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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.: DA–00–03]

Milk in the Northeast and Other Marketing Areas: Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

7 CFR Part	Marketing area	AO nos.
1001	Northeast	AO–14–A69
1005	Appalachian	AO–388–A11
1006	Florida	AO–356–A34
1007	Southeast	AO–366–A40
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1124	Pacific Northwest	AO–368–A27
1126	Southwest	AO–231–A65
1131	Arizona-Las Vegas	AO–271–A35
1135	Western	AO–380–A17

SUMMARY: This final rule implements revised product-price formulas for establishing Class III and Class IV milk prices. The formulas are applicable to all Federal milk marketing orders. Each of the amended orders was approved by producers who were eligible to have their milk pooled during the representative month for voting purposes. Referenda were conducted in two markets, and dairy farmer cooperatives were polled in the other nine markets to determine whether dairy farmers approve the issuance of the orders as amended.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Associate Deputy Administrator, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231-Room 2968, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–6274, e-mail: *clifford.carman@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

In consideration of the economic impact of changes to the Federal milk marketing order program implemented by this final rule on small entities, AMS prepared a regulatory flexibility analysis that was included in the final decision (67 FR 67906). The analysis indicates that the Department minimized the significant economic impact of the regulations on small entities to the fullest extent reasonably possible while adhering to the stated objectives. The Department reviewed the regulatory and financial burdens resulting from the regulations and determined, to the fullest extent possible, the impact on small businesses' abilities to compete in the market place. The Department reviewed the regulations from both the small producer and small processor perspectives, attempting to maintain a balance between these competing interests. Neither small producers nor small handlers should experience any particular disadvantage as a result of the order amendments.

No additional information collection or reporting requirements will be necessitated by the amendments.

An analysis of the economic effects of the alternatives selected was done and summarized in the final decision. A complete economic analysis is available upon request from Howard McDowell, Senior Economist, Office of the Chief Economist, USDA/AMS/Dairy Programs, Stop 0229-Room 2753, 1400 Independence Avenue, SW., Washington, DC 20250–0229, (202) 720–7091, e-mail: *howard.mcdowell@usda.gov*.

Civil Rights Impact Statement

Pursuant to Departmental Regulation (DR) 4300–4, a comprehensive Civil Rights Impact Analysis (CRIA) was

conducted and published with the final decision on Federal milk order consolidation and reform. The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. This issue was reconsidered in the Final Decision (67 FR 67906) with regard to the order amendments, and the conclusion has not changed.

Copies of the Civil Rights Impact Analysis done for the Final Decision on Federal milk order consolidation and reform can be obtained from AMS Dairy Programs at (202) 720–4392; any Milk Market Administrator office; or via the Internet at: *http://www.ams.usda.gov/dairy/*.

Prior documents in this proceeding:

Notice of Hearing: Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Tentative Final Decision: Issued November 29, 2000; published December 7, 2000 (65 FR 76832).

Interim Final Rule: Issued December 21, 2000; published December 28, 2000 (65 FR 82832).

Recommended Decision: Issued October 19, 2001; published November 29, 2001 (66 FR 59546).

Extension of Time: Issued November 26, 2001; published November 29, 2001 (66 FR 59546).

Final Decision: Issued October 25, 2002; published November 7, 2002 (67 FR 67906).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, for each of the aforesaid orders, it is found that:

(1) The said orders, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Northeast and other orders effective for milk marketed on or after April 1, 2003. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on October 25, 2002.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective for milk marketed on or after April 1, 2003.

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Northeast and other orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of the order amending the Northeast and other orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in each marketing area.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. Section 1000.40 is amended by adding paragraph (c)(1)(ii) and revising paragraph (d)(1)(i) to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

(d) * * *

(1) * * *

(i) Butter; and

* * * * *

2. Section 1000.50 is amended by revising the last sentence of the introductory text; by revising paragraphs (a), (b), (c), (g), (h), (j), (l), (m), (n), (o), (p)(1), and (q)(3); and by removing paragraph (q)(4) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $0.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class III skim milk price plus 3.5 times the butterfat price.

* * * * *

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class IV skim milk price plus 3.5 times the butterfat price.

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.5 cents, with the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 14 cents and multiplying the result by 0.99.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

(ii) Subtract 0.9 times the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.17.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 15.9 cents, with the result multiplied by 1.03.

(p) * * *

(1) Multiply 0.0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

* * * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.5 cents from this average, and multiplying the result by 1.20.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

1. Section 1001.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1001.61 is revised to read as follows:

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the producer price differential for the month.

3. Section 1001.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1001.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

4. Section 1001.71 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1001.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

5. Section 1001.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(vi) to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(vi) Multiply the pounds of butterfat in Class III and Class IV milk by the butterfat price for the month;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1030.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1030.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1030.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer butterfat price differential.

4. Section 1030.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

5. Section 1030.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1032.61 is revised to read as follows:

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1032.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1032.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1032.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1032.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

5. Section 1032.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1033.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1033.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1033.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1033.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

5. Section 1033.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1033.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1124.61 is revised to read as follows:

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1124.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1124.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1124.71 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

5. Section 1124.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

1. Section 1126.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1126.61 is revised to read as follows:

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1126.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1126.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1126.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1126.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

5. Section 1126.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

1. Section 1135.60 is amended by revising paragraphs (c)(3), (d)(2) and (h) to read as follows:

§ 1135.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1135.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1135.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

* * * * *

4. Section 1135.71 is amended by revising paragraph (b)(2) and removing and reserving paragraph (b)(3) to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) [Reserved]

* * * * *

5. Section 1135.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

Dated: February 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–3442 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO–313–A44; DA–01–07]

Milk in the Central Marketing Area; Interim Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain pooling provisions of the Central Federal milk order on an interim basis. This interim order amends the *Pool plant* provisions that: Establish lower but year-round supply plant performance standards; will not consider the volume of milk shipments to distributing plants regulated by another Federal milk order as a qualifying shipment for the Central order; exclude from receipts diverted milk made by a pool plant to another pool plant in determining pool plant diversion limits; and establish a "net shipments" provision for milk deliveries to distributing plants. For *Producer milk*, this interim order adopts amendments that: establish higher year-round diversion limits; will base diversion limits for supply plants on deliveries to Central order distributing plants; and eliminate the ability to simultaneously pool milk on the Central milk order and a State-operated milk order that has marketwide pooling. More than the required number of producers in the Central marketing area have approved the issuance of the interim order as amended.

EFFECTIVE DATE: March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231–Room 2968, 1400 Independence Avenue, Washington, DC 20250–0231, (202) 690–1366, e-mail: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Approximately 9,695 of the 10,108 dairy producers (farmers), or 95.9 percent, whose milk was pooled under the Central Federal milk order at the time of the hearing, November 2001, would meet the definition of small businesses. On the processing side, approximately 10 of the 56 milk plants associated with the Central milk order during November 2001 would qualify as "small businesses," constituting about 17.9 percent of the total.

Based on these criteria, more than 95 percent of the producers would be considered as small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Central milk marketing area and are not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

Prior documents in this proceeding:

Notice of Hearing: Issued October 17, 2001; published October 23, 2001 (66 FR 53551).

Tentative Final Decision: Issued November 8, 2002; published November 19, 2002 (67 FR 69910).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Central order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Central marketing order:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Central order, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Central order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary and in the public interest to make these interim amendments to the Central order effective March 1, 2003. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The interim amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on November 8, 2002.

The changes that result from these amendments will not require extensive

preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective March 1, 2003. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after publication in the **Federal Register**. (Sec. 553 (d)), Administrative Procedure Act, (5 U.S.C. 551–559)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Central order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Central order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Central marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR Part 1032 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.7 is amended by:

(a) Revising the introductory text of paragraph (c),

(b) Revising paragraph (c)(1),

(c) Revising paragraph (c)(2),

(d) Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4); and

(e) Adding a new paragraph (c)(5).

The revisions read as follows:

§ 1032.7 Pool plant.

* * * * *

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 20 percent during the months of August through February and 15 percent in all other months of the Grade A milk received from dairy farmers (except dairy farmers described in § 1032.12(b)) and from handlers described in § 1000.9(c), including milk diverted pursuant to § 1032.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (a) or (b) of this section;

(2) The operator of a pool plant located in the marketing area may include as qualifying shipments milk delivered directly from producer's farms pursuant to § 1000.9(c) or § 1032.13(c). Handlers may not use shipments pursuant to § 1000.9(c) or § 1032.13(c) to qualify plants located outside the marketing area;

* * * * *

(5) Shipments used in determining qualifying percentages shall be milk transferred or diverted to and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

* * * * *

2. Section 1032.13 is amended by:

(a) Revising paragraph (d)(2)

(b) Redesignating paragraphs (d)(3), (d)(4), and (d)(5), as (d)(4), (d)(5), and(d)(6), respectively.

(c) Adding a new paragraph (d)(3)

(d) Adding a new paragraph (e).

The revisions read as follows:

§ 1032.13 Producer milk.

* * * * *

(d) * * *

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent during the months of August through February, and not more than 85 percent during the months of March through July, provided that not less than 20 percent of such receipts in the months of August through February and 15 percent of the remaining months' receipts are delivered to plants described in § 1032.7(a) and (b);

(3) Receipts used in determining qualifying percentages shall be milk transferred to or diverted to or physically received by a plant described in § 1032.7(a) or (b) less any transfer or diversion of bulk fluid milk products from such plants.

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

* * * * *

Dated: February 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–3443 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–02–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1512

Requirements for Low-Speed Electric Bicycles

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Public Law 107–319, 116 Stat. 2776 (the Act), enacted December 4, 2002, subjects low-speed electric bicycles to the Commission's existing regulations at 16 CFR part 1512 and 16 CFR 1500.18(a)(12) for bicycles that are solely human powered. For purposes of this requirement, the Act defines a low-speed electric bicycle as "a two-or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph." Public Law No. 107–319, section 1, 116 Stat. 2776 (2002). The Commission is issuing this immediately effective amendment to its requirements for bicycles at 16 CFR part 1512 to promptly inform the public of the newly enacted statutory requirement on low-speed electric bicycles.

DATES: This amendment is effective upon publication in the **Federal Register**, that is, on February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Lowell Martin, Esq., Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7628; e-mail *lmartin@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Public Law 107–319 (the Act), enacted December 4, 2002, amends the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051, *et seq.*, by adding a new section 38 establishing requirements for low speed electric bicycles.

Specifically, section 1 of the Act makes low-speed electric bicycles subject to the Commission's existing regulations on bicycles.

(a) Notwithstanding any other provision of law, low-speed electric bicycles are consumer products within the meaning of section 3(a)(1)[of the CPSA] and shall be subject to the Commission regulations published at § 1500.18(a)(12) and part 1512 of title 16, Code of Federal Regulations.

Public Law 107–319, section 1, 116 Stat. 2776.

The Act defines the term "low-speed electric bicycle" as follows:

(b) for purposes of this section, the term "low-speed electric bicycle" means a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

Id.

The Commission's regulation at 16 CFR 1500.18(a)(12) makes the determination that bicycles that do not comply with the requirements of 16 CFR part 1512 present a mechanical hazard within the meaning of section 2(s) of the Federal Hazardous Substances Act (FHSA). 15 U.S.C. 1261(s). The effect of this determination is that noncomplying bicycles are "hazardous substances" for purposes of section 2(f)(1)(D) of the FHSA, and are also "banned hazardous substances" pursuant to section 2(q)(1)(A) of the FHSA. 15 U.S.C. 1261(f)(1)(D), 1261(q)(1)(A). See also, *Forester* v. *Consumer Product Safety Com'n, 559 F.2d 774, 783–786* (D.C. Cir. 1977).

The amendment to § 1512.2 of 16 CFR part 1512 promulgated today incorporates the Act's definition of "low-speed electric bicycle," thereby helping to inform the public of the statutory application of part 1512 to low-speed electric bicycles.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes an agency to dispense with certain notice procedures for a rule when it finds "good cause" to do so. 5 U.S.C. 553(b)(3)(B). Specifically, under section 553(b)(3)(B), the requirement for notice and an opportunity to comment does not apply when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The requirement reflected in this amendment is imposed by the Act and is not discretionary with the Commission. Accordingly, the Commission hereby finds that notice and an opportunity for comment on this amendment are unnecessary.

Section 553(d)(3) of the APA authorizes an agency, "for good cause found and published with the rule," to dispense with the otherwise applicable requirement that a rule be published in the **Federal Register** at least 30 days before its effective date. The Commission hereby finds that the 30 day delay in effective date is unnecessary because the requirement reflected in the amendment was imposed by the Act and is not discretionary with the Commission.

Because this amendment incorporates a requirement mandated by statute that is not discretionary with the Commission, and thus is not subject to notice and comment, this rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Because this amendment incorporates a statutory requirement not subject to agency discretion, it is not an agency action subject to the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Pursuant to Executive Order No. 12988, the Commission states the preemptive effect of this regulation as follows. Section 1 of the Act provides that its requirements "shall supercede any State law or requirement with respect to low-speed electric bicycles to the extent that such State law or requirement is more stringent than the Federal law or requirements referred to in subsection (a)[the Commission's regulations on bicycles at 16 CFR part 1512]." Public Law No. 107–319, section 1, 116 Stat. 2776.

List of Subjects in 16 CFR Part 1512

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

For the foregoing reasons, the Commission amends Title 16 of the Code of Federal Regulation to read as follows:

PART 1512—REQUIREMENTS FOR BICYCLES

1. The authority citation for Part 1512 is revised to read as follows:

Authority: Secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended, 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262); Pub. L. 107–319, 116 Stat. 2776.

§ 1512.2. [Amended]

2. Amend § 1512.2, to revise paragraph (a) to read as follows:

(a) Bicycle means:

(1) A two-wheeled vehicle having a rear drive wheel that is solely human-powered;

(2) A two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

Dated: February 6, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–3423 Filed 2–11–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–009]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Submarine Base San Diego, California (33 CFR 165.1103) at the request of the U.S. Navy. The additional size will accommodate the Navy's placement of anti-small boat barrier booms on the perimeter of the zone. Entry into this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast.

DATES: This rule is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–009], and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C.

553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its Web site has described the current nationwide threat level as "Elevated." According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Although we had anticipated using the effective period of the current temporary final rule to engage in notice and comment rulemaking, the Captain of the Port has decided to extend the effective period for 3 months to allow sufficient time to properly develop permanent regulations tailored to the present and foreseeable security environment. This extension preserves the status quo within the Port while a permanent rule is developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rulemaking and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any final rule.

Background and Purpose

The Coast Guard is expanding the current security zone (33 CFR 165.1103) to allow the U.S. Navy to put anti-small boat barrier booms at Naval Submarine Base San Diego. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. The expansion of this security zone will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Submarine Base San Diego and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, Commander, U.S. Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: Seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6 (a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The implementation of this security zone is necessary for the protection of the United States' national security interests. The size of the zone is the minimum necessary to allow for safe placement of the anti-small boat booms while providing adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing in close proximity to the Naval Submarine Base. Any hardships experienced by persons or vessels wishing to approach the Naval Submarine Base are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public. The expansion of the security zone will not impact navigation in the shipping channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" includes small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Naval Base San Diego. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132; Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule, which temporarily modifies an existing security zone, is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.1103 [Suspended]

2. Temporarily suspend § 165.1103 from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

3. Add new temporary § 165.T11–031 to read as follows:

§ 165.T11–031 Security Zone: San Diego Bay, CA:

(a) *Location.* The following area is a security zone: The water area adjacent to Naval Submarine Base, San Diego, California, described as follows: Commencing at a point on the shoreline of Ballast Point, at 32° 41′ 11.2″N, 117° 13′ 57.0″W. (Point A), thence northerly to 32° 41′ 31.8″N, 117° 14′ 00.6″W. (Point B), thence westerly to 32° 41′ 32.7″N, 117° 14′ 03.2″W. (Point C), thence southwesterly to 32° 41′ 30.5″N, 117° 14′ 17.5″W. (Point D), thence generally southeasterly along the shoreline of the Naval Submarine Base to the point of beginning, (Point A).

(b) *Effective dates.* This section is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of. this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: January 28, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–3464 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–008]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Base Coronado, California at the request of the U.S. Navy. The

additional size will accommodate the Navy's placement of anti-small boat barrier booms within the zone. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Navy Region Southwest, or the Commanding Officer, Naval Base Coronado.

DATES: This rule is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–008], and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its web site has described the current nationwide threat level as "Elevated." According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Although we had anticipated using the effective period of the current temporary final rule to engage in notice and comment rulemaking, the Captain of the Port has decided to extend the effective period for 3 months to allow sufficient time to properly develop permanent regulations tailored to the present and foreseeable security environment. This extension preserves the status quo within the Port while a permanent rule is developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any final rule.

Background and Purpose

The Coast Guard is expanding the security zone to allow the U.S. Navy to put in place anti-small boat barrier booms at Naval Base Coronado. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. The expansion of this security zone will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base Coronado and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the U.S.S. Cole and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, U.S. Naval Base San Diego, or the Commander, Naval Base Coronado. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6 (a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The implementation of this security zone is necessary for the protection of the United States' national security interests. The size of the zone is the minimum necessary to allow for safe placement of the anti-small boat booms while providing adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing in close proximity to the Naval Base. Any hardships experienced by persons or vessels wishing to approach the Naval Base are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public. The expansion of the security zone will not impact navigation in the shipping channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Naval Base Coronado. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995(44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule, which temporarily modifies an existing security zone, is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.1104 [Suspended]

2. Temporarily suspend § 165.1104 from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

3. Add new temporary § 165.T11–049 to read as follows:

§ 165.T11–049 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: on the waters along the northern shoreline of Naval Base Coronado, the area enclosed by the following points: Beginning at 32°42′ 53.0″N, 117° 11′ 45.0W (Point A); thence running northerly to 32° 42′ 55.5″N, 117° 11′45.0″W, (Point B); thence running easterly to 32° 42′ 55.8″N, 117° 11′ 29.2″W, (Point C); thence southeasterly to 32° 42′ 49.0″N, 117° 11′ 17.0″W (Point D); thence southeasterly to 32° 42′ 41.5″N, 117° 11′ 04.5″W (Point E) thence running southerly to 32° 42′ 37.5″N, 117° 11′ 07.0″ W (Point F); thence running southerly to 32° 42′ 28.5″N, 117° 11′ 11.0″W (Point G); thence running southeasterly to 32° 42′ 22.0″N, 117° 10′ 48.0″W (Point H); thence running southerly to 32° 42′ 13.0″N, 117° 10′ 51.0″W (Point I); thence running generally northwesterly along the shoreline of Naval Base Coronado to the place of beginning.

(b) *Effective Dates.* This section is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Navy Region Southwest, or the Commanding Officer, Naval Base Coronado. Section 165.33 also contains other general requirements.

(d) *Enforcement.* The U. S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: January 28, 2003.

Stephen P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–3463 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–007]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Base, San Diego, California (33 CFR 165.1101), extending it by approximately 80 feet seaward of the pier heads at the request of the U.S. Navy. The additional size will accommodate the Navy's placement of anti-small boat barrier booms perpendicular to the piers. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

DATES: This rule is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–007] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. While the Navy has been implementing many force protection measures since the attack on the U.S.S. Cole and the attacks of September 11, 2001, the Chief of Naval Operations has recently emphasized the need for the expanded use of anti-small boat barrier booms around Navy vessels in U.S. ports to protect against attacks similar to the one launched against the U.S.S. Cole. In addition, the Office of Homeland Security through its Web site has described the current nationwide threat level as "Elevated." According to the Office of Homeland Security, an Elevated Condition is declared when there is a significant risk of terrorist attacks. The Coast Guard believes that issuing an NPRM and thereby delaying implementation of the expanded security zone would be against the public interest during this elevated state of alert.

Although we had anticipated using the effective period of the current temporary final rule to engage in notice and comment rulemaking, the Captain of the Port has decided to extend the effective period for 3 months to allow sufficient time to properly develop permanent regulations tailored to the present and foreseeable security environment. This extension preserves the status quo within the Port while a permanent rule is developed.

For the reasons stated in the paragraphs above under 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew, and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rulemaking and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

The Coast Guard has plans to make the expansion of the security zone permanent. Towards that end, the Coast Guard will initiate notice and comment rulemaking before issuing any final rule.

Background and Purpose

The Coast Guard is expanding the security zone (33 CFR 165.1101) by temporarily extending it approximately 80 feet seaward of the pier heads to allow the U.S. Navy to deploy anti-small boat barrier booms perpendicular to the piers. The expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. It will also prevent recreational and commercial craft from interfering with military operations involving all-naval vessels home-ported at Naval Base San Diego and it will protect transiting recreational and commercial vessels and their respective crews from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE and the terrorist attacks of September 11, 2001. The expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port or Commander, Navy Region Southwest. Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years. The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6 (a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The implementation of this security zone is necessary for the protection of the United States' national security interests. The size of the zone is the minimum necessary to allow for safe placement of the anti-small boat booms while providing adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing in close proximity to the Naval Base. Any hardships experienced by persons or vessels wishing to approach the Naval Base are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public. The expansion of the security zone will not impact navigation in the shipping channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Naval Base, San Diego, California. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule, which temporarily modifies an existing security zone, is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors Marine safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.1101 [suspended]

2. Temporarily suspend § 165.1101 from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

3. Add new temporary § 165.T11–047 to read as follows:

§ 165.T11–047 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: the water area within Naval Base, San Diego enclosed by the following points: Beginning at 32°41′16.5″ N, 117°08′01″ W (Point A); thence running southwesterly to 32°41′02.5″ N, 117°08′08.5″ W (Point B); to 32°40′55.0″ N, 117°08′00.0″ W (Point C); to 32°40′49.5″ N, 117°07′55.5″ W (Point D); to 32°40′44.6″ N, 117°07′49.3″ W (Point E); to 32°40′37.8N, 117°07′43.2″ W (Point F); to 32°40′30.9″ N, 117°07′39.0″ W (Point G); 32°40′24.5″ N, 117°07′35.0″ W (Point H); to 32°40′17.2″ N, 117°07′30.8″ W (Point I); to 32°40′10.6″ N, 117°07′30.5″ W (Point J); to 32°39′59.0″ N, 117°07′29.0″ W (Point K); to 32°39′49.8″ N, 117°07′27.2″ W (Point L); to 32°39′43.0″ N, 117°07′25.5″ W (Point M); to 32°39′36.5″ N, 117°07′24.2″ W (Point N); thence running easterly to 32°39′38.5″ N, 117°07′06.5″ W (Point O); thence running generally northwesterly along the shoreline of the Naval Base to the place of beginning.

(b) *Effective Dates.* This section is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commander, Navy Region Southwest.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: January 28, 2003.

Stephen P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–3462 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket 020626160–2309–03; I.D. 061902C]

RIN 0648–AQ13

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of public comment period for interim final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is extending the public comment period through March 24, 2003 for an interim final rule published in the **Federal Register** on December 24, 2002. The purpose of the interim final rule is to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California, south of Point Conception (34°27′N.) and west to the 120°W., from August 15 through August 31, and January 1 through January 31, when the Assistant Administrator for Fisheries publishes a notice that El Nino conditions are present. The comment period, which originally ended on February 7, 2003, is being extended to allow for additional public comment.

DATES: Written comments on the above mentioned interim final rule must be postmarked or transmitted by facsimile by 5 p.m., Pacific Standard Time, on March 24, 2003. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Written comments on the interim final rule should be sent to Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Copies of the Environmental Assessment (EA) and biological opinion (BO) are available on the internet at *http://swr.ucsd.edu/* or may be obtained from Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980–4029.

SUPPLEMENTARY INFORMATION: On December 24, 2002, NMFS published an interim final rule (67 FR 78388) implementing the framework for prohibiting fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California, south of Point Conception (34°27′N.) and west to the 120°W., from August 15 through August 31, and January 1 through January 31, when the Assistant Administrator for Fisheries publishes a notice that El Nino conditions are present. This interim final rule also announced the criteria that will be used for determining whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure. Based on the these criteria, NMFS determined that El Nino conditions were not present for purposes of implementing the time and area closure for January 2003. In addition, comments were requested on an alternate closure that NMFS is evaluating.

The comment period is being extended in response to a request from the public to provide more time to review the loggerhead turtle entanglement data and the sea surface temperature data available on the NOAA Coastwatch West Coast Regional Node web page at *http://cwatchwc.ucsd.edu/*.

Dated: February 7, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3494 Filed 2–7–03; 1:52 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 29
Wednesday, February 12, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. (Pilatus) Model PC–6 airplanes. This proposed AD would require you to inspect and correct, as necessary, the aileron control bellcrank assemblies at the wing and fuselage locations. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct increased friction in the aileron control bellcrank assemblies, which could result in failure of the aileron flight-control system. Such failure could lead to problems in controlling flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 21, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–01–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–01–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Model PC–6 airplanes. The FOCA reports one occurrence where the pilot reported increased friction on the ailerons. Inspection revealed unwanted axial movement of the aileron bellcrank assemblies, part numbers 6132.0071.51, 6132.0071.52, and 6232.0118.00. The axial movement is caused by deterioration of the adhesive bond around the bellcrank bearings which could cause the heads of the control cable attachment bolts to catch on the adjacent structure.

What are the consequences if the condition is not corrected? Increased friction in the aileron control bellcrank assemblies could result in failure of the aileron flight-control system. Such failure could lead to problems in controlling flight.

Is there service information that applies to this subject? Pilatus has issued Service Bulletin No. 27–001, dated June 5, 2002.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting, before removal, the bellcrank assemblies to identify which have a circlip installed;
—Removing the bellcrank assemblies;
—Inspecting the bellcrank assemblies for loose or worn bearings;
—Inspecting the control-cable attachment bolts for correct type and for rub damage;
—Staking and locking the bearing in the housings of the wing bellcranks; and
—Reinstalling the bellcrank assemblies.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2002–642, dated November 15, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the

United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–6 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 32 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspections and modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7 workhours × $60 per hour = $420	$300	$720	$720 × 32 = $23,040.

We have no way of estimating costs to accomplish any necessary repairs that would be required based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft, Ltd.: Docket No. 2003–CE–01–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model PC–6 airplanes, all manufacturer serial numbers (MSN) up to and including 939, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct increased friction in the aileron control bellcrank assemblies, which could result in failure of the aileron flight-control system. Such failure could lead to problems in controlling flight.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect, before removal, the wing bellcrank assemblies, part numbers (P/N) 6132.0071.51 and 6132.0071.52, for installed circlips, P/N N237. (i) If circlips are installed, perform the actions required in paragraphs (d)(5) and (d)(6). (ii) If circlips are not installed, perform all actions required by paragraphs (d)(3), (d)(4), (d)(5), (d)(6), and (d)(7).	Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.

Actions	Compliance	Procedures
(2) Inspect, before removal, the fuselage bellcrank assembly, P/N 6232.0118.00, for the circlip installed on the housing to prevent axial movement of the bellcrank on its bearing and the flange of the housing to the rear. If the fuselage bellcrank assembly has either no circlip and/or is not installed as required, perform the actions in paragraphs (d)(8) and (d)(9).	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(3) Remove the wing bellcrank assemblies, P/Ns 6132.0071.51 and 6132.0071.52, and inspect for worn or damaged bearings. Replace worn or damaged bearings.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD, as applicable.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(4) Stake and lock the bearing in the housing of the wing bellcranks, P/Ns 6132.0071.51 and 6132.0071.52.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD, as applicable.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(5) Inspect the wing bellcranks control-cable attachment bolts for correct type and for signs of rub damage on the heads. Replace bolts which are damaged and/or have a total length (including head) of more than 21.5 mm (0.85 in.).	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(6) Inspect the wing bellcranks support plate for signs of rub damage caused by the bolts. If damage is found: (i) Obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD (ii) Incorporate this repair scheme.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(7) Reinstall wing bellcrank assemblies.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(8) Remove the fuselage bellcrank assembly, P/N 6232.0118.00, and inspect the housing for wear, damage, and signs of axial movement of the bearing in the housing. Replace worn or damaged bearings. If any signs of axial movement of a bearing are found: (i) Obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD. (ii) Incorporate this repair scheme.	Prior to further flight after the inspections required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.
(9) Reinstall the fuselage bellcrank assembly. Ensure that the fuselage bellcrank assembly is installed so that the surface of the bellcrank with the flange of the housing is installed to the rear. The effect of this is to lock the bellcrank on the bearing tube and thus prevent movement.	Prior to further flight after the inspections required in paragraphs (d)(1), (d)(2) and (d)(8) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.

Actions	Compliance	Procedures
(10) Do not install any bellcrank assemblies, P/Ns 6132.0071.51, 6132.0071.52, and 6232.0118.00 (or FAA-approved equivalent part numbers), unless the aileron assembly has been inspected, modified, and installed.	As of the effective date of this AD	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 27–001, dated June 5, 2002, and the applicable maintenance manual.

Note 1: Axial movement of serviceable bearings in the housings of the wing bellcranks is permitted provided no wear or damage to the bearing is found.

Note 2: Any signs of axial movement of a bearing in the housing of the fuselage bellcrank assembly requires that you obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD and incorporate the repair scheme.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Swiss AD Number HB 2002–642, dated November 15, 2002.

Issued in Kansas City, Missouri, on February 4, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3449 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel 1 Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arriel 1 series turboshaft engines. This proposal would require initial and repetitive visual inspections for ingestive erosion, and cleaning if necessary, of M02 and M03 modules. This proposal is prompted by reports from the manufacturer of ingestive erosion of M02 and M03 modules. The actions specified by the proposed AD are intended to prevent an unbalance of the gas generator rotating assembly which may lead to deterioration of the gas generator rear bearing and uncommanded engine shutdown.

DATES: Comments must be received by April 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–43–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Turbomeca S.A. Arriel 1 A, 1 A1, 1 A2, 1 B, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 turboshaft engines. The DGAC advises that approximately 225 of the Arriel engine fleet operates in a dusty or erosive atmospheric environment, containing substances such as laterite, sand, volcanic ash, and chemical particles. This atmospheric environment can lead to dust accumulation and unbalance of the gas generator rotating assembly, which may lead to deterioration of the gas generator rear bearing and also to uncommanded engine shutdown.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arriel 1 turboshaft engines of the same type design that are used on helicopters registered in the United States, the proposed AD would require initial and repetitive visual inspections for ingestive erosion, and cleaning if necessary, of M02 and M03 modules.

Economic Analysis

There are approximately 3,560 engines of the affected design in the worldwide fleet. The FAA estimates that about 225 of the 900 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 0.2 work hour per engine to perform each axial compressor erosion inspection, and take approximately 40 work hours per engine to perform the gas generator rotor assembly cleaning, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the proposed AD to perform one inspection and one cleaning to U.S. operators is estimated to be $542,700.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with State authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Turbomeca S.A.: Docket No. 2002–NE–43–AD.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel 1 A, 1 A1, 1 A2, 1 B, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter AS 350, AS 350B1, AS 350B2, AS 365C, AS 365C2, AS 365N, AS 365N1, AS 365N2, BK 117C1, BK 117C2, Augusta A109 K2, and Sikorsky S76 C helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent an unbalance of the gas generator rotating assembly which may lead to deterioration of the gas generator rear bearing and also to uncommanded engine shutdown, do the following:

Initial Inspections and Cleaning

(a) For engines that have been operated in a dusty or erosive atmospheric environment containing substances such as laterite, sand, volcanic ash, and chemical particles, and engines for which the operating environment cannot be determined, do the following:

(1) Perform an initial visual inspection for erosion of the axial compressor, within 50 operating hours after the effective date of this AD. Information on inspecting can be found in Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 72 0230, dated October 16, 1998.

Modification TU 175 Not Incorporated

(2) For engines that do not have Modification TU 175 incorporated, if axial compressor erosion is above 1.5 millimeters in area "D" as defined in the engine maintenance manual, and if the M03 module has operated more than 200 hours with this M02 module, clean the M03 module within the next 50 operating hours. Information on cleaning can be found in Turbomeca S.A. MSB No. 292 72 0230, dated October 16, 1998.

Modification TU 175 Incorporated

(3) For engines that have Modification TU 175 incorporated, if axial compressor erosion inspection requires the M02 module to be removed, and if the M03 module has operated more than 400 hours with this M02 module, clean the M03 module within the next 50 operating hours. Information on cleaning can be found in Turbomeca S.A. MSB No. 292 72 0230, dated October 16, 1998.

Reconditioning and Checks

(b) Perform reconditioning and checks of the engines. Information on reconditioning and checks can be found in Turbomeca S.A. MSB No. 292 72 0230, dated October 16, 1998.

Repetitive Inspections

(c) Repeat axial compressor erosion inspections within every 200 operating

hours-since-last-inspection (HSLI) for engines that do not have Modification TU 175 incorporated, and within every 400 operating HSLI, for engines that have Modification TU 175 incorporated, as specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Note 3: A list of authorized repair centers qualified to carry out gas generator rotating assembly maintenance and cleaning may be obtained from Turbomeca S.A. or the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Note 4: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive 1990–064(A), Revision 1, dated March 21, 2000.

Issued in Burlington, Massachusetts, on February 5, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–3473 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN AC09

Workshops To Discuss Specific Issues Regarding the Existing Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshops.

SUMMARY: The Minerals Management Service (MMS) is giving notice of four public workshops to discuss specific issues regarding the existing Federal oil royalty valuation regulations at 30 CFR Part 206 for crude oil produced from Federal leases.

DATES: The public workshop dates are:

Workshop 1—Denver, Colorado, on March 4, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Mountain time.

Workshop 2—Houston, Texas, on March 5, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Central time.

Workshop 3—Washington, DC, on March 6, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Eastern time.

Workshop 4—Albuquerque, New Mexico, on March 6, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Mountain time.

ADDRESSES: The workshop locations are:

Workshop 1 will be held at the Minerals Management Service, Denver Federal Center, 6th Avenue and Kipling Street, Building 85, Auditoriums A–D, Denver, Colorado, 80226–0165, telephone number (303) 231–3302.

Workshop 2 will be held at Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas 77032, telephone number (281) 987–6800.

Workshop 3 will be held at the Main Interior Building, 1849 C Street, NW., Washington, DC 20240 (South Penthouse Room), telephone number, (202) 208–3512.

Workshop 4 will be held at the Wyndham Albuquerque, 2910 Yale Boulevard SE., Albuquerque, New Mexico 87106, telephone number (505) 843–7000.

FOR FURTHER INFORMATION CONTACT: Paul Knueven, Minerals Management Service, Minerals Revenue Management Program, P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165, telephone (303) 231–3316, fax number (303) 231–3781, e-mail *Paul.Knueven@mms.gov*.

SUPPLEMENTARY INFORMATION: MMS continues to evaluate the effectiveness and efficiency of its regulations. We believe that the Federal oil valuation rule is working well and accomplishes its objective of ensuring a fair return on federal resources. However, with our 3 years of experience with the current rule and our 5-year experience with the royalty-in-kind program, we have identified certain technical issues needing a more thorough review.

Accordingly, MMS is seeking public comment and recommendations on the following specific issues: (1) The timing and application of published indices, (2) the calculation of location and quality differentials where lessees do not have that information, (3) allowable transportation costs, (4) the rate of return allowed for calculating actual costs under non-arm's-length transportation agreements, and (5) how lessees value and report crude oil disposed of under joint operating agreements.

Because we believe the current rule is working well and is not in need of extensive revision, we request that workshop participants focus their comments on the specific issues identified above. However, if there are other significant issues, participants may address those in their comments, if time permits.

The workshops will be open to the public without advance registration. Public attendance may be limited to the space available. We encourage a workshop atmosphere; members of the public are encouraged to participate.

For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: February 5, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–3467 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Reopening of public comment period and notice of public workshops.

SUMMARY: The MMS is reopening the public comment period on the proposed rule regarding the valuation for royalty purposes of crude oil produced from Indian leases.

DATES: We must receive comments on or before April 14, 2003.

ADDRESSES: Submit written comments directly to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Mineral Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385, e-mail *Sharron.Gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION: The MMS published a notice of proposed rulemaking regarding the value for royalty purposes of crude oil produced from Indian leases on February 12, 1998 (63 FR 7089) and a supplementary proposed rule on January 5, 2000 (65 FR 403). In today's **Federal Register**, MMS is announcing dates, places, and times for workshops on issues related to the existing rules adopted in March 2000 governing the valuation for royalty purposes of crude oil produced from Federal leases.

The workshops will address, among other things, issues related to calculation of transportation allowances (including the rate of return allowed for calculating actual costs under non-arm's-length transportation arrangements), timing and application of published index prices, and calculation of location and quality differentials under certain circumstances.

Because of the substantive overlap between these issues and issues involved in the proposed Indian oil valuation rule, and to give persons interested in Indian lease issues an opportunity to participate in the workshops, MMS is reopening the comment period on the proposed Indian oil valuation rule for 60 days so it can include in the record any relevant comments received. The MMS then can consider those comments as it proceeds with the Indian oil valuation rule.

The policy of the Department of the Interior is to give the public an opportunity to participate in the rulemaking process. Accordingly, you may submit your written comments, suggestions, or objections regarding this notice to the location identified in the **ADDRESSES** section of this notice. You should submit comments on or before the date identified in the **DATES** section of this notice.

We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 5, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–3466 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–02–108]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operating regulations that govern the operation of the Jordan (S337) bridge, the Gilmerton (US 13/460) bridge, and the Dominion Boulevard (US 17) bridge which all span the Southern Branch of the Elizabeth River, and the Centerville Turnpike (SR170) bridge across the Albemarle and Chesapeake Canal. We propose to extend the morning and evening rush hour closure periods between one hour and one-half hour for the Jordan and Gilmerton bridges and to add rush hour scheduled openings for the Gilmerton and Centerville Turnpike bridges. These regulations are necessary to relieve increased vehicular traffic congestion during weekday rush hours; the changes would reduce traffic delays while still providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before April 14, 2003.

ADDRESSES: You may mail comments and related material to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398–6222. The Commander (Aowb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–02–108), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Virginia Cut of the Atlantic Intracoastal Waterway (AICW) extends approximately 28 statute miles from the Southern Branch of the Elizabeth River to the North Landing River. The AICW is used by recreational, public, and commercial vessels. General regulations governing the operation of bridges are set out in 33 CFR 117.1 through 117.49. Specific drawbridge regulations, which supplement the general regulations for certain AICW bridges, are set out in 33 CFR 117.997.

The City of Chesapeake has requested a change to the existing regulations for the Jordan, Gilmerton, Dominion Boulevard and Centerville Turnpike

bridges crossing the AICW, in order to balance the needs of mariners and motorists transiting in and around Chesapeake. Bridge openings at peak traffic hours during the weekdays cause considerable vehicle traffic backup. The City of Chesapeake is seeking to reduce the amount of vehicular traffic congestion during the weekday morning and evening rush hours. The City of Chesapeake is also seeking to change two of their drawbridges; Dominion Boulevard and Centerville Turnpike bridges, from opening on signal to opening on the hour and half hour between peak traffic hours. The following bridges would be affected by this proposal:

Jordan Bridge

The current regulations require the Jordan Bridge across the Southern Branch of the Elizabeth River, at AICW mile 2.8, to open on signal at any time for public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial and/or public vessels assisting in any emergency situation. From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays, the bridge need not open during rush hour closure periods for the passage of certain recreational craft or commercial vessels and it need not open during rush hour restrictions for commercial cargo vessels, including tugs and tows, unless 2 hours advance notice has been given to the Jordan Bridge Office at (757) 545–4695. At all other times, the draw opens on signal.

The City of Chesapeake, through a Resolution submitted by the Chesapeake City Council, has requested changes in the regulations governing the Jordan Bridge. They requested a change in the hours the draw would open during the morning and evening rush hours to 6:30 a.m. to 8:30 a.m. and to 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays. This change would extend the morning closure period by one hour and the evening closure period by a half hour. The provision allowing vessels in distress, public vessels of the United States, and commercial and public vessels assisting in any emergency passage through the bridge at any time would be removed since this provision is addressed in 33 CFR 117.31. Vessels carrying liquefied flammable gas and other hazardous materials would still have unimpeded access through the bridge at any time.

The proposal to continue to allow vessels carrying liquefied flammable gas or other hazardous materials unimpeded access through the bridge at any time was made based on the hazards involved in shipping liquefied flammable gas and to maintain safety along the Southern Branch of the Elizabeth River. The Coast Guard Marine Safety Office, Hampton Roads, issues safety zones each time liquefied flammable gas is transported through the Port of Hampton Roads.

Since tugs and tugs with tows have no place to tie up in the proximity of the bridge to wait for a bridge opening, it is proposed to continue to include them in the 2-hour advance notice requirement as well as commercial cargo vessels requiring high tide to transit. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners that are referred to as "snow birds". Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during rush hour due to their numbers. The proposal to continue to restrict recreational vessels during the morning and evening rush hour is based on the need to limit the openings of the draw during these hours to aid in relieving highway congestion currently being experienced at this bridge.

The request for the change to the regulations is based on increasing area highway congestion, the lengthy delays to cross bridges due to area growth that is resulting in more motorists on the highways. The area's bridges and bridge-tunnel complexes are experiencing increasing congestion which can be partially remedied by extending the bridge closure periods during peak traffic hours to help keep the main highway arteries free flowing. The Jordan Bridge is a vital link between the cities of Portsmouth and Chesapeake used widely by motorists that work at the Norfolk Naval Shipyard, other Federal agencies located within the shipyard as well as within Portsmouth, and other industries and businesses in Portsmouth and Chesapeake.

The City's request to extend the morning and evening hour closure periods Monday through Friday, except Federal holidays, is based on the need to reduce traffic congestion. The current schedule has been successful; however, it needs to be expanded since the last time the regulations governing the operation of the Jordan Bridge were updated was in the summer of 1990. A Final Rule (58 FR 16122) was published March 25, 1993. Since then the current closure periods have not been sufficient to accommodate the increase in vehicular traffic crossing this bridge.

Weekday vehicular traffic submitted by the City of Chesapeake revealed that approximately 825 vehicles cross over the bridge during the morning rush hour and approximately 2500 cross over the bridge during the evening rush hour.

The Coast Guard studied the City of Chesapeake's drawlogs for the Jordan Bridge for 2001, Monday through Friday, except Federal holidays, between the hours of 7:30 a.m. to 8:30 a.m. and 5 p.m. to 5:30 p.m. to determine how often the draw opened for the passage of vessels. The logs revealed that during the requested extended rush hour closure periods, the draw opened a total of 637 times for 2001. April had the highest number of openings; 92 times during the morning and 72 times during the evening. Recreational vessels requesting opening during the requested hours of extension totaled 30 for May 2001, 365 for October 2001, and 167 for November. Based on the frequency of bridge openings and the increase in vehicular traffic, the City of Chesapeake's request to extend the morning and evening rush hours appears reasonable.

Gilmerton Bridge

Current regulations require the Gilmerton Bridge across the Southern Branch of the Elizabeth River, AICW mile 5.8, to open on signal at any time for public vessels of the United States, vessels in distress, commercial vessels carrying liquefied flammable gas or other harmful substances, and commercial and/or public vessels assisting in any emergency situation. From 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays the bridge need not open during rush hour closure periods for the passage of certain recreational craft or commercial vessels and need not open during rush hour closure periods for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Gilmerton Bridge at (757) 545–1512. The draw opens on signal at all other times.

The City of Chesapeake, through a Resolution submitted by the Chesapeake City Council, has requested changes in the regulations governing the Gilmerton Bridge. They requested a change in the hours the draw would open during the morning and evening rush hours to 6:30 a.m. to 8:30 a.m. and to 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays. This change would extend the morning closure period by a half hour and extend the evening closure period by a half hour. The provision allowing vessels in distress, public vessels of the United States, and/or commercial and public vessels assisting in any emergency passage through the bridge at any time would be removed since this provision is addressed in 33 CFR 117.31. Vessels carrying liquefied flammable gas and other hazardous materials would still be given access through the bridge at any time.

The proposal to continue to provide vessels carrying liquefied flammable gas or hazardous materials unimpeded access through the bridge at any time with no restrictions was made based on the hazards involved in shipping liquefied flammable gas and to maintain safety along the Southern Branch of the Elizabeth River. The Hampton Roads Marine Safety Office issues safety zones each time a liquefied flammable gas carrier is transiting the Port of Hampton Roads. Also, since tugs, and tugs with tows have no place to tie up in the proximity of the bridge to wait for a bridge opening, it is proposed to continue to include them in the 2-hour advance notice requirement provision, as well as commercial cargo vessels requiring high tide to transit. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners that are referred to as "snowbirds". Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during rush hour closure periods due to their numbers. The proposal to expand the closure periods for recreational vessels during the morning and evening rush hour is based on the need to limit the openings of the draw during these hours to aid in relieving highway congestion currently being experienced at this bridge.

The request for the change to the regulations is based on increasing area highway congestion and lengthy delays across bridges due to area growth that is resulting in more motorists on the highways. The Gilmerton Bridge is another vital link between the cities of Portsmouth and Chesapeake and is used widely by motorists that work at the Norfolk Naval Shipyard, other Federal agencies located within the shipyard as well as within Portsmouth, and other industries and businesses in Portsmouth and Chesapeake.

The City's request to extend the morning and evening closure periods Monday through Friday, except Federal holidays, is based on the need to reduce traffic congestion. November 1994 was the last time the regulations governing the operation of this drawbridge were updated. A Final Rule (60 FR 37365) was published July 20, 1995. Since 1994, area growth has continued and the current closure periods are not sufficient to accommodate the increase in vehicular traffic crossing this bridge. Weekday vehicular traffic counts submitted by the City of Chesapeake revealed that during the morning rush hour, approximately 2200 vehicles cross the Gilmerton Bridge. During the evening rush hours, approximately 3000 vehicles cross over this bridge.

The Coast Guard studied the City of Chesapeake's drawlogs for the Gilmerton Bridge for the year of 2001, Monday through Friday, except Federal holidays, between the hours of 8 a.m. to 8:30 a.m. to 5 p.m. to 5:30 p.m. to determine how often the draw opened for the passage of vessels. The logs revealed that during the requested half-hour extension of the morning and evening rush hours, the draw opened a total of 223 times in the morning and 235 times in the evening. The highest number of openings occurred during the spring months and the fall months. The lowest openings occurred in February when vessel traffic is at its lowest due to the cold weather. Based on the number of vehicles that cross this bridge during the morning and evening rush hours and the frequency of bridge openings during the same time, the City of Chesapeake's request to extend the morning and evening rush hours by a half-hour appears reasonable.

Dominion Boulevard

Current regulations require the Dominion Boulevard Bridge across the Southern Branch of the Elizabeth River, AICW mile 8.8, to open on signal except from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the drawbridge need not open for the passage of recreational vessels. Vessels in an emergency involving danger to life or property shall be passed at any time.

The City of Chesapeake, through a Resolution submitted by Chesapeake City Council, has requested changes in the regulations governing the operation of the Dominion Boulevard Bridge also known as the Steel Bridge. This request would change the rush hour restrictions to 6:30 a.m. to 8:30 a.m. and to 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays. This change would extend the morning rush hour by a half hour at the beginning and reduce it by one half hour at the end. The evening rush hour would begin an hour later and last an hour later. A new provision would be added to change on demand openings to opening on signal on the hour and half-hour, between 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The provision to allow vessels in an emergency involving danger to life or property would be removed since this provision is addressed in 33 CFR 117.31. The City of Chesapeake also requested that new provisions be included allowing vessels carrying liquefied flammable gas or other hazardous materials access through the bridge at any time, tugs and tugs with tows and commercial cargo vessels access through the bridge with a 2-hour advance notification, and delaying the draw for 10 minutes for an approaching vessel or vessels waiting to pass through the drawspan. Recreational vessels would continue to be subject to the closure periods during the morning and evening rush hours. At all other times, the draw would open on signal.

The proposal to allow vessels carrying liquefied flammable gas or hazardous materials unimpeded access through the bridge at any time with no restrictions was made based on the hazards involved in shipping liquefied flammable gas and to maintain safety along the Southern Branch of the Elizabeth River. The Coast Guard Marine Safety Office, Hampton Roads, issues safety zones each time a liquefied flammable gas carrier is transiting the Port of Hampton Roads. Also, since tugs and tugs with tows have no place to tie up in the proximity of the bridge to wait for a bridge opening, it is proposed to continue to include them in the 2-hour advance notice requirement provision, as well as commercial cargo vessels requiring high tide to transit. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners referred to as "snowbirds". Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during rush hour restrictions due to their numbers. The proposal to continue to restrict recreational vessels during the morning and evening rush hour is based on the need to limit the openings of the draw during these hours to aid in relieving highway congestion currently being experienced at this bridge.

The request for the change to the regulations is based on increasing area highway congestion and lengthy delays at the Dominion Boulevard Bridge. The Dominion Boulevard Bridge is one of the vital links to those who live and work in the Great Bridge area of Chesapeake. Bridge openings during rush hours severely disrupt vehicular traffic. The need to extend bridge

closure periods during peak traffic hours far exceeds the need to maintain the Dominion Boulevard Bridge at its present regulated schedule.

The City's request to extend the morning and evening closure periods Monday through Friday, except Federal holidays, is based on the need to reduce traffic congestion. The current schedule was updated December 26, 1995 in a Final Rule (61 FR 1714) and worked for a while, but as a result of urban development, Dominion Boulevard has become a heavily traveled thoroughfare and the current closure periods are no longer sufficient to accommodate the increase in vehicles crossing this bridge during rush hour. The City of Chesapeake studied weekday vehicular traffic counts during the morning and evening rush hours. The average vehicle traffic count during a weekday morning rush hour for this bridge is approximately 2500 and for the evening rush hour, the vehicle count is approximately 2000.

The Coast Guard studied the City of Chesapeake's drawlogs for the Dominion Boulevard Bridge for the year 2001, Monday through Friday, except Federal holidays between the hours of 6:30 a.m. to 7 a.m., 8:30 a.m. to 9 a.m., 4 p.m. to 5 p.m. and 6 p.m. to 7 p.m. to determine how often the draw opened for the passage of vessels. The logs revealed that during the requested morning and evening rush hour extensions, the draw opened a total of 252 times during the morning and 350 times during the evening. The highest number of openings occurred May through November. The highest number of recreational vessels passing through this bridge during the extended hours of closure periods requested by the City was 275 in May 2001 and 245 in October of 2001. The lowest number of openings occurred in February, March and December due to the cold weather when boating is at its lowest. Based on the number of vehicles that cross this bridge during the morning and evening rush hours and the frequency of bridge openings during the same time, the City of Chesapeake's request to extend the morning and evening rush hours appears reasonable.

Centerville Turnpike

Current regulations that govern the operation of the Centerville Turnpike Bridge across the Albemarle and Chesapeake Canal, AICW mile 15.2, require the bridge to open on signal except from 7 a.m. to 7 p.m. the draw need only be opened on the hour and half-hour, seven days a week year-round, for the passage of recreational vessels. Public vessels of the United States, commercial vessels and vessels in an emergency condition which present danger to life or property shall be passed at any time.

The City of Chesapeake, through a Resolution submitted by the Chesapeake City Council, has requested changes in the regulations governing the Centerville Turnpike Bridge. Provisions would be added to close the drawspan between the hours of 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, allow commercial cargo vessels, tugs, and tugs with tows access through the bridge at any time provided a 2-hour advance notification is made, and would subject certain recreational vessels and commercial vessels to the morning and evening rush hour closure periods. The City also requested that the draw open only on the hour and half hour between 8:30 a.m. and 4 p.m. seven days a week. Since the rush hour closure periods are only for the weekday, the hour and half hour openings would apply between 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays and not seven days a week. The rest of the time the draw would open on signal. The Coast Guard is adding to the City's request that the draw shall open on signal for the passage of vessels carrying liquefied flammable gas or other hazardous materials. Coast Guard Marine Safety Office, Hampton Roads, confirmed that there is a commercial facility located past the Centerville Turnpike bridge that receives deliveries of fuel that is transported by barges.

The proposal to allow vessels carrying liquefied flammable gas or hazardous materials unimpeded access through the bridge at any time with no restrictions was made based on the hazards involved in shipping liquefied flammable gas and to maintain safety along the Albemarle and Chesapeake Canal. The Coast Guard Marine Safety Office, Hampton Roads, issues safety zones each time a liquefied flammable gas carrier is transiting the Port of Hampton Roads. Also, since tugs, and tugs with tows have no place to tie up in the vicinity of the bridge to wait for a bridge opening, it is proposed to include them in the 2-hour advance notice requirement provision, as well as commercial cargo vessels requiring high tide to transit. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners referred to as "snowbirds". Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during rush hour closure periods due to their numbers. The proposal to continue to restrict recreational vessels during the morning and evening rush hour is based on the need to limit the openings of the draw during these hours to aid in relieving highway congestion currently being experienced at this bridge.

The City's request to provide morning and evening closure periods for bridge openings Monday through Friday, except Federal holidays, is based on the large volume of highway traffic that occurs at this location. Centerville Turnpike is a small two-lane road that accommodates large volumes of highway traffic. The highway traffic is a result of the population growth in Chesapeake and is causing lengthy delays to motorists who use this bridge daily going to and from home to work. The current schedule was updated as a Final Rule September 30, 1991 (56 FR 49410). A Notice of Proposed Rulemaking (NPRM) was published (63 FR 26792, June 2, 1998) for the Centerville Turnpike Bridge proposing a change to the current operating schedule. The request was made by the City of Chesapeake to provide rush hour closure periods in the morning and evening, Monday through Friday including Federal holidays from April 1 to November 30. The remainder of the time, the bridge would open on signal. Comments received as a result of the NPRM were from marina owners located on the AICW. They expressed concern that the closure periods would have a negative impact on their business. The City of Chesapeake was informed of these comments and decided based on their conversations with these business owners to provide a new proposal for the Centerville Turnpike Bridge. The new proposal took the place of the NPRM and provided a comprehensive sequencing of all of the AICW bridges in Chesapeake that the City felt would minimize inconvenience to the maritime industry. The Coast Guard tested the City's new proposal by transiting the AICW in a Coast Guard 41-foot Search and Rescue vessel traveling 10 knots. The Coast Guard determined the speed of travel was the average speed the majority of boaters traveled along this waterway. It was determined after the test was completed that the City's request did not meet the reasonable needs of navigation.

Data received from the City of Chesapeake revealed highway traffic counts at the Centerville Turnpike Bridge has increased from 13,700 per day to over 16,000 per day. Weekday traffic counts submitted by the City revealed over 4500 vehicles cross over the Centerville Turnpike Bridge during the morning rush hours and over 3300 cross over this bridge during the evening rush hours.

The Coast Guard studied the City of Chesapeake's drawlogs for the Centerville Turnpike Bridge for the year of 2001, Monday through Friday, except Federal holidays, between the hours of 6:30 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. to determine how often the draw opened for the passage of vessels. The logs revealed that during the requested morning and evening rush hours, the draw opened a total of 395 times in the morning and 414 times in the evening. Vessel traffic through this bridge was at it's highest from April to November 2001. In May vessels totaled 255 and in October vessels totaled 305. Since this bridge currently does not have a morning or evening rush hour schedule and based on the number of vehicles crossing this bridge and the high number of openings occurring during the requested morning and evening rush hours, the City of Chesapeake's request appears reasonable.

Discussion of Proposed Rule

Jordan Bridge

The Coast Guard proposes to amend the substance of § 117.997(b) that governs the Jordan Bridge, across the Southern Branch of the Elizabeth River, AICW mile 2.8, in Chesapeake, Virginia. The proposed change to paragraph (b)(1) would require the bridge to open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials. Paragraph (b)(2) would expand the closure periods during rush hour from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Paragraph (b)(2)(i) would change the wording of pleasure craft to recreational vessel.

Gilmerton Bridge

The Coast Guard proposes to amend the substance of § 117.997 (d) that governs the Gilmerton Bridge, across the Southern Branch of the Elizabeth River, AICW mile 5.8, in Chesapeake, Virginia. The proposed change to paragraph (d)(1) would require the bridge to open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials. Paragraph (d)(2) would expand the closure period during rush hour from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Paragraph (d)(2)(i) would change the wording of pleasure craft to recreational vessel.

Dominion Boulevard Bridge

The Coast Guard proposes to amend both the form and substance of § 117.997 (f) which governs the Dominion Boulevard Bridge, across the Southern Branch of the Elizabeth River, AICW mile 8.8, in Chesapeake, Virginia. The proposed change to paragraph (f)(1) would require the bridge to open on signal at any time for commercial vessels carrying liquefied flammable gas or hazardous materials. Paragraph (f)(2) would establish closure periods for the bridge during rush hours from 6:30 a.m. to 8:30 a.m. and from 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays. Paragraph (f)(2)(i) would establish that the bridge need not open for the passage of recreational or commercial vessels during those closure periods that do no qualify under paragraph (f)(2)(ii) of this section. Paragraph (f)(2)(ii) would establish that the bridge need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice is given to the Dominion Boulevard Bridge at (757) 547–0521. Paragraph (f)(3) would establish scheduled opening for the bridge on the hour and half hour from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Paragraph (f)(4) would establish discretion for the drawtender to delay the opening up to 10 minutes pass the hour and half hour for the passage of approaching vessels and any other vessels that are waiting to pass. Paragraph (f)(5) would establish that the bridge would open on signal at all other times.

Centerville Turnpike Bridge

The Coast Guard proposes to amend both the form and substance of § 117.997(i) that governs the Centerville Turnpike Bridge, across the Albemarle and Chesapeake Canal, AICW mile 15.2, in Chesapeake, Virginia. Paragraph (i)(1) would require the bridge to open at any time for commercial vessels carrying liquefied flammable gas or hazardous materials. Paragraph (i)(2) would establish closure periods for rush hour from 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays. Paragraph (i)(2)(i) would establish that the bridge need not open for the passage of recreational or commercial vessels that do not qualify under (i)(2)(ii) of this section. Paragraph (i)(2)(ii) would establish that the bridge need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Centerville Turnpike Bridge at (757) 547–3632. Paragraph (i)(3) would establish a schedule for bridge openings on the hour and half hour from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays. Paragraph (i)(4) would give discretion to the drawtender to delay the opening 10 minutes pass the hour/half hour for the passage of the approaching vessel and any other vessels that are waiting to pass. Paragraph (i)(5) would establish that the bridge would open on signal at all other times.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridges. Mariners can plan their transits in accordance with the scheduled bridge openings, to further minimize delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the schedule bridge openings and minimize delay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity

and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3502.).

Federalism

A rule has implications for federalism under Executive Order 12132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comment on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a State of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.997 paragraphs (b)(1), (b)(2) introductory text, (b)(2)(i), (d)(1), (d)(2) introductory text, (d)(2)(i), (f) and (i) are revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal

* * * * *

(b) * * *

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (b)(2)(ii) of this section.

* * * * *

(d) * * *

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (d)(2)(ii) of this section.

* * * * *

(f) The draw of the Dominion Boulevard (US 17) bridge, mile 8.8, in Chesapeake:

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (f)(2)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Dominion Boulevard Bridge at (757) 547–0521.

(3) From 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays, the draw need be opened only on the hour and half hour.

(4) If any vessel is approaching the bridge and cannot reach the draw exactly on the hour or half hour, the drawtender may delay the opening up to ten minutes pass the hour or half hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

(5) Shall open on signal at all other times.

* * * * *

(i) The draw of the Centerville Turnpike (SR170) bridge across the Albemarle and Chesapeake Canal, mile 15.2, at Chesapeake:

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under (i)(1)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Centerville Turnpike Bridge at (757) 547–3632.

(3) From 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need only be opened on the hour and half hour.

(4) If any vessel is approaching the bridge and cannot reach the draw exactly on the hour or half hour, the drawtender may delay the opening ten minutes pass the hour or half hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

(5) Shall open on signal at all other times.

Dated: January 15, 2003.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–3458 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Tampa 02–053]

RIN 2115–AA97

Security Zones; Tampa, Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa and Crystal River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent security zones in Tampa, Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa and Crystal River, Florida. These zones, which are similar to the existing temporary security zones for vessels, waterfront facilities and bridges, are needed to ensure public safety and security in the greater Tampa Bay area. Entry into these zones would be prohibited unless authorized by the Captain of the Port, or their designated representative.

DATES: Comments and related material must reach the Coast Guard on or before April 14, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Tampa [COTP Tampa 02–053], 155 Columbia Drive Tampa, Florida 33606. The Waterways Management Branch of Marine Safety Office Tampa maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Tampa between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR David McClellan, Coast Guard Marine Safety Office Tampa, at (813) 228–2189 extension 102.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Tampa 02–053], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Marine Safety Office Tampa at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The terrorist attacks of September 11, 2001, killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and are of interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The Captain of the Port of Tampa has determined that these security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

These proposed security zones are similar to the existing temporary security zones established for vessels, waterfront facilities and bridges that will soon expire. The following seven, existing temporary final rules, which are similar to the ones we propose to make permanent, were published in the **Federal Register:**

Security Zone for Crystal River, FL (66 FR 62940, December 4, 2001). This temporary rule created temporary fixed security zones around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel and the Demory Gap Channel, Crystal River, Florida.

Security Zone Sunshine Skyway Bridge, Tampa, FL (66 FR 65838, December 21, 2001). This temporary rule created temporary fixed security zones 100 feet around all bridge supports and rocky outcroppings at the base of the supports for the Sunshine Skyway Bridge in Tampa Bay.

Security Zone Tampa, FL (67 FR 8186, February 22, 2002). This temporary rule created temporary security zones 100 yards around moored

vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" flammable liquid cargo. Additionally, any vessel transiting within 200 yards of moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" cargo must proceed through the area at the minimum speed necessary to maintain safe navigation.

Security Zone Cruise Ships Tampa, FL (67 FR 10618, March 8, 2002). This temporary rule created temporary security zones 100 yards around cruise ships moored in the Port of Tampa. Additionally, any vessel transiting within 200 yards of a moored cruise ship must proceed through the area at the minimum speed necessary to maintain safe navigation.

Security Zone St. Petersburg Harbor, FL (67 FR 36098, May 23, 2002). This temporary rule established temporary fixed security zones 100 feet around seawalls, moorings, and vessels at Coast Guard and waterfront facilities and moorings in St. Petersburg Harbor, FL.

On April 16, 2002, the Captain of the Port issued a temporary rule titled "Security Zone facilities, Tampa, FL" that was published in the **Federal Register** on June 14, 2002 (67 FR 40861). This temporary zone created a security zone 50 yards from the shore or seawall and encompassing all piers around facilities in the following locations: Port Sutton, East Bay, Hooker's Point, Sparkman Channel, Ybor Channel and portions of Garrison Channel. Also, the security zone closed of all of Port Sutton Channel.

On December 4, 2001, the Captain of the Port issued a temporary rule titled "Security Zone Moving Cruise Ships, Tampa, FL" that was published in the **Federal Register** on June 24, 2002 (67 FR 42483). This temporary zone created a security zone 100 yards around all cruise ships transiting Tampa Bay.

On June 24, 2002, we published a temporary final rule (67 FR 42483) extending many of these temporary rules until October 31, 2002.

On October 30, 2002, the Captain of the Port issued a temporary final rule extending many of these temporary rules until February 28, 2003.

Discussion of Proposed Rule

The Coast Guard proposes to make the security zones, detailed in paragraph (a) of the regulatory text below, permanent.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because there is ample room for vessels to navigate around the security zones and the Captain of the Port may allow vessels to enter the zones, on a case-by-case basis with the express permission of the Captain of the Port of Tampa or their designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the majority of the zones are limited in size and leave ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and vessels may be allowed to enter the zones, on a case-by-case basis, with the express permission of the Captain of the Port of Tampa or their designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically effect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would effect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately effect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.760 to read as follows:

§ 165.760 Security Zones; Tampa Bay, Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa and Crystal River, Florida

(a) *Location.* The following areas, denoted by coordinates fixed using the North American Datum of 1983 (World Geodetic System 1984), are security zones:

(1) *Security Zone, Rattlesnake, Tampa, FL:* A permanent security zone commencing at position 27° 53.32′N, 082° 32.05′W north to 27° 53.36′N, 082° 32.05′W encompassing all waters east and south of this line in Rattlesnake, Tampa, Florida.

(2) *Security Zone, Old Port Tampa, Tampa, FL:* The security zone is bounded by the following points: 27° 51.62′N, 082° 33.14′W east to 27° 51.71′N, 082° 32.5′W north to 27° 51.76′N, 082° 32.5′W west to 27° 51.73′N, 082° 33.16′W and south to 27° 51.62′N, 082° 33.14′W closing off Old Port Tampa channel.

(3) *Security Zone, Sunshine Skyway Bridge, Tampa, FL.* 100-foot security zones around all bridge supports, dolphins and rocky outcroppings. The zones will be bounded on the northern side of the bridge at pier 135, (24 N), 27° 37.85′ N, 082° 39.78′ W, running south under the bridge to pier 88, (24 S) 27° 36.59′ N, 082° 38.66′ W. Visual identification of the zone can be defined as to the areas to the north and south where the bridge structure begins a distinct vertical rise.

(4) *Security Zone, Vessels Carrying Hazardous Cargo, Tampa, FL.* Fixed security zones 200 yards around moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" flammable liquid cargo. Any vessel transiting within the outer 100 yards of the zone for moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" cargo may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100 yard portion of the security zone closest to the vessel.

(5) *Security Zones, Cruise Ships, Piers, Seawalls, and Facilities, Port of Tampa and Port Manatee, FL.* Fixed security zones within the Port of Tampa extending 50 yards from the shore or seawall and encompassing all piers around facilities in the following locations: Port Sutton, East Bay, Hooker's Point, Sparkman Channel, Ybor Channel, Port Manatee, and portions of Garrison Channel. The security zones will be divided into four zones.

(i) *Zone One:* The security zone is bounded by the following points: 27°54.15′N, 082° 26.11′W, east northeast to 27° 54.19′N, 082° 26.00′W, then northeast to 27° 54.37′N, 082°.25.72′W, closing off all of Port Sutton Channel, then northerly to 27° 54.48′N, 082° 25.70′W, then northeasterly and terminating at point 27° 55.27′N, 082° 25.17′W.

(ii) *Zone Two:* The security zone is bounded by the following points: 27° 56.05′N, 082° 25.95′W, southwesterly to 27° 56.00′N, 082° 26.07′W, then southerly to 27° 55.83′N, 082° 26.07′W, then southeasterly to 27° 55.55′N, 082° 25.75′W, then south to 27° 54.75′N, 082° 25.75′W, then southwesterly and terminating at point 27° 54.57′N, 082° 25.86′W.

(iii) *Zone Three:* The security zone is bounded by the following points: 27° 54.74′N, 082° 26.47′W, northwest to 27° 55.25′N, 082° 26.73′W, then north-northwest to 27° 55.60′N, 082° 26.80′W, then north-northeast to 27° 56.00′N, 082° 26.75′W, then northeast 27° 56.58′N, 082° 26.53′W, and north to 27° 57.29′N, 082° 26.51′W, west to 27° 57.29′N, 082° 26.61′W, then southerly to 27° 56.65′N, 082° 26.63′W, southwesterly to 27° 56.58′N, 082° 26.69′W, then southwesterly and terminating at 27° 56.53′N, 082° 26.90′W.

(iv) *Zone Four:* The security zone encompasses all piers and seawalls of the cruise terminal berths 9 and 10 in Port Manatee, Florida beginning at 27° 38.00′N, 082° 33.81′W continuing east to 27° 38.00′N, 082° 33.53′W.

(v) *Zone Five:* Moving security zones 200 yards around all cruise ships entering or departing the Port of Tampa, Port of Saint Petersburg, and Port Manatee, in Tampa Bay, Florida. These security zones are activated on the inbound transit when a cruise ship passes the Tampa Lighted Whistle Buoy "T", located at 27° 35.35′N, 083° 00.71′W and terminate when the vessel is moored at a cruise ship terminal. The security zones are activated on the

outbound transit when a cruise ship gets underway from a terminal and terminates when the cruise ship passes the Tampa Lighted Whistle Buoy "T", located at 27° 35.35′N, 083° 00.71′W. Any vessel transiting within the outer 100 yards of the zone for a cruise ship may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100 yard portion of the security zone closest to the vessel.

(vi) *Zone Six:* Fixed security zones are established 200 yards around moored cruise ships in Tampa, Saint Petersburg, and Port Manatee, Florida. Any vessel transiting within the outer 100 yards of the zone of moored cruise ships may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100 yard portion of the security zone closest to the vessel.

(6) *Saint Petersburg Harbor, FL.* A fixed security zone encompassing all waters of Saint Petersburg Harbor (Bayboro Harbor), commencing on the north side of the channel at dayboard "10" in approximate position 27° 45.56′N, 082° 37.55′W, and westward along the seawall 50 yards from the seawall and around all moorings and vessels to the end of the cruise ship terminal in approximate position 27° 45.72′N, 082° 37.97′W. The zone will also include the Coast Guard south moorings in Saint Petersburg Harbor. The zone will extend 50 yards around the piers commencing from approximate position 27° 45.51′N, 082° 37.99′W to 27° 45.52′N, 082° 37.57′W. The southern boundary of the zone is shoreward of a line between the entrance to Salt Creek easterly to Green Daybeacon 11 (LLN 2500).

(7) *Security Zone for Crystal River, FL:* A permanent security zone is established around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida, encompassing the waters within the following points: 28° 56.87′N, 082° 45.17′W (Northwest corner), 28° 57.37′N, 082° 41.92′W (Northeast corner), 28° 56.81′N, 082° 45.17′W (Southwest corner), and 28° 57.32′N, 082° 41.92′W (Southeast corner). The security zone for the Demory Gap Channel encompasses the waters within the following points: 28° 57.61′N, 082° 43.42′W (Northwest corner), 28° 57.53′N, 082° 41.88′W (Northeast corner), 28° 57.60′N, 082° 43.42′W (Southwest corner), 28° 57.51′N, 082° 41.88′W (Southeast corner).

(b) *Regulations.* (1) Entry into or remaining within these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or that officer's designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 813–228–2189/91 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or their designated representative.

(c) *Definition.* As used in this section, *cruise ship* means a vessel required to comply with 33 CFR part 120.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: January 10, 2003.

James M. Farley,

Captain, U.S. Coast Guard, Captain of The Port, Tampa, Florida.

[FR Doc. 03–3460 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 179, 181 and 183

[USCG–2003–14359]

Small Entities Review

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is conducting a review of certain regulations and invites public comment on how best to lessen the impact of these rules on small entities. The regulations under review address notification of defects in boats, manufacturer certification and identification requirements, and safety standards for boats and associated equipment.

DATES: Comments and related material must reach the Docket Management Facility on or before June 12, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2003–14359), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Alston Colihan, Office of Boating Safety, Coast Guard, telephone (202) 267–0981. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone (202) 366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to respond to this notice. Submit comments and related material that tell us how 33 CFR part 179, 181, or 183 affects your small entity, and how you think that impact can be lessened. *See* "Background and Purpose," below, for more information on the small entities review process and the factors the Coast Guard must consider in conducting that review.

Please include your name and address, identify the docket number for this notice (USCG–2003–14359), and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Background and Purpose

Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Coast Guard and other rulemaking agencies to review existing rules for their economic impact on small entities. The Coast Guard reviews the small entities impact of its existing rules pursuant to a plan adopted by the Department of Transportation (DOT) and described in Appendix D of DOT's semiannual regulatory agenda (*see* 67 FR 74799, December 9, 2002 for the latest publication of the agenda).

Where our 610 Analysis Year shows that a rule has a "significant economic impact on a substantial number of small entities" (SEIOSNOSE), we begin a 610 Review Year. During the 610 Review Year, we determine whether and how the SEIOSNOSE can be lessened. In making that determination, the Regulatory Flexibility Act requires us to consider the:

- Continued need for the rule.
- Nature of public complaints or comments received concerning the rule.
- Rule's complexity.
- Extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local governmental rules.
- Length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In the fall 2002 agenda, we concluded the 610 Analysis Year for several rules and determined that 33 CFR parts 179, 181, and 183 significantly affect enough small entities to warrant a 610 Review Year for the three parts. Section 610 requires us to notify you that the Review Year is underway and to solicit your input, which we will consider in conducting our review.

In the fall 2003 agenda, we will announce the results of that review. We may determine that no further action seems possible or advisable at this time, in which case we will explain the basis for that determination. Or, we may determine that a rulemaking project is needed, to delete or amend the existing rule in a way that will lessen its small-entity impact. We will indicate whether a rulemaking project will begin promptly or be scheduled at a later date.

Dated: February 4, 2003.

Harvey E. Johnson,

Rear Admiral, Coast Guard, Director of Operations Policy.

[FR Doc. 03–3461 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0274; FRL–7288–7]

Methoprene, Watermelon Mosaic Virus-2 Coat Protein, and Zucchini Yellow Mosaic Virus Coat Protein; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document, EPA is proposing to amend the exemption expression for methoprene from the requirements of a tolerance when used on food commodities as an insect larvicide, and to revoke all the tolerances for methoprene because a recent EPA review finds that no harm is expected to the public from exposure to residues of methoprene. Therefore, these tolerances are no longer needed and their associated uses are proposed to be covered by tolerance exemptions. Also, EPA is proposing to revoke the exemptions for watermelon mosaic virus-2 coat protein, and zucchini yellow mosaic virus coat protein and specific portions of the viral genetic material when used as plant-incorporated protectants in squash, because these exemptions are covered in other sections of 40 CFR part 180. Because methoprene's 37 tolerances were previously reassessed, the regulatory actions proposed in this document do not contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996.

DATES: Comments, identified by docket ID number OPP–2002–0274, must be received on or before April 14, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Mandula, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7378; e-mail address: mandula.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0274. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0274. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0274. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2002–0274.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0274. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I Do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to exempt methoprene from the requirement of a tolerance, and therefore to revoke the existing tolerances for methoprene. The other actions involve maintaining exemptions from the requirement of a tolerance for specific pesticides, while removing redundant portions of 40 CFR part 180 relating to those tolerance exemptions.

1. *Methoprene.* EPA is proposing to revoke the tolerances in 40 CFR 180.359 for residues in or on specific food commodities for control of hornflies because review of methoprene toxicity data indicate that these tolerances are not necessary to protect human health or the environment. An EPA Decision Document on Tolerance Reassessment for Methoprene, prepared by EPA's Inert Ingredient Focus Group (IIFG) and finalized in August 2002, finds that methoprene is of low toxicity.

More specifically, the document finds that methoprene is not acutely toxic, and is neither irritating to skin or eyes, nor is it a dermal sensitizer. Developmental toxicity was not observed in studies with rabbits and mice. Methoprene is not carcinogenic in studies in rats and mice, and is not mutagenic in the Ames assay or in the dominant lethal assay. No adverse effects were seen in rats in a 2–year study. Metabolism studies in rats, mice, guinea pigs, and cows indicate rapid biodegradation of methoprene and its metabolites in mammals and that its metabolites are incorporated into natural body constituents (primarily fatty acids). The decision document concludes:

i. *Determination of safety.* Based on its review and evaluation of the available information, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of methoprene.

ii. *IIFG inert ingredient focus group recommendation/deferral to BPPD management.* At this time, 40 CFR 180.1033 specifies that methoprene is exempt from the requirement of a tolerance in or on all raw agricultural commodities when used to control mosquito larvae. There are also numerical tolerances for specific commodities in 40 CFR 180.359.

The methoprene risk assessment in the IIFG decision document used conservative assumptions that assumed the existence of a broad-based tolerance exemption. A broad-based tolerance exemption assumes that methoprene can be used on all crop commodities and that these crop commodities can be used as feed. The safety finding supports the tolerance exemption approach.

Based on the IIFG report, EPA is proposing to revoke the tolerances in 40 CFR 180.359 by removing that section from the CFR. EPA is also proposing to exempt methoprene from the requirement of a tolerance in or on all food commodities when methoprene is used as an insect larvicide. (A copy of the IIFG report will be made available in the docket for this proposed rule.)

2. *Two virus coat proteins and the genetic material necessary to produce the coat proteins in squash.* EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.1132 for watermelon mosaic virus-2 coat protein, and zucchini yellow mosaic virus coat protein and specific portions of the viral genetic material when used as plant-incorporated protectants in squash because the tolerance exemptions are duplicated in the more recent, broader 40 CFR 180.1184. The exemption in 40 CFR 180.1184 includes all food commodities, rather than being limited to squash. Therefore, 40 CFR 180.1132 is not needed to protect human health and the environment.

B. What is the Agency's Authority for Taking these Actions

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)).

C. When Do These Actions Become Effective?

The Agency is proposing that these actions become effective upon publication of a final rule in the **Federal Register**. The only effect of the rule will be to remove redundancies and inconsistencies 40 CFR part 180. No person or entity is expected to be adversely affected.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of November 20, 2002, EPA had reassessed over 6,490 tolerances. All of the tolerances and tolerance exemptions in this proposed rule have already been reassessed and counted towards the total number of tolerances that EPA must reassess by August 2006. Therefore, this rule will add zero tolerances to the required total.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision (RED) documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select "Laws, Regulations, and Dockets," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Revocation of the tolerance exemptions discussed in this Notice of Proposed Rulemaking would not have a significant economic impact on a substantial number of small entities, because the pesticides remain subject to existing tolerance exemptions. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implication." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 31, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.359 [Removed]

2. Section 180.359 is removed.

3. Section 180.1033 is revised to read as follows:

§ 180.1033 Methoprene; exemption from the requirement of a tolerance.

Methoprene is exempt from the requirement of a tolerance in or on all food commodities when used to control insect larvae.

§ 180.1132 [Removed]

4. Section 180.1132 is removed.

[FR Doc. 03–3236 Filed 2–11–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–02–13957; Notice 01]

RIN 2127–AI97

Glare from Headlamps and Other Front-Mounted Lamps: Adaptive Frontal-lighting Systems Federal Motor Vehicle Safety Standard No. 108; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: This document requests comments on Adaptive Frontal-lighting Systems (AFS). The automotive industry is introducing Adaptive Frontal-lighting Systems that can actively change the intensity and direction of headlamp illumination in response to changes in vehicle speed or roadway geometry, such as providing more light to the left in a left-hand curve. The agency is concerned that such headlighting systems may cause additional glare to oncoming drivers, change the easily recognizable and consistent appearance of oncoming vehicles, and have failure modes that may cause glare for long periods of time. The agency is also interested in learning whether these adaptive systems can provide any demonstrated reduction in crash risk during nighttime driving. Thus, the Agency is seeking information on these systems to assess their potential for a net increase or decrease in the risk of a crash. Of special interest to us are the human factors and fleet study research that may have been completed to assure these systems do not increase the safety risk for oncoming and preceding drivers.

DATES: Comments must be received on or before April 14, 2003.

ADDRESSES: Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to: Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Comments may be submitted electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically.

FOR FURTHER INFORMATION CONTACT: For technical issues, please contact Mr. Richard L. Van Iderstine , Office of Rulemaking, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Van Iderstine's telephone number is (202) 366–2720 and his facsimile number is (202) 366–4329. For legal issues please contact Mr. Taylor Vinson, Office of Chief Counsel, at the same address. Mr. Vinson's telephone number is (202) 366–5263.

SUPPLEMENTARY INFORMATION: The development of Adaptive Frontal-lighting Systems (AFS) has been ongoing for about a decade. However, there are much earlier versions of such situation-adaptive headlighting that have been sold to the public. In the United States, the Tucker automobile was equipped with one, and in Europe, Citron manufactured automobiles with them, too. These had headlamps that would swivel with the steering system. In 1993, funded by the European Union's Eureka Project EU 1403, member countries and their manufacturers (BMW, Bosch, Daimler-Benz, Fiat, Ford, Hella, Magneti-Marelli, Opel, Osram, Philips, PSA, Renault, Valeo, Volkswagen, Volvo, and ZKW) began defining requirements for AFS. Additionally, Japanese and North American manufacturers have been developing these systems. The goal of these AFS is to actively control headlamp beam pattern performance to meet the dynamic illumination needs of changing roadway geometries and visibility conditions.

Today, this goal has been partially realized by several lighting manufacturers who have developed systems incorporating various aspects of AFS functionality. An initial application, called "bending light," automatically reaims the lower beam headlamps to the left or right depending on the steering angle of the vehicle, with the intent to better illuminate curves in the roadway. Also, it is likely that these initial bending light offerings will have part of the light emitted from the headlamp move within the beam to the left or right to increase the amount of light shining into the curve. There are other ideas being explored that, for example, would reduce the intensity of illumination in well-lit urban driving situations, reduce the intensity of lower beam foreground light in wet weather to lessen the light that reflects off the roadway into other drivers' eyes, and various other performance changes.

Prototype systems have been demonstrated by motor vehicle lighting companies to motor vehicle manufacturers, and recently to government lighting experts from numerous countries around the world. This was last done in Geneva, Switzerland in the Spring of 2000, during the Forty-Fourth Session of the Meeting of Experts on Lighting and Light Signalling (GRE) where ten different AFS prototypes were available on cars for driving. The GRE is a subgroup of the United Nations' (UN) World Forum for Harmonization of Vehicle Regulations (WP.29).

In order to introduce this new headlighting technology in Europe, regulations have to be modified within the UN Economic Commission for Europe, under its 1958 Agreement titled: "Agreement concerning the Adoption of Uniform Technical Prescriptions (Rev.2)." The first amendment to accommodate swiveling (or bending) of the low beam function

in these regulations is scheduled for final voting at the March 2003 session of WP.29. AFS installation on motor vehicles in the European market could occur sometime after approval by WP.29. The second stage is forecast to be considered for approval in 2005. This could include roadway illumination for specific situations, such as highway, suburban, urban roads, inclement weather, and additional cornering lighting whose technical descriptions may be found in the formal draft document presented to the GRE (*see* TRANS/WP.29/GRE/2002/18—Proposal for a New Draft Regulation: "Uniform Provisions Concerning the Approval of Adaptive Frontlighting System (AFS) for Motor Vehicles" at *http://www.unece.org/trans/main/wp29/wp29wgs/wp29gre/grenwdoc/gre0218e.pdf*).

AFS implementation by U.S. vehicle manufacturers in North America currently is in the development stage. However, foreign manufacturers could begin marketing the bending function in the United States in the near future. Under Federal Motor Vehicle Safety Standard No. 108, Lamps, reflective devices and associated equipment, the bending light performance (by automatically reaiming the lamp) is not prohibited because the Standard does not specifically address the initial or subsequent aim of a headlamp in a headlighting system. The Standard addresses only aimability requirements. See the letter from the Chief Counsel, NHTSA, to Mr. Mark Cronmiller, VDO North America, dated July 7, 1999 (*http://www.nhtsa.dot.gov/cars/rules/interps/files/20061.ztv.html*). Mr. Cronmiller had asked about future "smart" headlighting systems that adjust headlamp aim vertically and/or horizontally according to driving conditions (*e.g.*, vertically for oncoming traffic, horizontally around curves in the road). The Chief Counsel responded that paragraph S7.8 of Standard No. 108 prescribes headlamp aiming hardware requirements under static conditions only. Once a headlamp is installed on a vehicle, its aim is fixed, but may be adjustable by mechanical means when the vehicle is at rest. A limited ability to adjust vertical aim on some vehicles is also provided by vehicle leveling devices. Standard No. 108 does not require that headlamps be aimed at the time the vehicle is manufactured and certified as conforming to all applicable Federal motor vehicle safety standards. If there is a requirement for correct headlamp aim on new vehicles, it would be that of a State's motor vehicle authority at the time the vehicle is first registered for highway use in that State. The letter continued by saying that, if a "smart" headlamp system meets the static aiming hardware requirements of Standard No. 108, a dynamic aiming feature is permissible. We also said that at that time that we had no specific plans to regulate or require headlamps with dynamic aim features, but were monitoring them to form an impression as to their suitability for use under American driving conditions, and to learn if there are any problems of maintenance of aiming integrity, or durability, involved in their use. At a minimum, we would be concerned about the need for fail-safe performance to assure that aim would return to nominally correct, straight ahead in the event of a failure.

We note that S5.3.1.1 of Standard No. 108 also requires that lamps and reflective devices must be installed such that their photometric requirements are met on motor vehicles and that no other part of the vehicle shall prevent that. As such, the additional hardware added to achieve AFS must not prevent headlamps, or any other required lamps, from meeting the required performance in any manner whether AFS is operating or not. Additionally, for the bending light mechanization where some of the light in the nominal beam pattern is actively redirected, the photometric requirements of the headlamp must be met regardless of active changes in the light distribution within the beam.

The balance between roadway illumination and glare is something that has always concerned us. The public shares our concern, too, as evidenced by the unprecedented response to Docket 8885, NHTSA's docket on glare from headlamps. Besides the more than four thousand comments to date, that docket has the highest number of Internet visits of all dockets in the DOT Docket Management System: more than 64,000 hits. The public's concern is that glare is increasing at an alarming rate whether from approaching vehicles or rear view mirrors. Thus, the agency is concerned whether the implementation of AFS will produce a volume of complaints similar to those in Docket 8885 regarding the installations of high intensity discharge, high-mounted, and supplemental headlamps.

Given this concern, we have a number of questions for drivers, and the lighting and the motor vehicle industries, relative to the safety, implementation and use of AFS, especially as it may be offered to the U.S. market. These questions are:

Questions for Drivers

Question 1: Do you have problems seeing around curves because of the limitations of the headlamps on the vehicles that you drive, or because of glare from an approaching vehicle? Please describe the problems, including road, ambient lighting, and weather conditions.

Question 2: Is the glare that you described above worse than the glare from vehicles approaching on straight roads? Is it because the light is brighter or because it is longer lasting?

Question 3: Under what nighttime driving conditions have you thought you needed extra headlight illumination to help you see the road, signs, or objects: When turning at intersections, when driving on curved roads, at intersections, driving in rain, when driving in fog, when driving on interstate highways, driving in cities, etc.?

Question 4: Under what nighttime driving conditions have you thought that the oncoming headlights seemed more glaring than usual: On right-hand curves, on left-hand curves, on high-speed roads, at intersections in cities, on hilly roads?

Question 5: What types of objects are most difficult for you to see when driving at night: Pedestrians, lane markings, street signs, stop signs, overhead guide signs, debris on road, animals, etc.?

Question 6: For a "bending light" AFS that added more illumination to the right side on right-hand curves and to the left on left-hand curves, what aspects of lamp design concern you the most: That lamp failure might reduce visibility; that added light on left-hand curves would increase glare to oncoming drivers; that the motion of the lights would be annoying; that the added light would not be bright enough to significantly increase the visibility distance.

Question 7: If a headlighting rating were available for new vehicles in the same manner as crashworthiness and rollover star ratings, would you use these headlighting ratings in the decisions that lead to your purchase of a new vehicle? On a scale of 1 to 10 with 1 being of little value and 10 being extremely important, how might you rate the importance of the headlamp rating, if available, to your purchase decision for a new vehicle?

Questions for Industry

Question 8: Have manufacturers evaluated prototype AFS-equipped vehicles at night to determine whether changes in the intensity and direction of illumination may cause misdirection of any driver's gaze toward the newly lighted or intensified area, or away from objects that are still important for driving safety? Please describe the evaluations and provide copies if available.

Question 9: Do moving beams (from bending light or the increase or decrease in intensity) either increase or decrease the level of driver fatigue compared to non-AFS lighting? Please provide all available research information about this issue.

Question 10: Have vehicle manufacturers evaluated prototype AFS-equipped vehicles at night as occupants of other vehicles to evaluate the potential glare from AFS? If so, please describe the evaluation and the results. Are there other assessment methods used to assess the glare from the AFS before vehicle manufacturers commit to a particular AFS design? Please provide the results of all alternative assessments conducted for AFS.

Question 11: What assessment is made of potential glare from AFS at points in the beam pattern that are currently unregulated?

Question 12: Are there any current lamp or vehicle manufacturer corporate design guidelines for AFS that deal with unregulated points in the beam pattern? If so, please indicate what those guidelines are and explain why the manufacturer believes they are appropriate.

Question 13: To what extent do lamp and vehicle manufacturers consider the reports and work by the Society of Automotive Engineers and other non-governmental bodies on the subject of glare in designing the performance of AFS on their vehicles? In answering this question, manufacturers are asked to provide a list of the reports, papers and data that they found useful in establishing design guidelines. Please provide specific examples of internal glare limits that have been adopted as a result of these references.

Question 14: While we are aware of many studies to demonstrate and promote the efficacy of AFS, we are not aware of a single study that has been done on the effects on other drivers facing AFS-equipped vehicles or on drivers using AFS-equipped vehicles. Please identify any such studies.

Question 15: Has glare been studied specifically for younger and older drivers facing or preceding the various modes of AFS operation on vehicles? If so, please list the studies.

Question 16: Has diminished recognition of presence, or the perception of distance or closure rate to an oncoming AFS vehicle ever been studied? If so, please list the studies and findings.

Question 17: What fail-safe features for each possible mode of AFS operation have been developed and studied that will prevent glare to oncoming and preceding drivers? Please describe them.

Question 18: What fail-safe features for each possible mode of AFS operation have been developed and studied that will prevent no greater risk to the driver using it than when non-AFS headlighting fails?

Question 19: What studies have been done to demonstrate whether AFS adds safety value? What value is that and how was it measured? Please identify and provide the findings of such studies.

Question 20: What are the anticipated incremental costs of adding the various designs of AFS features to halogen headlighting systems?

Question 21: What are the anticipated incremental costs of adding the various designs of AFS features to high intensity discharge headlighting systems?

Question 22: What are the anticipated incremental costs of adding the various designs of AFS features to light emitting diode headlighting systems?

Question 23: Presumably, the added illumination in curves is intended to reduce the risk of a crash. However, because most crashes are on straight roads (because of the predominance of straight roads), how does the presumed incremental benefit compare to the added cost of AFS? Does the incremental benefit outweigh the potential for additional glare to oncoming or preceding drivers in a curve or intersections or during an AFS failure? Why?

Question 24: Should AFS designs be incorporated as separate, regulated lighting systems that operate independently of the primary headlighting system?

Question 25: Given that known AFS prototype designs are intended to use more headlamp replaceable light sources than currently permitted, should AFS headlamps be limited in total luminous flux?

Question 26: Should AFS headlamps have unlimited luminous flux if automatic headlamp leveling and cleaning are incorporated, as currently mandated in Europe for headlamps that have light sources that are rated at 2000 lumen or more?

Question 27: What is the feasibility of reducing the intensity of AFS lamps during low speed, dense traffic, or high ambient illumination conditions? Please describe how this might be accomplished.

Question 28: Are there requirements in Standard No. 108 that are barriers to the implementation of AFS? If there are barriers, in accordance with the published lighting policy of the agency (*see* NHTSA docket 98–4281, at: http://dms.dot.gov/search/document.cfm?documentid=46284&docketid=4281), what data exist showing safety benefits to justify amending the Standard to permit AFS?

Question 29: Should AFS be mandatory? What data exists showing safety benefits to justify amending the Standard to require AFS? If not mandatory, why not?

Question 30: Should AFS be permitted as a replacement for non-AFS headlighting systems. If so, why, and what safeguards are necessary beyond that necessary for new OEM installations? If not, why not?

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This request for comment was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this request for comment and determined that it is not significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency anticipates if a proposal and ultimately a final rule should result from this request for comment, new requirements would apply to the applicable vehicles and items after the specified implementation date. The request for comment seeks to determine the ramifications of the introduction of adaptive frontal headlighting systems that are intended to enhance safety under a variety of driving conditions. The systems do so by varying the performance and aim of each headlamp's beam in a manner coincident with providing, for example, more illumination in the direction of a motor vehicle's turn, and other situations where the vehicle's manufacturer deems that more or less light is desired by the driver.

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may

attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given at the beginning of this document, under **ADDRESSES.**

How can I be Sure that my Comments were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I Submit Confidential Business Information?

If you wish to submit any information that you do not want to be made public, under a claim of confidentiality, you should submit three copies of your complete submission to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT.** This submission must include the information that you are claiming to be private, that is, confidential business information. In addition, you should submit two copies from which you have deleted the private information, to Docket Management at the address given at the beginning of this document under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter that provides the information specified in our confidential business information regulation, 49 CFR part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a proposed response to these glare issues, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES.**

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the multi-digit docket number shown at the heading of this document. In this case, the docket number is "NHTSA–2001–13957", you would type "13957".

(4) After typing the docket number, click on "search".

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the ".pdf" versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50, and 501.8.

Issued on: February 6, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–3505 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 68, No. 29
Wednesday, February 12, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant Arista Biologicals, Inc. of Allentown, Pennsylvania, an exclusive license for U.S. Patent No. 5,563,040, entitled "Method and Apparatus for Immunological Diagnosis of Fungal Decay in Wood". Notice of availability for this invention for licensing was published in the **Federal Register** on June 21, 1994.

DATES: Comments must be received within 30 calendar days of the date of publication of this notice in the **Federal Register.**

ADDRESSES: Send comments to: Patent Advisor, USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone: 608–231–9502; fax: 608–231–9508; or e-mail: *jstockhausen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Arista Biologicals, Inc. of Allentown, Pennsylvania has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 30 days from the date of this published notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 03–3445 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668–03–1040–DP–083A]

Monument Advisory Committee Meeting Schedule

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Notice of meetings.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announce the schedule of meetings for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as "National Monument"). The meetings will be held on the following dates:

- Saturday, April 5th, 2003;
- Saturday, June 7th, 2003;
- Saturday, August 2nd, 2003;
- Saturday, October 4th, 2003;
- Saturday, December 6th, 2003;

Meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260, from 9 a.m. until 4 p.m or until the agenda items are completed. There will be an hour dedicated to public input from 11 a.m.–12 p.m. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings. All committee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management Web Page for the National Monument (*http://www.ca.blm.gov/palmsprings/*). The April 5th, 2003 meeting will focus any Advisory Committee comments following publication of a Draft Management Plan for the National Monument. The subject matter of subsequent meetings will focus on the content and implementation of the National Monument Management Plan and other actions affecting the National Monument.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: April 5, 2003; June 7, 2003; August 2, 2003; October 4, 2003; and December 6, 2003. All meetings will take place from 9 a.m. to 4 p.m with a morning public comment period from 11 a.m. to 12 p.m. Meetings may end prior to 4 p.m. if all agenda items are completed.

ADDRESSES: The meeting will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by email at *dgeorge@ca.blm.gov*. Information can be found on our Web Page: *http://www.ca.blm.gov/palmsprings/*. Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

Dated: February 6, 2003.

Danella George,

Designated Federal Official, National Monument Manager.

[FR Doc. 03–3468 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of renewal at USDA.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix), notice is hereby given that the Secretary of Agriculture has renewed the charter for the Advisory Committee on Agriculture Statistics, hereafter referred to as Committee. Effective October 1, 1996, responsibility for the census of agriculture program was transferred to the National Agricultural Statistics Service (NASS) at USDA from the Bureau of the Census, U.S. Department of Commerce. Effective February 2, 1997, NASS also received the transferred program positions and staff from the Bureau of the Census, U.S. Department of Commerce. Responsibility for the Advisory Committee on Agriculture Statistics, which is a discretionary committee, was transferred, along with its allocated slot, to USDA with the census of agriculture program.

The Advisory Committee on Agriculture Statistics has provided input and direction to the census of agriculture program since the committee was first established on July 16, 1962. It has been particularly critical to have the committee as a valuable resource to USDA during the transfer of the census from the U.S. Department of Commerce.

The purpose of the committee is to make recommendations on census of agriculture operations including questionnaire design and content, publicity, publication plans, and data dissemination.

DATES: Comments on this notice must be received by April 18, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact R. Ronald Bosecker, Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretary of Agriculture on the conduct of the periodic censuses and surveys of agriculture, other related surveys, and the types of agricultural information to obtain from respondents. The committee also prepares recommendations regarding the content of agriculture reports, and presents the views and needs for data of major suppliers and users of agriculture statistics.

The Secretary of Agriculture has determined that the work of the Committee is in the public interest and relevant to the duties of USDA. No other advisory committee or agency of USDA is performing the tasks that will be assigned to the Committee.

The Committee, appointed by the Secretary of Agriculture, shall consist of 25 members representing a broad range of disciplines and interests, including, but not limited to, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Representatives of the Bureau of the Census, U.S. Department of Commerce, and Economic Research Service, USDA, serve as ex-officio members of the Committee.

The committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging developments and issues in the food and fiber sector that can affect agriculture statistics activities.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Signed at Washington, DC, January 31, 2003.

R. Ronald Bosecker,

Administrator.

[FR Doc. 03–3444 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020703A]

Proposed Information Collection; Comment Request; American Fisheries Act, Vessel and Processor Permit Applications

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden at 907–586–7228, or at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Fisheries Act (AFA) established an allocation program for the pollock fishery of the Bering Sea and Aleutian Islands Management Area (BSAI). Under the AFA, only vessels and processors that meet specific qualifying criteria are eligible to fish for and process pollock in the BSAI. The BSAI pollock quota is suballocated to groups of vessel owners who form fishing vessel cooperatives under the AFA.

All AFA vessel and processor permits have no expiration date and will remain valid indefinitely unless revoked by NMFS. Inshore catcher vessel cooperatives wishing to receive an allocation of the BSAI inshore pollock Total Allowable Catch (TAC) are required to submit an application for an inshore cooperative fishing permit on an annual basis by December 1 of the year prior to the year in which the cooperative fishing permit will be in effect. The information must be collected once a year because NMFS must identify the universe of participating vessels and processors prior to the start of each fishing year in order to assign allocations of pollock TAC to eligible groups of vessels that form cooperatives.

II. Method of Collection

Paper forms are used.

III. Data

OMB Number: 0648–0393.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 2 hours for an application for an AFA catcher vessel permit; 30 minutes for application for an AFA Permit for Replacement Vessel; 2 hours for application for an AFA Inshore Catcher Vessel Cooperative Permit; 2 hours for an application for an AFA mothership permit; and 2 hours for an application for an AFA inshore processor permit.

Estimated Total Annual Burden Hours: 39.

Estimated Total Annual Cost to Public: $59.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 5, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3495 Filed 2–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020703B]

Proposed Information Collection; Comment Request; Highly Migratory Species Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dianne Stephan, phone 978/281–9397; Highly Migratory Species Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), NOAA is responsible for management of the Nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act (16 U.S.C. 971 et seq.). NOAA must collect information from dealers to monitor the import and export of bigeye tuna and swordfish in order to comply with international obligations established through membership in the International Commission for the Conservation of Atlantic Tunas (ICCAT). ICCAT has implemented a trade monitoring program for bigeye tuna and swordfish to discourage illegal, unregulated and unreported fishing activities as well as further understanding of catches and international trade for these species.

In order to implement the binding recommendations of ICCAT, the Atlantic Tunas Dealer Permit (currently approved under 0648-0202) will be modified to address all import, export, and re-export of bigeye tuna for Atlantic coast dealers. The Pacific Tuna Dealer Permit (currently approved under 0648-0202) will be modified to address Pacific dealers involved in the import, export, and re-export of bigeye tuna. Finally, the Swordfish Dealer Permit (currently approved under 0648–0205) will be modified to include export and re-export of swordfish. All existing tuna and swordfish dealer permit requirements will be merged with the highly migratory species vessel permits under this collection.

II. Method of Collection

Relevant dealers must apply for or renew permits annually by mail. Renewal forms for all dealer permits are provided annually.

III. Data

OMB Number: 0648–0327.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 960.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 80.

Estimated Total Annual Cost to Public: $500.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 5, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3496 Filed 2–11–03; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 5,525,800 entitled "Selective Multi-Chemical Fiber Optic Sensor", Navy Case No. 76,085; U.S. Patent 5,735,927 entitled "Method of Producing Core/Cladding Glass Optical Fiber Preforms Using Hot Isostatic Pressing", Navy Case No. 76,989; U.S. Patent No. 5,739,536 entitled "Fiber Optic Infrared Cone Penetrometer System", Navy Case No. 77,412; U.S. Patent No. 5,778,125 entitled "Optical Fiber Terminations", Navy Case No. 77,790; U.S. Patent No. 5,779,757 entitled "Process for Removing Hydrogen and Carbon Impurities from Glasses by Adding a Tellurium Halide", Navy Case No. 77,216; U.S. Patent No. 5,846,889 entitled "Infrared Transparent Selenide Glasses", Navy Case No. 77,674; U.S. Patent No. 5,879,426 entitled "Process for Making Optical Fibers from Core and Cladding Glass Rods", Navy Case No. 77,577; U.S. Patent No. 5,900,036 entitled "Multi-Cylinder Apparatus for Making Optical Fibers, Process and Product", Navy Case No. 76,981; U.S. Patent No. 5,949,935 entitled "Infrared Fiber Optic Coupler", Navy Case No. 78,344; U.S. Patent No. 5,953,478 entitled "Metal-Coated IR–Transmitting Chalcogenide Glass Fibers", Navy Case No. 77,806; U.S. Patent No. 5,973,824 entitled "Amplification by Means of Dysprosium Doped Low Phonon Energy Glass Waveguides", Navy Case No. 78,395; U.S. Patent No. 6,015,765 entitled "Rare Earth Soluble Telluride Glasses", Navy Case No. 78,347; U.S. Patent No. 6,021,649 entitled "Apparatus for Making Optical Fibers from Core and Cladding Glass Rods with Two Coaxial Molten Glass Flows", Navy Case No. 79,632; U.S. Patent No. 6,128,429 entitled "Low Phonon Energy Glass and Fiber Doped with a Rare Earth", Navy Case No. 78,394; U.S. Patent No. 6,145,342 entitled "Catalyzed Preparation of Amorphous Chalcogenides", Navy Case No. 78,533; U.S. Patent No. 6,157,856 entitled "Tissue Diagnostics Using Evanescent Spectroscopy", Navy Case No. 79,047; U.S. Patent No. 6,175,678 entitled "Infrared Fiber Imager", Navy Case No. 79,823; U.S. Patent No. 6,195,483 entitled "Fiber Bragg Gratings in Chalcogenide or Chalcohalide Based Infrared Optical Fibers", Navy Case No. 77,161; U.S. Patent No. 6,285,811 entitled "Near-Field Optical Microscope with Infrared Fiber Probe", Navy Case No. 78,932; U.S. Patent Application Serial No. 09/906,010 entitled "Chalcogenide Glass Fiber Raman Laser and Amplifier", Navy Case No. 82,848; U.S. Patent Application Serial No. 09/964,548 entitled "Multi Heating Zone Process for Fabrication of Infrared Optical Fibers", Navy Case No. 82,941; and Navy Case No. 83,486 entitled "All Fiber FTIR", invention disclosure filed October 2, 2001.

ADDRESSES: Requests for copies of the patents or inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: February 6, 2003.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–3471 Filed 2–11–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Shook-Argosy Joint Venture

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Shook-Argosy Joint Venture, a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-Owned invention described in Navy Case No. 84,339 filed October 24, 2002, entitled "Infrastructure Linkage and Augmentation System".

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 27, 2003.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D. Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response. (Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: February 4, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–3472 Filed 2–11–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 14, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: February 6, 2003.

Joe Schubart,

Acting Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Consolidated State Performance Report.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 52. Burden Hours: 134,768.

Abstract: This information collection package contains the Consolidated State Performance Report (CSPR). The Elementary and Secondary Education Act (ESEA), in general, and its provision for submission of consolidated plans, in particular (*see* section 14301 of the ESEA), emphasize the importance of cross-program coordination and integration of federal programs into educational activities carried out with State and local funds. States would use the instrument for reporting on activities that occur during the 2001–2002 school year. The proposed CSPR requests some of the same information as in 2000–2001, with a few modifications to eliminate certain sections. The Department is working actively to revise the content of these documents and develop an integrated information collection system that responds to No Child Left Behind (NCLB), uses new technologies, and better reflects how federal programs help to promote State and local reform efforts.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at ;1–800–877–8339.

Office of the Chief Financial Officer

Type of Review: New collection.

Title: Small Business Innovation Research (SBIR) Program—Phase I—Grant Application Package (1890–0001) (KA).

Frequency: Annually.

Affected Public: Businesses or other for-profit (primary).

Reporting and Recordkeeping Hour Burden: Responses: 50. Burden Hours: 3750.

Abstract: This application package invites small business concerns to submit a Phase I research application for the Small Business Innovation Research (SBIR) program. This is in response to Pub. L. 106–554, the "Small Business Reauthorization Act of 2000, H.R. 5667" (the "Act") enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education (ED), to establish a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or R&D through a uniform, highly competitive, three-phase process each fiscal year. This collection falls under the Streamlined Discretionary Process, 1890–0011.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–3448 Filed 2–11–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Revised Scope for the Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, WA

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) has decided to revise the scope of the Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington. DOE issued a Draft Environmental Impact Statement (EIS) for the Hanford Site Solid Waste Program in May 2002. Subsequently, DOE issued a Notice of Intent to prepare a separate EIS, the Tank Waste Remediation System Supplemental EIS for the Disposal of Immobilized Low-Activity Wastes from Hanford Tank Waste Processing. DOE now intends to incorporate the scope of the Supplemental EIS into the scope of the EIS for the Solid Waste Program. DOE will not issue a separate Supplemental EIS for immobilized tank waste.

FOR FURTHER INFORMATION CONTACT: To request information about the revised draft EIS or to be placed on the EIS distribution list, contact:

Mr. Michael S. Collins, HSW EIS Document Manager, Richland Operations Office, U.S. Department of Energy, A6–38, Post Office Box 550, Richland, Washington, 99352–0550, Telephone and voice mail: (509) 376–6536, Fax: (509) 372–1926, Electronic mail: *solid_waste_eis_-_doe@rl.gov*.

For general information about the DOE NEPA process, contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585–0119, Fax: (202) 586–7031, Telephone: (202) 586–4600, Voice mail: (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE has decided to revise the scope of the Hanford Site Solid Waste (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington. DOE issued a Draft EIS for the Hanford Site Solid Waste Program in May 2002 (67 FR 36592, May 24, 2002). Subsequently, DOE issued a Notice of Intent (67 FR 45104, July 8, 2002) to prepare a separate EIS, the Tank Waste Remediation System Supplemental EIS for Disposal of Immobilized Low-Activity Wastes from Hanford Tank Waste Processing. DOE now intends to incorporate the scope of the Supplemental EIS into the scope of the EIS for the Solid Waste Program. In making this decision, DOE considered comments received on the original Draft EIS for the Solid Waste Program, and scoping comments for the Supplemental EIS, including the recommendations of the Environmental Protection Agency, the Washington State Department of Ecology, and the Hanford Advisory Board. Accordingly, DOE intends to issue a revised Draft EIS for the Solid Waste Program that reflects this expanded scope and responds to other comments on the Draft EIS, in accordance with Council on Environmental Quality and DOE procedures for implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508 and 10 CFR part 1021).

The revised Draft EIS will evaluate the potential environmental impacts associated with ongoing activities of the Hanford Site Solid Waste Program, disposal of immobilized low-activity wastes from Hanford tank waste processing, and reasonably foreseeable treatment, storage and disposal facilities and activities. The revised Draft EIS also will contain additional analyses of alternatives for managing both waste generated at the Hanford Site and waste received from offsite DOE generators, consistent with decisions resulting from the Department's Final Waste management Programmatic EIS (DOE/EIS–0200–F, May 1997) for low-level waste and mixed low-level waste (65 FR 10061, February 25, 2000).

Anticipated changes for the revised draft EIS include:

—The addition of alternatives for the disposal of immobilized low-activity waste from the tank farms and evaluation of the impacts of those alternatives.
—The addition of more alternatives for the disposal of low-level waste and mixed low-level waste and evaluation of the impacts of those alternatives.
—The addition of alternatives for disposal of different waste types (immobilized low-activity waste, low-level waste, mixed low-level waste) together and evaluation of the impacts of those alternatives.
—The addition of information on the impacts of transporting waste especially as it pertains to the States of Washington and Oregon.
—The addition of DOE responses to major issues from the first draft EIS.

In addition, DOE recently issued a Notice of Intent to prepare a separate EIS, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks at the Hanford Site, Richland, Washington (DOE/EIS–0356), (68 FR 1052, January 8, 2003). In this new tank waste treatment and closure EIS, DOE intends to evaluate alternative tank waste treatment processes for low activity waste. DOE will coordinate this EIS with the EIS on Hanford's Solid Waste Program, as appropriate.

Issued in Richland, Washington, on this 5th day of February, 2003.

Keith A. Klein,

Manager, Richland Operations Office.

[FR Doc. 03–3482 Filed 2–11–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41635 entitled "Energy Efficient Building Equipment and Envelope Technologies IV". The Department of Energy announces that it intends to conduct a competitive Program Solicitation, DE–PS26–03NT41635, and award financial assistance (Cooperative Agreements) for the program entitled "Energy Efficient Building Equipment and Envelope Technologies IV." Through this solicitation, the DOE/NETL seeks applications on behalf of the Office of Building Technology Programs in DOE's Office of Energy Efficiency and Renewable Energy (EERE) for innovative technologies that have the potential for significant energy savings in residential and commercial buildings. DOE is seeking to support projects that are advancing energy efficient equipment, envelope and whole building technologies. Specifically, the objective of the solicitation is to accelerate high-payoff technologies that, because of their risk, are unlikely to be developed in a timely manner without a partnership between industry and the Federal Government.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) Web Page located at *http://e-center.doe.gov* on or about February 28, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business*.

FOR FURTHER INFORMATION CONTACT: Bonnie Dowdell, Contract Specialist, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, E-mail Address: *Bonnie.Dowdell@netl.doe.gov*, Telephone Number: 412–386–5879.

SUPPLEMENTARY INFORMATION: DOE/NETL intends to select a group of projects programmatically balanced with respect to: (1) Technology category (equipment end uses, envelopes and whole buildings); (2) building type (residential and/or commercial); and (3) time of commercialization (short-term or long-term market potential of the technology). The solicitation will cover research and development on materials, components and systems applicable to both residential and commercial buildings. The solicitation will not support demonstration projects to deploy the technology on a large scale but will support proof of concept projects. The research and development areas of interest are as follows: *Whole Buildings*—Building Performance and Zero Energy; *Lighting*—Light Sources and Ballasts, Lighting Controls, Luminaries and Distribution Systems, and Lighting Impacts; *Space Conditioning Equipment*—Energy Conversion Efficiency, and Distribution, Storage, Control and System Integration; *Building Envelope*—Building Materials and Envelope Systems, and Windows; and Appliances.

The solicitation covers research in four technology maturation stages: Technology Maturation Stage 2 involves applied research; Technology Maturation Stage 3 involves exploratory development (non-specific applications and bench-scale testing); Technology Maturation Stage 4 involves advanced development (specific applications and bench-scale testing); and Maturation Stage 5 involves engineering development (pilot-scale and/or field testing). For projects spanning more than one maturation stage, continuation decision points will be inserted at the completion of each stage. Multiple awards (8—12) are expected regardless of the technology maturation stage(s) proposed. It is DOE's desire to encourage the widest participation, including the involvement of small business concerns and small disadvantaged business concerns. In order to gain the necessary expertise to review applications, non-Federal personnel may be used as evaluators or advisors in the evaluation of applications, but will not serve as members of the technical evaluation team. This particular program is covered by Section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost share commitment of at least 20 percent from non-Federal sources for research and development projects. It is anticipated that $16,000,000 in federal funding will be available however, not all of the necessary funds are currently available for this solicitation; the Government's obligation under any cooperative agreement awarded is contingent upon the availability of appropriated FY 2003 funds.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on January 29, 2003.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 03–3481 Filed 2–11–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement: Energy Information Administration Policy for Release of the Weekly Petroleum Status Report

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy Statement. Energy Information Administration Policy for Release of the Weekly Petroleum Status Report.

SUMMARY: The comments received represent a cross section of key interested parties that use the Weekly Petroleum Status Report (WPSR). There was strong support and opinions both for leaving the release time as it currently is and for moving the time to coincide with New York Mercantile Exchange (NYMEX) trading hours. Reasonable arguments were made on both sides of the issue. After careful review of the comments, the Energy Information Administration (EIA) has concluded that it is in the overall best interest of WPSR users to change the release time to 10:30 a.m. Eastern Standard Time (EST) on Wednesday.

EIA found the arguments for moving the release time compelling enough to shift its current policy. The leading arguments supporting this decision are summarized as follows: (1) It supports fairness, transparency, and market oversight functions by releasing the WPSR at a time when both European and United States markets are open, (2) it is expected to contribute to reduced market volatility by releasing the data when more traders are operating.

DATES: This policy becomes effective on Wednesday, February 26, 2003.

ADDRESSES: Requests should be directed to Ronald W. O'Neill. Mr. O'Neill may be contacted by telephone (202–586–2991), FAX (202–586–5846), or e-mail (*ron.oneill@eia.doe.gov*). These methods are recommended to expedite contact. His mailing address is Ronald W. O'Neill, M.S. EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0640.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or questions about the policy should be

directed to Ronald W. O'Neill at the address above. The WPSR is available on EIA's Internet site at *http://www.eia.doe.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Comments
III. Current Actions

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) requires that EIA carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and long term domestic demands.

EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to EIA's dissemination of energy information. Comments received help EIA when preparing information collections and information products necessary to EIA's mission.

EIA's Weekly Petroleum Status Report (WPSR) provides timely information on supply and selected prices of crude oil and principal petroleum products. It serves the industry, the press, planners, policymakers, consumers, analysts, and State and local governments with a ready, reliable source of current information.

The WPSR data are based primarily on weekly company submissions of information as of 7 am Eastern Standard Time (EST) Friday. Weekly data are filed with EIA by 5 pm EST on the following Monday. In the past, the WPSR data were publicly released electronically at 9 am EST each Wednesday, and the printed version was available on Friday. For weeks that included holidays, release of the WPSR was typically delayed by one day.

On December 3, 2002, EIA issued a Federal Register notice (67 FR 71959) requesting public comments on a proposed policy for changes in the release time of the WPSR. In that notice, EIA discussed the reasons for the proposed change and proposed moving the release time to 10:10 am EST on Wednesday to coincide with normal New York Mercantile Exchange (NYMEX) and International Petroleum Exchange (IPE) trading hours. EIA also solicited suggestions for alternative release times.

II. Summary of Comments

In response to the Federal Register notice requesting comments on the proposed WPSR release time policy, EIA received 26 comments. The comments were from members of Congress, investment companies, state governments, and traders.

Comments fell into one of two categories: Either they were in favor of moving the release time or they favored keeping it at 9 am EST. Below is a brief summary of the major reasons given for supporting each category.

Comments in favor of the current release time included:

- Having the petroleum data available before the NYMEX opens allows the trading community to make qualified evaluations of the oil market before trading begins.
- For some in the non-commodities trading community receiving the data earlier gives them more timely information for their use.

Comments in favor of changing the release time included:

- Releasing the data when both the European and United States markets are open enhances fairness, efficiency, and competition by allowing a greater number of market participants equal trading access. It essentially levels the playing field.
- Releasing the EIA petroleum data while both markets are open will contribute to reduced market volatility and greater transparency. Releasing the data while more trading opportunities exist and more traders are operating reduces the likelihood that a small number of traders could create volatile price swings. Markets with greater liquidity are less likely to be manipulated.
- With current market turbulence, never has the need for market competition and transparency been greater. Important functions of market oversight by the Commodity Futures Trading Commission (CFTC) would be diminished if much of the business was shifted to overseas markets or the less regulated Over-the-Counter (OTC) markets.
- Maintaining the current release time could have the unintended effect of shifting important price discovery and risk management functions to an overseas market. The domestic market is made less relevant, and its benefits to consumers and the economy reduced, because businesses will be forced to utilize markets open at the time, thus depriving them of an important competitive choice.

III. Current Actions

EIA WPSR Release Time Policy. EIA has established a policy for the release time of the WPSR. Under this policy, the WPSR will be publicly released electronically at 10:30 am EST each Wednesday. For weeks that include holidays, release of the WPSR will typically be delayed by one day.

EIA reserves the right to revisit or amend this policy. However, EIA shall not modify the WPSR release time policy without prior notification in the WPSR or the **Federal Register**.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, February 6, 2003.

Guy F. Caruso,

Administrator, Energy Information Administration.

[FR Doc. 03–3480 Filed 2–11–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0041; FRL–7292–7]

Tribal Pesticide Program Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC) will hold a 2–day meeting, on March 13 and 14, 2003. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Thursday, March 13, 2003, from 9 a.m. to 5 p.m., including a closed session from 4:30 to 5 p.m. and Friday March 14, 2003, from 9 a.m. to 5 p.m., including two closed sessions from 10:30 a.m. to 10:45 a.m. and 4 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel - 300 Army Navy Drive, Arlington, Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@epa.gov.

Lillian Wilmore, TPPC Facilitator, P.O. Box 470829, Brookline Village, MA 02447–0829; telephone number: (617) 232–5742; fax (617) 277–1656; e-mail address: naecology@aol.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in TPPC's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decisionmaking process. All parties are invited and encouraged to attend the meetings and participate as appropriate.

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0041. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. TPPC state of the council report.
2. Presentation questions and answers by EPA Office of Pesticide Programs and by EPA Office of Pesticide Programs, Field and External Affairs Division.
3. Reports from Working Groups and TPPC participation in other meetings: Tribal Strategy and Forum on State and Tribal Toxic Actions (FOSTTA), Pesticide Program Dialogue Committee, Western Regional Pesticide Conference, Certification and Training Advisory Group, and Worker Protection.
4. Tribal caucus.
5. Reports from other organizations: State FIFRA Issues Research and Evaluation Group, American Indian Environmental Office, Tribal Operations Committee, Regional Tribal Operations Committee, Intertribal Agricultural Council, and National Tribal Environmental Council, Intertribal Agricultural Council, and Tribal Air Group.
6. Videos; EPA and Indian Country: Building Pesticide and Toxic Programs in Indian Country and Native American Grave Protection Repatriation Act (NAGPRA) issues; tainted legacy.
7. Report on Tribal Medicine Project.
8. EPA Office of Enforcement and Compliance Assurance (OECA) related issues and continuing issues reference data collections issues—Form 5700–33H; inspector credentials.
9. EPA Office of Prevention, Pesticides and Toxic Substances (OPPTS) Tribal strategy—update.
10. Update—FIFRA section 18s and section 24c issues (including Shoalwater Bay Tribe issues).
11. Tribal issues raised; Quality Assurance Project Plan (QAPP) issues.
12. Updates from the sub-regional lead officer.
13. Report from the Working Group—Tribal Traditional Lifeways (subsistence issues).
14. Update on the lifeline project.
15. Update on the West Nile Virus.
16. Announcement of requests for proposal—National Environmental Exchange Network Grant; other funding announcements.
17. Water Quality and Pesticides Management; United States Geological Survey (USGS) projects on future training efforts.
18. FIFRA and the Clean Water Act: the talent decision.
19. Update and overview—Biopesticides (*Bt* issues).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 4, 2003.

Jay S. Ellenberger,

Associate Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 03–3412 Filed 2–11–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Thursday, February 13, 2003

February 6, 2003.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 13, 2003, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—*Title:* Revisions of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems (ET Docket No. 98–153). *Summary:* The Commission will consider a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking addressing the fourteen petitions for reconsideration filed in response to the First Report and Order in this proceeding. The First Report and Order established the standards that permit the unlicensed operation of ultra-wideband devices.

2—Consumer and Governmental Affairs—*Title:* Amendment of Part 1, Subpart N of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities. *Summary:* The Commission will consider an Order to update and enhance its rules regarding access for persons with disabilities to Commission programs and activities, as found in Subpart N of Part 1 of the Commission's rules.

3—Wireline Competition—*Title:* Review of the section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338), Implementation of the

Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98), Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147), and Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Docket No. 02–33). *Summary:* The Commission will consider a Report and Order concerning incumbent local exchange carriers' obligations to make elements of their networks available on an unbundled basis.

Additional information concerning this meeting may be obtained from David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web Page at www.fcc.gov/realaudio. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3609 Filed 2–10–03; 2:53 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2594]

Petitions for Reconsideration of Action in Rulemaking Proceedings

February 7, 2003.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in the Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by February 27, 2003. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Station (Saint Joseph, Clayton, Ruston, and Wisner, Louisiana) (MM Docket No. 01–19, RM–10048, RM–10027); Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Wisner, Ruston, Clayton, and Saint Joseph, Louisiana) (MM Docket No. 01–27, RM–10056, RM–10118).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Boca Raton, Florida) (MM Docket No. 00–138, RM–9896).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.622(b), Table of Allotments, Digital Broadcast Stations (Fort Myers, Florida) (MM Docket No. 00–180, RM–9956).

Number of Petitions Filed: 3.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3486 Filed 2–11–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011692–002.

Title: Indamex Agreement.

Parties: CMA CGM; S.A., Contship Containerlines, The Shipping Corporation of India Ltd.

Synopsis: The amendment deletes all vessel-sharing and space chartering authority from the agreement.

Dated: February 7, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3499 Filed 2–11–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING:

Federal Maritime Commission.

TIME AND DATE: 10 a.m.—February 11, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: The meeting previously announced (68 FR 6455 (February 7, 2003)) for February 11, 2003 has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3596 Filed 2–10–03; 2:17 pm]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

S.F. Systems Inc., 12335 Denholm Drive, #C, El Monte, CA 91732, Officers: Mei-Ling Chan, Vice President (Qualifying Individual), David Sun, President.

Gunter Shipping, 1072 E. 39th Street, Brooklyn, NY 11210, Joseph A. Gunter, Sole Proprietor.

Comis Int'l Inc., 690 Knox Street, #220, Torrance, CA 90502, Officers: Frank S. Noah, President (Qualifying Individual), M.H. Ahn, Treasury.

Carga Tica Int'l, Inc., 4408 N.W. 74th Avenue, Miami, FL 33166, Officers: Dannia Roa, Vice President (Qualifying Individual), Patricia Ann Fonseca, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

MC Logix, Inc., 1535 W. 139th Street, Gardena, CA 90249, Officer: Se Hwan Park, President (Qualifying Individual).

RCP Logistics, Inc., 300 Elmwood Avenue, Sharon Hill, PA 19079, Officer: Richard C. Powley, Resident (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

W. P. Mulry & Co., Inc., 348 Jervis Avenue, Copiaque, NY 11726, Officer: William P. Mulry, President (Qualifying Individual).

International Trade Brokers and Forwarders Co., 7252 NW 25th Street, Miami, FL 33122, Officers: Alvaro G. Munoz, President (Qualifying Individual), Isabel Munoz, Vice President.

Amtrade International, Inc., 1700 N. Dixie Hwy., Suite 142, Boca Raton, FL 33432, Officer: Ana Adriazola-Rodriguez, President (Qualifying Individual).

Arimar International SPA, Via VIII Marzo, 35/c, 50010 Scandicci (FI) Italy, Officers: Jennifer M. Carter, Director (Qualifying Individual).

Dated: February 7, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3500 Filed 2–11–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Meetings

TIME AND DATE: 9 a.m. (E.S.T.), February 20, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the January 21, 2003, Board member meeting.
2. Executive Director's report, including the following items:
   (a) Legislative report,
   (b) Investment report,
   (c) Participation information; and
   (d) Future meeting topics.
3. Status of new record keeping system.
4. Participant service presentation.

Parts Closed to the Public

5. Discussion of litigation matters.
6. Discussion of personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 10, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–3586 Filed 2–10–03; 12:54 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 03041]

World Trade Center Registry; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the intent to award fiscal year (FY) 2003 funds for a cooperative agreement program to develop a World Trade Center (WTC) Registry which will be a central, unified database to assess short and long term health effects among persons exposed to the WTC disaster.

B. Eligible Applicant

Assistance will be provided only to the New York City Department of Health and Mental Hygiene (NYCDOHMH). NYCDOHMH has designed and implemented the protocol for the initial data collection for this program. They are the point of entry into the public health system for the residents of New York City, and they have strong linkages to all levels of the community required to gain enrollment of identified registry populations.

C. Funding

Approximately $1,500,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or about February 28, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146, *Telephone:* (770) 488–2700.

For technical questions about this program, contact: Sharon Campolucci, Public Health Advisor, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Building 4, Suite 1300, MS E–31, Atlanta, GA 30305, Telephone (404) 498–0105, e-mail address: *ssc1@cdc.gov*.

Dated: February 6, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3476 Filed 2–11–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–26–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Testing Stigma Reducing Effects of an HIV Storyline—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC proposes to re-interview a subsample of adults initially interviewed about HIV stigma in the summer of 2000. The original study relied on a new technology, the Web-enabled television, to collect data from individuals in their homes. This same technique will be used to gather data in the proposed study. The information obtained will contribute to an understanding of stigmatizing attitudes, investigate the effectiveness of a stigma-reduction strategy with the potential to reach broadly into a target audience, and guide future research and intervention efforts in this area.

HIV stigma inhibits HIV testing and positive sero-status disclosure, and thus increases the risk of HIV infection. Although there is evidence that in the general population HIV stigmatizing

attitudes and beliefs may have decreased somewhat over the last 15 years, there is no information about the stability of HIV stigmatizing attitudes and beliefs over time within the same individuals. Understanding patterns of stigma will make it possible to identify effective strategies for stigma reduction, and these could carry a significant public health benefit.

HIV stigma is a pervasive societal problem, and a meaningful decrease in stigma will require interventions that reach large numbers of people. The electronic mass media reach millions of people and nationally televised broadcasts have been shown to increase knowledge of health issues, promote attitudes and norms that support prevention, and model prevention behaviors. Serialized daytime television dramas may offer some particular advantages for effective dissemination of anti-stigma messages. A large proportion of their audiences, compared with other demographic groups, report getting their health information from television. In addition, the dramatic presentation of health-relevant messages may make them more noticeable and memorable. CDC collaborates with writers of television shows to ensure that the health-related information they present is accurate and timely. After collaboration with CDC officials, a long-running, televised, daytime soap opera introduced a subplot about HIV. The subplot presented information that has the potential to reduce HIV stigmatizing attitudes in viewers. The proposed study will screen all respondents for exposure to this soap opera broadcast and a similar one without an HIV storyline so that the effects of storyline exposure on HIV stigma can be assessed. The annual burden for this data collection is 334 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden response (in hours)
Adult non-viewers	3200	1	5/60
Adult viewers	400	1	10/60

Dated: February 6, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–3475 Filed 2–11–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 78474, dated 12/24/2002) as amended to reorganize the National Center for HIV, STD & TB Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the *Surveillance Section (CK463),* insert the following:

Global AIDS Program (CK6). (1) Provides financial and technical assistance to nations heavily affected by the HIV/AIDS epidemic; (2) provides U.S.-based (headquarters) and onsite (in-country) technical assistance and oversight for CDC financial assistance which is designed to (a) develops and implements programs on HIV/AIDS prevention and surveillance as well as medical care, support, and treatment for people living with HIV/AIDS and (b) strengths infrastructure to support prevention and care program through training, informatics, laboratory support, program evaluation, operational research, and other relevant activities; (3) serves as liaison to other divisions/offices within NCHSTP and other CIOs, USAID and other Federal agencies, UNAIDS, the World Health Organization (WHO), and other agencies of the United Nations involved in HIV/AIDS-related activities and programs; non-governmental agencies working at the international level, and health agencies of other countries; (4) serves as the primary disseminator of information from CDC about the global HIV/AIDS epidemic through health communications materials, scientific publications, and presentations.

Office of the Director (CK61). (1) Directs the activities of the Global AIDS Program (GAP); (2) provides leadership and guidance on policy development and interpretation, budget formulation, and program planning, development, management, operations, and evaluations; (3) provides GAP-wide administrative and management services including personnel, budgets, contracts, grants and cooperative agreements, interagency/reimbursable agreements, travel, facility management, and equipment in inventory and coordinates or ensures coordination with the appropriate NCHSTP or CDC staff offices; (4) develops and implements strategies and increases host government capacity to monitor and evaluate the process, impact, and outcome of GAP and other HIV prevention and care programs; (5) provides scientific and editorial review and clearance of manuscripts for publication, abstracts for presentation, protocols for Institutional Review Board (IRB) and human subjects review, and other scientific, programmatic, and informational materials; (6) responds to congressional and other official inquiries related to the GAP budget and financial assistance programs.

HIV/AIDS Care and Treatment Branch (CK62). (1) Provides technical assistance in developing comprehensive programs for the prevention, diagnosis, and treatment of HIV/AIDS, tuberculosis, and other opportunistic infections; (2) provides assistance in the development of policy and programs for appropriate use of antiretroviral drugs; (3) designs and assists in implementing home- and community-based models for HIV/AIDS care; (4) develops and assesses operational research protocols to improve the effectiveness and implementation of GAP treatment and care technical strategies; (5) reviews and analyzes findings of GAP-sponsored and other operational research to guide GAP programs and policies; (6) provides technical support to GAP headquarters and country programs in developing laboratory, clinical, and administrative capacities to prevent and treat HIV and AIDS-related conditions; (7) monitors the quality and impact of care programs for persons living with HIV/AIDS and their families; (8) assists in monitoring the training of health care workers to provide care, support, and treatment; (9) assists in monitoring the impact of HIV/AIDS of health care systems in GAP countries, including monitoring the clinical spectrum of disease, response to treatment, and emerging antiretroviral and antimicrobial resistance; (10) provides technical support in increasing access to an availability of home- and community-based care and access to antiretroviral, tuberculosis, and other drug programs that will extend life and enhance the quality of life for persons living with HIV/AIDS; (11) provides technical assistance to GAP country programs in recruiting safe blood (products) donors, quality testing blood bank management, appropriate use of blood and blood products, and prevention of severe anemia; (12) fosters the improvement of HIV prevention and counseling services through blood donor education, mobilization, and retention of safe blood donors.

Country Program Support Branch (CK63). (1) Serves as the focal point for communications and program and administrative support for all country HIV prevention programs; (2) provides a link between GAP country programs and GAP headquarters in Atlanta and supports and assists GAP country program staff in communications with other GAP programs around the world; (3) provides logistical and administrative support to GAP country programs for implementing at least 17 technical strategies under HIV/STD/TB prevention, AIDS treatment and care, and infrastructure development relevant to specific country programs and plans; (4) assists in the development, disbursement, and oversight of country budgets; (5) arranges for international travel and all policy and administrative issues relevant to the overseas assignment of CDC staff and their families; (6) develops operational research protocols to evaluate novel approaches to implementing GAP technical strategies within each program; (7) procures and inventories materials and equipment needed to support country plans; (8) develops plans and provides financial, technical, and administrative assistance for developing, implementing, and evaluating in-country HIV programs.

Surveillance and Infrastructure Development Branch (CK64). Develops, implements, and evaluates comprehensive systems for collecting, disseminating, and applying epidemiologic and behavioral surveillance data to monitor trends in HIV, other sexually transmitted infections, and tuberculosis; (2) develops policies, systems, and programs and provides technical assistance to increase host government capacity to conduct quality laboratory testing for HIV, other sexually transmitted infections, and tuberculosis; (3) provides technical and other assistance to develop, maintain, and evaluate GAP and host government informatics systems; (4) develops, provides, and evaluates training activities in support of GAP technical strategies and assesses and improves the training capacity of host governments to support HIV prevention and care programs.

HIV Prevention Branch (CK65). (1) Supports GAP field sites in their collaborations with national and international partners to implement, improve, expand, sustain, and maximize effectiveness of HIV prevention programs; (2) provides technical assistance to GAP country programs in the development, implementation, and evaluation of model behavior changes interventions and programs to reduce risk-behaviors and enhance health-seeking behaviors; (3) provides technical assistance to GAP country programs to strengthen, expand, and make accessible programs to prevent, diagnose, and treat sexually transmitted infections and to prevent HIV infection among persons seeking treatment of sexually transmitted infections; (4) provides technical assistance to GAP country programs to implement, expand, monitor, and evaluate programs to provide antenatal services, decrease mother-to-child HIV transmission, and improve care and support of infected mothers and children; (5) provides technical assistance to GAP country programs on tailoring HIV prevention programs to meet the special needs of youth and drug-using populations; (6) provides technical assistance to GAP country programs to develop, expand, and evaluate voluntary HIV counseling and testing programs; (7) provides technical assistance for the development of strategies to maximize the impact of HIV prevention programs in GAP countries through public-private partnerships, national program expansion, and community mobilization.

Dated: February 2, 2003.

William H. Gimson,

Acting Director.

[FR Doc. 03–3440 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 78000–78001, dated December 20, 2002) is amended to reorganize the National Center for Injury Prevention and Control.

Section C–B, Organization and Functions, is hereby amended as follows:

After the Office of the Director (CE1), insert the following: *Office of Policy, Planning and Evaluation (CE12).* (1) Within the policies and guidelines of HHS, PHS, and CDC, conducts NCIPC planning and evaluation activities including tracking program objectives and performing evaluation studies; (2) provides information for the development of NCIPC's annual budget submission and supporting documents; (3) reviews, prepares, and coordinates policy and briefing documents; analyzes and implements policies related to the center; and (4) provides liaison with staff offices and other officials of CDC.

Delete in its entirety the functional statement for the *Office of Research Grants (CE3).*

After the *Division of Unintentional Injury Prevention (CE5),* insert the following:

Division of Injury and Disability Outcomes (CE6). (1) Plans, establishes, and evaluates national and state based surveillance systems to monitor the incidence, causes, risk factors, and treatments of outcomes of injuries; (2) coordinates a nationwide program to develop and enhance core injury capacity in public health agencies; (3) evaluates programs to prevent adverse outcomes of injuries or reduce the impact of such injuries on individuals and society; (4) conducts research on the medical aspects of injury, disability and health services for such conditions; (5) supports epidemiological and applied research and demonstration efforts to improve the effectiveness of health care and rehabilitation services and systems; (6) supports surveillance efforts directed at TBI and other national, state and local priorities; (7) collaborates with the Disabilities Prevention Program, National Center for Environmental Health, CDC, in providing technical assistance and consultation to states, communities, and research and academic institutions in the prevention of disabilities due to injuries; (8) ensures integration of research and findings into NCIPC intramural programmatic activities; (9) represents the scientific agendas of the NCIPC extramural research program; (10) serves as the focal point for

traumatic head and spinal cord injury activities within CDC; and (11) supports training programs and disseminates research findings to strengthen the competence of practioners and researchers in acute care and rehabilitation.

Dated: February 2; 2003.

William H. Gimson,

Acting Director.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 70088–70089, dated November 20, 2002) is amended to reorganize the Office of Vital and Health Statistics Systems, NCHS.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the *Office of Vital and Health Statistics Systems* and insert the following:

The Division of Vital Statistics (CS5). Plans and administers complex data collection systems and conducts a program of methodologic and substantive public health research activities based on the nationwide collection of data from vital records, follow back surveys, and demographic surveys of people in the childbearing ages. (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) directs, plans, and coordinates the vital statistics program of the United States; (3) administers the vital statistics cooperative program, including the National Death Index; (4) develops standards for vital statistics data collection including electronic systems, data reduction, and tabulation; (5) interprets, classifies, and compiles complex demographic, economic, health, and medical data; (6) serves as the United States representative to the World Health Organization (WHO), regarding the International Classification of Diseases (ICD) for mortality data and the classification and coding of cause of death; (7) conducts research to determine cross-national comparability of causes of death to further enhance the ICD and make appropriate recommendations to WHO; (8) conducts research on data collection methodology, survey methodology, data quality and reliability, and statistical computation as related to vital and survey statistics; (9) conducts multidisciplinary research directed toward development of new scientific knowledge on the demographics of reproduction, natality, and mortality; (10) performs theoretical and experimental investigations into the content of the vital statistics data collection effort; (11) develops sophisticated approaches to making vital statistics data available to users, including techniques to avoid disclosure of confidential data; (12) conducts descriptive analyses and sophisticated multivariate analyses that integrate vital statistics data across multiple surveys or data sets; (13) provides technical assistance and consultation to international, State, and local offices with vital registration responsibilities on vital registration, vital statistics, and data processing; (14) researches, designs, develops, and implements state-of-the-art computing systems for collecting, storing, and retrieving vital records and for subsequent analysis and dissemination; (15) conducts methodological research on the tools for evaluation, utilization, and presentation of vital statistics and related survey data and medical classification; (16) produces and publishes a wide variety of vital statistics analytic reports and tabulations in multiple formats; (17) develops and sustains collaborative partnerships within NCHS, CDC, DHHS, and externally with public, private, domestic and international entities on vital statistics programs.

Office of the Director (CS51). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) provides leadership for the monitoring and statistical evaluation of national vital statistics; (3) directs, plans, and coordinates the statistical and research activities of the Division; (4) develops and administers a research and analytic program in registration and vital statistics; (5) develops policy, practices, and management for the Nation Death Index program; (6) plans and conducts a program to improve the vital registration and statistics program of the U.S.; (7) conducts studies of new vital registration techniques; (8) recommends content and format of model legislation, regulations, standard certificates, and other aids to registration systems; (9) provides international leadership and consultation on vital registration and statistics issues to other countries; and (10) establishes collaborative partnerships within NCHS, CDC, DHHS, and externally with public, private, domestic and international entities on vital statistics programs.

Systems, Programming, and Statistical Resources Branch (CS55). (1) Conducts research into the design, development, and administration of vital statistics information technology systems; (2) performs systems analysis and computer programming of vital registration data; (3) develops technologies, data architectures, security infrastructure, and database management related to vital records, record linkage, and sample surveys consistent with Center and Agency information technology requirements; (4) develops, maintains, and employs state-of-the-art information technologies (*e.g.*, relational data bases, Web-enabled applications, applications development and dissemination activities) associated with vital statistics; (5) develops and maintains systems and databases to support the National Death Index program; (6) provides consultation and expert technical assistance to the Division concerning mainframe, client-server, and networking applications; (7) prepares and maintains population databases as well as conducts studies on statistical computation and data quality; (8) designs and implements information technology applications to produce final edited and imputed vital statistics and survey data; (9) produces and distributes wide variety of vital statistics reports and tabulations in multiple formats; (10) provides consultation, policy guidance and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, federal, local and international governments, researchers, and individuals, in regard to vital statistics systems design, administration, and usage; and (11) manages national vital statistics data files and databases and the DVS vital statistics data request program.

Mortality Medical Classification Branch (CS56). (1) Develops medical classification software and procedures for collecting and processing of mortality medical data in states and at NCHS; (2) provides leadership to the international community in the use and adoption of automated mortality medical classification systems; (3) directs a comprehensive program of technical assistance and consultation related to medical mortality data classification to states, local areas, other countries, and private organizations; (4) tests, refines, and updates automated coding systems that assist in production of mortality data; (5) conducts methodological research in data preparation and medical classification of mortality data; (6) provides nosological assistance and training, both nationally and internationally, in regard in International Classification of Diseases (ICD) information for mortality and new revisions of the ICD; (7) interprets, classifies, codes, keys, and verifies medical and demographic information of value to researchers and public policy officials; (8) develops and implements training programs for cause-of-death coding and provides technical assistance to international, federal, state, and local government and non-government agencies.

Mortality Statistics Branch (CS53). (1) Establishes the research agenda for mortality statistics in response to public health priorities; (2) converts identified data needs into statistical and research programs to obtain, evaluate, analyze, and disseminate mortality statistics data; (3) conducts research to improve data collection of vital records, record linkage, and sample survey methodologies related to mortality statistics; (4) performs theoretical and experimental research that improves the content of the mortality statistics data collection effort and the timeliness, availability, and quality of mortality statistics data; (5) conducts research into life tables methodology and produces annual and decennial U.S. and State life tables; (6) recommends content of U.S. Standard Certificates; (7) assesses disclosure risk and develops optimal data release strategies that improve policy analysis and decision-making; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (9) conducts research rated to the International Classification of Diseases (ICD) and cause of death classification; (10) conducts national and state-specific comparability studies of cause of death classification to facilitate the study of mortality trends across ICD revisions; (11) designs and conducts methodological research to improve the collection, production, use, and interpretation of mortality-related data; (12) collaborates with other agencies and organizations in the design, implementation, and analysis of vital records surveys; and (13) develops and promotes training activities related to the collection, production, use and interpretation of mortality statistics.

Reproductive Statistics Branch (CS54). (1) Establishes the research agenda for reproductive statistics in response to public health priorities; (2) assesses information data needs in the fields of reproduction, maternal and child health, family formation, growth, and dissolution; (3) plans and develops statistical and research programs to obtain, evaluate, analyze, and disseminate reproductive statistics data to meet these needs; (4) conducts research to improve data collections on vital records, record linkage, and sample survey methodologies related to reproductive statistics; (5) performs theoretical and experimental research that improves the content of the reproductive statistics data collection effort and the timeliness, availability, and quality of reproductive statistics data; (6) assesses disclosure risk and develops optimal data strategies that improve policy analysis and decision-making; (7) prepares and publishes descriptive analyses of individual data systems as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (8) conducts methodological research to improve statistics on reproduction, maternal and child health, family formation, growth, and dissolution; (9) recommends content of U.S. Standard Certificates; and (10) provides consultation and advice to members of Congress, the press, and a broad range of researchers and institutions at the international, national, State, and local levels on reproductive statistics data.

Data Acquisition and Evaluation Branch (CS52). (1) Provides policy direction to states regarding vital statistics data acquisition and quality control; (2) promotes state participation in the vital statistics cooperative program and the national death index (NDI) program; (3) develops specifications for coding, editing and processing of vital registration and statistics data; (4) develops and administers funding formulas that determine the level of reimbursement to states and the procurement mechanisms to effect this reimbursement; (5) develops and directs a comprehensive statistical quality assurance program to assure that the data received from each registration area are acceptable for national use; (6) provides technical assistance to states, local areas, other countries, and private organizations on data files, software, training, processing and coding of vital statistics data; (7) in consultation with health departments across the U.S., leads and conducts evaluation studies and other research on issues related to the collection of vital statistics; (8) prepares and publishes information obtained from special projects related to vital registration and statistics data; (9) promotes the development and implementation of "best statistical practices" throughout the U.S. vital statistics system to maximize the utility of vital statistics data; and (10) manages the acquisition of vital statistics data from the 57 registration areas to assure a national file of timely and complete data.

Division of Health Care Statistics (CS6). Plans and administers complex data collection systems and analytic programs and conducts a program of methodologic and substantive public health research activities on the health care system and the use of health care services. (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) plans, directs and coordinates the health care statistics program of the Center; (3) develop standards for health care statistics data collection, data reduction, and tabulation; (4) conducts research on data collection methodology, survey methodology, data quality and reliability, statistical computation, and utilization of health care statistics data; (5) conducts multidisciplinary research directed towards development of new scientific knowledge on the provision, use, quality, and appropriateness of ambulatory, hospital, and long-term care; interactions within the health care delivery system; and the effects of the system and its financing on services provided; (6) performs theoretical, experimental, and evaluation investigations into the content of the health care statistics data collection effort; (7) develops sophisticated approaches for making health care statistics data available to users, including techniques to avoid disclosure of confidential data; (8) conducts descriptive analyses and sophisticated multivariate analyses that integrate health care statistics across multiple surveys or data sets; (9) designs, develops, and implements state of the art computing systems for collection, storing, and retrieving health care statistics data for subsequent analysis and dissemination; (10) provides technical assistance, consultation, and liaison to international, federal, states, and local government agencies, as well as the private sector, on statistics describing health care resources and utilization and future data needs of particular relevance for public health, health services research, and health policy; (11) fosters the integration of health care

data systems as well as greater linkages of data for analytic purposes; (12) analyzes and produces and publishes a wide variety of health care statistics reports and tabulations in multiple formats; and (13) develops and sustains collaborative partnerships with NCHS, CDC, and DHHS, and externally with public, private, domestic, and international entities on health care statistics programs.

Office of the Director (CS61). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) provides leadership for the development, conduct, and evaluation of national health care surveys and statistics; (3) directs, plans, and coordinates the statistical and research activities of the Division; (4) develops and administers a research and analytic program to characterize the health care delivery system and patients and providers interacting within it; (5) coordinates activities within the division and with other Center components aimed at obtaining and using health care data from other Federal, state, and local government agencies, as well as from non-government sources; and (6) provides advice and leads development of collaborative partnerships with NCHS, CDC, and DHHS, and externally with public, private, domestic and international entities on health care statistics and the manner in which statistics may impact policy issues.

Ambulatory Care Statistics Branch (CS62). (1) Develops and maintains a national register of ambulatory health care providers and inventories; (2) assesses information and data needs in the field of ambulatory care statistics and translates data needs into plans for ambulatory health care surveys, inventories and research activities; (3) prepares specifications for the collection, coding, editing, and imputation of ambulatory health care statistics data; (4) conducts complex research studies relating to ambulatory health care providers and their utilization; (5) converts identified data needs into research, development, and evaluation activities; (6) performs theoretical and experimental research that improves the content of the ambulatory care data collection efforts and the timeliness, availability, and quality of ambulatory care data; (7) assesses disclosures risk and develops optimal data release strategies that improve policy analysis and decision-making; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (9) develops and publishes a wide variety of reports and tabulations in multiple formats and arranges for distribution/dissemination through appropriate media; and (10) provides technical advice and consultation in survey methodology, data collection, quality control, and analysis of ambulatory health data to other health professional personnel and researchers.

Hospital Care Statistics Branch (CS63). (1) Develops and maintains a national register of hospital care providers; (2) translates data needs into plans for national inpatient and ambulatory surgery health care surveys, inventories and research activities; (3) prepares specifications for collection, coding, data entry, editing, and imputation of hospital care statistics data; (4) conducts complex research studies relating to hospital care and ambulatory surgery facilities and their utilization; (5) converts identified data needs into research, development, and evaluation activities; (6) performs theoretical and experimental research that improves the content of the hospital care data collection effort and the timeliness, availability, and quality of hospital care statistics and ambulatory surgery data; (7) assesses disclosure risk and develops optimal data release strategies that improve policy analysis and decision-making; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that may integrate data across multiple surveys or data sets; (9) develops and publishes a wide variety of reports and tabulations in multiple formats and arranges for distribution/dissemination through appropriate media; and (10) provides technical advice and consultation in survey methodology, data collection, quality control, and analysis of hospital care and ambulatory surgery statistics to other health professional personnel and researchers.

Long-Term Care Statistics Branch (CS64). (1) Develops and maintains a national register of long-term care providers and plans for national long-term care surveys and inventories; (2) translates data needs into plans for surveys, inventories and research activities across the spectrum of long-term care; (3) prepares specifications for collection, coding, data entry, editing, and imputation of long-term care data; (4) conducts complex research studies relating to long-term care providers and their utilization; (5) converts identified data needs into research, development, and evaluation activities; (6) performs theoretical and experimental research to improve the content of the data collection effort and improves the timeliness, availability, and quality of long-term care statistics; (7) assesses disclosure risk and develops optimal data release strategies that improve policy analysis and decision-making; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that may integrate data across multiple surveys or data sets; (9) develops and publishes a wide variety of reports and tabulations in multiple formats and arranges for distribution/dissemination through appropriate media; and (10) provides technical advice and consultation in survey methodology, data collection, quality control, and analysis of long-term care statistics to other health professional personnel and researcher.

Technical Services Branch (CS65). (1) Conducts research into the design, development, and administration of health care statistics information technology systems; (2) performs systems analysis and computer programming of health care statistics data; (3) develops and implements computer technologies, data architectures, security infrastructure, and database management for division programs consistent with Center and Agency information technology requirements; (4) develops, maintains, and employs state-of-the-art information technologies (e.g., relational data bases, Web-enabled applications, applications development tools) in support of data collection, processing, maintenance, analysis, and dissemination activities associated with national health care surveys; (5) advises division staff regarding resources for mainframe, client-server, network, and emerging applications; (6) prepares and maintains databases and file libraries, as well as conducts studies of statistical computation and data quality; (7) produces and disseminates a wide variety of reports and tabulations in multiple formats; (8) develops quality control measures; and (9) provides consultation, policy guidance, and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, federal, local, and international governments, researchers, and individuals, in regard to health care survey and computer systems design and usage.

Division of Health Interview Statistics (CS7). Plans and administers complex data collection systems and analytic programs and conducts a program of methodologic and substantive public health research activities based on the collection of data from nationwide and special health interview surveys. (1) participates in the development of policy, long-range plans, and programs of NCHS; (2) plans, directs and coordinates the health interview statistics program of NCHS; (3) administers Division programs comprised of national health interview surveys, longitudinal surveys, population-based telephone surveys, targeted follow-up studies, and national and subnational surveys on selected health topics; (4) conducts research on data collection and estimation methodology, survey methodology, questionnaire design, data quality and reliability, and statistical computation related to health interview statistics; (5) analyzes data and publishes reports on the prevalence and incidence of disease and associated disabilities, health status, health-related behaviors, utilization of health care resources, health insurance status, and other health and well-being related topics; (6) conducts multidisciplinary research directed toward development of new scientific knowledge in areas related to health and health care, population demographics, economics, epidemiology, statistics, and disability, e.g., determining associations between risks and outcomes; (7) performs theoretical and experimental investigations of the content of health interview surveys; (8) develop sophisticated approaches to making data available to users, including techniques to avoid disclosure of confidential data; (9) conducts and publishes descriptive analyses and sophisticated multivariate analyses that may integrate data across multiple surveys or data sets; (10) designs, develops, and implements state-of-the art computing systems for collecting, storing, and retrieving health interview statistics and for subsequent analysis and dissemination; (11) applies computer systems and software in its programs, consistent with NCHS information technology requirements; (12) conducts methodological research on the utilization, evaluation, and presentation of health interview statistics; (13) produces and publishes a wide variety of health interview statistics reports, papers, and tabulations in multiple formats as well as makes presentations on analyses of such data; and (14) develops and sustains collaborative partnerships with, and provides expert advice and technical assistance to, NCHS, CDC, DHHS, and externally with public, private, domestic and international entities on issues regarding health interview survey data.

Office of the Director (CS71). (1) Participates in the development of policy, long-range plans, and programs of NCHS; (2) provides leadership for the design, development, conduct, and statistical evaluation of the Division's data systems, and the analysis and dissemination of national and subnational health interview statistics; (3) directs, plans, and monitors the scientific integrity and relevance to public health of the Division's data, publications, and other products; (4) directs and coordinates the planning and production activities of the Division, including data collection, information technology, and data dissemination; (5) develops and administers a research and analytic program in health interview statistics; (6) plans and conducts a program to improve methods for obtaining information on subpopulations defined by age, gender, geography, race, ethnicity, socioeconomic status, etc.; and (7) provides advice and leads development of collaborative partnerships within NCHS, CDC, and DHHS, and externally with public, private, domestic and international entities on issues regarding health interview statistics and the manner in which statistics may impact policy issues.

Systems and Programming Branch (CS72). (1) Conducts research into the design, development, deployment, and administration of information technology systems to collect, process, and disseminate national health interview survey data; (2) performs systems analysis and computer programming, employing state-of-the-art information technologies (e.g., relational databases, Web-enabled applications, applications development tools) in support of data collection, processing, maintenance, analysis, and dissemination activities associated with national health interview surveys; (3) develops and implements computer technologies, data architectures, and security infrastructure and information technology management for the national health interview survey information technology systems ensuring consistency with the Center and Agency information technology requirements (4) designs, implements, and administers health interview survey information technologies; (5) conducts studies on statistical computation and data quality; (6) directs and coordinates the Division's procurement of computer hardware and software; (7) conducts studies and analyses to endure data confidentiality; (8) designs and implements computer applications to produce final edited and imputed health interview survey data and statistics; (9) produces health statistics reports and tabulations of data from health interview surveys in multiple formats; (10) designs and conducts evaluative studies of health interview survey data collection, processing, and dissemination systems to incorporate new concepts, methods and technologies; (11) provides consultation, policy guidance, and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, federal, local, and international governments, researchers, and individuals, in regard to the design, administration, and usage of health interview statistics technology systems.

Survey Planning and Development Branch (CS73). (1) Establishes the design and content of the national health interview surveys in response to public health priorities; (2) converts identified data needs into research, development, and evaluation activities and related public health information in the areas of prevalence and incidence of disease and associated disabilities, health status, health-related behaviors, health insurance status, and other health and well-being related topics; (3) coordinates survey instrument development and data collection activities by outside contractors; (4) designs and conducts methodological, analytical, developmental, and evaluation studies of health interview survey processes, questions, and data; (5) performs theoretical and experimental research on the content of and data collection efforts for health interview surveys in order to improve timeliness, quality, and availability of health interview survey data; (6) collaborates with other NCHS programs and through contracts and interagency agreements with outside sponsors of survey supplements in the development, implementation, and analysis of survey questions and data; and (7) provides technical advice and consultation in survey methodology, data collection, quality control, and analysis of health interview statistics data to a broad range of institutions, governments, and researchers.

Data Analysis Branch (CS74). (1) Conducts research and analysis on topics relevant to public health suing national health interview survey data; (2) integrates, analyzes, and disseminates data from the national health interview survey; (3) facilities linkages across the national health interview survey components and with other databases; (4) prepares and presents scientific papers on health issues using data from the national health interview survey; (5) collaborates in the development and application of analytical and methodological techniques and guides for the Division's data collection programs; ((6) identifies substantive methodological and

technological research needs pertaining to health interview survey data; (7) serves as the NCHS resource on health interview survey data and their use in assessing the prevalence and incidence of disease and associated disabilities, health status, health related behaviors, health insurance status, and other health and well-being related topics; (8) collaborates in the questionnaire development process for health interview surveys; and (9) provides consolation, technical assistance, and liaison to academia, other research groups, and state, federal, and international entities concerning data needs and the definitions and uses of health interview survey data.

Special Population Surveys Branch (CS75). (1) Plans and directs special customized population surveys, such as the State and Local Area Integrated Telephone Survey (SLAITS), in order to obtain timely state and smaller-area data as well as national data relevant to public health; (2) plans and directs the methodological and development aspects of data systems for producing health, welfare, and well-being statistics for populations defined by geography, race and ethnicity, and for other special populations; (3) collaborates through contracts, grants, and interagency agreements with outside sponsors of special population surveys in the development, implementation, and analysis of survey questions and data; (4) coordinates special population survey instrument development and data collection and processing activities by outside contractors; (5) designs and implements computer applications to produce final edited and imputed special population survey data and statistics; (6) conducts methodological research and analysis to improve the quality of health, welfare, and well-being statistics for special populations; (7) conducts innovative research and analysis activities that will establish baseline health and health-related data at national and subnational levels; (8) converts identified data needs into research, development, and evaluation activities; (9) conducts theoretical and experimental research to improve the content of the data collection effort for special population surveys by linkage with other surveys and by conducting record validation; (10) designs, conducts, publishes, and presents results of methodological, analytical, developmental, and evaluation studies of special population survey processes, questions, and data; (11) serves as the NCHS resource on special population surveys data and their use in evaluating programs and activities related to the NCHS mission; and (12) provides consultation and technical assistance to academia, other research groups, and state, federal, and international entities addressing the definitions, needs, and uses of special population survey data.

Division of Health and Nutrition Examination Surveys (CS8). Plans and administers complex data collection systems and analytic programs and conducts a program of methodologic and substantive public health research activities based on the nationwide collection of data from health and nutrition examination surveys. (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) plans, directs and coordinates the health and nutrition examination statistics program of the Center; (3) administers national cross-sectional, longitudinal and special health and nutrition examination studies responsive to the needs for complex health, nutritional, and related public health information; (4) manages and coordinates activities of the World Health Organization (WHO) Collaborating Centre for Health and Nutrition Examination Surveys; (5) conducts research on data collection methodology, survey methodology, data quality, and statistical computation related to health and nutritional status assessment; (6) conducts multidisciplinary research directed toward development of new scientific knowledge in the areas related to health and nutrition status, e.g. determining the causal relationships between risks and outcomes; (7) performs innovative theoretical and experimental investigations into the content of the health and nutrition examination statistics data collection effort; (8) develops sophisticated approaches to making health and nutrition examination statistics data available to users, including techniques, to avoid disclosure of confidential data; (9) prepares adn publishes descriptive analyses and sophisticated multivariate analyses that integrate health and nutrition examination statistics data across multiple surveys or data sets; (10) consults and provides technical assistance on the assessment of health and nutritional status for application in setting medical standards, evaluation of national programs, and regulatory processes; (11) provides leadership for the National Nutrition Monitoring and Related Research Program; (12) designs, develops, and implements state-of-the-art computing systems and technologies for collecting, storing, and retrieving health and nutrition examination data for subsequent analysis and dissemination; (13) applies computer systems and software for its programs consistent with Center information technology requirements; (14) produces a wide variety of health and nutrition examination statistics analytic reports and tabulations in multiple formats; and (15) develops and sustains collaborative partnerships within NCHS, CDC, and DHHS, and externally with public, private, domestic and international entities on health and nutrition examination statistics programs.

Office of the Director (CS81). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) provides leadership for the monitoring and statistical evaluation of national health and nutrition examination statistics; (3) plans, directs and coordinates the statistical activities of the Division; (4) develops and administers a research and analytic program in health and nutrition examination statistics; (5) provides advice and leads development of collaborative partnerships within NCHS, CDC, and DHHS and externally with public, private, domestic and international entities on health and nutrition examination statistics; (6) provides support and focus for DHHS activities in the National Nutrition Monitoring and Related Research Program, coordinating these activities in CDC, DHHS, and other Federal agencies; and (7) manages and coordinates activities of the World Health Organization (WHO) Collaborating Center for Health and Nutrition Examination Surveys.

Analysis Branch (CS82). (1) Analyzes data and prepares scientific papers on the prevalence of disease or health-related characteristics and the interrelationships of these variables; (2) collaborates in the development and application of analytic techniques and guidelines for the Division's data collection programs; (3) performs innovative health and nutrition examination statistics data needs into research, development, and evaluation activities; (5) conducts theoretical and experimental research to improve the content of the health examination statistics data collection effort; (6) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (7) develops a wide variety of health and nutrition examination statistics reports and tabulations in multiple formats and arranges for dissemination through appropriate media; and (8) administers analysis and scientific peer review of manuscripts for data collected in the Division's data collection programs; and (9) provides technical advice and consultation to academic, international, federal, and state entities regarding nutritional and health examination statistics data.

Informatics Branch (CS83). (1) Conducts applied computer and informatics research on the development of new and novel approaches in integrated survey information systems, database technology, imaging and telemedicine, data transmission, geographical information systems, and metadata registries; (2) conducts research on the design, development, and administration of computer systems for more timely and accurate health and nutrition examination statistics data; (3) develops, implements, and supports technologies, data architectures, networks, security infrastructure, and database management for the Division's data collection and analytic programs consistent with state of the art trends in computer and informatics research; (4) implements appropriate technologies to prevent unauthorized access to internal and field data resources including authentication, data encryption, data security, system scanning/probing, and implementation and development of systems security and policies consistent with Presidential Decision Directives and other Government wide initiatives; (5) performs systems analysis, computer programming, and quality assurance/quality control of health and nutrition examination data; (6) develops and implements standards for the Division's data collection programs and provides support for telecommunications, data access, and high-speed network technologies (*e.g.*, data dissemination, telemedicine applications); (7)performs special projects related to data on health and nutrition and produces a wide variety of reports and tabulations in multiple formats; and (8) provides advice, policy guidance, and expert technical consultation NCHS-wide and to academic, federal, state, local and international governments, and researchers regarding health and nutrition examination survey information technologies and informatics research.

Operations Branch (CS84). (1) Develops and administers contracts for data collection, engineering, acquisition and maintenance of mobile examination centers (MEC) and medical and computer equipment and receipt and cont4rol systems; (2) develops and implements systems for reporting of medical findings, professional readings, and laboratory processing for health and nutrition examination and special studies; (3) develops and conducts engineering and logistical support for survey data collection; (4) designs and conducts research studies on response rates, quality control and quality assurance of health and nutrition examination statistics data; (5) designs and develops comprehensive outreach programs and survey participant recruitment materials; and (6) prepares and publishes reports and analyses of field operations and performs special projects related to health and nutrition examination statistics survey implementation.

Planning Branch (CS85). (1) Establishes the research agenda for health and nutrition statistics data in response to public health priorities; (2) converts identified data needs into research, development, and evaluation activities and related public health information; (93) directs the planning phase of contractual activities, including pilot testing and workshop development, in support of the Division's data collection programs; (4) plans and develops a statistical program to obtain, evaluate, analyze and disseminate health and a nutrition examination statistics to meet these needs; (5) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (6) performs theoretical and experimental research to improve the content of the health and nutrition examination statistics data collection effort and improve the timeliness, availability, and quality of the nutritional and health examination statistics data; (7) participates in the design and development of integrated, automated data collection systems and data file release programs as well as conducts statistical methods research; (8) provides technical oversight of all laboratory aspects of health and nutrition examination studies; and (9) provides consultation and technical assistance to a wide range of researchers and institutions at the state, national, and international levels addressing the definitions, needs, and uses of nutrition and health nutrition examination statistics.

Dated: February 2, 2003.

William H. Gimson,

Acting Director.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10084]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. We cannot reasonably comply with the normal clearance procedures because public harm is likely to result if the normal clearance process followed. Waiting for the normal clearance process to be completed might mean that vulnerable, elderly or disabled Medicare beneficiaries in affected areas would have limited or no access to physician services for prolonged periods.

CMS is requesting OMB review and approval of this collection by March 1, 2003, with a 180-day approval period. Written comments and

recommendations will be accepted from the public if received by the individuals designated below by February 19, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection; *Title of Information Collection:* Targeted Beneficiary Survey on Access to Physician Services Among Medicare Beneficiaries; *Form No.:* CMS–10084 (OMB# 0938–NEW); *Use:* Recent anecdotal reports have suggested that Medicare beneficiaries in certain parts of the country are having difficulty finding physicians who will accept new Medicare patients. In response to these anecdotes, CMS implemented a multi-faceted monitoring system that incorporated multiple data sources to address beneficiaries' reported access problems. As part of this monitoring strategy, CMS has designed a Targeted Survey on Access to Physician Services Among Medicare Beneficiaries. The survey is designed to interview 300 Medicare beneficiaries in each of 11 geographic areas where there is some evidence to suggest a potential physician access problem. The geographic areas include the state of Alaska; the Phoenix, Arizona area; the San Diego, California and San Francisco, California areas; the Denver, Colorado area; the Tampa, Florida area; the Springfield, Missouri area; the Las Vegas, Nevada area; the Brooklyn, New York area; the Fort Worth, Texas area; and the Seattle, Washington area. Survey respondents will be Medicare beneficiaries in the traditional Medicare program who are covered by part B where Medicare is the primary payer. The survey will over sample beneficiaries who are most likely to be seeking new physicians. The goal of the survey is to confirm or refute anecdotal reports that the Medicare payment restrictions are contributing to physician access problems. The survey will inform CMS about the characteristics of Medicare beneficiaries most likely to be experiencing physician access problems. It will enhance CMS's ability to consider the potential effects of payment changes on beneficiary access. *Frequency:* One-time; *Affected Public:* Individuals or households; *Number of Respondents:* 4,000; *Total Annual Responses:* 4,000; *Total Annual Hours:* 958.

We have submitted a copy of this notice to OMB for its review of these information collections.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by February 19, 2003:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, CMS–10084, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167. Attn: Brenda Agular, CMS Desk Officer.

Dated: February 4, 2003.

Anthony Mazzarella,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–3447 Filed 2–11–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0017]

Agency Information Collection Activities; Proposed Collection; Comment Request; Impact of Risk Management Programs on the Practice of Pharmacy

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's burden estimates to conduct a descriptive survey of pharmacists to evaluate pharmacists' knowledge of risk management programs, identify barriers to compliance, and assess the impact of these programs on the practice of pharmacy.

DATES: Submit written or electronic comments on the collection of information by April 14, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Risk management programs are reviewed by divisions in the Center for Drug Evaluation and Research as part of the new drug application (NDA) review process as well as during the postmarketing period. In an effort to address safety risks associated with drug therapy, several risk management programs have been implemented (e.g., for clozapine, thalidomide, and bosentan). Many risk management programs require pharmacists to actively intervene and implement actions that deviate from their normal work procedures. Currently, the impact of risk management programs on the practice of pharmacy in terms of pharmacists' compliance, knowledge, burden, and barriers is not known.

The goal of this descriptive survey is to obtain information that will help FDA understand how risk management programs affect the practice of pharmacy and gain insight on practical interventions for future risk management programs. Findings from the survey will offer new insight and knowledge in risk management programs, and will enable FDA to make better decisions when reviewing new or existing risk management programs. Expected outcomes from the survey include a collection of data to evaluate pharmacists' knowledge of risk management programs, identify barriers of compliance, and assess the impact of these programs on the practice of pharmacy.

The descriptive survey will be sent to a representative sampling of pharmacists in the United States. Approximately 5,000 pharmacists will be chosen at random from listings of licensed pharmacists obtained from participating U.S. State Boards of Pharmacy. Because the number of licensed pharmacists in each State varies and the number of respondents from each State cannot be predicted, either a simple random or a stratified sample design will be used, depending on whether there is sufficient number of participating pharmacists to evaluate regional differences. The geographic regions would be classified by location in one of the four geographic regions of the United States corresponding to those used by the U.S. Bureau of Census (northeast, midwest, south, west).

The survey will be conducted via first-class mail. The survey will be mailed with a cover letter to randomly chosen pharmacists along with a preaddressed, stamped return envelope. To ensure anonymity and confidentiality, no premarkings or numbering systems will be recorded on the survey or return envelope.

From the sample size of approximately 5,000 pharmacists, the desirable response rate is approximately 75 to 85 percent. If needed, actions will be taken to increase the response rate, such as resending the survey approximately 2 weeks after the initial mailing.

FDA estimates that it will take each pharmacist approximately 20 minutes to respond to the survey and return it to FDA. The burden of this collection of information is estimated as follows:

TABLE 1.—ESTIMATED ONE-TIME REPORTING BURDEN[1]

Number of Respondents	Annual Frequency Per Response	Total Annual Responses	Hours per Response	Total Hours
5,000	1	5,000	.33	1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 5, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3433 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0296]

Agency Information Collection Activities; Announcement of OMB Approval; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Investigational New Drug Regulations" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 18, 2002 (67 FR 64393), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0014. The approval expires on January 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 5, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3435 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0645]

Medical Device Warning Letter Pilot Termination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the termination of the Medical Device Warning Letter Pilot (MDWLP). This pilot concerns the issuance of warning letters for quality system, premarket notification (510(k)), and labeling violations. The intent is to inform the

medical device industry of FDA's decision to discontinue this pilot program.

DATES: The effective date for ending the MDWLP is March 14, 2003 for inspections or investigations initiated on or after that date.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Governale, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411, FAX 301–827–0482.

SUPPLEMENTARY INFORMATION:

I. Background

During the FDA and medical device industry grassroots forums, several issues were discussed concerning the agency's interaction with the device industry. After considering these issues, the agency initiated the MDWLP on March 29, 1999. (See the **Federal Register** of March 8, 1999 (64 FR 11018), for a copy of the pilot.) The purpose of this pilot was to optimize resource utilization, enhance communication between the medical device industry and FDA, and provide firms with incentives to promptly correct violations or deficiencies. The MDWLP included procedures for the issuance of warning letters for quality system (21 CFR part 820), 510(k) (21 CFR part 807, subpart E), and labeling (e.g., 21 CFR part 800, subpart B; part 801; and part 809, subparts B and C) violations. This pilot was restricted to the medical device industry and was one of several medical device industry initiatives. FDA continued this pilot after the scheduled termination date of September 8, 2000, while evaluating its effectiveness.

After evaluating its effectiveness, FDA has decided to discontinue the pilot. The pilot was intended to optimize resource utilization, enhance communication between the medical device industry and FDA, and provide firms with incentives to promptly correct violations or deficiencies. However, FDA has determined that the pilot has not provided incentives to promptly correct violations because firms that would have received warning letters if not for the pilot, did not have measurably better rates of compliance in followup inspections than did firms that received warning letters. Also, FDA found that the pilot did not optimize resource utilization in that while the quantity of timely responses to inspectional observations increased, the quality of those responses generally decreased. Thus, FDA determined that the additional burdens placed on field staff by the pilot failed to optimize resources and reduced overall field inspectional effectiveness.

Additionally, on November 29, 2001, the Department of Health and Human Services directed FDA to submit all warning letters and untitled letters to FDA's Office of the Chief Counsel prior to their issuance for review of legal sufficiency and consistency with agency policy. FDA's new procedures for review of warning and untitled letters address some of the concerns that the medical device industry originally expressed to FDA during the grassroots meetings. The procedures have the added benefit of applicability to all FDA programs. They are expected to enhance consistency with agency policy among FDA district offices and centers, improve the legal sufficiency and quality of enforcement correspondence, and provide for timely feedback to regulated entities.

For all of these reasons, the agency has decided to discontinue the MDWLP.

II. Electronic Access

A copy of the MDWLP may be downloaded to a personal computer with access to the Internet at http://www.fda.gov/ohrms/dockets/98fr/030899e.pdf.

Dated: February 4, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3436 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 4, 2003, from 8 a.m. to 5 p.m., and March 5, 2003, from 9 a.m. to 5 p.m., and March 6, 2003, from 8 a.m. to 12 noon.

Location: Marriott Washingtonian Center, Grand Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 4, 2003, the committee will discuss new drug application (NDA) 21–158, Factiver (gemifloxacin mesylate) Tablets, Parexel International, U.S. Agent for LG Life Sciences, Ltd., proposed for the treatment of Community-Acquired Pneumonia (CAP) and Acute Bacterial Exacerbation of Chronic Bronchitis (ABECB). On March 5, 2003, the committee will discuss the formation of a list of pathogens of public health importance for which antimicrobial drug development would be desirable. The committee also will discuss the concept of how preclinical data and clinical data from one disease state may support approval of antimicrobial drugs in another, separate disease state.

Procedure: On March 4 and 5, 2003, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 25, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 25, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 6, 2003, from 8 a.m. to 12 noon, the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara Turner at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 3, 2002.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3437 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 28, 2003, from 8 a.m. to 5 p.m.

Location: Hilton DC North—Gaithersburg, Salons A, B & C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12519. Please call the Information Line or access the Internet address of http://www.fda.gov/cdrh/panelmtg.html for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an injectable wrinkle treatment device. There will also be a discussion of two general issues: (1) Clinical trial issues for devices designed for ablation of pulmonary tumors, and (2) clinical trial issues for devices designed for the treatment of emphysema. Background information for each topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. The material for this meeting will be posted on February 27, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 14, 2003. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 8:45 a.m., 11:30 a.m. and 11:45 a.m., and between approximately 3:30 p.m. and 4 p.m. Time allotted for oral public presentations may be limited. Those desiring to make formal oral presentations should notify the contact person before February 14, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 5, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3430 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 4, 2003, from 8:30 a.m. to 3:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6758, or e-mail: PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss pediatric labeling for oncology products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by February 24, 2003. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 24, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Thomas Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 4, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3432 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 21, 2003, from 8 a.m. to 4:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kathleen Reedy or Carolyn Jones, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: REEDYK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will: (1) Discuss the mission of the subcommittee, (2) discuss the direction of the initiative entitled "Pharmaceutical cGMPs for the 21st Century: A Risk-Based Approach" (see the FDA Internet site at http://www.fda.gov/oc/guidance/gmp.html), and (3) receive an update on the regulatory approaches regarding aseptic manufacturing.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 7, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 7, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Carolyn Jones at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 3, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3431 Filed 2–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Nursing Scholarship Program (NSP) Application—NEW

The NSP will provide scholarships to eligible individuals for attendance at schools of nursing in exchange for a commitment from the individuals to serve as nurses for a period of not less than two years at a health care facility with a critical shortage of nurses. An "eligible individual" is defined as someone who is enrolled or accepted for enrollment as a full-time or part-time student in a school of nursing. The Secretary shall give preference to qualified applicants with the greatest financial need. Participating schools will be responsible for determining eligible students and submitting information to the Federal Government.

The estimate of burden for the form is as follows:

Form and number	Number of respondents	×	Responses per respondent	=	Total responses	×	Hours per responses	=	Total burden hours
Nursing Scholarship Program Application	1,500		1		1,500		3		4,500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 5, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–3429 Filed 2–11–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1610–PG–020H; G 3–0068]

Steens Mountain Advisory Council; Notice of Intent to Call for Nominations

AGENCY: Bureau of Land Management (BLM), Burns District.

ACTION: Notice of Intent to Call for Nominations for the Steens Mountain Advisory Council (SMAC).

SUMMARY: BLM is publishing this notice under section 9(a)(2) of the Federal Advisory Committee Act. Pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399), BLM gives notice that the Secretary of the Interior intends to call for nominations for vacating positions to the SMAC. This notice requests the public to submit nominations for membership on the SMAC.

Any individual or organization may nominate one or more persons to serve on the SMAC. Individuals may nominate themselves for SMAC membership. Nomination forms may be obtained from the Burns District Office, Bureau of Land Management (see address below). To make a nomination, submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Burns District Office. Nominations may be made for the following categories of interest:

- One person who is a recognized environmental representative for the State as a whole (appointed from nominees submitted by the Governor of Oregon);
- A person interested in fish and recreational fishing (appointed from nominees submitted by the Governor of Oregon);
- A person who is a recreational permit holder or is a representative of a commercial recreation operation (appointed jointly by the Oregon State Director of the BLM and the County Court for Harney County, Oregon); and
- A private landowner in the Steens Mountain Cooperative Management and Protection Area (CMPA) (appointed by the County Court for Harney County, Oregon).

The specific category the nominee will represent should be identified in the letter of nomination. The Burns District will collect the nomination forms and letters of reference and distribute them to the officials responsible for submitting nominations (County Court of Harney County, the Governor of Oregon, and BLM). BLM will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

DATES: Nominations should be submitted to the address listed below no later than 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4433, or <*Rhonda_Karges@or.blm.gov*> or from the following Web sites <*http://www.or.blm.gov/Burns*> or <*http://www.or.blm.gov/steens*> (P.L. 106–399 in its entirety can be found on the Steens Web site as previously cited.)

SUPPLEMENTARY INFORMATION: The purpose of the SMAC is to advise BLM on the management of the CMPA as described in Title 1 of Public Law 106–399. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories or interest listed above.

Members of the SMAC are appointed for terms of 3 years, except that, of the members first appointment, four members were appointed for a term of 1 year and four members were appointed for a term of 2 years. The State environmental representative, recreational permit holder, private landowner, and fish and recreational fishing positions were all 2-year terms and will expire August 2003. These four positions will all be replaced with 3-year terms, and will begin no earlier than August 2003.

Members will serve without monetary compensation, but will reimbursed for travel and per diem expenses at current rates for Government employees. The SMAC shall meet only at the call of the Designated Federal Official, but not less than once per year.

Dated: January 31, 2003.

Thomas H. Dyer,

Designated Federal Official, Bureau of Land Management.

[FR Doc. 03–3477 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XM–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meetings will be held on March 19 and May 21, 2003. The March 19 meeting will be at the Holiday Inn, 333 Sante Fe in Alamosa, Colorado beginning at 9 a.m. The public comment period will begin at 9:15 a.m. and the meeting will adjourn at approximately 4 p.m.

The May 21, 2003 meeting will be at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado beginning at 9:15 a.m. The public comment period will begin at approximately 9:30 a.m. and the meeting will adjourn at approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado.

Planned agenda topics for the March 19 meeting include:

Manager reports.
Effects of drought on grazing.
Updates on current public land issues.

Planned agenda topics for the May 21 meeting include:

Briefing on the Fuels Management Program.
Tour of a Fuels Management project.

All meetings are open to the public. The public can make oral statements to the Council at 9:15 a.m. on March 19 and 9:30 a.m. on May 21 or written statements may be submitted for the Councils consideration. Depending on

the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: February 5, 2003.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 03–3469 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–PG: GP03–0075]

Notice of Public Meeting, John Day/Snake Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held February 27, 2003 at the Oxford Inn Suites in Pendleton, OR beginning at 8 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North East Oregon.

Meeting Topics

The Upcoming National Resource Advisory Council Meeting with BLM Director Kathleen Clarke
RAC Progress Reports
Agency Updates
Blue Mountain Land Exchange/New Planning Rule
Wallowa County Watershed Analysis-Upper Joseph Subcommitte Updates
Roundtable
Meeting Calendar

Meeting Procedures

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE Third Street, Prineville, OR 97754.

Dated: February 6, 2003.

Ronald Halvorson,

Acting District Manager.

[FR Doc. 03–3474 Filed 2–11–03; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–319 and 322, and 731–TA–573 and 578 (Review) (Remand)]

Certain Carbon Steel Products (Cut to Length Plate) From Belgium and Germany; Notice of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its antidumping and countervailing duty review investigations nos. 701–TA–319 and 322 (Review), and 731–TA–573 and 578 (Review).

EFFECTIVE DATE: February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Rhonda Hughes, Office of General Counsel, telephone 202–205–3083; Bonnie Noreen, Office of Investigations, telephone 202–205–3167; or Elizabeth Haines, Office of Investigations, telephone 202–205–3200. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record in these reviews for the limited purpose of obtaining certain data that exclude floor plate from Belgian producers. This action is taken pursuant to the decision of the U.S. Court of International Trade in *Usinor, Industeel, S.A.* v. *United States*, Slip Op. 02–152 (Dec. 20, 2002), holding that the Commission must review certain data without consideration of Belgian floor plate data as a result of the ruling of the U.S. Court of Appeals for the Federal Circuit in *Duferco Steel, Inc.* v. *United States*, No. 01–1443 (July 12, 2002). The Commission will provide the parties in Consol. Court No. 01–00006 an opportunity to file comments on any new information received pertaining to that subject.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings and are also parties to the ongoing litigation (*i.e.*, persons listed on the Commission Secretary's service list and parties to Consol. Court No. 01–00006) may participate in these remand proceedings.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigations will be released to parties under the administrative protective order ("APO") in effect in the original reviews. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the reviews and in these remand investigations available to additional authorized applicants that are not covered under the original APO, provided that the application is made not later than seven days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in these remand investigations.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: February 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–3506 Filed 2–11–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Final)]

Certain Frozen Fish Fillets from Vietnam

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1012 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Vietnam of certain frozen fish fillets, provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species Pangasius Bocourti, Pangasius Hypophthelmus (also known as Pangasius Pangasius), and Pangasius Micronemus. The subject merchandise will be hereinafter referred to as frozen 'basa' and 'tra' fillets, which are the Vietnamese common names for these species of fish."

General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain frozen fish fillets from Vietnam are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 28, 2002, by the Catfish Farmers of America—a trade association of U.S. catfish farmers and processors—and by individual catfish processors.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on June 4, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on June 17, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 10, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. If unable to allocate hearing time among themselves, all parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference scheduled for 9:30 a.m. on June 13, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 11, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 24, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 24, 2003. On July 11, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 15, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the

Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means except to the extent provided by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: February 7, 2003.
By order of the Commission.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 03–3507 Filed 2–11–03; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Village Voice Media, LLC, & NT Media, LLC*; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed final judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District court for the Northern District of Ohio in *United States of America* v. *Village Voice Media, LLC, and NT Media, LLC,* Civil Action No. 1:03CV0164. On January 27, 2003, the United States filed a Complaint alleging that the market allocation agreement between New Times and Village Voice Media was *per se* illegal under section 1 of the Sherman Act, 15 U.S.C. 1. The proposed final judgment, filed the same time as the complaint, (i) enjoins Village Voice Media and New Times from taking any actions in furtherance of, or required under, their *per se* illegal market allocation agreement; (ii) requires defendants to divest all the assets used in connection with the publication of the *New Times LA*, New Times's alternative newsweekly in Los Angeles, and the *Cleveland Free Times,* Village Voice Media's alternative newsweekly in Cleveland, for the purpose of establishing a viable competitive alternative newsweekly in both geographic markets; (iii) permits any advertiser that entered into an advertising or promotion contract after October 1, 2002, with Village Voice Media's *LA Weekly,* or New Times's *Cleveland Scene,* for a specified time and solely at the advertiser's option, to terminate such contract without penalty or threat of retaliatory action; (iv) requires Village Voice Media and New Times to notify the United States for the next five years of any future acquisitions, or sales of, alternative newsweeklies; (v) prevents both defendants from enforcing any non-compete contractual provisions against any current or former employees involved in their Cleveland or Los Angeles alternative newsweeklies; and (vi) prevents each defendant and its officers, directors, agents, and employees, from entering into, continuing, maintaining, or renewing any market or customer allocation agreement. Copies of the complaint, proposed final judgment, and competitive impact statement are available for inspection at the Department of Justice in Washington, DC, in Room 200, 325 Seventh Street, NW., on the Department of Justice's web site at *http://www.usdoj.gov/atr/,* and at the Office of the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division, in Cleveland, Ohio.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530 (telephone: (202) 616–5935).

Constance K. Robinson,
Director of Operations.

Hold Separate Stipulation and Order

It is hereby stipulated and Agreed by and between the undersigned parties, subject to approval and entry by this court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

(A) "Acquirer" or "acquirers" means the entity or entities to which defendants divest the Divestiture assets.

(B) "Alternative newsweekly" means a publication (such as the Cleveland Scene or LA Weekly) that posses more than one of the following attributes: (i) It is published in a geographic area served by one or more daily newspaper to which residents turn as their primary source or sources of printed news; (ii) it is published weekly (or less frequently), and at least 24 times annually; (iii) it is distributed free of charge; (iv) it is not owned by a daily newspaper publishing company; and (v) it is a general interest publication that does not focus exclusively on one specific topic, such as music, entertainment, religion, the environment, or a political party or organization.

(C) "Cleveland Free Times assets" means all assets within the possession, custody or control of Village Voice Media and New Times that were formerly employed in the publication of the Cleveland Free Times alternative newsweekly in the Greater Cleveland area by Village Voice Media before October 1, 2002, including, but not limited to:

(1) All rights to the Cleveland Free Times name (and any derivations thereof), logo, layout and design, including all legal rights, including intellectual property rights associated with the Cleveland Free Times, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal right from, the third party controls such rights);

(2) Except for the payroll systems located in New York, New York, all computer hardware, software and licensing agreements connected with that software to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights); and all information relating to the Cleveland Free Times stored on the computer hardware, including all design templates and databates;

(3) All office furniture, telephone systems, T–1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the Cleveland Free Times;

(4) All rights to the Cleveland Free Times website and URL (*www.freetimes.com*);

(5) All rights to the print and electronic archives of the Cleveland Free Times publications and articles on a non-exclusive basis;

(6) All assets used in the publication of the Cleveland Free Times, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which Village Voice Media published the Cleveland Free Times; and

(7) All other tangible and intangible assets used in the publication of the Cleveland Free Times, including, but not limited to: All other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, terming arrangements, agreements, commitments, certifications, and understanding, including supply agreements, all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating to the Cleveland Free Times; all other records stored in the office of, or generated by or fore, the Cleveland Free Times; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the Cleveland Free Times; all research, packaging, sales, marketing, advertising and distribution know-how, information, data, and documentation, including marketing and sales data, and layout designs, and manuals and technical information Village Voice Media provided to any of its Cleveland Free Times employees, customers, suppliers, agents or licensees; and all specifications for materials.

(D) "Divestiture assets" means the *Cleveland Free Times* Assets and the *New Times LA* Assets.

(E) "Greater Cleveland area" means the counties of Cuyahoga, Lake, Geauga, Portage, Summit, Medina and Lorain in the state of Ohio.

(F) "Greater Loss Angeles area" means the counties of Los Angeles, Orange, San Bernardino, Riverside and Ventura in the state of California.

(G) "New Times" means defendant NT Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in Phoenix, Arizona, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation Cleveland Scene, LLC, and New Times Los Angeles, LP, and their directors, officers, managers, agents, and employees.

(H) "*New Times LA* Assets" means all assets within the possession, custody or control of New Times and Village Voice Media that were formerly employed in the publication of the *New Times LA* alternative newsweekly in the Greater Los Angeles area by New Times before October 1, 2002, including, but not limited to:

(1) Subject to the provisions of section V(K) of the proposed final judgment, all rights to the *New Tiems LA, LA Reader* and *LA View* names (including any derivations thereof), logos, layout and design, including all legal rights, including intellectual property rights associated with the *New Times LA, LA Reader* and *LA View,* including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(2) All computer hardware, software, and licensing agreements connected with that software to the fullest extent sublicensable, which are associated primarily with the publication of the *New Times LA,* including all rights to the *New Times LA* website and URL (*www.newtimesla.com*); all information relating to the *New Times LA* stored on the computer hardware, including all design templates and databases; New Times shall provide in the original format to the Acquirer (if such format is not readable or usable by commercially available software, then New Times shall provide such data in such format the Acquirer may reasonably specify) all other information relating to the publication of *New Times LA* stored on New Times's computer hardware (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(3) All office furniture, telephone systems, T–1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the *New Times LA;*

(4) All rights to the print and electronic archives of *New Times LA* publications and articles on a non-exclusive basis;

(5) All graphics and artworks used in the publication of the New Times LA and New Times's other alternative newsweeklies as of October 1, 2002, on a non-exclusive basis;

(6) All assets used in the publication of the New Times LA, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which New Times published the New Times LA; and

(7) All other tangible and intangible assets used in the publication of the New Times LA; including, but not limited to: all other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating exclusively to the New Times LA; all other records stored in the offices of, or generated by or for, the New Times LA; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the New Times LA; all research, packaging, sales, marketing, advertising, and distribution know-how, information, data and documentation, including marketing and sales data, and layout designs used exclusively in, or which relate exclusively to, the publication of the New Times LA (and copies of such know-how, information, data and documentation which relates to the publication of the New Times LA); all manuals and technical information New Times provided to any of its New Times LA employees, customers, suppliers, agents or licensees; and all specifications for materials.

(I) "Publication" means all activities associated with the business of offering an alternative newsweekly to the public as a commercial endeavor, including, but not limited to, editing, writing, printing, circulating, operating, marketing, and distributing such alternative newsweeklies, and selling advertisements and promotions therein.

(J) "State Attorneys General" means the Office of the Attorney General of the State of Ohio and the Office of the

Attorney General of the State of California, who may share information and consult with the Office of the Los Angeles County District Attorney on any matters arising under this hold separate stipulation and order.

(K) "Village Voice Media" means defendant Village Voice Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation LA Weekly Media, Inc. and Cleveland Free Times Media, Inc., and their directors, officers, managers, agents, and employees.

(L) The terms "and" and "or" have both conjunctive and disjunctive meanings.

II. Objectives

The final judgment filed in this civil action is meant to ensure prompt divestitures for the purpose of establishing viable competitors in the alternative newsweekly industry in order to remedy the effects that the United States alleges have resulted, and would otherwise continue to result, from the defendants' agreement that the United States alleges to have violated section one of the Sherman Act. The hold separate stipulation and order ensure, prior to such divestitures, that the Cleveland Free Times Assets and New Times LA Assets remain economically viable, and that the divestiture assets be maintained and not be diminished during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

This court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Northern District of Ohio.

IV. Compliance With and Entry of Final Judgment

(A) The parties stipulate that a final judgment in the form attached hereto as Exhibit A may be filed with and entered by this court, upon the motion of any party or upon this court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any part or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed final judgment by serving notice thereof on defendants and by filing that notice with this Court.

(B) Defendants shall abide by and comply with the provisions of the proposed final judgment, pending the judgment's entry by this court, or until expiration of time for all appeals of any court ruling declining entry of the proposed final judgment. Defendants, from the date of the signing of this hold separate stipulation and order by the parties, shall comply with all the terms and provisions of the proposed final judgment as though the same were in full force and effect as an order of this court.

(C) This hold separate stipulation and order shall apply with equal force and effect to any amended proposed final judgment agreed upon in writing by the parties and submitted to this Court.

(D) In the event that (1) the proposed final judgment is not entered pursuant to this hold separate stipulation and order, the time has expired for all appeals of any court ruling declining entry of the proposed final judgment, and this court has not otherwise ordered continued compliance with the terms and provisions of the proposed final judgment, or (2) the United States has withdrawn its consent, as provided in section IV(A) above, then the parties are released from all further obligations under this hold separate stipulation and order, and the making of this hold separate stipulation and order shall be without evidentiary prejudice to any party in this or any other proceeding.

(E) Defendants represent that the divestitures ordered in the proposed final judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking this court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the final judgment have been accomplished:

(A) Defendants shall preserve and maintain the value and goodwill of the divestiture assets. Defendants shall not, except as part of a divestiture approved by the United States, after consultation with the State Attorneys General, in accordance with the terms of the proposed final judgment, remove, sell, lease or sublease, assign, transfer, pledge or otherwise dispose of any of the divestiture assets.

(B) Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income, if any, of the Divestiture Assets.

Cleveland Free Times Assets

(C) With respect to the books, records, sales, marketing, promotions, customer and pricing information as part of the Cleveland Free Times Assets in its possession, custody or control, New Times shall hold them entirely separate, distinct and apart from those of New Times's other operations. Until such time that the Cleveland Free Times Assets are divested, the Cleveland Free Times Assets in New Time's possession, custody, or control shall be managed by a person, not employed by New Time's alternative newsweekly, the Cleveland Scene (the "New Times designated person").

(D) The New Times Designated Person shall have complete managerial responsibility for the Cleveland Free Times Assets in the possession, custody, and control of New Times, subject to the provisions of this order, and will be responsible for overseeing New Times's compliance with this section.

(E) In the event that the New Times designated person is unable to perform his or her duties, or is not approved by the United States, upon consultation with the State Attorneys General, New Times shall appoint, subject to the approval of the United States, upon consultation with the State Attorneys General, a replacement within five calendar days. Should defendant New Times fail to appoint a replacement acceptable to the United States, upon consultation with the State Attorneys General, within five calendar days, the United States shall appoint, upon consultation with the State Attorneys General, a replacement.

(F) Defendant New Times shall take no action that would interfere with the ability of the New Times designated person or any later appointed persons to oversee the Cleveland Free Times assets in New Times's possession, custody or control. The New Times Designated person shall not be terminated, transferred or reassigned prior to the divestiture of such assets under the final judgment and this hold separate stipulation and order.

(G) Within 10 calendar days after either the filing of the complaint or the entry of the hold separate stipulation and order, whichever is earlier, New Times shall deliver to the United States and State Attorneys General an affidavit that describes in reasonable detail: (i) Each Cleveland Free Times asset in its possession, custody, or control, (ii) the identity, title, and responsibilities of the New Times designated person, and (iii) all actions New Times has taken and all steps New Times has implemented on an ongoing basis to comply with this hold separate stipulation and order.

New Times LA Assets

(H) With respect to the books, records, sales, marketing, promotions, customer and pricing information as part of the New Times LA Assets in its possession, custody or control, Village Voice Media shall hold them entirely separate, distinct and apart from those of Village Voice Media's other operations. Until such time that the New Times LA assets are divested, the New Times LA assets shall be managed by a person, not employed by Village Voice Media's Alternative Newsweekly, the LA Weekly (the "VVM designated person").

(I) The VVM designated person shall have complete managerial responsibility for the New Times LA assets in the possession, custody, and control of Village Voice Media, subject to the provisions of this order, and will be responsible for overseeing Village Voice Media's compliance with this section.

(J) In the event that the VVM designated person is unable to perform his or her duties, or is not approved by the United States, upon consultation with the State Attorneys General, Village Voice Media shall appoint, subject to the approval of the United States, upon consultation with the State Attorneys General, a replacement within five calendar days. Should Village Voice Media fail to appoint a replacement acceptable to the United States, upon consultation with the State Attorneys General, within five calendar days, the United States shall appoint, upon consultation with the State Attorneys General, a replacement.

(K) Defendant Village Voice Media shall take no action that would interfere with the ability of the VVM designated person or any later appointed persons to oversee the New Times LA Assets in Village Voice Media's possession, custody or control. The VVM designated person shall not be terminated, transferred or reassigned prior to the divestiture of such assets under the final judgment and this hold separate stipulation and order.

(L) Within 10 calendar days after either the filing of the complaint or the entry of the hold separate stipulation and order, whichever is earlier, Village Voice Media shall deliver to the United States and State Attorneys General an affidavit that describes in reasonable detail: (i) Each New Times LA asset in its possession, custody, or control, (ii) the identity, title, and responsibilities of the VVM designated person, and (iii) all actions Village Voice Media has taken and all steps Village Voice Media has implemented on an ongoing basis to comply with this hold separate stipulation and order.

(M) Defendants shall take all steps necessary to ensure that preservation of the assets will be conducted by the designated persons and not be influenced by New Times or Village Voice Media. Defendants shall take all steps necessary to ensure that the divestiture assets are fully maintained in operable condition, and shall maintain and adhere to normal repair, product improvement and upgrade, and maintenance schedules for the divestiture assets.

(N) Defendants shall use their best efforts to assist, and shall take no action to interfere with or to impede, the trustee (if applicable) in accomplishing the required divestiture pursuant to the final judgment.

(O) This hold separate stipulation and order shall remain in effect until consummation of the divestiture required by the proposed final judgment or until further order of this court.

Dated: January 25, 2003, Washington, DC

Respectfully submitted,

For defendant Village Voice Media, LLC:

Melanie Sabo,

(Florida Bar No. 0875287), Preston Gates Ellis & Rouvelas Meeds, LLP 1735 New York Avenue, NW., Suite 500, Washington, DC 20006–5209, (202) 628–1700 (telephone). (202) 331–1024 (facsimile). melanies@prestongates.com.

For defendant NT Media, LLC:

Joseph Kattan, P.C.,

(DC Bar No. 33542), Gibson Dunn & Crutcher, LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, (202) 955–8500 (telephone), (202) 530–9558 (facsimile), *Jkatton@gibsondunn.com.*

For plaintiff United States of America:

Maurice E. Stucke,

(New York—no bar number assigned), U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington DC 20530, (202) 305–1489 (telephone), (202) 514–7308 (facsimile). Maurice.Stucke@usdoj.gov.

Order

It is so ordered by this court, this ____ day of __/__/__, 2003.

United States District Judge.

Final Judgment

Whereas, the United States of America filed its compliant on January 27, 2003, alleging that defendants Village Voice Media and New Times entered into agreements in violation of section one of the Sherman Act, and the plaintiff and defendants, by their respective attorneys, have consented to the entry of this final judgment without trial or adjudication of any issue of fact or law, and without this final judgment constituting any evidence against, or any admission by, any party regarding any such issue of fact or law;

And whereas, Village Voice Media and New Times agree to be bound by the provisions of this Final Judgment pending its approval by this court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Village Voice Media and New Times to restore the loss of competition alleged in the complaint;

And whereas, the United States requires Village Voice Media and New Times to agree to certain procedures and prohibitions for the purpose of restoring the loss of competition alleged in the complaint;

And whereas, the United States requires Village Voice Media and New Times to make certain divestitures for the purpose of remedying the loss of competition alleged in the complaint;

And whereas, Village Voice Media and New Times have represented to the United States that the divestitures required below can and will be made and that they will later raise no claim of hardship or difficulty as grounds for asking the court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trail or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

I. Jurisdiction

This court has jurisdiction over the subject matter of and each of the parties to this action. The compliant states a claim upon which relief may be granted against Village Voice Media and New Times under section 1 of the Sherman Act, as amended (15 U.S.C. 1).

II. Definitions

As used in this final judgment:

(A) "Acquirer" or "acquirers" means the entity or entities to which defendants divest the divestiture assets.

(B) "Alternative newsweekly" means a publication (such as the Cleveland Scene or LA Weekly) that possesses more than one of the following attributes: (i) It is published in a geographic area served by one or more daily newspapers to which residents turn as their primary source or sources of printed news; (ii) it is published weekly (or less frequently), and at least 24 times annually; (iii) it is distributed free of charge; (iv) it is not owned by a daily newspaper publishing company; and (v) it is a general interest publication that does not focus

exclusively on one specific topic, such as music, entertainment, religion, the environment, or a political party or organization.

(C) "California Attorney General" means the Office of the Attorney General of the State of California, who may share information and consult with the Office of the Los Angeles County District Attorney on any matters arising under this final judgment.

(D) "Cleveland Asset Purchase Agreement" means the Asset Purchase Agreement by and among Cleveland Free Times Media, Inc., Cleveland Scene, LLC, Village Voice Media, LLC, and NT Media, LLC, dated October 1, 2002, and any agreements ancillary thereto.

(E) "Cleveland Free Times Assets" means all assets within the possession, custody or control of Village Voice Media and New Times that were formerly employed in the publication of the Cleveland Free Times alternative newsweekly in the Greater Cleveland Area by Village Voice Media before October 1, 2002, including, but not limited to:

(1) All rights to the Cleveland Free Times name (and any derivations thereof), logo, layout and design, including all legal rights, including intellectual property rights associated with the Cleveland Free Times, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(2) Except for the payroll systems located in New York, New York, all computer hardware, software and licensing agreements connected with that software to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, Village Voice Media shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights); and all information relating to the Cleveland Free Times stored on the computer hardware, including all design templates and databases;

(3) All office furniture, telephone systems, T–1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the Cleveland Free Times;

(4) All rights to the Cleveland Free Times website and URL (*www.freetimes.com*);

(5) All rights to the print and electronic archives of the Cleveland Free Times publications and articles on a non-exclusive basis;

(6) All assets used in the publication of the Cleveland Free Times, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which Village Voice Media published the Cleveland Free Times; and

(7) All other tangible and intangible assets used in the publication of the Cleveland Free Times, including, but not limited to: All other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating to the Cleveland Free Times; all other records stored in the offices of, or generated by or for, the Cleveland Free Times; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the Cleveland Free Times; all research, packaging, sales, marketing, advertising and distribution know-how, information, data, and documentation, including marketing and sales data, and layout designs; all manuals and technical information Village Voice Media provided to any of its Cleveland Free Times employees, customers, suppliers, agents or licensees; and all specifications for materials.

(F) "Cleveland Scene termination period" means the period of time beginning October 1, 2002, and ending 30 calendar days after consummation of the divestiture of the Cleveland Free Times assets.

(G) "Divestiture assets" means the Cleveland Free Times Assets and the New Times LA assets.

(H) "Greater Cleveland area" means the counties of Cuyahoga, Lake, Geauga, Portage, Summit, Medina and Lorain in the state of Ohio.

(I) "Greater Los Angeles area" means the counties of Los Angeles, Orange, San Bernardino, Riverside and Ventura in the state of California.

(J) "Los Angeles asset purchase agreement" means the asset purchase agreement among LA Weekly Media, Inc., New Times Los Angeles, LP, Village Voice Media, LLC, and NT Media, LLC, dated October 1, 2002, and any agreements ancillary thereto.

(K) "LA Weekly termination period" means the period of time beginning October 1, 2002, and ending 30 calendar days after consummation of the divestiture of the New Times LA assets.

(L) "New Times" means Defendant NT Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in Phoenix, Arizona, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation Cleveland Scene, LLC, and New Times Los Angeles, LP, and their directors, officers, managers, agents, and employees.

(M) "New Times LA Assets" means all assets within the possession, custody or control of New Times and Village Voice Media that were formerly employed in the publication of the New Times LA alternative newsweekly in the Greater Los Angeles area by New Times before October 1, 2002, including, but not limited to:

(1) Subject to the provisions of section V(K), all rights to the New Times LA, LA Reader and LA View names (including any derivations thereof), logos, layout and design, including all legal rights, including intellectual property rights associated with the New Times LA, LA Reader and LA View, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property to the fullest extent sublicensable (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the Acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(2) All computer hardware, software, and licensing agreements connected with that software to the fullest extent sublicensable, which are associated primarily with the publication of the New Times LA, including all rights to the New Times LA website and URL (*www.newtimesla.com*); all information relating to the New Times LA stored on the computer hardware, including all design templates and databases; New Times shall provide in the original format to the acquirer (if such format is not readable or usable by commercially available software, then New Times shall provide such data in such format the acquirer may reasonably specify) all other information relating to the publication of New Times LA stored on New Times's computer hardware (provided that, with respect to any rights not legally transferable, New Times shall assist, and neither impede nor hinder, the acquirer in negotiating with, and obtaining all necessary legal rights from, the third party who controls such rights);

(3) All office furniture, telephone systems, T–1 lines, fax machines, copy machines, stationery, business cards, rate kits, and all other supplies and equipment used by the New Times LA;

(4) All rights to the print and electronic archives of New Times LA publications and articles on a non-exclusive basis;

(5) All graphics and artworks used in the publication of the New Times LA and New Times's other alternative newsweeklies as of October 1, 2002, on a non-exclusive basis;

(6) All assets used in the publication of the New Times LA, including all distribution racks, street distribution boxes, permits and licenses for individual distribution racks and boxes, route sheets, and leases or other rights to real property from which New Times published the New Times LA; and

(7) All other tangible and intangible assets used in the publication of the New Times LA, including, but not limited to: All other leases; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; all graphics and artwork relating exclusively to the New Times LA; all other records stored in the offices of, or generated by or for, the New Times LA; all technical information, computer software and related documentation, and know-how, and information relating to plans for, or improvements to, the New Times LA; all research, packaging, sales, marketing, advertising, and distribution know-how, information, data and documentation, including marketing and sales data, and layout designs used exclusively in, or which relate exclusively to, the publication of the New Times LA (and copies of such know-how, information, data and documentation which relates to the publication of the New Times LA); all manuals and technical information New Times provided to any of its New Times LA employees, customers, suppliers, agents or licensees; and all specifications for materials.

(N) "Ohio Attorney General" means the Office of the Attorney General of the State of Ohio.

(O) "Publication" means all activities associated with the business of offering an alternative newsweekly to the public as a commercial endeavor, including, but not limited to, editing, writing, printing, circulating, operating, marketing, and distributing such alternative newsweeklies, and selling advertisements and promotions therein.

(P) "State Attorneys General" means the California Attorney General and the Ohio Attorney General.

(Q) "Village Voice Media" means defendant Village Voice Media, LLC, a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, including without limitation LA Weekly Media, Inc. and Cleveland Free Times Media, Inc., and their directors, officers, managers, agents, and employees.

(R) The terms "and" and "or" have both conjunctive and disjunctive meanings.

III. Applicability

(A) This final judgment applies to Village Voice Media and New Times, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

(B) Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include any of the divestiture assets that the purchaser agrees to be bound by the provisions of this final judgment, provided, however, that Village Voice Media and New Times need not obtain such an agreement from the acquirer(s).

IV. Prohibited and Required Conduct

(A) Village Voice Media and New Times are enjoined as of the filing of the Complaint in this matter from taking any actions in furtherance of, or required under, either the Cleveland asset purchase agreement or the Los Angeles asset purchase agreement. Village Voice Media's and New Times's obligation under this final judgment supercede their obligations under either of these agreements, and Village Voice Media and New Times shall not object to the performance of their obligations under this final judgment on the grounds that those obligations would cause them to breach either agreement.

(B) For a period of two years commencing upon the filing date of the complaint in this matter, Village Voice Media shall permit any advertiser that entered during the LA Weekly termination period into a written or oral contract to advertise in, or engage in a promotion with, the LA Weekly, solely at the advertiser's option, to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. Village Voice Media shall provide all affected advertisers a copy of this final judgment within 15 calendar days after the filing of the complaint in this matter, and inform in writing all affected advertisers within: (i) Fifteen calendar days after the filing of the complaint in this matter; and (ii) thirty calendar days after consummation of the divestiture of the New Times LA assets, of their rights to terminate at their option their advertising or promotion contracts with the LA Weekly.

(C) For a period of two years commencing upon the filing date of the complaint in this matter, New Times shall permit any advertiser that entered during the Cleveland Scene termination period into a written or oral contract to advertise in, or engage in a promotion with, the Cleveland Scene, solely at the advertiser's option, to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. New Times shall provide all affected advertisers a copy of this final judgment within 15 calendar days after the filing of the complaint in this matter, and inform in writing all affected advertisers within: (i) Fifteen calendar days after the filing of the complaint in this matter; and (ii) 30 calendar days after consummation of the divestiture of the Cleveland Free Times assets, of their right to terminate at their option their advertising or promotion contracts with the Cleveland Scene.

(D) Each defendant, its officers, directors, agents, and employees, acting or claiming to act on its behalf, and successors and all other persons action or claiming to act on its behalf, are enjoined and restrained from, in any matter, directly or indirectly, entering into, continuing, maintaining, or renewing any market or customer allocation agreement, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or

following any practice, plan, program, or device having a similar purpose or effect.

(E) Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendants for a period of five years commencing upon the filing of the complaint in this matter, and without providing advance notification to the Antitrust Division of the United States Department of Justice, shall not directly or indirectly enter into any merger or joint venture involving, or sale of, any of its alternative newsweeklies or national advertising networks or acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any publication that possesses more than two of the five attributes specified in the definition of "alternative newsweekly" in section II(B) and this final judgment, one of which must be the attribute specified in section II(B)(v). Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to, the notification and report form set forth in the Appendix to part 803 of title 16 of the Code of Federal Regulations as amended, except that the information requested in items 5 through 8 of the instructions must be provided only about alternative newsweeklies. Notification shall be provided at least 30 calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until 20 calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this section shall be resolved in favor of filing notice.

(F) For any employee involved in the publication of the Cleveland Free Times as of October 1, 2002, any non-compete provision imposed by Village Voice Media shall be null and void. For a period from the filing of the complaint to one year from the divestiture of the Cleveland Free Times assets, defendants shall not enforce any other non-compete contractual provisions against any of their former or current employees of the Cleveland Free Times or the Cleveland Scene in the Greater Cleveland area. Defendants shall notify in writing all affected former and current employees that such non-compete contractual provisions will not be enforced.

(G) For any employee involved in the publication of the New Times LA as of October 1, 2002, any non-compete provision imposed by New Times shall be null and void. For a period from the fling of the complaint to one year from the divestiture of the New Times LA assets, defendants shall not enforce any other non-compete contractual provisions against any of their former or current employees of the New Times LA or LA Weekly in the Greater Los Angles area. Defendants shall notify in writing all affected former and current employees that such non-compete contractual provisions will not be enforced.

V. Divestitures

(A) Defendants are ordered and directed, within 30 calendar days after the filing of the complaint in this matter, to divest the divestiture assets in a manner consistent with this final judgment to an acquirer or acquirers acceptable to the United States in its sole discretion, after consultation with the State Attorneys General. The United States, in its sole discretion, after consultation with the State Attorneys General, may agree to an extension of this time period for any divestiture of up to 30 additional calendar days, and shall notify this court in such circumstances.

(B) Defendants agree to use their best efforts to divest the divestiture assets in a manner consistent with this final judgment to an acquirer or acquirers acceptable to the United States in its sole discretion, after consultation with the State Attorneys General, and to effect such divestitures as expeditiously as possible.

(C) In accomplishing the divestitures ordered by this final judgment, each defendant promptly shall make known, by usual and customary means, the availability of the divestiture assets under it possession, custody or control. Defendants shall inform any person making inquiry regarding a possible purchase of the divestiture assets that such assets are being divested pursuant to this final judgment and provide that person with a copy of this final judgment. Defendants shall offer to furnish to all prospective acquirers, subject to customary confidentiality assurances, all information and documents relating to the divestiture assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or attorney work-product doctrine. Defendants shall make available such information to the United States and the State Attorneys General at the same time that such information is made available to any other person.

(D) Village Voice Media shall provide the acquirers, the United States, and the State Attorneys General information relating to the personnel that were involved in any way in the publication of the Cleveland Free Times to enable the acquirer to make offers of employment. Defendants will not interfere with any negotiations by the acquirer(s) to employ any current or former Village Voice Media employee that was involved in the publication of the Cleveland Free Times.

(E) New Times shall provide the acquirers, the United States, and the State Attorneys General information relating to the personnel that were involved in any way in the publication of the New Times LA to enable the acquirer to make offers of employment. Defendants will not interfere with any negotiations by the acquirer(s) to employ any current or former New Times employee that was involved in the publication of the New Times LA.

(F) Defendants shall permit prospective acquirers of the divestiture assets to have reasonable access to personnel and to make inspections of the physical facilities of the divestiture assets. To the extent that defendants continue to maintain any environmental, zoning or other permits pertaining to the publication of the Cleveland Free Times or the New Times LA, defendants shall permit prospective acquirers access to any and all documents and information associated with those permits. Defendants shall permit prospective acquirers of the divestiture assets to have access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

(G) Defendants shall warrant to the acquirer(s) of the divestiture assets that each asset will be operational on the date of sale.

(H) Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Cleveland Free Times assets or the New Times LA assets.

(I) To the extent that Defendants continue to maintain any environmental, zoning or other permits pertaining to the publication of the Cleveland Free Times or the New Times LA Defendants shall warrant to the Acquirer(s) that there are no material defects in those permits. Following the sale of the Cleveland Free Times and/or the New Times LA Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the publication of the Cleveland Free Times and/or the New Times LA.

(J) Unless the United States, in its sole discretion, after consultation with the State Attorneys General, otherwise consents in writing, the divestiture pursuant to section V, or by trustee appointed pursuant to section VI, or this final judgment, shall include the Divestiture assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State Attorneys General, that the Cleveland Free Times or the New Times LA can and will be published by the acquirer(s) as viable, ongoing alternative newsweeklies. Divestiture of the divestiture assets may be made to one acquirer or to two acquirers, provided that (1) all the Cleveland Free Times assets are sold to one acquirer, (2) all the New Times LA assets are sold to one acquirer, and (3) in each instance it is demonstrated to the sole satisfaction of the United States, after consultation with the State Attorneys General, that the Cleveland Free Times assets and the New Times LA assets will remain viable and that the divestiture of the divestiture assets will remedy the competitive harm alleged in the complaint. The divestitures, whether pursuant to section V or section VI of this final judgment,

(1) Shall be made to an acquirer (or acquirers) that, in the United States's sole judgment, after consultation with the State Attorneys General, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the publication of alternative newsweeklies; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State Attorneys General, that none of the terms of any agreement between an acquirer (or acquirers) and defendants give defendants the ability unreasonably to raise the acquirer's costs, to lower the acquirer's efficiency, or otherwise to interfere in the ability of the acquirer to compete effectively.

(K) With respect to copyrights or trademarks associated specifically with the New Times LA that New Times employs in the publication of other New Times Alternative Newsweeklies, the divestiture pursuant to section V, or by a trustee appointed pursuant to section VI, of this Final Judgment shall be accomplished by means of an exclusive, perpetual, royalty-free, assignable license to those copyrights or trademarks for use by the acquirer and its successors in connection with publishing an alternative newsweekly in the Greater Los Angeles area. New Times is enjoined from using, or granting rights to persons other than the acquirer or its successors to use, such copyrights or trademarks in the publication of an alternative newsweekly in the Greater Los Angeles area. New Times, consistent with the purpose and intent of this final judgment, may include, as part of the license for any valid registered trademark used specifically with New Times's other alternative newsweeklies and New Times LA, the requirement on the acquirer and its successors to take the minimum reasonable measures necessary to prevent New Times from being deemed to have abandoned such shared registered trademarks under the Lanham Act.

VI. Appointment of Trustee

(A) If defendants have not divested the Cleveland Free Times assets within the time period specified in section V(A), they shall notify the United States and the State Attorneys General of that fact in writing. Upon application of the United States, the court shall appoint a trustee selected by the United States in its sole discretion and approved by this court to effect the divestiture of the Cleveland Free Times assets.

(B) If defendants have not divested the New Times LA assets within the time period specified in section V(A), they shall notify the United States and the State Attorneys General of that fact in writing. Upon application of the United States, the court shall appoint a trustee selected by the United States in its sole discretion and approved by this court to effect the divestiture of the New Times LA assets.

(C) After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the divestiture assets. The trustee shall have the power and authority to accomplish the divestiture to an acquirer(s) acceptable to the United States, after consultation with the State Attorneys General, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of sections V, VI, and VII of this final judgment, and shall have such other powers as this court deems appropriate. Subject to section VI(E) of this final judgment, the trustee may hire at the cost and expense of the defendant whose divestiture assets the trustee is to divest any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

(D) Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States, the State Attorneys General and the trustee within five calendar days after the trustee has provided the notice required under section VII of this final judgment.

(E) The trustee shall serve at the cost and expense of the defendant whose divestiture assets the trustee is to divest, on such terms and conditions as the United States approves, after consultation with the State Attorneys General, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by this court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to the defendant whose divestiture assets the trustee divested and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

(F) Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the defendants' personnel, books, records, and facilities, and defendants shall develop financial and other information relevant to such businesses as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

(G) After its appointment, the trustee shall file monthly reports with the United States, the State Attorneys General and the court setting forth the trustee's efforts to accomplish the divestiture ordered under this final judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the divestiture assets the trustee is to divest, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the divestiture assets.

(H) If the trustee has not accomplished such divestiture within three months after its appointment, the trustee shall promptly file with this court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this court. The trustee shall at the same time furnish such report to the United States and the State Attorneys General who shall have the right to make additional recommendations consistent with the purpose of the final judgment. The court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the final judgment, which may, if necessary, include extending the trust and the terms of the trustee's appointment by a period request by the United States.

VII. Noticke of Proposed Divestiture

(A) Within two business days following execution of a definitive divestiture agreement. Village Voice Media, New Times, or the trustee, whichever effected the divestiture, shall notify the United States and the State Attorneys General of any proposed divestiture required by section V or VI of this final judgment. If the trustee is responsible, it shall similarly notify the defendant whose divestiture assets the trustee divested. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the divestiture assets, together with full details of the same.

(B) Within five calendar days of receipt by the United States and the State Attorneys General of such notice, the United States, after consultation with the State Attorneys General, may request from defendants, the proposed acquirer or acquirers, any other third party, or the trustee (if applicable) additional information concerning the proposed divestiture, the proposed acquirer or acquirers, and any other potential acquirer. Defendants and the trustee shall furnish any additional information requested within five calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within fifteen calendar days after receipt of the notice or within five calendar days after the United States and the State Attorneys General have been provided the additional information requested from defendants, the proposed acquirer or acquirers, any third party, and the trustee (if applicable), whichever is later, the United States, after consultation with the State Attorneys General, shall provide written notice to the defendant whose divestiture assets are at issue, and the trustee (if applicable), stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section VI(D) of this final judgment. Absent written notice that the United States does not object to the proposed acquirer or upon objection by the United States, a divestiture proposed under section V or section VI shall not be consummated. Upon objection by either defendant under section VI(D), a divestiture proposed under section VI shall not be consummated unless approved by this court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to section V or VI of this final judgment.

IX. Affidavits

(A) Within fifteen calendar days of the filing of the complaint in this matter, and every thirty calendar days thereafter until the divestiture(s) has been completed under section V or VI, defendants each shall deliver to the United States and the State Attorneys General an affidavit as to the fact and manner of its compliance with section V or VI of this final judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the divestiture assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the divestiture assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objective by the United States, after consultation with the State Attorneys General, to information provided by defendants, including limitation on information, shall be made within five calendar days of receipt of such affidavit.

(B) Defendants shall keep all records of all efforts made to preserve and divest the divestiture assets until one year after such divestiture has been completed.

X. Compliance Inspection

(A) For the purposes of determining or securing compliance with this final judgment, or of determining whether the final judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice or the State Attorneys General, including consultants and other persons retained or designated thereby, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or duly authorized representatives of the State Attorneys General, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the United States' or State Attorneys General's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in their possession, custody, or control relating to any matters contained in this final judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

(B) Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or upon written request of duly authorized representatives of the State Attorneys General, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this final judgment as may be requested.

(C) No information or documents obtained by the means provided in this section shall be divulged by plaintiffs to any person other than an authorized representative of the executive branch of the United States, or of the State Attorneys General, except in the course of legal proceedings to which the United States or State Attorneys General is a party (including grand jury proceedings), or for the purpose of securing compliance with this final judgment, or as otherwise required by law.

(D) If at the time defendants furnish information or documents to the United States, they represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page fo such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the divestiture assets during the term of this final judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this final judgment to apply to this court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this final judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this court grants an extension, this final judgment shall expire ten years from the date of its entry.

XIV. Notice

For purposes of this final judgment, any notice or other communication shall be given to the persons at the addresses set forth below (or such other addresses as the United States or State Attorneys General may specify in writing to New Times or Village Voice Media):

For the United States: James R. Wade, Chief, Litigation III Section, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

For the Ohio Attorney General: Alan C. Witten, Antitrust Section, Ohio Attorney General's Office, 140 East Town Street, 12th Floor, Columbus, Ohio 43215.

For the California Attorney General: Winston H. Chen, Deputy Attorney General, Office of the California Attorney General, 300 South Spring Street, Los Angeles, California 90013.

XV. Public Interest Determination

Entry of this final judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b), files this competitive impact statement relating to the proposed final judgment submitted for entry in this civil antitrust proceeding.

On January 27, 2003, the United States filed a civil antitrust complaint pursuant to section 4 of the Sherman Act, as amended, 15 U.S.C. 4, against defendants Village Voice Media, LLC, ("Village Voice Media") and NT Media, LLC, ("New Times"), the nation's two largest chains of alternative newsweeklies. The compliant alleges that defendants entered into and engaged in a combination and conspiracy to suppress and eliminate advertising and editorial competition by allocating the markets for advertising in, and readers of, alternative newsweeklies in Cleveland, Ohio and Los Angeles, California. Defendants' market allocation agreement, as the complaint further alleges, is an unreasonable restraint of interstate trade that is per se illegal under section 1 of the Sherman Act, 15 U.S.C. 1.

The compliant seeks an order to terminate defendants' illegal agreement, to enjoin future conduct in furtherance of any such agreement, and to obtain such other equitable relief necessary to restore competition for the benefit of advertisers and readers in Cleveland and Los Angeles.

The United States filed simultaneously with the complaint a proposed final judgment and a hold separate stipulation and order, which constitute the parties' settlement.

This proposed final judgment, as explained more fully below, (i) enjoins Village Voice Media and New Times from taking any actions in furtherance of, or required under, their per se illegal market allocation agreement; (ii) requires defendants to divest all the assets used in connection with the publication of the New Times Los Angeles ("New Times LA"), New Times's alternative newsweekly in Los Angeles, and the Cleveland Free Times, Village Voice Media's alternative newsweekly in Cleveland, for the purpose of establishing a viable competitive alternative newsweekly in both geographic markets; (iii) permits any advertiser that entered into an advertising or promotion contract after October 1, 2002, with Village Voice Media's alternative newsweekly, the LA Weekly, or New Time's alternative newsweekly, the Cleveland Scene, for a specified time and solely at the advertiser's option, to terminate such contract without penalty or threat of retaliatory action; (iv) requires Village Voice Media and New Times to notify the United States for the next five years of any future acquisitions or sales of alternative newsweeklies; (v) prevents both defendants from enforcing any non-compete contractual provisions against any current or former employees involved in their Cleveland or Los Angeles alternative newsweeklies; and (vi) prevents each defendant and its officers, directors, agents, and employees, from entering into, continuing, maintaining, or renewing any market or customer allocation agreement.

The hold separate stipulation and order, which were filed with this Court on January 27, 2003, and the proposed final judgment require New Times and Village Voice Media to maintain and preserve the assets to be divested under the proposed final judgment to ensure that the assets remain economically viable until divested.

The United States, New Times, and Village Voice Media have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed final judgment would terminate this action, except that this court would retain jurisdiction to construe, modify, and enforce the proposed final judgment and to punish violations thereof.

1. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Defendants

1. Village Voice Media

Village Voice Media, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. Prior to its agreement with New Times to shut down its Cleveland Free Times alternative newsweekly, Village Voice Media owned alternative newsweeklies in New York City, Minneapolis-St. Paul, Cleveland, Seattle, Nashville, Orange County, and Los Angeles. Village Voice Media's revenues in 2001 were approximately $92 million.

Village Voice Media's Cleveland Free Times, launched in 1992, grew to become Ohio's largest alternative newsweekly, with an average weekly circulation that tripled in recent years to over 80,000. With a decade of covering news, arts, and music in Northeast Ohio, the Cleveland Free Times was popular with local retailers, concert promoters, clubs, and national advertisers, who sought to reach the weekly's demographic of active, young adults. Until its sudden closing on October 2, 2002, it directly competed against New Times's alternative newsweekly, the Cleveland Scene.

Village Voice Media's LA Weekly was launched in 1978 with the mission, according to Village Voice Media, to cover political, cultural, and social issues often overlooked by the mainstream daily newspaper, and provide readers with each week's most comprehensive events listing. With a weekly circulation of approximately 215,000 and an average 200 pages per issue, Village Voice Media's LA Weekly has the highest page count of any alternative newsweekly in the United States. Until October 3, 2002, its direct competitor was New Times's alternative newsweekly, the New Times LA.

2. New Times

NT Media, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Phoenix, Arizona. Prior to its agreement with Village Voice Media to shut down its New Times LA alternative newsweekly, New Times published 12 award-winning alternative newsweeklies (nine of which New Times had acquired since 1991) in Phoenix, Cleveland, Los Angeles, San Francisco, Oakland-Berkeley, Broward-Palm Beach, Miami, Denver, St. Louis, Kansas City, Dallas, and Houston. New Times's revenues in 2001 were approximately $104 million.

New Times in the summer of 1996 purchased two established alternative newsweekies, the LA Reader and LA View, for approximately $4 million, and consolidated and renamed them the New Times LA. To better compete against the LA Weekly, New Times grew its newsweekly's circulation to approximately 120,000 copies, aggressively discounted its advertising rates, and offered award-winning journalism.

In August 1998, New Times acquired the Cleveland Scene, a local music publication established in 1970. New Times repositioned and reformatted the Cleveland Scene to compete directly and aggressively against Cleveland's other alternative newsweekly, Village Voice Media's Cleveland Free Times.

B. The Alternative Newsweekly Industry

As the name suggests, alternative newsweeklies provide an alternative perspective to the established news-gathering organizations. In 1955, Village Voice Media's predecessors launched the first alternative newsweekly, The Village Voice, in New York City. Since then, the popularity of alternative newsweeklies has increased dramatically, fueled by the typically "anti-establishment" perspective of these publications which emerged during the 1960's and 1970's. Today over 125 alternative newsweeklies are published throughout the United States. Their popularity with readers continues to be driven largely by a unique editorial mix of politics, investigative reporting, and entertainment issues, often presented with a somewhat controversial or highly opinionated slant, and all of which is focused on decidedly local issues.

The local nature of these alternative newsweeklies, with their in-depth coverage of local happenings in the arts, music, politics, and entertainment fields, makes them particularly attractive to advertisers hoping to reach a young, educated, and urban audience in a cost-effective manner. Between 1990 and 2000, the collective weekly circulation of alternative newsweeklies has more than doubled to 7.8 million. Likewise, advertising expenditures in alternative newsweeklies have jumped, exceeding $500 million in the United States in 2000.

Two major chains dominate the alternative newsweekly industry: defendants New Times and Village Voice Media. New Times, the leading chain, distributes each week over 1.1 million copies of its various alternative newsweeklies. Village Voice Media operates on a similar scale, with a weekly circulation of over 800,000 for its alternative newsweeklies.

C. The Competition Between Village Voice Media and New Times

Prior to the defendants' per se illegal market allocation agreement, the only two geographic markets in which defendants competed head-to-head for readers and advertisers were Cleveland, Ohio and Los Angeles, California. This competition between the defendants' alternative newsweeklies provided both readers and advertisers with better editorial coverage, heavily discounted advertising rates, and higher quality service.

In Cleveland, New Times's alternative newsweekly, the Cleveland Scene, fought against the newly matched Village Voice Media's newsweekly, the Cleveland Free Times. From 1998 (when New Times purchased the Cleveland Scene) until October 2, 2002, the competition between the Cleveland Scene and the Cleveland Free Times was fierce. It resulted in steep discounts off the defendants' published advertising rate cards, better customer service, increased promotions, and a host of value-added services offered at little cost to the advertiser, such as "buy one ad get one free" deals, larger ads for the same price, or free upgrades of ads from black and white to color.

After New Times reformatted the Cleveland Scene to compete directly and aggressively against the Cleveland Free Times, the editorial competition between the defendants' alternative newsweeklies was similarly intense. The Cleveland Scene and the Cleveland Free Times responded to the other's editorial changes and improvements by introducing new or better features or increasing investigative journalism to recapture the readers' attention to its publication, both of which were distributed each Wednesday throughout Cleveland.

Likewise, from 1996 until October 3, 2002, advertisers benefitted from the competition between New Times LA and Village Voice Media's LA Weekly with lower advertising rates, better advertisement placement and improved service. Even if they did not advertise in the New Times LA, advertisers could leverage that alternative newsweekly in their negotiations with the older, entrenched LA Weekly. Moreover, the New Times LA discounted significantly off of its published rate cards—which benefitted smaller advertisers that could not afford the LA Weekly's higher advertising rates.

Both the LA Weekly and New Times LA, which were distributed each Thursday throughout Los Angeles, aggressively competed for readers. The different, and at times opposing, views and positions of the defendants' competing alternative newsweeklies provided readers with alternative viewpoints of important local events affecting social, political, esthetic, and moral issues. Since 1997, the New Times LA garnered numerous journalism awards—including over 30 awards from the Greater Los Angeles Press Club—for its investigative and news reporting.

D. The Illegal Market Allocation Agreement

In July 2002, New Times proposed to Village Voice Media to end their competitive war by agreeing to "swap" markets: New Times would close its New Times LA publication, making Village Voice Media's LA Weekly, in the words of Defendants' executives, the "only alternative weekly in LA." Likewise, Village Voice Media would close its Cleveland Free Times, leaving New Times's Cleveland Scene "the only alternative weekly in Cleveland." By August 12, 2002, Defendants agreed in principle to swap markets. Over the next two months, New Times's and Village Voice Media's senior executives and attorneys negotiated the terms of their contracts to effectuate their proposed market swap. As part of this agreement, Village Voice Media would compensate New Times for withdrawing from the larger Los Angeles market by paying New Times $9 million in cash. The proposed deal ended all competition between defendants, and created an opportunity for the remaining alternative newsweekly in each market to raise advertising rates.

On October 1, 2002, Village Voice Media's and New Times's senior executives signed two written contracts, each expressly contingent on the other, which sealed their per se illegal market allocation arrangement. Village Voice Media paid New Times a net amount of $9 million in cash at closing ($11 million to New Times less $2 million paid to Village Voice Media). The defendants' written contracts did not involve the transfer or integration of any meaningful economic assets associated with those shuttered papers. New Times shifted the New Times LA's accounts receivable, customer lists, and advertising contracts to Village Voice Media, who, in exchange, shifted the Cleveland Free Times's accounts receivable, customer lists, advertising contracts, and street boxes to New Times. These advertisers were already well known to defendants because each defendant had attempted in the past to sign up the other's advertisers. Moreover, the net assets (primarily the accounts receivable) actually transferred in Los Angeles accounted, according to the defendants' calculations, for only seven percent of their $11 million sale price in Los Angeles, and 24 percent of their $2 million sale price in Cleveland.

The defendants' written contracts specifically excluded from the sale most of the assets associated with the actual operations and goodwill of the two shuttered newsweeklies, notably: (i) The advertising personnel, writers, editors, and other employees, (ii) leases, offices, and computer equipment, (iii) back issues and archived materials of the closed publications, including editorial articles, photos, and art work, and (iv) the logos, trade names, trademarks, and copyrights associated with the closed publications. New Times specifically retained the rights to its New Times LA logo or "flag," and Village Volice Media specifically retained the rights to its Cleveland Free Times logo or "flag," but both defendants were contractually prevented from using, or letting anyone else use, these logos.

As defendants acknowledged in their internal documents, the goal of their agreement was to end their competitive war and to give one another a monopoly in each market. Consequently, the defendants' written contracts were designed to ensure that neither defendant would face competition in its "protected" market. To further that end, the defendants' contracts contained:

- Essentially identical "non-competition" clauses in which each defendant agreed not to publish an alternative newsweekly in the other defendant's market for at least ten years;
- Commitments by each defendant not to solicit or attempt to induce any advertiser to advertise in a competing publication over the next decade;
- Requirements that each Defendant redirect any traffic on its closed weekly's website to the other defendant's website for a period of one year, and to prominently state on its website that its alternative newsweekly was no longer in circulation;
- Provisions to deter any new competitive entry into each defendant's protected market. For example, over the next decade, Village Voice Media agreed not to use, and to prevent anyone else from using, the name "Cleveland Free Times" in connection with any current or future publication in the greater Cleveland area. Similarly, over the next decade, New Times agreed not to use, and to prevent anyone else from using, the name "New Times LA" or any variant containing "New Times" in connection with any current or future publication in the greater Los Angeles area; and
- Prohibitions on selling or otherwise making available any of the fixed assets associated with each defendant's closed publication to any of its former employees, consultants, or independent contractors in the affected markets.

After defendants executed their written contracts on October 1, 2002, defendant Village Voice Media closed down its Cleveland Free Times alternative newsweekly the next day, leaving New Time's Cleveland Scene the only alternative newsweekly in Cleveland, Ohio. Likewise, on October 2, 2002, New Times informed its New Times LA staff that it was shutting down immediately, leaving Village Voice Media's LA Weekly the only alternative newsweekly distributed throughout the greater Los Angeles area.

E. Competitors' Allocation of Geographic Markets Is an Unreasonable Restraint of Trade That is Per Se Illegal

The Supreme Court has long held that territorial allocation schemes among direct competitors are naked restraints of trade with no purpose except stifling competition. *United States* v. *Topco Assoc.*, 405 U.S. 596, 608 (1972) (citations omitted); *see also Addyston Pipe & Steel Co.* v. *United States*, 175 U.S. 211 (1899), *modifying and aff'g* 85 F. 271 (6th Cir. 1898) (Taft, J.); *Citizen Publ'g Co.* v. *United States*, 394 U.S. 131, 139–40 (1969)(applying *per se* standard where defendants' "market control" agreement comported neither with antitrust laws nor with First Amendment). As recently as 1990, the Supreme Court repeated that such market allocation agreements are classic examples of a *per se* violation of the Sherman Act. *Palmer* v. *BRG of Georgia, Inc.*, 498 U.S. 46 (1990).

Accordingly, these market-allocation agreements—whereby competitors agree to divide or allocate among themselves certain geographic areas—are condemned as *per se* violations of section one of the Sherman Act. Given their pernicious effect on competition and lack of any redeeming virtue, these market allocation agreements are conclusively presumed to be unreasonable, without the need for an elaborate inquiry into the precise harm that they caused or the potential business justification for their use. *Topco*, 405 U.S. at 607 (quoting *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 5 (1958)). Consequently, competitors cannot agree to split or "swap" markets.

This is not a case in which the territorial restraints were ancillary to a lawful business transaction. Such ancillary restraints are not illegal when reasonably necessary to protect the purchaser of the full enjoyment of the legitimate fruits of the contract. *Addyston Pipe & Steel*, 85 F. at 283. The Antitrust Division examines the substance, rather than the form, of the parties' agreement in evaluating its potential effect. When the restraints of trade are reasonably ancillary to the agreement's central pro-competitive purposes, then the Division will analyze the restraints under the rule-of-reason standard. Where the central purpose of the parties' agreement, however, is to unreasonably restrain competition by allocating territories and terminating competition among themselves and by preventing any significant entrant from competing, then the entire agreement will be treated as *per se* illegal. As Judge (later Mr. Chief Justice) Taft noted over 100 years ago, "[t]here is in such contracts no main lawful purpose, to subserve which partial restraint is permitted, and by which its reasonableness is measured, but the sole object is to restrain trade in order to avoid the competition which it has always been the policy of the common law to foster." *Id.*

That is the case, here, where the central purpose and effect of the defendants' agreement were to unreasonably restrain competition, by allocating the only two markets in which they compete, so that after swapping these markets, defendants would face no significant direct competitor. Five factors support this conclusion.

First, this was not a case where the underlying agreement created a distinctive product, and thereby increased competition in the alternative newsweekly industry generally, or in Cleveland or Los Angeles, specifically.[1] The defendants' restraints on competition were not essential for, or even beneficial to, the products, which in this case are alternative newsweeklies, to be made available in the first place. After all, before their market allocation agreement, defendants vigorously competed through their own alternative newsweeklies. As a direct result of the defendants' agreement to withdraw from each other's market, advertisers and readers were left with fewer meaningful options and the prospect of higher advertising rates. Consequently, the defendants' agreement on its face did not promote enterprise and productivity at the time it was adopted.

Second, the clear intent and explicit design of the defendants' contractual provisions were to eliminate competition in these markets and prevent others from meaningfully entering. Village Voice Media agreed to shut down its Cleveland alternative newsweekly, solely on the condition that New Times shuts down its newsweekly in Los Angeles. The contracts' essentially identical "non-competition" clauses prevented each defendant from publishing an alternative newsweekly in the other defendant's market for at least 10 years. Each defendant also agreed not to solicit or attempt to induce any advertiser to advertise in a competing publication over the next decade. Defendants restrained each other from meaningfully using the closed papers' logos and prevented anyone else from using these valuable assets in connection with any current or future publication in the Los Angeles or Cleveland areas. Furthermore, each defendant agreed not to sell or otherwise make available the fixed assets associated with its closed publication to any of its former employees, consultants or independent contractors, who might seek to rejuvenate the closed alternative newsweekly, and restore competition in the marketplace.

Third, The anticompetitive restraints at issue cannot be said to be ancillary to the sale of assets, given that so few assets were actually transferred. None of the assets associated with the actual operations and goodwill of the defendants' two shuttered newsweeklies were sold or integrated into the other defendant's newsweekly. The assets defendants actually transferred (which were mainly the accounts receivable of the shuttered paper) were of little value, even by defendants' own calculations.

Fourth, the anticompetitive purpose of the defendants' agreements is evident from the defendants' documents, which confirm that they entered into this agreement to end their competitive war, and grant each another a monopoly in the respective markets. The defendants' documents are replete with evidence that shows—and the testimony of the defendants' former employees and current advertisers confirms—that the defendants' market allocation agreement will end all meaningful competition, and enable each remaining alternative newsweekly, as the "only game in town," to raise advertising rates by a significant, non-cost based, amount.

Fifth, the fact that defendants planned to, and in some cases did, implement such rate hikes after allocating markets on October 2, 2002, confirms that the defendants' agreement was formed for the purpose, and with the effect, of raising advertising rates.

II. Explanation of the Proposed Final Judgment

The proposed final judgment requires divestiture that will restore the editorial and advertising competition in alternative newsweeklies published an distributed in Cleveland, Ohio and Los Angeles, California. Within 30 calendar days after January 27, 2003, the date the complaint was filed, defendants must divest the assets used in the publication of New Times's alternative newsweekly, the New Times LA, and Village Voice Media's alternative newsweekly, the Cleveland Free Times, to an acquirer or acquirers that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the alternative newsweekly business.[2] This relief has been tailored to ensure that the ordered divestitures restore the competition that has been eliminated as a result of the defendants' market allocation agreement and further prevent either defendant from exercising market power in the Cleveland of Los Angeles markets.

Given that defendants has closed the Cleveland Free Times and New Times LA in October 2002, a quick and effective remedy was necessary to reestablish competition. Consequently, defendants must use their best efforts to divest assets within 30 days. The proposed final judgment provides that the assets be divested in such a way as to satisfy the United States, in its sole discretion, that the acquirer can and will use the assets as part of a viable, ongoing business engaged in the publication of an alternative newsweekly in Cleveland, Ohio and Los Angles, California. Until the ordered divestitures take place, defendants must cooperate with any perspective purchasers.

If defendants do not accomplish the ordered divestitures within the prescribed 30-day time period, then section VII of the proposed final judgment provides that this court will appoint a trustee, selected by the United States, to complete the divestitures.

If a trustee is appointed, the proposed final judgment provides that defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestiture and the speed with which its is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States, the State Attorney General of Ohio and California, and this Court setting forth the trustee's efforts to accomplish the required divestiture. If at the end of three months after that appointment, the divestiture has not been accomplished, then the trustee, the United States, and the State Attorneys General of Ohio and California will make recommendations to this court, which shall enter such orders as appropriate to carry out the purpose of the final judgment.

In addition to ordering the divestiture of the assets used in the publication of the *Cleveland Free Times* and *New Times LA*, the proposed final judgment places several additional requirements on defendants.

First, Village Voice Media and New Times are enjoined under the proposed final judgment from taking any actions in furtherance of, or required under, both their written and oral market allocation agreements.

Second, for a period of two years commencing from January 27, 2003, Village Voice Media and New Times must allow advertisers that entered into certain written or oral contracts to advertise in, or engage in a promotion with, the LA Weekly or Cleveland Scene, solely at the advertiser's option, the right to terminate such contract without penalty, retaliatory action, or threat of retaliatory action. The advertising or promotion contracts that may be terminated are those entered into beginning October 1, 2002, and for the Cleveland advertisers, ending 30 days after the assets of the Cleveland Free Times are sold, and for the Los Angeles advertisers, 30 days after the assets of the New Times LA are sold.

Third, for a period of five years commencing from January 27, 2003, each defendant cannot directly or indirectly enter into any merger, sale, or joint venture involving any of its alternative newsweeklies or national advertising networks or acquire any assets of any alternative newsweekly without first notifying the United States 30 days in advance. If within this 30-day period, the United States requests additional information, defendants cannot consummate the proposed transaction or agreement until 20 days after submitting all such additional information.

Fourth, for any employee who was involved in the publication of the Cleveland Free Times or the New Times LA as of October 1, 2002, any non-compete provision imposed by defendants on such employee shall be null and void. Moreover, from the date the complaint was filed, January 27, 2003, to one year from the divestiture of the Cleveland Free Times assets, neither Village Voice Media nor New times can enforce any other non-compete contractual provisions against any of their former or current employees in the greater Cleveland area. Likewise, from January 27, 2003, to one year from the divestiture of the New times LA assets, defendants cannot enforce any other non-compete contractual provisions against any of their former or current employees in the greater Los Angeles area.

Fifth, the final judgment enjoins each defendant, and its officers, directors, agents, and employees from entering into, continuing, maintaining, or renewing this, or any other, market or customer allocation agreement, or from engaging in any other conspiracy, agreement, or understanding having a similar purpose or effect, and from adopting or following any practice having a similar purpose or effect.

III. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suite in Federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the proposed final judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed final judgment has no effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against defendants.

IV. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed final judgment may be entered by this court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this court's determination that the proposed final judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed final judgment within which any person may submit to the United States written comments regarding the proposed final judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this competitive impact statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed final judgment at any time prior to entry. the comments and the response of the United States will be filed with this court and published in the **Federal Register.**

Written comments should be submitted to: James R. Wade, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

The proposed final judgment provides that this court retains jurisdiction over this action, and the parties may apply to this court for any order necessary or appropriate for the modification, interpretation, or enforcement of the final judgment.

V. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed final judgment, a full trial on the merits against defendants. Given the inherent delays of a full trial and the appeals process, the United States is satisfied that the prompt divestiture of the Cleveland Free Times assets and New Times LA assets, coupled with the other relief contained in the proposed final judgment, will quickly establish, preserve and ensure a viable competitor in the publication of alternative newsweeklies in Cleveland, Ohio and Los Angeles, California. Thus, the United States is convinced that the proposed final judgment, once implemented by the court, will present

[1] *See, e.g., Broadcast Music, Inc.* v. *Columbia Broad, Sys., Inc.*, 441 U.S. 1 (1979)(challenged agreement created distinctive product of access to vast musical repertoire).

[2] The assets to be divested are defined and described in section II of the proposed final judgment as the "*New Times LA* Assets" and "*Cleveland Free Times* Assets." Defendants in essence must divest all assets that were formerly employed in the publication of the *New Times LA* and *Cleveland Free Times* alternative newsweeklies, including, but not limited to, all rights to the *New Times LA, LA Reader, LA View* and *Cleveland Free Times* names (including any derivations thereof); all rights to the *New Times LA* and *Cleveland Free Times* website; all rights to the print and electronic archives of *New Times LA* and *Cleveland Free Times* publications and articles on a non-exclusive basis; and all other tangible and intangible assets used in the publication of the *New Times LA* and *Cleveland Free Times*.

defendants from illegally benefitting from their market allocation agreement.

VI. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed final judgment is "in the public interest." In making that determination, the court "*may* consider"—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[3] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[4]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981)); *see also Microsoft*, 56 F.3d at 1458. "Indeed, the district court is without authority to 'reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.'" *United States* v. *Microsoft Corp.*, 231 F. Supp. 2d 144, 154 (D.D.C. 2002) (quoting *Microsoft*, 56 F.3d at 1459). Precedent requires that:

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed final judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of public interest."[6]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "Construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Microsoft*, 56 F.3d at 1459–60.

VII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed final judgment.

Dated: February 3, 2003.

Respectfully submitted,

Maurice E. Stucke,
Carol A. Bell,
Matthew J. Bester,
Attorneys for the United States, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530. (202 305–1489 (telephone). (202) 514–1517 (facsimile). Maurice.Stucke@usdoj.gov.

Jon Smibert,
Attorney for the United States, U.S. Department of Justice, Antitrust Division, Cleveland Field Office, 55 Erieview Plaza, Suite 700, Cleveland, OH 44114–1816.

Certificate of Service

I hereby certify that I served a copy of the foregoing competitive impact statement via first class United States mail, this 3rd day of February, 2003, on:

Melanie Sabo,
Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006–5209. Counsel for Defendant Village Voice Media, LLC.

Joseph Kattan, P.C.
Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036. Counsel for Defendant NT Media, LLC.

Matthew Bester,

[3] 119 Cong. Rec. 24,598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the competitive impact statement and response to comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

[4] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. 1977); *see also United States* v. *Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[5] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (emphasis added); *see also United States* v. *BNS, Inc.*, 858 F.2d at 462–63 (district court may not base its public interest determination on antitrust concerns in markets other than those alleged in government's complaint); *United States* v. *Gillette Co.*, 406 F. Supp. at 716 (court will not look at settlement "hypercritically, nor with a microscope"); *United States* v. *National Broad. Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978) (same).

[6] *Microsoft*, 231 F. Supp. 2d at 153 (quoting *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citation omitted), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983)); *see also United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (standard is not whether decree is one that will best serve society, but whether it is within the reaches of the public interest); *United States* v. *Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978) (standard is not whether decree is the best of all possible settlements, but whether decree falls within the reaches of the public interest).

Attorney for the United States, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530. (202) 353–4391.

[FR Doc. 03–3441 Filed 2–11–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 2, 2002, Cedarburg Pharmaceuticals, LLC, 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II

The firm will manufacturer these controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 14, 2003.

Dated: February 5, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3502 Filed 2–11–03; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 19, 2002, and published in the **Federal Register** on March 12, 2002 (67 FR 11142), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by renewal and letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Fentanyl (9801)	II

The firm plans to bulk manufacture amphetamine, methamphetamine and fentanyl for customers and to bulk manufacture the phenylacetone for the manufacture of the amphetamine. The bulk 2,5-dimethoxyamphetamine will be used for conversion into a non-controlled substance.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C. section 823(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated ISP Freetown Chemicals, Inc. to ensure that the company's registration is consistent with the public interest.

This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 5, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 03–3503 Filed 2–11–03; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 23, 2002, and published in the **Federal Register** on September 5, 2002 (67 FR 58857), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

The firm plans to bulk manufacture methylphenidate to produce a commercial product and manufacture the dextropropoxyphene to supply the generic market.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C., section 823(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated ISP Freetown Chemicals, Inc. to ensure that the company's registration is consistent with the public interest.

This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 5, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–3504 Filed 2–11–03; 8:45 am]
BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[03–012]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork

and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Nancy Kaplan, Code AO, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: BOREAS Data User Satisfaction Survey.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: NASA will utilize the information collected to improve the data, documentation, ordering processes, and services provided to users of BOREAS data.

Affected Public: Not-for-profit institutions; business or other for-profit; Federal government; State, local or tribal government.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Hours Per Request: 30 min.

Annual Burden Hours: 25.

Frequency of Report: On occasion.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 03–3426 Filed 2–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[03–011]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). NASA will utilize the information collected to expedite reporting of government-owned, contractor-operated vehicles as required by Executive Order 13149.

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Federal Automotive Statistical Tool (FAST) Collection.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: Data gathered in this report will enable NASA transportation managers to control costs and energy use by contractors operating government-owned vehicles.

Affected Public: Business or other for-profit.

Number of Respondents: 93.

Responses Per Respondent: 1.

Annual Responses: 93.

Hours Per Request: 15 min/vehicle.

Annual Burden Hours: 425.

Frequency of Report: Annually.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 03–3427 Filed 2–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–014)]

NASA Advisory Council, Space Science Advisory Committee Structure and Evolution of the Universe Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Thursday, February 27, 2003, 8 a.m. to 5:30 p.m., and Friday, February 28, 2003, 8 a.m. to 1 p.m.

ADDRESSES: Jet Propulsion Laboratory, Building 167 Conference Room, 4800 Oak Grove Drive, Pasadena, California 91109.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Status of Astronomy and Physics Programs.
—Structure and Evolution of the Universe Theme Update.
—Review of Space Science Strategic Plan.
—Review of Structure and Evolution of the Universe Program at the Jet Propulsion Laboratory.

Due to increased security measures at the NASA Jet Propulsion Laboratory (JPL), interested members of the public including the news media must contact Helen Paley (818) 354–6427, Cecil Brower (818) 354–6974, or Joe Aguirre (818) 354–0890 no later than Friday, February 21, 2003, by 12 noon p.d.t. to make arrangements for badging, parking, and being escorted while at JPL. Access to JPL will be limited to those who show proper photo identification and who have made prior arrangements to attend.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3508 Filed 2–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–013)]

NASA Advisory Council, Space Science Advisory Committee, Astronomical Search for Origins and Planetary Systems Subcommittee

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems Subcommittee (OS).

DATES: Thursday, February 27, 2003, 8 a.m. to 5:30 p.m., and Friday, February 28, 2003, 8 a.m. to 1 p.m.

ADDRESSES: Jet Propulsion Laboratory, Building 180, Room 703C, 4800 Oak Grove Drive, Pasadena, California 91109.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—OSS Strategic Plan.
—Astrobiology Roadmap.
—National Astrobiology Institute.
—Origins Technology.
—Theme Scientist Update.

Due to increased security measures at the NASA Jet Propulsion Laboratory (JPL), interested members of the public including the news media must contact Helen Paley (818) 354–6427, Cecil Brower (818) 354–6974, or Joe Aguirre (818) 354–0890 no later than Friday, February 21, 2003, by 12 noon p.d.t. to make arrangements for badging, parking, and being escorted while at JPL. Access to JPL will be limited to those who show proper photo identification and who have made prior arrangements to attend.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3509 Filed 2–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of three currently approved information collections. The first information collection is used for requesting permission to use privately owned equipment to microfilm archival holdings in the National Archives of the United States and Presidential libraries. The second information collection is used for requesting permission to film, photograph, or videotape at a NARA facility for news purposes. The third information collection is used for requesting permission to use NARA facilities for events. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before April 14, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Request to Microfilm Records.

OMB number: 3095–0017.

Agency form number: None.

Type of review: Regular.

Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.

Estimated number of respondents: 5.

Estimated time per response: 10 hours.

Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).

Estimated total annual burden hours: 50.

Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming, and to schedule use of the limited space available for filming.

2. *Title:* Request to film, photograph, or videotape at a NARA facility for news purposes.

OMB number: 3095–0040.

Agency form number: None.

Type of review: Regular.

Affected public: Business or other for-profit, not-for-profit institutions.

Estimated number of respondents: 660.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 110.

Abstract: The information collection is prescribed by 36 CFR 1280.48. The collection is prepared by organizations that wish to film, photograph, or videotape on NARA property for news purposes. NARA needs the information to determine if the request complies with NARA's regulation, to ensure protections of archival holdings, and to schedule the filming appointment.

3. *Title:* Request to use NARA facilities for events.

OMB number: 3095–0043.

Agency form number: NA 16008.

Type of review: Regular.

Affected public: Not-for-profit institutions, individuals or households, business or other for-profit, Federal government.

Estimated number of respondents: 52.

Estimated time per response: 30 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 26.

Abstract: The information collection is prescribed by 36 CFR 1280.74. The collection is prepared by organizations that wish to use NARA public areas for an event. NARA uses the information to determine whether or not we can accommodate the request and to ensure that the proposed event complies with NARA regulations.

Dated: February 6, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–3451 Filed 2–11–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

IMLS Survey of Educational and Training Opportunities Available for Library Support Staff in the U.S.: Pre-professionals, Paraprofessionals, Library Technicians; Submission for OMB Review, Comment Request

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of requests for New Information Collection Approval.

SUMMARY: The Institute of Museum and Library Studies (IMLS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 29, 2002, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until March 14, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden for the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

ADDRESSES: For a copy of the form contact: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, DC 20506.

Overview of this information:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Survey of Education and Training Opportunities for Pre-/Paraprofessional Library (Support) Staff

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number. Institute of Museum and Library Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Institutions offering education programs or providing training courses targeted to pre-/paraprofessional library (support) staff including academic institutions, state library agencies, library associations, library consortia or cooperatives, and commercial training entities.

Other: Select county library systems and individual libraries.

This collection will help to identify and describe programs (*e.g.*, associate degrees; bachelor degrees; certificates) and individual course/training offerings that are targeted toward non-MLS-degreed library workers. A major outcome of this project will be an inventory of resources for the library community to help identify specific programs/instruction. By identifying the population of organizations administering paraprofessional training and by describing the kinds of courses offered, this study will draw attention to topics (and areas of the country) where this type of education and training coursework is and is not available.

The resulting baseline inventory will be used to document the adequacy of—and analyze trends within—educational and training programs and courses throughout the United States designed to develop library staff who do not currently possess a Master's in Library Science (MLS) degree. Within the limitations of any one study, we will seek ways to identify how these institutions strive to advance the library support staff worker beyond current positions, responsibilities, or capabilities. Through this research effort, we will attempt to isolatc elements that contribute to success and highlight those that have incorporated these factors into their programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 300 respondents. It is estimated that each survey will take 0.5 hours (30 minutes to complete) and, as the average respondent will have two programs or courses for which to complete a survey, the average respondent will require one hour to complete the data collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the survey is 300 annual burden hours.

Dated: February 4, 2003.

Mamie Bittner,

Department Clearance Officer, Institute of Museum and Library Services.

[FR Doc. 03–3422 Filed 2–11–03; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Safeguards and Security; Notice of Meeting

For the closed meeting of the ACRS Subcommittee on Safeguards and Security scheduled for February 21, 2003, starting time has been changed to 8:30 a.m. instead of 1 p.m. in the NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

Notice of this meeting was published in the **Federal Register** on Tuesday, February 4, 2003 (68 FR 5667). All other items pertaining to this meeting remain the same as previously published.

Further information contact: Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: February 5, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–3483 Filed 2–11–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Plant Tours

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission tours.

SUMMARY: A Postal Rate Commissioner and several advisory staff members will tour postal and mailers' facilities in February and March. The purpose of the tours is to observe printing and mailing operations.

DATES: 1. February 13, 2003: Dulles, Virginia postal facility (anticipated for staff only).

2. March 3, 2003: Postal facility and Quebecor World, Inc.

3. March 4, 2003: Postal facility and R.R. Donnelley Logistics.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 200–789–6818.

Steven W. Williams,

Secretary.

[FR Doc. 03–3452 Filed 2–11–03; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 204–3—SEC File No. 270–42, OMB Control No. 3235–0047

Rule 203–2 and Form ADV–W—SEC File No. 270–40, OMB Control No. 3235–0313

Rule 203–3 and Form ADV–H—SEC File No. 270–481, OMB Control No. 3235–0538

Rule 0–2 and Form ADV–NR—SEC File No. 270–241, OMB Control No. 3235–0240

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Rule 204–3 under the Investment Advisers Act of 1940." Rule 204–3, the "brochure rule," currently requires an investment adviser to deliver, or offer, to prospective clients a disclosure statement containing specified information as to the business practices and background of the adviser. The brochure assists the client in determining whether to retain, or continue employing, the adviser. Rule 204–3 also currently requires that an investment adviser deliver, or offer, its brochure on an annual basis to existing clients in order to provide them with current information about the adviser. On April 5, 2000, the Commission proposed amendments to rule 204–3 in conjunction with amendments to Form ADV. The proposed amendments to rule 204–3 would require SEC-registered advisers to deliver their brochure and appropriate brochure supplements at the start of the advisory relationship, and to offer to deliver the brochure and brochure supplements annually. The proposed rule amendments also would require that advisers deliver updates to the brochure and brochure supplements to clients whenever information in the brochure becomes materially inaccurate. The updates could take the form of a reprinted brochure or a "sticker" containing the updated information.

The respondents to this information collection would be each investment adviser registered with the Commission. The Commission has estimated that compliance with proposed rule 204–3 would impose a burden of approximately 694 hours annually based on an average adviser having 670 clients. Based on this figure, the Commission estimates a total annual burden of 5,412,643 hours for this collection of information.

The title for the collection of information is "Rule 203–2 and Form ADV–W under the Investment Advisers Act of 1940." Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository ("IARD"). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The respondents to the collection of information are all investment advisers that are registered with the Commission or have applications pending for registration. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 500 respondents annually filing for full withdrawal and approximately 500 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 500 hours ((500 respondents x .75 hours) + (500 respondents x .25 hours)).

The title for the collection of information is "Rule 203–3 and Form ADV–H under the Investment Advisers Act of 1940." Rule 203–3 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to obtain a hardship exemption from the electronic filing requirements of the Investment Advisers Act. Rule 203–3 requires every person requesting a hardship exemption to file Form ADV–H with the Commission. The purpose of this collection of information is to permit advisers to obtain a hardship exemption, on a permanent or temporary basis, to not complete an electronic filing. The temporary hardship exemption permits advisers to make late filings due to unforeseen computer or software problems, while the continuing hardship exemption permits advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

The respondents to the collection of information are all investment advisers that are registered with the Commission. The Commission has estimated that compliance with the requirement to complete Form ADV–H imposes a total burden of approximately 1 hour for an adviser. Based on our experience with hardship filings, we estimate that we will receive 10 Form ADV–H filings annually. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 10 hours for this collection of information.

The title for the collection of information is "Rule 0–2 and Form ADV–NR under the Investment Advisers Act of 1940." Rule 0–2 and Form ADV–NR facilitate service of process to non-resident investment advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The purpose of this collection of information is to enable the commencement of legal and or regulatory actions against investment advisers that are doing business in the United States, but are not residents.

The respondents to this information collection would be each non-resident general partner or managing agent of an SEC-registered adviser. The Commission has estimated that compliance with the requirement to complete Form ADV–NR

imposes a total burden of approximately 1 hour for an adviser. Based on our experience with these filings, we estimate that we will receive 15 Form ADV–NR filings annually. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 15 hours for this collection of information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: February 6, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3490 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form N–23C–1—SEC File No. 270–230, OMB Control No. 3235–0230;
Rule 19a–1—SEC File No. 270–240, OMB Control No. 3235–0216;
Rule 22d–1—SEC File No. 270–275, OMB Control No. 3235–0310;
Rule 30b2–1—SEC File No. 270–213, OMB Control No. 3235–0220;
Form ADV–E—SEC File No. 270–318, OMB Control No. 3235–0361;

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 23(c) of the Investment Company Act of 1940 [15 U.S.C. 80a–23(c)] ("Investment Company Act" or "Act") prohibits a registered closed-end investment company ("closed-end fund" or "fund") from purchasing any security it issues except on a securities exchange, pursuant to tender offers, or under such other circumstances as the Commission may permit by rules or orders designed to ensure that purchases are made in a manner that does not unfairly discriminate against any holders of the securities to be purchased. Rule 23c–1 [17 CFR 270.23c–1] under the Act permits a closed-end fund that meets certain requirements to repurchase its securities other than on an exchange or pursuant to a tender.

A registered closed-end fund that relies on Rule 23c–1 may purchase its securities for cash if, among other conditions set forth in the rule, certain conditions are met: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the purchase is made at a price not above the market value, if any, of the asset value of the security, whichever is lower, at the time of the purchase; and (iii) if the security is stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of the class by letter or report addressed to all the stockholders of the class.

In addition, the issuer must file with the Commission, on or before the tenth day of the month following the date in which the purchase occurs, two copies of Form N–23C–1. The form requires the issuer to report all purchases it has made during the month, together with a copy of any written solicitation to purchase securities under Rule 23c–1 sent or given during the month by or on behalf of the issuer to ten or more persons.

The purpose of Rule 23c–1 is to protect shareholders of closed-end funds from fraud in connection with the repurchase by funds of their own securities. The purpose of the rule's requirement that the fund file Form N–23C–1 with the Commission is to allow the Commission to monitor funds' repurchase of securities as well as any written solicitation used by the fund to effect those repurchases, and to make that information available to the public. Investors may seek this information when determining whether to invest in certain funds.The requirement to file Form N–23C–1 applies to a closed-end fund only when the fund has repurchased its securities. If the information provided in the form were collected less frequently than a month after repurchases occur, the Commission and investing public would lack current information about closed-end funds that repurchase their own securities.

Commission staff estimates that each year approximately 30 closed-end funds use the repurchase procedures under Rule 23c–1, and that these funds file a total of 180 forms each year. The number of forms filed by each fund ranges from 1 to 12 depending on the number of months in which the fund repurchases its securities under Rule 23c–1. Commission staff estimates that each response requires 1 burden hour to prepare and file Form N–23C–1 with a copy of any written solicitation to purchase securities under the rule (if necessary).[1] The total annual burden of the rule's paperwork requirements is estimated to be 180 hours.

Section 19(a) [15 U.S.C. 80a–19(a)] of the Investment Company Act makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of the statement by rule.

Rule 19a–1 [17 CFR 270.19a–1] under the Act is entitled: "Written Statement to Accompany Dividend Payments by Management Companies." Rule 19a–1 sets forth specific requirements for the information that must be included in statements made under Section 19(a) by registered investment companies. The rule requires that the statement indicate what portions of the payment are made from net income, net profits and paid-in capital.[2] When any part of the payment is made from net profits, the rule requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made under Section 19(a) or in the first report to shareholders following the discovery of the inaccuracy. The purpose of Rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which dividend payments are made.

The Commission staff estimates that approximately 8,400 portfolios of management companies may be subject to Rule 19a–1 each year.[3] The total average annual burden for Rule 19a–1 per portfolio is estimated to be approximately 30 minutes.[4] The total annual burden for all portfolios is therefore estimated to be approximately 4,200 burden hours.

Rule 22d–1 [17 CFR 270.22d–1] under the Act provides registered investment companies that issue redeemable securities an exemption from Section 22(d) of the Investment Company Act to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per series of a fund of approximately 15 minutes, so that the total annual burden for the approximately 6,100 series of funds that might rely on the rule is estimated to be 1,525 hours.

Rule 30b2–1 [17 CFR 30b2–1] under the Investment Company Act requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its stockholders.[5] This requirement ensures that the Commission has information in its files to perform its regulatory functions and to apprise investors of the operational and financial condition of registered investment companies.[6]

It is estimated that approximately 3,700 registered management investment companies are required to send reports to stockholders at least twice annually. In addition, under recently proposed amendments to Rule 30b2–1, if adopted, each registered investment company would be required to file with the Commission new form N–CSR, certifying the financial statements. The annual burden of filing the reports is included in the burden estimate of form N–CSR.

Form ADV–E [17 CFR 279.8] is the cover sheet for accountant examination certificates filed pursuant to Rule 206(4)–2 under the Investment Advisers Act by investment advisers retaining custody of client securities or funds. Registrants each spend approximately three minutes, annually, complying with the requirements of the form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collections of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 5, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3491 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The burden hour estimates are based upon consultation with lawyers and accountants familiar with the practices of fund boards and the staff of investment advisers.

[2] Rule 19a–1 requires, among other things, that every written statement made under Section 19 of the Act by or on behalf of a management company clearly indicate what portion of the payment per share is made from the following sources: net income for the current or preceding fiscal year, or accumulated undistributed net income, or both, not including in either case profits or losses from the sale of securities or other properties; accumulated undistributed net profits from the sale of securities or other properties; and paid-in surplus or other capital source.

[3] The Commission staff estimates that there are approximately 3,800 registered investment companies that are "management companies" as defined by the Act, and each may have one or more separate portfolios that report dividends to shareholders. The Commission's records indicate that those 3,800 management companies have approximately 8,400 portfolios that report paying dividends, and so may be subject to Rule 19a–1.

[4] According to respondents, no more than approximately 15 minutes is needed to make the determinations required by the rule and include the required information in the shareholders' dividend statements. The Commission staff estimates that, on average, each portfolio mails two notices per year to meet the requirements of the rule, for an average total annual burden of approximately 30 minutes.

[5] Most filings are made via the Commission's electronic filing system; therefore, paper filings under Rule 30b2–1 occur only in exceptional circumstances. Electronic filing eliminates the need for multiple copies of filings.

[6] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and stockholders.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15g–3, SEC File No. 270–346, OMB Control No. 3235–0392;
Rule 15g–4, SEC File No. 270–347, OMB Control No. 3235–0393;
Rule 15g–5, SEC File No. 270–348 OMB, Control No. 3235–0394;
Rules 17Ad–6 and 17Ad–7, SEC File No. 270–151, OMB Control No. 3235–0291.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

- Rule 15g–3 Broker or Dealer Disclosure of Quotations and other Information Relating to the Penny Stock Market.

Rule 15g–3 under the Securities Exchange Act of 1934 (the "Exchange Act") requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

- Rule 15g–4 Disclosure of compensation to brokers or dealers.

Rule 15g–4 under the Exchange Act requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 270 respondents incur an average of 100 hours annually to comply with the rule.

- Rule 15g–5 Disclosure of compensation of associated persons in connection with penny stock transactions.

Rule 15g–5 under the Exchange Act requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. This rule was adopted by the Commission to increase the level of disclosure to investors concerning penny stocks generally and

specific penny stock transactions. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule. The total annual reporting and recordkeeping burden will be 27,000 burden hours.

• Rules 17Ad–6 and 17Ad–7 Recordkeeping requirements for transfer agents

Rule 17Ad–6 under the Exchange Act requires every registered transfer agent to make and keep current records about a variety of information, such as: (1) Specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2)); (2) written inquiries and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

Rule 17Ad–7 under the Exchange Act requires each registered transfer agent to retain the records specified in Rule 17Ad–6 in an easily accessible place for a period of six months to six years, depending on the type of record or document. Rule 17Ad–7 also specifies the manner in which records may be maintained using electronic, microfilm, and microfiche storage methods.

These recordkeeping requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep control over their own performance and for the Commission to adequately examine registered transfer agents on an historical basis for compliance with applicable rules.

We estimate that approximately 1,000 registered transfer agents will spend a total of 500,000 hours per year complying with Rules 17Ad–6 and 17Ad–7. Based on average cost per hour of $50, the total cost of compliance with Rule 17Ad–6 is $25,000,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 4, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3492 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form U–3A–2, SEC File No. 270–83, OMB Control No. 3235–0161;

Form U–13–60, SEC File No. 270–79, OMB Control No. 3235–0153.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Part 259.402 [17 CFR 259.402] under the Public Utility Holding Company Act of 1935, as amended ("Act"), 15 U.S.C. 79, *et seq.*, requires that public utility holding companies that are exempt from regulation under the Act file an annual financial statement on Form U–3A–2.

Rule 2 under the Act, which implements Section 3 of the Act requires the information collection prescribed by Form U–3A–2. The Commission estimates that the total annual reporting and recordkeeping burden of collections for Form U–3A–2 is 227.5 hours (91 responses × 2.5 hours = 227.5 hours).

Part 259.313 [17 CFR 259.313] under the Public Utility Holding Company Act of 1935, as amended ("Act"), 15 U.S.C. 79, *et seq.*, generally mandates standardized accounting and record keeping for mutual and subsidiary service companies of registered holding companies and the filing of annual financial reports on Form U–13–60.

Rules 93 and 94 under the Act, which implement Section 13 of the Act, require the information collection prescribed by Form U–13–60. The Commission estimates that the total annual reporting and recordkeeping burden of collections for Form U–13–60 is 877.5 hours (65 responses × 13.5 hours = 877.5 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 5, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3493 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25928; 812–12366]

Oppenheimer Select Managers, *et al.*; Notice of Application

February 6, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Oppenheimer Select Managers ("Select Managers") and OppenheimerFunds, Inc. ("OFI").

Filing Dates: The application was filed on December 18, 2000 and amended on February 6, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 3, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 6803 South Tucson Way, Englewood, CO 80112.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Select Managers, a business trust organized under the laws of Massachusetts, is registered under the Act as an open-end management investment company. Select Managers is currently comprised of six series (each a "Series"),[1] each with a different investment objective and policies. Shares of some Series may be sold as a funding option for variable life insurance policies and variable annuity contracts issued by an insurance company.

2. OFI is registered as an investment adviser under the Investment Advisers Act of 1940. OFI currently serves as investment adviser to each Series.

3. Select Managers (on behalf of each Series) has entered into separate investment management agreements with OFI (each, an "Advisory Agreement") that were approved by Select Manager's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and either the initial shareholder of the Series (before the Series' shares are offered to the public) or the Series' public shareholders.[2]

4. OFI may delegate day-to-day portfolio management responsibilities for a Series by entering into an investment subadvisory agreement ("Subadvisory Agreement") with a subadviser ("Subadviser"), subject to Board approval. OFI monitors and evaluates the Subadvisers and recommends to the Board their hiring, retention or termination. Subadvisers recommended to the Board by OFI are selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser's fees are paid by OFI out of the management fees received by OFI under its Advisory Agreement.

5. Applicants request relief to permit OFI, subject to Board approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of Select Managers or OFI, other than by reason of serving as a Subadviser to one or more of the Series ("Affiliated Subadviser").

6. Applicants also request an exemption from the various disclosure provisions described below that may require each Series to disclose fees paid by OFI to the Subadvisers. An exemption is requested to permit the Series to disclose (as both a dollar amount and as a percentage of a Series' net assets): (a) Aggregate fees paid to OFI and Affiliated Subadvisers, and (b) aggregate fees paid to the Subadvisers other than Affiliated Subadvisers ("Aggregate Fee Disclosure"). If a Series employs an Affiliated Subadviser, the Series will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fee," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07.2(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate

[1] Applicants also request relief with respect to future series of Select Managers and any future registered open-end management investment companies or series thereof that (a) are advised by OFI or an entity controlling, controlled by or under common control with OFI, (b) use the multi-manager structure as described in the application, and (c) comply with the terms and conditions stated in the application (included in the term "Series"). Select Managers is the only existing investment company that currently intends to rely on the order. If the name of any Series contains the name of a Subadviser (as defined below), it will be preceded by OFI.

[2] The term "shareholder" includes variable life insurance policy and variable annuity contract owners that are unitholders of any separate account for which a Series serves as a funding medium.

in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

7. By investing in a Series, shareholders will in effect hire OFI to manage the Series' assets through monitoring and evaluation of Subadvisers rather than by hiring its own employees to directly manage assets. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose unnecessary costs and delays on the Series and may preclude OFI from acting promptly in a manner considered advisable by the Board. Applicants note that each Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many Subadvisers charge their customers for advisory services according to a "posted" rate schedule. Applicants state that while Subadvisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Subadvisers to negotiate lower subadvisory fees with OFI, the benefits of which are likely to be passed on to the Series' shareholders.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. OFI will provide general management and administrative services to each Series, including overall supervisory responsibility of the general management and investment of the Series' assets and, subject to review and approval of the Board, will (i) set the Series' overall investment strategies, (ii) evaluate, select and recommend Subadvisers to manage all or a portion of a Series' assets, (iii) allocate and, when appropriate, reallocate the Series' assets among multiple Subadvisers, (iv) monitor and evaluate Subadviser performance, and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the relevant Series' investment objective, policies and restrictions.

2. Before a Series may rely on the order requested herein, the operation of the Series in the manner described in the application will be approved by a majority of each Series' outstanding voting securities as defined in the Act, or, in the case of a Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 3 below, by the initial shareholder before such Series' shares are offered to the public.

3. The prospectus for each Series will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the "Manager of Managers" structure described in the application. The prospectus will prominently disclose that OFI has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination and replacement.

4. Within ninety days of the hiring of a new Subadviser, OFI will furnish shareholders of the applicable Series all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Subadviser. To meet this obligation, OFI will provide shareholders of the applicable Series, within ninety days of the hiring of a new Subadviser, with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

5. No trustee or officer of the Series nor director or officer of OFI will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser except for (i) ownership of interests in OFI or any entity that controls, is controlled by or is under common control with OFI; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, in controlled by or is under common control with a Subadviser.

6. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. When a Subadviser change is proposed for a Series with an Affiliated Subadviser, the Series' Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which OFI or the Affiliated Subadviser derives an inappropriate advantage.

8. Each Series will disclose in its registration statement the Aggregate Fee Disclosure.

9. At all times, independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent each Series' Independent Trustees. The selection of such counsel will be placed within the discretion of the Independent Trustees.

10. OFI will provide the Board, no less frequently than quarterly, with information about OFI's profitability on a per-Series basis. This information will reflect the impact on profitability of the hiring or termination of any Subadvisers during the applicable quarter.

11. When a Subadviser is hired or terminated, OFI will provide the Board with information showing the expected impact on OFI's profitability.

12. OFI will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3489 Filed 2–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47319]

Order Exempting Options Specialists From Section 11(b) of the Securities Exchange Act of 1934 When Accepting Certain Types of Complex Orders

February 5, 2003.

I. Background

Section 11(b) of the Securities Exchange Act of 1934 ("Exchange Act")[1] prohibits a specialist[2] effecting as broker any transaction except upon a market or limited price order. Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual role as agent and principal in executing transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialists' books and their handling of discretionary agency orders.[3] Although the Securities and Exchange Commission ("Commission") has interpreted Section 11(b) to mean that all orders, other than market or limit orders, are discretionary and therefore cannot be accepted by a specialist, it has made certain exceptions. For example, the Commission has concluded that it is appropriate to treat percentage orders[4] and stopped orders[5] as equivalent to limit orders because, although these orders permit a specialist to use his or her judgment to some extent, the exchange rules applicable to these orders impose sufficiently stringent guidelines to ensure that a specialist would handle the orders in a manner consistent with his or her market making duties and Exchange Act Section 11(b). Accordingly, the Commission approved exchanges' proposals to permit specialists to accept percentage orders under certain circumstances[6] and to engage in the practice of "stopping" stock.[7] Specifically, in approving the NYSE's proposal to allow specialists to convert a percentage order on a destabilizing tick and to convert a percentage order into a limit order to enter a quotation that betters the market,[8] the Commission acknowledged that the NYSE's proposal permitted specialists to employ their judgment to a greater extent than the existing percentage order rule.[9] However, the Commission concluded that the requirements imposed on a specialist when converting a percentage order for execution or quotation purposes provided sufficient limits on the specialist to ensure that the specialist would implement the conversion provisions in a manner consistent with his or her market making duties and Section 11(b) of the Exchange Act.[10] These requirements are intended to minimize a specialist's discretion and to ensure that the specialist cannot, through his or her use of the conversion process, unduly influence market trends.

In addition, in approving exchanges' rules permitting specialists to stop stock in minimum variation markets, the Commission found it appropriate to treat stopped orders as equivalent to limit orders because a stopped order would be automatically elected at the best bid or offer, or better if obtainable.[11] The Commission noted that although stopped orders permit a specialist to employ his or her judgment to some extent, the requirements imposed on a specialist for granting stops in minimum variation markets provide that the specialist will implement the stopping stock provisions in a manner consistent with his or her market making duties and Section 11(b).[12]

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[1] 15 U.S.C. 78k(b).

[2] For purposes of this order, the term "specialist" includes Designated Primary Market Makers on the Chicago Board Options Exchange, Lead Market Makers on the Pacific Exchange, and Primary Market Makers on the International Securities Exchange.

[3] *See* H. Rep. No. 1383, 73d Cong., 22; S. Rep. 792, 73d Cong., 2d Sess. 18 (1934).

[4] A percentage order is a limited price order to buy or sell 50% of the volume of a specified stock after the percentage order is received by a specialist. A percentage order is essentially a memorandum entry left with a specialist that becomes a "live" order capable of execution when either: (i) All or part of the order is elected as a limit order on the specialist's book based on trades in the market; or (ii) a specialist holding a percentage order with a conversion instruction converts all or part of the percentage order into a limit order to make a bid or offer or to participate directly in a trade. *See* New York Stock Exchange, Inc. ("NYSE") Rules 13 and 123A and American Stock Exchange LLC ("Amex") Rules 131 and 154. The conversion instruction authorizes the specialist to convert all or part of a percentage order into a limit order and to be on parity with the converted percentage order.

[5] An agreement by a specialist to "stop" securities at a specified price constitutes a guarantee by the specialist of the purchase or sale of the securities at the specified price or better. "Stopping" stock should not be confused with a stop order, which is an order designated as such by the customer that requires the specialist to buy (sell) a security once a certain price level has been reached.

[6] *See* Exchange Act Release Nos. 40722 (November 30, 1998), 63 FR 67966 (December 9, 1998) (permitting a NYSE specialist to elect a percentage order based on the election of a previously elected or converted percentage order on the opposite side of the market); 39837 (April 8, 1998), 63 FR 18244 (April 14, 1998) (approving the NYSE's proposal to permit "immediate execution or cancel election" percentage orders); 39009 (September 3, 1997), 62 FR 47715 (September 10, 1997) (approving the NYSE's proposal to allow a converted percentage order to retain its priority on the book when a higher bid (lower offer) is made) and to permit a "last sale-cumulative volume" instruction, which provides that if an elected portion of a percentage order placed on the book at the price of the electing sale is not executed, the elected portion of the order shall be cancelled and re-entered on the book at the price of subsequent transactions on the NYSE, if the price of the subsequent transactions is at or better than the limit specified in the order; 30265 (January 17, 1992), 57 FR 3228 (January 28, 1992) (approving an Amex proposal to permit a specialist to accept "last sale" and "buy minus-sell plus" percentage orders, permit the conversion of a percentage order into a limit order on a destabilizing tick, and allow conversions that better the market); 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) ("1987 Order") (permitting a NYSE specialist to convert a percentage order into a limit order on a destabilizing tick and to convert a percentage order into a limit order to enter a quote that betters the market); 20738 (March 8, 1984), 49 FR 9666 (March 14, 1984) (allowing an entering broker to instruct an Amex specialist to convert half of a percentage order rather than the full amount of the percentage order); 19652 (April 5, 1983), 48 FR 15756 (April 12, 1983) (approving an Amex proposal to permit percentage orders to be converted and executed on zero plus ticks (for buy orders) and zero minus ticks (for sell orders) when the order causing the conversion is at least 5,000 shares); and 19466 (January 28, 1983), 48 FR 5627 (February 7, 1983) (amending the Amex's definition of percentage order to differentiate among straight limit, last sale, and buy minus-sell plus percentage orders and adopting procedures for the handling of percentage orders).

[7] The Commission granted permanent approval to the pilot programs of several exchanges that permit specialists to stop stock in minimum variation markets. *See* Exchange Act Release Nos. 37134 (April 22, 1996), 61 FR 18634 (April 26, 1996) ("BSE 1996 Order"); 36400 (October 20, 1995), 60 FR 54886 (October 26, 1995) ("Amex 1995 Order"); 36401 (October 20, 1995), 60 FR 54893 (October 26, 1995) ("CHX 1995 Order"); and 36399 (October 20, 1995), 60 FR 54900 (October 26, 1995) ("NYSE 1995 Order"). *See also* Exchange Act Release No. 40728 (November 30, 1998), 63 FR 67972 (December 9, 1998) (approving a Philadelphia Stock Exchange, Inc. ("PHLX") rule setting forth procedures for stopping stock where the spread in the quotation is greater then twice the minimum variation and for stopping orders in minimum variation markets). The rules of several exchanges permit specialists to stop stock when the spread is twice the minimum variation. *See* Amex Rule 109(c); Boston Stock Exchange ("BSE") Rule Chapter II, Section 38(b); NYSE Rule 116.30; and PHLX Rule 220. In addition, Chicago Board Options Exchange, Inc. market makers may stop options orders. See CBOE Rule 8.17.

[8] A conversion that betters the market narrows the spread, adds depth to a prevailing bid or offer, or establishes a new bid or offer immediately after a transaction has cleared the floor of bids and offers.

[9] *See* 1987 Order, *supra* note 5.

[10] Specifically, the 1987 Order noted that the NYSE's proposal imposed three basic limitations on the conversion of percentage orders on a destabilizing tick: (1) An order may be converted on a destabilizing tick for the purpose of participating in a trade of 10,000 or more shares; (2) the execution effected by the conversion may occur no more than ¼ point away from the last sale, although this requirement may be waived with the approval of an NYSE Floor Official; and (3) the specialist cannot convert percentage orders for consecutive, or contemporaneous, trades on destabilizing ticks without the approval of a Floor Governor. *See also* NYSE Rule 123A.30. With regard to conversions made to better the market, the 1987 Order noted that the NYSE's proposal permitted a specialist to: (1) Convert an order on a stabilizing tick to better the market in such size as was appropriate to further the specialist's market making duties; (2) convert an order on a destabilizing tick to narrow the spread or to establish a new bid or offer immediately after a transaction had cleared the floor of bids and offers, provided that the conversion was within 1/8 point of the last sale; and (3) convert an order on a destabilizing tick, exclusive of the 1/8 point requirement, to add size to a prevailing bid or offer. The NYSE's rules provide additional restrictions on bettering the market conversions. *See* NYSE Rule 123A.30.

[11] *See* Amex 1995 Order and NYSE 1995 Order, *supra* note 6. *See also* BSE 1996 Order and CHX 1995 Order, *supra* note 6 (finding that stopped orders are equivalent to limit orders because they would be elected automatically after a transaction takes place on the primary market at the stopped price).

[12] Specifically, on the Amex and the NYSE, a specialist may stop an order in a minimum variation market only where there is a substantial imbalance on the opposite side of the market from the order being stopped. In this situation there is an increased likelihood of price improvement for the stopped order. In addition, NYSE Rule 116.30 and Amex Rule 109(c) provide that an order to which a specialist grants a stop may not exceed

Continued

II. Complex Orders

Current exchange rules permit floor brokers to represent complex options orders, including, among others, spread,[13] straddle,[14] and combination orders.[15] According to two exchanges, there are fewer floor brokers today on the exchange floors than there were in the past. As a result, there may be times when, under current rules, such orders may not be able to be represented or executed on a national securities exchange. As a result of these concerns, on July 19, 2001, the Amex filed a proposal with the Commission, pursuant to Section 19(b)(1) of the Exchange Act[16] and Rule 19b-4 thereunder,[17] to amend its rules to permit Amex options specialists to accept spread orders.[18] The Commission determined that consideration of the Amex proposal required addressing issues related to Exchange Act Section 11(b).

According to the Amex, the Amex floor brokers who focused primarily on executing spread orders ("spread brokers") were unable to remain in business and the loss of the spread brokers has reduced spread order executions on the Amex.[19] Other exchanges have also expressed concern that the disappearance of floor brokers has meant a shift in business to the over-the-counter ("OTC") market.[20]

As noted above, the Commission previously has permitted specialists to accept percentage orders and to stop orders in part because the exchange rules allowing specialists to accept percentage orders and to stop orders sufficiently limited a specialist's discretion and ensured that a specialist's handling of those orders was consistent with his or her market making duties and Section 11(b) of the Exchange Act. Similarly, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to exempt, subject to certain conditions, options specialists from the provisions of Section 11(b) of the Exchange Act to allow them to accept orders in option contracts on the same underlying security where the customer specifies the number of contracts for each series and the net debit or credit at which the order will be executed ("Complex Orders"), including spread, straddle, and combination orders.[21] Such an exemption would allow market participants to continue to have the ability to purchase and sell Complex Orders on an exchange market, under conditions that would reduce the discretion the specialist has in executing these orders.

The Commission believes it is necessary for the protection of investors and appropriate in the public interest to condition a specialist's handling of Complex Orders, as indicated below. These conditions will limit a specialist's discretion in the handling of such orders. The conditions also require the exchange on which a specialist trades to have surveillance procedures in place to monitor specialists' handling of these orders for compliance with the exchange's rules and the conditions in this exception.

More specifically, the conditions set forth below should help to ensure that a specialist is not able to unduly influence market trends through his or her handling of Complex Orders. In this regard, the conditions limit a specialist's discretion by providing that an exchange's rules must require a specialist to execute a Complex Order as soon as it becomes possible to execute the order at the net debit or credit specified by the customer, consistent with its priority rules. The conditions also provide that an exchange's rules must require a specialist who accepts a Complex Order to announce the terms of the order to the trading crowd immediately after receiving the order. In addition, to address concerns regarding a potential conflict of interest that may arise if a specialist handles the orders of customers of his or her own firm, as well as the orders of other brokers' customers that are given to the specialist for execution, an exchange must have rules that prohibit a specialist from accepting orders from customers of the firm with which the specialist is associated.[22]

As noted above, the conditions set forth below are designed to reduce the specialist's discretion in handling Complex Orders. As a result, the conditions should help to provide the type of protection that the prohibition in Exchange Act Section 11(b) was enacted to provide, and at the same time permit exchange specialists, not solely floor brokers, of which there are relatively few, to accept Complex Orders.

For these reasons, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to exempt a specialist from the provision in Section 11(b) of the Exchange Act that prohibits a specialist from effecting on the exchange as broker any transaction except upon a market or limit order, provided that:

(1) The order effected by such specialist: (i) Is comprised solely of options on the same underlying security and the customer specifies the number of contracts and the net credit or debit at which the order is to be executed ("Complex Order");

(2) The rules of the exchange on which a specialist trades: (a) Prohibit the specialist from accepting Complex Orders from customers of the firm with which the specialist is associated; (b) require the specialist to time stamp a Complex Order upon receipt of the order; (c) require the specialist who accepts a Complex Order to announce immediately after receipt of the order the price, terms, and size of the Complex Order to the trading crowd; (d) require the specialist to execute the Complex Order as soon as it is possible to execute, consistent with the exchange's priority rules, at the net debit or credit specified by the customer; and

(3) The exchange on which the specialist trades has surveillance procedures in place for monitoring specialists' compliance with the exchange's rules governing the handling of Complex Orders.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,[23] that a specialist is exempt from the prohibition in Section 11(b) of the Exchange Act from effecting on the exchange as broker any transaction except upon a market or limit order, subject to the conditions set forth above.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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2,000 shares and the aggregate number of shares as to which stops are in effect may not exceed 5,000 shares. The 5,000-share limit is designed to ensure that the amount of stopped stock does not become so large that there would, in effect, cease to be an imbalance on the opposite side of the market from the order being stopped (*i.e.*, less likelihood of price improvement for the order being stopped). *See* Amex 1995 Order and NYSE Order, *supra* note 6. With regard to the rules of the Chicago Stock Exchange ("CHX") and the BSE, the Commission concluded that because stopped orders would be elected automatically after a transaction takes place on the primary market at the stopped price, the requirements imposed on specialists under the CHX and BSE rules provided sufficient guidelines to ensure that a specialist would implement the rules for stopping stock in minimum variation markets in a manner consistent with his or her market making duties and Section 11(b). *See* BSE 1996 Order and CHX 1995 Order, *supra* note 6.

[13] A spread order is an order to buy a stated number of option contracts and to sell the same number of option contracts, or contracts representing the same number of shares at option, in a different series of the same class of options.

[14] A straddle order is an order to buy (sell) a number of call option contracts and to buy (sell) the same number of put option contracts on the same underlying security, which contracts have the same exercise price and expiration date.

[15] A combination order is an order involving a number of call option contracts and the same number of put option contracts on the same underlying security and representing the same number of shares at option. In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if the contracts both represent the same number of shares at option. A adjusted option contract is a contract whose terms are changed to reflect certain fundamental changes to the underlying security. For example, after an adjustment for a 2 for 1 stock split, an investor who held an option on 100 shares of XYZ stock with an exercise price of $60 may hold two options, each on 100 shares of XYZ stock and with an exercise price of $30.

[16] 15 U.S.C. 78s(b)(1).

[17] 17 CFR 240.19b-4.

[18] *See* File No. SR-Amex-2001-48.

[19] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Sharon M. Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated October 18, 2001.

[20] For example, the Philadelphia Stock Exchange, Inc. ("PHLX") has stated that the number of foreign currency options ("FCO") participants and firms clearing FCOs has declined steadily since the 1980s as the market has increasingly shifted to OTC trading. *See* Exchange Act Release No. 44372 (May 31, 2001), 66 FR 30780 (June 7, 2001) (approving on a one-year pilot basis a PHLX proposal to permit FCO participants to, among other things, contact the specialist to negotiate the total debit or credit for transacting a spread, straddle, or combination FCO order). The PHLX allowed the pilot program to expire because there is at least one PHLX floor broker available to handle customer FCO orders and, accordingly, the relief provided by the pilot program currently is not necessary.

[21] For purposes of this order, the term Complex Order does not include orders that have a non-option component.

[22] The Commission has stated previously that specialists should not be permitted to have their own customers, as opposed to customers of other brokers whose orders are given to the specialist for execution. In this regard, the Commission stated that transactions for a specialist's own customers do not affirmatively assist his market making activities and are fraught with possibilities of abuse. *See* SEC, Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., Part 2, 166 (1963).

[23] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47328; File No. SR–Amex–2003–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Conforming Amendments to the Amex *Company Guide*

February 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 3, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 102(a) of the Amex *Company Guide* to correct a reference contained therein and conform to recently approved amendments to Section 101 of the Amex *Company Guide*. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

American Stock Exchange *Company Guide*

Section 102

(a) Distribution—Minimum public distribution* of 500,000, together with a minimum of 800 public shareholders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders, except for applicants seeking to qualify for listing pursuant to Section 101([d] *e*).

The Exchange may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 public shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the Exchange will review the nature and frequency of such activity and such other factors as it may determine to be relevant in ascertaining whether such issue is suitable for auction market trading. A security which trades infrequently will not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

In addition, the Exchange may also consider the listing of the securities of a bank which has a minimum of 500,000 shares publicly held and a minimum of 400 public shareholders.

Except for banks, companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, are normally not considered eligible for listing unless the public distribution appreciably exceeds 500,000 shares.

*The terms "public distribution" and "public shareholders" as used in the *Company Guide* include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (*i.e.*, 10% or greater), affiliated or family holdings.

(b)–(c)—No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 102(a) of the Amex *Company Guide* to change a reference therein from Section 101(d) to Section 101(e). The Exchange seeks to correct the reference in order to conform to a re-designation of the paragraph references in Section 101 pursuant to recently approved amendments to Section 101[3] of the Amex *Company Guide*. The existing reference to Section 101(d) of the Amex *Company Guide* is meant to refer to the Alternative Listing Standards, which are now referenced in Section 101(e).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 47119 (January 3, 2003), 68 FR 1494 (January 10, 2003) (approving File No. SR–Amex–2002–97)

[4] 15 U.S.C. 78f(b).

6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b-4(f)(6)[7] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay and the five-day pre-filing notice requirement. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest and therefore finds good cause to waive the five-day pre-filing notice requirement and to designate the proposal as immediately operative upon filing. The Commission notes that the proposed rule change corrects a grammatical error and does not involve a substantive change. In addition, prompt implementation of the proposed rule change should avoid any confusion as to the Exchange's listing requirements. For these reasons, the Commission finds good cause to waive the five-day pre-filing notice requirement and to designate that the proposal become operative immediately upon filing.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-05 and should be submitted by March 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b-4(f)(6).

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Notice of Office of Management and Budget (OMB) Approval, Proposed Request and Comment Request

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Social Security Administration (SSA) is providing notice of OMB's approval of the information collections in the 20 CFR 422.527, Private Printing and Modification of Prescribed Application and Other Forms. In accordance with the Paperwork Reduction Act, persons are not required to respond to an information collection unless it displays a valid Office of Management and Budget control number. The OMB Number is 0960-0663, which expires December 31, 2005.

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1300 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Claimant's Medications—0960–0289—20 CFR 404.1512 and 416.912.* The information on form HA–4632 is used to process title II (Old-Age and Survivors Disability Insurance) and title XVI (Supplemental Security Income (SSI)) disability claims. Claimants provide an updated list of medications using form HA–4632. This information enables the Administrative Law Judge who conducts the hearing to fully inquire into medical treatment the claimant is receiving and the effect of medications on the claimant's medical treatment. The respondents are applicants for title II and title XVI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 171,939.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 42,985 hours.

2. *Letter to Employer Requesting Wage Information—0960–0138.* Form SSA–L4201–U2 is used to collect wage data from employers to establish and/or verify wage information for SSI claimants, beneficiaries and deemors. SSA uses the data to determine if an individual is eligible for SSI and, if so, to determine the amount of the payment due. The respondents are employers of applicants for and recipients of SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 66,500 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Action: Comment Request

1. *State Partnership Initiative (SPI) Cooperative Agreements—0960–0610. Executive Order 13078 Dated March 13, 1998, Increasing Employment of Adults With Disabilities.* This action orders that a National Task Force be established to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. E.O. 13078 specifies that the Task Force "evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities." To comply with the EO, SSA released cooperative agreement announcements in 1998 to approximately 650 State agencies nationwide to conduct demonstration projects that assist States in developing service delivery models that increase the rates of gainful employment of people with disabilities. Eighteen State agencies have been selected to participate in the demonstration projects. SSA has employed a monitoring and technical assistance contractor to collect information from the State awardees' databases on behalf of SSA. The Contractor will use the information to evaluate whether and to what extent the service delivery models achieve the overall goals of the demonstration projects and will report project results to SSA. SSA will use the results to conduct a net outcome evaluation to determine the long-term effectiveness of the interventions. Following is a table that outlines the public reporting burden of the 18 State agencies for this project:

Type of Request: Revision of an OMB-approved information collection.

Title of collection	Number of annual responses	Frequency of response	Average burden per response	Estimated annual burden
Demonstration Site Form	16 (electronic)	One Time	1 minute	1 hour.
	2 (manual)	One Time	1 minute	1 hour.
Participant Demographic Data Form	3,080 (electronic)	One Time	15 minutes	770 hours.
	300 (manual)	One Time	20 minutes	100 hours.
Participant Employment Data Form	3,080 (electronic)	One Time	5 minutes	257 hours.
	300 (manual)	One Time	7 minutes	35 hours.
Participant Update Form	3,080 (electronic)	Quarterly	4 minutes	821 hours.
	300 (manual)	Quarterly	5 minutes	100 hours.
Change in Employment Status	1,540 (electronic)	Completed only if employment changes.	3 minutes	77 hours.
	150 (manual)		4 minutes	10 hours.
State Quarterly and State Semiannual and Annual Reports.	72	Quarterly, semiannual and Annual.	15 minutes for Each report.	18 hours.
	36			9 hours.
	18			4 hours.
Stakeholder Interviews	50	Varies per Stakeholder.	10 minutes	8 hours.
Total	12,024			2,211 hours.

2. *Claimant's Recent Medical Treatment—20 CFR, Subpart P, 404.1512 and 20 CFR, Subpart I, 416.912—0960–0292.* The information collected on form HA–4631 is used to provide an updated medical history for disability claimants who request a hearing and to afford claimants their statutory right to a hearing and decision under the Social Security Act. This information is necessary to assure that the Social Security Administration has the most recent medical information before making a final determination on a claim. The respondents are claimants requesting hearings on entitlement to benefits based on disability under title II and/or title XVI of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 309,490.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 51,582 hours.

3. Report to U.S. SSA by Person Receiving Benefits for a Child or Adult Unable to Handle Funds; and Report to U.S. SSA–0960–0049.

SSA needs the information on forms SSA–7161–OCR–SM and SSA–7162–OCR–SM to determine continuing entitlement to Social Security benefits and correct benefit amounts for beneficiaries outside the U.S., as well as to monitor the performance of representative payees outside the U.S. The respondents are individuals outside the U.S. who are receiving benefits on their own behalf (or for someone else) under title II of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

	SSA–7161–OCR–SM	SSA–7162–OCR–SM
Number of Respondents	30,000	205,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	15	5
Estimated Annual Burden (hours)	7,500	17,083

4. *Partnership Questionnaire—0960–0025—20 CFR, Subpart K, 404.1080–.1082.* Form SSA–7104 is used to establish several aspects of eligibility for benefits, including accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for Old Age, Survivors and Disability Insurance Benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,350.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 6,175 hours.

5. *SSI-Quality Review Case Analysis—0960–0960–0133.* The form SSA–8508 is used in a personal interview with a sample of Supplemental Security Income (SSI) recipients and covers all elements of SSI eligibility. The information is used to assess the effectiveness of SSI policies and procedures and to determine payment accuracy rates. The respondents are SSI recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 12,000.

6. *Statement of Funds You Provided to Another, Statement of Funds You Received—20 CFR 416.1103(f)—0960–0481.* SSI entitlement, and the amount of the SSI payment, is affected by any other income the applicant has. Forms SSA–2854 and SSA–2855 are used by SSA to collect information in situations where the SSI applicant alleges that money was borrowed on an informal basis from a noncommercial lender, *e.g.*, a relative or friend, etc. These statements are completed by the borrower/claimant and by the lender and are required to determine whether the proceeds from the transaction are/are not income to the borrower/claimant. If the transaction constitutes a *bona fide* loan, the proceeds are not income to the SSI borrower/claimant. The respondents are applicants for SSI payments who borrow money on an informal (noncommercial) basis and by individuals who lend money informally to SSI applicants.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 6,667 hours.

7. *SSI Wage Reporting Pilot—0960–NEW—Background:* SSA regulations at 20 CFR 416.701–732 require that recipients of Supplemental Security Income (SSI) report changes, such as change in income, resources and living arrangements that could affect the receipt and amount of payments. Currently, SSI recipients report changes on form SSA–8150, Reporting Events—SSI, or to an SSA teleservice representative through SSA's toll-free telephone number or they visit their local Social Security Office.

The SSI Wage Reporting Pilot: SSA is proposing to conduct a 6-month SSI wage reporting pilot to test a different method of collecting the information. During the pilot, a sample of individuals who need to report a change in earned income would call an SSA toll-free telephone number which will allow them to either speak their report (voice recognition technology) or key in the information using the telephone key pad. At the conclusion of the pilot, SSA will evaluate whether this is an effective method of reporting the information.

Number of Respondents: 4,000.

Frequency of Response: 6.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,000 hours.

Dated: February 6, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–3511 Filed 2–11–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 31, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14418.

Date Filed: January 31, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0607 dated 3 January 2003, TC3 Areawide Resolutions 002, 017c, 091w r1-r9, PTC3 0618 dated 3 January 2003, TC3 from Malaysia to Guam Resolutions r10-r14, PTC3 0619 dated 3 January 2003, TC3 between Malaysia and American Samoa, Resolutions r15-r20, PTC3 0620 dated 3 January 2003, TC3 between Korea (Rep. of) and Guam, Northern, Mariana Islands Resolutions r21-r29, PTC3 0621 dated 3 January 2003, TC3 between Korea (Rep. of) and American Samoa, Resolutions r30-r34, Minutes—PTC3 0623 dated 24 January 2003, Tables—PTC3 Fares 0197 dated 10 January 2003, PTC3 Fares 0203 dated 10 January 2003, PTC3 Fares 0204 dated 10 January 2003, PTC3 Fares 0205 dated 10 January 2003, Intended effective date: 1 April 2003.

Docket Number: OST–2003–14419.

Date Filed: January 31, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA–EUR Fares 0075 dated 31 January 2003 Resolution 015h—USA Add-ons between USA and UK intended effective date: 1 April 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–3455 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14378]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; correction of dates.

SUMMARY: The Coast Guard published a notice in the **Federal Register** on February 4, 2003 announcing a 2-day meeting of the Towing Safety Advisory Committee's (TSAC) Working Group on Maritime Security. The notice should have been for one date, February 19, 2003. This notice removes the incorrect date.

DATES: This correction is effective February 12, 2003. The TSAC Working Group will meet on Wednesday, February 19, 2003, from 10 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, or fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** on February 4, 2003, (68 FR 5690) announcing a meeting of the Towing Safety Advisory Committee (TSAC) Working Group on Maritime Security. We listed two dates for the meeting in the notice. The TSAC Working Group will only meet on February 19, 2003. This correction removes the incorrect date.

In notice FR Doc. No. 03–2522 published on February 4, 2003, (68 FR 5690) make the following correction:

On page 5690, in the third column, starting on line 1, remove the first sentence in the **DATES** section, and add, in its place, the sentence "The TSAC Working Group on Maritime Security will meet on Wednesday, February 19, 2003, from 10 a.m. to 4 p.m."

Dated: February 12, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–3459 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Winchester Regional Airport, Winchester, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of approximately 13 acres of land at the Winchester Regional Airport, Winchester, Virginia to the Virginia Department of Transportation for the relocation of Virginia State Route 645. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. The road is being relocated to provide more space for airport related development and the existing Route 645 right-of-way will be exchanged for the relocated road right-of-way.

DATES: Comments must be received on or before March 14, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Renny Manual, Secretary-Treasurer Luray-Page County Airport Commission, at the following address: Ms. Renny Manuel, Executive Director, Winchester Regional Airport Authority, 491 Airport Road, Winchester, Virginia 22602.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, email *Terry.Page@faa.gov.*

SUPPLEMENTARY INFORMATION:

On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia, on January 27, 2003.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 03–3457 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF THE INTERIOR

National Park Service

Membership in the National Parks Overflights Advisory Group

AGENCIES: National Park Service and Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of a vacancy on the NPOAG for a member representing environmental interests and invites interested persons to apply to fill the vacancy.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, Email: *Barry.Brayer@faa.gov,* or Howie Thompson, Natural Sounds Program, National Park Service, 12795 W. Alameda Parkway, Denver, Colorado, 80225, telephone: (303) 969–2461.

DATES: Persons interested in serving on the advisory group should contact Mr. Brayer or Mr. Thompson on or before March 5, 2003.

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as *ex officio* members

of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides "advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands."

Members of the advisory group may be allowed certain travel expenses as authorized by section 5703 of title 5, United States Code, for intermittent Government service.

The current NPOAG is made up of four members representing the air tour industry, three members representing environmental interests, and two members representing Native American interests. Current members of the NPOAG are: Andy Cebula, Aircraft Owners and Pilots Association; David Kennedy, National Air Transportation Association; Alan Stephen, Twin Otter/Grand Canyon Airlines; Joe Corrao, Helicopter Association International; Chip Dennerlein, State of Alaska Fish and Game; Charles Maynard, formerly with Great Smoky Mountain National Park; Susan Gunn, The Wilderness Society; and Germaine White and Richard Deertrack, representing Native American tribes.

Public Participation in the Advisory Group

In order to retain balance within the NPOAG, the FAA and NPS invite persons interested in serving on the NPOAG to represent environmental interests to contact either of the persons listed in **FOR FURTHER INFORMATION CONTACT.** Requests to serve on the NPOAG should be made in writing and postmarked on or before March 5, 2003. The request should indicate whether or not you are a member or an official of a particular environmental interest group. The request should also state what expertise you would bring to environmental interests while serving on the NPOAG. The term of service for NPOAG members is 3 years.

Issued in Washington, DC, on February 5, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 03–3456 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Amber Plan Program Support Assistance; Request for Applications

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for applications.

SUMMARY: This document requests applications for assistance from public agencies in supporting Amber Plan Programs in each State. The U.S. DOT Amber Plan Grant Program will provide up to seven million dollars in grants to States (including Puerto Rico and the District of Columbia) to fund the application of Intelligent Transportation Systems to facilitate the inclusion of State and local transportation agencies into existing or proposed Amber Plan Programs. The intent is to provide funds to States for the purpose of planning the systems and procedures necessary to incorporate various traveler information systems such as changeable message signs (CMS) in the issuance of Amber Alerts.

DATES: Applications for Amber Plan Program support assistance must be received prior to August 1, 2003. Decisions regarding the acceptance of specific applications for funding will be made within 60 business days of receipt.

ADDRESSES: Applications for Amber Plan Program support assistance should be submitted electronically via e-mail to *AMBERPLAN@FHWA.DOT.GOV*, or mailed directly to the Federal Highway Administration, Intelligent Transportation Systems (ITS) Joint Program Office, Amber Plan Support, HOIT–1, 400 Seventh St., SW., Room 3416, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rupert, Office of Transportation Management (HOTM–1), (202) 366–2194; Mr. Craig Allred, ITS Joint Program Office (HOIT–1), (202) 366–8034; or Ms. Gloria Hardiman-Tobin, Office of Chief Counsel (HCC–40), (202) 366–0780; Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's Home page at *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at *http://www.access.gpo.gov/nara*.

The document may also be viewed at the DOT's ITS Home page at *http://www.its.dot.gov*.

Background

The Amber Plan Program is a voluntary program where law enforcement agencies partner with broadcasters to issue an urgent bulletin in the most serious child abduction cases. These bulletins notify the public about abductions of children. The U.S. DOT recognizes the value of the Amber Plan Program and fully supports the State and local governments' choice to implement this program.

Alerts of recent serious child abductions may be communicated through various means including radio and television stations, highway advisory radio, changeable message signs (CMS), and other media. Under certain circumstances, using CMS to display child abduction messages as part of an Amber Plan Program has been determined to be consistent with current FHWA policy governing the use of CMS and the type of messages that are displayed. The FHWA, in fact, recently issued a policy memorandum that supports the use of changeable message signs (CMS) for Amber Alerts. This memorandum may be viewed at the following url: *http://ops.fhwa.dot.gov/Travel/reports/amber.htm*.

A key factor in the success of the Amber Plan Program is the need for public agencies to develop formal Amber Plan policies that include a sound set of procedures for calling an Amber Alert. If public agencies decide to display an Amber Alert or child abduction messages on a CMS, the FHWA has determined that this application is acceptable only if it is part of a well-established local Amber Plan Program, and public agencies have developed a formal policy that governs the operation and messages that are displayed on CMS.

Local Amber Plan Programs should include written criteria for issuing and calling off an Amber Alert, procedures on issues to coordinate with local agencies and other interests, and should conform to the recommendations of the National Amber Plan Program. Information about the National Amber Plan Program may be found at the following url: *http://www.missingkids.com/html/amberplan.html*. The general criteria for issuing an Alert and the associated procedures may include confirmation that a child has been abducted; belief that the circumstances surrounding the abduction indicate that the child is in danger of serious bodily harm or death, and enough descriptive information about the child, abductor, and/or suspect's vehicle to believe an immediate broadcast alert will help.

Of specific interest to the U.S. DOT are that these policies and procedures provide specific guidance on displaying Amber Alert or child abduction messages on CMS. Such guidance should address items such as the criteria when CMS will be used for Amber Alerts; clear identification of the law enforcement agency responsible for issuing the alert; which agencies, interests, and persons are to be contacted to initiate or call off an Amber Alert; circumstances under which the Amber Alert message could or could not be displayed; length of time to display the message; geographic area over which the information is to be displayed; circumstances that would cause the discontinuation of use of the CMS if the Amber Alert message creates an adverse traffic impact; and format and content of the messages to be displayed.

In general, the Amber Plan Program has proven to be a very effective yet relatively simple and inexpensive program to implement. However, the inclusion of the transportation community and the use of various highway advisory systems such as CMS as part of an Amber Plan Program has exposed several issues that need to be addressed in order for such use to be effective and an appropriate use of the advanced technology may be appropriate.

One key issue that has broad implications beyond Amber Alerts is the lack of well established communication systems and protocols between the public safety community and the transportation community or the inability of such systems to be used for the purposes of conveying Amber Alert information among agencies. Currently most Amber Alerts are communicated to Transportation Operations Centers by telephone or facsimile. While there is no evidence that these relatively informal "low-tech" arrangements are not effective, such an informal system, dependant on simple communication methods, certainly has the potential for problems such as missed calls, data errors, and erroneous or false alerts. Furthermore, the lack of formal communication links has larger implications for highway incident response, hazmat incidents, natural disasters, and security related events. A number of jurisdictions have identified this broader need for communication and have established communication systems among the various public safety and transportation agencies to report and coordinate response to incidents but it is not clear whether any of these systems have been used for Amber Alerts.

Another obstacle that has been identified is the lack of capability for jurisdictions to issue area wide messages on CMS or other traveler information systems. These systems are generally intended to alert motorists to a localized condition (*e.g.*, an incident on a specific roadway). As a result, in some jurisdictions, the systems that control these signs are not capable of posting the same message on all signs across a region. The result in the case of an Amber Alert is a rather labor intensive and time consuming process to change the message on the signs one sign at a time. Currently several of these jurisdictions are exploring ways to upgrade their systems to provide such capability. This has implications for other area wide situations such as a major natural disaster or security related event where evacuation or other critical information may need to be conveyed to motorists over a broad region.

A third issue that can impact the appropriate use of CMS for Amber Alerts is the fact that many transportation operation centers are not staffed around the clock. In those cases, if an Amber Alert or other critical message needs to be posted on CMS, an off-duty operator has to be contacted by an appropriate authority so he or she can return to the operations center and post the message. Another option is to give a public safety agency the capability and authority to post such messages during off hours. In some jurisdictions, this problem has been resolved by linking operations centers and providing for the transfer of control to a designated back-up center. In some cases these back-up centers are continuously operated Transportation Operation Centers; in other cases, these are emergency response centers (*e.g.*, police dispatch centers). In either case, both technological and institutional issues must be resolved to provide this important functionality.

Another concern is that jurisdictions must have the basic capability to communicate such information to motorists via CMS or other traveler information systems. Currently, CMS deployment is largely limited to urban freeways, and even in some of our largest metropolitan areas, the numbers of such signs are often limited. While it is not practical to widely deploy such systems for the specific purposes of issuing Amber Alerts, there is some value to increasing our overall capability to communicate with motorists. Exploring and planning alternative methods of providing information to travelers and expanding the use of such systems for such purposes as Amber Alerts should be pursued.

Finally, there is the issue of the message to be conveyed. There is anecdotal evidence of Amber Alerts being provided by multi-panel messages containing details such as the type of vehicle, the license plate number, and the ten-digit number to call adversely impact traffic as drivers attempted to read and possibly copy all the relevant information. Clearly, it is important to ensure that these signs are properly and safely used as part of an overall effort to provide information on Amber Alerts.

Objectives of the Amber Alert Grant Program

The proposed U.S. DOT Amber Plan Grant Program will provide up to $7 million in grants to States (including Puerto Rico and the District of Columbia) to fund the application of Intelligent Transportation Systems (ITS) to facilitate the inclusion of State and local transportation agencies into existing or proposed Amber Plan Programs. The intent is to facilitate, through the use of advanced technologies, the seamless coordination between law enforcement agencies and transportation communities necessary to implement an Amber Alert using changeable message signs or other traveler information systems and to improve our overall capability of communicating Amber Alerts and other important information to motorists.

Each State (including Puerto Rico and the District of Columbia) may apply for a grant of $125,000 for planning, coordinating and designing of systems, protocols, and message sets that support the coordination and communication necessary to issue an Amber Alert and to provide the means to communicate an Amber Alert to motorists. This funding would ensure that the notification is well designed and integrated between the law enforcement and transportation communities.

Once such planning has been completed, any remaining funds from

the grant could be used to support the implementation of systems that will support the dissemination of Amber Alert messages via CMS or other traveler information systems.

Funding

The instrument to provide funding, on a cost reimbursable basis, will be a Federal-aid project agreement. Federal funding authority is derived from § 5001(a)(5) of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, 419 (1998). Actual award of funds will be subject to funding availability. Federal ITS funding for Amber Plan support assistance may be used as necessary for:

1. Developing general policies and procedures that would guide the use of CMS or other motorist information systems to issue Amber Alerts.
2. Developing guidance or policies on the content and format of alert messages being conveyed on CMS or other traveler information systems.
3. Coordinating State, regional, and local plans for use of CMS or other transportation related issues.
4. Planning secure and reliable communications systems and protocols between public safety and transportation agencies or modify existing communications systems to support Amber Alerts.
5. Planning and designing improved systems for communicating with motorists including the capability for issuing wide area alerts to motorists.
6. Planning systems and protocols to facilitate the efficient issuance of Amber Alerts and other key information to motorists during off-hours.
7. Providing training and guidance to transportation authorities to facilitate appropriate use of CMS and other traveler information systems for Amber Alerts.

Once these eligible activities are complete, any remaining funding allocated under agreements resulting from this request may be used to implement the systems that will support the dissemination of Amber Alert messages via CMS or other traveler information systems. This includes systems necessary to establish the necessary communications between appropriate public safety and transportation agencies to post Amber Alerts on CMS; systems necessary to provide for wide area alerts to motorists; and systems necessary for 24-hour operation of such systems. **Note:** The actual purchase of CMS or other on-street or in-vehicle hardware is not eligible for funding under this program.

Matching Share/Cost Sharing

There is a statutorily required minimum twenty percent matching share that must be from non-federally derived funding sources, and must consist of either cash, substantial equipment contributions that are wholly utilized as an integral part of the project, or personnel services dedicated full-time to the project for a substantial period, as long as such personnel are not otherwise supported with Federal funds.[1] The non-federally derived funding may come from State, local government, or private sector partners. However, funding identified to support continued operations, maintenance, and management of the system will not be considered as part of the partnership's cost-share contribution.

Offerors are encouraged to consider additional matching share above the required minimum match described above. Those offerors willing to propose additional match may include the value of federally supported projects directly associated with the proposed project.

Grantees shall maintain financial records that detail the activities provided by Federal funding, indicating appropriate total matching requirements, as described under the heading, Matching Share/Cost Sharing. The U.S. DOT and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Grantees and sub-grantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised Office of Management and Budget (OMB) Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, dated June 24, 1997, that is available at the following url: *http://www.whitehouse.gov/omb/circulars/a133/a133.html*. The audits shall be conducted by an independent auditor in accordance with generally accepted government auditing standards covering financial audits found at 49 CFR 18.26.

Instructions to Applicants

An application for Amber Plan program assistance shall consist of two parts: (1) A proposed technical approach; and (2) a financial plan. Together these two elements must describe the proposed activities to be conducted with this funding. The complete application shall not exceed 15 pages in length, including the Amber Plan Approach, the Financial Plan, the title page, index, and tables. A page is defined as one side of an 8½ by 11-inch paper, with a type font no smaller than 12 point.

Applications shall be submitted in an electronic format compatible with Microsoft Office 2000. The cover sheet or title page of the application shall include the name, address, and phone number of an individual to whom correspondence and questions about the application may be directed. Any portion of the application or its contents that may contain proprietary information shall be clearly indicated; otherwise, the application and its contents shall be non-proprietary.

Application Content

Applicants must submit an acceptable Technical Approach and Financial Plan that together provide sound evidence that the objectives of this program can successfully be completed in a timely fashion.

Applications should be organized into the following two sections:

1. Technical Approach

The application should describe the proposed approach for establishing the systems, protocols and message sets necessary for posting of Amber Alert messages on CMS and other traveler information systems. The following paragraphs illustrate the general information that applicants should include in this section of the application.

(A) The application should identify candidate agencies or organizations that will be engaged in the proposed activities. These organizations may include, but not be limited to: highway agencies, public safety agencies, sources of traveler information, and commercial radio and television stations. It is expected that the slate of organizations, agencies, and firms involved in developing an Amber Plan Program will be adjusted as deployment plans are developed.

(B) The application should discuss institutional or organizational issues that will affect the Amber Plan Program and the involvement of the transportation community in that program, and what candidate techniques or activities will be used to address these issues. Prior activities that identified or addressed Amber Plan Program issues may be described in this section to provide a complete portrayal of the breadth of effort by the applicant to develop a plan for regional deployment.

(C) The application should describe the expected product(s) of the activities described in paragraph (B) of this section. It is expected that reports, plans, presentations, or other products would be produced by these activities for use by the applicant. The applicant should propose which of these products may serve as deliverables to the ITS–JPO under any resultant agreement from this request. The final deliverables will be determined in negotiations between the ITS–JPO and the selected locations.

(D) The application should include a proposed schedule or timeline for completion of the proposed activities and outputs for which the grant will be used. The schedule should include milestone events or targeted activities, especially indicating any activities that require ITS–JPO actions or actions by organizations typically not influenced by the applying agency. Additionally, the schedule should also indicate targets for delivery of any products or outputs from development activities.

2. Financial Plan

The Financial Plan should demonstrate that sufficient funding is available to successfully complete all aspects of the proposed development of the plans and designs described in section 1. Additionally, the Financial Plan shall provide the financial information described under the heading, Matching Share/Cost Sharing. An acceptable Financial Plan should:

(A) Provide a clear identification of the proposed funding for activities leading to the development of a comprehensive plan for issuing Amber Alerts, and a commitment that no more than 80 percent of the total cost will be supported by Federal ITS funds. As appropriate, financial commitments from other public agencies and from private firms should be documented appropriately, such as through memorandums of understanding.

(B) Describe how the proposed systems will be developed to ensure their timely implementation and the continued long-term operations of the systems.

(C) As appropriate, include corresponding public and/or private investments that minimize the relative percentage and amount of Federal ITS funds. Also include evidence of continuing fiscal capacity and commitment from anticipated public and private sources.

Authority: Sec. 5001(a)(5), Pub. L. 105–178, 112 Stat. 107, 420; 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: February 6, 2003.

Mary E. Peters,
Federal Highway Administrator.

[FR Doc. 03–3501 Filed 2–11–03; 8:45 am]
BILLING CODE 4910–22–P

[1] *See* § 5001(b) of the Transportation Equity Act for the 21st Century, Pub. L. 105–178; 112 Stat. 107, June 1998.

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this notice to advise Federal agencies that the Norwalk Transit District (NTD) intends to transfer approximately 2.11 acres of land and improvements thereon at 100 Fairfield Avenue, Norwalk, Connecticut.

EFFECTIVE DATE: Any Federal agency interested in acquiring the parcel of land must notify the FTA Region I Office of its interest by March 14, 2003.

ADDRESSES: Interested parties should notify the Regional Office by writing to Richard H. Doyle, Regional Administrator, Federal Transit Administration, 55 Broadway, Room 921, Cambridge, MA 02142.

FOR FURTHER INFORMATION CONTACT: Richard N. Cole, Director of Operations and Program Management, at 617/494–2395; or Jackie Hathaway, FTA Headquarters Office of Program Management, at 202/366–6106.

SUPPLEMENTARY INFORMATION:

Background: 49 U.S.C. 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government.

49 U.S.C. 5334(g)(1) Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the government in liquidation and return of the financial interest of the government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(g)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the assets further described below. Any Federal agency interested in acquiring the affected land and improvements thereon should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land and improvements thereon, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(g)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property is located at 100 Fairfield Avenue in Norwalk, Connecticut, and contains approximately 2.11 acres of land and a building which is approximately 26,495 square feet. The property has two 10,000 gallon underground fuel tanks and a leak detection system.

The land is of a triangular shape and is situated along exit ramp 14 eastbound of the Connecticut Turnpike, and the building fronts on Cedar Street. The land slopes down from Fairfield Avenue and the Cedar Street properties. The building is approximately 26,495 square feet; it consists of a metal sandwich panel construction with a rubber ballasted roof; and it is fully sprinklered. Almost ⅔ of the building was used for vehicle storage; and as a result, the heating and lighting systems in that area have limited capacity. The space is clear span. The balance of the building was used for a vehicle washer, four maintenance bays, and approximately 3,000 square feet of office space, toilets and showers.

The building is in fair condition but may need painting, a new roof, substantial cleaning and considerable cosmetic work. Fumes from the maintenance and storage area seep into the office area at times; and during

extremely wet seasons, there is water seepage in the storage area.

Issued on: February 6, 2003.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 03–3454 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–03–14448; Notice 2]

Pipeline Safety: Qualification of Pipeline Personnel

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will conduct a public meeting to discuss progress in implementing the operator qualification (OQ) rule for gas and hazardous liquid pipelines. OPS will continue to develop the protocols and guidance materials, and provide an opportunity for public comment. A panel of experts will address technical issues associated with protocols and related materials. A record of the previous public meeting on Qualification of Pipeline Personnel that was held in San Antonio, TX, is available in this docket (RSPA–03–14448).

DATES: The public meeting will be held on February 25, 26, and 27, 2003, beginning at 9 a.m. and will continue until 4 p.m.

ADDRESSES: The public meeting will be held at the Hyatt Regency Houston Airport Hotel, 15747 John F. Kennedy Blvd., Houston, TX 77032 (Tel: 800–233–1234); Fax: 281–590–8461; Web: *www.houstonairport.hyatt.com.* This meeting is free and open to the public. You may register electronically for this meeting at: *http://primis.rspa.dot.gov/meetings.* The deadline for making a hotel reservation is February 17, 2003.

The program will address the 13 issues generated by the first public meeting held in January 2003, and will be open for technical input. This will include presentations on definitions of terms discussed at the last meeting. Persons wishing to make a presentation or statement at the meeting should notify Janice Morgan, (202) 366–2392, no later than February 19, 2003.

Although we encourage persons wishing to comment on operator qualification and inspection protocols to participate in the public meeting, written comments will be accepted. You may submit written comments on operator qualification and inspection issues by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. You may also submit comments to the docket electronically. To do so, log on to the Internet Web address *http://dms.dot.gov.* and click on "Help" for instructions on electronic filing of comments. All written comments should identify the docket number RSPA–03–14448; Notice 2.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comments, if submitted on behalf of an association, business, labor union, *etc.*). You may review the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact Richard Sanders at (405) 954–7214 or (405) 954–7219, regarding the agenda of this public meeting. General information about OPS programs may be obtained by accessing OPS's Internet home page at *http://ops.dot.gov.*

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance, contact Janice Morgan, (202) 366–2392.

SUPPLEMENTARY INFORMATION: The operator qualification rules at 49 CFR 192.801 (for gas pipelines) and at 49 CFR 195.501 (for hazardous liquid pipelines) require every pipeline operator to have and follow a written qualification program that includes provisions to identify covered tasks and to ensure that all persons performing these tasks are qualified. By October 28, 2002, all gas and hazardous liquid pipeline operators should have completed the qualification of all individuals performing covered tasks on pipeline facilities.

On February 25, 26, and 27, 2003, OPS will conduct a public meeting to discuss progress in implementing the operator qualification rule for gas and hazardous liquid pipelines. OPS will present a detailed review of the development of the operator qualification inspection protocols. The meeting will focus on areas considered high priority and discussion on compliance issues from Federal and State pipeline safety personnel. These issues, as identified at a previous public meeting on January 22, 2003, in San Antonio, TX, are as follows:

(1) Scope of operator qualification;
(2) Evaluation of knowledge, skills, and physical ability;
(3) Re-evaluation intervals;
(4) Maintenance versus new construction;
(5) Treatment of emergency response;
(6) Additional covered tasks;
(7) Extent of documentation;
(8) Abnormal operating conditions;
(9) Treatment of training;
(10) Criteria for small operators;
(11) Direction and observation of non-qualified people;
(12) Noteworthy practices;
(13) Persons contributing to an incident or accident.

All persons attending the meeting will have an opportunity to comment on operator qualification compliance issues and to question the expert panel on the new operator qualification compliance protocols.

Issued in Washington, DC, on February 6, 2003.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 03–3453 Filed 2–11–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Narcotics Trafficker-Related Blocked Persons

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of 23 additional persons and 13 entities whose property and interests in property have been designated as specially designated narcotics traffickers pursuant to Executive Order 12978 of October 25, 1995; is supplementing information concerning two persons and one entity who have been designated as specially designated narcotics traffickers; and is removing the entries for two persons previously listed as specially designated narcotics traffickers.

DATES: The designations by the Office of Foreign Assets Control of additional persons identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 12978 are effective on October 24, 2002. The removal of the Agudelo Galvez and Donneys Gonzalez from the list of specially designated narcotics traffickers is effective as of April 15, 2002 and August 5, 2002, respectively.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register.** By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat" readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov.* This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac,* or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On October 21, 1995, the President issued Executive Order 12978 ("the Order"), where he found that the actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence corruption, and harm that they cause in the United States and abroad constitute an extraordinary threat to the national security, foreign policy, and economy of the United States. The President identified four individuals whose assets are blocked pursuant to the Order. Additional persons have been blocked pursuant to the Order and Section 536.312 of the Narcotics Trafficking and Sanctions Regulations, 31 CFR part 356 (the "Regulations"), because they have been determined to play a significant role in narcotics trafficking centered in Colombia, to materially assist in or provide financial support or technological support for, or goods or services in support of other specially designated narcotics traffickers, or to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order (collectively "Specially Designated Narcotics Traffickers" or "SDNTs"). These additional blockings have been published in the **Federal Register.**

On October 24, 2002, the Office of Foreign Assets Control ("OFAC"), acting under authority delegated by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of the Treasury, designated an additional 23 individuals and 13 entities. Additionally, supplementary information is being added to existing SDNT entries for two persons and one entity and those entries are revised in their entirety. Finally, the entries for two SDNT individuals are being removed from the list of specially designated narcotics traffickers because OFAC has determined that these individuals no longer meet the criteria for designation as SDNTs.

Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control, Persons, and their known aliases, including supplemental information, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** notice, as "specially designated narcotics traffickers" identified by the initials "[SDNT]". Additionally, the two names identified for removal will be deleted from the appendix A to 31 CFR chapter V through a separate **Federal Register** notice.

Additional Designations. On October 24, 2002, the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, designated an additional 23 individuals and 13 entities whose property and interests in property are blocked. The names of these additional persons (individuals and entities) are set forth in the list below.

The designations by the Office of Foreign Assets control pursuant to Executive Order 12978 of these additional persons listed below are effective on October 24, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

The list of additional SDNT designations follow:

1. AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; Km 12 Via Santa Ana Molina, Hacienda Doima, Cartago, Colombia; NIT # 800144713–3 (Colombia) (entity).

2. AGROPECUARIA MIRALINDO S.A., Carrera 8N No. 17A–12, Cartago, Colombia; NIT # 836000446–4 (Colombia) (entity).

3. ARIZONA S.A., Carrera 8N No. 17A–12, Cartago, Colombia, NIT # 836000489–0 (Colombia) (entity).

4. BENAVIDEZ CHAVEZ, Alvaro Higinio, Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; DOB 1 Feb 1971; Passport 94295393 (Colombia); Cedula No. 94295393 (Colombia) (individual).

5. CARDONA GARCIA, Diomiro, Carrera 1 No. 12–53, Cartago, Valle, Colombia; Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA,, Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; Passport 6233272 (Colombia); Cedula No. 6233272 (Colombia) (individual).

6. DURAN RAMIREZ, Pompilio, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o

GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; Passport 2534945 (Colombia); Cedula No. 2534945 (Colombia) (individual).

7. FLOREZ GRAJALES, Yudy Lorena (a.k.a. FLOREZ GRAJALES, Yudi Lorena), Carrera 78 No. 3–46, Cali, Colombia; Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; DOB 26 Jun 1978; Passport 32180561 (Colombia); Cedula No. 32180561 (Colombia) (individual).

8. GANADERIA EL VERGEL LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; Km 7 Via Cartago-Obando, Hacienda El Vergel, Cartago, Valle, Colombia; NIT # 800146295–5 (Colombia) (entity).

9. GANADERIAS BILBAO LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; Km 7 Via Cartago-Obando, Hacienda El Vergel, Cartago, Valle, Colombia; NIT # 800146290–9 (Colombia) (entity).

10. GARCIA DUQUE, Gustavo, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; DOB 30 Jun 1961; Passport 16213736 (Colombia); Cedula No. 16213736 (Colombia) (individual).

11. GARCIA GARCIA, Gabriel Alfonso, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; DOB 7 Jun 1976; Passport 16230989 (Colombia); Cedula No. 16230989 (Colombia) (individual).

12. GOMEZ APONTE, Laura Victoria, Carrera 4A No. 63N–29, Cali, Colombia; c/o LADRILLERA LA CANDELARIA LTDA., Cali, Colombia; DOB 31 Oct 1965; POB Cali, Valle, Colombia; Passport 31937650 (Colombia); Cedula No. 31937650 (Colombia) (individual).

13. GOMEZ BUSTAMANTE, Luis Hernando, Km 7 Via Cartago-Obando, Hacienda El Vergel, Cartago, Colombia; Km 12 Via Santa Ana Molina, Hacienda Doima, Cartago, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; DOB 14 Mar 1958; POB El Aguila, Valle, Colombia; Passport 16209410 (Colombia); Cedula No. 16209410 (Colombia) (individual).

14. GOMEZ GOMEZ, Viviana, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; DOB 17 Oct 1982; NIT # 681946748–1 (Colombia) (individual).

15. GOMEZ JARAMILLO, Olga Cecilia, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; DOB 29 Feb 1956; Passport 31398070 (Colombia); Cedula No. 31398070 (Colombia) (individual).

16. HENAO GONZALEZ, Carlos Andres, Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Cartago, Colombia; DOB 27 Nov 1980; Passport 75096405 (Colombia); Cedula No. 75096405 (Colombia) (individual).

17. HENAO GONZALEZ, Lina Marcela, Avenida 4 Oeste No. 5–97, Apt. 1001, Cali, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Cartago, Colombia; DOB 10 May 1985; POB Cali, Valle, Colombia; Passports AF228090 (Colombia), TI–85051037834 (Colombia); NIT # 650000091–9 (Colombia); Cedula No. TI–85051037834 (Colombia) (individual).

18. HENAO GONZALEZ, Olga Patricia, Avenida 4 Oeste No. 5–97, Apt. 1001, Cali, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Cartago, Colombia; DOB 18 Jan 1988; POB Cali, Valle, Colombia; Passports AG762459 (Colombia), RN12524986 (Colombia); NIT # 600018532–2 (Colombia); Cedula No. RN12524986 (Colombia) (individual).

19. HURTADO ROMERO, Jairo Jose, Carrera 42 No. 5B–81, Cali, Colombia; Carrera 8N No. 17A–12, Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cali, Colombia; Passport 13809079 (Colombia); Cedula No. 13809079 (Colombia) (individual).

20. INMOBILIARIA EL ESCORIAL LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle Colombia; Carrera 5 No. 18–20 Local 12, Cartago, Valle, Colombia; NIT # 800146869–2 (Colombia) (entity).

21. INMOBILIARIA LINARES LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; NIT # 800146860–7 (Colombia) (entity).

22. INMOBILIARIA PASADENA LTDA., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; NIT # 800146861–4 (Colombia) (entity).

23. INVERSIONES LA QUINTA Y CIA. LTDA., Diagonal 29 No. 36–10 of. 801, Cali, Colombia; Diagonal 27 No. 27–104, Cali, Colombia; NIT # 800160387–2 (Colombia) (entity).

24. JIMENEZ BEDOYA, Maria Adriana, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA. S.C.S., Cartago, Valle, Colombia; DOB 13 Apr 1971; Passport 31417388 (Colombia); Cedula No. 31417388 (Colombia) (individual).

25. LADRILLERA LA CANDELARIA LTDA., Avenida 6 Norte No. 17N–92, of. 514, Cali, Colombia; Correg. Buchitolo, Vereda Tres Esquinas, Candelaria, Colombia; NIT # 800119741–4 (Colombia) (entity).

26. LOPRETTO DURAN, Jorge Enrique, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o INMOBILIARIA EL ESCORIAL LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA LINARES LTDA., Cartago, Valle, Colombia; c/o INMOBILIARIA PASADENA LTDA., Cartago, Valle, Colombia; c/o VISCAYA LTDA., Cartago, Valle, Colombia; DOB 8 Aug 1962; Passport 16215409 (Colombia); Cedula No. 16215409 (Colombia) (individual).

27. MENDEZ SALAZAR, John Jairo, Calle 1 No. 56–109 Casa 32, Cali, Colombia; Carrera 42 No. 5B–81, Cali, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cali, Colombia; Passport 98515360 (Colombia); Cedula No. 98515360 (Colombia) (individual).

28. MONTES OCAMPO, Jose Alberto, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; DOB 24 Feb 1965; Passport 79339330 (Colombia); Cedula No. 79339330 (Colombia) (individual).

29. MONTOYA LUNA E HIJOS Y CIA. S.C.S., Carrera 85B No. 13A–136, Cali, Colombia; NIT # 800077316–5 (Colombia) (entity).

30. MONTOYA SANCHEZ, Diego Leon, Diagonal 27 No. 27–104, Cali, Colombia; c/o INVERSIONES LA QUINTA Y CIA. LTDA., Cali, Colombia; c/o LADRILLERA LA CANDELARIA LTDA., Cali, Colombia; c/o MONTOYA LUNA E HIJOS Y CIA. S.C.S., Cali, Colombia; DOB 11 Jan 1958; POB Trujillo, Valle, Colombia; Passport 16348515 (Colombia); Cedula No. 16348515; (Colombia) (individual).

31. MONTOYA SANCHEZ, Eugenio, (a.k.a. CARVAJAL TAFURT, Hector Fabio), Diagonal 27 No. 27–104, Cali, Colombia; Calle 7 No. 45–25, Cali, Colombia; c/o LADRILLERA LA CANDELARIA LTDA., Cali, Colombia; DOB 17 Apr 1970, alt. DOB 15 Apr 1972; POB Trujillo, Valle, Colombia; Passports AC814028 (Colombia), 94307307 (Colombia) 16836750 (Colombia); Cedula No. 94307307 (Colombia), 16836750 (Colombia) (individual).

32. MONTOYA SANCHEZ, Juan Carlos, Carrera 85B No. 13A–136, Cali, Colombia; c/o MONTOYA LUNA E HIJOS Y CIA. S.C.S., Cali, Colombia; DOB 3 Sep 1962; POB Riofrio, Valle, Colombia; Passport 16357049 (Colombia); Cedula No. 16357049 (Colombia) (individual).

33. ORGANIZACION LUIS HERNANDO GOMEZ BUSTAMANTE Y CIA S.C.S., Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; NIT # 800140477–1 (Colombia) (entity).

34. RIOS LOZANO, Alexander, Carrera 42 No. 5B–81, Cali, Colombia; Carrera 8N No. 17A–12, Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Cartago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cali, Colombia; DOB 15 Jan 1974; Passport 94402123 (Colombia); Cedula No. 94402123 (Colombia) (individual).

35. RUIZ CASTANO, Maria Helena, c/o LADRILLERA LA CANDELARIA LTDA., Cali, Colombia; DOB 17 Nov 1970; Passport 66901635 (Colombia); Cedula No. 66901635 (Colombia) (individual).

36. VISCAYA LTDA., (a.k.a VIZCAYA LTDA.), Carrera 3 No. 11–99, Cartago, Valle, Colombia; Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; Km 7 Via Cartago-Obando, Hacienda El Vergel, Cartago, Colombia; NIT # 800054357–8 (Colombia) (entity).

Supplemental Information on Existing Specially Designated Narcotics Traffickers. Supplementary information is added to existing SDNT entries for two individuals and one entity and those entries are revised in their entirety.

1. GONZALEZ BENITEZ, Olga Patricia, Hacienda Coque, Cartago, Colombia; Carrera 4 No. 16–04 apt. 303, Cartago, Colombia; Avenida 4 Oeste No. 5–97 Apt. 1001, Cali, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA. S.C.S., Cartago, Colombia; DOB 4 Aug 1965; POB Cartago, Valle, Colombia; Passports AH567983 (Colombia), 29503761 (Colombia); Cedula No. 29503761 (Colombia) (individual).

2. HENAO MONTOYA, Arcangel de Jesus; Hacienda Coque, Cartago, Colombia; Carrera 4 No. 16–04 apt. 303, Cartago, Colombia; Carrera 42 No. 5B–81, Cali, Colombia; c/o AGRICOLA GANADERA HENAO GONZALEZ Y CIA. SCS., Cartago, Colombia; c/o AGROPECUARIA MIRALINDO S.A., Carago, Colombia; c/o ARIZONA S.A., Cartago, Colombia; c/o COMPANIA AGROINVERSORA HENAGRO LTDA., Cartago, Colombia; c/o DESARROLLOS COMERCIALES E INDUSTRIALES HENAO GONZALEZ Y CIA., S.C.S., Cartago, Colombia; c/o MAQUINARIA TECNICA Y TIERRAS LTDA., Cartago, Colombia; c/o ORGANIZACION EMPRESARIAL A DE J HENAO M E HIJOS Y CIA. S.C.S., Cartago, Colombia; DOB 7 Oct 1954; POB Cartago, Valle, Colombia; Passport 16215230 (Colombia); NIT# 16215230–1 (Colombia); Cedula No. 16215230 (Colombia) (individual).

3. MAQUINARIA TECNICA Y TIERRAS LTDA. (a.k.a. M.T.T. LTDA.), Carrera 4A No. 16–04, Cartago, Colombia; Carrera 42 No. 5B–81, Cali, Colombia; NIT # 800084233–1 (Colombia) (entity).

Removals. The entries for two SDNT individuals are being removed from the list of SDNTs because OFAC has determined that these individuals no longer meet the criteria for designation as SDNTs. All real and personal property of these individuals, including all accounts in which they have interests, which had been blocked solely due to their designations as SDNTs, are unblocked; and all lawful transactions involving U.S. persons and these individuals are permissible.

1. Lieride Agudelo Galvez was designated on January 21, 1997. *See* 62 FR 2903, Jan. 21, 1997.

2. Federico Donneys Gonzalez was designated on October 24, 1995. *See* 60 FR 54582, Oct. 24, 1995.

Dated: December 23, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 31, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–3478 Filed 2–11–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of one additional entity whose property and interests in

property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: This designation by the Secretary of the Treasury of this one additional entity identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective on November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat" readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov*. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notices of these additional blockings have been published in the **Federal Register**.

Additional Designations. On November 21, 2002, the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, acting pursuant to authorities set forth in the Order designated one additional entity whose property and interests in property are blocked. The name of this additional entity is set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate Federal Register document, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designation by the Secretary of the Treasury pursuant to Executive Order 13224 of the additional entity listed below is effective on November 21, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

In Section-10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President further determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In furtherance of the objectives of the Order, the Secretary of the Treasury has determined that no prior notice should be afforded to the subject of the determination reflected in this notice because to do so would give the subject the opportunity to evade the measures described in the Order and, consequently, render those measures ineffectual toward addressing the national emergency declared in the Order.

The additional designation follows: MOROCCAN ISLAMIC COMBATANT GROUP (a.k.a. GICM; a.k.a. GROUPE ISLAMIQUE COMBATTANT MAROCAIN)

Dated: December 23, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 27, 2003.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–3479 Filed 2–11–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–47

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–47, Employee Plans Compliance Resolution System.

DATES: Written comments should be received on or before April 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Plans Compliance Resolution System.

OMB Number: 1545–1673.

Revenue Procedure Number: Revenue Procedure 2002–47.

Abstract: The information requested in Revenue Procedure 2002–47 is required to enable the Internal Revenue Service to make determinations regarding the issuance of various types of closing agreements and compliance statements. The issuance of closing agreements and compliance statements allows individual plans to continue to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 4,292.

Estimated Time Per Respondent: 13 hours, 6 minutes.

Estimated Total Annual Burden Hours: 56,272.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3497 Filed 2–11–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106871–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–106871–00, Reporting Requirements for Widely Held Fixed Investment Trusts (§ 1.671–5).

DATES: Written comments should be received on or before April 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Widely Held Fixed Investment Trusts.

OMB Number: 1545–1540.

Regulation Project Number: REG–106871–00.

Abstract: Under regulation section 1.671–5, the trustee or the middleman who holds an interest in a widely held fixed investment trust for an investor will be required to provide a Form 1099 to the IRS and a tax information statement to the investor. The trust is also required to provide more detailed tax information to middlemen and certain other persons, upon request.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3498 Filed 2–11–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 68, No. 29
Wednesday, February 12, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–200311; FRL–7444–7]

Approval and Promulgation of Air Quality Implementation Plans; Alabama Update to Materials Incorporated by Reference

Correction

In rule document 03–2172 beginning on page 5221 in the issue of Monday, February 3, 2003 make the following corrections:

§ 52.50 [Corrected]

1. On page 5228, in § 52.50, in the table, in the second column, in the second line, "Area 1" should read "Area".

2. On the same page, in the same section, in the same table, in the third column, "2/01/00" should read "12/01/00".

[FR Doc. C3–2172 Filed 2–11–03; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[ID–02–002; FRL–7422–3]

Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho

Correction

In rule document 03–856 beginning on page 2217 in the issue of Thursday, January 16, 2003, make the following correction:

§ 81.313 [Corrected]

On page 2226, in § 83.313, in the table, in the second column, under the heading "Designation", under the subheading "Date", in the sixth entry, "11/20/94" should read, "1/20/94".

[FR Doc. C3–856 Filed 2–11–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
February 12, 2003

Part II

Environmental Protection Agency

40 CFR Parts 9, 122, 123, and 412 National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123 and 412

[FRL–7424–7]

RIN 2040–AD19

National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's final rule revises and clarifies the Environmental Protection Agency's (EPA) regulatory requirements for concentrated animal feeding operations (CAFOs) under the Clean Water Act. This final rule will ensure that CAFOs take appropriate actions to manage manure effectively in order to protect the nation's water quality.

Despite substantial improvements in the nation's water quality since the inception of the Clean Water Act, nearly 40 percent of the Nation's assessed waters show impairments from a wide range of sources. Improper management of manure from CAFOs is among the many contributors to remaining water quality problems. Improperly managed manure has caused serious acute and chronic water quality problems throughout the United States.

Today's action strengthens the existing regulatory program for CAFOs. The rule revises two sections of the Code of Federal Regulations (CFR), the National Pollutant Discharge Elimination System (NPDES) permitting requirements for CAFOs (Sec. 122) and the Effluent Limitations Guidelines and Standards (ELGs) for CAFOs (Sec. 412).

The rule establishes a mandatory duty for all CAFOs to apply for an NPDES permit and to develop and implement a nutrient management plan. The effluent guidelines being finalized today establish performance expectations for existing and new sources to ensure appropriate storage of manure, as well as expectations for proper land application practices at the CAFO. The required nutrient management plan would identify the site-specific actions to be taken by the CAFO to ensure proper and effective manure and wastewater management, including compliance with the Effluent Limitation Guidelines. Both sections of the rule also contain new regulatory requirements for dry-litter chicken operations.

This improved regulatory program is also designed to support and complement the array of voluntary and other programs implemented by the United States Department of Agriculture (USDA), EPA and the States that help the vast majority of smaller animal feeding operations not addressed by this rule. This rule is an integral part of an overall federal strategy to support a vibrant agriculture economy while at the same time taking important steps to ensure that all animal feeding operations manage their manure properly and protect water quality.

EPA believes that these regulations will substantially benefit human health and the environment by assuring that an estimated 15,500 CAFOs effectively manage the 300 million tons of manure that they produce annually. The rule also acknowledges the States' flexibility and range of tools to assist small and medium-size AFOs.

DATES: These final regulations are effective on April 14, 2003.

ADDRESSES: The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center (EPA/DC) in the basement of the EPA West Building, Room B–102, at 1301 Constitution Ave., NW., Washington, DC. The administrative record is also available via EPA Dockets (Edocket) at *http://www.epa.gov/edocket* under Edocket number OW–2002–0025. The rule and key supporting materials are also electronically available on the Internet at *http://www.epa.gov/npdes/caforule.*

FOR FURTHER INFORMATION CONTACT: Gregory Beatty, U.S. EPA, Office of Water, Office of Wastewater Management (4203M), 1200 Pennsylvania Avenue NW., Washington, DC 20460, 202–564–0724, for information pertaining to the NPDES Regulations (Part 122) or Paul Shriner, U.S. EPA, Office of Water, Office of Science and Technology (4303T), 1200 Pennsylvania Avenue NW., Washington, DC 20460, 202–566–1076, for information pertaining to the Effluent Guideline (Part 412).

SUPPLEMENTARY INFORMATION:

A. General Information
1. What entities are potentially regulated by this final rule?
2. How Can I Get Copies of This Document and Other Related Information?
B. Under what legal authority is this final rule issued?
C. How is this preamble organized?
D. What is the Comment Response Document?
E. What other information is available to support this final rule?
I. Background Information
A. What is the context for this rule?
B. Why is EPA revising the existing effluent guidelines and NPDES regulations for CAFOs?
C. What are the environmental and human health concerns associated with improper management of manure and wastewater at CAFOs?
1. How do the amounts of animal manure compare to human waste?
2. What are "excess manure nutrients" and why are they an indication of environmental concern?
3. What pollutants are present in animal manure and wastewater?
4. How do these pollutants reach surface water?
5. How is water quality impaired by animal manure and wastewater?
6. What ecological and human health impacts have been caused by CAFO manure and wastewater?
D. What are the roles of the key entities involved in the final rule?
1. CAFOs.
2. States.
3. EPA.
4. USDA.
5. Other stakeholders.
6. The public.
E. What principles have guided EPA's decisions embodied in this rule?
F. What are the major elements of this final rule? Where do I find the specific requirements?
1. NPDES Regulations for CAFOs.
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II. What Events Have Led to This Rule?
A. The Clean Water Act
1. The National Pollutant Discharge Elimination System (NPDES) permit program
2. Effluent limitations guidelines and standards
3, Effluent guidelines planning process—Section 304(m) requirements
B. Existing Clean Water Act requirements applicable to CAFOs
1. Scope and requirements of the 1976 NPDES regulations for CAFOs
2. Scope and requirements of the 1974 feedlot effluent guidelines
C. USDA–EPA Unified National Strategy for Animal Feeding Operations
III. How Was This Final Rule Developed?
A. Small Business Advocacy Review (SBAR) Panel
B. Proposed Rule
C. 2001 Notice of Data Availability
D. 2002 Notice of Data Availability
E. Public Comments
F. Public outreach
1. Pre-proposal activities
2. Post-proposal activities
IV. CAFO Roles and Responsibilities
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A. General Information

1. What Entities Are Potentially Regulated by This Final Rule?

This final rule applies to new and existing animal feeding operations (AFOs) that meet the definition of a concentrated animal feeding operation (CAFO), or AFOs that are designated as CAFOs by the permitting authority. CAFOs are defined by the Clean Water Act as point sources for the purposes of the National Pollutant Discharge Elimination System (NPDES) program. (33 U.S.C. 1362). The rule also applies to States and Tribes with authorized NPDES Programs.

Table 1 lists the types of entities EPA is now aware could potentially be regulated by this final rule. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definitions and other provisions of 40 CFR 122.23 and the provisions of 40 CFR Part 412, including the applicability criteria at 40 CFR 412.1. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
Federal, State, and Local Government: Industry		*See* below	*See* below

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE—Continued

Category	Examples of regulated entities	North American industry code (NAIC)	Standard industrial classification code
	Operators of animal production operations that meet the definition of a CAFO:		
	Beef cattle feedlots (including veal)	112112	0211
	Beef cattle ranching and farming	112111	0212
	Hogs	11221	0213
	Sheep	1241, 11242	0214
	General livestock, except dairy and poultry	11299	0219
	Dairy farms	11212	0241
	Broilers, fryers, and roaster chickens	11232	0251
	Chicken eggs	11231	0252
	Turkey and turkey eggs	11233	0253
	Poultry hatcheries	11234	0254
	Poultry and eggs	11239	0259
	Ducks	112390	0259
	Horses and other equines	11292	0272

2. How Can I Get Copies of This Document and Other Related Information?

a. Docket. EPA has established an official public docket for this action under Docket ID No. W–00–27. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

b. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section A.2.a. Once in the system, select "search," then key in the appropriate docket identification number (OW–2002–0025).

B. Under What Legal Authority Is This Final Rule Issued?

Today's final rule is issued under the authority of Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

C. How Is This Preamble Organized?

Below is an outline for the preamble to the final rule. It is written in a question-and-answer format that is designed to help the reader understand the information in the rule. Each question is followed by a concise answer, a brief summary of what was proposed, the key comments that the Environmental Protection Agency (EPA) received on the proposed rule, and the principal rationale for EPA's decision.

List of Acronyms

AFO—animal feeding operation
BAT—best available technology economically achievable
BCT—best conventional pollutant control technology
BOD—biochemical oxygen demand
BPJ—best professional judgment
BMP—best management practice
BPT—best practicable control technology currently available
CAFO—concentrated animal feeding operation
CFR—Code of Federal Regulations
CFU—colony forming units
CNMP—comprehensive nutrient management plan
CSREES—USDA's Cooperative State Research, Education, and Extension Service
CWA—Clean Water Act
CZARA—Coastal Zone Act Reauthorization Amendments
ELG—effluent limitations guideline
EMS—environmental management system
EPA—Environmental Protection Agency
EQIP—Environmental Quality Incentives Program
FAPRI—Food and Agricultural Policy Research Institute
FR—Federal Register
ICR—Information Collection Request
NODA—Notice of Data Availability
NOI—notice of intent
NPDES—National Pollutant Discharge Elimination System
NRCS—USDA's Natural Resources Conservation Service
NRDC—Natural Resources Defense Council
NSPS—new source performance standards
NTTAA—National Technology Transfer and Advancement Act
NWPCAM—National Water Pollution Control Assessment Model
OMB—U.S. Office of Management and Budget
POTW—publicly owned treatment works
RFA—Regulatory Flexibility Act
SBA—U.S. Small Business Administration
SBAR (panel)—Small Business Advocacy Review Panel
SBREFA—Small Business Regulatory Enforcement Fairness Act
SRF—State Revolving Fund
TMDL—total maximum daily load
TSS—total suspended solids
UMRA—Unfunded Mandates Reform Act
USDA—United States Department of Agriculture
WWTP—wastewater treatment plant

D. What Is the Comment Response Document?

EPA received more than 11,000 comments on the proposed rule and on the two supplemental Notices of Data Availability. EPA evaluated all the significant comments submitted and prepared a *Comment Response Document* containing the Agency's responses to those comments. The *Comment Response Document* complements and supplements this preamble by providing more detailed explanations of EPA's final actions. The *Comment Response Document* is available at the Water Docket. See Section E below for additional information.

E. What Other Information Is Available to Support This Final Rule?

In addition to this preamble, today's final rule is supported by extensive other information that is part of the administrative record, such as the *Comment Response Document*, and the key supporting documents listed below. These supporting documents and the administrative record are available at the Water Docket and via e-Docket.

- "*Development Document for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*" (EPA 821–R–03–001). Hereafter referred to as the *Technical Development Document*, this document presents EPA's technical conclusions concerning the rule. EPA describes, among other things, the data collection activities in support of the rule, the wastewater treatment technology options, wastewater characterization, and the estimated costs to the industry.
- "*Economic Analysis of the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*" (EPA 821–R–03–002). Hereafter referred to as the *Economic Analysis*, this document presents the methodology employed to assess economic impacts of the final rule and the results of the analysis.
- "*Cost Methodology for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*" (EPA 821–R–03–004). Hereafter referred to as the *Cost Support Document*, this document presents the methodology employed to estimate costs that will be borne by CAFOs to comply with the requirements of the final rule.
- "*Environmental and Economic Benefit Analysis of the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*" (EPA 821–R–03–003). Hereafter referred to as the *Benefits Analysis*, this document presents the methodologies and results of analyses used to assess environmental impacts of the final rule.
- "*Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*" (EPA 821–R–01–002). Hereafter referred to as the *Environmental Assessment*, this document illustrates the environmental impacts associated with animal agriculture.
- "*Information Collection Request for Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Limitations Guidelines for Concentrated Animal Feeding Operations*" (EPA ICR No. 1989–02). Hereafter referred to as the *ICR*, this document presents estimates of the labor and capital costs associated with the recordkeeping and reporting requirements of the final rule.

I. Background Information

A. What Is the Context for This Rule?

Nationally, there are an estimated 1.3 million farms with livestock. About 238,000 of these farms are considered animal feeding operations (AFOs)—agriculture enterprises where animals are kept and raised in confinement. AFOs annually produce more than 500 million tons of animal manure that, when improperly managed, can pose substantial risks to the environment and public health. EPA and the United States Department of Agriculture (USDA) are committed to a comprehensive national approach to ensure that manure and wastewater from AFOs are properly managed. EPA and USDA are relying on a comprehensive suite of voluntary programs (*e.g.* technical assistance, training, funding, and outreach) and regulatory programs to ensure that AFOs establish appropriate site-specific comprehensive nutrient management plans (CNMPs) that will protect the environment and public health. Today's rule is a part of this suite of actions. It ensures that the largest of these operations, CAFOs, are required to develop and implement a nutrient management plan as a condition of an NPDES permit. The requirement in this rule to develop and implement a nutrient management plan can generally be fulfilled by developing and implementing a CNMP.

Congress passed the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." (33 U.S.C. 1251(a)). The Clean Water Act establishes a comprehensive program for protecting our Nation's waters. Among its core provisions, the Act prohibits the discharge of pollutants from a point source to waters of the United States except as authorized by an NPDES permit. The Clean Water Act also requires EPA to establish national technology-based effluent limitations guidelines and standards (ELGs) for different categories of sources. Section 502 of the Clean Water Act specifically defines the term "point source" to include CAFOs. In 1974 and 1976, EPA promulgated regulations that established ELGs for large feedlots (CAFOs) and established permitting regulations for CAFOs. Today's final rule revises the more than 25-year old requirements that apply to CAFOs. This regulatory action, which applies primarily to the largest CAFOs, is an important component of the overall effort to ensure effective management of manure.

Focusing EPA's regulatory program on the largest operations, which present the greatest potential risk to water quality, is consistent with the *Unified National Strategy for Animal Feeding Operations* jointly developed by EPA and USDA (USEPA/USDA, March 1999). The *Strategy* specifies that the vast majority of operations that confine animals are and will continue to be addressed through locally focused voluntary programs. The Strategy defines a national objective for all AFOs to develop CNMPs to minimize impacts on water quality and public health from AFOs. The vast majority (estimated to be about 95%) of these CNMPs will be developed under voluntary programs. The requirement in today's rule that the largest of these operations develop and implement a nutrient management plan is consistent with the objective of the Strategy.

B. Why Is EPA Revising the Existing Effluent Guidelines and NPDES Regulations for CAFOs?

Despite more than 25 years of regulation of CAFOs, reports of discharge and runoff of manure and manure nutrients from these operations persist. Although these conditions are in part due to inadequate compliance with and enforcement of existing regulations, EPA believes that the regulations themselves also need revision. The final regulations being announced today will reduce discharges that impair water quality by strengthening the permitting requirements and performance standards for CAFOs. These changes are

expected to mitigate future water quality impairment and the associated human health and ecological risks by reducing pollutant discharges from facilities that confine a large number of animals in a single location.

EPA's revisions to the existing regulations also address the changes that have occurred in the animal production industries in the United States since the development of the existing regulations. The continued trend toward fewer but larger operations, coupled with greater emphasis on more intensive production methods and specialization, is concentrating more manure nutrients and other animal waste constituents within some geographic areas. These large operations often do not have sufficient land to effectively use the manure as fertilizer. Furthermore, there is limited land acreage near the CAFO to effectively use the manure. This trend has coincided with increased reports of large-scale discharges from CAFOs, as well as continued runoff that is contributing to the significant increase in nutrients and resulting impairment of many U.S. water bodies.

Finally, EPA's revisions to the existing regulations will make the regulations more effective for the purpose of protecting or restoring water quality. The revisions will also make the regulations easier to understand and better clarify the conditions under which an AFO is a CAFO and, therefore, subject to the regulatory requirements of today's final regulations.

C. What Are the Environmental and Human Health Concerns Associated With Improper Management of Manure and Wastewater at CAFOs?

This section provides a brief summary of the environmental and human health concerns associated with the improper management of manure and wastewater at CAFOs. It is intended to provide the necessary context for discussions in subsequent sections of this preamble. Information is provided on the amount of manure generated by animal agriculture and the areas of the country where the amount of manure generated by these operations is considered excess at the farm and county levels as defined in analyses by USDA. This information is critical to framing the action EPA is taking today. A detailed discussion of the environmental and human health impacts is presented in Section VII of this preamble, entitled Environmental Benefits of the Final Rule.

Livestock and poultry manure, if not properly handled and managed by the CAFO, can contribute pollutants to the environment and pose a risk to human and ecological health. EPA's administrative record for this final rule includes estimates of the amount of manure and excess nutrients generated each year by CAFOs and provides information on the types of pollutants known to be present in animal manure and wastewater. The administrative record also documents the potential environmental problems associated with CAFOs, based on States reporting water quality impairment attributable to agricultural and animal production, survey data that show human and ecological health risks associated with these pollutants, and documented cases linking these risks to the discharge and runoff of pollutants from livestock and poultry facilities. More information is provided in the 2001 proposed rule (66 FR 2972–2974 and 66 FR 2976–2984) and other support documents referenced in the proposal and in the administrative record for this final rule. The administrative record contains information on the scientific and technical literature, as well as available survey and monitoring data, to corroborate the Agency's findings.

1. How Do the Amounts of Animal Manure Compare to Human Waste?

USDA estimates that operations that confine livestock and poultry animals generate about 500 million tons of manure annually (as excreted). This compares to EPA estimates of about 150 million tons (wet weight) of human sanitary waste produced annually in the United States, assuming a U.S. population of 285 million and an average waste generation of about 0.518 tons per person per year. By this estimate, all confined animals generate 3 times more raw waste than is generated by humans in the U.S. As a result of today's action, EPA is regulating close to 60 percent of all manure generated by operations that confine animals. Of the estimated amount of nutrients generated by these operations that is in excess of cropland needs, EPA's regulation will account for nearly 70 percent of manure generated by these operations.

2. What Are "Excess Manure Nutrients" and Why Are They an Indication of Environmental Concern?

An analysis developed by USDA provides a means to consider the potential environmental risk from confined livestock and poultry manure based on the amount of "excess" manure nutrients generated by CAFOs. USDA defines "excess manure nutrients" on a confined livestock farm as manure nutrient production that exceeds the capacity of the crop to assimilate the nutrients. USDA's analysis of *1997 Census of Agriculture* data indicates that a considerable portion of the manure nutrients generated at larger animal production facilities exceeds the crop nutrient needs, both at the farm and local county levels. Given consolidation trends in the industry toward larger-sized operations that tend to have less available land on which to spread manure, the amount of excess manure nutrients being produced has been rising.

Among the principal reasons for the farm-level excess of nutrients generated is inadequate land for utilizing manure. USDA data show that the amount of nutrients, and the amount of excess nutrients, produced by confined animal operations rose about 20 percent from 1982 to 1997. During that same period, cropland and pastureland controlled by these farms declined from an average of 3.6 acres in 1982 to 2.2 acres per 1,000 pounds live weight of animals in 1997. The combination of these factors has contributed to an increase in the amount of excess nutrients produced at these operations. Larger-sized operations with 1,000 or more animals exceeding 1,000 pounds accounted for the largest share of excess nutrients in 1997. Roughly 60 percent of the nitrogen and 70 percent of the phosphorus generated by these operations must be transported off-site.

By sector, USDA estimates that operations that confine poultry account for the majority of on-farm excess nitrogen and phosphorus. Poultry operations account for nearly one-half of the total recoverable nitrogen, but on-farm use is able to absorb less than 10 percent of that amount. In 1997 poultry operations accounted for about two-thirds of the total excess on-farm nitrogen. About half of the estimated on-farm excess phosphorus was generated by poultry. This is attributable to not only the limited land area for manure application but also the generally higher nutrient content of poultry manure compared to the manure of most other farm animals, as reported in the scientific literature. Dairies and hog operations are the other dominant livestock types shown to contribute to excess on-farm nutrients, particularly phosphorus.

The regions of the United States that show the largest increase in excess nutrients between 1982 and 1997 are the Southeast and the Mid-Atlantic. The excess amounts are mostly the result of the number and concentration of large poultry and hog operations in those regions. These operations generate high nutrient concentrations and often have the smallest land area per animal unit for manure application in the United States.

USDA's analysis also indicates which counties have the potential for excess manure nutrients defined as manure nutrients produced in a county in excess of the assimilative capacity of crop and pastureland in that county. (The analysis includes counties that have nutrient levels that exceed the assimilative capacity for all of the crop and pastureland in the county, as well as those counties where half of the county's total nitrogen or phosphorus could be provided by manure from confined animal operations.) The counties with potential excess manure nitrogen totaled 165 counties across the United States in 1997; the counties with potential excess manure phosphorus totaled 374 counties. The areas of particular concern for potential county-level excess manure nutrients are in North Carolina, Georgia, Alabama, Mississippi, Arkansas, California, Maryland, Delaware, Pennsylvania, Virginia, and Washington. If current trends in the livestock and poultry industry continue, more manure will be produced in areas without the physical capacity to agronomically use all the nutrients contained in that manure.

USDA's analysis is reported in "Confined Animal Production and Manure Nutrients" (Agriculture Information Bulletin 771) and also in "Confined Animal Production Poses Manure Management Problems" in the September 2001 issue of USDA's *Agricultural Outlook*. Both are available at USDA's Web site at *http://www.ers.usda.gov/*. Additional documentation on how this analysis was conducted is in USDA's "Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States," December 2000, available at *http://www.nhq.nrcs.usda.gov/land/pubs/manntr.html*. These documents are also available in the administrative record for today's final rule (*i.e.* docket number W–00–27).

3. What Pollutants Are Present in Animal Manure and Wastewater?

Pollutants most commonly associated with animal waste include nutrients (including ammonia), organic matter, solids, pathogens, and odorous compounds. Animal waste can also be a source of salts and various trace elements (including metals), as well as pesticides, antibiotics, and hormones. These pollutants can be released into the environment through discharge or runoff if manure and wastewater are not properly handled and managed.

4. How Do These Pollutants Reach Surface Water?

Pollutants in animal waste and manure can enter the environment through a number of pathways. These include surface runoff and erosion, overflows from lagoons, spills and other dry-weather discharges, leaching into soil and ground water, and volatilization of compounds (*e.g.*, ammonia) and subsequent redeposition on the landscape. As documented in the administrative record, pollutants from animal manure and wastewater can be released from an operation's animal confinement area, treatment and storage lagoons, and manure stockpiles, and from cropland where manure is often land-applied.

5. How Is Water Quality Impaired by Animal Manure and Wastewater?

Agricultural operations, including CAFOs, now account for a significant share of the remaining water pollution problems in the United States, as reported in the *National Water Quality Inventory: 2000 Report* (hereafter the *"2000 Inventory"*). This report, prepared every 2 years under Section 305(b) of the Clean Water Act, summarizes States' reports of impairment to their water bodies and the suspected sources of those impairments. A more comprehensive discussion of the results of the *2000 Inventory* is included in Section VII of this preamble.

EPA's *2000 Inventory* data indicate that the agricultural sector including crop production, pasture and range grazing, concentrated and confined animal feeding operations, and aquaculture is the leading contributor of pollutants to identified water quality impairments in the Nation's rivers and streams. This sector is also the leading contributor in the nation's lakes, ponds, and reservoirs. Agriculture is also identified as the fifth leading contributor to identified water quality impairments in the nation's estuaries. The inventory does not allow a comprehensive breakout of water quality impairments attributable to CAFOs, but EPA's data show that water quality concerns tend to be greatest in regions where crops are intensively cultivated and where livestock operations are concentrated.

The leading pollutants impairing surface water quality in the United States as identified in the 2000 survey data include nutrients, pathogens, sediment/siltation, and oxygen depleting substances. These pollutants can originate from a variety of sources, including the animal production industry.

The *2000 Inventory* provides a general indication of national surface water quality. While concerns have sometimes been raised about the comparability and consistency of these data across States, the report highlights in a general way the magnitude of water quality impairment from agriculture and the relative contribution compared to other sources. Moreover, the findings of this report are consistent with other reports and studies conducted by government and independent researchers that identify CAFOs as an important contributor of surface water pollution, as summarized in the administrative record for this rulemaking.

6. What Ecological and Human Health Impacts Have Been Caused by CAFO Manure and Wastewater?

Among the reported environmental problems associated with animal manure are surface water (*e.g.*, lakes, streams, rivers, and reservoirs) and ground water quality degradation, adverse effects on estuarine water quality and resources in coastal areas and effects on soil and air quality. The scientific literature, which spans more than 30 years, documents how this degradation can contribute to increased risk to aquatic and wildlife ecosystems; an example is the large number of fish kills in recent years. Human and livestock animal health can also be affected by excessive nitrate levels in drinking water and exposure to waterborne human pathogens and other pollutants in manure. The administrative record provides more detailed information on the scientific and technical research to support these findings.

Section VII of this document provides additional information concerning the adverse impacts of pollutants associated with manure in surface water. Both ecological and human health impacts are addressed.

D. What Are the Roles of the Key Entities Involved in the Final Rule?

EPA recognizes the role of many interested parties in the development of and, ultimately, the successful implementation of this final rule. To the greatest extent possible, EPA has attempted to strike a reasonable balance among the many interests. A short summary of their broad roles is provided below.

1. CAFOs

Entities that are defined or designated as CAFOs have clear and binding legal obligations under this regulation. In general, all CAFOs have a mandatory duty to apply for an NPDES permit and

must comply with the technology and water quality-based limitations in the permit as defined by the permitting authority. Only CAFOs that have successfully demonstrated no potential to discharge may avoid a permit. Each permitted CAFO must also develop and implement a site-specific nutrient management plan. EPA fully expects that a CNMP that is properly developed and implemented, consistent with USDA guidance, will satisfy the nutrient management requirements of this rule.

2. States

The States, including their environmental, agriculture, and conservation agencies, have the key leadership role in implementing programs to ensure that AFOs take the important steps needed to implement sound management practices that protect water quality. State regulatory agencies will play a central role in implementing today's final rule while supporting the voluntary efforts of other State programs and agencies.

3. EPA

EPA's statutory obligation is to establish national regulations that protect and restore the chemical, physical, and biological integrity of the Nation's waters. EPA has undertaken an extensive outreach process to promote understanding of the science, policy, and economic issues surrounding animal agriculture. The Agency will continue to work effectively with the varied interest groups to ensure effective implementation, compliance assistance, and enforcement of these regulations.

4. USDA

USDA is EPA's partner in working collaboratively to ensure that USDA's voluntary programs and EPA's regulatory programs complement each other to support effective nutrient management by AFOs. EPA and USDA will continue to coordinate the development and implementation of tools to support agriculture, in ways that respect the different roles of the two agencies.

5. Other Stakeholders

A host of other entities, such as research and educational institutions, soil and water conservation districts, watershed groups, and many others, can contribute to the use of sound agricultural practices and protection of water quality. The private sector plays an important role in ensuring that CAFOs have the tools and expertise available to protect water quality while enhancing production and remaining profitable. For example, the private sector in partnership with educational institutions and other stakeholders can explore innovative technologies for the management and utilization of animal manure and provide the needed expertise to support development of sound, site-specific, and technically based nutrient management plans.

6. The Public

The public has had, and continues to demonstrate, a keen interest in many aspects of animal agriculture. This final rule establishes obligations for CAFOs to protect water quality and affirms the public's role and involvement throughout the regulatory program.

E. What Principles Have Guided EPA's Decisions Embodied in This Rule?

EPA has considered the implementation of the existing regulations which are more than 25 years old, changes in the industry, the extensive comments on the proposed rule and supplemental notices of data availability, and countless studies, reports, and data in developing this final rule. At the same time, EPA has tried to embody some important principles throughout the final rule. The Agency strives to ensure its rules are based on sound science and economics, promote emerging technologies, and protect watersheds. In addition, the following principles have guided this rulemaking:

Simplicity and Clarity

EPA has tried to make this final rule as simple and easy to understand as possible. This rule provides a clear understanding of who is covered and what they are expected to do.

Emphasis on Large CAFOs

This rule focuses on the operations that pose the greatest risk to water quality. These operations are predominantly large CAFOs and some smaller CAFOs that pose a high risk to water quality.

Flexibility for States

This rule establishes a strong and consistent national expectation for CAFOs, yet provides flexibility for States to address site-specific situations.

Sound Nutrient Management Planning

This rule embodies the goal of developing site-specific nutrient management plans to ensure that animal manure is used consistent with proper agriculture practices that protect water quality.

F. What Are the Major Elements of This Final Rule? Where Do I Find the Specific Requirements?

This section provides a very brief summary of the major elements of this final rule and a brief index on where each of the requirements is located in the final regulations. The regulations for the NPDES permit program are in Part 122 of Title 40 of the Code of Federal Regulations. These NPDES regulations include requirements that apply to all point sources, including CAFOs. The national effluent limitations guidelines for CAFOs are in Part 412 of Title 40 of the Code of Federal Regulations. This summary is not a replacement for the actual regulations.

1. NPDES Regulations for CAFOs

Overall, this final rule maintains many of the basic features and the overall structure of the 1976 NPDES regulations with some important exceptions. First, all CAFOs have a mandatory duty to apply for an NPDES permit, which removes the ambiguity of whether a facility needs an NPDES permit, even if it discharges only in the event of a large storm. In the event that a Large CAFO has no potential to discharge, today's rule provides a process for the CAFO to make such a demonstration in lieu of obtaining a permit. The second significant change is that large poultry operations are covered, regardless of the type of waste disposal system used or whether the litter is managed in wet or dry form.

Third, under this final rule, all CAFOs covered by an NPDES permit are required to develop and implement a nutrient management plan. The plan would identify practices necessary to implement the ELG and any other requirements in the permit and would include requirements to land apply manure, litter, and process wastewater consistent with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients.

2. Effluent Limitations Guidelines Requirements for CAFOs

a. Existing sources. The final ELGs published today will continue to apply to only Large CAFOs, historically referred to as operations with 1,000 or more animal units, although the requirements for existing sources and new sources are different for certain animal sectors. In the case of existing sources, the ELGs will continue to prohibit the discharge of manure and other process wastewater pollutants, except for allowing the discharge of process wastewater whenever rainfall events cause an overflow from a facility designed, constructed, and operated to contain all process wastewaters plus the runoff from a 25-year, 24-hour rainfall event. In addition, the ELGs that require land application at the CAFO must be at rates that minimize phosphorus and nitrogen transport from the field to surface waters in compliance with technical standards for nutrient management established by the Director. The ELGs also establish certain best management practice (BMP) requirements that apply to the production and land application areas.

b. New sources. For new large beef and dairy operations, the ELGs establish production area requirements that are the same as those for existing sources. In the case of large swine, veal, and poultry operations that are new sources, a new zero discharge standard is established. The rule also clarifies that where waste management and storage facilities are designed, constructed, operated and maintained to contain all manure, litter and process wastewater, including the runoff and direct precipitation from a 100-year, 24-hour rainfall event, and is operated in accordance with certain other requirements, this will satisfy the new standard. Land application requirements for both groups are identical to those established for existing sources.

Table 1.1 provides an annotated summary of the key elements of these final regulations as well as the specific regulatory citation for each change. The chart is intended only to provide a summary and roadmap to the regulations and is not a definitive description of all regulatory requirements. Table 1.2 provides a summary of the time frames for the implementation and complying with the requirements of today's rulemaking.

TABLE 1.1.—REGULATORY SUMMARY

Topic	Regulatory cite (40 CFR)
Definitions	
Animal Feeding Operation (AFO)	122.23(b)(1)
Concentrated Animal Feeding Operation (CAFO)	122.23(b)(2)
Production Area	122.23(b)(8)/412.2(h)
Land Application Area	122.23(b)(3)/412.2(e)
Large CAFOs	122.23(b)(4)
Manure	122.23(b)(5)
Medium CAFOs	122.23(b)(6)
Process Wastewater	122.23(b)(7)/412.2(d)
Overflow	412.2(g)
10-year, 24-hour and 25-year, 24-hour storm	412.2(i)
Setback	412.4(b)(1)
Vegetated buffer	412.4(b)(2)
Multi-year phosphorus application	412.4(b)(3)
Who Needs an NPDES Permit?	
Designated CAFOs	122.23(c)
Duty to apply	122.23(d)
Land application discharges from a CAFO are subject to NPDES requirements	122.23(e)
No Potential to Discharge determinations	122.23(f)
When Must CAFOs Apply for Coverage Under an NPDES Permit?	
Sources covered under prior regulations	122.23(g)(1)
Newly covered CAFOs	122.23(g)(2)
New sources and new dischargers	122.23(g)(3) and (4)
Designated CAFOs	122.23(g)(5)
How Do CAFOs Apply for an NPDES Permit?	
Permit application requirements—Individual or general permits	122.21(i)(1) and 122.28(b)(2)(ii)
What Is Required in NPDES Permits Issued to CAFOs?	
Effluent limitations	122.42(e)(1)
Requirements for CAFOs subject to the ELGs (Part 412):	
Subpart C—Dairy and Beef Cattle Other Than Veal	412.30
Subpart C—Dairy and Beef Cattle Other Than Veal: Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).	412.31
Subpart C—Dairy and Beef Cattle Other Than Veal: Effluent limitations attainable by the application of the best control technology for conventional pollutants (BCT).	412.32
Subpart C—Dairy and Beef Cattle Other Than Veal: Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).	412.33
Subpart C—Dairy and Beef Cattle Other Than Veal: New source performance standards (NSPS)	412.35
Subpart D—Swine, Poultry, and Veal	412.40
Subpart D—Swine, Poultry, and Veal: Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).	412.43
Subpart D—Swine, Poultry, and Veal: Effluent limitations attainable by the application of the best control technology for conventional pollutants (BCT).	412.44

TABLE 1.1.—REGULATORY SUMMARY—Continued

Topic	Regulatory cite (40 CFR)
Subpart D—Swine, Poultry, and Veal: Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).	412.45
Subpart D—Swine, Poultry, and Veal New source performance standards (NSPS)	412.46
Subparts C and D—Required Land Application Best Management Practices	412.4(c)
Subparts C and D—Inspection and Record Keeping Requirements	412.37 and 412.47
Additional NPDES CAFO permit requirements:	
Nutrient management plan development and Implementation	122.42(e)(1)
Record-keeping	122.42(e)(2)
Transfer of manure	122.42(e)(3)
Annual reporting requirement	122.42(e)(4)

TABLE 1.2.—CONSOLIDATED TIME LINE FOR IMPLEMENTING TODAY'S RULEMAKING

	Time Frame
Milestone:	
Effective date of regulation	April 14, 2003.
Effective date of Effluent Guideline requirements for the production area applicable to Large CAFOs.	June 12, 2003.
Effective date of Effluent Guideline requirements for the land application area applicable to Large CAFOs.	By December 31, 2006.
Effective date for all CAFOs to develop and implement nutrient management plans.	By December 31, 2006, except for Large CAFOs that are new sources, by date of commencing operations.
Duty to Apply:	
Operations defined as CAFOs prior to April 14, 2003	Must have applied by the date required in 40 CFR 122.21(c).
Operations defined as CAFOs as of April 14, 2003, and that were not defined as CAFOs prior to that date.	As specified by the permitting authority, but no later than April 13, 2006.
Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.	(a) Newly constructed operations: 180 days prior to the time the CAFO commences operation. (b) Other operations (e.g., increase in number of animals): As soon as possible but no later than 90 days after becoming defined as a CAFO, except that, if the operational change that causes the operation to be defined as a CAFO would not have caused it to be defined as a CAFO prior to April 13, 2003, the operation must apply no later than April 13, 2006 or 90 days after becoming defined as a CAFO, whichever is later.
New sources	180 days prior to the time the CAFO commences operation.
Designated CAFOs	90 days after receiving notice of designation.
State Program Revision:	
No statutory changes needed to revise NPDES Program	April 12, 2004.
Statutory changes needed to revise NPDES Program	April 13, 2005.

II. What Events Have Led to This Rule?

The revisions to the National Pollutant Discharge Elimination System (NPDES) and Effluent Limitation Guidelines Programs specified in this final rule are focused on those livestock and poultry operations that are defined or designated as CAFOs. CAFOs are defined as point sources under the Clean Water Act. Following is a brief historical context of key regulatory, legal, and policy actions which have collectively led to today's action.

A. The Clean Water Act

Congress passed the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. 1251(a)). The Clean Water Act establishes a comprehensive program for protecting and restoring our Nation's waters. Among its core provisions, the Clean Water Act prohibits the discharge of pollutants from a point source to waters of the United States except as authorized by an NPDES permit. The Clean Water Act establishes the NPDES permit program to authorize and regulate the discharges of pollutants to waters of the United States. EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR part 122. The Clean Water Act also provides for the development of technology-based and water quality-based effluent limitations that are implemented through NPDES permits to control discharges of pollutants.

1. The National Pollutant Discharge Elimination System (NPDES) Permit Program

Under the NPDES permit program, all point sources that discharge pollutants to waters of the United States must apply for an NPDES permit and may discharge pollutants only in compliance with the terms of that permit. Such permits must include any nationally established, technology-based effluent discharge limitations (effluent guidelines—discussed below, in subsection II.A.2). In the absence of an applicable national effluent guideline, NPDES permit writers may establish technology-based requirements as determined by the permitting authority on a case-by-case basis, based on their "best professional judgment" (BPJ). Water quality-based effluent requirements are also included in permits where technology-based requirements are not sufficient to ensure compliance with State water quality standards or where required to implement a Total Maximum Daily Load (TMDL). For information on TMDLs see section IX.A.2 of this preamble.

Technology- and water quality-based requirements may be in the form of numeric effluent limitations or in the form of specific BMPs or other non-numeric effluent limitations and standards. In addition, NPDES permits normally include reporting, record-keeping, and other requirements and standard conditions (conditions that apply to all NPDES permits, such as the duty to properly operate and maintain equipment and treatment systems).

NPDES permits may be issued by EPA or a State, Territory, or Tribe authorized by EPA to implement the NPDES program. Currently, 45 States and the Virgin Islands are authorized to administer the NPDES program. This means that most CAFOs will obtain NPDES permits from State governments, not from EPA. Alaska, Arizona, the District of Columbia, Idaho, Massachusetts, New Hampshire, New Mexico, and Puerto Rico and other territories are not currently authorized to implement the NPDES program. In addition, Oklahoma, although authorized to administer the NPDES program, does not have CAFO regulatory authority. No Tribe is currently authorized to implement the NPDES program. This means that CAFOs located in the above-named jurisdictions or in Indian Country will obtain their NPDES permits from EPA.

An NPDES permit may be either an individual permit tailored for a single facility or a general permit applicable to multiple facilities. Before an individual permit is issued, the owner or operator must submit a permit application with facility-specific information to the permitting authority, which reviews the information and prepares a draft permit. The permitting authority prepares a fact sheet explaining the draft permit and publishes the draft permit and fact sheet for public review and comment. Following the permitting authority's consideration of public comments, a final permit is issued. Specific procedural requirements apply to the modification, revocation and reissuance, and termination of an NPDES permit. NPDES permits are subject to a maximum 5-year term and may be renewed when their term expires.

General NPDES permits are available to address categories of discharges that involve similar operations with similar wastes. Once a general permit is drafted, it is published for public review and comment accompanied by a fact sheet that explains the permit. Following EPA's or the State permitting authority's consideration of public comments, a final general permit is issued. The general permit specifies the type or category of facilities that may obtain coverage under the permit. To gain permit coverage, facilities generally must submit a "notice of intent" (NOI) to be covered under the general permit. Both general permits and individual permits are used to implement the same pollution control standards.

2. Effluent Limitations Guidelines and Standards

Effluent limitations guidelines and standards ("effluent guidelines" or "ELGs") are national regulations that establish limitations on the discharge of pollutants by industrial category and subcategory. For each category and subcategory guidelines address three classes of pollutants: (1) Conventional pollutants (*i.e.*, total suspended solids (TSS), oil and grease, biochemical oxygen demand (BOD), fecal coliform bacteria, and pH); (2) toxic pollutants (*e.g.*, toxic metals such as lead and zinc; toxic organic pollutants such as benzene); and (3) non-conventional pollutants (*e.g.*, phosphorus). These technology-based requirements are subsequently incorporated into NPDES permits. The Clean Water Act provides that effluent guidelines may include numeric or non-numeric limitations. Non-numeric limitations are usually in the form of BMPs. The effluent guidelines are based on the degree of control that can be achieved using various levels of pollution control technology, as outlined below.

a. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the Clean Water Act. In the guidelines for an industry category, EPA defines BPT effluent limits for conventional, toxic, and non-conventional pollutants. Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, EPA may require higher levels of control than those currently in place in an industrial category if the Agency determines that the technology can be practically applied. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (33 U.S.C. 304(b)(1)(B)).

b. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the Clean Water Act. In general, BAT represents the best existing economically achievable performance of direct discharging facilities in the industrial category or subcategory. The factors considered in assessing BAT are the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded to these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, the achievability is determined on the basis of the total cost to the industrial subcategory and the overall effect of the rule on the industry's financial health. BAT requirements may be based on effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, BAT may be based on technology transferred from a different subcategory within an industry or from another industrial category. BAT may be based on process changes or internal controls, even when these technologies are not common industry practice.

c. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the Clean Water Act. The 1977 amendments to the Clean Water Act required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. In addition to other factors specified in Section 304(b)(4)(B), the Clean Water Act requires that EPA establish BCT requirements after considering a two-part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974). Section 304(a)(4) designates the following as conventional pollutants: BOD, TSS, fecal coliform bacteria, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

d. New Source Performance Standards (NSPS)—Section 306 of the Clean Water Act. New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install

the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS represents the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed by the Clean Water Act to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

3. Effluent Guidelines Planning Process—Section 304(m) Requirements

Section 304(m) of the Clean Water Act, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards and (2) promulgating new effluent guidelines. On May 28, 1998, EPA published a Notice of Proposed Effluent Guidelines Plan (63 FR 102) that established schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was "Feedlots" (swine, poultry, dairy and beef cattle).

a. Clean Water Act Section 304(m) consent decree. The Natural Resources Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of section 304(m) and other statutory authorities that require promulgation of effluent guidelines (*NRDC et al. v. Whitman*, Civ. No. 89–2980 (D.D.C.)). Under the terms of the consent decree in that case, as amended, EPA agreed, among other things, to propose effluent guidelines for swine, poultry, beef and dairy portions of the animal industry by December 15, 2000, and to take final action by December 15, 2002.

B. Existing Clean Water Act Requirements Applicable to CAFOs

EPA's regulation of CAFOs dates to the 1970s. The existing NPDES CAFO regulations were issued on March 18, 1976 (41 FR 11458). The existing national effluent limitations guidelines and standards for feedlots were issued on February 14, 1974 (39 FR 5704). The discussion below provides an overview of the scope and requirements imposed under the existing NPDES CAFO regulations and feedlot effluent guidelines. It also explains the relationship of these two regulations, and it briefly summarizes other federal and State regulations that potentially affect AFOs.

1. Scope and Requirements of the 1976 NPDES Regulations for CAFOs

This section provides a simplified summary of the previous NPDES regulation to provide context for today's action. The previous NPDES CAFO regulations promulgated in 1976, determined which AFOs were defined or could be designated as CAFOs under the Clean Water Act and therefore subject to NPDES permit regulations. Under those regulations, CAFOs were defined as AFOs that confined more than 1,000 animal units (AU). In addition, an AFO that confined 300 to 1,000 AU was defined as a CAFO if it discharged pollutants through a man-made device or if pollutants were discharged to waters of the United States that ran through the facility or otherwise came into contact with the confined animals. AFOs were not defined as CAFOs, however, if they discharged only during a 25-year, 24-hour storm. Under the 1976 NPDES CAFO regulations, the permitting authority could also designate any AFO a CAFO, including those with fewer than 300 AU, if it met the discharge criteria specified above and was determined to be a significant contributor of pollution.

2. Scope and Requirements of the 1974 Feedlot Effluent Guidelines

This section provides a simplified summary of the previous effluent guidelines to provide context for today's action. EPA uses the effluent guidelines to establish national requirements limiting discharges to waters of the United States. EPA established the effluent guidelines for feedlots in 1974 based on the best available technology that was economically achievable for the industry. The guidelines were applicable to those facilities in specified sectors (or subcategories) with as many as or more than 1,000 AU that were to be issued an NPDES permit. The 1974 effluent guidelines did not allow discharges of pollutants from CAFOs into the Nation's waters except when a chronic or catastrophic storm caused an overflow from a facility that had been designed, constructed, and operated to contain manure, process wastewater and runoff resulting from a 25-year, 24-hour storm. For permitted facilities where the ELGs did not apply (those with fewer than 1,000 AU), technology-based discharge limits were established using the permit writer's best professional judgment.

C. USDA–EPA Unified National Strategy for Animal Feeding Operations

In 1998, EPA and USDA jointly developed a unified national strategy to minimize the water quality and public health impacts of AFOs. EPA and USDA jointly published a draft *Unified National Strategy for Animal Feeding Operations* on September 21, 1998. After sponsoring and participating in 11 public listening sessions and considering public comments on the draft strategy, a final *Unified National Strategy for Animal Feeding Operations* was published on March 9, 1999. A copy of the *Strategy* is available on the EPA and USDA web sites. The *Unified National Strategy for Animal Feeding Operations* established national goals and performance expectations for all AFOs. The general goal is for AFO owners and operators to take actions to minimize water pollution from confinement facilities and land where manure is applied. To accomplish this goal, the *Strategy* established a national performance expectation that all AFOs should develop and implement technically sound, economically feasible, and site-specific CNMPs to minimize impacts on water quality and public health.

The *Unified National Strategy for Animal Feeding Operations* identified seven strategic issues that should be addressed to better resolve concerns associated with AFOs. These are (1) fostering CNMP development and implementation; (2) accelerating voluntary, incentive-based programs; (3) implementing and improving the existing regulatory program; (4) coordinating research, technical innovation, compliance assistance, and technology transfer; (5) encouraging industry leadership; (6) increasing data coordination; and (7) establishing better performance measures and greater accountability. Today's action addresses the third strategic issue— implementing and improving the existing regulatory program.

III. How Was This Final Rule Developed?

The preamble to the proposed rule presented a detailed discussion of the history of EPA actions addressing CAFOs, including issuance of the original NPDES CAFO regulations and effluent limitations guidelines (ELGs) for feedlots, development of the EPA/State Feedlot Workgroup Report (1993), outreach dialogues with representatives of the pork industry and poultry industry, EPA AFO strategy development, and collaboration with USDA on the development of the

Unified National Strategy for Animal Feeding Operations (66 FR 2965). The discussion below briefly summarizes the key events that have been part of the process of preparing today's final rule.

A. Small Business Advocacy Review (SBAR) Panel

To address small business concerns, EPA's Small Business Advocacy Chairperson convened a Small Business Advocacy Review (SBAR) Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Participants included representatives of EPA, the Small Business Administration (SBA) and the Office of Management and Budget (OMB). "Small Entity Representatives" (SERs), who advised the Panel, included small business livestock and poultry producers as well as representatives of the major commodity and agricultural trade associations. Information on the Panel's proceedings and recommendations is in the April 7, 2000, *Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule on National Pollutant Discharge Elimination System (NPDES) and Effluent Limitations Guideline (Effluent Guidelines) Regulations for Concentrated Animal Feeding Operations* (hereinafter called the "*Panel Report*"), along with other supporting documentation included as part of the Panel process. The *Panel Report* details the process that EPA followed, provides meeting summaries, and offers other information, including the composition of both the panel and the SERs.

The report also includes the Panel's recommendations on specific issues concerning the NPDES CAFO regulation and ELGs. Key panel recommendations were to: streamline reporting requirements; minimize burden of any required certifications and testing requirements; and carefully weigh the costs and benefits of removing the 25-year, 24-hour storm exemption for operations with less than 1,000 animal units and of modifying the specific criteria for defining medium-sized AFOs as CAFOs. The entire SBAR report is available in the administrative record for this rulemaking, which is available for public review.

B. Proposed Rule

On January 12, 2001, EPA published a proposal to revise and update two regulations to ensure that manure, wastewater, and other process waters generated by CAFOs do not impair water quality (66 FR 2959). These two regulations were (1) the NPDES provisions that define which operations are CAFOs and establish permit requirements and (2) the ELGs, or effluent guidelines, for feedlots (beef, dairy, swine and poultry subcategories), which establish the technology-based effluent discharge standards for CAFOs. Key proposed changes that would affect the CAFO definition included options for establishing either two or three size categories of CAFOs, the thresholds for different size operations defined as CAFOs, criteria applicable to medium operations, inclusion of dry chicken operations that meet specified size thresholds, and potential revisions to the designation criteria and process. In addition, the proposed rule also presented options for co-permitting entities that exercise substantial operational control over a CAFO, ensuring appropriate public participation in permitting, and encouraging proper management of excess manure that is transferred off-site. Key proposed changes to the ELGs for feedlots included updating the guidelines based on current practices and technologies, the increased use of BMPs, and application of technology options to both the CAFO production area and the land application area (including nutrient management planning).

C. 2001 Notice of Data Availability

On November 21, 2001, EPA published a Notice of Data Availability (hereinafter referred to as the "2001 Notice") that presented a summary of new data and information submitted to EPA during the public comment period on the proposed CAFO regulations, including data received from USDA (66 FR 58556). The notice had four main components: (1) Discussion of new data and changes EPA was considering to refine its cost and economics model; (2) discussion of new data and changes EPA was considering to refine its nutrient loading and benefits analysis; (3) new data and changes EPA was considering to the proposed NPDES permit program regulations; and (4) new data and changes EPA was considering to the proposed ELG regulations. EPA's 2001 Notice also discussed options that the Agency was considering to enhance flexibility for the use of State NPDES and non-NPDES CAFO programs, including implementation of environmental management systems (EMS).

D. 2002 Notice of Data Availability

On July 23, 2002, EPA published a second Notice of Data Availability (hereinafter referred to as the "2002 Notice") that presented a summary of new data and information submitted to EPA during the public comment period on the proposed CAFO regulations, including data received after publication of the 2001 Notice. The 2002 Notice had three main components: (1) A discussion of alternative regulatory thresholds for chicken operations using dry litter management practices; (2) the potential creation of alternative performance standards to encourage CAFOs to implement new technologies; and (3) financial data and changes EPA was considering to refine its economic analysis models. The 2002 Notice made these data and potential changes available for public review and comment.

E. Public Comments

A general summary of public comments is included in the discussions of the various issues addressed in this preamble. EPA has prepared a *Comment Response Document* that includes responses to comments submitted for the proposed rule and both notices. All of the comments including supporting documents submitted on today's action are available for public review in the administrative record for this final rule which is filed under docket number W–00–27.

The proposed regulations were published in the **Federal Register** on January 12, 2001 (66 FR 2959), and the comment period closed on July 30, 2001. EPA received approximately 11,000 comments in total on the proposed rule. EPA received comments from a multitude of sources, including private citizens, facility owners and operators, environmental groups, local and State agencies, members of the academic community, banks and insurance companies, congressional representatives, and representatives (including trade associations) from each of the animal sectors (beef, dairy, swine, poultry, horses, ducks, turkey, and others). The comments are addressed in the *Comment Response Document* prepared by EPA in support of today's final rule.

The comment period for the 2001 Notice was from November 21, 2001, through January 15, 2002 (66 FR 58556). Approximately 300 comments were received on the 2001 Notice. Responses to each of these comments are also included in the *Comment Response Document*.

EPA prepared and published in the **Federal Register** a second notice (2002 Notice) during the development of today's final rule. The comment period

for the 2002 Notice was from July 23, 2002, through August 22, 2002. Approximately 150 comments were received on the 2002 Notice. Responses to each of these comments are also included in the *Comment Response Document.*

In addition to the public comments received on the proposal and the two Notices, approximately 200 additional comments on the two Notices were received from various stakeholders. Responses to each of these comments are included in the *Comment Response Document.*

F. Public Outreach

In support of both the proposed rule and today's final rule, EPA has conducted extensive outreach activities. These activities are documented in the administrative record for the final rule, which is available for public review under docket number W–00–27. The discussion that follows is focused on key outreach activities that EPA has conducted.

1. Pre-Proposal Activities

During the development of the proposed regulations for CAFOs, EPA met with many members of the stakeholder community through meetings, conferences, and site visits. EPA convened a SBAR Panel to address small entity concerns, provided outreach materials to and met with several national organizations representing State and local governments, and conducted approximately 110 site visits to collect information on waste management practices at livestock and poultry operations. EPA also established a workgroup that included representatives from USDA, seven States, EPA regions, and EPA headquarters. More detailed information on EPA's public outreach efforts was published in section XII of the **Federal Register** notice for the proposed rule (66 FR 3120).

2. Post-Proposal Activities

a. Public meetings and stakeholder outreach. Following publication of the proposed rulemaking, EPA conducted nine public outreach meetings on the proposed CAFO regulations. In addition, EPA continued to meet with representatives of various stakeholder groups, including representatives from various industry trade associations and environmental groups, as well as researchers from select land grant universities and research organizations. The land grant university staff consulted on this rulemaking included researchers at the Food and Agricultural Policy Research Institute (FAPRI) at the University of Missouri and researchers at The National Center for Manure and Animal Waste Management, composed of researchers from 16 land grant universities supported by USDA-Cooperative State Research, Education and Extension Service (CSREES). EPA has also consulted with State and local governments and several national associations representing State governments. A more detailed account of these efforts is provided in the 2001 Notice (66 FR 58557–58558).

b. USDA–EPA Workgroup meetings. In April 2001 USDA initiated a process to review the proposed revisions to EPA's CAFO rule and identify issues and concerns posed by the rule. USDA identified 15 specific areas of concern and a number of overarching issues. As a follow-up to this process, USDA and EPA's Office of Water initiated monthly meetings on issues of significance for agriculture and the environment, specifically water quality. The goal was to foster greater communication between the two agencies to provide better information to the public and policy makers on areas of mutual concern related to agriculture and water quality, and to facilitate informed decisions on approaches and needs to address the key agriculture and environment issues. In July 2001 EPA and USDA convened a joint workgroup to address the issues identified by the two agencies and begin to develop options for EPA leadership to consider in developing the final rule. The collaboration fostered increased understanding on the part of both agencies with respect to the issues, data, and analyses used to finalize today's CAFO rule.

c. Other outreach activities. As part of the development of this rulemaking, EPA used several additional means to provide outreach to stakeholders. Most notably, EPA has managed a number of Web sites that post information related to these regulations. Supporting documents for the proposed rule were posted to these sites, including the *Technical Development Document, Economic Analysis, Environmental Assessment, Environmental and Economic Benefit Analysis* of the proposed CAFO regulations, and cost methodology reports and guidance related to Permit Nutrient Plans. These are available at *http://www.epa.gov/guide/cafo/.* Other outreach materials are available at *http://www.epa.gov/npdes/caforule* and include brochures describing the proposed CAFO regulations, a compendium of AFO-related State program information, and various materials related to permitting issues to facilitate an understanding of the NPDES program and development of comments on the proposed rule by the public.

IV. CAFO Roles and Responsibilities

A. Who Is Affected by This Rule?

1. What Is an AFO?

In today's final rule, EPA is retaining the definition of an animal feeding operation (AFO) as it was defined in the 1976 regulation at 40 CFR 122.23(b)(1). An animal feeding operation means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (1) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (**Note:** EPA is making a typographical correction to the AFO definition. The comma between vegetation and forage growth had been inadvertently dropped from the 1976 final rule in subsequent printings of the **Federal Register**).

What did EPA propose? In the January 12, 2001, proposed rule, the Agency proposed to change the definition of an AFO, intending to eliminate ambiguities about which facilities and operations would be defined as AFOs in certain circumstances where the animals strip the ground of vegetation. The proposal stated that "* * * Animals are not considered to be stabled or confined when they are in areas such as pastures or rangeland that sustain crops or forage growth during the entire time that animals are present * * *."

What were the key comments? While it was EPA's intent to clarify the existing AFO definition, the proposed new regulatory language created substantial confusion. For example, many commenters from the beef cattle industry and others strongly believed that the proposed language would include pastures, rangeland, and unconfined wintering operations as AFOs and, in essence, would bring the entire beef industry under the regulations, none of which was intended. These commenters strongly recommended that the existing regulations should be kept intact to avoid new ambiguity. The view of commenters from the dairy sector and the Sustainable Agriculture Coalition was that the exclusion of pastureland and rangeland from the AFO definition was clear in the proposed rule and they found the proposed language acceptable. Other livestock sectors and environmental groups generally did not comment extensively on this issue.

Rationale. Based on public comment and further consideration, EPA concludes that the proposal to revise the AFO definition to exclude areas "that sustain crops or forage growth during the entire time that animals are present" created further concern and confusion, rather than clarification. EPA's intent was to make a minor change to the AFO definition to clarify how it would apply to wintering/grazing operations and to incidental vegetation that may exist in the area of confinement. EPA is retaining the existing definition for animal feeding operation because of the widespread familiarity that exists with the existing definition and because EPA's desired clarification can be achieved through preamble language rather than a change to the rule.

In an attempt to address some of the public comments and confusion created by the proposal, EPA is clarifying three topics in this preamble. First, EPA is reiterating that true pasture and rangeland operations are not considered AFOs, because operations are not AFOs where the animals are in areas such as pastures, croplands or rangelands that sustain crops or forage growth during the normal growing season. In some pasture based operations, animals may freely wander in and out of particular areas for food or shelter; this is not considered confinement. However, pasture and grazing-based operations may also have confinement areas (*e.g.* feedlots, barns, pens) that may qualify as an AFO. Second, incidental vegetation in a clear area of confinement, such as a feedlot or pen, would not exclude an operation from meeting the definition of an AFO. Third, in the case of a winter feedlot, the "no vegetation" criterion in the AFO definition is meant to be evaluated during the winter, when the animals are confined. Therefore, use of a winter feedlot to grow crops or other vegetation during periods of the year when animals are not confined would not exclude the feedlot from meeting the definition of an AFO. Note that animals must be stabled or confined for at least 45 days out of any 12 month period to qualify the operation as an AFO. EPA assumes that AFOs and permitting authorities will use common sense and sound judgement in applying this definition.

2. What Is a CAFO?

In today's final rule, EPA is retaining the existing structure for determining which AFOs are CAFOs, as well as retaining the existing conditions for defining Medium CAFOs. EPA is also retaining the existing conditions for designation of AFOs as CAFOs. Large facilities are considered CAFOs if they fall within the size range provided in § 123.23(b)(4). Medium AFOs are defined as CAFOs only if they fall within the size range provided in § 122.23(b)(6) and they meet one of the two specific criteria governing the method of discharge: (1) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (2) pollutants are discharged directly into waters of the United States that originate outside the facility and pass over, across, or through the facility or otherwise come into direct contact with the confined animals. Small facilities are CAFOs only if they are so designated by EPA or the State NPDES permitting authority. Refer to Table 4.1 in section IV.A.3 of this preamble for explicit definitions of Large, Medium, and Small CAFOs in each animal sector. Also, as proposed, EPA is no longer using the term "animal units" to define size classes in this final rule. Instead, EPA is setting thresholds by specifying the actual number of animals. EPA believes that using the number of animals at an operation to define thresholds more simply illustrates which operations are regulated. Using the number of animals also eliminates any confusion caused by the difference between EPA's and USDA's definitions of the term "animal unit."

What did EPA propose? EPA co-proposed two alternative ways to structure the NPDES regulations for defining which AFOs are CAFOs. The first alternative was a "two-tier structure," and the second was a "three-tier structure." In the first alternative, EPA proposed that all AFOs with the equivalent of 500 animal units or more would be defined as CAFOs, and those with fewer than the equivalent of 500 animal units would be CAFOs only if they are designated as such by EPA or the State NPDES permitting authority. In the second alternative, EPA proposed to retain a three-tier structure whereby all large operations are CAFOs, medium operations are CAFOs if they meet specified risk-of-discharge criteria, and small operations are CAFOs only if they are so designated by EPA or the State NPDES permitting authority. EPA also proposed to significantly revise the conditions whereby a medium AFO could be defined as a CAFO. Finally, EPA proposed to require all medium AFOs to certify to the permitting authority that they do not meet any of the conditions for being defined a CAFO.

What were the key comments? The predominance of public comment did not support the two-tier structure, as proposed, whereby all operations with the equivalent of 500 animal units or more would be CAFOs. Many commenters opposed such a low threshold as imposing unnecessary permitting and engineering costs on small operations and on operations that do not discharge, and would very likely cause many small operators to go out of business. Opponents also indicated that the proposal did not recognize geographic differences such as arid regions. Many of those same comments were, however, supportive of a two-tier structure if the regulatory threshold was set at the equivalent of 1,000 animal units or even 750 animal units, leaving discretion for the permitting authority to address all operations below that threshold. Conversely, some commenters indicated that 500 animal units was too high, because it did not address the pollution from smaller operations in their region. There was some preference for a two-tier structure that regulates all facilities above the equivalent of 300 AU, believing that all those operations pose risk to the environment and should be regulated as CAFOs.

Many commenters, including many State agencies, preferred to retain the existing three-tier structure because so many of their existing programs are based on the three-tier structure established in the 1976 regulations. They believe it would be very disruptive to their ongoing programs to have to change the basic structure of the regulations that define who is a CAFO.

Additionally, there was little support among the commenters for the three-tier structure, as proposed, with the new set of broad conditions that were proposed for redefining which of the medium facilities would be CAFOs. Many commenters believed that the existing conditions were adequate for addressing risk of discharge from medium facilities, and that the proposed new conditions would be an unnecessary expansion of who would be considered CAFOs. Further, many commenters indicated that the revised conditions did not add clarity and would not improve implementation. For example, many commenters indicated that one of the proposed conditions, whether an AFO was within 100 feet of waters of the United States, did not take into account facilities that are implementing BMPs to control runoff. The condition for evidence of discharge in the last five years did not take into account operations that may have instituted new practices or corrected problems to prevent future discharges, especially in light of the fact that, in the last two or three years, there has been heightened

awareness of the impacts of AFOs and renewed effort by States to implement both regulatory and non-regulatory AFO programs. The condition defining a facility as a CAFO if it transferred excess manure to off-site recipients also did not correlate closely enough to whether a facility had a risk of discharging, especially in arid regions.

The SBAR Panel did not make a recommendation specifically on the structure of the CAFO regulations. The Panel noted that some States already have effective permitting programs for CAFOs in place and recommended that EPA consider the impact of any new requirements on existing State programs and include in the proposed rule sufficient flexibility to accommodate such programs where they meet the minimum requirements of federal NPDES regulations. The Panel further recommended that EPA continue to consult with States in an effort to promote compatibility between federal and State programs.

Rationale. The Clean Water Act specifically lists CAFOs as point sources, and EPA has broad discretion under the Act to define that term. In the proposal, EPA noted a range of different factors that it considered relevant to determining which operations should be defined as CAFOs.

EPA has concluded that a three-tier structure is preferable to a two-tier structure because it is better suited to identifying those operations that, through a combination of size, concentration and potential to discharge, are more industrial and point source-like in nature and pose the greatest risk to water quality and therefore are appropriate to define as CAFOs. Another important reason to retain a three-tier structure is that changing to a two-tier structure at this point in time would be unnecessarily disruptive in the number of States that currently have three-tier CAFO programs in place. Many of these States have had these programs in place for over two decades, and they have many years of practical experience in operating their programs and issuing permits based on this existing definition. Changing to a two-tier structure not only would be disruptive to the States that are carrying out existing programs but would also create an unnecessary need to build a new understanding of the regulations in the CAFO industry. For these reasons, a three-tier structure is preferable even though it does not have the simplicity of a two-tier structure.

Establishing a two-tier structure at a low threshold, *e.g.*, at either 300 animal units or 500 animal units would be highly burdensome to permit authorities and AFO operators. While some parts of the country experience problems from concentrations of small facilities, this would impose significant costs on the regulated community and permit authorities in all parts of the country, including those areas that do not experience these problems. On the other hand, while it might seem desirable to provide flexibility for States with effective non-NPDES programs by establishing a threshold on the higher end, say at 750 or 1,000 animal units, using such a high threshold across-the-board would apply equally in States that do not have fully developed and effective programs to address water quality risks posed by operations with fewer than 1,000 animal units. This could lead to a definition that would not appropriately identify those operations that are large and concentrated enough and pose enough of a risk of discharge (taking into account the absence of effective State non-NPDES programs in some areas) that they should be identified as CAFOs. A high threshold might also undercut the ability of some permit authorities to address water quality problems associated with smaller facilities, especially in States that have restrictions on imposing CAFO NPDES requirements that are stricter than federal requirements.

Although the final rule retains the three-tier structure for defining who is a CAFO, after consideration of the public comments, EPA has not adopted the new set of conditions that were proposed for defining which medium operations are CAFOs. Instead, EPA is retaining the two conditions in the existing regulations. After careful consideration of the comments, EPA agrees with those commenters who believe that the new set of conditions proposed under the three-tier structure for determining when a medium facility is a CAFO would not necessarily have improved the clarity, effectiveness or enforceability of the regulations, which were the Agency's intended goals. The proposed new conditions were an attempt to better identify those medium operations that are of sufficient size and concentration and pose enough of a risk of discharge that they should be defined as CAFOs. While these conditions may have been environmentally protective on the whole, they were not finely targeted enough to identify the operations that meet these criteria; instead, EPA now believes that they would have caused substantial permitting burden and imposed costs on essentially all operations above 300 animal units.

For example, many commenters indicated that one of the proposed conditions, whether an AFO was within 100 feet of waters of the Unites States, did not take into account facilities that are implementing BMPs to control runoff. The condition for evidence of discharge in the last five years did not take into account operations that may have instituted new practices or corrected problems to prevent future discharges, especially in light of the fact that, in the last two or three years, there has been heightened awareness of the impacts of AFOs and renewed effort by States to implement both regulatory and non-regulatory AFO programs. The conditions defining a facility as a CAFO if it did not have a permit nutrient plan or if it transferred excess manure to off-site recipients also did not correlate closely enough to whether a facility had a risk of discharging, especially in arid regions.

EPA has concluded that retaining the existing two criteria provide an appropriate basis for defining which medium-size operations are CAFOs, while maintaining flexibility for States to tailor NPDES and non-NPDES programs for more comprehensive risk factors that may vary from State to State and even watershed to watershed.

3. What Types of Animals Are Covered by Today's Rule?

Today's revisions to the CAFO effluent guidelines address beef, dairy, swine, veal calves and poultry operations and do not change the effluent guidelines regulations for sheep, horses or ducks. On the other hand, today's final revisions to the NPDES permit regulations generally apply to all CAFOs regardless of species, and specifically address the size thresholds for defining which beef, dairy, swine, veal calves, poultry, sheep, horses, and duck operations are CAFOs. The following sections discuss changes made to the size thresholds for defining which operations in these sectors are CAFOs.

Although the following discussion focuses primarily on circumstances where an AFO is defined as a CAFO, it is important to note that small and medium-size AFOs can be designated as CAFOs by EPA or an NPDES authorized State. Refer to section IV.A.7 and 8 for a discussion of designation.

The thresholds for defining Large, Medium, and Small CAFOs in each sector are summarized in Table 4.1 below.

TABLE 4.1.—SUMMARY OF CAFO SIZE THRESHOLDS FOR ALL SECTORS

Sector	Large	Medium [1]	Small [2]
Cattle or cow/calf pairs	1,000 or more	300–999	Less than 300.
Mature dairy cattle	700 or more	200–699	Less than 200.
Veal calves	1,000 or more	300–999	Less than 300.
Swine (weighing over 55 pounds)	2,500 or more	750–2,499	Less than 750.
Swine (weighing less than 55 pounds)	10,000 or more	3,000–9,999	Less than 3,000.
Horses	500 or more	150–499	Less than 150
Sheep or lambs	10,000 or more	3,000–9,999	Less than 3,000.
Turkeys	55,000 or more	16,500–54,999	Less than 16,500.
Laying hens or broilers (liquid manure handling system).	30,000 or more	9,000–29,999	Less than 9,000.
Chickens other than laying hens (other than a liquid manure handling system).	125,000 or more	37,500–124,999	Less than 37,500.
Laying hens (other than a liquid manure handling system).	82,000 or more	25,000–81,999	Less than 25,000.
Ducks (other than a liquid manure handling system)	30,000 or more	10,000–29,999	Less than 10,000.
Ducks (liquid manure handling system)	5,000 or more	1,500–4,999	Less than 1,500.

[1] Must also meet one of two "method of discharge" criteria to be defined as a CAFO or may be designated.
[2] Never a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis.

A facility confining any other animal type that is not explicitly mentioned in the NPDES and effluent guidelines regulations is still subject to NPDES permitting requirements if it meets the definition of an AFO and if the permitting authority designates it as a CAFO. *See* § 122.23(c) for a discussion of designation.

a. *Chickens.* In today's action, EPA is revising the CAFO definition to include chicken operations that use manure handling systems other than liquid manure handling systems (*see* 40 CFR Part 122, Appendix B of the 1976 regulation). EPA has also eliminated the condition for continuous overflow watering system from the CAFO definition. This action establishes that dry litter chicken operations of specified sizes will need to seek coverage under an NPDES CAFO permit. EPA is establishing size thresholds for dry chicken operations based on the phosphorus content of the manure, and is therefore distinguishing between broiler and layer operations. EPA is not changing the existing threshold for chicken operations using liquid manure systems. The size thresholds for large, medium, and small chicken operations under today's regulations are as follows:

	Large	Medium	Small
Chickens other than laying hens (other than liquid manure handling).	125,000 or more	37,500–124,999	<37,500
Laying hens (other than liquid manure handling)	82,000 or more	25,000–81,999	<25,000
Laying hens or broilers (liquid manure handling)	30,000 or more	9,000–29,999	< 9,000

What did EPA propose? EPA proposed to regulate chicken operations regardless of the type of manure handling or watering system used. EPA proposed to include broilers and layers in a single category with one threshold number. Under the co-proposed three-tier structure, EPA proposed to adopt a Large CAFO threshold of 100,000 chickens and a Medium CAFO threshold of 30,000 chickens. In the co-proposed two-tier structure, the regulatory threshold would have been 50,000 chickens. Subsequently, EPA published a notice of data availability (FR 67, 48099, July 23, 2002) in which the Agency considered whether, under a three-tier structure, the threshold for large broiler operations should remain as proposed at 100,000 broilers, changed to 125,000 broilers, or established at some other threshold. EPA also considered whether the large threshold for laying hens should remain as proposed at 100,000 laying hens, or be changed to 82,000 laying hens. EPA also noted that the thresholds in the 1976 CAFO regulations for chicken operations with liquid manure handling systems or continuous overflow watering systems may remain unchanged in the final rule.

What were the key comments? Comments from poultry industry representatives and owners and operators of poultry operations stated that dry operations (those not using continuous flow watering systems) should not be defined as CAFOs under the NPDES regulations because the absence of water or other liquids would not result in pollutants being discharged through a discrete point source. Some industry representatives asserted that dry and wet manure handling pose different levels of risk and, therefore, EPA's CAFO regulations should distinguish between wet and dry poultry operations. A few commenters indicated that they felt that EPA was proposing to regulate dry poultry operations to address insufficient storage issues at some operations. These commenters believed that properly stored poultry litter would not result in a discharge. In addition some commenters disagreed with EPA's statement that many poultry operations did not have sufficient land to apply litter at agronomic rates. Commenters from this sector also felt that voluntary programs were working to address the excess manure issue. A more limited number of commenters indicated that the inclusion of dry poultry operations should be limited to what they described as very large operations. Commenters defined very large as ranging from more than six houses to more than 10,000 animal units (*e.g.*, 300,000 birds).

Many other commenters supported regulating poultry operations regardless of the watering systems they use because that approach provides equity across all animal sectors and addresses potential risk to water quality posed by dry operations. Some commenters

further stated that EPA should use manure phosphorus as the basis for setting thresholds for such operations.

Rationale. Why is EPA including chicken operations with dry manure and litter handling systems in today's regulations? For some time, poultry operators have been replacing continuous overflow watering systems by more efficient water conserving methods (*e.g.*, on-demand watering). Given this trend, liquid manure systems are used at approximately 25 percent of layer operations and are not generally used at broiler operations. As a result, most chicken operations are not covered by the existing regulations.

For the reasons articulated in the proposed rulemaking (66 FR 3010), and after carefully reviewing the public comments, EPA has determined that including chicken operations with dry manure handling systems is justified to protect water quality. EPA believes that dry poultry operations continue to contaminate surface water and ground water because of rainfall coming in contact with dry manure and litter that is stacked in exposed areas; accidental spills such as from egg-wash facilities and drinking water lines; improper handling of large numbers of mortalities; and improper land application of litter. In addition, included within the coverage of the CAFO regulations are other sectors that use dry technologies, such as ducks, turkeys, and certain swine, beef, and dairy operations using total confinement housing. Inclusion of dry poultry operations is consistent with the regulation of both wet and dry operations within these other animal sectors.

Why were the size thresholds selected? EPA believes that it is appropriate to distinguish between potential risk of discharge posed by wet versus dry handling systems, using the pollutant of most concern, *i.e.* phosphorus, for establishing regulatory thresholds. For nitrogen and BOD, the levels for broilers would result in similar thresholds varying only by 1% to 3%. EPA agrees with commenters who asserted that EPA should determine the chicken threshold values by evaluating phosphorus content in the manure on an annual basis, which takes into account that phosphorus production does not continue during the periods of the year when no manure is generated (*i.e.*, clean out time between flocks when no broilers are present). Traditionally, layers were kept through one year of egg production and sold for meat at 18 to 20 months of age (*see* Section 4 of the *Technical Development Document*). Depending on the relative price of eggs to hens, it has become increasingly common to recycle layers through more than one year of production. Flock recycling consists of stopping the flock's egg production, allowing a suitable rest period, and then bringing the flock back into production. The entire process is known as "force-molting". Some producers now keep the birds through two or three complete cycles of egg production. Laying hens are now typically kept for 94 weeks of production. Since layers will continue to produce manure throughout the year the daily phosphorus levels were used in setting thresholds for laying hens. Therefore, EPA is establishing different thresholds based first on wet versus dry manure systems and second on the broad type of poultry, *e.g.*, chickens for meat (broilers) and chickens for eggs (layers) based on phosphorus content of manure generation.

b. Swine Nurseries and Heifer Operations. Today's rule regulates swine nurseries and heifer operations that are defined as CAFOs. Specifically, the Agency has adopted a Large CAFO threshold of 10,000 or more immature swine (*i.e.* weighing less than 55 pounds) and a Medium CAFO threshold of 3,000 to 9,999 immature swine. For heifers, EPA has adopted a Large CAFO threshold of 1,000 head or more and a Medium CAFO threshold of 300 to 999 head.

What did EPA propose? EPA is adopting what was proposed for these animal types in a three-tier structure.

What were the key comments? While a majority of commenters supported the inclusion of immature swine and dairy cattle in the proposed rule, a number of commenters opposed this change, and preferred to retain the exemption for immature animals. A number of commenters noted that many States already have programs at least as strict as the one EPA is proposing, and that States should be allowed the flexibility to determine if including operations with immature animals would improve water quality.

Rationale. Immature swine were not a concern in the past because they were usually part of operations that included mature animals and, therefore, their manure was included in the permit requirements of the CAFO. However, in recent years, these swine operations have become increasingly specialized, increasing the number of large, separate nurseries where only immature swine are raised.

Under the three-phase production pyramids used by most large swine operations, specialized farrowing operations that house only sows and piglets until weaned represent the first phase of raising swine. The weaned piglets are transferred to a nursery at a separate location until they reach about 55 to 60 pounds, at which time they are transferred to a grow-finish facility at another site. EPA's thresholds for swine weighing less than 55 lbs were established on the basis of the average phosphorus excreted from immature swine in comparison to the average phosphorus excreted from swine weighing more than 55 pounds. (Refer to the *Technical Development Document* for more details).

For dairies, immature heifers are often removed to a separate location until they reach maturity. EPA data indicate that some of these animals are confined, some are pastured, and some move back and forth between confinement and pasture. The previous CAFO definition considered only the mature milking cows in determining whether an operation was a CAFO and did not address operations that separately confine immature heifers. EPA believes that these separately confined heifer operations should be included in the regulatory definition of a CAFO because they may generate as much manure as a CAFO dairy given that the animals are maintained until fully grown, and they confine the animals in a manner very similar to CAFO beef feedlots.

EPA agrees that the number of immature animals kept in confinement with mature animals varies greatly and should not be the basis for determining whether an AFO is a CAFO. In situations where immature animals (*e.g.* heifers and swine) are confined with mature animals, the immature animals are not counted for purposes of determining whether an AFO is defined as a CAFO based on the number of mature animals. Once an AFO is defined as a CAFO, based on any of the threshold values provided in table 4.1, manure and process wastewater generated by all immature and mature animals in confinement would be subject to NPDES permit requirements.

c. Horses. Today's rule retains the animal number thresholds for defining which horse operations are CAFOs. AFOs with 500 or more horses are defined as Large CAFOs, AFOs with 150 to 499 horses are defined as Medium CAFOs under certain conditions (*see* § 122.23(b)(7)), and AFOs with fewer than 150 horses are Small CAFOs only if designated in accordance with § 122.23(c).

What did EPA propose? In the January, 2001 proposed rule, EPA did not consider changing the CAFO definition thresholds for horses. As a result of the comments and data received on the proposal, EPA considered in a subsequent Notice of Data Availability (66 FR 58556, November 21, 2001) two alternative options for revising the horse thresholds. One option would retain the existing regulatory threshold in a two-tier structure. For example, if the regulatory threshold was dropped to 500 AU, EPA would retain 500 horses as the 500 AU equivalent, and those with fewer than 500 horses would be CAFOs only if so designated on a case-by-case basis. EPA suggested this option because the Agency agreed with commenters that there was no need to increase regulation of this sector; by maintaining the status quo EPA would be neither increasing nor decreasing the regulated universe. In the second option, EPA would have set one horse equal to one beef cow thereby establish regulatory thresholds similar to those for beef operations. As a result, in a three-tier structure, Large horse CAFOs would have 1,000 animals or more, and Medium horse CAFOs would have 300–999 horses. EPA presented the second option after examining data submitted by industry that suggested that a 1,000 pound horse may generate similar manure as a 1,000 pound beef cow. However, because that data did not differentiate thoroughbred race horses (typically on high-energy feed which might alter manure composition) from other horses, EPA requested more definitive data to justify the second approach.

What were the key comments? A number of comments were submitted by horse industry associations and individual horse operations requesting that EPA not lower the threshold for horses, as the existing regulation was adequate. They further suggested that this rulemaking would be an opportunity to revisit the basis for the existing threshold, and requested that EPA change it to one horse being equal to one beef cattle, asserting that there is no scientific basis for making one horse equal to two beef cattle (which is how the existing regulation defines horse CAFOs). Industry representatives provided data on manure content to support their position, although they did not provide manure data specific to racehorses. The commenters also explained that the horse industry is fundamentally different in how it is organized and operated from the other sectors that focus on food production, and that this sector has not seen the kinds of changes (*e.g.*, expansion and consolidation) that EPA is seeking to address in today's rule. Further, they point out that most large racetracks are in urban areas and are currently subject to a variety of EPA-initiated and State-administered programs related to water pollution and storm water runoff control.

Some commenters requested that EPA not reduce the regulatory thresholds, and asked EPA to retain the ability of permit writers to use BPJ to establish site-specific BMPs. Industry representatives also asked the Agency to clarify that confinement pertains to stalls or similar structures in buildings and not to fenced areas, and that it does not include short visits to stalls for shoeing, veterinary evaluation, or related activities.

Rationale. It should be noted that the thresholds for the CAFO definition refer only to horse operations where animals are confined for 45 days (non-consecutive) over a 12 month period. Thus, to be considered a Large CAFO, the operation would need to confine 500 horses at one time for 45 days or longer in a 12-month period, and to be a Medium CAFO at least 150 horses would need to be confined for 45 days or longer in a 12-month period. The areas associated with confinement at horse facilities would constitute the production area, and would not include pastures and other unconfined areas. EPA notes the 1974 ELG for horses assumed the majority of horse CAFOs were racetracks. Although race tracks accounted for less than 0.1 percent of all horse operations today, race tracks still account for more than 96% of all horse operations with 500 horses or more. Boarding/training stables comprise the remaining few operations with 500 horses or more. Such operations would not be considered CAFOs unless all of the horses were kept in confinement (as opposed to pasture). Data suggests most horse operations confine their animals for short-term stabling or visits to stalls for shoeing, veterinary evaluation, or related activities. However, according to consultations with the American Horse Council, it is unlikely that these visits would involve a number of horses large enough to define the operation as a CAFO. For example, a ranch maintaining over 500 horses would typically have fewer than 100 stalls or stables (*i.e.* confinement areas). Therefore, those operations that confine enough horses for a long enough period to be defined as CAFOs are generally racetracks.

In the 1970s regulations, the Agency considered racetracks when originally determining the size of an operation that must comply with the effluent guidelines, and the records indicate the size of operation was based on the manure generated by thoroughbred racehorses. Based on some comments that EPA should re-evaluate the classification of horses by bodyweight or manure content, EPA collected more current manure characteristics data from ASAE, USDA, and based on this data presented alternative thresholds for horses in the *2001 NODA* (*see* 66 FR 225, page 58595). After reviewing the data, EPA generally agrees that the phosphorus content of horse manure is similar to that of a beef cow. However, as described above, the majority of horse CAFOs are racetracks, and the more general data on recreational and work horses is not comparable. The Agency also reviewed the data submitted by horse industry representatives and determined that this data also did not distinguish manure generated by racehorses with that of a recreational or farm horse, and thus EPA does not believe the record is sufficient to justify a change to the existing regulatory thresholds.

The effluent guideline, which is not being changed in today's final rulemaking, continues to be applicable to those horse operations confining 500 horses or more, including stables such as at racetrack operations. Other horse operations that may be defined or designated as CAFOs would continue to follow permit requirements based on the BPJ of the permitting authority.

d. Ducks. Today's final rulemaking revises the thresholds for defining whether a duck operation is a CAFO. The following thresholds apply to duck operations where the AFO uses other than a liquid manure handling system ("dry systems"): 30,000 or more ducks for a Large CAFO and 10,000 to 29,999 ducks for a Medium CAFO. For small operations with fewer than 10,000 ducks, EPA or the State permitting authority may designate them as a CAFO. For operations where the AFO uses a liquid manure handling system ("wet systems"), EPA is retaining the existing thresholds. That is, those with 5,000 or more ducks are considered Large CAFOs; those with 1,500 to 4,999 ducks may be Medium CAFOs (if the other conditions are met); and small operations with fewer than 1,500 ducks would become CAFOs only if designated in accordance with § 122.23(c).

What did EPA propose? In the January, 2001 proposed rule, EPA did not consider changing the existing animal unit equivalents for ducks. As a result of comments received on the proposal, EPA considered in a subsequent *2001 Notice of Data Availability (NODA)* (66 FR 58566, November 21, 2001) two alternative options for establishing thresholds for duck operations. One option would treat

dry systems similarly to chicken operations (*e.g.*, at the time of the *NODA*, EPA was considering 100,000 ducks would have constituted a Large CAFO). Another option would establish a Large CAFO threshold of 30,000 ducks based on the quantity and content of duck manure, using data and recommendations supplied by Purdue University. In all cases, the threshold for Large CAFOs with wet systems would remain at 5,000 ducks.

What were the key comments? A number of commenters on both the proposal and the *NODA* from duck industry associations, individual duck operations and some States requested that EPA change the threshold in the CAFO definition for ducks. They urged EPA to consider revising the duck thresholds to a higher number. By retaining the 5,000 duck threshold, they noted, essentially all duck operations in the United States would be required to apply for an NPDES permit. Commenters noted that management practices have changed significantly since the 5,000 duck threshold was established. The management practices currently used to raise ducks are similar to chicken operations. Commenters claim that these dry facilities should be regulated like chicken operations, basing the threshold either on phosphorus manure levels or using a threshold similar to chickens. State commenters agree that the threshold for these types of facilities should be raised but suggest retaining the existing threshold for wet systems.

Rationale. The existing NPDES regulation and the effluent guideline make no distinction between dry and wet systems. The duck thresholds were originally established in the 1970s and were based primarily on ducks being raised outside on ponds or with a stream running through an open lot. These types of facilities have been referred to as "wet" lot operations. Today's regulation refers to them as AFOs that use liquid manure handling systems. This preamble also refers to them as "wet systems." For purposes of today's rulemaking, these include duck operations that use ponds, wet lots, or buildings with lagoons.

EPA agrees with commenters that the management practices more typically used today to raise ducks are similar to chicken operations where the birds are confined to a building on solid bedding or in a building with a concrete pit underneath it where manure collects. These types of facilities have been referred to as "dry lot" operations. Where these practices are utilized, and are not combined with liquid manure handling systems, such as lagoons, they present much less risk of a discharge than do wet systems. Today's regulation refers to them as AFOs that use "other than liquid manure handling systems." This preamble also refers to them as "dry systems."

After examining information concerning the current technologies of the duck industry, EPA concurs that it is appropriate to adjust the regulatory thresholds for dry systems, while retaining the existing threshold for wet systems. EPA is setting the Large CAFO threshold for duck operations with dry systems at 30,000 birds or more based on data produced by Purdue University and the American Society of Agriculture Engineers (ASAE), which are available in the administrative record. This threshold was calculated using phosphorus manure levels and assuming an approximate 3 duck to 1 chicken ratio. The medium size threshold is 10,000 to 29,999 ducks and the small threshold is less than 10,000 ducks. These thresholds were set at these levels based on the same 3 duck to 1 chicken ratio. Data on both layer and broiler chickens were averaged to obtain this ratio. This threshold is generally consistent with the thresholds adopted in current State programs, especially Indiana where the majority of the duck operations are located. This decision is also consistent with today's final decision on the chicken threshold, where EPA has established higher thresholds for layer operations using other than liquid manure handling systems than for layer operations using liquid manure handling systems.

e. Cow/Calf. In today's final rule, a beef cow/calf pair counts as one animal when temporarily confined in a pen, lot, barn, or stable. However, a cow/calf pair counts as two animals after the offspring are weaned.

What did EPA propose? The proposed rule did not discuss a convention to count cow/calf pairs. In response to comments from the beef industry, EPA described a convention in the November 2001 *NODA* to count a cow/calf pair as one animal for 120 days after the calf is weaned, after which they would be considered two animals.

What were the key comments? Comments on the proposal from organizations and individuals representing the beef sector indicated that they thought the proposal would alter the way mature and immature beef cow pairs are counted. They commented that if a cow/calf pair was counted as two animals, the proposed rule would have a significant impact on small beef operations that are largely pasture-based. Environmental organizations generally did not comment on this issue.

In comments on the 2001 Notice, States and industry commenters unanimously supported the proposal to explicitly count a cow/calf pair as one animal. Many commenters said that, in practice, producers think of the cow and calf as a single entity until weaning time when the young animal becomes physically separated and requires separate penning and housing, and suggested adopting this standard. Some commenters suggested other alternatives, such as counting a cow/calf pair as 1.2 animal units, or differentiating the AU equivalent based on the age of the calves (*e.g.*, up to two months old the cow/calf would be counted as one animal unit, from two to six months calves would be counted as 0.3, from six months to a year counted as 0.6, *etc.*)

Rationale. As described in the 2001 Notice, EPA has always assumed that cow/calf operations are typically pasture-based and would not normally fall within the coverage of the CAFO regulations. Such operations typically confine animals only temporarily for birthing, veterinary care, or other purposes. This temporary confinement may result in the operation being defined as an AFO, in which case it could in turn be defined as a CAFO should it meet certain conditions. However, it is not likely that this temporary confinement would involve enough animals to define the operation as a CAFO. EPA would like to make it clear that it is still not the Agency's intention to regulate pasture-based or rangeland operations. Counting a cow/calf pair as one animal is consistent with how EPA treats mother/offspring pairs housed together at the same location in other sectors (*e.g.*, dairy and swine).

After considering public comment, EPA determined that it was appropriate to consider a cow/calf pair as one animal until the calf is weaned, rather than to specify a particular time period after weaning, which would have entailed additional, potentially burdensome, record keeping requirements (*e.g.* date of weaning for each calf).

f. Eliminate the mixed animal calculation. With today's final rulemaking, EPA is eliminating the formula for calculating whether an AFO is a CAFO because of the accumulation of several different animal types in confinement at one facility. An AFO is defined as a CAFO only if the specific threshold for any one animal sector covered by today's final regulations is met. Once a given operation is defined as a CAFO, regardless of animal type, the regulations apply to all of the manure, litter, and wastewater generated by the operation. In the event that waste streams from multiple livestock species are co-mingled, and the regulatory requirements for each species are not the same, the permit must include the more stringent requirements.

What did EPA propose? EPA proposed to eliminate the mixed animal calculation.

What were the key comments? A number of comments were received concerning the elimination of the mixed animal calculation. Commenters opposed to the elimination of the calculation believe it is more protective of the environment to count all of the animals at an operation, in order to address the cumulative quantities of manure through the CAFO permit. Some commenters also claimed that eliminating the mixed animal calculation would create an opportunity for larger operations to avoid permitting by maintaining slightly fewer than the regulatory thresholds for several types of animals. Comments supporting EPA's proposal agreed that this change simplifies the regulation, provides relief to small farms, and focuses the regulation on the larger, more specialized facilities that tend to be more industrialized.

Rationale. As described in the proposed rulemaking (66 FR 3005) EPA is eliminating the mixed animal calculation for several reasons. First, this action simplifies the regulations. In addition, EPA's analysis indicates that the mixed animal calculation would have caused only a small fraction of the smaller AFOs to have been defined as CAFOs, so the Agency believes that this action does not materially change the scope of coverage of this regulation. To the extent that coverage is changed at all, it appropriately would be shifted away from smaller operations that tend to have more sustainable practices and sufficient crop land for land application of their manure nutrients. Should an AFO with mixed animals types be found to be a significant contributor of pollutants to waters of the United States, it could still be designated a CAFO in accordance with the designation provisions of this final rule.

4. Is My AFO a CAFO If It Discharges Only During Large Storm Events?

Today's final rule defines an operation as a CAFO regardless of whether the operation discharges only in the event of a large storm. In other words, today's final rule eliminates the 25-year, 24-hour storm permitting exemption for defining a CAFO. EPA notes, however, that the 25-year, 24-hour storm design criterion in the ELGs for large CAFOs is not being changed, except for new sources in the swine, veal, and poultry sectors (*see* preamble section IV.C.2)

What did EPA propose? EPA proposed to eliminate the 25-year, 24-hour storm event exemption from the definition of a CAFO.

What were the key comments? Comments from the animal agriculture industry were generally opposed to eliminating the permit exemption. Their position was that facilities that discharge only as a result of a storm event that exceeds a 25-year, 24-hour storm should not be covered by an NPDES permit. Environmental organizations and others supported the elimination of the exemption based on the position that it was not being used appropriately by the industry. States were split on whether to eliminate the exemption, depending largely on their current regulatory policy. Many commenters confused the proposed elimination of this exemption with consideration of the appropriate design standard for permitted facilities.

The SBAR Panel agreed that removing the 25-year, 24-hour exemption was generally appropriate for Large CAFOs because of the significant potential for environmental harm from Large CAFOs when the manure is not properly managed. The Panel also recognized that, under the terms of the proposal, eliminating the exemption would mean that some facilities would need to apply for a permit even though they have sufficient manure management and containment in place or, for some other reason, do not discharge except in a 25-year, 24-hour storm.

The Panel recommended that EPA consider reduced application requirements for small operators affected by the removal of the exemption. In the proposed rule EPA requested comment on whether to retain this exemption for small facilities as well as how many animals would be considered "small" for this purpose. The Agency carefully analyzed these issues during the development of this final rule.

Rationale. For the reasons stated in the proposal (66 FR 3006), and based on EPA's analysis of comments and other information, the Agency continues to believe that the 25-year, 24-hour storm permit exemption has created confusion and ambiguity that undermines the ability of permitting authorities to implement the CAFO regulations effectively. Eliminating this provision will: (1) Ensure that all Large CAFOs are appropriately permitted; (2) ensure through permitting that facilities are, in fact, properly designed, constructed, operated, and maintained to contain manure and the rainfall associated with a 25-year, 24-hour storm event or the revised standard for new sources in the swine, veal calf, and poultry sectors; (3) improve the ability of EPA and State permit authorities to monitor compliance; (4) ensure that facilities do not discharge pollutants from their production areas and that they land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, and process wastewater; and (5) achieve EPA's goals of simplifying the regulations, providing clarity to the regulated community, and improving the consistency of implementation.

The 25-year, 24-hour exemption was not applicable to operations that became CAFOs by designation. Since small AFOs can only become CAFOs by designation, the elimination of this exemption will not affect the universe of Small CAFOs (refer to section IV.A.7 for a discussion of designation).

Because EPA is not changing the criteria under which medium facilities are defined as CAFOs, the elimination of the 25-year, 24-hour storm permitting exemption is not expected to significantly affect the universe of Medium CAFOs either. EPA believes that at most medium facilities that meet the existing conditions for being defined as a CAFO, discharges would most likely occur not only in the 25-year, 24-hour storm but as a result of lesser storms as well. For example, a facility with a pipe or other man-made conveyance is likely to discharge to surface water in wet weather, or for that matter could potentially discharge even in dry weather. Similarly, a facility that has a stream or other water of the United States running through the production area meets the definition of a CAFO and is also likely to discharge in less than the 25-year, 24-hour storm. By using the existing criteria, the Agency does not believe that there will be a significant increase in the number of medium facilities defined as CAFOs. Medium facilities that meet these conditions are encouraged to take advantage of available technical support and eliminate the conditions that cause them to be defined as a CAFO.

Accordingly, EPA believes that the Agency has addressed the principal concerns raised by the SBAR Panel. In addition, the Agency has taken steps to reduce the amount of information

required as part of the permit application process, thereby addressing the other concern raised by the Panel.

In providing comments on the proposed rule, a number of commenters appear to have confused EPA's proposal to eliminate the 25-year, 24-hour storm event as a permit exemption with issues relating to the design standard for the effluent limitation guideline. In this final rule, the Agency is eliminating the use of the 25-year, 24-hour storm only for the purpose of determining who is required to be covered by an NPDES permit. The Agency is retaining the existing design standard for containment based on the 25-year, 24-hour storm event (except for new sources in certain animal sectors, as discussed elsewhere in this preamble).

The elimination in today's rule of the 25-year, 24-hour storm exemption from permitting is also compatible with today's requirement for all CAFOs to apply for a NPDES permit. In section IV.B.1 below, EPA explains the reasons for adopting a more comprehensive "duty to apply" today, including the unique characteristics of CAFOs and the zero discharge regulatory approach (except for large storm events) that applies to them, the historical experience showing the lack of permitting of Large CAFOs, and the need to simplify and clarify the applicability of the rule. Retaining the 25-year, 24-hour storm exemption from permitting would not be compatible with these reasons and indeed would perpetuate confusion over which operations are required to apply for a permit.

Having eliminated the 25-year, 24-hour storm exemption from permitting, today's rule nevertheless allows operations to avoid permitting if they can demonstrate that they truly have no potential to discharge (*see* section IV.B.2). However, operations that do have the potential to discharge, even if just in the 25-year, 24-hour storm, may not receive a determination of no potential to discharge.

5. How Are Land Application Discharges of Manure and Process Wastewaters at CAFOs Covered by This Rule?

Today's rule clarifies that runoff from the application of CAFO manure, litter, or process wastewaters to land that is under the control of a CAFO is a discharge from the CAFO and subject to NPDES permit requirements, except where it is an agricultural storm water discharge. All permits for CAFOs must contain terms and conditions on land application in order to ensure appropriate control of discharges that are not agricultural storm water.

What did EPA propose? EPA proposed to define an AFO to include both the animal production areas of the operation and any land areas under the control of the owner or operator on which manure and process wastewaters are applied. The definition of a CAFO is based on the AFO definition and therefore would have included the land application areas as well. Accordingly, a CAFO's permit would include requirements to control discharges from both its production area and its land application area.

What were the key comments? A number of commenters asserted that EPA lacks the authority to include permit requirements governing a CAFO's land application of manure and process wastewaters. They claim generally that the runoff from such land application is a nonpoint source discharge and therefore is not subject to NPDES requirements. In particular, they argue that because land application areas are not places where animals are concentrated or fed, there is no basis in the Act for including them in the definitions of AFO and CAFO. In addition, in their view, runoff of CAFO manure and process wastewaters from land application areas is excluded from the point source definition because it is "agricultural storm water." They believe that land application runoff is appropriately addressed only through nonpoint source, voluntary, incentive-based programs. Accordingly, these commenters objected to the proposal to include land application areas in the definition of an AFO and CAFO.

One commenter also stated that EPA's policy reasons for including land application areas in the AFO and CAFO definitions are not convincing. Excluding land application areas from the AFO and CAFO definitions, this commenter notes, does not necessarily mean that CAFO generated manure could be land applied without concern for the environment. For example, as a nonpoint source discharge, land application discharges would still be subject to State controls, the Clean Water Act nonpoint source program (section 319), and the TMDL program.

In contrast, certain other commenters indicated that there is a significant need to better address manure and related discharges from CAFO land application areas and therefore they agreed with the proposal to include the land application areas in the AFO/CAFO definitions. These commenters stated that this approach is consistent with recent court decisions and that addressing land application runoff is critical to ensuring water quality protection.

Rationale. EPA noted in the proposal that the runoff from land application of manure at CAFOs is a major route of pollutant discharges from CAFOs; that in some regions of the country, the amount of nutrients present in land-applied manure has the potential to exceed the nutrient needs of the crops; that areas exist of widespread phosphorus saturation of the soils; and that research shows a high correlation between areas with impaired lakes, streams and rivers due to nutrient enrichment and areas where there is dense livestock and poultry production.

EPA fundamentally disagrees with those commenters who asserted that the Agency lacks authority over land application discharges at CAFOs because this is an attempt to regulate nonpoint source pollution. Under the Clean Water Act, the Agency has broad discretion to determine what are point source discharges from CAFOs. EPA explained in the proposal why it is appropriate to clearly specify that land application discharges of manure and process wastewater from areas where CAFO manure and process wastewaters have been overapplied are discharges by the CAFO that are subject to NPDES requirements rather than being nonpoint source discharges. In brief, EPA stated in the proposal that the pipes and other manure-spreading equipment that convey CAFO wastes to the fields are an integral part of the CAFO, and so discharges from this equipment should be considered discharges from the CAFO. Further, land application areas are integral to CAFO operations, and there have been significant discharges in the past attributed to land application of CAFO wastes. The proposal noted in addition that defining CAFOs in this way is consistent with EPA's effluent limitations guidelines for other industries, which consider on-site waste treatment systems to be part of the production facilities in that the regulations restrict discharges from the total operation.

EPA believes that, in explicitly including CAFOs in the definition of a point source (CWA Sec. 502(14)), Congress intended that discharges of manure and process wastewater from a CAFO to waters of the U.S. should be regulated through the NPDES permit program. Since one important manner by which CAFOs may produce such discharges is to apply manure and process wastewater to land areas under their control, EPA believes that Congress must have intended discharges from a CAFO's land application area to be at least potentially included as

regulated point source discharges. However, Sec. 502 also includes a specific exclusion from the definition of a point source for "agricultural storm water discharges." EPA explains in the following section how it interprets these two statutory provisions in order to identify which discharges from a CAFO's land application area are agricultural storm water discharges and therefore are not point source discharges.

Because the runoff from land application of manure at CAFOs is a major route of pollutant discharges from CAFOs, and for the other reasons articulated above, EPA does not believe it is sufficient to rely on non-regulatory controls cited by one of the commenters, such as the CWA section 319 program, or State non-NPDES authorities.

While EPA is today making explicit in the regulations that a CAFO's land application of CAFO manure and process wastewaters is subject to NPDES requirements, the Agency is doing so through different regulatory language from what was proposed. EPA proposed to amend the AFO definition to include the land application areas at the facility as well as the animal production areas. Following the proposal, however, concerns were raised that this language could be misconstrued to mean that CAFO permits must include terms and conditions on any pollutants running off the operation's land application areas (for example, runoff of pesticides). This was not EPA's intent. The focus of this rulemaking is on the CAFO manure and process wastewaters that may be discharged by the CAFO. Therefore, EPA has chosen not to include the land application areas at an animal feeding operation within the definition of an AFO or CAFO in the final regulations. Instead, EPA has added section 122.23(e), entitled "Land application discharges from a CAFO are subject to NPDES requirements," which states as follows: "The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14)." This provision goes on to state that a discharge of manure or process wastewater from a CAFO's land application areas is an agricultural storm water discharge under certain conditions, as discussed in the next preamble section.

The Agency emphasizes that in today's amendments to the CAFO regulations, a CAFO's responsibility for land application discharges extends only to the CAFO's own land application areas, which includes areas at the CAFO itself or otherwise under the CAFO owner's or operator's control. Also, as noted, today's land application rule provisions apply only to the application of manure, litter, and process wastewaters at the CAFO, and not to other pollutants that may exist at the operation.

As explained above, EPA also believes that the final rules adopted today appropriately account for the exclusion of "agricultural storm water discharges" from the definition of a point source in the Clean Water Act. This subject is discussed in the following section.

6. How Is EPA Applying the Agricultural Storm Water Exemption With Respect to Land Application of CAFO Manure and Process Wastewaters?

EPA is clarifying in today's rule that discharges of manure, litter, and process wastewaters from the land application areas of a CAFO are agricultural storm water discharges where the manure or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater. Such practices, as specified in 122.42(e)(1) (vi)–(ix) must be included in all CAFO permits.

What did EPA propose? For purposes of land application of manure from an AFO or CAFO, EPA proposed to define the term "agricultural storm water discharge" as a discharge composed entirely of storm water, as defined in § 122.26(a)(13), from a land area upon which manure and/or wastewater has been applied in accordance with proper agricultural practices, including land application of manure or wastewater in accordance with either a nitrogen-based or, as required, a phosphorus-based manure application rate. Also, as noted, the proposed effluent guidelines included technology-based requirements for a CAFO's land application areas that were based on the CAFO's use of proper agricultural practices. (*See* 66 FR at 3029–32).

What were the key comments? A number of the commenters who claimed that EPA does not have authority to regulate land application at CAFOs focused on the exclusion for agricultural storm water discharges. In their view, under this exclusion, all runoff of manure, litter, or process wastewaters from a CAFO's crop fields is exempt from the NPDES program as agricultural storm water. In contrast, other commenters took the view that because of the Act's specific naming of CAFOs as point sources, none of the runoff from CAFO crop fields is entitled to the agricultural storm water exemption.

Rationale. The CWA states that the term "point source" does not include "agricultural storm water discharges" (section 502(14)). Nothing in the statutory language or legislative history indicates that Congress did not mean to include agricultural storm water discharges from a CAFO in this exclusion. EPA therefore believes that in order to interpret the inclusion of CAFOs as point sources and the agricultural storm water exclusion consistently, it is necessary to identify the conditions under which discharges from the land application area of a CAFO are point source discharges that are subject to NPDES permitting requirements and those under which they are agricultural storm water discharges and therefore are not point source discharges.

EPA has determined that it is appropriate to base the distinction between agricultural storm water discharges and regulated point source discharges of manure, litter, and process wastewater from a CAFO on whether or not the manure and process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater. The specific types of practices that EPA believes are needed to ensure this are specified in 122.42(e) (1)(vi)–(ix). Where such practices have been used, EPA believes it is reasonable to conclude that any remaining discharge is agricultural storm water. Conversely, where such practices have not been used, EPA believes it is reasonable to conclude that land application discharges of manure, litter, or process wastewater are not agricultural storm water but are discharges that Congress meant to subject to NPDES permitting requirements when it explicitly included CAFOs in the definition of a point source.

When manure or process wastewater is applied in accordance with practices designed to ensure appropriate agricultural utilization of nutrients, it is a beneficial agricultural production input. This fulfills an important agricultural purpose, namely the fertilization of crops, and it does so in a way that minimizes the potential for a subsequent discharge of pollutants to waters of the U.S. EPA recognizes that even when the manure, litter, or process wastewater is land applied in accordance with practices designed to

ensure appropriate agricultural utilization of nutrients, some runoff of nutrients may occur during rainfall events, but EPA believes that this potential will be minimized and any remaining runoff can reasonably be considered an agricultural storm water discharge.

EPA notes that any dry weather discharge of manure or process wastewater resulting from its application to land area under the control of a CAFO would not be considered an agricultural storm water discharge and would thus be subject to Clean Water Act requirements. As a matter of common sense, only storm water can be agricultural storm water. Further, if manure or process wastewater were applied so thickly that it ran off into surface waters even during dry weather, this would not be consistent with practices designed to ensure appropriate agricultural utilization of nutrients.

In this rule, EPA is clarifying how it believes the scope of regulated point source discharges from a CAFO is limited by the agricultural storm water exemption. EPA does not intend its discussion of how the scope of point source discharges from a CAFO is limited by the agricultural storm water exemption to apply to discharges that do not occur as the result of land application of manure, litter, or process wastewater by a CAFO to land areas under its control and are thus not at least potentially CAFO point source discharges. In explaining how the scope of CAFO point source discharges is limited by the agricultural storm water exemption, EPA intends that this limitation will provide a "floor" for CAFOs that will ensure that, where a CAFO is land applying manure, litter, or process wastewater in accordance with site specific practices designed to ensure appropriate agricultural utilization of nutrients, no further effluent limitations will be authorized, for example, to ensure compliance with water quality standards. Any remaining discharge of manure or process wastewaters would be covered by the agricultural storm water exemption and would be considered nonpoint source runoff. Further, the Agency does not intend that the limitation on the scope of CAFO point source discharges provided by the agricultural storm water exemption be in any way constrained, so long as manure, litter, or process wastewater is land applied by the CAFO in accordance with site specific nutrient management practices that ensure appropriate utilization of nutrients. In particular, EPA does not intend that the applicability of the agricultural storm water exemption to discharges from land application areas of a CAFO be constrained by requirements to control runoff resulting from the application of pesticides or other agricultural practices.

Although as noted above, manure and process wastewater discharges from the land application area are not directly subject to water quality-based effluent limits, EPA encourages States to address water quality protection issues in their technical standards for determining appropriate land application practices.

The Agency disagrees with the commenters who would interpret the agricultural storm water provision to exclude all of the runoff from a CAFO's land application areas. It would not be reasonable to believe that Congress intended to exclude as an "agricultural" storm water discharge any and all discharges of CAFO manure from land application areas, for example, no matter how excessively such manure may have been applied without regard to true agricultural needs. Similarly, EPA does not agree with the commenters who believe that the agricultural storm water discharge exclusion does not apply at all to CAFOs because Congress singled out CAFOs by specifically including them in the definition of point source. There is nothing in the text of the point source definition (CWA section 502(14)) that indicates that Congress intended the agricultural storm water discharge exclusion not to apply to CAFOs.

After considering all the comments, EPA has decided that it is not necessary to include a definition of the term "agricultural storm water" in the rule text at section 122.23(b). EPA believes that the amended regulatory text at 40 CFR 122.23(e), in combination with this preamble discussion, adequately clarifies the distinction between regulated point source discharges and non-regulated agricultural storm water discharges from the land application area of a CAFO.

Under the final rule, as proposed, discharges from the production area at the CAFO (e.g., the feedlot and lagoons) are not eligible for the agricultural storm water exemption at all, because they involve the type of industrial activity that originally led Congress to single out CAFOs as point sources.

Today's final rule also requires all permits for CAFOs to include terms and conditions to address land application. *See* section 122.42(e) and Part 412. The Agency has included this requirement because it has the authority to regulate point source discharges and any discharge of CAFO manure, litter, or process wastewaters from the land application area of a CAFO which is not agricultural storm water is subject to the Clean Water Act. EPA believes that the only way to ensure that non-permitted point source discharges of manure, litter or process wastewaters from CAFOs do not occur is to require that CAFOs apply for NPDES permits that will establish requirements that ensure that manure, litter, and process wastewater are only applied to CAFO land application areas in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

7. When and How Is an AFO Designated as a CAFO?

In today's final rule, EPA is retaining the requirement for an on-site inspection and a determination that an AFO is a significant contributor of pollutants to waters of the United States prior to designating an AFO as a CAFO. A small AFO may be designated only if it discharges either: (1) Into waters of the United States through a man-made ditch, flushing system, or other similar man-made device or (2) directly into waters of the United States that originate outside of the facility and pass over, across, or through the facility or otherwise come into contact with the confined animals. Medium operations may also be designated as CAFOs even if they do not meet either of the two conditions for being defined as a CAFO.

What did EPA propose? In the proposed rule, EPA presented two options with respect to the designation criteria. EPA proposed to retain the existing criteria under a three-tier structure and proposed to eliminate them under a two-tier structure. In addition, EPA requested comment on several additional alternatives that would have retained the criteria only for small operations.

EPA also proposed to modify the on-site inspection requirement to explicitly include other forms of information gathering such as use of monitoring data, fly-overs, and satellite imagery. EPA also proposed a technical correction, changing the term "significant contributor of *pollution*" to "significant contributor of *pollutants*."

What were the key comments? EPA received limited comment concerning proposed changes to the designation criteria. Only a few States specifically supported the elimination of the criteria. A few representatives of the livestock industry generally supported elimination of the criteria for operations of all sizes. Commenters were generally opposed to EPA's proposal to modify the on-site inspection requirement to allow for alternative data gathering methods. Some commenters acknowledged that the alternative methods of data collection proposed by EPA can indicate situations where a potential water quality problem exists; however, most commenters asserted that on-site inspections by knowledgeable personnel are the only fair and accurate method of determining whether an AFO is a significant contributor of pollutants.

The SBAR Panel raised concern over the proposed changes to the designation criteria, and the potential to cause more small businesses to be subject to regulation. The Panel supported the retention of the existing designation criteria and process.

Rationale. EPA has decided to retain the existing designation criteria and process because the existing criteria strike an appropriate balance for ensuring protection of surface water quality while maintaining flexibility for States to assist small and medium operations before they become subject to NPDES requirements for CAFOs. Retaining the requirement for an on-site inspection will help ensure a reasoned assessment of the situation has been performed and make the operation aware that it may be designated a CAFO.

AFOs that do not meet the regulatory definition of a CAFO can often be effectively addressed by State voluntary programs or regulatory non-NPDES programs focused on the elimination of the conditions that pose a threat to water quality. Implementing these voluntary or non-NPDES State programs can help to ensure that medium and small operations implement proper practices and are not designated as CAFOs. If documented threats to water quality are not addressed by the owner or operator of particular AFOs, the NPDES CAFO regulations provide States with appropriate flexibility to use designation as an effective mechanism to designate these operations as CAFOs on a case-by-case basis. Once designated as CAFOs, these operations are subject to the permitting requirements defined in today's action. Note that the ELGs apply only to Large CAFOs. For Medium and Small CAFOs appropriate permit limits should be established according to the BPJ of the permitting authority.

Although no change has been made to either the former designation criteria or the requirement for an on-site inspection, EPA is adopting as final a technical correction to the regulatory language on designation, changing the term from "significant contributor of *pollution*" to "significant contributor of *pollutants*." for the reasons discussed in the proposal. This technical correction makes the NPDES CAFO regulations consistent with the rest of the NPDES program. EPA received very few public comments on this revision.

If, after conducting an on-site inspection, the NPDES authorized State (or EPA in certain circumstances—see below) determines that an AFO is a significant contributor of pollutants to waters of the United States, the AFO may be designated as a CAFO. The determination of whether an AFO is a significant contributor of pollutants to waters of the United States should consider the cumulative impacts of multiple AFOs that may be causing or contributing to the exceedance of water quality standards.

8. Can EPA Designate an AFO as a CAFO Where the State Is the Permitting Authority?

Today's final rule explicitly authorizes the EPA Regional Administrator to designate CAFOs in NPDES authorized States where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant. Upon designation, the operation would be required to apply to the appropriate permitting authority for permit coverage. It should be noted that EPA is not assuming authority or jurisdiction to issue permits to the CAFOs that it designates in authorized NPDES States (except for those in Indian Country). That authority would remain with the authorized States.

What did EPA propose? EPA proposed to explicitly authorize EPA designation of AFOs as CAFOs in NPDES authorized States, without limiting this authority to AFOs contributing to impairments in downstream or adjacent jurisdictions.

What were the key comments? In comments submitted on the proposed rule, States and the livestock and poultry industry were generally opposed to EPA designation in NPDES authorized States. A number of commenters argued that EPA did not have the authority to designate in a State with an authorized NPDES permit program. Environmental organizations and allied commenters were generally supportive of EPA's designation authority. Those supportive of EPA's proposal believed that this authority would be an important component of ensuring that the revised regulations are fairly implemented across the entire country.

Rationale. After careful consideration of the comments, EPA has decided to limit EPA designation authority, in NPDES authorized States, to circumstances where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant. In these situations, the State in which the discharge is located may not have the same incentives for designating sources as it would if the impaired water affected by the discharger were located in the State. This approach will ensure consistent implementation of designation requirements across State boundaries where there are serious water quality concerns. EPA expects NPDES authorized States to ensure consistency within State boundaries. It is not EPA's intention to make such designations lightly or without close coordination with affected States. EPA's designation authority will be helpful in sensitive situations where one State finds it difficult to resolve water quality impairments caused by AFOs in another State.

EPA disagrees with those commenters who believe that the Agency does not have the legal authority to designate CAFOs in authorized States. In today's action, EPA is asserting similar, albeit more limited, authority to designate CAFOs as compared to designation of storm water point sources. *See* 40 CFR 122.26(a)(1)(v) and 122.26(a)(9).

Ultimately, EPA's authority to designate derives from the CWA itself. CWA Section 501(a) provides the Agency with the authority to designate point sources subject to regulation under the NPDES program, even in States approved to administer the NPDES permit program. This interpretive authority to define point sources and nonpoint sources was recognized by the D.C. Circuit in *NRDC* v. *Costle*, 568 F.2d 1369, 1377 (DC Cir. 1977). The interpretive authority arises from CWA Section 501(a) when EPA interprets the term "point source" at CWA Section 502(14).

9. How Can States Use Non-NPDES Programs To Prevent Medium and Small Operations From Being Defined or Designated as CAFOs?

EPA promotes the efforts of States to actively use a variety of strategies to work with owners and operators of AFOs to ensure that they do not meet the criteria that would result in their being defined or designated Small or Medium CAFOs.

Operators of medium and small facilities are encouraged to participate in voluntary programs that promote sustainable agriculture and the

reduction of environmental impacts. EPA anticipates that participation in these programs will assist them in eliminating conditions which would result in the AFO being defined or designated as a CAFO. For example, it may be that an operation that confines 500 cattle and that participates in a voluntary program to develop and implement a CNMP, as defined by USDA, could proactively fix situations that may otherwise cause them to meet the criteria for being defined or designated as a CAFO. EPA intends to develop a small entity compliance guide to assist small business and additional tools needed to assist AFOs in complying with this requirement. Please refer to a more extensive discussion of how this rule promotes and encourages State flexibility in section V.F.

10. What CAFOs Are New Sources?

Today's final rule makes no changes to the definition of "new source" in 40 CFR 122.2 or the definition and criteria for new source determinations in 40 CFR 122.29 with respect to CAFOs. For purposes of applying the new source performance standards in today's final rule, a source would be a new source if it commences construction after April 14, 2003 (*see* 40 CFR 122.2). Each source that meets this definition is required to achieve the new New Source Performance Standard upon commencing discharge.

What did EPA propose? EPA proposed additional criteria for determining who is a new source, including:

1. The CAFO is constructed at a site at which no other source is located;
2. The CAFO totally replaces the housing including animal holding areas, exercise yards, and feedlot, waste handling system, production process, or production equipment that causes the discharge or potential to discharge pollutants at an existing source; or
3. The CAFO constructs a production area that is substantially independent of an existing source at the same site.

What are the key comments? Some industry commenters expressed the view that the new source definitions were too broad and would result in many existing CAFOs being considered by their permitting authority as new sources. Commenters interpreted the proposal to mean that operations undergoing routine operation and maintenance or replacement of individual structures and equipment could be considered a new source under the proposed language. These existing facilities defined as new would have to undergo costly improvements to comply with the NSPS. In addition, the new source definition would be a disincentive to conduct routine maintenance and improvements at an operation. The commenters indicated that EPA did not provide enough rationale to include this language and that other industries do not have such a broad new source definition. Industry commenters, including some conservation districts, concluded that EPA should retain the existing definition.

Comments from environmental organizations and private citizens indicated their belief that all expanding AFOs should be considered CAFOs and subject to NSPS, and that these standards should be more restrictive than the existing source standards.

Rationale. After reviewing public comment and reconsidering this proposed revision, EPA has concluded that the existing regulation at § 122.29(b) provides adequate criteria for determining who is a new source. EPA's intention was to provide permit writers with clear and specific criteria applicable to CAFOs to improve clarity of these regulations. In retrospect, the only clarification that was provided was related to § 122.29(b)(ii), which refers to when the new construction "totally replaces the process or production equipment that causes the discharge of pollutants at an existing source." While the Agency disagrees with commenters that the proposed revisions would expand the scope of the existing regulation, EPA decided that it was not necessary to adopt the proposal as the existing regulation is sufficient for EPA to provide guidance on determining new sources. Further, EPA is not adopting the proposal in the interest of keeping the regulation simple. Nevertheless, EPA believes some clarity as to which CAFOs are new sources is appropriate. In response to commenters who believe that EPA should consider any facility that expands to be a new source, EPA did not propose such a definition, the reasons for which are discussed at 66 FR 3066 of the proposed rulemaking. EPA is clarifying that it is not the intent of this section to serve as a disincentive to CAFOs to maintain, upgrade, or otherwise enhance facilities and waste management systems to improve their operational and environmental performance. Thus, EPA is clarifying that an expanding source is not automatically defined as a new source. For example, a facility that expands its operation by simply extending existing housing structures by constructing new housing adjacent to existing housing, is not typically considered a new source. Under existing provisions at § 122.29(b) such expansions at an existing facility would not result in the facility becoming defined as a new source unless the modifications totally replace the process or production equipment that causes the discharge of pollutants, or the new/modified facility's production and waste handling processes are substantially independent of the preexisting source.

B. Who Needs a Permit and When?

1. Who Needs To Seek Coverage Under an NPDES Permit?

Today's rule requires all CAFO owners or operators to seek coverage under an NPDES permit, except in very limited situations where they make an affirmative demonstration of "no potential to discharge," as discussed below. This "duty to apply" applies without exception; it makes no difference, for example, whether the CAFO manure management system has been appropriately designed and operated to prevent discharges except during large storm events. Recognizing that there may be certain situations in which no reasonable potential to discharge exists, EPA has also established the ability for a CAFO owner or operator to demonstrate that the facility has no potential to discharge from either its production areas or its land application areas. If the permitting authority agrees with the demonstration of no potential to discharge, the operation would not need to obtain an NPDES permit. The no potential to discharge demonstration is not relevant to small or medium operations because an actual discharge is a required criterion for a small or medium operation to be considered a CAFO.

What did EPA propose? EPA proposed to require all CAFOs to seek coverage under an NPDES permit, except where they can demonstrate no potential to discharge.

What were the key comments? Environmental groups were largely in favor of the duty to apply provision, and sought to ensure that all Large CAFOs in particular had a duty to apply. These commenters expressed concern about the impacts of unregulated operations, the potential for CAFOs to discharge, and the lack of permitting of CAFOs under the current regulations. Many commenters stated that because of the potential to discharge CAFOs should have NPDES permits.

Trade associations and industry commenters were largely opposed to the duty to apply requirement. A number of these commenters questioned EPA's legal authority for requiring permit applications from CAFOs that claim not to discharge. They argued that the Clean Water Act requires an NPDES permit only for an actual discharge of pollutants to the waters of the United States. Commenters also noted that imposing a duty to apply is inconsistent with EPA's past interpretations of the Clean Water Act, pointing to past instances in which EPA has stated that permits are required only for actual discharges.

An industry commenter also disagreed with EPA's reasons for finding that there is a need to impose a duty to apply for a permit for CAFOs. The commenter disagreed with EPA's belief that many large AFOs have not applied for permits because of widespread confusion over the CAFO regulatory requirements and stated that any confusion in the regulations can easily be remedied by EPA. The commenter noted that there could be other reasons these operations are not permitted (for example, the operation does not discharge, it discharges only in a 25-year, 24-hour storm, or is a dry poultry facility). Commenters also questioned EPA's finding that many CAFOs are discharging without a permit and stated their belief that CAFO discharges are no more intermittent (and thus no more difficult to detect and document) than those in other industries.

These commenters also asserted that EPA is not authorized and not justified in putting the burden on the CAFO to show that it does not discharge. According to the commenters, this presumption of a discharge weakens the requirement of an actual discharge in the Act and will result in EPA regulating facilities that Congress intended to exclude from the NPDES program.

State comments were mixed. Most supported the duty to apply provision, including the no potential to discharge determination, agreeing with EPA that any operation that meets the definition of a CAFO should be required to apply for a permit. Some States indicated that the criteria for becoming a CAFO needed to be clear, and then facilities would know when they are CAFOs and would comply with the duty to apply. Other States opposed this proposal for a variety of reasons, including that shifting the burden of proof to the facility would be onerous, especially if EPA lowers the regulatory threshold; that there was no need to impose a permit in order to ensure that livestock operations have nutrient management plans; and that EPA should not create duplicative efforts in States with effective programs.

Although the SBAR Panel did not comment on the proposed duty to apply requirements, the Panel did comment on EPA's proposal to require all medium facilities either to certify that they are not CAFOs or to seek coverage under an NPDES permit. The Panel recommended that EPA carefully consider the burden of such requirements. The Panel also was concerned that requiring full permit applications from the number of Medium CAFOs contemplated at proposal may impose a significant burden with limited environmental benefits, and recommended that EPA carefully consider appropriate streamlining options. Finally, the SBAR Panel recommended that, before adding any new application or certification requirements for operators in this size range, EPA should carefully weigh the burden and environmental benefits of expanding the scope of the regulations in this way.

Rationale. After careful consideration of the comments, EPA is adopting the "duty to apply" in today's final regulations. This revised duty to apply is designed to identify and ultimately to prevent actual unauthorized discharges to the waters of the United States, consistent with the intent and goals of the Clean Water Act. CAFOs that demonstrate that they do not have a potential to discharge will not need to seek coverage under a permit, as discussed in section IV.B.2 of this preamble.

EPA continues to believe that there is a strong need and a sound basis for adopting this duty to apply and that it is within the Agency's authority to do so. EPA fully discussed its rationale for this provision in the proposal. There, the Agency discussed the duty for CAFOs, other than those which discharge only in the event of a 25-year, 24-hour storm, to apply for a permit under the existing NPDES regulations (40 CFR 122.21(a)) and explained a number of reasons behind the need for a clarified and more broadly applicable duty to apply for CAFOs.

EPA disagrees with the comment that there is no need for a duty to apply because there may be legitimate reasons for so many operations being unpermitted at present. In fact, there are numerous documented instances in the administrative record of actual discharges at unpermitted CAFOs that are not associated with 25-year, 24-hour storms. EPA also disagrees that CAFO discharges are no more intermittent than those in other industries. Operations in other industries are typically designed to routinely discharge after appropriate treatment; this is not the case at CAFOs, where discharges are largely unplanned and intermittent. It is thus much easier for CAFOs to avoid permitting by not reporting their discharges. EPA continues to believe that imposing a duty to apply for all CAFOs is appropriate given that the current regulatory requirements are being misinterpreted or ignored. Moreover, simply clarifying the regulations would not necessarily be adequate, because operations might still claim that the Clean Water Act requires no permit application if the facility claims not to discharge. As discussed in the proposal, Congress contemplated that EPA could set effluent standards at zero discharge, where appropriate, and that EPA would effectuate these standards through permits; this statutory scheme would be negated if CAFOs were allowed to avoid permitting by claiming that they already meet a zero discharge standard.

EPA noted in the proposal that it had not previously sought to categorically adopt a duty to apply for an NPDES permit for all facilities within a particular industrial sector. The Agency explained that it is doing so for reasons that involve the unique characteristics of CAFOs and the zero discharge regulatory approach (except for large storm events) that applies to them. EPA also noted that since the inception of the NPDES permitting program in the 1970s, only a small number of Large CAFOs have actually sought permits. The Agency is adopting this revised duty to apply for all of these reasons, including this historical experience showing the lack of permitting of Large CAFOs, while numerous documented discharges occurred over time. This change also serves to substantially simplify and clarify the applicability of the rule.

In addition, there is a sound basis in the administrative record for the presumption that all CAFOs have a potential to discharge to the waters of the United States such that they should be required to apply for a permit, unless they can show no potential to discharge. EPA does not agree with the claim that the presumption of a discharge will weaken the requirement of an actual discharge in the Clean Water Act and will result in EPA regulating facilities that Congress intended to exclude from the NPDES program. CAFOs will have the opportunity to demonstrate that they do not have a potential to discharge and therefore would not be required to apply for a permit.

2. How Can a CAFO Make a Demonstration of No Potential To Discharge?

Today's rule specifies that a Large CAFO need not have an NPDES permit if the permitting authority finds that the operation has no potential to discharge.

This final rule provides that Large CAFOs may request and submit technical information as the basis for a permitting authority to determine that there is no potential to discharge. Today's rule also establishes requirements for the permitting authority to issue a public notice that such a request has been received. The request for a no potential to discharge determination must be submitted by the date upon which the CAFO is required to seek permit coverage (*See* 40 CFR 122.23(g) and section IV.B.3 and Table 4.2 of this preamble). Within 90 days of receiving the request, the Director will let the CAFO know whether or not the request for a no potential to discharge determination has been granted. If the request is denied, the CAFO must seek permit coverage within 30 days after the denial.

What did EPA propose? EPA proposed that Large CAFOs have a duty to apply for an NPDES permit unless the permitting authority, upon request from the CAFO, makes a case-specific determination that a CAFO has no potential to discharge pollutants to water of the United States.

What were the key comments? Trade associations and industry commenters generally opposed the requirement to demonstrate "no potential to discharge." Their objections largely follow from their view that CAFOs should not be required to apply for a permit in the first instance absent evidence of an actual discharge. Having to show "no potential to discharge" in order to avoid a permit would place a difficult or impossible burden on operations to prove a negative, in their view. They also expressed concerns over the resources and expense of showing "no potential to discharge" and about how permitting authorities will be able to interpret and apply this standard consistently. Certain environmental groups, on the other hand, were also opposed to this provision, but their view is that CAFOs should be required to apply for permits without exception, and there should be no allowance for CAFOs to avoid permitting based on a finding of "no potential to discharge." They also voiced concerns that this provision will invite abuse by States that seek to avoid permitting responsibilities. On the subject of whether the rules should include a public process for the "no potential to discharge" determination, public commenters expressed views both for and against including this process. Those seeking to have a public process included their belief that it will serve as a check against any abuses in making these determinations.

Rationale. Today's rule requires all CAFOs to apply for a permit unless they have received a determination by the Director that the facility has "no potential to discharge." The "duty to apply" provision is based on the presumption that every CAFO has a potential to discharge and therefore must seek coverage under an NPDES permit. However, the Agency does not agree with commenters that there should be no opportunity to rebut this presumption and avoid permitting because EPA recognizes that, although they may be infrequent, there may be instances where a CAFO truly does not have a potential to discharge. For example, the CAFO may have no potential to discharge because it is located at a great distance from any water of the United States (*see* further discussion on this subject below). In such circumstances, it would make little sense to impose NPDES permit requirements in order to protect against such discharges. Therefore, the Agency believes that it is reasonable to allow facilities that demonstrate "no potential to discharge" to be released from the requirement to seek coverage under an NPDES permit. Although today's regulation allows facilities to submit "no potential to discharge" claims, an unpermitted CAFO that does in fact discharge pollutants to waters of the U.S., with or without a determination of "no potential to discharge," would be in violation of the Clean Water Act.

The requirement for demonstrating no potential to discharge is not being extended to small and medium AFOs since the specific criteria that must be met prior to becoming CAFOs requires the existence of a discharge. Whereas large AFOs are defined as CAFOs based on number of animals alone, small and medium AFOs only become CAFOs after meeting specific discharge-related criteria. A small AFO can only be designated as a CAFO by the State Director or Regional Administrator where it is determined that it is a significant contributor of pollutants to waters of the U.S. A medium AFO can become a CAFO by designation or definition. As in the case of small AFOs, a medium AFO can only be designated where it is determined to be a significant contributor of pollutants to waters of the United States. A medium AFO that is a CAFO by definition must meet one of the two "method of discharge" criteria prior to being defined as a CAFO. Thus, it is meaningless to consider such facilities as having no potential to discharge.

EPA's intention is that the term "no potential to discharge" is to be narrowly interpreted and applied by permitting authorities. This provision is intended to be a high bar that excludes those Large CAFOs from having an NPDES permit only where the CAFO can demonstrate to a degree of certainty that they have no potential to discharge to the waters of the United States. The no potential to discharge status is intended to provide relief where there truly is no potential for a CAFO's manure or wastewater to reach waters of the United States under any circumstances or conditions. Such circumstances would include, for example, CAFOs that are located in arid areas and far from any water body or those that have completely closed cycle systems for managing their wastes and that do not land apply their wastes. For example, a CAFO that meets the following conditions might be able to demonstrate no potential to discharge: (1) Located in an arid or semi-arid environment; (2) stores all its manure or litter in a permanent covered containment structure that prevents wind dispersal and precipitation from contacting the manure or litter; (3) has sufficient containment to hold all process wastewater and contaminated storm water and (4) does not land apply CAFO manure or litter because, for example, the CAFO sends all its manure or litter to a regulated, offsite fertilizer plant or composting facility. In particular, EPA believes that land application of its manure and wastewater would, in most cases, be enough by itself to indicate that a CAFO does have a potential to discharge (although conceivably no potential to discharge could be shown based on the physical features of the site, such as lack of proximity to waters of the United States). This discussion should help to address commenters concerns that there could be inconsistencies in how permitting authorities could interpret and apply the standard for "no potential to discharge".

The term "no potential to discharge" means that there is no potential for any CAFO manure, litter, or wastewater to be added to waters of the United States from an operation's production or land application areas, without qualification. If a Large CAFO chooses to make a demonstration of no potential to discharge, it is the CAFO's responsibility to provide appropriate supporting information that the permitting authority can use when reviewing the demonstration. The supporting information should include, for example, a detailed description of the types of containment used for manure focusing on the attributes of the containment that ensure no discharges

will occur. In addition, there may be instances where after preliminary review of the demonstration, the permitting authority may require the submission of supplemental information to assist in making a determination.

EPA disagrees with commenters' statements that the demonstration of "no potential to discharge" will place an impossible or excessively costly burden on facilities. EPA believes that, in many instances, the information that is specified in 40 CFR 122.23(f)(2) will be adequate for the Director to determine whether or not the facility has a potential to discharge. In such instances, there would be no greater cost to the facility than if it were to apply for a permit. If additional information is necessary, the Agency does not believe that it will result in greatly increased costs, because such information (including, for example, design specifications or other technical information) would be readily available to the facility and could be easily provided to the permitting authority.

Today's rule requires that a request for a no potential to discharge determination include most of the information required for a permit application, as specified in § 122.21(f) and (i)(1)(i) through (ix). This information will serve as the primary source of information relating to the facility's qualifications to avoid an NPDES permit. While some additional information may be available to the Director, including for example regional rainfall, soil, and hydrological conditions, the Director may require supplemental, site-specific information to make this determination. However, EPA is not requiring a CAFO owner or operator pursuing a no potential to discharge determination to certify to the development of its nutrient management plan, as required by § 122.21(i)(1)(x) for a CAFO that seeks permit coverage after December 31, 2006.

Within 90 days of receiving a request for a no potential to discharge determination the permitting authority will notify the CAFO of its decision on the request. During this review period, a CAFO that has submitted a request for a no potential to discharge determination does not have a duty to seek coverage under an NPDES permit. The final rule differs from the proposal in not imposing a duty to apply on CAFOs that have submitted a no potential to discharge request until there is a denial of the request by the Director. EPA believes that this is a preferable approach, because it does not risk the imposition of NPDES permit requirements on CAFOs even though they may qualify for a determination that they have no potential to discharge. To guard against abuse of this provision, the Agency is establishing a limited time of 90 days for the Director to make its determination.

If the permitting authority finds that no potential to discharge has not been demonstrated, the CAFO owner or operator must seek permit coverage within 30 days of the denial of the request. States may use the information submitted with the request for a no potential to discharge determination to proceed with individual permit development or for coverage under a general permit. However, in order to obtain coverage, the CAFO owner or operator would also be required to provide a request for coverage and include the information required by § 122.21(i)(1)(x), when applicable.

After all necessary information is submitted, and before making a final decision to grant a "no potential to discharge" determination, today's rule requires the Director to issue a public notice stating that a no potential to discharge request has been received. This notice must be accompanied by a fact sheet which includes, when applicable: (1) A brief description of the type of facility or activity which is the subject of the no potential to discharge determination; (2) a brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination; and (3) a description of the procedures for reaching a final decision on the no potential to discharge determination. The Director must base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the permitting authority. If the Director's final decision is to deny the "no potential to discharge" determination, the CAFO owner or operator must submit a permit application within 30 days after denial of the no potential to discharge determination.

The Agency believes that the process described above addresses concerns raised by commenters that States might abuse the intended effect of this provision and allow facilities that should be permitted as CAFOs to avoid permitting. The Agency believes this process should ensure that the Director has adequate information to properly decide whether a facility has a potential to discharge or not, and also ensures that the public will be made aware of such determinations and can act appropriately if it appears that determinations are not being made as required by this provision. Also, as noted above, facilities that actually do discharge without a permit are subject to enforcement for a violation of the Clean Water Act—even if they have previously received a no potential to discharge determination. This should provide a strong incentive to CAFOs not to file a frivolous request.

3. When Must CAFOs Seek Coverage Under a NPDES Permit?

Table 4.2 summarizes the time frames by which CAFOs (existing and new sources) must apply for an NPDES permit. Refer to section IV.A.11 of this preamble for a discussion of the new source definition.

TABLE 4.2.—TIME FOR SEEKING COVERAGE UNDER AN NPDES PERMIT

CAFO status	Time frame to seek coverage under an NPDES permit	Examples
Operations defined as CAFOs prior to April 14, 2003.	Must have applied by the date required in 40 CFR 122.21(c).	Operations that previously met the definition of a CAFO and were not entitled to the 25-year, 24-hour storm permit exemption.
Operations defined as CAFOs as of April 14, 2003, and that were not defined as CAFOs prior to that date (e.g. existing operations that become defined as a CAFO as a result of changes in this rule).	As specified by the permittihg authority, but no later than April 13, 2006.	For example, "dry" chicken operations (operations that did not use a liquid manure handling or continuous overflow watering system), stand-alone immature swine, heifer and calf operations; and those AFOs that were entitled to the permitting exemption for discharging only in the event of a 25-year, 24-hour storm.

TABLE 4.2.—TIME FOR SEEKING COVERAGE UNDER AN NPDES PERMIT—Continued

CAFO status	Time frame to seek coverage under an NPDES permit	Examples
Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.	(a) newly constructed operations: 180 days prior to the time the CAFO commences operation; (b) other operations (e.g. increase in number of animals): As soon as possible but no later than 90 days after becoming defined as a CAFO, except that, if the operational change that causes the operation to be defined as a CAFO would not have caused it to be defined as a CAFO prior to April 14, 2003, the operation must apply no later than April 13, 2006 or 90 days after becoming defined as a CAFO, whichever is later.	For example, an AFO that increases the number of animals in confinement to a level that would result in the operation becoming defined as a CAFO.
New sources	180 days prior to the time the CAFO commences operation.	For example, a new Large CAFO that commences construction after April 14, 2003.
Designated CAFOs	90 days after receiving notice of designation.	

What did EPA propose? The Agency proposed to delay the effective date of the revised definition of a CAFO until three years from the date of publication of the final rule, and thereby delay the date by which permits would be required for newly defined CAFOs until three years after the date of the final rule. During that three-year interim period, the Agency proposed that the existing CAFO definition would remain in effect. For example, prior to the effective date of the revised CAFO definition, the revised new source and new discharger provisions would apply only to those facilities meeting the definition of a CAFO under the existing regulatory definition. For designated CAFOs, EPA proposed that the CAFO must apply for a permit within 90 days of being designated.

What were the key comments? Some commenters felt that extending the time for compliance allowed too much time for implementation of the new regulations, and would only result in further delays in addressing the problems associated with discharges from CAFOs. Other commenters took the view that three years is too little time for States or industry to meet the new requirements, from either a technical or economic standpoint. Most of those who commented on this issue sought clarity in setting the effective dates for the regulations.

Rationale. In today's rule, EPA is establishing time frames for seeking coverage under a permit that are appropriate to the various categories of CAFOs, depending upon their status with respect to the effective date of the rule.

For the reasons discussed in Section IX of the preamble to the proposed rule, the Agency does not believe that it would be reasonable to require permit coverage for all CAFOs immediately on the effective date of this rule. Following issuance of today's rule, 40 CFR 123.62 provides authorized States with time to revise their State NPDES programs (one year or two years if statutory changes are needed). Further, most States will need approximately an additional year to develop a general permit, publish a draft of the general permit for public comment, and issue a final general permit for the many CAFOs that EPA expects to be covered under a general permit. EPA believes that a three-year time frame for newly defined CAFOs to obtain permit coverage is reasonable and justified based on the requirements of 40 CFR 123.62, together with the need to develop and issue general permits, and for the reasons stated below.

Today's rule is likely to result in fewer facilities being defined as CAFOs than anticipated at the time of proposal. Because States will not need to address concerns associated with identifying, permitting, and ensuring compliance by the large number of medium-size facilities anticipated as potential CAFOs at the time of proposal, EPA does not believe that concerns that States would need more than three years to meet the new requirements are justified.

The Agency is, however, changing its approach to achieve the proposed time frame for requiring CAFOs to seek coverage under a permit. Rather than delaying the effective date for the definition of a CAFO, as was proposed, EPA is simply establishing a three-year time frame for when newly defined CAFOs must seek coverage under a permit.

Today's approach is consistent with Congressional intent in the 1972 Clean Water Act. Today's rule marks the first time in many years, except in the case of storm water sources, that the Agency is revising the scope of the term point source to include additional facilities under the definition. In the 1972 Clean Water Act, Congress provided more than two years for point sources to obtain coverage under a permit (§ 402(k)). Similarly, in this instance, EPA believes that Congress would have intended for the Agency to provide additional time for these newly covered sources to obtain permit coverage. This additional time is necessary for States to revise their regulations and to develop and issue permits, and it provides facilities some time to take the necessary steps to comply with these new requirements.

Moreover, EPA believes that there will be other advantages as a result of the approach taken in today's rule. The first is to avoid the confusion that would be associated with having different and conflicting definitions of a CAFO present simultaneously in the Code of Federal Regulations, which would be the case if EPA were to promulgate a revised definition of CAFO but delay the effective date of the definition for three years. The second is to encourage States to issue new permits and cover newly defined CAFOs as soon as possible within the time period specified. CAFOs are encouraged to seek coverage under a permit once general permits addressing those facilities are available. A third reason is that this approach is consistent with EPA's approach when the Agency promulgated the storm water phase II regulations, although those regulations were based on a somewhat different statutory foundation.

For all of the reasons stated above, the Agency is exercising its discretion to define these newly regulated facilities as point sources, while delaying their duty

to apply for a permit until three years from the effective date of today's rule.

Today's rule does not extend the date by which operations that were defined as CAFOs under the prior regulations should have applied for a permit (*see* 40 CFR 122.21). In particular, EPA notes that those operations that previously met the criteria for being a CAFO, but who erroneously claimed the 25-year, 24-hour storm exemption and avoided applying for an NPDES permit on that basis, continue to be in violation of the regulations and need to immediately apply for NPDES permit coverage. Today's rule also does not extend the date by which operations that have previously been designated as a CAFO should have applied for an NPDES permit.

The third category described in Table 4.2 pertains to a category of permittees who become CAFOs subsequent to the effective date of today's rule, but who are not defined as "new sources" in accordance with the new source criteria. For example, a newly constructed Medium CAFO falls in this category, since it is not subject to the new source performance standards in Part 412. Newly constructed CAFOs in this category must seek coverage under an NPDES permit 180 days prior to the time the CAFO commences operation. This requirement is designed to parallel the time for permit application for new sources. Other operations that become CAFOs after the effective date of today's rule, including, for example, operations that increase the number of animals in confinement to a level that would result in the operation being defined as a CAFO, but that are not new sources, are required to seek permit coverage as soon as possible but no later than 90 days after being defined as a CAFO. EPA is establishing this date by which such new dischargers must seek coverage under an NPDES permit in consideration of the unique nature of AFO operations. In other industries, a facility would typically require significant capital improvements to become a newly discharging point source. AFOs, on the other hand, may become a new discharger merely by increasing the number of animals housed in confinement at the facility. Moreover, the increase necessary to meet the threshold numbers necessary to be defined as a CAFO could be relatively small. Such an increase could be necessary in response to fast-changing market conditions, in which case it would be an undue burden on the AFO to encounter a delay of 180 days before being able to operate as a CAFO. Inasmuch as CAFOs are not continuous dischargers, the Agency believes that it is reasonable and sufficient for a CAFO that is a new discharger (other than those that are newly constructed operations) to seek coverage within 90 days after becoming defined as a CAFO.

EPA is establishing an additional permit application deadline in this category of three years where the change that causes the operation to be defined as a CAFO would not have caused it to be defined as a CAFO if the change had occurred prior to the effective date of today's rule. This would include, for example, a dry poultry operation that, sometime after the effective date of today's rule, adds animals and exceeds the threshold for becoming defined as a CAFO. The Agency is establishing this permit application deadline since it is appropriate to treat such facilities on an equal footing to dry poultry operations that become defined as CAFOs as of the effective date of today's rule and who therefore have three years to apply for a permit. It would have been inequitable to have allowed a dry poultry operation that exists at the time this rule becomes effective to have three years to apply but to require a dry poultry operation that becomes a CAFO because it adds a small number of animals shortly after this rule becomes effective to apply within 90 days.

4. What Are the Different Types of Permits?

Today's final rule allows the permitting authority to determine the most appropriate type of permit coverage for a CAFO. Under the NPDES regulations, the two basic types of NPDES permits that can be used are individual permits and general permits. Refer to section V.E. of this preamble for further discussion about the different types of permits.

What did EPA propose? The proposed rule would have required States to conduct a public process for determining which criteria, if any, would require a CAFO owner or operator to apply for an individual rather than a general permit. The proposed rule also would have added a set of CAFO-specific criteria for when the Director may require an individual permit: (1) CAFOs located in an environmentally or ecologically sensitive area; (2) CAFOs with a history of operational or compliance problems; (3) CAFOs that are exceptionally large operations as determined by the permitting authority; and (4) significantly expanding CAFOs. EPA noted in the preamble to the rule as well that it had considered identifying a specific size threshold for individual permits, such as 5,000AU or 10,000AU, and solicited comment and information relating to such a threshold.

What were the key comments? Comments from industry and State agencies by and large were both against setting criteria for individual permits and against establishing a public process for developing such criteria. States in particular felt that existing NPDES regulations already adequately defined the process for developing individual and general permits, and strongly advocated against being told at the federal level what criteria to use in issuing permits. Environmental groups commented that they wanted strict federal criteria for individual permits out of concerns regarding the need for federal oversight over large operations and because of their keen interest in the public involvement afforded by individual permits. Many of these commenters stated that all Large CAFOs (*i.e.*, all with what was formerly termed 1,000 AU) should be required to have an individual permit.

Rationale. EPA elected not to set conditions for determining which CAFOs must have individual rather than general permits or to require the States to establish such conditions. The Agency determined that selecting a set of specific thresholds fundamentally fails to recognize the diversity of feeding operations in States across the nation. What may be a "large" facility in one State is often not viewed as such in another. This view was confirmed by the Agency's findings on this issue that although many States set criteria for who must have individual rather than general permits, these conditions vary greatly from State to State and are generally dominated by regional environmental concerns.

5. How Does a CAFO Apply for a Permit?

CAFO owners or operators must submit an application for an individual permit or submit a NOI (or the State's comparable form) for coverage under an applicable general permit. If a general permit is not available, the CAFO does not meet the eligibility requirements for coverage under the general permit, or the CAFO would otherwise prefer to be covered by an individual permit, the CAFO owner or operator must submit to the permitting authority an application (EPA's Form 2B for CAFOs and Aquatic Animal Production Facilities or the State's comparable form) for an individual permit. Today's final rule does not make any changes in how a CAFO applies for a permit.

6. What Are the Minimum Required Elements of an NOI or Application for an Individual Permit?

Today's final rule revises the information requirements for seeking coverage under an NPDES permit for CAFOs. Today's rule revises the NPDES individual permit application for CAFOs (Form 2B for CAFOs and Aquatic Animal Production Facilities), and specifies the information required in an NOI form for coverage under a CAFO general. EPA is requiring applicants for coverage under either individual or general CAFO permits to provide the same information:

(i) The name of the owner or operator;

(ii) The facility location and mailing addresses;

(iii) Latitude and longitude of the production area (entrance to production area);

(iv) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of paragraph (f)(7) of § 122.21;

(v) Specific information about the number and type of animals, whether in open confinement and housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(vi) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

(vii) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

(viii) Estimated amount of manure, litter, and process wastewater generated per year (tons/gallons);

(ix) Estimated amount of manure, litter, and of process wastewater transferred to other persons per year (tons/gallons); and

(x) For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

The complete Form 2B application containing all of the amendments to the application is included as an appendix to this preamble. The required data elements of the NOI are the same as the minimum data elements in the revised Form 2B. Where EPA is the permitting authority, it is EPA's intent to use the National NOI Processing Center to process NOIs.

What did EPA propose? EPA proposed to require applicants for individual permits to submit the following information in addition to the information required at 40 CFR 122.21(f) and 122.21(i):

- Acreage available for agricultural use of manure and wastewater;
- Estimated amount of manure and wastewater to be transferred off-site;
- Name and address of any person or entity that owns animals to be raised at the facility; directs the activity of persons working at the CAFO; specifies how the animals are grown, fed, or medicated, or otherwise exercises control over the operations of the facility; (in other words, that may exercise substantial operational control);
- If a new source, a copy of the draft Permit Nutrient Plan (PNP);
- Information about whether buffers, setbacks, or conservation tillage is being used to protect water quality; and
- A topographic map (required by Form 1) that identifies the latitude and longitude of the production area and the depth to ground water that may be hydrologically connected to surface water, if any.

EPA proposed that similar information be provided in a revised NOI for coverage under an NPDES CAFO general permit.

What were the key comments? Most of the comments received on this issue were from the States. Several citizens and associations also submitted comments. Several commenters wanted EPA to delete the requirement that the permittee submit the Permit Nutrient Plan with the permit application. Some States would also like to continue to use their forms and not the revised Form 2B. Some commenters argued that the proposed requirements set an undesirable precedent that is both unnecessary, (because NOI requirements are normally specified in the relevant general permit) and that could negatively affect other industries and reduce the flexibility of State permitting authorities.

The SBAR Panel did not specifically comment on the content of the changes to Form 2B and the NOI, but the Panel noted the substantial number of small entities in the medium range and recommended that EPA carefully consider the burden of any additional certification or application requirements. The Panel further noted that EPA had not ruled out the option of requiring a full permit application from all operations in the medium range. The Panel was concerned that such an approach may impose a significant burden with limited environmental benefits and therefore recommended that EPA carefully consider appropriate streamlining options before considering a more burdensome approach. Finally, the Panel recommended that before adding any new application or certification requirements for operators in the medium range, EPA should carefully weigh the burden and environmental benefits of expanding the scope of the regulations in this way.

Rationale. To clarify the subsequent discussion, it is important to point out that EPA is not adopting the term "Permit Nutrient Plan" in this final rule. The Agency is referring to the nutrient management planning requirements of today's rule simply as the nutrient management plan. EPA is not requiring the nutrient management plan to be submitted as part of the permit application for existing sources or new dischargers. Instead, the permitting authority may establish within the permit what information relative to the nutrient management plan must be submitted. At a minimum, nutrient management plans must be maintained on-site and be available upon request by EPA or the State permitting authority. Regarding the changes to the individual permit application form and the NOI for coverage under a general permit, EPA believes that the minimum data elements adopted in today's rule will provide permitting authorities with the essential information needed to evaluate permit applications properly and will ensure national consistency of information received by permit authorities. To the extent that a permitting authority needs additional information to support a permit application, it can use other Clean Water Act information gathering authorities (*e.g.*, section 308 of the Clean Water Act) to obtain such information. The new data elements correspond with the new rule requirements, including land application information.

In today's final rule, the Agency has revised the topographic map requirements for a permit application for CAFOs, by specifying that the CAFO must provide a topographic map of the geographic area in which the CAFO is located showing the specific location of the production area. In today's final rule, the Agency is consolidating all of the information to be submitted as part of a CAFO's request to seek coverage under an NPDES permit in 40 CFR 122.21(i). This information must be submitted by a CAFO, whether the CAFO is seeking coverage under an individual permit or a general permit. In establishing the topographic map requirement of § 122.21(i)(iv), the Agency is requiring the descriptive information necessary for permitting a CAFO, and not including all of the elements specified in 40 CFR 122.21(f)(7), which generally do not apply to a CAFO's operations.

In the future, EPA plans to allow the electronic submission of all NPDES permit applications such as Forms 1, 2B, and Notices of Intent for general permits (including attachments such as maps and diagrams). EPA has proposed a separate rule dealing with electronic reporting and recordkeeping (66 FR 46161; August 31, 2001) and is currently working to address comments and resolve technical and legal issues. None of the information collection requirements being promulgated in today's rulemaking are intended to limit or conflict with the future use of electronic reporting or recordkeeping.

C. What Are the Requirements and Conditions in an NPDES Permit?

All CAFO NPDES permits must contain a number of requirements and conditions, including effluent limitations, special conditions, standard conditions, and monitoring and reporting requirements. The December 1996 *U.S. EPA NPDES Permit Writers Manual*, 40 CFR 122.41, and 40 CFR 122.42 provide a detailed discussion of all aspects of an NPDES permit. This section focuses primarily on the major elements of a CAFO NPDES permit that are affected by today's rule. Specifically, this section describes the effluent limitations, special conditions applicable to CAFOs, standard conditions included in all NPDES permits, and monitoring and reporting requirements.

1. What Are the Different Types of Effluent Limitations That May Be in a CAFO Permit?

When developing effluent limitations for a CAFO NPDES permit, the permitting authority must consider limits based on applicable technology-based requirements or any more stringent requirements necessary to protect water quality. A water quality-based effluent limitation is designed to protect the quality of the receiving water by ensuring State or Tribal water quality standards are met. In cases where a technology-based permit limit is not sufficiently stringent to meet water quality standards, the permit must include appropriate water quality-based standards. For example, a technology-based standard for a CAFO might allow overflows from storage lagoons under certain circumstances. In some cases, the overflows might have to be restricted or further controlled to ensure that water quality standards are met. EPA does not expect that water quality-based effluent limitations will be established for CAFO discharges resulting from the land application of manure, litter, or process wastewater. As explained in Section IV.A.6 above, if a CAFO complies with the technical standards for nutrient management established by the Director, any remaining discharges of manure or process wastewater from the land application area are considered agricultural storm water. However, EPA encourages States to address water quality protection issues in their technical standards for determining appropriate land application practices. Today's rule does not change any aspects of water quality-based effluent limitations in the NPDES regulations.

There are two general approaches to developing technology-based limitations: (1) Using national effluent limitations guidelines (ELGs) and (2) using BPJ on a case-by-case basis (in the absence of ELGs). Today's rule revises the ELGs for Large CAFOs. Small and Medium CAFOs are not subject to the ELGs; therefore, the permitting authority will rely on BPJ to establish technology requirements for Small and Medium CAFOs. Revisions to the ELGs are discussed in detail below.

2. Effluent Limitations Guidelines for Large CAFOs

The effluent limitations section in NPDES permits is the primary mechanism for controlling discharges of pollutants to waters of the U.S. This section of the permit describes the specific limitations, in either a narrative or numeric form, that apply to the permittee. The permit contains either technology-based effluent limits (those based on a determination of the degree of pollutant reduction that can be achieved by applying pollution control technologies or practices) or water quality-based effluent limits (those based on the condition of the receiving water body) or both, and it may contain additional BMPs, as needed. This section discusses the ELGs established for Large CAFOs.

Today's final rule establishes new ELGs for Part 412, Subpart C, which applies to beef cattle, dairy cattle, and heifers; and Part 412, Subpart D, which applies to veal calves, swine, and poultry (chickens and turkeys). Today's rule also revises the applicability of Part 412, Subpart A to cover only horses and sheep.

Requirements for Large CAFOs are being established under the authority of Best Practicable Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), Best Conventional Pollutant Control Technology (BCT), and NSPS, consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

a. To which CAFOs do the effluent guidelines apply?. In today's final rule, EPA is revising the 1974 ELGs for beef cattle, dairy cattle, veal calves, swine, and poultry. Consistent with the 1974 ELG regulation, EPA is continuing to apply technology-based ELGs only to those operations which are defined as Large CAFOs at 40 CFR 122.23. In the case of Medium or Small CAFOs, or CAFOs not otherwise subject to Part 412, effluent limitations will be established on a case-by-case basis by the permitting authority using BPJ.

This final rule removes language referring to the type of manure handling or watering system employed at laying hen and broiler operations; as a result, it expands the scope of the rule to also address chicken operations with dry litter management systems. The term "dry" does not mean that no wastewaters are associated with these types of operations. For example, poultry waste includes manure, poultry mortalities, litter, spilled water, waste feed, water associated with cleaning houses, runoff from litter stockpiles, and runoff from land where manure has been applied. Today's rule adds explicit references to veal operations and includes requirements for Large veal CAFOs under Part 412, Subpart D. (Veal calves were included in the 1974 ELGs as part of "slaughters steers and heifers.") Today's rule further expands the applicability of the effluent guidelines to cover Large heifer CAFOs and operations that confine immature swine (*i.e.*, swine weighing less than 55 pounds).

What did EPA propose? In the proposed rule, EPA applied the technology-based ELGs to all Large CAFOs (the 1974 ELGs apply to only Large CAFOs) and proposed to expand the scope of the rule to apply to Medium CAFOs as well. Small CAFOs were excluded from the applicability of the ELGs in the proposed rule, and the limits included in their permits were to be based on BPJ. EPA also proposed to expand the scope of the rule to include heifer operations, immature swine operations (*e.g.*, swine nurseries), and chicken operations with dry litter management systems.

What were the key comments? EPA received a variety of comments regarding the size of operation to which the ELGs should apply. A number of comments favored retaining the framework of the 1974 ELGs, limiting the applicability of the ELGs to Large CAFOs and relying on the use of BPJ for Small and Medium CAFOs. Some commenters favored allowing even broader use of BPJ, with the permitting authority establishing BPJ-based permit limits for all CAFOs, regardless of size. Conversely, other commenters suggested applying the ELG requirements to all CAFOs, including Small and Medium CAFOs. In general, commenters expressing support for applying ELG requirements to Small and Medium CAFOs believe that basing permit requirements on BPJ will lead to a lack of uniformity in permit development. They believe the permit writers should not have an inappropriate amount of flexibility and there should be consistent effluent limitations for all CAFOs.

The SBAR Panel provided comments to EPA on this topic during the development of the proposed rule, suggesting that EPA consider less stringent ELGs for Medium CAFOs or allow permits for Medium CAFOs to be developed based on BPJ. The SBAR Panel stated that providing a mechanism for permitting authorities to establish less stringent guidelines for smaller facilities, based on consideration of economic achievability, could result in permit conditions that are more appropriately tailored to smaller operations and reduce the overall financial burden on the industry.

Rationale. The ELGs being promulgated in today's rule apply only to Large CAFOs, which is consistent with the approach used for the 1974 ELG regulation. EPA is not extending the ELG requirements being codified at 40 CFR Part 412 to Small or Medium CAFOs because setting the permit limitations for these facilities using BPJ allows for the establishment of permit conditions that are more appropriately tailored to and more directly address the site-specific conditions that led to the facility being defined or designated as a CAFO. This approach is consistent with the manner in which permit requirements for Small and Medium CAFOs have been established prior to today's rule.

The ELGs promulgated in today's rule mimic the fundamental structure embodied in the NPDES provisions. The NPDES provisions at Part 122 establish a threshold (in terms of numbers of animals) above which every AFO is defined as a CAFO (specifically, these are defined as Large CAFOs). Similarly, EPA has determined that, because of the nature of these Large CAFOs and the potential risk discharges from these operations pose to the environment, the ELGs promulgated today should apply to Large CAFOs. However, for the reasons discussed below and consistent with the approach used in establishing the 1974 ELGs, EPA is not establishing ELGs for Small or Medium CAFOs. EPA's analyses, based on USDA data, show that small and medium AFOs are more likely than Large CAFOs to have a sufficient land base for utilizing manure nutrients at rates consistent with appropriate agricultural utilization of nutrients. Small and medium AFOs are defined or designated as CAFOs only when certain conditions that pose an environmental risk are present at the operation. Since these smaller operations become CAFOs only if certain conditions are present, and the highly site-specific conditions that trigger any particular operation being defined or designated as a Small or Medium CAFO will vary from facility to facility, discharges from Small and Medium CAFOs are more appropriately controlled through NPDES permit limitations on a BPJ basis. EPA expects that, by tailoring the permit requirements for Small and Medium CAFOs on a BPJ basis, these smaller facilities will be able to better and more efficiently target their more limited resources to reducing their environmental impacts. This increased flexibility for setting the permit requirements for Small and Medium CAFOs will reduce the overall financial burden on the industry. Consistent with the Unified National AFO Strategy, EPA is focusing today's ELGs on those larger operations that present the greatest potential risk to water quality.

EPA is extending the applicability of the ELGs to heifer operations and operations that confine immature swine (*i.e.*, swine weighing less than 55 pounds). Increasingly, swine operations may specialize in a production phase, such as a nursery that confines swine under 55 pounds. In the dairy sector, some operators prefer to obtain their dairy cattle from heifer-raising operations. These heifer operations specialize in raising immature dairy cattle until the cattle are ready for their first calving. These operations for immature animals are increasing in both size and number, and they operate similarly to other CAFOs. Therefore, EPA is today including immature swine under Subpart D (swine/poultry/veal) and heifer operations under Subpart C (beef/dairy/heifer) of the ELGs.

In addition, EPA is expanding the scope of the ELGs to address chicken operations with dry litter management systems to better address water quality impacts associated with both storage and land application of manure, litter, and process wastewaters. EPA believes that improper storage, as well as improper land application rates that exceed the appropriate agricultural utilization of nutrients, has contributed to water quality problems, especially in areas with large concentrations of poultry production. Nutrients from large poultry operations continue to contaminate surface waters because of rainfall coming in contact with dry manure that is stacked in exposed areas, accidental spills, etc. In addition, land application remains the primary management method for significant quantities of poultry litter (including manure generated from facilities using dry systems). Most poultry operations are located on smaller parcels of land in comparison to other livestock sectors, placing increased importance on the proper management of the potentially large amounts of manure, litter, and process wastewaters that they generate.

In the 1974 ELG regulations, EPA established requirements in a manner that placed CAFOs into one of two groups, or subcategories, based on the type of animals at the operation: One subcategory established requirements for ducks only; the second subcategory established identical ELG requirements for CAFOs with horses, sheep, slaughter steers and heifers (including veal calves), dairy cattle, chickens, turkeys, and swine.

Today's rule establishes ELGs based on segregating the animal sectors into four different subcategories. The ELG regulations at Part 412, Subpart A now apply only to Large CAFOs with horses and sheep, but the ELG requirements for these operations remain unchanged by today's rule. Part 412, Subpart B continues to apply only to CAFOs with at least 5,000 ducks and these requirements also remain unchanged by today's rule. Today's rule segregates the remaining animal types covered by the ELGs into two additional subcategories. Part 412, Subpart C applies to Large CAFOs with dairy or beef cattle other than veal (heifer operations are covered by this subpart), and Part 412, Subpart D applies to Large CAFOs with swine, veal, or poultry. EPA developed these subcategories to better reflect similarities in production and waste management practices among the operations grouped together.

The operations in Subpart C predominantly use production and waste management practices that differ substantially from those practices used at operations in Subpart D. Large swine, poultry, and veal calf operations predominantly maintain their animals in confinement housing as opposed to the open outdoor lots used at the vast majority of large beef feedlots, heifer operations, and dairies (while dairy cattle at many dairies spend much of their time indoors either in the milking parlor or in barns, most dairy cattle also have access to outdoor areas similar in many respects to the outdoor areas at beef feedlots). The open outdoor lots present at beef feedlots expose large areas to precipitation, necessitating the ability to collect storm water runoff in retention ponds. Heifer operations (other than those that are pasture-based) are configured and operated in a manner very similar to beef feedlots, and thus have very similar waste management practices. Dairies also frequently keep animals in open areas for some period of time, whether it is simply the pathway from the barn to the milk house or an open exercise lot. Storm water runoff from these open areas must be collected in addition to any storm water that contacts food or silage. As is the case for beef feedlots and heifer operations, the runoff volume from the exposed areas is a function of the size of the area where the cattle are maintained, and the amount of precipitation.

Because swine, poultry, and veal calves are predominantly maintained in confinement housing, the waste management practices at Large CAFOs covered by Subpart D differ substantially from the practices at Subpart C operations. These confinement operations are able to manage manure largely in a relatively dry form, or contain liquid wastes in storage structures such as lagoons, tanks, or underhouse pits. Broiler and turkey operations generate a dry manure which can be kept covered either under a shed or with tarps. Laying hen operations with dry manure handling practices usually store manure below the birds' cages and inside the confinement building. Nearly all swine, veal, and poultry operations confine their animals under roof, avoiding the use of open animal confinement areas that generate large volumes of contaminated storm water runoff. These Subpart D operations differ most notably from Subpart C operations in that they, in most cases, do not have to manage the large volumes of storm water runoff that must be collected at Subpart C operations. While Subpart D operations that manage wastes in uncovered lagoons must be able to accommodate precipitation, they are largely able to divert uncontaminated storm water away from the lagoons and minimize the volume of wastes they must manage.

The statutory factors considered as a basis for subcategorization are discussed in Section IV.C.2.f of the preamble and in the *Technical Development Document*.

b. What are the land application effluent guidelines for all Large CAFOs covered by Subparts C and D (beef, dairy, heifer, swine, poultry, and veal)? The ELGs described in this section apply to all Large CAFOs covered by Part 412, Subpart C (beef, dairy, and heifer) and Subpart D (swine, poultry, and veal). These BPT, BCT, BAT, and NSPS requirements are being established for the reasons discussed below in this section, and consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

Today's final rule establishes requirements to ensure the proper application of manure, litter, and other process wastes and wastewaters to land under the control of Large CAFOs. The ELGs established by this rule require Large CAFOs to prepare and implement a site-specific nutrient management plan (described in detail in Section IV.C.3), for manure, litter, and other process wastewater applied to land under their ownership or operational control. In addition to preparing the site-specific nutrient management plan, and the recordkeeping and reporting requirements described in Section IV.D, Large CAFOs need to conduct the following land application BMPs and can use other BMPs that assist in complying with the ELGs:

- Land-apply manure, litter, and other process wastewaters in accordance with a nutrient management plan that establishes application rates for each field based on the technical standards for nutrient management established by the Director.
- Collect and analyze manure, litter, and other process wastewaters annually for nutrient content, including nitrogen and phosphorus.
- At least once every five years, collect and analyze representative soil samples for phosphorus content from all fields where manure, litter, and other process wastewaters are applied.
- Maintain a setback area within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters where manure, litter, and other process wastewaters are not applied. As a compliance alternative, the CAFO may elect to establish a 35-foot vegetated buffer where manure, litter, or other process wastewaters are not applied. For further flexibility the CAFO may demonstrate to the permitting authority that a setback or vegetated buffer is unnecessary or may be reduced.
- Periodically conduct leak inspections of equipment used for land application of manure, litter, or process wastewater.
- Maintain on-site the records specified in 40 CFR 412.37(c). These records must be made available to the permitting authority and the Regional Administrator, or his or her designee, for review upon request. Records must be maintained for 5 years from the date they are created.

Today's rule requires Large CAFOs to determine and implement site-specific nutrient application rates that are consistent with the technical standards for nutrient management established by the permitting authority. Permitting authorities have discretion in setting technical standards that minimize phosphorus and nitrogen transport to surface water. Technical standards for nutrient management should appropriately balance the nutrient needs of crops and potential adverse water quality impacts in establishing methods and criteria for determining appropriate application rates. The permitting authority may use the USDA Natural Resource Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590, or other appropriate technical standards, as guidance for development of the applicable technical standard. The current NRCS Nutrient Management technical standard describes three field-specific risk assessment methods to determine whether the land application rate is to be based on nitrogen or phosphorus, or whether land application is to be avoided. These three methods are: (1) Phosphorus Index; (2) Soil Phosphorus Threshold Level; and (3) Soil Test Phosphorus Level. The permitting authority has the discretion to determine which of these three methods, or other State-approved alternative method, is to be used.

The field-specific risk assessment provides CAFOs with the information needed to determine if manure nutrients should be applied at a nitrogen or phosphorus application rate, or if no manure application is appropriate. In today's rule, EPA clarifies that CAFOs may apply conservation practices, best management practices, or management activities to their land application areas, which in aggregate may reduce field vulnerability to off-site phosphorus

transport to surface waters. This may reduce the field-specific risk rating to a level consistent with manure application at a nitrogen rate in accordance with the technical standard established by the Director.

When establishing technical standards for nutrient management, the permitting authority also shall include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the standards. Flexibilities should include consideration of multi-year phosphorus application (also called phosphorus banking) on fields that do not have a high potential for phosphorus runoff to surface water, implementation of phosphorus-based nutrient management phased-in over time, and other components as determined appropriate by the Director.

EPA recognizes that, under some conditions, CAFOs may experience practical difficulties in applying manure nutrients to fields at a low phosphorus rate. Application equipment at some CAFOs may be unable to deliver the small phosphorus amount needed by crops in a single year. Thus, EPA is clarifying in this rule that CAFOs may elect to use a multi-year phosphorus application rate in accordance with the technical standards established by the Director. A multi-year approach allows a single application of phosphorus applied as manure at a rate equal to the recommended phosphorus application rate or estimated phosphorus removal in harvested plant biomass for the crop rotation or multiple years in the crop sequence. Crop rotations may vary in length depending on the crops produced, geographic area, and other site-specific conditions. For example, a two-year rotation may be common in some areas, while a three-year rotation may be more common in others. Rotations involving grains or hays, such as alfalfa, may run for five or more years. In other instances, crops are produced in a continuous cycle. Many wastewater spray fields are permanently in hay and grasses. In practice, multi-year phosphorus applications typically would be based on applying manure nutrients at a rate achievable with a CAFOs application equipment, and determining the removal rate in order to calculate the length of time until the next manure nutrient application window. Thus, multi-year applications may provide the phosphorus needed for a few to many years. The field would not receive additional phosphorus applications until the amount applied in the single year had been removed through plant uptake and harvest. However, under any multi-year application, the rate at which manure nutrients are applied would not exceed the annual nitrogen recommendation of the year of application. Nor would application be made on sites determined inappropriate based on a high potential for phosphorus runoff to surface water. The appropriateness of multi-year phosphorus application would be based on a field-specific risk assessment in accordance with the technical standard established by the Director.

What did EPA propose? The proposed rule included ELGs that would have required CAFOs to develop and submit a certified Permit Nutrient Plan, which would be reviewed annually and recertified every five years, and would have limited manure spreading on all land owned or under the operational control of the CAFO to the nitrogen-based rate, unless soil or other field conditions at the CAFO warranted limiting the application rate to the more stringent phosphorus-based rate. EPA also proposed to require a series of land application BMPs, including those listed above in this section of the preamble.

What were the key comments? EPA received a number of comments supporting the type and frequency of manure, litter, process wastewater, and soil sampling. Some commenters were opposed to establishing the proposed phosphorus-based standard in nutrient management plans, while other commenters stated that EPA should establish phosphorus-based standards for all CAFOs. In addition, some commenters were opposed to the inclusion of specific manure, litter, or wastewater application rates in NPDES permits, but supported the development of site-specific rates in a nutrient management plan.

EPA received many comments on the requirement to prohibit land application of manure, litter, and other process wastewaters within a 100-foot setback. Some commenters supported the 100-foot setback; however, the majority of commenters expressed opposition to establishment of a setback, in many cases stating that the setback restriction will unnecessarily reduce the available acreage for manure application and will be costly to implement because of its inflexibility. The commenters also stated that it should be left to States or a nutrient management planner to determine whether a setback or vegetated buffer is warranted, and to determine the size of such areas. The proposed rule considered allowing CAFOs to establish a 35-foot vegetated buffer strip as an alternative to the 100-foot setback. Many commenters were in favor of an approach that offers flexibility to the CAFO and to the nutrient management planner to incorporate site-specific considerations while utilizing the maximum amount of manure nutrients on site. They suggested that in cases where the operation can demonstrate that manure application will not affect surface water, such as when application occurs down-gradient of the surface water, no setback or buffer should be required.

The SBAR Panel noted the high cost of phosphorus-based application relative to nitrogen-based application and supported EPA's intent to require the use of a phosphorus-based application rates only where determined necessary based on field-specific conditions. According to the SBAR Panel, if the soil is not phosphorus-limited, then nitrogen-based application should be allowed. The SBAR Panel recommended that EPA consider leaving the determination of whether to require the use of phosphorus-based rates to BPJ and that EPA work with USDA in exploring such an approach.

Rationale. The nutrient-based limitations in this rule will reduce the discharge of nitrogen, phosphorus, and other pollutants in field runoff by restricting the amount of manure, litter, and other process wastewaters that may be applied to the amount that is appropriate for agricultural purposes, according to technical standards established by the permitting authority. Application of manure, litter, and other process wastewaters in excess of the crop's nutrient requirements increases the pollutant runoff from fields because the crop does not need these nutrients, increasing the likelihood of their being released to the environment. In many cases, the application of manure at a nitrogen-based rate is consistent with appropriate agricultural utilization of nutrients. Soils are able to retain the amounts of phosphorus that would be applied, or other site-specific conditions (*e.g.*, the types of conditions assessed through the phosphorus index approach) are such that the runoff of phosphorus and other pollutants or the likelihood of the pollutants reaching surface waters are adequately controlled.

However, allowing all manure to be spread at the nitrogen-based application rate may not always ensure appropriate agricultural utilization of nutrients. In areas that have high to very high phosphorus buildup in the soils, allowing continued application at a nitrogen-based rate could allow for continued discharge of phosphorus from the CAFO's cropland and consequently may not adequately control phosphorus discharges from these areas. In addition, EPA believes that in some instances phosphorus levels in soils are so high, or site-specific conditions (*e.g.*, highly erodible soils) are such that any application of manure, litter, or other process wastewaters would be inconsistent with appropriate agricultural utilization of nutrients and would lead to excessive levels of nutrients and other pollutants in runoff. EPA expects that these factors will be taken into account as State permitting authorities develop appropriate technical standards for the land application of manure by CAFOs.

The trace metals present in animal wastes, when applied to fields at either nitrogen- or phosphorus-based rates, are made available to plants in sufficient quantities that they provide many of the micronutrients necessary for proper plant growth. Excessively high levels of these trace metals, however, can inhibit plant growth. By limiting manure applications to the nitrogen- or phosphorus-based rate, CAFOs will also be limiting the rate at which metals are applied to fields and thus reduce the potential for applying excessive amounts of the trace metals.

Nitrogen-based application rates are generally based on the following factors: (1) The nitrogen requirement of the crop to be grown based on the operation's soil type and crop; and (2) realistic crop yields that reflect the yields obtained for the given field in prior years or, if not available, from yields obtained for the same crop at nearby farms or county records. Once the nitrogen requirement for the crop is established, the manure application rate is generally determined by subtracting any other sources of nitrogen available to the crop from the crop's nitrogen requirement. These other sources of nitrogen can include residual nitrogen in the soil from previous applications of organic nitrogen, nitrogen credits from previous crops of legumes and crop residues, or applications of commercial fertilizer, irrigation water, and biosolids. Application rates are based on the nitrogen content in the manure and should also account for application methods, such as incorporation, and other site-specific practices. Phosphorus-based application rates generally take into account the phosphorus requirements of the crop, as well as the amount of phosphorus that will be removed from the field when the crop is harvested. EPA expects that State standards will generally provide CAFOs the flexibility to determine, separately for each field, whether manure is to be applied at the nitrogen- or the phosphorus-based application rate. Thus, EPA expects that as the ELG requirements are implemented, some CAFOs will be able to apply manure at the nitrogen-based rate for all of their fields; some CAFOs will be limited to the phosphorus-based rate on all of their fields; and the remaining CAFOs will have some fields that are limited to the phosphorus-based rate and some fields where manure can be applied at the nitrogen-based rate. In making these field-specific determinations, CAFOs must use the method authorized by the permitting authority.

Today's rule specifies that manure, litter, or other process wastewaters are not to be applied within 100 feet of any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. As a compliance alternative to the 100-foot setback, the CAFO may elect to establish a 35-foot vegetated buffer where application of manure, litter, and other process wastewaters are not applied; or may demonstrate to the permitting authority that a setback or vegetated buffer is unnecessary or may be reduced because implementation of alternative conservation practices or site-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.

A setback is an area where manure, litter, or other process wastewaters are not applied, but crops may continue to be grown. The transport of nutrients and other pollutants in manure to surface waters and the rate at which transport occurs is dependent on the land use, geography, topography, climate, amount and method of manure application, and the nature and density of vegetation in the area. The setback achieves pollutant reductions by increasing the distance pollutants from the land application of manure, litter, or other process wastewaters have to travel to reach surface waters. The setback requirements established by this rule will minimize the potential runoff of pathogens, hormones such as estrogen, and metals and reduce the nutrient and sediment runoff.

Because a setback may not be the most cost-effective practice to control runoff in all cases, this rule includes a compliance alternative that allows the CAFO to establish a 35-foot vegetated buffer in lieu of the 100-foot setback A vegetated buffer is a permanent strip of dense perennial vegetation, where no crops are grown, that slows runoff, increases water infiltration, absorbs nutrients, and traps pollutants bound to sediment. The vegetated buffer is more effective (on a per-foot of width basis) than the setback at reducing pollutant runoff, therefore the compliance alternative allows the buffer width to be smaller than the setback. Both approaches are expected to achieve comparable pollutant reductions. (EPA decided not to require all fields receiving manure, litter, or other process wastewaters to have a vegetated buffer because that would unnecessarily require CAFOs to take that portion of the cropland out of production.)

The setback requirements included in today's rule contain an additional compliance alternative that allows the CAFO to implement alternative conservation practices that will provide pollutant reductions equivalent to or better than the 100-foot setback. In some cases, the CAFO may be able to demonstrate to the permitting authority that no setback is necessary based on site-specific conditions, such as when the surface water is located up-gradient from the area of manure application.

Manure must be sampled at least once per year and analyzed for its nutrient content, including nitrogen and phosphorus. EPA believes that annual sampling of manure is the minimum frequency to provide the necessary nutrient content on which to establish the appropriate application rate. The nutrient composition of manure varies widely among farms because of differences in animal species and management, and manure storage and handling practices. The only method available for determining the actual nutrient content of manure for a particular operation is laboratory analysis. If the CAFO applies its manure more frequently than once per year, it may choose to sample the manure more frequently. Sampling the manure as close to the time of application as practical provides the CAFO with a better measure of the nitrogen content of the manure. Generally, nitrogen content decreases through volatilization during manure storage when the manure is exposed to air. All CAFOs must collect and analyze soil samples for phosphorus at least once every 5 years from all fields under their control that receive manure. Soil tests are an important tool to determine the crop phosphorus needs and to determine the optimum application rate. Crop rotation cycles vary, and State programs require soil sampling at varying frequencies that in many cases are tied to the soil type. EPA requires soil sampling at least once every 5 years to correspond with the permit cycle for CAFOs, although States may require more frequent sampling. Without manure and soil analyses, CAFOs might apply more commercial fertilizer than is needed or spread too much manure on their fields. Either

practice can result in overfertilization, affecting crop yields and increasing the pollutant runoff from fields.

Records of the application of manure and wastewater must be maintained on site. These records are: (1) The expected crop yields; (2) the date manure, litter, or process wastewater is applied to each field; (3) the weather conditions at the time of application and 24 hours before and after application; (4) test methods used to sample and analyze manure, litter, process wastewater, and soil; (5) results from manure and soil sampling; (6) explanation of the basis for determining manure application rates, as provided in the technical standards established by the Director; (7) the calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater; (8) total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations of the total amount applied; (9) the method used to apply the manure, litter, or process wastewater; and (10) dates of manure application equipment inspection. Crop yields and the manure and soil testing data, as well as records on applications conducted in previous years, are used to determine whether to apply manure on a nitrogen or phosphorus basis and the amount of nutrients to be applied. The CAFO and the permitting authority will use the remaining land application records to track the amount of nutrients applied and to ensure that application occurs consistent with the nutrient management plan.

EPA believes the land application rates, the 100-foot setback (or the use of equivalent practices authorized by the compliance alternative), and the other land application BMPs included in this rule will ensure that manure, litter, and other process wastewaters are applied in a manner consistent with appropriate agricultural utilization of the nutrients in manure, litter, and other process wastewaters. Effluent limitations in the form of BMPs are particularly suited to the regulation of CAFOs. For many CAFOs, controlling discharges to surface waters is largely associated with controlling storm water. Storm water discharges can be highly intermittent, are usually characterized by very high flows occurring over relatively short time intervals, and carry a variety of pollutants whose nature and extent vary according to geography and local land use. Water quality impacts, in turn, also depend on a wide range of factors, including the magnitude and duration of rainfall events, the time period between events, soil conditions, the fraction of land that is impervious to rainfall, other land use activities, and the ratio of storm water discharge to receiving water flow. CAFOs are required to apply their manure, litter, and other process wastewaters to land in accordance with the site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, and other process wastewaters. The manure provides nutrients, organic matter, and micronutrients, which are very beneficial to crop production when applied appropriately. The amount or rate at which manure can be applied that ensures appropriate agricultural utilization of nutrients varies based on site-specific factors at the CAFO. These factors include the crop being grown, the expected crop yield, the soil types and soil concentration of nutrients (nitrogen and phosphorus), and the amount of other nutrient sources to be applied. For these reasons, EPA has determined that relying exclusively on numeric ELGs to control these discharges is infeasible. EPA has determined that the BMPs specified in today's rule represent the minimum elements of an effective BMP program and are necessary to control point source discharges to surface water. In this rule, EPA is promulgating only those BMPs that are appropriate on a nationwide basis, while giving States and permittees the flexibility to determine the appropriate practices at a local level to achieve the effluent limitations. The BMPs included in this rule are necessary to ensure appropriate agricultural utilization of nutrients in manure, litter, and other process wastewater.

EPA rejected establishing national requirements in this rule that would prohibit manure application to frozen, snow-covered, or saturated ground. As envisioned, the prohibition considered (but also rejected) at the time of proposal would have required CAFOs to install sufficient storage capacity to hold manure for the period of time during which the ground is frozen, snow-covered, or saturated. According to EPA's analyses, to meet such a requirement CAFOs in some areas, such as northern States, would need to be able to store manure, litter, and other process wastewaters for up to 270 days, depending on the amount of precipitation and severity of winter. In practice, such a prohibition could result in some facilities needing storage to hold manure and wastes for 12 months to allow for spreading manure at times that coincide with crop growing periods.

EPA rejected establishing these requirements in the final ELGs because pollutant runoff associated with the application of manure, litter, or other process wastewaters on frozen, snow-covered, or saturated ground is dependent on a number of highly site-specific variables, including climate and topographic variability, distance to surface water, and slope of the land. Such variability makes it difficult to develop a national technology-based standard that is reasonable and does not impose unnecessary cost on CAFO operators. Further, given the site-specific nature of the cropland and runoff characteristics, quantifying the pollutant reduction associated with these requirements is difficult and imposing such requirements through a national regulation could divert resources from other technologies and practices that are more effective. Therefore, EPA believes that requirements limiting the application of manure, litter, or other process wastewaters to frozen, snow-covered, or saturated ground are more appropriately addressed through NPDES permit limits established by the permitting authority. Although EPA has decided not to include requirements limiting the application of manure, litter, or other process wastewaters to frozen, snow-covered, or saturated ground in today's rule, the permitting authority retains the authority and is encouraged to include these types of requirements as technology-based standards using BPJ in NPDES permits as appropriate.

EPA is establishing provisions at 40 CFR 122.42(e) for permitting authorities to include in NPDES permits a requirement for the CAFO to develop and implement a nutrient management plan. Under these provisions, NPDES permits are to include prohibitions, practices, and procedures to achieve compliance with 40 CFR part 412, when applicable, or effluent limitations based on BPJ when 40 CFR part 412 does not apply.

As discussed above in this section and in section IV.C.3, today's rule requires CAFOs to develop and implement a nutrient management plan. For Large CAFOs, this requirement is reflected in the effluent guideline as the BPT/BCT/BAT/NSPS limitations on land application discharges (see 40 CFR 412.4(c)). Other CAFOs are also subject to the requirement to develop and implement a nutrient management plan (see 40 CFR 122.42(e)(1)), although the permitting authority would establish precise elements of the plan, such as manure application rates, on a BPJ basis.

For the reasons detailed below, EPA has concluded that there are certain constraints, including currently insufficient infrastructure capacity, that prevent Large CAFOs (except new sources) from being able to develop and implement the land application BMPs, including the nutrient management plan, by the date they will need to seek permit coverage under the requirements of this rule. Therefore, the ELGs promulgated today require Large CAFOs that are existing sources to implement the land application requirements at 40 CFR 412.3(c) by December 31, 2006 because that is the date when EPA is assured that the required planning is in fact available to the large number of regulated sources and, therefore, becomes BPT/BCT/BAT. (EPA has similarly concluded that Small and Medium CAFOs subject to the NPDES provisions for nutrient management plans also will be unable to develop and implement a nutrient management plan by the date they will need to seek NPDES permit coverage under the requirements of this rule, for reasons of insufficient infrastructure. Therefore, EPA is requiring Small and Medium CAFOs that are existing sources to develop and implement nutrient management plans by December 31, 2006.) For all CAFOs that are new sources (*i.e.*, Large CAFOs constructed after the effective date of this rule), the land application requirements at 40 CFR 412.4(c) apply immediately, as discussed further below.

Nutrient management plans are complex documents and their preparation requires knowledge in a number of areas. To adequately address the requirements established by today's rule, the nutrient management plan should be prepared by individuals (either CAFO owners and operators, or their technical consultants) who are competent in or have an understanding of a number of technical areas, including soil science and soil fertility, nutrient application and management, crop production, soil and manure testing and results interpretation, fertilizer materials and their characteristics, BMPs for the management of nutrients and water, and applicable laws and regulations. Because of this, EPA believes it is reasonable to anticipate that many CAFOs will choose to acquire the services of consultants with the technical expertise to prepare nutrient management plans and make recommendations regarding the implementation of the land application BMPs (*e.g.*, whether to use one of the authorized compliance alternatives in lieu of the setback requirements; options for reducing the nutrient content of manure, such as treatment or alternative feeding strategies; modifications to cropping strategies and land application practices).

Further, while the provisions of 122.42(e)(1) and 412.4(c)(1) do not specifically require nutrient management plans to be prepared or reviewed by certified experts, EPA recognizes that USDA, and other organizations such as the American Society of Agronomy, Crop Science Society of America, Soil Science Society of America, and a number of land grant universities, recommend that nutrient management plans be prepared by trained and certified specialists. USDA has published technical guidance that calls for the development of CNMPs and details the specific components and considerations that should be addressed during CNMP development. The Unified AFO Strategy, developed jointly by USDA and EPA, defines a national objective for all AFOs to develop CNMPs to ensure appropriate agricultural utilization of nutrients. (The vast majority of these CNMPs will be developed under voluntary programs.) EPA is not requiring CAFOs to use certified experts in preparing the nutrient management plans and is not requiring CAFOs to develop CNMPs, but the regulatory requirements for nutrient management plans are designed to dovetail with USDA standards for CNMPs so that CAFOs can meet EPA's nutrient management plan requirements and USDA's CNMP objectives in a single undertaking. It is therefore reasonable to expect that many CAFOs will opt to have their nutrient management plans prepared by certified specialists, an outcome that EPA encourages.

As discussed in more detail below, EPA interprets Section 301(b)(2) of the CWA to require that, for any effluent guideline promulgated, or any technology-based limitation established on a BPJ basis, after March 31, 1989, a discharger must achieve immediate compliance with the BPT/BCT/BAT effluent limitations upon issuance of the discharger's NPDES permit. With imposition of the nutrient management plan requirement, there may be a large number of CAFOs that are all trying to develop plans at the same time. Yet, there is a limited pool of certified preparers and other technical experts that are available nationwide to develop nutrient management plans and CNMPs. It is reasonable to recognize that Large CAFOs (and Small and Medium CAFOs), along with AFOs, could be competing for the services of the certified preparers and other technical experts. EPA estimates there are approximately 15,500 CAFOs, including 11,000 Large CAFOs, and 222,000 AFOs. AFOs are not required to prepare CNMPs, but their access to sources of public funds, such as EQIP, may be contingent on their adherence to NRCS technical standards, including preparation of a CNMP. Thus, additional time is needed for development and implementation of the plan.

Another aspect that prevents CAFOs from immediately complying with the land application BMPs is the need for States to ensure that they have established appropriate technical standards that CAFOs will use to determine the appropriate application rates for their fields. These standards must be a part of the State NPDES permitting program revisions discussed in Section V.C of this preamble. In addition, CAFOs will need some time to determine whether they have sufficient cropland for applying all of the nutrients contained in the manure, litter, and other process wastewaters that they generate. If they determine that they have excess nutrients, the CAFOs will need to identify alternatives for reducing the nutrient content, or seek markets for the excess nutrients such as off-site cropland, centralized processing facilities (*e.g.*, pelletizing plants, centralized anaerobic digester-based power generation facilities), or other solutions. These activities cannot logically commence until the CAFO has developed the plan and knows what its allowable manure application rate is.

EPA considered whether CAFOs should be required to implement certain elements of the land application BMPs in advance of preparing a nutrient management plan, but rejected doing so because the elements of the land application BMPs are inseparably linked together. The nutrient management plan is the tool CAFOs must use to assess soil and other field conditions at their operation, in conjunction with manure characterization data and crop rotations and yield projections, to determine the site-specific nitrogen or phosphorus-based rate at which manure, litter, and other process wastewaters are to be applied. The proper application rate can not be reasonably determined without first preparing the nutrient management plan. CAFOs will also use their nutrient management plan to inform their decision making on whether to comply with the provisions at 412.4(c)(5) by establishing the 100-foot setback on their fields or to instead select one of the compliance alternatives authorized by those provisions. EPA has also

determined that requiring manure and soil sampling and the record-keeping requirements included in 412.37(c) in advance of preparing and implementing the nutrient management plan would impose an unnecessary burden on CAFOs because, in the absence of a nutrient management plan that determines the appropriate application rates, these elements will not directly establish that manure will be applied in a manner that ensures appropriate utilization of nutrients. (Some of these actions, such as manure and soil sampling, may well be undertaken by the CAFOs as they develop their nutrient management plans, but EPA determined it was unnecessary for the regulation to impose these requirements in advance of nutrient management plan development and implementation.)

The land application BMPs, including the requirement to develop and implement a nutrient management plan, will immediately apply to all Large CAFOs who commence construction after the effective date of this rule (*i.e.*, new sources). Section 306(b)(1)(B) specifies that new source performance standards shall become effective upon promulgation. New sources engage in extensive site selection, facility design, and construction activities prior to commencing operations. Aspects addressed during this phase include location considerations (*e.g.*, climate and topographical factors), facility design variables to optimize the production process, and waste management considerations including the identification of optimal waste handling practices (*e.g.*, waste collection methods, the use of topographical elevation changes to facilitate waste handling) and disposal options (*e.g.*, on-site application on cropland, shipment to off-site markets). These activities undertaken by new sources prior to commencing construction are highly technical in nature, and CAFOs will typically engage the services of a number of consultants. While CAFOs are expected to engage the services of technical consultants to develop the nutrient management plans required by this rule, the analyses embodied within the nutrient management plan will not significantly add to the scope of analyses new sources will engage in prior to commencing operations.

EPA has considerable discretion under CWA section 304(b)(2) to determine whether and when a particular technology or process is BPT, BCT, or BAT. EPA also has broad authority to interpret CWA section 301. In *E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112 (1977), the Supreme Court accorded great deference to EPA in promulgating effluent limitations guidelines as regulations under section 301, noting that "[CWA Section] 101(d) requires us to resolve any ambiguity on this score in favor of the Administrator." *Id.* at 128. The Supreme Court also found that section 501(a) supports EPA's broad use of its regulatory authority to implement section 301. *Id.* at 132. EPA believes that its decision to promulgate the land application BMPs, including the nutrient management plans, with a future date for implementation is authorized by sections 301 and 304. Section 301(b)(2) in particular directs EPA to promulgate ELGs that, within the constraints of economic achievability, "will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants." Section 301(b)(2)(A).

EPA is aware that CWA sections 301(b)(2)(C) & (D) require ELGs to be achieved "in no case later than three years after the date such limits are promulgated under section 304(b), and in no case later than March 31, 1989." This language does not speak to the precise question EPA confronts here: whether EPA can promulgate ELGs that are phased in over time. In this case, for the reasons discussed above, while EPA believes that the requirement to develop and implement a nutrient management plan will be an "available" technology in the near future, it is not now available for the large number of CAFOs subject to today's rule. For this reason, EPA is, in essence, today promulgating what will be the available technology for the future, similar to what the Agency did for the pulp & paper effluent guideline. See 63 FR 18604 (Apr. 15, 1998). EPA is specifying the future date of December 31, 2006 because that is the date by which it predicts that sufficient capacity and capability to develop and implement a nutrient management plan and associated BMPs will be available to the great number of regulated sources. The availability of technical experts, including certified preparers, is a critically important component of the planning requirement, and in a sense is itself the technology basis for that BPT/BCT/BAT limitation. The Clean Water Act requires compliance with a promulgated ELG—*e.g.*, to develop a nutrient management plan—only once the technology ripens as the basis for that ELG, in this case as an available technology. While EPA is promulgating the nutrient management plan requirement as BPT/BCT/BAT in this rulemaking, EPA's record indicates that it may not truly be available for the subcategory as a whole until December 31, 2006.

c. What are the production area requirements for all existing and new Large beef, dairy, and heifer CAFOs (Part 412, Subpart C)? In today's final rule, consistent with the 1974 ELG regulation, EPA is continuing to establish BMPs for the CAFO production area, which includes the animal confinement areas and the manure storage and containment areas. These BPT, BCT, BAT, and NSPS requirements are being established for the reasons discussed in this section, and consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

EPA is largely retaining the current effluent guidelines that apply to beef and dairy operations, and adding language extending these requirements to heifer-raising operations. These regulations, which are codified at 40 CFR Part 412, Subpart C, prohibit the discharge of manure, litter, and other process wastewaters, except for allowing discharge when rainfall causes an overflow from a facility designed, maintained, and operated to contain all manure, litter, and process wastewaters, including storm water, plus runoff from the 25-year, 24-hour rainfall event. In addition, today's rule requires Large CAFOs to comply with the following BMPs:

- Perform weekly inspections of all storm water diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure;
- Perform daily inspections of water lines, including drinking water or cooling water lines;
- Install depth markers in all surface and liquid impoundments (*e.g.*, lagoons, ponds, tanks) to indicate the design volume and to clearly indicate the minimum capacity necessary to contain the 25-year, 24-hour rainfall event, including additional freeboard requirements;
- Correct any deficiencies found as a result of daily and weekly inspections as soon as possible;
- Do not dispose of mortalities in liquid manure or process wastewater treatment systems, and mortalities must be handled in such a way as to prevent discharge of pollutants to surface water, unless alternative technologies implemented under alternative performance standards are designed to handle mortalities; and
- Maintain on-site a complete copy of the records specified in 40 CFR 412.37(b) and (c). These records must be available to the permitting authority and the Regional Administrator, or his or her designee, for review upon request. Records must be maintained for 5 years from the date they are created.

What did EPA propose? EPA proposed to establish effluent guidelines that include the requirements promulgated in today's rule, and that would also have required all Large beef and dairy CAFOs (including heifers) to prevent discharges to the ground water beneath the production area (animal confinement areas, manure stockpiles, and impoundments) where there is a direct hydrologic connection to surface waters.

What were the key comments? EPA received numerous comments on the proposed inclusion of ground water monitoring and protection requirements for beef and dairy CAFOs. Many commenters opposed the proposed ground water requirements, stating that EPA lacks the authority to regulate ground water contamination in this rule and that the cost to comply with the proposed requirements would threaten the viability of these operations. The commenters also felt that EPA would need to define the term "direct' hydrologic connection to surface water" if ground water requirements were to be implemented. EPA also received comments supporting the inclusion of ground water requirements in this rule, arguing that individual State programs are not always protective of these types of discharges.

EPA received a number of comments suggesting the rule should allow for less frequent inspections of the production area; should establish effluent limitations that would allow CAFOs to discharge treated manure, litter, and process wastewaters (as opposed to the requirements in the 1974 ELGs based on the containment of these wastes); and should allow CAFOs to dispose of mortalities in surface impoundments designed for that purpose. Other commenters stated that EPA should retain the existing zero discharge requirement established by the 1974 ELGs and should not allow CAFOs to discharge the wastes they currently must contain, even if the wastes are treated before being discharged.

Rationale. The production area requirements established today for Large beef, dairy, and heifer CAFOs will provide effective control of discharges of manure and other process wastewaters to surface water. These requirements are widely demonstrated as achievable and are in use at most beef, dairy, and heifer CAFOs and the containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs. Furthermore, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which storage structures should be constructed.

CAFOs must properly design, operate, and maintain storage structures to contain all manure, litter, and process wastewater including the runoff from a 25-year, 24-hour rainfall event. The determination of the necessary storage volume should reflect the maximum length of time anticipated between emptying events. The design storage volume must reflect manure, wastewater, and other wastes accumulated during the storage period; normal precipitation less evaporation on the surface area during the entire storage period; normal runoff from the facility's drainage area during the storage period; 25-year, 24-hour precipitation on the surface (at the required design storage volume level) of the facility; 25-year, 24-hour runoff from the facility's drainage area; residual solids after liquids have been removed; necessary freeboard (USDA's Natural Resources Conservation Service (NRCS) recommends a minimum of 1 foot of freeboard); and, in the case of treatment lagoons, a minimum treatment volume necessary to allow anaerobic treatment to occur. Additional storage may also be required to meet management goals or other regulatory requirements. For example, if the permitting authority needs further controls to assure compliance with site-specific water quality standards. EPA encourages CAFOs to consider relevant ASAE and NRCS standards as one method to ensure appropriate design and construction.

CAFOs should actively operate and maintain the manure storage structure, including solids removal or dewatering when appropriate, to retain the capacity for the 25-year, 24-hour rainfall event. Recent studies suggest proper operation and maintenance will prevent most, if not all, overflows and discharges from manure storage areas. One recent study from Iowa State University suggested 76 percent of earthen manure structures lacked appropriate accompanying management and maintenance activities. Another study in North Carolina stated more than 90 percent of violations were attributed to operation and management deficiencies. Other studies also list typical shortcomings as including: careless transfer of manure to application equipment; improper manure agitation practices; inadequate controls to prevent burrowing animals and plants from eroding the storage berms and sidewalls; lack of routine inspection of land application and dewatering equipment during lagoon drawdown; and infrequent visual confirmation of adequate freeboard. Therefore, this rule establishes certain record keeping requirements that document the design basis for the structures, inspection and other maintenance activities related to the operation of the structures, and any overflows that occur. These records will help the CAFO operator to demonstrate that any overflows that do occur are consistent with the proper operation and maintenance of storage structures designed to contain all process wastewater, including the runoff from a 25-year, 24-hour rainfall event.

Although most CAFOs already have containment structures properly sized to contain their process wastes and the contributions from rainfall up to a 25-year, 24-hour rainfall event, many of these operations are not properly maintaining their systems to retain the capacity for such a rainfall event. Therefore, today's rule specifies that surface and liquid impoundments (*e.g.*, lagoons, ponds, and tanks) are required to have depth markers installed. The depth marker indicates the maximum volume that should be maintained under normal operating conditions allowing for the volume necessary to contain the 25-year, 24-hour rainfall event. Without such a depth marker, a CAFO operator might allow lagoons and other impoundments to fill to a level such that the capacity to contain the direct precipitation and runoff from a 25-year, 24-hour rainfall event is not maintained, leading to overflows that are inconsistent with the proper operation and maintenance of the system. In addition, closed or covered liquid impoundments are required to have depth markers installed to properly maintain these storage systems, such that dry weather discharges do not occur. Depth markers are necessary tools that allow operators to actively manage (e.g., dewater, remove solids) the liquid levels in their impoundments and ensure that adequate capacity is retained for the 25-year, 24-hour rainfall event. Remote sensors can also be used to monitor liquid levels in lagoons and impoundments. This sensor technology can be used to monitor changes in liquid levels, either rising or dropping levels. These sensors can also trigger an alarm when the level is changing rapidly or when the liquid level has reached a critical level. The alarm can transmit to a wireless receiver to alert the CAFO owner or operator and can also alert the permitting authority. The

advantage of this type of system is the real-time warning it can provide the CAFO owner or operator that a lagoon or impoundment is in danger of overflowing. It can provide the CAFO operator an opportunity to better manage operations and prevent catastrophic failures. These sensors are more expensive than depth markers; however, the added assurance they provide in preventing catastrophic failures might make them attractive to some operations.

Today's rule prohibits the disposal of dead animals in any liquid impoundments or lagoons and requires operations to handle dead animals in ways that prevent contributing pollutants to waters of the United States, except as provided for by alternative performance standards using technologies designed to handle mortalities. Improper disposal of mortalities can lead to surface or ground water contamination, or both, as well as noxious odors and the potential for disease transmission by scavengers and vermin. Historically, burial was the most common method of carcass disposal, but it is now prohibited in many States. By prohibiting the disposal of dead animals in liquid impoundments, this rule will eliminate the discharge of pollutants from carcasses in overflows and in the runoff from land application areas.

Weekly inspections ensure that any storm water diversions at the production area, such as roof gutters or any devices that channel storm water to the wastewater and manure storage and containment structure, are free from debris. Daily inspections of the automated systems providing water to the animals ensure they are not leaking or spilling, which by increasing the rate at which process wastewater is generated can lead to discharge of pollutants to surface water. The manure storage or treatment facility must be inspected weekly to ensure structural integrity. For surface and liquid impoundments, the berms must be inspected for leaking, seepage, wind or water erosion, excessive vegetation, unusually low or high liquid levels, reduced freeboard, depth of the manure and process wastewater in the impoundment as indicated by the depth marker, and other signs of structural weakness. EPA believes these inspections are necessary to ensure proper maintenance of the production area and prevent discharges of manure, litter, and other process wastewater to surface waters.

Records of these inspections must be maintained on-site, as well as records documenting any problems noted and corrective actions taken, the design basis for the structures, and the estimated volume of any overflows that occur. The depth of all liquid manure storage impoundments must be noted during each week's inspection. Production area inspection data allow operators to actively manage and maintain their surface and liquid impoundments to ensure the structural integrity of the system and avoid catastrophic failure of such systems. These records also assist the CAFO operator to minimize discharges to the extent possible and demonstrate that any overflows that do occur are consistent with the proper operation and maintenance of storage structures to contain all process wastewater including the runoff from a 25-year, 24-hour rainfall event.

As with the land application requirements, effluent limitations in the form of BMPs are particularly suited to the regulation of CAFOs. For many CAFOs, controlling discharges to surface waters is largely associated with controlling runoff and controlling overflows from manure storage structures. CAFO runoff can be highly intermittent and is usually characterized by very high flows occurring over relatively short time intervals. Whether the runoff or overflow will lead to a discharge, as well as the volume of any discharge that does occur and the nature of the pollutants present in the discharge, can vary substantially depending on the operating practices and physical characteristics of the operation (*e.g.*, paved vs. unpaved surfaces, manure handling practices, climate, amount of area exposed to the precipitation). For these reasons, EPA has determined that relying exclusively on numeric ELGs to control these discharges is infeasible.

EPA believes the production area BMPs included in this rule are necessary to ensure proper maintenance of the production area and prevent discharges, except whenever precipitation causes an overflow of process wastewater from a facility designed, constructed, and operated to contain all manure, litter, and process wastewaters plus the runoff from a 25-year, 24-hour rainfall event. There are numerous reports of operations discharging pollutants from the production area during dry weather; discharges from CAFOs that failed to maintain the required storage capacity to contain the 25-year, 24-hour rainfall; and instances of leakage and catastrophic failure of lagoons and other manure storage structures. Information in the record for this rule indicates that many of the discharges could have been avoided if CAFOs had practiced the BMPs in this rule frequently enough to detect and correct discrepancies before they led to discharges.

The proposed rule would have imposed explicit national requirements for certain CAFOs to address possible discharges to surface water via ground waters that have a direct hydrologic connection to surface waters. These operations would have been required to sample groundwaters to demonstrate that there is no discharge through a direct hydrologic connection to surface waters, unless they determined to the satisfaction of the permitting authority the absence of a direct hydrologic connection. Where a direct hydrologic connection to surface waters exists, controls on discharges to groundwater would have been required.

In today's effluent limitation guidelines, EPA is rejecting establishing requirements related to discharges to surface water that occur via ground water with a direct hydrologic connection.

Pollutant discharges from CAFOs to surface water via a groundwater pathway are highly dependent on site-specific variables, such as topography, climate, distance to surface water, and geologic factors such as depth of groundwater, soil porosity and permeability, and subsurface structure. The factors affecting whether such discharges are occurring at CAFOs are so variable from site to site that a national technology-based standard is inappropriate. Further, given the site-specific nature of these situations, quantifying the pollutant reduction associated with nationally-established requirements would be difficult. Imposing requirements through a national ELG could divert resources from other technologies and practices that are more effective at controlling CAFO discharges to surface waters. Therefore, EPA believes that requirements limiting the discharge of pollutants to surface water via groundwater that has a direct hydrologic connection to surface water are beyond the scope of today's ELGs.

Furthermore, EPA recognizes there are scientific uncertainties and site-specific considerations with respect to regulating discharges to surface water via groundwater with a direct hydrologic connection to surface water. EPA also recognizes there are conflicting legal precedents on this issue. Nothing in this rule shall be construed to expand, diminish, or otherwise affect the jurisdiction of the Clean Water Act over discharges to surface water via groundwater that has a direct hydrologic connection to surface water.

At the time of proposal, EPA considered, but rejected, requiring CAFOs to sample surface waters adjacent to feedlots and/or land under control of the feedlot to which manure is applied. This option would have required CAFOs to sample surface waters both upstream and downstream from the feedlot and land application areas following significant rainfall. In this final rule, EPA is continuing to reject imposing surface water monitoring requirements on CAFOs through the effluent guidelines because of concerns regarding the difficulty of designing and implementing through a national rule an effective surface water monitoring program that would be capable of detecting, isolating, and quantifying the pollutant contributions reaching surface waters from individual CAFOs; and because the addition of in-stream monitoring does not by itself achieve any better controls on the discharges from CAFOs than the controls imposed by this rule. In-stream monitoring could be an indicator of discharges occurring from the CAFO; however, unless conditions are appropriate and a well-designed sampling protocol is established, it is equally possible that the in-stream monitoring considered at proposal would measure discharges occurring from adjacent non-CAFO agricultural sources. These non-CAFO sources would likely be contributing many of the same pollutants considered under the sampling option. EPA considered alternative parameters that would isolate constituents from CAFO manure and wastewater from other possible sources contributing pollutants to a stream. Pathogens were considered as potential indicator parameters that could be used if adjacent operations do not also have livestock or are not using manure or biosolids as fertilizer sources. As discussed in the preamble for the proposed rule, however, there are concerns about the ability of CAFOs to collect and analyze samples for these pollutants (unless the sampling program is appropriately designed and tailored to the CAFO) because of the technical difficulty in obtaining representative samples and because of holding time constraints on collected samples associated with the analytical methods for these parameters. Accordingly, EPA believes that the imposition of in-stream monitoring requirements is more appropriately addressed through NPDES permit conditions established by the permitting authority. Although EPA has rejected the inclusion of in-stream monitoring requirements in this rule, the permitting authority retains the authority to include them in NPDES permits as either technology-based requirements based on BPJ, or water quality-based requirements, where the permitting authority determines they are necessary.

Another option considered, and rejected, at proposal would have required large dairy (and swine) operations to install anaerobic digester systems to treat their manure. Requiring anaerobic digester systems was not considered for beef and heifer operations because the wastes from these facilities would not support the operation of digester systems. (Refer to the *Technical Development Document* for more information on the operation of digester systems.) As discussed at proposal, anaerobic digesters offer certain benefits to CAFOs (*e.g.*, energy recovery, control of methane emissions), but they would not necessarily lead to significant reductions for many of the pollutants discharged to surface waters from CAFOs. Mandating the use of anaerobic digesters could divert resources from or complicate the installation of other technologies that can achieve even better performance. Further, use of an anaerobic digester does not eliminate the need for liquid impoundments to store dairy parlor water and barn flush water and to capture storm water runoff from the open areas at the dairy. Digesters do not necessarily reduce the nutrients in animal wastes. Most of the phosphorus removed from the effluent is concentrated in the digested solids, which are still subject to land application requirements. Similarly, metals present in the animal waste are not reduced and remain in the digester effluent and solids.

Although the ELG requirements in this rule are not specifically designed to reduce the pathogens in animal wastes, today's rule may achieve some reductions of pathogens in CAFO discharges by applying manure at rates that ensure appropriate agricultural utilization of nutrient and establishing setbacks or buffers where manure, litter, and other process wastewater are not applied. Pathogen die-off can also occur during the period manure is stored prior to land application, and further die-off of pathogens is expected to occur when the animal waste is exposed to sunlight following application to land. Because of the presence of pathogens in animal wastes and the potential risk they pose to human health and the environment, EPA continues to be concerned about the potential for transmission of pathogenic disease from CAFOs. This concern is substantiated by information in the rulemaking record regarding instances of foodborne and waterborne disease outbreaks. However, based on the current state of the science, a quantified link has not been established between pathogenic diseases outbreaks and CAFO discharges and runoff. EPA has a number of research efforts underway to better understand and reduce the environmental impact resulting from the discharge and runoff of manure from these facilities. This research will help inform future decisions to address pathogens in CAFO discharges.

d. What are the production area requirements for Large swine, poultry, and veal CAFOs (Part 412, Subpart D)? (1) Existing Large swine, poultry and veal CAFOs. Today's final rule establishes ELGs for existing swine, poultry, and veal operations that are the same as those described above in Section IV.C.2.c. for beef and dairy operations. Consistent with the 1974 ELG regulation, EPA is continuing to establish BMPs for the CAFO production area, which includes the animal confinement areas and the manure storage and containment areas. These BPT, BCT, and BAT requirements are being established for the reasons discussed in this section, and consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

EPA is retaining the current effluent guidelines that apply to swine, poultry, and veal operations, and adding language extending these requirements to immature swine, and to chicken operations with dry litter management practices. These regulations, which are codified at 40 CFR Part 412, Subpart D, prohibit the discharge of manure, litter, and other process wastewater, except for allowing discharge when rainfall causes an overflow from a facility designed, maintained, and operated to contain all manure, litter, and process wastewaters, including storm water, plus runoff from the 25-year, 24-hour rainfall event. In addition, today's rule requires Large CAFOs to comply with certain BMPs described above in Section IV.C.2.c.

What did EPA propose? EPA proposed to establish production area effluent guidelines for existing swine, poultry, and veal operations that would prohibit all discharges from CAFO production areas. Under the proposed rule, existing operations subject to the requirements of Part 412, Subpart D, would not have been allowed to discharge any manure, litter, or other process wastewaters, including the overflow of manure and other process

wastewaters from their containment systems.

What were the key comments? EPA received comments both opposing and supporting the proposed requirements that would have eliminated the allowance for overflows for swine, poultry, and veal CAFOs. Many commenters opposed to eliminating the overflow allowance argued that the cost to comply with such requirements would threaten the viability of their operations. Some stakeholders also stated that the use of impermeable lagoon covers (as a means for achieving compliance with the proposed requirements) would pose a number of operational challenges: freezing, biogas collection, clean storm water management, wind shear, cover repair, and disposal of spent covers. For these reasons, these stakeholders concluded the proposed zero discharge standard was technologically infeasible.

Rationale. The production area requirements established today for existing Large swine, poultry, and veal CAFOs will provide effective control of discharges of manure and other process wastewaters to surface water, consistent with the statutory factors the Clean Water Act requires EPA to consider in establishing effluent guidelines for existing sources (BPT, BCT, and BAT). These requirements are widely demonstrated as technologically achievable for these operations, and the containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs. Further, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which storage structures should be constructed.

CAFOs must properly design, operate, and maintain storage structures to contain all manure, litter, and process wastewater including the runoff from a 25-year, 24-hour rainfall event. The determination of the necessary storage volume should reflect the maximum length of time anticipated between emptying events. The design storage volume must reflect manure, wastewater, and other wastes accumulated during the storage period; normal precipitation less evaporation on the surface area during the entire storage period; normal runoff from the facility's drainage area during the storage period; 25-year, 24-hour precipitation on the surface (at the required design storage volume level) of the facility; 25-year, 24-hour runoff from the facility's drainage area; residual solids after liquids have been removed; necessary freeboard (NRCS recommends a minimum of 1 foot of freeboard); and, in the case of treatment lagoons, a minimum treatment volume necessary to allow anaerobic treatment to occur. Additional storage may also be required to meet management goals or other regulatory requirements. EPA encourages CAFOs to use relevant ASAE and NRCS standards as one method to ensure appropriate design and construction. This is also consistent with EPA's approach to estimating the costs of compliance with today's rule.

CAFOs should actively operate and maintain the manure storage structure, including solids removal or dewatering when appropriate, to retain the capacity for the 25-year, 24-hour rainfall event. Recent studies suggest proper operation and maintenance will prevent most, if not all, overflows and discharges from manure storage areas. One recent study from Iowa State University suggested 76 percent of earthen manure structures lacked appropriate accompanying management and maintenance activities. Another study in North Carolina stated more than 90 percent of violations were attributed to operation and management deficiencies. Other studies also list typical shortcomings as including: careless transfer of manure to application equipment; improper manure agitation practices; inadequate controls to prevent burrowing animals and plants from eroding the storage berms and sidewalls; lack of routine inspection of land application and dewatering equipment during lagoon drawdown; and infrequent visual confirmation of adequate freeboard. Therefore this rule establishes certain recordkeeping requirements that document the design basis for the structures, inspection and other maintenance activities related to the operation of the structures, and any overflows that occur. These records will help the CAFO operator to demonstrate that any overflows that do occur are consistent with the proper operation and maintenance of storage structures designed to contain all manure, litter, and process wastewater, including the runoff from a 25-year, 24-hour rainfall event.

As with the land application requirements, effluent limitations in the form of BMPs are particularly suited to the regulation of CAFOs. For many CAFOs, controlling discharges to surface waters is largely associated with controlling runoff and controlling overflows from manure storage structures. CAFO runoff can be highly intermittent and is usually characterized by very high flows occurring over relatively short time intervals. Whether the runoff or overflow will lead to a discharge, as well as the volume of any discharge that does occur and the nature of the pollutants present in the discharge, can vary substantially depending on the operating practices and physical characteristics of the operation (*e.g.*, paved vs unpaved surfaces, manure handling practices, climate, amount of area exposed to the precipitation).

EPA believes the production area BMPs included in this rule are necessary to ensure proper maintenance of the production area and prevent discharges except whenever precipitation causes an overflow of process wastewater from a facility designed, constructed, and operated to contain all manure, litter, and process wastewaters plus the runoff from a 25-year, 24-hour rainfall event. There are numerous reports of operations discharging pollutants from the production area during dry weather, discharges from CAFOs that failed to maintain the required storage capacity to contain the 25-year, 24-hour rainfall, and instances of leakage and catastrophic failure of lagoons and other manure storage structures. Information in the record for this rule indicates that many of the discharges could have been avoided if CAFOs had practiced the BMPs in this rule frequently enough to detect and correct discrepancies before they led to discharges.

For today's rule, EPA has determined that the cost to retrofit the many manure storage structures with covers, or to convert wet manure systems to dry manure systems, or to install other control techniques to achieve total containment of manure, litter, and other process wastewaters is not economically achievable for this subcategory. According to EPA's cost and economic impact analyses, requiring existing Large CAFOs subject to Part 412, Subpart D to comply with requirements for total containment (with no allowance for overflows) would result in facility closures at 11 percent of the CAFOs in Subpart D. (*See* the *Economic Analysis.*) EPA disagrees, however, with the comments that lagoon covers are technologically infeasible. EPA does agree that retrofitting existing lagoon systems with covers can pose substantial design challenges and some existing lagoons might need to be redesigned to accommodate a cover, substantially increasing the retrofit cost for existing sources. In spite of these design challenges and the operational challenges that covering lagoons can pose, EPA believes the record information on the demonstration status of impermeable lagoon covers adequately addresses these feasibility concerns. EPA has data from several vendors; one such vendor has developed more than a dozen such systems ranging in size from 3 acres to almost 20 acres. Covered lagoon systems have been successfully implemented in areas with cold climates such as northern Illinois, South Dakota, and Wisconsin, and in high-rainfall areas such as South Carolina, North Carolina, and Georgia. These systems are routinely exposed to and resist freezing, high winds, and other extreme weather events. EPA believes the information in the record demonstrates the technological feasibility of covering lagoons, but is rejecting BPT/BCT/BAT requirements based on such technology because they are not economically achievable.

EPA is not including ground water controls and monitoring requirements, or surface water monitoring requirements for Subpart D facilities for the same reasons described in Section IV.C.2.c for beef and dairy operations. EPA also rejected basing the effluent guidelines for swine operations on anaerobic digesters for the same reasons given above for dairies, and as discussed in the preamble for the proposed rule.

(2) New Large swine, poultry and veal CAFOs. In today's rule, EPA is establishing effluent guidelines for new swine, poultry, and veal operations based on zero discharge from CAFO production areas, subject to the provision that if a new source's waste management and storage facilities are designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 100-year, 24-hour rainfall event, it will satisfy the requirements of the NSPS. In addition, today's rule requires Large CAFOs to comply with certain BMPs described above in Section IV.C.2.c for the reasons given in Section IV.C. The NSPS requirements are being established for the reasons discussed in this section, and consistent with the factors for consideration under the Clean Water Act, as discussed in Sections II.A.2 and IV.C.2.f of this preamble.

What did EPA propose? EPA proposed to establish production area requirements for new sources that would have required zero discharge, and that would also have required all new Large swine, poultry, and veal CAFOs with a direct hydrologic connection to surface waters to prevent discharges to the ground water beneath the production area (animal confinement areas, manure stockpiles, and impoundments).

What were the key comments? Most comments received focused on the technological feasibility of total containment and the appropriateness of establishing ground water controls as part of the effluent guidelines. EPA received numerous comments in opposition to the proposed ground water requirements, stating that EPA lacks the authority to regulate ground water contamination in this rule and that the cost to comply with the proposed requirements would threaten the viability of these operations. The commenters also felt that EPA would need to define the term "direct hydrologic connection to surface water" if ground water requirements were to be implemented. EPA also received comments supporting the inclusion of ground water requirements in this rule, arguing that individual State programs are not always protective of these types of discharges.

Many commenters were also opposed to the proposed requirement that eliminates the allowance for overflows for swine, poultry, and veal CAFOs. Many commenters argued that the cost to comply with these requirements would threaten the viability of their operations. Some stakeholders felt impermeable lagoon covers in particular posed a number of operational challenges: Freezing, biogas collection, clean storm water management, wind shear, cover repair, and disposal of spent covers. For these reasons, these stakeholders concluded the proposed zero discharge standard was technologically infeasible.

Rationale. EPA has determined that the NSPS requirements included in this rule for the production area at new swine, poultry, and veal sources are technologically feasible and will not pose a barrier to entry, for the reasons discussed below and in the Technical Development Document.

A number of the comments opposed to establishing zero discharge limitations (with no allowance for the discharge of overflows) were related to concerns that unforeseeable events could eventually lead to a discharge from a facility and result, in the commenters' view, in a situation of noncompliance that the CAFO would be unable to prevent. EPA disagrees with these comments and believes the NPDES permitting regulations already address this concern. Consistent with existing provisions included in the NPDES regulations at 40 CFR 122.41, upset and bypass provisions are included as standard conditions in NPDES permits to address the potential for unforeseen circumstances and provide CAFOs with a reasonable defense. In other words, even though the NSPS for Subpart D operations prohibits discharges from the production area, a CAFO can claim an upset/bypass defense for events that are beyond reasonable control, including extreme weather events as well as other uncontrollable or unforeseen conditions.

An upset is an unintentional noncompliance event occurring for reasons beyond the reasonable control of the permittee. The upset provision in the NPDES permit operates as an affirmative defense to prosecution for violation of technology-based effluent limitations, provided certain specified criteria are met. *See* 40 CFR 122.41(n). For example, flood damage or other severe weather damage to containment structures that cannot reasonably be avoided or controlled by the permittee could be a basis for an affirmative defense for an upset. A bypass, on the other hand, is an act of intentional noncompliance during which waste treatment facilities are circumvented under certain specified circumstances, including emergency situations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage where there are no feasible alternatives to the bypass and where the permitting authority is properly notified. *See* 40 CFR 122.41(m).

EPA has added a reference at 40 CFR 412.46(3) to the existing regulatory provisions at 40 CFR 122.41(m) and (n) for upset and bypass. The upset and bypass provisions apply by existing regulation to all NPDES permits. In light of the more stringent requirements for new sources subject to Subpart D, EPA added this cross-reference to ensure that CAFO operators and permit writers were aware that the upset and bypass provisions are available. Upset and bypass conditions are applicable to all NPDES permits, for new and existing sources.

EPA has determined that total containment for the production area for new swine, poultry, and veal sources is technologically feasible and should not pose a barrier to entry for new sources subject to Subpart D. It is common for new poultry, veal, and swine operations to construct facilities that keep the animals in total confinement (covered housing) that is not exposed to rainfall or storm water runoff. In addition, many new operations are based on manure handling systems that greatly reduce or eliminate water use, such as hog and poultry high-rise houses, or that contain manure in covered or indoor facilities, such as underhouse pit storage systems and litter storage sheds. Other new facilities may choose flush systems with

lagoons that are covered or sited and designed to achieve total containment.

EPA recognizes that CAFOs may use different technologies to meet the zero discharge standard and that these technologies may have slightly different vulnerabilities to extreme weather events. Therefore, EPA is clarifying in today's rule that a CAFO may meet the zero discharge standard by designing, constructing, operating, and maintaining its waste management and storage facilities to contain all manure, litter, and process wastewater including the direct precipitation and runoff from a 100-year, 24-hour rainfall event.

By definition, a 100-year, 24-hour storm is an event which occurs on average once every 100 years. EPA believes that the 100-year, 24-hour rainfall event criteria provides the protection of the resource that the Agency intended under the zero discharge limitation, while providing clarity for the regulated community. The principle of tying regulatory or program requirements to precipitation-related events that happen with a frequency of once every 100 years is also used in other federal programs. For example, the Federal Emergency Management Agency uses the 100-year flood as the standard for floodplain management and to determine the need for flood insurance in the National Flood Insurance Program. The USDA Natural Resources Conservation Service (NRCS) uses the 100-year design criteria for flood protection structures. For instance, if the potential failure of a water control structure is likely to cause loss of life or extensive high value crop or property damage, NRCS uses the 100-year frequency storm as the basis for design.

CAFOs may choose to meet the zero discharge requirement through any technology designed to achieve this threshold. If a facility is designed, constructed, operated, and maintained to meet the 100-year, 24-hour rainfall criterion, and it nonetheless has a discharge due to extreme weather, this would not be considered a violation of its permit conditions. This provision is separate from an upset defense discussed above.

EPA has carefully evaluated the concerns raised in comments regarding the technical feasibility of total containment at swine, poultry, and veal operations. The concerns raised by commenters are primarily associated with operational factors and the effect of climate on the use of lagoon covers. Although the effluent guideline does not require the use of any specific technology, EPA concludes that the total containment requirements of this rule could be met at new sources through the use of lagoon covers or other appropriate technologies. New sources will avoid the design challenges and retrofit costs that existing sources would face with the use of lagoon covers, should they choose that technology to comply. Based on the information in the record, and as discussed above in this section, EPA has received data to demonstrate that each of these factors has been successfully handled at CAFOs and other facilities. Furthermore, by retaining all manure, litter, and other process wastewaters within the building (for example, by using underhouse pits) and not using an outdoor liquid impoundment, or by using other appropriate technologies, such as a lagoon designed to contain the precipitation and runoff from a 100-year, 24-hour rainfall event, new sources can avoid the operational challenges posed by covers.

In many instances, CAFOs are expected to construct swine and poultry housing that maintains the manure in dry form and stores the dry manure under cover until it is hauled off-site or land applied. Dry manures are generally more marketable and easier to transport, important considerations for facilities with insufficient land for agronomic use of the manures. The majority of poultry operations use total confinement housing practices, generating a dry manure that is collected within the poultry houses. The manure/litter is removed periodically from the poultry houses and is either taken directly to the land application area, transported to off-site fields or centralized processing facilities (*e.g.*, pelletizing operations), stored on-site within a roofed facility, or stored in temporary field stacks which can be covered and configured to prevent contact with precipitation. There has also been a great deal of interest in dry manure systems for swine operations in recent years, as evidenced by the current use of hoop structures and other designs described in the Technical Development Document. Dry manure systems are widely used at swine operations in Europe and are also being used at some operations in Canada. Some operations in the U.S. already use dry manure systems and EPA expects that the U.S. swine industry will choose to construct dry manure systems at new operations with greater frequency as they gain greater experience with these designs.

In other instances, new swine operations will likely choose underhouse deep pit systems to comply. Contrary to standard practice 30 years ago, closed buildings with underhouse deep pits are currently the predominant production technology used at swine operations. By 1995, approximately half of all large swine operations were using under floor pits with slotted floors. In 2000, more than 2,200 large swine operations nationwide utilized under floor pits, with several hundred additional operations using slurry storage. EPA has learned through site visits, as supported by meetings with the National Pork Producers Council (a trade association) that, because of further technological advancements, newly constructed systems rarely include lagoons, and that closed buildings with under floor pits are now the predominant production technology. Given the widespread use of this design, EPA anticipates that a number of new operations constructed in the next five to ten years will choose to use deep pit systems.

Some new swine operations may choose to use lagoon-based or other wet systems, depending on the factors specific to their situation. For example, some new operations may choose to rely on covered lagoon systems (with gas flaring or energy recovery). Another alternative technology that may be selected would be to install an anaerobic digester followed by a covered lagoon for storing the digester effluent. Benefits to operators using anaerobic digesters include the cost savings (or even revenue, in some cases) from electricity generation, a better-stabilized waste, significant odor reduction, and improved marketability of the digester solids. During site visits conducted during the rulemaking EPA has observed the use of aboveground fiberglass-lined steel tanks to store swine wastes. When configured to exclude direct precipitation or to contain all direct precipitation and runoff from a 100-year, 24-hour rainfall event, these tanks are able to meet the zero discharge requirement. As noted below in section IV.C.2.e, in order to provide appropriate flexibility to CAFOs, alternative technologies that achieve overall environmental performance across all media equal or superior to the reductions that would be achieved under the zero discharge standard may also be authorized by the Director.

EPA is aware of some interest by the swine industry in achieving total containment by using uncovered lagoons that would not be expected to discharge to surface waters based upon siting and lagoon design. For example, by providing additional freeboard in the design, a facility with sufficient containment to retain all manure, litter, and process wastewater plus the direct precipitation and runoff from a 100-year, 24-hour rainfall event would

be able to demonstrate that it complies with the rule requirements, assuming proper operation and management. Such facilities would be considered to achieve zero discharge. As discussed above, an upset defense could also apply when unforeseen and uncontrollable conditions result in a discharge.

The production area BMPs established today for Large swine, poultry, and veal CAFOs are necessary to ensure proper operation and maintenance of the production area and provide effective control of discharges of manure, litter, and other process wastewaters to surface water. There are numerous reports of operations discharging pollutants from the production area during dry weather, discharges from CAFOs that failed to maintain the required storage capacity, and instances of leakage and catastrophic failure of lagoons and other manure storage structures. CAFOs should actively operate and maintain the manure storage structure, including solids removal or dewatering when appropriate, to retain the capacity to accommodate continued generation of process wastewater. Information in the record for this rule indicates that many of the discharges could have been avoided if CAFOs had practiced the BMPs in this rule frequently enough to detect and correct discrepancies before they led to discharges.

EPA is not including ground water controls and monitoring requirements, or surface water monitoring requirements for Subpart D facilities for the same reasons described in Section IV.C.2.c for beef and dairy operations. EPA also rejected basing the effluent guidelines for swine operations on anaerobic digesters for the same reasons described above for dairies, and as discussed in the preamble for the proposed rule.

e. Voluntary alternative performance standards to encourage innovative technologies. EPA's long-term environmental vision for CAFOs includes continuing research and progress toward environmental improvement. The Agency believes that certain individual CAFOs will voluntarily develop and install new technologies and management practices equal to or better than those required by baseline technology-based effluent guidelines (BPT, BCT, and BAT) and standards (NSPS) promulgated in today's rule. Furthermore, EPA recognizes that some CAFOs, as well as land grant universities, State agencies, equipment vendors, and agricultural organizations, are working to develop new technologies that achieve reductions in nutrient and pathogen losses to surface water, ammonia and other air emissions, and ground water contamination. The development of new technologies offers the potential to match or surpass the pollutant reduction that would be achieved by compliance with the baseline production area effluent guidelines and standards (discussed above in Section IV.C.2.c for Large CAFOs subject to Part 412, Subpart C, and Section IV.C.2.d for Large CAFOs subject to Part 412, Subpart D). The term "baseline effluent guidelines" as used here is defined below in the following section of this preamble.

In addition to the production area effluent guidelines promulgated by today's rule (the "baseline effluent guidelines"), EPA is establishing provisions for the development of alternative performance standards for discharges from the production area of Large CAFOs. The effluent guidelines promulgated today also establish BMPs that apply to the production area and land application areas at Large CAFOs. These BMP requirements are applicable to all Large CAFOs (both existing and new sources), regardless of whether their NPDES permit limitations are based on the baseline effluent guidelines or the alternative performance standards.

In establishing the ELG provisions for alternative performance standards, this rule creates a framework that enables new and existing Large CAFOs in Subpart C and existing Large CAFOs in Subpart D to develop and implement new technologies and management practices that perform as well as or better than the baseline effluent guidelines at reducing pollutant discharges to surface waters from the production area. For new Large CAFOs in Subpart D, the rule allows for alternative permit limitations based upon site-specific innovative technologies that achieve environmental performance across all media which is equal or superior to the baseline standards. An added benefit of providing for alternative performance standards is the potential for new or alternative technologies and practices to help address the multimedia environmental issues confronting CAFOs. A key tenet of these programs is that CAFOs will now have the option to either accept NPDES permit limitations based on the baseline effluent guidelines or voluntarily request the permitting authority to establish an alternative BPT/BCT/BAT/NSPS performance standard as the basis for their technology-based NPDES permit limits (*e.g.*, inclusion of effluent limitations in their NPDES permits that are different from those based on the baseline effluent guidelines).

EPA received suggestions from a number of stakeholders on the merits of creating a framework for alternative performance standards. Several stakeholders believe that the effluent guidelines established by the 1974 ELG regulation, as well as the baseline effluent guidelines promulgated in today's rule, discourage the use of innovative treatment and pollution prevention technologies because they are based on containment rather than treating the wastes to particular targets of effluent quality. A number of commenters expressed support for alternative wastewater treatment technologies that are equivalent to or better than baseline effluent guidelines, and they specifically requested that EPA establish provisions in the rule to allow CAFOs to discharge treated process wastewater generated from the production area of the CAFO.

Commenters also suggested that EPA's regulatory framework should provide incentives encouraging CAFOs to use technologies that would protect all environmental media, including air, ground water, and surface water. Commenters suggested that adding flexibility in the rule to allow for the discharge of treated process wastewater could lead to better approaches for addressing multimedia environmental concerns. On a related note, a number of stakeholders commented that EPA should include controls for pathogens or antibiotics, as well as atmospheric emissions of ammonia, methane, and hydrogen sulfide.

In view of these comments and recognizing the potential environmental gains presented by the ongoing research and development of new treatment technologies for CAFO wastes, today's rule establishes provisions providing for the development of alternative performance standards for discharges from Large CAFOs. As noted above, CAFOs retain the option to either accept NPDES permit limitations based on the baseline effluent guidelines or voluntarily request the permitting authority to establish an alternative performance standard as the basis for their technology-based NPDES permit limits. The specific requirements imposed by the alternative performance standard would be established by the NPDES permitting authority based on the technical analysis and other information submitted by the CAFO, as required under the alternative performance standards provisions included in Part 412. CAFOs would not be required to enter the alternative

performance standards program. A Large CAFO choosing not to participate in the alternative performance standards program would instead be subject to the baseline effluent guidelines discussed above in Section IV.C.2.c (for Subpart C) or Section IV.C.2.d (for Subpart D). EPA previously used a similar approach in establishing the effluent guidelines regulations for the Pesticide Formulating, Packaging, and Repackaging (PFPR) industry. In that rule, PFPR facilities are subject to effluent guidelines requirements that prohibit all discharges, but they may voluntarily elect to instead adopt certain regulatory requirements (mandatory BMPs and treatment of discharged wastes) and be allowed to discharge a "pollution prevention allowable discharge." (*See* 40 CFR Part 455. *See also* 61 FR 57518; November 6, 1996.) In another rulemaking, EPA established effluent guidelines for the pulp, paper, and paperboard (Pulp & Paper) industry that provide incentives for mills to voluntarily implement advanced process technologies. For the Pulp & Paper effluent guidelines, mills accepting more stringent NPDES permit limitations based on the performance of the advanced technologies and other process improvements are granted incentives such as public recognition and substantially extended compliance periods. (*See* 40 CFR Part 430. *Also see* 63 FR 18504, 18593–18611; April 15, 1998).

(1) Baseline effluent guidelines. The effluent guidelines regulations promulgated in today's rule for all existing Large CAFOs, and for new source Large beef, dairy and heifer CAFOs, prohibit the discharge of process wastewaters, except when rainfall events cause an overflow from a facility designed, constructed, and operated to contain all manure, litter, and process wastewaters plus the runoff from a 25-year, 24-hour rainfall event. These limitations are based on the use of storage ponds and lagoons to contain the process wastes and runoff, although they do not preclude CAFOs from using alternative technologies. The NSPS requirements for new source Large swine, poultry, and veal CAFOs require zero discharge from the production area, subject to a provision that compliance with the standard can be met if the waste management and storage facilities are designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 100-year, 24-hour rainfall event. The ELGs were established on the basis of factors specified in CWA sections 304(b) and 306, including the cost of achieving the effluent reductions and any non-water quality environmental impacts. These limitations are referred to in this preamble as the "baseline effluent guidelines" for the purpose of clarifying which effluent guidelines requirements may be replaced by the alternative performance standards provisions included in today's rule.

The effluent guidelines promulgated today also establish BMPs that apply to the production area and land application areas at Large CAFOs. These BMP requirements are applicable to all Large CAFOs (both existing and new sources), regardless of whether their NPDES permit limitations are based on the baseline effluent guidelines or the alternative performance standards. As discussed in Sections IV.C.2.c and IV.C.2.d, the production area BMPs are necessary to ensure that manure storage structures and other production area components associated with controlling process wastewaters (*e.g.*, storm water diversions) are properly designed, operated, and maintained to prevent overflows or catastrophic failure of the system.

(2) Voluntary alternative performance standards for all Large beef/dairy/heifer CAFOs and existing Large swine/poultry/veal CAFOs. The alternative performance standards promulgated today for new and existing sources in Subpart C and existing sources in Subpart D, apply to discharges of manure, litter, and other process wastewaters from the CAFO production area. Under the provisions included in the final rule, these Large CAFOs will be allowed to discharge process wastewater that has been treated by technologies that the CAFO demonstrates will result in equivalent or better pollutant removals than would otherwise be achieved by the baseline effluent guidelines. These regulatory provisions are targeted toward the CAFO's wastewater discharges, but EPA encourages operations electing to participate in the alternative performance standards program to consider environmental releases holistically, including opportunities for achieving improvement in multiple environmental media.

As discussed above, the baseline effluent guidelines, though nominally zero discharge, allow for untreated overflow discharges if the system is designed, constructed, and operated to contain manure, litter, and process wastewater plus the runoff from a 25-year, 24-hour rainfall. (Large swine, poultry, and veal CAFOs that are new sources are subject to a different performance standard.) To demonstrate that an alternative control technology would achieve equivalent or better pollutant reductions than the baseline effluent guidelines, the CAFO must submit a technical analysis, which includes calculating the pollutant reductions based on the site-specific modeled performance of a system designed to comply with the baseline effluent guidelines (*e.g.*, a storage lagoon designed, constructed, and operated to contain all manure, litter, and process wastewaters plus the runoff from a 25-year, 24-hour rainfall event). For many pollutants (*e.g.*, nitrogen, phosphorus, BOD, metals), the mass of pollutants discharged will usually be the most appropriate measure for assessing treatment system performance and determining whether the alternative control technology will achieve equal or better pollutant reductions. For some pollutants such as pathogens, however, pollutant mass may not be the most appropriate measure of pollutant reductions and alternative measures will need to be used.

One approach for making such a demonstration is to use a computer simulation model to evaluate site-specific or region-specific climate data, along with wastewater characterization data, to determine the pollutant discharge that would be projected for a system designed, constructed, and operated to achieve compliance with the baseline effluent guidelines. The model would evaluate the daily inputs to the storage system, including all process wastes, direct precipitation, and runoff. It would also evaluate the daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of wastewater for use on cropland at the CAFO or transport off site. The model would be used to predict the overflow from the storage system that would occur over a 25-year period, and these overflow predictions would be used to determine the median annual predicted overflow over the 25 years evaluated by the model.

Precipitation patterns for a given location are inherently variable from year-to-year. As a result, the volume of water entering the storage system, either through direct precipitation or as collected runoff, will vary substantially from one year to another. The potential for the storage system to overflow and the volume of the overflow is a function of site-specific variables, including the rate and total volume of wastes entering and leaving the storage system. To enable the development of alternative performance standards that achieve pollutant reductions comparable to those that would be achieved by the baseline effluent guidelines, CAFOs must perform a technical analysis that includes a prediction of the volume of overflows from the storage system. If the technical analysis were to be performed using climate data from a period of unusually high precipitation, then the CAFO's analysis would tend to overestimate the overflow volume and result in alternative performance standards that do not achieve pollutant reductions equal to the baseline effluent guidelines. Conversely, if the technical analysis were to be performed using climate data from a period of unusually low precipitation (*e.g.*, drought periods), then the CAFO's analysis would tend to underestimate the overflow volume. By requiring the CAFO to use precipitation data for a 25-year period, the technical analysis will minimize the bias introduced by short-term variations in climate patterns.

The site-specific or other appropriate pollutant characterization data for the wastewater from the waste storage system (*i.e.*, the overflow) would be coupled with the overflow volume output from the model described above to predict the quantity of pollutant discharge that would occur from a system designed to comply with the baseline effluent guidelines. CAFOs would be required to meet NPDES permit conditions that result in equivalent or improved pollutant reductions, as compared to the predicted quantity of pollutant discharge from overflow of the baseline system. If a CAFO elected to use this approach, it would be meeting the same limitations as a CAFO under the baseline effluent guidelines, but expressed in a different fashion (*e.g.*, numeric limits on a continuous discharge versus a limit of zero discharge with an allowance for discontinuous overflows). To illustrate this type of analysis, EPA prepared an example evaluation using model farm characteristics. This example is available in the *Technical Development Document* and in section 19.6.2 of the rulemaking record.

(3) *Voluntary superior environmental performance standards for new Large swine/poultry/veal CAFOs.* The NSPS requirements that apply to production area discharges at new Large swine, poultry, and veal CAFOs are more stringent than the NSPS established for other new sources and the BAT requirements for existing sources. EPA is endeavoring to ensure that this rule does not inadvertently discourage approaches that are superior from a multimedia environmental perspective. Therefore, for new sources subject to Subpart D (Large swine, poultry, and veal CAFOs), EPA is establishing alternative performance standards that provide additional compliance flexibilities specifically designed to encourage CAFOs to adopt innovative technologies for managing and/or treating manure, litter, and process wastewater. Specifically, the NSPS includes a provision that allows for the CAFO to request the Director to establish alternative NPDES permit limitations based upon a demonstration that site-specific innovative technologies will achieve overall environmental performance across all media which is equal to or superior to the reductions achieved by baseline standards. The quantity of pollutants discharged from the production area must be accompanied by an equivalent or greater reduction in the quantity of pollutants released to other media from the production area (*e.g.*, air emissions from housing and storage), the land application areas for all manure, litter, and process wastewater at on-site and off-site locations, or both. In making the demonstration that the innovative technologies will achieve an equivalent or greater reduction, the comparison of quantity of pollutants is to be made on a mass basis where appropriate.

In general, EPA expects CAFOs will conduct a whole-farm audit to evaluate releases that occur at the point of generation to minimize or eliminate waste production and air emissions, followed by an evaluation of the waste handling and management systems, and ending with an evaluation of land application and off-site transfer operations. The specific technologies that CAFOs will select and adopt to achieve the pollutant reductions are expected to be most effective for the particular operation. As part of the demonstration the CAFO will need to present information that describes how the innovative technologies will generate improvement across multiple environmental media: The Director has the discretion to request additional supporting information to supplement such a request where necessary. Such information could include criteria and data that demonstrate effective performance of the technologies and that could be used to establish the alternative NPDES permit limitations.

(4) *Process and incentives for participating in alternative performance standards.* CAFOs interested in pursuing the alternative performance standards should have a good compliance history, *e.g.*, no ongoing violations of existing permit performance standards or history of significant noncompliance. These facilities must conduct an analysis of their operation (as described above in Sections IV.C.2.e.(2) and IV.C.2.e.(3)) and prepare a proposed alternative program plan including the results of the analysis; the proposed method for implementing new technologies and practices, including an approach for monitoring performance; and the results demonstrating that these technologies and practices perform equivalent to or better than the baseline effluent guidelines. This plan must be included with the CAFO's NPDES permit application or renewal, and it will be incorporated into the permit upon approval by the permitting authority.

CAFOs are expected to derive substantial benefits from participation in the alternative standards approach, through greater flexibility in operation, increased good will of neighbors, reduced odor emissions, and potentially lower costs. EPA is considering future opportunities for other possible incentives to encourage participation in this program.

f. How did EPA consider the Clean Water Act statutory factors in establishing the ELGs? (1) BPT. In establishing BPT effluent guidelines for an industry category, EPA looks at a number of factors in determining the appropriate effluent limits for conventional, toxic, and non-conventional pollutants. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate. 33 U.S.C. 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. EPA's consideration of these factors and how they affected this rulemaking is presented in the *Technical Development Document*.

One way that EPA takes these factors into account is by breaking down categories of industries into separate classes of similar characteristics. The division of a point source category into groups called "subcategories" provides a mechanism for addressing variations among products, raw materials, processes, and other parameters that can result in distinct effluent characteristics. This provides each subcategory with a uniform set of ELGs that take into account technology achievability and

economic impacts unique to that subcategory. In this rule, EPA has addressed such considerations by establishing two new subcategories, codified at Subpart C (beef, dairy, and heifers) and Subpart D (swine, poultry, and veal) of 40 CFR 412. *See* Section IV.C.2.a of the preamble for a discussion of these subcategories.

The requirements established in this rule for BPT effluent guidelines reflect consideration of the total cost of applying these technologies (including BMPs) in relation to the effluent reduction benefits that will be achieved. The ELGs promulgated today are expected to cost Large CAFOs $283 million per year (pre-tax). The ELGs will reduce discharges of sediment by 2.1 billion pounds, nutrients by 155 million pounds, and metals by one million pounds annually. This results in an overall ratio of $0.12 per pound of pollutant removed (using reductions of sediment, nutrients, and metals). Excluding sediment reductions, the rule achieves an overall ratio of $1.75 per pound of pollutant removed (nutrients and metals).

The technologies upon which BPT is based are ones that are readily applicable to all CAFOs and will provide effective control of discharges of manure, litter, and other process wastewaters to surface water. These requirements are widely demonstrated as achievable and represent the level of control achieved by the majority of Large CAFOs. The containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs, and most existing lagoons and other containment structures are built to these standards. Furthermore, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which containment structures should be constructed.

As described in Section IV.C.2.b of this preamble, the land application requirements included in this rule represent practices that will ensure that CAFOs apply manure, litter, and other process wastewaters at a rate and in a manner consistent with the appropriate agricultural utilization of nutrients. Limits on the rate at which manure can be applied and certain other constraints on application practices, such as setbacks and vegetated buffers, are widely demonstrated as achievable and have been imposed by a number of States and through NPDES permits.

(2) BCT. In evaluating the possible BCT standards in this rulemaking, EPA first considered whether there are any candidate technologies (*i.e.*, technology options) that are technologically feasible and achieve greater reductions in conventional pollutants than are achieved by the BPT requirements promulgated today. (Conventional pollutants are defined as TSS, BOD, pH, fecal coliform, and oil and grease.) EPA's analyses of pollutant reductions that can be achieved by the candidate options (including the BPT, BAT, and NSPS options) has focused largely on the control of nutrients, sediments, metals, and pathogens, but to the extent possible have also assessed the effectiveness of the control options at reducing discharges of conventional pollutants. Although animal wastes contain BOD because of the organic material present in these wastes, the data available for estimating reductions of BOD from application of the candidate technologies are limited. Therefore, EPA based its estimates of conventional pollutant reductions on TSS, using estimated reductions in sediment discharges as a surrogate for TSS. Following this approach, EPA identified no BCT technology option that achieves greater TSS removals than the BPT requirements promulgated today, and EPA does not believe the candidate BCT options would substantially reduce discharges of BOD. EPA therefore concluded that there are no candidate BCT technologies for establishing limits on conventional pollutants that are more stringent than BPT, and is establishing BCT requirements in this rule equal to BPT. If EPA had identified technology options appropriate for a national rule that achieve greater reductions of conventional pollutants than are achieved by BPT, then EPA would have performed the two-part BCT cost test. (*See* 51 FR 24974 for a description of the methodology EPA employs when setting BCT standards.)

(3) BAT. In general, BAT represents the best available economically achievable performance of direct discharging facilities in the industrial subcategory or category. The Clean Water Act requires EPA to consider a number of different factors when developing ELGs that represent the BAT level of control for discharges of toxic and nonconventional pollutants by a particular industry category. These factors include the cost of achieving effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and other factors as the Administrator deems appropriate. EPA's consideration of these factors and how they affected this rulemaking is presented in the *Technical Development Document*.

An additional statutory factor considered in setting the BAT requirements is economic achievability. Generally, the achievability is determined on the basis of the total cost to the industrial subcategory and the overall effect of the rule on the industry's financial health. The BAT requirements promulgated today are economically achievable and represent the best available technology for Large CAFOs. As was discussed above for BPT, EPA estimates the cost for Large CAFOs to comply with the ELGs at $283 million per year (pre-tax, $2001). The ELGs will reduce discharges of sediment by 2.1 billion pounds, nutrients by 155 million pounds, and metals by one million pounds annually. (These costs and pollutant reductions are not additional costs beyond that of BPT. Because the BPT and BAT requirements promulgated today are identical, the costs and pollutant reductions for each level of control are presented incremental to the baseline of current practices and current regulatory requirements.)

The technologies upon which BAT is based are ones that are readily applicable to all CAFOs and will provide effective control of discharges of manure, litter, and other process wastewaters to surface water. The containment requirements, in conjunction with the production area BMPs included in this rule, are widely demonstrated as achievable and represent the level of control demonstrated to be achievable by well-performing Large CAFOs. The containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs, and most existing lagoons and other containment structures are built to these standards. Furthermore, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which storage structures should be constructed.

As described in Section IV.C.2.b of this preamble, the land application requirements included in this rule are consistent with appropriate agricultural utilization of nutrients and will ensure that CAFOs apply manure, litter, and other process wastewaters at a rate and in a manner necessary to meet the requirements of the crops grown and not exceed the ability of the soil and crop to absorb nutrients. Limits on the rate at which manure can be applied and certain other constraints on application practices, such as setbacks and vegetated buffers, are widely

demonstrated as achievable and have been imposed by a number of States and through NPDES permits.

To determine economic achievability, EPA analyzed how many facilities affected by this rule would experience financial stress severe enough to make them vulnerable to closure. As explained in more detail in Section VIII of this preamble and in the *Economic Analysis*, the number of facilities experiencing stress might indicate whether certain regulatory options considered during the rulemaking are economically achievable, subject to other considerations.

For the veal, dairy, turkey, and egg laying sectors, the final regulations are not expected to result in any CAFO-level business closures. In the beef cattle, heifer, swine and broiler sectors, however, the final rule is expected to cause some existing CAFOs to experience financial stress. These operations may be vulnerable to closure as a result of complying with the final rule. Across all sectors, an estimated 285 existing Large CAFOs may be vulnerable to facility closure. This accounts for approximately 3 percent of all Large CAFOs, By sector, EPA estimates that 49 beef operations (3 percent of affected beef CAFOs), 204 hog operations (5 percent of affected hog CAFOs), 10 broiler operations (1 percent), and 22 heifer operations (9 percent) may close as a result of complying with the final rule.

(3) NSPS. NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS represents the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements. In addition, EPA evaluates whether the requirements would impose a barrier to entry to new operations.

The technologies upon which the production area NSPS for Large beef, dairy, and heifer CAFOs are ones that are readily applicable to all CAFOs in that subcategory and will provide effective control of discharges of manure, litter, and other process wastewaters to surface water. The containment requirements, in conjunction with the production area BMPs included in this rule, are widely demonstrated as achievable and represent the level of control demonstrated to be achievable by well-performing Large CAFOs covered by Part 412, Subpart C. The containment requirements included in this rule have been applicable to Large CAFOs since they were promulgated in the 1974 ELGs, and most existing lagoons and other containment structures are built to these standards. Furthermore, USDA and ASAE cite the 25-year, 24-hour rainfall event as part of the standard to which containment structures should be constructed.

EPA has determined that total containment (with a compliance option to design, operate, and maintain the facility to contain the runoff from a 100-year, 24-hour rainfall event) for the production area for new swine, poultry, and veal sources (and the production area BMPs) is technologically feasible and will not pose a barrier to entry for new sources subject to Subpart D. It is common for new poultry, veal, and swine operations to construct facilities that keep the animals in total confinement. In addition, many new operations are based on manure handling systems that greatly reduce or eliminate water use, such as hog and poultry high-rise houses, or that contain manure in covered or indoor facilities, such as underpit storage systems and litter storage sheds. EPA has carefully evaluated the concerns raised in comments regarding the technical feasibility of total containment at swine, poultry, and veal operations. The concerns raised by commenters are primarily associated with operational factors and the effect of climate on the use of lagoon covers. New sources will avoid the design challenges and retrofit costs that existing sources would face with these requirements. Based on the information in the record, and as discussed above, EPA has received data to demonstrate that each of these factors has been successfully handled at CAFOs and other facilities. Therefore, EPA concludes that the total containment requirements of this rule could be met through the use of lagoon covers if facilities choose to do so. However, by retaining all manure and process wastewater within the building (for example, by using underhouse pits) and not using an outdoor liquid impoundment, these operations will avoid the operational challenges posed by covers. Additional compliance flexibility is provided by the provision that allows the zero discharge standard to be met by designing, constructing, operating, and maintaining waste management and storage facilities to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 100-year, 24-hour rainfall event.

The land application requirements included in this rule for all Large CAFOs that are new sources are identical to those established under BAT for existing sources and are consistent with appropriate agricultural utilization of nutrients. These land application requirements will ensure that CAFOs apply manure, litter, and other process wastewaters at a rate and in the manner necessary to meet the requirements of the crops grown and not exceed the ability of the soil and crop to absorb nutrients. Limits on the rate at which manure can be applied and certain other constraints on application practices, such as setbacks and vegetated buffers, are widely demonstrated as achievable and as the best available demonstrated control technology, and have been imposed by a number of States and through NPDES permits.

EPA evaluated economic impacts to new source CAFOs by comparing the costs borne by new source CAFOs to those estimated for existing sources. That is, if the expected cost to new sources is similar to or less than the expected cost borne by existing sources (and that cost was considered economically achievable for existing sources), then EPA considers the regulations for new sources do not impose requirements that might grant existing operators a cost advantage over new CAFO operators and further determines that the NSPS is affordable and does not present a barrier to entry for new facilities. In general, costs to new sources for complying with a given set of regulatory requirements are lower than the costs for existing sources to comply with the same requirements since new sources are able to apply control technologies more efficiently than existing sources that may incur high retrofit cost. New source CAFOs will be able to avoid the retrofit costs that will be incurred by existing sources. For example, the cost of a model total containment system for swine that would meet the no discharge requirement (*e.g.*, incremental cost of deep pit swine house, including land application) typically is less than the cost for an existing source to retrofit water intensive lagoon-based systems that are exposed to precipitation. Among the primary reasons for the capital cost difference for a new source with total containment is that it does not include an impoundment lagoon,

and it experiences reduced operating costs because it handles less waste with substantially lower water and higher solids content than a water-intensive lagoon-based system. New sources may be able to avoid many of the other control costs facing some existing producers through careful site selection, such as choosing to locate at a site with sufficient available land nearby for applying manure. Furthermore, other technologies are available to new sources, that have been implemented by existing sources, that are also capable of achieving the no discharge standard. *See* section IV C above for further discussion of other technologies. Since the new source requirements for Subpart C are the same as the corresponding existing source requirements, EPA concludes that the NSPS requirements promulgated today do not present a barrier to entry for new facilities. For Subpart D facilities, where the new source requirements are more stringent than the existing source requirements, EPA concludes that the NSPS requirements do not pose a barrier to entry because of the currently widespread use of animal confinement practices and waste management technologies that can comply with the zero discharge standard, and because these total containment technologies and practices are less costly to implement than water-intensive systems (*e.g.*, such as water flush waste management) that are exposed to precipitation. EPA costed for zero discharge technologies and showed that these would pose no barrier to entry. Now that operations can choose an alternative option that might be cheaper to implement, EPA believes that there is even less likelihood that there is a barrier to entry. More information is provided in the *Technical Development Document* and the *Economic Analysis* supporting the final regulations.

3. What Technology-Based Limitations Apply to Small and Medium CAFOs?

In today's final rule, small and medium-size AFOs that have been defined or designated as CAFOs by the permitting authority would not be subject to the effluent limitations guidelines and standards specified in part 412. (Refer to section IV.C.2.a. of this preamble for a discussion of the key public comments and EPA's final analysis for applying the effluent limitations guidelines only to Large CAFOs.) Rather, for Small and Medium CAFOs the permit writer would use BPJ to establish, case by case, the appropriate technology-based requirements for each permit. The technology-based requirements must address the production area and the land application area(s). Establishing permit limits for these facilities on a BPJ basis, using 40 CFR 125.3 as a guide for the types of factors to consider, allows for the establishment of permit conditions that are tailored to and more directly address the site-specific conditions that led to the facility being defined or designated as a CAFO. In instances where technology-based requirements are not protective of water quality, the permit writer will also establish water quality-based effluent limits.

For the production area; the permitting authority must establish the technology-based limitations on the discharge of manure, litter, and process wastewater, including limitations where applicable based on the minimum duration and intensity rainfall event for which the CAFO can design and construct a system to contain all manure, litter, and process wastewater and storm water. Technical references from USDA and the American Society of Agricultural Engineers should be consulted for appropriate design factors to consider for containment structures. Typical design factors are: (1) Sludge volume, (2) treatment volume, (3) volume of manure and wastewater between drawdown events, (4) total volume for runoff and precipitation, and (5) the minimum duration and intensity rainfall event portion of (4).

For the land application area, the permitting authority must consider permit requirements that place technology-based limits on discharges resulting from the application of manure, litter, and process wastewater to land under the control of the CAFO owner or operator, including restrictions on the rates of application to ensure appropriate agricultural utilization of nutrients. In today's final rule, all CAFOs must develop and implement a nutrient management plan (as described in the next section).

4. Will CAFOs Be Required To Develop and Implement a Nutrient Management Plan?

Under today's final rule, NPDES permits for all CAFOs will require the development and implementation of a nutrient management plan. At a minimum, a nutrient management plan must include BMPs and procedures necessary to achieve effluent limitations and standards. The plan must, to the extent applicable, address the following minimum elements:

- Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- Ensure proper management of animal mortalities (*i.e.*, dead animals) to ensure that they are not disposed of in any liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- Ensure that clean water is diverted, as appropriate, from the production area;
- Prevent direct contact of confined animals with waters of the United States;
- Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, or process wastewater, or storm water storage or treatment system, unless specifically designed to treat such chemicals and other contaminants;
- Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and
- Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

For Large CAFOs these minimum elements of a nutrient management plan must also meet the more detailed requirements in the part 412 effluent guidelines. For Small and Medium CAFOs, or other operations not otherwise subject to part 412 requirements for land application, the minimum elements of a nutrient management plan will be further specified in the permit, on a site specific basis, based on the best professional judgment of the permitting authority.

What did EPA propose? In the proposed rule, EPA introduced the concept of a "Permit Nutrient Plan" ("PNP"), and proposed that permits for all CAFOs would require the development and implementation of a PNP. For CAFOs not subject to the ELGs, the proposal called for the permitting authority to consider the need for a PNP.

The concept of a PNP, as opposed to the use of the term CNMP, was used by EPA to identify those specific aspects of a CNMP that would be required under the proposed regulatory program. In the proposal EPA included a discussion documenting the relationship between a CNMP and a PNP. EPA also prepared, and made available for public review as a supporting document, a draft guidance document entitled *Managing Manure Nutrients at Concentrated Animal Feeding Operations* which provided information concerning the content of a PNP. The PNP was considered to be the subset of activities in a USDA defined CNMP that relate to compliance with the effluent discharge limitations and other requirements of the NPDES permit. EPA also proposed that it be developed, or reviewed and modified, by a certified specialist. The proposal would have required the PNP to be developed within 3 months of submitting either *an* NOI for coverage under an NPDES general permit or an application for *an* NPDES individual permit. CAFO operators would be required to notify the permitting authority when the PNP had been developed. EPA's position was that the content of a PNP was consistent with that of a CNMP and could be addressed in a single plan for a given operation.

What were the key comments? In general, commenters supported the concept of requiring the development and implementation of nutrient management plans by CAFOs. Although commenters generally supported the overall concept, many did not endorse the specific approach taken by EPA in the proposed rule. There was significant comment from stakeholders that the PNP would require the development of a separate plan in addition to a CNMP. Although EPA had intended the PNP to be a subset of information contained within a typical CNMP, not an independent or separate plan, a number of commenters misunderstood that point, and otherwise felt that the proposal would result in confusion in the regulated community.

The SBAR Panel noted the concerns of some small business representatives regarding the practical difficulties of ensuring that manure is always applied at agronomic rates. The Panel recommended that EPA continue to work with USDA to explore ways to limit permitting requirements to the minimum necessary to deal with such threats and to define what is "appropriate" land application consistent with the agricultural storm water exemption. The Panel agreed that if manure and wastewater are applied to land at agronomic rates and a facility is designed to contain the discharge from a 25-year, 24-hour storm, that facility would have minimal potential to discharge or adversely affect water quality. However, it is also possible that an operation might land apply in excess of agronomic rates but still not discharge, depending on such factors as annual rainfall, local topography, and distance to the nearest stream. The Panel recommended that EPA consider such factors as it develops requirements related to land application.

The SBAR Panel also raised concerns related to the development and implementation of CNMPs, as well as specific requirements for applying nutrients at a phosphorous-based rather than a nitrogen-based rate in certain circumstances. Small business representatives expressed concerns about application of manure at phosphorus-based rates. The Panel noted the high cost of phosphorus-based application relative to nitrogen-based application and supported EPA's intent to require the use of phosphorus-based application rates only where necessary to protect water quality, if at all, keeping in mind its legal obligations under the Clean Water Act. If the soil is not phosphorus-limited, nitrogen-based application should be allowed. The Panel recommended that EPA consider leaving the determination of whether to require the use of phosphorus-based rates to BPJ, and continue to work with USDA in exploring such an option.

Rationale. In the March 1999 USDA/EPA *Unified National Strategy for Animal Feeding Operations* EPA and USDA endorsed the concept of CNMPs for all AFOs. The Strategy acknowledged that the vast majority of these plans would be developed under voluntary programs while a limited number would be prepared under the regulatory program. In today's final rule, CAFOs, which represent only a small proportion of all AFOs, are required to have a nutrient management plan, and the nutrient management plan represents a subset of activities within a CNMP that are necessary for CWA regulatory purposes. EPA believes that this approach is consistent with the concepts in the Strategy.

EPA explained in section IV.C.2.b above that the BMPs specified in today's regulation, including the requirement to develop and implement a nutrient management plan, represent the minimum elements of an effective BMP program and are necessary to control the discharges of pollutants to surface waters. As discussed there, non-numeric effluent limitations consisting of BMPs are particularly suited to the regulation of CAFOs. In particular, EPA believes that it is generally infeasible to establish a numeric effluent limitation for discharges of land-applied CAFO waste. The factors that make a numeric limitation infeasible include, among other things, that storm water discharges can be highly intermittent, are usually characterized by very high flows occurring over relatively short time intervals, and carry a variety of pollutants whose nature and extent vary according to geography and local land use. Accordingly, the final regulations at section 122.42(e) specify the need for a nutrient management plan for all CAFOs and the general elements that the plan must address.

For Large CAFOs, EPA has specified the need for a nutrient management plan as a non-numeric effluent limitation in the form of a BMP requirement under the final ELGs. For Small and Medium CAFOs, and other operations that are not subject to the CAFO effluent guidelines, authority to require a nutrient management plan exists under Clean Water Act sections 402(a)(1) and (2) and 40 CFR 122.44(k). EPA believes that a nutrient management plan requirement for the Small and Medium CAFOs is necessary in order to appropriately control discharges of pollutants and otherwise carry out the purposes and intent of the CWA. For these operations, EPA found it was appropriate for the final rule to specify, on a national basis, the requirement for a nutrient management plan and the general elements that the plan must address. In turn, the final rule allows the permitting authority to include, on a best professional judgment basis in light of more localized factors, more specific nutrient management plan requirements as necessary to ensure appropriate agricultural utilization of nutrients at the operation.

EPA has addressed the SBAR panel concerns by defining the scope of a nutrient management plan with reference to those elements necessary to ensure that manure is managed effectively insofar as they are related to possible discharges to surface water. Further, today's final rule requires land application rates based on the site-specific technical standards established by the Director.

EPA agrees that the use of the term PNP created unintended confusion. While EPA remains a strong advocate of the development of CNMPs the Agency recognized the need to address this confusion. In response to comments, EPA is relying on the more generic term, "nutrient management plan" in today's rule. By way of clarification, the nutrient management plan is a separate and distinct term that applies to the subset of activities in a USDA-defined CNMP that are required by the CAFO effluent guidelines or NPDES permit regulations. These requirements are

defined in today's rule as the minimum elements that all nutrient management plans, developed as a special condition of an NPDES permit, must meet. EPA expects that many CAFOs will satisfy the requirement to develop a nutrient management plan by developing a full CNMP, although a full CNMP is not required in today's regulations. The minimum measures of a nutrient management plan in today's final rule are consistent with the content of both the PNP as proposed by EPA and the CNMP as defined by USDA. EPA's position remains that the development and implementation of a full CNMP is one of the most effective methods for a permitted operation to demonstrate compliance with the nutrient management plan requirements required by this rule.

In today's rule, EPA is requiring all CAFOs to develop and implement a nutrient management plan by December 31, 2006, except that CAFOs seeking to obtain coverage under a permit subsequent to that date must have a nutrient management plan developed and implemented upon the date of permit coverage. This is consistent with the dates being established for the ELG. As discussed in section IV.C.2.b of this preamble, the ELGs promulgated today require Large CAFOs that are existing sources to implement the land application requirements at 40 CFR 412.4(c) by December 31, 2006 because that is the date when EPA is assured that the required planning is in fact available to the great number of regulated sources. For Large CAFOs that are new sources (*i.e.*, those commencing construction after the effective date of this rule), the land application requirements at 40 CFR 412.4(c) apply immediately.

EPA has similarly concluded that Small and Medium CAFOs subject to the NPDES provisions for nutrient management plans also, in general, will be unable to develop and implement a nutrient management plan by the date they will need to seek permit coverage under the requirements of this rule, for reasons of insufficient infrastructure. Therefore, EPA is requiring Small and Medium CAFOs to develop and implement NMP plans by December 31, 2006. As discussed in section IV.C.2.b, among other things, this time frame allows reasonable time for States to update their NPDES programs and issue permits to reflect the nutrient management plan requirements of today's rule and provides flexibility for permit authorities to establish permit schedules based on specific circumstances, including prioritization of nutrient management plan development and implementation based on site-specific water quality risks and the available infrastructure for development of nutrient management plans. Refer to section IV.C.2.b for additional discussion on the time frame by which CAFOs must implement the land application requirements of 40 CFR 412.4(c).

Through the permit application process (every five years), a nutrient management plan will have to be reviewed and updated by the CAFO owner or operator. EPA recognizes that the nutrient management plan will be a dynamic document that might require updates more frequently than every five years. A site-specific nutrient management plan that reflects the current CAFO operation must be maintained on-site by the CAFO owner/operator. The most obvious factor that would necessitate an update to the nutrient management plan is a substantial change in the number of animals at the CAFO. A substantial increase in animal numbers (for example an increase of greater than 20 percent) would significantly increase the volume of manure and total nitrogen and phosphorus produced on the CAFO. As a result, the CAFO would need to reevaluate animal waste storage facilities to ensure adequate capacity and may need to reexamine the land application sites and rates. Another example of a reason for updating the nutrient management plan is a change in a CAFO's cropping program, which could significantly alter land application of animal waste. Changes in crop rotation or crop acreage, for instance, could significantly alter land application rates for fields receiving animal waste.

5. Does EPA Require Nutrient Management Plans To Be Developed or Reviewed by a Certified Planner?

Although EPA promotes and supports the use of certified specialists to help ensure the quality of nutrient management plans, the Agency is not requiring such plans to be developed or reviewed by a certified planner as part of this final rule.

What did EPA propose? EPA proposed the Permit Nutrient Plans be developed, or reviewed and modified, by a certified specialist. A certified planner was defined as someone who has been certified to prepare CNMPs by USDA or a USDA sanctioned organization.

What were the key comments? EPA received a number of comments on this provision. Many States support a State certification program where they would have the flexibility to develop their own program. Some producers and environmental groups supported certified plans as outlined in the proposal. Many comments related to the cost of having a specialist develop or review a plan and whether there are enough specialists across the country to handle the volume of work. Some said that a certified plan would not achieve the goal of improved water quality. Others said that operators should be able to develop their own plan, noting that USDA tools and other resources are available to operators and a specialist is not needed. There was also concern that EPA was limiting the type of specialist by listing, in the proposal, examples of who might be a specialist.

Rationale. EPA agrees that certification programs are more appropriately developed by USDA or at the State level. State resources, coordination with local stakeholders, and State requirements relating to nutrient management are some of the factors that may influence State specific certification programs. EPA shares the concerns regarding the current capacity to develop up to 15,500 certified plans for CAFOs and meet the demands from a universe of 222,000 other AFOs requesting CNMPs through USDA's voluntary program. Currently, EPA does not have a reliable estimate on the number of certified specialists available for developing and implementing nutrient management plans. However, EPA recognizes that some States already have certification programs in place for nutrient management planning, and expects that the USDA and EPA guidance for AFOs and CAFOs will provide additional impetus for new and improved State certification programs. These programs provide an excellent foundation for producing qualified specialists for nutrient management planning. When all of these State certification programs are in place, EPA expects that there will be sufficient capacity to develop and implement the required nutrient management plans by the required regulation implementation date of December 31, 2006.

Although not required, EPA encourages CAFOs to make use of certified specialists with the expertise to develop high quality nutrient management plans. The purpose of using certified specialists is to ensure that effective nutrient management plans are developed and/or reviewed and modified by persons who have the requisite knowledge and expertise to develop nutrient management plans that meet the regulatory requirements and that are appropriately tailored to the site-specific needs and conditions at each CAFO. Interested parties should consult with USDA, State Agricultural Departments, and their NPDES permitting authority regarding the availability of certified specialists and opportunities to be certified.

Under today's final rule operators may develop and implement their own nutrient management plan, and may themselves become certified nutrient management planners. In fact, EPA indicated in the SBAR Panel Report that it expected that many operators could become certified through USDA or land grant universities to prepare their own nutrient management plans. While no definitive number is currently available, results from preliminary draft studies indicate that the average CNMP cost per farm was $7,276 per year. The list of sources in the proposal of who can provide CNMP certified specialists is there only as a sample list. It in no way precludes or prevents an operator from obtaining a CNMP from an alternate source.

6. What Are the Special Conditions Applicable to All NPDES CAFO Permits?

In today's rule EPA is defining two special conditions that are to be required in all NPDES CAFO permits: (1) CAFO owners or operators must develop and implement a nutrient management plan that addresses specific minimum elements and (2) the CAFO owner or operator must maintain permit coverage for the CAFO until there is no remaining potential for a discharge of manure, litter, or associated process wastewater other than agricultural storm water from land application areas, that was generated while the operation was a CAFO (*i.e.* proper closure). The special conditions in an NPDES permit are used primarily to supplement effluent limitations and ensure compliance with the Clean Water Act.

A discussion of the specific nutrient management plan requirements of today's rule, the key public comments and EPA rationale for requiring nutrient management plans is included in section IV.C.4 of this preamble.

In today's rule, EPA is adopting as final the proposal to require permitted CAFOs that lose their status as CAFOs (*e.g.*, they cease operations, or reduce their number of animals below the regulatory thresholds) to retain an NPDES permit until there is no remaining potential for a CAFO-generated discharge other than agricultural storm water from the land application areas. Should the facility's permit expire, the owner/operator would be required to reapply for an NPDES permit if the facility has not been properly closed (*i.e.*, the facility still has a potential to discharge). Proper facility closure includes but is not limited to removal of water from lagoons and proper disposal or reuse of manure removed from storage areas such as pens, lagoons, and stockpiles. For CAFO facilities that down-size to become AFOs, proper closure of the CAFO is achieved when there is no longer a potential to discharge any manure, litter, or process wastewater generated while the operation was a CAFO.

What did EPA propose? In the proposal, the Agency discussed a variety of options for ensuring proper closure of CAFOs, including applying financial instruments, preparing closure plans, and, as adopted today, retaining an NPDES permit until the facility is properly closed.

EPA proposed two additional special conditions that are not being included in today's final rule. EPA proposed that the permit writer must consider whether to include special conditions to address (1) Timing restrictions on land application of manure or litter and wastewater to frozen, snow-covered, or saturated ground, and (2) conditions to control discharges to ground water with a direct hydrologic connection to surface water. Although today's rule does not include a national requirement for either of these issues to be regulated in the permit, the permitting authority may impose permit terms and conditions that address either of these issues on a case-by-case basis as appropriate. See section IV.C.2.b above for a discussion of the key comments on these two issues and EPA's reasons for not including either of them as national requirements in today's rule.

What were the key comments? Industry comments largely supported the proposal to require facilities to retain an NPDES permit until properly closed. Some environmental groups, U.S. Fish and Wildlife Service, some States and citizens preferred a closure plan with financial assurance, expressing concern that taxpayers end up paying to clean up abandoned lagoons, whereas this should be the responsibility of the CAFO operator. Some commenters opposed the closure requirement, stating that it was inconsistent with and more restrictive than NPDES requirements for other industry sectors. Others questioned the practical meaning of closure, as well as the practical ability of permit authorities to track such closed facilities.

Rationale. EPA's establishment of a minimum national standard for closure will help ensure the environmental risks associated with CAFO manure and wastewater are minimized upon closure. Although EPA is not establishing financial surety measures, States may want to implement them as appropriate under their own authorities to prevent the environmental damage caused by facilities that are no longer in business. EPA concluded that requiring retention of an NPDES permit provides a far more effective tool for environmental protection than would simply requiring a closure plan that might, or might not, be effectively implemented.

In practical terms, how clean a facility must be to meet closure requirements that the operation no longer has a potential to discharge will be left to the permitting authority. EPA is not requiring CAFO facilities to post bonds to obtain an NPDES permit, nor does EPA calculate that closure costs are necessarily high. EPA assumes that disposal methods normal to the operation will be used to close out the facility.

The need to maintain NPDES coverage until proper closure of the CAFO is a result of the unique nature of CAFO facilities. As a part of their normal operation CAFOs may, among other things, have manure and litter storage structures, lagoons, and feed storage areas. The abandonment of any one of these has the potential for catastrophic environmental damage to waters of the U.S. As a result, to protect against unauthorized discharges, there is a need to maintain coverage of the facility under the NPDES permit until the facility is properly closed. Upon verification of the proper closure of the facility by the permitting authority there will be no need to retain the NPDES permit. The NPDES permit can then be terminated and there would be no longer any need to track the facility. EPA expects that the State permitting authority will cease to issue a permit based on evidence that the facility is properly closed. It is not expected that this will be a major burden to the States.

7. Standard Conditions Applicable to All NPDES CAFO Permits

Standard conditions in an NPDES permit are preestablished conditions that apply to all NPDES permits, as specified in 40 CFR 122.41. They include Duty to Comply, Duty to Reapply, Need to Halt or Reduce Activity Not a Defense, Duty to Mitigate, Proper Operation and Maintenance, Permit Actions, Property Rights, Duty to Provide Information, Inspection and Entry, Monitoring and Records, Signatory Requirement, Reporting Requirements, Bypass and Upset. Today's action does not make any changes to the standard permit

conditions, with respect to NPDES permits issued to CAFOs.

D. What Records and Reports Must Be Kept On-Site or Submitted?

Today's rule specifies the types of records to be kept on-site at the CAFO in accordance with the recordkeeping requirements section of the permit. Today's rule also specifies the types of monitoring to be performed, the frequencies for collecting samples or data, and how to record, maintain, and transmit the data and information to the permitting authority in accordance with the monitoring and reporting section of the permit.

The specific recordkeeping, monitoring, and reporting requirements in today's rule balance the need for information documenting permit compliance and minimizing the burden on the permittee to collect and record data. State permit authorities have the option to include more stringent requirements if they find such an action necessary. The minimum recordkeeping, monitoring, and reporting requirements that must be included in each NPDES permit are as follows:

Recordkeeping requirements. All CAFO operators must maintain a copy of the site specific nutrient management plan on site, and records documenting the implementation of the best management practices and procedures identified in the nutrient management plan.

In addition, Large CAFOs must maintain operation and maintenance records that document (a) visual inspections, inspection findings, and preventive maintenance needed or undertaken in response to the findings; (b) the date, rate, location, and methods used to apply manure or litter and wastewater to land under the control of the CAFO operator; (c) the results of annual manure or litter and wastewater sampling and analysis to determine the nutrient content; and (d) the results of representative soil sampling and analyses conducted at least every five years to determine nutrient content.

Large CAFOs must also maintain records of manure transferred to other persons that demonstrate the amount of manure and/or wastewater that leaves the operation and record the date, name, and address of the recipient(s);

Today's rule requires all CAFOs to submit an annual report that includes the following information:

- Number and type of animals confined (open confinement and housed under roof).
- Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);
- Total number of acres for land application covered by the nutrient management plan;
- Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;
- Summary of all manure and wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and
- A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

What did EPA propose? EPA proposed requirements to keep, maintain for five years, and make available to the Director or the Regional Administrator, records of inspections and manure sampling and analysis, records related to the development and implementation of a PNP, and records of off-site transfers of manure. EPA proposed that CAFO operators maintain records of off-site transfer and provide the recipient with a brochure on proper land application practices. EPA also proposed a small quantity exemption limit below which an operator would not have to keep records of manure transfers. EPA proposed operators submit a cover sheet and executive summary of their permit nutrient plans to the permitting authority. In addition, the Agency proposed to require operators to submit a written notification to the permitting authority, signed by a certified planner, that the PNP has been developed or amended and is being implemented. The proposal required annual review of the PNP and re-submission of the executive summary if there were any changes to the PNP.

Today's final rule changes the recordkeeping and reporting requirements that were proposed in the following ways: EPA is not requiring the CAFO owner or operator to provide the recipient of the manure with a brochure that describes the recipient's responsibilities for appropriate manure management, and EPA is not adopting the proposal to set a minimum quantity exemption, such that records of manure transfer would not be required below a certain quantity. In addition, EPA is no longer requiring CAFO operators to submit with the NOI a copy of the cover sheet and executive summary of the CAFO operator's current Permit Nutrient Plan (PNP).

What were the key comments? EPA received a number of comments on the proposed recordkeeping, monitoring, and reporting requirements. The operators commented that monitoring and reporting programs are difficult to establish, expensive, and burdensome on the operator. They also claimed that these requirements would necessitate a significant amount of operator time and labor, and would provide opportunities for "technical" permit violations, with no benefit to water quality. Environmental groups and a majority of citizen commenters stated that these provisions are long overdue and any records submitted should be made available for public review.

The SBAR Panel recommended that EPA give careful consideration to all proposed recordkeeping requirements and explore options to streamline these requirements for small entities. Regarding the requirement to provide nutrient content information to manure recipients, the Panel believed that this would be minimally burdensome if analysis of this content is already required as part of the CNMP to ensure proper land application. The Panel suggested that EPA consider limiting any requirement to provide nutrient content analysis to situations where such analysis is required as part of the CNMP to ensure proper on-site land application, or possibly where the operator transfers manure to multiple recipients. Finally, the Panel noted that under the Paperwork Reduction Act and its implementing regulations, all reporting and recordkeeping requirements must be certified by the issuing agency to have practical utility and to reduce, to the extent practicable and appropriate, the burden on those required to comply, including small entities (5 CFR 1320.9).

Rationale. The recordkeeping, reporting, and monitoring requirements adopted today are necessary to demonstrate compliance with the requirements of today's rule and assure protection of water quality.

EPA is not requiring Small and Medium CAFOs to maintain records of the of the manure transferred off-site, or provide the recipient with an analysis of the nutrient content of the manure. As a result, these categories of CAFOs are relieved of the burden of keeping records of off-site transfer. EPA chose to provide regulatory relief for the Medium CAFOs by not requiring them to keep records of their manure transferred to third parties. EPA believes these CAFOs have more land and therefore ship less manure off-site. EPA's goal is to track the majority of the manure that is transferred to third parties. This information kept by the large operations is sufficient for EPA needs.

EPA decided not to include a small quantity exemption for off-site transfer of manure in the final rule. The reason for the proposed exemption was to provide record keeping relief to small operators. However, EPA determined that effective implementation of the small-quantity exemption would itself have required considerable recordkeeping by the operator. Practically, then, including this exemption would not have significantly reduced the record keeping burden to small operators.

The annual report, which includes seven elements that are readily available to the CAFO owner/operator in the nutrient management plan, is being required in today's rule rather than the proposed PNP written notification, cover sheet and executive summary. The annual report gives the permitting authority information on the number of overflows occurring in a year (in order to verify compliance with the production area design requirements), the amount of manure generated, the amount of manure transferred off-site, and the number of acres available for land application. The annual report also provides information, such as the degree to which CAFOs are expanding and accounting for increased manure production, which is important to evaluate changes that might be needed to comply with permitting requirements. The final rule requires the permittee to indicate whether its plan was either written or reviewed by a certified CNMP planner. EPA is not requiring that a certified planner be used to develop or review the plan required under this rule. However, EPA believes that certified planners provide a valuable service in plan development such as consistency and improved plan quality. Knowledge of which plans were developed by a certified planner will help EPA focus its compliance assistance efforts and help States determine level of permit review needed for each facility. EPA has concluded that the annual report is a more effective method for ensuring permitting authorities and EPA have basic information documenting CAFO performance relative to permit requirements.

EPA disagrees with the public comments suggesting that the monitoring and reporting requirements do not provide any benefit to water quality. Monitoring and reporting provide the basis for CAFO operators and permitting authorities to evaluate compliance with the requirements of today's rule and the associated environmental implications. Monitoring provides valuable benchmark information and subsequent data that a permittee can use to adjust its activities, better comply with the requirements of the permit, and thereby better control its runoff or potential runoff. Monitoring also provides documentation of the operation's activities, which is essential to determine whether regulatory requirements are being implemented effectively and the success of those activities in protecting water quality. Monitoring allows the permittee and the permitting authority to know what, if any, contribution the permittee is making to the degradation of water quality. Such information is also helpful in determining the improvements in water quality as a result of permit compliance activities.

In this final rule, EPA has made great efforts to reduce burden beyond what is noted above. EPA has eliminated all certifications that were proposed, which include middle category certification that a facility is not a CAFO, certification of off-site manure recipients, and the use of certified CNMP planners. In addition, EPA is not including a national requirement for operators to document that there is no direct hydrological connection from groundwater beneath their production area to surface waters (or add controls where there is such a connection).

V. States' Roles and Responsibilities

A. What Are the Key Roles of the States?

State regulatory agencies with authorized NPDES programs are principally responsible for implementing and enforcing today's rule. This final rule obligates NPDES permit authorities to revise their NPDES programs expeditiously and to issue new or revised NPDES permits to include the revised effluent guidelines and other permit requirements adopted today. In authorized States, their role would also include determinations for no potential to discharge (*see* section IV.B.2 of this preamble) and CAFO designation (*see* section IV.A.7 of this preamble) of AFOs as CAFOs.

Various State organizations, such as environmental agencies, agricultural agencies, conservation districts, play a central role in implementing voluntary and other programs (*e.g.*, technical assistance, funding, public involvement, legal access to information, and setting protocols) that support the goal of protecting water quality through proper management of animal manure. EPA fully expects and promotes effective cooperation between voluntary and regulatory programs to achieve this goal. In designing this final rule, EPA has placed the principal emphasis on Large CAFOs which are part of the base NPDES program. With this in mind, EPA is promoting and encouraging States to use the full range of voluntary and regulatory tools to address medium and small operations.

B. Who Will Implement These New Regulations?

The requirements of today's rule will be implemented by issuing NPDES permits. Today's rule will be implemented by States with authorized NPDES permit programs for CAFOs. As of the date of this final rule, there are 45 States and 1 Territory with authorized NPDES permit programs for CAFOs. In States without an authorized NPDES program for CAFOs and in Indian Country, EPA will implement the rule.

C. When and How Must a State Revise Its NPDES Permit Program?

NPDES regulations require State NPDES permitting programs to be revised to reflect today's changes within one year of the date of promulgation of final changes to the Federal CAFO regulations (*see* 40 CFR 123.62(e)). In cases where a State must amend or enact a statute to conform with the revised CAFO requirements, such revisions must take place within two years of promulgation of today's regulations. States that do not have an existing authorized NPDES permitting program but who seek NPDES authorization after these CAFO regulatory provisions are promulgated must have authorities that meet or exceed the revised federal CAFO regulations at the time authorization is requested.

Today's regulation requires States to have technical standards for nutrient management consistent with 40 CFR 412.4(c)(3). If the State already has nutrient management standards in place, it is sufficient to provide those to EPA along with the State's submission of regulatory revisions to conform to today's changes. If the State has not already established technical standards for nutrient management, the Director shall establish such standards by the date specified in § 123.62(e) and provide those to EPA along with the State's submission of regulatory revisions.

The NPDES program modification process is described at 40 CFR 123.62. Opportunities for public input into the process of review and approval of State program revisions and approvals is

described in section V.C of this preamble.

D. When Must States Issue New CAFO NPDES Permits?

EPA does not typically establish requirements for when States must develop and issue NPDES permits. However, today's regulations require CAFOs to seek NPDES permit coverage under general permits within certain time frames, and CAFOs may not discharge any pollutants to waters of the United States without a permit. Thus, it is in States' interests to issue new or revised NPDES permits in a timely manner. It is EPA's expectation that new general permits will be available no later than the date on which CAFOs have a duty to apply for an NPDES permit. See section IV.B.3 for a full description of when CAFOs must seek permit coverage.

E. What Types of NPDES Permits Are Appropriate for CAFOs?

The NPDES regulations provide the permitting authority with the discretion to determine the most appropriate type of permit for a CAFO. The two basic types of NPDES permits are individual and general permits. An individual permit is a permit specifically tailored for a specific facility, while a general permit is developed and issued by a permitting authority to cover multiple facilities with similar characteristics.

EPA recognizes that most CAFOs will likely be covered by NPDES general permits; however, there are some circumstances where an individual permit might be appropriate (*e.g.*, exceptionally large facilities, facilities that have a history of noncompliance, or facilities applying for approval to use an alternative performance standard in lieu of baseline technology-based effluent guidelines). The decision whether to issue a general or individual permit lies with the NPDES permitting authority. Section VI of the preamble discusses opportunity for public involvement in the NPDES permitting process.

As permit authorities explore innovative permitting approaches, the use of "watershed-based NPDES permits" might become more prevalent. For example, a watershed-based permit could be issued to CAFOs within a specific watershed. EPA is currently promoting pilot projects to help evaluate the benefits of watershed-based permitting and encourages States to use such a flexible tool to address the varied needs of specific watersheds.

F. What Flexibility Exists for States To Use Other Programs To Support the Achievement of the Goals of This Regulation?

In designing this final rule, EPA has striven to maximize the flexibility for States to implement appropriate and effective programs to protect water quality and public health by ensuring proper management of manure and related wastewater. This rule establishes binding legal requirements for Large CAFOs and maintains substantial flexibility for States to set other site-specific requirements for CAFOs as needed to achieve State program objectives. EPA encourages States to maximize use of voluntary and other non-NPDES programs to support efforts by medium and small operations to implement appropriate measures and correct problems that might otherwise cause them to be defined or designated as a CAFO. EPA encourages States to use the flexibility available under the rule so that their State non-NPDES programs complement the required regulatory program. The following examples can illustrate opportunities for this State flexibility:

- States are encouraged to work with State agriculture agencies, conservation districts, USDA and other stakeholders to create proactive programs to fix the problems of small and medium operations in advance of compelling the facilities to apply for NPDES permits.
- Where a small or medium facility has been covered by an NPDES permit, the permitting authority may allow the facility to exit the permit program at the end of the 5-year permit term if the problems that caused the facility to be defined or designated as a CAFO have been corrected to the satisfaction of the permitting authority.
- A small or medium AFO might be taking early voluntary action in good faith to develop and implement a comprehensive nutrient management plan, yet might have an unexpected situation that could be the basis for the facility's being defined or designated as a CAFO. EPA encourages the permitting authority to provide an opportunity to address the cause of the discharge before defining or designating the operation a CAFO.

These examples are intended to illustrate the flexibility that EPA is promoting with regard to medium and small operations. They are not applicable to Large CAFOs.

What did EPA propose? EPA's proposed rule included an option to expand substantially the criteria for when medium and small AFOs could be defined or designated as CAFOs. The effect of these proposed changes to the structure and definition of a CAFO was to require a substantially larger number of medium and small operations to be brought into the NPDES regulatory program. EPA estimated that as many as 30,000 medium and small AFOs could be brought into the regulatory program under this option. Another option presented in the proposal was to structure the permitting requirements to build in inherent flexibility for the medium facilities. In addition, the proposal and the subsequent 2001 Notice introduced a variety of more specific options for State flexibility, including one under which a State with an effective non-NPDES program could request to operate under a simplified permitting structure.

What were the key comments? The proposed expansion of the NPDES program for medium and small operations caused great concern, particularly among the States. Many comments from both States and facility operators centered on the desire that EPA recognize the effectiveness of existing State CAFO programs. More specifically, many States wanted EPA to allow effective State non-NPDES programs to operate in lieu of a State-run NPDES program, particularly in the event that EPA in the final rule expanded the criteria for defining medium facilities as CAFOs.

In general, comments from environmental groups expressed opposition to most types of flexibility because of concerns regarding potential loss of accountability at facilities and reduced public participation. Industry commenters generally supported State flexibility as necessary to address factors such as soil, climate, and site and regional characteristics that vary within and among States. Commenters maintained that State flexibility promotes those program elements States have found to be most effective and allows States and industry to achieve workable solutions to water quality issues. States also supported maintaining a high degree of flexibility both to accommodate State-specific characteristics and priorities and to preserve their investment in existing good quality programs. Some State and industry commenters asserted that EPA's options for flexibility were too limited.

Rationale. EPA recognizes that EPA's proposed expansion of the criteria for when medium and small AFOs would be defined or designated as CAFOs would have had the effect of eliminating the flexibility for States to use voluntary and other programs. EPA is also aware that many of the States authorized to implement the NPDES program supplement their NPDES CAFO requirements with additional State requirements. Some States currently regulate or manage CAFOs predominantly under State non-NPDES programs, or in conjunction with other water quality protection programs through participation in the CWA section 401 certification process (for permits) as well as through other means (*e.g.*, development of water quality standards, development of TMDLs, and coordination with EPA). Several States have effective alternative or voluntary programs that are intended to help small and medium operations fix potential problems that could cause them to be defined or designated as a CAFO.

EPA is encouraging States to use their non-NPDES programs to help small and medium AFOs to reduce water quality impacts and to ensure that they do not become point sources under this regulation. To the extent the voluntary program eliminates the practice that results in the AFO's being defined or designated a CAFO, the AFO may not be required to obtain NPDES permit coverage. Given that EPA has not expanded the criteria for when AFOs would be defined as CAFOs, the Agency believes that States will have the flexibility necessary to leverage effective non-NPDES programs for medium and small AFOs. EPA has also offered specific examples of flexibility that permitting authorities can exercise.

Once a facility is determined to be a CAFO, however, coverage under a permit issued by a non-NPDES program will not satisfy the NPDES permit requirement. EPA is committed to work with States to modify existing non-NPDES State programs that currently regulate CAFOs to gain EPA's approval as NPDES-authorized programs. Such a change would require a formal modification of the State's authorized NPDES program, and the State would have to demonstrate that its program meets all of the minimum criteria specified in 40 CFR part 123, Subpart B, for substantive and procedural regulations. Among other things, these criteria include the restriction that permit terms may not exceed five years, procedures for public participation, and provisions for enforcement, including third party lawsuits and federal enforceability.

VI. Public Role and Involvement

The public has an important role in the entire implementation of the NPDES Program, including the implementation of NPDES permitting of CAFOs. The NPDES regulations in 40 CFR parts 122, 123, and 124 establish public participation in EPA and State permit issuance, in enforcement, and in the approval and modification of State NPDES Programs. The purpose of this section is to provide a brief review of the key areas where the public has opportunities for substantial involvement. These opportunities for public involvement are long-standing elements of the NPDES Program. Nothing in today's final rule is intended to inhibit public involvement in the NPDES Program.

A. How Can the Public Get Involved in the Revision and Approval of State NPDES Programs?

Sections 123.61 and 123.62 of the NPDES regulations specify procedures for review and approval of State NPDES Programs. In the case of State authorization or a substantial program modification, EPA is required to issue a public notice, provide an opportunity for public comment, and provide for a public hearing if there is deemed to be significant public interest. To the extent that these final regulations require a substantial modification to a State's existing NPDES Program authorization, the public will have an opportunity to comment on the proposed modifications.

B. How Can the Public Get Involved if a State Fails To Implement Its CAFO NPDES Permit Program?

Section 123.64 of the NPDES regulations provides that any individual or organization having an interest may petition EPA to withdraw a State NPDES Program for alleged failure of the State to implement the NPDES permit program, including failure to implement the CAFO permit program.

C. How Can the Public Get Involved in NPDES Permitting of CAFOs?

Section 124.10 establishes public notice requirements for NPDES permits, including those issued to CAFOs. Under these existing regulations, the public may submit comments on draft individual and general permits and may request a public hearing on such a permit. Various sections of part 122 and § 124.52 allow the Director to determine on a case-by-case basis that certain operations may be required to obtain an individual permit rather than coverage under a general permit. Section 124.52 specifically lists CAFOs as an example point source where such a decision may be made. Furthermore, § 122.28(b)(3) authorizes any interested person to petition the Director to require an entity authorized by a general permit to apply for and obtain an individual permit. Section 122.28(b)(3) also provides example cases where an individual permit may be required, including where the discharge is a significant contributor of pollutants. See § 122.23(f)(3) for opportunities for public involvement in the process for making a "no potential to discharge" determination (refer to section IV.B.2 of this preamble for further discussion). Nothing in today's final rule is intended to change these provisions.

D. What Information About CAFOs Is Available to the Public?

Today's rule requires that all CAFOs, Large, Medium, and Small, and whether covered by a general or an individual permit, report annually to the permitting authority the following information:

- The number and type of animals, whether in open confinement or housed under roof;
- The estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months;
- The estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months;
- The total number of acres for land application covered by the nutrient management plan;
- The total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- A summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and
- A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

EPA expects that the permitting authority will make this information available to the public upon request. This should foster public confidence that CAFOs are complying with the requirements of the rule. In particular, the information in the annual report will confirm that CAFOs have obtained coverage under an NPDES permit, are appropriately controlling discharges from the production area, and have developed and are implementing a nutrient management plan. The annual report will also provide summary information on discharges from the production area and the extent of manure production and available land application area. This will help foster public confidence that the manure is being land applied at rates that ensure

appropriate agricultural utilization of nutrients.

Today's rule makes no changes to the existing regulations concerning how CAFOs may make Confidential Business Information (CBI) claims with respect to information they must submit to the permitting authority and how those claims will be evaluated. Under the existing regulations at 40 CFR Part 2, Subpart B, a facility may make a claim of confidentiality for information it must submit and EPA must evaluate this claim if it receives a request for the information from the public. Among the factors that EPA considers in evaluating such a claim are:

- Must the information be legally provided to the public under the Clean Water Act, its implementing regulations, or other authorities? If so, a claim of confidentiality will be denied.
- Has the facility adequately shown that the information satisfies the requirements for treatment as CBI? If yes, the claim of confidentiality will be upheld.

Claims of confidentiality with respect to information submitted to the State will be processed and evaluated under State regulations.

What was proposed? In the proposal, EPA discussed submission of the PNP to the permitting authority and its availability to the public. The proposed regulations would have required the cover sheet and executive summary of each CAFO's PNP to be made publicly available. EPA proposed that the information contained in these items could not be claimed as CBI. The proposed regulations indicated that anything else in the PNP could be claimed as confidential by the CAFO, and any such claim would be subject to EPA's normal CBI procedures in 40 CFR Part 2. *See* § 122.23(l) of the proposal.

Key comments. Industry commenters claimed that the PNP would contain proprietary information. They stated that EPA should protect these plans as CBI where requested by the CAFO. They claimed that making the PNP publicly available would discourage innovation in developing waste management technologies and could make CAFOs vulnerable to unwarranted lawsuits. Environmental groups stated that the PNP must be publicly available, or citizens would have no way of ensuring that CAFOs are adequately developing and implementing the PNPs. They also expressed concerns about the burden of traveling to the permitting authority's offices to gain access to the plans. They stated that the plans should be made more accessible to them by the permitting authority, either by mail or by posting on the internet.

Rationale. The final CAFO regulations require that various types of information on the operation and waste management practices of the facility be made available to the permitting authority, either routinely or upon request. The permitting authority has discretion, subject to applicable regulations, to determine how much of this information to make available to the public and in what manner. The Annual Report that all CAFOs must submit is designed to provide the permitting authority with summary information about the implementation of the nutrient management plan. EPA believes that the information the public is most interested in seeing is contained in the Annual Reports.

With respect to the contents of the nutrient management plan, specifically, today's rule requires that the nutrient management plan be maintained on-site at the CAFO and submitted only at the request of the permitting authority. Upon submission of the nutrient management plan to the permitting authority, the CAFO operator can assert a confidential business information claim over the plan, in accordance with applicable regulations. If the permitting authority receives a request for the information, it will determine the validity of the claim and provide the requester with information in accordance with the findings of the determination and applicable regulations.

As noted, today's rule makes no changes to the existing regulations concerning how facilities may make CBI claims with respect to information they must submit to the permitting authority and how those claims will be evaluated. Any changes to how the Agency handles the issue of confidential business information are beyond the scope of today's rule and would have broad implications across a number of EPA programs. Instead EPA will evaluate future CBI claims based on the applicable laws and regulations (*see, e.g.*, CWA Section 402(j), 40 CFR Part 2, Subpart B, and 40 CFR 122.7.

VII. Environmental Benefits of the Final Rule

A. Summary of the Environmental Benefits

This section presents EPA's estimates of the environmental and human health benefits, including pollutant reductions, that will occur from this rule. Table 7.1 shows the annualized benefits EPA projects will result from the revised ELG requirements for Large CAFOs. (Monetized values for benefits associated with the revised NPDES requirements for Small and Medium CAFOs are not included in the table.) The total monetized benefits associated with the ELG requirements for Large CAFOs range from $204 to $355 million annually. The values presented in the range represent those benefits for which EPA is able to quantify and determine an economic value. These benefit value estimates reflect only those pollutant reductions and water quality improvements attributable to Large CAFOs. EPA also developed estimates of the pollutant reductions that will occur due to the revised requirements for Small and Medium CAFOs, but analysis of the monetized value of the associated water quality improvements was not completed in time for benefits estimates to be presented here. As discussed later in this section, EPA has also identified additional environmental benefits that will result from this rule but is unable to attribute a specific economic value to these additional nonmonetized or nonquantified benefits.

Detailed information on the estimated pollutant reductions is provided in the *Technical Development Document*, which is in the docket for today's rule. EPA's detailed assessment of the environmental benefits that will be gained by this rule, as well as the benefits estimates for other regulatory options considered during this rulemaking, is presented in the *Benefits Analysis*, which is also available in the rulemaking docket.

TABLE 7.1.—ANNUALIZED BENEFITS OF ELG REQUIREMENTS FOR LARGE CAFOS

[Millions of 2001$]

Types of benefits	Total for all CAFOs
Recreational and non-use benefits from improved water quality in freshwater rivers, streams, and lakes.	$166.2 to $298.6.
Reduced fish kills	$0.1.
Improved shellfish harvests	$0.3 to $3.4.

TABLE 7.1.—ANNUALIZED BENEFITS OF ELG REQUIREMENTS FOR LARGE CAFOS—Continued

[Millions of 2001$]

Types of benefits	Total for all CAFOs
Reduced nitrate contamination of private wells	$30.9 to $45.7.
Reduced eutrophication & pathogen contamination of coastal & estuarine waters (Case study of potential fishing benefits to the Albemarle-Pamlico estuary).	Not monetized [$0.2].
Reduced public water treatment costs	$1.1 to $1.7.
Reduced livestock mortality from nitrate and pathogen contamination of livestock drinking water	$5.3.
Reduced pathogen contamination of private & public underground sources of drinking water	Not monetized.
Reduced human & ecological risks from antibiotics, hormones, metals, salts	Not monetized.
Improved soil properties	Not monetized.
Reduced cost of commercial fertilizers for non-CAFO operations	Not monetized.
Total benefits	$204.1 + [B] to $355.0 + [B].

[B] represents non-monetized benefits of the rule.

B. What Pollutants Are Present in Manure and Other CAFO Wastes, and How Do They Affect Human Health and the Environment?

1. What Pollutants Are Present in Animal Waste?

The primary pollutants associated with animal wastes are nutrients (particularly nitrogen and phosphorus), organic matter, solids, pathogens, and odorous/volatile compounds. Animal waste is also a source of salts and trace elements and, to a lesser extent, antibiotics, pesticides, and hormones. The composition of manure at a particular operation depends on the animal species, size, maturity, and health, as well as on the composition (*e.g.*, protein content) of animal feed. The sections below introduce the main constituents in animal manure and include information from the *National Water Quality Inventory: 2000 Report* (hereinafter the *"2000 Inventory"*). This report is prepared every 2 years under section 305(b) of the Clean Water Act, and it summarizes State reports of impairment to their water bodies and the suspected sources of those impairments.

a. Nutrients. Animal wastes contain significant quantities of nutrients, particularly nitrogen and phosphorus. The *2000 Inventory* lists nutrients as the leading stressor of impaired lakes, ponds, and reservoirs. Nutrients are also ranked as the fifth leading stressor for impaired rivers and streams, are among the top 10 stressors of impaired estuaries, and are the second leading stressor reported for the Great Lakes. Manure nitrogen occurs in several forms, including ammonia and nitrate. Ammonia and nitrate have fertilizer value for crop growth, but these forms of nitrogen can also produce adverse environmental impacts when they are transported in excess quantities to the environment. Ammonia is of environmental concern because it is toxic to aquatic life and it exerts a direct BOD on the receiving water, thereby reducing dissolved oxygen levels and the ability of a water body to support aquatic life. Excessive amounts of ammonia can lead to eutrophication, or nutrient overenrichment, of surface waters. Nitrate is a valuable fertilizer because it is biologically available to plants. Excessive levels of nitrate in drinking water, however, can produce adverse human health impacts.

Phosphorus is of concern in surface waters because it is a nutrient that can lead to eutrophication and the resulting adverse impacts—fish kills, reduced biodiversity, objectionable tastes and odors, increased drinking water treatment costs, and growth of toxic organisms. At concentrations greater than 1.0 milligrams per liter, phosphorus can interfere with the coagulation process in drinking water treatment plants thus reducing treatment efficiency. Phosphorus is of particular concern in fresh waters, where plant growth is typically limited by phosphorus levels. Under high pollutant loads, however, fresh water may become nitrogen-limited. Thus, both nitrogen and phosphorus loads can contribute to eutrophication.

b. Organic matter. Livestock manures contain many carbon-based, biodegradable compounds. Once these compounds reach surface water, they are decomposed by aquatic bacteria and other microorganisms. During this process dissolved oxygen is consumed, which in turn reduces the amount of oxygen available for aquatic animals. The *2000 Inventory* indicates that low dissolved oxygen levels caused by organic enrichment (oxygen-depleting substances) are the third leading stressor in impaired estuaries. They are the fourth greatest stressor in impaired rivers and streams, and the fifth leading stressor in impaired lakes, ponds, and reservoirs. Severe reductions in dissolved oxygen levels can lead to fish kills. Even moderate decreases in oxygen levels can adversely affect water bodies through decreases in biodiversity characterized by the loss of fish and other aquatic animal populations, and a dominance of species that can tolerate low levels of dissolved oxygen.

c. Solids. The *2000 Inventory* indicates that dissolved solids are the fourth leading stressor in impaired lakes, ponds, and reservoirs. Solids from animal manure include the manure itself and any other elements that have been mixed with it. These elements can include spilled feed, bedding and litter materials, hair, and feathers. In general, the impacts of solids include increasing the turbidity of surface waters, physically hindering the functioning of aquatic plants and animals, and providing a protected environment for pathogens. Increased turbidity reduces penetration of light through the water column, thereby limiting the growth of desirable aquatic plants that serve as a critical habitat for fish, shellfish, and other aquatic organisms. Solids that settle out as bottom deposits can alter or destroy habitat for fish and benthic organisms. Solids also provide a medium for the accumulation, transport, and storage of other pollutants, including nutrients, pathogens, and trace elements.

d. Pathogens. Pathogens are defined as disease-causing microorganisms. A subset of microorganisms, including species of bacteria, viruses, and parasites, can cause sickness and disease in humans and are known as human pathogens. The *2000 Inventory* indicates that pathogens (specifically bacteria) are the leading stressor in impaired rivers and streams and the fourth leading stressor in impaired estuaries. Livestock manure may contain a variety of microorganism species, some of which are human pathogens. Multiple species of pathogens can be transmitted directly from a host animal's manure to surface

water, and pathogens already in surface water can increase in number because of loadings of animal manure nutrients and organic matter.

More than 150 pathogens found in livestock manure are associated with risks to humans, including the six human pathogens that account for more than 90% of food and waterborne diseases in humans. These organisms are: *Campylobacter spp., Salmonella spp.* (non-typhoid), *Listeria monocytogenes, Escherichia coli* O157:H7, *Cryptosporidium parvum*, and *Giardia lamblia*. All of these organisms may be rapidly transmitted from one animal to another in CAFO settings. An important feature relating to the potential for disease transmission for each of these organisms is the relatively low infectious dose in humans. The protozoan species *Cryptosporidium parvum* and *Giardia lamblia* are frequently found in animal manure. Bacteria such as *Escherichia coli* O157:H7 and *Salmonella spp.* are also often found in livestock manure and have been associated with waterborne disease. The bacteria *Listeria monocytogenes* is ubiquitous in nature and is commonly found in the intestines of wild and domestic animals.

e. Other potential contaminants. Animal wastes can contain other chemical constituents that could adversely affect the environment. These constituents include salts, trace elements, and pharmaceuticals, including antibiotics and hormones. Although salts are usually present in waste regardless of animal or feed type, trace elements and pharmaceuticals are typically the result of feed additives to help prevent disease or promote growth. Accordingly, concentrations of these constituents vary with operation type and from facility to facility. The other constituents present in animal wastes are summarized below. Additional information on animal wastes is presented in the preamble for the proposed rule (*see* 66 FR 2976–2979) and the *Technical Development Document*.

Salts. The salinity of animal manure is directly related to the presence of dissolved mineral salts. In particular, significant concentrations of soluble salts containing sodium and potassium remain from undigested feed that passes unabsorbed through animals. Other major constituents contributing to manure salinity are calcium, magnesium, chloride, sulfate, bicarbonate, carbonate, and nitrate. Salt buildup may deteriorate soil structure, reduce permeability, contaminate ground water, and reduce crop yields. In fresh waters, increasing salinity can disrupt the balance of the ecosystem, making it difficult for resident species to remain. Salts may also contribute to degradation of drinking water supplies.

Trace elements. The *2000 Inventory* indicates that metals are the leading stressor in impaired estuaries and the second leading stressor in impaired lakes. Trace elements in manure that are of environmental concern include arsenic, copper, selenium, zinc, cadmium, molybdenum, nickel, lead, iron, manganese, aluminum, and boron. Of these, arsenic, copper, selenium, and zinc are often added to animal feed as growth stimulants or biocides. Trace elements can also end up in manure through use of pesticides, which are applied to livestock to suppress houseflies and other pests. Trace elements have been found in manure lagoons and in drainage ditches, agricultural drainage wells, and tile line inlets and outlets. They have also been found in rivers adjacent to hog and cattle operations. Trace elements in agronomically applied manures are generally expected to pose little risk to human health and the environment. However, repeated application of manures above agronomic rates could result in cumulative metal loadings to levels that potentially affect human health and the environment. There is some evidence that this is happening. For example, in 1995, zinc and copper were found building to potentially harmful levels on the fields of a hog farm in North Carolina.

Antibiotics. Antibiotics are used in AFOs and can be expected to appear in animal wastes. Antibiotics are used both to treat illness and as feed additives to promote growth or to improve feed conversion efficiency. Between 60 and 80 percent of all livestock and poultry receive antibiotics during their productive lifespan. The primary mechanisms of elimination are in urine and bile, so essentially all of an antibiotic administered is eventually excreted, whether unchanged or in metabolite form. Little information is available regarding the concentrations of antibiotics in animal wastes, or on their fate and transport in the environment. One concern regarding the widespread use of antibiotics in animal manure is the development of antibiotic-resistant pathogens. Use of antibiotics, especially broad-spectrum antibiotics, in raising animals is increasing. This could be contributing to the emergence of more strains of antibiotic-resistant pathogens, along with strains that are growing more resistant.

Pesticides and hormones. Pesticides and hormones are compounds used at AFOs and they can be expected to appear in animal wastes. These types of pollutants may be linked with endocrine disruption. The *2000 Inventory* indicates that pesticides are the second leading stressor in impaired estuaries. Pesticides are applied to livestock to suppress houseflies and other pests. There has been very little research on losses of pesticides in runoff from manured lands. A 1994 study showed that losses of cyromazine (used to control flies in poultry litter) in runoff increased with the rate of poultry manure and litter applied and the intensity of rainfall. Specific hormones are used to increase productivity in the beef and dairy industries. Several studies have shown hormones are present in animal manures. Poultry manure has been shown to contain both estrogen and testosterone. Runoff from fields with land-applied manure has been reported to contain estrogens, estradiol, progesterone, and testosterone, as well as their synthetic counterparts. In 1995, an irrigation pond and three streams in the Conestoga River watershed near the Chesapeake Bay had both estrogen and testosterone present. All of these sites were affected by fields receiving poultry litter.

2. How Do These Pollutants Reach Surface Waters?

Pollutants in animal waste and manure can enter the environment through a number of pathways, including surface runoff and erosion, direct discharges to surface water, spills and other dry-weather discharges, leaching into soil and ground water, and volatilization of compounds (*e.g.*, ammonia) and subsequent redeposition to the landscape. These discharges of manure pollutants can originate from animal confinement areas, manure handling and containment systems, manure stockpiles, and cropland where manure is spread.

Runoff and erosion occur during rainfall when rainwater fails to be absorbed into the ground and when the soil surface is worn away by water or wind. Runoff of animal wastes is more likely when rainfall occurs soon after application (particularly if the manure was not injected or incorporated) and when manure is overapplied or misapplied. Erosion can be a significant transport mechanism for land applied pollutants, such as phosphorus, that are strongly bonded to soils.

Pollutants are directly discharged to surface water when animals are allowed access to water bodies and when manure storage areas overflow. Dry weather discharges to surface waters associated with CAFOs have been reported to occur through spills or other accidental discharges from lagoons and irrigation systems, or through intentional releases. Other reported causes of discharge to surface waters are overflows from containment systems following rainfall, catastrophic spills from failure of manure containment systems, and washouts from floodwaters when lagoons are sited on floodplains or from equipment malfunction, such as pump or irrigation gun failure, and breakage of pipes or retaining walls.

It is well established that in many agricultural areas shallow ground water can become contaminated with manure pollutants. This occurs as a result of water traveling through the soil to the ground water and taking with it pollutants such as nitrate from livestock and poultry wastes on the surface. Leaking lagoons are also a potential source of manure pollutants in ground water, based on findings reported in the scientific and technical literature.

Pollutants from CAFO wastes are released to air through volatilization of manure constituents and the products of manure decomposition. Other ways that manure pollutants can enter the air is from spray irrigation systems and as wind-borne particulates in dust. Once airborne, these pollutants can find their way into nearby streams, rivers, and lakes as they are subsequently redeposited on the landscape. More detailed information on the transport of animal wastes is presented in the *Benefits Analysis* and the record.

3. How Is Water Quality Impaired by Animal Wastes?

EPA has made significant progress in implementing Clean Water Act programs and in reducing water pollution. Despite such progress, however, serious water quality problems persist throughout the country. Sources of information on these problems include reports from States to EPA, documented in the *2000 Inventory*, and the U.S. Geological Survey's National Water Quality Assessment (NAWQA) Program.

a. EPA's national water quality inventory. Agricultural operations, including CAFOs, are a significant contributor to the remaining water pollution problems in the United States, as reported by the *2000 Inventory*. EPA's *2000 Inventory* data indicate that the agricultural sector—including crop production, pasture and range grazing, concentrated and confined animal feeding operations, and aquaculture—is the leading contributor to identified water quality impairments in the nation's rivers and streams, lakes, ponds, and reservoirs. Agriculture is also identified as the fifth leading contributor to identified water quality impairments in the nation's estuaries. While the *2000 Inventory* does not generally separate effects of CAFOs from agriculture generally, EPA's data indicate that water quality concerns tend to be greatest in regions where crops are intensively cultivated and where livestock operations are concentrated.

The *2000 Inventory* data indicate that the agricultural sector contributes to the impairment of at least 129,000 river miles, 3.2 million lake acres, and more than 2,800 estuarine square miles. Forty-eight States and tribes identified agricultural sector activities contributing to water quality impacts on rivers; 40 States identified such impacts to lakes, ponds, and reservoirs; and 14 States reported such impacts on estuaries. AFOs are only a subset of the agriculture category, but 29 States specifically identified them as contributing to water quality impairment.

The leading pollutants impairing surface water quality in the United States as identified in the *2000 Inventory* data include nutrients, pathogens, sediment/siltation, and oxygen-depleting substances. These pollutants can originate from various sources, including the animal production industry. Animal production facilities may also discharge other pollutants, such as metals and pesticides, and can contribute to the growth of noxious aquatic plants due to the discharge of excess nutrients.

These data provide a general indication of national surface water quality, highlighting the magnitude of water quality impairment from agriculture and the relative contribution compared to other sources. Moreover, the findings of this report are corroborated by numerous reports and studies conducted by government and independent researchers that identify agriculture's predominance as an important contributor of surface water pollution, as summarized in the *Environmental Assessment of Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*, which is available in EPA's rulemaking record.

b. Other documented impacts on water quality. Data collected by NAWQA also identify agriculture among the leading contributor of nutrients to U.S. watersheds. A national water quality assessment program conducted by the U.S. Geologic Survey found that agricultural use of fertilizers, manure, and pesticides has degraded stream and shallow ground water quality in agricultural areas and has resulted in high concentrations of nitrogen. Subsequent measurements in specific major river basins suggest that animal feeding operations may play a significant role in observed water quality degradation in those basins (*e.g.*, Kalkhoff *et al.*, 2000; Groschen *et al.*, 2000). Finally, a 1997 study by Smith *et al.* characterizing spatial and temporal patterns in water quality identified animal waste as a significant source of in-stream nutrient concentrations in many watershed outlets, relative to other local sources, particularly in the central and eastern United States. The findings of this report suggest that livestock waste contributes more than commercial fertilizer use to local total phosphorus yield, whereas the use of commercial fertilizer is the leading source of local total nitrogen yield.

Numerous local, regional, and national evaluations also indicate that animal manure can be a significant source of pollutants that contribute to water quality degradation. A literature survey conducted for the proposed rule identified more than 150 reports of discharges to surface waters from hog, poultry, dairy, and cattle operations. Over 30 separate incidents of discharges from swine operations between the years 1992 and 1997 in Iowa alone were reported by that State's Department of Natural Resources. The incidents resulted in fish kills ranging from about 500 to more than 500,000 fish killed per event. Fish kills or other environmental impacts have also been reported by agencies in other States, including Nebraska, Maryland, Ohio, Michigan, and North Carolina.

Runoff of nutrients and other contaminants in animal manure and wastewater also contributes to degradation of U.S. waters. For example, nutrients originating from livestock and poultry operations in the Mississippi River Basin have been identified as contributing to the largest hypoxic zone in U.S. coastal waters in the northern Gulf of Mexico. (Hypoxia is the condition in which dissolved oxygen is below the level necessary to sustain most animal life.) According to a report conducted by the National Science and Technology Council in 2000, adverse impacts of eutrophication might be of concern for ecologically and commercially important species in the Gulf, whose fishery resources generate $2.8 billion annually. Animal manure also contributes to eutrophication, or nutrient overenrichment, which is also a serious concern for the Nation's coastal and estuarine resources.

More detailed information is presented in the 2001 proposal (66 FR

2972–2974) and in the record for this rulemaking.

4. What Ecological and Human Health Impacts Have Been Caused by CAFO Wastes?

Among the reported environmental problems associated with animal manure are surface and ground water quality degradation, adverse effects on estuarine water quality and resources in coastal areas, and effects on soil and air quality. The scientific literature, which spans more than 30 years, documents how these problems can contribute to increased risk to aquatic and wildlife ecosystems, for example, the large number of fish kills in recent years. Human health might also be affected, for example, by high nitrate levels in drinking water and exposure to waterborne human pathogens and other pollutants in manure. The record for this rule provides more detailed information on the scientific and technical research to support these findings.

a. Ecological impacts. Manure pollutants in surface waters contribute to eutrophication, the disruption of a water body due to overenrichment. Eutrophication is the most documented impact of nutrient pollution and is a serious concern for coastal and estuarine resources. Another negative impact generated by excess nutrients in surface water is algae blooms, which also result from overenrichment from nutrients. Such blooms depress oxygen levels and contribute further to eutrophication. Many lake and coastal problems are linked to eutrophication, including red tides, fish kills, outbreaks of shellfish poisonings, loss of habitat, coral reef destruction, and hypoxia.

Many of the constituents in manure, especially organic matter, also decrease the oxygen concentrations in surface waters, sometimes below the levels fish and invertebrates require to survive. Nitrites and pathogens in manure can also pose risks to aquatic life. If sediments are enriched by nutrients, the concentrations of nitrites in the overlying water may be raised enough to cause nitrite poisoning in fish. There is substantial information in the record for this rule that describes local, regional, and national evaluations indicating that animal manure is a significant source of pollutants that contribute to water quality degradation. Many of these evaluations note a high incidence of fish kills. EPA's analysis shows that between 1981 and 1999, 19 States reported 4 million fish killed from both runoff and spills at CAFOs.

In addition, excess nitrogen can contribute to water quality decline by increasing the acidity of surface waters. Pathogens can accumulate in fish and shellfish, resulting in a pathway for transmission to higher trophic organisms; they can also contribute to avian botulism and avian cholera. Additional information on fish kills and other adverse impacts is presented in the 2001 proposal (66 FR 2972–2974) and in the record for this rulemaking.

b. Human health impacts from affected drinking water. Pollution originating from an animal production facility can have multiple impacts on drinking water. Nitrogen in manure is easily transformed into the nitrate form, which can be transported to drinking water sources and present a range of health risks. These health risks include methemoglobinemia in infants, spontaneous abortions, and increased incidence of stomach and esophageal cancers. Nitrate is not removed by conventional drinking water treatment processes but requires additional, relatively expensive treatment units. California's Chino Basin estimates a cost of more than $1 million per year to remove nitrates from drinking water due to loadings from local dairies. Generally, people drawing water from domestic wells are at greater risk of nitrate poisoning than those drawing from public water sources, because domestic wells are typically shallower and not subject to wellhead protection monitoring or treatment requirements.

Salts in animal wastes can also pose a health hazard. At low levels, salts can increase blood pressure in salt-sensitive individuals, increasing their risk of stroke and heart attacks. The salt load into the Chino Basin from local dairies is more than 1,500 tons per year, which costs the drinking water treatment system between $320 and $690 per ton to remove.

To the extent that nutrients contribute to algae blooms in surface water through accelerated eutrophication, algae can affect drinking water by clogging treatment plant intakes, producing objectionable tastes and odors, and increasing production of harmful chlorinated by-products (*e.g.*, trihalomethanes) by reacting with chlorine used to disinfect drinking water. In Wisconsin, the City of Oshkosh has spent an extra $30,000 per year on copper sulfate treatment to kill the algae in the waters from Lake Winnebago, which is attributed to excess nutrients from animal manure, commercial fertilizers, and soil. In Tulsa, Oklahoma, excessive algae growth in Lake Eucha, associated with poultry farming, costs the city $100,000 per year to address taste and odor problems in the drinking water.

c. Other human health impacts. In addition to threats to human health through drinking water exposures, pathogens from animal manure can also threaten human health through shellfish consumption and recreational contact such as swimming in contaminated waters. Relatively low-dose exposures to *Cryptosporidium parvum* and *Giardia spp.* can cause infection in humans. Other bacteria found in livestock manure have also been associated with waterborne disease. Pathogens from animal wastes can readily enter water sources, resulting in contamination of surface waters. Some pathogens are able to survive and remain infectious in the environment for relatively long periods of time. U.S. federal agencies and other independent researchers have recognized the potential public health risks from pathogens originating from CAFOs. At this time, however, the magnitude of the human health risk from pathogenic organisms that directly originate from CAFOs and are transported through U.S. waters has not been established.

According to a United Nations report, the use of antibiotics in food-producing animals has the potential to affect human health because of the presence of drug residues in foods and also because of the selection of resistant bacteria in animals. However, the impact of antimicrobial metabolic products and nonmetabolized drugs in animal wastes that are released into the environment remains unclear. The emergence of resistant bacteria is of particular concern because such infections are more difficult to treat and require drugs that are often less readily available, more expensive, and more toxic. In the U.S., pilot studies coordinated by EPA, USDA, and the Centers for Disease Control have been initiated to assess the extent of environmental contamination by antimicrobial drug residues and drug-resistant organisms that enter the soil or water from human and animal waste.

C. How Will Water Quality and Human Health Be Improved by This Rule?

1. What Reductions in Pollutant Discharges Will Result From This Rule?

EPA's pollutant reductions for this rule focus to a large degree on estimating the amount of pollutants in the runoff from land where manure has been applied. These estimates of pollutant discharges, referred to as the "edge-of-field" loadings, were made for nutrients, metals, pathogens, and sediment for both pre-rule conditions (baseline) and post-rule conditions. The reductions in pollutant discharges were estimated using an environmental model (Groundwater Loading Effects of Agricultural Management Systems, or GLEAMS) that simulates hydrologic transport, erosion, and biochemical processes such as chemical transformation and plant uptake. The GLEAMS model uses information on soil characteristics and climate, along with characteristics of the applied manure and commercial fertilizers, to model losses of nutrients, metals, pathogens, and sediment in surface runoff, sediment, and ground water leachate. EPA's analysis also developed estimates of changes in pollutant discharges occurring at the production area.

The pollutant reduction estimates were developed for each type of model farm included in EPA's cost models. The model farms were developed to represent the various animal types, farm sizes, and geographic regions. Model farms were developed for each animal type across a range of size classes, and model farms were located in each geographic region. The pollutant estimates for the model farms were combined with published data from USDA's *1997 Census of Agriculture* and then refined into national, regional, State, and county level pollutant loading estimates that were used to determine in-stream surface water and ground water concentrations. These values were then used in the water quality models and other environmental benefits assessment models to estimate the human health and environmental benefits accruing from this rule.

EPA quantified the reduction of nitrogen and phosphorus loads associated with this rule. Reductions of discharges of the metals zinc, copper, cadmium, nickel, lead, and arsenic were also analyzed for the final rule. Fecal coliform and fecal streptococcus were used as surrogates to estimate pathogen reductions that would be achieved by this rule. Other pathogens would likely be reduced to a similar degree. Table 7.2 presents the pollutant reductions expected to result from this rule.

TABLE 7.2.—POLLUTANT REDUCTIONS: COMBINED TOTAL FOR ALL ANIMAL SECTORS

Parameter	Baseline pollutant loading (Pre-regulation)	Post-regulation pollutant loading	Pollutant reduction
Large CAFOs:			
Nutrients (million lb)	658	503	155 (24%)
Metals (million lb)	20	19	1 (5%)
Pathogens (10^{19} cfu)	5,784	3,129	2,655 (46%)
Sediment (million lb)	35,493	33,434	2,059 (6%)
Medium CAFOs:			
Nutrients (million lb)	65	54	11 (17%)
Metals (million lb)	2.0	1.9	0.1 (5%)
Pathogens (10^{19} cfu)	1,456	779	677 (46%)
Sediment (million lb)	3,119	3,015	104 (3%)

2. Approach for Determining the Benefits of This Rule

EPA has analyzed the water quality improvements expected to result from the new requirements being promulgated today and has estimated the environmental and human health benefits of the pollutant reductions that will result. The benefits described in this section are primarily associated with direct improvements in water quality (both surface water and ground water), but this new rule will also create certain non-water quality environmental effects, such as improved soil conditions, changes in energy consumption, and changes in emissions of air pollutants.

For this rule, EPA conducted seven benefit studies to estimate the impacts of reductions in pollutant discharges from CAFOs. The first study used a national water quality model (National Water Pollution Control Assessment Model, or NWPCAM) that estimates runoff from land application areas to rivers, streams, and, to a lesser extent, lakes in the U.S. This study estimated the value society places on improvements in surface water quality associated with today's rule. The second study examined the expected improvements in shellfish harvesting resulting from the new CAFO rule. A third study looked at incidences of fish kills that are attributed to AFOs and estimated the cost of replacing the lost fish stocks. The fourth study estimated the benefits associated with reduced ground water contamination. Reduced public water treatment costs were evaluated in the fifth study, and reduced livestock mortality from nitrate and pathogen contamination of livestock drinking water was evaluated in the sixth study. In the seventh study, a case study of potential fishing benefits for the Albemarle-Pamlico estuary is presented to provide some insight to the potential benefits for estuaries and coastal waters. Each of the seven studies, as well as benefits results, are briefly described in the following sections. Benefits results associated with reduced pollutant discharges from Large CAFOs are also summarized in Table 7.1. The benefit value estimates presented in this section reflect only those pollutant reductions and water quality improvements attributable to Large CAFOs. EPA also developed estimates of the pollutant reductions that will occur due to the revised requirements for Small and Medium CAFOs, but analysis of the monetized value of the associated water quality improvements was not completed in time for benefits estimates to be presented here.

In this analysis, EPA estimates the effect of pollutant reductions and other environmental improvements on human health and the ecosystem and assigns a monetary value to these benefits to the extent possible. In some cases, EPA was able to identify certain types of improvements that will result from this rule, but was unable to either estimate the monetary value of the improvement or quantify the amount of improvement that will occur. These non-monetized and non-quantified benefits are included in the discussion below. Given the limitations in assigning monetary values to some of the improvements, the economic benefit values described below and in the *Benefits Analysis* should be considered a subset of the total benefits of this rule. These monetized benefits should be evaluated along with descriptive qualitative assessments of the non-monetized benefits. For example, the economic valuation used for this rule assigns monetary values to the water quality improvements due to reductions of the

most significant pollutants originating from CAFOs (*e.g.*, nitrogen, phosphorus, pathogens, and sediment), but it does not include values for potential water quality improvements expected due to reduced discharges of certain other pollutants discharged in lesser amounts, such as metals or hormones.

Research documented in the record and summarized in the *Benefits Analysis* shows that CAFO wastes may affect the environment and human health in a variety of ways beyond those for which benefits have been monetized. The following are examples of other types of potential impacts or potential benefits:

- Human health and ecological effects of metals, antibiotics, hormones, salts, and other pollutants associated with CAFO manure.
- Eutrophication of coastal and estuarine waters due to both nutrients in runoff and deposition of ammonia volatilized from CAFOs.
- Reduced human illness due to pathogen exposure during recreational activities in estuaries and coastal waters.
- Improvements to soil properties due to reduced overapplication of manure, together with increased acreage receiving manure applications at agronomic rates.
- Reduced pathogen contamination in private drinking water wells.
- Reduced cost of commercial fertilizers for non-CAFO operations.

EPA's *Benefits Analysis* does not include monetary values for these other areas of environmental improvements because data limitations preclude quantifiable estimates of the magnitude of improvement or it is difficult to ascribe an economic value to these benefits. Nevertheless, these environmental benefits may result in improved ecological conditions and reduced risk to human health.

3. Benefits From Improved Surface Water Quality

a. Freshwater recreational benefits. EPA used NWPCAM to estimate the national economic benefits to surface water quality that will result as CAFOs implement the requirements of this rule. NWPCAM is a national-scale water quality model that simulates the water quality and benefits for various water pollution control approaches. NWPCAM is designed to characterize water quality for the Nation's network of rivers and streams, and, to a more limited extent, its lakes. NWPCAM can translate spatially varying water quality changes (improvements or degradation) resulting from different pollution control policies into terms that reflect the value individuals place on water quality improvements. In this way, NWPCAM is able to derive the economic benefit of the water quality improvements that will result from reducing CAFO discharges.

For this rule, EPA used NWPCAM to simulate impacts due to reductions in pollutant loadings from Large CAFOs (nitrogen, phosphorus, pathogen indicators, BOD5, and TSS) on water quality in the Nation's surface waters. NWPCAM's national-scale framework allows hydraulic transport, routing, and connectivity of surface waters to be simulated for the entire continental United States with the exception of coastal and estuarine waters. Pollutant loadings from the CAFOs were used as inputs to NWPCAM. The CAFO loadings were processed through the NWPCAM water quality modeling system to estimate in-stream pollutant concentrations on a detailed spatial scale to provide estimates of changes in water quality that will result as CAFOs implement this new rule. The NWPCAM modeling output, simulating the improved water quality in the Nation's surface waters, was used as the basis for monetizing improvements to water quality, and as input to several of the other benefits analyses described later in this section.

The monetary value of the benefits associated with the changes in water quality are estimated using two valuation techniques. The first technique relates water quality changes to changes in the category of use the water quality can support (*e.g.*, boatable uses versus fishable uses, or fishable uses versus swimmable uses), also referred to as the "water quality ladder" approach, and also considers the size of population benefitting from the changes in the types of use the water quality can support. The second method is similar to the first, but it uses a composite measure of water quality that is calculated from six water quality parameters (referred to as the "water quality index" approach). A key difference in the two approaches is that the water quality ladder approach assesses improvements using a step-function that attributes a monetary value to the water quality improvement only when changing from one use category to another (*e.g.*, a change from boatable use to fishable use), while the water quality index method assigns values along a continuum of water quality improvement (*e.g.*, the water use may remain designated as "boatable use," but improvements within that use category are assigned a monetary value). For both valuation approaches, the monetary value assigned to the benefits is based on what the public is willing to pay for improvements to water quality.

Based on the NWPCAM analysis using the water quality ladder approach, the benefits of improved surface water quality resulting from reduced pollutant discharges from Large CAFOs are estimated to be $166 million annually (2001 dollars). Using the water quality index approach, the benefits of improved surface water quality are estimated at $298 million annually (2001 dollars).

b. Shellfish beds. Pathogen contamination of coastal waters is a leading cause of shellfish bed harvest restrictions and closures. Sources of pathogens include runoff from agricultural land and activities. Using *The 1995 National Shellfish Register of Classified Growing Waters* published by the National Oceanic and Atmospheric Administration, EPA estimated the improvements to shellfish bed harvesting that will result as CAFO discharges of pathogens are reduced by this rule. These data were used to determine the average per-acre yield of shellfish from harvested waters and to estimate the area of shellfish-growing waters that are currently unharvested as a result of pollution from AFOs. By combining the per-acre yield data with estimates of the acreage of currently unharvested shellfish beds that will become available for harvesting as discharges of pathogens from Large CAFOs are reduced, EPA calculates the value of improved shellfish harvests at $0.3 to $3.4 million annually.

c. Fish kills. Episodic fish kill events resulting from spills, manure runoff, and other discharges of manure from AFOs continue to remain a serious problem in the United States. The impacts from these incidents range from immediate and dramatic kill events to less dramatic but more widespread events. Manure dumped into and along the West Branch of the Pecatonica River in Wisconsin resulted in a complete kill of smallmouth bass, catfish, forage fish, and all but the hardiest insects in a 13-mile stretch of the river. Less immediate, but equally important, catastrophic impacts on water quality from manure runoff are increased algae growth or algae blooms, which remove oxygen from the water and can result in the death of fish. Manure runoff into a shallow lake in Arkansas resulted in a heavy algae bloom that depleted the lake of oxygen, killing many fish.

While the modeled estimates of surface water quality improvements have been used to monetize benefits associated with freshwater bodies, water quality modeling (*i.e.*, NWPCAM) does not include estuaries, coastal areas or other marine water bodies, and fish kills are noted to occur in these areas as well. Parts of the Eastern Shore of the United States have been plagued with problems related to *Pfiesteria*, a dinoflagellate algae that exist in rivers at all times, but is known to cause fish kills in estuarine and coastal environments under certain conditions. Fish attacked by *Pfiesteria* have lesions or large, gaping holes on them as their skin tissue is broken down; the lesions often result in death. The conditions under which *Pfiesteria* can harm fish are believed to be related to high levels of nutrients. Fish kills related to *Pfiesteria* in the Neuse River in North Carolina have been blamed on the booming hog industry and the associated waste spills and runoff from the hog farms. Preliminary evidence suggests that human health problems might also be associated with exposure to *Pfiesteria*. As a result, people most likely would limit or avoid recreational activities in coastal waters with *Pfiesteria*-related fish kills. The town of New Bern, a popular summer vacation spot along the Neuse River in North Carolina, experienced several major fish kills in the summer of 1995. During this event, people became ill after swimming and fishing in the impacted areas, and there were reports that people swimming in the waters reported welts and sores on their bodies. Summer camps canceled boating classes, children were urged to stay out of the water, and warnings were issued about swimming and eating fish that were diseased. Many blame the heavy rainfall, which pumped pollutants from overflowing sewage plants and hog lagoons into the river, creating algae blooms, low oxygen, and *Pfiesteria* outbreaks as the cause of the fish kills.

EPA obtained reports on fish kill events in the United States, with data for nineteen States showing historical and current fish kills. Using these data, EPA estimates the benefits of reducing fish kills through implementation of the ELG requirements in today's rule for Large CAFOs at $0.1 million annually.

d. Reduced public water treatment costs. Total suspended solids (TSS) entering the surface waters from CAFOs can hinder effective drinking water treatment by interfering with coagulation, filtration, and disinfection processes. EPA used the NWPCAM model to predict how pollutant reductions from Large CAFOs would affect the ambient concentration of TSS in the source waters of public water supply systems. To measure the value of reductions in TSS concentrations, EPA estimated the extent to which lower TSS concentrations reduce the operation and maintenance (O&M) costs associated with the conventional treatment technique of gravity filtration. EPA estimates reduced drinking water treatment costs of $1.1 to $1.7 million annually due to reduced discharges of pollutants at Large CAFOs.

4. Benefits From Improved Ground Water Quality

a. Human health benefits. CAFO wastes can contaminate ground water and thereby cause health risks and welfare losses to people relying on ground water sources for their potable supplies or other uses. Of particular concern are nitrogen and other constituents that leach through the soils and the unsaturated zone and ultimately reach ground waters. Nitrogen loadings convert to elevated nitrate concentrations at household and community system wells, and elevated nitrate levels in turn pose a risk to human health in households with private wells. (Nitrate levels in community wells are regulated to protect human health.)

This rule is expected to reduce nitrate levels in private drinking wells by reducing the rate at which manure is spread on cropland, thus reducing the rate at which pollutants will leach through soils and reach ground water. The federal health-based National Primary Drinking Water Standard for nitrate is 10 milligrams per liter (mg/L), and this Maximum Contaminant Level (MCL) applies to all community water supply systems. Households relying on private wells are not subject to the federal MCL for nitrate, but levels above 10 mg/L are considered unsafe for sensitive subpopulations (*e.g.*, infants). Several economic studies indicate a considerable willingness-to-pay by households to reduce the likelihood of nitrate levels exceeding 10 mg/L, and to reduce nitrate levels even when baseline concentrations are considerably below the MCL.

EPA used U.S. Geological Survey data on nitrate levels in wells throughout the country to predict how nitrate concentrations in private drinking wells would be reduced by this rule. Based on these data, EPA estimates that 9.2 percent of households that currently rely on private wells with nitrate concentrations exceeding the MCL will have these concentrations reduced to levels below the MCL because of the ELG requirements for Large CAFOs. EPA estimates the value of these reductions based on willingness-to-pay studies to be $583 annually per household (2001$) resulting in benefit estimates of $30.2 to $44.6 million nationally on an annual basis for this component of ground water improvements. Another 5.8 million households that currently have nitrate levels in their private wells below the MCL will experience further reductions in nitrate levels because of the ELG requirements for Large CAFOs. Studies also show that people are willing to pay $2.09 per mg/L reduced annually (2001$) to get these additional reductions once they are already below the MCL for nitrate. This gives benefits estimates of $0.7 million to $1.1 million annually for the nation for this component of ground water improvements. The total benefits of reduced nitrate contamination of private drinking wells as a result of reducing pollutant discharges at Large CAFOs are estimated to range from approximately $30.9 to $45.7 million annually (2001$).

Research documented in the record and summarized in the *Benefits Analysis* shows that CAFO wastes affect the environment and human health in ways beyond those for which benefits have been monetized. Additional ground water benefits that may result from this rule include reduced pathogen contamination of private drinking water wells and community drinking water supplies. EPA's *Benefits Analysis* does not include monetary values for these additional ground water improvements because data limitations preclude quantifiable estimates of the magnitude of improvement or because it is difficult to ascribe an economic value to these benefits. EPA also recognizes that CAFO operators have strong private incentives to avoid contaminating their own private drinking water sources.

b. Animal health benefits. Land application of manure can result in leaching of nitrates and enteric pathogens to ground water, which in many cases is used as the source of drinking water for livestock in rural communities. Excessive nitrate in livestock watering sources, particularly in conjunction with feeds containing nitrogen such as alfalfa, can contribute to increased morbidity and mortality due to acute and chronic nitrate poisoning in cattle which would have the ability to convert nitrate to toxic nitrite. In addition, studies have found that nearly 20% of rural water wells are contaminated with enteric pathogens such as fecal coliform and fecal streptococcus, common indicators of enteric pathogens, at ratios which suggest the source of contamination may be animal waste. Consumption of water by livestock contaminated with enteric pathogens could result in increased morbidity and mortality due to waterborne illness, particularly gastrointestinal disorders.

EPA used data from scientific literature, USDA data on beef and dairy mortality from poisoning and gastrointestinal illness, EPA data on rural groundwater quality, and published recommendations for livestock drinking water quality, to estimate the potential to reduce on-farm beef and dairy cattle mortality associated with pathogens and nitrates in ground water. From this, EPA estimated the avoided cost of replacing cattle mortalities. The ELG requirements are expected to reduce nitrate and pathogen contamination of ground water at Large CAFOs and, as a result, reduce annual cattle mortality from nitrate poisoning and pathogens at Large CAFOs by approximately 4,300 mature cattle and 3,900 calves. Using a replacement value of $1,185 for mature cattle and $54 for day-old calves (2002 dollars), the monetary benefit of reduced on-farm beef and dairy cattle mortality at Large CAFOs is estimated at $5.3 million annually.

D. Other (Non-Water Quality) Environmental Impacts and Benefits

In analyzing the effects of this rule, EPA also considered how the requirements promulgated today would affect the amount and form of compounds released to air, as well as the energy that is required to operate the CAFO. In addition to the water quality impacts and benefits discussed above, EPA's analyses for this rule have also evaluated these other types of environmental impacts, often referred to as non-water quality environmental impacts. These non-water quality environmental impacts include changes in air emissions from CAFO production areas and land where CAFO-generated manure is spread, changes in energy use, and improvements in soil properties. EPA's estimates of changes in air emissions and energy use are described in more detail in the *Technical Development Document.*

To assess the potential changes in air emissions resulting from this rule, EPA quantified the releases from the production area, including animal housing and animal waste storage and treatment areas; land application activities; and emissions from vehicles, including the off-site transport of waste and on-site composting operations.

EPA projects increased emissions of criteria air pollutants (particulate matter, volatile organic compounds, nitrogen oxides, and carbon monoxide) related to increased fuel consumption as excess manure is transported away from the CAFO. The contribution of these projected increases is limited compared to the national criteria pollutant inventory. For example, for the year 2000, the total national inventory for nitrogen oxides was 25 million tons. The contribution of the projected increase in CAFO emissions of nitrogen oxides is less than 0.01 percent of that amount. The national inventory values for other criteria pollutants are also much larger than the projected changes in emissions from CAFOs.

CAFOs are a source of ammonia, which is a contributor to the formation of fine particulate matter. This rule is not expected to significantly alter ammonia emissions from CAFOs. During the rulemaking, EPA evaluated a number of regulatory options and, as part of those analyses, considered the potential air quality benefits associated with changes in ammonia emissions. For further discussion of those analyses, refer to Chapter 13 of the *Technical Development Document* and Section 22 of the rulemaking record.

CAFOs are also a source of hydrogen sulfide emissions. EPA's calculations indicate that today's rule will reduce hydrogen sulfide emissions from Large CAFOs by 12 percent nationally. Reductions in hydrogen sulfide emissions are expected to lead to human health benefits, but EPA has not been able to calculate the economic value of these reductions.

Finally, CAFOs are a source of greenhouse gases. Emissions of nitrous oxide at CAFOs arise mainly from the feedlot area during denitrification of nitrogen compounds during waste storage on the drylot and from fields where animal wastes are land applied. Emissions of methane also mainly arise during waste storage, created during the anaerobic decomposition of carbon compounds. CAFOs currently contribute approximately 3 percent of all U.S. nitrous oxide emissions and a similar percentage of U.S. methane emissions. EPA estimates that emissions of nitrous oxide at Large CAFOs will increase by 4 percent as the requirements of today's rule are implemented, and emissions of methane will decrease by 11 percent.

EPA also expects that the properties of the soil at a number of land application areas might improve because of reduced overapplication of manure. The soil properties of cropland that does not currently receive manure, but becomes a recipient as additional manure is hauled away from CAFOs that have excess manure are also expected to benefit from the organic matter content (improving tilth) and the micronutrients present in manure.

VIII. Costs and Economic Impacts

This section presents EPA's estimate of the total annual costs and the economic impacts that would be incurred by the livestock and poultry industry as a result of today's rule. This section also discusses EPA's estimated effects on small businesses and presents the results of the Agency's cost-effectiveness and cost-benefit analysis. All costs presented in this section are reported in pre-tax 2001 dollars (unless otherwise indicated).

EPA estimates the total monetized social costs of the final regulations at about $335 million annually. These costs include compliance costs borne by CAFOs and also administrative costs to federal and State governments. EPA estimates the total compliance cost for Large CAFOs at $283 million per year (pre-tax, $2001). Costs to Medium CAFOs are estimated at $39 million per year. Costs to Medium and Small operations that are designated as CAFOs are estimated at $4 million per year. EPA estimates that the administrative cost to federal and State governments to implement this rule is $9 million per year.

For the veal, dairy, turkey, and egg laying sectors, the final regulations are not expected to result in any CAFO level business closures. In the beef cattle, heifer, hog, and broiler sectors, however, the final rule is expected to cause some existing CAFOs to experience financial stress. These operations might be vulnerable to closure as a result of complying with the final regulations. Across all sectors, an estimated 285 existing Large CAFOs might be vulnerable to facility closure. This accounts for approximately 3 percent of all Large CAFOs. By sector, EPA estimates that 49 beef operations (3 percent of affected beef CAFOs), 22 heifer operations (9 percent), 204 hog operations (5 percent of affected hog CAFOs), and 10 broiler operations (1 percent) might close as a result of complying with the final regulations. These results are based on an analysis that does not consider the longer-term effects on market adjustment and also available cost share assistance from federal and State governments.

Detailed information on estimated compliance costs are provided in the *Technical Development Document* and the *Cost Support Document,* which are in the administrative record for today's rule. EPA's detailed economic assessment can be found in *Economic Analysis* which is also in the administrative record.

A. Costs of the Final Rule

1. Method for Estimating the Costs of This Rule

For the purpose of estimating the total costs and economic impacts CAFOs will bear in complying with this rule, EPA estimated costs associated with four broad cost components: nutrient management planning, facility upgrades, land application, and technologies for balancing on-farm nutrients. Nutrient management planning costs include manure and soil testing, record-keeping, and plan development. Facility upgrades reflect costs for additional or improved manure storage, mortality handling, runoff controls, reduction of fresh water use where appropriate, and additional farm management practices. Land application costs address agricultural application of nutrients, including hauling of excess manure off-site and adjusting for changes in commercial fertilizer needs, and reflect differences among operations based on cropland availability for manure application.

EPA evaluated compliance costs using a representative facility approach based on approximately 1,600 farm level cost models to depict conditions and to evaluate compliance costs for select representative CAFOs. The major factors used to differentiate individual model CAFOs include the commodity sector, the farm production region, and the facility size (based on herd or flock size or the number of animals on-site). EPA's model CAFOs primarily reflect the major animal sector groups, including beef cattle, dairy, hog, broiler, turkey, and egg laying operations. Practices at other subsector operations are also reflected in the cost models, such as replacement heifer operations, veal operations, flushed-cage layers, and hog grow-finish and farrow-finish facilities.

Another key distinguishing factor incorporated into EPA's cost models is information on the availability of cropland and pastureland for land application of manure nutrients. For this analysis, nitrogen and phosphorus rates of land application were evaluated for three categories of cropland availability: (1) CAFOs with sufficient cropland for all manure generated on-site; (2) CAFOs with some, but not enough, cropland to accommodate all of the manure produced at the facility; and (3) CAFOs with no cropland. EPA used USDA data to determine the number of CAFOs within each of these categories. This information takes into account which nutrient (nitrogen or phosphorus) is used as the basis to assess land application and nutrient management costs.

The data and information used to develop EPA's cost estimates were compiled with the assistance of USDA, in combination with other information collected by EPA from extensive literature searches, more than 100 farm site visits, and numerous consultations with industry, universities, and agricultural extension agencies. Additional detailed information on the data and assumptions used to develop EPA's cost estimates is provided in the *Technical Development Document.* Refer to the preamble for the proposed rule for a summary of EPA's data collection activities and the sources of data that the Agency used to estimate compliance costs (66 FR 3079–3080).

For the purpose of estimating costs and financial effects to Medium CAFOs, EPA assumes that costs that will be incurred by those sized operations to comply with BPJ-based limitations under the revised NPDES regulations are similar to the estimated costs that would be incurred if Medium CAFOs had to comply with the ELG.

2. Estimated Annual Costs of the Final CAFO Regulations

a. *Costs borne by CAFOs.* Table 8.1 summarizes the total annualized compliance costs to CAFOs. The table shows these costs broken out by sector and broad facility size category. As shown in the table, EPA estimates the total cost of the final rule to CAFOs at $326 million annually. (Total monetized estimated social costs of the rule include an additional $9 million to federal and State governments.) Roughly one-half of this cost is incurred by the dairy sector, with another roughly 30 percent incurred within the cattle sectors (including the beef, veal, and heifer sectors).

Of this total, EPA estimates that Large CAFOs will incur costs of $283 million per year. Total annualized costs to facilities defined as Medium CAFOs are estimated at $39 million annually. Table 8.1 also shows estimated total cost to Small and Medium AFOs that might incur costs if designated as CAFOs, which EPA estimates at about $4 million annually. More information on these costs and how they were calculated is provided in the *Economic Analysis.*

EPA has estimated the cost of land application based on nitrogen-based application rates, except in those instances where EPA believes that phosphorus-based rates are likely to be appropriate. The final rule specifies that the determination of application rates is to be based on the technical standards established by the Director and EPA expects that these standards will require phosphorus-based application, where appropriate. The rule also provides for these standards to include appropriate flexibilities in the use of phosphorus-based rates, such as multi-year phosphorus application, but the potential costs savings resulting from these flexibilities are not reflected in the analysis. As a result, the cost and economic impacts of this rule may have been overestimated.

TABLE 8.1.—ANNUAL PRE-TAX COST OF THE RULE, $2001

Sector	No. operations		Aggregate incremental costs			
	Large CAFOs	Medium CAFOs	Total	Large CAFOs	Medium CAFOs	Designated CAFOs
	(number)		($2001, millions, pre-tax)			
Fed Cattle	1,766	174	$88.2	$85.8	$1.9	$0.5
Veal	12	230	0.0	<0.1	<0.1	0.0
Heifer	242	7	6.3	3.8	2.4	0.1
Dairy	1,450	1,949	151.1	128.2	22.0	0.9
Hogs	3,924	1,485	34.8	24.9	9.5	0.4
Broilers	1,632	520	20.5	16.8	2.4	1.3
Layers: Dry [1]	729	26	7.5	7.2	0.1	0.2
Layers: Wet [1]	383	24	8.9	8.4	0.5	<0.1
Turkeys	388	37	8.7	8.1	0.3	0.3

TABLE 8.1.—ANNUAL PRE-TAX COST OF THE RULE, $2001—Continued

Sector	No. operations		Aggregate incremental costs			
	Large CAFOs	Medium CAFOs	Total	Large CAFOs	Medium CAFOs	Designated CAFOs
Total	10,526	4,452	326.0	283.2	39.1	3.8

Source: USEPA. May not add due to rounding. Number of operations do not include designated facilities. Assumes that the estimated costs for Medium CAFOs to comply with BPJ-based limitations under the revised NPDES regulations are similar to the costs that would be incurred by those sized operations if they had to comply with the ELG.
[1] "Layers: dry" are operations with dry manure systems. "Layers: wet" are operations with liquid manure systems.

b. Costs to the NPDES permitting authority. The NPDES permitting authority will incur additional costs to alter existing State programs and obtain EPA approval to develop new permits, review new permit applications, and issue revised permits that meet the final regulatory requirements. EPA expects that NPDES permitting authorities will incur administrative costs related to the development, issuance, and tracking of general or individual permits.

State and federal administrative costs to issue a general permit include costs for permit development, public notice and response to comments, and public hearings. States and EPA may also incur costs each time a facility operator applies for coverage under a general permit due to the expenses associated with a NOI. These per-facility administrative costs include initial facility inspections and annual record-keeping expenses associated with tracking NOIs. Administrative costs for an individual permit include application review by a permit writer, public notice, and response to comments. An initial facility inspection might also be necessary.

EPA assumes that under the final regulations an estimated 15,500 CAFOs would be permitted. This estimate consists of about 15,000 CAFOs covered by State permits and about 500 CAFOs covered by federal permits. Administrative costs incurred by State permitting authorities are expected to be $8.7 million. EPA permitting authorities will incur the remaining $0.3 million. EPA has expressed these costs in 2001 dollars, annualized over the 5-year permit term using a 7 percent discount rate. A summary of this analysis is available in section X.D of this preamble. More detailed information is in the *Technical Development Document.*

B. Economic Effects

1. Effects on the CAFO Operation

To estimate the impacts of the final regulations, EPA examined the economic effects on regulated CAFOs and national markets. This section presents EPA's analysis of financial impacts on both existing and new CAFOs that will be affected by the final regulations. Results presented here focus on economic effects from the CAFO regulations affecting Large CAFOs because only large facilities will be subject to the effluent guidelines and NSPS. This section also presents EPA's analysis of the economic effects on existing operations that are small businesses. More detailed information on those effects are presented in the *Economic Analysis.*

The preamble to the proposed rule summarizes EPA's data collection activities and the sources of data that the Agency used to estimate economic effects for the final regulations (66 FR 3079–3080). Both the 2001 Notice (66 FR 58556) and the 2002 Notice (67 FR 48099) describe the public comments received by EPA on the baseline financial data and the methodological approach developed by the Agency to evaluate financial effects. More detailed information on these comments and how EPA addressed them is in section 2 of the final *Economic Analysis.* EPA's detailed responses to these public comments, and the comments themselves, are contained in the *Comment Response Document* in the administrative record for today's rule. Both Notices also present new data received following proposal that EPA used in conducting its final analysis.

a. *Methodology used to assess impacts to the CAFO operation.* EPA assessed financial effects on regulated CAFOs based on predicted changes to select financial criteria. The economic model that EPA used to evaluate financial impacts on CAFOs uses a representative farm approach. Under this general framework, EPA constructed a series of model facilities ("model CAFOs") that reflect EPA's estimated compliance costs and readily available financial data. EPA used these model CAFOs to develop an average characterization for a group of operations based on certain distinguishing characteristics for each sector, such as facility size and production region, that can be shared across a broad range of facilities.

EPA evaluated the economic achievability of the rule at existing operations based on changes in representative financial conditions across three financial criteria: (1) An initial screening comparing incremental post-tax costs to total gross revenue ("sales test"), (2) projected post-compliance cash flow over a 10-year period ("discounted cash flow analysis"), and (3) an assessment of an operation's debt-to-asset ratio under a post-compliance scenario ("debt-asset test"). EPA notes that its discounted cash flow analysis likely understates impacts because it does not include any allowance for depreciation or replacement of capital in its definition of cash flow. However, EPA has conducted a sensitivity analysis that shows that the number of estimated CAFO closures would not be different if allowances for replacement of capital are made (*see* section 3.3 of the Economic Analysis).

EPA used the results from these analyses to divide affected CAFOs into three financial impact categories: Affordable, Moderate, and Stress. CAFOs experiencing affordable or moderate impacts are considered to have some financial impact on operations, but EPA does not expect the costs of complying with this rule to make these operations vulnerable to closure. EPA considers that for CAFOs in both the "Affordable" and "Moderate" impact categories the final requirements are likely to be economically achievable. Operations experiencing financial stress, however, are considered to be vulnerable to closure because of the costs of this rule. EPA considers that for CAFOs in the "Stress" impact category, the final requirements are likely not economically achievable. EPA notes, as discussed below, that there may be mitigating factors that could reduce the number of facilities experiencing financial stress, such as the availability of cost-share assistance and long-run market adjustment.

EPA conducted its analysis first at the farm level based on data reflecting financial conditions for the entire farm operation (*e.g.*, reflecting income and cost information spanning the entire operation, thus considering the operation's primary livestock production, along with other income sources such as secondary livestock and crop production, government payments, and other farm-related income). Based on the farm level results, EPA also assessed the financial effects on CAFOs at the enterprise level (*e.g.*, limiting the scope of the assessment to the operation's livestock or poultry enterprise, and excluding other non CAFO-related sources of income from the analysis). By evaluating the financial criteria at both the farm level and the enterprise level, EPA's analyses address comments expressed by many commenters, including FAPRI, other land grant university researchers, and industry, as well as USDA.

Starting with the farm level analysis, EPA considers the regulations to be economically achievable for a representative model CAFO if the average operation has a post-compliance sales test estimate within an acceptable range, a positive post-compliance cash flow over a 10-year period, and a post-compliance debt-to-asset ratio not exceeding a benchmark value. Specifically, if the sales test shows that compliance costs are less than 3 percent of sales, or if post-compliance cash flow is positive and the post-compliance debt-to-asset ratio does not exceed a benchmark (depending on the baseline data) and compliance costs are less than 5 percent of sales, EPA considers the options to be "Affordable" for the representative CAFO group. (Although a sales test result of less than 3 percent does indicate "Affordable" in the farm level analysis, further analysis is conducted to determine the effects at the operation's livestock or poultry enterprise.) The benchmark values assumed for the debt-asset test are sector-specific. EPA assumes a 70 percent benchmark value for the debt-asset test to indicate financial stress in the hog and dairy sectors, and an 80 percent benchmark for the debt-asset test to indicate financial stress in the beef cattle sector. These benchmark values address public comment received and alternative debt and asset data submitted for the livestock sectors. For the poultry sectors, however, EPA did not obtain alternative debt and asset data and continues to evaluate data used for proposal against a 40 percent benchmark value. *See* the Economic Analysis and EPA response to comment on this issue for more information.

A sales test of greater than 5 percent but less than 10 percent of sales with positive cash flow and a debt-to-asset ratio of less than these sector-specific debt-asset benchmark values is considered indicative of some impact at the CAFO level, but at a level not as severe as those indicative of financial distress or vulnerability to closure. These impacts are labeled "Moderate" for the representative CAFO group. EPA considers both the "Affordable" and "Moderate" impact categories to be economically achievable by the CAFO, subject to the enterprise analysis (*see* below). If, with a sales test of greater than 3 percent, post-compliance cash flow is negative or the post-compliance debt-to-asset ratio exceeds these sector-specific debt-asset benchmarks, or if the sales test shows costs equal to or exceeding 10 percent of sales, EPA considers the final regulations to be associated with potential financial stress for the entire representative CAFO group. In such cases, each of the operations represented by that group might be vulnerable to closure. For operations that are determined to experience financial "Stress" at the farm level, the final requirements are likely not economically achievable.

The enterprise level analysis builds on the farm level analysis, evaluating effects at a farm's livestock or poultry enterprise. If the farm level analysis shows that the regulations impose "Affordable" or "Moderate" effects on the operation, the enterprise level analysis is conducted to determine whether the enterprise's cash flow is able to cover the cost of regulations. This analysis uses a discounted cash flow approach similar to that used to assess the farm level effects, in which the net present value of cash flow is compared to the net present value of the total cost of the regulatory options over the 10-year time frame of the analysis. Over the analysis period, if an operation's livestock or poultry enterprise maintains a cash flow stream that both exceeds the cash costs of the rule (operating and maintenance costs plus interest) and covers the net present value of the principal payments on the capital, EPA concludes that the enterprise will likely not close because of the CAFO rule. This analysis is conducted on a pass/fail basis. If the net present value of cash flow minus the net present value of the rule's costs is greater than zero, the enterprise passes the test and the enterprise is assumed to continue to operate. EPA considers these results to indicate that the final requirements are economically achievable. If the net present value of cash flow is not sufficient to cover the net present value of the cost of the rule, EPA assumes that the CAFO operator would consider shutting down the livestock or poultry enterprise. That is, if an operation fails the enterprise level analysis, these operations are determined to experience financial "Stress" and the final requirements are likely not economically achievable.

In response to comments, EPA conducted additional supplemental analysis to determine the effects of the regulation under two different scenarios. One scenario takes into consideration the effects of long-run market adjustment following implementation of the final regulations. This analysis is conducted using simulated changes in producer revenue given changes in market prices as depicted by EPA's market model, which uses estimates of price and quantity response in these markets. A second scenario takes into consideration potential cost share assistance under federal and State conservation programs, assuming that a portion of costs are covered by cost sharing subject to programmatic constraints. Given the uncertainty of whether CAFO income will rise in response to long-run market adjustment or whether available cost share dollars will effectively offset compliance costs at regulated CAFOs, EPA's analysis to determine whether the regulation is "economically achievable" does not rely on such assumptions as part of its regulatory analysis and therefore reflects the highest level of impacts projected. However, EPA presents the results of this analysis assuming both some degree of cost passthrough and no cost passthrough, as well as some degree of cost share assistance and no cost share assistance, along with the results of its lead analysis. Additional detailed information on this decision framework is provided in section 2 of the *Economic Analysis.*

b. Economic effects on existing CAFOs affected by the Effluent Guidelines. Table 8.2 presents the results of EPA's analysis of the estimated CAFO financial effects in terms of the number of operations that will experience affordable, moderate, or stress impact because of this rule. Results are shown by sector for Large CAFOs.

EPA's analysis indicates that, for all Large CAFOs in the veal, dairy, turkey, and egg laying sectors, the impacts due to this rule are characterized as "Affordable" or "Moderate" and no facility closures are projected for these facilities. Therefore, EPA determined the rule being promulgated today is economically achievable for existing facilities in these animal sectors. In the beef cattle, heifer, hog and broiler sectors, however, EPA's analysis

indicates that the final rule will cause some existing CAFOs to experience financial stress, making these operations vulnerable to facility closure. Across all sectors, an estimated 285 existing Large CAFOs might be vulnerable to facility closure. This accounts for approximately 3 percent of all Large CAFOs. By sector, EPA estimates that 49 beef operations (3 percent of affected beef CAFOs), 22 heifer operations (9 percent), 204 hog operations (5 percent of affected hog CAFOs), and 10 broiler operations (1 percent) might close as a result of complying with the final regulations. These estimates of the number of potential CAFO closures are cumulative and reflect the results of both the farm level analysis and the enterprise level analysis. These estimated closure rates are generally consistent with the findings of economic achievability of previous effluent guidelines for other industrial point source categories. Based on the results of this analysis, EPA concludes that the final rule is economically achievable for existing CAFOs. More detailed information is provided in the *Economic Analysis*.

The results described above do not reflect long-run market adjustment and cost share assistance through federal and State conservation programs due to uncertainties associated with these considerations, for reasons discussed in the *Economic Analysis*. Although EPA concluded, based on the results in Table 8.2, that the final regulation is economically achievable, the *Economic Analysis* presents the results of alternative analyses under varying assumptions of long-run market adjustment and potential cost share assistance. Under assumptions of long run market adjustment, as reflected in eventual increases in CAFO revenue and producer prices, the number of potential facility closures is reduced from 285 closures to a single facility closure in the beef sector. All operations in the heifer, hog, and broiler sectors are expected to be able to absorb the estimated compliance costs under an assumption that incorporates long run market adjustment. Under assumptions of partial cost share assistance, assumed for this analysis to cover 50 percent of the capital expenditure to comply with the revised regulations, the number of potential closures is reduced only somewhat from 285 closures to 261 closures (comprised of 43 beef, 11 heifer, 204 hog, and 3 broiler operations). EPA conducted these analyses only for the beef, heifer, hog and broiler sectors since all Large CAFOs in the other sectors are estimated to be able to absorb costs associated with the final rule.

TABLE 8.2.—FINANCIAL EFFECTS ON LARGE CAFOS: FINAL REGULATIONS

Sector	Number large CAFOs	Number			Percent of total operations		
		Affordable	Moderate	Stress	Affordable	Moderate	Stress
Fed Cattle	1,766	1,717	.....	49	97	0	3
Veal	12	12	0	0	100	0	0
Heifer	242	220	0	22	91	0	9
Dairy	1,450	1,019	431	0	70	30	0
Hogs	3,924	3,249	470	204	83	12	5
Broilers	1,632	1,032	590	10	63	36	1
Layers: Dry [1]	729	729	0	0	100	0	0
Layers: Wet [1]	383	383	0	0	100	0	0
Turkeys	388	388	0	0	100	0	0
Total	10,526	8,749	1,491	285	83	14	3

Source: USEPA. See *Economic Analysis*. May not add due to rounding.
[1] "Layers: dry" are operations with dry manure systems. "Layers: wet" are operations with liquid manure systems.

c. Economic effects to existing CAFOs that are small businesses. (1) Number of affected small businesses. This section presents EPA's analysis of the economic effects on CAFOs that are small businesses. It summarizes the estimated number of small entities to which the rule will apply and describes the potential effects of the final rule on these businesses.

The SBA defines a "small business" in the livestock and poultry sectors in terms of average annual receipts (or gross revenue). SBA size standards for these industries define a "small business" as one with average annual revenues over a 3-year period of less than $0.75 million for dairy, hog, broiler, and turkey operations; $1.5 million for beef feedlots; and $9.0 million for egg operations. EPA defines a "small" egg laying operation for purposes of its regulatory flexibility assessments as an operation that generates less than $1.5 million in annual revenue. EPA consulted with SBA on the use of this alternative definition. A summary of EPA's rationale and supporting analyses pertaining to this alternative definition is provided in the administrative record and in Section 4 of the *Economic Analysis*.

Given these considerations, EPA defines a "small business" for this rule as an operation that houses or confines less than 1,400 fed beef cattle (includes fed beef, veal, and heifers); 300 mature dairy cattle; 2,100 market hogs; 37,500 turkeys; 61,000 layers; or 375,000 broilers. The approach used to derive these estimates is described in the *Economic Analysis* and the administrative record.

EPA estimates that of the approximately 238,000 animal confinement facilities in 1997, roughly 95 percent are small businesses. Not all of these operations will be affected by the final rule. Table 8.3 shows EPA's estimates of the number of "small business CAFOs that are expected to be affected by this rule. For this analysis, EPA estimates that about 6,200 affected CAFOs across all size categories are small businesses, accounting for more than 40 percent of the estimated 14,515 affected facilities. EPA estimates that among Large CAFOs about 2,330 operations are small businesses (accounting for about one-fourth of all Large CAFOs). Most affected small businesses are in the broiler sector. Among Medium CAFOs, EPA estimates about 3,870 operations are small businesses (accounting for the majority of operations in this size category), and most of the affected small businesses are in the hog, dairy, and broiler sectors.

For reasons noted in the administrative record, EPA believes that the number of small broiler operations is overestimated and might actually include a number of medium and large broiler operations that should not be considered small businesses.

(2) Estimated financial effects on small businesses. For the 2001 proposal, EPA conducted a preliminary assessment of the potential impacts on small business CAFOs based on the results of a costs-to-sales test (66 FR 3101). This screen test indicated the need for additional analysis to characterize the nature and extent of impacts on small entities. Based on the results of this initial assessment, EPA projected that it would likely not certify that the proposal, if promulgated, would not impose a significant economic impact on a substantial number of entities. Therefore, EPA convened a SBAR Panel and prepared an Initial Regulatory Flexibility Analysis (IRFA) pursuant to sections 609(b) and 603 of the RFA, respectively. The 2001 proposal provides more information on EPA's small business outreach and the Panel activities during the development of this rulemaking (66 FR 3121). Section XI of this preamble presents EPA's Final Regulatory Flexibility Analysis (FRFA), as required under section 604 of the RFA. More detailed information on this analysis is provided in section 4 of the *Economic Analysis*.

In examining the effects on small businesses for the final rule, EPA followed the same approach used to evaluate the impacts on other existing CAFOs, described in section VIII.B.1(a). For the purposes of this analysis, EPA assumes that the costs that will be incurred by those sized operations to comply with BPJ-based limitations under the revised NPDES regulations are similar to the estimated costs that would be incurred if Medium CAFOs had to comply with the ELG.

For past regulations, EPA has often analyzed the potential impacts to small businesses by evaluating the results of a costs-to-sales test, measuring the number of operations that will incur compliance costs at varying threshold levels (including ratios where costs are less than 1 percent, between 1 and 3 percent, and greater than 3 percent of gross income). EPA conducted such an analysis at the time of the 2001 proposal, indicating that about 80 percent of the estimated number of small businesses directly subject to the rule as CAFOs might incur costs in excess of three percent of sales.

EPA believes that its more refined analysis used for its general analysis (presented here) better reflects the potential impacts to regulated small businesses. Using this approach, EPA's analysis indicates that the final rule could cause financial stress to some small businesses, making these businesses vulnerable to closure. Among the estimated 6,200 small businesses, EPA estimates that 262 Large and Medium CAFOs might be vulnerable to facility closure (Table 8.3). Thus, EPA estimates that potential facility closures associated with this rule constitutes about 4 percent of all affected small business CAFOs. Medium CAFOs comprise the majority (about 85 percent) of these estimated number of closures. These results do not consider long-run market adjustment or cost share assistance through federal and State conservation programs. More detailed information is provided in the *Economic Analysis*.

TABLE 8.3.—FINANCIAL EFFECTS ON SMALL BUSINESS CAFOS

Sector	Number of small businesses	Number			Percent of total operations		
		Affordable	Moderate	Stress	Affordable	Moderate	Stress
CAFOs >1,000 AU:							
Fed Cattle	538	522	0	16	97	0	3
Veal	5	5	0	0	100	0	0
Heifer	97	88	0	9	91	0	9
Dairy	0	—	—	—	—	—	—
Hogs	0	—	—	—	—	—	—
Broilers	1,303	763	532	9	58	41	1
Layers: Dry [1]	0	—	—	—	—	—	—
Layers: Wet [1]	383	383	0	0	100	0	0
Turkeys	0	—	—	—	—	—	—
Total	2,326	1,795	532	34	76	23	1
Operations 300–1,000 AU (Defined as CAFOs):							
Fed Cattle	174	7	0	167	4	0	96
Veal	7	7	0	0	100	0	0
Heifer	230	189	0	41	82	0	18
Dairy	1,330	1,306	24	0	98	2	0
Hogs	1,485	1,483	2	0	100	0	0
Broilers	520	263	248	10	51	48	1
Layers: Dry [1]	24	24	0	0	100	0	0
Layers: Wet [1]	24	24	0	0	100	0	0
Turkeys	31	31	0	0	100	0	0
Total	3,825	3,334	274	228	87	7	6

Source: USEPA. See *Economic Analysis*. May not add due to rounding. Assumes that the costs that will be incurred by those sized operations to comply with BPJ-based limitations under the revised NPDES regulations are similar to the estimated costs that would be incurred if Medium CAFOs had to comply with the ELG.
[1] "Layers: dry" are operations with dry manure systems. "Layers: wet" are operations with liquid manure systems.

d. Economic effects to new CAFOs. EPA evaluated impacts on new source CAFOs by comparing the costs borne by new source CAFOs to those estimated for existing sources. That is, if the expected cost to new sources is similar to or less than the expected cost borne by existing sources (and that cost was considered economically achievable for

existing sources), EPA considers that the regulations for new sources do not impose requirements that might grant existing operators a cost advantage over new CAFO operators and further determines that the NSPS requirements are affordable and do not present a barrier to entry for new facilities. In general, costs to new sources from NSPS requirements are lower than the costs for retrofitting the same technologies at existing sources since new sources are able to apply control technologies more efficiently than existing sources that might incur high retrofit cost. New sources will be able to avoid the retrofit costs that will be incurred by existing sources. Furthermore, new sources might be able to avoid the other various control costs facing some existing producers through careful site selection. The requirements promulgated in today's rule do not give existing operators a cost advantage over new CAFO operators; therefore, the NSPS do not present a barrier to entry for new facilities. Examples of avoided retrofit costs and costs of total containment systems and waste management, including land application, for both existing and new sources are provided in Section IV.C of this preamble. More detailed information is provided in the *Cost Report* and the *Economic Analysis* supporting the final regulations.

2. Market Analysis

EPA's market analysis evaluates the effects of the final regulations on national markets. This analysis uses a linear partial equilibrium model adapted from the COSTBEN model developed by USDA's Economic Research Service. The modified EPA model provides a means to conduct a long-run static analysis to measure the market effects of the final regulations in terms of predicted changes in farm and retail prices and product quantities. Market data used as inputs to this model are from a wide range of USDA data and land grant university research. Once price and quantity changes are predicted by the model, EPA uses national multipliers that relate changes in sales to changes in total direct and indirect employment and also to national economic output. These estimated relationships are based on the Regional Input-Output Modeling System (RIMS II) from the U.S. Department of Commerce. The details of the market analysis are described in the *Economic Analysis*.

a. Commodity prices and quantities. EPA's market model predicts that the final rule will not result in significant industry-level changes in production and prices for most sectors. Predicted changes in animal production might raise producer prices as the market adjusts to the final regulatory requirements. For most sectors, EPA estimates that producer price changes will rise by less than one percent of the pre-regulation baseline price. The exception is in the hog sector, where estimated compliance costs slightly exceed one percent of the baseline price. At the retail level, EPA expects that the final rule will not have a substantial impact on overall production or consumer prices for value-added meat, eggs, and fluid milk and dairy products. EPA estimates that retail price increases resulting from this rule will be less than one percent of baseline prices in all sectors, averaging below the rate of general price inflation for all foods. In terms of retail level price changes, EPA estimates that poultry and red meat prices will rise about one cent per pound. EPA also estimates that egg prices will rise by about one cent per dozen and that milk prices will rise by about one cent per gallon.

b. Aggregate employment and national economic output. EPA does not expect the final rule to cause significant changes in aggregate employment or national economic output, measured in terms of Gross Domestic Product (GDP). EPA expects, however, that there will be losses in employment and economic output associated with decreases in animal production due to rising compliance costs. These losses are estimated throughout the entire economy, using available modeling approaches, and are not attributable to the regulated community only. This analysis also does not adjust for offsetting increases in other parts of the economy and other sector employment that might be stimulated as a result of the final rule, such as the construction and farm services sectors.

Employment losses are measured in full-time equivalents (FTEs) per year, including both direct and indirect employment. EPA estimates that the reduction in total direct employment is about 1,600 FTEs. This projected change is compared to total national employment of about 129.6 million jobs in 1997. More detailed information on these results is presented in the *Economic Analysis*.

c. Regional and community impacts. EPA considered whether the final rule could have community level and/or regional impacts if it substantially altered the competitive position of livestock and poultry production across the nation, or led to growth or reduction in farm production (in- or out-migration) in different regions and communities. Ongoing structural and technological changes in these industries have influenced where farmers operate and have contributed to locational shifts between the traditional production regions and the emergent, nontraditional regions. Production is growing rapidly in the emergent regions because of competitive pressures and because specialized producers tend to have the advantage of lower per-unit costs of production. This is especially true in hog and dairy production.

To evaluate the potential for differential impacts among farm production regions, EPA examined employment impacts by region. EPA also evaluated whether the final requirements could result in substantial changes in volume of production, given predicted facility closures, within a particular production region. EPA concludes from these analyses that regional and community level effects are estimated to be modest, but do tend to be concentrated within the more traditional agricultural regions. This analysis is discussed in the *Economic Analysis*.

EPA does not expect that this rule will have a significant impact on where animals are raised. On one hand, on-site improvements in waste management and disposal, as required by the final rule, could accelerate recent shifts in production to more nontraditional regions as higher-cost producers in some regions exit the market to avoid the relatively high retrofitting costs associated with bringing existing facilities into compliance. On the other hand, the final regulations might favor more traditional production systems where operators grow both livestock and crops, since these operations tend to have available cropland for land application of manure nutrients. These types of operations tend to be more diverse and less specialized and, generally, smaller in size. Long-standing farm services and input supply industries in these areas could likewise benefit from the final rule, given the need to support on-site improvements in manure management and disposal. Local and regional governments, as well as other nonagricultural enterprises, would also benefit.

d. Foreign trade impacts. Foreign trade impacts are difficult to predict because agricultural exports are determined by economic conditions in foreign markets and changes in the international exchange rate for the U.S. dollar. However, EPA predicts that foreign trade impacts as a result of the final rule will be minor given the relatively small projected changes in overall supply and demand for these products and the slight increase in market prices, as described in section VIII.B.2(a). Measured as potential for changes in traded volumes, such as increases in imports and decreases in exports, EPA estimates that increases in imports and decreases in exports will each total less than 1 percent compared to baseline (pre-regulation) levels in each of the commodity sectors. Based on these results, EPA believes that any quantity and price changes resulting from the final rule will not significantly alter the competitiveness of U.S. export markets for meat, dairy foods, and poultry products.

C. Cost-Benefit and Cost-Effectiveness Analyses

1. Cost-Benefit Analysis

This section presents a comparison of the costs and benefits attributable to the final rule. As Table 8.4 shows, the economic value of the environmental benefits EPA is able to monetize (*i.e.*, evaluate in dollar terms) is comparable to the estimated costs of the rule. As discussed in section VII, EPA estimates that the monetized benefits of the final rule range from $204 million to $355 million annually. Monetized benefit categories are primarily in the areas of improved surface water quality (measured in terms of enhanced recreational value), reduced nitrates in private wells, reduced shellfish bed closures from pathogen contamination, and reduced fish kills from episodic events. As discussed in Section VII of this preamble, EPA also identified a number of benefits categories that could not be monetized. These benefits are described in more detail in Section VII of this preamble and in the *Benefits Analysis* and other supporting documentation provided in the administrative record.

This compares to EPA's estimate of the total social costs of the final regulations of about $335 million annually. These costs cover compliance costs to all CAFOs (Large, Medium, and Small), and administrative costs to States and federal governments. Costs to all CAFOs are estimated at $326 million per year (pre-tax, $2001). EPA estimates the administrative cost to State and federal governments to implement this rule is $9 million per year. There may be additional social costs that have not been monetized. For a detailed discussion of these costs, see the *Technical Development Document* and the *Economic Analysis*. A comparison of the total costs and benefits for other regulatory options considered and analyzed by EPA can be found in the *Economic Analysis*.

TABLE 8.4.—TOTAL ANNUAL MONETIZED SOCIAL COSTS AND BENEFITS

[Millions of 2001 dollars]

Category	Large CAFOs	All CAFOs
Social Costs:		
Industry Compliance Costs (pre-tax)	$298	$352
State/Federal Administrative Costs	6	9
Total	304	360
Benefits (Total for all CAFOs)	$204 to $355	(**)

**Benefits analysis does not reflect monetized benefits for Medium CAFOs. May not add due to rounding. See Table 7.1 for information on benefit categories that EPA was not able to monetize.

2. Cost-Effectiveness Analysis

As part of the process of developing effluent limitations guidelines and standards, EPA typically conducts a cost-effectiveness (C–E) analysis to compare the efficiencies of regulatory options for removing pollutants. This analysis defines cost-effectiveness as the incremental annualized cost of a regulatory control option per incremental pound of pollutant removed annually by that option.

The American Society of Agricultural Engineers reports that the constituents present in livestock and poultry manure include boron, cadmium, calcium, chlorine, copper, iron, lead, magnesium, manganese, molybdenum, nickel, potassium, sodium, sulfur, zinc, nitrogen and phosphorus species, TSS, and pathogens. Of these pollutants, EPA's standard C–E analysis is suitable to analyze only the removals of metals and metallic compounds. EPA's standard C–E analysis does not adequately address removals of nutrients, TSS, and pathogens. To account for the estimated removal of nutrients and sediments under the final rule, the Agency developed an alternative approach to evaluate the pollutant removal effectiveness for nutrients and sediment relative to the cost of these pollutant removals.

The C–E analysis conducted for this rule evaluates the cost-effectiveness of removing select non-conventional and conventional pollutants, including nitrogen, phosphorus, and sediments. For this analysis, sediments are used as a proxy for TSS. This analysis compares the estimated compliance cost per pound of pollutant removed to a recognized benchmark, such as EPA's benchmark for conventional pollutants or other criteria for existing treatment, as reported in available cost-effectiveness studies. The research in this area has mostly been conducted at municipal facilities, including publicly owned treatment works (POTWs) and wastewater treatment plants (WWTPs). Additional information is available based on the effectiveness of various nonpoint source controls and BMPs and other pollutant control technologies that are commonly used to control runoff from agricultural lands. A summary of this literature is provided in the *Economic Analysis*. Benchmark estimates were used to evaluate the efficiency of the final rule in removing a range of pollutants. This approach also allowed for an assessment of the types of management practices that will be implemented to comply with the final regulations.

For this analysis, EPA estimated average cost-effectiveness values that reflect the increment between no revisions to the current regulations and the final regulatory requirements promulgated today. All costs are expressed in pre-tax 2001 dollars. Estimated compliance costs used to calculate the cost-effectiveness of the final regulations include total estimated costs to CAFOs and costs to the permitting authority.

EPA estimates an average cost-effectiveness of nutrient removal at about $3 per pound of nitrogen removed (pre-tax, 2001 dollars). For phosphorus removal, removal costs are estimated at about $7 per pound of phosphorus removed. For nitrogen, EPA used a cost-effectiveness benchmark established by

its Chesapeake Bay Program to assess the costs to WWTPs to implement system retrofits to achieve biological nutrient removal. This nitrogen benchmark estimate is approximately $4 per pound of nitrogen removed, based on a range of costs of $0.80 to $5.90 per pound of nitrogen removed. EPA's estimated cost-effectiveness to remove nitrogen falls within the estimated range of removal costs and is less than this average benchmark value assumed for this rule. For phosphorus, EPA assumed a cost-effectiveness benchmark of roughly $10 per pound based on a review of values reported in the agricultural research of the costs to remove phosphorus using various nonpoint source controls and management practices. EPA's estimated cost-effectiveness to remove phosphorus under this rule also falls below this $10 per pound benchmark value, indicating that the requirements are cost-effective. This is particularly true when compared to the reported cost to remove phosphorus at other industrial point source dischargers, where reported average costs are twice that for agricultural sources and often exceed $100 per pound of phosphorus removed. Based on these results, EPA concludes that these values are cost-effective.

EPA also examined the cost-effectiveness of removing sediments under the regulations. EPA estimates a cost of less than $0.30 per pound of sediment removal in this rule (pre-tax, 2001 dollars). This estimated per-pound removal cost is low compared to EPA's POTW benchmark for conventional pollutants. That benchmark measures the potential costs per pound of TSS and BOD removed for an "average" POTW (see 51 FR 24982). Indexed to 2001 dollars, EPA's benchmark costs are about $0.73 per pound of TSS and BOD removed. For information on EPA's cost-effectiveness, see the *Economic Analysis*.

IX. Coordination With Other Federal Programs

A. How Does Today's Rule Function in Relation to Other EPA Programs?

The relationship between animal agriculture and water quality is affected by existing programs other than the CAFO regulations. This section of the preamble presents today's action in the context of some of these other programs.

1. Water Quality Trading

EPA proposed a water quality trading policy on May 15, 2002, for public review and comment. The proposed policy lays out guidelines for States and local governments/municipalities to consider when implementing a water quality trading program to maintain or reduce pollutant loading and achieve the goals of the Clean Water Act. Water quality trading is considered by some to be a more efficient and quicker pollution reduction process to meet water quality standards than conventional Clean Water Act methods. The proposed trading policy encourages currently regulated and nonregulated sources of pollution to interact more and make mutually beneficial agreements to reduce pollutant loading they might otherwise not be motivated to make. CAFOs may find mutually beneficial opportunities for water quality pollutant trading with other point and nonpoint sources in their watershed. For CAFOs interested in more details about Water Quality Trading, please go *http://www.epa.gov/ow*. The trading policy includes a general EPA water quality trading policy statement and identifies elements that define a successful trading program and provisions that should ensure consistency with the Clean Water Act.

2. Total Maximum Daily Load (TMDL)

The TMDL provisions of the Clean Water Act are intended to be the second line of defense for protecting the quality of surface water resources. When technology-based controls on point sources are inadequate for water to meet State water quality standards, section 303(d) of the Clean Water Act requires States to identify those waters and to develop TMDLs. A TMDL study must be conducted for each pollutant that causes a water body to fail to meet State water quality standards. More than 20,000 waters are identified nationally as being impaired and possibly requiring a TMDL. The top impairments in 1998 were sediment, nutrients, and pathogens. AFOs and CAFOs can be sources of all three pollutants.

A TMDL is a calculation of the greatest amount of a pollutant that a water body can receive without exceeding water quality standards. A TMDL allocates the amount of pollution that can be contributed by the pollutant sources. A TMDL study identifies both point and nonpoint sources of each pollutant that cause a water to fail to meet water quality standards. Water quality sampling, biological and habitat monitoring, and computer modeling help the TMDL writer determine how much each pollutant source must reduce its contribution to ensure that the water quality standard is met. Through the TMDL process, pollutant loads are allocated to all sources. Wasteload allocations for point sources are enforced through NPDES discharge permits. Load allocations for nonpoint sources are not federally enforceable, but can be met through voluntary approaches. In some impaired watersheds, AFOs and CAFOs may be affected by TMDLs since improved management practices may be necessary to restore water quality. In the case of CAFOs, any necessary pollutant loading reductions would be achieved through the use of NPDES permits issued in accordance with the requirements contained in today's final rule.

3. Watershed Permitting

Watershed-based permits are NPDES permits that are issued to point sources on a geographic or watershed basis. They focus on watershed goals and consider multiple pollutant sources and stressors, including the level of nonpoint source control needed. A watershed approach provides a framework for addressing all stressors within a hydrologically defined drainage basin instead of viewing individual pollutant sources in isolation. More than 20 States have implemented some form of the watershed approach and manage their resources on a rotating basin cycle.

Because of the recent emphasis on water quality-based permits and development of TMDLs that focus on water quality impacts, EPA is looking at ways to use watershed-based permits to achieve watershed goals. The watershed-based permit is a tool that can assist with implementation of a watershed approach. The utility of this tool relies heavily on a detailed, integrated, and inclusive watershed planning process. Many of the actions necessary for a successful TMDL are also needed for a successful watershed approach. The process and data needs for developing a watershed-based permit and for developing a TMDL are very similar. In places where TMDLs have been developed, watershed permits may be useful tools for implementing TMDLs. For example, North Carolina's nutrient management strategy for the Neuse River Basin includes a watershed-based permit approach for TMDL implementation. The strategy recognizes the need for all groups to work together and includes an approach for permitted dischargers to work collectively to meet a combined nitrogen allocation, rather than be subject to individual allocations. The implementation of the approach is being developed (NC DWQ, 1998, 2002). A watershed permit approach was also used for municipal discharges in Connecticut contributing nutrients to the Long Island Sound (CTDEP, 2001).

An approach similar to those used in North Carolina and Connecticut can be used for permitting CAFOs within a specific watershed.

4. Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)

In the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Congress required States with federally approved coastal zone management programs to develop and implement coastal nonpoint pollution control programs. Thirty-three States and Territories currently have federally-approved Coastal Zone Management programs. Section 6217(g) of CZARA called for EPA, in consultation with other federal agencies, to develop guidance on "management measures" for sources of nonpoint source pollution in coastal waters. In January 1993 EPA issued its *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters,* which addresses five major source categories of nonpoint pollution: urban runoff, agriculture runoff, forestry runoff, marinas and recreational boating, and hydromodification. Within the agriculture runoff nonpoint source category, the EPA guidance specifically included management measures applicable to all new and existing "confined animal facilities." The guidance identifies which facilities constitute large and small confined animal facilities based solely on the number of animals confined. The manner of discharge is not considered. Under the CZARA guidance, a large beef feedlot contains 300 head or more, a small feedlot between 50 and 299 head; a large dairy contains 70 head or more, a small dairy between 20 and 69 head; a large layer or broiler contains 15,000 head or more, a small layer or broiler between 5,000 and 14,999 head; a large turkey facility contains 13,750 head or more, a small turkey facility between 5,000 and 13,749 head; and a large swine facility contains 200 head or more, a small swine facility between 100 and 199 head.

The thresholds in the CZARA guidance for identifying large and small confined animal facilities are lower than those established for defining CAFOs under today's rules. Thus, in coastal States the CZARA management measures potentially apply to a greater number of small facilities than today's CAFO definition. Despite the fact that both the CZARA management measures for confined animal facilities and the NPDES CAFO regulations address similar operations, these programs do not overlap or conflict with each other. CZARA applies to nonpoint source dischargers. Any CAFO facility, as defined by 40 CFR Part 122, that has an NPDES CAFO permit, is a point source discharger and thus not subject to CZARA. Similarly, if a facility subject to CZARA management measures is later designated a CAFO by an NPDES permitting authority, the facility is no longer subject to CZARA. With respect to AFOs, some of these facilities may be subject to both NPDES and CZARA requirements, if they have both point and nonpoint source discharges. EPA's CZARA guidance provides that new confined animal facilities and existing large confined animal facilities should limit the discharge of facility wastewater and runoff to surface waters by storing such wastewater and runoff during storms up to and including discharge caused by a 25-year, 24-hour storm. Storage structures should have an earthen or plastic lining, be constructed with concrete, or constitute a tank. All existing small facilities should design and implement systems that will collect solids, reduce contaminant concentrations, and reduce runoff to minimize the discharge of contaminants in both wastewater and in runoff caused by storms up to and including a 25-year, 24-hour storm. Existing small facilities should substantially reduce pollutant loadings to ground water. Both large and small facilities should also manage accumulated solids in an appropriate waste utilization system. In addition to the confined animal facility management measures, the CZARA guidance includes a nutrient management measure intended to be applied by States to activities associated with the application of nutrients to agricultural lands (including the application of manure). The goal of this management measure is to minimize edge-of-field delivery of nutrients and minimize the leaching of nutrients from the root zone. The nutrient management measures also provide for the development, implementation, and periodic updating of a nutrient management plan.

5. Clean Water Act Sec. 319 Program

Congress amended the Clean Water Act in 1987 to establish the section 319 Nonpoint Source Management Program because it recognized the need for greater federal leadership to help focus State and local nonpoint source efforts. Under section 319, States, Territories, and Indian Tribes receive grants to implement their approved management programs for controlling non-point source pollution, which may include a wide variety of activities, including technical assistance, financial assistance, education, training, technology transfer, demonstration projects, and monitoring to assess the success of specific nonpoint source implementation projects. More than 40 percent of section 319 Clean Water Act grants have been used for activities to control and reduce agricultural nonpoint source pollution. Also, several USDA and State-funded programs provide cost-share, technical assistance, and economic incentives to implement NPS pollution management practices.

6. Source Water Protection Program

Although many States, water systems, and localities have established watershed and wellhead protection programs, the 1996 Safe Drinking Water Act Amendments placed a new focus on source water quality. States have been given access to funding and required to develop Source Water Assessment Programs to assess the areas serving as public sources of drinking water in order to identify potential threats and initiate protection efforts.

The Source Water Assessment Programs created by States differ because they are tailored to each State's water resources and drinking water priorities. However, each assessment must include four major elements: delineating (or mapping) the source water assessment area, conducting an inventory of potential sources of contamination in the delineated area, determining the susceptibility of the water supply to those contamination sources, and releasing the results of the determinations to the public.

Although a number of measures are in place to protect and retain the high quality of the Nation's drinking water, drinking water sources are subject to a number of threats, including growing population, chemical use, and animal wastes. Improper disposal of chemicals, animal wastes, pesticides, and human wastes, as well as the persistence of naturally occurring minerals, can contaminate drinking water sources. Like human wastes, animal wastes contain pathogens, such as *E. coli*, that can sicken hundreds of people and kill the very young and old and people with weakened immune systems. These wastes can enter drinking water supplies in runoff from feedlots and pastures.

In addition to these State efforts, EPA is working with a broad spectrum of stakeholders to develop a national strategy to prevent source water contamination. When it is complete, the strategy will reflect what EPA's Water Program can do to further source water contamination prevention nationwide.

7. What Is EPA's Position Regarding Environmental Management Systems?

The Agency supports the voluntary adoption of environmental management systems (EMSs) by CAFOs. On May 15, 2002, the Administrator announced the Agency's Position Statement on Environmental Management Systems. This statement outlines the policy and principles by which the Agency will work with industry to promote the use of EMSs to improve environmental protection. EPA promotes the widespread use of EMSs across a range of organizations and settings, with particular emphasis on adoption of EMSs to achieve improved environmental performance and compliance, and pollution prevention through source reduction. The Agency encourages organizations to implement EMSs based on the plan-do-check-act framework, with the goal of continual improvement. An organization's EMS should address its entire environmental footprint (everywhere it interacts with the environment both negatively and positively), including both regulated and unregulated impacts, such as energy and water consumption, dust, noise, and odor. EPA supports EMSs that are appropriate to the needs and characteristics of specific sectors and facilities.

An operation could choose to implement an EMS that could include a CNMP, but would also include policies and practices designed to address other significant environmental problems. EPA, as part of its overall policy on EMSs, supports adoption of these systems in a variety of sectors, including agriculture. EPA has worked with specific agricultural producer groups like the United Egg Producers to develop a voluntary EMS program. USDA is also funding a major effort through the University of Wisconsin called *Partnerships for Livestock Environmental Assessment Management Systems*. This project is designed to provide information and other guidance on ways to use EMSs effectively in a variety of agricultural settings. EPA serves on the Advisory Committee for this effort, along with USDA and other federal agencies.

In the *2001 Notice*, EPA outlined options for how an EMS program may be incorporated into the rule. These options were based on ISO 14000 criteria, an international standard. EPA received a number of comments on these options. Industry was split in support of EMS: some groups thought that use of EMSs in the proposal exceeded authorities provided under the Clean Water Act, whereas others welcomed EMSs as an alternative to co-permitting. Environmental groups were concerned that reliance on EMS constituted a roll-back of rule requirements.

EPA is not including an EMS as an option in this final rule. EPA recognizes, based on comments, that offering an EMS alternative made the rule more complex and was not entirely consistent with the Agency's goal to keep the rule simple, easy to understand and easy to implement. However, EPA supports the use of EMS by States, as appropriate. In today's rule, EPA is requiring that CAFOs develop and implement nutrient management plans that can help CAFOs manage manure and protect water quality. CAFOs may want to consider implementation of nutrient management plans as part of a broader EMS to manage the specific impacts of excess nutrients. The CAFO's EMS would be broader than just a nutrient management plan, however, and would cover all media and both regulated and unregulated aspects.

More information on EPA's EMS policy, along with sector-specific EMS templates and guidance is provided at www.epa.gov/ems.

B. How Is EPA Coordinating With Other Federal Agencies?

EPA and USDA are committed to working together to provide coordinated assistance to animal agriculture for the betterment of animal agriculture and the environment. The agencies are working together to educate farmers, suppliers, USDA field representatives, consultants, and others on these new regulations. Both EPA and USDA believe in the importance of providing education, training and technical assistance to all involved in animal agriculture that can play a role in helping farmers understand the new requirements and how they can meet them. EPA and USDA have different roles and different constituencies. EPA sets the requirements, works toward compliance by industry, and enforces against noncompliance. USDA provides technical assistance, education, and training to farmers, growers, and allied industries. This education, training, and technical assistance will be vitally important to CAFO operators as they work to come into compliance with the new regulations. The Natural Resource Conservation Service and the Cooperative State Research, Education, and Extension Service are the key USDA agencies that will work with farmers to educate them on the requirements of the EPA CAFO rule. USDA will continue to educate EPA personnel on the intricacies of animal agriculture so that the Agency can improve its communication with this vital sector.

There was significant comment on the proposed rule on how EPA and USDA should work together with farmers to implement this rule. Some thought the implementation should be left to USDA NRCS and CSREES. Others thought EPA and USDA should work together in the field in a coordinated effort to educate, regulate and assist AFOs and CAFOs. One commenter suggested that EPA monitor water quality and NRCS provide technical assistance. A few comments asked that EPA join other federal agencies and conduct a comprehensive examination of the problems generated by CAFOs.

EPA and USDA believe that only by working in close partnership will the federal government provide the best service to farmers and the rest of the American public. It is EPA's intent and commitment to communicate and coordinate effectively across Agencies and Departments. Animal agriculture is important to this country, as is a sound, healthy environment. EPA and USDA believe these two goals can be jointly achieved.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0250.

The information collection requirements affect operations that are defined or designated as CAFOs under the final rule and, therefore, are subject to the record keeping, data collection, and reporting requirements associated with applying for and complying with an NPDES permit. They also affect the 43 States with approved NPDES programs that administer NPDES permits for CAFOs ("approved States"). EPA and approved States use the information routinely collected through NPDES permit applications and compliance evaluations in the following ways: to issue NPDES permits with appropriate limitations and conditions that comply with the Clean Water Act; to update information in EPA's databases that permitting authorities use to determine permit conditions; to calculate national permit issuance, backlog, and compliance statistics; to evaluate national water quality; to assist EPA in program management and other activities that ensure national consistency in permitting; to assist EPA in prioritizing permit issuance activities; to assist EPA in policy development and budgeting; to assist EPA in responding to Congressional and public inquiries; and to ensure compliance with the terms and conditions of the permit.

The responses to the information collection requirements are mandatory for CAFOs. CAFOs are defined as point sources under the NPDES program (33 U.S.C. 1362). Under 33 U.S.C. 1311 and 1342, a CAFO must obtain an NPDES permit and comply with the terms of that permit, which include appropriate record keeping and reporting requirements. Furthermore, 33 U.S.C. 1318 provides authority for information collection (*i.e.*, record keeping, reporting, monitoring, sampling, and other information as needed), which applies to point sources. Approved States will also incur burden for record keeping, data collection, and reporting requirements when they revise and implement any program changes necessitated by the final rule. Under 40 CFR 123.62(e), State NPDES programs must at all times be in compliance with federal regulations.

CAFOs must develop their nutrient management plans, retain them onsite, and make them available to the permitting authority on request. These plans may contain confidential business information. When this is the case, the respondent can request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR Part 2 (40 CFR 2.201 *et seq.*), and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976.

EPA estimates that the average annual public burden for this rule making will be 1.9 million hours. This estimate includes 0.3 million hours for State respondents and 1.6 million hours for CAFO respondents. It includes the time required to review instructions, search existing data sources, gather and maintain all necessary data, and complete and review the information collection. Table 10.1 provides the breakdown of these estimates by type of response. Average annual capital and O&M costs will total $5.9 million. This estimate includes $1.3 million in CAFO capital costs to purchase sampling equipment, install depth markers, and purchase services for the engineering portion of the nutrient management plan. Average annual CAFO O&M costs of $2.9 million include laboratory analyses of soil and manure samples, tractor rental, and record keeping costs. Average annual State O&M costs of $1.7 million pay for public notifications.

TABLE 10.1.—BURDEN ESTIMATES PER RESPONSE

Activities	Response frequency	Average annual burden (hours)	Average annual responses [1]	Labor cost ($ millions)
CAFO Respondents				
Start-up Activities	One time	14,493	4,831	$0.32
Permit Application Activities and NOIs	Every 5 years	43,479	4,831	0.95
ELG and NPDES Data Collection and Record Keeping Activities:				
Visual inspections	Annual	152,260	11,712	1.67
Equipment inspection	Annual	32,238	8,060	0.35
Manure sampling	Annual	26,088	11,712	0.29
Soil sampling	Every 5 years	31,057	3,613	0.34
ELG and NPDES record keeping	Annual	936,982	11,712	10.31
Additional NPDES Record Keeping and Reporting Activities:				
Nutrient management plan	Every 5 years	250,168	4,831	9.06
Manure transfer record keeping	Annual	102,858	7,347	1.13
Annual report	Annual	11,712	11,712	0.26
Compliance inspections	Per inspection	9,370	2,342	0.20
State Respondents				
NPDES Program Modification Activities	One time	3,583	14	0.11
General Permit Activities	Annual	31,598	3,277	0.94
Individual Permit Activities	Annual	174,143	1,573	5.19
Compliance Evaluation:				
Inspections	Annual	36,317	2,270	1.08
Annual Reports	Annual	45,397	11,349	1.35

[1] For CAFOs, the number of respondents for each type of response equals the number of responses. For approved States, these estimates differ. There are 43 approved States responding to the information collection requirements, but the number of responses for some activities can be greater because the estimate depends on the number of CAFOs submitting information or undergoing inspections. EPA is the permitting authority for some CAFOs, so the response estimates for CAFOs and States will differ.

These burden and cost estimates have been updated since the proposed rule to reflect changes in the final rule. The Agency received only a few comments on the PRA section of the preamble for the proposed rule. Most commenters believed that the number of affected operations was underestimated. EPA revised its estimate of total AFO operations and its estimate of affected CAFO operations. The final rule requirements results in fewer CAFOs compared to the proposed rule estimates.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

C. Regulatory Flexibility Act

1. Background

The RFA generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) A small business based on annual revenue standards established by the Small Business Administration (SBA), with the exception of one of the six industry sectors where an alternative definition to SBA's is used; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

For purposes of assessing the impacts of today's rule on small entities in the egg-laying sector, EPA considered small entities in this sector as an operation that generates less than $1.5 million in annual revenue. A summary of EPA's rationale and supporting analyses pertaining to this alternative definition is provided in the record and in section 4 of the *Economic Analysis*. *See* discussion under "Use of Alternative Definition" later in this section. Because this definition of small business is not the definition established under the RFA, EPA proposed using this alternative definition in the **Federal Register** and sought public comment. *See* 66 FR 3099. EPA also consulted with SBA Chief Counsel for Advocacy on the use of this alternative definition.

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations of representatives of affected small entities in accordance with section 609(b) of the RFA. *See* 66 FR 3121–3124; 3126–3128 (January 12, 2001). A detailed discussion of the SBAR Panel's advice and recommendations can be found in the *Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule on National Pollutant Discharge Elimination System and Effluent Limitations Guideline Regulations for Concentrated Animal Feeding Operations*, April 7, 2000. This document is included in the public record (DCN 93001). The 2001 proposal provides a summary of the Panel's recommendations. (*See* 66 FR 3121–3124).

As required by section 604 of the RFA, EPA prepared a final regulatory flexibility analysis (FRFA) for today's final rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal for this rule. The FRFA is available for review in the docket and is summarized below.

2. Summary of Final Regulatory Flexibility Analysis

As required by section 604 of the RFA, EPA also prepared a final regulatory flexibility analysis (FRFA) for today's rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in the docket (in section 4 of the final *Economic Analysis*). A summary is provided below.

a. Need for and objectives of the regulations. A detailed discussion of the need for the regulations is presented in section IV of the 2001 preamble (66 FR 2972–2976). A summary is also provided in section 4 of the final *Economic Analysis*. In summary, EPA's rationale for revising the existing regulations include the following: address reports of continued discharge and runoff from livestock and poultry operations in spite of the existing requirements; update the existing regulations to reflect structural changes in these industries over the past few decades; and improve the effectiveness of the existing regulations. A detailed discussion of the objectives and legal basis for the rule is presented in sections I and III of the proposal preamble (66 FR 2959).

b. Significant Comments on the IRFA. The significant issues raised by public comments on the IRFA address exemptions for small businesses, disagreement with SBA definitions and guidance on how to define small businesses for these sectors, and general concerns about EPA's financial analysis and whether it adequately captures potential financial effects on small businesses.

Commenters generally recommend that EPA exempt all small businesses from regulation, arguing in some cases that regulating small businesses could affect competition in the marketplace, discourage innovation, restrict improvements in productivity, create entry barriers, and discourage potential entrepreneurs from introducing beneficial products and processes. Several commenters claimed that EPA had misrepresented the number of small businesses. In particular, several commenters objected to SBA's small business definition for dairy operations, claiming it understates the number of small businesses in this sector. One commenter claimed that EPA's estimate of the total number of operations is understated and therefore must understate the number of small businesses. Some commenters objected to the consideration of total farm-level revenue to determine the number of small businesses since this understates the number of small businesses (despite SBA guidance, which bases its definitions on total entity revenue for purposes of defining a small business). However, other commenters claimed that EPA's approach to its small business analysis does not only capture operations that are, in fact, small businesses but also larger corporate operations. Another commenter recommended that EPA simply consider any operation with fewer than 1,000 animal units a small business. EPA also received comments requesting that EPA consider use of regional-specific definitions of small business because of concerns that the revenue-based SBA definition might not be applicable to operations in Hawaii since producers in that State generally face higher cost of production and also higher producer prices relative to revenue and cost conditions at farms in the contiguous 48 States. Comments from SBA recommended that EPA adopt the Panel's recommendation not to consider changing the designation criteria for operations with fewer than 300 animal units as a means to provide relief to small businesses. SBA also recommended that EPA adopt the SBAR Panel's approach and allow permitting authorities to focus resources where there is greatest need. Finally, some commenters generally questioned the results of EPA's financial analysis, giving similarly stated concerns about EPA's financial data and models used for its main analysis.

In response, EPA notes that the projected impacts of today's final regulations on small businesses are lower than the projected impacts of the proposed rule. For example, the final rule does not extend the effluent guideline regulations to Medium CAFOs, as was proposed in the 2001 proposal. Instead, EPA is retaining the existing regulatory threshold, applying the effluent guideline to Large CAFOs only. Requirements for Medium CAFOs will continue to be subject to the BPJ requirements as determined by the permitting authority, thus requiring that fewer small businesses adopt the effluent guideline standards. More information on this topic is available in section IV of this preamble. Section IV discusses other regulatory changes since the 2001 proposal, indicating greater alignment with SBAR Panel recommendations. Refer to section IV of this preamble for more information on the comments and EPA's responses to those comments, as well as EPA's justification for final decisions on these options.

Regarding EPA's estimate of the number of small businesses, the Agency continues to follow SBA guidance and SBA definitions on how to define small businesses for these sectors. However, EPA has made substantial changes to the financial data and models used for its main analysis, which is also used to evaluate financial effects on small businesses. Both the 2001 Notice (66 FR 58556) and the 2002 Notice (67 FR 48099) describe the public comments received by EPA on the baseline financial data and the methodological approach developed by EPA to evaluate financial effects. These comments and how EPA has addressed them are discussed more fully in section 4 of the final *Economic Analysis*. EPA's detailed responses to comments, and the comments themselves, are contained in the *Comment Response Document* in response categories SBREFA and Small Business.

c. Description and estimation of number of small entities to which the regulations will apply. The small entities subject to this rule are small businesses. No nonprofit organizations or small governmental operations operate CAFOs. As discussed in section VIII.B.1(c) of this preamble, to estimate the number of small businesses affected by this final rule, EPA relied on the SBA size standards for these sectors, with the exception of size definitions for the egg sector. SBA defines a "small business" in these sectors as an operation with average annual revenues of less than $0.75 million for dairy, hog, broiler, and turkey operations; $1.5 million in revenue for beef feedlots; and $9.0 million for egg operations. The definitions of small business for the livestock and poultry industries are in SBA's regulations at 13 CFR 121.201. For this rule, EPA proposed and solicited public comment on and is using an alternative definition for small business for egg-laying operations. EPA defines a "small" egg laying operation for purposes of its regulatory flexibility assessments as an operation that generates less than $1.5 million in annual revenue. EPA consulted with SBA on the use of this alternative definition, as documented in the rulemaking record for the 2001 proposal. Given these definitions, EPA evaluates "small business" for this rule as an operation that houses or confines fewer than 1,400 fed beef cattle (includes fed beef, veal, and heifers); 300 mature dairy cattle; 2,100 market hogs; 37,500 turkeys; 61,000 layers; or 375,000 broilers. The approach used to derive these estimates is described in the *Economic Analysis* and in the record.

Using these definitions and available data from USDA and industry, EPA estimates that 6,200 of affected CAFOs across all size categories are small businesses. Among Large CAFOs, EPA estimates that about 2,330 operations are small businesses. Among Medium CAFOs, EPA estimates that about 3,870 operations are small businesses. Table 8.3 in section VIII of this preamble shows EPA's estimates of the number of regulated small businesses across all industry sectors. Section VIII.B.1(c) provides more detail on the estimated financial effects on small businesses under the final rule.

d. Description of the reporting, record-keeping, and other compliance requirements. Today's rule would require all AFOs that meet the CAFO definition to apply for a permit, develop and implement a nutrient management plan, collect and maintain records required by applicable technology-based effluent discharge standards, and submit an annual report to the responsible NPDES permitting authority. (No nonprofit organizations or small governmental operations operate CAFOs.) All CAFOs would also be required to maintain records of off-site transfers of manure. Record-keeping and reporting burdens include the time to record and report animal inventories, manure generation, field application of manure (amount, method, date, weather conditions), manure and soil analysis results, crop yield goals, findings from visual inspections of feedlot areas, and corrective measures. Records may include manure spreader calibration worksheets, manure application worksheets, maintenance logs, and soil and manure test results. EPA believes the owner/operator has the skills necessary to keep these records and make reports to the permitting authority.

Section X.B further summarizes the expected reporting and record-keeping requirements under the final regulations based on information compiled as part of the ICR for the Final NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations (EPA ICR No. 1989.01) prepared by EPA.

e. Steps taken to minimize significant impacts on small entities. In today's final rulemaking, EPA has adopted an approach for a regulatory program that mitigates impacts on small business, recognizes and promotes effective non-NPDES State programs, and works in partnership with USDA to promote environmental stewardship through voluntary programs, and financial and technical assistance. EPA's proposal

included many options that were not finally adopted in deference to these principles.

Because of the estimated impacts on small entities EPA is not certifying that this rule will not impose a significant impact on a substantial number of small entities. EPA has complied with all RFA provisions and conducted outreach to small businesses, convened a SBAR panel, prepared an Initial Regulatory Flexibility Analysis (IRFA) and a Final Regulatory Flexibility Analysis (FRFA), and also prepared an economic analysis. The Agency's actions include the following efforts to minimize impacts on small businesses:

- Retained structure of existing regulations, which allows EPA and states to focus on the largest producers;
- Retained applicability of effluent guidelines for Large CAFOs only;
- Retained existing designation criteria and process;
- Retained existing definition of an AFO;
- Retained conditions for being defined as a Medium CAFO;
- Eliminated the "mixed" animal calculation for operations with more than a single animal type for determining which AFOs are CAFOs;
- Raised the duck threshold for dry manure handling duck operations; and
- Adopted a dry-litter chicken threshold higher than proposed.

EPA went to some length to explore and analyze a variety of ELG regulatory alternatives to minimize impacts on small businesses. The record for today's rule includes extensive discussions of the alternatives, EPA's analysis of those alternatives, and the rationale for the Agency's decisions. In large part, the Agency incorporated most of the alternative considerations to reduce the burden to small businesses. By way of example, today's regulations will affect fewer small businesses at significantly reduced costs, as compared to the estimates of the number of small businesses and expected costs to those businesses based on the requirements set forth in the 2001 proposal. For more information on EPA's option selection rationale, see section IV of this preamble.

3. Compliance Guide

As required by section 212 of SBREFA, EPA is also preparing a small entity compliance guide to help small businesses comply with this rule. To request a copy, contact one of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this preamble. EPA expects that the guide will be available in March 2003.

4. Use of Alternative Definition

The RFA defines small entities as including small businesses, small governmental jurisdictions, and small organizations. The statute provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

As stated above, EPA proposed defining "small entity" for purposes of its regulatory flexibility assessments under the RFA as an operation that generates less than $1.5 million in annual revenue. The Agency also consulted with SBA Chief Counsel for Advocacy. See 66 FR 2959, (January 12, 2001).

EPA received two comments from the same commenter requesting that EPA not use the alternative definition for egg-laying operations but instead consider regional-specific conditions for determining the number of small businesses. The commenter expressed concern that SBA's revenue-based definition might not be applicable to operations in Hawaii since producers in that State generally face higher cost of production and also higher producer prices relative to revenue and cost conditions at farms in the contiguous 48 States. There are a number of reasons why EPA did not use a regional-specific definition of small business for egg operations. First, consistent with the RFA, EPA uses small business definitions as defined by the SBA except in cases where EPA consults with the SBA Chief Counsel for Advocacy. Since size standards set by the SBA do not vary by region, EPA follows SBA's lead. Second, the regulations set requirements by the number of animal units at a farm, not the revenues associated with those animal units. An 82,000 bird egg-laying operation in the Midwest will be subject to the same effluent limitations guidelines as a 82,000 bird egg-laying operation in Hawaii and the territories. Third, the economic analysis, uses a representative farm approach. Only the broadest regional information could be obtained through USDA and other sources. Although some small subregions or localities might face unique issues, without performing a Section 308 survey of all regulated entities EPA must rely on the representative farm approach. (*See also* response to comment DCN CAFO201246–C–6 regarding EPA's use of a representative farm approach, which is consistent with longstanding practices at USDA and the land grant universities.) Note however, that although EPA uses a single definition of small business across all regions, EPA's representative farm analysis of small business impacts does account for some regional variation in costs and revenues. Fourth, very few impacts are seen in the egg-laying sector, regardless of size. Even if EPA had classified the majority of egg-laying operations with less than 1,000 AU as small businesses, this would not have changed the outcome of the Agency's small business analysis in any material way. Finally, even if EPA were to classify all operations as small businesses in areas outside the contiguous 48 States (including Hawaii and Alaska), this would only raise the total number of small business by less than 10 operations. See response to comment DCN CAFO NODA 600053–5 regarding EPA's consideration of regional-specific definition of small business for the regulated sectors.

Today, EPA is establishing this alternative definition of "small entity" for the egg-laying sector for purposes of the regulatory flexibility analysis for this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, established requirements for federal agencies to assess the effects of their regulatory actions on State, Tribal and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to State, Tribal and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative

was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

EPA has determined that this rule contains a federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA revised the unfunded mandates analysis for State costs based on comments received. EPA expanded the categories of costs and increased the unit costs and hour burden while the final rule significantly decreased the number of potential permittees. Because the revisions were largely offsetting, there is little change in the overall burden estimated ($8 million annually at proposal and $9 million annually for the final rule). Accordingly, EPA has prepared under section 202 of the UMRA a written statement, which is summarized below. See section 5 of the *Economic Analysis* for the complete section 202 statement.

1. Private Costs

This statement provides quantitative cost-benefit assessment of the federal requirements imposed by today's final rules. In large part, the private sector, not other governments, will incur the costs. EPA estimates total compliance costs to industry of $326 million per year (pre-tax, 2001 dollars). EPA estimates that the monetized benefits of the final regulations range from $204 million to $355 million annually. Section VIII.C.1 of this preamble provides additional information on EPA's analysis. The analysis is provided in section 5 of the *Economic Analysis* and other supporting information is provided in the *Benefits Analysis* supporting the final regulations. Both of these support documents are available in the administrative record for this rulemaking. A summary of these analyses is provided in section's VII and VIII of today's preamble.

2. State Local and Tribal Government Costs

Authorized States are expected to incur costs to update their State NPDES programs to conform to the final rule and implement the revised standards through issuing NPDES permits and inspecting CAFOs to ensure compliance. The total average annual State administrative cost to implement the permit program, approximately $9 million, will not exceed the thresholds established by the UMRA. The analysis underlying this cost estimate is in the *NPDES Technical Support Document* found in the rule record. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect local or Tribal governments. There are no local or Tribal governments authorized to implement the NPDES permit program and the Agency is unaware of any local or Tribal governments who are owners or operators of CAFOs. Thus today's rule is not subject to the requirements of Section 203 of UMRA.

3. Funding and Technical Assistance Available to CAFOs

The 2002 Farm Bill authorized cost-share funding for six years (2002 through 2007) for EQIP. Funding starts at $400 million in 2002 and continually increases to $1.3 billion in the last year. Sixty percent of this funding is to be targeted to animal agriculture, including large and small feedlots, as well as pasture and grazing operations. An operation is eligible for a total of up to $450,000 over the six year time frame. This funding is open to both CAFOs and AFOs. Being defined as a CAFO does not make you ineligible for this funding.

4. Funding Available to States

States may be able to use existing sources of financial assistance to revise and implement the final rule. Section 106 of the Clean Water Act authorizes EPA to award grants to States, Tribes, intertribal consortia, and interstate agencies for administering programs for the prevention, reduction, and elimination of water pollution. These grants may be used for various activities to develop and carry out a water pollution control program, including permitting, monitoring, and enforcement. Thus, State and Tribal NPDES permit programs represent one type of State program that can be funded by section 106 grants.

Key comments received on Unfunded Mandates relate to the increased cost to farmers and States and the need for funds for CAFO compliance and State permitting. In the discussion above, EPA outlines the funding available to CAFO owners (EQIP) and to States (CWA section 106 grants) to help meet this rule's mandates.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 19, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA does not consider an annual impact of approximately $9 million on States a substantial effect. In addition, EPA does not expect this rule to have any impact on local governments.

Further, the revised regulations would not alter the basic State-federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA's policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

During public comment, EPA received comments on its analysis required under the Federalism Executive Order. The comments were that the Agency had underestimated the cost impacts of the rule on States. In response to these comments, EPA reanalyzed the impacts on States.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with

Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes."

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes, as specified in Executive Order 13175. First, no Tribal governments have been authorized to issue NPDES permits. Second, few CAFO operations are located on Tribal lands. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

Although Executive Order 13175 does not apply to this rule, EPA has briefed Tribal communities about this rulemaking at the National Environmental Justice Advisory Committee meeting in Atlanta, Georgia in June, 2000 and through notices in Tribal publications. In addition, EPA Regional Offices discussed this rulemaking with the Tribes in their regions.

During the public comment period, the Agency received no comments from Tribes or comments relating to tribal issues.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is subject to Executive Order 13045 because it is an economically regulatory action as defined by Executive Order 12866, and we believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of increased nutrients, pathogens, and metals in surface water on children. The results of this evaluation are contained in the proposed *Environmental Assessment*, which is part of the public record for this final rule.

EPA has established a maximum contaminate level for nitrates in drinking water at 10 micrograms/liter. There is some evidence that infants under the age of six months may be at risk from methemoglobinemia caused by nitrates in private drinking water wells when ingesting water at nitrate levels higher than 10 micrograms/liter. The Agency has estimated the reduction in the number of households that will be exposed to drinking water with nitrate levels above 10 micrograms/liter in Chapter 8 of the *Benefits Assessment* (noting that the Agency does not have information on the number of households exposed to nitrates that also have infants). The Agency estimates that there are approximately 13.5 million households with drinking water wells in counties with animal feeding operations. Of these, the Agency estimates that approximately 1.3 million households are exposed to nitrate levels above 10 micrograms/liter. The Agency further estimates that approximately 112,000 households would have their nitrate levels brought below 10 micrograms/liter under the requirements of this final rule. The Agency estimates that options more stringent than these would provide only small incremental changes in pollutant loadings to groundwater (*see* the *Technical Development Document*). The Agency therefore does not believe that requirements more stringent than these in the rule would provide meaningful additional protection of children's health risks from methemoglobinemia.

The Agency received no comments on the impacts to children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The rule is not a "significant energy action" as defined in Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects. While there will be a minor increase in energy use from increased hauling of manure to offsite locations, EPA has estimated the increased fuel usage associated with transporting manure, litter, and other process wastewaters off site is approximately 423,000 barrels annually for all CAFOs. EPA does not believe that this will have a significant impact on the energy supply.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Pub L. 104–113 section 12(d), 15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does involve the use of technical standards. In this rulemaking, EPA has developed regulatory standards for controlling pollutant discharges from permitted CAFOs based on its expertise, professional judgment, and the extensive record developed, in part, through the APA's notice and comment process. While we identified the American National Standards for Good Environmental Livestock Production Practices, developed by the National Pork Producers Council and certified by ANSI as an American National Standard on February 20, 2002 (GELPP 0001–2002; 0002–2002; 0003–2002; 0004–2002; 0005–2002), and a commenter has identified ANSI/ASCE 7–98, a separate voluntary consensus standard, as being potentially applicable, we have decided not to use them in this rulemaking. The use of these voluntary consensus standard would have been impractical because EPA's rule establishes a regulatory framework in which decisions as to what specific best management practices must be applied at individual animal feeding operations is generally left to the State in the exercise of its authority to issue NPDES permits. In issuing permits, States may consider these ANSI-certified standards and include, or not include, various elements as they may deem appropriate. It would not have been consistent with EPA's design for this rule to adopt these ANSI-certified standards as national minimum requirements for all States to incorporate into all permits for covered animal feeding operations. EPA received a number of comments suggesting that EPA should specifically include the GELPPs and ANSI/ASCE 7–98 as authorized alternative management standards in the final CAFO rule. EPA decided not to do so for the reasons discussed above.

In any event, it is important to note that the standards set out in this rule may be better characterized as representing regulatory decisions EPA is directed to make by the Clean Water Act, rather than as "technical standards". Consistent with Section 6(c) of OMB Circular A–119, EPA would not be obliged to consider the use of voluntary consensus standards as possible alternatives to the regulatory standards being adopted.

It should be noted that the effluent guideline rule (40 CFR 412) provides for voluntary alternative performance standards developed and applied in NPDES permits on a site-specific basis. CAFOs that voluntarily develop and adopt such performance standards in their NPDES permits may need to use previously approved technical standards to analyze for some or all of the following pollutants: nitrogen, phosphorus, BOD, and TSS. Consensus standards have already been promulgated in tables at 40 CFR 136.3 for measurement of all of these analytes.

Further, the rule specifically provides that the determination of land application rates for manure is to be done in accordance with technical standards established by the State. In establishing such standards, States may rely on standards already established by USDA or other existing standards or may develop new standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

In implementing the requirements of the Environmental Justice Executive Order, EPA reviews the environmental effects of major federal actions significantly affecting the quality of the human environment. For such actions, EPA reviewers focus on the spatial distribution of human health, social and economic effects to ensure that agency decisionmakers are aware of the extent to which those impacts fall disproportionately on covered communities. EPA has determined that this rulemaking is a major federal action. However, the Agency does not believe this rulemaking will have a disproportionate effect on minority or low-income communities. The proposed regulations will reduce the negative effects of CAFO waste in the nation's waters to benefit all of society, including minority communities.

K. Congressional Review Act

The Congressional Review Act, 5. U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take affect until 60 days after it is published in the **Federal Register**. This will be effective April 14, 2003. This action is a "major rule" as defined by 5 U.S.C. 804(2).

BILLING CODE 6560–50–P

APPENDIX - FORM 2B

Form Approved
OMB No, 2040-0250
Approval expires 12-15-05

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*

FORM 2B NPDES	EPA	U.S. ENVIRONMENTAL PROTECTION AGENCY APPLICATIONS FOR PERMIT TO DISCHARGE WASTEWATER CONCENTRATED ANIMAL FEEDING OPERATIONS AND AQUATIC ANIMAL PRODUCTION FACILITIES

I. GENERAL INFORMATION Applying for: Individual Permit ☐ Coverage Under General Permit ☐

A. TYPE OF BUSINESS	B. CONTACT INFORMATION	C. FACILITY OPERATION STATUS
☐ 1. Concentrated Animal Feeding Operation (complete items B, C, D, and Section II) ☐ 2. Concentrated Aquatic Animal Production Facility (complete items B, C, and section III)	Owner/or Operator Name: _____ Telephone: (____) _____ Address: _____ Facsimile: (____) _____ City: _____ State: __ Zip Code: _____	☐ 1. Existing Facility ☐ 2. Proposed Facility

A. FACILITY INFORMATION

Name: _____ Telephone: (____) _____
Address: _____ Facsimile: (____) _____
City: _____ State: _____ Zip Code: _____
County: _____ Latitude: _____ Longitude: _____

If contract operation: Name of Integrator: _____
Address of Integrator: _____

II. CONCENTRATED ANIMAL FEEDING OPERATION CHARACTERISTICS

A. TYPE AND NUMBER OF ANIMALS

1. TYPE	2. ANIMALS: NO. IN OPEN CONFINEMENT	2. ANIMALS: NO. HOUSED UNDER ROOF
☐ Mature Dairy Cows		
☐ Dairy Heifers		
☐ Veal Calves		
☐ Cattle (not dairy or veal)		
☐ Swine (55 lb. or over)		
☐ Swine (under 55 lb.)		
☐ Horses		
☐ Sheep or Lambs		

B. Manure, Litter and/or Wastewater Production and Use

a) How much manure, litter and wastewater is generated annually by the facility? _____ tons _____ gallons
b) If land applied how many acres of land under the control of the applicant are available for applying the CAFOs manure/litter/wastewater? _____ acres
c) How many tons of manure or litter, or gallons of waste-water produced by the CAFO will be transferred annually to other persons? tons/gallons *(circle one)*

[redacted]

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☐ Turkeys		
☐ Chickens (Broilers)		
☐ Chickens (Layers)		
☐ Ducks		
☐ Other Specify _____		
3. TOTAL ANIMALS		

[redacted]

C. ☐ TOPOGRAPHIC MAP

D. TYPE OF CONTAINMENT, STORAGE AND CAPACITY

1. Type of Containment	Total Capacity (in gallons)
☐ Lagoon	
☐ Holding Pond	
☐ Evaporation Pond	
☐ Other: Specify _____	

[redacted]

2. Report the total number of acres contributing drainage: _____ acres

3. Type of Storage	Total Number. of Days	Total Capacity (gallons/tons)
☐ Anaerobic Lagoon		
☐ Storage Lagoon		
☐ Evaporation Pond		
☐ Aboveground Storage Tanks		
☐ Belowground Storage Tanks		
☐ Roofed Storage Shed		
☐ Concrete Pad		
☐ Impervious Soil Pad		
☐ Other: Specify _____		

[redacted]

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E. NUTRIENT MANAGEMENT PLAN

A. Has a nutrient management plan been developed? ☐ Yes ☐ No

B. Is a nutrient management plan being implemented for the facility? ☐ Yes ☐ No

C. If no, when will the nutrient management plan be developed? Date: _____

D. The date of the last review or revision of the nutrient management plan. Date: _____

E. If not land applying, describe alternative use(s) of manure, litter and or wastewater:

F. LAND APPLICATION BEST MANAGEMENT PRACTICES
Please check any of the following best management practices that are being implemented at the facility to control runoff and protect water quality:

❑ Buffers ❑ Setbacks ❑ Conservation tillage ❑ Constructed wetlands ❑ Infiltration field ❑ Grass filter ❑ Terrace

III. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY CHARACTERISTICS

A. For each outfall give the maximum daily flow, maximum 30- day flow, and the long-term average flow.				B. Indicate the total number of ponds, raceways, and similar structures in your facility.		
1. Outfall No.	2. Flow (*gallons per day*)			1. Ponds	2. Raceways	3. Other
	a. Maximum. Daily	b. Maximum 30 Day	c. Long Term Average	C. Provide the name of the receiving water and the source of water used by your facility.		
				1. Receiving Water	2. Water Source	

D. List the species of fish or aquatic animals held and fed at your facility. For each species, give the total weight produced by your facility per year in pounds of harvestable weight, and also give the maximum weight present at any one time.

1. Cold Water Species			2. Warm Water Species		
a. Species	b. Harvestable Weight (*pounds*)		a. Species	b. Harvestable Weight (*pounds*)	
	(1) Total Yearly	(2) Maximum		(1) Total Yearly	(2) Maximum

E. Report the total pounds of food during the calendar month of maximum feeding.	1. Month	2. Pounds of Food

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Approval expires 12-15-05

IV. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. Name and Official Title (*print or type*)	B. Phone No. ( )
C. Signature	D. Date Signed

Form Approved
OMB No, 2040-0250
Approval expires 12-15-05

INSTRUCTIONS

GENERAL
This form must be completed by all applicants who check "yes" to Item II-B in Form 1. Not all animal feeding operations or fish farms are required to obtain NPDES permits. Exclusions are based on size. See the description of these statutory and regulatory exclusions in the General Instructions that accompany Form 1.
For aquatic animal production facilities, the size cutoffs are based on whether the species are warm water or cold water, on the production weight per year in harvestable pounds, and on the amount of feeding in pounds of food (*for cold water species*). Also, facilities which discharge less than 30 days per year, or only during periods of excess runoff (*for warm water fish*) are not required to have a permit.
Refer to the Form 1 instructions to determine where to file this form.

Item I-A
See the note above and the General Instructions which accompany Form 1 to be sure that your facility is a "concentrated animal feeding operation" (CAFO).

Item I-B
Use this space to give owner/operator contact information.

Item I-C
Check "proposed" if your facility is not now in operation or is expanding to meet the definition of a CAFO in accordance with the information found in the General Instructions that accompany Form 1.

Item I-D
Use this space to give a complete legal description of your facility's location including name, address, and latitude/longitude. Also, the if a contract grower, the name and address of the integrator.

Item II
Supply all information in item II if you checked (1) in item I-A.

Item II-A
Give the maximum number of each type of animal in open confinement or housed under roof (either partially or totally) which are held at your facility for a total of 45 days or more in any 12 month period. Provide the total number of animals confined at the facility.

Item II-B
Provide the total amount of manure, litter and wastewater generated annually by the facility. Identify if manure, litter and wastewater generated by the facility is to be land applied and the number of acres, under the control of the CAFO operator, suitable for land application. If the answer to question 3 is yes, provide the estimated annual quantity of manure, litter and wastewater that the applicant plans to transfer off-site.

Item II-C
Check this box if you have submitted a topographic map of the geographic area in which the CAFO is located showing the specific location of the production area.

Item II-D
1. Provide information on the type of containment and the capacity of the containment structure (s).
2. The number of acres that are drained and collected in the containment structure (s).
3. Identify the type of storage for the manure, litter and/or wastewater. Give the capacity of this storage in days and gallons or tons.

Item II-E
Provide information concerning the status of the development and implementation of a nutrient management plan for the facility. In those cases where the nutrient management plan has not been completed, provide an estimated date of development and implementation. If not land applying, describe the alternative uses of the manure, litter and wastewater (e.g., composting, pelletizing, energy generation, etc.).

Item II-F
Check any of the identified conservation practices that are being implemented at the facility to control runoff and protect water quality.

Item III
Supply all information in Item III if you checked (2) in Item I-A.

Item III-A
Outfalls should be numbered to correspond with the map submitted in Item XI of Form 1. Values given for flow should be representative of your normal operation. The maximum daily flow is the maximum measured flow occurring over a calendar day. The maximum 30-day flow is the average of measured daily flow over the calendar month of highest flow. The long-term average flow is the average of measure daily flows over a calendar year.

Item III-B
Give the total number of discrete ponds or raceways in your facility. Under "other," give a descriptive name of any structure which is not a pond or a raceway but which results in discharge to waters of the United States.

Item III-C
Use names for receiving water and source of water which correspond to the map submitted in Item XI of Form 1.

Item III-D
The names of fish species should be proper, common, or scientific names as given in special Publication No. 6 of the American Fisheries Society. "A List of Common and Scientific Names of Fishes from the United States and Canada." The values given for total weight produced by your facility per year and the maximum weight present at any one time should be representative of your normal operation.

Item III-E
The value given for maximum monthly pounds of food should be representative of your normal operation.

Item IV
The Clean Water Act provides for severe penalties for submitting false information on this application form.
Section 309(C)(2) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application...shall upon conviction, be punished by a fine of no more than $10,000 or by imprisonment for not more than six months, or both."

Federal regulations require the certification to be signed as follows:
A. For corporation, by a principal executive officer of at least the level of vice president.
B. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
C. For a municipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

Paper Reduction Act Notice
The Public reporting burden for this collection of information estimated to average 4 hours per response. The estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information to the chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked Attention: Desk Officer for EPA.

EPA Form 3510-2B (12-02)

BILLING CODE 6560-50-C

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Parts 122 and 123

Administrative practice and procedure, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 412

Feedlots, Livestock, Waste treatment and disposal, Water pollution control.

Dated: December 15, 2002.
Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding entries in numerical order under the indicated heading and a new heading and entries to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
122.21(f)	2040–0250
122.23(i)	2040–0250
122.28(b)	2040–0250
122.42(e)	2040–0250
Feedlots Point Source Category	
412.31–412.37	2040–0250
412.41–412.47	2040–0250

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 122.21 by adding a sentence to the end of paragraph (a)(1) and revising paragraph (i)(1) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) * * *

(1) * * * All concentrated animal feeding operations have a duty to seek coverage under an NPDES permit, as described in § 122.23(d).

* * * * *

(i) * * *

(1) For concentrated animal feeding operations:

(i) The name of the owner or operator;

(ii) The facility location and mailing addresses;

(iii) Latitude and longitude of the production area (entrance to production area);

(iv) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of paragraph (f)(7) of this section;

(v) Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(vi) The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage(tons/gallons);

(vii) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

(viii) Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons);

(ix) Estimated amounts of manure, litter and process wastewater transferred to other persons per year (tons/gallons); and

(x) For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

* * * * *

3. Section 122.23 is revised to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement for CAFOs.* Concentrated animal feeding operations, as defined in paragraph (b) of this section, are point sources that require NPDES permits for discharges or potential discharges. Once an operation is defined as a CAFO, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(b) Definitions applicable to this section:

(1) *Animal feeding operation* ("AFO") means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) *Concentrated animal feeding operation* ("CAFO") means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) The term *land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.

(4) *Large concentrated animal feeding operation* ("Large CAFO"). An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(i) 700 mature dairy cows, whether milked or dry;

(ii) 1,000 veal calves;

(iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle

includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(iv) 2,500 swine each weighing 55 pounds or more;

(v) 10,000 swine each weighing less than 55 pounds;

(vi) 500 horses;

(vii) 10,000 sheep or lambs;

(viii) 55,000 turkeys;

(ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

(xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or

(xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

(5) The term *manure* is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(6) *Medium concentrated animal feeding operation* ("Medium CAFO"). The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b)(6)(i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

(i) The type and number of animals that it stables or confines falls within any of the following ranges:

(A) 200 to 699 mature dairy cows, whether milked or dry;

(B) 300 to 999 veal calves;

(C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(D) 750 to 2,499 swine each weighing 55 pounds or more;

(E) 3,000 to 9,999 swine each weighing less than 55 pounds;

(F) 150 to 499 horses;

(G) 3,000 to 9,999 sheep or lambs;

(H) 16,500 to 54,999 turkeys;

(I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(L) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or

(M) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and

(ii) Either one of the following conditions are met:

(A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(7) *Process wastewater* means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

(8) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(9) *Small concentrated animal feeding operation* ("Small CAFO"). An AFO that is designated as a CAFO and is not a Medium CAFO.

(c) *How may an AFO be designated as a CAFO?* The appropriate authority (*i.e.*, State Director or Regional Administrator, or both, as specified in paragraph (c)(1) of this section) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.

(1) *Who may designate?*

(i) *Approved States.* In States that are approved or authorized by EPA under Part 123, CAFO designations may be made by the State Director. The Regional Administrator may also designate CAFOs in approved States, but only where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.

(ii) *States with no approved program.* The Regional Administrator may designate CAFOs in States that do not have an approved program and in Indian country where no entity has expressly demonstrated authority and has been expressly authorized by EPA to implement the NPDES program.

(2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:

(i) The size of the AFO and the amount of wastes reaching waters of the United States;

(ii) The location of the AFO relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and

(v) Other relevant factors.

(3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph (b)(6) of this section may be designated as a CAFO unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) *Who must seek coverage under an NPDES permit?*

(1) *All CAFO owners or operators must apply for a permit.* All CAFO owners or operators must seek coverage under an NPDES permit, except as provided in paragraph (d)(2) of this section. Specifically, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit. If the Director has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the Director.

(2) *Exception.* An owner or operator of a Large CAFO does not need to seek coverage under an NPDES permit otherwise required by this section once the owner or operator has received from the Director notification of a determination under paragraph (f) of this section that the CAFO has "no potential to discharge" manure, litter or process wastewater.

(3) *Information to submit with permit application.* A permit application for an individual permit must include the information specified in § 122.21. A notice of intent for a general permit must include the information specified in §§ 122.21 and 122.28.

(e) *Land application discharges from a CAFO are subject to NPDES requirements.* The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in § 122.42(e)(1)(vi)–(ix), a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.

(f) *"No potential to discharge" determinations for Large CAFOs.*

(1) *Determination by the Director.* The Director, upon request, may make a case-specific determination that a Large CAFO has "no potential to discharge" pollutants to waters of the United States. In making this determination, the Director must consider the potential for discharges from both the production area and any land application areas. The Director must also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have "no potential to discharge" if it has had a discharge within the 5 years prior to the date of the request submitted under paragraph (f)(2) of this section. For purposes of this section, the term "no potential to discharge" means that there is no potential for any CAFO manure, litter or process wastewater to be added to waters of the United States under any circumstance or climatic condition. A determination that there is "no potential to discharge" for purposes of this section only relates to discharges of manure, litter and process wastewater covered by this section.

(2) *Information to support a "no potential to discharge" request.* In requesting a determination of "no potential to discharge," the CAFO owner or operator must submit any information that would support such a determination, within the time frame provided by the Director and in accordance with paragraphs (g) and (h) of this section. Such information must include all of the information specified in § 122.21(f) and (i)(1)(i) through (ix). The Director has discretion to require additional information to supplement the request, and may also gather additional information through on-site inspection of the CAFO.

(3) *Process for making a "no potential to discharge" determination.* Before making a final decision to grant a "no potential to discharge" determination, the Director must issue a notice to the public stating that a "no potential to discharge" request has been received. This notice must be accompanied by a fact sheet which includes, when applicable: a brief description of the type of facility or activity which is the subject of the "no potential to discharge" determination; a brief summary of the factual basis, upon which the request is based, for granting the "no potential to discharge" determination; and a description of the procedures for reaching a final decision on the "no potential to discharge" determination. The Director must base the decision to grant a "no potential to discharge" determination on the administrative record, which includes all information submitted in support of a "no potential to discharge" determination and any other supporting data gathered by the permitting authority. The Director must notify any CAFO seeking a "no potential to discharge" determination of its final determination within 90 days of receiving the request.

(4) *What is the deadline for requesting a "no potential to discharge" determination?* The owner or operator must request a "no potential to discharge" determination by the applicable permit application date specified in paragraph (g) of this section. If the Director's final decision is to deny the "no potential to discharge" determination, the owner or operator must seek coverage under a permit within 30 days after the denial.

(5) *The "no potential to discharge" determination does not relieve the CAFO from the consequences of an actual discharge.* Any unpermitted CAFO that discharges pollutants into the waters of the United States is in violation of the Clean Water Act even if it has received a "no potential to discharge" determination from the Director. Any CAFO that has received a determination of "no potential to discharge," but who anticipates changes in circumstances that could create the potential for a discharge, should contact the Director, and apply for and obtain permit authorization prior to the change of circumstances.

(6) *The Director retains authority to require a permit.* Where the Director has issued a determination of "no potential to discharge," the Director retains the authority to subsequently require NPDES permit coverage if circumstances at the facility change, if new information becomes available, or if there is another reason for the Director to determine that the CAFO has a potential to discharge.

(g) *When must a CAFO seek coverage under an NPDES permit?*

(1) *Operations defined as CAFOs prior to April 14, 2003.* For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an NPDES permit as of April 14, 2003, and comply with all applicable NPDES requirements, including the duty to maintain permit coverage in accordance with paragraph (h) of this section.

(2) *Operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date.* For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an NPDES permit by a date specified by the Director, but no later than February 13, 2006.

(3) *Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.* For newly constructed AFOs and AFOs that make changes to their operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under an NPDES permit, as follows:

(i) For newly constructed operations not subject to effluent limitations guidelines, 180 days prior to the time CAFO commences operation; or

(ii) For other operations (*e.g.*, resulting from an increase in the number of animals), as soon as possible,

but no later than 90 days after becoming defined as a CAFO; except that

(iii) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until April 13, 2006, or 90 days after becoming defined as a CAFO, whichever is later.

(4) *New sources.* New sources must seek to obtain coverage under a permit at least 180 days prior to the time that the CAFO commences operation.

(5) *Operations that are designated as CAFOs.* For operations designated as a CAFO in accordance with paragraph (c) of this section, the owner or operator must seek to obtain coverage under a permit no later than 90 days after receiving notice of the designation.

(6) *No potential to discharge.* Notwithstanding any other provision of this section, a CAFO that has received a "no potential to discharge" determination in accordance with paragraph (f) of this section is not required to seek coverage under an NPDES permit that would otherwise be required by this section. If circumstances materially change at a CAFO that has received a NPTD determination, such that the CAFO has a potential for a discharge, the CAFO has a duty to immediately notify the Director, and seek coverage under an NPDES permit within 30 days after the change in circumstances.

(h) *Duty to Maintain Permit Coverage.* No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit, in accordance with § 122.21(g). However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

(1) The facility has ceased operation or is no longer a CAFO; and

(2) The permittee has demonstrated to the satisfaction of the Director that there is no remaining potential for a discharge of manure, litter or associated process wastewater that was generated while the operation was a CAFO, other than agricultural stormwater from land application areas.

4. Section 122.28 is amended by adding one sentence to the end of paragraph (b)(2)(ii) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) * * *

(ii) * * * Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in § 122.21(i)(1), including a topographic map.

* * * * *

5. Section 122.42 is amended by adding paragraph (e) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(e) *Concentrated animal feeding operations (CAFOs).* Any permit issued to a CAFO must include:

(1) *Requirements to develop and implement a nutrient management plan.* At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006 must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

(i) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(ii) Ensure proper management of mortalities (*i.e.*, dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

(iii) Ensure that clean water is diverted, as appropriate, from the production area;

(iv) Prevent direct contact of confined animals with waters of the United States;

(v) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

(vi) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;

(vii) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

(viii) Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

(ix) Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs (e)(1)(i) through (e)(1)(viii) of this section.

(2) *Recordkeeping requirements.*

(i) The permittee must create, maintain for five years, and make available to the Director, upon request, the following records:

(A) All applicable records identified pursuant paragraph (e)(1)(ix) of this section;

(B) In addition, all CAFOs subject to 40 CFR part 412 must comply with record keeping requirements as specified in § 412.37(b) and (c) and § 412.47(b) and (c).

(ii) A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Director upon request.

(3) *Requirements relating to transfer of manure or process wastewater to other persons.* Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR part 412. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.

(4) *Annual reporting requirements for CAFOs.* The permittee must submit an annual report to the Director. The annual report must include:

(i) The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(ii) Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

(iii) Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);

(iv) Total number of acres for land application covered by the nutrient management plan developed in accordance with paragraph (e)(1) of this section;

(v) Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

(vi) Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and

(vii) A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

Appendix B to Part 122 [Removed and Reserved]

6. Remove and reserve Appendix B to part 122.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Add a new § 123.36 to read as follows:

§ 123.36 Establishment of technical standards for concentrated animal feeding operations.

If the State has not already established technical standards for nutrient management that are consistent with 40 CFR 412.4(c)(2), the Director shall establish such standards by the date specified in § 123.62(e).

Part 412 is revised to read as follows:

PART 412—CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) POINT SOURCE CATEGORY

Sec.
412.1 General applicability.
412.2 General definitions.
412.3 General pretreatment standards.
412.4 Best management practices (BMPs) for land application of manure.

Subpart A—Horses and Sheep

412.10 Applicability.
412.11 [Reserved]
412.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
412.13 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).
412.14 [Reserved]
412.15 New source performance standards (NSPS).

Subpart B—Ducks

412.20 Applicability.
412.21 Special definitions.
412.22 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
412.23–412.24 [Reserved]
412.25 New source performance standards (NSPS).
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412.33 Effluent limitations attainable by the application of the best control technology for conventional pollutants (BCT).
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412.45 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).
412.46 New source performance standards (NSPS).
412.47 Additional measures.

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, 1361.

§ 412.1 General applicability.

This part applies to manure, litter, and/or process wastewater discharges resulting from concentrated animal feeding operations (CAFOs). Manufacturing and/or agricultural activities which may be subject to this part are generally reported under one or more of the following Standard Industrial Classification (SIC) codes: SIC 0211, SIC 0213, SIC 0214, SIC 0241, SIC 0251, SIC 0252, SIC 0253, SIC 0254, SIC 0259, or SIC 0272 (1987 SIC Manual).

§ 412.2 General definitions.

As used in this part:

(a) The general definitions and abbreviations at 40 CFR part 401 apply.

(b) *Animal Feeding Operation (AFO)* and *Concentrated Animal Feeding Operation (CAFO)* are defined at 40 CFR 122.23.

(c) *Fecal coliform* means the bacterial count (Parameter 1) at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.

(d) *Process wastewater* means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(e) *Land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.

(f) *New source* is defined at 40 CFR 122.2. New source criteria are defined at 40 CFR 122.29(b).

(g) *Overflow* means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure.

(h) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(i) *Ten (10)-year, 24-hour rainfall event, 25-year, 24-hour rainfall event,* and *100-year, 24-hour rainfall event* mean precipitation events with a probable recurrence interval of once in ten years, or twenty five years, or one hundred years, respectively, as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May, 1961, or equivalent regional or

State rainfall probability information developed from this source.

(j) *Analytical methods.* The parameters that are regulated or referenced in this part and listed with approved methods of analysis in Table 1B at 40 CFR 136.3 are defined as follows:

(1) *Ammonia (as N)* means ammonia reported as nitrogen.

(2) *BOD5* means 5-day biochemical oxygen demand.

(3) *Nitrate (as N)* means nitrate reported as nitrogen.

(4) *Total dissolved solids* means nonfilterable residue.

(k) The parameters that are regulated or referenced in this part and listed with approved methods of analysis in Table 1A at 40 CFR 136.3 are defined as follows:

(1) *Fecal coliform* means fecal coliform bacteria.

(2) *Total coliform* means all coliform bacteria.

§ 412.3 General pretreatment standards.

Any source subject to this part that introduces process wastewater pollutants into a publicly owned treatment works (POTW) must comply with 40 CFR part 403.

§ 412.4 Best Management Practices (BMPs) for Land Application of Manure, Litter, and Process Wastewater.

(a) *Applicability.* This section applies to any CAFO subject to subpart C of this part (Dairy and Beef Cattle other than Veal Calves) or subpart D of this part (Swine, Poultry, and Veal Calves).

(b) *Specialized definitions.*

(1) *Setback* means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.

(2) *Vegetated buffer* means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

(3) Multi-year phosphorus application means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, no additional manure, litter, or process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal.

(c) *Requirement to develop and implement best management practices.* Each CAFO subject to this section that land applies manure, litter, or process wastewater, must do so in accordance with the following practices:

(1) *Nutrient Management Plan.* The CAFO must develop and implement a nutrient management plan that incorporates the requirements of paragraphs (c)(2) through (c)(5) of this section based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.

(2) *Determination of application rates.* Application rates for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the technical standards for nutrient management established by the Director. Such technical standards for nutrient management shall:

(i) Include a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters, and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters; and

(ii) Include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical standards, including consideration of multi-year phosphorus application on fields that do not have a high potential for phosphorus runoff to surface water, phased implementation of phosphorus-based nutrient management, and other components, as determined appropriate by the Director.

(3) *Manure and soil sampling.* Manure must be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil analyzed a minimum of once every five years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and other process wastewater.

(4) *Inspect land application equipment for leaks.* The operator must periodically inspect equipment used for land application of manure, litter, or process wastewater.

(5) *Setback requirements.* Unless the CAFO exercises one of the compliance alternatives provided for in paragraph (c)(5)(i) or (c)(5)(ii) of this section, manure, litter, and process wastewater may not be applied closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters.

(i) *Vegetated buffer compliance alternative.* As a compliance alternative, the CAFO may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited.

(ii) *Alternative practices compliance alternative.* As a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.

Subpart A—Horses and Sheep

§ 412.10 Applicability.

This subpart applies to discharges resulting from the production areas at horse and sheep CAFOs. This subpart does not apply to such CAFOs with less than the following capacities: 10,000 sheep or 500 horses.

§ 412.11 [Reserved]

§ 412.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT: There shall be no discharge of process waste water pollutants to navigable waters.

(b) Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 10-year, 24-hour rainfall event for the location of the point source.

§ 412.13 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30 through 125.32 and when the provisions of paragraph (b) of this section apply, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT: There shall be no discharge of process waste water pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.

§ 412.14 [Reserved]

§ 412.15 Standards of performance for new sources (NSPS)

(a) Except as provided in paragraph (b) of this section, any new source subject to this subpart must achieve the following performance standards: There must be no discharge of process wastewater pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.

Subpart B—Ducks

§ 412.20 Applicability.

This subpart applies to discharges resulting from the production areas at dry lot and wet lot duck CAFOs. This subpart does not apply to such CAFOs with less than the following capacities: 5,000 ducks.

§ 412.21 Special definitions.

For the purposes of this subpart:

(a) *Dry lot* means a facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.

(b) *Wet lot* means a confinement facility for raising ducks which is open to the environment, has a small number of sheltered areas, and with open water runs and swimming areas to which ducks have free access.

§ 412.22 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the (BPT):

Regulated parameter	Maximum daily [1]	Maximum monthly average [1]	Maximum daily [2]	Maximum monthly average [2]
BOD_5	3.66	2.0	1.66	0.91
Fecal coliform	([3])	([3])	([3])	([3])

[1] Pounds per 1000 ducks.
[2] Kilograms per 1000 ducks.
[3] Not to exceed MPN of 400 per 100 ml at any time.

(b) [Reserved]

§§ 412.23–412.24 [Reserved]

§ 412.25 New source performance standards (NSPS).

(a) Except as provided in paragraph (b) of this section, any new source subject to this subpart must achieve the following performance standards: There must be no discharge of process waste water pollutants into U.S. waters.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.

§ 412.26 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7 and in paragraph (b) of this section, any new source subject to this subpart must achieve the following performance standards: There must be no introduction of process waste water pollutants to a POTW.

(b) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be introduced to a POTW.

Subpart C—Dairy Cows and Cattle Other Than Veal Calves

§ 412.30 Applicability.

This subpart applies to operations defined as concentrated animal feeding operations (CAFOs) under 40 CFR 122.23 and includes the following animals: mature dairy cows, either milking or dry; cattle other than mature dairy cows or veal calves. Cattle other than mature dairy cows includes but is not limited to heifers, steers, and bulls. This subpart does not apply to such CAFOs with less than the following capacities: 700 mature dairy cows whether milked or dry; 1,000 cattle other than mature dairy cows or veal calves.

§ 412.31 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) *For CAFO production areas.* Except as provided in paragraphs (a)(1) through (a)(2) of this section, there must be no discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area.

(1) Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into U.S. waters provided:

(i) The production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event;

(ii) The production area is operated in accordance with the additional measures and records required by § 412.37(a) and (b).

(2) *Voluntary alternative performance standards.* Any CAFO subject to this subpart may request the Director to establish NPDES permit effluent limitations based upon site-specific alternative technologies that achieve a quantity of pollutants discharged from the production area equal to or less than the quantity of pollutants that would be discharged under the baseline

performance standards as provided by paragraph (a)(1) of this section.

(i) *Supporting information.* In requesting site-specific effluent limitations to be included in the NPDES permit, the CAFO owner or operator must submit a supporting technical analysis and any other relevant information and data that would support such site-specific effluent limitations within the time frame provided by the Director. The supporting technical analysis must include calculation of the quantity of pollutants discharged, on a mass basis where appropriate, based on a site-specific analysis of a system designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff from a 25-year, 24-hour rainfall event. The technical analysis of the discharge of pollutants must include:

(A) All daily *inputs* to the storage system, including manure, litter, all process waste waters, direct precipitation, and runoff.

(B) All daily *outputs* from the storage system, including losses due to evaporation, sludge removal, and the removal of waste water for use on cropland at the CAFO or transport off site.

(C) A calculation determining the predicted median annual overflow volume based on a 25-year period of actual rainfall data applicable to the site.

(D) Site-specific pollutant data, including N, P, BOD_5, TSS, for the CAFO from representative sampling and analysis of all sources of input to the storage system, or other appropriate pollutant data.

(E) Predicted annual average discharge of pollutants, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering paragraphs (a)(2)(i)(A) through (a)(2)(i)(D) of this section.

(ii) The Director has the discretion to request additional information to supplement the supporting technical analysis, including inspection of the CAFO.

(3) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.

(b) *For CAFO land application areas.* Discharges from land application areas are subject to the following requirements:

(1) Develop and implement the best management practices specified in § 412.4;

(2) Maintain the records specified at § 412.37 (c);

(3) The CAFO shall attain the limitations and requirements of this paragraph by December 31, 2006.

§ 412.32 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT:

(a) For CAFO production areas: the CAFO shall attain the same limitations and requirements as § 412.31(a).

(b) For CAFO land application areas: the CAFO shall attain the same limitations and requirements as § 412.31(b).

§ 412.33 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

(a) For CAFO production areas: the CAFO shall attain the same limitations and requirements as § 412.31(a).

(b) For CAFO land application areas: the CAFO shall attain the same limitations and requirements as § 412.31(b).

§ 412.34 [Reserved]

§ 412.35 New source performance standards (NSPS).

Any new point source subject to this subpart must achieve the following effluent limitations representing the application of NSPS:

(a) *For CAFO production areas.* The CAFO shall attain the same limitations and requirements as § 412.31(a)(1) and § 412.31(a)(2).

(b) *For CAFO land application areas:* The CAFO shall attain the same limitations and requirements as § 412.31(b)(1) and § 412.31(b)(2).

(c) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.

(d) Any source subject to this subpart that commenced discharging after April 14, 1993, and prior to April 14, 2003, which was a new source subject to the standards specified in § 412.15, revised as of July 1, 2002, must continue to achieve those standards for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the standards specified in § 412.31(a) and (b).

§ 412.36 [Reserved]

§ 412.37 Additional measures.

(a) Each CAFO subject to this subpart must implement the following requirements:

(1) *Visual inspections.* There must be routine visual inspections of the CAFO production area. At a minimum, the following must be visually inspected:

(i) Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channelling contaminated storm water to the wastewater and manure storage and containment structure;

(ii) Daily inspection of water lines, including drinking water or cooling water lines;

(iii) Weekly inspections of the manure, litter, and process wastewater impoundments; the inspection will note the level in liquid impoundments as indicated by the depth marker in paragraph (a)(2) of this section.

(2) *Depth marker.* All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event, or, in the case of new sources subject to the requirements in § 412.46 of this part, the runoff and direct precipitation from a 100-year, 24-hour rainfall event.

(3) *Corrective actions.* Any deficiencies found as a result of these inspections must be corrected as soon as possible.

(4) *Mortality handling.* Mortalities must not be disposed of in any liquid manure or process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface water, unless alternative technologies pursuant to § 412.31(a)(2) and approved by the Director are designed to handle mortalities.

(b) *Record keeping requirements for the production area.* Each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by 40 CFR 122.21(i)(1) and 40 CFR 122.42(e)(1)(ix) and the records specified in paragraphs (b)(1) through (b)(6) of this section. The CAFO must make these records available to the Director and, in an authorized State, the Regional Administrator, or his or her designee, for review upon request.

(1) Records documenting the inspections required under paragraph (a)(1) of this section;

(2) Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker under paragraph (a)(2) of this section;

(3) Records documenting any actions taken to correct deficiencies required under paragraph (a)(3) of this section. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction;

(4) Records of mortalities management and practices used by the CAFO to meet the requirements of paragraph (a)(4) of this section.

(5) Records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;

(6) Records of the date, time, and estimated volume of any overflow.

(c) *Recordkeeping requirements for the land application areas.* Each CAFO must maintain on-site a copy of its site-specific nutrient management plan. Each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by § 412.4 and 40 CFR 122.42(e)(1)(ix) and the records specified in paragraphs (c)(1) through (c)(10) of this section. The CAFO must make these records available to the Director and, in an authorized State, the Regional Administrator, or his or her designee, for review upon request.

(1) Expected crop yields;

(2) The date(s) manure, litter, or process waste water is applied to each field;

(3) Weather conditions at time of application and for 24 hours prior to and following application;

(4) Test methods used to sample and analyze manure, litter, process waste water, and soil;

(5) Results from manure, litter, process waste water, and soil sampling;

(6) Explanation of the basis for determining manure application rates, as provided in the technical standards established by the Director.

(7) Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;

(8) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;

(9) The method used to apply the manure, litter, or process wastewater;

(10) Date(s) of manure application equipment inspection.

Subpart D—Swine, Poultry, and Veal Calves

§ 412.40 Applicability.

This subpart applies to operations defined as concentrated animal feeding operations (CAFOs) under 40 CFR 122.23 and includes the following animals: swine; chickens; turkeys; and veal calves. This subpart does not apply to such CAFOs with less than the following capacities: 2,500 swine each weighing 55 lbs. or more; 10,000 swine each weighing less than 55 lbs.; 30,000 laying hens or broilers if the facility uses a liquid manure handling system; 82,000 laying hens if the facility uses other than a liquid manure handling system; 125,000 chickens other than laying hens if the facility uses other than a liquid manure handling system; 55,000 turkeys; and 1,000 veal calves.

§§ 412.41–412.42 [Reserved]

§ 412.43 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) *For CAFO production areas.*

(1) The CAFO shall attain the same limitations and requirements as § 412.31(a)(1) through (a)(2).

(2) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.

(b) *For CAFO land application areas.*

(1) The CAFO shall attain the same limitations and requirements as § 412.31(b)(1) and (b)(2).

(2) The CAFO shall attain the limitations and requirements of this paragraph by December 31, 2006.

§ 412.44 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT:

(a) *For CAFO production areas:* the CAFO shall attain the same limitations and requirements as § 412.43(a).

(b) *For CAFO land application areas:* the CAFO shall attain the same limitations and requirements as § 412.43(b).

§ 412.45 Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

(a) *For CAFO production areas:* the CAFO shall attain the same limitations and requirements as § 412.43(a).

(b) *For CAFO land application areas:* the CAFO shall attain the same limitations and requirements as § 412.43(b).

§ 412.46 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following effluent limitations representing the application of NSPS:

(a) *For CAFO production areas.* There must be no discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area, subject to paragraphs (a)(1) through (a)(3) of this section.

(1) Waste management and storage facilities designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 100-year, 24-hour rainfall event and operated in accordance with the additional measures and records required by § 412.47(a) and (b), will fulfill the requirements of this section.

(2) The production area must be operated in accordance with the additional measures required by § 412.47(a) and (b).

(3) Provisions for upset/bypass, as provided in 40 CFR 122.41(m)–(n), apply to a new source subject to this provision.

(b) *For CAFO land application areas:* the CAFO shall attain the same limitations and requirements as § 412.43(b)(1).

(c) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.

(d) *Voluntary superior environmental performance standards.* Any new source CAFO subject to this subpart may request the Director to establish alternative NPDES permit limitations based upon a demonstration that site-specific innovative technologies will achieve overall environmental performance across all media which is equal to or superior to the reductions achieved by baseline standards as provided by § 412.46(a). The quantity of pollutants discharged from the

production area must be accompanied by an equivalent or greater reduction in the quantity of pollutants released to other media from the production area (*e.g.*, air emissions from housing and storage) and/or land application areas for all manure, litter, and process wastewater at on-site and off-site locations. The comparison of quantity of pollutants must be made on a mass basis where appropriate. The Director has the discretion to request supporting information to supplement such a request.

(e) Any source subject to this subpart that commenced discharging after April 14, 1993, and prior to April 14, 2003, which was a new source subject to the standards specified in § 412.15, revised as of July 1, 2002, must continue to achieve those standards for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the standards specified in § 412.43(a) and (b).

§ 412.47 Additional measures.

(a) Each CAFO subject to this subpart must implement the requirements of § 412.37(a).

(b) Each CAFO subject to this subpart must comply with the record-keeping requirements of § 412.37(b).

(c) Each CAFO subject to this subpart must comply with the record-keeping requirements of § 412.37(c).

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Wednesday,
February 12, 2003

Part III

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D: 2003–2005 Subsistence Taking of Fish and Shellfish Regulations; Changes to Harvest Limits for Moose in Units 21(D) and 24, Muskox in Unit 26(C), and Caribou in Unit 17(A) and (C); Final Rules and Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI09

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2003 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the fish and shellfish regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002 Subsistence Taking of Fish and Wildlife Regulations," which expire on February 28, 2003. This rule also amends the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section __.24 of Subpart C).

DATES: Sections __.24(a)(2) and (3) are effective March 1, 2003. Sections __.27 and __.28 are effective March 1, 2003, through February 29, 2004.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). On January 8, 1999 (64 FR 1276), the Departments extended jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska* v. *Babbitt*. Consistent with Subparts A, B, and C of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participated in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 and 242.22 (2002) and 50 CFR 100.11 and 100.22 (2002), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents, with personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting of December 17–18, 2002.

Summary of Changes

Section __.24 (Customary and traditional use determinations) was originally published in the **Federal Register** (57 FR 22940) on May 29, 1992. Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** (59 FR 27462, published May 27, 1994; 59 FR 51855, published October 13, 1994; 60 FR 10317, published February 24, 1995; 61 FR 39698, published July 30, 1996; 62 FR 29016, published May 29, 1997; 63 FR 35332, published June 29, 1998; 63 FR 46148, published August 28, 1998; 64 FR 1276, published January 8, 1999; 64 FR 35776, published July 1, 1999; 66 FR 10142, published February 13, 2001; and 67 FR 5890, published February 7, 2002). During its December 17–18, 2002, meeting, the Board made additional determinations in addition to various annual season and harvest limit changes. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained below in Analysis of Proposals Adopted by the Board.

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. We published proposed Subpart D regulations for the 2003–04 seasons, harvest limits, and methods and means on February 11, 2002, in the **Federal Register** (67 FR 6334). A 50-day comment period providing for public review of the proposed rule and calling for proposals was advertised by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 33 proposals for changes to Customary and Traditional Use Determinations or to Subpart D. This number included some proposals deferred from previous years. Subsequent to the review period, the Board prepared a booklet describing the proposals and distributed it to the public. The public had an additional 30 days in which to comment on the proposals for changes to the regulations. The ten Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. Five of the proposals were not considered, falling outside the call for proposals. Three proposals and part of another were withdrawn before Board consideration. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments.

Analysis of Proposals Rejected by the Board

The Board rejected five proposals and part of one other proposal. All but one of these rejections were based on recommendations from the respective Regional Council. In that other case, the Regional Council recommendation to extend jurisdiction into an area of marine waters was inconsistent with the authority provided for in ANILCA.

The Board rejected three proposals requesting revised customary and traditional use determinations in the Prince William Sound Area. These proposals were rejected because there was inadequate information documenting historical use of Federal waters.

One proposal requested specific regulations for the use of fish traps (fyke nets). This proposal was rejected because it would be detrimental to the subsistence user and limit the flexibility for species management in the area.

The Board rejected a proposal that would have allowed the use of bait for taking coho salmon. This proposal was rejected because there is no information that subsistence users are unable to meet their needs under the present regulations and there is a concern regarding hooking mortality in other species with the use of bait.

In the case of the partial rejection, the marine area requested for regulation is not under jurisdiction of the Federal Subsistence Program and the freshwater areas support sockeye salmon populations that are sufficient for subsistence and nonsubsistence harvest.

The Board deferred action on three proposals and part of one other in order to assemble additional fisheries data, harvest information, or to allow communities or Regional Councils additional time to review the issues and provide additional information.

Analysis of Proposals Adopted by the Board

The Board adopted 11 proposals and part of 1 other proposal. In two cases, a number of proposals dealing with the same issue were dealt with as a package. Some proposals were adopted as submitted and others were adopted with modifications suggested by the respective Regional Council or developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils and were based on meeting customary and traditional uses, harvest practices, or protecting fish populations. Detailed information relating to justification for the action on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/home.html*). Additional technical clarifications and removal of excess materials have been made, which result in a more readable document.

Multiple Regions

The Board adopted two proposals resulting in the following changes in the regulations found in § __.27, which affects residents of multiple Regions.

- Provided for harvest of fish to be used in traditional religious ceremonies as part of a funerary or mortuary cycle.
- Provided for the adoption of State Emergency Orders in the Yukon and Kuskokwim River drainages.

Yukon-Northern Fishery Management Area

The Board adopted one proposal affecting residents of the Yukon-Northern Fishery Management Area resulting in the following changes to the regulations found in § __.27.

- Revised the regulations relative to use of rod and reel to take salmon during the period closed to net or fishwheel use.

Kuskokwim Fishery Management Area

The Board adopted one proposal affecting residents of the Kuskokwim Fishery Management Area resulting in the following changes to the regulations found in § __.27.

- Revised the regulations relative to use of rod and reel to take salmon during the period closed to net or fishwheel use in a portion of the area.

Bristol Bay Fishery Management Area

The Board adopted one proposal affecting residents of the Bristol Bay Fishery Management Area resulting in the following changes to the regulations found in § __.27.

- Established harvest regulations for rainbow trout.

Kodiak Fishery Management Area

The Board adopted one proposal affecting residents of the Kodiak Fishery Management Area resulting in the following changes to the regulations found in § __.28.

- Revised the regulations relative to the harvest of king crab.

Cook Inlet Fishery Management Area

The Board adopted parts of three similar proposals affecting residents of the Cook Inlet Fishery Management Area resulting in the following change to the regulations found in §§ __.24 and __.27.

- Established a customary and traditional use determination in Federal waters for shellfish.
- Established subsistence harvest regulations for shellfish.

Prince William Sound Fishery Management Area

The Board adopted three proposals affecting residents of the Prince William Sound Fishery Management Area resulting in the following changes to the regulations found in § __.27.

- Revised the marking and recording requirements for subsistence taken salmon and rainbow/steelhead trout.
- Allowed the retention of incidentally caught freshwater fish in fishwheels.
- Established a harvest limit for chinook salmon taken by rod and reel.

Southeastern Alaska Fishery Management Area

The Board considered five proposals relative to steelhead harvest on Prince of Wales Island and adopted a modified proposal affecting residents of the Southeastern Alaska Fishery Management Area resulting in the following changes to the regulations found in § __.27.

- Established harvest limits and methods and means for rainbow/steelhead trout on Prince of Wales Island in a winter and a spring season.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992; amended January 8, 1999, 64 FR 1276, June 12, 2001, 66 FR 31533, and May 7, 2002, 67 FR 30559) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT.** The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires July 31, 2003. On January 16, 2003, we published in the **Federal Register** (68 FR 2347) a notice of our intent to request OMB approval of a 3-year renewal of this information collection. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon and $ 0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board amends Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART —SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, §§ __.24(a)(2) and (3) are revised to read as follows:

§ __.24 Customary and traditional use determinations.

(a) * * *

(2) *Fish determinations.* The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
KOTZEBUE AREA	All fish	Residents of the Kotzebue Area.
NORTON SOUND—PORT CLARENCE AREA:		
Norton Sound—Port Clarence Area, waters draining into Norton Sound between Point Romanof and Canal Point.	All fish	Residents of Stebbins, St. Michael, and Kotlik.
Norton Sound-Port Clarence Area, remainder.	All fish	Residents of the Norton Sound—Port Clarence Area.
YUKON-NORTHERN AREA:		
Yukon River Drainage	Salmon, other than fall chum salmon.	Residents of the Yukon River drainage, including the community of Stebbins.
Yukon River drainage	Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish (other than salmon).	Residents of the Yukon-Northern Area.
Remainder of the Yukon-Northern Area.	All fish	Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26–B.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonat Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA:		
Nushagak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage.	Salmon and freshwater fish	Residents of the Naknek and Kvichak River drainages.

Area	Species	Determination
Naknek-Kvichak District—Kvichak/Iliamna-Lake Clark drainage.	Salmon and freshwater fish	Residents of the Kvichak/Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Egegik District, including drainages flowing into the district.	All fish	Residents of the Bristol Bay Area.
Ugashik District, including drainages flowing into the district.	All fish	Residents of the Bristol Bay Area.
Togiak District	Herring spawn on kelp	Residents of the Togiak District and freshwater drainages flowing into the district.
Remainder of the Bristol Bay Area.	All fish	Residents of the Bristol Bay Area.
ALEUTIAN ISLANDS AREA	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
ALASKA PENINSULA AREA	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
CHIGNIK AREA	Halibut, salmon and fish other than rainbow/steelhead trout.	Residents of the Chignik Area.
KODIAK AREA—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area	Fish other than rainbow/steelhead trout and salmon.	Residents of the Kodiak Area.
COOK INLET AREA	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
	Salmon, Dolly Varden trout, char, grayling, and burbot.	No Determination.
PRINCE WILLIAM SOUND AREA:		
South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
Copper River drainage upstream from Haley Creek.	Freshwater fish	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Chitina Subdistrict of the Upper Copper River District.	Salmon	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Glennallen Subdistrict of the Upper Copper River District.	Salmon	Residents of the Prince William Sound Area and residents of Cantwell, Chisana, Dot Lake, Healy Lake, Northway, Tanacross, Tetlin, Tok and those individuals living along the Alaska Highway from the Alaskan/Canadian border to along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.

Area	Species	Determination
Waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.	Salmon	Residents of Mentasta Lake and Dot Lake.
Remainder of the Prince William Sound Area.	Salmon	Residents of the Prince William Sound Area.
YAKUTAT AREA:		
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Remainder of the Yakutat Area	Dolly Varden, trout, smelt and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.
SOUTHEASTERN ALASKA AREA:		
District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132° 20′ W. long and east of 132° 25′ W. long.
District 3—Section 3–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section A	Halibut and bottomfish	Residents of Southeast Area.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they existed in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they existed in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.

Area	Species	Determination
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134° 30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
Remainder of the Southeastern Alaska Area.	Dolly Varden, trout, smelt and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.

(3) Shellfish determinations. The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
BERING SEA AREA	All shellfish	Residents of the Bering Sea Area.
ALASKA PENINSULA—ALEUTIAN ISLANDS AREA.	Shrimp, Dungeness, king, and Tanner crab	Residents of the Alaska Peninsula-Aleutian Islands Area.
KODIAK AREA	Shrimp, Dungeness, and Tanner crab	Residents of the Kodiak Area.
Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA:		
Federal waters in the Tuxedni Bay Area within boundaries of Lake Clark National Park & Preserve or Alaska Maritime NWR.	Shellfish	Residents of Tuxedni Bay, Chisik Island, and Tyonek.
PRINCE WILLIAM SOUND AREA	Shrimp, the clams, Dungeness, king, and Tanner crab.	Residents of the Prince William Sound Area.
SOUTHEASTERN ALASKA—YAKUTAT AREA:		
Section 1–E south of the latitude of Grant Island light.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
Section 1–F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
Section 3–A and 3–B	Shellfish, except shrimp, king crab, and Tanner crab:	Residents of the Southeast Area.
District 13	Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks.	Residents of the Southeast Area.

* * * * *

3. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § __.27 and § __.28 are added effective March 1, 2003, through February 29, 2004, to read as follows:

§ __.27 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) [*Reserved*]

(c) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A cast net;
(xix) A rod and reel; and
(xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (c)(2)(i) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed release device, designed to release in no more than 30 days in salt water, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live non-indigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fishwheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

(14) Except as provided elsewhere in this section, you may not take rainbow/steelhead trout.

(15) You may not use fish taken for subsistence use or under subsistence regulations in this part as bait for commercial or sport fishing purposes.

(16) You may not accumulate harvest limits authorized in this section or §—.28 with harvest limits authorized under State regulations.

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

(20) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which harvest limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(21) The taking of fish from Federal waters is authorized outside of published open seasons or harvest limits if the harvested fish will be used for food in traditional or religious ceremonies, that are part of funerary or mortuary cycles, including memorial potlatches, provided that:

(i) Prior to attempting to take fish, the person (or designee) or Tribal Government organizing the ceremony contacts the appropriate Federal fisheries manager to provide the nature of the ceremony, the parties and/or clans involved, the species and the number of fish to be taken, and the Federal waters from which the harvest will occur;

(ii) The taking does not violate recognized principles of fisheries conservation, and uses the methods and means allowable for the particular species published in the applicable Federal regulations (the Federal fisheries manager will establish the number, species, or place of taking if necessary for conservation purposes);

(iii) Each person who takes fish under this section must, as soon as practical, and not more than 15 days after the harvest, submit a written report to the appropriate Federal fisheries manager, specifying the harvester's name and address, the number and species of fish

taken, and the date and locations of the taking; and

(iv) No permit is required for taking under this section; however, the harvester must be eligible to harvest the resource under Federal regulations.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user, you (beneficiary) may designate another Federally-qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) The U.S. Fish and Wildlife Service, Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous 5 years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous 5 years, or when there is a request for harvest in excess of that provided in this paragraph (e)(2), will be considered by the Federal Subsistence Board.

(3) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances. You must also return any tags or transmitters that have been attached to fish for management and conservation purposes.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved]

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream, creek, or slough with any gear used to take fish for subsistence uses, except from May 15 to July 15 and August 15 to October 31 when taking whitefish or pike in streams, creeks, or sloughs within the Kobuk River drainage and from May 15 to October 31 in the Selawik River drainage. Only one gillnet 100 feet or less in length with a mesh size from 2½ to 4½ inches may be used per site. You must check your net at least once in every 24-hour period.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Point Romanof, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you take fish at any time in the Port Clarence District.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the State commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8 a.m. Monday until 8 p.m. Saturday;

(C) In Subdistricts 1–3, you may take salmon other than chum salmon by beach seine during periods established by emergency action.

(iii) You may take salmon only by gillnets, beach seines, fishwheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored fishing net.

(vi) You must have a subsistence fishing permit for net fishing in all waters from Cape Douglas to Rocky Point.

(vii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° W. long., including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by this paragraph (i)(3) of this section.

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–D, salmon may not be taken from 6 p.m. Sunday until 6 p.m. Tuesday.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(vi) In Districts 1, 2, 3, and Subdistrict 4–A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vii) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(viii) In Subdistrict 4–A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take king salmon during the State commercial fishing season, with drift gillnet gear only, from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(x) You may not subsistence fish in the Delta River.

(xi) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3-inches stretch-measure may be used from June 15–September 15. You may subsistence fish for all non-salmon species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed). From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used. From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xiv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the State commercial salmon fishing season using gillnets with mesh larger than six-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xv) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length;

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial, personal use, or subsistence fishing gear except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the "Slide," you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no

minimum distance requirement between fish wheels;

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods;

(E) In Birch Creek, gillnet mesh size may not exceed 3-inches stretch-measure.

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xviii) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xix) Only one subsistence fishing permit will be issued to each household per year.

(xx) In Districts 1, 2, and 3, you may not possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxi) In the Yukon River drainage, chinook (king) salmon must be used primarily for human consumption and may not be targeted for dog food. Dried chinook salmon may not be used for dogfood anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5–D, upstream of Circle City.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, you may not take salmon for 16 hours before, during, and for 6 hours after, each State open commercial salmon fishing period for District 1.

(iv) In District 1, Kuskokuak Slough only from June 1 through July 31, you may not take salmon for 16 hours before and during each State open commercial salmon fishing period in the district.

(v) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before, during, and 6 hours after each State open commercial salmon fishing period in each district.

(vi) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon by net gear or fishwheel for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in the district. You may subsistence fish for salmon with rod and reel 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by this paragraph (i)(4) of this section.

(vii) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(ix) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(x) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(xi) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xii) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, handline, or rod and reel.

(xiii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiv) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch mesh may not be more than 35 meshes in depth.

(xvi) You may take halibut only by a single hand-held line with no more than two hooks attached to it.

(xvii) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xviii) Rainbow trout may be taken by only residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak. The following restrictions apply:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15–June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9 a.m. Monday until 9 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

(iii) In the Egegik River from 9 a.m. June 23 through 9 a.m. July 17, you may take salmon only from 9 a.m. Tuesday to 9 a.m. Wednesday and 9 a.m. Saturday to 9 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin only by drift and set gillnets.

(vii) Outside the boundaries of any district, you may take salmon only by set gillnet, except that you may also take salmon by spear in the Togiak River excluding its tributaries.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, rainbow trout, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon and char only under authority of a subsistence fishing permit. You may take rainbow trout only under authority of a Federal subsistence fishing permit; permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G and local users.

(xv) Only one subsistence fishing permit for salmon and one for rainbow trout may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage, you may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(xvii) You may take rainbow trout only by rod and reel or jigging gear. Rainbow trout daily harvest and possession limits are 2 per day/2 in possession with no size limit April 10–October 31; 5 per day/5 in possession with no size limit November 1–April 9.

(xviii) If you take rainbow trout incidentally in other subsistence net fisheries, or through the ice, you may retain them for subsistence purposes.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36′ North latitude.

(i) You may take fish, other than salmon and rainbow/steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6 a.m. until 9 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, you may not use a salmon seine vessel to take salmon for subsistence 24 hours before, during, or 24 hours after a State open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, you may use a purse seine vessel to take salmon only with a gillnet and you may not have any other type of salmon gear on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the "Bishop's House" at 53° 52.64″ N. lat., 166° 32.30″ W. long. to a point on Amaknak Island at 53° 52.82″ N. lat., 166° 32.13″ W. long., and north of line from a point south of Agnes Beach at 53° 52.28″ N. lat., 166° 32.68″ W. long. to a point at 53° 52.35″ N. lat., 166° 32.95″ W. long. on Amaknak Island;

(C) Within Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point, waters within 250 yards of any anadromous stream, except the outlet stream of Unalaska Lake, which is closed under paragraph (i)(6)(iv)(A) of this section;

(D) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(E) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(F) Waters of McLees Lake and its tributaries and outlet stream;

(G) Waters in Reese Bay from July 1 through July 9, within 500 yards of the outlet stream terminus to McLees Lake;

(H) All freshwater on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between

a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(i) You may take fish, other than salmon and rainbow/steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time except within 24 hours before and within 12 hours following each State open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156° 20.22″ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) You may take fish, other than rainbow/steelhead trout, at any time, except as may be specified by a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may not subsistence fish for salmon from 48 hours before the first State commercial salmon fishing opening in the Chignik Area through September 30.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58° 51.10′ N. lat.), west of 150° W. long., north of 55° 30.00′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156° 20.22′ W. long.).

(i) You may take fish, other than salmon and rainbow/steelhead trout, at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before, during, and for 24 hours after any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—all waters inside a line from the tip of the Nyman Peninsula (57°43.23′ N. lat., 152°31.51′ W long.), to the northeastern tip of Mary's Island (57°42.40′ N. lat., 152°32.00′ W. long.), to the southeastern shore of Womens Bay at 57°41.95′ N. lat., 152°31.50′ W. long.;

(B) Buskin River closed waters—all waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ N. lat, 152°28.38′ W. long., to a point offshore at 57°45.35′ N. lat, 152°28.15′ W. long., to a marker located onshore south of the river mouth at approximately 57°45.15′ N. lat., 152°28.65′ W. long.;

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek;

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51′ 06″ N. lat.) and a line extending south from Cape Fairfield (148° 50′ 15″ W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take grayling or burbot for subsistence purposes.

(iii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section).

(iv) You may only take salmon, Dolly Varden, trout, and char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56).

(v) You may only take smelt with dip nets or gillnets in fresh water from April 1 through June 15. You may not use a gillnet exceeding 20 feet in length and 2 inches in mesh size. You must attend the net at all times when it is being used. There are no harvest or possession limits for smelt.

(vi) Gillnets may not be used in freshwater, except for the taking of whitefish in the Tyone River drainage or for the taking of smelt.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters and drainages of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) You may take fish, other than rainbow/steelhead trout, in the Prince William Sound Area only under authority of a subsistence fishing permit, except that a permit is not required to take eulachon.

(ii) You may take fish by gear listed in paragraph (c)(1) of this part unless restricted in this section or under the terms of a subsistence fishing permit.

(iii) If you catch rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes, unless restricted in this section.

(iv) In the Copper River drainage upstream from Haley Creek, you may take salmon only in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas.

(v) In the Upper Copper River District, you may take salmon only by fish wheels, rod and reel, or dip nets.

(vi) Rainbow/steelhead trout and other freshwater fish caught incidentally to salmon by fish wheel in the Upper Copper River District may be retained.

(vii) Freshwater fish other than rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District may be retained. Rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District must be released unharmed to the water.

(viii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit, or rainbow/steelhead trout caught incidentally to salmon by fishwheel, unless the anal (ventral) fin has been immediately removed from the fish. You must immediately record all retained fish on the subsistence permit. Immediately means prior to concealing the fish from plain view or transporting the fish more than 50 feet from where the fish was removed from the water.

(ix) You may take salmon in the Upper Copper River District only from May 15 through September 30.

(x) The total annual harvest limit for subsistence salmon fishing permits in combination for the Glennallen Subdistrict and the Chitina Subdistrict is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel;

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel, plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for chinook salmon taken by dip net or rod and reel does not increase;

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel, or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel.

(xi) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one subsistence fishing permit per subdistrict will be issued to each household per year. If a household has been issued permits for both subdistricts in the same year, both permits must be in your possession and readily available for inspection while fishing or transporting subsistence-taken fish in either subdistrict. A qualified household may also be issued a Batzulnetas salmon fishery permit in the same year;

(B) Multiple types of gear may be specified on a permit, although only one unit of gear may be operated at any one time;

(C) You must return your permit no later than October 31 of the year in which the permit is issued, or you may be denied a permit for the following year;

(D) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by Section ——.27(i)(11) and during fishing operations;

(E) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(F) You must personally operate your fish wheel or dip net;

(G) You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) If you are a fishwheel owner:

(A) You must register your fish wheel with ADF&G or the Federal Subsistence Board;

(B) Your registration number and name and address must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water;

(C) Only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel;

(D) You must remove the fish wheel from the water at the end of the permit period;

(E) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain.

(xiii) If you are operating a fishwheel:

(A) You may operate only one fish wheel at any one time;

(B) You may not set or operate a fish wheel within 75 feet of another fish wheel;

(C) No fish wheel may have more than two baskets;

(D) If you are a permittee other than the owner, a wood or metal plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, must be attached to the fish wheel so that the name and address are plainly visible.

(xiv) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. A permit may only be issued following approval by ADF&G or the Federal Subsistence Board of a harvest assessment plan to be administered by the permitted council or organization. The harvest assessment plan must include: provisions for recording daily catches for each fish wheel; sample data collection forms; location and number of fish wheels; the full legal name of the individual responsible for the lawful operation of each fish wheel; and other information determined to be necessary for effective resource management. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xiv):

(A) The permit will list all households and household members for whom the fish wheel is being operated;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the ADF&G or Federal Subsistence Board when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization are not eligible for a separate household subsistence fishing permit for the Upper Copper River District.

(xv) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, and rod and reel in Tanada Creek;

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action;

(D) You may retain chinook salmon taken in a fishwheel in the Copper River. You may not take chinook salmon in Tanada Creek;

(E) You must return the permit to the National Park Service no later than October 15.

(xvi) You may take pink salmon for subsistence purposes from freshwater with a dip net from May 15 until September 30, 7 days per week, with no harvest or possession limits in the following areas:

(A) Green Island, Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island, and adjacent islands, and the mainland waters from the outer point of Granite Bay located in Knight Island Passage to Cape Fairfield;

(B) Waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.

(12) *Yakutat Area.* The Yakutat Area includes all waters and drainages of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before a State opening of commercial salmon net fishing season until 48 hours after the closure. This applies to each river or bay fishery individually.

(iii) When the length of the weekly State commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) You may take salmon, trout (other than steelhead,) and char only under authority of a subsistence fishing permit. You may only take steelhead trout in the Situk and Ahrnklin Rivers and only under authority of a Federal subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must remove the dorsal fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) With a subsistence fishing permit, you may harvest at any time up to 10 Dolly Varden with no minimum size.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish, other than rainbow/steelhead trout, in the Southeastern Alaska Area at any time.

(ii) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday.

(iii) You must possess a subsistence fishing permit to take salmon. You must possess a Federal subsistence fishing permit to take coho salmon, trout, or char. You must possess a Federal subsistence fishing permit to take steelhead in Hamilton Bay and Kadake Bay Rivers. You must possess a Federal subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1–C or 1–D.

(iv) You may take steelhead trout on Prince of Wales Island only under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of 2 fish per household. You may use only a dip net, spear, or rod and reel with artificial lure or fly. You may not use bait. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales Island has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of 5 fish per household. You may use only a dip net, spear, or rod and reel with artificial lure or fly. You may not use bait. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(v) In the Southeastern Alaska Area, except for sections 3A, 3B, and 3C and the Stikine and Taku Rivers, you may take coho salmon in Southeast Alaska waters under Federal jurisdiction under the terms of a Federal subsistence fishing permit. There is no closed season. The daily harvest limit is 20 coho salmon per household, and the annual limit is 40 coho salmon per household. Only dipnets, spears, gaffs, and rod and reel may be used. Bait may only be used from September 15 through November 15. You may not retain incidentally caught trout and sockeye salmon unless taken by gaff or spear.

(vi) You may take coho salmon in Subdistricts 3(A), (B), and (C) only under the terms of a Federal subsistence fishing permit. There is no closed season. The daily harvest limit is 20 fish per household. Only spears, dip net, and rod and reel may be used. Bait may be used only from September 15 through November 15.

(vii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(viii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

(ix) You shall immediately remove the pelvic fins of all salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) For the Salmon Bay Lake system, the daily harvest and season limit per household is 30 sockeye salmon.

(xii) For Virginia Lake (Mill Creek), the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiii) For Thoms Creek, the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiv) The Sarkar River system above the bridge is closed to the use of all nets by both Federally-qualified and non-Federally qualified users.

(xv) Only Federally-qualified subsistence users may harvest sockeye salmon in streams draining into Falls Lake Bay, Gut Bay, or Pillar Bay. In the Falls Lake Bay and Gut Bay drainages, the possession limit is 10 sockeye salmon per household. In the Pillar Bay drainage, the individual possession limit is 15 sockeye salmon with a household possession limit of 25 sockeye salmon.

(xvi) In Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake, and Wilson Lake, in addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, cutthroat, and rainbow trout apply:

(A) You may harvest at any time up to 10 Dolly Varden of any size;

(B) You may harvest at any time six cutthroat or rainbow trout in combination. You may only retain fish between 11″ and 22″. You may only use a rod and reel without bait.

(xvii) In all waters, other than those identified in paragraph (i)(13)(xvi) of this section, in addition to the requirement for a subsistence fishing permit, you may harvest Dolly Varden and cutthroat and rainbow trout in accordance with the seasons and harvest limits delineated in the Alaska Administrative Code, 5 AAC 47. You may only use a rod and reel without bait unless the use of bait is specifically permitted in 5 AAC 47.

§ __.28 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) *[Reserved]*

(c) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by this section.

(d) Methods, means, and general restrictions. (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear to take shellfish:

(i) Abalone iron;
(ii) Diving gear;
(iii) A grappling hook;
(iv) A handline;
(v) A hydraulic clam digger;
(vi) A mechanical clam digger;
(vii) A pot;
(viii) A ring net;
(ix) A scallop dredge;
(x) A sea urchin rake;
(xi) A shovel; and
(xii) A trawl.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You shall plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, you may substitute for the keg or buoy, a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) Kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § __.27(c)(2).

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(e) Taking shellfish by designated harvest permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified

subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) You may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(f) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit unless a different limit is specified in this section;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch, and such other information as may be required for management or conservation purposes;

(6) You must complete and submit subsistence fishing reports at the time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(g) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(h) You may not take or possess shellfish smaller than the minimum legal size limits.

(i) Unlawful possession of subsistence shellfish. You may not possess, transport, give, receive, or barter shellfish or their parts taken in violation of Federal or State regulations.

(j)(1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this section, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest who is a federally-qualified subsistence user;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(k) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(2) *Prince William Sound Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(3) *Cook Inlet Area.* (i) You may take shellfish for subsistence purposes only as allowed in this section (k)(3).

(ii) You may not take king crab, Dungeness crab, or shrimp for subsistence purposes.

(iii) In the subsistence taking of Tanner crab:

(A) Male Tanner crab may be taken only from July 15 through March 15;

(B) The daily harvest and possession limit is 5 male Tanner crab;

(C) Only male Tanner crabs 5½ inches or greater in width of shell may be taken or possessed;

(D) No more than 2 pots per person, regardless of type, with a maximum of 2 pots per vessel, regardless of type, may be used to take Tanner crab.

(iv) In the subsistence taking of clams:

(A) The daily harvest and possession limit for littleneck clams is 1,000 and the minimum size is 1.5 inches in length;

(B) The daily harvest and possession limit for butter clams is 700 and the minimum size is 2.5 inches in length.

(v) Other than as specified in this section, there are no harvest, possession, or size limits for other shellfish, and the season is open all year.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a State closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only male Dungeness crabs with a shell width of 6½ inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the State opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab with shell width of 7 inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may only use one crab pot, which may be of any size, to take king crab;

(D) You may take king crab only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after State open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crabs with a shell width 5½ inches or greater per person.

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed State commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crabs per person; only crabs with a shell width of 6½ inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1–January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(6) *Bering Sea Area.* (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Dungeness crabs per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six males crabs per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., you may take crab only from June 1–January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Tanner crabs.

Dated: December 27, 2002.

William W. Knauer II,

Acting Chair, Federal Subsistence Board.

Dated: January 6, 2003.

Calvin H. Casipit,

Acting Subsistence Program Leader, USDA–Forest Service.

[FR Doc. 03–2396 Filed 2–11–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI89

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2004–05 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for fishing seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2004–05 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the fish and shellfish taking regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2003–04 Subsistence Taking of Fish and Wildlife Regulations," which expire on February 29, 2004. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of fish and shellfish.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 28, 2003. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule from February 11, 2003—March 20, 2003. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: You may submit proposals electronically to *Subsistence@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council	Ketchikan	February 25, 2003.
Region 2—Southcentral Regional Council	Anchorage	March 4, 2003.
Region 3—Kodiak/Aleutians Regional Council	Old Harbor	March 19, 2003.
Region 4—Bristol Bay Regional Council	Dillingham	February 27, 2003.
Region 5—Yukon-Kuskokwim Delta Regional Council	Chevak	March 6, 2003.
Region 6—Western Interior Regional Council	Aniak	March 18, 2003.
Region 7—Seward Peninsula Regional Council	Unalakleet	February 11, 2003.
Region 8—Northwest Arctic Regional Council	Kotzebue	February 26, 2003.
Region 9—Eastern Interior Regional Council	Nenana	March 11, 2003.
Region 10—North Slope Regional Council	Barrow	February 19, 2003.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

Electronic filing of comments (preferred method): You may submit electronic comments (proposals) and other data to *Subsistence@fws.gov*. Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

We will compile and distribute for additional public review during May 2003 the written proposals to change Subpart D fishing regulations and customary and traditional use determinations in Subpart C. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on June 11, 2003.

We will hold a second series of Regional Council meetings in September and October 2003, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change fishing and customary and traditional use determination regulations to the Regional Councils at those fall meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, December 2003. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please Note: The Board will not consider proposals for changes relating to hunting or trapping regulations at this time. The Board will be calling for proposed changes to those regulations in August 2003.

The Board's review of your comments and fish and shellfish proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24, Subpart C and §§ __.25, __.27, or __.28, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use

determinations or to subsistence fishing seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002, (67 FR 30559), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2002) and 50 CFR 100.11 (2002), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in December 2003.

Proposed Changes from 2003–2004 Seasons and Harvest Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ __.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2003–04 Subparts C and D final rule, without modification, served as the foundation for the 2004–05 Subparts C and D proposed rule. Please see the final rule published elsewhere in this issue of the **Federal Register**. The amendments made to subparts C and D in that rule are the same as the amendments we are proposing in this rule. The regulations contained in this proposed rule would take effect on March 1, 2004, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT.** The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did

not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA—A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements are approved by OMB under 44 U.S.C. 3501 and have been assigned control number 1018–0075, which expires July 31, 2003. On January 16, 2003, we published in the **Federal Register** (68 FR 2347) a notice of our intent to request OMB approval of a 3-year renewal of this information collection. We will not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866.

This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon [Note: $3.00 per pound is much higher than the current commercial value for salmon.] and $0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information—William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; and Ken Thompson, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2004–05 regulatory year. The text of the amendments would be the same as the final rule amendments for the 2003–04 regulatory year published elsewhere in this issue of the **Federal Register**.

Dated December 27, 2002.

William W. Knauer II,

Acting Chair, Federal Subsistence Board.

Dated: January 6, 2003.

Calvin H. Casipit,

Acting Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 03–2397 Filed 2–11–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Changes to Harvest Limits for Moose in Units 21(D) and 24, Muskox in Unit 26(C), and Caribou in Unit 17(A) and (C)

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Change in harvest limits.

SUMMARY: This provides notice of the Federal Subsistence Board's change in harvest limits to protect moose populations in Units 21(D) and 24, muskox populations in Unit 26(C), and caribou populations in Units 17(A) and (C). This regulatory change provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 28, 2002. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2002–2003 regulatory year.

DATES: The emergency action on moose was effective August 27 through September 25, 2002. The temporary action on muskox is effective September 15, 2002, through March 31, 2003. The temporary action on caribou is effective December 1, 2002, through March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002, (67 FR 30559), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2002–2003 wildlife seasons, harvest limits, and methods and means were published on June 28, 2002, (67 FR 43710). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG), manages the general harvest and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

Units 21(D) and 24 (portion)—Moose

Analysis of results from trend surveys conducted by ADF&G in Units 21(D) and 24 between 1985 and 1999, reveal significant declines in calf production and yearling bull recruitment. Trend count surveys conducted in 2000 and 2001 show that these declines continue. Current Federal regulations provide opportunities to harvest antlerless moose in Units 21(D) and 24. While increased cow harvest levels have provided additional opportunity and have served to stabilize moose populations in past years, prolonged harvest at the current levels may contribute to further declines in productivity and recruitment. As current management objectives prescribe more conservative sustained yields than the current harvest regimes, regulatory changes are needed to decrease the total cow harvest and to maintain productivity and recruitment. Moose harvests in Units 21(D) and 24 have not declined for any local resident hunting for subsistence purposes. Subsistence hunter days in the field are minimal and are not increasing. Results from household surveys conducted by ADF&G in 10 Middle Yukon and Koyukuk River communities reflect that local subsistence harvest rates for moose are high. Therefore, the reduced harvest limit from any moose to one bull is expected to stabilize the moose populations in Units 21(D) and 24 at current levels while still providing continued opportunity for subsistence users.

Unit 26(C)—Muskox

Muskoxen were reestablished in and near the Arctic National Wildlife Refuge in Unit 26(C) in 1969 and 1970. For several years after their release, numbers of muskoxen increased rapidly and began expanding into regions east (Canada) and west (Unit 26B) of the Refuge. After reaching a peak of 399 animals in 1986, numbers of muskoxen in Unit 26(C) were relatively stable from 1987–1998, but have declined sharply in the past two years.

A conservation concern was recognized when less than 70 muskoxen were counted during aerial surveys made in late June/early July 2002. Reasons for the decline include poor calf recruitment, emigration of muskoxen from Unit 26(C) into regions east and west of the Refuge, and increased predation. Until more calves are born and survive or muskoxen move back into the Refuge, numbers are likely to remain low and could continue to decline. The low number of calves seen in 2000 and 2001 is likely related to severe weather (fall icing conditions, deep snow and a prolonged snow season). Changes in distribution also has affected the number of muskoxen in the Refuge. Between 2000 and 2002, mixed-sex groups with 3 radio-collared animals dispersed eastward into Canada and at least 1 group with a radio-collared animal moved west off the Refuge. Muskoxen may also have dispersed southward into the mountains.

On July 11, 2002 the Federal Subsistence Board, acting through the delegated official and at the request of the North Slope Muskox Working Group, delayed the opening of the muskox season in Unit 26(C), from July 15 to September 15. Delaying the start of the season until September 15 allowed biologists time to conduct additional surveys and to recommend a more permanent course of action to address the population decline of muskoxen in Unit 26(C). That recommendation, which the Board adopted effective September 15, 2002, reduced the muskox harvest quota to two bulls.

Unit 17(A) and (C), Nushagak Peninsula—Caribou

Caribou from the Northern Alaska Peninsula Herd were reintroduced to the Nushagak Peninsula in February 1988, after an absence for over 100 years. This herd grew rapidly during the first six years following reintroduction with an average annual growth rate of 38%. During the mid to late 1990's, the caribou population remained relatively stable at around 1,200–1,300 animals. Since 1999, the caribou population has undergone a decline. The current population estimate is approximately 700 caribou. Causes for the decline are not fully understood, but are likely related to a decline in habitat condition, increase in predation, and unreported human harvest. The herd is managed according to the guidelines of the Nushagak Peninsula Caribou Management Plan, prepared by the Nushagak Peninsula Caribou Management Planning Committee. The management plan sets a harvest level of not more than 10 percent when the population is between 600 and 1000 caribou. Management recommendations include continued population and range monitoring, and continued law enforcement efforts necessary to promote hunter compliance.

This emergency special action reduced the harvest limit from 2 caribou to 1 caribou for the first 60 days of the winter hunt. Subsequent Board action, following a scheduled January 10 local public meeting, extended the action through the remainder of the season (March 31). Reducing the harvest limit will mean fewer caribou for subsistence users but will help the current estimated population of 700 from decreasing below the 600 animal threshold identified in the management plan as the population needed to allow continued hunting. It also allows additional hunters to participate in the hunt. The special action also provides the Refuge Manager the authority to close the harvest season if the harvest reaches the limit of 50 caribou as recommended by the Committee.

The emergency and temporary changes are necessary to protect declining moose, muskox, and caribou populations in the three areas described above. These changes are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this emergency action is impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d) to make this rule effective as indicated in the **DATES** section.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

This emergency change does not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

This emergency change has been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as gun, hunting gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on

competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the emergency change has no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the emergency change will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the emergency change meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the emergency change does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Daniel LaPlant drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: December 24, 2002.

Peggy Fox,

Acting Choir, Federal Subsistence Board.

Dated: January 6, 2003.

Calvin H. Casipit

Acting Subsistence Program Leader, USDA-Forest Service.

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H.J. Res. 18/P.L. 108–5
Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Feb. 7, 2003; 117 Stat. 9)
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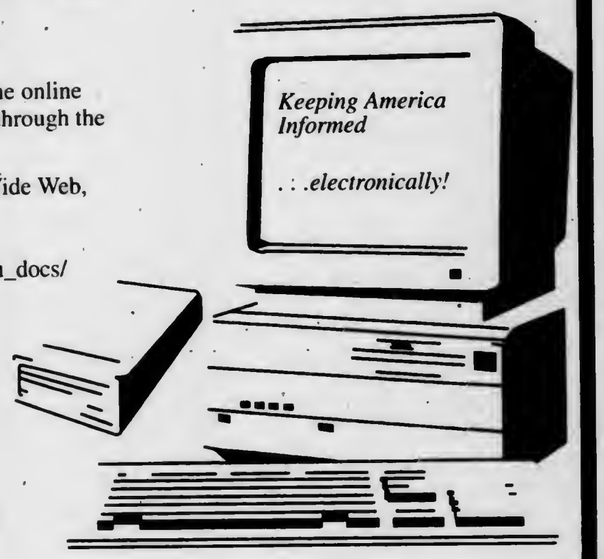
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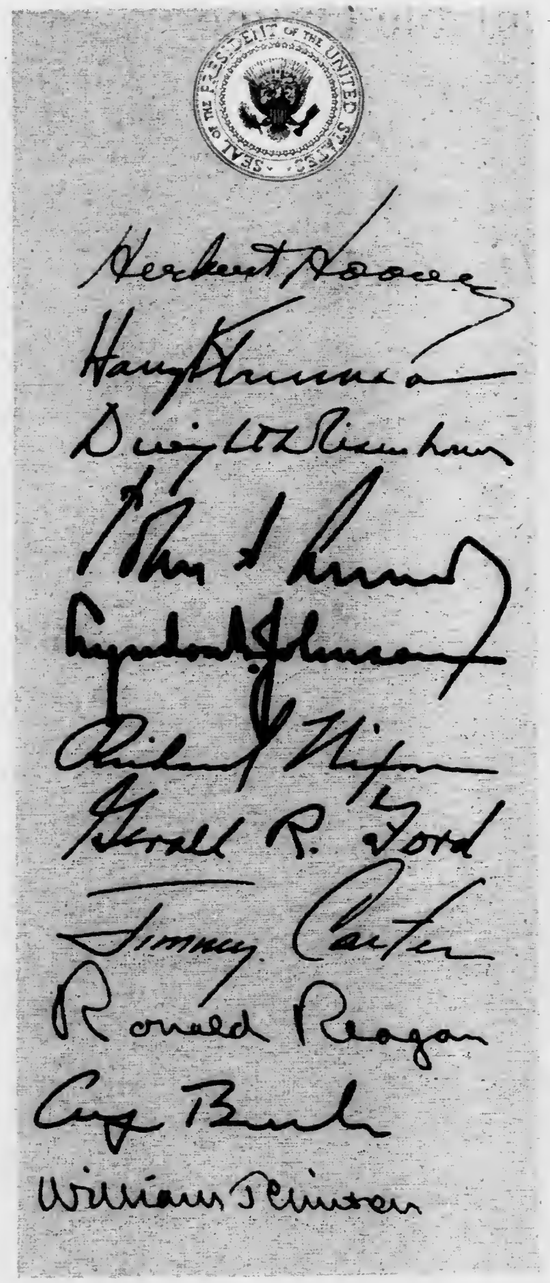
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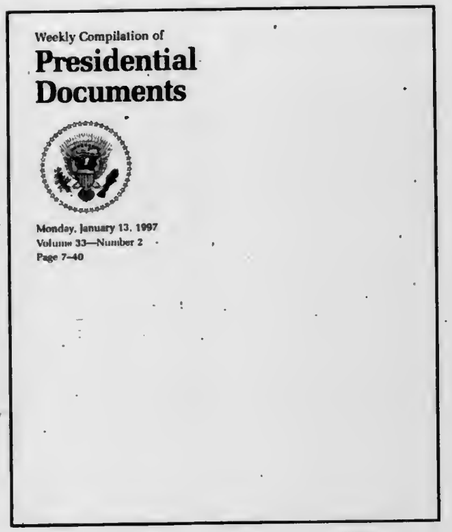
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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AC53

Insurance of State Banks Chartered as Limited Liability Companies

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has adopted a final rule regarding whether and under what circumstances the FDIC will grant deposit insurance to a State bank chartered as a limited liability company (LLC). Pursuant to section 5 of the Federal Deposit Insurance Act (FDI Act) the FDIC may grant deposit insurance only to certain depository institutions. One of the statutory requirements for a State bank to be eligible for Federal deposit insurance is that it must be "incorporated under the laws of any State." In the recent past the FDIC received two inquiries regarding whether a State bank that is chartered as an LLC (a "Bank-LLC") could be considered to be "incorporated" for purposes of that requirement. The final rule provides that a bank that is chartered as an LLC under State law would be considered to be "incorporated" under State law if it possesses the four traditional, corporate characteristics of perpetual succession, centralized management, limited liability and free transferability of interests.

DATES: *Effective date:* March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mindy West Schwartzstein, Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–7221, or Robert C. Fick, Counsel, Legal Division, (202) 898–8962, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, the FDIC may grant deposit insurance only to depository institutions that are engaged in the business of receiving deposits other than trust funds.[1] The term "depository institution" is defined in the Federal Deposit Insurance Act (FDI Act) to mean any bank or savings association.[2] The term "bank" is also defined in the FDI Act to include any State bank,[3] and "State bank" means:

> Any bank, banking association, trust company, savings bank, industrial bank * * * or other banking institution which—
>
> (A) Is engaged in the business of receiving deposits other than trust funds * * * and
>
> (B) Is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia (except a national bank),
>
> Including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before August 9, 1989.[4]

Recently, two banks expressed an interest in obtaining Federal deposit insurance for a State bank that would be chartered as an LLC.[5] The proponents have argued specifically that the term "incorporated" should not be interpreted to preclude an LLC from becoming an insured depository institution. The phrase "incorporated under the laws of any State" first appeared in the definition of "State bank" with the Banking Act of 1935,[6] but the FDI Act provides no definition of the term "incorporated." Furthermore, there is no legislative history nor judicial guidance regarding its meaning as used in the FDI Act. Consequently, it is not clear how the term "incorporated" should be interpreted in the context of the FDI Act, and specifically, whether an LLC could be considered to be "incorporated" for purposes of determining eligibility for Federal deposit insurance.

II. The Nature of Corporations

At common law there were generally three types of business entities: proprietorships, partnerships, and corporations. A proprietorship is an individual carrying on a business for profit. A partnership is generally an association of two or more persons to carry on as co-owners a business for profit.[7] Proprietorships and partnerships had no existence separate and apart from their owners. Corporations, on the other hand, were created and existed by virtue of a grant of authority from the sovereign. Although there appears to be no universally accepted definition of "corporation," most definitions of the term are pervaded by the notion of "an 'artificial legal creation,' the continuance of which does not depend on that of the component persons, and the being or existence of which is owed to an act of state."[8] One of the earliest judicial definitions reflecting that notion is that enunciated in the 1819 case of *Trustees of Dartmouth College* v. *Woodward*.[9] In *Dartmouth College*, Chief Justice Marshall stated that

> [A] corporation is an artificial being, * * * existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it * * * Among the most important are immortality and * * * individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual.[10]

Attributes of a Corporation

The lack of any universal agreement as to the characteristics of a corporation

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[1] *See* 12 U.S.C. 1815.

[2] *See* 12 U.S.C. 1813(c)(1).

[3] *See* 12 U.S.C. 1813(a)(1).

[4] 12 U.S.C. 1813(a)(2).

[5] Currently, State law in 5 States expressly permits LLCs to engage in the business of banking; the law in 14 other States would not. An informal survey of these 14 States indicated that there appears to be no particular reason for this prohibition. Representatives of two of the States thought that one reason could be that the corporate form lends itself to regulation and supervision. Representatives of two other States mentioned that legislation was being drafted or proposed to remove the prohibition.

[6] *See* Banking Act of 1935, Pub. L. No. 74–305, sec. 101, 49 Stat. 684.

[7] *See* Unif. Partnership Act, sec. 101(6) (1997), 6 U.L.A. 61 (Supp. 2002).

[8] 1 William Meade Fletcher *et al.*, Fletcher's Cyclopedia of the Law of Private Corporations § 4 (perm. ed., rev. vol. 2001).

[9] *Trustees of Dartmouth College* v. *Woodward*, 17 U.S. (4 Wheat.) 518 (1819).

[10] *Id.* at 636.

may have resulted from the fact that those characteristics have evolved over time.[11] However, it has been traditionally recognized that there are four attributes of a corporation that distinguish it from other forms of business entities; those attributes are: perpetual succession, centralized management, limited liability, and free transferability of interests.

Perpetual succession (also sometimes known as continuity of life) is not generally construed to mean immortality; rather perpetual succession means that the entity continues to exist independent of its owners. For example, the death or withdrawal of a shareholder of a corporation does not terminate the existence of the corporation. Perpetual succession is an attribute that distinguishes corporations from partnerships because partnerships are created and exist by agreement of the owners (the partners). The death or withdrawal of a partner generally terminates the partnership. A corporation, on the other hand, is created and exists by virtue of a grant of authority from the State, and the death or withdrawal of a shareholder does not terminate the corporation.

Centralized management generally means that continuing, exclusive authority to manage the entity is vested in a group of individuals appointed or elected by the owners. The owners, therefore, do not have the exclusive authority to directly manage the entity. For example, the shareholders of the corporation elect a group of individuals (who may or may not be owners) to be its Board of Directors, and the Board of Directors manages the corporation. In a partnership, the general partner(s) have the exclusive authority to manage the affairs of the partnership.

Limited liability generally means that an owner of the entity is not personally liable for the debts of the entity; rather, the maximum potential liability of an owner is limited to the owner's investment in the entity. For example, the shareholders of a corporation are generally not liable for the corporation's debts, and the maximum amount that a shareholder could lose if the corporation incurs liabilities beyond its assets is his or her investment. This attribute also distinguishes a corporation from a partnership because in a partnership the general partners typically are fully liable for the debts of the partnership.

Free transferability of interests generally means that an owner of the entity may transfer an ownership interest in the entity without the consent or approval of the other owners. For example, a shareholder of a corporation can generally transfer all or a part of his or her shares to another person without the consent or approval of any other shareholder. However, in closely-held corporations, it is a common practice for shareholders to enter into agreements requiring a selling shareholder to obtain the prior approval of the remaining shareholders. In partnerships, a partner generally cannot transfer his or her interest without the consent of the other partners. This is so because partnerships exist by virtue of an agreement among all of the owners. However, even when the other partners consent, the original partnership technically is terminated, and a new partnership is created.[12]

Tax Treatment of Corporations vs. Partnerships

As noted above, a key distinction between a corporation and a partnership is that a corporation is created by a grant of authority from the State, whereas a partnership is created by agreement among the co-owners. A corporation, unlike a partnership, is a legal entity separate and apart from its owners, and the Federal income tax laws reflect that separate existence. As a result, a corporation's income is effectively taxed twice, once at the corporation level, and again at the shareholders' level when the shareholders receive the corporation's income as dividends. However, because a partnership is not a legal entity separate from its owners, a partnership's income is not taxed at the partnership level, but is attributed directly to the partners and taxed only at the individual partners' level. This feature of a partnership is sometimes called "pass-through tax treatment," and is generally considered to be a significant advantage over the tax treatment of a corporation's income.

Since the characterization of a business entity as a "corporation" has significant tax implications, the Internal Revenue Service (IRS) established rules to determine whether an entity would be taxed as a corporation or a partnership. Prior to its amendment in 1997, Treas. Reg. § 301.7701–2 classified an association of two or more persons who had the purpose of carrying on a business and dividing the profits as either a partnership or a corporation depending upon whether the association possessed more corporate characteristics than noncorporate characteristics. The four corporate characteristics that the IRS utilized were: continuity of life (perpetual succession), centralized management, limited liability, and free transferability of interests. Under the former IRS regulations, if an association possessed at least three of the four corporate characteristics, it would be treated as a corporation for federal income tax purposes. As noted above, after 1996 the IRS no longer utilized the corporate characteristics test and now permits business entities that are not specifically classified as corporations in the regulation to elect partnership tax treatment.[13] In that regard, we note that one of the entities specifically classified as a corporation in the regulation is a "[s]tate-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act."[14] As a result, an FDIC-insured, State bank that is chartered as an LLC would not qualify under existing IRS regulations for partnership tax treatment. Nevertheless, proponents of permitting Federal deposit insurance for Bank-LLCs argue that if the FDIC determines that Bank-LLCs are eligible for Federal deposit insurance, they would then seek a change in the IRS regulations. The proponents argue that they have considered subchapter S status but found it too limiting.

In August 1996 Congress amended the Internal Revenue Code to allow eligible financial institutions to elect subchapter S status for federal income tax purposes.[15] A principal advantage of such status is that a subchapter S corporation is taxed the same as a partnership, *i.e.*, a subchapter S corporation is entitled to pass-through tax treatment. There are, however, limits on both the number and type of shareholders permissible for a subchapter S corporation. The maximum number of shareholders of a subchapter S corporation is 75, and only individuals, estates, certain trusts, and certain tax-exempt organizations may be shareholders.[16] Furthermore, there can only be one class of stock in a subchapter S corporation, and no nonresident aliens may be shareholders.[17]

These limitations on the number and type of permissible shareholders have been cited as principal reasons why subchapter S status does not provide banks with a practical way of gaining pass-through tax treatment. It is recognized that in the past several bills have been introduced in Congress to increase the number of permissible shareholders for subchapter S corporations, but to date none have been enacted into law. Consequently, the proponents have sought a determination from the FDIC regarding the eligibility of Bank-LLCs for deposit insurance. In issuing this final rule it is not the FDIC's intent to influence the IRS either way. This final rule is focused on responding to a request for a determination as to whether under the FDI Act a bank that is chartered as an LLC could be considered to be "incorporated" and therefore eligible to apply for Federal deposit insurance as a State bank. Specifically, the FDIC takes no position on how such an entity should be taxed. We note that supporters of deposit insurance for Bank-LLCs argue that even if the IRS declines to amend its regulations to provide pass-through tax treatment for a Bank-LLC, there are still advantages to the LLC structure. State tax laws may provide the desired pass-through tax treatment with respect to State income taxes. Furthermore, it is argued that the increased flexibility provided by the LLC structure is itself a significant advantage over the corporation structure.

[11] *See* Douglas Arner, Development of the American Law of Corporations to 1832, 55 SMU Law Review 23, 43–54, 2002.

[12] *See* Fletcher, supra note 8, § 20.

[13] *See* Treas. Reg. §§ 301.7701–2, 7701–3 (1997).

[14] Treas. Reg. § 301.7701–2(b)(5) (1997).

[15] *See* Small Business Job Protection Act, Pub. L. 104–188 § 1315, 26 U.S.C. 1361(b) (1996).

[16] *See* 26 U.S.C. 1361(b) (1996).

[17] *See Id.*

III. The Nature of Limited Liability Companies

Generally, an LLC is a business entity that combines the limited liability of a corporation with the pass-through tax treatment of a partnership.[18] Wyoming was the first State to authorize LLCs in 1977; since that time the remaining 49 States and the District of Columbia have all enacted LLC statutes. Generally, LLC statutes were crafted to authorize a business entity that is neither a partnership nor a corporation, but an entity that has some of the more desirable features of each.[19] As a result, an LLC has characteristics of both a partnership and a corporation. However, because an LLC is neither a partnership nor a corporation, State partnership laws and State corporation laws generally do not apply. For example, State corporation laws that require a board of directors, that specify how ownership interests (shares) may be issued, and that impose capital requirements generally do not apply to an LLC. LLC statutes generally allow the owners broad discretion in setting up an LLC. According to some legal scholars, "[w]hole bodies of corporate law doctrine . . . are rendered irrelevant" when an LLC is utilized.[20]

An LLC is established by filing articles of organization with the State. These articles are roughly equivalent to a corporation's articles of incorporation. Every LLC has an operating agreement which is a contract executed by the members that sets forth the manner in which the business of the LLC will be conducted. The operating agreement establishes the rights, powers, duties, and liabilities of the members with respect to each other and with respect to the LLC. It contains provisions detailing such matters as the LLC's management structure, capital contributions, accounting, distributions, transfers of a member's interest, and dissolution. As used in many LLC statutes, a "member" of an LLC is a person who owns an interest in the LLC and is roughly equivalent to a shareholder of a corporation. Furthermore, a "member's interest" in an LLC is generally the member's ownership interest in the LLC, and is sometimes evidenced by a certificate which is roughly equivalent to a stock certificate of a corporation.

Consistency of the LLC Structure With Corporate Attributes

Many LLC statutes authorize entities that do not possess the four corporate attributes. First, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will automatically terminate, or dissolve, or that its operations will be suspended pending the consent of the remaining members, upon the death, disability, bankruptcy, withdrawal, or expulsion of a member, or upon the happening of some other specified event.[21] These automatic termination/dissolution/suspension provisions are inconsistent with the notion of perpetual succession because the continued existence and operation of the entity directly depends upon the existence, condition, or status of its owners. Second, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will be managed solely and directly by the members.[22] Such member-management also tends to be inconsistent with the corporate attribute of centralized management because exclusive authority to manage the institution is vested in the owners who may or may not possess adequate expertise to manage the institution and who, as a group, may be so large or so small as to present operational or supervisory problems for the entity. Third, while members of an LLC generally have limited liability, some LLC statutes permit the LLC to provide for one or more full liability members, *i.e.*, members who are fully liable for all of the liabilities, debts, and obligations of the LLC.[23] Finally, some State LLC statutes require, or permit LLC members to provide in the operating agreement, either that LLC members may not transfer their interests in the LLC without the consent of the remaining members, or that a member may not transfer the managerial or voting rights that accompany an owner's economic interest in the LLC without the consent of the remaining members.[24] Such a provision tends to be inconsistent with the concept of free transferability of interests because the requirement for prior consent prevents, or at least restricts, an owner's transfer of his or her ownership interest.

IV. Overview of Comments Received

On July 23, 2002, the FDIC published a notice of proposed rulemaking in the **Federal Register** (67 FR 48054) (the "notice of proposed rulemaking") which generally proposed that a bank chartered as an LLC would be considered to be "incorporated" if it had the four traditional, corporate attributes. The notice of proposed rulemaking also requested comments on three specific questions regarding the proposed rule. The FDIC received 23 comment letters from 22 organizations. All of the comment letters were generally in favor of granting deposit insurance to State banks organized as LLCs. The organizations filing comments included nine State trade associations, six State banks, three national trade associations, two law firms, an organization of State bank supervisors, and a State banking commissioner.

The three questions posed and a discussion of the responses received with respect to those questions, as well as the FDIC's analysis of those responses follow.

[18] *See* Mark A. Sargent & Walter D. Schwidetzky, Limited Liability Company Handbook § 1:3 (rev. 2002).

[19] *See* "Unif. Limited Liability Company Act," Prefatory Note, (amended 1996) 6A U.L.A. 426 (Supp. 2002).

[20] *See* Sargent & Schwidetzky, *supra* note 18, § 1:3.

[21] *See, e.g.*, Nev. Rev. Stat. § 86.491 (2001); Mass. Ann. Laws ch. 156C, § 43 (2002).

[22] *See, e.g.*, Mich. Comp. Laws § 450.4401 (2002); Ala. Code § 10–12–22(a) (2002).

[23] *See, e.g.*, Vt. Stat. Ann., tit. 11, § 3043(b) (2002); Cal. Corp. Code § 17101(e).

[24] *See, e.g.*, Mich. Comp. Laws § 450.4506 (2002); Pa. Stat. Ann. tit. 15, § 8924 (2002).

1. Should the FDIC Permit a State Bank That Is Organized as an LLC To Obtain Federal Deposit Insurance?

All of the commenters favored, at least, in general, a determination that a State bank that is organized as an LLC is eligible to apply for Federal deposit insurance.

2. If So, Should the FDIC Interpret the Term "Incorporated" Utilizing Some, All, or None of the Traditional Four Corporate Attributes?

Ten commenters thought the FDIC should not use any of the four corporate attributes in determining eligibility for Federal deposit insurance; four commenters thought we should use three of the four corporate attributes; three commenters thought we should use all four attributes; and five commenters did not respond specifically on this question.

Arguments Against Using Any of the Four Corporate Attributes

Of the 10 commenters who opposed using any of the four corporate attributes in determining a Bank-LLC's eligibility to apply for deposit insurance, eight specifically thought that if the particular State permits a bank to be organized as an LLC, and if the FDIC determines that the institution could be operated in a safe and sound manner, that should be sufficient for the entity to be eligible for Federal deposit insurance.

In support of their position the 10 commenters offered their views on the appropriateness of using specific corporate attributes to determine eligibility for Federal deposit insurance.

With regard to the corporate attribute of perpetual succession, several commenters construed the perpetual succession attribute to mean perpetual existence. Several commenters pointed out that in the past many FDIC-insured banks had limited lives (*e.g.*, the legal existence of some banks would terminate after 50 years). Since limited-life banks had never been a problem for the FDIC in the past, the commenters argued, they should not be a problem for the FDIC now. However, perpetual succession does not mean immortality. Rather, perpetual succession means that the existence of an entity is not dependent on the existence, condition, or status of any of its owners, and the death, disability, withdrawal, or bankruptcy of one or more of the owners of the entity does not terminate, dissolve, or suspend the entity. As noted above, some State LLC laws require, or permit an LLC to provide in its organizational documents, that the LLC will automatically terminate, dissolve, or be suspended upon the death, disability, bankruptcy, withdrawal or expulsion of an owner of an LLC or upon the happening of some other specified event. If a Bank-LLC were subject to such automatic termination, dissolution, or suspension provisions, without any advance warning, depositors in that institution might be denied access to their deposits due to an automatic termination of the institution's existence. Generally, the triggers for such automatic provisions may be wholly unrelated to the financial condition of the entity. Consequently, an institution that is well-capitalized, that is otherwise highly-rated for safety and soundness, and that is not subject to any enforcement actions could suddenly be closed for the sole reason that one of the owners died. Depositors would never know with certainty if their bank will be in existence on the day and time when they may need to withdraw their money. Furthermore, without such advance notice, the FDIC would not be prepared to handle the institution's closure and meet its deposit insurance obligation in a timely manner. In addition, not only would a customer be denied access to his or her deposits, but also any checks in transit that had not yet been paid by the bank would be rejected. The uncertainty, confusion, and disruption caused by such a closing would not only cause serious damage to public confidence in the nation's banking system, but also serious disruption to the community. Finally, without an opportunity to locate a healthy institution to purchase the assets and assume the deposits of the institution on a going-concern basis, the cost of the resolution could be substantially higher than necessary. For these reasons, the FDIC continues to believe that it is not only reasonable, but essential, that the term "incorporated" be interpreted to include the corporate attribute of perpetual succession.

With regard to the corporate attribute of centralized management, one commenter recognized that in a theoretical sense there may be concerns when a Bank-LLC with a large number of members is proposed to be managed directly by its members. However, rather than requiring a board of directors for every Bank-LLC, the commenter suggested that the FDIC could require a board of directors only if the number of members exceeded 25. The FDIC believes that centralized management is an important attribute for a bank for a couple of reasons. First, if the authority to manage the bank is limited to the owners of the institution, management expertise would necessarily also be limited. The quality of the management of a bank is a key factor in a bank's success or failure. In order to provide the best chance for a bank to compete successfully and to operate profitably, a bank should be free to enlist the best qualified managers available to it. Too small of a group of owners may not provide sufficient management expertise. Too large of a group may dilute the influence of those owners who do have adequate management expertise. For example, even if some of the owners possess adequate expertise, their ability to manage the institution may be negated by a larger segment of the owners that lacks such expertise. Second, management by a group that is too small could severely impair the bank's ability to respond to supervisory and regulatory direction. The volume and complexity of the demands of operating a bank might put too small of a group under excessive pressure and could result in management that is not responsive or at least so slow as to imperil the bank's effectiveness. Too large of a group may make it unwieldy or excessively difficult to disseminate information and get decisions in a timely manner because so many voices are entitled to be heard and considered. For these reasons, the FDIC believes that centralized management is also an important attribute that a bank should have in order to be eligible for deposit insurance.

With regard to the corporate attribute of limited liability, one of the 10 commenters while generally disagreeing with the use of the four corporate attributes, nevertheless thought that requiring limited liability was reasonable, since unlimited liability would certainly reduce the number of prospective shareholders. Another of the 10 commenters thought that in some cases the FDIC might conclude that unlimited liability of one or more members actually reduces the risk to the deposit insurance fund. Furthermore, the commenter argued that bank organizers should be permitted to explain the reasons for unlimited liability and show how unlimited liability impacts the bank's risk to the fund.

The FDIC believes that limited liability tends to attract more potential investors than unlimited liability and, furthermore, that the more attractive an investment generally the greater the chances that the entity will be able to maintain adequate capital. Consequently, the FDIC believes that limited liability is also a very important attribute for a bank to possess.

With regard to the corporate attribute of free transferability of interests several of the 10 commenters also thought it inappropriate to require that attribute. The commenters argued that since many existing, FDIC-insured banks are closely-held corporations that have restrictive share-transfer agreements, it would be inconsistent for the FDIC to require free transferability of interests with respect to a bank that is chartered as an LLC. Furthermore, two of those commenters suggested that rather than requiring free transferability for every Bank-LLC, a better solution would be to require that the Bank-LLC's organizational documents provide that if the primary regulator determines that the institution's capital is inadequate, then the current owners would be required to restore capital or permit free transferability of the interests. The FDIC believes that the free transferability of ownership interests is an important attribute because it tends to ensure that the bank will have the best opportunity to attract and maintain adequate capital. Even well-run business entities can experience economic stress when there is a downturn in their markets or the industry as a whole. Adequate capital provides a cushion that helps a business weather the periods of economic stress. If an owner of an interest in an LLC must obtain the consent of the other owners in order to transfer his or her interest, the transfer may be delayed until that consent can be obtained, or it may be rejected altogether if the consent is not granted. Either circumstance tends to reduce a bank's ability to attract and maintain adequate capital. Indeed, the mere presence of such a consent requirement may discourage investors who can choose from other, more liquid and, perhaps, more familiar investments. As noted above, since an LLC is neither a corporation nor a partnership, State corporation laws and State partnership laws generally would not apply. That fact, coupled with the relative novelty of the LLC form of business entity, may discourage potential investors. Many investors are familiar with, or can readily determine, the general structure of corporations and the rights, powers, privileges, duties and liabilities of a corporation's shareholders, officers, and directors. With an LLC, its structure and the rights, powers, privileges, duties and liabilities of the LLC's owners, officers and managers are all generally subject to modification according to the wishes of the members. Unlike investing in a corporation, a potential investor in an LLC may not be able to rely, to any extent, on his or her general familiarity with corporate law in making an investment decision. A potential investor would have to examine carefully the operating agreement of the particular LLC to determine the LLC's operating structure and the rights, powers, privileges, duties, and liabilities of the LLC's owners, officers, and managers. Such additional burden may also tend to discourage new investors and further reduce the bank's ability to attract and maintain capital. Furthermore, the alternative suggested by one commenter would not cure these problems. The commenter suggested that the FDIC might require a provision in the LLC's organizational documents that if capital fell below a certain level then the existing owners would have to replenish capital or waive the consent requirement. However, if a bank's capital were to fall below the minimum capital requirements, it might then be too late to try to attract new investors. It is not clear that many investors would want to get involved with a bank that has an unfamiliar legal structure at a time when its capital is depleted. Consequently, the FDIC believes that a Bank-LLC should have the corporate attribute of free transferability of interests.

Several of the 10 commenters also offered general comments on how to determine eligibility and suggested some alternative uses for the four corporate attributes. Several thought that the key to eligibility for Federal deposit insurance should simply be whether the bank is chartered in accordance with State banking law. If so, they argue, that should be enough to qualify for eligibility for deposit insurance. The FDIC disagrees with this notion entirely. Congress conferred upon the FDIC the authority to grant Federal deposit insurance to certain institutions described in the FDI Act. Allowing the individual States to determine which institutions are eligible would (i) require the FDIC to ignore the express language of the FDI Act, (ii) require the FDIC to abdicate its statutory responsibility to make such determinations, and (iii) potentially result in a wide variety of notions as to what types of institutions are eligible for deposit insurance. As a result, the FDIC's ability to manage the risks posed to the insurance fund would be seriously jeopardized. The FDIC does not believe such an approach is either reasonable or consistent with the purposes of the FDI Act.

Two commenters pointed out that the four corporate attributes are not mentioned in the factors listed in section 6 of the FDI Act, 12 U.S.C. 1816, (the "section 6 factors") that are required to be considered in approving applications for deposit insurance. Therefore, they believe that the FDIC should determine who is eligible for deposit insurance solely by reference to the section 6 factors. One commenter argued that while the ultimate question is whether the bank is a legal entity under State law, it thought that the FDIC could consider the four corporate attributes in assessing whether the institution could be operated in a safe and sound manner. In that regard the commenter thought that perpetual succession and centralized management were important for safety and soundness and should be accorded greater weight, while free transferability of interests was less important. The FDIC believes that while the section 6 factors are required to be considered in determining whether to grant deposit insurance, they do not determine an institution's eligibility to apply for deposit insurance. Eligibility is a threshold issue that must be determined before the section 6 factors are considered. To focus only on the section 6 factors would again require that we ignore the express language of the FDI Act. Congress carefully set out what it meant by a "State bank," and the FDIC declines to ignore that language.

One commenter noted that national banks only need to be chartered pursuant to the National Bank Act (the "NBA") to be eligible for Federal deposit insurance and that, therefore, the FDIC should only require that state banks be chartered under State law. The FDIC agrees that in accordance with the language of the FDI Act a national bank is eligible to apply for deposit insurance if it is chartered as a national bank under the NBA. However, the NBA describes a national bank as a "body corporate"[25], and national banks are structured and operate essentially the same as corporations. Consequently, requiring a State-chartered, Bank-LLC to have the four corporate attributes does not represent treatment inconsistent with that applicable to national banks.

Arguments in Favor of Using Three of the Four Corporate Attributes

As noted above, four commenters thought we should use three of the four corporate attributes. Three of those four commenters disagreed specifically with requiring free transferability of interests for a Bank-LLC, but concurred with requiring the other three attributes. The other commenter while generally disagreeing with the free transferability requirement thought that the FDIC should require any three out of the four

[25] 12 U.S.C. 24.

corporate attributes. Two of the commenters who specifically disagreed with the free transferability requirement repeated the argument mentioned above that the free transferability requirement has not been viewed by the FDIC in the past as a significant impairment of an institution's ability to raise capital and, therefore, should not be required for Bank-LLCs. As discussed above, the FDIC believes that a Bank-LLC should have the corporate attribute of free transferability of interests. The FDIC's analysis of the need for this attribute is detailed above and will not be repeated here. However, in summary, the FDIC believes that free transferability of interests is necessary to ensure that a Bank-LLC will be able to attract and maintain adequate capital. With regard to the suggestion that the FDIC require any three of the four corporate attributes as its test for eligibility for deposit insurance, the FDIC does not believe that such an approach would be consistent with the purposes of the FDI Act and could lead again to a wide variety of notions about what types of institutions are eligible for deposit insurance. Each of the attributes has its own significance for purposes of the FDI Act, and each is independently justifiable as an essential requirement for the FDIC to determine that a Bank-LLC is "incorporated." Among other things, a three-out-of-four approach would permit a Bank-LLC that does not have perpetual succession to be considered "incorporated" for purposes of eligibility for deposit insurance. As fully discussed above, an institution that could terminate without warning could cause substantial harm to depositor confidence in the nation's banking industry, seriously disrupt the communities where the bank operated, and increase the costs of resolutions. Furthermore, the wide variety of institutions that such an approach could permit would jeopardize the FDIC's ability to manage the risks to the insurance fund. Consequently, the FDIC does not believe that a three-out-of-four approach would be consistent with the FDI Act and declines to adopt it.

Comments in Favor of Using All Four Corporate Attributes

Three commenters endorsed the FDIC's use of all four of the corporate attributes. One commenter also expressed the strong belief that the full range of safety and soundness and enforcement mechanisms that currently apply to state banks should also apply to Bank-LLCs. For the reasons discussed above, the FDIC believes that the corporate attributes are not only appropriate, but essential to determining whether a Bank-LLC could be considered to be "incorporated." The FDIC specifically concurs with the comment that the full range of safety and soundness and enforcement mechanisms needs to apply to Bank-LLCs. In that regard, the final rule includes some revisions to further clarify this point. The final rule clarifies that for purposes of the FDI Act (including section 8 of the FDI Act) and the FDIC's regulations, the members, managers, and officers of a Bank-LLC would be equivalent to shareholders, directors, and officers, respectively, of a bank chartered as a corporation. Also, the certificates or other evidences of ownership interests in a Bank-LLC would be equivalent to voting stock, voting shares and voting securities.

3. If the FDIC Should Not Utilize Any of the Four Corporate Attributes, How Should It Interpret the Term "Incorporated?"

Six commenters thought that the FDIC should interpret "incorporated" to mean chartered under State law. Two other commenters thought that an institution should be deemed to be "incorporated" if it is chartered under State law and can operate in a safe and sound manner. Another commenter thought that "incorporated" should mean "organized" or "operating" as a bank under State law. Yet another thought that "incorporated" should simply mean "chartered and regulated" under State law and thought the FDIC should focus on whether the particular structure is consistent with the section 6 factors. All of these suggestions have been fully analyzed and considered above, and will not be repeated here. Central to all of these suggestions is the notion that if the State's laws would charter an entity as a bank, that should be enough for the FDIC. Following that argument, the FDIC should consider to be "incorporated" whatever type of institution a State may charter as a bank under its laws. As fully discussed above, such an approach would mean that (i) the FDIC would have to ignore the express language of the FDI Act, (ii) the FDIC would have to abdicate its responsibility under the FDI Act, and (iii) the potential variety of notions about what could be chartered as a bank would seriously impair the FDIC's ability to manage the risks to the insurance fund. For those reasons the FDIC declines to adopt such an approach.

V. Interpretation of "Incorporated"

In order to determine whether an LLC could qualify as a State bank for purposes of Federal deposit insurance, it is necessary to determine if an LLC could be considered to be "incorporated." In resolving any ambiguity in a statute it is always helpful to try to determine what Congress intended by its choice of the particular words of the statute. In this case, as noted above, there is no legislative or judicial guidance on the meaning of the term "incorporated" as used in the FDI Act. Consequently, the FDIC believes that the best approach is to interpret the term in a manner consistent with, and in aid of, the purposes of the FDI Act.

Congress created the Federal Deposit Insurance Corporation in 1933 to restore and maintain public confidence in the nation's banking system by, among other things, promoting the safety and soundness of the institutions whose deposits the FDIC insures.[26] Consequently, the FDIC is charged with maintaining public confidence in the nation's banking system, and promoting the safety and soundness of the institutions that it insures is a critical component of its duty.

A common understanding of the term "incorporated" is "formed or constituted as a legal corporation."[27] In addition, Black's Law Dictionary defines "incorporate" as "to form a legal corporation."[28] An institution that is labeled as a corporation under State law would then be "incorporated" under the common understanding of the term. One approach that the FDIC could take, therefore, is to treat as incorporated only those entities that are labeled as "corporations" under State law. Such an interpretation would be consistent with the language of the statute. However, such an approach might be too narrow in that it may not include all of the State banks that are currently operating as insured institutions even though they are structured and operate with the same characteristics as a corporation. Furthermore, limiting the interpretation to only those entities that are labeled as "corporations" would seem unduly restrictive in that it would tend to unnecessarily limit the flexibility, and stifle the innovativeness, of State banking. Thus, such an approach could arguably impair or harm the viability of the nation's banking system.

Another approach to interpreting the term "incorporated" is to focus on the attributes of the entity. In other words, if the entity has the four corporate attributes, it should be considered to be "incorporated" regardless of how it is labeled under State law.[29] Clearly, the actual nature of an entity is much more important than its label.

Within the confines of Federal law, and subject to safety and soundness, banks need to be able to take advantage of new forms of business organization in order to maintain maximum viability. Some of these new forms of business entities were never envisioned at the time that Congress passed the FDI Act almost 70 years ago. Part of the FDIC's duty in administering the FDI Act is to interpret it to carry out the purposes of the FDI Act in the modern world. Consistent with that duty, the FDIC believes that it is more reasonable to focus on the essential characteristics of a corporation that distinguish it from other forms of business entities rather than to focus on the presence or absence of a label.

Therefore, mindful of the need to maintain the viability of the nation's banking system, and consistent with the purposes of the FDI Act, the FDIC believes that the better approach, is to interpret the term "incorporated" to include those LLCs that have the four traditional corporate attributes.

As noted above, the attributes that are commonly identified as distinguishing a corporation from other forms of business organizations are: perpetual succession, centralized management, limited liability, and free transferability of interests.

Perpetual Succession

The first attribute, perpetual succession, is essential to the FDIC's efforts to promote public confidence in the nation's banking industry. An institution that automatically terminated, dissolved, or suspended operations upon the happening of some event would most likely have a substantial, adverse effect on public confidence. A depositor in such an institution would have no way of knowing from one day to the next whether the institution will continue in existence, and whether he or she will be able to retrieve his or her money when the need arises. Furthermore, such an automatic termination, dissolution, or suspension feature would have a significantly adverse effect on the FDIC's efforts to resolve failed institutions. The FDIC is not only charged with promoting the safety and soundness of banking institutions, but is also charged with the duty of resolving failed institutions in an orderly, least costly manner. The FDIC would have no practical opportunity to plan and execute an orderly, least-costly resolution of an institution that, without any warning or advance notice, was terminated or dissolved or whose operations were suspended. Most likely it would not be possible to arrange for a healthy institution to purchase the assets and assume the deposit liabilities of the failed institution in order to continue to serve the affected community with the least disruption. Checks that were in transit at the time of the bank's failure, but that had not yet been paid, would be rejected. The disruption to the community could be substantial. The cost to the insurance fund of resolving such an institution could be significantly higher than necessary as a result, and the higher costs would tend to deplete the insurance fund more rapidly. Consequently, the FDIC believes that perpetual succession is an essential prerequisite for an insured depository institution, and that automatic termination/dissolution/suspension features are inconsistent with the FDIC's duties and the purposes of the FDI Act.

Centralized Management

Centralized management in the form of a board of directors provides the FDIC and other banking regulators with a discrete group of individuals who are authorized to act for, and represent, the institution in virtually all matters. The typical rights, liabilities, powers, and responsibilities of a board of directors are well-established. On the other hand, management of an institution directly and solely by all of its owners presents a variety of problems both from an operational standpoint and from an enforcement standpoint. First, if the authority to manage the bank is limited to the owners of the institution, management expertise would necessarily also be limited. The quality of the management of a bank is a key factor in a bank's success or failure. In order to provide the best chance for a bank to compete successfully and to operate profitably, a bank should be free to enlist the best qualified managers available to it. If there are too few owners, the group may not provide sufficient management experience and expertise. Too large of a group may also mean that even if adequate banking expertise is represented among the owners, it may be negated by a larger segment of the owners that lacks adequate expertise. Second, management by a group that is too small could severely impair the bank's ability to respond to supervisory and regulatory direction. The volume and complexity of the demands of operating a bank might put too small of a group under excessive pressure and could result in management that is not responsive or, at least so slow as to imperil the bank's effectiveness. Too large of a group may make it unwieldy or excessively difficult to disseminate information, arrange meetings, ensure that all members have the opportunity to be heard, and get decisions in a timely manner. Finally, with a member-managed Bank-LLC, merely determining who represents the institution and the extent of his or her authority could represent a significant task for regulators. Consequently, centralized management is also an important attribute for purposes of the FDIC Act.

Limited Liability

Limited liability, of course, encourages investment in the enterprise. Potential owners are more likely to invest in an enterprise when their liability is limited to the amount of their investment. Attracting and maintaining sufficient capital helps to ensure an adequate cushion to protect an institution during periods of economic stress. Since banks are subject to periods of economic stress just as other businesses are, the FDIC believes that the owners of banks should have limited liability to encourage the maintenance of adequate capital.

Free Transferability of Ownership Interests

The free transferability of ownership interests also tends to aid in attracting and maintaining adequate capital. Conversely, requiring the prior consent of the other owners in order to transfer an ownership interest may decrease the bank's ability to attract and maintain adequate capital. At worst, prior consent to a transfer limits the pool of available investors; at best, it delays interested, potential investors. While the FDIC currently insures approximately 700 mutual institutions (that issue no stock) and more than 1,700 closely-held institutions (some of which may have stock-transfer restrictions in the form of shareholder agreements), the FDIC has substantial experience with their structure, operations, and capital maintenance capabilities. The FDIC has no similar experience with institutions organized as LLCs, and that lack of similar experience argues for facilitating, rather than impairing, the maintenance of a capital cushion.

[26] *See FDIC* v. *Philadelphia Gear Corp.*, 106 S.Ct. 1931, 1935 (1986), *FDIC* v. *Eckert*, 754 F.Supp. 22, 24 (E.D. N.Y. 1990); *FDIC* v. *Rockelman*, 460 F.Supp. 999, 1001 (E.D. Wl 1978).

[27] The Random House Dictionary of the English Language 968 (2d ed. 1987).

[28] Black's Law Dictionary 769 (7th ed. 1999).

[29] This approach is not unprecedented. In *Morrissey* v. *Commissioner of Internal Revenue*, 296 U.S. 344, 359, 56 S.Ct. 289, 296 (1935) the Supreme Court held that a trust created for the purpose of carrying on a business that had continuity of life, centralized management, limited liability, and free transferability of interests is sufficiently analogous to a corporation to justify taxation as a corporation.

Indeed, the mere presence of such a prior consent requirement may discourage investors who can choose from other, more liquid and, perhaps, more familiar investments. As noted above, since an LLC is neither a corporation nor a partnership, State corporation laws and State partnership laws generally would not apply. That fact, coupled with the relative novelty of the LLC form of business entity, may also discourage potential investors. Many investors are familiar with, or can readily determine, the general structure of corporations and the rights, powers, privileges, duties and liabilities of a corporation's shareholders, officers, and directors. With an LLC, its structure and the rights, powers, privileges, duties and liabilities of the LLC's owners, officers and managers are all generally subject to modification according to the wishes of the members. Unlike investing in a corporation, a potential investor in an LLC may not be able to rely, to any extent, on his or her general familiarity with corporate law in making an investment decision. A potential investor in an LLC would have to examine carefully the operating agreement of the particular LLC to determine its operating structure and the rights, powers, privileges, duties, and liabilities of the LLC's owners, officers, and managers. Such additional burden may tend to discourage new investors and further reduce the bank's ability to attract and maintain capital. Consequently, the FDIC believes that the free transferability of ownership interests is an important attribute for a bank.

In summary, the FDIC believes that an LLC should have all of the four corporate attributes in order to be "incorporated." Therefore, a banking institution that is chartered as an LLC under the law of any State and that has all of the above four corporate attributes would be considered to be "incorporated" under the law of the State for purposes of the definition of "State bank." Furthermore, such a banking institution would be eligible to apply for Federal deposit insurance as a State bank under section 5 of the FDI Act, 12 U.S.C. 1815.

The final rule reflects these conclusions. In general, the rule provides that a banking institution that is chartered by a State as an LLC will be deemed to be "incorporated" if (i) it is not subject to any automatic termination/dissolution/suspension provisions, (ii) the exclusive authority to manage the institution is vested in a board of directors or managers, (iii) neither State law nor the LLC's organizational documents provide that any owner is liable for the debts of the institution beyond his or her investment, and (iv) neither State law nor the LLC's organizational documents require the consent of any other owner in order to transfer all or a part of an ownership interest. The final rule also specifies that for purposes of the FDI Act and the FDIC's regulations, an owner of an interest in an LLC is a "stockholder" and a "shareholder;" a manager of an LLC is a "director;" an officer of an LLC is an "officer;" and a certificate or other evidence of an ownership interest in an LLC is a "voting share," "voting security," and "voting stock." These provisions are intended to remove any ambiguity as to how the rest of the FDI Act and the FDIC's regulations apply to banking institutions chartered as LLCs, including the enforcement provisions of the FDI Act and the FDIC's regulations.

VI. Paperwork Reduction Act

The final rule does not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will apply to all depository institutions that are currently insured under the FDI Act as well as those applying for Federal deposit insurance. The final rule clarifies the circumstances when a banking institution that is chartered under State law as a limited liability company would be considered to be "incorporated" for purposes of the definition of "State bank" in 12 U.S.C. 1813(a)(2). It does not require any banking institution to organize as, or convert to, a limited liability company, and it imposes no new reporting, recordkeeping or other compliance requirements. Accordingly, the requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VIII. Impact on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

IX. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (government agencies), Bank deposit insurance, Banks, Banking, Bank merger, Branching, Foreign branches, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 303 of title 12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. New § 303.15 is added to read as follows:

§ 303.15 Certain limited liability companies deemed incorporated under State law.

(a) For purposes of the definition of "State bank" in 12 U.S.C. 1813(a)(2) and this Chapter, a banking institution that is chartered as a limited liability company (LLC) under the law of any State is deemed to be "incorporated" under the law of the State, if

(1) The institution is not subject to automatic termination, dissolution, or suspension upon the happening of some event (including, *e.g.*, the death, disability, bankruptcy, expulsion, or withdrawal of an owner of the institution), other than the passage of time;

(2) The exclusive authority to manage the institution is vested in a board of managers or directors that is elected or appointed by the owners, and that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, responsibilities, as a board of directors of a bank chartered as a corporation in the State;

(3) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents provide that an owner of the institution is liable for the debts, liabilities, and obligations of the institution in excess of the amount of the owner's investment; and

(4) Neither State law, nor the institution's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the institution in order for an owner to transfer an ownership interest in the institution, including voting rights.

(b) For purposes of the Federal Deposit Insurance Act and this Chapter,

(1) Each of the terms "stockholder" and "shareholder" includes an owner of any interest in a bank chartered as an LLC, including a member or participant;

(2) The term "director" includes a manager or director of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of a director of a corporation;

(3) The term "officer" includes an officer of a bank chartered as an LLC, or other person who has, with respect to such a bank, authority substantially similar to that of an officer of a corporation; and

(4) Each of the terms "voting stock," "voting shares," and "voting securities" includes ownership interests in a bank chartered as an LLC, as well as any certificates or other evidence of such ownership interests.

By order of the Board of Directors.

Dated in Washington, DC, this 31st day of January, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Resolution

Whereas, the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") is responsible for administering the Federal Deposit Insurance Act ("FDI Act"); and

Whereas, the FDIC is authorized under section 5 of the FDI Act (12 U.S.C. 1815) to approve or disapprove applications for deposit insurance for State banks as well as other depository institutions; and

Whereas, in order for a banking institution to qualify as a "State bank" eligible to apply for deposit insurance, section 3(a) of the FDI Act (12 U.S.C. 1813(a)) generally requires that it be engaged in the business of receiving deposits other than trust funds and that it be "incorporated under the laws of any State"; and

Whereas, the FDI Act does not define the term "incorporated," and there is some uncertainty as to the meaning of the term "incorporated"; and

Whereas, on July 23, 2002, the Board authorized the publication in the **Federal Register** of a proposed rule entitled Insurance of State Banks Chartered as Limited Liability Companies, describing the circumstances under which a bank chartered as a limited liability company would be considered to be "incorporated" and, therefore, eligible to apply for deposit insurance; and

Whereas, the Board requested public comment on the proposed rule and received 23 comment letters, and

Whereas, the staff has reviewed and the Board has considered the comments submitted by the public in response to the proposed rule; and

Whereas, the staff has recommended that the Board adopt a final rule entitled Insurance of State Banks Chartered as Limited Liability Companies as set forth in the attached **Federal Register** document; and

Whereas, the Board has decided to adopt the proposed rule entitled Insurance of State Banks Chartered as Limited Liability Companies as a final rule with certain modifications.

Now, therefore, be it resolved, that the Board does hereby adopt a final rule entitled Insurance of State Banks Chartered as Limited Liability Companies amending 12 CFR part 303 in the manner set forth in the attached **Federal Register** document.

Be it further resolved, that the Board hereby authorizes publication in the **Federal Register** of the attached final amendment to part 303.

Be it further resolved, that the Board hereby directs the Executive Secretary, or his designee, to cause the attached final rule to be published in the **Federal Register** in a form and manner satisfactory to the General Counsel, or his designee, and the Executive Secretary, or his designee.

Be it further resolved, that the Board hereby delegates authority to the General Counsel, or the General Counsel's delegate(s), and to the Executive Secretary, or the Executive Secretary's delegate(s) to make technical, non-substantive changes to the text of the attached **Federal Register** document.

[FR Doc. 03–3387 Filed 2–12–03; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA26

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final Rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is adopting an amendment to Appendix A to Subpart B of 12 CFR part 1750 Risk-Based Capital. The amendment, which more accurately incorporates and implements Financial Accounting Standard 133 in the stress test, is intended to enhance the accuracy of the calculation of the risk-based capital requirement for the Enterprises.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Pomeranz, Senior Accounting Specialist, Office of Risk Analysis and Model Development, telephone (202) 414–3796 or Marvin L. Shaw, Senior Counsel, telephone (202) 414–8913 (not toll free numbers), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

OFHEO published a final regulation setting forth a risk-based capital stress test on September 13, 2001, 12 CFR part 1750 (the Rule), which formed the basis for determining the risk-based capital requirement for the federally sponsored housing enterprises—Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).[1]

On September 12, 2002, OFHEO published a notice of proposed rulemaking (NPRM), 67 FR 57760, which proposed twelve technical and corrective amendments to the Rule.

[1] Risked-based Capital, 66 FR 47730 (September 13, 2001, 12 CFR part 1750, *as amended*, 67 FR 11850 (March 15, 2002), 67 FR 19321 (April 19, 2002), 67 FR 66533 (November 1, 2002).

These proposed amendments were intended to make minor technical corrections to the Rule, and to account more appropriately for Financial Accounting Standard No. 133 (FAS 133).[2] This amendment does not alter the FAS 133 accounting standard; it simply corrects the manner in which FAS 133 is incorporated into the stress test. Although the NPRM was subject to a ten-day comment period, OFHEO reopened and extended the comment period regarding the two FAS 133-related proposed amendments, noting that it might move to final action on any of the other ten.[3] On November 1, 2002, OFHEO published a final rule, which adopted eight of the technical and corrective amendments.[4] OFHEO is adopting three of the other amendments in today's final rule.[5]

Comments

OFHEO received comments in response to the NPRM from Fannie Mae, Freddie Mac, FM Watch, and the Honorable Richard H. Baker. In response to the September 30 notice that extended the comment period, OFHEO subsequently received one supplemental comment, which was submitted by FM Watch. The comments addressed the appropriateness of the proposed amendments related to FAS 133. Commenters also addressed procedural issues such as the effective date for the proposed amendments related to FAS 133 and the AOLTV Table, the length of the comment period, and the use of guidelines to supplement the Rule. Commenters also addressed issues related to regulatory impacts, particularly whether the proposal was "economically significant" under Executive Order 12866 and whether the proposal complies with the OFHEO's and the Office of Management and Budget's (OMB's) guidelines on information quality.

[2] Financial Accounting Standards Board Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities," June 1998.

[3] Risk-based Capital, 67 FR 61300 (September 30, 2002).

[4] Risk-based Capital, 67 FR 66533 (November 1, 2002).

[5] OFHEO has determined that it is appropriate to delay adopting the amendment that would correct the description of "unamortized balance" in Table 3–56 and Table 3–57 (amendment #7 in the NPRM), because that same term appears in numerous other places throughout the rule. OFHEO is conducting a systematic review of the entire Rule to ensure that this term is used and defined consistently. In the meantime, users of the stress test code will not be affected, because the Risk-based Capital Report Instructions, which are used to prepare data for the model, are correct.

Discussion of Issues

1. FAS 133

The NPRM included two changes to reflect the impact of FAS 133 on the stress test. The first of these, number 11 in the NPRM preamble, would modify the calculation of common stock dividends to reflect the effects of FAS 133 adjustments on after-tax income. The second, number 12 in the NPRM preamble, would modify the calculation of risk-based capital to account more fully for changes that FAS 133 required in the computation of Total Capital. As explained below, after considering all the comments on the proposed FAS 133-related changes, OFHEO has determined that the changes are appropriate and timely and is adopting them as proposed. Changes in the language from the proposed amendments clarify the rule, but have no substantive affect.

All five comment letters addressed the FAS 133-related changes. Both Enterprises were supportive of the changes, but suggested that OFHEO not waive the 30-day delay in effective date that is ordinarily required of final rules. Congressman Baker's letter voiced concern that the impact on the Enterprises' capital from amendment number 12 was so significant that OFHEO should extend the comment period.[6]

As noted above, FM Watch provided two comment letters. The first, which was submitted within the initial 10-day comment period, requested additional time for comment and urged OFHEO to delay action on the changes related to FAS 133 until OFHEO had more data on the affect of those changes on the Enterprises' risk-based capital. The letter also questioned whether the thirty percent add-on for management and operations risk should be applied after, rather than before FAS 133-related adjustments were made to the capital requirement. In FM Watch's second letter, received during the extended comment period, it stated that without additional background as to the implications OFHEO anticipates from the amendment, FM Watch was unable to provide informed comments on the proposal. The second letter, therefore, largely reiterated its earlier comments on the FAS 133-related amendments and requested that OFHEO defer action until additional quarters of data on the financial impact of the changes are available.

None of the comment letters took issue with the need for or the importance of the proposed FAS 133-related changes. Two commenters believed it necessary to delay action until the impact of the changes on the Enterprises' capital could be measured for a few more quarters. Neither, however, recommended that the change should not be implemented eventually. Nor did any commenter suggest that the proposed changes did not tie capital more closely to risk or that there was a better alternative methodology.

[6] *Id.* note 3.

Commentary regarding the final rule's effective date was unanimous in supporting a delayed effective date for implementation of these amendments. The Administrative Procedure Act, 5 U.S.C. 552(d), provides that the effective date for substantive rules will be delayed at least 30 days after publication, except in certain circumstances not applicable in this case. Accordingly, OFHEO has determined these changes take effect 30 days after the notice is published in the **Federal Register**. The effect of this determination is that OFHEO will incorporate these amendments related to FAS 133 in the capital calculation process starting with data submitted by the Enterprises for the fourth quarter of 2002, which OFHEO anticipates receiving from the Enterprises in early 2003. The first capital classification under the amended rule will occur approximately two months after publication.

Two of the comments suggested that the proposed change related to the effect of FAS 133 on total capital may be in error by adding the effects of FAS 133 after the thirty percent add-on for management and operations risk. After consideration of these comments, OFHEO has decided to utilize the methodology proposed in the NPRM.

As explained in greater detail in the NPRM preamble, the stress test, in essence, measures the amount of capital that would be consumed by an Enterprise during the ten-year stress period. This amount of capital is referred to in the amended regulation as "stress-test capital." The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (1992 Act) provides that stress-test capital should be increased by thirty percent to account for management and operations risk. The proposed amendment follows exactly that approach. However, the statute also requires that the risk-based capital requirement be expressed as an amount of "total capital," which can be compared to an Enterprise's current total capital to determine whether a deficiency exists. Because total capital is adjusted up or down before the start of the stress test to delete the impact of

FAS 133, it is appropriate to make the opposite adjustment at the end of the calculation, so as to compare apples with apples (or total capital with total capital).[7] Adding the FAS 133 impact in before the thirty percent add-on, as FM Watch suggests, would cause the adjustment at the end to be thirty percent greater than the adjustment at the beginning, overstating the value (in either a positive or negative direction) of the derivatives in an Enterprise's portfolio. OFHEO has not found that modifying its proposed approach in that manner would improve the sensitivity of the stress test to risk. Further, no commenter has identified a compelling rationale for such a change.

FM Watch contends that OFHEO lacks authority under the 1992 Act to add in the FAS 133-related adjustment after the 30 percent add-on. However, the Act expresses no such limitation on OFHEO's broad discretion to determine appropriate losses or gains on interest rate hedging activities, which are, in part, reflected in the changes in derivatives market value that FAS 133 adds to total capital. 12 U.S.C. 4611(a)(4).

2. Use of Guidelines

OFHEO proposed to amend the rule by replacing a static table containing fixed weighted average amortized original LTV (AOLTV) values with a notation that the table would be updated as necessary with a guideline (Guideline 404) that would be available on OFHEO's web site. Other guidelines related to Risk-Based Capital include Guideline 402 "Interest Rates" and Guideline 403 "Average Loan Size."

Freddie Mac stated that OFHEO is required by statute to issue all provisions related to risk-based capital requirements through notice-and-comment rulemaking, as opposed to OFHEO's reference to guidelines. Specifically, Freddie Mac believes that the Rule must include detailed descriptions of the precise methodologies that such guidelines would apply. Freddie Mac further stated that a change in a guideline should be effective only as of the end of the first reporting period beginning 60 days or more after the publication of such change.

OFHEO disagrees with Freddie Mac's view that guidelines are inappropriate. OFHEO believes that guidelines are necessary and appropriate for various aspects of implementing the Risk-Based Capital Requirement, provided the guideline addresses the finer details of the stress test where OFHEO requires the flexibility to make rapid or frequent changes, such as updating index changes. Such guidelines, which are used by other financial regulators, allow rapid response to rapidly changing circumstances and can be incorporated into the rule at a later date if such an incorporation appears advisable.

As to the effective dates for guidelines, OFHEO does not feel it necessary to announce a fixed rule. In the event that a new guideline or change to a guideline might impact capital significantly, OFHEO will consider the need for the Enterprises to plan their business strategies with capital requirements in mind. In this case, the Enterprises have had sufficient notice of Guideline 404, given its minor impact, to adapt to it. Accordingly, OFHEO has determined that a 30-day delay in effectiveness is adequate.

3. Comment Period

Congressman Baker and FM Watch requested a longer period of time for public comment on the proposed change related to FAS 133. In response to these requests, OFHEO extended the comment period until October 29, 2002. This extension allowed the public approximately six weeks to comment on the initial proposal. Only one commenter, FM Watch, submitted a comment during the extended comment period. Its comment simply amplified its earlier position.

4. Other Comments

Other comments received are beyond the scope of the amendment. Because these comments are not relevant to the substance of the proposal, they are not addressed in the preamble.

Regulatory Impacts

Executive Order 12866

OMB determined that these amendments are "significant" for purposes of review under EO 12866.

Two commenters questioned OFHEO's conclusion that the FAS 133 amendments are not economically significant within the meaning of Executive Order 12866. Both comments referred to the fact that the changes would have impacted Freddie Mac's risk-based capital requirement by more than $1.6 billion in a recent period. Neither comment, however, contends that the rule has resulted in costs to the Enterprises in excess of $100 million. Because the minimum capital requirement would have required more capital than the amended risk-based requirement in that period, the change would not have required Freddie Mac to raise any additional capital. Therefore, the commenters have not demonstrated that the change would have created cost for Freddie Mac. However, even if the amendment were to have the affect in some future period of requiring an Enterprise to raise capital or otherwise alter its hedging strategies, it is speculative to opine at this point that, in the absence of this amendment, the Enterprise would not have recognized the capital problem with its internal stress tests and taken equally expensive measures to deal with it.

Further, this essentially technical change, required to implement accounting standards imposed by a separate regulatory authority, does not raise the type of economic issues for which the detailed cost/benefit analysis required by the Executive Order was intended. No commenter has suggested that there is some less expensive means of implementing FAS 133 in the risk-based capital regulation or that OFHEO should continue to account for FAS 133 improperly.

Nevertheless, given the fact that this regulation is new and only recently became fully enforceable, OMB has exercised its discretion to review the FAS 133-related amendments formally to determine whether they have any important policy implications for the Administration or other Federal agencies.

OMB Information Quality Guideline

An additional issue raised by FM Watch concerned the application of OFHEO's recently issued "Final Guidelines for Ensuring Quality of Disseminated Information and Procedures for Correction by the Public" (67 FR 63672, September 15, 2002) (the Information Quality Guideline). In its letter, FM Watch indicates that the Rule may not be consistent with OFHEO's Information Quality Guideline because (i) in the two-day period between the posting of the amendment on the OFHEO Web site and publication in the **Federal Register** OFHEO revised the estimated impact of the FAS 133 amendments and (ii) FM Watch was unable to replicate OFHEO's

[7] Mathematically, the same result could be achieved by simply comparing starting capital (the capital at the beginning, "time zero," of the stress period) to stress test capital plus thirty percent. This was the way OFHEO had structured the calculation until FAS 133 altered the composition of total capital by including some changes in the market value of derivatives. OFHEO determined that it is unnecessarily complex to estimate market values throughout the stress test and, therefore, adjusted the starting amount of total capital to remove the market value changes. In order to provide a risk-based capital requirement that can be compared directly to actual, or unadjusted, "total capital," it is necessary to reverse-adjust stress test capital (which does not include market value changes) by adding back the market value changes that were removed at the start of the stress test.

conclusions. OFHEO notes that its revision to the estimate of the impact of the change was not a violation of the guidelines in this area. The initial error was rectified immediately and the correct information was published in the **Federal Register** and was available to all commenters during the entire comment period. With respect to the issue of replicability, the stress test model set forth in the Rule has been replicated by the Enterprises and largely incorporated into their operations. The ability of the Enterprises' to replicate the model demonstrates that OFHEO has met the burden imposed by both OFHEO's and OMB's data quality guidelines. OFHEO will continue to assist others to replicate the stress test by making available the stress test computer code and by publishing a stylized data set for their use in testing and replication.

Paperwork Reduction Act

These amendments do not contain any information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that this regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO amends 12 CFR part 1750 as follows:

PART 1750—CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4615, 4618.

2. Amend Appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–59 in paragraph 3.7.2.3;

b. Revise paragraph 3.10.3.2 [a] 2.; and

c. Add new paragraph 3.12.3 [a] 9. after paragraph 3.12.3 [a] 8.

Appendix A to Subpart B of Part 1750, Risk-Based Capital Test Methodology and Specifications

* * * * *

3.7.2.3 * * *

TABLE 3–59—AGGREGATE ENTERPRISE AMORTIZED ORIGINAL LTV ($AOLTV_0$) DISTRIBUTION [1]

Original LTV	UPB Distribution	Wt Avg AOLTV for Range
00<LTV<=60		
60<LTV<=70		
70<LTV<=75		
75<LTV<=80		
80<LTV<=90		
90<LTV<=95		
95<LTV<=100		
100<LTV		

[1] **Source:** RBC Report, combined Enterprises single-family sold loan portfolio. Table 3–59 is updated as necessary with combined Enterprises single-family sold loan group data from the RBC Report in accordance with OFHEO guideline #404. The contents of the table appear at *http://www.OFHEO.gov.*

Note: Amortized Original LTV (also known as the "current-loan-to-original-value" ratio) is the Original LTV adjusted for the change in UPB but not for changes in property value.

* * * * *

3.10.3.2 * * *

[a]* * *

2. *Common Stock.* In the first year of the Stress Test, dividends are paid on common stock in each of the four quarters after preferred dividends, if any, are paid unless the Enterprise's capital is, or after the payment, would be, below the estimated minimum capital requirement.

a. *First Quarter.* In the first quarter, the dividend is the dividend per share ratio for common stock from the quarter preceding the Stress Test times the current number of shares of common stock outstanding.

b. *Subsequent Quarters.*

(1) In the three subsequent quarters, if the preceding quarter's after tax income is greater than after tax income in the quarter preceding the Stress Test, (adjusted by the ratio of the Enterprise's retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost), pay the larger of (1) the dividend per share ratio for common stock from the quarter preceding the Stress Test times the current number of shares of common stock outstanding or (2) the average dividend payout ratio for common stock for the four quarters preceding the start of the Stress Test times the preceding quarter's after tax income (adjusted by the reciprocal of the ratio of the Enterprise's retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost) less preferred dividends paid in the current quarter. In no case may the dividend payment exceed an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter.

(2) If the previous quarter's after tax income is less than or equal to after tax income in the quarter preceding the Stress Test (adjusted by the ratio of the Enterprise's retained earnings and retained earnings after adjustments are made that revert investment securities and derivatives to amortized cost), pay the lesser of (1) the dividend per share ratio for common stock for the quarter preceding the Stress Test times the current number of shares of common stock outstanding or (2) an amount equal to core capital less the estimated minimum capital requirement at the end of the preceding quarter, but not less than zero.

* * * * *

3.12.3 * * *

[a]* * *

9. Subtract the net increase (or add the net decrease) in Retained Earnings related to Fair Value Hedges at the start of the stress test made in accordance with section 3.10.3.6.2[a]1.b. of this appendix.

Dated: January 24, 2003.

Armando Falcon, Jr.

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–2082 Filed 02–12–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 105

[OAG 104; AG Order No. 2656–2003]

RIN 1105–AA80

Screening of Aliens and Other Designated Individuals Seeking Flight Training

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Under section 113 of the Aviation and Transportation Security Act, certain aviation training providers subject to regulation by the Federal Aviation Administration are prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless the aviation training provider notifies the Attorney General of the identity of the candidate seeking training and the Attorney General does not notify the aviation training provider within 45 days that the candidate presents a risk to aviation or national security. On June 14, 2002, the Department issued two rulemaking documents, a proposed rule and an interim final rule, requesting comments on both documents.

This final rule implements the Flight Training Candidate Checks Program, by which aviation training providers will provide the required notification for specific categories of flight training candidates. The final rule also sets forth how aviation training providers may begin or resume instruction for candidates whom the Attorney General has determined do not present a risk to aviation and national security as a result of the risk assessment conducted pursuant to section 113 of the Aviation and Transportation Security Act.

DATES: *Effective date:* This rule is effective March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Robert E. Casey, Jr., Director, Foreign Terrorist Tracking Task Force, Mailbox 27, FBI Headquarters, 935 Pennsylvania Avenue, NW., Washington, DC 20535, Telephone (703) 414–9777.

SUPPLEMENTARY INFORMATION: On November 19, 2001, Congress enacted the Aviation and Transportation Security Act ("ATSA"), Pub. L. No.107–71. Upon enactment, section 113 of ATSA, 49 U.S.C. 44939, imposed notification and reporting requirements on certain persons who provide aviation training (hereinafter referred to as "Providers") to aliens and other specified individuals. The Department recognized that section 113 of ATSA became immediately effective upon enactment and that Providers had been forced to suspend the training of aliens covered by ATSA pending the implementation of a process for notification to the Attorney General and a determination whether the individual seeking training presents a risk to aviation or national security. The Department issued a notice on January 16, 2002 ("First Advance Consent Notice"), that stated that the Department was granting provisional advance consent for the training of three categories of aliens, based on an initial determination that persons in these categories did not appear to present a risk to aviation or national security. 67 FR 2238 (Jan. 16, 2002). The First Advance Consent Notice was superseded and the categories of advance consent modified in a notice published on February 8, 2002 ("Second Advance Consent Notice"). 67 FR 6051 (Feb. 8, 2002). The Second Advance Consent Notice was rescinded as of June 14, 2002, with the publication of the interim final rule, which instituted "expedited processing" in lieu of advance consent for certain alien pilots. 67 FR 41140 (June 14, 2002).

The Department also issued a proposed rule on the same date. 67 FR 41147 (June 14, 2002). The proposed rule set forth the manner in which candidates not eligible for expedited processing would be able to seek aviation training in compliance with section 113 of ATSA. Comments were invited on both the interim final rule and the proposed rule.

The Department received numerous comments from concerned individuals and organizations, including over 20 lengthy submissions. These comments covered numerous areas and all comments were considered. Many recommendations were adopted or taken into account in the preparation of this final rule. In addition, the Department made several stylistic changes to improve the clarity of the rule. A discussion of the comments follows.

1. Advance Consent

A number of commenters expressed the view that the Department should institute the former "advance consent" provisions, under which candidates who were both fully licensed and qualified pilots of large aircraft could obtain training without being subject to any risk assessment or background check. It was the opinion of these commenters that checks of these particular candidates serve no legitimate national security interest and merely create a deterrent for foreign candidates to train in the United States.

While the congressionally mandated requirements may have the unintended consequence of deterring some foreign nationals from seeking training from U.S. Providers, section 113 of ATSA requires the Department to conduct the risk assessments and the Department has no authority to waive this requirement. Moreover, the Department believes that the burden of complying with the regulations is comparatively small in relation to the benefits to security. During the brief time in which the expedited processing checks have been in effect, the process has resulted in the discovery and arrest of a number of persons for violations of the immigration and nationality laws, or on the basis of outstanding criminal warrants. The Department believes that the discovery of numerous immigration-related and criminal offenders among the expedited process candidates militates in favor of a thorough check system for all training candidates.

2. Expedited Processing

With regard to the expedited processing regulations that were issued after the advance consent notice, one commenter suggested that "[a]ir carrier employees under employment contracts with U.S. air carriers that are issued FAA Operations Specifications should be handled differently than those not employed by U.S. air carriers." In support of this comment, the commenter noted that an individual hired by an American air carrier must provide detailed professional, medical, and other information to satisfy Federal Aviation Administration ("FAA") requirements.

The commenter also suggested that the requirement that training dates be specified in advance denied Providers and pilots much-needed flexibility in complying with continuing training requirements. The commenter stated that "to force the air carriers to list an individual training date, to insist on an individual training course, to specify the exact time and date that a training event will be conducted * * * is not in the intent, or the letter of the Law."

The Department notes that while the FAA's system does contain certain security features, it is not focused on terrorism prevention in the same way as

section 113 of ATSA. Section 113 of ATSA requires the Department to conduct the risk assessments and the Department has no authority to waive this requirement. Moreover, through implementation of the expedited processing system, the Department already has discovered individuals attempting to seek covered flight training who were not eligible to be trained under the law. Accordingly, the Department will continue checks for all flight training candidates included within the ambit of section 113 of ATSA.

As to the second point, the Department agrees that the vicissitudes of scheduling, in combination with the busy schedules of many professional aviators and Providers, warrants some additional flexibility. Accordingly, § 105.10(b)(4) of the rule has been changed to allow for greater flexibility in training dates.

The Department also received the suggestion that expedited processing should include foreign nationals not "current and qualified" under § 105.12(a)(1). While the Department acknowledges that the "current and qualified" requirement for expedited processing does leave out certain individuals who might have been made eligible for expedited processing, the Department created easily-enforced and carefully-defined limits for expedited processing. In so doing, it consulted with the FAA and determined that the "current and qualified" requirement for expedited processing would be easily understood and enforced. The Department believes that, with the advent of web-based access to the risk assessment system, those candidates not eligible for expedited processing will have a turnaround time for their applications comparable to that of the expedited processing candidates. Accordingly, this aspect of the expedited processing requirement has not been changed.

An aviation industry association suggested that the Department expand the expedited processing categories to include current employees of United States and foreign air carriers operating under Part 129 of the Federal Aviation Regulations regardless of whether the individuals were current and qualified in aircraft weighing 12,500 pounds or more. In addition, some commenters urged that ground training with no flight simulator time be excluded from the scope of the regulation, or at least that candidates be able to undergo ground training pending the completion of their risk assessments. Commenters were concerned that the scope of the regulations was too broad, and imposed too great an administrative burden.

The Department has determined that waiving the "current and qualified" requirement could have a deleterious effect on security. While all employees of air carriers subject to FAA regulation do undergo certain background checks, these checks are not an adequate substitute for the risk assessment required pursuant to section 113 of ATSA. Under expedited processing, several individuals not eligible to be trained under the law have been discovered seeking flight training. Therefore, the Department will require thorough risk assessments for these candidates. As to the possibility of allowing certain training events to proceed either prior to or without a risk assessment, the Department cannot waive the requirements of ATSA. As a result, training cannot be allowed to begin before the end of the required 45-day notification period unless the Department has affirmatively authorized it. In most cases, the Department anticipates being able to authorize the commencement of training within a fraction of the 45-day notification period after submission of the candidate's fingerprints. Accordingly, requiring Providers to wait for authorization from the Department before beginning training should not impose a significant burden on those Providers.

An aviation industry association pointed out that existing regulations of the Federal Aviation Administration require crew members of aircraft weighing *more* than 12,500 pounds to have what is known as a "type rating" to operate them. Crew members of aircraft weighing 12,500 pounds or less (except in the case of jets) are not required to have type ratings. This causes some confusion with regard to section 113 of ATSA, which, by its terms, does not refer to type ratings, but instead to aircraft weighing 12,500 pounds and more.

To resolve this divergence between section 113 of ATSA and FAA regulations regarding type ratings, the Department has amended § 105,12(a)(1) of the rule. Henceforth, persons who are qualified on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less will not be eligible to obtain expedited processing.

An aircraft manufacturer commented that, in many cases, fully qualified pilots come to receive familiarization training in connection with the purchase of an aircraft. At present, the regulations only provide for expedited processing of training requests for familiarization training provided in order to transport the aircraft to the purchaser or recipient. The commenter also pointed out that the familiarization training that accompanies the purchase of a new aircraft is not always provided directly in conjunction with the "delivery" of the aircraft.

The Department agrees that training provided in connection with the sale of a particular aircraft, as long as such training is limited to familiarization training and not basic flight instruction, should be subject to expedited processing. Accordingly, the language of § 105.12(a)(2) has been amended to broaden the expedited processing category that deals with familiarization training. As revised, the section no longer limits familiarization training to pilots directly involved with the transport of an aircraft to the purchaser. Rather, any familiarization training in connection with the sale of a particular aircraft will qualify for expedited processing, regardless of whether the trainee will ultimately be responsible for transporting the aircraft to the purchaser.

3. Candidates Not Eligible for Expedited Processing

The process by which aliens not eligible for expedited processing will receive approval from the Department to be trained is a two-step process. It is generally similar to the process set forth in the proposed rule. As prescribed in this rule, the alien initially will be required to complete a detailed form requesting information regarding his or her background, including employment information and the source of funds being used to pay for the training. After this form is completed, it will be submitted to the Foreign Terrorist Tracking Task Force ("FTTTF") on behalf of the alien by the Provider. Upon receiving this information, the FTTTF will conduct a detailed risk assessment of the alien. Assuming no potential risks are discovered, the Provider or the alien will be notified that the alien may now proceed to the Provider where he or she will receive the necessary fingerprinting instructions. After receiving this notice, the alien must have his or her fingerprints taken under the direct observation of a law enforcement or consular officer, or another specifically authorized individual.

After the fingerprints are taken, the candidate will receive a receipt that should be given to the Provider. The Provider then will notify the FTTTF electronically that the alien has completed the fingerprinting requirement.

After the Provider has furnished this notification, the Department will complete its final review of the risk presented by the alien. In most cases, the Department anticipates being able to authorize the commencement of training within a fraction of the 45-day notification period after submission of the candidate's fingerprints. If the Department subsequently uncovers a problem, the FTTTF will order the Provider to cease training, in accordance with section 113(b) of ATSA.

4. Training Dates

Concerning flexibility with regard to training dates, one recommendation was that candidates be given up to 13 months to commence training following approval, provided there were no material changes in the information provided to the Department. It was also suggested that candidates be permitted to receive approval for several different courses of training.

The Department has determined that sound security practices require that training take place at a time and place known to the Department and that training occur within a reasonable amount of time following the request. Nevertheless, the Department agrees that some additional flexibility within this program, the Flight Training Candidate Checks Program ("FTCCP"), would not be inconsistent with security interests. Hence, changes have been made to § 105.10(b)(4) to allow actual training to occur within 30 calendar days of the scheduled training date.

5. Fingerprinting

Several concerns were raised by commenters on the subject of the fingerprinting process. Among these was the concern that requiring candidates to go before local law enforcement as the primary method of collecting fingerprints would be unduly burdensome given the possibility of a waiting period of up to 45 days after the candidate arrives in the United States before training can commence.

The Department agrees that requiring candidates to arrive in the United States 45 days prior to training would pose many problems and serve as a significant deterrent to U.S. training for some candidates. The 45-day time frame for action by the Department after the submission of all required information was established by the statute. The Department does not anticipate requiring this much time to conduct the necessary checks and assessments for the vast majority of candidates. The anticipated future use of electronic fingerprinting equipment will permit the fingerprint processing (including all necessary checks) to be completed in most cases in less than 24 hours after the proper electronic submission of a set of prints.

Commenters also expressed a preference for collecting the required fingerprints at U.S. embassies and consulates before a candidate undertakes the expense of traveling to this country and being subject to a 45-day waiting period. This option may prove difficult given limitations on State Department diplomatic personnel. At the present time, embassies and consulates cannot accommodate candidates in this regard. The final rule, however, has been drafted to allow for fingerprints to be taken abroad at U.S. Government agencies as these options become more feasible in the future. In addition, the Department is negotiating to obtain access to a process that may allow candidates to comply with its fingerprint requirements through the Immigration and Naturalization Service and its successor organizational unit in the Department of Homeland Security Directorate of Border and Transportation Security ("INS"), which has the most advantageous system for the prompt electronic processing of fingerprints available in the government, to allow INS to take fingerprints at its Application Support Centers. It is anticipated that INS centers, including centers abroad, may become available for fingerprinting candidates in the future.

Suggestions that fingerprints be collected in electronic format are consistent with the Department's future plans but dependent upon the resources and technology available to the FTCCP.

Another comment questioned the purpose of the fingerprinting provisions. Commenters believed that the databases against which fingerprints would be checked contain, for the most part, information obtained from crimes committed in the United States. Accordingly, they said that such records check on a foreign national would rarely produce any meaningful results. In the past, this may have been true; however, Departmental fingerprint resources are expanding to include substantial amounts of relevant data—including foreign records—that justify the requirement. The requirement also will help to prevent identity fraud by training candidates.

As provided in § 105.13(c) and (f) of the regulation, the Department may authorize private individuals to take the required fingerprints on a case-by-case basis if it determines that such individuals possess the necessary training and will be able to ensure the integrity of the fingerprinting process. The Department anticipates that some Providers may seek to engage the services of dependable fingerprinting experts in order to facilitate the fingerprint submission process.

6. Weight Classes

One commenter inquired about the distinction made in section 113 between large aircraft (over 12,500 pounds, maximum certificated takeoff weight) and smaller aircraft. According to this commenter, "the statement on the FAQ portion of [the] web page * * * leads [him] to believe that any foreign nationals and nationals of the United States desiring to attend training at any FAA approved and certificated flight school must register."

At this time, section 113 applies only to training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Training in the operation of a smaller aircraft, however, is included under certain special circumstances. For example, some lines of jets, such as the Cessna Citation and the Lear, are manufactured with several different models with maximum certificated takeoff weights ranging above and below 12,500 pounds. A Provider must furnish the required notification if the Provider is furnishing training that would allow the candidate to fly an aircraft with a certificated takeoff weight of 12;500 pounds or more in accordance with applicable FAA regulations. This matter has been addressed in § 105.10(b)(1) of the rule.

Section 113 applies to students who: (1) Are not citizens or nationals of the United States, or who fall into another category designated by the Under Secretary of Transportation for Security; (2) wish to receive flight training in aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, or if the training would allow the candidate to fly a model of the same or substantially similar type of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more in accordance with FAA regulations; *and* (3) wish to receive flight training from an FAA regulated flight training provider that will lead to an FAA certification, rating, or other FAA-covered distinction, regardless of whether training occurs in the United States or abroad.

Another commenter stated that the rule prevents people from obtaining flight training in the United States, but does not prevent them from gaining the same skills in another country. The commenter also stated that training in the operation of a light aircraft, which is not subject to regulation under

section 113 of ATSA, might be sufficient to allow a potential terrorist to steer a large aircraft.

Because Congress has not, to date, chosen to include training on aircraft with a maximum certificated takeoff weight of less than 12,500 pounds within the scope of the statute, the Department does not have the discretion to expand the scope of this rule to cover training on such aircraft (except where training in such aircraft could lead to a type rating that might enable a candidate to fly a larger aircraft).

7. Dry Leasing

Various organizations commented on the subject of a common industry practice known as "dry-leasing." In a "dry-lease" arrangement, an air carrier utilizes an established flight training facility's equipment and classrooms for its crews but provides its own instructors, curriculum, and record keeping. The Department has determined that, in certain circumstances, flight training providers participating in dry leases as lessors will be subject to the reporting requirements of section 113 even though they may not have direct control over who receives training. Many believe that it is inappropriate to impose these requirements on facility owners given that they do not have a direct relationship with the candidate who is to receive training.

The Department is sensitive to this concern. It is, however, the opinion of the Department and the FAA that, if U.S. flight training providers were able to dry lease simulator equipment to unregulated foreign providers, Congress's intent in passing ATSA would be frustrated.

8. The Web Site

The Department also has received various comments on the web-based system designed for initial flight training candidates to submit information. Among the more technical concerns was the observation that the Web site contains a number of information fields designated as "optional." Commenters stated that the information required by the existing system is sufficiently extensive to obviate any need for "optional" data. Instead, it was recommended that the Department collect only the data needed to determine if the candidate poses a threat to aviation or national security.

It is not the Department's intention to make any portion of the FTCCP form "optional." Nevertheless, some fields had to be made—at least provisionally—"optional" from a functional perspective because the information might not be available or applicable to the individual filling out the form. For example, the form requests visa information, which some candidates may not possess at the time they submit their applications. In other cases, candidates filling out the form are asked for "optional" information about their Provider (*i.e.*, Provider's Tax ID number, student ID number and end date for training). Commenters note that this information should not be required, as it should already be available to the Department.

All applicable items on the form that can be answered by the candidate must be answered, and all have been selected as helpful in some manner to the necessary risk assessment. In most cases, the form cannot be submitted without complete information. Moreover, in filling out the form, candidates are required to give full and complete answers. Where any item of information sought from a candidate is available to the candidate, the FTCCP form's request for that item of information should not be considered "optional."

An industry commenter also found the link on the FTCCP Web site to the FAA's home page confusing and unnecessary. The commenter felt that Providers already would have registered with the FTCCP and that the candidate would be able to locate the Provider through that system without any need to go to the FAA's web page.

The Department believes that it is important to have a link to the FAA on the FTCCP website because the FAA maintains valuable information on this website (including lists of Providers) that will be important to users of the FTCCP Web site. Accordingly, with the advice and cooperation of the FAA, the Department has modified the Web site to eliminate confusion.

9. Relationship to Other Regulations

A commenter pointed out an apparent conflict between the regulations created under section 113 of ATSA and certain regulations established by the INS. Under ATSA, the Department has up to 45 days to notify a Provider not to train a candidate. According to the commenter, this could conflict with an INS regulation requiring individuals admitted to the U.S. under F–1 (student) visas to commence their courses of study within 30 days of arrival. *See* 8 CFR 214.2(f)(5)(i). The Department notes the potential conflict. If students were compelled by ATSA to wait for 45 days after arriving in the United States before beginning training, they might thereby be forced into violating the INS's 30-day requirement. In practice, however, no conflict is anticipated.

For the purposes of flight training and when feasible, the Department encourages students not eligible for expedited processing to arrive in the United States approximately two weeks before their scheduled training. In the vast majority of cases, this will be enough time to satisfy the fingerprint requirement and ensure that training begins when scheduled. It should also be noted that most individuals seeking aviation training independent of an employment contract or as part of a degree program will not have F–1 (student) visas.

A manufacturing association stated that "any law or regulation which discourages legitimate pilot candidates from training in the U.S. will undoubtedly compromise aviation safety globally, and could harm U.S. citizens traveling abroad." While supportive of security measures generally, the association believes that flight training candidates could be more efficiently checked and monitored if the INS and the FTTTF were to combine and coordinate their regulations regarding data collection and processing. In particular, the association made reference to the INS's Student and Exchange Visitor Information System ("SEVIS") and the Automated Biometric Identification System ("IDENT"). The Department notes that SEVIS and IDENT do not serve the same purpose as the FTCCP. Nevertheless, the Department is making every effort to coordinate the resources of the FTCCP and the INS in implementing this system.

The association also recommended that prospective flight students who were required to apply for M–1 (technical training) or J–1 (exchange visitor programs) visas should submit information regarding their intentions with regard to aviation training at that time. Visas are issued by the State Department; information and risk assessments generated by the FTCCP will be provided to the State Department, which may choose to use these assessments and information in visa determinations.

10. The FTCCP Help Line

Several commenters asked the Department to extend the hours of operation for the help line supporting this system because "last minute changes in training schedules occur frequently and need to be addressed immediately." As noted above, the Department has made amendments to the rule to allow for some additional flexibility with regard to training dates. Nevertheless, at this time, resource constraints prevent operation of the help line 24 hours per day, seven days per week.

11. Training

There was some confusion as to what constitutes "training" within the meaning of section 113 of ATSA. Accordingly, the Department, in consultation with the FAA, has modified § 105.10(a) of this rule to resolve this concern by including a definition of training that specifically includes "ground school" but excludes the provision of written materials, such as manuals.

12. Designations by the Under Secretary of Transportation for Security

Section 113 of ATSA provides that the Under Secretary of Transportation for Security may designate individuals who, in addition to aliens, would be subject to the notification requirements of the statute should they seek training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. As of this time, the Under Secretary has made no designations. Because this is a matter within the discretion of the Under Secretary, this rule states only that individuals designated by the Under Secretary will not be eligible for expedited processing.

13. Training by or on Behalf of the Department of Defense

Training by the Coast Guard or a component of the Department of Defense is not covered by section 113 of ATSA and is therefore not subject to this regulation. Likewise, training by Providers pursuant to contracts with the Department of Defense are not covered by the regulation. A question was raised as to whether training by subcontractors was within the ambit of the statute. The Department has added language to § 105.10(a)(2) to clarify that any training conducted at the behest of the Coast Guard or Department of Defense for a military purpose is not subject to this rule, regardless of whether the training itself is administered by a subcontractor.

Conclusion

Initial experience with the regulations implementing section 113 of ATSA generally has been positive. While the Department recognizes the burdens imposed on the aviation industry and individuals by ATSA, it is striving to produce a policy consistent with ATSA that will realize security goals while simultaneously protecting the commercial interests of the aviation industry.

Regulatory Procedures

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), the Attorney General, by approving this regulation, certifies that this rule will have a significant economic impact on a substantial number of small entities. As a result, the Department has prepared the following Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 603.

Section 113 of ATSA requires the Department to conduct risk assessments to determine if providing flight training to certain aliens presents a risk to aviation or national security. The Department has no authority to waive this requirement.

The small entities affected by this rule include virtually all Providers furnishing flight instruction to aliens or other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Pursuant to section 113 of ATSA, Providers are prohibited from furnishing any instruction to such candidates until the Attorney General is able to provide a means for determining whether the candidate presents a risk to aviation or national security. The purpose of this rule is to provide a mechanism by which Providers may instruct candidates deemed by the Attorney General not to present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA.

Because section 113 of ATSA prohibits training of aliens without a prior risk assessment, the issuance of the rule will have a beneficial effect on small businesses because the rule will allow Providers to resume training for aliens determined by the Attorney General not to present a risk to aviation or national security: The only costs incurred by Providers complying with this regulation will be the minimal costs they incur when providing the required notification to the Attorney General. The Department is not aware of any studies or data detailing the effects of this regulation on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget ("OMB") for review.

The amendments made by ATSA prohibit the training by Providers of any alien without notification and clearance by the Attorney General. Notwithstanding the institution of the expedited processing procedures on June 14, 2002, this prohibition continues to impose a substantial economic burden on both Providers and air carriers utilizing alien pilots and flight engineers because aliens not eligible for expedited processing have been prohibited from receiving training since the enactment of the ATSA. These regulations are essential to providing a means to allow Providers and air carriers to function smoothly by allowing flight instruction for those candidates not provided relief through the publication of the interim final rule.

Paperwork Reduction Act of 1995

This information collection has been approved and assigned OMB Control Number 1105–0074. If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW, Washington, DC 20530.

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive

Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 28 CFR Part 105

Administrative practice and procedure, Airmen, Reporting and recordkeeping requirements, security measures, Terrorism.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is amended by revising part 105 to read as follows:

PART 105—SECURITY RISK ASSESSMENTS

Subpart A—[Reserved]

Subpart B—Aviation Training for Aliens and Other Designated Individuals

Sec.

105.10 Definitions, purpose, and scope.
105.11 Individuals not requiring a security risk assessment.
105.12 Notification for candidates eligible for expedited processing.
105.13 Notification for candidates not eligible for expedited processing.
105.14 Risk assessment for candidates.

Authority: Section 113 of Pub. L. 107–71, 115 Stat. 622 (49 U.S.C. 44939).

Subpart B

§ 105.10 Definitions, purpose, and scope.

(a) *Definitions.*

ATSA means the Aviation and Transportation Security Act, Public Law 107–71.

Candidate means any person who is an alien as defined in section 101(a)(3) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(3), or a person specified by the Under Secretary of Transportation for Security, who seeks training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more from a Provider.

Certificates with ratings recognized by the United States means a valid pilot or flight engineer certificate with ratings issued by the United States, or a valid foreign pilot or flight engineer license issued by a member of the Assembly of the International Civil Aviation Organization, as established by Article 43 of the Convention on International Civil Aviation.

Notification means providing the information required under this regulation in the format and manner specified.

Provider means a person or entity subject to regulation under Title 49 Subtitle VII, Part A, United States Code. This definition includes individual training providers, training centers, certificated carriers, and flight schools. Virtually all private providers of instruction in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more are covered by section 113 of ATSA (49 U.S.C. 44939) and are therefore subject to this rule. Providers located in countries other than the United States are included in this definition to the extent that they are providing training leading to a United States license, certification, or rating. Providers who "dry-lease" simulator equipment to individuals or entities for use within the United States are deemed to be providing the training themselves if the lessee is not subject to regulation under Title 49. Providers located in countries other than the United States who are providing training that does not lead to a United States pilot or flight engineer certification, or rating are not included in this definition. When the Department of Defense or the U.S. Coast Guard, or an entity providing training pursuant to a contract with the Department of Defense or the U.S. Coast Guard (including a subcontractor), provides training for a military purpose, such training is not subject to Federal Aviation Administration (FAA) regulation. Accordingly, these entities, when providing such training, are not "person[s] subject to regulation under this part" within the meaning of section 113 of ATSA.

Training means any instruction in the operation of an aircraft, including "ground school," flight simulator, and in-flight training. It does not include the provision of training manuals or other materials, and does not include mechanical training that would not enable the trainee to operate the aircraft in flight.

(b) *Purpose and scope.*

(1) Section 113 of ATSA (49 U.S.C. 44939) prohibits Providers from furnishing candidates with training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more without the prior notification of the Attorney General. Training in the operation of smaller aircraft is considered to be training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more if the training would lead to a type rating allowing the candidate to operate a model of the same or substantially similar type of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more in accordance with FAA regulations. The purpose of this notification is to allow the Attorney General to determine whether such an individual presents a risk to aviation or national security before training may begin. The Department believes that it is not required to make a candidate wait for 45 days in order to begin training if the Department has completed its risk assessment. Therefore, after providing the required notification to the Attorney General as described in this subpart, the Provider may begin instruction of a candidate if the Attorney General has informed the Provider that the Attorney General has determined as a result of the risk assessment conducted pursuant to section 113 of ATSA that providing the training does not present a risk to aviation or national security. If the Attorney General does not provide either an authorization to proceed with training or a notice to deny training within 45 days after receiving the required notification, the Provider may commence training at that time. All candidates who are not citizens or nationals of the U.S. must show a valid passport establishing their identity to a Provider before commencing training.

(2) The Department may, at any time, require the resubmission of all or a portion of a candidate's training request, including fingerprints. If, after approving any training application, the Department determines that a candidate presents a risk to aviation or national security, it will notify the Provider to cease training. The Provider who submitted the candidate's identifying information will be responsible for ensuring that the training is promptly halted, regardless of whether another Provider is currently training the candidate.

(3) Providing false information or otherwise failing to comply with section 113 of ATSA may present a threat to aviation or national security and is subject to both civil and criminal sanctions. The United States will take all necessary legal action to deter and punish violations of this section.

(4) Providers should make every effort to ensure that approved training occurs on the dates specified in the training request at the location of the Provider who submitted the request. However, where scheduling problems or other exigent circumstances prevent this from happening, training may be rescheduled for any time within 30 days of the approved training dates without submitting an additional request. If any scheduling change of greater than 30 days occurs, a new request with the corrected training dates must be submitted. Any proposed change in location or Provider must precipitate a new request, although Providers may employ the assistance of other Providers or their facilities for a portion of the training, provided that the substantial majority of the training occurs at location of the Provider who submitted the request.

§ 105.11 Individuals not requiring a security risk assessment.

(a) *Citizens and nationals of the United States.* A citizen or national of the United States is not subject to section 113 of ATSA unless otherwise designated by the Under Secretary of Transportation for Security. A Provider must determine whether a prospective trainee is a citizen or national of the United States prior to providing training in the operation of an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. To establish United States citizenship or nationality, the prospective trainee must show the Provider from whom he or she seeks training any of the following documents as proof of United States citizenship or nationality:

(1) A valid, unexpired United States passport;

(2) An original or government-issued certified birth certificate with a registrar's raised, embossed, impressed or multicolored seal, registrar's signature, and the date the certificate was filed with the registrar's office, which must be within 1 year of birth, together with a government-issued picture identification of the individual named in the birth certificate (the birth certificate must establish that the person was born in the United States or in an outlying possession, as defined in section 101(a)(29) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(29)));

(3) An original United States naturalization certificate with raised seal, INS Form N–550 or INS Form N–570, together with a government-issued picture identification of the individual named in the certificate;

(4) An original certification of birth abroad with raised seal, Department of State Form FS–545 or Form DS–1350, together with a government-issued picture identification of the individual named in the certificate;

(5) An original certificate of United States citizenship with raised seal, INS Form N–560 or Form N–561, together with a government-issued picture identification of the individual named in the certificate; or

(6) In the case of training provided to a federal employee (including military personnel) pursuant to a contract between a federal agency and a Provider, the agency's written certification as to its employee's United States citizenship/nationality, together with the employee's government-issued credentials or other federally-issued picture identification.

(b) *Exception.* Notwithstanding paragraph (a) of this section, a Provider is required to provide notification to the Attorney General with respect to any individual specified by the Under Secretary of Transportation for Security. Individuals specified by the Under Secretary of Transportation for Security will be identified by procedures developed by the Department of Transportation and are not eligible for expedited processing under § 105.12 of this part.

§ 105.12 Notification for candidates eligible for expedited processing.

(a) *Expedited processing.* The Attorney General has determined that providing aviation training to certain categories of candidates presents a minimal additional risk to aviation or national security because of the aviation training already possessed by these individuals or because of risk assessments conducted by other agencies. Therefore, the following categories of candidates are eligible for expedited processing, unless the candidate is an individual specified by the Under Secretary of Transportation for Security:

(1) Foreign nationals who are current and qualified as pilot in command, second in command, or flight engineer with respective certificates with ratings recognized by the FAA for aircraft with a maximum certificated takeoff weight of over 12,500 pounds, or who are currently employed and qualified by U.S. regulated air carriers as pilots on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Foreign nationals who are commercial, governmental, corporate, or military pilots of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who are receiving training on a particular aircraft in connection with the sale of that aircraft, provided that the training provided is limited to familiarization (*i.e.*, training required by one who is already a competent pilot to become proficient in configurations and variations of a new aircraft) and not initial qualification or type rating; or

(3) Foreign military or law enforcement personnel who must receive training on a particular aircraft given by the United States to a foreign government pursuant to a draw-down authorized by the President under section 506(a)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2318(a)(2)), if the training provided is limited to familiarization.

(b) *Notification.* Before a Provider may conduct training for a candidate eligible for expedited processing under paragraph (a) of this section, the Provider must submit the following information to the Department:

(1) The full name of the candidate;

(2) A unique student identification number created by the Provider as a means of identifying records concerning the candidate;

(3) Date of birth;

(4) Country of citizenship;

(5) Passport issuing authority;

(6) Dates of training; and

(7) The category of expedited processing under paragraph (a) of this section for which the candidate qualifies.

(c) *Commencement of training.* (1) The notification must be provided electronically to the Department by the Provider in the specific format and by the specific means identified by the Department. Notification must be made by electronic mail. Only notifications sent from an electronic mail address registered as a Provider will be accepted. Specific details about the mechanism for the notification will be made available by the Department and distributed through the FAA.

(2) After the complete notification is furnished to the Department, the Provider may commence training the candidate as soon as the Provider receives a response from the Department that the individual does not present a risk to aviation or national security as a result of the risk assessment conducted pursuant to section 113 of ATSA and the foreign national candidate presents a valid passport establishing his or her identity to the Provider. Receipt of this response from the Department will be deemed approval by the Department to commence training.

(d) *Records.* When a Provider conducts training for a candidate eligible for expedited processing, the Provider must retain a copy of the relevant pages of the passport and other records to document how the Provider made the determination that the candidate was eligible. The Provider also must retain certain identifying records regarding the candidate, including date of birth, place of birth, passport issuing authority, and passport number. The Provider must be able to reference these records by the unique student identification number provided to the Department pursuant to this

section. Providers also are encouraged to maintain photographs of all candidates trained by the Provider. Such records must be maintained for at least three years following the conclusion of training by the Provider. The Provider must also be able to use the unique student identification number to cross-reference any other documentation that the FAA may require the Provider to retain regarding the candidate.

§ 105.13 Notification for candidates not eligible for expedited processing.

(a) A Provider must submit a complete *Flight Training Candidate Checks Program* (FTCCP) form and arrange for the submission of fingerprints to the Department in accordance with this section prior to providing flight training, except with respect to persons whom the Provider has determined, as provided in § 105.11 of this part, are not subject to a security risk assessment. A separate FTCCP form must be submitted for each course or instance of training requested by a candidate. A set of fingerprints must be submitted in accordance with this rule prior to the commencement of any training. Where a Provider enlists the assistance of another Provider in training a candidate, no additional request need be submitted, as long as the specific instance of training has been approved.

(b) The completed FTCCP form must be sent to the Attorney General via electronic submission at *https://www.flightschoolcandidates.gov*. The form must be submitted no more than three months prior to the proposed training dates. No paper submissions of this form will be accepted.

(1) In order to ensure that such electronic submissions are made by FAA certificated training providers, Providers must receive initial access to the system through the FAA. Providers should register through their local FAA Flight Standards District Offices. The FAA has decided that registration will be only by appointment. Upon registration, Providers will be sent (via electronic mail) an access password to use the system.

(2) Candidates may complete the online FTCCP form at *https://www.flightschoolcandidates.gov* to reduce the burden on the Provider. After the form has been completed by a candidate, it will be forwarded electronically to the Provider for verification that the candidate is a bona fide applicant. Verification by the Provider will be considered submission of the form for purposes of paragraph (a) of this section. To reduce the burden on the candidates, personal information needs only to be updated, rather than reentered, for each subsequent training request.

(c) Candidates must submit fingerprints to the Federal Bureau of Investigation (FBI) as part of the identification process. These fingerprints must be taken by, or under the supervision of, a federal, state, or local law enforcement agency, or by another entity approved by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division. Where available, fingerprints may be taken by U.S. government personnel at a United States embassy or consulate. Law enforcement agencies and U.S. diplomatic installations are not required to participate in this process, but their cooperation is strongly encouraged. Any individual taking fingerprints as part of the notification process must comply with the following requirements when taking and processing fingerprints to ensure the integrity of the process:

(1) Candidates must provide two forms of identification at the time of fingerprinting. In the case of aliens, one of the forms of identification must be the individual's passport. In the case of United States citizens or nationals designated by the Under Secretary of Transportation for Security, a valid photo driver's license issued in the United States may be submitted in lieu of a passport;

(2) The fingerprints must be taken under the direct observation of a law enforcement or consular officer, or another specifically authorized individual. Individuals other than law enforcement or consular officers will only be approved on a case-by-case basis by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division, upon a showing that they possess the necessary training and will ensure the integrity of the fingerprinting process;

(3) The fingerprints must be processed by means approved by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division;

(4) The fingerprint submissions must be forwarded to the FBI in the manner specified by the Director of the Foreign Terrorist Tracking Task Force, in consultation with the FBI's Criminal Justice Information Services Division;

(5) Officials taking fingerprints must ensure that any fingerprints provided to the FBI are not placed within the control of the candidate or the Provider at any time; and

(6) Candidates must pay for all costs associated with taking and processing their fingerprints.

(d) In accordance with Public Law 101–515, as amended, the Director of the FBI is authorized to establish and collect fees to process fingerprint identification records and name checks for certain purposes, including non-criminal justice and licensing purposes. In addition to the cost to the FBI for conducting its review, other fees may be imposed, including the cost of taking the fingerprints and the cost of processing the fingerprints and submitting them to the FBI for review. Because the total fee may vary by agency, the candidate must check with the entity taking the fingerprints to determine the applicable total fee. This payment must be made at the designated rate for each set of fingerprints submitted.

(e) In some cases, candidates seeking training from Providers abroad may be unable to obtain fingerprints. If a Provider located in a country other than the United States can demonstrate that compliance with the fingerprint requirement is not practicable, a temporary waiver of the requirement may be requested by contacting the Foreign Terrorist Tracking Task Force. The Director of the Foreign Terrorist Tracking Task Force will have the discretion to grant the waiver, deny the waiver, or prescribe a reasonable, alternative manner of complying with the fingerprint requirement for each Provider location.

(f) The 45-day review period by the Department will not start until all the required information has been submitted, including fingerprints.

§ 105.14 Risk assessment for candidates.

(a) It is the responsibility of the Department of Justice to conduct a risk assessment for each candidate. The Department has made an initial determination that providing training to the aliens in the categories set forth in § 105.12(a) of this part presents minimal additional risk to aviation or national security and therefore has established an expedited processing procedure for these aliens. Based on the information contained in each FTCCP form and the corresponding set of fingerprints, the Department will determine whether a candidate not granted expedited processing presents a risk to aviation or national security.

(b) After submission of the FTCCP form by the Provider, the Department will perform a preliminary risk assessment.

(1) If the Department determines that a candidate does not present a risk to aviation or national security as a result of the preliminary risk assessment, the candidate or the Provider will be notified electronically that the Provider may supply the candidate with the appropriate materials and instructions to complete the fingerprinting process described in § 105.13(c) and (d) of this part.

(2) If the Department determines that the candidate presents a risk to aviation or national security, when appropriate, it will notify the Provider electronically that training is prohibited.

(3) For each complete training request submitted by a Provider, the Department will promptly conduct an appropriate risk assessment. Every effort will be made to respond to a training request in the briefest time possible. In routine cases, the Department anticipates granting approval to train within a fraction of the 45-day notification period after receiving a complete, properly submitted request, including fingerprints. In the unlikely event that no notification or authorization by the Department has occurred within 45 days after the proper submission under these regulations of all the required information, the Provider may proceed with the training, upon establishing the candidate's identity in accordance with paragraph (c) of this section.

(c) Providers must ascertain the identity of each candidate. For candidates who are not citizens or nationals of the United States designated by the Under Secretary of Transportation for Security, a Provider must inspect the candidate's passport and visa to verify the candidate's identity before providing training. Candidates who are citizens or nationals of the United States must present the documentation described in § 105.11(a) of this part. If the candidate's identity cannot be verified, then the Provider cannot proceed with training.

(d) If, at any time after training has begun, the Department determines that a candidate subject to this section being trained by a Provider presents a risk to aviation or national security, the Department shall notify the Provider to cease training. A Provider so notified shall immediately cease providing any training to the person, regardless of whether or in what manner such training commenced or had been authorized. The Provider who submitted the candidate's identifying information will be responsible for ensuring that the training is promptly halted, regardless of whether another Provider is currently training the candidate.

(e) With regard to any determination as to an alien candidate's eligibility for training, when appropriate, the Department will inform the Secretary of State and the Secretary of Homeland Security as to the identity of the alien and the determination made.

Dated: February 6, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–3384 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–19–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA280–0390B; FRL–7451–1]

Interim Final Determination That State Has Corrected Rule Deficiencies and Stay and/or Deferral of Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern SJVUAPCD Rules 2020 and 2201.

DATES: This interim final determination is effective on February 13, 2003. However, comments will be accepted until March 17, 2003.

ADDRESSES: Mail comments to Ed Pike, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rules that are the basis for today's action at our Region IX office during normal business hours: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may also see copies of the submitted rules at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified APCD, 1990 E. Gettysburg, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Ed Pike, EPA Region IX, (415) 972–3970 or send email to *pike.ed@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On July 19, 2001, we published a limited approval and limited disapproval of SJVUAPCD Rules 2020 and 2201 as adopted locally on September 17, and August 20, 1998, respectively, and submitted by the State on October 27, and September 29, 1998, respectively. 66 FR 37587 (July 19, 2001). We based our limited disapproval action on certain deficiencies in the submittal. This limited disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 19, 2001 (the effective date of our limited disapproval) and highway sanctions six months after the offset sanction is imposed, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On December 19, 2002, the SJVUAPCD adopted revisions to Rules 2020 and 2201 that were intended to correct the deficiencies identified in our limited disapproval action. On December 23, 2002, the State submitted these revisions to EPA.

In the Proposed Rules section of today's **Federal Register**, we have proposed approval of revised Rules 2020 and 2201 because we believe the revisions correct the deficiencies specified in our July 19, 2001, limited disapproval action.[1] Based on our proposed approval of the District's revisions to Rules 2020 and 2201, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our July 19, 2001, limited disapproval.

[1] The Proposed Rules section of today's **Federal Register** also contains our proposal to find that the approved California SIP is substantially inadequate because it cannot provide "necessary assurances" that no State law prohibits the State or districts from carrying out the Prevention of Significant Deterioration (PSD) or nonattainment New Source Review (NSR) portions of the SIP because California Health & Safety Code section 42310(e) exempts agricultural sources from permitting requirements. This additional action will require the State to provide the necessary assurances of authority required to implement the NSR program in the District as it applies to major agricultural sources.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination, or our proposed approval of revised Rules 2020 and 2201, we may take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then the sanctions and sanction clocks that were triggered by our July 19, 2001 limited disapproval will be permanently terminated on the effective date of a final rule approval of SJVUAPCD Rules 2020 and 2201.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with SJVUAPCD Rules 2020 and 2201 based on our proposal to approve the State's SIP revisions as correcting the specified deficiencies that prompted the finding to initiate sanctions.

Because EPA has preliminarily determined that the SJVUAPCD has corrected the specified deficiencies prompting EPA's limited disapproval action, and has also proposed to find that a State-wide agricultural exemption must be corrected, we have determined that it is appropriate to relieve the SJVUAPCD from sanctions as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the SJVUAPCD's and State's submittal and, through our proposed approval of the District's corrections, is indicating that it is more likely than not that the SJVUAPCD has corrected the deficiencies specified in the limited disapproval. Therefore, it is not in the public interest to impose sanctions solely on the District when the SJVUAPCD has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the SJVUAPCD's revisions of Rules 2020 and 2201. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 13, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: January 31, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–3417 Filed 2–12–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; DA 03–211]

Petition for Declaratory Ruling That Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for declaratory ruling.

SUMMARY: The Commission seeks comment on a petition for declaratory ruling from the Cellular Telecommunications & Internet Association (CTIA) asking the Commission to rule that wireline carriers are obligated to provide portability of their customers' telephone numbers to wireless carriers whose service area overlaps the wireline carriers' rate centers.

DATES: Comments are due on or before February 26, 2003, and reply comments are due on or before March 13, 2003

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Attorney, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

1. On January 23, 2003, the Cellular Telecommunications & Internet Association filed a Petition for Declaratory Ruling (Petition), asking the Commission to rule that wireline carriers are obligated to provide portability of their customers' telephone numbers to Commercial Mobile Radio Service (CMRS) providers whose service area overlaps the wireline carriers' rate centers. CTIA contends that some local exchange carriers (LECs) have narrowly construed the number portability obligations (as found at 47 CFR 52.23 and 52.31) with regard to CMRS providers, taking the position that portability is required only where CMRS providers have established a presence in the landline rate center where customers seek to port numbers from the LEC to CMRS providers.

2. We seek comment on the issues raised in the Petition. Interested parties may file comments on or before February 26, 2003. Reply comments are due March 13, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments and reply comments should be filed in the docket number, CC Docket No. 95–116.

3. This is a "permit but disclose" proceeding pursuant to § 1.1206 of the Commission's Rules. Ex parte presentations that are made with respect to the issues involved in the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's Rules.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

5. Parties who choose to file by paper must file an original and four copies of each filing. Each filing should include the applicable docket number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. In addition, a diskette copy should be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail to *qualexint@aol.com*.

6. The full text of the Petition and responsive comments will be available electronically on the Commission's ECFS under CC Docket No. 95–116. In addition, copies of these documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov*. This Public Notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cib/dro*. For further information concerning this proceeding, contact Jennifer Salhus, Policy Division, Wireless Telecommunications Bureau, at (202) 418–1310 (voice), Pam Slipakoff, at (202) 418–1500 (voice), or (202) 418–1169 (TTY).

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 03–3136 Filed 2–12–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 020603B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 9, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area is 11,741 metric tons (mt) as established by the interim 2003 harvest specifications of groundfish for the GOA (67 FR 78733, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,691 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3593 Filed 2–10–03; 3:59 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 30
Thursday, February 13, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2003–14484]

RIN 2105–AD24

Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend its rules governing airline computer reservations systems (CRSs), 14 CFR part 255, by changing the rules' expiration date from March 31, 2003, to January 31, 2004. If we do not revise the expiration date, the rules will terminate on March 31, 2003. This proposed extension of the current rules would keep them in effect while we carry out our reexamination of the need for CRS regulations. We have tentatively concluded that most of the current rules should be maintained on a temporary basis because they may be necessary for promoting airline competition and protecting consumers, although the Department may determine in its reexamination that the need for most or all of the rules has ended. The Department has previously extended the rules from their original December 31, 1997, expiration date, most recently to March 31, 2003.

DATES: Comments must be submitted on or before February 28, 2003. Late filed comments will be considered to the extent possible.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with Docket Number OST–2003–4484) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. Comments must be filed in Docket OST–2003–14484.

However, due to security procedures in effect since October 2001 on mail deliveries, mail received through the Postal Service may be subject to delays. Commenters should consider using an express mail firm to ensure the timely filing of any comments not submitted electronically or by hand.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

Electronic Access: You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on "search." An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara/index.html*.

SUPPLEMENTARY INFORMATION: We adopted rules governing CRS operations, 14 CFR part 255, because almost all airlines operating in the United States relied on the CRSs in marketing their airline services and each system was then controlled by one or more airlines or airline affiliates. 57 FR 43780, September 22, 1992. We found then that rules were necessary to ensure that each of the airlines and airline affiliates that controlled a system did not use the system to unfairly prejudice the competitive position of other airlines and to ensure that travel agents and their customers could obtain accurate and unbiased information from the systems. Our rules contained a sunset date to ensure that we would reexamine whether the rules remained necessary and, if so, whether they were effective.

As contemplated by the sunset date provision, we began a proceeding to reexamine whether the rules were necessary and effective by issuing an advance notice of proposed rulemaking. 62 FR 47606, September 10, 1997.

We later issued a supplemental advance notice of proposed rulemaking that asked the parties to update their comments. 65 FR 45551, July 24, 2000.

We recently issued a notice of proposed rulemaking where we tentatively concluded that most of the rules may remain necessary, at least in the short term, although we also proposed to eliminate some rules and to change others. 67 FR 69366, November 15, 2002. Our notice contains a lengthy and detailed discussion of the rulemaking issues, including our tentative findings on the relevant features of the airline distribution and CRS businesses. Comments and reply comments on our tentative findings on the need for CRS regulation and our proposals are due March 16 and May 15, 2003, respectively. 67 FR 72869, December 9, 2002.

By this notice we are proposing to extend the rules' expiration date to January 31, 2004, so that they will remain in force while we complete the rulemaking where we are reexamining the existing CRS rules. We have established a date for comments in that rulemaking proceeding that is only two weeks before the rules' current expiration date, and the reply comments are due several weeks after the current sunset date. We clearly cannot complete that rulemaking by March 31. Allowing the rules to sunset may be contrary to the public interest. Extending the sunset date will give us time to complete our reexamination of the rules as promptly as possible, so that the rules are updated to reflect current industry conditions and economic realities.

We have set a 15-day comment period so that we can publish a final decision on this proposal before the rules' current expiration date.

Notice of Proposed Rulemaking

Our notice of proposed rulemaking set forth our analysis and preliminary findings on the nature of the airline distribution and CRS businesses and on whether CRS rules appear necessary or

unnecessary. Important changes are occurring in the airline distribution system, especially the Internet's erosion of the airlines' dependence on the systems, and these developments may eliminate the need for many or all of our rules. 67 FR 69376–63977. Nonetheless, we tentatively concluded that at present rules should be maintained to protect airline competition and consumers. We have requested comment on whether we can eliminate some rules since airlines may have more bargaining leverage against the systems than we have found in past rulemakings, 67 FR 69368, and we will consider comments contending that additional rules can be eliminated or that the rules have become unnecessary.

Our notice of proposed rulemaking established a 60-day comment period and a 30-day reply comment period. Sabre and 18 other parties jointly asked us to extend the comment period by 60 days and the reply comment period by 30 days. We granted that request because providing the additional time was reasonable, due to the complexity of the issues, the length of our notice of proposed rulemaking, and the inclusion of three major holidays within the comment period. 67 FR 72869, December 9, 2002. Giving the parties adequate time for preparing comments will help us, since their comments should then be more thorough. The parties' petition to extend the comment period also included a request to extend the sunset date to September 30, 2003. We stated that we saw no reason to rule on that request and that we would consider that issue early this year. 67 FR 72870.

More recently Sabre filed a petition for a fact hearing. Sabre alleged that our notice of proposed rulemaking did not set forth an adequate factual basis for our proposals. We will address Sabre's request in a separate notice.

Proposed Extension of the Rules' Sunset Date

We have previously extended the sunset date five times, most recently to March 31, 2003. 62 FR 66272, December 18, 1997; 64 FR 15127, March 30, 1999; 65 FR 16808, March 30, 2000; 66 FR 17352, March 30, 2001; and 67 FR 14846, March 28, 2002.

We are again proposing to extend the expiration date for our CRS rules, to January 31, 2004, in order to maintain the rules while we complete our reexamination of the need for the rules and their effectiveness. The time needed for the parties' preparation of comments on our proposed rules, for our consideration of their comments and drafting of a final rule, and for the review by the Office of Management and Budget ("OMB") will prevent us from issuing revised final rules by March 31, 2003. By changing the sunset date, we would preserve the status quo until we determine which rules, if any, should be adopted. We have tentatively determined that doing so would be in the public interest.

As noted above, in our notice of proposed rulemaking we tentatively concluded that the rules appear to be necessary, at least in the near term, to protect airline competition and consumers against potentially unreasonable and unfair CRS practices, despite the on-going changes in airline distribution and the CRS business, although those changes may well eliminate the need for CRS rules in the longer term. Furthermore, our obligation under 49 U.S.C. 40105(b), formerly section 1102(a) of the Federal Aviation Act, then codified as 49 U.S.C. 1502(a), to act consistently with the United States' obligations under bilateral air services agreements may justify a short-term continuation of the rules. 67 FR 69384. We may decide in our rulemaking that the elimination of all or most of the rules would be consistent with our bilateral agreement obligations. We have asked the parties to comment on that issue. *See, e.g.*, 67 FR 69399.

In addition, any expiration of the current rules could be disruptive, since systems, airlines, and travel agencies have been conducting their operations in the expectation that each system will comply with the rules. Our preliminary regulatory impact assessment tentatively concluded that the continuation of the existing rules would not impose substantial costs on the systems. 67 FR 69421. If the rules are effective, they may also lower the costs for airline participants and increase the efficiency of travel agency operations. Thus, we tentatively believe that we should maintain the CRS rules in effect for 10 more months, during which we intend to make our final decision on whether CRS rules should be readopted and, if so, with what changes. As stated above, we recognize the importance of adopting final rules that reflect current conditions in the CRS and airline distribution businesses, and we intend to complete our reexamination of our rules as soon as reasonably possible.

Regulatory Process Matters

Regulatory Assessment

This rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. The proposal is also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

Maintaining the current rules for an additional 10 months should not, however, burden the systems with significant costs. Our notice of proposed rulemaking includes a preliminary regulatory assessment that explains why the existing rules do not appear to impose a significant burden on the systems or their users. 67 FR 69418–69423. We think the regulatory assessment included in our notice of proposed rulemaking should be applicable to our proposal to extend the rules' sunset date and that no new regulatory impact statement appears to be necessary. However, we will consider comments from any party on that analysis before we make this proposal final.

This rule would not impose unfunded mandates or requirements that would have any impact on the quality of the human environment.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. airlines and smaller travel agencies.

This notice of proposed rulemaking sets forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposed rule.

Our notice of proposed rulemaking on our overall reexamination of the CRS rules contains a tentative regulatory flexibility analysis on the rules' impact. That analysis appears to be valid for our proposed extension of the rules' termination date. Accordingly, we adopt that analysis as our tentative regulatory flexibility statement. We will consider any comments filed on that analysis in response to this proposal.

Our proposed rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other Federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law No. 96–511, 44 U.S.C. chapter 35.

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule will not limit the policymaking discretion of the States. Nothing in this proposal would directly preempt any State law or regulation. We are proposing this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. We believe that the policy set forth in this proposed rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute. Comments on these conclusions are welcomed and should be submitted to the docket.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and record-keeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR part 255 as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

255.12. Termination.

The rules in this part terminate on January 31, 2004.

Issued in Washington, DC on February 7, 2003, under authority delegated by 49 CFR 1.56a(h)2.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–3606 Filed 2–12–03; 8:45 am]

BILLING CODE 4910–62–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA086–SIP; FRL –7450–8]

Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority in section 110(k)(5) of the Clean Air Act (CAA or Act), EPA is proposing to find that the California State Implementation Plan (SIP) is substantially inadequate for all nonattainment air pollution control districts in the State and for all attainment area districts that have an approved Prevention of Significant Deterioration (PSD) program because the State cannot provide "necessary assurances" that it or the districts have authority to carry out the applicable nonattainment New Source Review (NSR) or PSD portions of the SIP. Specifically, sections 110(a)(2)(C) and (I) and 172 of the Act require the applicable implementation plan to contain a program for issuing permits to major stationary sources of air pollution pursuant to parts C and D of title I of the Act. In addition, section 110(a)(2)(E) requires that each SIP provide necessary assurances that the State or districts have adequate authority to carry out the SIP and that no state law prohibits the State or districts from carrying out any portion of the SIP. The California SIP does not meet these requirements because California Health & Safety Code section 42310(e) exempts new and modified major agricultural sources from all permitting, including PSD and NSR permitting otherwise required by parts C and D of title I of the Act. If EPA finalizes this proposed finding of substantial inadequacy, California will be required to amend its state law to eliminate the permitting exemption as it pertains to major agricultural sources of air pollution and submit the necessary assurances by November 23, 2003 to support an affirmative finding by EPA under section 110(a)(2)(E). If the State fails to submit the necessary assurances of authority or if EPA disapproves any such submittal in response to a final SIP call, sanctions will apply statewide pursuant to section 179 of the Act.

DATES: Comments must sent by March 17, 2003. EPA will respond to comments in its final action on this proposal.

ADDRESSES: Send comments to: Gerardo Rios, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can review and copy the existing SIP rules at EPA's Region 9 office from 8:30 am to 5 pm, Monday-Friday. A reasonable fee may be charged for copying.

Copies of the SIP rules are also available for inspection at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Please call Gerardo Rios, EPA Region IX, at (415) 972–3974 or send e-mail to *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Background

A. What Action Is EPA Proposing?

CAA section 110(k)(5) provides that whenever EPA finds the applicable implementation plan "is substantially inadequate to attain or maintain the relevant national ambient air quality

standard, * * * or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies." EPA today proposes to find that the approved California SIP is substantially inadequate because it cannot provide "necessary assurances" that the State or districts have the authority to issue permits under their PSD and nonattainment NSR SIPs to all major sources because Health & Safety Code section 42310(e) exempts major agricultural stationary sources from these permitting requirements.

B. How Does the California Health & Safety Code Exemption for Agricultural Sources Affect the Adequacy of the SIP?

For areas that fail to meet the National Ambient Air Quality Standards (NAAQS), section 110 and title I, part D of the Act require SIPs to contain a program for issuing "permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 173." CAA section 172(c)(5). EPA regulations establish that an approvable SIP program for issuing preconstruction permits "shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment * * *." 40 CFR 51.165(a)(2). Neither the Act nor EPA regulations allow any exemptions from permitting for new major sources, and our regulations contain only limited exemptions for major modifications. 40 CFR 51.165(a)(1)(v)(C).

For areas that attain the NAAQS, section 110 and title I, part C of the CAA require a PSD preconstruction permitting program for new and modified major stationary sources. *See, e.g.*, CAA section 165. EPA regulations also set forth the requirements for PSD permitting programs. 40 CFR 51.166. Like nonattainment NSR, neither the Act nor the PSD regulations contain exemptions from permitting for new major sources, and our regulations provide only limited ones for major modifications. *See* 40 CFR 51.166(b)(2)(iii).

California Health & Safety Code section 42310(e) exempts from all air permitting "equipment used in agricultural operations in the growing of crops or the raising of fowl or animals." As a result, the State and districts cannot issue permits to these agricultural sources, even if they are major stationary sources under the Act. The CAA NSR and PSD permitting requirements do not provide for this exemption.

Section 110(a)(2)(E) of the Act requires the State to provide assurances that it has "adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof) * * *." California Health & Safety Code section 42310(e) effectively prohibits the State and districts from fully implementing the SIP-approved NSR and PSD permitting programs for agricultural sources. Thus, the SIP does not comply with the requirement for the State to have adequate legal authority to fully implement the SIP. Therefore, the SIP for nonattainment areas and approved PSD programs in attainment areas in California is substantially inadequate and must be corrected.

C. How Can California Correct the SIP Inadequacy?

To correct the deficiency, EPA recommends that the State legislature amend Health & Safety Code section 42310(e) to remove the exemption as it applies to major agricultural sources. The State is already subject to a sanctions clock based on the Notice of Deficiency (NOD) that EPA issued on May 22, 2002, 67 FR 35990, with respect to the State's title V operating permits program. In that NOD, EPA explained that California Health & Safety Code section 42310(e) improperly exempted major agricultural sources from CAA title V permitting. The NOD stated: "EPA has determined that significant action in this instance means the revision or removal of Health and Safety Code 42310(e) so that local air pollution control districts have the required authority to issue title V permits to stationary agricultural sources that are major sources of air pollution." A similar correction with respect to NSR and PSD permitting is necessary to comply with this proposed action.

The May 2002 NOD notes that the title V regulations instruct EPA to apply sanctions in accordance with section 179(a) of the Act if California has not corrected the deficiency (removal or revision of the permitting exemption in Health and Safety Code section 42310(e)) prior to November 23, 2003 (18 months after the effective date of the NOD). The State legislature is required to take essentially the same action (*i.e.*, remove the agricultural permitting exemption for major stationary sources) to correct the SIP inadequacy discussed in this proposed action.

If EPA finalizes this SIP call and determines the State has failed to submit the necessary assurances addressing the deficiency by the required date, a sanctions clock would start for this SIP deficiency in accordance with section 179 of the Act. EPA proposes that if EPA determines the State fails to submit the necessary assurances to address the SIP call by November 23, 2003, or if EPA subsequently finds the correction does not adequately provide such assurances, sanctions would apply as specified under 40 CFR 52.31.[1]

D. Are Individual Districts Required To Revise Approved SIP Rules?

EPA is not calling for specific revisions to district rules at this time. We note that several districts may have exemptions for agricultural sources in their local SIP-approved rules.[2] We believe it is reasonable to wait for the State legislature to correct Health and Safety Code section 42310(e) first so that it is clear whether any such exemptions at the district level represent authority problems under section 110(a)(2)(E).[3] EPA, nonetheless, encourages districts to evaluate their SIP-approved rules to ensure that exemptions do not create potential authority problems. Once the State acts to address Health and Safety Code section 42310(e), EPA will work with the districts to determine if further rulemaking is necessary to address specific local deficiencies that remain after the State law change.

[1] EPA is using its authority in section 110(k)(5) to set a deadline that is less then 18 months. We believe the November 23, 2003, deadline is reasonable because action by this date is otherwise required to address the title V problems noted above.

[2] EPA has conducted a preliminary search for local rules exempting agricultural sources from NSR or PSD permitting requirements. The following districts may have one or more exemptions currently approved into the SIP: Bay Area, Butte, County, El Dorado, Feather River, Medocino, Placer, Sacramento and Yolo-Solano. As noted below, EPA will continue to evaluate the rules for all of the districts to identify more accurately any potentially problematic rule provisions in the SIP.

[3] We note that certain local exemptions are tied to exemptions such as Health and Safety Code section 42310(e) provided under State law. Removal of the exemption at the State level could automatically resolve authority problems at the district level. In addition, if the State legislature were to not only revise the language of Health and Safety Code section 42310(e) but also to clarify that any such local exemptions were also void, no further action by the districts may be necessary., Depending on the action at the State level, EPA may be able to make the required finding under 110(a)(2)(E) that the authority to carry out the permitting programs is not prohibited by any State or local law.

E. What Are the Consequences if We Finalize This Proposed Finding of Substantial Inadequacy?

If EPA finalizes this SIP call, as proposed, the State would need to submit to EPA a SIP revision providing the necessary assurances that it (or the districts) can fully implement the required NSR and PSD programs within the State. If the State fails to submit the required assurances or if EPA finds the submittal incomplete or disapprovable, sanctions would apply in accordance with CAA sections 179(a) and (b) and EPA regulations at 40 CFR 52.31. There are two types of sanctions: highway funding sanctions (section 179(b)(1)) and offset sanctions (section 179(b)(2)). Pursuant to our regulations at 40 CFR 52.31, offset sanctions will apply 18 months following a finding by EPA under section 179(a); highway funding sanctions would apply six months later.

II. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has historically exempted from Executive Order 12866 regulatory actions governing revisions to SIPs. It has been determined that today's proposed call for revisions to the SIP would not, in any event, be a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Today's proposed SIP call would not establish requirements applicable to small entities. Instead, it would require the State of California and several local air districts to develop, adopt, and submit SIP revisions that would provide the necessary assurances that the applicable NSR and PSD programs do not exempt major agricultural sources.

This rule will not have a significant impact on a substantial number of small entities because the rule does not establish requirements applicable to small entities. Therefore, the Administrator certifies that this action will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The proposed action will require the State of California and several local air districts to revise laws and regulations governing exemptions for agricultural sources. This requirement, even if considered a federal mandate,[4] would not result in aggregate costs over $100 million to either the state or local districts. In addition, this proposed rule, if finalized, will not significantly or uniquely impact small governments.

D. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not impose a new enforceable duty on the State (see *infra* note 1), and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

[4] It is unclear whether a requirement to submit a SIP revision would constitute a federal mandate. The obligation for a state to revise its SIP that arises out of sections 110(a) and 110(k)(5) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

E. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175 because it does not apply to any Tribes or otherwise have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA, nonetheless, specifically solicits additional comment on this proposed rule from tribal officials.

F. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

G. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, New Source Review, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 31, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–3416 Filed 2–12–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA280–0390A ; FRL–7450–9]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD or District) revised permit exemption and new source review (NSR) rules, Rules 2020 and 2201, respectively, for stationary sources. The District has revised Rules 2020 and 2201 and submitted them to EPA as a revision to the California State Implementation Plan (SIP). The revisions address deficiencies identified in our July 19, 2001 limited approval and limited disapproval of the previous version of these rules.

EPA is also publishing in today's **Federal Register** an interim final determination that the District has corrected the deficiencies noted in the limited disapproval. The interim final determination will stay the sanctions clock triggered by the July 19, 2001 limited approval/limited disapproval of the previous versions of Rules 2020 and 2201. If EPA takes final action to approve these rules, the sanctions clock for this action will be stopped.

DATES: Comments must be sent by March 17, 2003. EPA will respond to comments in a final action on this proposed approval.

ADDRESSES: Send comments to: Ed Pike, Permits Office [AIR–3], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can review and copy the submitted Rules 2020 and 2201, the existing SIP rules, and EPA's Technical Support Document (TSD) at EPA's Region 9 office from 8:30 am to 5 pm, Monday-Friday. A reasonable fee may be charged for copying.

Copies of the submitted Rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified APCD, 1990 E. Gettysburg Avenue, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Please call Ed Pike at (415) 972–3970 or send e-mail to *pike.ed@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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H. National Technology Transfer and Advancement Act

I. What Is EPA Proposing To Approve?

EPA today proposes to approve revisions to the California SIP by incorporating the submitted revised versions of District Rules 2020 and 2201 into the SIP. If EPA finalizes this proposed action after considering public comment, the submitted versions of Rules 2020 and 2201 will replace the existing versions of those rules currently in the SIP for the San Joaquin Valley Unified Air Pollution Control District, which includes the following counties: Fresno, Kern,[1] Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

The submitted versions of Rules 2020 and 2201 were adopted by the District on December 19, 2002, and submitted to EPA by the California Air Resources Board (CARB) on December 23, 2002. EPA found the submittal to be complete on December 30, 2002. EPA's Technical Support Document (TSD) accompanying this proposed action describes the portions of Rules 2020 and 2201 that were revised.

II. Background

A. History of SJVUAPCD NSR SIP Revisions

District Rule 2201 specifies the requirements for the review of new and modified stationary sources and outlines the requirements to be included in authorities to construct (ATCs) and permits to operate (PTOs). Rule 2020 specifies the emission units that are not required to obtain ATCs or PTOs. Together, these rules define the applicability and requirements of the District's NSR program.

On July 19, 2001, EPA finalized a limited approval and limited disapproval of previous versions of Rules 2020 and 2201.[2] 66 FR 37587. EPA's final action in July 2001 was a limited disapproval because three provisions in the previous versions of the rules did not comply with the CAA and were not approvable. Because of these three deficiencies, the rules failed to satisfy the requirements of sections 172(c)(5) and 173 of the CAA, EPA finalized a limited disapproval of the previous version of Rules 2020 and 2201 under section 110(k)(3) and part D of CAA title I. EPA's final limited disapproval in July 2001, triggered the sanctions (the "sanctions clock") in section 179 of the CAA.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k)(3) for an area designated nonattainment because of the submission's failure to meet one or more of the elements required by the Act, the Administrator is required to apply one of the sanctions set forth in section 179(b) if the deficiency has not been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: limitations on projects and grants for which the Department of Transportation may approve federal highway funding ("highway sanction") and increasing the NSR offset requirements ("offset sanction"). By regulation, EPA established that we will apply the offset sanction 18 months after rule disapproval and the highway sanction 6 months after the offset sanction. 40 CFR 52.31. The CAA also provides that final disapproval under section 110(k)(3) triggers the federal implementation plan (FIP) requirement. CAA Section 110(c). The 18 month period referred to in section 179(a) and 40 CFR 52.31, began on August 20, 2001, which was the effective date of EPA's final limited disapproval, and will expire on February 20, 2003.

With the limited disapproval, the July 19, 2001 action simultaneously finalized a limited approval of Rules 2020 and 2201. EPA finalized the limited approval under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to prescribe regulations necessary to further air quality by strengthening the SIP. Because Rules 2020 and 2201 strengthened the District's NSR program despite the three cited rule deficiencies, EPA's limited approval incorporated Rules 2020 and 2201 into the SIP subject to the section 179 mandatory sanctions triggered by EPA's limited disapproval.

B. Deficiencies in SJVUAPCD NSR Regulations and Required Action

EPA's limited disapproval cited three deficiencies in the previous versions of Rules 2020 and 2201. First, EPA determined that the previous version of Rule 2201 was not approvable because its offset tracking equivalency system failed to contain a mandatory remedy. We also found the previous version of Rule 2201 deficient because it did not require all sources making modifications that result in a significant increase in emissions to meet the Lowest Achievable Emission Rate (LAER). Finally, we concluded the previous version of Rule 2020 was not approvable because section 4.5 of the rule exempted agricultural sources from permitting. For a more detailed discussion of these three rule deficiencies please see our final limited approval and limited disapproval, 66 FR 37587 (July 19, 2001), and the accompanying Technical Support Document dated August 30, 1999 ("1999 TSD").

EPA's July 2001 limited disapproval informed the District that the following actions were required to correct the rule deficiencies:

1. The District must revise Rule 2201 to provide a mandatory, enforceable and automatic remedy to cure any annual shortfall and, in the future, prevent shortfalls in the District's New Source Review Offset Equivalency Tracking System.

2. The District must remove the agricultural exemption from District Rule 2020.

3. The District must revise Rule 2201 to ensure that all sources meet LAER[3] if they are allowed to make a significant increase in their actual emissions rate.

See 66 FR at 37590.

C. How Has SJVUAPCD Corrected These Rule Deficiencies?

1. Offset Equivalency

a. What is the basis for allowing an annual offset equivalency demonstration?

Section 173(a)(1)(A) provides that new and modified stationary sources seeking to commence operating in a nonattainment area must be required by the state permitting program to obtain sufficient offsetting emission reductions ("offsets") such that, "the total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources * * * so as to represent reasonable further progress * * *." In our July 19, 2001 final action, we explained that this statutory focus on total regional emissions supported the approval of a District offset program that

[1] For more information on the District and its jurisdiction see 64 FR 51493 (Sept. 23, 1999).

[2] The previous version of Rule 2020 acted upon in the July 19, 2001 final action was the version adopted by the District on September 17, 1998. The previous version of 2201 was the version adopted by the District on August 20, 1998.

[3] Many California Districts use the term "Best Available Control Technology" (BACT) with a definition equivalent to LAER. Please see the TSD for additional information on the District's definition of BACT.

ensured equivalency with the federal requirements on an annual aggregate basis. 66 FR at 37588–89.[4] Thus, we explained that an offset equivalency tracking system with a requirement for a mandatory and enforceable remedy for any shortfall would comply with the requirements of the Act. *Id.* at 37588.[5]

The goal of the District's offset equivalency tracking system, therefore, is to show that, notwithstanding certain differences between the District and federal NSR programs, the District's rules would require offsets that are, in the aggregate, equivalent to offsets required under the federal program.[6] In the 1999 TSD for the proposed limited approval/limited disapproval, 65 FR 58252 (Sept. 28, 2000), we identified areas where the District rules may require fewer offsets than the federal NSR regulations and directed the District to track these sources of potential shortfalls. *See* 1999 TSD at 15–17; *see also* 66 FR at 37588 n.3.[7] In general these differences fall into two categories: (1) Differences in the quantity of offsets required in the first instance and (2) differences in the way the value of emission reductions used to satisfy offset requirements is calculated. Thus, to demonstrate equivalency, the District's rule needs to track and report on both of these categories of differences. Likewise, if the remedy is to cure and prevent future shortfalls, the rule must be tailored to address the root cause of the shortfalls.[8]

b. What is the offset equivalency tracking system in Rule 2201 and how does it satisfy the deficiency noted in the limited disapproval?

Section 7.0 of the revised District Rule 2201 (adopted Dec. 19, 2002) provides for a system to track and demonstrate the equivalency of the District's NSR offset requirements to the offset requirements of the federal NSR program. There are three basic components of the tracking system provisions. Section 7.1 outlines the parameters to be tracked by the District on an annual basis. Sections 7.2 and 7.3 describe how equivalency is to be demonstrated each year. Section 7.4 describes the remedies to take effect to cure any annual shortfall and prevent future shortfalls. While the District action required in EPA's final limited approval/limited disapproval was "to provide a mandatory and enforceable remedy to cure any annual shortfall and, in the future prevent shortfalls," as noted above, the provisions for tracking and demonstrating equivalency are critical for ensuring that the remedy is applied automatically and addresses the cause for the shortfall. Thus, each of the components provided in section 7.0 is necessary to ensure the remedy provision satisfies this deficiency.

The District's tracking system requires two demonstrations to be included in the annual report. First, the District is to track and compare on an annual basis the aggregate quantity of offsets required under Rule 2201 and the quantity of offsets that would have been required under the federal NSR provisions. Rule 2201, section 7.2.1. This comparison will show whether the District rule requires as many offsets as the federal rules, regardless of the "creditable" value of the actual emission reduction used to meet the offset requirements. Should there be a shortfall the rule provides for two stages of remedy. The District may first retire unused emission reduction credits that meet federal requirements to make up for the shortfall. Rule 2201, section 7.4.1.1. If sufficient emission reduction credits are not available, the District must apply federal offset requirements to all permits issued after the annual demonstration deadline until the District amends its NSR provisions to require equivalent offsets. Rule 2201, section 7.4.1.2. These remedies reasonably address the source of the demonstrated shortfall and satisfy our requirement for a mandatory, enforceable and automatic remedy.

The second piece of the annual demonstration addresses whether the District's overall approach is equivalent, including the District's decision not to adjust the creditable value of emission reductions at time of use ("surplus adjusting" or "discounting" at time of use). The District will determine the creditable surplus value of the emission reductions actually used each year by applying federal creditability criteria, and compare this adjusted aggregate number to the number of offsets that would have been required under the federal NSR program. The District shall provide an annual report to demonstrate that, in the aggregate, it is achieving an equivalent number of creditable emission reductions as would be achieved under the federal program. Rule 2201, section 7.2.2. If a shortfall is found in this comparison, and it is not the result of different offset requirements identified in the first piece of the demonstration described above, the cause of the shortfall must be related to differences in the way the District determines the creditable value. As a result, the remedy for such a shortfall is to apply federal creditability criteria, including discounting at time of use. In the event of a shortfall in this portion of the annual demonstration, section 7.4.2 will automatically require all ATCs issued after the annual report deadline to ensure emission reductions used to satisfy offset requirements are creditable and that the surplus value of those reductions is determined at the time of ATC issuance. EPA proposes to conclude that this remedy reasonably meets the EPA requirement for a mandatory, enforceable and automatic remedy to cure any shortfall and prevent future shortfalls.

c. Does the tracking system replace applicable NSR requirements?

The tracking system does not replace the applicable requirements of Rule 2201. It is important to clarify that while the tracking system allows EPA to approve the District NSR provisions of Rule 2201 notwithstanding specific differences between the District's rules and federal NSR requirements, nothing in section 7.0 of the rule relieves sources from the obligation to comply with the other requirements of Rule 2201. For example, sources must continue to obtain offsets in compliance with section 4.5 of Rule 2201. Emission reductions used to meet these offset requirements must continue to be "real, enforceable, quantifiable, surplus, and permanent." Rule 2201, section 3.2.1. Therefore, a source could not rely on the annual aggregate demonstration to cure the use of unenforceable (or otherwise non-creditable) emission reductions to meet the District's offset requirements. Such use would be a violation of the District's rules and may be subject to enforcement by the District or EPA even if the District is otherwise required to make up for this shortfall through the offset tracking system.

Major sources (and major modifications) should therefore ensure that the emission reductions used to satisfy offset requirements meet federal creditability criteria.[9] The one potential exception is with regard to the federal requirement to determine the surplus value of an emission reduction at time of use. Rule 2201 allows the surplus value to be determined at the time the ATC for an emission reduction or the application for an emission reduction credit (ERC) is deemed complete. Rule 2201, section 3.2.2. With our final approval of the District tracking system, EPA will allow the District to forgo the federal surplus adjusting requirement and sources will be able to rely on emission reductions EPA might otherwise not consider surplus. This flexibility, however, is only available for sources covered by the District's tracking system. The tracking system only covers permits for sources with ATC applications that were not deemed complete before August 20, 2001. *See* Rule 2201, section 7.3.1. *Sources with ATC applications deemed complete before August 20, 2001 must meet all federal creditability criteria including the requirement that the surplus value of emission reductions be discounted at time of use (i.e., at time ATC is issued).*

Because the criteria for determining the creditability of an emission reduction will continue to be important both for sources seeking permits and for the District in implementing the tracking system,[10] the following sections discuss particular creditability issues that have recently been raised by the District and others.

d. What are the requirements for being an enforceable emissions reduction?

CAA sections 173(a) and (c)(1), require emission reductions to be federally enforceable before a construction permit may be issued, and in effect and enforceable by the time a new or modified source commences operation. EPA has explained that the District can make emission reductions enforceable by modifying the permit for the source reducing emissions or by obtaining SIP approval of the rules that result in the emission reduction. EPA has also explained that while the emission reduction need not occur before the new or modified source commences operation, the specific emission reduction credits to be used by the source under review must be identified and enforceable before the authority to construct may be issued. *See* 57 FR at 13553; *see also* Memo from John S. Seitz, Dir. OAQPS to Regional Air Dirs (June 14, 1994) ("Offsets Required Prior to Permit Issuance"). Thus, even though the emissions reduction may not have occurred by the time the ATC is issued (*e.g.*, the revised permit does not call for the source to actually reduce emissions until a later date), the new or modified source must identify the source of the emissions reduction to be used to meet the offset requirements, must provide an opportunity for review of the proposed emission reduction credits and, once the ATC is issued, cannot change the emission reduction credits unless a new ATC is proposed identifying the new emission reduction credits to be relied upon.

e. What kinds of emission reductions may be creditable?

Section 7.2.2.2 of Rule 2201 allows the District to include in the annual equivalency demonstration, "the surplus value of additional creditable emission reductions that have not been used as offsets and have been banked or have been generated as a result of permitting actions." These unused "additional credits" may include emission reductions from a number of actions. Examples of such additional credits include emission reductions used to meet offset requirements by non-major sources and the 10 percent Air quality Improvement Deduction applied under section 4.12 of Rule 2201 for newly banked credits.[11] This section addresses a few other issues the District has raised regarding the creditability of other actions that might be considered to generate "additional credits."

The central issue for determining the creditability of a particular action often will be whether the reduction is surplus. The surplus requirement derives from section 173(c)(2) of the Act, which provides, "Emission reductions otherwise required by this Act shall not be creditable as emissions reductions for purposes of any such offset requirement." To be creditable, a particular emission reduction must not be required by the Act or otherwise relied upon to meet a requirement of the Act. Thus, District requirements that are more stringent than an express requirement of the Act may generate surplus credits as long as the emission reductions are not relied upon elsewhere to comply with a requirement of the Act (*e.g.*, to achieve the National Ambient Air Quality Standards (NAAQS)).[12]

The emission reductions must also be real and quantifiable—actual emissions to the air must be reduced. Paper reductions (*i.e.*, changes in a source's permitted emissions that do not require actual emissions to decrease) are not creditable. Likewise, rules that limit the increase in emissions do not generate real, quantifiable reductions in emissions. For example, the District BACT requirements for modifications to existing non-major sources may generate emission reductions where the control requirement results in actual emissions reductions as compared to pre-modification emission levels. By contrast, BACT requirements for new non-major sources cannot generate emission reduction credits because there has been no reduction in actual emissions (instead actual emissions have increased).

It is not possible for EPA to predict the various potential claims that will be made for emission reduction credits. Even for the examples described in this section and in the TSD, case-specific facts may affect the analysis on creditability. It is therefore critical for the District to raise specific questions to EPA so that these issues can be resolved on a case-by-case basis.

f. Are pre-1990 emission reductions creditable?

Pre-1990 emission reduction credits pose particular problems under each of the criteria for creditability because of the age of these credits. Information on their generation may be missing, making it difficult to verify the quantity of emission reductions and ensure their continued enforceability. These problems, however, can be overcome if

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[4] We relied on this statutory interpretation, in part, in approving the RECLAIM Trading Program in the South Coast Air Quality Management District. *See* 61 FR 64291 (Dec. 4, 1996).

[5] We have also noted the ability of States to implement accounting or tracking systems to demonstrate annual aggregate equivalency with federal requirements for surplus adjusting. *See* Memo from John S. Seitz, Dir., Office of Air Quality Planning and Standards (OAQPS) to David Howekamp, Dir., Region IX Air and Toxics Div. (Aug. 26, 1994) ("1994 Seitz Memo").

[6] *See* 65 FR 58252, 58253 (Sept. 28, 2000) ("The District committed to demonstrate equivalency by calculating on an annual basis the quantity of offsets that would be required under federal nonattainment NSR regulations (*i.e.* the quantity of offsets that meet all Clean Air Act requirements) and the quantity of offsets required under the District program.").

[7] For example, the District does not require sources to offset the entire quantity of emissions increases (Rule 2201, section 4.5) and, in certain situations, does not impose the minimum offset ratio required under the CAA (Rule 2201, section 4.8).

[8] In our final limited approval/limited disapproval, we noted that the District had identified different remedies to address potential shortfalls including "using EPA requirements for calculating offset baselines and quantities" (which could address shortfalls related to differences in the quantity of offsets required in the first instance) and "using credits that are surplus at the time of use" (which could address shortfalls related to differences in the valuation of emission reductions used to meet offset requirements). *See* 66 FR at 37590.

[9] The District's amendments to Rule 2201 reiterate these criteria in section 7.1.5. These criteria derive directly from the offset requirements of the CAA section 173(c). *See* 1994 Seitz Memo; *see also* 51 FR 43814 (Dec. 4, 1986) ("Emissions Trading Policy Statement"). As such, EPA will interpret the District requirement in accordance with our federal policy and guidance on creditability.

[10] Section 7.1.5 of Rule 2201 expressly notes that the creditability of a given emission reduction included in the annual demonstration may be subject to EPA review.

[11] These additional credits must of course meet the creditability criteria described herein. This is expressly required by Rule 2201, section 7.4.1.1. The 1999 TSD provides additional discussion on the availability of these additional credits.

[12] The District has asked whether implementation of District rules that are not yet in the SIP could be counted as generating an ERC. Such rules, used to generate innovative offsets, must satisfy EPA requirements for Economic Incentive Programs (*see* EPA's guidance document entitled, "Improving Air Quality with Economic Incentive Programs" (January 2001)). EPA would not consider as creditable, emission reductions achieved through early implementation of rules that do not meet these requirements. In addition, any credits generated through these programs must continue to meet the basic criteria for creditability (*e.g.*, permanent, surplus; quantifiable and enforceable).

detailed records are available to support the required findings on creditability. The more difficult issues are related to the requirement that emission reductions be surplus.

The basic purpose of the surplus requirement is to avoid "double counting" emission reductions. Double counting can occur where emission reductions are the result of, or would have been achieved by, controls expressly required by the Act or controls used to satisfy requirements of the Act. Double counting can also occur if credit for emission reductions is claimed where the State's planning actions do not recognize that the reduced emissions existed in the first place. This is especially a concern for emission reductions that occurred long ago.

To avoid potential double counting, EPA has issued guidance on how emission reductions should be discounted at the time of use and the planning assumptions an area must make to allow the use of pre-1990 credits to meet NSR offset requirements. The 1992 "General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990" ("General Preamble") describes the planning requirements of the Act as amended in 1990. 57 FR 13498 (April 16, 1992). The General Preamble addresses the issue of pre-1990 (or "pre-enactment") emission reductions and how areas need to ensure the use of these does not conflict with planning. The two types of planning actions that need to reflect the use of pre-1990 credits are Rate of Progress (ROP) plans and attainment demonstrations. *See id.* at 13508–509 and 13552–54; *see also* 1994 Seitz Memo.

Section 172(c)(2) requires implementation plans for nonattainment areas to include provisions requiring reasonable further progress toward attainment. The 1990 Amendments added specific reduction requirements necessary to satisfy the general reasonable further progress requirement. For example, ozone areas classified as moderate nonattainment and above must achieve a 15-percent reduction in volatile organic compound (VOC) emissions from 1990 baseline levels within six years of enactment of the CAA Amendments. CAA section 182(b)(1). Ozone areas classified as serious and above must, in general, achieve an additional 3-percent reduction every three years thereafter until the attainment date. CAA section 182(c)(2)(B).

Because the baseline for measuring reasonable further progress is the level of actual emissions from anthropogenic sources in 1990, pre-1990 emission reductions generally are not included in the baseline. Thus, to avoid giving credit for reductions that the baseline already reflects, pre-1990 credits must be "added back." The General Preamble explains that the required emission reductions necessary to meet reasonable further progress (*e.g.*, 15 percent from 1990 levels) must be net of growth and net of any pre-1990 emission reduction credits the area plans to allow for use as offsets. 57 FR at 13508–509. This means that the controls identified to achieve the target level of emissions (*e.g.*, 85 percent of the baseline levels) must also achieve reductions to offset growth and the addition of any pre-1990 emission reduction credits the area wishes to make available.[13]

There are different ways that areas can include pre-1990 credits in ROP plans. EPA has explained, "A State may choose to show that the magnitude of pre-1990 ERC's (in absolute tonnage) was included in the growth factor, or the State may choose to show that it was not included in the growth factor, but in addition to anticipated growth." 1994 Seitz Memo. Under either approach, the quantity of pre-1990 credits added to or included in the growth factor must be distinguishable and identifiable. Id. If the addition of pre-1990 credits cannot be distinguished from general growth, EPA will not be able to determine whether the growth factor used in the plan is reasonable or to compare the actual use of pre-1990 credits to the cap assumed in the plan.[14]

Pre-1990 credits must also be accounted for in an area's attainment demonstration. 57 FR 13509 and 13553; *see also* 1994 Seitz Memo. In addition to demonstrations of reasonable further progress, the Act requires areas to submit a demonstration that the SIP, as revised, will provide for attainment of the NAAQS by the applicable attainment date ("attainment demonstration"). *See, e.g.*, CAA section 182(c)(2)(A) (attainment demonstration required for serious ozone nonattainment areas). Attainment demonstrations, in very general terms, require areas to use modeling or other approved analytical techniques to determine the level of emissions required to achieve the NAAQS and to provide projections of emissions inventories to show how the area will control sources to achieve the necessary level of emissions. Because new and modified major sources are required to offset their emissions increases by obtaining emission reductions from other sources, there should be no net effect on emissions inventories from construction or modification of a major source *if the emissions reduced are included in the inventory.* This means pre-1990 emissions reductions, which would otherwise not be included in inventories of emissions in 1990 and beyond, must be added back into the area's inventories as if these emissions were still in the air in order to be used as offsets and ensure no net effect on emission inventories. *See* 62 FR at 13509 and 13553; *see also* 1994 Seitz Memo.

There are multiple ways that these pre-1990 emissions can be included in the inventories. The simplest would be to include a line item for the emissions to be added for use as potential offsets. No matter what approach an area uses, the demonstration must clearly identify these emissions so that the reasonableness of the approach can be evaluated and the actual use of these pre-1990 credits can be compared to the assumptions in the demonstration.

To date, SJVUAPCD has failed to adequately account for the use of pre-1990 emission reduction credits in its planning activities. As a result, EPA does not consider these reductions to be surplus creditable reductions that can be used to meet federal offset requirements within the District.

The San Joaquin Valley was originally classified as moderate for the PM–10 NAAQS following enactment of the 1990 Clean Air Act Amendments. The District submitted a moderate area plan in December 1991, but this plan was never approved by EPA and, in any event, did not support the use of pre-1990 credits by including these credits in the plan's inventories as emissions in the air. On January 8, 1993, EPA reclassified the San Joaquin Valley as serious for PM–10. 58 FR 3334. The attainment deadline for serious PM nonattainment areas was December 31, 2001. CAA section 188(c)(2). The attainment demonstration, due with the serious area plan on February 8, 1997, was withdrawn by the District on February 26, 2002. On July 23, 2002, EPA issued a finding that the San Joaquin Valley failed to attain the PM–10 NAAQS by the applicable deadline. In accordance with CAA section 189(d), the State was required to submit by December 31, 2002, a new attainment demonstration for San Joaquin Valley, along with measures sufficient to achieve an annual reduction in PM–10 or PM–10 precursor emissions of not less than 5 percent. This new demonstration has not been submitted. The District, because it failed to attain the PM standard by the statutory deadline and has not submitted required progress and attainment plans, has failed to show how the use of pre-1990 emission reductions would be consistent with the need for expeditious attainment of the PM NAAQS.[15]

The San Joaquin Valley is currently designated as a severe nonattainment area for the 1-hour ozone NAAQS. 66 FR 56476 (Nov. 8, 2001). EPA approved a serious area plan (the "1994 ozone plan") for the District on January 8, 1997. 62 FR 1150. The plan included a demonstration that the area would attain the ozone NAAQS by 1999. The attainment demonstration in the 1994 ozone plan did not specifically identify and account for the possible use of pre-1990 emission reductions. The area failed to attain the ozone standard in 1999, and as a result EPA reclassified the area to severe on November 8, 2001. 66 FR 56476. The severe area plan was due on May 31, 2002. 66 FR at 56481. The attainment deadline for severe areas is November 15, 2005. CAA section 181(a)(1). The District failed to submit the required plan by the May 2002 deadline and is now subject to the offset sanction beginning March 18, 2004, for failure to submit the required plan. 67 FR 61784 (Oct. 2, 2002).

The 1994 ozone plan included ROP milestone provisions for 1996 and 1999. The plan, however, did not include pre-1990 credits in the ROP provisions or attainment demonstration. The District has recently prepared and adopted a ROP plan for the 2002 and 2005 milestones.[16] We will review this ROP plan to determine if the District has properly accounted for the use of pre-1990 credits and met applicable ROP requirements, but this alone will not provide the necessary demonstration that the use of these credits is consistent with the need for the area to attain the ozone NAAQS as expeditiously as possible.[17] Unless and until the area submits a new attainment demonstration that shows expeditious attainment can be achieved while still allowing the use of these credits, EPA cannot reasonably conclude that these pre-1990 reductions are surplus creditable reductions.

Based on these findings regarding the creditability of pre-1990 credits, EPA will consider the creditable value of these credits used in the District's tracking system to be zero. EPA, therefore, encourages the District and sources to avoid using these pre-1990 credits and, if problems arise, to work with EPA to explore options for other sources of emission reduction credits.

2. Agricultural Exemption

a. How has the District corrected this deficiency?

On December 19, 2002, the District adopted a version of Rule 2020 that deleted section 4.5, and thereby eliminated any exemption in its NSR rule for permitting a new or modified major stationary source of air pollutants. The District's deletion of the exemption from its NSR rule corrects the rule deficiency set out in our July 2001 limited disapproval. Because the District removed the exemption from its rule and for the reasons discussed below, EPA is proposing to find that the District has corrected the deficiency and to approve Rule 2020 as revised.

b. How is EPA addressing the State exemption?

EPA is aware, however, that California Health & Safety Code 42310(e) continues to preclude the District, as well as all other districts in California, from permitting agricultural sources under either title I or title V of the CAA. While the State is on notice of the need to remove the exemption for major sources for purposes of title V, the State must also remove the exemption for any major sources for purposes of title I. Therefore, concurrent with today's proposed approval of the District's revised version of Rule 2020 (deleting the exemption), EPA is publishing in the **Federal Register** a proposal pursuant to section 110(k)(5) of the CAA to find the California SIP is substantially inadequate for all nonattainment air pollution control districts in the State and for all attainment area districts that have an approved Prevention of Significant Deterioration (PSD) program because the State cannot provide "necessary assurances" that it or the districts have authority to carry out the applicable nonattainment NSR or PSD portions of the SIP.

This concurrent proposal will inform the Executive Officer of the CARB that the California SIP is and will remain inadequate until the California legislature amends Health & Safety Code section 42310(e) to the extent necessary to allow the State of California through the air districts to issue permits under title I, parts C and D, to all major sources, including those involved in agriculture. This action proposes to require the State to correct the inadequacy by November 23, 2003 to avoid a finding under section 179 of the Act which would trigger mandatory sanctions.[18]

3. Lowest Achievable Emission Rate Applicability

EPA determined that the previous version of District Rule 2201 did not always require LAER for major modifications because it did not require LAER if a modification resulted in an increase in actual emissions but not an increase in the emission unit's permitted emission rate. Therefore, EPA required the District to modify Rule 2201 to ensure that all major

[13] For example, assume the 1990 baseline emissions level is 100 tons per year (tpy) and the area anticipates 10 percent growth and wishes to make available 5 tpy of pre-1990 credits. In order to achieve the target level of 85 tpy (*i.e.*, 15 percent reduction of baseline emissions), the ROP plan will need to identify controls that will achieve 30 tpy of reduction—15 tpy to demonstrate reasonable further progress, 10 tpy to offset growth and 5 tpy to offset the use of pre-1990 credits. This obviously is an overly simplistic example and is intended only to show how these concepts relate to one another.

[14] EPA addressed similar concerns in its 1986 Emissions Trading Policy Statement. 51 FR 43814 (Dec. 4, 1986). In that guidance, EPA described the need to distinguish between shutdowns to be used to generate credits to meet offset requirements and shutdowns built into assumptions on growth. We explained, "In all cases where net turnover reductions have been quantified and relied on as part of attainment demonstrations, states which seek to grant shutdown credit for use in trading must be prepared to show clearly and unequivocally on the basis of SIP documents or tracking that the credit has not been double-counted or otherwise relied on for SIP planning purposes."

[15] This conclusion is consistent with our policy regarding the use of shutdown credits as offsets. Memo from John S. Seitz, Dir., OAQPS to Regional Air Dirs (July 21, 1993). Under the policy described in the 1993 memo, we explained that the use of shutdown credits as offsets was limited to ensure that reductions came out of the area's existing emissions and thus assured reasonable further progress. Before 1990, this could only be accomplished if the area had a demonstration of attainment that made this showing. After 1990, because the deadlines for submitting attainment demonstrations had been extended by the Clean Air Act Amendments, we decided that an attainment demonstration should not be required before shutdown credits could be used. We added, however, "This policy cannot be extended to situations where an attainment demonstration is lacking." Thus if any of the required planning submittals is delinquent, deemed incomplete or disapproved, shutdown credits cannot be used to meet offset requirements.

[16] The 2002 ROP Plan was adopted by the District Board on December 19, 2002, and submitted to ARB. A copy of the Plan can be found at the District's website at *http://www.valleyair.org/Air_Quality_Plans/AQ_plans_Ozone.htm#Amendment 2002 and 2005 ROP 103.*

[17] The 1994 Seitz Memo explains that pre-1990 credits to be used in an area "must be contained in: (1) The current applicable federally-approved RFP and ROP plans as growth, and (2) all federally-required attainment demonstrations as emissions in the air." While an argument could be made that inclusion of these credits in the ROP and not in an attainment demonstration might be sufficient to support their use where the attainment demonstration is not yet due, this argument is not reasonable where, as here, the area has not only failed to meet the plan submission deadlines but has had to be reclassified because of the area's failure to attain by the statutory deadlines.

[18] EPA is proposing this deadline to coincide with the deadline for sanctions under title V to correct the agriculture exemption in that program. *See* CAA Section 110(k)(5) (providing EPA discretion to establish reasonable deadlines).

modifications as defined at 40 CFR 51.165(a)(1)(v) are subject to LAER.

The District has corrected this deficiency by adding a backstop in addition to the current LAER applicability requirements. This backstop requires that any major modifications, as defined at 40 CFR 51.165, must meet LAER. *See* Rule 2201, sections 3.24 and 4.1.3. Sections 4.1.1 and 4.1.2 also continue to require LAER for minor sources regardless of whether changes at those sources are defined as major modifications.

D. Summary

EPA is proposing to approve revised versions of SJVUAPCD Rules 2020 and 2201. The revisions to these rules satisfy the requirements outlined in our July 19, 2001 limited approval/limited disapproval of previous versions of these rules. EPA is simultaneously publishing an interim final determination to stay the sanctions clock started by the limited disapproval. Additional information on the amendments to Rules 2020 and 2201 is contained in the TSD for this proposal.

Concurrent with this proposal, we are also proposing to call in the State to repeal or amend Health and Safety Code Section 42310(e). Once EPA determines that the State has provided the necessary assurances required under section 110(a)(2)(E), the NSR program for the SJVUAPCD will fully meet the requirements of sections 172(c)(5), 173 and 182 of the CAA.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and title I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); CAA section 110(a)(2).

C. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments." (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. We are merely proposing to approve a state rule implementing a federal standard. EPA's action does not impose requirements on Tribes and the rules being approved do not significantly or uniquely affect Tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks and is not a significant regulatory action.

G. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New Source Review, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 31, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–3418 Filed 2–12–03; 8:45 am]

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Notices

Federal Register
Vol. 68, No. 30
Thursday, February 13, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 03–001–3]

Declaration of Extraordinary Emergency Because of Exotic Newcastle Disease in Arizona

Exotic Newcastle disease (END) has been confirmed in the State of Arizona. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. Previously, END had been confirmed in the States of California and Nevada. The Secretary of Agriculture signed a declaration of extraordinary emergency with respect to END in California on January 6, 2003 (*see* 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), and a second declaration of extraordinary emergency with respect to END in Nevada on January 17, 2003 (*see* 68 FR 3507, Docket No. 03–001–2, published January 24, 2003).

END is a contagious and fatal viral disease affecting domestic, wild, and caged poultry and birds. It is one of the most infectious diseases of poultry in the world, and is so virulent that many birds die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry. This disease in poultry and birds is characterized by respiratory signs accompanied by nervous manifestations, gastrointestinal lesions, and swelling of the head.

END is spread primarily through direct contact between healthy birds or poultry and the bodily discharges of infected birds or poultry. Within an infected flock, END is transmitted by direct contact, contaminated feeding and watering equipment, and aerosols produced by coughing, gasping, and other respiratory disturbances. Dissemination between flocks over long distances is often due to movement of contaminated equipment and service personnel, such as vaccination crews. Movement of carrier birds and those in an incubating stage accounts for most of the outbreaks in the pet bird industry.

The existence of END in Arizona represents a threat to the U.S. poultry and bird industries. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The United States Department of Agriculture (the Department) has reviewed the measures being taken by Arizona to control and eradicate END and has consulted with the appropriate State Government and Indian tribal officials in Arizona. Based on such review and consultation, the Department has determined that the measures being taken by the State are inadequate to control or eradicate END. Therefore, the Department has determined that an extraordinary emergency exists because of END in Arizona.

This declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of END and (2) prohibit or restrict the movement or use within the State of Arizona, or any portion of the State of Arizona, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of END. The appropriate State Government and Indian tribal officials in Arizona have been informed of these facts.

Effective Date: This declaration of extraordinary emergency shall become effective February 7, 2003.

Ann M. Veneman,
Secretary of Agriculture.

[FR Doc. 03–3561 Filed 2–12–03; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Beech Fork Coal Lease and Project Specific Forest Plan Amendment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement, a Land Resource Management Plan (LRMP) amendment, issue a call for coal and other resource information, and notice of public meeting.

SUMMARY: The U.S. Forest Service (USFS) will prepare an environmental impact statement (EIS) to analyze the environmental impacts of leasing three federal coal reserve tracts. The three tracts total 1,210.44 acres and underlie lands administered by the USFS. The proposed development of the three federal coal reserve tracts involves underground mining of coal using room-and-pillar mining methods. No surface disturbance related to mine openings, haul roads, or processing will occur on the federal tracts. The tracts are adjacent to an existing underground coal mine on private lands.

In conjunction with the EIS, a Land Resource Management Plan Amendment will be prepared in a cooperative effort between the USFS, Bureau of Land Management (BLM) and the Office of Surface Mining (OSM). As part of the initiation of the LRMP Amendment, a Call for Coal and Other Resource Information is being made. This data request solicits (1) information on the coal resource development potential of the three proposed tracts and (2) resources that may be affected by coal development for lands in the project area.

Authority: The Mineral Leasing Act of 1920 (MLS) authorizes the leasing of federal coal in tracts that permit the mining of all economically extractable coal. The Daniel Boone National Forest Land Resource Management Plan provides overall guidance for land management activities, including extraction of mineral resources. The Forest Plan provides for the consideration of lease proposals in the project area and directs that special stipulations be used to protect surface resources. The LRMP Amendment is being prepared to update the 1985 Forest Plan to address leasing of two of the three tracts, as the Tennessee Valley Authority previously owned them.

Since the passage of the MLA, the federal government has had the authority to lease minerals on federal lands. The act requires that the lands be included in a comprehensive land use plan, and the lease be compatible with the plan and meet the requirements of the National Environmental Policy Act of 1969 (NEPA).

Executive Order 13212, May 18, 2001 is intended to improve the internal management of the federal government in dealing with processing energy-related projects in a timely manner to aid the flow of domestic mineral production. The Forest Plan, as noted previously, identifies standards and guidelines, some of which are applicable to minerals activities. The Daniel Boone National Forest is presently preparing a revision to the Forest Plan that will be accompanied by its own EIS. However, 42 United States Code (USC) Section 885 does not permit the Secretary of Agriculture to delay processing of lease applications pending the completion of the revised Forest Plan. The current Forest Plan guides management of this national forest until the revised plan is completed and the administrative appeal process has ended. The Forest Service is publishing this Notice of Intent pursuant to the Council on Environmental Quality implementing regulations of the National Environmental Policy Act at 40 CFR 1501.7.

Date Comments Are Due: Comments concerning the scope of this planning project and responses to the Call for Coal and Other Resource Information must be received by March 15, 2003. The Draft LRMP Amendment and EIS is expected to be completed in May 2003 and the Final LRMP Amendment and EIS is expected to be completed in September 2003.

Send Comments to: Submit written comments to Corey Miller, Daniel Boone National Forest, 1700 Bypass Road, Winchester, KY 40391. Comments may also be sent by fax at (859) 744–1568; or by electronically to *cmiller09@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Corey Miller is the Interdisciplinary Team Leader for this proposed action. He can be reached by US mail at the Daniel Boone National Forest, 1700 Bypass Road, Winchester, KY 40391; by phone at (859) 745–3149; or by e-mail at *cmiller09@fs.fed.us.*

Lead and Cooperating Agencies: The U.S. Department of Agriculture Forest Service, Daniel Boone National Forest is the lead agency. There will be two cooperating agencies associated with this project—U.S. Department of the Interior (USDI) Bureau of Land Management (BLM), Jackson Field Office, Jackson, MS and the USDI Office of Surface Mining (OSM), Lexington, KY.

Responsible Officials: The Forest Supervisor is the responsible official from the Forest Service for this project. The District Manager—Jackson Field Office is the responsible official from the BLM for this project. The Field Office Director—Lexington, Kentucky is the responsible OSM official for this project.

Decision To Be Made: The responsible official for the Daniel Boone National Forest will determine if the leasing of federal coal tracts underlying these National Forest System lands will occur after the LRMP Amendment and EIS in prepared and what stipulations should be applied if a lease are issued.

The Bureau of Land Management has the responsibility to address coal lease applications (coal lease sales) on federal mineral reserves. In consultation with the USFS, the responsible official for the BLM will decide whether or not to offer the tracts for competitive leasing, and under what terms, conditions and stipulations.

The Office of Surface Mining will be responsible for providing recommendations to the Secretary of the Interior regarding approval, disapproval, or conditional approval of the mine plan on lands contained within the federal lease area. If it is determined that there may be surface impacts resulting from mining in the proposed lease area, the Office of Surface Mining, with input from the U.S. Forest Service, will also be responsible for providing recommendations to the Secretary of the Interior concerning the issuance of findings as to whether or not the proposed lease and mining areas contain significant recreational, timber, economic or other values that may be incompatible with the proposed mining activities.

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposal: The purpose and need for the EIS is to determine if federal coal will be leased in response to the lease application submitted for this federal coal. Private coal leases, permitted by the state, surround the proposed federal coal lease tracts. The leasing of this coal would allow for the development of the private and federal coal resources in an economic and efficient manner and would maximize the recovery of the coal.

Scoping Process: Scoping is the process used to determine the scope of issues to be addressed and for identifying the significant issues related to this project. Public involvement is an integral component of coping. The public will be contacted in several different ways; provided information about this project, and given an opportunity to provide input on it. Information will be sent to a mailing list of individuals, groups, and agencies that are known to have an interest in this project or have previously expressed an interest in projects of this nature or general activities in the project area.

In addition to the publication of this Notice of Intent, legal notices will be published in the Lexington (KY) Herald-Leader and the Manchester (KY) Times.

A Public coping open house meeting will be held at the Leslie County Extension Office at 22045 Main Street in Hyden, KY on March 10, 2003 from 6 PM to 9 PM.

Additional hearings pursuant to Title 43 Code of Federal Regulations (CFR) Section 1610.2 and 43 CFR 3425.4, will be announced through the **Federal Register**, local news media and web sites at least 15 days prior to the event.

Preliminary Issues: Preliminary issues of concern include subsidence, and changes in the local hydrologic regime and water quality. The potential for surface and ground water resource impacts will be studied in the EIS.

Preliminary Alternatives: The proposed development of the federal coal reserve tracts involves an economic and efficient method of mining the resource. Other preliminary alternatives include the No Action alternative, which is a rejection of the Proposed Action to mine the federal coal. The adjoining private coal resource leases that surround the three federal tracts have been permitted, and the coal underlying those leases would be mined at a reduced level.

Permits or Licenses Required: A permit is required from the State Department of Surface Mining Reclamation and Enforcement prior to any development of coal resources.

Unsuitability Criteria: The information addressing the Unsuitability Criteria is listed in 43 CFR 3461. Application of the unsuitability criteria will result in a preliminary review of Daniel Boone National Forest lands for leasing. The determination relates only to the specific resources and uses addressed in the 20 unsuitability criteria. Section 43 CFR 3461.1 provides for an exemption in the application of the unsuitability criteria. However, in this case the exemption isn't met, because of the surface impacts resulting from subsidence from underground mines. The unsuitability criteria will be addressed in the EIS.

Lands within the project area, which are acceptable for further leasing consideration after application of the unsuitability criteria will then be addressed in regards to other resource values and uses that could be affected by lease issuance.

Comments Requested: This Notice of Intent initiates the scoping process that begins the preparation of the EIS. As part of the scoping process, the USFS is requesting comments on the proposed action. Comments received will be part of the public record on this project and will be available for public inspection.

Estimated Dates for DEIS and FEIS: The DEIS is expected to be filed with the Environmental Protection Agency and to be available for public review and comment by May 2003. At that time, The Environmental Protection Agency (EPA) will publish a Notice of Availability (NOA) of the DEIS in the **Federal Register.** The comment period on the DEIS will be a minimum of 45 days from the date the EPA publishes the NOA in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Firstly, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns (*Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*) Also, environmental objections that could be raised at the draft EIS stage, but are not raised until after completion of the final EIS, may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*. 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this project participate by the close of the scoping comment period, so that substantive comments are made available to the Forest Service at a time when the comments can be meaningfully considered and responded to in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed in September 2003. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action.

The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal in accordance with 36 CFR part 215.

Dated: February 6, 2003.

Benjamin T. Worthington,

Forest Supervisor, Daniel Boone National Forest.

[FR Doc. 03–3470 Filed 2–12–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on March 20, 2003, from 3:30 P.M. to 6 P.M.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–23612; EMAIL *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review and Approval of the Minutes of the September 19, 2002 Meeting; (3) Finalize business for 2002; (4) Discuss excess funds from 2001 projects; (5) Financial Agreements for RAC Projects not Performed by Forest Service; (6) Mendocino County Representatives; (7) Recommend Projects for 2003; (8) Discussion on Next Meeting Date; (10) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 7, 2003.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 03–3578 Filed 2–12–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent: To Request a Revision of a Currently Approved Information Collection

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Natural Resources Conservation Service's (NRCS) intention to request a revision to a currently approved information collection, Long Term Contracting.

DATES: Comments will be received for a 60-day period commencing with the date of this publication.

Additional Information or Comments: Contact *Phyllis I. Williams,* Agency OMB Clearance Officer, Natural Resources Conservation Service, Department of Agriculture, 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; (301) 504–2170; *phyllis.i.williams@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Payment.

OMB Number: 0578–0013.

Expiration Date of Approval: June 30, 2003.

Type of Request: To continue with a change of a currently approved collection for which the approval will expire.

Abstract: The primary objective of the Natural Resources Conservation Service (NRCS) is to work in partnership with the American people and the farming and ranching community to conserve and sustain our natural resources. The purpose of Long-Term Contracting information collection is to provide for programs to extend cost sharing and technical assistance through long-term contracts to landowners and others. These contracts provide for making land use changes and installing conservation measures and practices to conserve, develop, and use the soil, water, and related natural resources on private lands. For cost-share programs, Federal financial and technical assistance is based on a conservation plan that is made a part of an agreement, contract or easement, for a period of time of no less than 1 year, no more than 15 years. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, Federal cost-share payments are made to the land user, or third party, upon successful application of the conservation treatment. NRCS purchases easement programs and provides for the protection and management for the life of the easement.

The information collected through this package is used by NRCS to ensure the proper use of program funds, including the application for participation, contract implementation, conservation planning, and application for payment. The table below lists the forms in this collection, the use of each document, and the applicable programs for the information collection. These forms constitute this information collection, and reflect the documents used by Department of Agriculture (USDA) program participants to indicate their desire to participate in one or more of the applicable programs. To obtain copies of forms referenced, access the Service Center Web site address at *http://www.sc.egov.usda.gov.* You may also e-mail your request and/or comments, including your address, phone number, and form number, to *terri.jackson@usda.gov,* or call the Forms Manager at (301) 504–2164.

OMB 0578–0013, LONG-TERM CONTRACTING INFORMATION COLLECTION PACKAGE—FORMS INCLUDED—7 CFR 630

Form No.	Forms superceded	Form title and usage	Previous OMB No.	Program [1]
AD–1153	NRCS–LTP–01 and CCC–1250.	Application for Long-Term Contracted Assistance—(Used for the initial program application).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, GRP; FPP
AD–1154	NRCS–LTP–02 and CCC–1251.	Long Term Contract/Agreement for NRCS Cost-Share Programs—(Used for contract obligation).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, GRP; FPP
AD–1154D	New Program	Appendix; Special Provisions for the Grassland Reserve Incentives Programs.	New Program	GRP
AD–1154E		Appendix; Special Provisions for the Farmland Protection Program.	0578–0013	FPP
AD–1155	NRCS–LTP–11; CCC–1252.	Conservation Plan/Schedule of Operations—(Used to develop and list the applicable conservation practices/measures to be applied, the amounts to be applied, and the estimated financial assistance obligation).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, EQIP, AMA, CSP, GRP, SWCA, CRP, RCWP, RAMP, GPCP, CRSCP, WQIP; IEQIP, FIP, ECP
AD–1155A	NRCS–LTP–11B; CCC–1252B.	Conservation Plan/Schedule of Operations—Acceptance Page—(Used by the agency and participant to accept the Conservation Plan, summarize the obligations, and finalize the contract).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, EQIP, AMA, CSP, GRP, SWCA, CRP, RCWP, RAMP, GPCP, CRSCP, WQIP; IEQIP, FIP, ECP
AD–1156	NRCS–LTP–12; CCC–1253.	Revision of Plan or Schedule of Operations or Modifications of Contract—(Used to make any modifications to the practices and/or measures to be applied during the contract period).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, EQIP, AMA, CSP, GRP, SWCA, CRP, RCWP, RAMP, GPCP, CRSCP, WQIP; IEQIP, FIP, ECP
AD–1157	NRCS–LTP–20A; CCC–1255A.	Option Agreement to Purchase—(Used by the participant to indicate his/her desire to continue in the program after an initial acceptance of eligibility has been provided).	0578–0013	WRP, EWP–FPE; GRP
AD–1157A	CCC–1255A; NRCS–LTP–20.	Option Agreement to Purchase, Amendment 1.	0578–0013	WRP; EWP–FPE; GRP
AD–1158	NRCS–LTP21; CCC–1256.	Subordination Agreement and Limited Lien Waiver " (Used to remove encumbrances of the title for USDA to acquire an easement).	0578–0013	WRP; EWP–FPE; GRP
AD–1159	NRCS–LTP–24; CCC–1257.	Notification of Intent to Continue—(Used by the participant to indicate his/her desire to continue in the program after an initial acceptance of eligibility has been provided).	0578–0013	WRP; EWP–FPE; GRP
AD–1160	NRCS–LTP–25; CCC–1258.	Compatible Use Authorization—(Used by the agency to authorize uses compatible with the program purposes as requested by the program participant on easement acquisitions).	0578–0013	EWP–FP; WRP; GRP

OMB 0578–0013, LONG-TERM CONTRACTING INFORMATION COLLECTION PACKAGE—FORMS INCLUDED—7 CFR 630—Continued

Form No.	Forms superceded	Form title and usage	Previous OMB No.	Program [1]
AD–1161	NRCS–FNM–141; CCC–1202.	Application for Payment—(Used by the program participant to apply for payment in exchange for implementing one or more conservation practices or measures).	0578–0018	CRSCP; EWP; FIP; GPCP; IEQIP; RC&D; RAMP; FPP; WPFPP; WRP (direct appropriated funds); WHIP
CCC–1200		Conservation Program Contract—(Used to make initial application, and serve as the contractual document upon acceptance into the program).	0560–0174 (Pkg transferred from FSA) and 0578–0028.	EQIP, AMA, CSP, GRP, FPP, SWCA
CCC–1200A		Appendix; Special Provisions for the Environmental Quality Incentives Program.	0560–0174 (Pkg transferred from FSA) and 0578–0028.	EQIP
CCC–1200 AMA		Appendix; Special Provisions for the Agricultural Management Assistance Program.	0560–0174 (Pkg transferred from FSA) and 0578–0028.	AMA
CCC–1200C	New Program	Appendix; Special Provisions for the Conservation Security Program.	New Program	CSP
CCC–1201	New	Application Evaluation Worksheet—(Used by the agency to evaluate the environmental benefits of a participants proposed conservation plan of operations and for ranking the applications).	0560–0174	EQIP
CCC–1245		Practice Approval and Payment Application (Used by the program participant to apply for payment in exchange for implementing one or more conservation practices or measures).	0560–0140174 (Package transferred from FSA) and 0578–0028.	EQIP, AMA, CSP, GRP, FPP; SWCA
CCC–1255		Warranty Easement Deed (Permanent)—(Used to encumber the easement acreage and transfer easement to USDA).	0578–0013	WRP
CCC–1255A	New	Option to Purchase Agreement (30-year)—(Used by the participant to indicate his/her desire to continue in the program after an initial acceptance of eligibility has been provided).	Form No. Previously used for another purpose.	WRP
CCC–1255B	New	Warranty Easement Deed (30-year)—(Used to encumber the easement acreage and transfer easement to USDA).	Form No. Previously used for another purpose.	WRP
NRCS–CPA–38		Request for a Certified Wetland Determination—(Used by USDA participants to request a certified wetland determination).	0578–0013	WC; WRP; EWP–FPEP; WHIP; CRP
NRCS–LTP–13		Conservation Program Status Review—(Used by the agency and the participant to review the status of contract or agreement implementation).	0578–0013	EWP–FPEC; WPFPP, WRP, WHIP, EQIP, AMA, CSP, GRP, SWCA, CRP, RCWP, RAMP, GPCP, CRSCP, WQIP; IEQIP, FIP, ECP, CTA; HELC/WC
NRCS–LTP–20		Warranty Easement Deed (Permanent)—(Used to encumber the easement acreage and transfer easement to USDA).	0578–0013	EWP–FPE
NRCS–LTP–151		Notice of Agreement or Contract Violation—(Used by the agency to notify contract holders of contract violations).	0578–0013	CRSCP; GPCP; IEQIP; RAMP; RCWP; WBP; WHIP
NRCS–LTP–152		Transfer Agreement—(Used by the agency and the program participant to transfer the program contract or agreement to another entity).	0578–0013	CRSCP; GPCP; IEQIP; RAMP; RCWP; WBP; WHIP

OMB 0578–0013, LONG-TERM CONTRACTING INFORMATION COLLECTION PACKAGE—FORMS INCLUDED—7 CFR 630—Continued

Form No.	Forms superceded	Form title and usage	Previous OMB No.	Program [1]
NRCS–LTP–153		Agreement Covering Non-Compliance with Contract Provisions—(Used by the agency to notify program participants of non-compliance with program contracts or agreements).	0578–0013	CRSCP; GPCP; IEQIP; RAMP; RCWP; WBP; WHIP

[1] Conservation Programs and Authorities are as follows:
AMA—Agricultural Management Assistance; Pub. L. 106–224, Section 133(b); Pub. L. 107–171, Section 2501
EWP–FPEC—Emergency Watershed Program, Floodplain Easement Component; 16 U.S.C. 2203; 7 CFR 624
CRP—Conservation Reserve Program; 16 U.S.C. 3831–3836; 7 CFR 1410
CRSCP—Colorado River Salinity Control Program; 7 CFR 702
CSP—Conservation Security Program; Pub. L. 107–171, Sections 2001–2006
CTA—Conservation Technical Assistance; 16 U.S.C. 590 a–f
ECP—Emergency Conservation Program; 7 CFR 701
EQIP—Environmental Quality Incentives Program; 16 U.S.C. 3839aa; 3839aa(1–8); 7 CFR 1466
HELC/WC—Highly Erodible Land and Wetland Conservation Compliance; 7 CFR 12
FIP—Forestry Incentives Program; Pub. L. 95–313, Sec. 4, July 1, 1978, 92 Stat. 367; Pub. L. 101–624, title XII, Secs. 1214, 1224(1), Nov. 28, 1990, 104 Stat. 3525, 3542; 7 CFR 701
FPP—Farmland Protection Program; 16 U.S.C. 3830 note; 7 CFR 1469; Pub. L. 107–171, Section 2503
GPCP—Great Plains Conservation Program; 16 U.S.C. 590p(b); 7 CFR 631
GRP—Grassland Reserve Program; Pub. L. 107–171, Section 2401
IEQIP—Interim Environmental Quality Incentives Program; 7 CFR 631 and 7 CFR 702
RAMP—Rural Abandoned Mine Program; 30 U.S.C. 1236 *et seq.*; 7 CFR 632
RC&D—Resource Conservation & Development Program; Pub. L. 107–171, Section 2504
RCWP—Rural Clean Water Program; 33 U.S.C. 1288 *et seq.*; Pub. L. 7 CFR 634
SWCA—Soil and Water Conservation Assistance Program; Pub. L. 106–244, Section 211(b)
WBP—Water Bank Program; 16 U.S.C. 1301–1311; 7 CFR 752
WC—Wetland Conservation Compliance; 16 U.S.C. 3801–3824; 7 CFR 12
WHIP—Wildlife Habitat Incentives Program; 16 U.S.C. 3836a; 7 CFR 636
WPFPP—Watershed Protection and Flood Prevention Program; Pub. L. 83–566; 7 CFR 622
WQIP—Water Quality Incentives Program: 7 CFR 701
WRP—Wetlands Reserve Program; 16 U.S.C. 3837; 3837(a–f); 7 CFR 1467

This request represents a combination of four Information Collection Packages, as follows: OMB Number: 0578–0013, Long Term Contracting; OMB Number: 0578–0018, Application for Payment; OMB Number 0578–0028, Risk Protection Programs; and OMB Number 0560–0174, Environmental Quality Incentives Program, (transferred from the Farm Service Agency). The above table represents all of the forms incorporated into this one information collection, OMB Number 0578–0013. The table below shows a summary of the changes in the package since the previous authorization:

Previous Burden Hours		162,351.3
Burden Transferred from OMB Number 0560–0174	444,609	(+) Adjustment
Burden Transferred from OMB Number 0578–0018	20,731	(+) Adjustment
Burden Transferred from OMB Number 0578–0028	2,917	(+) Adjustment
Burden Hour Reduction for Electronic Submission, OMB Number 0578–0013	1,909.2	(−) Adjustment
Burden Hour Reduction for Electronic Submission, OMB Number 0578–0018	2,961.6	(−) Adjustment
Burden Hour Reduction for Electronic Submission, OMB Number 0578–0028	416.5	(−) Adjustment
Burden Hour Reduction for Electronic Submission, OMB Number 0560–0174	66,691.4	(−) Adjustment
Proposed Burden Hours		558,930

NRCS will ask for 3-year OMB approval within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.41 hours or 84.7 minutes per response.

Respondents: Farms, individuals, or households, or State, local, or Tribal governments.

Estimated Number of Respondents: 396,077.

Estimated Total Annual Burden on Respondents: 558,930.

Copies of this information collection and related instructions can be obtained without charge from Phyllis Williams, the Agency OMB Clearance Officer, at 5602 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; (301) 504–2170; *phyllis.i.williams@usda.gov.*

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology. Comments may be sent to: Phyllis Williams, Agency OMB Clearance Officer, U.S. Department of Agriculture, Natural Resources Conservation Service, 5602 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; (301) 504–2170; *phyllis.williams@usda.gov.*

All responses to this notice will be summarized and included in the request

for OMB approval. All comments also will become a matter of public record.

Signed in Washington, DC, on January 24, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–3569 Filed 2–12–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Williams Creek Watershed, Clay County, MO

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Williams Creek Watershed Clay County, Missouri.

FOR FURTHER INFORMATION CONTACT: Roger A. Hansen, State Conservationist, Natural Resources Conservation Service, Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, Missouri 65203. Telephone: (314) 876–0901.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roger A. Hansen, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are to rehabilitate an existing structure in order to comply with state and federal dam safety regulations, maintain flood prevention, flood damage reduction, and recreational benefits. The planned works of improvement include raising the height of Structure 2, improving the stilling basin/plunge pool, widening the auxiliary spillway, lowering the second stage of the principal spillway, installing wave protection on the front slope of the dam, installing an additional foundation drain, and replacing all recreational facilities during the construction process.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harold L. Deckerd, Assistant State Conservationist (WR).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO.10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,

State Conservationist.

[FR Doc. 03–3570 Filed 2–12–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part: Certain Cased Pencils From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review and intent to revoke order in part.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and section 351.216(b) of the Department of Commerce's (the Department's) regulations, The Smencil Company (Smencil Co.) filed a request for a changed circumstances review of the antidumping duty (AD) order on certain cased pencils from the People's Republic of China (PRC). Specifically, Smencil Co. requests that the Department revoke the AD order with respect to the specialty pencil it produces, which is described below. The domestic industry has affirmatively expressed a lack of interest in the continuation of the order with respect to this product. In response to the request, the Department is initiating a changed circumstances review and issuing a notice of preliminary intent to revoke, in part, the AD order on certain cased pencils from the PRC. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Howard Smith, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5505 and (202) 482–5193, respectively.

Background

On December 23, 2002, Smencil Co. filed a request with the Department to revoke the AD order on certain cased pencils from the PRC with respect to the patented, scent-infused pencils produced in the PRC that it imports. *See* Smencil Co.'s letter to the Secretary, dated December 10, 2002 (Smencil Co. Request Letter). Specifically, Smencil Co. requested that the Department revoke the AD order with respect to imports meeting the following description: scent-infused pencils manufactured in the PRC under U.S. patent number 6,217,242,[1] (Patent) that are made from rolled sheets of paper, namely rolled sheets of recycled newspaper, and infused with various scents so as to create scented pencils named Smencils. *See* Smencil Co. Request Letter at 1–2.

Smencil Co. attached to its request a letter dated December 10, 2002 from the petitioners in the pencils AD proceeding,[2] stating that they are not interested in having the AD order on certain cased pencils from the PRC apply to pencils manufactured in the PRC under patent number 6,217,242 that are made from rolled sheets of recycled newspaper that are infused with various scents, thereby creating products with odors distinct from those that may emanate from pencils made without the scent infusion. The petitioners indicated that the exclusion of the above-described pencils from the order should be narrowly drawn and not encompass pencils manufactured from recycled paper products without the scent infusion or with odors infused by means not covered by the Patent.

[1] Patent number 6,217,242 (April 17, 2001) describes the invention as a "scented writing implement (comprising) * * * a fragrant pencil and a method for making same." (*See* Smencil Co. Request Letter at Appendix 2) The patent is owned by Evaco, Ltd., doing business as The Smencil Company (*See* Smencil Co. Request Letter at 1).

[2] The petitioners are the Writing Instrument Manufacturers Association, Pencil Section (WIMA) (a trade association comprised, in part, of domestic pencil producers) and six domestic pencil producers: Aakron Rule, Inc., Dixon-Ticonderoga Corporation, Musgrave Pencil Company, Moon Products, Inc., Sanford Corporation, and Tennessee Pencil Company (collectively, the petitioners).

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and for U.S. Customs Service (Customs) purposes, our written description of the scope of the order is dispositive.

Initiation and Preliminary Results of Changed Circumstances AD Administrative Review, and Intent To Revoke in Part

Section 751(d)(1) of the Act and section 351.222 (g) of the Department's regulations provide that the Department may revoke an AD or countervailing duty order, in whole or in part, after conducting a changed circumstances review and concluding from the available information that changed circumstances sufficient to warrant revocation or termination exist. The Department may conclude that changed circumstances sufficient to warrant revocation (in whole or in part) exist when producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. *See* section 782(h) of the Act and section 351.222 (g)(1) of the Department's regulations. Based on an affirmative statement by domestic producers of the like product, we find that no interest exists in continuing the AD order with respect to the pencils described above in the "Background," section. Therefore, we are hereby notifying the public of our preliminary intent to revoke, in part, the AD order on certain cased pencils from the PRC with respect to imports of pencils that meet the above-mentioned description. We intend to modify the scope of the AD order to read as follows:

Imports covered by this order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Furthermore, pursuant to section 351.221(c)(3)(ii) of the Department's regulations, because domestic producers have expressed a lack of interest, we determine that expedited action is warranted and have combined the notices of initiation and preliminary results.

If the final partial revocation occurs, we intend to instruct Customs to liquidate, without regard to applicable antidumping duties, all unliquidated entries of pencils that meet the above-noted specifications, and to refund any estimated antidumping duties collected on such merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2001 (the first day of the period covered by the most recently initiated administrative review), in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2001, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on pencils that meet the above-noted specifications will continue unless, and until, we publish a final determination to revoke the order in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Case briefs and/or written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Pursuant to section 351.309(d) of the Department's regulations, rebuttals to written comments, limited to the issues raised in the case briefs, may be filed not later than five days after the deadline for submission of case briefs. Also, interested parties may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. All written comments shall be submitted in accordance with section 351.303 of the Department's regulations and shall be served on all interested parties on the Department's service list. The Department will issue the final results of this review within the time limits established in section 351.216 (e) of its regulations.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: February 6, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3591 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Final Results of Administrative Antidumping Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China until no later than April 14, 2003. The period of review is September 1, 2000, through August 31, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Eli Blum-Page or Maureen Flannery, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 and (202) 482–3020, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the tariff Act of 1930 (the Act) requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested, and final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the prescribed time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 and 180 days, respectively.

Background

Based on timely requests from petitioner and two respondent companies, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China, for the period of September 1, 200, through August 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 54195 (October 26, 2001).

On May 28, 2002, the Department published an extension of time limits for the preliminary results of this administrative review. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 36856. Following this extension, the preliminary results were issued on September 30, 2002. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 63877 (October 16, 2002).

Extension of Time Limits for Final Results

This case involves complex issues, including affiliation and the application of facts available. As such, the Department finds that is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1). Therefore, in accordance with sections 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for the completion of these final results to 180 days from the date of publication of the preliminary results. These final results will now be due no later than April 14, 2003.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 7, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3517 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On January 14, 2003, the Department of Commerce published the final results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 2000, through July 31, 2001. Based on a correction of an ministerial error, we have changed the assessment rate calculation for CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2003, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (68 FR 1816) (*Final Results*).

On January 14, 2003, CEMEX, S.A. de C.V. (CEMEX), and GCC Cemento, S.A. de C.V. (GCCC), alleged that the Department made an ministerial error in calculating the dumping margin for CEMEX and GCCC in the *Final Results* of the 2000/01 administrative review. Specifically, CEMEX and GCCC alleged that the Department inadvertently did not convert the variable for entered value from short tons to metric tons when calculating the assessment rate. CEMEX and GCCC argue that, by not converting the entered-value variable to a metric-ton basis, the assessment-rate calculation overstates the actual assessment rate. The petitioner did not comment on the ministerial-error allegation.

We agree with respondents' assertion that we neglected to convert the entered-value variable from short tons to metric tons in our calculations. Therefore, we have recalculated the assessment rate for CEMEX and GCCC by converting the entered-value variable from short tons to metric tons.

Correction of this ministerial error does not change the weighted-average margin of 73.74 percent that we calculated for the *Final Results*. Making the correction only changes the importer-specific assessment rate. See Analysis Memorandum dated February 3, 2003, for further information.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. As amended by this determination and in accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment rate value. For the sales in the United States through the respondents' affiliated U.S. parties, we divided the total dumping margin for the reviewed sales by the total entered value of those reviewed sales. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the entries during the review period (see 19 CFR 351.212(a)).

We are issuing and publishing this determination and notice in accordance with sections 751 (h) and 777(i) (1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3516 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Notice of Amended Final Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Thomas Futtner at (202) 482–3936 or (202) 482–3814, respectively, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2002, the Department published the final results of review for the tenth review of heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 67 FR 57789 (September 12, 2002) *(Final Results)*. On September 16, 2002, the petitioner Ames True Temper, and the respondents, Shandong Machinery Import & Export Corporation (SMC), Tianjin Machinery Import & Export Corporation (TMC), Liaoning Machinery Import & Export Corporation (LMC), and Shandong Huarong General Group Corporation (Huarong), timely filed allegations that the Department made several ministerial errors in its final results. On September 23, 2002, the petitioner and respondents filed rebuttal comments. On September 30, 2002, the respondents (*i.e.*, TMC, LMC, Huarong, and SMC) filed a summons and complaint with the U.S. Court of International Trade. On October 8, 2002, the respondents amended their complaint to include all four classes or kinds of merchandise. The respondents filed a second amended complaint on November 8, 2002, whereby SMC and LMC were removed as party-plaintiffs. The second amended complaint removed TMC's claims with respect to bars/wedges, limiting litigation to axes/adzes, hammers/sledges, and picks/mattocks. Huarong's claims were limited to bars/wedges. This notice addresses the clerical error allegations pertaining to LMC, SMC, and TMC's sales of bars/wedges.

Scope of Investigation

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the orders is dispositive.

Allegation of Ministerial Errors

The petitioner alleges (1) that the Department made an error when it did not publish cash deposit rates for the PRC-wide entity; (2) that the Department miscalculated the importer-specific assessment rates; (3) that the Department miscalculated the surrogate values for several factors of production; (4) that the Department miscalculated marine insurance and international freight with respect to SMC; (5) that the Department erred when it excluded certain sales from SMC's margin calculation; (6) that the Department miscalculated inland freight with respect to LMC; and (7) that the Department should apply an adverse facts available margin to LMC for the hammers/sledges class that is higher than the PRC-wide rate. The respondents allege (1) that the Department miscalculated two of the surrogate values that were also cited by the petitioner; and (2) that the Department erred when it did not exclude aberrational values from two surrogate value calculations affecting LMC.

According to 19 CFR 351.224(e), "the Secretary will analyze any comments received and, if appropriate * * * correct any significant ministerial error by amending the final determination or the final results of review * * *" The term "ministerial error" is defined under 19 CFR 351.224(f) as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial."

After reviewing the allegations made by the petitioner and respondents, we have determined, in accordance with 19 CFR 351.224(e), that the *Final Results* did include several ministerial errors. However, we did not agree with several other allegations of ministerial errors. For a detailed discussion of our analysis, *see* Memorandum from Bernard T. Carreau, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, "Tenth Antidumping Duty Review of Heavy Forged Hand Tools from the People's Republic of China—Amended Final Determination," *(Amended Final)* dated February 6, 2003. Also, in addition to these ministerial errors, the Department found a ministerial error that had not been raised by the parties in the margin calculations for LMC, and three ministerial errors regarding TMC's margin for sales of bars/wedges that were not raised by the parties.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results of the antidumping duty review of HFHTs from the PRC to reflect the correction of ministerial errors made in the margin calculations for SMC and LMC under the hammers/sledges and bars/wedges orders, and TMC under the bars/wedges order. These firm's revised weighted-average dumping margins are listed in the "Amended Final Results" section, below.

Amended Final Results of Review

We are amending the final results of the antidumping duty review of HFHTs from the PRC to reflect the correction of

certain ministerial errors, as noted in the Amended Final. The revised final weighted-average dumping margins are as follows:

Manufacturer/exporter	Time period	Margin (percent)
Liaoning Machinery Import & Export Corporation:		
Bars/Wedges	2/1/00–1/31/01	0.00
Hammers/Sledges	2/1/00–1/31/01	45.42
Shandong Machinery Import & Export Corporation: Hammers/Sledges	2/1/00–1/31/01	3.71
Tianjin Machinery Import & Export Corporation: Bars/Wedges	2/1/00–1/31/01	0.48

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these amended final results of review. We will direct the Customs Service to assess the resulting assessment rates for the subject merchandise on each of the importer's/customer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of amended final results of administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent, and therefore, *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies with a separate rate not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates; (4) for all non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. The current PRC-wide cash deposit rates are 18.72 percent for Axes/Adzes, 47.88 percent for Bars/Wedges, 27.71 percent for Hammers/Sledges and 98.77 percent for Picks/Mattocks. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: February 6, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3592 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013103A]

Antarctic Marine Living Resources Convention Act of 1984; Conservation and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final notice.

SUMMARY: At its Twenty-first meeting in Hobart, Tasmania, October 21 to November 1, 2002, the Commission for the Conservation of Antarctic Marine Living Resources (the Commission or CCAMLR), of which the United States is a member, adopted conservation measures, pending members' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These have been agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources (the Convention) and are in effect with respect to the United States.

ADDRESSES: Copies of the CCAMLR measures and the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle, 301–713–2282.

SUPPLEMENTARY INFORMATION:

Background

See 50 CFR part 300, subpart G - Antarctic Marine Living Resources, and 67 FR 77876 (December 19, 2002).

The measures restrict overall catches and bycatch of certain species of fish, krill and crab; limit participation in several exploratory fisheries; restrict fishing in certain areas and to certain gear types; set fishing seasons; amend and clarify the catch documentation scheme for *Dissostichus* species; amend a previously adopted measure on the use of automated satellite-linked vessel monitoring systems (VMS) on Contracting Party vessels fishing in the Convention Area; and promote compliance by Contracting and non-Contracting Party vessels. Resolutions urge Member efforts to reduce illegal, unregulated and unreported (IUU) fishing in Convention Areas adjacent to high seas Statistical Areas 51 and 57 and by flags of non-compliance.

The measures and resolutions were announced by the Department of State by a preliminary notice in the **Federal Register** on December 19, 2002 (67 FR 77887). Public comments were invited, but none were received. Through this action, NMFS notifies the public that the United States has accepted the measures adopted at CCAMLR's twenty-first meeting, and that pursuant to the Convention and 16 U.S.C. 2431 *et seq.*, these measures are in effect. For the full text of the measures adopted, see 67 FR 77887, December 19, 2002. NMFS provides the following summary of the measures as a courtesy.

Compliance

The Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures is revised to establish a list of non-Contracting Party vessels (Vessel List) whose fishing activities in the Convention Area have diminished the effectiveness of CCAMLR conservation measures in force.

The Scheme to Promote Compliance by Contracting Party Vessels with CCAMLR Conservation Measures is a new measure. It requires the Commission to identify those Contracting Parties whose vessels have engaged in fishing activities in the Convention Area in a manner which has diminished the effectiveness of CCAMLR conservation measures in force, and to establish a list of such vessels (IUU Vessel List).

Measures regulating new and exploratory fisheries are revised to restrict access to these fisheries to vessels that are equipped and configured so that they can comply with all relevant conservation measures. A vessel with a confirmed involvement in IUU fishing with respect to the CCAMLR schemes to promote compliance by Contracting and non-Contracting Party vessels is not allowed to participate in these fisheries.

The measure on Port Inspections of Vessels Carrying Toothfish is revised to require that Contracting Parties promptly provide the CCAMLR Secretariat with a report on the outcomes of each inspection conducted under the conservation measure.

The measure requiring the use of an Automated Satellite-Linked Vessel Monitoring System on vessels fishing within the Convention Area is revised to require that both the hardware and software components of the VMS must be tamper proof, i.e., must not permit the input or output of false positions nor be capable of being manually overridden. In addition, Contracting Parties may not issue licenses to fish in the Convention Area unless the VMS used on licensed vessels complies with every specification of the conservation measure.

The Commission adopted a resolution on Flags of Non-Compliance (FONC), urging all Contracting and non-Contracting Parties cooperating with the Commission to: (1) without prejudice to the primacy of the responsibility of the Flag State, to take measures or otherwise cooperate to ensure, to the greatest extent possible, that the nationals subject to their jurisdiction do not support or engage in IUU fishing, including engagement on board FONC vessels in the Convention Area is this is consistent with their national law; (2) ensure the full cooperation of their relevant national agencies and industries in implementing the measures adopted by CCAMLR: (3) develop ways to ensure that the export or transfer of fishing vessels from their State to FONC State is prohibited; and (4) prohibit the landings and transhipments of fish and fish products from FONC vessels.

Catch Documentation Scheme (CDS)

The CDS measure is revised in two ways. First, it requires that the master of a vessel completing a Dissostichus Catch Document(DCD)indicate whether a *Dissostichus* catch was caught in an Exclusive Economic Zone or on the high seas, as appropriate. Second, the Flag State can only issue a DCD confirmation number when it is convinced that the information submitted by the vessel requesting the confirmation number fully satisfies the provisions of the CDS conservation measure.

Incidental Mortality of Seabirds

The measure to minimize the incidental mortality of seabirds in the course of longline fishing or longline fishing research is amended to require that fishers remove fish hooks from all discarded material, including offal and fish heads.The Commission adopted minor changes to the bottle test in the experimental line-weighting trials required in all longline fisheries.

Research Vessel Activity

The conservation measure specifying the application of CCAMLR conservation measures to scientific research is revised to include a taxa-specific schedule for use by Members in notifying the CCAMLR Secretariat of research vessel activity.

Krill

Data requirements for the fisheries for *Euphausia superba* (krill) in Statistical Area 48 and Statistical Divisions 58.4.1 and 58.4.2 are revised to require that each Contracting Party obtain from each of its vessels the data required to complete the CCAMLR fine-scale catch and effort data form for trawl fisheries and that it aggregate these data monthly by 10 x 10 nautical mile rectangle and 10–day periods and transmit them to the CCAMLR Secretariat no late that 1 April of the following year. While fishers have been required previously to collect this data, Contracting Parties have not routinely provided it to the CCAMLR Secretariat.

Crab

The Commission eliminated a measure requiring fishers to process crab sections on board.

Champsocephalus gunnari

The Commission set the overall catch limit for *C.gunnari* in Statistical Subarea 48.3 for the 2002/2003 season at 2,181 tons, and otherwise continued previously adopted restrictions on the fishery.

The Commission set the catch limit for *C. gunnari* within defined areas of Statistical Division 58.5.2 for the 2002/03 season 2,980 tons and otherwise continued previously adopted restrictions on the fishery.

Electrona carlsbergi

The Commission set the catch limit for *E. carlsbergi*in Statistical Subarea 48.3 at 109,000 tons for the 2002/03 season. A special provision for Shag Rocks applies.

Dissostichus species

The Commission prohibited directed fishing for *Dissostichus* species in Statistical Subareas 48.5, 88.2 north of 65°S and 88.3, and Divisions 58.4.1, 58.5.1 and 58.5.2 outside the French EEZ and east of 79° 20'E outside the Australian EEZ from December 1, 2002 to November 30, 2003.

The Commission prohibited directed fishing for *Dissostichus* species in Statistical Division 58.4.4 and Subarea 58.6 outside areas of national jurisdiction until such time that further scientific information is gathered and

reviewed by the Working Group on Fish Stock Assessment and the Scientific Committee.

The Commission amended the general measures for exploratory fishing for *Dissostichus* species to limit longline soak times, except in the case of exceptional circumstances beyond the control of a vessel, to 48 hours, measured from the completion of the setting process to the beginning of the hauling process. In addition, the measure was modified to more precisely define the fine-scale rectangle within which vessels are to fish.

The Commission set the catch limit for the longline fishery for *D. eleginoides* in Subarea 48.3 in the 2002/03 season at 7,810 tons, counting any catch of *D. eleginoides* taken in other fisheries in Subarea 48.3 against the catch limit.

The Commission set the catch limit for trawl fishing in Division 58.5.2 during the December 1, 2002, to November 30, 2003, season and for longline fishing for *D. eleginoides* in Division 58.5.2 west of 79°20'E from May 1, 2003 to August 31, 2003, at 2,879 tons. This is the first season a longliner may operate in this fishery.

The Commission approved several fisheries as exploratory fisheries for the 2002/03 fishing season. These fisheries are limited total allowable catch (TAC) fisheries and are open only to the flagged vessels of the countries that notified CCAMLR of an interest by participants in the fisheries. The United States was not a notifying country, and, thus, U.S. fishers are not eligible to participate in them.

The exploratory fisheries for *Dissostichus* species are for longline fishing in Statistical Subarea 48.6 by Japan, New Zealand, South Africa and Uruguay; longline fishing in Statistical Division 58.4.2 by Australia; longline fishing in 58.4.3a (the Elan Bank) outside areas under national jurisdiction by Australia and Japan; longline fishing in Statistical Division 58.4.3b (the BANZARE Bank) by Australia and Japan; longline fishing in Statistical Subarea 88.1 by Japan, New Zealand, Russia, South Africa and Spain; longline fishing in Statistical Subarea 88.2 by Japan, New Zealand and South Africa.

The Commission extended the limitations on bycatch in new and exploratory fisheries in 58.5.2 for the 2002/03 season.

The Commission limited the bycatch of *Macrourus* species, skates and rays and other species in new and exploratory fisheries small-scale research units for *Dissostichus* in Statistical Area 48.6, Statistical Divisions 58.4.2, 58.4.3a, 58.4.3b, and Statistical Areas 88.1 and 88.2 for the 2002/03 season.

The Commission adopted a resolution relating to Harvesting *D. eleginoides* in Areas Outside of Coastal State Jurisdiction Adjacent to the CCAMLR Area in FAO Statistical Areas 51 and 57. The resolution recommends that Members provide data and other information, subject to their laws and regulations, relevant to understanding the biology and estimating the status of stocks in these areas. It also recommends that Members take steps necessary to conduct only that level of toothfish harvesting in these areas, which will ensure the conservation of this species in the Convention Area.

Authority: 16 U.S.C. 2431 *et seq.*

Dated: February 7, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3590 Filed 2–12–03; 8:45 am]

BILLING CODE 3510–22–S

LIBRARY OF CONGRESS

Copyright Office

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2003–1]

Vessel Hull Design Protection Act

AGENCIES: The United States Copyright Office, Library of Congress; and the United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments and notice of public hearing.

SUMMARY: In preparation for the report to the Congress on the Vessel Hull Design Protection Act, the United States Copyright Office and the United States Patent and Trademark Office are requesting written comments and are announcing a public hearing.

DATES: Written comments must be received on or before March 20, 2003. Reply comments must be received on or before April 14, 2003. The public meeting will be held on March 27, 2003, starting at 10 a.m. at the address below. Requests to participate or attend the public meeting are on a first-come, first-served basis and must be received by close of business on March 20, 2003.

ADDRESSES: If sent by mail, five copies of written comments and replies each should be addressed to: William J. Roberts, Jr., Senior Attorney, GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400 and Linda S. Lourie, Attorney-Advisor, Office of External Affairs, United States Patent and Trademark Office, Box 4, Department of Commerce, Washington, DC 20231. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenues, SE., Washington, DC and the Office of External Affairs, United States Patent and Trademark Office, Suite 902, 2121 Crystal Drive, Crystal Park 2, Arlington, VA. The public meeting will take place in LM–414 (CARP Hearing Room), James Madison Memorial Building, First and Independence Avenue, SE., Washington, DC. Notices of intent to participate in the public hearing should be faxed to (202) 252–3423 or e-mailed to *wroberts@loc.gov*.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366. Linda S. Lourie, Attorney-Advisor, Office of External Affairs, U.S. Patent and Trademark Office, Box 4, Department of Commerce, Washington, DC 20231. Telephone: (703) 305–9300. Telefax: (703) 305–8885.

SUPPLEMENTARY INFORMATION:

Background

As a part of the Digital Millennium Copyright Act of 1998, Congress passed the Vessel Hull Design Protection Act ("VHDPA") which created sui generis protection for original designs of watercraft hulls and decks. The VHDPA was slated to sunset after two years but in 1999, as part of the Intellectual Property and Communications Omnibus Reform Act, the VHDPA was made a permanent part of the law. See 17 U.S.C. chapter 13. In making the VHDPA permanent, Congress directed the Register of Copyrights and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to conduct a study on the effectiveness of the VHDPA and report their findings to the Judiciary Committees of the Senate and House of Representatives by November 1, 2003.

In conducting the study, the Copyright Office and the U.S. Patent and Trademark Office are required to consider a number of factors. See Section 504 of the Digital Millennium Copyright Act of 1998, Pub. L. No. 105–304, 112 Stat. 2860. First, we must examine the extent to which the VHDPA has been effective in suppressing infringement of protected vessel hull designs. Second, we must consider the extent to which the vessel hull design registration process contained in chapter 13 of title 17 has been utilized by those eligible to claim protection. Third, we must consider the extent to which the creation of new designs of vessel hulls have been encouraged by the VHDPA. Fourth, we must examine the effect, if any, that the VHDPA has had on the price of protected vessel hulls.

Finally, we are directed to consider any other factors deemed relevant to accomplishing the purpose of this study. One item for consideration under this category is what, if any, amendments need to be made to the VHDPA to improve its function and/or effectiveness.

Request for Written Comments

In order to accomplish our assigned task, the cooperation and participation of marine manufacturers, designers and those affected by the VHDPA is essential. Consequently, we request interested parties to submit written comments and information/data relevant to the study factors described above. Although we are desirous of information related to all factors, we are particularly interested in receiving information as to how the VHDPA has stimulated the creation of new vessel hull designs, and what effect, if any, protection for designs has had on the price of watercraft. Interested parties submitting data or information that they consider confidential should appropriately mark such documents so that they are not included in the public record of this proceeding.

Public Hearing

To further the goal of obtaining relevant information and drafting the report, a public hearing will be held at the Copyright Office (see above for the specific address) on Thursday, March 27, 2003, at 10 a.m. The public hearing is intended to allow participants to present relevant information and answer questions from staff preparing the report. Those wishing to attend should notify the Copyright Office by fax or e-mail no later than March 20, 2003.

Dated: February 10, 2003.

David O. Carson,

General Counsel, Copyright Office.

Jonathan W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03–3749 Filed 2–12–03; 8:45 am]

BILLING CODE 1410–30–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Friday, February 21, 2003, 10 a.m.

LOCATION: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Product Registration Cards (Petition CP 01–1)

The staff will brief the Commission on Petition CP 01–1 submitted by the Consumer Federation of America (CFA) requesting that the Commission issue a rule requiring product registration cards with every product intended for children.

Certain members of the public have been invited to give oral presentations based on their written comments previously submitted to the Commission.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–7923.

Dated: February 11, 2003.

Todd A. Stevenson,

Secretary

[FR Doc. 03–3748 Filed 2–11–03; 2:16 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE: In-Utero Surgical Repair of Myelomeningocele Randomized Clinical Trial

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties of a demonstration project in which the Department of Defense (DoD) will participate in a clinical trial for prenatal and postnatal myelomeningocele repair approved by the National Institute of Child Health and Human Development (NICHD). The study is being done to find out whether it is better to close a spina bifida defect before the baby is born or shortly after birth. Participation in this clinical trial will improve access to prenatal and postnatal surgical intervention for the repair of myelomeningocele for active duty members, former members, and their dependents when their condition meets protocol eligibility criteria. DoD financing of this procedure will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of intrauterine repair of fetal myelomeningocele. It is anticipated that new enrollments into the clinical trial will end in April 2004, with those enrolled having periodic examinations during a three-year follow-up period. This demonstration project is being conducted under the authority of 10 U.S.C. 1092.

EFFECTIVE DATES: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones, Health Care Policy Analyst, Medical Benefits and Reimbursement Systems, TRICARE Management Activity (TMA), 16401 East Centretech Parkway, Aurora, CO 80011–9066, telephone (303) 676–3401.

SUPPLEMENTARY INFORMATION:

A. Background

Myelomeningocele is the most severe form of spina bifida. In a fetus with myelomeningocele, there is evidence that neurologic function deteriorates during gestation. While myelomeningocele is not necessarily life threatening, it is the most common debilitating birth defect. Those who survive are likely to experience significant life-long disabilities. Approximately 2,000 fetuses annually are affected with some kind of open neural tube defect in the United States, half of which are open spina bifida. The surgical repair of myelomeningocele in utero is the technique that may provide early intervention in preserving the neurologic integrity of these children. To date, clinical results of fetal surgery for myelomeningocele are based on comparisons with past controls and addresses efficacy rather than safety. A randomized clinical trial for myelomeningocele is necessary to determine whether fetal repair of myelomeningocele, with its attendant maternal and neonatal morbidity, is warranted.

The Department of Defense (DoD) provides and maintains readiness to provide medical services and support to the Armed Forces during military operations, and to provide health services and support to members of the uniformed forces, their family members, and to others entitled to DoD medical care. The services offered to TRICARE beneficiaries other than active duty members must be medically necessary, appropriate, and proven care and are governed by 10 U.S.C. 1079(a)(13).

Active duty service members are authorized civilian medical care under 10 U.S.C. 1074(c), and may be referred for unproven therapy when controlled in a formal clinical research trial. The trial must be operating under the structure of an institutional review board process, which conforms to the requirements of DoD Directive 3216.2, Protection of Human Subjects and Adherence of Ethical Standards in DoD Supported Research, the requirements of 32 CFR part 219, Protection of Human Subjects, as well as Service specific human experimentation regulations.

DoD has the authority to waive the statutory limitation for all other DoD beneficiaries that health care services must be medically necessary, appropriate, and proven care, as long as these services are provided within the context of an interagency agreement with the National Institutes of Health (NIH) for beneficiary participation in NIH-sponsored or approved clinical trials. The Secretary of Defense must also determine that such waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

B. Caseload, Costs

Each year approximately 60,000 TRICARE births occur at the Military Treatment Facilities (MTFs). Approximately 40,000 TRICARE births occur in civilian hospitals. According to the Center of Disease Control, in 2001 there were 20.09 cases of spina bifida per 100,000 births. Based on various studies, we estimate that 95 percent of these reported cases are related to myelomeningocele. We then interpret that approximately 19 cases would occur annually in TRICARE. We expect six to sixteen TRICARE members each year would have a fetus with a prenatal diagnosis of spina bifida that would be eligible for the NICHD clinical trial and would agree to participate.

Treatment protocol costs are estimated between $300,000 and $1.3 million over Fiscal Years 2003 through 2006 for TRICARE participation in the NICHD clinical trial of myelomeningocele fetal repair.

C. Operation of the Demonstration

The National Institute of Child Health and Human Development (NICHD) will fund an unblinded randomized controlled clinical trial conducted by three participating centers. The NICHD will provide administrative support, all NICHD enrollments, and study monitoring activities. DoD will provide a Project Officer who will coordinate DoD activities.

The DoD will develop initiatives to educate military healthcare providers and civilian TRICARE network providers about this initiative and the processes that are available for referral and pre-authorization of individuals with affected fetuses. DoD will require pre-authorization for any clinical services necessary or resultant from participation in an NICHD sponsored clinical trail before reimbursement by TRICARE. A pre-authorization for enrollment in the trial will suffice to cover each incidental expense or claim related to participation in the clinical trial extending through the duration of the clinical trial. The pre-authorization process will include verification with the NICHD that the patient has been enrolled in the study.

The TRICARE contractor(s) would not be involved in clinical issues or in directing patients to a particular institution.

D. Requirements for Participation

Active duty members, former members, and their dependents eligible for TRICARE who meet the clinical trial protocol would be eligible to participate in the demonstration. NICHD anticipates a total of two hundred patients whose fetuses have been diagnosed with myelomeningocele at 16 to 25 weeks' gestation who are over the age of 18 years would be enrolled and referred to the Data and Study Coordinating Center (DSCC) at George Washington University in Rockville, Maryland, to undergo an initial evaluation. Those individuals who remain eligible and interested would be assigned by the DSCC to one of the three centers (Vanderbilt University medical Center in Nashville, the University of California at San Francisco, and Children's Hospital of Philadelphia) where final evaluation and screening will be performed. Patient selection to the three Management of Myelomeningocele Study (MOMS) Centers would be based on convenience to the individual as well as the need to divide evenly the participants among the three centers.

E. Costs

Patients who choose to participate in the clinical trial will have no additional costs for prenatal care beyond what is normally paid by the beneficiary. If TRICARE beneficiaries have other health insurance, the other health insurance is required to pay first before TRICARE to the extent the health care is a benefit under the other plan as stated under 10 U.S.C. 1079(j)(1). If patients are in a prenatal surgery group, the travel, meal and lodging costs for the patient and a relative or friend will be covered by NICHD grant support or the grantee institution until delivery and after delivery, until the patient and baby go home.

If patients are in a postnatal surgery group, travel back to the center for the patient and a support person will be covered by NICHD grant support or the grantee institution, as well as meals and lodging before and after delivery, until the baby and patient are able to go home. The cost of the study follow up, returning at one year and two and a half years of age will also be covered. Meals and lodging will be covered for those visits as well.

Dated: February 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–3512 Filed 2–12–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the 2003 S&T Review and the Chief of Staff and Secretary of the Air Force. The purpose of the meeting is to allow the SAB leadership to advise the Air Force leadership on the outcome of the 2003 Review. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: February 20, 2003.

ADDRESSES: Room 4E869, The Pentagon.

FOR FURTHER INFORMATION CONTACT: Maj John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–3638 Filed 2–12–03; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the 2003 S&T Review and the leadership of the Air Force Materiel Command. The purpose of the meeting is to allow the SAB leadership to advise the commander of the AFMC on the outcome of the 2003 Review. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: February 18, 2003.

ADDRESSES: Room 4E987, The Pentagon.

FOR FURTHER INFORMATION CONTACT: Maj John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–3639 Filed 2–12–03; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Dredged Material Management Plan Feasibility Study, Los Angeles County, CA

AGENCY: Department of the Army, Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), the Port of Los Angeles, the City of Long Beach, and the County of Los Angeles propose to evaluate options for managing dredge materials in Los Angeles County.

DATES: A scoping meeting will be held on February 26, 2003, from 6:30 to 8:30 p.m. at the Cesar Chavez Communitiy Center located at 401 Golden Avenue in Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) may be directed to Mr. Paul Rose, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, CA, 90053–2325, (213) 452–3840.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* The Corps estimates that, within the Los Angeles Region, approximately 5 million cubic meters (m^3) of sediments deemed suitable for ocean disposal and 2.5 million m^3 of sediments deemed unsuitable for ocean disposal will need to be dredged from the Ports and Harbors of Los Angeles County over the next 10 years. However, there is currently a lack of readily available disposal options for the unsuitable sediments. The U.S. Army Corps of Engineers, L.A. District has determined that there is a federal interest to participate in a detailed feasibility study to develop a regional dredged material management plan.

2. *Alternatives:* Alternatives that may be considered include: no action, upland disposal, aquatic capping, near shore confined disposal facility (California Department of Fish and Game), shallow water habitat creation, chemical stabilization, washing, blending, physical separation, thermal desorption, construction fill, landfill daily cover, reclamation fill, oil well injections, and geotextile encapsulation. These alternatives, and any additional, reasonable, alternatives recommended through the public scoping process, will be evaluated by the Corps of Engineers.

3. *Scoping Process:* The Corps, the Port of Los Angeles, the City of Long Beach, and the County of Los Angeles are preparing a joint EIS/EIR to address potential impacts associated with the proposed project. The Corps is the lead Federal agency for compliance with National Environmental Policy Act (NEPA) for the project, and the County of Los Angeles is the Lead State Agency for compliance with the California Environmental Quality Act (CEQA) for the non-Federal aspects of the project. The draft EIS/EIR (DEIS/EIR) document will incorporate public concerns in the analysis of impacts associated with the proposed action and associated project alternatives. The DEIS/EIR will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The final EIS/EIR (FEIS/EIR) will address the comments received on the DEIS/EIR during public review, and will be furnished to all who commented on the DEIS/EIR, and is made available to anyone that requests a copy during the 30-day public comment period. The final steps involves, for the Federal EIS, preparing a record of decision (ROD) and, for the State EIR, certifying the EIR and adopting a mitigation monitoring and reporting plan. The ROD is a concise summary of the decisions made by the Corps from among the alternatives presented in the FEIS/EIR.

The ROD can be published immediately after the FEIS public comment period ends. A certified EIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with respect to CEQA. A formal scoping meeting to solicit public comment and concerns on the proposed action and alternatives will be held on Wednesday, February 26, 2003 (*see* **DATES**).

Dated: January 31, 2003.

Richard G. Thompson,

Colonel, U.S. Army, District Engineer.

[FR Doc. 03–3587 Filed 2–12–03; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF ENERGY

[Docket No. IC03–423–000, FERC Form No. 423]

Federal Energy Regulatory Commission

Commission Collection Activities, Proposed Collection; Comment Request; Extension

February 6, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by April 9, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 and should refer to Docket No. 03–423–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions

for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic fillings is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202)502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 208–2425 and by E-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants" (OMB No. 1902–0024) is used by the Commission to carry out its responsibilities in implementing provisions of the Federal Power Act (FPA) as amended by the Public Utility Regulatory Policies Act (PURPA).

The Commission uses the information reported on FERC Form No. 423 to conduct fuel reviews under section 205(a) and (e)of the FPA, and to prepare expert testimony in electric utility rate cases filed with the Commission. The Form 423 data provides the only effective means for assessing the potential impact of new developments on the future utility fuel supply patterns. The Commission's staff compare delivered fuel costs for utilities receiving like fuels of similar quality; detect consistently high cost patterns or irregularities indicative of possible uneconomic fuel purchase practices; evaluate the economic effect of unusual fuel purchases practices, such as buying fuel from affiliate fuel sources, as opposed to selecting buyers by competitive bids, and investigate a broad range of fuel costs and fuel purchase practice issues raised in contested rate proceedings.

With the transition to power markets the data from FERC Form 423, in conjunction with other data sources, allow Commission staff to identify potential out-of-merit dispatch practices by system operators, a quick source for estimating the thermal efficiency of individual plants and when used in conjunction with bid data, indicates the efficiency of markets by identifying the key components associated with generators' variable costs.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 141.61. The statutory authorities for this mandatory information collection requirement are sections 205, of the Federal Power Act, as amended by section 208 of the Public Utility Regulatory Policies Act (49 Stat. 851; 16 U.S.C. 824d).

Action

The Commission is requesting a three-year extension of the current expiration date with no changes to the existing collection of data. It should be noted that during OMB's last review of Form 423, the Commission was directed prior to its next submission to OMB, to make a determination as to whether the information reported on Form 423 should be confidential. In order to assist the Commission in making that determination, the Commission seeks comments on how the public disclosure of information contained on Form 423 harms the competitive position of reporting parties and adversely affects the competitiveness of the market.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents (1)	Annual responses per respondent (2)	Average burden hours per response (3)	Total burden hours (1)×(2)×(3)
584	12	1	7,008

Estimated Burden: 7,008 total burden hours, 584 respondents, 12 responses annually, 1.0 hours per response (average). In Order No. 622, 66 FR 67076 (December 28, 2001), the Commission amended its regulations to provide for electronic filing of Form No. 423 commencing with the January 2002 filing. These changes to the reporting requirements resulted in a reduction in burden for all respondents.

Estimated cost burden to respondents is $394,338; (*i.e.*, 7,008 hours divided by 2,080 hours per full time employee per year multiplied by $117,041 per year equals $394,338)(rounded off).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3529 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–061]

ANR Pipeline Company; Notice of Negotiated Rate Filing

February 6, 2003.

Take notice that on January 31, 2003, ANR Pipeline Company (ANR) tendered for filing and approval an amendment to a Service Agreement between ANR and Wisconsin Public Service Corporation, which revises the No-Notice Entitlement and rates under such Agreement. ANR requests that the Commission accept and approve the amendment to be effective February 1, 2003.

ANR states that copies of the filing has been mailed to each of ANR's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3545 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–067]

ANR Pipeline Company; Notice of Negotiated Rate Filing

February 6, 2003.

Take notice that on January 31, 2003, ANR Pipeline Company, (ANR) tendered for filing three negotiated rate agreements between ANR and Kerr-McGee Corporation pursuant to ANR's Rate Schedules PTS–2, ITS and ITS (Liquefiables). ANR states that it is tendering these agreements, as well as a Lease Dedication Agreement, pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the agreements to be effective February 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3546 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–290–000]

Calpine California Equipment Finance Company, LLC; Notice of Issuance of Order

February 6, 2003.

Calpine California Equipment Finance Company, LLC ("CCEFC"), a wholly owned subsidiary of Calpine Corporation, filed an application requesting authority to transact at market-based rates, along with the accompanying tariff. The proposed market-based rate tariff provides for sales of capacity and energy at market-based rates, the sale of ancillary services at market rates, the resale of firm transmission rights, and the reassignment of transmission capacity. CCEFC also requested waiver of various Commission regulations. In particular, CCEFC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CCEFC.

On January 24, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CCEFC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 24, 2003.

Absent a request to be heard in opposition by the deadline above, CCEFC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CCEFC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued

approval of CCEFCs' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3528 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–239–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes to FERC Gas Tariff

February 6, 2003.

Take notice that on January 23, 2003., CenterPoint Energy Gas Transmission Company (CEGT), formerly Reliant Energy Gas Transmission Company, tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets attached as Appendix A to the filing, to be effective February 28, 2003. The purpose of this filing is to reflect CEGT's name change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment date: February 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3542 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–205–000, ER03–206–000, ER03–207–000, ER03–208–000 and ER03–209–000]

CES Marketing, LLC, CES Marketing II, LLC, CES Marketing III, LLC, CES Marketing IV, LP, CES Marketing V, LP; Notice of Issuance of Order

February 6,2003.

CES Marketing, LLC, CES Marketing II, LLC, CES Marketing III, LLC, CES Marketing IV, LP, and CES Marketing V, LP (collectively, "Applicants") filed applications requesting authority to transact at market-based rates along with the accompanying tariffs. The proposed market-based rate tariffs provide for sales of capacity, energy, and ancillary services at market-based rates, and for the reassignment of transmission capacity. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On January 16, 2003., pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 18, 2003.

Absent a request to be heard in opposition by the deadline above, Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Applicants' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3527 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–219–002]

Discovery Gas Transmission LLC; Notice of Withdrawal of Filing and Notice of Additional Tariff Sheets

February 6, 2003.

Take notice that on February 3, 2003., Discovery Gas Transmission LLC (Discovery) hereby respectfully (1) requests withdrawal of Substitute First Revised Sheet No. 186 filed on January 13, 2003. in Docket No. RP03–219–001 and (2) tenders for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 101 and Second Substitute First Revised Sheet No. 186, to be effective February 1, 2003.

Discovery states that this filing is made in response to the Commission's letter order issued in the above-captioned proceeding on January 30, 2003.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3541 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–46–000]

Dominion Transmission, Inc. and Texas Eastern Transmission, LP; Notice of Application

February 6, 2003.

Take notice that on January 30, 2003., Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, and Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–53101, filed in Docket No. CP03–46–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to uprate the horsepower on three electric engines at the Oakford Compressor Station and two electric engines at the South Oakford Compressor Station all located within Westmoreland County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

DTI and Texas Eastern state that these proposed uprates will provide greater operating flexibility and will potentially improve the performance of the Oakford Storage Complex. DTI and Texas Eastern state that as joint owners of the Oakford Storage Complex they are requesting authorization to operate the two existing 5,000 HP Engines #3 and #4 located at the South Oakford Station to an ISO-rated HP of 5,750 each and to operate the three existing 4,000 HP Engines #13, #14 and #15 located at the Oakford Station to an ISO-rated HP of 4,600 each. According to DTI and Texas Eastern, this operation at the higher HP rating is intended to improve the efficiency of the Oakford Storage Complex by allowing them to use the existing certificated level of capacity more efficiently and to maintain design pressures more effectively. In addition, DTI and Texas Eastern state that these operational improvements will facilitate more reliable and more flexible storage and transportation service to DTI and Texas Eastern's existing customers, at no additional cost. DTI and Texas Eastern add that they propose to modify the software controls so that each of the engines may be operated at the design rating described above; that this operation will not require any installation, construction or facility reconfiguration beyond the modifications of the software controls; and, that there will be no air emission issues since these compressor units are powered by electric motors.

Any questions concerning this application may be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301, at (304) 627–3462 or fax (304) 627–3305; or to Steven E. Tillman, General Manager, Regulatory Affairs, Texas Eastern Transmission, LP, P. O. Box 1642, Houston, Texas 77251–1642, at (713) 627–5113 or fax (713) 627–5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3525 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2610–000]

Element Re Capital Products, Inc.; Notice of Issuance of Order

February 6, 2003.

Element Re Capital Products, Inc. (Element Re) filed an application requesting authority to transact at market-based rates, along with the accompanying tariff. The proposed market-based rate tariff provides for sales of capacity and energy at market-based rates. Element Re also requested waiver of various Commission regulations. In particular, Element Re requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Element Re.

On November 19, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Element Re should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 17, 2003.

Absent a request to be heard in opposition by the deadline above, Element Re is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Element Re, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Element Re's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3526 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–491–003, RP02–188–002 and CP01–69–006]

Petal Gas Storage, L.L.C.; Notice of Compliance Filing

February 6, 2003.

Take notice that on January 31, 2003., Petal Gas Storage, L.L.C. (Petal), tendered for filing as part of FERC Gas Tariff, Original Volume No. 1, Substitute Original Sheet No. 11A, with an effective date of May 1, 2002.

Petal states that this filing is being made in compliance with the Commission's Order issued on January 22, 2003., directing Petal to remove any references to Petal's Electronic Bulletin Board from Petal's tariff.

Petal states that a copy of this filing has been mailed to all parties who have intervened in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3539 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–023]

Questar Pipeline Company; Notice of Negotiated Rates

February 6, 2003.

Take notice that on February 3, 2003, Questar Pipeline Company's (Questar) submitted a tariff filing to implement a negotiated-rate contract for BP Energy Company. Questar states that the contract was authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.*

Questar states that a copy of this filing has been served upon all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3547 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–248–000]

Texas Gas Transmission Corporation; Notice of Annual Cash-out Report

February 6, 2003.

Take notice that on January 31, 2003, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a report that compares its cash-out revenues with its cash-out costs incurred for the annual billing period November 1, 2001 through October 31, 2002, in accordance with its tariff. Texas Gas states that there is no rate impact to customers as a result of this filing.

Texas Gas states that copies of this filing have been served upon all of Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 13, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3543 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–10–001

Trailblazer Pipeline Company; Notice of Compliance Filing

February 6, 2003.

Take notice that on January 31, 2003., Trailblazer Pipeline Company (Trailblazer) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective January 1, 2003.

Trailblazer states that the purpose of this filing is to cancel Trailblazer's Rate Schedules T and I, which provided for firm and interruptible transportation services for Northern Natural Gas Company (Northern) and Natural Gas Pipeline Company of America (Natural) pursuant to service agreements dated October 8, 1982, as amended.

Trailblazer states that these sheets have been submitted in compliance with Ordering Paragraph (A) of the Commission's order issued January 28, 2003 in Docket No. CP03–10–000 (January 28th Order). Such order authorized Trailblazer to abandon firm and interruptible transportation services performed by Trailblazer for Northern and Natural authorized in Docket No. CP79–80, as amended.

Trailblazer states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. CP03–10–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3524 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–009; RP00–553–012; and RP00–481–009]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

February 6, 2003.

Take notice that on January 31, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets list on Appendix A attached to the filing, with a proposed effective date of April 1, 2003.

Transco states that the tariff sheets enumerated in Appendix A are submitted to comply with the Commission's August 29, 2002 order in the referenced proceedings, which directed that Transco update certain tariff sheets related to the implementation of Transco's new business system, 1Linesm. In addition, Transco proposes to move into effect on April 1, 2003, certain tariff sheets identified in Appendix C, attached to the filing, which require no updating and which already have been accepted by the Commission in the referenced proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available

for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3540 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–288–029 and RP01–507–003]

Transwestern Pipeline Company; Notice of Compliance Filing

February 6, 2003.

Take notice that on February 4, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 83; Substitute Fourth Sheet No. 84; and Original Sheet No. 84A, to become effective February 5, 2003.

Transwestern states that on December 10, 2002, it filed a Stipulation and Agreement (Settlement) resolving issues raised in the above referenced dockets. The Settlement included, among other things, pro forma tariff sheets setting forth new capacity posting and contract procedures in a new Section 24 of the General Terms and Conditions (GTC) of Transwestern's Tariff. Transwestern explains that, by Order issued January 31, 2003. (January 31 Order), the Commission accepted the Settlement and the pro forma tariff sheets, and directed Transwestern to file actual tariff sheets within five days of the date of the order. Transwestern states that this filing is made in compliance with the January 31 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3544 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–324–004, et al.]

Detroit Edison Company, et al.; Electric Rate and Corporate Filings

February 4, 2003.

The following filings have been made with the Commission.

The filings are listed in ascending order within each docket classification.

1. Detroit Edison Company, DTE Energy Trading, Inc., DTE Edison America, Inc, DTE Energy Marketing, Inc., DTE Georgetown, LLC, DTE River Rouge No. l, LLC, Crete Energy Venture, LLC

[Docket Nos. ER97–324–004, ER97–3834–010, ER98–3026–007, ER99–3368–003, ER00–1746–001, ER00–1816–002, and ER02–963–002]

Take notice that on January 31, 2003, the Detroit Edison Company, DTE Energy Trading, Inc., DTE Edison America, Inc., DTE Energy Marketing, Inc., DTE Georgetown, LLC, DTE River Rouge No. 1, LLC, and Crete Energy Venture, LLC tendered for filing a joint triennial market power analysis in compliance with the Commission's orders in the captioned proceedings. Detroit Edison Co., 77 FERC ¶ 61,279 (1996); DTE Energy Trading, Inc., 80 FERC ¶ 61,348 (1997); DTE Edison America, Inc., 84 FERC ¶ 61,028 (1998); DTE Energy Marketing, Inc., 88 FERC ¶ 61,189 (1999); DTE Georgetown, LLC, 91 FERC ¶ 61,073 (2000); DTE River Rouge No. l, LLC, 91 FERC ¶ 61,139 (2000); Crete Energy Venture, LLC, letter order, Docket No. ER02–963–000, March 15, 2002.

Comment Date: February 21, 2003.

2. ISO New England Inc.

[Docket No. ER01–316–008]

Take notice that on January 31, 2003, ISO New England Inc., filed its Index of Customers for the fourth quarter of 2002 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment Date: February 21, 2003.

3. New York Independent System Operator, Inc., ISO New England Inc.

[Docket No. ER03–246–001]

Take notice that on January 31, 2003., the New York Independent System Operator, Inc. (NYISO) and ISO New England Inc. (ISO New England), tendered for filing a compliance report in connection with the Commission's December 30, 2002, order in the above-referenced dockets.

The NYISO and ISO New England have served a copy of this filing to all parties listed on the official service list maintained by the Secretary of the Commission in docket number ER03–246–000.

Comment Date: February 21, 2003.

4. Virginia Electric and Power Company

[Docket No. ER03–383–001]

Take notice that on January 31, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a Substitute First Revised Generator Interconnection and Operating Agreement (Substitute First Revised Interconnection Agreement) with Old Dominion Electric Cooperative (ODEC) containing additional information describing the units at ODEC's generating facility and correcting internal references.

Dominion Virginia Power respectfully requests that the Commission allow the Substitute First Revised Interconnection Agreement to become effective February 1, 2003, the day after filing. Dominion Virginia Power also states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: February 21, 2003.

5. American Transmission Systems, Incorporated

[Docket No.ER03–474–000]

Take notice that on January 31, 2003, American Transmission Systems, Incorporated submitted for filing Service Agreement No.313 under its Open Access Transmission Tariff, an Agreement for Construction, Operation, and Compensation of Delivery Points with the Village of Grafton dated January 29, 2003. The purpose of the Service Agreement is to establish the terms and conditions for a second 69 kV delivery point for the Village of Grafton's distribution system. An effective date of April 2, 2003, is requested for the Service Agreement.

American Transmission Systems Inc., states that copies of this filing were served on the representatives of the Village of Grafton, American Municipal Power-Ohio, Inc., and the Public Utilities Commission of Ohio.

Comment Date: February 21, 2003.

6. Minnesota Power

[Docket No. ER03–475–000]

Take notice that on January 31, 2003, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Hibbing, Minnesota—Public Utilities Commission (Hibbing). This filing included revised rates, which would allow Hibbing the option to purchase wholesale, municipal non-firm energy service from Minnesota Power, for resale to Hibbing's retail customers.

Minnesota Power requests January 1, 2003, as the effective date for these revised rates.

Comment Date: February 21, 2003.

7. Interstate Power & Light Company

[Docket No.ER03–476–000]

Take notice that on January 31, 2003, Interstate Power and Light Company (IPL), tendered for filing Amendment No. 7 to Rate Schedule FERC No. 48 with the City of Bellevue. IPL states that this Amendment will terminate Rate Schedule FERC No. 48 effective April 1, 2003, and indicates that copies of the filing have been provided to the City of Bellevue and to the Iowa Utilities Board.

Comment Date: February 21, 2003.

8. Southern California Edison Company

[Docket No. ER03–477–000]

Take notice that on January 31, 2003, Southern California Edison Company (SCE) tendered for filing a Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and the City of Corona (Corona), California. SCE respectfully requests the Agreements become effective on January 4, 2003.

The Agreements specify the terms and conditions under which SCE will provide wholesale distribution service form the California Independent System Operator Controlled Grid at SCE's Mira Loma Substation 230 kV bus to the Corona Crossings Business Center development, located at the Northwest corner of Cajalco Road and Temescal Canyon Road in the City of Corona.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Corona.

Comment Date: February 21, 2003.

9. PPM Energy, Inc.

[Docket No. ER03–478–000]

Take notice that on January 31, 2003, PacifiCorp Power Marketing, Inc., informed the Federal Energy Regulatory Commission (Commission) that effective January 15, 2003, the name of PacifiCorp Power Marketing, Inc., had been changed to PPM Energy, Inc. in accordance with 18 CFR 35.16.

Comment Date: February 21, 2003.

10. Great Bay Power Marketing, Inc.

[Docket No. ER03–479–000]

Take notice that on January 31, 2003, Great Bay Power Marketing, Inc. (GBPM), filed a notice of succession with the Federal Energy Regulatory Commission pursuant to sections 35.16 and 131.51 of the Commission's rules and regulations, 18 CFR 35.16 and 131.51. This filing was made as a result of the transfer of a purchased power agreement entered into between Great Bay Power Corporation (GBPC) and Unitil Power Corp. (Unitil PPA) from GBPC to GBPM. GBPM adopted and ratified the Unitil PPA. GBPM requested that the revised rate schedule be made effective as of January 1, 2003.

Comment Date: February 21, 2003.

11. Oklahoma Gas and Electric Company

[Docket No. ER03–480–000]

Take notice that on January 31, 2003, Oklahoma Gas and Electric Company (OG&E) submitted for filing a delivery point and transmission interconnection agreement (the Agreement) between OG&E and The City of Paris, Arkansas (Paris).

OG&E requests an effective date of February 1, 2003, for the Agreement. Accordingly, OG&E requests waiver of the Commission's notice requirements. Copies of this filing were served upon Paris and the Oklahoma Corporation Commission.

Comment Date: February 21, 2003.

12. Duke Energy Corporation

[Docket No.ER03–481–000]

Take notice that on January 31, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing the First Amended and Restated Generation Interconnection and Operating Agreement (Restated IOA) between Duke and Rowan County Power, LLC, as the successor in interest to Carolina Power and Light Company. Duke seeks an effective date for the restated IOA of January 30, 2003.

Comment Date: February 21, 2003.

13. Duke Energy Corporation

[Docket No.ER03–482–000]

Take notice that on January 31, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing (1) a revised Service Agreement for Network Integration Transmission Service (NITSA) and (2) a revised Network Operating Agreement (NOA) between Duke and North Carolina Municipal Power Authority No. 1. Duke seeks an effective date for the revised NITSA and NOA of January 1, 2003.

Comment Date: February 21, 2003.

14. Unitil Power Corp.

[Docket No. ER03–483–000]

Take notice that on January 31, 2003., in accordance with section 35.13 of the Commission's regulations, 18 CFR 35.13, Unitil Power Corp. (UPC) and Unitil Energy Systems, Inc. (UES) (collectively, Unitil Companies) submitted for filing the Amended Unitil System Agreement between UPC and UES. The Amended Unitil System Agreement is Attachment I to Rate Schedule FERC No. 1 (the Unitil System Agreement). The Amended Unitil System Agreement is necessary to facilitate the divestiture of the portfolio of entitlements in generation and transmission facilities acquired by UPC to supply the requirements of UES. Following the divestiture of such portfolio and upon receipt of the necessary regulatory approvals, the terms and conditions, including rate provisions of the Amended Unitil System Agreement will replace those of the Unitil System Agreement. The Unitil Companies request an effective date of May 1, 2003, for the Amended Unitil System Agreement, but reserves the right not to implement the Amended Unitil System Agreement if the necessary regulatory approvals are not obtained.

The Unitil Companies states that a copy of the filing was served upon the

New Hampshire Public Utilities Commission.

Comment Date: February 21, 2003.

15. New England Power Pool

[Docket No. ER03–484–000]

Take notice that on January 31, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to (1) permit NEPOOL to expand its membership to include Lake Road Generating Company, LP (Lake Road) and Outback Power Marketing, Inc., (Outback); and (2) to terminate the memberships of Allied Utility Network (Allied), Enron Power Marketing, Inc., (EPMI), Great Bay Power Corporation (GBPC), MIECO Inc., (MIECO), and PSEG Power Connecticut, LLC, (PSEG PCT). The Participants Committee requests the following effective dates: January 1, 2003, for the termination of Allied, EPMI, GVPC, MIECO, and PSEG PCT; February 1, 2003, for the commencement of participation in NEPOOL by Lake Road; and March 1, 2003, for commencement of participation in NEPOOL by Outback.

The participants Committee states that copies these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: February 21, 2003.

16. Gilroy Energy Center, LLC

[Docket No. ER03–485–000]

Take notice that on January 31, 2003, Gilroy Energy Center, LLC (Gilroy) filed an executed Must-Run Service Agreement and accompanying schedules (RMR Agreement) between Gilroy and the California Independent System Operator Corporation (ISO) setting forth the rates, terms and conditions under which Gilroy will provide reliability must-run services to the ISO.

Comment Date: February 21, 2003.

17. PJM Interconnection, LLC

[Docket No. ER03–486–000]

Take notice that on January 31, 2003, PJM Interconnection, LLC (PJM), submitted amendments to Schedule 2 of the PJM Open Access Transmission Tariff to include WPS Westwood Generation LLC's (Westwood) revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service that the Federal Energy Regulatory Commission (Commission) accepted for filing, subject to refund, in WPS Westwood Generation, LLC, 101 FERC ¶ 61,290.

Consistent with the effective date of the Commission's acceptance of Westwood's revenue requirements in WPS Westwood Generation, LLC, 101 FERC ¶ 61,290 PJM requests an effective date of November 1, 2002, for the amendments.

PJM states that copies of this filing have been served on all PJM members, Westwood, and each state electric utility regulatory commission in the PJM region.

Comment Date: February 21, 2003.

18. Idaho Power Company

[Docket No. ER03–487–000]

Take notice that on January 31, 2003, Idaho Power Company (Idaho Power) tendered for filing two Service Agreements for Network Integration Transmission Service (NITSAs) (with attached Network Operating Agreements (NOAs)) with Idaho Power Company—Power Supply.

Comment Date: February 21, 2003.

19. Idaho Power Company

[Docket No. ER03–488–000]

Take notice that on January 31, 2003, Idaho Power Company (Idaho Power) tendered for filing (1) four Service Agreements for Network Integration Transmission Service (NITSAs) (with attached Network Operating Agreements (NOAs)) ; and (2) the Boise Diversion Dam Letter Agreement between Idaho Power and Bonneville Power Association (BPA).

Comment Date: February 21, 2003.

20. Mid-America Energy Company

[Docket No. ES03–22–000]

Take notice that on January 28, 2003, Mid-American Energy Company (Mid-American) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue promissory notes and other evidences of short-term, unsecured indebtedness, in an amount not to exceed $500 million.

Comment Date: February 24, 2003.

Standard Paragraph

Any person desiring to be hear or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3554 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Westar Generating, Inc., et al.; Electric Rate and Corporate Filings

[Docket No. ER01–1305–006, et al.]

Federal Energy Regulatory Commission

February 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Westar Generating, Inc.

[Docket No. ER01–1305–006]

Take notice that on February 3, 2003., Westar Generating, Inc., (WG) submitted for filing a revised Rate Schedule FERC No. 1, Purchase Power Agreement between WG and Westar Energy, Inc., (WE). WG states that the purpose of this revision is to remove certain language with respect to WE's purchase option for WG's ownership interest in the State Line combined-cycle generating project.

This revision is proposed to be effective February 1, 2003. WG states that copies of the filing were served upon WE and the Kansas Corporation Commission.

Comment Date: February 24, 2003.

2. Tampa Electric Company

[Docket No. ER03–169–002]

Take notice that on February 3, 2003, Tampa Electric Company (TEC) tendered for filing in compliance with the January 2, 2003, letter order a revised Interconnection and Operating Agreement between TEC and Cargill Fertilizer, Inc. as a service agreement under TEC's Open Access Transmission Tariff.

Comment Date: February 24, 2003.

3. Unitil Energy Systems, Inc.

[Docket No. ER03–374–001]

Take notice that on January 30, 2003, Unitil Energy Systems, Inc. (UES), filed a supplemental to the January 2, 2003, notice of succession, with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.16 and 131.51. UES adopted and ratified all applicable rate schedules filed with the Commission by Concord Electric Company and Exeter & Hampton Electric Company. UES also resubmitted its rate schedules to conform them to the formatting requirements of Order No. 614. UES requested that the revised rate schedules be made effective as of December 2, 2002.

Comment Date: February 20, 2003.

4. Florida Power & Light Company

[Docket Nos. ER03–489–000]

Take notice that on February 3, 2003, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an executed Service Agreement for Point-to-Point Transmission Service between FPL and Georgia Transmission Corporation (an Electric Membership Corporation). This Service Agreement No. 219 provides for 5 Megawatts of firm point-to-point transmission service for the period January 1, 2003, through December 31, 2004, which is a continuation of service begun on January 1, 2002. The preceding firm point-to-point service between FPL and Georgia Transmission Corporation that begun on January 1, 2002 was provided under Service Agreement No. 192. The parties have filed a notice of cancellation of Service Agreement No. 192.

FPL states that a copy of this filing has been served on Georgia Transmission Corporation and the Florida Public Service Commission.

Comment Date: February 24, 2003.

5. Westar Energy, Inc.

[Docket No. ER03–490–000]

Take notice that on February 3, 2003, Westar Energy, Inc., (WE) submitted for filing revisions to rate schedule FERC No. 300 removing certain agreements inadvertently submitted in an earlier docket and revising a Control Area Service Agreement between WE and Missouri Joint Municipal Electric Utility Commission (MJMEUC). WE states that the purpose of these changes is to permit MJMEUC to continue taking Scheduling, System Control, and Dispatch Services from WE. These changes are proposed to be effective January 1, 2003.

WE states that copies of the filing was served upon MJMEUC and the Kansas Corporation Commission.

Comment Date: February 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3553 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12327–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Kaskaskia L&D Hydroelectric Project would be located on the Kaskaskia River in Randolph County, Illinois. The project would utilize the U.S. Army Corps of Engineers' existing Kaskaskia Lock and Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing dam, would consist of: (1) Two 50-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing two generating units with a total installed capacity of 1.6 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 10 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the

specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3530 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12352–000.

c. *Date filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Cave Run Lake Dam Hydroelectric Project would be located on the Licking River in Rowan County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Cave Run Lake Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for Filing Comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing dam would consist of: (1) Two 50-foot-long, 42-inch-diameter steel penstocks; (2) a powerhouse containing two generating units with a total installed capacity of 5 megawatts, (3) a 1/4-mile-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 31 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3531 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12357–000.

c. *Date filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Nolin Lake Dam Hydroelectric Project would be located on the Nolin River in Grayson County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Nolin Lake Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing dam would consist of: (1) One 50-foot-long, 42-inch-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1 megawatt, (3) a 200-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 6 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3532 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12377–000.

c. *Date Filed:* September 23, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* The Mississippi Lock & Dam #5 Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Mississippi River in Winona County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12369–000, *Date Filed:* September 17, 2002, *Due Date:* December 24, 2002.

l. *Description of Project:* The proposed project, using the Corps' existing dam, would consist of: (1) six 80-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing six generating units with a total installed capacity of 10 megawatts, (3) a 200-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 61 gigawatthours.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3533 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12409–000.

c. *Date filed:* November 1, 2002.

d. *Applicant:* The Green Power Company of Kentucky.

e. *Name and Location of Project:* The Barren River 1 Hydroelectric Project would be located on the Barren River in Warren County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Barren Lock & Dam 1.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. David Brown Kinloch, Soft Energy Associates, 414 S. Wenzel Street, Louisville, KY 40204, (502) 589–0975

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Barren Lock & Dam 1, would consist of: (1) an existing lock chamber containing the six proposed generating units with a total installed capacity of 2 megawatts, (2) an existing 100-yard three-phase distribution line connecting to the existing control building, and (3) appurtenant facilities. The project would have an average annual generation of 8 gigawatt-hours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3534 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12411–000.

c. *Date filed:* November 12, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Opekiska L&D Hydroelectric Project would be located on the Monongahela River in Monongalia County, West Virginia. The project would utilize the U.S. Army Corps of Engineers' existing Opekiska Lock & Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Opekiska Lock & Dam would consist of: (1) Five 50-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing five generating units with a total installed capacity of 6.8 megawatts, (3) a 500 -yard-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 4.2 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3535 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing)

b. *Project Nos.:* 12417–000 and 12415–000

c. *Dates Filed:* November 13 and November 14, 2002.

d. *Applicants:* Coralville Hydro, LLC and Universal Electric Power Corporation

e. *Name and Location of Project:* The proposed project would be located on the existing Coralville Dam, owned by the U.S. Army Corps of Engineers, located on the Iowa River in Johnson County, Iowa.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.791(a)—825(r).

g. *Applicant Contacts:* For Universal: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115. For Coralville Hydro, LLC: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for Filing Comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Projects:* Coralville Hydro, LLC (P–12417–000): The proposed run-of run project would utilize the Corps' existing dam and consist of : (1) Two 15-foot-diameter, 100-foot-long steel penstocks, (2) a powerhouse containing two generating units with a total installed capacity of 4.5 MW, (3) a 67-kv transmission line approximately 8 miles long, and (4) appurtenant facilities. The project would have an annual generation of 39.4 GWh.

Universal Electric Power Corp (P–12415–000): The proposed run-of-river project would utilize the Corps' existing dam and consist of: (1) Two proposed 80-foot-long, 9-foot-diameter steel penstocks, (2) a proposed powerhouse containing two generating units having an installed capacity of 1.5 MW, (3) a proposed 400-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 9.3 GWh.

k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. Copies are also available for inspection and reproduction at the appropriate addresses in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified

development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3536 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 6, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit

b. *Project No.:* 12419–000

c. *Date Filed:* November 14, 2002

d. *Applicant:* Universal Electric Power Corporation

e. *Name and Location of Project:* The Mississippi L&D #21 Hydroelectric Project would be located on the Mississippi River in Adams County, Missouri. The project would utilize the U.S. Army Corps of Engineers' existing Mississippi Lock & Dam #21.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for Filing Comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Mississippi Lock & Dam #21, would consist of: (1) Five 80-foot-long, 9-foot-diameter steel penstocks, (2) a powerhouse containing turbine/generating units with a total installed capacity of 10 megawatts, (3) a 1000-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 61 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3537 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1927–008]

Notice of Amendment to Settlement Agreement and Soliciting Comments, Reply Comments, and Any Revised Recommendations, Terms and Conditions, and Prescriptions

February 6, 2003.

Take notice that the following Amendment to the North Umpqua Hydroelectric Project Settlement Agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment to Settlement Agreement

b. *Project No.:* 1927–008

c. *Date Filed:* November 4, 2002; supplemented February 3, 2003.

d. *Applicant:* PacifiCorp

e. *Name of Project:* North Umpqua Hydroelectric Project

f. *Location:* On the North Umpqua River, in Douglas County, Oregon. The project occupies about 2,725 acres of land within the Umpqua National Forest, and about 117 acres of land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* John Sample, Senior Hydropower Attorney, PacifiCorp 825 NE Multnomah, Suite 1500, Portland, OR 97232, (503) 813–6688, and James M. Lynch, Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, WA 98101–3197, (206) 624–0900.

i. *FERC Contact:* John Smith, 202–502–8972, *john.smith@ferc.gov*.

j. Deadline for filing comments: February 25, 2003. Reply comments and any revised recommendations, terms and conditions, and prescriptions are due March 7, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Filing:* PacifiCorp filed the Amendment to the North Umpqua Hydroelectric Project Settlement Agreement (Amendment) and an explanatory statement supporting the Amendment on behalf of itself and the U.S. Department of Agriculture's Forest Service, U.S. Department of Commerce's National Marine Fisheries Service, U.S. Department of the Interior's Fish and Wildlife Service and Bureau of Land Management, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, and Oregon Water Resources Department (Governmental Parties). The purpose of the Amendment is to revise and modify sections 5.1, 7.1, 7.2, and 8.3 of the Settlement Agreement filed June 21, 2001. The signatories request that the Commission accept and incorporate, without material modification, as

license articles in the new license all relevant provisions of the Settlement Agreement, Amendment, and the Governmental Parties' Final Terms and Conditions filed with the Commission in connection with this agreement. Comments, reply comments, and any revised recommendations, terms and conditions, and prescriptions are due on the dates listed above in item j.

l. A copy of the Amendment is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3538 Filed 2–12–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7452–1]

EPA Science Advisory Board; Executive Committee Teleconference; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee of the U.S. EPA Science Advisory Board (SAB) will meet on Wednesday, March 5, 2003 from 11 am–2 pm Eastern Time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Betty Fortune (see contact information below). The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office— information concerning availability of documents from the relevant Program Office is included in the FR citations given below.

Purpose of the Meeting—In this meeting, the Executive Committee plans to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) *Science and Technology Review Panel (S&TRP) (EC)*—Review of the FY2004 Science and Technology (S&T) Budget: An SAB Report (*see* 67 FR 79912, December 31, 2002 for further details).

(b) *Contaminant Sediment Science Plan Review Panel (EC)*—Review of the Contaminated Sediment Science Plan: An SAB Report (see 67 FR 61622, October 1, 2002 for further details).

(c) *Human Health Research Strategy Review Panel (EC)*—Review of the Human Health Research Strategy (HHRS): An SAB Report (see 67 FR 63422, October 11, 2002 for further details).

Please check with Ms. Betty Fortune (see contact information below) prior to the meeting to determine which reports will be on the agenda as last minute changes can take place.

Availability of Review Materials: Drafts of the SAB reports that will be reviewed at the meeting will be available to the public at the SAB Web site under the heading for the Executive Committee Public Teleconference, March 5, 2003 (*http://www.epa.gov/sab/whatsnew.htm*) approximately two weeks prior to the meeting.

Charge to the Executive Committee: The focus of the EC review of these reports will be on the following questions: (a) Has the SAB adequately responded to the questions posed in the Charge? (b) Are the statements and/or responses in the draft report clear? And (c) Are there any errors of fact in the report?

In accord with the Federal Advisory Committee Act (FACA), the public and the Agency are invited to submit written comments on these three questions that are the focus of the review. Written comments should be received in the SAB Staff Office by February 27, 2003. Forward comments to Ms. Betty Fortune (see contact information below).

The SAB will have a brief period available for applicable public comment. Therefore, anyone wishing to make oral comments on the three focus questions above, but that are not duplicative of the written comments, should contact the Designated Federal Officer for the Executive Committee, Mr. A. Robert Flaak (see contact information below).

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Mr. A. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; FAX (202) 501–0582; or via e-mail at *flaak.robert@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Flaak no later than noon Eastern Standard Time on February 27, 2003. Written comments should be sent to: Ms. Betty Fortune, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (Telephone (202) 564–4533, FAX (202) 501–0323; or via e-mail at: *fortune.betty@epa.gov*. Submission by e-mail to Ms. Fortune will maximize the time available for review by the Executive Committee.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the face-to-face meetings. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format).

Those providing written comments and who attend face-to-face meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in *The FY2001 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our Web site.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Fortune at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 5, 2003.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–3584 Filed 2–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7451–9]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS), 40 CFR part 60; the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR parts 61 and 63; and the Stratospheric Ozone Protection Program, 40 CFR part 82. This notice also clarifies the Notice of Availability published in the **Federal Register** on November 15, 2001 (66 FR 57453).

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/assistance/applicability*. The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by email at: *malave.maria@epa.gov*. For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background: The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. *See* 40 CFR 60.5 and 61.06. Although the 40 CFR part 63 NESHAP and section 111(d) of the Clean Air Act regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. *See* 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 55 such documents added to the ADI on December 20, 2002. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *http://www.epa.gov/compliance/assistance/applicability*.

Clarification to November 15, 2001 Notice of Availability

EPA has received questions regarding the applicability of the documents whose availability was noticed in the November 15, 2001 Notice of Availability (66 FR 57453). EPA has reviewed those documents, and through today's notice clarifies that to the extent any of those documents constituted "final action of the Administrator" for purposes of section 307(b)(1) of the Clean Air Act, they were not "nationally applicable" actions within the meaning of section 307(b)(1). For purposes of establishing venue for judicial review of any such document, the document may be considered a "local or regionally applicable" action as that phrase is employed in section 307(b)(1).

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on December 20, 2002; the applicable category; the subpart(s) of 40 CFR parts 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents.

ADI DETERMINATIONS UPLOADED ON DECEMBER 20, 2002

Control No.	Category	Subpart	Title
A020001	Asbestos	M	Moving Structures.
M020008	MACT	RRR	Alternative Scrap Inspection Monitoring.
M020009	MACT	S	UNOX Alternative Monitoring.
M020010	MACT	R, CC	Waiver for Backup Portable Combustion Unit.
M020011	MACT	T	Degreaser Freeboard Temperature Measurement.
M020012	MACT	RRR	Aluminum Foil Delaminator.
M020013	MACT	S	Alternative Monitoring.
M020014	MACT	F, G	Gas Streams Combusted in Fuel Gas System.
M020015	MACT	T	Cold Clean Operation or Stripping Operation.
M020016	MACT	T	Cold Clean Operation or Stripping Operation.
M020017	MACT	RRR	Aluminum Delacquering Kiln & Chip Dryers.
M020018	MACT	G	Classification of Drains Subject to HON.
M020019	MACT	LLL	Alternative Testing for Roller Mill Transfer Chutes.
M020020	MACT	LLL	Alternative Monitoring for Finish Mill Stacks.
M020021	MACT	LLL	Method 9 Waiver for Portland Cement Facility.
M020022	MACT	LLL	Method 9 Waiver for Coal Mill Stack.
0200050	NSPS	GG	Custom Fuel Monitoring.
0200051	NSPS	GG, A	Initial Performance Test Waiver.
0200052	NSPS	GG	Custom Fuel Monitoring.
0200053	NSPS	GG	Custom Fuel Monitoring.
0200054	NSPS	GG	Custom Testing & CEMS QA/QC Approval.
0200055	NSPS	O	Alternative Monitoring for Oxygen.
0200056	NSPS	GG	Exemption for Test Turbine Facility.
0200057	NSPS	PPP	Definition of Wet Scrubbing Control Devices.
0200058	NSPS	GG	Alternative Testing for Simple Cycle Gas Turbine Units.
0200059	NSPS	J	Alternative Monitoring for Portable Combustor at Loading Rack.
0200060	NSPS	A, J	FCCU Air Grid Replacement.
0200061	NSPS	WWW	Use of Higher Temperature Operating Value.
0200062	NSPS	Y, A	Reporting and Recordkeeping Exemption.
0200063	NSPS	A	Reporting and Recordkeeping Exemption.
0200064	NSPS	K, Ka, Kb	Custody Transfer Exemption Clarification.
0200065	NSPS	GG	Custom Fuel Monitoring.
0200066	NSPS	GG	Custom Fuel Monitoring/Alternate Test Method.
0200067	NSPS	GG	Alternate Test Method.
0200068	NSPS	GG	Custom Fuel Monitoring.
0200069	NSPS	GG, Da	Custom Fuel Monitoring/Alternate Test Plan.
0200070	NSPS	GG	Custom Fuel Monitoring.
0200071	NSPS	GG	Custom Fuel Monitoring.
0200072	NSPS	GG	Custom Fuel Monitoring.
0200073	NSPS	GG	Custom Fuel Monitoring/Alternate Test Plan.
0200074	NSPS	Dc	Custom Fuel Usage Monitoring.
0200075	NSPS	GG, A	Alternate Test Plan.
0200076	NSPS	J, A	Alternative Monitoring for Refinery Facility.
0200077	NSPS	GG	Custom Fuel Monitoring.
0200078	NSPS	GG	Approval of Flow Meters.
0200079	NSPS	GG	Custom Fuel Monitoring.
0200080	NSPS	GG	Custom Testing & CEMS QA/QC Approval.
0200081	NSPS	NNN, RRR	Use of Alternate Control System.
0200082	NSPS	NNN, RRR	Gas Streams Combusted in a Fuel Gas System.
0200083	NSPS	AA, AAa	Electric Arc Furnaces.
0200084	NSPS	DDDD, CCCC	Outdated Pharmaceutical & CISWI.
0200085	NSPS	H	Definition of Sulfuric Acid Plant.
0200086	NSPS	OOO, UUU	Lightweight Aggregate Production Facilities.
0200087	NSPS	OOO, A	Notification & Reporting Requirements.
0200088	NSPS	OOO	Applicability to Conveyors.

Abstract

Abstract for [A020001]:

Q1: Are residential structures owned by the State subject to the asbestos NESHAP if they have less than four dwelling units?

A1: Yes, if the structures are part of a State project such as road construction or urban renewal.

Q2: Is spray on ceiling texture considered part of the wall system like tape joint compound?

A2: No. The analyses of these individual layers may not be composited with the wallboard analyses.

Q3: If the ceilings are not disturbed or demolished during the move, does the asbestos need to be removed before the move?

A3: Prior to the move, the owner or operator must determine if the move will break up, dislodge, or similarly disturb the asbestos. If such disturbances occur, the owner or operator may be subject to enforcement action.

Q4: Can the State avoid the requirements of the asbestos NESHAP by having the demolition of a residential structure occur prior to the State taking official ownership?

A4: If the structure is part of an installation, as occurs when a group of houses are demolished for a project, such activities would be considered

circumvention which is prohibited by the part 61 NESHAP general provisions.

Q5: Is the movement of a single-family home purchased from a private party subject to the asbestos NESHAP?

A5: No, unless the home is part of an installation, planned development, or public project.

Q6: Is the movement of a single-family home purchased from a land developer subject to the asbestos NESHAP?

A6: Yes. Residential structures that are demolished or renovated as part of a commercial or public project are not exempt from the rule.

Q7: Is the movement of a structure that has been used for educational purposes and will contain four or less dwelling units subject to the asbestos NESHAP?

A7: Yes. Mobile classroom structures are considered institutional buildings.

Q8: Is the movement of a single-family home (not modular or mobile) purchased from a house manufacturing company subject to the asbestos NESHAP?

A8: No, based on the limited information provided.

Q9: Is the movement of portable school classrooms subject to the asbestos NESHAP?

A9: Yes. Large mobile structures for public or commercial use are regulated.

Q10: Is the movement of agricultural buildings subject to the asbestos NESHAP?

A10: Agricultural buildings used for commercial purposes, such as a dairy barn or crop storage structure, are subject. However, the rule does not apply to sheds used to store equipment for a homeowner's garden, or to farm stands that sell fresh produce and have no utilities.

Q11: Is the movement of garages subject to the asbestos NESHAP?

A11: Yes, if the residential structure associated with the garage is subject, if the garage is located at a commercial operation, or if the garage itself is used for commerce.

Abstract for [M020008]:

Q: Will EPA approve an alternative scrap inspection monitoring program for a facility that accepts no fabrication or press scrap containing paint or coatings?

A: Yes, provided the facility includes a recordkeeping provision like 40 CFR 63.1510(p)(6).

Abstract for [M020009]:

Q: Can the Boise Cascade paper mill in International Falls, Minnesota use the UNOX system biomass, as calculated using the mixed liquor volatile suspended solids (MLVSS), to meet the continuous monitoring requirements for kraft pulping condensates? The pulp and paper NESHAP does not specify a monitoring parameter for closed biological systems.

A: Yes. The UNOX system destruction efficiency depends on the number of biological organisms in the system, the biomass accounts for the majority of organic solids, and MLVSS is a measure of organic solids. Boise Cascade must use the average MLVSS measured during a compliant performance test as the minimum MLVSS demonstrating continuous compliance.

Abstract for [M020010]:

Q: Will EPA waive the performance test for a backup portable vapor combustion unit that Marathon Ashland Petroleum (MAP) has used at its St. Paul Park, Minnesota refinery to control VOC emissions from a gasoline loading rack during maintenance and repair work on the primary carbon adsorption unit controls?

A: Yes. Tests showed that the unit's VOC emissions were only 15 percent of the emission standard at another MAP location. The unit is scheduled for use at other MAP facilities, and bringing it back to St. Paul Park for a test would not provide any new information.

Abstract for [M020011]:

Q: What is the correct location for measuring freeboard refrigeration temperature in a halogenated solvent cleaning machine?

A: The temperature should be measured in the center of the chilled air blanket, at the center cooling coil of the machine.

Abstract for [M020012]:

Q: Is a facility that includes a chamber that delaminates aluminum foil from paper and plastic subject to the secondary aluminum NESHAP?

A: No. Subpart RRR defines a scrap dryer as a unit used to remove organic contaminants from aluminum scrap prior to melting. No melting occurs at the facility in question, and there are no other affected sources subject to subpart RRR.

Abstract for [M020013]:

Q: Will EPA approve surrogate parameters for daily monitoring of an open biological treatment system?

A: Yes, based on the information submitted, EPA approves the request. However, EPA may require use of another specified monitoring method if it finds reasonable grounds to dispute the results obtained under this alternative monitoring method.

Abstract for [M020014]:

Q: A refinery has process area reactors and distillation columns whose only gas streams are combusted in the refinery's fuel gas system. These gas streams are exempt from any compliance monitoring requirements under 40 CFR part 63, subpart G. Does 40 CFR 63.110(d)(10) also exempt those gas streams from the requirements of NSPS subparts NNN and RRR?

A: No. 40 CFR 63.110(d)(10) does not exempt the gas streams from meeting the requirements of NSPS subparts NNN and RRR.

Abstract for [M020015]:

Q: Do the halogenated solvent cleaner NESHAP standards apply to the process described for stripping epoxy resins from steel bowls?

A. The applicability section of this rule, 40 CFR 63.460(a), states that if any of the named solvents, including methylene chloride, which this facility uses, is used in any of four types of solvent cleaning machines as a cleaning and/or drying agent, then the subpart applies. Although the hand cleaning portion of the removal of the epoxy resin from the steel bowl is exempt from Subpart T, the mechanical cleaning inside the custom design tank is not exempt, but rather is an applicable batch cold cleaning machine under the halogenated solvent MACT standard.

Abstract for [M020016]:

Q: Do the halogenated solvent cleaner NESHAP standards apply to the stripping (thinning/diluting) of a coating of catalyzed epoxy resin in various stages of cure from metal bowls in the following process? The metal bowl is placed upside down in a custom designed tank containing approximately 3" of Methylene Chloride liquid. The tank cover is closed and spray is directed upward into the part in a 45 minute stripping process. The parts are removed and then hand cleaned about 15 minutes per bowl. Is this a cold cleaning operation or a stripping operation?

A: 40 CFR 63.461 defines a cold cleaning machine as any device or piece of equipment that contains and/or uses liquids, into which parts are placed to remove soils from the surface of the parts. In this case, the cleaning of the parts once they exit the solvent bath using spray headers to begin the stripping process and then the continued cleaning of parts by hand would identify this operation as a stripping operations. Based on the information supplied, EPA has determined that the operation is not subject to the halogenated solvent cleaning NESHAP.

Abstract for [M020017]:

Q1: USGC Almeg has a processing chamber in which foil is delaminated from paper and plastic. This processing chamber operates at a maximum temperature of 900 degrees Fahrenheit; no melting occurs here, nor does melting occur subsequently in any of

USGC Almeg's operations. Is USGC Almeg subject to subpart RRR?

A1: Yes. Units that use heat to remove contaminants from scrap aluminum are subject to 40 CFR part 63, subpart RRR, irrespective of whether the aluminum is subsequently melted.

Q2: USGC Almeg has a unit that dries aluminum chips in the absence of any melting of aluminum at the site. Is the unit subject to subpart RRR?

A2: Yes. A device that uses heat to evaporate water, oil, or oil/water mixtures from unpainted/uncoated aluminum chips is subject to the requirements of subpart RRR.

Abstract for [M020018]:

Q: What is the correct wastewater classification of low-point drains which are drained on a routine basis as part of proper function of the process?

A: The procedures followed by Celanese result in process wastewater because the draining of the wastewater is essential to maintaining the proper function of the process equipment; the draining occurs at a frequent, routine, planned interval; and the draining is not done for the purposes of maintenance or repair.

Abstract for [M020019]:

Q: Will EPA approve an alternative initial performance test for roller mill transfer chutes at a Portland cement facility?

A: Yes. Because of the design and operation of the chutes and the nature of the material being processed, EPA believes that emissions are not likely and accordingly approves the request for an alternative initial performance test.

Abstract for [M020020]:

Q: Will EPA approve alternative monitoring using a bag leak detection system in lieu of daily visual observations for finish mill stacks?

A: Yes. EPA approves a request for the use of a bag leak detection system (BLDS) in lieu of daily visual observations on finish mill stacks.

Abstract for [M020021]:

Q: Will EPA approve a waiver from Method 9 initial performance testing for transfer chutes, load spouts and Magnetic Separator Discharge Chute at a Portland cement facility?

A: EPA approves the waiver from Method 9 for transfer chutes, load spouts and Magnetic Separator Discharge Chute at the facility on condition that any change in operation will require further EPA review.

Abstract for [M020022]:

Q: Will EPA approve a waiver from Method 9 initial performance testing and monitoring for the coal mill stack and related air pollution control device at a Portland cement facility?

A: Yes. EPA approves a waiver of performance testing and alternative monitoring for the coal mill stack. Performance test requirements and the monitoring requirements shall be applicable to the main kiln stack and its related air pollution control device.

Abstract for [0200050]:

Q: Can Consolidated Edison Energy Massachusetts obtain a relaxed sulfur-in-fuel monitoring schedule under NSPS subpart GG for the operation of two stationary gas turbines which operate solely on natural gas?

A: Yes, EPA routinely grants custom monitoring schedules under 40 CFR part 60, subpart GG for units burning low sulfur fuels.

Abstract for [0200051]:

Q: Can Consolidated Edison Energy Massachusetts obtain a waiver from the requirement to conduct an initial performance test for NO_x under 40 CFR part 60, subpart GG?

A: Yes, EPA will waive the performance test requirement where it believes that the source can demonstrate compliance with the standard using other means. In this case, the source will demonstrate compliance with the subpart GG NO_x limit by installing, operating, and maintaining a NO_x continuous emission monitoring (CEM) system in accordance with 40 CFR part 75, and conducting an initial RATA certification for the CEM system.

Abstract for [0200052]:

Q: Can Massachusetts Institute of Technology obtain a relaxed sulfur-in-fuel monitoring schedule under NSPS subpart GG for the operation of a stationary gas turbine which operates solely on natural gas?

A: Yes, EPA routinely grants custom monitoring schedules under 40 CFR part 60, subpart GG for units burning low sulfur fuels.

Abstract for [0200053]:

Q: Can Sithe's Fore River and Mystic facilities obtain a relaxed sulfur-in-fuel monitoring schedule under NSPS subpart GG for the operation of stationary gas turbines with a primary fuel of natural gas and a secondary fuel of very-low sulfur distillate oil?

A: Yes, EPA routinely grants custom monitoring schedules under 40 CFR part 60, subpart GG for units burning low sulfur fuels.

Abstract for [0200054]:

Q: May Sithe's Fore River and Mystic facilities measure nitrogen oxides (NO_x), sulfur dioxide (SO_2), and particulate matter (PM) at the heat recovery steam generator (HRSG) outlet instead of measuring upstream and downstream of the duct burner during the subparts GG and Da initial performance test? Also, may Sithe use method 20 instead of method 7E for the initial performance test? Can Sithe obtain a custom CEMS quality assurance/quality control (QA/QC) regimen?

A: Yes, EPA has determined that in these specific cases the proposed alternatives to the test methods, sampling points, and CEMS QA/QC requirements will continue to ensure compliance with the emission limits.

Abstract for [0200055]:

Q: Contrary to what is required under 40 CFR 60.153(b)(2), subpart O, is it permissible to locate an oxygen monitor downstream of any multiple hearth incinerator rabble shaft cooling air inlet into the incinerator exhaust gas stream, fan, ambient air recirculation damper, or any other source of dilution air?

A: Yes, providing certain conditions are met. EPA has concurred with a multiple hearth incinerator owner/operator's determination that a stack gas extractive oxygen CEMS can provide a valid surrogate indicator of incinerator exhaust gas oxygen content with minimal interference from sources of dilution air, provided certain testing and operation and maintenance (O&M) practices are implemented, including reporting requirements.

Abstract for [0200056]:

Q: Will EPA exempt the U.S. Navy under 40 CFR 60.332 for a new Turbine Test Facility to be installed in the City of Philadelphia?

A: Yes, Region III approves the exemption from the nitrogen oxides standard in subpart GG because this new installation meets the conditions specified in 40 CFR 60.332 as both a military turbine installation and a manufacturer test facility for efficiency improvements and emissions reductions.

Abstract for [0200057]:

Q: Does EPA consider a "drop out" box with water sprays an example of a wet scrubbing control device?

A: Yes. The Stationary Source Control Techniques Document for Fine Particulate Matter (EPA, 1998) defines wet scrubbers as "particulate matter (PM) control devices that rely on direct and irreversible contact of a liquid with the PM." Therefore, a "drop-out" box with water sprays is considered to be an example of a wet scrubbing control device and should be in compliance with the regulations accordingly.

Abstract for [0200058]:

Q: Will EPA approve an alternative testing procedure for four simple cycle combustion turbines that use a certified continuous emission monitor that has been certified under 40 CFR part 75?

A: The owner has demonstrated that the concentration of oxygen is not stratified across the diameter of the exhaust stack. Therefore, subject to certain conditions, EPA approves this request.

Abstract for [0200059]:

Q: Will EPA approve an alternative monitoring plan for a portable combustor at the gasoline loading rack at Marathon Ashland Petroleum LLC's Detroit, Michigan refinery?

A: Yes. Because the request is consistent with EPA's policy for approval of an alternative monitoring plan for miscellaneous fuel gas streams, EPA approves the request.

Abstract for [0200060]:

Q1: Does the replacement of an air grid on an FCCU catalyst regenerator trigger NSPS subpart J?

A1: If the Air Grid Replacement Project does not cause an increase in the emission rate of PM, SO_2, or CO, as presented by MAP, it will not trigger NSPS. MAP is required to demonstrate that there will be no emission increase via CEM data and emissions tests.

Q2: Does the Air Grid Replacement Project qualify for the exemption of modification for routine maintenance, repair, and replacement in 40 CFR 60.14(e)(1)?

A2: No. The Air Grid Replacement Project is not a regular, customary or standard undertaking for the purposes of maintaining the plant in its present condition.

Abstract for [0200061]:

Q: Will EPA app.ove a higher operating temperature for ten wells at a landfill?

A: Yes. Based on the supporting information presented by the landfill, it appears that the methanogenic process is still at an anaerobic phase at the higher landfill gas temperatures and no evidence of subsurface landfill fire is present at the site.

Abstract for [0200062]:

Q: Will EPA grant a coal preparation plant a waiver from the NSPS general provision reporting and recordkeeping requirements for all of its coal handling system, except the dust collector?

A: No. The NSPS general provisions do not provide for the complete waiving of such reporting or recordkeeping requirements.

Abstract for [0200063]:

Q: Will EPA grant a waiver from the NSPS general provision reporting and recordkeeping requirements for a coal mine's processing and conveying equipment?

A: No. The NSPS general provisions do not provide for the complete waiving of such reporting or recordkeeping requirements.

Abstract for [0200064]:

Q: At what point does the custody transfer exemption apply to petroleum liquid storage vessels in natural gas production processes?

A: There is no set point for every facility where the custody transfer exemption applies. If the petroleum liquid storage vessels are located after any type of processing or treatment, the custody transfer exemption does not apply. It is possible that the custody transfer exemption may apply to different facilities at different points in the natural gas production process.

Abstract for [0200065]:

Q1: Are turbines manufactured before October 3, 1977 and maintained by Alyeska before that date, but that did not begin initial operation on the Trans-Alaska Pipeline System (TAPS) until after that date subject to NSPS subpart GG?

A1: In the case of stationary gas turbines that are mass-produced and purchased in completed form, EPA considers the manufacturer as the original owner or operator. The turbines are not subject to subpart GG provided that they were not modified or reconstructed after October 3, 1977.

Q2: Are turbines manufactured before October 3, 1977 and not purchased by Alyeska until after that date, and that therefore did not begin initial operation on the TAPS until after that date subject to subpart GG?

A2: In the case of stationary gas turbines that are mass-produced and purchased in completed form, EPA considers the manufacturer as the original owner or operator. The turbines are not subject to subpart GG provided that they were not modified or reconstructed after October 3, 1977.

Q3: Are turbines manufactured before October 3, 1977, and purchased by Alyeska after that date from another owner who bought them before that date, subject to subpart GG even if they may not have been placed into operation by the previous owner before October 3, 1997?

A3: In the case of stationary gas turbines that are mass-produced and purchased in completed form, EPA considers the manufacturer as the original owner or operator. The turbines are not subject to subpart GG provided that they were not modified or reconstructed after October 3, 1977.

Q4: Do the requirements of subparts A and GG apply only to a turbine, as the "affected facility," so that a turbine that is subject to these subparts is operated as a GG turbine no matter where it is operated on the TAPS?

A4: Under subparts A and GG, the turbine is the affected facility and the requirements of these subparts follow a turbine constructed, modified, or reconstructed after October 3, 1977, regardless of where the turbine is relocated. The affected facility is the stationary gas turbine and does not include the equipment that is powered by the turbine (such as a generator or pump).

Q5: Do turbines manufactured before October 3, 1977, become subject to subpart GG if they are treated as a pool of identical turbines and moved from location to location between TAPS pump stations to allow for the maintenance of turbines?

A5: Assuming that the maintenance does not result in a modification or reconstruction, and that the turbines are not otherwise modified or reconstructed, relocation of the turbine as part of a pool of identical turbines would not subject the turbine to subpart GG.

Q6: Does a turbine that is not subject to subpart GG (because it was not constructed, modified, or reconstructed after October 3, 1977) become subject to subpart GG if it is rotated into a location to replace a turbine that is subject to this subpart?

A6: No. A turbine that was not constructed, modified, or reconstructed after October 3, 1977, does not become subject to subpart GG simply because it is rotated into a location to replace a turbine that is subject to this subpart.

Abstract for [0200066]:

Q1: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A1: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis.

Q2: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A2: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 2,000 ppmw threshold.

Abstract for [0200067]:

Q: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 1,600 ppmw threshold.

Abstract for [0200068]:

Q: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel

monitoring schedules on a case-by-case basis. In this case, approval is based on the understanding that there is no fuel-bound nitrogen and on following specific conditions for confirming sulfur variability of the pipeline natural gas.

Abstract for [0200069]:

Q1: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?.

A1: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the understanding that there is no fuel-bound nitrogen and on following specific conditions for confirming sulfur variability of the pipeline natural gas.

Q2: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A2: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 1,600 ppmw threshold.

Q3: Will EPA approve a request to perform fuel sampling and analysis in lieu of sulfur dioxide stack testing under subpart Da?

A3: Yes, based upon the fact that sulfur dioxide emissions generated by burning pipeline quality natural gas should be at least one order of magnitude below the standard in subpart Da, EPA approves the request to perform fuel sampling in lieu of stack testing.

Abstract for [0200070]:

Q1: Will EPA grant a request to use the procedures for fuel sulfur content determination in section 2.3.3.1 of appendix D to part 75?

A1: Yes, EPA approves the use of this method when pipeline quality natural gas is the only fuel being burned.

Q2: Will EPA approve a custom fuel monitoring schedule under subpart GG for a facility?

A2: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the understanding that there is no fuel-bound nitrogen.

Abstract for [0200071]:

Q1: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A1: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the understanding that there is no fuel-bound nitrogen and on following specific conditions for confirming sulfur variability of the pipeline natural gas.

Q2: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A2: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 1,600 ppmw threshold.

Abstract for [0200072]:

Q: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the sulfur content of the fuel being used and the understanding that there is no fuel-bound nitrogen.

Abstract for [0200073]:

Q1: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A1: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the sulfur content of the fuel being used and the understanding that there is no fuel-bound nitrogen.

Q2: Will EPA approve use of the length-of-stain tube test for certain gas turbines?

A2: Yes, EPA approves the use of the length-of-stain tube test provided that the sulfur content of the gaseous fuel is well below the 1,600 ppmw threshold.

Q3: Will EPA approve use of NO_X CEMS as an alternative monitoring method to monitor the ratio of water to fuel?

A3: Yes, EPA grants this request because it is consistent with approval in a March 12, 1993, EPA guidance memorandum.

Q4: Will EPA approve a request not to have to correct NO_X CEMS data to ISO conditions?

A4: Yes, EPA finds it acceptable to maintain NO_X emissions below 25 ppmvd at 15 percent oxygen as it would ensure compliance with the applicable ISO—corrected subpart GG under all reasonably ambient conditions.

Q5: Will EPA allow use of NO_X reference test method data collected during a RATA conducted on the plant's CEMS as an alternative to the initial NO_X performance test?

A5: Yes, EPA will allow this use because the amount of sampling conducted during the RATA (a minimum of nine 21-minute test runs using the EPA reference methods) provides enough representative emissions data to determine compliance status.

Abstract for [0200074]:

Q: Will EPA approve a custom fuel usage monitoring schedule under subpart Dc for a facility?

A: Yes, the request is consistent with previous custom fuel usage monitoring schedules allowed under subpart Dc.

Abstract for [0200075]:

Q: Will EPA approve an alternative ASTM test method for monitoring the nitrogen content of fuel being burned?

A: Yes, because the proposed alternative method is capable of measuring close to the test target levels with minimal deviation and well within 5 percent of the mean, EPA approves the test method.

Abstract for [0200076]:

Q: Will EPA approve alternative monitoring requests for a refinery facility subject to subpart J?

A: Yes, EPA will approve the alternative monitoring requests, but with specific conditions and one modification from the proposed approach.

Abstract for [0200077]:

Q: Will EPA approve a custom fuel monitoring schedule under NSPS subpart GG for a facility?

A: Yes, EPA will approve the custom fuel monitoring schedule according to an August 14, 1987, national policy which allows the EPA regional offices to approve subpart GG custom fuel monitoring schedules on a case-by-case basis. In this case, approval is based on the understanding that there is no fuel-bound nitrogen and on following specific conditions for confirming sulfur variability of the pipeline natural gas.

Abstract for [0200078]:

Q: Will EPA approve water and fuel flow meters for two gas turbines?

A: Yes, EPA approves these meters because their accuracy meets the requirements of 40 CFR 60.334(a).

Abstract for [0200079]:

Q: Will EPA approve custom fuel monitoring for nitrogen and sulfur for a planned natural gas-fueled, turbine-driven pipeline compressor subject to subpart GG?

A: Yes, EPA approves a custom monitoring schedule, per 40 CFR 60.334(b)(2), that allows for no monitoring of fuel nitrogen as long as the affected source is supplied with solely pipeline quality natural gas. In addition, EPA approves a custom fuel monitoring schedule for sulfur. The schedule requires monitoring twice monthly for the first six months, and, if the affected source has test results less than 50 percent of the sulfur limit, then twice a year, during the first and third calendar quarters, as long as the affected source maintains compliance.

Abstract for [0200080]:

Q1: Will EPA allow Mirant Kendall to measure NO_X, SO_2, and PM for the new natural gas unit number 4 at the HRSG outlet instead of upstream and downstream of the duct burner during the subpart GG and subpart Da initial performance test? Can Kendall use Method 20 instead of Method 7E for the initial performance test?

A1: Yes, EPA has determined that in these specific cases the proposed alternatives to the test methods and sampling points will continue to ensure compliance with the emission limits.

Q2: Will EPA allow a custom CEMS QA/QC regimen?

A2: Yes, EPA has determined that in these specific cases the proposed alternative to the CEMS QA/QC requirements will continue to ensure compliance with the emission limits.

Abstract for [0200081]:

Q: Is the use of an adsorber and incinerator an acceptable alternate control system for subpart NNN and subpart RRR affected facilities?

A: Yes. Use of the control system and the proposed procedures for monitoring and ensuring proper operation and maintenance are acceptable.

Abstract for [0200082]:

Q: A refinery has process area reactors and distillation columns whose only gas streams are combusted in the refinery's fuel gas system. These gas streams are exempt from any compliance monitoring requirements under 40 CFR part 63, subpart G. Does 40 CFR 63.110(d)(10) also exempt those gas streams from the requirements of NSPS subparts NNN and RRR?

A: No. Section 63.110(d)(10) does not exempt the gas streams from meeting the requirements of NSPS subparts NNN and RRR.

Abstract for [0200083]:

Q: Are electric arc furnaces in steel forging plants regulated by subparts AA and AAa?

A: If a plant manufactures a product that comes from a mold and that product, as it comes out from the mold, is modified by rolling, forging, hot or cold working to alter its shape, the furnaces are regulated.

Abstract for [0200084]:

Q. Is outdated pharmaceutical waste considered an industrial waste that would make an incinerator a Commercial and Industrial Solid Waste Incineration (CISWI) Unit?

A. No. As the waste in question is from a warehouse, it is a municipal waste and, as a result, the unit is not subject to the CISWI regulations.

Abstract for [0200085]:

Q: For purposes of NSPS subpart H, what portions of a facility containing both sulfuric acid and liquid sulfur dioxide operations constitute a sulfuric acid plant?

A: On the basis of the information provided on this particular facility, only the sulfuric acid operations constitute a sulfuric acid plant under subpart H.

Abstract for [0200086]:

Q: A facility mines and crushes argillite and then fires it in kilns to produce lightweight aggregate. Are the lightweight aggregate product crushers/grinders, conveyors, screeners, and storage bins which follow the kilns subject to subpart OOO?

A: Yes. Even if no crushing or grinding takes place after the kilns, the subsequent material handling equipment would still be subject to subpart OOO as it is part of the nonmetallic mineral production line in which crushing and grinding of raw material takes place. The lightweight aggregate product is a nonmetallic mineral. The facility should also consider the potential applicability of subpart UUU to specific operations at the facility.

Abstract for [0200087]:

Q: Should facilities subject to NSPS subpart OOO submit routine reports to the appropriate agency with delegated authority for implementing the regulation, instead of EPA Region 4?

A: Yes. Facilities subject to NSPS subpart OOO only need to submit routine reports to the appropriate agency with delegated authority for implementing the regulation. There is no need to submit the reports to EPA Region 4.

Abstract for [0200088]:

Q: A facility crushes and grinds clay and then deposits it onto a storage pile. The clay is later removed from the storage pile and transferred by a conveyor to brick manufacturing equipment in a making room. Is the conveyor subject to subpart OOO?

A: No. The conveyor is not an affected facility in a production line at a nonmetallic mineral processing plant.

Dated: February 4, 2003.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 03–3585 Filed 2–12–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 26, 2003.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Larry Dale Williams, Boise Idaho; to retain control of Idaho Banking Company, Boise, Idaho.

Board of Governors of the Federal Reserve System, February 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3514 Filed 2–12–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice

President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Philip R. Forstrom, Clara City, Minnesota, Perry D. Forstrom, Spicer, Minnesota, and John T. Forstrom, Independence, Minnesota; as a group acting in concert, to acquire control of First State Agency of Lake Lillian, Inc., Lake Lillian, Minnesota, and thereby indirectly acquire control of First State Bank, Lake Lillian, Minnesota.

Board of Governors of the Federal Reserve System, February 7, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–3515 Filed 2–12–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 7, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. United Community Banks, Inc., Blairsville, Georgia; to merge with First Georgia Holding, Inc., Brunswick, Georgia, and thereby indirectly acquire voting shares of First Georgia Bank, Brunswick, Georgia.

Board of Governors of the Federal Reserve System, February 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3513 Filed 2–12–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: DHHS/ACF/ASPE Enhanced Services for the Hard-to-Employ

OMB No.: New Collection

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on previous and ongoing research by rigorously testing a wide variety of approaches to promote employment and improve family functioning and child well-being. The HtE project will "conduct a multi-site evaluation that studies the implementation issues, program design, net impact and benefit-costs of selected programs" [1] designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or low income parents who are hard-to-employ. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) of the Administration for Children and Families (ACF), the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Labor. The evaluation involves an experimental, random assignment design in 6 sites, testing a diverse set of strategies to promote employment for low-income parents who face serious obstacles to employment, including physical and mental health problems, substance abuse, human capital deficiencies, and situational barriers. At least two of the sites included in the evaluation will feature "two generation" models, serving both parents and their children. Over the next several years, the HtE project will generate a wealth of rigorous data on implementation, effects, and costs of these alternative approaches. The data collected will be used for the following purposes:

- To study the extent to which different HtE approaches impact employment, earnings, income, welfare dependence, and the presence or persistence of employment barriers;
- To collect data on a wider range of outcome measures than is available through Welfare, Medicaid, Food Stamps, Social Security, the Criminal Justice System or Unemployment Insurance records in order to understand the family circumstances and attributes and situations that contribute to the difficulties in finding employment; job retention and job quality; educational attainment; interactions with and knowledge of the HtE program; household composition; childcare; transportation; health care; income; physical and mental health problems; substance abuse; domestic violence; and criminal history.
- To conduct non-experimental analyses to explain participation decisions and provide a descriptive picture of the circumstances of individuals who are hard-to-employ;
- To obtain participation information important to the evaluation's benefit-cost component;
- And to obtain contact information for possible future follow-up, information that will be important to achieving high response rates for the 42-month survey.

Respondents: The respondents of the baseline survey are Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or low-income individuals who are hard-to-employ from six states likely to be participating in the HtE Project: California, Georgia, Kansas, New York, Pennsylvania, and Wisconsin. Survey respondents can be grouped according to 4 target populations: prisoners with children; low-income mothers with mental health problems; populations connected to the TANF system; and programs working with two-generations (parents and their children). Prior to random assignment, basic demographic information for all survey respondents will be obtained wherever possible from the program's automated system. In addition, all survey respondents will receive a core set of questions that will be administered by Audio-Computer Assisted Self Interview (ACASI-Core). In the site operating a program aimed specifically at ex-offenders, an additional supplementary module will be administered by Audio-CASI. Similarly, an additional supplementary module will be administered by Audio-CASI in the site operating a program aimed at survey respondents with mental health problems. Finally, in the two-generation sites (two of the six sites), survey respondents will complete a two-generation survey administered by a Computer Assisted Personal Interview (CAPI). Approximately 12,000 respondents will complete the core survey, 2,000 will complete the criminal justice module, 2,000 will complete the mental health module, and 4,000 will complete the two-generation CAPI survey.

[1] From the Department of Health and Human Services RFP No.: 233–01–0012.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Audio-CASI Core	12,000	1	10 minutes or .17 hrs	2,000
Criminal Justice Module	2,000	1	10 minutes or .17 hrs	333.33
Mental Health Module	2,000	1	10 minutes or .17 hrs	333.33
Two Generation	4,000	1	30 minutes or .5 hrs	2,000
Estimated Total Annual Burden Hours				4,666.66

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 6, 2003.

Gerald L. Fralick,

Director, Office of Information Systems.

[FR Doc. 03–3446 Filed 2–12–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03F–0023]

Kerry, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kerry, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of gum arabic as a thickener, emulsifier, or stabilizer in the manufacture of creamers for use in alcoholic beverages at a maximum level of use of 20 percent.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (S–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3071.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 1A4730) has been filed by Kerry, Inc., c/o Bell, Boyd, and Lloyd LLC, Three First National Plaza, 70 West Madison St., suite 3300, Chicago, IL 60602–4207. The petition proposes to amend the food additive regulations in part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* (21 CFR part 172) to provide for the safe use of gum arabic as a thickener, emulsifier, or stabilizer in the manufacture of creamers for use in alcoholic beverages at a maximum level of use of 20 percent.

The food additive petition filed as FAP 1A4730 was initially filed as a generally recognized as safe (GRAS) affirmation petition GRP 3G0287 as announced in a notice that was published in the **Federal Register** of October 13, 1983 (48 FR 46626) (The GRAS affirmation petition was filed by Beatrice Foods Co., now Kerry, Inc.). Kerry, Inc., requested in a letter dated September 6, 2001, that FDA convert the GRAS affirmation petition (GRP 3G0287) to a food additive petition (FAP 1A4730).

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment.

Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 19, 2002.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–3557 Filed 2–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1249]

Determination of Regulatory Review Period for Purposes of Patent Extension; Avandia

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for

Avandia and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Avandia (rosiglitazone maleate). Avandia is indicated for use in combination with a sulfonylurea in patients with type 2 diabetes mellitus when diet and exercise with either single agent does not achieve adequate glycemic control. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Avandia (U.S. Patent No. 5,002,953) from Smithkline Beecham Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Avandia represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Avandia is 2,042 days. Of this time, 1,859 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: October 23, 1993. The applicant claims October 22, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 23, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: November 24, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Avandia (NDA 21–071) was initially submitted on November 24, 1998.

3. *The date the application was approved*: May 25, 1999. FDA has verified the applicant's claim that NDA 21–071 was approved on May 25, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,021 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written comments and ask for a redetermination by April 14, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Copies are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–3555 Filed 2–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1239]

Determination of Regulatory Review Period for Purposes of Patent Extension; Rapamune

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Rapamune and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Rapamune (sirolimus (also rapamycin)). Rapamune is indicated for prophylaxis of organ rejection in patients receiving renal transplants. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Rapamune (U.S. Patent No. 5,100,899) from Sir Roy Caine, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 13, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Rapamune represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Rapamune is 2,709 days. Of this time, 2,434 days occurred during the testing phase of the regulatory review period, while 275 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective: April 17, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 17, 1992.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the act: December 15, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for Rapamune (NDA 21–083) was initially submitted on December 15, 1998.

3. The date the application was approved: September 15, 1999. FDA has verified the applicant's claim that NDA 21–083 was approved on September 15, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,492 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written comments and ask for a redetermination by April 14, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Copies are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–3556 Filed 2–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Grant Awards

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grant awards.

SUMMARY: The Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA), has awarded the following grants. Funds for these grants were appropriated under Public Law 107–116, the "Departments of Labor, HHS, Education, and Related Agencies Appropriations Act for FY 2002." The awards are Special Projects of Regional and National Significance (SPRANS), authorized by Section 501(a)(2) of the Social Security Act, the MCH Federal Set-Aside Program (42 U.S.C. 701(a)(2)).

- *Replicating "Lessons Learned" in Alcohol Screening During Pregnancy Demonstration Program.* (CFDA #93.110) This grant promotes replication of strategies found to motivate providers to systematically screen for alcohol use during pregnancy, provide information on associated risks, and refer clients for interventions. Competition for this award was open to only two existing grantees of a preceding three-year initiative entitled: "Improving Screening for Alcohol Use During Pregnancy Among Providers Demonstration Program." Each of the following two grantees was awarded $150,000 for the first year of the three-year grant period with second and third year grant awards subject to acceptable performance and the availability of funds:
  - Illinois Department of Human Services, Office of Family Health; and
  - Massachusetts Department of Public Health, Bureau of Family.

FOR FURTHER INFORMATION: Contact Ellen Hutchins, ScD, Division of Perinatal Systems and Women's Health, Maternal and Child Health Bureau, 5600 Fishers Lane, Room 11A–55, Rockville, MD 20857, (301) 443–9534.

- *New Investigators in MCH Research: Dissertation Awards.* (CFDA #93.110RD) This grant program supports doctoral candidates' research-based

dissertation in maternal and child health (MCH) or an MCH-related discipline. Competition for this award was limited to existing grantees of "Long-Term Leadership Training Grants." The following grantees received awards for a single project:

- The University of Maryland, School of Social Work; $29,411;
- The Johns Hopkins University, School of Public Health; $30,000;
- The Boston University, School of Public Health; $19,972;
- The University of Illinois at Chicago, School of Public Health; $20,560;
- The University of California, Los Angeles, School of Public Health; $22,482;
- The University of Minnesota, School of Public Health; $22,525; and
- The University of North Carolina at Chapel Hill, School of Social Work; $6,052.

FOR FURTHER INFORMATION: Contact Hae Young Park, M.P.H., Division of Research, Training and Education, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18A–55, Rockville, MD 20857, (301) 443–2127.

- *New Investigators in MCH Research: Training Program Enhancement Awards.* (CFDA #93.110TU) This grant program supports the development, demonstration and dissemination of program models in five institutions of higher education to enhance the research training of their MCH trainees. Competition for this award was limited to existing grantees of "Long-Term Leadership Training Grants." Each of the following two grantees received a maximum grant award of $20,000 for the first year of a 3-year project period:

- The University of Minnesota Center for Adolescent Health and Research—Leadership Education in Adolescent Health Training Program; $20,000;
- The Children's Hospital Los Angeles—Leadership Education in Neurodevelopmental Disabilities Training Program; $20,000;
- The Boston University School of Public Health—MCH Training Program; $20,000;
- The Virginia Commonwealth University—Leadership Education in Neurodevelopmental Disabilities Training Program; $20,000; and
- The University of Rochester—Leadership Education in Adolescent Health and Leadership Education in Neurodevelopmental Disabilities Training Programs; $20,000.

FOR FURTHER INFORMATION: Contact Hae Young Park, M.P.H., Division of Research, Training and Education, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18A–55, Rockville, MD 20857, (301) 443–2127.

Dated: February 6, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–3594 Filed 2–12–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Substance Abuse Prevention and Treatment Block Grant: Waiver for U.S. Territories (Other Than Puerto Rico) of Synar Program Requirements

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

SUMMARY: In keeping with the Substance Abuse and Mental Health Services Administration's (SAMHSA) delegation of authority from the Secretary and in compliance with title XIX, subpart II, section 1932(c) and with section 1926 of the Public Health Service Act, SAMHSA is issuing the following guidance to be used in determining whether to approve a U.S. Territory's request for a waiver from the requirements of section 1926 of the Public Health Service (PHS) Act (the Synar Amendment), and its implementing regulations, 45 CFR 96.130.

This guidance will become effective only at such time that an appropriation act for the Department of Health and Human Services (HHS) does not contain a prohibition on penalizing the territories under section 1926 of the PHS Act that receive less than $1,000,000. (*See, e.g.*, section 214 of Departments of Labor Health and Human Services, and Education, and Related Agencies Appropriation Act, Pub. L. 107–116 (Jan. 10, 2002).) SAMHSA, however, is seeking comment from the public on this guidance.

Section 1926 of the Public Health Service (PHS) Act and its implementing regulation, require each State, the District of Columbia and each U.S. Territory, as a condition for receiving a Substance Abuse Prevention and Treatment (SAPT) Block Grant award, to enact and enforce laws making illegal the sale or distribution of tobacco products to individuals under the age of 18 years. States, the District of Columbia and the Territories are also required to annually conduct unannounced inspections of tobacco retail outlets to ensure compliance with the law. These inspections must be based on a statistically valid random sample of retail outlets across the State, the District of Columbia or the Territory. Additionally, States, the District of Columbia and Territories are required, unless extraordinary circumstances exist, to meet negotiated annual retailer violation target rates, and to annually submit a report to the Secretary describing their activities to enforce the laws and reduce the availability of tobacco products to minors. Section 1926 also stipulates that any State, the District of Columbia or Territory failing to meet the requirements stated above may receive a 40 percent penalty against their SAPT Block Grant.

Section 1932(c) of the PHS Act authorizes the Secretary, in the case of any territory of the United States except Puerto Rico, to waive such provisions of this subpart II and subpart III as the Secretary determines to be appropriate, * * *" The reference is to subpart II and III of title XIX of the PHS Act which authorize the SAPT Block Grant. This discretionary authority extends to section 1926. This authority has been delegated by the Secretary to the Administrator of SAMHSA. This guidance explains the conditions under which the Administrator of SAMHSA, in his discretion, will grant a waiver for any Territory other than Puerto Rico from the requirements of section 1926.

DATES: Comments on the guidance must be in writing and should be sent to Mr. David Robbins, Acting Director, Division of State and Community Systems Development, Center for Substance Abuse Prevention (CSAP), Rockwall II Building, Room 930, 5600 Fishers Lane, Rockville, MD 20857, by April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. David Robbins, Acting Director, Division of State and Community Systems Development, Center for Substance Abuse Prevention (CSAP), Rockwall II Building, Room 930, 5600 Fishers Lane, Rockville, MD 20857. Mr. Robbins may be reached on (301) 443–2068.

SUPPLEMENTARY INFORMATION: U.S. Territories have faced many challenges in meeting the Synar legislative and regulatory requirements. Specifically, cultural issues have created significant challenges for the conduct of tobacco outlet inspections to assess the youth tobacco access rates within each of the U.S. Territories, as required by the Synar legislation. For example, in some Territories it is customary for individuals under the age of 18 to buy provisions, including tobacco, for their elders. In others, it is considered inappropriate to ask a person's age for any reason, even as part of a retail transaction. Additionally, the Territories are predominately comprised of small community centers within islands. Family loyalties toward merchants and the fear of community ostracism increase the difficulty of recruiting youth for retail outlet inspections. Ensuring youth safety is also a significant concern when retailer inspections are combined with enforcement. Territories report that maintaining the anonymity of youth inspectors is extremely difficult, if not impossible, in many of these small communities. Youth inspectors have been threatened, verbally harassed, and even injured as a result of their participation in the inspections.

In addition to cultural barriers to the conduct of inspections, accessibility to tobacco outlets often presents significant human and resource challenges for the U.S. Territories. Many Territories include outlying islands with very small populations. In order to conduct compliance inspections in these outlying areas, travel by boat and overnight stays are often required. Such travel is often costly and requires staff to work substantial numbers of hours to complete the required work. These logistical issues further burden the process of complying with the Synar legislative and regulatory requirements. Currently, a Territory must commit significant resources toward the development, implementation, and analysis of the survey of tobacco retail outlets across the Territory, as well as the conduct of law enforcement activities for violators of a Territory's youth tobacco access control law. Given that eligible Territories receive relatively small SAPT Block Grant awards (between $85,919 and $756,531), SAMHSA believes that resources expended directly toward the implementation of broader tobacco prevention and control programming would be more productive for obtaining the overall goal of the Synar program—reducing the use of tobacco products by youth.

Waiver Criteria: The Administrator of SAMHSA, in his discretion, will grant a waiver to any eligible Territory if:

- A waiver is requested by the eligible Territory at the same time it submits its application for SAPT funds;
- The waiver request is signed by the chief executive officer of the Territory in question;
- The request contains a comprehensive tobacco prevention and control program acceptable to the Administrator; and
- The Territory in question agrees to submit to the Administrator an annual report on its progress in implementing the plan.

A waiver may be granted for up to three years during which period the Territory in question will be obligated to submit an annual progress report. However, a waiver may be withdrawn as determined appropriate by the Administrator of SAMHSA if the territory fails to submit an annual report or if the progress is determined to be unsatisfactory by the Administrator of SAMHSA. If that should occur, the territory will be required to once again abide by the legislative and regulatory requirements of Synar.

SAMHSA recommends that Territories include the following in their comprehensive tobacco prevention and control plans:

- Public education including information regarding the health consequences of tobacco use, and the problem of youth access to tobacco. Public education may include media campaigns.
- Education and training for retail store owners, managers, and sales clerks on the health consequences of tobacco use and the problem of youth access to tobacco.
- Distribution of culturally sensitive educational materials.
- Community mobilization, which may occur through the formation of community-based coalitions. To be effective, such community coalitions shall support the Territorys capacity to reduce youth use of tobacco products by involving youth in tobacco issues, and by gaining support of the community to reduce a minor's access to tobacco products.
- Environmental strategies including proposals to change or enforce Territorial laws and policies to support efforts to reduce youth use of tobacco products. Examples of possible policy initiatives may include, but not be limited to, encouraging clean indoor air policies, increasing tobacco taxes, or formally supporting youth tobacco cessation programs.

Dated: January 6, 2003.

Charles G. Curie,

Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–3568 Filed 2–12–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Rescinding Policy for Resubmitting Revised Applications in Response to SAMHSA Program Announcements

SUMMARY: On March 12, 2001, (FR Vol. 66, No. 48, pages 14410–14411), the Substance Abuse and Mental Health Services Administration (SAMHSA), HHS, published policy outlining procedures that applicants were required to follow when resubmitting revised applications in response to SAMHSA Program Announcements. The purpose of this notice is to rescind the policy effective February 1, 2003.

SUPPLEMENTARY INFORMATION: The Substance Abuse and Mental Health Services Administration and its three Centers, the Center for Substance Abuse Treatment (CSAT), the Center for Mental Health Services (CMHS), and the Center for Substance Abuse Prevention (CSAP), publish Program Announcements and Requests for Applications (RFAs) to solicit applications for their grant programs. Program Announcements, unlike RFAs, have continuous application receipt dates; thereby, giving applicants an opportunity to resubmit, for a later receipt date, revised applications that were not funded. Although applicants may still revise and resubmit applications, effective February 1, 2003, SAMHSA is rescinding the policy that outlined specific instructions for revising and resubmitting the applications.

Contact: Ms. Sandra Stephens, Extramural Policy Team Leader, Division of Planning and Budget, Office of Policy, Planning, and Budget, Substance Abuse and Mental Health Services Administration. Telephone: (301) 443–9916; Fax: (301) 443–1659.

Dated: February 7, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–3595 Filed 2–12–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement for the Urban Wildlands Group, Inc., Los Angeles County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, receipt of application.

SUMMARY: The Urban Wildlands Group, Inc. (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (SHA) between the Applicant and the Service. The SHA provides for habitat enhancement and creation for the El Segundo blue butterfly *(Euphilotes bernardino allyni)* on approximately 2 acres of bluff habitat on private property in Los Angeles County, California. The proposed duration of both the SHA and permit is 30 years.

The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement, which also is available for public review.

DATES: Written comments must be received by 5 p.m. on March 17, 2003.

ADDRESSES: Comments should be addressed to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009, facsimile number (760) 918–0638 (see **SUPPLEMENTARY INFORMATION,** Public Review and Comment).

FOR FURTHER INFORMATION CONTACT: Karen A. Evans, Assistant Field Supervisor, at the above address or by calling (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

The primary objective of this SHA is to encourage voluntary habitat restoration or enhancement activities to benefit El Segundo blue butterfly by relieving a landowner, who enters into the provisions of a Cooperative Agreement with the Applicant, from any additional Section 9 liability under the Endangered Species Act beyond that which exists at the time the Cooperative Agreement is signed ("regulatory baseline"). A SHA encourages landowners to conduct voluntary conservation activities and assures them that they will not be subjected to increased endangered species restrictions should their beneficial stewardship efforts result in increased endangered species populations. Application requirements and issuance criteria for enhancement of survival permits through SHAs are found in 50 CFR 17.22(c). As long as enrolled landowners allow the agreed upon habitat improvements to be completed on their property and maintain their baseline responsibilities, they may make any other lawful use of the property during the permit term, even if such use results in the take of individual El Segundo blue butterflies or harm to their habitat.

Landowners within the Torrance Recovery Unit identified by the El Segundo Blue Butterfly Recovery Plan may be enrolled with the Applicant under the SHA. They will receive a Certificate of Inclusion when they sign a Cooperative Agreement. The Cooperative Agreement will include: (1) A map of the property; (2) delineation of the portion of the property to be enrolled and its acreage; (3) a description of the vegetation of the enrolled area of the property; (4) a description of the habitat improvements that will be completed, and; (5) the responsibilities of the Cooperator and the Applicant.

The Applicant will provide draft copies of Cooperative Agreements to the Service for an opportunity to review and concur with the recommended habitat management activities. The Service will have a period of 30 days in which to make comments. If no comments are received within 30 days, the Applicant may proceed to finalize the Cooperative Agreement. The Applicant, as the permittee, will be responsible for annual monitoring and reporting related to implementation of the SHA and Cooperative Agreements and fulfillment of their provisions. Upon request by the Service, the Applicant will make available records and materials related to implementation of the program.

Each Cooperative Agreement will cover restoration activities to create or enhance habitat for El Segundo blue butterfly and achieve species' recovery goals. These actions, where appropriate, could include (but are not limited to): (1) Removal of exotic vegetation to allow for native plant revegetation or to reduce the adverse effect on existing habitat; (2) revegetation with food plant for El Segundo blue butterfly as part of a native dune scrub or bluff scrub community; (3) repair or installation of fences to protect existing or created habitat from human disturbance; and (4) facilitation of the implementation of other objectives recommended by the El Segundo Blue Butterfly Recovery Plan. None of the Cooperative Agreements entered into under this SHA will allow conversion of native habitat into another habitat type.

Each Cooperative Agreement will stipulate that the habitat improvement measures be maintained for a period that is expected to result in the maturation of plants used in revegetation and for a period of 5 years beyond. Most Cooperative Agreements are expected to last at least 13 years. Based on experience elsewhere, this term is more than adequate to allow native plant revegetation to mature to a point usable by the butterflies for nectaring and egg-laying, as well as multiple seasons for dispersal to and from adjacent occupied habitat patches.

After maintenance of the restored/created/enhanced El Segundo blue butterfly habitat on the property for the agreed-upon term, Cooperators may then conduct otherwise lawful activities on their property that result in the partial or total elimination of the restored habitat and the incidental taking of El Segundo blue butterfly as a result of such habitat elimination. However, the restrictions on returning a property to its original baseline condition include: (1) El Segundo blue butterflies may not be captured, killed, or otherwise directly "taken"; (2) the Applicant and the Service will be notified a minimum of 60 days prior to the activity and given the opportunity to capture, rescue, and/or translocate any El Segundo blue butterflies, if necessary and appropriate; and (3) return to baseline conditions must be completed within the 30-year term of the permit issued to the Applicant. Cooperative Agreements may be extended if the Applicant's permit is renewed and that renewal allows for such extension.

In emergency situations, such as storm-related geological instability, the Service may authorize a Cooperator to carry out an action likely to result in incidental taking of El Segundo blue butterfly before the end of the agreed-upon duration of habitat maintenance, as identified in the Cooperative Agreement, provided the landowner notifies the parties to the Agreement in writing at least 14 days prior to the action, with the nature of the emergency, and an explanation of the extenuating circumstances.

The Service has made a preliminary determination that approval of the SHA qualifies as a categorical exclusion under the NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the SHA would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the SHA, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section. Documents also will be available for public inspection, by appointment, during normal business hours at this office (*see* **ADDRESSES**).

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). All comments received on the permit application and SHA, including names and addresses, will become part of the administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Decision

We will evaluate the permit application, the SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the El Segundo blue butterfly incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: February 5, 2003.

David G. Paullin,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–3549 Filed 2–12–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 020–03–1430–EU; AZA–31744FD]

Termination of Segregation, Opening Order; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice cancels and terminates the segregative effect of a proposed land exchange of 16,929.85 acres. The land will be opened to location and entry under the general land laws, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Andersen, BLM Phoenix Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027, 623–580–5500.

SUPPLEMENTARY INFORMATION: A Decision was issued on May 16, 2001, which segregated the land described therein from location and entry under the general land laws, including the mining laws, subject to valid existing rights for a five-year period. The Bureau of Land Management has determined that the proposed land exchange of the following described lands will not be needed and has been canceled.

Gila and Salt River Meridian, Arizona

T. 12 N., R. 1 E.
Secs. 3, 10, 11, 24 and 28 (Portions of).
T. 12 N., R. 2 E.
Secs. 3, 4, 5, 8, 9, 10, 15, 19, 20, 21, 28, 29, 30, 31, 32 and 33 (Portions of).
T. 13 N., R. 1 E.
Secs. 27, 28, 32, 33 and 34 (Portions of).
T. 13 N., R. 2 E.
Secs. 6, 7, 17, 18, 19, 20, 29, 30, 31 and 32 (Portions of).
T. 14 N., R. 2 E.
Secs. 30 and 31 (Portions of).

Above described property aggregates approximately 16,929.85 acres in Yavapai County.

At 9 a.m. on March 17, 2003 the land will be opened to the operation of the general land laws and to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. All valid applications under any other general land laws received at or prior to 9 a.m. on March 17, 2003 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Kathryn E. Pedrick,

Acting Field Manager, Phoenix Field Office.

[FR Doc. 03–3551 Filed 2–12–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–ET; AA–82857]

Public Land Order No. 7555; Withdrawal of National Forest System Land for the Russian River and Upper Russian Lake Recreation Corridor; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 2,998 acres of National Forest System land from location and entry under the United States mining laws for a period of 20 years to protect the Russian River and Upper Russian Lake Recreation Corridor. The land will remain open such uses as may by law be made of National Forest System lands, and all public uses consistent with the recreational utilization and protection of the Russian River watershed.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch.2 (1994)) to protect the Russian River and Upper Russian Lake Recreation Corridor:

Seward Meridian

Chugach National Forest

T. 3 N., R. 4 W., unsurveyed,
Sec. 4, N½ lying east of forest boundary, and SE¼ lying east of forest boundary;
Sec. 9, NE¼ lying east of forest boundary;
Sec. 10, N½ lying north of forest boundary;
Sec. 11, that portion lying north of forest boundary, excluding the N½NE¼;
Sec. 12, S½ lying northeast of the forest boundary;
Sec. 13, N½ lying north of the ordinary high water mark along the northeast shore of Upper Russian Lake.
T. 4 N., R. 4 W., unsurveyed,
Sec. 9, SE¼NE¼ and E½SE¼;
Sec. 10, SW¼NW¼ and W½SW¼;
Sec. 16, E½NE¼ and SE¼;
Sec. 21, W½E½, S½NW¼ lying east of forest boundary, and SW¼ lying east of forest boundary;
Sec. 28, W½E½ and W½ lying east of forest boundary;
Sec. 29, E½ lying east of forest boundary;
Sec. 32, NE¼ lying east of forest boundary;
Sec. 33, W½E½ and W½ lying east of forest boundary.

The area described contains approximately 2,998 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(1994), the Secretary determines the withdrawal shall be extended.

Dated: January 29, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–3552 Filed 2–12–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–78566]

Public Land Order No. 7552; Withdrawal of National Forest System Lands for the Trial, Washington, and Lost Lake Dams, Bonneville Unit, Central Utah Project; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 268.40 acres of National Forest System lands from location and entry under the United States mining laws, for a period of 50 years, for protection, operation and maintenance of the Bureau of Reclamation's Trial, Washington, and Lost Lake Dams in the Upper Provo River component of the Bonneville Unit of the Central Utah Project.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: David Krueger, Bureau of Reclamation, Provo Area Office, 302 East 1860 South, Provo, Utah 84606–7317; 801–379–1083.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2 (1994), to protect the Bureau of Reclamation's Trial, Washington, and Lost Lake Dams in the Upper Provo River component of the Bonneville Unit of the Central Utah Project:

Salt Lake Meridian

Wasatch National Forest

T. 2 S., R. 9 E.,
Sec. 4, SW¼NW¼SW¼ and NW¼SW¼SW¼;
Sec. 5, lot 4, SE¼SW¼NE¼, SW¼SE¼NE¼, N½NW¼SW¼NW¼, NW¼NE¼SE¼, SE¼NE¼SE¼, E½NW¼SE¼, and N½SE¼SE¼;
Sec. 6, lot 1, SW¼NE¼, N½NE¼SE¼NE¼, and N½NW¼SE¼;

Excepting therefrom a cabin lot situated in the NE¼ of sec. 6, being more particularly described as follows:

Beginning at a point, which lies North, 4,460 feet and West, 366 feet from the Southeast Corner of said Section 6; thence West, 134 feet; thence North, 163 feet; thence East, 132 feet; thence along the high water line of Trial Lake, South 02°26′45″ West, 54.60 feet; thence South 09°20′17″ East, 34.14 feet; thence South 09°45′06″ East, 36.13 feet; thence South 21°48′53″ West, 31.75 feet; thence South 24°15′26″ East, 10.66 feet; to the point of beginning. Containing 0.50 acre, more or less.

The areas described aggregate 268.40 acres in Summit County.

2. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: January 9, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–3566 Filed 2–12–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–487]

In the Matter of Certain Agricultural Vehicles and Components thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 8, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Deere & Company of Moline, Illinois. Letters supplementing the complaint were filed on January 27 and 28, 2003. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademark Nos. 1,254,339, 1,502,103, 1,503,576, and 91,860. The complaint further alleges that an industry in the United States exists as required by subsections (a)(1)(A) and (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 6, 2003, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain agricultural vehicles or components thereof by reason of infringement of U.S. Registered Trademark No. 1,254,339, 1,502,103, 1,503,576, or 91,860, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain agricultural vehicles or components thereof by reason of dilution of U.S. Registered Trademark No. 1,254,339, 1,502,103, or 1,503,576, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Deere & Company, One John Deere Place, Moline, Illinois 61250.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Jiangsu Yueda Co. Ltd., 71 Renmin Road Central, Yangcheng City, Jiangsu Province, China 224002
Dongfeng Agricultural Machinery Group, No. 10 Xinye Road, Changzhou, Jiangsu Province, China 213012
Jiangling Tractor Co., 509 Northern Yingbing Avenue, Nanchang City, Jiangxi Province, China 330001
Agra-Infocentrum-Benelux, Postbus 49, 5110 AA Baarle-Nassau, The Netherlands
Agrideal, Chemin des Perrines, 3550 Vitre, France
Erntetechnik Franz Becker, Naendorf 6, Metelen 48629, Germany
Agracat, Inc., 57 E. Main St., Farmington, Arkansas 72730
Bolton Power Equipment, 39 Whitcomb Road, Bolton, MA 01740
Bourdeau Bros., Inc., 590 Mason Road, Champlain, NY 12919–4855
China America Imports, 33898 Adler Lane, Creswell, OR 97426
Co-Ag LLC, 894 County Road, Theresa, WI 53091
Crossroads Technologies International, 815 Bedford St., Chesapeake, VA 23322
Dale Ilgen Enterprises, W. 6897 Firelane 4, Menasha, WI 54952
Davey-Joans Tractor & Chopper Supermarket, 980 SR 13 Box 173, Williamstown, NY 13493
Fitzpatrick Farms, 12210 Stone Road, Fowler, MI 48835
J & T Farms, 370 Spring Grove Road, Ephrata, PA 17522
Lenar Equipment, LLC, 3261 Northeast Alexander Lane, Albany, OR 97321
OK Enterprises, 55617 County Road 13, Mountain Lake, MN 56159
Pacific Avenue Equipment, 1015 Pacific Avenue, Yakima, WA 98901
SamTrac Tractor and Equipment, 3199 Plummers Lane, No. 13, Chico, CA 95973
Stanley Farms, 3821 County Hwy H, Stanley, WI 54768
Sunova Implement Co., 196679 19th Line RR #1, Lakeside, Ontario, Canada N0M 2G0
Task Master Equipment LLC/Tractors Etc., 83969 N. Pacific Highway 99, Creswell, OR 97426
Workhorse Tractors, 36616 N. 27th Ave., Phoenix, AZ 85806

(c) David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.
Issued: February 7, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–3567 Filed 2–12–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Drug Intelligence Center

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review; reinstatement, with change, of a previously approved collection for which approval has expired; national drug threat survey.

The United States Department of Justice, National Drug Intelligence

Center has submitted the following request for a reinstatement with change of a previously approved information collection to the Office of Management and Budget ("OMB") for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed reinstatement with change of the information collection is published to obtain comments from the public and affected agencies.

The proposed information collection was previously published in the **Federal Register** on December 6, 2002, Volume 67, Number 235, Page 72701, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 17, 2003. This process is in accordance with 5 CFR 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* NDIC Form #A–34c. U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* Federal, State and Local law enforcement agencies. *Abstract:* This survey is a critical component of the National Drug Threat Assessment. It provides direct access to detailed drug offense data from state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 3500 respondents who will each require an average of 30 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1750 hours.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: February 10, 2003.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 03–3564 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–DC–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environment Response, Compensation and Liability Act

In accordance with Departmental policy, 28 U.S.C. 50.7, and in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States* v. *ARCO, et al.*, Civil Action No. *03–0180*, was lodged on January, *31*, 2003, with the United States District Court for the Western District of Louisiana.

In this action the United States sought the recovery of its response costs that were incurred by the United States Environmental Protection Agency in response to releases or threatened releases of hazardous substances from the Gulf Coast Vacuum Services Site located 3.5 miles southwest of Abbeville, Vermillion Parish, Louisiana. The Consent Decree settles an action brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607. The Consent Decree provides that *ARCO, et al.*, will pay the United States $523,970 dollars for response costs incurred in conducting a removal action at the Gulf Coast Vacuum Services Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *ARCO, et al.*,D.J. Ref. #90–11–2–506/1.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Louisiana, 800 Lafayette Street, Suite 2200, Lafayette, Louisiana 70501; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas. During the pubic comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P. O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of *$8.25* (25 cents per page reproduction costs), payable to the U.S. Treasury.

Tom Mariani,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–3520 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on January 17, 2003, a proposed Consent Decree in *United States* v. *Arizona Department of Transportation, et al.*, Civil Action Number 03–CV–128, was lodged with the United States District Court for the District of Arizona.

In this action the United States sought injunctive relief and civil penalties under Sections 112 and 113 of the Clean Air Act, 42 U.S.C. 7412 and 7413, and the National Emission Standards for Hazardous Air Pollutants for Asbestos ("NESHAP"), 40 CFR part 61, subpart M, against the Arizona Department of Transportation, Cornerstone Properties, Inc., Mel Price Associates, Breinholt Contracting Co., Inc., and Granite Construction Co. The claims arise out of demolition activities in 1998 at four facilities located in Mohave County, Arizona. The proposed Decree provides that the defendants will pay a $115,000 penalty, comply with the Clean Air Act and the asbestos NESHAP in all future demolition and/or renovation operations, amend their standard contracts to provide for and require compliance with the NESHAP, and provide training.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Arizona Department of Transportation, et al.*, DOJ Ref. # 90–5–2–1–06520.

The Consent Decree may be examined at the Office of the United States Attorney, District of Arizona, U.S. Courthouse, 230 N. First Ave., Phoenix, AZ 85025, and at U.S. EPA Region IX, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–3521 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation Recovery Act

In accordance with Departmental Policy, 28 U.S.C. 50.7, notice is hereby given that on February 3, 2003, a proposed consent decree in *United States* v. *Charles George Trucking Company, Inc., et. al.*, Civil Action No. 85–2463–WD, was lodged with the United States District Court for the District of Massachusetts.

In this action the United States sought cost recovery and natural resource damages under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the Resource Conservation Recovery Act ("RCRA") against Charles George, Sr., Dorothy George and the Charles George Land Reclamation Trust (collectively, the "settling defendants") and other defendants (who have settled under prior agreements) with respect to the Charles George Land Reclamation Trust Superfund Site in Tynsborough, Massachusetts. Under the terms of the proposed settlement, the settling defendants will pay up to $3.8 million to reimburse the United States and the Commonwealth of Massachusetts for costs incurred at the Site. In addition, to resolve the governments' claims of natural resource damages at the Site, the settling defendants will impose a conservation restriction on approximately 15 acres of undeveloped land in Tynsborough, Massachusetts. This settlement is the third and final settlement entered into by the United States concerning response costs at this Site.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Charles George Trucking Company*, et. al., D.J. Ref. 90–11–3–91. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, 1 Courthouse Way, Suite 9200, Boston, Massachusetts 02210, and at U.S. EPA Region I, One Congress Street—Suite 1100, Boston, Massachusetts 02114. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–3522 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on January 27, 2003, a proposed consent decree in *United States* v. *Del Webb Communities, Inc.*, No. CV–S–03–0096–LDG–LRL, was lodged with the United States District Court for the District of Nevada.

The Consent Decree resolves claims brought in a complaint filed concurrently with the lodging of the Consent Decree. The complaint alleges that defendant Del Webb Communities, Inc. failed to comply with Clean Air Act requirements to control fugitive dust at construction projects in Clark County, Nevada.

Under the proposed Consent Decree, Del Webb will pay a $50,000 civil penalty. In addition, Del Webb will commit to injunctive relief requiring that it implement necessary work practices to control dust emissions in the future and provide training in such practices to its employees.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Del Webb Communities, Inc.*, D.J. Ref. No. 90–5–2–1–07313.

The consent decree may be examined at the offices of U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, and at the Office of the United States Attorney, District of Nevada, 333 Las Vegas Blvd. So., #5000, Las Vegas, Nevada 89101 (refer to NSAO No.: 2000V00330). During the public comment period, the consent decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611, U.S. Department of Justice, Washington, DC 20044–7611, or by e-mailing or faxing a request to Tonia

Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–3523 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 14, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ben Hayes, National Tracing Center, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3310.11, Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Other: Business or other for-profit. *Abstract:* Authorization of this form is requested as the Violent Crime Control and Law Enforcement Act requires Federal firearms licensees to report to the Bureau of Alcohol, Tobacco, Firearms and Explosives and to the appropriate local authorities any theft or loss of a firearm from the licensee's inventory or collection, within a specific time frame after the theft or loss is discovered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,000 respondents will complete a 24 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1,600 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: February 10, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–3563 Filed 2–12–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF LABOR

Employment & Training Administration

Office of Policy Development Evaluation and Research; Call for Papers; Biennial National Research Conference on "Workforce Investment Issues in the United States"; Washington, DC June 4–5, 2003

Summary: The Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL) is the federal government agency responsible for implementing a national workforce investment and security system that enables workers and employers to compete and succeed in an ever-changing economy. This task is accomplished through the provision of world class labor market information, labor exchange services, job search assistance, training, and unemployment insurance benefits. These programs assist in the management of the risks associated with unemployment, declining income and skill shortages. They help workers in their search for work and their efforts to upgrade their human capital. They help employers find new employees who meet their skill requirements and upgrade the skills of their incumbent workers.

In 1998, the Workforce Investment Act, the nation's most comprehensive effort at streamlining and transforming public employment, job training and education programs and agencies into a system that meets the skill needs of today's economy, was passed. The implementation of the Workforce Investment Act (WIA) of 1998 combines a variety of workforce development programs and initiatives under one umbrella—the One-Stop System—to effectively serve the needs of job-seekers, workers and employers in the changing workforce development environment at the onset of the 21st century economy.

Under the provisions of the WIA, the Secretary of Labor is required every two years to prepare a five-year research plan for research, pilot and demonstration initiatives. This research plan reflects a strategic vision for research efforts based upon input from stakeholders in employment and training research, a review of recent efforts, an identification of areas where future research may be needed, and a review of possible research methodologies.

In light of major changes in the macro-economy that have taken place in the areas of technological transformation, increasing globalization and changing demographics over the recent years, and the resulting effects of rising workforce insecurity, the Employment and Training Administration will hold its second national research conference since the enactment of WIA. The conference will focus on issues related to trends, challenges and impacts of the macro-economy to workforce investment, significance of recent changes in workforce investment, workforce competitiveness in the global economy, changing business requirements, workforce security in our new economy, and major policy options to increase productivity by meeting the skill needs of business and promoting economic opportunities for the United States workforce. A plenary session is planned to discuss the soon-to-be published 2002–2007 plan and lay the groundwork for the 2004–2009 research plan.

This is a call for empirical/non-empirical papers related to workforce investment issues. ETA is seeking recently completed papers and papers that will be completed prior to the conference. We encourage contributions by researchers from academia, state or local agencies, business organizations, labor associations, research consulting firms and other relevant organizations. Possible topics may include, but are not limited to:

- Workforce Investment Act (program implementation and administration of adult, dislocated worker and youth programs; issues relating to WIA reauthorization).
- Skills Requirements of Employers (skills needed by employers in particular sectors and industries, the effect of new technologies, including the internet and e-commerce, on skill needs of employers).
- Changes in the Structure and Organization of Work (changes in tenure and the rise of contingent work arrangements).
- Effect of Contingent Work on Hiring Practices (the effect of hiring practices of employers and the job search behavior of individuals).
- Role of Intermediaries in the Labor Market (whether intermediaries offer new approaches and techniques that can be adapted by the public-sector employment and training community).
- Adaptability of the Unemployment Insurance Program to an evolving U.S. economy. (program administration, coverage, eligibility, benefit adequacy, benefit duration, recipiency, benefit financing, economic stabilization, special populations and changing work patterns).
- Changes in Wages and Compensation (effect of education on workers' earnings).
- Wages and Compensation Trends (recent trends in the receipt of benefits, including health insurance and retirement benefits) Interventions (employment and training intervention responses to wage and compensation trends).
- Impact of technology, Internet and Labor Market Information on labor exchange processes.
- Education—Workforce Training Continuum (appropriate roles of public K–12 and higher education integrated with Workforce Investment System).

Time and Place: The conference will be held from 1 p.m. to 5 p.m. on June 4, 2003 and from 9 a.m. to 4:30 p. m. on June 5, 2003 at the Holiday Inn, Capital Hill, 550 C Street, SW., Washington, DC 20024.

Submission of Papers: All papers submitted will be reviewed by a panel of DOL experts in the workforce development arena and presenters will be notified if their papers are selected. Papers reporting on research and development, evaluation studies, pilot efforts, or applied practices are encouraged. Selected papers selected for the conference will be published as part of the ETA Occasional Paper Series. Travel and accommodation for invited presenters will be paid by the Employment and Training Administration. If interested, please submit your paper and abstract if possible in hard copy and diskette/CD (Word) by March 1, 2003. Papers should be doubled-spaced and single sided. You will be notified by April 4, 2003, if your paper is selected; you will have to confirm your attendance by April 15, 2001. Please send your papers and abstract to the logistical contractor for this contract, HMA Associates, Inc., 1680 Wisconsin Avenue, NW., 2nd Floor, Washington, DC, 20007, Attn: Peggie Edwards-Jefferies. She may be reached at 202–342–8258. We also encourage submitting abstracts for papers that have not yet been completed, but will be completed before the deadline for submission of papers.

Public Participation: This Conference is open to the public; there is no registration fee. For registration information, please send name, address, e-mail address, affiliation, and telephone number to H.M.A Associates, Inc., 1680 Wisconsin Avenue, NW., 2nd Floor, Washington, DC, 20007, Attn: Peggie Edwards-Jefferies or email them to *hmaassociates.com.*

Signed at Washington, DC, this 5th day of February.

Gerard F. Fiala,

Administrator, Office of Policy Development, Evaluation and Research.

[FR Doc. 03–3559 Filed 2–12–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: 29 CFR part 825, The Family and Medical Leave Act of 1993. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 14, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *hbell@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Family and Medical Leave Act of 1993 (FMLA), Public Law 103.3, 107 Stat. 6, 29 U.S.C. 2601, which became effective on August 5, 1993, requires private sector employers of 50 or more employees, and public agencies to provide up to 13 weeks of unpaid, job-protected leave during any 12-month

period to "eligible" employees for certain family and medical reasons. Leave must be granted to "eligible" employees because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform any of the essential function of his or her job. This information collection contains recordkeeping and notification requirements associated with the Act and regulations. Implementing regulations are found at 29 CFR Part 825. Two optional forms are included in this information collection request. The WH–380, Certification of Health Care Provider, may be used to certify a serious health condition under FMLA. The WH–381, Employer Response to Employee Request for Family or Medical Leave may be used by an employer to respond to a leave request under FMLA. Both forms are third-party notifications and are sent to the employee; they are not submitted to the Department of Labor. This information collection is currently approved for use through July 31, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under FMLA, and in order for the Department of Labor to carry out its statutory obligation under FMLA to investigate and ensure employer compliance have been met. Since OMB extended the expiration dates of the forms in July 2002, the Department has initiated a review of FMLA's implementing regulations to address issues raised by the U.S. Supreme Court in *Ragsdale* v. *Wolverine World Wide, Inc.*, 122 S. CT 1155 (2002), and decisions of other courts.

The Department expects to revise Forms WH–380 and WH–381, and these forms also may need to reflect changes that may be proposed to the FMLA regulations. The Department is requesting a one-year extension on the expiration date to the ICR. There is no change in the substance or method of collection since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: 29 CFR Part 825, The Family and Medical Leave Act of 1993.

OMB Number: 1215–0181.

Agency Number: WH–380, WH–381.

Affected Public: Individuals or household, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Total Respondents: 6.655 million.

Total Responses: 15.056 million.

Time per Response: 1 to 20 minutes.

Frequency: On Occasion (Recordkeeping, Third-Party Disclosure).

Estimated Total Burden Hours: 1,210,654.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 6, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–3558 Filed 2–12–03; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Notice of Debarment

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of debarment: BFI Waste Services, L.L.C.'s 260 West Dickman Street, Baltimore, facility (Division #50).

SUMMARY: This notice advises of the debarment of BFI Waste Services, L.L.C.'s 260 West Dickman Street, Baltimore, Maryland Facility (Division #50), (hereinafter "BRI"), as an eligible bidder on Government contracts or extensions or modifications of existing contracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Charles E. James, Sr., Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, 200 Constitution Ave., NW., Room C–3325, Washington, DC 20210 (202–693–1062).

SUPPLEMENTARY INFORMATION: On January 30, 2003, the United States Department of Labor's Administrative Law Judge Thomas M. Burke approved a Consent Decree, pursuant to Executive Order 11246, and its implementing regulations (41 CFR parts 60–1 *et seq.*). Under the terms of the Consent Decree, BFI Waste Service, L.L.C., its officers, agents, servants, employees, successors, divisions, subsidiaries, and persons in active concert or participation with them, agrees not to bid for or enter into Government contracts for a period of one hundred eighty (180) days from the effective date of this Consent Decree. The debarment shall be lifted at the conclusion of the one hundred eighty (180) day period, if BFI satisfies the Deputy Assistant Secretary that it is in compliance with Executive Order 11246. Further, the Consent Decree provides that during the debarment period, on BFI Facility will enter into any Government contracts and subcontracts that BFI's 260 West Dickman Street, Baltimore, Maryland Facility (Division #50), would have otherwise bid for and entered into during the debarment period.

Dated: February 3, 2003, Washington, DC.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

BILLING CODE 4510–CM–M

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

In the Matter of

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR
Plaintiff

v.

BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
Defendant

Date Issued: JAN 30 2003
Case Number: 2003-OFC-0002

ORDER PURSUANT TO CONSENT DECREE

This case arises under Executive Order 11246 (30 Fed. Reg. 12319) as amended by Executive Order 11375 (32 Fed. Reg. 14303) and Executive Order 12086 (43 Fed. Reg. 46501) and the regulations issued at 41 C.F.R. Part 60. On January 7, 2003, the Department of Labor (DOL) filed an Administrative Complaint and Consent Decree in this Office.

Review of the Consent Decree shows that it is in compliance with 29 C.F.R. § 18.9 and that it fairly and adequately resolves all pending issues in this matter. Accordingly, the Consent Decree is hereby **APPROVED** and **ADOPTED** in its entirety.

So ORDERED,

Thomas M. Burke
Associate Chief Judge

TMB/lmr

SERVICE SHEET

Case Name: BFI Waste Systems
Case Number: 2003-OFC-0002
Title: Order

I certify that a copy of the above entitled document was sent to the last known addresses of the following parties on: JAN 30 2003

Lynn Marie Rongaus
Paralegal

Solicitor of Labor
Room S2002 FPB
200 Constitution Avenue NW
Washington, DC 20210

Jo Lynn White
BFI Waste Services
260 West Dickman Street
Baltimore, MD 21230

Civil Rights Division/USDOL
Room N2464 FPB
200 Constitution Avenue NW
Washington, DC 20210
Attn: Sarah Crawford, Esq.

Office of Federal Contract
Compliance Programs/USDOL
Room C3325 FPB
200 Constitution Avenue NW
Washington, DC 20210

Douglas White, Esq.
Associate Regional Solicitor
US Department of Labor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209

Matthew Halpern, Esq.
Jackson Lewis LLP
1000 Woodbury Road, Suite 402
Woodbury, NY 11797

BILLING CODE 4510-CM-C

Office of Administrative Law Judges; Consent Decree

This Consent Decree (hereinafter "Consent Decree" or "Decree") is entered into between the Plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs (hereinafter "OFCCP"), and Defendant BFI Waste Services, LLC (hereinafter "BFI" or "Defendant"), in resolution of the Administrative Complaint filed by OFCCP pursuant to Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303) and Executive Order 12086 (43 FR 46501) ("Executive Order"). The Administrative Complaint alleged that Defendant violated the terms of a Conciliation Agreement that was executed by Defendant and OFCCP and that became effective in March 2000.

Part A. General Provisions

1. The record on the basis of which this Consent Decree is entered shall consist of the Complaint and the Consent Decree and the attachments thereto.

2. Attachment A of the Consent Decree consists of the Conciliation Agreement between OFCCP and Defendant which became effective in March 2000.

3. This Consent Decree shall not become final until it has been signed by the Administrative Law Judge, and the effective date of the Decree shall be the date it is signed by the Administrative Law Judge.

4. This Consent Decree shall be binding upon Defendant and any and all purchasers, successors, assignees, and/or transferees, and shall have the same force and effect as an order made after a full hearing.

5. All further procedural steps to contest the binding effect of the Consent Decree, and any right to challenge or contest the obligations entered into in accordance with the agreement contained in this Decree, are waived by the parties, except as provided hereunder.

6. Subject to the performance by Defendant of all duties and obligations contained in this Consent Decree, all alleged violations identified in the Administrative Complaint shall be deemed fully resolved. However, nothing herein is intended to relieve Defendant from compliance with the requirements of Executive Order 11246, Section 503 of the Rehabilitation Act, the Vietnam Era Veterans' Readjustment and Assistance Act, or their regulations, nor to limit OFCCP's right to review Defendant's compliance with such requirements.

7. Defendant agrees that there will be no retaliation of any kind against any beneficiary of this Consent Decree, or against any person who has provided information or assistance in connection with this Decree.

8. Defendant denies that it violated Executive Order 11246.

9. Defendant does not admit any violation of law or obligation. The parties agree that this Consent Decree is not, and may not be used, as an admission of any violation by Defendant, or as a basis for asserting Defendant's noncompliance with any labor and employment law, rules, or regulations, except for any action initiated pursuant to Paragraphs 27 to 30 of this Decree.

Part B. Jurisdiction and Procedural History

10. In its initial compliance review of Defendant in November 1999, OFCCP identified three violations of Executive Order 11246.

11. In March 2000, OFCCP and Defendant entered into a Conciliation Agreement to resolve the three violations.

12. Defendant was obligated to correct three alleged violations under the Conciliation Agreement, including: (1) Defendant's failure to provide accurate applicant flow data in support of its Affirmative Action Program; (2) Defendant's failure to offer equal employment opportunity to an applicant, Ms. Julie Ann Dunlap, for a position in the office and clerical job group; and (3) Defendant's failure to make good faith efforts to develop and execute an affirmative action plan to recruit women for the underutilized craftworker and laborer job groups.

13. The Conciliation Agreement obligated Defendant to provide two annual reports to enable OFCCP to monitor the company's compliance with the terms of the Conciliation Agreement. After Defendant submitted the first of the two reports, OFCCP determined that Defendant failed to comply with two provisions of the Conciliation Agreement. Specifically, OFCCP found that Defendant failed to (1) offer a customer service position to Ms. Julie Ann Dunlap with retroactive seniority and vesting status dating back to September 8, 1998, as well as a check for $32,708.98 in back pay and interest through December 31, 1999; and (2) provide the specified recruitment sources with timely notice of its employment opportunities in the craftworker and laborer job groups.

14. Defendant contends that it made good faith efforts to offer Ms. Julie Ann Dunlap employment, but that Ms. Dunlap never responded.

Part C. Specific Provisions

Job Offer to Ms. Julie Ann Dunlap

15. If Ms. Dunlap executes and returns the General Release and Covenant Not to Sue described in paragraph 16 below, Defendant will offer the next available full-time customer service position at its Baltimore, Maryland facility to Ms. Julie Ann Dunlap as set forth below. The terms of this job offer will include retroactive seniority and vesting status dating back to September 8, 1998, the date of Ms. Dunlap's original application. The job offer will be made in writing by certified mail, return receipt requested, and will describe the job title, rate of pay, job site, description of job benefits, start date, expected duration of the job, and will specify a time period of at least two weeks for Ms. Dunlap to respond to the employment offer. The written job offer will explicitly state that it includes retroactive seniority and vesting status dating back to September 8, 1998. If Ms. Dunlap's address is unknown, Defendant will make all reasonable efforts to obtain Ms. Dunlap's current address. When Ms. Dunlap's current address is obtained, BFI will offer her the next available full-time customer service position. If Ms. Dunlap does not respond or execute and return the General Release and Covenant Not to Sue described in paragraph 16 below to "BFI Waste Services, L.L.C., at 260 West Dickman Street, Baltimore, Maryland 21230, Attn: Bill Booth, General Manager", within (14) days of receiving the offer, Defendant's hiring obligation hereunder shall cease. Defendant's hiring obligation will also cease if Ms. Dunlap fails the drug screen or the background check (consisting of a check of criminal records and references). Defendant affirms that these screens are administered to all applicants for customer service positions, and will be handled in a non-discriminatory manner and in accordance with policy and procedure. If Defendant determines that the results of Ms. Dunlap's drug screen or background check preclude her from employment, Defendant will provide information and documentation to OFCCP demonstrating that the failure to hire Ms. Dunlap is non-discriminatory and consistent with Defendant's policies and practices. Defendant will provide the name, job title, and business telephone number of each employee who made, or

contributed to, the decision not to hire Ms. Dunlap. Defendant agrees that OFCCP may review compliance with this Paragraph, and will provide OFCCP within a reasonable time with all documents that are reasonable and are requested by OFCCP. Defendant also agrees that, upon reasonable advance notice, OFCCP may come onsite at the BFI 260 West Dickman Street, Baltimore, Maryland facility as is necessary to review compliance with this Paragraph.

Monetary Relief to Ms. Julie Ann Dunlop

16. Within 10 days of the date upon which it receives a fully executed copy of this Decree, Defendant will send Ms. Dunlap by certified mail, return receipt requested the letter contained in Attachment B, along with a W–4 form and a General Release and Covenant Not to Sue, and ask that she complete both and return them at the address specified in the letter to Defendant within 14 days of her receipt thereof (as determined by the date she signs the return receipt card). Within 10 days of receiving the completed W–4 form and executed General Release and Covenant Not to Sue, Defendant will submit by certified mail, return receipt requested two checks to Ms. Julie Ann Dunlap in the total amount of $44,838.91 minus legal payroll deductions. The parties agree that this payment represents back pay (the first check) and interest (the second check) due to Ms. Dunlap for the period of September 8, 1998, to December 31, 2002. For tax purposes, the parties agree that $35,289.58 of the total payment represents back pay and the remaining $9,549.33 represents interest.

17. If Ms. Dunlap's address is unknown as of 10 days from the date upon which Defendant receives a fully executed copy of this Decree, Defendant will deposit the check for Ms. Dunlap into an interest bearing escrow account at that time. Defendant and OFCCP, jointly, will make all reasonable efforts to obtain Ms. Dunlap's current address. Defendant will pay Ms. Dunlap the balance of the escrow account, including accrued interest, within 10 days of the date upon which Defendant receives a completed W–4 form and the executed General Release and Covenant Not to Sue. In the event Ms. Dunlap does not receive the letter from BFI, the money shall remain in the escrow account until the cessation of the term of this Consent Decree. At the cessation of the term of the Consent Decree, the escrow account shall revert to the Department of Labor, which will maintain the escrow account for Ms. Dunlap's benefit. If Ms. Dunlap is located thereafter, the Department of Labor will tender the money to Ms. Dunlap upon receipt of the executed General Release and Covenant Not to Sue, which it will forward to Defendant.

Recruitment Efforts

18. For a period of two years from the effective date of this Consent Decree, Defendant agrees to notify the recruitment and community agencies listed on page 11 of the Conciliation Agreement at least two weeks before interviewing is initiated for positions in the craftworker and laborer job groups. Defendant shall inform such recruitment sources of the minimum job qualifications required, wages, closing date for the vacancy, a job description, and the application procedures.

Reporting Requirements

19. Defendant agrees to provide reports to the U.S. Department of Labor, Office of the Solicitor, Division of Civil Rights, 200 Constitution Avenue NW., Room N–2464, Washington, DC 20210. Defendant will file a total of four reports according to the following schedule:

Report number	Covering period (after effective date of Consent Decree)	Due to be sent
1	Days 1–60	Day 90.
2	Days 61–120	Day 150.
3	Days 121–360	Day 390.
4	Days 361–720	Day 750.

The reports will include documentation verifying the following information:

a. Defendant's job offer to Ms. Dunlap; or, if Ms. Dunlap is not hired due to the results of a drug screen and/or background check, Defendant will provide the information specified in Paragraph 15 of this Decree;

b. Defendant's deposit of monetary relief into an interest bearing escrow account, if Ms. Dunlap's address in unknown or she does not respond, send a W–4 form or execute the General Release and Covenant Not to Sue, including a statement of the balance of the account;

c. Defendant's payment of monetary relief to Ms. Dunlap when (and if) her current address is obtained, including the address to which the check was sent, the amount of the check, the date on which the check was mailed, and documentation verifying payment on the check; and

d. Defendant's good faith efforts to recruit and hire women in the craftworker and laborer job groups. Such documentation shall include, but shall not be limited to copies of letters sent to recruitment sources and an applicant log for positions in the craftworker and laborer job groups, specifying the name, gender, position applied for, job group number, date of application, referral source, and disposition of each applicant.

Debarment

20. The Office of Administrative Law Judges shall retain jurisdiction in this case for a period of two years from the effective date of this Consent Decree.

21. Defendant's 260 West Dickman Street, Baltimore, Maryland facility (Division #050) agrees not to bid for or enter into Government contracts or subcontracts for a period of one-hundred and eighty (180) days from the effective date of this Consent Decree. This debarment period shall be effective against the officers, agents, servants, employees, successors, divisions, subsidiaries, and persons in active concert or participation with Defendant's 260 West Dickman Street, Baltimore, Maryland facility (Division #050). During the debarment period, no BFI facility will enter into any Government contracts or subcontracts that BFI's 260 West Dickman Street, Baltimore, Maryland facility (Division #050) would have otherwise bid for and entered into during the debarment period.

22. Notice of the debarment of "BFI's 260 West Dickman Street, Baltimore, Maryland facility (Division #050)" shall be printed in the **Federal Register**. In addition, OFCCP shall notify the Comptroller General of the United States General Accounting Office and all Federal Contracting Officers that "BFI's 260 West Dickman Street, Baltimore, Maryland facility (Division #050)" is ineligible for the award of any Government contracts or subcontracts.

23. The debarment shall be lifted at the conclusion of the one-hundred and eighty (180) day period if Defendant satisfies the Director of OFCCP that it is in compliance with Executive Order 11246.

24. OFCCP shall review each of Defendant's reports and shall determine whether Defendant has complied with the terms of this Consent Decree and the terms of Executive Order 11246 and its implementing regulations. OFCCP shall notify Defendant in writing, within 30 days of receipt of the report, if there is a deficiency. Defendant shall have 30 days from its receipt of the deficiency notice to correct such deficiency.

25. If OFCCP finds that Defendant has complied with the terms of this Consent Decree and with the terms of Executive Order 11246, the debarment shall be lifted and Defendant shall be free to enter into future Government contracts and subcontracts. Beginning 30 days before the conclusion of the 180-day period, Defendant may request reinstatement pursuant to 41 CFR § 60–1.31. Reinstatement proceedings shall be in accordance with 41 CFR § 60–1.31. Notice of the reinstatement shall be printed in the **Federal Register** and shall be made to the Comptroller General of the General Accounting Office and all Federal Contracting Officers.

Part D. Implementation and Enforcement of the Decree

26. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judges for a period of two years from the date this Consent Decree becomes final. If any motion is pending before the Office of Administrative Law Judges two years from the date this Consent Decree becomes final, jurisdiction shall continue beyond two years and until such time as the pending motion is finally resolved.

27. If at any time during the two years OFCCP believes that Defendant has violated any portion of this Consent Decree, Defendant will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Defendant with 15 days to respond in writing except where OFCCP alleges that such a delay would result in irreparable injury.

28. Enforcement proceedings for violation of this Consent Decree may be initiated at any time after the 15-day period referred to in Paragraph 24 has elapsed (or sooner, if irreparable injury is alleged) upon filing with the Court a motion for an order of enforcement and/or sanctions. The issues in a hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

29. Liability for violation of this Consent Decree shall subject Defendant to sanctions set forth in the Executive Order and its implementing regulations, as well as other appropriate relief, including contract cancellation.

30. If an application or motion for an order of enforcement or clarification indicates by signature of counsel that the application or motion is unopposed by the plaintiff or Defendant, as appropriate, the application or motion may be presented to the Court without hearing and the proposed Order may be implemented immediately. If an application or motion is opposed by any party, the party in opposition shall file a written response within twenty (20) days of service. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the application or motion.

31. The Consent Decree herein set forth is hereby approved and shall constitute the final Administrative Order in this case.

32. It is so ordered adjudged and decreed.

Agreed and Consented to:

On Behalf of BFI Waste Services, LLC:

Dated: December 19, 2002.

Jo Lynn White,
Officer, BFI Waste Services, LLC.

On Behalf of the Office of Federal Contract Compliance Programs:

Eugene Scalia, *Solicitor of Labor.*
Gary M. Buff,
Associate Solicitor.
Richard L. Gilman,
Counsel for Litigation.
Dated: December 27, 2002
Sarah C. Crawford,
Attorney, U.S. Department of Labor, Room N–2464, 200 Constitution Ave., NW., Washington, DC 20210, (202) 693–5287.

Thomas M. Burke,
Administrative Law Judge.

Notice to Readers

Attachments A & B are available from the U.S. Department of Labor's Wirtz Labor Library, 200 Constitution Avenue, NW., Room N2439, Washington, DC 20210. It is open to the public from 8:15 am to 4:45 pm. For further information call (202) 693–6613.

[FR Doc. 03–3560 Filed 2–12–03; 8:45 am]

BILLING CODE 4510–CM–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989 SMC–1559]

Envirocare of Utah, Inc.; Order Modifying Exemption From Requirements Relative to Possession of Special Nuclear Material

Envirocare of Utah, Inc. (Envirocare) operates a low-level waste (LLW) disposal facility in Clive, Utah. This facility is licensed by the State of Utah, an Agreement State. Envirocare is also licensed by Utah to dispose of mixed radioactive and hazardous wastes. In addition, Envirocare has a U.S. Nuclear Regulatory Commission (NRC) license to dispose of by product material as defined in 10 CFR part 40.

Section 70.3 of 10 CFR part 70 requires persons who own, acquire, deliver, receive, possess, use, or transfer special nuclear material (SNM) to obtain a license pursuant to the requirements in 10 CFR part 70. The licensing requirements in 10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities as defined in 10 CFR 150.11.

Pursuant to 10 CFR 70.14, "the Commission may * * * grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest."

On May 24, 1999, NRC transmitted an Order to Envirocare of Utah, Inc. The Order was published in the **Federal Register** on May 21, 1999, (64 FR 27826). The Order exempted Envirocare from certain NRC regulations and permitted Envirocare, under specified conditions, to possess waste containing SNM, in greater quantities than specified in 10 CFR part 150, at Envirocare's low-level waste (LLW) disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. The methodology used to establish these limits is discussed in the 1999 Safety Evaluation Report (SER) that supported the 1999 Order.

Envirocare, in a letter dated July 3, and 29, 2002, proposes that NRC issue further exemptions by amending the 1999 Order as follows: (1) Include stabilization of liquid waste streams containing SNM; (2) include the thermal

desorption process; (3) change the homogenous contiguous mass limit from 145 kg to 600 kg; (4) change the language and SNM limit associated with footnotes "c" and "d" of Condition 1 to reflect all materials in Conditions 2 and 3; and (5) omit the confirmatory testing requirements for debris waste.

A principal emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The staff considers that criticality safety can be maintained by relying on concentration limits, under the conditions specified. Safeguarding SNM against diversion or sabotage is not considered a significant issue because of the diffuse form of the SNM in waste meeting the conditions specified. These conditions are considered an acceptable alternative to the criticality definition provided in 10 CFR 150.11, thereby assuring the same level of protection. The staff reviewed safety aspects of the proposed action (*i.e.*, granting Envirocare's request) in the Safety Evaluation Report, dated January 14, 2003. The staff concluded that additional conditions were required to maintain sufficient protection of health, safety and the environment. The exemption conditions would be revised as follows:

1. Concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

Radionuclide	Maximum concentration (pCi/g)	Measurement uncertainty (pCi/g)
U–235[a]	1,900	285
U–235[b]	1,190	179
U–235[c]	26	10
U–235[d]	680	102
U–233	75,000	11,250
Pu–236	500	75
Pu–238	10,000	1,500
Pu–239	10,000	1,500
Pu–240	10,000	1,500
Pu–241	350,000	50,000
Pu–242	10,000	1,500
Pu–243	500	75
Pu–244	500	75

[a] For uranium below 10 percent enrichment and a maximum of 20 percent of the weight of the waste of materials listed in Condition 2.

[b] For uranium at or above 10 percent enrichment and a maximum of materials listed in Condition 2 of the weight of the waste of materials listed in Condition 2.

[c] For uranium at any enrichment with unlimited quantities of materials listed in Conditions 2 and 3.

[d] For uranium at any enrichment with sum of materials listed in Conditions 2 and 3 not exceeding 45 percent of the weight of the waste.

The measurement uncertainty values in column 3 above represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide.

The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms of waste.

2. Except as allowed by notes a, b, c, and d in Condition 1, waste must not contain "pure forms" of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities (*e.g.*, a pallet of drums, a B–25 box). By "pure forms," it is meant that mixtures of the above elements such as magnesium oxide, magnesium carbonate, magnesium fluoride, bismuth oxide, etc. do not contain other elements. These chemicals would be added to the waste stream during processing, such as at fuel facilities or treatment such as at mixed waste treatment facilities. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

3. Except as allowed by notes c and d in Condition 1, waste accepted must not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one percent of the total weight of the waste. The presence of the above materials will be determined by the generator, based on process knowledge, physical observations, or testing.

4. Waste packages must not contain highly water soluble forms of uranium greater than 350 grams of uranium-235 or 200 grams of uranium-233. The sum of the fractions rule will apply for mixtures of U–233 and U–235. Highly soluble forms of uranium include, but are not limited to: uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, and uranyl sulfate. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

5. Waste processing of waste containing SNM will be limited to stabilization (mixing waste with reagents), micro-encapsulation, macro-encapsulation using low-density and high-density polyethylene and thermal desorption.

When waste is processed using the thermal desorption process, Envirocare shall confirm the SNM concentration following processing and prior to returning the waste to temporary storage.

Liquid waste may be stabilized provided the SNM concentration does not exceed the SNM concentration limits in Condition 1. For containers of liquid waste with more than 600 kilograms of waste, the total activity (pCi) of SNM shall not exceed the SNM concentration in Condition 1 times 600 kilograms of waste. Waste containing free liquids and solids shall be mixed prior to treatment. Any solids shall be maintained in a suspended state during transfer and treatment.

6. Envirocare shall require generators to provide the following information for each waste stream:

Pre-Shipment

1. Waste Description. The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

2. Waste Characterization Summary. The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

3. Uniformity Description. A description of the process by which the waste was generated showing that the spatial distribution of SNM must be uniform, or other information supporting spatial distribution.

4. Manifest Concentration. The generator must describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator must describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

Envirocare shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the shipment of a waste stream. This will include statements that Envirocare has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with Conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with Conditions 1, 2, 3, or 4, Envirocare shall review this information and determine when testing is required to provide additional information in assuring compliance with the Conditions. Envirocare shall retain this information as required by the State of Utah to permit independent review.

At Receipt

Envirocare shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, that the measurement uncertainty does not exceed the uncertainty value in Condition 1, and that the waste meets Conditions 2 through 4.

7. Sampling and radiological testing of waste containing SNM must be performed in accordance with the following: one sample for each of the first ten shipments of a waste stream; or one sample for each of the first 100 cubic yards of waste up to 1,000 cubic yards of a waste stream, and one sample for each additional 500 cubic yards of waste following the first ten shipments or the following the first 1,000 cubic yards of a waste stream. Sampling and radiological testing of debris waste containing SNM (that is exempted from sampling by the State of Utah) can be eliminated if the SNM concentration is lower than one tenth of the limits in Condition 1.

8. Envirocare shall notify the NRC, Region IV office within 24 hours if any of the above conditions are not met, including if a batch during a treatment process exceeds the SNM concentrations of Condition 1. A written notification of the event must be provided within 7 days.

9. Envirocare shall obtain NRC approval prior to changing any activities associated with the above conditions.

Based on the staff's evaluation, the Commission has determined, pursuant to 10 CFR 70.14, that the exemption of above activities at the Envirocare disposal facility is authorized by law, and will not endanger life or property or the common defense and security and is otherwise in the public interest. Accordingly, by this Order, the Commission grants an exemption subject to the stated conditions. The exemption will become effective after the State of Utah has incorporated the above conditions into Envirocare's radioactive materials license. In addition, at that time, the Order transmitted on May 24, 1999, will no longer be effective.

Pursuant to the requirements in 10 CFR part 51, the Commission has prepared an Environmental Assessment for the proposed action and has determined that the granting of this exemption will have no significant impacts on the quality of the human environment. This finding was noticed in the **Federal Register** on January 23, 2003; 68 FR 3281.

The requests for the modifying the Order are available for inspection at NRC's Public Electronic Reading Room at *<http://www.nrc.gov/NRC/ADAMS/index.html>* ML021900394 and ML022180270. The staff's Environmental Assessment and Safety Evaluation Report may be obtained at the above web site using ML023470617 and ML023470587. Any questions with respect to this action should be referred to Timothy Harris, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6613, Fax: (301) 415–5398.

Dated at Rockville, Maryland this 30th day of January 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–3571 Filed 2–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25929; File No. 812–12576]

Great-West Life & Annuity Insurance Company et al.; Notice of Application

February 7, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application (the "Application") for an order under Sections 12(d)(1)(J), 17(b) and 6(c), of the Investment Company Act of 1940, as amended (the "Act"), providing exemptions from the limitations of Sections 12(d)(1)(A) and (B) and 17(a) of the Act.

Applicants: Great-West Life & Annuity Insurance Company ("GWL&A"), GW Capital Management, LLC, doing business as Maxim Capital Management, LLC (the "Adviser"), and Maxim Series Fund, Inc. (the "Fund") (collectively with GWL&A and the Adviser, the "Applicants").

Relevant 1940 Act Sections: Order requestod under Sections 12(d)(1)(J), 17(b) and 6(c) of the Act for exemption from Sections 12(d)(1)(A) and (B) and 17(a) of the Act.

Summary of Application: Applicants seek an order of the Commission permitting any series of the Fund and any other registered open-end investment company that is part of the same "group of investment companies," as defined in Section 12(d)(1)(G)(ii) of the Act, as the Fund and is, or will be, advised by the Adviser or any entity controlling, controlled by, or under common control with GWL&A, lawfully operating as a "fund of funds" (the "Profile Portfolios"), to purchase guaranteed interest annuity contracts issued by GWL&A ("Fixed Contracts"), as well as contracts GWL&A may issue in the future that are substantially similar in all material respects to the Fixed Contracts ("Future Fixed Contracts"), and GWL&A to sell to any Profile Portfolio such Fixed Contracts or Future Fixed Contracts. Applicants request that the relief extend to any future series of the Fund and any other future investment company advised by the Adviser lawfully operating as a "fund of funds" ("Future Profile Portfolios").

Filing Date: The Application was filed on July 16, 2001, and amended and restated on February 6, 2002.

Hearing or Notification of Hearing. An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this Application by writing to the Commission's Secretary and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 4, 2003, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o Great-West Life & Annuity Insurance Company, GW Capital Management, LLC, and Maxim Series Fund, Inc., 8515 East Orchard Road, Greenwood Village, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Patrick F. Scott, Attorney, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations

1. GWL&A is a stock life insurance company organized and existing under the laws of the State of Colorado. GWL&A was originally organized udner the laws of the State of Kansas as National Interment Association, and later changed its name to Ranger National Life Insurance Company, and then to Insuramerica Corporation until 1982 when it was changed to GWL&A. In 1990, GWL&A was re-domesticated as a Colorado corporation.

2. GWL&A is an indirect, wholly owned subsidiary of Great-West Lifeco Inc., an insurance holding company. Great-West Lifeco Inc. is a subsidiary of Power Financial Corporation, a financial services holding company based in Montreal, Canada. Power Corporation of Canada, a holding and management company, has voting control of Power Financial Corporation. Mr. Paul Desmarais, through a group of private holding companies, which he controls, has voting control of Power Corporation of Canada.

3. GWL&A is authorized to write annuities and life insurance in forty-nine states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam. As of December 31, 2001,

GWL&A had assets of over $28 billion. GWL&A is the issuer of the Fixed Contracts, which GWL&A will offer for sale to the Profile Portfolios, as described more fully below.

4. The Adviser is a limited liability company organized under the laws of the State of Colorado and a wholly owned subsidiary of GWL&A. The Adviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended. The Adviser serves as an investment adviser to the Fund. In addition to the Fund, the Adviser serves as an investment adviser to the Orchard Series Fund, a Delaware business trust that is registered with the Commission under the Act as an open-end management investment company of the series type. The Adviser also serves as investment adviser to Great-West Variable Annuity Account A, a managed separate account of GWL&A. As of December 31, 2001, the Adviser's assets under management totaled $7.5 billion.

5. The Fund is a Maryland corporation registered with the Commission under the Act as an open-end management company of the series type. The Fund is managed under the direction of its board of directors, and is not required to hold annual meetings of shareholders. The Fund currently consists of 36 series. Each series represents a separate investment portfolio (each a "Portfolio"). Each Portfolio has its own investment objectives and policies. Shares of the Portfolios are offered for sale pursuant to a registration statement filed with the Commission under the Securities Act of 1933, as amended (the "1933 Act"). Shares of the Portfolios are offered for sale to insurance companies, including GWL&A and its affiliates, for the purpose of funding variable life insurance policies and variable annuity contracts issued by those insurance companies. Shares of the Portfolios are also offered for sale to qualified plans of the type described in Treasury Regulation 1–817.5(f)(3)(iii), as permitted under an order of the Commission granting to the Fund an exemption from certain provisions of the Act.

6. There are currently ten Profile Portfolios, each an existing Portfolio of the Fund. Each Profile Portfolio operates as a "fund of funds" pursuant to an order of the Commission permitting the Profile Portfolios to invest in other funds that are part of the same group of investment companies as the Profile Portfolios and in funds that are not part of the same group of investment companies in reliance on Section 12(d)(1)(F) of the Act. Each Profile Portfolio is designed to provide a different asset allocation program based on an investor's investment goals, risk tolerance, and investment horizon. The Profile Portfolios currently pursue their investment objectives by investing in other registered, open-end management companies that are part of the same group of investment companies as the Profile Portfolios ("Underlying Portfolios"). In addition, pursuant to an order of exemption issued in 1999 (the "1999 Order"), the Profile Portfolios may invest in funds that are not part of the same group of investment companies in accordance with section 12(d)(1)(F) of the Act ("Other Portfolios").

7. The Profile Portfolios are designated into two groups, Profile I Portfolios and Profile II Portfolios, designed for two different distribution channels. Each group has one Portfolio with one of the following investment objectives: (i) *Aggressive Profile*—seek long-term capital appreciation primarily through investments in Underlying Portfolios that emphasize equity investments; (ii) *Moderately Aggressive Profile*—seek long-term capital appreciation primarily through investments in Underlying Portfolios that emphasize equity investments, and to a lesser degree, in Underlying Portfolios that emphasize fixed income investments; (iii) *Moderate Profile*—seek long-term capital appreciation primarily through investments in Underlying Portfolios with a relatively equal emphasis on equity and fixed income investments; (iv) *Moderately Conservative Profile*—seek capital appreciation primarily through investments in Underlying Portfolios that emphasize fixed income investments, and to a lesser degree, in Underlying Portfolios that emphasize equity investments; and (v) *Conservative Profile*—seek capital preservation primarily through investments in Underlying Portfolios that emphasize fixed income investments.

8. Subject to the supervision of the Board of Directors of the Fund, the Adviser uses a proprietary investment process for selecting Underlying Portfolios and Other Portfolios, which are placed in one of four equity asset classes (International, Small-Cap, Mid-Cap or Large-Cap) or one of two fixed income asset classes (Bond or Short-Term Bond). The assets of each Profile Portfolio are allocated among those asset classes within specified percentages of assets based on the Profile Portfolio's investment objective. Each Profile Portfolio is periodically "balanced" to maintain the appropriate asset allocation based on the Profile Portfolio's investment objective, policies and restrictions. Additional Profile Portfolios may be established in the future. Any Future Profile Portfolio that purchases a Fixed Contract as a portfolio investment will be subject to the terms and conditions of this Application.

9. GWL&A will issue the Fixed Contracts from its general account. As owner of a Fixed Contract, a Profile Portfolio will have the right to deposit funds from time to time with GWL&A. The deposits will accrue interest at a declared rate of interest, adjustable on a calendar quarter or other periodic basis, which is guaranteed to be no less than 3% on an annual basis. A Profile Portfolio or GWL&A will be able to terminate a Fixed Contract at any time upon seven-days' written notice to the other party. Upon termination, GWL&A will be obligated to pay the Profile Portfolio within seven days the amount of the Profile Portfolio's deposits, plus interest earned thereon.

10. The Profile Portfolios will pay no sales load of any kind in purchasing a Fixed Contract, and the guaranteed interest rate paid on the Fixed Contract will be at least as favorable as the guaranteed interest rate paid on other similar Fixed Contracts issued by GWL&A or other comparable companies. In addition, each Profile Portfolio will also be permitted to terminate a Fixed Contract at any time without the imposition of a market value adjustment or other charge or reduction.

11. The Profile Portfolios currently pursue their investment objectives by investing exclusively in Underlying Portfolios and Other Portfolios. At a special meeting of shareholders held on April 4, 2002, the Fund sought and obtained shareholders' approval of a proposal that would allow the Profile Portfolios to pursue their overall investment objectives by investing primarily in Underlying Portfolios, and also in liquid, short-term fixed income investments, the Fixed Contracts, and "government securities" as defined in Section 2(a)(16) of the Act. Applicants believe that they will be able to implement the asset allocation programs of the Profile Portfolios more efficiently and cost-effectively, and therefore at less expense to shareholders, if the Profile Portfolios are able, consistent with their investment objectives, to invest in Fixed Contracts and other short-term fixed income investments.

12. The registration statement for each Profile Portfolio will describe the nature and extent of the Profile Portfolio's permissible investments in Underlying Portfolios and Other Portfolios, subject to receipt of the order granting the requested exemption, in Fixed Contracts and other short-term fixed income investments. Each Profile Portfolio will limit its investments in Fixed Contacts and other short-term fixed income investments to the amount of portfolio assets that the Profile Portfolio may allocate to the "Short-Term Bond" asset class, as specified in the Profile Portfolio's then-current registration statement, subject to such other limitations as may apply under the Act or the Profile Portfolio's other investment policies and restrictions. Currently, the percentages of portfolio assets allocable to the Short-Term Bond asset class based on overall investment objective are as follows: (i) 25–40% for the Conservative Profile; (ii) 5–25% for the Moderately Conservative Profile; (iii) 5–250% for the Moderate Profile; (iv) 0–10% for the Moderately Aggressive Profile; and (v) 0–10% for the Aggressive Profile.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that Section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to Section 22(b) or Section 22(c) of the Act by a securities association registered under Section 15A of the Securities Exchange Act of 1934, or the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on Section 12(d)(1)(F) or (G). Section 12(d)(1)(G)(ii) defines the term "group of investment companies" to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Profile Portfolios will invest in shares of Other Portfolios, they cannot rely on the exemption from Sections 12(d)(1)(A) and (B) afforded by Section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that Section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, Section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

4. Applicants may not rely on the exemption provided by Section 12(d)(1)(G) for several reasons. First, Section 12(d)(1)(G)(i)(I) requires that a fund of funds relying on subparagraph (G), as well as all underlying funds, be part of the same "group of investment companies" as defined in Section 12(d)(1)(G)(ii). Pursuant to the 1999 Order, the Profile Portfolios may invest not only in shares of Underlying Portfolios, but also, subject to the limitations described above, in shares of Other Portfolios. Second, Section 12(d)(1)(G)(i)(II) limits the types of investments which a fund of funds relying on subparagraph (G) may hold to securities of funds that are part of the same "group of investment companies" as the fund of funds, Government securities and short-term paper. The Profile Portfolios, however, propose to invest not only in the types of securities that are described in Section 12(d)(1)(G)(i)(II) and in Other Portfolios, but also in shares of the Fixed Contracts.

5. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of Section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

6. Applicants request relief under Section 12(d)(1)(J) of the Act from the limitations of Sections 12(d)(1)(A) and (B) to permit the Profile Portfolios to invest in the Underlying Portfolios and the Fixed Contract. Applicants are not requesting relief from any provision of Section 12(d)(1)(F), upon which the Profile Portfolios rely to invest in Other Portfolios.

7. Applicants state that the Profile Portfolios' investments in the Underlying Portfolios do not raise the concerns about undue influence that Sections 12(d)(1)(A) and (B) were designed to address. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of sales charges or other fees.

8. The Profile Portfolios will invest in Other Portfolios only within the limits of Section 12(d)(1)(F).

9. Section 17(a)(1) prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered company. Section 17(a)(2) of the Act prohibits any of the persons described in subsection (a)(1) from purchasing any security or other property from such registered investment company.

10. Section 2(a)(3) of the Act defines "affiliated person" of another person in pertinent part as (i) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (ii) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (iii) any person directly or indirectly controlling, controlled by, or under common control with, such other person; or (iv) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

11. The Applicants submit that the Adviser may be deemed to be an affiliated person of the Fund because the Adviser is an investment adviser of the Fund and GWL&A may be deemed to be an affiliated person of the Adviser because GWL&A owns more than five percent of the outstanding voting securities of the Adviser, a wholly owned subsidiary of GWL&A. Therefore, any sale by GWL&A of a Fixed Contract to the Profile Portfolios could be deemed, absent relief, to be a principal transaction between the Fund and an affiliated person of an affiliated person

of the Fund in violation of Section 17(a)(1). The Applicants also submit that the Commission may determine that control by GWL&A over the Profile Portfolios exists because a wholly owned subsidiary of GWL&A, the Adviser, serves as an investment adviser of the Fund. Thus, any sale by GWL&A of a Fixed Contract to the Profile Portfolios could also be deemed, absent relief pursuant to Section 17(b), to be a principal transaction between the Fund and an affiliated person of the Fund in violation of Section 17(a)(1).

12. Section 17(b) of the Act provides that, notwithstanding Section 17(a), a person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of that subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned as recited in its registration statement and reports filed under the Act; and (iii) the proposed transaction is consistent with the general purposes of the Act.

13. Section 6(c) of the Act provides that the Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule or regulation thereunder. The Commission shall grant such exemption if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

14. Applicants seek an order of the Commission under Section 17(b) and Section 6(c) of the Act, granting an exemption from the prohibitions of Section 17(a), that would permit GWL&A to sell, and any Profile Portfolio to purchase, from time to time, one or more Fixed Contracts in a manner consistent with the applicable Profile Portfolio's investment objective, policies and restrictions. Applicants are seeking relief pursuant to Section 6(c) in addition to Section 17(b) because Section 17(b) could be interpreted as giving the Commission power to exempt only a single transaction from Section 17(a), as opposed to an ongoing series of future transactions. Applicants contend that relief is appropriate under Section 17(b) because the proposed arrangement meets the requirements of that section, for the reasons set forth herein. Applicants also contend that relief under Section 6(c) is appropriate for the same reasons.

15. Applicants assert that the terms of the proposed arrangement are fair and reasonable and do not involve overreaching. The proposed arrangement is not susceptible to the kinds of serious harms that could result from a violation of Section 17(a). For example, Section 17(a) was intended to guard against the possibility that "an unscrupulous investment company might "dump" undesirable securities on a registered investment company or transfer desirable securities from a registered investment company to another more favored advisory client in the complex." Therefore, the Applicants contend that, under the facts presented in this Application, there is no likelihood of any overreaching in this regard because the Fixed Contracts will not be transferable. A Profile Portfolio will only invest in a Fixed Contract in a manner consistent with its investment policies and restrictions, and will not be permitted to transfer its ownership of a Fixed Contract to any other Profile Portfolio or other person. Rather, each Profile Portfolio will be permitted to remove its assets from a Fixed Contract at any time without imposition of any market value adjustment or other charge or deduction.

16. Applicants further assert that Section 17(a) was also designed to guard against the possibility that an affiliated transaction might be effected at a price that is disadvantageous to the registered investment company. Under the proposed arrangement, however, the Applicants emphasize that the Profile Portfolios will pay no type of sales load in purchasing a Fixed Contract, and the guaranteed rate paid on the Fixed Contract will be at least as favorable as the guaranteed rate paid on other similar Fixed Contracts issued by GWL&A or other comparable companies, leaving no likelihood of overreaching by an affiliated person.

17. Applicants assert that subject to any necessary shareholder approvals, the proposed transaction will be consistent with the investment objectives and policies of each Profile Portfolio. The assets of each Profile Portfolio will be invested in the Fixed Contracts in accordance with the investment policies and restrictions of the applicable Profile Portfolio, as set forth in its then-current registration statement.

18. Applicants assert that the proposed arrangement is consistent with the general purposes of the Act. Section 17(a) is intended to prohibit affiliated persons in a position of influence or control over an investment company from furthering their own interest by selling securities or property that they own to an investment company at an inflated price, purchasing securities or property from an investment company at less than its fair value, or selling or purchasing securities or property on terms that involve other types of self-dealing or overreaching by the affiliated person. For the reasons discussed above, Applicants contend that the proposed arrangement does not involve any such overreaching or self-dealing.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. All Underlying Portfolios will be part of the same "group of investment companies," as defined in Section 12(d)(1)(G)(ii) of the Act, as the Profile Portfolios.

2. No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions. No Profile Portfolio will acquire securities of an Other Portfolio if, at the time of acquisition, the Other Portfolio owns securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act.

3. No Profile Portfolio will impose a front-end sales charge in excess of one and one-half percent. Furthermore, any sales charges, distribution-related fees and service fees relating to the shares of the Profile Portfolios, when aggregated with any sales charges, distribution-related fees and service fees paid by the Profile Portfolios relating to their acquisition, holding or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in Rule 2830 of the National Association of Securities Dealer Conduct Rules.

4. Before approving any advisory contract under Section 15 of the Act, the Board, including a majority of the Directors who are not "interested persons," as defined in Section 2(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

Conclusion

For the reasons stated herein, the Applicants submit that the terms of the contemplated transaction meet all of the requirements of Sections 12(d)(1)(J), 17(b) and 6(c) of the Act. Pursuant to Section 12(d)(1)(J), exemption of this transaction is consistent with the public interest and the protection of investors. Pursuant to Section 17(b), the terms of the proposed transaction are reasonable and fair and do not involve overreaching, the proposed transaction is consistent with the investment objectives and policies of each Profile Portfolio, and the proposed transaction is consistent with the general purposes of the Act. Similarly, under Section 6(c) of 3 the Act, Applicants submit that their request for an order is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Furthermore, Applicants seek relief relating to Future Profile Portfolios and Future Fixed Contracts in order to avoid incurring the expense and effort of drafting, and to relieve the Commission from the corresponding burden of reviewing, duplicative exemptive applications. Applicants submit that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3579 Filed 2–12–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47330; File No. SR–PCX–2003–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges for Options Intermarket Linkage Orders

February 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In connection with the launch of the options intermarket linkage ("Linkage"), the PCX proposes to amend its Schedule of Fees and Charges for Exchange Services in order to clarify that unless otherwise provided, executions resulting from Linkage orders will be subject to the same billing treatment as current executions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage Plan" or "Plan")[3] which linkage now includes participation by the five option exchanges ("Participant Exchanges").[4] The PCX proposed to adopt new rules relating to the operation of the Linkage on September 26, 2002 and filed an amendment to the proposal on January 30, 2003. Along with all of the Participant Exchanges, the Exchange launched phase I of Linkage on January 31, 2003.

In connection with the launch of the Linkage, the Exhange seeks to clarify its Schedule of Fees and Charges for Exchange Services in order to add a provision stating that executions resulting from Linkage orders will be subject to the same billing treatment as current executions. Accordingly, executions arising from either a Principal Acting as Agent ("P/A") Linkage order, or a Principal Linkage Order that are routed to the Exchange from other market centers will be subject to the same trade related charges assessed on market maker executions originating from the PCX. The proposal specifies that no fees will apply to Satisfaction Orders, which result after a trade-through.[5]

The Exchange does not seek to make any other changes to its Schedule of Fees and Charges for Exchange Services.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act, [7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[4] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) and 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

[5] Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–05 and should be submitted by March 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3580 Filed 2–12–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13955; Notice 2]

Columbia Body Manufacturing Co.; Grant of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are granting the application by Columbia Body Manufacturing Co. ("Columbia") of Clackamas, Oregon, for an exemption of three years from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*. Columbia asserted that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We published a notice of receipt of the application on December 4, 2002, asking for comments from the public (67 FR 72266).

Why Columbia Needs an Exemption

Columbia manufactures and sells a dump body type of trailer (the "trailer") requiring that the body's front end be lifted in order to discharge the load out of the back. The load is asphalt, used in road construction. This design of trailer generally has an overhang at the rear for funneling asphalt material into a paving machine; consequently, the trailer needs 16 to 18 inches of unobstructed clearance behind its rear wheels to hook up with the paving machine and dump its load. Standard No. 224 specifies that the rearmost surface of an underride guard to be located not more than 305mm (12 inches) from the "rear extremity" of the trailer.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Columbia's, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. Columbia argued that installation of the rear impact guard would prevent its trailer from operating with the paving machine, and "would interfere with the hook-up of the asphalt machine and dump operation of the trailer." Columbia averred that it "has investigated the retrofit and modifications needed to bring our products into compliance with FMVSS 224 without success." We discuss below its efforts to conform in greater detail.

Columbia's Reasons Why it Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith To Comply With Standard No. 224

Columbia is a small volume manufacturer. Its average production over the past three years has been 12 trailers a year, "none of which were asphalt paving trailers." Normally, it would produce 10 to 40 trailers annually. The company employs 30 people full time and has annual sales of $4–5,000,000. Columbia "has had requests to quote on 14" trailers and "14 truck mounted dump boxes, bringing the total sales figure to around $750,000.00." Absent an exemption, Columbia "will be unable to quote these units substantially decreasing our projected sales figures." Its application reflected that its cumulative net loss for the fiscal years 1998, 1999, and 2000 was $99,764. We asked Columbia to provide data on its fiscal year ending December 31, 2001, while the application was pending, and the company replied that its net loss for 2001 was $755,722.19.

Columbia asserted that it has sought manufacturers of underride guards since 1998. As a result of its search,

> We only found one English company, Quinton-Hazell that is no longer making either type, telescoping or hydraulic. Their research found that because of the expense of these two types of guards they would not be marketable. We have also investigated the work done by SRAC, located in Los Angeles, CA in the hopes that we might be able to use or modify the guards they designed for the trailers we wish to build. Neither was suitable because retracting the bumper and finding a way to keep the build up of asphalt off of any moving parts was not possible.

The company stated that it intended to continue to try and resolve the problems through continued research.

Columbia's Reasons Why It Believes That a Temporary Exemption Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Columbia argued that an exemption would be in the public interest and consistent with traffic safety objectives because, "our type of trailer helps state and municipal governments to produce the safe highways that are needed." It contemplates building less than 50 units a year while an exemption is in effect. According to Columbia, the amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens.

Public Comment on the Application

We received one comment in response to our notice of December 4, 2002. The National Truck Equipment Association (NTEA) recommended granting the petition, commenting that "the type of trailer for which Columbia Body is representing a temporary exemption is vital to the proper construction and maintenance of the highways." Like the applicant, NTEA was "unaware of any device that would meet the requirements of FMVSS 224 while allowing this particular type of trailer to perform its intended function." It reminded us that we have temporarily exempted similar types of trailers from compliance with Standard No. 224.

The Agency's Findings in Support of an Exemption

Columbia's present average production of only 12 trailers a year has been insufficient to generate a net profit for the company, and its net loss of over $750,000 in 2001 reflects a severe downturn in the company's financial fortunes. It anticipates that it could realize $750,000 in sales of 14 trailers of the type for which it has requested exemption, and for which potential customers have requested a price quotation. The company has investigated, unsuccessfully, means of compliance with Standard No. 224. There seems to be agreement, as indicated by NTEA's comment, that there is no feasible way for these trailers to be brought into compliance without compromising the function for which they were designed.

The public interest is served by allowing the production of these special-purpose road construction trailers, balanced against the limited number in which they are produced and the relatively limited time that they spend in transit on the public roads from one job site to another. Further, there is no substantial difference between Columbia Body's petition and other hardship applications that we have granted in the past (*e.g.*, Red River Manufacturing, Inc. and Dan Hill & Associates, Inc., 66 FR 20028).

Accordingly, for the reasons set above, we hereby find that compliance with Standard No. 224 would cause substantial economic hardship to Columbia Body, which has tried in good faith to comply with Standard No. 224, and we further find that an exemption would be in the public interest and consistent with the objectives of traffic safety. We accordingly grant NHTSA Temporary Exemption No. 2003–1 to Columbia Body Manufacturing Co. for its dump body type trailer only, from 49 CFR 571.224 Standard No. 224, Rear Impact Protection, expiring February 1, 2006.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on February 10, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–3588 Filed 2–12–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Issuance of Final Determination Concerning Bowling Pinsetters

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain bowling pinsetters which are installed at military facilities in the United States and which will be offered to the United States Government. The final determination found that based upon the facts presented, the country of origin of the bowling pinsetters is the United States.

DATES: The final determination was issued on February 7, 2003. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Special Classification and Marking Branch, Office of Regulations and Rulings (202–572–8838).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 7, 2003, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), Customs issued a final determination concerning the country of origin of certain bowling pinsetters offered to the United States Government. The U.S. Customs ruling number is HQ 562583. This final determination was issued at the request of Brunswick Corporation, under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that, based upon the facts presented, the assembly in the United States of numerous foreign and U.S. subassemblies and parts to create the pinsetters and the installation of the pinsetters in facilities in the United States result in a substantial transformation of the foreign subassemblies. Accordingly, the country of origin of the bowling pinsetters is the United States.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of (date of publication in the **Federal Register**).

Dated: February 7, 2003.

Michael T. Schmitz,

Assistant Commissioner, Office of Regulations and Rulings.

Attachment.

HQ 562583

MAR–05 RR:CR:SM 562583 KSG

February 7, 2003.

Category: Marking

Richard M. Belanger, Esq.,
Sidley Austin Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005.

Re: Country of origin of bowling pinsetters; substantial transformation; 19 CFR 177.22; procurement.

Dear Mr. Belanger: This is in response to your letters dated November 18, 2002, and January 17, 2003, on behalf of Brunswick Corporation, requesting a final determination of origin pursuant to 19 CFR 177.22(c) regarding U.S. Government procurement of certain bowling pinsetters assembled in the United States.

Facts

Brunswick Corporation is the importer of the components of the bowling pinsetters and therefore, is a party-in-interest as defined in 19 CFR 177.22(d).

This case involves the GS–X model of bowling pinsetters, which are automated machines designed to return bowling balls, pick up standing bowling pins and clear the deck at bowling facilities. The pinsetters are sold to military installations and other U.S. Government entities. This request involves a contract for installation of the GS–X pinsetters at bowling alleys located inside the United States. Brunswick anticipates that it will enter into contracts in the future for facilities at U.S. military bases in foreign countries as well as in the United States.

The GS–X pinsetter is typically sold in sets of two mechanical subassemblies and one electrical controller assembly plus other parts, although Brunswick may occasionally sell a single mechanical assembly with an attached electrical controller. The electrical assembly is manufactured in the United States by Controls, Inc., an unrelated company.

The mechanical assemblies are comprised of seven subassemblies consisting of thousands of components from numerous countries. The mechanical assemblies consist of three major parts: (1) The central block; (2) the "six-pack"; and (3) the ball accelerator. The central block is a large steel box that contains four subassemblies: the sweep wagon subassembly; the setting table subassembly; the drive frame sub-assembly; and the distributor subassemblies. Included in the drive frame subassembly are three

motors, including the distributor motor, the sweep motor and the table motor. The distributor subassembly, which resembles a conveyor belt assembly line, takes the pins from the pin elevator subassembly and places them in the setting table subassembly. The setting table subassembly picks up the standing pins from the lane and takes them again from the distributor subassembly before setting them down on the lane. Between the time when the setting table picks up the standing pins and sets them down again, the sweep wagon subassembly sweeps away felled pins. The drive frame subassembly houses three of the motors that are needed to run the central block and six-pack.

The six-pack assembly contains the pin elevator subassembly with two pin elevators and the ball pit subassembly with two ball cushions and two rollers. The pin elevator subassembly receives the pins from the ball pit subassembly and raises them into the distributor subassembly. The ball pit subassembly handles the initial impact of the pins and ball and cycles them through the pinsetter to get ready for the next ball.

The ball accelerator includes the ball accelerator motor. The ball accelerator subassembly returns the ball to the bowler.

In addition to the above-described mechanical subassemblies, the complete pinsetter, as installed, contains the U.S.-origin electrical controller assembly as well as other U.S. parts.

In foreign country X, Brunswick constructs the large steel frame that houses the central block. Numerous other parts from various countries are also shipped to foreign country X for assembly of the seven principal subassemblies of the mechanical assembly. Brunswick then attaches the distributor subassembly to the steel casing of the central block. The six remaining subassemblies and the central block casing are then shipped to a manufacturing facility in Muskegon, Michigan.

I. Processing Performed at Michigan Plant

In the United States (Muskegon, Michigan), Brunswick integrates the sweep wagon and setting table subassemblies, as well as the three motors of the drive frame subassembly, into the central block.

The integration of the sweep wagon mechanical subassembly involves installing it into the central block in a front orientation at a 45 degree diagonal position, with the right end being placed into the right sweep track first. Brunswick then adjusts the rollers to a minimum clearance of five millimeters on each side between the roller screw, taking care to ensure that adequate clearance is maintained during the entire length of travel by manually running the wagon forward and aft. Brunswick then attaches the sweep wagon to the sweep crank arms with nylon bushings, large flat shim washers and retaining rings. This procedure is then repeated on the opposite side. Finally, Brunswick adjusts the clearance to an average of ten millimeters between the gutter adapter and the flat gutter, with slots and screws provided in both adapters. This final adjustment must be made at the midpoint of wagon travel to allow the necessary clearance at extreme front and rear positions.

Brunswick integrates the setting table mechanical subassembly into the central block. This process involves the initial placement of spacers onto the corners of the test stand deck. The assembly team then delivers the setting table to the test stand deck and sets it onto the spacers, ensuring that the spacers are clear of the spotting tong attachment screws that protrude from the underside of the setting table. Brunswick then manually turns the setting table drive pulley on the left side of the drive frame to drop the left and right deck racks to the lowest point. The deck rack teeth are aligned to the drive gear teeth and plumb. Brunswick removes the hex nuts and lock washers from the setting table studs and installs the feet of the deck rack onto studs. Brunswick then rotates the bottom hex nuts until the first interference is detected against the deck rack feet. The top hardware is reinstalled and tightened. Brunswick manually turns the setting table drive pulley in the opposite direction to raise the setting table slightly so that the spacers can be removed. The setting table is re-lowered to the lowest position. Brunswick verifies that a 5 to 15 millimeter gap exists on all points between the setting table frame and the deck of the test stand. If proper clearance is not correct, or if the table frame is not level, appropriate adjustments are made. The top sections are then assembled for the telescoping square drive shafts for each of the setting table pivot shafts, and the spotting tongs with hardware are provided. Finally, Brunswick assembles and routes the setting table function switch and solenoid cable into the panduit channel at the front of the machine.

Brunswick integrates the distributor motor of the drive frame subassembly into the central block. This involves the assembly and placement of the motor pulley to the motor shaft. A 60 Hz sheave must be facing away from the motor assembly. The motor and mount assembly must first be placed into the forward motor location in the left drive frame and then be assembled into the frame with bushing, spacer and hitch pins. Brunswick then assembles the tension spring from the mount to the frame. Brunswick assembles the V-belt to the motor pulley and drive pulley.

The sweep motor of the drive frame subassembly is integrated into the central block. This involves a process identical to the assembly of the distributor motor described above except that the assembly is located in the middle motor location of the drive frame.

The setting table step motor of the drive frame subassembly is integrated into the central block. This involves a process identical to the assembly of the distributor and sweep motors described above except that the assembly is located in the rear motor location of the drive frame.

After assembly of the three subassemblies into the central block, the fully assembled central block is quality tested at the Michigan facility. Each central block undergoes 400 cycles of testing, which can take several hours.

Counsel states that the processing performed at the Michigan facility requires complex and detail-oriented labor and precise calibrations performed by highly skilled employees.

II. Processing Performed at Bowling Facility

At the bowling facility, the ball pit and pin elevator subassemblies are joined to create the six-pack component of the mechanical assembly. The central block, six-pack, and ball accelerator are then assembled to form the mechanical assemblies, after which the U.S.-made electrical controller assembly and other miscellaneous parts are integrated into the mechanical assemblies to form the GS–X pinsetter.

The GS–X pinsetter is installed into the bowling facility. This process takes approximately 20 hours of skilled labor per pinsetter, using tools and large moving equipment specially constructed for that particular installation. The project manager and field foreman manage the quality-assurance procedures and certify that each pinsetter is installed and functioning according to Brunswick specifications, which counsel states surpass those of the American Bowling Congress.

Issue

Whether the bowling pinsetters are substantially transformed in the United States so that they become products of the United States for U.S. Government procurement purposes.

Law and Analysis

Under subpart B of part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), the Customs Service issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B): "An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed."

See also 19 CFR 177.22(a).

If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *See Uniroyal Inc.* v. *United States*, 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

Customs ruled in Headquarters Ruling Letter ("HRL") 561734, dated March 22, 2001, 66 FR 17222, that Sharp multifunctional machines (printer, copier and fax machine) assembled in Japan were a product of Japan for procurement purposes. The machines were comprised of 227 parts (108 parts sourced from Japan, 92 parts from Thailand, 3 parts from China, and 24 parts from other countries) and eight subassemblies, each of which was also assembled in Japan. Further, the scanner unit (one of the eight subassemblies) which was assembled in Japan was characterized as "the heart of the machine." *See also* HRL 561568, dated March 22, 2001, 66 FR 17222.

In HRL 560433, dated September 19, 1997, Customs held that the assembly in the United Kingdom of audio/video stereo receivers from 16 subassemblies and other components originating from various countries resulted in a substantial transformation. Customs noted in that ruling that numerous skilled workers assembled the stereo receivers from numerous components and hundreds of raw materials. In HRL 734045, dated October 8, 1991, Customs held that foreign subassemblies and other components imported into Hong Kong which were processed and assembled with other Hong Kong components to make laptop and notebook personal computers were substantially transformed as a result of the Hong Kong operations.

In HRL 558919, dated March 20, 1995, Customs held that an extruder subassembly manufactured in England was substantially transformed in the United States when it was wired and combined with U.S. components (motor, electrical controls and extruder screw) to create a vertical extruder. In HRL 559887, dated October 3, 1996, Customs held that swivel joints and torsion spring balance assemblies from India were substantially transformed when assembled in the U.S. with U.S.-origin components to produce top and bottom loading/unloading arms (petroleum handling equipment). Therefore, the loading arms were considered products of the United States. Customs recently ruled in HRL 562502, dated November 8, 2002, that a Chinese-origin transfer feeder unit and Chinese-origin outer covers were substantially transformed when assembled in Japan with a Japanese-origin laser scanner unit to produce a printer engine. "When taken together, the manufacture of the laser scanner unit and the final assembly of the printer engine is complex and meaningful." Therefore, for procurement purposes, the printer engines were considered to be products of Japan.

In this case, the complex assembly of the central block from three subassemblies, including the incorporation of three motors from the drive frame subassembly into the central block, combined with the subsequent assembly of the central block, six-pack, ball accelerator, and U.S.-origin electrical controller assembly and the installation of the pinsetters in bowling facilities in the United States, when taken together, result in a substantial transformation of the foreign-origin subassemblies involved. The processing in the United States requires precise calibration and involves the assembly of numerous parts and subassemblies and highly skilled labor. The name, character and use of the foreign-origin subassemblies and parts change as a result of the processing and other assembly operations performed in the United States. Therefore, pursuant to 19 U.S.C. 2518(4)(B), and 19 CFR 177.22(a), we find that the country of origin of the bowling pinsetters is the United States.

Holding

Based on the facts presented, the components imported into the United States that are used in the manufacture of the bowling pinsetters involved in this case are substantially transformed in the United States. Accordingly, pursuant to 19 U.S.C. 2518(4)(B), and 19 CFR 177.22(a), the country of origin of the bowling pinsetters is the United States.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Michael T. Schmitz,

Assistant Commissioner, Office of Regulations & Rulings.

[FR Doc. 03–3510 Filed 2–12–03; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 68, No. 30
Thursday, February 13, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MO 169–1169; IL 187–2; FRL–7444–4]

Determination of Nonattainment as of November 15, 1996, and Reclassification of the St. Louis Ozone Nonattainment Area; States of Missouri and Illinois

Correction

In rule document 03–1771 beginning on page 4836 in the issue of Thursday, January 30, 2003, make the following correction:

§ 81.326 [Corrected]

On page 4841, in § 81.326, in the table, in the first column, under the heading "St. Louis Area", in the fourth entry, "St. Louis County" should read, "St. Louis".

[FR Doc. C3–1771 Filed 2–12–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[Notice No. 968]

RIN 1512–AB48

Commerce in Explosives (2000R–9P)

Correction

In proposed rule document 03–1946 beginning on page 4406 in the issue of Wednesday, January 29, 2003, make the following corrections:

§ 55.11 [Corrected]

1. On page 4416, in §55.11, in the third column, in the sixth line from the bottom, after "perchlorate," add "sulphur".

§ 55.207 [Corrected]

2. On page 4419, in §55.207, in the third column, in paragraph (c)(8), in the third line, "6-inches" should read, "6¾ inches".

§ 55.208 [Corrected]

3. On page 4420, in §55.208, in the third column, in paragraph (d)(18), in the seventh line, " "-inch " should read, "¾-inch".

[FR Doc. C3–1946 Filed 2–12–03; 8:45 am]

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H.J. Res. 18/P.L. 108–5

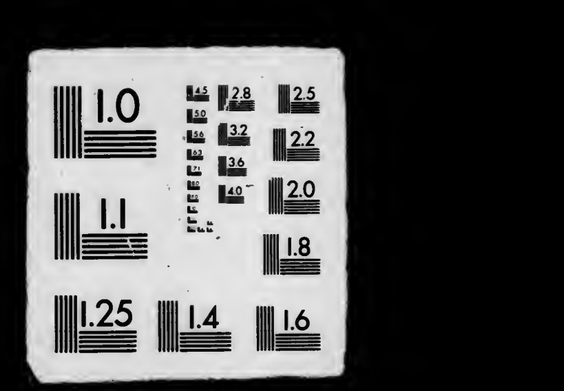
Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Feb. 7, 2003; 117 Stat. 9)

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 15f

RIN 0503–AA24

Administrative Civil Rights Adjudications Under Section 741

AGENCY: Office of the Secretary, Department of Agriculture (USDA).

ACTION: Interim final rule.

SUMMARY: The USDA amends the adjudication process for certain civil rights discrimination complaints filed administratively with USDA in order to establish deadlines for complainants to request a formal proceeding before an administrative law judge (ALJ) and to clarify that complaints may no longer be filed.

DATES: This rule is effective February 14, 2003. Written comments must be received by March 17, 2003.

ADDRESSES: Submit all comments concerning this interim final rule to: David Winningham, Director, Office of Civil Rights (CR), USDA, Whitten Building, Room 326–W, 1400 Independence Avenue, SW., Washington, DC 20250. Comments may be submitted via electronic mail to: *David Winningham@usda.gov*.

FOR FURTHER INFORMATION CONTACT: David Winningham, Director, Office of Civil Rights, (202) 720–5212.

SUPPLEMENTARY INFORMATION:

Classification

This interim final rule has been reviewed under Executive Order (E.O.) 121866, and it has been determined that it is not a "significant regulatory action" because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. This interim final rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or principles set forth in E.O. 12866.

Regulatory Flexibility Act

USDA certifies that this interim final rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601 *et seq.*).

Background and Purpose

The purpose of this interim final rule is to establish finality with respect to the status of Section 741 Complaint Requests filed under part 15f by imposing deadlines that will bring closure to all actions filed under part 15f.

On December 4, 1998, USDA published an interim final rule at 7 CFR part 15f implementing Section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277. Section 741 waived the statute of limitations (SOL) for filing discrimination complaints under certain nondiscrimination statutes for a period of two years after the enactment of that Act with respect to certain USDA programs.

The period for filing a Section 741 Complaint Request under the waiver of the SOL provided in Section 741 expired on October 21, 2000. USDA no longer has authority under the terms of the statutory waiver to accept Section 741 Complaint Requests under part 15f unless such a complaint has already been docketed under part 15f by USDA or unless a request was filed with USDA prior to October 21, 2000. This interim final rule amends § 15f.5 to make clear that Section 741 Complaint Requests filed under part 15f are no longer accepted by USDA.

A number of Section 741 Complaint Requests filed under the waiver are still pending before USDA, and complainants are still entitled to review of the final resolution of those Section 741 Complaint Requests by an ALJ if the Section 741 Complaint Requests are pursued to the formal proceeding stage under part 15f.

Prior to enactment of Section 741, USDA had a number of civil rights complaints pending that were eligible for consideration under Section 7841. In part 15f, USA committed itself to automatically docketing these pending complaints as Section 741 Complaint Requests and reviewing them to determine if settlement was a possibility. If settlement did not occur, then the Director would advise the complainant of the opportunity for review of the Section 741 Complaint Request under formal proceedings before an ALJ. Additionally, any new Section 741 Complaint Requests that were filed after promulgation of part 15f similarly were reviewed to determine if settlement was a possibility, and complainants were notified of the opportunity for an ALJ review if settlement did not occur.

The current regulations do not specify a deadline by which a complainant must seek an ALJ review of the Section 741 Complaint Request after USDA has informed the complainant that USDA will not settle the Section 741 Complaint Request. In order to bring legal finality to the complaint resolution process provided in part 15f, USDA amends § 15f.9 to specify that a complainant has 30 days from receipt of a notice that USDA will not settle the Section 741 Complaint Request to file a request for review by an ALJ. Complainants who, prior to the date of publication of this interim final rule, received a notice that USDA would not settle will have until 90 days after February 14, 2003 to request review of their Section 741 Complaint Request by an ALJ. Finally, part 15f is clarified to state that new request under part 15f will not be accepted by USDA.

List of Subjects in 7 CFR Part 15f

Administrative practice and procedure, Agriculture, Appeal procedures, Civil rights, Equal access to justice, Ex parte communications, Farmers, Federal aid programs, guaranteed loans, Insured loans, Loan

programs, Nondiscrimination, and Price support programs.

For the reasons stated in the preamble, USDA proposes to amend 7 CFR part 15f as follows:

PART 15f—ADJUDICATIONS UNDER SECTION 741

1. The authority citation for part 15f continues to read as follows:

Authority: 5 U.S.C. 301; section 101(a) of Pub. L. 105–277, 112 Stat. 2681; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

2. Amend paragraph (c) of § 15f.5 to add a sentence to read as follows:

§ 15f.5 How do I request that USDA consider my complaint under these procedures?

* * * * *

(c) * * * If you did not receive a notice form USDA by October 21, 2000, that your Section 741 Complaint Request had been docketed automatically under paragraph (a) of this section, and you did not file a Section 741 Complaint Request prior to October 21, 2000, under paragraph (b) of this section, then any Section 741 Complaint Request received by USDA after October 21, 2000, will not be accepted.

3. Revise § 15f.9 to read as follows:

§ 15f.9 What will the Director do to settle my Section 741 Complaint Request when it is received?

The Director will review each Section 741 Complaint Request. If the Director finds that your complaint is an eligible complaint, the Director will: review all documents and evidence submitted by you; review all agency or CR files, if any exist, regarding the circumstances surrounding the alleged discrimination; review any damage claims; and seek any further clarification, if necessary, from either you or the agency. GR also may refer your eligible complaint for a formal investigation by the CR Program Investigation Division or by an outside contractor. Based on his or her review, the Director will either undertake negotiations with you to resolve the complaint; or inform you that CR will not settle the complaint and explain to you your options, including your right to request formal proceedings before an ALJ under subpart D of this part within 30 days of receipt of notice from the Director that CR will not settle the complaint. If the complaint is successfully resolved or settled, the Director will issue a final determination disposing of the matter. If you have received a notice that the Director will not settle the complaint prior to February 14, 2003, you have until 90 days after February 14, 2003 to request formal proceedings under subpart D of this part. Any request for formal proceedings received by USDA after the deadlines set forth in this section will not be accepted.

Done at Washington, DC, this 7th day of February, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–3565 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–4]

Exotic Newcastle Disease; Additions to Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by quarantining La Paz and Yuma Counties, AZ, and a portion of Mohave County, AZ, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread exotic Newcastle disease from the quarantined area. This action is necessary on an emergency basis to prevent the spread of exotic Newcastle disease from the quarantined area.

DATES: This interim rule was effective February 10, 2003. We will consider all comments that we receive on or before April 15, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–4, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–4. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–117–4" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in "Subpart A—Exotic Newcastle Disease (END)" (9 CFR 82.1 through 82.15, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. Less than an entire State will be designated as a quarantined area only if the State enforces restrictions on intrastate movements from the quarantined area that are at least as stringent as the regulations. The regulations prohibit or restrict the movement of birds, poultry, products, and materials that could spread END from quarantined areas. Areas quarantined because of END are listed in § 82.3, paragraph (c).

On October 1, 2002, END was confirmed in the State of California. The disease was confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption, and in commercial poultry.

In an interim rule effective on November 21, 2002, and published in the **Federal Register** on November 26, 2002 (67 FR 70674–70675, Docket No. 02–117–1), we amended the regulations in § 82.3(c) by quarantining Los Angeles County, CA, and portions of Riverside and San Bernardino Counties, CA, and restricting the interstate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

In a second interim rule effective on January 7, 2003, and published in the **Federal Register** on January 13, 2003 (68 FR 1515–1517, Docket No. 02–117–2), we further amended § 82.3(c) by adding Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, to the list of quarantined areas. Because the Secretary of Agriculture signed a declaration of extraordinary emergency with respect to the END situation in California on January 6, 2003 (see 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), that second interim rule also amended the regulations to provide that the prohibitions and restrictions that apply to the interstate movement of birds, poultry, products, and materials that could spread END will also apply to the intrastate movement of those articles in situations where the Secretary of Agriculture has issued a declaration of extraordinary emergency (new § 82.16).

On January 16, 2003, END was confirmed in backyard poultry on a premises in Las Vegas, NV. Therefore, in a third interim rule effective January 17, 2003, and published in the **Federal Register** on January 24, 2003 (68 FR 3375–3376, Docket No. 02–117–3), we amended § 82.3(c) by quarantining Clark County, NV, and a portion of Nye County, NV, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. On January 17, 2003, the Secretary of Agriculture signed a declaration of an extraordinary emergency because of END in Nevada (*see* 68 FR 3507, Docket No. 03–001–2, published January 24, 2003).

On February 4, 2003, END was confirmed in backyard poultry on a premises in the Colorado River Indian Nation in Arizona. Therefore, in this interim rule, we are amending § 82.3(c) by designating all of La Paz and Yuma Counties, AZ, and that portion of Mohave County, AZ, that lies south of the Colorado River as a quarantined area and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. As provided for by the regulations in § 82.3(a), this quarantined area encompasses the area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of END. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by quarantining La Paz and Yuma Counties, AZ, and a portion of Mohave County, AZ, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. This action is necessary on an emergency basis to prevent the spread of END from the quarantined area.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

1. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. In § 82.3, paragraph (c) is amended by adding, in alphabetical order, an entry for Arizona to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) * * *

Arizona

La Paz County. The entire county.

Mohave County. That portion of the county that lies south of the Colorado River.

Yuma County. The entire county.

* * * * *

Done in Washington, DC, this 10th day of February, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3685 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 03–004–1]

Remove Texas From Lists of States Approved To Receive Stallions and Mares From CEM-Affected Regions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations by removing Texas from the lists of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis. This action is necessary because the Texas Animal Health Commission has determined that the State of Texas is not able to continue this activity, and has requested that the State be removed from the list.

DATES: This rule is effective February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Freeda Isaac, Senior Staff Veterinarian, Technical Trade Services, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations in 9 CFR part 93 (referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U.S. livestock from communicable diseases.

In § 93.301, paragraph (c)(1) prohibits the importation of horses into the United States from certain regions where contagious equine metritis (CEM) exists. Paragraph (c)(2) lists categories of horses that are excepted from this prohibition, including, in § 93.301(c)(2)(vi), horses over 731 days of age imported for permanent entry if the horses meet the requirements of § 93.301(e).

One of the requirements in § 93.301(e) is that mares and stallions over 731 days old imported for permanent entry from regions where CEM exists must be consigned to States listed in § 93.301(h)(6), for stallions, or in § 93.301(h)(7), for mares. The Administrator of the Animal and Plant Health Inspection Service (APHIS) has approved these States to receive stallions or mares over 731 days of age from regions where CEM exists because each State has entered into a written agreement with the Administrator to enforce State laws and regulations to control CEM, and each State has agreed to quarantine, test, and treat stallions and mares over 731 days of age from any region where CEM exists in accordance with § 93.301(e).

In 1995, Texas entered into a written agreement with the Administrator and was subsequently placed on both lists. However, the Texas Animal Health Commission has recently determined that Texas is no longer able to continue the quarantine, testing, and treatment of stallions and mares over 731 days old from regions where CEM exists, and has requested that the State be removed from the lists of States approved to received stallions and mares from CEM-affected regions. Therefore, this final rule removes Texas from the lists of States in § 93.301(h)(6) and (h)(7).

Effective Date

A State's decision to enter into a written agreement with the Administrator to enforce State laws and regulations to control CEM and to quarantine, test, and treat stallions and mares over 731 days of age from any region where CEM exists in accordance with § 93.301(e) is completely voluntary. Since the State of Texas has notified APHIS that it is unable to continue these activities and has withdrawn from its agreement with the Administrator, it does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary. We also find good cause for making this rule effective less than 30 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

APHIS does not mandate that any State participate in the quarantine, testing, and treatment of stallions and mares over 731 days of age from any region where CEM exists. As a result, decisions regarding a State's compliance or noncompliance with the standards set out in § 93.301(e) are made at the State level. Since the State of Texas has notified APHIS that it is unable to continue these activities and has withdrawn from its agreement with the Administrator, this rule simply amends the regulations to reflect the State's decision.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 is amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.301 [Amended]

2. Section 93.301 is amended as follows:

a. In paragraph (h)(6), by removing the words "The State of Texas".

b. In paragraph (h)(7), by removing the words "The State of Texas".

Done in Washington, DC, this 10th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3686 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 03–008–1]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the swine health protection regulations by removing Kansas and Oregon from the list of States that permit the feeding of treated garbage to swine and adding them to the list of States that prohibit garbage feeding. This action is necessary to reflect changes in the status of Kansas and Oregon, and thereby facilitate the administration of the swine health protection regulations.

DATES: This rule is effective February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, National Surveillance Coordinator, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1231; (301) 734–3752.

SUPPLEMENTARY INFORMATION:

Background

The swine health protection regulations in 9 CFR part 166 (referred to below as the regulations) were established under the Swine Health Protection Act (7 U.S.C. 3801 *et seq.*, referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

The regulations in § 166.15 categorize States according to the respective status of each with regard to the feeding of garbage to swine. Some States prohibit this activity, while other States permit the feeding of garbage to swine; these States are listed in § 116.15(a) and (b), respectively.

Under section 10 of the Act (7 U.S.C. 3809), a State will have primary enforcement responsibility for violations of laws and regulations related to the treatment and feeding of garbage if the Secretary determines that the State: (1) Has adopted adequate laws and regulations governing the treatment of garbage to be fed to swine and the feeding thereof which laws and regulations meet the minimum standards of the Act and regulations, (2) has adopted and is implementing adequate procedures for the effective enforcement of its garbage feeding laws and regulations, and (3) will keep records and make reports showing compliance with its garbage feeding laws and regulations and their enforcement as the Secretary may require by regulation. States that have primary enforcement responsibility are listed in § 166.15(c).

Prior to this rulemaking, Kansas and Oregon were listed in § 166.15(b) as States that permitted the feeding of treated garbage to swine and in § 166.15(c) as States with primary enforcement responsibility. However, Kansas and Oregon have both repealed their laws permitting the feeding of treated garbage to swine. We are, therefore, removing Kansas and Oregon from the list of States in § 166.15(b) that permit the feeding of treated garbage to swine and are adding them to the list of States in § 166.15(a) that prohibit the feeding of garbage to swine. We are also removing both States from the list in § 166.15(c) of States that have primary enforcement responsibility.

Effective Date

We are taking this action to update our regulations with respect to changes that have already occurred in the laws of Kansas and Oregon regarding the feeding of garbage to swine. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary. We also find good cause for making this rule effective less than 30 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

The decision regarding whether or not a State will permit the feeding of garbage to swine is made at the State level. Since the State of Kansas and the State of Oregon have each notified APHIS that State law now prohibits the feeding of garbage to swine, this rule simply amends the regulations to reflect each State's decision.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 166

Animal diseases, Hogs, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 166 is amended as follows:

PART 166—SWINE HEALTH PROTECTION

1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3801–3813; 7 CFR 2.22, 2.8, and 371.4.

§ 166.15 [Amended]

2. Section 166.15 is amended as follows:

a. In paragraph (a), by adding, in alphabetical order, the words "Kansas," and "Oregon,".

b. In paragraph (b), by removing the words "Kansas," and "Oregon,".

c. In paragraph (c), by removing the words "Kansas," and "Oregon,".

Done in Washington, DC, this 10th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3687 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 390

[Docket No. RM02–10–000]

Electronic Registration

February 11, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule: Notice of Suspension.

SUMMARY: The Federal Energy Regulatory Commission is suspending the requirement that users of its online applications register electronically. On December 20, 2002, the Commission issued an order extending the requirement's effective date from the original effective date of January 7, 2003. Through inadvertence, that order was not published in the **Federal Register** until January 15, 2003. The Commission is issuing this order, which is identical in substance to the December 20 order, for the sake of clarity.

DATES: 18 CFR 390.1, published on August 12, 2002 (67 FR 52410) is suspended as of January 7, 2003.

FOR FURTHER INFORMATION CONTACT:
Christopher Cook (information technology advisor), Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8102.
Wilbur Miller (legal advisor), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953.

SUPPLEMENTARY INFORMATION:

Notice of Suspension of Effective Date of Electronic Registration

1. On August 5, 2002, the Commission issued Order No. 891, establishing a system of electronic registration to act as a gateway to its online services.[1] The eRegistration system will allow users to input identifying information only once as a precursor to using services such as electronic filing, electronic subscription, or electronic service. The registration system has been available on the Commission's Web site, *http://www.ferc.gov*, since September as a voluntary system. Order No. 891 provided that eRegistration would become mandatory on January 7, 2003.[2]

2. Currently, eRegistration is not fully integrated with the online services with which it will operate, and this was expected to be the case on the original effective date. The Commission thus, on December 20, 2002, issued an order extending the effective date until adequate integration is achieved. 68 FR 1964 (Jan. 15, 2003.). The Commission stated that, once the system is ready, the Secretary of the Commission will issue a notice of the time when the eRegistration requirement will become effective. In the interim, eRegistration may be a prerequisite for the use of some informational services, such as electronic subscription.

3. Through inadvertence, the Commission's order of December 20, 2002, was not published in the **Federal Register** until January 15, 2003. 68 FR 1964. For the sake of clarity, the Commission in this order will suspend the effectiveness of eRegistration on the same terms as announced in the December 20 order.

The Commission Orders

18 CFR 390.1 is suspended until the new effective date is announced by the Secretary, in a document published in the **Federal Register.**

By the direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3740 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* 18 CFR part 390 (2001).

[2] FERC Stats. & Regs. ¶ 31,132, at p. 30,195 (2002), codifying requirement at 18 CFR 390.1.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 00C–1321]

Listing of Color Additives Exempt From Certification; Mica-Based Pearlescent Pigments; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of November 26, 2002, for the final rule that appeared in the **Federal Register** of October 24, 2002 (67 FR 65311). The final rule amended the color additive regulations to provide for the safe use of mica-based pearlescent pigments as color additives in contact lenses.

DATES: Effective date confirmed: November 26, 2002.

FOR FURTHER INFORMATION CONTACT:
Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3076.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 24, 2002 (67 FR 65311), FDA amended the color additive regulations to add § 73.3128 *Mica-based pearlescent pigments* (21 CFR 73.3128) to provide for the safe use of mica-based pearlescent pigments as color additives in contact lenses.

FDA gave interested persons until November 25, 2002, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of October 24, 2002, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the October 24, 2002, final rule. Accordingly, the amendments issued thereby became effective November 26, 2002.

Dated: Dated: February 7, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3668 Filed 2–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 120

[Public Notice 4274]

RIN AB–62

Bureau of Political-Military Affairs; Amendment to the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) which implements section 38 of the Arms Export Control Act (AECA), that governs the import and export of defense articles and defense services. The rule reflects the changed authorities as a result of the realignment of the responsibilities for defense trade controls.

EFFECTIVE DATE: January 29, 2003.

FOR FURTHER INFORMATION CONTACT:
Robert W. Maggi, Deputy Assistant Secretary and Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State(202) 663–2700 or Michael T. Dixon, Office of Defense Export Controls Management (202) 663–2798; FAX (202) 261–8199.

SUPPLEMENTARY INFORMATION: Effective January 20, 2003, the Department of State will realign responsibilities for defense trade controls under section 38 of the AECA and the International Traffic in Arms Regulations, 22 CFR Parts 120–130 ("ITAR"). Section 120.1(a) of the ITAR is amended to replace "Director of the Office of Defense Trade Controls" with "Deputy Assistant Secretary for Defense Trade Controls and Managing Director of Defense Trade Controls." Section 120.1, subparagraph (b) is amended by inserting "(1)" after "(b)" and by adding the new subparagraph "(b)(2)"; and by adding a new subparagraph "(b)(2)" about the new Directorate of Defense Trade Controls and the positions of the Deputy Assistant Secretary for Defense Trade Controls (DAS–Defense Trade Controls); Managing Director of Defense Trade Controls (MD–Defense Trade Controls); Director, Office of Defense Trade Controls Management; Director, Office of Defense Trade Controls Licensing; Director, Office of Defense Trade Controls Compliance; and Director, Office of Defense Trade Controls Policy. Initially, one individual will hold both the DAS–Defense Trade Controls and MD–Defense Trade Controls positions. The position of Director of the Office of Defense Trade Controls is abolished.

It is anticipated that further amendments to the ITAR will be promulgated in the near future to reflect these specific changes as a result of this realignment.

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1996. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Order 12372 and 13132.

List of Subjects in 22 CFR Part 120

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 120, is being amended as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

2. Section 120.1(a) and (b) are revised to read as follows:

§ 120.1 General authorities and eligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended. This subchapter implements that authority. By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary for Defense Trade Controls and Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs.

(b) (1) *Authorized officials.* All authorities conferred upon the Deputy Assistant Secretary for Defense Trade Controls or the Managing Director of Defense Trade Controls by this subchapter may be exercised at any time by the Under Secretary of State for Arms Control and International Security or the Assistant Secretary of State for Political-Military Affairs unless the Legal Adviser or the Assistant Legal Adviser for Political-Military Affairs of the Department of State determines that any specific exercise of this authority under this paragraph may be inappropriate.

(2) In the Bureau of Political-Military Affairs, there is a Deputy Assistant Secretary for Defense Trade Controls (DAS–Defense Trade Controls) and a Managing Director of Defense Trade Controls (MD–Defense Trade Controls). One individual holds both the DAS–Defense Trade Controls and MD–Defense Trade Controls positions. The position of Director, Office of Defense Trade Controls is abolished. The DAS–Defense Trade Controls/MD–Defense Trade Controls has assumed all duties, responsibilities, and authorities held under the ITAR by that Director. The MD–Defense Trade Controls has responsibility for the Directorate of Defense Trade Controls, which oversees the subordinate offices described in paragraph (b)(2)(i) of this section.

(i) All references to the Office of Defense Trade Controls and the Director of the Office of Defense Trade Controls contained in the International Traffic in Arms Regulations (ITAR) shall be deemed to be references to:

(A) The Office of Defense Trade Controls Management and the Director, Office of Defense Trade Controls Management, respectively, insofar as such references relate to management of defense trade controls operations; to include the exercise of general authorities in this part 120 and the design, development, and refinement of processes, activities, and functional tools for the export licensing regime and to effect export compliance/enforcement activities;

(B) The Office of Defense Trade Controls Licensing and the Director, Office of Defense Trade Controls Licensing, respectively, insofar as such references relate to licensing or other authorization of defense trade, including references under parts 123, 124, 125, 126, 129 and 130 of this subchapter, and the commodity jurisdiction procedure under this part 120;

(C) The Office of Defense Trade Controls Compliance and the Director, Office of Defense Trade Controls Compliance, respectively, insofar as such references relate to violations of law or regulation and compliance therewith, including references contained in parts 127, 128 and 130, of this subchapter, and including references under part 122 of this subchapter, and that portion under part 129 of this subchapter pertaining to registration;

(D) The Office of Defense Trade Controls Policy and the Director, Office of Defense Trade Controls Policy, respectively, insofar as such references relate to the general policies of defense trade, including references under this part 120 and part 126 of this subchapter.

(ii) Future amendments to the ITAR will be promulgated to reflect future realignment of responsibilities for defense trade controls.

* * * * *

Dated: January 29, 2003.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 03–2926 Filed 2–13–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

[FHWA Docket No. FHWA–99–5933]

FHWA RIN 2125–AE95; FTA RIN 2132–AA75

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule on Statewide Transportation Planning; Metropolitan Transportation Planning published in the **Federal Register** on January 23, 2003 (68 FR 3176). The FHWA is correcting the definition of non-metropolitan local official by removing the word "or" and replacing it with the word "and" as stated in the preamble.

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Jill Hochman, Office of Interstate and Border Planning (HEPI), (202) 366–0233, or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Paul Verchinski, Statewide Planning Division (TPL–11), (202) 366–1626, or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

The FHWA in consultation with the Federal Transit Administration, published a final rule on Statewide and Metropolitan Planning on January 24, 2003, at 68 FR 3176. After reviewing the final published document, the agencies realized that there was a mistake in the definition of the non-metropolitan local official. The definition indicated that a non-metropolitan local official, "means the elected or appointed officials of general purpose * * *"; however, the word "or" that follows the word "elected" and precedes the word "appointed" should be an "and". In the section-by-section analysis section of the preamble, the agencies explain that the definition should read "elected and appointed officials of general purpose * * *".

The language for the definition of non-metropolitan local official was jointly proposed by the National Association of Counties (NACO) representing the local governments, the National Association of Development Organizations (NADO) representing local officials and the American Association of State and Highway Transportation Officials (AASHTO) representing the State DOTs. The agencies reviewed this proposed definition and believed it had merit because it came from the organizations whose members are most impacted by the final rule. Therefore, this correction merely changes the "or" to an "and" to accurately reflect the definition we intended to appear in the final rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA and the FTA have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation regulatory policies and procedures. This action merely corrects a definition used in the final rule to remove the word "or" and replace it with the word "and" as stated in the preamble to the final rule. This correction is not a substantive change to the rule, but rather, is a ministerial change necessary to accurately reflect the intent of the agencies.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA and the FTA have evaluated the effects of this final rule on small entities and has determined it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the agencies have determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA and the FTA have also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction; 20.500 Federal Transit Capital Improvement Grants; 20.505, Federal Transit Metropolitan Planning Grants; 20.507, Federal Transit Formula Grants; 20515, State Planning and Research.

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA and the FTA have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and have determined that this action will not have any effect on the quality of environment.

Executive Order 13175 (Tribal Consultation)

The FHWA and the FTA have analyzed this action under Executive Order 13175, dated November 6, 2000. This action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this rule is not a significant energy action under EO 11321 because this rule is not a significant regulatory action and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 450

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

Issued on: February 10, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the Federal Highway Administration is amending title 23, Code of Federal Regulations, part 450, as set forth below:

PART 450—PLANNING ASSISTANCE AND STANDARDS

1. The authority citation for part 450 continues to read as follows:

Authority: 23 U.S.C. 134, 135, and 315; and 49 U.S.C. 5303–5306, 5323(l).

2. Amend § 450.104 to revise the definition of "non-metropolitan local official" to read as follows:

§ 450.104 Definitions.

* * * * *

Non-metropolitan local official means elected and appointed officials of general purpose local government, in non-metropolitan areas, with jurisdiction/responsibility for transportation.

* * * * *

[FR Doc. 03–3735 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–22–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's (PBGC) regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in March 2003. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with

valuation dates during March 2003, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during March 2003, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during March 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.10 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions are unchanged from those in effect for February 2003.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for February 2003.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during March 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 113, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
113	3–1–03	4–1–03	3.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 113, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
113	3–1–03	4–1–03	3.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_1	for t =	i_2	for t =	i_3	for t =
March 2003	.0510	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 7th day of February 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–3691 Filed 2–13–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC82

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Document Incorporated by Reference—American Petroleum Institute's Specification 2C for Offshore Cranes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is incorporating by reference into its regulations the Fifth Edition of the American Petroleum Institute's Specification for Offshore Cranes (API Spec 2C). MMS is taking this action to establish a minimum design standard for cranes installed on fixed platforms on the Outer Continental Shelf (OCS) after the effective date of this rule. The rule also requires lessees to equip all existing cranes installed on OCS fixed platforms with anti-two block safety devices. This final rule will ensure that OCS lessees use the best available and safest technologies for the design and construction of future cranes installed on the OCS.

EFFECTIVE DATE: March 17, 2003. The incorporation by reference of publications listed in the regulation is approved by the Director of the Federal Register as of March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Wilbon Rhome, Industrial Specialist, Operations and Analysis Branch, at (703) 787–1587.

SUPPLEMENTARY INFORMATION: MMS is responsible for the regulation of cranes, booms, and other material-handling equipment installed on fixed platforms according to the 1998 MMS/United States Coast Guard (USCG) Memorandum of Understanding (MOU). MMS currently regulates cranes by requiring lessees and operators to comply with the American Petroleum Institute's Recommended Practice for the Operation and Maintenance of Offshore Cranes (API RP 2D), Fourth Edition. As outlined in the 1998 MOU, USCG is responsible for cranes, booms, and other material-handling equipment installed on mobile offshore drilling units and floating production systems. In short, MMS regulates cranes installed on fixed platforms and the USCG regulates cranes installed on floating facilities.

On July 19, 2001, we published a proposed rule in the **Federal Register** (66 FR 37611) to incorporate API's Specification for Offshore Cranes (API Spec 2C) and to require the installation of anti-two block devices on all cranes on fixed platforms. During the 90-day comment period (which ended on October 19, 2001), MMS received comments from one production operator, one contractor, one trade organization, one crane manufacturer, and three crane service companies. In the preamble to the proposed rule, we requested comments on nine specific questions. We grouped the comments to those questions and our responses in a table. Other comments and our responses follow.

Incorporation of API Spec 2C

This final rule adds API Specification 2C for Offshore Cranes, Fifth Edition, April 3, 1995, to those documents currently incorporated by reference into MMS regulations. MMS has reviewed this document and determined that incorporating it into our regulations ensures that industry uses the best available and safest technologies for the design and construction of cranes used on OCS fixed platforms.

The purpose of incorporating API Spec 2C into the regulations is to establish detailed requirements for the design and construction of pedestal-mounted cranes for new OCS fixed platforms. API Spec 2C includes minimum requirements for equipment, materials, manufacturing procedures, and testing (both design and operational) that are not covered in API RP 2D.

The proposed rule required that new cranes on OCS fixed platforms meet the requirements of API Spec 2C. Comments on the rule indicated that there was uncertainty about which cranes were considered new cranes. Commenters asked if a rental crane was considered a new crane when it moved to a new location and did that rental crane have to meet the requirements of API Spec 2C?

The intent of the proposed rule to incorporate API Spec 2C was twofold: (1) That newly manufactured cranes must be manufactured according to specifications of API Spec 2C; and (2) that cranes installed on new fixed platforms must be manufactured according to specifications of API Spec 2C. Since the use of the term "new" is not precise we revised the final rule by inserting the effective date of the final rule to clarify the intended requirements. We have revised paragraphs (c) and (d) in 30 CFR 250.108 to accurately reflect the intent of the proposed rule. These paragraphs read as follows:

"(c) If a fixed platform is installed after March 17, 2003, all cranes on the platform must meet the requirements of the American Petroleum Institute's Specification for Offshore Cranes (API Spec 2C), incorporated by reference as specified in 30 CFR 250.198."

"(d) All cranes manufactured after March 17, 2003, and installed on a fixed platform, must meet the requirements of API Spec 2C, incorporated by reference as specified in 30 CFR 250.198."

We do not use the term "rental crane" in the final rule because the comments indicated that there are differing definitions of what constitutes a rental crane. A rental crane must meet the same requirements as any other crane installed on a fixed platform. If a rental crane is manufactured after March 17, 2003, then it must meet the requirements of API Spec 2C. If a rental crane is installed on a fixed platform that was installed after March 17, 2003, then it must meet the requirements of API Spec 2C. The comments also raised the issue about the appropriate use of rental cranes. MMS will discuss this issue with interested parties after the publication of this final rule.

Several commenters pointed out that API Spec 2C applies only to pedestal-mounted cranes and that the requirements in the specification may not be appropriate for smaller cranes or other material-handling equipment. MMS understands that API Spec 2C provides specifications for pedestal-mounted cranes and that it is not intended for other types of material-handling equipment. MMS regulates other material-handling equipment by requiring lessees to operate and maintain that equipment in a manner that ensures safe operation and prevents pollution. The requirements for other material-handling equipment are contained in new 30 CFR 250.108(f), previously 30 CFR 250.108(b).

Requirement for Anti-Two Block Devices

This final rule also requires lessees to install anti-two block devices on all existing cranes within 2 years of the effective date of this rule. In the past, MMS has encouraged industry to equip all cranes operating on OCS fixed platforms with an anti-two block safety device, regardless of the age or specific use of the crane. MMS has now determined that anti-two block safety devices must be used on all cranes installed on OCS fixed platforms. We are convinced that retrofitting all existing cranes with the anti-two block safety devices will benefit the industry by increasing safety, and reducing crane incidents on the OCS.

Our concern was highlighted by the International Association of Drilling Contractors in October 2000 when it issued a safety alert titled "Near Miss—Anti-Two Blocking Devices." This safety alert stated that anti-two block safety devices should be installed on all cranes because "Having a safety device like this ensures that everything is in place to prevent a problem. The anti-two block safety device for the crane boom is a protection device as is the crown protection device on the rig's drawworks. Both are very important to working safely."

In response to comments, the final regulations provide a 2-year transition period for the retrofitting of existing OCS fixed platform cranes with anti-two block safety devices. This additional year will allow industry adequate time to implement this change without causing undue hardships.

Recordkeeping Requirements

With the incorporation of API Spec 2C, we would include additional recordkeeping requirements in 30 CFR 250.108 to be consistent with the specification. Current regulations require you to keep inspection, testing, and maintenance records at the OCS facility for at least 2 years. The proposed rule would have expanded this requirement to retain these records for the "life of the crane." Comments received on the proposed rule assert that requiring the lessees to retain these records for the life of the crane would create a significant paperwork and administrative burden. Several commenters recommended that MMS should continue to follow our existing requirements of retaining crane records for 2 years. Another commenter said that keeping inspection, testing, and maintenance records for 4 years would provide a great predictive maintenance tool in determining integrity on previous and future discrepancies. Based on these comments, we have revised the final rule to require lessees to keep inspection, testing, and maintenance records for 4 years. We believe that keeping records for an additional 2 years will allow lessees to make an improved assessment of the crane maintenance program and identify any safety trends.

The final rule also requires the lessee to retain all design and construction records, including installation records for any anti-two block safety devices, for the life of the crane at the OCS fixed platforms. The rule further modifies 30 CFR 250.108 to require lessees to keep training records on rigger personnel, as well as those for crane operators. There were no comments objecting to these requirements.

Response to Comments on Preamble Questions

In the preamble to the proposed rule, we requested comments on nine specific questions. We have grouped the comments to those questions and our responses in the following table.

MMS questions	Comments received	MMS response
(a) Will the the addition of API Spec 2C to MMS' documents incorporated by reference increase safety and safe operations on the OCS?	Most commenters agreed that incorporating API Spec 2C would increase safety on the OCS? One commenter stated that there is too much flexibility in the interpretation of API Spec 2C for it to have any effect on safety. Noted flexibility shortcomings were that Spec 2C only applied to pedestal cranes, that more specificity was needed in presenting the basis of rating for load rating charts, and the noise level allowed was too high.	MMS has incorporated API Spec 2C in the regulations to promote safe crane operations on the OCS. MMS has determined that API Spec 2C is the best available reference for the design, construction, and testing of pedestal mounted cranes for offshore use. Any valid shortcomings of this document should be addressed in the next edition. It is not a shortcoming of this document in that it only applies to pedestal-mounted cranes.

MMS questions	Comments received	MMS response
(b) Are there other standards for offshore cranes that may be appropriate for MMS to incorporate as part of MMS' regulations?	All commenters with the exception of one responded "no" to this question. One commenter stated that MMS should accept cranes certified in accordance with the requirements of the American Bureau of Shipping (ABS) Certification of Cranes (ABS 1991).	MMS reviewed the ABS standard and, while we recognize that there are some similarities between ABS and API Sec 2C, we do not think that ABS is as widely accepted or recognized as an industry standard for cranes on OCS fixed platforms.
(c) When should MMS require all cranes on OCS fixed platforms to be fully compliant with API Spec 2C?	Most commenters said that many cranes cannot become compliant with API Spec 2C for a number of reasons (*i.e.*, engineering data not available, some cranes used offshore are not offshore are not pedestal cranes so they cannot comply with API Spec 2C, etc). Even if you could retrofit some of the cranes the costs would exceed the benefits. A couple of commenters said MMS should grandfather older cranes under any new regulations.	MMS understands that there are many types of cranes working on fixed platforms on the OCS. The final rule clarifies that the only cranes that must meet the requirements of API Spec 2C are: • If a fixed platform is installed engineering data after March 17, 2003, all cranes on the platform must meet the requirements of the American Petroleum Institutes's Specification for Offshore Cranes (API Spec 2C), incorporated by references as specified in 30 CFR 250.108. • All cranes manufactured after March 17, 2003, and installed on a fixed platform, must meet the requirements of API Spec 2C, incorporated by reference as specified in 30 CFR 250.108. Except for these cases, the final rule does not prohibit the use of cranes that do not meet the requirements of API Spec 2C.
(d) Is a 1-year transition period enough time for industry to comply with the change proposed in 30 CFR 250.108(c)?	One commenter stated that 1 year should offer enough time to comply if MMS is willing to accept as "existing" any cranes that had been ordered prior to the date of the final rule. Several commenters stated that the 1-year transition period is inadequate and will not allow for a systematic approach for retrofitting pre-1983, older model, and existing mechanical cranes with the required anti-two block safety device.	MMS revised the final rule to provide 2 years instead of 1 year for installing the anti-two block safety device on all existing cranes because the proposed 1-year transition period did not allow adequate time for all lessees to install the anti-two block device on the necessary cranes. The final rule does not require the retrofitting of any cranes to the specifications of API Spec 2C.
(e) Should MMS establish a requirement similar to the U.S. Coast Guard (USCG), which requires cranes to be installed according to an approved crane plan and inspected and load tested by an Agency-approved third party when the crane is installed?	One commenter stated that it used a third-party crane servicing company to conduct the initial load test for all temporary crane installations and recommended this practice for all initial installations of temporary cranes. One commenter recommended the installation of cranes according to plan approved by a qualified engineer but third-party witnessing was not necessary. Another said API RP 2D adequately addresses requirements for new crane installations. Another period out the crane manufacturer or crane manufacturer's qualified agent should perform the installation, inspection, and load testing of new cranes. The commenter also saw no value in a third party witnessing the installation because it does not perform any type of inspection other than a walk-around, visual type of inspection.	This final rule does not require an approved crane plan or third-party inspection for the installation of cranes. As pointed out by several commenters, API RP 2D does address load testing for the installation of new cranes placed in service, cranes that are being permanently relocated, and rental cranes after each rig-up or relocation. However, MMS believes that the installation of rental cranes and the relocation of cranes are issues that warrant additional discussions with operators, crane manufacturers, crane service companies, and other interested parties. MMS will being discussions with interested parties after the publication of this final rule.
(f) Should MMS require all new cranes for installation on OCS fixed platforms to have an API monogram on the nameplate of the crane as evidence of certification of anti-two block safety device?	Several commenters pointed out that manufacturers that apply the API monogram to the nameplate are warranting that they have an API license and that the construction of the crane complies in *all* details to API Spec 2C (not limited just to certification of the anti-two block safety devices).	MMS understands that all manufacturers that participate in the monogram program must meet all requirements set forth in API Spec 2C, including evidence of certification of the anti-two block safety devices. The API monogram is strictly voluntary and MMS has no plans to make this program a requirement.

MMS questions	Comments received	MMS response
(g) Should a rental crane that is installed on OCS fixed platforms be considered a new crane and, therefore be required to be fully compliant with API Spec 2C?	All that commented said that rental cranes should not be considered a new crane. Additional comments were:. • But rental cranes should meet API Spec 2C. • It is not practical to retroactively seek certification of existing rental cranes. • All new rental cranes should be compliant with API Spec 2C, but some existing rental cranes may not be able to be brought to the specification. "Rental cranes" covers a large variety of lifting devices. A considerable number of rental cranes are misrepresented. All rental cranes that are designed to pick up over 10,000 pounds should be required to meet the requirements of API Spec 2C.	The term "rental crane" is not used in the final rule. The final rule clarifies which cranes must meet the requirements of API Spec 2C. The response to question (c) identifies the cranes that must meet the specification. Comments on rental cranes indicated that there are differing definitions of what constitutes a rental crane. The comments also raise the issue about the appropriate use of rental cranes. MMS will include these issues in the discussion with interested parties after the publication of the final rule.
(h) Should MMS limit the type of anti-two block devices that are acceptable? What are the known failure rates of the different types?	One commenter said that all hydraulic cranes should have a shut down system as the anti-two block device. Mechanical cranes could allow for audible alarms until the crane has a major overhaul. Another commenter states that MMS should limit the types of anti-two block safety devices to those capable of shutting down the crane. One comment was that MMS should not limit the types of anti-two block devices because API 2C adequately addresses the issue. One comment suggested that MMS examine the Society of Automotive Engineers (SAE) standards regarding problems that may be encountered with the different types of anti-two block safety devices. One commenter stated the repeated testing as required by API RP 2D leads to the failure of the device.	The final does not limit the type of anti-two block devices that must be installed on all cranes. The final rule provides lessees and operators the flexibility and opportunity to choose the anti-two block safety device that best suits the particular operation. Limiting lessees to a certain type of anti-two block device could create a financial hardship and may not increase safety. It is the lessee's responsibility to operate its cranes safely. The MMS' review of the SAE standard did not reveal any new information that could be used as part of this final rule.
(i) Should MMS consider an additional cost factor for retrofitting existing cranes with the anti-two block safety device (*e.g.*, an associated cost for the amount of time a crane is expected to be out-of-service while it is being retrofitted).	One commenter said that MMS should consider all costs associated with the installation of anti-two blocks. Another said MMS should consider out-of-service time while another commenter said that the time to install the necessary equipment could be planned to minimize or eliminate any out-of-service time. MMS should also consider the cost of replacing a crane if it can't be retrofitted for an anti-two block device	With proper planning (*e.g.*, parts and personnel are at the work location before the crane is taken out of service), lessees should be able to keep out-of-service time a minimum. The final rule now provides a 2-year instead of the 1-year transition period that was in the proposed rule. This revision ensures that lessees will have sufficient time to install an anti-two block device without disrupting crane activities. MMS has determined that any additional costs associated with retrofitting existing cranes should be minimized and were considered in this rulemaking.

As noted in the responses to question (e), MMS believes that the installation of rental cranes and the relocation of cranes are issues that warrant additional attention. There have been numerous incidents and serious accidents involving the installation and use of rental cranes, including a fatal accident that occurred on May 5, 2002. However, any additional regulatory actions dealing with rental cranes are beyond the scope of this rulemaking. MMS will initiate discussions with operators, crane manufacturers, crane service companies, and other interested parties on the issues concerning rental cranes.

Finally, one commenter provided several relatively inexpensive suggestions and modifications for making older cranes (pre-1983) safer. These suggestions and modifications are:

- Maintain and post "Actual Lift Capacity Charts" in the cab of crane.
- Install high angle safety systems for lattice boom cranes or cranes that use a boom hoist and wire rope to lift the boom.
- Upgrade wire rope to meet the latest API Spec 2C safety factors.
- Post caution signs on all pre-1983 cranes and all non-API cranes to warn the crane operators that these cranes may not have the same safety factors as cranes built after 1983.

MMS is passing these suggestions on to lessees, operators, and contractors in the hope that they may be used to improve crane safety on the OCS.

Procedural Matters

The specifications in the API Spec 2C document we are incorporating by reference are currently widely accepted industry standards. The USCG has already incorporated API Spec 2C into its regulations. All cranes manufactured after 1983 came equipped with the anti-two block safety devices, and many earlier model cranes have been retrofitted with the anti-two block safety devices. The final rule will cause lessees to retrofit approximately 200 cranes that currently do not have anti-two block devices. MMS estimates that this will cost lessees approximately $800,000.

The final rule also provides 2 years for industry to complete the retrofit. The 2-year period will allow industry to schedule the required retrofits in a systematic approach. Therefore, this regulation's impact on the entire OCS oil and gas industry is minor.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The major purpose of this final rule is to establish a minimum design standard for future cranes installed on fixed platforms on the OCS and to prevent accidents that can be prevented by equipping cranes with anti-two block safety devices. This rule requires lessees to equip all existing cranes installed on OCS fixed platforms with anti-two block safety devices by March 16, 2005. Since API Spec 2C has already been accepted as an industry standard by most of the offshore community, including the USCG, the impact of this regulation on the entire industry is minor. Therefore, the associated costs to equip the remaining cranes, not previously retrofitted with anti-two block safety devices, will be minor. Based on our experience and information in MMS's Technical Information Management System, we estimate that about 5 percent (or a total of not more than 200) of the estimated 4,000 cranes located on OCS fixed platforms will need to be retrofitted with the anti-two block safety device. We estimate that this will cost approximately $4,000 per retrofit, for a total cost of not more than $800,000.

(2) This final rule will not create inconsistencies with other agencies' actions. This rule will not affect how lessees or operators interact with other agencies.

(3) This final rule will not affect entitlements, grants, user fees, loan programs, or their recipients. The rule deals only with the action to incorporate by reference API Spec 2C into our regulations.

(4) This final rule will not raise novel legal or policy issues. The final rule does involve a new policy issue to require lessees to equip all new and existing cranes installed on OCS fixed platforms with anti-two block safety devices, but this new policy decision is not "novel." The final rule simply addresses recognized gaps in our safety regulations. These minimum requirements are generally accepted industry practices.

Regulatory Flexibility (RF) Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the RF Act (5 U.S.C. 601 *et seq.*). An RF Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

The provisions of this rule will not have a significant economic effect on lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Offshore lessees/operators are classified under SBA's North American Industry Classification System (NAICS) code 211111 (Crude Petroleum and Natural Gas Extraction) and NAICS 213111 code (Drilling Oil and Gas Wells). We estimate approximately 130 companies will be affected by this rulemaking. According to SBA criteria, 39 companies are large firms, leaving approximately 91 companies (70 percent) that may qualify as small firms with fewer than 500 employees.

We estimate that about 5 percent of the 4,000 cranes (not more than 200) located on the OCS need to be retrofitted with anti-two block safety devices. Retrofitting an existing crane with an anti-two block system would cost approximately $4,000. Since 70 percent of the businesses operating on the OCS are small business firms, a corresponding 70 percent of the 200 cranes to be retrofitted would most likely involve small entities. The cost to small entities to retrofit these 140 cranes with anti-two block safety devices to comply with this standard is estimated to be $560,000 (140 × $4,000 = $560,000).

While MMS does not know how many cranes each small operator must retrofit, MMS expects that the typical small operator would need to retrofit one or two cranes during the 2-year period allowed by the final rule. The cost for the typical small operator would be between $4,000 and $8,000 over the 2-year period. This cost does not constitute a significant impact to the typical small operator. There may be a few small operators that will need to retrofit several more cranes than the typical small operator. The costs for these few small operators could double or triple the costs incurred by the typical small operator. However, MMS believes that even these increased costs do not constitute a significant impact to these small operators. In addition, an operator can decide not to retrofit the crane with an anti-two block device. The operator has the option of taking the crane out of service or obtaining a rental crane to take its place. Therefore, this rule does not constitute a significant impact upon a substantial number of small entities.

This final rule applies to all lessees and operating companies that operate cranes on OCS fixed platforms. Incorporation of this new document into MMS regulations will:

(1) Increase safety;

(2) Provide the oil and gas industry with uniform guidelines and detailed requirements for design and construction of pedestal-mounted cranes for OCS fixed platforms; and

(3) Provide for consistency with other regulatory agencies such as the USCG.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(1) Does not have an annual effect on the economy of $100 million or more. The final rule will not cause any significant costs to lessees or operators. The only costs will be the purchase of the API Spec 2C document, minor revisions to company operating procedures, and the installation of an anti-two block device on cranes installed on OCS fixed platforms that do not already have this safety device. These costs should be approximately $800,000 for the entire industry.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or

local government agencies, or geographic regions.

(3) Will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This rule applies to the lessees operating cranes on OCS fixed platforms.

Paperwork Reduction Act (PRA) of 1995

According to the PRA, an agency may not conduct or sponsor a collection of information unless it displays a current OMB control number. Until OMB approves the collection of information and assigns a control number, you are not required to respond. In connection with the proposed rulemaking, we submitted the information collection requirements to OMB for review and approval under section 3507(d) of the PRA. OMB approved the collection and assigned OMB control number 1010–0146, with a current expiration date of September 30, 2004. The information collection requirements in these final regulations remain unchanged from those OMB approved for the proposed rule, with one exception. We reduced certain proposed record retention requirements from "life of the crane" to 4 years. Since this change will have no effect on the annual paperwork burden of the regulations, we have determined that MMS is not required to resubmit the information collection requirements in the final regulations to OMB for approval.

The title of the collection of information for this final rule is "30 CFR 250, Subpart A—Crane Requirements." Potential respondents are approximately 130 Federal OCS lessees and operators. The paperwork requirements in the final regulations are mandatory. This collection does not include proprietary information or questions of a sensitive nature. MMS will use the information to determine that crane operations are safe and that crane operators and rigger personnel meet the physical qualifications and have completed appropriate training.

Current regulations at 30 CFR 250.108(d)(2) require that lessees retain records on testing, inspection, and maintenance of cranes installed on OCS fixed platforms for 2 years, and retain records on crane operator qualifications for at least 4 years. As previously discussed, this final regulation revises the 2-year retention period to 4 years, and expands the qualification recordkeeping to include rigger personnel as well as crane operators. The final regulations also require lessees to retain records on crane design, construction, and retrofitting for the life of the crane. MMS estimated the paperwork burden to be an additional 2 hours per respondent each year for the expanded recordkeeping requirements. OMB approved a for a total of 260 annual burden hours for this requirement.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments because it concerns the manufacturing requirements for specific equipment used in offshore oil and gas activities. The rule only affects manufacturers and users of such equipment. This rule does not impose costs on State or localities, as it only affects manufacturers and users of specific equipment used in offshore oil and gas activities.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, this rule does not have significant Takings implications. A Takings Implication Assessment is not required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Unfunded Mandates Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, and tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Government-to-Government Relationship With Tribes

According to the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have determined that there are no effects from this action on Federally-recognized Indian tribes.

List of Subjects

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: January 29, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Mineral Management.

For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. Section 250.108 is revised as follows:

§ 250.108 What requirements must I follow for cranes and other material-handling equipment?

(a) All cranes installed on fixed platforms must be operated in accordance with American Petroleum Institute's Recommended Practice for Operation and Maintenance of Offshore Cranes (API RP 2D), incorporated by reference as specified in 30 CFR 250.198.

(b) All cranes installed on fixed platforms must be equipped with a functional anti-two block device by March 16, 2005.

(c) If a fixed platform is installed after March 17, 2003, all cranes on the platform must meet the requirements of the American Petroleum Institute's Specification for Offshore Cranes (API Spec 2C), incorporated by reference as specified in 30 CFR 250.198.

(d) All cranes manufactured after March 17, 2003, and installed on a fixed platform, must meet the requirements of API Spec 2C, incorporated by reference as specified in 30 CFR 250.198.

(e) You must maintain records specific to a crane or the operation of a crane installed on an OCS fixed platform, as follows:

(1) Retain all design and construction records, including installation records for any anti-two block safety devices, for the life of the crane. The records must be kept at the OCS fixed platform.

(2) Retain all inspection, testing, and maintenance records of cranes for at least 4 years. The records must be kept at the OCS fixed platform.

(3) Retain the qualification records of the crane operator and all rigger personnel for at least 4 years. The records must be kept at the OCS fixed platform.

(f) You must operate and maintain all other material-handling equipment in a manner that ensures safe operations and prevents pollution.

3. In § 250.198, in the table in paragraph (e) a new entry for "API Spec 2C" is added in alphanumerical order, and the entry for "API RP 2D" is revised as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at
API Spec 2C, Specification for Offshore Cranes, Fifth Edition, April 1, 1995, API Stock No. G02C05	§ 250.108(c) and (d).
API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Fourth Edition, August 1, 1999, API Stock No. G02D04.	§ 250.108(a).

* * * * * * * * *

[FR Doc. 03–3424 Filed 2–13–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 321, 351, 352, 353, 359, and 360

United States Savings Bonds; Extension of Holding Period; Correction

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: We published a final rule in the **Federal Register** of January 17, 2003, increasing the period of time that owners of United States Series EE and I Savings Bonds must hold their bonds before the bonds are eligible for redemption. The mandatory holding period increased from 6 months to 12 months for bonds purchased on or after February 1, 2003. Although the rule correctly references the February 1, 2003 date for bonds affected by the increased holding period, the rule stated that bonds issued December 1, 2002, or earlier, are unaffected by the change and continue to retain the 6 months holding period. The rule should have stated that bonds issued January 1, 2003, or earlier, will continue to retain the 6 months holding period. This document corrects that misstatement.

EFFECTIVE DATE: Effective on February 1, 2003.

ADDRESSES: You can download this correction at the following Internet address: *http://www.publicdebt.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *(susan.klimas@bpd.treas.gov).* Dean Adams, Assistant Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *(dean.adams@bpd.treas.gov).*

SUPPLEMENTARY INFORMATION: We published in the January 17, 2003 **Federal Register** a final rule that increased the period of time that owners of United States Series EE and I Savings Bonds must hold their bonds before the bonds are eligible for redemption. This mandatory holding period increased from 6 months to 12 months for bonds purchased on or after February 1, 2003. Although the rule correctly references the February 1, 2003 date for bonds affected by the increased holding period, the rule stated that bonds issued December 1, 2002, or earlier, are unaffected by the change. (The issue date of a Series EE or I bond is the first day of the month in which a qualified issuing agent or organization receives or accumulates the full purchase price of the bond.) The rule should have stated that bonds issued January 1, 2003, or earlier, continue to retain the 6 months holding period. The misstatement could cause confusion for bond owners who purchased bonds during December 2002. This document corrects that misstatement.

In the FR Document 03–1114 published on January 17, 2003, (Vol. 68, No. 12, page 2666–2667, make the following corrections: change "December 1, 2002" to "January 1, 2003," where it appears in §§ 321.8(a)(1), 321.9(a)(1), Appendix to Part 321, section (8)(a), §§ 351.2(d), 352.7(a), 353.35(b), 359.6(a), and 360.35(b).

Dated: February 12, 2003.

Van Zeck,

Commissioner, Bureau of the Public Debt.

[FR Doc. 03–3820 Filed 2–13–03; 8:45 am]

BILLING CODE 4810–39–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–03–003]

RIN 2115–AE47

Drawbridge Operating Regulations; Gulf Intracoastal Waterway, Grand Lake, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 384 (Grand Lake) pontoon bridge across the Gulf Intracoastal Waterway, mile 231.4 West of Harvey Locks, at Grand Lake, Cameron Parish, Louisiana. This deviation allows the bridge to remain closed to navigation for two four-hour periods, Monday through Thursday, from February 17 through March 27, 2003. The deviation is necessary to allow for the repairs to the fender system of the bridge.

DATES: This deviation is effective from 7 a.m. on Monday, February 17, 2003 until 5 p.m. on Thursday, March 27, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 504–589–2965. The Bridge Administration Branch, Eighth District, maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to repair the fender system of the bridge. The repairs are necessary for the continued safe operation of the bridge. This deviation allows the draw of the SR 384 bridge to remain closed to navigation from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m. daily, Monday through Thursday, from February 17, 2003 through March 27, 2003.

The pontoon bridge has no vertical clearance in the closed-to-navigation position. The bridge normally opens to pass navigation an average of 1005 times a month. In accordance with 33 CFR 117.5, the bridge opens on signal for the passage of vessels. The bridge will be able to open for emergencies during the closure period; however, pile-driving equipment will have to be secured and moved prior to the opening of the bridge. Navigation on the waterway consists mainly of tugs with tows and some fishing vessels. No practical alternate route is readily available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 5, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–3738 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–63–2–7585; FRL–7451–8]

Approval of Revisions to the Louisiana Department of Environmental Quality Title 33 Environmental Quality Part III; Chapter 6 Emission Reduction Credits Banking in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) published in the **Federal Register** of September 27, 2002 (67 FR 60871) a document approving revisions to the Louisiana Department of Environmental Quality Title 33 Environmental Quality Part III; Air Chapter 6 Emission Reduction Credits Banking in Nonattainment Areas. This document corrects an error in the September 30, 2002, rulemaking action.

EFFECTIVE DATE: This rule will be effective February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Stankosky of the EPA Region 6 Air Permits Section at (214) 665–7525.

SUPPLEMENTARY INFORMATION: The EPA published in the **Federal Register** of September 27, 2002 (67 FR 60871) a document approving revisions to the Louisiana Department of Environmental Quality Title 33 Environmental Quality Part III; Air Chapter 6 Emission Reduction Credits Banking in Nonattainment Areas. On page 60873 of the September 27, 2002 action, EPA incorrectly stated that Tulane Environmental Law Clinic (TELC) submitted comments. We should instead have stated that the TELC submitted comments on behalf of its client, the Louisiana Environmental Action Network (LEAN).

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 30, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–3583 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0034; FRL–7291–3]

Imazamox; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the imazamox on all food commodities when applied/used as a herbicide. The Interregional Research Project Number 4 (IR-4) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. After review of the available data, EPA determined that the toxicological profile for imazamox supports an exemption from the requirement of a tolerance; no adverse effects were observed in the submitted toxicological studies regardless of the route of exposure. Since this regulation eliminates the need to establish maximum permissible levels for residues of imazamox, the Agency is also deleting 40 CFR 180.508, which includes previously established maximum permissible levels for residues of imazamox.

DATES: This regulation is effective February 14, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0034, must be received on or before April 15, 2003.

ADDRESSES: Written objections and hearing requests submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9368; e-mail address: jamerson.hoyt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production
- Animal production
- Food manufacturing
- Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0034. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document — electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of December 23, 2002 (67 FR 78229) (FRL–7284–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 2E6472) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by BASF Corporation. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of imazamox (2-[4,5-dihydro-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-methoxymethyl-3-pyridinecarboxylic acid) in or on all food commodities.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imazamox are discussed in this unit.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rodents	NOAEL = 1661 milligram/kilogram/day (mg/kg/day), highest dose tested (HDT) There were no treatment-related effects observed in this study.
870.3150	90-Day oral toxicity in nonrodents	NOAEL = 1.3 gram/kilogram/day (g/kg/day) (HDT) There were no treatment-related effects observed in this study.
870.3200	21/28-Day dermal toxicity	NOAEL = 1000 mg/kg/day (HDT) There were no observed toxic effects at any dose level.
870.3700a	Prenatal developmental in rodents (rat)	Maternal NOAEL = > 1000 mg/kg/day (limit dose)

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
		No maternal toxicity or clinical signs of toxicity were observed. Mean body weight gain was reduced during the early dosing periods (days 6–12) at the 1000 mg/kg/day dose compared to the control group. Body weights were comparable between the treated and the control groups for the remainder of the dosage period (days 12–16) and the post dosage period (days 16 to 20). Slightly reduced mean body weight gain observed during early dosing period (days 6–12) was not considered biologically relevant. Developmental NOAEL = equal to or greater than 1000 mg/kg/day. No treatment-related fetal gross external, visceral or skeletal malformations or variations were seen at any dose level.
870.3700b	Prenatal developmental in nonrodents (rabbit)	Maternal NOAEL = 900 mg/kg/day (HDT) Marginally reduced body weights and slightly decreased food consumption in F1 males and females were observed in in test animals at the 900 mg/kg/day dose level, but were not considered biologically significant. Developmental NOAEL = equal to or greater than 900 mg/kg/day (HDT) There were no treatment-related developmental effects observed at any of the administered dose levels.
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 1469 mg/kg/day in males/ 1705 mg/kg/day in females (HDT) There were no treatment-related systemic or reproductive toxicity observed at any of the administered dose levels.
870.4100b	Chronic toxicity dogs	NOAEL = 1,165 mg/kg/day (HDT) There were no treatment-related effects observed at any of the administered dose levels.
870.4200	Carcino-genicity rats	NOAEL = 1,068 mg/kg/day in males/1,284 mg/kg/day in females (HDT) There were no treatment-related effects observed in this study. There was no evidence of carcinogenicity in rats treated with imazamox in the diet for 24 months. The highest dose tested (1,068/1,284 mg/kg/day) is considered an adequate upper limit for this study.
870.4300	Carcino-genicity mice	NOAEL = 1,053 mg/kg/day for males (HDT)/1,348 mg/kg/day for females (HDT) There were no treatment-related effects observed in this study. There was no evidence of carcinogenicity in mice treated with imazamox in the diet for 24 months. The highest dose tested (1,053/1,348 mg/kg/day) is considered an adequate upper limit for this study.
870.5100	Gene Mutation	Negative
870.5375	Cytogenetics	Negative
870.5385	Other Effects	Negative
870.7485	Metabolism and pharmacokinetics	[^{14}C]Imazamox was readily absorbed by male and female rats following intravenous or oral dosing. Imazamox was rapidly excreted as the unchanged parent compound, primarily in the urine following intravenous administration and in the urine and feces following oral administration.

IV. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. Based on a review of the available data, EPA concluded that imazamox showed no toxicological endpoints of concern and, therefore, no dietary, occupational, residential, or aggregate risk assessments are needed.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.508) for residues of imazamox, per se, in or on canola and the legume vegetable group; imazamox and its metabolite AC263284 in or on wheat (bran, germ, grain, forage, hay, shorts, and straw); and imazamox and its metabolites AC26284 and AC312622 in or on alfalfa (seed, forage and hay). Time-limited tolerances for section 18 emergency exemptions are established for dry bean and canola. Section 180.508, which lists the maximum permissible levels for imazamox, will be removed since this regulation eliminates the need to establish maximum permissible levels for residues of the pesticide.

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. EPA concluded that no acute toxicological endpoint was identified from the toxicological studies submitted for imazamox, including oral developmental toxicity studies in rats and rabbits. Therefore, an acute dietary risk assessment was not conducted.

ii. *Chronic exposure.* EPA concluded that a chronic dietary risk assessment is not needed since no toxicity was observed at doses exceeding the Limit-Dose (1,000 mg/kg/day and higher) in chronic and subchronic studies in mice, rats, and dogs. A dose of 1,000 mg/kg/day is equivalent to a human diet in which the pesticide comprises approximately 7 percent of dietary consumption.

iii. *Cancer.* Imazamox is classified as a "not likely human carcinogen" based on the lack of evidence of carcinogenicity in mice and rats. Therefore a cancer risk assessment was not performed.

2. *Drinking water exposure.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for imazamox in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of imazamox.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) for imazamox for acute exposures are estimated to be 5.7 parts per billion (ppb) for surface water and 1.0 ppb for ground water. The EECs for chronic exposures are estimated to be 0.61 ppb for surface water and 1.0 ppb for ground water.

B. Other Non-Occupational Exposure

The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Imazamox is not registered or proposed for use on any sites that would result in residential exposure.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether imazamox has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imazamox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imazamox has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

VII. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. Population.* The toxicological profile for imazamox supports a tolerance exemption since no adverse effects were observed in the submitted toxicological studies regardless of the route of exposure. EPA does not expect imazamox to pose a dietary risk under reasonable foreseeable circumstances and, thus, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to imazamox residues. Accordingly, EPA finds that exempting imazamox from the requirement of a tolerance will be safe.

2. *Infants and children.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

EPA concludes there is a complete toxicity data base for imazamox and there is no evidence of pre-natal or post-natal toxicity to rat or rabbit fetuses following in utero exposure in the developmental studies or to young rats in the reproduction study. Due to the lack of toxicity in the animal studies,

EPA did not use a margin of exposure (safety) approach to assess the safety of imazamox. For this same reason, an additional margin of safety is not needed for infants and children. The Agency concludes that an exemption from the requirement of a tolerance for imazamox will be safe for infants and children.

VIII. Other Considerations

A. Analytical Method(s)

An analytical method for enforcement purposes is not required, this action eliminates the need for maximum permissible levels for residues of imazamox in or on food commodities.

B. Existing Tolerances

Tolerances are established (40 CFR 180.508) for residues of imazamox, per se, in or on canola and the legume vegetable group; imazamox and its metabolite AC263284 in or on wheat (bran, germ, grain, forage, hay, shorts, and straw); and imazamox and its metabolites AC26284 and AC312622 in or on alfalfa (seed, forage and hay). Time-limited tolerances for section 18 emergency exemptions are established for dry bean and canola. Section 180.508 will be removed since this regulation eliminates the need for maximum permissible levels for residues of the pesticide.

C. International Tolerances

There are no established or proposed Codex Maximum Residue Limits (MRLs) for imazamox.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0034 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 15, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0034, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 4, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.508 [Removed]

2. Section 180.508 is removed.

3. Section 180.1223 is added to subpart D to read as follows:

§ 180.1223 Imazamox; exemption from the requirement of a tolerance.

The herbicide imazamox, (±) 2, -[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(methoxymethyl)-3-pyridinecarboxylic acid, is exempt from the requirement of a tolerance on all food commodities when applied as a herbicide in accordance with good agricultural practices.

[FR Doc. 03–3699 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–S

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This Final Rule makes several revisions to the LSC regulations implementing the Freedom of Information Act. The revisions add provisions detailing the submitter's rights process, provide LSC with express authority to defer action on pending and additional requests and appeals when a requester has an outstanding fee balance, and clarify the applicable fee waiver standards. LSC is also revising the applicable fee structure to better reflect LSC's costs in complying with FOIA. Finally, the Final Rule contains technical changes to reflect current LSC nomenclature.

DATES: This Final Rule is effective March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE., Washington, DC 20002–4250; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: LSC is subject to the Freedom of Information Act (FOIA) by the terms of the Legal Services Corporation Act. 42 U.S.C. 2996d(g).[1] LSC has implemented FOIA by adopting regulations which contain the rules and procedures the Corporation follows in making agency records available to the public under FOIA. As part of an overall review of LSC's regulations, LSC determined that a variety of amendments to LSC's FOIA regulation are in order and Part 1602 was assigned a high priority for rulemaking. In light of the above, at the August 24, 2002, meeting of the Board of Directors, the Board identified Part 1602 as an appropriate subject for rulemaking and LSC subsequently announced that it was initiating a Notice and Comment rulemaking to consider revisions to its FOIA regulations. Subsequently, LSC published a Notice of Proposed Rulemaking (NPRM) on November 18, 2002 (67 FR 69498).

LSC received seven comments on the NPRM, all of which generally supported the proposed revisions. Upon receipt of the comments, LSC drafted a Final Rule for the consideration of the Operations and Regulations Committee of the Board of Directors. This Final Rule was adopted by the Board of Directors at its meeting of February 1, 2003.

Submitter's Rights Process

Pursuant to current LSC practice, if a request is received for the grant application records of a current or prospective recipient, LSC provides that applicant with an opportunity to request that some or all of the records requested be withheld from disclosure prior to LSC sending its response to the requester. This practice, which is consistent with current FOIA law, is not described or discussed in the regulations. The submitter's rights process affords important rights to grant applicants and also impacts requesters who have to wait until the submitter's rights process has been completed to obtain releasable records subject to this process. LSC believes that it is important, therefore, for this process to be explicitly set forth in Part 1602. Accordingly, LSC proposed to add a new section 1602.14, Submitter's rights process, to formally incorporate the Corporation's current practice into the regulations.

At the outset, LSC notes that its submitter's rights process is based on the submitter's rights process outlined in Federal Executive Order No. 12,600 (June 23, 1987). E.O. 12,600 required Federal agencies to "establish procedures to notify submitters of records containing confidential information [information arguably subject to FOIA Exemption 4] * * * when those records are requested under the Freedom of Information Act * * *." (Emphasis added) Although LSC is not a Federal agency, and, therefore, not subject to E.O. 12,600, LSC chose to develop a policy consistent with the Order. LSC believes that grant application records are the only records likely to contain "confidential information," the release of which could cause competitive harm. Thus, the current submitter's rights process is only invoked in relation to requests for grant application information, but not other records submitted by recipients. LSC proposed to keep the process limited to requests for grant application materials, but specifically invited comment on whether there are other records submitted by recipients which would likely be subject to withholding under Exemption 4.

LSC received five comments specifically addressing this issue. Two of the five comments supported the proposed submitter's rights section as proposed. The other three comments all supported the proposed section while also urging LSC to broaden the process to cover any information submitted by grantees and which might be subject to any exemption from disclosure under FOIA. Although the commenters make good points about specific records being likely to be exempt from disclosure, LSC is not persuaded that the submitter's rights process should be extended to cover records other than grant applications and exemption 4 information, disclosure of which could cause competitive harm.

Some of the information specifically referenced by the commenters, such as client names, financial records, etc., are already specifically protected from disclosure under 509(i) of the appropriations act (thus implicating FOIA exemption 3—information specifically protected from disclosure by law). LSC already knows not to disclose this information and believes that including requests for records that would be subject to this disclosure to the submitter's rights process would only add unnecessary administrative obstacles to fulfilling its obligations under FOIA. Moreover, whether information contained in client files, statements of facts, 1644 disclosure forms, and personnel files (examples mentioned by at least one commenter) would be subject FOIA exemption 6 (personal privacy) information or exemption 7 (law enforcement/personal privacy) information is a question which is properly decided by the Corporation under FOIA exemptions on a case-by-case basis under the case law interpreting FOIA. To date, LSC has experienced no problems concerning releasing or withholding requested information contained in recipient provided records. Accordingly, LSC declines to broaden the proposed submitter's rights process beyond the circumstances envisioned by the Executive Order and has been implemented at LSC.

Accordingly, LSC adopts new section 1602.14 as proposed. Under the new section, when the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation will provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested records (or any portion thereof). If a submitter who has received notice of a request for the submitter's records objects to the disclosure of the records (or any portion thereof), the submitter will have to submit a written detailed statement identifying the information for which disclosure is objected to and specifying the grounds for withholding the information under the confidential information exemption of FOIA or this Part. The submitter's statement will have to be provided to LSC within seven business days of the date of the notice from the Corporation and if the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

Upon receipt of written objection to disclosure by a submitter, LSC will be required to consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC will be required to give the submitter written notice that the Corporation was rejecting the submitter's withholding request (including an explanation of why the request was being rejected) and informing the submitter that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision will be final.

Under paragraph (d), the submitter's rights process will not apply if (1) LSC determines, upon initial review, that the information requested is exempt from disclosure; (2) the information has been previously published or officially made available to the public; or (3) disclosure of the information is required by statute (other than FOIA) or LSC regulations.

In addition, LSC is including provisions requiring that: (1) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC will have to promptly notify the submitter; (2) whenever LSC provides a submitter with notice and opportunity to object to disclosure under this section, LSC will also notify the requester; and (3) whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC will notify the requester.

LSC also adds a definition of the term "submitter" as that term is used in this section. The definition to be added at section 1602.2(k) would define "submitter" as any person or entity from whom the Corporation receives a grant application.

Authority To Defer Action Pending Receipt of Payment of Fees

Many, if not most, agency FOIA regulations contain a provision permitting the agency to suspend continuing work on any pending requests and appeals from requesters who are 30 or more days in arrears on FOIA fees which they have been charged. LSC regulations provide LSC with the authority to require anticipated fees for new requests be paid in advance for requesters with outstanding overdue bills, but do not expressly contain the authority to cease processing other existing requests, including appeals. Having this express authority would be helpful to the Corporation to avoid wasting resources on "nuisance" requesters who chronically have several requests and/or appeals pending before the Corporation at the same time, while being in arrears on properly assessed fees from prior requests to the Corporation. Accordingly, LSC proposed to add a new paragraph to section 1602.13, Fees, to provide for this authority. Specifically, the new language proposed would provide express authority to the Corporation to cease processing existing requests, including action on appeals, from a requester who is more than 30 days late in paying a properly assessed FOIA fee.

LSC received three comments which generally supported the proposed new provision, but which requested that LSC clarify that the provision would not apply in circumstances in which a fee waiver decision remains in dispute through a properly filed and pending appeal or lawsuit. This was LSC's intent. Use of the phrase "properly assessed fee" in the preamble to the NPRM and "properly charged FOIA fee" in the proposed regulatory text was intended to convey this meaning. LSC is, however, happy to clarify that the phrase "properly charged FOIA fee" in the text of the regulation is intended to mean fees that have been fairly assessed and which are not the subject of a timely filed and pending appeal or lawsuit.

LSC adopts the new language as proposed. This new language appears as a new paragraph (j) and the current paragraphs (j), (k) and (l) are redesignated as paragraphs (k), (l), and (m), respectively.

Fee Waiver Criteria

Requesters of records under FOIA are generally expected to pay reasonable fees related to the processing of FOIA requests. However, the statute also provides for waivers or reductions of fees when certain enumerated criteria are met. Section 1602.13(f) of the current regulation restates the basic fee waiver criteria as set forth in the statute. By way of contrast, the Department of Justice (DOJ) FOIA regulations on fee waiver criteria are more detailed, providing more guidance, based on long standing case law in this area, on the meaning of each of the factors to be considered in assessing fee waiver requests. LSC believes it would be helpful to both LSC and requesters for the LSC FOIA regulations to provide additional guidance in this area. By having a better understanding of the criteria, requesters can better prepare fee waiver requests and there will be less opportunity for disagreements and confusion as to when a fee waiver or reduction is appropriate. LSC, accordingly, proposed to add language to each of the subparagraphs setting forth the factors upon which fee waiver determinations are made that provides a greater explanation of that factor.

LSC received four comments specifically addressing the proposed revisions to the fee waiver criteria. All of these comments supported the proposed clarifications, although one commenter also provided suggestions for additional clarifications to the factors.

LSC proposed to add a sentence to subparagraph (i), which currently reads in its entirety "The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or Federal government," explaining that the subject of the requested records must concern identifiable operations or activities of the Corporation or the Federal government, with a connection that is direct and clear, not remote or attenuated. LSC received no objection to this proposed addition and LSC adopts the new sentence as proposed.(i)

The second factor currently reads, in its entirety, "The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation or Federal government operations or activities." LSC proposed to add language noting that the requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities and that the disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public's understanding.

LSC received no comments objecting to the proposed additional language. One commenter suggested that LSC add additional language defining the terms "public domain" and "substantially identical form" as those terms are used in this section. Specifically, the commenter urges LSC define "public domain" as information that is "readily available" to the public and "substantially identical form" as excluding compilations or summaries of information that is in the public domain. Each of these proposals stem from case law interpreting the statute.

While LSC appreciates these suggestions, LSC does not believe it is necessary to define the terms "public domain" and "substantially identical form" in the regulation. LSC believes that these terms are reasonably straightforward. Moreover, in LSC's experience, requesters seeking fee waivers have not evinced much confusion about the meaning of these terms in making their fee waiver applications. LSC is interested in adding some additional language to the factors to aid requesters in understanding the fee waiver standards, but is also mindful

[1] Absent this authority, LSC would not otherwise be subject to FOIA since LSC is not an agency, department or instrumentality of the Federal government. 42 U.S.C. 2996d(e)(1).

that nearly every term in FOIA has case law interpreting its meaning. It would be difficult and, in some cases, inappropriate to attempt to distill all of the existing case law into regulatory language. Thus, while LSC does not take issue with the meanings the applicable case law has developed for those terms, LSC believes that the terms are sufficiently clear on their face as not to need additional regulatory definition. Of course, in applying the fee waiver standards, LSC is, and will continue to be, mindful of the interpretations of terms as set forth in the applicable case law.

The third factor currently reads:

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to "public understanding."

LSC proposed to provide additional guidance on the meaning of this factor by adding language explaining that: the disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester; a requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered; and that it shall be presumed that a representative of the news media will satisfy this consideration.

LSC received no comments objecting to the proposed additional language. One commenter suggested that LSC add additional language defining the term "public" as including one or more segments of the public. LSC agrees that the term "public" in this instance may refer to a segment of the public, and not just to the public "at large," and intends that the regulation be understood to have this meaning. However, LSC believes that the addition of the phrase "reasonably broad audience of persons interested in the subject" conveys that meaning. Thus, LSC believes that the language, as proposed, is appropriate.

The fourth factor currently reads:

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation or Federal government operations or activities.

LSC proposed to include additional guidance in this factor that the public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure must be enhanced by the disclosure to a significant extent.

LSC received one comment in opposition to this language. The commenter found the additional proposed language to be confusing and not helpful to clarifying the meaning of the factor. Alternatively, the commenter suggested that, if LSC were to leave the language in the regulation, that LSC include greater explanation in the preamble of the meaning of the additional language.

The proposed new language is intended to clarify that this factor is assessing whether the disclosure sought would be "significant" by comparing the likely level of public understanding of the subject matter of the disclosure as it exists at that moment to what the level of understanding would be after disclosure. LSC is not sure in what way this is confusing, but has no objection to providing additional explanation in the preamble if it will aid in understanding of the rule. Generally, the fourth factor examines whether the information that is the subject of the disclosure either has been so widely disseminated and publicized or is so lacking in substantial informative value, such that the disclosure of the information is not likely to add any new perspective or facts (or the like), as to increase the public's understanding of the subject.

Section 1602.13(f)(2) sets forth the factors used by LSC to determine whether disclosure of the information is not primarily in the commercial interest of the requester. The first factor currently reads:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

LSC proposed to add a sentence to this subparagraph explaining that LSC shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in this Part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. LSC received no comments objecting to the proposed additional language.

The second factor reads:

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily" in the commercial interest of the requester.

LSC proposed to add language specifying that a fee waiver or reduction is justified where the public interest standard is greater in magnitude than that of any identified commercial interest in disclosure and that LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. That is, if the public interest standard has been satisfied, the fact that a news media requester has a commercial interest (*i.e.*, in selling newspapers, etc.) will not ordinarily serve to prevent that requester from getting a fee waiver or reduction. LSC further proposes to add language providing that disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest. LSC received no comments objecting to the proposed additional language.

In each of these cases, the language proposed to be added is consistent with the current regulations and LSC practice, FOIA case law and government-wide FOIA practice. As noted above, LSC believes the additions will aid in public understanding of the meaning and application of the fee waiver criteria. Accordingly, LSC adopts the new language on the fee waiver standards as proposed.

Three of the commenters also suggested that LSC should generally grant fee waivers in connection with most, if not all, requests received from the legal services community. One of these comments further suggested that LSC formally adopt language providing a blanket fee waiver to all requests from grantees.

LSC is authorized and required to provide fee waivers in accordance with the standards set forth in the FOIA. The statutory standards require fee waiver determinations to be made on a case-by-case basis in reference to the enumerated fee waiver criteria. As such, for LSC to either incorporate into the regulations or even adopt an informal policy to grant a blanket fee waiver policy in connection with requests from grantees or others in the legal services community would exceed LSC's authority under FOIA. LSC will continue, as it has always done, to consider requests individually and grant fee waivers and/or assess fees as required by the statute.

Miscellaneous Amendments

There are several instances throughout the regulation where the regulation makes reference to the "Office of the General Counsel." The Office of the General Counsel was renamed the Office of Legal Affairs in 1999. LSC, therefore, proposed to substitute the name "Office of Legal Affairs" for "Office of the General Counsel" each time it appears in sections 1602.6 and 1602.8 of the regulations. LSC received no objections to the proposed substitutions and LSC adopts them as proposed.

Section 1602.5, Public reading room, sets forth, among other things, the address of LSC's public reading room. The address listed, 750 First Street, NE., Washington, DC, 20002, is currently correct. However, LSC will be moving in June 2003 to new permanent headquarters. LSC proposed to add language to this section providing the address of the LSC public reading room in LSC's new home: 3333 K St., NW., Washington, DC 20007. LSC received no objections to the proposed addition and LSC adopts the change as proposed.

In accordance with FOIA, LSC charges fees for processing FOIA requests and providing copies of requested documents. LSC's schedule of applicable fees is set forth in section 1602.13(e). The current schedule of fees was adopted in 1998 and no longer accurately reflects LSC's costs in responding to FOIA requests. LSC, therefore, proposed to increase fees for search and review time and for copying.

LSC received no objections to the proposed fee increases. One commenter, however, did request that LSC apply the new fee schedule only to requests filed after the effective date of the amendment. LSC agrees that this is appropriate and LSC intends that the new fees will be assessed only on requests received on or after the effective date of this Final Rule.

LSC adopts the changes to the fee schedule as proposed. Specifically, LSC amends the search and review fee rates to reflect recent (2002) pay rates as follows:

Band 1: $16.15
Band 2: $26.66
Band 3: $39.15
Band 4: $51.41
Band 5: $54.99

LSC notes that the existing regulation provides for one blended rate for Bands 4 and 5. LSC is now separating these rates, providing separate search and review time rates for Bands 4 and 5. These changes will permit LSC to recover fees that are more in line with its actual costs relating to search and review activities.

Under the existing regulation, LSC charges $0.10 per page for standard paper photocopying. LSC's actual costs for photocopying are now closer to $0.15 per page. LSC is increasing copying costs to $0.13 per page so as to better reflect LSC's costs, while still providing a small discount to requesters. In addition, LSC substitutes the term "Express mail" for "special delivery" where it appears in section 1602.13(e)(7) to reflect current terminology.

List of Subjects in 45 CFR Part 1602

Freedom of Information, Reporting and recordkeeping requirements.

For reasons set forth above, LSC amends 45 CFR Part 1602 as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for Part 1602 continues to read as follows:

Authority: 42 U.S.C. 2996d(g); 5 U.S.C. 552.

2. Section 1602.2 is amended by adding a new paragraph (k) to read as follows:

§ 1602.2 Definitions.

* * * * *

(k) Submitter means any person or entity from whom the Corporation receives grant application records.

3. Paragraph (a) of § 1602.5 is revised to read as follows:

§ 1602.5 Public reading room.

(a) The Corporation will maintain a public reading room at its office at 750 First Street, NE., Washington, DC, 20002. After June 1, 2003, the Corporation's public reading room will be located at its office at 3333 K Street, NW., Washington, DC, 20007. This room will be supervised and will be open to the public during the regular business hours of the Corporation for inspecting and copying records described in paragraph (b) of this section.

* * * * *

4. Section 1602.6 is amended by revising the words "Office of the General Counsel" in the second sentence to read "Office of Legal Affairs."

5. Paragraph (b) of § 1602.8 is amended by revising the words "Office of the General Counsel" each of the three times that phrase appears in the paragraph to read "Office of Legal Affairs."

6. Section 1602.13 is amended by:

a. Revising paragraphs (e) and (f);

b. Redesignating paragraphs (j) through (l) as paragraphs (k) through (m), respectively; and

c. Adding a new paragraph (j).

§ 1602.13 Fees.

* * * * *

(e) The schedule for charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Manual search for and review of records will be charged as follows:

(i) Band 1: $16.15
(ii) Band 2: $26.66
(iii) Band 3: $39.15
(iv) Band 4: $51.41
(v) Band 5: $54.59
(vi) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: actual charges as incurred;

(3) Duplication by paper copy: 13 cents per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Express mail: actual charges as incurred.

(f) Fee waivers. A requester may seek a waiver or reduction of fees below the fees established under paragraph (e) of this section. A fee waiver or reduction request will be granted where LSC has determined that the requester has demonstrated that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation shall consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or Federal government." The subject of the requested records must concern identifiable operations or activities of the Corporation or Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation or Federal government operations or activities. The requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such

understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to "public understanding." The disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation or Federal government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. LSC shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in this Part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily" in the commercial interest of the requester. A fee waiver or reduction is justified where the public interest is greater in magnitude than that of any identified commercial interest in disclosure. LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest.

(3) Where LSC has determined that a fee waiver or reduction request is justified for only some of the records to be released, LSC shall grant the fee waiver or reduction for those records.

(4) Requests for fee waivers and reductions shall be made in writing and must address the factors listed in this paragraph as they apply to the request.

* * * * *

(j) When a requester has previously failed to pay a properly charged FOIA fee within 30 days of the date of billing, the Corporation may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee before the Corporation begins to process a new request or continues to process a pending request (including appeals) from that requester.

* * * * *

7. Section 1602.14 is added to read as follows:

§ 1602.14 Submitter's rights process.

(a) When the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation shall provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested grant application(s) (or any portion thereof). The notice shall reasonably describe the grant application(s), or portions thereof, requested and inform the submitter of the process required by paragraph (b) of this section.

(b) If a submitter who has received notice of a request for the submitter's grant application(s) desires to object to the disclosure of the grant application(s) (or any portion thereof), the submitter must identify the information for which disclosure is objected and provide LSC with a written detailed statement to that effect. The statement must be submitted to the FOIA Officer in the Office of Legal Affairs and must specify the grounds for withholding the information under FOIA or this Part. In particular, the submitter must demonstrate why the information is commercial or financial information that is privileged or confidential. The submitter's statement must be provided to LSC within seven business days of the date of the notice from the Corporation. If the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

(c) Upon receipt of written objection to disclosure by a submitter, LSC shall consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC shall give the submitter written notice which shall include:

(1) A description of the information to be released and a notice that LSC intends to release the information;

(2) A statement of the reason(s) why the submitter's request for withholding is being rejected; and

(3) Notice that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision shall be final.

(d) The requirements of this section shall not apply if:

(1) LSC determines upon initial review of the requested grant application(s), or portions thereof, the requested information should not be disclosed;

(2) The information has been previously published or officially made available to the public; or

(3) Disclosure of the information is required by statute (other than FOIA) or LSC regulations.

(e) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC shall promptly notify the submitter.

(f) Whenever LSC provides a submitter with notice and opportunity to oppose disclosure under this section, LSC shall notify the requester that the submitter's rights process under this section has been triggered. Whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 03–3645 Filed 2–13–03; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, et al., and Appendix G to Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update organizational names and addresses and cross references.

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 201, 202, 204, 206, 209, 212, 214, 217, 219, 230, 231, 232, 236, 239, 242, 249, 250, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 201, 202, 204, 206, 209, 212, 214, 217, 219, 230, 231, 232, 236, 239, 242, 249, 250, 252, 253, and Appendix G to chapter 2 are amended as follows:

1. The authority citation for 48 CFR parts 201, 202, 204, 206, 209, 212, 214, 217, 219, 230, 231, 232, 236, 239, 242, 249, 250, 252, 253, and Appendix G to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.201–1 [Amended]

2. Section 201.201–1 is amended in paragraph (d)(i)V., in the second sentence, by adding, after "Procurement", the phrase "and Acquisition Policy".

201.304 [Amended]

3. Section 201.304 is amended as follows:

a. In paragraph (1)(ii), by removing "(USD(AT&L)DPPA)"; and adding in its place "and Acquisition Policy (OUSD(AT&L)DPAP)"; and

b. In paragraphs (4) and (5), by removing "USD(AT&L)DP" and adding in its place "OUSD(AT&L)DPAP".

201.402 [Amended]

4. Section 201.402 is amended as follows:

a. In paragraph (1) introductory text, by adding, after "Procurement", the phrase "and Acquisition Policy", and by removing "(USD(AT&L)DP)" and adding in its place "(OUSD(AT&L)DPAP)"; and

b. In paragraph (2) introductory text, in the second sentence, by removing "USD(AT&L)DP" and adding in its place "OUSD(AT&L)DPAP".

201.404 [Amended]

5. Section 201.404 is amended in paragraph (b)(i) by removing "USD(AT&L)DP" and adding in its place "OUSD(AT&L)DPAP".

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

6. Section 202.101 is amended in the definition of "Contracting activity" as follows:

a. Under the heading "ARMY", by removing "Defense Supply Service-Washington" and adding in its place "Defense Contracting Command-Washington";

b. Under the heading "NAVY", in the first entry, by removing "and Business"; and

c. By removing the heading "BALLISTIC MISSILE DEFENSE ORGANIZATION" and the entry "Headquarters, Ballistic Missile Defense Organization" and adding in their place the heading "MISSILE DEFENSE AGENCY" and the entry "Headquarters, Missile Defense Agency".

7. Section 202.101 is amended in the definition of "Departments and agencies", in the last sentence, by removing "Ballistic Missile Defense Organization" and adding in its place "Missile Defense Agency".

8. Section 202.101 is amended in the definition of "Head of the agency", in the second sentence, by adding, after "Procurement", the phrase "and Acquisition Policy".

PART 204—ADMINISTRATIVE MATTERS

204.7003 [Amended]

9. Section 204.7003 is amended in paragraph (a)(1)(i)(J) by removing "Ballistic Missile Defense Organization" and adding in its place "Missile Defense Agency".

PART 206—COMPETITION REQUIREMENTS

206.302–5 [Amended]

10. Section 206.302–5 is amended in paragraph (c)(i)(B), in the last sentence, by adding, after "Procurement", the phrase "and Acquisition Policy".

PART 209—CONTRACTOR QUALIFICATIONS

209.104–1 [Amended]

11. Section 209.104–1 is amended in paragraph (g)(ii)(C), in the third sentence, by adding, after "Procurement", the phrase "and Acquisition Policy".

209.104–70 [Amended]

12. Section 209.104–70 is amended in paragraph (a), in the second sentence, by removing "Defense Procurement, ATTN: OUSD(AT&L)DP/FC" and adding in its place "Defense Procurement and Acquisition Policy, ATTN: OUSD(AT&L)DPAP(PAIC)".

209.403 [Amended]

13. Section 209.403 is amended in the definition of "Debarring and suspending official", in paragraph (1), by removing the entry "Ballistic Missile Defense Organization—The General Counsel" and adding in its place "Missile Defense Agency—The General Counsel".

209.406–2 [Amended]

14. Section 209.406–2 is amended in paragraph (a)(ii) by adding, after "Procurement", the phrase "and Acquisition Policy,".

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

15. Section 212.301 is amended by removing paragraph (f)(i)(B) and redesignating paragraphs (f)(i)(C) and (D) as paragraphs (f)(i)(B) and (C), respectively.

PART 214—SEALED BIDDING

16. Section 214.407–3 is amended by revising paragraph (e)(vii) to read as follows:

214.407–3 Other mistakes disclosed before award.

(e) * * *

(vii) Missile Defense Agency: General Counsel, MDA.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

217.170 [Amended]

17. Section 217.170 is amended in paragraph (d)(4), in the second sentence, as follows:

a. By adding, after "Procurement", the phrase "and Acquisition Policy"; and

b. By removing "(OUSD(AT&L)DP)" and adding in its place "(OUSD(AT&L)DPAP)".

217.173 [Amended]

18. Section 217.173 is amended in paragraph (b)(5)(iv) by removing "OUSD(AT&L)DP" and adding in its place "OUSD(AT&L)DPAP".

PART 219—SMALL BUSINESS PROGRAMS

219.1007 [Amended]

19. Section 219.1007 is amended in paragraph (b)(1), in the first and second sentences, by adding, after

"Procurement", the phrase "and Acquisition Policy".

PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

230.201–5 [Amended]

20. Section 230.201–5 is amended in paragraph (a)(1)(A)(*2*) twice, and in paragraphs (a)(1)(B), (e)(i), and (e)(ii), by adding, after "Procurement", the phrase "and Acquisition Policy".

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205–70 [Amended]

21. Section 231.205–70 is amended as follows:

a. In paragraph (d)(9) in the first sentence by adding, after "Procurement", the phrase "and Acquisition Policy", and by removing "OUSD(AT&L)DP/CPF" and adding in its place "OUSD(AT&L)DPAP(P)"; and

b. In paragraph (d)(10), by adding, after "Procurement", the phrase "and Acquisition Policy".

PART 232—CONTRACT FINANCING

232.006–5 [Amended]

22. Section 232.006–5 is amended by adding, after "Procurement", the phrase "and Acquisition Policy".

232.070 [Amended]

23. Section 232.070 is amended as follows:

a. In paragraph (a) in the first sentence by adding, after "Procurement", the phrase "and Acquisition Policy", and by removing "(OUSD(AT&L)DP)" and adding in its place "(OUSD(AT&L)DPAP)"; and

b. In paragraph (a) in the last sentence, and in paragraph (b) in the second sentence, by removing "OUSD(AT&L)DP" and adding in its place "OUSD(AT&L)DPAP".

232.071 [Amended]

24. Section 232.071 is amended in paragraphs (a)(1), (b)(1), and (b)(3) by removing "OUSD(AT&L)DP" and adding in its place "OUSD(AT&L)DPAP".

25. Section 232.501–2 is amended in paragraph (a) as follows:

a. By revising the first sentence; and

b. In the second sentence, by removing "OUSD(AT&L)DP" and adding in its place "OUSD(AT&L)DPAP". The revised text reads as follows:

232.501–2 Unusual progress payments.

(a) Unusual progress payment arrangements require the advance approval of the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP). * * *

232.617 [Amended]

26. Section 232.617 is amended in paragraph (a) by adding, after "Procurement", the phrase "and Acquisition Policy".

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.570 [Amended]

27. Section 236.570 is amended in paragraph (b)(5) by removing "236.303–70" and adding in its place "236.213–70".

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

28. Section 239.7302 is amended as follows:

a. In paragraph (b)(2)(i) in the third sentence by removing "Attn: D03D" and adding in its place "Attn: DSPD"; and

b. By revising paragraph (b)(2)(ii) to read as follows:

239.7302 Approvals and screening.

* * * * *

(b) * * *

(2) * * *

(ii) Uses the Defense Information Technology Management System (DITMS) to screen on-line. System access may be requested from the Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program Division. Customers may apply for a DITMS Account Number by contacting the DITMS Help Desk at (703) 681–2400; DSN 761–2400; FAX (703) 681–2875; or via the Internet at *https://ditms.disa.mil*.

* * * * *

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.602 [Amended]

29. Section 242.602 is amended in paragraph (c)(2) by adding, after "Procurement", the phrase "and Acquisition Policy".

242.771–3 [Amended]

30. Section 242.771–3 is amended in paragraph (c) by adding, after "Procurement", the phrase "and Acquisition Policy".

242.1203 [Amended]

31. Section 242.1203 is amended in paragraph (b)(2)(A), in the Navy entry, by removing "and Business".

PART 249—TERMINATION OF CONTRACTS

32. Section 249.7000 is amended by revising paragraph (a)(1) to read as follows:

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) * * *

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, "Canadian Agreement" (for a copy of the LOA or for questions on its currency, contact the Office of the Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), (703) 697–9351, DSN 227–9351);

* * * * *

33. Section 249.7001 is amended by revising paragraph (b)(11) to read as follows:

249.7001 Congressional notification on significant contract terminations.

* * * * *

(b) * * *

(11) Missile Defense Agency—Director of Contracts (MDA–DCT)

* * * * *

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

34. Section 250.303 is amended as follows:

a. In paragraph (3), by removing "and Business"; and

b. By revising paragraph (12) to read as follows:

250.303 Contractor requests.

* * * * *

(12) Missile Defense Agency—Director, MDA.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

35. Section 252.211–7005 is amended by revising the clause date and the second sentence of paragraph (b) to read as follows:

252.211–7005 Substitutions for Military or Federal Specifications and Standards.

* * * * *

Substitutions for Military or Federal Specifications and Standards (Feb 2003)

* * * * *

(b) * * * A listing of SPI processes accepted at specific facilities is available via the Internet in Excel format at *http://www.dcma.mil/onebook/7.0/7.2/7.2.6/reports/modified.xls*.

PART 253—FORMS

253.204–70 [Amended]

36. Section 253.204–70 is amended as follows:

a. In paragraph (b)(12)(iii)(B), by removing "Ballistic Missile Defense Organization" and adding in its place "Missile Defense Agency"; and

b. In paragraph (c)(4)(iii)(B)(*5*), by adding, after "Procurement", the phrase "and Acquisition Policy".

253.204–71 [Amended]

37. Section 253.204–71 is amended in paragraph (e)(2)(i)(A)(*4*), by adding, after "Procurement", the phrase "and Acquisition Policy".

Appendix G—Activity Address Numbers

G–102 [Amended]

38. Appendix G to Chapter 2 is amended in Part 1, Section G–102, paragraph (b)(2), by removing "OUSD(AT&L)DP(DAR)" and adding in its place "OUSD(AT&L)DPAP(DAR)".

39. Appendix G to Chapter 2 is amended in Part 2 by revising entries "DABQ01", "DABQ03", and "DABQ06", and by adding a new entry "DABR13" to read as follows:

Appendix G to Chapter 2—Activity Address Numbers

* * * * *

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

* * * * *

DABQ01, 1K U.S. Army Contracting Element, Pacific, Office of the Director/PARC, ATTN: SFCA–PR, Building T–115, Fort Shafter, HI 96858–5430

DABQ03, 8U ACA, Fort Richardson, Regional Contracting Office, Alaska, ATTN: SFCA–PRA, PO Box 5–525, Fort Richardson, AK 99505–0525

DABQ06, CJ ACA, Fort Shafter, Regional Contracting Office, Hawaii, ATTN: SFCA–PRH, Building 520, Pierce Street, Fort Shafter, HI 96858–5025

* * * * *

DABR13 Joint Interagency Task Force East, Contracting Office, ATTN: J4, PO Box 9051, NAF Key West, FL 33040–9051

* * * * *

40. Appendix G to Chapter 2 is amended in Part 8 by revising entry "NMA201" to read as follows:

PART 8—NATIONAL IMAGERY AND MAPPING AGENCY ACTIVITY ADDRESS NUMBERS

* * * * *

NMA201, Y2 National Imagery and Mapping Agency, Contracting Support for Acquisition Directorate, ATTN: ACA/P–65, 12310 Sunrise Valley Drive, Reston, VA 20191–3449 (ZM21)

* * * * *

[FR Doc. 03–3572 Filed 2–13–03; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2002–D031]

Defense Federal Acquisition Regulation Supplement; Emergency Acquisitions in Regions Subject to Economic Sanctions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to authorize DoD personnel to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions.

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D031.

SUPPLEMENTARY INFORMATION:

A. Background

Section 25.701 of the Federal Acquisition Regulation prohibits the acquisition of supplies or services from sources in countries or regions subject to economic sanctions. On October 1, 2002, the Department of the Treasury, Office of Foreign Assets Control, issued DoD a license authorizing emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions. This DFARS rule implements that license.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D031.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.701–70 is added to read as follows:

225.701–70 Exception.

DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control.

[FR Doc. 03–3573 Filed 2–13–03; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002–D034]

Defense Federal Acquisition Regulation Supplement; Fish, Shellfish, and Seafood Products

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DOD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8136 of the Defense Appropriations Act for Fiscal Year 2003. Section 8136 requires the acquisition of domestic fish,

shellfish, and seafood, to include fish, shellfish, and seafood manufactured or processed, or contained in foods manufactured or processed, in the United States.

DATES: Effective date: February 14, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before April 15, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D034 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D034.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule relates to application of the Berry Amendment (10 U.S.C. 2533a), which requires the acquisition of certain items from domestic sources. The Berry Amendment restriction on food is implemented in the DFARS at 225.7002 and in the clause at 252.225–7012, Preference for Certain Domestic Commodities. DoD generally must buy foods grown or produced in the United States (DFARS 225.7002–1(a)(1)), but there is an exception for the acquisition of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced (10 U.S.C. 2533a(f); DFARS 225.7002–2(j)).

Section 8136 of the Defense Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248) makes the exception at 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. Section 8136 is also specifically applicable to contracts and subcontracts for the procurement of commercial items.

Therefore, this interim rule revises DFARS 225.7002–2(j) and 252.225–7012(c)(3) to require the application of domestic source requirements to fish, shellfish, and seafood manufactured or processed in the United States, and fish, shellfish, and seafood contained in foods manufactured or processed in the United States.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DOD has prepared an Initial Regulatory Flexibility Analysis, which is summarized as follows:

This interim rule amends the DFARS to implement section 8136 of the Defense Appropriations Act for Fiscal Year 2003. Section 8136 makes 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. 10 U.S.C. 2533a(f) is an exception to domestic source requirements for foods manufactured or processed in the United States. The objective of the rule is to prohibit DoD acquisition of foreign fish, shellfish, and seafood, even if processed or manufactured in the United States. The rule will apply to all suppliers, processors, and manufacturers of seafood products sold to DoD. The rule should have a beneficial impact on domestic suppliers of fish, shellfish, and seafood.

A copy of the IRFA may be obtained from the address specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D034.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 8136 of the Defense Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248). Section 8136 requires the acquisition of domestic fish, shellfish, and seafood, to include fish, shellfish, and seafood manufactured or processed, or contained in foods manufactured or processed, in the United States. Section 8136 became effective upon enactment, on October 23, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7002–2 is amended by revising paragraph (j) to read as follows:

225.7002–2 Exceptions.

* * * * *

(j) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced, except that, in accordance with Section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248), the following foods are subject to the restrictions in 225.7002–1: Fish, shellfish, or seafood manufactured or processed in the United States; and fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

3. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read "(FEB 2003)"; and

b. In paragraph (b), in entry "252.225–7012", by removing "(APR 2002)" and adding in its place "(FEB 2003)".

4. Section 252.225–7012 is amended by revising the clause date and paragraph (c)(3) to read as follows:

252.225–7012 Preference for Certain Domestic Commodities.

* * * * *

Preference for Certain Domestic Commodities (Feb 2003)

* * * * *

(c) * * *

(3) To foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced, except that this clause does apply to fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States;

* * * * *

[FR Doc. 03–3574 Filed 2–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2002–D042]

Defense Federal Acquisition Regulation Supplement; Contractor Performance of Security-Guard Functions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 332 of the National Defense Authorization Act for Fiscal Year 2003. Section 332 provides temporary authority for contractor performance of security-guard functions at military installations or facilities in excess of those in place on September 10, 2001.

DATES: Effective date: February 14, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before April 15, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D042 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D042.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS subpart 237.1 to implement section 332 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314). Section 332 authorizes DoD to waive the prohibition at 10 U.S.C. 2465(a) related to security-guard functions at military installations or facilities. It permits contractor performance of security-guard functions to meet the increased requirements for such services since September 11, 2001. This authority extends only to the increased requirements; therefore, existing security-guard services not performed by contractors are unaffected. The authority expires on December 2, 2005. Recruiting and training standards for contractor personnel who are to perform security-guard functions pursuant to this authority will be comparable to the standards in place for DoD personnel currently performing those functions.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to the procurement of security-guard services over and above the level of such services being performed on September 10, 2001. The amount of such additional services is not expected to be significantly large, in comparison to the total amount of services procured by DoD. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D042.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 332 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314). Section 332 provides temporary authority for contractor performance of security-guard functions at military installations or facilities to meet the increased requirements for such services since September 11, 2001. Section 332 became effective upon enactment on December 2, 2002. The authority provided by section 332 expires on December 2, 2005. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 237 is amended as follows:

1. The authority citation for 48 CFR Part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

2. Section 237.101 is added to read as follows:

237.101 Definitions.

Increased performance of security-guard functions, as used in this subpart, means—

(1) In the case of an installation or facility where no security-guard functions were performed as of September 10, 2001, the entire scope or extent of the performance of security-guard functions at the installation or facility after such date; and

(2) In the case of an installation or facility where security-guard functions were performed within a lesser scope of requirements or to a lesser extent as of September 10, 2001, than after such date, the increment of the performance of security-guard functions at the installation or facility that exceeds such lesser scope of requirements or extent of performance.

3. Section 237.102–70 is amended by adding paragraph (d) to read as follows:

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

* * * * *

(d) Under section 332 of Pub. L. 107–314, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if—

(1) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(2) The agency has determined that—

(i) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(ii) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(iii) Performance of such functions will not result in a reduction in the security of the installation or facility; and

(3) Contract performance will not extend beyond December 1, 2005.

[FR Doc. 03–3577 Filed 2–13–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1540

Prohibited Items

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Interpretive rule.

SUMMARY: This interpretive rule provides guidance to the public on the types of property Transportation Security Administration (TSA) considers to be weapons, explosives, and incendiaries prohibited in airport sterile areas and in the cabins of aircraft under the TSA regulations. This interpretation also provides guidance on the types of items permitted in sterile areas, the cabins of passenger aircraft, and in passengers' checked baggage.

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Vicky Skelly, Aviation Security Specialist, Air Carrier Division, Office of Aviation Security Policy, TSA–9, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (571) 227–2641, e-mail *Vicky.skelly@tsa.dot.gov*. Legal questions may be directed to Ellen Siegler, Attorney, TSA–2, Chief Counsel; telephone (571) 227–2723, e-mail *ellen.siegler@tsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can obtain an electronic copy of this interpretive rule and other TSA rulemaking documents using the Internet by:

(1) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting the TSA's Laws and Regulations web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section.

Statutory and Regulatory Background

Following the terrorist attacks on the United States on September 11, 2001, Congress passed the Aviation and Transportation Security Act (ATSA) on November 19, 2001 (49 U.S.C. 40101 *et seq.*), establishing TSA. TSA is an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. TSA is responsible for security in all modes of transportation regulated by DOT, including civil aviation. See 49 U.S.C. 114(d). Accordingly, ATSA transferred the responsibility for civil aviation security from the Federal Aviation Administration (FAA) to the TSA.

On February 22, 2002, TSA published a final rule transferring the bulk of FAA's aviation security regulations to TSA. See 67 FR 8340. Among these was FAA's regulation governing the carriage of weapons, explosives, and incendiaries by individuals into sterile areas and into the cabins of passenger aircraft for which screening is conducted. This regulation now is codified at § 1540.111 of Title 49 of the Code of Federal Regulations (CFR). See 67 FR 8340 at 8354. See also 67 FR 41635 at 41639 (June 19, 2002).

Section 1540.111 Carriage of Weapons, Explosives, and Incendiaries by Individuals. The rule provides, in part, that an individual (other than a law enforcement or other authorized individual) "may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter (TSA's regulations on acceptance and screening of individuals and accessible property);

(2) When the individual is entering or in a sterile area; or

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter."

Section 1540.111(b) establishes certain exceptions to this rule for law enforcement officers and other persons authorized to carry weapons. These exceptions, however, do not apply to the general public.

For purposes of § 1540.111(a), "accessible property" is property that is accessible to the individual at the screening checkpoint, in the sterile area, or in the cabin of the aircraft. It includes carry-on baggage and property an individual carries on his or her person. A "sterile area" is a portion of an airport that provides passengers access to boarding aircraft and to which the access is generally controlled through the screening or persons and property. See 49 CFR 1540.5.

Penalties for Prohibited Items. Individuals who carry weapons, explosives, or incendiaries into a sterile area or the cabin of a passenger aircraft are subject to civil and criminal penalties. See, for instance, 49 U.S.C. 46301 and 46314. These penalties also apply to individuals who place loaded firearms in checked baggage. See also 49 U.S.C. 46505.

Today's Interpretative Rule. This interpretation provides guidance to the public as to the types of property TSA considers to be "weapons, explosives, and incendiaries" that, if carried by an individual not authorized to carry such items, are prohibited in sterile areas and in the cabins of aircraft under 49 CFR 1540.111(a). TSA refers to these items collectively as prohibited items because they are prohibited from these areas. There are many items that are not created for use as weapons, explosives, or incendiaries, but may be used as such items. Today's regulatory interpretation includes examples of these so-called "dual use items," which also are prohibited. Congress specifically directed TSA to identify dual use items for purposes of passenger screening. See 49 U.S.C. 44935(h)(3).

This interpretation also provides guidance on items that are permitted in a sterile area and in the cabin of a passenger aircraft even though they may appear to fall into the broad categories of items on the prohibited items list. These items generally are personal care, medical, and assistive items, examples of which are set forth below. In addition, certain prohibited items may be transported in checked baggage with appropriate safeguards.

It should be noted that TSA previously placed lists of prohibited and permitted items on its web site at *http://www.tsa.gov/trav_consumers/trav_consumers_tip_week.shtm*. Today's interpretive rule makes some changes in these lists, and the lists on TSA's web site will be updated to reflect this interpretation.

Neither the prohibited items list nor the permitted items list in today's regulatory interpretation contains all possible items. There are items not included on the prohibited items list that may be prohibited in an airport's sterile area and the cabin of an aircraft. Screeners have discretion to prohibit an individual from carrying an item into a sterile area or onboard an aircraft if the screener determines that the item is a weapon, explosive, or incendiary, regardless of whether the item is on the prohibited items list. Moreover, if future information or events demonstrate the need to prohibit items that this interpretive rule has listed as permitted, TSA may prohibit individuals from bringing these items into the sterile area or onboard the aircraft, without first publishing a change to this rule. This is consistent with Congress's direction that screeners be proficient in recognizing new threats and weapons. See, 40 U.S.C. 44935(h)(1).

Prohibited Items

The prohibited items list includes items in the following categories: Weapons (guns, sharp objects, club-like objects), explosives, and other dangerous items such as incendiary materials and disabling chemicals. The list contains examples of items in these categories, but it is not an exclusive list.

Weapons. Weapons are objects that may be used to attack another. TSA considers an item to be a weapon under 49 CFR 1540.111 if it is created for use as a weapon or is so similar to an item created as a weapon that it appears to be, or is easily used as, a weapon.

Weapons include firearms, as well as realistic replicas of firearms that may reasonably be thought to be actual weapons. Such realistic replicas are prohibited because their similarity in appearance to real weapons may allow them to be used to intimidate passengers and flight crew. The screener has the discretion to determine when a replica is so realistic that it should be prohibited. Other toy weapons will be allowed in the sterile areas and cabin.

Partial weapons and parts of weapons also are prohibited because they may be carried separately by collaborators for assembly subsequent to entry or boarding. In addition, partial weapons may appear to be operative and could be used to intimidate passengers and flight crew.

Weapons also include sharp objects that could be effective in intimidating or harming passengers or crew. These include knives; devices or instruments with razor blades, such as box cutters, utility knives with razor blades, and razor blades that are not components of safety razors; and metal scissors with pointed tips. Also included in this category are sharp or pointed tools and utensils such as screwdrivers, drills, and axes. Screwdrivers that are components of eyeglass repair kits, however, will be allowed in sterile areas and in the cabin.

The prohibited items list also includes as weapons many club-like items, whether made for use as weapons or made for other purposes but capable of being used as weapons. Examples include items such as billy clubs and night sticks, as well as items of sporting equipment, such as baseball bats, hockey sticks, lacrosse sticks, and tools such as crowbars and hammers.

Explosives. Explosives are substances that explode or cause an explosion. While many explosives may have commercial uses, they clearly could be used to damage an aircraft or against passengers and flight crew members. Examples include dynamite, plastic explosives, blasting caps, fireworks, flares, gunpowder, hand grenades, and ammunition for firearms. Realistic replicas of explosive devices are prohibited for the same reasons that realistic weapons are prohibited: They can be effective in intimidating crew and passengers.

Incendiaries. Incendiaries are devices or materials capable of causing a fire as well as realistic replicas of these devices Examples include gasoline and other fuels, gas torches (including micro-torches and torch lighters), and strike-anywhere matches. Incendiaries also include aerosol cans containing flammable liquids. Although many personal care and toiletry items may come in the form of aerosol cans containing flammable contents, the prohibited items list specifically excludes these items when carried in limited quantities into a sterile area and the cabin of a passenger aircraft. Under these conditions, the materials pose little risk.

Disabling Chemicals and Other Dangerous Items. Another category of weapons is disabling chemicals and other dangerous items. These include items that are intended for this purpose, such as tear gas, pepper spray, and mace, as well as household chemicals that may be used for this purpose, such as liquid bleach; chlorine for pools and spas, compressed gas cylinders, and batteries that may spill acid.

Separate Rules Governing Hazardous Materials

The prohibited items list contains a number of substances that constitute hazardous materials under separate DOT regulations for hazardous materials. See 49 CFR parts 172, 173, and 175. Individuals carrying hazardous materials on their person or in checked or carry-on baggage are subject to the hazardous materials requirements, which prohibit many types of hazardous materials from being carried aboard aircraft or permit their transport only with proper markings, labels, and packaging. Part 175 contains a list of passenger exceptions that permit passengers to bring into the cabin of a passenger aircraft some personal use items, such as toiletries, medicinal products, and limited quantities of certain matches and lighters for individual use, even though they otherwise constitute hazardous materials. Individuals with questions about the types and quantities of hazardous materials prohibited aboard passenger flights should contact the Hazardous Materials Information Center at 1–800–467–4922 or go to *http://hazmat.dot.gov/infocent.htm*.

Transport of Some Prohibited Items in Checked Baggage

Some items prohibited from sterile areas and aboard the cabin of passenger aircraft may be transported in checked baggage, under the following conditions. Passengers may place prohibited items other than explosives, incendiaries, and loaded firearms in their checked baggage, subject to any limitations provided in DOT's hazardous materials regulations. See 49 CFR part 175. Prohibited items that may be transported in checked baggage include unloaded firearms or starter pistols, small arms ammunition for personal use, club-like items, single containers of self-defense spray, and other articles listed in the interpretive rule. Realistic replicas of explosive and incendiary devices may not be transported in checked baggage because their detection would have the potential for causing delays and requiring the unwarranted expenditure of time and resources on the part of law enforcement personnel.

Permitted Items

Some items are permitted in a sterile area and the cabin of a passenger aircraft even though they may appear to fall into

the broad categories of items on the prohibited items list. These items generally are personal care, medical, and assistive items, and other items that appear to pose little risk or for which there is a compelling reason to allow their presence. For instance, many personal care items such as perfume and hair spray may contain incendiaries. In small amounts, however, they do not pose a risk to security. Other items, such as syringes included in diabetes-related equipment, and nitroglycerine pills or spray for medical purposes, conceivably could be used as weapons, but are permitted as a medical necessity for passengers with a legitimate need. Screwdrivers and other tools in eyeglass repair kits are also permitted, as are tools used in connection with prosthetic devices. Consistent with Department of Transportation regulations for hazardous materials, passengers also are permitted to carry no more than four books of matches (other than strike-anywhere matches) and no more than two lighters for individual use, if the lighters are fueled with non-refillable liquefied gas (Bic-type) or absorbed liquid (Zippo-type).

Interpretation

I. *Prohibited Items.* For purposes of 49 U.S.C. 40101 *et seq.* and 49 CFR 1540.111, TSA interprets the terms "weapons, explosives, and incendiaries" to include the items listed below. Accordingly, passengers may not carry these items as accessible property or on their person through passenger screening checkpoints or into airport sterile areas and the cabins of a passenger aircraft.

A. *Guns and Firearms.*
(1) BB guns.
(2) Compressed air guns.
(3) Firearms.
(4) Flare pistols.
(5) Gun lighters.
(6) Parts of guns and firearms.
(7) Pellet guns.
(8) Realistic replicas of firearms.
(9) Spear guns.
(10) Starter pistols.
(11) Stun guns/cattle prods/shocking devices.

B. *Sharp Objects.*
(1) Axes and hatchets.
(2) Bows and arrows.
(3) Drills, including cordless portable power drills.
(4) Ice axes/Ice picks.
(5) Knives of any length, except rounded-blade butter and plastic cutlery.
(6) Meat cleavers.
(7) Razor-type blades, such as box cutters, utility knives, and razor blades not in a cartridge, but excluding safety razors.
(8) Sabers.
(9) Saws, including cordless portable power saws.
(10) Scissors, metal with pointed tips.
(11) Screwdrivers (except those in eyeglass repair kits).
(12) Swords.
(13) Throwing stars (martial arts).

C. *Club-Like Items.*
(1) Baseball bats.
(2) Billy clubs.
(3) Blackjacks.
(4) Brass knuckles.
(5) Cricket bats.
(6) Crowbars.
(7) Golf clubs.
(8) Hammers.
(9) Hockey sticks.
(10) Lacrosse sticks.
(11) Martial arts weapons, including nunchucks, and kubatons.
(12) Night sticks.
(13) Pool cues.
(14) Ski poles.
(15) Tools including, but not limited to, wrenches and pliers.

D. *All Explosives, Including.*
(1) Ammunition.
(2) Blasting caps.
(3) Dynamite.
(4) Fireworks.
(5) Flares in any form.
(6) Gunpowder.
(7) Hand grenades.
(8) Plastic explosives.
(9) Realistic replicas of explosives.

E. *Incendiaries.*
(1) Aerosol, any, except for personal care or toiletries in limited quantities.
(2) Fuels, including cooking fuels and any flammable liquid fuel.
(3) Gasoline.
(4) Gas torches, including micro-torches and torch lighters.
(5) Lighter fluid.
(6) Strike-anywhere matches.
(7) Turpentine and paint thinner.
(8) Realistic replicas of incendiaries.

F. *Disabling Chemicals and Other Dangerous Items.*
(1) Chlorine for pools and spas.
(2) Compressed gas cylinders (including fire extinguishers).
(3) Liquid bleach.
(4) Mace.
(5) Pepper spray.
(6) Spillable batteries, except those in wheelchairs.
(7) Spray Paint.
(8) Tear gas.

II. *Permitted Items.* For purposes of 49 U.S.C. 40101 *et seq.* and 49 CFR 1540.111, TSA does not consider the items on the following lists as weapons, explosives, and incendiaries because of medical necessity or because they appear to pose little risk if, as is required, they have passed through screening. Therefore, passengers may carry these items as accessible property or on their person through passenger screening checkpoints and into airport sterile areas and the cabins of passenger aircraft.

A. *Medical and Personal Items.*
(1) Braille note taker, slate and stylus, and augmentation devices.
(2) Cigar cutters.
(3) Corkscrews.
(4) Cuticle cutters.
(5) Diabetes-related supplies/equipment (once inspected to ensure prohibited items are not concealed), including: Insulin and insulin loaded dispensing products; vials or box of individual vials; jet injectors; pens; infusers; and preloaded syringes; and an unlimited number of unused syringes, when accompanied by insulin; lancets; blood glucose meters; blood glucose meter test strips; insulin pumps; and insulin pump supplies. Insulin in any form or dispenser must be properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.
(6) Eyeglass repair tools, including screwdrivers.
(7) Eyelash curlers.
(8) Knives, round-bladed butter or plastic.
(9) Lighters (maximum of two, fueled with non-refillable liquefied gas (Bic-type) or absorbed liquid (Zippo-type).
(10) Matches (maximum of four books, strike on cover, book type).
(11) Nail clippers.
(12) Nail files.
(13) Nitroglycerine pills or spray for medical use, if properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.
(14) Personal care or toiletries with aerosols, in limited quantities.
(15) Prosthetic device tools and appliances (including drill, allen wrenches, pullsleeves) used to put on or remove prosthetic devices, if carried by the individual with the prosthetic device or his or her companion.
(16) Safety razors (including disposable razors).
(17) Scissors, plastic or metal with blunt tips.
(18) Tweezers.
(19) Umbrellas (once inspected to ensure prohibited items are not concealed).
(20) Walking canes (once inspected to ensure prohibited items are not concealed).

B. *Toys, Hobby Items, and Other Items Posing Little Risk.*
(1) Knitting and crochet needles.
(2) Toy transformer robots.
(3) Toy weapons (if not realistic replicas).

III. *Items Prohibited in Sterile and Cabin Areas but that May Be Placed in Checked Baggage.* Passengers may place prohibited items other than explosives, incendiaries, disabling chemicals and other dangerous items (other than individual self-defense sprays as noted below), and loaded firearms in their checked baggage, subject to any limitations provided in DOT's hazardous materials regulation. 49 CFR part 175.

(1) *Pepper spray or mace.* A passenger may have one self-defense spray, not exceeding 4 fluid ounces by volume, that incorporates a positive means to prevent accidental discharge. See 49 CFR 175.10(a)(4)(ii).

(2) *Small arms ammunition.* A passenger may place small arms ammunition for personal use in checked baggage, but only if securely packed in fiber, wood or metal boxes, or other packaging specifically designed to carry small amounts of ammunition. 49 CFR 175.10(a)(5).

(3) *Unloaded firearms.* A passenger may place an unloaded firearm or starter pistol in a checked bag if the passenger declares to the airline operator, either orally or in writing, before checking the baggage, that the passenger has a firearm in his or her bag and that it is unloaded; the firearm is carried in a hard-sided container; and the container is locked, and only the passenger has the key or combination. 49 CFR 1540.111(c).

(4) *Club-like items.* A passenger also may transport club-like objects and sharp objects in checked baggage, as long as they do not contain explosives or incendiaries.

(5) *Self-defense spray.* A passenger may have one self-defense spray (pepper spray or mace) not exceeding four fluid ounces in a checked bag if the spray container has a positive means to prevent accidental discharge. See 49 CFR 175.10(a)(4)(ii).

(6) *Other items.* Compressed air guns, fire extinguishers, flare pistols, and gun lighters are regulated as hazardous materials and may only be transported in checked baggage under strict limitations in quantity and packaging. 49 CFR part 175.

IV. *Lists are not Exclusive.* Neither the prohibited items list nor the permitted items list contains all possible items. A screener has discretion to prohibit an individual from carrying an item into a sterile area or onboard an aircraft if the screener determines that the item is a weapon, explosive, or incendiary, regardless of whether the item is on the prohibited items list or the permitted items list. For example, if a cigar cutter or other article on the permitted list appears unusually dangerous, the screener may refuse to allow it in sterile areas. Similarly, screeners may allow individuals to bring items into the sterile area that are not on the permitted items list. In addition, items may be prohibited from the cabin of an aircraft, or allowed in only limited quantities, by Department of Transportation regulations governing hazardous materials. Individuals with questions about the carriage of hazardous materials on passenger aircraft may call the Hazardous Materials Information Center at 1–800–467–4922 for more information.

Regulatory Impact Analyses

Regulatory Evaluation

This is not a substantive rule. Rather, it explains to the public, airport personnel, screeners, and airlines how the TSA interprets certain terms used in an existing rule, 49 CFR 1540.111. Generally, an interpretive rule is not likely to impose an economic impact distinct from the impact of the underlying rule. This interpretive rule does not expand the universe of items that passengers will not be allowed to bring into sterile areas or on board aircraft beyond the types of items that currently are considered prohibited weapons, explosives, and incendiaries under the underlying rule.

The resulting economic impact of this rule is non-significant. Passengers and other persons with items that may not be brought into sterile areas have several options, some of which include transporting the prohibited item in checked baggage, mailing it to a destination, or returning it to their car. These persons can also choose to voluntarily abandon the property in TSA-provided receptacles, at which point title of the property transfers to the Government. The rule does not affect manufacturers' or distributors' ability to sell items that may not be brought into sterile areas or passengers' ability to purchase them (prohibited items sold in sterile areas must be shipped to the purchaser).

While little or no adverse economic impact is expected, some unquantifiable economic benefit may result from the fact that this interpretive rule will expedite the screening process at the nation's airports by assisting passengers in deciding how to handle specified items before passengers reach the checkpoint.

Based on this analysis, this interpretative rule is not considered a "significant regulatory action" for purposes of Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, as amended, (RFA) was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." Based on the analysis discussed in the section above, this interpretative rule does not impose a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis is not required.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this interpretative rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended to discourage imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement that assesses the effect of any Federal mandate found in a rulemaking action that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local and tribal governments, in the aggregate, or by the private sector. Such a mandate is identified as a "significant regulatory action." The interpretive rule does not impose an unfunded mandate on state, local, or tribal governments because it does not require any action on the part of those entities.

Executive Order 13132, Federalism

TSA has examined this rule under the principles and criteria of Executive Order 13132, Federalism. TSA has determined that this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or

the distribution of power and responsibilities among the various levels of government. Therefore, this interpretative rule does not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Review Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

Issued in Washington, DC, February 10, 2003.

James M. Loy,

Under Secretary of Transportation for Security.

[FR Doc. 03–3736 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 020703C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the 2003 interim total allowable catch of pollock specific for this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 13, 2003, until 1200 hrs, A.l.t., February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 2003 pollock TAC in Statistical Area 630 of the GOA was established as 1,222 metric tons by the interim 2003 harvest specifications for groundfish in the GOA (67 FR 78733, December 26, 2002).

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on January 21, 2003 (68 FR 2921, January 22, 2003).

NMFS has determined that approximately 587 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock in Statistical Area 630 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA effective 1200 hrs, A.l.t., February 14, 2003.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to allow full use of the amount of the 2003 interim pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to allow full use of the amount of the 2003 interim pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3755 Filed 2–11–03; 3:00 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 31
Friday, February 14, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 90, 100, and 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) 90, 100, and 200 series airplanes. This proposed AD would require you to inspect the forward side of the aft pressure bulkhead for scoring damage and repair, if necessary. This proposed AD is the result of reports of the aft pressure bulkhead being damaged by scoring during manufacture. The actions specified by this proposed AD are intended to detect and correct damage to the aft pressure bulkhead of the fuselage. Such damage could lead to fatigue failure of the bulkhead.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before April 23, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–45–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–45–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The FAA has received reports that during manufacturing, nine aft pressure bulkheads of Raytheon 90, 100, and 200 series airplanes may have been damaged by scribing or knife marks (scoring).

What are the consequences if the condition is not corrected? The damage to the aft pressure bulkhead may cause fatigue failure of the bulkhead.

Is there service information that applies to this subject? Raytheon has issued Service Bulletin No. SB 53–3513, Revision 1, Issued May 2002, Revised October 2002.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the forward side of the aft pressure bulkhead for scoring damage; and
—Repairing, if required, the forward side of the aft pressure bulkhead.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon 90, 100, and 200 series airplanes of the same type design;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 3,223 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspection of the forward side of the aft pressure bulkhead:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 per hour = $480	Not applicable	$480	$1,547,040

We estimate the following costs to accomplish any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair of the forward side of the aft pressure bulkhead:

Labor cost	Parts cost	Total cost per airplane
16 workhours × $60 per hour = $960	$25	$985

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is within the next 6 calendar months after the effective date of this AD.

Why is the proposed compliance time presented in calendar time instead of hours time-in-service (TIS)? This unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it would be for an airplane with 500 hours TIS. For this reason, FAA has determined that a compliance based on calendar time should be utilized in this AD in order to ensure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 2002–CE–45–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category;

Model	Serial Nos.
(1) 65–90, 65–A90, B90, C90, and C90A	LJ–1 through LJ–1287, LJ–1289 through LJ–1294, and LJ–1296 through LJ–1299.
(2) E90	LW–1 through LW–347.
(3) F90	LA–2 through LA–236.
(4) H90 (T–44A)	LL–1 through LL–61.
(5) 100 and A100	B–2 through B–89, B–93, and B–100 through B–247.
(6) A100 (U–21F)	B–1, B–90 through B–92, and B–94 through B–99.
(7) A100–1 (U–21J)	BB–3 through BB–5.
(8) A200 (C–12A) and (C–12C)	BC–1 through BC–61, BC–62 through BC–75, and BD–1 through BD–30.
(9) A200C (UC–12B)	BJ–1 through BJ–66.
(10) A200CT (C–12D)	BP–1, BP–19, and BP–24 through BP–51.
(11) A200CT (C–12F)	BP–52 through BP–63.
(12) B200C (C–12F)	BP–64 through BP–71, BL–73 through BL–112, and BL–118 through BL–123.
(13) A200CT (FWC–12D)	BP–7 through BP–11.
(14) A200CT (RC–12D)	GR–1 through GR–12.
(15) A200CT (RC–12G)	FC–1 through FC–3.
(16) A200CT (RC–12H)	GR–14 through GR–19.
(17) A200CT (RC–12K)	FE–1 through FE–9.
(18) A200CT (RC–12P)	FE–25 through FE–31, FE–33, and FE–35.
(19) A200CT (RC–12Q)	FE–32, FE–34, and FE–36.
(20) B100	BE–1 through BE–137.
(21) B200C	BL–37 through BL–57, BL–61 through BL–72, and BL–124 through BL–138.
(22) 200C	BL–1 through BL–23, BL–26 through BL–36.
(23) B200C (C–12F)	BP–64 through BP–71, BL–73 through BL–112, and BL–118 through BL–123.

Model	Serial Nos.
(24) B200C (C–12R)	BW–1 through BW–29.
(25) B200C (UC–12F)	BU–1 through BU–10.
(26) B200C (UC–12M)	BV–1 through BV–10.
(27) B200CT and 200CT	BN–1 through BN–4.
(28) B200T and 200T	BT–1 through BT–34, and BB–1314.
(29) 200	BB–2, BB–6 through BB–185, BB–187 through BB–202, BB–204 through BB–269, BB–271 through BB–407, BB–409 through BB–468, BB–470 through BB–488, BB–490 through BB–509, BB–511 through BB–529, BB–531 through BB–550, BB–552 through BB–562, BB–564 through BB–572, BB–574 through BB–590, BB–592 through BB–608, BB–610 through BB–626, BB–628 through BB–646, BB–648 through BB–664, BB–666 through BB–694, BB–696 through BB–733, BB–735 through BB–792, BB–794 through BB–797, BB–799 through BB–822, BB–825 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912.
(30) B200	BB–734, BB–793, BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, BB–913 through BB–990, BB–992 through BB–1051, BB–1053 through BB–1092, BB–1094, BB–1099 through BB–1104, BB–1106 through BB–1116, BB–1118 through BB–1184, BB–1186 through BB–1263, BB–1265 through BB–1288, BB–1290 through BB–1300, BB–1302 through BB–1313, BB–1315 through BB–1384, BB–1389 through BB–1425, BB–1427 through BB–1438, and BB–1440 through BB–14443.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage to the aft pressure bulkhead of the fuselage. Such damage could lead to fatigue failure of the bulkhead.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the forward side of the aft pressure bulkhead for scoring damage.	Within the next 6 calendar months after the effective date of this AD, unless already accomplished.	In accordance with the Accomplishment Instructions of Raytheon Aircraft Mandatory Service Bulletin No.: SB 53–3513, Rev. 1, dated: October 2002.
(2) If scoring damage is found, repair as specified in the Raytheon Aircraft Mandatory Service Bulletin No.: SB 53–3513, Rev. 1, dated: October 2002. As applicable, obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD and incorporate this repair scheme.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD, unless already accomplished.	In accordance with the Accomplishment Instructions of Raytheon Aircraft Mandatory Service Bulletin No.: SB 53–3513, Rev. 1, dated: October 2002. As applicable, repair in accordance with a repair scheme obtained from Raytheon Aircraft Company. Obtain this repair scheme through FAA at the address specified in paragraph (f) of this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 7, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3611 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–49–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, N1, AS–365N2, AS 365 N3, SA–366G1, AS355F, F1, F2, N, and EC130 B4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model SA–365N, N1, AS–365N2, AS 365 N3, SA–366G1, AS355 F, F1, F2, N, and EC130 B4 helicopters with certain TRW–SAMM main servocontrols (servocontrols) installed. This proposal would require removing the servocontrol and replacing it with a servocontrol that does not fall within the "Applicability" of this AD at specified intervals. This proposal is prompted by the discovery of an incorrect tightening torque load found on servocontrols that were overhauled by Hawker Pacific Aerospace. The actions specified by this proposed AD are intended to prevent thread failure, separation of the upper end fitting that attaches the servocontrol cylinder to the upper ball end-fitting, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–49–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–49–AD." The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS 365 N, EC 130, AS 355, and SA 366 helicopters. The DGAC advises of a report of incorrect tightening torque load found in service on servocontrols that were overhauled by Hawker Pacific Aerospace.

Eurocopter has issued the following alert telexes, all dated April 29, 2002, which specify removing the servocontrols and returning them to the Hawker Pacific Aerospace:

- Alert Telex No. 67.00.08 for Model AS–365N, N1, N2, and N3 helicopters;
- Alert Telex No. 67.03 for Model AS–366G1 helicopters;
- Alert Telex No. 67.00.23 for Model AS355F, F1, F2, and N helicopters;
- Alert Telex No. 67A001 for Model EC130 B4 helicopters.

The DGAC classified these alert telexes as mandatory and issued AD No's. 2002–312–056(A), 2002–313–027(A), 2002–315–069(A), and 2002–316–004(A), all dated June 12, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Incorrect torquing of the critical end fitting on the main servocontrol creates an unsafe condition. This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require removing the servocontrols, part number SC8031, SC8031A, SC8031–1, SC8031–2, SC8032–1, SC8032–2, SC8033–1, SC8033–2, SC8034–1, SC8034–2, SC8042, or SC8043, that were overhauled or repaired at Hawker Pacific Aerospace before March 1, 2002, and replacing them with servocontrols that do not fall within the "Applicability" of this AD at specified intervals.

The FAA estimates that 252 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,853, but the manufacturer has stated in the service information that it will rework the servocontrols at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,847,916, assuming no costs are covered by the manufacturer's warranty.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2002–SW–49–AD.

Applicability: Model SA–365N, N1, AS–365N2, N3, SA–366 G1, AS355F, F1, F2, N and EC130 B4 helicopters, with TRW–SAMM main servocontrols, part number SC8031, SC8031A, SC8031–1, SC8031–2, SC8032–1, SC8032–2, SC8033–1, SC8033–2, SC8034–1, SC8034–2, SC8042 or SC8043, overhauled or repaired at Hawker Pacific Aerospace before March 1, 2002, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent thread failure, separation of the upper end-fitting that attaches the servocontrol cylinder to the upper ball end-fitting, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace each servocontrol with a servocontrol that does not fall within the "Applicability" of this AD in accordance with the following table:

For servocontrols that have been in service for:	Replace the servocontrols:
(1) Less than 1,000 hours time-in-service (TIS)	Within the next 550 hours TIS or 12 months, whichever occurs first.
(2) 1,000 or more hours TIS, and less than 1,300 hours TIS	Before the servocontrols reach 1,550 hours TIS or within 9 months, whichever occurs first.
(3) 1,300 or more hours TIS	Within the next 250 hours TIS or 6 months, whichever occurs first.

Note 2: Eurocopter Alert Telex No. 67.00.08 for Model AS 365 N, N1, N2, and N3 helicopters; Alert Telex No. 67.03 for Model AS 366 G1 helicopters; Alert Telex No. 67.00.23 for Model AS 355 F, F1, F2, and N helicopters; and Alert Telex No. 67A001 for Model EC 130 B4 helicopters, all dated April 29, 2002, pertain to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction De L'Aviation Civile (France) AD No's. 2002–312–056(A), 2002–313–027(A), 2002–315–069(A), and 2002–316–004(A), all dated June 12, 2002.

Issued in Fort Worth, Texas, on January 30, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–3774 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150313–01]

RIN 1545–BA80

Redemptions Taxable as Dividends

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations that provide guidance regarding the treatment of the basis of redeemed stock when a distribution in redemption of such stock is treated as a dividend, as well as guidance regarding certain acquisitions of stock by related corporations that are stock under sections 302, 304, 704, 861, 1371, 1374, and 1502 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Thursday, February 20, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Procedure and Administration) (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, October 18, 2002, (67 FR 64331), announced that a public hearing was scheduled for Thursday, February 20, 2003, at 10 a.m. in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 302, 304, 704, 861, 1371, 1374, and 1502 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Thursday, January 16, 2003. Outlines of oral comments were due on Thursday, January 30, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Thursday, February 6, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Thursday, February 20, 2003, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–3751 Filed 2–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 41, 48, and 145

[REG–103829–99 and REG–143321–02]

RIN 1545–AX10 and 1545–BB60

Excise Taxes; Definition of Highway Vehicle; Hearing and Information Reporting Relating to Taxable Stock Transactions; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of location of public hearings.

SUMMARY: This document changes the location of two public hearings on proposed regulations relating to the definition of a highway vehicle for purposes of various excise taxes and information reporting relating to taxable stock transactions.

DATES: The public hearings scheduled in room 4718 on Thursday, February 27, 2003 and Tuesday, March 25, 2003, respectively, are rescheduled to be held in the IRS Auditorium at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of public hearing (REG–103829–99), that was published in the **Federal Register** on Monday, September 16, 2002 (67 FR 58346), announced that a public hearing on proposed regulations relating to the definition of a highway vehicle for purposes of various excise taxes under sections 4041 (fuel taxes), 4051 (retail tax on heavy vehicles), 4071 (tire tax) and sections 6421 and 6427 (fuel tax credits and refunds) of the Internal Revenue Service Code would be held on Thursday, February 27, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG–143321–02), that was published in the **Federal Register** on Monday, November 18, 2002 (67 FR 69496) and Wednesday, November 27, 2002, announced that a public hearing on proposed regulations relating to information reporting relating to taxable stock transactions under sections 6043(c) and 6045 of the Internal Revenue Service Code would be held on Tuesday, March 25, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The location of both public hearings has changed. The public hearing for REG–103829–99 and REG–143321–02 are being held in the Auditorium, beginning at 10 a.m., Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Because of the controlled access restrictions, attendees are not admitted beyond the lobby on the Internal Revenue Service Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–3750 Filed 2–13–03; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4003, 4007, 4010, 4011, 4022, 4041, 4041A, 4043, 4050, 4062, 4203, 4204, 4207, 4208, 4211, 4219, 4220, 4221, 4231, 4245, 4281, 4901, 4902, 4903 and 4907

RIN 1212–AA89

Rules on Filings, Issuances, Computation of Time, and Electronic Means of Record Retention

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: We propose, consistent with the Government Paperwork Elimination Act, to remove requirements from our regulations that might limit electronic filing with us or electronic issuances to others. The proposed rules will give us flexibility to keep pace with ever-changing technology. In addition, they simplify and consolidate our rules on what methods you may use to send us a filing or provide an issuance to someone other than us, on how to determine the date we treat you as having made your filing or provided your issuance, and on how to compute various periods of time (including those for filings with us and for issuances to third parties). Finally, they provide rules for maintaining records by electronic means.

DATES: Comments must be received by April 15, 2003.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to *reg.comments@pbgc.gov*, or by fax to 202–326–4112. We will make all comments available on our Web site, *http://www.pbgc.gov*. Copies of comments also may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–326–4040).

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: These proposed rules are part of our ongoing implementation of the Government Paperwork Elimination Act (GPEA) and are consistent with the Office of Management and Budget directive to remove regulatory impediments to electronic transactions. They address electronic means for filings with us, issuances to third parties, and recordkeeping. They build in the flexibility needed to allow us to continue to expand the availability of electronic options as technology advances. Under the proposal, much of the detailed information on permitted electronic means will be on our Web site, *http://www.pbgc.gov*, which will be updated from time to time.

The proposed rules make it easier for you to make a filing or provide an issuance on time by treating most types of submissions as filed or issued on the date sent (provided you meet certain requirements) rather than on the date received. In addition, under the proposal, the rules are easier to use—they are simpler, more uniform, and appear together in a single part of the regulations. The proposal makes similar simplifying changes to the rules for computing periods of time.

Under this proposal, our filing, issuance, computation-of-time, and electronic record-retention rules are consolidated in new subparts A through E of part 4000.

- New subpart A tells you what methods you may use for sending a filing to us. These new rules will apply to any filing with us under our regulations where the particular regulation calls for their application. For these purposes, we treat any payment to us under our regulations as a filing.

- New subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. These new rules will apply to any issuance (except a payment) under our regulations where the particular regulation calls for their application.
- New subpart C tells you how we will determine the date you send us a filing and the date you provide an issuance to someone other than us (such as a participant). These new rules will apply to any filing or issuance under our regulations where the particular regulation calls for their application.
- New subpart D tells you how to compute time periods. These new rules will apply to any time period under our regulations (*e.g.*, for filings with us and issuances to third parties) where the particular regulation calls for their application.
- New subpart E tells you how to comply with any recordkeeping requirement under our regulations using electronic means.

Existing Part 4000's distribution and derivation tables, which show the changes that occurred as a result of the PBGC's July 1, 1996, reorganization and renumbering of its regulations (61 FR 32574), will be moved to the PBGC's Web site at *http://www.pbgc.gov*, and combined with similar tables showing the changes that occurred as a result of the PBGC's June 29, 1981, reorganization and renumbering of its regulations (46 FR 32574). A note at the beginning of the PBGC's regulations will refer users to the PBGC's Web site for the tables.

Method of Filing

We are trying to provide as much flexibility as possible in filing methods. The proposed rules allow you to file any submission with us by hand, mail, or commercial delivery service, and refer you to our Web site, *http://www.pbgc.gov*, for current information on electronic filing, including permitted methods, fax numbers, and e-mail addresses. The instruction booklets and forms used for certain filings with us also will describe electronic and other filing methods, as appropriate, and will be available on our Web site.

Where To File

Under the proposed rule, we are removing the filing addresses from our regulations and putting them on our Web site, *http://www.pbgc.gov*, and in the instructions to our forms; addresses will also be available through our Customer Service Center, 1–800–400–7242 (for participants), or 1–800–736–2444 (for practitioners). (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.) Because we have different addresses for different types of filings, you should make sure to use the appropriate address for your type of filing. For example, some filings (such as premium payments) must be sent to a bank, while other filings (such as the Standard Termination Notice (Form 500)) must be sent to the appropriate department at our offices in Washington, DC.

Method of Issuance

The proposed rules on methods of issuance permit you to use any method of issuance, provided you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Posting is not a permissible method of issuance under the rules of this part. (However, for certain issuances, posting is specifically permitted by the regulation governing the particular issuance.)

The proposed rules include a safe-harbor method for providing an issuance by electronic media. The proposed safe-harbor method generally tracks the Department of Labor's final rules (67 FR 17264 (April 9, 2002)) concerning disclosure of certain employee benefit plan information through electronic media, as set out at 29 CFR 2520.104b–1. Our safe-harbor method would be available to any person using electronic media to satisfy issuance obligations under our regulations.

These proposed rules on methods of issuance do not address compliance with the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, 114 Stat. 464 (2000) (codified at 15 U.S.C. 7001–7006) ("E–SIGN").

Date of Filing or Issuance

The proposed rules tell you how we will determine the date you filed your submission with us and the date you provided your issuance to someone other than us (such as a participant). In some cases, other PBGC rules relating to issuances to third parties refer to when an issuance is *received*. (For instance, when there is a request for abatement (regulation § 4207.3), interest is credited to the employer if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of a complete abatement application action.) These proposed rules would not affect those other receipt rules for issuances to third parties. Similarly, these proposed rules would not affect any receipt rule for filings with the PBGC, except to the extent these rules describe how to determine when a document is received (for instance, filings received by the PBGC after 5 p.m. are treated as received on the next business day).

Date of Filing in General

Under the proposed rule, we will treat most types of submissions as filed on the date you send the submission to us if you comply with certain requirements. The requirements vary depending on the method of filing you use. We may ask you for evidence of when you sent a submission to us.

There are a few types of submissions to us that we always treat as filed when received (not when sent), no matter what method you use: (1) Applications for benefits and related submissions (unless the instructions for the applicable forms provide for an earlier date), (2) advance notices of reportable event (under subpart C of section 4043), (3) notices of missed contributions exceeding $1 million (under subpart D of section 4043), and (4) requests for approval of a multiemployer plan amendment. The "filed-when-received" rule is necessary for these submissions because we may need to act quickly to provide benefit payments, to protect participants or premium payers, or to act within a statutory time frame.

In these cases, as well as cases where you do not meet the requirements for your filing date to be the date you send your submission, your filing date is the date we receive your submission. However, if we receive your submission after 5 p.m. (our time) on a business day, or anytime on a weekend or Federal holiday, we will treat it as received on the next business day.

Date of Issuance in General

Under the proposed rule, we will treat most types of issuances to third parties as provided on the date you send the issuance if you comply with certain requirements. The requirements vary depending on the method of issuance you use. The proposed rules for determining the date of an issuance generally track the proposed rules for determining the date of a filing; however, there are some differences for issuances using electronic means. An electronic issuance meeting the proposed safe harbor will have the benefit of the "send-date" rule. An electronic issuance that meets the general standard for issuances (*i.e.*, using measures reasonably calculated to ensure actual receipt), but not the safe harbor, will be deemed issued on the date received by the intended recipient.

Filing and Issuance by U.S. Postal Service

If you send your submission to us, or provide an issuance to someone else, by First-Class Mail (or another at least equivalent class), and you properly mail it by the last scheduled collection of the day, your filing or issuance date is the date you mail it. If you properly mail it later than the last scheduled collection or on a day when there is no scheduled collection, your filing or issuance date is the date of the next scheduled collection.

If your submission or issuance has a legible U.S. Postal Service postmark, we will presume your filing or issuance date is the date of the postmark. However, you may prove an earlier date. The same rules apply if your submission or issuance has a legible postmark made by a private postage meter (but no legible U.S. Postal Service postmark) and arrives at the proper address by the time reasonably expected.

Filing and Issuance Using the Postal Service of a Foreign Country

If you send your submission to us, or provide an issuance to someone else, using the postal service of a foreign country, your filing or issuance date is the date of receipt at the proper address.

Filing and Issuance by Commercial Delivery Service

If you send your submission to us, or provide an issuance to someone else, by a commercial delivery service that meets certain requirements (described below) and you properly deposit your submission or issuance by the last scheduled collection of the day, your filing or issuance date is the date you deposit your submission or issuance; if you properly deposit it later than the last scheduled collection or on a day when there is no scheduled collection, your filing or issuance date is the date of the next scheduled collection.

To benefit from this "send-date" rule, you must use: (1) A "designated delivery service" under Internal Revenue Code § 7502(f) (our Web site, *http://www.pbgc.gov*, will list the designated delivery services), or (2) a service for which it is reasonable to expect that your submission or issuance will arrive at the proper address by 5 p.m. on the second business day after the date of collection.

Filing and Issuance by Hand Delivery

If you hand deliver your submission or issuance, your filing or issuance date is the date of receipt at the proper address. A hand-delivered issuance need not be delivered while the intended recipient is physically present. For example, unless you have reason to believe that the intended recipient will not receive the notice within a reasonable amount of time, a notice is deemed to be received when you place it in the intended recipient's office mailbox.

Filing and Issuance by Electronic Delivery

You may submit most types of filings to PBGC electronically. If you do, the filing date for your submission is the date you transmit it to us at the proper address, provided (1) you comply with the technical requirements for that type of submission (our Web site, *http://www.pbgc.gov*, tells you when electronic filing is permitted and, if so, identifies the technical requirements for each type of submission), and (2) when sending an e-mail with an attachment, you include, in the body of the e-mail, the name and telephone number of the person for us to contact if we are unable to read the attachment.

Under certain circumstances, you may provide issuances electronically. An electronic issuance meeting the proposed safe harbor will have the benefit of a "send-date" rule. An electronic issuance that meets the general standard for issuances (*i.e.*, using measures reasonably calculated to ensure actual receipt), but not the safe harbor for electronic filings, will be deemed issued on the date received by the intended recipient. For any issuance in the form of an e-mail, you must include, in the body of the e-mail, the name and telephone number of the person to contact if the recipient is unable to read the attachment.

Filing and Issuance by Submission of Computer Disk

For most types of filings with PBGC, you may send us your submission on a computer disk (*e.g.*, a CD–ROM or floppy diskette). Similarly, you may be able to provide certain issuances on computer disk. For filings, you must comply with the technical requirements for that type of submission. For issuances, you must meet certain safe-harbor requirements. For both filings and issuances, you must include, in a paper cover letter or on the disk's label, the name and telephone number of the person to contact if we or the intended recipient is unable to read the disk. The rules for determining the filing or issuance date of your submission of a computer disk will apply as if you sent us a paper version of your submission.

Requirement To Resend

If you have reason to believe that we or the intended recipient has not received your electronic or paper filing or issuance (or has received it in a form that is not useable), you must promptly resend it. If you do so, we will treat it as filed or issued on the original filing or issuance date. If you are not prompt, your filing or issuance date will be the filing or issuance date of the resubmission or reissuance.

De Minimis Issuance Errors

We will not treat your issuance as untimely based on your failure to provide it to a participant or beneficiary in a timely manner if the failure resulted from administrative error and involved only a *de minimis* percentage of intended recipients, provided that you resend the issuance to the intended recipient promptly after discovering the error. (Under our existing regulations, this rule applies only to standard and distress termination issuances; the proposed rule applies it to all our issuances under our regulations.)

Computation of Time

The proposed computation-of-time rules tell you how to compute time periods under our regulations (*e.g.*, for filings with us and issuances to third parties) where the particular regulation calls for their application. (Some of our regulations will contain specific exceptions or modifications to these proposed rules.)

When computing a time period (whether counting forwards or backwards) under these rules, exclude the day of the act, event, or default that begins the period; include the last day of the period; and if the last day is a weekend or Federal holiday, extend or shorten the period (whichever benefits you in complying with the time requirement) to the next regular business day. The weekend and holiday rule also applies to deadlines for which counting is not required, such as "the last day" of a plan year.

For example, suppose that you miss a required minimum funding contribution of $2 million that has a November 13, 2003, due date. Under our regulations, you are required to file a notice of a missed contribution (Form 200) no later than 10 days after the due date for the missed contribution. To determine your deadline, count November 14 as day 1, November 15 as day 2, November 16 as day 3, and so on. Therefore, November 23 is day 10. Since November 23, 2003, is a Sunday, you will have until Monday, November 24, 2003, to file the notice.

As another example, suppose you are required to file an advance notice of reportable event for a transaction that is effective December 16, 2003. Under our regulations, the notice is due at least 30 days before the effective date of the event. To determine your deadline, count December 15 as day 1, December 14 as day 2, December 13 as day 3, and so on. Therefore, November 16 is day 30. Since November 16, 2003, is a Sunday, you will have until Monday, November 17, 2003, to file the notice.

If a time period is measured in months, you would first identify the day of the calendar month on which you start counting (*i.e.*, the date of the act, event, or default that triggers the period). Then you would look to the corresponding day of the calendar month in which you stop counting. For example, a one-month period measured from January 15 ends (if counting forward) on February 15 or (if counting backward) on December 15. In this example, as in most cases where you are counting months, the day of the calendar month in which the period starts (the 15th) corresponds to the same numbered day of the calendar month in which the period ends. There are two special rules that apply where you start counting on a day that is at or near the end of a calendar month:

- If you start counting on the last day of a calendar month, the corresponding day of any later (or earlier) calendar month is the last day of that calendar month. For example, for a three-month period measured from November 30, the corresponding day (if counting forward) is the last day of February (the 28th or 29th) or (if counting backward) the last day of August (the 31st).
- If you start counting on the 29th or 30th of a calendar month, the corresponding day of February is the last day of February. For example, for a one-month period measured from January 29, the corresponding day is the last day of February (the 28th or 29th).

Electronic Means of Record Retention

The proposed rule provides guidance on record maintenance and retention using electronic means. The proposed rule generally tracks the Department of Labor's final rules (67 FR 17264 (April 9, 2002)) for retaining records by electronic means, set out at 29 CFR 2520.107–1.

You remain responsible for following our electronic recordkeeping rules, even if you rely on others for help. For example, if a service provider to a plan administrator creates, maintains, retains, prepares, or keeps physical custody of the plan's records, the plan administrator must ensure that the service provider complies with these rules.

The proposed recordkeeping requirements are consistent with the goals of E–SIGN and are designed to facilitate voluntary use of electronic records while ensuring continued accuracy, integrity and accessibility of records required to be kept under our regulations. The requirements are justified by the importance of the records involved, are substantially equivalent to the requirements imposed on records that are not electronic records, will not impose unreasonable costs on the acceptance and use of electronic records, and do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements related to the regulations that would be affected by this proposed action were previously approved by OMB. We are requesting OMB's approval of the proposed changes in our filing, issuance, computation-of-time, and recordkeeping rules.

The proposed rules will promote the use of appropriate automated, electronic, or other technological collection techniques or other forms of information technology in connection with the approved information collections. Although the proposed rules are expected to make the information collections more convenient to the public by allowing use of electronic means, expanding the choice of filing, issuance, and recordkeeping methods, and giving the benefit of a "when-sent" filing or issuance date for most types of submissions, we do not expect the changes to materially affect burden and are therefore not revising the annual burden estimates currently approved by OMB for each of our regulations.

We invite comment from the public on any issues arising under the Paperwork Reduction Act relating to this proposed rule. We specifically seek public comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget, that this proposed rule is not a "significant regulatory action" under Executive Order 12866.

We certify under section 605(b) of the Regulatory Flexibility Act that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule does not affect the underlying requirements (*e.g.*, to file a submission with us, provide an issuance to a third party, or retain records) to which the proposed rules would apply. Nor does the final rule require any plan or other entity to make use of electronic media for either disclosure or recordkeeping purposes or to change the method it currently uses. Entities may avoid both any marginal cost and any beneficial impacts by simply retaining their existing paper-based or electronic methods of compliance with disclosure requirements or existing paper-based methods of compliance with recordkeeping requirements. (For those entities that already use electronic media for recordkeeping purposes, any expense associated with conforming their procedures to the minimum standards in this proposal would be marginal.) We do not expect the economic impact (if any) associated with the proposed changes to be significant for entities of any size, and therefore certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4003

Administrative practice and procedure, Pension insurance.

29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4010

Employee benefit plans; Penalties; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4011

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4022

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4041

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4041A

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4043

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4050

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4062

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4203

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4204

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4207

Employee benefit plans, Pension insurance.

29 CFR Part 4208

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4211

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4219

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4220

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4221

Employee benefit plans, Pension insurance.

29 CFR Part 4231

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4245

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4281

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4901

Freedom of information.

29 CFR Part 4902

Privacy.

29 CFR Part 4903

Claims, Government employees, Income taxes.

29 CFR Part 4907

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

For the reasons set forth above, the PBGC proposes to amend 29 CFR parts 4000, 4003, 4007, 4010, 4011, 4022, 4041, 4041A, 4043, 4050, 4062, 4203, 4204, 4207, 4208, 4211, 4219, 4220, 4221, 4231, 4245, 4281, 4901, 4902, 4903 and 4907 of 29 CFR chapter XL as follows:

1. Add the following note above the heading for Subchapter A of Chapter XL:

Note: PBGC's regulations were substantially reorganized and renumbered effective June 29, 1981 (at 46 FR 32574) and July 1, 1996 (at 61 FR 34002). Distribution and derivation tables showing the changes that occurred as a result of these amendments are available on the PBGC's Web site at *http://www.pbgc.gov*.

2. Revise part 4000 to read as follows:

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

Subpart A—Filing Rules

Sec.

4000.1 What are these filing rules about?
4000.2 What definitions do I need to know for these rules?
4000.3 What methods of filing may I use?
4000.4 Where do I file my submission?
4000.5 Does the PBGC have discretion to waive these filing requirements?

Subpart B—Issuance Rules

4000.11 What are these issuance rules about?
4000.12 What definitions do I need to know for these rules?
4000.13 What methods of issuance may I use?
4000.14 What is the safe-harbor method for providing an issuance by electronic media?
4000.15 Does the PBGC have discretion to waive these issuance requirements?

Subpart C—Determining Filing and Issuance Dates

4000.21 What are these rules for determining the date of a filing or issuance about?
4000.22 What definitions do I need to know for these rules?
4000.23 When is my submission or issuance treated as filed or issued?
4000.24 What if I mail my submission or issuance using the U.S. Postal Service?
4000.25 What if I use the postal service of a foreign country?
4000.26 What if I use a commercial delivery service?
4000.27 What if I hand deliver my submission or issuance?
4000.28 What if I send a computer disk?
4000.29 What if I use electronic delivery?
4000.30 What if I need to resend my filing or issuance for technical reasons?
4000.31 Is my issuance untimely if I miss a few participants or beneficiaries?
4000.32 Does the PBGC have discretion to waive any requirements under this part?

Subpart D—Computation of Time

4000.41 What are these computation-of-time rules about?
4000.42 What definitions do I need to know for these rules?
4000.43 How do I compute a time period?

Subpart E—Electronic Means of Record Retention

4000.51 What are these record retention rules about?
4000.52 What definitions do I need to know for these rules?
4000.53 May I use electronic media to satisfy PBGC's record retention requirements?
4000.54 May I dispose of original paper records if I keep electronic copies?

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

Subpart A—Filing Rules

§ 4000.1 What are these filing rules about?

Where a particular regulation calls for their application, the rules in this subpart A of part 4000 tell you what filing methods you may use for any submission (including a payment) to us. They do not cover an issuance from you to anyone other than the PBGC, such as a notice to participants. Also, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. (Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.2 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Filing means any notice, information, or payment that you submit to us under our regulations.

Issuance means any notice or other information you provide to any person other than us under our regulations.

We means the PBGC.

You means the person filing with us.

§ 4000.3 What methods of filing may I use?

(a) *Paper filings.* You may file any submission with us by hand, mail, or commercial delivery service.

(b) *Electronic filings.* Current information on electronic filings, including permitted methods, fax numbers, and e-mail addresses, is—

(1) On our Web site, *http://www.pbgc.gov;*

(2) In our various printed forms and instructions packages; and

(3) Available by contacting our Customer Service Center at 1200 K Street, NW, Washington, DC, 20005–4026; telephone 1–800–400–7242 (for participants), or 1–800–736–2444 (for practitioners). (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.)

§ 4000.4 Where do I file my submission?

To find out where to send your submission, visit our Web site at *http://www.pbgc.gov*, see the instructions to our forms, or call our Customer Service Center (1–800–400–7242 for participants, or 1–800–736–2444 for practitioners; TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.) Because we have different addresses for different types of filings, you should make sure to use the appropriate address for your type of filing. For example, some filings (such as premium payments) must be sent to a specified bank, while other filings (such as the Standard Termination Notice (Form 500)) must be sent to the appropriate department at our offices in Washington, DC.

§ 4000.5 Does the PBGC have discretion to waive these filing requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart B—Issuance Rules

§ 4000.11 What are these issuance rules about?

Where a particular regulation calls for their application, the rules in this subpart B of part 4000 tell you what methods you may use to issue a notice or otherwise provide information to any person other than us (*e.g.*, a participant or beneficiary). They do not cover payments to third parties. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (*e.g.*, requirements under the Internal Revenue Code (Title 26 of the United States Code)). If so, you must comply with any applicable issuance rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.12 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Filing means any notice, information, or payment that you submit to us under our regulations.

Issuance means any notice or other information you provide to any person other than us under our regulations.

We means the PBGC.

You means the person providing the issuance to a third party.

§ 4000.13 What methods of issuance may I use?

(a) *In general.* You may use any method of issuance, provided you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Posting is not a permissible method of issuance under the rules of this part.

(b) *Electronic safe-harbor method.* Section 4000.14 provides a safe-harbor method for meeting the requirements of paragraph (a) of this section when providing an issuance using electronic media.

§ 4000.14 What is the safe harbor method for providing an issuance by electronic media?

(a) *In general.* Except as otherwise provided by applicable law, rule or regulation, you satisfy the requirements of § 4000.13 if you follow the methods described at paragraph (b) of this section when providing an issuance by electronic media to any person described in paragraph (c) or (d) of this section.

(b) *Issuance requirements.* (1) You must take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents—

(i) Results in actual receipt of transmitted information (*e.g.*, using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information); and

(ii) Protects confidential information relating to the intended recipient (*e.g.*, incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by anyone other than the intended recipient);

(2) You prepare and furnish electronically delivered documents in a manner that is consistent with the style, format and content requirements applicable to the particular document;

(3) You provide each intended recipient with a notice, in electronic or non-electronic form, at the time a document is furnished electronically, that apprises the intended recipient of—

(i) The significance of the document when it is not otherwise reasonably evident as transmitted (*e.g.*, "The attached participant notice contains information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation."); and

(ii) The intended recipient's right to request and obtain a paper version of such document; and

(4) You give the intended recipient, upon request, a paper version of the electronically furnished documents.

(c) *Employees with electronic access.* This section applies to a participant who—

(1) Has the ability to effectively access the document furnished in electronic form at any location where the participant is reasonably expected to perform duties as an employee; and

(2) With respect to whom access to the employer's electronic information system is an integral part of those duties.

(d) *Any person.* This section applies to any person who—

(1) Except as provided in paragraph (d)(2) of this section, has affirmatively consented, in electronic or non-electronic form, to receiving documents through electronic media and has not withdrawn such consent;

(2) In the case of documents to be furnished through the Internet or other electronic communication network, has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the person's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(3) Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the participant's, beneficiary's or other person's address for receipt of electronically furnished documents or other information;

(iv) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge;

(v) Any hardware and software requirements for accessing and retaining the documents; and

(4) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the person will be unable to access or retain electronically furnished documents,

(i) Is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents;

(ii) Is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and

(iii) Again consents, in accordance with the requirements of paragraph (d)(1) or paragraph (d)(2) of this section, as applicable, to the receipt of documents through electronic media.

§ 4000.15 Does the PBGC have discretion to waive these issuance requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart C—Determining Filing and Issuance Dates

§ 4000.21 What are these rules for determining the filing or issuance date about?

Where the particular regulation calls for their application, the rules in this subpart C of part 4000 tell you how we will determine the date you send us a filing and the date you provide an issuance to someone other than us (such as a participant). These rules do *not* cover payments to third parties. In addition, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (*e.g.*, requirements under the Internal Revenue Code (Title 26 of the United States Code)). In meeting those requirements, you should follow any applicable rules under those requirements for determining the filing and issuance date. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.22 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Business day means a day other than a Saturday, Sunday, or Federal holiday.

We means the PBGC.

You means the person filing with us or the person providing the issuance to a third party.

§ 4000.23 When is my submission or issuance treated as filed or issued?

(a) *Filed or issued when sent.* Generally, we treat your submission as filed, or your issuance as provided, on the date you send it, if you meet certain requirements. The requirements depend upon the method you use to send your submission or issuance (see §§ 4000.24 through 4000.29). (Certain filings are always treated as filed when received, as explained in paragraph (b)(2) of this section.)

(b) *Filed or issued when received.* (1) *In general.* If you do not meet the requirements for your submission or issuance to be treated as filed or issued when sent (see §§ 4000.24 through 4000.32), we treat it as filed or issued on the date received in a permitted format at the proper address.

(2) *Certain filings always treated as filed when received.* We treat the following submissions as filed on the date we receive your submission, no matter what method you use:

(i) *Applications for benefits.* An application for benefits or related submission (unless the instructions for the applicable forms provide for an earlier date);

(ii) *Advance notices of reportable events.* Information required under subpart C of part 4043 of this chapter, dealing with advance notice of reportable events;

(iii) *Form 200 filings.* Information required under subpart D of part 4043 of this chapter, dealing with notice of certain missed minimum funding contributions; and

(iv) *Requests for approval of multiemployer plan amendments.* A request for approval of an amendment filed with the PBGC pursuant to part 4220 of this chapter.

(3) *Determining our receipt date for your filing.* If we receive your submission at the correct address by 5 p.m. (our time) on a business day, we treat it as received on that date. If we receive your submission at the correct address after 5 p.m. on a business day, or anytime on a weekend or Federal holiday, we treat it as received on the next business day. For example, if you send your fax or e-mail of a Form 200 filing to us in Washington, DC, on Friday, March 15, from California at 3 p.m. (Pacific standard time), and we receive it immediately at 6 p.m. (our time), we treat it as received on Monday, March 18.

§ 4000.24 What if I mail my submission or issuance using the U.S. Postal Service?

(a) *In general.* Your filing or issuance date is the date you mail your submission or issuance using the U.S. Postal Service if you meet the requirements of paragraph (b) of this section, and you mail it by the last scheduled collection of the day. If you mail it later than that, or if there is no scheduled collection that day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address.

(b) *Requirements for "send date."* Your submission or issuance must meet the applicable postal requirements, be properly addressed, and you must use First-Class Mail (or a U.S. Postal Service mail class that is at least the equivalent of First-Class Mail, such as Priority Mail or Express Mail). However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(c) *Presumptions.* We make the following presumptions—

(1) *U.S. Postal Service postmark.* If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible U.S. Postal Service postmark, we presume that the postmark date is the filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(2) *Private meter postmark.* If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible postmark made by a private postage meter (but no legible U.S. Postal Service postmark) and arrives at the proper address by the time reasonably expected, we presume that the metered postmark date is your filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(d) *Examples.* (1) You mail your issuance using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your issuance in a mailbox at 4 p.m. on Friday, March 15 and the next scheduled collection at that mailbox is 5 p.m. that day. Your issuance date is March 15. If on the other hand you deposit it at 6 p.m. and the next collection at that mailbox is not until Monday, March 18, your issuance date is March 18.

(2) You mail your submission using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your submission in the mailbox at 4 p.m. on Friday, March 15, and the next scheduled collection at that mailbox is 5 p.m. that day. If your submission does not show a March 15 postmark, then you may prove to us that you mailed your submission by the last scheduled collection on March 15.

§ 4000.25 What if I use the postal service of a foreign country?

If you send your submission or issuance using the postal service of a foreign country, your filing or issuance date is the date of receipt at the proper address.

§ 4000.26 What if I use a commercial delivery service?

(a) *In general.* Your filing or issuance date is the date you deposit your submission or issuance with the commercial delivery service if you meet the requirements of paragraph (b) of this section, and you deposit it by the last scheduled collection of the day for the type of delivery you use (such as two-day delivery or overnight delivery). If you deposit it later than that, or if there is no scheduled collection that day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address. However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(b) *Requirements for "send date."* Your submission or issuance must meet the applicable requirements of the commercial delivery service, be properly addressed, and—

(1) *Delivery within two days.* It must be reasonable to expect your submission or issuance will arrive at the proper address by 5 p.m. on the second business day after the next scheduled collection; or

(2) *Designated delivery service.* You must use a "designated delivery service" under section 7502(f) of the Internal Revenue Code (Title 26 of the United States Code). Our Web site, *http://www.pbgc.gov*, lists those designated delivery services. You should make sure that both the provider and the particular type of delivery (such as two-day delivery) are designated.

(c) *Example.* You send your submission by commercial delivery service using two-day delivery. In addition, you meet the requirements of paragraph (b). Suppose the deadline for two-day delivery at the place you make your deposit is 8 p.m. on Friday, March 15. If you deposit your submission by the deadline, your filing date is March 15. If, instead, you deposit it after the 8 p.m. deadline and the next collection at that site for two-day delivery is on Monday, March 18, your filing date is March 18.

§ 4000.27 What if I hand deliver my submission or issuance?

Your filing or issuance date is the date of receipt of your hand-delivered submission or issuance at the proper address. A hand-delivered issuance need not be delivered while the intended recipient is physically present. For example, unless you have reason to believe that the intended recipient will not receive the notice within a reasonable amount of time, a notice is deemed to be received when you place it in the intended recipient's office mailbox. Our Web site, *http://www.pbgc.gov*, and the instructions to our forms, identify the proper addresses for filings with us.

§ 4000.28 What if I send a computer disk?

(a) *In general.* We determine your filing or issuance date for a computer disk as if you had sent a paper version of your submission or issuances if you meet the requirements of paragraph (b) of this section.

(1) *Filings.* For computer-disk filings, we may treat your submission as invalid if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section.

(2) *Issuances.* For computer-disk issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements ("using measures reasonably calculated to ensure actual receipt") of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) *Requirements.* To get the filing date under paragraph (a) of this section, you must meet the requirements of paragraphs (b)(1) and (b)(3) To get the issuance date under paragraph (a), you must meet the requirements of paragraphs (b)(2) and (b)(3).

(1) *Technical requirements for filings.* For filings, your electronic disk must comply with any technical requirements for that type of submission (our Web site, *http://www.pbgc.gov*, identifies the technical requirements for each type of filing).

(2) *Technical requirements for issuances.* For issuances, you must meet the safe-harbor requirements of § 4000.14.

(3) *Identify contact person.* For filings and issuances, you must include, in a paper cover letter or on the disk's label, the name and telephone number of the person to contact if we or the intended recipient is unable to read the disk.

§ 4000.29 What if I use electronic delivery?

(a) *In general.* Your filing or issuance date is the date you electronically transmit your submission or issuance to the proper address if you meet the requirements of paragraph (b) of this section. Note that we always treat an advance notice of reportable event and a Form 200 (notice of certain missed contributions) as filed when received.

(1) *Filings.* For electronic filings, if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section, we may treat your submission as invalid.

(2) *Issuances.* For electronic issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements ("using measures reasonably calculated to ensure actual receipt") of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) *Requirements.* To get the filing date under paragraph (a), you must meet the requirements of paragraphs (b)(1) and (b)(3). To get the issuance date under paragraph (a), you must meet the requirement of paragraphs (b)(2) and (b)(3).

(1) *Technical requirements for filings.* For filings, your electronic submission must comply with any technical requirements for that type of submission (our Web site, *http://www.pbgc.gov*, identifies the technical requirements for each type of filing).

(2) *Technical requirements for issuances.* For issuances, you must meet the safe-harbor requirements of § 4000.14.

(3) *Identify contact person.* For an e-mail submission or issuance with an attachment, you must include, in the body of your e-mail, the name and telephone number of the person to contact if we or the intended recipient needs you to resubmit your filing or issuance.

(c) *Failure to meet address requirement.* If you send your electronic submission or issuance to the wrong address (but you meet the requirements of paragraph (b) of this section), your filing or issuance date is the date of receipt at the proper address.

§ 4000.30 What if I need to resend my filing or issuance for technical reasons?

(a) *Request to resubmit.* (1) *Filing.* We may ask you to resubmit all or a portion of your filing for technical reasons (for example, because we are unable to open an attachment to your e-mail). In that case, your submission (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (*e.g.*, by providing advice that allows us to open the attachment to your e-mail) by the date we specify, your filing date for the submission (or portion) that we asked you to resubmit is the date you filed your original submission. If you comply with our request late, your submission (or portion) will be treated as filed on the date of your resubmission.

(2) *Issuance.* The intended recipient may, for good reason (of a technical nature), ask you to resend all or a portion of your issuance (for example, because of a technical problem in opening an attachment to your e-mail). In that case, your issuance (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (*e.g.*, by providing advice that the recipient uses to open the attachment to your e-mail), within a reasonable time, your issuance date for the issuance (or portion) that the intended recipient asked you to resend is the date you provided your original issuance. If you comply with the request late, your issuance (or portion) will be treated as provided on the date of your reissuance.

(b) *Reason to believe submission or issuance not received or defective.* If you have reason to believe that we have not received your submission (or have received it in a form that is not useable), or that the intended recipient has not received your issuance (or has received it in a form that is not useable), you must promptly resend your submission or issuance to get your original filing or issuance date. However, we may require evidence to support your original filing or issuance date. If you are not prompt, or you do not provide us with any evidence we may require to support your original filing or issuance date, your filing or issuance date is the filing or issuance date of your resubmission or reissuance.

§ 4000.31 Is my issuance untimely if I miss a few participants or beneficiaries?

The PBGC will not treat your issuance as untimely based on your failure to provide the issuance to a participant or beneficiary in a timely manner if—

(a) The failure resulted from administrative error;

(b) The failure involved only a *de minimis* percentage of intended recipients; and

(c) You resend the issuance to the intended recipient promptly after discovering the error.

§ 4000.32 Does the PBGC have discretion to waive any requirements under this part?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart D—Computation of Time

§ 4000.41 What are these computation-of-time rules about?

The rules in this subpart D of part 4000 tell you how to compute time periods under our regulations (*e.g.*, for filings with us and issuances to third parties) where the particular regulation calls for their application. (There are specific exceptions or modifications to these rules in § 4007.6 of this chapter (premium payments), §4050.6(d)(3) of this chapter (payment of designated benefits for missing participants), and §4062.10 of this chapter (employer liability payments). In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (*e.g.*, requirements under the Internal Revenue Code (Title 26 of the United States Code)). In meeting those requirements, you should follow any applicable computation-of-time rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.42 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Business day means a day other than a Saturday, Sunday, or Federal holiday.

We means the PBGC.

You means the person responsible, under our regulations, for the filing or issuance to which these rules apply.

§ 4000.43 How do I compute a time period?

(a) *In general.* If you are computing a time period to which this part applies, whether you are counting forwards or backwards, the day after (or before) the act, event, or default that begins the period is day one, the next day is day two, and so on. Count all days, including weekends and Federal holidays. However, if the last day you count is a weekend or Federal holiday, extend or shorten the period (whichever benefits you in complying with the time requirement) to the next regular business day. The examples in paragraph (d) of this section illustrate these rules.

(b) *When date is designated.* In some cases, our regulations designate a specific day as the end of a time period, such as "the last day" of a plan year or "the fifteenth day" of a calendar month. In these cases, you simply use the designated day, together with the weekend and holiday rule of paragraph (a) of this section.

(c) *When counting months.* If a time period is measured in months, first identify the date (day, month, and year) of the act, event, or default that begins the period. The corresponding day of the following (or preceding) month is one month later (or earlier), and so on. For example, two months after July 15 is September 15. If the period ends on a weekend or Federal holiday, follow the weekend and holiday rule of paragraph (a) of this section. There are two special rules for determining what the corresponding day is when you start counting on a day that is at or near the end of a calendar month:

(1) *Special "last-day" rule.* If you start counting on the last day of a calendar month, the corresponding day of any calendar month is the last day of that calendar month. For example, a three-month period measured from November 30 ends (if counting forward) on the last day of February (the 28th or 29th) or (if counting backward) on the last day of August (the 31st).

(2) *Special February rule.* If you start counting on the 29th or 30th of a calendar month, the corresponding day of February is the last day of February. For example, a one-month period measured from January 29 ends on the last day of February (the 28th or 29th).

(d) *Examples.* (1) *Counting backwards.* Suppose you are required to file an advance notice of reportable event for a transaction that is effective December 31. Under our regulations, the notice is due at least 30 days before the effective date of the event. To determine your deadline, count December 30 as day 1, December 29 as day 2, December 28 as day 3, and so on. Therefore, December 1 is day 30. Assuming that day is not a weekend or holiday, your notice is timely if you file it on or before December 1.

(2) *Weekend or holiday rule.* Suppose you are filing a notice of intent to terminate. The notice must be issued at least 60 days and no more than 90 days before the proposed termination date. Suppose the 60th day before the proposed termination date is a Saturday. Your notice is timely if you issue it on the following Monday even though that is only 58 days before the proposed termination date. Similarly, if the 90th day before the proposed termination date is Wednesday, July 4 (a Federal holiday), your notice is timely if you issue it on Tuesday, July 3, even though that is 91 days before the proposed termination date.

(3) *Counting months.* Suppose you are required to issue a Participant Notice two months after December 31. The deadline for the Participant Notice is the last day of February (the 28th or 29th). If the last day of February is a weekend or Federal holiday, your deadline is extended until the next day that is not a weekend or Federal holiday.

Subpart E—Electronic Means of Record Retention

§ 4000.51 What are these record retention rules about?

The rules in this subpart E of part 4000 tell you what methods you may use to meet any record retention requirement under our regulations if you choose to use electronic means. The rules for who must retain the records, how long the records must be maintained, and how records must be made available to us are contained in the specific part where the record retention requirement is found. (Subpart A tells you what filing methods you may use for filings with us and how we determine your filing date. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time.)

§ 4000.52 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

We means the PBGC.

You means the person subject to the record retention requirement.

§ 4000.53 May I use electronic media to satisfy PBGC's record retention requirements?

General requirements. You may use electronic media to satisfy the record maintenance and retention requirements of this chapter if:

(a) The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;

(b) The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);

(c) The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(d) The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(e) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records; and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system); and

(f) All electronic records exhibit a high degree of legibility and readability when displayed on a video display terminal or other method of electronic transmission and when reproduced in paper form. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize a group of letters or numerals as words or complete numbers.

§ 4000.54 May I dispose of original paper records if I keep electronic copies?

You may dispose of original paper records any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this subpart, except such original records may not be discarded if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

3. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

4. Revise § 4003.9 to read as follows:

§ 4003.9 Method and date of filing.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

5. Revise § 4003.10 to read as follows:

§ 4003.10 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

§ 4003.33 [Amended]

6. Amend § 4003.33 to add the sentence "See § 4000.4 of this chapter for information on where to file." to the end of the paragraph.

§ 4003.53 [Amended]

7. Amend § 4003.53 to add the sentence "See § 4000.4 of this chapter for information on where to file." to the end of the paragraph.

PART 4007—PAYMENT OF PREMIUMS

8. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

9. Revise § 4007.3 to read as follows:

§ 4007.3 Filing requirements; method of filing.

(a) *Filing requirements.* The estimation, declaration, reconciliation and payment of premiums shall be made using the forms prescribed by and in accordance with the instructions in the PBGC annual Premium Payment Package. The plan administrator of each covered plan must file the prescribed form or forms, and any premium payments due, no later than the applicable due date specified in § 4007.11.

(b) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

10. Revise § 4007.5 to read as follows:

§ 4007.5 Date of filing.

The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that you filed your submission under this part with the PBGC.

11. Revise § 4007.6 to read as follows:

§ 4007.6 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of a late payment interest charge under § 4007.7 or of a late payment penalty charge under § 4007.8, the rules in part 4000.43 of this chapter governing weekends and Federal holidays do not apply.

12. Revise paragraphs (a) and (c)(1) of § 4007.10 to read as follows:

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments.* (1) *In general.* All plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Internal Revenue Code (Title 26 of the United States Code), by the insurer from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based.

(2) *Electronic recordkeeping.* The plan administrator may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

* * * * *

(c) *Providing record information.* (1) *In general.* The plan administrator shall make the records retained pursuant to paragraph (a) of this section available to the PBGC upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location) and shall submit information in such records to the PBGC within 45 days of the date of the PBGC's written request therefor, or by a different time specified therein.

* * * * *

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

13. Revise the authority citation for part 4010 to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

14. Revise paragraphs (c), (d) and (e) of § 4010.10 to read as follows:

§ 4010.10 Due date and filing with the PBGC.

* * * * *

(c) *How and where to file.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. See § 4000.4 for information on where to file.

(d) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(e) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

PART 4011—DISCLOSURE TO PARTICIPANTS

15. The authority citation for part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

16. Revise § 4011.9 to read as follows:

§ 4011.9 Method and date of issuance of notice; computation of time.

(a) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery of the Participant Notice. The Participant Notice may be issued together with another document, such as the summary annual report required under section 104(b)(3) of ERISA for the prior plan year, but must be in a separate document.

(b) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date the Participant Notice was issued.

(c) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for issuances under this part.

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

17. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

18. Amend § 4022.9 by adding paragraph (d) to read as follows:

§ 4022.9 Time of payment; benefit applications.

* * * * *

(d) *Filing with the PBGC.* (1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Benefit applications and related submissions are treated as filed on the date received by the PBGC unless the instructions for the applicable form provide for an earlier date. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

19. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

20. Amend § 4041.3 as follows:

a. Revise paragraphs (a), (b), and (c)(1) to read as follows:

b. Remove paragraph (c)(2);

c. Add the word "or" to the end of paragraph (c)(3)(i);

d. Remove paragraph (c)(3)(ii) and redesignate paragraph (c)(3)(iii) as paragraph (c)(3)(ii);

e. Redesignate paragraphs (c)(3) through (c)(6) as paragraphs (c)(2) through (c)(5).

§ 4041.3 Computation of time; filing and issuance rules.

(a) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. A proposed termination date may be any day, including a weekend or Federal holiday.

(b) *Filing with the PBGC.* (1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Issuance to third parties.* The following rules apply to affected parties (other than the PBGC). For purposes of this paragraph (c), a person entitled to notice under the spin-off/termination transaction rules of § 4041.23(c) or § 4041.24(f) is treated as an affected party.

(1) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

* * * * *

21. Revise § 4041.5 to read as follows:

§ 4041.5 Record retention and availability.

(a) *Retention requirement.* (1) *Persons subject to requirement; records to be retained.* Each contributing sponsor and the plan administrator of a plan terminating in a standard termination, or in a distress termination that closes out in accordance with § 4041.50, must maintain all records necessary to demonstrate compliance with section 4041 of ERISA and this part. If a contributing sponsor or the plan administrator maintains information in accordance with this section, the other(s) need not maintain that information.

(2) *Retention period.* The records described in paragraph (a)(1) of this section must be preserved for six years after the date when the post-distribution certification under this part is filed with the PBGC.

(3) *Electronic recordkeeping.* The contributing sponsor or plan administrator may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

(b) *Availability of records.* The contributing sponsor or plan administrator must make all records needed to determine compliance with section 4041 of ERISA and this part available to the PBGC upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location) and must submit such records to the PBGC within 30 days after the date of a written request by the PBGC or by a later date specified therein.

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

22. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

23. Revise § 4041A.3 to read as follows:

§ 4041A.3 Method and date of filing; where to file; computation of time; issuances to third parties.

(a) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

(d) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

24. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1443.

25. Revise § 4043.5 to read as follows:

§ 4043.5 How and where to file.

The PBGC applies the rules in the instructions to the applicable PBGC reporting form and subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. See § 4000.4 for information on where to file.

26. Amend § 4043.6 by removing paragraph (d) and revising paragraphs (a) and (b) and the paragraph heading of paragraph (c) to read as follows:

§ 4043.6 Date of filing.

(a) *Post-event notice filings.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under subpart B of this part was filed with the PBGC.

(b) *Advance notice and Form 200 filings.* Information filed under subpart C or D of this part is treated as filed on the date it is received by the PBGC. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(c) *Partial electronic filing; deemed filing date.* * * *

* * * * *

27. Revise § 4043.7 to read as follows:

§ 4043.7 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

PART 4050—MISSING PARTICIPANTS

28. The authority citation for part 4050 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1350.

29. Amend § 4050.6 by revising paragraph (d) to read as follows:

§ 4050.6 Payment and required documentation.

* * * * *

(d) *Filing with the PBGC.* (1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part. However, for purposes of determining the amount of an interest charge under § 4050.6(b) or § 4050.12(c)(2)(iii), the rules in § 4000.43 of this chapter governing weekends and Federal holidays do not apply.

PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

30. The authority citation for part 4062 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367, 1368.

31. Revise § 4062.9 to read as follows:

§ 4062.9 Method and date of filing; where to file.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Payment of liability must be clearly designated as such and include the name of the plan.

(b) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

32. Revise § 4062.10 to read as follows:

§ 4062.10 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of an interest charge under § 4062.7, the rules in §4000.43 of this chapter governing weekends and Federal holidays do not apply.

PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

33. The authority citation for part 4203 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

34. Amend § 4203.4 by revising paragraphs (a) and (c) to read as follows:

§ 4203.4 Requests for PBGC approval of plan amendments.

(a) *Filing of request.* (1) *In general.* A plan shall apply to the PBGC for approval of a plan amendment which establishes special complete or partial withdrawal liability rules. The request for approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the plan amendment, other than a repeal of the amendment which results in employers being subject to the general statutory rules on withdrawal.

(2) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4204—VARIANCES FOR SALE OF ASSETS

35. The authority citation for part 4204 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

36. Amend § 4204.11 as follows:

a. In the first sentence of paragraph (b), remove the word "filed" and add in its place the word "submitted".

b. Add new paragraph (e) to read as follows:

§ 4204.11 Variance of the bond/escrow and sale-contract requirements.

* * * * *

(e) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this subpart. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this subpart was provided.

37. Amend § 4204.21 by revising paragraphs (a) and (c) to read as follows:

§ 4204.21 Requests to PBGC for variances and exemptions.

(a) *Filing of request.* (1) *In general.* If a transaction covered by this part does not satisfy the conditions set forth in subpart B of this part, or if the parties decline to provide to the plan privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act (5 U.S.C. 552), the purchaser or seller may request from the PBGC an exemption or variance from the requirements of section 4204(a)(1)(B) and (C) of ERISA.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

38. The authority citation for part 4207 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1387.

39. Amend § 4207.10 by revising paragraph (c) to read as follows:

§ 4207.10 Plan rules for abatement.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

40. Add § 4207.11 to read as follows:

§ 4207.11 Method and date of filing and issuance; computation of time.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

PART 4208—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

41. Revise the authority citation for part 4208 to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1388(c) and (e).

42. Amend § 4208.9 by revising paragraph (c) to read as follows:

§ 4208.9 Plan adoption of additional abatement conditions.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

43. Add § 4208.10 to read as follows:

§ 4208.10 Method and date of filing and issuance; computation of time.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

44. Revise the authority citation for part 4211 to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1391(c)(1), (c)(2)(d), (c)(5)(B), (c)(5)(D), and (f).

45. Amend § 4211.22 by revising paragraphs (a) and (c) to read as follows:

§ 4211.22 Requests for PBGC approval.

(a) *Filing of request.* (1) *In general.* A plan shall submit a request for approval of an alternative allocation method or modification to an allocation method to the PBGC in accordance with the requirements of this section as soon as practicable after the adoption of the amendment.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

* * * * *

(c) *Where to submit.* See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4219—NOTICE, COLLECTION AND REDETERMINATION OF WITHDRAWAL LIABILITY

46. The authority citation for part 4219 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1388(c) and (e).

47. Amend § 4219.17 by revising paragraphs (a), (d) and (e) to read as follows:

§ 4219.17 Filings with PBGC.

(a) *Filing requirements.* (1) *In general.* The plan sponsor shall file with PBGC a notice that a mass withdrawal has occurred and separate certifications that determinations of redetermination liability and reallocation liability have been made and notices provided to employers in accordance with this subpart.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this subpart for filing with the PBGC.

* * * * *

(d) *Where to file.* See § 4000.4 for information on where to file.

(e) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

* * * * *

§ 4219.19 [Redesignated as § 4219.20]

48. Redesignate § 4219.19 as § 4219.20.

49. Add a new § 4219.19 to read as follows:

§ 4219.19 Issuances to third parties; methods and dates.

The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this subpart. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this subpart was provided. The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for issuances to third parties under this subpart.

PART 4220—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

50. The authority citation for part 4220 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1400.

51. Amend § 4220.3 by revising paragraphs (a) and (c) and adding paragraph (f) to read as follows:

§ 4220.3 Requests for PBGC approval.

(a) *Filing of request.* (1) *In general.* A request for approval of an amendment filed with the PBGC in accordance with this section shall constitute notice to the PBGC for purposes of the 90-day period specified in section 4220 of ERISA. A request is treated as filed on the date on which a request containing all information required by paragraph (d) of this section is received by the PBGC. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(2) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

* * * * *

(f) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

PART 4221—ARBITRATION OF DISPUTES IN MULTIEMPLOYER PLANS

52. The authority citation for part 4221 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1401.

§ 4221.4 Appointment of the arbitrator. [Amended]

53. Amend paragraph (c) of § 4221.4 by revising the second sentence to read as follows:

* * * * *

(c) *Challenge and withdrawal.* * * * The request for withdrawal shall be served on all other parties and the arbitrator by hand or by certified or registered mail (or by any other method that includes verification or acknowledgment of receipt and meets the requirements of § 4000.14 of this chapter) and shall include a statement of the circumstances that, in the requesting party's view, affect the arbitrator's impartiality and a statement that the requesting party has brought these circumstances to the attention of the arbitrator and the other parties at the earliest practicable point in the proceedings. * * *

* * * * *

54. Amend § 4221.6 by revising paragraph (b) to read as follows:

§ 4221.6 Hearing.

* * * * *

(b) After the time and place for the hearing have been established, the arbitrator shall serve a written notice of the hearing on the parties by hand, by certified or registered mail, or by any other method that includes verification or acknowledgment of receipt and meets the requirements of § 4000.14 of this chapter.

* * * * *

55. Revise § 4221.12 to read as follows:

§ 4221.12 Calculation of periods of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

56. Revise § 4221.13 to read as follows:

§ 4221.13 Filing and issuance rules.

(a) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

§ 4221.14 PBGC-approved arbitration procedures. [Amended]

57. Revise the third sentence of paragraph (c) of § 4221.14 to read: "The application shall include:".

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

58. The authority citation for part 4231 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1411.

59. Amend § 4231.8 by revising paragraphs (a), (c), and (d) to read as follows:

§ 4231.8 Notice of merger or transfer.

(a) *Filing of request.* (1) *When to file.* Except as provided in paragraph (f) of this section, a notice of a proposed merger or transfer must be filed not less than 120 days before the effective date of the transaction. For purposes of this part, the effective date of a merger or transfer is the earlier of—

(i) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(ii) The date on which one plan transfers assets to another plan involved in the transaction.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

* * * * *

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(d) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC. For purposes of paragraph (a) of this section, the notice is not considered filed until all of the information required by paragraph (e) of this section has been submitted.

* * * * *

PART 4245—NOTICE OF INSOLVENCY

60. The authority citation for part 4245 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1426(e).

61. Amend § 4245.3 as follows:

a. In the first sentence of paragraph (a) remove the words "interested parties, as defined in paragraph (d) of this section" and add in their place the words "interested parties, as defined in paragraph (e) of this section".

b. Redesignate paragraph (d) as paragraph (e).

c. Revise paragraph (c) and add new paragraph (d) to read as follows:

§ 4245.3 Notice of insolvency.

* * * * *

(c) *Delivery to PBGC; filing date.* (1) *Method of delivery.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(2) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(d) *Delivery to interested parties; issuance date.* (1) *Method of delivery.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of insolvency. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(2) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that the notice of insolvency was issued.

* * * * *

§ 4245.4 [Amended]

62. Amend the introductory language of paragraph (b) by removing the words "an interested party, as defined in § 4245.3(d)" and adding in their place the words "interested parties, as defined in § 4245.3(e)".

§ 4245.5 [Amended]

63. Amend § 4245.5 as follows:

a. In the first sentence of paragraph (a) remove the words "interested parties, as defined in § 4245.3(d)" and add in their place the words "interested parties, as defined in § 4245.3(e)".

b. Revise paragraph (d) and add paragraph (e) to read as follows:

§ 4245.5 Notice of insolvency benefit level.

* * * * *

(d) *Method of delivery to PBGC: filing date.* (1) *Method of delivery.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(2) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(e) *Method of delivery to interested parties; issuance date.* (1) *Method of delivery.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of insolvency benefit levels. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(2) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that the notice of insolvency benefit levels was issued.

§ 4245.6 [Amended]

64. In §4245.6, amend the introductory language of paragraph (b) by removing the words "interested parties, as defined in § 4245.3(d)" and adding in their place the words "interested parties, as defined in § 4245.3(e)".

65. Revise § 4245.7 to read as follows:

§ 4245.7 PBGC address.

See § 4000.4 of this chapter for information on where to file.

66. Add § 4245.8 to read as follows:

§ 4245.8 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

67. Revise the authority citation for part 4281 to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341(a), 1399(c)(1)(D), and 1441.

68. Revise § 4281.3 to read as follows:

§ 4281.3 Filing and issuance rules.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of delivery for filings with the PBGC under this part.

(b) *Method of issuance.* See § 4281.32(c) for notices of benefit reductions, § 4281.43(e) for notices of insolvency, and § 4281.45(c) for notices of insolvency benefit level.

(c) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(d) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

(e) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(f) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

69. Revise paragraph (c) of § 4281.32 to read as follows:

§ 4281.32 Notices of benefit reductions.

* * * * *

(c) *Method of issuance to interested parties.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of benefit reduction. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered or who are reasonably expected to enter pay status before the end of the plan year after the plan year in which the amendment is adopted, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

* * * * *

70. Revise paragraphs (e) and (f) of § 4281.43 to read as follows:

§ 4281.43 Notices of insolvency and annual updates.

* * * * *

(e) *Notices of insolvency—method of issuance to interested parties.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of insolvency. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual updates—method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the annual update to participants and beneficiaries. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

71. Revise paragraph (c) of § 4281.45 to read as follows:

§ 4281.45 Notices of insolvency benefit level.

* * * * *

(c) *Method of issuance.* The notices of insolvency benefit level shall be delivered to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of delivery for the notice of insolvency benefit levels.

PART 4901—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

72. Revise the authority citation for part 4901 to read as follows:

Authority: 5 U.S.C. 552, 29 U.S.C. 1302(b)(3), E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p.235.

73. Add § 4901.6 to read as follows:

§ 4901.6 Filing rules; computation of time.

(a) *Filing rules.* (1) *Where to file.* See § 4000.4 of this chapter for information on where to file a submission under this part with the PBGC.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

74. Revise § 4901.11 to read as follows:

§ 4901.11 Submittal of requests for access to records.

A request to inspect or copy any record subject to this subpart shall be submitted to the Disclosure Officer, Pension Benefit Guaranty Corporation. Such a request may be sent to the Disclosure Officer or made in person between the hours of 9 a.m. and 4 p.m. on any working day in the Communications and Public Affairs Department, PBGC, 1200 K Street, NW., Suite 240, Washington, DC 20005–4026. To expedite processing, the request should be prominently identified as a "FOIA request."

75. Revise paragraph (a) of § 4901.15 to read as follows:

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* If a disclosure request is denied in whole or in part by the disclosure officer, the requester may file a written appeal within 30 days from the date of the denial or, if later (in the case of a partial denial), 30 days from the date the requester receives the disclosed material. The appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation. See part 4000.4 of this chapter for information on where to file. To expedite processing, the words "FOIA appeal" should appear prominently on the request.

* * * * *

76. Revise paragraph (c) of § 4901.33 to read as follows:

§ 4901.33 Payment of fees.

* * * * *

(c) *Late payment interest charges.* The PBGC may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is sent to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is sent.

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

77. The authority citation for part 4902 continues to read as follows:

Authority: 5 U.S.C. 552a.

78. Revise paragraphs (a) and (b) of § 4902.3 to read as follows:

§ 4902.3 Procedures for determining existence of and requesting access to records.

(a) Any individual may submit a request to the Disclosure Officer, Pension Benefit Guaranty Corporation, for the purpose of learning whether a system of records maintained by the PBGC contains any record pertaining to the requestor or obtaining access to such a record. Such a request may be sent to the Disclosure Officer or made in person between the hours of 9 a.m. and 4 p.m. on any working day in the Communications and Public Affairs Department, PBGC, 1200 K Street, NW., Suite 240, Washington, DC 20005–4026.

(b) Each request submitted pursuant to paragraph (a) of this section shall include the name of the system of records to which the request pertains and the requester's full name, home address and date of birth, and shall prominently state the words, "Privacy Act Request." If this information is insufficient to enable the PBGC to identify the record in question, or to determine the identity of the requester (to ensure the privacy of the subject of the record), the disclosure officer shall request such further identifying data as the disclosure officer deems necessary to locate the record or to determine the identity of the requester.

* * * * *

79. Revise paragraph (c) of § 4902.5 to read as follows:

§ 4902.5 Procedures for requesting amendment of a record.

* * * * *

(c) An individual who desires assistance in the preparation of a request for amendment of a record shall submit such request for assistance in writing to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to such request as promptly as possible.

80. Revise paragraph (c) of § 4902.6 to read as follows:

§ 4902.6 Action on request for amendment of a record.

* * * * *

(c) An individual who desires assistance in preparing an appeal of a denial under this section shall submit a request to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to the request as promptly as possible, but in no event more than 30 days after receipt.

81. Revise paragraph (a) of § 4902.7 to read as follows:

§ 4902.7 Appeal of a denial of a request for amendment of a record.

(a) An appeal from a denial of a request for amendment of a record under § 4902.6 shall be submitted, within 45 days of receipt of the denial, to the General Counsel, Pension Benefit Guaranty Corporation, unless the record subject to such request is one maintained by the Office of the General Counsel, in which event the appeal shall be submitted to the Deputy Executive Director, Pension Benefit Guaranty Corporation. The appeal shall state in detail the basis on which it is made and shall clearly state "Privacy Act Request" on the first page. In addition, the submission shall clearly state "Privacy Act Request" on the envelope (for mail, hand delivery, or commercial delivery), in the subject line (for e-mail), or on the cover sheet (for fax).

* * * * *

82. Add § 4902.10 to read as follows:

§ 4902.10 Filing rules; computation of time.

(a) *Filing rules.* (1) *Where to file.* See § 4000.4 of this chapter for information on where to file a submission under this part with the PBGC.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

PART 4903—DEBT COLLECTION

83. The authority citation for part 4903 continues to read as follows:

Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402–6.

84. Amend § 4903.2 by adding paragraphs (c) and (d) to read as follows:

§ 4903.2 General.

* * * * *

(c) The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC. See § 4000.4 for information on where to file.

(d) The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

85. Revise paragraph (b)(2) of § 4903.24 to read as follows:

§ 4903.24 Request for offset from other agencies.

* * * * *

(b)(1) * * *

(2) All such requests should be directed to the Director, Financial Operations Department. See § 4000.4 of this chapter for information on where to file.

* * * * *

PART 4907—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION

86. The authority citation for part 4907 continues to read as follows:

Authority: 29 U.S.C. 794, 1302(b)(3).

87. Revise paragraph (c) of § 4907.170 to read as follows:

§ 4907.170 Compliance procedures.

* * * * *

(c) The Equal Opportunity Manager shall be responsible for coordinating implementation of this section.

(1) *Where to file.* See § 4000.4 of this chapter for information on where to file complaints under this part.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(4) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

* * * * *

Issued in Washington, DC, this 4th day of February, 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 03–3081 Filed 2–13–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–03–001]

RIN 2115–AA97

Safety Zone; Fort Vancouver Fireworks Display, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is establishing a permanent safety zone on the waters of the Columbia River in the vicinity of Vancouver, Washington. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with an annual July 4th fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard on or before April 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–03–001 and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office/Group Portland, 6767 N. Basin Ave., Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, at (503) 240–2584.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–03–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office/Group Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a permanent safety zone on the waters of the Columbia River in the vicinity of Vancouver, Washington to allow an annual July 4th fireworks display to occur in a safe environment. This event may result in a number of vessels congregating near the fireworks launching barge. The safety zone is needed to protect watercraft and their occupants from safety hazards associated with the fireworks display.

Discussion of Proposed Rule

This rule, for safety concerns, would control vessel movements in a regulated area surrounding the fireworks launching barge. Entry into this zone would be prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel would enforce this safety zone. The Captain of the Port may be assisted by other Federal and local agencies.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. This rule is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation will encompass less than one mile of the Columbia River for a period of only one and a half hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Columbia River from 9:30 p.m. to 11 p.m. on July 4th. This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only one and a half hours in the evening when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of

the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt state law or impose a substantial direct cost of compliance on them. We have analyzed this rule under Executive Order 13132 and have determined that this final rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for regulations establishing safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Section 165.1314 is added to read as follows:

§ 165.1314 Safety Zone; Fort Vancouver Fireworks Display, Columbia River Vancouver, Washington.

(a) *Location.* The following area is a safety zone: all waters of the Columbia River at Vancouver, Washington bounded by a line commencing at the northern base of the Interstate 5 highway bridge at latitude 45°37′16.5″ N, longitude 122°40′22.5″ W; thence south along the Interstate 5 highway bridge to Hayden Island, Oregon at latitude 45°36′51.5″ N, longitude 122°40′39″ W; thence east along Hayden Island to latitude 45°36′36″ N, longitude 122°39′48″ W (not to include Hayden Bay); thence north across the river thru the preferred channel buoy, RG Fl(2+1)R 6s, to the Washington shoreline at latitude 45°37′1.5″ N, longitude 122°39′29″ W; thence west along the Washington shoreline to the point of origin.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Enforcement period.* This section will be enforced every July 4, from 9:30 p.m. (P.d.t.) to 11 p.m. (P.d.t.).

Dated: February 4, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 03–3605 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–03–203]

RIN 2115–AA97

Safety Zones; Captain of the Port Chicago Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish fifteen permanent safety zones for annual fireworks displays throughout the Captain of the Port Chicago Zone. These safety zones are necessary to control vessel traffic within the immediate vicinity of fireworks launch sites and to ensure the safety of life and property during each event. These safety zones are intended to restrict vessels from the area encompassed by the safety zone for the duration of each fireworks display.

DATES: Comments and related material must reach the Coast Guard on or before March 17, 2003.

ADDRESSES: You may mail or hand-deliver comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office (MSO) Chicago, 215 W. 83rd Street Suite D, Burr Ridge, IL. 60527. MSO Chicago maintains the public docket for this rulemaking. Comments and material received from the public, as well as the documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Chicago between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST3 Kathryn Varela, MSO Chicago, at (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. Persons submitting comments should include their name and address, identify this rulemaking (CGD09–03–203) and indicate the specific event and section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for photocopying and electronic filing. Persons wanting acknowledgement for receipt of comments should enclose a stamped, self-addressed envelope or postcard.

The Coast Guard will consider all comments and material received during the comment period. We may change this proposal in view of them.

Public Meeting

The Coast Guard does not plan to hold a public hearing. Persons may request a public meeting by writing to Marine Safety Office Chicago at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Each year, various organizations in Illinois and Michigan sponsor fireworks displays at the same locations during the same general time periods. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazards associated with these events, the Captain of the Port Chicago has determined that fireworks launches in close proximity to watercraft pose a risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement will ensure the safety of persons and property at these events and help minimize the associated risk.

In the past, and for those reasons stated above, the Captain of the Port has annually promulgated separate temporary rulemaking for each fireworks event. This proposed rule would merely consolidates past temporary rulemakings into one rulemaking, would include other events for the purpose of uniformity, and would allow for a more thoughtful, timely rulemaking process. This rulemaking would create a permanent rule listing the safety zones for each fireworks launch platform used for each fireworks display. All geographic coordinates are based upon North American Datum 1983 (NAD 83).

Discussion of Proposed Rule

The Coast Guard is proposing to establish a safety zone around all annual fireworks events in the Captain of the Port Chicago area. The proposed size was determined by using the National Fire Protection Association standards.

The Coast Guard believes these proposed rules will not pose any additional problems for commercial vessels transiting the area. In the unlikely event that shipping is affected by these proposed rules, commercial vessels may request permission from the Captain of the Port Chicago, or his designated representative, to transit through the safety zone. No commercial shipping lanes would be impacted as a result of this rulemaking.

The Coast Guard would announce the exact dates and times for these events by publishing a Notice of Implementation in the **Federal Register** at least ten days prior to the beginning of the event, and by publishing this information in the Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and, for those who request it from MSO Chicago, by facsimile (fax).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 on Regulatory Planning and Review and therefore does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that order. It is non-significant under Department of Transportation regulatory policies and procedures (DOT) (44 FR 11040, February 26, 1979). If comments are received to indicate otherwise, the Captain of the Port may reconsider this determination. The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Captain of the Port Chicago has determined that this rule will not have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of an activated

safety zone. The safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a few hours on the day of the event on an annual basis. Vessel traffic could safely pass outside the proposed safety zone during the events, traffic would be allowed to pass through the safety zone only with the permission of the Captain of the Port Chicago's on-scene representative which will be the U.S. Coast Guard Patrol Commander. At least ten days before the effective period, the Coast Guard will publish a Notice of Implementation in the **Federal Register**. In addition, the exact times and dates will be published in the Ninth Coast Guard District Local Notice to Mariners, broadcasts made via the Broadcast Notice to Mariners and facsimile sent to operators of vessels who might be in the affected area who request such. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Chicago (see **ADDRESSES**.)

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reason discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.918 to read as follows:

§ 165.918 Safety Zones; Annual Fireworks Displays in the Captain of the Port Chicago Zone

(a) *Safety zones.* The following areas are designated safety zones:

(1) Evanston Fourth of July Fireworks—Evanston, IL

(i) *Location.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°02′58″ N, 087°40′22″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(2) Independence Day Fireworks—Manistee, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 44°14′51″ N, 086°20′46″ W (NAD 83) (Off First Street Beach).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(3) Independence Day Fireworks—Lake Kalamazoo, Saugatuck, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°38′52.5″ N, 086°12′18.5″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(4) Independence Day Fireworks—White Lake, Whitehall, MI.

(i) *Location.* All waters and adjacent shoreline of White Lake, Whitehall, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position of 43°24′33.5″ N, 086°21′28.5″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(5) Pentwater July 3rd Fireworks—Lake Michigan, Pentwater, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan and the Shipping Channel, Pentwater, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site on the North Breakwall with its center in approximate position of 43°46′56.5″ N, 086°26′38″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(6) Venetian Night Fireworks—Lake Kalamazoo, Saugatuck, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Kalamazoo, Saugatuck, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°38′52.5″ N, 086°12′18.5″ W (NAD 83).

(ii) *Expected date and time.* The fourth weekend in July; or the first weekend in August; sunset to termination of display.

(7) Venetian Night Fireworks—Lake Michigan, Hammond, IN.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, Hammond, IN. within the arc of a circle with a 840-foot radius from the fireworks launch site with its center in approximate position of 41°41′54″ N, 087°30′46″ W (NAD 83).

(ii) *Expected date and time.* The first weekend in August; sunset to termination of display.

(8) Venetian Night Fireworks—Monroe Street Harbor—Chicago, IL.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, Chicago, IL. within the arc of a circle with a 1000-foot radius from the fireworks launch site at Monroe Street Harbor with its center in approximate position of 41°52′41″ N, 087°36′37″ W (NAD 83).

(ii) *Expected date and time.* The fourth weekend in July; or the first weekend in August; sunset to termination of display.

(9) Wings Over the Lake Air Show—Michigan City, IN.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, off Washington Park, Michigan City, IN. encompassed by a line drawn between the following coordinates starting at 41°43′39″ N, 086°54′32″ W; northwest to 41°44′06″ N, 086°54′44″ W; northeast to 41°44′21″ N, 086°53′52″ W; southeast to 41°43′55″ N, 086°53′40″ W; then southwest back to the point of origin (NAD 83). The box starts approximately 250-feet from the East Pierhead and 250-feet from Washington Park Beach.

(ii) *Expected date and time.* The first week in July.

(10) YMCA Lake Michigan Swim—Ferrysburg, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, off the Ferrysburg North Pier within 100-feet of a straight line from 43°03.45′ N, 086°13.4′ W; to 43°05′ N, 086°15.24′ W (NAD 83).

(ii) *Expected date and time.* The third week in July; from 8 a.m. (local) until the end of the event.

(11) Team Aquatics Ski Show—Grand River, Grand Haven, MI.

(i) *Location.* All waters and adjacent shoreline of the Grand River, Grand Haven, MI. from 43°04′08″ N, 086°14′13″ W; thence east to 43°04′06″ N, 086°14′07″ W; thence southwest to 43°03′53″ N, 086°14′14″ W; and east to 43°03′51.5″ N, 086°14′07.5″ W (NAD 83).

(ii) *Expected date and time.* The fourth week in July; from 6 p.m. (local) until 8:30 p.m. (local).

(12) Chicago Flatwater Classic—Chicago River, Chicago, IL.

(i) *Location.* All waters and adjacent shoreline of the Chicago River from a line drawn across the river at mile marker 323 to a line drawn across the river at mile marker 331.

(ii) *Expected date and time.* The second weekend in August; from 9 a.m. (local) until 3:30 p.m. (local).

(13) Navy Pier Summer Fireworks—Lake Michigan, Chicago, IL.

(i) *Locations.*

(A) *Primary launch site.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius from the fireworks launch platform with its center in approximate position 41°53′18″ N, 087°36′08″ W (NAD 83).

(B) *Alternate launch site.* In the case of inclement weather, the alternate launch site is all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius with its center in approximate position 41°53′24″ N, 087°35′44″ W (NAD 83).

(ii) *Expected date and times.* Every Wednesday and Saturday evening from 9 p.m. (local) until termination of display from June 1 thru September 1.

(14) Navy Pier 4th of July Fireworks—Lake Michigan, Chicago, IL.

(i) *Locations.*

(A) *Primary launch site.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius from the fireworks launch platform with its center in approximate position 41°53′18″ N, 087°36′08″ W (NAD 83).

(B) *Alternate launch site.* In the case of inclement weather, the alternate launch site is all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius with its center in approximate position 41°53′24″ N, 087°35′44″ W (NAD 83).

(ii) *Expected date and time.* The first week of July; sunset to termination of display.

(15) St. Joseph's River Marathon Swim—St. Joseph, MI.

(i) *Location.* All the waters of Lake Michigan (off of St. Joseph, MI.), and the St. Joseph River, within 100-feet of the race course.

(ii) *Expected date and time.* The 3rd week in July; from 11 a.m. (local) until the end of the event.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. U.S. Coast Guard Auxiliary, representatives of the event organizer, and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

(3) In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Chicago to transit the safety zone. Approval in such cases will be case-by-case. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via Channel 16, VHF–FM.

(c) Captain of the Port Chicago will announce the exact time and location of the annual events listed in this section by publication of a Notice of Implementation in the **Federal Register** at least ten days prior to the beginning of the event, Broadcast Local Notice to Mariners, or any other means deemed appropriate.

Dated: January 30, 2003.

L.M. Henderson,

Commander, U.S. Coast Guard, Acting Captain of the Port, Chicago.

[FR Doc. 03–3739 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7452–2]

Approval and Promulgation of Implementation Plans; Rhode Island; One Hour Ozone Attainment Demonstration for the Rhode Island Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to fully approve the one-hour ozone attainment demonstration State Implementation Plan (SIP) for the Rhode Island serious ozone nonattainment area, submitted by the Rhode Island Department of Environmental Protection on January 27, 2003. This action is based on the requirements of the Clean Air Act as amended in 1990, related to one-hour ozone attainment demonstrations.

DATES: Comments must be received on or before March 17, 2003.

ADDRESSES: Written comments (two copies if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023.

Copies of the state submittal and EPA's technical support document (TSD) are available for public inspection during normal business hours (9 A.M. to 4 P.M.) at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918–1664, and at the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908–5767. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

SUPPLEMENTARY INFORMATION: This notice provides an analysis of the one-hour ozone attainment demonstration SIP submitted by the Rhode Island Department of Environmental Management (Rhode Island DEM) in proposed form on January 27, 2003 for the Rhode Island serious ozone nonattainment area. This revision is being proposed under a procedure called parallel processing. Under parallel processing, EPA proposes action on a state submission before it has been formally submitted to EPA, and will take final action on its proposal if the final submission is substantially unchanged from the submission on which proposal is based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposal as a basis for EPA's proposed action.

The Rhode Island DEM will hold a public hearing on its proposed SIP revision on February 27, 2003. The SIP revision that Rhode Island has proposed includes all the basic elements of what EPA is proposing to approve. If the proposed attainment demonstration plan is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will approve the state's plan consistent with this proposal and any submitted comments. Before EPA can finally approve this SIP revision, Rhode Island must finally adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

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I. Clean Air Act Requirements for Serious Ozone Nonattainment Areas

The Clean Air Act (CAA) requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the one-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (February 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

An area exceeds the one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration of 0.125 ppm or higher.[1] An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The area's 4th highest ozone reading at a single monitor is its design value. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (November 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe, or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the one-hour ozone standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Rhode Island ozone nonattainment area is classified as serious and its attainment date is November 15, 1999.

Under section 182(c)(2) of the CAA, serious areas were required to submit by November 15, 1994 demonstrations of how they would attain the one-hour ozone standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year. In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control

[1] The one-hour ozone standard is 0.12 ppm. EPA's long-standing practice is that monitored values of 0.125 ppm or higher are rounded up, and thus considered an exceedance of the NAAQS and values less than 0.125 ppm are rounded down and are not an exceedance.

measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is a motor vehicle emissions budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that the effects of emissions associated with new or improved federally-funded roadways and transit are considered before they are Federally funded or approved. As described in section 176(c)(2)(A) of the CAA, attainment demonstrations necessarily include the estimates of motor vehicle emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether federally-supported transportation plans, transportation implementation programs, and projects conform to the attainment demonstration SIP.

II. Background and Current Air Quality Status of the Rhode Island Ozone Nonattainment Area

The Rhode Island ozone nonattainment area is a state wide area. Historically and throughout most of the 1990's, ozone monitors throughout the Rhode Island nonattainment area violated the one-hour ozone standard. Directly downwind of the Rhode Island nonattainment area, there were also a number of other nonattainment areas violating the one-hour ozone standard during the 1990's in Massachusetts, New Hampshire, and in portions of southern Maine.

On June 9, 1999, EPA determined that the Rhode Island serious ozone nonattainment area had attained the 1-hour ozone standard (64 FR 30911).[2] This determination was based on data collected from 1996–1998. On June 9, 1999, EPA also determined that the Eastern Massachusetts area, the Portsmouth-Dover-Rochester, New Hampshire ozone nonattainment area, and the Portland, Maine ozone nonattainment area had also attained the 1-hour ozone standard based on data collected from 1996–1998. *See* 64 FR 30911. At the time of these determinations of attainment, there were no areas in any portion of Rhode Island, Eastern Massachusetts, New Hampshire or Maine that violated the one-hour ozone standard.

The Rhode Island nonattainment area continued to have air quality meeting the one-hour ozone standard in 1999 (based on data from 1997–1999) and in 2000 (based on data from 1998–2000). Based on data collected in 1999–2001, however, the Rhode Island area now has air quality violating the one-hour ozone standard. The violating monitors, based on 1999–2001 ozone data, are in West Greenwich, East Providence, and Narragansett, Rhode Island. Ozone data readings from the monitors for the area from the summer of 2002 now show only the West Greenwich and East Providence monitors registering a violation of the one-hour ozone NAAQS for the three-year period 2000–2002.

III. History and Time Frame for the State's Attainment Demonstration SIP

A. Ozone Transport Assessment Group and the NO_X SIP Call

Notwithstanding significant efforts by the states, in 1995 EPA recognized that many states in the eastern half of the United States could not meet the November 1994 time frame for submitting an attainment demonstration SIP because emissions of NO_X and VOCs in upwind states (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by states but noting the remaining difficulties in making attainment demonstration SIP submittals.[3] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[4] and provided for the states to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_X is significant and should be reduced regionally to enable states in the eastern half of the country to attain the ozone NAAQS.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Assistant Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and severe nonattainment areas: (1) Evidence that the applicable control measures in subpart 2 of part D of title I of the CAA were adopted and implemented or were on an expeditious course to being adopted and implemented; (2) a list of measures needed to meet the remaining rate-of-progress (ROP) emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit target calculations for post-1999 ROP and the control measures necessary for attainment and ROP plans through the attainment year by the end of 2000; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.[5] This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, state submissions due in April 1998 under the Wilson policy should have included motor vehicle emissions budgets.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-hour ozone standard because they did not regulate NO_X emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require NO_X emissions reductions within the state to a level consistent with a NO_X emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998). This final rule is commonly referred to as the NO_X SIP Call.

[2] In that notice, EPA also determined the one-hour ozone standard no longer applied to the Rhode Island area. Subsequently, due to continued litigation regarding the 8-hour ozone standard, EPA reinstated the applicability of the one-hour ozone standard in all areas. *See* 65 FR 45182 (July 20, 2000). EPA, however, did not modify its determination that the Rhode Island area had attained the one-hour ozone standard.

[3] Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's Web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

[4] Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

[5] Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM 10 NAAQS," issued December 29, 1997. A copy of this memorandum may be found on EPA's Web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

B. Rhode Island Ozone Attainment Demonstration Submittal

Unlike other states with serious ozone nonattainment areas, Rhode Island did not in 1998 submit a final ozone attainment demonstration as a SIP revision pursuant to EPA's December 29, 1997 memorandum. Based on data collected from 1996–1998, EPA determined on June 9, 1999 (64 FR 30911) that the Rhode Island serious ozone nonattainment area had attained the 1-hour ozone standard. Consistent with EPA policy, since the Rhode Island area had attained the standard by November 15, 1999, its statutory attainment date, Rhode Island did not need to submit an attainment demonstration to EPA for EPA to take action on.[6]

The Rhode Island nonattainment area continued to have air quality meeting the one-hour ozone standard through the summer of 2000, and it was not until after the summer of 2001 that the Rhode Island area had air quality violating the one-hour ozone standard. At that point in time, this nonattainment area was once again required to have an approved attainment demonstration and ROP plan with respect to section 182(c)(2) of the CAA. Today, in this proposed rule, EPA is proposing action on the proposed attainment demonstration SIP submitted by the Rhode Island DEM on January 27, 2003. EPA has previously approved the state's 15% plan (63 FR 67594, 12/8/98) and 9% ROP plan (66 FR 30811, 6/8/01).

The Rhode Island Attainment Demonstration contains the following elements: (1) The required photochemical grid attainment demonstration modeling, supplemented with a weight-of-evidence (WOE) analysis showing how attainment will be achieved; (2) an analysis showing that Rhode Island is implementing all reasonably available control measures (RACM) and that no other RACM could be adopted in Rhode Island that would advance the attainment year; (3) motor vehicle emissions budgets for the attainment year, which are used for conformity determinations, and (4) contingency measures as required pursuant to section 172(c)(9) of the CAA. Rhode Island Department of Environmental Protection will hold a public hearing on this Attainment Demonstration SIP on February 27, 2003.

The statutory attainment date for the Rhode Island Area was November 15, 1999. The area attained the standard as of its attainment date, but then subsequently experienced a violation. The CAA does not expressly address the appropriate attainment date for an area that attains the standard by its attainment date but then subsequently violates the standard nor does it address the planning requirements that apply to such an area. (CAA sections 179 (c) and (d) and 181(b)(2) establish requirements only for those areas that EPA determines do not attain the standard by their attainment date.) With respect to the attainment date, both subparts 1 and 2 specify outside dates for attainment and provide that attainment must be "as expeditiously as practicable." CAA sections 172(a)(2) and 181(a)(1). With respect to control obligations, EPA generally attempts first to work with the State to submit a revised SIP and, where necessary, would issue a SIP Call pursuant to section 110(k)(5). *See e.g.*, 65 FR 64352 (Oct. 27, 2000). Here, Rhode Island is already well on its way to submitting a final attainment demonstration and has indicated that the demonstration provides for attainment as expeditiously as practicable, *i.e.* by November 15, 2007. We review Rhode Island's submission in the following sections.

IV. What Are the Components of a Modeled Attainment Demonstration?

The EPA provides that states may rely on a modeled attainment demonstration supplemented with additional evidence to account for inherent uncertainty in the modeling.[7] In order to have a complete modeling demonstration submission, states should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

A. Modeling Requirements

For purposes of demonstrating attainment, section 182(c) of the CAA requires serious areas to use photochemical grid modeling or an analytical method EPA determines to be as effective.[8] The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS consistent with conditions specified by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight-of-evidence determination which incorporates, but is not limited to, other analyses, such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the state must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analysis and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA Regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select air pollution days, *i.e.*, days in the past with poor air quality, that are representative of the ozone pollution problem for the nonattainment area. Third, the state needs to identify the appropriate dimensions of the area to be modeled, *i.e.*, the domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Fourth, the state needs to determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the state needs to generate meteorological data that describe atmospheric conditions and emissions inputs. Finally, the state needs to verify that the model is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests. Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model-predicted one-hour daily maximum concentrations in all grid cells for the attainment year to the level of the NAAQS. A predicted concentration above 0.124 ppm ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to attain the standard. This type of test is often referred to as an exceedance test. The EPA's guidance recommends that states use either of two modeled attainment or exceedance tests for the one-hour ozone NAAQS: a deterministic test or a statistical test.

The deterministic test requires the state to compare predicted one-hour daily maximum ozone concentrations for each modeled day [9] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test takes into account the fact that the form of the one-hour ozone standard allows exceedances. If, over a three-year period, the area has an average of one or fewer exceedances per year, the area is not violating the standard. Thus, if the state models a very extreme day, the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard. (The form of the one-hour ozone standard allows for up to three readings above the standard over a three-year period before an area is considered to be in violation.)

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the one-hour NAAQS. For example, a monitoring site for which the four highest one-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

B. Additional Analyses Where Modeling Fails To Show Attainment

As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely. The process by which this is done is called a weight-of-evidence determination.

Under a WOE determination, the state can rely on and EPA will consider factors such as: other modeled attainment tests, *e.g.*, a rollback analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emissions trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exclusive list of factors that may be considered and these factors could vary from case to case. For example, the EPA's guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence besides an attainment test is sufficiently compelling to suggest attainment. However, the further a modeled attainment test is from being passed, the more compelling the WOE needs to be.

The EPA's modeling guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The mid-course review is discussed below.

V. What Is the Framework for Proposing Action on the Attainment Demonstration SIPs?

In addition to the modeling analysis and WOE support demonstrating attainment, the EPA has identified the following key elements which generally must be present in order for EPA to approve the one-hour attainment demonstration SIPs. These elements are: measures required by the CAA and measures relied on in the modeled attainment demonstration SIP; NO_x reductions affecting boundary conditions; motor vehicle emissions budgets; any additional measures needed for attainment[10]; and a Mid-Course Review (MCR).

A. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration SIP

The states should have adopted the control measures already required under the CAA for the area classification. In addition, a state may have included control measures in its attainment strategy that are in addition to measures required in the CAA. For purposes of fully approving the state's SIP, the state needs to adopt and submit all VOC and NO_x controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

The information in Table 1 is a summary of the CAA requirements that should be met for a serious area for the one-hour ozone NAAQS. These requirements are specified in section 182 of the CAA. EPA must have taken final action approving all measures

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[6] Policy guidance contained in a May 10, 1995 memorandum from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" recommends that ROP and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are no longer applicable to an area once it has air quality data indicating that the one hour ozone standard has been attained.

[7] The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the one-hour ozone NAAQS. See U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's *web site of http://www.epa.gov/ttn/scram/* (file name: "UAMREG"). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's Web site at *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

[8] Ibid.

[9] The initial, "ramp-up," days for each episode are excluded from this determination.

[10] As discussed in detail below, the Rhode Island attainment demonstration shows attainment without the need for additional measures beyond what has been adopted into the SIP or will be required by federal regulations. Therefore additional measures are not required for Rhode Island.

relied on for attainment, including the required ROP control measures and target calculations, before EPA can issue a final full approval of the attainment demonstration as meeting CAA section 182(c)(2). This was done for all the measures for Rhode Island.

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X [11], including an offset ratio of 1.2:1 and a major VOC and NO_X source cutoff of 50 tons per year
—Reasonable Available Control Technology (RACT) for VOC and NO_X [11].
—Enhanced Inspection and Maintenance (I/M) program.
—15% volatile organic compound plans.
—Emissions inventory.
—Emission statements.
—Periodic inventories.
—Attainment demonstration.
—9 percent ROP plan through 1999.
—Clean fuels program or substitute.
—Enhanced monitoring Photochemical Assessment Monitoring Stations.
—Stage II vapor recovery.
—Contingency measures.
—Reasonably Available Control Measures Analysis.

[11] Unless the area has in effect a NO_X waiver under section 182(f). The Rhode Island area is not such an area.

1. Control Measures Adopted by Rhode Island

Adopted and submitted rules for all previously required CAA mandated measures for the specific area classification that are being relied on in the attainment demonstration are required. This also includes measures that may not be required for the area classification but that the state relied on in the SIP submission for attainment. As explained in Table 2, Rhode Island has submitted and EPA has approved SIPs for all of the measures the state is relying on for attainment.

TABLE 2.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT PLAN FOR THE RHODE ISLAND SERIOUS OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Approval status
On-board Refueling Vapor Recovery	Federal rule	Promulgated at 40 CFR part 86.
Federal Motor Vehicle Control program (Tier 0)	Federal rule	Promulgated at 40 CFR part 86 (pre-1990).
Heavy Duty Diesel Engines (On-road)	Federal rule	Promulgated at 40 CFR part 86.
Federal Non-road Heavy Duty diesel engines	Federal rule	Promulgated at 40 CFR part 89.
Federal Non-road Gasoline Engines	Federal rule	Promulgated at 40 CFR part 90.
Federal Marine Engines	Federal rule	Promulgated at 40 CFR part 91.
Rail Road Locomotive Controls	Federal rule	Promulgated at 40 CFR part 92.
Automotive Refinishing	State initiative	SIP approved (61 FR 3827; 2/2/96).
Enhanced Inspection & Maintenance	CAA SIP Requirement	SIP approved (66 FR 9663; 2/9/01).
NO_X RACT	CAA SIP Requirement	SIP approved (62 FR 46202; 9/2/97).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	CAA SIP Requirement	SIP approved (59 FR 52429; 10/18/94).
VOC RACT pursuant to section 182(b)(2)(A) and (C) of CAA.	CAA SIP Requirement	Marine vessel loading SIP approved (61 FR 14975; 4/4/96). limited approval for non-CTG RACT rule (61 FR 14975; 4/4/96 64 FR 67500; 12/2/99). EPA approval pending for certain non-CTG RACT determinations. The state does not rely on reductions from the facilities with approval pending for attainment.
Stage II Vapor Recovery	CAA SIP Requirement	SIP Approved (58 FR 65933; 12/17/93).
Reformulated Gasoline	State opt-in	SIP approved (65 FR 12476; 3/9/00).
National Low Emission Vehicle (NLEV)	State opt-in	Federal program promulgated at 40 CFR 86 subpart R. State opt-in SIP approved (65 FR 12476; 3/9/00).
Clean Fuel Fleets	CAA SIP Requirement	SIP approved (65 FR 12476; 3/9/00). Rhode Island used RFG reductions to meet the Clean Fuel Fleet requirement.
Base Year Emissions Inventory	CAA SIP Requirement	SIP approved (61 FR 55902; 10/30/96, amended 63 FR 67600, 12/8/98).
15% VOC Reduction Plan and Contingency Plan.	CAA SIP Requirement	SIP approved (63 FR 67594; 12/8/98).
9% rate of progress plan	CAA SIP Requirement	SIP approved (66 FR 30811; 6/8/01).
Emissions Statements	CAA SIP Requirement	SIP approved (60 FR 2526; 1/10/95).
Enhanced Monitoring (PAMS)	CAA SIP Requirement	SIP approved (61 FR 55897; 10/30/96).
OTC NO_X MOU Phase II	State initiative	SIP approved (64 FR 29567; 6/2/99).
NO_X SIP Call	CAA requirement established pursuant to SIP call.	SIP approved (65 FR 81748; 12/27/00).

B. NO_X Reductions Consistent With the Modeling Demonstration

On October 27, 1998, EPA completed rulemaking on the NO_X SIP call which required states to address transport of NO_X and ozone to other states. To address transport, the NO_X SIP call established emissions budgets for NO_X that 23 jurisdictions were required to show they would meet by 2007 through enforceable SIP measures adopted and submitted by September 30, 1999. The NO_X SIP call is intended to reduce emissions in upwind states that significantly contribute to nonattainment problems. The EPA did not identify specific sources that the states must regulate nor did EPA limit the states' choices regarding where to achieve the emission reductions. The courts have largely upheld EPA's NO_X SIP Call, *Michigan* v. *United States Env. Prot. Agency*, 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001). Although a few issues were vacated or remanded to EPA for further consideration, states subject to the NO_X SIP call have largely adopted the controls necessary to meet the budgets set for them under the NO_X SIP call rule. The controls to achieve these reductions should be in place by May 2004.

Rhode Island used the best available NO_X SIP Call information in its modeling analysis. The modeling analysis is discussed in more detail below. Furthermore, Rhode Island adopted control measures to meet the requirements of the NO_X SIP call. EPA approved the regulation Rhode Island adopted pursuant to the NO_X SIP call on December 27, 2000 (65 FR 81748).

C. Motor Vehicle Emissions Budgets (MVEBs)

The EPA believes that attainment demonstration SIPs must necessarily estimate the level of motor vehicle emissions, which when considered with emissions from all other sources (stationary, area and other mobile source), is consistent with attainment. The estimate of motor vehicle emissions is used to determine the conformity of transportation plans and programs to the SIP, as described by CAA section 176(c)(2)(A). For transportation conformity purposes, the estimate of motor vehicle emissions is known as the motor vehicle emissions budget. The EPA believes that appropriately identified motor vehicle emissions budgets are a necessary part of an attainment demonstration SIP. A SIP cannot effectively demonstrate attainment unless it identifies the level of motor vehicle emissions that can be produced while still demonstrating attainment. See section VII.I. below for the discussion of the motor vehicle emissions budgets included in the Rhode Island attainment demonstration.

D. Mid-Course Review

A mid-course review (MCR), which generally is performed midway between approval of the attainment demonstration and the attainment date, is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable. See section VII.G. below for additional discussion on Rhode Island's mid-course review.

E. Reasonably Available Control Measures (RACM) Analysis

Section 172(c)(1) of the CAA requires SIPs to contain all RACM and provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). *See* 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would otherwise be inappropriate for local reasons, including costs. The EPA also issued a memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

When EPA presented its statutory argument in support of its RACM policy to the U.S. Court of Appeals for the D.C. Circuit in defense of its approval of the Washington D.C. ozone SIP, the D.C. Circuit found reasonable EPA's interpretation that measures must advance attainment to be RACM. *Sierra Club* v. *EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002). Specifically, the Court found that:

> EPA reasonably concluded that because the Act 'use[s] the same terminology in conjunction with the RACM requirement' as it does in requiring timely attainment, *compare* 42 U.S.C. 7502(c)(1) (requiring implementation of RACM 'as expeditiously as practicable but no later than' the applicable attainment deadline), *with id.* § 7511(a)(1) (requiring attainment under same constraints), the RACM requirement is to be understood as a means of meeting the deadline for attainment.

Id. Morever, the D.C. Circuit rejected, as a "misreading of both text and context," Sierra Club's arguments that EPA's interpretation of RACM conflicts with the Act's text and purpose and lacks any rational basis. The D.C. Circuit also found reasonable EPA's interpretation that it could consider costs in a RACM analysis and that measures may be rejected if they would require an intensive and costly effort for regulation of many small sources. *Sierra Club* v. *EPA*, 294 F.3d at 162,163. See section VII.H. below for additional discussion on Rhode Island's RACM analysis.

VI. What Are the Relevant Policy and Guidance Documents?

This proposal has cited several policy and guidance memoranda. The documents and their location on EPA's web site are listed below; these documents will also be placed in the docket for this proposal action.

Relevant Documents

1. "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram* (file name: "ADDWOE1H").

2. "Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures." November 24, 1999. OAQPS. U.S. EPA, RTP, NC.

3. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour

Attainment Demonstrations," from Merrylin Zaw-Mon, Office of Mobile Sources, to the Air Division Directors, Regions I–VI. November 3, 1999. Web site: *http://www.epa.gov/oms/transp/trafconf.html.*

4. Memorandum from Lydia Wegman and Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking." November 8, 1999. Web site: *http://www.epa.gov/oms/transp/trafconf.html.*

5. Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, "Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration." Web site: *http://www.epa.gov/scram001/tt25.htm* (file name: "MCRGUIDE").

6. Memorandum, "Guidance to Clarify EPA's Policy on What Constitutes "As Expeditiously as Practicable" for Purposes of Attaining the One-Hour Ozone Standard for Serious and Severe Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

7. U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMREG").

8. U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). Web site: *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

9. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, issued March 2, 1995. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

10. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS." Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

VII. How Does the Rhode Island Submittal Satisfy the Framework?

This section provides a review of Rhode Island" submittal and an analysis of how this submittal satisfies the framework discussed in Section V. of this notice.

A. What Did the State Submit?

The attainment demonstration SIP submitted by the Rhode Island Department of Environmental Management for the Rhode Island area includes a modeling analysis using the CALGRID model. The SIP was submitted in proposed form on January 27, 2003. The SIP is subject to public notice and comment and a hearing will be held on February 27, 2003. Information on how the photochemical grid modeling, the RACM analysis, the mid-course review and the Motor Vehicle Emissions Budgets are consistent with the CAA and EPA guidance is summarized below.

As explained earlier, the Rhode Island area attained the one-hour ozone standard as of 1999, its statutory deadline under the CAA. Moreover, the Rhode Island nonattainment area continued to have air quality meeting the one-hour ozone standard until the 1999 through 2001 time period. In its attainment demonstration, Rhode Island provides evidence that the area will once again attain by 2007.

Rhode Island chose a 2007 attainment date because it has determined that the current violations are due to upwind emissions, some of which cannot be reduced until as late as the beginning of the 2007 ozone season. The additional reductions that will occur in upwind areas, as well as in Rhode Island, include the following programs: (1) EPA's NO_X SIP call, which will be implemented by May 31, 2004, with states expected to fully comply with their budgets by 2007; (2) EPA's Tier 2 standards, which will impose new tailpipe standards for motor vehicles and reduce the sulfur content of fuel, and will be phased in beginning in 2004; (3) EPA's NO_X requirements for highway heavy-duty engines (*i.e.,* trucks and buses), which beginning in 2004 require new diesel trucks and buses to be 50 percent cleaner than today's models; (4) new nonroad diesel NO_X standards, which started in 1996 with increasingly more stringent standards being phased in through 2006; and (5) a number of upwind states will adopt new VOC controls for architectural coatings and consumer products that will go into effect in 2004.

Rhode Island also notes that New York, New Jersey and Connecticut have CAA attainment dates of 2007, which is when these upwind states will have fully implemented all measures necessary for them to attain the standard. Also, as discussed in section VII.H there is nothing more Rhode Island can do to advance their attainment date. Attainment in Rhode Island will be achieved when transport of ozone into Rhode Island is reduced below the one-hour standard, and the Rhode Island attainment plan discussed below shows this will not occur until November 15, 2007. Based on this information, EPA agrees that an attainment date of November 15, 2007 is as expeditiously as practicable and EPA proposes approval of this attainment date for the Rhode Island area.

B. How Was the Photochemical Grid Modeling Conducted?

The key element of the attainment demonstration is the photochemical grid modeling required by the CAA. The Rhode Island SIP used the CALGRID model which was approved for use by EPA since it was found to be at least as effective as the guideline model which is UAM–IV. The modeling domain for CALGRID extends from southwest Connecticut, northward 340 km to northern Vermont, and eastward to east of Nantucket, Massachusetts. For the Rhode Island nonattainment area, the domain is consistent with EPA guidance since it contains adequate areas both upwind and downwind of the nonattainment area. The domain also includes the monitors with the highest measured peak ozone concentrations in Rhode Island. Since the CALGRID modeling was done for a much larger domain that includes not only all of Rhode Island but also includes all of Massachusetts, most of Connecticut, southern New Hampshire, southern Vermont, and most of southern Maine, the CALGRID model has several "source" areas and several receptor areas. The only receptor area of import to this notice and the Rhode Island SIP submittal is the Rhode Island serious ozone nonattainment area. For the purposes of this notice, only model results in Rhode Island will be used, unless otherwise noted. As shown below, EPA believes the modeling portion of the attainment demonstration is consistent with EPA guidance.

The model was run for 10 days during four distinct episodes (August 14–17, 1987, June 21–22, 1988, July 7–8, 1988 and July 10–11, 1988). These episodes represent a variety of ozone conducive weather conditions, and reflect days with high measured ozone in a variety of areas within the entire domain. This is because, as stated above, the domain covers several nonattainment areas, and in order to model the meteorology that causes high ozone, several different episodes were needed. The episodes chosen for New England do include the worst ozone episode for Rhode Island over the last 15 years. The CALGRID model results for the first day of each episode are not used for attainment demonstration purposes, because they are considered "ramp-up days." Ramp-up days help reduce impacts of initial conditions; after ramp-up days, model results are more reflective of actual

emissions being emitted into the atmosphere. Since the first day of each episode was not considered, this leaves six days for strategy assessment. August 16, 1987 was also not used for strategy assessment. This leaves five strategy days: August 15, 1987; August 17, 1987; June 22, 1988; July 8, 1988 and July 11, 1988.

The CALGRID model was run using the CALMET meteorological processor. This processor took actual meteorological data collected by the National Weather Service and the State Air Pollution Agencies and using extrapolation and other analysis techniques provided winds, temperatures and other meteorological parameters at approximately 400 specific grid points for each hour of the episode up to 14 levels (*i.e.,* from the surface to top of the model which is about 5000 feet). CALMET is described in detail in the Rhode Island attainment demonstration, and was approved by EPA for use in the CALGRID modeling system.

The CALGRID model was run with emissions data prepared by EPA Region I and/or a contractor working with EPA Region I. The data were taken from the EPA Aerometric Informational Retrieval System (AIRS) data base in late 1993 and reflect the emission data supplied from the six New England States. The emission data for the small portion of New York state that forms the western edge of the domain was supplied by New York. EPA Region I quality assured all the New England AIRS data, the New York supplied data and all necessary modifications to the data. The data was further processed through the Emissions Preprocessor System (EPS Version 2.0). To more accurately model ozone in New England, day specific emissions were simulated for on-road mobile sources (cars, trucks, busses, etc.), and for large fossil-fueled fired power plants in New England. The base case CALGRID model is consistent with EPA guidance on model performance

Future emissions were projected to 1999 and 2007 accounting for both emission increases due to industrial growth, population growth and growth in the number of miles traveled by cars, as well as emission reductions due to cleaner gasoline, cleaner cars and controls on industrial pollution. Growth factors were derived using the EPA-approved Bureau of Economic Analysis (BEA) factors and all the emissions were processed using the EPS 2.0 system.

Model runs were also performed for the year 2007. The runs employed 2007 emission estimates inside the New England Domain, along with boundary condition files reflecting EPA's NO_X SIP Call emission estimates in upwind areas. Year 2007 emissions estimates for the states inside the modeling domain reflected EPA's NO_X SIP call as well as other federal and state control strategies being implemented by the beginning of the 2007 ozone season. This was accomplished using a two-step process. The first step was to project emissions using growth factors to account for increases or decreases in economic activity by industrial sector. In general, the states projected their emissions using the same growth factors that were used in the OTAG modeling effort. The second step involved applying control factors to source categories that would be regulated by the year 2007. States used a combination of information for control levels: those used for the OTAG modeling effort, and state-specific information relating to the effectiveness of control programs planned or in place. These 2007 emission estimates did not, however, include the Tier 2/Gasoline Sulfur program that was subsequently adopted by EPA on February 10, 2000 (65 FR 6698). The ozone reductions in 2007 from the Tier 2/Gasoline Sulfur program are discussed in Section VII.C.4.

C. What Are the Conclusions From the Modeling?

The EPA guidance for approval of the modeling aspect of a one-hour ozone attainment demonstration is to use the one-hour ozone grid modeling to apply one of two modeled attainment tests (deterministic or statistical) with optional weight-of-evidence analyses to supplement the modeled attainment test results when the modeled attainment test is failed. For the July 8, 1988 ozone episode, the deterministic test is passed for the future year 2007 for Rhode Island (*i.e.* all grid cells for every hour of that day using 2007 emissions are below 0.124 ppm). For the other modeled strategy days (*i.e.,* August 15, 1987; August 17, 1987; June 22, 1988; and July 11, 1988), neither the 1999 nor the 2007 CALGRID modeling performed for the Rhode Island area predicts ozone concentrations below the one-hour ozone standard (0.124 ppm) at every grid cell for every hour of every strategy day modeled. The maximum predicted 2007 concentration in the Rhode Island nonattainment area for the relevant episodes is 0.140 ppm, which occurred for the July 11 episode. The 2007 modeling was performed for two episode days: July 8 and July 11. Only these two days could be run for 2007, because 2007 boundary conditions were not available for the other strategy days. This maximum concentration is in western Rhode Island on the border with Connecticut, and is the result of transport into Rhode Island. Since the CALGRID model does not predict ozone concentrations below the one-hour ozone standard (0.124 ppm) at every grid cell for every hour of every episode day modeled, the strict deterministic test is not passed. Although the CALGRID model, as run for this analysis, does not pass the strict deterministic test at every grid cell, when additional weight-of-evidence analyses are considered, attainment is demonstrated.

Rhode Island submitted an analysis using the model predicted change in ozone to estimate a future air quality design value. In this analysis, Rhode Island uses the photochemical ozone modeling in a relative sense. In other word, Rhode Island uses the modeled ozone concentrations, from the EPA-approved CALGRID model, in conjunction with monitored ozone air quality data. Rhode Island conducted an analysis which shows how the photochemical modeling results, when applied to ozone design values at the West Greenwich, East Providence and Narragansett monitors, predict attainment at these three monitors by 2007 after taking into account anticipated emission reductions from the NO_X SIP call and the Tier 2/Low Sulfur program. The results show that with the planned emission reductions in the two precursor emissions (VOC and NO_X), ground-level ozone concentrations will be below the ambient standard by the 2007 attainment date. The steps Rhode Island DEM used in this analysis are discussed in the next four subsections.

1. Base Year Ozone Design Values

In the attainment demonstration, Rhode Island DEM reviewed ozone monitoring data to determine a base-year design value for each monitor in Rhode Island. Ozone data collected in 1995, 1996, and 1997 were used for calculating 1997 design values. Using 1997 design values versus 1999 design values results in a conservative analysis.

2. Ozone Reduction Between 1999 and 2007

The second step of this approach consists of comparing photochemical modeling run results in order to determine the predicted ozone reduction at each ozone monitor in Rhode Island between 1999 and 2007. Modeling runs were not performed for 1997 but were performed for 1999. The Rhode Island DEM's use of modeling results for 1999 is conservative since as emissions reductions that occurred between 1997 and 1999 are not

accounted for and relied on. Modeling results for 1999 were then compared with modeling results for 2007 (only two strategy days, July 8 and July 11, are used for 2007, because these are the only two days for which 2007 boundary conditions are available) to estimate changes between 1999 and 2007.

The average predicted change in ozone levels between 1999 and 2007 was determined for each 9-cell block of surface cells containing and surrounding each Rhode Island monitor (*i.e.*, the cell containing the monitor and the 8 surrounding cells). The average predicted change in ozone level was then divided by the 1999 average modeled concentration, in order to calculate the percent ozone reduction between 1999 and 2007. The percent ozone reduction for each monitoring location in Rhode Island are presented in the state's submittal.

3. Predicted Ozone Design Values for 2007

The third step was to determine a 2007 ozone design value for each Rhode Island ozone monitoring station location. This was accomplished by reducing the 1997 ozone design value by the percent ozone reduction predicted for each monitoring location derived in step 2, above. If the resulting design value dropped below the one-hour ozone standard, it is reasonable to assume that the monitor can attain the one-hour ozone standard by 2007. Rhode Island showed in their submittal that the predicted 2007 design values for all monitors in Rhode Island are all below the one-hour ozone NAAQS, except for one day at the East Providence monitor. As discussed in detail below, additional reduction in emissions will bring this monitor's predicted design value below the standard by 2007 as well.

For the West Greenwich monitor (the monitor currently with the highest design value), there was a reduction in ozone levels of 24 percent for the July 8 episode and a reduction in ozone levels of 13 percent at the West Greenwich monitor for the July 11 episode. For both episodes, the future adjusted design value for the West Greenwich monitor is predicted to be below the one-hour ozone standard (0.105 ppm for July 8 and 0.124 ppm for July 11.)

It should also be noted that Rhode Island DEM performed this same analysis for all of the ozone monitors in Massachusetts, New Hampshire and Maine that are also in the CALGRID modeling domain (*i.e.*, the areas downwind of Rhode Island that may be affected by pollution transport from Rhode Island on ozone conducive days). The results from this analysis, which are contained in the submittal, show that all of these monitors are predicted to have ozone values below the one-hour standard by 2007. This is consistent with the EPA-approved attainment demonstrations for both New Hampshire (67 FR 72574; 12/6/02) and Massachusetts for both the Eastern (67 FR 72576; 12/6/02) and Western Massachusetts (66 FR 665; 1/3/01) serious ozone nonattainment area.

4. Predicted Ozone Design Values for 2007 With the Tier 2/Gasoline Sulfur Program

As previously noted, the CALGRID runs for 2007 included the benefits of the NO_X SIP call as well as other CAA measures, but did not account for the Tier 2/Gasoline Sulfur program. The Tier 2/Gasoline Sulfur program consists of emission reductions due to more protective tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans and pick-up trucks, as well as lower standards for sulfur in gasoline. These new standards require passenger vehicles to be 77 to 95 percent cleaner than those on the road today and to reduce the sulfur content of gasoline by up to 90 percent. This program, which does not achieve emission reductions until 2004 and beyond, was not included in the CALGRID modeling analysis discussed above.

Rhode Island DEM, however, has looked at the EPA modeling performed in 1999 [12] to assess the effectiveness of the Tier 2/Gasoline Sulfur. For three episodes in the summer of 1995, EPA performed two sets of modeling runs: one run with 2007 CAA emission files including emission reductions associated with Tier 2/Gasoline Sulfur program and a second run that did not include Tier 2/Gasoline Sulfur program emission reductions. In both cases, the CAA emission files included EPA's NO_X SIP Call emission reductions. After the modeling runs were completed, EPA used the modeling results in a relative manner to estimate the percent ozone reduction associated with the Tier 2/Gasoline Sulfur program.

Rhode Island DEM included the predicted ozone design values for the 2007 CAA run and the 2007 Tier 2 run for each county in the Rhode Island nonattainment area. As shown in their submittal, the benefit at all ozone monitors in Rhode Island is at least an additional 0.001 ppm, over what CALGRID predicted. The improvement at the East Providence monitor is 1%. The Tier 2 modeling performed by EPA showed all 2007 design values for Rhode Island less than the one-hour standard. This combined with the results of the CALGRID analysis add to the weight-of-evidence.

Rhode Island DEM believes it is reasonable to conclude that the design value at the East Providence monitor for 2007 will be reduced by approximately 1 percent once the Tier 2/Gasoline Sulfur program is implemented, which will result in attainment of the one-hour standard at that monitor and throughout Rhode Island.

5. Conclusions From the Future Air Quality Design Value Analysis

Through this additional analysis, Rhode Island DEM has demonstrated that substantial ozone reductions can be expected to occur after the implementation of a number of control strategies that are in place both within and upwind of the New England Domain. Those strategies include EPA's NO_X SIP Call as well as EPA's Tier 2/Gasoline Sulfur program. Therefore, EPA believes it is reasonable to conclude that the Rhode Island nonattainment area will attain the one-hour ozone standard by 2007. While the absolute modeling results do not demonstrate attainment, the modeling results are useful in demonstrating a relative reduction in ozone levels sufficient to demonstrate attainment in 2007.

6. Additional Evidence To Support Attainment in Rhode Island

In addition to the ozone design value analysis performed by the Rhode Island DEM, EPA performed an additional design value analysis using a slightly different method. EPA used the CALGRID modeling in a relative sense to estimate a future design value. EPA compared base case CALGRID runs to future case CALGRID runs to estimate the improvement in ozone air quality levels between the base and future cases. Four strategy days (August 15 and 17 1987; July 8, 1988 and July 11, 1988)[13] are used in this analysis, which compared the improvement in modeled air quality between the base and future modeling cases. The following procedure is applied. First, base case CALGRID runs are examined to discern the maximum one-hour ozone concentration modeled in Rhode Island. The four strategy days are all examined.

[12] *See* "Technical Support Document for the Tier 2/Gasoline Sulfur Ozone Modeling Analyses," EPA420–R–99–031, December 1999.

[13] The June 22, 1988 strategy day is not used because of problems re-analyzing the base case model run for this episode.

Next, the same area is used to determine future modeled ozone values. The modeled maximum results of the four strategy days are averaged and a reduction factor calculated from the base case to the future case. This reduction factor represents the amount of ozone reduced in this area, as the result of the emission reductions modeled. This reduction factor is used to adjust the average ozone design value for this part of the model domain (*i.e.*, Rhode Island), as monitored between 1985 and 1990. This monitored design value represents both the base case model years of 1987 and 1988 and also the design values used in 1991 to classify one-hour nonattainment areas. The future design value is further reduced when the benefits of EPA's Tier 2/Gasoline Sulfur program are factored in.

This additional analysis also shows that air quality design values in Rhode Island can reasonably be expected to be reduced below 0.124 ppm based on continued additional reductions within the domain and reductions upwind, reflected in the future year boundary conditions, and the benefits of EPA's Tier 2/Gasoline Sulfur program.

7. Summary of the Ozone Modeling

In summary, the ozone modeling submitted for the Rhode Island area is consistent with the CAA and EPA guidance and demonstrates attainment. Other information, which provides additional support for concluding the Rhode Island area will attain in 2007 are the ambient ozone data trends and a trajectory analysis of exceedance days in the area.

D. What Are the Conclusions From the Ozone Trends?

There are three ozone air quality monitors in the Rhode Island nonattainment area that have data from 2000–2002. They are in the Rhode Island cities and towns of West Greenwich, East Providence, and Narragansett. The original serious classification of the nonattainment area was based on data from the 1987 through 1989 time period. Since then and up to and including 2002 ozone data, all 3 sites show a decrease in ozone due to emission reductions, both within Rhode Island and also upwind.

At the three Rhode Island monitors the ozone trend is downward. At the West Greenwich site, the one-hour ozone design value has dropped from 0.162 ppm in 1988 to 0.130 ppm in 2002, a drop of 20 percent. This site is not in attainment, based on 2000–2002 ozone data. At the East Providence site, the one-hour design value has dropped from 0.138 ppm in 1988 (site moved from Providence to East Providence in 1997) to 0.127 ppm in 2002, for a drop of 8 percent. This site, too, is not in attainment, based on 2000–2002 ozone data. The Narragansett site only has data for the last five years so no trend was calculated. The current design value for the Narragansett site is 0.124 ppm, which is below the standard. To show how close West Greenwich and East Providence are to meeting the NAAQS one can look at the fifth highest value over the same 3-year period 2000–2002. The fifth highest value for West Greenwich is 0.127 ppm and for East Providence it is 0.125 ppm. The sixth highest value is below the one-hour standard at these sites.

The ozone trend is also downward at the Truro, MA ozone monitor, the only monitor in eastern Massachusetts with a design value over the one-hour standard. At the Truro site, the one-hour design value has dropped from 0.146 ppm in 1989 to 0.130 ppm in 2002, for a drop of 11 percent. This site is not in attainment, based on 2000–2002 ozone data. To show how close Truro is to meeting the NAAQS one can look at the fifth highest value over the same 3-year period 2000–2002, the fifth highest value at the Truro site is below the level of the one-hour ozone standard.

Based on the overall downward trend in one-hour ozone concentrations in Rhode Island, and because precursor emissions are projected to keep falling, both within the nonattainment area and upwind from it, there is no reason to believe that the downward trend in ozone concentrations will not continue over the near term. The future emission reductions will be a result of the following: continued benefits from tighter standards on vehicles (National Low Emission Vehicles or CA LEV in upwind areas) due to fleet turnover; the reductions from large point sources due to the OTC NO_X Budget Program and EPA's NO_X SIP call; other federal control measures such controls on non-road engines; and the Tier 2 vehicle and low sulfur gasoline program.

E. What Do the Ozone Exceedance Day Trajectory Analyses Show?

Trajectory analysis is a tool for assessing atmospheric transport and identifying likely source regions of locally measured air contaminants. The Rhode Island DEM used the HYSPLIT–4 (Hybrid Single-Particle Lagrangian Integrated Trajectory) model, developed by NOAA's Air Resources Lab (ARL), to compute backward trajectories.

To assess airflow patterns on days when any Rhode Island monitor recorded exceedances of the one-hour ozone NAAQS during the period 1999–2002, 24-hour backward trajectories were computed by the Rhode Island DEM. The surface-based trajectories (start height of 10 meters) for these days, indicators of shorter range transport, follow a general track that crosses near the New York metropolitan area before turning northeastward toward Rhode Island. These trajectories cross no high emission areas in Rhode Island. Upper-level trajectories (500 and 1000 meters elevation), indicators of long-range transport, generally begin farther west over New York State, Pennsylvania or Ohio and follow a more west-to-east track, passing north of the New York metropolitan area. Since the trajectories for the exceedance days strongly resemble one another, the Rhode Island DEM concluded that there is a consistent meteorological pattern and source region for ozone and precursors when monitors in Rhode Island exceed the one-hour ozone NAAQS. Furthermore, the Rhode Island DEM concluded that one-hour exceedance level ozone concentrations will occur at the West Greenwich, East Providence and Narragansett monitors only if the air reaching these monitors had previously crossed nearby high emission areas such as the greater New York metropolitan area. It should be noted, that on all days when there are exceedances at West Greenwich, East Providence and Narragansett, there are also exceedances in Connecticut. EPA concludes that without the influence of the emissions from the greater New York metropolitan area, no one-hour exceedances would have occurred at these monitors. Attainment demonstrations already approved by EPA for Connecticut and the New York city area show attainment will be achieved in 2007, and likewise this attainment demonstration for Rhode Island concludes that attainment will be achieved in 2007.

To corroborate the Rhode Island DEM's results, EPA performed its own trajectory analyses for those days when there were exceedances of the one-hour ozone standard on either Cape Cod, in southeastern Massachusetts, and/or in Rhode Island, over the three year period 1999 through 2001. This area encompasses the ozone monitoring sites in Truro, MA; Fairhaven, MA; Narragansett, RI; East Providence, RI; and West Greenwich, RI. The exceedance days at these sites during 1999–2001 are as follows: June 7, 1999, July 6, 1999, July 16, 1999, June 10, 2000, June 30, 2001, July 25, 2001, August 7, 2001, and August 9, 2001.

EPA's trajectory analyses of the days with ozone exceedances at these sites (Truro, MA, Fairhaven, MA,

Narragansett, RI, East Providence, RI and West Greenwich, RI) support the Rhode Island DEM trajectories and the CALGRID modeling which shows that the most probable source region of the exceedances at these sites is areas to the south and west of Rhode Island, including Connecticut and the New York City area. Connecticut is less than 20 miles from West Greenwich or less than 2 hours of typical meteorological transport time. Details of this analysis are found in the TSD for this action. Both the analyses done by the Rhode Island DEM and EPA support the conclusion that without the influence of emissions from upwind, no exceedances would have occurred at the Rhode Island ozone monitors. This further supports the conclusion that the Rhode Island ozone nonattainment area will attain in 2007.

F. Are the Causes of the Recent Violation Being Addressed?

The Rhode Island ozone nonattainment area was in attainment for three consecutive, three-years periods from 1998–2000 (*i.e.*, 1996–1998, 1997–1999, and 1998–2000). CALGRID sensitivity runs looked at the effectiveness of NO_X reductions versus VOC reductions by reducing each pollutant individually within the domain by varying percentages (*i.e.*, 25%, 50%, 75% and 100%). These sensitivity runs concluded that reducing nitrogen oxide emission reductions is a more effective ozone control strategy for the New England Domain. Furthermore, in order to assess the role of transport into the New England domain, sensitivity modeling runs were preformed using very clean boundary conditions. These runs use boundary conditions from the OTAG run IN60, which assumed the reductions similar to NO_X SIP call emissions, plus an additional 60 percent reduction in NO_X from the ozone nonattainment areas classified as serious or above. These runs show that upwind NO_X reductions would be effective at reducing ozone throughout southern New England, including in Rhode Island where the current one-hour ozone violations occur. From these sensitivity runs as well as its trajectory analyses, EPA concludes that elevated ozone levels at the Rhode Island monitors are principally due to ozone and NO_X generated in Connecticut and upwind areas. Rhode Island DEM further concluded based on CAMx Source Apportionment Modeling described in EPA's October 27, 1998 Final Rulemaking on the NO_X SIP Call (63 FR 57355), that reducing NO_X emissions in adjacent upwind areas—Connecticut, New York City and New Jersey—will significantly reduce ozone levels at the Rhode Island monitors. Emissions of NO_X and VOC will also be lowered in Rhode Island as well, as a result of the emission control programs listed in Table 2. These local controls, combined with upwind controls will result in the Rhode Island ozone nonattainment area attaining in 2007.

As part of its submittal, Rhode Island DEM included the NO_X emission reductions anticipated to occur in Connecticut, New York City and New Jersey between 1999 and 2007 and between 2002 and 2007. The reduction between 2002 and 2007 was intended to illustrate the reductions that can be expected to reduce current air quality levels being monitored in Rhode Island. The NO_X reduction expected to occur in Connecticut, New York City and New Jersey between 1999 and 2002 is expected to be 126.5 tons per summer day. Those emission reductions have already occurred, and presumably affect the current ozone levels measured in 2002. Between 2002 and 2007, the NO_X reduction expected to occur in Connecticut, New York City and New Jersey is expected to be a bit higher, at 137 tons per summer day. These reductions, which largely have not occurred yet, will benefit future ozone levels in Rhode Island and will help the Rhode Island ozone nonattainment area meet attainment by 2007.

As part of its submittal, Rhode Island DEM also calculated the NO_X and VOC emission reductions projected to occur between 1999 and 2007 in the Rhode Island area. VOC emissions in Rhode Island are projected from 1999 to 2007 to go from 141.1 tons per summer day (tpsd) to 119.0 tpsd, which is a reduction of 22.1 tpsd or 15.6 percent. NO_X emissions in Rhode Island are projected from 1999 to 2007 to go from 93.1 tpsd to 73.6 tpsd, which is a reduction of 19.5 tpsd or 20.9 percent. When combined with the significant reductions in NO_X emissions expected in upwind states by 2007, the Rhode Island emissions inventory data provides additional reason to anticipate that the area will attain the one-hour ozone standard by 2007.

G. Is the Rhode Island Mid-Course Review Consistent With EPA Guidance?

As discussed above, the Rhode Island serious ozone nonattainment area attained the ozone standard based on ozone data collected in 1997–1999 and 1998–2000, but is now violating the standard. Rhode Island DEM has submitted an attainment demonstration supplemented with a weight-of-evidence analysis; therefore, Rhode Island DEM needs to commit to a mid-course review. The Rhode Island DEM has committed to perform a mid-course review for this area by December 31, 2004.

H. Is the Rhode Island RACM Analysis Consistent With the CAA and EPA Guidance?

The EPA has reviewed the SIP and the RACM analysis submittal for the Rhode Island area to determine if it includes all required RACM measures and sufficient documentation concerning available RACM measures. The RACM analysis will be subject to a public hearing on February 27, 2003.

The trajectory analyses, which are discussed in greater detail in section VII.E, indicate that elevated ozone levels at the three Rhode Island monitors are largely the result of local transport from upwind high emission areas in Connecticut, New York City and New Jersey.[14] In addition to what the Rhode Island DEM submitted, EPA performed a trajectory analysis of each of the days during 1999 through 2001 when exceedances of the one-hour ozone NAAQS were monitored in the Rhode Island ozone nonattainment area. That analysis shows similar results, *i.e.*, that the source region for these exceedances is areas to the south and west of Rhode Island.

The CAM-x source apportionment modeling showed that emissions in Connecticut and Rhode Island combined contribute only 5% to the anthropogenic one-hour ozone levels in Rhode Island. This CAM-x modeling also shows that Rhode Island cannot attain the one-hour NAAQS without substantial NO_X emission reductions in upwind states, and that, since upwind controls will not be fully implemented prior to 2007, the adoption of additional in-state emission reduction measures would not advance the State's attainment date.

The trajectory analyses and both the CALGRID and CAM-x modeling discussed above indicate that Rhode Island must rely on significant emission reductions from upwind states in order to attain the one-hour ozone standard, and that additional emission reduction measures adopted in Rhode Island alone would have a sufficiently small impact on ozone levels that they could not advance the attainment date in the Rhode Island area. Nonetheless, the Rhode Island DEM RACM analysis does review control measures that could reduce emissions of VOC and NO_X in Rhode Island and analyzed whether adoption of such measures might lead to attainment earlier than 2007.

Rhode Island DEM examined emissions from all significant emission source categories to assess whether there are any additional RACM that could be adopted. The methodology used consists of a two-step procedure. First, Rhode Island DEM reviewed its 2007 emissions inventory to identify significant source categories. After that, Rhode Island DEM screened potential control measures for the significant emitting source categories to determine if they could provide sufficient benefits to accelerate attainment in the Rhode Island area, and, if so, analyzed if the measures were feasible.

The methodology used by the Rhode Island DEM is based on the RACM analysis performed by EPA for the Greater Connecticut serious ozone nonattainment area. *See* 66 FR 634; January 3, 2001. The RACM analysis for Greater Connecticut looked at projected 2007 emissions from various source categories after taking into account CAA-mandatory controls, additionally adopted regional and national controls, and State-adopted SIP controls. The RACM analysis then assumed that stationary sources that have already been controlled nationally, regionally or locally in the SIP would not be effective candidates for additional controls that could be considered RACM, since these categories have only recently been required to reduce emissions or are about to shortly.

For VOC emissions, Rhode Island DEM reviewed its 2007 emissions inventory for stationary point, area, and non-road sources and culled from it the sixteen largest source categories. Emissions from each were at least one ton per summer day (tpsd), and in their aggregate emissions from these sixteen source categories represent approximately 90 percent of the total VOC inventory from these three sectors. Rhode Island DEM then analyzed whether control requirements exist for each source category, and found that in most instances state or federal control are currently in place.

For example, the largest emitting source category from these three sectors is the area source surface cleaning category. Rhode Island DEM estimates 2007 emissions for this activity will be 12.44 tpsd. However, Rhode Island DEM notes that most of the sources in the small surface cleaning sector, including all vapor degreasers and cold cleaners, are regulated by Rhode Island Air Pollution Control (APC) Regulation No. 36, "Control of Emissions from Organic Solvent Cleaning," which became effective in 1996. This regulation incorporates control requirements from EPA's Control Technique Guideline (CTG) for this source category, as well as the requirements of EPA's 1994 National Emission Standard for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaners. These requirements represent Reasonably Available Control Technology (RACT). Rhode Island DEM believes that any additional control measures for this activity would result in relatively small decreases in emissions and would not accelerate the State's attainment of the one-hour ozone NAAQS in emissions.

Control measures for the remaining VOC source categories were reviewed in a similar manner, and then Rhode Island DEM performed a similar analysis for the largest NO_X emitting source categories. Rhode Island's conclusion from this analysis is that, based on the types of measures reviewed and the costs of these programs, in association with the potential emission reduction benefits in the Rhode Island area, there are no stationary point, area, or non-road RACM that could be adopted in the state that would advance attainment prior to 2007.

Rhode Island also analyzed whether there were any additional mobile source measures that could be implemented that represent RACM. The Rhode Island DEM is already implementing a wide range of statewide mobile source emissions reduction programs including Stage 2 vapor recovery, enhanced inspection and maintenance, the national low emissions vehicle program, and reformulated gasoline. In addition to the above programs, Rhode Island implements transportation projects under the Congestion Mitigation and Air Quality (CMAQ) program, designed to reduce ozone precursor emissions in the transportation sector. The CMAQ program in Rhode Island's 2003–2004 Transportation Improvement Program (details are provided in the submittal and the TSD for this proposal) includes measures aimed at increasing bicycle, ferry and public transit travel, eliminating traffic congestion through improving transportation management, signalization and roadways, reducing emissions from diesel on-road vehicles with a heavy duty vehicle inspection program, and the installation of emissions controls on public transit diesel buses. However, implementation of these projects, and other similar programs that will be funded with CMAQ monies in the coming years, will only achieve a minimal emission reduction of 0.07 tons per summer day of VOC and 0.06 tons per summer day of NO_X. This small reduction in precursors will not result in an acceleration of the attainment date. Since a large number of mobile source emissions control programs are already being implemented and since additional measures of the type that have been funded by CMAQ monies would not accelerate the attainment date, Rhode Island has not identified any additional mobile source RACM measures. The Rhode Island DEM's conclusion on mobile sources is that Rhode Island is currently implementing all reasonably available control measures for mobile sources, since the benefits from these projects is minimal compared to Rhode Island's own emissions and even smaller when compared to the transport of ozone and ozone precursors.

EPA concludes that based on the available information, there are no additional technologically and economically feasible emission control measures in Rhode Island that will advance the attainment date for the Rhode Island ozone nonattainment area. Thus no potential measure can be considered RACM for purposes of section 172(c)(1) for the Rhode Island area for its one-hour ozone attainment demonstration. The Rhode Island DEM analysis is consistent with EPA requirements, which as noted above were upheld by the DC Circuit Court. The EPA therefore proposes that the Rhode Island SIP is consistent with the requirements for RACM.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for this area, this conclusion is not necessarily valid for other areas.

I. What About Motor Vehicle Emissions Budgets?

On June 8, 2001 (66 FR 30811) EPA approved the Rhode Island post-1996 plan which included a 1999 VOC motor vehicle emissions budgets of 41.57 tons per summer day VOC, as well as a NO_X budget of 46.40 tons per summer day of NO_X. These 1999 motor vehicle emissions budgets were formally determined adequate by EPA New England for use in transportation conformity on September 29, 1998. Subsequent to the rate-of-progress SIPs, on January 27, 2003, Rhode Island DEM submitted its ozone attainment demonstration to EPA, for parallel processing, which includes new motor vehicle emissions budgets for both VOC and NO_X for 2007, and these budgets are shown in Table 3. EPA is proposing these budgets for approval.

[14] These areas have approved attainment demonstrations and also have EPA-enforceable emission reduction strategies to bring about attainment of the one-hour standard by 2007.

TABLE 3.—2007 EMISSIONS BUDGETS FOR ON-ROAD MOBILE SOURCES IN TONS PER SUMMER DAY (TPSD)

Area	2007 VOC budget	2007 NO_x budget
Rhode Island	30.37	33.62

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on certain provisions of EPA's 1997 conformity rule in response to a case brought by the Environmental Defense Fund. As a result of the decision, a conformity determination cannot be made using the submitted motor vehicle emissions budgets until EPA makes a positive determination that the submitted budget is adequate. In response to the court's decision, EPA issued guidance on our new adequacy process on May 14, 1999.[15]

EPA believes that these motor vehicle emissions budgets are adequate for use in future transportation conformity analyses as these budgets meet all of the requirements set forth by EPA's adequacy criteria, were developed using EPA's MOBILE6 model, and are consistent with the attainment demonstration. However, prior to making an adequacy finding, EPA must administer a 30 day comment period for these budgets. Therefore, in today's action EPA is opening up the adequacy comment period on these budgets to run concurrently with the comment period for all of today's action. In addition, this **Federal Register** Notice will appear on EPA's Transportation and Air Quality planning website at *http://www.epa.gov/otaq/transp/conform/adequacy.htm*. All comments on these budgets should be submitted to EPA using the procedure outlined earlier in this notice.

J. Contingency Measures

Rhode Island addressed the contingency measure requirement of section 172(c)(9) of the Clean Air Act by demonstrating that the emission reductions from the federal on-road motor vehicle Tier 2 tailpipe standards and sulfur in gasoline rules, and the federal non-road engine control program that accrue between 2007 and mid-2009, which is the date by which emission reductions from contingency measures would need to occur, will achieve more emission reductions than Rhode Island needs to meet its three percent attainment contingency obligation. We propose approval of Rhode Island's contingency measure submittal.

VIII. Proposed Action

EPA is proposing to fully approve as meeting CAA section 182(c)(2) the ground-level one-hour ozone attainment demonstration State Implementation Plan for the Rhode Island nonattainment area submitted by Rhode Island on January 27, 2003. EPA is proposing an attainment date of November 15, 2007 for the area, and is proposing that the RACM analysis for the Rhode Island area is consistent with the requirements of section 172(c)(1). EPA proposes approval of Rhode Island's contingency measures submittal, which is consistent with the requirements of section 172(c)(9) of the CAA. This notice also proposes to approve 2007 motor vehicle emissions budgets for Rhode Island into the SIP.

This SIP is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the state's procedures for amending its regulations. If the proposed plan is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a Final Rulemaking Notice on the revisions. Before EPA can finally approve this plan Rhode Island must finally adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

EPA is soliciting public comments on the issues discussed in this proposal. These issues will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

IX. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 6, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–3698 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–P

[15] Memo from Gay MacGregor, Director, Regional and State Programs Division, USEPA Office of Mobile Sources, to Regional Air Division Directors, titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court decision," dated May 14, 1999.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG–2002–11288]

RIN 2115–AG30

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Notice of extension of comment period and notice of intent.

SUMMARY: The Coast Guard is extending the comment period on the Notice of Proposed Rulemaking (NPRM) on rates for pilotage on the Great Lakes published in the **Federal Register** January 23, 2003, for 45 days. This will extend the comment period to April 24, 2003. The Coast Guard also intends to delay the publishing of an Interim Rule (IR) previously planned for February 12, 2003 (68 FR 3204), to about April 30, 2003.

DATES: Comments and related material must reach the Docket Management Facility on or before April 24, 2003.

ADDRESSES: You may submit your comments directly to the Docket Management Facility. To make sure that your comments and related material do not enter the docket [USCG–2002–11288] more than once, please submit them by only one of the following means:

(1) By mail to the Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Facility maintains the public docket for this notice. Comments, and related material as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call or e-mail Tom Lawler, Chief Economist, Office of Great Lakes Pilotage (G–MW–1), U.S. Coast Guard, at telephone 202–267–1241, or *tlawler@comdt.uscg.mil*. For questions on viewing, or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages you to submit comments and related material concerning the NPRM on "Rates for Pilotage on the Great Lakes" published January 23, 2003, [68 FR 3203] in the **Federal Register**. If you do so, please include your name and address, identify the docket number [USCG–2002–11288], and give the reasons for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background Information

On January 23, 2003, the Coast Guard published an NPRM in the **Federal Register** to update the rates for pilotage on the Great Lakes. At a public meeting conducted on January 31, 2003, in Cleveland, OH, it received requests from the public to extend the comment period and to delay the issuance of an IR until after the comment period has ended.

A comment submitted to the docket has similarly requested that the comment period be extended by 45 days and an IR be delayed until the comment period has closed.

We have decided to grant this request for an extension of the comment period from March 10, 2003, to April 24, 2003, and to delay the publication of an IR until after the close of the comment period. The delay will allow the Coast Guard to collect and review all comments before it issues an IR.

The Coast Guard has also extended the comment period to obtain comments on two specific aspects of the NPRM and to obtain industry-related information that will aid the Coast Guard in assessing the economic impact of the IR.

To assist the Coast Guard in analyzing the impact of the IR on industry, the public should comment on the following issues:

1. Determining the total cost of operating a vessel on the Great Lakes and determining what percentages of those costs are attributable to: (a) Pilotage fees, (b) dockage, (c) longshoremen services, (d) tug services, (e) port and agent fees, (f) running expenses, and (g) other operating expenses.

2. Projections of traffic and cargoes anticipated for the 2003 navigational season.

Dated: February 10, 2003.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–3737 Filed 2–11–03; 3:00 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

48 CFR Part 228

[DFARS Case 2002–D030]

Defense Federal Acquisition Regulation Supplement; Payment Bonds on Cost-Reimbursement Contracts

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to permit the use of alternative payment protections for fixed-price construction subcontracts between $25,000 and $100,000 issued under cost-reimbursement contracts. This change is consistent with the corresponding Federal Acquisition Regulation (FAR) policy applicable to fixed-price construction contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 15, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D030 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D030.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule updates DFARS policy on performance and payment bonds for construction contracts. In accordance with the Miller Act (40 U.S.C. 270a–270f), FAR 28.102–1(a) requires performance and payment bonds for construction contracts exceeding $100,000. In accordance with section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), FAR 28.102–1(b) permits alternative payment protections for construction contracts between $25,000 and $100,000. DFARS 228.102–1(a) presently waives the requirement for performance and payment bonds for cost-reimbursement contracts, but requires the prime contractor to obtain bonds for its fixed-price subcontracts exceeding $25,000. This proposed DFARS rule authorizes the use of alternative payment protections for subcontracts between $25,000 and $100,000, for consistency with the corresponding FAR policy applicable to prime contracts.

In addition, this proposed rule updates text implementing 10 U.S.C. 2701(h) and (i), pertaining to bonds under Defense Environmental Restoration Program contracts. 10 U.S.C. 2701(h) and (i) were to expire on December 31, 1999; however, section 314 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) removed this expiration date. Therefore, the corresponding DFARS text has been amended to remove the expiration date. Additionally, the text has been relocated to a new section 228.102–70, as its present location and numbering has led to confusion regarding its relationship with the subsequent text.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule still requires payment protections for fixed-price construction subcontracts exceeding $25,000, while providing flexibility for subcontractors to chose the type of protection to be provided for subcontracts between $25,000 and $100,000. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D030.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 228

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 228 as follows:

1. The authority citation for 48 CFR Part 228 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 228—BONDS AND INSURANCE

2. Section 228.102–1 is revised to read as follows:

228.102–1 General.

The requirement for performance and payment bonds is waived for cost-reimbursement contracts. However, for cost type contracts with fixed-price construction subcontracts over $25,000, require the prime contractor to obtain from each of its construction subcontractors performance and payment protections in favor of the prime contractor as follows:

(1) For fixed-price construction subcontracts over $25,000, but not exceeding $100,000, payment protection sufficient to pay labor and material costs, using any of the alternatives listed at FAR 28.102–1(b)(1).

(2) For fixed-price construction subcontracts over $100,000—

(i) A payment bond sufficient to pay labor and material costs; and

(ii) A performance bond in an equal amount if available at no additional cost.

3. Section 228.102–70 is added to read as follows:

228.102–70 Defense Environmental Restoration Program construction contracts.

For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701—

(a) Any rights of action under the performance bond shall only accrue to, and be for the exclusive use of, the obligee named in the bond;

(b) In the event of default, the surety's liability on the performance bond is limited to the cost of completion of the contract work, less the balance of unexpended funds. Under no circumstances shall the liability exceed the penal sum of the bond;

(c) The surety shall not be liable for indemnification or compensation of the obligee for loss or liability arising from personal injury or property damage, even if the injury or damage was caused by a breach of the bonded contract; and

(d) Once it has taken action to meet its obligations under the bond, the surety is entitled to any indemnification and identical standard of liability to which the contractor was entitled under the contract or applicable laws and regulations.

[FR Doc. 03–3575 Filed 2–13–03; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2002–D016]

Defense Federal Acquisition Regulation Supplement; Liability for Loss Under Vessel Repair and Alteration Contracts

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to increase a contractor's liability for loss or damage under vessel repair and alteration contracts, from $5,000 to $50,000 per incident. The increased dollar ceiling is based on adjustments for inflation and the need to provide a financial incentive for contractors to minimize loss or damage.

DATES: DoD will consider all comments received by April 15, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D016 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D016.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

DoD uses the clause at DFARS 252.217–7012, Liability and Insurance, in master agreements for repair and alteration of vessels. The clause holds a contractor liable for loss or damage resulting from defective contractor workmanship and materials. For any other contractor-incurred loss or damage, the contractor bears the first $5,000 of loss or damage from each occurrence or incident.

This rule proposes to increase the contractor's liability ceiling from $5,000 to $50,000, because—

1. The $5,000 ceiling dates back to 1982. This dollar ceiling is outdated after considering inflation; and

2. An analysis of contractor-incurred damages for a period of 3 years indicates that 70 percent of the incidents were below $50,000. DoD anticipates that this increase will incentive contractors to reduce the number of such incidents. Improved contractor performance will not only reduce the vessel "down time" for maintenance and repair, but will also make more efficient use of scarce maintenance dollars that would otherwise be used to pay for the damage between the $5,000 and the $50,000 ceilings.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD has prepared an Initial Regulatory Flexibility Analysis (IRFA), which is summarized as follows:

This rule proposes to increase a contractor's liability from $5,000 to $50,000 for loss or damage to a Government vessel, materials, or equipment. The rule will apply to small entities that have a master agreement with DoD for repair and alteration of vessels. There is no available estimate of the total number of small entities that will be subject to the rule. However, the Naval Sea Systems Command (NAVSEA), which is responsible for the maintenance and repair of the majority of vessels, has collected data indicating that, during the period from May 1997 to October 2002, there were 61 occurrences of contractor-caused damages. Of those, 13 occurrences (21 percent) were attributed to small entities. The proposed rule does not impose any reporting, recordkeeping, or other compliance requirements and does not duplicate, overlap, or conflict with any other Federal rules. This rule will impact small entities, since they will need to increase their insurance coverage from $5,000 to $50,000. DoD considered using a ceiling of less than $50,000, but believes the $50,000 ceiling to be appropriate because—

1. This ceiling would capture a majority of claims, since a NAVSEA study shows that 70 percent of claims incurred during a recent 3-year period were for amounts less than $50,000; and

2. This increase should incentivize contractors to reduce the number of such occurrences, thereby reducing vessel "down-time" for maintenance and repair and making more efficient use of scarce maintenance dollars.

A copy of the IRFA may be obtained from the address specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D016.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 252 as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.217–7012 [Amended]

2. Section 252.217–7012 is amended as follows:

a. By revising the clause date to read "(XXX 2003)"; and

b. In paragraph (b)(6), by removing "$5,000" and adding in its place "$50,000".

[FR Doc. 03–3576 Filed 2–13–03; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 030128024–3024–01; I.D. 121002A]

RIN 0648–AQ63

Fisheries of the United States; National Standard 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of revision to national standard 1 guidelines.

SUMMARY: NMFS announces that the agency is considering revisions to the national standard guidelines for national standard 1 that specify criteria for determining overfishing and establishing rebuilding schedules. There have been concerns expressed by the scientific community, fisheries managers, the fishing industry, and environmental groups regarding the appropriateness of some aspects of these guidelines, particularly in light of new issues arising from rebuilding programs that have been underway for several years. This action solicits public input on the effectiveness and appropriateness of the national standard 1 guidelines in complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be submitted in writing by March 17, 2003.

ADDRESSES: Comments may be mailed to Mr. John H. Dunnigan, Director, Office of Sustainable Fisheries, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301–713–1193. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Mark R. Millikin, at 301–713–2341 or via e-mail at Mark.Millikin@noaa.gov.

SUPPLEMENTARY INFORMATION: National standard 1 reads, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." In 1996, the Sustainable Fisheries Act (SFA) amended the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) to, among other things, provide definitions for "overfishing" and modify the definition of "optimum yield." The Magnuson-Stevens Act, in section 303(a)(10), now requires each fishery management plan (FMP) to "specify objective and measurable criteria for identifying when the fishery to which the FMP applies is overfished." In addition, section 304(e) specifies requirements for rebuilding overfished fisheries. The revised national standard guidelines, including national standard 1, were proposed at 62 FR 41907, August 4, 1997, and published as final guidelines at 63 FR 24212, May 1, 1998.

As they currently exist, the national standard 1 guidelines provide definitions and require determination, to the extent possible, of maximum sustainable yield (MSY), or an acceptable surrogate; specification of status determination criteria including a maximum fishing mortality threshold and a minimum stock size threshold; ending overfishing and rebuilding overfished stocks; and specification of optimum yield (OY) in fisheries.

In response to the SFA, these national standard guidelines were implemented in 1998, over 5 years ago. Since that time, we have developed new perspectives, new issues, and new problems regarding their application. Concerns that have been identified for possible revision include, but are not limited to, the following:

1. The definition and use of the minimum stock size threshold (MSST) for determining when a stock is overfished. There has been considerable discussion about the utility of the concept of MSST, the definition of MSST contained in the guidelines, difficulties in estimating the MSST (especially in data-poor situations), and identifying appropriate proxies for MSST.

2. Calculation of rebuilding targets appropriate to the prevailing environmental regime. Currently, the guidelines do not address how rebuilding targets should accommodate changing environmental conditions. Rebuilding rates based upon current stock productivity may be inconsistent with rebuilding targets based upon historical stock productivity when there are persistent, long-term changes in environmental conditions.

3. Calculation of maximum permissible rebuilding times for overfished fisheries. The SFA established a maximum allowable 10–year rebuilding time for a fishery, except where the biology of the fish will not allow it or the fishery is managed under an international agreement. If the minimum time for a fishery to rebuild is 10 years or greater, the maximum allowable rebuilding time under the guidelines becomes the time to rebuild in the absence of any fishing mortality, plus one mean generation time. This has created a discontinuity where the difference in allowable rebuilding times between a stock with a minimum rebuilding time of 9 years and another stock with a minimum rebuilding time of 11 years, may be several decades in the case of long-lived species. This results in the need for much more restrictive management measures in the first case compared to the second, even though there is not much difference between them in terms of rebuilding potential.

4. The definitions of overfishing as they relate to a fishery as a whole or a stock of fish within that fishery. There are currently over 900 fish stocks identified for the purpose of determining their status with regard to overfishing, many of which are caught in small amounts and whose status is unknown. Combining assessments and status determination criteria for assemblages of minor stocks may make more sense biologically and economically than attempting to assess and manage them one by one. Further guidance is needed on the most ecologically sound and economically expedient ways to manage these fisheries.

5. Procedures to follow when rebuilding plans require revision after initiation, especially with regard to modification of the rebuilding time frame. The guidelines do not currently address what to do when observed rebuilding rates are greater or lower than expected or when new assessments change estimates of rebuilding targets or other parameters.

NMFS solicits input from the public regarding: (1) whether or not the national standard 1 guidelines should be revised and (2) if revisions are desired, what parts of the national standard 1 guidelines should be revised, how they should be revised, and why. NMFS will use the information in determining whether to proceed with a revision to the existing guidelines, and if so, the issues to be addressed.

This advance notice of proposed rulemaking has been determined to be significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–3758 Filed 2–13–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 31

Friday, February 14, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—Increase of 2002-Crop Overall Allotment Quantity

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Commodity Credit Corporation (CCC) has increased the 2002-crop overall allotment quantity (OAQ) of domestic sugar by 500,000 short tons, raw value (STRV). The beet sugar sector allotment increased to 4.457 million STRV, and the cane sugar sector increased to 3.743 million STRV, for a total OAQ of 8.200 million STRV. CCC has also revised the State cane allotments and processor allocations of the beet and cane sugar marketing allotments to be consistent with the increased OAQ and updated cane State and cane processor 2002-crop production forecasts. CCC is also suspending the proportionate share requirement on Louisiana sugarcane producers for the 2002 crop.

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: Section 1403 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended section 359c of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359c) to authorize the Secretary to adjust marketing allotments and allocations quarterly to reflect changes in estimated sugar consumption, stocks, production, or imports. When USDA announced a 7.700 million ton OAQ in August 2002, it noted the existence of considerable sugar market uncertainties and that the OAQ could be adjusted if warranted. After closely monitoring the market, and because market prices for both refined and raw sugar have been well above loan forfeiture levels, CCC increased the OAQ, thereby increasing the supply of sugar available to the domestic market.

At this time, CCC does not expect the beet sector to fully use its allotment and will reassign the estimated unused allotment (deficit), 182,000 tons, to the CCC inventory to be sold. The estimated unused allotment is calculated as the beet sector's FY 2003 allotment, 4.457 million tons, less beet processors' estimated available supply, 4.275 million tons (0.360 million tons beginning stocks plus 4.215 million tons production, less an assumed 0.300 million tons in estimated minimum ending stocks). While the beet sector ending inventory averaged 560,000 tons over the past decade, reaching a low of 360,000 tons at the end of FY 2002, the level to which the beet sector reduces its FY 2003 ending stocks is uncertain. Due to production and marketing unknowns, CCC estimates that an ending stocks level of 300,000 tons may be attainable.

CCC will conduct a thorough survey of beet and cane sugar production and stocks-to-use prior to May 1, 2003, and make allocation reassignments, as necessary. At that time, CCC may reduce the amount reassigned to CCC for inventory sales if survey results indicate CCC misjudged the beet sector's ability to supply the market. This can occur even if CCC has sold the reassigned sugar because CCC's ability to sell sugar is not limited to availability of reassigned sugar marketing allotments.

Pursuant to section 359f of the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1359ff), CCC announced the suspension of the proportionate share requirement on Louisiana sugarcane producers for the 2002 crop after it determined that the amount of sugar estimated to be produced from the 2002-crop sugarcane in Louisiana (1.340 million tons, raw value) will not be sufficient to enable Louisiana sugar cane processors to meet the state's cane sugar allotment (1.331 million tons, raw value) and provide for a normal carryover.

USDA will continue to closely monitor market performance and critical program variables throughout the year to ensure meeting program objectives and maintaining market balance. Further OAQ adjustments and alteration of the sugar Tariff Rate Quota (TRQ) import quantity will be considered as market conditions warrant.

These actions apply to all domestic sugar marketed for human consumption in the United States from October 1, 2002, through September 30, 2003. The 2002-crop sugar marketing allotments and allocations (in short tons, raw value) are listed in the following table:

2002-CROP SUGAR MARKETING ALLOTMENTS AND ALLOCATIONS

[Revised January 2003]

	Previous allotment/allocation	Change [1]	Revised allotment/allocation
Overall Beet/Cane Allotments			
Beet Sugar	4,184,950	271,750	4,456,700
Cane Sugar (includes Puerto Rico)	3,515,050	228,250	3,743,300
Total (Overall Allotment Quantity)	7,700,000	500,000	8,200,000
State Cane Sugar Allotments			
Florida	1,715,471	214,045	1,929,516

2002-CROP SUGAR MARKETING ALLOTMENTS AND ALLOCATIONS—Continued

[Revised January 2003]

	Previous allotment/allocation	Change [1]	Revised allotment/allocation
Louisiana	1,329,764	1,148	1,330,912
Texas	144,815	13,057	157,872
Hawaii	318,829	0	318,829
Puerto Rico	6,171	0	6,171
Total Cane Sugar	3,515,050	228,250	3,743,300
Beet Processors' Marketing Allocations			
Amalgamated Sugar Co	918,627	56,618	975,245
American Crystal Sugar Co	1,496,229	97,491	1,593,720
Holly Sugar Corp	280,786	18,233	299,019
Michigan Sugar Co	281,689	17,361	299,050
Minn-Dak Farmers Co-op	275,076	16,953	292,029
Monitor Sugar Co	161,414	9,948	171,362
Pacific Northwest Sugar Co	15,000	7,314	22,314
So. Minn. Beet Sugar Co-op	283,250	17,458	300,708
Western Sugar Co	417,051	26,748	443,799
Wyoming Sugar Co	55,828	3,626	59,454
Total Beet Sugar	4,184,950	271,750	4,456,700
Cane Processors' Marketing Allocations			
Florida	1,715,471	214,045	1,929,516
Atlantic Sugar Assoc	146,856	−1,987	144,869
Growers Co-op. of Florida	311,681	39,165	350,846
Okeelanta Corp	322,318	66,984	389,302
Osceola Farms Co	194,060	33,255	227,315
Talisman Sugar Corp	54,066	5,594	59,660
U.S. Sugar Corp	686,490	71,034	757,524
Louisiana	1,329,764	1,148	1,330,912
Alma Plantation	74,299	3,519	77,818
Caire & Graugnard	5,344	253	5,597
Cajun Sugar Co-op	92,119	5,526	97,645
Cora-Texas Mfg. Co	117,083	−553	116,530
Evan Hall Factory	2,670	127	2,797
Harry Laws & Co	56,709	1,472	58,181
Iberia Sugar Co-op	65,460	−2,662	62,798
Jeanerette Sugar Co	60,904	2,401	63,305
Lafourche Sugars Corp	69,216	3,278	72,494
Louisiana Sugarcane Co-op	83,052	−271	82,781
Lula Westfield, LLC	148,265	−5,120	143,145
M.A. Patout & Sons	174,963	−1,026	173,937
Raceland Sugars	81,195	−3,113	78,082
St. Mary Sugar Co-op	88,675	4,200	92,875
So. Louisiana Sugars Co-op	119,930	−4,832	115,098
Sterling Sugars	89,881	−2,051	87,830
Texas	144,815	13,057	157,872
Hawaii	318,829	0	318,829
Gay & Robinson, Inc	62,163	0	62,163
Hawaiian Commercial	256,666	0	256,666
Puerto Rico	6,171	0	6,171
Agraso	3,984	0	3,984
Roig	2,187	0	2,187

[1] Includes changes due to the 500,000-ton increase in the overall allotment quantity and, for cane states and sugarcane processors, changes due to updated 2002-crop production forecasts.

Signed in Washington, DC on January 31, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–3633 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Refined Sugar Re-Export Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Foreign Agricultural Service (FAS) will conduct a public meeting to review program operations for granting re-export credits to licensed refiners for shipments of sugar to Mexico. The meeting is open to the public.

DATES: FAS will conduct a meeting on Wednesday, February 19, 2003, from 3 p.m. to 5 p.m. in room 5066 of the USDA South Building, 1400 Independence Avenue, SW., Washington, DC. All times are eastern daylight time.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: The Import Policies and Programs Division, FAS, (202) 720–2916.

Signed in Washington, DC, on February 10, 2003.

Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–3784 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest, Lewis & Clark County, MT; North Belts Travel Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Helena National Forest is proposing a revision of the existing year-round travel management plan in the northern portion of the Big Belt Mountains and portions of the Dry Range on the Helena and Townsend Ranger Districts. This travel plan will include analysis on roads and trails regarding year-round and seasonal, open and closed motorized and non-motorized routes. In addition, potential travel corridors connecting roads and trails are being considered. This EIS will be prepared displaying the anticipated effects of the above activities to the resources and human uses of the analysis area. Closure methods will be identified and improvement projects to rehabilitate routes will be analyzed. The North Belts Travel Planning area includes about 190,000 acres from the Forest boundary north of the Gates of the Mountains Wilderness south to about the southern boundary of the Confederate Gulch drainage and portions of the Dry Range.

DATES: Comments concerning the scope of the analysis must be received by March 14, 2003. The draft EIS is expected April 2003 and the final EIS is expected April 2004.

ADDRESSES: Send written comments or for further information, mail correspondence to or call Beth Ihle—Team Leader, Townsend Ranger District, 415 S. Front, Townsend, MT 59644 (Phone 406–266–3425) or Chuck Neal—Travel Planner, 2880 Skyway Drive, Helena, MT 59601 (Phone 406–449–5201).

SUPPLEMENTARY INFORMATION:

History of Previous Efforts

Travel Plan efforts for the North Belts originally was initiated in 1997, which included vegetation management and noxious weed treatments. A draft EIS called the North Belts Travel Plan/ Magpie-confederate Vegetation Restoration Project was issued in March 1999. Alternatives were developed addressing travel plan issues from public input. In the summer of 2000, a major fire burned over 29,000 acres within the North Belts analysis area creating a substantial change. Due to this changed condition, travel plan efforts were to be separated from the vegetation and noxious weed components of the 1999 draft EIS. Restoration of the burned over area followed by a Forest-wide Roads Analysis Plan took priority over travel management plans. This renewed effort has taken into consideration the changed conditions and change in management direction in regard to travel planning and has also considered and incorporated public input from the previous attempts. Opportunity for additional comments is presented in this process.

Purpose and Need for Action

The Helena National Forest has identified the need for the North Belts Travel Management Plan to address a variety of year-round motorized and non-motorized recreation uses as well as access for administrative and permitted uses and for private lands. These needs will be balanced while meeting needs for fish and wildlife habitats and soil and watershed health, and prevention of noxious weed spread as directed by the Helena Forest Plan.

Proposed Action

Features of the proposed action include the following elements:

1. Open or closed periods for routes are simplified to the following:
   a. Yearlong open or closed,
   b. October 15—December 1: closed for big-game security, and
   c. December 2—May 15 open or closed for winter range.

   Other closures will be managed as unique situations occur and will utilize special orders or other methods to respond to them, *e.g.* spring thaw.
2. Open and closed routes and areas are proposed for snowmobiles area. However, in big-game winter range, snowmobiles will be allowed on designated routes only.
3. As part of the process, users may help identify "corridors" where future construction could connect existing routes and provide specific kinds of recreational opportunities.
4. Proposal includes new road construction (about 1.5 miles) and new non-motorized trail construction (about .25 miles). In addition, trail and road reconstruction, and development of trailheads and information kiosks would be included in the proposal.
5. Four route types are included:
   a. Roads open to vehicles meeting requirements of State laws,
   b. Motorized trails open to vehicles 50 inches wide or less,
   c. Non-motorized trails, and
   d. Snowmobile use.
6. Site-specific road rehabilitation projects such as culvert replacement, correcting drainage problems and localized road relocations are included.
7. Vehicle access within 300 ft. of an open, designated road is allowed primarily to access dispersed camping sites, but also for other uses as long as it does not result in resource damage such as rutting of soils, hill climbing, noxious weed infestations, fording of streams, crossing of meadows, etc.
8. In lynx habitat, the proposal does not result in a net increase in designated over the snow routes and snowmobile play areas.

Responsible Official

Tom Clifford—Forest Supervisor, 2880 Skyway Drive, Helena, MT 59601.

Nature of Decision To Be Made

Whether or not to implement the proposed action or an alternative to the proposed action including the following decisions:

- Which areas, roads, and trails are appropriate for what types of public motorized and non-motorized travel,
- Which areas, roads, and trails should have seasonal restrictions to protect wildlife or other resources,
- What types of closures and/or rehabilitation methods should be used on year-round closed routes,
- What segments of new trail construction and new trailhead facilities are needed,
- Which road maintenacne and repairs are needed to address watershed issues,
- What type of access is needed to private ownership within the Forest boundary,

- Which new connector travel corridors would be included for future site-specfic analysis, and
- Whether or not Forest Plan amendment(s) would be required?

Scoping Process

- Pre-scoping contacts—February 6, 2003.
- Scoping package (mailing)—February 10, 2003.
- NOI—February 14, 2003.
- Post on website—February 14, 2003.
- DEIS Public Meetings—May/June 2003.
- DEIS Comment Period—April through September of 2003.
- FEIS and ROD—April 2004.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments are due by March 14, 2003.

A draft environmental impact statement will be prepared for comment. The comment period on the draft EIS is expected to be from mid-April through September of 2003. This date will be established when the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21.)

Dated: February 6, 2003.

Al Christophersen,

Deputy Forest Supervisor.

[FR Doc. 03–3550 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Giant Sequoia National Monument Scientific Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Giant Sequoia National Monument Scientific Advisory Board (Scientific Advisory Board) will meet at the Visalia Convention Center in Visalia, California, March 12 and 13, 2003. The purpose of the meeting is to hear comments from the public, and to provide Forest personnel with comments on the Giant Sequoia National Monument Management Plan Draft Environmental Impact Statement (DEIS).

DATES: The meeting will be held Wednesday and Thursday, March 12 and 13, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Visalia Convention Center, 303 E. Acequia Avenue, Visalia, California, in the Sequoia room.

FOR FURTHER INFORMATION CONTACT: To receive further information, contact Arthur L. Gaffrey, 559–784–1500.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If you are planning to attend, please contact Arthur L. Gaffrey to ensure adequate seating. Guidelines for the public participation portion of the Scientific Advisory Board's meeting are as follows: The public will be allowed to address the Scientific Advisory Board during the first 30 minutes of the meeting on March 12; when registering, participants must provide 9 written copies of their presentation, one copy for each member of the Board and one copy to be included in the meeting minutes; oral presentations may be no more than 5 minutes in length, depending on the number of people wishing to address the Scientific Advisory Board; priority for presentations will be given to persons who did not make a presentation at a previous meeting; and all presentations must be related to the science surrounding the development of the Management Plan for the Giant Sequoia National Monument.

Written comments for the Scientific Advisory Board may be submitted to Forest Supervisor Arthur L. Gaffrey, Sequoia National Forest, 900 West Grand Avenue, Porterville, California 93257.

A final agenda can be obtained by contacting Arthur L. Gaffrey or by visiting the Giant Sequoia National Monument Web site at *http://www.r5.fs.fed.us/giant_sequoia.*

Dated: February 10, 2003.

Arthur L. Gaffrey,

Sequoio National Forest.

[FR Doc. 03–3666 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on March 4, 2003 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on March 4, 2003 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington Boulevard, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441– 3549. E-mail: *1chapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Committee will discuss and vote on project proposals submitted by the public and Six Rivers National Forest. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: February 6, 2003.

Julie E. Ranieri,

Acting Forest Supervisor.

[FR Doc. 03–3612 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Thursday, March 6, 2003 in Riggins, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on March 6 begins at 11:00 a.m. (m.s.t.), at the City Hall, Heritage Center, Riggins, Idaho. Agenda topics will include discussion of potential projects. A public forum will begin at 3 p.m. (m.s.t.).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: February 6, 2003.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 03–3637 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Wednesday, March 19, 2003, in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on March 19, 2003, from 10 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on March 19, 2003, begins at 10 a.m. at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include reviewing projects that have been submitted.

Dated: February 7, 2003.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 03–3663 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report, (5) Status of Project Proposals, (6) Update on Approved Projects, (7) General Discussion, (8) House Committee Report.

DATES: The meeting will be held on March 13, 2003 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; E-MAIL *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 10, 2003 will have the opportunity to address the committee at those sessions.

Dated: February 10, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–3667 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Grain Inspection Advisory Committee Reestablishment

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to reestablish committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture, has reestablished the Grain Inspection, Packers and Stockyards Administration's Grain Inspection Advisory Committee. The Secretary of Agriculture has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry, Designated Federal Official, Office of the Administrator, Grain Inspection, Packers and Stockyards Administration, USDA, 1094–S, 1400 Independence Ave., SW., Washington, DC 20250; Telephone (202) 720–0219; Fax (202) 205–9237; E-mail Terri.L.Henry@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Grain Inspection Advisory Committee is to advise the Administrator of the Grain Inspection, Packers and Stockyards Administration with the respect to the implementation of the United States Grain Standards Act, as amended and the Reorganization Act of 1994. The Committee is essential to help facilitate the marketing of grain.

Dated: February 10, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–3684 Filed 2–13–03; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; additions and deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: March 16, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On December 6, and December 20, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 72640, and 77962) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Administrative Services, National Park Service, Harpers Ferry Center, Harpers Ferry, West Virginia.
NPA: Hagerstown Goodwill Industries, Inc., Hagerstown, Maryland.
Contract Activity: National Park Service, Harpers Ferry, West Virginia.
Service Type/Location: Facilities Maintenance, Greater Louisville Technology Park, Port Hueneme Detachment & Navy, Caretaker Site Office, Louisville, Kentucky.
NPA: Employment Source, Inc., Fayetteville, North Carolina.
Contract Activity: Naval Surface Warfare Center, Crane, Indiana.
Service Type/Location: Janitorial/Custodial, 183rd Fighter Wing Air National Guard, Capitol Airport, Springfield, Illinois.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: 183rd Fighter Wing/Air National Guard, Springfield, Illinois.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Columbus, Ohio.
NPA: Licking-Knox Goodwill Industries, Inc., Newark, Ohio.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.
Service Type/Location: Janitorial/Custodial, U.S. Geological Survey Upper Midwest Environmental Science Center, La Crosse, Wisconsin.
NPA: Riverfront Activity Center, Inc., La Crosse, Wisconsin.
Contract Activity: U.S. Geological Survey, Reston, Virginia.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Pallet, P.S., Material Handling 3990–00–NSH–0008.
NPA: Handi-Shop Industries, Inc., Tomah, Wisconsin.
Contract Activity: U.S. Postal Service, Western Area Supply Center, Topeka, Kansas.
Product/NSN: Pallet, Wood 3990–00–NSH–0072.
NPA: Handi-Shop Industries, Inc., Tomah, Wisconsin.
Contract Activity: Federal Prison Industries, Dept. of Justice.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–3731 Filed 2–13–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed additions and deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

Comments Must Be Received On or Before: March 16, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, Naval & Marine Corps Reserve Center, St. Louis, Missouri.
NPA: MGI Services Corporation, St. Louis, Missouri.
Contract Activity: Naval Facilities Engineering Command, Crane, Indiana.
Service Type/Location: Mailroom Operation, Social Security Administration, Sam Nunn Federal Building, Atlanta, Georgia.
NPA: Nobis Enterprises, Inc., Marietta, Georgia.
Contract Activity: Social Security Administration, Region IV, Atlanta, Georgia.
Service Type/Location: Food Service Attendant, U.S. Navy Sub Base, Galley 446, Groton, Connecticut.
NPA: CW Resources, Inc., New Britain, Connecticut.
Contract Activity: Fleet Industrial Supply Center, Norfolk Detachment Philadelphia, Philadelphia, Pennsylvania.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

The following products and services are proposed for deletion from the Procurement List:

Products

Product/NSN: Seal, Metallic 5340–00–491–7632 5340–00–902–0426.
NPA: Michiana Resources, Inc, Michigan City, Indiana.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Services

Service Type/Location: Commissary Shelf Stocking, Point Mugu Naval Air Station, Point Mugu, California.
NPA: Association for Retarded Citizens—Ventura County, Inc., Ventura, California.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial, Fort Shafter, Hawaii.
NPA: Goodwill Industries of Hawaii, Inc., Honolulu, Hawaii.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial, Presidio of San Francisco Commissary, San Francisco, California.
NPA: Calidad Industries, Inc., Oakland, California.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Drill Sharpening, Naval Supply Center, San Diego, California.
NPA: The ARC of San Diego, San Diego, California.
Contract Activity: Department of the Navy, San Diego, California.
Service Type/Location: Janitorial/Custodial, Mare Island Naval Shipyard, Vallejo, California.
NPA: V-Bar Enterprises, Inc., Suisun City, California.
Contract Activity: Department of the Navy, Vallejo, California.
Service Type/Location: Janitorial/Custodial, Veterans Affairs Community Based Outpatient Clinic, St. George, Utah.
NPA: Washington County Association for Retarded Citizens, St. George, Utah.
Contract Activity: Department of Veterans Affairs, St George, Utah.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–3732 Filed 2–13–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Notice of Availability of Draft of Information Quality Guidelines

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Notice.

SUMMARY: The Committee has made available a draft of its Information Quality Guidelines pursuant to the requirements of the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies issued by the Office of Management and Budget (OMB). The Committee invites comments on these draft Information Quality Guidelines. The draft guidelines are published on the Committee's Web site *http://www.jwod.gov*.

DATES: Comments must be received on or before March 17, 2003.

ADDRESSES: Comments may be mailed to the Committee for Purchase from People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Suite 10800, Arlington, VA 22202. Comments can also be e-mailed to *info@jwod.gov*.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Director, Information Management, Committee for Purchase from People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Suite 10800, Arlington, VA 22202, (703) 603–7740.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information its disseminates. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB). In compliance with this statutory requirement and OMB

instructions, the Committee has posted its Information Quality Guidelines on its Web site *(http://www.jwod.gov)*.

The Guidelines describe the Committee's procedures for ensuring the quality of information that it disseminates and the procedures by which an affected person may obtain correction of information disseminated by the Committee that does not comply with the Guidelines. Persons who cannot access the Guidelines through the Internet may request a paper or electronic copy by contacting the Committee.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–3733 Filed 2–13–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of the Review.

SUMMARY: We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 2001, through May 31, 2002. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the differences between the constructed export price and normal value on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smith or Daniel Alexy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1276 and (202) 482–1540, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished ("TRBs"), from the People's Republic of China ("PRC"). The Department notified interested parties of the opportunity to request an administrative review of this order on June 5, 2002 (67 FR 38640). On June 25, 2002, Peer Bearing Company - Changshan ("CPZ") requested an administrative review. On June 27, 2002, Wanxiang Group Corporation ("Wanxiang"), China National Machinery Import & Export Corporation ("CMC"), Tianshui Hailin Import and Export Corporation ("Hailin"), Luoyang Bearing Corporation (Group) ("Luoyang"), and Liaoning MEC Group Co. Ltd. ("Liaoning") also requested administrative reviews. On June 28, 2002, the Koyo Corporation of U.S.A., an interested party in this proceeding pursuant to 19 CFR 351.213(b)(1), requested that the Department conduct an administrative review of Yantai Timken Co., Ltd. ("Yantai Timken"). In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 24, 2002 (67 FR 48435).

On August 6, 2002, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested information relevant to the issue of whether the companies named in the initiation notice are independent from government control. *See* the "Separate Rates Determination" section, below. On August 6, 2002, courtesy copies of the questionnaire were also sent to companies with legal representation.

On September 10, 2002, the following companies requested that the Department rescind the administrative review with respect to these companies: Hailin, Wanxiang, Luoyang, Liaoning, and CMC. Pursuant to 19 CFR 351.213(d)(1), because these companies withdrew their requests for review within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of these companies, we are rescinding the review with respect to Hailin, Wanxiang, Luoyang, Liaoning, and CMC.

We received responses to the questionnaire in August, September, and October 2002 from CPZ and Yantai Timken. We sent out supplemental questionnaires to CPZ and Yantai Timken in November, December 2002, and January 2003, and received responses to these supplemental questionnaires in December 2002 and January 2003.

Scope of the Order

Merchandise covered by this order includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under *Harmonized Tariff Schedule* of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy ("NME") country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC TRBs industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20589. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR 22587; *Sparklers*, 56 FR 20589.

In *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of New Shipper Reviews*, 67 FR 10665 (March 8, 2002), we determined that CPZ and Yantai Timken should receive separate rates. We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to these companies' exports according to the criteria identified in *Sparklers* and *Silicon Carbide*. The evidence includes, among other things, the companies' business licenses and copies of relevant PRC laws on trade and incorporation. Therefore, we have continued to assign each of these companies a separate rate.

Constructed Export Price

For all sales made by CPZ and Yantai Timken to the United States, we used constructed export price ("CEP") in accordance with section 772(b) of the Act. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

We calculated CEP based on the packed, ex-warehouse prices from CPZ's and Yantai Timken's U.S. subsidiaries to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for international freight, foreign brokerage and handling, foreign inland freight, marine insurance, customs duties, U.S. warehousing, and U.S. inland freight. When foreign brokerage and handling, marine insurance, and ocean freight were provided directly by market-economy companies and paid for in a market-economy currency, we deducted the market-economy values reported by the responding companies for these services.

In accordance with section 772(d)(1) of the Act, we made further deductions from the CEP starting price for the following selling expenses that related to economic activity in the United States: commissions, credit expenses, discounts, further manufacturing, rebates, repacking costs, and indirect selling expenses (including inventory carrying costs). For CPZ, we made an upward adjustment to its reported indirect selling expenses. For more information, *see Preliminary Results Calculation Memorandum for CPZ*(February 7, 2003), which is on file in the Department's Central Records Unit, which is located in Room B-099 of the main Department building ("CRU"). Additionally, in accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit. For information on how profit was calculated, *see* "Overhead, SG&A Expenses, and Profit" in the "Normal Value" section below.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production ("FOP") methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the FOP methodology, we are required to value, to the extent possible, the NME producer's inputs in a market-economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). *See*the October 21, 2002, Memorandum to File: "Requests for Surrogate Values," which includes the August 6, 2002, Memorandum to Melani Miller from Jeff May: "Administrative Review on Tapered Roller Bearings from the People's Republic of China," and the February 7, 2003, Memorandum to John Brinkmann: "Selection of a Surrogate Country and Steel Value Sources" ("*Steel Values Memorandum*") for a further discussion of our surrogate selection. (Both memoranda are on file in the CRU.)

We used publicly available information from India to value the various factors. Pursuant to the Department's FOP methodology, we valued each respondent's reported factors of production by multiplying them by the values described below. For a complete description of the factor values used, *see* the Memorandum to John Brinkmann: "Factors of Production Values Used for the Preliminary Results," dated February 7, 2003, which is on file in the Department's CRU.

1. Steel and Scrap. For hot-rolled alloy steel bars used in the production of cups, we used an adjusted weighted-average of Japanese export values to India from the Japanese Harmonized Schedule ("HS") category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. We adjusted this data to include costs incurred on ocean freight and marine insurance. This is the same valuation methodology used in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part* 67 FR 68990 (November 14, 2002) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2000–2001 Administrative Review* 67 FR 72147 (December 4, 2002) (collectively, "*TRBs XIV*") and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) ("*TRBs XIII*"). For further discussion of our calculation of this value, *see Steel Values Memorandum*.

We valued scrap recovered from the production of cups, cones, and rollers using Indian import statistics from Indian HS category 7204.2909. As in

previous administrative reviews of this order, we eliminated from our scrap calculations imports from NME countries and small quantity imports from market-economy countries. *See TRBs XIII* and *TRBs XIV*. We also excluded, imports from countries that do not produce bearing-quality steel (see,*e.g., TRBs XIV*). We made adjustments to the import values to include freight costs using the shorter of the reported distances from either the closest PRC port to the PRC respondent or the domestic supplier to the PRC respondent. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) and *Sigma Corporation v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997) and 86 F. Supp. 2d 1344, 1348 (CIT 2000).

Additionally, certain steel and steel parts used to make TRBs or TRB parts during the period of review ("POR") were purchased from market-economy suppliers and paid for with market-economy currency. In accordance with 19 CFR 351.408(c)(1), we valued these steel inputs using the actual price reported by the PRC respondent, except as noted below.

As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 1998–1999 Administrative Review and Determination to Revoke Order in Part*, 66 FR 11562 (February 26, 2001) (collectively, "*TRBs XII*") and *TRBs XIII*, we found a reasonable basis to believe or suspect that certain market-economy steel inputs purchased by PRC TRBs manufacturers for the production of TRBs were subsidized. Consistent with our treatment of subsidized inputs in *TRBs XIV*, *TRBs XIII*, and *TRBs XII*, we have not used the prices paid by PRC producers of TRBs for steel which we have continuing reason to believe or suspect is subsidized. Instead, we relied on surrogate values. (*See* individual company calculation memoranda for a more detailed company-specific discussion of this issue.)

2. Labor. Section 19 CFR 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate available on Import Administration's internet website at www.ia.ita.doc.gov/wages.

3. Overhead, SG&A Expenses, and Profit. For factory overhead, selling, general, administrative expenses, and profit, we used information obtained from the fiscal year 2001–2002 annual reports of five Indian bearing producers. We calculated factory overhead and selling, general, and administrative expenses as percentages of direct inputs and applied these ratios to the PRC respondent's direct input costs. These expenses were calculated exclusive of labor and electricity, but included employer provident funds and welfare expenses not reflected in the Department's regressed wage rate. This is consistent with the methodology we utilized in *TRBs XIV* and *TRBs XIII*. For profit, we totaled the reported profit before taxes for three of the five Indian bearing producers and divided by the total calculated cost of production ("COP") of goods sold. Consistent with *TRBs XIV*, we excluded from our profit calculation the two companies that reported profit losses. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. Packing. Consistent with our methodology in prior reviews (*see, e.g., TRBs XIV*), we calculated packing costs as a percentage of COP for CPZ based on company-specific information submitted in a previous review. This ratio was applied to CPZ's COP for the current review to calculate its packing costs.

We calculated surrogate values for the packing materials reported by Yantai Timken (*e.g.*, wooden pallet, plastic bag, steel strip) using import statistics reported in *Monthly Statistics of the Foreign Trade of India, Vol. II - Imports by Commodity*. We multiplied these surrogate values by the reported usage factor to calculate Yantai Timken's packing costs.

5. Electricity. We calculated our surrogate value for electricity based on electricity rate data from the*Energy Data Directory and Yearbook (1999/2000)* published by Tata Energy Research Institute. We calculated a simple average of the rates for the "industrial" category listed for 19 Indian states or electricity boards. We adjusted the electricity value to the POR using the Reserve Bank of India electricity-specific price index.

6. Natural Gas. Consistent with *Structural Steel Beams from the People's Republic of China; Final Determination of Sales at Less than Fair Value*, 67 FR 35479 (May 20, 2002) and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From the People's Republic of China*, 67 FR 41397 (June 18, 2002), we used publicly available information pertaining to natural gas prices in India derived from the "India Infoline" website which can be found at www.indiainfoline.com. The website reported an average market price for natural gas in India for June 2000, the most recent year for which natural gas data was available for India. We converted this value to dollars per cubic meter and adjusted the value to the current POR using the Indian wholesale price index ("WPI") published by the International Monetary Fund.

7. Foreign Inland Freight. We valued truck freight using an average of November 1999 truck freight rate quotes collected from Indian trucking companies by the Department and used in the *Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) and in past TRBs reviews (*see, e.g., TRBs XIV and TRBs XIII*). We inflated this truck freight rate to the POR using the Indian WPI.

8. Brokerage and Handling. We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 2001, through May 31, 2002:

Exporter/manufacturer	Weighted-average margin percentage
Peer Bearing Company - Changshan	6.31
Yantai Timken Bearing Company, Ltd.	20.41

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3).

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. We calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to that importer (or customer). In accordance with the requirement set forth in 19 CFR 351.106(c)(2), where an importer (or customer)-specific *ad valorem* rate is less than *de minimis*, we will direct the Customs Service to liquidate without regard to antidumping duties. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will direct the Customs Service to apply the *ad valorem* assessment rates against the entered value of each of the importer's/customer's entries during the review period.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates, *i.e.*, less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 7, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3729 Filed 2–13–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–601]

Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 9, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on top-of-the-stove stainless steel cooking ware (cookware) from the Republic of Korea (Korea). The review covers twenty-six manufacturers of subject merchandise and the period January 1, 2001, through December 31, 2001. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–6320 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2002, the Department published the preliminary results of administrative review of the antidumping duty order on cookware from Korea. *See Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 67 FR 62951 (October 9, 2002) (*Preliminary Results*). This review covers twenty-six manufacturers of subject merchandise: Daelim Trading Co., Ltd. (Daelim), Dong Won Metal Co., Ltd. (Dong Won), Chefline Corporation, Sam Yeung Ind. Co., Ltd., Namyang Kitchenflower Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Dong Hwa Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., Pionix Corporation, East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. The period of review (POR) is January 1, 2001, through December 31, 2001.

We invited parties to comment on our *Preliminary Results* of review. On November 8, 2002, we received case briefs from the Stainless Steel Cookware Committee (the petitioner), Dong Won, and Daelim (respondents). On November 13, 2002, we received rebuttal briefs from the respondents and on November 15, 2002, we received the petitioner's rebuttal brief.

The Department has conducted this administrative review in accordance with section 751 of the Act).

Scope of Review

The merchandise subject to this antidumping order is cookware from Korea. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7323.93.00 and 9604.00.00. The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The Department has issued several scope clarifications for this order. The Department found that certain stainless steel pasta and steamer inserts (63 FR 41545, August 4, 1998), certain stainless steel eight-cup coffee percolators (58 FR 11209, February 24, 1993), and certain stainless steel stock pots and covers are within the scope of the order (57 FR 57420, December 4, 1992). Moreover, as a result of a changed circumstances review, the Department revoked the order in part with respect to certain stainless steel camping ware (1) made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consisting of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 3662, January 24, 1997).

Partial Rescission of Review

In our *Preliminary Results*, we determined that the following eight companies made no shipments of subject merchandise to the United States during the POR: Hai Dong Stainless Steel Co., Ltd, Sungjin International, Inc., Seshin Co., Ltd., Sae Kwang Aluminum Co, Ltd., Dong Hwa Stainless Steel Co., Ltd., Pionix Corporation, Il Shin Co., Ltd., and Wonkwang Inc. *See Preliminary Results*, 67 FR at 62952. Because we received no comments from interested parties on our preliminary decision to rescind the review with respect to the above companies, we have determined that no changes to our decision to rescind are warranted for purposes of these final results. Therefore, we are rescinding this review with respect to these manufacturers/exporters.

Facts Available (FA)

For these final results of review, in accordance with section 776 of the Act, we have determined that the use of adverse FA is warranted for Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., B.Y. Enterprise, Ltd., and Namyang Kitchenflower Co., Ltd.

In the *Preliminary Results*, the Department determined that because the 16 manufacturers/exporters listed above wholly failed to respond to the Department's questionnaire, they did not act to the best of their respective abilities, and therefore an adverse inference is warranted in applying FA for these companies.

For the final results, no interested party comments were submitted regarding this issue and we continue to find that the failure of the 16 manufacturers/exporters listed above to respond to the Department's questionnaire in this review demonstrates that these entities failed to cooperate by not acting to the best of their ability. Thus, consistent with the Department's practice in cases where a respondent fails to respond to the Department's questionnaire, in selecting FA for the 16 manufacturers/exporters listed above, an adverse inference is warranted. For a discussion of the application of an adverse inference in this case, *see Preliminary Results*, 67 FR at 62953.

As adverse FA, we are assigning the highest rate determined for any respondent in any segment of this proceeding. This rate is 31.23 percent. *See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Cookware from Korea*, 51 FR 42873 (November 26, 1986). For a discussion on corroboration of the 31.23 percent FA rate and for a general discussion of the relevance of the selected FA rate for all non-cooperating respondents, see Preliminary Results, 67 FR at 62953.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 6, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made a change in Dong Won's margin calculations. In accordance with section 772(c)(1)(C) of the Act, we added to the U.S. price the amount of countervailing duty imposed on the subject merchandise to offset an export subsidy. *See* Calculation Memorandum for the Final Results of the 2001 Administrative Review of the Antidumping Duty Order on Top-of-the-Stove Stainless Steel Cooking Ware from Korea for Dong Won Metal Co., Ltd., from Ron Trentham to the File, dated February 6, 2003. This change is discussed at Comment 5 of the Decision Memorandum.

Final Results of Review

We determine that the following weighted-average percentage margins exist for the period January 1, 2001, through December 31, 2001:

Manufacturer/exporter	Margin (percent)
Dong Won Metal Co., Ltd.	0.17
Dae-Lim Trading Co.	0.90
Chefline Corporation	31.23
Sam Yeung Ind. Co., Ltd	31.23
Kyung-Dong Industrial Co., Ltd	31.23
Han Il Stainless Steel Ind. Co., Ltd	31.23
East One Co., Ltd	31.23
Charming Art Co., Ltd	31.23
Won Jin Ind. Co., Ltd	31.23
Hanil Stainless Steel Ind. Co., Ltd	31.23
East West Trading Korea, Ltd	31.23
Clad Co., Ltd	31.23
B.Y. Enterprise, Ltd	31.23
Namyang Kitchenflower Co., Ltd	31.23
Ssang Yong Ind. Co., Ltd.	31.23
O. Bok Stainless Steel Co., Ltd	31.23
Bae Chin Metal Ind. Co.	31.23
Poong Kang Ind. Co., Ltd.	31.23

Assessment

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. In accordance with 19 CFR 351.212(b)(1), we have calculated for Daelim and Dong Won importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for importer-specific sales to the total entered value of the same sales. For the companies for whom we applied FA, we based the assessment rate on the facts available margin percentage. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the company's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of this administrative review for all shipments of cookware from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates indicated above, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash deposit rate will be 8.10 percent, the "all-others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 6, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1. Countervailing Duty Offset
2. U.S. Sales Above Normal Value
3. Daelim's Cost of Manufacture
4. Duty Drawback for Dong Won
5. Application of Countervailing Duty Offset for Dong Won

[FR Doc. 03-3730 Filed 2-13-03; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013003A]

Receipt of an Application for an Incidental Take Permit (1417)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from Dr. Anne Rudloe, Gulf Specimen Marine Laboratories, Inc. (GSML) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, GSML's application includes a conservation plan designed to minimize and mitigate the impacts of any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile sea turtles associated with otherwise lawful trawling activities in Florida state waters of Bay, Gulf, Franklin, and Wakulla Counties to harvest marine organisms for the purpose of supplying entities conducting scientific research and educational activities. The duration of the proposed Permit is for 9 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record and will be available for review.

DATES: Written comments from interested parties on the Permit application and Plan must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Eastern daylight time on March 17, 2003.

ADDRESSES: Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. The application is available for download and review at *http://www.nmfs.noaa.gov/prot_res/PR3/Permits/ESAPermit.html*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Therese Conant (ph. 301-713-1401, fax 301-713-0376, e-mail *Therese.Conant@noaa.gov*), or Eric Hawk (ph. 727-570-5312, fax 727-570-5517, e-mail *Eric.Hawk@noaa.gov*). Comments received will also be available for public inspection, by appointment, during normal business hours by calling 301-713-1401.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take

listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the conservation plan and Permit application: loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles.

Background

GSML is a non-profit scientific and educational institution that holds an IRS 501(c)3 certificate of tax exemption and conducts sea turtle research and conservation activities. GSML uses small trawls (under 500 sq. ft. (46.5 sq. m)) without turtle excluder devices (TEDs) to collect marine fish, invertebrates and algae. Trawl times are less than 30 minutes in duration. GSML sells the marine organisms it catches to public aquariums, schools, research laboratories, and biomedical institutions. It utilizes the revenue to support its environmental education and sea turtle protection programs. The issuance of a Permit will allow for the continued harvest of marine fish, invertebrates and algae by GSML.

This application includes the Kemp's ridley, green and loggerhead sea turtles. This fishing activity does not target sea turtles, and while thus far GSML has not taken any turtles with the fishing gear it now uses, a take of one turtle every 3 years is anticipated. No mortalities are expected should this take occur.

The types of activities and effects that are considered under the ESA section 10 permitting process vary in complexity and degree of impact. Despite authorization of some small level of incidental take, the action authorized under a low-effect permit has a minor or negligible effect on the species covered in the permit. The determination of whether an incidental take permit qualifies for the low-effect category must be based on its anticipated impacts prior to implementation of the mitigation plan. Low-effect incidental take permits are categorically excluded from NEPA. NMFS has determined that this Permit (1417) qualifies for the low-effect category. Only one turtle is anticipated to be taken every 3 years, and these takes are expected to be non-lethal and result in zero injury.

Conservation Plan

The conservation plan prepared by GSML describes measures designed to minimize and mitigate the impacts of any incidental takes of ESA-listed sea turtles. It includes provisions to ensure that any captured sea turtles in need of resuscitation are provided such care, per NMFS guidelines. Additionally, any animals needing medical attention or rehabilitation will be cared for by authorized persons and facilities.

The conservation plan will mitigate the impacts of any incidental takes of ESA-listed sea turtles by helping turtles that have been put at risk or harmed due to interactions with other fisheries in the area. Specifically, GSML will remove any turtles it encounters ensnared in fishing lines, nets, and trap ropes. If any of these sea turtles require care, GSML will transport them to a rehabilitation facility.

This conservation plan will be funded through GSML revenues derived from the sale of the marine fish, invertebrates, and algae collected from trawling, donations from membership in its aquarium, and from grants and contracts.

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and submitted comments to determine whether the application meets the requirements of the ESA Section 10(a) permitting process. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. The final permit determinations will not be completed until after the end of the 30–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: February 10, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–3757 Filed 2–13–03; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021003C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish and Habitat Oversight Committee in March, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: These meetings will be held March 3 and 4, 2003. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meetings will be held in Providence, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, March 3, 2003 at 9:30 a.m. Groundfish Oversight Committee Meeting.

Location: Providence Biltmore, 11 Dorrance Street, Providence, MA 02903; telephone: (401) 421–0700.

The Groundfish Oversight Committee will continue development of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). The committee anticipates receiving a preliminary summary of the recent Peer Review Workshop at this meeting. This summary may include recommendations from the reviewers on the science underlying the development of Amendment 13. Based in large measure on those recommendations, the committee will consider adjustments to proposed status determination criteria, rebuilding trajectories and timelines as well as changes to the management measures in the Amendment. Changes to the measures could include revisions in the use of days-at-sea, gear, closed areas, or any other measure identified by the committee. The committee's recommendations will be presented to the Council at its meeting March 4–6, 2003. Given time, the committee will address other business.

Tuesday, March 4, 2003 at 8:30 a.m. Habitat Oversight Committee Meeting.

Location: Providence Biltmore, 11 Dorrance Street, Providence, MA 02903; telephone: (401) 421–0700.

The Habitat Oversight Committee will review the advice from the joint advisory panel representative's meeting on habitat that occurred February 6–7, 2003. They will also review the draft Essential Fish Habitat (EFH), Draft Supplementary Environmental Impact Statement (DSEIS) for Amendment 13 to the Multispecies FMP. The EFH components of Amendment 13 have been pulled out and will be submitted as a separate DSEIS. This document will be presented to the Council at its March 4–6, 2003 Council Meeting, then the EFH DSEIS will be incorporated back into the final Amendment 13 DSEIS, which will be presented to the Council at the July Council meeting. The committee will review the EFH DSEIS for Amendment 13 and identify a preferred alternative if appropriate.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 11, 2003.

Theophilus R. Brainerd,

Acting DirectorOffice of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3759 Filed 2–13–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021003B]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Snapper Grouper Committee, Highly Migratory Species Committee, Habitat Committee, Advisory Panel Selection Committee (closed session) and Executive Committee. There will also be a full Council Session.

DATES: The meetings will be held in March 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Holiday Inn Beach Resort, 200 South Beachview Drive, Jekyll Island, GA 31527; telephone: (1–800) 753–5955 or (912) 635–3311.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866/SAFMC–10; fax: 843–769–4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Snapper Grouper Committee Meeting: March 3, 2003, 1:30 p.m. until 5 p.m.

The Snapper Grouper Committee will meet to receive a presentation on the results of the Vermilion Snapper Black Sea Bass Stock Assessment and Review Workshops. In addition, the Committee will receive updates on the status of the NC pilot program for observer work on bycatch, a NOAA Fisheries report on estimating bycatch from logbooks, a progress report on economic data collection via logbooks, and the status of a snapper/grouper electronic logbook pilot study.

2. Snapper Grouper Committee Meeting: March 4, 2003, 8:30 a.m. until 5 p.m. and continued March 5, 2003, from 8:30 a.m. until 12 noon.

Following the presentations, the Committee will review draft Amendment 13 to the Snapper Grouper Fishery Management Plan (FMP) and develop recommendations for the Council. The Committee will also discuss the status of Amendment 14 to the Snapper Grouper FMP involving the use of marine protected areas as a management tool.

3. Highly Migratory Species Committee Meeting: March 5, 2003, 1:30 p.m. until 2:30 p.m.

The Highly Migratory Species (HMS) Committee will meet to hear a report on the HMS Advisory Panel meetings and discuss current HMS issues.

4. Habitat Committee Meeting: March 5, 2003, 2:30 p.m. until 5 p.m.

The Habitat Committee will meet to consider recommendations from the Habitat and Environmental Protection Advisory Panel and the Coral Advisory Panel and take action regarding those recommendations for consideration by full Council. The Committee will also develop guidance on revisions to current Policy Statements.

5. Advisory Panel Selection Committee Meeting (CLOSED): March 6, 2003, 8:30 a.m. until 10:30 a.m.

The Advisory Panel Selection Committee will meet to review current applications for advisory panel positions and develop recommendations.

6. *Executive Committee Meeting: March 6, 2003, 10:30 a.m. until 12 noon.*

The Executive Committee will meet to review and discuss major issues raised at the Council Chairmen/NOAA Fisheries meeting, hear a report on a recent meeting of Council representatives and staff with Dr. William Hogarth, NOAA Assistant Administrator of Fisheries and his staff, and review the status of Shrimp Amendment 6.

7. *Council Session: March 6, 2003, 1:30 p.m. until 5 p.m.*

From 1:30 p.m. 1:45 p.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the December 2002 meeting minutes.

From 1:45 p.m. 3:45 p.m.; the Council will hear recommendations from the Snapper Grouper Committee and take action regarding draft Snapper Grouper Amendment 13.

From 3:45 p.m. 5 p.m., the Council will receive a presentation of proposed regulatory changes in Gray's Reef National Marine Sanctuary and take action regarding the proposal.

From 5 p.m. 6 p.m.; the Council will receive legal briefing on litigation affecting the Council (CLOSED SESSION).

8. *Council Session: March 7, 2003, 8:30 a.m. until 12 Noon.*

From 8:30 a.m. 9 a.m., the Council will hear recommendations from the Advisory Panel Selection Committee and appoint new advisory panel members.

From 9 a.m. 9:15 a.m., the Council will receive a report from the Highly Migratory Species Committee.

From 9:15 a.m. 9:30 a.m., the Council will hear a report from the Habitat Committee.

From 9:30 a.m. 10:30 a.m., the Council will receive a presentation on the Marine Recreational Fisheries Statistics Survey (MRFSS).

From 10:30 a.m. 11:15 a.m., the Council will hear NOAA Fisheries status reports on the Golden/Red Crab/Skate FMP management unit issue, Shrimp Amendment 5 implementation, the Sargassum FMP, the Dolphin Wahoo FMP, the SEDAR Committee Process and implementation of the ACCSP (Atlantic Coast Cooperative Statistics Program) in the Southeast Region. NOAA Fisheries will also give status reports on landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper golden tilefish, wreckfish, greater amberjack and south Atlantic octocorals.

From 11:15 a.m. 12 noon, the Council will hear agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 27, 2003.

Dated: February 11, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 03–3760 Filed 2–13–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110802B]

Coral, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagic Resources, and Snapper-Grouper Fisheries of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an exempted fishing permit.

SUMMARY: NMFS announces the issuance of an exempted fishing permit (EFP) for the South Carolina Aquarium (applicant), located in Charleston, SC. The EFP would authorize the applicant, with certain conditions, to collect for public display annually, for 2 years, an average of 25 specimens each of numerous species of marine invertebrates and marine fish from Federal waters off South Carolina. This EFP is similar to the previous EFP issued to the applicant that expired on December 31, 2002.

ADDRESSES: Copies of the EFP are available from Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727–570–5305; fax 727–570–5583; e-mail: *peter.eldridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the regulations at 50 CFR 600.745(b).

The South Carolina Aquarium (SCA), located in Charleston, is a public, non-profit, self-supporting institution for the understanding and conservation of South Carolina's natural aquatic habitats, with extensive field study and outreach programs and with free admission to groups of school children.

The applicant intends, over a period of 2 years, to collect annually for public display an average of 25 specimens each of 76 species of marine invertebrates and 221 species of marine fish from the EEZ off South Carolina, using a variety of fishing gears and the fish anesthetic, quinaldine.

The proposed collection involves activities otherwise prohibited by regulations implementing the Fishery Management Plans of the South Atlantic Region for Coral, Coral Reefs, and Live/Hard Bottom Habitats, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagics, and Snapper-Grouper. The EFP authorizes the applicant, consistent with the terms of the EFP, to harvest and possess corals, live rock, golden crab, rock shrimp, red drum, wreckfish, warsaw grouper, speckled hind, spiny lobster, bluefish, cobia, king and Spanish mackerel, groupers and snappers, greater amberjack, hogfish and red porgy species taken from Federal waters off South Carolina. In addition, the EFP authorizes, consistent with the terms of the EFP, the use of quinaldine in a coral area and the possession of species below the minimum size limit and in excess of established bag limits or taken with prohibited gear.

The EFP has a number of conditions concerning the harvest of prohibited species and corals and the gear that can be employed. The EFP requires an annual report to NMFS that lists specimens that have been taken.

The applicant also intends to collect a large number of species that are either not subject to Federal fishery management in the South Atlantic Region or included under a fishery management plan that contains no management measures restricting possession or harvest. The collection of highly migratory species is prohibited in this EFP. The applicant was referred to the NMFS Highly Migratory Species Division for authorization to collect Atlantic highly migratory species, such as sharks and tunas, for public display.

A notice of receipt of the application for this permit was published in the **Federal Register** on November 21, 2002 (67 FR 70216). In addition to announcing the receipt of the application, public comments were requested; no public comments were received. Also, consistent with the requirements of 50 CFR 600.745(b)(3)(i), NMFS provided copies of the EFP application to the State of South Carolina, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, along with the following required information: Information on the EFP's effects on target and incidental species; citations of the regulations that, without the EFP, would prohibit the proposed collection activity; and other biological information relevant to the EFP proposal. None of these consulted entities expressed any objections to the issuance of the EFP.

Failure of the permittee to comply with the terms and conditions of the EFP may be grounds for revocation, suspension or modification of this EFP or for civil or criminal sanctions.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3761 Filed 2–13–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010903A]

Marine Mammals; File No. 939–1682

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Michael Moore, Ph.D., Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543, has been issued a permit to collect, import and export parts from all cetaceans and pinniped species (excluding walrus) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 4, 2002, notice was published in the **Federal Register** (67 FR 56535) that a request for a scientific research permit to collect, import and export marine mammal parts of the orders Cetacea and Pinnipedia (excluding walrus) had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which are the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 29, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–3762 Filed 2–13–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Technology Administration

RIN 0692–AA08

National Medal of Technology's Call for Nominations 2003

AGENCY: Technology Administration, Department of Commerce.

ACTION: Announcement: Call for Nominations for the National Medal of Technology 2003.

SUMMARY: The Department of Commerce's Technology Administration is accepting nominations for its National Medal of Technology (NMT) 2003 program.

Established by Congress in 1980, the President of the United States awards the National Medal of Technology annually to our Nation's leading innovators. If you know of a candidate who has made an outstanding contribution in technology, obtain a nomination form from: *www.ta.doc.gov/medal*.

DATES: The deadline for submission of an application is May 23, 2003.

ADDRESSES: The NMT Nomination form for the year 2003 can be obtained by visiting the Web site at *www.ta.doc.gov/medal*. Please return the completed application to Mildred Porter, Director of the NMT program, at: *NMT2003@ta.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Mildred Porter, Director, at *NMT2003@ta.doc.gov* or call 202–482–5572.

SUPPLEMENTARY INFORMATION: The National Medal of Technology is the highest honor awarded by the President of the United States to America's leading innovators. Enacted by Congress in 1980, the Medal of Technology was first awarded in 1985. The Medal is given annually to individuals, teams, or companies who have improved the American economy and quality of life by their outstanding contributions through technology.

The primary purpose of the National Medal of Technology is to recognize American innovators whose vision, creativity, and brilliance in moving ideas to market have had a profound and lasting impact on our economy and way of life. The Medal highlights the national importance of fostering technological innovation based upon solid science, resulting in commercially successful products and services.

Dated: February 5, 2003.

Bruce Mehlman,

Assistant Secretary for Technology Policy, Technology Administration.

[FR Doc. 03–3536 Filed 2–13–03; 8:45 am]

BILLING CODE 3510–18–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

February 7, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63895, published on October 16, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 7, 2003.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003.

Effective on February 14, 2003, you are directed to adjust the current limits for the following categories, as provided for in the Memorandum of Understanding between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated November 7, 1997, as amended and extended by exchange of notes on June 22, 2000 and July 5, 2000:

Category	Adjusted twelve-month limit [1]
433	25,815 dozen.
443	180,355 numbers.
448	64,809 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–3676 Filed 2–13–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Petition HP 01–3 Requesting a Ban of Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public meeting.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) will conduct a public meeting on March 17, 2003 to receive comments on the CPCS staff briefing package on petition HP 01–3 requesting a ban of chromated copper arsenate (CCA)-treated wood in playground equipment. The CPSE staff will also brief the Commission on the package on that date.

The focus of the discussions will be the supporting information developed by CPSC staff that is described in the February 7, 2003 briefing package entitled *Petition to Ban Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment.* The Commission invites oral presentations from individuals, associations, firms, and government agencies with information or comments related to the briefing package. The Commission will evaluate these presentations in its deliberations on petition HP 01–3.

DATES: The CPSC staff will brief the Commission on the issues at 10 a.m. on March 17, 2003. Oral presentations by commenters will begin at 2 p.m. on that date. In the event that time constraints require it, the meeting may continue to the next day. No oral presentations will be permitted by persons who do not submit both a request to testify and the text of the presentation by February 28, 2003. Requests to make oral presentations, and 10 copies of the text of the presentation, must be received by the CPSC Office of the Secretary no later than February 28, 2003. Persons making presentations at the meeting should provide an additional 50 copies for dissemination on the date of the meeting.

Presentation texts should identify the author's affiliation with, or employment or sponsorship by, any entity with an interest in the petitioner's request that the Commission ban use of CCA-treated wood in playground equipment. The Commission reserves the right to limit the number of persons who make presentations and the duration of their presentations. To prevent similar presentations, groups will be directed to designate a spokesperson.

Written submissions, in addition to, or instead of, an oral presentation may be sent to the address listed below and will be accepted until March 28, 2003.

ADDRESSES: The meeting will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, MD. Requests to make oral presentations, and texts of oral presentations should be captioned ACCA Ban Petition, Petition HP 01–3@ and be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Requests and texts of oral presentations may also be submitted by facsimile to (301) 504–0127 or by e-mail to *spsc–os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the purpose or subject matter of this meeting contact Patricia M. Bittner, M.S., Project Manager, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7263; e-mail: *pbittner@cpsc.gov.* For information about the schedule for submission of requests to make oral presentations and submission of texts of oral presentations, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; fax (301) 504–0127; e-mail *rhammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

By a submission dated May 22, 2001, the Environmental Working Group (EWG) and the Healthy Building Network (HBN) requested that the Commission enact a ban on use of chromated copper arsenate (CCA)-treated wood in playground equipment.[1] The submitters asserted that a ban is necessary because "[r]ecent research has shown that arsenic is more carcinogenic than previously recognized, that arsenic is present at significant concentrations on CCA-treated wood and in underlying soil, that the health risks posed by this wood are greater than previously recognized, and that past risk assessments were incomplete." On June 20, 2001, that request was docketed as petition HP 01–3 under the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278.

The Commission solicited public comment on the petition by Federal Register notice of July 13, 2001. 66 FR 36756. Twenty-eight comments were received by the close of the comment period on September 11, 2001. The staff also held a public meeting on August 6, 2001 with members of the American Chemistry Council (representing CCA chemical manufacturers) and the American Wood Preservers Institute. On October 3, 2001, the staff conducted a public meeting with representatives of the petitioners. The comments from the wood industry, environmental groups, trade associations, consumers, and state and local governments discussed toxicity issues, health risks from exposure to CCA-treated wood, CCA-treated wood as a possible hazardous substance under the FHSA, the levels of dislodgeable arsenic present on the wood, the bioavailability of arsenic, exposure to arsenic in soil and groundcover, disposal issues, and whether the type of wood influences arsenic leaching.

[1] The submission also contained a request that the commission review the safety of CCA-treated wood for general use. Such a review would not require rulemaking to implement. Therefore, that request was not docketed as a petition for rulemaking.

The staff has completed its analysis of the petition and the comments received and has forwarded a briefing package to the Commission.The staff recommends that the Commission defer further action on the petition pending final action by the United States Environmental Protection Agency (EPA) on the request by the registrants of the CCA pesticide to cancel registrations for most, if not all, uses that involve treating wood for consumer uses, including for use in playground equipment.

B. The Public Meeting

The purpose of the public meeting is to provide a forum for oral presentations on the CPSC staff briefing package on petition HP 01–3 and the materials that are described in the staff briefing package.

Participation in the meeting is open. See the **DATES** section of this notice for information on making requests to give oral presentations at the meeting and on making written submissions.

Dated: February 11, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–3824 Filed 2–13–03; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Technical Assistance Conference Calls for Organizations Applying Directly to the Corporation for Funding Through the AmeriCorps*National Program Grant

AGENCY: Corporation for National and Community Service.

ACTION: Notice of technical assistance conference calls.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") will be providing a series of technical assistance conference calls for organizations applying directly to the Corporation for funding through the AmeriCorps*National Program. If you are applying for funding via a state commission, instead of applying directly to the Corporation, please contact your commission for assistance using the following link to choose your state and then find your state commission: *http://www.nationalservice.org/about/family/commissions_pick.html.*

Part A. AmeriCorps*National Guidelines and Application Instructions

We will hold a series of technical assistance calls to review the 2003–2004 AmeriCorps*National Application Instructions. Non-profit organizations intending to submit an application for an AmeriCorps*National program grant, to operate a program in two or more states, may participate in these calls. Participation in these calls is optional. The 2003–2004 AmeriCorps Guidelines and AmeriCorps*National Application Instructions are posted on our Web site at: *http://www.americorps.org/resources/guidelines2003.html.*

These calls will be recorded and available for replay. Call dates and times are as follows.

- *For organizations applying for NEW AmeriCorps*National program grants:* March 11, 2003, 1–2:30 p.m. EST.
- *For organizations applying for AmeriCorps*National PLANNING grants:* March 12, 2003, 1–2:30 p.m. EST.
- *For existing AmeriCorps*National Grantees applying for CONTINUATION grants:* March 26, 2003, 1–2:30 p.m. EST.

To Register for a Call: Select one of the call dates specified above, then contact Sueko Kumagai via e-mail (*skumagai@cns.gov*) or phone (202–606–5000, ext. #418) with your selected date. Please register no later than 3 days prior to your selected call.

Part B. AmeriCorps*National Application Toolkit Technical Assistance Calls

We will hold a series of technical assistance calls reviewing application toolkits. We have developed the toolkits to assist applicants with the performance measurement, tutoring, and faith-based and community initiative aspects of program design. Non-profit organizations intending to submit an application to the Corporation for an AmeriCorps*National program grant, to operate a program in two or more states, may participate in these calls. Participation in these calls is optional.

These calls will be recorded and available for replay. Call dates and times are as follows. Call-in information and replay information are provided for each call.

- *Performance Measurement Toolkit Technical Assistance Conference Calls*

Tuesday, February 18, 3 p.m. EST—for NEW AmeriCorps*National Applicants
Toll-Free Number: (888) 723–9816.
PassCode: toolkit
Leader's Name: Sueko Kumagai
Replay Number: (800) 835–8069. Replay available until: February 25, 2003, 3 p.m. EST

Tuesday, February 25, 4 p.m. EST—for current AmeriCorps*National Grantees
Leader's Name: Sueko Kumagai.
PassCode: toolkit
Toll-Free Number: (888) 723–9816
Replay Number: (800) 294–9508. Replay available until: March 4, 2003, 4 p.m. EST

- *Faith Based and Community Initiatives Toolkit Technical Assistance Conference Calls*

Wednesday, February 19, 2003, 3 p.m. EST—for NEW AmeriCorps*National Applicants
Leader's Name: Sueko Kumagai.
PassCode: toolkit
Toll-Free Number: (888) 723–9816
Replay Number: (800) 489–7535. Replay available until: February 26, 2003, 3 p.m. EST

Wednesday, February 26, 2003, 4 p.m. EST—for current AmeriCorps*National Grantees
Leader's Name: Sueko Kumagai.
PassCode: toolkit
Toll-Free Number: (888) 723–9816
Replay Number: (800) 839–9137.
Replay available until: March 5, 2003, at 4 p.m. EST

- *Tutoring Toolkit Technical Assistance Conference Calls*

Friday, February 21, 2003, 3:30 p.m. EST—for NEW AmeriCorps*National Applicants
Leader's Name: Sueko Kumagai.
PassCode: toolkit
Toll-Free Number: (888) 723–9816
Replay Number: (800) 925–2387. Replay available until: February 28, 2003, 3 p.m. EST

Friday, February 28, 3 p.m. EST—for current AmeriCorps*National Grantees
Leader's Name: Sueko Kumagai.
PassCode: toolkit
Toll-Free Number: (888) 723–9816
Replay Number: (888) 568–0350. Replay available until: March 7, 2003, at 3 p.m. EST

We will schedule additional technical assistance calls for the toolkits for

Capacity Building with Members and Citizenship and Member Development in the near future. Please check *http://www.americorps.org/resources/guidelines2003.html* frequently for updates.

To Register for a Call: Select one of the call dates specified above, then contact Sueko Kumagai via e-mail (*skumagai@cns.gov*) or phone (202–606–5000, ext. #418) with your selected date. You must respond no later than three days prior to your selected call.

Dated: February 10, 2003.

John Foster-Bey,

*Director, AmeriCorps*State and National.*

[FR Doc. 03–3598 Filed 2–13–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

[Requisition No. 03–00337]

Second Notice of Proposed Solicitation for Cooperative Agreement Applications

AGENCY: Defense Logistics Agency, DOD.

ACTION: Proposed solicitation for cost sharing cooperative agreement applications.

SUMMARY: On December 13, 2002, a notice was published in the **Federal Register** announcing that the Defense Logistics Agency (DLA) intends to issue a solicitation for cooperative agreement applications (SCAA) to assist State and local governments and other nonprofit eligible entities in establishing or maintaining procurement technical assistance centers (PTACs) pursuant to chapter 142, title 10, United States Code. Written comments, that were to be submitted by January 31, 2003, concerning this proposed SCAA were also invited. Comments from four organizations were received. The comments fell into four categories. The first category was editorial changes and corrections. DLA has incorporated most of these as they improve or correct formatting, paragraph numbering, *etc.* The second category was a suggestion that two thresholds be changed: (1) Increase the funding limitation of $150,000 for less than statewide programs and (2) change the existing requirement that a statewide program service at least 50% of a state's counties *and* 75% of the state's labor force to 50% of a state's counties *or* 75% of the state's labor force. Neither of these suggestions will be implemented. The funding limitation is statutory and it is not within DLA's discretion to increase it. The suggestion to change the regulatory definition of statewide program had previously been made and it was determined that such a change would not benefit the overall program. The third category is the suggestion that DLA adopt an award selection methodology that would implement the recently increased funding level authorized for statewide programs while at the same time minimize any disruption to the existing satisfactorily performing programs, both statewide and less than statewide. DLA agrees with this comment and has implemented changes in section II of the SCAA at paragraphs 21 and 28 and in section V, paragraph D. The fourth category was the suggestion that the option award procedures be modified to allow for increases in the amount of DoD funds for which individual programs may apply in option years, should funds be available. DLA agrees with this comment and has implemented changes in section I, paragraph K, and section VIII, paragraph F.

This revised proposed SCAA is available for review on the Internet Web site: *http://www.dla.mil/db/draftscaa.pdf.*

Printed copies are not available for distribution.

You are invited to submit written comments concerning this proposed revised SCAA to: Headquarters, Defense Logistics Agency, Office of Small and Disadvantaged Business Utilization, 8727 John J. Kingman Road, Suite 1127, Ft. Belvoir, VA 22060–6221. Attn: Grants Officer.

All comments must be received by March 10, 2003, in order for them to be considered. DLA intends to post the proposed SCAA, when finalized, on the Internet in late March or early April 2003. A future notice to be published in the **Federal Register** will announce this posting and the Web site address to be utilized in accessing the final SCAA and to submit applications.

FOR FURTHER INFORMATION CONTACT: Ms. Diana Maykowskyj at (703) 767–1656.

Anthony J. Kuders,

Program Manager, DoD Procurement Technical Assistance Program.

[FR Doc. 03–3665 Filed 2–13–03; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

[CFDA No: 84.184H]

Office of Safe and Drug-Free Schools—Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students—Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students provides awards to develop or enhance, implement, and evaluate campus- and/or community-based strategies to prevent high-risk drinking or violent behavior among college students.

For FY 2003 the competition for new awards focuses on projects designed to meet the priorities we describe in the *Priorities* section of this application notice.

Eligible Applicants: Institutions of higher education (IHEs), consortia thereof, public and private nonprofit organizations, or individuals.

Applications Available: February 14, 2003.

Deadline for Transmittal of Applications: March 31, 2003.

Deadline for Intergovernmental Review: May 30, 2003.

Estimated Available Funds: The Department expects to make available $2,250,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications at this time to allow enough time to complete the grant process before the end of the current fiscal year.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 18.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the notice of final priority and selection criteria, as published in the **Federal Register** on December 27, 2000 (65 FR 82224–82226) and January 10, 2001 (66 FR 1963), apply to this competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

SUPPLEMENTARY INFORMATION: An application under this program should address the specific needs of the applicant and propose activities specifically designed to meet those needs. The Deputy Under Secretary strongly discourages applicants from using "form" applications or proposals that address general rather than specific local needs.

Priorities: This competition focuses on projects designed to meet either of the two priorities in the notice of final priorities for this program, published in the **Federal Register** on December 27, 2000 (65 FR 82224–82226) and January 10, 2001 (66 FR 1963).

Absolute Priority #1—Develop or Enhance, Implement, and Evaluate Campus- and/or Community-Based Strategies To Prevent High-Risk Drinking Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to high-risk drinking by the population selected;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing high-risk drinking by the target population;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Absolute Priority #2—Develop or Enhance, Implement, and Evaluate Campus- and/or Community-Based Strategies To Prevent Violent Behavior Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to violent behavior;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing violent behavior among college students;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Under 34 CFR 75.105(c)(3) we consider only applications that meet either of the priorities.

Selection Criteria: The following selection criteria are used to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Need for project.* (15 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude or severity of the problem to be addressed by the proposed project. (10 points)

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(2) *Significance.* (20 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement. (5 points)

(b) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (10 points)

(c) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (5 points)

(3) *Quality of the project design.* (30 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

(c) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (10 points)

(d) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (5 points)

(4) *Quality of project personnel.* (10 points)

In determining the quality of project personnel, the following factors are considered:

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(b) The qualifications, including relevant training and experience, of key project personnel. (7 points)

(5) *Quality of the project evaluation.* (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

(c) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

For Applications and Further Information Contact: Richard Lucey, Jr., U.S. Department of Education, Office of Safe and Drug-Free Schools, 400 Maryland Avenue, SW., Room 3E252, Washington, DC 20202–6123. Telephone: 202/205–5471. Fax: 202/260–7767. E-mail: *richard.lucey@ed.gov.* To download a copy of the application, visit the Web site for the Office of Safe and Drug-Free Schools at *http://www.ed.gov/offices/OSDFS.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800/877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications and Further Information Contact.*

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students is one the programs included in the pilot project. If you are an applicant under the Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grants Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award Number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at 202/260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. (ET), on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m. (ET)) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 888/336–8930.

You may access the electronic grant application for the Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 888/293–6498; or in the Washington, DC, area at 202/512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/*

Program Authority: 20 U.S.C. 7131.

Dated: February 12, 2003.

Judge Eric G. Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–3868 Filed 2–13–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). The main agenda item for this teleconference is to approve the Commission's final report to the President. This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

Date and Time: Monday, February 24, 2003, the hour to be determined.

Purpose: For approval of the Commission's final report to the President.

ADDRESSES: The Commission will hold a teleconference meeting in Washington, DC, on Monday, February 24, 2003. A room will be made available to the public to listen to the Commission's discussion. The specific location has not been determined at this time, but it is anticipated that space will be limited. You are encouraged to contact the White House Initiative on Educational Excellence for Hispanic Americans staff no later than Friday, February 21, 2003, if you wish to attend.

FOR FURTHER INFORMATION CONTACT: Leslie Sanchez, Executive Director, or Adam Chavarria, Associate Director, White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 401–1411.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 13230, dated October 12, 2001. The Commission is established to provide advice to the Secretary of Education (Secretary) and issue reports to the President concerning: (a) The progress of Hispanic Americans in closing the academic achievement gap and attaining the goals established by the No Child Left Behind Act of 2002; (b) the development, monitoring, and coordination of Federal efforts to promote high-quality education for Hispanic Americans; (c) ways to increase parental, State and local, private sector, and community involvement in improving education; and (d) ways to maximize the effectiveness of Federal education initiatives within the Hispanic community.

Individuals who will need accommodations for a disability (e.g., interpreting services, assistive listening devices, materials in alternative format) should notify Adam Chavarria at (202) 401–1411 by no later than February 14, 2003. We will attempt to meet requests after this date but cannot guarantee availability of the requested accommodation. The site will be accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans from the hours of 9 a.m. to 5 p.m.

Dated: February 6, 2003.

William D. Hansen,

Deputy Secretary, Department of Education.

[FR Doc. 03–3648 Filed 2–13–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting

AGENCY: Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in policy discussions related to mental health services for young children with disabilities and their families. The meeting will be open and accessible to the general public.

DATE AND TIME: FICC Meeting: Thursday, March 13, 2003 from 9 a.m. to 4 p.m.

ADDRESSES: U.S Department of Health and Human Services, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 2002, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–3615 Filed 2–13–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on January 31, 2002, an arbitration panel rendered a decision in the matter of *Richard Bird* v. *Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired (Docket No. R–S/00–9).* This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d-1(a), after the Department received a complaint filed by petitioner, Richard Bird.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged failure of the Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired, the designated State licensing agency (SLA), to properly administer the Randolph-Sheppard vending facility program regarding vending machine income-sharing by a Federal property managing agency in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: since February 1994, the complainant, Richard Bird, operated a snack bar and three rooms with vending machines at the Cleveland, Ohio, Main Post Office under a permit agreement issued to the SLA by the U.S. Postal Service (USPS) in accordance with 34 CFR 395.16 and 395.34. In addition to the complainant's three rooms with vending machines, there are five rooms with vending machines at the Main Post Office that were not included within USPS's permit agreement because they are operated by a private vendor.

Complainant receives 30 percent of the commissions paid to USPS by the private vendor from the operation of its vending machines as provided by the Act (20 U.S.C. 107d-3) and 34 CFR 395.32. USPS had determined that those vending machines were not in direct competition, but rather indirect competition, with the vending machines operated by the complainant. One hundred percent of the commissions paid to USPS would be paid to the complainant if the vending machines of the private vendor were considered to be in direct competition with complainant's vending machines.

Since 1996, complainant contended that the vending machines of the private vendor were in direct competition with his vending machines. Complainant further alleged that income from the operation of his vending facility had declined since 1994 due in large part to employees at the Main Post Office being moved to other locations and a reduction in the commission rate paid by the private vendor to USPS. To offset this decline, complainant requested that vending machines located in the Parking, Vehicle Maintenance, and Administration Building of the Main Post Office Complex operated by a private vendor be added to his vending facility.

In 1997, the SLA requested that USPS issue permits to operate the vending machines in the Parking, Vehicle Maintenance, and Administration Building in the Main Post Office Complex. USPS denied the SLA's request. Since 1998, SLA personnel have maintained that the vending machines at the Main Post Office operated by the private vendor were in direct, not indirect, competition with the complainant's vending machines. However, the SLA did not file a complaint with the U.S. Department of Education seeking Federal arbitration on the 1997 denial of the permits for the Parking, Vehicle Maintenance, and Administration Building or the direct versus indirect competition issue until June 1999. The SLA had requested that the June 1999 complaint be held in abeyance pending the outcome of this arbitration decision.

Complainant filed a grievance in October 1999 with the SLA. He alleged that the SLA failed to perform as his advocate by not aggressively challenging the actions of USPS to protect the value of his vending facility because of declining income. Complainant sought to be represented at the State of Ohio fair hearing on his grievance by a nonattorney. The Hearing Examiner ruled prior to the hearing that Ohio Law prohibited the nonattorney from representing complainant. The parties agreed to postpone the State fair hearing so that complainant could obtain proper representation.

Subsequently, complainant filed a complaint seeking Federal arbitration of his grievance. A hearing of this matter was held on July 19 and 20, 2001.

Arbitration Panel Decision

The issues heard by the panel were—(1) Whether the SLA prevented complainant from having access to the State administrative remedy procedures provided by the Act; (2) whether the SLA properly distributed unassigned vending machine income to complainant; (3) whether the SLA has the right to establish new vending facilities that continue to serve customers, who were originally assigned to complainant's building, after they have relocated to other USPS buildings; and (4) whether the SLA attempted to limit complainant's income by installing a second vending facility at the Cleveland Main Post Office Building.

Concerning issue number one, the panel ruled that complainant voluntarily chose to bypass the SLA State fair hearing process and sought remedy from a Federal arbitration panel.

The panel determined regarding issue number two that the SLA did not properly advocate for the complainant to ensure him the appropriate income from the vending machines in the five vending rooms not assigned to him. Further, the panel concluded that the vending machines at issue operated by the private vendor were in direct, not indirect, competition with complainant's vending machines.

Regarding issue number three, the panel found that the complainant established at the hearing that it was the practice of the SLA to allow blind vendors to "follow" their customers when they relocate. Therefore, the panel concluded that the SLA should aggressively pursue obtaining a permit for the postal facilities where complainant's customers have relocated.

Concerning issue number four, after consideration of the SLA's testimony that they were simply considering the establishment of a second vending facility at the Cleveland Post Office, but had not made a formal decision to do so, the panel ruled that issue number four was not ripe for consideration by the panel. However, the panel cautioned the SLA to consider complainant's declining income before making any decision to place another vendor at the Cleveland Post Office.

Finally, the panel ruled that the SLA owed complainant a duty to preserve the value of his vending facility and income derived from it. The panel concluded that the SLA had not properly performed that duty by its failure to assert the priority provisions of the Act.

Accordingly, the panel awarded the complainant $30,000 as compensation for vending machine income lost from 1996 through 2001 due to USPS's determination that the five areas with vending machines operated by the private vendor were not in direct competition with complainant's vending machines. The panel arrived at the $30,000 figure by calculating the difference between the commission compensation complainant actually received during those years and the commission compensation the panel believed he should have received given the panel's belief that the private vendor's machines are in direct competition with complainant's vending machines.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: February 11, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–3747 Filed 2–13–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on proposed modifications and a three-year extension to the Form EIA–28, Financial Reporting System (FRS).

DATES: Written comments must be submitted within 60 days of the publication of this notice. If you anticipate difficulty in submitting comments within that period, contact the person identified below as soon as possible.

ADDRESSES: Comments should be directed to Gregory P. Filas of EIA. To ensure receipt of the comments by the due date, submission by FAX (202–586–9753) or e-mail (*greg.filas@eia.doe.gov*) is recommended. Mr. Filas' mailing address is Energy Information Administration (EI–62), Financial Analysis Team, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Filas may be telephoned at (202) 586–1347.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed form and instructions should be directed to Mr. Filas at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*), and the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*), require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

Under Pub. L. 95–91, section 205(h), the Administrator of the EIA is required to "identify and designate" the major energy companies who must annually file Form EIA–28, Financial Reporting System (FRS), to ensure that the data collected provide "a statistically accurate profile of each line of commerce in the energy industry in the United States." The standardized reporting and data content allow comparisons on a uniform basis among major energy companies. Data collected on Form EIA–28 are published in aggregate form to protect confidentiality and are used in analyses of the energy industry.

II. Current Actions

For the FRS survey to be conducted in 2004 collecting information for 2003, EIA proposes to revise the Form EIA–28. Major energy companies have become increasingly involved in the supply and disposition of natural gas and electricity as both industries have deregulated. The current FRS is not currently designed to collect detailed information necessary for analyzing major energy companies' activities in electric power and downstream natural gas. Therefore, it is necessary for the FRS to revise its program in order to collect accurate information as mandated.

The mandate (Pub. L. 95–91, section 205(h)) requires EIA to provide data to evaluate the competitive environment within which energy products are supplied and developed and to analyze the nature of institutional arrangements as they relate to energy resource development, supply, and distribution. EIA has consulted with data providers and data users to design a modified FRS that reflects the suggestions of both groups.

The proposed modifications include the addition of the following schedules: Electric Power Income Statement, Electric Power Operating Expenses, Purchases and Sales of Fuel and Electric Power, Electric Power Capacity Measures, Electric Power Output Measures, Downstream Natural Gas Income Statement, Downstream Natural Gas Operating Expenses, Purchases and Sales of Natural Gas and Natural Gas Liquids, Downstream Natural Gas Capacity Measures, and Downstream Natural Gas Output Measures. These schedules will be similar in format to existing schedules used by major energy companies for reporting on petroleum operations. Copies of the proposed new schedules and the instructions are available from Mr. Filas. In addition to the proposed modifications in the FRS form and instructions, EIA will request an extension of OMB approval.

III. Request for Comments

Prospective respondents and other interested persons are invited to comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have

practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the Form EIA–28 instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can information be submitted by the due date?

C. Public reporting burden for the Form EIA–28 collection is currently estimated to average 449 hours per response. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. With regard to the new schedules for electric power and downstream natural gas, EIA is estimating those schedules will require an additional one-time burden in 2004 of between 150 to 300 hours per affected respondent to modify existing information systems to generate the additional information. After the systems are modified, EIA is estimating the average increase in reporting burden for the EIA–28 will be 186 hours annually for companies having downstream natural gas activities and 233 hours annually for companies having electric power activities. For those companies having both business activities, the average increase in burden is estimated at 419 hours annually. However, most FRS respondent companies will not be affected as they have no activities in electric power and/or downstream natural gas and thus will incur no additional burden for reporting.

Please comment on (1) the accuracy of the agency's estimate and (2) how the agency could minimize the burden of collecting this information, including the use of information technology.

D. The agency estimates respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs; and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the method(s) of collection.

As a Potential User

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail indicated on the form?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507 (h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, February 7, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. 03–3706 Filed 2–13–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, March 6, 2003, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Update on site closure activities, including remediation of the 903 Pad and finalization of Rocky Flats Cleanup Agreement modifications;
2. Conversation with DOE-Rocky Flats site manager, Gene Schmitt;
3. Review and approve EMSSAB Transuranic Waste Workshop recommendations;
4. Review and approve Wildlife Refuge Technical Review Group recommendation on the purchase of mineral rights at Rocky Flats;
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303)420–7855.

Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued in Washington, DC, on February 11, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–3705 Filed 2–13–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 5, 2003, 9 a.m. to 6 p.m.; Thursday, March 6, 2003, 9 a.m. to 12 noon.

ADDRESSES: The Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, Maryland 20877, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to complete the charge before the Committee to consider what new and upgraded facilities will be necessary to position the Fusion Energy Sciences program in the forefront of scientific discovery during the next 20 years.

Tentative Agenda

Wednesday, March 5, 2003

- Office of Science Perspective
- Office of Fusion Energy Sciences Perspective
- Report from the Development Plan Panel
- Public Comments

Thursday, March 6, 2003

- Discussion of Areas of U.S. interest for Participation in ITER
- Final Report from the Non-Electric Applications Panel

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 11, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–3704 Filed 2–13–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–76–004 and CP01–77–004]

Cove Point LNG Limited Partnership; Notice of Supplemental Compliance Filing

February 7, 2003.

Take notice that on February 5, 2003, Dominion Cove Point LNG Limited Partnership (DCP) filed a supplement to the compliance filing made in the captioned proceedings on January 13, 2003.

DCP explains that the prior filing anticipated the reactivation of its LNG-import facilities on May 1, 2003, and that it now believes that the facilities will not be in-service until June 2003.

Accordingly, DCP is amending its January 13, 2003, filing to request that the tariff sheets previously filed be made effective one month later than previously requested. That is, DCP proposes an effective date of June 1, 2003. for the bulk of the sheets, and March 1, 2003, for Original Sheet Nos. 18C.01, 18D and 18F. In addition, DCP now requests that Original Sheet No. 18A.01. also become effective on March 1, 2003. Furthermore, DCP proposes to correct typographical errors on First Revised Sheet Nos. 21 and 122 and to include a clarifying numbering change on Second Revised Sheet Nos. 136 and 137. Accordingly, DCP submits the following new tariff sheets with its filing:

Substitute First Revised Sheet No. 21
Substitute First Revised Sheet No. 122
Substitute Second Revised Sheet No. 136
Substitute Second Revised Sheet No. 137

Cove Point states that copies of its letter of transmittal and enclosures have been served upon Cove Point's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3649 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–534–003]

Guardian Pipeline Company, L.L.C.; Notice of Negotiated Rates

February 7, 2003.

Take notice that on February 4, 2003, Guardian Pipeline Company, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 Third Revised Sheet No. 6, proposed to be effective February 1, 2003.

Guardian states that the purpose of this filing is to reflect the implementation of a negotiated rate agreement with Wisconsin Power & Light Company for transportation under Rate Schedule FT–1.

Guardian states that copies of this tariff filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's

rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3660 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–249–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 7, 2003.

Take notice that on February 3, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet Number 202; and Original Sheet Number 303A to become effective February 1, 2003.

Northern Border states that the purpose of this filing is to incorporate a new section in the general terms and conditions of Northern Border's FERC Gas Tariff to list non-conforming agreements, and to reflect two non-conforming Rate Schedule T–1B Service Agreements between Northern Border and Dynegy Marketing and Trade (Dynegy) to effectuate permanent capacity releases for the two Rate Schedule T–1B contracts with Dynegy. Northern Border states that, under its currently effective tariff, Rate Schedule T–1B does not have a provision for capacity release. Northern Border states that these two contracts with Dynegy therefore are being filed as non-conforming agreements.

Northern Border states that it is preparing a separate filing to be filed within the next week to revise tariff sheets to clearly state that capacity release is permitted under Rate Schedule T–1B.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3662 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–436–001]

Northern Natural Gas Company; Notice of Amendment

February 7, 2003.

Take notice that on January 29, 2003, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in the above referenced docket, an amendment to its original application that was filed on September 30, 2002, pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's rules and regulations. The original application sought a certificate of public convenience to construct and operate certain compression, pipeline, and town border station (TBS) facilities, with appurtances, located in various counties in Minnesota in order to expand the capacity of Northern's Market Area facilities (Project MAX). Northern's amendment proposes to amend its September 30, 2002, application to include the modification of three additional existing TBS facilities and the upgrade of the proposed Popple Creek Compressor Station, all located in Minnesota, all as more fully described in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Northern states that in response to additional customer requests, Northern held an open season from December 13 through December 23, 2002, for capacity on its St. Cloud branchline to provide service beginning November 1, 2003, to be included in Northern's Project MAX expansion. Northern received requests from two customers for 5,770 of incremental throughput and realignment of 9,961 Mcf/d from other Market Area Points. In order to provide such service, Northern proposes to amend the September 30, 2002, application to include the modification of Deerwood TBS, Sherwood Forest TBS, and Sartell #1 TBS and the installation of a 1,500 horsepower (HP) compressor unit instead of the 1,000 HP unit originally proposed at the new Popple Creek Compressor Station. Northern states that it will mitigate the impacts, if necessary, to ensure that the noise level at the noise sensitive areas (NSA) will not exceed the required 55 Ldn noise level. Northern estimates that the total estimated capital cost of the facility modifications proposed is $457,000. Northern proposes that costs of the facility modifications and the facilities in the September 30, 2002, application be rolled-in to Northern's Market Area rates in its next general rate case once the subject facilities are placed in-service.

Northern requests that the Commission issue an order granting approval of the subject facilities by no later than May 1, 2003, in order to ensure an in-service date of November 1, 2003.

Any questions regarding the application should be directed to Mary Kay Miller, Vice President, Regulatory & Customer Service, Northern Natural Gas Company, P.O. Box 3330,Omaha, Nebraska 68103–0330, telephone (402) 398–7060 or Michael T. Loeffler, Director Certificates and Community Relations, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330, telephone (402) 398–7103.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3650 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP02–362–003] PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

Federal Energy Regulatory Commission

February 7, 2003.

Take notice that on February 5, 2003, PG&E Gas Transmission, Northwest Corporation (GTN), tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Third Revised Sheet No. 127 and Fourth Revised Sheet No. 128, with an effective date of November 14, 2002.

GTN states that these tariff sheets are being submitted to comply with the Commission's January 16, 2003, Order Accepting Compliance Filing, Subject to Conditions, in Docket Nos. RP02–362–001 and RP02–362–002. This proceeding involves proposed tariff changes by PG&E Gas Transmission, Northwest Corporation ("GTN") that allow the pipeline to sell capacity on a pre-arranged basis.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3659 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–50–000]

Talbot EMC, Chattahoochee EMC, Oglethorpe Power Corporation; Notice of Application

February 7, 2003.

Take notice that on February 4, 2003, Talbot EMC (Talbot), Chattahoochee EMC (Chattahoochee) and Oglethorpe Power Corporation (Oglethorpe) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby (i) Talbot and Chattahoochee will be merged with and into Oglethorpe, with Oglethorpe as the surviving entity and Talbot and Chattahoochee thereafter ceasing to exist, or, alternatively, (ii) Talbot and Chattahoochee will transfer to Oglethorpe their respective 618–MW and 468–MW generating facilities, terminate their rate schedules and power purchase agreements and thereafter cease doing business as public utilities.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3653 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–5–002]

Vermont Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC; Notice of Filing

February 7, 2003.

Take notice that on January 30, 2003, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) filed with the Federal Energy Regulatory Commission (Commission) a compliance report pursuant to the Commission's order issued February 1, 2002 (98 FERC 61,122), to account for the sale of the Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC.

Vermont Yankee states that a copy of this filing has been served on the service list maintained by the Secretary in this docket, Vermont Yankee's wholesale customers, and on the state utility commissions in Vermont, New Hampshire, Massachusetts and Connecticut.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3652 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–47–000]

Williston Basin Interstate Pipeline Company; Notice of Application

February 7, 2003.

On January 31, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), P. O. Box 5601, Bismarck, North Dakota 58506–5601 filed in Docket No. CP03–47–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon approximately 21.4 miles of natural gas transmission pipeline loop and a related receipt point meter station all located in Big Horn County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Keith A. Tiggelaar, Director, Regulatory Affairs, Williston Basin Interstate Pipeline Company, P. O. Box 5601, Bismarck, North Dakota 58506–5601, at (701) 530–1560 or *keith.tiggelaar@wbip.com.*

Williston Basin states that it will be abandoning the Rairden-Greybull Loop (Rairden Loop) which is located in Big Horn County, Wyoming and consists of 21.4 miles of 12 ¾-inch natural gas transmission pipeline. Additionally, Williston Basin states that it will abandon the Dobie Creek receipt point meter station (Dobie Creek Meter Station), which is connected to the Rairden Loop and is also located in Big Horn County, Wyoming. Williston Basin states that the primary purpose of the Rairden Loop was to increase the maximum capacity of Williston Basin's Worland to Cabin Creek line section and the increased capacity allowed the transfer of additional gas volumes to Williston Basin's Elk Basin storage field. Williston Basin states that in September of 1999 it was discovered that the Rairden Loop was severely corroded due to failed pipeline coating. Upon this discovery, Williston Basin states that the Office of Pipeline Safety was notified of a generalized corrosion condition and that the maximum allowable operating pressure (MAOP) of the Rairden Loop line was reduced to ensure the continued safe operation of those facilities and the remaining parties who were utilizing the facilities were informed that they should attempt to find other transportation alternatives. As a result of these consultations, all of the parties who previously used these facilities have found other transportation alternatives, and no volumes have been transported on this line since February 12, 2002. In addition to being severely corroded, Williston Basin states that much of the original production for which the Rairden Loop was constructed has declined and that competition from other pipelines in the Rairden Loop area has resulted in decreased demand for the Rairden Loop facilities. Consequently, Williston Basin states that it has been determined that the Rairden Loop is no longer required and is seeking abandonment as the safest and most economical course of action.

Williston Basin states that Montana-Dakota constructed the Dobie Creek Meter Station under blanket authority and reported the construction in its Annual Report of Activities under Blanket Certificate in Docket No. CP78–101–000. Williston Basin states that the Dobie Creek Meter Station was originally constructed to facilitate a gas purchase agreement with American Quasar Petroleum Company. Accordingly, Williston Basin states that the Dobie Creek Meter Station is being abandoned because no customer has received service through this meter station since February 12, 2002, and Williston Basin believes that requests for service will not occur in the future. Consequently, Williston Basin is requesting Commission authorization to abandon the Dobie Creek Meter Station facilities.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3651 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–40–000, et al.]

Calpine California Equipment Finance Company, LLC., et al.; Electric Rate and Corporate Filings

February 6, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calpine California Equipment Finance Company, LLC

[Docket No. EG03–40–000

Take notice that on January 31, 2003, Calpine California Equipment Finance Company, LLC (CCEFC) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

CCEFC, a Delaware limited liability company, owns and leases to certain of its affiliates in California 495 MW of electric generating facilities. CCEFC states that it will purchase and resell the output of such facilities at wholesale. CCEFC further states that copies of the application were served upon the U.S. Securities and Exchange Commission and California Public Utilities Commission.

Comment Date: February 17, 2003.

2. Calpine Parlin, LLC

[Docket No. EG03–41–000]

Take notice that on February 4, 2003, Calpine Parlin, LLC (Calpine Parlin), c/o Calpine Corporation Eastern Region Office, The Pilot House, 2nd Floor, Lewis Wharf, Boston, MA 02110, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Calpine Parlin is a Delaware limited liability company and a wholly-owned subsidiary of Calpine Cogeneration Corporation. Calpine Parlin states that it owns and operates a 122 MW cogeneration facility located in Parlin, New Jersey and sells electric energy at wholesale. Calpine Parlin further states that copies of the application were served upon the Securities and Exchange Commission, New Jersey Board of Public Utilities, Colorado Public Utilities Commission, Kansas Corporation Commission, Michigan

Public Service Commission, Minnesota Public Utilities Commission, New Mexico Public Regulation Commission, North Dakota Public Service Commission, Oklahoma Corporation Commission, South Dakota Public Utilities Commission, Texas Public Utility Commission, Wisconsin Public Service Commission, and Wyoming Public Service Commission.

Comment Date: February 27, 2003.

3. Empire District Electric Company

[Docket No. ER99–1757–002]

Take notice that on February 4, 2003, Empire District Electric Company (Empire) filed an updated market analysis as required by the Commission's March 31, 1999, order in Docket No. ER99–1757–000 granting Empire market based rate authority.

Comment Date: February 25, 2003.

4. International Falls Power Company

[Docket No. ER03–319–001]

Take notice that on February 4, 2003, International Falls Power Company (IFPC) tendered for filing in this matter a Submission of First Amendment to Initial Rate Schedule.

Comment Date: February 25, 2003.

5. Klondike Wind Power LLC

[Docket No. ER03–416–002]

Take notice that on February 4, 2003, Klondike Wind Power LLC (Klondike) amended its January 17, 2003, revised market-based tariff (Tariff) filing with the Federal Energy Regulatory Commission (the Commission). The amendment reflects changes to its Code of Conduct to conform to prior Commission orders. Klondike reiterates its request for a waiver of the 60-day prior notice requirement to allow its revised Tariff (as amended) to become effective as of December 19, 2002.

Comment Date: February 25, 2003.

6. Ameren Services Company

[Docket No. ER03–491–000]

Take notice that on February 3, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Service between ASC and Westar Energy, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Westar Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: February 24, 2003.

7. Harquahala Generating Company, LLC

[Docket No. ER03–492–000]

Take notice that on February 3, 2003, Harquahala Generating Company, LLC (Harquahala) tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed amendment to the Western Systems Power Pool (WSPP) Agreement. The proposed amendment reflects the admission of Harquahala to membership in the WSPP. Harquahala requests that the Commission authorize the proposed amendment to become effective on February 3, 2003.

Comment Date: February 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3654 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2782–006 Utah]

Parowan City; Notice of Availability of Draft Environmental Assessment

February 10, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Red Creek Hydroelectric Project located on Red Creek, in Iron County, Utah, and has prepared a draft Environmental Assessment (EA) for the project. The project occupies 19.06 acres of United States lands administered by the Bureau of Land Management.

The draft EA contains Commission staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

Any comments on this draft EA should be filed within 30 days from the date of this notice and should be addressed to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2782–006 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site *http://www.ferc.gov* under the "e-Filing" link.

For further information, contact Steve Hocking at (202) 502–8753 or *steve.hocking@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3723 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–33–000, CP03–34–000 and CP03–35–000]

Wyckoff Gas Storage Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Wyckoff Gas Storage Project and Request for Comments on Environmental Issues

February 10, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Wyckoff Gas Storage Project involving construction and operation of facilities by Wyckoff Gas Storage Company, LLC (Wyckoff) in Steuben County, New York.[1] These facilities would consist of about 16.2 miles of various diameter pipeline, 9,470 horsepower (hp) of compression, 9 gas injection/withdrawal wells, and 3 observation wells. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Wyckoff provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Wyckoff requests authorization to construct and operate a natural gas storage facility in two nearly depleted reservoirs in Steuben County, New York, capable of storing up to 6 billion cubic feet of natural gas (CP03–33–000). Wyckoff also requests a blanket certificate under part 157 of the regulations (CP03–34–000) to permit Wyckoff to construct, acquire, and operate additional facilities following construction of the storage facilities; and a blanket certificate under part 284 of the regulations (CP03–35–000) to provide storage services on behalf of others and approval of the filed FERC gas tariff under which Wyckoff would operate to provide open access storage services. Wyckoff's storage facilities would consist of:

—9,470 horsepower of compression and dehydration facilities at a new compressor station;
—drilling and completion of 6 new injection/withdrawal wells and the re-completion and conversion of 3 existing wells;
—drilling 3 observation wells;
—constructing 3.5 miles of 20-inch-diameter pipeline and bi-directional metering facilities near the intersection of pipelines owned by Tennessee Gas Pipeline Company (Tennessee) and Columbia Gas Transmission Corporation (Columbia) in the town of Jasper, New York;
—an interconnection/meter station near the Tennessee and Columbia point of intersection;
—constructing 8 miles of 20-inch-diameter pipeline interconnecting pipeline and metering facilities operated by Dominion Transmission, Inc. (Dominion);
—an interconnection/metering station at the Dominion point of interconnection; and
—constructing 4.7 miles of 6-inch-diameter well lines in the town of Jasper, New York.

There are no nonjurisdictional facilities identified for the project.

The location of the project facilities is shown in appendix 1.[2] Land Requirements for Construction

Construction of the proposed facilities would require about 132.3 acres of land. Following construction, about 85.6 acres would be maintained as new permanent right-of-way and aboveground facility sites. The remaining 46.7 acres of land would be restored and allowed to revert to its former use. The areal extent of the gas storage reservoir is approximately 584 acres.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

—Geology and soils
—land use
—water resources, fisheries, and wetlands
—cultural resources
—vegetation and wildlife
—air quality and noise
—endangered and threatened species
—hazardous wastes
—water resources and wetlands
—public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

[1] Wyckoff's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Wyckoff. This preliminary list of issues may be changed based on your comments and our analysis.

—Two nearby residences and one church would be impacted by noise from the new compressor station.
—Eight perennial streams would be crossed by the pipelines.
—Twenty-four wetlands would be affected by the project affecting about 1.6 acres.
—A total of about 40.3 acres of agricultural land consisting of primarily hay and cornfields would be affected by the project.
—A segment of National Fuel Gas Supply Corporation's existing pipeline would be abandoned in place where it would be paralleled by the proposed pipeline.
—The pipeline route would pass within 200 feet of three year round residences and two seasonal hunting camps.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
—Label one copy of the comments for the attention of Gas 2 Branch.
—Reference Docket No. CP03–33–000.
—Mail your comments so that they will be received in Washington, DC on or before March 14, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request. If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3722 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Protests

February 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12346–000.

c. *Date Filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Mississippi L&D #13 Hydroelectric Project would be located on the Mississippi River in Whiteside County, IL. The project would utilize the U.S. Army Corps of Engineers' existing Mississippi Lock & Dam #13.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Mississippi Lock and Dam #13, would consist of: (1) Seven 80-foot-long, 6-foot-diameter steel penstocks, (2) a powerhouse containing one generating unit with a total installed capacity of 7.6 megawatts, (3) a 1.5-mile-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 46 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3655 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12393–000.

c. *Date Filed:* October 17, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Enid Dam Hydroelectric Project would be located on the Yocona River in Yalobusha County, Mississippi. The project would utilize the U.S. Army Corps of Engineers' existing Enid Dam and Reservoir.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60

days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Enid Dam and Reservoir, would consist of: (1) An 80-foot-long, 114-inch-diameter steel penstock, (2) a powerhouse containing four generating units with a total installed capacity of 7.8 megawatts, (3) a 3-mile-long, 14.7-kilovolt transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 48 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnLineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3656 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12405–000.

c. *Date Filed:* October 30, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Morgantown L&D Hydroelectric Project would be located on the Monongahela River in Monongalia County, West Virginia. The project would utilize the U.S. Army Corps of Engineers' existing Morgantown Lock and Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60

days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Morgantown Lock and Dam, would consist of: (1) Five 50-foot-long, 96-inch-diameter steel penstocks, (2) a powerhouse containing five generating units with a total installed capacity of 5.5 megawatts, (3) a 200-yard-long, 14.7-kilovolt transmission line connecting to an existing substation, and (4) appurtenant facilities. The project would have an average annual generation of 34 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnLineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3657 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

February 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from licensing.

b. *Project No.:* 12433–000.

c. *Date Filed:* January 24, 2003.

d. *Applicant:* Indian River Power Supply LLC.

e. *Name of Project:* Indian River Hydro Project.

f. *Location:* On the Westfield River, near the Town of Russell, in Hampden County, Massachusetts. The proposed project would not occupy any federal lands.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Richard E. Lynch, Sr., Indian River Power Supply LLC, 22 Woodland Avenue, Westfield, MA 01085–2221, (413) 562–0588.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 502–6032 or *gaylord.hoisington@ferc.gov*.

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Request for Cooperating Agency Status:* March 25, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and request for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the eFiling system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process.

m. The application is not ready for environmental analysis at this time.

n. *Description of Project:* The proposed project would consist of: (1) An existing 3-foot-high, 377-foot-long concrete dam; (2) a 13-acre impoundment with normal storage of 620 acre-feet to 720 acre-feet; (3) two existing 7-foot-diameter to 12-foot-diameter, 65-foot-long steel penstocks equipped with trashracks; (4) an existing 60-foot-long, 60-foot-wide, 25-foot-high powerhouse containing two Francis turbines with a total installed capacity of 700 kilowatts; (5) a proposed 933-foot-long transmission line connecting to an existing distribution system, and (6) appurtenant facilities. The project would have an average annual generation of 7,400,000 kilowatts.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Massachusetts State Historic Preservation Officer (SHPO), as required by Section 106 of the National Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule:* The application should be processed according to the following Hydro Licensing schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to provide a 30 day period for entities to comment on the EA, and will take into consideration all comments filed on the EA before final action is taken on the exemption from licensing application. If any person or organization objects to the staff proposed process, they should file comments by the date stipulated in item l above, briefly explaining the basis for their objection.

Issue Acceptance or Deficiency Letter: March 2003

Issue Acceptance Letter: May 2003

Issue Scoping Document 1 for Comments: July 2003

Request Additional Information: August 2003

Issue Scoping Document 2, if Necessary: October 2003

Notice of Application Is Ready for Environmental Analysis: November 2003

Notice of the Availability of the EA: May 2004

Ready for Commission's Decision on the Application: August 2004

Magalie R. Salas,

Secretary.

[FR Doc. 03–3658 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–162–003]

Trailblazer Pipeline Company; Notice of Compliance Filing

February 7, 2003.

Take notice that on January 31, 2003, Trailblazer Pipeline Company (Trailblazer) filed the following documents:

1. Exhibit No. TPC–1 (Revised): Testimony of Bruce H. Newsome on behalf of Trailblazer Pipeline Company, and Mr. Newsome's related affidavit.

2. Exhibit No. TPC–81 (Revised): Revised Tariff Sheets. Exhibit No. TPC–81 (Revised) is sponsored by Mr. Newsome.

Trailblazer states that the purpose of this filing is to comply with the hearing procedural schedule adopted January 17, 2003, in the above-captioned docket. Trailblazer notes that the tariff sheets are tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, with an effective date of January 1, 2003.

Trailblazer states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP03–162.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3661 Filed 2–13–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7452–7]

Science Advisory Board; Advisory Council on Clean Air Compliance Analysis; Request for Nominations for Additional Expertise for the Special Council Panel for the Review of the Third 812 Analysis and the Council's Two Subcommittees, the Air Quality Modeling Subcommittee and the Health and Ecological Effects Subcommittee

1. *Action:* Notice; request for nominations to add additional expertise to the Advisory Council on Clean Air Compliance Analysis (Council) for a Special Council Panel for the Review of the Third 812 Analysis and request for nominations for membership on the Council's two subcommittees, the Air Quality Modeling Subcommittee and the Health and Ecological Effects Subcommittee (HEES). The Council is a separately chartered federal advisory committee, housed administratively in the U.S. Environmental Protection Agency Science Advisory Board.

2. *Summary:* The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board is requesting nominations to: (a) add expertise to the Advisory Council on Clean Air Compliance Analysis (Council) for a Special Council Panel for the Review of the Third 812 Analysis (Special Council Panel); (b) the Council's Air Quality Modeling Subcommittee (AQMS); and (c) the Council's Health and Ecological Effects Subcommittee (HEES).

The SAB was established to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The Council provides scientific advice on any analysis required under section 312 of the Clean Air Act (CAA) of the impacts of the Clean Air Act (CAA) on the public health, economy, and environment of the United States and is a separately chartered Federal advisory committee Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.). The AQMS of the Council provides expertise on air quality modeling used in such analysis. The HEES of the Council provides advice on assessments of health and ecological effects used in such analyses. The AQMS and the HEES will report to the Administrator of EPA through the Council. The Special Council Panel will comprise members of the Council, appointed by the Administrator, and additional experts needed for the Review of the Third 812 Analysis. Members of the Special Council Panel, AQMS, and HEES will provide advice to the Agency on the Third 812 Analysis over a two-year period. Over that period, the Special Council Panel for the Review of the Third 812 Analysis, AQMS, and HEES will comply with the provisions of FACA and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, which can found on the SAB's website at: *http://www.epa.gov/sab/pdf/ec02010.pdf.* Those selected to serve on the Council, AQMS, and HEES will review the draft materials identified in this notice and respond to the charge questions provided below.

3. *Background:* The Agency is seeking the Council's advice in developing the third in a series of statutorily mandated comprehensive analyses of the total costs and total benefits of programs implemented pursuant to the Clean Air Act. Section 812 of the Clean Air Act requires the EPA to periodically assess the effects of the 1990 Clean Air Act Amendments on the "public health, economy and the environment of the United States" and to report the findings and results of the assessments to Congress. Section 812 of the Clean Air Act Amendments of 1990 (42 U.S.C. § 7612) also specifically directed the EPA Administrator to establish the Council to: (a) Review data to be used for any analysis required under section 312 of the Clean Air Act (CAA) of the impacts of the Clean Air Act (CAA) on the public health, economy, and environment of the United States, and make recommendations on its use; (b) review the methodology used to analyze such data and make recommendations on the use of such methodology; and (c) prior to the issuance of a report to Congress required under section 312 of the CAA, review the findings of the report and make recommendations concerning the validity and utility of such findings.

EPA has to date completed two reports to Congress [The Benefits and Costs of the Clean Air Act: 1970 to 1990 (published, 1997, and on the EPA Web site at *http://www.epa.gov/oar/sect812/copy.html*) and The Benefits and Costs of the Clean Air Act, 1990 to 2010 (published 1999), and on the EPA Web site at *http://www.epa.gov/air/sect812/1990-2010/fullrept.pdf*] and received the advice of the Council on them in multiple reports. EPA also sought Council advice on a draft Analytical Plan (June 2001) for a third analysis, and received advice on the plan from the Council in September 2001, Review of the Draft Analytical Plan for EPA's Second Prospective Analysis—Benefits and Costs of the Clean Air Act 1990–2020 (EPA–SAB–COUNCIL–ADV–01–004, on the SAB Web site at *http://www.epa.gov/science1/pdf/councila01004.pdf*).

EPA's work pursuant to the draft Analytical Plan (June 2001) and receipt of SAB Council advice was suspended pending resolution of three key issues:

(a) National Academy of Sciences (NAS) review of EPA air pollution benefits methods. Shortly after completion of the September 2001 SAB Council review of the June 2001 Analytical Plan, a panel of the National Academy of Sciences initiated development of their statutorily-mandated report evaluating EPA's methods for conducting air pollution reduction benefits analysis. The Agency recognized that the pending NAS report would have substantial effects on the selection of methods and assumptions in the third analysis, and suspended initiation of analytical work until the NAS review was completed. The NAS report, Estimating the Public Health Benefits of Proposed Air Pollution Regulations (on the web at *http://www.nap.edu/catalog/10511.html*), was completed in October 2002.

The Agency notes that the NAS report recommends numerous changes to EPA methods that are relevant for the third 812 analysis. Of particular importance, the NAS recommends that EPA develop and apply significantly enhanced uncertainty analysis methods, including the use of probabilistic specifications for important but uncertain or highly variable factors. The NAS panel, however, did not provide extensive specific advice regarding the appropriate methods or assumptions to apply in air pollution benefits analyses. The Agency proposes to seek Council advice to evaluate proposals for methodological changes pursuant to SAB and NAS advice. One specific change will be an additional analysis recommended by the NAS. This

analysis, referred to as the "Fixed Current Conditions Analysis," is intended to gauge baseline aggregate uncertainty embedded in the benefits modeling system.

(b) Base emissions inventory selection. The Agency decided to wait for the availability of the upcoming 1999 National Emissions Inventory (NEI) rather than the currently available 1996 National Emissions Inventory because of shortcomings in the current emission inventories, including several deficiencies identified by the SAB Council. The 1999 NEI has now been further delayed, and is not expected to be available for use in the third analysis until Summer 2003.

The Agency therefore proposes to use the time between now and Summer 2003, when the 1999 NEI will be available, to configure and begin implementing key supplemental analyses, included in the original Analytical plan. These supplemental analyses include: (i) A Title VI re-analysis; (ii) a Hazardous Air Pollutant Case Study; and (iii) an Ecological Service Flow Case Study. Specific proposals for design and implementation of these supplemental analyses would be incorporated in the revised Analytical Plan and submitted for review by the SAB Council.

(c) Air quality model selection. The SAB Council strongly encouraged use of a comprehensive and integrated modeling system, such as the Community Multiscale Air Quality (CMAQ) model currently under development. The Agency also decided to defer initiation of emissions inventory development until air quality model evaluations for the key competing models (especially CMAQ versus the Regulatory Modeling System for Aerosols and Deposition (REMSAD) for modeling of particulate matter and CMAQ versus the Comprehensive Air Quality Model with Extensions (CAMx) for ozone modeling) were completed to ensure appropriate specification of the emission inventories used as inputs to the air quality models that will be selected for the study.

The Agency is seeking review by the Council Special Panel and its two subcommittees of three documents in the Spring 2003 that will assist the Agency in developing the third 812 analysis, which will be reviewed by the Council Special Panel and its two subcommittees in draft and final form in Fiscal Year 2004. The three documents to be reviewed in the Spring of 2003 include: (a) A revised Analytical Plan; (b) a new EPA meta-analysis for the Value of a Statistical Life (VSL), which has been developed in response, in part, to SAB Council advice for an updated and refined VSL estimate for use in third analysis; and (c) a draft strategic plan for development and implementation of probabilistic uncertainty methods to be applied more generally in EPA benefit-cost analyses. This strategic plan is expected to include proposed processes for (i) probability-based uncertainty analysis and (ii) expert elicitation to configure probability distributions for key uncertain and/or variable factors where data are limited and/or function specification would likely be controversial.

4. *EPA Request for and Proposed Charge to the Council, HEES, and AQMS.* Specific and detailed charge questions are still under development, particularly since EPA is still developing methodological options for implementation of NAS advice, especially related to probabilistic uncertainty analysis. However, the particular analytical elements for which new or updated SAB Council advice is expected to be sought include the following:

(a) Selection of upcoming 1999 National Emissions Inventory

(b) Selection of REMSAD version 7.3 for PM and CAMx for ozone air quality modeling

(c) Selection of specific Computable General Equilibrium model for estimation of general equilibrium effects (proposed model choice still pending)

(d) Selection of exposure modeling methodology

(e) Methods for quantification of compliance cost uncertainty

(f) Methods for quantification of emission inventory uncertainty

(g) Refinements to population characteristics for health effect estimation, including:

(i) Updated baseline incidence and prevalence rates for morbidity and mortality

(ii) Adjustments to account for differences in study and applied populations

(iii) Accounting for population exposure variability

(iv) Population subgroup differentiation in estimating incidence changes

(v) Development of regional-scale population projections based on Woods and Poole Economics, Incorporated, 2001 projections

(h) Updated and expanded morbidity endpoint treatments, including:

(i) Revised asthma severity baseline using new National Health Interview Survey data

(ii) Expansion of asthma age range

(iii) Emergency room visits in children age 0 to 18

(iv) Non-fatal heart attacks in adults over 30

(v) Hospital admissions for all cardiovascular causes

(vi) Hospital admissions for all respiratory causes in children under age 2

(vii) Revisions to hospital admissions studies used to estimate changes in pneumonia, chronic obstructive pulmonary disease, and total cardiovascular

(viii) Asthma hospital admissions in children age 6 to 13

(ix) Ozone-related school loss days

(x) Additional calculations to extrapolate study population age ranges for application to all child age range for various concentration-response functions

(xi) Possible expert elicitation regarding methods to transfer non-U.S. data on doctor visits and medication usage

(xii) Possible expert elicitation regarding revision to the current triangular distribution for the chronic bronchitis severity adjustment factor

(i) Updated treatments for particulate matter mortality, including:

(i) A proposed probability-based structure for cessation lags

(ii) Alternative mortality concentration-response functions (including possible expert elicitation regarding appropriate weights for alternative particulate matter cohort studies for the purpose of pooling)

(iii) Alternative PM mortality threshold models (including possible expert elicitation regarding choice and refitting of alternative threshold concentration-response curves)

(iv) Alternative particulate matter causality assumptions

(v) Relative toxicity of particulate matter components

(j) Updated and new valuation coefficients (or coefficient distributions) for the full range of morbidity and for mortality endpoints, including:

(i) Development of methods to estimate Quality Adjusted Life Year values for air pollution-related outcomes

(ii) Review of EPA's pending meta-analysis for Value of a Statistical Life

(iii) Review of the welfare economics components of EPA's analyses including not only efficiency considerations, but distributional consequences of alternative scenarios

(k) Expanded uncertainty analysis, including:

(i) Development of preliminary covariance matrices followed by possible expert elicitation for assessment and refinement

(ii) Development of probability distributions for key uncertain and/or variable factors (in many cases, incorporating subjective judgments through various methods such as Bayesian approaches or expert elicitation)

(iii) Configuration of sensitivity tests to evaluate alternative distributions for key factors

(iv) Configuration of the side bar "Fixed Current Conditions Analysis" represented in the EPA benefit-cost modeling system

(v) Configuration of multi-factor sensitivity tests to evaluate the relative significance and interaction effects of key uncertain or variable factors

5. *SAB Request for Nominations:* The EPA SAB is requesting nominations of individuals who are recognized, national-level experts in one or more of the following disciplines necessary to contribute to the charge questions to be addressed by the Special Council Panel for the Review of the Third 812 Analysis, AQMS, or HEES:

(a) Emissions estimation (AQMS and the Special Council Panel)

(b) Air quality modeling (AQMS and the Special Council Panel)

(c) Exposure modeling related to air pollution (AQMS, HEES)

(d) Health effects (HEES and the Special Council Panel))

(e) Human clinical studies related to air pollution (HEES and the Special Council Panel)

(f) Air pollution epidemiology (HEES and the Special Council Panel)

(g) Ecosystem effects related to air pollution (HEES and the Special Council Panel)

(h) Uncertainty analysis and statistical and/or subjective probability (AQMS, HEES, and the Special Council Panel)

(i) Decision theory (Special Council Panel)

(j) Representation of expert judgment including expert elicitation (HEES and the Special Council Panel)

(k) Estimation of the value of morbidity and premature mortality risk reduction (Special Council Panel)

(l) Estimation of the value of ecosystem effects (Special Council Panel)

(m) Welfare economics (Special Council Panel).

6. *Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate qualified individuals to add expertise in the above areas for the Special Council Panel for the Review of the Third 812 Analysis, AQMS, or HEES. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB website. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab*. To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations in electronic format may contact Dr. Angela Nugent at the mailing address given at the end of this notice. Nominations should be submitted in time to arrive no later than 21 days after the publication date of this **Federal Register** Notice. Any questions concerning either this process or any other aspects notice should be directed to Dr. Nugent.

The EPA Science Advisory Board will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** Notice (termed the "Widecast"), SAB Staff will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the specific expertise to add to the Council for the Special Council Panel, for the AQMS, or the HEES.

For the EPA SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form, which is submitted by EPA SAB Members and Consultants, allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*. Subcommittee members will likely be asked to attend at least one public face-to-face meeting and several public conference call meetings over the anticipated course of the advisory activity.

The approved policy under which the EPA SAB selects review panels is described in a recent SAB document, EPA Science Advisory Board (SAB) Panel Formation Process: Immediate Steps to Improve Policies and Procedures—An SAB Commentary (EPA–SAB–EC–COM–002–003), which can be found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ecm02003.pdf*.

Additional information concerning the EPA Science Advisory Board, including its structure, function, and composition, may be found on the EPA SAB Web site at: *http://www.epa.gov/sab;* and in the EPA Science Advisory Board FY2001 Annual Staff Report, which is available from the EPA SAB Publications Staff at phone: (202) 564–4533; via fax at: (202) 501–0256; or on the SAB Web site at: *http://www.epa.gov/sab/annreport01.pdf*.

7. *For Further Information*—Any member of the public wishing further information regarding this Request for Nomination may contact Dr. Angela Nugent, Designated Federal Officer, U.S. EPA Science Advisory Board (1400A), Suite 6450C by telephone/voice mail at (202) 564–4562, by fax at (202) 501–0323; or via e-mail at *nugent.angela@epa.gov*.

Dated: February 10, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–3703 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0038; FRL–7291–5]

Eastern Research Group, Inc. and Geologics Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Eastern Research Group, Inc. and its subcontractor, Geologics Corp., in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Eastern Research Group, Inc. and its subcontractor, Geologics Corp. have been awarded a contract to perform work for the Office of Enforcement and Compliance Assurance (OECA), and access to this information will enable Eastern Research Group, Inc. and its subcontractor, Geologics Corp., to fulfill the obligations of the contract.

DATES: Eastern Research Group, Inc. and its subcontractor, Geologics Corp., will be given access to this information on or before February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0038. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Contractor Requirements

Under Contract No. 68–W9–9057, Eastern Research Group, Inc. and its subcontractor, Contract No. 68–W0–1031, Geologics Corp., will support EPA's compliance monitoring and enforcement efforts under the Office of Compliance, by performing tasks in the following areas: Training, data management, compliance monitoring, compliance inspections, targeting, sector-based support, outreach, sampling and sample analysis, and pollution prevention.

OPP has determined that access by Eastern Research Group, Inc., and its subcontractor, Geologics Corp., to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Eastern Research Group, Inc. and its subcontractor, Geologics Corp., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Eastern Research Group, Inc. and its subcontractor, Geologics Corp., are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Eastern Research Group, Inc., and its subcontractor, Geologics Corp., until the requirements in this document have been fully satisfied. Records of information provided to Eastern Research Group, Inc., and its subcontractor, Geologics Corp., will be maintained by EPA Project Officers for this contract. All information supplied to Eastern Research Group, Inc. and its subcontractor, Geologics Corp., by EPA for use in connection with this contract will be returned to EPA when Eastern Research Group, Inc. and its subcontractor, Geologics Corp., have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: February 3, 2003.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 03–3581 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–H65014–MO Rating EC2, Pineknot Woodland Restoration Project, Open Shortleaf Pine Woodland Restoration, Implementation, Doniphan/Eleven Point Ranger District, Mark Twain National Forest, Carter County, MO.

Summary: EPA expressed environmental concerns with potential impacts to air and water quality. EPA requests that the final EIS include more detailed information on criteria for assessment of soil and water mitigation measures, compliance of prescribed burns with a smoke/fire management plan and discussion of how the proposed restoration habitat meets old growth habitat as currently defined in the Forest Plan Standard and Guidelines.

ERP No. D–AFS–J35006–UT Rating EC2, Fox and Crescent Reservoirs Maintenance Project, Dam Structures Operation and Maintenance, Special Use Permit Issuance, High Andes Wilderness, Ashley National Forest, Uinta Basin, Duchesne County, UT.

Summary: EPA supports the proposed action in order to supply existing water rights and commends the USFS for indentifying proposed mitigations. However, EPA expressed environmental concerns about the potential adverse impacts to water quality, fish and aquatic invertebrates, flow regimes and the release of sediment to downstream ecosystems.

ERP No. D–AFS–J65370–MT Rating EC2, Management Area 11 Snowmobile Use Areas on the Seeley Lake Ranger District, Implementation, Lola National Forest, Missoula and Powell Counties, MT.

Summary: EPA expressed environmental concerns regarding potential snowmobile impacts to grizzly bear and other wildlife and increased traffic and erosion and rutting of substandard roads that may impair water quality and fisheries, including 303(d) listed streams and threatened bull trout. EPA believes additional information is needed to fully assess and mitigate potential impacts of the proposed management actions.

ERP No. D–AFS–L65409–AK Rating EC2, Licking Creek Timber Sale, Timber Harvest, Implementation, Tongass National Forest, Ketchikan Misty Fiords Ranger District, Revillagigedo Island, Ketchikan, AK.

Summary: EPA expressed environmental concerns related to indirect and cumulative impacts of proposed silvicultural practices and road construction to water quality and fish resources; the Action Alternatives' reliance on even-aged silvicultural practices, and lack of project level watershed analysis. Also, we recommend the FEIS examine another possible Action Alternative that would address and mitigate for cumulative impacts while maintaining moderate economic efficiencies so that the EIS could include a viable Alternative that is less damaging and yet still provides economic benefits.

ERP No. D–FHW–F40411–MN Rating EC2, Trunk Highway 371 Corridor Reconstruction, US Truck Highway 10 to County State Aid Highway (CSAH) Highway 48, Funding, Morrison County, MN.

Summary: EPA expressed environmental concerns regarding impacts to aquatic and floodplain habitat. EPA recommended bridging of a stream and its associated floodplain, creation of a wetland site and requested a detailed wetland mitigation plan to be included in the final EIS.

ERP No. D–MMS–E02012–00 Rating LO, Eastern Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales 189 (proposed for 2003) and 197 (proposed for 2005) Leasing Program 2002–2007, Eastern Planning Area, Counties and Parishes of TX, LA, MS, AL and FL.

Summary: While EPA has no objections to the action as proposed, EPA expressed interest in the results of ongoing studies to further define the fate and effects of mercury and other heavy metal pollutants in drilling and production waste discharges. EPA also requested clarification on the construction and operational impacts of future pipeline infrastructure.

ERP No. DS–AFS–J65349–UT Rating EC2, Griffin Springs Resource Management Project, New Information concerning the Life History and Analysis of Endangered, Threatened, Candidate, Sensitive and Management Indicator Species, Dixie National Forest, Escalante Range District, Garfield County, UT.

Summary: EPA previously identified road maintenance and upgrading, beetle suppression and other management activities as having potential significant impacts to old growth forests, wetlands and wildlife. EPA remains environmentally concerned that discussion of the purpose, need and risk involved with a large scale thinning operation and discussion of the transportation system in the final EIS did not fully address our concerns and could result in adverse impacts from ecosystem alteration and fragmentation.

ERP No. DS–COE–G36148–TX Rating LO, Dallas Floodway Extension, Flood Damage Reduction and Environmental Restoration, New Information concerning Additional Formulation, Trinity River Basin, Dallas County, TX.

Summary: EPA has no objection to the proposed action since EPA agreed with the cumulative impact supplemental EIS.

Final EISs

ERP No. F–AFS–E60006–KY, Daniel Boone National Forest Land Exchange Project, Two Federal Tracts for 98.17 Acres of Privately Owned Land located in Owsley County, Federal Lands to be Exchanged are Tract 107AB (52.15 acres) located on Langdon Branch in Leslie County and Tract 745 (39.96 acres) located on Spicer Fork in Perry County, KY.

Summary: EPA continues to have environmental concerns about impacts to water quality and aquatic resources associated with subsequent surface mining activities.

ERP No. F–AFS–K65243–CA, Brown Darby Fuel Reduction Project, Combination of Salvage Harvesting of Trees Killed and Other Fuel Management Activities, Stanislaus National Forest, Calaveras Ranger District, Calaveras and Tuolumne Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NRC–D05124–VA, GENERIC EIS—North Anna Power Station, Units 1 and 2, Supplement 7 to NUREG–1437, License Renewal, VA.

Summary: EPA concurs with the analysis of the environmental impacts as they relate to the alternatives discussed in the report. EPA requests an opportunity to re-examine conclusions should they change as the license expiration date approaches.

ERP No. FS–NRC–E06012–SC, GENERIC EIS—Catawba Nuclear Station, Unit 1 and 2 (Catawba),

Renewal of the Operating Licenses (OLs) for an Additional 20–Year Period, Supplement 9 to NUREG–1437, York County, SC.

Summary: EPA has no objection to the proposed action since our previous issues were resolved.

Dated: February 11, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–3692 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–6]

Environmental Impact Statements; Notice of Availability

AGENCY: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.* Weekly receipt of Environmental Impact Statements, filed February 3, 2003, through February 7, 2003, pursuant to 40 CFR 1506.9.

EIS No. 030049, Draft EIS, NPS, OH, Cuyahoga Valley National Park Rural Landscape Management Program, Rural Landscape Resources Preservation and Protection, Cuyahoga River, Cuyahoga and Summit Counties, OH, comment period ends: March 31, 2003, contact: John P. Debo (440) 546–5903.

EIS No. 030050, Draft Supplement, NPS, KY, TN, Big South Fork National River and Recreation Area, General Management Plan, implementation, additional information concerning resources, roads and trails, McCreary, KY and Fentress, Morgan, Pickett, and Scott Counties, TN, comment period ends: May 15, 2003, contact: Reed Detring (423) 569–9778.

EIS No. 030051, Final EIS, MMS, AK, Beaufort Sea Planning Area multiple sale 186, 195 and 202 oil and gas lease sales, Alaska Outer Continental Shelf, Offshore Marine Environment, Beaufort Sea Coastal Plain, and the North Slope Borough of Alaska, wait period ends: March 17, 2003, contact: George Valiulis (703) 787–1662.

EIS No. 030052, Final EIS, FHW, IA, Avenue G viaduct and connecting corridor, access improvement for local emergency services and safety through expanded capacity across the trail corridor, funding and NPDES permit, Pottawattamie County, IA, wait period ends: March 17, 2003, contact: Bobby Blackmon (515) 233–7300.

EIS No. 030053, Draft EIS, BLM, WY, Snake River Resource Management Plan, BLM-administrated public land and resources allocation and management, Snake River, Jackson Hole, Teton Counties, WY, comment period ends: May 15, 2003, contact: Joe Patti (307) 775–6101.

EIS No. 030055, Draft EIS, FHW, TX, Grand Parkway/TX–99 Improvement Project, IH–10 to U.S. 290, funding, right-of-way grant and U.S. Army COE section 404 permit issuance, Harris County, comment period ends: May 23, 2003, contact: John Mack (512) 536–5960.

EIS No. 030056, Draft EIS, AFS, FL, USDA Forest Service and State of Florida Land Exchange Project, assembled exchange of both fee, ownership parcels and partial interest parcels, Baker, Citrus, Franklin, Hernando, Lake, Liberty, Okaloosa, Osceola, Santa Rosa and Sumter Counties, FL, comment period ends: March 31, 2003, contact: Gary Hegg (850) 926–3561.

Dated: February 11, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–3693 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7452–9]

Issuance of a Final General Permit to the National Science Foundation for the Ocean Disposal of Man-Made Ice Piers From its Base at McMurdo Sound on Antarctica

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final permit.

SUMMARY: EPA is today issuing a general permit under sections 102(a) and 104(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) to the National Science Foundation (NSF) for the disposal at sea of man-made ice piers from its base at McMurdo Sound on Antarctica. McMurdo Station, which is located on the southern tip of Hut Point Peninsula on Ross Island, is the largest of three stations in Antarctica operated by the National Science Foundation. This station is the logistics hub of the United States Antarctic Program. The majority of personnel and supplies destined for bases and field camps on Antarctica pass through McMurdo Station. In order to unload supplies, ships dock at an ice pier at McMurdo Station; this man-made pier has a normal life span of three to five years. At the end of its useful life, all transportable equipment, materials, and debris are removed, and the pier is cast loose from its moorings at the base and towed out to McMurdo Sound for disposal, where it melts naturally. Issuance of this general permit is necessary because the pier must be towed out to sea for disposal at the end of its useful life. This final general permit is intended to protect the marine environment by setting forth permit conditions, including operating conditions during use of the pier and clean-up, with which the NSF must comply before the disposal of such ice piers can take place. EPA has determined that only minimal adverse environmental impacts will result from the dumping of ice piers under this general permit.

DATES: This permit is effective February 14, 2003.

ADDRESSES: Additional information on this final general permit can be obtained from the person identified in the section **FOR FURTHER INFORMATION CONTACT,** which follows below.

FOR FURTHER INFORMATION CONTACT: David Redford, Chief, Marine Pollution Control Branch, Oceans and Coastal Protection Division (4504T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 566–1288.

SUPPLEMENTARY INFORMATION:

A. The McMurdo Station Ice Pier

The NSF is the agency of the United States Government responsible for oversight of the United States Antarctic Program. The NSF currently operates three major bases in Antarctica: McMurdo Station on Ross Island, adjacent to McMurdo Sound; Palmer Station, near the western terminus of the Antarctic Peninsula; and Amundsen-Scott South Pole Station, at the geographic South Pole. McMurdo Station is the largest of the three stations, and serves as the primary logistics base for Antarctica.

For most of the year, McMurdo Station is closed in by sea ice. However, in early January, a U.S. Coast Guard icebreaker opens a channel to the harbor at McMurdo Station, allowing a fuel tanker and a supply vessel to replenish the station. The tanker normally arrives in mid-January to unload fuel and unleaded gasoline. In early February, the supply vessel arrives and off-loads the annual provision of supplies for McMurdo Station and other U.S. Antarctic bases. After unloading its cargo, the supply vessel is backloaded with the previous year's accumulation of wastes, which are returned to the United States for disposal and recycling.

Construction of an ice pier is necessary to allow the various vessels to dock and unload at McMurdo Station. This ice pier, which is approximately 800 feet long, 300 feet wide, and 22 feet thick, is constructed during the winter season. The pier has several wooden poles frozen in it to support lighting, power, and telephone connections, and is covered with a gravel surface. At the end of each austral summer season, the pier is inspected, and as much of the gravel surface as possible is removed and stored for use the following season. If the pier is to be reused the next year, it is flooded with seawater during the winter to create a new surface for the following summer season.

The ice pier has a normal viable life of three to five years; after that period, factors such as stress cracking and erosion cause the pier to be unusable. If the pier has deteriorated to the point that it is not capable of being used the following season, the wooden poles are cut off just above the surface of the ice, the gravel is scraped off for use in the following season, all transportable equipment, materials, and debris are removed, and the pier is physically separated from McMurdo Base. It is then towed by a U.S. Coast Guard cutter to float free in the ice pack of the Ross Sea, where it mixes with the annual sea ice, and eventually disintegrates.

Please see the proposed permit notice in the **Federal Register** (68 FR 775–780, January 7, 2003) for a complete discussion of the McMurdo Station ice pier, including the process by which it is constructed, the reasons why the pier needs to be disposed of and reconstructed on a regular basis, the procedures undertaken prior to disposal to assure that minimal substances remain on the pier, and a description of the physical disposal process.

B. Statutory and Regulatory Background

Section 102(a) of the Marine Protection, Research, and Sanctuaries Act (MPRSA), 33 U.S.C. 1412(a), requires that agencies or instrumentalities of the United States obtain a permit to transport any material from any location for the purpose of dumping into ocean waters. Section 104(c) of the MPRSA, 33 U.S.C. 1414(c), and EPA regulations at 40 CFR 220.3(a) authorize the issuance of a general permit under the MPRSA for the dumping of materials which have a minimal adverse environmental impact, and are generally disposed of in small quantities.

The proposed towing of ice piers by the NSF from McMurdo Station for disposal at sea constitutes transportation of material for the purpose of dumping in ocean waters, so it is subject to the MPRSA. EPA has determined that only minimal adverse environmental impacts will result from the ocean dumping of ice piers under this general permit.

C. Discussion

Today EPA is issuing a general permit to the NSF and its agents for the ocean dumping of man-made ice piers from the NSF research station at McMurdo Sound, Antarctica, subject to specific conditions. Agents of the NSF are included in the permit because transportation for the purpose of dumping the pier may be by vessels which are not under the direct ownership or operational control of the NSF, *e.g.*, the U.S. Military Sealift Command, the U.S. Navy, or the U.S. Coast Guard. Further, the general permit applies only to the ocean dumping of man-made ice piers from the NSF station at McMurdo Sound, Antarctica. The 1992 amendments to the MPRSA (Pub. L. 102–580) provide that permits under the MPRSA shall be issued for a period not to exceed seven years (Sec. 104(a), 33 U.S.C. 1414(a)); consequently, the term of this permit is limited to a maximum of seven years.

This general permit establishes several conditions that must be met during the life of, and prior to the ocean dumping of, an ice pier. For example, the non-embedded ends of all utility poles and bollards must be cut off from the ice pier prior to disposal, and shall not be disposed of in the ocean. In addition, this general permit requires the NSF to report by June 30 of every year to the Director of the Oceans and Coastal Protection Division, in EPA's Office of Water, on any spills, discharges, or clean-up procedures on the ice pier, and on any ocean dumping of ice piers from McMurdo Station conducted under this general permit.

The conditions specified in this general permit are intended to protect the Antarctic environment against release of contaminants from the McMurdo Station ice pier following its ocean dumping and subsequent melting. As noted above, section 104(c) of the MPRSA, 33 U.S.C. 1414(c), and EPA regulations at 40 CFR 220.3(a) authorize the issuance of general permits for the dumping of materials which have a minimal adverse environmental impact. The Agency has determined that only minimal adverse environmental impacts would result from the dumping of ice piers from the NSF base at McMurdo Station in Antarctica.

Furthermore, the NSF is directed, as a condition of this permit, to utilize a methodology to track any ice piers released from McMurdo Station for a period of one year from the date of release. Such methodologies may include the use of satellite-tracked pingers placed on the ice pier, or any other methodology that will allow data to be collected on the course, speed, and location of the ice pier. The results of these tracking efforts are to be included in the reports that the NSF is required to submit to the Agency. If tracking results demonstrate that all such ice piers released have generally followed the same path and time duration for the one year following release, the Agency will consider whether further tracking efforts and tracking reports shall be required from the NSF under any future versions of this permit.

D. Response to Comments Received

One comment was received on the proposed general permit (68 FR 775–780, January 7, 2003). That comment, from The Antarctica Project (TAP), raised two points of concern about the proposed permit. Both points derive from Section (b) of the permit; that section requires NSF or its contractors to clean up any spill or discharge on the ice pier below any visible evidence of the spill or discharge, and to clean up any spill or discharge within two hours of the spill or discharge, or as soon as possible thereafter.

The first concern raised by TAP questioned whether allowing the NSF to clean up a spill "within two hours of the spill or discharge, or as soon as possible thereafter," was sufficiently environmentally protective. TAP has proposed revising the language to read: "All spills or discharges on an ice pier must be cleaned up within two hours of the spill or discharge, unless circumstances prevent cleanup within this time frame. In that event, the spill or discharge will be cleaned up as soon as possible thereafter." Discussion of this point with NSF has made it clear that the Foundation intends to meet the two-hour cleanup requirement unless unusual circumstances prevent it from doing so. Such circumstances may include situations such as sudden severe weather conditions, a fire in the McMurdo Station complex, or a much larger discharge event elsewhere at McMurdo Station, that would require immediate and primary attention from cleanup personnel. Therefore, the language of the permit has been

modified to accommodate TAP's concern.

Second, TAP questioned whether cleaning up a spill or discharge below any visible evidence of the spill or discharge was environmentally sufficient; they stated that a spill or discharge may penetrate into the ice below the point of visibility. TAP wanted the cleanup of any spill or discharge to be confirmed by testing, presumably by sampling and analysis. As described in the section entitled **SUPPLEMENTARY INFORMATION** in the proposed permit notice (68 FR 775, 778), NSF conducted sampling and analysis on a previous ice pier, evaluating both general areas of the pier and specific locations that showed any sign of contamination. The results of these analyses demonstrated that cleanup efforts were effective in removing petroleum hydrocarbons. EPA believes that the combination of spill prevention measures by NSF to minimize the risk of any spills or discharges, as well as the removal of any visually contaminated areas in a spill event will effectively address any concerns with residual contamination of the ice pier. Consequently, the language of the permit has not been modified to reflect TAP's comments on this point.

E. Endangered Species Act

The Endangered Species Act (ESA) imposes duties on Federal agencies regarding endangered species of fish, wildlife, or plants and habitats of such species that have been designated as critical. Section 7(a)(2) of the ESA and its implementing regulations (50 CFR part 402) require EPA to ensure, in consultation with the Secretary of Interior or Commerce, that any action authorized, funded, or carried out by EPA in the United States or upon the high seas, is not likely to jeopardize the continued existence of any endangered or threatened species, or adversely affect their critical habitat.

In compliance with section 7 of the ESA, an endangered species list for the affected area of ocean dumping of ice piers from the NSF facility at McMurdo Station was requested by EPA and received from both the Fish and Wildlife Service (F&WS) of the Department of the Interior and the National Marine Fisheries Service (NMFS) of the Department of Commerce. No endangered, threatened, or candidate species are reported to occur in the affected area.

Before issuing the notice proposing issuance of a general permit to NSF for the ocean dumping of ice piers, EPA discussed this matter with both the F&WS and the NMFS pursuant to section 7 of the ESA, and the agencies have agreed that the ocean dumping of ice piers by the NSF or its agents from McMurdo Station in Antarctica will have no effect on endangered or threatened species. EPA stated that it would consider any comments offered by either the F&WS or the NMFS on this issue before promulgating a final general permit for the ocean dumping of ice piers. No further comments were received from either agency on this matter.

Dated: February 11, 2003.

Suzanne E. Schwartz,

Director, Oceans and Coastal Protection Division.

The general permit is as follows:

Disposal of Ice Piers from McMurdo Station, Antarctica

The United States National Science Foundation and its agents are hereby granted a general permit under sections 102(a) and 104(c) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1412(a) and 1414(c), to transport ice piers from the McMurdo Sound, Antarctica, research station for the purpose of ocean dumping, subject to the following conditions:

(a) The NSF shall have a spill prevention, control, and countermeasures (SPCC) plan in place, consistent with the requirements of 40 CFR 112.3, for the McMurdo Station ice pier. The SPCC plan shall address procedures for loading and unloading the following materials, and shall include methods to minimize the accidental release or discharge of any of the following materials to the ice pier:

(1) Petroleum products unloaded from supply tankers to the storage tanks at McMurdo Station;

(2) Drummed chemicals, petroleum products, and materiel unloaded from cargo freighters to supply depots at McMurdo Station; and

(3) Materials loaded to freighters destined to be returned to bases outside Antarctica.

(b) If a spill or discharge occurs on an ice pier, clean-up procedures must be completed by NSF or its contractors to a level below any visible evidence of the spill or discharge. All spills or discharges on an ice pier must be cleaned up within two hours of the spill or discharge, unless circumstances prevent cleanup within this time frame. In that event, the spill or discharge will be cleaned up as soon as possible thereafter.

(c) As part of normal monitoring requirements, a record of the following information shall be kept by NSF:

(1) The date and time of all spills or discharges, the location of the spill or discharge, a description of the material that was spilled or discharged, the approximate volume of the spill or discharge, clean-up procedures employed, and the results;

(2) The number of wooden poles remaining in the pier at the time of its release from McMurdo Station, and their approximate length;

(3) The approximate length of the steel cables remaining in the pier at the time of its release from McMurdo Station;

(4) Any other substances remaining on the pier at the time of its release from McMurdo Station; and

(5) The date of detachment of the pier from McMurdo Station, and the geographic coordinates (latitude and longitude) of the point of final release of the pier in McMurdo Sound or the Antarctic Sea.

(d) The non-embedded ends of all wooden utility poles and bollards will be cut off from the ice pier prior to disposal, and shall not be disposed of in the ocean.

(e) Prior to the ocean dumping of any ice piers, the following actions shall be taken by NSF:

(1) Other than the matter physically embedded in the ice pier (*i.e.*, the ends of light poles or bollards frozen in the pier, and the strengthening cables), all other objects (including the non-embedded portions of bollards used for maintaining a connection between the pier and the mainland, the non-embedded portions of poles used for lighting, power, or telephone connections, and any removable equipment, debris, or objects of anthropogenic origin), shall be removed from the pier prior to dumping.

(2) The gravel non-slip surface of the pier shall be removed to the maximum extent possible, and stored on the mainland for subsequent use.

(3) A methodology to track any ice piers released from McMurdo Station shall be established and utilized for a period of one year from the date of release of the ice pier. The results of these tracking efforts are to be included in the annual reports that the NSF is required to submit to EPA.

(f) The NSF shall submit a report by June 30 of every year to the Director of the Oceans and Coastal Protection Division, in EPA's Office of Water, on (1) Any spills, discharges, or clean-up procedures on the ice pier at McMurdo Station, (2) any ocean dumping of ice piers from McMurdo Station, and (3) any tracking efforts of ice piers released from McMurdo Station under this general permit for the year preceding the date of the annual report.

(g) For the purpose of this permit, the term "ice pier(s)" means those man-made ice structures containing embedded steel cable, and any remaining gravel frozen into the surface of the pier, that are constructed at McMurdo Station, Antarctica, for the purpose of off-loading the annual provision of materiel and supplies for the base at McMurdo Station and other U.S. Antarctic bases, and for loading the previous year's accumulation of wastes, which are returned to the United States.

(h) This permit shall be valid until February 18, 2010.

[FR Doc. 03–3840 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0015; FRL–7288–5]

Tribal Pesticide and Special Projects; Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Pesticide Programs (OPP), in coordination with the EPA regions, is soliciting pesticide and special project proposals from eligible Tribes and intertribal consortia for fiscal year (FY) 2003 funding. Under this program, cooperative agreement awards will provide financial assistance to eligible Tribal Governments or intertribal consortia to carry out projects that assess or reduce risks to human health and the environment from pesticide exposure. The total amount of funding available for award in FY 2003 is $445,500.

DATES: Proposals, identified by docket ID number OPP–2003–0015, must be submitted on or before March 15, 2003. If the project proposal is submitted by fax or electronically by March 15, 2003, the EPA regional contact must receive an original copy of the proposal by mail within 5 working days thereafter.

ADDRESSES: Proposals may be submitted by mail, fax, or electronically. Please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Karen Rudek, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6005; fax number: (703) 308–1850; e-mail address: *rudek.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

Potentially affected entities include federally recognized Tribal governments or qualified intertribal consortia. For this solicitation, an intertribal consortium is defined as a partnership between two or more federally recognized Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under the Federal Insecticide, Fungicide, and Rodenticide Act. Only one project proposal may be submitted by each Tribal Government or intertribal consortium.

To determine whether your Tribe or your Tribal consortium may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 35.501 and 35.502. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0015. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and to Whom Do I Submit a Project Proposal?

You may submit a project proposal through the mail, by fax, or electronically to the EPA Tribal pesticide staff in your region, as listed below. Contact the appropriate regional staff person if you need assistance or have questions regarding the creation or submission of a project proposal. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0015 in the subject line on the first page of your proposal.

EPA Region I (Connecticut, Maine, New Hampshire, Rhode Island, Vermont) Rob Koethe, EPA Region I, One Congress St., Suite 1100, (CPT), Boston, MA 02114–2023, telephone: (617) 918–1535, fax: (617) 918–1505, e-mail: *koethe.robert@epa.gov.*

EPA Region II (New Jersey, New York, Puerto Rico, Virgin Islands) Tara Masters, EPA Region II, U.S. EPA Facilities, Raritan Depot (MS50), 2890 Woodbridge Ave., Edison, NJ 08837–3679, telephone: (732) 906–6183, fax: (732) 321–6771, e-mail: *masters.tara@epa.gov.*

EPA Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia) Fatima El Abdaoui, EPA Region III, Chestnut Building (3AT11), Philadelphia, PA 19107, telephone: (215) 814–2129, fax: (215) 814–3114, e-mail: *el-abdaoui.fatima@epa.gov.*

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) Christopher Plymale, EPA Region IV, 61 Forsyth St., SW., Atlanta, GA 30303, telephone: (404) 562–9004, fax: (404) 562–8972, e-mail: *plymale.christopher@epa.gov.*

EPA Region V (Illinois, Indiana, Michigan, Minnesota, Wisconsin) Meonii Crenshaw, EPA Region V, 77 West Jackson Boulevard (DRT8J), Chicago, IL 60604–3507, telephone: (312) 353–4716, fax: (312) 353–4788, e-mail: *crenshaw.meonii@epa.gov.*

EPA Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas) Jerry Collins, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733, telephone: (214) 665–7562, fax: (214) 665–7263, e-mail: *collins.jerry@epa.gov.*

EPA Region VII (Iowa, Kansas, Missouri, Nebraska) John Tice, EPA Region VII, 100 Centennial Mall N., Room 289, Lincoln, NE 68508, telephone: (402) 437–5080, fax: (402) 323–9079, e-mail: *tice.john@epa.gov*.

EPA Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) Donna Jackson, EPA Region VIII, 999 18th St., (8P–P3T), Denver, CO 80202–2466, telephone: (303) 312–6281, fax: (303) 312–6116, e-mail: *jackson.donna@epa.gov*.

EPA Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam) Marcy Katzin, EPA Region IX, 75 Hawthorne St., (CMD–4–3), San Francisco, CA 94105, telephone: (415) 947–4215, fax: (415) 947–3583, *katzin.marcy@epa.gov*.

EPA Region X (Alaska, Idaho, Oregon, Washington) Theresa Pimentel, EPA Region X, 1200 Sixth Avenue, (ECO-084), Seattle, WA 98101, telephone: (206) 553–0257, fax: (206) 553–1775, e-mail: *pimentel.theresa@epa.gov*.

II. Background

A. What Action is the Agency Taking?

The Office of Pesticide Programs, in coordination with the EPA regions, is soliciting Tribal pesticide projects for FY 2003 funding. The total amount of funding available in FY 2003 to be awarded to Tribal Governments and/or intertribal consortia for pesticide projects is $445,500.

B. What is the Agency's Authority for Taking this Action?

Section 23(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to enter into cooperative agreements with States and Indian Tribes to implement pesticide enforcement programs. Pursuant to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for FY 1999, pesticide program implementation grants under section 23(a)(1) of FIFRA are available for "pesticide program development and implementation, including enforcement and compliance activities."

The award and administration of these grants will be governed by the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments set forth at 40 CFR part 31. Grants awarded pursuant to this solicitation are program grants subject to the regulations for "Environmental Program Grants for Tribes" set forth at 40 CFR part 35, subpart B.

III. What Should I Consider as I Prepare My Project Proposal for EPA?

1. *Scope and purpose of the OPP Tribal Pesticide and Special Projects Cooperative Agreements.* The purpose of these cooperative agreements is to provide financial assistance to eligible Tribal Governments or intertribal consortia to carry out projects related to human health and the environment that assess or reduce risk from pesticide exposure. Funds can be used for new activities or to further an existing eligible project or program.

2. *Eligible applicants and activities—*

i. *Who may submit a project proposal and may an applicant submit more than one?* Any federally recognized Tribal Government or intertribal consortium (as defined in Unit I.A.) that is eligible to receive federal funds may submit a project proposal. Only one project proposal may be submitted by each Tribal Government or intertribal consortium.

ii. *What types of projects are eligible for funding?* The Agency will consider projects related to human health and the environment that assess or reduce risk from pesticide exposure. Projects may be targeted to any pesticide concern or need facing a Tribe or intertribal consortium, including:

- Water quality.
- Traditional Tribal lifeways/subsistence. Effects of pesticides on cultural activities.
- Assessment of the need for and/or development of a pesticide management policy or plan.
- Consideration of integrated pest management, reduced pesticide use, or alternatives to pesticides.
- Sampling.
- Education about the use of pesticides in Tribal museum curatorship.
- Noxious weed educational materials and/or control alternatives.
- Public outreach/education materials relating to pest management and/or the safe use, storage and disposal of pesticides.

Water quality work products may be focused on monitoring of surface water or ground water (e.g., assessing dietary exposure to pesticides via drinking water, determining those water bodies that may be impaired due to pesticides, predicting potential exposure to endangered and threatened aquatic species, or establishing a baseline of contamination from which to measure progress in the future). Water quality projects may also include information gathering and development such as a vulnerability assessment, determining the pesticides (from either on or off reservation sources) that are most likely to impact water quality, and/or providing information to pesticide users on ways they can assist in ensuring quality water sources. Finally, water quality work may also focus on the development or implementation of programs aimed at preventing contamination of water sources, mitigating contaminated water sources or implementation of best management practices.

Other projects not related to the water quality activities described above may include the establishment of a Tribal environmental, pesticide, or water quality code, a system for the proper disposal of pesticides, and/or educational outreach to the community. Sampling projects may include soil sampling, residue sampling on culturally significant/medicinal plants, or sampling to determine the effects of pesticides on cultural activities, such as subsistence hunting and fishing.

iii. *How much money may be requested, and are matching funds required?* Maximum funding award will not exceed $50,000 per project. Indirect cost rates will not increase the $50,000 maximum funding amount. No matching funds are required.

IV. Project Proposal Application Requirements

A. What is Required as Part of the Application Process?

In order to be considered for funding, applicants must submit the following to the regional Tribal pesticide staff contact indicated in Unit I.C. of this solicitation:

1. *Project proposal (maximum 8 pages[1] of narrative), including:*

i. Name of project.

ii. Tribal project contact (including qualifications).

iii. Project description, including:

- Purpose and goal(s) of the project.
- New or continuing project. (If this proposed project is a discrete part of a continuing effort, please provide beginning and expected ending dates for the larger effort, amount of project funding previously awarded, and project activity percent achieved to date.)
- Environmental or health issues addressed.
- Approach and methods (how the project will be carried out).
- Deliverables.
- Expected/desired outcome.
- Indicators/measures of success.

[1] Additional information may be included in an appendix to the main project proposal, when it adds significant supporting detail to the main proposal.

- Resources and time frame required for this project, including beginning and ending dates.

iv. Need for assistance. Provide the following information to the extent it is relevant to demonstrating the need for the specific project that is proposed:

- A list of other sources of funding you have sought for the project.
- A description of similar, identical, or otherwise relevant work that you have undertaken, including sources of funding for that work.
- A description of Tribal or other studies, surveys and other sources of information that document the environmental issues that will be addressed by the project.

v. Responsible parties and location.

- Identify persons in charge of the project and their qualifications.
- Identify major participants in the project (e.g., universities, Federal, State or local agencies) and their qualifications.
- Identify location(s) where the project will be conducted.

vi. External stakeholders.

- Identify those who will be affected by the project and how they will be affected.
- Identify those who will participate in the project and their roles.

vii. Resources.

- Identify any personnel and/or contractors to be involved in the project, including their roles and qualifications. Description should include any relevant training or experience. For example, if the project includes sampling and writing of a Sampling and Analysis Plan, describe any experience the person(s) has in writing a Sampling and Analysis Plan, in conducting soil or water sampling, etc.
- Identify existing resources/information that will be used in conducting the project.
- Identify any additional resources (including but not limited to training) that will be required for the project.
- Describe any EPA training or assistance that will be required for Tribal personnel who will be working on the project. Such training may include the development of outreach material or a sampling analysis plan, etc.

viii. Infrastructure and coordination.

- Identify coordination efforts required to successfully conduct the project, within or outside the Tribe,
- Identify ways in which this project will improve or build Tribal capacity.
- Identify any assistance you may require in coordinating with other Federal, State or local agencies.

2. *Draft work plan (1–2 pages).* The submitted draft work plan should outline:

i. Deliverables.

ii. The separate phases of the project.

iii. The tasks associated with each phase of the project.

iv The time frames for completion of each phase or task.

v. The name, title of the person(s) who will conduct each phase or task.

vi. The dates when progress reports will be provided to EPA, clearly showing deliverables, accomplishments, delays and/or obstacles. Project costs cannot be incurred until a final work plan has been approved by the appropriate EPA regional office.

3. *Estimated budget.* The estimated budget should outline costs for personnel, fringe benefits, travel, equipment, supplies, contractual, indirect cost rate, and any other costs associated with the proposed project.

4. *Letter or resolution from the Tribal leadership showing support for and commitment to the project.* (If it is not possible to obtain a letter/resolution from your Tribal leader to submit with your project proposal, an interim letter of explanation must be included with the proposal. An original letter/resolution from your Tribal leadership will be required prior to project award.)

5. *Letter of confirmation of availability for any other funds needed to complete the project.* If your proposal requires the use of additional funds for leveraging, please include a letter from the funding source confirming that these monies are available for the project. If the budget includes a Tribal in-kind contribution, a letter of confirmation is not needed.

6. *Confidential business information.* Applicants must clearly mark information considered confidential business information. EPA will make a final confidentiality determination for information the applicant claims as confidential business information, in accordance with Agency regulations at 40 CFR part 2, subpart B.

B. When and Where Must Project Proposals be Submitted?

The applicant may submit a project proposal to the appropriate EPA regional contact by mail, fax, or electronically. The proposal must be received by the EPA regional contact listed in Unit I.C. no later than close of business March 15, 2003. If the project proposal is submitted by fax or electronically by March 15, 2003, the EPA regional contact must receive an original copy of the proposal by mail within 5 working days thereafter. Incomplete or late proposals will be disqualified for funding consideration.

V. Process for Awarding Cooperative Agreements

A. How Will Project Proposals be Reviewed and Selected?

Tribal project proposals will be reviewed and approved for validity and completeness by each respective region and then forwarded, along with regional comments, to an EPA Headquarters, Office of Pesticide Programs review panel. The team will consult with regional staff regarding their comments as necessary. If there is money left over after the selection process is completed, the review team will discuss and determine the allocation of the money. Selections will be made by close of business April 30, 2003. EPA reserves the right to reject all applications or initial/final proposals and make no awards. All costs charged to these awards must be allowable under OMB circular A-87.

B. How will Applicants be Notified?

Regions will notify their respective applicants of the selections. Those applicants not awarded funds may request an explanation for the lack of award from EPA regional staff.

VI. Criteria for Awarding Project Cooperative Agreements

Criteria on which the project proposals will be ranked are listed below. Applicants must submit information specified in this solicitation to address the award criteria. Applicants must also provide information specified in this solicitation that will assist both a Tribe and EPA in assessing the Tribe's capacity to do the project work outlined in the project proposal. The work plan and budget should reflect the training and the work that can realistically be completed during the period of performance of the cooperative agreement.

General Background Information Request

To provide reviewers with context for your proposed project, and to assist them in gaining the clearest possible sense of the impact of this project on your Tribe and the environment, please briefly provide some information about your reservation:

1. Specify the size, geography, and general climate of the reservation.
2. How many residents are Tribal members and how many are not Tribal members?
3. How much of the reservation is under cultivation?
4. Does the reservation include wetlands or other preserves?

5. If there is relevance to your project, briefly describe the Tribal and non-Tribal populations of surrounding counties/States, and surrounding land use.

6. How many people (Tribal/non-Tribal) are employed by the Tribal Government (e.g., in government services, including health care, police and fire protection).

7. How many are employed on the reservation in other areas that use pesticides or may be impacted by their use (e.g., agriculture, animal husbandry, fisheries/fishing, forestry, construction, casinos/resorts/golf course maintenance)?

8. If you are concerned about pesticide pollution that may originate within reservation boundaries, what are the potential sources and what chemicals might be involved?

9. If you are concerned with pollution migration from off-reservation sources, what are those potential sources, and what chemicals are of specific concern?

10. Is the Tribe concerned about water quality issues? If so, please describe the nature of these concerns.

11. Does the Tribe currently have any pesticide policy in place?

Selection criteria

Total possible points: 100

Technical Qualifications, Overall Management Plan, Past Performance (30 Points)

Does the person(s) designated to lead the project have the technical expertise he or she will need to successfully complete it? Does the project leader have experience in grant and project management? Proposals should provide complete information on the education, skills, training and relevant experience of the project leader. As appropriate, please cite technical qualifications and specific examples of prior, relevant experience. If this project will develop new Tribal capacity, describe how the project leader and/or staff will gain necessary training and expertise.

To whom does the project leader report? What systems of accountability and management oversight are in place to ensure this project stays on track?

Has the Tribe or Tribal consortium received past funding from EPA's Office of Pesticide Programs, other EPA programs, or other sources? If so, please identify the funding source and activities/deliverables it supported.

If previously performed work directly impacts this project, briefly describe the connection. If a directly relevant project is currently ongoing, what progress has been made?

If this new project builds upon earlier efforts, how will you use the knowledge, data, and experience of grant outputs from previous projects to shape this new proposed activity?

Justification for Need of the Project, Soundness of Technical Approach (35 Points)

Why is this project important to the Tribe or the Tribal consortium? What environmental issues(s) will it address and how serious and/or pervasive are these issues? What is the expected outcome of the project? What benefits will this project provide to the Tribe, human health, and the environment?

Has the Tribe identified a need to coordinate or consult with other parties (Tribal and/or non-Tribal) to ensure the success of this project? If so, who are they? How does the Tribe plan to involve these parties? How will they be affected by the outcome of the project?

What are the key outputs of this project? How do you propose to quantify and measure progress? Have interim milestones for this project been established? If so, what are they? How will you evaluate the success of the project in terms of measurable environmental results? Please describe the steps you will take to ensure successful completion of the project and provide a time line and description of interim and final results and deliverables.

Does your budget request accurately reflect the work you propose? Please provide a clear correlation between expenses and project objectives. Will EPA funding for this project be supplemented with funding from other source(s)? If so, please identify them.

Benefits, Sustainability, Transferable Results (35 Points)

What ecological or human health benefits does this project provide? What quality of life issues does the project address?

Does the project have limited or broad application to address risks related to pesticides?

Will the results from this project continue to provide benefits to the Tribe or other Tribes after the period of performance has expired and this funding is no longer available? How are the benefits of this effort expected to be sustained over time?

Does the applicant understand/acknowledge the need for coordination between Tribal agencies and outside communities, and/or Federal, State or local agencies? Will the project help build Tribal infrastructure or capacity? How?

Can the project results be incorporated into existing and/or future pesticide-related Tribal environmental activities? Are any of the deliverables, experiences, products, or outcomes resulting from the project transferable to other communities? Might this project readily be implemented by another Tribe?

VII. Post Selection Activity

Selected applicants must formally apply for funds through the appropriate EPA regional office. In addition, selected applicants must negotiate a final work plan, including reporting requirements, with the designated EPA regional project officer. For more general information on post award requirements and the evaluation of grantee performance, see 40 CFR part 31.

VIII. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Pesticides, Tribes.

Dated: January 30, 2003.

Stephen L. Johnson,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–3582 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0341; FRL–7289–5]

Boscalid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of boscalid in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0341, must be received on or before March 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Richard Keigwin, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7618; e-mail address: keigwin.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0341. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0341. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0341. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0341.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0341. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 3, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of a Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 1F6313

EPA has received a pesticide petition (1F6313) from BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'-biphenyl)-2-yl)]] in or on the following primary raw agricultural commodities and processed commodities: Root vegetables (crop group 1-B) 1.0 parts per million (ppm), tuberous and corm vegetables (crop group 1-C) 0.05 ppm, bulb vegetables (crop group 3) 3.0 ppm, leafy vegetables (crop group 4) 11.0 ppm, head and stem brassica (sub crop group 5-A) 3.0 ppm, legume vegetables (crop group 6) 2.2 ppm, fruiting vegetables (crop group 8) 1.0 ppm, cucurbit vegetables (crop group 9) 1.5 ppm, stonefruit (crop group 12) 1.7 ppm, berries (crop group 13) 3.5 ppm, tree nuts (crop group 14) 0.25 ppm, almond hulls 3.0 ppm, pistachios 0.65 ppm, mint 30.0 ppm, grapes 3.5 ppm, raisins 8.5 ppm, strawberries 1.2 ppm, peanut 0.05 ppm, peanut meal 0.15 ppm, peanut oil 0.15 ppm, canola 3.5 ppm, sunflower seed 3.5 ppm.

BASF Corporation also proposes to amend 40 CFR part 180 by establishing tolerances for residues of 3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'-biphenyl)-2-yl) in or on the following raw agricultural and processed commodities of rotational crops: Beet root 1.0 ppm, root vegetables (crop group 1-B) 1.0 ppm, leaves of root and tuber vegetables (crop group 2) 1.0 ppm, head and stem brassica (sub crop group 5-A) 3.0 ppm, leafy brassica greens (sub crop group 5-B) 18.0 ppm, legume vegetables - peas (crop group 6) 2.2 ppm, foliage of legume vegetables (crop group 7): forage 1.5 ppm, hay 2.0 ppm, vines 0.05 ppm, cucurbit vegetables (crop group 9) 1.5 ppm, cereal grains (crop group 15) 0.20 ppm, forage fodder and straw of cereal grains (crop group 16) forage 2.0 ppm, straw 3.0 ppm, fodder 1.5 ppm, grass forage fodder and hay (crop group 17) forage 2.0 ppm, hay 8.0 ppm, straw 0.3 ppm, seed 0.2 ppm, non-grass animal feeds (crop group 18) forage 1.0 ppm, hay 2.0 ppm, seed 0.2 ppm, mint 30.0 ppm, cotton seed 0.05 ppm, cotton gin by-products 0.3 ppm, soybean seed 0.1 ppm, soybean hulls 0.2 ppm, flax seed 3.5 ppm, sunflower seed 3.5 ppm, and rice hulls 0.5 ppm.

BASF Corporation is also proposing to amend 40 CFR part 180 by establishing tolerances for the combined residues of 3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro (1,1'-biphenyl)-2-yl and its metabolite 2-chloro-*N*-(4'chloro-5-hydroxy-biphenyl-2-yl)nicotinamide expressed in parent equivalents in the following animal commodities: Cow milk 0.10 ppm, cow muscle 0.10 ppm, cow fat 0.30 ppm, cow meat by-products 0.35 ppm, eggs 0.02 ppm, poultry muscle 0.05 ppm, poultry fat 0.05 ppm, and poultry meat by-products 0.05 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Nature of the residue studies (OPPTS 860.1300) were conducted in grapes, lettuce, and beans as representative crops in order to characterize the fate of boscalid, also known as BAS 510 F, in all crop matrices. In all three crops, the BAS 510 F Residues of Concern (ROC) were characterized as parent (BAS 510 F). A confined rotational crop study also determined that parent was the residue of concern in the representative crops of radish, lettuce, and wheat.

2. *Analytical method.* In plants the parent residue is extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and a column cleanup. Quantitation is by gas chromatography/mass spectrometry (GC/MS). In livestock the residues are extracted with methanol. The extract is treated with enzymes in order to release the conjugated glucuronic acid metabolite. The residues are then isolated by liquid/liquid partition followed by column chromatography. The hydroxylated metabolite is acetylated followed by a column cleanup. The parent and acetylated metabolite are quantitated by gas chromatography/electron capture detection (GC/ECD).

3. *Magnitude of residues.* Field trials were carried out in order to determine the magnitude of the residue in the following crops: Almonds, beans (dry and succulent), edible peas (dry and succulent), canola, carrot, cucurbits, grape, lettuce, leafy vegetables (brassica and non-brassica), onion (dry bulb and green), peanut, pecan, pepper (bell and chili), pistachio, potato, berries (crop group), stonefruit (cherries, peaches, plums), strawberry, tomato, mint, and sunflower. Field trials were conducted in the United States and Canada in the required regions. Field trials were carried out using the maximum label rate, the maximum number of applications, and the minimum preharvest interval for each crop or crop group. In addition, processing studies were conducted on the following crops to determine concentration factors during normal processing of the raw agricultural commodity into the processed commodities: Canola, grape, peanut, plum, tomato, sunflower, and mint. Magnitude of the residue studies were also carried out in dairy cows and hens. Tier III field rotational crop studies were conducted to support rotational crop tolerances for beet roots, beet tops, cotton, foliage of legume vegetables, soybeans, cereals, grass and non-grass animal feeds. Processing studies were conducted on soybeans and rice to determine concentration factors.

B. Toxicological Profile

1. *Acute toxicity.* Based on available acute toxicity data BAS 510 F and its formulated products do not pose acute toxicity risks. The acute toxicity studies place technical BAS 510 F in toxicity category IV for acute oral; category III for acute dermal and category IV for acute inhalation. BAS 510 F is category IV for both eye and skin irritation, and it is not a dermal sensitizer. Two formulated end use products are proposed, a Water Dispersible Granule (WG) termed BAS 510 02 F containing 70% BAS 510 F and a Water Dispersible Granule (WG) termed BAS 516 02 F containing a 2:1 mixture of BAS 510 F and BAS 500 F. BAS 510 02 F has an acute oral toxicity category of III, acute dermal of III, acute inhalation of IV, eye irritation of III, skin irritation of IV, and is not a dermal sensitizer. BAS 516 02 F has an acute oral toxicity category of III, acute dermal of III, acute inhalation of IV, eye irritation of III, skin irritation of IV, and is not a dermal sensitizer.

2. *Genotoxicity.* Ames Test (one study; point mutation): Negative; *In Vitro* CHO/HGPRT Locus Mammalian Cell Mutation Assay (one study; point mutation): Negative; *In Vitro* V79 Cell Cytogenetic Assay (one study; chromosome damage): Negative; *In Vivo* Mouse Micronucleus (one study; chromosome damage): Negative; *In Vitro* Rat Hepatocyte (one study; DNA damage and repair): Negative. BAS 510 F has been tested in a total of five genetic toxicology assays consisting of *in vitro* and *in vivo* studies. It can be stated that BAS 510 F did not show any mutagenic, clastogenic or other genotoxic activity when tested under the conditions of the studies mentioned above. Therefore, BAS 510 F does not pose a genotoxic hazard to humans.

3. *Reproductive and developmental toxicity.* The reproductive and developmental toxicity of BAS 510 F was investigated in a 2–generation rat reproduction study as well as in rat and rabbit teratology studies.

There were no adverse effects on reproduction in the 2–generation study at any dose tested. Pup effects were observed, with parental toxicity, at the highest dose tested only. In both parental generations, reduced food consumption and reduced body weight (bwt) gain were observed at 10,000 ppm. Both absolute and relative liver weights were increased 21% in F1 generation parental females at the high dose of 10,000 ppm only. Hepatocellular centrilobular hypertrophy (usually slight) was observed in many animals of both sexes in both the F0 and F1 generations at 1,000 ppm, and in all animals of both sexes at 10,000 ppm. Additionally, some of the parental male rats at 10,000 ppm, in both generations, displayed centrilobular liver cell degeneration. Developmental toxicity was seen at 1,000 ppm in the form of decreased pup weights in the F2 males, and at 10,000 ppm in the form of decreased pup weight for both males and females of both the F1 and F2 generations. The parental systemic and developmental toxicity no observed adverse effect levels (NOAEL) are both 100 ppm (12 milligrams/kilogram/day (mg/kg/day).

No teratogenic effects were noted in either the rat or rabbit developmental studies. In the rat study, evidence of maternal or developmental toxicity was not observed at any dose (highest dose tested of 1,000 mg/kg/day). Neither a maternal nor developmental lowest observed adverse effect level (LOAEL) were found since the highest dose tested was the NOAEL in both studies. In the rabbit teratology study, maternal toxicity observed at the mid dose of 300 mg/kg bwt consisted of discolored/reduced feces in one dam and an abortion in one dam. This finding is not necessarily indicative of a definitive test substance related adverse effect. The dam which displayed the fecal alterations and abortion also displayed decreased body weight and body weight gain - compared to the group mean - during gestation. These decreases occurred even prior to compound administration. Food consumption was also dramatically decreased in this dam compared to the other animals in the group. Every day from gestation day (GD) 1 - 12, this dam had food consumption values, which were less than half the mean for the group (compound administration began on GD 7). From GD 13 to 26 (when the animal aborted and was sacrificed) this dam ate essentially nothing (food consumption during this time period was ≤ 1.5 grams/day). These decreases in body weight, body weight gain, and food consumption, prior to compound administration, all indicate an animal in poor health and this poor state of health, rather than compound exposure, was likely the reason for the fecal alterations and abortion.

At the high dose of 1,000 mg/kg bwt a maternal body weight gain decrease compared to controls of 81% was observed during the treatment period. Reduced food consumption, reduced body weight and abortions in three dams, were also seen at 1,000 mg/kg/day. Evidence of developmental toxicity was not seen at any dose tested.

Developmental neurotoxicity (DNT) was not observed at any dose in the developmental neurotoxicity study. No maternal toxic effects were noted at any dose in this study. No developmental toxicity was seen at the low dose of 12 mg/kg/day (100 ppm). Reduced body weights and body weight gains were seen at 118 mg/kg/day (1,000 ppm) during postnatal day (PND) 1–4. Reduced body weights and body weight gains were seen at 1,183 mg/kg/day (10,000 ppm) as well as decreased absolute pup brain weight at day 11 post partum (p.p.) (both sexes) and decreased brain length (males only) at day 11 p.p. The reduced pup brain weights and decreased brain length go hand-in-hand and both are due to the decreased pup weights seen at this dose. In this respect, it should be noted that pup brain weights relative to body weight at p.p. 11 were not significantly different from controls at this dose.

Though no maternal toxicity was seen in this study, other studies using similar doses of BAS 510 resulted in maternal toxicity. A dose of 118 mg/kg/day in female rats of the same strain in the multi-generation study, resulted in an increased incidence of hepatic centrilobular hypertrophy a parameter which could not have been detected in the DNT study as liver histopathology on parental animals was not performed in the DNT study.

4. *Subchronic toxicity.* The subchronic toxicity of BAS 510 F was investigated in 90–day feeding studies with rats, mice and dogs, and in a 28–day dermal administration study in rats. A 90–day neurotoxicity study in rats was also performed. Generally, mild toxicity was observed. At high dose levels (doses above the LOAELs) in feeding studies, all three species displayed alterations in various clinical chemistry parameters. These clinical chemistry alterations were likely secondary to general toxicity. Statistically significant increased absolute and relative thyroid weights were observed in male rats only at doses at and above the LOAEL. Increased absolute and relative liver weights were observed in both sexes at doses above the LOAEL in rats and dogs. Increased absolute and relative liver weights were seen in both sexes of the mouse at lower doses. However, the increases in liver weights at these lower doses in the mouse were not deemed to be compound related due to the unusually low concurrent control liver weight values. At doses above the LOAELs, liver weight increases were supported by histopathology alterations in the rat and mouse, but not in the dog. Overall, only mild toxicity was observed in oral subchronic testing.

In the 28–day repeat dose dermal study, no systemic effects were noted up to the highest dose tested of 1,000 mg/kg/day.

In a 90–day rat neurotoxicity study, there was no mortality, signs of clinical toxicity, adverse effects on food consumption or body weight, at any dose level in either sex. No signs of neurotoxicity were observed during clinical observations, functional observation batteries, motor activity measurements of neuropathology. Therefore, there were no selective neurotoxic effects. Adverse effects were not seen even at the highest dose level tested. A LOAEL was not found and the NOAEL is the highest tested of 15,000 ppm (1,050 mg/kg/day in males; 1,272 mg/kg/day in females).

5. *Chronic toxicity.* Based on review of the available data, the Reference Dose (RfD) for BAS 510 F will be based on a 24–month feeding study in rats with a threshold no observed effect level (NOEL) of 5 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.05 mg/kg/day. The following are summaries of chronic toxicity studies submitted to EPA. The chronic toxicity/oncogenicity studies with BAS 510 F include a 12–month feeding study with Beagle dogs, an 18–month B63CF1 mouse feeding study, a 24–month Wistar rat chronic feeding study and a 24–month Wistar rat oncogenicity study.

At the highest dose tested in dogs, effects observed consisted primarily of increased liver and thyroid weights and some serum clinical chemistry changes. The NOAEL was 800 ppm (21.8 mg/kg bwt males; 22.1 mg/kg bwt females).

Decreased body weights were seen in males in the mouse chronic study at doses of 400 ppm and above. Decreased female body weight was seen at doses of 2,000 ppm and above. The target organ in this study was the liver. In both the rat chronic and oncogenicity studies, the highest dose tested of 15,000 ppm exceeded a maximum tolerated dose (MTD) and was discontinued after 17 months. Effects observed at the next highest dose of 2,500 ppm primarily centered around the thyroid and liver.

Overall, mild toxicity was observed with chronic exposure to BAS 510 F. No evidence of treatment-induced oncogenicity was observed in the mouse or dog studies. A slight increase in thyroid follicular cell adenomas was seen in both sexes at the high dose when the data from both rat bioassays are combined.

A mode of action (MOA) for the thyroid follicular cell adenomas has been proposed. This MOA is based on the EPA publication "Assessment of Thyroid Follicular Cell Tumors," March 1998, EPA/630/R-97/002. This document describes the criteria, which must be met in order for a compound to be considered under the MOA described in that publication. BASF Corporation believes that BAS 510 F has met the cited criteria.

Threshold effects. Based on a review of the available chronic toxicity data, BASF believes EPA will establish the Reference Dose (RfD) for BAS 510 F at 0.05 mg/kg/day. This RfD for BAS 510 F is based on the 2–year chronic and 2–year oncogenicity studies in rats with a threshold average NOAEL of 5 mg/kg/day for males and females. Using an uncertainty factor of 100, the RfD is calculated to be 0.05 mg/kg/day. Based on the acute toxicity data, BASF believes that BAS 510 F does not pose any acute dietary risks.

BAS 510 F was shown to be non-carcinogenic in mice and dogs. There was a slight increase in thyroid follicular cell adenomas at the high dose in both sexes in the rat. A threshold-based mode of action for these tumors based on the EPA publication "Assessment of Thyroid Follicular Cell Tumors" (EPA/630/R-97/002, March, 1998) has been proposed. BASF believes the data to support this proposed mode of action are strong, and that the thyroid tumors seen in the rat following BAS 510 F exposure have a threshold. In addition, a battery of genotoxicity studies demonstrated that BAS 510 F has no genotoxic or clastogenic potential. Therefore, BASF believes that the threshold approach to regulating BAS 510 F is appropriate. Also, it should be noted that, while the Agency has in the past considered tumors of this type to be potential human carcinogens, the European Union has published a policy which considers these tumor types, when they occur at low incidence rates in the rat, to not be relevant to man. The publication: "European Commission, European Chemicals Bureau, ECBI/49/99 Add. 1 Rev. 2; Draft Summary Record, Commission Group of Specialized Experts in the Fields of Carcinogenicity, Mutagenicity and Reprotoxicity, Meeting at Arona, 12 September 1999." Therefore, BASF believes that these tumors are not likely relevant to humans and, if these tumors are to be considered relevant to humans, the threshold approach to cancer risk assessment is appropriate.

6. *Animal metabolism.* In the rat, the predominant route of excretion of BAS 510 F is fecal with urinary excretion being minor. The half-life of BAS 510 F is less than 24 hours. Saturation of absorption appears to be occurring at the high dose level. BAS 510 F is rapidly and intensively metabolised to a large number of biotransformation products. The hydroxylation of the diphenyl moiety was the quantitatively most important pathway. Second most important was the substitution of the Cl of the 2-chloropyridine part against SH by conjugation with glutathione. No major differences were observed with regard to label, sex, and dose level. In hens and goats the residues of concern were determined to be parent, the hydroxylated metabolite M510F01 (2-chloro-*N*-(4'chloro-5-hydroxy-biphenyl-2-yl)nicotinamide), and the glucuronic acid of the metabolite M510F02.

7. *Metabolite toxicology.* No additional studies were required for metabolite toxicology.

8. *Endocrine disruption.* No specific tests have been conducted with BAS 510 F to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there were no significant findings in other relevant toxicity studies (i.e., subchronic and chronic toxicity, teratology and multi-generation reproductive studies) which would suggest that BAS 510 F produces endocrine-related effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* A chronic dietary exposure analysis was conducted for BAS 510 F including crops which are target uses as well as inadvertent residues in rotational crops. The analysis assumed 100% of the crops were treated, default processing factors (even though much lower experimentally-derived processing factors are available), and used the tolerance value for residues. Even with these worst-case assumptions, it was determined that the Theoretical Maximum Residue Contribution (TMRC) was only 30.1% of the RfD dose for the U.S. population and 62.5% for children 1–6 years (the highest exposed age-related subpopulation). Based on the toxicology results, an acute dietary risk assessment for BAS 510 F is most likely not required, but if so only for children 1–6 years. For dietary exposure estimation, 100% crop treated and tolerance values for residues were used. The resulting acute exposure prediction for children 1–6 years (the highest exposed age-related subpopulation) resulted in an acceptable 8.8% of the acute reference dose at the 95th percentile. If a more realistic scenario were used assuming percent crop treated and the range of residues, a much lower exposure would be obtained.

ii. *Drinking water.* Estimates of ground water and surface water levels were determined using Screening Concentrations in Ground Water (SCI-GROW) and First Index Reservoir Screening Tools (FIRST) models, respectively. Using SCI-GROW to estimate chronic exposure to BAS 510 F from drinking water, drinking water consumption utilizes 0.15% of the RfD for the U.S. population and 0.044% for children ages 1–6. Using FIRST to estimate chronic exposure to BAS 510 F from drinking water, drinking water consumption utilizes 0.08% of the RfD for the U.S. population and 0.24% of the RfD for children ages 1–6.

2. *Non-dietary exposure.* BAS 510 F is not currently planned for residential uses. Thus, residential exposure is not aggregated into the risk assessment.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." BAS 510 F is a foliar fungicide chemically belonging to the carboxin class of fungicides. BAS 510 F acts in the fungal cell by inhibiting of mitochondrial respiration through inhibition of the succinate-ubiquinone oxidase reductase system in Complex II of the mitochondrial electron transport chain. BAS 510 F shares this mode of action with only one other currently registered U.S. pesticide carboxin. EPA is currently developing methodology to perform cumulative risk assessments. At this time, there is no available data to determine whether BAS 510 F has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, BAS 510 F does not appear to produce a toxic metabolite produced by other substances.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and the reliability of the toxicity data, BASF has estimated that aggregate exposure to BAS 510 F will utilize 30.2% of the RfD for the US population. For the highest exposed age-related subpopulation (children 1-6 years), the maximum aggregate exposure is predicted to be 62.8% of the reference dose. BASF concludes that there is a reasonable certainty that no harm will result from the aggregate exposure to residues of BAS 510 F, including anticipated dietary and drinking water exposures and non-occupational exposures.

2. *Developmental toxicity in the rat.* A developmental study was conducted via oral gavage in rats with dosages of 0, 100, 300, and 1,000 mg/kg bwt/day with a maternal and developmental no observed adverse effect level (NOAEL) of 1,000 mg/kg. No evidence of developmental toxicity was observed up to the highest dose tested.

3. *Developmental toxicity in the rabbit.* A developmental study was

conducted via oral gavage in rabbits with dosages of 0, 100, 300, and 1,000 mg/kg bwt/day. The NOAEL for maternal toxicity was 100 mg/kg bwt/day and was 1,000 mg/kg/day for developmental toxicity. As noted above this NOAEL is based on fecal alterations and an abortion in a single dam at the next highest dose of 300 mg/kg/day. The dam which displayed the fecal alterations and abortion also displayed decreased body weight, body weight gain and food consumption - compared to the group mean - during gestation. These decreases occurred even prior to compound administration. These decreases in body weight, body weight gain, and food consumption, prior to compound administration, all indicate an animal in poor health and this poor state of health, rather than compound exposure, was likely the reason for the fecal alterations and abortion. No teratogenic effects were observed at any dose level.

4. *Reproductive toxicity.* A 2–generation reproduction study in rats was conducted with dosages of 0, 12, 118, and 1,183 mg/kg bwt/day. No impairment of reproductive function was noted at any dose. The parental and developmental NOAEL are both 12 mg/kg/day. Mild effects in both the parents and pups were noted at 118 mg/kg/day and consisted of an increased incidence of hepatic centrilobular hypertrophy in parents and, in the pups, slightly decreased body weight and body weight gain (7%) in F2 generation only, and only in males. At 1,183 mg/kg/day paternal effects included decreased body weights and food consumption, increased liver weights and increased incidence of hepatic centrilobular hypertrophy and degeneration. Pup effects at this dose were an increase in pup mortality in the F2 only and a decreased body weight in F1 and F2.

5. *Reference dose.* In all reproductive studies, the NOAELs for developmental effects were either equal to or higher than those for the parents. Therefore, BAS 510 F shows no selective toxicity for the young. In addition, there were no direct neurotoxicity effects noted in either the acute or subchronic neurotoxicity studies.

Based on these results, no additional safety factors to protect children are warranted. Since the reproductive studies NOAELs are higher than the RfD calculated from the chronic rat study, BASF believes the RfD of 0.05 mg/kg/day is also appropriate to measure safety for infants and children. Therefore, the chronic population adjusted dose is also 0.05 mg/kg bwt/day.

F. International Tolerances

A maximum residue level has not been established for BAS 510 F in any crop by the Codex Alimentarius Commission.

[FR Doc. 03–3694 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0007; FRL–7289–1]

Pyrimethanil; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of pyrimethanil in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0007, must be received on or before March 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A: Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0007. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0007. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0007. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0007.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0007. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 3, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Janssen Pharmaceutica Inc.

PP 2F6480

EPA has received a pesticide petition (2F6480) from Janssen Pharmaceutica Inc., Plant and Material Protection Division, 1125 Trenton-Harbourton Road, Titusville, NJ 08560 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the fungicide, pyrimethanil (4,6-dimethyl-*N*-phenyl-2-pyrimidinamine) in or on the raw agricultural commodities citrus fruits (calamondin, citrus citron, citrus hybrids, grapefruit, kumquat, lemon, lime, mandarin, sour and sweet oranges, pummelo and Satsuma mandarin) at 6 parts per million (ppm), pome fruit (apples, pears, oriental pears, crabapples, loquats, mayhaws, and quince) wet pomace at 12 ppm, and pome fruit (apples, pears, oriental pears, crabapples, loquats, mayhaws, and quince) at 3 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolic profile of pyrimethanil has been investigated following application to five different crops (apple, carrots, grapes, lettuce and tomatoes) and is well understood. In plants, pyrimethanil is the only significant residue ranging from essentially all of the Total Radioactive Residues (TRR) in carrots and tomatoes to 44% in lettuce. Limited metabolism of pyrimethanil occurs with minor amounts (less than 10%) of the phenyl and pyrimidyl hydroxylated metabolites (AE C614276, AE C614277, AE C614278, and AE C621312) being released after acid hydrolysis. Analysis of the foliage from apples and carrots confirmed that the metabolism of pyrimethanil in plants proceeded primarily via hydroxylation of the aromatic ring structures as well as the methyl groups.

2. *Analytical method.* The plant metabolism studies indicated that analysis for the parent compound, pyrimethanil was sufficient to enable the assessment of the relevant residues in crop commodities. For citrus, the pyrimethanil was extracted with acetone, the extract acidified and washed with isohexane and basified to enable solvent partition. After solvent exchange to ethyl acetate, the residue is determined using GC-MS. For pome fruits, the pyrimethanil was extracted directly with ethyl acetate/isohexane (1:1), dried, and analyzed for residues with GC-MS. The limit of quantitation is 0.05 ppm. These methods allow detection and measurement of residues in or on agricultural commodities at or above the proposed tolerance level.

3. *Magnitude of residues.* Magnitude of residue trials were conducted for pyrimethanil on apples, pears, and citrus (lemons, oranges (navels and valencias), tangerines, tangelos, and grapefruit). Trials were conducted in the major producing states which together represent 97%, 70%, and 75% of the citrus, apple and pear domestic production, respectively. Samples were collected according to good agricultural practices at harvest and/or following a postharvest treatment. The pre-harvest interval (PHI) for pome fruit was 7 days following application of the fungicide at the proposed label rate, to approximate maximum field residues. The proposed PHI for pome fruit is 72 days. Samples were harvested at maturity and analyzed with a method having an level of quantitation (LOQ) of 0.05 ppm pyrimethanil. Residues in the raw agricultural commodity (RAC) samples (range, maximum and average) are discussed per crop grouping below.

i. *Citrus fruits (calamondin, citrus citron, citrus hybrids, grapefruit, kumquat, lemon, lime, mandarin, sour and sweet oranges, pummelo and Satsuma mandarin).* Nine trials were conducted on citrus during 2001. An end use formulation containing 400 gram/liter or 3.34 lbs/active ingredient/gallon of pyrimethanil was applied by drench, dip and/or line spray in water, storage wax or shipping wax. Multiple treatments (single, double and triple applications) were investigated. A maximum of ten different multiple treatment scenarios were investigated for lemons, seven for oranges, and five for grapefruit. Fruit were washed between treatments only when this was typical of commercial packinghouse operations. The maximum rates applied were 1,000 ppm in drench and dip tanks, and 2,000 ppm in any type of line spray. The maximum proposed use recommendations are for a 4 minute drench at 500 ppm, 2 minute dip at 1,000 ppm, and/or 2,000 ppm line spray for water or storage and shipping wax, with a maximum of three applications. Whole fruit and edible pulp were analyzed separately for pyrimethanil residues. In the whole fruit samples, maximum residues were 6.0 ppm for the proposed applications, and 0.76 ppm for edible pulp. Mean pyrimethanil residues ranged from 1.1 ppm for an single aqueous line spray applied with a 20,000 ppm treating solution to 5.45 ppm for a triple treatment that included a drench (1,000 ppm), dip (1,000 ppm), and 2,000 ppm wax line spray. A single orange trial was established in Florida as a processing study. Pyrimethanil was applied as a dual application at rates of 2,000 and 4,000 ppm active ingredient (a.i.) in aqueous and wax line sprays, respectively. This rate is the maximum for the aqueous treatment and two times the proposed label rate for wax incorporation. Mean pyrimethanil residue levels found in/on the samples were: Whole citrus fruits 7.46 ppm, dried pulp 2.93, orange juice 0.05 ppm and citrus oil 131 ppm. No pyrimethanil-derived residue concentrated from the whole fruit into the orange juice or dried pulp. However, the pyrimethanil residues concentrated from the whole oranges into the citrus oil by a factor of 17.5. Citrus oil is not considered as a ready-to-eat food commodity and since none of the of the processed food products are likely to contain pyrimethanil residues above the proposed citrus tolerance of 6.0 ppm in the raw agricultural commodity of whole fruit utilizing dilution factors, tolerances are not necessary for citrus oil.

ii. *Pome fruit (apples, pears, Oriental pears, crabapples, loquats, mayhew, and quince).* Ten trials were established for this study, four in Washington, four in California, and two in New York. Of the 10 trials, 4 were conducted on pears and 6 on apples. A pre-harvest formulation of pyrimethanil was applied to the apple or pear trees during a single application, at a nominal rate of 0.40 lb of a.i., 7 days prior to harvest. Mean pyrimethanil residue levels found in or on the apple fruit following both preharvest and postharvest applications ranged from 0.49 ppm for a single aqueous line spray at 1,000 ppm a.i. to 1.44 ppm for the dual treatment consisting of a drench (1,000 ppm) followed by an aqueous line spray (1,000 ppm). Individual sample residues ranged from a low of 0.11 ppm for the 1,000 ppm aqueous line spray to 2.84 ppm for the dual treatment of a 1,000 ppm drench followed by a 2,000 ppm wax application. The limit of quantitation of the analytical method was 0.05 ppm. A single trial was established in Washington as a processing study. Pyrimethanil was applied to apple trees four times prior to harvest. Applications were made at a nominal rate of 2.0 lb a.i./Acre, with 7 days between applications. This rate is approximately five times the proposed label application rate. Mean pyrimethanil residue levels found in or on the samples were: Whole apple fruit 0.17 ppm, wet pomace 0.69 ppm, and juice 0.06 ppm. No pyrimethanil-derived residue concentrated from the whole fruit into the apple juice. However, the pyrimethanil residues concentrated from the whole apples into the wet pomace by a factor of 4.

B. Toxicological Profile

1. *Acute toxicity.* Pyrimethanil is of low acute toxicity placing the active ingredient in Toxicity Category II, III and IV. Pyrimethanil is non-irritating to the eyes and skin and is not a skin sensitizer.

Acute neurotoxicity. Groups of 10 rats/sex/group were dosed once by oral gavage at dose levels of 0, 30, 100, 1,000 milligrams/kilogram (mg/kg) of pyrimethanil bodyweight. On the day of dosing, high dose animals experienced transient behavioral effects attributable to receipt of a substantial bolus dose of test substance. No histopathological lesions accompanied these transient behavioral changes. The no observed adverse effect level (NOAEL) was 100 mg/kg due to reduced body temperature for males. The NOAEL was 30 mg/kg.

2. *Genotoxicity.* Pyrimethanil is not mutagenic or genotoxic in any assay in either the presence or absence of metabolic activation.

3. *Reproductive and developmental toxicity.* Pyrimethanil is not a developmental or reproductive toxicant.

i. *Teratology - rat.* Thirty Sprague Dawley rats/group received doses of 0, 7, 85, 1,000 mg/kg of pyrimethanil by gavage from gestation days (GD) 6-15. At the highest dose tested, reduced maternal body weight gain was observed during GD6-15, along with a slight but statistically significant decrease in food consumption, hair loss, hunched posture, slight emaciation, and slightly reduced mean fetal body weight. The maternal and developmental NOAEL was 85 mg/kg.

ii. *Teratology - rabbit.* Groups of at least 18 time-mated New Zealand White rabbits received oral gavage doses of 0, 7, 45, or 300 mg/kg/day pyrimethanil over gestation days (GD) 7-19. At the highest dose tested, there was a decrease in body weight gain, production of feces and food consumption. Three females were euthanized due to severe emaciation. The highest dose, 300 mg/kg/day exceeded the maternal maximum tolerated dose (MTD). The maternal NOAEL was 45 mg/kg/day due to reduced fecal production in 1/3 of the animals. The high dose resulted in reduced mean fetal body weight, increased incidence of runts, delayed skeletal ossification and incidence of fetuses with 13 thoracic vertebrae and ribs. The maternal NOAEL was 7 mg/kg/day. The developmental NOAEL was 45 mg/kg/day.

iii. *Two-generation reproduction - rat.* Three groups of 30 Sprague-Dawley rats per sex received dietary exposure to pyrimethanil at levels of 0, 1.7, 20.9, or 266.7 mg/kg/day. In the parental generation at the highest dose tested there was a statistically significant decrease in mean body weight gain in both sexes. Mean pup weights, observed on PND1 through weaning, were reduced, though were within the range of historical controls. In the F1 generation at the highest dose tested, mean body weights and mean food consumption were reduced. Though the mean score for the combined sexes was the same as the controls, a marginally different air-righting reflex at PND11 associated with reduced body weight was seen in high dose male pups. The NOAEL for maternal and developmental toxicity was 20.9 mg/kg/day. The reproductive NOAEL was 266.7 mg/kg/day.

4. *Subchronic toxicity*—i. *28–Day dietary rat.* Five Sprague-Dawley rats/sex/group received dietary exposure to pyrimethanil for 28 days at 0, 844, 1,161, 1,500, and 2,710 mg/kg/day. All doses exceeded the maximum tolerated dose. Severe emaciation was observed at all dose levels. Body weight gains and food consumption were reduced. Liver and thyroid histopathology were observed, along with reduced hemoglobin, MCV and MCH. Kidney, adrenal and liver weights were altered. No NOEL or NOAEL was achieved.

ii. *90–Day dietary rat.* Ten Sprague-Dawley rats/sex/group received pyrimethanil in the diet at dose levels of 0, 5.4-6.8, 54.5-66.7, and 545-667 mg/kg/day (males and females, respectively). High dose animals had reduced body weight gain and food consumption, increased urinary protein in males, colored urine (not blood or bilirubin) and minimal hepatocellular hypertrophy. The NOAEL in males was 54.5-66.7 (males and females, respectively) due to colored urine and a low incidence of minimal centrilobular hepatocellular hypertrophy. The NOAEL was 5.4 mg/kg/day (males) -6.8 mg/kg/day (females).

iii. *28-Day dietary-mouse.* Five CD-1 mice/sex/group received dietary doses of 0, 167-236, 567-667, 1960-2357 mg/kg/day, males and females respectively, for 28 days (all the mice in one additional high dose group, 30,000 ppm, died within the first week of the study). At 1960-2357 mg/kg/day, animals experienced: body weight loss (females), decreased body weight gain during the first 2 weeks (males), a statistically significant decrease in cholesterol, statistically significant decreases in relative liver weights (females), pigmentation of thyroid follicles, urolithiasis, moderate urothelial hyperplasia in urinary bladder, and

slight kidney tubular degeneration (females). The NOAEL was 167-236 mg/kg/day.

iv. *90–Day dietary-mouse.* Twenty CD-1 mice/sex/group received pyrimethanil diet exposure at dose levels of 0, 12-18, 139-203, 1,864-2,545 mg/kg/day males-females for 90 days. At the high dose, animals had decreased body weight and increased food consumption, cholesterol and total bilifubin. High dose females had increased relative liver weights. Histopathology in the high dose animals was found in the kidneys, liver, thyroid, and urinary bladder. High dose males had slight urinary tract tubular dilation and slight to moderate hyperplasia of bladder epithelium. The NOAEL was determined to be 12 mg/kg/day (males) -18 mg/kg/day (females). Based on mild hepatic glycogen depletion, the NOAEL was 139-203 mg/kg/day (males and females, respectively).

v. *90–Day dietary-dog.* Four beagle dogs/sex/group received pyrimethanil by gavage for 90 days at doses of 0, 6, 80, 1,000 mg/kg/day. The high dose was lowered to 800 mg/kg/day on day 7 due to frequent and consistent vomiting. Decreased body weight, food, and water consumption were observed. Males had a significant reduction in phosphate, while females experienced a slight reduction in sodium, anion gap and total protein. At 80 mg/kg/day, infrequent vomiting after dosing and decreased water consumption were observed. After 4 weeks of dosing at 80 mg/kg/day, males had significantly reduced phosphate. The NOAEL was 80 mg/kg/day. The NOEL was 6 mg/kg/day.

vi. *Subchronic neurotoxicity.* Groups of 12 Sprague-Dawley rats per sex were treated for 13 weeks with pyrimethanil via the diet at 0, 4, 38.7-44.3, 391.9-429.9 mg/kg/day (males and females, respectively). There were no treatment-related findings in behavioral assessments, neuropathology or brain morphometrics. The NOAEL for this study is 38.7-44.3 mg/kg/day (males and females, respectively) based upon decreased body weight and food consumption in the high dose group.

vii. *Dermal toxicity evaluation.* No dermal studies have been conducted for pyrimethanil.

5. *Chronic toxicity*—i. *Chronic toxicity - dog.* Four beagle dogs/sex/group received pyrimethanil by gavage at levels of 0, 2, 30, or 250 mg/kg/day for 12 months. The high dose was reduced from 400 to 250 mg/kg/day on day 8 of treatment due to excessive vomiting during the first week of treatment. At the high dose, there was a decrease in mean body weight gain and mean consumption of food and water. The NOAEL for the study was 30 mg/kg/day, with the high dose of 250 mg/kg/day being the NOAEL.

ii. *Combined chronic toxicity/oncogenicity - rat.* Seventy Sprague-Dawley rats/sex/group received pyrimethanil by diet at levels of 0, 1.3-1.8, 17-22, and 221-291 mg/kg/day (males and females, respectively) for 2 years. At the highest dose tested, body weight gain and food consumption were decreased. Absolute liver weights were increased. Histopathology revealed centrilobular hepatocyte hypertrophy, increased incidence of eosinophilic foci (males), thyroid follicular hyperplasia, hypertrophy and colloid depletion, and the presence of a brown pigment, identified as lipofuscin in thyroid follicular cell epithelium. There was a statistically significant, dose-dependent increase in the incidence of benign thyroid follicular cell adenomas. There was no increased incidence in any malignant tumor or increase in tumor multiplicity as a result of daily dietary ingestion of pyrimethanil at any dose level. The results of special studies, discussed below, demonstrate that the benign thyroid tumors are likely a secondary result of a disruption of thyroid-pituitary homeostasis, a well-known, threshold-mediated mechanism. The NOAEL was 17 mg/kg/day (males) and 22 mg/kg/day (females).

iii. *Oncogenicity - mouse.* Fifty-one CD-1 mice/sex/group received pyrimethanil by diet at 0, 16, 160, and 1,600 ppm (corresponding to 0, 2-2.5, 20-24.9, and 210.9-253.8 mg/kg/day in males and females, respectively). There was an increase in the number of high dose male deaths caused by urogenital tract lesions. Urinary bladder histopathology on those dying during the course of the study indicates an increase in the incidence of male urinary bladder distension, cystitis, urothelial hyperplasia and inflammation of the penis. These findings are consistent with the findings of both the 28- and 90-day studies indicating that high dose administration of pyrimethanil resulted in urolith formation leading to irritation, distension and hyperplasia of the urinary bladder and urinary tract. Chronic dietary treatment with pyrimethanil produced no increased incidence of tumor-bearing mice nor of any specific tumor type suggestive of a carcinogenic effect. The NOAEL for both sexes was 20-24.9 mg/kg/day (males and females, respectively).

iv. *Special studies.* Since rodent thyroid tumors are fairly common, and since the EPA has established that five lines of evidence are required to prove the thyroid-pituitary disruption mode of action for rodent thyroid tumors, special studies were undertaken

a. *Thyroid mechanistic study (14-Day).* Sprague Dawley rats received 378.5 mg/kg/day of pyrimethanil for 14 days to study the effects of pyrimethanil on the thyroid and liver microsomal enzymes. An increase in the levels of UDPGT and a corresponding statistically significant increase in liver weight were observed. Thyroid hormones T4 and T3 were decreased, while TSH levels were significantly increased. All effects were shown to be reversible.

b. *Dietary thyroid function test using perchlorate discharge (7-Day).* Sprague Dawley rats received 509 mg/kg/day pyrimethanil or 177 mg/kg/day propylthiouracil, or 109 mg/kg/day phenobarbital in order to study the function of the thyroid gland. The animals fed pyrimethanil had 43% decreased body weight gain, 21% decreased food consumption and a 150% increase in uptake of iodine-125. There was no significant discharge of radioactive iodine from the thyroid after administration of perchlorate.

The required five lines of evidence to support the threshold mode of action for thyroid pituitary disruption and rat thyroid tumors are satisfied in the pyrimethanil studies.

EPA's final rule establishing a tolerance for pyrimethanil in wine stated that "The Agency's Carcinogenicity Peer Review Committee (CPRC) chose a non-linear approach, Margin of Exposure (MOE) based on a NOAEL of 17 mg/kg/day for increased incidences of thyroid tumors in rats. The MOE methodology was selected because of thyroid tumors associated with administration of pyrimethanil in the rat, which may be due to a disruption in the thyroid-pituitary status. This chemical has been classified as a Group C chemical (possible human carcinogen) and a non-linear methodology (MOE) was applied for the estimation of human cancer risk. The estimated MOE does not exceed the Agency's level of concern and therefore, EPA has a reasonable certainty that no harm will result from exposures to residues of pyrimethanil."

6. *Animal metabolism.* Pyrimethanil is rapidly metabolized and excreted from lactating dairy cows. The observed total radioactive residues in edible tissues and milk were as follows: Milk - maximum residue of 0.069 ppm; liver - 0.363 ppm; kidney 0.249 ppm and muscle 0.017 ppm. The metabolic pathway is similar to that of plants involving hydroxylation of the phenyl and pyrimidine rings as well as hydroxylation of the methyl substituents. Further metabolic reactions occur including cleavage of the phenyl ring to produce substituted pyrimidines. The major metabolite was AE C614276 (46% of the kidney residues, 63% of the milk residues) resulting from hydroxylation of the phenyl ring. Hydroxylation of the pyrimidinyl ring of pyrimethanil resulted in formation of minor amounts of AE C614277. Hydroxylation of the methyl groups of pyrimethanil resulted in formation of minor amounts of AE C614278. Hydroxylation of the methyl groups of AE C614276 resulted in formation of minor amounts of AE C614800.

7. *Metabolite toxicology.* The primary residue of concern in both crop and animal commodities is pyrimethanil. In the animal metabolism, since major metabolites are produced following the oral administration of pyrimethanil, toxicology data for metabolites are completely supported by data obtained for pyrimethanil.

8. *Endocrine disruption.* Chronic, life span, and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of pyrimethanil is negligible.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances are proposed under 40 CFR part 180 for pyrimethanil in or on citrus fruits and pome fruits following postharvest application. An import tolerance for wine grapes has been approved by the EPA. A petition for registration of pyrimethanil on bananas is pending at EPA. In March 2002, registration applications and tolerance petitions were filed for tree nuts, bulb vegetables, grapes, stone fruits (except cherries), pome fruit (preharvest application), tuberous and corm vegetables, strawberries, and tomatoes. There are no residential uses proposed for pyrimethanil. Therefore, potential human risk scenarios cover aggregate exposure from food residues and drinking water.

i. *Food.* Refined estimates of acute dietary exposure from potential pyrimethanil residues with the addition of postharvest uses on citrus and pome fruits are all well under 100% of the acute reference dose (RfD) at the 99.9th percentile. The most highly exposed sub population of non-nursing infants utilizes 13.35% of the RfD, while the U.S. population utilizes 6.1%. These potential dietary exposures were estimated in a Tier 3 Monte Carlo risk assessment using the Dietary Exposure Evaluation Model (DEEM) software (Novigen 2001). The 1994–96, 1998 Continuing Surveys of Food Intake by Individuals (CSFII) consumption data from USDA was used which includes the Supplemental Children's Survey (1998). Residue values included in the assessment were distributions of the field trail values incorporating percent crop treated (PCT) as zeroes for all non-blended and partially blended items. Blended items were included as the average residue and adjusted for PCT. These PCT values are the anticipated market share of pyrimethanil for the crops at market maturity (5 years). Concentration factors derived from processing studies were included where appropriate. Secondary residues for meat and milk were included in the assessment. These were calculated using theoretical dietary burdens from sensible diets for beef and dairy cattle and tissue to feed ratios from the ruminant feeding study.

Refined chronic dietary exposure estimates resulting from the proposed uses of pyrimethanil are well within acceptable limits for all population subgroups examined. The most highly exposed group of non-nursing infants utilized 0.9% of the reference dose with the U.S. population utilizing 0.2% of the reference dose. A Tier 3 chronic analysis was done using the DEEM software, (Novigen 2001). The 1994–96, 1998 CSFII consumption data from USDA was used. Average anticipated residue values were calculated from the appropriate field trial studies conducted for pyrimethanil. The average residue values were adjusted by the projected PCT at product maturity. Concentration factors derived from processing studies were included where appropriate. Secondary residues were calculated using theoretical dietary burdens derived from sensible diets for beef and dairy cattle and tissue to feed ratios from the ruminant feeding study.

ii. *Drinking water.* EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was followed to perform the Tier One drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessments, including water models such as Screening Concentrations in Ground Water (SCI-GROW), First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZMS/EXAMS), and monitoring data. If monitoring data are not available then the models are used to predict potential residues in surface and ground water and the highest levels (whether ground or surface) are assumed to be the drinking water residue. In the case of pyrimethanil, monitoring data are not available. SCI-GROW and FIRST were used to estimate a drinking water residue. Calculation of the Drinking Water Estimated Concentration (DWEC) for surface water for the worst case pyrimethnail use scenario results in a acute DWEC of 122 ppb and a chronic DWEC of 37 ppb. Drinking Water Levels of Comparison (DWLOCs) calculated based on the acute and chronic risk assessments described above are many fold higher than these conservative DWECs. The adult acute and chronic DWLOCs are 9,860 ppb and 5,936 ppb respectively. Children's acute and chronic DWLOCs are 2,641ppb and 1,686 ppb respectively.

2. *Non-dietary exposure.* Pyrimethanil products are not labeled for residential uses (food or non-food), thereby eliminating the potential for residential exposure or non-occupational exposure.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." There are no available data to determine whether pyrimethanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyrimethanil does not appear to form a toxic metabolite produced by other substances. For the purposes of the tolerance petition, it has been assumed that pyrimethanil does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the assumptions and data described above, based on the completeness and reliability of the toxicity data, it is concluded that dietary risk from the proposed uses of pyrimethanil are acceptable for all populations examined. Chronic exposure for the U.S. population utilizes 0.2% (0.000392 mg/kg bw/day) of the chronic reference dose. Acute exposure for the U.S. population utilizes 6.1% (0.018287 mg/kg bw/day) of the acute reference dose. The most highly exposed population of non-nursing infants utilizes only 0.9% of the chronic reference dose and

13.35% of the acute reference dose. The actual exposures are likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD (acute or chronic), because the RfD represents the level at or below which exposure will not pose appreciable risk to human health. DWLOC for adults both acute (9,860 ppb) and chronic (5,936 ppb) are several orders of magnitude above the conservative DWEC for acute (122 ppb) and chronic (37 ppb) worst case scenarios. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) to residues of pyrimethanil.

2. *Infants and children.* The relevant toxicity studies as discussed in the toxicology section above show no extra sensitivity of infants and children to pyrimethanil, therefore, the FQPA safety factor can be removed. Using the assumptions and data described in the exposure section above, it is concluded that dietary risk from the proposed uses of pyrimethanil are acceptable for all infant and children sub-populations examined. The most highly exposed sub-population was non-nursing infants for both the chronic and acute analyses. The sub-population non-nursing infants utilizes 0.9% (0.001563 mg/kg bw/day) of the chronic reference dose and 13.35% (0.040040 mg/kg bw/day) of the acute reference dose. All other infant and children populations have less exposure. The chronic and acute drinking water levels of concern for children (1,684 ppb and 2,600 ppb respectively) are well above the conservative drinking water estimated concentrations for chronic and acute scenarios. The chronic DWEC is 37 ppb and the acute DWEC is 122 ppb. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of pyrimethanil.

F. International Tolerances

Maximum Residue Limits for pyrimethanil have not been established by the Codex Alimentarius Commission.

[FR Doc. 03–3695 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0020; FRL–7289–9]

Aspergillus flavus AF36; Notice of Filing a Pesticide Petition to Establish an Exemption from a Tolerance for a Certain Pesticide Microbial Agent in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide microbial agent in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0020, must be received on or before March 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0020. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0020. The system is an "anonymous access" system, which means EPA will not *know your identity, e-mail address, or* other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0020. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0020.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0020. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7.To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and record keeping requirements.

Dated: February 6, 2003.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 and The Arizona Cotton Research and Protection Council

PP 8E5001

EPA has received a pesticide petition (PP 8E5001) from Interregional Research Project Number 4 (IR–4), New Jersey Agricultural Experiment Station, Technology Center, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 on behalf of the Arizona Cotton Research and Protection Council, 3721 East Wier Avenue Phoenix, Arizona 85040–2933 proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.1206 by establishing an amendment/expansion of an existing tolerance exemption for the microbial pesticide *Aspergillus flavus* AF36 in or on the food and feed commodity cotton and its by products.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, the aforesaid Interregional Research Project Number 4 (IR–4), has submitted the following summary of information, data, and arguments in support of the pesticide petition on behalf of the Arizona Cotton Research and Protection Council, however EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product name and Proposed Use Practices

Aspergillus flavus AF36, a non-aflatoxin-producing strain of *Aspergillus flavus*, is proposed for application to cotton to reduce the incidence of aflatoxin producing strains of*Aspergillus flavus* and thereby reduce aflatoxin contamination of cottonseed. When applied just prior to flowering, *Aspergillus flavus* AF36 which does not produce aflatoxin, competitively excludes aflatoxin producing *Aspergillus flavus* strains without increasing *Aspergillus flavus* in the environment in the long term. Sterile wheat seed colonized with *Aspergillus flavus* AF36 is applied at 10 lb of end-use product (total amount of active ingredient less than 0.01 lb/acre) per acre. The pesticide is currently being used in certain counties in the States of Arizona and Texas under an Experimental Use Permit (EPA Reg. No. 69224–EUP–1). The current submission proposes to establish a permanent exemption from tolerance for residues of *Aspergillus flavus* AF36 on cotton and its byproducts.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The pesticide and corresponding residues are identified as *Aspergillus flavus* AF36, a non-aflatoxin-producing strain of *Aspergillus flavus.*

2. *Magnitude of residue at the time of harvest and method used to determine the residue. Aspergillus flavus* AF36 is a naturally occurring fungus isolated from cottonseed produced in the Yuma Valley of Arizona. *Aspergillus flavus* AF36 has been shown to be naturally and consistently associated with commercial cotton grown in Arizona. Other than immediately after application, the overall quantity of *Aspergillus flavus* at time of harvest on cottonseed grown in fields where *Aspergillus flavus* AF36 has been applied and has been shown to be similar to levels on cottonseed grown in fields where no application was made. *Aspergillus flavus* is a widespread fungus. It is particularly well adapted to the hot desert regions of Arizona where it is widespread in the environment. The communities of *Aspergillus flavus* in the desert and in agricultural fields are naturally composed of both aflatoxin producing (toxigenic) and aflatoxin non-producing (atoxigenic) strains. Both atoxigenic and toxigenic strains have been found on essentially all plant material and soils in the desert valleys of Arizona. The goal of applications is to increase the percent of the *Aspergillus flavus* community composed of the atoxigenic strain AF36 and to decrease the percent of *Aspergillus flavus* that produces aflatoxins on the crop and in the fields.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An exemption from the requirement of a tolerance for residues of the microbial pesticide *Aspergillus flavus* AF36 in/on cotton is being proposed for cotton treated in Arizona and Texas. *Aspergillus flavus* isolate AF36, when applied to the soil just prior to bloom has been shown to significantly reduce the levels of aflatoxin in cottonseed at harvest. Aflatoxin levels in cottonseed products are regulated by the Food and Drug Administration (FDA). FDA does not allow cottonseed products containing aflatoxin at 20 parts per billion (ppb), or higher to be used in dairy rations. FDA regulations also do not allow cottonseed products containing aflatoxin above 300 ppb, to be used for feeding beef cattle. All lots of the active ingredient (*Aspergillus flavus* isolate AF36) and the formulated products are monitored for aflatoxin production as part of a rigorous quality control program. Starter cultures of *Aspergillus flavus* isolate AF36 used in the production of the end-use product are always screened for strain identity by vegetative compatibility, and for aflatoxin production using thin layer chromatography and appropriate standards. Quality control standards are zero tolerance in the starter cultures and in the formulated product for aflatoxin production, and for *Aspergillus flavus* not identified as *Aspergillus flavus* isolate AF36. *Aspergillus flavus* AF36 has never been found to produce aflatoxin.

C. Mammalian Toxicological Profile

An acute oral toxicity test was performed whereby a single oral dose of 5,000 milligrams/kilogram body weight (mg/kg/bwt) per animal of *Aspergillus flavus* AF36 colonized wheat seed was administered by gavage to five male and five female Sprague Dawley rats. The oral LD_{50} of *Aspergillus flavus* AF36 was determined to be greater than 5,000 mg/kg rat body weight. No clinical signs were observed during the 14–day study and no abnormalities or adverse effects were observed in any of the rats upon necropsy.

An initial pulmonary rat study resulted in lethality in a significant number of animals treated with either the live *Aspergillus flavus* AF36 in Tween 80 or heat killed *Aspergillus flavus* AF36 in Tween 80. Onset of symptoms was rapid after dosing with all deaths occurring by day 4 of the study. All rats surviving to day 4 of the study recovered and all rats sacrificed (as scheduled) on day 8 or day 15 of the study had totally eliminated viable *Aspergillus flavus* AF36 from the lungs, caecal contents, and feces. There was no evidence of infectivity. The aetiology of deaths was unclear. It appeared that *Aspergillus flavus* AF36 prepared as a test substance with Tween 80 caused a severe acute inflammatory response. Retrospective literature review and consultation with a toxicologist supported the theory that the responses were a result of a synergism with Tween 80 and/or of Tween 80 breakdown products formed during preparation of the spore suspension test substance.

A second rat pulmonary study was therefore undertaken. In the second study the conidia were both washed from the wheat and suspended in sterile physiological saline instead of Tween 80. Animals (2 male and 2 female for each treatment level) were dosed at 0; 10^5, 10^6, 10^7, and 10^8 colony forming units per rat. There were no clinical signs in any of the treatment groups considered to be associated with the test substance. Rats were sacrificed at day 8 without treatment associated mortality. No abnormalities were observed in any of the animals at the macroscopic examination at termination.

Based on these two mammalian studies, the petitioner concludes that *Aspergillus flavus* AF36 does not present either a toxicological or an infectious risk to mammals. Data waivers were requested for the following toxicology studies: Acute dermal toxicology/pathology, primary dermal irritation, primary eye irritation, and acute intraperitoneal toxicology/pathology effects of the microbial pesticide. The following rationales were used as a basis for the data waiver requests:

- Researchers and other workers have worked with *Aspergillus flavus* AF36 at the Southern Regional Research Center for over 10 years and in commercial fields (1996 to 1998) and in hand-picked field plots (1989 to 1994) without report of any adverse health effects.
- *Aspergillus flavus* AF36 is widely distributed in the environment and its occurrence is natural.
- The label will require applicators and other handlers to wear Personal Protective Equipment (PPE) such as waterproof gloves, a dust/mist filtering respirator with the appropriate NIOSH approval prefix N–95, P–95, or R–95, coveralls, long sleeved shirt and long pants, and shoes plus socks, and goggles, to mitigate against dermal and primary eye irritation exposure.

The pesticide is to be applied aerially by mixers/handlers and applicators who are licensed and trained to handle restricted materials. At the 10 lb/acre application rate of the formulated material, the total amount of active ingredient is less than 0.01 lb/acre. Applications of AF36 do not significantly impact the total amount of *Aspergillus flavus* in the soil or crop, but only change the proportion of the AF36 strain in relation to the overall soil population. Since the product is applied to cotton fields as a granular formulation on colonized wheat seeds, exposure from drift is minimal.

In addition, the following rationales were advanced in support of the data waiver requests for acute dermal toxicity and primary dermal irritation. These studies were waived during the experimental use program, based upon the lack of toxicity in animals dosed orally. While other *Aspergillus flavus* strains have been reported to be dermal sensitizers, this testing is not warranted, since the aerial method of application and the PPE required on the label will mitigate dermal exposure to workers and pesticide handlers. The acute intraperitoneal study was waived based upon the lack of toxicity in animals dosed orally and by pulmonary/intratracheal instillation.

Genotoxicity, reproductive and developmental toxicity, subchronic toxicity and chronic toxicity testing were not performed, since no adverse effects were observed in the acute toxicology study Tier 1 studies. Tier II (885.3550), subchronic toxicology study (EPA OPPTS 885.3600) and chronic feeding studies (guideline 152–50) are only required if triggered by adverse effects observed in Tier I studies.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food. Aspergillus flavus* AF36 is a naturally occurring organism, which does not produce aflatoxin and is thus safer than the aflatoxin-producing *Aspergillus flavus* isolates. Proposed uses and application rates will not result in increases in the total population of *Aspergillus flavus* on the mature crop beyond naturally occurring background levels. FDA does not allow cottonseed products containing aflatoxin at 20 ppb or higher to be used in dairy rations. FDA regulations also do not allow cottonseed products containing aflatoxin levels above 300 ppb, to be used for feeding beef cattle.

Aspergillus flavus AF36, when applied to the soil just prior to bloom, has been shown to significantly reduce the levels of aflatoxin in cottonseed at harvest. Furthermore, the proposed use and application rate will not increase exposure of humans to *Aspergillus flavus* by dietary means, since cotton itself is not a food product for human consumption. There is minimal dietary exposure to *Aspergillus flavus* from cottonseed. There is no mechanism for *Aspergillus flavus* to be transferred from the seed to animal products and there is no evidence that the fungus readily contaminates meat or milk. Seed is typically extracted for oil with hexane and that process kills the fungus. Furthermore, applications of *Aspergillus flavus* AF36 do not increase the indigenous populations of *Aspergillus flavus* associated with the harvested crop. The applications merely alter the composition of the fungal community associated with the mature crop so that aflatoxin producing strains are far less frequent. The result is a much lower incidence of aflatoxins in the crop and in the environment associated with the developing and mature crop.

ii. *Drinking water. Aspergillus flavus* AF36 is a naturally occurring organism that is already widespread in the environment and is not considered to be a risk to drinking water. Both percolation through soil and municipal treatment of drinking water would reduce the possibility of exposure of *Aspergillus flavus* through the drinking

water. Applications of *Aspergillus flavus* AF36 do not increase the long-term populations of *Aspergillus flavus* in the environment, and thus are not expected to influence the relationship of *Aspergillus flavus* to water sources. Applications merely change the composition of the *Aspergillus flavus* community so that aflatoxin producing strains are less common in the environment.

2. *Non-dietary exposure.* The potential for non-occupational, non-dietary exposure to the general population is not expected to be significant and is not expected to present any risk of adverse health effects.

E. Cumulative Exposure

There are no other registered products containing *Aspergillus flavus* AF36 or any other isolates (strains) of the microbial active ingredient. Data submitted show that the fungal metabolite of concern, which is aflatoxin, is not produced by *Aspergillus flavus* AF36 in the crop or in artificial media in the lab. When applied prior to flowering, *Aspergillus flavus* AF36 has been shown to exclude aflatoxin producing fungi competitively from the developing crop and to reduce aflatoxin contamination of cottonseed. Data show that the proposed use will not result in appreciable increases in the long-term population of *Aspergillus flavus* on the crop beyond naturally occurring levels. Furthermore, there is no expectation of cumulative effects with other pesticides.

F. Safety Determination

1. *U.S. population. Aspergillus flavus* AF36 is a naturally occurring organism. This isolate has low toxicity as demonstrated by the acute oral toxicity study in rats. *Aspergillus flavus* is ubiquitous throughout the hot desert valleys in Arizona. Studies have shown that treatment of cotton fields just prior to flowering with sterile wheat seed colonized by *Aspergillus flavus* AF36 at 10 lb per acre does not increase the long-term populations of *Aspergillus flavus* either on the crop at maturity or in the soil 1 year after application. Based on this information, Interregional Research Project Number–4 is of the opinion that the aggregate exposure to *Aspergillus flavus* over a lifetime should not change with application of *Aspergillus flavus* AF36, and exposure to both aflatoxin producing *Aspergillus flavus* strains and aflatoxin should decrease. This should be beneficial to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to *Aspergillus flavus* AF36.

2. *Infants and children.* Based on the lack of toxicity and natural occurrence, there is reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to *Aspergillus flavus* AF36. Exempting *Aspergillus flavus* AF36 from the requirement of a tolerance should pose no significant risk to humans or the environment.

G. Effects on the Immune and Endocrine Systems

Aspergillus flavus AF36 is a naturally occurring organism, which does not produce aflatoxin, and is thus safer than the *Aspergillus flavus* isolates that produce aflatoxin. To date there is no evidence to suggest that *Aspergillus flavus* AF36 functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Efficacy

Existence of aflatoxins in the environment is a public health hazard. Data were submitted to demonstrate that proper use of *Aspergillus flavus* AF36 results in reductions in the average aflatoxin producing potential of fungi resident in treated areas and in reductions in the quantity of aflatoxins in crops. In field tests prior to 1996, the aflatoxin content of cottonseed was shown to be inversely related to the proportion of the *Aspergillus flavus* community on the crop composed of *Aspergillus flavus* AF36. Detailed analyses of the aflatoxin content of commercial fields from 1996 through 1998 confirmed that reduced aflatoxin levels were associated with displacement of aflatoxin producers by *Aspergillus flavus* AF36 from treated crops and that treatments were associated with up to 90% reductions in crop aflatoxin content.

Efficacy of applications of *Aspergillus flavus* AF36 in displacing aflatoxin producers was demonstrated for fungal communities both on cottonseed from treated crops at harvest and in soils of treated fields 1 year after treatment. This included cotton crops treated in 1996 (112 acres treated), 1997 (463 acres treated), 1998 (499 acres), 1999 (10,488 acres), 2000 (16,725 acres), and 2001 (19,975 acres treated). The proportion of *Aspergillus flavus* communities composed of *Aspergillus flavus* AF36 indicates the extent to which aflatoxin producers were displaced. In 1996 average incidence of AF36 on treated crops was 88.5% and in the soil, 1 year after treatment, incidence of AF36 was 85.2%. Incidences of AF36 on treated crops were 78% and 67% in 1997 and 1998, respectively, and in soil 1 year after treatment, AF36 incidences were 72% and 77%, respectively. Successful displacement was also observed as the acreage treated rapidly expanded from 1999 to 2001 with average incidences of AF36 on treated crops ranging from 57% in 1999 to 66% in 2001.

Aflatoxin-producing S strain isolates of *Aspergillus flavus* are prominent in soils of cotton producing areas of Arizona and south Texas. They produce more aflatoxins than other *Aspergillus flavus* isolates such as the non-aflatoxin-producing L strain *Aspergillus flavus* AF36. Applications of AF36 during the experimental program were effective at displacing the high aflatoxin producing S strain of *Aspergillus flavus*. During the course of the experimental use program, *Aspergillus flavus* AF36 also caused long-term reductions in the aflatoxin producing potential of fungal communities in agricultural fields. *Aspergillus flavus* AF36 retained atoxigenicity (failure to produce aflatoxins) upon repeated reisolation from treated fields 1, 2, or 3 years after treatment. Thus, there was a long-term reduction in the potential of fungal communities to produce aflatoxins in treated areas. The average aflatoxin producing potential of *Aspergillus flavus* communities resident in soils of treated fields was reduced on average 73% 1 year after treatment over the 3 year period (1996 to 1999). S strain isolates, which produced very high levels of aflatoxins, with field averages ranging from 7,100 ppb, aflatoxin to 22,700 ppb, aflatoxin, were effectively displaced. Their incidence was reduced from initially composing 46% of *Aspergillus flavus* soil communities to composing on average of 11%.

I. Existing Tolerances

The registrant is not aware of any existing tolerances or tolerance exemptions for *Aspergillus flavus* AF36, other than the temporary tolerance exemption on cotton (40 CFR 180.1206) in conjunction with an EUP, which expires on December 30, 2004.

J. International Tolerances

There are no Codex maximum residue levels established for residues of *Aspergillus flavus* AF36. *Aspergillus flavus* AF36 containing products are presently not registered for pest control outside of the United States.

[FR Doc. 03–3696 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7452–6]

Notice of Proposed Settlement; Solitron Microwave Superfund Site, Port Salerno, FL

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a Prospective Purchaser Agreement (PPA) pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, regarding the Solitron Microwave Superfund Site located in Port Salerno, Martin County, Florida. This Agreement is made and entered into by EPA and the Port Salerno Industrial Park, LLC ("PSIP"). The PPA concerns the acquisition by PSIP of certain real property presently owned by Solitron Devices, Inc. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of publication.

Dated: January 31, 2003.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–3700 Filed 2–13–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 03–38; DA 03–390]

Petitions for Protection From Whipsawing on the U.S.-Philippines Route

AGENCY: Federal Communications Commission.

ACTION: Notice; soliciting comments.

SUMMARY: AT&T and WorldCom filed petitions requesting that the FCC take action to protect U.S. international carriers and U.S. consumers from alleged "whipsawing" behavior occurring on the U.S.-Philippines route. The Commission issued a public notice soliciting comments on this issue.

DATES: Comments or oppositions are due on or before February 20, 2003 and reply comments are due on or before February 27, 2003.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. *See Supplementary Information for filing instructions.*

FOR FURTHER INFORMATION CONTACT: James Ball, Chief, or Lisa Choi, Senior Legal Advisor, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: AT&T Corp. (AT&T) and WorldCom Inc. (WorldCom) filed petitions on February 7, 2003 requesting that the Commission take action to protect U.S.-international carriers and U.S. consumers from alleged "whipsawing" behavior occurring on the U.S.-Philippines route. "Whipsawing" is a form of anticompetitive behavior that involves the ability of foreign carriers to obtain unduly favorable terms and conditions from U.S.-international service providers by setting competing U.S. carriers against one another.

According to AT&T's petition, several carriers in the Philippines, including the Philippines Long Distance Telephone Company (PLDT), Globe Telecom, Inc., Digitel Telecommunications Philippines, Inc., Bayan Telecommunications Company, Smart Communications, Inc., and Subic Telecom, collectively referred to as "Philippine carriers," are engaged in disrupting AT&T's network. AT&T states that each of these carriers has demanded a unilateral increase in the rate for termination services in the Philippines for U.S.-outbound traffic. Similarly, WorldCom's petition states that PLDT has blocked WorldCom's traffic in retaliation for WorldCom's refusal to agree to a similar rate increase for traffic terminating on PLDT's network in the Philippines.

AT&T and WorldCom have requested that the Commission take action to protect U.S. carriers in their negotiations on the U.S.-Philippines route from "whipsawing" and prevent further network disruptions and harm to U.S. consumers. Specifically, AT&T has requested that the Commission take urgent action to prevent further "whipsawing," including interim relief. AT&T and WorldCom request that the Commission prohibit U.S. carriers from making payments to the Philippine carriers and PLDT, respectively, until international service is fully restored.

All filings concerning any or all matters in this Public Notice should refer to IB Docket No. 03–38. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments or oppositions on or before February 20, 2003 and reply comments on or before February 27, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.foc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; e-mail: *qualexint@aol.com;* facsimile: (202) 863–2898; phone: (202) 863–2893.

The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street,

SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Copies of the petitions and any subsequently-filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 863–2893, via facsimile at (202) 863–2898, or via e-mail at *qualexint@aol.com*. The petition and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications and any subsequently filed documents in this matter are also available electronically through the Commission's Electronic Filing System (ECFS) which may be accessed on the Commission's Internet Web site at *http://www.fcc.gov*. Ex parte communications between outside parties and Commission staff concerning these petitions are permitted subject to the Commission's rules for "permit-but-disclose proceedings." *See* 47 CFR 1.1206.

Federal Communications Commission.

James Ball,

Chief, Policy Division, International Bureau.

[FR Doc: 03–3854 Filed 2–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:01 a.m. on Tuesday, February 11, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director John D. Hawke, Jr. (Comptroller of the Currency), seconded by Vice Chairman John M. Reich, and concurred in by Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than February 7, 2003, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC building located at 550—17th Street, NW., Washington, DC.

Dated: February 11, 2003.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–3869 Filed 2–12–03; 2:34 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension of a collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning requests for a major disaster or an emergency declaration by the President.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206, as amended (the Stafford Act), requires that all requests for a major disaster or an emergency declaration by the President must be made by the Governor of the affected State. Section 401 of the Act stipulates specific information the Government must submit with a request for any major disaster declaration. Section 501(a) of the Act stipulates specific information the Governor must submit with a request for any emergency declaration. Section 403(c) of the Act authorizes emergency assistance, without a Presidential declaration, through the utilization of Department of Defense personnel and resources. Information needed to process the request from the Governor is set forth in 44 CFR part 206.35 and 206.36.

Collection of Information

Title: The Declaration Process: Requests for Damage Assessment, Federal Disaster Assistance, Cost Share Adjustment, and Loans of the Non-Federal Share.

Type of Information Collection: Extension of a currently approved collection.

Abstract: When a disaster occurs in a State, the Governor of the State or the Acting Governor in his/her absence, may request a major disaster declaration. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgement and processing. The information obtained by State damage assessments will be analyzed by FEMA Regional senior level staff. The Regional analysis shall include a discussion of State and local resources and capabilities, and other assistance available to met the disaster related needs. The Director of FEMA forwards the Governor's request to the President, with a FEMA report and recommendations. In the event the information required by law is not contained in the request, the Governor's request cannot be processed and forwarded to the White House. The Governor may appeal the decision.

Affected Public: Individual or households, not-for-profit institutions, State, local or tribal government, business or other for-profit, farms, and the Federal government.

Number of Respondents: The number of respondents for the information collections is 58 to include the Governors of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianna Islands, and Federal States of Micronesia, and the Republic of the Marshall Islands.

Frequency of Response: Per declaration.

Hours per Response: 76 hours per response.

Estimated Total Annual Burden Hours: 13,224.

Estimated Cost: The estimated annualized cost per respondent is $30.00 per hour for gathering preliminary assessments information × 13,244 total burden hours = $97,200. The estimated annualized cost to the Federal government is 5 FEMA senior level staff salary @ approximately $110,000 = $550,000 × 13,244 total burden hours = $72,842,000.

Comments: Written comments are solicited to: Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the collection of information contact Magdalena M. Ruiz, Chief, Declaration and Administrative Branch, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Telephone number (202) 646–3629. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *Information.Collections@fema.gov*.

Dated: February 5, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Directorate.

[FR Doc. 03–3674 Filed 2–13–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Mortgage and Rental Assistance Program.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0298.

Abstract: FEMA provides assistance in the form of mortgage or rental payments on behalf of eligible applicants who, as a result of a major disaster or emergency, have received written notice of dispossession or eviction from their primary residence by foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease entered into, prior to a disaster. Applications for this type of assistance may be filed for up to six months following the date of a declaration.

Affected Public: Individuals or households, Business or Other For Profit.

Number of Respondents: 2550.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 10,200.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or email address *InformationCollections@fema.gov*.

Dated: February 5, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–3675 Filed 2–13–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1427–DR]

Federated States of Micronesia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Federated States of Micronesia (FEMA–1427–DR), dated July 11, 2002, and related determinations.

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 31, 2003, to Joe M. Allbaugh, Director of the Federal Emergency Management Agency, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia, due to damage resulting from Tropical Storm Chata'an, including flooding, mudslides and landslides on July 2–4, 2002, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act).

Therefore, I amend my declaration of July 11, 2002, to authorize Federal funds for Public Assistance, including direct Federal assistance, at 90 percent of total eligible costs.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program (Section 411), mobile home group site development (Section 408), and the Hazard Mitigation Grant program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the President of the Federated States of Micronesia and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–3672 Filed 2–13–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1447–DR]

Northern Mariana Islands; Amendment No.4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands, (FEMA–1447–DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 11, 2002:

The Islands of Saipan and Tinian for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–3673 Filed 2–13–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011840.

Title: Fruit Carriers Discussion Agreement.

Parties: Great White Fleet (U.S.) Ltd., Dole Ocean Cargo Express, Inc., Network Shipping Ltd., South Pacific Shipping Company Ltd., d/b/a Ecuadorian Line.

Synopsis: The proposed agreement would permit the parties to discuss rates and other conditions in the trade between the U.S. Atlantic, Gulf, and Pacific ranges and Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

By Order of the Federal Maritime Commission.

Dated: February 11, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–3711 Filed 2–13–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Uwharrie Capital Corp*, Albermarle, North Carolina; to acquire 100 percent of the voting shares of Cabarrus Bank & Trust Company, Concord, North Carolina.

Board of Governors of the Federal Reserve System, February 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3644 Filed 2–13–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 10 a.m., Tuesday, February 18, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may *register on-line.* You may pre-register until close of business February 17, 2003. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to

evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Final amendments to Regulation B (Equal Credit Opportunity) that would conclude the Board's review of the regulation. (Proposed earlier for public comment; Docket No. 1008).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: February 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3807 Filed 2–12–03; 9:19 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: At approximately 10:45 a.m., Tuesday, February 18, 2003, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–2955 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3808 Filed 2–12–03; 9:19 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 9:00 a.m. (EST); Correction: February 20, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

ACTION: Notice; correction.

SUMMARY: The Federal Retirement Thrift Investment Board published a notice in the **Federal Register** of Wednesday, February 12, 2003, Volume 68, No. 29, page 7115, concerning upcoming Board member meeting. The document contained an incorrect time.

Correction

In the **Federal Register** of Wednesday, February 12, 2003, Volume 68, No. 29, on page 7115, third line, left side, correct the time to read 10 a.m.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 12, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–3839 Filed 2–12–03; 12:31 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through February 3, 2005.

For information, contact Roger Rosa, Ph.D., Executive Secretary, Board of Scientific Counselors, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, of the Department of Health and Human Services, CDC/Washington Office, HHH Building, 200 Independence Ave., SW., Room 715H, MS P12, Washington, DC 20201—telephone 202/205–7856 or fax 202/260–4464.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 7, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3664 Filed 2–13–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: University Centers for Excellence in Developmental Disabilities Education, Research, and Service.

OMB No.: New Collection.

Description: In accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000,

University Centers are required to collect data in order to measure progress achieved in one or more areas of emphasis (child care, education and early intervention, employment, health, housing, recreation, transportation, quality assurance) through advocacy, capacity building, and systemic change activities. Progress is to be measured through (1) satisfaction of individuals with developmental disabilities with advocacy, capacity building, and systemic change activities; (2) the extent to which the advocacy, capacity building, and systemic change activities provided results through improvements; and (3) the extent to which collaboration was achieved in the areas of advocacy, capacity building, and systemic change activities.

Respondents: University Centers for Excellence in Developmental Disabilities Education, Research, and Service.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Data Collection for Annual Report—University Centers	61	1	80	4,880
Estimated Total Annual Burden Hours				4,880

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–3678 Filed 2–13–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: University Centers for Excellence in Developmental Disabilities Education, Research, and Service.

OMB No.: New Collection.

Description: In accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, University Centers are required to collect data in order to measure progress achieved in one or more areas of emphasis (child care, education and early intervention, employment, health, housing, recreation, transportation, quality assurance) through advocacy, capacity building, and systemic change activities. Progress is to be measured through (1) satisfaction of individuals with developmental disabilities with advocacy, capacity building, and systemic change activities; (2) the extent to which the advocacy, capacity building, and systemic change activities provided results through improvements; and (3) the extent to which collaboration was achieved in the areas of advocacy, capacity building, and systemic change activities.

Respondents: University Centers for Excellence in Developmental Disabilities Education, Research, and Service.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Data Collection for Annual Report—University Centers	61	1	80	4,880
Estimated Total Annual Burden Hours				4,880

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–3679 Filed 2–13–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Fellows Program.

OMB No.: 0970–0140.

Description: Public Law 103–252, the Human Services Amendments of 1994, amended the Head Start Act (the Act) to authorize the creation of a Head Start Fellows Program to support the professional development of individuals working in the fields of child development and family services. The Act was most recently reauthorized through fiscal year 2003, by the Coats Human Services Amendments of 1998, Public Law 105–285.

Head Start Fellowships are awarded on a competitive basis to individuals (other than Federal employees) selected from among applicants who are working in the fields of child development and children and family services. Information collected from the applications is used to ensure that individuals selected to be Head Start Fellows have the appropriate experience/skills, and that the training developed for them and the work assigned to them will enhance their ability to make significant contributions to the fields of child development and family services. The information collected is used by program staff and policy makers at the Federal level to make judgments on the progress and needs of the program.

Respondents: Individuals who work in local Head Start programs or fields of child development and children and family services.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	200	1	24	4,800
Estimated Total Annual Burden Hours				4,800

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3677 Filed 2–13–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Caseload Reduction Documentation Process, ACF–202.

OMB No.: 0970–0199.

Description: To ensure that States receive credit for families that have become self-sufficient and left the welfare rolls, Congress created a caseload reduction credit. The credit reduces the required participation rate that a State must meet for a fiscal year. To receive a caseload reduction credit, a State must complete form ACF–202, the Caseload Reduction Report. The report provides information needed to calculate a caseload reduction credit, and thus determines the participation standard each State must meet for the fiscal year. This report derives from section 407(a)(3) of the Social Security Act and the implementing Federal Regulations at 45 CFR part 261, subpart D.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Caseload Reduction Documentation Process, ACF–202	54	1	160	8,640
Estimated Total Annual Burden Hours				8,640

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3680 Filed 2–13–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Reasonable Cause/Corrective Action Documentation Process.

OMB No.: 0970–0199.

Description: The Social Security Act provides that States can be penalized for misusing Temporary Assistance for Needy Families funds and for failure to comply with other requirements. If a State wishes to dispute a penalty determination or wants to be considered for a waiver of a penalty, the State may submit a "reasonable cause" justification and/or a corrective compliance plan. After careful consideration of one or both documents, we will notify the State of our findings with respect to the penalty. This process was established by section 409 of the Social Security Act and the implementing Federal regulations at 45 CFR part 261, subpart E, Part 262, and Part 264.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Reasonable Cause/Corrective Action Documentation Process	54	2	160	17,280
Estimated Total Annual Burden Hours				17,280

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington DC 20503, Attn: Desk Officer for ACF.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3681 Filed 2–13–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Report on State Maintenance-of-Effort (MOE) Programs, ACF–204.

OMB No.: 0970–0199.

Description: States must submit an annual report containing information on their State MOE programs via form ACF–204. The report is an important source for information about the different ways States are using their resources to help families attain and maintain self-sufficiency. The information is used to discuss program characteristics in our annual report to Congress, to respond to Congressional and public inquiries about how TANF programs are evolving, and to asses State MOE expenditures. The statutory basis for this report is found in sections 409(a)(7) and 411(a)(3) of the Social Security Act and the implementing Federal regulations at 45 CFR 265.9.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Report on State Maintenance-of-Effort (MOE) Programs, ACF–204	54	128	1	6,912
Estimated Total Annual Burden Hours				6,912

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be send directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3682 Filed 2–13–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: January 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of January 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
BAEZ-LOPEZ, ROBERTO ... YAUCO, PR	02/20/2003
BEARD, WALITA G ..... CHATTANOOGA, TN	02/20/2003
CLEVENGER, PATRICIA ..... COTTAGEVILLE, WV	02/20/2003
COLON-NEGRON, ARABELLA ..... YAUCO, PR	02/20/2003
CRUZ-BAEZ, EDGAR ..... PONCE, PR	02/20/2003
DAVILA, JOSE ..... RIDGEFIELD PARK, NJ	02/20/2003
GETTMANN, CECILIA BARBER ..... MASSENA, NY	02/20/2003
GIBSON, CAROLYN P ..... MACON, GA	02/20/2003
GORDON, DENNIS D ..... COLUMBUS, OH	02/20/2003
GUSTAFSON, CHERYL ANNE ..... FEDERAL WAY, WA	02/20/2003
HAWKINS, JOSEPHINE ..... JACKSON, MS	02/20/2003
HERNANDEZ, MARCELINO VINCENT ..... TAFT, CA	02/20/2003
HYLOR, SYDEAL ..... MIAMI, FL	02/20/2003
I, CHEA ..... LONG BEACH, CA	02/20/2003
JONES, CLARENCE MARSHALL ..... DETROIT, MI	02/20/2003
JONES, DARLA ..... ASHTABULA, OH	02/20/2003
KASHISHYAN, EDIK ..... GLENDALE, CA	02/20/2003
KRAWCZUK, WILLIAM J ..... SYRACUSE, NY	02/20/2003
LONG, VANDY Y ..... LONG BEACH, CA	02/20/2003
MALIK, IFTKAR ..... DIX HILLS, NY	02/20/2003
MATTEI-FRANCESCHINI, HILDRED ..... YACO, PR	02/20/2003
NALLS, DOUGLAS EARL .... MIAMI, FL	02/20/2003
NICOLOFF, ROBBIN GAIL .. FORT WORTH, TX	02/20/2003
NOLETTE, RICHARD E ..... BIDDEFORD, ME	02/20/2003
NORTHEASTERN HOME HEALTH SVCS ..... MOUNTAIN TOP, PA	02/20/2003
ORTEGA-ORTIZ, ORLANDO PENUELAS, PR	02/20/2003
ORTIZ-VARGAS, DANIEL .... YAUCO, PR	02/20/2003
PEREA-VICENTE, MIGUEL MAYAGUEZ, PR	02/20/2003
PETRUTSAS, YVETTE MUSETA ..... HOUSTON, TX	02/20/2003
QUINONES-ACEVEDO, PABLO ..... RIO PIEDRAS, PR	02/20/2003
ROSICH-BACHS, JAIME .... HORMIGUEROS, PR	02/20/2003
ROSS, JEMEKEA ..... COLUMBUS, OH	02/20/2003
RUIZ, MARCOS ..... FT LAUDERDALE, FL	02/20/2003
SANDS, WILLIAM JAMES ... SNEADS, FL	02/20/2003
SAYERS, PAMELA PAIGE .. OLATHE, KS	02/20/2003
SCOTT, ERIKA DEANNA .... FRESNO, CA	02/20/2003
SCOTT EVAN BERNSTEIN, DPM, P A ..... MIAMI, FL	08/23/2001
SINGLETARY, BRITTANY ... HOUSTON, TX	02/20/2003
SOTO-SANTIAGO, REYNALDO ..... ARECIBO, PR	02/20/2003
STRANGE-BOSTON, DONALD C ..... ASHLAND, VA	02/20/2003
THAI, THANH SON ..... CANON CITY, CO	02/20/2003
WOZNIAK, JOHN V ..... CLINTON, CT	02/20/2003
YOUNG, OLGA IRIS ..... CHULA VISTA, CA	02/20/2003
FELONY CONVICTION FOR HEALTH CARE FRAUD	
ELROD, SELINA WANDELLA ..... FORT COLLINS, CO	02/20/2003
JENKINS, JEANETTE ..... N CHARLESTON, SC	02/20/2003
VEHOSKI, MARYALICE ..... DANBURY, CT	02/20/2003
WIBORG, WARREN ROGER JR ..... NORFOLK, NE	02/20/2003
FELONY CONTROL SUBSTANCE CONVICTION	
BARAN, ROBIN ..... PHILIPSBURG, PA	02/20/2003
DEARING, ANITA F MAHONEY ..... GREENWOOD, IN	02/20/2003
DELGADO-LEON, RENE PEDRO ..... RIVERDALE, GA	02/20/2003
JACKSON, SALLY RACHAEL CALLAHA ..... OXFORD, OH	02/20/2003
NIGN, DEBRA LYNN ..... MANSFIELD, OH	02/20/2003
PAYNE, JAMES DAVID ..... NEW ALBANY, IN	02/20/2003
RENDON-GONZALEZ, LUIS ANOTONIO ..... TRUJILLO ALTO, PR	02/20/2003
SCHAEFFER, SUSAN ..... HUMMELSTOWN, PA	02/20/2003
VACEK, BEVERLY KELLY .. PALACIOS, TX	02/20/2003
VAUGHN, MARY RUTH ..... ARLINGTON, TX	02/20/2003
WESLEY, YVETTE MONIQUE	02/20/2003

Subject city, state	Effective date
PLANO, TX	
WILLIAMS, JOYCE LAREE	02/20/2003
SIDNEY, MT	
PATIENT ABUSE/NEGLECT CONVICTIONS	
AUMACK, MICHAEL T	02/20/2003
KALAMAZOO, MI	
CARTER, ANDREA	02/20/2003
MILTON, DE	
CATANACH, PATRICK L	02/20/2003
CANON CITY, CO	
FISH, LOIS ANNE	02/20/2003
REDLANDS, CA	
FLETCHER, DAWN L	02/20/2003
MORRIS, NY	
GARNER, MONICA	02/20/2003
WOODRUFF, SC	
HARRIS, TENASSA R	02/20/2003
BOLIVAR, TN	
HAYNES, CARYLON J	02/20/2003
GAITHERSBURG, MD	
MORGAN, CONSTANCE	02/20/2003
LAUREL, MS	
OKEZIE, THEODORE EZE	02/20/2003
SEATTLE, WA	
REYES, ANTONIO CUTIN	02/20/2003
AVENAL, CA	
ROSS, KAREN	02/20/2003
ROCHESTER, NY	
SAWYER, JOEL THOMAS	02/20/2003
MOOSE LAKE, MN	
YEN, ALBERT ANDREW	02/20/2003
HOUSTON, TX	
CONVICTION FOR HEALTH CARE FRAUD	
ANSON, ANNA VICTORIA	02/20/2003
CANON CITY, CO	
CONVICTION–OBSTRUCTION OF AN INVESTIG.	
WEGEHAUPT, BETTY L	02/20/2003
BELCOURT, ND	
CONTROLLED SUBSTANCE CONVICTIONS	
GENEROSE, CATHERINE	02/20/2003
HAZLETON, PA	
MURPHY, DAVID M	02/20/2003
HARRISBURG, PA	
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ADAMCZYK, BONNIE	
MOCK	02/20/2003
SIDMAN, PA	
ALBERS, LESLIE A	02/20/2003
PINE RIDGE, SD	
ANDERSON, STEPHEN A	02/20/2003
LOCKPORT, NY	
AQUILA, JAMES F	02/20/2003
CATHEDRAL CITY, CA	
ARBEIT, JOAN WICKLIFFE	02/20/2003
TUCSON, AZ	
BANKS, MICHAEL ANTHONY	02/20/2003
TEXARKANA, TX	
BECKER, MARE PARFINOVIC	02/20/2003
MESA, AZ	
BEHRENS, KATHY J	02/20/2003
TUCSON, AZ	
BILODEAU, BETTY DALEY	02/20/2003
PHOENIX, AZ	
BOURNE, ANDREA	02/20/2003
BUCKATUNNA, MS	
BROWN, MARY GODDARD	02/20/2003
REEDSVILLE, PA	
BROWN, LEONARD DANIEL	02/20/2003
ONEONTA, AL	
BURRELL, JOEL BRION	02/20/2003
ELYRIA, OH	
CARTER, JAMIE S	02/20/2003
PHOENIX, AZ	
CASHMORE, IRENE OLKER	02/20/2003
MEDFORD, NY	
CASTILLO, ARMANDO MOL	02/20/2003
PORTERVILLE, CA	
CAZARES, JESUS ERNESTO	02/20/2003
TUCSON, AZ	
CHEATOM, GREGORY	02/20/2003
PITTSBURGH, PA	
CHICKERING-MOORE, DORIS MARIE	02/20/2003
SAN ANTOINIO, TX	
CHO, JIN SOOK	02/20/2003
ANAHEIM, CA	
CLARKE, KILDARE ISAAC	02/20/2003
WHITE PLAINS, NY	
COLE, EDILLIA C	02/20/2003
FAIR OAKS, CA	
CUMMINGS, WILLIAM G	02/20/2003
SUFFERN, NY	
DELPEZZO, ELIZABETH M	02/20/2003
CENTER VALLEY, PA	
DELUCIA, TONI L	02/20/2003
OIL CITY, PA	
DILLON, DONNA YVONNE	02/20/2003
GILBERT, AZ	
DOYLE, LISA KATHERINE	02/20/2003
PHOENIX, AZ	
DRAGOO, TAMI LYNN	02/20/2003
PEORIA, IL	
DUFFUS, STEPHANIE JOAN	02/20/2003
FRISCO, TX	
ELSIRGANY, JANET M	02/20/2003
CASE GRANDE, AZ	
FERGUSON, ROBERT C	02/20/2003
WAPAKONETA, OH	
FORD, EUGENE R	02/20/2003
SUFFOLK, VA	
GABALDON, ANTONIA	02/20/2003
PHOENIX, AZ	
GALEY, JOHN SCOTT	02/20/2003
PHOENIX, AZ	
GALVAN, CAROLE JEAN	02/20/2003
MCALLEN, TX	
GELDERNICK, WILLIAM JACOB	02/20/2003
CHICAGO, IL	
GHAFUR, AMINA ABDUL	02/20/2003
DENVER, CO	
GIL DE RUBIO, HECTOR	02/20/2003
FOREST HILLS, NY	
GINTER, NANCY LEE	02/20/2003
BEDFORD, IN	
GIUNTA, JOSEPH LIBORIO	02/20/2003
WINCHESTER, VA	
GONZALEZ, SHERRY L	02/20/2003
PUEBLO WEST, CO	
GORDON, REBECCA A	02/20/2003
CAPE MAY CT HOUSE, NJ	
GRAINEY, JOAN	02/20/2003
HUNTINGDON, PA	
GREENOUGH, NIKKI LARON	02/20/2003
AURORA, NE	
GRIFFIN, JUDITH GRACE	02/20/2003
VILLAGE OF OAK CREEK, AZ	
GUSTAFSON, PETER F	02/20/2003
TUSCON, AZ	
HARROLD, LAURA LEE	02/20/2003
PORTAGE, IN	
HAWKER, JAMES B	02/20/2003
MESA, AZ	
HOOVER, MELISSA MARIE	02/20/2003
EXETER, CA	
HUSSEY, BARBARA LYNN	02/20/2003
GRAND RAPIDS, MI	
HUTTON, DEAN	02/20/2003
UKIAH, CA	
JAGGI, SHERYL L	02/20/2003
CORRY, PA	
JOHNSON, KENT ROBERT	02/20/2003
RIVERSIDE, CA	
JONES, SHERRY LYNN	02/20/2003
HAMMOND, IN	
JUTTE, DONALD LEE	02/20/2003
CINCINNATI, OH	
KABATO, ZENAWI	02/20/2003
FAIRFAX, VA	
KEEHAN, MICHAEL F	02/20/2003
HACIENDA HGTS, CA	
KEEN, SUSIE C	02/20/2003
GRUNDY, VA	
KEENAN, ROYAN CHRISTINE	02/20/2003
RICHMOND, CA	
KELLENBERGER, MATTHEW JOHN	02/20/2003
SPRINGFIELD, IL	
KELLY, JOSEPH L III	02/20/2003
NORFOLK, VA	
KONOW, SUZANNE MARY	02/20/2003
BUCKEYE, AZ	
KUHLMAN, KELVIN HAROLD	02/20/2003
NEW ALBANY, IN	
KULL, LOLITA JEAN	02/20/2003
LAKE HAVASU CITY, AZ	
KULP, MELINDA GOODLING	02/20/2003
EPHRATA, PA	
LARSON, SUSAN HUMPHREY	02/20/2003
SCOTTSDALE, AZ	
LAWLESS, JACKIE GLEE	02/20/2003
SPRINGFIELD, IL	
LEAMER, SANDRA	02/20/2003
BARNESBORO, PA	
LEE, CHANG DEOK	02/20/2003
LOS ANGELES, CA	
LEWIS, VERNA M	02/20/2003
DALEVILLE, VA	
LONG, KERI M	02/20/2003
APACHE JUNCTION, AZ	
LOWELL-SENTURIA, LISA B	02/20/2003
NEW YORK, NY	
LYONS, DORIS C	02/20/2003
CHESAPEAKE, VA	
MACCHI, DAVID MICHAEL	02/20/2003

Subject city, state	Effective date
MARTINEZ, CA	
MAGANA-NIEBLA, RAFAEL	02/20/2003
BURNSVILLE, MN	
MAISTER, JAMES M	02/20/2003
TAMPA, FL	
MAKAR, YOUSSEF NASHED	02/20/2003
BIRMINGHAM, AL	
MALDONADO, EDWARD JAMES	02/20/2003
DALTON CITY, IL	
MARTIN, BRENDA CAROL	02/20/2003
UVALDE, TX	
MASON, SHERYL L	02/20/2003
JARRAH, VA	
MCGEHEE, SHELLY LYNN	02/20/2003
OTTAWA, KS	
MERRIS, KATHLEEN S	02/20/2003
FREMONT, CA	
MILLBANK, MARCIA ANN	02/20/2003
SAN GABRIEL, CA	
MILLER, JOHN EDWARD	02/20/2003
LOS ANGELES, CA	
MOLYNEAUX, JUAN J	02/20/2003
NEW YORK, NY	
MORGAN, MICHAEL P	02/20/2003
NORFOLK, VA	
NADGIR, LAKSHMI	02/20/2003
LOS ANGELES, CA	
NORRIS, DENISE KOSLOWSKY	02/20/2003
MESA, AZ	
NUNN, MYRTLE R	02/20/2003
PHOENIX, AZ	
O'NEAL, BENJAMIN THOMAS	01/20/2003
TUCSON, AZ	
O'NEIL, AMY E	02/20/2003
NARRAGANSETT, RI	
PELLEGRINO, TAMMY IRVA	02/20/2003
ATCO, NJ	
PERCHOROWICZ, JUDITH MARGARET	02/20/2003
MISSION VIEJO, CA	
POTACCO, PHILIP	02/20/2003
SOUTH ORANGE, NJ	
POWERS, MARILYN	02/20/2003
SCOTTSDALE, AZ	
PRATER, SHAWN L	02/20/2003
TEMPE, AZ	
RADEKA, NICKOLAS	02/20/2003
WILMINGTON, NC	
RAE, JAMES RICHARD	02/20/2003
TUCSON, AZ	
RARRICK, RICHARD JAY	02/20/2003
S HOLLAND, IL	
RICHARD, CHRISTIAN MADISON	02/20/2003
IRVINE, CA	
ROBBINS, RICHARD J	02/20/2003
GLENDALE, AZ	
RODRIGUES, DIANE SUSAN ALLAN	02/20/2003
SAFFORD, AZ	
SHEFFER, LEE ALLAN	02/20/2003
OROVILLE, CA	
SLADE, MAX A	02/20/2003
PRESCOTT VALLEY, AZ	
SPERANDIO, CHRISTOPHER PAUL	02/20/2003
RICHMOND, VA	
STANITZ, C JAMES III	02/20/2003
ELMWOOD PARK, IL	
STARBUCK, JOHN M	02/20/2003
HOUSTON, TX	
STEPHNEY, KAREN	02/20/2003
GREENVILLE, MS	
STEVENS, CRISTY ANN	02/20/2003
MESA, AZ	
STRAIN, STEPHEN F	02/20/2003
NASHVILLE, TN	
STRATTON, MARIT	02/20/2003
RAMONA, CA	
TAYLOR, SONDRA J	02/20/2003
NEWPORT NEWS, VA	
TAYLOR, GILDA BONITA	02/20/2003
E ST LOUIS, IL	
TAYLOR, TANYA	02/20/2003
PHOENIX, AZ	
TOMBACK, DAVID	02/20/2003
KEW GARDENS, NY	
TURNER, ESTHER INEZ	02/20/2003
DEL CITY, OK	
URELL, COLEEN RAE	02/20/2003
TUCSON, AZ	
WALTERS, CECILIA	02/20/2003
MARS, PA	
WATKINS, ELIZABETH LUCILLE	02/20/2003
LAS VEGAS, NV	
WEAPU, WALTER	02/20/2003
BUCKEYE, AZ	
WEBER, JEFFREY D	02/20/2003
PHOENIX, AZ	
WHITE, DELORES V	02/20/2003
GILBERT, AZ	
WIEGENSTEIN, GWENDOLYN ANN	02/20/2003
CATHEDRAL CITY, CA	
WILLIAMS, KATHLEEN E	02/20/2003
YORK, PA	
WILLIAMS, ROBIN SMITH	02/20/2003
BELLEVUE, NE	
WOOTEN, STACY	02/20/2003
HOUSTON, TX	
ZAJACS, LISA C	02/20/2003
EVANS CITY, PA	
FEDERAL/STATE EXCLUSION/ SUSPENSION	
BEREZHANSKIY, VALERIY	02/20/2003
GLENVIEW, IL	
LYUBEZNAYA, YELENA	02/20/2003
BUFFALO GROVE, IL	
NAPADOV, VALERY	02/20/2003
NORTHBROOK, IL	
ORTENBERG, OLEG	02/20/2003
DEERFIELD, IL	
FRAUD/KICKBACKS	
L & L PSYCHOLOGICAL SVCS, P C	10/31/2002
OLD GREENWICH, CT	
LONSKI, MICHAEL W	10/31/2002
OLD GREENWICH, CT	
MICHAEL LONSKI, PHD, P C	10/31/2002
OLD GREENWICH, CT	
OWNED/CONTROLLED BY CONVICTED ENTITIES	
A BASTECKI CHIROPRACTIC	02/20/2003
AMES, IA	
ANTHONY E PERROTTI, DO, P A	02/20/2003
PEMBROKE PINES, FL	
PRAET CHIROPRACTIC	02/20/2003
FLAGSTAFF, AZ	
FAILURE TO PROVIDE PAYMENT INFORMATION	
JACKSON, SHEILA L	02/20/2003
SHREVEPORT, LA	
JACKSON, CLEVE	02/20/2003
SHREVEPORT, LA	
RELIABLE HOME HEALTH CARE INC	02/20/2003
SHREVEPORT, LA	
DEFAULT ON HEAL LOAN	
COHEN, DANIEL B	12/16/2002
SOUTHFIELD, MI	
COHN, MITCHELL A	12/10/2002
HASLET, MI	
LEE, SHERMAN T	12/10/2002
S PASADENA, CA	

Dated: February 3, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 03–3608 Filed 2–13–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 1—Clinical Sciences and Epidemiology.

Date: March 3–4, 2003.

Open: March 3, 2003, 8 a.m. to 10:05 a.m.

Agenda: Joint session of NCI, Board of Scientific Advisors and BSC Committees.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Bldg. 31, Conference Room 10, Bethesda, MD 20892.

Closed: March 3, 2003, 10:05 a.m. to 11:05 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: March 3, 2003, 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: March 4, 2003, 8 a.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abby B. Sandler, PhD, Scientific Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2114, Rockville, MD 20852, (301) 496–7628.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3617 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 2—Basic Sciences.

Date: March 3, 2003.

Open: 8 a.m. to 10:05 a.m.

Agenda: Joint Session of NCI, Board of Scientific Advisors and BSC Committees.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Bldg. 31, Conference Room 10, Bethesda, MD 20892.

Closed: 10:05 a.m. to 11:05 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Bldg. 31, Conference Room 6, Bethesda, MD 20892.

Closed: 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Rockville, MD 20852, (301) 496–7628.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3618 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, February 10, 2003, 7:15 p.m. to February 12, 2003, 10:45 a.m., which was published in the **Federal Register** on January 16, 2003, 68 FR 2343.

The notice is being amended to include a closed session on February 12 from 8 a.m. to 8:30 a.m.

The open session will convene at 8:30 a.m. The meeting is partially closed to the public.

Dated: February 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3619 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RFP–NICHD–2003–08—Folate and Neural Tube Defects.

Date: March 4, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. Telephone conference call.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3620 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Antibody Production Facility.

Date: February 24, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Four Points Sheraton, Embassy I, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nasrin Nabavi, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301 496–2550. *nn30t@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3621 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Human Respiratory Pathogens: Bacterial (Part A).

Date: March 18, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Eugene R. Baizman, Ph.D., Scientific Review Administrator, NIH/NIAID/DEA, Scientific Review Program, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616. 301–496–2550. *eb237e@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Human Respiratory Pathogens: Viral (Part B).

Date: March 19, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Eugene R. Baizman, Ph.D., Scientific Review Administrator, NIH/NIAID/DEA, Scientific Review Program, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616. 301–496–2550. *eb237e@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856 Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3622 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract

proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Primary Immunodeficiency Disease Consortium.

Date: March 13, 2003.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone conference call.)

Contact Person: Priti Methrotra, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616. 301–435–9369. *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transportation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: February 6, 2003.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3623 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development Subcommittee.

Date: March 12, 2003.

Time: 6 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PhD., Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547. (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development Subcommittee.

Date: March 12, 2003.

Time: 7:30 p.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PhD., Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547. (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Projects.

Date: March 17, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Khursheed Asghar, PhD., Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547. (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos: 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3624 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Minority Training and Development.

Date: February 24, 2003.

Time: 10:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Selected Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherido@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH Cognition and Behavior Conte Centers

Date: March 13, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3627 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Contracts for National Coordination Office-NNTC.

Date: March 10, 2003.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Houmam H Araj, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3628 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Test Strip for Urinary Cystine.

Date: February 25, 3003.

Time: 11 AM to 12:30 PM.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, PhM, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3629 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.
Publications SEP P M3.

Date: March 21, 2003.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Merlyn M. Rodrigues, MD, PhD., Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3630 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, R03's SEP.

Date: March 28, 2003.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Merlyn M. Rodrigues, MD, PhD., Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 5, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3631 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–F05 (20) L Fellowships: Cell and Development Biology.
Date: February 26–28, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Old Town Alexandria, 480 King Street, Alexandria, VA 22314.
Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tuberculosis.
Date: February 26, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 2.
Date: February 26–28, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG 1 VISC(01) Biology and Diseases of the Posterior Eye.
Date: February 26–28, 2003.
Time: 8:30 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 1.
Date: February 26–27, 2003.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Neal B. West, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892–7808, (301) 435–2514, *westnea@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Rheumatology SBIR's.
Date: February 26, 2003.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, *davidsoh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–4 (02) M:Cell Biology.
Date: February 26, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 451–3848, *ainsztea@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing Science: Children and Families.
Date: February 26, 2003.
Time: 3:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.
Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–2 02M: Member Conflict: Behavioral Pharmacology.
Date: February 26, 2003.
Time: 3:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Thomas A Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prokaryotic and Eukaryotic Molecular Biology and Genetics,
Date: February 26–28, 2003.
Time: 8 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1047, *mccormim@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Biology.
Date: February 27–28, 2003.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.
Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda MD 20892, (301) 435–1220, *chackoge@csr.nih.gov*.

Name of Committee: Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.
Date: February 27–28, 2003.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Nursing Research Study Section, Nursing Science: Adults and Older Adults.
Date: February 27–28, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov*.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 3.
Date: February 27–28, 2003.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications,
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 6,
Date: February 27–28, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 5.
Date: February 27–28, 2003.
Time: 8 a.m. to 5 p.m.,
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, F10 (20): Fellowships: Pathophysiology.
Date: February 27–28, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications,
Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.
Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, F10 (21) Fellowship: Pathophysiology.
Date: February 27, 2003.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications,
Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.
Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@car.nih.gov*.

Name of Committee: Cardiovascular Sciences Integrated Review Groupu, Pharmacology Study Section,
Date: February 27–28, 2003.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.
Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov*.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Geriatrics and Rehabilitation Medicine.
Date: February 27–28, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Governor's Hotel, 1615 Rhode Island Ave., NW., Washington, DC 20036.
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neurosciences ZRG1–1 BDCN–6 (01).
Date: February 27–28, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, Presidential Library, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemistry/Biophysics SBIR/STTR Panel.
Date: February 27–28, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Pathogenesis.
Date: February 27–28, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 3.
Date: February 27–28, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Riverwalk Hotel, 711 Riverwalk Street, San Antonio, TX 78205.
Contact Person: Michael A Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychosocial Risk and Disease Prevention.
Date: February 27–28, 2003.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Muscle and Biology.
Date: February 27–28, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036..
Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov*.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 1.
Date: February 27–28, 2003.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Ellen K. Schwartz, PhD, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 2.

Date: February 27–28, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Yvette Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alpha Adrenergic Signaling.

Date: February 27, 2003.

Time: 1 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 300 M Street, NW., Washington, DC 20007.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS T: 10B: Small Business: Endocrinology, Metabolism, Nutrition, & Reproductive Sciences.

Date: February 27–28, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Metallobiochemistry Study Section.

Date: February 28, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Phoenix Park Hotel, 520 North Capitol Street, Washington, DC 20001.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1723, *nelsonja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adverse Drug Reactions.

Date: February 28, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3625 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 10, 2003, 8 a.m. to February 10, 2003, 4 p.m., which was published in the **Federal Register** on January 29, 2003, 68 FR 4501–4503.

The meeting will be two days February 9–10, 2003, from 7:30 p.m. to 4 p.m. The location remains the same. The meeting is closed to the public.

Dated: February 6, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3626 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes Of Health

Prospective Grant of Exclusive License: Vaccines Against Rotavirus Disease

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied USPN 4,704,275, USPN 4,751,080 ("Vaccine Against Rotavirus Disease" and USPN 4,571,385 ("Genetic Re-assortment Of Rotaviruses For Production Of Vaccines And Vaccine Precursors") and foreign patent applications or other related materials to BIOVIRx, Inc. of Shoreview, MN. The rights to this invention have been assigned to the United States of America.

DATES: Only written comments and/or applications for a license which are received by NIH on or before April 15, 2003 will be considered.

ADDRESSES: Requests for a copy of a license application, inquiries, comments and other materials relating to the contemplated license should be directed to: Steven M. Ferguson, Deputy Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852; Telephone: (301) 435–5561; Facsimile: (301) 402–0220; E-mail: *sf8h@nih.gov.*

SUPPLEMENTARY INFORMATION: U.S. Patents 4,704,275 and 4,751,080 describe a live, attenuated serotype 3 rhesus rotavirus (or reassortments thereof) suitable for prevention of rotavirus disease in humans. U.S. Patent 4,571,385 describes methods of producing a human rotavirus vaccine based upon the re-assortment of human and non-human rotavirus strains.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of immunoprophylactic protection against rotavirus disease.

This prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 29, 2003.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–3616 Filed 2–13–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–04]

Notice of Submission of Proposed Information Collection to OMB: Mortgagee's Cert./Application/Monthly Summary of Assistance Payments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: March 17, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0081) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review; as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Cert./Application/Monthly Summary of Assistance Payments.

OMB Approval Number: 2502–0081.

Form Numbers: HUD–300 and HUD–93102.

Description of the Need for the Information and its Proposed Use: Mortgagees' applications for assistance payments on behalf of lower income homeowners under Section 235.

Respondents: Business or other or-profit.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	x	House per response	=	Burden hours
Reporting burden	350	24		0.6		5,250

Total Estimated Burden Hours: 5,250.

Status: Reinstatement, without change,

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 11, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–3775 Filed 2–13–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–07]

Third Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: The meetings will be held on Tuesday, March 4, 2003, from 8 a.m. to 5 p.m., Wednesday, March 5, 2003, from 8 a.m. to 5 p.m., and Thursday, March 6, 2003, 8 a.m to 4:15 p.m.

ADDRESSES: These meetings will be held at the Hyatt Regency Dallas Fort Worth (DFW), International Parkway (inside DFW International Airport), Dallas, Texas, telephone (972) 453–1234.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Office of Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards. The purpose of this meeting is to begin the development of proposed model manufactured home installation standards.

Tentative Agenda

A. Welcome and Introductions
B. Presentation on Duties of Congress of State Administrative Agencies
C. Presentation on Oregon's Installation Set-up Program
D. Installation Standards
E. Dispute Resolution

Dated: February 10, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–3776 Filed 2–13–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Special Use Permit Application Form for Alaska Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. We have included an estimate of the information collection burden in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: We accept comments until April 15, 2003.

ADDRESSES: Send your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222—ARLSQ, 4401 N. Fairfax Dr., Arlington, VA 22203; or *Anissa_Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, and related forms, contact Anissa Craghead at (703) 358–2445 or *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We plan to submit a request to OMB to renew its approval of the collection of information for special use permit applications on national wildlife refuges in Alaska. We are requesting a 3-year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The National Wildlife Refuge System Improvement Act of 1997, which amends the National Wildlife Refuge Administration Act (16 U.S.C. 668dd–668ee), requires that we authorize economic privileges on any national wildlife refuge by permit only when the activity will not be incompatible with the purposes for which the refuge was established. The Alaska National Interest Lands Conservation Act (ANILCA) provides for the disposition and use of a variety of federally owned lands in Alaska. Sections 302 and 303 of ANILCA identify the purposes for which each refuge in Alaska was established and shall be managed. Section 304 of ANILCA prohibits us from permitting any use of Alaska refuges unless it is compatible with the purposes of the refuge, and requires that we prescribe regulations and impose terms and conditions as may be necessary and appropriate to ensure activities permitted under any use are so compatible.

Various other sections of ANILCA prescribe additional conditions and requirements for us to permit uses on national wildlife refuges in Alaska. Specifically, section 810 of ANILCA requires that we evaluate the effects of any proposed use on subsistence uses and needs. Section 1303 of ANILCA establishes requirements and conditions for permitting use or construction of cabins, and states that we will issue no special use permits for cabins unless the permit applicant provides certain items of information. Section 1307 of ANILCA contains provisions concerning persons and entities to whom we are to give special rights and preferences with respect to providing commercial visitor services (except for guided hunting and sport fishing services) on units of the National Wildlife Refuge System in Alaska.

Our general refuge regulations provide for public entry for specialized purposes, including economic activities such as the operation of guiding, outfitting, and other visitor services on refuges by concessionaires or cooperators under appropriate contracts or legal agreements (see 50 CFR part 25.61) or special use permits (see 50 CFR parts 26.22(b) and 26.25). Alaska refuge regulations provide the authorities and procedures for selecting permittees on Alaska refuges, the vast majority of which are providers of services and facilities to the public (see 50 CFR parts 36. 37 and 36.41). We issue permits for a specific time period as determined by the type and location of the use or visitor service provided.

We supply refuge special use permit applications to interested Alaska citizens upon request. We use information provided on the permit application to determine whether the applicant is qualified and eligible for a permit. For competitively awarded permits, we use the information to ensure that we select the most qualified applicants to receive the benefit of a refuge permit. In applicable situations, we also use the information to determine the applicant's eligibility for special rights and preferences required by section 1307 of ANILCA. In addition, Alaska refuge managers need the information requested on the permit application to evaluate potential impacts of the proposed uses on refuge resources and other refuge users. Using information provided on the application form, refuge managers must determine or ensure that the proposed uses are compatible with the purposes of the refuge, provide safe and high quality visitor services to the public, and are consistent with other statutory and regulatory requirements for management of Alaska refuges.

Title: Special Use Permit Applications for National Wildlife Refuges in Alaska.

OMB Control Number: 1018–0014.

Service Form Number: 3–2001.

Frequency of Collection: On occasion.

Description of Respondents: Individuals and households; business and other for-profit institutions; not-for-profit institutions; farms; and State, local, or Tribal governments.

INFORMATION COLLECTION BURDEN ESTIMATE

Type of permit application	Annual number of respondents	Completion time (in hrs.)	Annual burden (in hrs.)
Competitively issued permit	180	30	5,400
Non-competitively issued permit	170	1.5	255
Combined Total	350		5,655

We invite comments concerning this renewal on (1) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) The accuracy of our estimate of the burden of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on respondents. This information collection is part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: February 10, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–3743 Filed 2–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft National Management Plan for the Genus Eriocheir

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and request for comments.

SUMMARY: This notice announces the availability of a Draft National Management Plan for the Genus Eriocheir for public review and comment. The document was prepared by the Chinese Mitten Crab Control Working Group of the Aquatic Nuisance Species Task Force, as authorized by section 4722(c) of the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA) of 1990 (16 U.S.C. 1701 *et seq.*). Comments received will be considered in preparing the final National Management Plan for the Genus Eriocheir, which will become the basis for cooperative and integrated management of the Chinese Mitten Crab, Eriocheir sinensis, with the involvement of Federal, State, Tribal, and local resource agencies.

DATES: Comments on the draft National Management Plan for the Genus Eriocheir should be received by March 31, 2003.

ADDRESSES: Written responses and requests for copies of the document should be mailed to Chair, Chinese Mitten Crab Control Working Group, U.S. Fish and Wildlife Service, Sacramento/San Joaquin Estuary Fishery Resources Office (SSJEFRO), 4001 North Wilson Way, Stockton, CA 95205–2486.

FOR FURTHER INFORMATION CONTACT: Kim Webb, Chair, Chinese Mitten Crab Control Working Group, at 209–946–6400 ext. 311 or by e-mail at *kim_webb@fws.gov* or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at *sharon__gross@fws.gov.*

SUPPLEMENTARY INFORMATION: The Chinese mitten crab, Eriocheir sinensis, is a recently introduced species to the San Francisco Estuary and associated watershed. The most probable mechanisms of introduction to the estuary were deliberate release to establish a fishery and/or accidental release via ballast water. This species is native to coastal rivers and estuaries of Korea and China along the Yellow Sea. The Chinese mitten crab is presently well-established throughout the San Francisco Bay, the Sacramento-San Joaquin Delta, and the mainstems of the major rivers and tributaries that flow into the estuary. Both the distribution and population size of this species continue to rapidly increase.

The establishment of this species in North America is of concern because the crab is considered a pest in northern Europe. The crab was accidentally introduced to Germany in the early 1900s, proliferated and spread to many northern European rivers and estuaries, where it impacted local fisheries and levee integrity. Once mitten crabs become established, there may be numerous negative impacts. The following description of negative impacts has been developed from a review of the literature and from experience with the California crab populations:

- Levees and/or banks are weakened due to mitten crab burrowing, leading to increased maintenance/repair requirements, slumping and/or failure of banks and/or levees. The tidal marsh and the mouth of San Francisquito Creek has experienced enhanced erosion where horizontal mitten crab burrows cut into the marsh sediments.
- Mitten crab feeding behavior contributes to a decrease in vegetation in agriculture fields and/or natural habitats.
- Fish in fish salvage or fish passage operations face increased mortality due to the presence of mitten crab in the facilities. At peak times of fall migration period, estimated fish mortality attributed to the crabs at the federal facility at Tracey is reported to be 98–99%. The economic impact incurred to the fish salvage facilities amounted to over one million dollars.
- Water diversion/industrial use activities are subject to interference due to crabs blocking or clogging systems.
- Recreational and commercial fishing are subject to interference and reductions in opportunities/efficiencies due to blocking/clogging of traps/nets, bait stealing and/or damage to gear or catch.
- The impacts of predation, competition, habitat alteration and/or foodweb disturbance on biotic populations leads to a decrease in biotic populations and/or biodiversity, and a change in the community structure.
- Public and wildlife health risks arising from potential bioaccumulation and biomagnification of contaminants, the transfer of disease, or spread of parasites leads to a decrease in public/wildlife health. These risks are escalated both by direct consumption of the crab or indirectly by consumption/association with animals that prey on or associate with the crab.

In recognition of these threats, the California Department of Fish and Game added the genus Eriocheir to its List of Prohibited Species (Section 671, Title 14) in 1986. The U.S. Fish and Wildlife Service added the genus to its injurious wildlife list under the Lacey Act in 1989 (50 CFR 16.13). The ANS Task Force has followed the status of the mitten crab

invasion of California since early 1998 and determined that, under the authority of NANPCA, the development of a cooperative and comprehensive management plan for the genus Eriocheir was appropriate and necessary. The U.S. Fish and Wildlife Service supported a literature search and summary, organized a public meeting and workshop, and developed a report in 1999 to the ANS Task Force entitled "The Chinese Mitten Crab Invasion of California: A Draft Management Plan for the Genus Eriocheir." In 2001 the ANS Task Force developed a Mitten Crab Control Working Group (under the authority of NANPCA) and charged the committee with the task to review and edit the draft plan. The committee submitted a revised version of the draft plan to the ANS Task Force for review and approval in 2002.

The purpose of the draft management plan is to assist the ANS Task Force and other interested parties with a determination of appropriate responses to the Chinese mitten crab invasion of the San Francisco Bay and estuary, as well as the threat to other estuaries. The plan addresses the information and initial recommendations as well as the opinions of committee members regarding priorities for implementation of management actions. Currently, there is not enough information about this crab to implement many management actions with a high degree of confidence; therefore, a vital component of this program is adaptive management. As implementation moves forward, results of new findings will be incorporated into future planning. Continual integration of findings will require flexibility in adoption of many program components, but it will greatly enhance the success of the program by allowing decisions to be based on more complete scientific information.

The goal of the draft National Plan is to prevent or delay the introduction and spread of Eriocheir species to new areas and reduce the negative impacts of existing populations.

The draft plan has identified the following four primary objectives: (1) Preventing introductions and spread; (2) detecting new populations and monitoring existing populations; (3) reducing negative impacts; and (4) developing strategies and methods for population control and management. Elements of research, outreach and management pertain to each of these objectives.

The draft plan has outlined actions not only to minimize further impacts in California, but to also prevent invasions in other ecosystems. Due to reports of crab sightings and the susceptibility of these regions, the Columbia River, Mississippi River, Hudson River, and St. Lawrence River are considered areas that may soon face the same type of invasion that San Francisco Bay has experienced. Without the implementation of proactive efforts to prevent new introductions and spread from California, control and management activities will likely be required in numerous locations throughout the country in the future, making management efforts even more complex and expensive. Importantly, while immediate actions are warranted in the draft plan, additional biological information is also needed to allow development of a theoretically based management plan that will allow us to minimize negative impacts on the very resources we hope to protect.

The draft National Management Plan for the Genus Eriocheir is available on the ANS Task Force Web site (*http://www.anstaskforce.gov*) You may also request copies of the draft plan by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: January 21, 2003.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 03–3745 Filed 2–13–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the California Spotted Owl (*Strix occidentalis occidentalis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the California spotted owl (*Strix occidentalis occidentalis*) under the Endangered Species Act of 1973, as amended. After reviewing the best available scientific and commercial information available, we find that the petitioned action is not warranted. We continue to ask the public to submit to us any new information that becomes available concerning the status of or threats to this species. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on February 7, 2003. You may submit new information concerning these species for our consideration at any time.

ADDRESSES: You may send data, information, comments, or questions concerning this finding to Field Supervisor (Attn: CASPO), Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825. You may inspect the petition, administrative finding, supporting information, and comments received, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Moore or Ken Sanchez at the above address (telephone at 916/414–6600; facsimile at 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that presented substantial scientific or commercial information that listing may be warranted, we make a finding within 12 months of receiving the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

On April 3, 2000, we received a petition dated April 2000, from the Center for Biological Diversity, Tucson, Arizona, and Sierra Nevada Forest Protection Campaign, Sacramento, California, and other organizations to list as threatened or endangered the California spotted owl (*Strix occidentalis occidentalis*). The names, addresses, and signatures of representatives of these organizations followed in a letter dated April 17, 2000. These organizations filed the petition on behalf of themselves and 14 other organizations and requested that we designate critical habitat for the California spotted owl concurrent with listing. Further, they requested emergency listing and emergency designation of critical habitat. Although emergency listing and designation of critical habitat are not petitionable actions under the Act, we determined that an emergency situation did not exist.

On October 12, 2000, we published a 90-day finding on that petition in the **Federal Register** (65 FR 60605). In that publication we found that the petition presented substantial scientific or commercial information to indicate that listing the California spotted owl may be warranted, and we requested information and data regarding the species. On July 31, 2001, the Center for Biological Diversity and others filed a complaint in District Court, alleging the Service failed to make a timely 12-month finding in response to their listing petition. On March 5, 2002, the District Court entered an order requiring the completion of the 12-month finding by February 10, 2003.

The Petition

The petitioners believe that listing the California spotted owl is necessary because of factors related to loss and modification of habitats from timber harvest and urbanization, lack of existing State or Federal regulatory mechanisms that protect the species, and declines in the population.

The petitioners believe listing is necessary primarily because past timber harvest in the Sierra Nevada has resulted in the loss of key components of spotted owl habitat over large portions of the landscape. They also believe that current Federal land management agency strategies and private land forest practices are resulting in the loss or destruction of spotted owl habitat. They expressed special concern about past timber harvest practices that selectively removed the larger, older trees that comprise a key component of spotted owl breeding habitat.

The petitioners refer to the "Interim Guidelines" of the Federal land management strategy in place at the time the petition was submitted (April 2000) to conclude that current and planned timber sales would continue to remove key components of spotted owl habitat. The petitioners believe the cumulative effects of continued timber harvest and fuels reduction projects on Federal lands would have dramatic effects on the spotted owl.

The petitioners state, "* * * there are almost no protections for spotted owls * * *" on private lands. They assessed the State mechanism for permitting timber harvest and analyzed recent timber harvest plans to conclude, "* * * owls are being heavily impacted by logging on private lands." Additional evidence of habitat destruction cited by the petitioners includes urbanization and development, particularly loss of habitat at lower elevations from new home construction.

The petitioners cite recent studies that report potential population declines as further evidence to support a positive listing decision. The petitioners review and interpret several studies of California spotted owl population dynamics to infer "drastic" annual declines in the population.

Other impacts addressed in the petition include livestock grazing, recreation, climate change, fire, competition from the barred owl, and disease and predation. These are impacts thought by the petitioners to be apparent, though not well studied or documented.

Taxonomy and Description

The spotted owl was first described as *Syrnium occidentale* by John Xantus in 1859 based on a specimen collected at Fort Tejon, Kern County, California (Xantus 1859). The species was later reassigned to the genus *Strix* (Ridgway 1914). The specific name was altered to conform to the Code of Zoological Nomenclature, yielding the scientific name *Strix occidentalis* (Service 1993). Currently, the American Ornithologist Union (AOU) recognizes three subspecies of spotted owls: the California spotted owl (*Strix occidentalis occidentalis*), the northern spotted owl (*Strix occidentalis caurina*), and the Mexican spotted owl (*Strix occidentalis lucida*) (AOU 1957).

The spotted owl is mottled in appearance. It has a brown back with white spots and brown barring. The facial disk is pale brown with concentric rings of dark brown, bordered by a ring of dark brown feathers. A conspicuous light-colored "X" is apparent between the eyes above its pale yellowish beak, where "eyebrows" and "whiskers" merge together. Unlike most other owl species, which have yellow eyes, spotted owls have dark brown eyes. Wings and tail are rounded, and all flight feathers are dark brown with light brown cross-bars. Sexes cannot be distinguished by plumage, but can be readily identified by size and vocalization (Verner *et al.* 1992b). Females are usually larger than males, with males weighing 470 to 685 grams (g) (17 to 24 ounces (oz)), and females 535 to 775 g (19 to 27 oz) (Gutiérrez *et al.* 1995). First- and second-year adults can be distinguished by the tips of the tail feathers, which are white and taper to a sharp point until replaced by adult plumage at about 26 months of age (Gutiérrez *et al.* 1995). The spotted owl is the fifth largest species of owl occurring in North America (Verner *et al.* 1992b); It is 41 to 48 centimeters (cm) (16 to 19 inches (in)) in length, with a wingspan of 107 to 114 cm (42 to 45 in) (Center for Biological Diversity 2000).

California spotted owls are lighter brown with slightly larger white spots than the northern spotted owl. Mexican spotted owls are lighter brown than both the California and northern subspecies, with some individuals having a rare palomino color. The facial disk and upper breast of the Mexican spotted owl contain more white than the other subspecies, and larger white spots add to the perception that they are lighter in color (Gutiérrez *et al.* 1995).

The northern spotted owl was listed as threatened under the Act in 1990 (Service 1990), and the Mexican spotted owl was listed as threatened in 1993 (Service 1993).

Population Genetics

Three genetic markers (*i.e.*, allozymes, mitochondrial DNA and random amplified polymorphic DNA) have been used to examine the genetic structure of spotted owls . Analysis of allozymes (alternate forms of proteins) supports separation of the Mexican spotted owl from the other two subspecies (Gutiérrez *et al.* 1995). Barrowclough *et al.* (1999) compared the sequences of a fragment of mitochondrial DNA (mtDNA) from 73 individual spotted owls, including samples from all three subspecies and from multiple populations within each subspecies. Their data support the separation of the species into the three currently recognized subspecies. Based on their data, the northern spotted owl appears to have diverged from the other two subspecies, and the California spotted owl later diverged from the Mexican spotted owl. In this study, gene flow appeared relatively high within subspecies and low between subspecies (Barrowclough *et al.* 1999). The authors concluded that gene flow between northern and California spotted owls is a recent and uncommon phenomenon.

Haig *et al.* (2001) used random amplified polymorphic DNA (RAPD) to analyze genetic variation between spotted owls at multiple geographic levels, including between subspecies. They found extremely low RAPD variation in spotted owls, with only 11 of 400 primers showing variation. Their data show genetic separation of Mexican spotted owls from California and northern spotted owls, but do not show separation between the California and northern subspecies. They suggest that the lack of separation between the California and northern subspecies in their data may be due to recent gene flow between subspecies, or due to the low variation of the data. We are also aware that additional research by Haig and colleagues bearing on the question of subspecific distinctions in spotted owls has not yet been published (A. Bowers, U.S. Fish and Wildlife Service, in litt. 2002).

Currently available, published genetic data (*i.e.*, mtDNA and RAPDs) apparently lead to different conclusions regarding subspecific distinctions in spotted owls. Therefore, for the purposes of this finding, we adopt the taxonomy accepted by the American Ornithological Union (AOU 1957), which recognizes the California spotted owl as a distinct subspecies (*Strix occidentalis occidentalis*).

Life History

Mating System and Reproduction. Spotted owls usually reach reproductive maturity at two years of age, although first year birds have sometimes nested the season after they were hatched. Considerable variation exists in both the percentage of pairs that nest and the number of pairs that successfully fledge young, both geographically and from year to year (Verner *et al.* 1992b).

Spotted owls are monogamous with no records of extra-pair copulations. They usually pair with the same mate from year to year, although "divorces" have been documented. The breeding season of California spotted owls extends from mid-February to mid-September or early October. Individuals begin breeding earlier in the San Bernardino Mountains than in the Sierra Nevada. Within a geographic area, individuals begin breeding earlier at lower elevations (Verner *et al.* 1992b).

California spotted owls are mostly nonmigratory, remaining within the same home ranges year round. However, in the Sierra Nevada, some individuals migrate downslope to winter habitats (Verner *et al.*1992b). Laymon (1988) observed the subspecies migrating from summer home ranges in mixed conifer forests to winter home ranges in lower elevation pine-oak woodlands. He believed that similar migrations may also occur in Southern California. Tibstra (1999) observed that 10 of 22 dispersing juvenile owls having natal sites in coniferous forest habitats above 1,120 meters (m) (3,675 feet (ft)) moved downslope to lower elevation (305 m (1,000 ft) to 732 m (2,402 ft)) pine-oak woodland habitats. Of those ten, data were available through the following spring for only two, both of which overwintered and then moved back to high-elevation sites. The elevational movements of those two owls were significantly correlated with environmental temperature. Tibstra speculated that the pattern of migration to winter range observed in some adults may be established in the first year by dispersing juveniles.

Owls that migrate downslope do so between early October and mid-December and return in late February to late March. Such migrations range from 15 to 65 kilometers (km) (9 to 40 miles (mi)) with altitudinal changes of 500 to 1,500 m (1,640 to 4,921 ft). Some individuals have also been observed to move between high- and low-elevation ranges one or more times within a single winter (Gutiérrez *et al.* 1995).

Individuals of migratory pairs of California spotted owls migrate to separate winter ranges rather than wintering together. After they return to their summer ranges, they follow the same breeding cycle as nonmigratory pairs, as described below. However, they probably do not spend as much time together at the beginning of the breeding season, because they may not return from their winter range by the time nonmigratory pairs have begun roosting together (Verner *et al.* 1992b, Gutiérrez *et al.* 1995). Individuals of nonmigratory pairs of California spotted owls remain together on the same home range year round, but they do not usually roost together during the winter. However, late in the winter, they increasingly roost together, preen each other, and occasionally copulate. For approximately two weeks before the first egg is laid, pairs roost together and copulate once or twice each evening. For about one week before the first egg is laid, the female spends most of her time near the nest, and the male brings her prey items (Verner *et al.* 1992b, Gutiérrez *et al.* 1995).

California spotted owl eggs are elliptical, white to pearl grey, and smooth to slightly granular in texture. California spotted owl egg laying peaks in mid-April. When egg laying begins, the female spends almost all her time in the nest, and the male supplies almost all of her food. The number of eggs in clutches ranges from one to four, with most nests containing two. Successive eggs are laid approximately three days apart. Pairs continue to copulate throughout, and for up to four days, after the egg laying period (Verner *et al.* 1992b, Gutiérrez *et al.* 1995).

Only the female incubates the eggs. During the first two days of incubation, she may leave the nest for up to two hours, but thereafter she will only leave the nest for 10 to 20 minutes at a time to regurgitate pellets, defecate, preen, or accept food from her mate (Verner *et al.* 1992b).

Eggs hatch after approximately 30 days. Hatchlings are covered with white natal down, with juvenile plumage starting to replace natal down at about 10 to 20 days (Gutiérrez *et al.* 1995). The female broods the hatchlings almost continuously for eight to ten days. During this period, the male supplies food for the female and young. Two to three weeks after the eggs hatch, the female begins foraging for one to four hours per night. Males have not been observed to feed the chicks directly, but continue to bring food to the nest, which the female passes to the chicks (Verner *et al.* 1992b).

Most chicks fledge 34 to 36 days after hatching. New fledglings are weak fliers and may spend hours or days on the ground. Approximately three days after fledging, most young are able to fly or climb to elevated perches. Within a week, most are able to fly between trees. Both parents continue to feed the fledglings until mid to late September (Verner *et al.* 1992, Gutiérrez *et al.* 1995).

Dispersal. Spotted owls primarily disperse as juveniles (natal dispersal), but may also disperse as adults (breeding dispersal) if habitat within their home range has been degraded or if they have separated from a mate (Verner *et al.* 1992b). Natal dispersal occurs in September and October.

Natal dispersal distances of California spotted owls have been estimated using radio telemetry (Verner *et al.* 1992, Tibstra 1999) and recapturing territorial owls that were banded as juveniles (LaHaye *et al.* 2001, Jennifer Blakesley, Colorado State University, *in litt.* 2002a). Dispersal distances of successfully dispersing owls ranged from 3 km (2 mi) to 76 km (47 mi). Mean natal dispersal distance of 26 owls in the Sierra National Forest and Sequoia National Park estimated using radio telemetry was 15.9 km (9.9 mi) (Tibstra 1999) and median distance of 42 owls on the Lassen National Forest estimated using recapture data was 25 km (16 mi) for females and 23 km (14 mi) for males (Blakesley *in litt.* 2002a). Mean natal dispersal distances of 129 owls in southern California estimated using recapture data were 10.1 km (6.3 mi) for males and 11.7 km (7.3 mi) for females. No significant difference existed in dispersal distance or time to become territorial between sexes (LaHaye *et al.* 2001). In this study, some dispersing owls did not occupy territories until they were four years old, but over 60 percent occupied territories within one year of fledging. Apparent survival of fledglings (calculated as the percentage of banded fledglings that were later relocated) was 31.8 percent.

LaHaye *et al.* (2001) concluded that the presence of conspecifics (members of the same species) may play a vital role in the recruitment of dispersing California spotted owls into a territory, because owls that "settled" (established territories) were significantly more likely to do so in territories that were occupied the previous year than would be expected by chance and all previously vacant territories that were settled were adjacent to occupied territories. The percentage of territories occupied varied from 59 to 95 percent from year to year. During the study, young fledged from 28 percent of the 39 territories that were "frequently vacant," indicating that habitat at those sites was suitable to support California spotted owl reproduction.

Four color banded adults on the Sierra National Forest later shifted territories, moving 3.4 km (2.1 mi), 3.5 km (2.2 mi), 3.9 km (2.4 mi), and 7.1 km (4.4 mi) (Verner *et al.* 1992b). In a study of breeding dispersal of California spotted owls in the San Bernardino Mountains (LaHaye and Gutiérrez *in litt.* 2002), 46 females and 38 males dispersed, which were 22 percent and 17 percent of the total banded females and males, respectively. Among dispersing females, 70 percent were adults and 30 percent subadults; among males, 71 percent were adults and 29 percent were subadults. A significantly higher percentage of subadults dispersed (30 percent) compared to the territorial population as a whole (14 percent). Mean dispersal distances were 4.3 km (2.7 mi) for females and 3.0 km (1.9 mi) for males, which are significantly shorter than natal dispersal distances observed in the same population.

Interactions with Other Species and Natural Mortality. Spotted owls are mobbed by many species of diurnal birds (Gutiérrez *et al.* 1995). Red-tailed hawks (*Buteo jamaicensis*) and common ravens (*Corvus corax*) may take away prey items that are captured by spotted owls. The spotted owl's closest competitors are great horned owls (*Bubo virginianus*) and barred owls (*Strix varia*). Barred owls have recently colonized portions of the range of California spotted owls and are known to displace spotted owls from their territories (Verner *et al.* 1992b, Gutiérrez *et al.* 1995). Circumstantial evidence suggests that barred owls may kill spotted owls (Leskiw and Gutiérrez 1998). Northern goshawks (*Accipiter gentilis*), great horned owls, red-tailed hawks and potentially other birds of prey eat spotted owls (Verner *et al.* 1992, Gutiérrez *et al.* 1995). Fishers (*Martes pennanti*) have been observed in spotted owl nest trees and may take eggs or chicks (Gutiérrez *et al.* 1995).

Starvation (Verner *et al.* 1992b, Gutiérrez *et al.* 1995, Tibstra 1999) has been documented as a cause of death in California spotted owls. Starvation is more common in juveniles than adults and may result from low prey availability or lack of hunting experience (Verner *et al.* 1992b). Dispersing juveniles sometimes roost in open habitats during inclement weather, which may result in exposure causing or contributing to their deaths (Gutiérrez *et al.* 1995). Accidents leading to death have been documented for spotted owls, including flying into obstacles and drowning (Verner *et al.* 1992b).

Feeding and Metabolism. Spotted owls are "perch and pounce" predators, hunting primarily by selecting an elevated perch, detecting prey by sight or sound, and swooping from the perch to capture the prey with their talons. Spotted owls are not fast fliers, but they are very agile and maneuverable. The flight pattern is a series of quick wing beats interspersed with gliding flight. Spotted owls use gliding flight when approaching prey. When gaining altitude in the forest canopy, they make a series of short climbing flights rather than one continuous flight. Flight is labored when attempting to fly to a higher perch or a nest sight. Flight above the forest canopy is probably rare, except during dispersal (Gutiérrez *et al.* 1995). If a potential prey item is inaccessible or at a considerable distance from an owl's perch, the owl may move closer before pouncing (Verner *et al.* 1992b). Spotted owls will forage at several sites within a single night (Gutiérrez *et al.* 1995). They also hunt by capturing in mid-air flying prey such as insects, bats, and birds (Verner *et al.* 1992b, Gutiérrez *et al.* 1995). California spotted owls forage primarily at night, but have been observed hunting during the day, especially while raising young (Laymon 1991, Verner *et al.* 1992). They may cache prey items on limbs, stumps, or the ground for later consumption (Gutiérrez *et al.* 1995). Prey items include mammals, birds, and insects.

Spotted owls have a high water need relative to their metabolic rate (Weathers *et al.* 2001), and have been observed drinking surface water from seeps and creeks (Gutiérrez *et al.*1995). California spotted owls have a narrow thermal neutral zone (the ambient temperature range through which a bird or mammal can maintain its normal body temperature without expending energy to do so) relative to birds in general and are therefore especially subject to heat stress (Gutiérrez *et al.* 1995, Weathers *et al.* 2001). They roost higher in the forest canopy during winter and lower during the summer. They will also move during a day in response to changes in ambient temperature and sun exposure. The variety of microclimates available in mature and old growth forests has been postulated as an explanation for the spotted owl's use of such habitats (Gutiérrez *et al.* 1995).

Distribution, Range, and Land Ownership

Grinnell and Miller (1944) described the range of the California spotted owl as "[i]n general, coastal slope of southern California from southern San Diego County northwest to Santa Barbara, Ventura, and western Kern Counties, and west flank of Sierra Nevada north from Tulare County to Tehama County" and noted that the southern California range was apparently separated from the Sierra portion of the range.

The mapped range of the California subspecies in Grinnell and Miller (1944) indicated a gap in the distribution of spotted owls in Shasta County, separating the California and northern spotted owl subspecies. However, based on newer records and the occurrence of apparently-suitable habitat in the area, more recent authors have concluded that this purported gap between the California and northern subspecies may not have actually existed (Detrich *et al.* 1993). For regulatory purposes, we established the "Pit River area" as the boundary between the northern spotted owl and the California spotted owl (55 FR 26114). No historic data are available regarding pre-European settlement population numbers of the California spotted owl.

The northern spotted owl ranges from southwestern British Columbia, Canada through western Washington, western Oregon, and northern California south along the coast to San Francisco Bay (Service 1990). The range of the Mexican spotted owl is disjunct from the other subspecies, from southern Utah and Colorado south through Arizona and New Mexico, and is discontinuous through the Sierra Madre Occidental and Oriental to the mountains at the southern end of the Mexican Plateau (Service 1993).

Today the California spotted owl still occurs throughout its historic range, including the west side of the Sierra Nevada from Shasta County south to the Tehachapi Pass, and all major mountains of southern California, including the San Bernardino, San Gabriel, Tehachapi, north and south Santa Lucia, Santa Ana, Liebre/Sawmill, San Diego, San Jacinto, and Los Padres ranges (Beck and Gould 1992). In addition, a few sites have been found on the eastern side of the Sierra Nevada and in the central Coast Ranges at least as far north as Monterey County.

Regarding the current distribution of the California spotted owl, Verner *et al.* (1992a) stated "in spite of the fact that

logging has occurred over nearly all of the conifer forests of the Sierra Nevada in the past 100 years, and especially the past 50 years, spotted owls continue to be widely distributed throughout most of the conifer zone. Indeed, spotted owls may be more abundant in some areas of the Sierra Nevada today than they were 100 years ago, " (due to presumed effects of 19th century sheep grazing on spotted owl prey species.) They also stated that "Spotted owl distribution in the Sierra Nevada is characterized by its continuity and relatively uniform density."

The elevation of known nest sites of California spotted owls ranges from about 305 to 2,348 m (1,000 to 7,700 ft), with approximately 86 percent of sites occurring between 915 and 2,135 m (3,000 and 7,000 ft) (USFS 2001a). In conifer forests mean elevation of nest sites was 1,160 m (5,300 ft) in the northern Sierra Nevada and 1,830 m (6,000 ft) in southern California (Gutiérrez *et al.*1992).

The California Department of Fish and Game (CDFG) has maintained a database of the number and location of California spotted owl territories located from the early 1970s to the present. We have combined that database with similar data collected by Sierra Pacific Industries, the major private timberland owner in the Sierra Nevada. The following discussion of locations and land ownership is based on that combined database and includes all records available to us. It is important to note that not all territories are occupied during any given year. The data presented are useful to illustrate the range of the species and jurisdictions under which it occurs, but should not be viewed as a population estimate because the current status of many territories is unknown due to lack of recent surveys; not all territories are occupied in a given year; and, in addition to territorial owls that comprise most of the sites in the database, nonterritorial, "floater" owls may be present but uncounted.

California spotted owl territories have been located on Forest Service (USFS), National Park Service (NPS), Bureau of Land Management (BLM), California Department of Parks and Recreation (State parks), California Department of Forestry and Fire Protection (CDF), California State Lands Commission (CSLC), Native American and private lands, and in Mexico.

Sierra Nevada. In the Sierra Nevada the California spotted owl is mostly continuously and uniformly distributed, with several breaks in distribution where habitat appears limited due to natural or human-caused factors (Beck and Gould 1992). These Areas of Concern are further discussed in a later section.

In Sierra Nevada national forests, 99 percent of owl sites occur on the Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, and Sequoia National Forests. The number of territories per national forest are as follows: Modoc 3, Lassen 138, Toiyabe 2, Inyo 5, Tahoe 173, Lake Tahoe Basin Management Unit 14, Plumas 254, El Dorado 202, Stanislaus 234, Sierra 226, and Sequoia 148. This results in a sub-total for Forest Service Sierran lands of 1,399 sites. The number of territories per national park are as follows: Lassen 6, Kings Canyon 19, Sequoia 50, and Yosemite 54. Fourteen territories are on BLM land in the Sierra Nevada. Three territories are on State parks, 1 is on CDF land, and 4 are on CSLC land. One territory is on Native American land and 314 are on private lands. Thus, the total number of California spotted owl sites known in the Sierra Nevada is 1,865 (Service 2002)

Because the subspecies has large home ranges, a given home range may occur across different ownerships. For instance, the Forest Service reported that over 15 percent of 135 Forest Service sites analyzed had greater than 15 percent of their theoretical home range on private lands (USFS 2001).

Coast Ranges and Southern California. In southern California, the owl occupies "islands" of high elevation forests isolated by lowlands covered by chaparral, desert scrub, and increasingly (Noon and McKelvey 1992), human development (LaHaye *et al.*1994). California spotted owls have been found on 440 territories or sites in southern California in 15 populations comprised of 3 to 270 individuals, and separated from each other by 10 to 72 km (6 to 45 mi) (Verner *et al.* 1992a, Gutiérrez 1994). Seventy-five percent of known territories are on Federal lands and twenty-five percent are on nonFederal lands. The Angeles National Forest has 64 territories, Cleveland National Forest has 18 territories, Los Padres National Forest has 109 territories, and San Bernardino National Forest has 138 territories; two territories are on BLM land; eight territories are on State parks; six are on Native American lands, 95 are on private lands, and one is in Mexico.

Within the California coastal and inland mountain ranges where California spotted owls occur (San Bernardo, San Gabriel, San Jacinto, Castaic, Santa Ana, and Santa Lucia mountains and San Diego/Peninsular, and Los Padres Ranges) an area of just over 2,428,068 hectares (ha) (6,000,000 acres (ac)) was assessed for all habitats by the Forest Service (Stephenson and Calcarone 1999). Landownership in the assessment area is National Forest (57 percent), private (33 percent), BLM (4 percent), Indian (3 percent), State (2 percent), military (1 percent) and local (1 percent). Not all of the analysis area is suitable spotted owl habitat (mixed conifer hardwood), thus the portion of the total owl population or sites known on Federal lands as determined in Verner *et al.*1992a and Gutiérrez 1994, is higher (75 percent) than their relative ownership in the assessment area (62 percent).

The range of California spotted owls in southern California is disjunct from that in the Sierra Nevada range as a result of natural topographic and manmade factors (Stephenson and Calcarone 1999). Within this southern range, habitat and spotted owls are distributed discontinuously across the landscape reflecting natural vegetation breaks, topographic conditions, and human induced habitat disturbance and fragmentation (Noon and McKelvey 1992). The spotted owls in the southern portion of the range may function as a meta population, with separate subpopulations connected by infrequent but persistent interchange of individual owls (Noon and McKelvey 1992; LaHaye *et al.* 1994).

Habitat

The habitat used by California spotted owls today is comprised of forests that have been shaped by numerous interacting human impacts, including timber harvest, livestock grazing, urbanization, and, because of fire suppression, changes in the character of wildfires. Prior to the occupation of California by Anglo-Americans in the mid-1900s, habitat was probably fairly stable on a large geographic scale, although there were almost certainly localized variations caused by fire and other causes of forest mortality. In recent decades, timber harvest and ingrowth related to fire suppression have created widespread forest conditions believed to be considerably different than that of pre-historic times (McKelvey and Weatherspoon 1992, McKelvey and Johnston 1992). In the following section, the current understanding of use of today's forests by California spotted owls will be portrayed, along with some discussion of the factors that created these conditions. The anticipated trends in habitat will be discussed in the Threats section below.

The suppression of wildfire during the 20th century has been one of the most important factors in creating the forest conditions that provide habitat for the California spotted owl today. For thousands of years preceding European settlement of California, low to moderate intensity fires burned frequently in most Sierra Nevada vegetation types (University of California 1996). Median fire return intervals were typically less than 20 years, and as low as four years, in ponderosa pine (*Pinus ponderosa*) and mixed conifer zones. In the mixed conifer zone, where approximately 80 percent of Sierra Nevada California spotted owl sites occur (see Habitat Requirements, above), many plant species take advantage of, or depend on, fire for their reproduction or as a means of competing with other species. The effects of frequent surface fires largely explain the reports and photographs by early observers who described Sierra Nevada forests as typically open and park-like. However, other early observers reported dense conditions and dark or impenetrable forest. These records suggest that although open conditions were more prominent than they are today, Sierra Nevada forests were a mix of different degrees of openness, with an unknown proportion in dark, dense, nearly impenetrable vegetative cover and with variations in density with latitude, aspect, and elevation (University of California 1996, Gruell 2001).

Suppression of wildland fires had been established in California as State and Federal policy by the early 20th century. The area burned annually in recent times has been estimated to be only about three percent of that burned pre-European settlement in mixed conifer forest types (University of California 1996). As will be discussed further below, fire suppression has resulted in substantial growth of small understory trees in much of the range of the California spotted owl.

Timber harvest has been another obvious impact to California spotted owl habitat (Gutiérrez 1994, Verner *et al.* 1992a). McKelvey and Johnston (1992) used historical documents to describe the status of Sierran forests at the beginning of the 20th century, and detailed the harvest history from the late 19th century to 1990. Harvest steadily intensified from the railroad building and mining eras of the 1800s until the 1950s, then remained at relatively high levels through the 1980s. (Intermittent declines occurred during poor economic conditions of the 1930s and early 1980s.) Low elevations and accessible areas (McKelvey and Johnston 1992, Beardsley *et al.* 1999) and commercially important forest types such as west-side mixed conifer and east-side pine (Franklin and Fites-Kaufmann 1996) have been the most heavily impacted. As a result, McKelvey and Johnston stated that "The mixed conifer zone of the Sierra Nevada * * * has few or no stands remaining that can be described as natural or pristine."

Verner *et al.* (1992a) discussed five major factors of concern for California spotted owl habitat that have resulted from historical timber harvest strategies: (1) Decline in the abundance of very large, old trees; (2) decline in snag density; (3) decline in large-diameter logs; (4) disturbance or removal of duff and topsoil layers; and (5) change in the composition of tree species. Of these concerns, they believed significant changes in diameter distributions of trees in the Sierra Nevada and rapid reductions in the distribution and abundance of large, old, and decadent trees posed the greatest threat to the California spotted owl. Thus, extensive commercial harvest of large old trees in late successional forest directly affected the key structural components of California spotted owl habitat.

Timber harvest in the Sierra Nevada peaked in the 1950s and remained at high levels into the late 1980s (McKelvey and Johnston 1992). Since the late 1980s, the volume of timber harvested in the Sierra Nevada has declined substantially. In particular, levels of timber harvest on national forest lands declined after implementation of the California Spotted Owl Sierran Province Interim Guidelines in 1993 (USFS 2001a). From Fiscal Year (FY)1998 through FY 2002, the mean annual total harvest volume (279.4 million board ft (mmbf)) on the seven National Forests that support most of the Sierra owl population was about 28 percent of the mean annual total volume harvested on those forests during the period FY 1986 through FY 1990 (1,007 mmbf) (USFS 2002a). Whereas old-growth accounted for most of the volume in the past, more recent harvest practices have focused on thinning of young, smaller trees (McKelvey and Johnston 1992).

The decline in Federal harvest led an overall decline in the total Federal and private harvest in the Sierra Nevada. According to California timber tax data (California Board of Equalization 2002), total harvest from public lands in 18 Sierra Nevada counties during the late 1980s and early 1990s constituted about half of the total annual volume harvested in those counties, but following the 1993 implementation of protections for the California spotted owl on Forest Service lands, the public lands harvest did not exceed 25 percent of the total annual volume harvested from those counties in any year from 1994 through 2000. In the meantime, private harvest during the 15-year period from 1986 to 2000 remained between 650 and 775 mmbf per year, except for a 2-year spike of over 900 mmbf per year in 1990 and 1991. Mean annual volume from private lands in the 18 Sierra Nevada Counties in the period for the period 1986 to 1990 was about 811 mmbf, and mean annual volume from 1996 to 2000 was about 714 mmbf, a difference of 12 percent. Thus, in the Sierra Nevada, private lands harvest has declined somewhat while Federal harvest has declined sharply since the late 1980s.

Similar trends in timber harvest have occurred in the four southern California national forests, although timber harvest in this area was never as extensive as in the Sierra Nevada. According to McKelvey and Johnston (1992), harvest volume in Los Angeles and San Bernardino counties was about ten to twenty times higher in the 1960s than in the early 1980s, and the decline has continued since the 1980s. Southern California national forests have not had a commercial green timber sale program for over a decade. Harvest in recent years has primarily been salvage and hazard trees along roads and near administrative sites (M. Gertsch, USFS, pers. comm. 2002). Mean annual total harvest volume for the four forests in FY 1998 to 2002 (1.66 mmbf) was about 30 percent of the mean annual total harvested on the four forests during FY 1988 to1992 (5.48 mmbf) (USFS 2002a).

Thus, timber harvest, the primary cause of habitat loss for the California spotted owls for decades, has been much reduced in recent years. Spotted owls today are occupying habitat that is a combination of the remnants of older stands and stands regenerating from timber harvest in past decades. The present habitat used by California spotted owls is further described below.

California spotted owls use a broader range of habitat types than the northern spotted owl (Call *et al.* 1992, Gutiérrez *et al.* 1992, Anderson and Mahato 1995, Moen and Gutiérrez 1997, North *et al.* 2000), in part due to the relatively more complex landscapes available to the California subspecies (Zabel *et al.* 1992b, Franklin and Fites-Kaufmann 1996, Helms and Tappeiner 1996, Beardsley *et al.* 1999). In the Sierra Nevada, this complexity reflects: (1) The variety of environmental conditions due to elevation, latitude, geology, precipitation, and temperature; (2) rich flora; and (3) influence of natural disturbance, especially fire (Andersen and Mahato 1995) and human disturbance (Franklin and Fites-Kaufmann 1996). The forests of the

Sierra Nevada have a complex logging history dominated by selection methods (McKelvey and Johnston 1992, Beardsley *et al.*1999) varying by number of entries, types of species harvested, size distribution of harvested trees, and total volume logged (Zabel *et al.*1992b). The heterogeneity of forests occupied by California spotted owls make quantifying its habitat difficult and sensitive to scale. Several studies have found that analysis of habitat at a coarse, small scale (*e.g.*, using timber type polygons developed for timber management) masks fine grained attributes used or selected by owls (Bias and Gutiérrez 1992, Zabel *et al.*1992a, Moen and Gutiérrez 1997).

Despite the complexity of California spotted owl habitat, several authors have concluded the subspecies is a habitat specialist (Andersen and Mahato 1995, Moen and Gutiérrez 1997, LaHaye *et al.*1997), selecting habitat at several scales. California spotted owls, like the other subspecies of spotted owls, use or select habitats for nesting, roosting, or foraging that have structural components of old forests, including large (typically greater than 61 cm (24 in) diameter at breast height (dbh; breast height has been standardized at 137 cm (4.5 ft) above the ground) (Call 1990, Gutiérrez *et al.*1992, Zabel *et al.*1992a, Moen and Gutiérrez 1997, USFS 2001a), decadent trees (trees with cavities, broken tops, etc.); high density of trees (Laymon 1988, Call 1990, Bias and Gutiérrez 1992, Gutiérrez *et al.*1992, LaHaye *et al.*1997, Moen and Gutirrez 1997); multi-layered canopy/complex structure (Call 1990, Gutiérrez *et al.*1992, LaHaye *et al.*1997, Moen and Gutiérrez 1997); high canopy cover (greater than 40 percent and mostly greater than 70 percent; Laymon 1988, Bias and Gutiérrez 1992, LaHaye *et al.*1992, Gutiérrez *et al.*1992, Zabel *et al.*1992a, Moen and Gutiérrez 1997, North *et al.*2000); snags (Laymon 1988, Call 1990, Bias and Gutiérrez 1992, Gutiérrez *et al.*1992, LaHaye *et al.*1997); and logs (Call 1990). Gutiérrez *et al.* (1992) noted that these characteristics applied to mixed conifer forests, because riparian/hardwood forests occupied by California spotted owls did not necessarily have these characteristics.

Late successional forests provide habitat attributes selected by California spotted owls, including large trees, high canopy closure, multi-layered canopies, snags, and logs (University of California 1996). The current extent of old forests in the Sierra Nevada is believed to be substantially less than in pre-historic times. Estimates of the current extent have been made by several authors. The University of California (1996) reported that in national parks in the Sierra Nevada, which contain the best representation of pre-European settlement conditions because only minor areas have been subject to timber harvest, 55 percent of forests are in late successional conditions, but on all Federal lands in the Sierra Nevada, late successional conditions are now found on only 19 percent of forest lands. The Forest Service (USFS 2001a) reported that old forest conditions have declined from 50 to 90 percent in various vegetation types compared to the range of historical conditions. Beardsley *et al.* (1999) estimated that approximately 15 percent of coniferous forests in the Sierra Nevada remain in high quality old growth/late successional stages; most of these stands are in high elevations and national parks (Franklin and Fites-Kaufmann 1996). Most of the remaining high quality late successional/old growth habitat in the Sierra Nevada is in public ownership; less than two percent of 1,214,000 ha (3 million ac) of private land was classified as high quality late successional/old growth habitat (Franklin and Fites-Kaufmann 1996).

California spotted owls in the Sierra Nevada may have undergone at least three periods of decline: (1) Elimination of prey species by intensive livestock grazing and burning in the 1800s; (2) logging beginning in the late 1800s, which removed basic structural elements of owl habitat; and (3) recent California spotted owls in the Sierra Nevada may have undergone at least three periods of decline: (1) Elimination of prey species by intensive livestock grazing and burning in the 1800s; (2) logging beginning in the late 1800s, which removed basic structural elements of owl habitat; and (3) recent logging of stands that regenerated following initial entry (Gutiérrez 1994).

In the early 1990s, researchers expressed concern regarding potential lag effects in population decline, in which the negative effects of habitat modification might not be observed until subsequent years (Noon *et al.* 1992, Gutiérrez 1994, LaHaye *et al.* 1994). However, it seems reasonable to presume that the causal mechanisms of negative effects ascribed to the high levels of timber harvest circa 1990 were substantially reduced as timber harvest levels dropped and increased protection measures were instituted in the mid- and late-1990s. In the opinion of the Forest Service (USFS 2001a), it is unlikely that recent timber harvest on national forests has caused declines in spotted owl populations, although the possibility exists that declines are due in part to latent effects of past timber harvest. However, because the regeneration of habitat may take several decades, modification of habitat components that resulted from past timber harvest is probably still affecting the subspecies to various degrees.

Although late-successional forests with large old trees are believed to provide the best habitat for California spotted owls, descriptions of suitable habitat derived from habitat use studies often also include smaller size classes, and thus, include a greater proportion of the landscape than that included in the above estimates of older forest extent. In the early 1990s, Verner *et al.* (1992a) estimated the amount of suitable California spotted owl habitat on public land. They defined suitable habitat as having canopy cover exceeding 40 percent and dominant trees 30 to 36 cm (12 to 14 in) dbh or larger, or areas with the potential to reach those values relatively rapidly. Their estimates of California spotted owl habitat in the Sierra Nevada by jurisdiction were as follows: 1,416,400 ha (3,500,000 ac) on national forests;186,560 ha (461,000 ac) on national parks; 27,721 ha (68,500 ac) on BLM lands; and 10,522 ha (26,000 ac) on State lands. Their estimates for the Coast ranges and southern California were: 218,530 ha (540,000 ac) on national forests; 3,076 ha (7,600 ac) on BLM; and 10,117 ha (25,000 ac) held by State and local governments. Thus, the total estimated habitat was 1,872,926 ha (4,628,100 ac). An undetermined amount of suitable habitat also existed on private and Native American lands (Verner *et al.* 1992a).

Habitat in the Sierra Nevada. The Final Environmental Impact Statement (FEIS) for the Sierra Nevada Framework Amendment (SNFPA) (USFS 2001a) estimated the amount of suitable habitat for California spotted owls on national forest lands in the Sierra Nevada to be 1.7 million ha (4.3 million ac). This estimate was about 14 percent higher than that of Verner *et al.* (1992a). The new estimate was based on more refined analysis, rather than an actual increase in habitat. This constitutes about 59 percent of the forested lands on the Sierra Nevada national forests.

Amounts of habitat on private lands have not been quantified. Generally, industrial landowners regard information relevant to timber inventories as proprietary. Based on Forest Service data, there were about 485,600 ha (1.2 million ac) of industrial timberland in the Sierra Nevada as of 1994 (derived from Waddell and Bassett 1997a, Waddell and Bassett 1997b, Waddell and Bassett 1997c). National forests in the Sierra Nevada include

approximately 560,000 ha (1.4 million ac) of private land within their administrative boundaries. Private land inholdings are much greater in extent in the northern national forests (especially the Lassen, Plumas, and Tahoe) than in the southern Sierra Nevada forests. Much of the private land within the boundary of the Lassen and Plumas National Forests is in contiguous blocks, leaving national forest lands also fairly contiguous. Most private land on the Tahoe National Forest is in checkerboard ownership, and the Eldorado National Forest has a combination of checkerboard ownership and large contiguous blocks of inholdings. We acknowledge that considerable amounts of suitable habitat exist on private lands, especially in the smaller size classes. This is reflected in the occurrence of over 300 spotted owl activity centers (about 17 percent of the Sierra Nevada total) on private lands.

The mixed-conifer forest type (sugar pine (*Pinus lambertiana*), ponderosa pine, white fir (*Abies concolor*), Douglas-fir (*Pinus lambertiana*), giant sequoia (*Sequoiadendron giganteum*), incense-cedar (*Calocedrus decurrens*), black oak (*Q. kelloggii*), and red fir (*Abies magnifica*) is the predominant type used by spotted owls in the Sierra Nevada: about 80 percent of known sites are found in mixed-conifer forest, 10 percent in red fir forest (red and white fir, lodgepole pine (*Pinus contorta*), and quaking aspen (*Populus tremuloides*), seven percent in ponderosa pine/ hardwood forest type (ponderosa pine, interior live oak (*Quercus wislizenii*), canyon live oak (*Quercus chrysolepis*), black oak, incense-cedar, white fir, tanoak (*Lithocaarpus densiflorus*), and Pacific madrone (*Arbutus menziesii*)), and the remaining three percent in foothill riparian/hardwood forest (cottonwood (*Populus* ssp.), California sycamore (*Platanus racemosa*), interior live oak, Oregon ash (*Fraxinus latifolia*), and California buckeye (*Aesculus californica*) and east-side pine (ponderosa and Jeffrey pine (*P. jeffreyi*)) (Verner *et al.* 1992a, USFS) 2001).

Six major studies (Gutierrez *et al.* 1992) have described habitat relations of the owl in four areas spanning the length of the Sierra Nevada. These studies examined spotted owl habitat use at three scales: landscape; home range; and nest, roost, or foraging stand. Based on comparisons of time spent by owls in various habitat types to amounts of habitat available, owls preferentially use areas with at least 70 percent canopy cover, use habitats with 40 to 69 percent canopy cover in proportion to their availability, and spend less time in areas with less than 40 percent canopy cover than might be expected if habitat were selected randomly.

California spotted owls in the Sierra Nevada prefer stands with significantly greater canopy cover, total live tree basal area, basal area of hardwoods and conifers, and snag basal area for nesting and roosting. Owls use stands dominated by trees with dbhs between 30 and 61 cm (12 and 24 in) and canopy covers between 40 and 100 percent for nesting significantly more than expected, based on the proportion of those forest types (Gutierrez *et al.* 1992). Stands suitable for nesting and roosting have: (1) Two or more canopy layers; (2) dominant and codominant trees in the canopy averaging at least 61 cm (24 in) in dbh; (3) at least 70 percent total canopy cover (including the hardwood component); (4) higher than average levels of very large, old trees; and (5) higher than average levels of snags and downed woody material (Gutierrez *et al.* 1992, USFS 2001a).

Analysis of vegetation characteristics of plots surrounding 292 California spotted owl nest and roost sites on the Lassen, Eldorado, and Sierra National Forests, and in Sequoia and Kings Canyon National Parks provides further information on habitat types favored by the species (USFS 2001a). Thirty-two percent of the plots were in stands with multilayered canopies exceeding 60 percent closure and with average trees exceeding 61 cm (24 in) in dbh. Eighteen percent were in stands with 40 to 59 percent canopy closure and with average trees exceeding 61 cm (24 in) in dbh. Fourteen percent were in stands with over 60 percent canopy cover and with average trees between 28 and 61 cm (11 to 24 in) in dbh. Eleven percent were in stands with 40 to 59 percent canopy closure and average trees between 28 and 61 cm (11 to 24 in) in dbh. Nine percent were in stands with over 60 percent canopy closure and average trees exceeding 61 cm (24 in) in dbh. Seven percent were in stands with 25 to 39 percent canopy cover and average trees exceeding 61 cm (24 in) in dbh. Five percent were in stands with 25 to 39 percent canopy cover and average trees between 28 and 61 cm (11 to 24 in) in dbh. North *et al.* (2000) suggested that canopy cover, tree density, and foliage volume represent conditions consistent across different forest types and therefore could indicate the basic nest site conditions selected by California spotted owls. California spotted owl nests were consistently located in sites with 75 percent canopy cover, 300 trees/ha (122 trees/ac), and 40,000 cubic m/ha (571,860 cubic ft/ac) of foliage volume.

Moen and Gutiérrez (1997) analyzed California spotted owl habitat at the landscape, habitat patch, and microsite levels on a 355 square kilometer (137 square mile) study area on the El Dorado National Forest. They used remote sensing to analyze vegetation in 457 ha (1,129 ac) circular plots surrounding spotted owl activity centers, and compared those plots with randomly selected plots of equal size. Owl plots were significantly more homogeneous than random sites, indicating that owls select against patchy or fragmented habitats; owl sites contained significantly more area with canopy closure exceeding 70 percent than random plots; and California spotted owl roosts were significantly more likely to be located in mixed conifer habitat containing trees greater than 30 cm (12 in) dbh than would be expected by chance. In addition, of 82 roost sites examined, 56 (68 percent) were in habitat with greater than 40 percent canopy closure and trees greater than 30 cm (12 in) dbh, and 97 percent of roost sites had trees over 100 cm (39 in) dbh. Microsite comparison between sixteen 0.04 ha (0.10 ac) vegetation plots surrounding nest sites and random plots of equal area showed that nest plots had significantly higher structural diversity, more total trees, larger trees, and more trees over 100 cm (39 in) dbh.

Bias and Gutiérrez (1992) attributed low use of private timberlands by roosting and nesting California spotted owls to sanitation (removal of damaged or diseased trees or species of low commercial value) and high-grade logging (harvest of large trees of high commercial value) that removed potential nest trees. However, as stated above, California spotted owls do occur on private timberlands. Habitat use by California spotted owls has been studied on a private timber production area in the Sierra Nevada, 48 kilometers (km) (30 mi) east of Chico, California (Larry L. Irwin *et al.*, National Council for Air and Stream Improvement, Incorporated, *in litt.* 2002). Seven pairs of California spotted owls were repeatedly located using radiotelemetry. Habitat use was similar to that observed in other studies on Federal lands. Owls were located in areas with canopy closure averaging 70 percent, dominated by trees 30 to 36 cm (12 to 14 in) in dbh but with a few larger (over 66 cm (26 in) dbh) trees, and with tree densities ranging from 930 to 1,360 trees/ha (372 to 544 trees/ac). To our knowledge, there are no studies providing information on demographic performance of owl populations on private lands in the range of the California spotted owl.

Habitat in the Coast Range and Southern California. In the coast range, California spotted owls occupy redwood/California-laurel forests which consists of a mix of coast redwood (*Sequoia sempervirens*), California-laurel (*Umbellularia californica*), tanoak, Pacific madrone, red alder (*Alnus rubra*), and white alder (*Alnus rhombifolia*), coast live oak, Santa Lucia fir (*Abies bracteata*), and bigleaf maple (*Acer macrophyllum*) (Verner *et al.* 1992a). Spotted owls can be found at elevations below 305 m (1,000 ft) along the Monterey coast to approximately 8,500 ft (2,591 m) in the inland mountains (Stephenson and Calcarone 1999). Lower elevation (less than 3,000 ft (914 m)) birds can be found in pure oak stands and higher elevation (greater than 6,500 ft (1,981 m)) birds can be found in pure conifer stands.

Verner *et al.* (1992a) noted that California spotted owls also use riparian hardwood forest types (coast and canyon live oak, cottonwood, California sycamore, white alder, and California laurel) in southern California. Owls on Mount San Jacinto used conifer and riparian hardwood forests significantly more than would be expected based on their availability and owls on Palomar Mountain primarily used conifer or mixed forests of conifers and hardwoods. California spotted owl nest sites in the San Bernardino Mountains were more likely to be located in areas with steeper slopes and in the lower third of canyons and owl nest and roost sites in this area were more likely to be located in areas with higher canopy closure and higher basal area (the area of all trees at breast height) than random sites.

Spatial positions and vegetation types were compared between plots surrounding 144 California spotted owl territory centers and 144 random plots in the San Bernardino Mountains of southern California (Smith *et al.* 1999, Humboldt State University, *in litt.* 2002). Owl sites were significantly closer to one another than random sites, showing a clumped distribution. Owl sites contained more area of closed canopy forest, larger mean patch sizes of closed canopy forest, and lower habitat diversity than random sites. California spotted owl territories in this study were found in three vegetation types; canyon live oak/ big cone Douglas-fir (39 percent of territories), mixed conifer/hardwood (which includes canyon live oak, big cone Douglas-fir, sugar pine, white fir, Coulter pine (*P. coulteri*), incense cedar, and black oak) (28 percent of territories), and mixed conifer (which contains white fir, Jeffrey pine, and incense cedar (33 percent of territories).

Stephenson and Calcarone (1999) estimated that there were approximately 473,473 ha (1,170,000 ac) of habitat types where spotted owls were known to reproduce (low-elevation oak/bigcone Douglas-fir, mid-elevation conifer/ hardwood, and high elevation mixed conifer) within the range of the subspecies in southern California and the central Coast Ranges. The total amount of available suitable habitat in the analysis area is likely lower, because it is possible that not all habitat is currently in a condition suitable for reproduction, roosting or foraging.

Nest Tree Characteristics. California spotted owls nest in a variety of tree/ snag species in pre-existing structures such as cavities, broken top trees, and platforms such as mistletoe brooms, debris platforms and old raptor or squirrel nests (Gutiérrez *et al.* 1992, 1995). Nest trees are often large, over 89 cm (35 in) average dbh (Gutiérrez *et al.* 1992, Steger *et al.* 1997, LaHaye *et al.* 1997), and larger than other trees in the same stand (Gutiérrez *et al.* 1992). Nest trees are also often greater than 200 years old (Gutiérrez *et al.* 1992, North *et al.* 2000). However, approximately 25 percent of nest trees out of a sample of over 250 were less than 76 cm (30 in) dbh (Gutiérrez *et al.* 1992). Although old, large trees are important to California spotted owls, intermediate-sized (28 to 61 cm (11 to 24 in)) trees were also selected by nesting (LaHaye *et al.* 1997; and trees 51 to 76 cm (20 to 30 in) dbh), roosting (Moen and Gutiérrez 1997), and foraging (Laymon 1988) owls.

Prey and Foraging Habitat. California spotted owls are considered prey specialists (Verner *et al.* 1992b) because they select a few key species (Verner *et al.* 1992b) among the variety of taxa on which they prey. In the upper elevations of the Sierra Nevada (about 1,200 to 1,525 m (4,000 to 5,000 ft), the primary prey is the northern flying squirrel (*Glaucomys sabrinus*), which is most common in larger stands of mature forests (Verner *et al.* 1992b). In lower elevations of the Sierra Nevada and in southern California, the primary prey is the dusky-footed woodrat (*Neotoma fuscipes*) (Thrailkill and Bias 1989), which is most abundant in shrubby habitats and uncommon in pure conifer forests or forests with little shrub understory (Williams *et al.* 1992). Both flying squirrels and woodrats occur in the diets of owls in the central Sierra Nevada (Verner *et al.* 1992b). Home ranges of owls in areas where the primary prey is northern flying squirrels are consistently larger than those where the primary prey is dusky-footed woodrats presumably because woodrats occur in greater densities and weigh more than flying squirrels (Zabel *et al.* 1992a). Verner *et al.* (1992b) reported that approximately 25 percent of known owl sites in the Sierra Nevada occur where woodrats are the primary prey species and 75 percent of sites occur where flying squirrels are the primary prey species.

Other prey items include gophers (*Thomomys* spp.), mice (*Peromyscus* spp.), diurnal squirrels (*Tamiasciurus douglasii, Sciurus griseus, Spermophilus beecheyi, Eutamias* spp.) and a variety of other rodents; shrews (*Sorex* spp.); moles (*Scapanus* spp); bats (*Myotis* spp.); birds; frogs; lizards; and insects (Verner *et al.* 1992b, Gutiérrez *et al.* 1995, Tibstra 1999). California spotted owls have low metabolic rates relative to other birds. Analysis of metabolic rates and the energy content of prey items indicates that an individual California spotted owl would need to eat one flying squirrel every 1.8 days or one woodrat every 3.7 days (Weathers *et al.* 2001).

California spotted owls in the Sierra Nevada forage most commonly in intermediate- to late-successional forests with greater than 40 percent canopy cover and a mixture of tree sizes, some larger than 61 cm (24 in) in dbh. The birds consistently use stands with significantly greater canopy cover, total live tree basal area, basal area of hardwoods and conifers, snag basal area, and dead and downed wood than are found at random locations within the forest. Studies on the Tahoe and Eldorado National Forests found that owls forage in stands with large diameter trees (defined as trees greater than 61 cm (24 in) in dbh in one study and trees 51 to 89 cm (20 to 35 in) in dbh in the other) significantly more than expected based on availability. Owls also forage in stands with trees between 30 and 61 cm (12 and 24 in) dbh and greater than 70 percent canopy cover significantly more than expected, based on the proportion of that forest type (USFS 2001a).

Stands suitable for owl foraging have: (1) At least two canopy layers; (2) dominant and codominant trees in the canopy averaging at least 28 cm (11 in) in dbh; (3) at least 40 percent canopy cover in overstory trees (30 percent canopy cover in red fir dominated forests); and (4) higher than average numbers of snags and downed woody material. California spotted owls forage in forests with ample open flying space within and beneath the canopy (Gutiérrez *et al.* 1995); therefore, extremely dense stands may not be used for foraging. Although canopy covers down to 40 percent are suitable for foraging, they appear to be so only marginally. Radio tracking data from the Sierra National Forest showed that owls tended to forage more in sites with greater than 50 percent canopy cover than predicted from their availability; while stands with 40 to 50 percent canopy cover were used about in proportion to their availability (USFS 2001a). The subspecies avoids open (0–30 percent canopy cover; Gutiérrez *et al.* 1992) or logged (Call 1990, Zabel *et al.* 1992b, Gutiérrez and Pritchard 1990) areas.

Winter Habitat. Winter habitats of owls that undertake altitudinal migrations have similar canopy closures, but lower basal areas of both green trees and snags, and higher shrub densities than higher-elevation summer habitats (Gutiérrez *et al.* 1995).

General Description of Suitable Habitat. Based on the above studies, nesting habitat for California spotted owls is generally described as stands with an average dominant and co-dominant tree diameter of greater than 24 in and canopy cover of greater than 70 percent. Foraging habitat is generally described as stands of trees of 30 cm (12 in) in diameter or greater, with canopy cover of 40 percent or greater. Exceptions to both descriptions are known to occur. Suitable habitat includes California Wildlife Habitat Relationship (WHR) habitat types 4M, 4D, 5M, 5D, and 6 (Mayer and Laudenslayer 1988).

Home Range

Spotted owl pairs have large home ranges that may overlap those of conspecifics (Verner *et al.* 1992b). A portion of the home range is defended as a territory, especially against unknown intruders (Gutiérrez *et al.* 1995). However, territorial disputes between neighbors are rare. Members of the same sex are more likely to display aggression toward each other than members of the opposite sex (Verner *et al.* 1992b). Spotted owls may roost near conspecifics other than their mates (Gutiérrez *et al.* 1995). Verner *et al.* 1992b suggested that the spotted owl territorial system functions such that an individual or pair are dominant within a territory and prevent conspecifics from breeding there, but that feeding or roosting by those birds may be tolerated.

Carey *et al.* (1992) studied the relationship between the amount of habitat used by northern spotted owls and prey abundance within those habitats. They found that owls used more area in habitats where the estimated biomass of medium sized prey, primarily flying squirrels and woodrats, was lower. The largest home ranges of California spotted owls occur where flying squirrels comprise the majority of the owl's diet and the smallest occur where woodrats dominate (Verner *et al.* 1992b, Zabel *et al.* 1992a). Woodrat populations are denser than flying squirrel populations, often by at least 10 fold, and woodrats weigh nearly twice as much as flying squirrels. Variation in prey availability likely affects the percentage of California spotted owl pairs that nest and successfully fledge young. Weather may also affect these parameters, either by directly affecting the owls or by affecting their prey base (Verner *et al.* 1992b).

Estimates of California spotted owl home range size are extremely variable. All available data indicate that they are smallest in habitats at relatively low elevations that are dominated by hardwoods, intermediate in size in conifer forests in the central Sierra Nevada, and largest in the true fir forests in the northern Sierra Nevada (Zabel *et al.* 1992a, USFS 2001a). Based on an analysis of data from telemetry studies of California spotted owls, mean breeding season pair home range sizes have been estimated as 3,642 ha (9,000 ac) in true fir forests on the Lassen National Forest; 1,902 ha (4,700 ac) in mixed conifer forests on the Tahoe and Eldorado National Forests; and 1,012 ha (2,500 ac) in mixed conifer forests on the Sierra National Forest. Zimmerman *et al.* (2000) used radiotelemetry data to estimate the breeding season home range of two pairs of California spotted owls in the San Bernardino Mountains of southern California. The average home range (571 ha (1,410 ac)) was smaller than those reported for the Sierra Nevada and varied widely between the two pairs (325 to 816 ha (803 to 2,016 ac)).

Gutiérrez *et al.* (1992) analyzed the sizes of stands containing nest trees (*i.e.*, nest stands) and the cumulative sizes of each nest stand plus all adjoining stands that were in vegetation strata preferentially used by owls for nesting. The mean size of nest stands was about 40 ha (100 ac); the mean size of the nest stand plus adjacent suitable stands was about 120 ha (300 ac). In radio tracking studies, the central area including half of the foraging locations of owls was found to vary from an average of 128 ha (317 ac) on the Sierra National Forest to an average of 319 ha (788 ac) on the Lassen National Forest (Gutiérrez *et al.* 1992). Bingham and Noon (1997) used radiotelemetry data to calculate core areas within the home ranges of four California spotted owls. Owls used the core areas more than would be expected if the entire home range were used at random. Core areas contained an average of 66 percent of points at which owls were located within an average of 21 percent of the home range.

Habitat in Home Range. California spotted owls were found to select more consistently for habitat patches with high canopy cover than for large tree size-class (Zabel *et al.* 1992a). Call (1990) estimated 42 percent of the home range to be medium timber 28 to 53 cm (11 to 21 in) dbh, and 55 percent large timber greater than 53 cm (21 in). The proportion of habitat in home ranges of owls in conifer forests of the Sierra Nevada with canopy cover greater than 40 percent was 68 percent and 81 percent for the two conifer sites studied. (Zabel *et al.* 1992a).

California spotted owls have been known to use stands that were recently selectively harvested (Zabel *et al.* 1992b). However, where forests in the Sierra National Forest were heavily thinned, owls consistently nested in patches with large, old, high crown-volume trees (North *et al.* 2000), relying on the remaining components of the original forest.

Numerous studies have described habitat used by spotted owls and habitat that occurs around owl nest sites and activity centers, but the relationships between these forest habitat characteristics and the distribution and demographic performance of California spotted owls are not completely understood. Several studies that have related habitat characteristics with California spotted owl demographic performance and occupancy rates found that productivity was positively correlated with amounts of forest with high canopy cover. Blakesley (2002a) characterized habitat within 1,830 ha (4,532 ac) circles surrounding 67 California spotted owl nest sites in northeastern California and used those data to explain observed variation in site occupancy, apparent survival probability, reproductive output, and nest success. Site occupancy was positively associated with the amount of habitat dominated by large trees and high canopy cover. North *et al.* (2000) found higher reproduction in conifer forest associated with high foliage volumes and concluded: "The possible interaction of weather and nest-site structure on owl reproduction suggests forest managers should be cautious about reducing canopy volume in potential owl nesting areas. Retaining groups of large, old, high crown-volume trees may be needed to maintain the number of potential nesting sites in a forest." Apparent survival and

reproductive output were positively correlated with the proportion of habitat surrounding each nest that was selected by the owls throughout the Sierra Nevada, as described by Gutiérrez *et al.* (1992). Nest success was positively associated with the presence of large trees within the nest stand.

Verner *et al.* (1992b) reported that about 75 percent of the California spotted owls in the Sierra Nevada occurred in areas where the northern flying squirrel was the primary prey species. Northern flying squirrels have been shown to be most common in larger stands of mature forests (Williams *et al.* 1992). Flying squirrels typically use older mature forest because they provide suitable nest sites, including snags, and abundant sources of food including arboreal lichens and truffles, which are associated with an abundance of soil organic matter and decaying logs (Verner *et al.* 1992b). In second-growth forests in Oregon, northern flying squirrels were found in younger forests if large snags and down logs remained from earlier stands (Carey and Peeler 1995). Thus, past selection harvest that removed the largest trees and snags probably did not favor northern flying squirrels, and, therefore, probably had negative effects on foraging by California spotted owls.

Blakesley (2002a, pers. comm. 2002) studied California spotted owls in an area where northern flying squirrels (*Glaucomys sabrinus*) comprised 70 to 80 percent of prey taken. She found that both survival and reproductive output were positively related to the proportion of the home range that was comprised of habitat selected by owls. Furthermore, site occupancy and reproductive output were negatively associated with the amount of non-habitat (non-forest and areas dominated by small trees and/or very low canopy cover).

In areas where the primary prey consists of dusky-footed woodrats, effects of timber harvest, either by selection or small patch cuts, may have been less severe on spotted owl prey. Dusky-footed woodrats are more abundant in shrubby areas than in areas with little shrub understory (Williams *et al.* 1992), so this forage species may persist in harvested areas, at least at the lower elevations where it is more common. Franklin *et al.* (2000), who studied demographic performance of northern spotted owls in an area of northwestern California where dusky-footed woodrats were the primary prey, reported that adult owls with access to larger blocks of suitable forested habitat had slightly lower mortality rates, but those with home ranges that were more patchy with more openings had slightly higher fecundity (number of young produced per breeding female). A landscape pattern with some small patches of other habitats dispersed within and around a main patch of old forest appeared to provide the optimum balance in promoting both high fecundity and high survival. It seems likely that California spotted owls would have similar responses in the minority of their range where dusky-footed woodrats are the primary prey and thus may be less affected by habitat modification in those areas.

According to McKelvey and Johnston (1992), clear-cutting was the predominant harvest method on Sierran national forests only from 1983 through 1987. In areas where clear-cutting occurred during those years, and perhaps also where catastrophic fire has eliminated forested habitat, it may be reasonable to evaluate impacts based on studies of the effects of clear-cutting on the similar northern spotted owl. Bart (1995b) examined the relationship between amount of a northern spotted owl pair's home range that is suitable habitat and productivity and survivorship of owls. In Bart's (1995b) study area, habitat remaining after harvest was either of good quality (*i.e.*, remaining old growth) or very poor quality unsuitable for extensive use by owls (clear cuts). That analysis suggested that removing any suitable habitat within the vicinity of the nest tends to reduce productivity and survivorship of resident owls. Bart concluded that replacement rate reproduction might occur when 30 to 50 percent suitable habitat is retained within an owl's home range. However, he also noted that productivity and survivorship declined steadily below 80 percent suitable habitat and advised that northern spotted owl habitat should not be reduced to perceived thresholds in all instances or viability could be compromised. The primary form of habitat modification in the Bart (1995b) analysis area was clear-cutting. Therefore, these results may only have limited application to the California spotted owl, because much of the range of the California spotted owl has been selectively harvested. The selection harvest practiced in the Sierra is believed to have lowered habitat quality by removing large trees and snags, but it may not have rendered habitat completely unsuitable (USFS 2001a). Thus, the degree of impact of past selection harvest practices on California spotted owls remains unclear.

Spotted owl distribution in the Sierra Nevada is generally continuous and of uniform density within the historic range. However, several "areas of concern" were identified in Beck and Gould (1992). These are areas where densities of spotted owls are low, local populations are isolated, or distribution of habitat or owls is not continuous or is restricted because of past timber harvest, fire, and natural breaks in habitat. Areas of concern might be important if the range of the spotted owl begins to shrink. Beck and Gould (1992) identified 16 areas distributed throughout the range where there are gaps that delineate discontinuities in owl distribution (no habitat exists or there is a bottleneck) and 19 areas where concern relates to low population density, fragmented habitat, or loss of habitat due to fire.

The USFS (2001a) further cautioned that management in at least nine of these areas of concern in the Sierra Nevada could have disproportionate impacts to spotted owls without special management consideration. USFS noted that areas of concern that fall within checkerboard ownerships (blocks of private land interspersed with Federal lands) or fragmented habitats warranted special attention. Final management direction selected by the USFS-modified alternative 8 (USFS 2001b) included objectives for the amounts of habitat within each owl home range to provide for replacement rate reproduction.

Demographic Analysis

As one of the most intensively studied birds in the United States, the spotted owl has been the focus of research for well over two decades. Many sophisticated statistical techniques for estimating population trends have been developed and refined using data from the northern spotted owl, and the state of information for the California subspecies has benefitted accordingly. Across the range of the California spotted owl, five study areas (Lassen, Eldorado, Sierra, Sequoia-Kings Canyon, and San Bernardino), totaling about 2,200 square miles, have been established to examine the subspecies' population status. This research serves as a valuable resource for evaluating whether or not listing under the ESA may be warranted. In this section, we offer a synopsis and evaluation of the most current research on California spotted owl population trends. Because analytical techniques for assessing population status are complex, it is necessary to discuss the techniques, the studies, and their conclusions in some detail.

Several analytical methods have been applied to the analysis of population trend in spotted owls, and each method carries certain strengths and

weaknesses. Thus, to best understand population trend, it is important to concurrently assess the results of all methods instead of relying on a single analytical approach. One of the simpler methods uses raw empirical abundance data, where banded owls are counted and numbers are compared over time. Population trends can then be crudely assessed by evaluating abundance data from one year against similar data from a later year, or multiple years of data can be used in a regression analysis to determine the population trend from the slope of a regression line. While count data may appear straightforward, they are often subject to important sources of unquantifiable bias if the ability to detect owls changes from year to year. This can occur if survey effort changes over the course of the study or if the study area changes in size during the study period. Also, variation in detectability can be caused by environmental or behavioral factors. Numerous sources of possible bias can be present during the collection of abundance data in the field, especially over the long periods of time required to evaluate population trends in long-lived species such as spotted owls. However, basic abundance data can provide a reference point for comparison with the results of more sophisticated statistical methods, especially when possible error is reduced by careful data collection. Abundance data are available for each of the California spotted owl study areas, and are included in this evaluation by the Service.

Because of the problems that accompany abundance data, scientists have developed more sophisticated methods for estimating population trends that can be described in statistical terms, and which allow various statistical tests of the estimated population trend. These methods derive estimates of the annual rate of population change, otherwise known as lambda (λ), which is the fundamental measure for retrospective estimation of population trend. Varying analytical methods derive λ from data on vital rates (*i.e.*, birth and death rates) gathered using methods described for the northern spotted owl (Forsman 1983). Reproductive output is measured from direct observation of the number of young leaving the nest, and estimates of survival are obtained using mark-recapture techniques. Capture-recapture theory (Lebreton *et al.* 1992) provides the foundation for deriving a statistical estimate of survival and population trend. In brief, this is done by capturing and uniquely marking individuals, and then recapturing (or resighting) those same individuals in subsequent years (Lebreton *et al.* 1992). Some of the potential bias factors remain, such as variation in survey effort, but the recapture history for each marked individual serves as the basis for calculating vital rates for each age and gender class. After fecundity (*i.e.*, birth rate: number of female young fledged per female) and survival for the population are statistically estimated from field sampled data, those estimates are used to compute the finite rate of population change, or λ.

Lambda provides an estimate of two useful measures: the direction in population trend and the magnitude of population change (Franklin *et al.* 1996). A λ value equal to 1.0 indicates a stationary population; less than 1.0 indicates a declining population; and greater than 1.0 indicates a growing population. The amount by which λ differs from 1.0 indicates the magnitude of the trend (*i.e.*, if $\lambda = 1.10$, the population has increased by an average of about 10 percent each year [1.10 to 1.0 = 0.10]). However, λ is a point estimate, and this estimate has a measure of precision. Therefore, researchers often test whether λ is significantly greater or less than 1.0, or equal to 1.0. For example, a $\lambda = 0.97$ may not be statistically different from 1.0 at some predetermined significance level if the confidence interval includes 1.0 (Lande 1988).

It should be noted that the estimate of lambda applies only to the period during which the data are collected. For this reason, long term studies are necessary to avoid misinterpretation of apparent trends. For instance, if a population demonstrates cycles that are completed over multiple decades, ten years of data may only capture a down cycle (which would falsely appear to be a decline) or up cycle (which would falsely appear to be an increase), depending on the timing of the study.

The five individual studies conducted on California spotted owl populations were consistent in their initial method for calculating λ, which has also been extensively described and applied in analyses of the northern spotted owl (Franklin *et al.* 1996). In this method, survival and fecundity estimates for females were used in a mathematical tool called a projection matrix to solve for λ. Several issues may affect the validity of the projection matrix approach to calculating lambda. First, the method assumes that adult survival and fecundity are constant over time (Franklin *et al.* 1996). Long term research on the northern spotted owl has demonstrated that this assumption is sometimes violated. Survival rates are not constant (Burnham *et al.* 1996), and spotted owls have demonstrated variable annual fecundity, with occasional years of very high fecundity (Franklin *et al.* 2002). However, the magnitude of the resulting bias appears to be small (Burnham *et al.* 1996, Noon and Biles 1990). Second, individuals, particularly juveniles, may emigrate to areas outside the study area boundaries. Even though they could still be alive, these individuals are considered mortalities because they disappear from the study area, resulting in a survival rate that is biased low (Raphael 1996). To better understand the possible error in juvenile mortality rates, researchers compare the observed mortality rate with calculated theoretical rates that would be necessary for a stable population, and examine the difference. Although useful in some respects, this exercise does not alter the estimate of lambda for the subject owl population. The issue of juvenile emigration was addressed in the 1999 meta-analysis for the northern spotted owl, as well as for some of the individual northern spotted owl study areas, and overall trend estimates were adjusted for juvenile emigration (Franklin *et al.* 1999).

Another potential issue regarding the projection matrix method is that the calculation includes only territorial birds (which are relatively easy to locate), ignoring nonterritorial, unlocated "floaters" that may be present and available to fill vacancies left by the eventual mortality of breeding birds (Franklin 1992). Bart (1995b) argued that the presence of floaters causes population trends to be determined by the trend in the amount of habitat, not by birth and survival rates. Using lambda estimates corrected for floaters and false juvenile mortalities, Bart (1995b) calculated that lambda estimates using the projection matrix method could be 0.13 to 0.03 lower than the actual value. Thus, for example, a population with an estimated lambda of 0.90 (signifying a decline of 10 percent per year) could actually be an increasing population. This argument should be considered in evaluation of lambda estimates. Trends in the nonterritorial segment of the population cannot be evaluated with the projection matrix method, although it is likely that over the long term, trends in the territorial and nonterritorial segments will follow similar trajectories, since they both depend on similar environmental conditions.

For these reasons, we approach the use of population matrix λ estimates with caution in this finding, and where possible, has sought additional

corroborative data and analyses before concluding that a population is declining. Our following discussion of the results from each of the five study areas will include evaluation of potential error in the lambda estimate that might result from these factors.

More recently, the data from the five study areas were reanalyzed using another statistical method. In 2001, owl researchers from the five California spotted owl study areas, timber industry consultants, and stakeholders met with experts in population analyses to conduct a meta-analysis of the available data (Franklin *et al.* 2002). The term meta-analysis refers to the combined analysis of data collected from numerous studies to increase sample size and investigate relationships that would be difficult to assess with data from an individual study. A draft report authored by 15 participants (Franklin *et al.* 2002) summarized the results of the five-day meta-analysis workshop and subsequent analysis.

It is our understanding that, as of the publication of this finding, peer review comments have been received by the authors of the meta-analysis, but the incorporation of peer review comments by the authors has not been completed. Thus, the meta-analysis manuscript remains a draft. We have examined the draft meta-analysis document, the comments of prominent peer reviewers, and solicited comments from the authors regarding our conclusions herein. We regard the draft meta-analysis as the best available science on the subject, but as stated above, we have not relied solely on this analysis in developing our conclusions regarding population trend.

The meta-analysis of adult survival was based on female and male adult capture histories for the five study areas, but fecundity was estimated for each study area separately because differences existed in field sampling protocols. To eliminate a possible bias in projection matrix estimates of λ due to inaccurate rates of survival (resulting from unknown emigration rates), a new technique was used to calculate λ, called the "temporal symmetry capture-recapture model" (Pradel 1996). Pradel's method calculates the rate of change in population size between two successive years using mark-recapture histories for each owl, and since this technique calculates annual estimates, λ can change each year. In contrast, the projection matrix method calculates an average λ estimate for the period of study using a population's average birth and death rates. Pradel's measure applies to subadult and adult territorial owls, and incorporates birth, death, emigration, and immigration rates. Estimates of juvenile survival are unnecessary because movement of spotted owls into and out of the study area is considered in changes of owl numbers over time.

While Pradel's λ accounts for permanent emigration of juveniles, it doesn't provide insight as to the root cause of a population's rate of change. For example, if $\lambda = 1.0$, indicating a stable population, it is impossible to know if the stability is a result of immigration or new recruits from births, which prevents inferences about the health of the local population (Franklin *et al.* 2002). Thus, it is important that trends in survival and fecundity rates be examined concurrently with assessments of λ. Pradel's λ provides information as to whether owls are being replaced from within or outside the study area, and not solely whether they are replacing themselves, which is the goal of the projection matrix approach. Because the Pradel method provides an estimate of one λ for each year, the annual λ estimates can themselves be assessed for trends, and a mean estimate can be calculated for the period of study.

Franklin *et al.* (2002) applied the Pradel method to each of the five individual study areas, and conducted a combined meta-analysis of the results from the four study areas (Lassen, Eldorado, Sierra, and Sequoia / Kings Canyon) that lie in the Sierra Nevada. The following discussion details the results of the earlier projection matrix analyses and reports of basic count data for each study area, and compares those results with the new results derived using the Pradel method, as reported by the draft. Following the discussion of individual areas, we will describe the results of the meta-analysis of the four combined Sierra Nevada study areas.

Since survey areas changed throughout the course of some studies, only those areas (within larger study areas) that received surveys from start to finish were included in the new analysis, and only years that received consistent survey effort were used in the analysis (Lassen study area [490 mi²]: 1992 to 2000; Eldorado study area [137 mi²]: 1990 to 2000; Sierra study area [137 mi²]: 1990 to 2000 Sequoia and Kings Canyon study area [132 mi²]: 1991 to 2000; San Bernardino study area [730 mi²]: 1991 to 1998).

In this review, we primarily used the most recent report or published article for each area, although we reference earlier reports to clarify apparent changes in results for a given area. We summarize the results below.

Lassen Study Area—The Lassen study area encompassed approximately 850 mi² in northeastern California, the majority of which was located in the Lassen National Forest. Small segments of the study area included the Plumas National Forest, private timber lands, Lassen Volcanic National Park, and Bureau of Land Management land. According to Blakesley and Noon (*in litt.* 2003), four lines of evidence suggest that the Lassen population has been decreasing. However, this information, received very recently, could not be fully evaluated. The most recent publication for this study area (Blakesley *et al.* 2001) covered 10 years of field sampling (1990 to 1999), during which the annual rate of population change was estimated to be 0.910 using the projection matrix method. This estimate was significantly less than that of a stationary population ($\lambda = 1.0$), and suggested that the territorial female owl population (those females that occupy and defend a habitat area) declined 9 percent annually from 1990 to 1999. Blakesley *et al.*(2001) inferred that if the conditions present during their study remained constant into the future, and if the true rate of change were as low as 4 percent instead of the estimated 9 percent, that the population would decline by one-half within 20 years. Such forecasting beyond the period of data collection is unreliable, and the accuracy of this projection is likely biased, as conditions are unlikely to remain constant for 20 years (Burnham *et al.* 1996, Raphael *et al.* 1996, Noon *et al.* 1992).

We were unable to compare the estimated value of λ to the observed numbers of territorial adults in this study, because the survey area increased over time. However, from the estimated growth rate of 0.910, we can conclude that over 50 percent of the population would be lost by the end of the study. According to Blakesley and Noon (*in litt.* 2003), within 68 territories surveyed consistently from 1993 to 2001, the number of female owls declined from 56 to 37. This suggests a decline of 5 percent annually, which is not statistically different from the 9 percent decline estimated above. A potentially large source of error arises from unknown rates of juvenile and adult emigration. Blakesley *et al.* (2001) suggested that while incorrect juvenile emigration rates may have resulted in a survival estimate biased low, the magnitude of the bias was probably small. For the Lassen population to demonstrate a stationary trend during the study period (given that all other vital rates were accurate, including an adult survival probability of 0.827), the juvenile survival rate would have to more than double (from the estimated 0.333) to 0.790. However, given that all other parameters remain the same, Franklin (2003) estimated that if adult and subadult survival was actually 0.85, juvenile survival would have to be 0.657 to achieve a stationary population, and if adult and subadult survival were actually 0.87, juvenile survival would have to be 0.55 for a stationary population. A juvenile survival probability of 0.55 is within the realm of possibility based on juvenile survival estimates for northern spotted owls on two study areas (Franklin *et al.* 1999).

The meta-analysis for this study area included nine years of sampling (1992 to 2000) and encompassed 490 mi². The mean λ estimate for the period using Pradel's method was less than 1.0 (0.985), but was not statistically different from that of a stationary population ($\lambda = 1.0$). Examination of the annual λ estimates (per year, as opposed to the above mean λ) showed no evidence of a trend for the Lassen study, and adult apparent survival showed no substantive variation or trends through time. Fecundity was so variable through time that a linear trend (as opposed to sporadic high-low trends) could not be identified.

Although there is information that suggests that this population may be declining, uncertainties exist when interpreting the projection matrix approach, actual counts, and Pradel's methodology. Without further refinement of the projection matrix approach (*i.e.*, adjusting juvenile survival estimates using radio telemetry), it is difficult to reconcile the declining projection matrix λ of 0.910 with the statistically stationary estimate of 0.985 derived using Pradel's methodology. Thus, we cannot conclude with certainty that the population is declining, increasing, or stationary.

Eldorado Study Area—The Eldorado study area consisted of two segments: a 137-mi² density study area, and a 220-mi² regional study area. The most recent publication for this study area (Seamans *et al.* 2001a) covered 10 years of field sampling (1990 to 1999). Although surveys took place from 1986 to 1999 in the density study area, surveys in the regional study area were initiated in 1997. Only data from 1990 to 1999 were used because survey effort and sample sizes increased dramatically after 1989 due to increased funding (Seamans *et al.* 2001a). The study area was located primarily within the Eldorado National Forest, but portions were also located within the Tahoe National Forest and the Tahoe Basin Management Area. Researchers lacked sufficient data to calculate the juvenile survival rate on the Eldorado study area, so they used the survival rate from the nearby Lassen study area (0.333) as a surrogate. This estimate was thought to be optimistic, as estimates of northern spotted owl juvenile survival from 11 study areas averaged 0.258 (Forsman 1996), and in the Eldorado study area, 11 of 147 individuals banded as juveniles were recaptured as territory holders, which would translate to a survival probability of 0.074 (Gutiérrez *et al.* 2001). However, there is a likelihood that the estimated juvenile survival of 0.258 for northern spotted owls was underestimated, as it was not corrected for juvenile emigration. A later report (Franklin *et al.* 1999) adjusted juvenile survival estimates in three northern spotted owl study areas to reflect juvenile emigration rates calculated from radiotelemetry data. The adjusted juvenile survival rates were 0.598, 0.632, and 0.366. These estimates represented increases of 137.2%, 41.8%, and 87.9% in juvenile survival estimates for each respective study area.

Using the projection matrix approach, the annual rate of population change was estimated to be 0.948, which was significantly less than that of a stationary population. This λ value suggested that the territorial female owl population declined 5.2 percent annually from 1990 to 1999. In contrast, female abundance at the start (1990) and finish (1999) of the study was 26 and 28 individuals, respectively. This difference between the estimated λ and the rate calculated from actual numbers could be attributed to immigration of individuals into the study area. If true, this would indicate that individuals were not replacing themselves, but were being replaced by recruits from outside the study population. Earlier estimates of λ from this study area calculated similar trends (λ= 0.947) using only 6 years of data (Noon *et al.* 1992). This six year estimate was not statistically less than 1.0, but the power (ability to detect differences) of this test was low, so the trend of the population was uncertain at the time (Verner *et al.* 1992). Results from the 2001 study (Seamans *et al.* 2001a) expanded the sample size and study period, and increased the statistical power of their test so that their estimate of lambda (0.948) was then found to be statistically less than 1.0.

The use of a surrogate juvenile survival rate in this study may introduce bias into the estimate of λ for two reasons: the Lassen estimate of juvenile survival probably carries certain biases given the inability to consider juvenile emigration in the estimate of juvenile survival, and the Lassen study area may not accurately represent the Eldorado study area. Further, Gutiérrez *et al.* (2001) reports that survey effort for this study area changed over time, and that survey effort can influence density and survival estimates. For this reason, data from the first four years of study were not included in the estimate of survival or reproduction (Seamans *et al.* 2001a analyzed data starting in 1990, not 1986). In a subsequent report (Seamans *et al.* 2001b), the projection matrix estimate of λ was compared to a growth rate calculated from actual numbers of adult females present during the study. The growth estimate from actual numbers was 0.951, and was significantly less than zero. This estimate was calculated using data from 1993 (37 adult females) to 2000 (24 adult females), while the value derived from the projection matrix approach (0.948), which was calculated using data from 1990 to 1999.

The meta-analysis for this study area included 11 years of sampling (1990 to 2000) and encompassed 137 mi². The mean λ estimate for this study area was greater than 1.0 (1.042), and was not statistically different from that of a stationary population ($\lambda = 1.0$). Examination of annual λ estimates showed a significant decline, and similar to the Lassen study area, adult apparent survival showed no substantive variation or trends through time. No linear trend in fecundity could be identified.

While the projection matrix estimate of λ showed a decline, (and trend in Pradel's annual λ showed a decline), actual counts increased a small amount from 1990 (26 adult females) to 1999 (28 adult females) but decreased from 1993 (37 adult females) to 2000 (24 adult females), and the mean λ estimate using Pradel's method appeared to show a stationary population. Furthermore, there were substantive uncertainties regarding the accuracy of vital rate estimates used in the projection matrix estimate of λ. These results do not allow us to reach a definitive decision with respect to population trend on the Eldorado study area, and we cannot conclude the population is declining.

Sierra Study Area—The Sierra study area was located primarily (92 percent) within the Sierra National Forest, and encompassed the watersheds of the San Joaquin River and the North Fork of the Kings River (Franklin *et al.* 2002). The study area included approximately 263 mi², and the boundaries were delineated based on National Forest boundaries and major topographic features such as

ridges and drainages. Spotted owl telemetry studies and intensive surveys began in 1987 and 1990, respectively, on a 160 mi² portion of this study area (old Sierra study area). In 1994, surveys were expanded to include an additional 103 mi² (new Sierra study area; Steger *et al.* 1999). Juvenile survival rate was not calculated using data from this study area. Instead, the juvenile survival rate from the San Bernardino study area (0.328) was used to approximate the Sierra study area's juvenile survival rate.

Using survey data from 1990 to 2000 and the projection matrix method, the annual rate of population change was estimated for the old Sierra study area (1987 to 2000) and both old and new Sierra study areas combined (1987 to 2000). Annual rates of population change for the old Sierra and combined Sierra study areas were 0.897 and 0.901, respectively. These estimates were significantly less than that of a stationary population, and suggested that the territorial female owl population declined about 10 percent annually from 1987 to 2000. For an 11 year period (1990 to 2000), this translates to a population decline of around 60 percent. For the old Sierra study area during 1991 to 2000 (1990 was not examined as survey guidelines were not yet established on the study area), actual owl numbers seemed to corroborate a decline, albeit the drop in numbers was less severe than 60 percent. Owl abundance in 1991 and 2000 were 69 and 55, respectively. These numbers represent a 20 percent decrease, although the accuracy of the count numbers is unknown. The new Sierra study area also showed a decline: actual owl numbers dropped from 37 in 1994 to 29 in 2000.

The meta-analysis for this study area included 11 years of sampling (1990 to 2000) and encompassed 137 mi². The mean λ estimate for this study area was less than 1.0 (0.961), but was not statistically different from that of a stationary population (λ = 1.0). Annual λ estimates showed a weak (nonsignificant) decline, and adult apparent survival showed no substantive variation or trends through time. The Sierra study showed a negative trend in fecundity, which could have been driven by a high reproduction year early in the study.

Although the mean λ was statistically stationary using Pradel's methodology, actual numbers of owls declined; the projection matrix approach showed a decline; there was a negative trend in fecundity; and there was a weak, nonsignificant decline in annual λ estimates (using Pradel's method). It appears that a decline in this study area is possible, but the use of a surrogate juvenile survival rate introduced a bias of unknown proportion, and thus, the magnitude of a possible decline remains uncertain.

Sequoia and Kings Canyon Study Area—The Sequoia and Kings Canyon study area encompassed approximately 130 mi² of land in Fresno and Tulare counties. The majority of the area was located in the Sequoia and Kings Canyon National Parks. Small segments of the study area include the Kings River watershed, but most of the study area was in the Kaweah River watershed (Franklin *et al.* 2002). Surveys in this study area cover 11 years of field sampling (1990 to 2000), but useful data exist from a previous demographic study that began in 1988 (Steger *et al.* 2000). Demographic surveys were conducted on130 mi² of land in this area, and methods for calculating λ were identical to those used for the Sierra study area. The annual rate of population growth using the projection matrix method was estimated to be 0.973, suggesting a decline of 2.7 percent per year. Statistical testing found that λ was not significantly less than 1.0. Actual owl counts during the study period seemed to indicate that the population might be growing, but again, the accuracy of such numbers is uncertain. Owl abundance in 1990 and 2000 were 54 and 64, respectively.

The meta-analysis for the Sequoia and Kings Canyon study area covered 132 mi² during 1991 to 2000. The resulting mean λ estimate was 0.984, but was not statistically different from that of a stationary population. A significant quadratic trend (decline, then increase) was detected for annual λ estimates, but adult apparent survival showed no substantive variation or trends through time. A linear trend could not be identified in fecundity estimates, as fecundity was highly variable through time. Apparent survival for the Sequoia and Kings Canyon study area was significantly higher (0.877) than that of the other study areas combined (0.819).

Lambda estimates using the projection matrix approach and Pradel's method suggest stationary population trends, and actual owl numbers do not show declines. Trend in annual λ estimates also does not show a decline, and apparent survival in this study area was higher than all other study areas examined in this finding. Based on these results, and considering the inclusion of the juvenile survival rate from another study area, we cannot conclude that this population is declining.

San Bernardino Study Area—The San Bernardino study area was located entirely within the San Bernardino National Forest, and comprised all suitable habitat for spotted owls within the mountains. Surveys covering approximately 200 mi² (Big Bear study area) began in 1987, but were expanded in 1989 to cover the entire San Bernardino Mountain range (approximately 730 mi²; San Bernardino Mountains study area; Gutiérrez et al 1999). This study area was unique in that it exists in southern California as a relatively isolated population (Gutiérrez and Pritchard 1990, LaHaye *et al.*1994). Higher elevations in the study area contained forested habitat suitable for spotted owls, while lowland areas of unsuitable desert scrub and chaparral habitats surrounded and isolated the higher peaks (Noon and McKelvey 1992). Early projection matrix studies using four, five, and six years of data estimated significant annual declines during years between 1987 and 1993 (λ = 0.769, 0.827 and 0.860, respectively; LaHaye *et al.* 1992, Noon *et al.* 1992, LaHaye *et al.* 1994). The annual rate of population change for the most recent report we possess was estimated to be 0.91 based on 11 years of data (1988 to 1998; LaHaye *et al.* 1999). This estimate was significantly less than that of a stationary population, and suggested that the territorial female owl population declined nine percent annually from 1988 to 1998. Over the 11-year study period, this rate of decline would translate to a loss of over 60 percent of the population.

Although all forested habitat within the San Bernardino Mountains study area (including unoccupied habitat) was surveyed (Gutiérrez 2001), survey effort increased during the study period. In 1989, 532 total surveys were conducted, whereas in 1998, 1,185 total surveys were conducted (LaHaye *et al.* 1999). This change in survey effort could cause the number of owls observed in any year to be a function of the survey effort instead of an actual trend in numbers. Thus, there is a high likelihood that an assessment of actual owl numbers through time could be biased, and may not accurately represent the true population size in any given year.

The meta-analysis for this study area included 8 years of sampling (1991 to 1998) and encompassed 730 mi². The mean λ estimate for this study area was less than 1.0 (0.978), but was not statistically different from that of a stationary population (λ = 1.0). Examination of annual λ estimates showed a weak (nonsignificant) decline, and as with all other study areas, adult apparent survival showed no substantive variation or trends through time. No linear trend in fecundity could be identified.

Although the projection matrix approach showed a decline and there was a weak, nonsignificant decline in annual λ estimates using Pradel's method, the mean λ was statistically stationary using Pradel's methodology. This is more meaningful than with the other study areas. Recall that using Pradel's method, the population could appear stationary or growing, even if the population growth is caused by outside immigration. For this study area, recruitment cannot likely be attributed to immigrants entering the study area, as the study area is relatively isolated. Thus, the disparity between the projection matrix estimate and the estimate using Pradel's method could be a result of either (1) measurement error in survival rates of juveniles or adults, or (2) the presence of unlocated floaters in the study area (Franklin 1992). Regardless, we have insufficient certainty as to the status of this population to conclude that it is either declining, increasing, or stationary.

Meta-Analysis Results

The meta-analysis used the Pradel method to evaluate data from various study areas, as described above. The analysis was also applied to some aspects of the population as a whole. The estimated mean lambda for each of the individual studies was not significantly different than 1.0 over the periods analyzed. The meta-analysis did not estimate a mean overall value of lambda for all study areas combined. Examination of trends in annual λ over the periods analyzed for each study area showed no evidence of a trend for the Lassen study, a significant decline for the Eldorado study, a significant quadratic trend (decline, then increase) for the Sequoia and Kings Canyon study, and a weak (nonsignificant) decline for the Sierra study. The overall trend in annual lambda rates for these four Sierra Nevada study areas was declining, then increasing. The trend in annual rates for the San Bernardino study was a weak (nonsignificant) decline for the period analyzed.

Adult survival rate for the Lassen, San Bernardino, Sierra, and Eldorado study areas combined was 0.819, which was substantially lower than the mean estimate (0.850) for adult northern spotted owls across 15 study areas (Franklin *et al.* 1999). Except for the Sierra study area, fecundity estimates for the California spotted owl study areas were so variable through time that linear trends could not be identified. The Sierra study showed a negative trend in fecundity, which could have been driven by a high reproduction year early in the study.

Conclusions—In total, the findings reported above are not conclusive with respect to the population status of the California spotted owl. There is no definitive evidence that the population is decreasing across its range, and various analytical results of the individual study areas are not wholly supportive of conclusions regarding declines in any given study area. Low levels of declines may be occurring in some study areas, but if so, they are not clearly evident using existing analytical techniques. The strongest support for a possible decline is on the Sierra study area, and the strongest support for a possible stationary population is on the Sequoia and Kings Canyon study area. The combined rate of adult survival for all study areas except the Sequoia and Kings Canyon study area may be of concern, as it is substantially lower than that reported for the northern spotted owl. However, Pradel's λ estimate for each study area consistently showed statistically stationary populations, so we cannot conclude that this lower adult survival rate is causing a decline in California spotted owl populations. At this time we have no clear statistical evidence to show that the California spotted owl is declining throughout its range.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the California spotted owl are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

There are two categories of possible threats to the California spotted owl that are related to habitat. The first is the current threat related to the condition of existing populations and habitat, and existing, ongoing habitat modification. The second is the potential threat that may result from future management of habitat.

Threats related to current condition of populations and habitat. Numerous authors have expressed concern over the current status of the California spotted owl, and much of this concern is related to the quality of the habitat available to the subspecies at the present time. The best scientific information available indicates that high survival of spotted owls is achieved by maintaining large, unfragmented areas of suitable habitat (Moen and Gutiérrez 1997, Franklin *et al.* 2000, Blakesley *in litt.*, 2002a). Important habitat components, especially large trees, large snags, and large down logs, are currently in short supply across the range of the California spotted owl (Verner *et al.* 1992b, USFS 2001a). The diameter of nest trees selected by owls in the Sierra Nevada is significantly greater than the average diameters of conifers in the Sierra Nevada. Large trees become future large snags and large downed logs, the latter providing important habitat attributes for some prey species. The length of time required to recover old trees and increase their density over the landscape raises the level of concern associated with their decline (USFS 2001a).

Concern has been exacerbated because, although harvest volume was declining markedly in the 1990s, existing management direction did not appear to be sufficient to arrest completely habitat decline (USFS 2001a), and because, until recently, most of the remaining old growth in national forests in the Sierra Nevada remained in areas available for timber harvest (Franklin and Fites-Kaufmann 1996, Beardsley *et al.* 1999). Thus, Blakesley and Noon (1999) argued that the most positive step that can be taken to reverse apparent declines of California spotted owls would be to increase retention and recruitment of large trees and closed canopy conditions throughout the Sierra Nevada.

Concern also exists because the existing habitat used by California spotted owls appears to be vulnerable to stand-replacing catastrophic fire. Removal of large overstory trees in conjunction with fire exclusion has lead to changes in forest structure that favor spread of high intensity fire. Conifer stands have become denser and composed mainly of trees in small and medium size classes (University of California 1996). The species composition of these forests has also shifted, from more shade intolerant, fire-hardy species such as ponderosa pine and black oaks to more shade tolerant, fire sensitive species such as white fir and incense-cedar (Verner *et al.* 1992, Weatherspoon *et al.* 1992). Similar increases in density and changes in species composition have been documented for coniferous forests of southern California (Weatherspoon *et al.* 1992, Minnich *et al.* 1995). Forests in

southern California were logged significantly into the 1960s (Verner *et al.* 1992a) and have also been affected by intensive fire suppression. Dense stand conditions in California forests have lead to increased tree mortality, due to competition, drought, insects, disease, and, in some cases, air pollution (University of California 1996). The increased density and continuity of young trees together with increased fuels from fire suppression and tree mortality have created conditions favorable to more intense and severe fires (University of California 1996). Over the last 30 years, the annual acreage burned in the Sierra has been about 19,020 ha (47,000 ac), but in the last ten years, that average was 30,756 ha (76,000 ac) (USFS 2001b).

Paradoxically, the growth of understory trees that contribute to the high degree of canopy closure favored by California spotted owls also increases the risk that wildfire might spread into the canopy and destroy the stand. Because fire suppression has increased density of stands in the Sierra Nevada, the possibility exists that it has led to net improvement in owl habitat in some areas (Weatherspoon *et al.* 1992) with resultant increases in spotted owls (Verner *et al.* 1992a). Weatherspoon *et al.* (1992) characterized forests selected by spotted owls as having the structural components favorable for crown fires.

However, in recent years, relatively few California spotted owl sites have been severely impacted by wildfire (USFS 2001a). From 1993 to 1998, only 15 Protected Activity Centers, a 121 ha (300 ac) management area established around all Forest Service owl sites in 1993, burned in wildfires, and three of those remain occupied (USFS 2001a). This possibly is because of the success of initial attacks on wildfires in Sierran mixed conifer types (Weatherspoon *et al.* 1992) or because California spotted owls often occupy relatively moist areas such as northern aspects (Gould 1977, Barrows 1981, Gutiérrez *et al.* 1992, North *et al.* 2000), lower slopes of canyons (Gould 1977, Gutiérrez *et al.* 1992), or areas close to water (Gould 1977) where average fire intervals are longer (Weatherspoon *et al.* 1992). Weatherspoon *et al.* (1992) noted that most of the large fires in the Sierra Nevada had occurred on the eastside and at low elevations on the westside, outside the areas where spotted owls occur.

During development of the SNFPA, the overall concerns regarding the status of the California spotted owl and its old forest habitat were so pervasive that the Forest Service, the primary land manager in the Sierra Nevada, formally adopted the assumption that the owl's population was declining as a basic tenet driving land management direction, and in the SNFPA Record of Decision established that "The primary objective is to conserve rare and likely important components of the landscape such as stands of mid and late seral forests with large tree, structural diversity and complexity, and moderate to high canopy cover" (USFS 2001b).

The SNFPA FEIS (USFS 2001a) provided analysis that suggested that many California spotted owl territories might not contain sufficient amounts of suitable habitat to provide for desirable levels of reproduction, based on inferences made from the work by Hunsaker *et al.* (2002) (which was in press at the time of publication of the FEIS). However, during the process of publication of that study, analysis of the data by another Forest Service scientist found that the statistical methodology of Hunsaker *et al.* (2002) was flawed and that the study's conclusion regarding the relationship between habitat and reproductive success could not be supported (Lee 2001). Thus, while the FEIS analysis of the amounts of habitat in home ranges may be of descriptive value, certain of its conclusions as to the possible population implications were not valid. The FEIS reported that, overall, 50 percent of the home ranges contained less than 60 percent of their area in suitable habitat. In the central Sierra Nevada (represented as the Plumas, Tahoe, Eldorado, and Stanislaus National Forests, which contain about 46 percent of the owl sites in the Sierra), 58 percent of the home ranges contained less than 60 percent suitable habitat.

In southern California, recent prolonged drought, particularly on the San Bernardino National Forest, has led to significant mortality in the big-cone Douglas-fir and mixed conifer vegetation types, both of which provide nesting, roosting, and foraging habitat for California spotted owls. The extent of mortality is projected to be 8,094 to 12,140 ha (20,000 to 30,000 ac), much of which is considered suitable nesting/roosting habitat. The San Jacinto Mountains are experiencing especially high mortality. It is anticipated that most of the nesting and roosting habitat in the San Jacinto Mountains will be lost. This area supports about 10 pairs of spotted owls, all of which could be lost (Loe *in press* 2002).

Despite well-founded concerns regarding the current status of the subspecies, there are several factors that suggest that the California spotted owl is not in immediate danger of extinction nor will be in the foreseeable future. These factors include: (1) The subspecies remains widespread and well-distributed throughout its historic range, despite extensive historical effects on habitat and apparent sub-optimal conditions in current habitat; (2) The estimated numbers of the subspecies combined with its wide distribution reduce the likelihood of widespread extirpation due to a catastrophic event; and (3) Although there are analyses that suggest populations may be declining, the population declines are not conclusively demonstrable.

Threats to Habitat from Future Timber Harvest, Catastrophic Fire, and Vegetative Management. With the current status and performance of California spotted owl populations and their habitat in question, the evaluation of potential future threats is a key aspect of this finding. In the following discussion, we evaluate the potential effects of impending management on the habitat of the subspecies.

In this evaluation, we confine the scope of our judgement of the future actions and programs of Federal land management agencies to reasonably foreseeable outcomes of established management direction, rather than more speculative assessment of possible future management scenarios. In particular, and most importantly, this limitation confines us to evaluation of the established management direction for Forest Service lands in the Sierra Nevada, (*i.e.*, SNFPA). As discussed below, we are aware that Forest Service is considering changes in management direction, and that other parties have called for actions that could have more widespread impacts on California spotted owl habitat. However, because such proposals are not incorporated in established management direction, they remain outside the scope of this finding.

Timber harvest on Federal lands in the Sierra Nevada—Timber harvest in coming decades on Forest Service lands in the Sierra Nevada will be governed by the Record of Decision for the SNFPA. The Record of Decision states: "For each national forest affected by this decision, a revised allowable sale quantity (ASQ) will be established at the time of their Forest Plan Revision. Until those revisions are complete, the total annual Probable Sales Quantity (PSQ) green volume for the 11 national forests is estimated to be approximately 191 million board feet (mmbf) for the next five years, which includes approximately 137 mmbf from the pilot project for the Herger-Feinstein Quincy Library Group (HFQLG). The estimated annual volume for the ensuing five years is approximately 108 mmbf. An additional 91 mmbf of salvage harvest per year may also be made available (USFS 2001b).

Totaling approximately 282 mmbf per year in combined volume of green and salvage timber harvest for the first five years, this harvest level would be similar to the annual average harvest volume (about 279 mmbf) from Sierra Nevada national forests from FY 1998 to 2000, described above. However, the harvest would be distributed somewhat differently than in past years, as over 70 percent of the green tree volume will be harvested from the three forests (Lassen, Plumas, and Tahoe) involved in the HFQLG pilot project. (Since 1994, the amount harvested from these three forests has ranged from 56 percent to 71 percent of the total harvested from all Sierra forests.) All of the planned harvest would be subject to the SNFPA Standards and Guidelines summarized below. It should be noted that even though the projected volume from the HFQLG pilot project was 139 mmbf per year, the total harvest in the first two years was only about 60 mmbf, primarily as a result of the constraints of the SNFPA and planning delays (Mary Carroll-Martin, USFS, pers. comm. 2003).

Timber harvest on private lands in the Sierra Nevada—Private timber harvest is widespread in the Sierra Nevada. Between 1999 and 2001, 765 timber harvest plans covering 86,685 ha (216,675 ac) within the range of the California spotted owl were submitted (Susan Britting, Sierra Nevada Forest Protection Campaign, *in litt.* 2002). For the foreseeable future, timber harvest on industrial timber lands in the Sierra Nevada will be conducted in compliance with the California Forest Practice Rules. Regulatory aspects of the Sustained Yield Plans (SYP) program are further described in Factor D below.

The primary private industrial timberland owner in the Sierra Nevada is Sierra Pacific Industries, Inc. (SPI), which owns about 376,351 ha (930,000 ac) within the range of the California spotted owl. For the next several decades, SPI's timber harvest will be conducted according to their Maximum Sustainable Production (MSP) plan pursuant to the California Forest Practice Rules (further described in Factor D below). Under this plan, SPI projects an increase of large tree/closed canopy conditions from about 20 percent of the landscape in year one (current condition) to 65 percent in year 80 and stabilizing to 55 percent in year 100. Over the 100 year period, the average diameter of trees increases from 18 in class (current condition) to 32 in class, and projections anticipate maintenance of the higher proportion of larger tree class over time with harvest practices (SPI 1999 a and b).

Timber harvest in southern California—The four southern California National Forests are currently operating under Forest Land and Resource Management Plans that were completed in the late 1980s. As discussed further in Factor D, these plans are in the process of revision. There is not an Allowable Sale Quantity or Proposed Sale Quantity proposed in the Southern California Conservation Strategy. The prolonged mortality of vegetation has resulted in significant build-up of fuels in the San Bernardino National Forest. In order to reduce both a fuel hazard and risk of fire, the San Bernardino National Forest has a number of salvage harvest timber sales currently under contract. Additional sales are being planned and the sale program will respond to continuing and projected mortality (M. Gertsch, USFS, pers. comm. 2002). Timber harvest on these forests will be conducted with California spotted owl protection measures (M. Gertsch, USFS, pers. comm. 2002).

In summary, available information suggests that U.S. Forest Service timber harvest levels in the Sierra Nevada and southern California are not expected to increase substantially above current levels. In addition, the SPI MSP is expected to provide an increasing amount of habitat on that large industrial ownership over the next few decades. Other private lands have not been specifically evaluated, but will be governed under the FPRs, further described below.

Risk of Catastrophic Fire—Weatherspoon *et al.* (1992) identified the following major factors of concern in habitats of California spotted owls in the Sierra Nevada that pertained to fire risk: (1) Ingrowth of shade-tolerant tree species, creating unnaturally dense stands with ground-to-crown fuel ladders; (2) excessive accumulation of surface fuels; and (3) change in composition of tree species from fewer pines and black oaks to more firs and incense-cedar. Such conditions create a tendency towards crown fires that kill most or all trees in an area, which may result in direct mortality of California spotted owls or make the burned habitat unsuitable for the species.

Approximately 39 percent of the California spotted owl sites on national forest lands in the Sierra Nevada occur in areas with high fire hazard risk (USFS 2001a). However, as stated above, the actual loss of owl sites to wildfire has been small in recent years, perhaps due to effective suppression and environmental factors. The annual rate of loss has been only 0.2 percent of the known national forest owl sites in the Sierra (Service 2001). Thus, based on recent rates of loss to catastrophic fire, it could be argued that the risk to the subspecies is not particularly high. Effects at some local levels have been larger; the Plumas National Forest lost 5 percent of protected activity centers (PAC, protected owl nest and surrounding habitat) per year over a recent two-year period (USFS 2001a). It is also argued that the steadily increasing amount of forest fuel creates an ever-increasing risk of large catastrophic fires (Weatherspoon *et al.* 1992).

The Forest Service currently believes that wildfire effects, particularly those associated with large, stand replacing wildfires, are a major source of risk to spotted owl populations (USFS 2001b). This is based on analysis of recent trends in fire occurrence and on the explicit assumption that the recently-observed high rate of large severe fires will continue. Also, the growing concern over the potential for disastrous wildfire effects on human communities has strongly influenced management direction toward reducing fuels in forests in proximity to human communities in the so-called Wildland Urban Interface (WUI). Response to this concern is manifested in nationwide activities under the National Fire Plan (National Interagency Fire Center (NIFC) 2002), which established general guidance and funding for land management agencies and communities involved in fire suppression and fuels reduction.

This recently increased focus on reduction of forest fuels has substantial implications for the California spotted owl, and raises difficult questions about the potential benefits and risks to the subspecies that may result from reduction of forest fuels. In general terms, the situation may be described as follows: In today's forests, the high canopy-cover stands currently much-used by spotted owls are largely a product of sustained fire suppression in stands regenerating after high levels of harvest that occurred several decades ago. The large numbers of small and medium-sized understory trees that create high degrees of canopy cover also act as a potential fuel ladder that can carry fire into the forest crown, where, under some conditions, the fire can spread rapidly and create extensive tree mortality. The competition among many small trees suppresses the rate of growth of the stand into the larger trees that are an important component of high quality habitat for owl nesting and forage

production. More mature habitat features a high degree of foliage volume and canopy cover that begins high above the ground and is not as vulnerable to fire. Thus, the primary technique of fuels reduction, thinning understory trees with mechanical equipment and/or prescribed fire, may have detrimental effects on owl habitat in the short term (10 to 20 years), but may favor development of habitat in the longer term, and may reduce the likelihood of catastrophic fire that could substantially degrade or eliminate habitat.

Tradeoffs between owl habitat lost through treatments versus projected losses to wildfire events are complex and difficult to assess. The effects of vegetation treatments upon owl habitat are mostly immediate and relatively easy to quantify, but reductions in the acreage and intensity of future wildfires due to vegetation treatments will be realized over much longer periods. In addition, due to the random nature of wildfire events, projections regarding future wildfire have greater amounts of uncertainty and are heavily dependent upon assumptions that are difficult to quantify.

In the Record of Decision for the SNFPA, the Regional Forester stated "Two factors of greatest concern to me are: (1) Ensuring the long term protection and recovery of old forest conditions and the spotted owl and other species (2) being able to ensure that the risk of wildfires within the Sierra Nevada can be managed to protect ecosystems, property and communities' (USFS 2001b). The objective of the SNFPA's conservation strategy for California spotted owls was to provide the environmental conditions needed to establish a high likelihood of maintaining viable populations of the California spotted owl, well distributed across the national forests within the Sierra Nevada planning area. This strategy sought to maintain habitat capable of supporting existing owl populations, stabilize current population declines, and provide increases in owl habitat over time. It was based on providing and improving fundamental components of spotted owl habitat such as: a high foliage volume and complex vegetation structure at nest sites; a high percentage of home ranges in forests with moderate to high cover that are concentrated near nest sites; and habitat for primary prey species, especially the northern flying squirrel.

This objective is to be accomplished through a multi-scale landscape strategy to: (1) Protect and manage allocations called "Old Forest Emphasis Areas" to provide large area reserves of high quality spotted owl habitat; (2) conduct surveys for owls where vegetation treatments would occur; (3) establish PACs comprising known and suspected nest stands and the best available 121 ha (300 ac) of habitat around owl activity centers; (4) establish limited operating periods within approximately 0.4 km (0.25 mi) of California spotted owl nest sites during the breeding season (March 1 through August 31); (5) protect and manage individual spotted owl home range core areas (972 ha (2,400 ac) on the Hat Creek and Eagle Lake Ranger Districts of the Lassen National Forest; 405 ha (1,000 ac) on the Almanor Ranger District of the Lassen National Forest, Modoc, Inyo, Plumas, Tahoe, Eldorado, Lake Tahoe Basin Management Unit, and portions of the Humboldt-Toiyabe and Stanislaus National Forests; and 243 ha (600 ac) on the Sequoia and Sierra National Forests) in the "general forest" forested areas outside of Old Forest Emphasis Areas; (6) manage the general forest outside of owl core areas to maintain and increase the amount of suitable spotted owl habitat; and (7) address fire hazard and risk by reducing surface and ladder fuels within strategically placed area treatments focusing on the urban wildland intermix zone and Old Forest Emphasis Areas of high hazard and risk (USFS 2001a and b).

Based on the explicit assumption that the California spotted owl was in some degree of population decline, the SNFPA incorporated numerous Land Allocations and Standards and Guidelines (S and Gs) that protect existing owl habitat across the landscape and in the course of implementation of fuels treatments. In general, these measures apply to four landscape level designations. In order of increasing intensity of potential fuels treatment, these designations are old forest emphasis areas, general forest, the urban threat zone, and the urban Defense zone. The most important features of the S and Gs that relate to conservation of California spotted owls are summarized below, based on discussion in the SNFPA Record of Decision (USFS 2001b). More detail is given in the FEIS (USFS 2001a).

Important aspects of the SNFPA allocations and S and Gs include the following:

(1) In forests west of the Sierra crest (westside), all live conifer trees with a dbh of 76 cm (30 in) or greater will be retained. East of the crest, where trees generally do not grow as large or as rapidly, all trees 61 cm (24 in) or greater in the eastside pine forest type will be retained. Montane hardwoods with a dbh of 30 cm (12 in) or greater within westside forest types will be retained. Prescribed burn prescriptions and techniques will be designed to minimize the loss of large trees and down material. The largest down logs will be retained for coarse woody debris outside of the Defense zone of the urban wildland intermix. Forested stands over 2 ha (5 ac) with the largest trees will be maintained to perpetuate their current conditions. Generally, in these stands no trees greater than 30 cm (12 in) dbh will be removed and canopy cover will not be reduced more than 10 percent below current conditions when applying necessary fuels reduction treatments.

(2) Spotted owl PACs will be applied in all designations except the Defense zone of the urban wildland intermix. PACS are to include at least 121 ha (300 ac) of the best available habitat. Total acreage in spotted owls PACs (including non-habitat acreage within the PACs as presently designated) is currently estimated at 243,258 ha (601,116 acres) (K. Barber, USFS, pers. comm. 2003), which is about 12 percent of the forested acreage on national forest lands in the Sierras. Stand-altering activities in spotted owl PACs will be limited to reduction of surface and ladder fuels through prescribed fire treatments. Prior to prescribed burning, known nest trees and trees in the immediate vicinity will be protected by hand line construction, tree pruning, and cutting of small trees within a surrounding 0.4 to 0.8 ha (one to two ac) area. Activities that could disturb nesting would be prohibited within 402 meters (0.25 mi) of nests within the breeding season unless it is demonstrated that nesting is not occurring. Vegetation treatments will occur in no more than 5 percent per year and no more than 10 percent per decade of the California spotted owl PACs.

(3) Spotted owl home range core areas will be applied around all PACs, except in the Threat zone as described below. Generally, fuel treatments in home range core areas will be limited to prescribed fire or low intensity mechanical treatments for the removal of material necessary to reduce surface and ladder fuels sufficient to achieve an average flame length of 2 m (6 ft) or less if the stand were to burn under 90th percentile fire weather conditions. Fuels treatment measures will be similar to those described in the following discussion of Old Forest Emphasis Areas (USFS 2001a and b).

(4) Old Forest Emphasis Areas will be established, totaling over 1,618,712 ha (4,000,000 ac). Currently, about 70 percent of the acreage in these areas is suitable owl habitat (USFS 2001a and b); thus, about 65 percent of the estimated 1.7 million ha (4.3 million ac) of existing habitat on national forests in the Sierras is within the Old Forest Emphasis Areas. About 49 percent of the California spotted owl sites known on national forest lands in the Sierras lie within old forest emphasis and wilderness areas. Additionally, all stands of high quality habitat outside old forest emphasis areas (*i.e.*, California WHR types 5M, 5D, and 6) will also be identified and protected.

Several protective prescriptions apply in old forest areas, based on their location with respect to other management needs. Where possible, managers are directed to avoid applying the "strategically placed landscape fuel treatments" in Old Forest Emphasis Areas. However, placement of these strategic fuel treatments may be required within Old Forest Emphasis Areas to minimize the risks to human life and property, sensitive resources, or protect the Old Forest Emphasis Area from loss to wildfire. In Old Forest Emphasis Areas (as in spotted owl home range core areas), fuel treatments will be limited to the removal of material necessary to reduce surface and ladder fuels sufficient to achieve an average flame length of 1.8 m (6 ft) or less if the stand were to burn under 90th percentile fire weather conditions.

When treatments are necessary within Old Forest Emphasis Areas, prescribed fire is the first priority to achieve the fuels objectives, rather than mechanical treatment. When prescribed fire will not achieve fuels objectives, mechanical thinning of understory trees less than 30 cm (12 in) dbh will be used to achieve the fuels objectives. However, in some instances those treatments will not achieve the fuels objectives due to existing stand conditions. In those situations incidental mechanical thinning of trees up to 51 cm (20 in) dbh and canopy reductions of up to 20 percent may be conducted in 28 to 61 cm (11 to 24 in) dbh stands with greater than 40 percent canopy cover. An additional analysis of suitable owl habitat will be conducted before applying the mechanical thinning of up to 51 cm (20 in) dbh and canopy reductions of up to 20 percent prescription in Old Forest Emphasis Areas. This prescription may only be utilized when sufficient suitable owl habitat exists to satisfy the requirements of a home range core area within 2.4 km (1.5 mi) of the nest site or activity center. This site specific analysis will be documented in the project environmental assessment. A minimum of 50 percent canopy cover will be retained on the westside and 30 percent will be retained on the eastside following any mechanical fuel treatments in Old Forest Emphasis Areas;

(5) The General Forest designation is that area outside of other designations. It consists of about 1.69 million ha (4.17 million ac) (after subtraction of overlapping allocations with higher priority). In the General Forest lands, spotted owl home range core areas and PACs are protected as described in the previous paragraphs. Within General Forest that is outside spotted owl PACs and home range core areas, no trees greater than 51 cm (20 in) dbh will be removed and canopy cover will not be reduced more than 20 percent below current conditions. A minimum of 50 percent canopy cover will be retained on the westside and 30 percent will be retained on the eastside following mechanical treatments. The four largest snags per acre over 38 cm (15 in) dbh will be retained.

(6) The threat zone of the urban wildland intermix consists of all areas on Forest Service lands that are between 0.4 km (0.25 mi) and 2.4 km (1.5 mi) of human structures. Recent analysis indicates that this area contains over 849,823 ha (2,100,000 ac) or about 18 percent of the national forest lands in the Sierra Nevada (K. Barber, USFS, pers. comm. 2003). The FEIS stated that about 32 percent of the known activity centers occurred within the threat zone (USFS 2001a). The threat zone overlaps about half of the California spotted owl PACs (an indication of the extensive spread of human development in the region), and about 29 percent of the total PAC acres are overlapped by the threat zone. Generally, no trees greater than 51 cm (20 in) dbh will be removed, and canopy cover will not be reduced more than 20 percent below current levels in the threat zone. A minimum of 50 percent canopy cover will be retained on the westside and 30 percent will be retained on the eastside. The four largest snags per acre over 38 cm (15 in) dbh will be retained. Strategically placed landscape treatments will be implemented to achieve fuels objectives within the Threat zone. Spotted owl PACs will be established and managed as described in (2) above, but, in an effort to balance the need for effective fuels reductions treatments with conservation of owl habitat, the S&GS did not establish home range core areas in the Threat zone. Instead, site-specific analysis will determine whether sufficient suitable habitat exists to satisfy the requirements of a home range core area within 2.4 km (1.5 mi) of the nest site or activity center. Where sufficient habitat will remain within that area, fuels treatments that remove trees up to 51 cm (20 in) dbh and reducing canopy cover by up to 20 percent, but resulting in no less than 50 percent canopy cover post-treatment, may be utilized outside of PACs in 28 to 61 cm (11 to 24 in) dbh stands with greater than 60 percent canopy cover. Otherwise, the treatment will be constrained to removal of trees less than 30 cm (12 in) dbh. The site-specific analysis will be documented in the project environmental assessment.

(7) The Defense zone of the Urban Wildland Intermix includes those areas of national forest land that are within 0.4 km (0.25 mi) of human structures. The most recent available estimate indicates that the Defense zone totals about 137,995 ha (341,000 ac) of national forest lands (K. Barber USFS pers comm. 2003), representing about three percent of the national forest lands in the Sierra Nevada. About 4.0 percent of the California spotted owl activity centers in the Sierra Nevada occur within the Defense zone (USFS 2001a). The Defense zone overlaps portions of about half of all California spotted owl PACs on Sierra national forest lands, but, based on experience in early implementation of the SNFPA, the Defense zone includes only about 4 percent of the total PAC acreage, as a result of its narrow, linear form (K. Barber USFS pers comm. 2003). This area is the highest priority for fuel treatments, and the relatively intensive treatments allowed in this zone may result in stands that are not suitable for California spotted owls. In the Defense zone, mechanical treatments will be prohibited within a 152 m (500-foot) radius buffer around a spotted owl nest site or activity center.

(8) Vegetation treatments will occur on no more than 30 to 40 percent of each watershed. These vegetation treatments will result in stand conditions meeting the definition of suitable owl habitat.

Effects of The Quincy Library Group Pilot Project—In 1998, the HFQLG designated areas on the Lassen, Plumas, and Tahoe National Forests that would be treated for creation of a landscape-based fuels reduction program. The Record of Decision for the SNFPA (USFS 2001b) directed that all SNFPA S and Gs applying to California spotted owls will be implemented in the HFQLG pilot project, resulting in the inability to carry out about ten percent of the Defensible Fuel Profile Zones that had been proposed in the original HFQLG Environmental Impact Statement (USFS 2001b). As stated earlier, the expected harvest volume of 138 mmbf per year from the HFQLG area would be less than the amount

harvested on the three forests during the late 1990s. However, in the first two years of implementation, the project has harvested a total of about 60 mmbf (M. Carroll-Martin, USFS, pers. comm. 2003), so anticipated effects described in the FEIS, which included a decrease in owl habitat of 5 to 8 percent (USFS 2001a), may be occurring at a slower rate than anticipated.

Effects of future habitat modification by fuel treatments and wildfire—Under the SNFPA, fuel treatments will be applied on a relatively small portion of the Sierra Nevada. Prescribed fire treatments would be used on less than six percent of the forested area; prescriptions thinning trees below 30 cm (12 in) dbh on about three percent; thinning of trees 30 to 51 cm (12 to 20 in) dbh on less than one percent; and thinning of trees over 51 cm (20 in) dbh on less than one half of one percent (derived from data in USFS 2001a and K. Barber, USFS, pers comm. 2003) However, because spotted owl habitat is in a condition that favors the spread of intense wildfire, many of the treatments will be focused on spotted owl habitat.

According to a database of treatments projected to occur over the next 20 years provided to us by the Forest Service (Service 2001), SNFPA mechanical treatments will treat approximately 25 percent of suitable owl habitat in the Sierras. However, these treatments will not be equally distributed among the forests. Mechanical treatments on the Lassen, Plumas, and Tahoe National Forests (forests comprising the QLG pilot project area) will treat 31, 28, and 31 percent, respectively, of spotted owl habitat.

According to the SNFPA FEIS (USFS 2001a), only a small amount of spotted owl habitat is expected to be rendered completely unsuitable by fuels treatments and wildfire. The total habitat area projected to be lost to both causes in the first decade is about 26,304 ha (65,000 ac) and in the second decade, about 23,876 ha (59,000 ac). The projection for the second decade is less because the most intense fuels treatments will take place in high risk areas in the first decade. In total, this loss would represent about three percent of the estimated existing habitat over the next twenty years. On a landscape basis, this loss will be overcome by a projected overall increase in high quality habitat of about 13 percent over the next fifty years (USFS 2001a). This increase is expected to occur as today's young and mid-aged stands mature into larger size classes, assisted by the thinning and reduction in intense wildfire that are among the objectives of the SNFPA. Habitat suitability for the primary prey species, the northern flying squirrel and dusky-footed woodrat, is also projected to increase (USFS 2001a).

The primary area where fuel treatments would remove large trees and reduce canopy cover to the point of unsuitability for owls would be the Defense zone of the wildland/urban interface. The FEIS estimated that about four percent of the known spotted owl activity centers fell within the Defense zone (USFS 2001a). More recent analysis indicates that the Defense zone overlaps some portion of 21 percent of all PACs; and Defense zone prescriptions could apply on an average of 35 ha (86 ac) of those affected PACs. However, only about four percent of the overall PAC acreage in the Sierra Nevada occurs within the Defense zone (Klaus Barber, USFS, pers. comm. 2003), so this effect should be limited.

While the S and Gs provide some protection for a 152 m (500-foot) radius (about 7 ha (18 ac)) around known activity centers that are found in the Defense zone, canopy cover in the remainder of the Defense zone could potentially be reduced to the point that it will probably be unsuitable for nesting, roosting, or foraging by spotted owls. The portion of those PACs that will actually be changed from suitable to unsuitable is unknown; this will depend on the original condition and the site-specific treatment. This effect could lead to reduced productivity on these sites through reduction of foraging habitat (Blakesley *in litt.* 2002a, Bart 1995a). While the fuel treatment prescription for the Defense zone could potentially be applied on over 137,591 ha (340,000 ac) only about seven percent of the Defense zone area overlaps PACs. The Defense zone treatments will also affect foraging areas that are associated with other more distant PACs, but this effect should be limited to a relatively small proportion of the foraging area by the narrow linear nature of the Defense zone.

During the early decades of SNFPA implementation, less severe habitat modification by fuel treatments and wildfire outside the Defense zone will be considerably more extensive. This habitat modification will probably be the most important factor affecting California spotted owl populations in the next few decades, and such, needs careful evaluation in this finding.

In general, treatments that remove habitat features such as large trees, snags, logs, and woody debris or that reduce canopy cover may be detrimental to California spotted owls, at least until these features can be regenerated by continuing growth of forest stands. As described in previous sections, large trees, high degrees of canopy closure, and large snags and logs are associated with owl nesting, roosting, and foraging habitat, and with the habitat of their primary prey in much of the Sierra, the northern flying squirrel. Alternately, treatments that retain sufficient canopy cover and habitat features to support California spotted owls, while at the same time reducing the risk of catastrophic fire, may benefit the species (Weatherspoon *et al.* 1992, Larry L. Irwin and Jack Ward Thomas, National Council for Air and Stream Improvement, Inc., *in litt.* 2002).

The primary aspects of fuel treatments that would potentially affect spotted owl habitat are (1) removal of trees larger than 51 cm (20 in.) diameter, which may reduce numbers of existing and potential nesting trees and large diameter snags and logs, with an accompanying reduction of canopy cover; and (2) removal of trees 30 to 51 cm (12 to 20 in.) in diameter, with resultant reduction in canopy closure, and perhaps to a lesser degree, reduction in numbers of existing nest trees and recruitment of potential nesting trees and large diameter snags and logs.

Throughout the area of the SNFPA, a general S&G precludes the removal of any tree over 76 cm (30 in.) dbh. The prescriptions that would allow any extensive harvest of trees of over 51 cm (20 in.) dbh (except for incidental removal for operability) are confined to the Defense zone. In addition, outside the Defense zone, removal of trees over 51 cm (20 in.) dbh would be limited to moderate quality habitat (*i.e.*, CWHR 4M and 4D) in the threat zone where this zone overlaps Old Forest Emphasis areas or where home range core areas exceed a habitat quantity standard. Thus, except for possible eventual long-term effects on recruitment of large trees that might result from continued extensive thinning of small understory trees (Franklin and Fites-Kaufmann 1996), most effects of the SNFPA on large trees are confined to the Defense zone and, with limitations, to other areas outside PACs only if their removal is necessary to allow mechanical treatments.

Therefore, since effects on large trees are limited, most of the effects of the SNFPA would be anticipated to result from the harvest of trees in the 30 to 51 cm (12 to 20 in.) size class. A small minority of spotted owl nests have been found in trees in this size class (USFS 2001a), but all known nest sites will be protected, so loss of existing nest trees is not expected. Trees in this size class also contribute to roost sites, but most

breeding season roost sites would be expected to be contained within PACs, where no mechanical treatments will be allowed. Thus, loss of these trees in breeding season roost sites would be confined to the Defense zone and to effects of prescribed fire in those areas of PACs where managers could use fire without important effects.

As a result of the above protections, the primary effect of removal of trees 30 to 51 cm (12 to 20 in.) dbh will be in foraging areas, rather than at nest sites. Because the home range core areas receive the heaviest foraging use, the effects could be most important there, but everywhere outside the Defense zone, except in the threat zone outside home range core areas and PACs, trees 30 to 51 cm (12 to 20 in.) dbh will only be removed when sufficient habitat exists within 2.4 km (1.5 mi) to meet the core area habitat requirements. Thus, effects on spotted owls due to removal of trees 30 to 51 cm (12 to 20 in.) dbh are expected to be limited.

Another important effect of fuel treatments may be reduction in canopy closure. In the Defense zone, the canopy closure could be reduced to a level below the 40 percent threshold that defines habitat suitable for use by spotted owls, although according to the Forest Service, this area is often left at about 40 percent to obtain the benefits of shade in the fuel break (K. Barber, USFS pers. comm. 2003). In the threat zone, canopy cover may be reduced not more than 20 percent below current levels, and not below 50 percent cover; and in home range core areas in that zone, may not be reduced unless sufficient habitat exists within 2.4 km (1.5 mi) to meet the core area habitat requirements. In General Forest that is outside PACs, home range core areas, and patches of high quality habitat (where cover could be reduced by no more than 10 percent), canopy may be reduced by 20 percent, but generally not to lower than 50 percent cover. In westside home range core areas, and in Old Forest Emphasis areas, canopy cover may be reduced not more than 10 percent from existing levels unless habitat standards are met, and not below 50 percent cover overall.

As a result of the above measures, opportunities for reduction of canopy closure by more than 10 percent outside the Defense zone would be limited to areas outside home range core areas unless the habitat standards are met. Where the habitat standard is met, the degree of reduction would not exceed 20 percent, and would not go below 50 percent overall unless the stand was already below 50 percent canopy closure. Reduction of canopy closure by 20 percent would potentially reduce opportunities for nesting in areas where nesting does not currently occur, at least for the short term, but these prescriptions would not apply in areas designated as PACs or in any home range core areas that do not exceed the habitat standard. In all areas except the Defense zone, habitat that currently has a degree of canopy closure suitable for foraging use would retain that character after treatment.

Reduction in canopy closure might potentially have important effects on survival and reproduction of spotted owls, especially related to effects of exposure to weather and modification of forage species habitat. Potential effects of weather on adult and juvenile survival (Franklin *et al.* 2000, North *et al.* 2000) would be largely avoided in 121 ha (300-ac) PACs around all known nest sites and activity centers, where only prescribed fire is allowed to treat surface and ladder fuels, and where effects to overstory canopy would be expected to be minimal. Fuel treatments in PACs would occur only in 5 percent of PACs per year and 10 percent per decade.

In addition, reduction in canopy closure might have effects on occupancy and reproductive success of California spotted owls. North *et al.* (2000) reported on the positive influence of high foliage volume around nest sites on owl reproduction. Effects on this attribute would not be anticipated from fuel treatments under the S and Gs. Hunsaker *et al.* (2002) reported that California spotted owl reproductive success was correlated with degree of canopy cover within several radii around nests, and thus, it might be inferred that even relatively small reductions in canopy cover by fuel treatments in foraging areas could reduce reproductive success. However, prior to publication of Hunsaker *et al.* 2002, during the process of publication of that study, analysis of the data by another Forest Service scientist (Lee 2001) found that the statistical methodology of Hunsaker *et al.* (2002) was flawed, and thus, the above inference cannot be supported. The analyses of the data by both Hunsaker *et al.* (2002) and Lee (2001) found that canopy cover of at least 50 percent was desirable; that level would be maintained by the S and Gs in all areas but the Defense zone. Blakesley (2002a) reported that amount of habitat above 40 percent canopy cover was positively correlated with owl reproduction, but did not evaluate differences between increments of canopy cover. Outside the Defense zone, treatments would not reduce higher degrees of cover to below the 40 percent level.

In many cases, the renewed growth of the crowns of the remaining stand after thinning would be expected to fill in the canopy cover within one to two decades, so effects of reduction in canopy closure due to thinning of understory trees might be temporary. Additionally, the extent of such effects would be tempered by the limitation on fuel treatments to less than 40 percent of watersheds (outside the Defense zone), and by the direction to focus treatments on the upper two-thirds of slopes.

The Service concludes that no available data firmly indicate that the removal of trees and the reduction in canopy cover as prescribed by the SNFPA S and Gs and described above would have substantial negative effects on California spotted owl reproduction and occupancy, except in the Defense zone. This does not mean that negative effects would not occur. Such effects are possible, and researchers have suggested that subtle effects could be important if they occur on a wide scale (Noon *et al.* 1992). Substantial scientific uncertainty remains regarding the effects of fuel treatments in PACs and foraging areas. However, in the absence of demonstrated effects, and considering that the potential negative impacts are also accompanied by the positive effects of fire risk reduction and faster development of high quality habitat, we find that the timber harvest and fuel treatments proposed under the SNFPA do not constitute a significant threat to the California spotted owl at this time.

Fire on nonfederal Lands—The California Department of Forestry and Fire Protection (CDF 2002) reported that over 47,347 ha (117,000 ac) of nonfederal lands burned in 2002 and that for the most recent 5 year period (1998 to 2002) an average of 47,347 (117,000 ac) of nonfederal lands burned per year (CDF 2002). However, these statistics are not broken down by habitat type and, thus, do not provide an indication of losses for forest lands or spotted owl habitat.

In general, risk of catastrophic fire is probably lower on industrial timber lands than on many Federal forest lands, as a result of more active management, especially thinning, in recent decades. Risk varies on timber lands in other private ownership, according to the degree of timber harvest and fuel reduction.

Threats From Urbanization

Residential development, both through growth of communities and construction of dispersed residences,

poses a threat to California spotted owls by removing and fragmenting suitable habitat for the spotted owl and can remove habitat for prey species, especially woodrats. Residential developments also introduce and increase urban adapted predators (cats, dogs, skunks, racoons, ravens, crows) into spotted owl habitat; these predators may kill fledgling spotted owls in the nest or on the ground before they are capable fliers. Fires within the range of the California spotted owl, which could result in the loss of habitat, are more likely to be human caused, especially at the urban interface (NIFC 2002).

Development that is most likely to result in the loss of spotted owl habitat is occurring on private land in the lower elevation foothill areas of the Sierra Nevada and in southern California (Verner *et al.* 1992a). Statistics for nine of fifteen Sierra Nevada counties within the range of the California spotted owl show these counties are currently experiencing varying degrees of urban expansion, and have projected population growth rates from 0.7 percent in Sierra county to 6.2 percent in Calaveras county (Sierra Business Council 1997). The amount of private versus public lands in the Sierra Nevada and southern California portions of the range varies widely by county. The Sierra Nevada Ecosystem Project (1996) core analysis area encompassed almost 8.5 million ha (21 million ac) in the Sierra Nevada, of which 61 percent is Federal and 38 percent is nonfederal lands. Estimates from the Sierra Business Council (1997) indicate that for the nine Sierra Nevada counties in the range of the spotted owl they analyzed, an average of 46 percent is private land. These studies do not identify specific habitat types within ownerships; however, we assume higher elevation (greater than 3,000 ft) lands that are predominately in Federal ownership are at a lower risk of loss due to urbanization, while lower elevation (less than 3,000 ft) lands, in private ownership are more likely at risk of habitat loss. Some information is available on the "projected" amount of land planned for development by county as specified in their General Plans, however, these accounts are not sufficiently detailed to identify habitat types that are planned for development. McBride *et al.* (1996) looked at the impacts of development in specific habitat types in selected areas in five counties in the Sierra Nevada. Their results indicated there was a decrease in crown cover and tree density and an increase in impervious surface; however, no estimates were given for the rate or amounts of habitat lost overall.

Direct and indirect loss and degradation of habitat of California spotted owls and their prey is expected to continue in mid and lower elevation zones of the Sierra Nevada and southern California ranges through residential development (Laymon 1988, Verner *et al.* 1992b), harvest of hardwoods for firewood production (Laymon 1988, Verner *et al.* 1992b), human disturbance, and other consequences of development because these are among the fastest growing areas in California (Laymon 1988, McKelvey and Weatherspoon 1992). Suitable habitat scattered among houses and housing developments was not found to be occupied by California spotted owls in southern California, although areas adjacent to these developments contained dense and productive populations of the subspecies (Gutiérrez 1994). As a result, development has the potential to further impair effective dispersal among isolated populations (Ruth and Standiford 1994). In the San Bernardino Mountains, development is likely to first occur at low elevations. Urbanization has similar negative implications for Sierra Nevada spotted owls that migrate to lower elevations in the winter (Laymon 1988, Verner *et al.* 1992b).

In southern California, the mountain ranges occupied by California spotted owls probably act as habitat islands with limited dispersal between them. Under natural conditions, if the spotted owl population of one island were reduced or eliminated, that population could be sustained or reestablished through immigration from another island. As a result, a concern is that individual populations of California spotted owls, for example, those in southern California, could become isolated from other parts of the subspecies' range, for example the Sierra Nevada. As urbanization between mountain ranges continues, habitats there may be made unsuitable to support dispersing California spotted owls, eliminating immigration and potentially leading to extirpation of one or more subpopulations (Verner *et al.* 1992).

It is evident urbanization and loss of spotted owl habitat is occurring, especially in the Sierra Nevada foothills and in southern California. This development is occurring within a variety of habitat types including agricultural, grassland, as well as woodlands, and conifer forest types used by spotted owls. Development is limited in some respects by county general planning efforts that guide development for a specified planning period. Based on the limited amount of information available we cannot conclude the loss of spotted owl habitat is significant nor are the threats from urbanization immediate.

Miscellaneous Habitat Factors. There are several minor or lesser known factors that may influence spotted owl survival. Each is discussed below.

Riparian forests are important habitats for California spotted owls in southern California (Verner *et al.* 1992a). Diversion of surface waters and pumping of groundwater depletes water from streams upon which such habitats depend. Therefore, such development may lead to loss of habitat in some areas and therefore extirpation of California spotted owls in those areas (Verner *et al.* 1992a).

During the late 1800s, heavy grazing of surface fuels by livestock may have reduced the influence or extent of wildfires (University of California 1996), and subsequent ingrowth of vegetation on denuded soils may have contributed to the heavy fuel loading and tendency towards catastrophic fire now found in much of the California spotted owl's range. Currently, livestock grazing may impact spotted owls by removing cover used by prey species, especially brush used by woodrats (Verner *et al.* 1992b).

Recreation is the fastest growing use of the national forests (USFS 2001a). The construction of facilities used for recreation, including campgrounds, trails (foot, horse, and off highway vehicle), roads, ski resorts, and cabins has likely contributed to the destruction and fragmentation of California spotted owl habitat. In addition to habitat loss, recreational activities have the potential to disturb spotted owls and thereby adversely affect their survival and reproduction (Service 2001). The effect of recreation on owls is poorly understood and may be an increasing threat to California spotted owls, especially in southern California (Noon and McKelvey 1992).

Sudden oak death is a tree disease caused by the pathogen *Phytophthora ramorum*. It infects a variety of trees, including true oaks (*Quercus* spp.), California bay laurel, tanoak, and madrone (CDF 2002). Some trees are killed by the disease, while others survive but serve as hosts. The disease can be found in 11 coastal counties outside the range of the California spotted owl and only one within the range (Monterey) (CDF 2002, UC Berkeley, *in litt.* 2002, Endicott 2002). The extent to which the disease may spread and the number of tree species it may affect remain undetermined. California spotted owls are forest species, thus, tree deaths caused by this pathogen may pose a threat to owls or their prey species.

In summary, threats affecting the California spotted owl's habitat by themselves, or in combination with other factors, do not seem to pose now or in the foreseeable future a significant threat to the continued existence of the California spotted owl such that it warrants listing.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We found no evidence that overutilization for commercial, recreation, scientific, or educational purposes is a threat to the California spotted owl. Research by Federal and State agencies, and various public institutions and private groups is conducted on the California spotted owl, but such research is not known to have a negative effect on the species. We are aware that northern spotted owl sites are visited by ecotourists (Sacramento Bee, October 27, 2002) and photographers, but we are not aware of such visits to California spotted owls. Therefore, we believe that overutilization for commercial, recreation, scientific, or educational purposes does not pose a threat to the continued existence of the California spotted owl.

C. Disease or Predation

Little is known regarding disease in California spotted owls (Verner *et al.* 1992b, Gutiérrez *et al.* 1995). They have a high infection rate by blood parasites, with 76 individuals examined showing 100 percent infection with one or more of *Haemoproteus noctuae, H. syrnii, Leucocytozoon ziemanni, Trypanosoma avium,* microfilariae, and/or *Atoxoplasma spp* (Verner *et al.* 1992b, Gutírrez *et al.* 1995). However, survival rates are high even where blood parasite infection rates are high (Verner *et al.* 1992b, Gutírrez *et al.* 1995). Infection by parasitic worms has been documented in northern spotted owls, including round worms, flat worms, and spiny-headed worms (Verner *et al.* 1992b, Gutírrez *et al.* 1995); and similar infections are likely in the California subspecies. External parasites have also been recorded in California spotted owls, including louse flies (*Icosta americana*) and chewing lice (*Strigiphilus spp*).

In 1999, a strain of the West Nile Virus (WNV) that has a high fatality rate in some birds was discovered in the eastern United States and more recently has infected humans in California (Russell 2002 and CDC 2002). WNV has been detected in dead birds of at least 138 species, although cause of death was not conclusively attributed to WNV (CDC 2002). Although birds, particularly crows and jays, infected with WNV can die or become ill, most infected birds do survive (CDC 2002). WNV is amplified during periods of adult mosquito blood-feeding by continuous transmission between mosquito vectors and bird reservoir hosts. Infectious mosquitoes carry virus particles in their salivary glands and infect susceptible bird species during blood-meal feeding. Bird reservoirs can sustain an infectious viremia (virus circulating in the bloodstream) for one to four days after exposure, after which these hosts develop life-long immunity. A sufficient number of vectors must feed on an infectious host to ensure that some survive long enough to feed again on a susceptible reservoir host.

In 2002, WNV activity has spread to most eastern and mid-western states, with 113 cases and 5 human deaths as of August 8, 2002 (United States Geological Service (USGS) 2002). We are not aware of any infection of spotted owls by the virus, but WNV has been found to infect the closely related barred owl (USGS, *in litt.* 2002), and may pose a threat to spotted owls.

Natural predators are discussed under Natural Mortality in the Life History section, above. Natural predation probably has little effect on healthy populations. However, as populations become smaller and more fragmented, the impacts of natural predation may also become significant. Also, the invasion of a new competitor and possible predator, the barred owl, is discussed in Factor E.

In summary, disease or predation factors by themselves, or in combination with other factors, do not seem to pose now or in the foreseeable future a significant threat to the continued existence of the California spotted owl such that it warrants listing.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms that could provide some protection for the California spotted owl include: (1) Federal laws and regulations including the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531), the Wilderness Act of 1964 (16 U.S.C. 1131–1136), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C 1601–1614, §§ 1641–1647), and the Sierra Nevada Forest Plan Amendment (USFS 2001a and b); and (2) State laws including the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 *et seq.*), the California Forest Practice Rules (14 C.C.R. § 895 *et seq.*), and the California Fish and Game Code §§ 1 *et seq.* Local land use processes and ordinances are subject to CEQA.

Federal

The Migratory Bird Treaty Act (MBTA) prohibits "take" of any migratory bird. "Take" is defined as to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect . However, no provisions in the MBTA prevent habitat destruction except that causing direct mortality or destruction of active nests.

The Wilderness Act of 1964 established a National Wilderness Preservation System made up of federally owned areas designated by Congress as "wilderness areas" for the purpose of preserving and protecting designated areas in their natural condition. Commercial enterprise, road construction, use of motorized vehicles or other equipment, and structural developments are usually prohibited within designated wilderness areas. The Wilderness Act has protected some California spotted owl habitat from development or other types of habitat conversions; however, it does not have any provisions specific to the protection of the species.

The National Environmental Policy Act of 1969, as amended (NEPA), requires all Federal agencies to formally document and publicly disclose the environmental impacts of their actions and management decisions. NEPA documentation is provided in either an environmental impact statement, an environmental assessment, or a categorical exemption, and may be subject to administrative or judicial appeal. The Forest Service considers the California spotted owl a species of concern. Therefore, part of the analysis generated by the Forest Service to direct management decisions under NEPA may include a biological evaluation that discloses potential impacts to species of concern on a project by project basis.

The Multiple-Use Sustained-Yield Act of 1960, as amended, (MUSY) provides direction that the national forests be managed using principles of multiple use and to produce a sustained yield of products and services. Specifically, MUSY provides policy that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. Land management for multiple uses has inherent conflicts.

However MUSY directs resource management not to impair the productivity of the land while giving consideration to the relative values of the various resources, though not necessarily in terms of the greatest financial return or unit output. MUSY provides direction to the Forest Service that wildlife, including the California spotted owl, is a value that must be managed for, though discretion is given to each forest when considering the value of this species relative to the other uses for which it is managing. Although MUSY could provide some protection for the owl, it does not have any provisions specific to the conservation of the owl or its habitat.

The Forest Service also manages national forests under the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) as amended by the National Forest Management Act of 1976 (NFMA). Implementing regulations for NFMA (36 CFR 219.20(b)(i)) require all units of the National Forest System to have a land and resource management plan (LRMP). The purpose of the LRMP is to guide and set standards for all natural resource management activities over time. NFMA requires the Forest Service to incorporate standards and guidelines into LRMPs, including provisions to support and manage plant and animal communities for diversity, and the long-term range-wide viability of native and desired non-native species. Standards and guidelines are based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.

Beginning in 1991 and culminating with the signing of the Record of Decision for the Sierra Nevada Forest Plan Amendments in 2001, the Forest Service initiated several Sierra Nevada-wide planning efforts to maintain viability of California spotted owls on national forest land. These efforts gathered and analyzed technical information as well as developed and refined management direction. These efforts included a technical assessment of the current status of the California spotted owl and issuance of interim guidelines (Verner *et al.* 1992a) for protecting California spotted owl habitat in January of 1993. The guidelines were adopted as the 1993 California Spotted Owl Sierran Province Interim Guidelines Environmental Assessment and incorporated as amendments into the Forest Service's Land and Resource Management Plans.

These guidelines were intended to maintain management options and short-term population viability for the California spotted owl in the short term (maximum of five years; Verner 1999) until a conservation strategy for the owl was developed. The primary objectives of the interim guidelines were to protect known nest stands, protect large old trees in timber strata which provide suitable owl habitat, and reduce the threat of stand-destroying fires. However, they allowed degradation of suitable nesting and roosting habitat by allowing timber harvest (except in protected activity centers and some acreage in spotted owl habitat areas) to reduce canopy cover to 40 percent in timber types selected by owls and below 40 percent in other types used by owls according to their availability on the landscape. The estimated time of recovery of these treatments was five years. Under the interim guidelines, no mechanism existed to evaluate cumulative impacts of timber harvest on California spotted owls in national forests. After 1993 when baseline surveys for the species were completed within Forest Service managed lands, forest management continued without further requirements to survey for the owl.

In 1995 the Forest Service released a draft environmental impact statement (EIS) for a long-term management plan for California spotted owl habitat. Final direction was not issued due to new scientific information provided by the Sierra Nevada Ecosystem Project (SNEP) report released in 1996. In 1998 the Forest Service initiated a collaborative effort to incorporate new information from the SNEP report into management of Sierra Nevada national forests. This effort became known as the Sierra Nevada Framework for Conservation and Collaboration (Framework).

As part of the Framework, the Forest Service developed the SNFPA Environmental Impact Statement, for which a record of decision was issued on January 12, 2001 (USFS 2001b). This effort amended the land and resource management plans of Forest Service administered lands addressed by the Framework. The SNFPA addresses five problem areas: old forest ecosystems and associated species; aquatic, riparian, and meadow ecosystems and associated species; fire and fuels; noxious weeds; and lower westside hardwood ecosystems. The SNFPA included a conservation strategy for California spotted owls, which replaced the interim guidelines.

Subsequent to the establishment of management direction by the Record of Decision of the SNFPA, Region 5 of the Forest Service has undertaken two efforts that may result in changes in the anticipated impacts of the SNFPA. The first is a management review of the SNFPA (USFS 2002b), and the second is planning for implementation of an Administrative Study on the Lassen and Plumas National Forests that would evaluate the effects of extensive fuels treatments on the California spotted owl (67 FR 72136). As of yet, neither of these efforts have formally established management direction, so their potential effects are uncertain and subject to change before implementation. Therefore, their potential effects are not included in the assessment of threats to the California spotted owl under this 12-month finding. However, because the outcome of each of these efforts could substantially affect California spotted owls, we will monitor the development of management direction, offer scientific assistance, and review the effects at a later date, if necessary.

The SNFPA applies only to national forests in the Sierra Nevada and Modoc Plateau. Spotted owls in southern California are protected by measures developed by each forest (Ruth and Standiford 1994), which are currently revising their LRMPs to include a strategy to manage habitat for the owl. As a result, no comprehensive strategy currently exists for the California spotted owl on national forests in southern California. The four Forests have completed an ecological assessment (Stephenson and Calcarone 1999) and in September 2001 published a Notice of Intent (NOI) to prepare a single Environmental Impact Statement and Record of Decision (USFS 2001c). The draft EIS is scheduled for release in 2003. Included in the Purpose and Need statement of the NOI is the intent "To more adequately protect plant and animal species and their habitat." The Proposed Action also recognizes that one of the most compelling needs for change in Forest Plan direction is maintenance of viable populations of plant and animal species.

Other Federal agencies have general or specific policies and regulations that would apply to the owl. The National Park Service protects all species from collection, with exemptions only for scientific testing (36 CFR 2.5). The BLM has listed the owl as a Special Status Species that should be addressed prior to approval of actions that may impact the species on BLM lands (USDI 2001).

State. Section 3503.5 of the California Fish and Game Code (CDFG 2002) provides that it is unlawful to take, possess, or destroy any birds in the order Strigiformes (owls) or to take, possess, or destroy their nests or eggs. This restriction applies only to individual owls, their nests and eggs and does not place restrictions on

inactive nests or habitats used by spotted owls.

The CDFG has identified the California spotted owl as a Species of Special Concern (CDFG 1978). This status applies to animals not listed under the Federal or the California Endangered Species Act but which appear to be vulnerable to extinction. The intent of this designation is to obtain special consideration for these species in the project planning process and to focus attention on the species to avert the need for listing under either State or Federal laws. CEQA requires that impacts to such species be mitigated. Although state and local agencies have discretion to approve projects that impact a Species of Special Concern, such impacts must be mitigated.

In 1970 the State of California enacted the CEQA (CEQA 1996a). CEQA requires a full disclosure of the potential environmental impacts of public or private projects carried out or authorized by nonfederal agencies within the state of California. The stated goals are to, "identify the significant environmental effects of their actions; and, either avoid those significant environmental effects, where feasible; or mitigate those significant environmental effects, where feasible." The CEQA Guidelines provide criteria to the State or local public agency with permitting authority or jurisdiction over a project (lead agency) in determining whether a project may have significant effects (CEQA 2001b). Section 15065 of the CEQA Guidelines, as amended, requires a finding of significance if "[t]he project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish and wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species' (CEQA 2001b).

CEQA requires review of any project that is undertaken, funded, or permitted by a State or local governmental agency. If a project with potential impacts on the California spotted owl were reviewed, CDFG personnel could determine that, although not listed, the spotted owl is a *de facto* endangered, threatened, or rare species under section 15380 of CEQA. Once significant effects are identified, the lead agency has the option of requring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (§ 21002) (CEQA 1996a), athough such an override requires justification and is rarely implemented.

The lead ageny is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. If significant effects are identified by the lead agency, an Environmental Report (EIR) must be prepared that analyzes the effects of the action, proposed mitigation, and explains why any potential mitigation measure is not feasible. After review of the EIR by the public and relevant agencies, the lead agency has the option of disapproving the project, requiring mitigation for effects through changes in the project, or to decide that overriding considerations make mitigation infeasible and allow the project to go forward.

If a project with potential impacts on the California spotted owl were reviewed, CDFG personnel could determine that, although not listed, the spotted owl is a *de facto* endangered, threatened, or rare species under section 15380 of CEQA. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (§ 21002)(CEQA 1996a). CEQA analysis and subsequent requirements for mitigation (*e.g.*, legacy hardwoods) would result in protection of spotted owl habitat components. However, CEQA does not compel a comprehensive strategy for protection of this species.

Under provisions of CEQA, an independent regulatory program can be certified by the Secretary of the Resources Agency, and allow submission of a plan in place of an EIR. In 1973 the State of California enacted the Z'berg-Nejedly Forest Practice Act of 1973 (CDF 2000), to ensure that timber harvest was done in a manner that would preserve fish, wildlife, forests, streams and other water sources. Additional rules, called Forest Practice Rules (FPR) (CDF 2002), were promulgated by the State Board of Forestry and Fire Protection and are administered by the California Department of Forestry and Fire Protection (CDF) to carry out the intent of the Forest Practice Act. CDF ensures that private landowners abide by the FPRs when harvesting trees. Although there are specific exemptions in some cases, compliance with the Forest Practice Act and Board rules apply to commercial harvesting operations for landowners of all sizes. The FPRs require landowners prepare and submit for approval by CDF, a Timber Harvesting Plan (THP). A THP is the blueprint outlining what timber will be harvested, how it will be harvested, and the steps that will be taken to prevent damage to the environment. A THP functions as the equivalent of an EIR under CEQA.

THPs are prepared by Registered Professional Foresters (RPF) who are licensed to prepare detailed plans pursuant to California's Professional Foresters Law (PFL) of 1972 (CDF 2002). A RPF is defined as "..a person who, by reason of his or her knowledge of the natural sciences, mathematics, and the principles of forestry, acquired by forestry education and experience, performs services, including, but not limited to, consultation, investigation, evaluation, planning or responsible supervision of forestry activities when [such] professional services require the application of forestry principles and techniques". A person must have seven years experience in forestry work and may substitute a Master of Forestry or Bachelor of Science of Forestry degree in lieu of four years of forestry work experience and must pass a comprehensive examination administered by the Professional Foresters Examining Committee.

The FPRs provide that a THP must contain information on the presence and protection of known habitat or individuals of any listed species and information on the presence and protection of non-listed species that may be impacted by the timber operation. If information provided in a proposed THP is incorrect, incomplete or misleading in a material way, or is insufficient to evaluate significant environmental effects, the FPRs require disapproval of the THP. Under the FPRs, a species can be classified as a "sensitive species" if it is found that the California population requires timberland as habitat for foraging, breeding, or shelter, the California population is in decline or there is a threat from timber operations, and continued timber operations under the current rules of the Board will result in a loss of the California population viability. The California spotted owl is not currently listed as a sensitive species. The FPRs require a cumulative effects assessment to address any significant known wildlife or fisheries concerns where there is a substantial reduction in required habitat or the project will result in significant interference with the movement of resident or migratory species. The CDF requires measures including, but not limited to, a buffer that protects the nest, screening, perch, and replacement trees if a spotted owl nest is sighted

during the planning or operations phase of a THP (Cunningham, CDF, pers. comm. 2002).

The implementation of the FPRs can take several forms from development of smaller individual site specific THPs to the so called Option B—landscape scale Sustained Yield Plans (SYPs). Currently there are two approved SYPs that cover approximately 73,700 ha (182,000 ac) of California spotted owl habitat north of Lake Almanor. This is approximately 8 percent of the estimated acres of potential suitable habitat on private timberlands (Verner *et al.* 1992a).

Another way to comply with the FPRs is development of the so called Option A-Maximum Sustainable Production (MSP) plan which provides a broad set of criteria that guides the individual THP process for the ownership (FPRs §§ 913.11, 933.11, 953.11)(CDF 2002). The primary goal of the MSP is to document and provide for the long term sustained yield of timber products.

Sierra Pacific Industries (SPI) is the largest private commercial timberland owner within the range of the California spotted owl. SPI owns approximately 376,351 ha (930,000 ac) of timberland within the range of the spotted owl. All of SPI's commercial timberland is harvested under two CDF approved MSPs (one for the north and one for the south) (SPI 1999 a & b). SPI continuously collects and maintains an inventory of vegetation/habitat over the entire ownership. The ownership is inventoried in 1.6 ha (4 ac) plots with detailed information on tree species, overstory, understory, size class, snag class, etc. Thus, SPI continuously maintains information on over 350,000 plots with 10 percent of the land ownership inventoried each year and all plots are inventoried each decade. Information is also collected on wildlife including location of California spotted owl nest sites. SPI uses the baseline inventory to model growth and yield of timber stands. This sophisticated modeling projects forest conditions for a 100 year planning horizon with a mix of silvicultural and cultural practices. SPI models project an increase of large tree/closed canopy conditions from about 20 percent of the landscape in year one (current condition) to 65 percent in year 80 and stabilizing to 55 percent in year 100. The average diameter of trees increases from 18 in class (current condition) to 32 in class and projections anticipate maintenance of the higher proportion of larger tree class over time with harvest practices.

The implementation of the FPRs focus primarily on sustainable timber harvest with a secondary focus on fish and wildlife. With no requirements to implement strategies to specifically manage and protect habitats that spotted owls use, some habitat elements may not be protected adequately. For example the FPRs do not require retention of structural elements such as downed woody debris that provide habitat for spotted owl prey species. However, the FPRs provide that all snags within the logging area be retained to provide wildlife habitat. There are exceptions, such as allowing harvest of merchantable snags in any location, snags whose felling is required for insect or disease control or safety reasons, and snags proposed for harvest by an RPF, where there is justification that there will not be a significant impact to wildlife. These exceptions provide discretion to timber operators on the ground to remove snags without specific review of the potential effects on owl habitat, unless addressed through late successional forest stands regulation. If a nest site is only discovered and buffered during harvest operations, impacts that have already occurred to the foraging and roosting habitat surrounding the nest site may not be adequately addressed. Furthermore, if planning or harvest operations occur outside the nesting season, nests may not be detected at all, and those habitats will receive no protection. Certain timber operations can be exempt from the THP process, including the harvest of dead and dying trees in amounts less than 10 percent of the volume of timber per acre.

The FPRs provide that in preparing a THP, the RPF may conduct the cumulative impacts assessment based on information that is reasonably available before submission of the THP. The effects of timber harvest in a watershed could be determined, cumulatively, to result in impacts not assessed on a site by site basis. CDF with support from CDFG for fish and wildlife species, determines the sufficiency of the assessment based on information in its files or on comments received during the notice and comment period. However, less than 25 percent of THPs are field checked by the CDFG, and most THPs do not adequately assess cumulative impacts (Berbach pers. comm. 2002). This level of review accounts for approximately 50 to 60 percent of the acres in THPs submitted, where the focus is often exclusively on listed species due to budget, priorities, and staffing issues (Garrison, CDFG, pers. comm. 2002). In smaller, non-industrial THPs, a complete cumulative effects analysis of past, present, and reasonably foreseeable actions at the watershed scale is not always provided by the land owner or the RPF preparing a THP. This is due to factors such as lack of funding to perform adequate watershed level analysis, lack of information about other private parcels in the watershed, and sometimes lack of knowledge of available resources, including studies conducted on larger public and private ownerships that would provide such information (Cunningham, CDF, pers. comm. 2002).

Approximately 80 percent of habitat for the California spotted owl on private lands is in the ownership of SPI timberlands and accounts for approximately 10–12 percent of the range of the spotted owl. All of SPI properties operate under a State required long term plan for timber production and resources management. As part of the requirement by the State, SPI's MSP does provide a sophisticated projection for long term increases in habitats characterized as suitable for nesting, roosting, foraging and dispersal by spotted owls. These habitats are projected to be well distributed across the landscape. SPI has taken steps to collect and analyze information on spotted owl nest locations, breeding success, and habitat use to support their conclusion that long term projections include an increase in habitat for spotted owls.

The timber management plans in place on private lands are not developed or implemented with the purpose of protecting habitat for California spotted owls. However, it appears that the State FPRs and the plans in place over a significant portion of the range of the spotted owl on private lands would result in some benefits to spotted owls. These plans would benefit from further evaluation and peer review to verify their contribution to spotted owl viability in the Sierra Nevada.

Therefore, we believe there is no substantive information that indicates there are significant or immediate threats to California spotted owl viability because of the lack of regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Climate and Climate Change. Climate may influence vital rates (survival, fecundity, and recruitment) of spotted owls directly, or through indirect means such as effect on prey populations (LaHaye *et al.* 1994, Verner 1999, Franklin *et al.* 2000, North *et al.* 2000). In southern California, drought was postulated to affect spotted owl population dynamics through its effects on prey (LaHaye *et al.* 1994), and statistical modeling showed that drought is associated with reduced

fecundity (LaHaye *et al., in litt.* 2002). North *et al.* (2000) found synchronous low reproductive success of owls in the Sierra National Forest and Sequoia and Kings Canyon National Parks correlated to high spring precipitation (as was found for northern spotted owls by Franklin *et al.* (2000)) and lower spring temperatures, presumably due to effects of weather on prey species. Statistical modeling indicated lower fecundity in years with higher spring precipitation in spotted owls in southern California (LaHaye *et al., in litt.* 2002). Results of a modeling study conducted by Franklin *et al.* (2000) suggested that northern spotted owl populations may experience periods of decline solely due to climatic variation; *i.e.*, even if habitat conditions remain unchanged, northern spotted owl populations may decline. The synchronous declines in reproduction observed by North *et al.* (2000) are of concern because as populations decline, the effects of catastrophes, especially those having a synchronous effect on populations, will have an increasing importance in determining rates of population change (Peery 1999, Franklin *et al.* 2000).

Climate may have greater impacts on spotted owls when working in concert with habitat degradation. Studies by Franklin *et al.* (2000) for northern spotted owls and by North *et al.* (2000) for California spotted owls indicate the important role habitat may play in buffering against the negative effects of climate. Franklin *et al.* (2000) found that the best model to predict adult survival included interactions between climate and habitat. Habitat quality, as defined by an optimal mix of edge and interior habitat, appeared to buffer the effects of climatic variation on survival, presumably because such habitats provided sufficient prey resources. North *et al.* (2002) found that the characteristics of nest site structures can modify microclimate conditions. Despite synchronous low reproduction, certain nests consistently exhibited higher reproductive success. In oak woodlands, these nests were on shrubby, north-aspect slopes in trees or snags surrounded by a well-developed canopy and in conifer forests they were overtopped by a canopy with a high foliage volume. The authors concluded that reproduction is influenced by both regional weather conditions and nest-site canopy structure, which protects fledglings from detrimental weather. Thus, if habitat features that buffer the effects of weather are removed, climate may have greater negative effects on spotted owls.

The last century has included some of the most variable climate reversals, at both the annual (extremes and high frequency of El Niño and La Niña events) and near decadal scales (periods of five to eight year drought and wet periods) documented (USFS 2001b). These events may have negative effects on California spotted owls. Modeling of population response to climate in northern spotted owls by Franklin *et al.* (2000), suggests that cold high precipitation springs, as would be expected in California during El Niño years, lead to higher mortality. Alternately, low precipitation (as expected during La Niña years) may have negative effects on prey populations (Verner *et al.* 1992a).

Changes in climate that occur faster than the ability of endangered species to adapt could cause local extinctions (United States Environmental Protection Agency (USEPA) 1989). Analysis of the Antarctic Vostok ice core has shown that over the past 160,000 years, temperatures have varied with the concentrations of greenhouse gasses such as carbon dioxide and methane (Harte 1996). Since the pre-industrial era, atmospheric concentrations of carbon dioxide have increased nearly 30 percent, methane concentrations have more than doubled, and nitrous oxide (another greenhouse gas) levels have risen approximately 15 percent (USEPA 1997). The burning of fossil fuels is the primary source of these increases (USEPA 1997). Global mean surface temperatures have increased 0.3–0.7 Celsius (0.6–1.2 Fahrenheit) since the late 19th century (USEPA 1997).

Climate modeling indicates that the overall effects of global warming on California will include higher average temperatures in all seasons, higher total annual precipitation, and decreased spring and summer runoff due to decreases in snowpacks (USEPA 1989, USEPA 1997). California spotted owls are susceptible to heat stress (Weathers *et al.* 2001) and are therefore likely to suffer from increased temperatures. Higher precipitation during the breeding season may increase mortality of spotted owls (Franklin *et al.* 2000). Decreased runoff from snowpacks may cause decreases in the extent or quality of riparian habitats, which are important for California spotted owls, especially in southern California (Verner *et al.* 1992a).

Southern California forests in San Bernardino, Riverside, and San Diego counties are experiencing the worst drought in more than 450 years (Loe *in litt.* 2002). Thus, the spotted owl population in these habitats may be at significant risk. Conifers stressed by drought, combined with overstocked conditions, pollution, mistletoe, root disease, and insect infestations are experiencing mortalities of up to 40 percent in some areas (Loe *in litt.* 2002). As larger older trees along with canopy layers are lost due to mortality, the effects to spotted owl prey and nesting habitat will likely continue for significant periods. As stated above, the San Jacinto Mountains are experiencing especially high mortality. It is anticipated that most of the nesting and roosting habitat in the San Jacinto Mountains will be lost. This area supports about 10 pairs of spotted owls, all of which could be lost (M. Gertsch, USFS, pers. comm. 2002). Response plans by the Forest Service and CDF include removal of dead and infected trees to reduce spread of disease, harmful insects, and fire; however, these agencies indicated the extent of the impacts far exceed their capacity to respond in the short term (Loe *in litt.* 2002). Planning efforts to address the drought mortality by the agencies are underway. As previously stated the population of spotted owls in southern California are geographically isolated from spotted owls in the north (Sierra Nevada range) and may warrant special management consideration.

Air Pollution. Nitrogen oxides and volatile organic compounds are emitted from industrial and automotive sources and transported by wind to California spotted owl habitat (USFS 2001a). These compounds react under sunlight to release ozone. Snow core samples from the Sierra Nevada contain a variety of other contaminants from industrial and automotive sources including; hydrogen ions (indicative of acidic precipitation), nitrogen and sulfur compounds (NH_4, SO_2, and SO_4), and heavy metals (Pb, Fe, Mn, Cu, and Cd) (Laird *et al.* 1986). These pollutants may directly harm California spotted owls. In addition to likely direct effects, pollutants can negatively affect California spotted owl habitat. Air pollution causes damage to trees, which may cause abnormalities and retard growth (USFS 2001a). Air pollution also contributes to tree deaths, especially by making them vulnerable to attack by insects (USFS 2001a). Damage and death of trees may reduce forest characteristics selected by California spotted owls, such as canopy cover, basal area, number of large trees, etc. Tree death also contributes to heavy fuel loading and the risk of severe fires (University of California 1996).

Human Induced Stress and Mortality. Spotted owls have died in collisions with vehicles (Verner *et al.* 1992b). They may also suffer from stress caused by human activities and habitat alteration. Wasser *et al.* (1997) measured levels of stress induced glucocorticoid

hormones in field collected northern spotted owl feces, and found those levels to be significantly higher in males having territories centered within 0.41 km (0.25 mi) of roads or areas of recent timber harvest. Gutiérrez and Tempel (*in litt.* 2002) collected similar data on California spotted owls. They found significant variation between samples, but that variation was not significantly correlated with habitat condition, road proximity, or exposure to noise from chainsaws.

Barred Owl Invasion. Historically, the barred owl was native to eastern north America and absent from the range of the California spotted owl. Barred owls have expanded their range into western North America, moving into the range of the California spotted owl from the north. Barred owl populations in California are increasing, especially in northwestern California, and the species has now been detected as far south as Nevada County, California, in the Sierra Nevada (Dark *et al.* 1998).

Barred owls have been documented to displace spotted owls from their territories and to hybridize with spotted owls (Dark *et al.* 1998). There is also circumstantial evidence that barred owls will prey on spotted owls (Leskiw and Gutiérrez 1998).

The barred owl invasion of western North America has probably been facilitated by alteration of habitats by humans. The barred owl is a forest species, but does not rely on late successional forests as spotted owls do. The establishment of riparian forests and the planting of trees that occurred simultaneously with human settlement of the northern great plains may have created habitat used by dispersing barred owls as they moved west across the midwestern United States and southern Canada. Barred owls readily use disturbed habitats, and logging in the Rocky Mountains, Cascades, and Sierra Nevada has probably facilitated their colonization of forests there.

In 2002, researchers on the Lassen Study Area found three pairs with combinations of spotted owls and "sparred owls" (spotted owl/barred owl hybrids), and one pair of barred owls. None of these birds reproduced. No other barred owls or sparred owl combinations were reported from the Sierra Study Area or the Sequoia Study Area. Other reports had not yet been received as of late October 2002 (Stine 2002).

The existing population of barred owls in the Sierra Nevada remains at a level below one percent that of spotted owls. Although barred owls may pose a substantial threat to California spotted owls at some point in the future, by themselves, or in combination with other factors, they do not nor do other factors seem to pose now or in the foreseeable future a significant threat to the continued existence of the California spotted owl such that it warrants listing.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment period following our 90-day petition finding, and consulted with recognized California spotted owl experts and other Federal and State resource agencies. On the basis of the best scientific and commercial information available, we find that listing the California spotted owl is not warranted at this time.

In making this finding, we recognize that there are indications that the California spotted owl may be experiencing an uncertain levels of decline in parts of its range based on demographic studies, and that the species may face threats from catastrophic fire and habitat modification related to reduction of the risk of catastrophic fire. We recognize the difficult trade-offs involving short-term risk of fuel treatments versus long term benefits of those treatments in reducing risks and improving habitat. We recognize other current threats to the species, its habitat, and its prey, including effects of drought and climate change on habitat; the potential spread of a new competitor/predator (the barred owl); and possible threats of disease.

We conclude that the overall magnitude of threats to the California spotted owl does not rise to the level that requires the protections of the Act. We will continue to monitor the status and management of the species. We will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited is available on request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** above).

Author

The primary authors of this document are Phil Detrich of the Yreka Fish Wildlife Office, Kenneth Sanchez of the Sacramento Fish and Wildlife Office, and Darrin Thome of the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 7, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–3519 Filed 2–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Gulf of Mexico Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION:**.

DATES: The Gulf of Mexico Regional Panel will meet from 9 a.m. to 5 p.m. on Wednesday, February 26, 2003, and 8:30 a.m. to noon, on Thursday, February 27, 2003.

ADDRESSES: The Gulf of Mexico Regional Panel meeting will be held at the Springhill Suites, 24 Via De Luna, Pensacola Beach, Florida 32561. Phone 850–932–6000.

FOR FURTHER INFORMATION CONTACT: Ron Lukens, Assistant Director, Gulf States Marine Fisheries Commission at 228–875–5912 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Gulf of Mexico Regional Panel was established under the auspices of the ANS Task Force in 2000 with administration and coordination provided by the Gulf States Marine Fisheries Commission. The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Gulf of Mexico region of the Untied States that includes five Gulf States: Alabama, Florida, Louisiana, Mississippi, and Texas. The Gulf of Mexico Regional Panel will discuss several topics at this meeting including: status of coordination of aquatic invasive species prevention, control, research, and outreach efforts; an update from Panel working groups; status and discussion of national legislation regarding aquatic invasive species; updates on the development of State ANS Plans; and a discussion of the 2002 Annual Report.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: January 30, 2003.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 03–3744 Filed 2–13–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1220–PG]

Notice of Public Meeting, Carrizo Plain National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Carrizo Plain National Monument Advisory Committee will meet as indicated below.

DATES: The meeting will be held Saturday, March 8, 2003, at the Carrisa Plains School located approximately two miles west of the intersection of Soda Lake Road and Highway 58. The meeting will begin at 10 a.m. The agenda calls for a discussion of the Charter which authorizes the committee to advise BLM on the management of the Carrizo Plain National Monument, and a general discussion of the committee's duties and function. The committee will be briefed on the status of the planning process to update the existing Carrizo Management Plan.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 661–391–6010.

SUPPLEMENTARY INFORMATION: The 9 member Carrizo Plain Advisory Committee advises the Bureau of Land Management, through the Designated Federal Officer (Ron Fellows, BLM–Bakersfield Field Manager) on planning and management issues for the Carrizo Plain National Monument. At this meeting, topics to be discussed and business to be conducted include:

Orientation and future planning for Committee members.
Election of officers.
Briefing on BLM structure and issues.
Update on the planning process to date regarding the Carrizo Plain National Monument Resource Management Plan.
Discussion of Committee input on the planning process.

All meetings of the Committee are open to the public, and the public is invited to attend and participate. A time will be allocated for hearing public comments, and written comments may be submitted either at the meeting or to the address above. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Dated: February 4, 2003.

Ron Fellows,

Field Manager.

[FR Doc. 03–3640 Filed 2–13–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Central Gulf of Mexico (GOM), Oil and Gas Lease Sale 185

AGENCY: Minerals Management Service, Interior.

ACTION: Final notice of sale 185.

SUMMARY: On March 19, 2003, MMS will open and publicly announce bids received for blocks offered in Central GOM Oil and Gas Lease Sale 185, pursuant to the OCS Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256).

The Final Notice of Sale 185 Package (FNOS 185) contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the Package.

DATES: Public bid reading will begin at 9 a.m., Wednesday, March 19, 2003, in the Hyatt Regency Conference Center (Cabildo Rooms), 500 Poydras Plaza, New Orleans, Louisiana. All times referred to in this document are local New Orleans times, unless otherwise specified.

ADDRESSES: Bidders can obtain an FNOS 185 containing this Notice of Sale and several supporting and essential documents referenced herein from the MMS Gulf of Mexico Region Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or via the MMS Gulf of Mexico Region Internet site at *http://www.gomr.mms.gov.*

Filing of Bids: Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, prior to the Bid Submission Deadline of 10 a.m., Tuesday, March 18, 2003. If bids are mailed, the envelope containing all of the sealed bids must be marked as follows:

Attention: Mr. John L. Rodi
Contains Sealed Bids for Sale 185

If the RD receives bids later than the time and date specified above, he will return those bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, March 18, 2003. Should an unexpected event such as flooding or travel restrictions be significantly disruptive to bid submission, the MMS Gulf of Mexico Region may extend the Bid Submission Deadline. Bidders may call (504) 736–0557 for information about the possible extension of the Bid Submission Deadline due to such an event.

Areas Offered for Leasing: The MMS is offering for leasing all blocks and partial blocks listed in the document "Blocks Available for Leasing in Central Gulf of Mexico OCS Oil and Gas Lease Sale 185" included in the FNOS 185. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Region Public Information Unit):

Outer Continental Shelf Leasing Maps—Louisiana Map Numbers 1 Through 12

(These 30 maps sell for $2.00 each.)

LA1 West Cameron Area (Revised November 1, 2000)
LA1A West Cameron Area, West Addition (Revised November 1, 2000)
LA1B West Cameron Area, South Addition (Revised November 1, 2000)
LA2 East Cameron Area (Revised November 1, 2000)
LA2A East Cameron Area, South Addition (Revised November 1, 2000)
LA3 Vermilion Area (Revised November 1, 2000)
LA3A South Marsh Island Area (Revised November 1, 2000)
LA3B Vermilion Area, South Addition (Revised November 1, 2000)
LA3C South Marsh Island Area, South Addition (Revised November 1, 2000)
LA3D South Marsh Island Area, North Addition (Revised November 1, 2000)
LA4 Eugene Island Area (Revised November 1, 2000)
LA4A Eugene Island Area, South Addition (Revised November 1, 2000)
LA5 Ship Shoal Area (Revised November 1, 2000)
LA5A Ship Shoal Area, South Addition (Revised November 1, 2000)
LA6 South Timbalier Area (Revised November 1, 2000)
LA6A South Timbalier Area, South Addition (Revised November 1, 2000)
LA6B South Pelto Area (Revised November 1, 2000)
LA6C Bay Marchand Area (Revised November 1, 2000)
LA7 Grand Isle Area (Revised November 1, 2000)
LA7A Grand Isle Area, South Addition (Revised November 1, 2000)
LA8 West Delta Area (Revised November 1, 2000)
LA8A West Delta Area, South Addition (Revised November 1, 2000)
LA9 South Pass Area (Revised November 1, 2000)
LA9A South Pass Area, South and East Addition (Revised November 1, 2000)
LA10 Main Pass Area (Revised November 1, 2000)
LA10A Main Pass Area, South and East Addition (Revised November 1, 2000)
LA10B Breton Sound Area (Revised November 1, 2000)
LA11 Chandeleur Area (Revised November 1, 2000)
LA11A Chandeleur Area, East Addition (Revised November 1, 2000)
LA12 Sabine Pass Area (Revised November 1, 2000)

Outer Continental Shelf Official Protraction Diagrams

(These 10 diagrams sell for $2.00 each.)

NG15–03 Green Canyon (Revised November 1, 2000)
NG15–06 Walker Ridge (Revised November 1, 2000)
NG15–09 Amery Terrace (Revised October 25, 2000)
NG16–01 Atwater Valley (Revised November 1, 2000)
NG16–04 Lund (Revised November 1, 2000)
NG16–07 Lund South (Revised November 1, 2000)
NH15–12 Ewing Bank (Revised November 1, 2000)
NH16–04 Mobile (Revised November 1, 2000)
NH16–07 Viosca Knoll (Revised November 1, 2000)
NH16–10 Mississippi Canyon (Revised November 1, 2000)

Please Note: A CD–ROM (in ARC/INFO and Acrobat (.pdf) format) containing all of the GOM Leasing Maps and Official Protraction Diagrams, except for those not yet revised to digital format, is available from the MMS Gulf of Mexico Region Public Information Unit for a price of $15.00. The Leasing Maps and Official Protraction Diagrams are also available via the Internet. For the current status of all Central GOM Leasing Maps and Official Protraction Diagrams, please refer to 66 FR 28002, published May 21, 2001. In addition, Supplemental Official OCS Block Diagrams (SOBDs) for these blocks are available for blocks which contain the "U.S. 200 Nautical Mile Limit" line and the "U.S.-Mexico Maritime Boundary" line. These SOBDs are also available from the MMS Gulf of Mexico Region Public Information Unit and via the Internet. For additional information, please call Mr. Charles Hill (504) 736–2795.

All blocks are shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this sale is shown in the document "List of Blocks Available for Leasing in Sale 185" included in the FNOS 185. Some of these blocks may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Also, information on the unleased portions of such blocks is found in the document "Central Gulf of Mexico Lease Sale 185—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred" included in the FNOS 185.

Areas Not Available for Leasing: The following whole and partial blocks are not offered for lease in this sale:

- Viosca Knoll Block 69 (lease termination currently under appeal);
- Blocks which are beyond the United States Exclusive Economic Zone in the area known as the Northern Portion of the Eastern Gap:

Lund South (Area NG16–07)

Blocks
172 and 173
213 through 217
252 through 261
296 through 305
349

- Whole and partial blocks which lie within the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

Amery Terrace (Area NG15–09)

Partial Blocks:
235 through 238
273 through 279
309 through 317
Whole Blocks:
280 and 281
318 through 320
355 through 359

Lease Terms and Conditions: Initial period, extensions of initial period, minimum bonus bid amount, rental rates, royalty rates, minimum royalty, and royalty suspension areas are shown on the map "Lease Terms and Economic Conditions, Sale 185, Final" for leases resulting from this sale:

Initial Period: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to 799 meters; and 10 years for blocks in water depths of 800 meters or deeper;

Extensions of Initial Period: Extensions *may* be granted for eligible leases on blocks in water depths less than 400 meters as specified in Notice To Lessees and Operators 2000–G22, effective December 22, 2000;

Minimum Bonus Bid Amount: A bonus bid amount of $25 per acre or fraction thereof for blocks in water depths of less than 800 meters and a bonus bid amount of $37.50 per acre or fraction thereof for blocks in water depths of 800 meters or deeper;

Rental Rates: $5 per acre or fraction thereof for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty Rates: 16⅔ percent royalty rate for blocks in water depths of less than 400 meters and a 12½ percent royalty rate for blocks in water depths of 400 meters or deeper, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month during which the production is obtained;

Minimum Royalty: After the start of royalty-bearing production: $5 per acre or fraction thereof per year for blocks in water depths of less than 200 meters and $7.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due;

Royalty Suspension Areas: Royalty suspension, subject to gas price thresholds, will apply to blocks in water depths less than 200 meters where new deep gas (15,000 feet or greater subsea) is drilled and commences production within 5 years from lease issuance, and, subject to both oil and gas price thresholds, will apply in water depths of 400 meters or deeper; see the map "Lease Terms and Economic Conditions, Sale 185, Final" for specific areas and the "Royalty Suspension Provisions, Sale 185, Final" document contained in the FNOS 185 for specific details regarding royalty suspension eligibility, applicable price thresholds and implementation.

Stipulations: The map "Stipulations and Deferred Blocks, Sale 185, Final" depicts the blocks where seven lease stipulations apply: (1) Topographic Features; (2) Live Bottoms; (3) Military Areas; (4) Blocks South of Baldwin County, Alabama; (5) Law of the Sea Convention Royalty Payment; (6) Protected Species; and (7) Below Seabed Operations on Mississippi Canyon Block 474. The texts of the stipulations are contained in the document "Lease Stipulations for Oil and Gas Lease Sale 185, Final" included in the FNOS 185. This map also depicts the deferred blocks noted above.

Rounding: The following procedure must be used to calculate the minimum bonus bid, annual rental, and minimum royalty on blocks with fractional acreage: Round up to the next whole acre and multiply by the applicable dollar amount per acre to determine the correct minimum bonus bid, annual rental, or minimum royalty.

Please Note: For the minimum bonus bid only, if the calculation results in a decimal figure, round up to the next whole dollar amount (see next paragraph). The minimum bonus bid calculation, including all rounding, is shown in the document "List of Blocks Available for Leasing in Sale 185" included in the FNOS 185.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 185, not to be opened until 9 a.m., Wednesday, March 19, 2003." The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the FNOS 185.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 67 FR 66416 on October 31, 2002. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region Adjudication Unit. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, *e.g.*, 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the FNOS 185.

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to the MMS equal to one-fifth of the bonus bid amount for each such bid. Under the authority granted by 30 CFR 256.46(b), the MMS requires bidders to use electronic funds transfer procedures for payment of one-fifth bonus bid deposits for Sale 185, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" included in the FNOS 185. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) by 1 p.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, however, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Please Note: Certain bid submitters (*i.e.*, those that do NOT currently own or operate an OCS mineral lease OR those that have ever defaulted on a one-fifth bonus bid payment (EFT or otherwise)) are required to guarantee (secure) their one-fifth bonus bid payment *prior* to the submission of bids. For those who must secure the EFT one-fifth bonus bid payment, one of the following options may be used: (1) Provide a third-party guarantee; (2) Amend Development Bond Coverage; (3) Provide a Letter of Credit; or (4) Provide a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated FNOS 185 and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. The Attorney General may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of the current procedures, "Modifications to the Bid Adequacy Procedures" (64 FR 37560 of July 12, 1999), can be obtained from the MMS Gulf of Mexico Region Public Information Unit via the Internet.

Successful Bidders: As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. Each bidder in a successful high bid must have on file in the MMS Gulf of Mexico Region Adjudication Unit a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, part 12, subpart D. A copy of the Debarment Certification Form is contained in the FNOS 185.

Affirmative Action: The MMS *requests* that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the Gulf of Mexico Region Adjudication Unit. This certification is required by 41 CFR 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are *required* to be on file in the MMS Gulf of Mexico Region Adjudication Unit.

Geophysical Data and Information Statement: Pursuant to 30 CFR 251.12, the MMS has a right to access geophysical data and information collected under a permit in the OCS.

Each bidder submitting a bid on a block in Sale 185, or participating as a joint bidder in such a bid, must submit a Geophysical Data and Information Statement identifying any processed or reprocessed pre- and post-stack depth migrated geophysical data and information in its possession or control and used in the evaluation of that block. The existence, extent (*i.e.*, number of line miles for 2D or number of blocks for 3D) and type of such data and information must be clearly identified. The statement must include the name and phone number of a contact person, and an alternate, knowledgeable about the depth data sets (that were processed or reprocessed to correct for depth) used in evaluating the block. In the event such data and information includes data sets from different timeframes, you should identify only the most recent data set used for block evaluations. The statement must also identify each block upon which a bidder participated in a bid but for which it does not possess or control such depth data and information.

Each bidder must submit a separate Geophysical Data and Information Statement in a sealed envelope. The envelope should be labeled "Geophysical Data and Information Statement for Oil and Gas Lease Sale 185" and the bidder's name and qualification number must be clearly identified on the outside of the envelope. This statement must be submitted to the MMS at the Gulf of Mexico Regional Office, Attention: Resource Evaluation (1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394) by 10 a.m. on Tuesday, March 18, 2003. The statement may be submitted in conjunction with the bids or separately. Do not include this statement in the same envelope containing a bid. These statements will not be opened until after the public bid reading at Lease Sale 185 and will be kept confidential. An Example of Preferred Format for the Geophysical Data and Information Statement is included in FNOS 185.

The MMS will issue a Notice to Lessees (NTL) to provide more detail concerning submission of the Geophysical Data and Information Statement, making the data available to the MMS following the lease sale, preferred format, reimbursement for costs, and confidentiality.

Information to Lessees: The FNOS 185 contains an "Information To Lessees" document which provides information on various matters of interest to potential bidders.

Dated: February 4, 2003.

R.M. Burton,

Director, Minerals Management Service.

[FR Doc. 03–3646 Filed 2–13–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection, Strategic Planning Environmental Assessment Outreach.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 15, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kay Troester, Strategic Planning Office, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Strategic Planning Environmental Assessment Outreach.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as wall as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions, Federal Government, State, Local, or Tribal Government. Under the provisions of the Government Performance and Results Act, Federal agencies are directed to improve their effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction. This act requires that agencies update and revise their strategic plans every three years. The Strategic Planning Office at ATF will use the voluntary outreach information to determine the agency's internal strengths and weaknesses and external opportunities and risks.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete an 18-minute questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 450 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 10, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–3634 Filed 2–13–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on January 21, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), International Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Raytheon, Tucson, AZ; and Solectron, Milpitas, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and International Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, International Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on October 29, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 5, 2002 (67 FR 72429).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3728 Filed 2–13–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open SystemC Initiative ("OSCI")

Notice is hereby given that, on January 10, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open SystemC Initiative ("OSCI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Celoxica, Oxford, UNITED KINGDOM; Forte Design Systems, San Jose, CA; and Future Design Automation, Tokyo, JAPAN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notification disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3726 Filed 2–13–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on January 21, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advantest Corp., Gunma, JAPAN has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on August 2, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56590).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3727 Filed 2–13–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the

Employment and Training Administration is soliciting comments concerning the proposed extension of data collections using the ETA Form 9042a, Petition for Trade Adjustment Assistance (1205–0342, expires 3/31/2003) and its Spanish translation ETA 9042a–1 (1205–0342, expires 3/31/2003); ETA 9043a, Business Confidential Data Request (1205–0339, expires 3/31/2003); and ETA 8562a, Customer Survey (1205–0190 expires 3/31/2003) To meet the Terms of Clearance assigned by OMB on October 9, 2002, these collections of information will be consolidated into one reporting requirement and approved under OMB approval number 1205–0342. ETA will not be seeking approval of the original ETA 9043, 8562 and 9042 used for the Trade Act Program as in effect prior to November 4, 2002, only the new forms associated with the Trade Act of 2002 will be extended. The consolidation of these reporting requirements along with the elimination of the ETA 9043, 8562 and 9042 forms will result in a burden decrease of 11,451 hours.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 15, 2003.

ADDRESSES: Erin L. FitzGerald, Program Analyst, Division of Trade Adjustment Assistance, Room C–5311, 200 Constitution Ave., NW., Washington, DC 20210. Phone (202) 693–3506 (this is not a toll-free number), fax (202) 693–3584, e-mail *efitzgerald@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Act of 2002 (Pub. L. 107–210) amends the Trade Act of 1974 and consolidated two previously authorized worker adjustment assistance programs, Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) into one TAA program effective November 4, 2002. Section 221 (a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002, authorizes the Secretary of Labor and the Governor of each state to accept petitions for certification of eligibility to apply for adjustment assistance. The petitions may be filed by a group of workers, their certified or recognized union or duly authorized representative, employers of such workers, one-stop operators or one-stop partners. ETA Form 9042a, Petition for Trade Adjustment Assistance, and its Spanish translation, ETA Form 9042a–1, Solicitud De Asistencia Para Ajuste, establish a format that may be used for filing such petitions.

Sections 222, 223 and 249 of the Trade Act of 1974, as amended, require the Secretary of Labor to issue a determination for groups of workers as to their eligibility to apply for Trade Adjustment Assistance (TAA). After reviewing all of the information obtained for each petition for trade adjustment assistance filed with the Department, a determination is issued as to whether the statutory criteria for certification are met. The information collected in ETA Form 9043a, Business Confidential Data Request, and ETA Form 8562a, Customer Survey, will be used by the Secretary to specifically determine to what extent, if any, increased imports or shift in production have impacted the petitioning worker group.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a notice to revise and consolidate collections of information currently approved by OMB under control numbers 1205–0342, 1205–0339, and 1205–0190 all expiring 3/31/03. The extension of the ETA 9042a, ETA 9042a–1, ETA 9043a, and ETA 8562a provides a format for collecting information necessary for the Department to comply with the requirement that it accept petitions for Trade Adjustment Assistance and issue determinations of eligibility in response to those petitions.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Investigative Data Collection Requirements for the Trade Act of 1974 as amended by the Trade Act of 2002.

OMB Number: 1205–0342.

Affected Public: Individuals or. Households, Businesses.

Cite/reference	Total respondents/ responses	Average time per response	Total reference burden
ETA 9042A & ETA 9042A–1	4,100	[1] 20	1,367
ETA 9043A	4,100	[2] 3.5	14,350
ETA 8562A	6,560	[2] 1.78	11,677
Totals			27,394

[1] Minutes. [2] Hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 10, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–3670 Filed 2–13–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Notice of Termination, Suspension, Reduction or Increase in Benefit Payments (CM–908). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 15, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email hbell@fenix2.dol-esa.gov. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Mine Safety and Health Act of 1977 as amended (30 U.S.C. 942). The Act implementing regulations at 20 CFR 725.621 necessitate this information collection. Under the Act, responsible coal mine operators or their representatives must provide benefit payments to eligible coal miners and dependents of coal miners who have contracted pneumoconiosis. Responsible operators who pay benefits are required to report any changes in the benefit amount, and the reasons for the change, to the Department of Labor. This information collection is currently approved for use through August 31, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to ensure that Division of Coal Mine Workers' Compensation regulations are followed and that the new benefit amount is accurate and timely.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Termination, Suspension, Reduction or Increase in Benefit Payments.

OMB Number: 1215–0064.

Agency Number: CM–908.

Affected Public: Business or other for-profit.

Total Respondents: 325.

Total Responses: 9,000.

Time per Response: 12 minutes.

Frequency: On Occasion (Reporting).

Estimated Total Burden Hours: 1,800.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $3,600.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 10, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–3669 Filed 2–13–03; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, which ever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA020001 (Mar. 1, 2002)
MA020002 (Mar. 1, 2002)
MA020003 (Mar. 1, 2002)
MA020013 (Mar. 1, 2002)
MA020018 (Mar. 1, 2002)
MA020020 (Mar. 1, 2002)
MA020021 (Mar. 1, 2002)
Rhode Island
RI020001 (Mar. 1, 2002)

Volume II

Delaware
DE020001 (Mar. 1, 2002)
DE020005 (Mar. 1, 2002)
Maryland
MD020001 (Mar. 1, 2002)
MD020009 (Mar. 1, 2002)
MD020021 (Mar. 1, 2002)
MD020034 (Mar. 1, 2002)
MD020036 (Mar. 1, 2002)
MD020037 (Mar. 1, 2002)
MD020042 (Mar. 1, 2002)
MD020048 (Mar. 1, 2002)
MD020056 (Mar. 1, 2002)
MD020057 (Mar. 1, 2002)
MD020058 (Mar. 1, 2002)
Virginia
VA020022 (Mar. 1, 2002)
VA020050 (Mar. 1, 2002)
VA020051 (Mar. 1, 2002)
VA020052 (Mar. 1, 2002)
VA020069 (Mar. 1, 2002)
VA020078 (Mar. 1, 2002)
VA020079 (Mar. 1, 2002)
VA020092 (Mar. 1, 2002)
VA020099 (Mar. 1, 2002)

Volume III

Kentucky
KY020004 (Mar. 1, 2002)
KY020027 (Mar. 1, 2002)
KY020029 (Mar. 1, 2002)
KY020035 (Mar. 1, 2002)
South Carolina
SC020036 (Mar. 1, 2002)

Volume IV

Illinois
IL020001 (Mar. 1, 2002)
IL020015 (Mar. 1, 2002)
IL020026 (Mar. 1, 2002)
IL020049 (Mar. 1, 2002)
Indiana
IN020001 (Mar. 1, 2002)
IN020002 (Mar. 1, 2002)
IN020003 (Mar. 1, 2002)
IN020006 (Mar. 1, 2002)
Ohio
OH020002 (Mar. 1, 2002)
OH020023 (Mar. 1, 2002)
OH020028 (Mar. 1, 2002)
OH020029 (Mar. 1, 2002)
OH020037 (Mar. 1, 2002)

Volume V

Iowa
IA020002 (Mar. 1, 2002)
IA020004 (Mar. 1, 2002)
IA020010 (Mar. 1, 2002)
IA020031 (Mar. 1, 2002)
Missouri
MO020001 (Mar. 1, 2002)
MO020002 (Mar. 1, 2002)
MO020003 (Mar. 1, 2002)
MO020006 (Mar. 1, 2002)
MO020009 (Mar. 1, 2002)
MO020010 (Mar. 1, 2002)
MO020011 (Mar. 1, 2002)
MO020044 (Mar. 1, 2002)
MO020048 (Mar. 1, 2002)
MO020049 (Mar. 1, 2002)
MO020050 (Mar. 1, 2002)

Volume VI

Colorado
CO020013 (Mar. 1, 2002)
CO020014 (Mar. 1, 2002)
Oregon
OR020001 (Mar. 1, 2002)

Volume VII

California
CA020023 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 6th day of February 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–3485 Filed 2–13–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

RIN 1293–AA07

Annual Report From Federal Contractors

AGENCY: Veterans' Employment and Training Service, Department of Labor.

ACTION: Notice of guidance.

SUMMARY: The Veterans' Employment and Training Service (VETS) is providing guidance on methodologies for calculating the maximum and minimum number of employees for the Federal Contractor Veterans' Employment Report VETS–100.

EFFECTIVE DATE: This guidance is effective February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Norman Lance, Chief, Investigation and Compliance Division, VETS, at (202) 693–4731 or by e-mail at *Lance-Norman@dol.gov*. Individuals with hearing impairments may call (800) 670–7008 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 4212(d).

Background: The Vietnam Era Veterans' Readjustment Assistance Act of 1974 , as amended, (VEVRAA) contains affirmative action and reporting requirements for Federal contractors and subcontractors regarding several classes of protected veterans. One VEVRAA requirement is that covered Federal contractors and subcontractors file an annual Federal Contractor Veterans' Employment Report VETS–100 (VETS–100 Report). Prior to the enactment of the Veterans Employment Opportunities Act of 1998 (VEOA), the VETS–100 Report required contractors to report, for each hiring location, the number of protected veterans by job category, and number of new hires, including protected veterans hired during the reporting period covered by the report. VEOA amended the VEVRAA's reporting requirements by adding the requirement that the maximum number and minimum number of persons employed during the reporting period be included in the VETS–100 Report.

VETS published a Notice of Proposed Rulemaking (65 FR 59684, October 5, 2000) to implement the provisions of VEOA, including the requirement for reporting the maximum and minimum number of employees. The Notice of Proposed Rulemaking did not contain guidance on how covered contractors were to determine the maximum and minimum number of employees. A commenter asserted that the proposed rule was unclear about how the maximum and minimum number of employees had to be determined, and asked for clarification. To respond to the concerns of the commenter, VETS added clarifying language to the final rule (66 FR 51998, October 11, 2001) explaining how the maximum and minimum number of employees had to be determined.

After publication of the final rule, it was brought to the attention of VETS that the revised language might have inadvertently increased the record keeping burden on some contractors. To permit contractors flexibility in how they determine the maximum and minimum number of employees, VETS published an Interim Final Rule (66 FR 65452, December 19, 2001) that withdrew the language specifying how contractors were to determine the maximum and minimum number of employees. The basic statutory requirement to report the maximum and minimum number of employees remained.

In the preamble to the interim final rule, VETS requested comments about the methods covered contractors and subcontractors proposed to use to calculate the maximum and minimum number of employees. VETS intended to consider these comments in the development of guidance or regulations about the issue. VETS was concerned that the request for comments solely within the preamble to the interim final rule might be overlooked. Consequently, VETS published a Notice on March 8, 2002 (67 FR 10804) reiterating the request for comments about how to determine the maximum and minimum number of employees.

Development of Guidance: VETS received four comments: two from human resource consultants, one from an association representing human resource professionals, and one from an association that represents employers. Commenters described the practical difficulties with creating a "one size fits all" procedure for reporting the maximum and minimum number of employees. For example, some contractors utilize payroll records to track the number of employees while others use headcounts. Some contractors maintain records by organizational unit while others maintain records by physical location. Some contractors count everyone on payroll as "active employees" while others count as employees only those actually paid in a particular period, and do not count employees on temporary leaves of absence or on other unpaid leave status. Two commenters recommended methodologies for computing the maximum and minimum number of employees. Additionally, one commenter requested that VETS eliminate the maximum and minimum number of employees reporting requirement. The final commenter asked how to determine the maximum and minimum number when an employer exercises the option to consolidate hiring locations by state.

VETS is unable to eliminate the reporting requirement for the maximum and minimum number of employees because this reporting requirement is mandated by VEOA. As discussed below, contractors determining the maximum and minimum number of employees when exercising the option to consolidate hiring locations by state may calculate their maximum and minimum number of employees by any reasonable method of computation. We appreciate receiving the thoughtful comments. We have considered all concerns and recommendations made by the commenters in developing VETS policy.

Guidance: VETS understands that contractors and subcontractors have developed many different methods to count the maximum and minimum number of employees in their workforces during the VETS–100 reporting period. Consequently, VETS has decided to permit contractors to utilize any reasonable method for contractors to compute the maximum and minimum number of employees in their workforces. Consideration of whether a procedure is reasonable will include how the employer normally maintains records about its employees and whether the employer has been consistent in its methodology for counting employees across reporting cycles.

The following are examples of methodologies identified in the public comments that VETS determined would be reasonable approaches for computing the maximum and minimum number of employees for the VETS–100 Report. These examples are provided as illustrations only and other reasonable methods are considered acceptable. Further, the examples assume that they are based on the current record keeping practice of the employer and that the employer consistently uses the same method from year to year.

Methodology Based on Organizational Structure

* The number of active employees are identified each month by job categories within an establishment and then totaled. At the end of the reporting period, the largest number recorded is

the maximum number of employees and the smallest number recorded is the minimum number of employees for each location.

Methodologies Based on Payroll Systems

* The payroll system identifies the number of active employees for each day for each location and saves that information for the whole year. At the end of the reporting period, the largest number of active employees recorded is the maximum number of employees and the smallest number of active employees recorded is the minimum number of employees.

* Payroll system data is collected on a quarterly basis about the number of employees at each establishment who either were paid wages or benefits, or were eligible to be paid wages or benefits, that quarter. The number of employees in the quarter with the largest number of employees is the maximum number and the number of employees in the quarter with the smallest number of employees is the minimum number.

* Payroll information is collected on a monthly basis about the number of employees at each establishment who either were paid wages or benefits, or were eligible to be paid wages or benefits, that month. The number of employees in the month with the largest number of such employees is the maximum number and the number of such employees in the month with the smallest number of employees is the minimum number of employees.

* A single payroll system for all employees in a single establishment is utilized. Payroll records for each pay period are maintained. The number of employees in the payroll period with the largest number of employees would be the maximum number of employees and the number of employees in the payroll period with the fewest number of employees would be the minimum number of employees for the reporting period.

Methodology Based on Company Headcount

* Many employers maintain daily establishment headcount records for financial planning and budgeting purposes. The number of employees on the day with the highest headcount would be the maximum number of employees and the number of employees on the day with the least number of employees would be the minimum number.

The above methodologies are provided as guidance only and any reasonable method of computation of the maximum and minimum number of employees is considered acceptable.

Signed at Washington, DC, this 10th day of February, 2003.

Frederico Juarbe Jr.,

Assistant Secretary of Labor for Veterans' Employment and Training Service.

[FR Doc. 03–3671 Filed 2–13–03; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 31, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the government and of private persons directly affected by the government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Bureau of the Census (N1–29–03–1, 5 items, 5 temporary items). Records of the Manufacturing and Construction Division consisting of economic survey questionnaires used to collect data on the production and shipment of selected products. Digital images of records are included. This schedule clarifies and revises disposition instructions for the paper records, which were previously approved for disposal.

2. Department of Defense, Office of the Inspector General (N1–509–03–2, 13 items, 13 temporary items). Files documenting requests for subpoenas from Defense Department criminal investigative organizations. Included are program and policy files and case files, along with a database used to track subpoena requests. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of the Treasury, Financial Management Service (N1–425–03–1, 45 items, 45 temporary items). Records relating to debt collection activities. Included are such records as case files relating to wage garnishment, compliance reviews, and debtor disputes as well as financial information and reports, administrative resolutions, system development project files, conference files, and creditor agency payment information. Also included are electronic copies of documents created using electronic mail and word processing.

4. Administrative Office of the U.S. Courts, Office of Internal Services (N1–116–03–1, 4 items, 3 temporary items). Architectural and engineering plans for courthouses and other Federal judicial facilities. Also included are electronic copies of documents created using electronic mail and word processing. Plans for the Thurgood Marshall Federal Judiciary Building are proposed for permanent retention. Other Federal courthouse architectural plans were previously approved for permanent retention in the General Services Administration records schedule.

5. Central Intelligence Agency, Pacific Corporation (N1–263–00–1, 39 items, 25 temporary items). Corporate records of the Pacific Corporation, an agency proprietary, and its operating arm, Air America, Inc. Included are such materials as subject files, contracts, personnel rosters, surplus sales records, tax files and other financial records, maps, litigation files, and records relating to security. Records proposed for permanent retention include charters, by-laws, minutes, selected subject files, selected contract files, selected security records, and Board of Review files. An Air America publicity film is also proposed for permanent retention.

6. Environmental Protection Agency, Office of Research and Development (N1–412–01–04, 5 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to overflights of sites under study. Recordkeeping copies of aerial photographs, analytical reports, and indexes are proposed for permanent retention.

7. Environmental Protection Agency, Office of Environmental Information (N1–412–03–4, 3 items, 3 temporary items). Records of the Collecting Strategies Division relating to information collection requests and information collection budget reports submitted to the Office of Management and Budget. Also included are electronic copies of records created using electronic mail and word processing.

8. Environmental Protection Agency, Office of Air and Radiation (N1–412–03–5, 3 items, 3 temporary items). Records associated with an electronic database relating to acid rain, including tracking data, utility reporting data, quality assurance information, and data derived from emissions monitoring plans. Included are electronic data files, software, and supporting documentation.

9. Federal Housing Finance Board, Office of Management (N1–485–03–1, 4 items, 4 temporary items). Paper and electronic work papers created by bank examiners during an examination and used in the preparation of reports. Records include memoranda, draft analyses, notes, and spreadsheets. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of reports of examination were previously approved for permanent retention.

10. National Archives and Records Administration, Office of Records Services—Washington, DC (N2–286–01–1, 8 items, 8 temporary items). Records of the United States Agency for International Development that were previously accessioned into the National Archives. Records relate to training and education and include such files as training contracts, training authorizations, and records relating to scholarships.

11. National Commission to Ensure Consumer Information and Choice in the Airline Industry (N1–220–03–02, 21 items, 3 temporary items). The Commission's web site and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as information and data collected by the Commission, studies, the Commission's final report, transcripts and digests of hearings, and press materials.

12. Office of Government Ethics, Office of the Director (N1–522–03–1, 2 items, 2 temporary items). Records relating to the evaluation of allegations involving Inspectors General brought before the Integrity Committee of the President's Council on Integrity and Efficiency. Also included are word processing copies of these records that are used to produce a recordkeeping copy.

13. Overseas Private Investment Corporation, Office of the Chief Financial Officer (N1–420–03–2, 26 items, 26 temporary items). Records relating to information technology operations and management. Records relate to such matters as equipment support services, system backups, security, customer services, and the design and implementation of the agency's information technology infrastructure. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: February 10, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–3597 Filed 2–13–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 15, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0144.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Examination Survey.

Description: The survey provides federal credit unions with an opportunity to give NCUA feedback on its examination procedures. NCUA uses the information to evaluate and improve the examination process.

Estimated No. of Respondents/ Recordkeepers: 6,023.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: Reporting and annually.

Estimated Total Annual Burden Hours: 502 hours.

Estimated Total Annual Cost: $ 0.

By the National Credit Union Administration Board on February 10, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–3707 Filed 2–13–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for a Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 15, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0121.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Notice of change of Officials and Senior Executive Officers.

Description: The regulations direct newly chartered and troubled credit unions to provide NCUA with 30 days notice before making a management change. 12 CFR 701.14 and 741.205.

Estimated No. of Respondents/ Recordkeepers: 589.

Estimated Burden Hours Per Response: 2.0 hours.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 1178.

Estimated Total Annual Cost: $ 0.

By the National Credit Union Administration Board on February 10, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–3708 Filed 2–13–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for a New Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 15, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following new collection of information:

OMB Number: 3133–.

Form Number: N/A.

Type of Review: New collection.

Title: 12 CFR 741.11 of NCUA's Rules and Regulations, Foreign Branching.

Description: Part 741.11 contains a provision that any insured credit union must apply for and receive approval from the regional director before establishing a credit union branch outside the United States unless the foreign branch is located on a United States military institution or embassy outside the United States. The application must include (1) a business plan, (2) written approval by the state supervisory agency if the applicant is a state-chartered credit union, and (3) documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement actions, to include conservatorship and liquidation actions.

Estimated No. of Respondents/ Recordkeepers: 10.

Estimated Burden Hours Per Response: 16 hours.

Frequency of Response: Reporting and other (one time only).

Estimated Total Annual Burden Hours: 160.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on February 10, 2003.

Becky Baker,

Secretory of the Board.

[FR Doc. 03–3709 Filed 2–13–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 15, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0138.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Community Development Revolving Loan Program for Credit Union Application for Funds.

Description: NCUA requests this information from credit unions to assess financial ability to repay the loans and to ensure that the funds are used to benefit the institution and the community it serves. The respondents are financial institutions that serve specific membership groups.

Estimated No. of Respondents/ Recordkeepers: 28.

Estimated Burden Hours Per Response: 9 hours.

Frequency of Response: Reporting, on occasion and annually.

Estimated Total Annual Burden Hours: 252 hours.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on February 10, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–3710 Filed 2–13–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting; Sunshine Act

AGENCY: National Labor Relations Board.

TIME AND DATE: Wednesday, February 5, 2003. Immediately following a 2 p.m. scheduled Board Agenda.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action * * *).

MATTERS TO BE CONSIDERED: Internal Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Acting Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1067.

Dated: Washington, DC, February 6, 2003.

By direction of the Board:

Lester A. Heltzer,

Acting Executive Secretary.

[FR Doc. 03–3813 Filed 2–12–03; 10:19 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee, 1172; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Nome: Alan T. Waterman Award Committee, 1172.

Date and Time: Wednesday, March 5, 2003, 9 a.m.–2 p.m., room 1295.

Place: National Science Foundation, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards (NSF–00–123).

Reason for Closing: The nomination being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: February 11, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–3725 Filed 2–13–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee, 1176; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Nome: DOE/NSF Nuclear Science Advisory Committee (1176).

Date and Time: Thursday, March 6, 2003; 8:30 a.m.–6 p.m.; Friday, March 7, 2003; 8:30 a.m.–6 p.m.

Place: Stafford I Building, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7377.

Purpose of Meeting: To provide advice and recommendations concerning the scientific programs of the NSF and DOE in the area of basic nuclear physics research.

AGENDA:

March 6, 2003

Introduction (R. Casten)
Report from DOE
Report from NSF
Discussion of long-range priorities charge from DOE Office of Science
Introduction of additional charges
Public Comment

March 7, 2003

Continued Discussion of additional charges

Dated: February 11, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–3724 Filed 2–13–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; License No. NPF–3]

FirstEnergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, Unit 1; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated February 3, 2003, Congressman Dennis J. Kucinich (petitioner) of the United States House of Representatives has requested that the U.S. Nuclear Regulatory Commission (NRC) revoke the FirstEnergy Nuclear Operating Company's (FirstEnergy's) license to operate the Davis-Besse Nuclear Power Station in Oak Harbor, Ohio.

As the basis for this request, the petitioner states that FirstEnergy "has operated outside the parameters of their operating license for several years, has violated numerous federal laws, rules and regulations, and has hidden information from the NRC and lied to the NRC to justify the continuing operation of the Davis-Besse Nuclear Power Station."

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the NRC's Office of Nuclear Reactor Regulation (NRR). As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time.

A copy of the petition is available in the Agencywide Documents Access and Management System (ADAMS) for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, http://www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room) using the Accession No. ML030370067. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 10th day of February 2003.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3688 Filed 2–13–03; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site *(http://www.pbgc.gov)*.

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in February 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in March 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in February 2003 is 4.94 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between March 2002 and February 2003.

For premium payment years beginning in—	The required interest rate is—
March 2002	5.40
April 2002	5.71
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39
September 2002	5.08
October 2002	4.76
November 2002	4.93
December 2002	4.96
January 2003	4.92
February 2003	4.94

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in March 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 7th day of February 2003.

Joseph H. Grant,

Deputy Executive Director and Chief, Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–3690 Filed 2–13–03; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Nonresident Questionnaire; OMB 3220–0145—Under Public Laws 98–21 and 98–76, benefits under the Railroad Retirement Act payable to annuitant living outside the United States may be subject to taxation under United States income tax laws. Whether the social security equivalent and non-social security equivalent portions of Tier I, Tier II, vested dual benefit, or supplemental annuity payments are subject to tax withholding, and whether the same or different rates are applied to each payment, depends on a beneficiary's citizenship and legal residence status, and whether exemption under a tax treaty between the United states and the country in which the beneficiary is a legal resident has been claimed. To effect the required tax withholding, the Railroad Retirement Board (RRB) needs to know a nonresidents citizenship and legal residence status.

To secure the required information, the RRB utilizes Form RRB–1001, Nonresident Questionnaire, as a supplement to an application as part of the initial application process, and as an independent vehicle for obtaining the needed information when an annuitant's residence or tax treaty status changes. Completion is voluntary. One response is requested of each respondent.

The RRB estimates that 1,300 Form RRB–1001's are completed annually. The completion time for Form RRB–1001 is estimated at 30 minutes. No changes are proposed to Form RRB–1001.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–3642 Filed 2–13–03; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application for Survivor Death Benefits.

(2) *Form(s) submitted:* AA–21, AA–21cert, G–273a, AA–11a, and G–131.

(3) *OMB Number:* 3220–0031.

(4) *Expiration date of current OMB clearance:* 04/30/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit.

(7) *Estimated annual number of respondents:* 20,600.

(8) *Total annual responses:* 20,600.

(9) *Total annual reporting hours:* 5,150.

(10) *Collection description:* The collection obtains the information needed to pay death benefits and annuities due but unpaid at death under the Railroad Retirement Act. Benefits are paid to designated beneficiaries or to survivors in a priority designated by law.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–3641 Filed 2–13–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form F–9—OMB Control No. 3235–0377, SEC File No. 270–333

Form F–10—OMB Control No. 3235–0380, SEC File No. 270–334

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management Budget for extension and approval.

Form F–9 is a registration statement under the Securities Act of 1933 that is used to register investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange offer and either non-convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in paragraph (E), are thereafter only convertible into a security of another class of the issuer. The purpose of the information collection is to permit verification of compliance with securities law requirements and to assure the public availability and dissemination of such information. The principal function of the Commission's forms and rules under the securities laws' disclosure provisions is to make information available to the investors. Approximately 18 respondents file Form F–9 annually and at 25 hours per response for a total of 450 annual burden hours. It is estimated that 25% of the 450 annual burden hours (113 burden hours) is prepared by the company.

Form F–10 is a registration statement under the Securities Act of 1933 that is used by certain Canadian "substantial issuers"—those issuers with at least 36

calendar months of reporting history with a securities commission in Canada and a market value of common stock of at least $360 million (Canadian) and an aggregate market value of common stock held by non-affiliates of at least $75 million (Canadian). The purpose of the information collection is to facilitate cross-border offerings by specified Canadian issuers. Approximately 25 respondents file Form F–10 annually and at approximately 25 hours per response for a total of 625 annual burden hours. It is estimated that 25% of the 625 total burden hours (156 burden hours) is prepared by the company.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW Washington, DC 20549.

Dated: February 6, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3713 Filed 2–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration on the American Stock Exchange LLC (Kinross Gold Corporation, Common Stock, No Par Value) File No. 1–13382

February 10, 2003.

Kinross Gold Corporation, a Providence of Ontario corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the Province of Ontario, Canada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer states that it is in the process of merging with TVX Gold Inc. and Echo Bay Mines, Ltd. As a result of this transaction, the Company seeks to voluntarily withdraw its Security from listing and registration with the Amex. The Issuer represents that the merger transaction became effective on January 31, 2003 and that its Security began trading on the New York Stock Exchange, Inc. on February 3, 2003.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before March 5, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–3719 Filed 2–13–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27648]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 7, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 4, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 4, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

NorthWestern Corporation (70–10053)

NorthWestern Corporation ("NorthWestern" or "Applicant"), 125 South Dakota Avenue, Sioux Falls, South Dakota 57104, a "holding company" and "public-utility company" within the meanings of sections 2(a)(7) and 2(a)(5) of the Act, respectively, has filed an application ("Application") under section 3(a)(3) of the Act.

NorthWestern is engaged in various utility and nonutility operations.[1] The NorthWestern Public Service division ("NPS") of NorthWestern holds ownership interests in the following electric utility assets: a 23.4% share of Big Stone Generating Plant, located near Big Stone City, South Dakota; a ten percent share of Coyote I Electric Generating Station, located near Beulah, North Dakota; and an 8.7% share of Neal Electric Generating Unit No. 4, located near Sioux City, Iowa. These facilities are operated by their other co-owners, and their output is dispatched by the MidContinent Area Power Pool. NorthWestern uses this plant to provide retail electric service to 108 communities in South Dakota, with a combined total population of 98,400 people. The company states that it also engages in limited wholesale electricity sales.

The NPS also holds nonexclusive municipal franchises to provide natural gas service in fifty-seven South Dakota and four Nebraska communities. Under these franchises, NorthWestern provides gas distribution services to approximately 81,000 customers.[2]

Applicant states that the South Dakota Public Utility Commission regulates its electric and gas utility operations, and its Nebraska gas distribution activities are regulated by the four Nebraska municipalities in which it operates.

By purchase and sale agreement dated September 29, 2000 ("Agreement"), NorthWestern agreed to acquire ("Acquisition") the gas, electric, and certain nonutility operations of Montana Power Company ("MPC"). Under the Agreement, MPC would transfer certain assets to a new limited liability company subsidiary, Montana Power LLC ("LLC"), and NorthWestern would acquire all of the membership interests of the LLC. The assets that MPC would transfer to the LLC include the following: (1) Milltown Dam, a three megawatt capacity hydroelectric facility; (2) its leasehold interest in Colstrip Unit 4, an electric generating plant located in Montana that is operated by a third-party; (3) certain electric transmission and distribution lines; (4) 2,000 miles of natural gas pipeline; and (5) three underground propane distribution systems that service the town of Townsend, the Big Sky Ski Resort, and the Anaconda Job Corps. MPC used these assets to provide retail electric service to approximately 288,000 customers located in Montana and Wyoming,[3] retail gas service to approximately 151,000 retail customers in Montana, and propane distribution service to the town of Townsend, the Big Sky Ski Resort, and the Anaconda Job Corps.

On February 14, 2002, NorthWestern filed the Application and, on February 25, 2002, NorthWestern acquired the LLC. By acquiring the LLC, Applicant became a "holding company" within the meaning of the Act. Applicant requests an order from the Commission granting the company an exemption from registration under section 3(a)(3) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3712 Filed 2–13–03; 8:45 am]

BILLING CODE 8010–01–P

[1] Applicant states that, through subsidiaries, NorthWestern: locates for utilities underground lines, wires, and pipes; provides unregulated energy related products and services to industrial, institutional, and commercial clients; provides energy management consulting services; sells energy management systems; finances energy management investments; operates energy delivery facilities; provides integrated communication and data solutions to small and medium-sized businesses; provides air conditioning, heating, duct-cleaning, and plumbing services; supplies, markets, and distributes propane, other natural gas liquids, crude oil, and natural gas to other resellers and end-users; markets electricity at market rates; and holds "non-material," passive investments in nonutility businesses related to those described above.

[2] Applicant states that approximately half of these customers are located in South Dakota, and the other half is located in Nebraska.

[3] Applicant states that the only electric service provided in Wyoming consisted of MPC's service of customers within Yellowstone National Park, which is located in both Montana and Wyoming.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration on the American Stock Exchange LLC (Star Struck, Ltd., Common Stock, $1.00 par value) File No. 1–08912

February 10, 2003.

Star Struck, Ltd., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $1.00 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on November 1, 2002 to withdraw the Issuer's Security from listing on the Amex. The Board took such action at the advice of counsel since the Issuer had fewer than 500 shareholders of record and total assets not exceeding $10,000,000 on the last day of each of the three most recent fiscal years and, by delisting its Security from the Amex, the Issuer could eliminate significant anticipated costs, including fees and expenses relating to the Amex's annual listing charges. In addition, the Board has considered the effect on the Issuer and on its shareholders of delisting and has determined that the benefit of delisting substantially outweighs any adverse effect on the Issuer or on its shareholders. The Issuer states that it is currently seeking a market maker for the Security.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before March 5, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–3718 Filed 2–13–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25930; File No. 812–12865]

TCW Premier Funds, et al.

February 10, 2003.

AGENCY: The Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order of Exemption under Section 6(c) of the Investment Company Act of 1940,

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

as amended ("1940 Act") from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Applicants: TCW Premier Funds ("Trust") and TCW Investment Management Company ("TCW") (collectively, "Applicants").

Summary of Application: Applicants seek an order to permit shares of the Trust and shares of any other existing or future investment company that is designed to fund insurance products and for which TCW, or any of its affiliates, may serve as investment manager, investment adviser, subadviser, administrator, manager, principal underwriter or sponsor (the Trust and such other investment companies being hereinafter referred to, collectively, as "Insurance Trusts"), or permit shares of any current or future series of any Insurance Trust ("Insurance Fund"), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans"); (3) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the "Manager"); and (4) any insurance company that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 ("General Accounts").

Filing Date: The Application was filed on August 9, 2002 and was amended and restated on October 18, 2002.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the Application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on March 6, 2003 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0690. Applicants, c/o Philip K. Holl, Esq., Senior Vice President and Associate General Counsel, TCW Investment Management Company, 865 South Figueroa Street, Suite 1800, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Leland B. Erickson, Attorney, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. The Trust is a Delaware business trust organized on July 16, 2002 and is registered as an open-end management investment company under the 1940 Act. The initial series of the Trust are TCW Premier Opportunity Fund and TCW Premier Value Opportunities Fund (the "Funds"). Additional series of the Trust and classes of the Funds and additional Insurance Funds may be established in the future.

2. TCW serves as the Trust's investment adviser. TCW was organized in 1987 as a wholly-owned subsidiary of The TCW Group, Inc. Société Générale Asset Management, S.A. may be deemed to be a control person of TCW by reason of its ownership of more than 25% of the outstanding voting stock of the TCW Group, Inc. Société Générale Asset Management, S.A., is a wholly-owned subsidiary of Société Générale, S.A.

3. The Insurance Trusts intend to offer shares of the Insurance Funds to (a) separate accounts of affiliated and unaffiliated insurance companies in order to fund variable annuity contracts and variable life insurance contracts (collectively, "Separate Accounts"); (b) Qualified Plans; (c) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the "Manager"); and (d) any insurance company that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 ("General Accounts").

4. Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as "Participating Insurance Companies." The Participating Insurance Companies will establish their own separate accounts and design their own contracts. Each Participating Insurance Company will have the legal obligation to satisfy all applicable requirements under both state and federal law. It is anticipated that Participating Insurance Companies will rely on Rules 6e–2 and 6e–3(T), although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

5. The Insurance Trusts intend to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including section 403(b)(7) Plans and section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

6. Shares of each Insurance Fund also may be offered to the Manager or to General Accounts, in reliance on regulations issued by the Treasury Department (Treas. Reg. 1.817–5) that established diversification requirements for variable annuity and variable life insurance contracts ("Treasury Regulations"). Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as the return on shares held by the Manager or General Accounts is computed in the same manner as for shares held by the Separate Accounts, and the Manager or the General Accounts do not intend to sell to the public shares of the Insurance Trust that they hold. An additional restriction is imposed by the Treasury Regulations on sales to the Manager, who may hold shares only in connection with the creation or management of the Insurance Trust. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations generally will be made to the Manager for the purpose of providing necessary capital required by section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 6(c) of the 1940 Act granting exemptions from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of each Insurance Trust to be offered and sold to, and held by: (1) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) Qualified Plans; (3) any Manager to an Insurance Fund; and (4) General Accounts.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust ("Trust Account"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account ("underlying fund") offers its shares "*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *." (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding." Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered *exclusively* to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans, the Manager or General Accounts.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company" (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Trusts by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans, the Manager or General Accounts.

5. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Trusts by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Trusts are also to be sold to Qualified Plans, the Manager or General Accounts. None of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Trusts may themselves be investment companies that rely upon Rules 6e–2 and 6e–3(T) and wish to continue to rely upon the relief provided in those Rules, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict arises in the context of the Application between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans, the Manager and the General Accounts must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as an eligible investment option. Applicants have concluded that investment by the Manager or the inclusion of Qualified Plans and General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans or General Accounts arose, the Qualified Plans or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and

invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants thus argue that allowing the Manager, General Accounts or Qualified Plans to invest directly in the Insurance Trusts should not increase the opportunity for conflicts of interest.

6. Applicants assert that the Treasury Regulations made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by separate accounts of insurance companies in connection with their variable life insurance contracts. Section 817(h) of the Internal Revenue Code of 1986 ("Code") imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life contracts. In particular, the Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. The Treasury Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

7. Applicants also assert that the Treasury Regulations contain another exception that permits the Insurance Funds to sell shares to General Accounts or the Manager subject to certain conditions (Treas. Reg. § 1.817–5(f)(3)(i), (ii)).

8. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, the sale of shares of the same investment company to separate accounts through which variable life insurance contracts are issued, to Qualified Plans, to the investment company's investment manager and its affiliates or General Accounts (collectively, "eligible shareholders") could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

9. Paragraph (3) of section 9(a) provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (a)(2). Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment manager or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management or administration of the fund. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as the funding medium for variable contracts. There is no regulatory purpose in extending the monitoring requirements to embrace a full application of section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans, the Manager or General Accounts. Those Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Funds. Those individuals who participate in the management or administration of the Insurance Funds will remain the same regardless of which separate accounts, insurance companies, Qualified Plans or General Accounts use the Insurance Funds. Therefore, applying the monitoring requirements of section 9(a) because of investment by separate accounts of other Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Moreover, the relief requested should not be affected by the sale of shares of the Insurance Trusts to Qualified Plans, the Manager or General Accounts. The insulation of the Insurance Trusts from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans, the Manager and General Accounts are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

10. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require "pass-through" voting with respect to underlying fund shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

11. Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors. State insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts. Therefore, variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. The Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts, and has not developed a single comprehensive exemptive rule for variable annuity contracts.

12. The Insurance Trusts' sale of shares to Qualified Plans, the Manager or General Accounts will not have any impact on the relief requested herein in this regard. Shares of the Insurance Funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

13. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further assert that shared funding by unaffiliated Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Trust's election, to withdraw its separate account's investment in that Insurance Trust, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Trusts will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Trust. Each Participating

Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Trust will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans or General Accounts, of course, cannot be disregarded but must be counted and given effect.

17. Applicants assert that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (*i.e.*, long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Trust. In addition, permitting mixed and shared funding will facilitate the establishment of additional series serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Trust with a greater variety of investment objectives and policies.

19. Applicants note that section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, "qualified pension or retirement plans," "the general account of a life insurance company," "the manager * * * of an investment company" and separate accounts to share the same underlying management investment company. Therefore, neither the Code nor the Treasury Regulations thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

20. Applicants assert that the ability of the Insurance Trusts to sell their respective shares directly to Qualified Plans, the Manager or General Accounts does not create a "senior security," as such term is defined under section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan, the Manager or a General Account. As noted above, regardless of the rights and benefits of contract owners or Plan participants, the Separate Accounts, Qualified Plans, the Manager and the General Accounts have rights only with respect to their respective shares of the Insurance Trusts. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Trusts has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants assert that permitting an Insurance Trust to sell its shares to the Manager in compliance with Treas. Reg. 1.817–5 will enhance Insurance Trust management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that, unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Insurance Trusts may be deemed to lack an insurance company "promoter" for purposes of Rule 14a–2 under the Act. It is anticipated that many other Insurance Trusts may lack an insurance company promoter. Accordingly, Applicants assert that such Insurance Trusts will be subject to the requirements of section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

22. Applicants assert that given the conditions of Treas. Reg. 1.817–5(i)(3) and the harmony of interest between an Insurance Trust, on the one hand, and its Manager or a Participating Insurance Company, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager will permit the orderly and efficient creation and operation of Insurance Trusts, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Trust operations.

23. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Trusts as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the investment and administrative expertise of TCW, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Trusts available for mixed and shared funding and permitting the purchase of Insurance Trust shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Trusts. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Trusts, or by making the addition of new Insurance Funds more feasible.

Applicants' Conditions

Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Board of Directors ("Board") of each Insurance Trust shall consist of persons who are not "interested persons" of the Insurance Trust, as defined by section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (1) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (2) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (3) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the respective Insurance Trust for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, participants of Qualified Plans, the Manager or General Accounts investing in that Insurance Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (1) An action by any state insurance regulatory authority; (2) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (3) an administrative or judicial decision in any relevant proceeding; (4) the manner in which the investments of any Insurance Fund are being managed; (5) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (6) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (7) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Trust, any Participating Insurance Company (on their own behalf, as well as by virtue of any investment of general account assets in all Insurance Trusts), and the Manager (collectively, "Participants") will report any potential or existing conflicts to the Board. Each of the Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in an Insurance Trust under their agreements governing participation in the Insurance Trust, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Trust, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans shall, at their expense or, at the discretion of a Manager to an Insurance Trust, at that Manager's expense, and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (1) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Trust or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (2) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (3) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Trust or any Insurance Fund and reinvesting those assets in a different investment medium; and (4) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Trust's election, to withdraw its Separate Account's investment in the Insurance Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Trust, to withdraw its investment in the Insurance Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Trust or its Manager(s) be required to establish a new funding medium for any variable contract. No

Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered Separate Account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Insurance Fund held in their registered Separate Accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Insurance Fund held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares held by its General Accounts, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts investing in an Insurance Trust calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Trust's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in an Insurance Trust shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Trust. Each Plan will vote as required by applicable law and governing Plan documents.

7. An Insurance Trust will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan documents. Each Insurance Trust shall disclose in its prospectus that: (1) Shares of the Insurance Trust are offered to insurance company separate accounts which fund both variable annuity and variable life insurance contracts, and to Qualified Plans and General Accounts; (2) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Trust and the interests of Qualified Plans or General Accounts investing in the Insurance Trust might at some time be in conflict; and (3) the Board will monitor the Insurance Trust for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Insurance Trust and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Insurance Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Trust), and in particular each Insurance Trust will either provide for annual meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in section 16(c) of the 1940 Act) as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, each Insurance Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Manager will vote its shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Trust; provided, however, that the Manager or any General Account shall vote their shares in such other manner as may be required by the Commission or its staff.

12. The Participants shall at least annually submit to the Board of an Insurance Trust such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the Application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials and data to the Board of the Insurance Trust when it so reasonably requests, shall be a contractual obligation of the Participating Insurance Companies and Participating Qualified Plans under their agreements governing participation in each Insurance Trust.

13. If a Qualified Plan should become an owner of 10% or more of the assets of an Insurance Trust, the Insurance Trust shall require such Plan to execute a participation agreement with such Insurance Trust which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Trust.

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3717 Filed 2–13–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47332; File No. SR–CBOE–2002–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Broker-Dealer Orders on RAES

February 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange submitted Amendment No. 1 to the proposed rule change on January 21, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding broker-dealer access to RAES. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, Attorney, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated January 17, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange changed the Statement of the Terms of Substance of the Proposed Rule Change and the Purpose section of the filing to correctly describe the proposal, and made non-substantive, clarifying changes to the rule text.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend Interpretation and Policy .01 of CBOE Rule 6.8 to allow the appropriate Floor Procedure Committee to determine, on a class and/or series basis, to prohibit access to RAES for broker-dealer orders after 3 p.m. Currently, the appropriate Floor Procedure Committee may permit broker-dealer orders on RAES during the trading day for options by class and/or series. CBOE proposes to expand access to RAES for broker-dealer orders, but some issues arise from 3 p.m. until the close especially for American style options, which permit early exercise.

Options pricing models used by CBOE members to generate the autoquote on CBOE utilize the price of underlying securities on the appropriate securities exchange.[4] Once the underlying stock stops trading, there is no price feed from the underlying securities to automatically update the options pricing models. Therefore, the hundreds of options series must be updated manually. If broker-dealer orders are permitted on RAES this could potentially increase the number of automatically executed orders significantly, (especially when a news release occurs after the close of the securities exchanges but before the close of CBOE), which if the increase in orders is significantly large, could create even more difficulties in updating the option pricing models in a timely manner.

Due to the increase in potential orders occurring electronically at a greater speed, CBOE would like to permit RAES access in more classes and/or series for broker-dealer orders, but permit the appropriate floor procedure committee to limit the access in classes or series, where appropriate, to the time period when the exchanges for the underlying securities are open for their regular trading session, *i.e.*, until 3 p.m. The proposed rule change would provide a solution that would permit broker-dealers to have access for the vast majority of the trading, while at the same time minimizing stress to the options pricing models when they are manually updated. CBOE believes that this proposed rule change would provide flexibility, while at the same time permitting increased competition for electronic orders.

[4] For purposes of this discussion securities exchanges includes NASDAQ.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act[5] in general and furthers the objectives of section 6(b)(5)[6] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change would promote competition, remove impediments to and perfect the mechanism to a free and open market by permitting greater competition for electronic order. The proposed rule change would permit broker-dealer orders to have RAES access in more option classes and/or series, and thus promote competition for these orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–2002–69 and should be submitted by March 7, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3715 Filed 2–13–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47333; File No. SR–CBOE–2002–18]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Its DPM Membership Ownership Requirement

February 10, 2003.

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 2002, the Chicago Board Option Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend CBOE Rule 8.85(e). On June 10, 2002, the proposed rule change was published in the **Federal Register**.[3] The Commission received one comment letter.[4] On January 23, 2003, the Exchange filed Amendment No. 1.[5] The Commission approves the proposed rule change, as amended, and publishes this notice to solicit comments on Amendment No. 1. The Commission also approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposed Rule Change

The CBOE proposes to amend Rule 8.85(e) pertaining to the Designated Primary Market-Maker ("DPM") seat ownership requirement. Currently, the DPM seat ownership requirement,[6] contained in CBOE Rule 8.85(e), requires each DPM to own at least one Exchange membership. The rule also provides that this requirement is satisfied if the senior principal of the DPM owned the required membership(s).

The Exchange now proposes to amend CBOE Rule 8.85(e) to make DPM seat ownership requirements applicable to each trading location (as opposed to each DPM organization). Thus, under the rule a DPM organization will be required to own a seat for each trading location in which a DPM organization serves as a DPM, as determined by the Exchange's Modified Trading System Appointments Committee ("MTS Committee").[7] Under the proposal the term "trading location," is defined as "any separate, identifiable unit of a DPM organization that applies for and is allocated options classes by the appropriate Allocations Committee.[8] The proposed rule change also stipulates that each DPM organization will have ninety-days from the date of Commission approval to satisfy the new ownership requirements.

CBOE also proposes to eliminate the provision allowing a senior principal of a DPM to own a membership instead of the DPM organization for the purpose of satisfying a DPM's seat ownership requirements. Thus, each DPM organization would be required to directly own seats to fulfill the requirements pursuant to CBOE Rule 8.85(e).

III. Summary of Comments

The Commission received one comment letter from TD Options, LLC ("TD Options").[9] TD Options expressed concern that the proposal: (1) Did not sufficiently explain its claim that the amendment to the DPM seat ownership rule would promote a long-term commitment to the Exchange, (2) did not provide sufficient rationale to explain why the DPM seat ownership requirement would no longer be satisfied by a principal's seat ownership under the proposal, and (3) lacked clarity with regard to the definition of "trading location."

In CBOE's response to the comments from TD Options,[10] the Exchange indicated that the proposal would ensure that DPMs have a long-term commitment to the Exchange because DPMs are allocated valuable securities by the CBOE, derive considerable benefits from those allocations, but currently do not have to pay for such allocations. Thus, the CBOE suggested that by amending its Rule 8.85(e) to align the DPM seat ownership requirements with the allocation of option classes, the DPM commitment to Exchange would be enhanced, and the likelihood of seat lease-related problems that could compromise a DPM's ability to open trading in its allocated option classes would be reduced. The Exchange also indicated that eliminating a DPM's ability to fulfill its seat ownership requirement through a principal ownership should enable CBOE to better monitor compliance with the rule, particularly in the present environment where individuals join and leave DPM organizations with increased frequency due to industry consolidation. In the CBOE Response Letter, the Exchange also explained that it was seeking to clarify what may be considered a trading location in instances where what physically appears to be two trading stations is actually one trading station, or conversely, where what physically appears to be one trading station is actually two trading stations. In Amendment No. 1, CBOE further clarified that the term "trading location," as used in this proposed rule change would refer to any separate, identifiable unit of a DPM organization that applies for and is allocated options classes by the appropriate Allocation Committee.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2002–18, Amendment No. 1, and should be submitted by March 7, 2003.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The proposed rule change will require that a DPM own an Exchange membership or seat for every trading location, *i.e.*, any separate, identifiable unit of a DPM organization that applies for and is allocated options classes by the appropriate Allocation Committee. The Commission believes that the Exchange's effort to ensure stability in its options market by amending the DPM seat ownership requirements is not unreasonable. By requiring each DPM to own an Exchange membership per trading location, the Exchange seeks to ensure a DPM's long-term commitment to the Exchange. The proposal should discourage entities from seeking short-term DPM appointments, which could be disruptive to the trading of allocated options classes, because DPMs will be required to make a substantial financial commitment to the Exchange. DPMs that own a membership in the Exchange should be more willing to invest the time, effort, and funding needed to build and foster a stable market place for the trading of their allocated options classes. This should provide enhanced trading benefits to investors by increasing liquidity and trading stability. Moreover, the proposal could help to preserve the integrity of the Exchange because DPMs will have a vested interest in ensuring that the Exchange maintains high standards.

Further, the Commission believes that the proposed amendment to the DPM seat ownership requirement should provide incentives to DPMs that are allocated existing CBOE options, or seeking allocations in established option classes, to maintain sufficient capital to operate as a DPM, which should result in greater liquidity and investor protections in those options classes. The proposal could further CBOE's interest in securing long-term commitments to the Exchange because members that are committed to the Exchange should have greater incentives to ensure the orderly and effective operation of the market.

The proposed rule change also eliminates the provision allowing a senior principal of a DPM to own a required membership instead of the DPM organization for the purpose of satisfying a DPM's seat ownership requirements. Instead, each DPM organization would be required to maintain direct ownership of any seats pursuant to CBOE Rule 8.85(e). The Commission believes that this requirement is consistent with the Act. In particular, the Commission believes that eliminating a DPM's ability to fulfill its seat ownership requirement through a principal's ownership could enhance the Exchange's ability to monitor DPM compliance with CBOE Rule 8.85 by helping to eliminate any confusion that may result from industry consolidation or a principal's leaving or joining a DPM organization. The Commission believes that by requiring the DPM organization to have direct ownership of the seat, the proposal could help assure the DPM's long-term commitment to the Exchange, and its willingness to invest the time, effort, and funding needed to build and foster a stable market place for the trading of its allocated options classes.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. CBOE filed Amendment No. 1 in response to comments it received after the publication of the notice of the filing of the proposed rule change, to clarify the definition of the term "trading location." Because Amendment No. 1 is responsive to the commenter's concerns, the Commission finds good cause for accelerating approval of the proposed rule change, as amended by Amendment No. 1.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change, as amended, (File No. SR–CBOE–2002–18) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3716 Filed 2–13–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47331; File No. SR–NASD–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees Applicable to the NASD Alternative Display Facility

February 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. NASD has designated the proposed rule change as one that establishes or changes a due, fee or other charge imposed by NASD pursuant to

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[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46020 (June 3, 2002), 67 FR 39758 (June 10, 2002).

[4] *See* Letter from Margaret Wiermanski, Chief Compliance Officer, TD Options, LLC, to Kelly Riley, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated July 16, 2002 ("TD Options Comment Letter").

[5] *See* Letter from Angelou Evangelou, Seninr Attorney, Legal Division, CBOE to Deborah Flynn, Assistant Director, Division, Commission, dated January 23, 2003 ("Amendment No. 1"). In Amendment No. 1, CBOE clarifies that the term "trading location," as used in Rule 8.85(e), is defined "as any separate, identifiable unit of a DPM organization that applies for and is allocated options classes by the appropriate Allocation Committee."

[6] *See* Securities Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (Order approving File No. SR–CBOE–99–37).

[7] The MTS Committee is the Committee responsible for reviewing and ensuring compliance with CBOE Rule 8.85.

[8] *See* Amendment No. 1, *supra* note 5.

[9] *See* TD Options Comment Letter, *supra* note 4.

[10] *See* Letter from Angelou Evangelou, Senior Attorney, Legal Division, CBOE to Marc McKayle, Special Counsel, Division, Commission, dated October 10, 2002 ("CBOE Response Letter").

[11] *See* Amendment No. 1, *supra* note 5.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

paragraph (f)(2) of Rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend the NASD Rule 7000A Series to designate transaction and quotation related fees applicable to activities in the NASD's Alternative Display Facility ("ADF"). The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7000A. Charges for ADF Services and Equipment

7010A. System Services

(a) Trade *Reporting and* Comparison [and Reporting] Service

The following charges shall be paid by ADF participants for use of the Trade *Reporting and* Comparison [and Reporting] Service (TRACS):

Transaction Related Charges:

Comparison $0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares)

Automated Give-Up $0.029/side *(if the associated publicly disseminated trade is not reported to the media through the ADF)*

Qualified Special Representative $0.029/side (if the associated publicly disseminated trade is not reported to the media through the ADF)

Late Report—T+N $0.30/side *unless the trade is executed outside normal ADF operating hours of 8:00 a.m. to 6:30 p.m. and the member's average publicly disseminated trades reported to the media through the ADF per day during the billing period is 150,000 or greater*

[Browse/query $0.28/query*]

[Trade Reporting $.029/side (applicable only to reportable transaction not subject to trade comparison through TRACS) **]

Corrective Transaction Charge $0.25/ Break, Decline, *Reversal* transaction, paid by each party

(b) Quotation Updates

The following quotation update charges will apply based on the average daily number of publicly disseminated trades reported to the media through the ADF during the billing period. [A member will be charged $0.01 per quotation update in the ADF quotation montage on those quotation updates that exceed three times the number of transactions reported to the ADF by the member.] A "quotation update" includes any change to the price or size of a displayed quotation. [This charge will be determined on a monthly basis.]

Average trades reported through the ADF per day	*Quotation update charge*	*Quotes update provided at no charge*
Less than 1	*$.02 per quotation update*	*None.*
Between 1 and 100,000	*$.01 per quotation update*	*5 quotation updates per trade.*
Between 100,001 and 150,000	*$.01 per 10 quotation update*	*10 quotation updates per trade.*
Greater than 150,000	*No Charge*	*N/A*

[(c) Volume Discounts on Transaction and Quotation Fees

During the initial six months of operation of the ADF, except as provided in paragraph (d) below, transaction fees incurred pursuant to paragraph (a) above, except the browse/query fee, and quotation update fees incurred pursuant to paragraph (b) above will be discounted on the following incremental basis:]

Trades per month	Chargeable quotation updates per month	Discount
Up to 2,000	Up to 8,000	0%
2,001 to 4,000	8,001 to 15,000	10%
4,001 to 6,000	15,001 to 25,000	25%
6,001 to 8,000	25,001 to 35,000	35%
8,001 or greater	35,001 or greater	50%]

[(d) Limited Period Without Transaction and Quotation Charges]

[During the initial six months of operation of the ADF, members will not be charged for transaction fees incurred pursuant to paragraph (a) above and the quotation fees incurred pursuant to paragraph (b) above for up to a three-month period. The three-month "no transaction" fee period begins on the first day on which a member has incurred charges under paragraph (a) or paragraph (b) above, and will continue until the earlier of three months or the end of the six-month period.]

* * * * *

7040A. Installation, Removal, Relocation or Maintenance

ADF subscribers shall pay a minimum charge of $5,000 for installation costs associated with connecting to the ADF. Upon installation, removal, relocation or maintenance of terminal and related equipment, or combination thereof, the subscriber shall pay charges incurred by NASD or its subsidiaries above the $5,000 minimum, on behalf of the subscriber for the work being performed by the maintenance organization retained by NASD or its subsidiaries. Upon payment of $5,000 under this provision, members will receive a credit of up to $5,000 to be used toward [their trade reporting and comparison] charges imposed under Rule 7010A(a) *and (b).*

* * * * *

[3] 17 CFR 240.19b-4(f)(2).

[* Each TRACS query incurs the $0.28 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than $0.28 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the $0.28 query charge.]

[** The trade reporting service charge is applicable to those trades input into TRACS for reporting purposes only, such as NSCC Qualified Special Representative reports and reports of internalized transactions.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the Commission approved SR–NASD–2002–97,[4] which authorizes NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR–NASD–2001–90,[5] which proposes to operate the ADF on a permanent basis. As described in detail in SR–NASD–2001–90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order[6] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.[7]

For the duration of the pilot period, ADF will provide ADF market participants (market makers and ECNs) the ability to post quotations in Nasdaq securities and will provide all members that participate in the ADF the ability to view quotations and report transactions in Nasdaq securities to the Exclusive Securities Information Processor ("SIP") for Nasdaq-listed issues for consolidation and dissemination of data to vendors and ADF market participants. The facility also will provide for trade comparison through the Trade Reporting and Comparison Service ("TRACS"). This mechanism operates similarly to the trade reporting functions of Nasdaq's Automated Confirmation Transactions Service ("ACT").[8]

In SR–NASD–2002–97, NASD proposed the Rule 7000A Series, which provides the fee structure applicable to quotation and transaction-related activities through the ADF. Pursuant to that fee structure, NASD has not been charging ADF participants for transaction and quotation update fees (Rules 7010A(a) and (b), respectively) for a period of up to three months during the initial six months of operation of the ADF (from July 29, 2002 to January 29, 2003). Also during the first six-months of the ADF's operation, but subsequent to the three-month "no charge" period, ADF participants are eligible for certain volume discounts to make the overall cost of trade reporting and quoting through the ADF more attractive to higher volume users.

Given that the six-month "no charge/volume discount" fee structure is scheduled to end on January 29, 2003, NASD staff has been reviewing the ADF fee structure and now is proposing a new fee structure to commence on February 17, 2003. Specifically, NASD is proposing to eliminate trade reporting fees, browse/query and Automated Give-Up ("AGU")/NSCC Qualified Special Representative ("QSR") comparison charges (provided that the associated publicly disseminated trade is reported to the media through the ADF). With respect to "as of" trades, NASD is proposing to continue to charge $0.30/side unless the "as of" trade is executed outside normal ADF operating hours of 8:00 a.m. to 6:30 p.m. and the member's daily average of publicly disseminated trades reported to the media through the ADF during the billing period is 150,000 or greater. NASD will continue to charge for corrective transactions. As a result, only the following TRACS-related fees will continue to apply: Comparison Fee of $0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares); Late Report—T+N fee of $0.30/side under the circumstances noted above; and Corrective Transaction Charge[9] of $0.25, paid by each party. AGU/QSR comparison charges of $0.029/side would apply only if the associated trade is not reported to the ADF.

With respect to quotation activities, quotation update charges[10] would vary depending on the number of publicly disseminated trades reported to the media through the ADF during normal ADF processing hours of 8:00 a.m. to 6:30 p.m. Specifically, quotation update charges would apply based on the average number of publicly disseminated trades reported to the media through the ADF per day during the billing period. If an ADF market participant's average trades reported to the media through the ADF per day during the billing period is less than one, the quotation charge applicable to that ADF market participant would be $.02 per quotation update. Similarly, if an ADF market participant's average trades reported to the media through the ADF per day is between one and 150,000, the quotation charge applicable to that ADF market participant would be $.01 per quotation update. Finally, if an ADF market participant's average trades reported to the media through the ADF per day during the billing period is greater than 150,000, no quotation update charges would apply.

The proposed fee structure also would provide for a certain number of quotation updates at no charge based on the average number of publicly disseminated trades reported to the media through the ADF per day during the billing period. Specifically, if an ADF Market Participant averages between one and 100,000 trades reported through the ADF per day, the market participant would receive five free quotes per trade during that billing period. If a market participant averages between 100,001 and 150,000 trades reported to the media through the ADF per day, it would receive 10 free quotes per trade during that billing period.

By imposing quotation fees based on the number of publicly disseminated trades reported to the media through the ADF, this fee structure will fairly impose costs on those members whose quotation activity creates system capacity demands, and therefore costs that are not covered by the revenue received from trades reported to the media through the ADF.

Members currently are charged a minimum of $5,000 for installation costs associated with connecting to the ADF. The ADF, however, provides market participants with a credit of up to $5,000 toward their trade reporting and comparison charges. Given the revised fee structure, NASD is proposing to amend Rule 7040A to permit the $5,000 credit to be used toward any of the fees imposed under Rule 7010A(a) or (b), including quotation fees.

Finally, for administrative ease, NASD also is proposing to extend the current "no charge" period until February 14, 2003 and have the fee changes described herein commence February 17, 2003. As a result, ADF participants will continue not to be

[4] Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

[5] Securities Exchange Act Release No. 45991 (May 28, 2002), 67 FR 39476 (June 7, 2002).

[6] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR–NASD–99–53).

[7] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131).

[8] TRACS does not perform risk management services that are provided by Nasdaq's ACT.

[9] NASD also is proposing to add "Reversals" to the types of corrective transactions under Rule 7010A(a). Reversals are trade corrections made T+N.

[10] A "quotation update" includes any change to the price or size of a displayed quotation.

charged for transaction and quotation update fees under Rules 7010A(a) and (b), respectively until February 17, 2003.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will provide a cost effective and efficient mechanism to quote and report trades on the ADF. The proposed rule change also is consistent with Section 15A(b)(5) of the Act[12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that this fee structure is a reasonable means for the NASD to recover the development costs of the ADF, as well as meet ongoing operating costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as establishing or changing a due, fee, or other charge under section 19(b)(3)(A)(ii) of the Act[13] and Rule 19b–4(f)(2) thereunder,[14] which renders the proposal effective upon receipt of this filing by the Commission. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[11] 15 U.S.C. 78*o*–3(b)(6).
[12] 15 U.S.C. 78*o*–3(b)(5).
[13] 15 U.S.C. 78s(b)(3)(A)(ii).
[14] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–09 and should be submitted by March 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3714 Filed 2–13–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 4277]

Notice of Information Collection Under Emergency Review: Form DS–4028, Request for Approval of Technical Assistance Agreement Cover Letter; Form DS–4029, Request for Approval of Technical Assistance Agreement; OMB Control Number 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

The following summarizes the information collection submitted to OMB:

Type of Request: Emergency Review.

Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DTC.

Title of Information Collection: Request for Approval of Technical Assistance Agreement Cover Letter and Request for Approval of Technical Assistance Agreement.

Frequency: Not More Than 12 Per Week.

Form Numbers: DS–4028 and DS–4029.

Respondents: Businesses.

Estimated Number of Respondents: 13.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 6,240 hours.

(Total Estimated Burden based on maximum number of requests that may be received during 5-month pilot program.)

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by February 9, 2003. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Robert W. Maggi, Deputy Assistant Secretary of Defense Trade Controls, Directorate of Defense Trade Controls, Bureau of Political-MilitaryAffairs, SA–1, Room 12th Floor, H1200, Washington, DC 20522–0112 (202) 663–7000.

Dated: January 25, 2003.

Robert W. Maggi,

Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 03–3720 Filed 2–13–03; 8:45 am]

BILLING CODE 4710–25–P

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4276]

Culturally Significant Objects Imported for Exhibition Determinations: "Himalayas: An Aesthetic Adventure"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Himalayas: An Aesthetic Adventure," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, IL, from on or about April 5, 2003, to on or about July 27, 2003; Freer Gallery of Art and Arthur M. Sackler Gallery, Washington, DC, from on or about October 19, 2003, to on or about January 11, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 10, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, , Department of State.

[FR Doc. 03–3721 Filed 2–13–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4275]

Bureau of Educational and Cultural Affairs Program Title: Central Asia School Connectivity Program: Uzbekistan and Tajikistan

ACTION: Request for proposals.

SUMMARY: The Youth Programs Division, Office of Citizen Exchanges, of the Bureau of Educational and Cultural Affairs announces an open competition for the School Connectivity Program for Uzbekistan and Tajikistan. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to expand the educational opportunities available in Uzbekistan and Tajikistan by providing access to the Internet and related training to help promote civic education and education reform. Applicants may submit proposals to implement the program in both or one of the countries. The anticipated amount of funding available is as follows: Uzbekistan—$1,425,000; Tajikistan—$572,000.

Program Information

Overview

The Central Asia School Connectivity Program for Uzbekistan and Tajikistan is designed to introduce youth to a broad range of ideas about civil society while enhancing the use of Internet technology. Through this program, secondary schools in each country will be able to incorporate civics and related resource materials into their curricula and improve general education under the guidance of specially trained teachers. The goals of the program are:

1. To provide access to information via the Internet;
2. To provide youth in Uzbekistan and Tajikistan with the opportunity to learn democratic values through virtual and person-to-person exchanges with U.S. schools;
3. To provide training and resources to improve the teaching of civic education and related fields;
4. To generate personal and institutional ties across borders among students, educators and their schools.
5. To identify sustainability strategies that will allow for program continuation when funding is no longer available.

The main components of this program for which grant funding is provided are:

- Recruiting and selecting secondary schools in Uzbekistan and Tajikistan and in the U.S. in a competitive, transparent process;
- Establishing computer centers, including hardware, software, Internet access, and renovations;
- Providing training for teacher-trainers who will, in turn, train teachers and students in selected schools and, later, other community members;
- Facilitating joint civics-based telecurriculum projects with U.S. schools, and possibly schools from other countries;
- Developing civic-based educational resources that utilize the Internet and coordinate the use of curricula from other related programs;
- Providing regional seminars and cross-border exchanges for participating youth to advance computer usage and increase awareness of a civil society;
- Developing school-community partnerships and other locally based initiatives to help sustain computer centers and support curriculum innovation.
- Conducting a three-week program in the U.S. for teachers to enhance computer and training skills, develop mentoring techniques and gain exposure of school-community partnerships at a grassroots level.

Guidelines

The number of grants to be awarded under this competition will be based upon the quality and responsiveness of proposals to the review criteria presented later in this Request for Grant Proposals (RFGP). For purposes of simplicity, these Guidelines refer to "grant" and "grant recipient." Sub-grant and consortium arrangements are possibilities. The grant(s) should begin on or about June 2003, subject to availability of funds. The grant period should be two years.

The grant recipient will be responsible for:

(1) Selecting schools for the installation of a computer center, the provision of training, and the implementation of a civic education program that emphasizes use of the Internet. Selected schools will be partnered, either one-to-one or in small groups, with U.S. schools so that students and faculty may work on joint projects with American peers over the Internet in order to practice their newly-developed knowledge of using this tool for educational purposes.

(2) Equipping each of the selected schools with 6–8 computers, printers, and other items necessary to afford them

Internet connectivity. This will be accompanied by improvements to the classrooms to ensure that facilities are suitable and secure. Once established, centers will be staffed by site monitors who will oversee their use.

(3) Providing training to a core group of educators in Internet education, American studies, English, civic education, curriculum development, and teaching methodologies. These educators will be employed by the grant recipient to train others in their respective regions. They will also be responsible for ongoing support, project implementation and site supervision. The training of teachers and students will focus on basic computer skills, use of electronic mail and bulletin boards, and use of the World Wide Web for research and for supplementing lesson plans. These educators will also oversee school partnership programs.

(4) Facilitating joint telecurriculum projects among students to learn about civil society, including the basics of democracy, volunteerism, conflict resolution, good citizenship, and civic responsibility, such as voting. Project staff will help teachers and youth select topics, facilitate action planning and evaluation processes, provide guidance, and assist with the development of a final product for widespread dissemination.

(5) Collaborating with USG agencies, local NGOs and ECA-funded programs relevant to this project to enhance local capacity and build on current efforts. This includes the incorporation of education materials created by other USG-funded initiatives and the engagement of program beneficiaries in project activities.

(6) Facilitating a three-week exchange of teachers to the United States in which participants will receive specialized training and will reside with partner teachers with whom they have worked during the academic year. Participants will be exposed to U.S. educational practices, specifically the use of technology in U.S. classrooms, as well as school-community partnerships and grassroots volunteer organizations that use computer technology as a tool for income-generating activities. Activities will focus on the role that the individual can play in a democracy, including school-based programs that educate young people on their civil, moral, and legal obligations to society. Upon return to their home country, participants will share their experiences and serve as mentors to other schools in the network.

(7) Developing sustainability strategies in communities where schools have been selected. Community representatives may identify income-generating activities and will use technology to shape a sustainable development path for computer centers in their communities. Community members may receive training in issues such as developing a needs assessment, entrepreneurship, management, marketing, and fundraising. The creation of PTAs will be instrumental in generating community involvement and support.

(8) Developing an evaluation plan that will focus on: (a) Determining if objectives are being met or have been met; (b) measuring attitudinal and behavioral change; (c) identifying any unmet needs, and (d) assessing if the project has effectively discovered resources, advocates, and financial support for sustainability of current efforts. Informal evaluation through discussions, monthly updates and other sources of feedback will be carried out throughout the duration of the project.

Budget Guidelines

All organizations applying under this competition must demonstrate in their proposal narrative a minimum of four years experience managing and conducting international exchange programs. Bureau grant guidelines require that organizations with less than four years experience conducting and managing international exchanges be limited to $60,000 in Bureau funding. Since the grant or grants awarded under the competition will exceed the $60,000 ceiling, organizations with less than four years experience, per above, are not eligible to apply under this competition.

The Bureau reserves the right to accept proposals for both countries or for single countries and make an award or awards in accordance with what serves the best interest of the programs. Applicants must submit a summary budget that includes all program components as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Administrative costs, including indirect rates, should be kept to a minimum and cost-shared as possible.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number *ECA/PE/C/PY–03–28.*

Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

FOR FURTHER INFORMATION CONTACT: The Office of Youth Programs, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 619–5904, and fax (202) 619–5311, e-mail *amussman@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau of Education and Cultural Affairs Program Officer Anna Mussman on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at: *http://exchanges.state.gov/education/rfps.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, April 7, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–03–28, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the State Department Geographic Area Office and Public Diplomacy section at the U.S. embassy overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should display an understanding of the goals of the program, as reflected in the priorities of this RFGP. Exchange activities should ensure sufficient use of program resources. Proposals should demonstrate a commitment to excellence and creativity in the implementation and management of the program.

2. *Program planning:* A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, seminars and exchange activities should be described in detail. Responsibilities of in-country partners should be clearly described.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity.

Achievable and relevant features should be cited in both program administration (selection of schools and participants, program venue and program evaluation) and program content. Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

5. *Institutional Capacity/Record/Ability:* Applicants should demonstrate knowledge of each country's educational environment and display significant experience in developing school-based Internet programs. Proposals should exhibit an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements as determined by the Bureau's Grants Division. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and objectives.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. Applicants should provide baseline data and questionnaires for use in surveying schools/participants to facilitate the demonstration of results. Applicants may describe any experience conducting results-oriented evaluations.

7. *Follow-on Activities:* Proposals should provide a strategy for the continuation of the schools' Internet access and online linkages without the Bureau's financial support. Applicants should detail how exchange participants will share newly-acquired knowledge and skills with others.

8. *Cost-effectiveness/cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. While lower "per school" figures will be more competitive, the Bureau expects all figures to be realistic. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the

educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authorities for this program are provided through the Fulbright-Hays Act and the FREEDOM Support Act (FSA).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 3, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–3683 Filed 2–13–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

Bureau of Administration

[Public Notice 4278]

Notice of Availability of Alternative Fueled Vehicle (AFV) Reports for Fiscal Years 1998 Through 2002

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. Department of State, Bureau of Administration, is issuing this notice in order to comply with the Energy Policy Act of 1992, 42 U.S.C. 13201 *<http://web2.westlaw.com/Find/Default.wl?DB=1000546&DocName=42USCAS13201&FindType=L&AP=&RS=WLW2.81&VR=2.0&SV=Split&MT=Westlaw&FN=_top>* *et seq.* and the United States District Court for the Northern District of California's order, in case number C 02–0027 WHA, Center for Biological Diversity, Bluewater Network and the Sierra Club v. Spencer Abraham, *et al.*, that Federal agencies must place all alternative fueled vehicle data for Fiscal Years 1996 through 2001 on a publicly accessible Web site. The purpose of this notice is to announce the public availability of the Department of State's reports for Fiscal Years 1998 (no earlier report extant) through 2002 at the following Web site: *http://www.state.gov/m/a/c8503.htm.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the reports of the AFV report Web site should be addressed to the Domestic Fleet Management and Operations Division (A/OPR/GSM/FMO) [Attn: Chappell Garner], 2201 C Street NW., Washington, DC 20520, phone: (202) 647–3159.

SUPPLEMENTARY INFORMATION: The Earthjustice Environmental Law Clinic filed suit in Federal court in California on January 2, 2002 on behalf of the Center for Biological Diversity, Bluewater Network and the Sierra Club against the Department of the Interior and 16 other Federal agencies for failing to comply with the alternative fueled vehicle (AFV) acquisition and reporting requirements for Federal fleets imposed by the Energy Policy Act of 1992 (EPAct). The lawsuit requested the court to order Interior and the other Federal agencies to comply with EPAct requirements and offset future vehicle purchases with the number of AFVs necessary to bring them into compliance with the requirements of the EPAct.

Dated: February 12, 2003.

Vincent J. Chaverini,

Deputy Assistant Secretary, Office of Operations, Department of State:

[FR Doc. 03–3849 Filed 2–13–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Glenwood Aviation, LLC d/b/a America Rising for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2003–2–8), Docket OST–02–13365.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Glenwood Aviation, LLC d/b/a America Rising, fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail using small aircraft under part 135 of the Federal Aviation Regulations.

DATES: Persons wishing to file objections should do so no later than February 21, 2003.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–02–13365 and addressed to the Department of Transportation Dockets (OST–M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Serig, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4822.

Dated: February 7, 2003.

Susan McDermott,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–3734 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Transportation Labor-Management Board; Meeting

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Transportation (DOT) announces a meeting of the Transportation Labor-Management Board (Board). Notice of this meeting is required under the Federal Advisory Committee Act.

Time and Place: The Board will meet on Tuesday, February 25, 2003, at 9 a.m., at the U.S. Department of Transportation, Nassif Building, room 3246A, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 3rd floor.

Type of Meeting: The meeting is open to the public. Please note that visitors without a government identification badge should enter the Nassif Building at the Southwest lobby, for clearance at the Visitor's Desk. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

Point of Contact: Stephen Gomez, U.S. Department of Transportation, Office of the Secretary, Workforce Environment and Pay Division, M–13, U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9455.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to determine the issues the Board will address, establish priorities, and review the revised Transportation Labor-Management Board Charter.

Public Participation: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Stephen Gomez at the address shown above. Comments should be received by February 18, 2003 in order to be considered at the February 25th meeting.

Issued in Washington, DC, on February 6, 2003.

For the U.S. Department of Transportation.

Linda S. Moody,

Associate Director, Workforce Environment and Pay Division.

[FR Doc. 03–3607 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13766]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers 2115–0142, 2115–0089, 2115–0137, 2115–0143, and 2115–0541

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the five Information Collection Reports (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before March 17, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2002–13766) more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(b) By mail to OIRA, 725 17th Street N.W., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard. (4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a website on which you can post your comments.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2002–13766 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [67 FR 69808 (November 19, 2002)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2002–13766. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Approval of Plans and Records for Marine Engineering Systems—46 CFR Subchapter F.
OMB Control Number: 2115–0142.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners and builders of commercial vessels.
Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.
Abstract: This collection of information requires an owner or builder of a commercial vessel to submit to the U.S. Coast Guard, for review and approval, plans pertaining to marine-engineering systems to ensure that the vessel will meet regulatory standards.
Annual Estimated Burden Hours: The estimated burden is 3,090 hours a year.

2. *Title:* Ships Carrying Bulk Hazardous Liquids.
OMB Control Number: 2115–0089.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners and operators of chemical tank vessels.
Forms: CG–4602B, CG–5148, CG–4148A, CG–5148B and CG–5461.
Abstract: This information is needed to ensure the safe transport of bulk hazardous liquids on chemical tank vessels and to protect the environment from pollution.

Annual Estimated Burden Hours: The estimated burden is 738 hours a year.

3. *Title:* Report of Discharge of Oil or Hazardous Substance.

OMB Control Number: 2115–0137.

Type of Request: Extension of a currently approved collection.

Affected Public: Persons in charge of vessels or onshore or offshore facilities.

Form: This collection of information does not require the public to fill out forms, but does require them to report, by phone using a toll-free number, any pollution discharge to the National Response Center (NRC).

Abstract: The collection of information requires any person in charge of a vessel or an onshore or offshore facility to report to the NRC, as soon as he or she knows of any discharge of oil or a hazardous substance.

Annual Estimated Burden Hours: The estimated burden is 8,667 hours a year.

4. *Title:* Records Relating to Citizenship of Personnel on Units Engaged in Activities on Outer Continental Shelf (OCS).

OMB Control Number: 2115–0143.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of vessels and units engaged in activities on the OCS.

Form: This collection of information does not require the public to fill out forms, but does require employers to ascertain citizenship of their employees on the OCS.

Abstract: Vessels and units engaged in activities on the OCS (exploration and exploitation of offshore resources such as gas and oil) must be manned and crewed by U.S. citizens or permanent resident aliens (43 U.S.C. 1356). Employers must, by 33 CFR 141.35, maintain records demonstrating compliance.

Annual Estimated Burden Hours: The estimated burden is 442 hours a year.

5. *Title:* Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 2115–0541.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of tank barges.

Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.

Abstract: This information is needed to ensure the safe shipment of bulk hazardous liquids in barges. In particular, it is needed to ensure that barges meet safety standards and to ensure that barges' crewmembers have the information necessary to operate barges safely.

Annual Estimated Burden Hours: The estimated burden is 10,903 hours a year.

Dated: February 4, 2003.

Clifford I. Pearson,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 03–3603 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13767]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers 2115–0606, 2115–0077, 2115–0096, 2115–0549, 2115–0603 and 2115–0640

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the six Information Collection Reports (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before March 17, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2002–13767) more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a website on which you can post your comments.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2002–13767 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the Internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [67 FR 69806 (November 19, 2002)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2002–13767. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* National Response Resource Inventory.

OMB Control Number: 2115–0606.

Type of Request: Extension of a currently approved collection.

Affected Public: Organizations that remove oil spills.

Form: This collection of information does not require the public to fill out forms, but the information is submitted in a electronic format.

Abstract: The information is needed to improve the effectiveness of deploying response equipment in the event of an oil spill. It may also be used in the development of contingency plans.

Annual Estimated Burden Hours: The estimated burden is 1,224 hours a year.

2. *Title:* Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent and Operations Manual (OM).

OMB Control Number: 2115–0077.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of facilities that transfer oil or hazardous materials in bulk.

Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.

Abstract: A Letter of Intent is a notice to the Coast Guard Captain of the Port that an operator intends to operate a facility that will transfer bulk oil or hazardous materials to or from vessels. An OM establishes procedures to follow when conducting the transfer and in the event of a spill.

Annual Estimated Burden Hours: The estimated burden is 27,819 hours a year.

3. Title: Records on Oil and Hazardous Material Pollution Prevention and Safety: Equivalents, Alternatives, and Exemptions.

OMB Control Number: 2115–0096.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of facilities and vessels transferring oil and hazardous materials in bulk.

Form: CG–4602B.

Abstract: This information is needed to minimize the number and impact of pollution discharges and accidents occurring during transfer of oil or hazardous materials. It also helps to evaluate proposed alternatives and requests for exemptions.

Annual Estimated Burden Hours: The estimated burden is 1,440 hours a year.

4. *Title:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 2115–0549.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of passenger vessels.

Form: This collection of information does not require the public to fill out forms, but does require the posting of two placards on passenger vessels.

Abstract: The collection of information requires passenger vessels to have posted two placards that contain safety and operating instructions on the use of cooking appliances that employ liquefied gas or compressed natural gas.

Annual Estimated Burden Hours: The estimated burden is 2,680 hours a year.

5. *Title:* Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

OMB Control Number: 2115–0603.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of certain tank vessels.

Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.

Abstract: OPA 1990 requires the issuance of rules for the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old. This also helps to verify the structural integrity of older such vessels.

Annual Estimated Burden Hours: The estimated burden is 13,688 hours a year.

6. *Title:* Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States.

OMB Control Number: 2115–0640.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of certain vessels.

Form: This collection of information does not require the public to fill out forms, but does require the information to be reported electronically.

Abstract: The information is needed to reduce the number of ship collisions with endangered northern right whales. The rules establish two mandatory ship-reporting systems off the northeast and southeast coasts of the United States.

Annual Estimated Burden Hours: The estimated burden is 88 hours a year.

Dated: February 4, 2003.

Clifford I. Pearson,

Rear Admiral, Coast Guard, Director of Information and Technology.

[FR Doc. 03–3604 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Toledo Express Airport, Toledo, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Toledo-Lucas County Port Authority for the Toledo Express Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Toledo Express Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 22, 2003.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is January 24, 2003. The public comment period ends March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine Jones, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–670.7, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7298. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Toledo Express Airport are in compliance with applicable requirements of part 150, effective January 24, 2003. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 22, 2003. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

Toledo-Lucas County Port Authority submitted to the FAA on January 21, 2003 noise exposure maps, descriptions, and other documentation which were produced during the Supplemental Part 150 Study to the Final 1999 part 150 Noise Compatibility Study, January 2003. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise computability program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Toledo-Lucas County Port Authority. The specific maps under consideration are NEM–1, "Existing (2002) Conditions, Noise Exposure Map," and NEM–2, "Future (2007) NEM/NCP Conditions," on pages NEM–7 and NCP–6, respectively,] in the submission. The FAA has determined that these maps for Toledo Express Airport are in compliance with applicable requirements. This determination is effective on January 24, 2003. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Toledo Express Airport, also effective on January 24, 2003. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of a 180 days, will be completed on or before July 22, 2003.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 315, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Mr. Paul Toth, Jr. Airport Director, Toledo Express Airport, Swanton, Ohio 43558.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Dated: Issued in Belleville, Michigan, January 24, 2003.

Irene R. Porter,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 03–3600 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Provide an O'Hare International Airport Environmental Impact Statement Public Information Meeting in Schiller Park, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: The Federal Aviation Administration (FAA) Issuance of a Notice of Intent (NOI) to Conduct an Informational Meeting with Regard to the Ongoing Environmental Impact Statement for the Proposed Modernization Program for O'Hare International Airport.

SUMMARY: This NOI announces the FAA's intention to conduct a Public Information Meeting on behalf of the FAA's ongoing Environmental Impact Statement (EIS) for the proposed Modernization Program for O'Hare International Airport. The Airport is located in Chicago, Illinois. Due both to the anticipated high level of interest in matters pertaining to O'Hare International Airport, and FAA's desire to more fully involve and accommodate potentially interested persons, agencies, and other entities, the FAA has decided to conduct a Public Information Meeting focused on the status of the ongoing EIS, with special emphasis on project purpose and need matters. The information meeting will be co-hosted with the Chicago Department of Aviation (DOA), and it will be conducted as follows: Wednesday, March 19, 2003 from 4 p.m. to 8 p.m. at the Mirage Banquets facility at the Four Points Sheraton O'Hare hotel located at 10249 West Irving Park Road in Schiller Park, Illinois. A number of display boards illustrating the current status of the ongoing EIS and describing FAA's conceptualization of key project purpose and need criteria (as well as a number of the Airport's key present and projected operational problems) will be available for inspection. Staff of FAA and its Third Party EIS Contractor will be available at the Public Information Meeting to answer questions. Forms for providing written comments to FAA by interested parties on the matters presented by FAA in the Public Information Meeting will also be provided. FAA is requesting that comments be submitted by the close of business on Monday, April 21, 2003.

Representatives of the DOA will be available to offer information on its Airport Layout Plan (ALP), on its analysis of runway options, on its facility requirements, and on its concept for development of the Airport.

FOR FURTHER INFORMATION CONTACT: Michael W. MacMullen, Airports Environmental Program Manager, Federal Aviation Adminstration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. MacMullen can be contacted by phone at (847) 294–7522 (voice) and at (847) 294–7046 (facsimile).

SUPPLEMENTARY INFORMATION: The FAA previously decided to prepare an Environmental Impact Statement (EIS) addressing specific improvements at and adjacent to O'Hare International Airport. As presently conceived, the runway construction component of the O'Hare Modernization Program would involve: a new North Runway 9–27, a relocation of existing Runway 18–36 (Arrival Runway 9R–27L), a relocation of existing Runway 14L–32R (arrival Runway 9L–27R), a relocation of existing Runway 14R–32L (South Runway 9–27), an extension of existing Runway 9R–27L, and an extension of existing Runway 9L–27R. Overall, the proposed project as presently conceived would result in O'Hare International Airport ultimately having a total of eight runways: six parallel east-west runways, and two parallel runways oriented in the northeast-southwest direction. In addition, the O'Hare Modernization Program could also potentially involve relocation of some or all existing navigation aids, placement of new navigation aids, revision to existing air traffic control procedures, provision of a new western access to the Airport, additional terminal facilities, and various roadway and rail line relocations. Finally, the potential acquisition of approximately 539 housing units, 109 businesses, and 433 acres of property outside of the Airport's present boundaries is also envisioned. The purpose and need for the above-identified improvements will be presented and reviewed in detail within FAA's forthcoming EIS. In addition, reasonable alternatives, including the "no-build," will be considered, as appropriate.

Interested parties are invited to attend the Public Information Meeting and also to provide written comments to FAA. The FAA informational contact person identified above should receive any written comments by no later than the close of business on Monday, April 21, 2003.

Issued in Des Plaines, Illinois on February 6, 2003.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, Great Lakes Region.

[FR Doc. 03–3599 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–04]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 6, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on February 10, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12856.

Petitioner: The Lindbergh Corporation of America.

Section of 14 CFR Affected: 14 CFR 91.307(a)(1) and 105.43(a)(1).

Description of Relief Sought: To allow certain volunteer parachutists to maintain specific reserve parachutes under a program consisting of an inspection and repack every year and a detailed external inspection every 120 days. This program would allow Lindbergh to collect, compile, and publish data on the advisability of extending the 120-day repack requirement.

Docket No.: FAA–2002–13296.

Petitioner: Aircraft Investments, LLC.

Section of 14 CFR Affected: 14 CFR 21.191(g).

Description of Relief Sought: To allow Aircraft Investments to receive an amateur-built experimental airworthiness certificate under § 21.191(g) for its "Spirit of St. Louis" aircraft.

[FR Doc. 03–3601 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–05]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 6, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on February 10, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13209.

Petitioner: Kaman Aerospace Corporation.

Section of 14 CFR Affected: 14 CFR 141.39(d).

Description of Relief Sought: To permit Kaman Aerospace Corporation to conduct flight training under its part 141 pilot school certificate in Kaman K–1200 KMAX aircraft without at least two pilot stations with engine-power controls.

[FR Doc. 03–3602 Filed 2–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 5, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before March 17, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1353.

Regulation Project Number: FI–189–84 Final.

Type of Review: Extension.

Title: Debt Instruments With Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property.

Description: These regulations provide definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.

Respondents: Business or other for-profit, Individuals or households, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 525,000.

Frequency of Response: Other (per issuance of debt instrument with original issue discount).

Estimated Burden Hours Per Respondent: 21 minutes.

Estimated Total Reporting Burden: 185,500 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc, 03–3632 Filed 2–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–1 and Revenue Procedure 2003–3

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–1 and Revenue Procedure 2003–3, 26 CFR 601.201 Rulings and Determination Letters.

DATES: Written comments should be received on or before April 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedures should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 601.201—Rulings and Determination Letters.

OMB Number: 1545–1522.

Revenue Procedure Number: Revenue Procedure 2003–1 and Revenue Procedure 2003–3.

Abstract: The information requested in Revenue Procedure 2003–1 and Revenue Procedure 2003–3 is required to enable the Internal Revenue Service to give advice on filing letter rulings and determination letter requests and to process such requests.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, farms, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 3,800.

Estimated Time Per Respondent: 80 hours, 19 minutes

Estimated Total Annual Burden Hours: 305,230.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3752 Filed 2–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–19 and Notice 98–34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–19 and Notice 98–34, Guidance for Expatriates under Internal Revenue Code sections 877, 2501, 2107 and 6039F.

DATES: Written comments should be received on or before April 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of these notices should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Guidance for Expatriates under Internal Revenue Code sections 877, 2501, 2107 and 6039F.

OMB Number: 1545–1531.

Notice Number: Notice 97–19 and Notice 98–34.

Abstract: Notice 97–19 and Notice 98–34 provide guidance regarding the federal tax consequences for certain individuals who lose U.S. citizenship, cease to be taxed as U.S. lawful permanent residents, or are otherwise subject to tax under Code section 877. The information required by these notices will be used to help make a determination as to whether these taxpayers expatriated with a principal purpose to avoid tax.

Current Actions: There are no changes being made to these notices at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 12,350.

Estimated Time Per Respondent: 32 minutes.

Estimated Total Annual Burden Hours: 6,525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3753 Filed 2–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–15–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–15–91, Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions) (§ 1.988–5).

DATES: Written comments should be received on or before April 15, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the Internet *(Larnice.Mack@irs.gov)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

OMB Number: 1545–1312.

Regulation Project Number: INTL–15–91.

Abstract: This regulation provides that if a taxpayer identifies a hedge and dividend, rent, or royalty payment as a hedged qualified payment, then the taxpayer may integrate such transactions. The regulation also allows taxpayers to elect a mark to market method of accounting for foreign currency gains and losses.

Current Actions: There is no change to these existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 6, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3754 Filed 2–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, March 3, 2003 from 1 pm PST to 3 pm PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 3, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–3756 Filed 2–13–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 68, No. 31
Friday, February 14, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–7]

Proposed National Pollutant Discharge Elimination System (NPDES) General Permits for Storm Water Discharges from Construction Activities—Extension of Comment Period

Correction

In notice document 03–3240 beginning on page 6451 in the issue of Friday, February 7, 2003, make the following correction:

On page 6451, in the second column, under **SUMMARY**, in the eighth line, "February 13, 2003" should read, "February 3, 2003".

[FR Doc. C3–3240 Filed 2–13–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–07–AD; Amendment 39–13043; AD 2003–03–18]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 1900, 1900C, and 1900D Airplanes

Correction

In rule document 03–2784 beginning on page 5822 in the issue of Wednesday, February 5, 2003, make the following correction:

§ 39.13 [Corrected]

On page 5823, in § 39.13, in the table, in the second column, under the heading "Compliance", in the last line, "AC" should read, "AD".

[FR Doc. C3–2784 Filed 2–13–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14347; Airspace Docket No. 03–ACE–4]

Modification of Class D Airspace; and Modification of Class E Airspace; Topeka, Philip Billard Municipal Airport, KS

Correction

In rule document 03–3266 beginning on page 6606 in the issue of Monday, February 10, 2003 make the following correction:

On page 6606, in the second column, under the heading **Comments Invited**, in the eighth line, after "reasoned" add the following text: "regulatory decisions on the proposal. Comments are specifically invited on the overall".

[FR Doc. C3–3266 Filed 2–13–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
February 14, 2003

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–07]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 2002 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 24 CFR part 581.3(b) landholding agencies are required to notify HUD by December 31, 2002, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 24 CFR part 581.8(d) and (e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Julie Jones-Conte, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; Corps of Engineers: Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, Washington, DC 20314–1000; (202) 761–7425; U.S. Navy: Charles C. Cocks, Dept. of Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; U.S. Air Force: Albert F. Lowas, Jr., Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 22209–2802; (703) 696–5501; GSA: Brian K. Polly, Office of Property Disposal, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0386; Dept. of Veterans Affairs: Amelia McLellan, Real Property Service, Dept. of Veterans Affairs, room 419, 810 Vermont Ave. NW., Washington, DC 20420; (202) 565–5941; Dept. of Energy: Andy Duran, Office of Engineering & Construction Management, ME–90, Washington, DC 20585; (202) 586–4548; Dept. of Transportation: Rugene Spruill, Space Management, Transportation Administrative Service Center, DOT, 400 Seventh St. SW., room 10314, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Linda Tribby, Acquisition & Property Management, Dept. of Interior, 1849 C St. NW., MS 5512, Washington, DC 20240; (202) 219–0728; (These are not toll-free numbers).

Dated: February 6, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V PROPERTIES REPORTED IN YEAR 2002 WHICH ARE SUITABLE AND AVAILABLE

Agriculture

Kentucky

Building

Residence
420 Willow Street
Morehead Co: KY 40351–
Property No.: 15200210004
Status: Excess
Comment: 1300 sq. ft., brick

Ranger's Residence
125 Cherry Road
Berea Co: KY
Property No.: 15200210005
Status: Excess
Comment: 1680 sq. ft., brick, needs repair

Montana

Building

Ranger Residence Garage
401 Manix Street
Augusta Co: Lewis & Clark MT 59422–
Property No.: 15200210001
Status: Excess
Comment: 372 sq. ft., needs repair, most recent use—bunkhouse, off-site use only

Ranger Residence
401 Manix Street
Augusta Co: Lewis & Clark MT
Property No.: 15200210002
Status: Excess
Comment: 856/700 sq. ft., needs repair, most recent use—bunkhouse, off-site use only

Choteau Bunkhouse
4236 Hwy 89
Choteau Co: Teton MT 59422–
Property No.: 15200210003
Status: Excess
Comment: 1209 sq. ft., needs repair, presence of asbestos, most recent use—bunkhouse, off-site use only

Air Force

Alaska

Building

Bldg. 6165
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Property No.: 18200230007
Status: Unutilized
Comment: 15,970 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 6173
Elmendorf AFB
Elmendorf Co: AK 99506—
Property No.: 18200230008
Status: Unutilized
Comment: 16,290 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 7525
Elmendorf AFB

Elmendorf AFB Co: AK 99506–
Property No.: 18200230009
Status: Unutilized
Comment: 26,226 sq. ft., need rehab, possible asbestos/lead paint, most recent use—dormitory, off-site use only

Florida

Land

Homestead Communications Annex
Homestead Co: Dare FL 33033–
Property No.: 18200210015
Status: Excess
Comment: 20 acres w/concrete bldg., consist of wetlands/100 year floodplain, most recent use—high frequency regional broadcasting system

Missouri

Building

Bldgs. 90A/B, 91A/B, 92A/B
Jefferson Barracks Housing
St. Louis Co: MO 63125–
Property No.: 18200220002
Status: Excess
Comment: 6450 sq. ft., needs repair, includes 2 acres

Nebrasko

Land

Hastings Radar Bomb Scoring
Hastings Co: Adams NE 68901–
Property No.: 18199810027
Status: Unutilized
Comment: 11 acres

New York

Building

Lockport Comm. Facility
Shawnee Road
Lockport Co: Niagara NY
Property No.: 18200040004
Status: Excess
Comment: 2 concrete block bldgs., (415/2929 sq. ft.) on 7.68 acres

South Dokota

Building

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Property No.: 18199340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

Land

S. Nike Ed. Annex Land
Ellsworth AFB
Pennington Co: SD 57706–
Property No.: 18200220010
Status: Unutilized
Comment: 7 acres w/five foundations from demolished bldgs. remain on site; with a road and a parking lot

Army

Alaska

Building

Bldgs. 09100, 09104–09106
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Property No.: 21200020158
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only.

5 Bldgs.
Fort Richardson
09108, 09110–09112, 09114
Ft. Richardson Co: AK 99505–6500
Property No.: 21200020159
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09128, 09129
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Property No.: 21200020160
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09151, 09155, 09156
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Property No.: 21200020161
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldg. 09158
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Property No.: 21200020162
Status: Unutilized
Comment: 672 sq. ft., most recent use—storage shed, off-site use only

Bldgs. 09160–09162
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Property No.: 21200020163
Status: Unutilized
Comment: 11,520 sq. ft., concrete, most recent use—NCO-ENL FH, off-site use only

Bldgs. 09164, 09165
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Property No.: 21200020164
Status: Unutilized
Comment: 2304/2880 sq. ft., most recent use—storage, off-site use only

Bldg. 10100
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Property No.: 21200020165
Status: Unutilized
Comment: 4688 sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldg. 00390
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030067
Status: Excess
Comment: 13,632 sq. ft., off-site use only

Bldgs. 01200, 01202
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030068
Status: Excess
Comment: 4508/6366 sq. ft., most recent use—hazard bldg., off-site use only

Bldg. 01204
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030069
Status: Excess
Comment: 5578 sq. ft., most recent use—VOQ transient, off-site use only

Bldgs. 01205–01207
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030070
Status: Excess
Comment: various sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. 01208, 01210, 01212
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030071
Status: Excess
Comment: various sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. 01213, 01214
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030072
Status: Excess
Comment: 11964/13740 sq. ft., most recent use—transient UPH, off-site use only

Bldgs. 01218, 01230
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030073
Status: Excess
Comment: 480/188 sq. ft., most recent use—hazard bldgs., off-site use only

Bldgs. 01231, 01232
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030074
Status: Excess
Comment: 458/4260 sq. ft., most recent use—hazard bldgs., off-site use only

Bldg. 01234
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030075
Status: Excess
Comment: 615 sq. ft., most recent use—admin., off-site use only

Bldg. 01237
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030076
Status: Excess
Comment: 408 sq. ft., most recent use—fuel/pol bldg., off-site use only

Bldg. 01272
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030077
Status: Excess
Comment: 308 sq. ft., most recent use—storage, off-site use only

Bldg. 08109
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030080
Status: Excess
Comment: 1920 sq. ft., most recent use—storage, off-site use only

Bldg. 21001
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030081
Status: Excess
Comment: 3200 sq. ft., most recent use—family housing, off-site use only

Bldg. 22001
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030082
Status: Excess

Comment: 1448 sq. ft., most recent use—family housing, off-site use only

Bldg. 22002
Fort Richardson
Ft. Richardson Co: AK 99505–
Property No.: 21200030083
Status: Excess
Comment: 1508 sq. ft., most recent use—family housing, off-site use only

Armory
NG Noorvik
Noorvik Co: AK 99763–
Property No.: 21200110075
Status: Unutilized
Comment: 1200 sq. ft., most recent use—armory, off-site use only

Bldg. 00229
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Property No.: 21200120085
Status: Excess
Comment: 13,056 sq. ft., off-site use only

Arizona

Building

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Property No.: 21199310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Property No.: 21199420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Property No.: 21199520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos, off-site use only

2 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Property No.: 21200010082
Location: 15542, 15546
Status: Unutilized
Comment: 552 & 400 sq. ft., presence of asbestos/lead paint, most recent use—restrooms, off-site use only

2 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Property No.: 21200010083
Location: 15544, 15552
Status: Unutilized
Comment: 9713 & 2895 sq. ft., presence of asbestos/lead paint, most recent use—classrooms, off-site use only

Bldg. 15543
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Property No.: 21200010084
Status: Unutilized
Comment: 416 sq. ft., presence of asbestos/lead paint, most recent use—rec. shelter, off-site use only

California

Building

Bldgs. 204–207, 517
Presidio of Monterey
Monterey Co: CA 93944–5006
Property No.: 21200020167
Status: Unutilized
Comment: 4780/10,950 sq. ft., presence of asbestos/lead paint, most recent use—classroom/admin/storage, off-site use only

Bldgs. 18026, 18028
Camp Roberts
Monterey Co: CA 93451–5000
Property No.: 21200130081
Status: Excess
Comment: 2024/487 sq. ft., concrete, poor condition, off-site use only

Colorado

Building

Bldg. F–107
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Property No.: 21200130082
Status: Unutilized
Comment: 10,126 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–108
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Property No.: 21200130083
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–209
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Property No.: 21200130084
Status: Unutilized
Comment: 400 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–217
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Property No.: 21200130085
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–218
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Property No.: 21200130086
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–220
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Property No.: 21200130087
Status: Unutilized
Comment: 690 sq. ft., poor condition, possible asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. T–6001
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Property No.: 21200130088
Status: Unutilized
Comment: 4372 sq. ft., poor condition, possible asbestos/lead paint, most recent use—vet clinic, off-site use only

Georgia

Building

Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Property No.: 21199011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor

Bldg. 1252, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only

Bldg. 4882, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220727
Status: Unutilized
Comment: 6627 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only

Bldg. 4977, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220736
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only

Bldg. 4944, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only

Bldg. 4960, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220752
Status: Unutilized

Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4969, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only

Bldg. 4884, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220762
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4966, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220764
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only

Bldg. 4965, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only

Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only

Bldg. 4979, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only

Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Property No.: 21199410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only

Bldg. 21314
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Property No.: 21199410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only

Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Property No.: 21199410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only

Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Property No.: 21199410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only

Bldg 4051, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720156
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 1737
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720161
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720167
Status: Unutilized
Comment: 13,644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720168
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldgs. 2865, 2869, 2872
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720169
Status: Unutilized
Comment: approx. 1100 sq. ft. each, needs rehab, most recent use—shower fac., off-site use only

Bldg. 4476
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720184
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only

8 Bldgs.
Fort Benning 4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720189
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only

Bldg. 4714
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720191
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only

Bldg. 4702
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720192
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only

Bldgs. 4712–4713
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199720193
Status: Unutilized
Comment: 1983/10,270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only

Bldg. 305
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199810268
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only

Bldg. 318
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199810269
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only

Bldg. 1792
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199810274
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only

Bldg. 1836
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199810276
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only

Bldg. 4373
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199810286
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg. off-site use only

Bldg. 4628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199810287
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only

Bldg. 92
Fort Benning
Co: Muscogee GA 31905–
Property No.: 21199830278
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2445
Fort Benning
Co: Muscogee GA 31905–
Property No.: 21199830279
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldg. 4232
Fort Benning
Co: Muscogee GA 31905–
Property No.: 21199830291
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldg. 39720
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Bldg. No.: 21199930119
Status: Unutilized
Comment: 1520 sq. ft., concrete block, possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. 492
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930120
Status: Unutilized
Comment: 720 sq. ft., most recent use—admin/maint, off-site use only

Bldg. 880
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930121
Status: Unutilized
Comment: 57,110 sq. ft., most recent use—instruction, off-site use only

Bldg. 1370
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930122
Status: Unutilized
Comment: 5204 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2288
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930123
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only

Bldg. 2290
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930124
Status: Unutilized
Comment: 455 sq. ft., most recent use—storage, off-site use only

Bldg. 2293
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930125
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2297
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930126
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin.

Bldg. 2505
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930127
Status: Unutilized
Comment: 10,257 sq. ft., most recent use—repair shop, off-site use only

Bldg. 2508
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930128
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only

Bldg. 2815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930129
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 3815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930130
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only

Bldg. 3816
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930131
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only

Bldg. 5886
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930134
Status: Unutilized
Comment: 67 sq. ft., most recent use—maint/storage, off-site use only

Bldgs. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930135
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930136
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199930137
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only

Bldg. T–1003
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030085
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

Bldgs. T–1005, T–1006, T–1007
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030086
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1015, T–1016, T–1017
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030087
Status: Excess
Comment: 7496 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1018, T–1019
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030088
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1020, T–1021
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030089
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1022
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030090
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—supply center, off-site use only

Bldg. T–1027
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030091
Status: Excess
Comment: 9024 sq ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1028
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030092
Status: Excess
Comment: 7496 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1035, T–1036, T–1037
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030093
Status: Excess
Comment: 1626 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1038, T–1039
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030094
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1040, T–1042
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030095
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1086, T–1087, T–1088
Fort Stewart
Hinesville Co: Liberty GA 31514–
Property No.: 21200030096
Status: Excess
Comment: 7680 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. 223
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21200040044
Status: Unutilized
Comment: 21,556 sq. ft., most recent use—gen. purpose

Bldg. 228
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21200040045
Status: Unutilized
Comment: 20,220 sq. ft., most recent use—gen. purpose

Bldg. 2051
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21200040046
Status: Unutilized
Comment: 6077 sq. ft., most recent use—storage

Bldg. 2053
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21200040047
Status: Unutilized
Comment: 14,520 sq. ft., most recent use—storage

Bldg. 2677
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21200040048
Status: Unutilized
Comment: 19,326 sq. ft., most recent use—maint. shop

Bldg. 02301
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Property No.: 21200140075
Status: Unutilized
Comment: 8484 sq. ft., needs major rehab, potential asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T0130
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Property No.: 21200230041
Status: Excess
Comment: 10,813 sq. ft., off-site use only

Bldg. T0157
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Property No.: 21200230042
Status: Excess
Comment: 1440 sq. ft., off-site use only

Bldg. T0251
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Property No.: 21200230043
Status: Excess
Comment: 27,254 sq. ft., off-site use only

Bldgs. T291, T292
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Property No.: 21200230044
Status: Excess
Comment: 5220 sq. ft. each, off-site use only

Bldg. T0295
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Property No.: 21200230045
Status: Excess
Comment: 5220 sq. ft., off-site use only

Bldg. T0470
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Property No.: 21200230046
Status: Excess
Comment: 27,254 sq. ft., off-site use only

Bldg. T1191
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Property No.: 21200230047
Status: Excess
Comment: 9386 sq. ft., off-site use only

Bldg. T1192
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Property No.: 21200230048
Status: Excess
Comment: 3992 sq. ft., off-site use only

Land

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential

Hawaii

Building

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818–
Property No.: 21199030324
Location: Approximately 600 feet from Main Gate on Aliamanu Drive
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations

Bldg. T–337
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Property No.: 21199640203
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only

Bldg. 01227
Schofield Barracks
Wahiawa Co: HI 96786–
Property No.: 21200220104
Status: Unutilized
Comment: 525 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. 4334
Schofield Barracks
Wahiawa Co: HI 96786–
Property No.: 21200220105
Status: Unutilized
Comment: 7402 sq. ft., concrete, needs repair, most recent use—housing, off-site use only

Bldg. 06508
Schofield Barracks
Wahiawa Co: HI 96786–
Property No.: 21200220106
Status: Unutilized
Comment: 1140 sq. ft., most recent use—office, off-site use only

Illinois

Building

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Property No.: 21199620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

Bldg. AR112
Sheridan Reserve
Arlington Heights Co: IL 60052–2475
Property No.: 21200110081
Status: Unutilized
Comment: 1000 sq. ft., off-site use only

Kansas

Building

Bldg. S–830
Fort Leavenworth
Leavenworth KS 66027–
Property No.: 21199820161
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only

Bldg. S–831
Fort Leavenworth
Leavenworth KS 66027–
Property No.: 21199820162
Status: Unutilized
Comment: 5789 sq. ft., most recent use—underground storage, off-site use only

Bldg. P–243
Fort Leavenworth
Leavenworth KS 66027–
Property No.: 21199830321
Status: Unutilized
Comment: 242 sq. ft., most recent use—industrial, off-site use only

Bldg. P–469
Fort Leavenworth
Leavenworth Co: KS 66027–
Property No.: 21200210031
Status: Unutilized
Comment: 625 sq. ft., most recent use—storage, off-site use only

Bldg. S–471
Fort Leavenworth
Leavenworth Co: KS 66027–
Property No.: 21200210032
Status: Unutilized
Comment: 4535 sq. ft., most recent use—repair shop, off-site use only

Bldg. P–485
Fort Leavenworth
Leavenworth Co: KS 66027–
Property No.: 21200210033
Status: Unutilized
Comment: 2006 sq. ft., most recent use—instructional, off-site use only

Bldg. S–486
Fort Leavenworth
Leavenworth Co: KS 66027–
Property No.: 21200210034
Status: Unutilized
Comment: 960 sq. ft., most recent use—instructional, off-site use only

Bldg. S–496
Fort Leavenworth
Leavenworth Co: KS 66027–
Property No.: 21200210035
Status: Unutilized
Comment: 7134 sq. ft., most recent use—vocational, off-site use only

Bldg. 00493
Fort Leavenworth
Ft. Leavenworth Co: KS 66027–
Property No.: 21200230049
Status: Unutilized
Comment: 1020 sq. ft., most recent use—storage, off-site use only

Bldg. 00498
Fort Leavenworth
Ft. Leavenworth Co: KS 66027–
Property No.: 21200230050
Status: Unutilized
Comment: 208 sq. ft., most recent use—shed, off-site use only

Louisiana

Building

Bldg. 8423,
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Property No.: 21199640528
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Bldg. 8449,
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Property No.: 21199640539
Status: Underutilized
Comment: 2093 sq. ft., most recent use—office

Maryland

Building

Bldg. 907
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Property No.: 21200120092
Status: Unutilized
Comment: 2306 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 930
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Property No.: 21200120097
Status: Unutilized
Comment: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 938
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Property No.: 21200120098
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2837
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Property No.: 21200120101
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 0310A
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120103
Status: Unutilized
Comment: 120 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 00313
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120104
Status: Unutilized
Comment: 983 sq. ft., most recent use—storage, off-site use only

Bldg. 00340
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120105
Status: Unutilized
Comment: 384 sq. ft., most recent use—storage, off-site use only

Bldg. 0459B
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120106
Status: Unutilized
Comment: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

Bldg. 00785
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120107
Status: Unutilized
Comment: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

Bldg. E3728
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120109
Status: Unutilized
Comment: 2596 sq. ft., presence of asbestos/lead paint, most recent use—testing facility, off-site use only

Bldg. 05213
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120112
Status: Unutilized
Comment: 200 sq .ft., poor condition, most recent use—storage, off-site use only

Bldg. E5239
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120113
Status: Unutilized
Comment: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120114
Status: Unutilized
Comment: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. E5637
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Property No.: 21200120115
Status: Unutilized
Comment: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 503
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Property No.: 21200130092
Status: Unutilized
Comment: 14,244 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 2478
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Property No.: 21200130097
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldg. 8481
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Property No.: 21200130098
Status: Unutilized
Comment: 7718 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. 219
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200140078
Status: Unutilized
Comment: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 229
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200140079
Status: Unutilized
Comment: 2250 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 287
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200140080
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 294
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200140081
Status: Unutilized
Comment: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, off-site use only

Bldg. 949
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200140083
Status: Unutilized
Comment: 2441 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 979
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200140084
Status: Unutilized
Comment: 2331 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1007
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200140085
Status: Unutilized
Comment: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2212
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200140086
Status: Unutilized
Comment: 9092 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 3000
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200140087
Status: Unutilized
Comment: 10,663 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 00546
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200220109
Status: Unutilized
Comment: 5659 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 00939
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200220110
Status: Unutilized
Comment: 8185 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 02206
Fort Meade
Ft. Meade Co: Anne Arundel MD 29755–
Property No.: 21200220111
Status: Unutilized
Comment: 3075 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 02207
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200220112
Status: Unutilized
Comment: 6855 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 02271
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200220114
Status: Unutilized
Comment: 10,080 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 04675
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Property No.: 21200220115
Status: Unutilized
Comment: 1710 sq. ft., possible asbestos/lead paint, most recent use—rental store, off-site use only

Bldg. 2050A
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Property No.: 21200230051
Status: Unutilized
Comment: 200 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. 2211, 2213
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 29755–
Property No.: 21200230053
Status: Unutilized
Comment: 6936 & 8386 sq ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. 2214
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Property No.: 21200230054
Status: Unutilized
Comment: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2217
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Property No.: 21200230055
Status: Unutilized
Comment: 7710 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin/warehouse, off-site use only

Bldg. 2253
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Property No.: 21200230056
Status: Unutilized
Comment: 18,912 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. 2275
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Property No.: 21200230057
Status: Unutilized
Comment: 10,080 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 2276
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Property No.: 21200230058
Status: Unutilized
Comment: 10,080 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 8880
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Property No.: 21200230060
Status: Unutilized
Comment: 2500 sq. ft., needs rehab, most recent use—storehouse/maint. shop, off-site use only

Massachusetts

Building

Bldg. 76
Army Soldier Systems Center
Natick Co: Middlesex MA 01760–
Property No.: 21200210037
Status: Unutilized
Comment: 1000 sq. ft., most recent use—storage, off-site use only

Missouri

Building

Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199340212
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199420441
Status: Underutilized
Comment: 4720 sq-ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T–2191
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T–2197
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Property No.: 21199510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 1650
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199810311
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only

Bldg. 2170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199810313
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199820179
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2169, 2181, 2182, 2183

Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199820180
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199820181
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2187
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199820182
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property No.: 21199820183
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Montana

Building

Bldg. 00405
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Property No.: 21200130099
Status; Unutilized
Comment: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Property No.: 21200130100
Status: Unutilized
Comment: 528 sq. ft., needs rehab, presence of asbestos, security limitations

New Hampshire

Building

Bldg. KG001
Grenier Field USARC
Manchester Co: Rockingham NH 03103–7474
Property No.: 21200030104
Status: Excess
Comment: 18,994 sq ft., presence of asbestos, most recent use—classroom, off-site use only

Bldg. KG002
Grenier Field USARC
Manchester Co: Rockingham NH 03103–7474
Property No.: 21200030105
Status: Excess
Comment: 20,014 sq. ft., presence of asbestos, most recent use—storage/store, off-site use only

Bldg. KG003
Grenier Field USARC
Manchester Co: Rockingham NH 03103–7474
Property No.: 21200030106
Status: Excess
Comment: 3458 sq. ft., presence of asbestos, most recent use—veh. maint., off-site use only

New Jersey

Building

Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Property No.: 21199740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only

Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Property No.: 21199740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C
Armament R, D, &'Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Property No.: 21200130103
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only

New Mexico

Building

Bldg. 34198
White Sands Missile Range
Dona Ana Co: NM 88002–
Property No.: 21200230062
Status: Excess
Comment: 107 sq. ft., most recent use—security, off-site use only

New York

Building

Bldg. T–181
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130129
Status: Unutilized
Comment: 3151 sq. ft., needs rehab, most recent use—housing mnt., off-site use only

Bldg. T–201
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130131
Status: Unutilized
Comment: 2305 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–203
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130132
Status: Unutilized
Comment: 2284 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–252
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130133
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–253, T–256, T–257
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130134
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–271, T–272, T–273
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130135
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. T–274
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130136
Status: Unutilized
Comment: 2750 sq. ft., needs rehab, most recent use—BN HQ, off-site use only

Bldgs. T–276, T–277, T–278
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130137
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. T–1030
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130139
Status: Unutilized
Comment: 15,606 sq. ft., needs rehab, most recent use—simulator bldg., off-site use only

Bldg. P–2159
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130140
Status: Unutilized
Comment: 1948 sq. ft., needs rehab, most recent use—waste/water treatment, off-site use only

Bldg. T–2443
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200130142
Status: Unutilized
Comment: 793 sq. ft., needs rehab, most recent use—vet facility, off-site use only

Bldgs. T–401, T–403
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210042
Status: Unutilized
Comment: 2305/2284 sq. ft., needs repair, most recent use—battalion hq bldg., off-site use only

Bldgs. T–404, T–406, T–407
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210043
Status: Unutilized
Comment: 2000/1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–430
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210044
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

4 Bldgs.
Fort Drum
T–431, T–432, T–433, T–434
Ft. Drum Co: Jefferson NY 13602–

Property No.: 21200210045
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–435
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210046
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–437, T–438
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210047
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–439, T–460
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210048
Status: Unutilized
Comment: 2588/2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

4 Bldgs.
Fort Drum
T–461, T–462, T–463, T–464
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210049
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–465
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210050
Status: Unutilized
Comment: 2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–405, T–408
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210051
Status: Unutilized
Comment: 1296 sq. ft., needs repair, most recent use—storage, off-site use only

6 Bldgs.
Fort Drum
T–410, T–411, T–412, T–416, T–417, T–418
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210052
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–421, T–422
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210053
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–423, T–424
Fort Drum
Ft. Drum Co: Jefferson NY 13602—
Property No.: 21200210054
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

7 Bldgs.
Fort Drum
T–441, T–442, T–443, T–444, T–446—T–448
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210055
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

6 Bldgs.
Fort Drum
T–451, T–452, T–453, T–454, T–456, T–458
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210056
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

5 Bldgs.
Fort Drum
T–471, T–472, T–473, T–474, T–477
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210057
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–420, T–445, T–470
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210058
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—dining facility, off-site use only

Bldgs. T–440, T–450
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210059
Status: Unutilized
Comment: 2360 sq. ft., needs repair, most recent use—dining facility, off-site use only

Bldg. T–478
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Property No.: 21200210060
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—classroom, off-site use only

North Carolina

Building

Bldg. C5536
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Property No.: 21200130150
Status: Unutilized
Comment: 600 sq. ft., single wide trailer w/metal storage shed, needs major repair, presence of asbestos/lead paint, off-site use only

Oklahoma

Building

Bldg. T–838,
Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Property No.: 21199220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable)

Bldg. T–954,
Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Property No.: 21199240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop

Bldg. T–3325,
Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Property No.: 21199240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse

Bldg. T1652
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Property No.: 21199440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015
Fort Sill
Lawton Co: Comanche OK 73501–5100
Property No.: 21199520197
Status: Unutilized
Comment: 15,402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366
Fort Sill
Lawton Co: Comanche OK 73503–
Property No.: 21199610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building T–2952
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199710047
Status: Unutilized
Comment: 4327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only

Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199710066
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199710086
Location: T–6465, T–6466, T–6467, T–6468
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off-site use only

Bldg. T–810
Fort Sill

Lawton Co: Comanche OK 73503–5100
Property No.: 21199730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only
Bldgs. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730351
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1177
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730356
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only
Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1940
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730360
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730364
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730366
Status: Unutilized
Comment: 1656–3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only
Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730367
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2209
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730368
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–2291 thru T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730372
Status: Unutilized
Comment: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730383
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldgs. T–4401, T–4402
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730393
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730409
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730414
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only
Bldgs. T–7290, T–7291
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730417
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-site use only
Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only
4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only
Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910135
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only
Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910140
Status: Unutilized
Comment: 4093/4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only
Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only
Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910156
Status: Unutilized

Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only
Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only
Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910158
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only
Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21199910159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only
Bldg. S–4023
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21200010128
Status: Unutilized
Comment: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. P–747
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21200120120
Status: Unutilized
Comment: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only
Bldg. P–842
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21200120123
Status: Unutilized
Comment: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–911
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21200120124
Status: Unutilized
Comment: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. P–1672
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21200120126
Status: Unutilized
Comment: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. S–2362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21200120127
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only
Bldg. P–2589
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21200120129
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–3043
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21200120130
Status: Unutilized
Comment: 80 sq. ft., possible asbestos/lead paint, most recent use—guard shack, off-site use only
Bldg. S–4749
Fort Sill
Lawton Co: Comanche OK 73503–5100
Property No.: 21200130152
Status: Unutilized
Comment: 1438 sq. ft., possible asbestos/lead paint, most recent use—weather station, off-site use only

Pennsylvania

Building

Bldg. 00634
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Property No.: 21200240089
Status: Unutilized
Comment: 113 sq. ft., presence of asbestos, most recent use—plant/utility bldg., off-site use only

South Carolina

Building

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Property No.: 21199730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.
Bldg. 2441
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Property No.: 21199820187
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.
Bldg. 3605
Fort Jackson
Ft. Jackson Co: Richland SC 29202–
Property No.: 21199820188
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage
Bldg. 1765
Fort Jackson
Ft. Jackson Co: Richland SC 29202–
Property No.: 21200030109
Status: Unutilized
Comment: 1700 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—training bldg., off-site use only

Land

One Acre
Fort Jackson
Columbia Co: Richland SC 29202–
Property No.: 21200110089
Status: Underutilized
Comment: approx. 1 acre

Texas

Building

Bldg. 7137
Fort Bliss
El Paso Co: El Paso TX 79916–
Property No.: 21199640564
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only
Bldg. 919
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Property No.: 21199920212
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only
Bldg. 92043
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200020206
Status: Unutlilzed
Comment: 450 sq. ft., most recent use—storage, off-site use only
Bldg. 92044
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200020207
Status: Unutilized
Comment: 1920 sq. ft., most recent use—admin., off-site use only
Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200020208
Status: Unutilized
Comment: 2108 sq. ft., most recent use—maint., off-site use only
Bldg. 4469
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200030116
Status: Unutilized
Comment: 5310 sq. ft., most recent use—barracks, off-site use only
Bldg. 1281
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110091
Status: Unutilized
Comment: 25,027 sq. ft., most recent use—cold storage, off-site use only
Bldg. 3656
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110093
Status: Unutilized
Comment: 1806 sq. ft., most recent use—igloo str. inst., off-site use only
Bldg. 7113
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110094
Status: Unutilized
Comment: 14,807 sq. ft., most recent use—nursery school, off-site use only
Bldg. 7133
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110095
Status: Unutilized
Comment: 11,650 sq. ft., most recent use—storage, off-site use only
Bldg. 7136

Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110096
Status: Unutilized
Comment: 11,755 sq. ft., most recent use—vet facility, off-site use only

Bldg. 7146
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110097
Status: Unutilized
Comment: most recent use—oil storage, off-site use only

Bldg. 7147
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110098
Status: Unutilized
Comment: most recent use—oil storage, off-site use only

Bldg. 7153
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110099
Status: Unutilized
Comment: 11,924 sq. ft., most recent use—bowling center, off-site use only

Bldg. 7162
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110100
Status: Unutilized
Comment: 3956 sq. ft., most recent use—development center, off-site use only

Bldg. 11116
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200110101
Status: Unutilized
Comment: 20,100 sq. ft., most recent use—storage, off-site use only

Bldg. 7113
Fort Bliss
El Paso Co: TX 79916–
Property No.: 21200220132
Status: Unutilized
Comment: 8855 sq. ft., presence of asbestos/lead paint, most recent use—child development center, off-site use only

Bldg. T5900
Camp Bullis
San Antonio Co: Bexar TX 78257–
Property No.: 21200220133
Status: Excess
Comment: 9876 sq. ft., possible lead paint, most recent use—theater/training bldg., off-site use only

Bldg. T6111
Camp Bullis
San Antonio Co: Bexar TX 78257–
Property No.: 21200220134
Status: Excess
Comment: 521 sq. ft., possible lead paint, most recent use—gas station, off-site use only

Bldg. T5002
Camp Bullis
San Antonio Co: Bexar TX 78257–
Property No.: 21200220135
Status: Excess
Comment: 370 sq. ft., presence of lead paint, off-site use only

Bldgs. 107, 108
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220136
Status: Unutilized
Comment: 13,319/28,051 sq. ft., most recent use—admin., off-site use only

Bldg. 120
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220137
Status: Unutilized
Comment: 1450 sq. ft., most recent use—dental clinic, off-site use only

Bldg. 134
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220138
Status: Unutilized
Comment: 16,114 sq. ft., most recent use—auditorium, off-site use only

Bldg. 56305
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220143
Status: Unutilized
Comment: 2160 sq. ft., most recent use—admin., off-site use only

Bldg. 56402
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220144
Status: Unutilized
Comment: 2680 sq. ft., most recent use—recreation center, off-site use only

Bldgs. 56403, 56405
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220145
Status: Unutilized
Comment: 480 sq. ft., most recent use—shower, off-site use only

Bldgs. 56620, 56621
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220146
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220147
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56628
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220148
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56630, 56631
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220149
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56636, 56637
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220150
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56638
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220151
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56703, 56708
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220152
Status: Unutilized
Comment: 1306 sq. ft., most recent use—shower, off-site use only

Bldgs. 56750, 56751
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220153
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56758
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220154
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldg. P2789
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Property No.: 21200220155
Status: Excess
Comment: 25,784 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—dining, Historic Preservation requirement, off-site use only

Bldg. P6202
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Property No.: 21200220156
Status: Excess
Comment: 1479 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—officer's family quarters, off-site use only

Bldg. P6203
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Property No.: 21200220157
Status: Excess
Comment: 1381 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only

Bldg. P6204
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Property No.: 21200220158
Status: Excess
Comment: 1454 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only

Virginia

Building

Bldg. T246
Fort Monroe
Ft. Monroe Co: VA 23651–
Property No.: 21199940047
Status: Unutilized

Comment: 756 sq. ft., needs repair, possible lead paint, most recent use—scout meetings, off-site use only

Bldgs. 1516, 1517, 1552, 1567
Fort Eustis Ft. Eustis Co: VA 23604–
Property No.: 21200130154
Status: Unutilized
Comment: 2892 & 4720 sq. ft., most recent use—dining/barracks/admin, off-site use only

Bldg. 1559
Fort Eustis
Ft. Eustis Co: VA 23604–
Property No.: 21200130156
Status: Unutilized
Comment: 2892 sq. ft., most recent use—storage, off-site use only

Washington

Building

Bldg. CO909
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21199630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21199630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 1307
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21199630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21199630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21199630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21199630219
Status: Unutilized
Comment: 10,200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21199630220
Status: Unutilized
Comment: 12,366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199640570
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. A1419, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199640571
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199710156
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199720216
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. B1011–B1012
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199720217
Status: Unutilized
Comment: 992 sq. ft./1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

Bldg. 5162
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199830419
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199830433
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920237
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920239
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920240
Location: U003A, U004B, U006C, U015B, U016B, U019B
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920245
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920247
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920251
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920259
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920266
Location: U058A, U103A, U018A
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920269
Location: U101B, U101C, U507B, U557A
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920273
Location: U111A, U015A, U024E, U052F, U109A, U110A
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use-shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920275
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. A0334
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920284
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920291

Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920292
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 5170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920301
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920304
Status: Excess
Comment: 3660/412 sq .ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920306
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920307
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920309
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Property No.: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

COE

Arkansas

Land

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Property No.: 31199010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Property No.: 31199010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Property No.: 31199010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Property No.: 31199010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Property No.: 31199010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Property No.: 31199010076
Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Property No.: 31199010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Property No.: 31199010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Property No.: 31199010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Property No.: 31199010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Property No.: 31199010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Property No.: 31199010083
Status: Unutilized
Comment: 46 acres

Kansas

Land

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Property No.: 31199010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation

Kentucky

Building

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Property No.: 31199010022
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab

Land

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Property No.: 31199010025
Location: Adjoining the village of Rockcastle
Status: Excess
Comment: 2.57 acres; rolling and wooded

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Property No.: 31199010026
Location: 2½ miles in a southerly direction from the village of Rockcastle
Status: Excess
Comment: 2.00 acres; steep and wooded

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Property No.: 31199010027
Location: 2½ miles in a southerly direction from the village of Rockcastle
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Property No.: 31199010028
Location: 4½ miles in a southeasterly direction from the village of Rockcastle
Status: Excess
Comment: 5.44 acres; steep and wooded

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Property No.: 31199010029
Location: 6½ miles west of Cadiz
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Property No.: 31199010031
Location: 1 mile in a southerly direction from the village of Rockcastle
Status: Excess
Comment: 4.90 acres; wooded; no utilities

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Property No.: 31199010032
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek
Status: Excess
Comment: 8.24 acres; steep and wooded

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Property No.: 31199010033
Location: 3½ miles in a southerly direction from Canton, KY
Status: Excess
Comment: 4.26 acres; steep and wooded

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Property No.: 31199010034
Location: 5 miles south of Canton, KY
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Property No.: 31199010035
Location: 4½ miles south from Canton, KY
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Property No.: 31199010036
Location: 6½ miles south of Canton, KY
Status: Excess
Comment: 1.75 acres; wooded

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Property No.: 31199010042
Location: On the north side of the Illinois Central Railroad
Status: Excess
Comment: 5.80 acres; steep and wooded

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Property No.: 31199010044
Location: Approximately 4 miles east of Eddyville, KY
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Property No.: 31199010045
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Property No.: 31199010046
Location: Approximately 4½ miles east of Eddyville, KY
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Property No.: 31199010047
Location: Approximately 4½ miles east of Eddyville, KY
Status: Excess
Comment; 8.64 acres; steep and wooded; no utilities

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Property No.: 31199010048
Location: Approximately 5½miles east of Eddyville, KY
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Property No.: 31199010049
Location: Approximately 7½ miles southeasterly of Eddyville, KY
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Property No.: 31199010050
Location: 7 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Property No.: 31199010051
Location: 9 miles southeasterly of Eddyville, KY
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Property No.: 31199010052
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River
Status: Excess
Comment: 5.5 acres; wooded; no utilities

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Property No.: 31199010053
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.40 acres; wooded; no utilities

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Property No.: 31199010054
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Property No.: 31199010055
Location: 2.5 miles southwest of Kuttawa, KY on the waters of Cypress Creek
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Property No.: 31199010056
Location: 6½ miles southeasterly of Eddyville, KY
Status: Excess
Comment: 97.66 acres; steep, rolling and wooded; no utilities

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Property No.: 31199010058
Location: Village of Linton, KY state highway 1254
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Property No.: 31199010059
Location: 1 mile northwest of Linton, KY
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Property No.: 31199011621
Location: 4½miles south from Canton, KY
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Property No.: 31199011622
Location: 4½ miles south from Canton, KY
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Property No.: 31199011623
Location: 7 miles southeasterly from Eddyville, KY
Status: Unutilized
Comment: 0.70 acres; wooded; subject to utility easements

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Property No.: 31199011624
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Property No.: 31199011625
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Property No.: 31199011626
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Property No.: 31199011627
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Property No.: 31199140009
Status: Underutilized
Comment: 91 acres, most recent use–hunting, subject to existing easements

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Property No.: 31199320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored

Tract No. F–610
Buckhorn Lake Project
Buckhorn Co: KY 41721–
Property No.: 31200240001
Status: Unutilized
Comment: 0.64 acres, encroachments, most recent use—flood control purposes

Louisiana

Land

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Property No.: 31199011009
Status: Unutilized
Comment: 10.81 acres; wildlife/forestry; no utilities

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Property No.: 31199011010
Location: 35 miles Northeast of Shreveport, LA
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities

Massachusetts

Building

Storage Bldg.
Knightville Dam Road
Huntington Co: Hampshire MA 01050–
Property No.: 31200030005
Status: Unutilized
Comment: 480 sq. ft., needs rehab, off-site use only

Mississippi

Building

Quonset Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701—
Property No.: 31200220010
Status: Unutilized
Comment: 26,250 sq. ft., presence of asbestos/lead paint, most recent use—storage/office, off-site use only

Storage Bldg. #1
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Property No.: 31200220011
Status: Unutilized
Comment: 32,502 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Storage Bldg. #2
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Property No.: 31200220012
Status: Unutilized
Comment: 16,170 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Yellow Office Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Property No.: 31200220013
Status: Unutilized
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Storage Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Property No.: 31200220014
Status: Unutilized
Comment: 1820 sq. ft.. presence of asbestos/lead paint, most recent use—office, off-site use only

Container Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Property No.: 31200220015
Status: Unutilized
Comment: 270 sq. ft. presence of lead paint, most recent use—storage, off-site use only

Land

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Property No.: 31199011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Property No.: 31199011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Property No.: 31199011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenada Co: Calhoun MS 38901–0903
Property No.: 31199011022
Status: Underutilized

Comment: 490 acres; no utilities; intermittently used under lease—expires 1994

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Property No.: 31199011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Property No.: 31199011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease)

Parcel 4
Grenada Lake
Section 2 and 3, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Property No.: 31199011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Property No.: 31199011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease)

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Property No.: 31199011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Property No.: 31199011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Property No.: 31199011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Property No.: 31199011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease)

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Property No.: 31199011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Property No.: 31199011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Property No.: 31199011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Property No.: 31199011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Property No.: 31199011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Property No.: 31199011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management

Missouri

Land

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Property No.: 31199030014
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150
Status: Underutilized
Comment: 1.7 acres; potential utilities

Montana

Building

Bldg. 1
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Property No.: 31200040010
Status: Unutilized
Comment: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only

Bldg. 2
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Property No.: 31200040011
Status: Unutilized
Comment: 3292 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Property No.: 31200040012
Status: Unutilized
Comment: 964 sq. ft., most recent use—cold storage, off-site use only

Bldg. 4
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Property No.: 31200040013
Status: Unutilized
Comment: 72 sq. ft., most recent use—cold storage, off-site use only

Bldg. 5
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Property No.: 31200040014
Status: Unutilized
Comment: 1286 sq. ft., most recent use—cold storage, off-site use only

North Dakota

Building

Office Bldg.
Lake Oahe Project 3rd & Main
Ft. Yates Co: Sioux ND 58538–
Property No.: 31200020001
Status: Unutilized
Comment: 1200 sq. ft., 2-story wood, off-site use only

Ohio

Building

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Property No.: 31199120018
Location: Located at lock site, downstream of lock and dam structure
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Residence
506 Reservoir Rd.
Paint Creek Lake
Bainbridge Co: Highland OH 45612–
Property No.: 31200210008
Status: Unutilized
Comment: 1200 sq. ft., needs repair, off-site use only

Residence
4969 Dillon Dam Road
Dillon Lake
Zanesville Co: OH 43701–
Property No.: 31200210009
Status: Unutilized
Comment: 1800 sq. ft., off-site use only

Oklahoma

Land

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Property No.: 31199010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3

Pennsylvania

Building

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Property No.: 31199210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

Dwelling
Lock & Dam 6, Allegheny River, 1260 River Rd
Freeport Co: Armstrong PA 16229–2023
Property No.: 31199620008
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes

Govt. Dwelling
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Property No.: 31199640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/ basement, most recent use—residential

Dwelling
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Property No.: 31199710009
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Property No.: 31199740002
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Property No.: 31199740003
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Property No.: 31199740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Property No.: 31199740006
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Property No.: 31199740007
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Property No.: 31199740008
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Property No.: 31199740009
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Property No.: 31199830003
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential

Land

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Property No.: 31199010018
Location: Route 28 north to Belknap, Road #4
Status: Excess
Comment: 2.58 acres; steep and densely wooded

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Property No.: 31199011001
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake
Co: Armstrong PA 03051–
Property No.: 31199011011
Location: Left bank—55 miles downstream of dam
Status: Unutilized
Comment: 7.59 acres; potential for utilities

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Property No.: 31199430012
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights

South Dakota

Building

Residence
Tract 109
Pierre Co: Hughes SD
Property No.: 31200240002
Status: Excess
Comment: 960 sq. ft., off-site use only

Residence
Tract 118
Pierre Co: Hughes SD
Property No.: 31200240003
Status: Excess
Comment: 912 sq. ft., off-site use only

Residence
Tract 131
Pierre Co: Hughes SD
Property No.: 31200240004
Status: Excess
Comment: 912 sq. ft., off-site use only

Residence
Tract 141
Pierre Co: Hughes SD
Property No.: 31200240005
Status: Excess
Comment: 936 sq. ft., off-site use only

Residence
Tract 514
Ft. Pierre Co: Stanley SD
Property No.: 31200240006
Status: Excess
Comment: 1426 sq. ft., off-site use only

Residence
Tract 516
Ft. Pierre Co: Stanley SD
Property No.: 31200240007
Status: Excess
Comment: 2264 sq. ft., off-site use only

Tennessee

Land

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Property No.: 31199010927
Location: 2½ miles west of Dover, TN
Status: Excess
Comment: .57 acres; subject to existing easements

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Property No.: 31199010928
Location: 3½ miles south of village of Tabaccoport
Status: Excess
Comment: 100.86 acres; subject to existing easements

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Property No.: 31199010929
Location: ½ mile downstream from Cheatham Dam
Status: Excess
Comment: 26.25 acres; subject to existing easements

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Property No.: 31199010930
Location: West of Buckeye Bottom Road
Status: Excess
Comment: 14.48 acres; subject to existing easements

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Property No.: 31199010931
Location: Old Jefferson Pike
Status: Excess
Comment: 2.27 acres; subject to existing easements

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Property No.: 31199010932
Location: Across Fall Creek near Fall Creek camping area
Status: Excess
Comment: 14.85 acres; subject to existing easements

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Property No.: 31199010933
Location: TN Highway 56

Status: Unutilized
Comment: 11 acres; subject to existing easements

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Property No.: 31199010934
Location: East of Lamar Road
Status: Excess
Comment: 6.92 acres; subject to existing easements

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Property No.: 31199010935
Location: South of Old Jefferson Pike
Status: Excess
Comment: 12 acres; subject to existing easements

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Property No.: 31199010936
Location: 2½ miles SE of Dover, TN
Status: Excess
Comment: 10.15 acres; subject to existing easements

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Property No.: 31199010937
Location: 1½ miles East of Cumberland City
Status: Excess
Comment: 96 acres; subject to existing easements

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Property No.: 31199010938
Location: 4 miles east of Cumberland City
Status: Excess
Comment: 7.7 acres; subject to existing easements

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Property No.: 31199010939
Location: 2 miles downstream from Cheatham Dam
Status: Excess
Comment: 1.1 acres; subject to existing easements

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Property No.: 31199010940
Location: 2½ miles downstream from Cheatham Dam.
Status: Excess
Comment: 19.5 acres; subject to existing easements

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Property No.: 31199010941
Location: 4½ miles SW of Bumpus Mills
Status: Excess
Comment: 17 acres; subject to existing easements

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Property No.: 31199010943
Location: 3 miles NE of Palmyer, TN. Highway 149
Status: Excess
Comment: 6.6 acres; subject to existing easements

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Property No.: 31199010944
Location: 1½ miles SE of Dover, TN
Status: Excess
Comment: 29.67 acres; subject to existing easements

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Property No.: 31199011173
Location: 3 miles south of Village of Tobaccoport.
Status: Excess
Comment: 5 acres; subject to existing easements

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Property No.: 31199130007
Status: Underutilized
Comment: 54 acres, (portion in floodway), most recent use—recreation

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Property No.: 31199140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Property No.: 31199140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Property No.: 31199140010
Status: Underutilized
Comment: 97 acres, most recent use—hunting, subject to existing easements

Virginia

Building

Metal Bldg.
John H. Kerr Dam & Reservoir
Co: Boydton VA
Property No.: 31199620009
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only

Wisconsin

Building

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Property No.: 31199011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Property No.: 31199011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Property No.: 31199011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Property No.: 31199011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Property No.: 31199011533
Location: 3 miles southwest of intersection State 96 and Canal Road
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab

Former Lockmaster's Dwelling
Little Kaukauna Lock
Little Kaukauna
Lawrence Co: Brown WI 54130–
Property No.: 31199011535
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Property No.: 31199011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access

Energy

Idaho

Building

Bldg. CF603
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Property No.: 41200020004
Status: Excess
Comment: 15,005 sq. ft. cinder block, presence of asbestos/lead paint, major rehab, off-site use only

GSA

Arkansas

Building

Social Sec. Administration
225 Hazel Street
Hot Springs Co: Garland AR 71901–
Property No.: 54200210016
Status: Surplus
Comment: 7437 sq. ft. office building
GSA Number: 7–G–AR–0560

Blytheville Fed. Ofc. Bldg.
120 North Broadway
Blytheville Co: Mississippi AR 72316–
Property No.: 54200210017
Status: Surplus
Comment: 7921 sq. ft. office building, good condition
GSA Number: 7–G–AR–0559

Post Antenna Tower Site
1.5 west of USHwy 165
Gillette Co: AR 72055–
Property No.: 54200230008
Status: Surplus
Comment: Radio repeater tower, presence of asbestos/lead paint, on 2.06 acres
GSA Number: 7–D–AR–563

Joy Antenna Tower Site
Range 9 West
Searcy Co: White AR 72143–
Property No.: 54200230011
Status: Surplus
Comment: Radio repeater tower, presence of asbestos/lead paint, subject to existing easements, on 1.75 acres
GSA Number: 7–D–AR–564

Jamestown Antenna Tower Site
Jamestown Co: Independence AR 7250–
Property No.: 54200240001
Status: Surplus
Comment: Radio repeater tower on 1.05 acres, subject to existing easements
GSA Number: 7–D–AR–0562

Ash Flat Comm. Site
Gillette Co: AR 72055–
Property No.: 54200240002
Status: Surplus
Comment: radio repeater tower on 2.06 acres, subject to existing easements
GSA Number: 7–D–AR–0565

Hawaii

Land

Parcels 9, 2, 4
Loran Station Upolu Point
Hawi Co: Hawaii HI
Property No.: 54200220002
Location: Resubmitted to Federal Register for publication
Status: Surplus
Comment: Parcel 9 = 6.242 acres/encumbered by utility and road access easements; parcel 2 = 1.007 acres; parcel 4 = 5.239 acres
GSA Number: 9–U–HI–0572

Louisiana

Building

Federal Building
200 South Union Street
Opelousas Co: St. Landry Pr LA 70570–
Property No.: 54200230014
Status: Surplus
Comment: 41,886 sq. ft., most recent use—courthouse/post office/federal building, portion occupied
GSA Number: 7–G–LA–0566

Massachusetts

Building

Aircraft Hanger
Hanscom Air Force Base
Concord Co: MA
Property No.: 54200140007
Status: Excess
Comment: 40,000 sq. ft., off-site use only, relocating property may not be feasible
GSA Number: 1–D–MA–0857679

Michigan

Building

Detroit Job Corp Center
10401 E. Jefferson 1265 St. Clair
Detroit Co: Wayne MI
Property No.: 54200230012
Status: Surplus
Comment: Parcel One = 80,590 sq. ft.bldg., needs repair, presence of asbestos; Parcel Two = 5140 sq. ft. bldg.
GSA Number: 2–L–MI–757

Mississippi

Building

Post Office/Courthouse 820 Crawford Street
Vicksburg Co: Warren MS 39180–
Property No.: 54200240006
Status: Surplus
Comment: 14,000 sq. ft., 34% of space occupied by Federal tenants, needs rehab, access restrictions, historic preservation covenant required
GSA Number: 4–G–MS–0559

Missouri

Building

Columbia Federal Ofc. Bldg.
608 Cherry Street
Columbia Co: Boone MO 65201–7712
Property No.: 54200230016
Status: Surplus
Comment: 30,609 sq. ft., needs rehab, most recent use—office
GSA Number : 7–C–MO–633

Old Custom House/P.O.
815 Olive Street
St. Louis Co: MO 63101–
Property No.: 54200240016
Status: Surplus
Comment: 6-story office building, restrictive use due to Historical Landmark status
GSA Number: 7–G–MO–074

Land

Improved Land
St. Louis Army Ammunition Plant 4800 Goodfellow Blvd.
St. Louis Co: MO 63120–1798
Property No.: 54200110007
Status: Surplus
Comment: 21 acres w/2 large bldgs. and numerous small bldgs. situated on 13 acres, 5 acres = parking lot and streets, presence of asbestos/lead paint, clean-up required to state regulator standards
GSA Number: 000000

Montana

Land

Canyon Ferry Reservoir
Portion
Tracts FS–1, FS–2, FS–3, FS–4
Lewis & Clark Co: MT 59602–
Property No.: 54200240010
Status: Surplus
Comment: 8.47 acres, subject to existing easements, buffer zone
GSA Number: 7–I–MT–0409

New Jersey

Building

Chapel Hill Front Range Light
N. Lenard Ave.
Middletown Co: Monmouth NJ
Property No.: 54200240011
Status: Excess
Comment: steel tower on 0.40 acres, possible flood hazard, wetlands & possible endangered species
GSA Number: 1–U–NJ–0627

Land

Belle Mead Depot
Rt. 206/Mountain View Rd.
Hillsborough Co: Somerset NJ 08502–
Property No.: 54200210014
Status: Excess
Comment: approx. 400 acres, property will not be subdivided, contaminants of concern present, lease restriction on 7 acres, 44 miles of railroad track, remediation activity, potential restriction of property f
GSA Number : 1–G–NJ–0642

New York

Building

Social Sec. Admin. Bldg.
517 N. Barry St.
Olean Co: NY 10278–0004
Property No.: 54200230009
Status: Excess
Comment: 9174 sq. ft., poor condition, most recent use—office
GSA Number: 1–G–NY–0895

Puerto Rico

Land

Bahia Rear Range Light
Ocean Drive
Catano Co: PR 00632–
Property No.: 54199940003
Status: Excess
Comment: 0.167 w/skeletal tower, fenced, aid to navigation
GSA Number: 1–T–PR–508

Navy

California

Building

Bldg. 371
Naval Warfare Systems Center
San Diego Co: CA 92152–
Property No.: 77200020080
Status: Unutilized
Comment: 29,800 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 402
Naval Warfare Systems Center
San Diego Co: CA 92152–
Property No.: 77200020081
Status: Unutilized
Comment: presence of lead paint, most recent use—storage, off-site use only

Bldg. 417
Naval Warfare Systems Center
San Diego Co: CA 92152–
Property No.: 77200020082
Status: Unutilized
Comment: 110 TR, needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 418
Naval Warfare Systems Center
San Diego Co: CA 92152–
Property No.: 77200020083
Status: Unutilized
Comment: 288 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 426
Naval Warfare Systems Center
San Diego Co: CA 92152–
Property No.: 77200020084
Status: Unutilized
Comment: presence of asbestos/lead paint, off-site use only

Bldg. 434
Naval Warfare Systems Center
San Diego Co: CA 92152–
Property No.: 77200020085
Status: Unutilized
Comment: 11,440 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 210
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Property No.: 77200020086
Status: Unutilized
Comment: 17,708 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—police station, off-site use only

Bldg. 541
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Property No.: 77200020087
Status: Unutilized
Comment: 3857 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 804
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Property No.: 77200020088
Status: Unutilized
Comment: 3119 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 805
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Property No.: 77200020089
Status: Unutilized
Comment: 3732 sq ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 806
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Property No.: 77200020090
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 807
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Property No.: 77200020091
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldgs. 23027, 23025
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Property No.: 77200040023
Status: Unutilized
Comment: 400 sq. ft., metal siding, most recent use—loading facility, off-site use only

Bldg. 01290
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Property No.: 77200120090
Status: Excess
Comment: 460 sq. ft., most recent use—garage, off-site use only

Bldg. 02453
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Property No.: 77200120110
Status: Excess
Comment: 48 sq. ft., most recent use—storage locker, off-site use only

Bldg. 32027
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Property No.: 77200120111
Status: Excess
Comment: 331 sq. ft., off-site use only

Bldg. 32534
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Property No.: 77200120112
Status: Excess
Comment: 2252 sq. ft., most recent use—repair shop, off-site use only

Bldg. 32537
Naval Air Weapons Station
China Lake Co: CA 93444–6001
Property No.: 77200120113
Status: Excess
Comment: most recent use—instrument bldg., off-site use only

Playgrounds
Marine Corps Logistics Base
Desert View
Barstow Co: San Bernardino CA 92311–
Property No.: 77200230018
Status: Underutilized
Comment: 2 playgrounds with personnel shelter, off-site use only

Garages
Marine Corps Logistics Base
Desert View
Barstow Co: San Bernardino CA 92311–
Property No.: 77200230019
Status: Underutilized
Comment: sq. ft. varies, needs rehab, possible asbestos/lead paint, off-site use only

76 Structures
Marine Corps Logistics Base
Desert View
Barstow Co: San Bernardino CA 92311–
Property No.: 77200230020
Status: Underutilized
Comment: sq. ft. varies, needs rehab, possible asbestos/lead paint, most recent use—housing, off-site use only

Land
Portion of Land
Naval Base, Point Loma
Murphy Canyon
San Diego Co: CA 92124–
Property No.: 77200140012
Status: Unutilized
Comment: 24,350 sq. ft. of parking lot, adjacent to environmentally sensitive area

Connecticut

Building
Bldgs. 2, 108, 440
Naval Submarine Base
Groton Co: New London CT 06349–
Property No.: 77200210095
Status: Unutilized
Comment: various sq. ft., need rehab, presence of asbestos/lead paint, most recent use—office/store/club, off-site use only

Bldg. 516
Naval Submarine Base
Groton Co: New London CT 06349–
Property No.: 77200230037
Status: Excess
Comment: 1450 sq. ft., needs rehab, possible asbestos, off-site use only

Hawaii

Building
Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Property No.: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Property No.: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Property No.: 77199640040
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Property No.: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 220
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Property No.: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Maryland

Building
Bldg. 139
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200010032
Status: Unutilized
Comment: 4950 sq. ft., possible asbestos/lead paint, most recent use—wind tunnel, off-site use only

Bldg. 104
Naval Surface Warfare
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120079
Status: Unutilized
Comment: 8050 sq. ft., most recent use—garage, off-site use only

Bldg. 109
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5000
Property No.: 77200120080
Status: Unutilized
Comment: 9650 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 110
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120081
Status: Unutilized
Comment: 10,750 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 111
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120082
Status: Unutilized
Comment: 4220 sq. ft., most recent use—office, off-site use only

Bldg. 112
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120083
Status: Unutilized
Comment: 2440 sq. ft., most recent use—printing bldg., off-site use only

Bldg. 113
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120084
Status: Unutilized
Comment: 2440 sq. ft., most recent use—lab, off-site use only

Bldg. 143
Naval Surface Warfare
West Bethesda Co: MD 20817–5700
Property No.: 77200120085
Status: Unutilized
Comment: 16,950 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 152
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120086
Status: Unutilized
Comment: 1400 sq. ft., most recent use—fire house annex, off-site use only

Bldg. 159
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120087
Status: Unutilized
Comment: 605 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—hazardous waste storage, off-site use only

Bldg. 187
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120088
Status: Unutilized
Comment: 768 sq. ft., most recent use—pump house, off-site use only

Bldg. 117
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120102
Status: Unutilized
Comment: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 196
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Property No.: 77200120106
Status: Unutilized
Comment: 456 sq. ft., needs rehab, most recent use—destructor bldg., off-site use only

9 Housing Units
U.S. Naval Station
Annapolis Co: Anne Arundel MD 21402–
Property No.: 77200240005
Status: Excess
Comment: size varies, brick veneer wood frame on slab, off-site use only

New Hampshire

Building
Bldg. 239
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Property No.: 77200030019
Status: Excess
Comment: 897 sq. ft., presence of asbestos/lead paint, off-site use only

Pennsylvania

Building
Bldg. 216
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Property No.: 77200220008
Status: Excess
Comment: 121,604 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 504B
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Property No.: 77200220009
Status: Excess
Comment: 4824 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 608D
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Property No.: 77200220010
Status: Excess
Comment: 8400 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 609B
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Property No.: 77200220011
Status: Excess
Comment: 2100 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 611
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Property No.: 77200220012
Status: Excess
Comment: 425 sq. ft. concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 616
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Property No.: 77200220013
Status: Excess
Comment: 216 sq .ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Rhode Island

Building
Bldg. 8
Naval Ambulatory Care
Newport Co: RI 02841–
Property No.: 77200220017
Status: Unutilized
Comment: 2800 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, meets Nat. Register criterion, off-site use only

Bldg. 30
Naval Ambulatory Care
Newport Co: RI 02841–
Property No.: 77200220018
Status: Unutilized
Comment: 150 sq. ft., poor condition, most recent use—switch house, off-site use only

Bldg. 46
Naval Ambulatory Care
Newport Co: RI 02841–
Property No.: 77200220019
Status: Unutilized
Comment: 3690 sq. ft., poor condition, possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. 53
Naval Ambulatory Care
Newport Co: RI 02841–
Property No.: 77200220020
Status: Unutilized
Comment: 2691 sq. ft., poor condition, possible asbestos/lead paint, most recent use—garage/office, off-site use only

Bldg. 55
Naval Ambulatory Care
Newport Co: RI 02841–
Property No.: 77200220021
Status: Unutilized
Comment: 135 sq. ft., poor condition, most recent use—storage, off-site use only

Virginia

Building
Structure SP–129
Naval Station
Norfolk Co: VA 23511–

Property No.: 77200110136
Status: Excess
Comment: 3564 sq. ft., presence of asbestos/lead, most recent use—office, off-site use only

Bldg. 106(G)
Naval Station
Lafayette River Annex
Norfolk Co: VA
Property No.: 77200220046
Status: Excess
Comment: 2767 sq. ft. garage, most recent use—storage, off-site use only

Bldg. CEP–184
Naval Station
Norfolk Co: VA
Property No.: 77200220047
Status: Excess
Comment: 200 sq. ft., most recent use—gate/sentry house, off-site use only

Land

Land
Marine Corps Base
Quantico Co: VA 22134–
Property No.: 77200040034
Status: Unutilized
Comment: 4900 sq. ft. open space

VA

Alabama

Land

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Property No.: 97199010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

California

Land

4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Property No.: 97199240001
Status: Underutilized
Comment: 4 acres; landslide area.

Indiana

Building

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Property No.: 97199230006
Status: Excess
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Property No.: 97199230007
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house

Bldg. 7
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Property No.: 97199810001
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Property No.: 97199810002
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Property No.: 97199810003
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 18
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Property No.: 97199810004
Status: Underutilized
Comment: 13,862 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Property No.: 97199810005
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Iowa

Land

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Property No.: 97199740002
Status: Unutilized
Comment: Golf course, easement requirements

Maryland

Land

VA Medical Center
9600 North Point Road
Fort Howard Co: Baltimore MD 21052–
Property No.: 97199010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves

Pennsylvania

Building

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Property No.: 97199230012
Status: Underutilized
Comment: Portion of bldg. (4046 sq. ft.), most recent use—storage, second floor—lacks elevator access

Texas

Land

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Property No.: 97199010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities

Wisconsin

Building

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Property No.: 97199010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab

Land

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Property No.: 97199010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities

Title V Properties Reported in Year 2002 Which Are Suitable and Unavailable

Air Force

Colorado

Building

Bldg. 100
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Property No.: 18200230001
Status: Excess
Reason: Interest expressed

Bldg. 101
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Property No.: 18200230002
Status: Excess
Reason: Interest expressed

Bldg. 102
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Property No.: 18200230003
Status: Excess
Reason: Interest expressed

Bldg. 103
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Property No.: 18200230004
Status: Excess
Reason: Interest expressed

Bldg. 104
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Property No.: 18200230005
Status: Excess
Reason: Interest expressed

Bldg. 106
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Property No.: 18200230006
Status: Excess
Reason: Interest expressed

Idaho

Building

Bldg. 224

Mountain Home Air Force
Co: Elmore ID 83648–
Property No.: 18199840008
Status: Unutilized
Reason: Extension of runway

Iowa

Building

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Property No.: 18199310002
Status: Unutilized
Reason: Will be transferred to Sioux City

New York

Building

Bldg. 1225
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220014
Status: Unutilized
Reason: Held in trust

Bldg. 1226
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220015
Status: Unutilized
Reason: Held in trust

Bldg. 1227
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220016
Status: Unutilized
Reason: Held in trust

Bldg. 1231
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220017
Status: Unutilized
Reason: Held in trust

Bldg. 1233
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220018
Status: Unutilized
Reason: Held in trust

Bldgs. 1235, 1239
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220019
Status: Unutilized
Reason: Held in trust

Bldg. 1241
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220020
Status: Unutilized
Reason: Held in trust

Bldg. 1243
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220021
Status: Unutilized
Reason: Held in trust

Bldg. 1245
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220022
Status: Unutilized
Reason: Held in trust

Bldg. 1247
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220023
Status: Unutilized
Reason: Held in trust

Bldg. 1250 + land
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220024
Status: Unutilized
Reason: Held in trust

Bldg. 1253
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220025
Status: Unutilized
Reason: Held in trust

Bldg. 1255
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220026
Status: Unutilized
Reason: Held in trust

Bldg. 1261
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220027
Status: Unutilized
Reason: Held in trust

Bldg. 1263
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220028
Status: Unutilized
Reason: Held in trust

Bldgs. 1266, 1269
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220029
Status: Unutilized
Reason: Held in trust

Bldg. 1271
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220030
Status: Unutilized
Reason: Held in trust

Bldg. 1273
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220031
Status: Unutilized
Reason: Held in trust

Bldg. 1277
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220032
Status: Unutilized
Reason: Held in trust

Bldg. 1279
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220033
Status: Unutilized
Reason: Held in trust

Bldg. 1285
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220034
Status: Unutilized
Reason: Held in trust

Bldg. 1287
Verona Test Annex
Verona Co: Oneida NY 13478–
Property No.: 18200220035
Status: Unutilized
Reason: Held in trust

Pennsylvania

Building

Bldg. 201
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Property No.: 18200240014
Status: Excess
Reason: mission use

Bldg. 203
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Property No.: 18200240015
Status: Excess
Reason: mission use

Bldg. 208
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Property No.: 18200240016
Status: Excess
Reason: mission use

Bldg. 210
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Property No.: 18200240017
Status: Excess
Reason: mission use

Bldg. 211
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Property No.: 18200240018
Status: Excess
Reason: mission use

Army

Alabama

Building

Bldgs. 1001–1006, 1106–1107
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Property No.: 21200210027
Status: Unutilized
Reason: utilized

Bldg. 01433
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Property No.: 21200220098
Status: Excess
Reason: being utilized

Georgia

Building

Bldg. 4090
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Property No.: 21199630007
Status: Underutilized
Reason: Plan to utilize as a museum

Bldg. 2410
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Property No.: 21200140076.
Status: Unutilized
Reason: change in mission requirement

Bldg. 20802
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Property No.: 21200210078
Status: Unutilized
Reason: utilized

Bldg. T–920
Fort Stewart

Hinesville Co: Liberty GA 31314–
Property No.: 21200240083
Status: Excess
Reason: mission use

Maryland

Building

Bldg. 2282C
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Property No.: 21200230059
Status: Unutilized
Reason: secured

Missouri

Building

Bldg. 2172
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Property No.: 21200040059
Status: Unutilized
Reason: reutilized

North Carolina

Building

Bldgs. A2245, A2345
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Property No.: 21200240084
Status: Excess
Reason: mission use

Bldg. A2544
Fort Bragg
Ft. Bragg Co: Cumberland NC
Property No.: 21200240085
Status: Excess
Reason: mission use

Bldg. D2826
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Property No.: 21200240086
Status: Excess
Reason: mission use

Bldg. N4116
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Property No.: 21200240087
Status: Excess
Reason: mission use

103 Bldgs.
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Property No.: 21200240088
Status: Excess
Reason: mission use

Land

.92 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Property No.: 21199610728
Status: Underutilized
Reason: contains well owned by Town; within an explosive buffer zone

10 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Property No.: 21199610729
Status: Underutilized
Reason: within an explosives buffer zone

257 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Property No.: 21199610730
Status: Underutilized
Reason: within an explosives buffer zone

24.83 acres—Tract of Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Property No.: 21199620685
Status: Underutilized
Reason: Explosive Buffer Zone

Tennessee

Building

Bldgs. 01551, 01552
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223–
Property No.: 21200230076
Status: Unutilized
Reason: utilized

Texas

Building

Bldgs. 4219, 4227
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220139
Status: Unutilized
Reason: admin use

Bldgs. 4229, 4230, 4231
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220140
Status: Unutilized
Reason: admin use

Bldgs. 4244, 4246
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220141
Status: Unutilized
Reason: admin use

Bldgs. 4260, 4261, 4262
Fort Hood
Ft. Hood Co: Bell TX 76544–
Property No.: 21200220142
Status: Unutilized
Reason: admin use

Washington

Building

Bldg. 03272
Fort Lewis
Tacoma Co: Pierce WA 98335–
Property No.: 21200220160
Status: Unutilized
Reason: utilized

Bldg. 04180
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21200240091
Status: Excess
Reason: mission use

Bldg. 05904
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21200240092
Status: Excess
Reason: mission use

Bldgs. 9003, 9517
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Property No.: 21200240093
Status: Excess
Reason: mission use

COE

Illinois

Building

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Property No.: 31199010001
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Property No.: 31199010002
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Property No.: 31199010003
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Property No.: 31199010004
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Property No.: 31199010005
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Property No.: 31199010006
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Property No.: 31199010007
Status: Unutilized
Reason: Project integrity and security; safety liability

Land

Lake Shelbyville
Shelbyville Co: Shelby & Moultrie IL 62565–9804
Property No.: 31199240004
Status: Unutilized
Reason: Disposal action initiated

Ohio

Building

Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Property No.: 31199640001
Status: Unutilized
Reason: utilized as construction office

Pennsylvania

Building

Tract 353
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Property No.: 31199430019
Status: Unutilized
Reason: To be transferred to Borough

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Property No.: 31199430021
Status: Unutilized
Reason: To be transferred to Borough

Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Property No.: 31199430022
Status: Unutilized
Reason: To be transferred to Borough

Tract 403C
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Property No.: 31199430023
Status: Unutilized
Reason: To be transferred to Borough

Tract 434
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Property No.: 31199430024
Status: Unutilized
Reason: To be transferred to Borough

Tract No. 224
Grays Landing Lock & Dam Project
Greensboro Co: Green PA 15338–
Property No.: 31199440001
Status: Unutilized
Reason: Disposal action initiated

Land

East Branch Clarion River Lake
Wilcox Co: Elk PA
Property No.: 31199011012
Status: Underutilized
Reason: Location near damsite

Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Property No.: 31199210009
Status: Unutilized
Reason: Leased to Township

Wisconsin

Building

Former Lockmaster's Dwelling
DePere Lock
100 James Street
DePere Co: Brown WI 54115–
Property No.: 31199011526
Status: Unutilized
Reason: In negotiation for transfer to the State

Energy

Idaho

Building

Bldg. CFA–613
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Property No.: 41199630001
Status: Unutilized
Reason: Historical issues

GSA

Alabama

Building

Coosa River Storage Annex
Anniston Army Depot
Talladega Co: q AL 35161–
Property No.: 54200230001
Status: Excess
GSA Number: 4–J–AL–541
Reason: Interest expressed

Californio

Building

Merced Federal Bldg.
415 W. 18th St.
Merced Co: CA 95340–
Property No.: 54200220012
Status: Surplus
GSA Number: 9–G–CA–1567
Reason: Federal interest

Illinois

Building

Radar Communication Link ½ mi east of 116th St.
Co: Will IL.
Property No.: 54199820013
Status: Excess
GSA Number: 2–U–IL–696
Reason: Negotiated sale

LaSalle Comm. Tower Site
1600 NE 8th St.
Richland Co: LaSalle IL 61370–
Property No.: 54200020019
Status: Excess
GSA Number: 1–D–IL–724
Reason: Conveyance to State

Maryland

Building

29 Bldgs.
Walter Reed Army Medical Center
Forest Glen Annex, Linden Lane
Silver Spring Co: Montgomery MD 20910–1246
Property No.: 54200130012
Status: Excess
GSA Number: 4–D–MD–558–B
Reason: Written expression of interest

Michigan

Building

Pontiac Federal Bldg.
142 Auburn Ave.
Pontiac Co: Oakland MI
Property No.: 54200220005
Status: Surplus
GSA Number: 1–G–MI–809
Reason: Negotiated sale

Minnesota

Building

GAP Filler Radar Site
St. Paul Co: Rice MN 55101–
Property No.: 54199910009
Status: Excess
GSA Number: 1–GR(1)–MN–475
Reason: Homeless conveyance

MG Clement Trott Mem. USARC
Walker Co: Cass MN 56484–
Property No.: 54199930003
Status: Excess
GSA Number: 1–D–MN–575
Reason: Federal interest

Mississippi

Building

Post Office/Courthouse
820 Crawford Street
Vicksburg Co: Warren MS 39180–
Property No.: 54200240013
Status: Surplus
GSA Number: 4–G–MS–0559
Reason: Expression of interest by city for hist. monument

Missouri

Building

Hardesty Federal Complex
607 Hardesty Avenue
Kansas City Co: Jackson MO 64124–3032
Property No.: 54199940001
Status: Excess
GSA Number: 7–G–MO–637
Reason: Continuation

New York

Building

Army Reserve Center
205 Oak Street
Batavia Co: NY 14020–
Property No.: 54200240004
Status: Excess
GSA Number: 1–D–NY–890
Reason: Federal interest

Fed. Bldg. #2
850 Third Ave.
Brooklyn Co: NY 11232–
Property No.: 54200240005
Status: Surplus
GSA Number: 1–G–NY–0872
Reason: Pending resubmission

North Carolina

Building

Tarheel Army Missile Plant
Burlington Co: Alamance NC 27215–
Property No.: 54199820002
Status: Excess
GSA Number: 4–D–NC–593
Reason: Advertised

Vehicle Maint. Facility
310 New Bern Ave.
Raleigh Co: Wake NC 27601–
Property No.: 54200020012
Status: Excess
GSA Number: NC076AB
Reason: Federal need

Pennsylvania

Building

Bristol Social Security Bldg.
1776 Farragut St.
Bristol Co: Bucks PA 19007–
Property No.: 54200230002
Status: Surplus
GSA Number: 4–G–PA–792
Reason: interest expressed

Puerto Rico

Building

7.5 Naval Reservation
Munoz Rivera Ave.
San Juan Co: PR
Property No.: 54200240012
Status: Excess
GSA Number: 1–N–PR–497
Reason: Federal interest

Tennessee

Building

3 Facilities, Guard Posts
Volunteer Army Ammunition Plant

Chattanooga Co: Hamilton TN 37421–
Property No.: 54199930011
Status: Surplus
GSA Number: 4–D–TN–594F
Reason: negotiated sale
4 Bldgs.
Volunteer Army Ammunition Plant
Railroad System Facilities
Chattanooga Co: Hamilton TN 37421–
Property No.: 54199930012
Status: Surplus
GSA Number: 4–D–TN–594F
Reason: negotiated sale 200 bunkers
Volunteer Army Ammunition Plant
Storage Magazines
Chattanooga Co: Hamilton TN 37421–
Property No.: 54199930014
Status: Surplus
GSA Number: 4–D–TN–594F
Reason: negotiated sale
Bldg. 232
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Property No.: 54199930020
Status: Surplus
GSA Number: 4–D–TN–594F
Reason: negotiated sale 2 Laboratories
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Property No.: 54199930021
Status: Surplus
GSA Number: 4–D–TN–594F
Reason: negotiated sale 3 Facilities
Volunteer Army Ammunition Plant
Water Distribution Facilities
Chattanooga Co: Hamilton TN 37421–
Property No.: 54199930022
Status: Surplus
GSA Number: 4–D–TN–594F
Reason: negotiated sale
Federal Bldg. 118 East Locust Street
Lafayette Co: Macon TN 37083–
Property No.: 54200220010
Status: Excess
GSA Number: 4–G–TN–656
Reason: homeless interest expressed

Land

1500 acres
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Property No.: 54199930015
Status: Surplus
GSA Number: 4–D–TN–594F
Reason: negotiated sale

Washington

Land

Richland Rail R/W
East of 1335 Lee Blvd.
Richland Co: Benton WA
Property No.: 54200210005
Status: Excess
GSA Number: 9–B–WA–1197
Reason: Awarded

Wisconsin

Building

Wausau Federal Building 317 First Street
Wausau Co: Marathon WI 54401–
Property No.: 54199820016
Status: Excess
GSA Number: 1–G–WI–593
Reason: advertised

NAVY

Virginia

Building

Naval Medical Clinic 6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Property No.: 77199010109
Status: Unutilized
Reason: Planned for expansion space.

Land

Naval Base
Norfolk Co: Norfolk VA 23508–
Property No.: 77199010156
Status: Unutilized
Reason: Identified for use in developing admin. office space.

2.6 Acres
Naval Station
Norfolk Co: VA 23508–1273
Property No.: 77200120131
Status: Underutilized
Reason: pending construction 1.15 acres
Naval Amphibious Base Little Creek
Norfolk Co: VA 23508–
Property No.: 77200120132
Status: Unutilized
Reason: pending construction

VA

Iowa

Land

38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Property No.: 97199740001
Status: Unutilized
Reason: Enhanced-Use Legislation potential

Michigan

Land
VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Property No.: 97199010015
Status: Underutilized
Reason: Being used for patient and program activities

Montana

Building

VA MT Healthcare
210 S. Winchester
Miles City Co: Custer MT 59301–
Property No.: 97200030001
Status: Underutilized
Reason: transfer to Custer County

New York

Land

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Property No.: 97199010017
Status: Underutilized
Reason: Portion leased; portion landlocked

Pennsylvania

Land

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Property No.: 97199010016
Status: Underutilized
Reason: Used as natural drainage for facility property

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Property No.: 97199010080
Status: Unutilized
Reason: Property is essential to security and safety of patients

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Property No.: 97199340001
Status: Underutilized
Reason: needed for mission related functions

Wisconsin

Building

Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Property No.: 97199830002
Status: Underutilized
Reason: Subject of leasing negotiations

[FR Doc. 03–3428 Filed 2–13–03; 8:45 am]

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Federal Register

Friday,
February 14, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC Metropolitan Area Special Flight Rules Area; SFAR 94; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–11580; SFAR 94]

RIN 2120–AH62

Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC Metropolitan Area Special Flight Rules Area; SFAR 94

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action extends, for 2 years, the expiration date for SFAR 94, which requires any person operating an aircraft to or from College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field to conduct those operations in accordance with security procedures approved by the Administrator. This extension will allow the FAA, along with other Federal agencies, sufficient time to review current security threats and associated contingency plans and procedures and to determine future rulemaking efforts, if any.

DATES: This final rule is effective February 12, 2003 and SFAR 94 published at 67 FR 7538 (February 19, 2002) as amended in this rule shall remain in effect until February 13, 2005.

FOR FURTHER INFORMATION CONTACT: Reginald C. Matthews, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267–8783; e-mail *reginald.matthews@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the docket number shown at the beginning of this document. Click on "search."

(3) On the next page, which contains the docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's Web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Be sure to identify the amendment number or docket number of this final rule.

Privacy Act Statement: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

In the aftermath of the September 11, 2001, terrorist attacks which resulted in the tragic loss of human life at the World Trade Center, the Pentagon, and in southwest Pennsylvania, the FAA prohibited all aircraft operations within the National Airspace System, with the exception of certain military, law enforcement, and emergency related aircraft operations. This general prohibition was lifted in part on September 13, 2001. In the Washington, DC Metropolitan area, however, aircraft operations remained prohibited at all civil airports within a 25-nautical mile radius of the Washington (DCA) Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). This action was accomplished via the United States Notice to airmen (NOTAM) system. Specifically, several NOTAMs were issued according to title 14 Code of Federal Regulations (14 CFR) 91.139, Emergency Air Traffic Rules, and the implementation of temporary flight restrictions (TFRs) issued according to 14 CFR 91.137, Temporary Flight Restrictions in the Vicinity of Disaster/Hazard Areas.

On October 4, 2001, limited air carrier operations were permitted to resume at Ronald Reagan Washington National Airport.

On October 5, 2001, the FAA issued NOTAM 1/0989, which authorized instrument flight rules (IFR) operations and limited visual flight rules (VFR) operations within an 18 to 25 nautical mile radius from the DCA VOR/DME in accordance with emergency air traffic rules issued under 14 CFR 91.139. Exceptions to the restrictions affecting part 91 operations in the Washington, DC area issued since September 11th were made to permit the repositioning of aircraft from airports within the area of the TFR and to permit certain operations conducted under waivers issued by the FAA.

On December 19, 2001, the FAA canceled NOTAM 1/0989 and issued NOTAM 1/3354 that, in part, set forth special security instructions under 14 CFR 99.7 and created a new TFR for the Washington, DC area. The NOTAM also created TFRs in the Boston and New York City areas. That action significantly decreased the size of the area subject to the earlier prohibitions on part 91 operations in the Washington, DC area and permitted operations at Freeway (W00), Maryland (2W5), and Suburban (W18) airports. At the same time, the FAA eliminated all "enhanced Class B airspace flight restrictions." The Enhanced Class B airspace area consisted of that airspace underlying and overlying Class B airspace from the surface to flight level 180.

As security concerns were resolved, most general aviation operations resumed with varying degrees of restriction. However, due to their proximity to important national Capitol area assets, three airports in Maryland (College Park Airport, Potomac Airfield, and Washington Executive/Hyde field) remained closed for a sustained period following the September 11 attacks because of the restrictions on aircraft operations in the airspace that overlies those airports.

Although many of the restrictions on operations in the Washington, DC area were eliminated, NOTAM 1/3354 continued to prohibit aircraft operations under part 91 in airspace that overlies College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field. On February 19, 2002, the FAA cancelled NOTAM 1/3354 and issued NOTAM 2/1369. NOTAM 2/1369 (updated and reissued as 2/2263, on November 27, 2002) contained the description of the Washington Metropolitan Area Special Flight Rules Area, as published in SFAR 94, and prohibited flight by part 91 and certain other aircraft within the Special Flight Rules Area.

On February 14, 2002, the FAA issued NOTAM 2/1257 which provided flight plan filing procedures and ATC arrival and departure procedures for pilots operating from the three airports in accordance with SFAR 94. The FAA updated and reissued NOTAM 2/1257 as 2/2720 on December 10, 2002. NOTAM 2/2720 permits pilots vetted at any one of the three Maryland airports to fly into any of the three airports.

Discussion of Comments

As previously stated, on February 19, 2002, the FAA published SFAR 94 as a final rule (67 FR 7538), and requested public comments regarding this action. The SFAR defined the Washington, DC Metropolitan Area Special Flight Rules Area and allowed operations over, to, and from the three Maryland airports that were closed for security reasons after September 11, 2001. However, the SFAR imposed new security procedures for pilots and aircraft operations at these airports.

In response to the SFAR, the FAA received 30 comments. Among the commenters were pilots and business operators based at these airports, transient pilots who regularly used these airports prior to September 11, and the Aircraft Owners and Pilots Association (AOPA).

Since this action merely extends the expiration date of the SFAR in order to give concerned government agencies enough time to assess security requirements and determine appropriate regulatory action, the FAA is unable to fully address all of the comments received at this time. However, all comments will be considered prior to taking any permanent action regarding these airports. With this in mind, the FAA offers the following responses regarding the comments received.

Comment: Many commenters stated that they did not see a compelling reason for this SFAR, as it is their opinion that general aviation aircraft, and general aviation pilots operating at these airports do not pose a threat to the nation. Commenters cited incidents in Miami, FL, and Washington, DC as evidence of the inability of general aviation aircraft to cause significant damage.

FAA Response: The incidents identified above all involved very small aircraft and were all determined not to be associated with terrorism. These incidents are not representative of the potential threat posed by general aviation aircraft. FAA and TSA understand that the enhanced security measures implemented at these airports impact operations at these airports. However, based on information provided by Federal security and intelligence agencies, the measures addressed by this SFAR are necessary to ensure the protection of key assets and critical infrastructure in the Washington area from airborne attack.

Initially, the restrictions included six local general aviation airports. The FAA and TSA, in coordination with other government agencies, reevaluated the threat and diminished the size of the TFR. Three airports were completely removed from the TFR restrictions. The other three airports remain under varying levels of restrictions because of the ongoing security threats to the government.

The Federal Government does not currently regulate security at general aviation airports. With over 19,000 airports, heliports, and landing strips across the United States, the FAA is exploring alternate methods to enhance the security of general aviation airports. In the meantime, however, the Federal Government has determined that the three specific airports require additional security measures due to their proximity to the Washington, DC Metropolitan area.

Comment: Several commenters believe that the SFAR should be rescinded and airports allowed to return to pre-September 11, 2001, operations.

FAA Response: We do not agree with these commenters. The FAA has met with Federal security and intelligence officials, and has been advised that, at this time, the threat level is such that the FAA cannot rescind the SFAR. This extension is temporary and expires on February 13, 2005. The FAA is keeping the action temporary, because it is working with the agencies that will make up the Homeland Security Department to determine whether the SFAR and the airspace restrictions in the current Washington, DC, NOTAM should be adopted as a permanent rule.

Aviation is still viewed as a target and potential weapon by terrorist organizations. After the events of September 11, 2001, security at commercial airports has been enhanced. Thus, terrorists may be looking to alternative methods to conduct terrorist acts. Consistent with this concern, the Federal Bureau of Investigation (FBI) issued alerts indicating that, based on threat reporting, the use of "small aircraft" and charters may be of interest to terrorists seeking to carry out suicide attacks.

Comment: Numerous commenters would like to see the TFR boundaries adjusted, or minimized, and others stated that security, as well as air traffic procedures at these airports should be revised. Specifically, AOPA commented that the northeast boundary of the SFAR area overlaps a charted VFR waypoint used by VFR pilots in navigating along a charted VFR flyway through the Baltimore-Washington Class B airspace area. This conflict could result in pilots unintentionally violating the SFAR airspace. In addition, some commenters suggested that the TFR airspace be defined by the DCA VOR, in lieu of the Washington Monument.

FAA Response: The TFR of concern to this commenter (NOTAM 1/3354) is not a part of the SFAR. The TFR issued through NOTAM 2/2263 imposes restrictions for security purposes. The TFR boundaries coincide with the Washington, DC Metropolitan Area Special Flight Rules Area that is described in SFAR 94. The current TFR over the Washington, DC metropolitan area serves to protect an area containing key assets and critical government infrastructure. The size of the TFR around Washington has been agreed to by all the Federal agencies that have responsibility for ensuring the security of key assets and critical infrastructure in the area. No changes are being made to the NOTAM at this time.

However, the FAA notes that the VFR waypoint that was located on the northeast boundary of the TFR has been relocated so that it is no longer within the TFR boundary. In addition, the FAA issued a special edition of the Baltimore-Washington VFR Terminal Area chart, which depicts both the relocated waypoint, and the boundaries of the Washington DC, Metropolitan Area Special Flight Rules Area. Regarding the definition of the TFR area, originally, NOTAM 1/3354 described the area with reference to the Washington Monument. However, that NOTAM also included a detailed description of the TFR area using a combination of radials and DME from the DCA VOR/DME and latitude/longitude coordinates for each point. SFAR 94 did not describe the area with reference to the Monument. Any reference to the Washington Monument has been deleted from subsequent NOTAMs.

Comment: Several commenters submitted alternative proposals to the TFR, such as placing all of the airports under enhanced Class B airspace, developing an elevated response level that is commensurate with the National Security level as determined by

Homeland Security, or upgrading Hyde Field as DCA alternative.

FAA Response: The FAA finds that under existing circumstances, SFAR 94 continues to provide adequate security for the National Capitol Area. These comments will be addressed as part of any final decision regarding the three Maryland airports in question.

Petition for Rulemaking

On October 16, 2002, the FAA received a petition for rulemaking from the Aircraft Owners and Pilots Association (AOPA). The petition seeks relief from the security requirement for pilots at the three affected airports. Specifically, the petition requests that the FAA amend SFAR 94 to allow security vetted pilots at the three airports to conduct flights to any of the other three airports (College Park Airport, Washington Executive/Hyde Field, Potomac Airport), allow traffic pattern work at these three airports, and allow transient pilots to operate at these airports, subject to the security provisions of this rule. On December 23, 2002, the FAA notified AOPA that the petition would be considered a comment and placed in the docket for this SFAR.

FAA Response: Since SFAR 94 was published, the FAA has issued NOTAM 2/2720 under the Administrator's authority in SFAR 94 to permit operators based at one of the three Maryland airports to fly into, out of or between any of the three airports, provided they do the following:

1. File an IFR or VFR flight plan with Leesburg Automated Flight Service Station;
2. Obtain an Air Traffic Control clearance with a discrete transponder code; and
3. Follow arrival/departure procedures contained in the NOTAM.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) is impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective less than 30 days after publication in the **Federal Register**. The Washington, DC area has a number of critical governmental and national assets. The U.S. government believes that terrorists still are looking to use general aviation aircraft to conduct terrorist activity. General aviation is an attractive means for terrorism because the training period for learning to fly many of the smaller aircraft is shorter, and security at most general aviation airports is not as tight as security at commercial airports. In fact, the FBI issued terrorist alerts in May and July of 2002 regarding small airports. By extending the effective period of this SFAR, critical national assets will continue to be protected against an airborne threat while permitting operations at these airports.

This action is taken in accordance with the Administrator's statutory mandate found in section 44701(a)(5) of Title 49, United States Code (49 U.S.C.) to promote the safe flight of civil aircraft in air commerce by proscribing regulations and minimum standards necessary for safety in air commerce and national security. This action is necessary to permit aircraft operations to resume at the affected airports while preventing possible hazardous actions directed against aircraft, persons, and property within the United States. This action is also being taken pursuant to the statutory authority in 49 U.S.C. section 40103(b)(3).

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This final rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)). In accordance with the Paperwork Reduction Act, documentation describing the information collection activities was submitted to the Office of Management and Budget (OMB) for review and approval, and assigned control number 2120–0677.

This rule constitutes a recordkeeping and third party disclosure burden on persons conducting operations at specific airports in the Washington, DC area. The respondents are three airports, the State of Maryland, and persons flying to or from these airports.

A protection provided by the Paperwork Reduction Act states that an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. As stated above, the OMB control number is 2120–0677.

Economic Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs, is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will have a significant economic impact on a substantial number of small entities; (3) will have no effect on international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Costs

The FAA has performed an analysis of the expected costs and benefits of this SFAR; specific parts of the SFAR resulted in costs only during its first year, and this analysis will mention them in the course of discussing the different cost elements. The TSA performed the analysis for the SFAR's first year; a copy of their final regulatory evaluation of the economic impacts has been placed in Docket No. FAA–2002–11580; SFAR 94.

The FAA was able to obtain limited historical financial and operational data for College Park and Potomac Field Airports and was also able to obtain this data for part of their first year under the SFAR. Additional data restrictions, however, limited the analysis of the rule's impact on the Washington Executive Airport/Hyde Field. Thus, as will be seen below, FAA was required to make additional assumptions in doing the analysis for this airport.

In 2000, approximately 89,000 part 91 operations were conducted from these airports. The 2001–2002 flight restrictions have caused significant economic hardship for these airport operators, aircraft owners and operators based at the airports, and businesses located on, or dependent upon, the continued operation of the airports.

To provide a basis for comparison, the operational and financial data provided by the three airports has been adjusted to reflect full years of operation. The projected cost of compliance for all three airports is estimated to be $12.51 million ($11.22 million, discounted) over the 2 years that the SFAR is in effect. In addition, the cost to the Federal and state governments sums to approximately $245,800 ($220,500, discounted), so that the total cost of this final rule is $12.76 million ($11.44 million, discounted).

College Park Airport

The College Park Airport was opened in 1909 and is the oldest continuously operating airport in the world. With the exception of about 100 annual air taxi operations, the College Park Airport serves a combination of private pilots and fliers who use their aircraft to conduct business. This annualized revenue loss was increased by a factor of 20% to account for revenues losses not included in the analysis. Thus, the estimate of losses to College Park Airport associated with complying with the operational restrictions in SFAR 94 is $1.62 million for each of the 2 years examined by this analysis. In doing these analyses, the FAA assumes no change in annual revenue per year.

The cost to the College Park Airport and its pilots of complying with the security provisions of this rule will be approximately $347,700 per year. Security costs, which include airport security program maintenance, airport security program modification, and airport physical security provision, sum to $181,500. Security costs for pilots sum to $166,200 and are based on the ground and in-flight delays.

Potomac Airfield

The Potomac Airfield is a small privately owned airport located in Fort Washington, Maryland. Based on information from the first 8 months of 2002, and assuming that these revenues derived during the period stay the same for the 2 years examined by this analysis, the FAA estimates annual revenue loss to be $1.36 million. This annualized revenue loss was increased by a factor of 20% to account for revenue losses not included in the analysis. Thus the FAA estimates losses of $1.63 million for each of the 2 years examined by this analysis.

The estimated cost to Potomac Airfield Airport and its pilots of complying with the security provisions of this rule will be approximately $411,000 over each year that SFAR 94 is in effect. Security costs, which include airport security program maintenance, airport security program modification, and airport physical security provision, sum to $63,100. Security costs for pilots sum to $347,900 and are based on the ground and in-flight delays.

Washington Executive/Hyde Field Airport

Washington Executive/Hyde Field Airport is a small privately owned airport located in Clinton, Maryland. The airport largely serves the needs of private fliers and pilots who occasionally fly for business reasons. This airport was closed longer than the other two; operations resumed at Hyde Field on March 2, 2002. However, on May 17, 2002, the airport was closed again because of a security violation. The airport reopened on September 28, 2002. For costing purposes, the FAA assumes that this airport will remain open for the 2 years of the SFAR 94 extension.

Because the airport had been closed for much of 2002, revenue data is very sketchy. The FAA was able to obtain information on some components, such as fuel sales, aircraft storage fees, landing fees, and miscellaneous sales, but was unable to obtain information on other components, such as aircraft maintenance, aircraft rental, and avionic services. Accordingly, the cost of compliance for the Washington Executive Airport has been adjusted to compensate for the lack of financial data. To offset this shortcoming, the average of the estimated costs of the operational restrictions incurred by the two other airports has been added to the cost of compliance for the Washington Executive Airport. The similarities in size, operations, and geographic location of these airports add credibility to the extrapolation of financial losses. This resulted in the estimate of losses associated with complying with the operational restrictions of SFAR 94 for this airport to be $1.52 million for each of the 2 years examined by this analysis. The FAA does not have historical data on revenue growth at this airport. Accordingly, the FAA will assume no annual change in revenue from either the base period or the contrast period.

The estimated cost to this airport and its pilots of complying with the security provisions of this rule will be approximately $641,900 over each year that SFAR 94 is in effect. Security costs, which include airport security program maintenance, airport security program modification, and airport physical security provision, sum to $78,600 annually. Security costs for pilots sum to $563,300 annually and are based on the ground and in-flight delays.

Other Costs

This rule will impose costs on both Federal and state governmental agencies, totaling $122,900 per year, which is made up of:

- A security specialist at TSA will mandate periodic modifications to each airport's security procedures as well as check each airport's compliance with these mandates.
- Flight service station specialists will need to file the flight plans.
- An airport inspector at TSA will inspect each airport on a monthly basis. This inspector will need to liaison with the state government law enforcement agency involved in the program and will need to fill out airport inspection forms for each airport inspection.

Benefits

This final rule is intended to provide an increased level of safety and security against the threat of airborne terrorist attacks. The primary benefit of the rule will be enhanced protection for the vulnerability of a significant number of vital government assets in the National Capital Region. The temporary security provisions and flight restrictions contained in this rule are an integral part of the effort to identify and defeat the threat posed by terrorists.

For the past two decades, the major goal of aviation security has been the prevention of in-flight bombings and acts of sabotage. Thus, the major line of defense against an aviation-related criminal or terrorist act has been the prevention of an explosive or incendiary device from getting on board an airplane. The February 1993 attack on the World Trade Center (WTC) raised public awareness that the scope of the foreign terrorist threat in the U.S. was more serious and technically more sophisticated than previously thought. The ensuing investigation revealed that foreign terrorists operating in the U.S. are capable of building sophisticated explosive devices and covertly carrying out their plans. The attacks of September 11, 2001, introduced the

specter of terrorists using civil aviation aircraft as a missile against civilian targets, government control centers, political targets, and economic, and/or socially prominent assets. This raises concern regarding the vulnerability of critical government and military facilities to the threat of terrorism. National security demands that a terrorist strike within the National Capital Region must be taken into consideration.

The experience of the past 30 years combating acts of air piracy confirms that the losses associated with aircraft bombings and hijackings are identifiable, measurable, and confined. The cost of a catastrophic terrorist act against a civilian aircraft can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc. A terrorist attack using a weapon of mass destruction on an urban area would inflict casualties and property damage on a far greater scale than any act perpetrated against a commercial aircraft. If successful, the economic impact would be enormous and in many ways incalculable as demonstrated by the September 11, 2001, attacks, for which the economic costs will not be fully realized for several years. However, even if such an attack failed, there would be a direct economic cost of reduced travel and tourism due to individuals' perceptions of safety and security.

The rule's objective is to reduce the risk that an airborne terrorist attack initiated from an airport moments away from vital national assets will occur. The cost of a major act of terrorism against a nationally prominent target or critical government infrastructure is extremely difficult to quantify. Dependent upon the target and extent of damages, etc., this type of terrorist act would have far reaching economic consequences and long lasting social and/or political implications. As such, losses associated with such an act are virtually impossible to estimate.

The following analysis describes an attempt at quantifying some of the elements involved with the impact of a small general aviation aircraft within the National Capital Region. This is intended to allow the reader to judge the likelihood of benefits of the rule equaling or exceeding its cost. The FAA recognizes that such an impact may not cause substantial damage to property or a large structure; however, it could potentially result in an undetermined number of fatalities and injuries and reduced tourism.

The FAA is unable to predict which target or location such an aircraft would crash into. In a worst-case scenario, a general aviation aircraft could be flown into the dome of the Capitol Building. While the destruction of the aircraft is almost certain, it is not known to what extent the dome or the building would be damaged. Fatalities and casualties could number into the thousands in the case of a direct attack. According to the Capitol Visitor Center website, as many as 18,000 individuals visited the Capitol Building each day during peak season, and this does not take into account those who work or do business in the Capitol Building on a daily basis when Congress is in session. Due to the number of unknowns involved in a terrorist attack in the National Capital Region, the economic cost due to fatalities, casualties and property damage are inestimable.

In addition to casualties and property damage, which are difficult to quantify, there would be the potential loss of revenue from a decrease in travel and tourism resulting from a terrorist incident in the nation's capital. This negative impact that a terrorist attack, successful or not, would have on tourism is quantifiable. The heightened state of alert that follows a terrorist strike is typified by halted public tours, obstructed streets, off limits public buildings, closed down landmarks, and increased public apprehension. After the September 11th attacks, tours at the Capitol Building were curtailed and tourism as a whole declined. A terrorist attack specifically against the nation's capital would draw significant national and international media attention. The adverse publicity would weaken consumer confidence and further discourage travel and tourism to the Washington, DC Metropolitan area. The U.S. National Park Service and the District of Columbia Government's Office of Planning and Economic Development cite that tourism is the number one private sector Industry in the region. An estimated 22 million visitors come to the Washington Region each year, and spent, on average, about $116.00 per person.

Assuming that each person spends $116 per visit, multiplying this times 22,000,000 tourist yields $2.552 billion as the annual contribution visitors make to the Washington, DC economy. Based on the experience of September 11, 2001, the FAA believes that a decline of three percent is a conservative estimation as to the decline in overall tourism. Three percent of the $2.552 billion would result in a $76.56 million decline in revenues to the District of Columbia economy. The FAA believes that the casualty and property loss added to the estimated $76.56 million revenue decline from reduced tourism could easily be in the hundreds of millions of dollars.

This SFAR was promulgated on February 13, 2002 and will last for 3 years. Accordingly, these benefits need to be applied over this 3-year period. This analysis looks at the costs and benefits of the SFAR extension, for the final 2 years of this SFAR, so the benefits calculations need to be examined for this 2-year period, meaning that only two-thirds of the $76.56 million can be applied to this rule; benefits sum to $51.04 million ($45.78 million, discounted); these benefits assume an equally likely chance that this incident will be avoided during any time over the 3-year period. The TSA regulatory evaluation will analyze the benefits for the first year of the SFAR.

The cost of this rule is estimated to be $12.76 million ($11.44 million, discounted). This cost needs to be compared to the possible unfortunate consequences that could occur if a terrorist attack using a small general aviation aircraft is carried out against a public facility or congested public assembly area located within National Capital Region. Using conservative assumptions, the FAA estimates that the costs of an airborne attack could equal $76.56 million in terms of fatalities, injuries, the destruction of the airplane, and reduced tourism. Two-thirds of these costs can be counted as the benefits for this SFAR extension, and they need to be contrasted with the cost of implementing SFAR 94 for all three airports. The FAA concludes that the benefits vastly outweigh the costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA is not required to provide a regulatory flexibility analysis for this rulemaking action, because there was not a previous Notice of Proposed Rulemaking (NPRM). (*See* "Justification for Immediate Adoption," above.) The FAA has provided one, however, because it believes that it is important to show the potential impact on these entities for completeness.

For this SFAR, the small entity group is considered to be small general aviation airports (Standard Industrial Classification Code [SIC] 4581—Airports, Flying Fields, and Airport Terminal Services). The small entity size standards criteria used by the FAA in past analyses involving airports defines a small airport as one with annual revenues of less than $5 million. In addition, all privately owned, public-use airports are considered small.

Three airports are affected by this rule. The College Park Airport is owned and partially funded by two Maryland Counties, Montgomery and Prince Georges. The 2000 census discloses that the combined population of the two counties is approximately 1.7 million. As such, the College Park Airport is not a small entity. Both the Potomac Airfield Airport and Washington Executive Airport/Hyde Field are privately owned and considered small in this analysis.

As a basis for comparison among small airports, the FAA examined the revenue base for all Part 139 small airports. Small general aviation airports are not required to have security programs; only those airports that have scheduled service are required to have such a program. Air carrier airports are funded from tax revenues and generally have greater aviation traffic activity than general aviation airports and airports without scheduled service. The two small airports subject to SFAR 94 are not supported from tax revenues, as the revenues that sustain the two airports are derived solely from the pilots who use the airports. The estimated annual cost of compliance, based on known costs and revenues for the Washington Executive Airport is $290,700 and the burden on the Potomac Airfield Airport is $220,700; they increase to $333,100 and $252,200 when the anticipated airport revenue losses are increased by 20%, as discussed above. These costs are considered burdensome because they are well in excess of one percent of the median annual revenue of small airport operators (one percent of the annual median revenue for small operators is $28,000). Therefore, the FAA has determined that the rule will have a significant economic impact on a substantial number of small entities.

Regulatory Flexibility Analysis

Under section 603 (b) of the RFA (as amended), each final regulatory flexibility analysis is required to address the following points: (1) Reasons why the FAA considered the rule, (2) the objectives and legal basis of the rule, (3) the kind and number of small entities to which the rule will apply, (4) the reporting, record keeping, and other compliance requirements of the rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the rule. The FAAA will perform an analysis for the two small airports impacted by this rule.

Reasons why the FAA considered the rule—The catastrophic events of September 11, 2001, introduced the awareness that terrorists will use civil aviation aircraft as a missile or possible carriers of biological, chemical, radioactive and/or conventional weaponry against civilian targets. The airports affected by this rule are located within a few minutes flight from vital civilian and military control centers. This final rule recognizes that the terrorist threat is changing and growing and that extraordinary steps must be taken to safeguard vulnerable critical national assets and counter the increased threat level.

The objectives and legal basis for the rule—The objective of the rule is to restore operations at the affected airports while attempting to counter the threat of a possible terrorist airborne attack carried out against vital national assets located within the National Capital Region. The Legal basis for the rule is found in 49 U.S.C. 44901 *et seq.*. Both the FAA and the TSA must consider, as a matter of policy, maintaining and enhancing safety and security in air commerce as its highest priorities (49 U.S.C. 40101(d)).

The kind and number of small entities to which the rule will apply—The rule applies to two small general aviation airports subject to SFAR 94. Private fliers and some pilots who occasionally operate their aircraft for business reasons use the two airports.

The reporting, record keeping, and other compliance requirements of the rule—As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review:

Paragraph 4.—Airport Security procedures, Subparagraph (a) requires the two airports to modify or submit the security procedures program at the request of the TSA as well as maintain their security program. The cost and time required for these activities is estimated to be $672 at Potomac, taking 16 hours, and $600 at Washington Executive/Hyde, taking 15 hours for a total of $1,272, taking 31 hours.

All Federal rules that may duplicate, overlap, or conflict with the rule—The FAA is unaware of any Federal rules that duplicate, overlap, or conflict with this rule.

Other Considerations

Affordability analysis—The extent to which a small airport can "afford" the cost of compliance is directly related on the availability of income and earnings. The small airports subject to this rule generate income to sustain their operations from landing fees, tie-down charges, rent and other compensation paid by airport tenants, fuel sales, flight school instruction, sightseeing rides, aircraft rentals, and miscellaneous local sales. All of these sources of income are influenced directly by the number of operations at the airport. The reduction in operations experienced by the airports as a consequence of the flight restrictions in place before and after this rule became effective is significant.

The decrease in operations corresponds directly to the decline in working capital at the airports. Working capital is defined as the excess of current assets over current liabilities. The financial strength and viability of a business entity's financial strength is substantially influenced by its working capital position and its ability to meet its short-term liabilities. As fixed-base operator and pilots have relocated to other airfield, revenues have continued to decline. Besides laying-off staff, without other sources of revenue, the airports are unable to implement offsetting cost-saving efficiencies that could ameliorate the loss of income.

At this time, there is no comprehensive source of information available that would account for a total financial picture of these airports. There is also no information about the airports' ability to obtain credit. The only evidence is limited to the fact that the airport and its tenants generated revenues in previous years and were able to pay their taxes. As such, it can

be assumed that these small entities were generating sufficient revenues to meet tax and other obligations; however, the costs of complying with SFAR 94 are very high relative to the current revenues reported by the airports. As discussed in more detail in the full analysis, the security costs alone are more than 20 percent of the projected revenues, $63,100 out of total airport revenue of $259,000 at Potomac and $78,600 out of total airport revenue of $291,300 at Washington Executive Airport/Hyde Field.

The financial impact of the flight restrictions in place before the effective date of SFAR 94 is significant relative to the size of these airports. The reopening of the airports has not improved the financial posture of the airports. The May 17, 2002 temporary closing again of Washington Executive Airport/Hyde Field imperiled the survival of this airport. The complex and burdensome flight restrictions now in place are intimidating and have caused many private pilots to relocate to other airports. On the basis of the above, the FAA considers that the rule will threaten the viability of the impacted airports.

Competitiveness analysis—Airports located further away from the DCA VOR/DME are not subject to the security provisions and air traffic restrictions now in effect for College Park Airport, Potomac Airfield Airport, and Washington Executive Airport/Hyde Field. These airports offer a convenient alternative location for pilots seeking to avoid costly operational restrictions and security requirements. The availability of these airports has contributed to reducing the competitiveness of the affected airports. Pilots flying into the airports covered by this SFAR face additional costs in filing flight plans which they would not have at alternative airport; these costs sum to $347,900 annually ($33.13 per operation) at Potomac and $563,300 annually ($33.14 per operation) at Washington Executive Airport/Hyde Field.

Business Closure—The FAA is unable to determine with certainty whether the two small airports significantly impacted by this rule will remain open. On the basis of the Affordability Analysis provided above, the FAA considers that the rule will threaten the viability of the impacted airports.

Alternatives

This rule was brought about by the need to restore operations at the affected airports while providing increased protection against the threat of a terrorist strike to the Nation's capital. The FAA found that the urgent need to provide relief made the use of advance notice impractical and contrary to public interests. The fact that the rule is in effect reduces the number of options to be examined in this analysis; meanwhile, the FAA and the TSA are considering all comments and reviewing other alternatives. Moreover, both agencies believe that any change to the security requirements or air traffic restrictions would be the equivalent of revoking the rule and increasing the vulnerability of the National Capital Region. Thus, the FAA has examined the following three alternatives.

Alternative 1—Rescind the rule immediately—This alternative would provide immediate relief to the airports by removing security provisions and restoring former air traffic control procedures and air space configurations. Implementation of this alternative would facilitate the return of pilots who, for the sake of operating simplicity and reduced flying costs, relocated to other airports. This would be the least costly option. The FAA believes that the threat of terrorists using aircraft as missiles must be guarded against. This makes this regulation necessary until such time that this threat is neutralized.

Conclusion: Rescinding the rule would increase the vulnerability and diminish the level of protection now in place to safeguard vital national assets located within the National Capital Region. This alternative is rejected because it would compromise the security of vital national assets and increase their vulnerability.

Alternative 2—Status Quo—Under this alternative, the FAA and TSA would maintain the present security and air traffic operational restrictions. The annual cost of compliance for the affected airports totals $511,400; they increase to $585,400 when the anticipated airport revenue losses are increased by 20% The rule ensures that any aircraft operating to and from the affected airports and transiting the restricted area specified in the SFAR has been properly identified and cleared.

Conclusion: This alternative is preferred because it balances the security concerns against the impact on the three airports and related businesses.

Alternative 3—Close Airports Permanently—Under this alternative, the FAA would completely close the three airports to all aviation operations. This would effectively close all aviation-related businesses at or near the affected airports. They would be forced to move to other airports or close their businesses permanently. All pilots who have aircraft permanently based at the airports would also be forced to move their aircraft to other locations, thereby imposing moving costs, including new hanger, tie-down, storage fees, etc. Workers at the airports would be forced to seek employment at one of the other general aviation airports in the Washington Metro area. This is the most costly option.

Conclusion: This alternative is not preferred because it causes the greatest financial burden on the airports, their tenants and aviation-related businesses, and individuals who work or store aircraft at the three affected airports.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no affect on any trade-sensitive activity.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have Federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rule does not contain such a mandate. Additionally, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when no notice of proposed rulemaking has first been published. Accordingly, the FAA has not prepared a statement under the Act.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Security.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 40101, 44111, 44701, 44709, 44711; 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Amend Special Federal Aviation Regulation (SFAR) No. 94 by revising section 7 to read as follows:

SFAR NO. 94—ENHANCED SECURITY PROCEDURES FOR OPERATIONS AT CERTAIN AIRPORTS IN THE WASHINGTON, DC METROPOLITAN AREA SPECIAL FLIGHT RULES AREA

* * * * *

7. *Expiration.* This Special Federal Aviation Regulation shall remain in effect until February 13, 2005.

Issued in Washington, DC on February 11, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–3777 Filed 2–12–03; 9:25 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 762, 764, and 774

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1910, 1924, 1941, 1943, 1951, 1955, 1956, 1962, and 1965

RIN 0560–AG78

2002 Farm Bill Regulations—General Credit Provisions

AGENCY: Farm Service Agency and Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Farm Service Agency's (FSA) regulations to comply with provisions of the Farm Security and Rural Investment Act of 2002 (2002 Act). In addition, this rule clarifies direct loan eligibility criteria in accordance with the Department of Agriculture Reorganization Act of 1994. This rule amends the regulations that govern the direct and guaranteed farm loan programs of FSA by revising eligible loan purposes, percentage of loan guarantees, terms for downpayment loans, the direct loan "term limit" and numerous other provisions affecting loan making, servicing and collections. The rule is intended to focus more FSA resources on beginning farmers and ranchers and make more borrowers eligible for FSA farm credit assistance.

DATES: Effective February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Zeidler, Senior Loan Officer, USDA, FSA, Farm Loan Programs Loan Making Division, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–5199; e-mail: *kathy_zeidler@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

This rule is not being published for public notice or to solicit comment from interested parties as a proposed rule because it implements precise requirements of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171)(the 2002 Act) where the Agency has little or no leeway in terms of policy interpretation. Thus, this rule is published as final and is effective immediately. Other provisions of the 2002 Act that involve agency policy considerations in which public participation is required will be published separately according to 5 U.S.C. 553.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, Public Law 96–534, (5 U.S.C. 601), FSA has determined that this rule will not have a significant economic impact on a substantial number of small entities. FSA program participants are predominantly family-size farmers and ranchers and, as defined by the U.S. Small Business Administration, approximately 98 percent of all farmers are classified as small businesses. The provisions in this rule will not impact a substantial number of small entities to a greater extent than large entities. The intent of this rule is to implement legislation. Program participation is voluntary and requires no direct action on the part of small entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Evaluation

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws to the extent any laws are inconsistent with it, and its provisions are not retroactive. Before legal action may be brought concerning this rule, administrative remedies must be exhausted.

Executive Order 12372

The programs within this rule are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. The rule contains no Federal mandates, as defined by title II of the UMRA. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2) and, therefore, is not subject to the requirements of the SBREFA.

Paperwork Reduction Act

The Agency's information collection requirements, currently approved under OMB control numbers 0560–0154, 0560–0157, 0560–0162, 0560–0166, 0560–0167, 0560–0171, and 0560–0178 are not affected by the final rule.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are:

10.404—Emergency Loans

10.406—Farm Operating Loans

10.407—Farm Ownership Loans

Discussion of the Final Rule

This rule implements the general credit provisions of title V of the 2002 Act as they apply to FSA's Farm Loan Programs (FLP). The changes to Federal credit policies are relatively minor. The changes focus more FSA resources on beginning farmers and ranchers and make slightly more applicants eligible for FSA farm credit assistance. The effects of the changes are difficult to estimate, but they are expected to boost demand minimally for FSA farm loan programs. The specific regulatory changes are discussed below.

Refinancing Bridge Loans

Section 5002 of the 2002 Act authorizes FSA to refinance a temporary bridge loan that was obtained from a commercial or cooperative lender because a shortage of loan funds prevented FSA from closing an approved direct farm ownership (FO) loan. This rule amends 7 CFR 1943.16 to implement this section.

Amount of Guarantee for Operations on Tribal Land

Section 5003 of the 2002 Act expands the category of loans eligible for a 95 (instead of 90) percent guarantee to include operating loans (OL) made to a farmer or rancher whose land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe. This rule amends FSA's guaranteed loan eligibility requirements at 7 CFR 762.129 accordingly.

Term and Loan Percentage Changes for Downpayment Loan Program

Section 5005 of the 2002 Act modifies the terms for loans made under the Downpayment FO Loan Program for qualified beginning farmers and ranchers. Accordingly, this rule amends 7 CFR 1943.14 to specify that loans made under this program will be for 40 (instead of 30) percent of the purchase price or appraised value of the farm or ranch, whichever is less. The term of the loan is limited to 15 (instead of 10) years or less. Also, the time period in which balloon installments are prohibited on loans obtained from other lenders in conjunction with a Downpayment FO loan is increased to 15 (instead of 10) years.

Term Limits on Direct Operating Loans

Section 5101 of the 2002 Act requires the Agency to waive the term limit for a direct OL to a farmer or rancher when their land is subject to the jurisdiction of an Indian tribe and commercial credit is not available. The 2002 Act also provides for a one-time waiver for two years of the direct OL term limit on a case-by-case basis to other borrowers if certain criteria are met. The determination is not subject to administrative appeal. This rule amends 7 CFR 1941.12 to comply with these provisions. One of the statutory requirements for a case-by-case waiver is that the borrower have a "viable farm or ranch operation." The Agency has adopted this requirement by referring to the existing definition of "financially viable operation" at 7 CFR 1941.4 and 1924.54. Another statutory requirement is that the borrower has successfully completed, or will complete within one year, borrower training under section 359 of the Consolidated Farm and Rural Development Act (CONACT). The other statutory requirements for a case-by-case waiver are that the borrower applied for commercial credit from at least two commercial lenders and was unable to obtain a commercial loan, including a loan guaranteed by the Secretary.

Emergency Loan Eligibility for Quarantine Losses

Section 5201 of the 2002 Act authorizes emergency (EM) loans for losses resulting from quarantines imposed by the Secretary under the Plant Protection Act or animal quarantine laws as defined in section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990. This rule amends 7 CFR 764.2 to add a definition of "quarantine" and revise the definition of "disaster" to comply with this requirement.

Entity Eligibility

Section 5302 of the 2002 Act adds trusts and limited liability companies to the list of entities eligible for EM loans and direct and guaranteed OL and FO loans. Thus, 7 CFR 762.102, 764.2, 1910.4, 1924.74, 1941.4 and 1943.4 are amended by revising the definitions of "entity" and "joint operation" to comply with this requirement.

Simplified Loan Guarantee Application

Section 5307 of the 2002 Act increases the loan amount for which FSA can accept a simplified guaranteed loan application from $50,000 to $125,000. Accordingly, 7 CFR 762.102 and 762.110 have been amended to meet this requirement.

Beginning Farmer Definition

Section 5310 of the 2002 Act changes the definition of qualified beginning farmer or rancher by increasing the acres of land that these applicants may own to a maximum of 30 (instead of 25) percent of the average farm or ranch size in the county. This rule amends 7 CFR 762.102, 1941.4 and 1943.4 definitions accordingly to comply with this requirement.

Term and Interest Rate Changes for Seed Loans

Section 10103 of the 2002 Act extends to 36 (from 18) months the period of time for which the zero percent interest rate may apply to loans made under the Emergency Loan for Seed Producers Program. The Act also increases the term of these loans to the earlier of 36 months or the settlement of the bankruptcy proceeding involving AgriBiotech. These requirements are implemented in this rule by amending 7 CFR 774.18.

Eligibility Criteria for Direct Loans

Section 227(b) of the Department of Agriculture Reorganization Act of 1994 repealed a portion of section 333 of the CONACT, which contained eligibility criteria relating to an applicant's character and honesty. Therefore, this rule removes these obsolete eligibility criteria from 7 CFR 1941.12 and 1943.12.

Debt Settlement

Section 5303 of the 2002 Act provides the Secretary the authority to approve or disapprove applications for debt settlement and release of liability without the recommendation of, but after consultation with, the local FSA County Committee (COC). The COC will be consulted by the Agency prior to an action of this type to comply with this statute and ensure that all available information is considered. Also, the previous regulation described many actions involving debt settlement processing and COC recommendation which are internal and have been removed. This rule amends 7 CFR parts 1951, 1955, 1956, 1962, and 1965 accordingly to remove references to COC recommendations.

Interest Rate Options for Loans in Servicing

Section 5305 of the 2002 Act amended the CONACT by requiring FSA to use the lowest of the interest rate in effect at the time the borrower applies for Primary Loan Servicing (PLS), the original interest rate on the loan, or the interest rate being charged for the loan type at the time of deferral, consolidation, rescheduling, or reamortization. Prior to this statutory change, only the latter two options were specified. For the first new option, the time of PLS application will be the time the complete application is received by FSA. This method will be used on program loans with regular or limited resource interest rates. This rule, therefore, revises 7 CFR 1951.909 and Exhibit A of Attachment 1 of part 1951, subpart S accordingly.

Inventory Property

Section 5308 of the Act increases the time that the Agency is allowed to sell real estate inventory property to beginning farmers and ranchers from 75 days to 135 days. Section 5308 further emphasizes the need to maximize opportunities for beginning farmers by combining or subdividing inventory property. This rule amends 7 CFR 1955.63 and 1955.107 accordingly to comply with these requirements. In addition, Exhibits G and G–1 of 7 CFR part 1955, subpart A are removed as they contain only administrative provisions which do not impact the public.

Annual Review of Borrowers

Section 5318 of the Act requires that FSA conduct annual loan assessments of direct loan borrowers. As this review was previously required twice per year, 7 CFR 1924.55 is amended to comply with this requirement.

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7 CFR Part 762

Agriculture, Loan programs—agriculture.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs—agriculture.

7 CFR Part 774

Agriculture, Disaster, Loan programs—agriculture.

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Account servicing, Accounting, Credit, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

7 CFR Part 1965

Foreclosure, Credit, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

Accordingly, 7 CFR Chapters VII and XVIII are amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

2. Amend § 762.102(b) by revising the definitions of "Entity," "Joint operation," the first sentence in subparagraph (5) of the "Beginning farmer or rancher" definition, and the second sentence of the "Cash flow budget" definition to read as follows:

§ 762.102 Abbreviations and definitions.

* * * * *

(b) * * *

Beginning farmer or rancher. * * *

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. * * *

* * * * *

Cash flow budget. * * * Cash flow budgets for loans under $125,000 do not require income and expenses itemized by categories. * * *

* * * * *

Entity. Cooperatives, corporations, partnerships, joint operations, trusts, or limited liability companies.

* * * * *

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property may be owned separately or jointly by the individuals.

* * * * *

3. Amend § 762.110 in paragraphs (a) introductory text, (a)(1), (a)(3), and (b) introductory text by removing "$50,000" everywhere it appears and adding in its place "$125,000."

4. Amend § 762.129 by revising paragraph (b)(2) and the last sentence of paragraph (b)(3) and adding paragraph (b)(4) to read as follows:

§ 762.129 Percent of guarantee and maximum loss.

* * * * *

(b) * * *

(2) When the purpose of an FO guarantee is to participate in the downpayment loan program;

(3) * * * The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding; or

(4) When a guaranteed OL is made to a farmer or rancher whose farm or ranch land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe.

* * * * *

PART 764—EMERGENCY FARM LOANS

5. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

6. Amend § 764.2 by revising the definitions of "Disaster" and "Entity"

and by adding a definition of "Quarantine" to read as follows:

§ 764.2 Definitions.

* * * * *

Disaster means an event of unusual and adverse weather conditions, other natural phenomena, or quarantine, that has substantially affected producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area designated by the Agency.

* * * * *

Entity means a partnership, corporation, cooperative, joint operation, trust or limited liability company that is an operator of an operation engaged in farming, ranching, or aquaculture activities at the time the disaster occurs.

* * * * *

Quarantine means a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990).

* * * * *

PART 774—EMERGENCY LOAN FOR SEED PRODUCERS PROGRAM

7. The authority citation for part 774 continues to read as follows:

Authority: Pub. L. 106–224.

8. Amend § 774.18 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 774.18 Interest rate, terms and security requirements.

(a) *Interest rate.* (1) The interest rate on the loan will be zero percent for 36 months or until the date of settlement of, completion of, or final distribution of assets in the bankruptcy proceeding involving AgriBiotech, whichever comes first.

* * * * *

(b) *Terms.* (1) Loans shall be due and payable upon the earlier of the settlement of the bankruptcy claim or 36 months from the date of the note.

* * * * *

PART 1910—GENERAL

9. The authority citation for part 1910 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Receiving and Processing Applications

10. Amend §1910.4 by revising the heading of paragraph (b), adding a new sentence after the eighth sentence in paragraph (b) and revising paragraph (b)(2) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(b) *Completed Farm Loan Programs applications and additional FSA responsibilities.* * * * Applicants who request a waiver of the direct OL term limits in accordance with subpart A of part 1941 of this chapter based on the facts that their land is subject to the jurisdiction of an Indian tribe and their loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, automatically consent to the Agency releasing information as necessary to the Bureau of Indian Affairs to confirm these facts. * * *

(2) If the applicant is a cooperative, corporation, partnership, joint operation, trust, or limited liability company:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the entity by each member, or the percentage of interest in the entity held by each member.

(ii) A current personal financial statement from each member of the entity.

(iii) A current financial statement from the entity itself.

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

* * * * *

PART 1924—CONSTRUCTION AND REPAIR

11. The authority citation for part 1924 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Management Advice to Individual Borrowers and Applicants

12. Revise § 1924.55 by removing the last sentence of the introductory text, and by revising the heading, adding a first sentence, and revising the last sentence of paragraph (e) to read as follows:

§ 1924.55 Assessment of the agricultural operation.

* * * * *

(e) *Annual review.* For all borrowers, the assessment described under this section will be reviewed on at least an annual basis to monitor progress. * * * The year-end analysis under this section may be treated as the required assessment review.

13. Revise the fourth sentence of § 1924.74(b)(1) to read as follows:

§ 1924.74 Borrower Training program.

* * * * *

(b) *Processing—*

(1) *Agency review.* * * * In the case of a cooperative, corporation, partnership, joint operation, trust, or limited liability company, any individual member holding a majority interest in the entity or who is operating the farm must agree to complete the training on behalf of the entity. * * *

* * * * *

PART 1941—OPERATING LOANS

14. The authority citation for part 1941 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures and Authorizations

15. In part 1941, subpart A, revise all references to "a cooperative, corporation, partnership, or joint operation" to read "an entity." Also, revise all references to "cooperative(s), corporation(s), partnership(s) or joint operation(s)" to read "entities."

16. In part 1941, subpart A, revise all references to "members, stockholders, partners, or joint operators" to read "members." Also, revise all references to "member's, partner's, stockholder's, or joint operator's" to read "member's." And, revise all references to "member, stockholder, partner, or joint operator" to read "member."

17. Amend the first sentence of § 1941.1 by removing the words "farm cooperatives, private domestic corporation, partnerships, and joint operations' and adding in their place the word "entities."

18. Amend § 1941.4 by removing the number "25" from the first sentence in paragraph (e) of the definition of "Beginning farmer or rancher" and adding in its place the number "30," by adding a definition of "entity," and by adding a sentence at the end of the definition of "financially viable operation" to read as follows:

§ 1941.4 Definitions.

* * * * *

Entity. Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

* * * * *

Financially viable operation. * * * This definition only applies when considering a term limit waiver under § 1941.12.

* * * * *

19. Amend § 1941.6 by revising paragraph (c) to read as follows:

§ 1941.6 Credit elsewhere.

* * * * *

(c) Property and interest in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals will be considered and used by an applicant in obtaining credit from other sources.

* * * * *

20. Amend § 1941.12 by:

a. Removing paragraphs (a)(4) and (5);

b. Redesignating paragraphs (a)(6) through (11) as (a)(4) through (9) respectively;

c. Revising the new paragraph (a)(6);

d. Removing paragraphs (b)(5)(iii) and (iv);

e. Redesignating paragraphs (b)(5)(v) and (vi) as (b)(5)(iii) and (iv) respectively;

f. Revising paragraphs (b)(6)(i), (b)(7)(i), (b)(8)(iii) and (b)(9);

The revised text reads as follows:

§ 1941.12 Eligibility requirements.

* * * * *

(a) * * *

(6)(i) Have not executed a promissory note for a direct OL loan in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to the jurisdiction of an Indian tribe, and the loan is secured by one or more security instruments subject to the jurisdiction of Indian tribe, and the test for credit requirement in § 1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

(A) The applicant has a financially viable operation;

(B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

* * * * *

(b) * * *

(6) * * *

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met.

* * * * *

(7) * * *

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met by the entity and all its members.

* * * * *

(8) * * *

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section.

(9)(i) Have no member of the entity who has executed a promissory note for direct OL loans closed in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and the test for credit requirement in § 1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

(A) The applicant has a financially viable operation;

(B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

* * * * *

Subpart B—Closing Loans Secured by Chattels

21. Amend § 1941.54 by revising paragraph (b)(2) as follows and removing paragraph (b)(3):

§ 1941.54 Promissory note.

* * * * *

(b) *Signatures.* * * *

(2) *Entities.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all members of the entity.

22. Amend § 1941.57 by revising paragraph (a) to read as follows:

§ 1941.57 Security instruments.

* * * * *

(a) *Executing security instruments by borrowers.* State supplements will be issued, as necessary, to carry out the provisions of this paragraph. In order to close the loan and obtain the desired lien, security instruments will be executed by appropriate entity officials, on behalf of an entity borrower. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the security requirements for the loan request.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

23. The authority citation for part 1943 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Direct Farm Ownership Loan Policies, Procedures, and Authorizations

24. In part 1943, subpart A, revise all references to "a cooperative, corporation, partnership, or joint operation" to read "an entity." Similarly, revise all references to "cooperative(s), corporation(s), partnership(s) or joint operation(s)" to read "entities."

25. In part 1943, subpart A, revise all references to "members, stockholders, partners, or joint operators" to read "members." Also, revise all references to "member's, partner's, stockholder's, or joint operator's" to read "member's." And, revise all references to "member, stockholder, partner, or joint operator" to read "member."

26. Amend § 1943.1 by removing the words "farm cooperatives, private domestic corporations, partnerships, and joint operations" and adding in their place the words "and entities."

27. Amend § 1943.4 by removing the number "25" from the first sentence in paragraph (e) of the definition of "Beginning farmer or rancher" and adding in its place the number "30" and

by adding a definition of "entity" to read as follows:

§ 1943.4 Definitions.

* * * * *

Entity. Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

* * * * *

28. Amend § 1943.6 by revising paragraph (c) to read as follows:

§ 1943.6 Credit elsewhere.

* * * * *

(c) Property and interests in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals, will be considered and used by an applicant in obtaining credit from other sources.

* * * * *

29. Amend § 1943.12 by:

a. Removing paragraphs (a)(4) and (a)(5);

b. Redesignating (a)(6) through (a)(11) as (a)(4) through (a)(9) respectively;

c. Removing paragraphs (b)(4)(iii) and (b)(4)(iv);

d. Redesignating paragraphs (b)(4)(v) and (b)(4)(vi) as (b)(4)(iii) and (b)(4)(iv); and

e. Revising paragraphs (b)(5)(i), (b)(6)(i) and (b)(7) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

* * * * *

(b) * * *

(5) * * *

(i) The requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section must be met.

* * * * *

(6) * * *

(i) The requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section must be met by the entity applicant and all its members.

* * * * *

(7) If each member's ownership interest does not exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) All of the members of the entity are related by blood or marriage,

(ii) All of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section.

* * * * *

30. Amend § 1943.14 by revising paragraphs (c), (d)(4) and (e)(2)(i) to read as follows:

§ 1943.14 Downpayment FO loan program for beginning farmers or ranchers.

* * * * *

(c) *Loan purposes.* Loans may be made to provide an amount equal to 40 percent of the purchase price or appraised value, whichever is lower, of the farm or ranch to be acquired, unless the applicant requests a lesser amount. The remaining balance of the purchase price or appraised value, whichever is lower, not to exceed 50 percent, may be guaranteed by the Agency.

(d) * * *

(4) The other financing for the balance of the purchase price is amortized for less than 30 years and/or a balloon payment is scheduled within the 15 years of the Agency loan.

(e) * * *

(2) *Terms of loans.* (i) Each loan made under this section shall be amortized over a period of 15 years or less, at the option of the borrower.

* * * * *

31. Amend § 1943.16 by adding a new paragraph (e) to read as follows:

§ 1943.16 Loan purposes.

* * * * *

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

32. Amend § 1943.38 by removing the words "Cooperatives or corporations" from paragraph (g)(3)(ii) and adding in their place the word "Entities," and by removing paragraph (g)(3)(iii).

PART 1951—SERVICING AND COLLECTIONS

33. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart J—Management and Collection of Nonprogram (NP) Loans

34. Amend § 1951.463 by removing and reserving paragraph (e).

Subpart S—Farm Loan Programs Account Servicing Policies

35. Amend § 1951.903 by removing the words "recommended by the County Committee (except where the debt has been discharged through bankruptcy)," from the second sentence of paragraph (b).

36. Amend § 1951.909 by:

a. Revising paragraphs (a)(3), (e)(1)(xii), and (e)(2)(viii);

b. Redesignating paragraph (e)(2)(ix) as (e)(2)(x);

c. Adding new paragraph (e)(2)(ix);

d. Revising paragraph (i)(2)(i).

The revised and added text reads as follows:

§ 1951.909 Processing primary loan service programs requests.

(a) * * *

(3) If a completed application includes a request for a waiver from the training required by paragraph (c)(5) of this section, the Agency will, prior to any offer of Primary Loan Servicing, evaluate the borrower's knowledge and ability in production and financial management and determine the need for additional training as set out in § 1924.74 of this chapter.

* * * * *

(e) * * *

(1) * * *

(xii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for loans made at the regular interest rate will be the lesser of:

(*1*) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(*2*) The lowest interest rate for that type of loan on the date of restructure; or

(*3*) The lowest original loan note rate on any of the original notes being consolidated and/or rescheduled.

(B) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(*1*) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(*2*) The limited resource interest rate for that type of loan on the date of restructure; or

(*3*) The lowest original loan note rate on any of the original notes being consolidated and/or rescheduled.

(C) OL loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(*1*) The borrower meets the requirements for the limited resource interest rate; and

(*2*) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

* * * * *

(2) * * *

(viii) Interest rates of reamortized loans will be as follows:

(A) The interest rate for loans made at the regular interest rate will be the lesser of:

(*1*) The interest rate for that type of loan on the date a complete servicing application was received;

(*2*) The interest rate for that type of loan on the date of restructure; or

(*3*) The original loan note rate of the note being reamortized.

(B) The interest rate of FO or SW loans made at the limited resource interest rate will be the lesser of:

(*1*) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(*2*) The limited resource interest rate for that type of loan on the date of restructure; or

(*3*) The original loan note rate on the note being reamortized.

(C) FO or SW loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(*1*) The borrower meets the requirements for the limited resource interest rate;

(*2*) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section; and

(*3*) For SW loans, the loan funds were used for soil and water conservation and protection purposes as set forth in § 1943.66 (a)(1) through (a)(5) of this chapter.

(D) SA payment agreement will be reamortized at the current SA amortization rate in effect on the date of approval or the rate on the original payment agreement, whichever is less.

(ix) If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Promissory Note is processed and the next installment due date. The amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.

* * * * *

(i) * * *

(2) * * *

(i) If the administrative appeal process results in a determination that the borrower is eligible for Primary Loan Servicing, the servicing official will process the request pursuant to this section. The servicing official will use the information the appeal officer used in making the decision on the appeal, unless stated otherwise in the final appeal decision letter. In cases of debt restructuring resulting from appeals, the interest rate will be determined in accordance with paragraphs (e)(1)(xii) and (e)(2)(viii) of this section as applicable. If implementation of the appeal decision would cause writedown or writeoff of more than $300,000 because of interest accrued after the adverse decision, the servicing official will process the action so as to complete the transaction.

* * * * *

37–38. Amend Exhibit A to subpart S as follows:

a. In Attachment 1, Section I, Subsection 4, the paragraph entitled "Interest Rate for Loan Servicing" is revised.

b. In Attachment 1, Section V, the paragraphs entitled "Approval Requirements" are revised.

The revised text reads as follows:

Exhibit A—Notice of the Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers

* * * * *

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate of the new loan will be either the interest rate on the original loan, the interest rate on the date you submit a complete application for loan servicing, or the interest rate for that type of loan on the date of restructure, whichever is less. If you meet the eligibility requirements, you may be able to get the limited resource interest rate on OL, SW, or FO loans, if the loan was not originally approved with a limited resource rate. For information about current interest rates, contact the FSA county office.

* * * * *

Approval Requirements

If you sell your collateral, you must apply the proceeds from the sale to your FSA account before you can be considered for debt settlement. In the case of compromise or adjustment, however, you may keep your collateral if you are unable to pay your total FSA debt and pay FSA the present market value of your collateral along with any additional amount you are able to pay as determined by FSA. You will be allowed to retain a reasonable equity in essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FSA will not finance a compromise or adjustment offer.

The County Committee will be consulted on all debt settlements of FLP loans. FSA must find that the statements on your application are true, and that you do not have assets or income in addition to what you stated in your application. You must also have not previously received any form of debt forgiveness from FSA on any other direct farm loan. If you qualify, your application must also be approved by the FSA State Executive Director or the FSA Administrator depending on the amount of the debt to be settled.

* * * * *

PART 1955—PROPERTY MANAGEMENT

39. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

40. Amend § 1955.10 by revising paragraphs (f)(2) and (f)(3) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(f) * * *

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* If the Agency indebtedness plus any prior liens exceeds the market value of the property, the indebtedness cannot be satisfied but a credit can be given equal to the market value less prior liens. Debt settlement will be considered in accordance with subpart B of part 1956 of this chapter.

(i) *Crediting accounts.* The Agency will credit an account by an amount equal to the market value less prior liens, unless the borrower is Native American. Native American borrower-owners will be credited with the fair market value or the Agency debt against the property, whichever is greater, provided:

(A) The borrower-owner is a member of a tribe or the tribe, and

(B) The property is located within the confines of a federally recognized Indian reservation.

(ii) *Agency approval.* The same procedure outlined in paragraphs

(f)(1)(i) through (f)(1)(iii) of this section will be followed for approving the voluntary conveyance. The conveyance will be accepted in full satisfaction of the indebtedness unless the market value of the property to be conveyed is less than the total of Government indebtedness and prior liens, and the borrower has agreed to accept a credit in the amount of the market value of the security property less prior liens, if any.

(3) *Loans to organizations.* When an offer of voluntary conveyance is received from an organization borrower, and the market value of the property being conveyed (less prior liens, if any) is less than the Government debt, full consideration must be given to the borrower's present situation and future prospects for paying all or a part of the debt.

* * * * *

41. Remove Exhibits G and G–1 to subpart A.

Subpart B—Management of Property

42. Amend § 1955.63 by revising paragraphs (a) and (b) to read as follows:

§ 1955.63 Suitability determination.

* * * * *

(a) *Determination.* The Agency will classify property that secured loans or was acquired under the CONACT as "suitable property" or "surplus property" in accordance with the definitions found in § 1955.53.

(b) *Grouping and subdividing farm properties.* To the maximum extent practicable, the Agency will maximize the opportunity for beginning farmers and ranchers to purchase inventory properties. Farm properties may be subdivided or grouped according to § 1955.140, as feasible, to carry out the objectives of the applicable loan program. Properties may also be subdivided to facilitate the granting or selling of a conservation easement or the fee title transfer of portions of a property for conservation purposes. The environmental effects of such actions will be considered pursuant to subpart G of part 1940 of this chapter.

* * * * *

Subpart C—Disposal of Inventory Property

43. Amend § 1955.107 by revising paragraphs (a)(2)(i), (b) introductory text, (b)(1), and (b)(2) to read as follows:

§ 1955.107 Sale of FSA property (CONACT).

* * * * *

(a) * * *

(2) * * *

(i) *Sale to beginning farmers/ranchers.* Not later than 135 days from the date of acquisition, FSA will sell suitable farm property, with a priority given to applicants who are classified as beginning farmers or ranchers, as defined in § 1955.103, as of the time of sale.

* * * * *

(b) *Surplus property and suitable property not sold to a beginning farmer or rancher.* Except where a lessee is exercising the option to purchase under the Homestead Protection provision of subpart S of part 1951 of this chapter, surplus property will be offered for public sale by sealed bid or auction within 15 days from the date of acquisition in accordance with § 1955.147 or § 1955.148. Suitable farm property which has been advertised for sale to a beginning farmer or rancher in accordance with paragraph (a) of this section, but has not sold within 135 days from the date of acquisition will be offered for public sale by sealed bid or auction to the highest bidder as provided in paragraph (b)(1) of this section. All prospective buyers will be notified in writing as part of the property advertisement of the presence of any highly erodible land, converted wetlands, floodplains, wetlands, or other special characteristics of the property that may limit its use or cause an easement to be placed on the property.

(1) *Advertising surplus property.* FSA will advertise surplus property for sale by sealed bid or auction within 15 days from the date of acquisition or, for those suitable properties not sold to beginning farmers or ranchers in accordance with this section, within 135 days of the date of acquisition.

(2) *Sale by sealed bid or auction.* Surplus real estate must be offered for public sale by sealed bid or auction and must be sold no later than 165 days from the date of acquisition to the highest bidder. Preference will be given to a cash offer which is at least *percent of the highest offer requiring credit. (*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.) Equally acceptable sealed bid offers will be decided by lot.

* * * * *

44. Amend § 1955.137 by revising the first sentences of paragraphs (b)(3)(ii) and (b)(3)(iii) to read as follows:

§ 1955.137. Real property located in special areas or having special characteristics.

* * * * *

(b) * * *

(3) * * *

(ii) After receiving the wetland determination from NRCS, FSA will review the determination for each inventory property and determine if any of the wetlands or converted wetlands identified by NRCS were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired. * * *

(iii) After FSA has completed the determination of whether the wetlands or converted wetlands located on an inventory property were used for cropland or farming, the U.S. Fish and Wildlife Service (FWS) will be contacted. * * *

* * * * *

PART 1956—DEBT SETTLEMENT

45. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

46. Remove and reserve § 1956.57 (f).

47. Amend § 1956.70 by revising paragraph (b)(3) introductory text to read as follows:

§ 1956.70 Cancellation.

* * * * *

(b) * * *

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by use of the appropriate Agency form with the attachments noted below. No attempt will be made to obtain the debtor's signature. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

* * * * *

48. Amend § 1956.84 by revising paragraph (e) to read as follows:

§ 1956.84 Approval or rejection.

* * * * *

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected will be notified of appeal rights pursuant to 7 CFR part 11.

* * * * *

49. Revise § 1956.96 to read as follows:

§ 1956.96 Delinquent adjustment agreements.

A 90-day extension for making the payments may be given by the Agency when the circumstances of the case justify an extension. A decision not to extend the time for making payments is not appealable. If the debtor is delinquent under the terms of the adjustment agreement and is likely to be financially unable to meet the terms of the agreement, the Agency may cancel the existing agreement and process a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. The cancellation of an adjustment agreement is appealable. If an agreement is cancelled, any payments received shall be retained as payments on the debt owed at the time of the adjustment agreement.

PART 1962—PERSONAL PROPERTY

50. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

51. Amend § 1962.41 by removing paragraph (f) and revising paragraph (e) to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

* * * * *

(e) *Unpaid debt.* If the sale of all security results in less than full payment of the debt, the borrower may request debt settlement of the remaining debt. The servicing official will consult with the County Committee before determining if the borrower's account can be debt settled in accordance with subpart B of part 1956 of this chapter.

52. Amend § 1962.46 by revising paragraph (g)(5)(ii) to read as follows:

§ 1962.46 Deceased borrowers.

* * * * *

(g) * * *

(5) * * *

(ii) If only a portion of the debt is assumed, the amount assumed equals the amount as determined by OGC which could be collected from the assets of the estate of the deceased borrower, including the value of any security or EO property.

* * * * *

PART 1965—REAL PROPERTY

53. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

54. Amend § 1965.26 by removing paragraphs (f)(6) and (g) and revising paragraphs (c)(2)(iv) introductory text and (f)(5) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(c) * * *

(2) * * *

(iv) The Agency approves the compromise or adjustment offer in accordance with subpart B to part 1956 of this chapter and the borrower makes a settlement offer according to the following:

* * * * *

(f) * * *

(5) If the sale of all security results in less than full payment of the debt, the borrower may submit a request for debt settlement. The servicing official will consult with the County Committee before determining if the borrower's account can be debt settled in accordance with subpart B of part 1956 of this chapter.

* * * * *

55. Amend § 1965.27 by removing and reserving paragraphs (b)(19) and (g)(6), revising paragraph (f), amending paragraph (h) by removing the words "County Supervisor" wherever they appear and adding in their place the words "Agency" and revising the fifth sentence of paragraph (h)(1) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(f) *Release of transferor from liability.* The borrower may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Release shall not be granted to any borrower or cosigner who was liable for any FLP direct loan which was reduced or terminated in a manner resulting in a loss to the Government. When the total outstanding debt is not assumed, any request for debt settlement will be processed in accordance with subpart B of part 1956.

* * * * *

(h) * * *

(1) * * * The Agency will consider the following:

* * * * *

Dated: January 31, 2003.

J. B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: February 4, 2003.

Thomas C. Dorr,

Under Secretary for Rural Development.

[FR Doc. 03–3562 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami 03–011]

RIN 2115–AA97

Safety Zone: Julia Tuttle Fireworks, Biscayne Bay, Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in Biscayne Bay one mile north of Julia Tuttle Causeway, Miami Beach, FL. The safety zone is established to protect boaters from the hazards associated with the Julia Tuttle fireworks display being held in Biscayne Bay. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 8 p.m. on March 6, 2003 until 11 p.m. on March 6, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–011 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FUTHER INFORMATION CONTACT: BM1 D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United

States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 840-foot circle surrounding a barge in approximate position 25°49′47″ N. 080°10′39″ W in Biscayne Bay for the Julia Tuttle fireworks display. This rule is needed to increase safety in Biscayne Bay from 8 p.m. March 6, 2003, to 10 p.m. on March 6, 2003, during the Julia Tuttle fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity of Biscayne Bay one mile north of Julia Tuttle Causeway, Miami Beach, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the waters of Biscayne Bay one mile north of Julia Tuttle Causeway.

Regulatory Evaluation

This regulation is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominate in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implication under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Temporary § 165.T07–011 is added to read as follows:

§ 165.T07–011 Safety Zone: Biscayne Bay one mile North of Julia Tuttle Causeway, Miami Beach, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 840-foot circle surrounding a barge in approximate position 25°49′47″N, 80°10′39″W in Biscayne Bay one mile North of Julia Tuttle Causeway for the Julia Tuttle fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 8 p.m. on March 6, 2003 until 10 p.m. on March 6, 2003.

Dated: January 29, 2003.

J.A. Watson,

Commander, U. S. Coast Guard, Acting Captain of the Port Miami.

[FR Doc. 03–3769 Filed 2–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI88

Subsistence Management Regulations for Public Lands in Alaska

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: We, the U.S. Forest Service and U.S. Fish and Wildlife Service, are amending the regulations governing subsistence use of wildlife in Alaska by clarifying how old a person must be to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit and by removing the requirement that Regional Councils must have an odd number of members. These changes are noncontroversial and are designed to ensure that the regulations for the Federal Subsistence Management Program in Alaska are easy for the public to understand and reflect current policies.

DATES: This rule will be effective on April 21, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before April 4, 2003.

ADDRESSES: Submit written comments to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503. Submit electronic comments to *Bill_Knauer@fws.gov*. For electronic comments, please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

FOR FURTHER INFORMATION CONTACT: For Forest Service questions, contact Ken Thompson, Regional Subsistence Program Manager, USDA–FS Alaska Region, at (907) 786–3592. For Fish and Wildlife Service questions, contact Thomas H. Boyd at (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 36 CFR part 242 and 50 CFR part 100 (referred to below as "the regulations"), authorized by title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3126), implement the Federal Subsistence Management Program on public lands in Alaska.

On May 7, 2002, we published in the **Federal Register** (67 FR 30559–30571) a final rule that made certain changes to the regulations. In that final rule, we clarified how old a person must be to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit, and we retained, without change, a long-held requirement that Regional Councils must have an odd number of members.

At the request of other agencies, in the final rule, we added language to § _____.6(b) of the regulations to clarify that, "In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to have reasonably harvested that species yourself (or under the guidance of an adult)." Since the publication of the final rule, we have determined that this language could be misleading and should be further clarified. Therefore, we are making editorial changes to this paragraph to make it easier to understand.

In addition, in the final rule, we retained, without change, a long-held requirement in § _____.11(b)(1) stating, "The number of members for each Regional Council shall be established by the Board, and shall be an odd number." We retained the requirement that Regional Councils have an odd number of members to prevent the possibility of a tie during Council votes. Since the publication of the final rule, however, the Deputy Secretary of the Department of the Interior approved a Federal Subsistence Board recommendation to increase the size of Regional Councils to 10 or 13 members. These increases will help achieve better balance, as required by the Federal Advisory Committee Act (5 U.S.C. App.1), in Regional Councils. Further, we have learned that in Regional Council meetings, if a vote count is tied, that motion fails; therefore, our reason for requiring an odd number of members does not apply. In light of this new information, we are revising § _____.11(b)(1) to remove the requirement that Regional Councils must have an odd number of members. This change will bring this paragraph into accord with current policies.

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 45 days of publication of this rule in the **Federal Register**. Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. In the event that we do receive any adverse comments, we will engage in the normal rulemaking process to promulgate these changes to the CFR. Therefore, in this issue of the **Federal Register**, we have published a proposed rule regarding these regulatory changes. We will give the same consideration to comments submitted in response to either this direct final rule or the proposed rule; you do not need to submit comments to both documents.

As discussed above, if we receive no written adverse comments or written

notice of intent to submit adverse comments within 45 days, then this direct final rule will become effective 60 days from today. In that case, we will publish a document in the **Federal Register**, before the effective date of this direct final rule, confirming the effective date and withdrawing the related proposed rule.

Required Determinations

Regulatory Planning and Review (E.O. 12866), Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

An economic analysis is not necessary for this rule as it will not have an economic impact on any entities, large or small. This rule is not a significant rule under E.O. 12866 and, therefore, was not reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act:

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A federalism assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared for this rule. This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments amend title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In § _____.6, paragraph (b) is revised to read as follows:

§ _____.6 Licenses, permits, harvest tickets, tags, and reports.

* * * * *

(b) In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to reasonably harvest that species yourself (or under the guidance of an adult).

* * * * *

3. In § _____.11, paragraph (b)(1), the first sentence is revised to read as follows:

§ _____.11 Regional advisory councils.

* * * * *

(b) * * *

(1) The number of members for each Regional Council shall be established by the Board. * * *

* * * * *

Dated: January 31, 2003.

Gale A. Norton,

Secretary of the Interior.

Dated: November 14, 2002.

Steven A. Brink,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 03–3741 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–11 and 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ55–248, FRL–7441–4]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by New Jersey, including revisions to the State's enhanced motor vehicle inspection and maintenance (I/M) program. This revision updates New Jersey's enhanced I/M performance standard modeling to reflect the State's plan to extend the current new vehicle inspection exemption from one inspection cycle (2 years) to two inspection cycles (4 years). The State's evaluation demonstrates that the proposed changes to the enhanced I/M program will not impact the State's ability to continue to meet its enhanced I/M emission reduction goals for current and future years. The intended effect of this action is to approve New Jersey's plan to extend the new vehicle emission inspection exemption, and the State's supporting revised performance standard modeling, which demonstrates that the enhanced I/M program continues to meet EPA's low enhanced performance standard.

EFFECTIVE DATE: This rule will be effective March 20, 2003.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2002 (67 FR 67345), EPA published a notice of proposed rulemaking regarding a SIP revision submitted by the State of New Jersey. The notice proposed to approve New Jersey's plan to extend the new vehicle emission inspection exemption from two to four years, and the State's supporting revised performance standard modeling. This new vehicle emission inspection exemption was enacted by New Jersey on July 1, 2002 as Public Law 2002, Chapter 34, and supercedes the current emission inspection test frequency set forth in New Jersey's I/M rules. The new legislation requires any new vehicle of model year 2000 and newer to be exempt from the emission inspection for 4 years, and thereafter inspected every 2 years, however, implementation of this new legislation is contingent upon approval by EPA. New Jersey's goal is to begin implementation of the new vehicle emission inspection exemption on January 1, 2003.

Also included as part of the modeling assumptions for New Jersey's revised performance standard modeling demonstration were other proposed program changes contained in the State's April 24, 2002 proposed SIP revision. For more detailed information on these proposed design changes, please see the November 5, 2002 notice of proposed rulemaking. Although the State appropriately included these proposed changes in its revised modeling since they will, if adopted, impact the overall emission reduction potential of the I/M program, EPA is not taking action on these changes in this final rulemaking. However, EPA will take formal rulemaking action on these other changes after they are adopted and formally submitted by the State.

The SIP revision was proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its regulations. The proposed SIP revision was initially submitted to EPA on August 20, 2002, and the final SIP revision was formally submitted on December 3, 2002. It should be noted that EPA did not receive any comments associated with the November 5, 2002 proposed approval of revisions to New Jersey's enhanced I/M program. A detailed description of New Jersey's submittals and EPA's rational for the proposed action were presented in the proposal referenced above and will not be restated here.

Conclusion

EPA is taking final action to approve New Jersey's December 3, 2002 SIP revision, which updates New Jersey's enhanced I/M performance standard modeling to reflect the State's plan to extend the current new vehicle inspection exemption from one inspection cycle (2 years) to two inspection cycles (4 years). In accordance with the parallel processing procedures, EPA has evaluated New Jersey's final SIP revision submitted on December 3, 2002, and finds that no substantial changes were made from the proposed SIP revision submitted on August 20, 2002. Also in the final SIP revision, New Jersey addressed the four minor issues identified by EPA during technical review of the proposed SIP revision. EPA agrees with New Jersey's responses to those comments it received which are related to the enhanced I/M program as an element of the State's SIP.

EPA is approving New Jersey's I/M SIP revision submitted on December 3, 2002. New Jersey has demonstrated through performance standard modeling that its enhanced I/M program with the new vehicle emission inspection exemption, including other proposed program design changes, continues to meet EPA's low enhanced performance standard.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 9, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(72) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(72) Revisions to the New Jersey State Implementation Plan (SIP) concerning the Enhanced Inspection and Maintenance Program, submitted on December 3, 2002 by the New Jersey State Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

(A) New Jersey Revised Statutes.

(*1*) Public Law 2002, Chapter 34, paragraph 15 amending N.J.S.A. 39:8–2.c, enacted on July 1, 2002.

[FR Doc. 03–3697 Filed 2–14–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045; AD–FRL–7446–6]

RIN 2060–AK53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills, which were issued on January 12, 2001 under section 112 of the Clean Air Act (CAA). The amendments clarify and consolidate the monitoring and testing requirements and add a site-specific alternative standard for one pulp mill. We are issuing these amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills if significant adverse comments are filed.

DATES: The direct final rule is effective on May 19, 2003, without further notice, unless EPA receives significant adverse comments by March 20, 2003. If significant adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** to notify the public that the rule will not take effect. The incorporation by reference of certain publications in the rule is approved by the Director of the Office of the Federal Register as of May 19, 2003.

ADDRESSES: Comments may be submitted by mail (in duplicate, if possible) to EPA Docket Center (Air Docket), U.S. EPA West (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0045. By hand delivery/courier, comments may be submitted (in duplicate, if possible) to EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0045.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5427, facsimile number (919) 541–5600, electronic mail (e-mail) address *telander.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action are those kraft, soda, sulfite, and stand-alone semichemical pulp mills with chemical recovery processes that involve the combustion of spent pulping liquor. Categories and entities potentially regulated by this action include:

Category	NAICS code*	Examples of regulated entities
Industry	32211 32212 32213	Kraft, soda, sulfite, and stand-alone semichemical pulp mills.
Federal government		Not affected.
State/local/tribal government		Not affected.

*North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.860 of the national emission standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0045. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW, Washington, DC 2004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information and other information whose disclosure is restricted by statute, which are not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

Direct Final Rule. We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate significant adverse comments. We anticipate no significant adverse comments because EPA received no adverse comments when we published similar amendments during 2001. Furthermore, with respect to the amendment regarding an individual sulfite pulp mill located in Cosmopolis, Washington, EPA has already received favorable comments on the amendment from the State of Washington. The EPA received one adverse comment during the CAA section 113(g) comment period on the draft settlement agreement between EPA and Weyerhaeuser Paper Company, which described the amendment at issue, which comment is being addressed directly in this notice (although this response does not bar further comment). However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills if significant adverse comments are filed.

If we receive any significant adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the Agency determine to issue one. Any of the distinct amendments in today's rule for which we do not receive significant adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 21, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading the preamble to the direct final rule.

I. Background
A. Site-Specific Alternative Standard
B. Technical Corrections
II. Amendments to Subpart MM
III. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. *et seq.*
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G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

The EPA promulgated national emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills on January 12, 2001 (66 FR 3180). The final rule (40 CFR part 63, subpart MM) includes standards for hazardous air pollutants (HAP), as well as monitoring, performance testing, recordkeeping, and reporting requirements. The EPA established a site-specific potential compliance date under subpart MM for Georgia-Pacific Corporation's stand-alone semichemical pulp mill in Big Island, Virginia (66 FR 16400, March 26, 2001). The EPA published technical corrections to subpart MM on July 19, 2001 (66 FR 37591), which corrected the compliance date and oxygen correction equations and clarified the performance testing requirements to account for all applicable test methods and sources. Today's action includes amendments to clarify and consolidate the monitoring and testing requirements and adds a site-specific alternative standard for HAP metals for Weyerhaeuser Paper Company's sulfite pulp mill in Cosmopolis, Washington.

A. Site-Specific Alternative Standard

The NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills includes a HAP metals standard for existing sulfite combustion units, using particulate matter (PM) emissions as a surrogate for HAP metals emissions. The final rule requires existing sulfite combustion units to reduce HAP metals emissions, measured as PM, to a level less than or equal to 0.040 grains per dry standard cubic foot (gr/dscf), corrected to 8 percent oxygen (§ 63.862(a)(2)).

Following promulgation of the rule, Weyerhaeuser Paper Company requested that EPA issue a site-specific alternative standard under subpart MM for Weyerhaeuser's Cosmopolis, Washington sulfite pulp mill. The alternative standard would allow Weyerhaeuser to reduce HAP metals emissions from an onsite emission source called a hog fuel dryer in lieu of complying with the HAP metals standard for existing sulfite combustion units. The hog fuel dryer at the Cosmopolis mill is used to dry solid fuel, such as bark, prior to combustion of the fuel in an onsite boiler. The hog fuel dryer is not regulated under a NESHAP and appears to be unique. Compliance with the alternative standard will result in greater annual HAP metals emissions reductions, lower annual energy utilization, and lower compliance costs at the Cosmopolis mill than would have been achieved through compliance with the HAP metals standard for sulfite combustion units.

Weyerhaeuser's Cosmopolis, Washington mill is a magnesium-based sulfite mill with three chemical recovery furnaces. These three recovery furnaces are subject to the HAP metals standard in subpart MM for existing sulfite combustion units. The emissions from each recovery furnace are first routed through a multiclone to recover magnesium oxide (particulate) and then through a cooling tower followed by absorption towers to recover sulfur dioxide. Following the absorption towers, the emissions from the three recovery furnaces are combined and treated in an educted venturi scrubber before being emitted to the atmosphere through a common stack.

The recovery furnaces are subject to a Washington State permit PM limit of 0.1 gr/dscf. The applicable NESHAP limit of 0.040 gr/dscf, corrected to 8 percent oxygen, is more stringent and would supersede the State limit. The hog fuel dryer is also subject to a State permit PM limit of 0.1 gr/dscf. However, the hog fuel dryer is not subject to any NESHAP. The hog fuel dryer is equipped with cyclones to reduce PM emissions. The alternative standard probably cannot be achieved without installation of a fabric filter, and Weyerhaeuser intends to replace the existing cyclones on the hog fuel dryer with a fabric filter after promulgation of the site-specific alternative standard.

Environmentally beneficial practices at the Cosmopolis mill include the use of oxygen delignification and elemental chlorine-free and oxygen bleaching. The load on the recovery furnaces has increased as a result of oxygen delignification and a decision by the mill to burn sludge from onsite wastewater treatment in the recovery furnaces. Although the mill recovers energy from burning the biosolids, this practice has resulted in an increase in PM emissions from the recovery furnaces. However, the mill is still able to consistently meet its State permit PM limit.

The sulfite recovery furnaces at the Cosmopolis mill are tested monthly for PM. Based on the monthly data collected during the past 12 years, the mill cannot consistently meet EPA's NESHAP standard for HAP metals from existing sulfite recovery furnaces (0.040 gr/dscf at 8 percent oxygen, measured as PM) without a significant investment in a new emission control device. Because the exhaust gas volume from the hog fuel dryer is much smaller than the exhaust gas volume from the recovery furnaces, Weyerhaeuser determined that it would be much less costly for the Cosmopolis mill to install more efficient controls to reduce HAP metals emissions from the hog fuel dryer than from the recovery furnaces. Weyerhaeuser estimates that the capital cost of controlling the emissions from the recovery furnaces would be approximately $4 million (based on installation of a wet electrostatic precipitator) versus approximately $1.3 million to control emissions from the hog fuel dryer (based on installation of a fabric filter). The operating cost of the fabric filter for control of hog fuel dryer emissions would be about the same as the operating costs of the existing mechanical cyclone, which the fabric filter would replace. Weyerhaeuser also estimates that the operating costs of the wet electrostatic precipitator for control of recovery furnace emissions would be approximately $60,000 per year.

Weyerhaeuser conducted HAP emission tests to determine and compare the quantity of HAP metals emitted from the recovery furnaces (combined stack) versus the hog fuel dryer under current operating conditions. The recovery furnaces and hog fuel dryer were tested for the following 11 HAP metals: antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium. Based on the results of the emission tests, the sulfite recovery furnaces collectively emit approximately 212 pounds per year (lb/yr) of HAP metals, and the hog fuel dryer emits approximately 441 lb/yr. (See Docket ID No. OAR–2002–0045.) Both the recovery furnaces and hog fuel dryer emit very similar types of HAP metals. For both emission sources, the top four HAP metals emitted were manganese, lead, chromium, and nickel, accounting for 98.5 percent of the recovery furnace HAP metals emissions and 98.9 percent of the hog fuel dryer HAP metals emissions. Manganese was the predominant HAP metal emitted from both sources. The recovery furnaces emitted 0.025 pounds per hour (lb/hr) of manganese, accounting for 86 percent of the recovery furnace HAP metals emissions. The hog fuel dryer emitted 0.10 lb/hr of manganese, accounting for 97 percent of the hog fuel dryer HAP metals emissions. (See Docket ID No. OAR–2002–0045.) None of these metals are added to the mill's manufacturing process but are naturally occurring metals present in the wood chips and hog fuel processed at the mill.

Compliance with EPA's HAP metals standard for existing sulfite combustion units would reduce HAP metals emissions from the recovery furnaces by about 30 percent using PM as a surrogate for HAP metals. Assuming the same emissions reductions are achieved for HAP metals as for PM, compliance with the HAP metals standard for existing sulfite combustion units would reduce HAP metals emissions from the recovery furnaces by approximately 64 lb/yr. As an alternative to controlling HAP metals emissions from the recovery furnace, Weyerhaeuser proposes that the hog fuel dryer at their Cosmopolis, Washington mill meet a PM emission limit of 10.0 lb/hr (with PM serving as a surrogate for HAP metals emissions), which is equivalent to a PM emissions concentration of 0.030 gr/dscf. The hog fuel dryer's current PM emissions concentration is 0.081 gr/dscf. Weyerhaeuser's proposed PM emission limit for the hog fuel dryer would require that the mill reduce PM emissions from the hog fuel dryer by approximately 63 percent. Assuming the same emissions reductions are achieved for HAP metals as for PM, the total HAP metals emission reduction for the alternative standard would be approximately 278 lb/yr, which is more than four times the HAP metals emissions reductions that would be achieved through compliance with the HAP metals standard for existing sulfite combustion units.

After reviewing the test reports and other documentation provided by Weyerhaeuser, we agree with Weyerhaeuser's request to include an alternative standard in subpart MM because the alternative achieves greater emissions reductions of the same HAP metals and does so by controlling a source otherwise unregulated under subpart MM or any other NESHAP. The emission test reports and other documents related to the alternative standard are provided in the project docket. (*See* Docket ID No. OAR–2002–0045.)

The EPA received one adverse comment on the proposed settlement agreement. The commenter maintained that once EPA learned that there was an unregulated emission point at the Cosmopolis mill, the Agency had no choice but to develop a maximum achievable control technology (MACT) standard for that emission point in addition to the MACT standard for all other emission points. The commenter further suggested that the unregulated emission point would be subject to case-by-case MACT (under section 112(j) of the Act).

The EPA appreciates this thoughtful comment, but does not agree with it. First, although the commenter's approach is permissible, it is not compelled. The EPA typically develops MACT standards for a series of aggregated plant operations, not for individual emission points, in keeping with the requirement in section 112(d)(2) to develop emission standards applicable to new or existing "sources". A "source" can include an entire facility. See sections 112(a)(3) and 111(a)(3). In this case, EPA has determined that MACT for the aggregated unit operations involved in black liquor recovery (the source category subject to this rule) is a given amount of HAP emissions. Indeed, the standard for HAP metals in the existing rule (the HAP also emitted by the hog fuel dryer) is expressed as an aggregated limit (along with an alternative standard expressing the standard on an emission point by emission point basis). See section 63.862(a)(1)(ii)(A). In this rule, EPA is providing an alternative means of complying with that MACT limit (a means which, as explained above, results in more HAP reduction than otherwise provided for in the rule). The EPA notes further that it has pursued this same approach to compliance in a number of Project XL applications. See, *e.g.* 66 FR 34119, 34120 (June 27, 2001) (final rule) and 66 FR 16637, 16640 (March 27, 2001) (proposed rule).

The commenter's further point regarding use of 112(j) to develop case-by-case MACT for the single emission point also is not compelled (and probably is not permissible). Once EPA promulgates a valid MACT standard for a source category, the Agency has fulfilled its statutory obligation and no case-by-case limitation may issue.

Finally, even if one were to accept the commenter's argument that MACT must be developed on an emission point by emission point basis, a standard for a hog fuel dryer would likely be some type of beyond-the-floor, given the absence of this emission point at other facilities and absence of controls at the one facility operating this type of unit. The EPA thus would be compelled to consider the cost, non-air quality environmental and health impacts and energy requirements of a standard (as required by section 112(d)(2)), and would not be obligated to promulgate a standard based upon consideration of those factors. Thus, even under the commenter's approach, it would not follow that a standard would result.

B. Technical Corrections

The NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills includes standards, as well as monitoring, performance testing, recordkeeping, and reporting requirements. Technical corrections to subpart MM were published by EPA on July 19, 2001, correcting the compliance date and oxygen concentration equations and clarifying the performance testing requirements to account for all applicable test methods and sources. After these technical corrections were published, it became evident that additional technical corrections were needed to provide further clarification of the monitoring and testing requirements. Today's action includes those technical corrections, which are described previously in this preamble.

II. Amendments to Subpart MM

Today's action includes amendments to clarify and consolidate the monitoring and testing requirements and adds a site-specific alternative standard for Weyerhaeuser Paper Company's sulfite pulp mill in Cosmopolis, Washington.

As described above, the alternative standard will allow the mill to reduce emissions from an onsite hog fuel dryer in lieu of complying with the standard for HAP metals for existing sulfite combustion units specified in § 63.862(a)(2). The alternative standard will limit HAP metals emissions from the hog fuel dryer by limiting PM emissions to a level less than or equal to 10.0 lb/hr. Weyerhaeuser will install a fabric filter on the hog fuel dryer to achieve compliance with the alternative standard and must continuously monitor the performance of the fabric filter using a bag leak detection system with an audible alarm system. Weyerhaeuser must perform an initial compliance test using the test methods specified in the NESHAP to demonstrate that the PM emissions from the hog fuel dryer meet the alternative standard. Weyerhaeuser also must develop and implement a written startup, shutdown, and malfunction plan that contains specific procedures to be followed for operating and maintaining the hog fuel dryer and fabric filter during periods of startup, shutdown, and malfunction, and a program of corrective action if the hog fuel dryer or fabric filter malfunctions. Weyerhaeuser must take corrective action as specified in its startup, shutdown, and malfunction plan whenever the bag leak detection alarm sounds. The Cosmopolis mill will be in violation of the alternative standard if corrective action is not initiated within 1 hour of a bag leak detection alarm, corrective action is not completed in accordance with the startup, shutdown, and malfunction plan, or the alarm is engaged for more than 5 percent of the total operating time during a 6-month block reporting period.

The EPA is granting Weyerhaeuser's request for an alternative standard for its Cosmopolis, Washington sulfite mill because compliance with the alternative standard will result in a greater reduction in HAP metals emissions than would be achieved through compliance with the HAP metals standard for existing sulfite combustion units, and at a lower cost to the mill. The HAP metals emissions reductions will be at least four times greater under the alternative standard, and energy utilization will be lower.

The changes to subpart MM resulting from inclusion of amendments to clarify the monitoring and testing requirements and addition of a site-specific alternative standard for Weyerhaeuser's Cosmopolis, Washington mill are described in Table 1 of this preamble.

TABLE 1.—SUMMARY OF AMENDMENTS TO SUBPART MM

Citation	Change
§ 63.860(b)	Change the number of referenced paragraphs from (b)(1) through (6) to (b)(1) through (7) to reflect the addition of paragraph (b)(7) (hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill) to the list of affected sources.
§ 63.860(b)(5)	Revise the definition of affected source for sulfite combustion units to exclude the units at Weyerhaeuser Paper Company's Cosmopolis, Washington mill.
§ 63.860(b)(7)	Add the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill to the list of affected sources.
§ 63.861	Add definitions in alphabetical order for Bag leak detection system, Fabric filter, and Hog fuel dryer.
§ 63.862(a)(1)(i)(B)	Introduce the terms kg/Mg and lb/ton to read kilogram per megagram and pound per ton, respectively.
§ 63.862(a)(2)	Specify the alternative standard in paragraph (d) as an exception to the HAP metals standard for existing sulfite combustion units.
§ 63.862(d)	Add an alternative standard for HAP metals for the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill.
§ 63.864	Add a site-specific monitoring plan and monitoring specifications for continuous opacity monitoring systems and continuous parameter monitoring systems to clarify the monitoring requirements. Add monitoring specifications, corrective action provisions, and violation provisions for bag leak detection systems for the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill. Allow sources to identify and exclude periods of no gas flow in calculating average parameter values by adding flow monitor provisions and data availability restrictions. Under § 63.7(a), initial performance tests (and the establishment of operating parameter values) are not required until 180 days after the compliance date. Enable sources to demonstrate whether they are in compliance during the period between the compliance date and the performance test date by adding a provision requiring sources to maintain during this period a log that details the operation and maintenance of the process and emissions control equipment. Add two provisions to this section based on provisions moved from § 63.865(e) and (f). These two provisions include procedures for establishing operating parameter values and procedures for obtaining approval of operating parameters for alternative control devices. Move three provisions in § 63.864(a)(6), (b)(1), and (b)(4) to § 63.865 so as to consolidate all performance testing provisions under § 63.865. These three provisions include performance test exemptions for new non-direct contact evaporator (NDCE) recovery furnaces equipped with a dry electrostatic precipitator (ESP) system and performance test requirements for all other sources, including those sources complying with the overall PM bubble emission limit. Delete the performance test exemption in § 63.864(b)(3) for new NDCE recovery furnaces equipped with a dry ESP system as repetitive of the same provision in § 63.864(a)(6).
§ 63.865	Add an introductory paragraph based on a provision moved from § 63.864(b)(1). This provision requires sources to conduct an initial performance test.
§ 63.865(a)(1)	Revise the term tons/d to read ton/d.
§ 63.865(a)(2)(vi)	Add a new paragraph (a)(2)(iv) based on a provision moved from § 63.864(b)(4). This provision requires sources complying with the overall PM bubble emission limit to demonstrate compliance with the approved PM emission limits for the process units using the referenced test methods and procedures.
§ 63.865(b)	Include the alternative standard in § 63.862(d) in the list of standards for which sources must determine compliance using the referenced test methods and procedures.
§ 63.865(b)(1)	Clarify that the sampling time, sample volume, and cleanup solvent requirements apply to Methods 5, 29, and 17 (40 CFR part 60, appendix A). Allow sources to use the test methods to measure concentration or mass of PM. Include the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill in the list of units to be tested.
§ 63.865(b)(2)	Revise the reference paragraph (a) or (b) of § 63.862 to read § 63.862(a) or (b).
§ 63.865(b)(3)	Include the voluntary consensus standard American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) Performance Test Code (PTC) 19.10–1981-part 10 as an alternative to Method 3B. Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, EPA is directed to use voluntary consensus standards in its regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA has identified the voluntary consensus standard ANSI/ASME PTC 19.10–1981-part 10 as an acceptable alternative to EPA Method 3B with regard to the standard's manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas.
§ 63.865(b)(5)	Revise this paragraph and add paragraphs (b)(5)(i) through (iv) to include the alternative EPA methods to Methods 1, 2, and 3 in 40 CFR part 60, appendix A (i.e., Methods 1A, 2A, 2C, 2D, 2F, 2G, 3A, and 3B) and the alternative voluntary consensus standard to Method 3B (i.e., ANSI/ASME PTC 19.10–1981-part 10).
§ 63.865(c), (c)(1), (c)(2)	Revise paragraph (c) to introduce the performance and testing requirements for all new recovery furnaces. Revise paragraph (c)(1) based on a provision moved from § 63.864(a)(6). This provision exempts new NDCE recovery furnaces equipped with a dry ESP system from conducting a performance test. Revise paragraph (c)(2) and add new paragraphs (c)(2)(i) and (c)(2)(ii) to provide the required test method (Method 308 (40 CFR part 63, appendix A)) and emission rate equations for new recovery furnaces not equipped with a dry ESP system. In paragraph (c)(2), refer to paragraphs (b)(5)(i) through (iv) for additional test methods beyond Method 308. In paragraph (c)(2)(i), introduce the terms Mg/hr and ton/hr to read megagrams per hour and tons per hour, respectively.
§ 63.865(d)	Refer to paragraphs (b)(5)(i) through (iv) for additional test methods beyond Method 25A in 40 CFR part 60, appendix A. Specify the calibration gas as propane for each Method 25A test run.
§ 63.865(d)(1)	Revise the list of variables for Equation 11 to clarify that the THC emission rate and mass emission rate must be reported as carbon.

TABLE 1.—SUMMARY OF AMENDMENTS TO SUBPART MM—Continued

Citation	Change
§ 63.865(e) and (f)	Move two provisions in § 63.865(e) and (f) to § 63.864 so as to consolidate all monitoring provisions under § 63.864. These two provisions include procedures for establishing operating parameter values and procedures for obtaining approval of operating parameters for alternative control devices.
§ 63.866(c)	Change the number of referenced paragraphs from (c)(1) through (6) to (c)(1) through (7) to reflect the addition of paragraph (c)(7) (bag leak detection system records) to the recordkeeping requirements.
§ 63.866(c)(1) and (2)	Abbreviate the terms megagrams/day and tons/day to read Mg/d and ton/d, respectively.
§ 63.866(c)(7)	Add recordkeeping requirements for the bag leak detection system for the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill.
§ 63.867(a)(3)	Add a notification of compliance status requirement for the bag leak detection system for the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2060–0377. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1805.03) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (MD–2822T), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the internet at *http://www.epa.gov/icr*.

Today's action makes clarifying changes to the final rule and imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of this direct final rule, the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that has fewer than 750 employees for NAICS codes 32211, 32212, and 32213 (pulp, paper, and paperboard mills); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives which minimize any significant economic impact of the proposed rule on small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The amendments in today's rule make improvements to the emission standards, primarily by clarifying issues in the areas of testing and monitoring and add a new compliance option. We have, therefore, concluded that today's final rule will have no adverse impacts on any small entities and may relieve burden in some cases.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of-1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the direct final rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the direct final rule.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to the direct final rule.

F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the amendments. Thus, Executive Order 13175 does not apply to the direct final rule.

G. Executive Order 13045, Protection of Children From Environmental Health risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule is not subject to Executive Order 13045, because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. One voluntary consensus standard, ANSI/ASME PTC 19.10–1981—Part 10 ("Flue and Exhaust Gas Analysis"), has been identified as an acceptable alternative to EPA Method 3B for the purposes of this action. The voluntary consensus standard ANSI/ASME PTC 19.10–1981—Part 10 is cited in today's action for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ANSI/ASME PTC 19.10–1981—Part 10 is an acceptable alternative to EPA Method 3B. The EPA is not proposing/adopting any other voluntary consensus standards in this action.

J. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by SBREFA of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule will become effective on May 19, 2003, unless significant adverse comments are received by March 20, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: January 27, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—[Amended]

2. Section 63.14 is amended by revising paragraph (i) and removing paragraph (j) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) The following materials are available for purchase from at least one of the following addresses: ASME International, Orders/Inquiries, P.O. Box 2900, Fairfield, NJ 07007–2900; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112.

(1) ASME standard number QHO–1–1994, "Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators," IBR approved for § 63.1206(c)(6)(iii).

(2) ASME standard number QHO–1a-1996 Addenda to QHO–1–1994, "Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators," IBR approved for § 63.1206(c)(6)(iii).

(3) ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for §§ 63.865(b), 63.3360(e)(1)(iii), 63.4166(a)(3), and 63.5160(d)(1)(iii).

* * * * *

Subpart MM—[Amended]

3. Section 63.860 is amended by:

a. Revising paragraph (b) introductory text;

b. Revising paragraph (b)(5); and

c. Adding paragraph (b)(7).

The revisions and addition read as follows:

§ 63.860 Applicability and designation of affected source.

* * * * *

(b) *Affected sources.* The requirements of this subpart apply to each new or existing affected source listed in paragraphs (b)(1) through (7) of this section:

* * * * *

(5) Each new or existing sulfite combustion unit located at a sulfite pulp mill, except such existing units at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. AP–10).

* * * * *

(7) The requirements of the alternative standard in § 63.862(d) apply to the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14).

* * * * *

4. Section 63.861 is amended by adding, in alphabetical order, definitions for the terms *Bag leak detection system*, *Fabric filter*, and *Hog fuel dryer* to read as follows:

§ 63.861 Definitions.

* * * * *

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative PM loadings.

* * * * *

Fabric filter means an air pollution control device used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

* * * * *

Hog fuel dryer means the equipment that combusts fine particles of wood waste (hog fuel) in a fluidized bed and directs the heated exhaust stream to a rotary dryer containing wet hog fuel to be dried prior to combustion in the hog fuel boiler at Weyerhaeuser Paper Company's Cosmopolis, Washington facility. The hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility is Emission Unit no. HD–14.

* * * * *

5. Section 63.862 is amended by:

a. Revising paragraph (a)(1)(i)(B);

b. Revising paragraph (a)(2); and

c. Adding paragraph (d).

The revisions and addition read as follows:

§ 63.862 Standards.

(a) *Standards for HAP metals: existing sources.*

(1) * * *

(i) * * *

(B) The owner or operator of each existing kraft or soda smelt dissolving tank must ensure that the concentration of PM in the exhaust gases discharged to the atmosphere is less than or equal to 0.10 kilogram per megagram (kg/Mg) (0.20 pound per ton (lb/ton)) of black liquor solids fired.

* * * * *

(2) Except as specified in paragraph (d) of this section, the owner or operator of each existing sulfite combustion unit must ensure that the concentration of PM in the exhaust gases discharged to the atmosphere is less than or equal to 0.092 g/dscm (0.040 gr/dscf) corrected to 8 percent oxygen.

* * * * *

(d) *Alternative standard.* As an alternative to meeting the requirements of paragraph (a)(2) of this section, the owner or operator of the existing hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14) must ensure that the mass of PM in the exhaust gases discharged to the atmosphere from the hog fuel dryer is less than or equal to 4.535 kilograms per hour (kg/hr) (10.0 pounds per hour (lb/hr)).

6. Section 63.864 is revised to read as follows:

§ 63.864 Monitoring requirements.

(a) *General.* For each monitoring system required in this section, the owner or operator of each affected source or process unit must develop and make available for inspection by the Administrator, upon request, a site-specific monitoring plan that addresses the provisions in paragraphs (a)(1) through (6) of this section.

(1) Installation of the sampling probe or other interface at a measurement location relative to each affected source or process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), and (4)(ii);

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d)(2); and

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of §§ 63.10(c), (e)(1), (e)(2)(i) and 63.866.

(b) The owner or operator of each affected source or process unit must conduct a performance evaluation of each monitoring system in accordance with the site-specific monitoring plan.

(c) The owner or operator of each affected source or process unit must operate and maintain the monitoring system in continuous operation according to the site-specific monitoring plan.

(d) *Continuous opacity monitoring system (COMS).* The owner or operator of each affected kraft or soda recovery furnace or lime kiln equipped with an ESP must install, calibrate, maintain, and operate a COMS according to the provisions in paragraphs (d)(1) through (4) of this section.

(1) Each COMS must be installed, operated, and maintained according to Performance Specification 1 of 40 CFR part 60, appendix B.

(2) A performance evaluation of each COMS must be conducted according to the requirements in § 63.8 and according to Performance Specification 1 of 40 CFR part 60, appendix B.

(3) As specified in § 63.8(c)(4)(i), each COMS must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) The COMS data must be reduced as specified in § 63.8(g)(2).

(e) *Continuous parameter monitoring system (CPMS).* For each CPMS required in this section, the owner or operator of each affected source or process unit must meet the requirements in paragraphs (e)(1) through (14) of this section.

(1) Satisfy all requirements of performance specifications for CPMS upon promulgation of such performance specifications.

(2) Satisfy all requirements of quality assurance (QA) procedures for CPMS upon promulgation of such QA procedures.

(3) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(4) To calculate a valid hourly average, there must be at least four equally spaced values for that hour, excluding data collected during the periods described in paragraph (e)(6) of this section.

(5) Have valid hourly data for at least 75 percent of the hours during the averaging period.

(6) The CPMS data taken during periods in which the control devices are not functioning in controlling emissions, as indicated by periods of no gas flow for all or a portion of an affected source or process unit, must not be considered in the averages.

(7) Calculate 3-hour averages using all of the valid hourly averages for each operating day during the semiannual reporting period.

(8) Record the results of each inspection, calibration, and validation check.

(9) Except for redundant sensors, any device that is used to conduct an initial validation or accuracy audit of a CPMS must meet the accuracy requirements specified in paragraphs (e)(9)(i) and (ii) of this section.

(i) The device must have an accuracy that is traceable to National Institute of Standards and Technology standards.

(ii) The device must be at least three times as accurate as the required accuracy for the CPMS.

(10) The owner or operator of each affected kraft or soda recovery furnace, kraft or soda lime kiln, sulfite combustion unit, or kraft or soda smelt dissolving tank equipped with a wet scrubber must install, calibrate, maintain, and operate a CPMS that can be used to determine and record the pressure drop across the scrubber and the scrubbing liquid flow rate using the procedures in § 63.8(c), as well as the procedures in paragraphs (e)(10)(i) and (ii) of this section:

(i) The monitoring device used for the continuous measurement of the pressure drop of the gas stream across the scrubber must be certified by the manufacturer to be accurate to within a gage pressure of ±500 pascals (±2 inches of water gage pressure); and

(ii) The monitoring device used for continuous measurement of the scrubbing liquid flow rate must be certified by the manufacturer to be accurate within ±5 percent of the design scrubbing liquid flow rate.

(11) The owner or operator of each affected semichemical combustion unit equipped with an RTO must install, calibrate, maintain, and operate a CPMS that can be used to determine and record the operating temperature of the RTO using the procedures in § 63.8(c). The monitor must compute and record the operating temperature at the point of incineration of effluent gases that are emitted using a temperature monitor accurate to within ±1 percent of the temperature being measured.

(12) The owner or operator of the affected hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14) must meet the requirements in paragraphs (e)(12)(i) through (xi) of this section for each bag leak detection system.

(i) The owner or operator must install, calibrate, maintain, and operate each triboelectric bag leak detection system according to the "Fabric Filter Bag Leak Detection Guidance," (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center, MD–D205–02, Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network under Emission Measurement Center Continuous Emission Monitoring. The owner or operator must install, calibrate, maintain, and operate other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

(ii) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(iii) The bag leak detection system sensor must provide an output of relative PM loadings.

(iv) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(v) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(vi) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(vii) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(ix) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the "Fabric Filter Bag Leak Detection Guidance."

(x) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in the site-specific monitoring plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition. Record each adjustment.

(xi) The owner or operator must record the results of each inspection, calibration, and validation check.

(13) The owner or operator of each affected source or process unit that uses an ESP, wet scrubber, RTO, or fabric filter may monitor alternative control device operating parameters subject to prior written approval by the Administrator.

(14) The owner or operator of each affected source or process unit that uses an air pollution control system other than an ESP, wet scrubber, RTO, or fabric filter must provide to the Administrator an alternative monitoring request that includes the site-specific monitoring plan described in paragraph (a) of this section, a description of the control device, test results verifying the performance of the control device, the appropriate operating parameters that will be monitored, and the frequency of measuring and recording to establish continuous compliance with the standards. The alternative monitoring request is subject to the Administrator's approval. The owner or operator of the affected source or process unit must install, calibrate, operate, and maintain the monitor(s) in accordance with the alternative monitoring request approved by the Administrator. The owner or operator must include in the information submitted to the Administrator proposed performance specifications and quality assurance procedures for the monitors. The Administrator may request further information and will approve acceptable test methods and procedures. The owner or operator must monitor the parameters as approved by the Administrator using the methods and procedures in the alternative monitoring request.

(f) If flow to a control device could be intermittent, the owner or operator must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no gas flow.

(g) The owner or operator of each affected source or process unit complying with the gaseous organic HAP standard of § 63.862(c)(1) through the use of an NDCE recovery furnace equipped with a dry ESP system is not required to conduct any continuous monitoring to demonstrate compliance with the gaseous organic HAP standard.

(h) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator of the affected source or process unit must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating, including periods of startup, shutdown, and malfunction.

(i) The owner or operator of an affected source or process unit may not use data recorded during monitoring malfunctions, associated repairs, required quality assurance or control activities, and periods of no gas flow for all or a portion of an affected source or process unit in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. The owner or operator must use all of the data collected during all other periods in assessing the operation of the control device and associated control system.

(j) *Determination of operating ranges.* (1) During the initial performance test required in § 63.865, the owner or operator of any affected source or process unit must establish operating ranges for the monitoring parameters in paragraphs (e)(10) through (14) of this section, as appropriate; or

(2) The owner or operator may base operating ranges on values recorded during previous performance tests or conduct additional performance tests for the specific purpose of establishing operating ranges, provided that test data used to establish the operating ranges are or have been obtained using the test methods required in this subpart. The owner or operator of the affected source or process unit must certify that all control techniques and processes have not been modified subsequent to the testing upon which the data used to establish the operating parameter ranges were obtained.

(3) The owner or operator of an affected source or process unit may establish expanded or replacement operating ranges for the monitoring parameter values listed in paragraphs (e)(10) through (14) of this section and established in paragraph (j)(1) or (2) of this section during subsequent performance tests using the test methods in § 63.865.

(4) The owner or operator of the affected source or process unit must continuously monitor each parameter and determine the arithmetic average value of each parameter during each performance test. Multiple performance tests may be conducted to establish a range of parameter values.

(5) During the period of each performance test, the owner or operator of the affected source or process unit must establish the operating range for each monitoring parameter according to the requirements in paragraphs (j)(5)(i) and (ii) of this section.

(i) For wet scrubbers, the owner or operator must record the pressure drop across the scrubber and the scrubbing liquid flow rate over the same time period as the performance test while the vent stream is routed and constituted normally. The owner or operator must locate the pressure and flow monitoring devices in positions that provide representative measurements of these parameters.

(ii) For RTO, the owner or operator must record the operating temperature averaged over the same time period as the performance test. The owner or operator must locate the temperature monitor in a position that provides a representative temperature.

(6) During the period, if any, between the compliance date specified for the affected source in § 63.863 and the date upon which monitoring systems have been installed and validated and any applicable operating ranges for monitoring parameters have been set, the owner or operator of the affected source or process unit must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(k) *On-going compliance provisions.* (1) Following the compliance date, owners or operators of all affected sources or process units are required to implement corrective action, as specified in the startup, shutdown, and malfunction plan prepared under § 63.866(a) if the monitoring exceedances in paragraphs (k)(1)(i) through (vi) of this section occur:

(i) For a new or existing kraft or soda recovery furnace or lime kiln equipped with an ESP, when the average of ten consecutive 6-minute averages result in a measurement greater than 20 percent opacity;

(ii) For a new or existing kraft or soda recovery furnace, kraft or soda smelt dissolving tank, kraft or soda lime kiln, or sulfite combustion unit equipped with a wet scrubber, when any 3-hour average parameter value is outside the range of values established in paragraph (j) of this section.

(iii) For a new or existing semichemical combustion unit equipped with an RTO, when any 1-hour average temperature falls below

the temperature established in paragraph (j) of this section;

(iv) For the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), when the bag leak detection system alarm sounds.

(v) For an affected source or process unit equipped with an ESP, wet scrubber, RTO, or fabric filter and monitoring alternative operating parameters established in paragraph (e)(13) of this section, when any 3-hour average value is outside the range of parameter values established in paragraph (j) of this section; and

(vi) For an affected source or process unit equipped with an alternative air pollution control system and monitoring operating parameters approved by the Administrator as established in paragraph (e)(14) of this section, when any 3-hour average value is outside the range of parameter values established in paragraph (j) of this section.

(2) Following the compliance date, owners or operators of all affected sources or process units are in violation of the standards of § 63.862 if the monitoring exceedances in paragraphs (k)(2)(i) through (vii) of this section occur:

(i) For an existing kraft or soda recovery furnace equipped with an ESP, when opacity is greater than 35 percent for 6 percent or more of the operating time within any quarterly period;

(ii) For a new kraft or soda recovery furnace or a new or existing lime kiln equipped with an ESP, when opacity is greater than 20 percent for 6 percent or more of the operating time within any quarterly period;

(iii) For a new or existing kraft or soda recovery furnace, kraft or soda smelt dissolving tank, kraft or soda lime kiln, or sulfite combustion unit equipped with a wet scrubber, when six or more 3-hour average parameter values within any 6-month reporting period are outside the range of values established in paragraph (j) of this section;

(iv) For a new or existing semichemical combustion unit equipped with an RTO, when any 3-hour average temperature falls below the temperature established in paragraph (j) of this section;

(v) For the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), when corrective action is not initiated within 1 hour of a bag leak detection system alarm, corrective action is not completed in accordance with the startup, shutdown, and malfunction plan, and the alarm is engaged for more than 5 percent of the total operating time in a 6-month block reporting period. In calculating the operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if corrective action is not initiated within 1 hour, the alarm time is counted as the actual amount of time taken to initiate corrective action.

(vi) For an affected source or process unit equipped with an ESP, wet scrubber, RTO, or fabric filter and monitoring alternative operating parameters established in paragraph (e)(13) of this section, when six or more 3-hour average values within any 6-month reporting period are outside the range of parameter values established in paragraph (j) of this section; and

(vii) For an affected source or process unit equipped with an alternative air pollution control system and monitoring operating parameters approved by the Administrator as established in paragraph (e)(14) of this section, when six or more 3-hour average values within any 6-month reporting period are outside the range of values established in paragraph (j) of this section.

(3) For purposes of determining the number of nonopacity monitoring exceedances, no more than one exceedance will be attributed in any given 24-hour period.

7. Section 63.865 is amended by:

a. Adding § 63.865 introductory text, revising paragraph (a)(1), and adding paragraph (a)(2)(vi);

b. Revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(3), and (b)(5), and adding paragraphs (b)(5)(i) through (iv);

c. Revising paragraph (c);

d. Revising paragraphs (d) introductory text and (d)(1); and

e. Removing paragraphs (e) and (f).

The revisions and additions read as follows:

§ 63.865 Performance test requirements and test methods

The owner or operator of each affected source or process unit subject to the requirements of this subpart is required to conduct an initial performance test using the test methods and procedures listed in § 63.7 and paragraph (b) of this section, except as provided in paragraph (c)(1) of this section.

(a) * * *

(1) Determine the overall PM emission limit for the chemical recovery system at the mill using Equation 1 of this section as follows:

$$EL_{PM} = \frac{\left[\left(C_{ref,\,RF}\right)\left(Q_{RFtot}\right) + \left(C_{ref,\,LK}\right)\left(Q_{LKtot}\right)\right](F1)}{\left(BLS_{tot}\right) + ERI_{ref,\,SDT}} \qquad \text{(Eq. 1)}$$

Where:

EL_{PM} = Overall PM emission limit for all existing process units in the chemical recovery system at the kraft or soda pulp mill, kg/Mg (lb/ton) of black liquor solids fired;

$C_{ref,RF}$ = Reference concentration of 0.10 g/dscm (0.044 gr/dscf) corrected to 8 percent oxygen for existing kraft or soda recovery furnaces;

Q_{RFtot} = Sum of the average volumetric gas flow rates measured during the performance test and corrected to 8 percent oxygen for all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill, dry standard cubic meters per minute (dscm/min) (dry standard cubic feet per minute [dscf/min]);

$C_{ref,LK}$ = Reference concentration of 0.15 g/dscm (0.064 gr/dscf) corrected to 10 percent oxygen for existing kraft or soda lime kilns;

Q_{LKtot} = Sum of the average volumetric gas flow rates measured during the performance test and corrected to 10 percent oxygen for all existing lime kilns in the chemical recovery system at the kraft or soda pulp mill, dscm/min (dscf/min);

F1 = Conversion factor, 1.44 minutes • kilogram/day • gram (min • kg/d • g) (0.206 minutes • pound/day • grain [min • lb/d • gr]);

BLS_{tot} = Sum of the average black liquor solids firing rates of all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill measured during the performance test, megagrams per day (Mg/d) (tons per day [ton/d]) of black liquor solids fired; and

$ERI_{ref,SDT}$ = Reference emission rate of 0.10 kg/Mg (0.20 lb/ton) of black liquor solids fired for existing kraft or soda smelt dissolving tanks.

(2) * * *

(vi) After the Administrator has approved the PM emissions limits for each kraft or soda recovery furnace, smelt dissolving tank, and lime kiln, the owner or operator complying with an overall PM emission limit established in § 63.862(a)(1)(ii) must demonstrate compliance with the HAP metals standard by demonstrating compliance with the approved PM emissions limits for each affected kraft or soda recovery furnace, smelt dissolving tank, and lime kiln, using the test methods and procedures in paragraph (b) of this section.

(b) The owner or operator seeking to determine compliance with § 63.862(a), (b), or (d) must use the procedures in paragraphs (b)(1) through (6) of this section.

(1) For purposes of determining the concentration or mass of PM emitted from each kraft or soda recovery furnace, sulfite combustion unit, smelt dissolving tank, lime kiln, or the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), Method 5 or 29 in appendix A of 40 CFR part 60 must be used, except that Method 17 in appendix A of 40 CFR part 60 may be used in lieu of Method 5 or Method 29 if a constant value of 0.009 g/dscm (0.004 gr/dscf) is added to the results of Method 17, and the stack temperature is no greater than 205 °C (400 °F). For Methods 5, 29, and 17, the sampling time and sample volume for each run must be at least 60 minutes and 0.90 dscm (31.8 dscf), and water must be used as the cleanup solvent instead of acetone in the sample recovery procedure.

(2) For sources complying with § 63.862(a) or (b), the PM concentration must be corrected to the appropriate oxygen concentration using Equation 7 of this section as follows:

$$C_{corr} = C_{meas} \times \frac{(21 - X)}{(21 - Y)} \qquad \text{(Eq. 7)}$$

Where:

C_{corr} = The measured concentration corrected for oxygen, g/dscm (gr/dscf);

C_{meas} = The measured concentration uncorrected for oxygen, g/dscm (gr/dscf);

X = The corrected volumetric oxygen concentration (8 percent for kraft or soda recovery furnaces and sulfite combustion units and 10 percent for kraft or soda lime kilns); and

Y = The measured average volumetric oxygen concentration.

(3) Method 3A or 3B in appendix A of 40 CFR part 60 must be used to determine the oxygen concentration. The voluntary consensus standard ANSI/ASME PTC 19.10–1981—Part 10 (incorporated by reference—see § 63.14) may be used as an alternative to using Method 3B. The gas sample must be taken at the same time and at the same traverse points as the particulate sample.

* * * * *

(5)(i) For purposes of selecting sampling port location and number of traverse points, Method 1 or 1A in appendix A of 40 CFR part 60 must be used;

(ii) For purposes of determining stack gas velocity and volumetric flow rate, Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A of 40 CFR part 60 must be used;

(iii) For purposes of conducting gas analysis, Method 3, 3A, or 3B in appendix A of 40 CFR part 60 must be used. The voluntary consensus standard ANSI/ASME PTC 19.10–1981—Part 10 (incorporated by reference—see § 63.14) may be used as an alternative to using Method 3B; and

(iv) For purposes of determining moisture content of stack gas, Method 4 in appendix A of 40 CFR part 60 must be used.

* * * * *

(c) The owner or operator of each affected source or process unit complying with the gaseous organic HAP standard in § 63.862(c)(1) must demonstrate compliance according to the provisions in paragraphs (c)(1) and (2) of this section.

(1) The owner or operator complying through the use of an NDCE recovery furnace equipped with a dry ESP system is not required to conduct any performance testing to demonstrate compliance with the gaseous organic HAP standard.

(2) The owner or operator complying without using an NDCE recovery furnace equipped with a dry ESP system must use Method 308 in appendix A of this part, as well as the methods listed in paragraphs (b)(5)(i) through (iv) of this section. The sampling time and sample volume for each Method 308 run must be at least 60 minutes and 0.014 dscm (0.50 dscf), respectively.

(i) The emission rate from any new NDCE recovery furnace must be determined using Equation 9 of this section as follows:

$$ER_{NDCE} = \frac{\left(MR_{meas}\right)}{BLS} \qquad \text{(Eq. 9)}$$

Where:

ER_{NDCE} = Methanol emission rate from the NDCE recovery furnace, kg/Mg (lb/ton) of black liquor solids fired;

MR_{meas} = Measured methanol mass emission rate from the NDCE recovery furnace, kg/hr (lb/hr); and

BLS = Average black liquor solids firing rate of the NDCE recovery furnace, megagrams per hour (Mg/hr) (tons per hour (ton/hr)) determined using process data measured during the performance test.

(ii) The emission rate from any new DCE recovery furnace system must be determined using Equation 10 of this section as follows:

$$ER_{DCE} = \left[\frac{\left(MR_{meas,\,RF}\right)}{BLS_{RF}}\right] + \left[\frac{MR_{meas,\,BLO}}{BLS_{BLO}}\right] \qquad \text{(Eq. 10)}$$

Where:

ER_{DCE} = Methanol emission rate from each DCE recovery furnace system, kg/Mg (lb/ton) of black liquor solids fired;

$MR_{meas,RF}$ = Average measured methanol mass emission rate from each DCE recovery furnace, kg/hr (lb/hr);

$MR_{meas,BLO}$ = Average measured methanol mass emission rate from the black liquor oxidation system, kg/hr (lb/hr);

BLS_{RF} = Average black liquor solids firing rate for each DCE recovery furnace, Mg/hr (ton/hr) determined using process data measured during the performance test; and

BLS_{BLO} = The average mass rate of black liquor solids treated in the black liquor oxidation system, Mg/hr (ton/hr) determined using process data measured during the performance test.

(d) The owner or operator seeking to determine compliance with the gaseous organic HAP standards in § 63.862(c)(2) for semichemical combustion units must use Method 25A in appendix A of 40 CFR part 60, as well as the methods listed in paragraphs (b)(5)(i) through (iv) of this section. The sampling time for each Method 25A run must be at least 60 minutes. The calibration gas for each Method 25A run must be propane.

(1) The emission rate from any new or existing semichemical combustion unit must be determined using Equation 11 of this section as follows:

$$ER_{SCCU} = \frac{(THC_{meas})}{BLS} \quad \text{(Eq. 11)}$$

Where:

ER_{SCCU} = THC emission rate reported as carbon from each semichemical combustion unit, kg/Mg (lb/ton) of black liquor solids fired;

THC_{meas} = Measured THC mass emission rate reported as carbon, kg/hr (lb/hr); and

BLS = Average black liquor solids firing rate, Mg/hr (ton/hr); determined using process data measured during the performance test.

* * * * *

8. Section 63.866 is amended by:

a. Revising paragraph (c) introductory text;

b. Revising paragraph (c)(1);

c. Revising paragraph (c)(2); and

d. Adding paragraph (c)(7).

The revisions and addition read as follows:

§ 63.866 Recordkeeping requirements.

* * * * *

(c) In addition to the general records required by § 63.10(b)(2), the owner or operator must maintain records of the information in paragraphs (c)(1) through (7) of this section:

(1) Records of black liquor solids firing rates in units of Mg/d or ton/d for all recovery furnaces and semichemical combustion units;

(2) Records of CaO production rates in units of Mg/d or ton/d for all lime kilns;

* * * * *

(7) For the bag leak detection system on the hog fuel dryer fabric filter at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

* * * * *

9. Section 63.867 is amended by adding paragraph (a)(3) to read as follows:

§ 63.867 Reporting requirements.

(a) * * *

(3) In addition to the requirements in subpart A of this part, the owner or operator of the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14) must include analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.864(a)(7) in the Notification of Compliance Status.

* * * * *

[FR Doc. 03–3702 Filed 2–14–03; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: This rule is effective as of February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; (202) 336–8817; *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Poverty Guidelines. The revised figures for 2003 set out below are equivalent to 125% of the current Poverty Guidelines as published on February 7, 2003 (68 FR 6457).

List of Subjects in 45 CFR 1611

Grant programs—law, Legal services.

For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

Appendix A of Part 1611—Legal Services Corporation 2003 Poverty Guidelines*

Size of family unit	48 Contiguous States and the District of Columbia[i]	Alaska[ii]	Hawaii[iii]
1	$11,225	$14,013	$12,913
2	15,150	18,925	17,425
3	19,075	23,838	21,938
4	23,000	28,750	26,450
6	30,850	38,575	35,475
7	34,775	43,488	39,988
8	38,700	48,400	44,500

* The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[i] For family units with more than eight members, add $3,925 for each additional member in a family.

[ii] For family units with more than eight members, add $4,913 for each additional member in a family.

[iii] For family units with more than eight members, add $4,513 for each additional member in a family.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–3780 Filed 2–14–03; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 020603C]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of fishing season dates.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) program. The season will open 1200 hrs, Alaska local time (A.l.t.), March 1, 2003, and will close 1200 hrs, A.l.t., November 15, 2003. This period is the same as the 2003 IFQ and Community Development Quota season for Pacific halibut adopted by the International Pacific Halibut Commission (IPHC). The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

DATES: Effective 1200 hrs, A.l.t., March 1, 2003, 1200 hrs, A.l.t., November 15, 2003.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) with fixed gear in the IFQ regulatory defined in § 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ program will open 1200 hrs, A.l.t., March 1, 2003, and will close 1200 hrs, A.l.t., November 15, 2003. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, thus preventing the accomplishment of the management objective for simultaneous opening of these two fisheries.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.23(g)(1) and is exempt fromreview under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 11, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3847 Filed 2–12–03; 4:03 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 32
Tuesday, February 18, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Part 1470

Conservation Security Program

AGENCY: Commodity Credit Corporation and the Natural Resources Conservation Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Conservation Security Program (CSP) is authorized by Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002. The Natural Resources Conservation Service (NRCS) administers CSP. Under CSP, NRCS is authorized to provide financial and technical assistance to owners and operators of agricultural operations to promote conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and other conservation purposes. NRCS is interested in obtaining public input before developing a proposed regulation.

This advance notice is intended to give the public the opportunity to comment on key issues that have been raised regarding the implementation of the program. These comments will help NRCS in the agency's development of a proposed rule. NRCS intends to publish the proposed rule in 2003 and therefore has narrowed the comment period for this advance notice to 30 days. The public will have another opportunity to provide input during the comment period for the proposed rule prior to NRCS publishing a final rule for the program.

DATES: Comments must be received in writing by March 20, 2003.

ADDRESSES: Send comments in writing, by mail, to Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, or by e-mail to *FarmBillRules@usda.gov;* Attn: Conservation Security Program. This Advance Notice of Proposed Rulemaking may also be accessed via the Internet through the NRCS homepage, at *http://www.nrcs.usda.gov,* and by selecting Farm Bill 2002. All comments, including names and addresses when provided, are placed in the record and are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, Conservation Operations Division, NRCS, PO Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; fax: (202) 720–4265; submit e-mail to: *mark.berkland@usda.gov,* Attention: Conservation Security Program.

SUPPLEMENTARY INFORMATION:

General Information about the Conservation Security Program

The Farm Security and Rural Investment Act of 2002 (The 2002 Act) (Pub. L. 107–171) amended the Food Security Act of 1985 to authorize the Conservation Security Program (CSP). CSP is administered by USDA's Natural Resources Conservation Service (NRCS). CSP is a voluntary program that provides financial and technical assistance to promote the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Working lands include cropland, grassland, prairie land, improved pasture, and range land, as well as forested land that is an incidental part of an agriculture operation.

In keeping with principles outlined in the USDA publication, "Food and Agriculture Policy—Taking Stock for the New Century", the Secretary's vision for CSP's unique role within USDA conservation programs is:

(1) To identify and meaningfully reward those farmers and ranchers meeting the very highest standards of conservation and environmental management on their operations;

(2) To create powerful incentives for other producers to meet those same standards of conservation performance on their operations; and

(3) To provide public benefits for generations to come.

In short, CSP should reward the best and motivate the rest.

The intent of CSP is to support ongoing conservation stewardship of agricultural lands by providing assistance to producers to maintain and enhance natural resources. The program is available in all 50 States, the Caribbean Area and the Pacific Basin area. The program provides equitable access to benefits to all producers, regardless of size of operation, crops produced, or geographic location.

NRCS is seeking public comment to help the agency develop a proposed rule. The public will have the opportunity to provide additional input during the proposed rule's comment period prior to the publication of a final rule.

Under the statute, CSP is available on cropland, grassland, prairie land, improved pasture, and range land, as well as certain forested land that is an incidental part of an agriculture operation.

Background

According to statute, an inventory will be conducted to identify resource concerns and determine the extent of conservation treatment that is being applied and maintained on their land. Authorized payments include a base payment determined by the treatment level, cost-share for applying conservation practices, maintenance payments for applied conservation practices, and enhanced payments for treatment that exceeds the minimum criteria. A three-tiered approach is used when offering payments.

If a producer desires to move to a higher tier, cost-share payments for needed structural practices are available through the CSP at up to 75 percent of the cost of the new practice, or up to 90 percent in the case of beginning farmers or ranchers. Participants may contribute to the cost of the new practice through in-kind sources, such as personal labor, use of personal equipment, donated labor or materials, and use of on-hand or approved used materials. Cost-shared practices are to be maintained for the life of the practice. All needed practices and management must be in place and maintained before a producer can move to the next tier. Similar to other United States Department of Agriculture (USDA) conservation programs, the 2002 Act requires that the Conservation Security Program (CSP) provide financial incentives to agricultural producers that undertake new conservation efforts that meet high environmental standards. However, unlike other USDA conservation programs, the 2002 Act requires that CSP provides financial assistance for maintaining conservation. A clear intent of the program is to financially reward producers for significant environmental goods and services they provide to the public through their annual and ongoing conservation efforts. CSP, therefore, raises new and important issues that have not been confronted previously for traditional conservation programs.

NRCS undertook two projects to identify and better understand those elements in the design of the program that would have the most influence on its performance. In the first project, the firm, Plexus Marketing Group, was retained to conduct nine focus groups to obtain inputs from representative agricultural and stakeholder groups regarding key elements of the CSP to assist NRCS in developing program rules. In the second project, the Soil and Water Conservation Society (SWCS) organized five workshops to obtain feedback on CSP and its implementation from producers and NRCS field staff.

The Plexus focus groups were held as follows:

Three (3) were conducted in various states with a representative cross section of groups:

November 12 Columbia, MO
November 13 Modesto, CA
November 14 Macon, GA

Six (6) were held in Washington, DC with specific groups:

November 19 Agricultural Media Group
November 19 Livestock Group
November 20 Fruits & Vegetables Group
November 20 Crops Group
November 21 Wildlife and Sportsman Groups
November 21 Environmental Groups

The composition of the groups were determined by the firm with assistance from NRCS. The firm facilitated the participants through a series of questions to solicit their feedback on key issues relevant to rulemaking for the new program.

The five SWCS workshops were held in the following locations:

November 12 Billings, Montana (Montana, Wyoming)
November 14 Fort Morgan, Colorado (Colorado, Wyoming)
November 21 Defiance, Ohio (Ohio, Michigan, Indiana)
December 3 Greenville, Mississippi (Mississippi, Arkansas, Louisiana)
December 11 Fresno, California (California)

Four NRCS field staff and 12 producers participated in each workshop. Producers were selected in an unbiased manner which assured that they were not exclusively conservation-oriented or farm program participants. Producers were interviewed to solicit their feedback on key issues relevant to rulemaking for the new program.

Key Issues for Comment

The results of these two projects coupled with analyses conducted by NRCS have identified several key issues in rulemaking that will have profound effects on the performance and effectiveness with which CSP can be used to meet the objectives of the statute. The SWCS workshops, for example, identified important opportunities to simultaneously streamline and enhance the conservation performance of CSP. The focus groups, on the other hand, felt it important to do the program "right" at the onset even if it meant slowing initial implementation; further the participants were concerned about flexibility and accountability. Both groups identified concerns about the potential budget implications of the program. One of the overarching issues identified was the tension between the demand for the program and the budget concerns.

NRCS is currently analyzing in detail the information gathered through the workshops and focus groups to inform its rulemaking in regard to the key issues raised in the workshops, focus groups, and agency analyses of alternatives. Given the importance of these issues to the performance and effectiveness of CSP, NRCS is seeking additional public comment. NRCS is specifically interested in receiving public input regarding how CSP can be used to meet the objectives of the statute on the following issues:

1. The law specifies that conservation security plans address one or more "significant" resource concerns. Resource concerns may be as general as soil erosion or water quality or as specific as soil erosion by water or ground water quality. Many concerns have no practical direct measurement techniques or tools. What criteria should be used to determine what is a resource concern and whether a resource concern is significant?

2. The law requires that NRCS establish minimum requirements for three tiers of conservation effort. The minimum could be as specific as a list of minimum practices or as general as bundling of conservation measures that achieve a desired resource outcome. What should be the minimum requirements for each tier? Should NRCS establish minimum requirements that apply to all contracts nationally? What could some of these requirements be?

3. The law requires NRCS to describe the particular practices to be implemented, maintained, or improved as part of the program. What criteria should be used to determine which practices and activities are eligible for payment under the program? Should specific practices or activities receive priority for payment under the program? To what extent should sets of practices and activities be accorded priority for payment under the program?

4. The law restricts the maximum base payment to a percentage of the total contract cap (*i.e.* 25 percent for Tier I and 30 percent for Tiers II and III). What should be the balance of the base payment, maintenance cost-share payment and enhancement payment to reward the steward and attain additional conservation benefits?

5. The law uses the extent of the agricultural operation covered by the contract as a primary distinction between Tiers I and II. Tier I covers the "enrolled portion of the agricultural operation", while Tiers II and III cover "the entire agricultural operation." With the variety of ownership and landowner-tenant relationships which change over time across the country, how should "agricultural operation" be defined?

6. The law specifies the eligible land for payment purposes as cropland, grassland, prairie land, and rangeland as well as forestland that is an incidental part of the agricultural operation. Should noncropped areas, such as turn rows or riparian areas, that are part of the agriculture operation be included for conservation treatment? Should farmsteads, ranch sites, barnyards, feedlots, equipment storage, material-handling facilities, and other such developed areas be considered part of the "agricultural operation"? What criteria should be used to determine those areas of a farm or ranch that might legitimately be excluded from the "agricultural operation"?

7. The law specifies that NRCS make a base payment as part of a conservation security plan using either the 2001 national rental rate for a specific land use or another appropriate rate that assures regional equity. How should NRCS determine the base payment? If an alternative to the national rental rate is used, how should it be constructed? Should the payments be determined at the national, state or local levels?

8. The law provides for an enhanced payment if an owner or operator does one or more of the following: (a)

Implements or maintains practices that exceed minimum requirements; (b) addresses local conservation priorities; (c) participates in on-farm research, demonstration, or pilot projects; (d) participates in a watershed or regional resource conservation plan; or (e) carries out assessment and evaluation activities relating to practices included in a conservation security plan. Enhanced payments are meant to ensure and optimize environmental benefits. How should enhanced payments be determined and calculated?

9. The law does not limit the number of contracts held by a producer. Should there be a limitation on the total number of contracts a producer may have? If there is no limit on the number of contracts, should USDA set an individual payment limitation for producers with multiple contracts?

10. The law requires that the regulations provide for adequate safeguards to protect the interests of tenants and sharecroppers, including provisions for sharing payments, on a fair and equitable basis. Concerns have been raised over the impact of CSP provisions on owner/operator relationships including changes in rental rates or changes in operators. How can NRCS ensure that payments are shared on a fair and equitable basis?

11. The law requires a minimum contract length in CSP of five years. Many landlord-tenant relationships are short-term in nature, usually less than five years. Should the applicant be required to have control of the land for the complete CSP contract period? How should the program address the tension between the return to management versus the return to capital?

12. The law does not prescribe a funding or acreage cap for CSP. USDA estimates that there is a potential applicant pool of over two million farms and ranches covering over 900 million potential eligible acres. A primary implementation concern is the program scope. In order for this program to accomplish the Administration's goal of maximizing the conservation and improvement of natural resources, it is necessary to prioritize CSP assistance. The Department is seeking public comments on ways to focus and prioritize CSP assistance. For example, if the program would only fund the highest-priority applications, should there be an open application process with all applicants competing for a limited number of contracts? Should applications be constrained by resource concern, program funding, tier level, owner-operator relationship, geography or other constraint?

13. The law includes energy as a resource concern for CSP program purposes. The NRCS Field Office Technical Guide does not recognize energy as a natural resource concern and therefore no quality criteria or non-degradation standard exists to compare a conservation treatment against. NRCS is seeking comments on how energy use should be incorporated into the program requirements. How should the benefits be assessed?

14. The law includes payment for conservation practices described as requiring planning, implementation, management and maintenance. A concern was raised as to whether the payment would be, in fact, a return for equity in capital or for the engagement in intensive management. What should the program be paying for?

15. The law provides little guidance for monitoring quality assurance or specifics on identifying contract violations. The issue is two-fold in nature encompassing both the measurement of outcomes from a performance standpoint and assuring the Federal funds are spent wisely and that contracts are appropriately carried out. How should USDA ensure accountability?

NRCS will accept all other comments on general program implementation.

Regulatory Findings

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), USDA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this Advanced Notice of Proposed Rulemaking is a "significant regulatory action" in light of the provisions of paragraph (4) above as it raises novel legal or policy issues. As such, this action was submitted to OMB for review.

Signed in Washington, DC, on February 6, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service and Vice President, Commodity Credit Corporation.

[FR Doc. 03–3782 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–040–1]

RIN 0579–AB38

Importation of Milk and Milk Products From Regions Affected With Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of animal products to establish specific processing requirements for certain cheeses, butter, and butteroil imported from regions in which foot-and-mouth disease exists; these products are currently exempt from the requirements of the regulations. Additionally, we are proposing to require that those products, when imported from regions in which foot-and-mouth disease exists, be accompanied by government certification regarding the processing of the products. The proposed processing methods could also be used for other milk products that are currently eligible for importation under other conditions. We believe these actions are necessary to ensure that materials containing the foot-and-mouth disease virus are not imported into the United States.

DATES: We will consider all comments that we receive on or before April 21, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–040–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–040–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–040–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James-Preston, Assistant Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of meat and other animal products, including milk and milk products, in order to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of livestock.

FMD is a severe and highly contagious viral infection affecting cattle, deer, goats, sheep, swine, and other animals. The most effective means of eradicating FMD is by the slaughter of affected animals. FMD is endemic to more than two-thirds of the world and is considered to be widespread in parts of Africa, Asia, Europe, and South America. FMD occurs in over seven different serotypes and 60 subtypes. As FMD outbreaks have occurred in foreign regions, the United States has banned the importation of live ruminants and swine, and restricted the importation of many animal products, from countries affected by FMD. In the past few years, the United States has implemented prohibitions and restrictions in response to outbreaks in South America, the European Union, and Taiwan.

Although FMD was eradicated in the United States in 1929, the virus could be reintroduced by a single infected animal, animal product, or person carrying the virus. Once introduced, FMD can spread quickly through exposure to aerosols from infected animals, direct contact with infected animals, contact with contaminated feed or equipment, or contact with humans harboring the virus or carrying the virus on their clothing. It appears that FMD is primarily spread among livestock through aerosol, direct contact, or ingestion of animal products, including milk products. FMD could be introduced into the United States if milk or milk products carrying the FMD virus that have not been properly processed are imported into the United States and are ingested by ruminants or other livestock in the United States.

Current Regulations

Section 94.16 of the regulations contains provisions governing the importation of milk and milk products from FMD-affected countries. With certain exceptions, the current provisions in § 94.16 prohibit the importation of milk and milk products from regions in which FMD exists, unless the milk or milk product meets one of the conditions set forth in § 94.16(b). The products that are exempted from the importation conditions are butter, butteroil, and cheese, except cheese with liquid or containing any item prohibited or restricted from importation under the regulations unless such item is independently eligible for importation under part 94. Except for these exempted articles, milk and milk products may not be imported from any region designated in § 94.1(a)(1) as a region in which rinderpest or FMD exists unless the milk or milk products meet one of the following conditions:

1. They are in a concentrated liquid form and have been processed by heat by a commercial method in a container hermetically sealed promptly after filling but before such heating, so as to be shelf stable without refrigeration.

2. They are dry milk or dry milk products, including dry whole milk, nonfat dry milk, dried whey, dried buttermilk, and formulations that contain any such dry milk products, and are consigned directly to an approved establishment for further processing in a manner approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) as adequate to prevent the introduction or dissemination of livestock diseases into the United States. However, in specific cases, upon request by the importer to the Administrator, and approval by the Administrator, they may be stored for a temporary period in an approved warehouse under the supervision of an APHIS inspector pending movement to an approved establishment. Such products must be transported from the port of first arrival to an approved establishment or an approved warehouse, and from an approved warehouse to an approved establishment only under Department seals or seals of the U.S. Customs Service. Such seals may be broken only by an APHIS inspector or other person authorized to do so by the Administrator. Such products may not be removed from the approved warehouse or approved establishment unless the Administrator gives special permission and all the conditions and requirements specified by the Administrator are complied with.

3. Milk and milk products not exempted from the importation conditions and not meeting conditions 1 or 2 above may be imported if the importer first applies for and receives written permission from the Administrator authorizing such importation. Permission will be granted only when the Administrator determines that such action will not endanger the health of the livestock of the United States. Products subject to this provision include, but are not limited to, condensed milk, long-life milks such as sterilized milk, casein and caseinates, lactose, and lactalbumin. Additionally, small amounts of milk and milk products that would otherwise be prohibited from being imported into the United States may, in specific cases, be imported for examination, testing, or analysis if such importation is approved by the Administrator.

In light of recent FMD outbreaks in the European Union, South America, and elsewhere, we have reviewed the scientific literature and have determined that permitting the importation into the United States of butter, butteroil, and certain cheeses without their meeting specific importation conditions could pose an unacceptable risk of introducing the FMD virus into the United States. The literature we reviewed [1] indicates that

[1] *See:* Blackwell, J.H., "Survival of Foot-and-Mouth Disease Virus in Cheese," 1976, Journal of Dairy Science, Vol. 59, No. 9, pp. 1574–1579.

Sellers, R.F., "Inactivation of Foot-and-Mouth Disease Virus in Milk," 1969, British Veterinary Journal, Vol. 125, No. 4, pp. 163–168.

Continued

the FMD virus could survive in those exempted products, so we believe that it is necessary to provide specific processing requirements for these products as a condition of their importation. These proposed processing methods are consistent with the Office International des Epizooties (OIE) standards. We are, therefore, proposing to remove the exemptions from importation conditions for the milk products listed in § 94.16(a) and instead would provide specific conditions (*i.e.*, processing methods) under which those products could be imported. These processing methods could also be used for other products that are already eligible for importation under the conditions in § 94.16, including, but not limited to, condensed milk, long-life milks such as sterilized milk, cream, cheeses, whey, casein and caseinates.

Under this proposed rule, the milk products now listed as exempt in § 94.16(a) could be imported into the United States from a region affected with FMD only if they have been produced using one of the processing methods described below:

1. Milk or milk products (other than cheese) that are, or are made from, milk that has been treated at ultra-high temperature (UHT)(298.4 °F (148 °C) for 3 seconds or 284 °F (140 °C) for 5 seconds).

2. Milk or milk products (other than cheese) that are, or are made from, milk that has been treated at a high temperature for a short time (HTST) (161.6 °F (72 °C) for 15 seconds), followed by a second HTST treatment. For milk products made with added fat or added concentrates, the treatment temperature would have to be increased to 167 °F (75 °C).

3. Milk products made from milk that is HTST-treated then brought to a pH of less than 6 for 1 hour.

4. Cheese made from raw milk, aged at a temperature of greater than 35.6 of (2 °C) with a pH of less than 6 for 120 days prior to export from the country of origin.

5. Cheese made from HTST milk, aged at a temperature of greater than 35.6 of (2 °C) with a pH of less than 6 for 30 days prior to export from the country of origin.

The scientific evidence available to us indicates that each of the methods described above is sufficient to inactivate the FMD virus in milk and milk products.

We would also require that any milk or milk product imported under these proposed conditions (*i.e.*, the butter, butteroil, and cheeses that would have to meet one of those conditions, as well as any other milk or milk product for which one of those methods was used as an alternative to meeting the existing importation conditions in § 94.16) be accompanied by an official veterinary certificate endorsed by a full-time, salaried veterinarian employed by the region of origin attesting to the completion of the appropriate processing. The certificate would help ensure that the required processing has been performed by requiring that a representative responsible for animal health in the exporting region verifies that the treatment has been carried out.

Additional Changes

We are proposing to add ice cream and chocolate milk to the examples of milk products in current § 94.16 (b)(3) that may be eligible for importation based on written permission from the Administrator. We are proposing to specifically cite ice cream and chocolate milk as products requiring written permission to minimize the chance that these products may accidentally be diverted into the animal food chain.

We are also proposing to require that the examination, testing, and analysis of small amounts of milk and milk products allowed for importation under current § 94.16(b)(4) occur in a laboratory setting. This action would ensure that untreated samples would not enter the United States to be sold at trade shows or fairs.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the office of Management and Budget.

We are proposing to amend the regulations regarding the importation of animal products to establish specific processing requirements for certain cheeses, butter, and butteroil imported from regions in which FMD exists. Those processing methods could also be used for other milk and milk products that are already eligible for importation under different conditions, thus allowing their importation under a greater variety of conditions. Additionally, we are proposing to require that products imported from regions in which FMD exists and processed using one of the proposed methods be accompanied by government certification regarding their processing. We believe these actions are necessary to ensure that products containing the FMD virus are not imported into the United States.

The establishment of FMD in the United States could result in serious economic consequences, given the size of the Nation's livestock inventories and the volume of animal and animal product sales. Potential losses associated with an outbreak of FMD include production losses at affected establishments, eradication and quarantine costs, and trade restrictions.[2] Production losses arise from lost production on depopulated premises and in the industries linked to the livestock sector. There would also be additional costs to be borne by producers and slaughterers, as restrictions would be imposed to prevent the spread of FMD and eradicate the disease within the United States. These restrictions and eradication measures would also mean added costs to the government for implementation and enforcement.

FMD outbreaks in the spring of 2001 in the United Kingdom illustrate these costs. Control of FMD in the United Kingdom became a nationwide undertaking, with restrictions on the movement of animals (and people), large-scale slaughter of animals on affected and neighboring farms, and disposal of carcasses through burning, rendering, or burial. The last case of FMD in the United Kingdom was found on September 30, 2001; by the time the United Kingdom declared the outbreak eradicated on January 14, 2002, 586,551 cattle, 3,466,493 sheep, 148,388 pigs, 2,482 goats, 1,021 deer, and 770 other animals had been slaughtered.[3] In addition, the European Union banned the export of meat, livestock, and milk products from the United Kingdom. As is shown below, the United States is a major exporter of products whose international movement could be affected by an outbreak of FMD in the United States. In addition to a likely reduction in demand from international consumers, trading partners of the United States would likely impose restrictions on, and reduce imports of, U.S. ruminants, swine, and some of their products in the event of an FMD outbreak in the United States.

According to "Agricultural Statistics 2001," published by National Agricultural Statistics Service (NASS), cattle in U.S. herds in 2000 were valued at $67.1 billion, with 1999 cash receipts of $36.5 billion from the sale of cattle, calves, beef, and veal. Cash receipts from the sale of milk and cream in 1999 reached $23.2 billion. U.S. hogs and pigs in 2000 were valued at $4.6 billion, with 1999 cash receipts from the sale of hogs, pork, and lard totaling $8.6 billion. Sheep and lamb inventories in 2000 were valued at $668.8 million, with 1999 cash receipts of $468.8 million from the sale of live sheep and lambs and of mutton and lamb. The value of U.S. wool production in 1999 totaled about $17.9 million.

U.S. exports of live bovines, swine, sheep, and goats were valued at $304.5 million in 2000. U.S. exports of fresh beef, pork, and sheep and goat meat totaled $4.4 billion in 2000. U.S. exports of fresh ruminant and swine products other than meat were valued at $718.4 million in 2000. U.S. exports of prepared and preserved ruminant and swine meat products such as sausages and cured, salted, and dried meats were valued at $375.5 million in 2000. U.S. exports of dairy products totaled $784.1 million in 2000. In addition, the United States exports a great number of other ruminant and swine products including germplasm, hides and skins, animal feeds, dairy products, bones, hair, guts, and glands.

In order to help prevent an outbreak of FMD in the United States, and thus protect the substantial domestic and export market described above, imports of certain cheeses, butter, and butteroil from regions affected with FMD would be subject to specific processing requirements as a result of this proposed rule. Other products, including milk, cream, casein, whey, caseinates, and ice cream, which are already eligible for importation under different conditions, could also be processed using the proposed methods as an alternative to meeting the existing requirements governing the importation of those products. Those products, as previously discussed, would need to be accompanied by an official veterinary certificate that attests to the completion of the appropriate processing. U.S. imports of these products in 2000 from regions affected with FMD and the world are shown in Table 1.

TABLE 1.—U.S. IMPORTS OF MILK AND MILK PRODUCTS, 2000

Product imported	From FMD affected regions (in millions)	From FMD free regions (in millions)	U.S. global imports (in millions)
Milk and cream, not concentrated	$0.73	$9.65	$10.38
Milk and cream, concentrated or sweetened	2.78	31.51	34.29
Butter and other fats and oils derived from milk	0.65	34.44	35.09
Cheese and curd	140.53	556.10	696.63
Ice cream	2.38	15.25	17.62
Casein and caseinates	98.81	401.57	500.38
Other milk products	15.25	157.06	172.31

Source: World Trade Atlas, Global Trade Information Services, Inc.

Approximately 9 percent of these imports were from regions affected with FMD. Information on the portion of butter, butteroil, and cheese imports from FMD-affected regions that do not currently meet the proposed requirements is not available. However, the impact of the proposed changes is expected to be small. Imports in total are small relative to domestic production. For example, butter imports totaled 18,059 metric tons in 1999, while domestic production of butter was 578,349 metric tons. In addition, APHIS anticipates that the majority of these imports currently meet, or could relatively easily be made to meet, the requirements described in this proposed rule, as most processors already possess and use the equipment necessary to meet the proposed standards. In addition, certain products (*i.e.*, dry milk and dry milk products including dry whole milk, nonfat dry milk, dried whey, dried buttermilk, and formulations which contain any such dry milk products) would continue to be eligible for importation under existing regulations and would not be required to meet the specific proposed requirements.

For most types of cheese imported into the United States, this proposed rule should have little impact. At a total of 197,537 metric tons in 1999, the amount of imported cheese was equal to about 5 percent of domestic cheese production, which was about 3.6 million metric tons. In addition, most U.S. imports of cheese currently meet or should be able to meet the requirements for time, temperature, and pH level in this proposed rule. There are notable possible exceptions to this. The aging requirement in the proposed rule may affect the importation of some cheeses, as additional aging may alter the character of some cheeses made with raw milk and some cheeses with eye-formation such as Swiss cheese, thus making them less desirable or unavailable for importation. In 1999, the United States produced about 100,000 metric tons, and imported more than 34,000 metric tons, of Swiss cheese. Table 2 shows U.S. imports of Swiss type cheeses and their origin in 1998 through 2000. The extent to which imports of Swiss cheese and raw milk cheese may be altered as a result of the proposed rule is unknown. However, the effect should be exceedingly small, as more than 99 percent of U.S. Swiss cheese imports in 2000 originated in FMD-free countries.

TABLE 2.—U.S. IMPORTS OF SWISS CHEESE

[in metric tons]

Country of origin	1998	1999	2000
Austria	1,269	1,109	1,298
Canada	346	369	183
Denmark	1,428	3,417	2,585
Finland	5,872	6,908	8,124
France	1,371	984	1,390

[2] Ekboir, Javier M., "Potential Impact of Foot-and-Mouth Disease in California," 1999, Agricultural Issues Center, Division of Agriculture and Natural Resource, University of California.

[3] UK Department for Environment, Food & Rural Affairs.

Cunliffe, H.R., *et al.*, "Inactivation of Milkborn Foot- and Mouth Disease Virus at Ultra-High Temperatures," 1979, Journal of Food Protection, Vol. 42, No. 2, pp. 135–137.

TABLE 2.—U.S. IMPORTS OF SWISS CHEESE—Continued
[in metric tons]

Country of origin	1998	1999	2000
Germany	3,858	6,477	4,633
Hungary	790	792	357
Ireland	1,021	1,124	818
Netherlands	374	424	213
Norway	7,510	7,254	7,709
Switzerland	3,416	3,516	3,498
Other countries	1,773	2,816	3,082

In addition to the specific processing requirements for butter, butteroil, and certain cheeses imported from regions affected by FMD, this proposed rule would also require government certification that those requirements have been met. The cost of obtaining certification may affect the price of the product paid by U.S. importers and end users. However, the cost of obtaining such certification is expected to be low. The certification is simply a signed statement from the veterinary official of the exporting country attesting that the requirements have been met. Certification would be a new requirement for cheese (without liquid or restricted items), butter, and butteroil. Under the current regulations, these items may enter without restriction. In 2000, about 40 percent of the $530 million in milk and milk products imported from FMD-affected countries were cheese and butter.

For some other imports, the proposed rule would expand import options. For example, certain products such as condensed milk, long-life milks such as sterilized milk, casein and caseinates, lactose and lactalbumin, are currently allowed entry if written permission is given for their importation, and other products such as dry milk or dry milk products are currently allowed entry only if consigned to an approved facility for further processing. If any of these products were produced using milk processed in accordance with methods described in this proposal, those products would be eligible for importation if accompanied by the certification described in the previous paragraph. The number of producers in FMD-affected regions that might opt to use the processing methods described in this proposed rule for these products is unknown. We expect that those producers would use UHT-or HTST-treated milk in the preparation of their products if that option was viable from a production standpoint and was an economically attractive alternative to the existing requirements in § 94.16 governing the importation of these products.

The quantity of imports from FMD-affected regions that might be produced using milk treated in accordance with this proposed rule is not known, nor is the degree to which that treatment might affect the cost of those imports.

As this proposed rule would simply provide an alternative to the current importation provisions for milk and milk products other than butter, butteroil, and cheese, we expect that the effect of this proposed rule on imports of those products, which in 2000 constituted about 60 percent of milk and milk product imports from FMD-affected regions, would be small.

Cost/Benefit Analysis

This proposed rule may involve added costs for importers and users of butter, butteroil, and certain cheeses, as those imports from FMD-affected regions would be required to meet new processing and certification requirements. However, because FMD-affected regions account for a small portion of all U.S. imports of these products and represent an even smaller fraction of domestic production and overall supply, the impacts on domestic prices and consumption will be small. Moreover, these costs are very small when compared to the benefits of preventing an outbreak of FMD in the United States. Such an outbreak could have serious economic consequences given the size of the nation's livestock inventories and the volume of animal and animal product sales.

Impact on Small Entities

The Regulatory Flexibility Act requires that Agencies specifically consider the economic impact of their rules on small entities. Those entities most likely to be affected by the proposed rule are domestic importers of milk and milk products, domestic users of these products, and dairy farms.

The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small entities under the Regulatory Flexibility Act. According to North American Industry Classification System (NAICS) codes 422430 and 422490, import/export merchants, agents, and brokers are identified in the wholesaling trade. A firm engaged in wholesaling dairy products is considered small if it employs fewer than 100 persons. In 1997, more than 97 percent (2,460 of 2,522) of dairy products (except dried or canned) wholesalers would be considered small, and more than 95 percent (12,251 of 12,845) of other grocery and related products wholesalers, which includes dried and canned dairy products, would be considered small.[4] An establishment engaged in dairy cattle and milk production (NAICS code 112111) is considered small if it has annual sales of less than $750,000. According to the 1997 Census of Agriculture, at least 79,155 of 86,022 (or 92 percent) of dairy farms would be considered small. The size standards for establishments engaged in food manufacturing range from fewer than 500 employees to fewer than 1,000 employees, depending on the type of food being manufactured. An establishment engaged in dairy product manufacturing (NAICS code 3115) is considered small if it employs fewer than 500 persons. This is also the standard for non-chocolate confectionary manufacturing, NAICS code 311340, which includes granola and other types of breakfast bars. In 1997, 25,729 of 26,302 (or more than 97 percent) of food manufacturing establishments would be considered small.[5]

From the above it is clear that any domestic entity affected by this proposed rule is likely to be considered small. However, for most milk products, the quantity imported is a small fraction of that produced domestically, and the quantity of imports supplied by FMD-affected regions is a smaller percentage still of domestic supply. Thus, the impact of this proposed rule on small entities is expected to be small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

[4] 1997 Economic Census; Department of Commerce, Bureau of the Census.

[5] 1997 Economic Census, Department of Commerce, Bureau of the Census.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 01–040–1. Please send a copy of your comments to: (1) Docket No. 01–040–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the regulations regarding the importation of animal products to establish new processing requirements for butter, butteroil, and certain cheeses imported from regions in which FMD exists. Additionally, we are proposing to require that those materials, as well as other milk or milk products that are processed using the new proposed methods in lieu of meeting the existing importation conditions, when imported from regions in which foot-and-mouth disease exists, be accompanied by government certification by a salaried veterinarian employed by the region of origin regarding the processing of the materials.

We are asking OMB to approve, for 3 years, our use of this information collection activity in connection with our efforts to ensure that milk and milk products imported into the United States from FMD regions do not harbor the FMD virus.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Exporters of milk and milk products in FMD regions; full-time, salaried veterinarians employed by the region of origin.

Estimated annual number of respondents: 200.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 1,000.

Estimated total annual burden on respondents: 250 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.) Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS" Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS" Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. Section 94.16 would be amended as follows:

a. By removing paragraph (a) and redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

b. In newly redesignated paragraph (a), by revising the introductory text of the paragraph; redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(6) through (a)(9), respectively; and by adding new paragraphs (a)(1) through(a)(5) to read as follows.

c. In newly redesignated paragraph (a)(8), by revising the first sentence to read as follows, and in the last sentence, by adding the words "ice cream, chocolate milk," after the word "lactose".

d. In newly redesignated paragraph (a)(9), by adding the words "in a laboratory setting" after the word "analysis".

e. In newly redesignated paragraph (c), in the last sentence, by removing the citation § 94.16(b)(3)" and adding the words "paragraph (a)(8) of this section" in its place.

§ 94.16 Milk and milk products.

(a) Milk and milk products originating in, or shipped from, any region designated in § 94.1(a) as a region infected with rinderpest or foot-and-mouth disease may be imported into the United States if the milk or milk product satisfies one of the sets of criteria described in paragraphs (a)(1) through (a)(9) of this section. Products processed in accordance with one of the methods described in paragraphs (a)(1) through (a)(5) of this section must be accompanied by an official veterinary

certificate endorsed by a full-time, salaried veterinarian employed by the region of origin stating that the products have been processed in accordance with one of those methods:

(1) Milk or milk products (other than cheese) that are, or are made from, milk that has been treated at an ultra high temperature (298.4 °F (148 °C) for 3 seconds or 284 °F (140 °C) for 5 seconds); or

(2) Milk or milk products (other than cheese) that are, or are made from, milk that has been treated at a high temperature for a short time (HTST) (161.6 °F (72 °C) for 15 seconds) followed by a second HTST (161.6 °F (72 °C) for 15 seconds) treatment. For milk products made with added fat or added concentrates, the treatment temperature must be increased to 167 °F (75 °C); or

(3) Milk products made from HTST milk that is brought to a pH of less than 6 for 1 hour.

(4) Cheese made from raw milk, aged at a temperature of greater than 35.6 °F (2 °C) with a pH of less than 6 for 120 days prior to export from the country of origin; or

(5) Cheese made from HTST milk, aged at a temperature of greater than 35.6 °F (2 °C) with a pH of less than 6 for 30 days prior to export from the country of origin.

* * * * *

(8) Milk and milk products not of classes included within the provisions of paragraphs (a)(1) through (a)(7) of this section may be imported if the importer first applies to and receives written permission from the Administrator, authorizing such importation. * * *

* * * * *

Done in Washington, DC, this 11th day of February, 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–3836 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[NOTICE 2003—5]

Leadership PACs

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on proposed rules to address leadership PACs, which are unauthorized committees that are associated with a Federal candidate or officeholder. Further information is provided in the supplementary information that follows.

DATES: The hearing will be held at 9:30 a.m. on Wednesday, February 26, 2003. The Commission is no longer accepting requests to testify.

ADDRESSES: Commission hearings are held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 26, 2002, the Commission published a Notice of Proposed Rulemaking ["NPRM"] proposing three alternative sets of rules addressing political committees that are associated with a Federal candidate or officeholder, and potential limitations to the contributions that such committees may accept and make. 67 FR 78753 (Dec. 26, 2002). The comment period for the NPRM ended on January 31, 2003. Eight sets of comments were received by the Commission in response to the NPRM. Seven commenters, who submitted six of the sets of comments, requested to testify at a public hearing if one is held.

After considering these requests and the other comments received to date in response to the NPRM, the Commission believes a public hearing would be helpful in considering the issues raised in the rulemaking. As the Commission stated in the NPRM, the hearing will be held at 9:30 a.m. on February 26, 2003.

Dated: February 11, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–3834 Filed 2–14–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR PART 1301

[DEA–232P]

RIN 1117–AA70

Controlled Substances Registration and Reregistration Application Fees

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: DEA is proposing to adjust the current fee schedule for DEA controlled substances registration to adequately recover necessary costs associated with the Diversion Control Program as mandated by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993.

DATES: Written comments must be submitted on or before April 21, 2003.

ADDRESSES: Written comments should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/CCR.

FOR FURTHER INFORMATION, CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102–395) requires that the Drug Enforcement Administration (DEA) collect fees to ensure the recovery of the full costs of operating the Diversion Control Program. Section 111(b)(3) of the act, codified at 21 U.S.C. 886a(3), requires that "fees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program." Section 111(b)(1) of the act also requires that "there shall be deposited as offsetting receipts into that account all fees collected by the Drug Enforcement Administration, in excess of $15,000,000, for the operation of its diversion control program."

Since 1970 the Controlled Substances Act (CSA) has authorized the Attorney General to "charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances." 21 U.S.C. 821 and 958(f). This fee is collected by the Deputy Administrator of DEA for the Attorney General and is the only fee collected by DEA to support the Diversion Control Program. DEA does collect a user fee to support its listed chemical activities. However, this fee does not fall within the scope of this notice (see below for a further discussion). The fee schedule for the CSA was established in 1971 and was adjusted in 1984 and again in 1993. The fees have remained unchanged since that time.

Following publication in the **Federal Register** of the fee adjustment in 1993, the American Medical Association (AMA) and others filed a complaint in the United States District Court for the District of Columbia objecting to the new fees. The district court issued its final order granting the government's motion for summary judgment and disposing of all claims on July 5, 1994. *AMA* v. *Reno,* 857 F. Supp. 80 (D.D.C. 1994). The AMA appealed, and on July 27, 1995 the United States Court of Appeals for the District of Columbia Circuit remanded, without vacating, the rule to DEA. Specifically, the court required DEA "to identify the components of the fee-funded diversion control program and provide a brief explanation of why it deemed each component to be a part of that program." *AMA* v. *Reno,* 57 F.3d 1129, 1135 (D.C. Cir. 1995).

DEA responded to the remand requirement through a notice in the **Federal Register** on December 30, 1996, describing the fee-funded components and activities of the DCP with an explanation of how each satisfies the statutory requirements for fee-funding. 61 FR 68624–32. DEA accepted comments on this final rule and, based on these comments, published its final rule on the Drug Diversion Control Fee Account (DDCFA) in the **Federal Register** on August 9, 2002. This rule contains information on the Specific DCP activities funded by the DDCFA. Copies of both the December 30, 1996 and August 9, 2002 rulemakings may be found on the Diversion Control Program Web site: *http://www.deadiversion.usdoj.gov.*

This announcement establishes the fee structure under the existing registration system to fully support the operations of the Diversion Control Program for Fiscal Year 2004 through Fiscal Year 2006. Since the last published rule in 1993, the Diversion Control Program has experienced significant growth without any associated increase in registrant fees to support the growth and increased funding needs. DEA is required by law (see below) to collect the full costs of the Diversion Control Program. The amount to be recovered is established by the Congressional appropriations process. The projected amount required to be recovered for Fiscal Year 2004, based on the President's Budget Request, will be $133.6 million; the estimated amount required to be recovered for Fiscal Year 2005 will be $157.3 million. The estimated amount required to be recovered for Fiscal Year 2006 will be $160.3 million. These figures include required program growth and the mandatory annual $15 million transfer to the U.S. Treasury.

Statutory Authority to Collect Fees

DEA's authority to collect registration fees derives from three statutory provisions. DEA is authorized by 21 U.S.C. 824 to collect "reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances and to the registration and control of regulated persons and of regulated transactions." Secondly, 21 U.S.C. 958(f) permits DEA to collect "reasonable fees relating to the registration of importers and exporters of controlled substances or List I chemicals." Lastly, the 1993 Appropriations Act added a provision requiring DEA to set a fee schedule "that ensures the recovery of the full costs of operating the various aspects of that program." 21 U.S.C. 886a(3). The United States Court of Appeals for the District of Columbia Circuit noted that in establishing the DDCFA, Congress left intact the fee collection requirements of 21 U.S.C. 821, confirming boundaries of the DCP that DEA can fund by registration fees. *AMA* v. *Reno,* 57 F.3d 1129, 1135 (D.C. Cir. 1995). Although the court made no specific mention of 21 U.S.C. 958(f), those same boundaries remain intact as well. The court found that the current statutory scheme thus requires DEA to set registration fees to recover the full costs of the DCP, while requiring DEA to charge "reasonable" fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances and the registration and control of regulated persons and of regulated transactions.

DEA, therefore, must examine DCP activities in conjunction with the nexus requirements of 21 U.S.C. 821 and 958(f) to determine whether it can properly fee-fund them while setting fees that recover the full cost of these activities.

Diversion Control Program and Responsibilities

DEA's mission with respect to licit controlled pharmaceuticals is to prevent, detect and eliminate the diversion of controlled pharmaceuticals from legitimate channels to illegal use, while at the same time ensuring their availability for legitimate medical and scientific purposes. To facilitate these goals, Congress, through the CSA, established a closed system of controlled substance distribution encompassing manufacturers, distributors, pharmacies and practitioners; that is, within this closed system a controlled substance can be traced from the time it is manufactured to the time it is dispensed to the ultimate user. This system has proven effective in reducing the diversion of these substances from legitimate channels to the illicit market. Components of this closed system include scheduling of all controlled substances, registration of all controlled substance handlers, recordkeeping for accountability, security, and manufacturing quotas, all under DEA DCP oversight. (The DCP also possesses similar chemical control responsibilities pursuant to the Chemical Diversion and Trafficking Act (CDTA) and subsequent legislation.)

The plain language of the 1993 Appropriations Act requires DEA to set and collect registration fees to cover the full costs of operating its Diversion Control Program. In its 1993 final rule publication setting new registration fees, DEA examined all activities that relate to the registration and control of the manufacture, distribution and dispensing of controlled substances and to the registration (and control) of importers and exporters. DEA determined that "activities contained in the [diversion] program which give rise to the fees consist of diversion investigators, analysts, technicians, and clerical personnel salaries and expenses; and travel, rent, utilities, supplies, equipment and services associated with these positions for the registration and control of the manufacture, distribution and dispensing of controlled substances." 58 FR 15273. DEA determined that it would not fee-fund costs associated with chemical control efforts (see below), clandestine laboratory efforts, overseas staff (specifically diversion investigators assigned to foreign posts), DEA's Office of Chief Counsel or executive direction. 58 FR 15273. DEA concluded that these activities were excluded from the Attorney General's budget delineation for the category of "Diversion Control" and thus not included in the determination of the fees. *Id.*

At the time this initial rule was published on March 22, 1993, 21 U.S.C. 821 did not extend to chemical control activities ("regulated transactions"). Accordingly, there were no registration or fee requirements for handlers of List I chemicals, and chemical control activities were not included among those to be supported by the DDCFA. Congress amended 21 U.S.C. 821 on December 17, 1993 to require reasonable fees relating to "the registration and control of regulated persons and of regulated transactions." Domestic Chemical Diversion Control Act of 1993, 3(a), Pub. L. 103–200, 107 Stat. 2333.

Despite this amendment, to date DEA's chemical control activities have continued to be supported by appropriated funds and not by the DDCFA.

In its December 1996 **Federal Register** notice, DEA further excluded from fee-funding those activities that incidentally support the DCP but are funded elsewhere in the DEA Salaries Budget (and thus not fee-funded). Specific examples listed in the notice include "support provided by the Attorneys in DEA's office of Chief Counsel Division Regulatory Section; certain laboratory service support; DEA Automated Data Processing Systems support (except ARCOS and CSA); Office of Training staff; DEA Management and Administrative Support; Office of Congressional and Public Affairs; Intelligence Support and Diversion Investigators assigned overseas." 61 FR 68631.

In summary, to date fee-fundable DCP activities have included: scheduling, registration, investigation, inspection, data collection and analysis, training, establishing production quotas, cooperative efforts with state, local and other federal agencies, cooperative efforts with the regulated industry, international activities relating to the registration and control of the manufacture, distribution and dispensing of controlled substances, and attendant management, personnel, administrative and clerical oversight for the DCP because they too relate to the fee-funding criteria of 21 U.S.C. 821 and 958(f). Fee-fundable activities also have included travel, rent, utilities, supplies, equipment and services associated with the above-listed activities. Fee-fundable activities also have included activities related to the control of licit controlled substances in the United States in which the initial source is foreign. For example, smuggling a controlled substance into or introducing it into the United States is importation, albeit illegal, and constitutes an activity for which DEA registration and controls are required under the CSA and its implementing regulations; therefore activities to prevent smuggling fall under the purview of the DCP. Foreign-source substances potentially threaten the integrity of the closed system of distribution and undermine other diversion control efforts by DEA. They also may pose a public health threat and/or unlawful competition to legal, registered U.S. manufacturers and suppliers. The advance of the Internet in particular has made foreign-source substances more accessible in the United States and the diversion of these substances a greater problem. The DCP now will address the activities that will be funded by the DDCFA as part of its programmatic responsibilities.

A more detailed description of the activities funded through the DDCFA is included in DEA's 1996 final rule (61 FR 68631) and amended final rule published on August 9, 2002 (67 FR 51988).

Current Fee-Funding

Since the last published rule in 1993, the Budget Authority for the Diversion Control Program has doubled without any associated increase in registrant fees. Currently, the fees established in 1993 are no longer adequate to recover the "full costs" of operating the DCP as required by law.

The Congressional appropriation for the DCP for Fiscal Year 1994 was $57.1 million. For Fiscal Year 2004, the expected Budget Authority will be $118,561,000 (this figure does not include the mandatory $15 million transfer to the U.S. Treasury). The growth in the DCP has been driven by a number of factors some of which have been reflected in DEA budget submissions such as the creation of Tactical Diversion Squads in Fiscal Year 1997. Other DCP expansions include DEA's response to the diversion of OxyContin®, involving the opening of 247 cases from October 1999 through March 2002 (including 159 cases in Fiscal Year 2001 alone, a 270 percent increase from Fiscal Year 2000). These cases have led to a total of 328 arrests. DEA is also expending increasing time and resources on implementing its initial response to internet-based drug diversion, for which it has opened a number of cases leading to arrests and convictions. DEA has also seen an increase in the number of drug diversion cases leading to arrests. (The number of diversion arrests more than doubled in just five years, from 444 arrests in Fiscal Year 1995 to 941 diversion arrests relating to drug cases alone in Fiscal Year 2000. DEA made 871 diversion arrests relating to drug cases in Fiscal Year 2001, and 341 arrests in the first six months of Fiscal Year 2002. The slight decrease in arrests in Fiscal Year 2001 and the first half of Fiscal Year 2002 is attributable to a greater emphasis on chemical investigative activities.) These additional programmatic needs and responsibilities have required additional investigators, headquarters staff and increased financial resources to support these staff and their efforts to prevent the diversion of licit controlled substances

The following table shows the annual growth in Budget Authority for the DCP from Fiscal Year 1994 through Fiscal Year 2006 (expected Budget Authority for FY03 and estimated Budget Authority for FY04, FY05, and FY06). The Budget Authority is based on the President's Budget Request. Note, these figures do not include the required annual $15 million transfer to the U.S. Treasury.

Fiscal year	Budget authority (In millions)
FY94	$57.1
FY95	58.4
FY96	62.2
FY97	67.8
FY98	73.2
FY99	76.7
FY00	80.3
FY01	83.5
FY02	86.2
FY03 (est)	89
FY04 (est.)	118.6
FY05 (est.)	142.3
FY06 (est.)	145.3

In reviewing the activities currently supported by the DDCFA and the relevant legislation and regulatory actions governing the DCP and fee funding, DEA identified several elements of DEA operations that, though not part of the DCP, incidentally support the activities of the DCP and which to date have been funded through Congressional appropriations rather than through the DDCFA. Examples of such elements include two sections within the Office of Chief Counsel that (a) litigate administrative actions related to DEA registrants and (b) provide legal support on regulatory policy matters; a section within the Office of Training that is specifically dedicated to the DCP; a portion of the Office of Forensic Sciences Special Testing Laboratory that supports authentic sample analyses for licit drugs; and a portion of the budget for DEA's agency-wide computer network, "Firebird", related to the work of the DCP. As was discussed more fully in previous rulemakings regarding the DDCFA, while these elements incidentally support diversion control efforts, because their overall function is not primarily devoted to diversion control, they have been included elsewhere in the DEA budget and not as part of fee-fundable activities. In the absence of specific guidance in the 1993 Appropriations Act as to which activities were encompassed within the DCP and thus fee-fundable, DEA has followed the plain language of the act and used the budget categories that had historically been included in the DCP budget request of the Attorney General. As described in DEA's 1996 **Federal Register** notice, for the purposes of budget formulation and appropriation, DEA historically has identified only those resources (with their overhead costs) that were specifically devoted to diversion control efforts as part of the DCP in its annual budget submission to Congress. Other resources which support a broad range of DEA activities, including diversion control, therefore have been included in the budget formulation and appropriation process and not funded through the DDCFA. 61 FR 68631. At this time these activities will continue to be funded through appropriated funds as DEA considers how to better comply with the applicable laws in the future.

Development of the New Fee Schedule

DEA set the current fee schedule for the Diversion Control Program (DCP) through publication in the **Federal Register** on March 22, 1993. This announcement outlined the general categories of cost to be borne by the resulting Drug Diversion Control Fee Account (DDCFA) and delineated the fee categories indicated below:

Registrant class	Annual cost
Manufacturers	$875
Distributors, Importers/Exporters	438
Dispensers/Practitioners	70
Researchers, Narcotic Treatment Programs	70

Since this announcement, the fees, which as required by law support the full cost of the Diversion Control Program, have not changed despite growth in the program and additional costs borne by the program (see the previous section). To recover the full costs of the DCP as required by law, DEA plans to incrementally raise the fees in accordance with its existing fee structure as follows:

Registrant class	Annual cost
Manufacturers	$1,605
Distributors, Importers/Exporters	804
Dispensers/Practitioners	131
Researchers, Narcotic Treatment Programs	131

These increases in fees will go into effect 30 days after the publication of the final rule.

The determination of fees for the Fiscal Year 2004–2006 period covered by this notice is based on the expected Budget Authority for Fiscal Year 2004 (based on the President's Budget Request) and the estimated budget request and appropriation for each subsequent year plus the annual $15 million transfer to the U.S. Treasury. In addition to covering with fee funds all program elements and activities related to the registration and control of the manufacture, distribution and dispensing of controlled substances, DEA must transfer the first $15 million of fee revenue to the General Fund of the Treasury each year. 21 U.S.C. 886a(1). For each fiscal year between Fiscal Year 1993 through Fiscal Year 1998, Congress appropriated an additional $15 million to offset this requirement (a total infusion to the DDCFA of $90 million). However, beginning in Fiscal Year 1999, Congress discontinued this additional appropriation.

The expected Budget Authority for Fiscal Year 2004 is $118,561,000, which accounts for increases in program costs due to inflation, increases in federal staff salaries, and additional funds to undertake a number of new initiatives to prevent, detect and eliminate the diversion of controlled substances while ensuring an adequate supply for legitimate medical and scientific purposes. Funds include $12,518,000 for diversion investigation (for 93 positions), including OxyContin® diversion control and implementation of a system to detect Internet sites that may divert controlled substances and investigation of those sites, as warranted. This will permit DEA to conduct additional and more complex investigations into the diversion of pharmaceutical controlled substances. Other funds accounted for include $12,098,000 (for 40 positions) to develop a system to permit the electronic transmission of controlled substances prescriptions from prescriber to pharmacy and to develop an electronic order form for Schedule I and II controlled substances. These electronic alternatives will provide a similar or higher degree of security/integrity than current paper-based systems and will help DEA to meet its legal mandates under the Government Paperwork Elimination Act. The total cost of program enhancements for Fiscal Year 2004 is $24,873,000. Including the mandatory transfer to Treasury of $15 million, the total amount required to be recovered for Fiscal Year 2004 is $133,561,000.

The anticipated President's Budget Request for Fiscal Year 2005 is $142,265,000. This figure accounts for increases in program costs due to inflation (including such items as postage rate increase, increases in cost of employee health benefits, increases in GSA rent, etc.), costs of federal staff pay increases, and an additional $20,578,000 (for 39 positions). This figure includes costs to support the systems to permit the electronic transmission of controlled substances prescriptions and electronic orders of Schedule I and II controlled substances, the support and operation of DEA's Internet investigations, a major upgrade to the Automation of Reports and Consolidated Orders System (ARCOS), and significant improvements to registration customer/forms service. Other funds accounted for include liaison, policy, regulatory, and analytical activities of the Diversion Control Program. Including the mandatory transfer to Treasury of $15 million, the total amount required to be recovered for Fiscal Year 2005 is $157,265,000.

The anticipated President's Budget Request for Fiscal Year 2006 is $145,307,000 which accounts for inflationary growth from the previous fiscal year estimate and increases in Federal staff salaries. Including the mandatory transfer to Treasury of $15 million, the total amount required to be recovered for Fiscal Year 2006 is $160,307,000.

To calculate inflationary growth, DEA used inflation figures of 1.5 percent for Fiscal Year 2004, 1.6 percent for Fiscal Year 2005 and 1.7 percent for Fiscal Year 2006 and salary increase assumptions of 2.0 percent for Fiscal Year 2004 and 3.4 percent for both Fiscal Year 2005 and Fiscal Year 2006, based on the President's Economic Assumptions. The total amount necessary to collect through fee funds for the Fiscal Year 2004–2006 period is $451,133,000. Based on the amounts required to be collected for the 2004–2006 period to comply with the law, DEA developed the specific fee levels for each registrant category reflected in the previous table. To calculate these fees, DEA first estimated the number of paying registrants for this period and then used this figure combined with the amount required to be collected to set the new fee rate. To calculate the number of paying registrants, DEA used logarithmic regression analysis to project the yearly registrant figures based on historical registrant data for the period of Fiscal Year 1994 through Fiscal Year 2001.

DEA then estimated the number of registrants for each registrant category since different registrant categories pay different fees. Because there were insufficient data for some activities to perform regression analysis, DEA used the percentage for each category using data from the corresponding cycle years in the past.

Finally, based on the analyses conducted, DEA developed the fees for each registrant category consistent with

its current fee structure. In doing so, DEA opted to set the fee level for a three-year period (FY 2004–2006) to avoid the heavy burden on registrants and the additional administrative expenses to DEA that resetting the fee each year would impose. Accordingly, the fees above reflect the *total amount* necessary to be collected for the full three-year period (FY 2004–2006) divided by projected registrants and accounting for projected registrant growth by category for each fiscal year. Because different categories of registrants pay different amounts, DEA weighted the number of registrants in each category to ensure the appropriate reflection in the fee schedule. Because the fees reflect the total amount necessary to be collected for the Fiscal Year 2004–2006 period, DEA may accumulate additional funds beyond those necessary for actual program operations in the initial year (Fiscal Year 2004), but in the final year of the period (Fiscal Year 2006) fee collections are anticipated to fall short of the amount necessary to cover expenditures in that year, so DEA will then draw down the previously collected surplus. The alternatives to this approach would be to reset the fee each year or to set a different fee for each fiscal year; both of these options would cause unnecessary confusion and would impose greater administrative burdens on DEA and registrants.

Regulatory Analyses

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. While DEA recognizes that this regulation will have a financial effect on registrants with the increase in fees, the change in fees is not significant. Moreover, the fees have not been changed in nine years, and DEA is legally mandated to collect fees to cover the full costs of the Diversion Control Program. The appropriations process was used to determine the budget on which the fees are based. The increase in fees after nine years covers both inflation and enhancements to address additional responsibilities assumed by the Diversion Control Program.

In considering options for collecting the full costs of the Diversion Control Program as mandated by law (21 U.S.C. 886a(3)), DEA considered several alternatives to the approach proposed in this regulation. One alternative would be to reset the fee each year for each category of registrant according to the Budget Authority. Another alternative would be to set a different fee for each fiscal year. DEA determined that both of these options would cause unnecessary confusion with fee changes each year and would impose greater administrative and financial burdens on DEA and registrants than the approach proposed in this regulation.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant regulatory action, but this action has been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. While it will affect the private sector in excess of $100,000,000 per year, the effect on individual entities and practitioners is minimal. The majority of the affected entities will pay $131 per year (or $391 for a three year registration period). Moreover, this rule is promulgated in compliance with Congressional mandate that the full cost of operating the DCP be collected through registrant fees as stipulated in the 1993 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (Pub. L. 102–395) and codified in 21 U.S.C. 886a(3). Detailed estimates and analyses, including specific fee amounts for individual registrants, are included in the text of the proposed rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. While this rule will result in an annual effect on the economy of $100,000,000 or more, it will not result in a major increase in costs or prices or cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. This rule is not a discretionary action but rather responds to the Congressional mandate that the full operating costs of the DCP be collected through registrant fees as described above. The individual effect on small business registrants is minimal ranging from $131 to $1,605 per year with the majority of affected registrants paying an annual fee of $131 (or $391 for three years).

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures. For the reasons set out above, 21 CFR part 1301 is proposed to be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.13 is proposed to be amended by revising paragraph (e)(1) to read as follows:

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

* * * * *

(e) * * *

(1)

Business activity	Controlled substances	DEA application forms	Application fee ($)	Registration period (years)	Coincident activities allowed
(i) Manufacturing	Schedules I–V	New—225 Renewal—225a	1,605 1,605	1	Schedules I–V: May distribute that substance or class for which registration was issued; may not distribute or dispose any substance or class for which not registered. Schedules II–V: Except a person registered to dispose of any controlled substance may conduct chemical analysis and preclinical research (including quality control analysis) with substances listed in those schedules for which authorization as a mfg. Was issued.
(ii) Distributing	Schedules I–V	New—225 Renewal—225a	804 804	1	
(iii) Dispensing or instructing (includes Practitioner, Hospital/Clinic, Retail Pharmacy, Teaching Institution).	Schedules II–V	New—224 Renewal—224a	391 391	3	May conduct research and instructional activities with those substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under state statute. A pharmacist may manufacture an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in Schedule II–V in a proportion not exceeding 20% of the complete solution, compound or mixture.
(iv) Research	Schedule I	New—225 Renewal—225a	131 131	1	A researcher may manufacture or import the basic class of substance or substances for which registration was issued, provided that such manufacture or import is set forth in the protocol required in Section 1301.18 and to distribute such class to persons registered or authorized to conduct research with such class of substance or registered or authorized to conduct chemical analysis with controlled substances.
(v) Research	Schedules II–V	New—225 Renewal—225a	131 131	1	May conduct chemical analysis with controlled substances in those schedules for which registration was issued; manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration or reregistration and provided that the manufacture is not for the purposes of dosage form development; import such substances for research purposes; distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities or research with such substances, and to persons exempted from registration pursuant to Section 1301.24; and conduct instructional activities with controlled substances.
(vi) Narcotic Treatment Program (including compounder).	Narcotic Drugs in Schedules II–V.	New—363 Renewal—363a	131 131	1	
(vii) Importing	Schedules I–V	New—225 Renewal—225a	804 804	1	May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered.
(viii) Exporting	Schedules I–V	New—225 Renewal—225a	804 804	1	
(ix) Chemical Analysis	Schedules I–V	New—225 Renewal—225a	131 131	1	May manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempted from registration pursuant to section 1301.24; may export such substances to persons in other countries performing chemical analysis or enforcing laws related to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

Business activity	Controlled substances	DEA application forms	Application fee ($)	Registration period (years)	Coincident activities allowed
(x) Disposer	Schedules I–V	New—225 Renewal—225a	131 131	1	

* * * * *

Dated: February 5, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–3765 Filed 2–14–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI88

Subsistence Management Regulations for Public Lands in Alaska

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Forest Service and U.S. Fish and Wildlife Service, are proposing to amend the regulations governing subsistence use of wildlife in Alaska by clarifying how old a person must be to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit and by removing the requirement that Regional Councils must have an odd number of members. These changes are viewed as noncontroversial and are designed to ensure that the regulations for the Federal Subsistence Management Program in Alaska are easy for the public to understand and reflect current policies.

DATES: We must receive your written public comments no later than April 4, 2003.

ADDRESSES: Submit written comments to Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503. Submit electronic comments to *Bill_Knauer@fws.gov*. For electronic comments, please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

FOR FURTHER INFORMATION CONTACT: For Forest Service questions, contact Ken Thompson, Regional Subsistence Program Manager, USDA–FS Alaska Region, at (907) 786–3592. For Fish and Wildlife Service questions, contact Thomas H. Boyd at (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 36 CFR part 242 and 50 CFR part 100 (referred to below as "the regulations"), authorized by Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3126), implement the Federal Subsistence Management Program on public lands in Alaska.

On May 7, 2002, we published in the **Federal Register** (67 FR 30559–30571) a final rule that made certain changes to the regulations. In that final rule, we clarified how old a person must be to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit, and we retained, without change, a long-held requirement that Regional Councils must have an odd number of members.

At the request of other agencies, in the final rule, we added language to §___.6(b) of the regulations to clarify that, "In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to have reasonably harvested that species yourself (or under the guidance of an adult)." Since the publication of the final rule, we have determined that this language could be misleading and should be further clarified. Therefore, we are proposing editorial changes to this paragraph to make it easier to understand.

In addition, in the final rule, we retained, without change, a long-held requirement in §___.11(b)(1) stating, "The number of members for each Regional Council shall be established by the Board, and shall be an odd number." We retained the requirement that Regional Councils have an odd number of members to prevent the possibility of a tie during Council votes. Since the publication of the final rule, however, the Deputy Secretary of the Department of the Interior approved a Federal Subsistence Board recommendation to increase the size of Regional Councils to 10 or 13 members. These increases will help achieve better balance, as required by the Federal Advisory Committee Act (5 U.S.C. App.1), in Regional Councils. Further, we have learned that in Regional Council meetings, if a vote count is tied, that motion fails; therefore, our reason for requiring an odd number of members does not apply. In light of this new information, we are proposing to revise §___.11(b)(1) to remove the requirement that Regional Councils must have an odd number of members. This change would bring this paragraph into accord with current policies.

Elsewhere in today's **Federal Register**, we have published a direct final rule to promulgate the same regulatory changes to 36 CFR 242 and 50 CFR 100 proposed here. We published the direct final rule because we believe these changes are noncontroversial and anticipate no adverse public comment on them. If we receive no adverse comments regarding these amendments within 45 days, then these changes become effective 60 days from today, and we will withdraw this proposed rule. If we do receive adverse comments, then this proposed rule initiates the normal notice-and-comment rulemaking proceedings. We are opening this comment period for 45 days instead of 60 days because we need this regulatory change in place prior to the councils' recruitment and appointment process for the winter 2004 meeting cycle. This entire process normally takes a year to complete.

Required Determinations

Regulatory Planning and Review (E.O. 12866), Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

An economic analysis is not necessary, as this proposed rule would not have an economic impact on any entities, large or small. The Office of Management and Budget (OMB) has determined that this proposed rule is not a significant rule under E.O. 12866, and, therefore, OMB has not reviewed this proposed rule.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.

In accordance with the Unfunded Mandates Reform Act:

(a) This proposed rule would not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required.

(b) This proposed rule would not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, the proposed rule would not have significant Federalism effects. A Federalism assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared for this proposed rule. This proposal does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments propose to amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART_____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 would continue to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In §_____.6, paragraph (b) would be revised to read as follows:

§_____.6 Licenses, permits, harvest tickets, tags, and reports.

* * * * *

(b) In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to reasonably harvest that species yourself (or under the guidance of an adult).

* * * * *

3. In §_____.11, paragraph (b)(1), the first sentence would be revised to read as follows:

§_____.11 Regional advisory councils.

* * * * *

(b) * * *

(1) The number of members for each Regional Council shall be established by the Board. * * *

* * * * *

Dated: January 31, 2003.

Gale A. Norton,

Secretary of the Interior.

Steven A. Brink,

Acting Regional Forester, USDA—Forest Service.

[FR Doc. 03–3742 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045; FRL–7446–4]

RIN 2060–AK53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: The EPA is proposing amendments to the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills, which were issued on January 12, 2001 under section 112 of the Clean Air Act. This action proposes to improve implementation of the emission standards by clarifying and consolidating monitoring and testing requirements and adding a site-specific compliance alternative for one pulp mill.

In the Rules and Regulations section of this **Federal Register**, we are issuing these amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant adverse comments. We have explained our reasons for these revisions in the preamble to the direct final rule.

If we receive any significant adverse comment on one or more distinct amendments in the direct final rule, we will publish a timely notice of withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule. If no significant adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in that action:

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

DATES: *Comments.* Written comments must be received by March 20, 2003, unless a hearing is requested by February 28, 2003. If a hearing is requested, written comments must be received by April 4, 2003.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by February 28, 2003, a public hearing will be held on March 4, 2003.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, or through hand delivery/courier. By mail, comments may be submitted (in duplicate, if possible) to EPA West (Air Docket), U.S. EPA, Room B–108 (MD–6102T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0045. By hand delivery/courier, comments may be submitted (in duplicate, if possible) to EPA Docket Center (Air Docket), U.S. EPA, Room B–108 (MD–6102T), 1301 Constitution Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0045.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC at 10:30 a.m. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact the person listed below under **FOR FURTHER INFORMATION CONTACT,** at least 2 days in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD-C504-05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-5427, facsimile number (919) 541-5600, electronic mail address: *telander.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action are kraft, soda, sulfite, and stand-alone semichemical pulp mills with chemical recovery processes that involve the combustion of spent pulping liquor. Categories and entities potentially regulated by this action include:

Category	NAICS code*	Examples of regulated entities
Industry	32211 32212 32213	Kraft, soda, sulfite, and stand-alone semichemical pulp mills.
Federal government.		Not affected.
State/local tribal government.		Not affected.

*North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.860 of the national emission standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document. *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR-2002-0045. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B-108, 1301 Constitution Avenue, NW, Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which are not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an electronic mail (e-mail) address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select "search" and key in Docket ID No. OAR-2002-0045. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by e-mail to *air-and-r-docket@epa.gov,* Attention Docket ID No. OAR-2002-0045. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: EPA West (Air Docket), U.S. EPA, Room B-108 (MD-6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR-2002-0045.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center (Air Docket), U.S. EPA, Room B-108 (MD-6102T), 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR-2002-0045. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile. Fax your comments to: (202) 566-1741, Attention Docket ID OAR-2002-0045.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Jeff Telander, c/o OAQPS Document Control Officer (MD-C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR-2002-0045. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

What Are the Administrative Requirements for This Action?

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register.**

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has fewer than 750 employees for NAICS codes 32211, 32212, and 32213 (pulp, paper, and paperboard mills); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives which minimize any significant economic impact of the proposed rule on small entities (5 U.S.C. 603-604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The amendments in today's rule make improvements to the emission standards, primarily by clarifying issues in the areas of testing and monitoring and add a new compliance option. We have, therefore, concluded that today's proposed rule will have no adverse impacts on any small entities and may relieve burden in some cases.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 27, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03-3701 Filed 2-14-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73, 74, 76 and 90

RIN 4214

[MB Docket No. 03-15; FCC 03-8]

Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document commences the Commission's second periodic review of the progress of the conversion to digital television. The document revisits several issues addressed in the first periodic review and solicits comment on a number of additional issues that the Commission believes essential to resolve to ensure continued progress on the transition.

DATES: Comments are due on or before April 14, 2003; reply comments are due on or before May 14, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554. See supplementary information for filing information.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau at (202) 418-2154, or Peter Corea, Policy Division, Media Bureau at (202) 418-7931.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Notice of Proposed Rule Making* (*"NPRM"*) MB Docket No. 03-15; FCC 03-8, adopted January 15, 2003, and released January 27, 2003. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy

contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com*. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419 comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998). This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via email at *bmillin@fcc.gov*. Parties may submit their comments using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. Comments may be filed as an electronic file via the Internet at *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Additional information on ECFS is available at *http://www.fcc.gov/e-file/ecfs.html*.

Filings may also be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's contractor, Histrionics, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Synopsis of Notice of Proposed Rulemaking

Channel Election

1. In the DTV Sixth Memorandum Opinion and Order ("*6th MO&O*"), (63 FR 15774, April 1, 1998), we determined that, after the transition, DTV service would be limited to a "core spectrum" consisting of current television channels 2 through 51 (54–698 MHz). Although some stations received transition channels out of the core, and a few have both their NTSC and DTV channels outside the core, we believe that there will be sufficient spectrum to accommodate all DTV stations within the core by the end of the transition. Having stations with two in-core channels decide which one of the channels would be most suitable for use in digital broadcasting will assist us in determining what channels will be available for stations with two out-of-core channels and in clearing the out-of-core spectrum.

2. In the First DTV Periodic Review Memorandum Opinion and Order, ("*1st MO&O*"), (66 FR 65122, December 18, 2001), we temporarily deferred channel election deadlines until this next periodic review. Accordingly, we now request comment on the new channel election deadline. We propose that commercial and noncommercial broadcast licensees with two in-core assigned channels make their final channel election by May 1, 2005. This date provides three years for commercial broadcasters and two years for noncommercial broadcasters after the applicable digital construction deadline to make the channel election. A May 1, 2005, channel election deadline also provides licensees that will have to move into the core time to plan for their move before December 31, 2006. We seek comment on this proposal.

3. As an alternative, we seek comment on whether establishing the same deadline(s) for channel election as for replication and maximization protection, would be more effective in speeding the transition. As our proposed replication and maximization protection deadlines are later than May 1, 2005, aligning the channel election deadline with these deadlines would give broadcasters more time to increase to full power before they determine which channel is preferable for digital broadcasting. We seek comment on whether we should align the channel election deadline(s) with the replication and maximization protection deadlines we establish herein and, if so, what the deadline(s) should be.

4. As we stated in the First DTV Periodic Review Report and Order ("*1st R&O*"), (MM 00–39, 66 FR 09973, February 13, 2001), in all cases, including stations with both channels in-core, we reserve the right to select the final channel of operation in order to minimize interference and maximize the efficiency of broadcast allotments in the public interest. We intend to review the channel elected to ensure that its use furthers these goals.

DTV/Analog In-Core Channel Swaps

5. Some stations with two in-core channels have already determined that they prefer to use their current analog NTSC channel for DTV operations and want to commence digital operations on the new channel before the end of the transition. Currently a station with in-core DTV and NTSC channels can swap those channels only through a dual rulemaking proceeding to change both the DTV and NTSC Tables of Allotments. As the DTV transition proceeds, it is possible that many stations will want to explore this swap option. Accordingly, we seek comment on whether we should allow such channel swaps through an application process.

Replication and Maximization for In-Core Channels

6. In the *1st MO&O* we stated that we would establish in this second DTV periodic review a date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection to the unreplicated areas, and by which broadcasters with authorizations for maximized digital facilities must either provide service to the associated coverage area or lose DTV service protection to the uncovered portions of those areas. We stated that these replication and maximization protection deadlines may be earlier than, but will in no event be later than, the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. We now seek comment on establishing new dates for maintaining interference protection for the unserved portions of both the replication and maximization service areas of DTV stations on channels 2–51.

7. For DTV channels within the core spectrum, we propose to set new replication and maximization protection dates close to the end of the transition: for the top-four network affiliates (*i.e.*, ABC, CBS, Fox and NBC) in markets 1–100—July 1, 2005; and for all other commercial DTV licensees as well as noncommercial DTV licensees—July 1, 2006.

8. We seek comment generally on the appropriateness of these dates. We also invite commenters to propose alternative approaches for establishing interference protection deadlines, such as giving stations a certain amount of time (*e.g.*, 24 months) after the station commences digital service or after adoption of the Report and Order (*"R&O"*) in this proceeding, whichever is later, to fully replicate or maximize, or establishing a replication/maximization deadline for each market based on when that market reaches a specified digital service penetration level.

9. If a station fails to construct and operate facilities that fully replicate its NTSC service area or provide signal coverage over an authorized maximized service area by the interference protection deadline(s) we will establish in this proceeding, we seek comment on how the Commission should dispose of any construction permits or applications for replication or maximization facilities at that time. Should applications for facilities in excess of those in actual operation by the station be dismissed? How should the Commission treat authorizations for facilities not being fully used by the station? For example, a station has a construction permit for facilities that would serve a larger area than facilities it is operating pursuant to Special Temporary Authority. Should such a construction permit be modified to specify the facilities in actual operation? In addition, we invite comment on how the Commission should treat the spectrum use opportunity that would be created after the interference protection deadline(s). Who should be permitted to file an application for this spectrum? Should any applications for this spectrum be subject to competing applications? Our inclination is to restrict any station that has failed to fully replicate or construct its authorized maximization facilities by the applicable deadline from filing an application to expand coverage for a certain period of time in order to allow other existing or new stations, including Class A eligible LPTV stations on out-of-core channels, to apply to use this spectrum. If we were to adopt this approach, how long should the restriction on the filing of expansion applications by stations that did not fully replicate or maximize by the deadline last? Any decision we reach in this proceeding regarding future licensing of this spectrum will be consistent with 47 U.S.C. 309(j).

10. Finally, we seek comment on whether we should adopt an intermediate signal coverage requirement beyond a broadcaster's current obligation to cover its community of license and in addition to the ultimate "use-or-lose" deadline for full replication or maximization. In the *1st MO&O*, the Commission predicted that the "requirement that broadcasters serve their community of license will ensure that, for most stations, the majority of their analog service populations will receive initial digital service." We seek comment on whether this predictive judgment has been borne out in practice. For instance, we seek comment on whether some of the larger cities in which stations can operate under low-power STAs have large suburban populations that may not be served by a signal that only covers a station's community of license. If there are significant numbers of consumers not being served by stations operating under low-power STAs, we seek comment on what actions, if any, the Commission should take. Should the Commission establish a deadline by which time stations must provide DTV service within the entire area of their analog "city-grade" coverage contour or their Grade A coverage? Yet another alternative would be to require broadcast stations to deploy transmission equipment that is capable of being upgraded to serve broader coverage areas (*e.g.*, their analog Grade "B" coverage), but permit the stations themselves to determine when any intermediate power increases occur prior to the full replication "use-or-lose" date. In general, our goal is to ensure that the maximum number of consumers is able to receive digital television as quickly as possible while providing broadcasters a realistic timetable for increasing to full power.

Bond-Clearing Arrangements

11. In the *1st MO&O*, we temporarily deferred the deadline for loss of interference protection for unserved areas for broadcasters involved in a band-clearing arrangement that are left with a DTV single-channel allotment. We stated that we will continue to protect throughout the course of the transition the analog TV service area of stations that do not have a paired DTV channel, either because they were not assigned a paired DTV channel or because they elect voluntarily to relinquish their paired DTV channel and convert to single channel analog operation as part of the 700 MHz band clearing, as long as the stations continue to operate in an analog mode.

12. We stated that our intention was to provide broadcasters involved in band-clearing with the same treatment as other broadcasters in terms of our DTV replication policy. We also said that, in our next periodic review, we would establish a new replication protection deadline for these broadcasters within the same timeframe as that established for replication and maximization for other broadcasters. We hereby seek comment on the timeframe needed and appropriate for broadcasters involved in band-clearing proposals to replicate their service area once commencing digital operation.

Interference Protection of Analog and Digital Television Service in TV Channels 51–69

13. We seek comment on whether we should adopt the same or different replication and maximization interference protection deadlines for stations operating on TV channels 52–69 (698–806 MHz, also referred to as the "700 MHz band") as for stations operating on core channels. In order to reclaim and relicense channels 52–69 in accordance with statutory mandate, the Commission is relocating television operations in this spectrum to the core spectrum (TV channels 2–51), and has reallocated the 698–806 MHz band to other services. During the transition to digital broadcasting, incumbent broadcasters are permitted to continue to operate in the 698–806 MHz band. Licensees of new public safety, commercial wireless, and other services are permitted to operate in the band prior to the end of the transition, provided they do not interfere with incumbent analog and digital broadcasters.

1. Definition of "Actual" Broadcast Parameters Under Sections 90.545(c)(1)(ii) and 27.60(b)(1)(iii)

14. A number of the interference protection issues raised herein with respect to the 698–806 MHz band relate to the interpretation of the alternative protection criteria for wireless operators

set forth in §§ 90.545(c) and 27.60(b) of the rules, and whether those provisions require protection of broadcast authorizations and allotments. In particular, do these provisions require protection of broadcast authorizations and allotments when the station's operating parameters are less than the parameters described in an existing authorization or allotment?

15. Sections 90.545(c) and 27.60(b) describe alternative methods for a wireless applicant or licensee in the 700 MHz band to move its stations closer to an analog TV or DTV antenna while still complying with the interference protection requirements in the rules. Pursuant to one of these alternatives, the applicant or licensee may submit an engineering study that considers the "actual," rather than "hypothetical," parameters of the analog TV or DTV station and that demonstrates that intervening terrain or other factors permit the land mobile stations and these facilities to be more closely spaced. In the Order adopting this alternative, we stated that applicants should be allowed to submit engineering studies showing how they propose to meet the appropriate desired/undesired ("D/U") signal strength ratio at the existing TV station's "authorized or applied for" Grade B service contour or equivalent contour for DTV stations instead of the hypothetical Grade B contour.

16. We tentatively conclude that §§ 90.545(c)(1)(ii) and 27.60(b)(1)(iii) should be amended to make clear that the interference protection specified in those provisions should be afforded to authorized and/or applied for NTSC and DTV facilities, including the facilities specified on the broadcast station's license or construction permit or both when a station has both a license and a construction permit. We invite comment on this approach. If we do not protect all authorized and/or applied for facilities, what facilities should be protected?

2. Replication

17. We invite comment on the extent to which facilities defined in the DTV Table of Allotments on channels 52–69 should be protected by wireless operators and other services in those bands. In other words, in addition to protecting authorized and/or applied for facilities, should we interpret the requirement that wireless operators and other services protect the "actual" parameters of existing TV stations to require protection of full replication facilities, regardless of whether the DTV station is currently operating, or has filed an application to operate, pursuant to those facilities? If so, how long should this interference protection last?

18. We tentatively conclude that DTV full replication facilities should be protected as "actual." We seek comment on this view and on whether we should establish the same interference protection deadline for replication facilities for stations on channels 52–69 as we will establish in this proceeding for stations on in-core channels.

3. Maximization

19. We invite comment on whether we should establish an earlier deadline for loss of interference protection to the unserved areas described in existing maximization authorizations on channels 52–69 than the deadline we establish for maximization facilities on in-core channels. We also invite comment on whether we should establish the same maximization interference protection deadline for the entire 700 MHz band, or treat the upper and lower bands differently. If we were to establish a different deadline for all or part of channels 52–69, what should that deadline be?

4. Future Modification Applications

20. In June 2002, the Media Bureau adopted a freeze on the filing of analog TV and DTV "maximization" applications in channels 52–59. The Bureau announced that it would not accept for filing television modification applications that would increase a station's analog or DTV service area in channels 52–59 in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) The DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of the Public Notice. The Bureau will consider, on a case-by-case basis, requests for waiver of the freeze on new maximization applications in channels 52–59 where the application would permit co-location of transmitter sites or is otherwise necessary to maintain quality service to the public. The freeze was adopted to assist participants in Auction No. 44, consisting of spectrum licenses in the Lower 700 MHz Band, to determine the areas potentially available in the band for the provision of service by auction winners before the channels are cleared of broadcast stations. That auction was scheduled to begin June 19, 2002, but was postponed in compliance with the Auction Reform Act of 2002.

21. The Media Bureau recently adopted a similar freeze on the filing of analog TV and DTV "maximization" applications in channels 60–69. As with the freeze on maximization in channels 52–59, the Bureau will consider requests for waiver of the freeze on channels 60–69 on a case-by-case basis for stations that propose an increase or shift in coverage under certain circumstances, including to permit co-location at a common antenna site or to resolve certain technical difficulties. We intend to protect applications for waiver under these maximization filing freezes in the same manner that we protect other pending applications. Absent a waiver, future applications for maximization of facilities on channels 52–69 now are foreclosed.

5. Applications for New Analog TV or DTV Facilities

22. With respect to the Lower 700 MHz Band, digital service in the band could be proposed after the auction by a station with an existing DTV allotment on a channel outside the 52–58 band seeking to move to a channel inside this band or by a DTV station inside this band seeking to move to another channel inside the band. We invite comment on whether and how we should protect such proposed digital service on channels 52–58. We also seek comment on whether 47 CFR 73.622 should be amended to require that a broadcaster proposing a channel change that would cause harmful interference to a new entrant on channels 52–59 demonstrate that no other suitable channels are available on 2–58 that would avoid such interference.

6. Channel 51

23. Finally, we seek comment on the interference protection that should be afforded by wireless entities and other new service providers to future analog TV and DTV facilities on channel 51 that are authorized or requested after the auction of the spectrum comprising channel 52.

Pending DTV Construction Permit Applications

24. A number of television licensees have not yet been granted an initial construction permit (CP) for a DTV facility. Almost all of these licensees have filed an application for a digital CP, but grant of these applications has been delayed for a variety of reasons including delays in international coordination with Canada and Mexico and unresolved interference issues. While the Commission has successfully resolved a number of obstacles to grant of outstanding digital CP applications, and the number of licensees without an initial digital CP has been significantly reduced, approximately 140 commercial and noncommercial television licensees still have not yet been granted an initial DTV CP. To date, these applicants have not been required to construct DTV facilities pending action on their outstanding DTV applications.

25. To ensure that all licensees that have been awarded digital spectrum begin to provide digital service, we propose to require that all such television licensees that have filed an application for a digital CP with the Commission that has not yet been granted must commence digital service pursuant to special temporary authority ("STA") within one year from adoption of the *R&O* in this proceeding. Within this time frame, these applicants would be required to request an STA from the Commission and to construct at least the minimum initial facilities required to serve their community of license, as specified in the policy outlined in the *1st MO&O*. We request comment on this proposal. We also request comment on whether the channel election and interference protection deadlines adopted in this proceeding should apply to these licensees and, if not, what other deadlines would be appropriate.

Noncommercial Educational Television Stations

26. Noncommercial television broadcasters are scheduled to complete construction of their digital stations and commence digital service by May 1, 2003. We invite comment on whether noncommercial broadcasters that are not already airing a digital signal anticipate they will meet the May 1, 2003 construction deadline. For any station that does not anticipate meeting the deadline, what obstacles are preventing completion of construction? We also invite comment generally on what steps, if any, the Commission should take to assist noncommercial stations in the transition to DTV. For example, should the financial hardship standard for grant of an extension of time to construct a digital television station be applied differently to noncommercial licensees?

7. Simulcasting

27. In the DTV *5th R&O*, we adopted rules requiring DTV licensees to simulcast 50% of the video programming of their analog channel on their DTV channel by April 1, 2003. This requirement increases to a 75% simulcast requirement in April 2004, and a 100% requirement in April 2005. We seek comment on whether we should retain, revise or remove the simulcast requirement, how to define simulcasting, and whether the existing dates are appropriate. What extent of program duplication should be required to fulfill simulcasting obligations? Does the ultimate requirement of 100% simulcasting other than at the very end of the transition create disincentives for broadcasters to innovate? If broadcasters have a market-based incentive to simulcast and currently are simulcasting 100% of their analog programming on their digital channel, is a regulatory requirement to simulcast necessary? Is the simulcasting requirement causing broadcasters to forego creative uses of digital technology? Would something less than a 100% simulcast requirement be sufficient to protect analog viewers while allowing for innovation on the DTV channels? If maintaining some simulcast obligation is appropriate, we seek comment on whether we should revise the current dates for the phase-in of simulcast requirements.

28. We propose a definition of simulcasting in the DTV context as follows: Within a 24-hour period, the broadcast on a digital channel of the same programming broadcast on the analog channel, excluding commercials and promotions and allowing for enhanced features and services.

We request comment on this proposed definition. We also seek comment on how simulcast requirements and the definition of "simulcasting" relate to the substantial duplication decisions in the must carry portions of the Act.

Effect on Prime Time Broadcasting Requirements

29. If we decide to eliminate or change the simulcasting requirements, we must adjust the digital broadcast schedule requirements that are currently pegged to the simulcast requirements. We propose that, if we eliminate or reduce the simulcasting requirements in § 73.624(f), we amend § 73.624(b)(1) to require DTV stations subject to the May 1, 2002, or May 1, 2003, construction deadlines to air, by April 1, 2003, a digital signal for an amount of time equivalent to 50% of the amount of time they provide an analog signal. The digital signal must be aired during prime time hours. This minimum digital operation requirement would increase to 75% on April 1, 2004 (requiring airing of a digital signal for an amount of time equivalent to at least 75% of the amount of time the station airs an analog signal), and to 100% on April 1, 2005. We seek comment on this proposal and invite alternatives as well.

Section 309(j)(14)

30. Section 309(j)(14)(A) of the Communications Act requires the Commission to reclaim the 6 MHz each broadcaster uses for transmission of analog television service by December 31, 2006. Congress recognized, however, that not all stations will convert to DTV at the same time. Thus, "to ensure that a significant number of consumers in any given market are not left without broadcast television service as of January 1, 2007," Congress required the Commission in section 309(j)(14)(B) to grant extensions to any station in any television market if one or more of three conditions exist. We review the language of section 309(j)(14) and invite comment on how we should interpret certain portions of that statutory provision. We also seek comment on establishing rules and filing deadlines governing how and when extension requests will be made.

Filing of Extension Requests

31. Section 309(j)(14)(B) provides that the Commission shall extend the date by which stations must cease analog service for qualifying stations that request an extension. We intend to develop a form to be used by stations to request an extension under this provision. We invite comment on when stations seeking an extension should be required to file their extension request. We invite comment on the period of time for which extensions should be granted. We also invite comment on whether the Commission may grant a blanket extension under section 309(j)(14)(B) to all stations in a market or nationally if the Commission finds that the criteria for return of analog spectrum have not been met. What findings would the Commission need to make in order to grant a blanket extension?

Definition of Television Market

32. Under section 309(j)(14)(B), the Commission must consider whether any one of the three conditions for an extension exist in the requesting station's "television market." For purposes of applying section 309(j)(14)(B), we invite comment on how we should define "television market." One option would be to define "television market" as the designated market area or DMA, as defined by Nielsen Media Research, in which the television station requesting the extension is located. Another option would be to define "television market" as the requesting station's Grade B contour.

33. Use of DMAs to define the applicable market may be more consistent with the language of section 309(j)(14), which requires the Commission to grant an extension to "any station that requests such an extension in any television market." This language seems to contemplate that

each market will contain more than one television station, as is generally true of DMAs. The Grade B contour of any station requesting an extension, in contrast, is generally unique for each station, and therefore contains only one station. A Grade B test may also be more difficult to administer as market data, including information about digital-to-analog converter technology and the number of television households with digital television reception capability, would have to be compiled for the area within each requesting station's Grade B contour, rather than DMA-wide.

34. Use of DMAs to define the applicable market for purposes of section 309(j)(14)(B) would ensure that transition progress throughout the DMA is considered in determining whether the criteria for extension have been met. As parts of the United States, particularly in rural areas, do not lie within the Grade B contour of any full-power television station, a Grade B test would not consider transition progress in these areas before cessation of analog service.

35. If we define the applicable market by reference to a station's Grade B contour, we invite comment on whether we should refer to the station's analog Grade B or the equivalent digital contour. In addition, does the market of a station requesting an extension under section 309(j)(14) include only the requesting station's Grade B contour, or also the Grade B contour of any TV translator retransmitting the requesting station's signal?

36. The Grade B contour of many stations reaches more than one DMA. Under a DMA-only market test, a station could be denied an extension of its analog license without consideration of the status of the transition in a neighboring DMA where the station may have a significant number of viewers. To address this situation, another option would be to adopt a modified DMA market test that considers viewers in adjacent DMAs in situations where stations have a significant number of viewers in those DMAs. For example, where a station requesting a transition extension has a significant number of viewers in a DMA other than its designated DMA ("home DMA"), we could require that both DMAs meet the statutory criteria for the transition in section 309(j)(14)(B). We request comment on this approach.

37. How we define the "market" is important in applying each of the conditions for an extension under section 309(j)(14)(B). We request comment on the impact of a DMA, modified DMA, or Grade B market definition on the availability of extensions under each of these conditions.

Network Digital Television Broadcast Test

38. Under the first ground for an extension under section 309(j)(14)(B), the Commission must grant an extension if one or more of the stations in the market that are licensed to or affiliated with one of the four largest national television networks is not "broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market." We invite comment on how we should interpret this provision. We read the language of section 309(j)(14)(B)(i) to require that all stations in a market licensed to or affiliated with a top-four network must be broadcasting in digital before analog service is required to cease in the market, even if a top-four network has more than one affiliate in the market. We request comment on this view. Should we consider a station that is broadcasting a digital signal pursuant to a DTV STA, and providing service in compliance with the Commission's minimum initial digital television construction requirements, to be "broadcasting a digital television service signal" for purposes of this provision? We propose that a station not meeting such minimum initial DTV operating requirements would not be considered to be "broadcasting a digital television signal" within the meaning of this provision. Thus, extensions would be available under section 309(j)(14)(B)(i) in any market where a top four network affiliate is not providing digital service in accordance with at least the Commission's minimum requirements for coverage of the community of license and hours of operation. We request comment on this proposal.

39. Alternatively, we could require that a station be providing service to the entire area encompassed within the station's DTV allotment in order to be considered "broadcasting a digital television service signal" in the market under section 309(j)(14)(B)(i). To ensure that stations not postpone replication to delay return of analog spectrum, we propose that if we require service to the full replication area under section 309(j)(14)(B)(i), we would not consider lack of replication to constitute lack of service after the replication protection deadline adopted in this proceeding.

Converter Technology Test

40. Under the second ground for an extension under section 309(j)(14)(B), the Commission must grant an extension to a requesting station if the Commission finds that digital-to-analog converter technology is not "generally available" in the market. For purposes of section 309(j)(14)(B)(ii), we propose to define as a "digital-to-analog converter" units that are capable of converting a digital television broadcast signal to a signal that can be displayed on an analog television set. We invite comment on this definition. Should we consider as a "digital-to-analog converter" a unit that is not capable of displaying in analog format signals originally broadcast in all digital formats? We also request comment on how we should interpret the phrase "generally available" under section 309(j)(14)(B)(ii). For example, should we require only that digital-to-analog converter boxes be available for sale at retail outlets in the market or for sale or lease from cable operators or satellite providers? How widespread must the availability be to be considered "generally available?'

15 Percent Test

41. Section 309(j)(14)(B)(iii) provides for a third ground for extension for markets that do not qualify under section 309(j)(14)(B)(i) or (ii). Section 309(j)(14)(B)(iii) sets forth a two-part test. The first prong of the test, described in section 309(j)(14)(B)(iii)(I), is met where 15 percent or more of the television households in the market do not subscribe to an MVPD (as defined in 47 U.S.C. 602) that "carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such a market."

42. Read literally, section 309(j)(14)(B)(iii)(I) appears to require that an MVPD, such as a cable system, must be carrying all of the television stations broadcasting a digital channel as a first step to satisfy this prong of the test. Read thus, if one or two digital television stations in a market are not carried by a cable or satellite provider (*e.g.* because the station is not carried voluntarily and is not eligible for mandatory carriage), then the criterion is not met. In almost all DMAs, there are stations that are not entitled to must-carry on cable systems in the DMA and that are not carried by the systems voluntarily. Did Congress intend that this prong would be very rarely satisfied in a market?

43. We invite comment on whether there is a more flexible interpretation of the language in the statute. How should this language influence our definition of "market?" Can we conclude that only television broadcast stations that provide a good quality digital signal to the MVPD headend or local receive facility are contemplated by this language? If we interpret section 309(j)(14)(B)(iii)(I) as requiring carriage of only those digital stations in the market entitled to must-carry, the availability of extensions under this provision will be more limited, and the market is likely to transition to digital more quickly. On the other hand, if we interpret section 309(j)(14)(B)(iii)(I) as requiring that all stations broadcasting digital signals be carried regardless of the station's must-carry rights and signal delivery capability, this prong may be satisfied less often. Moreover, a station could refuse to grant retransmission consent, and prevent carriage, which would in turn prevent the MVPD from counting towards the market transition. As a result, the analog licenses would be extended in every market in which the 15% criteria is not met by households possessing over-the-air digital or down-conversion equipment. Is this the result that Congress intended or that is compelled by the language in the statute?

44. We also invite comment on whether, under section 309(j)(14)(B)(iii), MVPDs must carry only primary, full power television stations in the market, or also Class A LPTV stations or other secondary non-Class A LPTV stations and TV translators. If section 309(j)(14)(B)(iii) is read to require carriage of all of these facilities in the market, and "market" is defined as DMA, then this prong of the transition criteria will be satisfied less often. If the market is defined as the station's Grade B contour or service area, then it may be more likely that cable systems within the station's Grade B area would carry that station (*e.g.*, the signal quality issue is less likely to arise). How does this result influence our decision on the proper definition of market?"

45. Under the second part of the 15% test, an extension should be granted if 15 percent or more of the television households in the market do not have either "(a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or (b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market."

46. We invite comment on how we should interpret the phrase "capable of receiving the digital television service signals of the television stations licensed in such market." Does this phrase require that a household be capable of over-the-air reception of all television stations licensed in the market in order not to be counted toward the 15 percent threshold for an extension? Under this interpretation, any household outside the service contour of any digital station in the market would be counted toward the 15 percent threshold under these provisions (recognizing that such households could be excluded from counting toward the 15 percent under section 309(j)(14)(B)(iii)(I) if they are MVPD subscribers as defined in that provision). What if a household receives a parent station's signal rebroadcast in analog format via TV translator (*e.g.*, the parent station originally broadcast the signal in digital format and the signal was downconverted to analog format by a TV translator)? We note that § 74.701 of the Commission's rules requires that TV translators retransmit the signals of the parent station "without significantly altering any characteristic of the original signal other than its frequency and amplitude." Should our rules permit TV translators to downconvert to analog format a signal originally broadcast by the parent station in digital format? As a separate issue, we propose to define television receivers "capable of receiving" DTV signals under section 309(j)(14)(B)(iii)(II)(a) as television sets equipped with either integrated or separate (*e.g.*, set-top box) DTV tuners, and request comment on this definition.

47. For purposes of calculating households in the market to determine whether the 15 percent test is met under both prongs of section 309(j)(14)(iii), we propose to interpret that provision as requiring grant of an extension where 15 percent or more of the television households in the market neither subscribe to an MVPD that carries local DTV signals (section 309(j)(14)(B)(iii)(I)), nor have equipment capable of displaying signals originated in DTV (section 309(j)(14)(B)(iii)(II)). In other words, for a household to be counted in the 15 percent, that household must both be a non-subscriber ("non-subscriber" may include subscribers to MVPDs that carry the required DTV stations but who lack equipment to view such signals in either analog or digital format) *and* lack the capability to receive DTV signals over-the-air, either through a set with an integrated DTV tuner, via a DTV set-top box, or via a digital-to-analog downconverter. We believe that this interpretation best reflects the intent of Congress that "a significant number of consumers in any given market are not left without broadcast television service" as we transition from analog to digital. Accordingly, we propose to grant extensions under section 309(j)(14)(B)(iii) only where the requisite number of television households (15 percent or more) in the market are not capable of receiving digital signals either over the air or via an MVPD. We request comment on this view.

Fact Finding Under Section 309(j)(14)(B)

48. We request comment on the extent to which the Commission is required to conduct consumer surveys or otherwise obtain information to determine whether an extension is required under section 309(j)(14)(B). In addition, we invite comment on the nature of any survey that must be performed, the type of questions that should be included, and the percent of the television households in the market that must be included in the sample. Is it necessary to survey each market separately, or would a more wide-spread survey suffice to establish that a market meets one or more of the criteria for grant of an extension request? If the first survey conducted demonstrates that an extension is warranted, when should a new survey be performed to see if there has been further transition progress in the market?

DTV Labeling Requirements and Consumer Awareness

49. As part of our commitment to continue monitoring the marketplace, we seek further comment on whether manufacturers are producing or plan to produce digital television receivers that can receive digital format transmissions via cable or satellite but that cannot receive digital broadcast signals over the air. We also seek information on the number of "pure monitors" (without any tuner) intended for use in display of signals from video service providers that are currently produced or planned for production. Do equipment manufacturers plan to label such equipment to describe the reception limitations or need for additional receiving equipment? What is the potential for consumer confusion in connection with these devices? Should we require labeling on pure monitors that can be used to display video services, which neither receive off-air signals, nor are designed to be "digital cable ready," to advise consumers that the monitor cannot function to receive programming unless it is attached to an

off-air tuner, or cable, or satellite receiver? Should we require labeling on digital television receivers that are not "digital cable ready" to indicate that the set "will not receive cable or satellite programming without the use of a converter"? We seek comment on these and other labeling options, as well as the need for and costs of such required disclosures.

50. In addition, we seek comment on whether the Commission should require a disclosure label on analog-only sets to inform consumers that a converter or external DTV tuner will be needed to ensure reception of television broadcast signals after stations in the consumer's market complete conversion to digital-only broadcasting.

Distributed Transmission Technologies

51. In the *1st R&O*, we addressed comments requesting that the Commission adopt rules for on-channel DTV boosters, including an allowance for a distributed transmission system, but deferred consideration of distributed transmission techniques until we could address the issue in a more comprehensive manner. Commenters have defined distributed transmission as being similar to a cellular telephone system in that a service area is divided into a number of cells, each served by its own transmitter. DTV boosters retransmit the primary DTV station's programming on the same channel.

52. *Primary vs. secondary status.* We have received comments suggesting that the Commission should grant primary status to the multiple transmitters in distributed transmission systems and license them under part 73 of the rules, as opposed to treating them similarly to LPTV, translator, and booster stations. We seek comment on the implications of granting primary status to DTV boosters in distributed transmission systems, and on whether we should license some categories of such stations with primary status.

53. *Location and service area.* Currently, all analog TV boosters must be located and must have a service area contained within the Grade B contour of the associated full service station. Should an equivalent requirement be established for DTV boosters used as part of a distributed transmission system?

54. *Power, antenna height and emission mask.* If multiple DTV booster stations can be used to replace, or significantly augment, a single central transmitter in a distributed transmission system, what maximum or minimum limitations, if any, should be placed on the power and/or antenna height used at each DTV booster?

55. *Interference protection.* What standards are needed to protect distributed transmission systems from interference and how should those standards be calculated and applied?

56. *Technical standards.* What standards would be appropriate for boosters in distributed transmission systems with respect to specific technical requirements, such as frequency tolerance, type certification of transmitters, control circuitry and performance measurements?

57. We seek comment generally on whether the Commission should permit the deployment of distributed transmission systems. We ask commenters to specifically address the relevant rules and policies that would have to be put in place to permit distributed transmission systems, and any new or amended forms, policies and/or procedures that would be needed with respect to the Commission's current system for filing, processing and granting television station licenses.

DTV Public Interest Obligations

58. Both Congress and the Commission have recognized that digital television broadcasters have an obligation to serve the public interest. Congress established the statutory framework for the transition to digital television in the 1996 Act, making it clear that public interest obligations would continue for broadcasters in the new digital world. In section 336 of the Act, Congress stated that "[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity." The Commission also reaffirmed that "digital broadcasters remain public trustees with a responsibility to serve the public interest," and stated that "existing public interest requirements continue to apply to all broadcast licensees." Under our current rules, commercial television broadcast station licensees must provide coverage of issues facing their communities, and place lists of programming used in providing significant treatment of those issues (issues/programs lists) in the station's public inspection files on a quarterly basis. Licensees must also maintain in their station's public inspection files records that substantiate certification of compliance with the commercial limits on children's programming and quarterly Children's Television Programming Reports (FCC Form 398) reflecting the licensee's efforts to serve the educational and informational needs of children.

59. It is thus clear that DTV broadcasters must air programming responsive to their communities of license, comply with the statutory requirements concerning political advertising and candidate access, and provide children's educational and informational programming, among other things. What remains unresolved is how these obligations will apply in the digital environment, and whether they should be applied differently or otherwise adapted to reflect the enhancements available in digital broadcasting.

60. The Commission issued a formal Notice of Inquiry *("NOI")*, (MM 99–360, 65 FR 4211, January 26, 2000), on DTV public interest obligations in December 1999, followed by two *NPRMs* in September, 2000 (65 FR 66951, November 8, 2000, 65 FR 62683, October 19,2000). In the *NOI*, the Commission sought comment on several issues related to how broadcasters might best serve the public interest during and after the transition from analog to digital television. Among the areas of inquiry in the *NOI* were questions regarding how broadcasters might make information about how they serve the public interest more accessible to the public.

61. The DTV Public Interest Form *NPRM* proposed that the Commission adopt rules regarding the disclosure of broadcasters' activities in the public interest, essentially putting the contents of the public file on the Internet to make it more accessible to viewers. In light of the concerns about disclosure expressed in the record of the *NOI*, the *NPRM* proposed to replace the issues/programs list with a standardized form and to enhance the public's ability to access information on a station's public interest obligations by requiring broadcasters to make their public inspection files available on the Internet.

62. The Children's DTV Public Interest *NPRM* (65 FR 66951, November 8, 2000), proposed clarifying broadcaster obligations under the Children's Television Act and related Commission guidelines in a digital television environment. This *NPRM* focused primarily on two areas: the obligation of television broadcast licensees to provide educational and informational programming for children, and the requirement that television broadcast licensees limit the amount of advertising in children's programs. It sought comment on how the current three-hour children's core educational programming processing guideline should be applied in light of the many possible ways broadcasters may choose to use their DTV spectrum; whether the current preemption rules for core educational programming should be revised or adapted for the digital environment; and whether steps should be taken to ensure that programs designed for children or families do not contain age-inappropriate product promotions that are unsuitable for children to watch.

63. To date, the Commission has not issued any decisions in the DTV Public Interest Form *NPRM*, the Children's DTV Public Interest *NPRM*, or the NOI. Given the significant time that has passed since the comment periods in these proceedings were closed, we invite additional comment in those dockets in order to reflect more recent developments. We are particularly interested in those issues relating to the application of public interest obligations to broadcasters that choose to multicast (*e.g.*, the application of our children's television rules or the statutory political broadcasting rules in a multicast environment). We are also interested in whether our approach to multicast public interest obligations should vary with the scope of whatever final digital must-carry obligation the Commission adopts. Our goal is to bring these proceedings concerning the public interest obligations of broadcasters in the digital environment to conclusion promptly in order to provide certainty to broadcasters and the public as the digital television transition continues.

Other Issues

1. ATSC Standards

64. We hereby seek comment on whether our rules should be further changed to reflect any revisions to the ATSC DTV standard A/53B since the August 7, 2001, version.

2. PSIP

65. We seek comment on both whether to require use of PSIP and which aspects of PSIP should be adopted into our rules. If we decide not to require use of PSIP, it is, nevertheless, important to decide if some or all of the PSIP information set forth in ATSC A/65A must be used by those who voluntarily use PSIP. Likewise, are there certain aspects of the PSIP standard that should not be used or required?

3. Closed Captioning

66. We seek comment on whether there are additional actions the Commission should take to ensure the accessibility and functioning of closed captioning service for digital television.

4. V-Chip

67. We seek comment on whether the Commission needs to do more to ensure that v-chip functionality is available in the digital world. We seek comment on whether the Commission should adopt the provisions of the ATSC A/65A standard that requires all digital television broadcasters to place v-chip rating information in the PSIP.

5. TV Translators

68. We request comment on how the proper PSIP information is to be provided on TV translator rebroadcasts and who will be responsible for ensuring that that information is so provided. We also request comment regarding the costs of providing PSIP information on TV translators as well as any other concerns that translator operators might have in implementing PSIP on their DTV operations.

6. DTV Station Identification

69. In general, we propose to require digital television stations to follow the same rules for station identification as analog television stations. Recognizing that channel number identification is not currently required for all television stations by our rules, we ask whether channel identification should be required for DTV stations? If station identification announcements include channel numbers, we request comment on whether our rules should specify which channel number stations should use: the major (analog) channel number, minor (digital) channel number, or over-the-air channel number. Stations considering multicasting have raised concerns about separate identification of their separate digital programming streams for purposes of obtaining audience ratings. While we are not inclined to assign separate call signs for additional program streams for stations that choose to multicast, we propose to permit such stations to include additional information in their station announcements identifying each program stream.

7. Satellite Stations

70. Because satellite stations, by definition, operate in small or sparsely populated areas which have insufficient economic bases to support full-service operations, we seek comment on whether the public interest would be served by allowing such stations to turn in their digital authorization and "flash-cut" to DTV transmission at the end of the transition period. We request comment on the advantages and disadvantages of granting this special designated status to satellite stations, specifically whether it will hinder the overall transition to digital television and harm viewers by delaying their access to digital signals, or whether disallowing such status will overly burden satellite stations financially.

71. We also invite comment on whether allowing satellite stations to "flash-cut" to digital would present legal impediments to satisfying section 309(j)(14).

Procedural Matters

72. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See* 47 CFR 1.1202, 1.1203, and 1.1206(a).

73. *Comment Information.* Pursuant to § 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 14, 2003, and reply comments on or before May 14, 2003. Comments filed addressing issues in the *DTV Public Interest Form NPRM*, *Children's DTV Public Interest NPRM*, and NOI proceedings should also be filed by these dates and should reference the docket numbers in those proceedings, not the docket number of this DTV periodic review proceeding. Commenters wishing to address both public interest issues and other issues raised in the DTV periodic review should put their public interest comments in a separate document to be filed in the appropriate public interest docket(s) and file their comments on other issues raised in the periodic review in the docket number of this proceeding (MB 03–15; RM 9832).

Paperwork Reduction Act

74. *Initial Paperwork Reduction Act Analysis.* This *NPRM* may contain proposed information collections subject to the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork burdens, we invite OMB, the general public, and other federal agencies to take this opportunity to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on the *NPRM*. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the

collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Kim Johnson, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim A. Johnson@omb.eop.gov*.

75. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *NPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

76. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM* written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for and Objectives of the Proposed Rules

77. As described in the *NPRM*, the proposed rules are required to ensure a smooth transition of the nation's television system to digital television.

Legal Basis

78. The authority for the action proposed in this rulemaking is contained in sections 4(i) and (j), 303, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 303, 307, 309 and 336.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

79. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

80. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and therefore might be over-inclusive.

81. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

Television Broadcasting

82. The proposed rules and policies could apply to television broadcasting licensees, and potential licensees of television service. There were 1,509 television stations operating in the nation in 1992. The majority of firms can be considered small.

Cable and Other Program Distribution

83. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address each service individually to provide a more precise estimate of small entities.

Cable Operators. We estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this NPRM.

Direct Broadcast Satellite ("DBS") Service

84. There are four licensees of DBS services under part 100 of the Commission's Rules. We will assume all four licensees are small, for the purpose of this analysis.

Home Satellite Dish ("HSD") Service

85. HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion. Most of providers of these services are considered small.

Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS")

86. MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

87. We find that there are approximately 850 small MDS providers.

88. We tentatively conclude that at least 1,932 ITFS licensees are small businesses.

89. We conclude that there are a total of 133 small entity LMDS providers.

Satellite Master Antenna Television ("SMATV") Systems

90. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Most providers of these services are considered small.

Open Video Systems ("OVS")

91. The Commission has certified 25 OVS operators with some now providing service. We conclude that at least some of the OVS operators qualify as small entities.

Electronics Equipment Manufacturers

92. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. We conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers

93. We conclude that there are approximately 544 small computer manufacturers.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

94. At this time, we do not expect that the proposed rules would impose any significant additional recordkeeping or recordkeeping requirements. While the requirements proposed in the *NPRM* could have an impact on consumer electronics manufacturers and broadcasters, such impact would be similarly costly for both large and small entities. We seek comment on whether others perceive a need for more extensive recordkeeping and, if so, whether the burden would fall on large and small entities differently.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

95. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

96. The deadlines we proposed for replication and maximization for in-core channels would give the largest commercial stations in the largest markets on in-core channels three years to acquire necessary financing, develop business plans, and expand their digital service areas. Taking into consideration smaller-market commercial stations, smaller commercial stations in larger markets, and noncommercial DTV licensees, which may face greater obstacles in moving towards full replication or service maximization, we proposed alternative replication and maximization deadlines allowing close to the maximum time under the current statutory transition period to complete their replication and maximization facilities. We welcome comment on modifications of the proposals if such modifications might assist small entities and especially if such are based on evidence of potential differential impact.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

97. None.

Ordering Clause

98. Pursuant to the authority contained in sections 4(i) and (j), 303, 307, 309 and 336 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i) and (j), 303, 307, 309 and 336, this *NPRM is adopted*.

99. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

List of Subjects in 47 CFR Parts 73, 74, 76, and 90

Administrative practice and procedure, Cable television, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3812 Filed 2–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 03–14477, No. 1]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: The agency denies a petition for rulemaking from Mr. Ronald J. Slaughter requesting that NHTSA initiate rulemaking to consider requiring motor vehicle manufacturers to equip new vehicles with instrumentation sufficient to alert vehicle drivers and nearby police whenever the vehicles are being operated while one or more of the occupants is unbelted. Mr. Slaughter suggested that implementation of the requested amendment would lead to increases in the rate of safety belt use.

The agency is denying the petition for the following reasons. First, implementation of the requested amendment would be costly since it would necessitate the installation of seat belt use sensors, seat occupancy sensors, and light sources in each vehicle. Second, the requested amendment would have limited effect on safety belt use rates in the states whose safety belt use laws permit officers to stop a vehicle or issue a citation for failure to use a safety belt only if the officers also observe a separate concurrent violation. Third, the agency is concerned about consumer acceptance of the system proposed by the petitioner. Fourth, occupants who do not want to wear their seat belts can easily circumvent the system by placing the seat belt behind them or modifying the light to stay on all the time.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Sanjay Patel of the NHTSA Office of Crashworthiness Standards. Telephone: (202) 366–4583, facsimile: (202) 366–4329.

For legal issues, you may call Ms. Rebecca MacPherson of the NHTSA Office of the Chief Counsel. Telephone: (202) 366–2992, facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On January 25, 2000, Mr. Ronald J. Slaughter submitted a petition for rulemaking requesting that NHTSA consider requiring motor vehicle manufacturers to equip new vehicles with lights inside and outside the vehicle that would continuously burn and be visible to the driver and to those outside the vehicle as long as all vehicle occupants are belted. Mr. Slaughter believes that continuously burning lights on the instrument panel would give the driver more control over his or her passengers, reminding them to "buckle up." Further, Mr. Slaughter suggested that lights visible outside the vehicle would help police officers enforce mandatory seat belt use laws. He believes that such lights would increase safety belt use, assist in the identification of drunk or otherwise

impaired drivers, and reduce traffic crash injuries and fatalities. Mr. Slaughter did not provide any data or other information relating to the cost of such devices or any studies performed regarding the effectiveness or feasibility of such a system.

NHTSA is very supportive of efforts to increase safety belt use and agrees that the failure of many motor vehicle occupants to use safety belts is a significant concern. The agency has expended considerable effort and resources to improve the rate of safety belt use in the United States. NHTSA has prepared and distributed numerous legislative fact sheets, position papers, success stories, model laws for both seat belts and child passenger safety, and other materials on the benefits of mandatory seat belt use and child passenger safety laws. Agency employees have testified, when invited by state officials, at state legislative hearings for states considering the enactment of the belt use laws.

Recently, at the invitation of state officials, NHTSA employees have testified in support of attempts within various states to change secondary enforcement laws, under which police officers must observe a separate and distinct violation before stopping a vehicle where occupants are not using belts, to primary enforcement laws. Primary enforcement laws allow police officers to make stops and issue citations for the failure to wear a seat belt without first observing another violation unrelated to seat belt use. Presently, 18 states and the District of Columbia have enacted such laws.

NHTSA has also established cooperative agreements with numerous states to demonstrate that publicized enforcement of a mandatory seat belt use law can increase seat belt use and formed formal partnerships with many national organizations for the purpose of mobilizing their membership to promote traffic safety in general, and seat belt and child safety seat use in particular. The agency has produced brochures, posters, videos, print ads, billboards, public service announcements, and a host of other media resource materials to educate the public on the safety benefits of seat belts. Other activities pursued by the agency to improve belt use include programs to improve the training of law enforcement officers, the use of child safety seat checkpoints, and other measures designed to improve belt use and enforcement of mandatory belt use laws.

Despite the agency's on-going efforts and interest in encouraging full use of vehicle safety belts, NHTSA has considered and rejected two proposals similar to Mr. Slaughter's in recent years. In both cases, the agency reluctantly concluded that the potential safety benefits of the proposed requirements were outweighed by other factors. On February 24, 1999 (64 FR 9118), the agency published a denial of a petition from Mr. Les Boyd requesting that the agency consider requiring motor vehicle manufacturers to equip new vehicles with instrumentation sufficient to alert nearby police whenever the vehicles were being operated with an unbelted occupant. In denying the Boyd petition, the agency expressed three major concerns about the general use of instrumentation to alert police. First, NHTSA explained that implementation of the requested amendment would have been costly because it would have necessitated the installation of sensors in each seating position to identify unbelted occupants as well as a transmitter in each vehicle to alert nearby police.

Second, the agency stated that it anticipated that adopting the requested requirements would lead to only a modest increase in safety belt usage in the majority of states with secondary seat belt use laws because those states only permit officers to stop a vehicle or issue a citation for an occupant's failure to use a safety belt if the officers also observe a separate, concurrent violation. The agency further stated that it did not anticipate that granting Mr. Boyd's petition would lead to a substantial increase in seat belt use even in those states whose mandatory seat belt use laws permit officers to enforce those laws without first observing a separate, concurrent violation. Third, NHTSA expressed reservations about the amount of identifying information that would need to be transmitted in order for police to determine which vehicles were being operated with unbelted occupants, stating that the transmission of such detailed information raised significant privacy concerns.

On November 5, 1999 (64 FR 60625), the agency denied a petition from Carl Nash and Donald Friedman. The petitioners proposed requiring certain inducements to fasten all occupant safety belts, such as continuous visual reminders, audible suggestions, or interruption of non-essential accessories such as air conditioning. In denying the petition, the agency expressed concerns about the effectiveness of continuous visual reminders, pointing to a lack of "information indicating that such a reminder would likely result in additional safety benefits over the existing warning systems." The agency also stated its opinion that NHTSA lacks the statutory authority to require audible suggestions or system interruption. The agency reconfirmed this opinion in the preamble to the Advanced Air Bag final rule, published on May 12, 2000 (65 FR at 30734), as well as in a letter to Dr. Nash on June 6, 2000.

In evaluating Mr. Slaughter's petition, we believe that there is no apparent reason to require continuously burning lights to indicate that all occupants are belted. First and foremost, there are no data relating to the costs of such a system or any studies indicating its effectiveness or feasibility. With respect to the petitioner's proposal to require a continuously burning light positioned outside the vehicle, the agency believes that doing so would be unlikely to enhance appreciably the ability of police officers to determine whether occupants are wearing their safety belts. In many cases, officers can already see whether an occupant's shoulder belt is being worn by looking through the vehicle's windows. We acknowledge that an illuminated, external light would be more effective than plain visual inspection in certain circumstances, however, such as at night, during periods of inclement weather, or in other situations when visibility is severely limited.

As to Mr. Slaughter's proposal to require a continuously burning light inside the vehicle, on the dashboard, we note that the agency presently requires vehicles to be equipped with an internal light and an audible warning to remind the vehicle's driver to fasten his or her safety belt. (*See* Federal Motor Vehicle Safety Standard No. 208, paragraph S7.3.) This light normally remains illuminated when the driver's safety belt is not being worn. The agency believes that the combined effect of requiring an audible warning system and dashboard light inside the vehicle keyed to the driver's seating position, coupled with the ability of police offers to observe (in normal driving conditions) from outside the vehicle, whether shoulder belts are being worn already provides many of the "reminder" and enforcement benefits the petitioner contends would be realized by his proposal.

Not only would the benefits from adopting the petitioner's proposal appear to be minimal, but also the costs of requiring manufacturers to install continuously burning lights inside and outside the vehicle would likely be high. To work in the manner suggested by the petitioner, each seating position would not only need a belt-use sensor in every safety buckle, but every seating position other than the driver's seat would also have to have some form of seat sensor to indicate whether the seat

was occupied. Each vehicle would also need to be equipped with a wiring harness and internal and external lights, designed to illuminate only when the safety belts in all "occupied" seats registered as fastened. Based on the comparatively simpler weight sensors and wiring harnesses used in the BMW advanced air bag system, the agency estimates that the minimum cost for a vehicle with five seating positions would be at least $50 per vehicle. Substantially greater costs would be incurred in vehicles with more seating positions and/or vehicles with readily removable seats.

In addition to the potentially high cost of the petitioner's proposal, the agency is also concerned about consumer acceptance of such a system. Vehicle seats, especially rear seats, are frequently used to transport cargo such as groceries, luggage, pets, and other heavy objects. If the system were to work as envisioned by the petitioner, the mere placement of such items on a vehicle's seat coupled with a failure to fasten the associated belt would prevent the continuously burning lights from illuminating, thus indicating falsely to police officers that the vehicle was being operated with unbelted "occupants." Such "false alarms" would likely lead to widespread consumer backlash and disapproval. Other "false alarms" could occur when the light bulbs burn out and need to be replaced by the consumer. Occupants who do not want to wear their seat belts can also easily circumvent the system by placing the seat belt behind them or modifying the light to stay on all the time.

Finally, we note that Congress has requested that NHTSA conduct a study to consider whether unobtrusive technologies could increase belt use. In response, NHTSA has contracted with the Transportation Research Board of the National Academy of Sciences to conduct a study on the benefits and acceptability of these technologies, as well as any legislative or regulatory actions that may be necessary to enable installation of devices to encourage seat belt use in passenger vehicles. In conjunction with this study, NHTSA is also conducting research to determine what levels of intrusiveness would induce non-belt users to wear their seat belt, without causing adverse reactions from current belt users.

For the reasons stated above, NHTSA concludes that it is unlikely that a rulemaking proceeding to require continuously burning lights inside and outside the vehicle tied to safety belt usage as suggested by the petitioner would result in the issuance of a rule requiring such a device. Accordingly, the petition is denied. Upon completion of the National Academy of Sciences' and our own studies, we will consider what future action the agency will take on this issue.

Authority: 49 U.S.C. 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued: February 10, 2003.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 03–3832 Filed 2–14–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020503A]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of scoping meetings; request for comments.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils (Councils) announce their intention to jointly prepare, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures for managing the spiny dogfish (*Squalus acanthias*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The Councils are developing Amendment 1 to the Spiny Dogfish Fishery Management Plan (FMP) to address rebuilding targets and timeframes, methods to estimate discard mortality and reduce discarding, the quota allocation scheme, and potentially other management measures as well. This notification announces a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to management of spiny dogfish. The intended effect of this notification is to alert the interested public of the scoping process and to provide for public participation.

DATES: Written comments on the intent to prepare an EIS must be received on or before 5 p.m., local time, April 4, 2003. A public scoping meeting will be held on Monday, March 17, 2003, at 7:00 PM.

ADDRESSES: Written comments on the intent to prepare the EIS and requests for the scoping document or other information should be directed to Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New St., Dover, DE 19904, (Phone 302–674–2331). Comments may also be sent via facsimile (FAX) to (302) 674–5399. Comments will not be accepted if submitted by e-mail or Internet.

A scoping hearing will be held at 7:00 PM on March 17, 2003 at the Sheraton Oceanfront Hotel (36th Street & Atlantic Ave.), in Virginia Beach, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, telephone (302) 674–2331.

SUPPLEMENTARY INFORMATION:

Fishery Management Unit

The management unit is all Atlantic spiny dogfish (Squalus acanthias) in U.S. waters in the western Atlantic Ocean.

Problems Discussed For this Amendment

1. Define a rebuilding biomass target and agecomposition

Currently, there is no rebuilding target for the spiny dogfish stock because the rebuilding target established in the original FMP was disapproved. It will be necessary to establish a new target that will identify the stock size that corresponds to a recovered spiny dogfish stock as defined under the MSFCMA. Examples of rebuilding targets are BMSY (population biomass (B) that supports Maximum Sustainable Yield (MSY)) and SSBmax (female Spawning Stock Biomass (SSB) that maximizes recruitment). Additionally, identification of a target age structure for the rebuilt stock has been suggested. Target age compositions proposed thus far include those corresponding to (1) the average from 1980–88 and (2) the average from 1989–93.

2. Choose a rebuilding timeframe consistent with National Standards Guidelines

The National Standards Guidelines of the MSFCMA provide minimum and maximum time limits for rebuilding fish stocks that are classified as overfished. The lower limit of the specified time period for rebuilding is the amount of time that would be required for rebuilding if fishing mortality were

eliminated (50 CFR 600.310(e)(4)(ii)(B)(3)). The longest amount of time allowed for rebuilding is the amount of time required to rebuild the stock with no fishing mortality plus one mean generation time. Other potential rebuilding time frames include those consistent with a constant fishing mortality rate of F = 0.03, a constant harvest strategy of 8.8 million pounds, and one mean generation time.

3. Evaluate new methods to estimate discards and discard mortality as well as develop management options to reduce discards in other fisheries

The Dogfish Monitoring Committee concluded at its September 2002 meeting that discard mortality may be compromising the fishery's ability to achieve the FMP objective of rebuilding female spawning stock biomass. The Committee strongly recommended increased observer coverage to allow reliable estimation of discards and additional studies to estimate discard mortality rate by gear type. The mortality of dogfish discarded in other fisheries could be greater than that which will allow stock rebuilding. If this is the case, additional constraints on the fisheries which land and discard dogfish should be considered (e.g., time-area closures).

4. Establish a new quota allocation scheme

The current quota allocation scheme designates 57.9 percent of the annual quota to period 1 (May–October) and 42.1 percent to period 2 (November–April). This scheme may be modified in order to simplify the allocation process and/or distribute harvest more evenly over the course of the year. Alternatives to the current scheme include but are not limited to a 50:50 split between quota periods 1 and 2, alternative seasons (i.e., monthly, bimonthly, quarters), changing the fishing year to be consistent with the calendar year, and adding a provision for overages.

5. Other management concerns

A number of additional management measure changes could be considered in the development of Amendment 1. These modifications could include changing the specification of management measures from an annual to a multiple year approach, adding quota set-asides for biological supply and/or biomedical research, limited access options, establishing a percentage of the quota for research set-asides, allocating the quota regionally or state-by-state, establishing a maximum size or slot sizes, and managing the Northwest Atlantic spiny dogfish resource in cooperation with Canada.

Possible Management Measures

Commercial Fishery Management Measures

Possible management measures for the commercial fishery include:

Discard Monitoring Program	X
Closed seasons	X
Closed areas	X
Regional Quota Allocation	X
Minimum/Maximum Size Limits	X
Trip limits	X
Limited Access	X

Recreational Fishery Management Measures

Possible management measures for the spiny dogfish recreational fishery include:

Discard Monitoring Program	X
Closed seasons	X
Closed areas	X
Minimum/Maximum Size Limits	X
Trip limits	X

Public Scoping Meeting Schedule

A scoping meeting will be held as follows:

7:00 PM March 17, 2003 at Sheraton Oceanfront Hotel, 36th Street & Atlantic Ave. Virginia Beach, VA 23451 Tel: 757–425–9000

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council, telephone (302) 674–2331, at least 5 days prior to the scoping meeting.

Authority: 16 U.S.C. 1801 et. seq.

Dated: February 11, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3845 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030128021–3021–01; I.D. 121602A]

RIN: 0648–AQ45

Fisheries of the Exclusive Economic Zone Off Alaska; Opening Waters to Pacific Cod Pot Fishing off Cape Barnabas and Caton Island

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule to open waters to Pacific cod pot fishing around Cape Barnabas and Caton Island located in the Gulf of Alaska (GOA). Waters out to 3 nautical miles (nm) around these sites are currently closed to Pacific cod fishing by federally permitted vessels as a Steller sea lion protection measure. State of Alaska regulations do not implement these same closures in State waters. This action is necessary to provide consistency between State and Federal fishing restrictions and to relieve a potential burden on the Pacific cod pot fishing sector. The regulatory amendment is intended to meet the objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments on the proposed rule must be received on or before March 20, 2003.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or delivered to the Federal Building, 709 W 9th St., Juneau, Alaska. Comments may also be faxed to 907–586–7557, marked Attn: Lori Durall. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action and the Steller sea lion supplemental environmental impact statement (SEIS) may also be obtained from the same address, from the Alaska Region, NMFS, Web site at *http://www.fakr.noaa.gov*, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, (907) 586–7228 or melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

At its October 2001 meeting, the Council recommended Steller sea lion (SSL) protection measures for 2002 and beyond. These measures were developed by a Council-appointed committee (hereafter referred to as the SSL Committee but was formerly called the "RPA Committee"). In developing its recommendations, the SSL Committee first assessed the needs of Steller sea lions to avoid jeopardy to their continued existence or destruction or adverse modification of their critical habitat based on the best scientific information available. The SSL Committee then crafted groundfish fisheries management measures that provided adequate protection for Steller sea lions in compliance with the Endangered Species Act (ESA).

These recommendations included a revised harvest control rule for pollock, Pacific cod, and Atka mackerel; closed areas and seasons based on the location, fishery, and gear type; critical habitat harvest limits for the pollock and Atka mackerel fisheries in certain areas of critical habitat; and requirements to allow for monitoring of pollock, Pacific cod, and Atka mackerel directed fishing. The recommendations of the SSL Committee were further modified by the Council. The complete set of recommendations by the Council is detailed in the preamble to the emergency interim rule implementing Steller sea lion protection measures and groundfish harvest specifications in 2002 (67 FR 956, January 8, 2002).

NMFS formally consulted under section 7 of the ESA on the Steller sea lion protection measures. A biological opinion (2001 BiOp) was appended to the Steller sea lion SEIS which evaluated the effects of the preferred alternative on ESA listed species (see **ADDRESSES**). The agency determined in the 2001 BiOp that the protection measures proposed by the Council were not likely to jeopardize the continued existence of the western distinct population segment (DPS) of Steller sea lions or result in the destruction or adverse modification of its critical habitat. Based on the 2001 BiOp and the environmental impacts disclosed in the Steller sea lion SEIS, the Council adopted the preferred alternative (with modifications) and forwarded it to NMFS for approval and implementation. NMFS implemented the preferred alternative by emergency interim rule prior to the start of the 2002 fishing year (67 FR 956, January 8, 2002, amended 67 FR 21600, May 1, 2002, 67 FR 45671, July 10, 2002, 67 FR 47472, July 19, 2002, and extended 67 FR 34860, May 16, 2002). These protection measures were published as a proposed rule for 2003 and beyond (67 FR 56692, September 4, 2002) and the final rule became effective January 1, 2003 (68 FR 204, January 2, 2003).On December 18, 2002, the United States District Court for the Western District of Washington remanded to NMFS the biological opinion ("2001 BiOp") NMFS prepared for the groundfish fisheries managed pursuant to the Stellar sea lion protection measures published on January 2, 2003 (68 FR 204). Greenpeace, et al. V. National Marine Fisheries Service, No. C98–492Z (W.D. Wash.). The Court held that the biological opinion's findings of no jeopardy to the continued existence of endangered Stellar sea lions and no adverse modification of their critical habitat were arbitrary and capricious. On December 30, 2002, the Court issued an Order declaring that the 2001 BiOp "shall remain effective until June 30, 2003," while NMFS complies with the remand.

In order for the Steller sea lion protection measures to be fully implemented, in November 2001, the State of Alaska Board of Fisheries (BOF) adopted parallel regulations providing for an extension of Steller sea lion protection measures in State waters (0–3 nm) during the State parallel fishery. The parallel groundfish fishery is defined as the Pacific cod, walleye pollock, and Atka mackerel fisheries in State waters opened by the Commissioner of the Alaska Department of Fish and Game (ADF&G). The opening was effected under emergency order authority to correspond with the times, area, and, unless otherwise specified, the gear of the Federal season in adjacent Federal waters (Alaska Administrative Code 5 AAC 28.087(c), January 3, 2002).

As part of its November 2001 action, the BOF adopted a series of fishery closure areas that almost mirrored those areas requested by the Council under the Steller sea lion protection measures. The Federal regulations (implementing the Council's preferred alternative) contained closures for Pacific cod fisheries using pot gear at Caton Island (King Cove area) and Cape Barnabas (Kodiak) within 3 nm of those ESA listed haulouts. However, the BOF action did not contain these closures for the parallel fishery, and this allowed vessels without a Federal fishing permit to fish in those areas under Alaska State law. This resulted in conflicting Federal and State regulations. In November 2001, NMFS informally consulted on allowing Pacific cod fisheries using pot gear at Caton Island and Cape Barnabas within 3 nm of those ESA listed haulouts and determined that these changes to the Steller sea lion protection measures were not of sufficient extent to re-initiate formal ESA consultation.

In October 2002, the Council recommended proposed regulations to remove Pacific cod pot fishing restrictions in waters within 3 nm of Cape Barnabas and Caton Island for federally permitted vessels. These proposed regulations remove the restrictions from Table 5 of part 679 for these two locations.

Classification

NMFS has determined that the opening of closed Pacific cod pot fishing within 3 nm miles of Caton Island and Cape Barnabas is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Under Executive Order 12612, this proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment. Because no federalism issues are implicated with this action, the mandatory requirements contained in Executive Order 13132 for consultation on federalism issues among Federal, State, and local governments are not triggered.

Nothing in this action results in any changes in reporting or recordkeeping requirements.

Species listed under the Endangered Species Act (ESA) are present in the action area. This action is not expected to result in increases of Pacific cod harvest beyond those experienced with the opening of the State parallel fishery in these areas. With no additional removals of Pacific cod expected, informal ESA consultation concluded that this action is not likely to adversely affect listed species.

The analysis for this action did not reveal any existing Federal rules that duplicate, overlap, or conflict with this action.

NMFS prepared an IRFA that describes the impact this action may have on small entities. Earlier sections of this preamble describe the reasons

why action by the agency is being considered and provide a succinct statement of the objectives of, and the legal basis for, the proposed rule. This action is expected to affect six regulated small entities by removing a fishing restriction. These entities are the pot vessels fishing for Pacific cod in the waters within 3 nm of the two haulouts. This action does not impose new reporting, recordkeeping or other compliance requirements on regulated small entities. No Federal rules exist that duplicate, overlap or conflict with the proposed rule. This action does not have any adverse impacts on regulated small entities. No significant alternatives to the proposed rule exist that would have lower economic impacts on these entities.

Two alternatives were considered for the Caton Island and Cape Barnabas pot fishing vessels: (1) No exemption for these vessels (status quo) and (2) exempt pot fishing vessels from SSL closures from 0 to 3 nm around Caton Island and Cape Barnabas.

Alternative 1 is the baseline alternative, and federally permitted vessels using pot gear for Pacific cod directed fishing would continue to be prohibited from fishing within 3 nm of the Caton Island and Cape Barnabas haulouts. Also, the status quo would not provide consistency between Federal and State regulations governing fishing restrictions within Steller sea lion protection areas. The preferred alternative would allow federally permitted vessels used to participate in the GOA Pacific cod pot fishery to fish within 3 nm of the haulouts at Caton Island and Cape Barnabas. This would reduce the Pacific cod revenues placed "at risk" by the restrictions of the status quo alternative by up to $63,000. The areas in question are small parts of larger fishing areas, and fishermen may currently be making up a large part of the harvest foreclosed by the restrictions by fishing elsewhere. This alternative is not believed to create jeopardy for the Steller sea lions or adversely modify its critical habitat. This alternative would not trigger Executive Order 12866 significance criteria since the maximum revenue impact is likely to be $63,000 at the outside.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 6, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Table 5 to Part 679 [Amended]

2. Table 5 to part 679 is revised as follows:

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W	52 55.40 N	172 27.20 E	20, 10	3	3
St. Lawrence I./SW Cape	BS	63 18.00 N	171 26.00 W	52 21.80 N	173 41.40 E	20, 10	3	3
Hall I.	BS	60 37.00 N	173 00.00 W	52 45.00 N	173 56.50 E	20, 3		
St. Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W	52 20.38 N	175 53.85 E	20, 3		
St. Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W	52 49.75 N	175 54.03 E	20, 10	10	10
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W	52 22.50 N	175 12.70 E	20, 10	3	3
St George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W	51 52.50 N	177 12.00 E	20, 10		
St. George I./S. Rookery	BS	56 33.50 N	169 40.00 W					
Cape Newenham	BS	58 39.00 N	162 10.50 W					
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W					
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.90 E					
Agattu I./Gillon Pt.[11]	AI	52 24.13 N	173 21.31 E					
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E					
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E					
Alaid I.[11]	AI	52 46.50 N	173 51.50 E					
Shemya I.[11]	AI	52 44.00 N	174 08.70 E					
Buldir I.[11]	AI	52 20.25 N	175 54.03 E					
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E					
Kiska I. Sobaka & Vega[11]	AI	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3	3	3
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column[11]	AI	51 32.32 N	178 49.28 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20,10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I.[11]	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3
Tanaga I./Bumpy Pt.	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	3		
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.72 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Sviech. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia)[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I.[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.[4]	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunaska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	BA	BA
Chuginadak[14]	GOA	52 46.70 N	169 41.90 W			20	10	20
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	BA	BA
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I.[5]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53 25.00 N	168 24.50 W			BA	BA	BA

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Ogchul I.	GOA	52 59.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[13, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 13]	BS	53 58.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[4]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[9]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[9]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[9]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[9]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[9]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[9]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7
Amak I. And rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.98 N	162 26.7 W			10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54.56.00 N	160.15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	3
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 45.60 N	158 53.90 W			3	3	3
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	20
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Puale Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3
Takli I.	GOA	58 01.75 N	154 31.25 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	
Kodiak/Gull Point[7]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75.	152 22.20 W			10		
Ugak I.[7]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20		
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W			10		
Point Elrington[10, 12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).

[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).

[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long. Amlia I./East, and Tanadak I. (Amlia) haulouts 20 nm hook-and-line and pot closures apply only to waters located east of 173° W longitude.

[5] This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.

[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.
[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.
[8]The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.
[9]Restriction area includes only waters of the Gulf of Alaska Area.
[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.
[11]Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at 50 679.22 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock applies only to waters west of 178°W long. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm to 10 nm of rookeries and between 0 nm to 3 nm of haulouts.
[12]The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.
[13] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.
[14]Trawl closure around this site is limited to waters east of 170°0'00" W long.

[FR Doc. 03–3589 Filed 2–14–03; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 32
Tuesday, February 18, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–020–1]

Availability of an Environmental Assessment for Licensing of Brucella Abortus Vaccine, Strain RB–51, Live Culture

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the licensing of Brucella Abortus Vaccine, Strain RB–51, Live Culture. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the licensing of this vaccine, examines the potential effects that the licensing of this veterinary vaccine could have on the quality of the human environment. Based on the environmental assessment, we have reached a preliminary determination that the licensing of this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to issue a U.S. Veterinary Biological Product license for this vaccine for use in cattle after the close of the comment period for this notice unless new, substantial issues bearing on the effects of this action are brought to our attention.

DATES: We will consider all comments that we receive on or before March 20, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–020–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–020–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–020–1" on the subject line.

You may request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed) by writing to Dr. Connie S. Smellich-Sandage, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010, or by calling (515) 232–5785. Please refer to the docket number, date and complete title of this notice when requesting copies.

A copy of the environmental assessment (as well as the risk analysis with confidential business information removed) and any comments that we receive on this docket are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road, Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314. For information regarding the environmental assessment or the risk analysis, contact Dr. Connie S. Smellich-Sandage, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010; (515) 232–5785.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. In determining whether to issue a veterinary biological product license for the vaccine referenced in this notice, APHIS conducted a risk analysis to assess the potential effect of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the licensing of the following product:

Requester: Colorado Serum Company.

Product: Brucella Abortus Vaccine, Strain RB–51, Live Culture, Code 1261.00.

Action: Issuance of product license.

The above-mentioned vaccine is for use in cattle as an aid in the prevention of clinical signs due to *Brucella abortus*. The vaccine is prepared from a naturally occuring, rifampicin resistant mutant strain of the organism.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

We have reached a preliminary determination that the licensing of this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact based on the EA and issue a veterinary biological product license for this vaccine following the close of the comment period for this notice.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 11th day of February, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3838 Filed 2–14–03; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–010–1]

Big Cat Symposia; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is a notice to animal exhibitors, dealers, transporters, researchers, animal protection groups, industry groups, and other interested persons that we are holding a series of educational symposia to present current information on the care and maintenance of exotic big cats. This notice provides the agenda for the symposia, information on the location and dates of the first two symposia, and general information on subsequent symposia.

DATES: The first symposium will be held in Fort Worth, TX, on Wednesday, March 26, 2003. The second symposium will be held in Las Vegas, NV, on Wednesday, April 30, 2003. Each symposium will be held from 8 a.m. to 5 p.m. Preregistration is requested for both symposia. Parties wishing to attend may preregister by e-mailing *ACE@aphis.usda.gov* or by calling the Animal Care headquarters office at (301) 734–7833. The preregistration deadline for the Fort Worth meeting is March 1, 2003; for the Las Vegas meeting, the deadline is April 1, 2003.

On-site registration will take place from 7:30 a.m. to 8:30 a.m. on the day of each symposium.

ADDRESSES: The symposia will be held at the following locations:

1. Fort Worth, TX: Ramada Plaza Hotel, 1701 Commerce Street, Fort Worth, TX 76102, (817) 335–7000.
2. Las Vegas, NV: Sam's Town Hotel, 5111 Boulder Highway, Las Vegas, NV 89122, (800) 897–8696.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda of the symposia, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833. Dr. Kohn may be contacted by e-mail at *ACE@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is announcing a series of educational symposia on the care and maintenance of exotic big cats. The symposia will give Animal Care an opportunity to disseminate information on various topics that are key to the successful management and handling of exotic big cats. The symposia will be held in various geographical locations to facilitate attendance by regulated parties that maintain these animals.

The first symposium will be held on Wednesday, March 26, 2003, at the Ramada Plaza Hotel, Fort Worth, TX, and the second symposium will be at Sam's Town Hotel, Las Vegas, NV, on April 30, 2003. We plan to hold similar symposia at some time between October 2003 and January 2004 in the Midwest, Washington, DC, and Florida.

The symposia have been developed to provide current information and ideas on a variety of topics. Each symposium will follow the same agenda, with possible minor modifications. The symposia will start with general sessions, followed by breakout sessions allowing more interaction between speakers and attendees. The agenda for these symposia is:

7:30 a.m.–8:30 a.m.—Registration.
8:00 a.m.–11:30 a.m.—General Session.
  Welcome.
  Nutrition.
  Veterinary Care and Tranquilization.
  Transportation.
  New Training Methods.
11:30 a.m.–1 p.m.—Lunch Break.
1:00 p.m.–2:30 p.m.—Concurrent Breakout Session #1.
  Explaining APHIS Regulations.
  Nutrition/Zootrition.
  Heat Budgets and Shade (avoiding overheating and overcooling).
2:45 p.m.–4:15 p.m.—Concurrent Breakout Session #2.
  Training.
  Transportation Issues.
  Fixed Exhibit Enclosure Design.
4:15 p.m.–5:00 p.m.—Questions and Answers; Closing.

Notices of these symposia are being sent to current Animal Welfare Act licensees with exotic big cats. This notice is also available on the Internet at *http://www.aphis.usda.gov/ac*, the Animal Care web site. Copies of a brochure containing the information in this announcement can also be requested by calling the Animal Care headquarters office at (301) 734–7833 or by e-mailing a request to *ACE@aphis.usda.gov*.

Please note that these symposia are being held to provide and disseminate information on the care and maintenance of big exotic cats under the Animal Welfare Act. There will be no opportunity at these symposia to submit formal comments on proposed rules or other regulatory initiatives.

Preregistration

Preregistration is requested by calling the Animal Care headquarters office at (301) 734–7833 or by e-mailing Animal Care at *ACE@aphis.usda.gov* and providing your name, number of attendees, phone number, and e-mail address or other contact address. This information is needed so we may inform registrants in a timely manner if any changes are made to the schedules of the symposia. Please preregister for the Fort Worth symposium by March 1, 2003, and for the Las Vegas symposium by April 1, 2003.

Travel and Lodging Information

All attendees are responsible for their own travel and lodging. No rooms have been reserved for attendees at the symposium hotels or any other hotels.

Done in Washington, DC, this 11th day of February, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3837 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, April 8, 2003. The purpose of the meeting is to provide orientation to Advisory Committee members, and to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held April 8, 2003.

ADDRESSES: The meeting will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 7 will have the opportunity to address the Committee at those sessions.

Dated: February 7, 2003.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 03–3809 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Lingle-Ft. Laramie Water Quality Project, Goshen County, WY

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lingle-Ft. Laramie Water Quality Project, Goshen County, Wyoming.

FOR FURTHER INFORMATION: Contact Lincoln E. Burton, State Conservationist, Natural Resources Conservation Service, Room 3124, Federal Building, 100 East B Street, Casper, Wyoming 82601, telephone (307) 261–6453.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the human environment. As a result of these findings, Lincoln E. Burton, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is watershed protection—the on-site treatment of agricultural related pollutants for off-site benefits. The planned works of improvement include accelerated technical assistance for land treatment, accelerated financial assistance to treat 8,300 acres to reduce the amount of nitrogen available to be leached to the groundwater, 25 animal waste management facilities, and 35 abandoned wells will be decommissioned.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency (EPA) and to various federal, state, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lincoln E. Burton.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.** The Environmental Assessment will then be signed and funding authorization requested. All plans will be written within five years, and implementation will continue for up to ten years.

Dated: January 22, 2003.

Lincoln E. Burton,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

Finding of No Significant Impact for Lingle-Ft. Laramie Water Quality Project, Goshen County, Wyoming

Introduction

The Lingle-Ft. Laramie Water Quality Project is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies, including section 7 consultation, as well as with interested organization and individuals. Data developed during the assessment is available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Room 3124 Federal Building, 100 East B Street, Casper, Wyoming 82601–1969.

Recommended Action—Alternative 2: Accelerated Land Treatment

Proposed is the development of about 48 conservation plans that will provide for land treatment measures to be applied on farms for the reduction of the agricultural contribution to nitrate contamination of the groundwater. The proposed plan will treat 8,300 acres with increased irrigation efficiency to reduce the amount of nitrogen available to be leached to the groundwater. Twenty-five animal waste management facilities and application practices will be installed in the watershed. Thirty-five abandoned wells will be decommissioned.

Effect of Recommended Action

The recommended action will improve groundwater quality, improve human health and safety, improve irrigation efficiency, and reduce irrigation labor. Nitrates available for leaching will be reduced through installation of fertilizer injection systems, nutrient management, and irrigation water management.

The proposed action will reduce the amount of nitrogen available to be leached. It is estimated at full implementation, there will be a 33 percent reduction of nitrate leached below the root zone, which equals about 81 pounds of nitrate per acre each year over the entire project area at a 60% participation rate. Nitrogen reduction is considered not to be a controversial issue.

The proposed action will install twenty-five animal waste management systems to collect and store run-off from feed lots until it can be safely applied to the agricultural fields.

The proposed action will improve on farm irrigation efficiency, which will increase the water available to meet crop consumptive use.

A literature review and search of the State Historic Preservation Office (SHPO) records were conducted for the project area. The effect of project installation will be determined for each individual project contract according to Natural Resource Conservation Service, Northern Plains Region procedures.

It is likely that more sites will be discovered during the planning and installation of the accelerated land treatment practices. Since project practices will be installed on a "voluntary participation" basis, location of ground disturbances is presently unknown. Most surface disturbances below the plow zone will occur as a result of installing ag waste facilities, pipelines, land leveling, grading, and shaping. NRCS cultural resources procedures, as described in the NRCS Northern Plains Region procedures, will be followed when ground disturbances are planned.

Compliance with National Environmental Policy Act (NEPA) protection rules for each farm will follow the procedures in the NRCS General Manual, Section 190 and 420, respectively.

The proposed action will have little or no effect on wetlands. With on farm improved irrigation efficiencies some reduction in tail water run-off will occur, but with the sandy soils in the watershed most of the run-off has gone to groundwater and not surface water. Wetland restoration, creation and enhancement will increase a total of about 24 acres as operator's contracts are developed. A 2 acre-foot depletion will be offset by a debit from the National Fish and Wildlife Foundation account.

No wilderness areas are in the watershed.

There is potential habitat for the threatened Ute ladies' tresses (Spiranthes diluvialis) and Preble's meadow jumping mouse (Zapus hudsonius preblei), but none have been identified within the watershed, the determination of "may affect, but not likely to adversely affect" was arrived at with section 7 consultation. The habitat will not be adversely impacted. There are no known resident threatened or endangered animals within the watershed area.

The proposed action will increase vegetative cover suitable for wildlife as a result of the application of conservation practices that include vegetative components. Fish habitat will not be affected.

The proposed action will not disproportionately affect any protected groups.

No significant adverse environmental impacts will result from installation of the proposed action.

Alternatives

Based on the above summary of effects (as discussed in the EA), I have determined the alternative which I have selected, will not have significant effect on the human environment. For that reason, no environmental impact statement needs to be prepared.

The planned action is the most practical means of reducing the agricultural contribution of nitrate to the groundwater. Because no significant adverse environmental impacts will result from the installation of the on farm conservation measures, no other alternatives, other than the no action alternative, were considered.

Consultation—Public Participation

On June 17, 1996, the North Platte Valley Conservation District, and the Lingle-Fort Laramie Conservation District Boards of Supervisors, filed an application for PL 83–566 assistance in developing a plan for the Goshen County, Lingle-Ft. Laramie Water Quality Project. The State of Wyoming Governor's Office referred the application to the Wyoming Board of Agriculture for ranking and approval. On September 18, 2000, the board gave the project a ranking of high and approved the request to be submitted to the NRCS. Acceptance was acknowledged by the State Conservationist, and appropriate agencies and Sponsors were notified. The town of Torrington and the Goshen County Commissioners were later added to the list of Sponsors.

The Sponsors held two interagency and two public meetings to determine the extent of the problem. The Sponsors requested that NRCS analyze alternative solutions and prepare a preliminary investigation report. In September 2000, a preliminary investigation report was completed for the Lingle-Ft. Laramie Water Quality Project.

Numerous newspaper articles, newsletters, and radio public service announcements, have been aired in order to provide public information. Public meetings with the news media in attendance were held to gain public input and inform the public.

On October 24, 1996, an interagency meeting was held to determine concerns of the other agencies.

June 14, 2000, a public scoping meeting was held to determine public concerns and opinions. A public response analysis was completed on the responses.

On October 18, 2000, another public meeting was held to review the alternatives developed and obtain further public input.

On June 11, 2001, the Sponsors met to review the Draft Plan-EA.

On July 25, 2002, the Sponsors held a public meeting to begin the Public/Interagency review of the Draft Plan-EA. Written comments were requested from agencies, organizations, and groups identified in the planning process as interested. The comments were reviewed and responses prepared on each comment. The comments and responses are contained in the Final Plan Environmental Assessment.

Written comments were requested from 70 agencies, organizations, and groups identified in the planning process.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan. Section 7 consultation has been completed and incorporated.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Lingle-Ft. Laramie Water Quality Project Plan is not required.

Additional Information or questions can be directed to: George W. Cleek IV, Assistant State Conservationist, USDA–NRCS, 100 East B Street, Room 3124, Casper, WY 82601–1969, Phone: 307–261–6457, E-mail: *george.cleek@wy.usda.gov.*

Dated: January 22, 2003.

Lincoln E. Burton,

State Conservationist.

[FR Doc. 03–3781 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Upper Knapps Creek Watershed Natural Stream Restoration Demonstration Project, Pocahontas County, WV

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Knapps Creek Watershed Natural Stream Restoration Demonstration Project, Pocahontas County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Lillian V. Woods, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, telephone (304) 284–7545.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lillian V. Woods, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to restore natural channel geometry and profile to impaired segments of Upper Knapps Creek in Pocahontas County, West Virginia, and to provide the interested public the opportunity to observe techniques utilized and results obtained.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lillian V. Woods.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(*This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

Lillian V. Woods,

State Conservationist.

[FR Doc. 03–3783 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on Thursday, March 20, 2003, at the Doubletree Hotel, 424 West Markham, Little Rock, Arkansas 72201. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Farella E. Robinson of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–3855 Filed 2–14–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet March 4, 2003, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Update on Wassenaar Arrangement proposals.
5. Discussion on status of encryption regulation recommendations.
6. Discussion of deemed export license conditions and process review.
7. Discussion on status of Automated Export System regulations and related Customs Service proposals.
8. Working group status reports and discussion of future plans.

Closed Session

9. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto, and of matters the disclosure of which would be likely to frustrate the implementation of agency action as described in 5 U.S.C. 552b(c)(9)(B).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 11, 2003, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) and the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate the implementation of agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: February 12, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–3811 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–875]

Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Trentham or Sam Zengotitabengoa, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–6320, and (202) 482–4195, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that non-malleable cast iron pipe fittings (pipe fittings) from the People's Republic of China (PRC) are

being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Final Determination of Investigation" section of this notice.

Case History

On September 25, 2002, the Department of Commerce (the Department) published the preliminary determination of sales at LTFV in the antidumping duty investigation of pipe fittings from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 67 FR 60,214 (September 25, 2002) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

On September 30, 2002, and October 1, 2002, respectively, Jinan Meide Casting Co., Ltd. (JMC) and Shanghai Foreign Trade Enterprises Co., Ltd. (SFTEC) (the respondents) filed preliminary determination clerical error allegations. The Department concluded that certain allegations constituted ministerial errors, to be corrected in the final determination, but that the errors did not amount to significant ministerial errors for purposes of issuing an amended preliminary determination. *See* Ministerial Error Allegations Memorandum, from Holly A. Kuga to Bernard T. Carreau, dated November 4, 2002 (Ministerial Error Allegations Memorandum). From October 25, 2002, through November 5, 2002, the Department conducted a sales and factors of production verification of JMC and SFTEC. *See* Memorandum to the File from the Team, Verification of Sales Information Reported by Jinan Meide Casting Co., Ltd., to the file, dated December 4, 2002; Memorandum to the File from the Team, Verification of Sales Information Reported by Shanghai Foreign Trade Enterprises Co., Ltd., to the file, dated December 4, 2002; Memorandum to Neal M. Halper from the Team, Verification Report on the Factors of Production Data Submitted by Jinan Meide Casting Co., Ltd., dated December 11, 2002 (JMC FOP Verification Report); and Memorandum to Neal M. Halper from the Team, Verification Report on the Factors of Production Data Submitted by Shanghai Foreign Trade Enterprises, Ltd., and its Suppliers, dated December 11, 2002 (SFTEC FOP Verification Report). SFTEC filed surrogate value information and data on September 11, 2002, and November 25, 2002. JMC filed available surrogate value information and data on November 4, 2002, and the petitioners[1] filed surrogate value information and data on November 1, 2002. On October 25, 2002, SFTEC filed a request for a public hearing in this investigation, and JMC and the petitioners filed a request to appear and participate at a hearing if one was requested by another party. SFTEC withdrew its request for a hearing on January 7, 2003. The respondents filed case briefs on December 23, 2002, and the petitioners filed a case brief on December 24, 2002. The respondents and the petitioners filed rebuttal briefs on January 3, 2003. In response to requests, we held meetings with the petitioners, on January 14, 2003, JMC, on February 4, 2003, and SFTEC, on February 5, 2003, during which the party in question highlighted issues raised in its briefs.

Scope of the Investigation

For purposes of this investigation, the products covered are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from 1/4 inch to 6 inches, whether threaded or un-threaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as "cast iron pipe fittings" or "gray iron pipe fittings." These cast iron pipe fittings are normally produced to ASTM A-126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A-395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of this petition. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to the American Water Works Association (AWWA) specifications AWWA C110 or AWWA C153 are not included.

Imports of covered merchandise are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60 and 7307.19.30.85. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Period of Investigation (POI)

The POI is July 1, 2001, through December 31, 2001.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration (Decision Memorandum) dated February 7, 2003, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B-099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Non-Market Economy

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58115 (November 20, 2001). An NME country designation remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as a NME country in this investigation. For further details, see the *Preliminary Determination*.

[1] The petitioners in this case are Anvil International, Inc. and Ward Manufacturing, Inc. (collectively referred to as the Petitioners).

Separate Rates

In our *Preliminary Determination*, we found that both responding companies, JMC and SFTEC, met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the preliminary determination which would warrant reconsideration of our separates rates determination with respect to these companies. For a complete discussion of the Department's determination that the respondents are entitled to a separate rate, see the *Preliminary Determination*.

The PRC-Wide Rate

In the *Preliminary Determination*, we found that the use of adverse facts available (FA) for the PRC-wide rate was appropriate for other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from JMC and SFTEC.

Section 776(c) of the Act provides that, when the Department relies on secondary information in using facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. At the preliminary determination, we corroborated the information contained in the petition regarding export price and normal value (NV). See Memorandum to Holly A. Kuga, Corroboration of Secondary Information, dated September 19, 2002 (*Preliminary Corroboration Memorandum*). In order to corroborate the petition information, we recalculated the petition margin to reflect new information placed on the record of the investigation after initiation and prior to the preliminary determination. *Id.*, at page 6. We received no comments regarding our application of total adverse FA to the PRC-wide entity or our corroboration of petition information. As a result, we have continued to apply an adverse FA rate to the PRC-wide entity. For further discussion, see *Preliminary Determination*.

For the *Preliminary Determination*, we derived overhead, selling, general, and administrative (SG&A) expenses, and profit ratios from the 1999–2000 combined income, value of production, expenditure and appropriation account for a sample of 1,914 public companies in India that were reported in the June 2001 *Reserve Bank of India Bulletin*. Both JMC and SFTEC alleged that in the Preliminary Determination, the Department overstated SG&A expenses. After review, we agreed that the calculation of the SG&A ratio was in error. *See* Ministerial Error Allegations Memorandum. For the final determination, we recalculated the petition margin using the corrected SG&A ratio and corrected several other arithmetic errors. We also adjusted the surrogate value for electricity As a result of these recalculations, the PRC-wide rate is, for the final determination, 75.5 percent *ad valorem*. *See* Memorandum to the File from the Team, Corroboration of Secondary Information, dated February 7, 2003.

Surrogate Country

For purposes of the final determination, we continue to find that India remains the appropriate surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see the Preliminary Determination.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, see the "Changes Since the Preliminary Determination" section below.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the preliminary determination. These adjustments are listed below and discussed in detail in the (1) Decision Memorandum, (2) Memorandum to the File, Surrogate Country Values Used for the Final Determination of the Antidumping Duty Investigation of Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, dated February 7, 2003, (Surrogate Country Values Memorandum) and (3) Memorandum to the File from the Team, Final Calculation of Antidumping Duty Investigation of Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China for Shanghai Foreign Trade Enterprises Co., Ltd., dated February 7, 2003 (SFTEC's Final Calculation Memorandum), and Memorandum to the File from the Team, Final Calculation of Antidumping Duty Investigation of Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China for Jinan Meide Casting Co., Ltd., dated February 7, 2003 (JMC's Final Calculation Memorandum).

1. We corrected the SG&A and the plastic sheet surrogate value for JMC. See Ministerial Error Allegations Memorandum and JMC's Final Calculation Memorandum.
2. We corrected the SG&A and the wooden crates surrogate value for SFTEC. See Ministerial Error Allegations Memorandum and SFTEC's Final Calculation Memorandum.
3. We revised our calculation of freight costs for the factors of production to include the revised distances identified during verification. *See* JMC's Final Calculation Memorandum and SFTEC's Final Calculation Memorandum.
4. We adjusted the surrogate value for pig iron. *See* Decision Memorandum, at Comment 6.
5. We adjusted SFTEC's reported raw material consumption factors to reflect only the sales revenue received from scrap sales based on the surrogate value for cast iron scrap. *See* Decision Memorandum, at Comment 3, and SFTEC's Final Calculation Memorandum.
6. We adjusted the surrogate value for electricity. *See* Surrogate Country Values Memorandum.
7. As partial FA for JMC, we adjusted the conversion costs at the gray iron casting workshop to account for the difference between the highest product-specific yield loss and the average yield loss of all products in the gray iron casting workshop. *See* Decision Memorandum, at Comment 1, and JMC's Final Calculation Memorandum.
8. We have allowed JMC's offset for scrap recovered. *See* Decision Memorandum, at Comment 5, and JMC's Final Calculation Memorandum.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the Customs Service to continue suspension liquidation of entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after September 25, 2002 (the date of publication of the *Preliminary Determination* in the **Federal Register**). We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation

instructions will remain in effect until further notice.

Final Determination of Investigation

We determine that the following weighted-average percentage margins exist for the period July 1, 2001, through December 31, 2001:

Manufacturer/exporter	Weighted-Average Margin (percent)
Jinan Meide Casting Co., Ltd.	7.08
Shanghai Foreign Trade Enterprises Co., Ltd.	6.34
PRC-Wide Rate	75.50

The PRC-wide rate applies to all entries of the subject merchandise except for entries from JMC and SFTEC.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 7, 2003.

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

Appendix Issues in Decision Memorandum

Comment 1: Whether Respondents Properly Reported the Necessary Information to the Department
Comment 2: Whether the Department Correctly Calculated the Distance for the NME Inland Freight Charge
Comment 3: Whether the Department Should Correct the Treatment of Scrap and Coke Offset Reported by SFTEC
Comment 4: Whether the Department Correctly Derived Surrogate Financial Ratios
Comment 5: Whether the Department Should Credit JMC with the Recovery of Scrap from the Smoothing and Threading Workshops
Comment 6: Whether the Department Erred in Valuing the Surrogate Value for Pig Iron
Comment 7: Whether the Department Should Adjust SFTEC's Coke Usage
Comment 8: Whether the Department Properly Calculated the Surrogate Brokerage and Handling Value
Comment 9: Whether the Department will Correct the Ministerial Errors from the Preliminary Determination

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–001]

Potassium Permanganate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results in the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) in response to a request by Groupstars Chemical LLC (Groupstars LLC), a U.S. importer of potassium permanganate. The review covers potassium permanganate (subject merchandise) exported to the United States by Groupstars LLC's affiliated PRC exporter, Groupstars Chemical Co., Ltd. (collectively Groupstars). The Department has preliminarily determined that Groupstars sold subject merchandise during the period of review (POR) at prices below normal value (NV). If the preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 18, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1009 and (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The POR is January 1, 2001 through December 31, 2001.

Background

On January 31, 1984, the Department published in the **Federal Register** (49 FR 3897) the antidumping duty order on potassium permanganate from the PRC. On January 30, 2002, in response to the Department's notice of "Opportunity to Request an Administrative Review," Groupstars LLC requested that the Department conduct an administrative review of its supplier, Groupstars Chemical Co., Ltd. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 56 (January 2, 2002).

On February 26, 2002, the Department published a notice of initiation of an antidumping duty administrative review covering Groupstars' sales of potassium permanganate during the period January 1, 2001 through December 31, 2001. *See* the notice *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 8780.[1]

[1] Although Groupstars Chemical LLC is the company listed in the notice of initiation, as noted above, Groupstars Chemical LLC is the U.S. importer of subject merchandise while Groupstars Chemical Co. Ltd. is the PRC exporter of the subject merchandise.

On March 1, 2002, the Department issued its antidumping questionnaire to Groupstars. Groupstars responded to the Department's questionnaire on April 3, 2002 and April 10, 2002. Additionally, Groupstars submitted responses to the Department's July, August, October, and November 2002 supplemental questionnaires during August, September, October, and November 2002, respectively. On March 7, 2002 and August 23, 2002, interested parties submitted publicly available information and comments for the Department's consideration in valuing factors of production (FOP) in this administrative review.

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On August 16, 2002, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until January 31, 2003. See Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 67 FR 54408 (August 22, 2002).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS).[2]

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Act, we verified sales and FOP information provided by Groupstars using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the report. *See* Memorandum from John Conniff and Drew Jackson to the file regarding "Verification of Groupstars Chemical Co. Ltd's responses in the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China," dated January 31, 2003 (Verification Report), the public version of which is on file in the Central Records Unit (CRU), room B-099 of the main Commerce building.

Separate Rates Determination

In proceedings involving nonmarket economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Groupstars provided the separate rates information requested by the Department and reported that its export activities are not subject to government control.

We examined the separate rates information provided by Groupstars in order to determine whether it is eligible for a separate rate. The Department's separate rates test, which is used to determine whether an exporter is independent from government control, does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities so as to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (Silicon Carbide). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20508 (May 6, 1991).

Groupstars submitted a copy of its business licenses in its questionnaire response. We examined Groupstars' business license at verification and found no inconsistencies with its statement regarding the absence of restrictive stipulations associated with its business license. *See* memorandum from John Conniff and Drew Jackson to the file regarding PRC Verification of Groupstars Chemical Co. Ltd's responses in the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China (PRC Verification Report). Furthermore, Groupstars submitted copies of PRC legislation demonstrating the statutory authority for establishing the *de jure* absence of government control over companies. Thus, we believe that the evidence on the record supports a preliminary finding of absence of *de jure* governmental control based on: (1) an absence of restrictive stipulations associated with the business licenses of Groupstars; and (2) the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or are subject to, the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent

[2] The scope reflects the correct HTSUS subheading currently in effect. The HTSUS number in the Department's two previous reviews was incorrect.

has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide*, at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Groupstars reported that it determines prices for sales of the subject merchandise based on market principles, the cost of the merchandise, and profit. Moreover, Groupstars stated that it negotiates prices directly with its customers. Also, Groupstars claims that its prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that Groupstars has the authority to negotiate and sign contracts and other agreements. Further, Groupstars claims that its negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of Groupstars' contracts.

Furthermore, Groupstars reported that it has autonomy in making decisions regarding the selection of management. Groupstars indicated that its selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of the management of Groupstars.

Finally, Groupstars reported that it retains the proceeds of its export sales, and its management determines how to use profits. Groupstars stated that it operates in accordance with market principles and calculates profits and losses in a normal commercial manner. There is no evidence on the record to suggest that there is any governmental involvement in Groupstars' decisions regarding the disposition of profits or financing of losses.

Therefore, we find that the evidence on the record, including the verification findings, which are consistent with the separate rates information reported by Groupstars, supports a preliminary finding of absence of *de facto* governmental control based on record statements and supporting documentation showing that: (1) Groupstars sets its own export prices independent of the government and without the approval of a government authority; (2) Groupstars has the authority to negotiate and sign contracts and other agreements; (3) Groupstars has adequate autonomy from the government regarding the selection of management; and (4) Groupstars retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this review by Groupstars demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for the purposes of these preliminary results, we are granting a separate rate to Groupstars.

Fair Value Comparisons

To determine whether Groupstars' sales of subject merchandise were made at prices less than NV, we compared the constructed export price (CEP) to NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below.

Constructed Export Price

In accordance with section 772(b) of the Act, the Department calculated a CEP for all sales by Groupstars to the United States because the first sale to an unaffiliated purchaser occurred after the subject merchandise was imported into the United States. We calculated CEP based on the packed prices from Groupstars LLC to the first unaffiliated U.S. customer. In accordance with section 772(c) of the Act, we deducted from the starting price, where appropriate, movement charges including foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. Customs duties, U.S. brokerage and handling, U.S. inland freight, and U.S. warehousing charges. Foreign inland freight, foreign brokerage and handling, and ocean freight, were provided by NME vendors, and thus, we based the deductions for these movement charges on the surrogate values identified in the "Normal Value" section of this notice below. Groupstars' shipments of subject merchandise were insured through a market-economy marine insurance provider and the provider was paid using a market-economy currency. Therefore, pursuant to 19 CFR 351.408(c)(1), we used the actual price paid for marine insurance as a deduction from the starting price. In accordance with 772(d)(1) of the Act, we deducted from the starting price those selling expenses that related to economic activity in the United States. In accordance with section 772(d)(3) of the Act, we deducted from the starting price an amount for profit. For additional information regarding these adjustments, see the calculation memorandum from Drew Jackson to the File dated January 31, 2003 which is in the CRU public file (Calculation Memorandum).

Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if: (1) the subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value pursuant to section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Because none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing potassium permanganate include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (1) at a level of economic development comparable to the PRC, and (2) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. *See* Memorandum from Jeffrey May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement, dated February 28, 2002, which is in the CRU public file.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOP using surrogate values that were in effect during the POR. However, when we were unable to obtain surrogate values in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF) publication, *International Financial Statistics*. We valued the FOP as follows:

(1) We valued the following materials using available Indian import data from the publication *Monthly Statistics of the Foreign Trade of India*, Volume II--Imports (*Indian Import Statistics*) for the period January through December 2001: manganese ore, potassium hydroxide, limestone, silicon dioxide, salt, pallets, steel drums, polyethylene bags, woven plastic bags and coal.[3] *See* Memorandum from Drew Jackson to the File Regarding Surrogate Values Used for the Preliminary Results of the Administrative Review of Potassium Permanganate from the People's Republic of China (Surrogate Value Memorandum), dated January 31, 2003, which is in the CRU public file.

(2) We valued plastic drums using 2001 data found on the *Economic Times of India* website.

(3) We valued electricity using 2000–2001 data from the *Annual Report on the Working of State Electricity Boards & Electricity Departments*, published in June 2001 by the Power and Energy Division of the Planning Commission of the Government of India.

(4) We valued water using the Indian value reported in the publication *Second Water Utilities Data Book (1997)*, published by the Asian Development Bank.

(5) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's web site under "Expected Wages of Selected NME Countries." See http://ia.ita.doc.gov/wages.

(6) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using 1992–1993 information reported in the *Reserve Bank of India Bulletin* of January 1997. There is no information on the record regarding the factory overhead, SG&A expenses, and profit for Indian producers of potassium permanganate. However, the *Reserve Bank of India Bulletin* maintains data for an Indian industry group that includes companies that process and manufacture chemicals. Therefore, we have used this source to value factory overhead, SG&A expenses, and profit for the preliminary results. Using the information from the *Reserve Bank of India Bulletin*, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(7) We used the following sources to value ocean, truck, and rail freight services. Truck and rail freight services were incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to Groupstars:

Truck Freight: We valued truck freight services using the 1999 rate quotes reported by Indian freight companies and used in the less than fair value investigation of bulk aspirin from the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000).

Rail Freight: We valued rail freight services using July 1999–2000 rates published in the *Reserve Bank of India Bulletin* in July 2001.

Ocean Freight: We valued ocean freight services using the regional rates calculated in the *Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160 (February 28,1997).

(8) We valued foreign brokerage and handling using the average of the foreign brokerage and handling expenses reported in the public versions of the U.S. sales listing submitted in the antidumping duty review of *Certain Stainless Steel Wire Rod from India: Final Results of the Administrative and New Shipper Review*, 64 FR 856 (January 6, 1999).

For further discussion of the surrogate values used in this review, see the Surrogate Value Memorandum.

Use of Partial Facts Available

Pursuant to section 776(a)(2)(D) of the Act, the Department may use facts available when an interested party provides information but the information cannot be verified. In the instant review, Groupstars was unable to substantiate the consumption quantity reported for pallets. *See* PRC Verification Report. Therefore, the Department has resorted to the use of facts available with respect to this factor. Specifically, as facts available, the Department calculated the consumption quantity of pallets by dividing the total number of pallets purchased by Groupstars during the POR by the total quantity of subject merchandise exported during the POR. For further details, see the Calculation Memorandum.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage dumping margin exists for the period January 1, 2001 through December 31, 2001:

Exporter/Manufacturer	Margin (percent)
Groupstars Chemical Co., Ltd.	13.31%

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within 10 days of the date of announcement of the preliminary results. Interested parties may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) in accordance with 19 CFR 351.309(c)(1)(ii) and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs in accordance with 19 CFR 351.309(d). Case briefs must be submitted within 30 days after the date of publication of this notice. Rebuttal briefs must be submitted within five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue a memorandum identifying the date of a hearing, if one is requested. The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results.

[3] For some of the FOP, we were unable to find Indian import statistics for March 2001. We will attempt to find the March 2001 statistics for the final results of review.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we calculated importer-specific assessment rates for merchandise subject to this review. We divided the total dumping margin (calculated as the difference between NV and CEP) for the importer by the total entered value of the reviewed sales. Where the importer-specific assessment rate is above *de minimis*, we will direct Customs to assess the resulting *ad valorem* rate against the entered value of the entry of the subject merchandise by that importer during the POR. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates, calculated as described above, on each of the importer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of potassium permanganate from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company named above will be the rate for that firm established in the final results of this administrative review; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate not covered in this review, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rate in effect; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2003.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–3853 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings and Anticircumvention Inquiries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

EFFECTIVE DATE: February 18, 2003.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention determinations completed between July 1, 2000 and September 30, 2002. In conjunction with this list, the Department is also publishing a list of requests for scope determinations and anticircumvention determinations pending as of September 30, 2002. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Sally Gannon, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2243 or (202) 482–0162, respectively.

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings. *See* 19 CFR 351.225(o). Our most recent "Notice of Scope Rulings" was published on August 29, 2000. *See* 65 FR at 52409.

This notice covers all scope rulings and anticircumvention determinations completed by Import Administration between July 1, 2000 and September 30, 2002, inclusive. It also lists any scope or anticircumvention inquiries pending as of September 30, 2002. The Department intends to publish the items contained herein in February 2003. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between July 1, 2000 and September 30, 2002

France

A–427–801: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; Saint-Gobain Ceramics and Plastics, Inc.; ceramic ball blanks used in the production of balls are outside the scope of the order; August 9, 2001.

Germany

A–428–801: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Germany; TEMCO Textilmaschinenkomponenten GmbH and Petree & Stoudt Associates, Inc.; certain textile machinery components are outside the scope of the order; October 1, 2001.

India

A–570–864: Pure Magnesium in Granular from the People's Republic of China; ESM Group Inc.; pure magnesium in granular form that is ground in Canada or another third country from pure magnesium ingots produced in the PRC is within the scope of the order; August 21, 2002.

Japan

A–588–804: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan; NTN Bearing Corporation of America; balls used in an EM coupling are within the scope of the order; August 25, 2000.

A–588–804: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan; Sanden International USA; parts of an electromagnetic (EM) coupling, identified as an orbiting EM plate, and a fixed EM plate are outside the scope of the order; February 12, 2001.

A–588–804: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan; NTN Corporation, NTN Bearing Corporation of America, NTN Driveshaft, Inc., NTN–Bower Corporation, and NTN–BCA Corporation; turntable slewing bearings used in computerized tomography (CT) scan machines are outside the scope of the order; July 9, 2001.

A–588–804: Ball Bearings and Parts Thereof from Japan; Honda Motor Company, Ltd., *via* Honda of Canada Manufacturing; ball bearing and parts thereof are outside the scope of the order; June 20, 2002.

A–588–840: Engineered Process Gas Turbo-Compressor Systems from Japan; Mitsubishi International Corporation; steam turbine imported as a replacement part, revamping the engineered process gas turbo compressor system, is not within the scope of the order; November 29, 2001.

A–588–845: Stainless Steel Sheet and Strip in Coils from Japan; Federal-Mogul Corporation and McCord Leakless Sealing Co.; McCord Grade 301 Precision Strip is within the scope of the order; October 29, 2001.

A–588–854: Tin Mill Products from Japan; Weirton Steel and Independent Steel Worker; double reduced electrolytically chromium coated steel is within the scope of the order; October 12, 2001.

A–588–854: Tin Mill Products from Japan; Ton-Yi Industrial Corporation; double-reduced electrolytic tin plate (ETP) meeting the requirements of ASTM specification A 626/A 626M and double-reduced tin-free (TFS) meeting the requirements of ASTM specification A 657/A 657M produced in Taiwan from Japanese black plate are outside the scope of the order; March 21, 2002.

A–588–854: Tin Mill Products from Japan; Okaya, U.S.A., Inc.; tin-free single reduced electrolytically chromium coated steel is inside the scope of the order; August 27, 2002.

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; "bond cake" candles are outside the scope of the order; "Christmas tree" taper and white taper candles are within the scope of the order; July 7, 2000.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Cherrydale Farms; "floating bug" candles are within the scope of the order; October 5, 2000.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Cherrydale Farms; "strawberry preserves" mason jar candle and "novelty fruit gel" candle are within the scope of the order; October 6, 2000.

A–570–504: Petroleum Wax Candles from the People's Republic of China; San Francisco Candle Company; certain Christmas candles containing minimally decorative designs or designs generic to the winter season are within the scope of the order; "Carved Christmas Tree with Star" pillar candle is outside the scope of the order; February 12, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Barthco Trade Consultants; "floating flower" candles, "floating star" candles, and "mini loaf" candles are all within the scope of the order; April 30, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; "heart-shaped" candle is outside the scope of the order; May 4, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; "holly" pillar candle is outside the scope of the order; May 8, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; JCPenney Purchasing Corporation; various Christmas candles containing holly and Santa Claus images, "NOEL" pillar candles, Halloween candles containing Jack-O" Lanterns and ghosts, certain candles in the form of identifiable objects, "Build Your Own Candle" kit, and certain candles containing palm oil are all outside the scope of the order; candles with non-holiday-specific generic decorations, and candles claimed to be in shapes outside the scope, are all within the scope of the order; May 21, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; "tear-drop" candle is within the scope of the order; June 11, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; "disc" candle is within the scope of the order; July 11, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; "Easter figurine" candles and "pine cone" candles are outside the scope of the order; July 11, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; "floral lamp shade" pillar candle is within the scope of the order; July 30, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; JCPenney Purchasing Corporation; "flower" candles and "leaf" candles are all outside the scope of the order; November 9, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Jo-Ann Stores; "floating flower" candle, "champagne glass flower" candle and "heart floater" candle are all outside the scope of the order; "five point star" candle and "star floater" candle are within the scope of the order; January 29, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; "floating pumpkin lantern" candle is within the scope of the order; February 13, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Atico International, Inc.; "flower-shaped," "sunflower," and "tulip with fence" candles are all outside the scope of the order; February 19, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Premier Candles; "tulip-shaped" wax-filled container is within the scope of the order; February 25, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Atico International, Inc.; "valentine heart" candle, "Easter egg" candles, "Easter" floating candles, "lantern" candles, and "valentine heart with lip" candle are all within the scope of the order; April 8, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; round "ball" candle is within the scope of the order; April 8, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; votive candle is within the scope of the order; May 21, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; T.S. Group, Inc.; assorted "utility" candles are within the scope of the order; May 21, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Peerless Umbrella Co.; "star-shaped" candle is within the scope of the order; August 29, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Interpro International; assorted round and "floating disc" candles are within the scope of the order; September 26, 2002.

A–570–836: Glycine from the People's Republic of China; Watson Industries, Inc.; glycine of Chinese origin that was refined and re-exported from South Korea which was then imported by Watson, was within the scope of the antidumping duty order; May 3, 2002.

A–570–855: Non-frozen Apple Juice Concentrate from the People's Republic of China; Coloma Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc. and Tree Top, Inc.; imports of "semi-frozen" apple juice concentrate from the PRC are outside the scope of the order; October 1, 2001.

A–570–862: Foundry Coke from the People's Republic of China; Dajin U.S.

Trading, Inc.; certain coke (specifically, shipments of coke in which it is determined less than 50 percent of the shipment is larger than 100 mm in diameter, after drop shatter testing) is within the scope of the order; May 31, 2002.

A–570–862: Foundry Coke from the People's Republic of China; Importer: Shook Group LLC and Dajin U.S. Trading, Inc.; Producer: Shanxi Dajin International (Group) Co. Ltd.; certain coke (specifically, shipments of coke in which it is determined less than 50 percent of the shipment is larger than 100 mm in diameter, after drop shatter testing) is within the scope of the order; May 31, 2002.

A–570–864: Pure Magnesium in Granular Form from the People's Republic of China; ESM Group Inc.; pure magnesium in granular form that is ground in Canada or another third country from pure magnesium ingots produced in the PRC is within the scope of the order; August 21, 2002.

Taiwan

A–583–816: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan; Importer: Allegheny Bradford Corporation d/b/a Top Line Process Equipment Company; Producer: King Lai International Co., Ltd. from Taichung, Taiwan; stainless steel butt-weld tube fittings are within the scope of the order; December 10, 2001.

A–583–827: Static Random Access Memory Semiconductors from Taiwan; Pacesetter Inc.; Platform B digital integrated circuits and symmetry controllers are not within the scope of the order; June 12, 2000.

Anticircumvention Determinations Completed Between July 1, 2000 and September 30, 2002

None.

Scope Inquiries Terminated Between July 1, 2000 and September 30, 2002

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; "pearl" pillar candle containing vegetable wax request withdrawn; original request received May 8, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; "floating gel" candle set request withdrawn; original request received October 24, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; "floating gel" candle set request withdrawn; original request received November 9, 2001.

Anticircumvention Inquiries Terminated Between July 1, 2000 and September 30, 2002

None.

Scope Inquiries Pending as of September 30, 2002

Brazil

A–351–817 and C–351–818; Cut-To-Length Carbon Steel Plate from Brazil; TradeArbed, Inc.; whether continuous cast steel slab is within the scope of the order; initiated September 9, 2002.

India

A–533–808, A–533–810: Stainless Steel Wire Rod from India; Barthcb Trade Consultants; whether stainless steel wire rod shipped to the United Arab Emirates, where it is further processed into finished stainless steel bars, which are then shipped to the United States is within the scope of the order; requested September 10, 2002.

Japan

A–588–835: Oil Country Tubular Goods from Japan; Grant Prideco; whether unfinished drill pipe from Japan without tool joints further processed in China into finished drill pipe with tool joints is substantially transformed into Chinese-origin merchandise; initiated June 16, 2000.

Mexico

A–201–805: Circular Welded Non-Alloy Steel Pipe from Mexico; whether mechanical tubing is within the scope of the order; requested July 31, 1998.

People's Republic of China

A–570–502: Certain Iron Construction Castings from the People's Republic of China; Frank J. Martin Co.; whether certain cast iron full-flanged rings and certain cast iron gas lids are within the scope of the order; requested August 21, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Burlington Toiletries, Ltd.; whether a petroleum wax gel candle is within the scope of the order; requested August 8, 2000.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; Atico International, Inc.; whether "snowball" candle, "Christmas cake" candle, certain glowing candles, "JOY" and "PEACE" pillar candles, certain beeswax candles (where exact beeswax composition was not identified), "angel" cake candle, "angel bear" candles, and "NOEL" pillar candle are within the scope of the order; requested August 24, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Leader Light, Ltd.; whether assorted pillar candles, "star" candles, "brick" candles, wax-filled containers, candle "gardens," "floating" candles, "jar" candles, and assorted figurines are within the scope of the order; requested September 10, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Atico International, Inc.; whether a "tiered heart-shaped" disk candle and paraffin wax "gel-filled" candle are within the scope of the order; requested September 19, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Fleming International, Ltd.; whether candles containing synthetic and vegetable waxes are within the scope of the order; requested October 24, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; For Your Ease Only; whether floating gel candles are within the scope of the order; requested November 15, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Garden Ridge; whether assorted "animal print" candles containing palm oil are within the scope of the order; requested February 20, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; New Spectrum; whether assorted pillars, rounds, and figurines are within the scope of the order; requested March 29, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Hallmark Cards, Inc.; whether assorted "leaves" candles, a "star" candle, and a "dome-shaped" candle are within the scope of the order; requested May 8, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Meijer, Inc.; whether "birthday" candles and assorted pillars, rounds, and wax-filled containers are within the scope of the order; requested May 14, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether "resin topper jar" candles containing palm oil are within the scope of the order; requested May 21, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether a "flower" pillar candle containing stearic wax is within the scope of the order; requested May 28, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether a "fruit" pillar candle containing stearic wax is within the scope of the order; requested May 28, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether two "disc-shaped" candles containing stearic wax are within the scope of the order; requested May 28, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Home Interiors & Gifts, Inc.; whether a "rose blossom" candle, "sunflower" floating candles, "Americana heart" floating candles, "baked apple" tea lights, and vanilla tea lights are within the scope of the order; requested June 4, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether three wax filled gel candles are within the scope of the order; requested June 13, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Dollar Tree Stores, Inc.; whether assorted "gel-filled" containers are within the scope of the order; requested August 1, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; San Francisco Candle Company; whether a "candy cane" candle is within the scope of the order; requested August 23, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; San Francisco Candle Company; whether a "heart-shaped" candle is within the scope of the order; requested August 23, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether a "floating rose-shaped" candle is within the scope of the order; requested September 30, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Neatzit Israel International, Ltd.; whether a Chanukah candle is within the scope of the order; requested September 30, 2002.

Russian Federation

A–821–802: Antidumping Suspension Agreement on Uranium; USEC, Inc. and its subsidiary, United States Enrichment Corporation; whether enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the order; August 6, 1999.

Multiple Countries

A–475–820: Stainless Steel Wire Rod from Italy, C–475–821: Stainless Steel Wire Rod from Italy, A–588–843: Stainless Steel Wire Rod from Japan, A–469–805: Stainless Steel Wire Rod from Spain, A–469–807: Stainless Steel Wire Rod from Spain; A–583–828: Stainless Steel Wire Rod from Taiwan, A–533–810: Certain Stainless Steel Wire Rod from India, A–588–833: Stainless Steel Wire Rod from India, A–351–825: Stainless Steel Wire Rod from Brazil, A–533–808: Stainless Steel Wire Rod from India, C–469–004: Stainless Steel Wire Rod from Spain; Ishar Bright Steel Ltd.; scope inquiry as to whether stainless steel bar that is manufactured in the United Arab Emirates from stainless steel wire rod imported from multiple subject countries is within the scope of the orders; requested December 22, 1998.

Anticircumvention Inquiries Pending as of September 30, 2002

Italy

A–475–818 & C–475–819: Certain Pasta From Italy; Pastificio Fratelli Pagani S.p.A. (Pagani); whether imports of certain pasta from Italy, falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping and countervailing duty orders; initiated April 27, 2000.

Japan

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; USS-Posco Industries; whether imports of boron-added hot-dipped and electrolytic corrosion-resistant carbon steel sheet, falling within the physical dimensions outlined in the scope of the order, are circumventing the order; initiated October 30, 1998.

Interested parties are invited to comment on the completeness of this list of pending scope inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Enforcement Group III, Import Administration, International Trade Administration, 14th Street and Constitution Avenue NW, Room 1870, Washington, DC 20230.

This notice is published in accordance with section 351.225(o) of the Department's regulations.

Dated: February 10, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3851 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Jointly Owned Invention Available for Licensing.

SUMMARY: The invention listed below is owned in part by the U.S. Government, as represented by the Department of Commerce, and JILA/University of Colorado. The Department of Commerce's interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: National Institute of Standards and Technology, Technology Partnerships Division, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov*, or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

[Docket No.: 01–021US]

Title: Method Of Minimizing The Short-Term Frequency Instability Of Laser-Pumped Atomic Clocks

Abstract: The invention proposes a method of optimizing the performance of laser-pumped atomic frequency references with respect to the laser detuning and other operating parameters. The invention establishes that the frequency reference short-term instability will be minimized when (a) the laser frequency is tuned nominally a few tens of MHz away from the center of the atomic absorption line; and (b) the external oscillator lock modulation frequency is set either far below or far above the inverse of the optical pumping time of the atoms. The exact parameters for the optimization depend on the particular experimental situation and can be roughly calculated using a theory developed to simulate the clock performance.

Dated: February 10, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–3818 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021003D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Magnuson-Stevens Act Committee in March, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, March 4, 2003 at 6 p.m.

ADDRESSES: The meeting will be held at the Providence Biltmore, 11 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council's Magnuson-Stevens Act Committee will meet on Tuesday, March 4, 2002 at 6 p.m. or following the last scheduled item on the agenda for the New England Fishery Management Council meeting. The Committee plans to discuss issues related to reauthorization of the Magnuson-Fishery Conservation and Management Act.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 11, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3848 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102102A]

National Plan of Action for the Management of Fishing Capacity

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of draft plan.

SUMMARY: NMFS announces the availability of a draft National Plan of Action (NPOA) developed pursuant to the International Plan of Action (IPOA) for the Management of Fishing Capacity by the United Nations' Food and Agriculture Organization (FAO) Committee on Fisheries (COFI) Ministerial Meeting in February 1999. Members of the public are encouraged to provide comments on the draft NPOA.

DATES: Comments must be received no later than March 17, 2003.

ADDRESSES: Written comments and requests for copies of the draft NPOA should be submitted to Matteo Milazzo, Regulatory Services Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301–713–0596. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Matteo Milazzo at 301–713–2337, fax 301–713–0596.

SUPPLEMENTARY INFORMATION:

Electronic Access

The draft U.S. NPOA for the Management of Fishing Capacity is available electronically at the following address: http://www.nmfs.noaa.gov/sfa/sfweb/index.htm.

Background

The United States played a significant role during the 1990s in global programs to accurately identify and assess the problem of overcapacity in marine fisheries, and was a key player in the FAO technical and policy-level consultations of 1997–1999 that led to the International Plan of Action for the Management of Fishing Capacity. The IPOA calls on member nations to voluntarily develop, adopt and make public national plans of action for the management of fishing capacity, and if required, reduce fishing capacity in order to balance fishing capacity with available resources on a sustainable basis. The plans are to be based on an assessment of fish stocks and should give due consideration to the socio-economic aspects of reducing fishing capacity.

The United States has been committed to developing this national plan, and reporting on its implementation to FAO/COFI. NMFS seeks public comments on the Capacity NPOA and the public's input will be used to develop the final NPOA.

Dated: February 11, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3846 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, March 5, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3928 Filed 2–13–03; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, March 7, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3929 Filed 2–13–03; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Friday, March 7, 2003.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3930 Filed 2–13–03; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, March 14, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3931 Filed 2–13–03; 11:19 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AN DATE: 11 a.m., Friday, March 21, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3932 Filed 2–13–03; 11:19 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, March 28, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3933 Filed 2–13–03; 11:19 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 18, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management (OMB) provide interested Federal agencies and the public and early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publish that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension or reinstatement; (Title); (3) Summary of the collection; (4) Description of the need for, and proposed use of the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Dated: February 11, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New Collection.

Title: Pre-Elementary Education Longitudinal Study (PEELS) Phase 1.

Frequency: Varies.

Affected Public:

Individuals or households, Not-for-profit institutions, State, local, or Tribal Gov't. SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 17,741.

Burden Hours: 4,986.

Abstract: PEELS will provide the first national picture of experience and outcomes of three to five year old children in early childhood special education. The study will inform special education policy development and support GPRA measurement and IDEA reauthorization with data from parents, service providers, and teachers.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her email address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–3778 Filed 2–14–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–228–001]

Alliance Pipeline L.P.; Notice of Compliance Filing

February 11, 2003.

Take notice that on February 6, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 253, proposed to become effective February 1, 2003..

On December 31, 2002, Alliance filed First Revised Sheet No. 253 to amend the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Alliance to terminate a temporary release of capacity, upon 30-days written notice to the replacement shipper, where (i) Alliance has terminated the releasing shipper's Firm Transportation Agreement or Master Capacity Release Agreement in accordance with GTC Section 8 (Default and Termination); and (ii) the rate stated in the replacement shipper's applicable Capacity Release Schedule is less than the rate that the releasing shipper was obligated to pay Alliance.

Alliance further proposed that a replacement shipper may avoid termination of the temporary release if, prior to the end of the 30-day notice period, the replacement shipper agrees that, beginning the first day after the end of the 30-day notice period, it will pay, for the remainder of the term of the release, either the rate the former releasing shipper was obligated to pay Alliance, the maximum applicable Recourse Reservation and Usage Charges as stated in the tariff for the applicable service, or a rate mutually agreed upon by Alliance and the Shipper.

By order issued January 30, 2003, the Commission accepted Alliance's filing, to be effective February 1, 2003, subject to Alliance filing clarifying language specifying that the replacement shipper may retain the released capacity by agreeing to pay the "lesser of" the available rate options. By its filing, Alliance is proposing to add the required clarifying language. Alliance states further that, because the relative relationship between its recourse and negotiated rates will not necessarily remain static over the term of any particular release of capacity, it is also adding further clarifying language to provide the replacement shipper with the right to determine which of the available rate options will provide the lowest effective rate over the remaining term of a capacity release.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3799 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. ER01–2221–000 and ER01–2221–001]

Federal Energy Regulatory Commission Energy Transfer—Hanover Ventures, LP; Notice of Issuance of Order

February 11, 2003.

Energy Transfer—Hanover Ventures, LP (Energy Transfer), submitted for filing a rate schedule under which Energy Transfer will engage in wholesale electric energy and capacity at market-based rates. Energy Transfer also requested waiver of various Commission regulations. In particular, Energy Transfer requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Energy Transfer.

On October 29, 2001, pursuant to delegated authority, the Director, Division of Tariffs and Rates—West, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Energy Transfer should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 21, 2003.

Absent a request to be heard in opposition by the deadline above, Energy Transfer is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Energy Transfer, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Energy Transfer's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3795 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–49–000]

National Fuel Gas Supply Corporation; Notice of Application

February 11, 2003.

Take notice that on February 3, 2003, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP03–49–000 pursuant to Section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations, for permission and approval to abandon certain minor underground natural gas storage facilities in its Summit Storage Field (Summit), in Erie County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link, select "Docket #" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

National Fuel proposes to abandon certain facilities in the Summit Storage Field. National Fuel proposes to abandon Wells 1511–P, 1518–P and 1528–P and to abandon their associated 4-inch well lines. National Fuel proposes to abandon the facilities, because the wells have deteriorated well casings and contribute very little to Summit's injection and withdrawal capability. National Fuel further states that the deteriorated well casings would require expensive reconditioning or abandonment. Since the wells contribute very little to Summit's injection and withdrawal capability and are in close proximity to residences, National Fuel does not recommend reconditioning of the wells. The application indicates that there would be no abandonment or decrease in service to any of National Fuel's existing customers as a result of the proposed abandonment. National Fuel states that it would cost approximately $135,360 to abandon its facilities in this proposal.

Any questions regarding Natural Fuel's application should be directed to David W. Reitz, Deputy General Counsel, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, at (716) 857–7949.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3793 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–243–000]

Nicole Energy Services, Inc.; Notice of Petition for Declaratory Order

February 11, 2003.

Take notice that on January 24, 2003., Nicole Energy Services, Inc., (Nicole) tendered for filing a petition for a declaratory order to terminate a controversy.

Nicole requests that the Commission issue a declaratory order stating, as a matter of law, (1) that the Natural Gas Tariff of Columbia Gas Transmission Corporation (CGT) requires CGT to install meters at its cost to measure the volume gas received from a shipper; (2) that CGT's Natural Gas Tariff permits, but does not require, shippers of natural gas to install "check meters" to verify the gas volumes measured by CGT's meters; and (3) that CGT can make no downward adjustment to a shipper's gas volumes other than the "retainage" adjustment provided for in CGT's Natural Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3801 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–251–000]

Northern Border Pipeline Company; Notice of Tariff Filing

February 11, 2003.

Take notice that on February 6, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the filing, to become effective March 10, 2003.

Northern Border is filing these revised tariff sheets to clearly state that in accordance with Section 284.8 of the Commission's regulations, Rate Schedule T–1B Shippers have the right to release capacity pursuant to Section 27, Release of Firm Capacity, of the General Terms and Conditions and to make minor tariff housekeeping changes.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3803 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–31–000]

Paiute Pipeline Company; Notice of Site Visit

February 11, 2003.

On February 19, 2003, the staff of the Office of Energy Projects will participate in a site visit to the area proposed for construction of natural gas pipeline facilities by Paiute Pipeline Company for its Carson Lateral Replacement Project, in Lyon, Douglas, Carson City, and Washoe Counties, Nevada. The site visit will begin at 8 a.m. from the Carson City Field Office of the U.S. Bureau of Land Management, 5665 Morgan Hill Road, Carson City, Nevada. All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Anyone interested in additional information on the site visit may contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary

[FR Doc. 03–3792 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–242–000]

Petal Gas Storage, L.L.C. ; Notice of Tariff Filing

February 11, 2003.

Take notice that on January 27, 2003., Petal Gas Storage, L.L.C., (Petal) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixth Revised Sheet No. 100, First Revised Sheet No. 140 and Sheet Nos. 141—199, with an effective date of March 1, 2003.

Petal states that the revised tariff sheets are being filed to modify Petal's tariff to provide for a general waiver of the "shipper must have title" rule in the event that Petal is transporting or storing gas for others on acquired off-system capacity and to include a general statement that Petal will only transport or store gas for others using off-system capacity pursuant to its existing tariff and rates.

Petal states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3800 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP03–252–000]

Federal Energy Regulatory Commission PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

February 11, 2003.

Take notice that on February 10, 2003., PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing a Refund Report which reports GTN's refund of revenues collected under its Competitive Equalization Surcharge mechanism, in compliance with Section 35 of GTN's FERC Gas Tariff.

GTN further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3804 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–253–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

February 11, 2003.

Take notice that on February 10, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing a Refund Report which reports GTN's refund of interruptible transportation revenues collected on its Coyote Springs Lateral, in compliance with section 35A of GTN's FERC Gas Tariff.

GTN further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3805 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–250–000]

Questar Pipeline Company; Notice of Tariff Filing

February 11, 2003.

Take notice that on February 6, 2003., Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 67 and Original Sheet No. 67A, to be effective March 8, 2003.

Questar states that it is proposing to revise § 6, Capacity Release and Assignment, of the General Terms and Conditions of part 1 of its tariff by adding § 6.24 to address circumstances where a releasing shipper is determined to be uncreditworthy.

Questar states that a copy of the filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3802 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–118]

Tennessee Gas Pipeline Company; Notice of Amendment to Negotiated Rate Agreement

February 11, 2003.

Take notice that on February 5, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing an amendment to the October 18, 2001, Negotiated Rate Agreement between Tennessee and NJR Energy Services ("Negotiated Rate Agreement") which was previously accepted by the Commission in Tennessee Gas Pipeline Company, 97 FERC ¶ 61,248 (2001). The amendment provides for a change in the delivery points to which the negotiated rate applies. Tennessee requests that the Commission accept and approve the Amendment to the Negotiated Rate Agreement to be effective February 5, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3806 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3117–000, ER01–3117–001, ER01–3118–000, and ER01–3118–001]

Well Power Gates, LLC; Wellhead Power Panoche, LLC; Notice of Issuance of Order

February 11, 2003.

Wellhead Power Gates, LLC and Wellhead Power Ponoche, LLC (together, "Applicants") filed applications requesting authority to transact at market-based rates along with the accompanying tariffs. The proposed market-based rate tariffs provide for sales of capacity, energy, and ancillary services at market-based rates. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On January 28, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Rates—West, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 21, 2003.

Absent a request to be heard in opposition by the deadline above, Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Applicants' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3796 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–40–003, et al.]

American Electric Power Company, et al.; Electric Rate and Corporate Filings

February 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Company

[Docket Nos. EC98–40–003, ER98–2777–004 and ER98–2786–004]

Take notice that on February 6, 2002, the American Electric Power Company tendered for filing with the Federal Energy Regulatory Commission (FERC) Market Monitoring of American Electric Power: Tenth Quarterly Report to FERC.

Comment Date: February 27, 2003.

2. New York Independent System Operator, Inc.

[Docket No. ER03–200–002]

Take notice that on February 5, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in connection with the Commission's January 21, 2003., order in the above-referenced dockets.

The NYISO states that it has served a copy of this filing to all parties listed on the official service list for the above proceeding. The NYISO has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: February 26, 2003.

3. American Electric Power Service Corporation

[Docket No. ER03–493–000]

Take notice that on February 4, 2003, American Electric Power Service Corporation (AEPSC) on its own behalf and on behalf of West Texas Utilities (WTU) submitted for filing an Amended and Restated Transmission Service Agreement for ERCOT Regional Transmission Service, dated October 22, 2002, between AEPSC and Southwest Texas Electric Cooperative, Inc. (SWTEC) and an Amended and Restated Interconnection Agreement, dated October 22, 2002, between WTU and SWTEC. Both agreements have been amended to recognize the termination of transmission service to WTU's Tippett Substation for SWTEC load and the initiation of transmission service to WTU's McCamey and Mesa View substations for such load.

AEPSC seeks an effective date of October 22, 2002 for the termination and addition of these points of delivery and, accordingly, seeks waiver of the Commission of Texas.

Comment Date: February 25, 2003.

4. Chattahoochee EMC

[Docket No. ER03–494–000]

Take notice that on February 4, 2003, Chattahoochee EMC tendered for filing a Notice of Cancellation of its FERC Electric Tariff Original Volume No. 1 and its Service Agreement Nos. 1 through 28.

Comment Date: February 25, 2003.

5. Talbot EMC

[Docket No. ER03–495–000]

Take notice that on February 4, 2003, Talbot EMC tendered for filing a Notice of Cancellation of its FERC Electric Tariff Original Volume No. 1 and its Service Agreement Nos. 1 through 30.

Comment Date: February 25, 2003.

6. Calpine Parlin, LLC

[Docket No. ER03–496–000]

Take notice that on February 4, 2003, Calpine Parlin, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Succession to adopt Calpine Parlin, Inc.'s market-based rate authorizations. Calpine Parlin, LLC requests an effective date of February 4, 2003 for the Notice of Succession.

Comment Date: February 25, 2003.

7. PJM Interconnection, L.L.C.

[Docket No. ER03–497–000]

Take notice that on February 4, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing a revised interconnection service agreement between PJM and PPL West Earl, L.L.C. (PPL West Earl). The original agreement is revised to add development milestones and to include some other minor modifications.

PJM requests a January 10, 2003 effective date for the revised agreement.

PJM states that copies of this filing were served upon PPL West Earl and the state regulatory commissions within the PJM region.

Comment Date: February 25, 2003.

8. Florida Power & Light Company

[Docket No. ER03–498–000]

Take notice that on February 6, 2003, Florida Power & Light Company (FPL) tendered for filing an executed, revised Interconnection & Operation Agreement between FPL and Blue Heron Energy Center, LLC. FPL requests that this agreement be made effective upon execution by the parties, January 31, 2003., as mutually agreed by the parties.

Comment Date: February 27, 2003.

9. PacifiCorp

[Docket No. ER03–499–000]

Take notice that on February 5, 2003, pursuant to Section 205 of the Federal Power Act, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed revision to FERC Rate Schedule No. 554, PacifiCorp's currently effective rate schedule for the 1964 Pacific Northwest Coordination Agreement (PNCA). PacifiCorp has filed a revised tariff sheet to reflect an extension of the term of the PNCA from June 30, 2003. to July 31, 2003. PacifiCorp requests that the Commission accept the change effective May 1, 2003.

PacifiCorp states that copies of this filing have been served upon all parties to the PNCA.

Comment Date: February 26, 2003.

10. Liberty Power Corp., L.L.C.

[Docket No. ER03–500–000]

Take notice that on February 6, 2003, Liberty Power Corp., L.L.C. (Liberty) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Liberty Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Liberty states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer, that it is not in the business of generating or transmitting electric power and that it has no corporate affiliations.

Comment Date: February 27, 2003.

11. La Paloma Generating Company, LLC

[Docket No. ER03–501–000]

Take notice that on February 6, 2003, La Paloma Generating Company, LLC (La Paloma) tendered for filing a proposed amendment to the Western Systems Power Pool (WSPP) agreement. The proposed amendment reflects the admission of La Paloma to the WSPP. La Paloma requests that the Commission authorize the proposed amendment to become effective on February 6, 2003.

Comment Date: February 27, 2003.

12. Niagara Mohawk Power Corporation

[Docket No. ER03–502–000]

Take notice that on February 7, 2003, Niagara Mohawk Power Corporation, a National Grid Company (Niagara) submitted for filing an Interconnection Facilities Agreement between Niagara and Hydro One Networks Inc. and an Interconnection Agreement between Niagara and Independent Electricity Market Operator.

Comment Date: February 28, 2003.

13. Aquila, Inc.

[Docket No. ER03–503–000]

Take notice that on February 7, 2003., Aquila, Inc. (Aquila) tendered for filing Service Agreement No. 96 under Aquila's FERC Electric Tariff, Third Revised Volume No. 25, a firm point-to-point transmission service agreement between Aquila's WestPlains Energy-Colorado division and MIECO, Inc.

UtiliCorp requests an effective date for the service agreement of February 7, 2002.

Comment Date: February 28, 2003.

14. Aquila, Inc.

[Docket No. ER03–504–000]

Take notice that on February 7, 2003, Aquila, Inc. (Aquila) tendered for filing Service Agreement No. 97 under Aquila's FERC Electric Tariff, Third Revised Volume No. 25, a short-term non-firm point-to-point transmission service agreement between Aquila's WestPlains Energy-Colorado division and MIECO, Inc.

UtiliCorp requests an effective date for the service agreement of February 7, 2003.

Comment Date: February 28, 2003.

15. Quonset Point Cogen, L.P.

[Docket No. ER03–505–000]

Take notice that on February 7, 2003, Quonset Point Cogen, L.P. (Quonset) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting its FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates, and waiving certain regulations of the Commission. Quonset requests that its Electric Rate Schedule No. 1 be made effective as of January 13, 2003.

Comment Date: February 28, 2003.

16. TXU Portfolio Management Company LP

[Docket No. ER03–506–000]

Take notice that on February 7, 2003, TXU Portfolio Management Company LP (TXU Portfolio Management), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Succession pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16, and a revised market-based rate schedule (Rate Schedule). As a result of a name change, TXU Portfolio Management is succeeding to the tariffs and related service agreements of TXU Energy Trading Company LP, effective January 10, 2003. The revised Rate Schedule reflects the name change from TXU Energy Trading Company LP, and a revision to paragraph four (4) "Affiliate Sales" of the Rate Schedule to comply with the Commission's Order in Aquila, Inc., 101 FERC ¶ 61,331 (2002).

TXU Portfolio Management requests an effective date of January 10, 2003 for its revised Rate Schedule.

Comment Date: February 28, 2003.

17. TXU Big Brown Company LP, TXU DeCordova Company LP, TXU Tradinghouse Company LP, TXU Generation Company LP

[Docket No. ER03–507–000]

Take notice that on February 7, 2003, TXU Big Brown Company LP, TXU DeCordova Company LP, TXU Tradinghouse Company LP, and TXU Generation Company LP (Joint Applicants) filed with the Federal Energy Regulatory Commission Joint Applicants' Request for Waiver of Reporting Requirements and For Expedited Action.

Comment Date: February 28, 2003.

18. Upper Peninsula Power Company

[Docket No. ES03–23–000]

Take notice that on February 4, 2003, Upper Peninsula Power Company (Upper Peninsula) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt in an amount not to exceed $20 million at any time.

Upper Peninsula also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: February 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3794 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–409–000, CP01–410–000, CP01–411–000, and CP01–444–000]

Tractebel Calypso Pipeline, L.L.C.; Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Tractebel Calypso Pipeline Project; Request for Comments on Environmental Issues and Notice of a Public Scoping Meeting and Site Visit

February 11, 2003.

On July 20, 2001, Calypso Pipeline, L.L.C. (Calypso) filed applications for Certificates of Public Convenience and Necessity for authorization to own, construct, operate, and maintain a new 24-inch-diameter, approximately 41.8-mile natural gas pipeline extending from a receipt point on the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas to delivery points in Broward County, Florida. On December 10, 2001, Calypso requested that the preparation of the EIS be temporarily suspended. Subsequently, on August 30, 2002, Tractebel Calypso Pipeline, L.L.C., (Tractebel Calypso) and Calypso, jointly filed a letter and enclosure notifying the Commission of a change in the applicant resulting from the sale of certain assets of Calypso to Tractebel Calypso. The sale of the project was completed October 8, 2002. Tractebel Calypso is now considered the applicant on record under the application with all rights and responsibilities attached to that status.

The staff of the Federal Energy Regulatory Commission (FERC or Commission), will prepare an Environmental Impact Statement (EIS) that will analyze the environmental impacts of the proposed Tractebel Calypso Pipeline Project. The FERC will be the lead federal agency. The Mineral Management Service (MMS) and the National Marine Fisheries Service (NMFS) are cooperating agencies in the preparation of the EIS.

The proposed pipeline originates in the Bahamas and would come ashore at Port Everglades, Florida. These facilities would consist of about 41.8-miles of 24-inch-diameter pipeline (approximately 36.0 miles offshore and approximately 5.8 miles onshore), a meter and pressure regulation station with a pig [1] receiver, and two block valves. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The MMS will have primary responsibility for offshore analysis in U.S. waters and will coordinate with the U.S. Army Corps of Engineers regarding Florida state waters review. Agencies listed in Appendix 3 are hereby asked to indicate whether they want to be cooperating agencies for purposes of producing an EIS.

[1] Pigs are tools that are used inside the pipeline for cleaning and inspecting the pipe.

The application, and other supplemental filings in this docket are available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). Click on the "FERRIS" link, select "General Search" from the FERRIS Menu, and follow the instructions, being sure to input the correct docket number (CP01–409). General information about the MMS and detailed information regarding Florida state and Federal waters can be accessed at the MMS Internet Web site (*http://www.mms.gov*).

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain and under certain circumstances the pipeline company could initiate condemnation proceedings in accordance with Florida law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice that Tractebel Calypso provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Florida is experiencing a substantial increase in demand for electric power as a result of population growth in the state. The Tractebel Calypso project would transport into Florida up to 832 million standard cubic feet of natural gas per day. The project would deliver the gas to an interconnect with the Florida Gas Transmission Company (FGT) system.

The Tractebel Calypso project would be located onshore in Broward County, Florida, and offshore in the Atlantic Ocean. The project would receive gas at the U.S./Bahamian EEZ at a subsea connection to a 24-inch pipeline, referred to as the Grand Bahama Island Pipeline, transporting natural gas from a proposed liquefied natural gas (LNG) storage facility in Freeport, Grand Bahama Island. The LNG facility and the Grand Bahama Island Pipeline are nonjurisdictional facilities.

Hawksbill Creek LNG, Ltd., a Bahamian company, proposes to construct and operate the LNG terminal in Freeport, Grand Bahama Island, that would receive LNG tankers arriving from international LNG supply locations. The LNG would be offloaded from the tankers and stored in specially designed storage tanks. From there, the LNG would be revaporized in heat exchangers on the terminal site and the resulting natural gas would be fed into the 24-inch-diameter offshore pipeline.

The FERC and MMS authorizations for this project would not extend eastward of the EEZ. The Government of the Bahamas regulates matters pertaining to the environment and safety and traditionally requires an environmental impact assessment as a condition to approving a project such as the LNG terminal and the Grand Bahama Pipeline. The Government of the Bahamas is in the process of reviewing the environmental impact assessment for these facilities.

The LNG facility and the Grand Bahama Pipeline are not part of the facilities proposed in the Tractebel Calypso Application to the FERC. In its application, Tractebel Calypso seeks authority to construct and operate:

Offshore Pipeline Segment

- The proposed offshore pipeline segment would be located in the Atlantic Ocean, off the southeast Florida coastline, and would consist of approximately 36 miles (31.2 nautical miles) of 24-inch-diameter pipeline (Offshore Pipeline). The Offshore Pipeline would traverse the Atlantic Ocean, starting at the U.S./Bahamian EEZ, passing through Federal and state waters, and ending at a shoreline entry at Port Everglades in Fort Lauderdale, Florida, to connect with the proposed Tractebel Calypso onshore pipeline segment.

Nearshore Pipeline Segment

- The Port Everglades, Florida shore approach would be installed utilizing horizontal directional drilling (HDD) techniques to minimize impacts to three nearshore coral reefs. The pipeline would be directionally drilled out from an upland site at Nova Southeastern University to a point 4,616 feet from shore on the north side of the Port Everglades entrance channel. From this point, a 2,132-foot-long by 25-foot-wide ditch would be cut through an existing spoil disposal area to the origination of a second directional drill. The second directional drill would be used to extend the pipeline an additional 5,130 feet to the northeast exiting at a depth of about 120 feet of water. Finally, the pipeline between 120 feet and 200 feet of depth would be covered with prefabricated flexible concrete mats. Where water depths exceed 200 feet, the Offshore Pipeline would be laid directly on the sea floor.

Onshore Pipeline Segment

- The proposed onshore pipeline segment would be located in Broward County, Florida, and would consist of approximately 5.8 miles of 24-inch-diameter pipeline (Onshore Pipeline). The Onshore Pipeline would start at the terminus of the proposed Offshore Pipeline (the Port Everglades shoreline entry) and end at a proposed interconnection with FGT's existing 24-inch-diameter Lauderdale Lateral at milepost (MP) 1.6 (near Florida Power & Light Company's [FP&L] Fort Lauderdale Plant). A block valve would be located near the beginning of the Onshore Pipeline. A pressure regulation and meter station with a pig receiver and block valve would be located at the terminus of the Onshore Pipeline. The proposed facilities are summarized in tables 1 and 2 below. The general locations of the project facilities are shown in Appendix 1 [2]. If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 4.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Brapch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

TABLE 1.—PROPOSED PIPELINE FACILITIES FOR THE TRACTEBEL CALYPSO PIPELINE PROJECT

Location	Length (miles)
U.S. Federal Waters	31.6
Florida State Waters	4.4
Broward County (Onshore)	5.8
Total New Pipeline Length	41.81

[1] Does not include 53.9 statute miles of nonjurisdictional waters between the Bahamas and the EEZ.

TABLE 2.—SUMMARY OF ANCILLARY FACILITIES FOR THE TRACTEBEL CALYPSO PIPELINE PROJECT

Facility	Approximate milepost	Description
Block Valve (below ground)	36.02	Nova Southeastern University Oceanographic Center.
Meter and Pressure Regulation Station, Pig Receiver	41.72	Disturbed area near PF&L Fort Lauderdale Cooling Pond.
Block Valve (above ground)	41.83	Located at a tie-in to FGT pipeline.

Land Requirements for Construction

Construction of the onshore portion of the Tractebel Calypso project would affect a total of about 68.8 acres of land including 31.9 acres required for pipeline construction; 21.4 acres required for extra workspace; 10.0 acres required for a contractor yard; and 0.5 acres required for aboveground facilities. Total land requirements for the permanent right-of-way would be about 4.6 acres and less than 0.3 acres of land would be required for the operation of the new permanent aboveground facilities. The remaining approximately 64 acres of land affected by construction would be restored and allowed to revert to its former use.

Approximately 2.2 miles (38 percent) of the Onshore Pipeline would be directionally drilled or bored underground. Of the remaining 3.6 miles of the proposed route, approximately 2.8 miles (78 percent) would cross industrial/commercial land. About 3.4 miles (94 percent) would be installed parallel to existing roadway, pipeline, and utility rights-of-way. Tractebel Calypso would typically use a 75-foot-wide construction right-of-way width. Additional temporary work areas may be necessary for waterbody, highway, and railroad crossings; additional topsoil storage; and pipe storage and equipment yards.

Following construction and restoration of the right-of-way and temporary extra work spaces, Tractebel Calypso would retain a new 10-foot-wide permanent easement for the 24-inch-diameter pipeline. The remaining portion of the construction right-of-way would be returned to landowners for their use without restrictions after appropriate reclamation efforts are successful.

According to the applicant, constructing the offshore portion of the Tractebel Calypso project would affect 766 acres in Federal waters. Tractebel Calypso has predicted that in Florida state waters construction of the pipeline would cause temporary direct impacts to 1.7 acres of marine hardbottom habitat of which 0.3 acres is coral reef and the remainder is disturbed and/or transitional hardbottom habitat. Approximately 1.8 acres of sand bottom would be affected. Construction-generated sediment would affect an additional 4.3 acres of the spoil area, about 0.3 acres of reef, and 0.1 acres of reef-sand transitional area.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This is called "scoping". The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Soils and sediments
- Water resources
- Wetlands, barrier beaches, and submerged aquatic vegetation
- Vegetation
- Fish and wildlife
- Endangered and threatened species
- Land use, recreation, and visual resources
- Air quality and noise
- Cultural resources
- Socioeconomics
- Reliability and safety
- Alternatives

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS. The Draft EIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our responses to comments received and will be used by the Commission in its decision-making process to determine whether to approve the project.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

To ensure your comments are considered, please carefully follow the instructions in the Public Participation and Scoping Meeting section of this Notice of Intent.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by Tractebel Calypso, and early input from intervenors. Some of these issues are listed below. This list is preliminary and may be changed based on your comments and our analysis.

- Construction and operational effects on seagrasses, coral reefs, hard and soft bottom communities, mangroves, and aquatic organisms;
- Extent and effects of turbidity and sedimentation that may result from pipeline trenching and directional drilling in shallow waters;
- Failure or inadvertent releases during construction of the HDD segments;
- Potential effects of proposed shore approach on the Port Everglades entrance channel and on sensitive surface waters, including the Port Everglades and Intracoastal Waterway;
- Effects to wildlife and fisheries, including federally protected species, essential fish habitat and fisheries of concern, and other biological resources of concern;
- Potential fuel spills from the pipelay barges and associated vessel traffic;
- Potential effect on future land use of 27 parcels of land, and effect on 24 landowners and governmental agencies;
- Potential effects to resources and recreation associated with construction and operation within John U. Lloyd State Park;
- Effect of construction on groundwater and surface water supplies;
- Potential introduction and control of non-native plant species;
- Potential effects on federally endangered and threatened species including the wood stork, Johnson's seagrass, West Indian manatee, loggerhead sea turtle, green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, and leatherback sea turtle;
- Potential effects on offshore submerged cultural resources;
- Noise generated as a result of pipeline construction;
- Temporary disruption of local roadways and recreational trails during construction;
- Potential impacts on 1.7 acres of wetlands;
- Potential effect of the project on designated airport runway clearance zones;
- Cumulative effects of the proposed project with other projects, including natural gas pipelines and other utilities, which have been recently constructed or are proposed to be built in the same region and similar time frames;
- Public Safety in the vicinity of the proposed facilities.

Public Participation and Scoping Meeting

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas/Hydro Branch.
- Reference Docket No. CP01–409–000.
- Mail your comments so that they will be received in Washington, DC on or before March 14, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting the FERC will conduct in the project area. The location and time for this meeting is listed below.

Schedule for the Tractebel Calypso Pipeline Project Environmental Impact Statement Public Scoping Meeting

Date and Time, Location, Phone

March 5, 2003 at 7 p.m.—I.T. Parker, Community Center 901 N.E., Third Street, Dania Beach, FL 33004—(954) 924–3698.

The public meeting is designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Prior to the start of the meeting, company representatives will be available to informally discuss the project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

On the morning of March 6, 2003, representatives of Tractebel Calypso and Commission staff will be visiting some project areas. Anyone interested in participating in the site visit may meet in the parking lot of the I.T. Parker Community Center at 9AM. Individuals must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 2)[4]. Only intervenors have the right to seek rehearing of the Commission's decision.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EIS.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC, or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3791 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–036]

Notice of Settlement Accord and Soliciting Comments

February 11, 2003.

Take notice that the following Settlement Accord has been filed with the Commission and is available for public inspection:

a. Type: Comprehensive Relicensing Settlement Accord With Explanatory Statement.

b. *Project No.:* P–2000–036.

c. *Date Filed:* February 6, 2003.

d. *Applicant:* Power Authority of the State of New York.

e. *Name of Project:* St. Lawrence-FDR Power Project.

f. *Location:* Located on the St. Lawrence River near Massena, in St. Lawrence County, New York. There are no Federal lands located within the project boundary.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:*

Mr. Joseph J. Seymour, Chairman and Chief Executive Officer, Power Authority of the State of New York, 30 South Pearl Street, Albany, NY 12207–3425, (518) 433–6751.

Mr. John J. Suloway, Director, Licensing Division, Power Authority of the State of New York 123 Main Street, White Plains, NY 10601–3170, (914) 287–3971.

i. *FERC Contact:* Ed Lee, (202) 502–6082 or E-Mail *Ed.Lee@ferc.gov*.

j. *Deadline Dates*: Comments due March 15, 2003.; reply comments due March 30, 2003.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Pursuant to Order No. 619, the Federal Energy Regulatory Commission (FERC) now accepts certain "qualified documents" via the Internet in lieu of paper filing. "Qualified documents" may be submitted electronically only by accessing the E-Filing link at *http://www.ferc.gov*. Comments received via e-mail are not placed in the public record.

• "Qualified documents" that may by submitted electronically in lieu pf paper and the procedures for e-filing "qualified documents" are described in FERC's User Guide for Electronic Filing of Qualified Documents, which can be accessed via FERC's website*http://www.ferc.gov*/e-filing. For assistance with filing qualified documents electronically, you can contract FERC's Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

k. Description of Filing: The Power Authority of the State of New York (NYPA) filed the Settlement Accord on behalf of itself and the U.S. Fish and Wildlife Service of the U.S. Department of the Interior; New York State Department of Environmental Conservation; New York State Department of State; New York State Office of Parks, Recreation and Historic Preservation; St. Lawrence Aquarium and Ecological Center Inc.; New York Rivers United; and the St. Lawrence Local Government Task Force. The purpose of the Settlement Accord is to resolve among the signatories all issues associated with issuance of a new license for the project regarding fish enhancement, American Eel passage facility, habitat improvements, wildlife management, St. Lawrence River Research and Education Fund, water temperature, land and vegetation management plans, shoreline stabilization plan, navigation enhancements, and recreation. The Settlement Accord specifically adopts and incorporates (1) five individual agreements, and (2) a letter of understanding between NYPA and National Marine Fisheries Service.

NYPA requests that the Commission accept and incorporate into any new license the protection, mitigation, and enhancement measures stated in the Settlement Accord. Comments and reply comments on the Settlement Accord and supporting documentation are due on the dates listed above.

l. A copy of the application is available for inspection and reproduction during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202)502–8371. In addition, the application may be viewed and/or printed via the internet through FERC's Home Page (*http://www.ferc.gov*). From FERC's Home Page on the internet, the application and other filings and issuances regarding this application are available in the Federal Energy Regulatory Records Information System (FERRIS). To access this information in FERRIS, for the St. Lawrence Hydroelectric Project license application, enter the application's docket number (*i.e.*, P–2000) and sub-docket number (*i.e.*, 036) where specified. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy of the application is also available for inspection and reproduction from the applicant at the address in item h. above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3797 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 11, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Prohibited

Date Filed: Presenter or Requester.

1. Project No. 2816–020 2–3–03 Robert L. Carey, Jr.

Exempt

Date Filed: Presenter or Requester.

1. CP02–78–000, 2–6–03, Jeff Shenot
2. CP02–396–000, 2–6–03, S. Rene' Hypes
3. Project No. 2042–000, 2–6–03, Frank Winchell
4. Project No. 2069–007, 2–7–03, Charles Hall, Nan Allen, Dianne Rodman

Magalie R. Salas,

Secretary.

[FR Doc. 03–3798 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7452–8]

EPA Science Advisory Board; Ecological Processes and Effects Committee Meeting—Notification of a Change in the Agenda and the Request for Public Comment

Purpose of this Notice—To advise of a change in the agenda for the advisory committee meeting advertised in 68 FR 4775, January 30, 2003. As noted in that FR Notice, the Ecological Processes and Effects Committee (EPEC) of the U.S. EPA Science Advisory Board (SAB) will meet on Thursday and Friday, February 13–14, 2003. Although a formal Consultation on the EPA Office of Waters' "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" was scheduled for that meeting, it has since been changed to a briefing. Other agenda items are unchanged and the meeting location remains unchanged.

In the above cited **Federal Register** notice, we stated that public comments (information, analysis or other documentation) will be accepted until February 7, 2003 on the EPEC member biosketches for the purpose of helping us to ensure a balanced panel for the Consultation that was originally planned. Since the Consultation will not take place at this time and no advice is being developed or provided by individuals on the Panel as a result of receiving briefings, we are no longer seeking comments on the biosketches. Any comments received at the address listed in the **Federal Register** notice (through the date of the meeting) will be considered in the event that the SAB conducts a formal Consultation on this topic in the future.

FOR FURTHER INFORMATION: Any member of the public wishing further information concerning this meeting, should contact Mr. Lawrence Martin, Designated Federal Officer, USEPA Science Advisory Board (1400A), Suite 6450, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–6497; fax at (202) 501–0582; or via e-mail at *martin.lawrence@epa.gov*. Information concerning this meeting can be found at the following Web site: *http://www.epa.gov/sab/panels/epecpubmtg021303.htm*.

Dated: February 7, 2003.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–3841 Filed 2–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Renewal of FASAB Charter

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Renewal of FASAB Charter.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that under the authority and in furtherance of the objectives of 31 U.S.C. 3511(d), the Secretary of the Treasury, the Director of

OMB, and the Comptroller General (the Sponsors) have established and agreed to continue an advisory committee to consider and recommend accounting standards and principles for the Federal government.

FOR FURTHER INFORMATION: Or to Obtain a Copy of the Charter, Contact: Wendy M. Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. 31 U.S.C. 3511(D), Pub. L. 92–463.

Dated: February 10, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–3768 Filed 2–14–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 24

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 24.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has issued Statement of Federal Financial Accounting Standards (SFFAS) No. 24. *Selected Standards for the Consolidated Financial Report of the United States Government.*

The Board approved the Statement in October 2002, and submitted it to FASAB principals for a 90-day review. The review period closed on January 27, 2003.

SFFAS No. 24 states for the first time that all SFFAS's apply to all Federal entities (including the consolidated Government-wide entity) unless a standard specifically provides otherwise. In addition, it clarifies that the Statement of Budgetary Resources and Statement of Financing, while relevant for agencies executing the budget, are not required for the Government-wide CFR.

However, SFFAS 24 requires new statements for the CFR, but not for agencies or departments. The new statements provide information on net operating revenue (or cost), budget surplus (or deficit), and cash. The new statements are principal CFR financial statements and are to be presented on a comparative basis.

The standards prescribed in SFFAS No. 24 are effective for periods beginning after September 30, 2001. Hard copies of the statement will be mailed to the FASAB mailing list. It is also available on the FASAB web site at *http://www.fasab.gov* or by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: February 10, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–3766 Filed 2–14–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Issuance of Statement of Federal Financial Accounting Concepts (SFFAC) No. 4

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of issuance of statement of Federal Financial Accounting Concepts (SFFAC) No. 4.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Concepts (SFFAC) No. 4, *Intended Audience and Qualitative Characteristics for the Consolidated Financial Report of the United States Government.*

The Board approved the Concept in October 2002, and submitted it to FASAB principals for a 90-day review. The review period closed on January 27, 2003.

SFFAC No. 4 identifies the primary audience of the Consolidated Financial Report of the U.S. Government (CFR) as external users represented by citizens and their intermediaries. Further, it describes the characteristics of the audience and the qualitative characteristics FASAB believes will aid in meeting the financial reporting objectives of the CFR. Finally, the concepts document provides that the CFR should be a "general purpose" report that should be highly understandable and timely.

The concepts prescribed in SFFAC No. 4 are effective for periods beginning after September 30, 2002. Hard copies of the concept will be mailed to the FASAB mailing list. It is also available on the FASAB web site at *http://www.fasab.gov* or by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: February 10, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–3767 Filed 2–14–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting Scheduled for February 13, 2003, Cancelled; Sunshine Act

February 11, 2003.

The Federal Communications Commission has cancelled the Open Meeting on the subjects listed below, previously scheduled for Thursday, February 13, 2003, at 445 12th Street SW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—*Title:* Revisions of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems (ET Docket No. 98–153). *Summary:* The Commission will consider a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking addressing the fourteen petitions for reconsideration filed in response to the First Report and Order in this proceeding. The First Report and Order established the standards that permit the unlicensed operation of ultra-wideband devices.

2—Consumer and Governmental Affairs—*Title:* Amendment of Part 1, Subpart N of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities. *Summary:* The Commission will consider an Order to update and enhance its rules regarding access for persons with disabilities to Commission programs and activities, as found in Subpart N of Part 1 of the Commission's rules.

3—Wireline Competition—*Title:* Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98), Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147), and Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Docket No 02–33). *Summary:* The Commission will consider a Report and Order concerning incumbent local exchange carriers' obligation to make elements of their networks available on an unbundled basis.

Additional information concerning this meeting may be obtained from David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3914 Filed 2–12–03; 4:13 pm]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer Cindy Ayouch— Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of The Extension For Three Years, With Revision, of the Following Reports:

Report title: Survey of Terms of Bank Lending

Agency form number: FR 2028A, FR 2028B, and FR 2028S

OMB control number: 7100–0061

Frequency: Quarterly

Reporters: commercial banks (all three reports) and U.S. branches and agencies of foreign banks (FR 2028A and FR 2028S)

Annual reporting hours: 8,095 hours

Estimated average hours per response: FR 2028A: 4.0. FR 2028B: 1.5. FR 2028S: 0.1.

Number of respondents: FR 2028A: 398. FR 2028B: 250. FR 2028S: 567.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Survey of Terms of Bank Lending provides unique information concerning the price and certain nonprice terms of loans made to businesses and farmers by commercial banks. The reports are completed for the first full business week of the mid-month of each quarter (February, May, August, and November). The FR 2028A and B collect detailed data on individual loans made during the survey week. The FR 2028S collects the prime interest rate for each day of the survey. From these sample STBL data, estimates of the terms of business and farm loans extended during the reporting week at all insured U.S. commercial banks are constructed. The estimates for business loans are published in the quarterly E.2 release, "Survey of Terms of Bank Lending," while estimates for farm loans are published in the quarterly E.15 release, "Agricultural Finance Databook."

Current actions: On December 3, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the Survey of Terms of Bank Lending (67 FR 71969). The notice described the Federal Reserve's proposal to revise the FR 2028A by: (1) adding a field for the date on which the terms, including pricing, for loans made under formal commitment became effective, (2) reducing the number of base pricing rate options from five to one, (3) deleting the item indicating whether loans are callable, (4) modifying the format of the recalculation and maturity date items, and (5) making minor clarifications to the instructions. The Federal Reserve also proposed to revise the FR 2028B by modifying the format of the recalculation and maturity date items. The FR 2028A and FR 2028B reporting instructions will be revised according to the proposed changes, with other minor clarifications. No changes are being made to the FR 2028S. The Federal Reserve did not receive any comments on the proposed changes. The revisions to the reporting forms and instructions will be effective for the May 2003 survey week.

Board of Governors of the Federal Reserve System, February 11, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–3822 Filed 2–14–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ruff Management LLC, Longview, Texas; to become a bank holding company by acquiring 1 percent general partner interest in Ruff Partners, Ltd., Longview, Texas, and thereby indirectly

acquire shares of First State Bank of Hallsville, Hallsville, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Charles Schwab Corporation, San Francisco, California; to acquire 100 percent of the voting shares of Charles Schwab Bank, N.A., Reno, Nevada.

Board of Governors of the Federal Reserve System, February 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3823 Filed 2–14–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Grants for Education Programs in Occupational Safety and Health, Program Announcement #03001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #03001.

Times and Dates: 7:30 a.m.–8 a.m., March 3, 2003—open.

8 a.m.–6 p.m., March 3, 2003—closed.

8 a.m.–5:30 p.m., March 4, 2003—closed.

8 a.m.–12:30 p.m., March 5, 2003—closed.

Place: Embassy Suites, 10 E. River Center Blvd., Covington, KY 41011, 859.261.8400.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 03001.

Contact Person for More Information: Bernadine Kuchinski, Ph.D., Occupational Health Consultant, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio, telephone (513) 533–8511.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 5, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–3810 Filed 2–13–03; 1:15 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 am–4:30 p.m., February 26, 2003; 8 a.m.–3 p.m., February 27, 2003.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The agenda will include a discussion on the influenza vaccine ACIP recommendation; update on U.S. influenza vaccine strains; update on vaccine supply; update on smallpox program implementation; recommendations for storage of vaccines; update on IOM immunization safety review committee meetings; DTaP-HepB-IPV Vaccine for infants born to HBsAG+ mothers; availability of child and adult immunization schedule in PDA format; evidence-based tables in ACIP recommendations; public participation in formulating vaccine policy; vaccinating cochlear implant recipients for meningitis and pneumococcal disease; update on effect of pneumococcal conjugate vaccine on disease following introduction; impact of varicella vaccination program on herpes zoster; and update on the HIV vaccine working group.

Agenda items are subject to change as priorities dictate.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register.**

Contact Person for More Information: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: February 10, 2003.

Joseph Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3771 Filed 2–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–367, 367a, b, and c, CMS–1957, CMS–R–48]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program—Manufacturers; *Form No.:* 0938–0578; *Use:* Section 1927 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal Government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 570; *Total Annual Responses:* 2,280; *Total Annual Hours:* 54,780.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* SSO Report of State Buy-In Problems and Supporting Regulation at 42 CFR 407.40; *Form No.:* CMS–1957; *Use:* The CMS–1957 is issued to assist with communications between the Social Security District Offices, Medicaid State Agencies and CMS Central Offices in the resolution of beneficiary entitlement under state buy-ins. It is used when a problem arises which cannot be resolved thru normal data exchange. *Frequency:* On occasion; *Affected Public:* Individuals or households, State, Local or Tribal Government; *Number of Respondents:* 3,000; *Total Annual Hours:* 1075.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital COP–42 CFR 482, 482.12, 482.13, 482.22, 482.27, 482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, and 485.631.; *Form No.:* CMS–R–48 (OMB # 0938–0328); *Use:* Hospitals seeking to participate in the Medicare and Medicaid programs must meet the Conditions of Participation (COP) for Hospitals, 42 CFR part 482. The information collection requirements contained in this package are needed to implement the Medicare and Medicaid COP for hospitals.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Gov.; *Number of Respondents:* 6,017; *Total Annual Responses:* 6,017; *Total Annual Hours:* 3,737,303.00.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 6, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–3785 Filed 2–14–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–96, CMS–R–5, CMS–R–245, CMS–R–209 and CMS–718 BP, 719 BP, 720 BP, 721 BP, SUM, Staffing, SC1, and SC2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Emergency and Foreign Hospital Services—Beneficiary Statement in Canadian Travel Claims and Supporting Regulations in 42 CFR, section 424.123; *Form No.:* CMS–R–96 (OMB# 0938–0484); *Use:* Payment may be made for certain Part A inpatient hospital services and Part B outpatient hospital services provided in a non-participating U.S. or foreign hospital when services are necessary to prevent the death or serious impairment of the health of the individual. This statement must be submitted by the beneficiary to support their claim for payment.; *Frequency:* On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,100; *Total Annual Responses:* 1,100; *Total Annual Hours:* 275.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Physician Certifications/Recertifications in Skilled Nursing Facilities (SNFs) Manual Instructions and Supporting Regulations in 42 CFR section 424.20; *Form No.:* CMS–R–5 (OMB# 0938–0454); *Use:* This information collection requires SNFs to keep record of physician certifications and recertifications of information such as the need for care and services, estimated duration of the SNF stay, and plan for home care; *Frequency:* On occasion; *Affected Public:* State, Local or Tribal Government, Individuals or Households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 2,068,716; *Total Annual Responses:* 883,838; *Total Annual Hours:* 441,793.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs Use of the OASIS as Part of the CoPs for HHAs and Supporting Regulations in part 484 of 42 CFR; *Form No.:* CMS–R–245 (OMB# 0938–0760); *Use:* This regulation requires HHAs to use a standard core assessment data set, the OASIS, to collect information and to evaluate adult non-maternity patients. In addition, data from the OASIS will be used for purposes of case mix adjusting patients under home health PPS and will facilitate the production of necessary case mix information at relevant time points in the patient's home health stay. Modifications have been made to currently approved OASIS forms to allow for the preservation of masking of personally identifiable information for the non-Medicare/non-Medicaid individuals; *Frequency:* Upon patient assessment; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Government; *Number of Respondents:* 7,100; *Total Annual Responses:* 9,510,900; *Total Annual Hours:* 8,013,013.

4. *Type of Information Collection Request:* Extension of a currently

approved collection; *Title of Information Collection:* Medicare and Medicaid Programs; Use and Reporting OASIS Data as Part of the CoPs for HHAs and Supporting Regulations in 42 CFR 484.11 and 484.20; *Form No.:* CMS–R–209 (OMB# 0938–0761); *Use:* HHAs are required to report data from the OASIS as a condition of participation. Specifically, the above named regulations sections provide guidelines for HHAs for the electronic transmission of the OASIS data as well as responsibilities of the State agency or OASIS contractor in collecting and transmitting this information to HCFA. These requirements are necessary to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs, and to establish a prospective payment system for HHAs.; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Government; *Number of Respondents:* 6,900; *Total Annual Responses:* 85,200; *Total Annual Hours:* 838,408.

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Business Proposal Formats for Quality Improvement Organizations (QIOs)—previously known as Peer Review Organizations and Supporting Regulations in 42 CFR, Section 475.101—475.107; *Form No.:* CMS–718–721 (OMB# 0938–0579); *Use:* The submission of proposal information by current QIOs and other bidders, on the appropriate forms, will satisfy CMS's need for meaningful, consistent, and verifiable data with which to evaluate contract proposals; *Frequency:* tri-annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours:* 455.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, *Attention:* Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 6, 2003.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–3786 Filed 2–14–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: (1) TANF Data Report, ACF–199; (2) SSP–MOE Data Report, ACF–209.

OMB No.: 0970–0199.

Description: States, the District of Columbia and certain U.S. territories are required by 42 U.S.C. 611 and 45 CFR part 265 to collect on a monthly basis and report to HHS on a quarterly basis a wide variety of disaggregated case record information for their programs funded under TANF. If a respondent wants to qualify for a high performance bonus or receive a caseload reduction credit, the respondent must submit similar data for its separate state programs. A respondent may comply with these requirements by collecting and submitting case record information for its entire caseload or for a portion of the caseload that is obtained through the use of scientifically acceptable sampling methods. HHS collects the information electronically through the use of the TANF Data Report (ACF–199) and the SSP–MOE Data Report (ACF–209) and their associated TANF Sampling and Statistical Methods Manual. HHS is proposing to extend this information collection for another three years.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report, ACF–199	54	4	2,193.74	473,848
SSP–MOE Data Report	17	4	1,662	113,016
Estimated Total Annual Burden Hours				586,864

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3856 Filed 2–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: 45 CFR part 95, section F.

OMB No.: 0992–0005.

Description: The advance planning document (APD) process, established in the rules at 45 CFR part 95, subpart F, is the procedure by which States request and obtain approval for Federal financial participation in their cost of acquiring automatic data processing equipment and services. The APD submitted by the State Agency provides the Department of Health and Human Services (HHS) with the following information necessary to determine the State's need to acquire the requested ADP equipment and/or services:

1. A statement of need;
2. A requirements analysis and feasibility study;
3. A cost benefit analysis;
4. A proposed activity schedule; and,
5. A proposed budget.

DHHS' determination of a State agency's need to acquire requested ADP equipment of services is authorized at sections 402(a)(5), 452(a)(1), 1902(a)(4) and 1102 of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Advance Planning Document	50	1.84	60	5,520
RFP and Contract	50	1.54	1.5	115.5
Emergency Funding Request	27	1	1	27
Service Agreements	14	1	1	14
Biennial Reports	50	1	1.5	75
Estimated Total Annual Burden Hours				5,751.5

Respondents

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3857 Filed 2–14–03; 8:45 am]

BILLING CODE 484–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Building Strong Families Demonstration and Evaluation.

OMB No.: New collection.

1. *Description:* The Building Strong Families (BSF) project is an important opportunity to learn whether well-designed interventions can help couples fulfill their aspirations for a healthy marriage and a strong family. The project will assess the net impact of interventions with low-income, unwed couples beginning around the time of a child's birth. The programs will be designed to help such couples strengthen their relationship, achieve a healthy marriage if that is the path they choose, and thus enhance child and family well-being. The programs will be designed around two main components. First, the programs will provide instruction and support to improve marriage and relationship skills and enhance couples' understanding of marriage. This focus is the distinctive component of the BSF project. In addition, BSF programs will provide a variety of other services that could help low-income couples sustain a healthy relationship (*e.g.*, employment assistance). The early project period will be used to gather information from multiple sources in order to develop program models to be tested and evaluated. One important source of information will be low-income unwed parents and newly married couples.

2. *Respondents:* The respondents for the Focus Group Protocols and information sheets are low-income, unmarried, expectant or recent parents and newly married couples with children who volunteer to participate in focus groups. The attendance goal for each group is eight to 12 people in a total of 26 focus groups for a total of 208 to 312 respondents. Eight types of focus groups are planned: mothers alone, fathers alone, unwed couples, and recently married couples in each of two settings. The planned settings are: (1)

Selective settings (*i.e.*, venues selected in which we have or can establish relationships with organizations that can identify and encourage participation by low-income couples/parents) in order to gain information and insights early in the project development period; and (2) site-specific settings, after programs become part of the formal study, to help inform site-specific program designs to address needs among the target population. The selective settings will be the focus of the first round of information collection.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Focus Group Protocol	144	1	1.5	216
Information Sheet	144	1	.10	14.4
Estimated Total Annual Burden Hours				230.4

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–3858 Filed 2–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project: Collection of data on American Indian and Alaska Native needy families receiving temporary assistance from programs operated by American Indian and Alaska Native entities (Indian tribes).

Title: Tribal Temporary Assistance For Needy Families Program (Tribal TANF) Data Reporting Instructions and Requirements.

OMB No: 0970–0215.

Description: 42 U.S.C. 612 (section 412 of the Social Security Act—the Act—as amended by Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996—PRWORA) mandates that Federally recognized Indian tribes with an approval tribal TANF program collect and submit to the Secretary of the Department of Health and Human Services (HHS) data on the recipients served by their programs. Instructions and requirements for submitting that data are the subject of this request for comments.

Respondents: Indian tribes that have an approved tribal TANF program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal TANF Data reports	56	24	50	67,200
Estimated Total Burden:				67,200

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3859 Filed 2–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0034]

Agency Information Collection Activities; Proposed Collection; Comment Request; FDA Safety Alert/ Public Health Advisory Readership Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for the FDA Safety Alert/Public Health Advisory Readership Survey.

DATES: Submit written or electronic comments on the collection of information by April 21, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Safety Alert/Public Health Advisory Readership Survey (OMB Control No. 0910–0341)—Extension

Section 705(b) (21 U.S.C. 375(b)) of the Federal Food, Drug, and Cosmetic Act (the act) authorizes FDA to disseminate information concerning imminent danger to public health by any regulated product. The Center for Devices and Radiological Health (CDRH) communicates these risks to user communities through two publications: (1) The FDA Safety Alert and (2) the Public Health Advisory. Safety alerts and advisories are sent to organizations such as hospitals, nursing homes, hospices, home health care agencies, manufacturers, retail pharmacies, and other health care providers. Subjects of previous alerts included spontaneous combustion risks in large quantities of patient examination gloves, hazards associated with the use of electric heating pads, and retinal photic injuries from operating microscopes during cataract surgery.

Section 1701(a)(4) (42 U.S.C. 300u(a)(4) of the Public Health Service Act authorizes FDA to conduct research relating to health information. FDA seeks to evaluate the clarity, timeliness, and impact of safety alerts and public health advisories by surveying a sample of recipients. Subjects will receive a questionnaire to be completed and returned to FDA. The information to be collected will address how clearly actions for reducing risk are explained, the timeliness of the information, and whether the reader has taken any action to eliminate or reduce risk as a result of information in the alert. Subjects will also be asked whether they wish to receive future alerts electronically, as well as how the safety alert program might be improved.

The information collected will be used to shape FDA's editorial policy for the safety alerts and public health advisories. Understanding how target audiences view these publications will aid in deciding what changes should be considered in their content, format, and method of dissemination.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
308	3	924	.17	157

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the history of the safety alert and public health advisory program, it is estimated that an average of three collections will be conducted a year. The total burden of response time is estimated at 10 minutes per survey. This was derived by CDRH staff completing the survey and through discussions with the contacts in trade organizations.

Dated: February 10, 2003.
Margaret M. Dotzel,
Assistant Commissioner for Policy.
[FR Doc. 03–3816 Filed 2–14–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0280]

Agency Information Collection Activities; Announcement of OMB Approval; Filing Objections and Requests for a Hearing on a Regulation or Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Filing Objections and Requests for a Hearing on a Regulation or Order" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 29, 2002 (67 FR 71178), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0184. The approval expires on February 28, 2006. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 10, 2003.
Margaret M. Dotzel,
Assistant Commissioner for Policy.
[FR Doc. 03–3817 Filed 2–14–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–63), notice is hereby given of the following Federal advisory committee meeting. The meeting will be open to the public.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: March 27, 2003, 5 p.m.–7 p.m.; March 28, 2003, 8:30 a.m.–5 p.m.; March 29, 2003, 9 a.m. to 5:30 p.m.; March 30, 2003, 8 a.m.–10:30 a.m.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009, (202) 797–2000.

Agenda: The agenda will focus on meeting with Agency management to determine the desired areas of recommendations for the Council to address in the upcoming year. The Council will also review the new NHSC Legislation to discuss possible areas of recommendations. Agenda items and times are subject to change as priorities dictate.

For Further Information Contact: Tira Robinson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 594–4140.

Dated: February 11, 2003.
Jane M. Harrison,
Director, Division of Policy Review and Coordination.
[FR Doc. 03–3814 Filed 2–14–03; 8:45 am]
BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for CSAT Practice Improvement Collaborative Cooperative Agreements: Strengthening Treatment Access and Retention (Short Title: Strengthening Access and Retention (SAR)).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Request for Applications (RFA), including Part I, *CSAT Practice Improvement Collaborative Cooperative Agreements: Strengthening Treatment Access and Retention (TI 03–006) (Short Title: Strengthening Access and Retention (SAR))*, and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements*, before preparing and submitting an application.

Activity	Application deadline	Est. Funds FY 2003	Est. No. of awards	Project period
CSAT Practice Improvement. Collaborative Cooperative. Agreements: Strengthening. Treatment Access and Retention	May 12, 2003	$2.5 million	12–14	3 years

The actual amount available for the award may vary depending on unanticipated program requirements and actual SAMHSA appropriations. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of State Training and Evaluation of Evidence-Based Practices grants. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund the grants. This program is authorized under Section 509 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications

were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: The National Clearinghouse for Alcohol and Drug Information (NCADI): (800) 789–2647 or (800–487–4889 TDD).

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is accepting applications for fiscal year (FY) 2003 funds for cooperative agreements to implement effective clinical and administrative practices to improve client access and retention in substance abuse treatment.

Eligibility: Public and domestic private nonprofit entities are eligible to apply, including units of State or local government, tribal governments and organizations, and community-based organizations, including faith-based organizations.

Since SAMHSA/CSAT believes that only an existing, experienced, and appropriately credentialed provider with demonstrated capacity and expertise will be able to conduct the required practice improvement activities, the treatment providers implementing the proposed project must meet three criteria:

- The provider must have been providing treatment services for a minimum of two years prior to the date of this application.
- If the applicant organization is not a direct provider of substance abuse treatment services, the applicant must document a commitment from an experienced, licensed substance abuse treatment provider to implement the proposed project.
- The provider must be in compliance, at the time the application is submitted, with all local, city, county and State requirements for licensing, accreditation, or certification.

Availability of Funds: It is expected that approximately $2.5 million will be available for twelve to fourteen awards in FY 2003. The average annual award will be $175,000 to $200,000 in total costs (direct and indirect). Applications with proposed Federal budgets that exceed $200,000 will be returned without review.

Period of Support: Awards may be requested for up to 3 years.

Criteria for Review and Funding:

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on program issues, contact: Suzanne Cable, Division of Services Improvement, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9713, [e-mail] *scable@samhsa.gov*; or Frances Cotter, MA, MPH, Division of Services Improvement, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9713, [e-mail] *fcotter@samhsa.gov*.

For questions on program issues related to rural populations in need of medication assisted therapy for addiction to heroin or prescription opiates contact: Jacqueline Hendrickson, Division of Pharmacologic Therapies, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1109, [e-mail] *jhendri@samhsa.gov*.

For questions on grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, [e-mail] *shudak@samhsa.gov*.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the

applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under "Assistance with Grant Applications". The SPOC should send any State review process recommendations directly to:

Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 10, 2003.

Richard Kopanda,

Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–3815 Filed 2–14–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Certificate of Degree of Indian or Alaska Native Blood Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed agency information collection activities; comment request.

SUMMARY: The Bureau of Indian Affairs is seeking comments from the public on an extension of an information collection from persons seeking proof of American Indian or Alaska Native blood, as required by the Paperwork Reduction Act. The information collected under OMB Clearance Number 1076–0153 will be used to establish that the applicants meet requirements for official recognition as an American Indian or Alaska native for purposes of eligibility determination and participation in programs administered through the U. S. Bureau of Indian Affairs.

DATES: Submit comments on or before April 21, 2003.

ADDRESSES: Written comments can be sent to Duane Bird Bear, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop: 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Newman, Tribal Government Services Specialist/Enrollment, at 202–513–7641.

SUPPLEMENTARY INFORMATION: This collection was originally approved and assigned OMB Control No. 1076–0153 when it was submitted with a proposed rulemaking, 25 CFR part 70, which was published in the **Federal Register** on April 18, 2000 (66 FR 20775). The proposed rulemaking has not been finalized due to numerous requests from individuals and Indian tribal governments for extensions of time for comments. Several extensions of time for the submission of public comments were granted. The period for public comment ended on December 31, 2001. The Bureau of Indian Affairs, through the development of the proposed rule, is attempting to bring its decision-making procedures regarding the issuance of CDIB forms in line with the Administrative Procedures Act, 5 U.S.C. 553, as mandated by section 552, and as directed in the 1986 decision of the Interior Board of Indian Appeals (IBIA), Office of Hearings and Appeals, U.S. Department of the Interior, in *Morgan Underwood, Sr.* v. *Deputy Assistant Secretary—Indian Affairs (Operations)*, 93 I.D. 13, 11 IBIA 3 (IBIA, January 31, 1986). However, there is legal support for the information collection in that currently existing federal laws and regulations require some form of proof of Indian blood for various purposes, including ownership of lands held in trust by the United States for benefit of Indian landowners who are members of federally-recognized Indian tribes (including Alaska Native villages), especially at those locations where the Indian tribe or Alaska native village has minimum Indian blood degree requirements for membership.

The public is advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB clearance number. For example, this collection is listed by OMB as Control No. 1076–0153, and it expires 06/30/2003. The response is voluntary to obtain or retain a benefit.

We are requesting comments about the proposed collection to evaluate:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made;

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility;

(c) The quality, utility, and clarity of the information to be collected; and

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

Please submit your comments to the person listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, are open for public review during (regular business hours). If you wish your name and address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

Type of review: Renewal.

Title: Request for Certificate of Degree of Indian or Alaska Native Blood.

Affected Entities: Individual Indian Applicants.

Size of Respondent Pool: 287,400.

Number of Annual Responses: 287,400.

Hours per response: 1.5.

Total Annual Hours: 433,500.

Dated: February 6, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–3830 Filed 2–14–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1610–DS]

Notice of Availability of the Supplemental Draft Environmental Impact Statement for the Jack Morrow Hills Coordinated Activity Plan/Draft Green River Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Supplemental Draft Environmental Impact Statement (SDEIS) for the Jack Morrow Hills Coordinated Activity Plan (CAP)/Draft Green River Resource Management Plan (RMP) Amendment, Wyoming.

SUMMARY: The Bureau of Land Management (BLM), in cooperation with the State of Wyoming, county governments, and conservation districts located within the planning area, have prepared an SDEIS for the Jack Morrow Hills CAP/Draft RMP Amendment. This is an integrated activity planning effort for the BLM-administered public lands and resources in the Jack Morrow Hills area, located in Sweetwater, Fremont, and Sublette Counties, Wyoming. When completed, the EIS for the Jack Morrow Hills CAP/Green River RMP Amendment will provide more specific management direction to address potential conflicts among energy resources development, recreational activities and facilities, livestock grazing, important wildlife habitat, cultural resources, and other important resource and land uses in the planning area. The planning area encompasses approximately 622,000 acres, of which 585,000 acres are public land surface and Federal mineral estate administered by the BLM through its Rock Springs Field Office in Rock Springs, Wyoming. The SDEIS documents the analysis of five alternatives, ranging from preservation to full development. Ultimately, the approved EIS for the Jack Morrow Hills CAP/RMP Amendment will include land and resource management decisions for fluid mineral leasing and mineral location in the core area, where these decisions were deferred in the Green River RMP prepared in 1997. These decisions will constitute an amendment to the Green River RMP. Other decisions made in the Green River RMP, in the balance of the planning area, may also be modified, resulting in further amendment to the RMP. Other actions resulting from this planning effort are expected to include the use of adaptive management approaches to decision making. Areas involved include: transportation planning, off-highway-vehicular use designations and designation of roads for use, livestock grazing practices, recreational activities and facilities, identification of rights-of-way windows and concentration and avoidance areas, and prescriptions for managing wildlife habitat.

DATES: Written comments on the SDEIS for the Jack Morrow Hills CAP/ Draft RMP Amendment will be accepted for 90 days following the date the Environmental Protection Agency publishes the notice of availability of the SDEIS for the Jack Morrow Hills CAP/ Draft RMP Amendment in the **Federal Register**, projected to be February 14, 2003. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, or mailings.

ADDRESSES: Written comments should be sent to: Jack Morrow Hills CAP Team Leader, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901. Please visit Web site *www.wy.blm.gov/jmhcap* for a link to submit comments by electronic mail. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Copies of the SDEIS for the Jack Morrow Hills CAP/Draft RMP Amendment are available in the Rock Springs Field Office at the above address; the Bureau of Land Management Lander Field Office, 1335 Main Street, Lander, Wyoming 82520; and the Bureau of Land Management Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. The supplemental draft EIS will also be available on the internet at the above Web site address. Anyone wishing to be placed on the mailing list for the Jack Morrow Hills CAP planning effort should contact the Rock Springs Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Murphy, Acting Field Manager, or Renee Dana, Jack Morrow Hills CAP Team Leader, Rock Springs Field Office, Bureau of Land Management, at the above address; or phone 307–352–0256.

SUPPLEMENTARY INFORMATION: Based upon concerns raised by the public during preparation of the Green River RMP, the BLM is now preparing the SDEIS for the Jack Morrow Hills CAP/ Draft RMP Amendment. When completed, the EIS for the Jack Morrow Hills CAP/RMP Amendment will provide management direction for the protection of important resources (*e.g.*, desert elk and other big game habitat, unique sand dune-mountain shrub habitat, unstabilized-stabilized sand dunes), while allowing for appropriate levels of leasing and development of energy resources, recreational activities, livestock grazing, and other activities. The planning area encompasses the Steamboat Mountain, Greater Sand Dunes, Oregon Buttes, and White Mountain Petroglyphs Areas of Critical Environmental Concern (ACEC). There are also seven Wilderness Study Areas (WSAs) and part of the South Pass Historic Landscape ACEC located in the planning area.

The entire planning area contains about 622,330 acres of Federal, State, and private lands. The core area, where the Green River RMP fluid minerals leasing and mineral location decisions have been deferred, contains approximately 85,000 acres. This planning effort addresses the level and timing of mineral leasing and development, while sustaining other important land and resource uses such as big game habitat, recreation, and livestock grazing. Other actions considered in this planning effort include use of adaptive management approaches to decisionmaking. Based on monitoring of actual impacts and effectiveness of management, BLM proposes to adapt management practices for transportation planning, off-highway-vehicular use designations and designation of roads for use, livestock grazing practices, recreational activities and facilities, identification of rights-of-way corridors and avoidance areas, and prescriptions for managing wildlife habitat.

Public participation has been sought through scoping, public meetings, and field trips to ensure that this planning effort addresses all issues and concerns from those interested in the management of the public lands within the planning area.

The BLM's preferred alternative consists of management actions from the other alternatives and a few actions that are unique to the Preferred Alternative. The Preferred Alternative employs the technique of Adaptive Management (AM). AM is a process of studying and monitoring the effects of incremental implementation of management decisions. The AM process includes identification, selection, and monitoring of indicators and thresholds. These measures are chosen to clarify and enhance information about the effect of land management decisions. Existing decisions are modified based on the new information and another round of adaptive decisions is begun. Opportunities for public participation will be provided throughout the AM process. Development of the preferred alternative was based on public comment and the analysis of the other alternatives and was formulated to represent the best mix and balance for a multiple use land and resource management activity plan for the BLM-administered public lands and resources in the planning area. Comments regarding the AM process are important to assist in the final document as it relates to process, thresholds, and monitoring indicators.

There are seven existing wilderness study areas (WSAs) within the planning area. Until Congress acts, the WSAs will be managed under the Interim Wilderness Management Policy.

Alan L. Kesterke,

Acting State Director.

[FR Doc. 03–2369 Filed 2–12–03; 4:51 pm]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-930-03-1310-DO]

Notice of Intent to Prepare an Environmental Impact Statement on a Proposed Development of Oil Facilities in the National Petroleum Reserve—Alaska and the Colville River Delta

AGENCY: Bureau of Land Management; Alaska State Office, Interior.

ACTION: Notice of intent (NOI) to prepare an Environmental Impact Statement (EIS) for full field development in connection with ConocoPhillips's Alpine Satellite Development Program within the National Petroleum Reserve—Alaska (NPR–A) and in the Colville River Delta.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) Alaska State Office will be preparing a full field development EIS in connection with the ConocoPhillips Alpine Satellite Development Program. The BLM is the lead Federal agency in the development of this EIS. The United States Army Corps of Engineers (USACE), the Environmental Protection Agency (EPA), and the State of Alaska are cooperating agencies. The project area is located on the North Slope of Alaska in the Colville River Delta and in the northeast portion of the NPR–A.

This EIS will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), other relevant laws and regulations, and the management policies of the BLM, the USACE, EPA, and the State of Alaska. The BLM will work collaboratively with interested parties to identify the issues concerning the project that need to be addressed in the EIS, assure an appropriate range of alternatives, and develop mitigation that is suited to local, regional, and national needs and concerns. The public scoping process will help identify these issues, alternatives, and potential mitigation, as well as help provide resource, socio-economic, subsistence, and other valuable information for the development of the EIS.

DATES: This notice initiates the public scoping process. Scoping comments can be submitted in writing to the address listed below and will be accepted through March 31, 2003. All public meetings will be announced through the local news media, a mailing, and the web site developed for the project, *http://www.alpine-satellites-eis.com.*

Public Participation: In order to ensure local community participation and input, public scoping meetings will be held in Anchorage, Barrow, Fairbanks, and Nuiqsut. In addition to the scoping process, there will be opportunities for public participation and comment on the draft EIS.

ADDRESSES: Written comments may be mailed to Alpine Satellite Development Program EIS, Entrix, Inc., 3701 East Tudor Road, Suite 205, Anchorage, Alaska 99507; faxed to 907–563–0439; hand-delivered to Entrix, Inc., 3701 East Tudor Road, Suite 205, Anchorage, Alaska or to the BLM Public Information Center in the Federal Building, 222 W. 7th Avenue, Anchorage, Alaska; or forwarded electronically through the project website at *http://www.alpine-satellites-eis.com.* Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Jim Ducker, Telephone 907–271–3130; email *Jim_Ducker@blm.gov.*

SUPPLEMENTARY AND BACKGROUND INFORMATION: The EIS will analyze the development proposal submitted by ConocoPhillips Alaska, Inc (CPAI). The company's proposal includes development of two oil and gas accumulations in the Colville Delta east of NPR–A and three accumulations within NPR–A. The EIS also will examine full field development of additional well sites and one or more new processing facilities within the field.

The development on Federal lands within NPR–A is subject to the management direction provided by BLM's Record of Decision for the Northeast National Petroleum Reserve-Alaska Integrated Activity Plan/ Environmental Impact Statement (Northeast NPR–A IAP/EIS). The Record of Decision for this full field development EIS may amend the Northeast NPR–A IAP/EIS. Any amendment, including exceptions to requirements to the Northeast NPR–A IAP/EIS, would be limited to those necessary for the development authorized by BLM following completion of this EIS and will not constitute a general amendment of the Northeast NPR–A IAP/EIS.

CPAI currently operates their Alpine Central Processing Facility (ACPF) near Nuiqsut, Alaska. CPAI has proposed to develop oil and gas from five satellites. Two satellites known as CD–3 (CD North during exploration) and CD–4 (CD South) are in the Colville Delta. Three other proposed satellites known as CD–5, CD–6, and CD–7 (Alpine West, Lookout, and Spark, respectively, during exploration) are in the NPR–A. The CD–3 and CD–4 satellite locations involve lands owned, respectively, by the State of Alaska and by Kuukpik Corporation, a Native-owned corporation created by the Alaska Native Claims Settlement Act (ANCSA). The state and another ANCSA corporation, the Arctic Slope Regional Corporation (ASRC), own the oil and gas associated with these two satellites. CD–5 is proposed to be located within NPR–A on Kuukpik land and an ASRC oil and gas lease. CD–6 and CD–7 are located on oil and gas leases in the Northeast portion of NPR–A that are administered by the BLM.

CPAI's proposed development of CD–3 would consist of a gravel pad capable of supporting up to 32 wells. The site would also contain a gravel airstrip that would be used for access to the site. The proposed development of CD–4 would include a gravel pad capable of supporting up to 32 wells and the construction of a 3.6-mile gravel road that would connect the site to the Alpine facility. The proposed CD–5 would require a gravel pad capable of supporting 20–30 wells and the construction of approximately 3 miles of gravel road with a vehicle-capable bridge to cross the Nigliq Channel. The proposed CD–6 development would require a gravel pad capable of supporting up to 30 wells and the construction of approximately 10 miles of all weather gravel road that would connect to CD–5. The proposed CD–7 production site development would require a gravel pad capable of supporting up to 30 wells and the construction of approximately 6 miles of gravel road that would connect CD–6 and CD–7.

Utility lines would connect each of the satellite pads to ACPF. Oil and gas products produced at these sites would be transported by a pipeline to the ACPF and after processing the finished product would be transported through an existing pipeline to the Kuparuk facility and from Kuparuk through existing pipelines to the Trans-Alaska Pipeline System.

Henri R. Bisson,

State Director, Bureau of Land Management, Alaska State Office.

[FR Doc. 03–3821 Filed 2–14–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–5101–00–A199; AZA 017002]

Notice of Application, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of application.

SUMMARY: In accordance with regulations found at 43 CFR 2882.3 (b) the Bureau of Land Management has received a right-of-way application from Red Lake Gas Storage L.P. (Red Lake). Red Lake proposes to construct an underground natural gas storage facility on private lands approximately 30 miles north of Kingman, Arizona. The storage facility would consist of two solution mined salt caverns and appurtenant facilities. Portions of the project would affect public lands administered by the Bureau of Land Management (BLM), Kingman Field Office. Subsequently, Red Lake has submitted an application requesting a right-of-way for a 30-mile-long natural gas pipeline (36-inch diameter), access road, brine disposal pipeline (18-inch diameter), interconnect facility/meter station (5.0 acres), and extra work space during construction (8.01 acres).

Interested parties may view the application at the BLM, Kingman Field Office located at 2475 Beverly Avenue, Kingman, Arizona. The office hours are 7:30 a.m. to 4:30 p.m. Monday through Friday. The application may also be viewed at the Kingman Public Library located at 3269 N. Burbank Street, Kingman, Arizona. The Library hours are: Monday, Friday and Saturday from 10 a.m. to 6 p.m.; Tuesday from 9 a.m. to 8 p.m.; Wednesday from 10 a.m. to 8 p.m.; Thursday from 9 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Lucas Lucero, 602–417–9532.

Dated: December 19, 2002.

Ruben Sanchez,

Acting Field Manager.

[FR Doc. 03–3770 Filed 2–14–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0136).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 206, subpart C, Federal Oil. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled: "30 CFR Part 206, Subpart C, Federal Oil."

DATES: Submit written comments on or before March 20, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206, Subpart C, Federal Oil.

OMB Control Number: 1010–0136.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. MMS assists the Secretary in performing the royalty management functions.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, requires that the Secretary "establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner." In order to accomplish these tasks, MMS developed valuation regulations for Federal leases at 30 CFR part 206, subpart C. These regulations were published as a final rule in the **Federal Register** on March 15, 2000 (65 FR 14022). Market value is a basic principle underlying royalty valuation. Consequently, these regulations include methods to capture the true market value of crude oil produced from Federal leases, both onshore and offshore.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to assure that the royalties are paid appropriately. The valuation regulations at 30 CFR part 206, subpart C, require companies to collect and/or submit information used to value their Federal oil.

MMS is requesting OMB's approval to continue to collect this information. Not collecting the information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive

nature included in this information collection.

Frequency: Annually.

Estimated Number and Description of Respondents: 69 Federal lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 12,431 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

30 CFR 206 section	Reporting requirements	Burden hours per response	Annual number of responses	Annual burden hours
206.103 (a), (b), (c), and (e)	Calculate value of oil not sold at arm's-length	Category 1 = 222.50 [1] Category 2 = 116.00 [2] Category 3 = 31.25 [3]	13 4 28	2,892 464 875
	Obtain MMS approval for tendering program	400	2	800
	Obtain MMS approval for alternative valuation methodology.	400	2	800
	Obtain MMS approval to use value determined at refinery.	330	1	330
206.107(a)	Request a value determination from MMS	330	8	2,640
206.109(c)(2)	Request to exceed regulatory limit—Form MMS–4393.	Burden covered under OMB Control Number 1010–0095.		
206.110(b), (c), and (e)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under an arm's-length contract.	330	1	330
	Propose transportation cost allocation method to MMS when transporting gaseous and liquid products under an arm's-length contract.	330	1	330
	You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.	330	1	330
206.110(c)(1) and 206.111(1)(2)	Amend your Form MMS–2014 if MMS rejects your cost allocation.	Burden covered under OMB Control Number 1010–0140.		
206.111(g), (k), and (l)	Propose change of depreciation method for non-arm's-length transportation allowances to MMS.	330	1	330
	Propose transportation cost allocation method to MMS when transporting more than one liquid product under a non-arm's-length contract.	330	1	330
	Propose transportation cost allocation method to MMS when transporting gaseous and liquid product under a non-arm's-length contract.	330	1	330
206.112(b) and (f)	Request MMS approval for location/quality adjustment under non-arm's-length exchange agreements.	330	1	330
	Request MMS for location/quality adjustment when information is not available.	330	4	1,320
206.114 and 115(a)	Report a separate entry for transportation allowances—Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
Total			69	12,431

[1] Category 1 lessees are companies with over 30 million barrels of annual domestic production.
[2] Category 2 lessees are companies with between 10 and 30 million barrels of annual domestic production.
[3] Category 3 lessees are companies with less than 10 million barrels of annual domestic production.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a **Federal Register** notice (67 FR 62985) on October 9, 2002, announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by March 20, 2003.

Public Comment Policy: We will post all comments in response to this notice on our web site at *www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 6, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–3788 Filed 2–14–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)–1371]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), Justice

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *http://www.it.ojp.gov/global.*

DATES: The meeting will take place on Tuesday, April 1, 2003, from 1 p.m. to 5 p.m. ET, and Wednesday, April 2, 2003, from 9 a.m. to 12 Noon ET.

ADDRESSES: The meeting will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202; Phone: (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone: (202) 616–0532. [note: this is not a toll-free number]; E-mail: *mccrearj@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a *space available* basis. *Access to the meeting will not be allowed without registration.* All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the Designated Federal Employee (DFE).

J. Patrick McCreary,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 03–3787 Filed 2–14–03; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Science Foundation

ACTION: Submission for OMB Review; Comment Request Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 69574 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW Room 10235, Washington DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of NSF Support for Undergraduate Research Opportunities (URO).

OMB Number: 3145–0121.

Type of Request: Intent to seek approval to reinstate an information collection for one year.

Abstract: "Evaluation of NSF Support for Undergraduate Research Opportunities (URO)".

Proposed Project: The National Science Foundation (NSF) manages a number of programs that provide meaningful research experiences for undergraduate students. This suite of programs include: Research Experiences for Undergraduates (REU), both the Site and Supplement components; Research in Undergraduate Institutions (RUI); the undergraduate research components in several of NSF's large research centers programs, e.g., Engineering Research Centers (ERC) Programs, Science and Technology Centers (STCs); and several institution-wide human resources development programs in which undergraduate research experiences are often one component.

These Programs provide a wide range of U.S. undergraduate students with opportunities to conduct hands-on research under the mentorship of graduate students, postdoctoral fellows, and faculty in various types of higher education institutions, including small liberal arts colleges, minority-serving institutions, single-sex institutions, comprehensive universities, research universities, as well as non-profit institutions in which science or engineering research is conducted.

The purpose of the proposed evaluation is to examine the impact of undergraduate research experiences supported by NSF on the undergraduate student and faculty and other mentors who participate. Study questions include: Why do undergraduates choose to participate in research activities? What are the perceived advantages and disadvantages to faculty for mentoring undergraduates in research activities? What are the criteria for selecting students for research activities? What kinds of activities comprise undergraduate "research" experiences? How do undergraduate research experiences affect students' decisions about their academic and work future?

Use of the Information: The information will allow NSF to review its portfolio of programs in which a substantial number of undergraduates participate in research projects of faculty and other mentors to determine whether there needs to be any rebalancing. In addition, it will include an inventory of undergraduate research opportunities around the U.S. and contribute to the literature on best practices in undergraduate research experiences.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Individuals.

Estimated Number of Respondents: 9,333.

Estimated Total Annual Burden on Respondents: 4,328 hours.

Frequency of Responses: One time.

Dated: February 12, 2003.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–3825 Filed 2–14–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1), License Nos. (as shown in Attachment 1) EA–03–009]

In the Matter of: All Pressurized Water Reactor Licensees; Order Modifying Licenses (Effective Immediately)

I

The Licensees identified in the Attachment to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of pressurized water reactor (PWR) nuclear power plants in accordance with the Atomic Energy Act of 1954 and 10 CFR part 50.

II

The reactor pressure vessel (RPV) heads of PWRs have penetrations for control rod drive mechanisms and instrumentation systems. Nickel-based alloys (e.g., Alloy 600) are used in the penetration nozzles and related welds. Primary coolant water and the operating conditions of PWR plants can cause cracking of these nickel-based alloys through a process called primary water stress corrosion cracking (PWSCC). The susceptibility of RPV head penetrations to PWSCC appears to be strongly linked to the operating time and temperature of the RPV head. Problems related to PWSCC have therefore increased as plants have operated for longer periods of time. Inspections of the RPV head nozzles at the Oconee Nuclear Station, Units 2 and 3 (Oconee), in early 2001 identified circumferential cracking of the nozzles above the J-groove weld, which joins the nozzle to the RPV head. Circumferential cracking above the J-groove weld is a safety concern because of the possibility of a nozzle ejection if the circumferential cracking is not detected and repaired.

Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), which is incorporated into NRC regulations by 10 CFR 50.55a, "Codes and standards," currently specifies that inspections of the RPV head need only include a visual check for leakage on the insulated surface or surrounding area. These inspections may not detect small amounts of leakage from an RPV head penetration with cracks extending through the nozzle or the J-groove weld. Such leakage can create an environment that leads to circumferential cracks in RPV head penetration nozzles or corrosion of the RPV head. In response to the inspection findings at Oconee and because existing requirements in the ASME Code and NRC regulations do not adequately address inspections of RPV head penetrations for degradation due to PWSCC, the NRC issued Bulletin 2001–01, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles," dated August 3, 2001. In response to the Bulletin, PWR Licensees provided their plans for inspecting RPV head penetrations and the outside surface of the heads to determine whether any nozzles were leaking.

In early March 2002, while conducting inspections of reactor vessel head penetrations prompted by Bulletin 2001–01, the Licensee for the Davis-Besse Nuclear Power Station (Davis-Besse) identified a cavity in the reactor vessel head near the top of the dome. The cavity was next to a leaking nozzle with a through-wall axial crack and was in an area of the reactor vessel head that the Licensee had left covered with boric acid deposits for several years. On March 18, 2002, the NRC issued Bulletin 2002–01, "Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity," which requested PWR Licensees to provide information on their reactor vessel head inspection and maintenance programs, the material condition of their reactor vessel heads, and their boric acid inspection programs. In their responses, the Licensees provided information about their boric acid inspection programs and their inspections and assessments to ensure that their respective plant did not have reactor vessel head degradation like that identified at Davis-Besse.

The experience at Davis-Besse and the discovery of leaks and nozzle cracking at other plants reinforced the need for more effective inspections of RPV head penetration nozzles. The absence of an effective inspection regime could, over time, result in unacceptable circumferential cracks in RPV head penetration nozzles or in the degradation of the RPV head by corrosion. These degradation mechanisms increase the probability of a more significant loss of reactor coolant pressure boundary through ejection of a nozzle or other rupture of the RPV head. The NRC issued Bulletin 2002–02, "Reactor Pressure Vessel Head and Vessel Head Penetration Nozzle Inspection Programs," dated August 9, 2002, requesting that Licensees provide information about their inspection programs and any plans to supplement existing visual inspections with additional measures (e.g., volumetric and surface examinations). Licensees have responded to Bulletin 2002–02 with descriptions of their inspection plans for at least the first refueling outage following the issuance of Bulletin 2002–02 or with a schedule to submit such descriptions before the next refueling outage. Many of the Licensees' responses to Bulletin 2002–02 did not describe long-term inspection plans. Instead the Licensees stated that they would follow guidance being developed by the industry-sponsored Materials Reliability Program.

Inspections performed at several PWR plants in late 2002 found leakage and cracks in nozzles or J-groove welds that have required repairs or prompted the replacement of the RPV head. In addition, as discussed in NRC Information Notice 2003–02, "Recent Experience with Reactor Coolant System Leakage and Boric Acid Corrosion," issued January 16, 2003, leakage has recently occurred at some plants from connections above the RPV head and has required additional assessments and inspections to ensure that the leakage has not caused significant degradation of RPV heads.

III

Based on recent experience, current inspection requirements in the ASME Code and related NRC regulations do not provide adequate assurance that reactor coolant pressure boundary integrity will be maintained for all combinations of construction materials, operating conditions, and operating histories at PWRs. The long-term resolution of RPV head penetration inspection requirements is expected to involve changes to the ASME Code and NRC regulations, specifically 10 CFR 50.55a. Research being conducted by the NRC and industry is increasing our understanding of material performance, improving inspection capabilities, and supporting assessments of the risks to public health and safety associated with potential degradation of the RPV head and associated penetration nozzles. These research activities are important to the long term development of revisions to the ASME Code and NRC regulations.

The operating history of PWRs supports a general correlation among certain operating parameters, including the length of time plants have been in operation, and the likelihood of occurrence of PWSCC of nickel-based alloys used in RPV head penetration nozzles. Bulletin 2002–02 presented a three-tier categorization of susceptibility to RPV head penetration nozzle degradation based on reactor operating durations and temperatures. Licensees' responses to the Bulletin included an estimate of the effective degradation years (EDY) and the appropriate categorization of each plant into one of the three susceptibility categories. Each Licensee proposed an inspection plan for RPV head penetrations based upon the susceptibility to degradation via PWSCC (as represented by the value of EDY calculated for the facility). In addition, recent operating experience has shown that, under certain conditions, leakage from mechanical and welded connections above the RPV head can lead to the degradation of the low alloy steel head by boric acid corrosion.

Revising the ASME Code and subsequently the NRC regulations will take several years. The Licensees' actions to date in response to the NRC bulletins have provided reasonable assurance of adequate protection of public health and safety for the near term operating cycles, but cannot be relied upon to do so for the entire interim period until NRC regulations are revised. Additional periodic inspections of RPV heads and associated penetration nozzles at PWRs, as a function of the unit's susceptibility to PWSCC and as appropriate to address the discovery of boron deposits, are necessary to provide reasonable assurance that plant operations do not pose an undue risk to the public health and safety. Consequently, it is necessary to establish a minimum set of RPV head inspection requirements, as a supplement to existing inspection and other requirements in the ASME Code and NRC regulations, through the issuance of an Order to PWR Licensees.

It is appropriate and necessary to the protection of public health and safety to establish a clear regulatory framework, pending the development of consensus standards and incorporation of revised inspection requirements into 10 CFR 50.55a, directly or through reference to a future version of the ASME Code. In order to provide reasonable assurance of adequate protection of public health and safety for the interim period, all PWR Licenses identified in the Attachment to this Order shall be modified to include the inspection requirements for RPV heads and associated penetration nozzles identified in Section IV of this Order. The NRC requirements imposed by this Order are based on the body of evidence available through February 2003. Continuing research and operating experience may support future changes to the requirements imposed through this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 104b, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered*, effective immediately, *that* all licenses identified in the attachment to this order are modified as follows:

A. To determine the required inspection(s) for each refueling outage at their facility, all Licensees shall calculate the susceptibility category of each reactor vessel head to PWSCC-related degradation, as represented by a value of EDY for the end of each operating cycle, using the following equation:

$$EDY = \sum_{j=1}^{n}\left\{\Delta EFPY_j \exp\left[-\frac{Q_i}{R}\left(\frac{1}{T_{head,j}} - \frac{1}{T_{ref}}\right)\right]\right\}$$

Where:

EDY = total effective degradation years, normalized to a reference temperature of 600 °F

$\Delta EFPY_j$ = operating time in years at $T_{head,j}$

Q_i = activation energy for crack initiation (50 kcal/mole)

R = universal gas constant (1.103×10^{-3} kcal/mole°R)

$T_{head,j}$ = 100% power head temperature during time period j (°R = °F + 459.67)

T_{ref} = reference temperature (600 °F = 1059.67 °R)

n = number of different head temperatures during plant history

This calculation shall be performed with best estimate values for each parameter at the end of each operating cycle for the RPV head that will be in service during the subsequent operating cycle. The calculated value of EDY shall determine the susceptibility category and the appropriate inspection for the RPV head during each refueling outage.

B. All Licensees shall use the following criteria to assign the RPV head at their facility to the appropriate PWSCC susceptibility category:

High—(1) Plants with a calculated value of EDY greater than 12, OR (2) Plants with an RPV head that has experienced cracking in a penetration nozzle or J-groove weld due to PWSCC.

Moderate—Plants with a calculated value of EDY less than or equal to 12 and greater than or equal to 8 AND no previous inspection findings requiring classification as High.

Low—Plants with a calculated value of EDY less than 8 AND no previous inspection findings requiring classification as High.

C. All Licensees shall perform inspections of the RPV head [1] using the following techniques and frequencies.[2]

(1) For those plants in the High category, RPV head and head penetration nozzle inspections shall be performed using the following techniques every refueling outage.[3]

(a) Bare metal visual examination of 100% of the RPV head surface (including 360° around each RPV head penetration nozzle), AND

(b) Either:

(i) Ultrasonic testing of each RPV head penetration nozzle (*i.e.*, nozzle base material) from two (2) inches above the J-groove weld to the bottom of the nozzle and an assessment to determine if leakage has occurred into the interference fit zone, OR

(ii) Eddy current testing or dye penetrant testing of the wetted surface of each J-Groove weld and RPV head penetration nozzle base material to at least two (2) inches above the J-groove weld.

(2) For those plants in the Moderate category, RPV head and head penetration inspections shall be performed such that at least the requirements of 2(a) or 2(b) are performed each refueling outage. In addition the requirements of 2(a) and 2(b) shall each be performed at least once over the course of every two (2) refueling outages.

(a) Bare metal visual examination of 100% of the RPV head surface (including 360° around each RPV head penetration nozzle).

(b) Either:

(i) Ultrasonic testing of each RPV head penetration nozzle (*i.e.*, nozzle base material) from two (2) inches above the J-groove weld to the bottom of the nozzle and an assessment to determine if leakage has occurred into the interference fit zone, OR

(ii) Eddy current testing or dye penetrant testing of the wetted surface of each J-Groove weld and RPV head penetration nozzle base material to at least two (2) inches above the J-groove weld.

(3) For those plants in the Low category, RPV head and head penetration nozzle inspections shall be performed as follows. An inspection meeting the requirements of 3(a) must be completed at least every third refueling outage or every five (5) years, whichever occurs first. If an inspection meeting the requirements of 3(a) was not performed during the refueling outage immediately preceding the issuance of this Order, the Licensee must complete an inspection meeting the requirements of 3(a) within the first two (2) refueling outages following issuance of this Order. The requirements of 3(b) must be completed at least once over the course of five (5) years after the issuance of this Order and thereafter at least every four (4) refueling outages or every seven (7) years, whichever occurs first.

(a) Bare metal visual examination of 100% of the RPV head surface (including 360° around each RPV head penetration nozzle).

(b) Either:

(i) Ultrasonic testing of each RPV head penetration nozzle (*i.e.*, nozzle base material) from two (2) inches above the J-groove weld to the bottom of the nozzle and an assessment to determine if leakage has occurred into the interference fit zone, or

(ii) Eddy current testing or dye penetrant testing of the wetted surface of each J-Groove weld and RPV head penetration nozzle base material to at least two (2) inches above the J-groove weld.

D. During each refueling outage, visual inspections shall be performed to identify potential boric acid leaks from pressure-retaining components above the RPV head. For any plant with boron deposits on the surface of the RPV head or related insulation, discovered either during the inspections required by this Order or otherwise and regardless of the source of the deposit, before returning the plant to operation the Licensee shall perform inspections of the affected RPV head surface and penetrations appropriate to the conditions found to verify the integrity of the affected area and penetrations.

[1] This Order imposes additional inspection requirements. Licensees are required to address any findings from these inspections (*i.e.*, perform analyses and repairs) in accordance with existing requirements in the ASME Code and 10 CFR 50.55a. The NRC has issued guidance to address flaw evaluations for RPV head penetration nozzles (see letter dated November 21, 2001, from J. Strosnider, NRC, to A. Marion, Nuclear Energy Institute) and will, as necessary, issue revised guidance pending the updating of the ASME Code and related NRC regulations.

[2] The requirements of this Order are generally consistent with inspection plans that the NRC staff accepted in letters to some Licensees regarding their responses to Bulletin 2002–02. If the NRC staff has already accepted a specific variation from the requirements of this Order (*e.g.*, inspections to less than two (2) inches above the J-groove weld), the Licensee may continue with the previously accepted inspection plan for the next refueling outage after issuance of this Order, provided that in its response to this Order the Licensee identifies all discrepancies between the requirements of this Order and the previously accepted inspection plan. Licensees proposing to deviate from the requirements of this Order for subsequent refueling outages shall seek relaxation of this Order pursuant to the procedure specified at the end of this Section.

[3] For repaired RPV head penetration nozzles that establish a new pressure boundary, the ultrasonic testing inspection shall include the weld and at least one (1) inch above the weld in the nozzle base material. For RPV head penetration nozzles or J-groove welds repaired using a weld overlay, the overlay shall be examined by either ultrasonic, eddy current, or dye penetrant testing in addition to the examinations required by (1)(b)(i) or (1)(b)(ii).

E. For each inspection required in Paragraph C, the Licensee shall submit a report detailing the inspection results within sixty (60) days after returning the plant to operation.[4] For each inspection required in Paragraph D, the Licensee shall submit a report detailing the inspection results within sixty (60) days after returning the plant to operation if a leak or boron deposit was found during the inspection.

F. In the response required by Section V of this Order, all Licensees shall notify the Commission if: (1) They are unable to comply with any of the requirements of Section IV, or (2) compliance with any of the requirements of Section IV is unnecessary. Licensees proposing to deviate from the requirements of this Order shall seek relaxation of this Order pursuant to the procedure specified below.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause. A request for relaxation regarding inspection of specific nozzles shall also address the following criteria:

(1) The proposed alternative(s) for inspection of specific nozzles will provide an acceptable level of quality and safety, or

(2) Compliance with this Order for specific nozzles would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

Requests for relaxation associated with specific penetration nozzles will be evaluated by the NRC staff using its procedure for evaluating proposed alternatives to the ASME Code in accordance with 10 CFR 50.55a(a)(3).

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific plant; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Assistant General Counsel for Materials Litigation and Enforcement either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[5]

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or request for hearing shall not stay the immediate effectiveness of this order.

Dated this 11th day of February, 2003.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Attachment to Order:

Facilities

Beaver Valley Power Station, Units 1 and 2
Docket Nos. 50–334 and 50–412
License Nos. DPR–66 and NPF–73

Calvert Cliffs Nuclear Power Plant, Units 1 and 2
Docket Nos. 50–317 and 50–318
License Nos. DPR–53 and DPR–69

R.E. Ginna Nuclear Power Plant
Docket No. 50–244
License No. DPR–18

Indian Point Nuclear Generating Station, Units 2 and 3
Docket Nos. 50–247 and 50–286
License Nos. DPR–26 and DPR–64

Millstone Power Station, Units 2 and 3
Docket Nos. 50–336 and 50–423
License Nos. DPR–65 and NPF–49

Salem Nuclear Generating Station, Units 1 and 2
Docket Nos. 50–272 and 50–311
License Nos. DPR–70 and DPR–75

Seabrook Station, Unit 1
Docket No. 50–443
License No. NPF–86

Three Mile Island Nuclear Station, Unit 1
Docket No. 50–289
License No. DPR–50

Catawba Nuclear Station, Units 1 and 2
Docket Nos. 50–413 and 50–414
License Nos. NPF–35 and NPF–52

Crystal River Nuclear Power Plant
Docket No. 50–302
License No. DPR–72

Joseph M. Farley Nuclear Plant, Units 1 and 2
Docket Nos. 50–348 and 50–364
License Nos. NPF–2 and NPF–8

Shearon Harris Nuclear Power Plant, Unit 1
Docket No. 50–400
License No. NPF–63

William B. McGuire Nuclear Station; Units 1 and 2
Docket Nos. 50–369 and 50–370
License Nos. NPF–9 and NPF–17

North Anna Power Station, Units 1 and 2
Docket Nos. 50–338 and 50–339
License Nos. NPF–4 and NPF–7

[4] This reporting requirement supercedes the 30-day reports requested by NRC Bulletin 2002–02.

[5] The version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884, April 29, 2002.

Surry Power Station, Units 1 and 2
Docket Nos. 50–280 and 50–281
License Nos. DPR–32 and DPR–37
Oconee Nuclear Station, Units 1, 2 and 3
Docket Nos. 50–269, 50–270 and 50–287
License Nos. DPR–38, DPR–47 and DPR–55
H.B. Robinson Steam Electric Plant, Unit 2
Docket No. 50–261
License No. DPR–23
St. Lucie Nuclear Plant, Units 1 and 2
Docket Nos. 50–335 and 50–389
License Nos. DPR–67 and NPF–16
Turkey Point Nuclear Generating Station, Units 3 and 4
Docket Nos. 50–250 and 50–251
License Nos. DPR–31 and DPR–41
Sequoyah Nuclear Plant, Units 1 and 2
Docket Nos. 50–327 and 50–328
License Nos. DPR–77 and DPR–79
Watts Bar Nuclear Plant, Unit 1
Docket No. 50–390
License No. NPF–90
Virgil C. Summer Nuclear Station, Unit 1
Docket No. 50–395
License No. NPF–12
Vogtle Electric Generating Plant, Units 1 and 2
Docket Nos. 50–424 and 50–425
License Nos. NPF–68 and NPF–81
Braidwood Station, Units 1 and 2
Docket Nos. STN 50–456 and STN 50–457
License Nos. NPF–72 and NPF–77
Byron Station, Units 1 and 2
Docket Nos. STN 50–454 and STN 50–455
License Nos. NPF–37 and NPF–66
Donald C. Cook Nuclear Plant, Units 1 and 2
Docket Nos. 50–315 and 50–316
License Nos. DPR–58 and DPR–74
Davis-Besse Nuclear Power Station, Unit 1
Docket No. 50–346
License No. NPF–3
Kewaunee Nuclear Power Plant
Docket No. 50–305
License No. DPR–43
Palisades Plant
Docket No. 50–255
License No. DPR–20
Point Beach Nuclear Plant, Units 1 and 2
Docket Nos. 50–266 and 50–301
License Nos. DPR–24 and DPR–27
Prairie Island Nuclear Generating Plant, Units 1 and 2
Docket Nos. 50–282 and 50–306
License Nos. DPR–42 and DPR–60
Arkansas Nuclear One, Units 1 and 2
Docket Nos. 50–313 and 50–368
License Nos. DPR–51 and NPF–6
Callaway Plant, Unit 1
Docket No. 50–483
License No. NPF–30
Comanche Peak Steam Electric Station, Units 1 and 2
Docket Nos. 50–445 and 50–446
License Nos. NPF–87 and NPF–89
Diablo Canyon Nuclear Power Plant, Units 1 and 2
Docket Nos. 50–275 and 50–323
License Nos. DPR–80 and DPR–82
Fort Calhoun Station, Unit 1
Docket No. 50–285
License No. DPR–40
Palo Verde Nuclear Generating Station, Units 1, 2 and 3
Docket Nos. STN 50–528, STN 50–529 and STN 50–530
License Nos. NPF–41, NPF–51 and NPF–74
San Onofre Nuclear Station, Units 2 and 3
Docket Nos. 50–361 and 50–362
License Nos. NPF–10 and NPF–15
South Texas Project Electric Generating Station, Units 1 and 2
Docket Nos. 50–498 and 50–499
License Nos. NPF–76 and NPF–80
Waterford Steam Electric Generating Station, Unit 3
Docket No. 50–382
License No. NPF–38
Wolf Creek Generating Station, Unit 1
Docket No. 50–482
License No. NPF–42

[FR Doc. 03–3835 Filed 2–14–03; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of February 17, 24, March 3, 10, 17, 24, 2003.
PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.
STATUS: Public and Closed.
MATTERS TO BE CONSIDERED:

Week of February 17, 2003

There are no meetings scheduled for the Week of February 17, 2003.

Week of February 24, 2003—Tentative

There are no meetings scheduled for the Week of February 24, 2003.

Week of March 3, 2003—Tentative

Monday, March 3, 2003

10 a.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs—Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m.—Discussion of Security Issues (Closed—Ex. 1)

Week of March 10, 2003—Tentative

There are no meetings scheduled for the Week of March 10, 2003.

Week of March 17, 2003—Tentative

Thursday, March 20, 2003

10 a.m.—Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1)

2 p.m.—Discussion of Management Issues (Closed—Ex. 2)

Week of March 24, 2003—Tentative

Thursday, March 27, 2003

2 p.m.—Briefing on Status of Office of Research (RES) Programs, Performance, and Plans (Public Meeting)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information: "Meeting with National Association of Regulatory Utility Commissioners (NARUC)," originally scheduled for February 24, 2003, has been canceled.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 12, 2003.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 03–3934 Filed 2–13–03; 11:19 am]
BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and

make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, January 24, 2003, through February 6, 2003. The last biweekly notice was published on February 4, 2003 (68 FR 5668).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 20, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

[1] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please *see* 67 FR 20884; April 29, 2002.

present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: December 13, 2002.

Description of amendments request: The proposed amendments would revise Technical Specification 3.5.2, Emergency Core Cooling System—Operating, by removing the Note that modifies the Limiting Condition for Operation. The proposed change would remove the requirement to have the charging pumps operable when thermal power is greater than 80% of rated thermal power (RTP). The proposed change would also remove Surveillance Requirement 3.5.2.4 for verifying the required charging pump flow rate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The charging pumps were credited in the previous analysis to mitigate the consequences of a small-break loss-of-coolant accident (LOCA) above 80% of rated thermal power (RTP). The charging pumps were not considered to be an initiator of the accident. The new analysis for the small-break LOCA does not assume the charging pumps are initiators of the accident. Therefore, removing the requirement to maintain the charging pumps operable above 80% RTP and removing Surveillance Requirement 3.5.2.4 from the Technical Specification does not involve a significant increase in the probability of an accident previously evaluated.

The consequence of a small-break LOCA is the potential for inadequate core cooling and decreased negative reactivity such that the reactor core is not protected after the design basis event. The previous analysis for the small-break LOCA above 80% RTP assumed unborated flow from a single charging pump to ensure there was adequate cooling flow delivered to the Reactor Coolant System. The revised small-break LOCA analysis was performed such that flow from the charging pumps was not credited. Since the charging pump flow is no longer credited in the small-break LOCA analysis, the proposed changes do not involve a significant increase in the consequences of a small-break LOCA.

Therefore, the proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

This request[ed] change does not involve a change in the operation of the plant and no new accident initiation mechanism is created by the proposed changes. Since the charging pump flow is no longer credited in the small-break LOCA analysis, the requirement to have the charging pumps operable above 80% RTP and the charging pump Surveillance Requirement 3.5.2.4 can be removed from the Technical Specification. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the Emergency Core Cooling System is to provide core cooling and negative reactivity, to ensure that the reactor core is protected after design basis events. For a small-break LOCA, the previous analysis credited flow from the charging pumps above 80% RTP to supply supplemental cooling flow to the Reactor Coolant System. Credit for flow from a single charging pump was only taken for the water inventory.

The revised small-break LOCA analysis was performed using the newest Nuclear Regulatory Commission accepted versions of the Westinghouse evaluation models for Combustion Engineering designed pressurized water reactors. The revised small-break LOCA analysis incorporated several changes to plant parameters used in the analysis, one of which was the elimination of the need to credit the charging pump flow above 80% RTP. Since the charging pump flow is no longer credited in the small-break LOCA analysis, the requirement to have the charging pumps operable above 80% RTP and charging pump Surveillance Requirement 3.5.2.4 can be removed from the Technical Specification.

The proposed change to Technical Specification 3.5.2 does not modify any other charging pump requirements specified in the Technical Requirements Manual (*e.g.*, requirements on charging pump availability for boration and cooldown remain in effect).

Therefore, the safety function of the Emergency Core Cooling System is maintained and the margin of safety is not significantly reduced by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 12, 2002.

Description of amendments request: The proposed amendments would revise the Technical Specifications, as necessary, to support an expansion of the core flow operating range (*i.e.*, Maximum Extended Load Line Limit Analysis Plus (MELLLA+)). As part of the MELLLA+ implementation, Carolina Power & Light Company would implement the Detect and Suppress Solution-Confirmation Density (DSS–CD) approach to automatically detect and suppress neutronic/thermal-hydraulic instabilities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

10 CFR 50.91(a) states "At the time a licensee requests an amendment, it must provide to the Commission its analysis about the issue of no significant hazards consideration using the standards in § 50.92." The following provides this analysis for the MELLLA+ operating range to a minimum core flow rate of 85% of rated with 120% of the original licensed thermal power.

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The expansion of the core operating range discussed herein will not significantly increase the probability or consequences of an accident previously evaluated.

The probability (frequency of occurrence) of a DBA [design-basis accident] occurring is not affected by the operating range expansion, because the plant continues to comply with the regulatory and design basis criteria established for plant equipment (ASME [American Society of Mechanical Engineers] code, IEEE [Institute of Electrical and Electronics Engineers] standards, NEMA [National Electrical Manufacturers Association] standards, Regulatory Guides, etc.). An evaluation of the probabilistic safety assessments concludes that the calculated core damage frequencies do not significantly change due to the MELLLA+ operating range expansion. Scram setpoints (equipment settings that initiate automatic plant shutdowns) are established such that there is no significant increase in scram frequency due to the MELLLA+ operating range expansion. No new challenge to safety related equipment results from the MELLLA+ operating range expansion. The changes in consequences of hypothetical accidents, which occur from operation in the MELLLA+ region, are in all cases insignificant. The MELLLA+ accident evaluations do not exceed any NRC-approved acceptance limits. The spectrum of hypothetical accidents and abnormal operational occurrences has been investigated, and will meet the plant's currently licensed regulatory criteria. In the area of core design, for example, the fuel operating limits such as Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Safety Limit Minimum Critical Power Ratio (SLMCPR) are met, and fuel reload analyses will show plant transients meet the criteria accepted by the NRC as specified in [GE Nuclear Energy, "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A and NEDE–24011–P–A–US, (latest approved revision)]. Challenges to fuel (ECCS [emergency core cooling system] performance) are evaluated, and shown to still meet the criteria of 10 CFR 50.46, Appendix K, Regulatory Guide 1.70, and UFSAR [Updated Final Safety Analysis Report] Section 6.3. Challenges to the containment have been evaluated, and the containment and its associated cooling systems meet 10 CFR 50 Appendix A Criterion 38, Long Term Cooling, and Criterion 50, Containment. Radiological release events (accidents) have been evaluated, and shown to meet the regulatory limits of 10 CFR 50.67.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The MELLLA+ operating range expansion will not create the possibility of a new or different kind of accident from any accident previously evaluated. Equipment that could be affected by MELLLA+ has been evaluated and no new operating mode, safety related equipment lineup, accident scenario, or equipment failure mode was identified. The full spectrum of accident considerations, defined in the UFSAR, has been evaluated, and no new or different kind of accident has been identified. The MELLLA+ operating range expansion uses fully developed technology, and applies it within the capabilities of existing plant equipment. The technology includes NRC approved codes, standards and methods applied in accordance with existing regulatory criteria.

3. Will the change involve a significant reduction in a margin of safety?

The MELLLA+ operating range expansion will not involve a significant reduction in a margin of safety. The calculated loads on all affected structures, systems and components have been shown to remain within design allowables for all design basis event categories. No NRC acceptance criterion is exceeded. The margins of safety currently included in the design of the plant are not affected by the MELLLA+ operating range expansion. Because the plant configuration and response to transients and hypothetical accidents do not result in exceeding the presently approved NRC acceptance limits, operation in the MELLLA+ region does not involve a significant reduction in a margin of safety.

Conclusion: A MELLLA+ operating range expansion to a minimum core flow rate of 85% of rated with 120% of original licensed thermal power has been investigated. The BSEP [Brunswick Steam Electric Plant] licensing requirements have been evaluated and it has been demonstrated that this MELLLA+ operating range expansion can be accommodated:

- Without a significant increase in the probability or consequences of an accident previously evaluated,
- Without creating the possibility of a new or different kind of accident from any accident previously evaluated, and
- Without exceeding any presently existing regulatory limits or acceptance criteria applicable to the plant, which might cause a reduction in a margin of safety.

Having made negative declarations regarding the 10 CFR 50.92 criteria, this assessment concludes that an operating range expansion to a minimum core flow rate of 85% of rated with 120% of original licensed thermal power does not involve a Significant Hazards Consideration.

10 CFR 50.91(a) states "At the time a licensee requests an amendment, it must provide to the Commission its analysis about the issue of no significant hazards consideration using the standards in § 50.92." The following provides this analysis for the DSS–CD long-term stability solution.

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will implement DSS–CD as the long-term stability solution. The DSS–CD solution is designed to identify the power oscillation upon inception and initiate control rod insertion to terminate the oscillations prior to any significant amplitude growth. The DSS–CD provides protection against violation of the Safety Limit Minimum Critical Power Ratio (SLMCPR) for anticipated oscillations. Compliance with General Design Criteria (GDC) 10 and 12 of 10 CFR part 50, Appendix A is accomplished via an automatic action. The DSS–CD introduces an enhanced detection algorithm that detects the inception of power oscillations and generates an earlier power suppression trip signal exclusively based on successive period confirmation recognition. The existing Option III algorithms are retained (with generic setpoints) to provide defense-in-depth protection for unanticipated reactor instability events.

A developing instability event is suppressed by the DSS–CD system with substantial margin to the SLMCPR and no clad damage, with the event terminating in a scram and never developing into an accident. In addition, the DSS–CD solution defense-in-depth features incorporate all the

backup scram algorithms plus the licensed scram feature of the existing Option III system. The DSS–CD system does not interact with equipment whose failure could cause an accident. Scram setpoints in the DSS–CD will be established so that analytical limits are met. The reliability of the DSS–CD will meet or exceed that of the existing system. No new challenges to safety-related equipment will result from the DSS–CD solution. Because an instability event would reliably terminate in an early scram without impact on other safety systems, there is no significant increase in the probability of an accident.

Proper operation of the DSS–CD system does not affect any fission product barrier or Engineered Safety Feature. Thus, the proposed change cannot change the consequences of any accident previously evaluated. As stated above, the DSS–CD solution meets the requirements of GDC 10 and 12 by automatically detecting and suppressing design basis thermal-hydraulic oscillations prior to exceeding the fuel SLMCPR.

Based on the above, the operation of the DSS–CD solution within the framework of the Option III OPRM hardware will not increase the probability or consequences of an accident previously evaluated.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The DSS–CD solution operates within the existing Option III OPRM [Oscillation Power Range Monitor] hardware. No new operating mode, safety-related equipment lineup, accident scenario, system interaction, or equipment failure mode was identified. Therefore, the DSS–CD solution will not adversely affect plant equipment.

Because there are no hardware design changes * * *, there is no change in the possibility or consequences of a failure. The worst case failure of the equipment is a failure to initiate mitigating action (*i.e.*, scram), but no failure can cause an accident of a new or different kind than any previously evaluated.

Based on the above, the proposed change to the DSS–CD solution will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

The DSS–CD solution is designed to identify the power oscillation upon inception and initiate control rod insertion to terminate the oscillations prior to any significant amplitude growth. The DSS–CD solution algorithm will maintain or increase the margin to the SLMCPR for anticipated instability events. The safety analyses in NEDC–33075P * * * demonstrate the margin to the SLMCPR for postulated bounding stability events. As a result, there is no impact on the MCPR [minimum critical power ratio] Safety Limit identified for an instability event.

The current Option III algorithms (Period Based Detection, Amplitude Based, and Growth Rate) are retained (with generic setpoints) to provide defense-in-depth protection for unanticipated reactor instability events.

Based on the above, the proposed change will not involve a significant reduction in the margin of safety.

Conclusions: The DSS–CD stability solution has been investigated. The BSEP licensing requirements have been evaluated and it has been demonstrated that the DSS–CD stability solution can be accommodated:

- Without a significant increase in the probability or consequences of an accident previously evaluated,
- Without creating the possibility of a new or different kind of accident from any accident previously evaluated, and
- Without exceeding any presently existing regulatory limits or acceptance criteria applicable to the plant, which might cause a reduction in a margin of safety.

Having made negative declarations regarding the 10 CFR 50.92 criteria, this assessment concludes that the DSS–CD stability solution does not involve a Significant Hazards Consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602. *NRC Section Chief:* Allen G. Howe.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 7, 2002, supplemented by letter dated January 8, 2003.

Description of amendment request: The proposed amendments would revise the Updated Final Safety Analysis Report to eliminate credit for the flow path from the spent fuel pool to the high pressure injection pump as one source of primary system makeup following a tornado. The proposed amendments would also credit the Standby Shutdown Facility as the assured means of achieving safe shutdown for all three Oconee units following a tornado. By letter dated January 8, 2003, Duke Energy Corporation provided a revised No Significant Hazards Consideration (NSHC) that supercedes the NSHC that was noticed in the **Federal Register** on July 23, 2002 (67 FR 48216).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Energy Corporation (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being requested in this amendment request involve (1) the elimination of the Spent Fuel Pool [SFP] as a suction source to a High Pressure Injection [HPI] pump for primary system make-up, and (2) to fully credit the Standby Shutdown Facility (SSF) as the primary assured means of achieving safe shutdown of all three units following a tornado. Following the modification to fully tornado protect the SSF, this facility becomes the station's assured flow path for both primary make-up and secondary decay heat removal for all three units.

Although the probability of a severe tornado strike at the station does not change, new tornado insights gained from a review of the current external event risk analysis have resulted in an enhanced risk model that more accurately characterizes station tornado damage risk. The proposed changes are part of the revised tornado mitigation strategy that provides for an assured, deterministic success path rather than the current strategy that is based on risk insights and diversity for achieving safe shutdown. This effort has resulted in an overall reduction in tornado risk at the station and consequently, would not result in a significant increase in the consequences of an accident previously evaluated.

Other than the fortification of walls of existing structures to harden them against tornado damage, there are no physical changes to the plant structures, systems, or components (SSCs), nor are there any changes to safety limits or set points. Also, no new radiological release pathways are created.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed in this amendment request do not create the possibility of a new or different kind of accident from any accident previously evaluated. The initial placement of the SFP–HPI flow path into the LB [licensing basis] was based on 1989 risk analyses that showed a potential need for primary make-up due to inventory losses from a reactor coolant pump (RCP) seal loss-of-cooling accident (LOCA). The upgrade of the RCP seals has significantly reduced the probability of a seal LOCA and subsequently, alleviated the initial reliance on the SFP–HPI flow path for primary make-up. If multi-unit primary make-up and decay heat removal are required following an event, the tornado protected SSF RBMU [sic] [(RCMU) reactor coolant makeup] or SSF ASW [auxiliary service water] pumps have the capabilities to perform these functions for all three units.

3. Involve a significant reduction in a margin of safety.

As mentioned previously, new tornado insights gained from a review of the current external event risk analysis have resulted in an enhanced risk model that more accurately characterizes station tornado damage risk. The proposed changes are part of the revised tornado mitigation strategy that provides for an assured, deterministic success path rather than a strategy that is based on risk insights and diversity for achieving safe shutdown.

There is no safety limit, set point, or design parameter changes required. The integrity of the fuel cladding, reactor coolant system, and containment are preserved. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: December 30, 2002.

Description of amendment request: The proposed amendment revises two technical specifications (TSs). The first change proposes to revise TS 2.1.1.2, "Minimum Critical Power Ratio Safety Limit (MCPRSL)" to support operation during Cycle 17 with a mixed core. The second change proposes to revise the local power range monitor (LPRM) calibration frequency specified in the TS for the oscillation power range monitor (OPRM) in Surveillance Requirement (SR) 3.3.1.3.2. This change will correct an inconsistency between the LPRM calibration frequency specified in SR 3.3.1.3.2 and SR 3.3.1.1.7, "Reactor Protection System (RPS) Instrumentation."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The licensee addresses each change separately.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

1. The requested change to TS 2.1.1.2, MCPRSL to support the cycle 17 core loading does not involve any plant modifications or operational changes that could affect system reliability, performance, or possibility of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigation systems, and do not introduce any new accident initiation mechanisms. The consequences of accidents previously evaluated are not changed because the number of rods that are protected from transition boiling is predicted to be greater than 99.9 percent which meets the acceptance criterion in NUREG–0800, Section 4.4.

2. The requested change to SR 3.3.1.3.2, OPRM/LPRM calibration frequency, does not involve a modification to the plant or introduce the probability of an operator error. The LPRMs are not the precursor to any accident. Making the LPRM surveillance frequency for the OPRM consistent with that approved for the RPS/APRM [reactor protection system/average power range monitor] does not change system reliability. The proposed LPRM surveillance frequency is supported by the uncertainties used to perform the MCPRSL analyses. Therefore, the number of rods that are calculated to experience transition boiling during normal operation or anticipated operational occurrences will not be changed and the consequences of these events will not be increased.

Therefore, these changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

1. The ATRIUM–10 fuel to be used in cycle 17 is compatible with the co-resident SVEA–96 fuel. This compatibility is demonstrated by application of the FRA–ANP critical power methodology to the core design that includes the ATRIUM–10 and SVEA–96 fuel. The proposed changes do not represent any new modes of operation, changes in setpoints or plant modifications other than those required for the reactor core. The change does not introduce new postulated accident precursors or mitigation systems. Reload design and analysis will be performed in accordance with approved NRC methodology.

2. Increasing the time interval for the OPRM/LPRM surveillance reduces the frequency to be consistent with the LPRM surveillance frequency for the RPS/APRM and does not involve a modification to the plant, introduce a new operator error or revise setpoints.

Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

1. The proposed MCPRSL does not involve a significant reduction in the margin of safety associated with the criterion set forth in NUREG–0800, section 4.4. The safety limit established for the core ensures that the criterion for the number of fuel rods allowed to experience transition boiling will be maintained for normal plant operation and anticipated operational transients.

The core operating limits will continue to be determined using methodologies that have been approved by the NRC.

2. The proposed LPRM surveillance frequency is supported by the uncertainties used to perform the MCPRSL analyses. Therefore, the number of rods that are calculated to experience transition boiling during normal operation or anticipated operational occurrences will not be changed.

Therefore, implementation of the change to the MCPRSL and the LPRM surveillance frequency does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 10, 2002, as supplemented on November 22, 2002, and January 28, 2003. This notice supercedes 67 FR 68735 published on November 12, 2002, which erroneously stated that the October 10, 2002, application was a supplement of the licensee's application dated December 12, 2001. The October 10, 2002, replaced the December 12, 2001, application. This notice also adds supplements dated November 22, 2002, and January 28, 2003.

Description of amendment request: The proposed amendment would change the Technical Specification Tables 3.2.A, 3.2.B, 4.2.A, and 4.2.B. The proposed changes affect various instrument trip level settings and decreases the calibration frequencies for a variety of instruments. The proposed changes also involve clarifications to the Reactor Water Cleanup system trip configuration and the titles of certain trip systems. In addition, the proposed changes would make certain editorial and administrative corrections. The proposed setpoint changes and calibration frequencies are based on the licensee's evaluation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The methodology used to determine the proposed trip level settings and surveillance intervals ensure adequate performance of the affected instrumentation. In addition, the affected instruments are not initiators of any accident previously evaluated. Therefore, the proposed trip level setting and surveillance intervals will not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes to trip level settings and surveillance intervals were establish using methodologies subject to 10 CFR Appendix B Quality Assurance program and ensure existing radiological limits are met. Therefore, the proposed trip level settings and surveillance intervals will not involve a significant increase in the consequences of an accident previously evaluated.

Other changes are editorial or administrative in nature and can not significantly increase the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different [kind] of accidents or malfunctions than those previously analyzed in Pilgrim's UFSAR [Updated Final Safety Analysis Report] are introduced by this proposed change because there are no new failure modes introduced. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in the margin of safety.

The proposed changes to trip level settings and surveillance intervals were established using approved methodologies subject to a 10 CFR, Appendix B, Quality Assurance program and existing radiological limits are met. These changes do not impact Pilgrim's configuration or operation.

Editorial and administrative type changes do not impact the operation or configuration of Pilgrim. For the above reasons the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: James W. Clifford.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 4, 2002. This notice supercedes 68 FR 2801 published on January 21, 2003, which erroneously stated that the December 4, 2002, application was a supplement of the licensee's application dated May 1, 2002. The December 4, 2002, application replaced the May 1, 2002, application in its entirety.

Description of amendment request: The proposed amendment would extend the applicability of the current Pilgrim Nuclear Power Station (Pilgrim) reactor pressure vessel pressure-temperature (P–T) curves through the end of Operating Cycle (OC) 16. The current P–T curves were approved for use in License Amendment 190, dated April 13, 2001, and are limited to use through the end of OC 14. The proposed change would delete the 20 and 32 Effective Full Power Year (EFPY) curves and replace the wording of the title blocks to allow use through the end of OC 16. The proposed amendment would change Pilgrim Technical Specification Figures 3.6.1, 3.6.2, and 3.6.3.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:**

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves a request to extend the use of the current reactor pressure vessel P–T curves for two additional OCs. The P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR part 50, Appendix G, and American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), section XI, Appendix G and Regulatory Guide 1.99, Revision 2, Radiation Embrittlement of Reactor Vessel Materials, and were established in compliance with the methodology used to calculate and predict effects of radiation on embrittlement of reactor pressure vessel beltline materials. There are no physical changes to the plant or new modes of operation being introduced by the proposed change. Further, the proposed change does not involve a change to any activities or equipment and is not assumed in the safety analysis to initiate any accident sequence. The proposed change does not adversely affect the integrity of the reactor coolant pressure boundary such that its function in the containment of radioactive materials is affected. Additionally, the proposed change will not create any failure mode not bounded by previously evaluated accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The current P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR part 50, Appendix G, and ASME Code, section XI, Appendix G, and were approved by the U.S. Nuclear Regulatory Commission for use through OC 14. The proposed change would extend use of the P–T curves for two additional OCs. No new modes of operation are introduced by the proposed change. Plant operation in compliance with the current P–T curves ensures conditions in which brittle fracture of primary coolant pressure boundary materials is avoided. Accidents involving a breach of the primary coolant pressure boundary have previously been evaluated and no other types of accidents associated with the proposed change have been identified. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed curves were established in compliance with the methodology used to calculate and predict effects of radiation on embrittlement of reactor pressure vessel beltline materials and are estimated for 48 effective full-power years. The current curves are approved for use through the end of OC 14 (~19 EFPYs) which provides a conservatism factor of 1.7 between the actual EFPYs at the end of OC 14 and the end-of-life curve (32 EFPY). The change would extend the use of the proposed curves to the end of OC 16 (~23 EFPYs) which provides a conservatism factor of approximately 2.0. The actual EFPYs at the end of OC 16 is bounded by the 48 EFPYs estimated for the current curves. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: December 12, 2002.

Description of amendment request: The proposed amendment would add a new Surveillance Requirement (SR) to the technical specification (TS) section 3.7.5, "Auxiliary Feedwater (AF) System," which requires operation of the diesel-driven AF pump on a monthly frequency (*i.e.*, once every 31 days) for greater than or equal to 15 minutes. The current TS SR 3.7.5.3 requires both the diesel-driven AF pump and the motor-driven AF pump to be operated once per quarter in accordance with the Inservice Testing Program; however, based on operating experience, Braidwood and Byron Stations conduct the diesel-driven AF pump surveillance on a monthly frequency to maintain a high level of assurance that the diesel engine would automatically start when called upon to perform its design basis function.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change adds a new TS SR to the AF System TS section 3.7.5. The new SR requires that the diesel-driven AF pump be operated for greater than or equal to 15 minutes every month. Operating experience has shown that conducting the diesel-driven AF pump surveillance on a monthly frequency maintains a high level of assurance that the diesel engine will automatically start when called upon to perform its design basis function.

The previously analyzed events are initiated by the failure of plant structures, systems, or components. The AF system is not considered an initiator for any of these previously analyzed events. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. No active or passive failure mechanisms that could lead to an accident are affected. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The initial conditions of design basis accident and transient analyses in the Byron/Braidwood Stations Updated Final Safety Analysis Report assume the AF system is operable. The operability of the AF system is assured by the proposed TS SR and is consistent with the initial assumptions of the accident analyses. Since functionality of the diesel engine can be better assured when the diesel-driven AF pump is operated monthly vice quarterly, Exelon is proposing to add a TS SR to operate the diesel-driven AF pump on a monthly frequency. The proposed SR will provide higher confidence that the diesel-driven AF pump will reliably start automatically during an emergency condition, consistent with the AF System design requirements, and continue to mitigate the consequences of the associated design basis accidents. Based on this evaluation, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. The current diesel-driven AF pump surveillance procedure is already conducted on a monthly basis and has been reviewed, approved and judged appropriate to provide high confidence that the AF diesel engine and pump will reliably start and operate during an emergency condition. The new SR formalizes this monthly surveillance practice in the TS. Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change does not alter any existing setpoints at which protective actions are initiated and no new setpoints or protective actions are introduced. The design and operation of the AF system remains unchanged and maintains the existing margins of safety. Since the increased frequency of the diesel-driven AF pump surveillance test maintains high assurance that the pump's diesel engine will successfully auto-start during an emergency, the proposed additional SR will provide high confidence that the AF system will continue to function as designed. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Exelon concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 23, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) section 6, Administrative Controls, to: (1) relocate administrative requirements discussed in Administrative Letter 95–06 (AL 95–06), "Relocation of Technical Specification Administrative Controls Related to Quality Assurance," to the Operational Quality Assurance Program, (2) change the title of the senior onsite official, and (3) bring the TSs into consistency with changes in 10 CFR part 20.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Seabrook Station TS do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. In addition, the proposed changes do not affect the manner in which the plant responds in normal operation, transient or accident conditions nor do they change any of the procedures related to operation of the plant. The proposed changes do not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative and editorial for the purpose of correcting or updating TS to reflect current NRC (Nuclear Regulatory Commission) and industry initiatives.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types

and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, it is concluded that these proposed revisions do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the Seabrook Station TS do not change the operation or the design basis of any plant system or component during normal or accident conditions. The proposed changes do not include any physical changes to the plant. In addition, the proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The plant equipment will continue to respond per the design and analyses and there will not be a malfunction of a new or different type introduced by the proposed changes.

The proposed changes are administrative in nature and only correct, update and clarify the Seabrook Station Technical Specifications to reflect NRC guidance, *i.e.*, AL 95–06. The proposed changes do not modify the facility nor do they affect the plant's response to normal, transient or accident conditions. The changes do not introduce a new mode of plant operation. The changes are an enhancement and do not affect plant safety. The plant's design and design basis are not revised and the current safety analyses remains in effect.

Thus, these proposed revisions to the Seabrook Station TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in [a] margin of safety.

The proposed changes are administrative changes to the Seabrook Station Technical Specifications. The safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits as specified in the Technical Specifications are not revised nor is the plant design or its method of operation revised by the proposed changes. Thus, it is concluded that these proposed revisions to the Seabrook Station TS do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: James W. Clifford.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: October 17, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification 3.7.9, "Control Room Emergency Filtration System (CREFS)," by deleting the one-time extension to the allowed outage time (AOT) for CREFS and the exception to the requirements of limiting condition for operation 3.0.4 and surveillance requirement 3.0.4 that were allowed during the AOT.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The operability of CREFS ensures that the control room will remain habitable for operators during and following all credible accident conditions. The inoperability or failure of CREFS is not an accident initiator or precursor. Therefore, the probability of an accident previously evaluated will not be significantly increased as a result of the proposed change. Because design limitations continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid. Therefore, the consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The evaluation of the effects of the proposed changes indicate that all design standards and applicable safety criteria limits are met. These changes therefore do not cause the initiation of any new or different accident nor create any new failure mechanisms.

Equipment important to safety will continue to operate as designed.

Additionally, the changes do not result in any event previously deemed incredible being made credible. The changes also do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other structures, systems or components (SSCs) important to safety. Therefore, deleting the one-time extension to the CREFS AOT will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 28, 2002, as supplemented on December 18, 2002, and January 18, 2003.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) by relaxing the secondary containment requirements and eliminating the Filtration, Ventilation, and Recirculation System (FRVS) charcoal filters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The definition of CORE ALTERATIONS has been revised to define that control rod movement, provided there are no fuel assemblies in the associated core cell, is not a core alteration. This is consistent with Standard Technical Specifications (STS) NUREG–1433 Vol.1, Rev. 2, Standard Technical Specifications, General Electric Plants, BWR/4 [Boiling Water Reactor, Type 4].

The TS presently provide a period of 7 days to restore an inoperable FRVS ventilation unit when performing activities with the potential for draining the reactor vessel or discontinue such activities.

Operation of the redundant train will ensure that the remaining subsystem is operable, that no failures, which could prevent automatic actuation, have occurred and that any other failures will be readily detected. This is consistent with STS, NUREG–1433 Vol.1, Rev. 2, Standard Technical Specifications, General Electric Plants, BWR/4.

The proposed changes associated with the FHA [fuel-handling accident] do not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated in the Hope Creek Updated Final Safety Analysis Report (UFSAR). The FHA for the HCGS [Hope Creek Generating Station] is defined as a drop of a fuel assembly over irradiated assemblies in the reactor core 24 hours after reactor shutdown. AST [accident source term] is used to evaluate the dose consequences of a postulated accident. The FHA has been analyzed without credit for Secondary Containment, Filtration Recirculation and Ventilation System (FRVS), and Control Room Emergency Filtration (CREF) system. The resultant radiological consequences are within the acceptance criteria set forth in 10 CFR 50.67 and Regulatory Guide 1.183. This amendment does not alter the methodology or equipment used directly in fuel handling operations. The equipment hatch, the personnel air locks, nor any other containment penetration, nor any component thereof is an accident initiator. Actual fuel handling operations are not affected by the proposed changes. Therefore, the probability of a Fuel Handling Accident is not affected with the proposed amendment. No other accident initiator is affected by the proposed changes.

The Loss of Coolant Accident (LOCA) Dose Calculation has been revised to (1) eliminate credit for the FRVS recirculation charcoal filters, (2) reduce credited efficiency of FRVS vent charcoal filters, (3) reduce Engineered Safety Feature (ESF) leakage from 10 gpm to 1 gpm and (4) reduce control room unfiltered in-leakage to 350 cfm [cubic feet per minute]. These proposed changes do not eliminate any safety system. The changes are only associated with the credit provided by the system in reducing the radiological consequences and therefore, do not affect any accident initiator. The results of that analysis show that the Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and Control Room (CR) doses are of the same order of magnitude as the previous analysis and remain within the acceptance criteria in 10 CFR 50.67 and Regulatory Guide 1.183.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed amendment will not create the possibility for a new or different type of accident from any accident previously evaluated. Changes to the allowable activity in the primary and secondary systems do not result in changes to the design or operation of these systems. The evaluation of the effects of the proposed changes indicates that all design standard and applicable safety criteria limits are met.

Equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes and modifications do not significantly affect the mitigative function of these systems.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Does the change involve a significant reduction in [a] margin of safety?

Response: No.

The proposed changes revise the TS to establish operational conditions where specific activities represent situations during which significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences are at or below the regulatory guidelines. Safety margins and analytical conservatisms are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed TS continue to ensure that the TEDE [total effective dose equivalent] for the CR, the EAB, and LPZ are below the corresponding acceptance criteria specified in 10 CFR 50.67 and RG1.183.

Therefore, these changes do not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James Clifford.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 9, 2002, as supplemented November 22, 2002, and December 6, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 6.8.4.f, "Primary Containment Leakage Rate Testing Program," to allow a one-time interval extension to the requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The proposed revision to section 6.8.4.f adds a one-time extension to the current interval for containment integrated leak rate test (ILRT). The current test interval of 10 years, based upon past performance, would be extended on a one-time basis to 15 years from the last ILRT. The proposed extension to ILRT testing cannot increase the probability of an accident previously evaluated since the containment ILRT testing extension is not a modification to plant systems, nor a change to plant operation that could initiate an accident. The proposed extension to Type A testing does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493, "Performance-Based Containment Leak-Test Program," found that very few potential containment leakage paths fail to be identified by Type B and C tests. The NUREG concluded that reducing the ILRT testing frequency to once per twenty years would lead to an imperceptible increase in risk. Containment performance monitoring is performed in accordance with the Maintenance Rule (10 CFR 50.65) and inspections required by American Society of Mechanical Engineers (ASME) code are performed in order to identify indications of containment degradation that could affect leak tightness. Type B and C testing required by the technical specifications (TS) will identify any containment opening, such as valves, that would otherwise be detected by the ILRT. Reg. Guide 1.174 provides guidance for determining the risk impact of plant-specific changes to the licensing basis. It also recommends the use of risk analysis techniques to ensure and show that the proposed change is consistent with the defense-in-depth philosophy. The increase in large early release frequency (LERF) resulting from a change in the ILRT test frequency from the current once in every 10 years to once in every 15 years is less than 1E–7 per year, thereby meeting Regulatory Guide 1.174 definition of a very small change in risk. The change in conditional containment failure probability (CCFP) is estimated to be 0.25% for the proposed change. These factors show that an ILRT test extension will not represent a significant increase in the consequences of an accident.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed revision to section 6.8.4.f adds a one-time exception to the current interval for the ILRT. The current test interval of 10 years, based upon past performance, would be extended on a one-time basis to 15 years from the last Type A test. Primary containment is designed to contain energy and fission products during and after an event. The Individual Plant

Examination (IPE) identifies events that lead to containment failure. Revision to the ILRT test interval does not change this list of events. There are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating a new or different kind of accident.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the change involve a significant reduction in the margin of safety?

Response: No.

The proposed revision to section 6.8.4.f adds a one-time extension to the current interval for the ILRT. The current test interval of 10 years, based upon past performance, would be extended on a one-time basis to 15 years from the last ILRT. The proposed extension to ILRT testing interval will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year exception in ILRT leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that the containment leakage rate contributes a very small amount to the individual risk, and that the decrease in Type A testing frequency would have a minimal affect on this risk since most potential leakage paths are detected by Type C testing. Type B and Type C testing will continue to be performed at a frequency currently required by the Technical Specifications (TS). The containment inspections being performed in accordance with ASME, section XI, and Maintenance Rule (10 CFR 50.65) provide a high degree of assurance that the containment will not degrade in a manner that is only detectable by Type A testing.

Reg. Guide 1.174 provides guidance for determining the risk impact of plant-specific changes to the licensing basis. It also recommends the use of risk analysis techniques to ensure and show that the proposed change is consistent with the defense-in-depth philosophy. The increase in large early release fraction (LERF) resulting from a change in the ILRT test frequency from the current once in every 10 years to once in every 15 years is less than 1E–7 per year, thereby meeting Regulatory Guide 1.174 definition of a very small change in risk. The change in conditional containment failure probability (CCFP) is estimated to be 0.25% for the proposed change.

Therefore, these changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James Clifford.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 25, 2002, as supplemented on October 21, 2002.

Description of amendment request: The proposed change would revise Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Technical Specifications (TSs) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of up to 24 hours, to "* * * up to 24 hours or up to the limit of the specified frequency, whichever is greater." In addition, the following requirement would be added to SR 4.0.3: "A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed." PSEG is also proposing changes to adopt a TS Bases Control Program and changes to SR 4.0.1.

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination for amendments concerning missed surveillances in its original application dated July 25, 2002. The proposed amendment would also make administrative changes to SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2, "Standard Technical Specifications, Westinghouse Plants." These changes are necessary to make the current Salem TSs compatible with the proposed CLIIP changes for missed surveillances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

[Specification 4.0.3]

The proposed change relaxes the time allowed to perform a missed Surveillance. The time between Surveillances is not an initiator to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be OPERABLE and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected.

[Specification 4.0.1]

The proposed additional requirement equating failure to meet a surveillance with failure to meet the [limiting condition for operation] is consistent with current interpretation of the technical specifications. This change, along with relocation and rewording of existing requirements from Specification 4.0.3, are administrative in nature and do not adversely affect accident initiators, design functions, facility configuration or the manner of operation or control. The ability of structures, systems and components to perform their intended function remains unaffected.

[Bases Control Program]

The proposed change to adopt a Technical Specification Bases Control Program is also administrative in nature and does not adversely affect accident initiators, design functions, facility configuration or the manner of operation or control. The ability of structures, systems or components to perform their intended function remains unaffected. Future changes to the TS Bases will continue to be administratively controlled in accordance with the requirements of 10 CFR 50.59.

Therefore, these three changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

None of the three proposed changes involves a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

[Specification 4.0.3]

The [extended] time allowed to perform a missed Surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any Surveillance is verification that the LCO is met. Failure to perform a Surveillance within the prescribed Frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed Surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed Surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed Surveillance, a missed Surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed Surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested.

[Specification 4.0.1]

The proposed changes to TS 4.0.1, including relocation and rewording of existing requirements from Specification 4.0.3, are administrative in nature and do not reduce the level of programmatic or procedural controls associated with the Surveillance Requirements. There are no substantive differences in meaning or intent between the existing specifications and the corresponding STS requirements. Further, these changes have no impact on equipment design, configuration, analytical basis, setpoints or operation.

[Bases Control Program]

The proposed change to adopt a Technical Specification Bases Control Program is also administrative in nature and does not reduce the level of programmatic or procedural controls associated with the Bases. There is no impact on equipment design, configuration, analytical basis, setpoints or operation.

Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: December 19, 2002.

Description of amendment request: The proposed amendments would change the Operating Licenses and Technical Specifications associated with an increase in the licensed reactor power level of 1.5 percent for each reactor (from 2763 megawatts thermal (MWt) to 2804 MWt).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[Southern Nuclear Company] SNC's conclusion that the proposed change to the Plant Hatch Unit 1 and 2 Operating Licenses and Technical Specifications does not involve a significant hazards consideration is based upon the following:

1. The proposed amendment does not change involve a significant increase in the probability or consequences of an accident previously evaluated[.]

The comprehensive analytical efforts performed to support the proposed uprate conditions included a review and evaluation of all components and systems that could be affected by this change. Performance requirements for these systems were evaluated and found acceptable. Furthermore, evaluation of accident analyses confirmed the effects of the proposed uprate are bounded by the current dose analyses. The systems will function as designed. The performance requirements for these systems were evaluated and found acceptable.

The primary loop components (e.g., reactor vessel, reactor internals, control rod drive housings, piping and supports, and recirculation pumps) continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, the probability of a structural failure of these components is not increased as a result of this change.

The Nuclear Steam Supply System (NSSS) systems will still perform their intended design functions during normal and accident conditions. The balance-of-plant (BOP) systems and components will continue to meet their applicable structural limits and perform their intended design functions. Thus, the probability of a structural failure of these components is not increased as a result of this change.

The NSSS/BOP interface systems will continue to perform their intended design functions. The safety relief valves and containment isolation valves still meet design sizing requirements at the uprated power level.

Because the integrity of the plant will not be affected by operation at the uprated condition, SNC concluded that all structures, systems, and components required to mitigate a transient remain capable of fulfilling their intended functions. The reduced uncertainty in the flow input to the core thermal power uncertainty measurement allows most of the current safety analyses to be used, with small changes to the core operating limits, to support operation at a core power of 2804 MWt. Other analyses performed at a nominal power level were either evaluated or reperformed for the 1.5% increased power level. The results demonstrate that the applicable analysis acceptance criteria continue to be met at the 1.5% uprate conditions. Thus, all Plant Hatch Final Safety Analysis Report accident analyses continue to demonstrate compliance with the relevant event acceptance criteria. The analyses performed to assess the effects of mass and energy release remain valid. The source terms used to assess radiological consequences were reviewed and determined to bound operation at the 1.5% uprated condition. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not change create the possibility of a new or different kind of accident from any previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed change will have no adverse effect on any safety-related system or component and does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers confirm that all relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and from the standpoint of compliance with the required acceptance criteria. As appropriate, all evaluations were performed using methods that were either reviewed and approved by the NRC, or are in compliance with regulatory review guidance and standards. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 14, 2002.

Description of amendment request: The proposed amendment would delete

the turbine missile design basis from the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The turbine missile generation probability will not be significantly increased by elimination of the regulatory commitments in the UFSAR. No plant changes are proposed that would significantly increase the probability of turbine missile generation. Turbine missile generation does not pose a credible threat to safety related components and consequently has no potential to increase radiological consequences.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes involve no physical modification of the plant or different operating configurations.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Turbine missiles do not constitute a credible threat to nuclear safety at STP [South Texas Project]. They are not a consideration in any plant safety analysis. Changing the regulatory commitment with regard to design for turbine missiles has no effect on any margin of safety.

Based upon the analysis provided herein, the proposed amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: January 14, 2003 (TS 02–08).

Description of amendment request: The proposed amendment would revise applicability requirements for TS 3.3.9.4, "Containment Building Penetrations." This revision will modify the current applicability requirement associated with movement of "irradiated fuel" by adding a new applicability statement for the containment building equipment door.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the applicability of the containment building penetration function and associated action. This change does not alter the function of the penetrations but does revise when the feature is required to be available for the mitigation of postulated accidents. These penetrations only function to minimize the release of radioactive material for accident mitigation and are not considered to be a source of any postulated accident. The analysis verifies that a fuel handling accident (FHA) occurring at least 100 hours after being critical in a reactor core will not result in dose consequences above the regulatory limits without the containment closure function provided by the CBED [containment building equipment door]. The applicability and action for the CBED will not be changed when movement of recently irradiated fuel is in progress and this function ensures acceptable dose consequences. Therefore, the proposed change will not increase the probability of an accident because the penetration function has not been altered and this function is not a potential source for accidents. Additionally, the proposed change will not significantly increase the consequences of an accident because the analysis has verified that dose consequences will be maintained less than the required regulatory limits.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change only modifies when containment building penetrations need to be available for accident mitigation and does not alter their function, design, or operation. These penetrations only serve to minimize the release of radioactive material in the event of postulated accidents and do not have the potential to create an accident. Since the function of the penetrations is not being changed and they do not have an accident generation potential, the possibility of a new or different kind of accident is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change will not alter the function, design, or operation of the containment building penetrations for postulated accidents that require this feature for the mitigation of the event. The analysis has determined that the CBED availability can be limited to those activities that involve the movement of irradiated fuel that has been in a critical reactor core within the previous 100 hours. Therefore, not requiring the CBED to be available 100 hours or longer afterwards will not impact plant safety or result in dose consequences above established regulatory limits. The proposed change will not alter any setpoints or other functions that serve to maintain the safety limits. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Yankee Atomic Electric Co., Docket No. 50–29, Yankee Nuclear Power Station (YNPS) Franklin County, Massachusetts

Date of amendment request: January 14, 2003.

Description of amendment request: The proposed amendment will revise the Yankee Rowe Nuclear Power Station License and Technical Specifications to delete operational and administrative requirements that would no longer be required once the spent nuclear fuel has been transferred from the spent fuel pool to the Independent Spent Fuel Storage Installation (ISFSI).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes reflect the complete transfer of all spent nuclear fuel from the Spent Fuel Pit to the Independent Spent Fuel Storage Installation (ISFSI). Design basis accidents related to the Spent Fuel Pit are discussed in the YNPS FSAR. These postulated accidents are predicated on spent nuclear fuel being stored in the Spent Fuel Pit. With the removal of the spent fuel from the Spent Fuel Pit, there are no remaining important to safety systems required to be monitored and there are no remaining credible accidents that require that actions of a Certified Fuel Handler or non-Certified Fuel Handler to prevent occurrence or mitigate the consequences.

The YNPS FSAR provides a discussion of radiological events postulated to occur as a result of decommissioning with the bounding consequence resulting from a materials handling event. The proposed changes do not have an adverse impact on decommissioning activities or any of their postulated consequences.

The proposed change to the Design Features section of the Technical Specifications clarifies that the spent fuel is being stored in dry casks within an ISFSI. The probability or consequences of accidents at the ISFSI are evaluated in the dry cask vendor's FSAR and are independent of the accidents evaluated in the YNPS FSAR.

Based on the above, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes reflect the reduced operational risks as a result of the spent nuclear fuel being transferred to dry casks within an ISFSI. The proposed changes do not modify any physical systems, or components. The plant conditions for which the YNPS FSAR design basis accidents relating to spent fuel have been evaluated are no longer applicable. The aforementioned proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of an accident. Design basis accidents associated with the dry cask storage of spent fuel are already considered in the dry cask system's Final Safety Analysis Report. No new accident scenarios are created as a result of deleting non-applicable operational and administrative requirements. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

Does the proposed license amendment involve a significant reduction in a margin of safety?

No. As described above, the proposed changes reflect the reduced operational risks as a result of the spent nuclear fuel being transferred to dry casks within an ISFSI. The design basis and accident assumptions within the YNPS FSAR and the Defueled Technical Specifications relating to spent fuel are no longer applicable. The proposed changes do not affect remaining plant operations, systems, or components supporting decommissioning activities. In addition, the proposed changes do not result in a change in initial conditions, system response time, or in any other parameter affecting the course of a decommissioning activity accident analysis. Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

Based on the considerations noted above, it is concluded that the proposed changes will not endanger the public health and safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Section Chief: Scott W. Moore.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 16, 2003.

Brief description of amendment request: The proposed amendment would revise the applicable Technical Specifications requirements for rod position monitoring during the current operating cycle (Cycle 22) to allow the use of an alternate method of determining rod position. This would be effective until repair of the indication system can be completed during the next shutdown of sufficient duration.

*Date of publication of individual notice in **Federal Register:*** January 24, 2003 (68 FR 3566).

Expiration date of individual notice: February 7, 2003, for comments; February 24, 2003, for hearings.

Florida Power and Light Company, Docket No. 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: November 26, 2002.

Brief description of amendments: The proposed license amendments would revise Technical Specifications (TSs) to increase the total spent fuel wet storage capacity by adding a spent fuel storage rack in the cask area in each unit's spent fuel pool. Also, it would revise the location called out in the Design Features sections 5.6.1.1a and b of the TSs referring to Updated Final Safety Analysis Report Appendix 14D, rather than referring to Westinghouse Report WCAP–14416–P.

*Date of publication of individual notice in the **Federal Register:*** January 28, 2003 (68 FR 4246).

Expiration date of individual notice: February 27, 2003.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 29, 2001, and its supplements dated August 29, 2001, and September 24, 2002.

Brief description of amendment: The amendment revises paragraph 2.C.(5), "Physical Protection," of Facility Operating License No. DPR–61 to reference the Defueled Physical Security Plan that includes the security plan for the Independent Spent Fuel Storage Installation.

Date of issuance: January 30, 2003.

Effective date: January 30, 2003, and shall be implemented within 30 days from the date of issuance and prior to the transfer of spent nuclear fuel to the Independent Spent Fuel Storage Installation.

Amendment No.: 199.

Facility Operating License No. DPR–61: The amendment revised the Operating License.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44163). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2003.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: August 8, 2002, as supplemented October 23, 2002.

Brief description of amendment: The amendment authorized changes to the Updated Final Safety Analysis Report (USFAR) for Fermi 2 by allowing implementation of the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel Integrated Surveillance Program as the basis for demonstrating the compliance with the requirements of Appendix H, "Reactor Vessel Material Surveillance Program Requirements," to 10 CFR part 50.

Date of issuance: January 30, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 152.

Facility Operating License No. NPF–43: Amendment authorizes changes to the USFAR.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56320). The October 23, 2002, supplemental letter provided additional clarifying information that did not change the original no significant hazards consideration determination or expand the amendment beyond the scope of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 18, 2002, as supplemented August 7, and October 9 and October 30, 2002, and January 15, 2003.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.7.15 in response to Boraflex degradation to provide revised spent fuel pool (SFP) storage criteria, and revised fuel enrichment and burnup requirements that take credit for soluble boron. TS 4.3.1 is revised to increase the required soluble boron credit from a concentration of 730 parts per million (ppm) to 850 ppm to ensure acceptable levels of subcriticality in the SFPs. Associated changes to the TS Bases are also included.

Date of issuance: February 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 210 & 191.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42820). The supplements dated August 7, and October 9 and October 30, 2002, and January 15, 2003, provided clarifying information that did not change the scope of the April 18, 2002, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: October 22, 2002.

Brief description of amendment: The amendment deletes TS 5.5.3, "Post Accident Sampling System (PASS)," and thereby eliminates the requirements to have and maintain the PASS at Columbia Generating Station. The amendment also addresses related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment," and License Condition 2.C.(13), "Post Accident Sampling."

Date of issuance: January 27, 2003.

Effective date: January 27, 2003, to be implemented within 60 days from the date of issuance.

Amendment No.: 184.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78518). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002, as supplemented by letters dated July 9, August 2, September 16, and November 7 and 22, 2002.

Brief description of amendment: This amendment increases the licensed power level by approximately 1.7 percent from 3,039 megawatts thermal (MWt) to 3,091 MWt. These changes result from increased feedwater flow measurement accuracy to be achieved by utilizing high accuracy ultrasonic flow measurement instrumentation.

Date of issuance: January 31, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 129.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 11, 2002 (67 FR 40022). The July 9, August 2, September 16, and November 7 and 22, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2003.

No significant hazards consideration comments received: No,

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 24, 2001, as supplemented on May 22, 2002.

Brief description of amendment: The amendment revised information in the Final Safety Analysis Report regarding the protection of the component cooling water (CCW) system from natural phenomena. The change addresses the fact that a portion of one safety-related loop of the CCW system is routed through the fuel storage building, where the structure was not designed to protect the CCW piping from the effects of natural phenomena.

Date of issuance: January 27, 2003.

Effective date: January 27, 2003.

Amendment No.: 214.

Facility Operating License No. DPR–64: Amendment revised the Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50466). The May 22, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: February 26, 2002, as revised by letters dated October 9 and 30, 2002.

Brief description of amendment: The amendment revises the definition of Operable in Technical Specification (TS) 1.0.K with respect to support system requirements for alternating current power sources. Conforming changes are also made to a specific support system TS in Sections 3/4.5, "Core and Containment Cooling Systems", 3/4.7, "Station Containment Systems", and 3/4.10, "Auxiliary Electrical Power Systems," and associated Bases.

Date of Issuance: February 4, 2003.

Effective date: As of the date of issuance, and shall be implemented within 90 days.

Amendment No.: 213.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** (67 FR 78519). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: September 19, 2002, as supplemented December 26, 2002.

Brief description of amendments: The amendments add a new analytical method to Technical Specifications (TS) section 5.6.5, "Core Operating Limits Report." The change supports the core design efforts used for the Unit 2 refueling outage which began on January 21, 2003.

Date of issuance: February 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 159 & 145.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63694). The December 26, 2002, supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 31, 2002, as supplemented by letter dated October 16, 2002.

Brief description of amendments: These amendments revised Technical Specifications (TSs) 3.8.2.1, "DC Sources—Operating," and 3.8.2.2, "DC Sources—Shutdown"; and added the new Specification 6.8.4.i, "Battery Monitoring and Maintenance Program." The changes also included the relocation of the following TS items to a licensee-controlled program: (1) A number of surveillance requirements that require the performance of preventive maintenance, and (2) certain battery and battery cell parameter values that are periodically verified to monitor early indications of DC subsystem degradation.

Date of issuance: January 29, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 164 and 126.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58643). The supplement dated October 16, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: February 28, 2001, as supplemented by letter dated June 13, 2002.

Brief description of amendments: Revise the Technical Specifications to eliminate the requirement for at least one person qualified to stand watch to be present in the control room when nuclear fuel is stored in the spent fuel pool.

Date of issuance: January 31, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 183 and 170.

Facility Operating License Nos. DPR–39 and DPR–48: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34283). The June 13, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Beaver County, Pennsylvania

Date of application for amendment: May 31, 2002, as supplemented July 19, and September 3, 2002.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.1.1.4, upper limit for the moderator temperature coefficient (MTC), from 0×10^{-4} change in reactivity per degree Fahrenheit ($\Delta k/k/°F$) to $+0.2 \times 10^{-4}$ $\Delta k/k/°F$ for power

levels up to 70 percent of rated thermal power (RTP), and ramping linearly to 0 $\times 10^{-4}$ $\Delta k/k/°F$ from 70 percent to 100 percent RTP. The change is needed to address future core designs with higher energy requirements, associated with plant operation at higher capacity factors.

Date of issuance: February 6, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No.: 251.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58644). The July 19, and September 3, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 2003.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: March 27, 2002, as supplemented on October 7, 2002.

Brief description of amendment: The amendment revises the Technical Specifications section 3.6.3, "Emergency Power Sources," to extend the current allowable outage time for an inoperable diesel generator from 7 days to 14 days, and section 3.4.4, "Emergency Ventilation System," and section 3.4.5, "Control Room Air Treatment System," to reflect the change to section 3.6.3.

Date of issuance: February 3, 2003.

Effective date: February 3, 2003.

Amendment No.: 179.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21290). The October 7, 2002, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 25, 2002. The application was initially submitted to the Nuclear Regulatory Commission with an incorrect date of April 25, 2001. The Nuclear Management Company, LLC, subsequently submitted a letter dated May 30, 2002, correcting the date of the application as April 25, 2002.

Brief description of amendment: The amendment changes Technical Specification (TS) 3.7/4.7, "Containment Systems," to allow the use of 10 CFR part 50, Appendix J, Option B, for Types B and C containment leak rate testing and adds a new TS section 6.8.M, "Programs and Manuals—Primary Containment Leakage Rate Testing Program."

Date of issuance: February 4, 2003.

Effective date: As of the date of issuance and to be implemented within 75 days.

Amendment No.: 132.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56325).

The May 30, 2002, letter corrected the date of the application and did not change the NRC staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 25, 2002, as supplemented by letter dated October 23, 2002.

Brief description of amendments: These amendments revise the Susquehanna Steam Electric Station Final Safety Analysis Report (SSES FSAR) by replacing the current plant-specific reactor pressure vessel material surveillance program with the Boiling Water Reactor Integrated Surveillance Program.

Date of issuance: February 6, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 208 and 182.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the SSES FSAR.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56328). The October 23, 2002, supplemental letter provided additional information that clarified the application, but did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 6, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 23, 2002.

Brief description of amendment: The amendment updates the reference to 10 CFR 20.203 with the corresponding reference to 10 CFR 20.1601. Hope Creek Generating Station Technical Specification (TS) 6.12, "High Radiation Area," is revised to be consistent with the Standard TSs, General Electric Plants (NUREG–1433, Rev. 2).

Date of issuance: January 30, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 142.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75884).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 21, 2002.

Brief description of amendments: The amendments revise the technical specifications (TSs) to replace reference to specific valves for preventing uncontrolled boron dilution. The revised TSs incorporate a general statement for preventing uncontrolled boron dilution, consistent with the improved standard TSs.

Date of issuance: January 27, 2003.

Effective date: January 27, 2003.

Amendment Nos.: Unit 1–149; Unit 2–137.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61686).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 23, 2002.

Brief description of amendments: The amendments relocated the shutdown margin limits to the Core Operating Limits Report and modified certain boration requirements consistent with NUREG–1431. The amendments also correct some typographical errors in the Technical Specification pages.

Date of issuance: February 4, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–150; Unit 2–138.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42830).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: November 6, 2002.

Brief description of amendments: The amendments revised the Browns Ferry Nuclear Plant, Units 2 and 3, Updated Final Safety Analysis Report (UFSAR) to modify the basis for TVA's compliance with the requirements of Appendix H to title 10 of the Code of Federal Regulations part 50, "Reactor Vessel Material Surveillance Program Requirements."

Date of issuance: January 28, 2003.

Effective date: As of the date of issuance, to be incorporated into the UFSAR at the time of its next update.

Amendment Nos.: 279 & 238.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the UFSAR.

Date of initial notice in ***Federal Register:*** November 26, 2002 (67 FR 70770). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 3, 2002, as supplemented October 17, 2002, and January 29, 2003.

Brief description of amendments: The amendments revise Technical Specification (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. Thise changes to SR 4.0.3 will allow an extension of up to 24 hours or the limit of the surveillance frequency, whichever is greater. The amendments also include editorial changes to make the revised TS consistent with the Standard TS for Westinghouse plants. In addition, the amendments include the adoption of the TS Bases Control Program listed in NUREG–1431, Revision 2.

Date of issuance: February 5, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment Nos.: 280 and 271.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TSs.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68745). The January 29, 2003, supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 5, 2003.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 10th day of February, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3689 Filed 2–13–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Summission for OMB Review: Comment Request Review of Expiring Information Collection: OPM 1647

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management submitted a request for renewal of authorization for an information collection to the Office of Management and Budget. OPM Form 1647, Combined Federal Campaign Eligibility Application, is used to review the eligibility of national, international, and local charitable organizations that wish to participate in the Combined Federal Campaign.

We estimate 1,400 OPM Forms 1647 will be completed annually. Each form takes approximately three hours to complete. The annual estimated burden is 4,200 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, Fax (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received by March 20, 2003.

ADDRESSES: Send or deliver comments to:

Curtis Rumbaugh, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5450, Washington, DC 20415; and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–3819 Filed 2–14–03; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25931; File No. 812–12881]

Vision Group of Funds, *et al.*; Notice of Application

February 10, 2003.

AGENCY: The Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), for an exemption from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15), thereunder.

APPLICANTS: Vision Group of Funds (the "Trust") and Manufacturers and Traders Company ("M&T Bank"), on behalf of M&T Asset Management ("M&T"), a business unit of M&T Bank.

SUMMARY OF APPLICATION: Applicants seek an order exempting the Applicants and certain life insurance companies and their separate accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trust and shares of any other investment company or portfolio that is designed to fund insurance products and for which M&T Bank or any of its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator ("Future Trusts") (the Trust, together with Future Trusts, are the "Trusts") to be sold to and held by: (i) Separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as "Variable Contracts") issued by both affiliated and unaffiliated life insurance companies; (ii) qualified pension and retirement plans ("Qualified Plans") outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (iv) M&T Bank or certain related corporations (collectively "M&T Bank"); and (v) any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 ("General Accounts"), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

FILING DATES: The application was filed on September 9, 2002, and amended and restated on January 13, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 10, 2003 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, C. Grant Anderson, Esq., Reed Smith LLP, Federated Investors Tower, 1001 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is registered with the Commission as an open-end management investment company and is organized as a Delaware business trust. M&T is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended, and serves as the investment adviser to the Trust. The Trust currently consists of twenty-one investment portfolios, including three investment portfolios that are sold only to separate accounts of insurance companies in conjunction with variable life and variable annuity contracts: Vision Large Cap Growth Fund II, Vision Large Cap Value Fund II and Vision Managed Allocation Fund—Moderate Growth II (each, a "Fund," and collectively, the "Funds"). The Trust or any Future Trusts may offer one or more additional investment portfolios in the future (also referred to as "Funds").

2. Shares of the Funds will be offered to separate accounts of affiliated and unaffiliated insurance companies (each, a "Participating Insurance Company") to serve as investment vehicles to fund Variable Contracts (as hereinafter defined). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration pursuant to exemptions from registration under section 3(c) of the 1940 Act (individually, a "Separate Account" and collectively, the "Separate Accounts"). Shares of the Portfolios may also be offered to Qualified Plans, M&T Bank or certain related corporations (collectively "M&T Bank"), and any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 ("General Accounts"), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

3. The Participating Insurance Companies at the time of their investment in the Trusts either have or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company, on behalf of its Separate Accounts, has or will enter into an agreement with the Trusts concerning such Participating Insurance Company's participation in the Funds. The role of the Trusts under this agreement, insofar as the federal securities laws are applicable, will consist of, among other things, offering shares of the Trusts to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

1. Applicants and certain life insurance companies and their Separate Accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts and shares of any Future Trusts to be sold to and held by: (a) Separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies; (b) Qualified Plans outside of the separate account context; (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (d) M&T Bank or certain related corporations (collectively "M&T Bank"); and (e) any General Accounts, including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust ("UIT") under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is also granted to the investment adviser, principal underwriter, and depositor of the separate account. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require "pass-through" voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of management investment companies "which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company." Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to herein as "shared funding."

4. The relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares, as described above. Applicants note that if shares of the Funds are sold only to Qualified Plans, exemptive relief under Rule 6e–2 would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as "extended mixed and shared funding."

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies that offer to sell their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account." Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding. The exemptions are also granted to the investment adviser, principal underwriter and depositor of the separate account.

6. The relief under Rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, and additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares as described above. Applicants note that if shares of the Funds were sold only to Qualified Plans, exemptive relief under Rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans.

7. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Funds' shares to Qualified Plans, to M&T Bank, or General Accounts to result in a prohibition against, or otherwise limit, a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Qualified Plans, M&T Bank or General Accounts. Applicants therefore request relief in order to have the participating insurance companies enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants note that if the Funds' shares were to be sold only to Qualified Plans, M&T Bank, General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would be unnecessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, M&T Bank, or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

8. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations that made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Consistent with the Commission's authority under section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, this Application requests relief for the class consisting of insurers and Separate Accounts that will invest in the Funds, and to the extent necessary, Qualified Plans, other eligible holders of shares and investment advisers, principal underwriters and depositors of such accounts.

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any

company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying management company.

11. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans invests in the Trusts. Applying the monitoring requirements of section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners.

12. Moreover, since the Qualified Plans, M&T Bank and General Accounts are not themselves investment companies, and therefore are not subject to section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

13. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of its contract owners initiate any change in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of Rules 6e–2 and 6e–3(T) under the 1940 Act).

14. Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

15. Applicants state that the sale of Fund shares to Qualified Plans, M&T Bank and General Accounts will not have any impact on the relief requested herein. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons. Under section 403(a) of ERISA, shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

16. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Similarly, M&T Bank and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, M&T Bank or General Accounts.

17. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if M&T Bank or an affiliate of M&T Bank were to serve in the capacity of trustee or named fiduciary with voting responsibilities, M&T Bank or the affiliates would have a fiduciary duty to vote those shares in the best interest of the Qualified Plan participants.

18. In addition, even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

19. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. The purchase of shares of Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

20. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 under the 1940 Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

21. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for Variable Contracts (including variable life contracts). Section 817(h) of the Code in effect requires that the investments made by variable annuity and variable life insurance separate accounts be "adequately diversified." if a separate account is organized as a UIT that invests in a single fund or series, the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *." Accordingly, a UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Fund, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to the public. Consequently, there will be no public shareholders of any Fund.

22. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

23. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Trust. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Fund.

24. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

25. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Trust's election, to withdraw its Separate Account's investment in such Fund. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Fund.

26. Each Fund will be managed to attempt to achieve the investment objective or objectives of such Fund, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

27. Applicants do not believe that the sale of the shares of the Funds to

Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those which would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

28. Applicants considered whether there are any issues raised under the Code, Regulations, or Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

29. Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts. (Treas. Reg. 1.817–5(f)(3)(iii)) Thus, the Regulations specifically permit "qualified pension or retirement plans'"and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Fund.

30. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Fund at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan.

31. Applicants state that there is analogous precedent for a situation in which the same funding vehicle was used for contract owners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-term gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to Participating Insurance Companies and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds.

32. In connection with any meeting of shareholders, the soliciting Trust will inform each shareholder, including each Separate Account, Qualified Plan, M&T Bank and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Funds concerning participation in the relevant Fund. Shares of a Fund that are held by M&T Bank and any General Account will be voted in the same proportion as all variable contract owners having voting rights with respect to that Fund. However, M&T Bank and any General Account will vote their shares in such other manner as the Commission may require. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Fund would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the affected Trust, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

33. Applicants reviewed whether a "senior security," as such term is defined under section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, M&T Bank or a General Account. Applicants concluded that the ability of the Trusts to sell shares of their Funds directly to Qualified Plans, M&T Bank or a General Account does not create a senior security. "Senior security" is defined under section 18(g) of the 1940 Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans, M&T Bank, General Accounts and the Separate Accounts only have rights with respect to their respective shares of the Fund. They only can redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Board of Trustees (the "Board") of the Trust will consist of persons who are not "interested persons" of the Trust, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any Trustee or Trustees, then the operation of this condition will

be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in a Fund), M&T Bank, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Fund (collectively, "Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested Trustees of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Fund and reinvesting such assets in a different investment vehicle including another Fund, or in the case of Participating Insurance Company Participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Trust, to withdraw such insurer's Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trust, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Trust, M&T Bank or an affiliate of M&T Bank, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (a) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges as provided in the Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares it owns through its Separate Accounts, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, M&T Bank or any of its affiliates, and any General Account will vote its shares of any Fund in the same proportion of all variable contract owners having voting rights with respect to that Fund; provided, however, that M&T Bank, any of its affiliates or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Fund, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the funds of the type described in the section 16(c) of the 1940 Act), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (a) shares of the Trust may be offered to Separate Accounts of Variable Contracts and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict; and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the Application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in the Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Funds.

12. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Qualified Plan executes an agreement with the Trust governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3829 Filed 2–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47342; File No. SR–NQLX–2003–02]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by Nasdaq Liffe Markets, LLC, Relating to Revised Listing Standards

February 10, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on January 15, 2003, Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NQLX also has previously filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with written certifications under section 5c(c) of the Commodity Exchange Act[3] ("CEA") on November 18, 2002 and January 6, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

First, NQLX proposes amending Rule 325 to specify the reportable position levels for security futures contracts that have 1,000 shares of the underlying security, rather than the usual 100 shares of the underlying security. Second, NQLX proposes adopting a rule change to its Rule 420 as it relates to exchange for physical transactions between two members. Pursuant to this change, instead of requiring the member selling the futures leg to submit the relevant trade information to NQLX, the rule would allow the two members to mutually agree on which member would submit the trade information to NQLX. The remaining changes to Rule 420 correct the numbering in the rule. Below is the text of the proposed rule changes.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b-7.

[3] 7 U.S.C. 7a-2(c).

Proposed new language is italicized. Proposed deletions are in [brackets].

Rule 325 Reportable Positions

(a) No change.

(b) For purposes of filings made or information provided to NQLX pursuant to CFTC regulations Parts *15,* 17 and 18, each Member must report any open contract positions [of 200 contracts or more for] in Security Futures Contracts *of (i) 200 contracts or more if one contract represents 100 shares of common stock, shares of an exchange-traded fund, shares of a registered closed-end management investment company or 100 trust-issued receipts or American Depository Receipts, or (ii) 100 contracts or more if one contract represents 1,000 shares of an exchange-traded fund or shares of a registered closed-end management investment company or 1,000 trust-issued receipts.*

Rule 420 Exchange for Physical Trades

(b) Information Recording, Submission, and Dissemination.

(1) No change.

(2) As soon as practicable but no later than 30 minutes after arranging an Exchange for Physical Trade, the Member—when the transaction is between a Member and a Customer—and the Member selling the Futures Leg—when the transaction is between two Members *unless otherwise mutually agreed to by the two members*—must submit through the ATS the following information concerning the Exchange for Physical Trade:

(*i*[c]) NQLX will review the information submitted by the Member pursuant to Rule 420(b) for the proposed Exchange for Physical Trade and will post both sides of the Futures Leg to the account of, and send a confirmation to, the submitting Member if, at the time, the Exchange for Physical Trade appears to have satisfied the requirements of Rule 420.

(*4*[d]) After sending the confirmation for the Exchange for Physical trade, NQLX will disseminate through the ATS the following information:

(*i*[1]) the Futures Leg designated with a "B" to denote that the transaction was the Exchange for Physical Trade,

(*ii*[2]) delivery or expiration month,

(*iii*[3]) price of the Futures Leg,

(*iv*[4]) quantity of the Futures Leg,

(*v*[5]) put or call and exercise price of the Futures Leg (if applicable), and

(*vi*[6]) open or close position indicator (if applicable).

(*5*[e]) Prices reported for Exchange for Physical Trades will not trigger unexecuted Orders in the Central Order Book.

(*6*[f]) As soon as practicable, but no longer than 10 minutes, after receipt of confirmation for the Exchange for Physical Trade from NQLX, the submitting Member (or its Clearing Member, if applicable) must transfer through the Trade Registration System the applicable Futures Contract to the Member for the buyer of the Futures Leg (or its Clearing Member, if applicable).

(*7*[g]) As soon as practicable, but no longer than 10 minutes, after the Futures Leg appears on the Trade Registration System pursuant to Rule 420*(b)(6)*[f], the Member for the buyer of the Futures Leg (or its Clearing Member, if applicable) must accept the Futures Leg, and designate the buyer's Customer account number or identifier in, the Trade Registration System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule changes, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

First, NQLX proposes adopting a rule addition to its Rule 325 to specify the reportable position levels for security futures contracts that have 1,000 shares of the underlying security, rather than the usual 100 shares of the underlying security. Second, NQLX proposes adopting a rule change to its Rule 420 related to the party that must submit trade information on exchange for physical transactions when the transactions are between two members. Under such circumstances, instead of requiring the member selling the futures leg to submit the relevant trade information to NQLX, the rule change would allow the two members to mutually agree on which member would submit information on the transaction to NQLX. If the two members could not agree on which one would submit the trade information to NQLX, then the member selling the futures leg would have the reporting responsibility. The remaining changes to Rule 420 correct the numbering in the rule.

2. Statutory Basis

NQLX files these proposed rule changes pursuant to section 19(b)(7) of the Act.[4] NQLX believes that these proposed rule changes are consistent with the requirements of the Commodity Futures Modernization Act of 2000,[5] including the requirement that trading in a listed security futures contract is not readily susceptible to manipulation of its price nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.[6] NQLX further believes that its proposed rule changes comply with the requirements under section 6(h)(3) of the Act[7] and the criteria under section 2(a)(1)(D)(i) of the CEA.[8] In addition, NQLX believes that its proposed rule changes are consistent with the provisions of section 6 of the Act,[9] in general, and section 6(b)(5) of the Act,[10] in particular, which requires, among other things, that the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices; and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Prior to the filing of the proposed rule change with the SEC, NQLX filed written certifications with the CFTC under section 5c(c)[11] of the CEA and CFTC Regulation Part 40.6[12] in which NQLX certified that its proposed changes to Rules 325 and 420 comply with the CEA. Proposed changes to Rules 325 and 420 were effective the day after their filing with the CFTC.

Within 60 days of the date of effectiveness of the proposed rule changes, the Commission, after

[4] 15 U.S.C. 78s(b)(7).

[5] Pub. L. 106–554, 114 Stat. 2763 (2000).

[6] *See* section 6(h)(3)(H) of the Act, 15 U.S.C. 78f(h)(3)(H).

[7] 15 U.S.C. 78f(b)(3).

[8] 7 U.S.C. 2(a)(1)(D)(i).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 7 U.S.C. 7a–2(c).

[12] 17 CFR 40.6.

consultation with the CFTC, may summarily abrogate the proposed rule changes and require that the proposed rule changes be refiled in accordance with the provisions of section 19(b)(1) of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR–NQLX–2003–02 and should be submitted by March 11, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3828 Filed 2–14–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster No. P006]

State of Oklahoma

As a result of the President's major disaster declaration for Public Assistance on February 4, 2003, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Beckham, Blaine, Caddo, Canadian, Custer, Kingfisher, Kiowa, Logan, Noble, Osage, Pawnee, Payne, Roger Mills and Washita Counties in the State of Oklahoma constitute a disaster area due to damages caused by a severe ice storm occurring from December 3, 2002, and continuing through December 4, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 7, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

For physical damage	Percent
Non-profit organizations without credit available elsewhere	3.324
Non-profit organizations with credit available elsewhere	5.500

The number assigned to this disaster for physical damage is P00611. (Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: February 5, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–3779 Filed 2–14–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459, Amdt. 8]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated February 5, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to February 7, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 11, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–3831 Filed 2–14–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4279]

Determination Pursuant to Section 212(a)(3)(B) of the Immigration and Nationality Act (INA), Placing Entities on the Terrorist Exclusion List (TEL)

Acting under the authority of section 212(a)(3)(B) of the Immigration and Nationality Act (INA), as amended, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that each of the following entities is a "terrorist organization" under the meaning of the INA:

Al Taqwa Trade, Property and Industry Company Limited (f.k.a. Al Taqwa Trade, Property and Industry; f.k.a. Al Taqwa Trade, Property and Industry Establishment; f.k.a. Himmat Establishment)

Bank Al Taqwa Limited (a.k.a. Al Taqwa Bank; a.k.a. Bank Al Taqwa)

Nada Management Organization SA (f.k.a. Al Taqwa Management Organization SA)

Youssef M. Nada & Co. Gesellschaft M.B.H.

Ummah Tameer E-Nau (UTN) (a.k.a. Foundation for Construction; a.k.a. Nation Building; a.k.a. Reconstruction Foundation; a.k.a. Reconstruction of the Islamic Community; a.k.a. Reconstruction of the Muslim Ummah; a.k.a. Ummah Tameer I-Nau; a.k.a. Ummah Tameer E-Nau; a.k.a. Ummah Tameer I-Pau)

Loyalist Volunteer Force (LVF)

Ulster Defense Association (a.k.a. Ulster Freedom Fighters)

Afghan Support Committee (ASC) (a.k.a. Ahya ul Turas; a.k.a. Jamiat Ayat-ur-Rhas al Islamia; a.k.a. Jamiat Ihya ul Turath al Islamia; a.k.a. Lajnat el Masa Eidatul Afghania)

Revival of Islamic Heritage Society (RIHS) (a.k.a. Jamia Ihya ul Turath; a.k.a. Jamiat Ihia Al-Turath Al-Islamiya; a.k.a. Revival of Islamic Society Heritage on the African Continent) [Pakistan and Afghanistan; Kuwait office not designated]

This notice shall be published in the **Federal Register.**

Dated: November 6, 2002.

Colin L. Powell,

Secretary of State, Department of State (TE).

[FR Doc. 03–3850 Filed 2–14–03; 8:45 am]

BILLING CODE 4710–10–P

[13] 15 U.S.C. 78s(b)(1).

[14] 17 C.F.R. 200.30–3(a)(75).

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Intercity Bus Security Grant Program; Notice Modifying the Delivery Instructions for Receipt of Applications Under the Intercity Bus Security Grant Program

AGENCY: Transportation Security Administration, Department of Transportation.

Authority: Authority for this program is contained in the fiscal year 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. 107–206, 116 Stat. 820.

ACTION: Notice modifying delivery address for receipt of grant applications.

SUMMARY: This notice modifies the delivery address and instructions previously established for receipt of applications under the Intercity Bus Security Grant Program (Program Announcement #02MLPA0002) in 68 FR 2634, Jan. 17, 2003.

For applications sent by the U.S. Postal Service (USPS), the applicant should mail its application to: Mary Heying or Tony Corio, Attn: Intercity Bus Security Grants, Transportation Security Administration Headquarters, Office of Maritime and Land Security, West Tower, 9th Floor North, TSA–8, 400 Seventh Street, SW., Washington, DC 20590. An application received by the Office of Maritime & Land Security after the closing date will not be considered unless it was sent by at least first-class mail no later than 5 calendar days before the closing date or was sent by first-class mail and it was determined by TSA that late receipt was due solely to mishandling after receipt at TSA. Proof of mailing consists of a legibly dated USPS postmark; a legible mail receipt with the date of mailing stamped by the USPS; or a dated shipping label, invoice, or receipt from a commercial carrier. A private metered postmark will not be considered as proof of mailing. (**Note:** the USPS does not always provide a dated postmark. Before relying on this method, the applicant should check with its local post office.)

For applications delivered by hand or by a next-day express delivery service, the application should be delivered to: Transportation Security Administration Headquarters, Office of Maritime and Land Security, West Tower, 9th Floor North, 701 South 12th Street, Arlington, VA 22202, Attn: Mary Heying, Workstation #926BN, 571–227–1252 or Tony Corio, Workstation #924DN, 571–227–1233. Hand delivered applications will be accepted between 8:30 a.m. and 4 p.m. (e.s.t.) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted by the Office of Maritime & Land security after 4 p.m. (e.s.t.) on the closing date.

Note that a previous notice published in 68 FR 5975, Feb. 5, 2003, modified the deadline for receipt of applications to on or before 4 p.m. e.s.t., March 19, 2003.

ADDRESSES: Program Announcement #02MLPA0002 and application forms for the Intercity Bus Security Grant Program are available through the TSA Internet at *http://www.tsa.dot.gov* under Business Opportunities and Industry Partners.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Heying, Transportation Security Administration Headquarters, West Tower, 9th Floor North, TSA–8, 400 7th Street, SW., Washington, DC 20590, (phone: 571–227–1252, email: *Mary.Heying@tsa.dot.gov*), or Mr. Tony Corio (phone: 571–227–1233, email: *Tony.Corio@tsa.dot.gov*).

Dated: February 11, 2003.

Mark H. Johnson,

Deputy Assistant Administrator, Office of Maritime and Land Security.

[FR Doc. 03–3789 Filed 2–14–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Operation Safe Commerce Cooperative Agreement Program; Notice Modifying the Delivery Instructions for Receipt of Applications Under the Operation Safe Commerce Cooperative Agreement Program

AGENCY: Transportation Security Administration, Department of Transportation.

Authority: Authority for this program is contained in the fiscal year 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. 107–206, 116 Stat. 820.

ACTION: Notice modifying delivery address for receipt of cooperative agreement applications.

SUMMARY: This notice modifies the delivery address and instructions previously established for receipt of applications under the Operation Safe Commerce Cooperative Agreement Program (Program Announcement #02MLPA0001) in 68 FR 5071, Jan. 31, 2003.

For applications sent by the U.S. Postal Service (USPS), the applicant should mail its application to: Mary Heying or Tony Corio, Attn.: Operation Safe Commerce Cooperative Agreement Program, Transportation Security Administration Headquarters, Office of Maritime and Land Security, West Tower, 9th Floor North, TSA–8, 400 Seventh Street, SW., Washington, DC 20590. An application received by the Office of Maritime & Land Security after the closing date will not be considered unless it was sent by at least first-class mail no later than 5 calendar days before the closing date or was sent by first-class mail and it was determined by TSA that late receipt was due solely to mishandling after receipt at TSA. Proof of mailing consists of a legibly dated USPS postmark; a legible mail receipt with the date of mailing stamped by the USPS; or a dated shipping label, invoice, or receipt from a commercial carrier. A private metered postmark will not be considered as proof of mailing. (**Note:** The USPS does not always provide a dated postmark. Before relying on this method, the applicant should check with its local post office.)

For applications delivered by hand or by a next-day express delivery service, the application should be delivered to: Transportation Security Administration Headquarters, Office of Maritime and Land Security, West Tower, 9th Floor North, 701 South 12th Street, Arlington, VA 22202, Attn: Mary Heying, Workstation #926BN, 571–227–1252 or Tony Corio, Workstation #924DN, 571–227–1233. Hand delivered applications will be accepted between 8:30 am and 4 pm (EST) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted by the Office of Maritime & Land Security after 4 pm (EST) on the closing date.

ADDRESSES: Program Announcement #02MLPA0001 and application forms for the Operation Safe Commerce Cooperate Agreement Program are available through the TSA Internet at *http://www.tsa.dot.gov* under Business Opportunities and Industry Partners.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Heying, Transportation Security Administration Headquarters, West Tower, 9th Floor North, TSA–8, 400 7th Street, SW., Washington, DC 20590, (phone 571–227–1252, email: *Mary.Heying@tsa.dot.gov*), or Mr. Tony Corio (phone: 571–227–1233, email: *Tony.Corio@tsa.dot.gov*).

Dated: February 11, 2003.

Mark H. Johnson,

Deputy Assistant Administrator, Office of Maritime and Land Security.

[FR Doc. 03–3790 Filed 2–14–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability ("NOFA") Inviting Applications for the FY 2003 Funding Round of the Financial Assistance Component of the Community Development Financial Institutions ("CDFI") Program: Change of Application Deadlines; Policy Revision

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of change of application deadlines; policy revision.

Change of Application Deadlines: On February 4, 2003, the Community Development Financial Institutions Fund (the "Fund") announced in a NOFA for the Financial Assistance Component of the CDFI Program (68 FR 5738) that the deadline for applications for assistance through the Financial Assistance Component was March 10, 2003. On February 7, 2003, the Fund announced (68 FR 6540) that it was extending the deadline for applications for assistance through the Financial Assistance Component to March 17, 2003.

This notice is to announce that, due to unforeseen complications with the development of the application and related documents, the Fund again is extending the deadline for the submission of electronic and paper applications for the FY 2003 funding round of the Financial Assistance Component, to 5 p.m. ET on April 14, 2003. Please also note that for electronic applications timely submitted, applicants must submit original signature pages not later than 5 p.m. ET on April 16, 2003, in accordance with the instructions in the electronic application.

In addition, the Fund is extending the deadline for submission of requests for paper applications to 5 p.m. ET on March 21, 2003. The Fund will provide program and technical support related to the Financial Assistance Component application between the hours of 9 a.m. and 5 p.m. ET through April 11, 2003. The Fund will not respond to telephone calls or e-mails concerning the application that are received after 5 p.m. ET on April 11, 2003, until after the Financial Assistance Component application deadline on April 14, 2003.

Further, the Fund has extended certain other deadlines, as follows. An application for a FY 2003 Financial Assistance Component award will not be considered unless: (a) The applicant is already certified as a CDFI with a certification expiration date after June 30, 2003; or (b) the Fund receives from an applicant a complete CDFI certification application no later than March 7, 2003, evidencing that the applicant can be certified as a CDFI. With respect to any CDFI that is currently certified by the Fund and whose certification expiration date is on or before June 30, 2003, the Fund must receive an application for re-certification no later than March 7, 2003, evidencing that the applicant can be re-certified as a CDFI.

Policy Revision

The Fund has determined that it is appropriate to revise the definition of Category I applicants, set forth in the February 4, 2003 NOFA for the Financial Assistance Component, as follows: Category I includes CDFIs that have capitalization needs up to and including $1,000,000 and total assets as of December 31, 2002 that range up to $500 million (for insured depository institutions and depository institution holding companies), up to $25 million (for insured credit unions), or up to $25 million for other CDFIs. This policy revisions comports with the definition of eligible CDFI Partner found in the NOFA for the FY 2003 funding round of the Bank Enterprise Award (BEA) Program (68 FR 5727).

All other information and requirements set forth in the February 4, 2003 NOFA for the Financial Assistance Component shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Technical support related to the electronic application can be obtained by calling (202) 622–2455 and selecting option 1, then option 2, and then option 9, or by e-mail at *ithelpdesk@cdfi.treas.gov*. These are not toll free numbers.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: February 12, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–3940 Filed 2–14–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8275 and 8275–R

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8275, Disclosure Statement, and Form 8275–R, Regulation Disclosure Statement.

DATES: Written comments should be received on or before April 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or Larnice.Mack@irs.gov, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Disclosure Statement (Form 8275) and Regulation Disclosure Statement (Form 8275–R).

OMB Number: 1545–0889.

Form Number: Forms 8275 and 8275–R.

Abstract: Internal Revenue Code section 6662 imposes accuracy-related penalties on taxpayers for substantial understatement of tax liability or negligence or disregard of rules and regulations. Code section 6694 imposes similar penalties on return preparers. Regulations sections 1.662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation, on Form 8275–R.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 5 hrs. 35 min.

Estimated Total Annual Burden Hours: 5,575,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–3860 Filed 2–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–34–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–34–91 (TD 8396), Conclusive Presumption of Worthlessness of Debts Held by Banks (Section 1.166–2).

DATES: Written comments should be received on or before April 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (Larnice.Mack@irs.gov), Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Conclusive Presumption of Worthlessness of Debts Held by Banks.

OMB Number: 1545–1254.

Regulation Project Number: FI–34–91.

Abstract: Section 1.166–2(d)(3) of this regulation allows a bank to elect to determine the worthlessness of debts by using a method of accounting that conforms worthlessness for tax purposes to worthlessness for regulatory purposes, and establish a conclusive presumption of worthlessness. An election under this regulation is treated as a change in accounting method.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–3861 Filed 2–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

DATES: Written comments should be received on or before April 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

OMB Number: 1545–0805.

Form Number: 5472.

Abstract: Form 5472 is used to report information about transactions between a U.S. corporation that is 25% foreign owned or a foreign corporation that is engaged in a U.S. trade or business and related foreign parties. The IRS uses Form 5472 to determine if inventory or other costs deducted by the U.S. or foreign corporation are correct.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 75,000.

Estimated Time Per Response: 24 hrs. 17 min.

Estimated Total Annual Burden Hours: 1,821,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–3862 Filed 2–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–104–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–104–90 (TD 8390), Tax Treatment of Salvage and Reinsurance (§ 1.832–4).

DATES: Written comments should be received on or before April 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax Treatment of Salvage and Reinsurance.

OMB Number: 1545–1227.

Regulation Project Number: FI–104–90.

Abstract: Section 1.832–4(d) of this regulation allows a nonlife insurance company to increase unpaid losses on a yearly basis by the amount of estimated salvage recoverable if the company discloses this to the state insurance regulatory authority.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–3863 Filed 2–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Chiropractic Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Chiropractic Advisory Committee will meet Tuesday, March 25, 2003, from 8:30 a.m. until 5 p.m. and Wednesday, March 26, 2003, from 8:30 a.m. until 4 p.m. at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Room 230, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide direct assistance and advice to the Secretary of Veterans Affairs in the development and implementation of the chiropractic health program. Matters on which the Committee shall assist and advise the Secretary include protocols governing referrals to chiropractors and direct access to chiropractic care, scope of practice of chiropractic practitioners, definitions of services to be provided and such other matters as the Secretary determines to be appropriate.

On March 25, the Committee will receive an update on the status of the chiropractic occupational study and discuss the scope of chiropractic services, services to be provided in the VA chiropractic program, and protocols governing direct access and referrals to chiropractors. On March 26, the Committee will continue discussions on the items listed above and, at the end of the day, discuss the agenda for the next meeting and plan meeting dates for FY 2004.

On March 25, from 3 p.m. to 5 p.m., the Committee will provide time for oral statements from the public on the issues under discussion. Members of the public who wish to make a brief oral presentation at this meeting must contact Ms. Sara McVicker, Committee Manager, in writing via fax at (202) 273–9148 or via e-mail at *sara.mcvicker@mail.va.gov* no later than noon eastern time Friday, March 21, 2003, in order to have time reserved on the agenda. Requests to be scheduled for oral presentations should not be mailed via United States Postal Service due to delivery delays resulting from security measures. Opportunities for oral comments will be limited to no more than five (5) minutes per speaker and no more than 90 minutes total. Persons who wish their oral statement to become part of the Committee's records and available to the public on the Committee's internet site must submit a written or electronic copy of the statement at the time of the meeting. Persons making oral statements are requested to bring 13 copies of their statement for the Committee and an additional 20 copies for other members of the public.

Any member of the public wishing to attend the meeting is requested to contact Ms. McVicker, RN, MN, at (202) 273–8558 by noon eastern time on March 21, 2003, in order to facilitate entry to the building.

The Committee will accept written comments from interested parties on issues under discussion and other matters relating to the development and implementation of the chiropractic health program within the Veterans Health Administration. It is preferred that such comments be transmitted electronically to the Committee at *sara.mcvicker@mail.va.gov* or comments may be mailed to: Chiropractic Advisory Committee, Primary and Ambulatory Care SHG (112), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: February 10, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–3827 Filed 2–14–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Medical Research Service Merit Review will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date(s)	Location
Alcoholism & Drug Dependence	March 17, 2003	Holiday Inn Central.
Immunology & Dermatology	March 17–18, 2003	Holiday Inn. Central.
Neurobiology-D	March 20–21, 2003	Hotel Washington.
Infectious Diseases	March 20–21, 2003	Holiday Inn. Central.
Surgery	March 24, 2003	Hotel Washington.
Oncology	March 24–25, 2003	Hotel Washington.
Mental Health & Behav Sciences	March 25–26, 2003	Hotel Washington.
Cardiovascular Studies	March 27, 2003	Holiday Inn. Central.
Epidemiology	March 28, 2003	Holiday Inn. Central.
Gastroenterology	March 31–April 1, 2003	Holiday Inn. Central.
Respiration	April 1, 2003	Holiday Inn. Central.
Endocrinology	April 3–4, 2003	Marriott Residence Inn.
Nephrology	April 7, 2003	Hotel Washington.
General Medical Science	April 8, 2003	Hotel Washington.
Hematology	April 11, 2003	Holiday Inn. Central.
Clinical Research Program	April 15, 2003	Holiday Inn. Central.
Neurobiology-C	April 25, 2003	Holiday Inn. Central.
Aging and Clinical Geriatrics	April 25, 2003	Holiday Inn. Central.
Medical Research Service Merit Review Committee	June 5, 2003	Marriott Residence Inn.

The addresses of the hotels are:

Holiday Inn. Central., 1501 Rhode Island Avenue, NW., Washington., DC

Hotel Washington., 515—15th Street, NW., Washington., DC

Marriott Residence Inn. (Thomas Circle), 1199 Vermont Avenue, NW., Washington., DC

These subcommittee meetings are for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these subcommittee meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, Ph.D., Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 408–3630.

Dated: February 7, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–3826 Filed 2–14–03; 8:45 am]

BILLING CODE 8320–01–M



Federal Register

Tuesday,
February 18, 2003

Part II

Office of Government Ethics

5 CFR Parts 2637 and 2641
Post-Employment Conflict of Interest Restrictions; Proposed Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2637 and 2641

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: Since 1980, 5 CFR part 2637 (formerly 5 CFR part 737) has provided guidance concerning the post-employment conflict of interest restrictions of 18 U.S.C. 207. As a result of amendments to section 207 that became effective January 1, 1991, employees terminating service in the executive branch or in an independent agency (or terminating service from certain high-level Government positions) since that date are subject to substantially revised post-employment restrictions. The purpose of part 2641 is to provide regulatory guidance explaining the scope and content of the statutory restrictions as they apply to employees terminating service on or after January 1, 1991. This proposed rule would expand the guidance previously published in part 2641 as interim or interim final rules and make minor modifications to those earlier rulemakings. It would also remove part 2637 from 5 CFR.

DATES: Comments are invited and must be received on or before May 19, 2003.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Richard M. Thomas. Comments may also be sent electronically to OGE's Internet E-mail address at *http://www.usoge.gov*. The subject line of E-mail messages should include the following reference: "Comments on proposed post-employment conflict of interest rule."

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics; Telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion of Post-Employment Regulatory Guidance

I. Rulemaking History

Since its enactment in 1962, 18 U.S.C. 207 has remained the primary source of post-employment restrictions applicable to former officers and employees of the executive branch and of independent agencies. In 1979 (interim rule) and 1980 (final rule), the Office of Government Ethics (OGE) published regulatory guidance concerning section 207 as codified at 5 CFR part 737 (now 5 CFR part 2637). *See* OGE's regulations issued at 44 FR 19974–19988 (April 3, 1979), 45 FR 7402–7431 (February 1, 1980), 54 FR 50229–50231 (December 5, 1989), and 56 FR 3961–3965 (February 1, 1991), as amended, redesignated and corrected over the years.

Section 207 was substantially revised by the Ethics Reform Act of 1989, Pub. L. 101–194, 103 Stat. 1716, with technical amendments enacted by Pub. L. 101–280, 104 Stat. 149 (1990). As a result of these and subsequent amendments, employees terminating Government service (or service in certain high-level Government positions) on or after January 1, 1991, are subject to revised substantive prohibitions.

Pursuant to authority set forth in the Ethics in Government Act of 1978, as amended, and Executive Order 12674, as modified by Executive Order 12731 (hereinafter referred to as Executive Order 12674), OGE published executive branch guidance concerning certain aspects of the new version of 18 U.S.C. 207 on February 1, 1991 (56 FR 3961–3965), now codified at 5 CFR part 2641.[1] For purposes of section 207(c), the 1991 interim rule (1) Established procedures for exempting senior employee positions; (2) designated separate departmental and agency components; and (3) established procedures for future designations and modification of designations of departmental or agency components. The appendices to part 2641 reserved for listings of exemptions and designations were subsequently amended by final rules published at 57 FR 3115–3117 (January 28, 1992), 57 FR 11673 (April 7, 1992), 58 FR 33755–33756 (June 21, 1993), 62 FR 26915–26918 (May 16, 1997), 64 FR 5709–5710 (February 5, 1999), and, most recently, 68 FR 4681–4684 (January 30, 2003).

As described below in the discussions of §§ 2641.204, 2641.301(j) and 2641.302 as proposed, this proposed rule would make further minor modifications to existing part 2641. In addition, it would expand part 2641 to provide comprehensive guidance concerning 18 U.S.C. 207 as applicable to individuals terminating service on or after January 1, 1991 (or service in certain high-level Government positions), incorporating amendments to section 207 enacted subsequent to the Ethics Reform Act.[2] As discussed more fully below, a future rulemaking would supplement the preliminary guidance at proposed §§ 2641.203 and 2641.206 concerning 18 U.S.C. 207(b) and (f).

This proposed rule does not address very limited amendments enacted on December 17, 2002, in section 209(d) of the E-Government Act of 2002, Pub. L. 107–347. These amendments, which pertain only to assignees from private sector organizations under the newly authorized Information Technology Exchange Program, had not been enacted when the proposed rule was developed and will not be effective until April 16, 2003, subsequent to the issuance of the proposed rule. *See* section 402(a)(1), Pub. L. 107–347. OGE invites comments concerning interpretation of these amendments—which add a new category of senior employee under section 207(c)(2)(A)(v) and a new restriction on contract advice in section 207(l)—which will be addressed in the final rule, as appropriate.

OGE is proposing to discontinue publication of 5 CFR part 2637. Due to the passage of time, employees who terminated service prior to January 1, 1991, could no longer be subject to any of the substantive restrictions of the previous version of 18 U.S.C. 207 other than the permanent bar for particular matters involving specific parties. Former employees, agency ethics officials and other interested parties can continue to consult the last edition of

[1] OGE also issued, by Memoranda to Designated Agency Ethics Officials, General Counsels and Inspectors General, summaries of the restrictions of 18 U.S.C. 207, as amended, on October 26, 1990, November 5, 1992, and February 17, 2000. The current version of the summary may be found on OGE's Web site at *http://www.usoge.gov* under "DAEOgrams" for the year 2000.

[2] The statute has been amended several times since the Ethics Reform Act. Section 101(b)(8)(A) of Pub. L. 101–509, 104 Stat. 1389, amended 18 U.S.C. 207(c)(2)(A)(ii) to change the pay-based threshold for purposes of determining the applicability of section 207(c) from the rate for GS–17 to the rate for level V of the Executive Schedule. Section 705(a) of Pub. L. 102–25, 105 Stat. 75 reinstated section 207(k) authorizing Presidential waivers of section 207 in narrow circumstances, a provision that was later amended by Pub. L. 102–190. Section 609 of Pub. L. 102–395, 106 Stat. 1828, amended section 207(f) to extend that one-year restriction to three years in the case of any individual assuming the office of U.S. Trade Representative after October 6, 1992, the effective date of the law. Subsequently, section 21(a) of Pub. L. 104–65, 109 Stat. 691, amended section 207(f)(2) to permanently bar both the U.S. Trade Representative and the Deputy U.S. Trade Representative from engaging in the activities prohibited by section 207(f). Sections 5 and 6 of Pub. L. 104–179, 110 Stat. 1566, changed the rate of basic pay triggering "senior employee" status and added a new exception permitting former high-level officials to represent certain candidates and political organizations notwithstanding section 207(c) or (d). Finally, section 102(a) of Pub. L. 105–244, 112 Stat. 1585, made a conforming change to the exception at section 207(j)(2)(B) when it amended the definition of "institution of higher learning" in title 20 of the United States Code. (Pub. L. 103–322, 108 Stat. 1796 made only two very minor grammatical changes to section 207(c).)

the CFR in which part 2637 was published, for interpretive guidance concerning the permanent bar and relevant exceptions as applicable to employees who terminated service before January 1, 1991. OGE will maintain a copy of part 2637 and suggests that all designated agency ethics officials keep a copy in their files.

As required by section 201(c) of Executive Order 12674, OGE is publishing this proposed rule after obtaining the concurrence of the Department of Justice. We also consulted with the Office of Personnel Management pursuant to title IV of the Ethics in Government Act of 1978, as amended. Section 402 of that Act provides, among other things, that the Director of OGE shall provide, in consultation with the Office of Personnel Management (OPM), overall direction of executive branch policies relating to preventing conflicts of interest, and develop, in consultation with the Justice Department and OPM, rules and regulations pertaining to the identification and resolution of conflicts of interest.

Subpart A—General Provisions

Proposed § 2641.101—Purpose

Proposed § 2641.101(a) explains that 18 U.S.C. 207 does not bar employment with any particular employer. Rather, it prohibits certain acts which involve, or may appear to involve, the unfair use of prior Government employment. The section would stress that the proscribed activities are prohibited even if they are undertaken for no compensation. The section would also note that the restrictions are personal to the employee and that they are not imputed to others, such as a law partner of a former employee. On the other hand, we have inserted a parenthetical cross-reference to the note following proposed § 2641.103 concerning the punishment under 18 U.S.C. 2 of a person or entity who "aids, abets, counsels, commands, induces, or procures commission" of a violation of 18 U.S.C. 207.

Proposed § 2641.101(b) makes two important points. First, it would emphasize that part 2641 provides interpretive guidance concerning the application of 18 U.S.C. 207 to former employees of the executive branch or of certain independent agencies of the Federal Government of the United States, including current employees who formerly served in "senior" or "very senior" employee positions. Second, although certain of the statute's provisions also apply to former employees of the District of Columbia, Members and elected officials of Congress and legislative staff, and employees of independent agencies in the legislative and judicial branches, the proposed paragraph specifically states that part 2641 is not intended to provide guidance to those individuals.

The note following proposed § 2641.101(b) warns that part 2641 does not purport to interpret post-employment restrictions that may be contained in laws or authorities other than section 207. Thus, for example, a former employee must comply with 18 U.S.C. 203 which restricts the acceptance of compensation in connection with certain representational activities undertaken by the employee or others at a time when the former employee was still serving with the Government. Under 41 U.S.C. 423(d), a former agency official may not accept compensation from a contractor for one year as an employee, officer, director, or consultant if the former official: (1) Served in certain procurement positions at the time the contractor was selected for or awarded a contract in excess of $10,000,000; (2) served in certain positions relating to the administration of a contract with the contractor in excess of $10,000,000; or (3) personally made certain decisions valued in excess of $10,000,000 in relation to a contract with the contractor. *See* 48 CFR part 3. The proposed note does not refer to restrictions contained in any professional codes of conduct, as these are outside the jurisdiction of OGE.

The proposed note does not purport to set forth an exhaustive list of all post-employment restrictions, including agency-specific or position-specific restrictions. We were concerned that the burden associated with compiling and maintaining an exhaustive (and accurate) list would outweigh the benefit of such a listing in a regulation intended to provide guidance relating to 18 U.S.C. 207. If history is any indicator, post-employment restrictions are frequently amended, suspended or abolished, then amended again or reinstated (*see, e.g.*, the legislative history of 41 U.S.C. 423(d)). We also foresaw difficulties in defining the standards for inclusion in such a listing.

Proposed § 2641.102—Applicability

Section 207 has been amended several times over the years. Proposed § 2641.102 traces the most significant of these amendments and explains that, as a consequence of these changes, former employees are subject to varying post-employment restrictions depending upon the date of their termination from Government service (or from a "senior" or "very senior" employee position). Section 2641.102 as proposed indicates whether an employee should consult 5 CFR part 2637 or part 2641 for regulatory guidance.

A note following § 2641.102 as proposed would warn that the guidance in part 2641 incorporates all amendments to 18 U.S.C. 207 enacted after the Ethics Reform Act of 1989 (and the related technical amendments to that Act), except as superseded. Significantly, as would be explained in the note, an individual who terminated Government service (or a "senior" or "very senior" employee position) before one or more of these amendments became effective would have become subject to a version of section 207 other than that reflected in part 2641 as proposed.

The substantive post-Ethics Reform Act amendments have concerned the applicability of sections 207(c), (d), or (f), the waiver authority in section 207(k), and the definition of "institution of higher learning" in section 207(j)(2)(B). The one-year restriction of section 207(c) has expired as to any former senior employee covered by a version of that restriction other than that described in part 2641. Moreover, the prior versions of section 207(f) are of relevance only in relation to the length of the restriction as it applied to a former United States Trade Representative or former Deputy United States Trade Representative who terminated service in the early 1990s. And, since the waiver authority in section 207(k) has not yet been utilized, a section 207(k) waiver would, in the future, be granted in accordance with part 2641, once it is finally adopted.

As discussed earlier, OGE is proposing to discontinue publication of 5 CFR part 2637. Since proposed § 2641.102(b) indicates that part 2637 should be consulted in relation to employees who terminated service prior to 1991, that section would also note the edition of the CFR in which part 2637 was last published.

Proposed § 2641.103—Enforcement and Penalties

It is the role of ethics officials, both at OGE and elsewhere, to give advice concerning the meaning of 18 U.S.C. 207. Section 2641.103(a) of the proposed rule notes that agencies are required by 28 U.S.C. 535 to report to the Attorney General any information, allegations, or complaints of possible violations of the laws in title 18 of the United States Code involving Government officers and employees, including violations of 18 U.S.C. 207 by former officers and employees.

When a matter involving a Federal conflict of interest law is referred to the

Department of Justice by an agency, 5 CFR 2638.603 requires that an agency concurrently notify the Director of OGE of the referral unless otherwise prohibited by law. The Office of Government Ethics has developed an optional "Notification of Conflict of Interest Referral" reporting form (OGE Form 202) that agencies can use for this purpose. After the final disposition of a referral, including any disciplinary or corrective action taken by the agency, agencies are required further to notify the Director of such disposition.

Proposed § 2641.103(b) cross-references the penalties and injunctions authorized to be imposed for violations of 18 U.S.C. 207. The section refers to 18 U.S.C. 216(a), (b) and (c) which, respectively, set forth the imprisonment terms and criminal fines for felony and misdemeanor violations of section 207, authorize the Attorney General to take actions to impose civil penalties for violations of section 207, set forth fine amounts, and authorize the Attorney General to seek injunctive relief to prohibit conduct that violates section 207.

The note proposed to follow § 2641.103 warns that a person or entity who "aids, abets, counsels, commands, induces, or procures" a violation of 18 U.S.C. 207 is punishable as a principal under 18 U.S.C. 2.

Notably, the new version of 18 U.S.C. 207 no longer provides for the administrative sanctions that were formerly authorized by the pre-Ethics Reform Act version of section 207(j). These procedures remain available, however, in the case of employees who terminated Government service prior to January 1, 1991. A number of agencies continue to publish procedures implementing former section 207(j). Given the passage of time, however, agencies may wish to weigh the likelihood that these procedures would be utilized against other factors, including the expense of continued publication and the availability of civil remedies.

Proposed § 2641.104—Definitions

Proposed § 2641.104 defines a number of terms that are used throughout the regulation. Although the terms are listed in proposed § 2641.104 in alphabetical order, they are discussed here *out of order* to facilitate our discussion. Other terms or phrases are defined in subsequent sections of the proposed regulation and are discussed further below.

The proposed definitions in § 2641.104 generally are intended to be consistent with definitions of the same terms previously published in 5 CFR part 2637. In some cases, we have altered the wording in order to clarify the definition, ensure consistency with other OGE regulations, or add additional information to reflect an OGE, Department of Justice, or judicial interpretation that was not incorporated into part 2637. Several of the definitions were included in the interim rule published in 1991 at part 2641 to permit the immediate exercise of the OGE Director's authority to designate departmental and agency components for purposes of 18 U.S.C. 207(c) and to waive certain positions from sections 207(c) and (f). The proposed rule also would make several modifications to the definitions in existing part 2641 in order to clarify the meaning or update the definitions consistent with current interpretations.

The term "employee" is used in 18 U.S.C. 207 in a number of contexts. Primarily, the term "employee" is used in section 207 to describe the individuals subject to section 207 and to identify the current Government officials with whom post-employment contact is restricted and the decisions of whom a former senior or very senior employee cannot seek to influence on behalf of a foreign entity. The term is, however, used for other purposes in section 207 and in proposed part 2641. Thus, for example, the exception in section 207(j)(2)(A) benefits an individual who becomes an "employee" of certain specified entities, such as a State or local government. *See* proposed § 2641.301(c). Moreover, in the proposed regulation, we use the term "employee" to refer to an individual's employment relationship with a non-Federal entity. As proposed, § 2641.104 defines the term for the purpose of identifying the individuals subject to section 207. (The definition would exclude certain individuals who are subject to section 207 but for whom part 2641 was not intended to provide guidance, such as employees of independent agencies in the legislative or judicial branches.) Proposed § 2641.104 emphasizes that the definition is modified elsewhere in the regulation, as necessary, when the term "employee" is used for other purposes.

Consistent with 18 U.S.C. 202(a) and (c), the term "employee" is defined in proposed § 2641.104 to exclude enlisted members of the Armed Forces, the President, and the Vice President (except, with respect to the Vice President, as otherwise provided). Relevant provisions of part 2641 as proposed would specifically indicate that the Vice President is subject to 18 U.S.C. 207(d) and (f) and that, in certain circumstances, communications to or appearances before the President and Vice President are prohibited. For purposes of clarity, the proposed definition of "former employee" emphasizes that the Vice President is a "former employee" only for purposes of sections 207(d) and (f).

The proposed definition of "employee" includes an individual appointed or detailed under the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3371–3376. The IPA authorizes the assignment of employees of State or local governments (and certain other entities) to Federal agencies. Under 5 U.S.C. 3374(a), an individual who is assigned to a Federal agency may be "appointed" in the agency or may be deemed "on detail" to the agency. The IPA specifically provides that an individual, whether appointed or on detail to a Federal agency, is deemed an "employee" for purposes of 18 U.S.C. 207. 5 U.S.C. 3374(c)(2). The regulation would also acknowledge that an individual may be subject to section 207 under the terms of a statute other than the IPA.

The proposed definition of "employee" also excludes officers or employees of the District of Columbia. Although former employees of the District of Columbia must comply with 18 U.S.C. 207(a)(1) and (a)(2), proposed § 2641.101(b) emphasizes that part 2641 "is not intended to provide guidance to those individuals." Moreover, we were also persuaded to exclude District of Columbia officials from the definition of "employee" since section 207(a)(3) indicates that post-employment contacts with District of Columbia officials are not with "any officer or employee of any department, agency, court, or court-martial of the United States" within the meaning of sections 207(a)(1) and (a)(2).

"State" is defined in proposed § 2641.104 to include the District of Columbia. The definition of "State" in 18 U.S.C. 207(j)(7) specifically defines the term as including the District of Columbia. We also propose to define the District of Columbia as a State in view of the exceptions at sections 207(j)(1) and (j)(2) which permit a former employee to engage in otherwise prohibited representational activity on behalf of certain governments. We defined the District of Columbia as a State notwithstanding language in the exception at section 207(j)(1) which, since it refers to the District of Columbia separately, distinguishes the District of Columbia government from State and local governments. In this regard, we noted that the wording of section 207(j)(1) also distinguishes the District of Columbia government from the United States Government. We decided

that the District of Columbia must have been listed separately in section 207(j)(1) for purposes of indicating the exception's applicability to former District of Columbia employees who act on behalf of that government.

As defined in proposed § 2641.104, "Government service" means "a period of time during which an individual is employed by the Federal Government." The proposed definition provides some guidance concerning when service ends in the case of "special Government employees," including some advisory committee members and Reserve officers of the Armed Forces and officers of the National Guard of the United States. As defined in 18 U.S.C. 202(a), a special Government employee (SGE) is an officer or employee of the executive branch or any independent agency "who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis * * *." Many of these individuals serve the Government only a few days per year, often returning to private sector employment during interim periods.

In the case of civilians who serve the executive branch or independent agencies as SGEs, the definition of "Government service" proposed in § 2641.104 indicates that Government service refers to "the period of time covered by the individual's appointment (or other act evidencing employment with the Government), regardless of any interval or intervals between days actually served." Thus, sections 207(a)(1), (a)(2), and (b) are not triggered each time there is an interval between the days on which a civilian SGE actually performs work. Example 4 following the definition of "former employee" in proposed § 2641.104 is illustrative.

In the case of a Reserve or National Guard officer, status as an SGE is related to the performance of active duty or active duty for training. More specifically, unless otherwise an employee, a Reserve or National Guard officer is classified as an SGE only while on active duty involuntarily, while on active duty for training for any length of time, or while serving voluntarily on extended active duty for 130 days or less. *See* 18 U.S.C. 202(a). The definition of "Government service" in proposed § 2641.104 indicates that, in the case of Reserve or National Guard officers, the end of a period of active duty or active duty for training as an SGE is considered the end of Government service for purposes of triggering the application of sections 207(a)(1), (a)(2), and (b). *See* example 5 following the proposed definition of "former employee" in § 2641.104. During periods when not serving on active duty, officers maintain their Reserve or National Guard status—categorized as either "active" or "inactive"—but they are not considered SGEs. Like civilians, Reserve and National Guard officers are, while special Government employees, subject to 18 U.S.C. 203 and 205. Similar to section 207, these statutes restrict an individual's ability to represent others before Federal departments, agencies, or courts.

The definition of the term "executive branch" derives from 18 U.S.C. 202(e)(1). According to 18 U.S.C. 202(e)(1), the executive branch includes "each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch." The term "executive agency" is defined in 5 U.S.C. 105 to mean "an Executive department, a Government corporation, and an independent establishment." The "Executive departments" are enumerated in 5 U.S.C. 101. Accordingly, proposed § 2641.104 states that the term "executive branch" includes "an Executive department as defined in 5 U.S.C. 101, a Government corporation, and an independent establishment (other than the General Accounting Office) * * * and also includes any other entity or administrative unit in the executive branch." The definitions of the "judicial" and "legislative" branches are from corresponding definitions in 18 U.S.C. 202(e)(2) and (3). Following 18 U.S.C. 202(e)(3)(B), we include the General Accounting Office (GAO) in our proposed definition of "legislative branch" and specifically exclude GAO from our proposed definition of "executive branch."

We determined that it would be appropriate to define the term "Government corporation" by reference to two separate statutory provisions, one in title 5 and one in title 18 of the United States Code. For purposes of determining the employees subject to 18 U.S.C. 207, we propose to use the definition of "Government corporation" in 5 U.S.C. 103. As defined in that section for purposes of Government personnel rules, a Government corporation means a corporation owned or controlled by the Government of the United States. In contrast, we propose to rely on the definition in 18 U.S.C. 6 when necessary to identify the employees with whom post-employment contact is restricted, to describe matters to which the United States is a party or has a direct and substantial interest, to specify the decisions of whom a former senior or very senior employee cannot seek to influence on behalf of a foreign entity, and to explain when an activity will be deemed undertaken on behalf of the United States. A corporation is an "agency" as defined in 18 U.S.C. 6 if it is a corporation "in which the United States has a proprietary interest." The Department of Justice's Office of Legal Counsel has distinguished a proprietary interest from one that is merely "custodial or incidental" as determined by reference to the corporation's "functions, financing, control, and management." 12 Op. Off. Legal Counsel 84 (1988). The proposed definition incorporates this Office of Legal Counsel guidance.

As defined in proposed § 2641.104, an individual becomes a "former employee" at the termination of Government service. Examples following the proposed definition of former employee illustrate the combined effect of this definition and those of "employee," "executive branch," and "Government service." Notably, proposed example 3 emphasizes that former employee status is triggered when an employee terminates *Federal* service. Thus, the example points out that an individual who served in a GS–14 position did not become a former employee when he terminated service in the executive branch to accept a position in the legislative branch. This result is dictated by language in 18 U.S.C. 207(a)(1), (a)(2) and (b) indicating that those restrictions commence when "service or employment with the United States" terminates. In contrast, we indicate that status as a "former senior employee" or "very senior employee" is triggered (for purposes of sections 207(c), (d), and (f)) at the termination of service in a senior or very senior position. This distinction appears both in the proposed definition of "former employee" and in proposed definitions of "former senior employee" and "former very senior employee."

The proposed revised definition of "senior employee" at § 2641.104 reflects the post-Ethics Reform Act of 1989 amendment of 18 U.S.C. 207(c) by the Office of Government Ethics Authorization Act of 1996, Pub. L. 104–179. Prior to the amendment of section 207(c)(2)(A)(ii) by that Act, section 207(c) applied, *inter alia*, to employees occupying positions for which the rate of basic pay was equal to or greater than that payable for level V of the Executive Schedule (EL–V). The amendment replaced the EL–V threshold with the

rate of basic pay payable for level 5 of the Senior Executive Service (ES–5).

Proposed example 2 following § 2641.104 reflects our conclusion in OGE Informal Advisory Letter 92 x 20 that step increases, or their equivalent, must be considered in determining whether an employee's basic rate of pay equals or exceeds the threshold rate of basic pay. In a subsequent advisory letter, we observed that this interpretation is not limited to the SL (senior level) or ST (scientific or professional) positions that were the subject of OGE Informal Advisory Letter 92 x 20. In the subsequent advisory letter, we stated that "[i]n general, for purposes of 18 U.S.C. 207(c)(2)(A)(ii), the "rate of basic pay" for any pay system refers to the base amount of actual pay for each individual employee, not the minimum rate of pay for a position's authorized pay range (footnote omitted)." OGE Informal Advisory Letter 98 x 2. Both OGE advisory letters, along with the others cited in this rulemaking document, are included in *The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics*, as published by the U.S Government Printing Office, and are also available on OGE's Web site at *http://www.usoge.gov*.

Admirals and Generals in the uniformed services ("flag" officers) are senior employees because, as specified in 18 U.S.C. 207(c)(2)(A)(iv), they are "employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade is * * * pay grade O–7 or above." A flag officer becomes a senior employee once "frocked." When frocked, an officer is authorized to wear the stars of the higher rank and to serve in a specified flag officer billet. He does not, however, receive the pay and allowances authorized by law for pay grade O–7 until he is actually promoted to that pay grade. We invite comment from the military departments concerning our interpretation of section 207(c) as it applies to flag officers.

As first published in part 2641 in early 1991, the term "senior employee" was defined to include individuals detailed to a position otherwise considered to be a senior employee position. We have revisited our earlier interpretation and propose to delete the reference to details. Our earlier interpretation was largely based upon a reading of 18 U.S.C. 207(g). Since that section indicates that an individual's former agency would include one to which the individual had been detailed, we stated in the regulation that a detail to a senior employee position would trigger senior employee status for purposes of determining the applicability of section 207(c). Upon further review of this issue, we now deem it more significant that the statute generally defines senior employee positions by reference to rate of pay (except in the case of Presidential or Vice Presidential appointments under title 3 of the United States Code). In the case of Senior Executive Service employees who are detailed, an employee continues to be the incumbent of the position from which detailed for purposes of pay and benefits. 5 CFR 317.903(a). Accordingly, we are proposing to delete the reference to details in existing § 2641.101 from our revised definition of senior employee in proposed § 2641.104. *Compare* OGE Informal Advisory Letter 98 x 4 in which we determined that an employee was a "senior employee" under 18 U.S.C. 207(c)(2)(A)(i) because she was, despite her election to continue to receive the SES pay of her previous position, employed in an Executive Schedule position.

For the reasons discussed above in connection with the definition of "senior employee," the proposed definition in § 2641.104 of "very senior employee" differs from that previously published in part 2641 in relation to details. Separately, it should be noted that since the definition of "very senior employee" encompasses any employee who satisfies any of the criteria enumerated in proposed subparagraphs (1)–(4) of the definition, the definition may encompass an SGE. However, there is no provision exempting any former very senior employee from 18 U.S.C. 207(d) based upon length of service. *Compare* proposed definition of "senior employee" in § 2641.104.

Section 207(d) applies to, among others, any person who "is employed in a position * * * *at* a rate of pay payable for level I of the Executive Schedule" (emphasis added). Therefore, the current definition of "very senior employee," found in existing section 2641.104, would be modified slightly in the proposed rule to reflect the apparent intent of Congress that the restriction apply to any individual employed in a level I position, or in a position in a pay system other than the Executive Schedule for which the rate of pay is exactly equal to—but not greater than—the level I rate. *See* Memorandum for Kenneth R. Schmalzbach, Assistant General Counsel, Department of the Treasury, from Daniel Koffsky, Acting, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of 18 U.S.C. § 207(d) to Certain Employees of the Treasury Department* (November 3, 2000), available under "Other Ethics Guidance, Conflict of Interest Prosecution Surveys and OLC Opinions" on OGE's Web site, *http://www.usoge.gov*. Proposed § 2641.104 reflects a similar Congressional judgment in relation to the application of section 207(d) to individuals serving in the Executive Office of the President.

The terms "agency" and "department" are used throughout 18 U.S.C. 207. The definitions of both terms in proposed § 2641.104, respectively, are from 18 U.S.C. 6. These terms appear in sections 207(a)(1) and 207(a)(2), for example, in connection with identifying those employees to and before whom communications and appearances may not be made. *See* proposed § 2641.201(f). They similarly identify the scope of the representational bars set forth in sections 207(c) and 207(d). *See* proposed § 2641.204(g). They are also used in 18 U.S.C. 207(f) for purposes of identifying the decisions of whom a former senior or very senior employee cannot seek to influence on behalf of a foreign entity. Significantly, these terms were not defined for purposes of identifying those former employees to whom the various restrictions of section 207 apply. We are proposing to include any "independent agency" not in the legislative or judicial branches within the scope of our definition of "agency."

Even the "United States" is a "person" as that term is defined in proposed § 2641.104; sections 207(a)(1), (a)(2), (b), (c), and (d), prohibit post-employment activity that is undertaken on behalf of (or to assist) "any other person (except the United States)." In some places in the proposed regulatory text, we use the terms "person" and "entity" together even though the first term encompasses the latter.

The terms "agency ethics official" and "designated agency ethics official" are defined due to their use in a number of places in the regulatory text, including in proposed § 2641.105 concerning advice, in proposed § 2641.301 concerning exceptions and waivers, and in proposed § 2641.302 concerning separate departmental or agency component designations for purposes of 18 U.S.C. 207(c).

Finally, as this regulation is intended to be gender-neutral, proposed § 2641.104 indicates that the terms "he," "his," and "him" include "she," "hers," and "her," and vice versa.

Proposed § 2641.105—Advice

Proposed § 2641.105(a) indicates that current or former employees and others should seek advice concerning 18 U.S.C. 207 and part 2641 from an "agency ethics official." The latter term is defined in proposed § 2641.104 as encompassing the designated agency ethics official (DAEO), the alternate DAEO, and any deputy ethics official as described in subpart B of 5 CFR part 2638. Proposed § 2641.105(a) notes that the agency in which the employee formerly served has the primary responsibility for providing such advice and that the agency may seek assistance from OGE. Proposed § 2641.105(a) does not require that agency advice be reduced to writing, although that format can provide the most protection to the employee. We expect that the decision whether to provide oral or written advice will be dictated by the circumstances.

An individual's former agency remains the primary source of advice. Agency officials are more familiar with agency programs and policies than are OGE personnel, and questions arising under section 207 often require a detailed understanding of the facts surrounding agency operations. However, OGE personnel also will provide advice to current or former employees, including their representatives or non-Federal employers, as outlined in proposed § 2641.105(b). Based on its statutory responsibilities for the executive branch ethics program, OGE may provide advice in a matter where an agency has already provided a former employee with advice.

While OGE strongly encourages agencies to establish mechanisms to ensure that departing employees will receive advice concerning pertinent post-employment restrictions (*see, e.g.*, 5 CFR 2638.203(b)(6) and (7)), this regulation as proposed would not require the agency to set up any particular system in order to achieve this goal. The Office of Government Ethics is aware that some agencies require that employees meet with an agency ethics official as one step in the exit process. Others have developed systems that identify terminating employees who can then be provided with written materials concerning the post-employment laws.

Although reliance on the oral or written advice of an agency ethics official or OGE is a factor that will be taken into consideration by the Department of Justice when selecting cases for prosecution, proposed § 2641.105(c) warns that there may be circumstances that would cause the Department to initiate a prosecution notwithstanding the former employee's reliance on such advice. The regulation would distinguish any case in which OGE issues a "formal" opinion. *See* 5 CFR 2638.309. Proposed § 2641.105(e) would advise that there is no attorney-client relationship formed when a current or former employee seeks advice from an agency attorney concerning post-employment restrictions. Thus, an agency or OGE attorney is obligated to report violations of law to appropriate authority. *See, e.g.*, 5 CFR 2635.101(b)(11).

Section 2641.105(d) of the proposed rule emphasizes that a former employee does not risk a violation of 18 U.S.C. 207 when he contacts an agency ethics official, attorney, or other Government employee for the purpose of seeking prospective advice concerning the potential applicability of the statute to his own post-employment activities.

Subpart B—Prohibitions

Proposed part 2641 draws heavily from the language and explanations in 5 CFR part 2637 concerning provisions of 18 U.S.C. 207 that were not amended by the Ethics Reform Act of 1989 (or thereafter). However, we have incorporated a number of improvements designed to facilitate understanding of this very complex statute. We have organized part 2641 as proposed in a manner that we feel more clearly highlights the applicability, duration, and elements of each of the substantive provisions of section 207 that apply to former employees of the executive branch and independent agencies. In addition, more guidance is included concerning the scope of the statutory exceptions.

We have also included new and more numerous examples. However, the examples are illustrative, not comprehensive. Each agency may provide additional illustration and guidance to its own employees, consistent with this part, in order to address specific problems arising in the context of a particular agency's operations. It is important to emphasize that the examples in part 2641 were drafted to illustrate the scope and meaning of 18 U.S.C. 207 only. Activity that is represented as permissible under section 207 may be prohibited by another post-employment law.

Proposed § 2641.201—18 U.S.C. 207(a)(1)

Section 207(a)(1) of title 18, United States Code, sets forth the permanent bar that was designated as section 207(a) in the pre-Ethics Reform Act of 1989 version of section 207. The target of this restriction is the former employee who participates personally and substantially in a particular matter involving a specific party or parties while employed by the Government and who later "switches sides" by representing another person on the same matter, with the intent to influence, before a Federal department, agency, or court.

Proposed § 2641.201(b) provides cross-references to the appropriate paragraphs of proposed § 2641.301 for each of the exceptions and waivers that in certain circumstances negate the prohibition contained in 18 U.S.C. 207(a)(1).

Proposed § 2641.201(d)—Communication or Appearance

Section 207(a) bars certain communications to or appearances before the United States. Proposed § 2641.201(d) describes the statutory communication or appearance element. Although section 207(a) has been amended several times since 1962—and the operative language describing the offense in section 207(a)(1) has varied—OGE and the Department of Justice have long held that it covers only those actions involving some representational contact by the former employee with the Government. *E.g.*, 2 Op. O.L.C. 313 (1978); OGE Informal Advisory Letter 82 x 13. The current statutory language reinforces the longstanding view that some communication or appearance by the former employee is required for a violation of the statute.

The definition of "communication" at proposed § 2641.201(d)(1) is intended to be all-inclusive with respect to types of communication, content of communication, or means of communication. This intentionally broad definition covers all formal or informal communications of any sort; to the extent that a given communication might be thought trivial or insignificant, such issues may be dealt with in connection with other statutory elements, especially the requirement that the communication be made with the intent to influence the Government. *See* proposed § 2641.201(e).

The definition of "appearance" at proposed § 2641.201(d)(2) largely follows the language of 5 CFR 2637.201(b)(3). However, the proposed regulation focuses solely on physical presence and omits the reference, found in § 2637.201(b)(3), to "convey[ing] material to the United States in connection with a formal proceeding or application." The latter phrase is unnecessary, since the conveying of material, such as pleadings and other documents, typically would constitute a "communication" anyway. *See* 5 CFR 2637.201(b)(3) (example 1) (under old rule, appearance included submitting brief in agency proceeding). Under the

statute as it existed prior to the 1989 amendments, it was more important to distinguish appearances from mere communications, as the two types of contacts were treated differently for certain purposes that are no longer relevant under the current statutory scheme. *See* 44 **Federal Register** 19974, 19975 (April 3, 1979) (preamble to 5 CFR part 737, now 5 CFR part 2637); OGE Informal Advisory Letter 81 x 35.

Proposed § 2641.201(d)(3) emphasizes that section 207(a) does not prohibit "behind-the-scenes assistance" that involves no contact by the former employee with the Government. *See, e.g., Beverly Enterprises, Inc.* v. *Trump*, 182 F.3d 183, 191 (3d Cir. 1999), *cert. denied*, 120 S.Ct. 795 (2000). Proposed example 5 is derived from a recent opinion of the Office of Legal Counsel, and it illustrates the principle that a former employee does not confine herself to permissible behind-the-scenes activity when she conveys information to the Government through an intermediary and does so with the intent that the information be attributed to her. *See* Memorandum for Amy L. Comstock, Director, OGE, from Joseph R. Guerra, Deputy Assistant Attorney General, OLC, January 19, 2001, available under "Other Ethics Guidance, Conflict of Interest Prosecution Surveys and OLC Opinions" on OGE's Web site, *http://www.usoge.gov*. In this connection, see also proposed example 7 following proposed § 2641.201(f), which would illustrate the related point that a communication will be deemed to be made "to" an employee of the United States if it is conveyed to an employee through a third party with the intent that the information be attributed to the former employee.

Proposed § 2641.201(e)—With the Intent to Influence

Section 207(a) prohibits only those communications or appearances that are made with the intent to influence the United States. Proposed § 2641.201(e) describes this statutory element of intent to influence.

Prior to the 1989 amendments, the phrase "with the intent to influence" modified only "communication," not "appearance." See S. Rep. No. 170, 95th Cong., 1st Sess. 152–53 (1977); OGE Informal Advisory Letter 81 x 35.[3] After the 1989 Act, it became clear that both appearances and communications must be made with the intent to influence in order for a violation of section 207(a) to occur: "Any person who * * * knowingly makes, with the intent to influence, any communication to or appearance before * * *." 18 U.S.C. 207(a)(1). (Identical language also appears in sections 207(a)(2), 207(c)(1), and 207(d)(1).) It is unclear, however, to what extent this 1989 change really altered the executive branch's understanding of section 207(a): "appearance" had been used in conjunction with the statutory phrase "acts as agent or attorney for, or otherwise represents," and OGE had already determined that this meant an appearance was prohibited only "if there were an actual or potential dispute." OGE Informal Advisory Letter 81 x 35. *See also* 5 CFR 2637.204(e), 2637.201(b)(5); 2 Op. Off. Legal Counsel 313, at 316. As discussed more fully below, the existence of an actual or potential dispute is one of the recognized factors for determining intent to influence. *Compare* 5 CFR 2637.204(e) (under old rule, same standard for "acting as representative" and "attempting to influence").

Proposed § 2641.201(e) uses basically the same test for the intent to influence as the prior section 207 regulations. *See* 5 CFR 2637.204(e). As articulated in the proposed regulation, the intent to influence may be found if the communication or appearance is made for either of the following purposes: "(i) [s]eeking a Government ruling, benefit, approval, or other discretionary Government action; or (ii) [a]ffecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute." Proposed § 2641.201(e)(1)(i) and (ii). In some respects, paragraph (1)(i) might be viewed as a subset of subparagraph (1)(ii), in the sense that any time a communication or appearance is made to seek "discretionary" Government action, there is at least the potential for a conflict of positions or other dispute between the Government and the private party being represented. Nevertheless, consistent with the prior section 207 regulations, OGE believes that it is appropriate to emphasize that any representational contact made for the purpose of seeking discretionary Government action would meet the element of the intent to influence.

The proposed regulation draws on various provisions in the prior regulations, as well as more recent administrative and judicial precedents, to provide guidance on when the intent to influence is present. Proposed § 2641.204(e)(2) sets out situations that generally have been recognized as involving no intent to influence. Several of the paragraphs in proposed § 2641.201(e)(2) repeat provisions or examples found in the prior section 207 regulations and other OGE precedents. For example, proposed § 2641.201(e)(2)(iii)—signing a tax return prepared for another person—and § 2641.201(e)(2)(v)—submitting an SEC Form 10–K—basically reiterate examples found in 5 CFR 2737.204(e). Some provisions in the proposed regulation make certain clarifications to the language used in the prior section 207 regulations and other OGE precedents. For example, proposed § 2641.201(e)(2)(iv), read in conjunction with proposed § 2641.201(d) (example 4), substantially preserves 5 CFR 2637.204(g) (example 1), pertaining to various aspects of the Federal grant application process and service by former employees as principal investigators, but clarifies the rationale. The proposed rule intentionally does not carry forward the provision on project responses in 5 CFR 2637.201(b)(7) because this provision was thought by OGE to be susceptible to misinterpretation. In OGE's experience, the project response provision and the accompanying example sometimes have been construed as allowing former employees inappropriate latitude in communicating with the Government where there may be a potential for controversy in the course of performing Government contracts or submitting proposals or reports to the Government. In its place, OGE has provided example 5, following proposed § 2641.201(e)(2), in order to emphasize the limits on communications during the performance of contracts, particularly in the difficult area of contracts to perform professional or managerial studies or similar services for the Government. Proposed examples 3 and 7 also provide additional guidance concerning the scope of permissible contacts in connection with Government contracts.

Some of the situations addressed in proposed § 2641.201(e)(2) pertain to communications and appearances that involve certain types of factual statements or questions, *e.g.*, proposed § 2641.201(e)(2)(ii). OGE has long recognized that certain statements of fact, in appropriate circumstances, do not necessarily involve an intent to influence the United States. *See, e.g.*, OGE Informal Advisory Letter 80 x 9. Factual statements, however, are not *per se* excluded from section 207(a). Factual disputes often are the heart of a given controversy, and a former employee's characterization of the material facts can be a form of advocacy. *See, e.g.*, proposed § 2641.201(e)(2) (example 4) (dealing with efforts to persuade Government of safety and efficacy of new drug based on presentation of testing data). Congress recognized this by providing exceptions to section 207, such as the exceptions for scientific or technological information and testimony under oath, which permit certain factual statements, but only under specified safeguards. *See* proposed § 2641.301(e) and (f). It is clear that factual statements may be made with the intent to influence the Government, if they are made for the purpose of seeking discretionary Government action or affecting Government action in connection with an issue or aspect of a matter involving an appreciable element of dispute. Therefore, OGE was careful, in various proposed textual provisions and examples pertaining to factual statements (or appearances in connection with factual matters), to include circumstances that specifically would indicate that there is no intent to influence.

A word of caution is in order with respect to the application of proposed § 2641.201(e)(1) and (2). The presence or absence of the intent to influence typically will be based on a consideration of all the relevant circumstances in a given case. The facts of each case should be examined carefully, therefore, before any conclusion is reached that a particular activity would fall within any of the provisions of proposed § 2641.201(e)(2) indicating no intent to influence, or would more correctly be viewed as meeting the test for the intent to influence in proposed § 2641.201(e)(1).

Proposed § 2641.201(e)(3) makes explicit a principle that was already implicit in the prior section 207 regulations. *See* § 2637.201(b)(5) (example 1). This provision recognizes that certain communications or appearances may commence without any intent to influence the Government, but may take on a different character if unforeseen disputes or other changed circumstances arise. In these cases, the former employee must refrain from any further communication or appearance if it becomes apparent that such further contact would be made with the intent to influence.

Proposed § 2641.201(e)(4) emphasizes that a mere appearance, even without any accompanying communication by the former employee, may be prohibited by section 207(a). As one court put it, applying the pre-1989 language, a representational appearance by a former employee may be covered "with or without speaking for the client." *United States* v. *Coleman*, 805 F.2d 474, 480 (3d Cir. 1986).[4] Phrased another way, silent appearances can be made with the intent to influence. This conclusion is compelled by the language and history of the statute. The language of section 207(a)(1) explicitly covers former employees who make, "with the intent to influence, any communication to *or* appearance before" the Government (emphasis added). Historically, as discussed above, representational appearances actually were covered *per se*, even without any explicit requirement of "intent to influence," although it was recognized even prior to the 1989 amendments that the appearance must have been made under circumstances involving "at least inchoate adversariness." 2 Op. Off. Legal Counsel at 316. There is nothing in the legislative history of the 1989 Act to indicate that the addition of an explicit "intent to influence" element in connection with appearances was intended to relax the restriction on representational appearances as it had been understood previously.

The question becomes, then, what circumstances would indicate that physical presence alone, without any substantive communication, is intended to influence the Government? The second sentence of proposed § 2641.201(e)(4) provides a nonexhaustive list of factors that can be relevant to such determinations. Many of these factors are derived from judicial and administrative precedents. *See, e.g., Coleman, supra; United States* v. *Schaltenbrand*, 930 F.2d 1554 (11th Cir. 1991); OGE Informal Advisory Letter 82 x 7. Although no one factor is necessarily determinative, these and any other relevant factors should be considered in light of the totality of the circumstances in a given case.

Proposed § 2641.201(f)—To or Before an Employee of the United States

The post-Ethics Reform Act of 1989 version of 18 U.S.C. 207(a)(1) prohibits communications to or appearances before any "officer or employee" of any "department, agency, court, or court-martial of the United States or the District of Columbia * * *." The prior version of the permanent bar had also prohibited communications to and appearances before "any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof." We believe the current version of the permanent bar no longer lists "civil, military, or naval commission" because these commissions are encompassed within the remaining terms. For purposes of summarizing the section 207(a)(1) restriction as briefly as possible at proposed § 2641.201(a), we refer to an employee "of the United States" rather than repeating the words "department, agency, court, or court-martial." Proposed § 2641.201(f) is titled accordingly. Although a court-martial is held under the auspices of a department, we chose to specifically list this forum in order to avoid possible confusion. Moreover, proposed § 2641.201(f) does not distinguish between "department" and "agency," because the definition of "agency" includes "department." *See* proposed § 2641.104.

The term "employee of the United States" is defined at proposed § 2641.201(f)(1) for purposes of identifying those individuals with whom post-employment contact is restricted. The proposed definition specifically includes an individual who, under 5 U.S.C. 3374(a), is considered an employee because appointed or detailed under the IPA. Pursuant to 18 U.S.C. 207(i)(1)(A), it also encompasses the President and the Vice President. Section 207(i)(1)(A) specifically states that "the term "officer or employee," when used to describe the person to whom a communication is made or before whom an appearance is made * * * shall include in subsections (a), (c), and (d), the President and the Vice President."

More generally, the proposed definition of "employee of the United States" at § 2641.201(f)(1) includes any "Federal employee" who is "employed by" an agency, court, or court-martial. Our choice of words was guided by a number of factors. First, 18 U.S.C. 207(a)(1) states that a communication or appearance is barred only if directed to an "employee" of a department, agency, court, or court-martial. We specifically intend that the words "employed by" would exclude from the scope of section 207(a) those communications directed to a non-Federal employee who happens to be serving in a department, agency, court, or court-martial. However, as illustrated in proposed example 7 following § 2641.201(f), we recognize that there may be circumstances in which a communication to a non-Federal employee is actually directed to a Federal employee.

Proposed § 2641.201(f)(1)(i) specifies that an agency encompasses a Government corporation. While the

[3] The Senate Report discussion and OGE Informal Advisory Letter 81 x 35 specifically pertained to section 207(c), but they were relevant also to section 207(a), because "[p]rior to the effective date of the amendments enacted by the Ethics Reform Act of 1989, both sections 207(a) and 207(c) contained identical language describing the nature of the representational activity prohibited." OGE Informal Advisory Letter 96 x 14, n. 25.

[4] *Colemon* involved the application of former 18 U.S.C. 207(b)(1), but that statute contained the same language concerning the representational conduct prohibited as section 207(a), prior to the 1989 amendments.

term agency encompasses any independent agency, proposed § 2641.201(f)(1)(ii) emphasizes that the representational bar extends to contacts with employees of an independent agency in any of the three branches of the Federal Government. Notably, proposed example 1 following § 2641.201(f) as proposed would highlight the fact that Members of Congress and their staffs are not employees of an independent agency in the legislative branch. Proposed § 2641.201(f)(1)(iii) modifies the term "court" with the adjective "Federal" in order to distinguish State or other non-Federal courts. Of course, as has been described in several OGE Informal Advisory Letters, a communication made in a court has "the additional unavoidable intent of attempting to influence and to persuade" a Federal party in the lawsuit, regardless of the forum. OGE Informal Advisory Letter 80 x 6. Moreover, a former employee may be prohibited from contacting Federal employees for use as witnesses or otherwise in connection with a lawsuit in State court. OGE Informal Advisory Letter 82 x 13.

Proposed § 2641.201(f)(1) omits the District of Columbia from the list of entities to or before which communications and appearances may not be made. As clarified in 18 U.S.C. 207(a)(3), the District of Columbia is listed in section 207(a)(1) merely as a consequence of the permanent bar's applicability to former District of Columbia employees. Thus, a former employee of the District of Columbia is covered by section 207(a)(1) in relation to contacts back to the government of the District of Columbia, but former employees of the executive branch (and of independent agencies) are not restricted by section 207(a)(1) from contacting employees of the District of Columbia.

Our definition of "to or before" in proposed § 2641.201(f)(2)(i) indicates that a communication or appearance will be considered directed to an employee of an agency, court, or court-martial even though not addressed to any particular employee of the entity. We believe it would be inconsistent with the purpose of 18 U.S.C. 207 to permit communications to a Federal entity merely because they are not addressed to a named individual.

In proposed § 2641.201(f)(2)(ii), we specify that a communication or appearance must be directed to an employee "in his capacity as an employee of" an agency, court, or court-martial. Proposed examples 2, 3, and 4 following proposed § 2641.201(f) are illustrative. While a former employee is not prohibited from lobbying a legislative branch employee at a meeting, example 2 emphasizes that a former employee may not try to influence an employee of an independent agency who is participating in the same meeting. Example 3 indicates that the permanent bar would extend to communications directed to an executive branch employee who is assigned by his agency to carry out official Government duties as a member of the Board of Directors of a non-Federal entity. The employee would be acting in his capacity as an executive branch employee even when, as in the proposed example, he is considering a specific issue of most interest to the private sector entity. (Separately, of course, the issue must be of direct and substantial interest to the current employee's agency, as described in proposed § 2641.201(j).) The proposed wording of § 2641.201(f)(2)(ii) is also intended to address the situation in which a former employee directs a communication to a former employee in a social setting. Although the current Federal Communications Commission (FCC) employee in proposed example 4 is "off-duty" at the cocktail party, the former employee nevertheless directs his communication to the FCC employee in his capacity as an employee of that agency.

As proposed, § 2641.201(f)(2)(ii) indicates that a former employee does not "direct" his communication to a mere bystander. Beyond this, we considered whether 18 U.S.C. 207(a)(1) should be interpreted as also not extending to a variety of situations in which a former employee directs a communication to a current employee who has no official role in a forum, yet who is participating in the forum as more than a mere bystander. We considered, for example, a number of situations in which a communication is directed to an assembled group. As we observed in OGE Informal Advisory Letter 81 x 5(1) in relation to the scope of section 207(c), the concern is the extent to which section 207 "might require [a former employee] to survey who his audience was before he argued a certain position to any group of individuals."

Proposed § 2641.201(f)(3) permits a former employee to serve as a speaker if the forum "[i]s not sponsored or co-sponsored by an entity specified in paragraphs 2641.201(f)(1)(i)–(iv) of this section, [i]s attended by a large number of people, and [a] significant proportion of those attending are not employees of the United States." *See* OGE Informal Advisory Letters 81 x 5(1), 81 x 5(2), It is our intention that former employees not be prohibited from addressing what are essentially public forums. The regulation may depart somewhat from past guidance in that it states that employees otherwise permitted to address such fora may engage in debate with any other panel participants or with members of the audience who happen to be current employees without fear of being found to have made a prohibited communication. In a public setting outside the context of official decision-making, such incidental exchanges between participants are still primarily directed towards the audience.

Under proposed § 2641.201(f)(3), private sector sponsorship of a forum, standing alone, does not free a speaker or panel participant from his post-employment restrictions. The forum must be in the nature of a conference, seminar, or similar forum; the audience must be large; and a significant proportion of attendees must be persons other than Federal employees. We considered whether to specify a minimum number of attendees and/or a maximum percentage of Federal employee attendees. In some settings, a communication is directed to so wide an audience that it cannot be said to be made "to" Federal employees in the audience. And while some audiences will plainly fall on one side or the other of a line drawn for this purpose, a precise line as to the size and composition of such an audience cannot be drawn. Former employees should appreciate the risks of violating section 207 before agreeing to address a forum when it is unclear whether proposed § 2641.201(f)(3) applies. In this regard, former employees may be guided by the size of the conference and the proportion of non-employee attendees in proposed example 5.

The regulation would deal with published writings in a similar fashion. A former employee may "permit the broadcast or publication of a commentary provided that it is broadcast or appears in a newspaper, periodical, or similar widely-available publication."

As proposed example 7 would indicate, a communication can be made "to" an employee of the United States if it is conveyed through an intermediary with the intent that the information be attributed to the former employee. A similar point is discussed above in connection with proposed example 5 following § 2641.201(d) as proposed, which would illustrate the distinction between permissible behind-the-scenes activity and communications directed to the Government.

Proposed § 2641.201(g)—On Behalf of Any Other Person

Proposed § 2641.201(g) defines the phrase "on behalf of" for purposes of 18 U.S.C. 207(a)(1), (a)(2), (c) and (d). As enacted in 1962, the lifetime restriction originally barred a former employee from acting as "agent or attorney" for anyone. Similarly, the predecessor of current section 207(a)(2), concerning matters under an employee's official responsibility, originally barred a former employee from appearing personally as "agent or attorney." These restrictions were amended by the Ethics in Government Act of 1978 to extend to the former employee who acts "as agent or attorney for, or otherwise represents, any other person * * * in any formal or informal appearance * * * or * * * makes any oral or written communication on behalf of any other person." Congress used this same language in 1978 when it enacted section 207(c), the one-year "cooling-off" restriction applicable to former senior employees. Since the Ethics Reform Act of 1989, these three restrictions have barred a former employee from making any "communication to or appearance before" an employee of the United States "on behalf of" any other person. The same language appears in section 207(d), the one-year cooling-off restriction applicable to former very senior employees.

We determined that a communication or appearance that is in the interest of another person is not sufficient to be considered "on behalf of" that person. Accordingly, the proposed definition at § 2641.201(g)(1) states that "[a] former employee does not act on behalf of another merely because his communication or appearance is consistent with the interests of the other person, is in support of the other person, or may cause the other person to derive a benefit as a consequence of the former employee's activity." While we recognize that the terms "agent" and "attorney" no longer appear in the current version of the permanent, two-year, or one-year cooling-off restrictions, proposed § 2641.201(g)(1) indicates that when a former employee acts as another's "agent" or "attorney," he necessarily acts on behalf of the principal. Even when a former employee is not acting as an agent or attorney, however, proposed § 2641.201(g)(1) recognizes that a former employee may nevertheless act on behalf of another provided the criteria at proposed § 2641.201(g)(1)(i) and (ii) are satisfied. As specified in proposed § 2641.201(g)(1)(i), the former employee must be acting with the consent, express or implied, of the other person. And, as specified in proposed § 2641.201(g)(1)(ii), the former employee must be subject to some degree of *control or direction* by the other person in relation to the communication or appearance.

The former employee in example 2 following proposed § 2641.201(g) has broad authority to further the interest of the organization with which she is serving as a volunteer. For purposes of the consent requirement in proposed § 2641.201(g)(1)(i), the organization is deemed to have consented to her dispatch of the letter to the Government. In contrast, the circumstances in proposed example 3 would indicate that the former employee is not acting on behalf of the nonprofit group with which he is serving as an employee.

OGE has fielded many questions from agencies that wish to contact former employees who have gone to work for private sector employers. We have generally been counseling that all relevant factors must be considered, including the relationship between the communication or appearance and any related interest of the former employee's new employer or other organization with which he is affiliated. *See, e.g.*, OGE Informal Advisory Letter 97 x 9. We believe that the focus on the two factors at proposed § 2641.201(g)(1) would make certain contacts between an agency and its former employee less problematic and would allow OGE and agency ethics officials to advise accordingly.

An appearance or communication is barred by 18 U.S.C. 207(a)(1), (a)(2), (c), or (d) only if made on behalf of "any other person." Proposed § 2641.201(g)(2) cross-references the definition of "person" in proposed § 2641.104, but specifically states that self-representation is not prohibited. Proposed example 1 following proposed § 2641.201(g) is illustrative. Proposed § 2641.201(g)(2) also includes a reference to sole proprietorships that is intended to distinguish that form of business enterprise from partnerships and corporations for purposes of the "exception" for self-representation. The proposed rule reflects that a corporation is a person separate from its owner or owners. As a result, if a former employee chooses to incorporate his consulting business, he must ensure that his communications with the Government do not run afoul of the post-employment statute's requirements since he will be representing another "person." On the other hand, if the same former employee had chosen not to incorporate his business, he would be free to interact with current Government employees without fear of violating section 207(a)(1) since he would be representing only himself.

Proposed § 2641.201(h)—Particular Matter Involving Specific Parties

Proposed § 2641.201(h) explains a concept that has been central to the understanding of 18 U.S.C. 207 since its original enactment in 1962. The phrase "particular matter" is broadly defined in section 207(i)(3) to include "any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding." In section 207(a)(1) and (2), however, particular matter is modified by the additional phrase "which involved a specific party or specific parties." *See* B. Manning, *Federal Conflict of Interest Law* 204 (1964) (explaining significance of the phrase); 2 Op. O.L.C. 151 (1978) (same). Proposed § 2641.201(h) is intended to explain the nature and scope of this statutory element.

The proposed regulation uses basically the same test for particular matters involving specific parties that is used in 5 CFR 2637.201(c). Proposed § 2641.201(h)(1) states: "These matters involve a specific activity or undertaking affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case." One minor change worth noting is that the proposed regulation speaks of "identified" parties, whereas section 2637.201(c)(1) used the term "identifiable" parties (following identical language originally found in B. Manning, *supra*, at 204). This change is consistent with the more recent definition of particular matter involving specific parties in 5 CFR 2640.102(l). *See* 60 FR 47207, 47211 n.1 (September 11, 1995). The use of "identified," rather than "identifiable," is intended to distinguish more clearly between particular matters involving specific parties and mere "particular matters," which are described elsewhere as including matters of general applicability that focus "on the interests of a discrete and *identifiable* class of persons" but do not involve specific parties. 5 CFR 2640.102(m) (emphasis added). *See also* 5 CFR 2640.103(a)(1); 5 CFR 2635.402(b)(3). The use of the term "identified," however, does not mean that a matter will lack specific parties just because the name of a party is not disclosed to the Government, as

where an agent represents an unnamed principal.

Consistent with this basic test and with § 2637.201(c)(1), proposed § 2641.201(h)(2) confirms that matters of general applicability are not particular matters involving specific parties. *See also Shakeproof Indus. Prod. Div. of Ill. Tool Works, Inc.* v. *Department of Commerce*, 104 F.3d 1309, 1313–14 (Fed. Cir. 1997). As illustrated by the examples following this provision, section 207(a) ordinarily does not prohibit former employees from making representations in connection with general rulemaking, policy and legislative matters, notwithstanding any personal and substantial participation or official responsibility they may have had with respect to such matters as a Federal employee.

Proposed § 2641.201(h)(3) indicates that specific parties must be involved, under section 207(a), both at the time the former employee was involved in the matter and at the time of the post-employment representation. This reflects a longstanding interpretation of section 207(a), which was codified in 5 CFR 2637.201(c)(4). Nevertheless, the Ethics Reform Act of 1989 made certain adjustments to the grammatical structure of section 207(a) that may require some explanation. Prior to the 1989 Act, section 207(a) read, in pertinent part: "Whoever * * * knowingly acts as agent or attorney for, or otherwise represents, any other person * * * in connection with any * * * particular matter involving specific parties * * * in which he participated personally and substantially as an officer or employee * * *." In 1989, the language pertaining to specific parties was broken out and moved to its own lettered subparagraph, which now reads: "(C) which involved a specific party or specific parties *at the time of such participation*." 18 U.S.C. 207(a)(1)(c) (emphasis added).[5] Based on the legislative history, it appears that the amendment was intended simply to resolve any doubt that specific parties must have been involved at the time that the former employee participated in the matter, not to cast doubt on the well-understood requirement that specific parties must be involved at the time of the representation.[6]

[5] Similar language was enacted in 1989 in section 207(a)(2)(C), which pertains to particular matters pending under an employee's official responsibility: "(C) which involved a specific party or specific parties *at the time it was so pending* (emphasis added)."

[6] The leading Senate proponent of the 1989 amendments stated that many of the changes to section 207 "simply reflect an effort to make the statute more readable." 135 Cong. Rec. S15954 (November 17, 1989) (remarks of Sen. Levin). Senator Levin also entered into the record a section-by-section analysis stating that section 207(a)(1) is "similar to current law" and describing it as a prohibition against "lobbying * * * on a particular matter involving specific parties," *id.*, which suggests this was not a novel effort to cover matters that do not involve specific parties at the time of the lobbying. Furthermore, the Department of Justice testified at a 1989 hearing with respect to H.R. 9, which contained the same language as the enacted amendments concerning the timing of the specific parties requirement. The Justice Department commented on this aspect of the proposal and specifically noted its consistency with the OGE regulation discussed above: "The requirement that a specific party must have been involved at the time of the employee's government service clarifies present law in a way that is consistent with current regulations. It means, for example, that a Government employee who helped develop a set of regulations or policies is not precluded from becoming involved in a particular case or matter involving the application of the regulation or policy. See 5 CFR 737.5 (c)(now 5 CFR 2637.201(c)]." Hearings Before the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary, House of Representatives, on H.R. 2267 and Related Bills: Post-Employment Restrictions Act of 1989, 101st Cong., 1st Sess. 151 (April 27, 1989)(statement of John C. Keeney, Deputy Assistant Attorney General, Criminal Division).

Proposed § 2641.201(h)(4) pertains to the related issue of when specific parties can be said to be involved in a particular matter. Section 207(a) can apply to participation in preliminary or informal stages of a particular matter. *See, e.g.*, 2 Op. O.L.C. 313 (1978). Consequently it becomes important to determine, in light of the facts surrounding a given matter, at what point specific parties are first identified. Proposed § 2641.201(h)(4) and the examples that follow are intended to provide guidance in making such determinations. In addition to general guidance applicable to all types of matters, the proposed regulation also provides more specific guidance with respect to contracts, grants, and other agreements, which historically have posed some of the most difficult and recurring questions. *See* OGE Informal Advisory Letter 96 × 21.

Another set of difficult and recurring questions is addressed by proposed § 2641.201(h)(5), which explains the requirement that the same particular matter must be involved both at the time of the former employee's Government service and at the time of post-employment representation. The proposed regulation uses substantially the same test as 5 CFR 2637.201(c)(4), including a similar list of factors that should be taken into consideration, where relevant, in determinations as to whether two matters constitute the same particular matter involving specific parties. The proposed examples following proposed § 2641.201(h)(5) would illustrate the application of some of these factors and draw on various administrative and judicial precedents. *E.g., United States* v. *Medico Indus., Inc.*, 784 F.2d 840 (7th Cir. 1986); *CACI, Inc.-Federal* v. *United States*, 719 F.2d 1567 (Fed. Cir. 1983); OGE Informal Advisory Letter 93 × 32. For purposes of clarity, one factor was not carried over from the previous list in § 2637.201(c)(4), namely, "the continuing existence of an important Federal interest"; this factor was thought to add little to the analysis of section 207, since the statute already applies only to matters in which the United States is a party or at least has a "direct and substantial interest." 18 U.S.C. 207(a)(1), (a)(2).

The principle reflected in proposed § 2641.105—that the primary responsibility for rendering post-employment advice resides in the ethics official at the agency where the former employee served—is particularly important in connection with these "same particular matter" determinations. These questions frequently require an understanding of the specific operations, programs, and missions of the agencies involved. Moreover, there is judicial recognition that agency determinations with respect to the "same particular matter" element are "entitled to weight." *CACI*, 719 F.2d at 1576; *see also Shakeproof*, 104 F.3d at 1314. This is not to suggest, of course, that deference to the agency is absolute. See, *e.g., United States* v. *Gonzalez-Florido*, 986 F.Supp. 687 (D.P.R. 1997).

Proposed § 2641.201(i)—Participated Personally and Substantially

Proposed § 2641.201(i) defines the terms "participate," "personally," and "substantially." The first regulatory definition of these terms for purposes of 18 U.S.C. 207 was published in 1980 at 5 CFR 2637.201(d). When Congress amended section 207 in 1989, it added a statutory definition of "participated" at section 207(i)(2). In the 1990s, OGE published regulatory guidance concerning the meaning of these terms in connection with its implementation of 18 U.S.C. 208 at 5 CFR part 2635 and 5 CFR part 2640. The current definitions of "personal and substantial" at 5 CFR 2635.401(b)(4) and "personal and substantial participation" at 5 CFR 2640.103(a)(2) were patterned closely after definitions in 5 CFR part 2637. The language of proposed § 2641.201(i) deviates somewhat from the language of these existing OGE regulations for several reasons. First, we are proposing to more clearly separate the definitions of the terms "participate," "personally," and "substantially." We would also exactly track the language of the statutory definition of "participated." More significantly, however, we are proposing to include some additional guidance that reflects our experience with several questions arising since publication of the earlier regulations.

The first sentence of the definition of "participate" at proposed § 2641.201(i)(1) is from 18 U.S.C. 207(i)(2). Consistent with existing guidance at 5 CFR 2637.201(d)(3), the definition then indicates that to participate can also mean to "purposefully forbear in order to affect the outcome of a matter." The proposed definition also distinguishes participation from mere knowledge of a matter and from the definition of "official responsibility" as set forth in proposed § 2641.202(j). Additionally, the proposed definition points out that an employee can participate in a particular matter even though it is not pending at his own agency. Finally, it would state that an employee does not participate in a particular matter within the meaning of section 207(a)(1) unless he does so in his official capacity.

Under the proposed definition at § 2641.201(i)(2), to participate "personally" includes the direct and active supervision of others. The existing regulations refer to active supervision of a "subordinate." As proposed, § 2641.201(i)(2) indicates that the person supervised need not technically be a subordinate. An employee may participate in a matter, for example, by means of direct and active supervision of an employee who is merely on loan from another office. Separately, we are also proposing to make the fairly obvious point that an employee participates in a matter whether he does so "individually or in combination with other persons."

The definition of "substantially" at proposed § 2641.201(i)(3) closely tracks the definitions of that term in 5 CFR part 2635 and 5 CFR part 2640. However, we are proposing to insert an additional sentence in response to two recent scenarios. The first concerned a former employee's involvement as a Government employee in a meeting with a private sector company. The meeting was preliminary to the company's submission of an application to the Government. The former employee was willing to concede that the meeting and the application were the same "particular matter." He argued, however, that the meeting constituted an aspect of the matter that was insignificant in relation to the application process as a whole and that the former employee's participation was, therefore, insubstantial. In another case, a former employee argued that his participation in a multi-million dollar project had not been substantial since the dollar value of the aspect of the project in which he was involved was insignificant in relation to the dollar value of the project as a whole. The Office of Government Ethics rejected both arguments, noting that in both cases the former employee had made a substantive contribution to the matter. As we propose to explain in § 2641.201(i), "[p]rovided that an employee participates in the substantive merits of a matter, his participation may be substantial even though his role in the matter, or the aspect of the matter in which he is participating, may be minor in relation to the matter as a whole."

We have included an additional sentence in the definition at proposed § 2641.201(i)(3) emphasizing that participation in "peripheral" aspects of a matter or in aspects not directly involving the substantive merits of a matter is not substantial. We would note, however, that such an aspect might itself constitute a particular matter with respect to which the permanent bar might apply. This is set forth in 5 CFR 2637.201(d)(2) and example 1 following 5 CFR 2637.201(d)(1).

Although reworded, proposed examples 1 and 2 following proposed § 2641.201(i) are from existing 5 CFR 2637.201(c) and 2637.201(d). Proposed example 3 would make the point that an employee's participation may be substantial even though her role in the matter may be minor in relation to the matter as a whole.

Proposed § 2641.201(j)—United States is a Party or Has a Direct and Substantial Interest

Finally, proposed § 2641.201(j) focuses on how to determine whether the United States is a party or has a direct and substantial interest in a particular matter at the time of a former employee's post-employment representational activity.

The definition of "United States" at proposed § 2641.201(j)(1) is intended to encompass the entire Federal Government. As explained earlier in connection with the definitions in proposed § 2641.104, we cited the definition of "Government corporation" in 18 U.S.C. 6 for purposes of defining "United States" in proposed § 2641.201(j)(1). Also, as explained below in connection with proposed § 2641.301(a), the Government of the District of Columbia is not encompassed by the term United States. Separately, we note that the proposed definition of United States at § 2641.201(j)(1) encompasses the entire judicial branch. *Compare* proposed § 2641.201(f) which provides that a representation is not made "to" an employee of the United States unless made, *inter alia*, to an employee of a Federal *court*. The narrower interpretation in proposed § 2641.201(f) reflects the statutory language "department, agency, court, or court-martial of the United States" in 18 U.S.C. 207(a).

Proposed § 2641.201(j)(2) specifically states that "the United States is neither a party to nor does it have a direct and substantial interest in a particular matter merely because a Federal statute is at issue or a Federal court is serving as the forum for resolution of the matter." *See, e.g.*, 14 Op. Off. Legal Counsel O.L.C. 139 (June 7, 1990) (predecessors to 18 U.S.C. 207(a)(1) and (a)(2) determined not to bar former employees from serving as trustees in bankruptcy cases unless the United States is a party or has a direct and substantial interest in the bankruptcy proceeding, *e.g.*, if the United States is a creditor of the estate.) Of course, when a former employee wishes to participate in a judicial proceeding concerning the same particular matter with which he was involved while a Government employee, it is likely that his former agency will be a party to or have a direct and substantial interest in the subject of the proceeding or that the agency will itself be serving as the forum.

As OGE has noted in relation to 18 U.S.C. 205, determining whether or not the United States has a direct and substantial interest in a particular matter "may not be easy." OGE Informal Advisory Letter 94 × 7. Proposed § 2641.201(j)(2)(i) assigns the primary responsibility for coordinating this determination to the designated agency ethics official at the former employee's agency. This assignment is consistent with the DAEO's responsibility, as specified in proposed § 2641.105(a), to provide advice to a former employee of his agency or to the individual's representative. If any agency has a continuing direct and substantial interest in a matter, we suggest that it will most likely be the agency in which the matter was pending when the former employee worked on it as a Government employee. If the circumstances suggest that another agency may have a direct and substantial interest in the matter, the DAEO should contact an agency ethics official at the other agency. Moreover, we anticipate that an agency's ethics staff will need only pursue resolution of a direct and substantial interest issue when all other elements of 18 U.S.C. 207(a)(1) or 207(a)(2) appear satisfied.

As proposed, the regulation does not establish any procedures for the internal coordination of an agency's direct and substantial interest determination. Under proposed § 2641.201(j)(2)(i), it is within an agency's discretion to determine who must be consulted within the agency (or any department of which the agency is a part) in order to determine whether the agency will assert a direct and substantial interest in a particular matter. A DAEO may accept the assurance of another agency's DAEO (or equivalent official in the legislative or judicial branch) that he has been authorized by competent agency authority to convey the agency's direct and substantial interest determination.

In making this determination, proposed § 2641.201(j)(2)(ii) provides that appropriate officials shall consider "all relevant factors." Thus, the proposed factors listed in § 2641.201(j)(2)(ii)(A)-(D) are not all-inclusive. We specifically seek public comment concerning useful revisions or additions to our proposed list.

Proposed § 2641.202—18 U.S.C. 207(a)(2)

All relevant statutory changes that were made to 18 U.S.C. 207(a)(1) by the Ethics Reform Act of 1989 were also made to section 207(a)(2), formerly section 207(b)(i), a two-year bar which similarly applies to all "former employees." Proposed § 2641.202(b) provides cross-references to the appropriate paragraphs of proposed § 2641.301 for each of the exceptions and waivers that in certain circumstances negate the prohibition contained in section 207(a)(2). As sections 207(a)(1) and (a)(2) are identical except for their duration and the degree of involvement in a particular matter during Government service necessary to trigger the restriction, proposed § 2641.202(d)–(i) cross-reference relevant portions of proposed § 2641.201 relating to the permanent bar.

Proposed § 2641.201(j)—Official Responsibility

The first sentence of the definition of "official responsibility" in proposed § 2641.202(j)(1) quotes the statutory definition of the term in 18 U.S.C. 202(b). In addition, consistent with existing guidance at 5 CFR 2637.202, proposed § 2641.202(j)(1) explains that the scope of an employee's official responsibility is ordinarily determined by statute, regulation, Executive order, job description, or delegation of authority. Example 1 following proposed § 2641.202(j) emphasizes that subject matter jurisdiction assigned by position description is not removed from the scope of an employee's official responsibilities merely because the employee does not actually exercise his authority to direct Government action in that subject area.

Proposed § 2641.202(j)(1), drawing from existing 5 CFR 2637.202(b)(2), emphasizes the potential breadth of the term "official responsibility," noting that "[a]ll particular matters under consideration in an agency are under the official responsibility of the agency head and each is under that of any intermediate supervisor who supervises a person, including a subordinate, who actually participates in the matter *or who has been assigned to participate in the matter* within the scope of his duties" (emphasis added). The highlighted language is new. It is intended to make clear that a supervisor can have official responsibility for a pending matter even though his subordinate has not yet retrieved the assigned matter from his in-box or, although having retrieved it, has not yet worked on it "personally and substantially." This language would also make it clear that a supervisor need not have personally assigned the matter to the subordinate, provided the matter is pending with the subordinate and it falls within the scope of the subordinate's official duties. Proposed example 3 would emphasize the requirement that the assigned matter fall within the scope of the supervised employee's official duties. On the other hand, the proposed language is intended to indicate that an employee can have official responsibility for a matter even though he exercises only nominal supervision over the person actually doing the work; the supervised employee need not be a true subordinate. Thus, for example, OGE has advised that a former employee had official responsibility for a matter even though all work on a project was being accomplished by employees "on loan" from another office.

As drafted, proposed § 2641.202(j) indicates that a nonsupervisory subordinate is not deemed to have official responsibility for a matter to which he has been assigned, whether or not he has begun to work on it. *But see United States* v. *Coleman*, 805 F.2d 474 (3d Cir. 1986) (affirming conviction of nonsupervisory employee for violation of 18 U.S.C. 207(b)(i), the predecessor to section 207(a)(2).) Proposed example 4 following proposed § 2641.202(j) emphasizes, however, that the nature of a nonsupervisory employee's participation in a particular matter could potentially make her subject to the permanent section 207(a)(1) bar as to that matter.

Existing 5 CFR 2637.202(b)(3) provides that authority for an "ancillary" consideration does not constitute responsibility for the particular matter as a whole. As proposed, § 2641.202(j)(1) continues to make the point that responsibility for ancillary matters, such as budgeting, or equal employment considerations, does not constitute official responsibility for the whole of a matter. Proposed example 2 following § 2641.202(j) illustrates this point. The proposed guidance makes the additional point that responsibility for nonsubstantive aspects of a matter similarly does not cause an employee's official responsibility to extend to the whole of a substantive matter.

Guidance in proposed § 2641.202(j)(2) concerning the meaning of "actually pending" also derives from existing guidance in 5 CFR 2637.202. New language clarifies that a supervisory employee acquires official responsibility for a matter as soon as it is referred to him for assignment, regardless of whether he subsequently assigns the matter to another employee or retains it for his own action. Thus, proposed § 2641.202(j)(2) provides that a supervisory employee acquires official responsibility for any matter referred to the employee "for assignment." In proposed example 5, the General Counsel is said to have acquired official responsibility for a certain matter as soon as it was referred to him as an issue requiring action by the legal department. In addition, as already noted, the proposed guidance notes that there is no requirement that a matter have been pending under an individual's official responsibility for any particular length of time. *See, e.g.*, OGE Informal Advisory Letter 94 x 13. In proposed example 5, therefore, it would be enough that the particular matter had been pending under the General Counsel's official responsibility for 2 days. Proposed § 2641.202(j)(2) also indicates that a matter remains pending when it is not under "active" consideration, as discussed in OGE Informal Advisory Letter 85 x 6. Proposed example 6 is a reworded version of the current example following 5 CFR 2637.202(c).

Proposed § 2641.202(j)(3) addresses the applicability of section 207(a)(2) with respect to particular matters that fell within an employee's official responsibility only by virtue of a temporary assignment to a position. We recognize that while on detail or serving in an acting capacity, a temporary supervisor can potentially establish

policies, gain information, decide issues, and make contacts that may serve him well in his post-Government life. On the other hand, in proposing this regulatory provision, we sought to balance the concerns underlying section 207(a)(2) against the likelihood that a temporary assignment would permit an employee to acquire the knowledge and experience necessary to make those concerns legitimate. Such assignments occur frequently throughout the executive branch, sometimes lasting only a few days or otherwise involving circumstances indicating that the employee had no reasonable expectation of being able to exercise the full authority of the position. In many cases, where the employee functions only in a limited "caretaker" role, it seems remote that the policy concerns underlying section 207(a)(2) would be implicated. Although we were unable to establish a bright line test for determining when temporary duties implicate section 207(a)(2), we are proposing a nonexclusive list of factors that agencies can utilize in making such determinations, as set out in proposed § 2641.202(j)(3)(i)–(iv).

Proposed § 2641.202(j)(4) indicates that "[t]he scope of an employee's official responsibility is not affected by annual leave, terminal leave, sick leave, excused absence, leave without pay, or similar absence from assigned duties." Related § 2641.202(j)(5) as proposed would state that "[o]fficial responsibility for a matter is not eliminated through self-disqualification or avoidance of personal participation in a matter * * *." Thus, a matter is not removed from an employee's official responsibility when he recuses himself from participation in the matter due to a conflicting financial or personal interest or during a job search as required by subparts D, E, and F of 5 CFR part 2635 and 5 CFR part 2640. Example 8 following proposed § 2641.202(j) is illustrative. This interpretation is consistent with *United States* v. *Dorfman* 542 F. Supp. 402 (N.D. Ill. 1982), in which the court advised that a U.S. Attorney's recusal coupled with assignment of a particular matter to a "first assistant" would not remove the case from the U.S. Attorney's official responsibility. The court cited 5 CFR 737.7 (now 5 CFR 2637.202(b)(5)), a provision which was also the subject of OGE Informal Advisory Letter 86 x 2. As interpreted by OGE in that advisory letter, a contract could be removed from an employee's official responsibility if he had "not only the contract but also the actual function dealing with the contract removed from his duties under his position description." Proposed § 2641.202(j)(5)) recognizes that the scope of an employee's official responsibility may be changed by an amendment of a position description.

Proposed § 2641.202(j)(6) does not explicitly address the scope of the term "official responsibility" in the case of an employee whose Government service lasted less than one year and was preceded by a break in Government service. However, proposed example 9 does provide our interpretation of the application of section 207(a)(2) where there has been a break in service in the last year of the former employee's Government service. By way of background, this issue was brought to our attention when a former high-ranking employee, after a break in service lasting a few months, agreed to serve as an SGE for a short period of time. When he left Government the second time, less than one year had passed since serving in his previous Government job. We noted that an initial section 207(a)(2) bar would have commenced at the end of his first period of Government service. The issue was whether the section 207(a)(2) bar triggered by his second departure from Government should apply to particular matters for which he had responsibility during his first period of service (provided they were actually pending within the one-year period prior to his termination from his second Government job.) We determined that the second section 207(a)(2) restriction applied only to those particular matters that were actually pending under his official responsibility during his most recent period of Government service. (Of course, any section 207(a)(2) restriction remaining from the employee's termination from Government service immediately preceding the break in service would still be in effect.)

Section 207(a)(2) also requires that the particular matter be one that the former employee "knows or reasonably should know" was pending under his official responsibility during his last year of Government service. As described in existing part 2637, section 207(a)(2) had been interpreted to mean that the restriction would not apply to a former employee "unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility." The proposed new guidance similarly provides that it is the former employee's knowledge at the time of the post-employment representation that is critical. Thus, the last sentence of proposed § 2641.202(j)(7) notes that "[i]t is not necessary that a former employee have known during his Government service that the matter was actually pending under his official responsibility."

Proposed § 2641.202(j)(7) makes it clear that it is enough that the former employee "reasonably should know" at the time of his post-employment representation that the matter was actually pending under his official responsibility within his last year of Government service. We are proposing to include a note following § 2641.202(j) of the new regulation that would warn an employee that prudence dictates that he make inquiry "when the facts suggest that a particular matter involving specific parties *could* have been actually pending under his official responsibility" (emphasis added). The proposed note cross-references the provision in proposed § 2641.105(d) stating that an employee will not be deemed to violate section 207 when he contacts an employee of the United States for purposes of determining the applicability or meaning of section 207 as applied to his own activities.

Proposed § 2641.203—18 U.S.C. 207(b)

Pursuant to 18 U.S.C. 207(b), a former employee may not utilize specified nonpublic information to assist another person in relation to certain ongoing trade or treaty negotiations in which the former employee participated personally and substantially during his last year of Government service. The prohibition lasts for one year or until the termination of the negotiation, whichever occurs first. Enacted by the Ethics Reform Act of 1989 to protect sensitive Government information relating to certain trade or treaty negotiations, section 207(b) represents a significant departure from the earlier post-employment restrictions of section 207 since, like section 207(f) discussed below, it extends to "behind-the-scenes" assistance.

While OGE intends to publish comprehensive regulatory guidance concerning 18 U.S.C. 207(b), § 2641.203 of this proposed rule includes only a brief introductory summary of the restriction and paragraphs concerning applicable exceptions and waivers, and the commencement and duration of the restriction. We have reserved § 2641.203(d)–(i) for additional guidance.

To date, OGE's written guidance relating to 18 U.S.C. 207(b) remains the interpretation of the restriction that was distributed by means of a memorandum dated October 26, 1990, which was published as OGE Informal Advisory Letter 90 x 17. OGE reissued updated

versions of the memorandum on November 5, 1992 and again on February 17, 2000, by a Memorandum to Designated Agency Ethics Officials, General Counsels, and Inspectors General. Although the 1992 and 2000 memoranda incorporate a few substantive changes, none affects our original 1990 summary of section 207(b). The February 2000 updated summary is available on our Web site under "DAEOgrams," at *http://www.usoge.gov*.

Proposed § 2641.204—18 U.S.C. 207(c)

Section 207(c) of title 18, United States Code, is the one-year "cooling-off" restriction that prohibits a former "senior employee" from communicating to or appearing before his former agency, on behalf of another person, with the intent to influence official action. The statutory language of section 207(c) was substantially revised by the Ethics Reform Act of 1989. As noted earlier, OGE published interim regulatory guidance in February 1991 at part 2641 concerning section 207(c) as amended by the Ethics Reform Act of 1989. That rule set forth several definitions in connection with the establishment of interim procedures for the granting of exemptions and designation of components for purposes of section 207(c). As discussed above, in connection with proposed section 2641.104, we are proposing to make certain changes to the interim definitions in existing part 2641. (Our proposed changes to the existing exemption and component designation procedures at 5 CFR 2641.201(d) and (e) are discussed further below in connection with renumbered proposed §§ 2641.301(j) and 2641.302.)

Proposed § 2641.204(a) confirms that an executive branch employee can be subject to either 18 U.S.C. 207(c) or 207(d) but not both. Like section 207(d), section 207(c) states that the restriction applies "[i]n addition to the restrictions set forth in subsections (a) and (b)." Moreover, section 207(c)(2)(A) states that the section 207(c) bar "shall apply to a person (other than a person subject to the restrictions of subsection (d)) * * *." Accordingly, § 2641.204(a) as proposed would specifically provide that a former "very senior employee" is subject to the one-year cooling-off restriction set forth in section 207(d) in lieu of that set forth in section 207(c).

Proposed § 2641.204(b) provides cross-references to the appropriate paragraphs of proposed § 2641.301 for the exemption, exceptions, and waivers that in certain circumstances would negate the prohibition contained in 18 U.S.C. 207(c).

Proposed § 2641.204(c)(1) concerns the application of 18 U.S.C. 207(c) to special Government employees (SGEs). Since its enactment in 1978, section 207(c) has not applied to an SGE who served the Government fewer than 60 days during a statutorily specified time frame. As revised by the Ethics Reform Act of 1989, the current language of the statute provides that the one-year cooling-off period "shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates." Proposed renumbered § 2641.204(c)(1) confirms that the "60 days" refers to the number of days in which an employee served as an SGE and not to the number of days in which he served as a senior employee.

We are proposing to include a sentence in § 2641.204(c)(1) which addresses the manner in which the 60-day period should be computed for purposes of determining the applicability of section 207(c) to a former senior SGE. Guidance concerning the counting of days in connection with the service of SGEs was contained in the former Federal Personnel Manual and has been endorsed in OGE informal advisory letters and OLC opinions. Consistent with that guidance, § 2641.204(c)(1) as proposed would state that "[a]ny day on which work is performed shall count toward the 60-day threshold without regard to the number of hours worked on that day or whether the day falls on a weekend or holiday." *See e.g.*, OGE Informal Advisory Letter 84 x 4 and 7 Op. Off. Legal Counsel 123 (1983). The first example following proposed § 2641.204(c) illustrates the proper method of counting the 60 days in the case of an SGE. It should be noted, however, that certain *de minimis* activities performed by an SGE on a given day might not be sufficient to count that day, under limited circumstances. *See* Manning, *supra*, at 28. The Office of Government Ethics has acknowledged a narrow *de minimis* standard where the activity is insignificant, both in terms of substance and in terms of the amount of time expended, and the SGE is not compensated by the Government specifically for that particular effort. An example would be a day on which the SGE did nothing more for the Government than make a brief telephone call to confirm the date of an official meeting. Proposed § 2641.204(c)(1) would also specify the manner in which an SGE's rate of basic pay should be calculated for purposes of determining whether the rate of basic pay that he receives for his part-time or intermittent work is equal to or greater than the rate of basic pay payable for ES–5 within the meaning of section 207(c)(2)(A)(ii).

Proposed 2641.204(c)(2) concerns the application of 18 U.S.C. 207(c) to certain appointees or detailees. Specifically, this provision sets out those circumstances in which it has been determined that an individual appointed or detailed to an agency pursuant to the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3371–3376, is subject to the restrictions of section 207(c). *See* "Applicability of the Post-Employment Restrictions of 18 U.S.C. § 207(c) to Assignees Under the Intergovernmental Personnel Act," Memorandum of Daniel L. Koffsky, Acting Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice, to Susan F. Beard, Acting Assistant General Counsel, Department of Energy, June 26, 2000.

Proposed § 2641.204(d) emphasizes that 18 U.S.C. 207(c) is triggered upon termination from a senior employee position, not from termination of Government service, unless the two events occur simultaneously. (This interpretation applies equally with respect to sections 207(d) and 207(f) as specified in proposed §§ 2641.205(c) and 2641.206(c), respectively.) The two examples following proposed § 2641.204(d) illustrate the timing of the section 207(c) restriction in the case of a senior employee who moves from one agency to another. Since the restriction can run while an individual continues to serve as a Government employee, the first example cross-references proposed § 2641.301(a) which states that communications and appearances are permissible if made during the course of performing official duties as an employee of the United States. In the second example, the individual does not cease to be a senior employee until he terminates his senior position at the second agency.

As 18 U.S.C 207(c) and the permanent bar share several elements in common, proposed § 2641.201 is cross-referenced several times in proposed § 2641.204. For example, both section 207(a)(1) and 207(c) require that there be a communication or appearance made with the intent to influence, although in the case of section 207(c), the representation is prohibited only if made to the former senior employee's former agency. Section 2641.201 is also cross-referenced for its proposed definition of "on behalf of any other person."

Section 2641.204(g)—To or Before Employee of Former Agency

Proposed § 2641.204(g)(1) defines "to or before employee of former agency." This provision is different from proposed § 2641.201(f) because that section focuses on employees "of the United States" rather than employees at the senior employee's "former agency."

The term "employee" is defined in proposed § 2641.204(g)(1) for purposes of identifying the individuals to whom a former senior employee may not direct a communication or appearance. Proposed § 2641.204(g)(1)(ii) reflects the fact that an individual serving in an agency pursuant to the IPA is deemed an "employee" of that agency and, hence, is an individual to whom a former senior employee of that agency may not direct a communication or appearance. Notably, the definition of employee at proposed § 2641.204(g)(1) also includes an individual detailed to a former senior employee's former agency. Section 207(g) of the statute provides that "a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both * * *." As reflected in proposed § 2641.204(g)(2)(iii), we interpreted this statutory provision to mean that an employee is barred from contacting any agency to which he was detailed during his last year of senior service, regardless of the duration of the detail. We also decided, however, that section 207(g) is relevant when identifying those employees serving in a former senior employee's former agency to whom a communication or appearance cannot be directed. Accordingly, proposed § 2641.204(g)(1)(iii) specifies that the term employee encompasses an individual detailed from an agency to the former senior employee's former agency.

As noted earlier, 18 U.S.C. 207(i)(1)(A) states that "the term 'officer or employee', when used to describe the person to whom a communication is made or before whom an appearance is made * * * shall include in subsections (a), (c), and (d), the President and the Vice President * * *." Under the proposed rule, a former senior employee of the Executive Office of the President is barred from contacting not only employees of that Office, but also the President and Vice President. On the other hand, former senior or very senior employees who formerly served in entities other than the Executive Office of the President would not be barred by section 207(c) or (d) from contacting the President or Vice President. This reasoning is reflected in proposed § 2641.204(g)(1)(v); proposed § 2641.204(g) is cross-referenced in § 2641.205(f) as proposed for purposes of the section 207(d) restrictions.

The definitions of "department" and "agency" in proposed § 2641.104, combined with the proposed guidance in § 2641.204(g)(2), are key to understanding the scope of 18 U.S.C. 207(c). As we noted earlier in connection with the definition of "agency" in proposed § 2641.104, we specifically included independent agencies (not in the legislative or judicial branches) within that definition.

As already mentioned, and as explained further below in connection with proposed § 2641.302, the Director of OGE is authorized to designate distinct and separate agency components for purposes of section 207(c). The designation of such components within an agency has the effect of narrowing the scope of the restriction as applied to former senior employees eligible to benefit from such designations.

Proposed § 2641.204(g)(2)(i) emphasizes that the 18 U.S.C. 207(c) bar applies only with respect to an agency in which the former employee served within his last year of service as a senior employee. Example 3 following proposed § 2641.204(g) illustrates the application of section 207(c) when a former senior employee's period of Government service was preceded by a break in Government service.

Consistent with past interpretation, 18 U.S.C. 207(c) is described in proposed § 2641.204(g)(2)(ii) as extending to any agency in which a former senior employee served *in any capacity* prior to his termination from a senior position, "regardless of his position, rate of basic pay, or pay grade." *See, e.g.*, OGE Memorandum to Designated Agency Ethics Officials, General Counsels, and Inspectors General (February 17, 2000), available under "DAEOgrams" on OGE's Web site, *http://www.usoge.gov*. Thus, the former employee in proposed example 2 following § 2641.204(g) is barred as to both the Commodity Futures Trading Commission (CFTC) and the Export-Import Bank of the United States even though she served in only a GS–15 position at the CFTC.

Proposed § 2641.204(g)(2)(iii) explains that, in addition to a detail, an employee may otherwise be deemed to be serving two entities simultaneously. The regulation would recognize that many employees are required to serve on committees or similar entities as a collateral duty. The regulation would specify that an employee will be deemed an employee of such an entity if required to serve pursuant to statute or Executive order.

Defining the boundaries of an employee's former agency is key to the proper interpretation of 18 U.S.C. 207(c). Proposed § 2641.204(g)(2)(iv) addresses situations where organizational changes affecting an agency could make it difficult to determine if a successor agency is substantially the same as a former senior employee's former employing entity. For example, subsequent to an employee's termination from a senior employee position, his former employing entity could be made larger or smaller, merged in whole or in part with another agency, or even abolished.

Significantly, proposed § 2641.204(g)(2)(iv) need not be consulted unless the agency to which 18 U.S.C 207(c) applies "has been significantly altered by organizational changes after [a senior employee's] termination from senior service * * *." Thus, it is not necessary to consult § 2641.204(g)(2)(iv) as proposed merely because the name of a former senior employee's former agency has changed or because some personnel have retired or transferred. If, however, an organizational change is such that the former senior employee's former employing entity "is not identifiable as substantially the same agency from which the former senior employee terminated * * *", then the guidance in proposed § 2641.204(g)(2)(iv)(A) applies and the section 207(c) bar will not apply with respect to that entity. *See* OGE Informal Advisory Letter 85 x 5 and example 4 following proposed § 2641.204(g).

Under proposed § 2641.204(g)(2)(iv)(B), a former senior employee's 18 U.S.C. 207(c) bar will extend to the whole of an employing entity that has been affected by organizational changes if it "remains identifiable as substantially the same entity" from which he terminated. Proposed example 5 emphasizes that a former employee would be barred from contacting current employees who had joined the new employing entity, but would not be barred from contacting an employee who had been transferred elsewhere. Under proposed § 2641.204(g)(2)(iv)(C), if a former employing entity is made separate but otherwise remains "substantially the same," the section 207(c) bar would apply with respect to the separate entity. Proposed § 2641.204(g)(2)(iv) would require designated agency ethics officials to provide counseling in consultation with OGE when the scope

of section 207(c) is at issue as a result of an agency reorganization.

The guidance concerning the meaning of "to or before" in proposed § 2641.204(g)(3) closely tracks the corollary guidance in proposed § 2641.201 as does the guidance at proposed § 2641.204(g)(4) concerning public commentary. The guidance is repeated in § 2641.204 as proposed only because it has been tailored to the one-year restriction which is aimed only at communications to or appearances before an individual's former agency. Proposed § 2641.204(h), concerning the phrase "on behalf of any other person", similarly cites the corollary discussion in proposed § 2641.201(g).

As amended by the Ethics Reform Act of 1989, 18 U.S.C. 207(c) prohibits a former senior employee from making certain communications or appearances on behalf of "any other person" in connection with "any matter on which *such person* seeks official action" (emphasis added). The guidance at proposed § 2641.204(i)(1) reflects that the reference to "such person" refers to the former senior employee.

Proposed § 2641.204(i)—Matter in Which Former Employee Seeks Official Action

Proposed § 2641.204(i)(2) emphasizes that a communication or appearance can be prohibited even if not in connection with a "particular" matter or a "particular matter involving a specific party or parties." The adjective "particular" does not appear in the section 207(c). *See* 17 OP. Off. Legal Counsel. 37, 41–42 (1993) (describing effect of 1989 amendments to statute). Thus, proscribed contacts include those made in connection with "[b]road policy options that are directed to a large and diverse group of persons." *Compare* 5 CFR 2637.204(d). *See also* 5 CFR 2640.103(a)(1) and 2635.402(b)(3).

Consistent with existing part 2637, proposed § 2641.204(i)(2)(iii) emphasizes that a communication or appearance may be barred even though made in connection with a new matter not pending at nor of interest to the agency prior to the post-employment contact. The Ethics Reform Act of 1989 deleted the requirement in 18 U.S.C. 207(c) that the subject of a communication or appearance be "pending before" the former senior employee's former agency or of "direct and substantial interest" to it. In commenting upon H.R. 3660 prior to its passage, Senator Levin noted that "the offense is committed if the former employee seeks official action by an agency or department employee." 135 Cong. Rec. S15954 (1989) (statement of Sen. Levin).

The language "seeks official action" distinguishes between official and unofficial acts. As implemented in proposed § 2641.204(i)(1), "[a] former senior employee seeks official action when the circumstances establish that he is making his communication or appearance for the purpose of inducing a current employee * * * to make a decision or to otherwise act in his *official capacity*" (emphasis added).

The proposed examples following § 2641.204(i) as proposed illustrate the concept of "official capacity." In proposed example 1, the former senior employee can solicit a personal charitable contribution from a current employee of his former department since he is not requesting that the current employee act in his official capacity. In example 2 as proposed, a former senior employee wishes to invite the Secretary of his former department to a cocktail party where he would introduce the agency head to several of his private clients. The former senior employee and the Secretary do not have a history of socializing outside the office, the clients could be affected by the Secretary's official duties, and the expenses of the party are being charged to the former senior employee's consulting firm. The example advises that the former senior employee should not contact the Secretary since "[t]he circumstances do not establish that the communication would be made other than for the purpose of inducing the Secretary to make a decision in his official capacity about the invitation."

Proposed § 2641.205—18 U.S.C. 207(d)

The one-year "cooling-off" restriction of 18 U.S.C. 207(d) was enacted by the Ethics Reform Act of 1989. Section 207(d) differs from section 207(c) in that, in addition to being barred from contacting employees of his former department or agency, a former very senior employee is barred from representing another person before any individual currently appointed to an Executive Level position listed in 5 U.S.C. 5312–5316.

Proposed § 2641.205(b) provides cross-references to the appropriate paragraphs of § 2641.301 as proposed for the exceptions and waivers that in certain circumstances would negate the prohibition contained in 18 U.S.C. 207(d).

Paragraphs (d)–(i) of proposed § 2641.205 cross-reference the elements described in proposed §§ 2641.201 and 2641.204 where relevant. Where cross-references to the § 2641.204 elements are made, proposed § 2641.205 highlights the differences between the senior employee and very senior employee restrictions. Proposed § 2641.205(f) points out that, unlike section 207(c), section 207(d) does not provide for the designation of departmental or agency components as a means of narrowing its impact. Proposed § 2641.205(f) also indicates that section 207(d) applies to communications to or appearances before any agency in which an individual served *as a very senior employee* during his last year of very senior service. By comparison, as interpreted in proposed § 2641.204(g)(2)(ii), section 207(c) applies to contacts with an employee of any agency in which the individual served "in any capacity" during the year prior to his termination from a senior position. Also, and more significantly, section 207(d) bars contacts not only with the individual's former agency but, as noted in proposed § 2641.205(a) and (g), also with any official currently appointed to an Executive Schedule position. As emphasized in Example 2 following § 2641.205, however, we have interpreted the bar to apply only with respect to Executive Level officials who are actually listed in sections 5312–5316 of title 5 of the *United States Code*. This interpretation accords with the plain language of the provision ("any person appointed to a position in the executive branch which is listed in" those sections).

The note following proposed § 2641.205(g) indicates that a communication to an Executive Level official may include a communication made through a subordinate of such official. A former very senior employee cannot evade the prohibition of 18 U.S.C. 207(d) simply by making a communication to a subordinate official, as long as such communication is still made with the intent that the information be conveyed to an Executive Level official and attributed to the former very senior employee, *Cf.* Memorandum for Amy L. Comstock, Director, OGE, from Joseph R. Guerra, Deputy Assistant Attorney General, OLC, January 19, 2001, available under "Other Ethics Guidance, Conflict of Interest Prosecution Surveys and OLC Opinions" on OGE's Web site, *http://www.usoge.gov*. This point is illustrated in proposed example 5.

Proposed § 2641.206—18 U.S.C. 207(f)

Section 207(f) of 18 U.S.C. was enacted by the Ethics Reform Act of 1989. It prohibits both former senior and former very senior employees from representing, aiding, or advising a foreign government or foreign political party with the intent to influence a decision of an employee of a Federal department or agency. Like sections 207(c) and 207(d), the restriction is measured from the date when an employee ceases to be a senior or very senior employee and not necessarily from his termination from Government service. Like section 207(b), section 207(f) differs from the other section 207 restrictions in that it prohibits certain "behind-the-scenes" aid or advice in addition to prohibiting certain contacts with Government officials.

We have reserved § 2641.206(d)–(g) to indicate that OGE will revise § 2641.206 in the future additional guidance concerning section 207(f). For now, proposed § 2641.206 includes only a summary of the restriction and paragraphs concerning the restriction's applicability, commencement, and duration. Proposed § 2641.206(c) indicates that section 207(f) is a one-year restriction except as applied to a former U.S. Trade Representative or former Deputy U.S. Trade Representative. Originally a one-year restriction as applied to individuals terminating from these positions, section 609 of Pub. L. 102–395, 106 Stat. 691, amended section 207(f) to extend the one-year restriction to three years in the case of any individual becoming the U.S. Trade Representative after the 1992 effective date of that law. Subsequently, section 21(a) of Pub. L. 104–65, 109 Stat. 691, amended section 207(f)(2) to permanently bar either a former U.S. Trade Representative or former Deputy U.S. Trade Representative from engaging in the activities prohibited by section 207(f).

Subpart C—Exceptions, Waivers and Separate Components

Proposed § 2641.301(a)–(j) address the parenthetical "except the United States" provision contained in 18 U.S.C. 207(a)(1), (a)(2), (b), (c), and (d); the general exceptions and waivers described in section 207(j); the waiver authority in section 207(k); and section 207(c)(2)(C)'s provision for the exclusion of certain positions from the coverage of sections 207(c) and (f). Proposed § 2641.302 concerns the designation of separate and departmental components to narrow the scope of the section 207(c) bar.

Proposed § 2641.301(a)—Acting on Behalf of the United States

As indicated by the parenthetical "except the United States" which appears in each of the substantive restrictions of 18 U.S.C. 207 except section 207(f), otherwise prohibited activity is permissible if engaged in on behalf of the United States. In addition to this parenthetical, however, section 207(j)(1) of the current version of the statute provides that "[t]he restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States * * *" Proposed § 2641.301(a) implements the parenthetical language and section 207(j)(1).

The definition of "United States" at proposed § 2641.301(a)(1) encompasses the entire Federal Government. The District of Columbia is not part of the United States for purposes of the exception. While former employees of the government of the District of Columbia are covered by 18 U.S.C. 207(a)(1) and (a)(2), section 207(a)(3) makes it clear that the United States and the District of Columbia are separate entities for purposes of those restrictions. Thus, former employees of the United States may represent others before employees of the government of the District of Columbia and vice versa. Similarly, while section 207(j)(1) states that the restrictions of section 207 "shall not apply to acts done in carrying out official duties on behalf of the United States *or the District of Columbia* * * *" (emphasis added), we have interpreted this language merely to indicate that former employees of the District of Columbia may represent the government of the District of Columbia notwithstanding section 207(a)(1) or (a)(2). As we indicated earlier in connection with proposed § 2641.104, however, we have defined the District of Columbia as a State for purposes of the section 207(j) exceptions implemented in § 2641.301(b) and (c).

Proposed § 2641.301(a)(2) addresses the often repeated argument that an activity is undertaken on behalf of the United States if it benefits the United States. We have consistently rejected this expansive reading of the exception. *See, e.g.*, OGE Memorandum to Designated Agency Ethics Officials, General Counsels, and Inspectors General (February 17, 2000), available under "DAEOgrams" on OGE's Web site, *http://www.usoge.gov*. As proposed, the regulation indicates that the exception does not apply merely because a former employee "is performing work funded by the Government, because he is engaging in the activity in response to a contact initiated by the Government, because the Government will derive some benefit from the activity, or because he or the person on whose behalf he is acting may share the same objective as the Government." Proposed examples 1, 2, and 3 are illustrative. To the extent that OGE Informal Advisory Letter 81 x 9 can be read as indicating that responses to Government-initiated exchanges are always permissible regardless of the circumstances, we expressly reject that reading here.

Proposed § 2641.301(a)(2)(i) states that activities are undertaken on behalf of the United States when undertaken in carrying out official duties as a current employee of the United States. Thus, as illustrated in examples 1 and 2 following proposed § 2641.301(a), a person who is reemployed by the United States may perform his official Government duties unfettered by the post-employment restrictions in 18 U.S.C. 207. Notably, proposed example 2 indicates that a former employee may carry out official duties as an employee of the legislative branch without violating the section 207 restrictions when she undertakes an activity for a constituent. Departing from guidance in OGE Informal Advisory Letter 81 x 4, we are not proposing to distinguish service performed for a Congressman's constituent from actions taken in furtherance of a Congressman's "legislative function."

The note following the proposed § 2641.301(a) examples cross-references two additional examples, found elsewhere in the regulation, which also concern the operation of this exception in the case of current employees. The second of these, example 1 following proposed § 2641.204(d), shows how the exception applies in the case of a current employee who, although having never left Government service, is a former employee by virtue of having terminated a senior employee position. But for the exception, the former senior employee might have been hindered in the performance of his official duties by 18 U.S.C. 207(c).

As described in proposed § 2641.301(a), the exception for acts undertaken on behalf of the United States is not limited to acts carried out as an *employee* of the United States. This subject was addressed in OGE Informal Advisory Letter 82 x 16, which dealt with a former employee whose law firm was hired by his former agency to represent it in a case in which the employee had been personally and substantially involved while in Government. After advising that the former employee could not negotiate the terms of the legal services contract on behalf of his firm, OGE concluded that the former employee could perform the contract by representing the agency in court, because such representations would be on behalf of the United States. OGE also stated that the former employee could "contact [the agency] for the files, discuss briefs previously

filed by [the agency], and discuss future strategy," because communications and appearances made for these purposes were characterized as lacking the necessary "intent to influence" element.

In drafting proposed § 2641.301(a)(2)(ii)(A), we followed the result reached in 82 x 16, although we departed, in part, from the analysis in that opinion. We have concluded that a former employee acts on behalf of the United States when he serves "[a]s a representative of the United States pursuant to a specific agreement with the United States to provide representational services involving a fiduciary duty to the United States." Consequently, the "on behalf of the United States" provision would permit not only representational contacts made by the former employee to a court (or another agency) but also any contacts with the agency with which there is an agreement to provide representational services, if those contacts are necessary for the former employee to carry out his representational duties under the agreement. Contrary to the analysis in 82 x 16, however, we decline to base the latter conclusion on the absence of intent to influence with respect to such contacts, because we do not believe that it is always the case that communications required during the course of performing a contract with an agency are necessarily made without the intent to influence the agency. This subject is discussed in more detail above in connection with the "intent to influence" element.

We specify in proposed § 2641.301(a)(2)(ii)(A) that the representational services must involve a "fiduciary duty to the United States." This serves to emphasize that the former employee must have an independent obligation to act primarily for the benefit of the Government. *See Restatement of the Law (2d) Agency* § 13 (1958) (agreement to act on behalf of another person makes one a fiduciary with duty to act primarily for benefit of other person). It is important, therefore, to remember that a former employee will not be deemed to act on behalf of the United States merely because he is performing some kind of contract with the United States. *See Restatement* § 14N, comments a & b (distinguishing between contractor who agrees to act on behalf of principal and thereby becomes fiduciary, and non-agent contractor who is not fiduciary). OGE Informal Advisory Letter 81 x 35 focused on the restrictions applicable to a former employee who went to work for a corporation that had a contract to provide certain services to the Government. The opinion is noteworthy for its conclusion that "[t]he fact that the contract between [the Department] and [the Corporation] requires communication between them on many questions arising under [the Project] does not authorize [the former employee's] participation in such communications."

Communications to and appearances before the legislative branch are not prohibited by sections 207(a)(1), (a)(2), (c), or (d). On the other hand, communications or appearances before the legislative branch can be barred by section 207(b) or (f). In addition, a section 207 issue can arise when an employee of the executive branch is present at a forum held under the auspices of the legislative branch, as discussed in connection with the "to or before" element in proposed § 2641.201(f)(2). Under proposed § 2641.301(a)(2)(ii)(B), however, a communication or appearance made by a former employee at the request of the Congress, in the context of a Congressional hearing, will be deemed made on behalf of the United States. This interpretation makes effective the permission, under the statute, for communications to Congress and its members. The provision is limited to hearings, however, in order not to permit a former employee to use the good offices of a Congressman to facilitate otherwise prohibited contacts with executive branch personnel.

Proposed § 2641.301(b)—Acting as an Elected State or Local Government Official

In addition to excepting communications or appearances made in carrying out official duties on behalf of the United States, 18 U.S.C. 207(j)(1) authorizes a former employee to carry out official duties as an elected official of a State or local government notwithstanding sections 207(a)(1), (a)(2), (b), (c), (d), or (f). As we noted in OGE Informal Advisory Letter 87 x 1, this exception "is grounded in considerations of federalism" in that "statutory restrictions should not unduly impede the ability of the elected representative of the people to perform the duties of his position." The two examples following proposed § 2641.301(b) highlight the requirement that the former employee be acting as an "elected official" of the State or local government. The term "State" is defined in proposed § 2641.104 to include the District of Columbia, the Commonwealth of Puerto Rico, and United States territories or possessions.

Proposed § 2641.301(c)—Acting on Behalf of Specified Entities

Proposed § 2641.301(c) describes a second exception permitting representational activity on behalf of a State or local government. The exception in 18 U.S.C. 207(j)(2) would permit communications and appearances in carrying out official duties as an employee of "an agency or instrumentality of a State or local government" notwithstanding sections 207(c) or (d). It also would except from those prohibitions communications and appearances made as an employee of certain institutions of higher education, hospitals, or medical research organizations. The wording of proposed § 2641.301(c) indicates that the exception also applies when the former employee is employed by more than one of the entities specified in § 2641.301(c)(1), such as by an interstate compact organization composed of several States. *See* OGE Informal Advisory Letter 87 x 1. However, as proposed example 3 illustrates, the exemption does not apply to an association of States or State officials that is not an entity carrying out governmental functions. *See* Memorandum for An Agency General Counsel, from Beth Nolan, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Applicability of the Exemption Provisions of 18 U.S.C. § 207(j)(2) to the Employment of a Former Federal Official by [an] Association* (July 2, 1999) (OGE Informal Advisory Letter 87 x 1 distinguished).

In order to qualify for the exception, the former employee must be an "employee" of the State or local government or other specified entity and not merely a consultant or independent contractor. This interpretation had been adopted in OGE Informal Advisory Letter 87 x 1 concerning the same exception in the previous version of 18 U.S.C. 207. That letter, citing legislative history relating to the Ethics in Government Act of 1978, had determined that the exception does not apply in the case of so-called "hired guns." Use of the term "employee" in the new version of the statute is consistent with that legislative history. *See* 125 Cong. Rec. H3696, H3697 (daily ed. May 24, 1979). Accordingly, proposed § 2641.301(c)(2) incorporates the distinction, providing that the term "employee" means a person who has an employee-employer relationship with a specified entity and excludes individuals serving a specified entity as a consultant or independent contractor. Example 2 following proposed § 2641.301(c) concerns an attorney who does not qualify for the exception because of this distinction.

Proposed § 2641.301(d)—Communicating Information Based on Special Knowledge

Proposed § 2641.301(d) implements 18 U.S.C. 207(j)(4), an exception to sections 207(c) and (d) permitting a former senior or very senior employee to make an uncompensated "statement" if "based on [his] own special knowledge in the particular area that is the subject of the statement * * *."

When originally enacted by Congress in 1978, 18 U.S.C. 207(c) prohibited a former senior employee from representing "anyone" before his former agency. Because section 207(c) barred self-representation (as well as the representation of others), the statute specifically permitted communications or appearances "concerning matters of a personal and individual nature, such as personal income taxes or pension benefits." The statute also stated that the one-year cooling-off provision did not prevent a former senior employee from "making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses."

The current version of 18 U.S.C. 207(c) no longer prohibits self-representation, and, therefore, the statute no longer includes an exception for communications of a personal and individual nature. On the other hand, the "special knowledge" exception survives. Of course, since self-representation is no longer barred, a former senior or very senior employee need not rely on this or any other exception to section 207(c) or (d) when he makes a communication solely on his own behalf.

For purposes of implementing the section 207(j)(4) exception, we propose guidance as to what the terms "special knowledge," "statement" and "compensation" mean in section 207(j)(4). We indicate in proposed § 2641.301(d)(1) that a former employee will be deemed to have "special knowledge" with respect to the subject area "if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience." While this standard does not require the "outstanding qualifications" in a field that are the prerequisite for a section 207(j)(5) certification, discussed below, a former employee must have become knowledgeable with the subject prior to making contact with the Government. Proposed § 2641.301(d)(2) defines the term "statement" as "a communication of facts directly observed by the former employee."

The proposed definition of compensation at § 2641.301(d)(3) is broad. Reflecting the exception's amendment by the Ethics Reform Act of 1989, the proposed definition does not exclude compensation provided for by law or regulation for witnesses. However, the proposed definition of compensation does exclude the payment of actual and necessary expenses incurred in connection with making the statement. *Cf.* Memorandum of Dawn Johnson, Acting Assistant Attorney General, Office of Legal Counsel, for the Counsel to the President, January 28, 1998 ("compensation," within the meaning of 18 U.S.C. 203, does not include reimbursement of expenses in connection with representation), available on the DOJ Web site at *http://www.usdoj.gov/olc/1998opinions.htm.*

Proposed § 2641.301(e)—Communicating Scientific or Technological Information

Section 207(j)(5) of 18 U.S.C. permits a former employee to make communications "solely for the purpose of furnishing scientific or technological information" notwithstanding sections 207(a)(1), (a)(2), (c), or (d), provided that (1) the communications are made "under procedures" acceptable to the agency or agencies to which the communication is directed or (2) the head of such agency or agencies "makes a certification" that meets certain requirements. A former employee cannot use this exception to avoid the restrictions in sections 207(b) or 207(f). Thus, a former employee cannot escape the reach of either of these latter two restrictions by merely limiting his use of covered trade or treaty information to that which is of a scientific or technological character or by assisting a foreign entity only by means of furnishing scientific or technological information.

Proposed § 2641.301(e) incorporates both the procedures and certification aspects of the section 207(j)(5) exception for communication of scientific and technological information and, in effect, constitutes, two exceptions. Proposed § 2641.301(e) states the exception in general terms, and proposed § 2641.301(e)(1)–(e)(3) provides information common to both the procedures exception and the certification exception. Guidance on the promulgation and implementation of procedures is contained in proposed paragraph (e)(4). Guidance on the certification process is contained in proposed paragraph (e)(5).

As originally enacted in 1962, section 207 had provided an exception from its substantive restrictions for former employees certified as possessing "outstanding scientific or technological qualifications" and only when in the "national interest." This certification exception, since modified, survives as part of current section 207(j)(5). Prior to the amendments to section 207 in the Ethics Reform Act of 1989, the certification mechanism freed the former employee from any post-employment restrictions attendant to such matter, not just communications solely for the purpose of furnishing scientific and technological information. *See* OGE Informal Advisory Letter 80 x 9. The 1989 amendments changed the wording of the certification exception, limiting recipients of a section 207(j)(5) certification to making contacts "solely for the purpose of furnishing scientific or technological information." This change imposes a significant limitation on the scope of activities permitted by a certification, because the recipient of the certification is prohibited from making communications that are not "solely for the purpose of furnishing scientific or technological information."

The part of the exception involving procedures was added by the Ethics in Government Act of 1978. *See* 124 Cong. Rec. 31,983 (1978) (statement of Rep. Stratton) (explaining need for alternative in addition to existing certification mechanism). Since its original enactment, the procedures provision has always been limited to communications solely for the purpose of furnishing scientific or technological information.

The exception in 18 U.S.C. 207(j)(5) permits otherwise prohibited "communications," but is silent as to "appearances." We have worded proposed § 2641.301(e) so that procedures and certifications under section 207(j)(5) permit both communications and appearances. It would defeat the purpose of the exception if it permitted a former employee to make communications but not to appear before the Government to make such communications.

When drafting proposed § 2641.301(e)(1), we were aware that certain legislative history in connection with the 1978 amendments indicated that the exception applies only to communications that are made "solely for the purpose of furnishing scientific or technological information *and*

without the intent to influence." *See* 124 Cong. Rec. H35,671 (1978) (emphasis added). However, as discussed earlier in connection with the "intent to influence" element in proposed § 2641.201(e), the post-1989 version of section 207 prohibits no communications or appearances that are not made with the intent to influence the Government. The exception in section 207(j)(5) would be surplusage if it only applied to communications and appearances that are not prohibited in the first place, *i.e.*, those made without any intent to influence. Even communications made solely for the purpose of conveying scientific or technological information may be deemed to be made with the intent to influence, if made for the purpose of affecting Government action in a matter that involves an appreciable element of dispute or discretionary Government action. Therefore, proposed § 2641.301(e)(1) reflects that a communication for the purpose of furnishing scientific or technological information may be permitted by the exception even when made in contexts involving intent to influence.

The former Marine Corps employee in proposed example 1 following § 2641.301(e)(4) as proposed, for example, may report the results of a series of scientific tests even though the methodology of those tests is expected to be and is, in fact, the subject of debate at the meeting. Moreover, he could report the results even though they tend to support the company's argument that it has complied with a certain contract specification. As emphasized in proposed § 2641.301(e)(1)(iii), the exception permits the communication of scientific or technological information in adversarial or other contexts even if the information is "inherently influential." On the other hand, proposed example 1 emphasizes that the former Marine Corps employee could not present the company's argument that it has complied with a contract term regarding advance payments.

Proposed § 2641.301(e)(2) offers guidance concerning the meaning of the adjectives "scientific" and "technological." It would provide that scientific or technological information refers, for example, to "technical or engineering information relating to the natural sciences" as distinguished from information "associated with a nontechnical discipline such as law, economics, or political science." This distinction is consistent with the legislative history concerning the certification authority in section 207(j)(5). The Conference Report issued in connection with the Ethics in Government Act of 1978 reflected the intent of the Committee that the phrase "scientific, technological, or other technical discipline" excludes the social sciences. S. Conf. Rep. No. 95–127 at 77 (1978). We expect that an agency will be in the best position to interpret these adjectives in the context of its own programs and consistent with the guidance in proposed § 2641.301(e)(2).

While proposed § 2641.301(e)(2) requires that a communication convey scientific or technological information to be permissible under the exception, proposed § 2641.301(e)(3) recognizes that a communication may be made *for the purpose of* furnishing scientific or technological information notwithstanding an "incidental reference or remark" of a nontechnical character. Thus, like existing 5 CFR 2637.206(b), proposed § 2641.301(e)(3)(ii) recognizes the permissibility of nontechnical communications "when necessary to appreciate the practical significance of the basic scientific or technological information provided." Moreover, like 5 CFR 2637.206(a), § 2641.301(e)(3)(iii) as proposed would permit incidental communications "[i]ntended to facilitate the furnishing of scientific or technological information * * *." Significantly, however, proposed § 2641.301(e)(3) emphasizes that, taken as a whole, a communication (or series of related communications) must "primarily" convey information of a scientific or technological character.

Proposed examples 1 and 2 following § 2641.301(e)(3) are illustrative. Example 1 emphasizes that it is the former employee's own communications that must primarily convey scientific or technological information. Thus, the former employee in that example is not deemed to make a permissible "incidental" reference to a product's expected cost when the scientific information, although communicated on the same occasion, is communicated by another individual. On the other hand, as indicated in proposed example 2, the former employee could state the product's expected cost if the whole of her communication otherwise focused primarily on relevant scientific principles.

As specified in proposed § 2641.301(e)(4), the exception is available to a former employee where the communication is made in accordance with procedures adopted by the agency to which the communication is directed. The prerequisite that the agency to which the communication is directed is the agency whose procedures must be complied with is consistent with existing regulatory guidance at 5 CFR 2637.206(e) and with past OGE advice. *See, e.g.*, OGE Informal Advisory Letter 96 x 21.

The regulation as proposed does not specify any particular procedure or procedures that must be adopted by an agency. The language of the statute affords each agency the discretion to develop procedures it deems "acceptable." Proposed § 2641.301(e)(4)(i) suggests some possible mechanisms that could be employed by an agency to ensure the proper use of the exception. Many of these are taken from existing guidance at 5 CFR 2637.206(e).

The certification provision in section 207(j)(5) would be implemented by proposed § 2641.301(e)(5). As specified in proposed § 2641.301(e)(5)(iii), these certifications must be issued by the head of the agency with which the former employee would have contact.

We have interpreted section 207(j)(5) as permitting agency heads the discretion to limit their certification to only certain of the statute's substantive restrictions. For example, in OGE Informal Advisory Letter 97 x 14, we advised a designated agency ethics official that an agency head could waive section 207(c) only. Similarly, we have included a provision at proposed § 2641.301(e)(5)(iii)(E) that confirms our view that the granting authority has discretion to impose other limitations on the scope of a section 207(j)(5) certification. As we said in OGE Informal Advisory Letter 80 x 9, a certification for technical expertise "may be limited in nature at the discretion of the head of the agency or Department * * *."

While the authority to grant the certification ultimately rests with the appropriate agency head, proposed § 2641.301(e)(5) incorporates the statutory requirement for advance consultation with OGE prior to issuance. We believe that the statutory "national interest" standard contemplates that this authority will be used infrequently. Moreover, legislative history surrounding the amendment of this provision in 1978 supports the view that certifications should be granted only in "exceptional" cases. S. Rep. No. 170, 95th Cong., 1st Sess. 155 (1977).

Proposed § 2641.301(e)(5) provides that a section 207(j)(5) certification may be granted to a "former employee." We believe that an agency head may entertain a request for a certification from a current employee who has firm post-employment plans, provided that the effective date of the certification occurs after the employee terminates Government service.

Paragraphs (A), (B), and (C) of proposed § 2641.301(e)(5)(i) describe the three statutory criteria that must be satisfied in order for a certification to be issued. Proposed § 2641.301(e)(5)(i)(B) requires that the former employee will actually utilize his scientific, technological, or technical expertise in connection with the matter for which the waiver is granted. We believe this criterion follows from the statutory requirement that the former employee not only possess outstanding qualifications, but that he will be "acting with respect to a particular matter which requires such qualifications." OGE will carefully examine the facts surrounding a waiver proposed for an individual who will occupy a management position to ensure this criterion is satisfied.

We used the term "matter" in proposed § 2641.301(e)(5)(i)(B). Section 207(j)(5) provides that a certification will apply with respect to a "particular matter" which requires outstanding qualifications in certain disciplines. Since sections 207(c) and (d) apply to any "matter" rather than to any "particular matter," we reasoned that the policy underlying the certification authority would be ill-served by a distinction permitting experts to contact the Government concerning action focused on a "discrete and identifiable class of persons," but not on broad policy issues or conceptual work. *See* the definition of "particular matter" at proposed § 2641.201(h)(1). *See also* 5 CFR 2640.103(a)(1).

As part of the consultation process, OGE will carefully review an agency's draft certification to ensure that it specifies all of the information required by proposed § 2641.301(e)(5)(iii). Proposed § 2641.301(e)(5)(iii)(C) requires that a certification specify the name of the person on whose behalf the former employee will be acting. We do not read section 207(j)(5) as requiring that a certification recipient act only on behalf of a person specified in the certification. Rather, as already mentioned, we believe that the certification is specific to the *matter* that will be the subject of the recipient's post-employment contacts. Accordingly, under proposed § 2641.301(e)(5)(iii)(F), a certification must include a "description of the matter and the communications that will be permissible or, if relevant, a statement that such information is protected from disclosure by statute."

We did not include in this proposed regulation the provision that has appeared at 5 CFR 2637.207(d) providing for pre-qualification of experts through creation of an "agency registry." We are not aware that any agency has set up such a registry. Moreover, we are not convinced that such a registry would have anything but an insignificant impact on certification processing times. Indeed, we suspect that the administrative burden associated with a registry would outweigh any benefit.

Proposed § 2641.301(f)—Testifying under Oath

The amendment of 18 U.S.C. 207 by the Ethics Reform Act of 1989 prompted our proposed major revision of regulatory guidance concerning the permissibility of testimony under oath. In the prior version of the statute, section 207(h) had stated that nothing in section 207 prevented a former employee "from giving testimony under oath * * *." The Ethics Reform Act of 1989 version of the statute also uses this language, in renumbered section 207(j)(6), but adds that a former employee "who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter."

The proposed definition of "testimony under oath" is drawn from language in Rule 603 of the Federal Rules of Evidence. Proposed § 2641.301(f)(1) requires that the former employee's oral or written testimony be given in a proceeding "in which applicable procedural rules require a witness to declare by oath or affirmation that he will testify truthfully." In addition, the exception does not apply unless the testimony is given in connection with a "judicial, quasi-judicial, administrative or other legally recognized proceeding." Taken together, these two requirements emphasize that a former employee cannot escape the restrictions of 18 U.S.C. 207 by merely raising his right hand and assuring those present at any gathering that he is telling the truth. On the other hand, provided the requirements as proposed are met, these provisions would confirm that the exception permits a witness to give testimony, except as limited by proposed § 2641.301(f)(2) concerning service as an expert witness.

As already noted, while the testimony-under-oath exception generally permits testimony offered as an expert witness, the exception is subject to a significant statutory limitation in this regard. As specified in section 207(j)(6)(A), a former employee "who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter" may not "serve as an expert witness" except for the United States or pursuant to court order.

Proposed § 2641.301(f)(2)(ii) implements the court order provision. We specifically distinguished a subpoena as not falling within this definition. The practical nature of a subpoena is such that in many contexts it may be issued under the court's authority by counsel's filling out a form, without reasoned consideration by a court unless and until the subpoena is challenged. *See, e.g., Doe* v. *DiGenova*, 779 F.2d 74 (D.C. Cir. 1985) (subpoenas—grand jury or otherwise—do not qualify as "order[s] of a court of competent jurisdiction" under the Privacy Act.) Thus, the mere fact that an expert witness appears in court in response to a subpoena does not mean that he is testifying pursuant to court order within the meaning of section 207(j)(6)(A). Also, a court order merely qualifying a witness to testify as an expert is not a court order that directs the witness to testify in such a way as to overcome the expert witness bar. Because the United States will be represented in most proceedings in which it has a "direct and substantial interest" pursuant to 18 U.S.C. 207(a)(1), the United States should make the court aware of the statutory bar where appropriate.

The proposed regulation could not, and does not attempt to, instruct a judge as to the proper standard to apply in determining whether a court order is appropriate. Proposed example 4 suggests our view of an appropriate circumstance for a court to order expert testimony. We would expect that a court would order an expert witness otherwise barred by section 207(a)(1) to testify only where there are extraordinary circumstances present, such as where there is no other equivalent expert testimony available and the employee's prior involvement in the matter will not cause him to have an undue influence on proceedings.

Of course, fact witness testimony is always allowable under the testimony-under-oath exception. However, some "experts" who could be fact witnesses because of having worked on matters while at their former agencies (thereby triggering the section 207(a)(1) bar) would prefer to serve as expert witnesses. An expert witness can be paid for his service as an expert while a payment for fact testimony may be prohibited by the bribery statute. *See* 18 U.S.C. 201. When Congress provided for the court order exception to the expert testimony bar in section 207, it did not intend to provide a mechanism for former employees who worked on

matters to receive compensation for testimony because of their personal knowledge of the facts.

Proposed § 2641.301(f)(3) implements section 207(j)(6) as it pertains to the permissibility of statements made under penalty of perjury. Proposed § 2641.301(f)(3) emphasizes that this exception does not authorize an employee to "submit a pleading, application, or other document as an attorney or other representative." *See also* 5 CFR 2637.208(c). We also emphasize in § 2641.301(f)(3) as proposed that when the permanent bar is applicable, a former employee is subject to the limitation concerning expert witness testimony even though his testimony could also be characterized as a statement made under penalty of perjury.

The proposed note following § 2641.301(f)(3) as proposed would emphasize that, for purposes of the exception, it is irrelevant that a witness may be compensated for his testimony. On the other hand, the note alerts former employees and others to the criminal provisions in 18 U.S.C. 201(c)(3) and (d) which may prohibit fact witnesses from receiving compensation for testifying in certain forums other than as "provided by law" or to cover "the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance" at a proceeding. Separately, the note also alerts the reader to the possible existence of agency procedures relating to the production or disclosure of Government information by current or former employees. *See, e.g.*, Department of Justice regulations at 28 CFR part 16, subpart B.

Proposed § 2641.301(g)—Acting on Behalf of a Candidate or Political Party

The Office of Government Ethics Authorization Act of 1996, Pub. L. 104–179, 110 Stat. 1566, amended 18 U.S.C. 207(j) to add a new exception to sections 207(c) and (d). Under new section 207(j)(7), a former senior or very senior employee may represent a "candidate" for Federal or State office or "an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party." The proposed regulatory definitions of these terms at § 2641.301(g)(1) closely track the statutory definitions in section 207(j)(7). As noted earlier in connection with proposed § 2641.301(b) and (c), the term "State" is defined in § 2641.104 as proposed.

Proposed § 2641.301(g)(2)(ii) reflects that a communication or appearance must be made on behalf of "one or more" of the candidates or political organizations specified in § 2641.301(g)(1) (i)–(vi). This language reflects our interpretation that the exception is available to a former senior or very senior employee who is simultaneously acting on behalf of more than one of the specified candidates or political organizations.

If the former senior or very senior employee is representing a candidate, section 207(j)(7) applies only if the employee makes the communication or appearance on behalf of the candidate "in his or her capacity as a candidate." Accordingly, the former Attorney General in proposed examples 2 and 3 following proposed § 2641.301(g) could seek official action from a Government official about a tax matter of interest to a State committee, but could not make a communication on behalf of a candidate seeking the dismissal of an enforcement action involving the candidate's family business.

The exception is available to a former senior or very senior employee who is retained either directly by a candidate or specified political organization or who is hired by a third person who provides services exclusively to candidates or the specified political organizations. Significantly, the exception is not available if the former employee is "employed by" any other person or entity at the time he makes the communication or appearance. This limitation, described at proposed § 2641.301(g)(2)(i), is illustrated in example 4. The former senior employee in that example cannot avoid the section 207(c) bar by using the exception because he is employed by a firm that does not exclusively "represent, aid, or advise" the specified persons or entities.

Section 207(j)(7) applies only when the communication or appearance is made "solely on behalf of" a specified candidate or political organization. We would highlight this restriction by denoting it as one of the "limitations" at § 2641.301(g)(2) as proposed.

Finally, proposed § 2641.301(g) recognizes that even a communication or appearance purportedly made solely on behalf of a specified person or entity may unavoidably also involve a representation of the former senior or very senior employee's employer. Since the exception contemplates that former employees may become "employed by" third persons or entities who provide services exclusively to candidates or political organizations, we did not believe that such an affiliation should preclude use of the exception. Accordingly, we indicate that a former employee may make a communication or appearance on behalf of such a third person or entity, described in proposed § 2641.301(g)(2)(i)(B), provided the communication or appearance otherwise meets the requirements for the § 2641.301(g) exception as proposed.

Proposed § 2641.301(h)—Acting on Behalf of an International Organization Pursuant to a Waiver

Section 207(j)(3) was added by the Ethics Reform Act of 1989 version of section 207. This exception provides that the restrictions of the statute shall not apply to "an appearance or communication on behalf of, or aid or advice to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States." The Secretary of State has issued several section 207(j)(3) waivers.

Proposed § 2641.301(h) provides that a section 207(j)(3) waiver may be granted to any "former employee." We believe that the Secretary of State may entertain a request for a waiver from a current employee who has firm post-employment plans, provided that the effective date of the waiver occurs after the employee becomes a former employee.

Section 2641.301(i)—Acting as an Employee of a Government-Owned, Contractor Operated Entity Pursuant to a Waiver

Section 207(k) of 18 U.S.C. authorizes the President to waive some or all of the substantive restrictions of section 207 for up to 25 current employees of the executive branch (excluding any former employees who may be continuing to benefit from previously issued waivers). Subject to a slightly more flexible provision relating to prior employment at certain laboratories, a waiver under this section applies to an individual who returns to the same Government-owned, contractor operated entity by which he was employed just prior to entering Government service. Proposed § 2641.301(i) re-states the statutory criteria and procedures applicable to such waivers.

Proposed § 2641.301(j)—Waiver for Certain Positions From the Prohibitions of 18 U.S.C. 207 (c) and (f)

Apart from the general exceptions and waivers described in section 207(j) and the waiver authority set forth in section 207(k), section 207(c) is not applicable to any former senior employee whose Government position has been waived from the prohibition by the Director of OGE. *See* section 207(c)(2)(C).

On February 1, 1991 OGE published an interim rule (with request for comments), which established procedures to waive positions pursuant to section 207(c)(2)(C). OGE has published waived positions as appendix A to 5 CFR part 2641.

OGE received three written comments in response to the 1991 rulemaking. One comment was generally supportive of the interim rule. A second comment raised, in part, the issue of the applicability of section 207(c) to employees detailed to senior employee positions. That issue has already been discussed as part of the discussion of the definition of "senior employee" in proposed § 2641.104. The third comment requested "clarification on the standards which will be used in determining whether to grant a waiver." More specifically, the comment stated that the rule "could be improved by adding a list of factors to consider for determining whether there would be a potential for the use of undue influence or unfair advantage."

The statute lists two criteria that must be satisfied in order for the Director to waive a position from section 207(c). First, the Director must determine that the imposition of section 207(c) "would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions," under section 207(c)(2)(C)(i). Second, the Director must determine that "granting the waiver would not create the potential for use of undue influence or unfair advantage," under section 207(c)(2)(C)(ii). Our interim rule listed some factors that could be relevant to such determinations, and the proposed rule would add additional guidance. It is impossible, however, to develop an exhaustive list of factors that could be considered. The waiver procedure envisions a case-by-case evaluation of the facts related to the hardship on the agency and the potential for undue influence and unfair advantage. It is up to the agency to bring any relevant factors to our attention in order to permit the Director to make the determinations required under the statute.

In addition to modifying certain definitions, as already discussed, we are proposing to make several other changes to the existing provisions of part 2641 relating to waivers. First, as the underlying statute states that OGE may *waive* the restrictions of section 207(c), we have used the term "waiver" throughout the new, renumbered § 2641.301(j) as proposed, rather than the term "exemption" which appears in existing § 2641.201(d). We would also renumber the existing paragraphs concerning waivers so that the paragraph describing the statutory criteria would appear in proposed § 2641.301(j)(2) as proposed. In addition, we would reorder the statutory criteria in renumbered § 2641.301(j)(2) as proposed to track the order in which they are set forth in the statute.

We propose to modify renumbered § 2641.301(j) to emphasize that a waiver of section 207(c) will operate to waive the restriction of section 207(f). This result follows from the fact that the one-year ban on providing certain assistance to foreign governments or foreign political parties set forth in section 207(f) applies, *inter alia*, to "[a]ny person who is subject to the restrictions contained in subsection (c) * * *" of section 207. Thus, if a former senior employee is not subject to section 207(c) because that restriction has been waived by the Director of OGE, then he will similarly not be subject to section 207(f). We are proposing to insert necessary references to section 207(f) in renumbered § 2641.301(j). Along the same lines, we propose that the Director consider, in relation to the statutory criterion for waiver at renumbered § 2641.301(j)(2)(iii), the consequences of a position's waiver from the restrictions pertaining to foreign entities.

We are proposing to amend renumbered § 2641.301(j)(1) to indicate that OGE may consider waiving restrictions for a position if it "could be occupied by a senior employee." We chose this wording mainly because individuals serving in Senior Executive Service positions are paid basic rates of pay which range from ES–1 to ES–6 depending upon their individual qualifications. As long as a position *could* be occupied by a senior employee, OGE will not decline to consider a waiver merely because the current incumbent's pay rate is less than the ES–5 rate of basic pay triggering senior employee status.

We are proposing to add an example to follow proposed renumbered § 2641.301(j)(1), concerning eligible senior positions. As specified in 18 U.S.C. 207(c)(2)(C) and as would be reflected in renumbered § 2641.301(j)(1), positions for which the rate of basic pay is "specified in" or "fixed according to" the Executive Schedule are ineligible for waiver. Proposed example 1 illustrates the application of this limitation.

Waivers may not be issued to prevent or remedy individual hardships, but rather to address programmatic concerns. In the past, some waivers have been sought to ameliorate the effects of the one-year cooling-off provision as it would apply to a particular individual, rather than to prevent expected recruitment problems. The Office of Government Ethics has not granted such waivers. *See, e.g.*, OGE Informal Advisory Letter 94 x 12. *See also* OGE Informal Advisory Letter 96 x 15, in which the Director of OGE declined to grant a waiver to remedy the consequences of an agency's misinterpretation of a personnel law which resulted in the retroactive reinstatement of an individual to her former senior position and the renewal of her one-year cooling-off period.

We are proposing to modify renumbered § 2641.301(j)(3)(i) by inserting the word "recommend" to emphasize the role of the designated agency ethics official. OGE expects that a request will not be forwarded for consideration by the Director unless the ethics official believes that waiver is warranted.

We are proposing to reword the description of the "hardship" criterion, at renumbered § 2641.301(j)(2)(i) and (ii), to emphasize what must be central to an agency's recommendation concerning this element. An agency must show that it "has experienced or is experiencing undue hardship in obtaining qualified personnel" and that "[w]aiver of the restriction with respect to the position or positions is expected to ameliorate the recruiting difficulties." *See* OGE Informal Advisory Letter 97 x 16.

We are proposing to add an additional factor that would support an agency's claim of recruitment difficulties. Proposed § 2641.301(j)(2)(i)(A) confirms the relevance of position vacancy rates. Moreover, we are proposing to modify the factor at existing § 2641.201(d)(5)(ii), which currently provides that the Director of OGE will consider, *inter alia*, that the incumbent of a position proposed for waiver possess "outstanding qualifications in a scientific, technological, or other technical discipline." We would revise this factor, at renumbered § 2641.301(j)(2)(i)(C), to include outstanding qualifications in any other "specialized discipline."

We are proposing to add a new sentence, at renumbered § 2641.301(j)(3)(i), indicating that a designated agency ethics official "may, at any time, request that a current waiver be revoked." In addition, we are proposing to delete the requirement that letters must be submitted annually to OGE concerning the continued waiver of the restriction. Finally, because OGE need publish a rule only when a revision to appendix A is warranted as a result of the granting of a new waiver or the revocation of an existing waiver, we propose to drop the requirement in existing § 2641.201(d)(3) that OGE

annually publish an updated compilation. As proposed, renumbered § 2641.301(j)(3)(ii) would merely require that the Director of OGE "maintain a listing" of waived positions in appendix A to 5 CFR part 2641.

Section 2641.301(k)—Miscellaneous Statutory Exceptions

Proposed § 2641.301(k) lists statutory provisions, other than those in 18 U.S.C. 207 itself, which modify the scope of the post-employment statute as it would otherwise apply to specified former employees or classes of former employees. We invite reviewers of this proposed rule to review our list and suggest modifications or additions.

Section 2641.302—Component Designations

The scope of 18 U.S.C. 207(c) can be narrowed through designation, by the Director, of separate departmental or agency components. Authority for the designation of separate components is set forth in section 207(h). On February 1, 1991, OGE published an interim rule establishing procedures, currently codified at 5 CFR 2641.201(e), to designate separate agency components. OGE has published agency component designations as appendix B to 5 CFR part 2641.

We are proposing to make several changes to existing § 2641.201(e), which would be renumbered as § 2641.302. We have reorganized the paragraphs in existing § 2641.201(e) concerning component designations so that the paragraph describing the statutory criteria would appear before the paragraph relating to procedures. In addition, we have reordered the two statutory criteria in renumbered § 2641.302(c). We have also changed the due date for the written updates, required by existing § 2641.201(e)(3)(ii), to July 1 and have dropped the requirement, at existing § 2641.201(e)(3)(iii), that the Director of OGE publish an annual compilation of designated components. OGE would "maintain a listing" of designations in appendix B and would publish amendatory rules only when necessary.

For clarity, we would avoid use of the term "component" in renumbered § 2641.302(a) when referring to an undesignated agency or bureau within a parent agency. We are also proposing to add two examples to follow that section. The first illustrates the effect of a component designation in the case of a former senior employee of a parent agency. The second example concerns a former senior employee of a designated component. Both proposed examples would also show that an agency office that some might characterize as a "component" will, if not designated by the Director of OGE, nevertheless be considered part of the parent for purposes of determining the scope of the section 207(c) bar.

We propose to list four additional factors that the Director of OGE will consider in connection with the "distinct and separate" finding required by the statute. The first of these additional factors, at renumbered § 2641.302(c)(1)(iii), would indicate that the Director will consider "[t]he degree of supervision exercised by the parent over the component." In view of this addition, we are proposing to delete much of existing § 2641.201(e)(7). That section had made clear that the Director may designate subordinate agencies or bureaus as distinct and separate from a parent notwithstanding that the parent may exercise some degree of general supervision over the subordinate entity. We would, however, retain the last sentence of existing § 2641.201(e)(7). As reworded and retitled, renumbered § 2641.302(d) would continue to indicate that the Director will not ordinarily designate agencies or other administrative units that are encompassed by or otherwise supervised by an existing designated component.

The other three new factors proposed at renumbered § 2641.302(c)(1) derive from OGE's experience in deciding several designation requests over the past few years. New § 2641.302(c)(1)(iv) would indicate that the Director will consider "[w]hether the component exercises responsibilities that cut across organizational lines within the parent." We have declined to designate an office that had been created administratively to provide personnel, payroll, and similar services to the parent and to its designated components. We also declined to designate an Inspector General's office as a component distinct and separate from the parent and other designated components. The two other new factors will confirm the relevance of the size of the component, both in absolute and relative terms. In one instance, for example, we declined to designate an office of fewer than 25 people that also would have been very small in relation to other designated components of the parent.

In view of the passage of time since the original publication of part 2641, we are also proposing to delete existing § 2641.201(e)(3)(i) concerning the effective date of the Director's initial post-Ethics Reform Act designations. The introductory paragraph in Appendix B would continue to provide that "[e]xcept as otherwise indicated, all designations are effective as of January 1, 1991." We also would reorganize existing § 2641.201(e)(3)(ii) by creating separate paragraphs, proposed § 2641.302(e)(1) and (e)(2), respectively titled "Agency recommendation" and "Agency update."

Existing § 2641.201(e)(4) currently provides that a new designation "shall be effective as of the effective date of the rule that creates the designation * * *." Since a designation can substantially affect the scope of 18 U.S.C. 207(c) as applied to particular individuals, it is important that the designation become effective as soon as possible. We are proposing to modify existing § 2641.201(e)(4) to establish the date of publication as the effective date for all future designations. However, since a revocation has the effect of expanding the section 207(c) bar, we propose to retain the 90-day delayed effective date with respect to revocations, now at renumbered § 2641.302(f). As before, a revocation would not apply to any individual who terminated senior service prior to the expiration of the 90-day period.

We also propose to revise existing § 2641.201(e)(4) so that a new component designation "shall be effective as to individuals who terminated senior service either before, on or after that date." This proposed change, at renumbered § 2641.302(f), would serve to mitigate the consequences of administrative delays in connection with the publication of a rule designating a new component.

As stated earlier in relation to § 2641.204(g), it is necessary to identify a former senior employee's "former agency" in order to determine the scope of 18 U.S.C. 207(c). If a designated component is determined to be no longer identifiable as substantially the same entity, the section 207(c) bar will not apply to a former senior employee of that component. Example 1 following § 2641.302(g) as proposed illustrates this concept. In the case of a designated component that remains identifiable as substantially the same entity, the bar will apply to a former senior employee as if the whole of the reorganized entity had been designated as a distinct and separate component by the Director. Proposed example 2 as proposed illustrates this idea. The example also points out that a former employee would not be barred from contacting a current employee who had been transferred outside the boundaries of the designated component, as reorganized.

Although OGE has assigned the "appropriate" designated agency ethics official the primary responsibility for applying the standards of proposed

§ 2641.204(g) in the context of agency components, we emphasize that proposed § 2641.302(g) would not constitute a delegation of the Director's authority to make or revoke component designations. Rather, it would reflect the practical necessity of determining if, subsequent to a reorganization, there is an identifiable successor to a component that had been previously designated as distinct and separate by OGE.

Agency ethics officials would need turn to § 2641.302(g) as proposed only when a designated component has been "significantly altered by organizational changes." Proposed § 2641.302(g) requires that the determination required by § 2641.302(g) be made in consultation with OGE. While agency officials will be most familiar with the details of a significant reorganization, OGE personnel can assist in determining whether a designated component remains "identifiable as substantially the same entity." Moreover, such consultation should ensure that advice rendered to a particular individual will be consistent with any subsequent revision of appendix B by the OGE Director.

Appendixes

Finally, we are proposing to delete existing footnotes 4 and 5 from the appendix B listing for the Department of Justice. The information in those footnotes would, henceforth, be contained in parentheses following the appropriate component.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments on this proposed regulation, to be received by May 19, 2003. The comments will be carefully considered and any appropriate changes will be made to the regulation before a final rule is adopted and published in the **Federal Register** by OGE.

Executive Order 12866

In promulgating this proposed rule, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of OGE, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Parts 2637 and 2641

Conflict of interests, Government employees.

Approved: January 31, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend 5 CFR Chapter XVI as follows:

Under the authority of 5 U.S.C. App (Ethics in Government Act of 1978):

1. Part 2637 is removed.

2. Part 2641 is revised to read as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Subpart A—General Provisions

Sec.

2641.101 Purpose.
2641.102 Applicability.
2641.103 Enforcement and penalties.
2641.104 Definitions.
2641.105 Advice.

Subpart B—Prohibitions

2641.201 Permanent restriction on any former employee's representations to United States concerning particular matter in which the employee participated personally and substantially [18 U.S.C. 207(a)(1)].
2641.202 Two-year restriction on any former employee's representations to United States concerning particular matter for which the employee had official responsibility [18 U.S.C. 207(a)(2)].
2641.203 One-year restriction on any former employee's representations, aid, or advice concerning ongoing trade or treaty negotiation [18 U.S.C. 207(b)].
2641.204 One-year restriction on any former senior employee's representations to former agency concerning any matter, regardless of prior involvement [18 U.S.C. 207(c)].
2641.205 One-year restriction on any former very senior employee's representations to former agency or certain officials concerning any matter, regardless of prior involvement [18 U.S.C. 207(d)].
2641.206 One-year restriction on any former senior or very senior employee's representations on behalf of, or aid or advice to, foreign entity [18 U.S.C. 207(f)].

Subpart C—Exceptions, Waivers and Separate Components

2641.301 Statutory exceptions and waivers.
2641.302 Separate agency components.

Appendix A to Part 2641—Positions Waived from 18 U.S.C. 207(c) and (f)
Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2641.101 Purpose.

(a) *Purpose of 18 U.S.C. 207.* 18 U.S.C. 207 prohibits certain acts by former employees (including current employees who formerly served in "senior" or "very senior" employee positions) which involve, or may appear to involve, the unfair use of prior Government employment. None of the restrictions of section 207 prohibit any former employee, regardless of Government rank or position, from accepting employment with any particular private or public employer. Rather, section 207 prohibits a former employee from providing certain services to or on behalf of non-Federal

employers or other persons, whether or not done for compensation. These restrictions are personal to the employee and are not imputed to others. (*See*, however, the note following § 2641.103 concerning 18 U.S.C. 2.)

(b) *Purpose of part 2641.* This part 2641 provides interpretive guidance explaining the scope and content of 18 U.S.C. 207 as it applies to former employees of the executive branch or of certain independent agencies (including current employees who formerly served in "senior" or "very senior" employee positions). Although certain restrictions in section 207 apply to former employees of the District of Columbia, Members and elected officials of the Congress and certain legislative staff, and employees of independent agencies in the legislative and judicial branches, this part is not intended to provide guidance to those individuals.

Note to § 2641.101: Part 2641 does not address post-employment restrictions that may be contained in laws or authorities other than 18 U.S.C. 207. These restrictions include those in 18 U.S.C. 203 and 41 U.S.C. 423(d).

§ 2641.102 Applicability.

Since its enactment in 1962, 18 U.S.C. 207 has been amended several times. As a consequence of these amendments, former executive branch employees are subject to varying post-employment restrictions depending upon the date they terminated Government service (or service in a "senior" or "very senior" employee position).

(a) *Employees terminating on or after January 1, 1991.* Former employees who terminated or employees terminating Government service (or service in a "senior" or "very senior" employee position) on or after January 1, 1991, are subject to the provisions of 18 U.S.C. 207 as amended by the Ethics Reform Act of 1989, title I, Public Law 101–194, 103 Stat. 1716 (with amendments enacted by Act of May 4, 1990, Public Law 101–280, 104 Stat. 149) and by subsequent amendments. This part 2641 provides guidance concerning section 207 to these former employees.

(b) *Employees terminating between July 1, 1979 and December 31, 1990.* Former employees who terminated service between July 1, 1979, and December 31, 1990, are subject to the provisions of section 207 as amended by the Ethics in Government Act of 1978, title V, Public Law 95–521, 92 Stat. 1864 (with amendments enacted by Act of June 22, 1979, Public Law No. 96–28, 93 Stat. 76). Regulations providing guidance concerning 18 U.S.C. 207 to these employees were last published in the 2003 edition of Title 5 of the Code of Federal Regulations, revised as of January 1, 2003.

(c) *Employees terminating prior to July 1, 1979.* Former employees who terminated service prior to July 1, 1979, are subject to the provisions of 18 U.S.C. 207 as enacted in 1962 by the Act of October 23, 1962, Public Law 87–849, 76 Stat. 1123.

Note to § 2641.102: The provisions of this part 2641 reflect amendments to 18 U.S.C. 207 enacted subsequent to the Ethics Reform Act of 1989 and before [the effective date of the final rule]. An employee who terminated Government service (or service in a "senior" or "very senior" employee position) between January 1, 1991, and [the effective date of the final rule] may have become subject, upon termination, to a version of the statute that existed prior to the effective date of one or more of those amendments. Those amendments concerned: (1) Changes, effective in 1990 and 1996, concerning the rate of basic pay triggering "senior employee" status for purposes of section 207(c); (2) the reinstatement and subsequent amendment of the Presidential waiver authority in section 207(k); (3) the length of the restriction set forth in section 207(f) as applied to a former United States Trade Representative or Deputy United States Trade Representative; (4) the addition of section 207(j)(7), an exception to section 207(c) and (d); and (5) a change to section 207(j)(2)(B), an exception to section 207(c) and (d).

§ 2641.103 Enforcement and penalties.

(a) *Enforcement.* Criminal and civil enforcement of the provisions of 18 U.S.C. 207 is the responsibility of the Department of Justice. An agency is required to report to the Attorney General any information, complaints or allegations of possible criminal conduct in violation of title 18 of the United States Code, including possible violations of section 207 by former officers and employees. *See* 28 U.S.C. 535. When a possible violation of section 207 is referred to the Attorney General, the referring agency shall concurrently notify the Director of the Office of Government Ethics of the referral in accordance with 5 CFR 2638.603.

(b) *Penalties and injunctions.* 18 U.S.C. 216 provides for the imposition of one or more of the following penalties and injunctions for a violation of section 207:

(1) *Criminal penalties.* 18 U.S.C. 216(a) sets forth the maximum imprisonment terms for felony and misdemeanor violations of section 207. Section 216(a) also provides for the imposition of criminal fines for violations of section 207. For the amount of the criminal fines that may be imposed, *see* 18 U.S.C. 3571.

(2) *Civil penalties.* 18 U.S.C. 216(b) authorizes the Attorney General to take civil actions to impose civil penalties for violations of section 207 and sets forth the amounts of the civil fines.

(3) *Injunctive relief.* 18 U.S.C. 216(c) authorizes the Attorney General to seek an order from a United States District Court to prohibit a person from engaging in conduct which violates section 207.

(c) *Other relief.* In addition to any other remedies provided by law, the United States may, pursuant to 18 U.S.C. 218, void or rescind contracts, transactions, and other obligations of the United States in the event of a final conviction pursuant to section 207, and recover the amount expended or the thing transferred or its reasonable value.

Note to § 2641.103: A person or entity who aids, abets, counsels, commands, induces, or procures commission of a violation of section 207 is punishable as a principal under 18 U.S.C. 2.

§ 2641.104 Definitions.

For purposes of this part:

Agency means any department, independent establishment, commission, administration, authority, board or bureau of the United States or Government corporation. The term includes any independent agency not in the legislative or judicial branches.

Agency ethics official means the designated agency ethics official (DAEO) or the alternate DAEO, appointed in accordance with 5 CFR 2638.202(b), and any deputy ethics official described in 5 CFR 2638.204.

Department means one of the executive departments listed in 5 U.S.C. 101.

Designated agency ethics official (DAEO) means the official designated under 5 CFR 2638.201 to coordinate and manage an agency's ethics program.

Employee means, for purposes of determining the individuals subject to 18 U.S.C. 207, any officer or employee of the executive branch or any independent agency that is not a part of the legislative or judicial branches. The term does not include the President or the Vice President (except, with respect to the Vice President, as otherwise provided), an enlisted member of the Armed Forces, or an officer or employee of the District of Columbia. The term includes an individual appointed as an employee or detailed to the Federal Government under the Intergovernmental Personnel Act (5 U.S.C. 3371–3376) or specifically subject to section 207 under the terms of another statute. It encompasses senior employees, very senior employees, and special Government employees. (This term is redefined elsewhere in this part, as necessary, when the term is used for other purposes.)

Executive branch includes an executive department as defined in 5 U.S.C. 101, a Government corporation, an independent establishment (other than the General Accounting Office), the Postal Service, the Postal Rate Commission, and also includes any other entity or administrative unit in the executive branch.

Former employee means an individual who has completed a period of service as an employee. Unless otherwise indicated, the term encompasses a former senior employee and a former very senior employee. An individual becomes a former employee at the termination of Government service, whereas an individual becomes a former senior employee or a former very senior employee at the termination of service in a senior or very senior employee position. Consistent with 18 U.S.C. 202(c) and the definition of "employee" in this section, the Vice President is a former employee only for purposes of 18 U.S.C. 207(d) and (f) [§§ 2641.205 and 2641.206] and any applicable exceptions to those restrictions; there are no other section 207 or part 2641 restrictions applicable to the Vice President.

Example 1 to the definition of former employee: An individual served as an employee of the Agency for International Development, an agency within the executive branch. Since he was, therefore, an "employee" as that term is defined in this section by virtue of having served in the executive branch, he became a "former employee" when he terminated Government service to pursue his hobbies.

Example 2 to the definition of former employee: An individual served as an employee of the Tennessee Valley Authority (TVA). Since the TVA is a corporation owned or controlled by the Government of the United States, she served as an employee in the "executive branch" as that term is defined in this section. She became a "former employee," therefore, when she terminated Government service to do some traveling.

Example 3 to the definition of former employee: An individual terminated a GS–14 position in the executive branch to accept a position in the legislative branch. He did not become a "former employee" when he terminated service in the executive branch since he did not terminate "Government service" as that term is defined in this section.

Example 4 to the definition of former employee: An individual is appointed by the President to serve as a special Government employee on the Oncological Drug Advisory Committee at the Department of Health and Human Services. The special Government employee meets with the committee five days per year. She does not terminate Government service at the end of each meeting of the committee and therefore does not at that time become a "former employee."

Example 5 to the definition of former employee: An individual is a Major in the U.S. Army Reserve. The Major earns points toward retirement by participating in weekend drills and performing active duty for training for two weeks each year. The Major is not a special Government employee when he performs weekend drills, but is considered to be one while on active duty for training. The Major is considered to be a "former employee" when he terminates each period of active duty for training.

Former senior employee is an individual who terminates service in a senior employee position (without successive Government service in another senior position).

Former very senior employee is an individual who terminates service in a very senior employee position (without successive Government service in another very senior employee position).

Government corporation means, for purposes of determining the individuals subject to 18 U.S.C. 207, a corporation that is owned or controlled by the Government of the United States. For purposes of identifying or determining individuals with whom post-employment contact is restricted, matters to which the United States is a party or has a direct and substantial interest, decisions which a former senior or very senior employee cannot seek to influence on behalf of a foreign entity, and whether a former employee is acting on behalf of the United States, it means a corporation in which the United States has a proprietary interest as distinguished from a custodial or incidental interest as shown by the functions, financing, control, and management of the corporation.

Government service means a period of time during which an individual is employed by the Federal Government. As applied to a special Government employee (SGE), Government service refers to the period of time covered by the individual's appointment (or other act evidencing employment with the Government), regardless of any interval or intervals between days actually served. *See* example 4 to the definition of *former employee* in this section. In the case of Reserve officers of the Armed Forces or officers of the National Guard of the United States who are not otherwise employees of the United States, Government service shall be considered to end upon the termination of a period of active duty or active duty for training during which they served as SGEs. *See* example 5 to the definition of *former employee* in this section.

He, his, and *him* include she, hers, and her, and vice versa.

Judicial branch means the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court of International Trade; the United States bankruptcy courts; any court created pursuant to Article I of the United States Constitution, including the United States Court of Appeals for the Armed Forces, the United States Claims Court, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch.

Legislative branch means the Congress; it also means the Office of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and any other agency, entity, office, or commission established in the legislative branch.

Person includes an individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization, institution, or entity, including any officer, employee, or agent of such person or entity. Unless otherwise indicated, the term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State and local governments. The term includes the "United States" as that term is defined in § 2641.301(a)(1).

Senior employee means an employee, other than a very senior employee who is:

(1) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule);

(2) Employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment or additional pay such as bonuses, awards, and various allowances, is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service;

(3) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B);

(4) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B); or

(5) An active duty commissioned officer of the uniformed services serving in a position for which the pay grade (as specified in 37 U.S.C. 201) is pay grade O–7 or above.

Example 1 to the definition of senior employee: A former administrative law judge serves on a commission created within the executive branch to adjudicate certain claims arising from a recent military operation. The position is uncompensated but the judge

receives travel expenses. The judge is not employed in a position for which the rate of pay is specified in or fixed according to the Executive Schedule, is not serving in a position to which he was appointed by the President or Vice President under 3 U.S.C. 105(a)(2)(B) or 106(a)(1)(B), and is not employed in a position for which the basic rate of pay (exclusive of locality and additional pay) is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service. He is not a senior employee.

Example 2 to the definition of senior employee: A doctor is hired to fill a "senior-level" position and is initially compensated pursuant to 5 U.S.C. 5376 at a rate of basic pay slightly less than that payable for level 5 of the Senior Executive Service. If both the annual pay adjustment provided for in 5 CFR 534.504 and the periodic pay adjustment authorized in 5 CFR 534.503 result in a rate of basic pay equal to or above the rate of basic pay payable for level 5 of the Senior Executive Service, the doctor will become a senior employee.

Special Government employee means an officer or employee of the executive branch or an independent agency, as specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days.

State means one of the fifty States of the United States and the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Very senior employee means an employee who is:

(1) Serving in the position of Vice President of the United States;

(2) Employed in a position which is either listed in 5 U.S.C. 5312 or for which the rate of pay is equal to the rate of pay payable for level I of the Executive Schedule;

(3) Employed in a position in the Executive Office of the President which is either listed in 5 U.S.C. 5313 or for which the rate of pay is equal to the rate of pay payable for level II of the Executive Schedule;

(4) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(A); or

(5) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(A).

§ 2641.105 Advice.

(a) *Agency ethics officials.* Current or former employees or others who have questions about 18 U.S.C. 207 or about this part 2641 should seek advice from a designated agency ethics official or another agency ethics official. The agency in which an individual formerly served has the primary responsibility to provide oral or written advice concerning a former employee's post-employment activities. An agency ethics official, in turn, may consult with other agencies, such as those before whom a post-employment communication or appearance is contemplated, and with the Office of Government Ethics.

(b) *Office of Government Ethics.* The Office of Government Ethics (OGE) will provide advice to agency ethics officials and others concerning 18 U.S.C. 207 and this part 2641. The OGE may provide advice orally or through issuance of a written advisory opinion and shall, as appropriate, consult with the agency or agencies concerned and with the Department of Justice.

(c) *Effect of advice.* Reliance on the oral or written advice of an agency ethics official or the OGE cannot ensure that a former employee will not be prosecuted for a violation of 18 U.S.C. 207. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice (DOJ) in the selection of cases for prosecution. In the case in which OGE issues a *formal* advisory opinion in accordance with subpart C of 5 CFR part 2638, the DOJ will not prosecute an individual who acted in good faith in accordance with that opinion. *See* 5 CFR 2638.309.

(d) *Contacts to seek advice.* A former employee will not be deemed to act on behalf of any other person in violation of 18 U.S.C. 207 when he contacts an agency ethics official or other employee of the United States for the purpose of seeking guidance concerning the applicability or meaning of section 207 as applied to his own activities.

(e) *No attorney-client privilege.* Disclosures made by a current or former employee to an agency ethics official, to any Government attorney, or to an employee of the Office of Government Ethics are not protected by an attorney-client privilege.

Subpart B—Prohibitions

§ 2641.201 Permanent restriction on any former employee's representations to United States concerning particular matter in which the employee participated personally and substantially [18 U.S.C. 207(a)(1)].

(a) *Basic prohibition of 18 U.S.C. 207(a)(1).* No former employee shall knowingly, with the intent to influence, make any communication to or appearance before an employee of the United States on behalf of any other person in connection with a particular matter involving a specific party or parties, in which he participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(a)(1) does not apply to a former employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(4) Testifying under oath. *See* § 2641.301(f). (Note that this exception from § 2641.201 is generally not available for expert testimony. *See* § 2641.301(f)(2).)

(5) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(6) Acting as an employee of a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(a)(1) is a permanent restriction that commences upon an employee's termination from Government service. The restriction lasts for the life of the particular matter involving specific parties in which the employee participated personally and substantially.

(d) *Communication or appearance—*(1) *Communication.* A former employee makes a communication when he imparts or transmits information of any kind, including facts, opinions, ideas, questions or direction, to an employee of the United States, whether orally, in written correspondence, by electronic media, or by any other means. This includes only those communications with respect to which the former employee intends that the information conveyed will be attributed to himself, although it is not necessary that any employee of the United States actually recognize the former employee as the source of the information.

(2) *Appearance.* A former employee makes an appearance when he is physically present before an employee of the United States, in either a formal or informal setting. Although an appearance also may be accompanied by certain communications, an appearance need not involve any communication by the former employee.

(3) *Behind-the-scenes assistance.* Nothing in this section prohibits a former employee from providing assistance to another person, provided that the assistance does not involve a communication to or an appearance before an employee of the United States.

Example 1 to paragraph (d): A former employee of the Federal Bureau of Investigation makes a brief telephone call to a colleague in her former office concerning an ongoing investigation. She has made a communication. If she personally attends an informal meeting with agency personnel concerning the matter, she will have made an appearance.

Example 2 to paragraph (d): A former employee of the National Endowment for the Humanities (NEH) accompanies other representatives of an NEH grantee to a meeting with the agency. Even if the former employee does not say anything at the meeting, he has made an appearance (although that appearance may or may not have been made with the intent to influence, depending on the circumstances).

Example 3 to paragraph (d): A Government employee administered a particular contract for agricultural research with Q Company. Upon termination of her Government employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the Government. At the request of a company vice president, she prepares a paper describing the persons at her former agency who should be contacted and what should be said to them in an effort to increase the scope of funding of the contract and to resolve favorably a dispute over a contract clause. She may do so.

Example 4 to paragraph (d): A former employee of the National Institutes of Health (NIH) prepares an application for an NIH research grant on behalf of her university employer. The application is signed and submitted by another university officer, but it lists the former employee as the principal investigator who will be responsible for the substantive work under the grant. He has not made a communication. He also may sign an assurance to the agency that he will be personally responsible for the direction and conduct of the research under the grant, pursuant to § 2641.201(e)(2)(iv). Moreover, he may personally communicate scientific or technological information to NIH concerning the application, provided that he does so under circumstances indicating no intent to influence the Government pursuant to § 2641.201(e)(2) or he makes the communication in accordance with the exception for scientific or technological information in § 2641.207(e).

Example 5 to paragraph (d): A former employee established a small government relations firm with a highly specialized practice in certain environmental compliance issues. She prepared a report for one of her clients, which she knew would be presented to her former agency by the client. The report is not signed by the former employee, but the document does bear the name of her firm. The former employee expects that it is commonly known throughout the industry and the agency that she is the author of the report. If the report were submitted to the agency, the former employee would be making a communication and not merely confining herself to behind-the-scenes assistance, because the circumstances indicate that she intended the information to be attributed to herself.

(e) *With the intent to influence—*(1) *Basic concept.* The prohibition applies only to communications or appearances made by a former Government employee with the intent to influence the United States. A communication or appearance is made with the intent to influence when made for the purpose of:

(i) Seeking a Government ruling, benefit, approval, or other discretionary Government action; or

(ii) Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy.

Example 1 to paragraph (e)(1): A former employee of the Administration on Children and Families (ACF) signs a grant application and submits it to ACF on behalf of a nonprofit organization for which she now works. She has made a communication with the intent to influence an employee of the United States because her communication was made for the purpose of seeking a Government benefit.

Example 2 to paragraph (e)(1): A former Government employee calls an agency official to complain about the auditing methods being used by the agency in connection with an audit of a Government contractor for which the former employee serves as a consultant. The former employee has made a communication with the intent to influence because his call was made for the purpose of seeking Government action in connection with an issue involving an appreciable element of dispute.

(2) *Intent to influence not present.* Certain communications to and appearances before employees of the United States are not made with the intent to influence, within the meaning of paragraph (e)(1) of this section, including, but not limited to, communications and appearances made solely for the purpose of:

(i) Making a routine request not involving a potential controversy, such as a request for publicly available documents or an inquiry as to the status of a matter;

(ii) Making factual statements or asking factual questions in a context that involves neither an appreciable element of dispute nor an effort to seek discretionary Government action, such as conveying factual information regarding matters that are not potentially controversial during the regular course of performing a contract;

(iii) Signing and filing the tax return of another person as preparer;

(iv) Signing an assurance that one will be responsible as principal investigator for the direction and conduct of research under a Federal grant (see example 4 to paragraph (d) of this section);

(v) Filing a Securities and Exchange Commission (SEC) Form 10–K or similar disclosure forms required by the SEC;

(vi) Making a communication, at the initiation of the Government, concerning work performed or to be performed under a Government contract or grant, during a routine Government site visit to premises owned or occupied by a person other than the United States where the work is performed or would be performed, in the ordinary course of evaluation, administration, or performance of an actual or proposed contract or grant; or

(vii) Purely social contacts (*See* example 4 to paragraph (f) of this section).

Example 1 to paragraph (e)(2): A former Government employee calls an agency to ask for the date of a scheduled public hearing on her client's license application. This is a routine request not involving a potential controversy and is not made with the intent to influence.

Example 2 to paragraph (e)(2): In the previous example, the agency's hearing calendar is quite full, as the agency has a significant backlog of license applications. The former employee calls a former colleague at the agency to ask if the hearing date for her client could be moved up on the schedule, so that her client can move forward with its business plans more quickly. This is a communication made with the intent to influence.

Example 3 to paragraph (e)(2): A former employee of the Department of Defense (DOD) now works for a firm that has a DOD contract to produce an operator's manual for a radar device used by DOD. In the course of developing a chapter about certain technical features of the device, the former employee asks a DOD official certain factual questions about the device and its properties. The discussion does not concern any matter that is known to involve a potential controversy between the agency and the contractor. The former employee has not made a communication with the intent to influence.

Example 4 to paragraph (e)(2): A former medical officer of the Food and Drug Administration (FDA) sends a letter to the agency in which he sets out certain data from safety and efficacy tests on a new drug for which his employer, ABC Drug Co., is seeking FDA approval. Even if the letter is confined to arguably "factual" matters, such as synopses of data from clinical trials, the communication is made for the purpose of obtaining a discretionary Government action, *i.e.*, approval of a new drug. Therefore, this is a communication made with the intent to influence.

Example 5 to paragraph (e)(2): A former Government employee now works for a management consulting firm, which has a Government contract to produce a study on the efficiency of certain agency operations. Among other things, the contract calls for the contractor to develop a range of alternative options for potential restructuring of certain internal Government procedures. The former employee would like to meet with agency representatives to present a tentative list of options developed by the contractor. She

may not do so. There is a potential for controversy between the Government and the contractor concerning the extent and adequacy of any options presented, and, moreover, the contractor may have its own interest in emphasizing certain options as opposed to others because some options may be more difficult and expensive for the contractor to develop fully than others.

Example 6 to paragraph (e)(2): A former employee of the Internal Revenue Service (IRS) prepares his client's tax return, signs it as preparer, and mails it to the IRS. He has not made a communication with the intent to influence. In the event that any controversy should arise concerning the return, the former employee may not represent the client in the proceeding, although he may answer direct factual questions about the records he used to compile figures for the return, provided that he does not argue any theories or positions to justify the use of one figure rather than another.

Example 7 to paragraph (e)(2): An agency official visits the premises of a prospective contractor to evaluate the testing procedure being proposed by the contractor for a research contract on which it has bid. A former employee of the agency, now employed by the contractor, is the person most familiar with the technical aspects of the proposed testing procedure. The agency official asks the former employee about certain technical features of the equipment used in connection with the testing procedure. The former employee may provide factual information that is responsive to the questions posed by the agency official, as such information is requested by the Government under circumstances for its convenience in reviewing the bid. However, the former employee may not argue for the appropriateness of the proposed testing procedure or otherwise advocate any position on behalf of the contractor.

(3) *Change in circumstances.* If, at any time during the course of a communication or appearance otherwise permissible under paragraph (e)(2) of this section, it becomes apparent that circumstances have changed which would indicate that any further communication or appearance would be made with the intent to influence, the former employee must refrain from such further communication or appearance.

Example 1 to paragraph (e)(3): A former Government employee accompanies the vice president of a company to a meeting with agency officials to convey test results called for under a Government contract. During the course of the meeting, an unexpected dispute arises concerning certain terms of the contract. The former employee may not participate in any discussion of this issue. Moreover, if the circumstances clearly indicate that even her continued presence during this discussion would be an appearance made with the intent to influence, she should excuse herself from the meeting.

(4) *Mere physical presence intended to influence.* Under some circumstances, a former employee's mere physical presence, without any communication by the employee concerning any material issue or otherwise, may constitute an appearance with the intent to influence an employee of the United States. Relevant considerations include such factors as whether:

(i) The former employee has been given actual or apparent authority to make any decisions, commitments, or substantive arguments in the course of the appearance;

(ii) The Government employee before whom the appearance is made has substantive responsibility for the matter and does not simply perform ministerial functions, such as the acceptance of paperwork;

(iii) The former employee's presence is relatively prominent;

(iv) The former employee is paid for making the appearance;

(v) It is anticipated that others present at the meeting will make reference to the views or past or present work of the former employee;

(vi) Circumstances do not indicate that the former employee is present merely for informational purposes, for example, merely to listen and record information for later use;

(vii) The former employee has entered a formal appearance in connection with a legal proceeding at which he is present; and

(viii) The appearance is before former subordinates or others in the same chain of command as the former employee.

Example 1 to paragraph (e)(4): A former Regional Administrator of the Occupational Safety and Health Administration (OSHA) becomes a consultant for a company being investigated for possible enforcement action by the regional OSHA office. She is hired by the company to coordinate and guide its response to the OSHA investigation. She accompanies company officers to an informal meeting with OSHA, which is held for the purpose of airing the company's explanation of certain findings in an adverse inspection report. The former employee is introduced at the meeting as the company's compliance and governmental affairs adviser but she does not make any statements during the meeting concerning the investigation. She is paid a fee for attending this meeting. She has made an appearance with the intent to influence.

Example 2 to paragraph (e)(4): A former employee of an agency now works for a manufacturer that seeks agency approval for a new product. The agency convenes a public advisory committee meeting for the purpose of receiving expert advice concerning the product. Representatives of the manufacturer will make an extended presentation of the data supporting the application for approval, and a special table has been reserved for them in the meeting room for this purpose. The former employee does not participate in the manufacturer's presentation to the advisory committee and does not even sit in the section designated for the manufacturer. Rather, he sits in the back of the room in a large area reserved for the public and the media. The manufacturer's speakers make no reference to the involvement or views of the former employee with respect to the matter. Even though the former employee may be recognized in the audience by certain agency employees, he has not made an appearance with the intent to influence because his presence is relatively inconspicuous and there is little to identify him with the manufacturer or the advocacy of its representatives at the meeting.

(f) *To or before an employee of the United States—(1) Employee of the United States.* For purposes of this paragraph, an "employee of the United States" means the President, the Vice President, and any current Federal employee (including an individual appointed as an employee or detailed to the Federal Government under the Intergovernmental Personnel Act (5 U.S.C. 3371–3376)) who is detailed to or employed by any:

(i) Agency (including a Government corporation);

(ii) Independent agency in the executive, legislative, or judicial branch;

(iii) Federal court; or

(iv) Court-martial.

(2) *To or before.* Except as provided in paragraph (f)(3) of this section, a communication "to" or appearance "before" an employee of the United States is one:

(i) Directed to and received by an entity specified in paragraphs (f)(1)(i) through (f)(1)(iv) of this section even though not addressed to a particular employee, *e.g.*, as when a former employee mails correspondence to an agency but not to any named employee; or

(ii) Directed to and received by an employee in his capacity as an employee of an entity specified in paragraphs (f)(1)(i) through (f)(1)(iv) of this section, *e.g.*, as when a former employee directs remarks to an employee representing the United States as a party or intervenor in a Federal or non-Federal judicial proceeding. A former employee does not direct his communication or appearance to a bystander who merely happens to overhear the communication or witness the appearance.

(3) *Public commentary.* (i) A former employee who addresses a public gathering or a conference, seminar, or similar forum as a speaker or panel participant will not be considered to be making a prohibited communication or appearance if the forum:

(A) Is not sponsored or co-sponsored by an entity specified in paragraphs (f)(1)(i) through (f)(1)(iv) of this section;

(B) Is attended by a large number of people; and

(C) A significant proportion of those attending are not employees of the United States.

(ii) In the circumstances described in paragraph (f)(3)(i) of this section, a former employee may engage in exchanges with any other speaker or with any member of the audience.

(iii) A former employee also may permit the broadcast or publication of a commentary provided that it is broadcast or appears in a newspaper, periodical, or similar widely available publication.

Example 1 to paragraph (f): A Federal Trade Commission (FTC) employee participated in the FTC's decision to initiate an enforcement proceeding against a particular company. After terminating Government service, the former employee is hired by the company to lobby key Members of Congress concerning the necessity of the proceeding. He may contact Members of Congress or their staff since a communication to or appearance before such persons is not made to or before an "employee of the United States" as that term is defined in paragraph (f)(1) of this section.

Example 2 to paragraph (f): In the previous example, the former FTC employee arranges to meet with a Congressional staff member to discuss the necessity of the proceeding. A current FTC employee is invited by the staff member to attend and is authorized by the FTC to do so in order to present the agency's views. The former employee may not argue his new employer's position at that meeting since his arguments would unavoidably be directed to the FTC employee in his capacity as an employee of the FTC.

Example 3 to paragraph (f): The Department of State granted a waiver pursuant to 18 U.S.C. 208(b)(1) to permit one of its employees to serve in his official capacity on the Board of Directors of a private association. The employee participates in a Board meeting to discuss what position the association should take concerning the award of a recent contract by the Department of Energy (DOE). When a former DOE employee addresses the Board to argue that the association should object to the award of the contract, she is directing her communication to a Department of State employee in his capacity as an employee of the Department of State.

Example 4 to paragraph (f): A Federal Communications Commission (FCC) employee participated in a proceeding to review the renewal of a license for a television station. After terminating Government service, he is hired by the company that holds the license. At a cocktail party, the former employee meets his former supervisor who is still employed by the FCC and begins to discuss the specifics of the license renewal case with him. The former employee is directing his communication to an FCC employee in his capacity as an employee of the FCC. Moreover, as the conversation concerns the license renewal matter, it is not a purely social contact and satisfies the element of the intent to influence the Government within the meaning of paragraph (e) of this section.

Example 5 to paragraph (f): A Department of Commerce employee participated in the negotiation of a proposed treaty with another country. After terminating Government service, she goes to work for a company that would be affected by the treaty. She is invited to speak about the pending negotiation at a conference sponsored by a trade association. The conference is attended by 100 individuals, 50 of whom are employees of entities specified in paragraphs (f)(1)(i)–(f)(1)(iv) of this section. The former employee may speak at the conference and may engage in a discussion of the merits of the treaty in response to a question posed by a Department of Agriculture employee in attendance.

Example 6 to paragraph (f): An employee of the Defense Base Closure and Realignment Commission participated in recommending that a particular military base be closed. After terminating Government service, the former employee may, on behalf of an organization with which he is affiliated, write and permit publication of an op-ed piece in a metropolitan newspaper in support of the recommendation to close that base.

Example 7 to paragraph (f): ABC Company has a contract with the Department of Energy which requires that contractor personnel work closely with agency employees in adjoining offices and work stations in the same building. After leaving the Department, a former employee goes to work for another corporation that has an interest in performing certain work related to the same contract, and he arranges a meeting with certain ABC employees at the building where he previously worked on the project. At the meeting, he asks the ABC employees to mention the interest of his new employer to the project supervisor, who is an agency employee. Moreover, he tells the ABC employees that they can say that he was the source of this information. The ABC employees in turn convey this information to the project supervisor. The former employee has made a communication to an employee of the Department of Energy. His communication is directed to an agency employee because he intended that the information be conveyed to an agency employee with the intent that it be attributed to himself, and the circumstances indicate such a close working relationship between contractor personnel and agency employees that it was likely that the information conveyed to contractor personnel would be received by the agency.

(g) *On behalf of any other person—(1) On behalf of.* (i) A former employee makes a communication or appearance on behalf of another person if the former employee is acting as the other person's agent or attorney or if:

(A) The former employee is acting with the consent of the other person, whether express or implied; and

(B) The former employee is acting subject to some degree of control or direction by the other person in relation to the communication or appearance.

(ii) A former employee does not act on behalf of another merely because his communication or appearance is consistent with the interests of the other person, is in support of the other person, or may cause the other person to derive a benefit as a consequence of the former employee's activity.

(2) *Any other person.* The term "person" is defined in § 2641.104. For purposes of this paragraph, the term excludes the former employee himself or any sole proprietorship owned by the former employee.

Example 1 to paragraph (g): An employee of the Bureau of Land Management (BLM) participated in the decision to grant a private company the right to explore for minerals on certain Federal lands. After retiring from Federal service to pursue her hobbies, the former employee becomes concerned that BLM is misinterpreting a particular provision of the lease. The former employee may contact a current BLM employee on her own behalf in order to argue that her interpretation is correct.

Example 2 to paragraph (g): The former BLM employee from the previous example later joins an environmental organization as an uncompensated volunteer. The leadership of the organization authorizes the former employee to engage in any activity that she believes will advance the interests of the organization. She makes a communication on behalf of the organization when, pursuant to this authority, she writes to BLM on the organization's letterhead in order to present an additional argument concerning the interpretation of the lease provision. Although the organization did not direct her to send the specific communication to BLM, the circumstances establish that she made the communication with the consent of the organization and subject to a degree of control or direction by the organization.

Example 3 to paragraph (g): An employee of the Administration for Children and Families wrote the statement of work for a cooperative agreement to be issued to study alternative workplace arrangements. After terminating Government service, the former employee joins a nonprofit group formed to promote family togetherness. He is asked by his former agency to attend a meeting in order to offer his recommendations concerning the ranking of the grant applications he had reviewed while still a Government employee. The management of the nonprofit group agrees to permit him to take leave to attend the meeting in order to present his personal views concerning the ranking of the applications. Although the former employee is a salaried employee of the non-profit group and his recommendations may be consistent with the group's interests, the circumstances establish that he did not make the communication pursuant to mutual consent.

Example 4 to paragraph (g): An Assistant Secretary of Defense participated in a meeting at which a defense contractor pressed Department of Defense (DOD) officials to continue funding the contractor's sole source contract to develop the prototype

of a specialized robot. After terminating Government service, the former Assistant Secretary approaches the contractor and suggests that she can convince her former DOD colleagues to pursue development of the prototype robot. The contractor agrees that the former Assistant Secretary's proposed efforts could be useful and asks her to set up a meeting with key DOD officials for the following week. Although the former Assistant Secretary is not an employee of the contractor, the circumstances establish that she is acting subject to some degree of control or direction by the contractor.

(h) *Particular matter involving a specific party or parties*— (1) *Basic concept.* The prohibition applies only to communications or appearances made in connection with a "particular matter involving a specific party or parties." Although "particular matter" is defined broadly to include "any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding," 18 U.S.C. 207(i)(3), such particular matters also must involve a specific party or parties in order to fall within the prohibition. These matters involve a specific activity or undertaking affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.

Example 1 to paragraph (h)(1): An employee of the Department of Housing and Urban Development approved a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that application as it is a particular matter involving specific parties in which she participated personally and substantially as a Government employee.

Example 2 to paragraph (h)(1): An attorney in the Department of Justice drafted provisions of a civil complaint that is filed in Federal court alleging violations of certain environmental laws by ABC Company. The attorney may not subsequently represent ABC before the Government in connection with the lawsuit, which is a particular matter involving specific parties.

Example 3 to paragraph (h)(1): A former Government employee seeks to represent a foreign government before an agency in connection with certain issues arising under a bilateral treaty that he helped to negotiate as a Government employee. He may not do so, if it is determined that the matter with respect to which he seeks to represent the foreign government is the same matter in which he previously participated as a Government employee. Although bilateral treaties may involve the adoption of broad national policies that do not focus specifically on the rights of any one person or company within the United States, such matters do involve specific parties, namely the United States and the foreign country, which are parties to a contract-like agreement. Note also that certain employees may be subject to additional restrictions with respect to trade and treaty negotiations or representation of a foreign entity, pursuant to 18 U.S.C. 207(b) and (f).

(2) *Matters of general applicability not covered.* Legislation or rulemaking of general applicability and the formulation of general policies, standards or objectives, or other matters of general applicability are not particular matters involving specific parties.

Example 1 to paragraph (h)(2): A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation.

Example 2 to paragraph (h)(2): The former employee in the previous example also assisted MSHA in its defense of a lawsuit brought by a trade association challenging the same regulation. This lawsuit is a particular matter involving specific parties, and the former MSHA employee would be prohibited from representing the trade association or anyone else in connection with the case.

Example 3 to paragraph (h)(2): An employee of the National Science Foundation formulated policies for a grant program for organizations nationwide to produce science education programs targeting elementary school age children. She is not prohibited from later representing a specific organization in connection with its application for assistance under the program.

Example 4 to paragraph (h)(2): An employee in the legislative affairs office of the Immigration and Naturalization Service (INS) drafted official comments submitted to Congress with respect to a pending immigration reform bill. After leaving the Government, he contacts the White House on behalf of a private organization seeking to influence the administration to insist on certain amendments to the bill. This is not prohibited. Generally, legislation is not a particular matter involving specific parties. However, if the same employee had participated as an INS employee in formulating the agency's position on proposed private relief legislation granting citizenship to a specific individual, this matter would involve specific parties, and the employee would be prohibited from later making representational contacts in connection with this matter.

Example 5 to paragraph (h)(2): An employee of the Food and Drug Administration (FDA) drafted a proposed rule requiring all manufacturers of a particular type of medical device to obtain pre-market approval for their products. It was known at the time that only three or four manufacturers currently were marketing or developing such products. However, there was nothing to preclude other manufacturers from entering the market in the future. Moreover, the regulation on its face was not limited in application to those companies already known to be involved with this type of product at the time of promulgation. Because the proposed rule would apply to an open-ended class of manufacturers, not just specifically identified companies, it would not be a particular matter involving specific parties. After leaving Government, the former FDA employee would not be prohibited from representing a manufacturer in connection with the final rule or the application of the rule in any specific case.

Example 6 to paragraph (h)(2): A former agency attorney participated in drafting a standard form contract and certain standard terms and clauses for use in all future contracts. The adoption of a standard form and language for all contracts is a matter of general applicability, not a particular matter involving specific parties. Therefore, the attorney would not be prohibited from representing another person in a dispute involving the application of one of the standard terms or clauses in a specific contract in which he did not participate as a Government employee.

(3) *Specific parties at all relevant times.* The particular matter must involve specific parties both at the time the individual participated as a Government employee and at the time the former employee makes the communication or appearance, although the parties need not be identical at both times.

Example 1 to paragraph (h)(3): An employee of the Department of Defense (DOD) performed certain feasibility studies and other basic conceptual work for a possible innovation to a missile system. At the time she was involved in the matter, DOD had not identified any prospective contractors who might perform the work on the project. After she left Government, DOD issued a request for proposals to construct the new system, and she now seeks to represent one of the bidders in connection with this procurement. She may do so. Even though the procurement is a particular matter involving specific parties at the time of her proposed representation, no parties to the matter had been identified at the time she participated in the project as a Government employee.

Example 2 to paragraph (h)(3): A former employee in an agency inspector general's office conducted the first investigation of its kind concerning a particular fraudulent accounting practice by a grantee. This investigation resulted in a significant monetary recovery for the Government, as well as a settlement agreement in which the grantee agreed to use only certain specified accounting methods in the future. As a result of this case, the agency decided to issue a proposed rule expressly prohibiting the fraudulent accounting practice and requiring all grantees to use the same accounting methods that had been developed in connection with the settlement agreement. The former employee may represent a group of grantees submitting comments critical of the proposed regulation. Although the proposed regulation in some respects evolved from the earlier fraud case, which did involve specific parties, the subsequent rulemaking proceeding does not involve specific parties.

(4) *Preliminary or informal stages in a matter.* When a particular matter involving specific parties begins depends on the facts. A particular matter may involve specific parties prior to any formal action or filings by the agency or other parties. Much of the work with respect to a particular matter is accomplished before the matter reaches its final stage, and preliminary or informal action is covered by the prohibition, provided that specific parties to the matter actually have been identified. With matters such as grants, contracts, and other agreements, ordinarily specific parties are first identified when initial proposals or indications of interest, such as responses to requests for proposals (RFP) or earlier expressions of interest, are received by the Government; in unusual circumstances, however, a prospective grant, contract, or agreement may involve specific parties even prior to the receipt of a proposal or expression of interest, if there are sufficient indicia that the Government has specifically identified a party.

Example 1 to paragraph (h)(4): A Government employee participated in internal agency deliberations concerning the merits of taking enforcement action against a company for certain trade practices. He left the Government before any charges were filed against the company. He has participated in a particular matter involving specific parties and may not represent another person in connection with the ensuing administrative or judicial proceedings against the company.

Example 2 to paragraph (h)(4): A former special Government employee (SGE) of the Agency for Health Care Policy and Research served, before leaving the agency, on a "peer review" committee that made a recommendation to the agency concerning the technical merits of specific grant proposal submitted by a university. The committee's recommendations are nonbinding and constitute only the first of several levels of review within the agency. Nevertheless, the SGE participated in a particular matter involving specific parties and may not represent the university in subsequent efforts to obtain the same grant.

Example 3 to paragraph (h)(4): Prior to filing a product approval application with a regulatory agency, a company sought guidance from the agency. The company provided specific information concerning the product, including its composition and intended uses, safety and efficacy data, and the results and designs of prior studies on the product. After a series of meetings, the agency advised the company concerning the design of additional studies that it should perform in order to address those issues that the agency still believed were unresolved. Even though no formal application had been filed, this was a particular matter involving specific parties. The agency guidance was sufficiently specific, and it was clearly intended to address the substance of a prospective application and to guide the prospective applicant in preparing an application that would meet approval requirements. An agency employee who was substantially involved in developing this guidance could not leave the Government and represent the company when it submits its formal product approval application.

Example 4 to paragraph (h)(4): A Government scientist participated in preliminary, internal deliberations about her agency's need for additional laboratory facilities. After she terminated Government service, the General Services Administration (GSA) issued a request for proposals (RFP) seeking private architectural services to design the new laboratory space for the agency. The former employee may represent an architectural firm in connection with its response to the RFP. During the preliminary stage in which the former employee participated, no specific architectural firms had been identified for the proposed work.

Example 5 to paragraph (h)(4): In the previous example, the proposed laboratory was to be an extension of a recently completed laboratory designed by XYZ Architectural Associates. From the very beginning of deliberations, both the agency and GSA were aware that the proposed laboratory extension posed unique architectural issues, intimately related to certain technical features of the original laboratory design, that might best be addressed by XYZ, which had specific experience and certain efficiencies resulting from its prior work. Before leaving the Government, the former employee participated in meetings in which these design issues and the ways in which XYZ might resolve them were discussed internally. Although XYZ was not contacted at this stage, and the ultimate procurement process would be open to all bidders, the agency had already identified XYZ as a likely qualified bidder based on the circumstances surrounding XYZ's recent involvement in a related matter. The former employee may not represent XYZ or any other competing contractor before the Government in connection with this matter.

(5) *Same particular matter.* The prohibition applies only to communications or appearances in connection with the same particular matter involving specific parties in which the former employee participated as a Government employee. The same particular matter may continue in another form or in part. In determining whether two particular matters involving specific parties are the same, all relevant factors should be considered, including the extent to which the matters involve the same basic facts, the same or related parties, related issues, the same confidential information, and the amount of time elapsed. With matters such as grants, contracts or other agreements, a new matter typically does not arise simply because there are amendments, modifications, or extensions, unless there are fundamental changes in objectives or the nature of the matter.

Example 1 to paragraph (h)(5): An employee drafted one provision of an agency contract to procure new software. After she left Government, a dispute arose under the same contract concerning a provision that she did not draft. She may not represent the contractor in this dispute. The contract as a whole is the particular matter involving specific parties and may not be fractionalized into separate clauses for purposes of avoiding the prohibition of 18 U.S.C. 207(a)(1).

Example 2 to paragraph (h)(5): A former special Government employee (SGE) recommended that his agency approve a new food additive made by Good Foods, Inc., on the grounds that it was proven safe for human consumption. The Healthy Food Alliance (HFA) sued the agency in Federal court to challenge the decision to approve the product. After leaving Government service, the former SGE may not serve as an expert witness on behalf of HFA in this litigation because it is a continuation of the same product approval matter in which he participated personally and substantially.

Example 3 to paragraph (h)(5): An employee of the Department of the Army negotiated and supervised a contract with Munitions, Inc. for four million mortar shells meeting certain specifications. After the employee left the Government, the Army sought a contract modification to add another one million shells. All specifications and contractual terms except price, quantity and delivery dates were identical to those in the original contract. The former Army employee may not represent Munitions in connection with this modification, because it is part of the same particular matter involving specific parties as the original contract.

Example 4 to the paragraph (h)(5): In the previous example, certain changes in technology occurred since the date of the original contract, and the proposed contract modifications would require the additional shells to incorporate new design features. Moreover, because of changes in the Army's internal system for storing and distributing shells to various locations, the modifications would require Munitions to deliver its product to several de-centralized destination points, thus requiring Munitions to develop novel delivery and handling systems and incur new transportation costs. The Army considers these modifications to be fundamental changes in the approach and objectives of the contract and may determine that these changes constitute a new particular matter.

Example 5 to paragraph (h)(5): A Government employee reviewed and approved certain wiretap applications. The

prosecution of a person overheard during the wiretap, although not originally targeted, must be regarded as part of the same particular matter as the original wiretap application. The reason is that the validity of the wiretap may be put in issue and many of the facts giving rise to the wiretap application would be involved.

(i) *Participated personally and substantially*— (1) Participate. To "participate" means to take an action as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, or to purposefully forbear in order to affect the outcome of a matter. An employee can participate in particular matters that are pending other than in his own agency. An employee does not participate in a matter merely because he had knowledge of its existence or because it was pending under his official responsibility. An employee does not participate in a matter within the meaning of this section unless he does so in his official capacity.

(2) *Personally.* To participate "personally" means to participate:

(i) Directly, either individually or in combination with other persons; or

(ii) Through direct and active supervision of the participation of any person he supervises, including a subordinate.

(3) *Substantially.* To participate "substantially" means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Provided that an employee participates in the substantive merits of a matter, his participation may be substantial even though his role in the matter, or the aspect of the matter in which he is participating, may be minor in relation to the matter as a whole. Participation in peripheral aspects of a matter or in aspects not directly involving the substantive merits of a matter (such as reviewing budgetary procedures or scheduling meetings) is not substantial.

Example 1 to paragraph (i): A General Services Administration (GSA) attorney drafted a standard form contract and certain standard terms and clauses for use in future contracts. A contracting officer uses one of the standard clauses in a subsequent contract without consulting the GSA attorney. The attorney did not participate personally in the subsequent contract.

Example 2 to paragraph (i): An Internal Revenue Service (IRS) attorney is neither in charge of nor does she have official responsibility for litigation involving a particular delinquent taxpayer. At the request of a co-worker who is assigned responsibility for the litigation, the lawyer provides advice concerning strategy during the discovery stage of the litigation. The IRS attorney participated personally in the litigation.

Example 3 to paragraph (i): The IRS attorney in the previous example had no further involvement in the litigation. She participated substantially in the litigation notwithstanding that the post-discovery stages of the litigation lasted for ten years after the day she offered her advice.

Example 4 to paragraph (i): The General Counsel of the Office of Government Ethics (OGE) contacts the OGE attorney who is assigned to evaluate all requests for "certificates of divestiture" to check on the status of the attorney's work with respect to all pending requests. The General Counsel makes no comment concerning the merits or relative importance of any particular request. The General Counsel did not participate in any particular request when she checked on the status of all pending requests.

Example 5 to paragraph (i): The OGE attorney in the previous example completes his evaluation of a particular certificate of divestiture request and forwards his recommendation to the General Counsel. The General Counsel forwards the package to the Director of OGE with a note indicating her concurrence with the attorney's recommendation. The General Counsel participated substantially in the request.

Example 6 to paragraph (i): An International Trade Commission (ITC) computer programmer developed software designed to analyze data related to unfair trade practice complaints. At the request of an ITC employee who is considering the merits of a particular complaint, the programmer enters all the data supplied to her, runs the computer program, and forwards the results to the employee who will make a recommendation to an ITC Commissioner concerning the disposition of the complaint. The programmer did not participate substantially in the complaint.

(j) *United States is a party or has a direct and substantial interest*—(1) *United States.* For purposes of this paragraph, the "United States" means:

(i) The executive branch (including a Government corporation);

(ii) The legislative branch; or

(iii) The judicial branch.

(2) *Party or direct and substantial interest.* The United States may be a party to or have a direct and substantial interest in a particular matter even though it is pending in a non-Federal forum, such as a State court. The United States is neither a party to nor does it have a direct and substantial interest in a particular matter merely because a Federal statute is at issue or a Federal court is serving as the forum for resolution of the matter. When it is not clear whether the United States is a party to or has a direct and substantial interest in a particular matter, this determination shall be made in accordance with the following procedure:

(i) *Coordination by designated agency ethics official.* The designated agency ethics official (DAEO) for the former employee's agency shall have the primary responsibility for coordinating this determination. When it appears likely that a component of the United States Government other than the former employee's former agency may be a party to or have a direct and substantial interest in the particular matter, the DAEO shall coordinate with agency ethics officials serving in those components.

(ii) *Agency determination.* A component of the United States Government shall determine if it is a party to or has a direct and substantial interest in a matter in accordance with its own internal procedures. It shall consider all relevant factors, including whether:

(A) The component has a financial interest in the matter;

(B) The matter is likely to have an effect on the policies, programs, or operations of the component;

(C) The component is involved in any proceeding associated with the matter, *e.g.*, as by having provided witnesses or documentary evidence; and

(D) The component has more than an academic interest in the outcome of the matter.

§ 2641.202 Two-year restriction on any former employee's representations to United States concerning particular matter for which the employee had official responsibility [18 U.S.C. 207(a)(2)].

(a) *Basic prohibition of 18 U.S.C. 207(a)(2).* For two years after his Government service terminates, no former employee shall knowingly, with the intent to influence, make any communication to or appearance before an employee of the United States on behalf of any other person in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his official responsibility within the one-year period prior to the termination of his Government service.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(a)(2) does not apply to a former employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(4) Testifying under oath. *See* § 2641.301(f).

(5) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(6) Acting as an employee of a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(a)(2) is a two-year restriction that commences upon an employee's termination from Government service. *See* example 9 to paragraph (j) of this section.

(d) *Communication or appearance. See* § 2641.201(d).

(e) *With the intent to influence. See* § 2641.201(e).

(f) *To or before an employee of the United States. See* § 2641.201(f).

(g) *On behalf of any other person. See* § 2641.201(g).

(h) *Particular matter involving a specific party or parties. See* § 2641.201(h).

(i) *United States is a party or has a direct and substantial interest. See* § 2641.201(j).

(j) *Official responsibility*—(1) *Definition.* "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. Ordinarily, the scope of an employee's official responsibility is determined by those functions assigned by statute, regulation, Executive order, job description, or delegation of authority. All particular matters under consideration in an agency are under the official responsibility of the agency head and each is under that of any intermediate supervisor who supervises a person, including a subordinate, who actually participates in the matter or who has been assigned to participate in the matter within the scope of his official duties. A nonsupervisory employee does not have official responsibility for his own assignments within the meaning of section 207(a)(2). Authority to direct Government action concerning only ancillary or nonsubstantive aspects of a matter, such as budgeting, equal employment, scheduling, or format requirements does not, ordinarily, constitute official responsibility for the matter as a whole.

(2) *Actually pending.* A matter is actually pending under an employee's official responsibility if it has been referred to the employee for assignment or has been referred to or is under consideration by any person he supervises, including a subordinate. A matter remains pending even when it is not under "active" consideration. There is no requirement that the matter must have been pending under the employee's official responsibility for a certain length of time.

(3) *Temporary duties.* An employee ordinarily acquires official responsibility for all matters within the scope of his position immediately upon assuming the position. However, under certain circumstances, an employee who is on detail (or other temporary assignment) to a position or who is serving in an "acting" status might not be deemed to have official responsibility for any matter by virtue of such temporary duties. Specifically, an employee performing such temporary duties will not thereby acquire official responsibility for matters within the scope of the position where he functions only in a limited "caretaker" capacity, as evidenced by such factors as:

(i) Whether the employee serves in the position for no more than 60 consecutive calendar days;

(ii) Whether there is actually another incumbent for the position, who is temporarily absent, for example, on travel or leave;

(iii) Whether there has been no event triggering the provisions of 5 U.S.C. 3345(a); and

(iv) Whether there are any other circumstances indicating that, given the temporary nature of the detail or acting status, there was no reasonable expectation of the full authority of the position.

(4) *Effect of leave status.* The scope of an employee's official responsibility is not affected by annual leave, terminal leave, sick leave, excused absence, leave without pay, or similar absence from assigned duties.

(5) *Effect of disqualification.* Official responsibility for a matter is not eliminated through self-disqualification or avoidance of personal participation in a matter, as when an employee is disqualified from participating in a matter in accordance with subparts D, E, or F of 5 CFR part 2635 or part 2640. Official responsibility for a matter can be terminated by a formal modification of an employee's responsibilities, such as by a change in the employee's position description.

(6) *One-year period before termination.* Section 207(a)(2) applies only with respect to a particular matter that was actually pending under the former employee's official responsibility:

(i) At some time when the matter involved a specific party or parties; and

(ii) Within his last year of Government service.

(7) *Knowledge of official responsibility.* A communication or appearance is not prohibited unless, at the time of the proposed post-employment communication or appearance, the former employee knows or reasonably should know that the matter was actually pending under his official responsibility within the one-year period prior to his termination from Government service. It is not necessary that a former employee have known during his Government service that the matter was actually pending under his official responsibility.

Note to paragraph (j): 18 U.S.C. 207(a)(2) requires only that the former employee "reasonably should know" that the matter was pending under his official responsibility. Consequently, when the facts suggest that a particular matter involving specific parties could have been actually pending under his official responsibility, a former employee should seek information from an agency ethics official or other Government official to clarify his role in the matter. *See* the definition of agency ethics official in § 2641.105.

Example 1 to paragraph (j): An Assistant Secretary of State's position description specifies that he is responsible for a certain class of treaty negotiations. These negotiations are handled by an office under his supervision. As a practical matter, however, the Assistant Secretary has not become involved with any treaty negotiation of this type. The Assistant Secretary has official responsibility for all such treaty negotiations as specified in his position description.

Example 2 to paragraph (j): A budget officer at the National Oceanic and Atmospheric Administration (NOAA) is asked to review NOAA's budget to determine if there are funds still available for the purchase of a new hurricane tracking device. The budget officer does not have official responsibility for the resulting contract even though she is responsible for all budget matters within the agency. The identification of funds for the contract is an ancillary aspect of the contract.

Example 3 to paragraph (j): An Internal Revenue Service (IRS) auditor worked in the office responsible for the tax-exempt status of nonprofit organizations. Subsequently, he was transferred to the IRS office concerned with public relations. When contacted by an employee of his former office for advice concerning a matter involving a certain nonprofit organization, the auditor provides useful suggestions. The auditor's supervisor

in the public relations office does not have official responsibility for the nonprofit matter since it does not fall within the scope of the auditor's current duties.

Example 4 to paragraph (j): An information manager at the Central Intelligence Agency (CIA) assigns a nonsupervisory subordinate to research an issue concerning a request from a news organization for information concerning past agency activities. Before she commences any work on the assignment, the subordinate terminates employment with the CIA. The request was not pending under the subordinate's official responsibility since a non-supervisory employee does not have official responsibility for her own assignments. (Once the subordinate commences work on the assignment, she may be participating "personally and substantially" within the meaning of 18 U.S.C. 207(a)(1) and § 2641.201(i).)

Example 5 to paragraph (j): A regional employee of the Federal Emergency Management Agency requests guidance from the General Counsel concerning a contractual dispute with Baker Company. The General Counsel immediately assigns the matter to a staff attorney whose workload can accommodate the assignment, then retires from Government two days later. Although the staff attorney did not retrieve the assignment from his in-box prior to the General Counsel's departure, the Baker matter was actually pending under the General Counsel's official responsibility from the time the General Counsel received the request for guidance.

Example 6 to paragraph (j): A staff attorney in the Federal Emergency Management Agency's Office of General Counsel is consulted by procurement officers concerning the correct resolution of a contractual matter involving Able Company. The attorney renders an opinion resolving the question. The same legal question arises later in several contracts with other companies but none of the disputes with such companies is referred to the Office of General Counsel. The General Counsel had official responsibility for the determination of the Able Company matter but the subsequent matters were never actually pending under his official responsibility.

Example 7 to paragraph (j): An employee of the National Endowment for the Humanities becomes "acting" Division Director of the Division of Education Programs when the Division Director is away from the office for three days to attend a conference. During those three days, the employee has authority to direct Government action in connection with many matters with which she ordinarily would have no involvement. However, in view of the brief time period and the fact that there remains an incumbent in the position of Division Director, the agency ethics official properly may determine that acting official did not acquire official responsibility for all matters then pending in the Division.

Example 8 to paragraph (j): A division director at the Food and Drug Administration disqualified himself from participating in the review of a drug for Alzheimer's disease, in accordance with subpart E of 5 CFR part 2635, because his brother headed the private sector team which developed the drug. The matter was instead assigned to the division director's deputy. The director continues to have official responsibility for review of the drug. The division director also would have retained official responsibility for the matter had he either asked his supervisor or another division director to oversee the matter.

Example 9 to paragraph (j): The Deputy Secretary of a department terminates Government service to stay home with her newborn daughter. Four months later, she returns to the department to serve on an advisory committee as a special Government employee (SGE). After three months, she terminates Government service once again in order to accept a part-time position with a public relations firm. The 18 U.S.C. 207(a)(2) bar commences when she resigns as Deputy Secretary and continues to run for two years. (Any action taken in carrying out official duties as a member of the advisory committee would be undertaken on behalf of the United States and would, therefore, not be restricted by 18 U.S.C 207(a)(2). *See* § 2641.301(a).) A second two-year restriction commences when she terminates from her second period of Government service but it applies only with respect to any particular matter actually pending under her official responsibility during her three-month term as an SGE.

§ 2641.203 One-year restriction on any former employee's representations, aid, or advice concerning ongoing trade or treaty negotiation [18 U.S.C. 207(b)].

(a) *Basic prohibition of 18 U.S.C. 207(b).* For one year after his Government service terminates, no former employee shall knowingly represent, aid, or advise on the basis of "covered information," any other person concerning an ongoing trade or treaty negotiation in which, during his last year of Government service, he participated personally and substantially as an employee. "Covered information" refers to agency records which were accessible to the employee which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(b) does not apply to a former employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Testifying under oath. *See* § 2641.301(f).

(4) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(5) Acting as an employee at a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(b) commences upon an employee's termination from Government service. The restriction lasts for one year or until the termination of the negotiation, whichever occurs first.

(d) *Represent, aid, or advise.* [Reserved]

(e) *Any other person.* [Reserved]

(f) *On the basis of.* [Reserved]

(g) *Covered Information.* [Reserved]

(h) *Ongoing trade or treaty negotiation.* [Reserved]

(i) *Participated personally and substantially.* [Reserved]

§ 2641.204 One-year restriction on any former senior employee's representations to former agency concerning any matter, regardless of prior involvement [18 U.S.C. 207(c)].

(a) *Basic prohibition of 18 U.S.C. 207(c).* For one year after his service in a senior position terminates, no former senior employee may knowingly, with the intent to influence, make any communication to or appearance before an employee of an agency in which he served in any capacity within the one-year period prior to his termination from a senior position, if that communication or appearance is made on behalf of any other person in connection with any matter on which the former senior employee seeks official action by any employee of such agency. An individual who served in a "very senior employee" position is subject to the broader one-year restriction set forth in 18 U.S.C. 207(d) in lieu of that set forth in section 207(c). *See* § 2641.205.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(c) does not apply to a former senior employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Acting on behalf of specified entities. *See* § 2641.301(c).

(4) Making uncompensated statements based on special knowledge. *See* § 2641.301(d).

(5) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(6) Testifying under oath. *See* § 2641.301(f).

(7) Acting on behalf of a candidate or political party. *See* § 2641.301(g).

(8) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(9) Acting as an employee of a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(10) Subject to a waiver issued for certain positions. *See* § 2641.301(j).

(c) *Applicability to special Government employees and Intergovernmental Personnel Act appointees or detailees—(1) Special Government employees.* (i) 18 U.S.C. 207(c) applies to an individual as a result of service as a special Government employee (SGE) who:

(A) Served in a senior employee position while serving as an SGE; and

(B) Served 60 or more days as an SGE during the one-year period before terminating service as a senior employee.

(ii) Any day on which work is performed shall count toward the 60-day threshold without regard to the number of hours worked that day or whether the day falls on a weekend or holiday. For purposes of determining whether an SGE's rate of basic pay is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service, within the meaning of the definition of senior employee in § 2641.104, the employee's hourly rate of pay (or daily rate divided by eight) shall be multiplied by 2087, the number of Federal working hours in one year. (In the case of a Reserve officer of the Armed Forces or an officer of the National Guard who is an SGE serving in a senior employee position, 18 U.S.C. 207(c) applies if the officer served 60 or more days as an SGE within the one-year period prior to his termination from a period of active duty or active duty for training.)

(2) *Intergovernmental Personnel Act appointees or detailees.* 18 U.S.C. 207(c) applies to an individual serving as a senior employee pursuant to an appointment or detail under the Intergovernmental Personnel Act, 5 U.S.C. 3371–3376. An individual is a senior employee if he received total pay from Federal or non-Federal sources equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service (exclusive of any reimbursement for a non-Federal employer's share of benefits not paid to the employee as salary), and:

(i) The individual served in a Federal position ordinarily compensated at a rate equal to or greater than level 5 of the Senior Executive Service, regardless of what portion of the pay is derived from Federal expenditures or expenditures by the individual's non-Federal employer;

(ii) The individual received a direct Federal payment, pursuant to 5 U.S.C. 3374(c)(1), that supplemented the salary that he received from his non-Federal employer; or

(iii) The individual's non-Federal employer received Federal reimbursement equal to or greater than the amount of basic pay payable for level 5 of the Senior Executive Service.

Example 1 to paragraph (c): An employee of a private research institution serves on an advisory committee that convenes periodically to discuss United States policy on foreign arms sales. The expert is compensated at a daily rate which is the equivalent of the rate of basic pay payable to a full-time employee for level 5 of the Senior Executive Service. The individual serves two hours per day for 65 days before resigning from the advisory committee nine months later. The individual becomes subject to 18 U.S.C. 207(c) when she resigns from the advisory committee since she served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

Example 2 to paragraph (c): An individual is detailed from a university to a Federal department under the Intergovernmental Personnel Act to do work that had previously been performed by a GS–15 employee. While on detail, the individual continues to receive pay from the university in an amount $5,000 less than the rate of basic pay payable for level 5 of the Senior Executive Service (SES). In addition, the department pays a $25,000 supplement directly to the individual, as authorized by 5 U.S.C. 3374(c)(1). Since the employee's total pay is equal to or greater than the rate of basic pay payable for level 5 of the SES, and a portion of that compensation is paid directly to the individual by the department, he becomes subject to 18 U.S.C 207(c) when his detail ends.

(d) *Commencement and length of restriction.* 18 U.S.C. 207(c) is a one-year restriction. The one-year period is measured from the date when the employee ceases to serve in a senior employee position, not from the termination of Government service, unless the two events occur simultaneously. (In the case of a Reserve officer of the Armed Forces or an officer of the National Guard who is a special Government employee serving in a senior employee position, section 207(c) is measured from the date when the officer terminates a period of active duty or active duty for training.)

Example 1 to paragraph (d): An employee at the Department of Labor (DOL) serves in a senior employee position. He then accepts a GS–15 position at the Federal Labor Relations Authority (FLRA) but terminates Government service six months later to accept a job with private industry. 18 U.S.C. 207(c) commences when he ceases to be a senior employee at DOL, even though he does not terminate Government service at that time. (Any action taken in carrying out official duties on behalf of FLRA while still employed by that agency would be undertaken on behalf of the United States and would, therefore, not be restricted by section 207(c). *See* § 2641.301(a).)

Example 2 to paragraph (d): In the previous example, the DOL employee accepts a senior employee position at FLRA rather than a GS–15 position. The bar of 18 U.S.C. 207(c) commences when, six months later, he terminates service in the second senior employee position to accept a job with private industry. (The bar will apply with respect to both the DOL and FLRA. *See* paragraph (g) of § 2641.204 and examples 2 and 3 to that paragraph).

(e) *Communication or appearance. See* § 2641.201(d).

(f) *With the intent to influence. See* § 2641.201(e).

(g) *To or before employee of former agency—(1) Employee.* For purposes of this paragraph, a former senior employee may not contact:

(i) Any current Federal employee of the former senior employee's "former agency" as defined in paragraph (g)(2) of this section;

(ii) An individual detailed under the Intergovernmental Personnel Act (5 U.S.C. 3371–3376) to the former senior employee's former agency;

(iii) An individual detailed to the former senior employee's former agency from another agency;

(iv) An individual serving with the former senior employee's former agency as a collateral duty pursuant to statute or Executive order; and

(v) In the case of a communication or appearance made by a former senior employee who is barred by 18 U.S.C. 207(c) from communicating to or appearing before the Executive Office of the President, the President and Vice President.

(2) *Former agency.* The term "agency" is defined in § 2641.104. Unless eligible to benefit from the designation of distinct and separate agency components as described in § 2641.302, a former senior employee's former agency will ordinarily be considered to be the whole of any larger agency of which his former agency was a part on the date he terminated senior service.

(i) *One-year period before termination.* 18 U.S.C. 207(c) applies with respect to agencies in which the former senior employee served within the one-year period prior to his termination from a senior employee position.

(ii) *Served in any capacity.* Once the restriction commences, 18 U.S.C. 207(c) applies with respect to any agency in which the former senior employee served in any capacity during the one-year period, regardless of his position, rate of basic pay, or pay grade.

(iii) *Multiple Assignments.* An employee can simultaneously serve in more than one agency. A former senior employee will be considered to have

served in his own employing entity and in any entity to which he was detailed for any length of time or with which he was required to serve as a collateral duty pursuant to statute or Executive order.

(iv) *Effect of organizational changes.* If a former senior employee's former agency has been significantly altered by organizational changes after his termination from senior service, it may be necessary to determine whether a successor entity is the same agency as the former senior employee's former agency. The appropriate designated agency ethics official, in consultation with the Office of Government Ethics, shall identify the entity that is the individual's former agency. Whether a successor entity is the same as the former agency depends upon whether it has substantially the same organizational mission, the extent of the termination or dispersion of the agency's functions, and other factors as may be appropriate.

(A) *Agency abolished or substantially changed.* If a successor entity is not identifiable as substantially the same agency from which the former senior employee terminated, the 18 U.S.C. 207(c) prohibition will not bar communications or appearances by the former senior employee to that successor entity.

(B) *Agency substantially the same.* If a successor entity remains identifiable as substantially the same entity from which the former senior employee terminated, the 18 U.S.C. 207(c) bar will extend to the whole of the successor entity.

(C) *Employing entity is made separate.* If an employing entity is made separate from an agency of which it was a part, but it remains identifiable as substantially the same entity from which the former senior employee terminated senior service before the entity was made separate, the 18 U.S.C 207(c) bar will apply to a former senior employee of that entity only with respect to the new separate entity.

(D) *Component designations.* If a former senior employee's former agency was a designated "component" within the meaning of § 2641.302 on the date of his termination as senior employee, see § 2641.302(g).

(3) *To or before.* Except as provided in paragraph (g)(4) of this section, a communication "to" or appearance "before" an employee of a former senior employee's former agency is one:

(i) Directed to and received by the former senior employee's former agency, even though not addressed to a particular employee; or

(ii) Directed to and received by an employee in his capacity as an employee of a former senior employee's former agency including in his capacity as an employee serving in the agency on detail or, if pursuant to statute or Executive order, as a collateral duty. A former senior employee does not direct his communication or appearance to a bystander who merely happens to overhear the communication or witness the appearance.

(4) *Public commentary.* (i) A former senior employee who addresses a public gathering or a conference, seminar, or similar forum as a speaker or panel participant will not be considered to make a prohibited communication or appearance if the forum:

(A) Is not sponsored or co-sponsored by the former senior employee's former agency;

(B) Is attended by a large number of people; and

(C) A significant proportion of those attending are not employees of the former senior employee's former agency.

(ii) In the circumstances described in paragraph (g)(4)(i) of this section, a former senior employee may engage in exchanges with any other speaker or with any member of the audience.

(iii) A former senior employee also may permit the broadcast or publication of a commentary provided that it is broadcast or appears in a newspaper, periodical, or similar widely-available publication.

Example 1 to paragraph (g): Two months after retiring from a senior employee position at the United States Department of Agriculture (USDA), the former senior employee is asked to represent a poultry producer in a compliance matter involving the producer's storage practices. The former senior employee may not represent the poultry producer before a USDA employee in connection with the compliance matter or any other matter in which official action is sought from the USDA. He has ten months remaining of the one-year bar which commenced upon his termination as a senior employee with the USDA.

Example 2 to paragraph (g): An individual serves for several years at the Commodity Futures Trading Commission (CFTC) as a GS–15. With no break in service, she then accepts a senior employee position at the Export-Import Bank of the United States (Ex-Im Bank) where she remains for nine months until she leaves Government service in order to accept a position in the private sector. Since the individual served in both the CFTC and the Ex-Im Bank within her last year of senior service, she is barred by 18 U.S.C. 207(c) as to both agencies for one year commencing from her termination from the senior employee position at the Ex-Im Bank.

Example 3 to paragraph (g): An individual serves for several years at the Securities and Exchange Commission (SEC) in a senior employee position. He terminates Government service in order to care for his parent who is recovering from heart surgery. Two months later, he accepts a senior employee position at the Overseas Private Investment Corporation (OPIC) where he remains for nine months until he leaves Government service in order to accept a position in the private sector. The 18 U.S.C. 207(c) bar commences when he resigns from the SEC and continues to run for one year. (Any action taken in carrying out official duties as an employee of OPIC would be undertaken on behalf of the United States and would, therefore, not be restricted by section 207(c). *See* § 2641.301(a).) A second one-year restriction commences when he resigns from OPIC. The second restriction will apply with respect to OPIC only. Upon his termination from the OPIC position, he will have one remaining month of the section 207(c) restriction arising from his termination of his SEC position. This remaining month of restriction will run concurrently with the first month of the one-year OPIC restriction.

Example 4 to paragraph (g): An architect serves in a senior employee position in the Agency for Affordable Housing. Subsequent to her termination from the position, the agency is abolished and its functions are distributed among three other agencies within three departments, the Department of Housing and Urban Development, the Department of the Interior, and the Department of Justice. None of these successor entities is identifiable as substantially the same entity as the Agency for Affordable Housing, and, accordingly, the 18 U.S.C 207(c) bar will not apply to the architect.

(h) *On behalf of any other person. See* § 2641.201(g).

(i) *Matter on which former senior employee seeks official action—*(1) *Seeks official action.* A former senior employee seeks official action when the circumstances establish that he is making his communication or appearance for the purpose of inducing a current employee, as defined in paragraph (g) of this section, to make a decision or to otherwise act in his official capacity.

(2) *Matter.* The prohibition on seeking official action applies with respect to any matter, including:

(i) Any "particular matter involving a specific party or parties" as defined in § 2641.201(h);

(ii) The consideration or adoption of broad policy options that are directed to a large and diverse group of persons;

(iii) A new matter that was not previously pending at or of interest to the former senior employee's former agency; and

(iv) A matter pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch.

Example 1 to paragraph (i): A former senior employee at the National Capital Planning Commission (NCPC) wishes to contact a friend who still works at the NCPC to solicit a donation for a local charitable organization. The former senior employee may do so since the circumstances establish that he would not be making the communication for the purpose of inducing the NCPC employee to make a decision in his official capacity about the donation.

Example 2 to paragraph (i): A former senior employee at the Department of Defense wishes to contact the Secretary of Defense to ask him if he would be interested in attending a cocktail party. At the party, the former senior employee would introduce the Secretary to several of the former senior employee's current business clients who have sought the introduction. The former senior employee and the Secretary do not have a history of socializing outside the office, the Secretary is in a position to affect the interests of the business clients, and all expenses associated with the party will be paid by the former senior employee's consulting firm. The former senior employee should not contact the Secretary. The circumstances do not establish that the communication would be made other than for the purpose of inducing the Secretary to make a decision in his official capacity about the invitation.

Example 3 to paragraph (i): A former senior employee at the National Science Foundation (NSF) accepts a position as vice president of a company that was hurt by recent cuts in the defense budget. She contacts the NSF's Director of Legislative and Public Affairs to ask the Director to contact a White House official in order to press the need for a new science policy to benefit her company. The former senior employee made a communication for the purpose of inducing the NSF employee to make a decision in his official capacity about contacting the White House.

§ 2641.205 One-year restriction on any former very senior employee's representations to former agency or certain officials concerning any matter, regardless of prior involvement [18 U.S.C. 207(d)].

(a) *Basic prohibition of 18 U.S.C. 207(d).* For one year after his service in a very senior employee position terminates, no former very senior employee shall knowingly, with the intent to influence, make any communication to or appearance before any official appointed to an Executive Schedule position listed in 5 U.S.C. 5312–5316 or before any employee of an agency in which he served as a very senior employee within the one-year period prior to his termination from a very senior employee position, if that communication or appearance is made on behalf of any other person in connection with any matter on which the former very senior employee seeks official action by any official or employee.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(d) does not apply to a former very senior employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Acting on behalf of specified entities. *See* § 2641.301(c).

(4) Making uncompensated statements based on special knowledge. *See* § 2641.301(d).

(5) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(6) Testifying under oath. *See* § 2641.301(f).

(7) Acting on behalf of a candidate or political party. *See* § 2641.301(g).

(8) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h):

(9) Acting as an employee of a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(d) is a one-year restriction. The one-year period is measured from the date when the employee ceases to serve in a very senior employee position, not from the termination of Government service, unless the two events occur simultaneously. *See* examples 1 and 2 to paragraph (d) of § 2641.204.

(d) *Communication or appearance. See* § 2641.201(d).

(e) *With the intent to influence. See* § 2641.201(e).

(f) *To or before employee of former agency. See* § 2641.204(g), except that this section covers only former very senior employees and applies only with respect to the agency or agencies in which a former very senior employee served as a very senior employee, and very senior employees do not benefit from the designation of distinct and separate agency components as referenced in § 2641.204(g)(2).

(g) *To or before an official appointed to an Executive Schedule position. See* § 2641.204(g)(3) for "to or before," except that this section covers only former very senior employees and also extends to a communication or appearance before any official currently appointed to a position that is listed in sections 5 U.S.C. 5312–5316. A communication made to an official described in 5 U.S.C. 5312–5316 can include a communication to a subordinate of such official with the intent that the information be conveyed directly to the official and attributed to the former very senior employee.

(h) *On behalf of any other person. See* § 2641.201(g).

(i) *Matter on which former very senior employee seeks official action. See* § 2641.204(i), except that this section only covers former very senior employees.

Example 1 to § 2641.205: The former Attorney General may not contact the Assistant Attorney General of the Antitrust Division on behalf of a professional sports league in support of a proposed exemption from certain laws, nor may he contact the Secretary of Labor. He may, however, speak directly to the President or Vice President concerning the issue.

Example 2 to § 2641.205: The former White House Chief of Staff is now the Chief Executive Officer of a major computer firm and wishes to convince the new Administration to change its new policy concerning computer chips. The former Chief of Staff may contact an employee of the Department of Commerce who, although paid at a level fixed according to level III of the Executive Schedule, does not occupy a position actually listed in 5 U.S.C. 5312–5316. She could not contact an employee working in the Office of the United States Trade Representative, an office within the Executive Office of the President (her former agency).

Example 3 to § 2641.205: A senior employee serves in the Department of Agriculture for several years. He is then appointed to serve as the Secretary of Health and Human Services (HHS) but resigns seven months later. Since the individual served as a very senior employee only at HHS, he is barred for one year by 18 U.S.C. 207(d) as to any employee of HHS and any official currently appointed to an Executive Schedule position listed in 5 U.S.C. 5312–5316, including any such official serving in the Department of Agriculture. (In addition, a one-year section 207(c) bar commenced when he terminated service as a senior employee at the Department of Agriculture.)

Example 4 to § 2641.205: The former Secretary of the Department of Labor may not represent another person in a meeting with the current Secretary of Transportation to discuss a proposed regulation on highway safety standards.

Example 5 to § 2641.205: In the previous example, the former very senior employee would like to meet instead with the special assistant to the Secretary of Transportation. The former employee knows that the special assistant has a close working relationship with the Secretary, and he expects that the special assistant will brief the Secretary about any discussions at the proposed meeting. The former very senior employee may not meet with the assistant.

§ 2641.206 One-year restriction on any former senior or very senior employee's representations on behalf of, or aid or advice to, a foreign entity [18 U.S.C. 207(f)].

(a) *Basic prohibition of 18 U.S.C. 207(f).* For one year after service in a senior or very senior employee position terminates, no former senior employee or former very senior employee shall knowingly, with the intent to influence a decision of an employee of an agency of the United States, represent, aid, or

advise a foreign government or foreign political party.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(f) does not apply to a former senior or former very senior employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a). (Note, however, the limitation in § 2641.301(a)(2)(ii).)

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Testifying under oath. *See* § 2641.301(f).

(4) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(5) Acting as an employee of a Governmentowned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(6) Subject to a waiver issued for certain positions. *See* § 2641.301(j).

(c) *Commencement and length of restriction*—(1) *Generally.* Except as provided in paragraph (c)(2) of this section, 18 U.S.C. 207(f) is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a senior or very senior employee, not from the termination of Government service, unless the two occur simultaneously. *See* example 1 to paragraph (d) of § 2641.204.

(2) *U.S. Trade Representative or Deputy U.S. Trade Representative.* 18 U.S.C. 207(f) is a permanent restriction as applied to a former U.S. Trade Representative or Deputy U.S. Trade Representative.

(d) *Represent, aid, or advise.* [Reserved]

(e) *With the intent to influence.* [Reserved]

(f) *Decision of employee of an agency.* [Reserved]

(g) *Foreign entity.* [Reserved]

Subpart C—Exceptions, Waivers and Separate Components

§ 2641.301 Statutory exceptions and waivers.

(a) *Exception for acting on behalf of United States.* A former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from engaging in any activity on behalf of the United States.

(1) *United States.* For purposes of this paragraph, the term "United States" means:

(i) The executive branch (including a Government corporation);

(ii) The legislative branch; or

(iii) The judicial branch.

(2) *On behalf of the United States.* A former employee will be deemed to engage in the activity on behalf of the United States if he acts in accordance with paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(i) *As employee of the United States.* A former employee engages in an activity on behalf of the United States when he carries out official duties as a current employee of the United States.

(ii) *As other than employee of the United States.* (A) Provided that he does not represent, aid, or advise a foreign entity in violation of 18 U.S.C. 207(f), a former employee engages in an activity on behalf of the United States when he serves:

(*1*) As a representative of the United States pursuant to a specific agreement with the United States to provide representational services involving a fiduciary duty to the United States; or

(*2*) As a witness called by the United States (including a Congressional committee or subcommittee) to testify at a Congressional hearing (even if applicable procedural rules do not require him to declare by oath or affirmation that he will testify truthfully).

(B) A former employee will not be deemed to engage in an activity on behalf of the United States merely because he is performing work funded by the Government, because he is engaging in the activity in response to a contact initiated by the Government, because the Government will derive some benefit from the activity, or because he or the person on whose behalf he is acting may share the same objective as the Government.

Note to paragraph (a)(2)(ii): *See also* § 2641.301(f) concerning the permissibility of testimony under oath, including testimony as an expert witness, when a former employee is called as a witness by the United States.

Example 1 to paragraph (a): An employee of the Department of Labor (DOL) transfers to become an employee of the Pension Benefit Guaranty Corporation (PBGC). The PBGC, a wholly owned Government corporation, is a corporation in which the United States has a proprietary interest. The former DOL employee may press the PBGC's point of view in a meeting with DOL employees concerning an airline bankruptcy case in which he was personally and substantially involved while at the DOL. His communications to the DOL on behalf of the PBGC would be made on behalf of the United States.

Example 2 to paragraph (a): A Federal Transit Administration (FTA) employee recommended against the funding of a certain subway project. After terminating Government service, she is hired by a Congressman as a member of his staff to perform a variety of duties, including miscellaneous services for the Congressman's constituents. The former employee may contact the FTA on behalf of a constituent group as part of her official duties in order to argue for the reversal of the subway funding decision in which she participated while still an employee of the FTA. Her communications to the FTA on behalf of the constituent group would be made on behalf of the United States.

Example 3 to paragraph (a): A Postal Service attorney participated in discussions with the Office of Personnel Management (OPM) concerning a dispute over the mailing of health plan brochures. After terminating Government service, the attorney joins a law firm as a partner. He is assigned by the firm's managing partner to represent the Postal Service pursuant to a contract requiring the firm to provide certain legal services. The former senior employee may represent the Postal Service in meetings with OPM concerning the dispute about the health plan brochures. The former senior employee's suggestions to the Postal Service concerning strategy and his arguments to OPM concerning the dispute would be made on behalf of the United States (even though he is also acting on behalf of his law firm when he performs representational services for the United States). A communication to the Postal Service concerning a disagreement about the law firm's fee, however, would not be made on behalf of the United States.

Example 4 to paragraph (a): A former senior employee of the Food and Drug Administration (FDA), now an employee of a drug company, is called by a Congressional committee to give unsworn testimony concerning the desirability of instituting cost controls in the pharmaceutical industry. The former senior employee may address the committee even though her testimony will unavoidably also be directed to a current employee of the FDA who has also been asked to testify as a member of the same panel of experts. The former employee's communications at the hearing, provided at the request of the United States, would be made on behalf of the United States.

Example 5 to paragraph (a): A National Security Agency (NSA) analyst drafted the specifications for a contract that was awarded to the Secure Data Corporation to develop prototype software for the processing of foreign intelligence information. After terminating Government service, the analyst is hired by the corporation. The former employee may not attempt to persuade NSC officials that the software is in accord with the specifications. Although the development of the software is expected to significantly enhance the processing of foreign intelligence information and the former employee's opinions might be useful to current NSC employees, his communications would not be made on behalf of the United States.

Example 6 to paragraph (a): A senior employee at the Department of the Air Force specialized in issues relating to the effective utilization of personnel. After terminating Government service, the former senior employee is hired by a contractor operating a Federally Funded Research and Development Center (FFRDC). The FFRDC is not a "Government corporation" as defined in § 2641.104. The former senior employee may not attempt to convince the Air Force of the manner in which Air Force funding should be allocated among projects proposed to be undertaken by the FFRDC. Although the work performed by the FFRDC will be determined by the Air Force, may be accomplished at Governmentowned facilities, and will benefit the Government, her communications would not be made on behalf of the United States.

Example 7 to paragraph (a): A Department of Justice (DOJ) attorney represented the United States in a civil enforcement action against a company that had engaged in fraudulent activity. The settlement of the case required that the company correct certain deficiencies in its operating procedures. After terminating Government service, the attorney is hired by the company. When DOJ auditors schedule a meeting with the company's legal staff to review company actions since the settlement, the former employee may not attempt to persuade the auditors that the company is complying with the terms of the settlement. Although the former employee's insights might facilitate the audit, his communications would not be made on behalf of the United States even though the Government's auditors initiated the contact with the former employee.

Note to paragraph (a): *See also* example 9 to paragraph (j) of § 2641.202 and example 1 to paragraph (d) of § 2641.204.

(b) *Exception for acting on behalf of State or local government as elected official.* A former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from engaging in any post-employment activity on behalf of one or more State or local governments, provided the activity is undertaken in carrying out official duties as an elected official of a State or local government.

Example 1 to paragraph (b): A former employee of the Department of Housing and Urban Development (HUD) participated personally and substantially in the evaluation of a grant application from a certain city. After terminating Government service, he was elected mayor of that city. The former employee may contact an Assistant Secretary at HUD to argue that additional funds are due the city under the terms of the grant.

Example 2 to paragraph (b): A former employee of the Federal Highway Administration (FHWA) participated personally and substantially in the decision to provide funding for a bridge across the White River in Arkansas. After terminating Government service, she accepted the Governor's offer to head the highway department in Arkansas. A communication to or appearance before the FHWA concerning the terms of the construction grant would not be made as an elected official of a State or local government.

(c) *Acting on behalf of specified entities.* A former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a communication or appearance on behalf of one or more entities specified in paragraph (c)(1) of this section, provided the communication or appearance is made in carrying out official duties as an employee of a specified entity.

(1) *Specified entities.* For purposes of this paragraph, a specified entity is:

(i) An agency or instrumentality of a *State or local government;*

(ii) A *hospital or medical research organization,* if exempted from taxation under 26 U.S.C. 501(c)(3); or

(iii) An *accredited, degree-granting institution of higher education,* as defined in 20 U.S.C. 1001.

(2) *Employee.* For purposes of this paragraph, the term "employee" of a specified entity means a person who has an employee-employer relationship with an entity specified in paragraph (c)(1) of this section. It includes a person who is employed to work part-time for a specified entity. The term excludes an individual performing services for a specified entity as a consultant or independent contractor.

Example 1 to paragraph (c): A senior employee leaves her position at the National Institutes of Health (NIH) and takes a full-time position at the Gene Research Foundation, a tax-exempt organization pursuant to 26 U.S.C. 501(c)(3). As an employee of a 501(c)(3) tax-exempt medical research organization, the former senior employee is not barred by 18 U.S.C. 207(c) from representing the Foundation before the NIH.

Example 2 to paragraph (c): A former senior employee of the Environmental Protection Agency (EPA) joins a law firm in Richmond, Virginia. The firm is hired by the Commonwealth of Virginia to represent it in discussions with the EPA about an environmental impact statement concerning the construction of a highway interchange. The former senior employee's arguments concerning the environmental impact statement would not be made as an employee of the Commonwealth of Virginia.

Example 3 to paragraph (c): A former senior employee becomes an employee of the ABC Association. The ABC Association is a nonprofit organization whose membership consists of a broad representation of State health agencies and senior State health officials, and it performs services from which certain State governments benefit, including collecting information from its members and conveying that information and views to the Federal Government. However, the ABC Association has not been delegated authority by any State government to perform any governmental functions, and it does not operate under the regulatory, financial, or management control of any state government. Therefore, the ABC Association is not an agency or instrumentality of a state government, and the former senior employee may not represent the organization before his former agency within one year after terminating his senior employee position.

(d) *Exception for uncompensated statements based on special knowledge.* A former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a statement based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.

(1) *Special knowledge.* A former employee has special knowledge concerning a subject area if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience.

(2) *Statement.* A statement for purposes of this paragraph is a communication of facts directly observed by the former employee.

(3) Compensation. Compensation includes any form of remuneration or income that is given in consideration, in whole or in part, for the statement. It does not include the payment of actual and necessary expenses incurred in connection with making the statement.

Example 1 to paragraph (d): The Chairman of the Council of Economic Advisors was personally and substantially involved in discussions with other White House officials concerning the advisability of a three-phase reduction in the capital gains tax. After Government service, the former Chairman affiliates with a nonprofit group that advocates a position on the three-phase capital gains issue that is similar to his own. The former Chairman, who receives no salary from the nonprofit organization, may meet with the current Chairman on the organization's behalf to state what steps had previously been taken by the Council to address the issue. The statement would be permissible even if the nonprofit organization reimbursed the former Chairman for his actual and necessary travel expenses incurred in connection with making the statement.

Example 2 to paragraph (d): A former senior employee becomes a government relations consultant, and he enters into a $5,000 per month retainer agreement with XYZ Corporation for government relations services. He would like to meet with his former agency to discuss a regulatory matter involving his client. Even though he would not be paid by XYZ specifically for this particular meeting, he nevertheless would receive compensation for any statements at the meeting, because of the monthly payments under his standing retainer agreement. Therefore he may not rely on the exemption for uncompensated statements based on special knowledge.

(e) *Exception for furnishing scientific or technological information.* A former employee is not prohibited by 18 U.S.C. 207(a), (c), or (d), or §§ 2641.201, 2641.202, 2641.204, or 2641.205, from making communications, including appearances, solely for the purpose of furnishing scientific or technological information, provided the

communications are made either in accordance with procedures adopted by the agency or agencies to which the communications are directed or the head of such agency or agencies, in consultation with the Director of the Office of Government Ethics, makes a certification published in the **Federal Register**.

(1) *Purpose of information.* A communication made solely for the purpose of furnishing scientific or technological information may be:

(i) Made in connection with a matter that involves an appreciable element of actual or potential dispute;

(ii) Made in connection with an effort to seek a discretionary Government ruling, benefit, approval, or other action; or

(iii) Inherently influential in relation to the matter in dispute or the Government action sought.

(2) *Scientific or technological information.* The former employee must convey information of a scientific or technological character, such as technical or engineering information relating to the natural sciences. The exception does not extend to information associated with a nontechnical discipline such as law, economics, or political science.

(3) *Incidental references or remarks.* Provided the former employee's communication primarily conveys information of a scientific or technological character, the entirety of the communication will be deemed made solely for the purpose of furnishing such information notwithstanding an incidental reference or remark:

(i) Unrelated to the matter to which the post-employment restriction applies;

(ii) Concerning feasibility, risk, cost, speed of implementation, or other considerations when necessary to appreciate the practical significance of the basic scientific or technological information provided; or

(iii) Intended to facilitate the furnishing of scientific or technological information, such as those references or remarks necessary to determine the kind and form of information required or the adequacy of information already supplied.

Example 1 to paragraph (e)(3): After terminating Government service, a former senior employee at the National Security Agency (NSA) accepts a position as a senior manager at a firm specializing in the development of advanced security systems. The former senior employee and another firm employee place a conference call to a current NSA employee to follow up on an earlier discussion in which the firm had sought funding from the NSA to develop a certain proposed security system. After the other firm employee explains the scientific principles underlying the proposed system, the former employee may not state the system's expected cost. Her communication would not primarily convey information of a scientific or technological character.

Example 2 to paragraph (e)(3): If, in the previous example, the former senior employee explained the scientific principles underlying the proposed system, she could also have stated its expected cost as an incidental reference or remark.

(4) *Communications made under procedures acceptable to the agency.* (i) An agency may adopt such procedures as are acceptable to it, specifying conditions under which former Government employees may make communications solely for the purpose of furnishing scientific or technological information, in light of the agency's particular programs and needs. In promulgating such procedures, an agency may consider, for example, one or more of the following:

(A) Requiring that the former employee specifically invoke the exception prior to making a communication (or series of communications);

(B) Requiring that the designated agency ethics official for the agency to which the communication is directed (or other agency designee) be informed when the exception is used;

(C) Limiting communications to certain formats which are least conducive to the use of personal influence;

(D) Segregating, to the extent possible, meetings and presentations involving technical substance from those involving other aspects of the matter; or

(E) Employing more restrictive practices in relation to communications concerning specified categories of matters or specified aspects of a matter, such as in relation to the pre-award as distinguished from the post-award phase of a procurement.

(ii) The Director of the Office of Government Ethics may review any agency implementation of this exception in connection with OGE's executive branch ethics program oversight responsibilities. *See* 5 CFR part 2638.

Example 1 to paragraph (e)(4): A Marine Corps engineer participates personally and substantially in drafting the specifications for a new assault rifle. After terminating Government service, he accepts a job with the company that was awarded the contract to produce the rifle. Provided he acts in accordance with agency procedures, he may accompany the President of the company to a meeting with Marine Corps employees and report the results of a series of metallurgical tests. These results support the company's argument that it has complied with a particular specification. He may do so even though the meeting was expected to be and is, in fact, a contentious one in which the company's testing methods are at issue. He may not, however, present the company's argument that an advance payment is due the company under the terms of the contract since this would not be a mere incidental reference or remark within the meaning of paragraph (e)(3) of this section.

(5) *Certification for expertise in technical discipline.* A certification issued in accordance with this section shall be effective on the date it is executed (unless a later date is specified), provided that it is transmitted to the **Federal Register** for publication.

(i) *Criteria for issuance.* A certification issued in accordance with this section may not broaden the scope of the exception and may be issued only when:

(A) The former employee has outstanding qualifications in a scientific, technological, or other technical discipline (involving engineering or other natural sciences as distinguished from a nontechnical discipline such as law, economics, or political science);

(B) The matter requires the use of such qualifications; and

(C) The national interest would be served by the former employee's participation.

(ii) *Submission of requests.* The individual wishing to make the communication shall forward a written request to the head of the agency to which the communications would be directed. Any such request shall address the criteria set forth in paragraph (e)(5)(i) of this section.

(iii) *Issuance.* The head of the agency to which the communications would be directed may, upon finding that the criteria specified in paragraph (e)(5)(i) of this section are satisfied, approve the request by executing a certification, which shall be published in the **Federal Register**. A copy of the certification shall be forwarded to the affected individual. The head of the agency shall, prior to execution of the certification, furnish a draft copy of the certification to the Director of the Office of Government Ethics and consider the Director's comments, if any, in relation to the draft. The certification shall specify:

(A) The name of the former employee;

(B) The Government position or positions held by the former employee during his most recent period of Government service;

(C) The identity of the employer or other person on behalf of which the former employee will be acting;

(D) The restriction or restrictions to which the certification shall apply;

(E) Any limitations imposed by the agency head (or deputy or acting head) with respect to the scope of the certification; and

(F) The basis for finding that the criteria specified in paragraph (e)(5)(i) of this section are satisfied, specifically including a description of the matter and the communications that will be permissible or, if relevant, a statement that such information is protected from disclosure by statute.

(iv) *Copy to Office of Government Ethics.* Once published, the agency shall provide the Director of the Office of Government Ethics with a copy of the certification as published in the **Federal Register**.

(v) *Revocation.* The agency head may revoke a certification and shall forward a written notice of the revocation to the former employee and to the OGE Director. Revocation of a certification shall be effective on the date specified in the notice revoking the certification.

(f) *Exception for giving testimony under oath or making statements required to be made under penalty of perjury.* Subject to the limitation described in paragraph (f)(2) of this section concerning expert witness testimony, a former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from giving testimony under oath or making a statement required to be made under penalty of perjury.

(1) *Testimony under oath.* Testimony under oath is evidence delivered by a witness either orally or in writing, including deposition testimony and written affidavits, in connection with a judicial, quasi-judicial, administrative, or other legally recognized proceeding in which applicable procedural rules require a witness to declare by oath or affirmation that he will testify truthfully.

(2) *Limitation on exception for service as an expert witness.* The exception described in paragraph (f)(1) of this section does not negate the bar of 18 U.S.C. 207(a)(1), or § 2641.201, to a former employee serving as an expert witness; where the bar of section 207(a)(1) applies, a former employee may not serve as an expert witness except:

(i) If he is called as a witness by the United States; or

(ii) By court order. For this purpose, a subpoena is not a court order, nor is an order merely qualifying an individual to testify as an expert witness.

(3) *Statements made under penalty of perjury.* A former employee may make any statement required to be made under penalty of perjury, except that he may not:

(i) Submit a pleading, application, or other document as an attorney or other representative; or

(ii) Serve as an expert witness where the bar of 18 U.S.C. 207(a)(1) applies, except as provided in paragraph (f)(2) of this section.

Note to paragraph (f): Whether compensation of a witness is appropriate is not addressed by 18 U.S.C. 207. However, 18 U.S.C. 201 may prohibit individuals from receiving compensation for testifying under oath in certain forums except as authorized by 18 U.S.C. 201(d). Note also that there may be statutory or other bars on the disclosure by a current or former employee of information from the agency's files or acquired in connection with the individual's employment with the Government; a former employee's agency may have promulgated procedures to be followed with respect to the production or disclosure of such information.

Example 1 to paragraph (f): A former employee is subpoenaed to testify in a case pending in a United States district court concerning events at the agency she observed while she was performing her official duties with the Government. She is not prohibited by 18 U.S.C. 207 from testifying as a fact witness in the case.

Example 2 to paragraph (f): An employee was removed from service by his agency in connection with a series of incidents where the employee was absent without leave or was unable to perform his duties because he appeared to be intoxicated. The employee's supervisor, who had assisted the agency in handling the issues associated with the removal, subsequently left Government. In the ensuing case in Federal court between the employee who had been removed and his agency over whether he had been discriminated against because of his disabling alcoholism, his former supervisor was asked whether on certain occasions the employee had been intoxicated on the job and unable to perform his assigned duties. Opposing counsel objected to the question on the basis that the question required expert testimony and the witness had not been qualified as an expert. The judge overruled the objection on the basis that the witness would not be providing expert testimony but opinions or inferences which are rationally based on his perception and helpful to a clear understanding of his testimony or the determination of a fact in issue. The former employee may provide the requested testimony without violating 18 U.S.C. 207.

Example 3 to paragraph (f): A former senior employee of the Environmental Protection Agency (EPA) is a recognized expert concerning compliance with Clean Air Act requirements. Within one year after terminating Government service, she is retained by a utility company that is the defendant in a lawsuit filed against it by the EPA. While the matter had been pending while she was with the agency, she had not worked on the matter. After the court rules that she is qualified to testify as an expert, the former senior employee may offer her sworn opinion that the utility company's practices are in compliance with Clean Air Act requirements. She may do so although she would otherwise have been barred by 18 U.S.C. 207(c) from making the communication to the EPA.

Example 4 to paragraph (f): In the previous example, an EPA scientist served as a member of the EPA investigatory team that compiled a report concerning the utility company's practices during the discovery stage of the lawsuit. She later terminated Government service to join a consulting firm and is hired by the utility company to assist it in its defense. She may not, without a court order, serve as an expert witness for the company in the matter since she is barred by 18 U.S.C. 207(a)(1) from making the communication to the EPA. On application by the utility company for a court order permitting her service as an expert witness, the court found that there were no extraordinary circumstances that would justify overriding the specific statutory bar to such testimony. Such extraordinary circumstances might be where no other equivalent expert testimony can be obtained and an employee's prior involvement in the matter would not cause her testimony to have an undue influence on proceedings. Without such extraordinary circumstances, ordering such expert witness testimony would undermine the bar on such testimony.

(g) *Exception for representing certain candidates or political organizations.* Except as provided in paragraph (g)(2) of this section, a former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a communication or appearance on behalf of a candidate in his capacity as a candidate or an entity specified in paragraphs (g)(1)(ii) through (g)(1)(vi) of this section.

(1) *Specified persons or entities.* For purposes of this paragraph (g), the specified persons or entities are:

(i) A *candidate.* A candidate means any person who seeks nomination for election, or election to, Federal or State office or who has authorized others to explore on his own behalf the possibility of seeking nomination for election, or election to, Federal or State office;

(ii) An *authorized committee.* An authorized committee means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination or election of the candidate or to explore the possibility of seeking the nomination or election of the candidate. The term does not include a committee that receives contributions or makes expenditures to promote more than one candidate;

(iii) A *national committee.* A national committee means the organization

which, under the bylaws of a political party, is responsible for the day-to-day operation of the political party at the national level;

(iv) A *national Federal campaign committee.* A national Federal campaign committee means an organization which, under the bylaws of a political party, is established primarily to provide assistance at the national level to candidates nominated by the party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(v) A *State committee.* A State committee means the organization which, under the bylaws of a political party, is responsible for the day-to-day operation of the political party at the State level; or

(vi) A *political party.* A political party means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of the association, committee, or organization.

(2) *Limitations.* The exception in this paragraph (g) shall not apply if the communication or appearance:

(i) Is made at a time the former senior or very senior employee is employed by any person or entity other than:

(A) A person or entity specified in paragraph (g)(1) of this section; or

(B) A person or entity who exclusively represents, aids, or advises persons or entities described in paragraph (g)(1) of this section;

(ii) Is made other than solely on behalf of one or more persons or entities specified in paragraph (g)(1) or (g)(2)(i)(B) of this section; or

(iii) Is made to or before the Federal Election Commission by a former senior or very senior employee of the Federal Election Commission.

Example 1 to paragraph (g): The former Counsel to the President becomes the full-time head of the President's re-election committee. The former Counsel may, within one year of terminating his very senior employee position, represent the re-election committee to the White House travel office in discussions regarding the appropriate amounts of reimbursements by the committee of political travel costs of the President.

Example 2 to paragraph (g): The former U.S. Attorney General is asked by a candidate running for Governor of Alabama to contact the Chairman of the Federal Trade Commission (a position listed in 5 U.S.C. 5314) to seek the dismissal of a pending enforcement action involving the candidate's family business. The former very senior employee's communication to the Chairman would not be made on behalf of the candidate in his capacity as a candidate and, thus, would be barred by 18 U.S.C. 207(d).

Example 3 to paragraph (g): In the previous example, the former Attorney General could contact the Commissioner of Internal Revenue (a position listed in 5 U.S.C. 5314) to urge the review of a tax ruling affecting Alabama's Republican Party since the communication would be made on behalf of a State committee.

Example 4 to paragraph (g): The former Assistant Secretary for Legislative and Intergovernmental Affairs at the Department of Commerce is hired as a consultant by a company that provides advisory services to political candidates and senior executives in private industry. Her only client is a candidate for the U.S. Senate. The former senior employee may not contact the Deputy Secretary of Commerce within one year of her termination from the Department to request that the Deputy Secretary give an official speech in which he would express support for legislation proposed by the candidate. The communication would be prohibited by 18 U.S.C. 207(c) because it would be made when the former senior employee was employed by an entity that did not exclusively represent, aid, or advise persons or entities specified in paragraph (g)(1) of this section.

(h) *Waiver for acting on behalf of international organization.* (1) The Secretary of State may grant a former employee an individual waiver of one or more of the restrictions in 18 U.S.C. 207 where the employee would act on behalf of an international organization in which the United States participates. The Secretary of State must certify in advance that the proposed activity is in the interests of the United States.

(2) An employee who is detailed under 5 U.S.C. 3343 to an international organization remains an employee of his agency. In contrast, an employee who transfers under 5 U.S.C. 3581–3584 to an international organization is a former employee of his agency.

(i) *Waiver for re-employment by Government-owned contractor operated entity.* The President may grant a waiver of one or more of the restrictions in 18 U.S.C. 207 to eligible employees upon the determination and certification in writing that the waiver is in the public interest and the services of the individual are critically needed for the benefit of the Federal Government. Upon the issuance of a waiver pursuant to this paragraph, the restriction or restrictions waived will not apply to a former employee acting as an employee of the same Government-owned, contractor operated entity with which he was employed immediately before the period of Government service during which the waiver was granted. If the individual was employed by the Lawrence Livermore National Laboratory, the Los Alamos National Laboratory, or the Sandia National Laboratory immediately before the person's Federal Government employment began, the restriction or restrictions waived shall not apply to a former employee acting as an employee of any one of those three national laboratories after the former employee's Government service has terminated.

(1) *Eligible employees.* Any current civilian employee of the executive branch, other than an employee serving in the Executive Office of the President, who served as an officer or employee at a Government-owned, contractor operated entity immediately before he became a Government employee. A total of no more than 25 current employees shall hold waivers at any one time.

(2) *Issuance.* The President may not delegate the authority to issue waivers under this paragraph. If the President issues a waiver, a certification shall be published in the **Federal Register** and shall identify:

(i) The employee covered by the waiver by name and position; and

(ii) The reasons for granting the waiver.

(3) *Copy to Office of Government Ethics.* A copy of the certification shall be provided to the Director of the Office of Government Ethics.

(4) *Effective date.* A waiver issued under this section shall be effective on the date the certification is published in the **Federal Register.**

(5) *Reports.* Each former employee holding a waiver must submit semiannual reports, for a period of two years after terminating Government service, to the President and the OGE Director.

(i) *Submission.* The reports shall be submitted:

(A) Not later than six months and 60 days after the date of the former employee's termination from the period of Government service during which the waiver was granted; and

(B) Not later than 60 days after the end of any successive six-month period.

(ii) *Content.* Each report shall describe all activities undertaken by the former employee during the six-month period that would have been prohibited by 18 U.S.C. 207 but for the waiver.

(iii) *Public availability.* All reports filed with the OGE Director under this paragraph shall be made available for public inspection and copying.

Note to paragraph (i)(5): 18 U.S.C. 207(k)(5)(D) specifies that an individual who is granted a waiver as described in this paragraph is ineligible for appointment in the civil service unless all reports required by that section have been filed.

(6) *Revocation.* A waiver shall be revoked when the recipient of the waiver fails to file a report required by paragraph (i)(4) of this section, and the recipient of the waiver shall be notified of such revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(j) *Waiver of restrictions of 18 U.S.C. 207(c) and (f) for certain positions.* The Director of the Office of Government Ethics may waive application of the restriction of section 18 U.S.C. 207(c) and § 2641.204, with respect to certain positions or categories of positions. When the restriction of 18 U.S.C. 207(c) has been waived by the Director pursuant to this paragraph, the one-year restriction of 18 U.S.C. 207(f) and § 2641.206 also will not be triggered upon an employee's termination from the position.

(1) *Eligible senior employee positions.* Any position which could be occupied by a senior employee is eligible for a waiver of the 18 U.S.C. 207(c) restriction except the following:

(i) Positions for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule);

(ii) Positions for which occupants are appointed by the President pursuant to 3 U.S.C. 105(a)(2)(B); or

(iii) Positions for which occupants are appointed by the Vice President pursuant to 3 U.S.C. 106(a)(1)(B).

Example 1 to paragraph (j)(1): The head of a department has authority to fix the annual salary for a category of positions administratively at a rate of compensation not in excess of the rate of compensation provided for level IV of the Executive Schedule (5 U.S.C. 5315). He sets a salary level that does not reference any Executive Schedule salary. The level of compensation is not "specified in" or "fixed according to" the Executive Schedule. If the authority pursuant to which compensation for a position is set instead stated that the position is to be paid at the rate of level IV of the Executive Schedule, the salary for the position would be fixed according to the Executive Schedule.

(2) *Criteria for waiver.* A waiver of restrictions for a position or category of positions shall be based on findings that:

(i) The agency has experienced or is experiencing undue hardship in obtaining qualified personnel to fill such position or positions as shown by relevant factors which may include, but are not limited to:

(A) Vacancy rates;

(B) The payment of a special rate of pay to the incumbent of the position pursuant to specific statutory authority; or

(C) The requirement that the incumbent of the position have outstanding qualifications in a scientific, technological, technical, or other specialized discipline;

(ii) Waiver of the restriction with respect to the position or positions is expected to ameliorate the recruiting difficulties; and

(iii) The granting of the waiver would not create the potential for the use of undue influence or unfair advantage based on past Government service, including the potential for use of such influence or advantage for the benefit of a foreign entity.

(3) *Procedures.* A waiver shall be granted in accordance with the following procedures:

(i) *Agency recommendation.* An agency's designated agency ethics official (DAEO) may, at any time, recommend the waiver of the 18 U.S.C. 207(c) (and section 207(f)) restriction for a position or category of positions by forwarding a written request to the Director addressing the criteria set forth in paragraph (j)(2) of this section. A DAEO may, at any time, request that a current waiver be revoked.

(ii) *Action by Office of Government Ethics.* The Director of the Office of Government Ethics shall promptly provide to the designated agency ethics official a written response to each request for waiver or revocation. The Director shall maintain a listing of positions or categories of positions in appendix A to this part for which the 18 U.S.C. 207(c) restriction has been waived. The Director shall publish notice in the **Federal Register** when revoking a waiver.

(4) *Effective dates.* A waiver shall be effective on the date of the written response to the designated agency ethics official indicating that the request for waiver has been granted. A waiver shall inure to the benefit of the individual who holds the position when the waiver takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the waiver. Revocation of a waiver shall be effective 90 days after the date that the OGE Director publishes notice of the revocation in the **Federal Register.** Individuals who formerly served in a position for which a waiver of restrictions was applicable will not become subject to 18 U.S.C. 207(c) (or section 207(f)) if the waiver is revoked after their termination from the position.

(k) *Miscellaneous statutory exceptions.* Several statutory authorities specifically modify the scope of 18 U.S.C. 207 as it would otherwise apply to a former employee or class of former employees. These authorities include:

(1) 22 U.S.C. 3310(c), permitting employees of the American Institute in Taiwan to represent the Institute notwithstanding 18 U.S.C. 207;

(2) 22 U.S.C. 3613(d), permitting the individual who was Administrator of Panama Canal Commission on the date of its termination to act in carrying out official duties as Administrator of the Panama Canal Authority notwithstanding 18 U.S.C. 207;

(3) 22 U.S.C. 3622(e), permitting an individual who was an employee of the Panama Canal Commission on the date of its termination to act in carrying out official duties on behalf of the Panama Canal Authority;

(4) 25 U.S.C. 450i(j), permitting a former employee who is employed by an Indian tribe to act on behalf of the tribe notwithstanding 18 U.S.C. 207 if the former employee submits notice of any personal and substantial involvement in the matter during Government service;

(5) 38 U.S.C. 5902(d), permitting a former employee who is a retired officer, warrant officer, or enlisted member of the Armed Forces, while not on active duty, to act on behalf of certain claimants notwithstanding 18 U.S.C. 207 if the claim arises under laws administered by the Secretary of Veterans Affairs;

(6) 50 U.S.C. 405(b), permitting a former part-time member of an advisory committee appointed by the Federal Emergency Management Agency, the Central Intelligence Agency, or the National Security Council to engage in conduct notwithstanding 18 U.S.C. 207 except with respect to any particular matter directly involving an agency the former member advised or in which such agency is directly interested; and

(7) 50 U.S.C. app. 463, permitting former employees appointed to certain positions under 50 U.S.C. App. 451 *et seq.* (Military Selective Service Act) to engage in conduct notwithstanding 18 U.S.C. 207.

Note to paragraph (k): Exceptions from 18 U.S.C. 207 may be included in legislation mandating privatization of Governmental entities. *See,* for example, 42 U.S.C. 2297h–3(c), concerning the privatization of the United States Enrichment Corporation.

(l) *Guide to available exceptions and waivers to the prohibitions of 18 U.S.C. 207.* This chart lists the exceptions and waivers set forth in 18 U.S.C. 207 and, for each exception and waiver identifies the prohibitions of section 207 excepted or subject to waiver. Detailed guidance on the applicability of the exceptions and waivers is contained in the cross-referenced paragraphs of this section.

SECTION 207 PROHIBITIONS AFFECTED

Exception/Waiver	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)
(1) Acting for the United States, *see* §2641.301(a)	•	•	•	•	•	•
(2) Elected State or local government official, *see* §2641.301(b)	•	•	•	•	•	•
(3) Acting for specified entities, *see* §2641.301(c)				•	•	
(4) Special knowledge, *see* §2641.301(d)				•	•	
(5) Scientific or technological information, *see* §2641.301(e)	•	•		•	•	
(6) Testimony, *see* §2641.301(f)	•	•	•	•	•	•
(7) Acting for a candidate or political party, *see* §2641.301(g)				•	•	
(8) Acting for an international organization, *see* §2641.301(h)	•	•	•	•	•	•
(9) Employee of a Government-owned, contractor operated entity, *see* §2641.301(i)	•	•	•	•	•	•
(10) Waiver for certain positions, *see* §2641.301(j)				•		•

§2641.302 Separate agency components.

(a) *Designation.* For purposes of 18 U.S.C. 207(c) only, and § 2641.204, the Director of the Office of Government Ethics may designate agency "components" that are distinct and separate from the "parent" agency and from each other. Absent such designation, the representational bar of section 207(c) extends to the whole of the agency in which the former senior employee served. An eligible former senior employee who served in the *parent* agency is not barred by section 207(c) from making communications to or appearances before any employee of any designated component of the parent, but is barred as to any employee of the parent or of any agency or bureau of the parent that has not been designated. An eligible former senior employee who served in a *designated component* of the parent agency is barred from communicating to or making an appearance before any employee of that designated component, but is not barred as to any employee of the parent, of another designated component, or of any other agency or bureau of the parent that has not been designated.

Example 1 to paragraph (a): While employed in the Office of the Secretary of Defense, a former career Senior Executive Service employee was employed in a position for which the rate of basic pay exceeded that payable for level 5 of the Senior Executive Service. He is prohibited from contacting the Secretary of Defense and DOD's Inspector General. However, because eligible under paragraph (b) of this section to benefit from component designation procedures, he is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of the Army. (The Department of the Army is a designated component of the parent, DOD. The Office of the Secretary of Defense and the Office of the DOD Inspector General are both part of the parent, DOD. See the listing of DOD components in appendix B to this part.)

Example 2 to paragraph (a): Because eligible under paragraph (b) of this section to benefit from component designation procedures, a former Navy Admiral who last served as the Vice Chief of Naval Operations is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of Defense, the Secretary of the Army, or DOD's Inspector General. He is prohibited from contacting the Secretary of the Navy. (The Department of the Navy is a designated component of the parent, DOD. The Office of the Secretary of Defense and the Office of the DOD Inspector General are both part of the parent. See the listing of DOD components in appendix B to this part.)

(b) *Eligible former senior employees.* All former senior employees are eligible to benefit from this procedure except those who were senior employees by virtue of having been:

(1) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule) (*see* example 1 to paragraph (j)(1) of § 2641.301);

(2) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B); or

(3) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B).

Example 1 to paragraph (b): A former senior employee who had served as Deputy Commissioner of the Internal Revenue Service is not eligible to benefit from the designation of components for the Department of the Treasury because the position of Deputy Commissioner is listed in 5 U.S.C. 5316, at a rate of pay payable for level V of the Executive Schedule.

(c) *Criteria for designation.* A component designation must be based on findings that:

(1) The component is an agency or bureau, within a parent agency, that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent as shown by relevant factors which may include, but are not limited to:

(i) The component's creation by statute or a statutory reference indicating that it exercises functions which are distinct and separate;

(ii) The component's exercise of distinct and separate subject matter or geographical jurisdiction;

(iii) The degree of supervision exercised by the parent over the component;

(iv) Whether the component exercises responsibilities that cut across organizational lines within the parent;

(v) The size of the component in absolute terms; and

(vi) The size of the component in relation to other agencies or bureaus within the parent.

(2) There exists no potential for the use of undue influence or unfair advantage based on past Government service.

(d) *Subdivision of components.* The Director will not ordinarily designate agencies that are encompassed by or otherwise supervised by an existing designated component.

(e) *Procedures.* Distinct and separate components shall be designated in accordance with the following procedure:

(1) *Agency recommendation.* A designated agency ethics official may, at any time, recommend the designation of an additional component or the revocation of a current designation by forwarding a written request to the Director of the Office of Government Ethics addressing the criteria set forth in paragraph (c) of this section.

(2) *Agency update.* Designated agency ethics officials shall, by July 1 of each year, forward to the OGE Director a letter stating whether components currently designated should remain designated in light of the criteria set forth in paragraph (c) of this section.

(3) *Action by the Office of Government Ethics.* The Director of the Office of Government Ethics shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official. The Director shall maintain a listing of all designated agency components in appendix B to this part.

(f) *Effective dates.* A component designation shall be effective on the date the rule creating the designation is published in the **Federal Register** and shall be effective as to individuals who terminated senior service either before, on or after that date. Revocation of a component designation shall be effective 90 days after the publication in the **Federal Register** of the rule that revokes the designation, but shall not be effective as to individuals who terminated senior service prior to the expiration of such 90-day period.

(g) *Effect of organizational changes.* (1) If a former senior employee served in an agency with component designations and the agency or a designated component that employed the former senior employee has been significantly altered by organizational changes, the appropriate designated agency ethics official shall determine whether any successor entity is substantially the same as the agency or a designated component that employed the former senior employee. Section 2641.204(g)(2)(iv)(A) through (g)(2)(iv)(C) should be used for guidance in determining how the 18 U.S.C. 207(c) bar applies when an agency or a designated component has been significantly altered.

(2) *Consultation with Office of Government Ethics.* When counseling individuals concerning the applicability of 18 U.S.C. 207(c) subsequent to significant organizational changes, the appropriate designated agency ethics official (DAEO) shall consult with the Office of Government Ethics. When it is determined that appendix B to this part no longer reflects the current organization of a parent agency, the DAEO shall promptly forward recommendations for designations or revocations in accordance with paragraph (e) of this section.

Example 1 to paragraph (g): An eligible former senior employee had served as an engineer in the Agency for Transportation Safety, an agency within Department X primarily focusing on safety issues relating to all forms of transportation. The agency had been designated as a distinct and separate component of Department X by the Director of the Office of Government Ethics. Subsequent to his termination from the position, the functions of the agency are distributed among three other designated components with responsibilities relating to air, sea, and land transportation, respectively. The agency's few remaining programs are absorbed by the parent. As the designated component from which the former senior employee terminated is no longer identifiable as substantially the same entity, the 18 U.S.C. 207(c) bar will not affect him.

Example 2 to paragraph (g): A scientist served in a senior employee position in the Agency for Medical Research, an agency within Department X primarily focusing on cancer research. The agency had been designated as a distinct and separate component of Department X by the Director of the Office of Government Ethics. Subsequent to her termination from the position, the mission of the Agency for Medical Research is narrowed and it is renamed the Agency for Cancer Research. Approximately 20% of the employees of the former agency are transferred to various other parts of the Department to continue their work on medical research unrelated to cancer. The Agency for Cancer Research is determined to be substantially the same entity as the designated component in which she formerly served, and the 18 U.S.C. 207(c) bar applies with respect to the scientist's contacts with employees of the Agency for Cancer Research. She would not be barred from contacting an employee who was among the 20% of employees who were transferred to other parts of the Department.

(h) *Unauthorized designations.* No agency or bureau within the Executive Office of the President may be designated as a separate agency component.

Appendix A to Part 2641—Positions Waived from 18 U.S.C. 207(c) and (f)

Pursuant to the provisions of 18 U.S.C. 207(c)(2)(C) and 5 CFR 2641.301(j), each of the following positions is waived from the provisions of 18 U.S.C. 207(c) and 5 CFR 2641.204, as well as the provisions of 18 U.S.C. 207(f) and 5 CFR 2641.206. All waivers are effective as of the date indicated.

Agency: Department of Justice

Positions: United States Trustee (21) (effective June 2, 1994).

Agency: Securities and Exchange Commission

Positions: Solicitor, Office of General Counsel (effective October 29, 1991). Chief Litigation Counsel, Division of Enforcement (effective October 29, 1991).

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following agencies is determined, for purposes of 18 U.S.C. 207(c), and 5 CFR 2641.204, to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Commerce

Components: Bureau of the Census, Bureau of Export Administration (effective January 28, 1992), Economic Development Administration, International Trade Administration, Minority Business Development Administration, National Oceanic and Atmospheric Administration, National Telecommunications and Information Administration, Patent and Trademark Office, Technology Administration (effective January 28, 1992),

Parent: Department of Defense

Components: Department of the Air Force, Department of the Army, Department of the Navy, Defense Information Systems Agency, Defense Intelligence Agency, Defense Logistics Agency, Defense Threat Reduction Agency (effective February 5, 1999), National Imagery and Mapping Agency (effective May 16, 1997), National Reconnaissance Office (effective January 30, 2003), National Security Agency.

Parent: Department of Energy

Component: Federal Energy Regulatory Commission.

Parent: Department of Health and Human Services

Components: Administration on Aging (effective May 16, 1997), Administration for Children and Families (effective January 28, 1992), Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997), Agency for Toxic Substances and Disease Registry (effective May 16, 1997), Centers for Disease Control and Prevention (effective May 16, 1997), Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration), Food and Drug Administration, Health Resources and Services Administration (effective May 16, 1997), Indian Health Service (effective May 16, 1997), National Institutes of Health (effective May 16,

1997), Substance Abuse and Mental Health Services Administration (effective May 16, 1997).

Parent: Department of the Interior

Components [1]: Bureau of Indian Affairs (effective January 28, 1992), Bureau of Land Management (effective January 28, 1992), Bureau of Reclamation (effective January 28, 1992), Minerals Management Service (effective January 28, 1992), National Park Service (effective January 28, 1992), Office of Surface Mining Reclamation and Enforcement (effective January 28, 1992), U.S. Fish and Wildlife Service (effective January 28, 1992), U.S. Geological Survey (effective January 28, 1992).

Parent: Department of Justice

Components: Antitrust Division, Bureau of Prisons (including Federal Prison Industries, Inc.), Civil Division, Civil Rights Division, Community Relations Service, Criminal Division, Drug Enforcement Administration, Environment and Natural Resources Division, Executive Office for United States Attorneys [2] (effective January 28, 1992), Executive Office for United States Trustees [3] (effective January 28, 1992), Federal Bureau of Investigation, Foreign Claims Settlement Commission, Immigration and Naturalization Service, Independent Counsel appointed by the Attorney General, Office of Justice Programs, Office of the Pardon Attorney (effective January 28, 1992), Offices of the United States Attorney (each of 94 offices), Offices of the United States Trustee (each of 21 offices), Tax Division, United States Marshals Service (effective May 16, 1997), United States Parole Commission.

Parent: Department of Labor

Components: Bureau of Labor Statistics, Employment and Training Administration, Employment Standards Administration, Mine Safety and Health Administration, Occupational Safety and Health Administration, Office of Disability Employment Policy (effective January 30, 2003), Pension and Welfare Benefits Administration (effective May 16, 1997).

Parent: Department of State

Component: Foreign Service Grievance Board.

Parent: Department of Transportation

Components: Federal Aviation Administration, Federal Highway Administration, Federal Motor Carrier Safety Administration (effective January 30, 2003), Federal Railroad Administration, Federal Transit Administration, Maritime Administration, National Highway Traffic Safety Administration, Saint Lawrence Seaway Development Corporation, Surface Transportation Board (effective May 16, 1997), Transportation Security Administration (effective January 30, 2003), United States Coast Guard.

Parent: Department of the Treasury

Components: Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Bureau of the Mint, Bureau of the Public Debt, Comptroller of the Currency, Federal Law Enforcement Training Center, Financial Crimes Enforcement Center (FinCEN) (effective January 30, 2003), Financial Management Service, Internal Revenue Service, Office of Thrift Supervision, United States Customs Service, United States Secret Service.

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BILLING CODE 6345–02–P

[1] All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

[2] The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

[3] The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

Federal Register

Tuesday,
February 18, 2003

Part III

Department of Labor

Solicitation of Nominations for The Secretary of Labor's New Freedom Initiative Award; Notice

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[OMB Number 1230–0002]

Solicitation of Nominations for The Secretary of Labor's New Freedom Initiative Award

The Secretary of Labor's New Freedom Initiative Award presented by Secretary Elaine L. Chao, United States Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210:

1. *Subject:* New Freedom Initiative Award(s).

2. *Purpose:* To outline the eligibility criteria, the nomination process and the administrative procedures for the New Freedom Initiative Award(s), and to solicit New Freedom Initiative Award(s) nominations.

3. *Originator:* Office of Disability Employment Policy (ODEP).

4. *Background:* To encourage the use of public-private partnerships, the Secretary of Labor will present the New Freedom Initiative Award(s). Initiated in 2002, this award is made annually to individual(s), non-profit organization(s), or corporation(s) that have, through programs or activities, demonstrated exemplary and innovative efforts in furthering the employment objectives of President George W. Bush's New Freedom Initiative. *See http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.* By increasing access to assistive technologies, and utilizing innovative training, hiring, and retention strategies, the recipient(s) will have established and instituted comprehensive strategies to enhance the ability of Americans with disabilities to enter and advance within the 21st Century workforce and to participate in daily community life.

5. *Eligibility Criteria:* The following criteria apply to the New Freedom Initiative Award Nominees:

A. The nominees must be individuals, corporations, or non-profit organizations whose activities exemplify the goals of the President's New Freedom Initiative which include the Office of Disability Employment Policy's mission of increasing employment opportunities for youth and adults with disabilities. Nominations may be submitted, however, by other entities with the knowledge and permission of the nominee. Self-nomination is also encouraged.

B. Nominees must have developed and implemented a multi-faceted program directed toward increasing employment opportunities for people with disabilities through increased access to assistive technologies, and use of innovative training, hiring, and retention techniques.

C. Nominees must report any unresolved violations of state or Federal law, as determined by compliance evaluations, complaint investigations, or other Federal inspections and investigations. In addition, the nominee must also report any pending Federal or state enforcement actions, and any corrective actions or consent decrees that have resulted from litigation under laws enforced by the Department of Labor (DOL).

6. *Nomination Submission Requirements:*

A. The single program or multiple programs for which the individual or company is being nominated must demonstrate a commitment to people with disabilities, and clearly show measurable results in terms of significantly enhancing employment opportunities for people with disabilities. The programs or activities may also address such issues as the widening skills gap among persons with disabilities, a diversified 21st Century workforce, and discrimination based on disability.

B. The nomination packages should be limited to only that information relevant to the nominee's program(s). Nomination packages should be no longer than twenty (20) typed pages double-spaced. A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).

C. Nomination packages must include the following for consideration:

1. The nomination package should include an executive summary prepared by or on behalf of the nominee, which clearly identifies the specific program(s) under nomination and fully describes the results achieved.

2. The specific activities, program(s), or establishment for which the nomination is being submitted.

3. Specific data on training, placements, resources expended and other relevant information that will facilitate evaluation of the nominee's submission.

4. A description of how the program(s) and/or activities that are the subject of the nomination have had a positive and measurable impact on the employment of people with disabilities.

5. A data summary on the nominee. See Section 6(D).

D. A data summary on the Nominee will include the following:

1. Name(s) of the individual, organization or corporation being nominated.

2. Full street address, telephone number and e-mail address where applicable.

3. Name of highest ranking official(s) (where appropriate).

4. Name of executive(s) responsible for human resources, equal employment opportunity, and/or disability awareness at nominee's establishment and/or corporate office (where appropriate).

5. Name of parent company (where appropriate).

6. Name, street address, telephone number and email address of CEO or President of parent company (where appropriate).

7. Name, title, street address, telephone number and e-mail address of a contact person.

8. Number of employees at the establishment or corporation being nominated (where appropriate).

9. Name and description of principal program(s) or service(s).

7. *Timing and Acceptable Methods of Submission of Nominations:*

Nomination packages must be submitted to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington DC 20210 by May 15, 2003. Any application received after 4:45 p.m. EDST on May 15, 2003 will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than the fifth calendar day before May 15, 2003;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to May 15, 2003.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Disability Employment Policy on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

Confirmation of receipt of your application can be made by contacting Dina Dorich of the Office of Disability Employment Policy, telephone (202) 693–7859; TTY (202) 693–4920 (these are not toll-free numbers), prior to the closing deadline.

8. *The Administrative Review Process:*

A. The ODEP Steering Committee will perform preliminary administrative review to determine the sufficiency of all submitted application packages.

B. An Executive Evaluation Committee made up of representatives appointed by the Secretary of Labor from Department of Labor employees will perform secondary review.

C. The Secretary of Labor will conduct the final review and selections.

9. Other Factors to be Considered During the Administrative Review Process:

A. If a nominee merges with another company during the evaluation process, only that information relative to the nominated company will be evaluated, and the award, if any, will be limited to the nominated company.

B. Prior receipt of this award will not preclude a nominee from being considered for the New Freedom Initiative Award in subsequent years. Programs and activities serving as the basis of a prior award, however, may not be considered as the basis for a subsequent award application.

10. Procedures Following Selection:

A. Awardees will be notified of their selection via the contact person identified in the application package at least six weeks prior to the awards ceremony. Non-selected nominees will also be notified within 45 days of the selection of the awardees.

B. As a precondition to acceptance of the award, the nominee agrees to perform two out of three of the following activities:

1. Submit to ODEP for review a two-minute video of the program(s) or activity(ies) for which it is being recognized within 30 days of notification of award selection;

2. Display an exhibit or showcase of the program(s)/activity(ies)for which it is being recognized at the awards ceremony, with contents of the Display submitted to ODEP for review within 30 days of notification of award selection;

3. Participate in any New Freedom Initiative workshops hosted by ODEP in conjunction with the awards ceremony.

C. Materials developed by the awardees in conjunction with Section 10(B) will be subject to review by the Office of the Solicitor's Division of Legislative and Legal Counsel at the Department of Labor to ensure compliance with applicable ethics standards.

11. *Location:* The awards ceremony will generally be held during the month of October at a location to be determined by the Secretary of Labor.

Paperwork Reduction Act Notice (Pub. L. 104–13): Persons are not required to respond to a collection of information unless is displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB Number 1230–0002 (Expiration Date: 12/31/05). The obligation to respond to this information collection is voluntary; however, only nominations that follow the nomination procedures outlined in this notice will receive consideration. The average time to respond to this information of collection is estimated to be 10 hours per response; including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this estimate; including suggestions for reducing response time to the U.S. Department of Labor, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue NW., Washington DC 20210. Please reference OMB Number 1230–0002.

We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the Department of Labor's New Freedom Initiative Award. Your comments will be very useful to the Office of Disability Employment Policy in making improvements in our solicitation for nominations for this award in subsequent years. All comments are strictly voluntary and strictly private. We would appreciate your taking a few minutes to tell us—for example" whether you thought the instructions were sufficiently clear; what you liked or disliked; what worked or didn't work; whether it satisfied your need for information or if it didn't, or anything else that you think is important for us to know. Your comments will be most helpful if you can be very specific in relating your experience.

We value your comments, and would really like to hear from you. Please send any comments you have to Dina Dorich at *dorich-bernadine@dol.gov* or via mail to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue NW., Washington DC 20210. Thank you.

Signed at Washington, DC, this 11th date of February, 2003.

W. Roy Grizzard,

Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 03–3833 Filed 2–14–03; 8:45 am]

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CFR PARTS AFFECTED DURING FEBRUARY

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H.R. 16/P.L. 108–6

To authorize salary adjustments for Justices and judges of the United States for fiscal year 2003. (Feb. 13, 2003; 117 Stat. 10)

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

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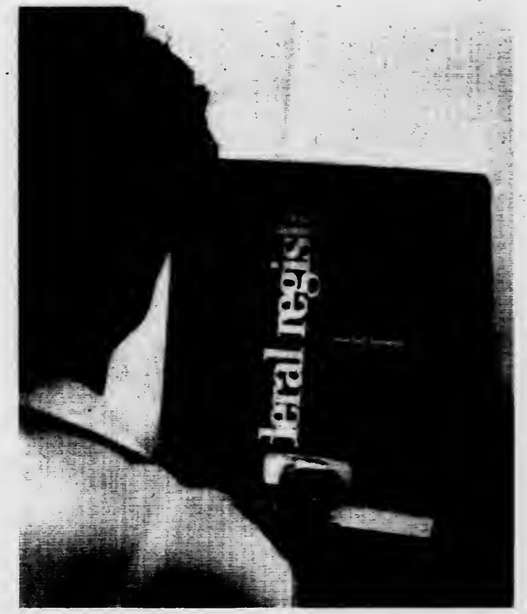
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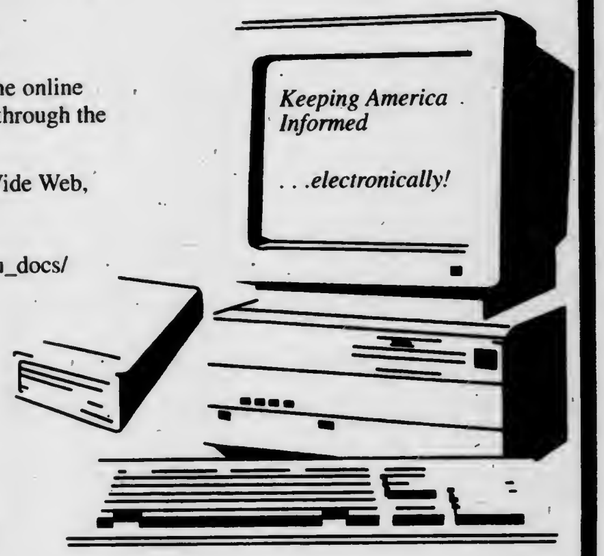
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RUS Specification for Voice Frequency Loading Coils

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by rescinding the current issue of RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26. This specification has become outdated because of advancements made in the delivery of telecommunications services to rural subscribers.

DATES: *Effective date:* March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Charlie I. Harper, Jr., Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1598, Washington, DC 20250–1598, telephone (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is exempt from the Office of Management and Budget (OMB) review for the purposes of Executive Order 12866 and, therefore has not been reviewed by OMB.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Loan documents between RUS and its telecommunications borrowers require borrowers to comply with certain standards and specifications for the construction of telecommunications facilities financed with RUS loan funds. This rule rescinds the requirements that borrowers comply with an outdated RUS Specification for Voice Frequency Loading Coils. This rule relieves borrowers of a requirement that no longer represents best practices in the telecommunications industry and consequently will not have a significant impact on the affected entities.

Information Collection and Recordkeeping Requirements

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325. Telephone (202) 512–1800.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS issues publications titled "bulletins" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure RUS financing. RUS issues standards and specifications for construction of telecommunications facilities financed with RUS loan funds. After review of RUS's bulletin and specification issuances, RUS has decided to rescind the outdated RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26, issued January 19, 1989. This bulletin is incorporated by reference at 7 CFR 1755.97.

RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26, specifies the technical requirements for voice frequency loading coils that are used in aerial, direct burial, and underground plant installations. Since RUS borrowers are designing and constructing new plant facilities capable of handling both voice and data transmission which require that loop lengths be shorter than 18,000 feet, the installation of voice frequency loading coils in these new transmission facilities using these shorter loop lengths is no longer required.

Therefore RUS is rescinding this bulletin because of obsolescence.

On January 31, 2002, RUS published a proposed rule (67 FR 4679) to rescind RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26, because of obsolescence. Comments on this proposed rule were due by April 1, 2002. One comment was received by this due date. The commenter agreed with RUS that the bulletin should be rescinded because of obsolescence. Since the commenter agreed with RUS, RUS will rescind RUS Bulletin 345–22, RUS Specification for Voice Frequency Loading Coils, PE–26.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, RUS amends Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION.

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entry "RUS Bulletin No. 345–22" from the table.

Dated: January 3, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–3746 Filed 2–18–03; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

Regulation K; Docket No. R–1143; International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board of Governors of the Federal Reserve System has issued an interpretation concerning the underwriting by foreign banks of securities to be distributed in the United States. The interpretation clarifies that a foreign bank that wishes to engage in such activity must either be a financial holding company or have authority to engage in underwriting activity under section 4(c)(8) of the Bank Holding Company Act.

EFFECTIVE DATE: February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452–3786), Ann Misback, Assistant General Counsel (202/452–3788), or Michael Waldron, Counsel (202/452–2798), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: A number of foreign banks that are subject to the Bank Holding Company Act ("BHC Act"), but do not have authority to engage in underwriting activity in the United States, have participated as co-managers in the underwriting of securities that are to be distributed in the United States. The foreign banks use U.S. offices or affiliates to engage in activities conducted in support of the underwriting transaction for which the U.S. offices or affiliates are compensated by the foreign bank. The foreign bank becomes a member of the underwriting syndicate but does not distribute any of the securities in the United States or elsewhere. The foreign banks take the position that they are not engaged in underwriting in the United States because any underwriting obligation is booked outside the United States.

A foreign bank that is subject to the BHC Act may engage in underwriting activities in the United States only if it has been authorized under section 4 of that Act. Section 225.124 of the Board's Regulation Y states that a foreign bank will not be considered to be engaged in the activity of underwriting in the United States if the shares to be underwritten are distributed outside the United States. In the transactions in question, all of the securities were distributed in the United States.

Regulation K defines "engaged in business" and "engaged in activities" to mean conducting an activity through an office or subsidiary in the United States. In 1985, however, the Board amended another provision of Regulation K to clarify that, with respect to securities activities, the location of the prohibited activity was not dependent on being conducted through an office or subsidiary in the United States. Section 211.23(f)(5)(ii) of Regulation K states that a foreign banking organization shall not:

> Directly underwrite, sell, or distribute, nor own or control more than 10 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States, except to the extent permitted bank holding companies;

In adopting the provision, the Board stated in part that it was intended to clarify that no part of the prohibited underwriting process may take place in the United States. Thus, the prohibition did not depend on the activity being conducted through a U.S. office or subsidiary. The definition of "engaged in business" in Regulation K is not intended to operate as authority to allow banking organizations to avoid regulatory restrictions in the United States by conducting activities from abroad, as the 1985 revision of § 211.23(f)(5)(ii) made clear.

Technological and regulatory changes since the Regulation K definition of "engaged in business" was adopted in 1979 have eliminated some of the barriers to the delivery of cross-border services into the United States. Many of the services that can now be provided on a cross-border basis, including securities and insurance, were not permissible activities for banking organizations to conduct in the United States prior to the enactment of the Gramm-Leach-Bliley Act ("GLB Act") and generally can be conducted by banking organizations in the United States today only in conformance with the requirements of that Act. To allow activities to be conducted in the United States from abroad would undermine the careful framework adopted in the GLB Act, which is available to both domestic and foreign banking organizations.

As a result, the Board believes it would be appropriate to issue this interpretation in order to clarify the scope of existing restrictions on underwriting by foreign banks. Specifically, the Board wishes to clarify that the underwriting by a banking organization subject to the BHC Act of securities to be distributed in the United States is an activity that is considered to be conducted in the United States. Such activity may only be conducted by a banking organization that is a financial holding company under the GLB Act or has so-called section 20 authority under section 4(c)(8) of the BHC Act.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR Part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*

2. Part 211 is amended by adding a new § 211.605 to read as follows:

§ 211.605 Permissible underwriting activities of foreign banks.

(a) Introduction. A number of foreign banks that are subject to the Bank Holding Company Act ("BHC Act") have participated as co-managers in the underwriting of securities to be distributed in the United States despite the fact that the foreign banks in question do not have authority to engage in underwriting activity in the United States under either the Gramm-Leach-Bliley Act ("GLB Act") or section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)). This interpretation clarifies the scope of existing restrictions on underwriting by such foreign banks with respect to securities that are distributed in the United States.

(b) Underwriting transactions engaged in by foreign banks. (1) In the transactions in question, a foreign bank typically becomes a member of the underwriting syndicate for securities that are registered and intended to be distributed in the United States. The lead underwriter, usually a registered U.S. broker-dealer not affiliated with the foreign bank, agrees to be responsible for distributing the securities being underwritten. The underwriting obligation is assumed by a foreign office or affiliate of the foreign bank.

(2) The foreign banks have used their U.S. offices or affiliates to act as liaison with the U.S. issuer and the lead underwriter in the United States, to prepare documentation and to provide other services in connection with the underwriting. In some cases, the U.S. offices or affiliates that assisted the foreign bank with the underwriting receive a substantial portion of the revenue generated by the foreign bank's participation in the underwriting. In other cases, the U.S. offices receive "credit" from the head office of the foreign bank for their assistance in generating profits arising from the underwriting.

(3) By assuming the underwriting risk and booking the underwriting fees in their foreign offices or affiliates, the foreign banks are able to take advantage of an exemption under U.S. securities laws; a foreign underwriter is not required to register in the United States if the underwriter either does not distribute any of the securities in the United States or distributes them only through a registered broker-dealer.

(c) Permissible scope of underwriting activities. (1) A foreign bank that is subject to the BHC Act may engage in underwriting activities in the United States only if it has been authorized under section 4 of the Act. The foreign banks in question have argued that they are not engaged in underwriting activity in the United States because the underwriting activity takes place only outside the United States where the transaction is booked. The foreign banks refer to Regulation K, which defines "engaged in business" or "engaged in activities" to mean conducting an activity through an office or subsidiary in the United States. Because the underwriting is not booked in a U.S. office or subsidiary, the banks assert that the activity cannot be considered conducted in the United States.

(2) The Board believes that the position taken by the foreign banks is not supported by the Board's regulations or policies. Section 225.124 of the Board's Regulation Y (12 CFR 225.124(d)) states that a foreign bank will not be considered to be engaged in the activity of underwriting in the United States if the shares to be underwritten are distributed outside the United States. In the transactions in question, all of the securities to be underwritten by the foreign banks are distributed in the United States.

(3) Regulation K (12 CFR part 211) was amended in 1985 to provide clarification that a foreign bank may not own or control voting shares of a foreign company that directly underwrites, sells or distributes securities in the United States (emphasis added). 12 CFR 211.23(f)(5)(ii). In proposing this latter provision, the Board clarified that no part of the prohibited underwriting process may take place in the United States and that the prohibition on the activity does not depend on the activity being conducted through an office or subsidiary in the United States. Moreover, in the transactions in question, there was significant participation by U.S. offices and affiliates of the foreign banks in the underwriting process. In some transactions, the foreign office at which the transactions were booked did not have any documentation on the particular transactions; all documentation was maintained in the United States office. In all cases, the U.S. offices or affiliates provided virtually all technical support for participation in the underwriting process and benefitted from profits generated by the activity.

(4) The fact that some technological and regulatory constraints on the delivery of cross-border services into the United States have been eliminated since the Regulation K definition of "engaged in business" was adopted in 1979 creates greater scope for banking organizations to deal with customers outside the U.S. bank regulatory framework. The definition in Regulation K, however, does not authorize foreign banking organizations to evade regulatory restrictions on securities activities in the United States by directly underwriting securities to be distributed in the United States or by using U.S. offices and affiliates to facilitate the prohibited activity. In the GLB Act, Congress established a framework within which both domestic and foreign banking organizations may underwrite and deal in securities in the United States. The GLB Act requires that banking organizations meet certain financial and managerial requirements in order to be able to engage in these activities in the United States. The Board believes the practices described above undermine this legislative framework and constitute an evasion of the requirements of the GLB Act and the Board's Regulation K. Foreign banking organizations that wish to conduct securities underwriting activity in the United States have long had the option of obtaining section 20 authority and now have the option of obtaining financial holding company status.

(d) Conclusion. The Board finds that the underwriting of securities to be distributed in the United States is an activity conducted in the United States, regardless of the location at which the underwriting risk is assumed and the underwriting fees are booked. Consequently, any banking organization that wishes to engage in such activity must either be a financial holding company under the GLB Act or have authority to engage in underwriting activity under section 4(c)(8) of the BHC Act (so-called "section 20 authority"). Revenue generated by underwriting bank-ineligible securities in such transactions should be attributed to the section 20 company for those foreign banks that operate under section 20 authority.

Dated: By order of the Board of Governors, February 7, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–3643 Filed 2–18–03; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–43–AD; Amendment 39–13051; AD 2003–04–03]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB 9, TB 10, TB 20, TB 21, and TB 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all SOCATA—Groupe AEROSPATIALE (Socata) Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. This AD requires you to repetitively inspect the aileron control gimbal joint for correct alignment and correct operation, and replace any misaligned or defective gimbal joint. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent failure of the aileron control gimbal joint. Such failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on April 7, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 7, 2003.

ADDRESSES: You may get the service information referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–43–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on all Socata Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. The DGAC reported an incident involving a Model TB 9 airplane. During flight, the pilot experienced loss of aileron control. Loss of aileron control resulted because the gimbal joint became disconnected from the aileron.

The gimbal joint became disconnected from the aileron because the safety pin broke. The cause of the safety pin breaking is being investigated by the manufacturer. The result of the investigation may result in a future design change.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in failure of the aileron control gimbal joint. Such failure could lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Socata Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 15, 2002 (67 FR 69154). The NPRM proposed to require you to repetitively inspect the aileron control gimbal joint for correct alignment and correct operation, and replace any misaligned or defective gimbal joint.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Is there a modification I can incorporate instead of repetitively inspecting the aileron control gimbal joint? The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, FAA will continue to work with Socata in collecting information and in performing fatigue analysis to determine whether a future design change may be necessary.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 346 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total Cost on U.S. operators
2 workhours × $60 per hour = $120	No parts required for inspection	$120	$120 × 346 = $41,520

The FAA has no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 per hour = $360	$469	$360 + $469 = $829

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–04–03 SOCATA—Groupe Aerospatiale: Amendment 39–13051; Docket No. 2002–CE–43–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the aileron control gimbal joint. Such failure could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the aileron control gimbal joint for correct alignment and correct operation.	Upon accumulating 300 hours time-in-service (TIS) on the aileron control gimbal joint or within the next 30 hours TIS after April 7, 2003 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS.	In accordance with the Accomplishment Instructions in Socata TB Aircraft Mandatory Service Bulletin SB 10–130 27, dated April 2002.
(2) Replace misaligned or defective gimbal joints found during any inspection required in paragraph (d)(1) of this AD.	Prior to further flight after the inspection where a misaligned or defective gimbal joint was found. The inspection requirements of paragraph (d)(1) start over after each replacement.	In accordance with the Accomplishment Instructions in Socata TB Aircraft Mandatory Service Bulletin SB 10–130 27, dated April 2002, and the applicable maintenance manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Socata TB Aircraft Mandatory Service Bulletin SB 10–130 27, dated April 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French AD 2002–225(A), dated May 15, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on April 7, 2003.

Issued in Kansas City, Missouri, on February 6, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3614 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–14–AD; Amendment 39–13055; AD 2003–04–07]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This AD requires you to repetitively inspect the horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage). If damage is found, this AD also requires you to repair or replace the damaged parts. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct damage on the horizontal and vertical stabilizer attachment fittings and associated hardware, which could result in failure of the attachment fittings. Such failure could lead to flutter and subsequent structural failure of the empennage.

DATES: This AD becomes effective on April 7, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 7, 2003.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. The CAA reports that, during regular scheduled maintenance, an operator discovered fretting corrosion on the horizontal and vertical stabilizer attachment bolts on an in-service Jetstream Series 4100 airplane. The Jetstream Series 4100 airplane has a similar structural layout in the affected area to those affected by this action. The corrosion is occurring on the eye bolt shanks and the horizontal and vertical stabilizer forward and rear attachment fitting lugs on the contact faces. There have been 10 reported cases of corrosion found on Jetstream Series 3101 and Jetstream Model 3201 airplanes.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could result in failure of the horizontal and vertical stabilizer attachment fittings. Such failure could lead to flutter and subsequent structural failure of the empennage.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on December 10, 2002 (67 FR 75819). The supplemental NPRM proposed to require you to repetitively inspect the forward and rear horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage). The supplemental NPRM also proposed to require you to, if damage is found during any inspection, repair or replace the damaged parts.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the supplemental proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the supplemental NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the supplemental NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 250 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
120 workhours × $60 = $7,200.	No parts required	$7,200	$7,200 × 250 = $1,800,000

The FAA has no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs each owner/operator will incur over the life of each of the affected airplanes based on the results of the inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage will vary on each airplane.

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is "upon accumulating 8 calendar years on the airframe or within the next 12 months after the effective date of this AD, whichever occurs later."

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours time-in-service (TIS). This will allow the owners/operators to work the inspection into regularly scheduled maintenance.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–04–07 British Aerospace: Amendment 39–13055; Docket No. 2002–CE–14–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion and/or wear (damage) on the horizontal and vertical stabilizer attachment fittings and associated hardware, which could result in failure of the attachment fittings. Such failure could lead to flutter and subsequent structural failure of the empennage.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually inspect the forward and rear horizontal stabilizer attachment bolts and associated hardware for corrosion (i.e., pitting or a change of color in the surface) and wear (damage).	Initially inspect upon accumulating 8 years on the airframe or within the next 12 calendar months after April 7, 2003 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years.	In accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002.
(2) If corrosion or wear is found during any inspection required in paragraph (d)(1) of this AD, replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin.	Prior to further flight after the inspection in which the damage was found.	In accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002.
(3) Visually inspect the forward and rear horizontal and vertical stabilizer attachment fittings and the forward eye bolts of the vertical stabilizer for corrosion or damage at the lug faces.	Initially inspect upon accumulating 8 years on the airframe or within the next 12 calendar months after April 7, 2003 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years.	In accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002.
(4) If corrosion or damage is found during any inspection required in paragraph (d)(3) of this AD: (i) Replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin; or (ii) If damage exceeds the limits defined in the manufacturer's service bulletin, obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (iii) Incorporate this repair scheme	Prior to further flight after the inspection in which the damage was found.	Repair in accordance with the repair scheme obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA92RW, Scotland. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.

Note 1: Although not required by this AD, FAA highly recommends you accomplish *Highly Recommended Corrosion Prevention Tasks* in British Aerospace Jetstream Service Bulletin 55–JA020544, Original Issue: October 24, 2002, upon accomplishing the initial inspection of this AD and during repetitive inspections if damage is found.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(i) *When does this amendment become effective?* This amendment becomes effective on April 7, 2003.

Issued in Kansas City, Missouri, on February 7, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3613 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–04–AD; Amendment 39–13050; AD 2003–04–02]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft Model CAP 10B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–12–10 and AD 99–21–23, which currently apply to APEX Aircraft (APEX) Model CAP 10B airplanes. AD 98–12–10 requires installing an inspection opening in the wing, repetitively inspecting the upper and lower wing spars for structural cracking, and, if any cracks are found, repairing the cracks in accordance with a repair method. AD 99–21–23 requires restricting the entry speed for performing flick maneuvers to 97 knots, inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual, and fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view) that indicates this limitation. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. This AD retains the wing modification and repair requirements from AD 98–12–10. This AD also incorporates new repetitive inspection procedures, further reduces the flick maneuver speed specified in AD 99–21–23, and temporarily reduces the load factor limits prior to the initial inspection. The actions specified by this AD are intended to provide the flight information necessary to the pilot so that excessive speed is not used during aerobatic maneuvers and to detect and correct structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on April 4, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 4, 2003.

The Director of the Federal Register previously approved the incorporation by reference of Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992, as listed in the regulations as of July 23, 1993 (58 FR 31342, June 2, 1993).

ADDRESSES: You may get the service information referenced in this AD from APEX Aircraft, Direction Technique, Route de Troyes, F21121 Darois, France; telephone: +33 (380) 356 510; facsimile: +33 (380) 356 515. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE–04-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified FAA that it was receiving reports of cracks on the upper and lower surfaces of the wing spar. The DGAC reported that the cracking was occurring as a result of exceeding the load limit determined for the airplane, executing snap roll maneuvers outside the envelope for which the airplane is certificated, and experiencing repetitive hard landings. This 1 condition caused us to issue AD 98–12–10, Amendment 39–10566 (63 FR 31104, June 8, 1988). AD 98–12–10 requires the following on Model CAP 10B airplanes, all serial numbers through 263:

—Installing an inspection opening in the wing;

—Repetitively inspecting the upper and lower wing spars for structural cracking; and

—If any cracks are found, repairing the cracks.

Accomplishment of these actions is required in accordance with Avions Mudry Service Bulletin No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996, and Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992.

The DGAC also reported that there was no airspeed limitation for performing flick maneuvers during aerobatic flight. The speeds listed in sections 4 and 7 of the CAP 10B flight manual are only recommendations instead of required speeds.

Without required entry speeds for flick maneuvers when performing aerobatic flight, the pilot could use excessive speed and cause the wing to separate from the airplane. This situation caused us to issue AD 99–21–23, Amendment 39–11368 (64 FR 55416, October 13, 1999). AD 99–21–23 requires the following on Model CAP 10B airplanes, all serial numbers:

—Restricting the entry speed for performing flick maneuvers to 97 knots;

—Inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual; and

—Fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view).

What has happened since AD 98–12–10 and AD 99–21–23 to initiate this action? The DGAC notified the FAA that an unsafe condition may still exist on all APEX Model CAP 10B airplanes, which created the need to change AD 98–12–10 and AD 99–21–23. The DGAC reports that additional fractures in the wing spar are being found that were not detected using the inspection procedures specified in AD 98–12–10.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all APEX Model CAP 10B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 2002 (67 FR 44404). The NPRM proposed to supersede AD 98–12–10 and AD 99–21–23 with a new AD that would require the following:

—Installing an inspecting opening in each wing;

—Temporarily reducing the load factor limits until completion of the initial inspection of the upper and lower surfaces of the wing spar and landing gear attachment blocks and are found free of cracks;

—Repetitively inspecting the upper and lower surfaces of the wing spar and the landing gear attachment blocks for cracks;

—Reducing the flick maneuver speed;

—Inserting a copy of the AD into the Limitation Section of the CAP 10B flight manual; and

—Fabricating and installing a placard that indicates the flick maneuver speed in the cockpit in the pilot's clear view. The placard will incorporate the following language:

"The Never-Exceed Airspeed for Positive or Negative Flick Maneuvers Is 160 KM/H (86 KTS)"

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could result in structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change the Initial Compliance Time for Inspecting the Upper Wing Spar Cap, the Main Wing Spar Undersurface, and the Landing Gear Attachment Blocks

What is the commenter's concern? The commenter states that the initial inspection compliance time of within the next 50 hours TIS after the effective date of this AD should be increased to 55 hours TIS to coincide with French AD Number 2001–616(A) R1, dated May 29, 2002.

What is FAA's response to the concern? We concur with the commenter and will change the final rule AD action to incorporate this change.

Comment Issue No. 2: Change the Repetitive Inspection Compliance Time for the Landing Gear Attachment Blocks

What is the commenter's concern? The commenters are concerned that repetitively removing bolts to inspect the landing gear attachment blocks for cracks accelerates wear by elongating the bolt holes, which promotes block cracking. Requiring repetitive inspections at intervals not to exceed every 50 hours time-in-service (TIS) will ultimately do more harm than good. The commenters suggest that repetitive inspections be performed at each annual inspection.

What is FAA's response to the concern? We partially concur. We agree that the intervals for repetitive inspections of the landing gear attachment blocks should be increased. However, we cannot enforce a compliance time of "at each annual inspection." The unsafe condition is directly related to use and not calendar time. Therefore, we are increasing the intervals for repetitive inspections of the landing gear attachment blocks to every 1,000 hours TIS.

We will change the final rule AD action to incorporate this change.

Comment Issue No. 3: Change the Repetitive Inspection Compliance Time for the Upper Wing Spar Cap and the Main Wing Spar Undersurface

What is the commenter's concern? The commenter states that the repetitive inspection compliance time of every 50 hours TIS after the initial inspection should be increased to 55 hours TIS to coincide with intermediate inspection requirements in French AD Number 2001–616(A) R1, dated May 29, 2002. This is for the upper wing spar cap and the main wing spar undersurface.

What is FAA's response to the concern? We concur with the commenter and will change the final rule AD action to incorporate this change.

FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for changing the compliance time for the repetitive inspection intervals and minor editorial questions. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 36 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the installation of the inspection opening:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
18 workhours × $60 per hour = $1,080	No parts required to make the inspection opening.	$1,080	$1,080 × 36 = $38,880

We estimate the following costs to accomplish the inspection(s):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
15 workhours × $60 per hour = $300	No parts required to perform the inspection	$300	$300 × 36 = $10,800

The FAA has no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs each owner/operator will incur over the life of each of the affected airplanes based on the results of the inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Accomplishing the flight manual and placard requirements of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this action is the time it will take each owner/operator of the affected airplanes to insert the information into the flight manual and fabricate and install the placard.

What is the difference between the cost impact of this AD and the cost impacts of AD 98–12–10 and AD 99–21–23? The only difference between this AD and AD 98–12–10 and AD 99–21–23 is the change of inspection procedures. The FAA has determined that the costs of these changes are minimal and does not increase the cost impact over that already required by the previous ADs.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–12–10, Amendment 39–10566 (63 FR 31104, June 8, 1988), and AD 99–21–23, Amendment 39–11368 (64 FR 55416, October 13, 1999), and by adding a new AD to read as follows:

2003–04–02 Apex Aircraft (Avions Mudry et Cie previously held type certificate A36EU): Amendment 39–13050; Docket No. 2002–CE–04–AD; Supersedes AD 98–12–10, Amendment 39–10566, and AD 99–21–23, Amendment 39–11368.

(a) *What airplanes are affected by this AD?* This AD affects Model CAP 10B airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to provide the flight information necessary to the pilot so that excessive speed is not used during aerobatic maneuvers and to detect and correct structural cracks in the wing spar, which could result in the wing separating from the airplane. Such failure could lead to loss of control of the airplane.

(d) What actions must I accomplish to address this problem? To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For CAP 10 B airplanes, all serial numbers through 263, install a permanent inspection opening in the No. 1 wing rib. Inspection openings are incorporated during production for airplanes having a serial number of 264 or higher.	Within the next 100 hours time-in-service (TIS) after July 23, 1993 (the effective date of AD 93–10–11, which was superseded by AD 98–12–10), unless already accomplished.	In accordance with Avions Mudry Service Bulletin CAP10B No. 16 ATA (57–004), dated April 27, 1992.

Actions	Compliance	Procedures
(2) For all airplanes, accomplish the following: (i) Restrict the load factors limitation to +5 & −3 G's. (ii) Restrict the entry speed for performing flick maneuvers to 86 knots through the incorporation of the following information into the CAP 10B flight manual: "The never-exceed airspeed for positive or negative flick maneuvers is 160 km/h (86 knots)." (iii) Fabricate a placard that incorporates the following words (using at least ⅛-inch letters) and install this placard on the instrument panel within the pilot's clear view: "THE NEVER EXCEED AIRSPEED FOR POSITIVE OR NEGATIVE FLICK MANEUVERS IS 160 KM/H (86 KNOTS)".	Within the next 25 hours TIS after April 4, 2003 (the effective date of this AD).	Accomplish the limitations of paragraphs (d)(2)(i) and (d)(2)(ii) of this AD by inserting a copy of the AD into the Limitations Section of the CAP 10B flight manual. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish this flight manual insertion and the placard requirements of paragraph (d)(2)(iii) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) Inspect the upper wing spar cap, the main wing spar undersurface, and the landing gear attachment blocks for cracks.	Initially inspect all areas within the next 55 hours TIS after April 4, 2003 (the effective date of this AD). Repetitively inspect the upper wing spar cap and the main wing spar undersurface thereafter at intervals not-to-exceed 55 hours TIS. Repetitively inspect the landing gear attachment blocks thereafter at intervals not-to-exceed 1,000 hours TIS.	In accordance with APEX Aircraft CAP10B—Upper spar cap inspection Document No. 1000913GB, Revision No. 00, dated February 4, 2002; APEX Aircraft CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated February 4, 2002; and APEX Aircraft CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated February 4, 2002.
(4) If cracks are found during any inspection required in paragraph (d)(3) of this AD, accomplish the following: (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; (ii) Incorporate this repair scheme; and (iii) The repair scheme will indicate whether or not you may raise the load factor limits.	Obtain and incorporate the repair scheme prior to further flight after the inspection in which the cracks are found. Continue to inspect as specified in paragraph (d)(3) of this AD.	In accordance with the repair scheme obtained from APEX Aircraft, Direction Technique, Route de Troyes, F21121, Darois, France. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(5) If no cracks are found during the initial inspection required in paragraph (d)(3) of this AD, you may raise load factor limits back to +6 & −4.5 G's.	Prior to further flight after the initial inspection required in paragraph (d)(3) of this AD in which no cracks were found.	Not applicable.

Note 1: The service information specified in paragraph (d)(3) of this AD is available on CD–ROM from the manufacturer. You may contact them at the address and phone number in paragraph (h) of this AD.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

(2) Alternative methods of compliance approved in accordance with AD 98–12–10 and AD 99–21–23, which are superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done in accordance with Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992; APEX Aircraft CAP10B—Upper spar cap inspection Document No. 1000913GB, Revision No. 00, dated February 4, 2002; APEX Aircraft CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated February 4, 2002; and APEX Aircraft CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated February 4, 2002.

(i) The Director of the Federal Register approved this incorporation by reference of APEX Aircraft CAP10B—Upper spar cap inspection Document No: 1000913GB, Revision No. 00, dated February 4, 2002; APEX Aircraft CAP10B—Landing gear attachment blocks inspection Document No. 1000914GB, Revision No. 00, dated February 4, 2002; and APEX Aircraft CAP10B—Main spar undersurface inspection Document No. 1000915GB, Revision No. 00, dated February 4, 2002, under 5 U.S.C. 552(a) and 1 CFR part 51.

(ii) The Director of the Federal Register previously approved the incorporation by reference of Avions Mudry Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992, as listed in the regulations as of July 23, 1993 (58 FR 31342, June 2, 1993).

(2) You may get copies from APEX AIRCRAFT, Direction Technique, Route de Troyes, F21121 Darois, France; telephone: +33 (380) 356 510; facsimile: +33 (380) 356 515. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–12–10, Amendment 39–10566 and AD 99–21–23, Amendment 39–11368.

Note 3: The subject of this AD is addressed in French AD Number 2001–616(A) R1, dated May 29, 2002.

(j) *When does this amendment become effective ?* This amendment becomes effective on April 4, 2003.

Issued in Kansas City, Missouri, on February 4, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3450 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–47–AD; Amendment 39–13056; AD 2003–04–08]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Piaggio Aero Industries S.p.A. (Piaggio) Model P–180 airplanes. This AD requires you to install a placard on the inside of the lavatory door that prohibits occupying the lavatory seat during takeoff and landing. This AD also requires you to incorporate a temporary revision into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent passengers from occupying the lavatory seat during takeoff and landing. The lavatory/cabin partition could fail and lead to passenger injury in an emergency situation.

DATES: This AD becomes effective on April 11, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 11, 2003.

ADDRESSES: You may get the service information referenced in this AD from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA of a manufacturing/installation defect on the lavatory/cabin partitions on certain Piaggio Model P–180 airplanes. The lavatory/cabin partitions were installed improperly and are not of sufficient strength. This condition was found during a quality control inspection.

What is the potential impact if FAA took no action? Occupying the lavatory seat during takeoff or landing could result in failure of the lavatory/cabin partition. Such failure could result in passenger injury in an emergency situation.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piaggio Model P–180 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 21, 2002 (67 FR 70187). The NPRM proposed to require you to install a placard on the inside of the lavatory door that prohibits occupying the lavatory seat during takeoff and landing; and incorporate a temporary revision into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM).

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 12 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the placard installation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	$20	$80	12 × $80 = $960

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is "within the next 30 days after the effective date of this AD, unless already accomplished."

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance of this AD is presented in calendar time instead of hours TIS because the lavatory/cabin partitions are unsafe as a result of an improper installation. The unsafe condition has the same chance of occurring on an airplane with 50 hours TIS as it does for an airplane with 1,000 hours TIS. Therefore, we believe that a compliance time of 30 days will:

- Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and
- Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–04–08 Piaggio Aero Industries S.p.A.: Amendment 39–13056; Docket No. 2002–CE–47–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, serial numbers 1002, 1004, 1006 through 1037, 1039, 1040, 1042, 1043, and 1045, that are:

(1) Equipped with a toilet seat; and

(2) Are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent passengers from occupying the lavatory seat during takeoff and landing. The lavatory/cabin partition could fail and lead to passenger injury in an emergency situation.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Fabricate a placard that incorporates the following words (using at least ¼-inch black letters on a white background) and install this placard on the inside of the lavatory door in front of the lavatory seat: "LAVATORY SEAT CANNOT BE OCCUPIED DURING TAKEOFF AND LANDING".	Within the next 30 days after April 11, 2003 (the effective date of this AD), unless already accomplished.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may fabricate and install the placard. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Incorporate into the Limitations Section of the pilot operating handbook/airplane flight manual (POH/AFM), page 4 of Piaggio Alert Service Bulletin No. ASB–80–0164, Original Issue: September 10, 2001.	Within the next 30 days after April 11, 2003 (the effective date of this AD), unless already accomplished.	The owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the POH/AFM manual insertion of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) As an alternative method of compliance to this AD, you may modify the lavatory/cabin partition.	At any time as terminating action for the placard and POH/AFM requirements of this AD.	In accordance with Piaggio Service Bulletin (Recommended) No. SB–80–0165, Original Issue: September 10, 2001.

Note 1: Information about fabricating and installing the placard and the POH/AFM manual insertion is referenced in Piaggio Alert Service Bulletin No. ASB–80–0164, Original Issued: September 10, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Manager, Standards Office.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* The POH/AM requirements of this AD must be done in

accordance with Piaggio Alert Service Bulletin No. ASB–80–0164, Original Issue: September 10, 2001. The procedures for accomplishing the optional modification of this AD are contained in Piaggio Service Bulletin (Recommended) No. SB–80–0165, Original Issue: September 10, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Italian AD Number 2001–513, dated November 30, 2001.

(i) *When does this amendment become effective ?* This amendment becomes effective on April 11, 2003.

Issued in Kansas City, Missouri, on February 10, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3870 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–45–AD; Amendment 39–13053; AD 2003–04–05]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Robinson Helicopter Company (RHC) Model R44 helicopters that requires inspecting the tail rotor pitch control assembly for roughness or binding of the pitch control bearings (bearings) by hand-rotating the pitch control bearing housing (housing). If the housing does not rotate freely, the AD requires replacing the unairworthy pitch control assembly with an airworthy unit. This amendment is prompted by reports of failure of the tail rotor pitch control assembly due to improperly lubricated bearings on the RHC Model R22 helicopters. Although there have been no reported failures on the RHC Model R44 helicopters, the design of the tail rotor pitch control assembly makes it susceptible to the same failures as have occurred on the Model R22 helicopters. The actions specified by this AD are intended to detect corrosion of the bearings and to prevent bearing failure and subsequent loss of directional control of the helicopter.

DATES: Effective March 26, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 26, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified helicopters was published in the **Federal Register** on September 10, 2002 (67 FR 57351). That action proposed inspecting the pitch control assembly for roughness or binding of the bearings by hand-rotating the housing and if the housing does not rotate freely, replacing each unairworthy pitch control assembly with an airworthy unit.

The FAA has reviewed RHC Service Bulletin SB–43A, Revision A, dated June 10, 2002 (SB), which describes procedures for inspecting the pitch control assembly for roughness or binding of the bearings by hand-rotating the housing. If the housing does not rotate freely, the SB specifies replacing each unairworthy pitch control assembly, part number (P/N) A031–1, with an airworthy unit in accordance with the maintenance manual.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, the manufacturer, requests a change to the summary information to indicate that bearing failures have been reported only on RHC Model R22 helicopters, and there are no reports of failed bearings on Model R44 helicopters. The FAA agrees and has changed the preamble information to indicate that the bearing failures have occurred on the RHC Model R22 helicopters only.

The same commenter requests a change to the summary and the discussion sections to revise the failure sequence to indicate that bearing failure could result in loss of tail rotor thrust requiring a power-off landing. The commenter states that in all three of the bearing failures, the failed bearing caused the pitch control linkage to fail and the tail rotor to go to flat pitch but none of the failures resulted in an accident. The commenter also states that there was no breakup of the tail rotor assembly, no tail rotor contact of the tailboom, and no loss of control resulting in an accident. The FAA agrees that the failed bearing has not resulted in breakup of the tail rotor assembly and contact with the tailboom, and the likelihood of such a breakup and contact with the tailboom may be remote. Therefore, we have removed the reference to the breakup of the tail rotor assembly and contact with the tailboom from the failure sequence. We do not agree that the failure sequence should state that bearing failure could result in loss of tail rotor thrust requiring a power-off landing. The loss of directional control associated with this type of failure could result in loss of control of the helicopter, and a successful power-off landing may not be possible. The term "loss of control of the helicopter", however, may be understood to mean an almost certain catastrophic event, such as loss of cyclic or pitch control. That is not our intent when we use the failure sequence in our AD's. That sequence states what could happen not necessarily what will happen. Our intent is to convey the sequence of events that we intend to prevent by issuing the AD to correct the unsafe condition. Therefore, we have changed the failure sequence to state that loss of "directional" control can result.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect 440 helicopters of U.S. registry, that it will take approximately 2.3 work hours per helicopter to inspect and replace each pitch control assembly, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1145 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $564,520, assuming the pitch control assembly is replaced on the entire fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–05 Robinson Helicopter Company: Amendment 39–13053. Docket No. 2001–SW–45–AD.

Applicability: Model R44 helicopters, up to and including serial number 1208, except serial numbers 1143, 1165, 1183, 1189, 1192, 1196, 1197, 1198, 1200, 1203, and 1204, with pitch control assembly, part number (P/N) C031–1, Revision G or prior, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect corrosion of a tail rotor pitch control bearing (bearing) and to prevent bearing failure and subsequent loss of directional control of the helicopter, accomplish the following:

(a) Within 20 hours time-in-service (TIS) and thereafter at intervals not to exceed 300 hours TIS or 12 months, whichever occurs first, inspect the pitch control assembly for roughness or binding of the pitch control bearings by hand rotating the pitch control bearing housing (housing) in accordance with Robinson Helicopter Company Service Bulletin SB–43A, Revision A, dated June 10, 2002. If the housing does not rotate freely, before further flight, replace the unairworthy pitch control assembly with an airworthy unit.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspection of the pitch control assembly shall be done in accordance with Robinson Helicopter Company Service Bulletin SB–43A, Revision A, dated June 10, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 26, 2003.

Issued in Fort Worth, Texas, on February 6, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–3773 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–44–AD; Amendment 39–13052; AD 2003–04–04]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Robinson Helicopter Company (RHC) Model R22 helicopters that requires inspecting the tail rotor pitch control assembly for roughness or binding of the pitch control bearings (bearings) by hand-rotating the pitch control bearing housing (housing). If the housing does not rotate freely, the AD requires replacing the unairworthy pitch control assembly with an airworthy unit. This amendment is prompted by reports of failure of the tail rotor pitch control assembly due to improperly lubricated bearings on the RHC Model R22 helicopters. The actions specified by this AD are intended to detect corrosion of the bearings and to prevent bearing failure and subsequent loss of directional control of the helicopter.

DATES: Effective March 26, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 26, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification

Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified helicopters was published in the **Federal Register** on September 10, 2002 (67 FR 57349). That action proposed inspecting the pitch control assembly to determine roughness or binding of the bearings by hand-rotating the housing. If the housing does not rotate freely, it proposed replacing each unairworthy pitch control assembly with an airworthy unit.

The FAA has reviewed RHC Service Bulletin SB–90A, Revision A, dated June 10, 2002 (SB), which describes procedures for inspecting the pitch control assembly to determine roughness or binding of the bearings by hand-rotating the housing. If the housing does not rotate freely, the SB specifies replacing each unairworthy pitch control assembly, part number (P/N) A031–1, with an airworthy unit in accordance with the maintenance manual.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, the manufacturer, requests a change to the summary information to indicate that bearing failures have been reported only on RHC Model R22 helicopters, and they have received no reports of failed bearings on Model R44 helicopters. The FAA agrees and has changed the summary to indicate that the bearing failures have occurred on the RHC Model R22 helicopters only.

The same commenter requests a change to the summary and the discussion sections to revise the failure sequence to indicate that bearing failure could result in loss of tail rotor thrust requiring a power-off landing. The commenter states that in all three of the bearing failures, the failed bearing caused the pitch control linkage to fail and the tail rotor to go to flat pitch, but none of the failures resulted in an accident. The commenter also states that there was no breakup of the tail rotor assembly, no tail rotor contact of the tailboom, and no loss of control resulting in an accident. The FAA agrees that the failed bearing has not resulted in breakup of the tail rotor assembly and contact with the tailboom, and the likelihood of such a breakup and contact with the tailboom may be remote. Therefore, we have removed the reference to the breakup of the tail rotor assembly and contact with the tailboom from the failure sequence. We do not agree that the failure sequence should state that bearing failure could result in loss of tail rotor thrust requiring a power-off landing. The loss of directional control associated with this type of failure could result in loss of control of the helicopter, and a successful power-off landing may not be possible. The term "loss of control of the helicopter", however, may be understood to mean an almost certain catastrophic event, such as loss of cyclic or pitch control. That is not our intent when we use the failure sequence in our AD's. That sequence states what could happen not necessarily what will happen. Our intent is to convey the sequence of events that we intend to prevent by issuing the AD to correct the unsafe condition. Therefore, we have changed the failure sequence to state that loss of "directional" control can result.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect 1300 helicopters of U.S. registry, that it will take approximately 2.3 work hours per helicopter to inspect and replace each pitch control assembly, and that the average labor rate is $60 per work hour. Required parts will cost approximately $800 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,219,400, assuming the pitch control assembly is replaced on the entire fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–04 Robinson Helicopter Company: Amendment 39–13052. Docket No. 2001–SW–44–AD.

Applicability: Model R22 helicopters, up to and including serial number 3328, except serial numbers 3167, 3326, and 3327, with pitch control assembly, part number (P/N) A031–1, Revision J or prior, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect corrosion of a tail rotor pitch control bearing (bearing) and to prevent bearing failure and loss of directional control of the helicopter, accomplish the following:

(a) Within 20 hours time-in-service (TIS) and thereafter at intervals not to exceed 300 hours TIS or 12 months, whichever occurs first, inspect the pitch control assembly for roughness or binding of the pitch control bearings by hand-rotating the pitch control bearing housing (housing) in accordance with Robinson Helicopter Company Service Bulletin SB–90A, Revision A, dated June 10, 2002. If the housing does not rotate freely, before further flight, replace the unairworthy pitch control assembly with an airworthy unit.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspection of the pitch control assembly shall be done in accordance with Robinson Helicopter Company Service Bulletin SB–90A, Revision A, dated June 10, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on March 26, 2003.

Issued in Fort Worth, Texas, on February 6, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–3772 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14075; Airspace Docket No. 02–AAL–7]

Establishment of Class E Airspace; Wasilla, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA published in the **Federal Register** of January 2, 2003 (68 FR 44), Docket Number FAA 2002–14075; Airspace Docket Number 02–AAL–7, a final rule for the establishment of Class E Airspace for the Wasilla Airport, AK. The coordinates of the Airport Reference Point (ARP) for the Wasilla Airport were wrong. This action corrects the coordinates.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.ctr.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION: Federal Register Document 02–33129, Docket Number FAA 2002–14075; Airspace Docket Number 02–AAL–7, published on January 2, 2003 (68 FR 44) established the Class E airspace area at Wasilla, AK. The coordinates for the ARP read "Wasilla Airport, AK (lat. 61° 34′ 08″ N, long. 149° 32′ 25″ W)." This should read "Wasilla Airport, AK (lat. 61° 34′ 17″ N, long. 149° 32′ 26″ W)." This action corrects the coordinates that were wrong.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Wasilla Airport, AK as published in the **Federal Register** (68 FR 44), and in corporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

In the rule FR Document 02–33129, published on January 2, 2003 make the following correction to page 45.

* * * * *

AAL AK E5 Wasilla, AK [Corrected]

Wasilla Airport, AK

(Lat. 61° 34′ 17″ N., long. 149° 32′ 26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Wasilla Airport excluding Big Lake Class E Airspace.

* * * * *

Issued in Anchorage, AK, on February 5, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–3962 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14428; Airspace Docket No. 03–ACE–8]

Modification of Class E Airspace; Ankeny, IA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Ankeny, IA revealed a discrepancy in the Ankeny Regional Airport, IA airport reference point used in the legal description for the Ankeny, IA Class E airspace. This action corrects the discrepancy by modifying the Ankeny, IA Class E airspace and by incorporating the current Ankeny Regional Airport, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14428/ Airspace Docket No. 03–ACE–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Ankeny, IA. It incorporates the current airport reference point for Ankeny Regional Airport, IA and brings the legal description of this airspace

area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environment, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14428/Airspace Docket No. 03–ACE–8". The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Ankeny, IA

Ankeny Regional Airport, IA
(Lat. 41°41′28″N., long. 93°33′59″W.)
COSED Waypoint
(Lat. 41°46′40″N., long. 93°33′59″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Ankeny Regional Airport, and within 2 miles each side of the 045° bearing from the airport extending from the 7-mile radius to 8.9 miles northeast of the airport, and within 2 miles each side of the 015° bearing from COSED Waypoint to 5.8 miles northeast of the waypoint, excluding that portion within the Des Moines, IA, Class C and E airspace areas.

* * * * *

Issued in Kansas City, MO on February 5, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3967 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14426; Airspace Docket No. 03–ACE–6]

Modification of Class E Airspace; Lebanon, MO

AGENCY: Federal Aviation Administration (FAA)DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Lebanon, MO has revealed discrepancies in the Lebanon, Floyd W. Jones Airport, MO airport reference point used in the legal description for the Class E airspace. This action corrects those discrepancies by incorporating the current Lebanon, Floyd W. Jones Airport, MO airport reference point in the Class E legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14426/Airspace Docket No. 03–ACE–6, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies Class Class E airspace at Lebanon, MO. It also brings the legal descriptions of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14426/Airspace Docket No. 03–ACE–6." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Lebanon, MO

Lebanon, Floyd W. Jones Airport, MO
(Lat. 37°38′54″ N., long. 92°39′09″ W.)
Lebanon NDB, MO
(Lat. 37°34′17″ N., long. 92°39′30″ W.)

That airspace extending upward form 700 feet above the surface within a 6.5-mile radius of Floyd W. Jones Airport and within 2.6 miles each side of the 184° bearing from the Lebanon NDB extending from the 6.5-mile radius to 9.5 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on February 5, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3968 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14427; Airspace Docket No. 03–ACE–7]

Modification of Class E Airspace; Ames, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Ames, IA has revealed a discrepancy in the Ames Municipal Airport, IA airport reference point used in the legal description for the Ames, IA Class E airspace. Additional discrepancies were identified in the name and location of the NDB serving Ames Municipal Airport. This action corrects these discrepancies by modifying the Ames IA Class E airspace and by incorporating the current Ames Municipal Airport, IA airport reference point and the correct name and location of the NDB in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14427/ Airspace Docket No. 03–ACE–7, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329+2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Ames, IA. It incorporates the current airport reference point for Ames Municipal Airport, IA, corrects the name and location of the NDB serving Ames Municipal Airport and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14427/Airspace Docket No. 03–ACE–7" The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40129; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended];

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Ames, IA

Ames Municipal Airport, IA
(Lat. 41°59′31″ N., long. 93°37′19″ W.)
Merle NDB
(Lat. 41°54′10″ N., long. 93°39′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Ames Municipal Airport, and within 2.1 miles each side of the 197° bearing from the Merle NDB extending from the 6.6-mile radius to 7.4 miles south of the airport, and within 2 miles each side of the 136° bearing from the airport extending from the 6.6-mile radius to 10 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on February 5, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3969 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13413; Airspace Docket No. 02–ACE–6]

Realignment of Federal Airways V–72 and V–289; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on January 16, 2003 (68 FR 2187). In that rule, the radials for Federal Airway 72 (V–72) and Federal Airway 289 (V–289) northeast of the Dogwood, MO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) were inadvertently published in magnetic values rather than the true radials. This action corrects that error.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On January 16, 2003, Airspace Docket No. 02–ACE–06 (68 FR 2187), was published amending the legal description of V–72 and V–289. The descriptions inadvertently provided magnetic values for the coordinates rather than the true radials. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal descriptions for V–72 and V–289, as published in the **Federal Register** on January 16, 2003, (68 FR 2187), and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 2188, correct the legal descriptions of V–72 and V–289, to read as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–72 [Revised]

From Razorback, AR, Dogwood, MO; INT Dogwood 058° and Maples, MO, 236° radials; Maples; Farmington, MO; Centralia, IL; Bible Grove, IL; Mattoon, IL; to Bloomington, IL. From Rosewood, OH; Mansfield, OH; INT Mansfield 098° and Akron, OH, 233° radials; Akron; Youngstown, OH; Tidioute, PA; Bradford, PA; INT Bradford 078° and Elmira, NY, 252° radials; Elmira; Binghampton, NY; Rockdale, NY; Albany, NY; Cambridge, NY; INT Cambridge 063° and Lebanon, NH, 214° radials; to Lebanon.

* * * * *

V–289 [Revised]

From Beaumont, TX; INT Beaumont 323° and Lufkin, TX, 161° radials; Lufkin; Gregg County, TX; Texarkana, AR; Fort Smith, AR; Harrison, AR; Dogwood, MO; INT Dogwood 058° and Maples, MO, 236° radials; INT Maples 236° and Vichy, MO, 204° radials; to Vichy.

* * * * *

Issued in Washington, DC, on February 5, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–3963 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–14369; Airspace Docket No. 03–AWA–1]

RIN 2120–AA66

Revision of Prohibited Area P–49 Crawford; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Prohibited Area 49 (P–49), over the President of the United States' residence at Crawford, TX. The FAA is modifying this airspace to enhance security in the immediate vicinity of the presidential residence, and to assist the United States Secret Service (USSS) in accomplishing its mission of providing security for the President of the United States.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On January 6, 2003, the USSS requested that the FAA modify the current description of P–49, to enhance the level of security provided for the President. Specifically, the USSS requested that we relocate the center of the prohibited area.

Under the provision of § 73.83 of Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73), no person may operate an aircraft within that area without permission from the using agency. This action responds to that request.

The Rule

This amendment to 14 CFR part 73 modifies P–49, Crawford, TX. Currently, the prohibited area extends from the surface to 5,000 feet above mean sea level (MSL) within a 3-nautical mile (NM) radius of latitude 31°34′57″ N., longitude 97°32′37″ W. This action relocates the center of the prohibited area approximately one-half nautical mile east-southeast of its current location to latitude 31°34′45″ N., longitude 97°32′00″ W. This action is a minor modification of the center coordinates for the airspace area. Flight within this area is prohibited unless permission is obtained from the using agency. Because of the immediate need to enhance the security of the President, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable.

Section 73.89 of 14 CFR part 73 was republished in FAA Order 7400.8K, dated September 26, 2002.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.89 [Amended]

2. § 73.89 is amended as follows:

* * * * *

P–49 Crawford, TX [Amended]

By removing "Boundaries. That airspace within a 3 NM radius of lat. 31°34′57″ N., long. 97°32′37″ W.," and substituting "Boundaries. That airspace within a 3 NM radius of lat. 31°34′45″ N., long. 97°32′00″ W.," in its place.

* * * * *

Issued in Washington, DC, on February 6, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–3964 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30354; Amdt. No. 440]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards branch (AMCAFS–420), Flight technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace Systems, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reason or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory change and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95 Airspace, Navigation (Air).

Issued in Washington, DC, on February 10, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

PART 95—[AMENDED]

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 440 Effective Date March/20/2003]

From	To	MEA
§ 95.6001 Victor Routes-U.S.		
§ 95.6072 VOR Federal Airway 72 is Amended to Read in Part		
Dogwood, MO VORTAC	Gobey, MO Fix	3,400
Gobey, MO Fix	Maples, MO VORTAC	3.400
§ 95.6142 VOR Federal Airway 142 is Amended to Read in Part		
Malad City, ID VOR/DME	Fort Bridger, WY VOR/DME	12,000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 440 Effective Date March/20/2003]

From	To	MEA
§ 95.6289 VOR Federal Airway 289 is Amended to Read in Part		
Dogwood, MO VORTAC	GOBEY, MO FIX	3,400
GOBEY, MO FIX	Pekle, MO FIX	3,400
Pekle, MO FIX	Vichy, MO VOR/DME	3,000

[FR Doc. 03–3970 Filed 2–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 03N–0008]

RIN 0910–AA01

Ophthalmic Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that established conditions under which over-the-counter (OTC) ophthalmic drug products are generally recognized as safe and effective and not misbranded. This amendment clarifies the active ingredient in OTC eyewash drug products and the labeling of the active ingredient and its purpose. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: *Effective Date*: This rule is effective March 21, 2003.

Compliance Dates: The compliance dates are either February 21, 2005, or the date of the first major labeling revision after the effective date of March 21, 2003.

Comment Dates: Submit written or electronic comments by April 21, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 4, 1988 (53 FR 7076), FDA issued a final monograph for OTC ophthalmic drug products (part 349 (21 CFR part 349)). Section 349.20 of that monograph states that eyewashes contain water, tonicity agents to establish isotonicity with tears, agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent.

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA issued a final rule establishing standardized format and content requirements for the labeling of OTC drug products (§ 201.66 (21 CFR 201.66)). Section 201.66(c)(2) requires the labeling to state the established name of each active ingredient and the quantity in each dosage unit stated in the directions for use. Section 201.66(c)(3) requires the labeling to state the purpose of each active ingredient, which is the general pharmacological category or the principal intended action of the drug. When an OTC drug monograph contains a statement of identity, the pharmacological action described in the statement of identity shall also be stated as the purpose of the active ingredient. Section 201.66(c)(8) requires a listing of the established name of each inactive ingredient.

II. Clarification

Manufacturers of OTC eyewash drug products have requested clarification on how to list the active and inactive ingredients for these products to comply with § 201.66(c)(2) and (c)(8). The agency has determined that the active ingredient of these eyewash drug products is water, and that tonicity, hydrogen-ion concentration (pH) and buffering, and preservative agents should be listed as inactive ingredients. Based on the statement of identity in § 349.78(a), the agency has also determined that the purpose of the water may be stated as either "eyewash" or "eye irrigation."

Section 502(e)(1)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(1)(A)(i)) (the act) requires the label of a drug to bear the established name of the drug to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula). The established name of the drug is defined as

* * *(A) the applicable official name designated pursuant to section 508 [of the act], or (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient * * *.
(21 U.S.C. 352(e)(3))

Section 508 of the act (21 U.S.C. 358) authorizes FDA to designate an official name for any drug if FDA determines "that such action is necessary or desirable in the interest of usefulness and simplicity" (21 U.S.C. 358(a)). FDA does not, however, routinely designate official names for drug products under section 508 of the act (21 CFR 299.4(e)). In the absence of designation by FDA of an official name, interested persons may rely on the current compendial name as the established name (§ 299.4(e)). FDA has not designated an official name for water. The current compendial name for water is "purified water," which should appear in product labeling.

III. The Technical Amendment

The agency is revising § 349.20 to state: "The active ingredient of the product is purified water. The product also contains suitable tonicity agents to establish isotonicity with tears, suitable agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent." The agency is also revising the statement of identity for eyewash drug products in § 349.78(a) to delete "eye lotion" and replace it with "eye irrigation." The agency does not consider the term "eye lotion" fully informative to consumers in stating the purpose of the water in the eyewash drug product. Manufacturers should state the purpose of the water as either "eyewash" or "eye irrigation."

Section 201.66(c)(2) requires the labeling to state the quantity of each active ingredient. For products marketed without discrete dosage

directions, such as eyewashes, the labeling should state the proportion of each active ingredient. For eyewashes, the quantity of water should be stated as the percentage of the total product, which is likely to be 98 to 99 percent. It is not necessary to state "in each bottle" or an amount per dosage unit.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of agency procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to public interest. This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether the regulation should be modified or revoked.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million. No further analysis is required under the Regulatory Flexibility Act because the agency has determined that this final rule will not have a significant effect on a substantial number of small entities.

As discussed previously, FDA is implementing this action to clarify the final monograph for OTC ophthalmic drug products. This will facilitate compliance with the labeling provisions in § 201.66. OTC ophthalmic drug products were supposed to be in compliance with this section by May 16, 2002. The agency believes that while some products may have already incorporated the labeling format described in this technical amendment, other products have not.

The agency believes 25 manufacturers produce approximately 40 eyewash products, which are represented by up to 60 stock keeping units (SKUs). To minimize any impacts on any of these manufacturers not currently in compliance, the agency is providing them with up to 24 months (or the date of the first major labeling revision of the product after the effective date of this final rule, whichever occurs first) to relabel their products. The agency believes the cost of a label change to a particular SKU will not exceed $3,000. Based on this information, the total one-time costs of relabeling would be $180,000 ($3,000 per SKU x 60 SKUs). The average cost per manufacturer would be $7,200 ($180,000 / 25 manufacturers). These estimates likely overstate the true burden of this rule, as the agency believes some manufacturers may already be in compliance and would incur no additional costs. Also, some manufacturers might be able to make these changes during the implementation period as part of routinely scheduled label revisions.

The Regulatory Flexibility Act requires the agency to analyze whether a rule may have a significant impact on a substantial number of small entities. According to the Small Business Administration, manufacturers of OTC ophthalmic drug products, as part of the North American Industry Classification System (NAICS) code 325412 (pharmaceutical preparations), are small entities if they have fewer than 750 employees. The agency has reviewed information on the manufacturers of OTC eyewash drug products and believes 22 of the 25 manufacturers are small entities. These small entities have average annual revenues of $10.7 million. The cost of the rule per affected small entity would be 0.067 percent ($7,200 / $10.7 million) of average annual revenues.

The two smallest of these small entities have reported annual revenues of approximately $1 million. The agency believes one of these manufacturers to have three SKUs. The total cost of the final rule for this particular small entity would be 0.9 percent (3 SKUs x $3,000 per SKU / $1 million). Thus, the impact on any of the small entities would be less than 1 percent of annual revenues. The agency therefore certifies that this final rule will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

The agency concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Opportunity for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or three hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 349

Labeling, Opthalmic goods and services, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 349 is amended as follows:

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 349 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 349.20 is revised to read as follows:

§ 349.20 Eyewashes.

The active ingredient of the product is purified water. The product also contains suitable tonicity agents to establish isotonicity with tears, suitable agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent.

3. Section 349.78 is amended by revising paragraph (a) to read as follows:

§ 349.78 Labeling of eyewash drug products.

(a) *Statement of identity.* The labeling of the product identifies the product with one or more of the following terms: "eyewash," "eye irrigation," or "eye irrigating solution."

* * * * *

Dated: January 31, 2003.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 03–3926 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 636

[FHWA Docket No. FHWA–2000–7799]

RIN 2125–AE79

Design-Build Contracting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule on design-build contracting published in the **Federal Register** on December 10, 2002 (67 FR 75902). The FHWA is correcting a typographical error concerning the relative weight of evaluation factors other than cost or price.

EFFECTIVE DATE: The final rule is effective January 9, 2003.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Gerald Yakowenko, Office of Program Administration (HIPA), (202) 366–1562. For legal information: Mr. Harold Aikens, Office of the Chief Counsel (HCC–30), (202) 366–1373, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document, the final rule, the NPRM, and all comments received by the U.S. Dockets Facility, Room PL–410, may be viewed through the Docket Management System (DMS) at *http://dms.dot.gov*. The DMS is available 24 hours each day, 365 days a year. Electronic submission and retrieval help and guidelines are available under the help section of this web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communication software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661.

Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web site at: *http://www.access.gpo.gov/nara*.

Background

Section 1307 of the Transportation Equity Act for the 21st Century (TEA–21, Public Law 105–178, 112 Stat. 107 (1998)) amends 23 U.S.C. 112 to allow the design-build contracting method after the FHWA promulgates a regulation prescribing the Secretary's approval criteria and procedures on qualified projects. The TEA–21 defined qualified projects as projects that comply with the criteria in this regulation and whose total costs are estimated to exceed: (1) $5 million for intelligent transportation system projects, and (2) $50 million for any other project. It also provides certain key requirements that the FHWA must address in the development of these regulations.

On December 10, 2002, at 67 FR 75902, the FHWA published a final rule on Design-Build Contracting that implemented the regulations for design-build contracting as mandated by section 1307 of TEA–21. The regulations list the criteria and procedures that will be used by the FHWA in approving the use of design-build contracting by the State transportation departments. The regulation does not require the use of design-build contracting, but allows State transportation departments to use it as an optional technique in addition to traditional contracting methods.

After publication of the final rule, we realized that § 636.211(b)(2)(i) and (b)(2)(iii) read word for word identical to say, "Significantly less important than cost or price." However, § 636.211(b)(2)(i) should read, "Significantly more important than cost or price." This was stated clearly in the preamble to the final rule in the section-by-section analysis; however, when the rule language was typed in, both sections were identical, and the word "less" appeared in both sections. The FHWA is correcting § 636.211(b)(2)(i) to replace the word "less" with the word "more."

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, or within the meaning of the U.S. Department of Transportation's regulatory policies and procedures because it is merely a correction of a minor mistake in the regulatory language. This correction will not adversely affect, in a material way, any section of the economy.

In addition, this correction to the rule will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that the final rule will not have a significant economic impact on a substantial number of small entities and hereby certifies that this correction to the final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This action will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*). This action makes a ministerial correction to the final rule that allows STDs to use a contracting method that has only been used in the Federal-aid highway program on an experimental basis to date.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a Federal assessment. Nothing in this document directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the minor correction will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. The final rule does not address issues that are related to tribal operations. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The final rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Action Concerning Regulation That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has reviewed this rule and determined that it does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and has determined that this rule will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this proposed action with the Unified Agenda.

List of Subjects in 23 CFR Part 636

Design-build, Grant programs-transportation, Highways and roads.

Issued on: February 13, 2003.

James A. Rowland,

Chief Counsel, Federal Highway Administration.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 636, as follows:

PART 636—DESIGN–BUILD CONTRACTING

1. The authority citation for 23 CFR part 636 continues to read as follows:

Authority: Sec. 1307 of Pub. L. 105–178, 112 Stat. 107: 23 U.S.C. 110, 109, 112, 113, 114, 115, 119, 128, and 315; 49 CFR 1.48(b).

§ 636.211 [Corrected]

2. Correct paragraph (b)(2)(i) of § 636.211 to remove the word "less" and replace it with the word "more".

[FR Doc. 03–3987 Filed 2–18–03; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 157 and 602

[TD 9042]

RIN 1545–BB24

Excise Tax Relating to Structured Settlement Factoring Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the manner and method of reporting and paying the nondeductible 40-percent excise tax imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction. The Victims of Terrorism Tax Relief Act of 2001 added this excise tax to the Internal Revenue Code of 1986. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective February 19, 2003.

Applicability Date: For dates of applicability, *see* § 157.5891–1T(e).

FOR FURTHER INFORMATION CONTACT: Shareen S. Pflanz at 202–622–8488 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1824. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document adds a new part 157, Excise Tax on Structured Settlement Factoring Transactions, to title 26 of the Code of Federal Regulations. The temporary regulations under part 157 provide guidance on the proper manner and method of reporting and paying the 40-percent excise tax imposed on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction. The temporary regulations reflect the addition to the Internal Revenue Code (Code) of chapter 55 and section 5891 by section 115 of the Victims of Terrorism Tax Relief Act of 2001, Public Law 107–134 (115 Stat. 2427, 2436–2439).

Explanation of Provisions

Section 5891of the Internal Revenue Code imposes an excise tax on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction. The tax is equal to 40 percent of the factoring discount with respect to the factoring transaction.

The temporary regulations set forth the manner and method of paying the excise tax imposed under section 5891 of the Code. Generally, the term *structured settlement factoring transaction* is defined as a transfer of structured settlement payment rights made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration. If a taxpayer is liable for the tax imposed by section 5891, the excise tax must be reported on Form 8876, Excise Tax on Structured Settlement Factoring Transactions. Generally, the temporary regulations require that the excise tax return be filed and the tax paid on or before the later of the ninetieth day following the day the taxpayer receives any structured settlement payment rights (including portions of structured settlement payments) or May 20, 2003. The temporary regulations provide rules relating to the Service's authority to extend the time for payment of any amount shown or required to be shown on the return.

The temporary regulations do not address the method of determining the proper amount of the excise tax imposed by section 5891 of the Code. Issues related to the determination of the amount of the excise tax may be addressed by future regulations.

The temporary regulations will be effective generally for structured settlement factoring transactions entered into on or after February 22, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the proposed rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is Shareen Soltanzadeh Pflanz, Attorney, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 157

Excise taxes, Structured settlement factoring transactions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, title 26 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

1. Part 157 is added to read as follows:

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Subpart A—Tax on Structured Settlement Factoring Transactions

Sec.

157.5891–1T Imposition of excise tax on structured settlement factoring transactions.

Subpart B—Procedure and Administration

157.6001–1T Records, statements, and special returns.
157.6011–1T General requirement of return, statement, or list.
157.6061–1T Signing of returns and other documents.
157.6065–1T Verification of returns.
157.6071–1T Time for filing returns.
157.6081–1T Extension of time for filing the return.
157.6091–1T Place for filing returns.
157.6151–1T Time and place for paying of tax shown on returns.
157.6161–1T Extension of time for paying tax.
157.6165–1T Bonds where time to pay tax has been extended.

Authority: 26 U.S.C. 7805.

Section 157.6001T also issued under 26 U.S.C. 6001.
Section 157.6011T also issued under 26 U.S.C. 6011.
Section 157.6061T also issued under 26 U.S.C. 6061.
Section 157.6071T also issued under 26 U.S.C. 6071.
Section 157.6091T also issued under 26 U.S.C. 6091.
Section 157.6161T also issued under 26 U.S.C. 6161.

Subpart A—Tax on Structured Settlement Factoring Transactions

§ 157.5891–1T Imposition of excise tax on structured settlement factoring transactions.

(a) *In general.* Section 5891 imposes on any person who acquires, directly or indirectly, structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount with respect to such factoring transactions.

(b) *Exceptions for certain approved transactions*—(1) In general. The excise tax shall not apply to a structured settlement factoring transaction if the transfer of structured settlement payment rights is approved in advance in a qualified order.

(2) *Qualified order dispositive.* A qualified order shall be treated as dispositive for purposes of this exception.

(c) *Definitions*—(1) Applicable state statute means—(i) A statute that is enacted by the state in which the payee of the structured settlement is domiciled and that provides for the entry of an order, judgment, or decree described in paragraph (c)(4)(i) of this section; or

(ii) If there is no such statute, a statute that is enacted by the state in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business and that provides for the entry of such an order, judgment, or decree.

(2) Applicable state court means, with respect to any applicable state statute, a court of the state that enacted such statute. If the payee of the structured settlement is not domiciled in the state that enacted the statute, the term also includes a court of the state in which the payee is domiciled.

(3) Factoring discount means an amount equal to the excess of—

(i) The aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction; over

(ii) The total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

(4) *Qualified order* means a final order, judgment, or decree that—

(i) Finds that the transfer of structured settlement payment rights does not contravene any federal or state statute, or the order of any court or responsible administrative authority, and is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; and

(ii) Is issued under the authority of an applicable state statute by an applicable state court, or is issued by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(5) *Responsible administrative authority* means the administrative authority that had jurisdiction over the underlying action or proceeding that was resolved by means of the structured settlement.

(6) *State* includes the Commonwealth of Puerto Rico and any possession of the United States.

(7) *Structured settlement* means an arrangement—

(i) That is established by—

(A) Suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 104(a)(2); or

(B) Agreement for the periodic payment of compensation under any workers' compensation law excludable from the gross income of the recipient under section 104(a)(1); and

(ii) Under which the periodic payments are——

(A) Of the character described in section 130(c)(2)(A) and (B); and

(B) Payable by a person who is a party to the suit or agreement or to the workers' compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(8) *Structured settlement factoring transaction* means a transfer of structured settlement payment rights (including portions of structured settlement payments) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration other than—

(i) The creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights; or

(ii) A subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

(9) *Structured settlement payment rights* means rights to receive payments under a structured settlement.

(d) *Coordination with other provisions of the Internal Revenue Code*—(1) *In general.* If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

(2) *No withholding of tax.* The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(e) *Effective dates*—(1) *In general.* Section 5891 applies to structured settlement factoring transactions entered into on or after February 22, 2002. Section 5891(d) also applies to structured settlement factoring transactions entered into before February 22, 2002.

(2) *Transition rule.* In the case of a structured settlement factoring transaction entered into during the period beginning on February 22, 2002, and ending on July 1, 2002, no tax shall be imposed under section 5891(a) if—

(i) The structured settlement payee is domiciled in a state (or possession of the United States) that has not enacted an applicable state statute (as defined in section 5891(b)(3)); and

(ii) The person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction—

(A) The amounts and due dates of the payments to be transferred;

(B) The aggregate amount to be transferred;

(C) The consideration to be received by the structured settlement payee for the transferred payments;

(D) The discounted present value of the transferred payments (including the present value as determined in the manner described in section 7520); and

(E) The expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

Subpart B—Procedure and Administration

§ 157.6001–1T Records, statements, and special returns.

(a) *In general.* Any person subject to tax under chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code (chapter 55) must keep such complete and detailed records as are sufficient to enable the Internal Revenue Service (IRS) to determine accurately the amount of liability under chapter 55. (b) Notice by the IRS requiring returns, statements, or the keeping of records. The IRS may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the IRS to determine whether or not the person is liable for tax under chapter 55.

(c) *Retention of records.* The records required by this section must be kept at all times available for inspection by the IRS, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§ 157.6011–1T General requirement of return, statement, or list.

Every person liable for tax under section 5891 must file a return with respect to the tax in accordance with the forms and instructions provided by the Internal Revenue Service.

§ 157.6061–1T Signing of returns and other documents.

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code or the regulations thereunder must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such return, statement, or other document shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

§ 157.6065–1T Verification of returns.

If a return, statement, or other document made under the provisions of chapter 55 of the Internal Revenue Code (chapter 55) or of subtitle F of the Code (subtitle F), or the regulations thereunder with respect to any tax imposed by chapter 55, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 55 or subtitle F, or the regulations thereunder, with respect to any tax imposed by chapter 55 may be required to contain or be verified by written declaration that is made under the penalties of perjury.

§ 157.6071–1T Time for filing returns.

(a) *In general.* Except as provided in paragraph (b) of this section, returns required by § 157.6011–1T (relating to returns of tax with respect to structured settlement factoring transactions) must be filed on or before the ninetieth day following the receipt of structured settlement payment rights in a structured settlement factoring transaction.

(b) *Returns relating to structured settlement payment rights received before February 19, 2003.* Returns required by § 157.6011–1T that relate to structured settlement payment rights received on or before February 19, 2003, must be filed on or before May 20, 2003.

§ 157.6081–1T Extension of time for filing the return.

(a) *Application for extension.* An application for an extension of time for filing the return required by § 157.6011–1T (relating to returns of tax with respect to structured settlement factoring transactions) must be completed in accordance with the forms and instructions provided by the Internal Revenue Service. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of the extension.

(b) *Filing of return.* If an extension of time for filing the return is granted, a return must be filed before the period of extension expires.

§ 157.6091–1T Place for filing returns.

The return required by § 157.6011–1T (relating to returns of tax with respect to structured settlement factoring transactions) must be filed at the place specified in the forms and instructions provided by the Internal Revenue Service.

§ 157.6151–1T Time and place for paying of tax shown on returns.

The tax under chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code shown on any return must, without assessment or notice and demand, be paid at the time and place specified in the forms and instructions provided by the IRS. For provisions relating to the time and place for filing such return, see § 157.6071–1T and § 157.6091–1T. For provisions relating to the extension of time for paying the tax, see § 157.6161–1T.

§ 157.6161–1T Extension of time for paying tax.

(a) *In general*—(1) *Tax shown or required to be shown on return.* The Internal Revenue Service may, at the request of the taxpayer, grant a reasonable extension of time for payment of the amount of any tax imposed by chapter 55 (Structured Settlement Factoring Transactions) of the Internal Revenue Code (chapter 55) and shown or required to be shown on any return. The period of such extension shall not exceed 6 months from the date fixed for payment of such tax, except that in the case of a taxpayer that is abroad, such extension may exceed 6 months.

(2) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extension of time for paying income tax to apply.* The provisions of § 1.6161–1(b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to payment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 55 of the Internal Revenue Code.

§ 157.6165–1T Bonds where time to pay tax has been extended.

If an extension of time for payment is granted under section 6161, the Internal Revenue Service may, if it deems necessary, require a bond for the payment, in accordance with the terms of the extension, of the amount with respect to which the extension is granted. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to the form of bonds, see the regulations under section 7101 contained in part 301 (Regulations on Procedure and Administration) of this chapter.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

2. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

3. In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section identified and described	Current OMB control No.
* * * * *	
157.6001–1T	1545–1824
157.6011–1T	1545–1824
157.6081–1T	1545–1824
157.6161–1T	1545–1824
* * * * *	

David Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: December 17, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–3864 Filed 2–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–03–010]

RIN 2115–AA97

Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing temporary safety and security zones in portions of the waters around La Guardia and John F. Kennedy airports in Queens, NY, the New York City Police Department (NYPD) ammunition depot on Rodman Neck in Eastchester Bay, and the Port Newark and Port Elizabeth, NJ, commercial shipping facilities in Newark Bay. This action is necessary to safeguard critical port infrastructure and coastal facilities from sabotage, subversive acts, or other threats. The zones will prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

DATES: This rule is effective from February 4, 2003 until September 1, 2003. Comments and related material must reach the Coast Guard on or before April 21, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–03–010) and are available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–010), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Activities New York Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The Captain of the Port conducts an ongoing assessment of the maritime domain security needs within the port and has determined that the temporary safety and security zones established by this rule are necessary to provide for the protection of critical port infrastructure and coastal facilities. This determination was reached after due consideration of various warnings publicly disseminated by the Federal Bureau of Investigation and other law enforcement agencies, threatening statements attributed to the al Qaeda organization, terrorist attacks upon civil aviation in Kenya, Africa, and requests received from the police departments of New York City and the Port Authority of New York and New Jersey. In view of the urgent need to adequately safeguard critical coastal facilities and infrastructure from potential terrorist attack, any delay encountered by normal notice and comment rulemaking procedures would be contrary to the public interest.

For the same reasons, the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(3).

Background and Purpose

On September 11, 2001 three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. *See, Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 FR 59447 (September 20, 2002). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations. *Executive Order 13273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States*, 67 FR 56215 (September 3, 2002).

Since the September 11, 2001 terrorist attacks, the Federal Bureau of Investigation has issued several warnings concerning the potential for additional attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions within Iraq have made it prudent for U.S. ports and properties of national significance to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The Captain of the Port New York recently established six new safety and security zones throughout the New York Marine Inspection Zone and Captain of the Port Zone. (68 FR 2890, January 22, 2003). Subsequently, the Captain of the Port has determined that the safety and security zones established by this rule are urgently required to meet critical maritime domain security needs that were not addressed by the earlier rule. The Captain of the Port will consider any public comments submitted with respect to the temporary zones established in this rule before commencing notice and comment rulemaking to develop any permanent successor rule that may be required to meet the security needs of the port.

The Coast Guard is establishing temporary safety and security zones around La Guardia and John F. Kennedy airports, the New York City Police Department ammunition depot, and the Port Newark/Port Elizabeth commercial shipping facilities. These safety and security zones are necessary to provide for the safety of the port and to ensure that vessels, facilities, airports, or ammunition depots, are not used as targets of, or platforms for, terrorist attacks. These zones would restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones.

Discussion of Temporary Rule

This rule establishes the following temporary safety and security zones:

La Guardia Airport, Bowery and Flushing Bays, Queens, NY.

The Coast Guard is establishing a temporary safety and security zone in all waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′52.8″ N, 073°53′09.3″ W, thence to 40°46′54.8″ N, 073°52′54.2″ W, thence to 40°46′59.3″ N, 073°52′51.3″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′10.6″ N, 073°52′06.7″ W, thence to 40°47′01.9″ N, 073°52′02.4″ W, thence to 40°46′50.4″ N, 073°52′08.1″ W, thence to 40°46′26.8″ N, 073°51′18.5″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′51.2″ N, 073°50′59.6″ W, thence to 40°45′49.5″ N, 073°51′07.2″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′02.3″ N, 073°51′20.1″ W, thence to 40°45′48.4″ N, 073°51′37.0″ W, (NAD 1983) thence along the shoreline to the point of origin.

Within the boundaries of the above-described zone, the Coast Guard is establishing another temporary safety and security zone in all waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′50.6″ N, 073°53′07.3″ W, thence to 40°46′53.0″ N, 073°52′50.9″ W, thence to 40°46′57.6″ N, 073°52′47.9″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′07.9″ N, 073°52′09.2″ W, thence to 40°47′01.4″ N, 073°52′06.1″ W, thence to 40°46′50.0″ N, 073°52′14.6″ W, thence to 40°46′22.2″ N, 073°51′16.0″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′52.4″ N, 073°51′00.2″ W, thence to 40°45′50.6″ N, 073°51′07.9″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′04.0″ N, 073°51′23.3″ W, thence to 40°45′51.2″ N, 073°51′38.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the 200-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of the two zones will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com*. This regulatory framework provides the Captain of the Port with the tools to safeguard airport property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

John F. Kennedy (JFK) Airport, Jamaica Bay, Queens, NY

The Coast Guard is establishing four temporary safety and security zones in all waters near JFK Airport bound by the following points:

First, all waters of Bergen Basin north of 40°39′26.4″ N.

Second, all waters of Thurston Basin north of 40°38′21.2″ N.

Third, all waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′42.5″ N, 073°49′13.2″ W, thence to 40°38′00.6″ N, 073°47′35.1″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°37′59.4″ N, 073°47′32.6″ W, thence to 40°37′46.1″ N, 073°47′07.2″ W, thence to 40°37′19.5″ N, 073°47′30.4″ W, thence to 40°37′05.5″ N, 073°47′03.0″ W, thence to 40°37′34.7″ N, 073°46′40.6″ W, thence to 40°37′20.5″ N, 073°46′23.5″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′36.9″ N, 073°45′52.8″ W, thence to 40°38′00.8″ N, 073°44′54.9″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

Fourth, within the boundaries of the above-described 200 yard zone, all waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′45.1″ N, 073°49′11.6″ W, thence to 40°38′02.0″ N, 073°47′31.8″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°38′00.8″ N, 073°47′29.4″ W, thence to 40°37′47.4″ N, 073°47′02.4″ W, thence to 40°37′19.9″ N, 073°47′25.0″ W, thence to 40°37′10.0″ N, 073°47′03.7″ W, thence to 40°37′37.7″ N, 073°46′41.2″ W, thence to 40°37′22.6″ N, 073°46′21.9″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′40.0″ N, 073°45′55.6″ W, thence to 40°38′02.8″ N, 073°44′57.5″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the 200-yard zone in Jamaica Bay that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of those two zones will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com*. This regulatory framework provides the Captain of the Port with both the authority to safeguard airport property

and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY

The Coast Guard is establishing two temporary safety and security zones in all waters of Eastchester Bay near the NYPD Ammunition Depot bound by the following points:

First, all waters of Eastchester Bay within approximately 150 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′29.9″ N, 073°48′20.7″ W, thence to 40°51′16.9″ N, 073°48′22.5″ W, thence to 40°51′07.5″ N, 073°48′18.7″ W, thence to 40°50′54.2″ N, 073°48′11.1″ W, thence to 40°50′48.5″ N, 073°48′04.6″ W, thence to 40°50′49.2″ N, 073°47′56.5″ W, thence to 40°51′03.6″ N, 073°47′47.3″ W, thence to 40°51′15.7″ N, 073°47′46.8″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

Second, within the boundaries of the above-described 150-yard zone, all waters of Eastchester Bay within approximately 100 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′30.1″ N, 073°48′19.0″ W, thence to 40°51′16.8″ N, 073°48′20.5″ W, thence to 40°51′07.9″ N, 073°48′16.8″ W, thence to 40°50′54.9″ N, 073°48′09.0″ W, thence to 40°50′49.7″ N, 073°48′03.6″ W, thence to 40°50′50.1″ N, 073°47′57.9″ W, thence to 40°51′04.6″ N, 073°47′48.9″ W, thence to 40°51′15.9″ N, 073°47′48.4″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the 150-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of the two zones will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com*. This regulatory framework provides the Captain of the Port with the tools to safeguard Police Department property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

Port Newark/Port Elizabeth, Newark Bay, NJ

The Coast Guard is establishing a temporary safety and security zone that includes all waters of Newark Bay bound by the following points: 40°41′49.9″ N, 074°07′32.2″ W, thence to 40°41′46.5″ N, 074°07′20.4″ W, thence to 40°41′10.7″ N, 074°07′45.9″ W, thence to 40°40′54.3″ N, 074°07′55.7″ W, thence to 40°40′36.2″ N, 074°08′03.8″ W, thence to 40°40′29.1″ N, 074°08′06.3″ W, thence to 40°40′21.9″ N, 074°08′10.0″ W, thence to 40°39′27.9″ N, 074°08′43.6″ W, thence to 40°39′21.5″ N, 074°08′50.1″ W, thence to 40°39′21.5″ N, 074°09′54.3″ W, (NAD 1983) thence northerly along the shoreline to the point of origin.

The zones described above are necessary to protect the La Guardia and John F. Kennedy airports, NYPD ammunition depot, and the Port Newark/Port Elizabeth commercial shipping facilities, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the airports, ammunition depot, and commercial shipping facilities that could potentially cause serious negative impact to vessels, the port, commercial ground shipments by vehicle or rail, airline traffic, or the environment and result in numerous casualties. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Vessels will still be able to transit around the safety and security zones at all times. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Any violation of any safety or security zone herein is punishable by, among others, civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that: The zones are temporary in nature; the zones implicate relatively small portions of the waterway; vessels will be able to transit around the safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth are already subject to control of the Vessel Traffic Service and previously established safety and security zones while recreational and fishing vessels are unlikely to operate within that area; and the Captain of the Port will relax the enforcement of the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port allows him to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the New York Marine Inspection and Captain of the Port Zones in which entry will be prohibited by safety or security zones.

These safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones are temporary in nature; the zones implicate relatively small portions of the waterway; vessels will be able to transit around the safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth are already subject to control of the Vessel Traffic Service and previously established safety and security zones while recreational and fishing vessels are unlikely to operate within that area; and the Captain of the Port will relax the enforcement of the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port allows him to do so.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

Collection of Information

This temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this temporary rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This temporary rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This temporary rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this temporary rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this temporary rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes safety and security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From February 4, 2003 to September 1, 2003, in § 165.169 add new paragraphs (a)(7), (a)(8), (a)(9) and (a)(10) to read as follows:

§ 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) * * *

(7) *La Guardia Airport, Bowery and Flushing Bays, Queens, NY.*—(i) *Location: 200-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′52.8″ N, 073°53′09.3″ W, thence to 40°46′54.8″ N, 073°52′54.2″ W, thence to 40°46′59.3″ N, 073°52′51.3″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′10.6″ N, 073°52′06.7″ W, thence to 40°47′01.9″ N, 073°52′02.4″ W, thence to 40°46′50.4″ N, 073°52′08.1″ W, thence to 40°46′26.8″ N, 073°51′18.5″ W, thence to

40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′51.2″ N, 073°50′59.6″ W, thence to 40°45′49.5″ N, 073°51′07.2″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′02.3″ N, 073°51′20.1″ W, thence to 40°45′48.4″ N, 073°51′37.0″ W, (NAD 1983) thence along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′50.6″ N, 073°53′07.3″ W, thence to 40°46′53.0″ N, 073°52′50.9″ W, thence to 40°46′57.6″ N, 073°52′47.9″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′07.9″ N, 073°52′09.2″ W, thence to 40°47′01.4″ N, 073°52′06.1″ W, thence to 40°46′50.0″ N, 073°52′14.6″ W, thence to 40°46′22.2″ N, 073°51′16.0″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′52.4″ N, 073°51′00.2″ W, thence to 40°45′50.6″ N, 073°51′07.9″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′04.0″ N, 073°51′23.3″ W, thence to 40°45′51.2″ N, 073°51′38.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(7) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(7)(i) of this section. That lies outside of the waters described in paragraph (a)(7)(ii) of this section: Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(7)(i) and (a)(7)(ii) of this section will be communicated by the Captain of the Port to the public by marine broadcast, or local notice to mariners, or notice posted at *http://www.harborops.com.*

(8) *John F. Kennedy Airport, Jamaica Bay, Queens, NY.*—(i) *Location: Bergen Basin.* All waters of Bergen Basin north of 40°39′26.4″ N.

(ii) *Location: Thurston Basin.* All waters of Thurston Basin north of 40°38′21.2″ N.

(iii) *Location: 200-Yard Zone.* All waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′42.5″ N, 073°49′13.2″ W, thence to 40°38′00.6″ N, 073°47′35.1″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°37′59.4″ N, 073°47′32.6″ W, thence to 40°37′46.1″ N, 073°47′07.2″ W, thence to 40°37′19.5″ N, 073°47′30.4″ W, thence to 40°37′05.5″ N, 073°47′03.0″ W, thence to 40°37′34.7″ N, 073°46′40.6″ W, thence to 40°37′20.5″ N, 073°46′23.5″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′36.9″ N, 073°45′52.8″ W, thence to 40°38′00.8″ N, 073°44′54.9″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

(iv) *Location: 100-Yard Zone.* All waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′45.1″ N, 073°49′11.6″ W, thence to 40°38′02.0″ N, 073°47′31.8″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°38′00.8″ N, 073°47′29.4″ W, thence to 40°37′47.4″ N, 073°47′02.4″ W, thence to 40°37′19.9″ N, 073°47′25.0″ W, thence to 40°37′10.0″ N, 073°47′03.7″ W, thence to 40°37′37.7″ N, 073°46′41.2″ W, thence to 40°37′22.6″ N, 073°46′21.9″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′40.0″ N, 073°45′55.6″ W, thence to 40°38′02.8″ N, 073°44′57.5″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

(v) *Enforcement period.* The zones described in paragraphs (a)(8) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(8)(iii) of this section that lies outside of the waters described in paragraph (a)(8)(iv) of this section. Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(8)(iii) and (a)(8)(iv) of this section will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at http://www.harborops.com.

(9) *NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY.*—(i) *Location: 150-Yard Zone.* All waters of Eastchester Bay within approximately 150 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′29.9″ N, 073°48′20.7″ W, thence to 40°51′16.9″ N, 073°48′22.5″ W, thence to 40°51′07.5″ N, 073°48′18.7″ W, thence to 40°50′54.2″ N, 073°48′11.1″ W, thence to 40°50′48.5″ N, 073°48′04.6″ W, thence to 40°50′49.2″ N, 073°47′56.5″ W, thence to 40°51′03.6″ N, 073°47′47.3″ W, thence to 40°51′15.7″ N, 073°47′46.8″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Eastchester Bay within approximately 100 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′30.1″ N, 073°48′19.0″ W, thence to 40°51′16.8″ N, 073°48′20.5″ W, thence to 40°51′07.9″ N, 073°48′16.8″ W, thence to 40°50′54.9″ N, 073°48′09.0″ W, thence to 40°50′49.7″ N, 073°48′03.6″ W, thence to 40°50′50.1″ N, 073°47′57.9″ W, thence to 40°51′04.6″ N, 073°47′48.9″ W, thence to 40°51′15.9″ N, 073°47′48.4″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(9) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(9)(i) of this section that lies outside of the waters described in paragraph (a)(9)(ii) of this section. Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(9)(i) and (a)(9)(ii) of this section will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.*

(10) *Port Newark/Port Elizabeth, Newark Bay, NJ.* All waters of Newark Bay bound by the following points: 40°41′49.9″ N, 074°07′32.2″ W, thence to 40°41′46.5″ N, 074°07′20.4″ W, thence to 40°41′10.7″ N, 074°07′45.9″ W, thence to 40°40′54.3″ N, 074°07′55.7″ W, thence to 40°40′36.2″ N, 074°08′03.8″ W, thence to 40°40′29.1″ N, 074°08′06.3″ W, thence to 40°40′21.9″ N, 074°08′10.0″ W, thence to 40°39′27.9″ N, 074°08′43.6″ W, thence to 40°39′21.5″ N, 074°08′50.1″ W, thence to 40°39′21.5″ N, 074°09′54.3″ W, (NAD 1983) thence northerly along the shoreline to the point of origin.

* * * * *

Dated: February 4, 2003.

Craig E. Bone,

Captain, Coast Guard Captain of the Port, New York.

[FR Doc. 03–3980 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0273; FRL–7278–7]

Pelargonic Acid (Nonanoic Acid); Exemption from the Requirement of a Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the pelargonic acid in or on all foods when applied used as a component of a food contact surface sanitizing solution in food handling establishments. Eco Lab Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective February 19, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0273, must be received on or before April 21, 2003.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail address: heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAIC code 111)
- Animal production (NAIC code 112)
- Food manufacturing (NAIC code 311)
- Pesticide manufacturing (NAIC code 32532)

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0273. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of December 7, 2001 (66 FR 63534) (FRL–6737–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6193) by Eco Lab Inc., 370 N. Wabasha Street, St. Paul MN 55102. That notice included a summary of the petition prepared by Eco Lab, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1159 be amended by establishing an exemption from the requirement of a tolerance for residues of nonanoic acid. Nonanoic acid is a component of a proposed product KX-6116 in which this active ingredient is present at 6.49% in the formulation. The proposed sanitizer formulation is applied to food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, and beverage and food processing plants. The sanitizer is applied by immersion, coarse spray, or circulation technique as appropriate to the equipment. The solution, once applied, is allowed to drain and dry and there is no potable water rinse.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the

variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pelargonic acid (nonanoic acid) are discussed in this unit.

A. Acute Toxicity

As a result of a number of acute toxicity studies, technical pelargonic acid is placed in the following Toxicity Categories: Primary eye irritation (Toxicity Category II), primary eye irritation (Toxicity Category II), acute oral toxicity (Toxicity Category IV), acute dermal and inhalation toxicity (Toxicity Category III). Sensitization test results showed that pelargonic acid cannot be considered a dermal sensitizer.

B. Subchronic and Chronic Toxicity

In an oral toxicity study (conducted for 14-days), no systemic toxicity was observed with either sex even at the highest dose tested, 20,000 parts per million (ppm) (1,834 milligrams/kilogram/day (mg/kg/day)). In addition, pelargonic acid showed no adverse effects on survival, clinical signs, body weight gain, food consumption, hematology, clinical chemistry or gross pathology. For each dose, three animals per sex were tested. However, the study did not report organ weights and histopathology. This was considered a deficiency in this study. Nevertheless, the Agency determined that because no toxic effects were observed at a very high level of ~ 2,000 mg/kg, a 90–day oral study was not necessary.

A 28–day dermal toxicity study conducted on rabbits was submitted to the Agency under TSCA section 8(e). Five male and five female New Zealand white rabbits were dermally treated with pelargonic acid present in mineral oil. In all, 10 applications were made (5 per week) at a dose level of 500 mg/kg/day. A 2–week recovery period was allowed for selected rabbits. During the first and second week of treatment, slight body weight loss and decreased food consumption were observed. One female rabbit showed ocular discharge and hypoactivity during the second week of treatment. All rabbits dermally treated with pelargonic acid by day 14 showed signs of severe erythema and moderate edema. Dermal reactions consisting of moderate desquamation, moderate fissuring, eschar, exfoliation and necrosis were also observed at day 14. By day 29, all dermal reactions had reversed. It was evident that at the treatment level of 500 mg/kg/day of pelargonic acid, significant dermal signs of toxicity were observed but no significant systemic reaction.

A supplemental study on chronic toxicity/carcinogenicity in mice was conducted for 80 weeks. A dose of 50 mg of pelargonic acid was dermally applied to each mouse twice/day for 80 weeks. Histopathology showed no non-neoplastic or neoplastic lesions on skins and internal organs of mice. The Agency concluded that this study although not exactly conducted according to guideline, adequately assesses the chronic toxicity and the carcinogenic potential of pelargonic acid via the dermal route.

C. Developmental Toxicity

A development toxicity was conducted on a group of 22 pregnant Crl:COBS CD(SD)BR rats. These rats were treated with pelargonic acid in corn oil at a dose of 1,500 mg/kg on gestation days 6 through 15 (both days inclusive). Maternal body weight was not significantly affected during the treatment. Only 1 out of 22 animals showed signs of clinical toxicity. No significant histopathology signs were observed in the maternal animals. Pelargonic acid treatment did not have any significant effect on cesarean section observations. Four fetuses in one litter showed a higher incidence of cleft palate compared to the control mean. For maternal toxicity, the Agency has determined the no observed adverse effect level (NOAEL) to be greater than 1,500 mg/kg/day. Because fetal effects were observed at 1,500 mg/kg/day, the NOAEL for developmental toxicity was not determined. The Agency has determined that this dose is in excess of the Agency's limit dose for toxic effects. The type and level of exposure expected from the use of this chemical is much lower than the dose level shown in the study.

D. Mutagenicity/Carcinogenicity

Ames Test (Salmonella/reverse mutation assay) showed pelargonic acid to be non-mutgenic. Similarly, *in vivo* cytogenetics study using micronucleus assay gave a negative result. In a mouse lymphoma forward mutation study, pelargonic acid appears to induce a weak mutagenic response at or higher than 50 milligrams/milliliter (mg/mL) level. This was observed in the presence of increasing toxicity, and may be an indication of gross chromosomal changes or damage and not actual mutational changes within the thymidine kinese gene locus.

As described above, a summary of the results of a dermal carcinogenicity study in mice with pelargonic acid was submitted. Fifty mice were treated twice-weekly with 50 mg doses of undiluted pelargonic acid for 80 weeks. No evidence of severe dermal or systemic toxicity was seen. Histopathology revealed no tumors of the skin or the internal organs

E. Exposure Assessment

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue of pelargonic acid (nonanoic acid) and to other related substances. In these considerations, the Agency has included dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for pelargonic acid's chemical residue and exposure from non-occupational sources. The Food and Drug Administration has cleared pelargonic acid as a synthetic food flavoring agent (21 CFR 172.515), as an adjuvant, production aid and sanitizer to be used in contact with food (21 CFR 178.1010(b)) and in washing or to assist in lye peeling of fruits and vegetables (up to 1%) (21 CFR 173.315). Pelargonic acid is also exempt from the requirement of a tolerance when used in or on all food commodities, as a plant regulator on plants, seeds, or cuttings after harvest in accordance with GAP. It is also exempt from a tolerance when used as a herbicide on all plant food commodities provided that allocations are not made directly to the food commodity except when used as a harvest aid or dessicant to any root or tuber vegetable, bulb, or cotton (40 CFR 180.1159). Applications of the proposed end-use products containing pelargonic acid will not directly contact edible portions of food commodities.

1. *Food.* For the proposed sanitizer uses, a worst case dietary exposure estimate has been calculated, assuming that all food consumed by an adult or child has contacted a sanitized surface using pelargonic acid, that a 1 mg/cm^2 sanitizer residue remains on the surface, and that 100% of the residue (170 ppm) is transferred to the food from the surface. Using these assumptions, in which all food contacts 4,000 cm^2 of sanitized non-porous food-contact surfaces a worst case dietary exposure of 680 µg/day is calculated. For a 70 kg adult this becomes 9.7 µg/kg/day and for a 15 kg child, exposure is calculated as 45 µg/kg/day.

2. *Drinking water exposure.* KX-6116 as a sanitizer contains pelargonic acid as its active component and low concentrations of pelargonic acid could be expected to be introduced into drinking water. However, exposure through drinking water is expected to be low and not of significance.

3. *Other non-occupational exposure.* Based on the intended use of pelargonic acid in food handling establishments, exposure to pelargonic acid as a component of KX-6116 sanitizer through non-occupational, non-dietary sources is not likely to occur.

4. *Cumulative effects.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity. Based on the information discussed in Unit VII. EPA concluded that pelargonic acid is sufficiently non-toxic that EPA can determine that it does not share a common mechanism of toxicity with other substances.

F. Safety Factor for Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Based on the considerations discussed in Unit III.G., EPA concluded that pelargonic acid was sufficiently non-toxic that a margin of safety analysis was not appropriate. For the same reason, EPA has not applied an additional margin of safety for the protection of infants and children.

G. Determination of Safety

Based on the following considerations, EPA concludes that pelargonic acid is unlikely to pose a risk under all reasonable exposure scenarios:

1. Fatty acids such as pelargonic acid are processed by known metabolic pathways within the body and contribute to normal physiological function.

2. Pelargonic acid is naturally present at levels up to 224 parts per billion (ppb) in apples, 385 ppm in the skin of grapes, and 143 ppm in grape pulp. It is present in a number of other foods as well. An average serving of grapes containing 385 ppm of pelargonic acid in the grape skins would result in exposure to pelargonic acid to an average consumer of 164 µg/kg/day. In comparison, a worst case estimate of dietary exposure to pelargonic acid as a result of its use as sanitizer is 9.7 µg/kg/day for a 70 kg adult and 45 µg/kg/day for a 15 kg child.

3. The Food and Drug Administration has cleared pelargonic acid as a synthetic food flavoring agent (21 CFR 172.515), as an adjuvant, production aid and sanitizer to be used in contact with food (21 CFR 178.1010(b)) and in washing or to assist in lye peeling of fruits and vegetables (up to 1%) (21 CFR 173.315). Pelargonic acid is also exempt from the requirement of a tolerance when used in or on all food commodities, as a plant regulator on plants, seeds, or cuttings after harvest in accordance with Good Agricultural Practices (GAP). It is also exempt from a tolerance when used as a herbicide on all plant food commodities provided that allocations are not made directly to the food commodity except when used as a harvest aid or dessicant to any root or tuber vegetable, bulb, or cotton (40 CFR 180.1159).

4. Dietary toxicity testing evidenced adverse reactions only at doses that were at or above limit doses. Dermal toxicity testing showed no significant systemic reaction.

5. The estimated exposures to pelargonic acid and other fatty acids from direct or indirect addition to food as well as sanitizer uses are well below the doses administered in animal studies that are required to elicit an adverse effect. Accordingly, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to pelargonic acid.

IV. Other Considerations

A. Analytical Method(s)

Because an exemption from the requirement of a tolerance without numerical limitation for residues in food is being granted for pelargonic acid, an enforcement analytical method is not needed. However, an analytical method is available in cases of gross misuse. The analytical method is being made available to anyone interested in pesticide enforcement when requested, from Norm Cook, Antimicrobials Division (7510C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Office location and telephone number: 1921 Jefferson Davis Highway, 3rd Floor, Arlington, VA 22202, (703) 308–8253.

B. Existing Tolerances

1. *40 CFR 180.1159.* Pelargonic acid is exempted from the requirement of a tolerance on all food commodities when used as a plant regulator on plants, seeds, or cuttings and all food commodities after harvest in accordance with GAP or as a herbicide when applications are not made directly to the food commodity except when used as a harvest aid or dessicant to: any root and tuber vegetables, bulb vegetable or cotton. When pelargonic acid is used as a harvest aid or dessicant, application must be made no later than 24 hours prior to harvest.

2. *21 CFR 178.1010(c)(37).* Pelargonic acid is permitted in food contact sanitizing solutions at a level up to 90 ppm.

3. *21 CFR 172.515.* Pelargonic acid may be safely used as synthetic food flavoring substances and adjuvants in food in the minimum quantity required to reproduce the intended effect.

4. *21 CFR 173.315.* Pelargonic acid may be used in an aliphatic acid mixture for washing or to assist in the peeling of fruits and vegetables. The aliphatic acid mixture may be used at a level not to exceed 1% in the lye peeling solution.

C. International Tolerances

No codex maximum residue levels have been established for the pelargonic acid.

V. Conclusion

An exemption from the requirement of a tolerance is established for residues of pelargonic acid in or on all raw agricultural commodities and in processed commodities, when such residues result from the use of pelargonic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of pelargonic acid up to 170 ppm per application on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants. The sanitizer shall be applied by immersion, coarse spay, or circulation technique as appropriate to the equipment or utensil. No potable

water rinse is required following the use of the sanitizer.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0273 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 21, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0273, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 2003.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1159 is amended by adding paragraph (c) to read as follows:

§ 180.1159 Pelargonic acid; exemption from the requirement of a tolerance.

* * * * *

(c) An exemption from the requirement of a tolerance is established for residues of pelargonic acid in or on all raw agricultural commodities and in processed commodities, when such residues result from the use of pelargonic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of pelargonic acid up to 170 ppm per application on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants.

[FR Doc. 03–3842 Filed 2–18–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0272; FRL–7278–6]

Decanoic Acid; Exemption from the Requirement of a Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of decanoic acid (capric acid) in or on all foods when applied/used as a component of a food contact surface sanitizing solution in food handling establishments. Eco Lab Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of decanoic acid.

DATES: This regulation is effective February 19, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0272, must be received on or before April 21, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit X. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Adam Heyward, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–6422; e-mail address; heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAIC code 111)
- Animal production (NAIC code 112)

- Food manufacturing (NAIC code 311)
- Pesticide manufacturing (NAIC code 32532)

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0272. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of December 7, 2001 (66 FR 63534) (FRL–6737–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6194) by Eco Lab Inc., 370 N. Wabasha Street, St. Paul, MN 55102. That notice included a summary of the petition prepared by Eco Lab Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance is established for residues of decanoic acid in or on all raw agricultural commodities and in processed commodities, when such residues result from the use of decanoic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of decanoic acid up to 170 parts per million (ppm) per application on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants. The sanitizer is applied by immersion, coarse spray, or circulation technique as appropriate to the equipment. The solution, once applied is allowed to drain and dry and there is no potable water rinse.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA assesses the hazards of the pesticide through examination and review of available toxicology data. Second, EPA examines the potential route(s) and duration(s) of exposure to the pesticide through food, drinking water, and through other exposures that can occur as a result of pesticide use in residential settings.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for an exemption from the requirement of a tolerance for residues of decanoic acid on all food up to 170 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available toxicology data from the open scientific literature as well as the data submitted in support of this action and has considered its validity, completeness and reliability and the relationship to human risk. EPA has also considered available information on potential differences in sensitivity to the toxicity of the pesticide in major identifiable subgroups of consumers, including infants and children. The natures of the toxic effects caused by decanoic acid (capric acid) are discussed in this unit.

B. Acute Toxicity

The acute oral toxicity of decanoic acid is low lethal dose (LD) $_{50}$ >10 grams/kilograms (g/kg) as is the acute dermal toxicity (LD_{50} > 5 g/kg). Decanoic Acid is a moderate too severe skin irritant when applied undiluted to intact or abraded rabbit skin for 24 hours. Decanoic acid is also a severe eye irritant when applied as a 5% solution.

C. Subchronic Toxicity

As reported in Patty's Industrial Hygiene and Toxicology, 4th ed., rats fed capric acid at 10% in the diet for 150 days showed no adverse effects from treatment. In another study, rats administered approximately 4 g decanoic acid /kg/day for 6 weeks showed reduced body weight gain and increased plasma triglyceride levels. In a longer term study in which rats were fed 2.5 g/kg/day decanoic acid for 47 weeks, no adverse toxicological effects were noted. Dogs administered 4.4 g/kg/day decanoic acid for 102 days showed no adverse effects of treatment.

D. Developmental and Reproductive Effects

In a study by Hendrich *et al.* (JAOCS, Vol. 70, no. 8, August 1993, pages 797–802), the potential reproductive effects of decanoic acid were examined in CBA/2 and C57B1/6 mice. Groups of mice received diets containing either 17.2% beef tallow and 3.5% corn oil or 8.6% crude *Cuphea* oil and 3.5% corn oil. *Cuphea* oil is composed of 76% decanoic acid, 4.8% octanoic acid, 2.5% dodecanoic acid, 2.2% myristate, 3.4% palmitate, 0.7% stearate, 3.3% oleate, and 5.5% linoleate. Parental animals were fed for various times due to the short supply of *Cuphea* oil. C57B1/6 mice were fed for either 10 months, 8 months, or 5 months (F1, F2, and F3 generations), while the CBA/2 mice were fed for 11–12 months, 9–11 months, and 6–8 months (F1, F2, and F3 generations). Body weights, food intake, liver weights, and total serum cholesterol were analyzed as well as the number of pups born and surviving to weaning. Histopathology was performed on liver, left kidney, spleen, heart, lung, and one testis. The histopathology appears to have been done only on parental mice. Feeding of *Cuphea* oil containing decanoic acid to successive generations of two strains of mice had no effect on reproduction in either strain of mouse. In the F1 generation of the CBA/2 strain, the reported number of pups per female was decreased in the *Cuphea*-fed mice vs. the mice fed the basal diet without the *Cuphea* oil. However, this effect was not observed in any other generation of the CBA/2 strain or in any generation of the C57B1/6 strain and is therefore not interpreted as a treatment-related effect. Body weight in C57B1/6 and CBA/2 mice was reduced approximately 10% after 13 weeks of treatment but this effect was not observed in successive generations. Food intake was not consistently affected by treatment. Serum cholesterol was significantly increased in C57B1/6 mice after 3 months of treatment, and the increase was also observed after 5 and 12 months. Fatty vacuolization was observed in the liver of most mice after treatment. CBA/2 mice tended to accumulate fat as large vacuoles in periportal hepatocytes with smaller vacuoles in centrilobular hepatocytes. C57B1/6 mice had a more diffuse fatty change with large vacuoles in centrilobular areas.

E. Carcinogenicity/Mutagenicity

There are no published studies on carcinogenicity of decanoic acid, but available mutagenicity data indicate that decanoic acid is negative for mutagenic effects.

F. Physiological Effects

Decanoic acid was observed to enhance the permeability of the blood-brain in Wistar rats to several hydrophilic compounds when administered into the carotid artery (Ohnishi *et al.*, J. Pharm. Pharmacol. 51: 1015–1018, 1998).

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and drinking water (from ground water or surface water) and exposure through non-occupational pesticide use.

A. Dietary Exposure

1. *Food; existing tolerances and other clearances.* The Food and Drug Administration (FDA) has established a food additive clearance for decanoic acid at levels up to 234 ppm in sanitizing solutions (21 CFR 178.1010(c)(22), (30), (31), (34)), and has also cleared this chemical for direct addition to food for human consumption without limits.

Decanoic acid is also permitted for use in food as a lubricant, binder and as a defoaming agent as a component in the manufacture of other food-grade components, without limits, provided it meets the criteria as set forth in 21 CFR 172.860.

Worst case dietary exposures for the sanitizer use of decanoic acid have been calculated assuming that all food consumed by an adult or child has contacted a 4,000 cm^2 sanitized surface using decanoic acid, that a 1 milligram/centimeter (mg/cm^2) sanitizer residue remains on the surface, and that 100% of the residue (28 ppm) is transferred to the food from the surface. Using these assumptions a worst case dietary exposure of 113 µg/day is calculated. For a 70 kg adult this becomes 1.6 µg/kg/day, and for a 15 kg child, intake is calculated as 7.5 µg/kg/day.

2. *Drinking water exposure.* The use of decanoic acid as a component of KX-6116 food surface sanitizer could result in the introduction of very low concentrations of decanoic acid into drinking water. However, this exposure through drinking water is expected to be minimal.

B. Non-Occupational Exposure

Based on the intended use of decanoic acid in food handling establishments, exposure to decanoic acid as a component of KX-6116 sanitizer through non-occupational sources is not likely to occur.

V. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity. Based on the information discussed in Section VII below, EPA concluded that decanoic acid is sufficiently non-toxic that EPA can determine that it does not share a common mechanism of toxicity with other substances.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Based on the considerations discussed in Unit VII. of this document, EPA concluded that decanoic acid was sufficiently non-toxic that a margin of safety analysis was not appropriate. For the same reason, EPA has not applied an additional margin of safety for the protection of infants and children.

VII. Determination of Safety for U.S. Population, Infants and Children

Based on the following considerations, EPA concludes that decanoic acid is unlikely to pose a risk under all reasonable exposure scenarios:

1. The fatty acids as a group including decanoic acid have a safe history of use as natural components of many foods, as direct food additives, and as cosmetic ingredients. Furthermore, fatty acids are processed by known metabolic pathways within the body and contribute to normal physiological function.

2. The Joint FAO/WHO Expert Committee on Food Additives did not establish a specific allowable daily intake (ADI) for decanoic acid (i.e. Reference dose (RfD)) based on the knowledge that the compound is already a component of the human diet, has a long history of use, and does not present with any significant toxicology concerns and therefore does not represent a health hazard.

3. The Food and Drug Administration has established a food additive clearance for decanoic acid at levels up to 234 ppm in sanitizing solutions (21 CFR 178.1010(c)(22), (30), (31), (34)),

and has also cleared this chemical for direct addition to food for human consumption without limits. Decanoic acid is also permitted for use in food as a lubricant, binder and as a defoaming agent as a component in the manufacture of other food-grade components, without limits, provided it meets the criteria as set forth in 21 CFR 172.860.

4. Evidence of adverse reactions to decanoic acid in dietary toxicity testing was observed only at doses that were at or above limit doses.

5. The estimated exposures to decanoic acid and other fatty acids from direct or indirect addition to food as well as sanitizer uses are well below the doses administered in animal studies that are required to elicit an adverse effect. For example, adverse effects in toxicity testing could only be achieved by doses in the range of several grams of decanoic acid per kilogram of body weight per day. A worst case dietary exposure for the sanitizer use estimated exposure for a 70 kg adult of 1.6 µg/kg/day, and for a 15kg child of 7.5 µg/kg/day.

Accordingly, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to pelargonic acid.

VIII. Other Considerations

A. Analytical Method(s)

Because an exemption from the requirement of a tolerance without numerical limitation for residues in food is being granted for decanoic acid, an enforcement analytical method is not needed. However, an analytical method is available in cases of gross misuse. The analytical method is being made available to anyone interested in pesticide enforcement when requested, from Norm Cook, Antimicrobials Division (7510C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460. Office location and telephone number: 1921 Jefferson Davis Highway, 3rd Floor, Arlington, VA 22202, (703) 308–8253.

B. International Tolerances

No codex maximum residue levels have been established for decanoic acid.

IX. Conclusion

An exemption from the requirement of a tolerance is established for residues of decanoic acid in or on all raw agricultural commodities and in processed commodities, when such residues result from the use of decanoic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of decanoic acid up to 170 ppm per application on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants. The sanitizer is applied by immersion, coarse spray, or circulation technique as appropriate to the equipment. The solution, once applied is allowed to drain and dry and there is no potable water rinse.

X. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0272 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 21, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0272, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XI. Stautory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: January 21, 2003.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1223 is added to subpart D to read as follows:

§ 180.1223 Decanoic acid; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of decanoic acid in or on all raw

agricultural commodities and in processed commodities, when such residues result from the use of decanoic acid as an antimicrobial treatment in solutions containing a diluted end-use concentration of decanoic acid (up to 170 ppm per application) on food contact surfaces such as equipment, pipelines, tanks, vats, fillers, evaporators, pasteurizers and aseptic equipment in restaurants, food service operations, dairies, breweries, wineries, beverage and food processing plants.

[FR Doc. 03–3843 Filed 2–18–03; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF ENERGY

41 CFR Part 109–6

RIN 1991–AB61

Official Use of Government Passenger Carriers Between Residence and Place of Employment

ACTION: Final rule.

AGENCY: Office of Management, Budget and Evaluation, Department of Energy (DOE).

SUMMARY: The Department of Energy publishes a final rule to remove from the DOE Property Management Regulation (DOE–PMR) certain overly broad restrictions regarding the use of government passenger carriers between an employee's residence and place of employment, and to update references to the Federal Management Regulation.

EFFECTIVE DATE: This rule is effective February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen J. Michelsen, Director, Office of Resource Management, Office of Procurement and Assistance Management, Department of Energy, (202) 586–1368, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The DOE–PMR at 41 CFR 109–6.4 sets forth rules that apply to the use of Government passenger carriers between a DOE employee's residence and place of employment. Section 109–6.402(b) restricts such use to the Secretary of Energy and persons "engaged in field work," as determined by the Secretary. DOE today is eliminating this restriction from the DOE–PMR because it prevents certain uses by employees of Government passenger carriers between residence and place of employment that are authorized by statute and the implementing Federal Management Regulation. Other uses authorized by 31 U.S.C. 1344 include, but are not limited to: use by an officer or employee with regard to which the Secretary, has determined, that highly unusual circumstances present a clear and present danger, that an emergency exists, or that other compelling operational considerations make such transportation essential to the conduct of official business; use by a single principal deputy to the Secretary if the Secretary determines appropriate; and use, when approved by the Secretary, by officers or employees when essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties. The rule being promulgated today harmonizes the DOE–PMR with the relevant statutory authority and allows Government vehicles to be used in the manner authorized by the statute. In addition, this rule updates DOE–PMR, 41 CFR 109–6.4, by replacing obsolete references to sections of the Federal Management Regulation which was revised in 2000 (65 FR 54966, September 12, 2000).

This rule is being promulgated as a final rule, without providing for a public comment period, or a 30 day effective date because it addresses a matter relating to agency management or personnel or to public property and therefore is not subject to the notice and comment requirements of the Administrative Procedures Act. *See* 5 U.S.C. 553(a).

Regulatory Review

A. Review Under Executive Order 12866

This final rule has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this final rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. DOE has determined that today's regulatory action would not impose a Federal mandate on State, local, or tribal governments or on the private sector.

C. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive Agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Public Law 96–354, requires preparation of a regulatory flexibility analysis for any rule which is subject to notice and comment rulemaking requirements. As noted above, this rule addresses a matter relating to agency management or personnel or to public property and maybe is not subject to the notice and comment requirements of the Administrative Procedures Act.

E. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are imposed by today's regulatory action.

F. Review Under the National Environmental Policy Act

This rule eliminates certain restrictions on the official use of government passenger carriers by DOE employees between residence and place of employment. Implementation of this rule will not result in environmental impacts because minimal additional use of vehicles is anticipated. DOE has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings amending existing regulations that do not change the environmental effect of the regulations being amended.

G. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this final rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This final rule would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

K. Review Under Executive Order 13045

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks) contains special requirements that apply to certain rulemakings that are economically significant under Executive Order 12866. This final rule is not economically significant. Accordingly, Executive Order 13045 does not apply to this rulemaking.

List of Subjects in 41 CFR Part 109–6

Government property management, Motor vehicles.

Issued in Washington, DC, on Februrary 13, 2003.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden, Director,

Office of Procurement and Assistance Management, National Nuclear Security Administration.

For the reasons set forth above, DOE amends 41 CFR Chapter 109 as follows:

PART 109–6—MISCELLANEOUS REGULATIONS

1. The authority citation for part 109–6 continues to read as follows:

Authority: Sec. 205(c), 63 Stat 390 (40 U.S.C. 486(c)); 31 U.S.C. 1344(e)(1).

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

§ 109–6.400 [Amended]

2. In 109–6.400(a) remove the reference "41 CFR 101–6.4," and add in its place "41 CFR part 102–5."

§ 109–6.402 [Amended]

3. Section 109–6.402 is amended as follows:

a. In paragraph (a), remove the second sentence.

b. In paragraph (a), remove the reference "41 CFR 101–6.4," and add in its place "41 CFR part 102–5."

c. Paragraph (b) is removed.

d. Paragraph (c) is redesignated as paragraph (b).

e. In redesignated paragraph (b), the reference "41 CFR 101–6.402(f)" is removed and "41 CFR 102–5.105" is added in its place.

f. Paragraph (d) is redesignated as paragraph (c).

[FR Doc. 03–3992 Filed 2–18–03; 8:45 am]
BILLING CODE 6450–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 302

[FTR Case 2003–302; FTR Amendment 2003–01]

RIN 3090–AH78

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables (2003 Update)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 2003 RIT allowance to be paid to relocating Federal employees.

DATES: This final rule is effective January 1, 2003, and applies for RIT allowance payments made on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Calvin L. Pittman, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–1538. Please cite FTR case 2003–302, FTR Amendment 2003–01.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5724b of title 5, United States Code, provides for reimbursement of substantially all Federal, State, and local income taxes incurred by a transferred Federal employee on taxable moving expense reimbursements. Policies and procedures for the calculation and payment of a RIT allowance are contained in the Federal Travel Regulation (41 CFR part 302–17). The

Federal, State, and Puerto Rico tax tables for calculating RIT allowance payments are updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 302

Government employees, Income taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

Dated: February 6, 2003.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR part 302–17 as set forth below:

CHAPTER 302–17—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for 41 CFR part 302–17 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

2. Revise Appendixes A, B, C, and D to part 302–17 to read as follows:

Appendix A to Part 302–17—Federal Tax Tables for RIT Allowance

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 2002

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–17.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 2002.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$8,137	$14,130	$14,743	$24,811	$20,219	$31,833	$11,770	$16,693
15	14,130	37,040	24,811	53,556	31,833	67,914	16,693	33,839
27	37,040	80,140	53,556	118,624	67,914	139,528	33,839	69,420
30	80,140	158,281	118,624	184,826	139,528	201,236	69,420	105,672
35	158,281	326,339	184,826	337,037	201,236	335,297	105,672	178,317
38.6	326,339	.....	337,037	.....	335,297	.....	178,317	.....

Appendix B to Part 302–17—State Tax Tables For RIT Allowance

State Marginal Tax Rates by Earned Income Level—Tax Year 2002

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–17.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 2002.

MARGINAL TAX RATES (STATED IN PERCENTS) FOR THE EARNED INCOME AMOUNTS SPECIFIED IN EACH COLUMN [1, 2]

State (or district)	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & over
Alabama	5	5	5	5
Alaska	0	0	0	0
Arizona	2.87	3.2	3.74	5.04
Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
California	4	6	8	9.3
If single status [3]	6	8	9.3	9.3
Colorado	4.63	4.63	4.63	4.63
Connecticut	4.5	4.5	4.5	4.5
Delaware	5.2	5.55	5.95	5.95
District of Columbia	7	9	9	9
Florida	0	0	0	0
Georgia	6	6	6	6
Hawaii	6.4	7.6	8.25	8.25
If single status [3]	7.6	8.25	8.25	8.25
Idaho	7.4	7.8	7.8	7.8
Illinois	3	3	3	3
Indiana	3.4	3.4	3.4	3.4
Iowa	6.48	7.92	8.98	8.98
If single status [3]	6.8	7.92	8.98	8.98
Kansas	3.5	6.25	6.45	6.45
If single status [3]	6.25	6.45	6.45	6.45
Kentucky	6	6	6	6

MARGINAL TAX RATES (STATED IN PERCENTS) FOR THE EARNED INCOME AMOUNTS SPECIFIED IN EACH COLUMN [1, 2]—Continued

State (or district)	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & over
Louisiana	2	4	4	6
If single status [3]	4	4	6	6
Maine	4.5	7	8.5	8.5
If single status [3]	7	8.5	8.5	8.5
Maryland	4.75	4.75	4.75	4.75
Massachusetts	5.3	5.3	5.3	5.3
Michigan	4.1	4.1	4.1	4.1
Minnesota	5.35	7.05	7.05	7.85
If single status [3]	7.05	7.05	7.85	7.85
Mississippi	5	5	5	5
Missouri	6	6	6	6
Montana	8	9	10	11
Nebraska	3.49	5.01	6.68	6.68
If single status [3]	5.01	6.68	6.68	6.68
Nevada	0	0	0	0
New Hampshire	0	0	0	0
New Jersey	1.4	1.75	2.45	6.37
If single status [3]	1.4	3.5	5.525	6.37
New Mexico	3.2	6	7.1	8.2
If single status [3]	6	7.1	7.9	8.2
New York	4.5	5.9	6.85	6.85
If single status [3]	5.25	6.85	6.85	6.85
North Carolina	6	7	7	7.75
North Dakota	2.1	3.92	4.34	5.04
If single status [3]	2.1	3.92	5.04	5.04
Ohio	3.715	4.457	5.201	6.9
Oklahoma	9	10	10	10
If single status [3]	10	10	10	10
Oregon	9	9	9	9
Pennsylvania	2.8	2.8	2.8	2.8
Rhode Island [4]	25	25	25	25
South Carolina	7	7	7	7
South Dakota	0	0	0	0
Tennessee	0	0	0	0
Texas	0	0	0	0
Utah	7	7	7	7
Vermont [5]	24	24	24	24
Virginia	5.75	5.75	5.75	5.75
Washington	0	0	0	0
West Virginia	4	4.5	6	6.5
Wisconsin	6.15	6.5	6.5	6.75
Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (*e.g.*, $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–17.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–17.8(e)(2)(iii).

[5] The income tax rate for Vermont is 24 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–17.8(e)(2)(iii).

Appendix C to Part 302–17—Federal Tax Tables for RIT Allowance—Year 2

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 2003

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–17.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2001, or 2002.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$8,274	$14,314	$15,005	$25,136	$20,977	$32,559	$10,958	$16,536
15	14,314	37,771	25,136	54,712	32,559	69,722	16,536	34,507
27	37,771	81,890	54,712	122,788	69,722	142,842	34,507	70,442
30	81,890	162,802	122,788	193,703	142,842	206,675	70,442	107,631
35	162,802	334,763	193,703	350,138	206,675	343,919	107,631	181,753
38.6	334,763	.....	350,138	.....	343,919	.....	181,753	.....

Appendix D to Part 302–17—Puerto Rico Tax Tables for RIT Allowance

Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 2002

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–17.8(e)(4)(i).

Marginal tax rate	Single filing status		Any other filing status	
Percent	Over	But not over	Over	But not over
10				$25,000
15		$25,000		
28	$25,000	50,000	$25,000	50,000
33	50,000		$50,000	

[FR Doc. 03–3882 Filed 2–18–03; 8:45 am]
BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–272; MM Docket No. 01–273, RM–10284; MM Docket No. 02–43, RM–10384; MM Docket No. 02–107, RM–10417; MM Docket No. 02–168, RM–10480; MM Docket No. 02–169, RM–10481; MM Docket No. 02–170, RM–10482; MM Docket No. 02–172, RM–10484; MM Docket No. 02–173, RM–10485; MM Docket No. 02–175, RM–10487; MM Docket No. 02–176, RM–10488; MM Docket No. 02–291, RM–10528; MM Docket No. 02–292, RM–10540; and MM Docket No. 02–293, RM–10541]

Radio Broadcasting Services; Alpena, MI; Arthur, NE; Milan, NM; Channing, TX; Eldorado, TX; Escobares, TX; Matador, TX; McLean, TX; Memphis, TX; Ozona, TX; Rotan, TX, Wellington, TX.; Wheeler, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants 13 proposals that allot new channels to Alpena, Michigan; Arthur, Nebraska; Milan, New Mexico; Channing, Texas, Eldorado, Texas; Escobares, Texas; Matador, Texas; McLean, Texas; Memphis, Texas; Ozona, Texas; Rotan, Texas; Wellington, Texas; and Wheeler, Texas. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective March 17, 2003. The window period for filing applications for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–273, MM Docket No. 02–43, MB Docket No. 02–107; MB Docket No. 02–168, MB Docket 02–169, MB Docket No. 02–170, MB Docket No. 02–172; MB Docket No. 02–173, MM Docket No. 02–175, MM Docket No. 02–176, MM Docket No. 02–291; MM Docket No. 02–292, and MM Docket No. 02–293, adopted January 29, 2003, and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

The Commission, at the request of Linda Crawford, allots Channel 258C1 at Eldorado, Texas, as the community's third local FM transmission service. *See* 66 FR 52734, October 17, 2001. Channel 258C1 can be allotted at Eldorado in compliance with the Commission's minimum distance separation requirements with a site restriction 7.4 kilometers (4.8 miles) south to avoid a short-spacing to the licensed site of Station KYZZ(FM), Channel 261C2, San Angel, Texas. The coordinates for Channel 258C1 at Eldorado are 30–47–49 North Latitude and 100–37–29 West Longitude. Although Mexican concurrence has been requested for Channel 258C1 at Eldorado, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Eldorado herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Commission, at the request of Don Davis, allots Channel 270A at Milan, New Mexico, as the community's second local FM transmission service. *See* 67 FR 11970, March 18, 2002. Channel 270A can be allotted at Milan in compliance with the Commission's minimum distance separation requirements a city reference coordinates. The coordinates for Channel 270A at Milan are 35–10–11 North Latitude and 107–53–24 West Longitude.

The Commission, at the request of Northern Paul Bunyan Radio Company, allots Channel 289A at Alpena, Michigan as the community's third local FM transmission service. *See* 67 FR 11970, March 18, 2002. Channel 289A can be allotted to Alpena in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) northeast to avoid short-spacings to the licensed site of Station WKHQ–FM, Channel 290C1, Charlevoix, Michigan, and to the proposed site for Channel 292C2 at Rogers City, Michigan. The coordinates for Channel 289A at Alpena are 45–05–30 North Latitude and 83–21–48 West Longitude. Although Canadian concurrence has been requested for Channel 289A at Alpena, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian government, the construction permit will include the following condition: "Operation with the facilities specified for Alpena herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement."

The Commission, at the request of Linda Crawford, allots Channel 284A at Channing, Texas, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002. Channel 284A can be allotted to Channing in compliance with the Commission's minimum distance separation requirements with a site restriction of 38.0 kilometers (23.6 miles) northwest to avoid a short-spacing to the licensed site of Station KQFX(FM), Channel 282C1, Borger, Texas, and Station KLGD(FM), Channel 285C1, Tulia, Texas. The coordinates for Channel 284A at Channing are 35–58–15 North Latitude and 102–33–43 West Longitude.

The Commission, at the request of Charles Crawford, allots Channel 284A at Escobares, Texas, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002. Channel 284A can be allotted to Escobares in compliance with the Commission's minimum distance separation requirements 6.8 kilometers (4.2 miles) northeast to avoid a short-spacing to the licensed site of Station XHMF–FM, Channel 283C, Monterrey, Mexico. The coordinates for Channel 284A at Escobares are 26–26–29 North Latitude and 98–54–14 West Longitude. Although, Mexican concurrence has been requested for Channel 284A at Escobares, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Escobares herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement." 1

The Commission, at the request of Linda Crawford, allots Channel 275C3 at Ozona, Texas, as the community's third local FM transmission service. *See* 67 FR 47502, July 19, 2002. Channel 275C3 can be allotted at Ozona in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 275C3 at Ozona are 30–42–30 North Latitude and 101–12–06 West Longitude. Although Mexican concurrence has been requested for Channel 275C3 at Ozona, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Ozona herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

The Commission, at the request of Linda Crawford, allots Channel 290A at Rotan, Texas, as the community's first local aural transmission service. *See* 67 FR 47502 (July 19, 2002. Channel 290A can be allotted at Rotan in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel at Rotan are 32–51–07 North Latitude and 100–27–55 West Longitude.

The Commission, at the request of Maurice Salsa, allots Channel 248A at Wellington, Texas, as the community's second local FM transmission service. *See* 67 FR 47502, July 19, 2002. Channel 248A can be allotted at Wellington in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.0 kilometers (8.7 miles) northwest to avoid a short-spacing to the allotment site for Channel 248C1, Archer City, Texas, and to the construction permit site for Station KWEY–FM, Channel 247C1, Weatherford, Oklahoma. The coordinates for Channel 248A at Wellington are 34–56–51 North Latitude and 100–19–10 West Longitude.

The Commission, at the request of Katherine Pyeatt, we are allotting Channel 292A at Memphis, Texas, as the community's second local FM transmission service. *See* 67 FR 47502, July 19, 2002. Channel 292A can be allotted at Memphis in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 292A at Memphis are 34–43–29 North Latitude and 100–32–01 West Longitude.

The Commission, at the request of Maurice Salsa, allots Channel 227C3 at Matador, Texas, as the community's second local FM transmission service. *See* 67 FR 47502, July 19, 2002. Channel 227C3 can be allotted at Matador in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.2 kilometers (11.9 miles) northeast to avoid a short-spacing to the licensed site of Station KRKZ(FM), Channel 228C2, Altus, Oklahoma, and to the vacant allotment site for Channel 226C2 at Aspermont, Texas. The coordinates for Channel 227C3 at Matador are 34–10–06 North Latitude and 100–43–57 West Longitude.

The Commission, at the request of Arthur Radio Broadcasting, allots Channel 300C1 at Arthur, Nebraska, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002 Channel 300C1 can be allotted at Arthur in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.0 kilometers (5.0 miles) northwest to avoid a short-spacing to the vacant allotment site for Channel 297C1 at Hershey, Nebraska. The coordinates for Channel 300C1 at Arthur are 41–37–10 North Latitude and 101–45–57 West Longitude.

The Commission, at the request of Robert Fabian, allots Channel 267C3 at McLean, Texas, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002. Channel 300C1 can be allotted at McLean compliance with the Commission's minimum distance separation requirements with a site restriction of 21.4 kilometers (13.3 miles) southwest to avoid short-spacings to the licensed sites of Station KWOX (FM), Channel 266C, Woodward, Oklahoma, and Station KLAW (FM), Channel 267C1, Lawton, Oklahoma. The coordinates for Channel 267C3 at McLean are 35–05–01 North Latitude and 100–44–58 West Longitude.

The Commission, at the request of Maurice Salsa, allots Channel 280C2 at Wheeler, Texas, as the community's first local aural transmission service. *See* 67 FR 47502, July 19, 2002. Channel 280C2 can be allotted at Wheeler in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.1 miles) northeast to avoid short-spacings to the licensed sites of Station KKYN–FM, Channel 280C2, Plainview, Texas, and Station KHYM(FM), Channel 280C1, Copeland, Kansas. The coordinates for Channel 280C2 at Wheeler are 35–28–55 North Latitude and 100–12–56 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 289A at Alpena.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Arthur, Channel 300C1.

4. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 270A at Milan.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channing, Channel 284A; by adding Channel 258C1 at Eldorado; by adding Escobares, Channel 284A; by adding Channel 227C3 at Matador; by

adding McLean, Channel 267C3; by adding Channel 292A at Memphis; by adding Channel 275C3 at Ozona; by adding Rotan, Channel 290A; by adding Channel 248A at Wellington; and by adding Wheeler, Channel 280C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3954 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 33
Wednesday, February 19, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–06–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to inspect the pedestal leg assembly on aft facing passenger seats for correct configuration. If incorrectly configured, this proposed AD would require you to modify to the correct configuration. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct pedestal leg assemblies on aft facing passenger seats that are in nonconformance with manufacturing standards. Nonconforming passenger seats could result in passenger injury in an emergency situation.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 26, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE–06-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9–ACE–7–Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003–CE–06–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–06–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, during manufacture of certain aft facing aircraft passenger seats (vendor part numbers (VPN) 403008–1 and 403008–2), the forward pedestal legs were installed in reverse order. One instance was found during the seat manufacturer's final quality control inspection. Pilatus found another instance.

What are the consequences if the condition is not corrected? This condition, if not corrected, could result in failure of the aircraft seat pedestal leg assembly. Such failure could result in passenger injury in an emergency situation.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002.

What are the provisions of this service information? The service bulletin specifies inspecting the forward pedestal legs of certain aircraft aft facing passenger seats for correct configuration.

This service bulletin also references Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002, which includes procedures for accomplishing the inspection and procedures for modifying incorrectly configured seat assemblies to the correct configuration.

What action did the FOCA take? The FOCA classified these service bulletins as mandatory and issued Swiss AD Number HB 2002–658, dated November 30, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are

type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus PC–12 and PC–12/45 of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to inspect the pedestal leg assembly on aft facing passenger seats for correct configuration. If incorrectly configured, this proposed AD would require you to modify to the correct configuration.

What are the differences between this proposed AD, the service information, and the FOCA AD? The FOCA AD and the service information require an inspection of the identification tag on certain passenger seats to determine if the Pilatus part number correctly corresponds to the ERDA vendor part number. The identification tag may incorrectly identify the Pilatus part number; although the ERDA vendor part number is correct. If the corresponding part numbers are incorrect, the FOCA AD and the service information require affixing a new identification tag with the correct corresponding Pilatus part number. The procedures for accomplishing this inspection and modification are contained in Decrane Aircraft, ERDA, Inc., Service Bulletin SB02011, Revision A, June 3, 2002.

Because the ERDA part number is correct, we are not including this as part of the unsafe condition. However, we will include a note in this proposed AD recommending that you verify that the corresponding Pilatus part number is correct.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 280 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	No parts required to perform inspection	$60	$60 × 280 = $16,800

We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 = $120	$150	$270	$270 × 280 = $75,600

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is "within the next 90 days after the effective date of this AD."

Why is the proposed compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance of this proposed AD is presented in calendar time instead of hours TIS because the unsafe condition is a result of an improper installation. The unsafe condition has the same chance of occurring on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours TIS. Therefore, we believe that a compliance time of 90 days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2003–CE–06–AD

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through 436 that:

(1) Incorporate a passenger seat, ERDA Vendor Part Number (VPN) 403008–1 or 403008–2 (also identified as Pilatus Part Number (P/N) 959.30.01.601, 959.30.01.602, 959.30.01.613, or 959.30.01.614) (or FAA-approved equivalent part number), with a serial number as specified in Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; and

(2) Are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct pedestal leg assemblies on aft facing passenger seats that are in nonconformance with manufacturing standards. Nonconforming passenger seats could result in passenger injury in an emergency situation.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) Inspect the forward pedestal legs on the aircraft aft facing passenger seat for correct configuration.	Within the next 90 days after the effective date of this AD.	In accordance with Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; as specified in Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002.
(2) If the legs are incorrectly configured, modify to the correct configuration.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; as specified in Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002.
(3) Do not install any affected seat specified in paragraph (a) of this AD unless it has been inspected as specified in paragraph (d)(1) of this AD and configured in accordance with Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; as specified in Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002.	As of the the effective date of this AD	In accordance with Decrane Aircraft, ERDA, Inc., Service Bulletin SB02010, Revision A, June 3, 2002; as specified in Pilatus PC12 Service Bulletin No. 25–025, dated September 27, 2002

Note 1: Although not required by this AD, we recommend that you verify that the Pilatus part number correctly corresponds with the ERDA vendor part number on certain passenger seats. The procedures for accomplishing this action are contained in Decrane Aircraft, ERDA, Inc., Service Bulletin SB02011, Revision A, June 3, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD Number HB 2002–658, dated November 30, 2002.

Issued in Kansas City, Missouri, on February 10, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3871 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–14368; Airspace Docket No. ASD 02–ASW–4]

RIN 2120–AA66

Proposed Revision of Jet Route; Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise segments of Jet Route 2 (J–2), J–138, and J–590 by realigning the routes to the north over the Baton Rouge, LA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC). The FAA is proposing this action to enhance the management of the aircraft operations over the Baton Rouge, LA, area.

DATES: Comments must be received on or before April 17, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14368/Airspace Docket No. 02–ASW–4, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd.; Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA 2003–14368/Airspace Docket No. 02–ASW–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA is conducting a comprehensive revision of the Houston terminal airspace area. As part of this effort, the FAA plans to revise certain segments of J–2, J–138, and J–590 over the new Baton Rouge, LA, VORTAC to promote the expeditious movement of aircraft through the Baton Rouge, LA, airspace area. The FAA believes that this action would enhance the management of air traffic operations in the area.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to revise segments of J–2 and J–138 between the Lake Charles, LA, VORTAC and the Semmes, AL, VORTAC; and J–590 between the Lake Charles, LA, VORTAC and the Greene County, MS, VORTAC, by realigning the routes to the north over the Baton Rouge, LA, VORTAC. This action is necessary to support the planned revision of the Houston terminal airspace area.

Jet routes are published in paragraph 2004 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–2 [Revised]

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend; Cochise, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Baton Rouge, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091° and the Seminole, FL, 290° radials; Seminole to Taylor, FL.

* * * * *

J–138 [Revised]

From Fort Stockton, TX, via Center Point, TX; San Antonio, TX; Hobby, TX; Lake Charles, LA; Baton Rouge, LA; to Semmes, AL.

* * * * *

J–590 [Revised]

From Lake Charles, LA, via Baton Rouge, LA; Greene County, MS; to Montgomery, AL.

* * * * *

Issued in Washington, DC, on February 12, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–3965 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 80N–145B]

RIN 0910–AA01

Over-the-Counter Ophthalmic Drug Products for Emergency First Aid Use; Proposed Amendment of Final Monograph for Over-the-Counter Ophthalmic Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) ophthalmic drug products to include OTC emergency first aid eyewash drug products. These products are used to flush or irrigate the eye to remove acid and alkali chemicals or particulate contamination. This proposal is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments by May 20, 2003. Submit written or electronic comments on the agency's economic impact determination by May 20, 2003. Please see section IX of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Marina Y. Chang, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 4, 1988 (53 FR 7076), FDA published a final monograph for OTC ophthalmic drug products in part 349 (21 CFR part 349). The monograph provides for eyewash drug products in § 349.20, but does not include emergency first aid eyewash drug products because there were no submissions or comments on these products during the rulemaking process.

After the final monograph was published, the agency received a request for an advisory opinion (Ref. 1) concerning the status of a product used for emergency first aid treatment of chemical burns of the eyes and skin. This product was described as a sterile phosphate buffered solution containing sodium phosphate, USP and monobasic potassium phosphate, NF, preserved with edetate disodium, USP 1:2,000 and benzalkonium chloride, USP 1:5,000, for use immediately following a chemical burn to thoroughly flush the eyes and skin for the express purpose of removing the chemical irritant, and to relieve the discomfort and burning caused by the irritating chemical prior to seeking medical treatment.

As a result, the agency published a request for data and information on this category of drugs in the **Federal Register** of December 5, 1989 (54 FR 50240). The agency stated that it was unaware of sufficient data to make a determination as to the safety, effectiveness, and proper labeling of these ophthalmic drug products. Specifically, the agency noted that the majority of these products: (1) Are not intended to be marketed directly to individual consumers; (2) are often packaged in large volume containers not normally found at the retail level of distribution, especially for OTC ophthalmic drug products; (3) may be stored for long periods of time under different environmental conditions; (4) may be marketed in different types of containers and closure systems; and (5) may be used with plumbed, nonplumbed, self-contained emergency eyewash, or shower equipment/stations. The agency noted it was not aware of all of the various labeling formats, labeling statements, and formulations of all the various emergency first aid eyewash products.

In response to the request for data and information, three manufacturers and one manufacturer's association provided submissions (Refs. 2 through 7) that included several journal articles in support of the safety and effectiveness of products that provide immediate emergency care by neutralization and dilution to the most serious burns due to strong acids and alkalis. The submitted literature explained that acid burns cause instantaneous coagulation of protein and result in limited damage, whereas strong alkalis penetrate the ocular tissues rapidly and produce damage that is widespread, uncontrolled, and progressive (Ref. 8). The literature (Ref. 2) included a quote from the National Institute of Occupational Safety and Health occupational health guidelines which states: "If (chemical) gets into the eyes, wash eyes immediately with large amounts of water, lifting the lower and upper lids occasionally. Get medical attention immediately." The comment included an excerpt from the regulations of the Occupational Safety and Health Administration (OSHA) entitled "Requirements for Medical and First Aid" (42 CFR 1910.151). This portion of the OSHA regulations assures that workers exposed to injurious corrosive materials be provided with "suitable facilities for quick drenching or flushing of the eye." One manufacturer also provided sample labeling of several marketed products (Ref. 5).

II. Comments Received and the Agency's Responses

A. Neutralization

Three comments addressed the term "neutralization." One comment stated that it removed this term from the principal display panel of its product's labeling and replaced it with "Wash/Flush" because the latter term better expressed the action of the product. Another comment considered the term "neutralization" to be relative and not absolute. The third comment believed that neutralizing was part of the action of the product and provided a chart demonstrating the buffering capacity of a neutralizer solution towards strong acids and bases versus purified water (Ref. 7).

The agency reviewed available medical literature (Refs. 8 through 15) and found the treatment of choice for acid and alkali burns listed in this literature to be copious and continuous irrigation of the area with water or a pH balanced solution for at least 20 to 30 minutes. According to the American Academy of Ophthalmology (Ref. 8), "Specific neutralizing agents are not useful; simple dilution (with water or saline solution) is the most effective and practical way of neutralizing strong chemicals." *Casarett and Doull's Toxicology: The Basic Science of Poisons* (Ref. 9) states: "Attempts to obtain some special buffered solution or

mildly alkaline wash will only delay the start of treatment. Washing should begin as close in time and place to the site of the accident as possible." *Conn's Current Therapy 1990* (Ref. 10) states:

> The severity of the chemical burn is related directly to length of time that a given agent is exposed to the skin * * *. Exact identification of the burning chemical may suggest appropriate specific measures; but an acid should not be neutralized with a base or vice versa.

The agency is concerned that attempts to adjust the pH of the affected area, such as by testing with litmus paper and then adding drops of neutralizing solution, would delay or, at a minimum, reduce the vigorous flushing needed to prevent further eye damage. Therefore, the agency tentatively concludes that initial treatment is best accomplished by copious and continuous amounts of water or saline solution. Any attempt to provide a corrective solution, if necessary, should be left to health care professionals following transport of the accident victim to the facility's first aid station or a hospital. Accordingly, the agency considers the term neutralization as inappropriate to describe the pharmacological action of these products.

B. Water Lavage

Four comments emphasized the importance of immediate and continuous water lavage for emergency care of the eye following chemical burns. The Tulane University Research Report (Ref. 7) compared administration of 50 milliliters (mL) of distilled water and a test product, called "Neutralize" (exact formulation not provided), to each eye 10 seconds after acid was dropped on the eye. The studies showed no significant difference in the rate of healing or in the final condition of both eyes.

The agency agrees that the medical literature and the American Academy of Ophthalmology support the use of copious amounts of fluid as the best approach for emergency eyewash care. The agency also recognizes the value of providing a sterile and stable product in large quantities in an industrial setting where flowing water may not be available.

C. Container Size and Ease of Opening

One comment referred to a 32-ounce (oz) container, intended for only one use, as having a closure that requires 1¼ turns. The comment explained that a 38-millimeter unrestricted opening is approximately the diameter needed to cover an average adult eye. The comment added that this product is easily opened by a small stature adult under stress. The comment noted that a tamper evident plastic heat shrink seal that breaks away easily is used.

All eyewash products must comply with the monograph standards in part 349. The products must also meet current good manufacturing practices (CGMPs) as stated in 21 CFR parts 210 and 211.

The agency believes that emergency eyewash products must contain enough fluid to permit adequate flushing of the eye. While a maximum volume may depend on the configuration of the container or the plumbing system, the minimum volume should be no less than 16 oz (473 mL (500 mL or 1/2 liter is acceptable)). Because of concerns about sterility, the product should be for a single individual's use unless it is part of a plumbing system with a one-way valve.

D. pH Adjustment

Several comments supported the pH range of 6.6 to 7.4 as appropriate for these products. One comment mentioned a lack of adverse event reports in the many years of use of these products as an indicator that the present pH is appropriate. Another comment stated it was unlikely that the pH of a product would have a clinically significant impact on the outcome of a chemical burn. One comment, however, felt that the agency should not require a specific range but define the requirement as "needing to be at or near neutral pH, 6.6 to 7.4."

The agency agrees that 6.6 to 7.4 is an appropriate pH range for emergency eyewash solutions. The agency believes this pH range provides sufficient flexibility for manufacturers to adjust agents to maintain stability, yet provides a solution that does not cause further harm or additional irritation to the accident victim. The agency, however, agrees that the pH within this range is not likely to impact on the outcome of a chemical burn. The agency believes that the inclusion of an antimicrobial preservative would aid the stability of the product.

Accordingly, the agency is proposing the following in new § 349.22 *Emergency first aid eyewashes*: "These products contain water, agents to achieve the pH within a range of 6.6 to 7.4, and a suitable antimicrobial preservative agent."

E. Buffering

One comment noted that buffering is an added feature to help neutralize the chemical burn but that both buffered and unbuffered solutions can be extremely beneficial to achieve dilution and neutralization because the main treatment is by dilution. Another comment added that buffers help ensure product integrity during storage in an industrial setting, while another comment was unaware of any superiority of either buffering or not buffering.

The product that led to the request for data was described as a sterile phosphate buffered solution (Ref. 1) for use immediately following a chemical burn to thoroughly flush the eyes and skin for the express purpose of removing the chemical irritant, and to relieve the discomfort and burning caused by the irritating chemical prior to seeking medical treatment. The comment provided excerpts from studies presented in a Tulane University Research Report (Ref. 7) to demonstrate the superiority of its product when compared to water as an emergency first aid eyewash to treat a caustic acid splash.

The agency notes that a medical dictionary (Ref. 16) defines "buffering" as "a chemical system that prevents change in concentration of another chemical substance, e.g., proton donor and acceptor systems serve as buffers preventing marked changes in hydrogen ion concentration (pH)." The agency acknowledges the buffer system contributes to the tonicity of the ophthalmic product but adds that the tonicity of the entire formulation should approximate lacrimal fluids.

The agency agrees with the comment that stated it was unaware of any superiority of either buffering or not buffering these products. Accordingly, the agency is proposing in § 349.22 that emergency first aid eyewash products may contain agents for buffering the pH.

F. Phosphate Treatment of Chemical Burns

One comment provided references to support "phosphate therapy" to treat burns caused by acidic or basic substances (Ref. 1). The references reported a phosphate buffer is prepared by dissolving 70 grams (g) of monobasic potassium phosphate (KH_2PO_4) and 180g of dibasic sodium phosphate ($Na_2HPO_4.12\ H_2O$) in 850 mL of water. The concentration of the solution is molar with respect to phosphate, but as the phosphates are physiologically occurring substances they can be safely employed in such high concentrations and provide prompt neutralization. The comment contended that some antidotes are too acidic or alkaline; that burns caused by acids or bases require different treatment; and that the phosphate buffer is neutral in its reaction, and thus is well suited for the treatment of injuries caused by acidic or basic chemicals.

At this time, the agency considers a phosphate buffered solution acceptable for emergency first aid eyewash products. The increased concentration of phosphates would not alter the pH range but could be more effective against an acid or alkali burn.

G. Industrial Glare

One comment briefly referred to emergency first aid eyewash solutions to treat industrial glare (i.e., from welder's arc) but did not provide any data to support this use. At this time, the agency is not including this use as an indication for these products without adequate supporting documentation. The agency requests interested parties to provide supporting data.

H. Five to 15-gallon Container Plus Preservative Concentrate

One comment explained that a 15-minute emergency eyewash requires 14 gallons (gal) of potable water and a 5-minute eyewash requires 9 1/2 gal of potable water. The comment stated that the unit would be filled with potable water and the preservative concentrate added. The comment offered that a concentrate will preserve 5 to 20 gal of potable water for up to 180 days. The comment further stated that potable eyewash units should be flushed and cleaned and the water and concentrate replaced every 60 days.

All emergency eyewash products must be able to meet monograph requirements, which include safety and effectiveness, a pH range of 6.6 to 7.4, and compliance with CGMPs. The agency is aware that there are preservative concentrates in the marketplace for use in potable eyewash units, as the comment noted. Under § 349.82(d)(3), the agency is proposing that the labeling contain the word "concentrate" in bold type. The labeling must provide adequate directions for adding the concentrate to potable water to obtain a solution that meets the requirements of § 349.22. The directions should also state that the concentrate should be added to potable water to have a fully constituted solution available in advance of an emergency. The agency is unaware of data to support the length of time that any particular preservative concentrate is safe and effective. Manufacturers of these products are advised to follow CGMPs.

I. Labeling

One comment proposed several labeling revisions under § 349.78. Under § 349.78(a), the comment added fo the statement of identity the terms "neutralizer" and "neutralizing solution."

As stated in section II.A of this document, the agency does not believe that the term "neutralize" properly describes the action of these products and, therefore, is not proposing this term or any variation of this term in the monograph.

Under § 349.78(b)(1) and (b)(2), the comment added the terms "acid" and "alkali." Under § 349.78(b)(5), the comment provided for indications for eyes that have been subjected to industrial glare such as welder's arc and "other workplace irritants." The comment argued that demulcents have a long history of use for soothing the burning sensation associated with welder's arc and other workplace irritants that dry the eye. The comment explained that this indication is an extension of § 349.60(b)(2), which provides for temporary relief due to exposure to the sun.

The agency agrees that if an emergency first aid eyewash will assist in the prevention of permanent damage to the eye(s) due to industrial glare, this indication should be included in the uses section of the labeling. However, as stated in section II.G of this document, the agency needs supporting documentation for this use.

The agency believes the term "particulate contamination" is a general term that could include the comment's request for an indication for "other workplace irritants." The agency agrees that there are potential instances in the industrial setting where particulate matter could cause eye damage and that an eyewash solution could alleviate the seriousness of the condition. Accordingly, the agency is proposing the terms "acid," "alkali," and "particulate contamination" in new § 349.82(b) as examples of causes of injury.

Under § 349.78(d)(3), the comment suggested the following directions for emergency first aid eyewash products:

> *For eyewash products packaged in a container that olso serves as an eyecup.* Remove safety seal and cap. Avoid contamination of rim of bottle. Place rim over affected eye, pressing tightly to prevent the escape of the liquid, and tilt the head backward. Open eyelid wide and rotate eyeball to ensure thorough bathing with the solution. Use only unopened bottle on the eyes.

The comment explained that many large volume (up to 32 oz) first aid eyewash solutions are packaged in containers with wide flanged rims that fit over the eye.

The agency agrees that containers that also serve as eyecups should be addressed in the monograph and is including this information, with a few modifications, in § 349.82(d)(1). The agency notes that eyecups generally promote retention of material that may be injurious to the eye instead of allowing the injurious material to be washed away and down the face. The use of eyecups in the setting of workplace irritants should be discouraged. The agency also obtained and reviewed representative current labeling for a number of these products (Ref. 17) to develop the labeling in this proposal.

III. The Agency's Proposal

The agency tentatively concludes that the references support the safety and effectiveness of emergency first aid eyewash drug products to remove acid or alkali chemicals and that, in particular, immediate flushing of the eye with fluid is urgently needed to lessen the impact of the alkalis. The agency also acknowledges that burns from alkalis penetrate the ocular tissues rapidly and produce damages that are widespread, uncontrolled, and progressive. However, the agency does not believe that a chemical irritant should be counteracted with another chemical. The agency believes that immediate and copious irrigation with fluid is the most important step and that the amount of time prior to irrigation is a critical factor in determining the amount of residual damage.

The effectiveness of an emergency eyewash appears dependent upon the steady flow of copious amounts of fluid to the injured eye(s). Emergency first aid eyewashes serve as an interim step in first aid care by providing immediate flushing of the eye and allowing the accident victim to be transported to the facility's first aid station or a hospital while the flushing treatment is in progress. Accordingly, the agency is proposing to amend the final monograph for OTC ophthalmic drug products to include a section on emergency first aid eyewashes.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the

Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted annually for inflation. The current inflation adjusted statutory threshold is approximately $110 million.

With respect to the Regulatory Flexibility Act, FDA does not believe that the proposed rule would have a significant economic impact on a substantial number of small entities. However, the agency recognizes the uncertainty of its estimates with respect to the number of affected small entities as well as the economic impact of the rule on those small entities. The agency therefore requests detailed public comment regarding any substantial or significant economic impact that this rulemaking would have on manufacturers of OTC emergency first aid eyewash drug products.

The purpose of this proposed rule is to amend the final monograph for OTC ophthalmic drug products to include OTC emergency first aid eyewash drug products. This proposed rule may increase OTC availability of these products and may, as a result, lower the costs to industrial facilities and individuals that use such products.

Manufacturers of the affected products should incur only minor costs to relabel their products to meet the monograph requirements. These manufacturers can make the required changes whenever they are ready to order new product labeling within the 12 months after the final rule is issued. Manufacturers of products with annual sales of less than $25,000 will have 24 months to complete the required relabeling. The agency has been informed that this type of relabeling generally costs approximately $3,000 to $4,000 per stockkeeping unit (SKU) (i.e., individual products, packages, and sizes). The agency estimates that there are approximately 25 manufacturers or marketers of 40 to 45 products and 50 to 60 SKUs that would be affected by this proposed rule.

Based on this information, the total one-time costs of relabeling would be between $150,000 ($3,000 per SKU x 50 SKUs) and $240,000 ($4,000 per SKU x 60 SKUs). Assuming an equal distribution of these costs across the 25 affected entities results in an average cost burden of $6,000 to $9,600 per firm. The agency believes that actual costs would be lower for several reasons. First, most of the required changes will be made by private label manufacturers that tend to use relatively simple and less expensive labeling. Second, the agency is proposing a 12-month implementation period that would allow manufacturers to coordinate the required changes with routinely scheduled label printing and/or revisions. Labeling changes for these products would not be required until 12 months after the monograph amendment is issued as a final rule and becomes effective. Furthermore, products with less than $25,000 per year in sales would not need to be relabeled until 24 months after the rule becomes final. Thus, manufacturers would have time to use up existing labeling stocks and plan for new labeling, thereby mitigating some of the costs of this proposed rule. Third, manufacturers may be able to implement the new labeling required by this proposal at the same time that they implement the new standardized format and content labeling required by 21 CFR 201.66. Thus, the total relabeling costs associated with two different but related final rules may be reduced by implementing the required changes at the same time.

According to standards established by the Small Business Administration, a small pharmaceutical preparations manufacturer (NAICS code 325412) employs fewer than 750 people. FDA has determined that approximately 88 percent (22 out of 25) of OTC ophthalmic drug product manufacturers meet these criteria and can therefore be categorized as small entities. The average annual revenue of small entities affected by this rule was found to be approximately $10.7 million. Thus, the cost of the rule per affected small entity would be between 0.056 percent ($6,000 ÷ $10.7 million) and 0.09 percent ($9,600 ÷ $10.7 million) of average annual revenues. FDA is aware of one small entity that has average annual revenues of approximately $1 million and produces 3 SKUs. The total cost of the final rule for this small entity would be between 0.9 percent (3 SKUs x $3,000 per SKU ÷ $1 million) and 1.2 percent (3 SKUs x $4,000 per SKU ÷ $1 million) of annual revenues. Thus the economic impact of the proposed rule on the majority of small entities is expected to be much less than 1 percent of annual revenues. While these estimates are uncertain, it appears that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The agency considered but rejected several alternatives: (1) A shorter or longer implementation period, and (2) an exemption from the requirements for small entities. While the agency believes that industries and accident victims who use these products would benefit from having the new labeling in place as soon as possible, the agency also acknowledges that coordination of the labeling changes with implementation of the new OTC "Drug Facts" labeling may significantly reduce the costs associated with this proposed rule. Thus, an alternative specifying a shorter implementation period was rejected due to its inflexibility and potentially greater cost. A longer implementation period was also rejected because it would unnecessarily delay the benefits of new labeling and revised formulations, where applicable, to parties who use these OTC drug products. The agency also rejected an exemption for small entities because the new labeling and revised formulations, where applicable, would also generate benefits for parties who purchase products marketed by those entities. Furthermore, the vast majority of firms affected by this proposed rule can be classified as small entities. However, an additional year is being allowed for products with annual sales of less than $25,000 to implement the required changes in order to reduce the potential impact of the rule on small entities.

This proposed rule allows for continued marketing of affected products without the risk of regulatory action provided the following conditions are met: (1) The product or similarly formulated and labeled products were marketed as OTC drugs at the inception of the OTC drug review on May 11, 1972, a date that was later extended to on or before December 4, 1975 (see 21 CFR 330.13); (2) such product does not constitute a hazard to health; (3) the product formulation is not regarded to be a prescription drug within the meaning of section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)); (4) the product is an OTC drug and does not bear claims for serious disease conditions that require the attention and supervision of a licensed practitioner.

Emergency first aid eyewash products and eye irrigating solutions that do not meet the previous criteria may not be marketed OTC pending evaluation of these products for the treatment of chemical burns and for irrigation of the eye(s) unless the product is the subject of an approved new drug application (NDA).

This analysis of impacts shows that the proposed rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden to small entities. This analysis of impacts, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required by the Regulatory Flexibility Act. The agency will reassess the economic impact of this rulemaking in the preamble to the final rule.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

VIII. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda. gov/dockets/ecomments* or three hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. Proposed Effective Date

FDA is proposing that any final rule that may issue based on this proposal become effective 12 months after its date of publication in the **Federal Register**.

X. References

The following references are on display in the Dockets Management Branch (see **ADDRESSES**) under Docket No. 80N–145B and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. AP.
2. Comment 1.
3. Comment 2.
4. Comment 3.
5. Comment 4.
6. Comment 5.
7. Comment 6.
8. "External Disease and Cornea," 1989–1990, *Basic and Clinical Science Course*, American Academy of Ophthalmology, San Francisco, CA, pp. 130–133, 1989.
9. Potts, A. M., "Toxic Responses of the Eye," *Casarett and Doull's Toxicology: The Basic Science of Poisons*, 3d ed., Macmillan Publishing Co., New York, NY, pp. 478–485, 1986.
10. Raker, R. E., *Conn's Current Therapy 1990*, W. B. Saunders Co., Philadelphia, PA, p. 1035, 1990.
11. Dreisbach, R. H., and W. O. Robertson, "Emergency Management of Poisoning," *Handbook of Poisoning: Prevention, Diagnosis & Treatment*, 12th ed., Appleton & Lange, Norwalk, CT, pp. 28–29, 1987.
12. Siverston, K. T., "Ocular Toxicity," *Manual of Toxicologic Emergencies*, Year Book Medical Publishers, Inc., Chicago, IL, pp. 115–118, 1989.
13. Tapley, D. F. et al., "The Eyes," *The Columbia University College of Physicians and Surgeons Complete Home Medical Guide*, Crown Publishers, Inc., New York, NY, pp. 696–697, 1989.
14. Behrman, R. E., and V. C. Vaughan, "Injuries to the Eye," *Nelson Textbook of Pediatrics*, 13th ed., W. B. Saunders Co., Philadelphia, PA, pp. 1472–1473, 1987.
15. "Occupational Health Guidelines for Ethyl Chloride," National Institute for Occupational Safety and Health, pp. 1–4, September 1978.
16. *Dorland's Illustrated Medical Dictionary*, 27th ed., W. B. Saunders Co., Philadelphia, PA, p.252, 1988, s.v. "buffer."
17. Comment 7.

List of Subjects in 21 CFR Part 349

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 349 be amended as follows:

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 349 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 349.22 is added to subpart B to read as follows:

§ 349.22 Emergency first aid eyewashes.

These products contain water, agents to achieve the pH within a range of 6.6 and 7.4, and a suitable antimicrobial preservative agent. Additionally, they may contain tonicity agents to establish isotonicity with tears and agents for buffering the pH.

3. Section 349.82 is added to subpart C to read as follows:

§ 349.82 Labeling of emergency first aid eyewash drug products.

(a) *Statement of identity.* The labeling of the product identifies the product with one of the following: "Emergency first aid eyewash," "First aid eye rinse," or "Emergency eyewash."

(b) *Indications.* The labeling of the product states, under the heading "Uses", "for" [select one of the following: "flushing," or "irrigating"] "the eye to reduce chances of severe injury caused by acid, alkali, or particulate contamination".

(c) *Warnings.* In addition to the warnings in § 349.50 (the "Replace cap after using," warning in § 349.50(c)(1) should only be used if applicable), the labeling of the product contains the following warnings under the heading "Warnings" for all emergency eyewash products:

(1) "Do not use [in bold type] [bullet][1] for injection [bullet] in intraocular surgery [bullet] internally [bullet] if

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

solution changes color or becomes cloudy".

(2) "Ask a doctor if you have [in bold type] [bullet] eye pain [bullet] changes in vision [bullet] redness or irritation of the eye after use [bullet] an injury caused by an alkali".

(d) *Directions.* The labeling of the product states, as appropriate, under the heading "Directions", "[bullet] do not dilute solution or reuse bottle [in bold type] [bullet] hold container a few inches above the eye [bullet] control rate of flow by pressure on bottle [bullet] flush affected area for a minimum of 20 minutes [bullet] continue flushing with water if necessary [bullet] obtain medical treatment".

(1) *For products packaged in a container that also serves as an eyecup.* The labeling states "[bullet] use only unopened bottle [bullet] remove safety seal and cap [bullet] avoid contamination of rim of bottle [bullet] place rim over affected eye [bullet] tilt head backward [bullet] open eyelids wide [bullet] throughly bathe eye with solution [bullet] allow solution to flow away from eye". The directions in this paragraph shall be placed in sequence with the directions provided in paragraph (d) of this section, as appropriate.

(2) *For products intended for use with a nozzle applicator.* The labeling states "[bullet] flush affected eye as needed [bullet] control flow of solution by pressure on bottle".

(3) *For products that use a concentrate with potable water.* The word "concentrate" shall be in bold type. Labeling must provide adequate directions for adding the concentrate to potable water to obtain a solution that meets the requirements of § 349.22. The directions shall also state that the concentrate should be added to potable water to have a fully constituted solution available in advance of an emergency.

Dated: January 31, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3927 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 157 and 602

[REG–139768–02]

RIN 1545–BB14

Excise Tax Relating to Structured Settlement Factoring Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the manner and method of reporting and paying the 40-percent excise tax imposed on any person who acquires structured settlement payment rights in a structured settlement factoring transaction. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 20, 2003. Outlines of topics to be discussed at the public hearing scheduled for June 12, 2003, at 10 a.m. must be received by May 22, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–139768–02), room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–139768–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Shareen S. Pflanz, 202–622–8488; concerning submissions of comments, Sonya Cruse, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collection of information should be received by April 21, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §§ 157.6001–1T, 157.6011–1T, 157.6081–1T, and 157.6161–1T. This information is required by the IRS to verify that the excise tax imposed under section 5891 of the Internal Revenue Code is properly reported on Form 8876 and timely paid. This information will be used for that purpose. The collection of information is mandatory. The likely respondents and/or recordkeepers are individuals, business or other for-profit institutions, and small businesses and organizations. The reporting burden is also reflected on Form 8876.

Estimated total annual reporting and/or recordkeeping burden: 2 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 minutes.

Estimated number of respondents and/or recordkeepers: 4.

Estimated annual frequency of responses (for reporting requirements only): On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** add a new part 157 to title 26 of the Code of Federal Regulations. The temporary regulations set forth the manner and method of paying the excise tax imposed under section 5891. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the expectation that the excise tax imposed by section 5891 of the Code will apply to few structured settlement factoring transactions. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 12, 2003 beginning at 10 a.m. in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 22, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Shareen Soltanzadeh Pflanz, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 157

Excise taxes, Structured Settlement Factoring Transactions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26 of the Code of Federal Regulations is proposed to be amended as follows:

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

1. A new part 157 is added to read as follows:

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Subpart A—Tax on Structured Settlement Factoring Transactions

Sec.

157.5891–1 Imposition of excise tax on structured settlement factoring transactions.

Subpart B—Procedure and Administration

157.6001–1 Records, statements, and special returns.
157.6011–1 General requirement of return, statement, or list.
157.6061–1 Signing of returns and other documents.
157.6065–1 Verification of returns.
157.6071–1 Time for filing returns.
157.6081–1 Extension of time for filing the return.
157.6091–1 Place for filing returns.
157.6151–1 Time and place for paying of tax shown on returns.
157.6161–1 Extension of time for paying tax.
157.6165–1 Bonds where time to pay tax has been extended.

Authority: 26 U.S.C. 7805

Section 157.6001–1 also issued under 26 U.S.C. 6001.

Section 157.6011–1 also issued under 26 U.S.C. 6011.

Section 157.6061–1 also issued under 26 U.S.C. 6061.

Section 157.6091–1 also issued under 26 U.S.C. 6091.

Section 157.6161–1 also issued under 26 U.S.C. 6161.

Subpart A—Tax on Structured Settlement Factoring Transactions

§ 157.5891–1 Imposition of excise tax on structured settlement factoring transactions.

[The text of proposed § 157.5891–1 is the same as the text of § 157.5891–1T published elsewhere in this issue of the **Federal Register**].

Subpart B—Procedure and Administration

§ 157.6001–1 Records, statements, and special returns.

[The text of proposed § 157.6001–1 is the same as the text of § 157.6001–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6011–1 General requirement of return, statement, or list.

[The text of proposed § 157.6011–1 is the same as the text of § 157.6011–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6061–1 Signing of returns and other documents.

[The text of proposed § 157.6061–1 is the same as the text of § 157.6061–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6065–1 Verification of returns.

[The text of proposed § 157.6065–1 is the same as the text of § 157.6065–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6071–1 Time for filing returns.

[The text of proposed § 157.6071–1 is the same as the text of § 157.6071–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6081–1 Extension of time for filing the return.

[The text of proposed § 157.6081–1 is the same as the text of § 157.6081–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6091–1 Place for filing returns.

[The text of proposed § 157.6091–1 is the same as the text of § 157.6091–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6151–1 Time and place for paying of tax shown on returns.

[The text of proposed § 157.6151–1 is the same as the text of § 157.6151–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6161–1 Extension of time for paying tax.

[The text of proposed § 157.6156–1 is the same as the text of § 157.6161–1T published elsewhere in this issue of the **Federal Register**].

§ 157.6165–1 Bonds where time to pay tax has been extended.

[The text of proposed § 157.6165–1 is the same as the text of § 157.6165–1T published elsewhere in this issue of the **Federal Register**].

David Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–3865 Filed 2–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–03–024]

RIN 2115–AA97

Security Zone; St. Thomas, U.S. Virgin Islands

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create moving and fixed security zones 50 yards around all cruise ships entering, departing, moored or anchored in the Port of Charlotte Amalie, St. Thomas, U.S. Virgin Islands. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port of San Juan or his designated representative.

DATES: Comments and related material must reach the Docket Management Facility on or before March 21, 2003.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office San Juan, P.O. Box 71526, San Juan, Puerto Rico 00936. You may also deliver them in person to Commanding Officer, Marine Safety Office San Juan, Rodriguez and Del Valle Building, 4th Floor, Calle San Martin, Road #2, Guaynabo, Puerto Rico, 00968. The U.S. Coast Guard Marine Safety Office maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the USCG Marine Safety Office between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, at (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–03–024), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one by writing to the Commanding Officer U.S. Coast Guard Marine Safety Office at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Charlotte Amalie, St. Thomas, U.S. Virgin Islands against cruise ships entering, departing, anchored and moored within the Port of Charlotte Amalie. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely.

The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing temporary security zones around all cruise ships entering, departing and moored within the Port of Charlotte Amalie. We previously published a temporary final rule entitled "Security Zones; St. Thomas, U.S. Virgin Islands" in the **Federal Register** on February 1, 2002 (67 FR 4909), and on November 13, 2002 (67 FR 68760). Those temporary final rules contained similar provisions as those in this notice of proposed rulemaking.

Discussion of Proposed Rule

The security zone for a cruise ship entering the Port of Charlotte Amalie will be activated when a cruise ship passes: St. Thomas Harbor green lighted buoy #3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy #2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy #4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the vessel passes any of these buoys on its departure from the Port of Charlotte Amalie. The security zones encompass all waters 50 yards around a cruise ship.

Persons and vessels are prohibited from entering into or transiting through a security zone unless authorized by the Captain of the Port (COTP), or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port. The Captain of the Port will notify the public of these security zones through Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan Web site at *http://www.msocaribbean.com.*

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Port of San Juan when a cruise ship is entering, departing, moored or anchored in the Port of San Juan. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, (787) 706–2444.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a

significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because it is establishing safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.762 to read as follows:

§ 165.762 Security Zone; Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

(a) *Location.* Temporary moving and fixed security zones are established with a 50-yard radius surrounding all cruise ships entering, departing, moored or anchored in the Port of Charlotte Amalie, St. Thomas U.S. Virgin Islands. The security zone for a cruise ship entering port is activated when the vessel passes: St. Thomas Harbor green lighted buoy #3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy #2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy #4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the cruise ship passes any of these buoys on its departure from the Port of Charlotte Amalie.

(b) *Regulations.* (1) Under general regulations in § 165.33 of this part, entering, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port of San Juan.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port via the Greater Antilles Section Operations Center at (787) 289–2041 or via VHF radio on Channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

The Marine Safety Office San Juan will notify the maritime community of periods during which these security zones will be in effect by providing advance notice of scheduled arrivals and departures of cruise ships via a broadcast notice to mariners.

(c) *Definition.* As used in this section, cruise ship means a passenger vessel greater than 100 feet in length that is authorized to carry more than 150 passengers for hire, except for a ferry.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: February 6, 2003.

William J. Uberti,

Captain, Coast Guard, Captain of the Port, San Juan.

[FR Doc. 03–3978 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–015]

RIN 2115–AE84

Regulated Navigation Area; Fifth Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Coast Guard, in an effort to continually update its regulations and to provide a useable service to the public, proposes to establish a Regulated Navigation Area (RNA) encompassing the entire Fifth Coast Guard District. This RNA would provide for the safety of life and property, help facilitate commerce, and would impose restrictions on vessels operating within the RNA when ice is a threat to navigation. The Coast Guard solicits comments from the public and industry on the questions listed in this request.

DATES: Comments and related material must reach the Coast Guard on or before April 21, 2003.

ADDRESSES: You may mail comments and related material to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704. The Fifth Coast Guard District Waterways Management Section maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above mentioned office between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Anne Grabins, Aids to Navigation and Waterways Management Branch; phone: (757) 398–6559; *e-mail: agrabins@lantd5.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Request for Information

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–02–015), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying, to the address listed under **ADDRESSES.** If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to the Fifth Coast Guard District Waterways Management Section at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

Executive Order No. 7521, 1 FR 2527, directed the Coast Guard to keep open to navigation, by means of ice-breaking operations, the waterways of the United States in accordance with the reasonable demands of commerce. On May 19, 1983, the Captain of the Port Baltimore exercised the provisions of a Regulated Navigation Area(RNA) published in the **Federal Register** (48 FR 22543) to manage vessel traffic in the event ice impedes navigation. The RNA imposed certain operational restrictions, established by the COTP, on vessels that intended to operate within the Baltimore COTP zone. This RNA was repealed on February 27, 1998 (63 FR 9942), because it was believed that it was unnecessary to impose general continuous restrictions on all vessels through the winter months and that prudent mariners could make decisions about whether it was safe for their vessel to operate in ice.

Interest in a vessel management tool similar to the RNA previously in place in the Baltimore Captain of the Port Zone has been resurrected. It is anticipated that a RNA will decrease the administrative burden to the Coast Guard and industry, establish consistent policy throughout the Fifth Coast Guard District, and assist the management of the limited Coast Guard ice capable resources.

The ice navigation season historically begins in the Delaware and Chesapeake Bay regions as early as the first week in December and in Albemarle and Pamlico Sounds in North Carolina in January. Ice has historically ceased to be an impediment to all types of marine navigation interests by the first week in March. During a moderate or severe winter, frozen waterways can become a serious problem, impeding a vessel's ability to maneuver, and causing visual aids to navigation to be submerged, destroyed or moved off station. Vessel watertight integrity can also be compromised by ice abrasion and ice pressure with the greatest adverse affect on fiberglass and wood hulls and the least effect on steel or ice-reinforced hulls.

When ice conditions deteriorate to a point where independent vessel operations are not possible, convoy operations are required to enable vessels to transit. Coast Guard vessels built to operate in the ice typically conduct convoy operations. In recent years, the number of Coast Guard resources available to operate in ice has been reduced by 59%. In 1984, the Fifth Coast Guard District had 17 Coast Guard surface assets capable of working in various ice conditions. There are currently seven surface assets capable in the Fifth District to maintain aids to navigation, perform convoy missions in ice, and execute other Coast Guard missions that can be performed only by an ice capable vessel. These surface assets possess capabilities defined by their draft, horsepower, crew size, and their designed ability to break ice. Additionally, climatic, hydrographic, geographic, and operational constraints determine where and when these vessels may conduct convoy operations. Of the seven surface assets available to operate in ice, one has the capability to break 14 inches of ice at three knots; three have the capability to break up to nine inches at three knots; and three have the capability to break up to six inches of ice at three knots. The Coast Guard's ability to support convoy operations is finite, therefore, it behooves commercial traffic as well as the Coast Guard to effectively plan where and how surface assets are employed.

In addition to the deepwater ports of Hampton Roads, Baltimore, Richmond, and Philadelphia that support manufacturing and trade, many waterways of the Fifth Coast Guard District are used for the transport of fuels for residential and commercial use. The primary transportation method to deliver fuel oil for power generation and home heating is by barge, and convoy operations will ensure the reliable delivery of this essential commodity. In the event of a waterborne emergency during the ice season, the Coast Guard's available surface search and rescue (SAR) assets are limited to the same seven Coast Guard cutters capable of performing convoy duty. Establishing a method for the COTPs to regulate vessel traffic will enable the Coast Guard to better manage available resources and prioritize Coast Guard missions when ice is present on Fifth District waterways.

Captains of the Port have the authority (33 CFR part 160, subpart B) to restrict and manage vessel movement by issuing a COTP order. However, this authority may only be directed to a specific vessel, facility or an individual to restrict or stop vessel operations and cannot be issued to "all vessels" or a class of vessels. A Regulated Navigation Area (RNA) is a water area that allows the District Commander to control vessel operations to preserve the safety of adjacent waterfront structures, to ensure safe transit of vessels, or to protect the marine environment. RNA's are typically established when extensive vessel controls are needed over an extended period of time. A Regulated Navigation Area is, therefore, the more appropriate means to control vessel operations to ensure safe transit of vessels when conditions require higher standards of control than that provided by the Navigation Rules.

The Coast Guard recognizes that there are exceptions to every circumstance. With this in mind, the RNA would include a waiver process for vessel operators who may not meet the criteria of the operating restrictions but who may have the capability to operate in ice safely. This waiver would be granted at the discretion of the Captain of the Port.

Questions

Public response to the following questions will help the Coast Guard develop a more complete and carefully considered rulemaking. The questions are not all-inclusive, and any supplemental information is welcome. In responding to each question, please explain the reasons for each answer.

1. Would this type of rulemaking benefit commercial vessels operating within the Fifth Coast Guard District?
2. Are shaft horsepower, hull material, and convoys the best criteria to restrict vessel traffic when ice impedes navigation?
3. What are the most effective threshold levels to set shaft horsepower restrictions?
4. Are separate rules for each COTP zone required to effectively regulate vessel traffic when ice impedes navigation?
5. If a company is able to provide its own convoy escort service, should this be considered in the RNA?
6. What consideration should be given for various tug and barge towing configurations? Is it practical to apply the same shaft horsepower requirement for each towing configuration?
7. Should the horsepower rating for a tractor tug be considered differently than a traditional tug shaft horsepower?
8. Would a shaft horsepower/overall length or shaft horsepower/overall tonnage ratio be a better method of prescribing power requirements for towing vessels?
9. What, if any, elements of barge hull design should be considered?
10. Are there any other criteria that should be considered in developing this rulemaking?

Dated: February 4, 2003.

James D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–3981 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–192; MB Docket No. 03–24, RM–10636; MB Docket No. 03–25, RM–10637; MB Docket No. 03–26, RM–10638]

Radio Broadcasting Services; Apopka, Homosassa Springs, and Maitland, FL; Basin City and Othello, WA; and Shawnee and Topeka, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth three separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Cox Radio, Inc. pursuant to Section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). Petitioner proposes to change the community of allotment and upgrade the license for Channel 237A at Apopka, Florida, to Channel 237C3 at Maitland, Florida, and to modify the license of WPYO(FM) accordingly. In order to facilitate those changes, petitioner further proposes to relocate the transmitter site of WXCV(FM), Homosassa Springs, Florida, and to modify the license for WXCV(FM). Channel 237C3 can be allotted to Maitland in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 km (9.2 miles) east of Maitland. The coordinates for Channel 237C3 at Maitland are 28–39–38 North Latitude and 81–13–02 West Longitude. Petitioner contends that the proposal does not require a *Tuck* analysis because it is relocating from one community in the Orlando, Florida Urbanized Area to another community also located within that Urbanized Area, but the petition nonetheless contains a *Tuck* analysis to establish that Maitland is independent of the Orlando Urbanized Area. *See* Supplementary Information *infra*.

DATES: Comments must be filed on or before March 24, 2003, and reply comments on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: Kevin F. Reed, Elizabeth A. M. McFadden, and Nam E. Kim, Dow, Lohnes & Albertson, PLLC (counsel for Cox Radio, Inc.), 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036; Barry A. Friedman, Thompson Hine LLP (counsel for Wheeler Broadcasting, Inc.), 1920 N Street, NW., Suite 800, Washington, DC 20036–1600; and Mark N. Lipp and J. Thomas Nolan, Shook, Hardy & Bacon (counsel for Cumulus Licensing Corporation), 600 Fourteenth Street, NW., Suite 800, Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–24, 03–25, and 03–26; adopted January 29, 2003 and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Commission further requests comment on a petition filed by Wheeler Broadcasting, Inc. pursuant to Section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). Petitioner proposes to change the community of allotment and upgrade the license for Channel 248C3 at Othello, Washington, to Channel 248C2 at Basin City, Washington, as a first local service, and to modify the license of KZLN(FM) accordingly. Channel 248C2 can be allotted to Basin City in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.2 km (4.5 miles) north of Basin City. The coordinates sfor Channel 248C2 at Basin City are 46–39–26 North Latitude and 119–10–23 West Longitude. The proposal does not require a *Tuck* analysis because neither the existing Channel 248C3 facility at Othello nor the proposed Channel 248C2 facility at Basin City cover any part of any urbanized area within the 70 dBu contour.

The Commission further requests comment on a petition filed by Cumulus Licensing Corporation pursuant to Section 1.420(i) of the Commission's rules, 47 CFR 1.420(i). Petitioner proposes to change the community of allotment and downgrade the license for Channel 299C at Topeka, Kansas, to Channel 299C1 at Shawnee, Kansas, and to modify the license of KMAJ(FM) accordingly. Channel 299C1 can be allotted to Shawnee in compliance with the Commission's minimum distance separation requirements with a site restriction of 41.3 km (25.6 miles) west of Shawnee. The coordinates for Channel 299C1 at Shawnee are 39–09–06 North Latitude and 95–09–28 West Longitude. Petitioner contends that the proposal does not require a *Tuck* analysis because the proposal would move the station from one urbanized area to another, but the petition nonetheless contains a *Tuck* analysis to establish that Shawnee deserves a first local service preference.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Apopka, Channel 237A and by adding Maitland, Channel 237C3.

3. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 299C at Topeka and by adding Shawnee, Channel 299C1.

4. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Basin City, Channel 248C2 and by removing Othello, Channel 248C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3952 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–273; MB Docket No. 03–29, RM–10643; MB Docket No. 03–30, RM–10644]

Radio Broadcasting Services; Muldrow, OK and Trona, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes two allotments in Muldrow, Oklahoma and Trona, California. The Commission requests comment on a petition filed by David P. Garland proposing the allotment of Channel 286A at Muldrow, Oklahoma, as the community's first local service. Channel 286A can be allotted to Muldrow in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.02 km (6.52 miles) north of Muldrow. The coordinates for Channel 286A at Muldrow are 35–29–47 North Latitude and 94–36–04 West Longitude. See Supplementary Information *infra*.

DATES: Comments must be filed on or before March 24, 2003, and reply comments on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: David P. Garland, 1110 Hackney Street, Houston, Texas 77023; Dana J. Puopolo, 2134 Oak St., Unit C, Santa Monica, California 90405.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–29 and 03–30; adopted January 29, 2003 and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Commission further requests comment on a petition filed by Dana J. Puopolo proposing the allotment of Channel 255A at Trona, California, as the community's first local service. Channel 255A can be allotted to Trona in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 km (4.2 miles) southeast of Trona. The coordinates for Channel 255A at Trona are 35–43–51 North Latitude and 117–18–28 West Longitude. Petitioner is required to submit sufficient information to establish that Trona qualifies as a community for FM allotment purposes.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Muldrow, Channel 286A.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Trona, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3953 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–266, MB Docket No. 02–27, RM–10631]

Radio Broadcasting Services; Cotulla and Dilley, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by IH–35 South Broadcasters proposing the allotment of Channel 264A to Cotulla, Texas, as a third local FM service. In order to accommodate this allotment, the Petitioner also proposes the substitution of Channel 229A for vacant Channel 264A at Dilley, Texas. Channel 264A can be allotted to Cotulla, Texas, consistent with the minimum distance separation requirement of the Commission's Rules at city reference coordinates. The coordinates for Channel 264A at Cotulla are 28–26–12 North Latitude and 99–14–05 West Longitude. Since Cotulla is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested. Channel 229A can also be allotted to Dilley, Texas, consistent with minimum distance separation requirements of the Commission's Rules provided there is a site restriction 6.3 kilometers (3.9 miles) south of the community. The coordinates for Channel 229A at Dilley are 28–36–56 North Latitude and 99–10–48 West Longitude. Since Dilley is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

DATES: Comments must be filed on or before March 24, 2003, and reply comments on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Harry C. Martin, Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–27, adopted January 29, 2003, and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 264A at Cotulla and by removing Channel 264A and by adding Channel 229A at Dilley.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3955 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P 1

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–193, MB Docket No. 03–21, RM–10632]

Radio Broadcasting Services; Port St. Joe, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Moira L. Ritch proposing the allotment of Channel 270C3 at Port St. Joe, Florida, as that community's second local service. The coordinates for Channel 270C3 at Port St. Joe, Florida are 29–47–45 NL and 85–17–27 WL. There is a site restriction 2.2 kilometers (1.4 miles) south to avoid short-spacing to the application site of Station WWAV, Channel 271C2, Santa Rose, Florida and license site of Station WBGE, Channel 270A, Brainbridge, Georgia.

DATES: Comments must be filed on or before March 24, 2003, and reply comments on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Moira L. Ritch, P.O. Box 13599, Mexico Beach, Florida 32410.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–21, adopted January 29, 2003, and released January 31, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 270C3 at Port St. Joe.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3950 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–194; MB Docket Nos. 03–22, 03–23; RM– RM–10597, RM–10633]

Radio Broadcasting Services; Conway and Vilonia, AR; Racine, OH and Ravenswood, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on proposals in two separate docketed proceedings in a multiple docket *Notice of Proposed Rule Making*. One, filed by Creative Media, Inc. ("Creative") proposes to substitute Channel 224C3 for Channel 224A at Conway, Arkansas, and reallot Channel 224C3 from Conway to Vilonia, Arkansas as the community's first local aural transmission service, and modify the license for Station KASR(FM) to reflect the changes. Channel 22C3 can be reallotted from Conway to Vilonia, Arkansas at Creative's requested site12.7 kilometers (7.9 miles) east of the community at coordinates 35–05–02 NL and 92–04–59 WL. The other, filed by Legend Communications of West Virginia, LLC ("Legend") to reallot Channel 226A from Ravenswood, West Virginia, to Racine, Ohio, as the community's first local aural transmission service, and modify the license for Station WPTM(FM) to reflect the change of community. Channel 226A can be reallotted from Ravenswood, West Virginia, to Racine, Ohio at Legend's requested transmitter site 14.4 kilometers (9 miles) southeast of the community at coordinates 38–53–36 NL and 81–46–52 WL.

DATES: Comments must be filed on or before March 24, 2003, and reply comments must be filed on or before April 8, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Legend Communications of West Virginia, LLC, c/o Christina T. Brumley, Esq., Jackson & Kelly PLLC, P.O. Box 553, Charleston, West Virginia 25322 (MB Docket No. 03–22). Creative Media, Inc., c/o Eugene T. Smith, Esq., P.O. Box 15541, Washington, DC 20003 (MB Docket No. 03–23).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–22 and 03–23, adopted January 29, 2003, and released January 31, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 224A at Conway and adding Vilonia, Channel 224C3.

3. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Racine, Channel 226A.

4. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Ravenswood, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–3951 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020703D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting on March 4, 5, and 6, 2003, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday March 4, 5, and 6, 2003. The meeting will begin at 1:30 a.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Providence Biltmore Hotel, 11 Dorrance Street, Kennedy Plaza, Providence, RI 02903; telephone 401/412–0700. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, March 4, 2003

Following introductions, the Council will address a number of groundfish fishery-related issues during this first afternoon session. There will be a briefing on the February 3–5, 2003 Groundfish Peer Review meeting, and a discussion about incorporation of those meeting results, including advice on biological reference points, into the Northeast Multispecies Fishery Management Plan (FMP) Amendment 13 Draft Supplemental Environmental Impact Statement (DSEIS).

Wednesday, March 5, 2003

The meeting will reconvene with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. The Groundfish Committee will report on and ask the Council to identify management alternatives for further development and inclusion in the Amendment 13 DSEIS. Their discussion also will relate to measures that would implement the U.S./Canada Resource Sharing Agreement, groundfish stock rebuilding time periods and modifications to alternatives as necessary to meet any revised fishing mortality targets. The Groundfish Committee report will continue until the end of the day.

Thursday, March 6, 2003

The third day of the meeting will begin with a presentation by NMFS staff on the agency's new coastwide initiative to collect recreational fishing data. The report will include details about the methodology that will be employed to collect catch and effort data from the for-hire recreational fleet. The presentation will be followed by a brief public comment period during which any member of the public may bring forward items relevant to Council business but not otherwise listed on the agenda for this meeting. The Habitat Committee will report on recommendations developed at the recent Groundfish, Scallop and Monkfish Joint Advisors meeting on habitat alternatives for Council consideration in Amendment 10 to the Atlantic Sea Scallop FMP and in Amendment 13 to the Northeast Multispecies FMP. The Habitat Committee also will identify a preferred alternative for Scallop Amendment 10. Finally, the Council will review the habitat section, with all alternatives and analyses, of the Northeast Multispecies Amendment 13 DSEIS, select a preferred alternative and conduct a final vote to approve this element of the DSEIS. The Council meeting will adjourn following the conclusion of any other outstanding business. Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 11, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3990 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 33

Wednesday, February 19, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on March 6, 2003 at 9 a.m. in Room 3884 of the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

1. Introductions and opening remarks.
2. Approval of minutes from previous meeting.
3. Presentation of papers or comments by the public.
4. Review of proposals submitted by the MPETAC.
5. Discussion on 5-axis issues.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230.

For more information contact Lee Ann Carpenter at 202–482–2583.

Dated: February 13, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–817]

Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measure on Certain Cut-to-Length Carbon-Quality Steel Plate Products From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to section 129 of the Uruguay Round Agreements Act, which governs administrative actions following World Trade Organization Panel reports, the Department of Commerce is issuing a second determination with respect to the antidumping duty investigation on cut-to-length carbon-quality steel plate from India. This determination is in conformity with the findings of a World Trade Organization Panel report, as adopted by the World Trade Organization Dispute Settlement Body.

FOR FURTHER INFORMATION CONTACT: Howard Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5193.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to Department of Commerce's regulations are references to the provisions codified at 19 CFR Part 351 (2001). Citation to "section 129" refers to section 129 of the Uruguay Round Agreements Act, codified at 19 U.S.C. 3538.

Background

On December 29, 1999, the Department of Commerce (Commerce) published a final determination of sales at less than fair value in the antidumping duty investigation on cut-to-length carbon-quality steel plate (subject merchandise) from India.[1] During this proceeding, the sole Indian respondent, the Steel Authority of India, Ltd. (SAIL), acknowledged serious deficiencies with respect to its home market sales, cost of production, and constructed value information. However, SAIL argued that Commerce should use its submitted U.S. sales price information in the margin calculation, by comparing the prices of these sales to information concerning normal value from the petition.[2] Commerce rejected this request and based the dumping margin on total facts available.[3] In determining to reject the partial information submitted by SAIL and rely entirely on the facts available, Commerce found that the information submitted did not meet any of the criteria established by section 782(e) of the Act. This included a finding, pursuant to section 782(e)(5), that the information could not be used without undue difficulties.[4] Commerce's explanation for this finding was that "the U.S. sales database contained errors that, while in isolation were susceptible to correction, however when combined with the other pervasive flaws in SAIL's data lead us to conclude that SAIL's data on the whole is unreliable."[5]

Subsequently, the Government of India requested the establishment of a World Trade Organization (WTO)

[1] *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from India*, 64 FR 73126 (December 29, 1999) (*Final Determination*). Following an affirmative injury determination issued by the United States International Trade Commission, Commerce issued an antidumping duty order on this product. See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-to-Length Carbon Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

[2] *Final Determination* at 73128.

[3] Commerce selected, as facts available, the highest of the margins alleged in the petition, 72.49 percent.

[4] *Final Determination* at 73127. Section 782(e)(5) lists, as a factor to consider in determining whether to accept information that does not meet all applicable requirements, whether "the information can be used without undue difficulties." The corresponding provision in the AD Agreement, which was the focus of the Panel ruling in this case, is at Annex II, paragraph 3.

[5] Id.

dispute settlement panel (the Panel) to consider, inter alia, Commerce's rejection of SAIL's U.S. sales data in this case. The Panel issued its report on June 28, 2002.[6] The WTO Dispute Settlement Body (DSB) adopted the findings in this report on July 29, 2002. On August 30, 2002, the United States informed the DSB that it would implement the recommendations of the DSB in a manner consistent with its WTO obligations.

On December 10, 2002, pursuant to section 129(b)(2) of the Uruguay Round Agreements Act (URAA), the U.S. Trade Representative (USTR) requested that Commerce issue a determination that would render its original antidumping determination in this matter not inconsistent with the findings of the Panel.

On December 26, 2002, Commerce issued its draft determination in this proceeding. *See* draft Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measure on Certain-Cut-to-Length Carbon-Quality Steel Plate Products from India (Draft Determination) which is on file in the Central Records Unit, room B–099 of the main Commerce building. On January 2, 2003, SAIL submitted comments regarding Commerce's Draft Determination. On January 6, 2003, Bethlehem Steel Corporation and United States Steel Corporation (Petitioners) submitted rebuttal comments. A summary of these comments and rebuttal comments, as well as Commerce's response are included in this determination. On February 3, 2003, the USTR held consultations with Commerce and the appropriate congressional committees with respect to this determination. On February 7, 2003, the USTR directed Commerce to implement this determination.

WTO Panel Findings and Conclusions

In its report, the Panel found that the U.S. statutory provisions concerning use of facts available are not inconsistent with Article 6.8 and paragraphs 3, 5, and 7 of Annex II of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement).[7] However, the Panel found that the application of these provisions in this case was inconsistent with Article 6.8 and paragraph 3 of Annex II of the AD Agreement.

Specifically, the Panel found that the United States had not provided a "legally sufficient justification" in the final determination for refusing to take into account U.S. sales price information submitted by SAIL and basing the dumping margin entirely on the facts available.[8] The focus of any such justification, according to the Panel, should be on whether the information met the requirements set forth in paragraph 3, Annex II, of the AD Agreement, taking into account the interrelationship between the partial data at issue (U.S. sales data) and the other elements of the dumping analysis, for which, both sides agree, SAIL did not submit reliable information. In this regard, the Panel noted "we consider to be critical the question of whether information which itself may satisfy the criteria of paragraph 3 can be used without undue difficulties in light of its relationship to rejected information."[9]

The Panel did not consider as sufficient the statement in the final determination, without elaboration, that the U.S. database could not be used without undue difficulties because the errors in that database, when combined with the other pervasive flaws in SAIL's data, indicate the unreliability of SAIL's data on the whole.[10] The Panel noted Commerce's acknowledgment that the errors in the U.S. database "in isolation were susceptible to correction,"[11] and stated that, in light of this, Commerce needed to provide a more adequate explanation for its decision to reject this information: "[W]e consider it imperative that the investigating authority explain, as required by paragraph 6 of Annex II, the basis of a conclusion that information which is verifiable and timely submitted cannot be used in the investigation without undue difficulties."[12]

Although the United States explained, during the panel proceedings, why it could not use SAIL's data without undue difficulty, the Panel focused on the need for Commerce itself to provide the explanation in its antidumping determination. "Even assuming we were persuaded by the United States" arguments before us that USDOC could have made the decision posited [to reject the U.S. sales data as unduly difficult to use based on arguments made in dispute settlement], there is nothing in the record to indicate to us that it did make such a decision in the case."[13]

The Panel refused a request by India that it suggest the United States implement this finding by recalculating the dumping margin taking into account the U.S. price data at issue, stating that "[i]n this case, we see no particular need to suggest a means of implementation, and therefore decline to do so."[14] The Panel added that "the choice of means of implementation is decided, in the first instance, by the Member concerned."[15] The Panel then issued a general recommendation that the DSB request the United States "to bring its measure into conformity with its obligations under the AD Agreement,"[16] which the DSB subsequently adopted.

Implementation

In order to bring the measure at issue into conformity with the AD Agreement, in this section 129 determination, we are providing the "legally sufficient explanation" that the Panel found lacking in the initial determination regarding why the U.S. sales information at issue could not be used "without undue difficulties" in calculating a dumping margin under the AD Agreement. The following "legally sufficient explanation" fully explains why Commerce is under no obligation to take SAIL's U.S. sales transactions into account in establishing a dumping margin for SAIL. Nonetheless, in implementing the DSB's recommendation, Commerce has given careful attention to the Panel's reasoning and has determined that it is appropriate, under the particular facts of this case, to give consideration to the U.S. sales information in a limited manner in determining the appropriate facts available margin to assign to SAIL. Each of these aspects of our implementation is explained below.

In its report, the Panel defined the term "undue difficulties" as those that "go beyond what is otherwise the norm in an anti-dumping investigation,"[17] as opposed to difficulties that arise routinely during the course of an investigation and which are within the ambit of the "two-way process involving joint effort" between investigating authorities and respondents established by Annex II of the AD Agreement.[18] In situations involving the potential use of partial information submitted where other data has been rejected, the Panel focused on:

> [W]hether a conclusion that some information fails to satisfy the criteria of paragraph 3, and thus may be rejected, can in any case justify a decision to reject other information submitted which, if considered in isolation, would satisfy the criteria of paragraph 3. We consider that the answer to this question is yes, in some cases, but that the result in any given case will depend on the specific facts and circumstances of the investigation at hand.[19]

While the Panel noted the fact-specific nature of this determination, it also discussed some general considerations regarding the interconnection between databases that could apply across cases. The Panel states, for instance, that:

> We consider * * * that *the various elements, or categories, of information necessary to an antidumping determination are often interconnected,* and a failure to provide certain information may have ramifications beyond the category in which it falls. For instance, a failure to provide cost of production information would leave the investigating authority unable to determine whether sales were in the ordinary course of trade, and further unable to calculate a constructed normal value. Thus, a failure to provide cost of production information might justify resort to facts available with respect to elements of the determination beyond just the calculation of cost of production. *Moreover, without considering any particular "categories" of information, it seems clear to us that if certain information is not submitted, and facts available are used instead, this may affect the relative ease or difficulty of using the information that has been submitted and which might, in isolation, satisfy the requirements of paragraph 3 of Annex II.*[20]

The Panel's hypothetical example underscores the impact that the failure to provide one element of necessary information (*e.g.*, cost of production) can have on the usability of other elements. While the Panel does not take the view that a failure to provide one element of information automatically allows for disregarding all other information submitted,[21] it makes clear in the report that the absence of one element can result in the failure of other elements to meet the requirements of paragraph 3:

> [I]t may indeed be the case that a failure to provide *one* element of information undermines the usability of information that is submitted, *making it unduly difficult to use the information submitted in making determinations.* * * * A panel reviewing such a decision must be able to conclude that the investigating authority considered the relationship between the missing information and the information submitted, and concluded in light of that relationship, the fact that one element of information was not submitted justified the conclusion that information submitted did not satisfy the criteria of paragraph 3 of Annex II.[22]

The Panel's concern with the impact that a single missing element of information can have on other elements of information is particularly relevant to the investigation at issue because, in this investigation, SAIL failed to provide usable information not just for one of the major elements of information required, but for three out of four major elements of information required in an antidumping proceeding, namely home market sales, cost of production, and constructed value information.[23] As a result, the question under the facts of this determination is not whether SAIL's failure to provide a single element renders unusable the remainder of the information, but whether SAIL's failure to provide potentially usable information for all elements except U.S. sales renders this sole remaining element unduly difficult to use.

In addressing this question, Commerce has considered both the Panel's definition of undue difficulties as those that go "beyond what is otherwise the norm" in an antidumping case and its hypothetical example involving the impact of missing cost of production information on the relative ease or difficulty of using home market sales data. While certain minor data deficiencies may be the norm in antidumping cases, the absence of any information regarding normal value and production costs far exceeds that norm and, therefore, the difficulties faced in dealing with the absence of such information are far beyond the norm. As the Panel noted, a lack of usable cost of production information "*would leave the investigating authority unable* to determine whether sales were in the ordinary course of trade and further unable to calculate a constructed normal value. Thus, a failure to provide cost of production information might justify resort to facts available with respect to elements of the determination beyond just the calculation of cost of production."[24] In the hypothetical example posed by the Panel, the investigating authority would be unable to determine whether the partial information submitted satisfies the requirements of the AD Agreement (*e.g.*, whether home market sales are in the ordinary course of trade as required by Article 2.1). Thus, the hypothetical suggests that one missing element of the information required for an antidumping analysis may render other elements of information submitted "unduly difficult" to use in a way that turns fundamentally on whether it is possible to calculate a meaningful and accurate dumping margin under these circumstances, given the interrelationship between the elements involved and the requirements of the AD Agreement.[25]

Therefore, in considering whether it is unduly difficult to use SAIL's U.S. sales data under these circumstances, we have taken into account whether any such calculation would produce a meaningful and accurate result, in light of the interrelationship between elements in a dumping analysis, as well as the degree of difficulty that would be incurred in order to use the U.S. data to calculate a dumping margin in accordance with Article 2 of the AD Agreement. Applying these considerations to the facts of this case, we find that it is unduly difficult to use SAIL's U.S. data because it is not possible to calculate a dumping margin in the manner envisioned by the AD Agreement where the respondent has provided potentially usable information on only a single element of the dumping analysis, and where even that information has substantial flaws. Instead, any dumping margin determined under these circumstances is a facts available margin. We address this in more detail below.

In light of the relationship between SAIL's missing information (home market sales, cost of production, and constructed value data) and the information submitted (the U.S. sales data), SAIL's flawed U.S. data could not be used without undue difficulty in calculating a dumping margin in the manner envisioned by the AD Agreement.

In the context of the AD Agreement, which defines dumping based on a

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[6] United States—Antidumping and Countervailing Measures on Steel Plate from India, WT/DS206/R (June 28, 2002) (Panel Report), full text available at www.wto.org).

[7] Panel Report, paragraph 8.2(a).

[8] Panel Report, paragraph 8.1.

[9] Panel Report, paragraph 7.61 (emphasis added). The Panel here refers to the "undue difficulties" standard contained in paragraph 3, Annex II of the AD Agreement. As noted, a corresponding standard is set forth at section 782(e)(5) of the U.S. antidumping law.

[10] Panel Report, paragraph 7.69.

[11] *Final Determination* at 73127. See also Panel Report, paragraph 7.71.

[12] Panel Report, paragraph 7.74.

[13] Panel Report, paragraph 7.69 (emphasis original).

[14] Panel Report, paragraph 8.8.

[15] *Id.*

[16] Panel Report, paragraph 8.6.

[17] Panel Report, paragraph 7.72.

[18] Panel Report, paragraph 7.73.

[19] Panel Report, paragraph 7.62.

[20] Panel Report, paragraph 7.60 (emphasis added).

[21] Id.

[22] Panel Report, paragraph 7.67 (emphasis added).

[23] We refer to normal value, export price, cost of production, and constructed value information as major "elements" of information for an antidumping analysis, consistent with statements by India and the Panel. See, *e.g.*, Panel Report, Paragraph 7.54–7.55.

[24] Panel Report, paragraph 7.60 (emphasis added).

[25] We note that the current proceeding represents a particularly extreme version of the scenario described by the Panel. In this proceeding, SAIL did not merely fail to provide cost of production information, rather it failed to provide any usable information for any of the required elements other than U.S. sales, and even its U.S. sales information is incomplete.

comparison of the export price with the normal value of sales made in the ordinary course of trade, the information necessary for conducting an antidumping analysis includes prices of the subject merchandise in the domestic market of the exporting country, export prices of the subject merchandise, and, where needed (such as this case), cost of production and constructed value information.[26] A competent authority conducting an antidumping analysis requires each of these elements of information in order to calculate a respondent's dumping margin. Thus, there is an explicit relationship between SAIL's U.S. sales database and the information that was absent in this case: SAIL's home market price, cost of production, and constructed value information.[27] With such fundamental aspects of data entirely absent—a scenario that goes well beyond the norm in an antidumping investigation—a fair and objective investigating authority could reasonably determine that SAIL's U.S. sales database could not be used without undue difficulty in calculating a dumping margin consistent with the AD Agreement.

The interrelationship between elements in a dumping analysis starts with the basic measure of dumping in Article 2.1 of the AD Agreement—export sales prices compared with normal value—and extends to the numerous requirements throughout Article 2 establishing the circumstances under which export prices and normal value may be compared. This interrelationship is underscored by the fact that the basic purpose of each of the four major data elements required for a dumping analysis that come into play under Article 2—comparison market prices, export prices, cost of production, and constructed value—is defined in terms of its comparison with other elements. None of these elements serves any purpose in isolation, separate from the other aspects of the dumping analysis, and each requires adjustments that take into account the element against which it is being compared.

First, upon selection of the appropriate comparison market, sales in that market must be analyzed to determine whether they are in the ordinary course of trade, as required by Article 2.1 of the AD Agreement. Most typically, this requires a comparison between the sales price element and the cost of production element in the comparison market, as governed by Article 2.2.1 and Article 2,2.1.1. As with other aspects of the analysis, this "cost test" does not concern the cost of production element alone but instead requires a comparison between major data elements, as illustrated by the hypothetical example discussed in the Panel Report. Where it is determined, under the criteria established in Article 2.2, that comparison market sales are not in the ordinary course of trade, constructed value may be used as normal value.

The prices of sales in the comparison market made in the ordinary course of trade must then be compared with sales prices to the export market. This in turn requires a comparison of a number of characteristics related to sales in each market, as described in Article 2.4. Sales in the two markets must be matched according to the physical characteristics of the products sold, and adjustment for any differences in physical characteristics must be made. Sales in the two markets must also be compared at the same level of trade, where possible, and an adjustment for any differences in level of trade must be made where such differences are demonstrated to affect price comparability. Article 2.4 requires that comparisons between markets be made at the ex-factory level, necessitating an adjustment for transportation and certain warehousing expenses in the two markets. Article 2.4 also requires that due allowance be made for a number of other differences that affect price comparability, including differences in terms and conditions of sale, taxation, quantities, and any other differences that affect price comparability. For instance, in the case of export price sales, such as the U.S. sales at issue, Commerce would normally adhere to the Article 2.4 requirement that an adjustment be made for differences in terms and conditions of sale by adding direct selling expenses incurred on export price sales to normal value, while deducting home market selling expenses. This adjustment would also be made when normal value is based on constructed value.[28] A proper comparison under Article 2 of the AD Agreement requires that we account for all such differences between the export and comparison markets in our analysis.

It is important to note that these provisions of the AD Agreement enable the investigating authority to arrive at an accurate determination of whether dumping is occurring in the export market. For example, it is often the case that selling to an export market involves a higher level of expenses than selling in the domestic market, and such differences in terms and conditions of sale must be taken into account in determining whether price discrimination between markets is occurring.

In this case, the absence of usable data for all elements other than U.S. sales, along with the deficiencies relating to SAIL's U.S. sales data, leaves Commerce unable to conduct a meaningful dumping analysis under the framework discussed above. There are no usable home market sales prices for SAIL. Moreover, the sales expense and production cost information relating to those sales are not usable. Therefore, it is not possible to compare any of SAIL's home market sales prices to its U.S. sales prices. Any analysis attempted without such data would leave the investigating authority unable to adjust for all differences in terms and conditions of sale between U.S. sales and normal value. Further, it is not possible to match sales at the same level of trade, or to adjust for differences in levels of trade where price comparability is affected. In fact, the types of difficulties encountered by Commerce in attempting to conduct an antidumping analysis, given the pervasive reporting failures in this case, may be illustrated by examining the Article 2.4 requirements with respect to level of trade.

In its questionnaire response SAIL claimed that it made home market sales at multiple levels of trade, some of which corresponded more closely to the U.S. level of trade than others.[29] In order to meet the Article 2.4 requirements regarding levels of trade, we normally would first seek to compare U.S. sales with home market sales made at the same level of trade. If price comparisons could not be made at the same level of trade, we would attempt to compare U.S. and home market sales at different levels of trade while considering whether a level-of-trade adjustment was appropriate. If we were unable to make any price comparisons (because, for instance, home market sales were below the cost of production) and had to rely on constructed value, we would still take level of trade into account in calculating the selling expense and profit elements of constructed value. None of these considerations with respect to the comparison between U.S. prices and normal value is possible because SAIL provided no usable home market sales, cost of production, or constructed value information. Under these circumstances, despite the investigating authority's efforts, there is no way of knowing the extent to which a dumping margin is affected, upward or downward, by comparisons made at different levels of trade. Simply put, it is not possible, under these facts, to engage in partial, selective "gap-filling" of the sort that would allow for a meaningful determination of dumping as defined in the AD Agreement.

SAIL's argument that a dumping margin should be calculated by comparing its U.S. prices to the constructed value offered in the petition does nothing to remedy the data deficiencies that make calculating a dumping margin in the manner envisioned by the AD Agreement impossible. Moreover, there is no way to know whether substituting the constructed value from the petition for SAIL's entire home market sales and cost databases would adequately represent SAIL's home market pricing practices. Because the use of SAIL's U.S. sales information with the constructed value in the petition would not result in a dumping calculation as outlined in the AD Agreement, it would represent a facts available margin.

The facts available nature of the dumping determination under these circumstances is further underscored by the substantial flaws in the sole element of information for which SAIL provided potentially usable data. SAIL's U.S. data excluded necessary information on variable and total costs of manufacturing and misreported information on matching criteria for a majority of U.S. sales. At a minimum, as envisioned by Article 2 of the AD Agreement, Commerce would need the missing cost information in order to adjust for any differences in physical characteristics between the products SAIL sold in the United States and the product for which constructed value was calculated in the petition.[30] Those physical characteristics include specification/grade, quality, thickness, and width of the subject merchandise. Differences in these physical characteristics affect both prices and costs of the subject merchandise. However, there is no way to make such adjustments using SAIL's reported data because the variable and total cost information is missing in its entirety from the U.S. database, and thus is not susceptible to correction. Moreover, while there were other errors in SAIL's U.S. sales database that "in isolation were susceptible to correction * * *" (*Final Determination* at 73127), correcting these errors would still leave the gap created by the missing U.S. cost information. This is because SAIL provided no usable cost of production or constructed value information anywhere on the record. This is not a case where Commerce could correct those errors that were susceptible to correction and fill the gap created by missing variable and total cost information on some U.S. sales by using accurate information provided on other U.S. sales. Nor can Commerce adapt cost information provided in the cost of production or constructed value portions of the response to fill the gap created by the missing information on U.S. sales, since there is no such information on the record that was capable of being verified. Thus, while some of the deficiencies in SAIL's U.S. sales information were correctable, these deficiencies, when combined with other missing U.S. sales information and an unusable home market sales and cost response made using SAIL's U.S. sales information in a dumping calculation unduly difficult. The lack of variable and total cost information for SAIL in this case leaves Commerce unable to calculate a dumping margin in accordance with the provisions of Article 2 of the AD Agreement (*e.g.*, unable to make adjustments for differences in physical characteristics), which is similar to the position in which the investigating authority would find itself in the hypothetical example provided by the Panel where "a failure to provide cost of production information would leave an investigating authority unable to determine whether sales were made in the ordinary course of trade, and further unable to calculate a constructed normal value."[31]

Nevertheless, throughout the course of the dispute settlement proceeding, the Government of India—on behalf of SAIL—offered a variety of proposals for using SAIL's U.S. sales data in the dumping analysis, including corrections to the data that it suggested could be employed. As noted by Commerce in its statements before the Panel, the first of India's proposals employed methodologies that were contrary to the requirements of the AD Agreement, while its latter proposals conceded that no more than 30 percent of SAIL's U.S. sales was even potentially suitable for comparison to the normal value in the petition.[32] However, even if 30 percent of SAIL's U.S. sales was potentially suitable for comparison to the normal value in the petition because it matched the product for which the petition normal value was calculated, for the reasons noted above, any such comparison would not result in a dumping margin calculated in accordance with the provisions of Article 2 of the AD Agreement. Moreover, such a comparison would not account for the majority of SAIL's U.S. sales, and would require Commerce to determine the dumping margin for the majority of U.S. sales in a different manner. In light of these circumstances, the use of SAIL's U.S. sales data in calculating a dumping margin in accordance with the AD Agreement presented undue difficulties that Commerce was not obligated to undertake.

This position is reasonable, not only from the standpoint of satisfying the "unduly difficult" requirement of paragraph 3 of Annex II of the AD Agreement, but also when viewed in the broader context of the goals of the AD Agreement. The AD Agreement establishes certain requirements in making a comparison between export price and normal value in order to ensure that price discrimination is accurately measured. As explained above, a comparison of actual U.S. sales prices to a constructed value from the petition does not result in the accurate measurement of dumping envisioned by Article 2 because such a comparison

[26] In this case, cost of production and constructed value information was needed because Commerce was conducting a cost investigation.

[27] In fact, the explicit linkages between each of these elements needed to calculate an accurate dumping margin are reflected in SAIL's own questionnaire responses. In SAIL's export price response, for example, SAIL referred Commerce to its cost of production response—which SAIL and the Government of India have conceded was never usable—for cost information needed to measure differences in physical characteristics between products. SAIL Section C Response, at C–45 and C–50 (May 10, 1999).

[28] Many of the same allowances and adjustments must be made when constructed value is used.

[29] SAIL section B questionnaire response, B32–B35 (May 10, 1999).

[30] Normally, adjustments for differences in physical characteristics would not need to be made when comparing U.S. prices to constructed values because respondents provide the constructed value for each product sold to the United States. In this case, however, we have a constructed value for only one product. Thus, any comparison of SAIL's U.S. sales prices to the constructed value in the petition would have to take into account the adjustment for differences in physical characteristics using SAIL's cost information, information which SAIL failed to provide.

[31] Panel Report, paragraph 7.60.

[32] Commerce explained that the initial proposal submitted by India is flawed in many respects. In addition to offering new facts not presented to Commerce in the underlying investigation, this proposal offers three flawed options: (1) An option that would have Commerce use a below-cost price as normal value, contrary to the requirement that sales be in the ordinary course of trade; (2) an option that would have Commerce compare export prices to a normal value based on a different product without making an adjustment for differences in physical characteristics, contrary to the requirement in Article 2.4 of the AD Agreement that such an adjustment be made; and (3) an option that would have Commerce calculate a margin for SAIL using a small subset of SAIL's U.S. database.

cannot meet the requirements established by that Article.

For these reasons, we conclude that a calculation that cannot be made in accordance with Article 2 of the AD Agreement cannot somehow be more accurate than resorting to facts available. The facts available used in the investigation in this case are based on information from the petition, as authorized by Annex II, paragraph 1 of the AD Agreement. While the facts available contained in the petition may not account for all of the adjustments described above because it is based on information "reasonably available" to the party preparing the petition, it is not appropriate to assume, as SAIL has done, that the dumping margin derived from the petition overstates the margin that Commerce would have calculated if SAIL had provided all of the information requested by Commerce. There is no basis for determining whether this assumption is true. For example, there is no basis to know whether the petition normal value exceeds—or is even as high as—SAIL's actual normal value. Given the limited information available to a petitioner, a petition may understate the appropriate margin for any given respondent.[33] Thus, there is no way to determine the actual dumping margin with any degree of accuracy, or to know whether the respondent may benefit by not providing reliable information regarding its prices and costs. In cases such as this, given the nature of the information available, it may be appropriate to rely on information that ensures the respondent has not benefitted from its failure to provide information that is under its control. This is particularly true in this case, where the limited amount of potentially usable data submitted by SAIL raises basic questions owing to the respondent's control of the information relating to a dumping proceeding.

Nevertheless, ultimately, as the Panel indicated,[34] the determination whether to use or disregard partial information is a fact-specific judgment that must be made from case to case. The circumstances surrounding our disregard of SAIL's information are set forth above, and are clearly distinguishable from the majority of Commerce's determinations involving facts available. In most cases, Commerce accepts imperfect, but adequate data supplied by respondents, and uses facts available to fill data gaps which are not so significant as to render a calculated dumping margin meaningless. Thus, in such cases where a respondent supplies information, Commerce does not, as a matter of practice, "disregard all of the information submitted and base its determination exclusively on the facts available."[35] Rather, as the Panel notes, Commerce frequently relies on "partial" facts available with respect to some piece of information that is not submitted by a party.[36] In deciding whether the use of total or partial facts available is appropriate, it is necessary to consider all of the objectives of the AD Agreement, namely, to calculate dumping margins in accordance with the guidelines of Article 2, provide respondents with the procedural protections established by the Agreement, and at the same time provide the appropriate incentives for parties that control the information necessary to perform a dumping calculation to supply that information in the most timely and accurate manner possible. The application of these principles under these facts supports the conclusion that it was unduly difficult to use SAIL's substantially incomplete data in a dumping calculation consistent with the AD Agreement.

Accordingly, in determining SAIL's dumping margin, Commerce is not required to attempt to match SAIL's U.S. sales data to a normal value derived from the petition given the "undue difficulties" that such usage would present within the meaning of paragraph 3, Annex II of the AD Agreement. Therefore, the use of total facts available is appropriate and consistent with the AD Agreement.

At the same time, in selecting the most appropriate basis for facts available, we have considered the Panel's recognition of the positive aspects of SAIL's U.S. information relative to the complete reporting failure on all other elements.[37] In light of this aspect of the Panel's decision, and in response to comments submitted by the parties (see below), we have determined that under these circumstances it is appropriate to consider average U.S. pricing levels, as reported by SAIL, in selecting the most appropriate facts available, as described below.

The petition contains two sources of information on U.S. sales prices: (1) An offer for sale of subject merchandise (price quote); and (2) average unit values (AUVs) of subject merchandise based on U.S. import data provided by the Bureau of Census. In the final determination, Commerce relied solely on the price quote in deriving the dumping margin of 72.49 percent. However, upon reconsideration of this information in light of the minimum and average pricing levels of all Indian exports to the United States during the period of investigation (POI) (particularly the pricing levels of identical merchandise), which in this case are indicated by the U.S. sales information provided by SAIL since it accounted for virtually all Indian exports during the POI, we have determined that this price quote is atypical by comparison with all comparable prices. Therefore, it is appropriate under the circumstances of this case to consider the other information on the record regarding U.S. prices during the POI. Normally, in such circumstances, we would turn to the other source of petition information for use as facts available. However, in this case, the use of AUV data from the petition would benefit the respondent for its reporting failures because use of this data yields a lower margin compared with the flawed data submitted by SAIL. Accordingly, under the particular circumstances of this case, we have determined that it is appropriate, as facts available, to compare SAIL's average net U.S. price during the POI to the normal value provided in the petition. This average U.S. price is net of average movement expenses. *See* the memorandum Facts Available Analysis for the Section 129 Determination—Certain Cut-to-Length Carbon-Quality Steel Plate from India (Facts Available Memorandum), dated concurrently with this determination.

With respect to the facts available used for normal value, we note that SAIL's complete failure to report usable information for normal value leaves only one source of information appropriate for use in determining normal value, namely the constructed value information from the petition. The only other source of information on the record concerning normal value—home market price information from the petition—is inappropriate due to a properly documented allegation that home market sales were made below the cost of production. However, because, as acknowledged by SAIL, the constructed value from the petition is suitable for comparison with no more than 30 percent of the company's U.S. sales, it is appropriate to base the total facts available margin, in part, on a constructed value adjusted to account for physical differences for the remaining non-identical U.S. sales. In this case, an adjustment applied in accordance with the guidelines of Commerce's normal practice adequately accounts for the physical differences. Specifically, we increased the constructed value from the petition by 20 percent of the total cost of manufacturing included in that value. This is in keeping with Commerce's normal practice of considering products whose variable costs differ by no more than 20 percent of the cost of manufacturing to be comparable. Hence, we have adjusted the cost of manufacturing to account for the physical differences, and revised the constructed value used as total facts available for non-identical merchandise.

Therefore, the redetermined facts available margin is based on a comparison of SAIL's average net U.S. price with the constructed value from the petition, adjusted, where appropriate, for physical differences in merchandise. Due to the lack of usable information on the record, the dumping margin determined under these circumstances departs from our normal methodology in a number of respects. First, unlike a calculated dumping margin, this redetermined facts available margin is an aggregate calculation that does not involve model-specific comparisons between U.S. prices and normal value. Aside from the general classification described above regarding the percentage of SAIL's U.S. sales involving "identical" vs. "similar" merchandise compared with the product used in determining normal value, the calculation involves no analysis of product characteristics and no "model match" methodology, as is normally done in accordance with section 771(16) of the Act.[38] As such, there is no reliance on any of the individual product characteristic fields developed for this investigation and included in the antidumping questionnaire, such as specification/grade, quality, thickness, and width of the subject merchandise, since the lack of home market sales and cost information precludes comparisons made on the basis of these characteristics.

In addition, we have not matched sales by level of trade or otherwise adjusted for differences in levels of trade. As discussed above, the Department normally compares sales made at the same level of trade, where possible, pursuant to section 773(a)(1)(B)(i) of the Act. For comparisons involving different levels of trade, a level-of-trade adjustment is made pursuant to section 773(a)(7)(A) where it is established that any difference in levels of trade: (i) Involves the performance of different selling activities and (ii) is demonstrated to affect price comparability based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined. While SAIL reported in the narrative portion of its questionnaire response that it made home market sales at multiple levels of trade, some of which corresponded more closely to the U.S. level of trade than others, the lack of any usable home market sales data precludes taking level of trade into account with respect to product matching and in determining whether a level-of-trade adjustment is appropriate.

Finally, while we were able to adjust SAIL's U.S. prices for inland freight expenses, thereby arriving at an ex-factory price as required by section 772(c)(2)(A) of the Act, the lack of any usable expense information relating to home market sales precluded making any adjustments for differences in circumstances of sale between the two markets, as required by section 773(a)(6)(C)(iii). *See* Facts Available Memorandum for more details on the dumping margin determined for SAIL in this section 129 determination.

While the margin determined for SAIL in this redetermination cannot, therefore, be considered a calculated margin in accordance with our normal methodology, we believe that this facts available margin reflects the Panel's recognition of the positive aspects of SAIL's participation in the investigation, while continuing to ensure that SAIL has not benefitted by its failure to provide usable information. The following section contains interested parties' comments and Commerce's response.

Interested Party Comments

Comment 1

SAIL argues that Commerce's Draft Determination fails to implement the DSB's rulings and recommendations. SAIL notes that Commerce states in its Draft Determination that the Panel Report found "the United States had not provided a legally sufficient justification for its underlying determination." However, SAIL maintains that the actual Panel finding was that the United States had acted inconsistently with the AD Agreement by refusing to take SAIL's U.S. sales data into account and making its determination regarding SAIL's dumping margin solely on the basis of facts available. Therefore, to the extent that Commerce continues to calculate SAIL's dumping margin entirely on the basis of facts available, it fails to implement the DSB decision. According to SAIL, during the Panel process, the United States attempted to provide a "legally sufficient justification" for its original determination, but the Panel considered it *post hoc* rationalization. In SAIL's view, nothing in the Panel Report suggests that repeating this rationalization in greater detail could constitute adequate implementation of the DSB ruling.

Petitioners disagree with SAIL's representations. According to Petitioners, the Panel did not accept Commerce's rejection of SAIL's U.S. sales data based solely on the flaws in the other information submitted; nor did the Panel accept India's claim that if one category of information is submitted, it must be used. Rather, the Panel decided that categories of information may be interconnected such that failure to provide certain information may make it unduly difficult to use other data. Moreover, with respect to undue difficulties, Petitioners maintain that the Panel was not only referring to difficulties in physically calculating a margin, but "to methodological difficulties that preclude the calculation of a dumping margin in a manner consistent with the AD Agreement." Petitioners note that the Panel found the issue of "undue difficulties" to be a highly fact-specific issue and stated that where these situations arise, the investigating authority is required to adequately explain why information that is timely and verifiable cannot, because of its relationship with rejected data, be used without undue difficulty. In this case, the Panel found Commerce failed to provide this explanation with respect to SAIL's U.S. sales data. Petitioners argue that the Panel would not have indicated that Commerce could provide a legally sufficient justification for rejecting the U.S. sales data if the Panel was requiring that those data be used. Moreover, in rejecting SAIL's request that the Panel instruct Commerce to recalculate the dumping

[33] *See, e.g., Notice of Final Determination of Sales at Less Thon Foir Volue: Steel Concrete Reinforcing Bars from the People's Republic of China*, 66 FR 33522, 33523 (2001) (petition margin understated margin calculated for respondent); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434, 40435 (1998) (same).

[34] Panel Report, paragraph 7.62.

[35] Panel Report, paragraph 7.60. The Panel here is summarizing its view of the U.S. position regarding what an investigating authority may do under the AD Agreement. In our view, it is important to emphasize that Commerce does not, in the majority of its cases, use any such discretion to disregard all information submitted.

[36] Panel Report, paragraph 7.92.

[37] Panel Report at paragraph 7.71. While the Panel explicitly declined to determine whether SAIL's U.S. sales information was unduly difficult to use, it did find that the information met other requirements of paragraph 3, Annex II, namely that it was "capable of being verified" and "supplied in a timely fashion."

[38] The corresponding AD Agreement provision for comparisons and adjustments discussed in this section is Article 2.4.

margin using its reported U.S. sales data, the Panel left the decision regarding the manner of implementation to the United States and held open the option of explaining how in this case the rejected data undermined the usability of the company's U.S. sales data. Petitioners maintain that Commerce analyzed the facts of this case and concluded that "the absence of usable data for all elements other than U.S. sales, along with deficiencies relating to the U.S. sales themselves, leaves Commerce unable to conduct a meaningful dumping analysis * * * ." Therefore, according to Petitioners, Commerce's Draft Determination is in full compliance with the Panel's decision and should not be modified in any way.

Petitioners further urge Commerce to reject SAIL's contention that providing a legally sufficient justification constitutes an improper *post hoc* rationalization. According to Petitioners, the Panel described the justification for rejecting U.S. sales data offered by Commerce in its written submissions to the Panel as *post hoc* rationalization because this justification was not on the record of the investigation and was offered only in argument in written submissions to the Panel.

As described above, Petitioners maintain that the Panel's decision permits Commerce to implement the findings in this WTO proceeding by explaining why SAIL's U.S. sales data is not usable. Petitioners argue that the justification in the section 129 determination for rejecting the U.S. sales data is being provided by the investigating authority to explain its determination and cannot possibly be considered a *post hoc* rationalization.

Commerce's Position

The Panel stated that, under the AD Agreement, before rejecting an element of information submitted and resorting to facts available, the investigating authority must evaluate the element of information in question against the criteria of paragraph 3 of Annex II. Observing that "the various elements, or categories of information necessary to an anti-dumping determination are often interconnected, and a failure to provide certain information may have ramifications beyond the category in which it falls," the Panel also acknowledged that the failure to provide one element of information can undermine the usability of information which, if considered in isolation, would satisfy the criteria of paragraph 3.[39] Further, the Panel took the view that the decision to reject, as unduly difficult to use, information that otherwise satisfies the criteria of paragraph 3 is a case-specific determination that is dependent upon the facts and circumstances of the investigation at hand. With respect to such a decision, the Panel noted that "[c]ritical to such a determination is the explanation by the investigating authority of its conclusion in this regard."[40]

On this point, the Panel noted that while Commerce argued, during the Panel proceeding, that SAIL's U.S. sales data could not be used without undue difficulty, there was no evidence to indicate that Commerce had made such a determination on the record of this case. Based on the facts and explanations on the case record, the Panel stated that Commerce's decision to reject the U.S. sales information lacked a valid basis under paragraph 3, Annex II, of the AD Agreement. The Panel concluded its review by recommending that the United States bring its measures "into conformity with its obligations under the AD Agreement."

Therefore, consistent with the Panel Report, providing the legally sufficient justification that the Panel found lacking in Commerce's initial determination regarding why U.S. sales information could not be used without undue difficulties brings the decision into conformity with the United States' obligation under the AD Agreement. Moreover, as the justification is an integral part of Commerce's new determination, it cannot be viewed as *post hoc* rationalization.

Comment 2

According to SAIL, Commerce essentially offers two reasons for concluding that it is unduly difficult to use the U.S. sales data at issue in its dumping calculations, both of which SAIL rejects. SAIL maintains that the Panel already rejected one of Commerce's reasons for not using the U.S. sales data in a dumping calculation, namely that there is an explicit relationship between the U.S. data and the unusable information and thus it is reasonable to reject the U.S. sales data when fundamental aspects of other data are entirely absent. Specifically, SAIL maintains that this argument was addressed and dismissed by the Panel when it determined that the United States had not applied the criteria of paragraph 3, Annex II, of the AD Agreement to SAIL's U.S. sales data and found Commerce's decision rejecting this sales information lacked a valid basis under the AD Agreement. SAIL notes that in accepting the argument that the absence of certain data may affect the usability of other data, the Panel stated that:

> To accept that view does not necessarily require the further conclusion, espoused by the United States, that in a case in which any 'essential element' of requested information is not provided in a timely fashion, the investigating authority may disregard all the information submitted and base its determination entirely on facts available. To conclude otherwise would fly in the face of one of the fundamental goals of the AD Agreement as a whole, that of ensuring that objective determinations are made, based to the extent possible on facts.[41]

SAIL contends that despite this statement, Commerce continues, in its Draft Determination, to argue that there is an "explicit relationship" among essential data elements and to assume that where any "essential element" of data is missing, Commerce is always justified in rejecting the other "essential element" entirely. SAIL notes that Commerce attempts to defend this position by stating that, based on the dumping analysis called for under Article 2 of the AD Agreement, none of these elements serves any purpose in isolation. SAIL asserts, however, that even dumping margins based on facts available must be calculated under Article 2 of the AD Agreement. SAIL claims that the only difference between a determination based on facts available and one based on the respondent's submitted data is that the information is derived from different sources. SAIL also notes that, regardless of the source of the information, the dumping margin is calculated by comparing the export price with normal value.

Furthermore, SAIL argues that if Commerce cannot calculate a margin under Article 2 of the AD Agreement when one side of the equation is based on facts available, it is difficult to see how Commerce can establish a margin when both sides of the equation are based on facts available. Although Commerce attempts to address this point by noting that all the information required for each Article 2 adjustment may not be reasonably available to the petitioner, SAIL states that this argument underscores the obvious fact that the petition data is less accurate than the data submitted by SAIL and that Commerce has failed to "'undertake a degree of effort' in selecting among the data in the petition and submitted by the respondent in order to calculate the most accurate possible margin under Article 2." SAIL maintains that Commerce "cannot fulfill its obligations under the AD Agreement simply by asserting that the use of actual data does not necessarily provide any meaningful information." SAIL emphasizes that 30 percent of its U.S. sales involve a product that is identical to the one for which constructed value was calculated in the petition and could be used to calculate a dumping margin for SAIL that is more accurate and reliable than that based entirely on the petition.

SAIL also notes that Commerce resorts to its old defense in arguing that a respondent should not be allowed to "game" the process by selectively submitting information, but maintains that this claim is groundless in this case. SAIL states that it did not attempt to manipulate the system and there is nothing in the Panel Report to suggest that this argument provides a legally sufficient basis under the AD Agreement to discard SAIL's U.S. sales information.

SAIL observes that Commerce's second claim that it cannot use the U.S. data because the data are flawed attempts to disavow Commerce's statement in the investigation that errors in the U.S. sales database "in isolation were susceptible to correction" by suggesting that there are other flaws in that database. However, other than claiming that missing cost of production data is a flaw in the U.S. sales database, SAIL contends that Commerce's claim simply recycles its initial argument and does not provide a reason for rejecting use of the U.S. data.

Finally, SAIL notes that nothing in the Draft Determination suggests that Commerce even attempted to calculate a margin using its verified U.S. sales data. SAIL, therefore, asserts that Commerce is in no position whatsoever to state that it "encountered undue difficulty in doing so."

Petitioners disagree with SAIL's claim that Commerce continues to assume that "where any 'essential element' is missing (in this case, home market sales and cost), the investigating authority is always justified in rejecting the other 'essential element' entirely." Petitioners argue that Commerce has discussed the data shortcomings in this case extensively and explained why the reported U.S. sales data is unduly difficult to use. In Petitioners' view, Commerce has shown that "the egregiousness of the situation here goes well beyond the norm for an antidumping investigation." Moreover, it is Petitioners' contention that "the interrelationship between elements in a dumping analysis is embodied in the numerous requirements throughout Article 2 of the AD Agreement." Petitioners maintain that to conduct a fair comparison between markets, Article 2 requires that due allowance be made for differences in physical characteristics, level of trade and other terms and conditions of sale, taxation, and quantities that affect price comparability. Petitioners note that as Commerce has shown in its Draft Determination, SAIL failed to provide any usable home market sales, constructed value or adjustment data that could be used as the basis for establishing normal value in calculating a dumping margin. Petitioners assert that this lack of usable data, under the facts of this case, render it unduly difficult to use SAIL's reported U.S. sales data in a manner consistent with Article 2. Petitioners' argue that this is "the end of the matter as far as the reported U.S. sales data are concerned—Commerce may reject those data and use total facts available." Commerce then has the discretion to choose the facts available to apply.

Petitioners also counter SAIL's claims that the margin calculation in the petition suffers from the same flaws as a margin calculated using SAIL's U.S. sales data and that the U.S. sales data are the most accurate data on the record. Petitioners argue, as described above, that once Commerce rejects the U.S. sales data as unduly difficult to use, it may use, and has the discretion to choose, the form of total facts available to apply. This includes use of the petition margin, just as Commerce did in this case. Petitioners claim that Commerce is under no obligation to prove that the facts available it selects are the most accurate. At the same time, Petitioners assert that "it does not follow that the petition margin is less accurate than the margin calculated by comparing SAIL's reported U.S. sales data to the normal value in the petition. Without SAIL's actual data, it is impossible to determine what its true margin is." Petitioners point out that if SAIL's assertions about the presumed lack of accuracy in a petition margin were accepted, Commerce would never be able to use the petition margin as facts available—an argument that is flatly inconsistent with the AD Agreement.

Petitioners dispute SAIL's claim that some of its U.S. sales can be compared to the petition's normal value arguing that the merchandise is not identical as SAIL purports and that Commerce cannot adjust for differences in the terms and conditions of these sales. Even if this were not the case, Petitioners further assert that this alternative is not acceptable as it violates the object and purpose of the AD Agreement in calculating accurate and reliable margins. Petitioners argue that this approach forces Commerce to calculate a dumping margin for SAIL based on only a minority of its U.S. sales and would be subject to manipulation and abuse by respondents. Petitioners respond to SAIL's claim that there is no evidence of "gaming" the process in this case by arguing that it would not be proper to require Commerce to produce such evidence. In Petitioners' view, "to do so would require Commerce to assess the respondent's mental state—something that is literally impossible to do."

Finally, Petitioners argue that SAIL's assertion that "Commerce does not provide any evidence that it actually attempted to use the verified U.S. sales data and encountered 'undue difficulties' in doing so" is irrelevant and should be dismissed. Petitioners note that this argument "focuses solely on the difficulties, or lack thereof, in physically calculating a dumping margin using its submitted data. As noted above, however, the Panel's decision goes not only to the difficulties in physically calculating a dumping margin, but also to the methodological difficulties in determining the dumping margin in a manner consistent with the AD Agreement." Petitioners maintain that Commerce has determined "that it is unduly difficult to use the U.S. sales data, including by using the methodologies proposed by India in the proceedings before the Panel, in a manner that is consistent with the AD Agreement." As Commerce's Draft Determination is fully consistent with the Panel's decision, SAIL's arguments should be rejected.

Commerce's Position

The Panel has not rejected the position taken by Commerce in this determination, namely that SAIL's U.S. data is unduly difficult to use based on both its attendant errors and its relationship with the home market and cost of production information that SAIL failed to provide. Rather, the Panel found that Commerce incorrectly rejected SAIL's U.S. data on the basis of problems with other information without addressing whether the U.S. sales price information could be used without undue difficulties. In this determination, we have identified the undue difficulties attendant in calculating a dumping margin in the manner envisioned by the AD Agreement, including the fact that no more than 30 percent of SAIL's U.S. sales are even potentially suitable for comparison to the product that served

[39] Panel Report, paragraph 7.60.

[40] Panel Report, paragraph 7.67.

[41] Panel Report, paragraph 7.60.

as the basis for normal value in the petition. In its proposals, SAIL focuses on the ease of calculating a dumping margin using its U.S. sales data and the proffered calculation methodologies. However, as explained above, these methodologies do not, and cannot, account for all of the adjustments required under Article 2 of the AD Agreement because the information needed to make those adjustments is not on the record. Moreover, the proposed methodologies do not remedy the lack of useable home market sales and cost of production information. Where a lack of information precludes the investigating authority from applying the provisions of Article 2 of the AD Agreement in calculating a dumping margin, the authority is justified in finding potentially useable elements of information unduly difficult to use and basing the margin on facts available. The Panel recognized this possibility when it noted that a failure to provide cost of production information would leave the investigating authority unable to determine whether sales were in the ordinary course of trade (a requirement of Article 2) and thus might justify resorting to facts available with respect to elements of the determination beyond just the calculation of the cost of production.

Furthermore, although SAIL contends that Commerce continues to believe it is justified in always entirely rejecting the other "essential elements" of a response where any "essential element" is missing, Commerce has not in fact made this statement. The present case is not one where an "essential element" is missing; it is a case where *all* of the "essential elements" of information provided by SAIL, other than U.S. sales data, were unverifiable, with substantial additional problems associated with the U.S. data. Thus, of all the information requested by Commerce in order to calculate a margin in accordance with Article 2 of the AD Agreement, only a small portion of one of the "essential elements" of information needed to calculate a dumping margin is even potentially useable.

In the instant case, it was not possible for Commerce to conduct an antidumping duty calculation, as envisioned by the AD Agreement, because SAIL failed to properly provide most of the information that Commerce required. This was despite Commerce's actions throughout the investigation to actively cooperate with SAIL in obtaining an accurate and complete record with which to calculate a dumping margin in accordance with Article 2 of the Agreement. In fact, during the course of the investigation Commerce provided SAIL with no fewer than five opportunities after its initial questionnaire response to supply useable information. As a result, the information-gathering stage of the investigation extended from the issuance of the initial questionnaire up to the preliminary determination, and was then further extended to a period well after the preliminary determination until just prior to verification. Each submission by SAIL required a separate analysis to identify remaining problems that needed to be addressed in order for the information to be used to calculate a dumping margin. Despite the numerous difficulties encountered prior to the preliminary determination, and the fact that Commerce made its preliminary determination entirely on the basis of facts available, Commerce sought to establish the validity of the information submitted by SAIL through extensive verifications undertaken in India. Thus, SAIL is incorrect when it claims that Commerce's position in this matter demonstrates that it fails to recognize the obligation on the investigating authority to cooperate with interested parties in making its determination and undertake a degree of effort in selecting between petition and respondent data for purposes of calculating a margin. Rather than failing to recognize this obligation, Commerce went far beyond what is otherwise the norm in an antidumping investigation in its attempts to base its determination on the data provided by SAIL.

Section 129 Determination Margin

As a result of the redetermination of the facts available margin, the following margins exist:

Exporter/Manufacturer	Margin (percentage)
Steel Authority of India, Ltd.	42.39
All Others	42.39

Continuation of Suspension of Liquidation

In accordance with section 129(c)(1)(B) of the URAA, we will instruct the U.S. Customs Service (Customs) to continue to suspend liquidation of all imports of certain cut-to-length carbon-quality steel plate from India that are entered, or withdrawn from warehouse, for consumption on or after February 7, 2003, the date on which the USTR directed Commerce under subsection (b)(4) of that section to implement this section 129 determination. Customs shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice.

The section 129 determination "all others" rate is the new cash deposit rate for all exporters of subject merchandise, other than SAIL. This rate will apply to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 7, 2003.

This section 129 determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: February 7, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3993 Filed 2–18–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to a request from Weishan Zhenyu Foodstuff Co., Ltd. (Weishan Zhenyu). The period of review (POR) is September 1, 2001, through February 28, 2002.

The preliminary results are listed below in the section titled "Preliminary Results of Review." Interested parties are invited to comment on these preliminary results. (*See* the "Preliminary Results of Reviews" section of this notice.)

EFFECTIVE DATE: February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Thomas Gilgunn, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3782 or (202) 482–4236, respectively.

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the People's Republic of China on September 15, 1997. (*See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218.) On March 29, 2002 the Department received a properly filed request for a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, from Weishan Zhenyu under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China.

The new shipper request was made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations. Under these provisions, an exporter or producer of the subject merchandise may request a new shipper review stating that it did not export the merchandise to the United States during the period of investigation (POI) and that such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise during that period, including those not individually examined during the investigation. If the exporter or producer makes the statements required by the regulations, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI; (iv) a certification that since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI and; (v) in an antidumping proceeding involving inputs from a non-market-economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. (*See generally* section 351.214(b)(2) of the Department's regulations.)

The request received from Weishan Zhenyu was accompanied by information and certifications establishing that it did not export the subject merchandise to the United States during the POI, and that it was not affiliated with any company which exported subject merchandise to the United States during the POI. Weishan Zhenyu provided information and certifications that demonstrated the date on which this company first shipped and entered freshwater crawfish tail meat for consumption in the United States, the volume of that and each subsequent shipment, and the date of first sale to an unaffiliated customer in the United States. In addition, Weishan Zhenyu certified that its export activities are not controlled by the central government.

The Department determined that the request met the requirements stipulated in section 351.214 of the regulations. On April 30, 2002, the Department published its initiation of this new shipper review for the period September 1, 2001, through February 28, 2002. (*See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review*, 67 FR 21218 (April 30, 2002).)

On May 8, 2002 we issued a questionnaire to Weishan Zhenyu. On June 7, 2002, we received their section A questionnaire response. On June 24, 2002 we received their sections C and D questionnaire responses. On September 23, 2002, we issued a supplemental questionnaire to Weishan Zhenyu. We received the response to this questionnaire on October 7, 2002. On October 25, 2002, we issued a second supplemental questionnaire to Weishan Zhenyu. We received their response to the second supplemental on November 12, 2002. We issued a third supplemental questionnaire to Weishan Zhenyu on November 12, 2002. We received their response to the third supplemental questionnaire on November 18, 2002. On January 28, 2003, we requested information from the U.S. importer of Weishan Zhenyu's new shipper shipment. To date, we have not received a response to this request. Any information provided by the importer will be analyzed for purposes of the final results of this new shipper review.

On September 26, 2002, the Department extended the preliminary results of this new shipper review by 33 days until November 22, 2002. (*See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limit of Preliminary Results of New Shipper Review*, 67 FR 60640 (September 26, 2002).) On November 1, 2002, the Department extended the deadline for completion of the preliminary results of this new shipper review for an additional 83 days until February 13, 2003. (*See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 66613 (November 1, 2002).)

Scope of the Antidumping Duty Order

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verification of the questionnaire responses of Weishan Zhenyu. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Our verification results are outlined in the *New Shipper Review of Freshwater Crawfish Tail Meat (tail meat) from the People's Republic of China (PRC) (A–570–848): Sales and Factors Verification Report for Weishan Zhenyu Foodstuff Co., Ltd.*, dated January 30, 2003. (*Weishan Zhenyu Verification Report*). A public version of this report is on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.

Separate Rates

Weishan Zhenyu requested a separate, company-specific rate. In its questionnaire response, the company

stated that it is an independent legal entity.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record supports the claim made by Weishan Zhenyu that its export activities are not controlled by the government. Weishan Zhenyu submitted evidence of its legal right to set prices independently of all government oversight. The business license of Weishan Zhenyu indicates that the company is permitted to engage in the exportation of crawfish. We found no evidence of *de jure* government control restricting this company's exportation of crawfish.

In general, no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. (*See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).)

The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (*Legal Persons Law*), issued on June 13, 1988 by the State Administration for Industry and Commerce of the PRC and provided for the record of this review, indicates a lack of *de jure* government control over privately-owned companies, such as Weishan Zhenyu, and that control over this enterprise rests with the enterprise itself. *The Legal Persons Law* provides that, to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. (*See Notice of Final Determination of Sales at Less Than Fair Value; Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*).) At verification, we saw that the business license for Weishan Zhenyu was granted in accordance with this law. The results of verification support the information provided regarding the *Legal Persons Law*. (*See Weishan Zhenyu Verification Report*, at 6.) Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to Weishan Zhenyu.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record and reviewed at verification, indicates that the management of Weishan Zhenyu is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The company general manager of Weishan Zhenyu has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. Weishan Zhenyu stated that its management is selected by a board of directors and there is no government involvement in the selection process. Finally, decisions made by the respondent concerning purchases of subject merchandise from suppliers are not subject to government approval. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's export activities, we preliminarily determine that a separate rate should be applied to Weishan Zhenyu. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see Separate Rates Decision Memorandum* to Dana Mermelstein, Program Manager, Office of AD/CVD Enforcement VII, dated February 12, 2003. A public version of this memorandum is on file in the Department's Central Record Unit (CRU).

Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at a price below normal value, we compared its United States price to normal value, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For Weishan Zhenyu, we based the United States price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight and brokerage and handling expenses from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Weishan Zhenyu did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Factor Values Memo for the Preliminary Results of the Antidumping Duty New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China*, dated February 12, 2003 *(Factor Values Memo)*.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and the subsequent administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exceptions of the whole live crawfish input and the crawfish scrap by-product, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding foreign inland freight expenses to make them delivered prices.

We valued the factors of production as follows:

To value the input of whole crawfish we used publicly available data showing Spanish imports of whole live crawfish from Portugal. We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on whole live crawfish, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (*See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) *(Roofing Nails)*.)

To value the by-product of wet crawfish scrap, we used a price quote from Indonesia for wet crab and shrimp shells. (*See Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC), Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01*, dated August 5, 2002.)

To value coal, we used the average 1996 total price of "steam coal for industry" as published in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000*. We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the average of the 1997 total cost per kilowatt hour (KWH) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000*. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank.

To achieve comparability of energy and water prices to the factors reported for the crawfish tail meat processing period applicable to the company under review, we adjusted these factor values to reflect inflation to the applicable crawfish processing season during the POR using the Wholesale Price Index (WPI) for India, as published in the 2002 *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data for the period April 2000 through January 2001 as reported in the *Monthly Statistics of the Foreign Trade of India (Monthly Statistics)*. We adjusted these prices to reflect inflation to the crawfish processing season during the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *(See Roofing Nails.)*

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we continued to use simple average derived from the publicly available 1996–97 financial statements of four Indian seafood processing companies. We applied these rates to the calculated cost of manufacture. *(See Factor Values Memo,* at 6.)

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2000*, International Labour Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

We valued movement expenses as follows: To value truck freight expenses we used seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of *Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation to the month of sale of the finished product using the WPI for India from the *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer and exporter	Time period	Margin (percent)
Weishan Zhenyu Foodstuff Co., Ltd.	9/1/01–2/28/02	0.00

Cash-Deposit Requirements

If these preliminary results are not modified in the final results of this review, a cash deposit rate of zero will be effective upon publication of the final results of this new shipper review for all shipments of freshwater crawfish tail meat from the PRC produced and exported by Weishan Zhenyu and entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act. The cash deposit rate for shipments produced and exported by Weishan Zhenyu will be the total amount of antidumping duties divided by the total quantity exported during the POR. This per kilogram cash deposit rate will be equivalent to the company-specific dumping margin rate established in this review. For crawfish tail meat exported, but not produced, by Weishan Zhenyu, we will apply as the cash deposit rate the PRC-wide rate, which is currently 223.01 percent. (*See* memorandum to file dated August 5, 2002, which places on the record of this review the "Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC, dated August 27, 2001".)

Assessment Rates

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we calculated importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We divided the total dumping margins (calculated as the difference between NV and EP) for the importer by the total quantity of subject merchandise sold to that importer during the POR. Upon the completion of this review, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. For crawfish tail meat produced and exported by Weishan Zhenyu, we will assess antidumping duties on a per kilogram basis equivalent to the company-specific cash deposit rate established in this review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with § 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: February 12, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3995 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428–836]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value.

SUMMARY: We preliminarily determine that polyvinyl alcohol from Germany is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of this preliminary determination.

EFFECTIVE DATE: February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Robin Moore, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that polyvinyl alcohol (PVA) from Germany is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 61591 (Oct. 1, 2002)) (*Initiation Notice*), the following events have occurred.

On October 21, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of PVA from Germany are materially injuring the United States industry (*see* ITC Investigation Nos. 731-TA-1014–1018 (Publication No. 3553, *Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 65597 (Oct. 25, 2002))).

On October 22, 2002, we selected Clariant GMBH (Clariant) and Kuraray Specialties Europe GMBH (Kuraray Europe), the producers/exporters accounting for the vast majority of exports of subject merchandise from Germany during the period of investigation (POI), as the mandatory respondents in this proceeding. For further discussion, see the memorandum to Louis Apple, Director, Office 2, from the Team entitled "Antidumping Duty Investigation of Polyvinyl Alcohol from Germany - Selection of Respondents," dated October 22, 2002. Due to limited resources, we determined that we could only investigate these two largest producers/exporters. We also issued antidumping questionnaires to Clariant and Kuraray Europe on October 22, 2002.

On November 22, 2002, Kuraray Europe submitted a response to Section A of the Department's questionnaire. On December 5, 2002, Kuraray Europe notified the Department that it would no longer participate in this investigation, and it requested that the Department remove all of its business proprietary information from the record of this proceeding. On December 11, 2002, the Department destroyed Kuraray Europe's business proprietary information and notified Kuraray Europe of this action. For further discussion, see the "Facts Available (FA)" section of this notice.

On December 9, 2002, in a letter faxed to the Department, Clariant acknowledged receipt of the Department's questionnaire. The fax was placed on the record of this proceeding on December 17, 2002. However, Clariant stated that, because it had sold the entirety of its production assets on January 1, 2002, and no longer produced PVA, it did not intend to respond to the Department's questionnaire. For further discussion, see the "Facts Available (FA)" section of this notice.

Period of Investigation

The POI is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002).

Scope Comments

In accordance with the preamble to our regulations (see Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the initiation notice. *See* the *Initiation Notice*, 67 FR at 61591. Although no comments on the scope of the investigation were received in this proceeding, scope comments were received in the companion Japanese case. Because these comments relate to PVA in general, we find that they are applicable to this proceeding. Accordingly, we have placed on the record of this proceeding all public scope comments as well as all public versions of the proprietary scope documents filed in the companion Japanese case, and we have modified the scope to conform to that set forth in the preliminary determination of that proceeding. *See* the "Scope Comments" section of the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan*, published in the **Federal Register** concurrently with this notice.

Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

1) PVA in fiber form.

2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent..

12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or

(D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On October 22, 2002, the Department issued its questionnaire to Clariant and Kuraray Europe. On December 9 and December 5, 2002, respectively, these parties informed the Department that they did not intend to participate in this investigation. Because both Clariant and Kuraray Europe failed to supply necessary information, we have applied FA to calculate their dumping margins, pursuant to section 776(a)(2)(B) of the Act.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Both respondents were notified in the Department's questionnaires that failure to submit the requested information by the date specified might result in use of FA. As a general matter, it is reasonable for the Department to assume that Clariant and Kuraray Europe possessed the records necessary for this investigation and that by not supplying the information the Department requested, Clariant and Kuraray Europe failed to cooperate to the best of their ability. As the respondents failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act.

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.*

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see* the September 25, 2002, Initiation Checklist, on file in the Central Records Unit, Room B-099, of the Main Commerce Department building, for a discussion of the margin calculations in the petition). In addition, in order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based.

Export Price

With respect to the margins in the petition, EP was based on POI price quotes from a U.S. distributor for the sale of fully-hydrolyzed PVA produced by Kuraray Europe. The petitioners calculated net U.S. prices by deducting a distributor mark-up, certain movement expenses, and U.S. imputed credit expenses. We adjusted the petitioners' EP calculation by not deducting an amount for U.S. credit expenses; instead, we made an adjustment to NV, in accordance with the Department's EP circumstance-of-sale calculation methodology.

We compared the U.S. market price quotes with official U.S. import statistics and U.S. customs data, and found the prices used by the petitioners to be reliable. For further discussion, see the February 12, 2003, memorandum to the file from the team entitled "Corroboration of Data Contained in the Petition for Assigning Facts Available Rates" (Corroboration Memo).

Normal Value

The petitioners based NV on a home market price quote from a German PVA producer for PVA of a comparable grade to the products exported to the United States. This price quote was contemporaneous with the U.S. price quotes used as the basis for EP. In addition, the petitioners alleged that sales of PVA products in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Based upon a comparison of the price of the foreign like product in the home market to the calculated COP of the product, we found reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country-wide cost investigation. Pursuant to section 773(b)(3) of the Act, COP consisted of the cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COP based on the experience of a U.S. PVA producer during the 2001 fiscal year, adjusted for known differences between costs incurred to manufacture PVA in the United States and Germany.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Germany on constructed value (CV). The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute the COP. Consistent with Section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Clariant International's 2001 financial statements. The petitioners' calculation of profit was based on operating profit and not on the net income of the German PVA producer. Therefore, for initiation purposes, we recalculated the CV profit rate to include non-operating items. Because this calculation resulted in a loss, we used a profit rate of zero.

The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition. Specifically, we attempted to locate both home market prices through publicly available sources and U.S. producer costs upon which CV was based, but we were unable to do so. *See* the Corroboration Memo.

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question. " *See* 19 CFR 351.308(d). Additionally, the SAA specifically states that where "corroboration may not be practicable in a given circumstance," the Department need not prove that the facts available are the best alternative information." *See* SAA at 870.

Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petitions to be corroborated to the extent practicable for purposes of this preliminary determination.

Accordingly, in selecting AFA with respect to Clariant and Kuraray Europe, we have applied the margin rate of 19.05 percent, which is the highest estimated dumping margin set forth in the notice of initiation. *See Initiation Notice*, 67 FR at 61593.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and FA margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA provides that we may use other reasonable methods. *See* SAA at 873. Because the petition contained two estimated dumping margins, we have used these two estimated dumping margins to create an "all others" rate based on a simple average. Therefore, we have calculated the margin of 10.75 percent as the "all others" rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India*, 64 FR 19123, 19124 (Apr. 19, 1999).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain ih effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (in percent)
Clariant GMBH	19.05
Kuraray Specialties Europe	19.05
All Others	10.75

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than 25 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. *See* 19 CFR 351.309.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 10 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310.

We will make our final determination no later than 75 days after the date of this preliminary determination, pursuant to section 735 (a)(1) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: February 12, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3994 Filed 2-18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012303A]

Small Takes of Marine Mammals Incidental to Specified Activities; Port of Miami Construction Project (Phase II)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers-Jacksonville District (Corps) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to deepening the Dodge-Lummus Island Turning Basin in Miami, FL (Turning Basin) to a depth of 44 ft (13.41 m). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a 1-year small take authorization, to the Corps to incidentally take, by harassment, small numbers of bottlenose dolphins (Tursiops truncatus) as a result of conducting this activity.

DATES: Comments and information must be received no later than March 21, 2003.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2322, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On June 24, 2002, NMFS received a request from the Corps for an IHA to take bottlenose dolphins incidental to deepening the Turning Basin in the Port of Miami, south of Dodge-Lummus Island. The Port of Miami is one of the major terminal complexes in Florida. The majority of this tonnage is high-value general cargo transported in trailers and containers. The Port also accommodates a large cruise ship industry. Development has primarily centered on the Lummus Island terminal and container complex facilities. Expanding and deepening the Turning Basin would eliminate the need for vessels docked at Lummus Island to back to or from the Fisher Island Turning Basin.

Completion of the dredging project may employ a hopper dredge, clamshell dredge, cutterhead dredge and/or confined blasting. The dredging will remove 1.4 million cubic yards of material from an area 1,500 ft (457.2 m) in diameter. The Corps proposes to dredge the Turning Basin, starting in December 2002, to a maximum depth of 42 ft (12.8 m) plus a 2 ft (0.61 m) overdepth. Material removed from the dredging will be placed in the Miami Ocean Dredged Material Disposal Site.

The Corps expects the contractor will employ underwater dredging and confined blasting to construct the project. Blasting has the potential to have adverse impacts on bottlenose dolphins inhabiting the area near the project. While the Corps does not presently have a blasting plan from the contractor which will specifically identify the number of holes that will be drilled, the amount of explosives that will be used for each hole, the number of blasts per day (usually no more than 3/day) or the number of days the construction is anticipated to take to complete, the Corps has forwarded to NMFS a description of a completed project in San Juan Harbor, Puerto Rico to use as an example. For that project, the maximum weight of the explosives used for each event was 375 lbs (170 kg) and the contractors detonated explosives once or twice daily from July 16 to September 9, for a total of 38 individual detonations. Normal practice is for each charge to be placed approximately 5–10 ft (1.5–3 m) deep depending on how much rock needs to be broken and how deep a depth is sought. The charges are placed in the holes and tamped with rock. Therefore, if the total explosive weight needed is 375 lbs (170 kg) and they have 10 holes, they would average 37.5 lbs (17.0 kgs)/hole. However, a more likely weight for this project may be only 90 lbs (41 kgs) and, therefore, 9 lbs(4.1 kg)/hole. Charge weight and other determinations are expected to be made by the Corps and the contractor approximately 30–60 days prior to commencement of the construction project. Moreover, because the charge weight and other information is not presently available, NMFS will require the Corps provide this information to NMFS, including calculations for impact/mitigation ranges (for the protection of marine mammals and sea turtles from injury), prior to commencing work.

Description of the Marine Mammals Affected by the Activity

General information on marine mammal species found off the East Coast of the United States can be found in Waring et al. (2001, 2002). This report is available at the following location: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

The only marine mammal species likely to be found in the Turning Basin is the bottlenose dolphin. There is not currently a stock assessment available concerning the status of bottlenose dolphins in the inshore and nearshore waters off south Florida. Additionally, while neither a status review nor peer-reviewed reports of status of the Biscayne Bay bottlenose dolphins have been published, the Southeast Fisheries Science Center, NMFS, is currently working on this report. Preliminary information indicates a documented population of 159 bottlenose dolphins residing within the boundaries of the Biscayne Bay area. A total of 146 bottlenose dolphins have been resighted in the Port of Miami area at least one additional time. These animals were often sighted within or transiting through the Port of Miami. It is not known whether bottlenose dolphins inhabit the Turning Basin or whether they simply use the area as a transit to North Biscayne Bay or offshore via the main port channel. The defined stocks of bottlenose dolphins that reside closest to the project area, therefore, are the western North Atlantic coastal and offshore stocks of bottlenose dolphins with minimum populations estimated to be 2,482 for the coastal stock and 24,897 for the offshore stock. Additional assessment information for these two stocks is available at the previously mentioned URL.

Potential Effects on Marine Mammals

In general, potential impacts to marine mammals from explosive detonations could include both lethal and non-lethal injury, as well as Level B harassment. Marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are more likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called "cavitation."

A second criterion for mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS has established dual criteria for determining non-lethal injury for explosives as the peak pressure that will result in: (1) the onset of slight lung hemorrhage, or (2) a 50-percent probability level for a rupture of the tympanic membrane. These are injuries from which animals would be expected to recover on their own. Finally, NMFS has established dual criteria for Level B acoustic harassment: (1) an energy-based TTS criterion of 182 dB re 1 uPa^2–sec cumulative energy flux in any 1/3 octave band above 100 Hz for odontocetes (and sea turtles) derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000); and (2) 12 psi peak pressure cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (i.e., TTS). The Level B Harassment zone therefore is the minimum distance at which neither criterion is exceeded.

To protect endangered, threatened and protected species (manatees, dolphins, sea turtles), the following equations have been proposed by the Corps for this project to determine zones for injury or mortality from an open water explosion and to assist the Corps in establishing mitigation to reduce impacts to the lowest level practicable. These equations are believed to be conservative since they are based on unconfined charges and the proposed blasts in the Turning Basin will be confined (stemmed) charges. The equations are:

Caution Zone radius = 260 (lbs/delay)$^{1/3}$

Safety Zone radius = 520 (lbs/delay)$^{1/3}$

The caution zone is the radius from the detonation where mortality (but not necessarily injury), would not occur in an open-water blast while the safety zone is the approximate distance where non-serious injury (Level A harassment) is unlikely from an open-water explosion. However, even though single event detonations do not result in behavioral response by marine mammals (*see* 66 FR 22450, May 3, 2001), there is a possibility that other Level B harassment (e.g., a temporary shift in hearing threshold) could occur at greater distances than provided by these safety zones. For that reason, an IHA is warranted.

In the Turning Basin or any area where explosives are required to obtain channel design depth, marine mammal/sea turtle protection measures will be employed by the Corps. For each explosive charge, the Corps proposes that detonation will not occur if a marine mammal is sighted by a dedicated marine mammal/sea turtle observer within the caution zone, a circular area around the detonation site with the following radius: R = 260(W)1/3 (260 times the cube root of the weight of the explosive charge in pounds) where: R = radius of the danger zone in ft; W = weight of the explosive charge in lbs). Although the area described by the above equation is considered to be an area for potential mortality, the Corps believes that because all explosive charges will be stemmed (placed in a drilled hole and tamped with rock), the areas for potential mortality and injury will be significantly smaller than this area and therefore it is unlikely that even non-serious injury would occur if monitoring this zone is effective. (Since bottlenose dolphins are commonly found on the surface of the water, implementation of a mitigation/monitoring program is expected by NMFS to be close to 100 percent effective).

According to the Corps, bottlenose dolphins and other marine mammals have not been documented as being directly affected by dredging activities and therefore the Corps does not anticipate any incidental harassment of bottlenose dolphins by dredging.

Potential Effects on Habitat

The Corps expects the effects on marine mammal habitat to be minimal. The bottom of the basin is rock and sand, and the walls of the Turning Basin are vertical rock. The Corps also believes that the area of the Turning Basin may not be suitable habitat for dolphins in Biscayne Bay, but it is more likely that the animals use the area to traverse to North Biscayne Bay or offshore via the main port channel. In addition, as a large number of fish are not expected to perish during the detonations, there will not be a significant effect on dolphins' food supply (T. Jordan, pers. comm, 2002).

Mitigation and Monitoring

The Corps proposes to implement mitigation measures and a monitoring program that will establish both danger- and caution-zone radii to ensure that bottlenose dolphins will not be injured during blasting and that impacts will be at the lowest level practicable. Mitigation measures include: (1) confining the explosives in a hole with drill patterns restricted to a minimum of 8 ft (2.44 m) separation from any other

loaded hole; (2) restricting the hours of detonation from 2 hours after sunrise to 1 hr before sunset to ensure adequate observation of marine mammals and sea turtles in the safety zone; (3) staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time, which in turn will reduce the danger zone radius; (4) capping the hole containing explosives with rock in order to reduce the outward potential of the blast, thereby reducing the chance of injuring a dolphin or sea turtle; (5) matching, to the extent possible, the energy needed in the "work effort" of the borehole to the rock mass to minimize excess energy vented into the water column; and (6) conducting a marine mammal/sea turtle watch with no less than two qualified observers from a small water craft and/or an elevated platform on the explosives barge, at least 30 minutes before and continue for 30 minutes after each detonation to ensure that there are no dolphins or sea turtles in the area at the time of detonation. The observer monitoring program will take place in a circular area at least three times the radius of the above described caution/safety zone (called the watch zone). Any marine mammal(s) in the danger zone or the watch zone will not be forced to move out of those zones by human intervention. Detonation shall not occur until the animal(s) move(s) out of the danger zone on its own volition.

In the unlikely event a marine mammal or marine turtle is injured or killed during blasting, the Contractor shall immediately notify the NMFS Regional Office.

Reporting

The Corps would like to have contractors complete the proposed activities in no more than 24 months from start date. Therefore, NMFS is proposing to issue a 1–year IHA with the possibility for renewal upon application from the Corps. NMFS proposes to require the Corps to submit a report of activities 120 days before the expiration of the proposed IHA if the Corps plans to request a renewal of its IHA, or 120 days after the expiration of the IHA if a renewal is not being requested.

Endangered Species Act

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded upon completion of the comment period and consideration of those comments prior to a determination on issuance of an IHA.

National Environmental Policy Act

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996); the Corps' 1989 Environmental Impact Statement and Feasibility Report for the Navigation Study for the Miami Harbor Channel; and the contents, results, and analyses of the Corps' blasting project, will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Therefore, based on this analysis, the action of issuing an IHA governing the incidental taking of marine mammals, by harassment for this activity meets the definition of a "Categorical Exclusion" as defined under NOAA Administrative Order 216–6 and is exempted from further environmental review.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact as described in this document, should result, at worst, in the temporary modification in behavior by bottlenose dolphins. While behavioral modifications, including temporarily vacating the area, may be made by these species to avoid the resultant visual and acoustic disturbance from dredging and detonations, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to issue an IHA to the Corps for the potential harassment of small numbers of bottlenose dolphins incidental to deepening the Dodge-Lummus Island Turning Basin in Miami, FL (Turning Basin), provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bottlenose dolphins and will have no more than a negligible impact on this marine mammal stock.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (*see* **ADDRESSES**).

Dated: February 12, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–3989 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011003C]

Marine Mammals; File No. 782–1438

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, (Dr. Sue Moore, Principal Investigator (PI)) has been issued an amendment to scientific research Permit No. 782–1438.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 782–1438, issued on issued on May 8, 1998 (63 FR 27265) authorizes the National Marine Mammal Laboratory to take various large and small cetacean species through photographic aerial surveys (Project I); biopsy sampling, tagging and photo-identification (Project II); small cetacean species and pinnipeds through vessel surveys (Project III); gray whales through biopsy sampling, tagging, photo-id and harassment (Project IV); and beluga whales by satellite-tagging, flipper tagging, VHF radio/time depth recorder(TDR) suction cup-tagging and biopsy sampling (Project V). The amendment increased the number of accidental mortalities in Project V to three during 2003. This Project will expire September 30, 2003.

Dated: January 28, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–3991 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: United States Patent and Trademark Office (USPTO).

Title: Electronic Response to Office Action and Preliminary Amendment Forms.

Form Number(s): PTO Form 1966 and PTO Form 1957.

Agency Approval Number: 0651–XXXX.

Type of Request: New collection.

Burden: 6,258 hours annually.

Number of Respondents: 36,815 responses per year.

Avg. Hours Per Response: The time needed to respond to the response to office action form and the preliminary amendment form is estimated to be 10 minutes each. This includes time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et. seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in commerce regulable by Congress, may file an application to register their mark. In some cases, the USPTO may issue Office Actions requesting missing information, or advising applicants of the refusal to register the mark. Applicants may also submit additional information voluntarily by providing a Preliminary Amendment. The USPTO administers the Trademark Act through 37 CFR Part 2, which contains the rules that implement the Act.

This collection of information is a matter of public record, and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by contacting Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Washington, DC 20231, by phone at 703–308–7400, or by e-mail to *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before March 21, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 11, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–3880 Filed 2–18–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction Notice/Change of Comment Period.

SUMMARY: On January 31, 2003, the Department of Education published a 60-day public comment period notice in the **Federal Register** (Page 5004, Column 3) for the information collection, "Indian Education Formula Grants to Local Educational Agencies (LEAs)." This notice should have requested comments within the 30-day period since a 60-day notice was already provided for this program. Interested persons are invited to submit comments on or before March 21, 2003. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.*

Dated: February 12, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 03–3916 Filed 2–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice/change of comment period.

SUMMARY: On February 12, 2003, the Department of Education published a 30-day notice in the February 12, 2003 **Federal Register** (Volume 68, Number 29, Page 7110) for the Small Business Innovation Research (SBIR) Program Grant Application. The notice referred to the Phase I grant application; however, this was incorrect. The 30-day notice relates to the Phase II grant application. The remaining information of that notice remains the same, including the public comment end date of March 14, 2003. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.*

Dated: February 12, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 03–3917 Filed 2–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–20; Low Dose Radiation Research Program—Biologically-Based Risk Modeling

AGENCY: Department of Energy.

ACTION: Notice inviting applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for participation in a biologically-based risk modeling exercise, for the purposes of developing and evaluating different modeling/prediction strategies. Awardees will be asked to develop individual biologically-based models incorporating one or more phenomena such as adaptive response, bystander effects, genetic susceptibility, or genomic instability. A central aspect of this exercise will be the eventual modeling, by all awardees, of an artificially defined biological test system or archetype having a set of biological characteristics and radiation-induced endpoints for which exact probability values are either known or assigned. Please review the Supplementary Information and Application sections below for further details.

DATES: *Preapplications* (letters of intent) should be submitted by April 4, 2003. *Formal applications* are due 4:30 p.m. EDT, May 23, 2003, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: *Preapplications* referencing Program Notice 03–20, should be sent to Ms. Joanne Corcoran by E-mail: *joanne.corcoran@science.doe.gov*, with a copy to Dr. Noelle Metting at: *noelle.metting@science.doe.gov*.

Formal applications referencing Program Notice 03–20 must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov* (see also *http://www.sc.doe.gov/production/grants/grants.html*). IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit the application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212, in order to gain assistance for submission through IIPS or to receive special approval and instruction on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Noelle Metting, telephone: (301) 903–8309, E-mail: *noelle.metting@science.doe.gov*, Office of Biological and Environmental Research, U.S. Department of Energy, SC–72/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION: The Low Dose Radiation Research Program has the challenge of conducting research that can be used to inform the development of future national radiation risk policy for the public and the workplace. The Program has focused on quantifying and understanding the mechanisms of molecular and cellular responses to low dose exposures to radiation, currently 0.1 Gy (10 rads) or less, with a view toward the lower doses. Most scientists in the field would agree that not enough is yet known about the biological consequences of low dose radiation exposure to be able to completely model human health risk. However, it is timely to begin to systematically evaluate different approaches for modeling the diversity of available information on the biological effects of low dose radiation exposure.

We define biologically-based risk models as mathematical constructs of the key biological events involved in the production of an adverse health effect, *e.g.*, cancer, in response to radiation across a range of doses of interest. Such models are likely to describe both stochastic and deterministic variables that range from probabilities of inducing key molecular events such as cell death, replication or specific gene expression, to the description of responses at the tissue level or even at the level of the entire organism. Mathematical predictors or estimators of radiation risk should ultimately be able to incorporate all available epidemiological and experimental information.

In this solicitation, applications are sought for participation in an interactive, biologically-based risk modeling exercise. The first activity for the awardees will be to participate in an initial Workshop for extensive discussions with experimental researchers and regulatory scientists: Awardees will then work to develop a biologically-based risk model that includes one or more characteristics important to low dose radiobiology.

Concurrently, awardees will participate in one or more workshops for the purpose of developing an artificially defined *biological archetype*. This biological archetype will become the core source of biological data, a biological test system for which exact probability values are either known or (temporarily) assigned. Quantitative information to be defined in the biological archetype will include definitions (specific probability values or ranges as a function of dose) for such attributes as:

- Amount of steady state endogenous DNA damage
- Yield of radiation-induced DNA damage (specific lesions)
- Efficiency of repair of radiation-induced DNA damage for specific lesions (repair capacity, saturation level, error rate)
- Radiation-induced gene expression
- Radiation-induced genomic instability
- Radiation-induced bystander effects (cell-cell communication)
- Radiation-induced adaptive responses
- Genetic susceptibility—for a population of individuals
- Current epidemiological information
- Etc...

The biological archetype will eventually be modeled by each funded awardee, for the ultimate purpose of comparing the different modeling/prediction strategies. Please note that the biological archetype will be a composite of what is presently established, supplemented where needed by best-guess, made-up data.

The long term goals of this exercise are the following: (1) To discover which mechanistic data are usable and which are the most critical inputs for development of biologically-based models to predict human health risks for low dose exposures (the exercise thus may help to define future experimental research needs); and (2) to provide new insight into how to extrapolate between different levels of biological organization (from molecules to cells to tissues to organisms) and from observations *in vitro* to biological responses *in vivo*.

Applicants should demonstrate knowledge of and expertise in risk modeling. They should discuss general strategies for, or demonstrate expertise in the use of, biological mechanistic data in the development of risk models. Ideally, the application should exhibit some familiarity with relevant radiation biology literature, but prior work in this field is not a prerequisite. *The Project Description must contain the following:*

1. A proposal to develop a biologically-based model taking account of one or more phenomena such as adaptive response, bystander effects, genetic susceptibility, or genomic instability. A hierarchical scheme may be proposed for developing a series of simple to complex biologically-based risk models that include successively higher numbers of biological parameters.

2. A discussion of model validation strategies, as well as a general discussion of error estimation strategies, should be included. (Of great importance will be the determination of how much error can be tolerated in each of the critical inputs.)

3. Briefly, the applicant's ideas on how one would begin to design a "biological archetype" that could be used to compare different models. (What type of biological archetype would be most useful at the present time—single cell, cell culture, tissue, mouse, man? In the future? Which characteristics of the biological archetype should be defined? Which characteristics are known at the present time?)

Information on the Low Dose Radiation Research Program can be found on the Web site: *http://lowdose.tricity.wsu.edu*.

Program Funding: It is anticipated that up to $1,500,000 will be available for approximately 8 two-year awards, contingent upon the availability of funds. Each award will be no more than $200,000, total costs per year. If the exercise is judged productive by administrative review, some or all awards may be extended an additional year.

Merit and Relevance Review: Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project.

2. Appropriateness of the Proposed Method or Approach.

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Application

(Please Note Information Below On Page Limits)

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to the Guide and required forms is made available via the World Wide Web: *http://www.science.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage of providing more text in their applications by using small type. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8 ½" × 11" (or metric A4, *i.e.*, 210 mm × 297 mm). Applications must be written in English, with all budgets in U.S. dollars.

Applicants are asked to use the following ordered format:

- Face Page (DOE F 4650.2 (10–91))
- Project Abstract Page; single page only, should contain title, PI name, and abstract text
- Budget page for the one year project period (using DOE F 4620.1)
- Budget Explanation
- Project Description; ten (10) pages or less. The application should contain the following:

a. A proposal to develop a biologically-based model taking account of one or more phenomena such as adaptive response, bystander effects, genetic susceptibility, or genomic instability.

b. A discussion of model validation strategies, as well as a general discussion of error estimation strategies, should be included.

c. Briefly, the applicant's ideas on how one would design a biological archetype that could be used to compare different models (approximately one page).

- Literature Cited
- Collaborative Arrangements (if applicable)
- Facilities and Resources
- Biographical Sketches
- Current and Pending Support
- Letters of Collaboration (if applicable)

The Office of Science, as part of its regulations, requires at 10 CFR 605.11(b) that a recipient receiving an award to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

DOE requirements for reporting, protection of human and animal subjects and related special matters can be found on the World Wide Web at: *http://www.science.doe.gov/production/grants/Welfare.html*.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on February 6, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–3939 Filed 2–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41757–0 entitled, "Ground Breaking Innovative Technology Concepts For Mining." The Department of Energy (DOE), National Energy Technology Laboratory (NETL) is seeking white paper applications on behalf of the Energy Efficiency and Renewable Energy, Mining Industries of the Future Program, for advanced concepts that span the mining industry and are capable of revolutionizing the industry as a whole or for discrete segments as regards energy intensity (*i.e.* energy used to achieve a unit output).

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about February 14, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Juliana L. Murray, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: *murray@netl.doe.gov,* Telephone Number: 412–386–4872.

SUPPLEMENTARY INFORMATION: The objective of this solicitation is to support the stated national interests by providing seed funding for development of "revolutionary" concepts or "unique" approaches that would define the direction for potential future research and development projects that address needs that broadly fall in the domestic mining industry. These approaches should represent significant departures from existing approaches, not simply incremental improvements. This solicitation seeks "out-of-the-box" thinking; therefore, mature ideas, past the conceptual stage, are not eligible for this program. Cost sharing is not required because of the fundamental nature of the requested research under this solicitation, but the DOE/NETL will only contribute up to $50,000 per project selected for award.

DOE has identified specific mining industry activities where energy efficiency improvements would have the most significant impact. This solicitation encourages prospective concepts to be developed in the following areas:

Area of Interest 1: DE–PS26–03NT41757–1

Energy Efficient Alternatives to Current Technologies in Materials Handling

Interests include energy alternatives with regard to energy use per unit of output to current technologies involving the used of equipment or processes to transport ore and waste.

Area of Interest 2: DE–PS26–03NT41757–2

Energy Efficient Alternatives to Current Beneficiation and Processing Technologies, Particularly Crushing and Grinding

Interests include energy alternatives with regard to energy use per unit of output to current technologies using equipment or processes to crush, grind, concentrate and/or separating the ore from the unwanted material.

Area of Interest 3: DE–PS26–03NT41757–3

Mineral Extraction Processes To Reduce Downstream Material Handling and

Beneficiation and Processing Requirements; Efficiency Alternatives to Pumping in Mining Applications

Interests include energy alternatives to mineral processes using equipment or processes to explore, mine and process ore.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at IIPS_HelpDesk@e-center.doe.gov. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on February 6, 2003.

Dale A. Siciliano, Director,

Acquisition and Assistance Division.

[FR Doc. 03–3938 Filed 2–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Executive Order 13272; Consideration of Small Entities in Agency Rulemaking

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of procedures and policies.

SUMMARY: The Department of Energy (DOE) is adopting procedures and policies to ensure that the potential impacts of its draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. These procedures and policies, which are published for the benefit of the public, also are available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

EFFECTIVE DATE: The procedures and policies in this notice are effective February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Assistant General Counsel for Regulatory Law, U.S. Department of Energy, 1000 Independence Avenue, SW., GC–74, Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION: On August 13, 2002, President Bush issued Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (Aug. 16, 2002). E.O. 13272 generally calls on agencies to establish procedures and policies to promote compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* More specifically, section 3(a) of the Executive Order requires all Executive agencies to "issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process." It also requires agencies to make their procedures and policies available to the public through the Internet or other easily accessible means. Section 3(b) of the Executive Order requires agencies to notify the Chief Counsel for Advocacy of the Small Business Administration ("Office of Advocacy") of any draft rules that may have a significant economic impact on a substantial number of small entities. Such notification must be made either: (i) When the agency submits a draft rule to the Office of Information and Regulatory Affairs of the Office of Management and Budget under

Executive Order 12866, or (ii) if review under E.O. 12866 is not required, at a reasonable time prior to publication of the rule in the **Federal Register**. Section 3(c) of the Executive Order provides that the agency must give appropriate consideration to Office of Advocacy comments on a draft rule and, subject to narrow exceptions, respond in the notice of final rulemaking to any written comments submitted by the Office of Advocacy on the proposed rule.

The procedures and policies in this notice were reviewed by the Office of Advocacy pursuant to section 3(a) of E.O. 13272, and the Secretary of Energy has approved their publication in the **Federal Register.**

Issued in Washington, DC on February 12, 2003.

Lee Liberman Otis,

General Counsel.

On the basis of the foregoing, DOE adopts the following Procedures and Policies:

Department of Energy (DOE) Procedures and Policies for Implementing Executive Order 13272; Consideration of Small Entities in Agency Rulemaking

I. Purpose

These procedures and policies implement Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (Aug. 16, 2002), consistent with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* ("Act").

II. Applicability

These procedures and policies, which have been approved by the Secretary of Energy, apply to the development of any regulation by DOE (including by the National Nuclear Security Administration) that is subject to notice and comment rulemaking under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other law. For purposes of these procedures and policies, the Federal Energy Regulatory Commission is not considered to be part of DOE.

III. Procedures and Policies

1. *Preliminary Determination.* In developing a proposed rule, a DOE program office must determine whether an initial regulatory flexibility analysis (IRFA) is required by the Act. The Act requires an agency to prepare and make available for public comment an IRFA for any rule subject to notice and comment requirements (5 U.S.C. 603(a)). The agency must prepare a final regulatory flexibility analysis (FRFA) for a final rule (5 U.S.C. 604(a)). However, the Act provides that these analysis requirements do not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

To make the foregoing determinations, the program office must conduct a preliminary informal analysis to determine if there is any impact on small entities and the magnitude of any impacts. The preliminary analysis must be sufficient to answer the following questions:

a. Does the Act Apply?

The Act applies to any rule subject to notice and comment rulemaking under section 553 of the APA or any other law, including notice and comment rulemaking required by an agency regulation. Among the exemptions from the APA's notice and comment rulemaking requirements are matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts (5 U.S.C. 553(a)). In addition, the Act does not apply to rules of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances (see definition of "rule," 5 U.S.C. 601(2)). Although exempted from notice and comment requirements under the APA, certain rulemakings involving procurement contracts are subject to notice and comment requirements under 41 U.S.C. 418b, and therefore are subject to the Act.

If a rule is being promulgated in response to an emergency that makes compliance with the analysis requirements of the Act impracticable, DOE may delay the completion of a FRFA for a period of up to 180 days after issuance of the rule (5 U.S.C. 608). If a FRFA is not prepared within the 180-day period, the rule will lapse and have no effect.

Program office staff should direct questions regarding the applicability of the Act to a particular rulemaking or category of rulemaking to program counsel at DOE, who may consult the Assistant General Counsel for Regulatory Law.

b. What Is the Applicable Definition of a Small Entity?

The Act defines three categories of small entities: "small business," "small organization," and "small governmental jurisdiction."

The Act defines a "small business" as having the same meaning as "small business concern" under section 3 of the Small Business Act (5 U.S.C. 601(3)). Section 3 of the Small Business Act provides that a small business concern includes any firm that is "independently owned and operated" and is "not dominant in its field of operation" (15 U.S.C. 632). In addition, the Small Business Administration (SBA), as authorized by section 3. has developed specific size standards and related regulations (13 CFR 121.201) that further define "small business concern." In performing regulatory flexibility analyses, DOE program staff must use SBA size standards for determining the number of small businesses that would be affected by a proposed rule unless an alternative definition of "small business" is adopted following procedures required by the Act (discussed below). The SBA's size standards generally are based on the total number of employees or on gross annual receipts of an enterprise (including affiliates). Beginning on October 1, 2000, the SBA size standards used the North American Industry Classification System (NAICS) to categorize businesses on an industry-by-industry basis. Previously, the SBA size standards were based on the less-detailed Standard Industrial Classification (SIC) codes.

The Act defines a "small organization" as any not-for-profit enterprise that is independently owned and operated and not dominant in its field (5 U.S.C. 601(4)). The Act defines "small governmental jurisdiction" as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000 (5 U.S.C. 601(5)).

If an agency wishes to use an alternative definition of "small business," "small organization," or "small governmental jurisdiction" for purposes of its actions required by the Act, it must consult with the Office of Advocacy on an appropriate alternative definition and publish the proposed alternative definition for public comment in the **Federal Register**. In addition, if an agency seeks to change the definition of "small business" for rulemaking purposes (*i.e.*, for purposes of determining how a regulation applies to a business of a certain size), the agency must obtain the approval of the SBA Administrator using the procedures outlined in the Small Business Act (*see* 15 U.S.C. 632(a)(2)(C)(i)-(ii)) and in SBA's regulations (*see* 13 CFR 121.902(b)). The Administrator's approval is not required, however, if a different standard is specifically authorized by statute.

The Office of Advocacy can assist program office staff who have questions regarding the definitions of small entities and the process for using alternative definitions. Program staff with such questions should contact the Office of Advocacy, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; telephone (202) 205–6533. In addition, these definitions are discussed in Chapter 1 of the Office of Advocacy's guide for complying with the Act, entitled *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies* ("Office of Advocacy Guide"), which is available on the Office of Advocacy's Internet site at: *http://www.sba.gov/advo/.*

c. What Is the Preliminary Assessment of a Proposed Rule's Economic Impact Based on the Size and Type of Entities Affected and the Likely Overall Cost?

After defining the small entities that would be affected by a proposed rule, the program office staff must gather and consider sufficient information for determining whether the rule, if promulgated, will have a significant economic impact on a substantial number of small entities. There are no "hard" boundaries for the terms "significant economic impact" and "substantial number" of small entities. Significance should be considered relative to the size of the small businesses, the size of competitors' businesses, and any disparity in impact the rule might have on small businesses. It may be appropriate to group small businesses and other small entities into more than one category for purposes of the analysis. The Office of Advocacy Guide, Chapter 1, suggests criteria that may be used to determine significance, including the percentage of revenue or profits affected and effect on the ability of firms to make capital investments. The interpretation of "substantial number" should be made on an industry-specific basis. As explained in the Office of Advocacy Guide, Chapter 1, the absolute number of small entities required to meet the "substantial number" test may vary greatly depending on the size of the universe of small entities within a particular economic or other activity.

The level, scope and complexity of the preliminary analysis under the Act also will vary depending on the characteristics and composition of the industry to be regulated and the nature of proposed regulatory requirements. For example, the level of data collection and analysis in the preliminary assessment will be different for: (1) A proposed rule to establish new energy efficiency standards for a type of home appliance (*e.g.*, refrigerators or furnaces), and (2) a procurement regulation that applies principally to DOE's management and operating contractors but has requirements that flow down to subcontractors, some of whom may be small entities. In the former example of appliance standards, a fairly rigorous analysis of the economic impact on small manufacturers may be warranted because new energy efficiency standards often impose costs on all manufacturers of the affected products, and competition within the industry may be affected. In the latter procurement contract example, it may be difficult to estimate the number of small subcontractors who would be affected by new contract requirements. However, if DOE is contractually obligated to reimburse contractors for the cost of complying with regulatory requirements, the proposed rule would not have a significant economic impact on small entities. Because it is clear that such a proposed rule would not have an adverse economic impact, there is no need to determine the exact number of small contractors that might be affected by the proposed new requirements.

d. Is There Sufficient Factual Basis for Concluding That the Proposed Rule Would Not Have a Significant Economic Impact on a Substantial Number of Small Entities?

The Act permits the head of the agency to forego the preparation of an IRFA upon a written certification that the rule will not have a significant economic impact on a substantial number of small entities. The Act requires certifications to be supported by a "statement of factual basis" (5 U.S.C. 605(b)). At a minimum, the statement of factual basis must contain a description of the small entities that would be directly affected by the proposed rule and the potential economic impacts, as well as the program office's reasoning and assumptions underlying the certification. This statement will be subject to public comment, which will assure either that the certification was not erroneous, or that erroneous certifications are corrected. If the program office is uncertain of the impact on small entities, it should consider: (1) Performing an IRFA with the available data and information, and (2) soliciting public comment on the issue of impacts on small entities. Based on information obtained during the comment process, the program office may determine that a sufficient factual basis exists to certify, in the notice of final rulemaking, that the rule will not have a significant economic impact on a substantial number of small entities.

The Office of Advocacy Guide, Chapter 1, gives examples of adequate and inadequate certifications. One example given of an inadequate certification is an agency statement that the rule would not have a significant economic impact on small entities because they would not be subject to any requirements not applicable to large entities. The Office of Advocacy filed comments with the agency, objecting to the certification because a principal purpose of the Act was to address disproportionate impacts of "one-size-fits-all" regulations on small entities. Therefore, the justification that the same requirements applied to both small and large businesses was inadequate. Other examples of inadequate certifications referenced in the Office of Advocacy Guide involve unsupported generalizations that were inconsistent with readily available factual information about the small entities that would be regulated by a proposed rule.

2. *The Initial Regulatory Flexibility Analysis and Notification to Advocacy.* If an IRFA is required, the DOE program office must inform the Office of General Counsel point of contact for the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA) — currently the Assistant General Counsel for Regulatory Law— that an IRFA is being prepared. This notice may be given when a draft notice of proposed rulemaking is submitted to the Office of General Counsel for review. To comply with the notification requirement in section 3(b) of E.O. 13272, the Office of General Counsel point of contact for OIRA will provide a copy of the draft notice of proposed rulemaking and the draft IRFA to the Office of Advocacy either when: (i) The submission is made to OIRA under E.O. 12866, or (ii) if review under E.O. 12866 is not required, no later than 10 business days before the notice of proposed rulemaking is published in the **Federal Register**.

The IRFA, or a summary, must be included in the Supplementary Information portion of the notice of proposed rulemaking. The IRFA must describe the economic impact of the proposed rule on small entities that would be directly affected by the proposed rule. Sections 603(b) and (c) of the Act set forth the elements of an IRFA. Each of the elements is discussed in more detail in Chapter 2 of the Office of Advocacy Guide. Section 603(b) requires that the IRFA contain:

- Reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of and, if feasible, an estimate of the number of small entities to which the proposed rule would apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that would be subject to the requirements and the type of professional skills needed to comply; and
- An identification, to the extent practicable, of all federal rules that may duplicate, overlap or conflict with the proposed rule.

Section 603(c) of the Act provides that the IRFA also must contain:

- A description of any significant alternatives to the proposed rule that would minimize the economic impact on small entities while accomplishing the stated objectives of the applicable statutes; and
- Consistent with applicable statutes, a discussion of significant alternatives such as: (1) Differing compliance or reporting requirements or timetables for small entities; (2) the clarification, consolidation or simplification of compliance and reporting requirements for small entities; (3) the use of performance rather than design standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities.

To estimate the number of small entities to which the proposed rule would apply, DOE program staff should identify each of the affected classes of small businesses according to its NAICS code. They can then use the NAICS code in combination with U.S. Census data to arrive at an estimate of the number of entities in each class. To help agencies with this element of the IRFA, the Office of Advocacy provides a full listing of NAICS codes along with the U.S. Census data for each class on its web page *(http://www.sba.gov/advo/stats/us99_n6.pdf).*

The Act requires the IRFA to provide either quantifiable or numerical estimates of the impacts of a proposed rule and alternatives to the proposed rule, although more general descriptive statements concerning effects may be provided if quantification is not practicable or reliable (5 U.S.C. 607). The level of the analysis in the IRFA also will depend on such factors as the quality and quantity of available information and the anticipated severity of a rule's impacts on small entities that will be affected by the rule. Generally, the agency must examine the costs and other economic impacts for the industry sectors targeted by the rule. Impacts examined may include economic viability (including closure), competitiveness, productivity, and employment. The analysis should identify cost burdens for the industry sector and for the individual small entities affected. Costs might include engineering and hardware acquisition, maintenance and operation, employee skill and training, and administrative practices (including recordkeeping and reporting). The results of the analysis should allow interested persons to compare the impacts of regulatory alternatives on the differing sizes and types of entities targeted or affected by the rule. The results should enable direct comparison of small and large entities to determine the degree to which the alternatives chosen disproportionately affect small entities or a targeted sector. Furthermore, the analysis should examine whether the alternatives are effectively designed to capture benefits to the public and accomplish the purposes of the statute authorizing the regulations.

The Act provides that agencies may prepare regulatory flexibility analyses in conjunction with, or as a part of, any other analysis required by law as long as the Act's requirements are met (5 U.S.C. 605(a)). For significant regulatory actions requiring preparation of a regulatory impact analysis under Executive Order 12866, the IRFA and the regulatory impact analysis may be prepared together. Program staff must, however, explicitly explain how the requirements of the Act are satisfied.

The DOE program office also must include in the Supplementary Information portion of the notice of proposed rulemaking a summary of the actions that have been or will be taken to assure that small entities are given an opportunity to participate in the rulemaking. Examples of the techniques for accomplishing this are set forth in 5 U.S.C. 609 and include: (1) A statement in an advance notice of proposed rulemaking alerting small entities that the rulemaking may have a significant impact on them; (2) publication of the notice of proposed rulemaking in publications likely to be obtained by small entities; (3) direct notification; (4) conferences or workshops targeted to small entities; and

(5) modification of procedural rules to reduce the cost or complexity of small entity participation in the rulemaking. In addition, for any rulemaking that may significantly or uniquely affect small governments, program offices must follow DOE's policy on intergovernmental consultation under the Unfunded Mandates Reform Act of 1995. *See* Notice of Final Statement of Policy, 62 FR 12820 (March 19, 1997), which is posted on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

Program staff may obtain additional guidance on how to prepare an IRFA from the Office of Advocacy's Internet site: *http://www.sba.gov/advo/.* Chapter 2 of the Office of Advocacy Guide deals with IRFAs.

3. *The Final Regulatory Flexibility Analysis.* A FRFA must be prepared for any final rule that will have a significant economic impact on a substantial number of small entities (5 U.S.C. 604). The elements of the FRFA resemble, but are somewhat different than, those for an IRFA. Section 604(a)(1)-(5) of the Act requires that the FRFA include:

- A succinct statement of the need for, and objectives of, the rule;
- A response to significant issues raised by the public comments in response to the IRFA, including a statement of any changes made in the rule as result of public comments;
- A description and an estimate of the number of small entities to which the rule would apply or an explanation of why no such estimate is provided;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills needed to comply; and
- A description of the steps taken by the agency to minimize the significant economic impact on small entities consistent with applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

In addition, section 3(c) of E.O.13272 provides that, subject to narrow exceptions, an agency must respond in the notice of final rulemaking to any written comments submitted by the Office of Advocacy on the proposed rule.

Section 604(b) of the Act provides that an agency must publish the FRFA, or a summary, in the **Federal Register** and make it available to the pubic. In most cases, this publication will be included in the notice of final rulemaking. An agency may delay, but not waive, the completion of a FRFA for up to 180 days after issuance of a rule if the rule is being promulgated in response to an emergency that makes compliance with the Act impracticable

(*see* section III.1.a. of these Procedures and Policies). If a FRFA is not prepared within the 180-day period, the rule will lapse and have no effect.

IV. Legal Effect

These procedures and policies are intended only to improve the internal management of the federal government. They do not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the Department of Energy, its officers or employees, any federal agency or any other person.

[FR Doc. 03–3937 Filed 2–18–03; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–388–002]

Transcontinental Gas Pipe Line Corporation; Notice of Amendment

February 12, 2003.

Take notice that on February 4, 2003., Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP01–388–002, an application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to amend the certificate of public convenience and necessity granted by the Commission by order issued February 14, 2002 in Docket No. CP01–388 authorizing Transco's Momentum Expansion Project (Momentum), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Transco states that Momentum is an incremental expansion of Transco's existing pipeline system to provide new firm transportation capacity to serve increased market demand in the Southeastern region of the United States.

Transco states that the purpose of this application is to seek Commission authorization to amend the Momentum certificate to enable Transco to: (1) Reduce the overall size of the project from 358,898 dt/d to 322,898 dt/d to reflect the termination of two shippers under the project and the partial replacement of such shippers with two new shippers under the project, (2) place the Momentum facilities into service in two phases, with the first phase (Phase I) to be placed into service on May 1, 2003. and the second phase (Phase II) to be placed into service on May 1, 2004, and (3) redesign the recourse rates to reflect the revised estimated cost of the project and the phased-in construction of the project.

Transco states that in order to provide the service requested, it proposes to downsize the firm transportation capacity to be created under Momentum and to place the project facilities into service in two phases. The Momentum facilities as amended will consist of the following:

Phase I Facilities—268,898 dt/d of firm transportation capacity commencing May 1, 2003. (the original in-service date for Momentum):

- Magnolia Loop. 2.03 miles of 42-inch diameter pipeline loop from milepost 632.89 on Transco's mainline in Amite County, Mississippi to milepost 634.85 on Transco's mainline in Amite County, Mississippi (previously authorized as 6.63 miles of 42-inch diameter pipeline loop from milepost 632.89 to milepost 639.44 in Pike County, Mississippi);
- Jones Loop. 25.25 miles of 48-inch diameter pipeline loop from milepost 860.78 on Transco's mainline in Perry County, Alabama to milepost 885.97 in Autauga County, Alabama (previously authorized as 25.38 miles of 48-inch diameter pipeline loop from milepost 860.78 to milepost 886.12 in Autauga County, Alabama);
- Kellyton Loop. 8.35 miles of 42-inch diameter pipeline loop from milepost 926.87 (the discharge side of Compressor Station No. 105) on Transco's mainline in Coosa County, Alabama to milepost 935.04 in Coosa County, Alabama (previously authorized as 19.01 miles of 42-inch diameter pipeline loop from milepost 926.87 to milepost 945.64 in Tallapoosa County, Alabama; a portion of this loop is included in Phase II);
- The Bowman Loop and the compression related facilities at Compressor Station Nos. 90, 105, 130 and 160 remain as originally certificated in the February 14, 2002 order.

Phase II Facilities—54,000 dt/d of firm transportation capacity commencing May 1, 2004:

- Kellyton Loop. 6.84 miles of 42-inch diameter pipeline loop from milepost 935.04 on Transco's mainline in Coosa County, Alabama to milepost 941.85 in Tallapoosa County, Alabama (as noted above, previously authorized as 19.01 miles of 42-inch diameter pipeline loop from milepost 926.87 on Transco's mainline in Coosa County, Alabama to milepost 945.64 in Tallapoosa County, Alabama; a portion of this loop is included in Phase I).

The previously authorized Hale Loop, consisting of 5.55 miles of 42-inch diameter pipeline loop from milepost 767.38 on Transco's mainline in Clarke County, Mississippi to milepost 772.80 in Clarke County, will be eliminated in its entirety.

Transco states that a complete environmental record regarding the Momentum facilities has already been developed in this proceeding. Since no new facilites are being proposed herein and since the shortened loops described above will be essentially within the "footprint" of the originally certificated loops, Transco states that this requested amendment will reduce the overall environmental impact of the project. Relocated loop tie-ins may take additional extra work space at a new location that was not contemplated under an original, longer loop, but the impact will be minor.

Transco states that it estimates the proposed project, as amended, will cost approximately $189 million. As a result of the changes to the estimated cost and billing determinants for the project and the phasing of the facilities, Transco proposes to revise the certificated initial recourse rates for the firm transportation service under Momentum. Transco requests that the Commission issue an order granting these requested authorizations by April 10, 2003, to enable Transco to place the Phase I facilities into service by May 1, 2003 as requested by the Phase I shippers.

Any questions concerning this application may be directed to Tom Compson, Transcontinental Gas Pipe Line Corporation, P. O. Box 1396, Houston, Texas 77251–1396, at (713) 215–2080; or Scott C. Turkington, Director, Rates & Regulatory, or Stephen A. Hatridge, Senior Counsel, Transcontinental Gas Pipe Line Corporation, P. O. Box 1396, Houston, Texas 77251–1396, at (713) 215–2312. In addition, Transco states that it has established a toll-free telephone number (1–866–241–1787) so parties can call with questions about the Momentum project.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4004 Filed 2–18–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3410]

Woods Lake Hydro Co.; Notice of Authorization for Continued Project Operation

February 12, 2003.

On April 30, 2001, Woods Lake Hydro Co., licensee for the Woods Lake Project No. 3410, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 3410 is located on Lime Creek in Eagle County, Colorado.

The license for Project No. 3410 was issued for a period ending January 31, 2003.. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 3410 is issued to Woods Lake Hydro Co. for a period effective February 1, 2003., through January 31, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 1, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Woods Lake Hydro Co. is authorized to continue operation of the Woods Lake Project No. 3410 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4020 Filed 2–18–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–51–000, et al.]

Lake Benton Power Partners LLC, et al. Electric Rate and Corporate Filings

February 11, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Lake Benton Power Partners LLC, Storm Lake Power Partners II LLC and RP Wind LBI LLC RP Wind SLII LLC

[Docket Nos. EC03–51–000, ER97–2904–005, and ER99–1228–003]

Take notice that on February 5, 2003, RP Wind LBI LLC (LBI) and RP Wind SLII LLC (SLII), Lake Benton Power Partners LLC (Lake Benton), and Storm Lake II Power Partners LLC (Storm Lake), and together with Lake Benton, LBI, and SLII, the (Applicants), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act seeking authorization for LBI and SLII to acquire managing member interests in Lake Benton and Storm Lake, respectively. In addition, Lake Benton and Storm Lake gave notice of the change in status that will result from the transaction described in the application.

Comment Date: February 26, 2003.

2. Ameren Energy Generating Company and Union Electric Company d/b/a AmerenUE

[Docket No. EC03–53–000]

Take notice that on February 5, 2003, Ameren Energy Generating Company (AEG) and Union Electric Company d/b/a AmerenUE (collectively, AEG and AmerenUE are referred to as Applicants) submitted an application pursuant to section 203 of the Federal Power Act, and part 33 of the Federal Energy Regulatory Commission (Commission or FERC) regulations, 18 CFR part 33, for authorization for AEG to sell and

transfer, and for AmerenUE to purchase and acquire, certain transmission facilities currently owned by AEG that are used to interconnect AEG's Kinmundy, Illinois and Pinckneyville, Illinois generation facilities to the Ameren transmission system. This transaction also involves the sale and transfer of the Kinmundy and Pinckneyville generation facilities now owned by AEG to AmerenUE.

Applicants state that copies of this filing have been served on all affected state commissions.

Comment Date: February 26, 2003.

3. Citizens Communications Company, Tucson Electric Power Company, and UniSource Energy Corporation

[Docket No. EC03–54–000]

Take notice that on February 7, 2003, Citizens Communications Company, Tucson Electric Power Company, and UniSource Energy Corporation filed with the Federal Energy Regulatory Commission (Commission) a Joint Application for the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act.

As further described in the Application, Citizens proposes to sell, and UniSource Energy proposes to acquire, the operating electric and gas utility properties of Citizens that are located in Arizona. Applicants request that the transaction is consistent with the public interest and approve the transaction pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (2000). Applicants request approval of the Transaction by no later than May 30, 2003, to permit closing of the proposed transaction as soon as possible thereafter.

Comment Date: February 28, 2003.

4. The Premcor Refining Group Inc.

Williams Generating Memphis, L.L.C.

[Docket Nos. EC03–55–000 and ER02–2421–001]

Take notice that on February 7, 2003, The Premcor Refining Group Inc. (Premcor) and Williams Generating Memphis, L.L.C. (Williams Generating) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (2000), and part 33 of the Commission's regulations, 18 CFR part 33, a joint application for authorization to dispose of certain jurisdictional facilities in connection with the purchase of the Williams Generating refinery by Premcor.

Comment Date: February 27, 2003.

5. Sussex Rural Electric Cooperative

[Docket No. EL03–49–000]

Take notice that on January 27, 2003., Sussex Rural Electric Cooperative (Sussex) filed with the Federal Energy Regulatory Commission (Commission) a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Commission's regulations. Sussex also requests waiver of 18 CFR 35.28(d)(ii)'s 60-day notice requirement. Sussex's filing is available for public inspection at its offices in Sussex, New Jersey.

Comment Date: February 26, 2003.

6. Mountain View Power Partners, LLC

[Docket No. ER01–751–003]

Take notice that on February 7, 2003, Mountain View Power Partners, LLC (Mountain View) filed with the Federal Energy Regulatory Commission (Commission) an amended market-based rate tariff and a code of conduct to reflect a change in upstream ownership, in compliance with the Commission's delegated letter order on January 24, 2003, as amended by the errata issued on January 30, 2003 in the above-referenced proceeding.

Mountain View requests that the Commission make the amended tariff effective as of January 31, 2003.

Comment Date: February 28, 2003.

7. Quonset Point Cogen, L.P.

[Docket No. ER02–2607–000]

Take notice that on February 10, 2003, Quonset Point Cogen, L.P., requests to withdraw its Application for Market-Based Rates, Request for Expedited Consideration, and Requests for Notice Waiver and Blanket Authority filed on September 27, 2002.

Comment Date: March 3, 2003.

8. Quonset Point Cogen, L.P.

[Docket No. ER03–6–000 ER03–6–001]

Take notice that on February 7, 2003, Quonset Point Cogen, L.P. and PSEG Energy Technologies Inc. (Applicants) filed with the Federal Energy Regulatory Commission (Commission) a request to withdraw a Thermal and Electric Energy Purchase Agreement filed on October 2, 2002 in this docket. Applicants are requesting that this Agreement no longer be reviewed for approval by the Commission.

Comment Date: February 28, 2003.

9. Sithe/Independence Power Partners, L.P.

[Docket No. ER03–42–001]

Take notice that on February 6, 2003, Sithe/Independence Power Partners, L.P. (Sithe Independence) submited revised tariff sheets in compliance with the Commission's November 22, 2002 order in Sithe/Independence Power Partners, L.P., 101 FERC § 61,210 (2002). Sithe Independence is filing revisions to its FERC Electric Tariff No. 1 and its Original Service Agreement Nos. 1 and 2 to reflect an effective date of February 1, 2003, the date on which Sithe Independence terminated the Qualifying Facility status of its 1,060 MW electric generating facility in Oswego County, New York. Sithe Independence is also revising its FERC Electric Tariff No. 1 to prohibit both sales to and purchases from its affiliate Portland General Electric Company without the Commission's approval.

Comment Date: February 27, 2003.

10. New York Independent System Operator, Inc.

[Docket No. ER03–303–001]

Take notice that on February 6, 2003, the New York Independent System Operator, Inc. (NYISO), filed corrections to its December 20, 2002 (the December 20 Filing), filing in which the NYISO proposed to amend its demand response programs. The filing amended a definition submitted in the December 20 Filing.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: February 27, 2003.

11. ConocoPhillips Company

[Docket No. ER03–428–001]

Take notice that on February 10, 2003., ConocoPhillips Company (ConocoPhillips) tendered for filing an Amended Notice of Succession pursuant to Section 35.16 of the Commission's Regulations. As a result of a name change, ConocoPhillips is succeeding by merger to the tariffs and related service agreements of Conoco Inc., effective December 31, 2002.

Comment Date: March 3, 2003.

12. Centennial Power, Inc.

[Docket No. ER03–509–000]

Take notice that on February 7, 2003, Centennial Power, Inc. (Applicant) tendered for filing, under Section 205 of the Federal Power Act, a request for authorization to sell electricity at market-based rates under its proposed market-based tariff.

Comment Date: February 28, 2003.

13. Delta Energy Center, LLC

[Docket No. ER03–510–000]

Take notice that on February 7, 2003., Delta Energy Center, LLC (Delta) filed an unexecuted Must-Run Service Agreement and accompanying schedules (RMR Agreement) between Delta and the California Independent System Operator Corporation (ISO) setting forth the rates, terms and conditions under which Delta proposes to provide reliability must-run services to the ISO. Delta requested expedited consideration of the RMR Agreement by the Commission.

Comment Date: February 28, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4005 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Project Nos.:* 12308–000 and 12358–000.

c. Dates filed: July 17, 2002 and August 21, 2002.

d. *Applicants:* Universal Electric Power Corporation and Brandon Road Hydro, LLC.

e. *Name and Location of Projects:* The two Brandon Road L&D Hydroelectric Projects are proposed to be located on the Des Plaines River in Will County, Illinois, and would utilize the U.S. Army Corps of Engineers' existing Brandon Road Lock & Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C.§§ 791(a)—825(r).

g. *Applicant Contacts: For Universal:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115. *For Brandon Road Hydro, LLC:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Projects:* Universal Electric Power Corp (P–12308–000): The proposed run-of-river project using the existing Corps' Brandon Road Lock and Dam would consist of: (1) A 54-inch-diameter, 80-foot-long steel penstock, (2) a powerhouse containing three generating units with a total installed capacity of 3 MW, (3) a 14.7-kv transmission line approximately 1 mile long in length, and (4) appurtenant facilities. The project would have an annual generation of 18 GWh.

Brandon Road Hydro, LLC (P–12358–000): The proposed run-of-river project using the existing Corps' Brandon Road Lock and Dam would consist of: (1) A 156-inch-diameter, 50-foot-long concrete penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 6.6 MW, (3) a 25-kv transmission line approximately 1 mile long in length, and (4) appurtenant facilities. The project would have an annual generation of 55.16 GWh.

k. *Competing Application:* Project No. 12315–000, *Date Filed:* July 1, 2002. *Comment Due Date:* December 8, 2002.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business

address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4007 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12320–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Peoria L&D Hydroelectric Project would be located on the Illinois River in Peoria County, Illinois. The project would utilize the U.S. Army Corps of Engineers' existing Peoria Lock & Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed run-of-river project using the existing Corps' Peoria Lock & Dam would consist of: (1) Four 7-foot-diameter 50-foot-long steel penstocks; (2) a submersible powerhouse containing four turbine/generating units with an installed capacity of 6.6 MW; (3) a 14.7 kv transmission line approximately 100 feet long; and (4) appurtenant facilities. The project would have an annual generation of 40 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4008 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12322–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Brookville Lake Dam Hydroelectric Project would be located on the East Fork of the Whitewater River in Franklin County, Indiana. The project would utilize the U.S. Army Corps of Engineers' existing Brookville Lake Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed run-of-river project using the existing Corps' Brookville Lake Dam would consist of: (1) A 9-foot-diameter 220-foot-long steel penstock; (2) a powerhouse containing three generating units with an installed capacity of 9 MW; (3) a 14.7 kv transmission line approximately 400 feet long; and (4) appurtenant facilities. The project would have an annual generation of 55 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant; and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4009 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12334–000.

c. *Date filed:* August 13, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Demopolis L&D Hydroelectric Project would be located on the Tombigbee River in Marengo County, Alabama. The project would utilize the U.S. Army Corps of Engineers' existing Demopolis Lock & Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Demopolis Lock and Dam, would consist of: (1) A new powerhouse containing several turbine/generating units with a total installed capacity of 23.7 megawatts, (2) the penstock (input) to the powerhouse, (3) a 12.7 or 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 155 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction.

The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4010 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12344–000.

c. *Date Filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* J. Edwards Roush Lake Dam Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' existing J. Edwards Roush Lake Dam, on the Wabash River in Huntington County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7715.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12294–000, *Date Filed:* July 5, 2002, *Comment Due Date:* November 25, 2002.

l. *Description of Project:* The proposed project, using the Corps' existing J. Edwards Roush Lake Dam, would consist of: (1) one 50-foot-long, 78-inch-diameter steel penstock, (2) a powerhouse containing two generating units with a total installed capacity of 2.3 megawatts, (3) a 4 mile-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 14 gigawatthours.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION" COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4011 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12366–000.

c. *Date filed:* September 13, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Dequeen Lake Dam Hydroelectric Project would be located on the Rolling Fork River in Sevier County, Arkansas. The project would utilize the U.S. Army Corps of Engineers' existing Dequeen Lake Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Dequeen Lake Dam, would consist of: (1) one 50-foot-long, 6-foot-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1.8 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 11 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

1. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4012 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12382–000.

c. *Date filed:* October 1, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Fulton L&D Hydroelectric Project would be located on the Tombigbee River in Itawamba County, Mississippi. The project would utilize the U.S. Army Corps of Engineers' existing Fulton Lock and Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing dam, would consist of: (1) a 300-foot-long, 6-foot-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1.125 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 7 gigawatthours. k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4013 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12384–000.

c. *Date filed:* October 3, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Emmett Sanders L&D #4 Hydroelectric Project would be located on the Arkansas River in Jefferson, Arkansas. The project would utilize the U.S. Army Corps of Engineers' existing Emmett Sanders Lock & Dam #4.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Emmett Sanders Lock &Dam #4, would consist of: (1) Fourteen 40-foot-long, 114-inch-diameter steel penstocks, (2) a powerhouse containing fourteen generating units with a total installed capacity of 27 megawatts, (3) a 1000-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 166 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4014 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12391–000.

c. *Date filed:* October 17, 2002.

d. *Applicant:* Universal Electric Power Corporation

e. *Name and Location of Project:* The Dillon Dam Hydroelectric Project would be located on the Licking River in Muskingum County, Ohio. The project would utilize the U.S. Army Corps of Engineers' existing Dillon Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Dillon Dam, would consist of: (1) one 50-foot-long, 8-foot-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1.59 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 9.7 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4015 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12401–000.

c. *Date Filed:* October 31, 2002.

d. *Applicant:* North Texas Municipal Water District.

e. *Name of Project:* Lavon Dam Hydroelectric Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' existing Lake Lavon Dam, on the East Fork of the Trinity River in Collin County, Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James Parks, North Texas Municipal Water District, 505 E. Brown Street, P.O. Box 2408, Wylie, TX 75098, (972) 442–5405.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12233–000, *Date Filed:* June 17, 2002, *Comment Due Date:* October 2, 2002.

l. *Description of Project:* The proposed project, using the Corps' existing Lake Lavon Dam, would consist of: (1) one 200-foot-long, 84-inch-diameter steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1.8 megawatts, (3) a mile-long, 25-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 7.2 gigawatthours.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4016 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12407–000.

c. *Date filed:* October 31, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Sardis Dam Hydroelectric Project would be located on the Little Tallahatchie River in Panola County, Mississippi. The project would utilize the U.S. Army Corps of Engineers' existing Sardis Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Sardis Dam, would consist of: (1) Two 80-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing six generating units with a total installed capacity of 15.75 megawatts, (3) a ½ mile-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 97 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the

Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4017 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12422–000.

c. *Date filed:* November 25, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Francis E. Walter Dam Hydroelectric Project would be located on the Lehigh River in Luzerene County, Pennsylvania. The project would utilize the U.S. Army Corps of Engineers' existing Francis E. Walter Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Francis E. Walter Dam, would consist of: (1) Five 50-foot-long, 9-foot-diameter steel penstocks, (2) a powerhouse containing five turbine/generating units with a total installed capacity of 10.3 megawatts, (3) a 300-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 63 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development. Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the

Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4018 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12427–000.

c. *Date filed:* December 17, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Kentucky L&D # 1 Hydroelectric Project would be located on the Kentucky River in Carroll County, Kentucky. The project would utilize the U.S. Army Corps of Engineers' existing Kentucky Lock & Dam # 1.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Kentucky Lock and Dam, would consist of: (1) Three 50-foot-long, 8-foot-diameter steel penstocks, (2) a powerhouse containing three turbine/generating units with a total installed capacity of 3 megawatts, (3) a 200-foot-long, 14.7-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an average annual generation of 18 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the

Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4019 Filed 2–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 13, 2003.

The following Notice of Meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 20, 2003, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda * Note—Items Listed on The Agenda May Be Deleted Without Further Notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400, For a Recording Listing Items Stricken From or Added to the Meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; However, all public documents may be examined in the reference and information center.

819TH—Meeting February 20, 2003, Regular Meeting 10:00 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Toriffs and Rates—Electric

E–1.
Docket# EL03–36, 000, D.E. Shaw Plasma Power, L.L.C.

E–2.
Docket# EC03–30, 000, Illinois Power Company, Illinois Electric Transmission Company, LLC and Trans-Elect, Inc.
Other#s ER03–284, 000, Illinois Power Company, Illinois Electric Transmission Company, LLC and Trans-Elect, Inc.

E–3.
Docket# EC03–40, 000, ITC Holdings Corporation, ITC Holdings Limited Partnership, International Transmission Company, DTE Energy Company and Detroit Edison Company
Other#s ER03–343, 000, ITC Holdings Corporation, ITC Holdings Limited Partnership, International Transmission Company, DTE Energy Company and Detroit Edison Company

E–4.
Docket# ER98–1438, 014, Midwest Independent Transmission System Operator, Inc.
Other#s EC98–24, 008, Midwest Independent Transmission System Operator, Inc.
ER01–479, 004, Midwest Independent Transmission System Operator, Inc.

E–5.
Docket# EL03–35, 000, Midwest Independent Transmission System Operator, Inc.

E–6.
Omitted

E–7.
Docket# ER03–332, 000, PJM Interconnection L.L.C.

E–8.
Docket# ES02–51, 000, Westar Energy, Inc.

E–9.
Omitted

E–10.
Docket# ER03–338, 000, Southern California Edison Company

E–11.
Docket# ER03–184, 000, Geysers Power Company, LLC
Other#s ER03–184, 001, Geysers Power Company, LLC

E–12.
Omitted

E–13.
Omitted

E–14.
Docket# ER03–379, 000, Southern Company Services, Inc.

E–15.
Docket# ER03–402, 000, Midwest Independent Transmission System Operator, Inc.

E–16.
Omitted

E–17.
Docket# ER03–312, 000, Pacific Gas and Electric Company

E–18.
Docket# ER03–366, 000, Midwest Independent Transmission System Operator, Inc.
Other#s ER03–368, 000, Midwest Independent Transmission System Operator, Inc.

E–19.
Docket# ER03–358, 000, Pacific Gas and Electric Company

E–20.
Omitted

E–21.
Omitted

E–22.
Docket# ER01–3001, 004, New York Independent System Operator, Inc.

E–23.
Docket# ER01–2189, 004, Mid-Continent Area Power Pool
Other#s ER01–2322, 001, Mid-Continent Area Power Pool
ER01–3003, 003, Mid-Continent Area Power Pool
ER01–3004, 001, Mid-Continent Area Power Pool
ER02–112, 003, Mid-Continent Area Power Pool

E–24.
Docket# ER02–2234, 005, California Power Exchange Corporation
Other#s ER02–2234, 006, California Power Exchange Corporation
ER02–2234, 007, California Power Exchange Corporation
ER03–139, 001, California Power Exchange Corporation
ER03–139, 002, California Power Exchange Corporation

E–25.
Docket# ER02–2008, 002, Duke Energy Corporation

E–26.
Docket# ER02–2313, 000, Southwestern Electric Power Company

E–27.
Docket# EC03–24, 000, Idaho Power Company and IDACORP Energy, L.P.
Other#s EC03–33, 000, Idaho Power Company and IDACORP Energy, L.P.
EC03–34, 000, Idaho Power Company and IDACORP Energy, L.P.
EC03–38, 000, Idaho Power Company and IDACORP Energy, L.P.

E–28.
Omitted

E–29.
Omitted

E–30.
Docket# ER02–1069, 001, Entergy Services, Inc.
Other#s EL02–88, 000, Wrightsville Power Facility, L.L.C. v. Entergy Arkansas, Inc.

ER02–1069, 002, Entergy Services, Inc.
ER02–1151, 001, Entergy Arkansas, Inc.
ER02–1151, 002, Entergy Arkansas, Inc.
ER02–1472, 001, Entergy Gulf States, Inc.
ER02–1472, 002, Entergy Gulf States, Inc.

E–31.
Omitted.

E–32.
Docket# EL02–73, 001, Access Energy Cooperative

E–33.
Docket# ER02–2220, 001, Southern Company Services, Inc.
Other#s ER02–2220, 002, Southern Company Services, Inc.

E–34.
Docket# ER98–3760, 006, California Independent System Operator Corporation
Other#s EC96–19, 057, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company
ER96–1663, 060, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company

E–35.
Omitted

E–36.
Docket# ER02–2420, 001, Midwest Independent Transmission System Operator, Inc.

E–37.
Omitted

E–38.
Omitted

E–39.
Docket# TX96–2, 007, City of College Station, Texas

E–40.
Docket# ER02–2126, 004, Consolidated Edison Company of New York, Inc.

E–41.
Docket# EL00–89, 001, Southern California Edison Company

E–42.
Docket# NJ00–7, 000, Basin Electric Power Cooperative, Inc.
Other#s NJ00–7, 001, Basin Electric Power Cooperative, Inc.
NJ01–6, 000, Basin Electric Power Cooperative, Inc.
NJ01–6, 001, Basin Electric Power Cooperative, Inc.
NJ01–8, 000, Basin Electric Power Cooperative, Inc.
NJ01–8, 001, Basin Electric Power Cooperative, Inc.

E–43.
Omitted

E–44.
Docket# EL03–32, 000, Illinois Power Company

E–45.
Omitted

E–46.
Docket# EL03–28, 000, Town of Wallingford, Connecticut Department of Public Utilities, Electric Division and Connecticut Municipal Electric Energy Cooperative v. Connecticut Light and Power Company, Select Energy, Inc. and Northeast Utilities Service Company

E–47.
Docket# EL03–40, 000, Wisconsin Public Service Corporation v. Midwest Independent Transmisson System Operator, Inc.

E–48.
Omitted

E–49.
Docket# ER01–313, 000, California Independent System Operator Corporation
Other#s ER01–313, 001, California Independent System Operator Corporation
ER01–424, 000, Pacific Gas and Electric Company
ER01–424, 001, Pacific Gas and Electric Company

E–50.
Docket# ER02–111, 002, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–652, 001, Midwest Independent Transmission System Operator, Inc.

E–51.
Docket# EL01–113, 000, Mid-Tex G&T Electric Cooperative, Inc., Big Country Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc., v. West Texas Utilities Company

E–52.
Docket# EL02–51, 001, California Electricity Oversight Board v. Williams Energy Services Corporation, AES Huntington Beach LLC, AES Alamitos LLC, AES Redondo Beach LLC, Mirant Americas Energy Marketing L.P., Mirant Delta LLC, Reliant Energy Services, Inc., Reliant Energy Coolwater LLC, Reliant Energy Etiwanda LLC, Reliant Energy Mandalay LLC, Reliant Energy Ormand Beach LLC, Dynergy Power Marketing, Inc., Encina Power LLC, Calpine Corporation, Geysers Power Company LLC, Southern California Edison Company, All Other Public and Non-Public Utilities Who Own or Control Generation in California and Who Sell Through the Markets or Use the Transmission Lines Operated by the California Independent System Operator Corporation, and All Scheduling Coordinators Acting on Behalf of the Above Entities

E–53.
Docket# ER02–188, 000, Geysers Power Company, LLC
Other#s ER02–236, 000, Geysers Power Company, LLC
ER02–236, 001, Geysers Power Company, LLC
ER02–407, 000, Geysers Power Company, LLC
ER02–407, 001, Geysers Power Company, LLC

E–54.
Omitted

E–55.
Docket# ER02–1422, 003, Midwest Independent Transmission System Operator, Inc.
Other#s ER02–1842, 001, Midwest Independent Transmission System Operator, Inc.

E–56.
Docket# EG03–33, 000, Wellco Services, Inc.

E–57.
Docket# ER03–45, 001, Virginia Electric and Power Company

E–58.
Docket# EL03–47, 000, Investigation of Certain Enron-Affiliated QF's
Other#s QF89–251, 008, Las Vegas Cogeneration Limited Partnership
QF90–203, 004, Las Vegas Cogeneration Limited Partnership

E–59.
Docket# EL02–114, 000, Portland General Electric Company
Other#s EL02–115, 001, Avista Corporation

Miscellaneous Agenda

M–1.
Docket# RM02–4, 000, Critical Energy Infrastructure Information
Other#s PL02–1, 000, Critical Energy Infrastructure Information

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP01–503, 001, Natural Gas Pipeline Company of America

G–2.
Omitted

G–3.
Docket# RM00–11, 000 Five-Year Review of Oil Pipeline Pricing Index
Other#s RM00–11 001 Five-Year Review of Oil Pipeline Pricing Index

G–4.
Docket# OR98–11, 000, SFPP, L.P.
Other#s IS98–1, 000 *et al.*, SFPP, L.P.

G–5.
Docket# RP03–129, 000, Panhandle Eastern Pipe Line Company

G–6.
Docket# RP03–237, 000, Transwestern Pipeline Company

G–7.
Docket# RP98–43, 000, Anadarko Gathering Company

G–8.
Docket# RP02–217, 000, Panhandle Eastern Pipe Line Company

G–9.
Docket# RP00–335, 001, Black Marlin Pipeline Company
Other#s RP03–167, 000, Black Marlin Pipeline Company

G–10.
Docket# RP00–482, 003, CenterPoint Energy Gas Transmission Company
Other#s RP00–482, 004, CenterPoint Energy Gas Transmission Company

G–11.
Docket# RP00–401, 001, Enbridge Pipelines (AlaTenn) Inc.
Other#s RP01–4, 004, Enbridge Pipelines (AlaTenn) Inc.

G–12.
Docket# RP02–331, 002, PG&E Gas Transmission, Northwest Corporation

G–13.
Docket# RP00–535, 004, Texas Eastern Transmission, LP
Other#s RP03–194, 000, Texas Eastern Transmission, L.P.

G–14.
Docket# RP02–158, 001, Viking Gas Transmission Company
G–15.
Docket# RP00–533, 004, Algonquin Gas Transmission Company
Other#s RP03–193, 000, Algonquin Gas Transmission Company
G–16.
Omitted
G–17.
Omitted
G–18.
Docket# RP00–468, 004, Texas Eastern Transmission Corporation
Other#s RP00–468, 005, Texas Eastern Transmission Corporation
RP01–25, 004, Texas Eastern Transmission, LP
RP01–25, 005, Texas Eastern Transmission, LP
RP03–175, 000, Texas Eastern Transmission, LP
G–19.
Docket# RP00–387, 001, Florida Gas Transmission Company
Other#s RP00–387, 002, Florida Gas Transmission Company
RP00–583, 002, Florida Gas Transmission Company
RP00–583, 003, Florida Gas Transmission Company
RP03–165, 000, Florida Gas Transmission Company
G–20.
Docket# RP00–410, 002, CenterPoint Energy-Mississippi River Transmission Corporation
Other#s RP00–410, 003, CenterPoint Energy-Mississippi River Transmission Corporation
RP01–8, 002, CenterPoint Energy-Mississippi River Transmission Corporation
RP01–8, 003, CenterPoint Energy-Mississippi River Transmission Corporation
G–21.
Omitted
G–22.
Docket# RP00–398, 001, Overthrust Pipeline Company
Other#s RP00–398, 002, Overthrust Pipeline Company
RP01–34, 003, Overthrust Pipeline Company
RP01–34, 004, Overthrust Pipeline Company
G–23.
Omitted
G–24.
Docket# RP99–485, 001, Enbridge Pipelines (KPC)
G–25.
Omitted
G–26.
Docket# RP02–505, 002, Kinder Morgan Interstate Gas Transmission LLC
G–27.
Omitted
G–28.
Docket# IS02–403, 001, Shell Pipeline Company LP
G–29.
Docket# PR02–16, 002, Calpine Texas Pipeline, L.P.
G–30.
Docket# RP03–229, 000, Tennessee Gas Pipeline Company
G–31.
Docket# RP02–363, 003, North Baja Pipeline LLC
G–32.
Docket# RP00–275, 000, Chesapeake Panhandle Limited Partnership v. Natural Gas Pipeline Company of America, MidCon Gas Products Corp., MidCon Gas Services Corp, KN Energy, Inc., and Kinder Morgan, Inc.

Energy Projects—Hydro

H–1.
Docket# RM02–16, 000, Hydroelectric Licensing under the Federal Power Act
H–2.
Omitted
H–3.
Docket# P–2671, 042, Kennebec Water Power Company
H–4.
Omitted
H–5.
Docket# JR00–2, 000, James M. Knott
Other#s P–9100, 011, James M. Knott
H–6.
Docket# DI02–3, 001, AquaEnergy Group Ltd.

Energy Projects—Certificates

C–1.
Docket# CP02–387, 000, Petal Gas Storage, L.L.C.
C–2.
Docket# CP02–381, 000, Texas Eastern Transmission, L.P.
C–3.
Docket# CP03–7, 000, Colorado Interstate Gas Company
C–4.
Docket# CP02–1, 003, Southern Natural Gas Company
C–5.
Docket# CP01–416, 001, Sierra Production Company
C–6.
Docket# CP98–131, 005, Vector Pipeline L.P.
C–7.
Docket# CP01–415, 004, East Tennessee Natural Gas Company
Other#s CP01–375, 001, East Tennessee Natural Gas Company
CP01–375, 002, East Tennessee Natural Gas Company
CP01–415, 007, East Tennessee Natural Gas Company
C–8.
Docket# CP02–431, 000, Colorado Interstate Gas Company, RME Petroleum Company and Chevron U.S.A.
C–9.
Docket# CP01–36, 000, Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company v. Raton Gas Transmission Company
Other#s CP01–52, 000, Raton Gas Transmission Company
CP01–382, 000, Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company v. Raton Gas Transmission Company
CP01–383, 000, Raton Gas Transmission Company
C–10.
Docket# CP01–76, 001, Cove Point LNG Limited Partnership
Other#s CP01–76, 000, Cove Point LNG Limited Partnership
CP01–77, 000, Cove Point LNG Limited Partnership
CP01–77, 001, Cove Point LNG Limited Partnership
CP01–156, 000, Cove Point LNG Limited Partnership
CP01–156, 001, Cove Point LNG Limited Partnership
RP01–217, 000, Cove Point LNG Limited Partnership
RP01–217, 001, Cove Point LNG Limited Partnership

Magalie R. Salas,
Secretary.
[FR Doc. 03–4169 Filed 2–14–03; 4:00 pm]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

February 13, 2003.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.
Date and Time: February 20, 2003 (Within a relatively short time after the regular Commission Meeting).
Place: Hearing Room 6, 888 First Street, NE., Washington, DC 20426.
Status: Closed.
Matters to be Considered: Non-public investigations and inquiries and enforcement related matters.
Contact Person for more information: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on February 20, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,
Secretary.
[FR Doc. 03–4170 Filed 2–14–03; 4:00 pm]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–000]

Electric Quarterly Reports; Revised Public Utility Filing Requirements; Notice of Extension of Time

February 11, 2003.

On December 19, 2002, the Commission issued Order 2001–C (published 12/27/02, Vol. 67 FR 79077), requiring future Electric Quarterly Reports to be filed using the new Electric Quarterly Report Submission Software. The fourth quarter Electric Quarterly Reports were originally due to be filed on or before January 31, 2003. This deadline was previously extended to February 14, 2003.

On February 10, 2003, a bug was found in the program that inactivated some of the error checking on imported transaction data. The submission capability was temporarily disabled in order to preclude erroneous data from being filed at the Commission. A new version of the software was released today which reactivated the edit checks. This version will be automatically uploaded to the respondents' computers upon opening the Electric Quarterly Report application. Utilities that had previously imported data which passed the data integrity checks may find that some of their data will not pass the current edits.

In consideration of this situation, we would like to allow utilities more time to correct their data to ensure that they can file successfully. Notice is hereby given that the time to file the fourth quarter 2002 Electric Quarterly Report is extended to and including February 21, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–4006 Filed 2–18–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0003; FRL–7287–8]

Recordkeeping Requirements for Certified Applicators Using 1080 Collars on Livestock; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Recordkeeping Requirements for Certified Applicators Using 1080 Collars on Livestock (EPA ICR No. 1249.07, OMB Control No. 2070–0074). This is a request to renew an existing ICR that is currently approved and due to expire September 30, 2003. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2003–0003, must be received on or before April 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are one of the approximately 75 certified pesticide applicators who utilize 1080 collars for livestock protection; or a state agency that implements a 1080 collar monitoring program in the states of Montana, New Mexico, South Dakota, or Wyoming; or are one of the five registrants required to keep records of: (1) Number of collars purchased; (2) number of collars placed on livestock; (3) number of collars punctured or ruptured; (4) apparent cause of puncture or rupture; (5) number of collars lost or unrecovered; (6) number of collars in use and storage; and (7) location and species data on each animal poisoned as an apparent result of the toxic collar. Potentially affected entities may include, but are not limited to:

- Pesticide and other agricultural manufacturing (NAICS 325320), e.g., Pesticide registrants whose products include 1080 collars.
- Government establishments primarily engaged in the administration of environmental quality programs (NAICS 9241), e.g., States implementing a 1080 collar monitoring program.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Food Quality Protection Act (FQPA) of 1996, and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA

Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0003. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0003. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0003.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0003. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Recordkeeping Requirements for Certified Applicators Using 1080 Collars on Livestock.

ICR numbers: EPA ICR No. 1249.07, OMB Control No. 2070–0074.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire September 30, 2003.

Abstract: This ICR affects approximately 75 certified pesticide applicators who utilize 1080 toxic collars for livestock protection. Four states (Montana, New Mexico, South Dakota, and Wyoming) monitor the program, and five pesticide registrants are required to keep records of: (1) Number of collars purchased; (2) number of collars placed on livestock; (3) number of collars punctured or ruptured; (4) apparent cause of puncture or rupture; (5) number of collars lost or unrecovered; (6) number of collars in use and in storage; and (7) location and species data on each animal poisoned as an apparent result of the toxic collar. Applicators maintain records, and the registrants/lead agencies do monitoring studies and submit the reports. These records are monitored by either the: State lead agencies; EPA regional offices; or the registrants. EPA receives annual monitoring reports from registrants or State lead agencies. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 3,353 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Certified pesticide applicators who utilize 1080 collars for livestock protection; state agencies that implement a 1080 collar monitoring program in Montana, New Mexico, South Dakota, or Wyoming; one of five registrants required to keep records pertaining to use of 1080 collars for livestock protection.

Estimated total number of potential respondents: 84.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 3.

Estimated total annual burden hours: 3,353.

Estimated total annual burden costs: $40,792.

VI. Are There Changes in the Estimates from the Last Approval?

Total respondent costs associated with this program rose from $38,448 to $40,792. Total agency costs rose from $8,845 to $10,150. Changes to total costs associated with this program are due to the increase in labor rates, reflecting the most current estimates.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 5, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–3959 Filed 2–18–03; 8:45 am].

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0309; FRL–7281–7]

Oxadiazon; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide reregistration eligibility decisions consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the human health and environmental fate and effects risk assessments, and related documents for oxadiazon. Oxadiazon, an herbicide, is used primarily on golf courses, and has no remaining tolerances. This notice also starts a 60-day public comment period for the risk assessments. Comments are to be limited to issues directly associated with oxadiazon, and raised by the risk assessments or other documents placed in the docket. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FQPA are transparent and based on the best available information. The Agency cautions that these risk assessments for oxadiazon are preliminary and that further refinements may be appropriate. Risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket ID number OPP–2002–0309, must be received on or before April 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mark Seaton, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0469; e-mail address: seaton.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in, or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0309. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless, the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed, or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0309. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0309. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0309.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0309. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. If you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is making available risk assessments that have been developed as part of the Agency's public participation process for making reregistration eligibility decisions for the organophosphate and other pesticides consistent with FFDCA, as amended by FQPA. The Agency's human health and environmental fate and effects risk assessments and other related documents for oxadiazon are available in the individual pesticide docket. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for oxadiazon.

The Agency cautions that the oxadiazon risk assessments are preliminary and that further refinements may be appropriate. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessments for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues

associated with the pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by April 21, 2003 using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION.** Comments will become part of the Agency record for oxadiazon.

List of Subjects

Environmental protection, Chemicals, Oxadiazon, Pesticides.

Dated: December 3, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–3844 Filed 2–18–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

February 11, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by April 21, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0400.

Title: Tariff Review Plan.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 45.

Estimated Time Per Response: 61 hours.

Frequency of Response: On occasion, annual and biennial reporting requirements.

Total Annual Burden: 2,745 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Certain local exchange carriers are required annually to submit Tariff Review Plans in partial fulfillment of cost support material required by 47 CFR part 61. The information is used by the Commission and the public to determine the justness and reasonableness of rates, terms and conditions in tariffs as required by the Communications Act of 1934, as amended.

OMB Control No.: 3060–0421.

Title: New Service Reporting Requirements Under Price Cap Regulation.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 17.

Estimated Time Per Response: 20 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 340 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Commission seeks to extend for three years the current obligation of price cap local exchange carriers (LECs) to file annual reports comparing their actual results of operation with the projections made when those LECs filed tariff revisions to offer new services. The Commission staff continues to use these reports to monitor the new services to which these reports relate and to evaluate the reliability of subsequent new service showings submitted by these carriers.

OMB Control No.: 3060–0514.

Title: Section 43.21(b), Holding Company Annual Report.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 20.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 20 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The SEC 10K form is needed from holding companies of communications common carriers to provide the Commission with the data required to fulfill its regulatory responsibilities and by the public in analyzing the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

OMB Control No.: 3060–0894.

Title: Certification Letter Accounting for Receipt of Federal Support, CC Docket Nos. 96–45 and 96–262.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents: 51.

Estimated Time Per Response: 3 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 153 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Commission requires states to certify that carriers with the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with section 254(e).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3866 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 11, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 21, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0307.

Title: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individual or households, business or other for-profit, not-for-profit institutions, and State, local or Tribal government.

Number of Respondents: 12,195.

Estimated Time Per Response: .5–5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 23,073 hours.

Total Annual Cost: $7,591,000.

Needs and Uses: This collection will promote Congress' goal of regulatory parity for all commercial mobile radio services, and encourage the participation of a wide variety of applicants, including small businesses, in the SMR industry. In addition, this collection will establish rules for the SMR services in order to streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

OMB Control No.: 3060–0824.

Title: Service Provider Identification Number and Contact Form.

Form No.: FCC Form 498.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 10,000 hours.

Total Annual Cost: $400,000.

Needs and Uses: The Administrator of the universal service program must obtain contact and remittance information from service providers participating in the universal service high cost, low income, rural health care, and schools and libraries programs. The Administrator uses FCC Form 498 to collect service provider name, phone numbers, other contact information, and remittance information from universal service fund participants to enable the Administrator to perform its universal service disbursement functions under 47 CFR part 54. FCC Form 498 allows fund participants to direct remittance to third parties or receives payments directly from the Administrator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3867 Filed 2–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Thursday, February 20, 2003

February 13, 2003.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, February 20, 2003, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98), Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147), and Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Docket No. 02–33). *Summary:* The Commission will consider a Report and Order concerning incumbent local exchange carriers' obligations to make elements of their networks available on an unbundled basis.

Additional information concerning this meeting may be obtained from David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Notice: Due to the elevated homeland security alert announced February 7, 2003, the FCC has taken additional security precautions that will limit visitor access to the FCC headquarters building in Washington, DC. Until further notice, the Maine Avenue lobby is closed. All visitors must enter the building through the 12th Street lobby, and will require an escort at all times in the building.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4158 Filed 2–14–03; 3:29 pm]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. F.N.B. Corporation, Naples, Florida; to merge with Charter Banking Corp., Tampa, Florida, and thereby indirectly acquire Southern Exchange Bank, Tampa, Florida.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Kansas City, Kansas; to acquire additional shares, for a total of 47.5 percent of the voting shares of Brotherhood Bancshares, Inc., and thereby indirectly acquires shares of Brotherhood Bank & Trust Company, both of Kansas City, Kansas.

Board of Governors of the Federal Reserve System, February 12, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3875 Filed 2–18–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03003]

HIV Community-Based Prevention Projects for the Commonwealth of Puerto Rico and the United States Virgin Islands; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a) and 317 of the Public Health Service Act, 42 U.S.C. 241(a) and 247(b) as amended. The Catalog of Federal Domestic Assistance Number is 93.939, HIV Prevention Activities —Non-Governmental Organization Based.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2003 funds for a cooperative agreement program for community-based organizations (CBOs) in the Commonwealth of Puerto Rico (the Commonwealth) (Category A) and the United States Virgin Islands (USVI) (Category B) to develop and implement HIV Prevention Programs. This program addresses the "Healthy People 2010" focus area(s) of Educational and Community-Based Programs, HIV, and Sexually Transmitted Diseases.

The purpose of the program is to (1) Develop and implement effective community-based HIV prevention programs that reflect the Commonwealth's or the USVI HIV prevention priorities outlined in their comprehensive HIV prevention plan and epi profile; and

(2) Promote collaboration and coordination of HIV prevention efforts among CBOs, Health Departments, and private agencies in order to increase the number of high-risk persons who are tested for HIV infection and learn their test results.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention: (1) Reduce the number of new HIV infections; and (2) Decrease the number of persons at high risk for acquiring or transmitting HIV infection.

All attachments referenced in this announcement are posted with the announcement on the CDC Web site, Internet address: *http://www.cdc.gov.*

C. Eligible Applicants

Assistance will be provided only to non-governmental organizations and faith-based organizations (tax exempt corporation or association), whose net earnings do not benefit private shareholders or individuals and who meet the following criteria:

1. Have a current tax-exempt status under Internal Revenue Service Code Section 501(c)(3) or written Statement of Good Standing and a Certificate of Incorporation from the Commonwealth State Department (Category A) or the USVI State Department (Category B).

2. Be located in the Commonwealth of Puerto Rico or the United States Virgin Islands.

3. Be able to show that you have provided HIV prevention or care services to your target population over the last two years.

4. Provide evidence that you have shared with the health department the details of your proposed program.

5. Request no more than $175,000 in funding, including indirect costs, if applying under Category A; and no more than $200,000, including indirect costs, if applying under Category B.

6. Not be a government or municipal agency (including a health department, school board, or public hospital), a private or public university or college, or a private hospital.

For both categories, you can apply on your own or with one or more CBOs as a coalition. The term coalition, for this announcement, means a group of organizations working together, where each organization has a clearly defined activity assigned to them from the overall program plan. All groups share program responsibilities, but the organization applying for funds must be the legal applicant and perform a substantial portion of the program activities. The lead organization must meet all of the eligibility requirements listed above.

CDC encourages applications from applicants who are representative of the minority communities served in the make up of their board of directors, key staff and management. They should also be situated in close geographic proximity to the targeted population, have a history of providing services to these communities and have documented linkages to the targeted populations.

Note: You may only submit one application. If you apply alone and also as part of a group, your application will not be reviewed and will be returned to you. Your organization may apply for this funding even if you are currently receiving other funding from CDC; however, you must still meet all of the eligibility requirements above.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c (4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

For fiscal year 2003, about $1.3 million is available for awards under Category A to fund approximately eight awards and $800,000 for Category B to fund approximately four awards. CBOs who are selected will receive funding in July 2003. The funds are to be used during a budget time frame of 12 months.

Your organization's project may be continued for a total of 5 years (*i.e.*, 2003, 2004, 2005, 2006, 2007) under this agreement. Funding at the same level after the first year is based on the amount of funds available to CDC and your success and/or progress in meeting your goals and objectives. You must keep track of your successes by writing reports and sending them to CDC. Also, CDC staff may visit your organization to learn about your activities. When asking for the subsequent funding, you must again show CDC that you still meet the requirements stated above in the "Eligible Applicants" section.

CDC is committed to working with CBOs in these activities and to ensuring that these funds are distributed in a way that matches the geographic locations and risk behaviors where the epidemic is widespread.

Use of Funds

The money must be used to:

1. Target priority populations identified in the Comprehensive HIV Prevention Plan developed by the Community Planning Group.

2. Develop and implement activities and interventions described in the Comprehensive HIV Prevention Plan developed by the Community Planning Group.

The money must not be used to:

1. Give direct patient medical care, including substance abuse or medical treatment, or medications.

2. Replace or duplicate existing funding.

3. Support only administrative and managerial functions.

Funding Preferences

Preference will be given to applicants that:

1. Are located in or near to the targeted community they are intending to serve (Indigenous to the targeted population.)

2. Have a documented history of service to the targeted community(ies) to be served with evidence of having established systems for involving clients, and community members in identifying community needs, assets, and barriers, and in creating appropriate program response.

3. Have documented linkages to the targeted population.

4. Have documented evidence of implementing culturally and linguistically competent interventions for the targeted population.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible activities listed under 1. Recipient Activities, and CDC will be responsible for activities listed under 2. CDC Activities.

1. Recipient Activities

a. Involve the target population in planning, implementing, and evaluating activities and services throughout the project period.

b. Develop or adapt existing program models that are supported by scientifically valid evidence of lowering risk behavior, encouraging abstinence, or increasing help-seeking behavior.

Examples of evidence-based models can be found: (1) In the "Compendium of Effective Behavioral Interventions", (Inventory #D235) available in CD-Rom format from the CDC National Prevention Information Network (NPIN) by calling 1–800–458–5231 or at the following Web site: *http://www.cdc.gov/hiv/pubs/hivcompendium.pdf* and (2) in the report entitled, "Positive Youth Development in the United States," commissioned by the U.S. Department of Health and Human Services Assistant Secretary for Planning and Evaluation and available at: *http://aspe.hhs.gov/hsp/positiveyouthdev99/index.htm*

c. Comply with the requirements described in the Review of Contents of "HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questioners, Survey Instruments, and Education Sessions", published in the **Federal Register** on June 15, 1992.

d. Comply with Health Department rules, regulation, protocols and procedures while implementing your counseling and testing intervention.

Your program activities should address barriers to HIV prevention. The activities could address social, health service, faith organizations and family units that can keep persons at risk from getting the services they need.

e. Conduct at least one of the interventions listed below. All of your efforts must include cultural competency, sensitivity to issues of sexual and gender identity, and developmental and linguistic appropriateness.

(1) HIV counseling, testing, and referral (CTR) Provide HIV CTR to individuals at high risk for HIV infection. If you provide these services, you must meet certain requirements and follow set guidelines. See Attachment 4 for more information.

Your program might: (a) Improve access to testing sites that will be more acceptable and accessible to the target population or, (b) Improve use of post-test counseling, referral, and follow-up.

(2) Health Education and Risk Reduction Conduct health education and risk-reduction interventions (HE/RR). These may include individual, group, or community-level interventions.

(3) Outreach Activities Conduct outreach activities to improve access to the target population. Provide face-to-face HIV prevention interactions and hand out prevention-related materials, encourage abstinence.

f. Assist high-risk clients with referrals to appropriate primary HIV prevention services, and continued prevention and care services if they are infected.

g. Assist HIV infected individuals with access to appropriate prevention interventions, care and treatment.

h. Monitor and evaluate your proposed program to assure its quality. Use approximately three to five percent of the funds awarded under this announcement for monitoring intervention activities. CDC will provide technical assistance in tracking program activities and quality.

i. If conducting counseling and testing, prepare and submit to CDC, within the first six months of funding, a quality assurance plan for your program.

j. Conduct periodic client satisfaction assessments, *e.g.*, questionnaires or focus groups.

k. Put into place training and capacity building measures and a plan to identify the training needs of your staff.

l. Work with CDC and CDC-funded capacity-building assistance programs to identify and address the capacity-building needs of your program.

m. Find and use local resources for organizational and program development, *e.g.*, the health department, community development agencies, other CBOs, local colleges and universities, locally based foundations, Service Corps of Retired Executives (a Small Business Administration program), and the local business or industrial community.

n. Put into place a communication and information dissemination plan, which includes: (1) Marketing your prevention program and services to the target population and local community; (2) Sharing lessons learned and successful program models; and (3) Ensuring Internet and e-mail communication for your organization and key program staff during the first year of funding.

o. You must attend at least one CDC-sponsored meeting of funded agencies. If you sponsor any conferences using CDC funds, you must follow CDC policies for getting approval.

p. Begin gathering information to help develop and implement a plan for obtaining additional resources from non-CDC sources to further support the program implemented through this cooperative agreement and to improve the chance that it will continue after the end of the project period. We encourage you to contact local organizations and agencies, such as community development agencies, colleges, and universities who may often have information about funding and other types of assistance.

q. Work with other organizations in the community by:

(1) Establishing ongoing collaborations with health departments, community planning groups, academic and local or national research institutions, health care providers, or other local or national resources in designing, implementing, and evaluating interventions; and

(2) Participating in the HIV prevention community planning process. Participation may include going to meetings; if selected, serving as a member of the group; reviewing and commenting on plans; and becoming familiar with and using information from the community planning process, such as the epidemiology (epi) profile, needs assessment data, and intervention strategies. If selected for funding, an overview of project activities should be presented to your jurisdiction's community planning group.

2. CDC Activities

a. Provide assistance and consultation on program and administrative issues through its partnerships with health departments, national and regional minority organizations, contractors, and other national and local organizations.

b. Meet with you to find out what your training needs are and work with you to ensure those needs are met.

c. Work with the health department to provide training either directly or through its network of HIV/STD prevention training centers. This service is available to persons who supervise, manage, and perform counseling and referral and other outreach activities and for staff who provide direct patient care.

d. Sharing the most up-to-date scientific information on risk factors for HIV infection and prevention measures, and successful program strategies to help prevent HIV infection.

e. Provide assistance and information on rapid test technologies once they become available.

f. Help you establish partnerships with state and local health departments, community planning groups, and other groups who receive federal funding to support HIV/AIDS activities.

g. Make sure that successful prevention interventions, program models, and lessons learned are shared between grantees through meetings, workshops, conferences, newsletters, Internet, and other avenues of communication.

h. Oversee your success in program and fiscal activities, protection of client privacy, and compliance with other requirements that apply to your organization.

i. During the first year of funding, CDC will work with CBOs and the Health Department to develop standardized evaluation formats and activities for grantees.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. If you are eligible and you want to apply for funding under this announcement, CDC asks that you let us know your intention to apply by filling out the "Intent to Apply," form found in Attachment 7. Your letter of intent will enable CDC to determine the amount of interest in this program and make sure we have enough of the most qualified reviewers for the application review process.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

1. Include page numbers throughout your application. Begin with the first page and number each page through to the last page of the last attachment.
2. Include a Table of Contents which indicates each section and page numbers for the whole package you send in.
3. Begin each separate section of your application on a new page.
4. Do not staple or bind the original document submission or the two copies.
5. Print all materials in a 12 point type size, single-spaced.
6. Use 8½ × 11 paper.
7. Set the margins at a minimum of one inch.
8. Print on one side of the paper only.

Content Guidelines

The sections that follow give you the questions you have to answer to correctly prepare your application. There are three sections:

- How Do I Write My Proposal Narrative?
- How Much Will My Proposed Program Cost and How Many Staff Do I Need?
- What Other Materials Do I Need to Attach?

When answering the questions below, you must:

1. Label each section, as indicated below, using the section title (*e.g.*, How Do I Write My Proposal Narrative?) and, when appropriate, the name of the subsection (*e.g.*, Justification of Need, Program Activities.)
2. Use the abbreviation N/A (not applicable), if a section does not apply to your application.
3. Include all information that is part of the basic plan (*e.g.*, activity timetables, staff program responsibilities, evaluation plans) in the main section of the application.

Note: Your application will be reviewed based on the answers you give to these questions. To be sure you get the best review of your application, use the format provided below when writing your application. Please answer all questions with complete sentences that provide detailed information about your eligibility and proposed activities.

How Do I Write My Proposal Narrative?

Your narrative should be no more than 35 pages. The 35 pages does not include your budget and budget narrative. We have included the number of points attached to each section and a suggested number of pages. Sections can vary in length as long as the total number of pages of the narrative is no more than 35. The narrative should address the following areas:

1. Justification of Need

How this section is scored: You will be scored on what information you use and how you use it to demonstrate the need of the target population for your proposed program. Check with the health department for information on the HIV/AIDS statistics and HIV/AIDS needs assessment developed for the community planning process. Use this information when writing your answer for this section.

Suggested length: 6 pages.
Points for this section: 200 points.

Answer all of the following questions for this section:

(a) How has your proposed target population been affected by the HIV/AIDS epidemic, *e.g.*, how many persons are infected with HIV or diagnosed with AIDS; how many deaths have there been from AIDS; how do socioeconomics affect the population? (50 points)

(b) What are the behaviors and other characteristics of your target population that put them at a high risk of becoming infected with HIV or giving HIV to a needle-sharing or sex partner, *e.g.*, unsafe sexual behaviors as indicated by rates of STDs, teen pregnancy rates, or assessments of risk behaviors; substance use rates; environmental, social, cultural, or language characteristics? (50 points)

(c) What are the barriers to accessing HIV prevention in your target population? How will you address these barriers? (50 points)

(d) Which organizations in your area are providing similar services? Please describe their activities and how your proposed activities will further meet the needs of the target population or improve services provided. (20 points)

(e) Is your proposed target population a priority population as indicated in the comprehensive HIV prevention plan developed through the community planning process? If not, please tell us why your proposed activities are needed? (30 points)

2. Program Activities

How this section is scored: We will look at whether or not your objectives are likely to be achieved; if your activities are sound, doable, creative, specific (how detailed you are in what you want to do), time-phased (have you set a time frame), and measurable (can you show that your activities made a difference).

Suggested length: 15 pages.
Points for this section: 400 points.

Remember that you will work with the health department and other organizations serving your proposed target population to carry out your program activities. As the applicant, you must describe how all planned services are to be provided either by you or together with another organization.

You will be asked to provide goals and objectives in this section. Goals provide a broad statement of what you intend to accomplish. Objectives should be realistic, specific (who will do what) and measurable.

Sample Goal and Objectives

Proposed Intervention (goal): Our program is intended to increase condom use among men who have sex with men who meet in bars.

Reaching clients (objective): Our program will enroll # high-risk persons MSM in our intervention.

Referral and Linkages (objective): Our program will ensure that # HIV-positive persons are successfully referred to a substance abuse program.

Answer all of the following questions for this section:

(a) Proposed Interventions (100 points)

(1) What program model are you planning to use?

(2) Which social-behavioral science theory are you basing your proposed program model on?

(3) What risk behavior(s) or help-seeking behavior(s) will your program model address?

(4) What are the goals for your proposed intervention, *i.e.*, what will happen as a result of your intervention?

(b) Reaching Your Clients (130 points)

(1) What are your objectives and activities planned to reach your proposed target population, during the first year of your proposed project?

(2) What steps will you take to build trust and credibility with this population?

(3) How will you get them to use your services?

(4) How will you use the available social networks to help you provide services?

(5) How will you involve them in planning, evaluating, and modifying your program activities?

(c) Referral and Linkages (80 points)

(1) What are your objectives and activities to help ensure that individuals who are infected with HIV or at a high risk get treatment and other services they need, for example, medical, mental health, drug use treatment, and social services such as housing and transportation?

(2) If you are working with other organizations, which of your proposed activities will be carried out by those organizations, whether they are part of an HIV prevention coalition, subcontractors, or non-paid partners? You must provide in your application a letter of intent from all partnering organizations, as applicable.

(d) Confidentiality (50 points)

(1) What steps will you take to ensure the confidentiality of all records, information, and activities related to your clients?

(2) What steps will you take to ensure the confidentiality of your clients during program activities?

(e) Management and Staffing of the Program (20 points)

(1) How will you manage your program?

(2) What will be the responsibilities and roles of the staff?

(3) What skills and experience does your staff have working with the target population?

(4) What are the responsibilities and roles of those organizations who you want to work with you, *e.g.*, staff responsibilities, skills, experience?

(f) Time line (20 points)

What are the details of your time line? Include information on the most important steps in your project and the approximate dates for when a step is begun and expected to be completed.

3. Training, Quality Assurance, and Program Monitoring and Evaluation

How this section is scored: We will look at the quality of: your plan to train your staff; how you will monitor their performance; your plans for seeking technical assistance; how you will measure progress in achieving your objectives; and how you will measure whether you are meeting the needs of your clients.

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Suggested length: 8 pages.

Points for this section: 200 points.

Answer all of the following questions for this section:

(a) What will you do to make sure your staff gets the training they need? Give an estimate of the number of staff to be trained, which staff will be trained, and who will provide the training? (40 points)

(b) How will you routinely monitor your staff's activities to find out if they are following established guidelines and protocols and what training they need? (40 points)

(c) How will you determine and meet your organization's needs in the areas of capacity-building or technical assistance? (20 points)

(d) How will you find out if you are meeting your objectives during the first year of operation? (40 points)

(e) How will you measure whether your services are meeting the needs of the target population and if those you refer for services are using the referral? How will you monitor your activities and those of the organizations working with you as subcontractors or as collaborators? (40 points)

(f) How will you measure the accomplishment for the objectives of this cooperative agreement (stated in section "A. Purpose" of this announcement)? These measures of effectiveness must be objective and quantitative and must measure the intended outcome of the program, (20 points)

4. Organizational History and Experience

How this section is scored: We will look at the overall experience of your organization in working with your proposed target population. This will include how much experience you have related to your proposed project.

Suggested length: 8 pages.

Points for this section: 250 points.

Answer all of the following questions for this section:

(a) Show evidence of the appropriateness of the proposed staff to the language, age, gender, sexual orientation, disability, literacy, and ethnic/racial/cultural factors of your proposed target population. (50 points)

(b) Provide evidence that your organization reflects the proposed target communities served in the makeup of your board of directors, key staff and management, and that your organization is situated in close geographic proximity to the proposed targeted population, have a history of providing services to the target community and have documented linkages to the targeted populations. (50 points)

(c) What are the specific kinds of health-related services, other than HIV prevention services, that you have provided your target population and for how long? (20 points)

(d) What are the HIV prevention services that you have provided your target population and for how long? (20 points)

(e) How have you ensured that any materials or interventions that you use in your program are culturally sensitive and appropriate for the target population? (30 points)

(f) What other experience does your organization have in providing services to the proposed target population, and for how long? (20 points)

(g) What is your organization's experience in linking with other organizations to provide HIV care or prevention services and ongoing care, as needed, for your clients? (20 points)

(h) What experience does your organization have in record keeping of when and how services are provided, evaluating services, and marketing services to the target population? (25 points)

(i) What experience does your organization have in improving the way services are delivered by finding and accessing other resources (for example, other organizations, materials, proven strategies)? (15 points)

5. Communication and Information Dissemination

How this section is scored: We will look at the overall experience of your organization sharing information with other partners, health departments and national organizations.

Suggested length: 3 pages.

Points for this section: 75 points.

Answer all of the following questions for this section:

(a) How are you planning to market your prevention program and services to the target population and local community? (25 points)

(b) How are you planning to compile lessons learned from the project? (30 points)

(c) How would you ensure access to Internet and e-mail communication for your organization during the first year of funding? (20 points)

How Much Will My Proposed Program Cost and How Many Staff Do I Need? (Budget)

In this section, you will need to provide a detailed description of your budget needs and the type and number of staff you will need to put into place to conduct your proposed activities.

Use Form 5161, 424A for the correct format when writing your budget. These forms are available in a PDF format at the following Web site: *http://www.cdc.gov/od/pgo/forminfo.htm.*

You must provide details of your budget for each activity you want to do. You must show how the operating costs will support the activities and objectives you propose.

Your organization must have the capability to access the Internet and to download documents about HIV from CDC and other sites, as well as have electronic mail (e-mail) available for program staff. If you do not have this capability, you must provide a budget for purchasing this equipment.

The following information and questions will help you in writing this part of the application.

(a) What are your budget and staffing needs? This answer should provide the specifics of how you plan to spend funds. For example, how much funding is needed to provide services to the target population, how much is needed to operate your organization (staff, supplies), with whom are you planning to contract, and how much is needed for contracting with other organizations.

CDC may not approve or fund all proposed activities. Give as much detail as possible to support each budget item. List each cost separately when possible.

(b) If you are contracting with other organizations or are applying as a coalition, you must include in the budget the type and name (if known) of the organization(s); how you chose the organization(s); what activities they will do and why they are the best ones to do these activities; a detailed list of the funds you think you will need to pay the organization(s); why and how long you will use their services; and how you will keep track of what they are doing for you.

(c) Provide a description for each job, including job title, function, general duties, and activities; the rate of pay and whether it is hourly or salary; and the level of effort and how much time will be spent on the activities (give this in a percentage, *e.g.*, 50 percent of time spent on evaluation). Also, if you already know names and titles of persons you will be working with, include this information and a resume, if available. If you don't have names yet, tell us how you plan to recruit these persons. For positions that are voluntary, give a description of the work the volunteers will be doing. Also include the experience and training that is available in relation to the proposed project.

(d) If you ask for indirect costs, you must include a copy of your organization's current agreement concerning your negotiated Federal indirect cost rate.

What Other Materials Do I Need To Attach?

Following is a list of additional materials to include with your application:

1. A description of funds you receive from any other source to support your HIV/AIDS programs and other similar programs that target the same population included in your proposed plan.

You must include: the name of the organization/source of income, the amount of funding they give you, a very brief description of how you use the funds, and the budget and project time period; and information that tells us that the funds you are requesting through this program announcement will not be used to replace funds received from any other Federal or non-Federal source.

Note: CDC-awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds.

2. Independent audit statements from a certified public accountant for the past 2 years. If you do not have audit statements, provide completed IRS Form 990s for the last 2 years.

3. If you are part of a national organization, please include an original, signed letter from the chief executive officer of the national organization that states that they understand this program announcement and the responsibilities you will have if you are chosen for funding.

4. If you are working with other organizations (*e.g.*, coalition members or referral agencies), you must include a memorandum of understanding or agreement or a letter to show that the relationship is accepted by both organizations. This memorandum or letter should give details about the activities you propose to do with the organization. This must be submitted each year to show that you are still working with the organization.

G. Submission and Deadline

Letter of Intent (LOI)

On or before March 21, 2003, send the completed Intent to Apply Form, found in Attachment 8, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the signed original and two copies of Application Form PHS 5161–1 (OMB Number 0920–0428) and your narrative. Forms are available at the following internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770–488–2700. Application forms can be mailed to you.

Your application and narrative must be received by 4 p.m. Eastern Time April 21, 2003. Send your application and narrative to:

Technical Information Management—PA# 03003, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

Deadline: Letters of intent and applications will be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or national disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Your application will not be compared to other applications. It will only be reviewed based on the information contained in section the "Content" section of this announcement. This will be done by an independent review group that is chosen by CDC.

With the recommendations from the independent review group, CDC will conduct pre-decisional site visits to those applications that score high enough to be considered for funding. This will be the second tier of the selection process. The Pre-decisional site visits will account for a total of 1,000 points. The following areas will be evaluated during this process:

1. Recipient Capability Assessment (300 points)

CDC's Procurement and Grants Office (PGO) will conduct a recipient capability assessment (RCA) to evaluate the capacity of the agency to manage the funds that will be provided by CDC. This will be conducted by either PGO staff or another selected agent.

2. Proposed Program (250 Points)

- The purpose of this section is to assess the feasibility of the proposed program and the capability of the organization to effectively implement HIV prevention interventions.
- Proposed intervention(s) based on scientific theory or an evidence-based logic model.
- Specific, measurable, achievable, realistic and time phased goals and objectives (SMART).
- Target population reflect the priorities identified in the HIV Prevention Comprehensive Plan or are based on epidemiological data or needs assessment.
- Interventions reflect the priorities identified in the HIV Prevention Comprehensive Plan.
- Evaluation plan for proposed program.

3. Programmatic Infrastructure (200 points)

The purpose of this section is to assess the extent and relevance of organization's experience, capacity, and ability to identify and address the needs of the proposed target population and to effectively and efficiently implement the proposed activities, including:

- Organizational structure and planned collaborations.
- Past and current experience in developing and implementing effective and efficient HIV prevention strategies and activities.
- Experience and ability in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services.
- Capacity to obtain meaningful input and representation from members of the target population(s).
- Capacity to provide culturally competent and appropriate services which respond effectively to the cultural, gender, sexual orientation, race/ethnicity, age groups, environmental, social, and linguistic characteristics of the target population(s) (when appropriate).
- Capacity to identify and provide training to program staff.
- Ability to track data on services provided and use it to plan future interventions and to improve available services.

4. Organizational Infrastructure (150 points)

The purpose of this section is to assess the capacity of the organization to effectively and efficiently sustain the proposed program.

- Organizational By Laws, Mission and Vision.
- Composition, role, experience and involvement of the board of directors in administering the agency.
- Current fiscal systems to track available funding.
- Personnel process and procedures.
- Organizational protocols and procedures (*i.e.* security, confidentiality, grievances, etc)
- Organizational Capacity for fund raising

5. Health Department Review (100 points)

The purpose of this section is to obtain input for the department of health regarding the proposed program plan.

- Review the program plan (*i.e.*, proposed target population, intervention, number of persons to be served, and service location) to assess consistency of the proposed target population and intervention(s) with the HIV Prevention Comprehensive Plan;
- Rate the past performance with state/city funded programs.
- Provide a letter of support or non-support for funding to CDC.

The points from all five sections will be added and a final score will be assigned. In order to be considered for funding you must score at least 700 points during the pre-decisional site visits. Failure to do so will disable your agency from receiving funds from CDC.

I. Other Requirements

Technical Reporting Requirements

If you are selected for funding, you must let CDC know how you are doing by sending to us an original plus two (2) copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application and must include the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no later than 90 days after the end of each budget period.

3. Final financial and performance reports, no later than 90 days after the end of the project period.

4. Quarterly reports on the numbers of HIV antibody counseling, testing, and referral activities you have done.

Send all reports to the Grants Management Specialist identified in the "Where To Obtain Additional Information" section of this announcement.

The following are additional requirements that must be met if awarded a cooperative agreement under this announcement. For a complete description of each, see Attachment 1 of the program announcement as posted on the CDC Web site.

AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

J. Where To Obtain Additional Information

CDC suggests that you do not use the program announcement in the **Federal Register.** Instead, use the version posted on the CDC Web site to write your application. This copy includes the forms you need and has additional information to help you through the process. The internet address is: *http://www.cdc.gov.*

Click on "Funding" the "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Vincent Falzone, Grants Management Specialist, Procurement and Grants Office, Centers for disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2763, email address: *vfalzone@cdc.gov.*

For Program technical assistance, contact: Angel Ortiz, J.D., Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, Prevention Program Branch, 1600 Clifton Road, MS E–58, Atlanta, GA 30333, Telephone (404) 639–5197, E-mail: *air4@cdc.gov.*

See also the DHAP home page on the Internet: www.cdc.gov/hiv. To receive additional written information, call The National Prevention Information Network (NPIN) at 1–800–458–5231 (TTY users: 1–800–243–7012) or visit their Web site: *http://www.cdcnpin.org/program* or

You can send requests by fax to: 1–888–282–7681 or e-mail to: *application-cbo@cdcnpin.org.*

This information, including 5161 forms in PDF and word processing formats, is also posted on the Division of HIV/AIDS Prevention (DHAP) Web site at: *http://www.cdc.gov/hiv* or by contacting NPIN either through their toll-free number: 1–800–458–5231 or their Web site: *http://www.cdcnpin.org/program.*

CDC also maintains a Listserv (HIV–PREV) related to this program announcement. If you decide to subscribe to the HIV–PREV Listserv, you will be able to send questions and will receive an answer and information through e-mail. This would include the latest news regarding the program announcement. Frequently asked questions on the Listserv will be posted to the DHAP Website. You can subscribe to the Listserv on-line or via e-mail by sending a message to: *listserv@listserv.cdc.gov* and writing the following in the body of the message: subscribe HIV-prev first name last name (*e.g.*, subscribe HIV-prev john smith).

Dated: February 10, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3922 Filed 2–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03027]

Grants for New Investigator Training Awards for Unintentional Injury, Violence Related Injury, Acute Care, Disability, and Rehabilitation-Related Research; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year (FY) 2003 funds for grants for new investigator training awards in four research areas: unintentional injury prevention, violence-related injury prevention, injury-related acute care and disability research, and injury-related biomechanics research published in the **Federal Register** on February 7, 2003, Volume 68, Number 26, and pages 6483–6488. The notice is amended as follows: On page 6483, second column, the Program Announcement 03027 title should read: Grants for New Investigator Training awards for Unintentional Injury, Violence related Injury, Biomechanics, Acute Care, Disability, and Rehabilitation-Related Research.

Dated: February 7, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3921 Filed 2–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0403]

Determination of Regulatory Review Period for Purposes of Patent Extension; VALCYTE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VALCYTE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VALCYTE (valganciclovir hydrochloride). VALCYTE is indicated for treatment of cytomegalovirus retinitis in patients with acquired immunodeficiency syndrome (AIDS). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VALCYTE (U.S. Patent No. 6,083,953) from Syntex, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VALCYTE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VALCYTE is 2,101 days. Of this time, 1,919 days occurred during the testing phase of the regulatory review period, while 182 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* June 30, 1995. The applicant claims July 26, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 30, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* September 29, 2000. The applicant claims September 28, 2000, as the date the new drug application (NDA) for VALCYTE (NDA 21–304) was initially submitted. However, FDA records indicate that NDA 21–304 was submitted on September 29, 2000.

3. *The date the application was approved:* March 29, 2001. FDA has verified the applicant's claim that NDA 21–304 was approved on March 29, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension,

this applicant seeks 226 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 21, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 18, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–3872 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0225]

Determination of Regulatory Review Period for Purposes of Patent Extension; CANCIDAS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CANCIDAS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CANCIDAS (caspofungin acetate). CANCIDAS is indicated for esophageal candidiasis and invasive aspergillosis in patients who are refractory to or intolerant of other therapies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CANCIDAS (U.S. Patent No. 5,514,650) from Merck & Co., Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CANCIDAS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CANCIDAS is 1,974 days. Of this time, 1,791 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: September 3, 1995. The applicant claims September 1, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 3, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: July 28, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for CANCIDAS (NDA 21–227) was initially submitted on July 28, 2000.

3. *The date the application was approved*: January 26, 2001. FDA has verified the applicant's claim that NDA 21–227 was approved on January 26, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 682 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 21, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 18, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management

Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–3873 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 3, 2003, from 8 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: perezt@cder.fda.gov or FDA Advisory Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 3, 2003, the subcommittee will discuss the development of antiretroviral drugs in human immunodeficiency virus (HIV)-infected and HIV-exposed neonates younger than 4 weeks of age. Following this at 2:45 p.m., the agency will provide an update to the subcommittee on the Adverse Event Reporting plan as mandated in section 17 of the Best Pharmaceuticals for Children Act. After this presentation, at approximately 3:45 p.m., the agency will provide an update on pediatric initiatives within the agency.

The background material for this meeting will be posted on the Internet when available, or 1 working day before the meeting at http://www.fda.gov/ohrms/dockets/ac/menu.htm.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by February 21, 2003. Oral presentations from the public will be scheduled between approximately 9:50 a.m. and 10:50 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by February 21, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas Perez at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–4001 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 6, 2003, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD, 301–948–8900.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6758, or e-mail: PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12538. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 6, 2003, the committee will discuss new drug application 21–549, EMEND (aprepitant) Capsules, Merck & Co., Inc., for the following indication: "EMEND, in combination with other antiemetic agents, is indicated for the prevention of acute and delayed nausea and vomiting associated with initial and repeat courses of highly emetogenic cancer chemotherapy, including high-dose cisplatin."

Background material for this meeting will be available 1 business day before the meeting on the Internet at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.

Procedure: On March 6, 2003, from 8:30 a.m. to 4 p.m., the meeting is open to the public. Interested persons may

present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 26, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 26, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 6, 2003, from 4 p.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Thomas H. Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 11, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–4002 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 6, 2003, from 10:30 a.m. to 5:30 p.m.

Location: Gaithersburg Marriott Washingtonian Center, Salons A, B, and C, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a thermal (cold) cardiac ablation catheter and generator system intended for cryoablation of cardiac tissue to treat patients with atrioventricular tachycardia and for mapping of the atrioventricular node. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the March 6, 2003, meeting will be posted on March 5, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 19, 2003. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 19, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–3999 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0025]

Medical Devices: Draft Guidance for Industry and FDA; The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Draft Guidance for Industry and FDA." The draft guidance document is intended to assist facilities and their personnel in meeting the MQSA final regulations. This document deals with requirements related to testing of the automatic exposure control (AEC) component of mammography units.

DATES: Submit written or electronic comments on the draft guidance by May 20, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Draft Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance serves to clarify and update previously issued guidance on testing the AEC component of mammography units. Due to the use of increasingly sophisticated mammography units, previously issued guidance on this matter does not adequately address the issue. This draft guidance was developed with input from the National Mammography Quality Assurance Advisory Committee during a meeting held on August 26, 2002. Once finalized, this guidance will supersede the AEC guidance that currently appears in the July 18, 2002, version of the MQSA Policy Guidance Help System (http://www.fda.gov/cdrh/mammography/robohelp/START.HTM).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on testing of the AEC component of mammography units. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments. Two hard copies of any mailed comments are to be submitted, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

To receive "The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Draft Guidance for Industry and FDA" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1435) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

Dated: February 3, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–3874 Filed 2–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Cancer Institute Special Emphasis Panel, Flexible System to Advance Innovative Research.

Date: March 19–21, 2003.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Suite 703–7142, Rockville, MD 20852, 301/594–9582, *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3884 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applicants and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Cancer Institute Special Emphasis Panel, Molecular Interactions Between Tumor Cells and Bone.

Date: April 23–25, 2003.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Suite 703/7142, Rockville, MD 20852, 301/594–9582, *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3886 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: March 13, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: 1. Update on the DCLG Advocacy Survey; 2. Report from the Future of the DCLG Working Group; 3. Update on the Consumer Advocates in Research and Related (CARRA) program; 4. Tissue Banking Project; 5. DCLG Activities Report and Implications; 6. Update on the DCLG—Patient Advisory Board (PAB) Clinical Trials Project; 7. DCLG Member Reports.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Elaine Lee, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892. 301/594–3194.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3898 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEATH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Development of High-Yield Technologies for Isolating Exfoliated Cells in Body Fluids.

Date: March 7, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Blvd., Room 8018, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, (301) 496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3903 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training.

Date: March 2–4, 2003.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert E. Bird, Ph.D., Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, (301) 496–7978, *birdr@moil.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3904 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topics 187, 188 and 189.

Date: March 20–21, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, (301) 594–1286.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3905 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Namer of Committee: National Cancer Institute Special Emphasis Panel.

Date: March 4, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Lynn M Amende, PhD, Scientific Review Administrator, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities/NCI, 6116 Executive Boulevard Room 8150, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3907 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nomè of Committee: National Cancer Institute Special Emphasis Panel. PAR–02–042, Colorectal Cancer Screening in Primary Care Practice.

Date: March 25, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telphone Conference Call).

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federall Advisory Committee Policy.

[FR Doc. 03–3908 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group. Subcommittee C—Basic & Preclinical.

Date: April 22–24, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael B. Small, Ph.D., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Center's Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3909 Filed 2–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meeting of the Board of Scientific Counselors, Natidnal Eye Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, Natwional Eye Institute.

Date: February 24–25, 2003.

Time: February 24, 2003, 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Eye Institute, Building 31, Room 6A35, 31 Center Drive, Bethesda, MD 20852.

Time: February 25, 2003, 8 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Eye Institute, Building 31, Room 6A35, 31 Center Drive, Bethesda, MD 20852.

Contact Person: Miller S Sheldon, PhD, Scientific Director, National Institutes of Health, National Eye Institute, Bethesda, MD 20892, (301) 451–6763.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Information is also available on the Institute's/Center's home page: www.nei.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3911 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RFP–NICHD–2002–04—Shigella Vaccine in Adult and Children.

Date: March 10, 2003.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3887 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Prostacyclin & the Development of Preimplantation Embryo.

Date: March 10, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3889 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, March 4, 2003, 3:30 p.m. to March 4, 2003, 4:30 p.m. which was published in the **Federal Register** on January 31, 2003, 68 FR 5032.

The starting time of this meeting has changed from 3:30 p.m., as previously advertised to 2:30 p.m. The meeting is closed to the public.

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3890 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, March 4, 2003, 2:30 p.m. to March 4, 2003, 3:30 p.m., which was published in the **Federal Register** on January 31, 2003, 68 FR 5031.

The starting time of this meeting has changed from 2:30 p.m., as previously advertised, to 3:30 p.m. The meeting is closed to the public.

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3891 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Maternal and Child Health Research Subcommittee.

Date: March 10–12, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program, 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3892 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–43, Review of R44 grants.

Date: March 26, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Philip Washko, Ph.D., DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, RM. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–39, Review of RFA DE–03–002, Oral Muscosal Immune Factors HIV.

Date: March 31, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, Ph.D., Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892. (301) 594–2372.

Nome of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–40, Review of RFA DE–03–003, Oral Muscosal Vaccination HIV.

Date: March 31, 2003.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, Ph.D., Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892. (301) 594–2372.

Nome of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–47, Review of R44 grants.

Date: April 1, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–38, Review of RFA DE–03–005, Pathobiology of TMJ Disorders.

Date: April 2, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm, Bethesda, MD 20892–6402.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–37, Review of RFA DE–03–004, Restoration of Orofacial.

Date: April 8–9, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm, Bethesda, MD 20892–6402.

Nome of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–45, Review of R44 grants.

Date: April 16, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–46, Review of R44 Grants.

Date: April 29, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3893 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: March 18–19, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Urology Research Centers.

Date: March 24–26, 2003.

Time: 7:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3894 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Nursing Fellowships Special Emphasis Panel.

Date: March 5, 2003.

Time: 11 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant application.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeffrey Mchernak, Ph.D., Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3895 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Evaluation of the Colposcopy for Research Use.

Date: February 26, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone conference call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 396–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3899 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A, MARC Review Subcommittee.

Date: February 18, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Richard I. Martinez, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3900 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Bulimia Nervosa.

Date: March 7, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ITV Conflicts.

Date: March 12, 2003.

Time: 2:50 p.m. to 4:50 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services Conflicts.

Date: March 19, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Martha Ann Carey, Ph.D., RN Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Children and Youth Interventions.

Date: March 19, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3901 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH SBIR CONTRACT TOPICS 27 AND 28.

Date: March 6, 2003.

Time: 1:30 p.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael J. Kozak, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9608, Bethesda, MD 20892–9606, (301) 443–6471, *kozakm@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Models for Public Use Datasets.

Date: March 14, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3902 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Program Project Application.

Date: March 3–5, 2003.

Time: 8 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Best Western University Tower Hotel, 4507 Brooklyn, NE., Seattle, WA 98195.

Contact Person: N. Kent Peters, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 18ANK, Bethesda, MD 20892, (301) 594–2408, *petersn@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3910 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Speical Emphasis Panel, "Pharmacovigilance Database for Anti-Addiction Medications" (Topics 044).

Date: March 5, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3912 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, A M3 RO1'S.

Date: March 4, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, Ph.D., M.D., Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3885 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, INFORMATION L M3.

Date: March 11, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, M.D., Ph.D., Scientific Review Adm.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3888 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Integrative, Functional and Cognitive Neuroscience 5, February 18, 2003, 8:30 a.m. to February 19, 2003, 10 a.m., which was published in the **Federal Register** on January 31, 2003, 68 FR 5032–5035.

The meeting will be one day only February 18, 2003, from 8 a.m. to 6 p.m. The location remains the same. The meeting is closed to the public.

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3896 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Emphasis Panel, February 19, 2003, 10:30 a.m. to February 19, 2003, 5:30 p.m., which was published in the **Federal Register** on February 5, 2003, 68 FR 5906–5908.

The meeting times have been changed to 8 a.m. to 6 p.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: February 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3897 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Statement of Organization, Functions, and Delegations of Authority

Part P (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995, and as last amended at 67 FR 49947 dated August 1, 2002) is amended to reflect changes in Chapters PA, PB and PH, within the Program Support Center (PSC), Department of Health and Human Services (HHS). The restructuring of information technology resources will benefit the Department by realigning PSC business systems with PSC business owners to achieve greater efficiencies, help to control costs, and enhance customer satisfaction. The human resources restructuring will align functions to facilitate more effective partnering with current and future customers and will facilitate the transition of the planned consolidation of human resources offices throughout the Department. The changes are as follows:

I. Under Part P, Section P–10, Organization, delete the following in its entirety:

5. Information Resources Management Service (PH).

II. Under Section P–20, Functions, make the following changes:

A. Under Chapter PA, retitle the *Immediate Office of the Director (PA)*, as the *Immediate Office of the Deputy Assistant Secretary for Program Support (PA).*

B. Under Chapter PH, *"Information Resources Management Service,"* delete in its entirety.

D. Under Chapter PA, establish the *Office of Information Technology (PAE):*

Section PAE.00 Mission: Office of Information Technology (PAE). The Office (1) Serves as the focal point within the PSC for planning, organizing, coordinating, implementing and managing the activities required to maintain an agency-wide information technology (IT) program in compliance with the Clinger-Cohen Act, Paperwork Reduction Act, HHS Chief Information Officer guidance, and other related Federal guidance and best practices; (2) Develops and implements PSC-wide IT policy; (3) Manages and directs the operation of the PSC's IT infrastructure, data communication networks, and enterprise infrastructure while executing some production operations at the PSC and Departmental levels; (4) Oversees PSC corporate level IT support services or initiatives; (5) Reviews and coordinates technology program initiatives, ensuring secure interoperability among systems and reducing system redundancy; (6) Establishes and manages the PSC-wide Security Program; (7) Recommends emerging information technology to improve the productivity, effectiveness, and efficiency of PSC programs; (8) Provides customer liaison services to resolve issues and improve technology support; (9) Manages audit liaison services for all SAS 70 audits conducted within the PSC; (10) Oversees the IT Continuity of Operations Program for PSC IT systems; and (11) Monitors and evaluates the performance of PSC information resource investments through a capital planning and investment control process including budget and acquisition management.

Section PAE.10 Organization. The Office of Information Technology (PAE) consists of the following components:

- Office of the Director
- Information Systems Security Division (PAE1)
- Technology Support Services Division (PAE2)
- Resources Planning and Management Division (PAE3)

Section PAE.20 Functions. 1. *Office of the Director:* (1) Provides leadership and overall management for information technology resources for which PSC has responsibility; (2) Directs the development, implementation, and enforcement of the PSC's information technology architecture, policies, standards, and acquisitions in all areas of information technology; (3) Oversees PSC's information systems security program, assuring compliance with the Federal Information Systems Management Act and other Federal and HHS guidance; (4) Oversees and advises the PSC's IT business technology functions including business planning, development, budgeting and fiscal planning, establishing service level agreements, assessing customer satisfaction, and assuring compliance with the Government Performance and Results Act (GPRA); (5) Oversees capital planning and investment control (CPIC) for PSC IT initiatives; (6) Chairs the PSC Information Technology Review Board (ITRB); (7) Oversees the PSC-wide IT systems Continuity of Operations Program (COOP); and (8) Oversees audit liaison services for all SAS 70 audits conducted within the PSC.

2. *Information Systems Security Division (PAE1):* (1) Manages the PSC-wide Information Technology Security Program; (2) Develops and implements PSC-wide IT security policy; (3) Oversees Certification and Accreditation of all critical PSC systems, including assisting program managers in preparing/revising certification packages to acquire or retain approval to operate; (4) Establishes and implements the PSC Security Awareness Program, including security training and awareness oversight; (5) Oversees the PSC wide Incidence Response Program, including investigation of reported IT security incidents and appropriate disposition, e.g., reporting incidents to higher levels and external organizations, if warranted; (6) Manages the PSC-wide IT systems Continuity of Operations Program (COOP); and (7) Manages audit liaison services for SAS 70 audits conducted within the PSC.

3. *Technology Support Services Division (PAE2):* (1) Designs, obtains, installs, and maintains all Local Area Network (LAN) capabilities within the PSC for application and office automation support; (2) Provides all electronic mail and third party software support; (3) Designs, obtains, installs, and maintains all communication and Wide Area Network (WAN) connectivity capabilities within the PSC; (4) Establishes and maintains a help desk for desktop support; (5) Provides system administration functions; (6) Schedules, operates, and maintains production processes for some PCS applications; (7) Provides customer liaison services to resolve issues and improve customer service; (8) Designs, obtains, installs, and maintains computer and network systems including hardware, software, and data communications required to support human resources, financial management, and administrative automated systems; (9) Provides automated data processing management services for computer systems in local operational offices; (10) Supports the implementation of the PSC's information system security program, including documenting and reporting security breaches; (11) Manages PSC corporate level IT support services or initiatives; (12) Manages Web site hosting and design PSC-wide; and (13) Designs, develops, and maintains PSC Web applications and pages.

4. *Resources Planning and Management Division (PAE3):* (1) Oversees and manages overall IT budgeting and fiscal planning; (2) Facilitates, supports, and executes the capital planning and investment process and portfolio management; (3) Coordinates and manages the development and execution of the 5-year Information Resources Management (IRM) planning process; (4) Serves as the focal point for IT architecture planning; (5) Develops, implements, and oversees adherence to IT policy; (6) Plans, coordinates, manages and reports on activities required by the Government Paperwork Elimination Act (GPEA) and Government Performance and Results Act (GPRA); (7) Oversees E-Government initiatives; (8) Monitors and evaluates IT Customer Satisfaction; (9) Reviews and oversees all PSC acquisitions and IT acquisitions initiatives; (10) Oversees and evaluates Section 508 compliance throughout the PSC.

III. Delete all organizational units for the *Human Resources Service (PB)* in their entirety except the *Division of Commissioned Personnel (PBJ)*, and replace with the following:

Section PB.10 Mission. *Human Resources Service (PB):* The Service: (1) Operates a servicing personnel office for a variety of customers; (2) Provides human resources operating systems and management information to HHS program managers and personnel offices; (3) Operates and maintains a Department-wide centralized payroll system; (4) Provides centralized common needs training; (5) Provides Executive Secretariat/Executive Director services for the Board for Correction of PHS Commissioned Corps Records; (6) Operates a servicing equal employment opportunity function; and (7) Manages the Departmental EEO complaints processing program.

Section PB.20 Organization: The Human Resources Service (PB) consists of the following components:

- Office of the Director (PBA)
- Division of Payroll (PBG)
- Division of Commissioned Personnel (PBJ)
- Division of Personnel Operations (PBN)
- Division of Equal Employment Opportunity (PBP)
- HHS University (PBQ)
- Enterprise Applications Division (PBR)
- Systems Integrity and Quality Assurance Division (PBY)

1. *Office of the Director (PBA):* (1) Provides executive direction, leadership, guidance and support to all Human Resources Service (HRS) components; (2) Provides leadership of a multi-customer, competitive, fee-for-service, cost centered organization; (3) Directs the human resources program for the PSC; (4) Provides leadership for the Board for Correction of PHS Commissioned Corps Records; (5) Provides systems integrity and quality assurance functions including acceptance testing for all new systems/subsystems, major enhancements and systems changes for the human resources information system; (6) Ensures all information necessary for yearly SAS 70 audits is provided, and works with OIT audit liaison staff to resolve any associated issues and findings; and (7) Works with PSC Office of Information Technology staff to ensure appropriate Continuity of Operations measures are in place for systems owned by HRS.

2. *Division of Payroll (PBG):* (1) Administers the Department's centralized payroll systems; (2) Manages and conducts payroll accounting, reconciliation and pay adjustments processing, produces feeder reports for HHS accounting systems, and carries out the Department's employee debt collection program; (3) Processes all actions relative to separated employees, including retirement and other separation actions, maintains retirement records and processes death benefit claims; (4) Audits leave accounts and processes unemployment compensation actions; (5) Provides direction, technical assistance, standard operating procedures, manuals and training for IMPACT operators, timekeepers, designated agents, payroll liaison persons and other persons who input data or who use outputs from the personnel and payroll systems; (6) Diagnoses problems and devises solutions to systemic problems and inefficiencies; and (7) Provides required information and works with the PSC Office of Information Technology to resolve audit-related issues and findings.

3. *Division of Personnel Operations (PBN):* (1) Administers comprehensive human resources management and employee/labor relations services for the Program Support Center (PCS), and its customers; (2) Develops and implements strategies and processes to ensure the progression of the Division of Personnel Operations in its role as a multi-customer, competitive, fee-for-service cost center; (3) Provides a full range of personnel operations services and consultations on human resources activities; (4) Provides expert managerial advisory services including analyzing employee resources, forecasting future requirements, and coordinating policy to meet Departmental mission and public interest needs; (5) Provides consultative services and expert advice to organizations affecting change management activities; and (6) Administers special initiative programs.

4. *Division of Equal Employment Opportunity (PBP):* (1) Encourages and assists the PSC and its other customers in voluntarily taking affirmative steps to correct the effects of past discrimination and prevent present and future discrimination without resorting to litigation or other formal governmental action; (2) Works toward achieving the Federal and the HHS goal of having a fully representative workforce which includes members of all racial and ethnic groups as well as people with disabilities; (3) Administers special emphasis/diversity programs designed to accommodate the special needs of particular groups. This includes programs such as the Hispanic Employment Program, the Federal Women's Program, the People with Disabilities Program, and programs concerning African Americans, Asian

Americans/Pacific Islanders, and American Indians/Alaska Natives; (4) Seeks to identify and eliminate discriminatory policies and practices from the workforce based on race, national origin, color, sex, age, religion, disability, sexual orientation and/or reprisal; (5) Promotes the early resolution of complaints of discrimination, and provides for the prompt, fair and impartial processing of discrimination complaints; and (6) Manages the Departmental EEO complaints processing program.

5. *HHS University (PBQ):* Develops and manages the Department's training and workforce development functions with responsibility for the following: (1) Develops and manages the Department's on-line training program; (2) Develops and implements a service designed to facilitate the Department-wide matching of deployed employees with appropriate positions; (3) Provides career counseling services for Departmental employees; (4) Develops and delivers common needs training; (5) Develops and implements a learning management system; (6) Manages workforce development initiatives to support Departmental common needs training; and (7) Facilitates cross-departmental utilization of mission training being provided by the HHS Operating Divisions.

6. *Enterprise Applications Division (PBR):* The Division provides the full range of automated data processing support activities associated with the development and maintenance of both civilian and commissioned officer's human resources information technology systems: (1) Provides overall program leadership and direction to the operation of the enterprise personnel and payroll system for the Department; (2) Develops and implements new human resources and payroll systems; (3) Conducts analysis and design of systems changes, enhancements and new requirements; (4) Provides the full range of support activities associated with the development and maintenance of personnel/payroll processing and reporting systems; (5) Provides automation services for the HHS automated personnel and payroll systems and subsystems; (6) Manages the operation of production for the civilian personnel and payroll processing systems; (7) Provides human resource and human resource systems customer liaison services to resolve issues and improve customer services; and (8) Provides required information and works with the PSC Office of Information Technology to resolve audit-related issues and findings.

7. *Systems Integrity and Quality Assurance Division (PBY):* Primary functions of SIQAD include: (1) Implements and operates Configuration Management services including change management, software version control, and design of automated systems to reduce errors and support parallel and concurrent development; (2) Manages software/system acceptance testing, quality assurance reviews, Independent Verification and Validation (IV&V), and quality control functions for all human resources systems/subsystems including major enhancements and systems changes for PSC applications and infrastructure; (3) Ensures the integrity of HR production environments; (4) Provides systems integrity and quality assurance services to other PSC organizations as required; (5) Administers HRS accounts residing on the National Institutes of Health mainframe and IBM Resource Access Control Facility (RACF) protection of files within those accounts; and (6) Provides required information and works with the PSC Office of Information Technology to resolve audit-related issues and findings.

Dated: February 4, 2003.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 03–3998 Filed 2–12–03; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Center for the Evaluation of Risks to Human Reproduction: Notice of a Workshop on Thyroid Hormones and Reproduction

Summary

The Center for the Evaluation of Risks to Human Reproduction (CERHR) is sponsoring a workshop entitled "Thyroid Toxicants: Assessing Reproductive Health Effects" on April 28 and 29, 2003 at the Holiday Inn Old Town Select Hotel, 480 King Street, Alexandria, VA 22314 (telephone: 703–549–6080, fax: 703–684–6508). Registration begins at 8:30 am on April 28 and the meeting begins at 9 am each day. This meeting is open to the public with attendance limited only by the availability of space. Persons interested in attending are requested to pre-register for this meeting by contacting CERHR (contact information below). A preliminary agenda is provided below and additional meeting information will be posted, as available, on the CERHR Web site: *http://cerhr.niehs.nih.gov.*

Background

Thyroid function is modulated through physiological feedback mechanisms. Hypothyroid and hyperthyroid states are well known in humans with some being associated with iodine levels in the environment. Some drugs are known to enhance or repress thyroid function, and a recent article identified 116 synthetic chemicals that "interfere" with production, transport, or metabolism of thyroid hormone. Thyroid hormone levels modulate other hormone-producing tissues particularly those that involve reproduction, development, or mental performance. Both hypothyroidism and hyperthyroidism are reported to be associated with an increased risk of adverse pregnancy outcomes in humans.

The purpose of this NTP–CERHR workshop is two-fold:

(1) To discuss and determine appropriate designs of developmental and reproductive toxicity tests for detecting adverse effects resulting from thyroid dysfunction.

(2) To discuss the relevance of thyroid-related adverse reproductive and developmental effects observed in rodents for predicting similar effects in humans.

Preliminary Meeting Agenda

Thyroid Toxicants: Assessing Reproductive Health Effects, Holiday Inn Old Town Select Hotel, 480 King Street, Alexandria, VA 22314 (telephone: 703–549–6080).

Day 1—Monday, April 28

8:30 a.m. Registration
9 Introduction
Summary of thyroid conference, "Thyroid Hormone and Brain Development: Translating Molecular Mechanisms to Population Risk," held at the National Institute of Environmental Health Sciences on September 23–25, 2002
A review of current alternative assays for assessing thyroid toxicity
Session 1: A comparison of normal thyroid development/control/function in rodents and humans
10:45 Break
Session 2: Comparison of the reproductive and developmental effects of hypo/hyperthyroidism in rodents and humans
Discussion
Noon Lunch (on your own)
1 p.m. Session 2, continued: Human/rodent comparison of reproductive effects of selected thyroid active chemicals
Methimazole
PTU
Phenobarbital
Sulfamethazine
Discussion
5 Adjourn

Day 2—Tuesday, April 29

9 a.m.
Session 3: The elements of a rodent testing protocol to consider in assessing thyroid effects on reproduction and development and their relevance to human health effects
Discussion
10:15 Break
Session 4: An overview of 1) appropriate rodent protocols for detecting thyroid effects on reproduction and development and 2) the appropriate use of rodent data for predicting human effects
Discussion
Noon Adjourn

As additional details and materials for this workshop become available, they will be posted on the CERHR Web site (*http://cerhr.niehs.nih.gov*) or can be obtained by contacting Dr. Michael Shelby, Director, CERHR, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709; telephone: 919–541–3455; fax: 919–316–4511; e-mail: *shelby@niehs.nih.gov*

Pre-Registration

This workshop is open to the public and interested individuals are encouraged to attend. Time is set aside for open discussion throughout the meeting to provide an opportunity for all attendees to contribute to the scientific discussion. The number of attendees will be limited only by the space available. Due to the limitations of space, pre-registration for this meeting is encouraged. To pre-register, please provide your name, affiliation, contact information and email address by Friday, April 18, 2003, to: Ms. Harriet McCollum, CERHR, Suite 500, 1800 Diagonal Road, Alexandria, VA 22314; telephone: 703–838–9440; fax: 703–684–2223; email: *HMcCollum@Sciences.com*

Dated: February 7, 2003.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–3913 Filed 2–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Funding Opportunities Notice for State Training and Evaluation of Evidence-Based Practices, March 24, 2003 Application Receipt Date

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Modification/Clarification of a Notice of Funding Availability Regarding the Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, grants for State Training and Evaluation of Evidence-Based Practices.

SUMMARY: **Federal Register** Notice referring to the current RFA SM 03–003 and indicating the availability of funds for State Training and Evaluation of Evidence-Based Practices with a March 24, 2003 receipt date. This notice is to inform the public of expanded eligibility for the SAMHSA/CMHS announcement No. SM 03–003, State Training and Evaluation of Evidence-Based Practices (Short Title: EBP Training and Evaluation). In addition to State mental health authorities, as described in SM 03–003, Indian tribes or tribal organizations (as defined in Section 4(b) and Section 4(c) of the Indian Self-determination and Education Assistance Act) are also eligible to apply.

The EBP Training and Evaluation grants will fund the States/Tribes/Tribal Organizations to (1) provide state-of-the-art training and continuing education to State mental health service providers and other stakeholders who are implementing one or more of six EBPs for which SAMHSA has previously developed implementation Resource Kits, and (2) evaluate the implementation of selected EBPs in two or more communities within the service areas of the State/Tribe/Tribal Organization. The average annual award will range from $250,000 to $325,000 in total costs.

Program Contact: For questions concerning program issues, contact: Crystal R. Blyler, Ph.D., Community Support Program, Suite 11C–22, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3997, Fax 301–443–0541, e-mail: *cblyler@samhsa.gov.*

Dated: February 6, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–3878 Filed 2–18–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Assessment Plan for the Natural Resource Damage Assessment at the Ashtabula River and Harbor Site

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 30-day comment period.

SUMMARY: Notice is given that the document titled "Natural Resource Damage Assessment Plan for the Ashtabula River and Harbor" ("the Plan") will be available for public review and comment on the date of publication in the **Federal Register**. The U.S. Departments of the Interior (Fish and Wildlife Service) and Commerce (National Oceanic and Atmospheric Administration) and the Ohio Environmental Protection Agency are trustees for natural resources ("trustees") considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and 300.610, and Executive Order 12580.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR part 11. The public review of the Plan announced by this Notice is provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan can be requested from the address listed below. All written comments will be considered by the trustees and included in the Report of Assessment at the conclusion of the assessment process.

DATES: Written comments on the Plan must be submitted within 30 days of the date of this Notice.

ADDRESSES: Comments on the Plan should be sent to: Dr. Sheila Abraham, Ohio Environmental Protection Agency, North East District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087 or Mr. David De Vault, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111

FOR FURTHER INFORMATION CONTACT: Dr. Sheila Abraham (330) 963–1290 or Mr. David De Vault, (612) 713–5340.

SUPPLEMENTARY INFORMATION: The trustees are undertaking an assessment of damages resulting from suspected injuries to natural resources in and near the lower Ashtabula River and Harbor that have been exposed to hazardous substances released by industrial activity at the Fields Brook Superfund Site and the Ashtabula River and Harbor. The trustees suspect this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be addressed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, in order to determine the appropriate type and extent of resource restoration. The Plan addresses the trustee's overall assessment approach, and utilizes both existing data as well as additional data to be collected. Plan addenda may be prepared by the trustees to provide public notice of additional data collection activities. Restoration of natural resources will be proposed by the trustees following the assessment.

Requests for copies of the Plan may be made to the Case Managers at the addresses listed above. The Trustee Case Managers will provide copies of all comments to all trustees.

You may submit comments on the Plan by sending electronic mail (e-mail) to: *dave_devault@fws.gov* or *sheila.abraham@epa.state.oh.us*. Do not use any special characters or forms of encryption in your e-mail. The trustees also accept comments in WordPerfect and Word versions as attachments to the e-mail or on disk.

Dated: January 27, 2003.

William F. Hartwig,

Regional Director, Region 3, Fish and Wildlife Service.

[FR Doc. 03–3920 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0137).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a Notice to Lessees and Operators (NTL) discussed below. The current Office of Management and Budget (OMB) approval of the information collection in this NTL expires in August 2003. The MMS is submitting the NTL to OMB for review and approval.

DATE: Submit written comments by April 21, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov*. Reference "Information Collection 1010–0137" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the collection of information.

SUPPLEMENTARY INFORMATION:

Title: Historical Well Data Cleanup (HWDC) Project—Notice to Lessees.

OMB Control Number: 1010–0137.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCSLA at 43 U.S.C. 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

The MMS's Historical Well Data Cleanup Project, NTL 98–29, Addendum 2, is currently underway and is expected to last several years to allow operators ample time to provide the missing or corrected data. This notice announces our intention to request a 3-year extension for this information collection.

The information we collect under NTL 98–29, Addendum 2, is missing data for wellbores that MMS has not assigned API numbers and other well data discovered as missing while completing the well database cleanup project. We are not able to manage and utilize data from drilling operations accurately without the information for the missing wells. We will use the information to identify other well data (*e.g.*, logs, surveys, tests) missing from our records, geologically map existing MMS data to the correct wellbore/location, and correctly exchange information with the operators and industry. Our geoscientists can use the information to evaluate resources for lease sales for fair market value. With respect to safety concerns, we believe that there may be anywhere from 3,000 to 5,000 unidentified completed and abandoned wellbores (bypasses and sidetracks), some of which may contain stuck drill pipe or other materials. In approving permits and other operations in an area, it is important for us to know what may be adjacent to or near the vicinity of the activity we are approving to minimize the risk of blowouts, loss of well control, and endangerment to life, health, and the environment. This is particularly important as, over the years, the number of wells drilled constantly increases, thereby increasing the risk to adjacent activities if operators are not aware of what might be in the area.

We will protect information respondents submit that is considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 90,000 hours for approximately 40,000 wells, based on:

(1) ¼ hour to locate and copy a summary of drilling operations (*e.g.*, scout tickets) for each well.

(2) 2 hours to retrieve and analyze each well file and retrieve other missing data. There are no recordkeeping requirements.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 11, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–3919 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 1, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW, 8th floor, Washington, DC 20005; or by fax, (202) 343–1836. Written or faxed comments should be submitted by March 6, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

COLORADO

Boulder County

Boulder Creek Bridge, (Highway Bridges in Colorado MPS), CO 119 at milepost 39.13, Boulder, 03000103.

IDAHO

Bannock County

Pocatello Westside Residential Historic District, Roughly bounded by N. Arthur Ave., W. Fremont St., N. Grant Ave., and W. Young St., Pocatello, 03000102.

NEBRASKA

Douglas County

Lincoln Highway—Omaha to Elkhorn, (Lincoln Highway in Nebraska MPS), Approx. 3 mi. segment along N. 174 St., Elkhorn, 03000104.

Fillmore County

Fairmont Army Airfield, Approx. 2 mi. S of Fairmont, Fairmont, 03000105.

Knox County

Ponca Tribal Self-Help Community Building Historic District, Approx. 3 mi. SE of Niobrara, Niobrara, 03000106.

Platte County

Behlen, Walter and Ruby, House, 2555 Pershing Rd., Columbus, 03000108.

Sarpy County

Linoma Beach, 17106 S. 255th St., Gretna, 03000107.

NEW HAMPSHIRE

Carroll County

Jackson Falls National Register Historic District, Approx. parts of Jackson Village Rd. and Five Mile Circuit Rd., Jackson, 03000110.

Coos County

Aldrich, Benjamin, Homestead, E terminus of Aldrich Rd., 0.46 E of Piper Hill, Colbrook, 03000109.

[FR Doc. 03–3957 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 25, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, (202)

343–1836. Written or faxed comments should be submitted by March 6, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Conway County

Morrilton Commercial Historic District, Roughly bounded by E. Railroad, Broadway, N. Division and N. Moose Sts., Morrilton, 03000085.

KENTUCKY

Harlan County

Lynch Historic District, Roughly bounded by city limits, L&N RR bed, Big Looney Cr., Second, Mountain, Highland Terrace, Liberty, and Church Sts., Lynch, 03000086.

Mercer County

Lexington, Harrodsburg, and Perryville Turnpike Rural Historic District, US 68, Harrodsburg, 03000087.

MISSOURI

Greene County

South—McDaniel—Patton Commerical Historic District, (Springfield, Missouri MPS (Additional Documentation)), Roughly bounded by S. Campbell Ave., W. McDaniel St., South Ave., and W. Walnut St., Springfield, 03000088.

MONTANA

Cascade County

Neihart School, 200 S. Main St., Neihart, 03000089.

NEW YORK

Cattaraugus County

Robbins, Simeon B., House, 9 Pine St., Franklinville, 03000091.

Fulton County

Sacandaga Railroad Station, 136 McKinley Ave., Sacandaga Park, 03000094.

Monroe County

Cox, Isaac, Cobblestone Farmstead, 5015 River Rd., Scottsville, 03000092.

Oneida County

Black River Canal Warehouse, 502 Water St., Boonville, 03000093.

Queens County

Church of the Resurrection, 85–09 118th St., Kew Gardens, Borough of Queens, 03000090.

OKLAHOMA

Ottawa County

Tri-State Zinc and Lead Ore Producers Association Office, 508 N. Connell Ave., Picher, 03000097.

Sequoyah County

First Presbyterian Church, 120 S. Oak St., Sallisaw, 03000096.

Tulsa County

Broken Arrow Elementary—Junior High School, 210 N. Main, Broken Arrow, 03000095.

Circle Theater, 10 S. Lewis Ave., Tulsa, 03000098.

Wagoner County

First Presbyterian Church of Coweta, 200 S Ave. B, Coweta, 03000099.

PUERTO RICO

San Juan Municipality

Puerto Rico Island Penitentiary, S of PR 21, Rio Piedras, 03000100.

TEXAS

Hays County

Michaelis, M.G., Ranch, 3600 FM 150 W, Kyle, 03000101.

[FR Doc. 03–3958 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2658–2003]

Registration of Certain Nonimmigrant Aliens From Designated Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice amends two previous Notices that require certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service. This Notice changes the dates on which the registration periods close, thus permitting the affected nonimmigrant aliens more time to register. The Notice permits nonimmigrant aliens of Pakistan or Saudi Arabia who are required to register under the Notice published on December 18, 2002, at 67 FR 77642, to timely register on or before March 21, 2003. The Notice permits nonimmigrant aliens of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait who are required to register under the Notice published on January 16, 2003, at 68 FR 2363, to timely register on or before April 25, 2003. This Notice makes no other changes to the registration requirements.

EFFECTIVE DATES: This Notice is effective on February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone: (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1305(b), provides that

[t]he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may "prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence."

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). *See* 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System ("NSEERS"). In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in previously published Notices shall be registered and required to provide specific information. *See* 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002); 67 FR 77642 (Dec. 18, 2002); 68 FR 2363 (Jan. 16, 2003). The Attorney General has the sole discretion to make this determination.

Under this Notice, the Attorney General grants the nonimmigrant aliens required to register under two of these Notices additional time to register. This Notice has the effect of changing the closing date for registration under the Notice published on December 18, 2002, at 67 FR 77642, from February 21, 2003, to March 21, 2003. Thus, covered nonimmigrant aliens from Pakistan or Saudi Arabia are being permitted an additional month to register. This Notice also has the effect of changing the closing date for registration under the Notice published on January 16, 2003, at 68 FR 2363, from March 28, 2003, to April 25, 2003. Thus, covered nonimmigrant aliens from Bangladesh, Egypt, Indonesia, Jordan, or Kuwait are being given almost an additional month to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

A willful failure to comply with the notices setting forth the special registration requirements constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). *See* 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the notices is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to the notices fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). *See* 8 CFR 264.1(f)(8).

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) Notwithstanding the terms of the Notice published on December 18, 2002, at 67 FR 77642, nonimmigrant aliens included in that Notice may timely register on or before March 21, 2003.

(b) Notwithstanding the terms of the Notice published on January 16, 2003, at 68 FR 2363, nonimmigrant aliens included in that Notice may timely register on or before April 25, 2003.

Dated: February 13, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–3960 Filed 2–18–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2248–02]

Notice Designating Additional Ports-of-Entry for Departure of Aliens Who Are Subject to Special Registration

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: On August 12, 2002, the Attorney General published a final rule in the **Federal Register** at 67 FR 52584, to revise the special registration requirements for nonimmigrant aliens whose presence in the United States requires closer monitoring. The final rule requires that when a nonimmigrant alien subject to special registration departs from the United States, he or she must report to an Immigration and Naturalization Service (Service) inspecting officer at any port-of-entry (POE), unless the Service has, by publication in the **Federal Register**, specified that nonimmigrant aliens subject to special registration may not depart from specific POEs. The requirement for an alien subject to special registration to report to the Service prior to departing the United States became effective on October 1, 2002.

On September 30, 2002, the Service published a notice in the **Federal Register** at 67 FR 61352 listing POEs through which nonimmigrant aliens who have been specially registered may depart from the United States. This notice provides the public with an expanded list of ports through which nonimmigrant aliens who have been specially registered may depart from the United States. This list is provided in the affirmative as a list of approved POEs to assist the public.

DATES: This notice is effective March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen M. Dearborn, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone number: (202) 305–2970.

SUPPLEMENTARY INFORMATION:

Nonimmigrant Aliens Subject to Special Registration Requirements

Effective September 11, 2002, the Service regulations at 8 CFR 264.1(f) provide that nonimmigrant aliens (other than those applying under section 101(a)(15)(A), or (G) of the Immigration and Nationality Act (Act) (8 U.S.C. 1101(a)(15)(A), (G)) who meet certain criteria are subject to special registration, photographing and fingerprinting requirements. If a nonimmigrant alien who is registered, photographed, and fingerprinted upon arrival in the United States remains in the United States 30 days or more, he or she must report in person to a Service office to provide additional documentation that confirms that he or she is complying with the terms of his or her admission. Whether registered upon arrival in the United States or notified via publication in the **Federal Register** to report to a Service office for registration subsequent to admission, nonimmigrant aliens who are subject to special registration must be interviewed annually. Upon each change of address and where applicable, each change of educational institution or employment, a special registrant who remains in the United States for 30 days or more must also notify the Service within 10 days of such change.

Beginning on October 1, 2002, when a nonimmigrant alien subject to special registration departs the United States, he or she is required to report to an inspecting officer at the POE through which the alien is departing unless the Service has specified in a **Federal Register** notice that certain POEs may not be used for departure by special registrants. A nonimmigrant alien, subject to special registration, who fails to report his or her departure to an inspecting officer as required, may thereafter be presumed to be inadmissible to the United States.

On September 30, 2002, the Service published a notice in the **Federal Register** notifying the public that not all ports may be used for departure by special registrants. In addition, the notice designated those POEs that could be used for final registration and departure by nonimmigrant aliens who are subject to special registration. The purpose of this notice is to expand the list of POEs that may be used for departure by special registrants.

Ports-of-Entry Which Are Not Authorized for the Departure of Nonimmigrant Aliens Subject to Special Registration

Nonimmigrant aliens who are subject to special registration may not depart the United States from any POE listed in, or regarded as designated by 8 CFR 100.4(c)(2), or (c)(3), or any other point-of-embarkation, other than those listed below.

Ports-of-Entry Designated for Final Registration and Departure by Nonimmigrant Aliens Subject to Special Registration

The following POEs are specifically designated for final registration and departure by nonimmigrant aliens subject to special registration. Nonimmigrant aliens subject to special registration may not be examined by the Service and depart the United States through any location other than those listed below. On March 3, 2003 those POEs identified with an asterisk below, will be authorized to provide final registration and departure by nonimmigrant aliens subject to special registration. The other POEs listed without the asterisks were designated on October 1, 2002, and will continue to process special registrants for final registration and departure.

Amistad Dam POE, Texas;
Alcan POE, Alaska;

Anchorage International Airport, Alaska;
Atlanta Hartsfield International Airport, Georgia;
Baltimore–Washington International Airport, Maryland;
Bell Street Pier 66 (Seattle) Cruise Ship Terminal, Washington;
Bridge of the Americas POE, Texas;
Brownsville/Matamoros POE, Texas;
Buffalo Peace Bridge POE, New York;
Cape Vincent POE, New York;
Calexico POE, California;
Calais POE, Maine;
Cape Canaveral Seaport, Florida;
Chicago Midway Airport, Illinois;
Chicago O'Hare International Airport, Illinois;
Champlain POE, New York;
Charlotte International Airport, North Carolina;
Chateaugay POE, New York;
Cleveland International Airport, Ohio;
Columbus POE, New Mexico;
Dallas/Fort Worth International Airport, Texas;
Del Rio International Bridge POE, Texas;
Denver International Airport, Colorado;
Derby Line POE, Vermont;
Detroit International (Ambassador) Bridge POE, Michigan;
Detroit Canada Tunnel, Michigan;
Detroit Metro Airport, Michigan;
Douglas POE, Arizona;
Eagle Pass POE, Texas;
Eastport POE, Idaho;
Fort Covington POE, New York;
Fort Duncan Bridge POE, Texas;
Galveston POE, Texas;
Grand Portage POE, Minnesota;
Guam International Airport;
Heart Island POE, New York;
Hidalgo POE, Texas;
Highgate Springs POE, Vermont;
Honolulu International Airport, Hawaii;
Honolulu Seaport, Hawaii;
Houlton POE, Maine;
Houston George Bush Intercontinental Airport, Texas;
Houston Seaport, Texas;
International Falls POE, Minnesota;
John F. Kennedy International Airport, New York;
Ketchikan Seaport, Alaska;
Kona International Airport and Seaport, Hawaii;
Gateway to the Americas Bridge POE, Laredo, Texas;
Las Vegas (McCarran) International Airport, Nevada;
Lewiston Bridge POE, New York;
Logan International Airport, Massachusetts;
Long Beach Seaport, California;
Los Angeles International Airport, California;
Madawaska POE, Maine;
Miami International Airport, Florida;
Miami Marine Unit, Florida;
Minneapolis/St. Paul International Airport, Minnesota;
Mooers POE, New York;
Niagara Falls, Rainbow Bridge, New York;
Newark International Airport, New Jersey;
Nogales POE, Arizona;
Ogdensburg POE, New York;
Orlando, Florida;
Oroville POE, Washington;
Otay Mesa POE, California;
Pacific Highway POE, Washington;
Pembina POE, North Dakota;
Philadelphia International Airport, Pennsylvania;
Phoenix (Sky Harbor) International Airport, Arizona;
Piegan POE, Montana;
Pittsburgh International Airport, Pennsylvania;
Point Roberts POE, Washington;
Port Everglades Seaport, Florida;
Port Arthur POE, Texas;
Port Huron POE, Michigan;
Portal POE, North Dakota;
Portland International Airport, Oregon;
Progreso Bridge POE, Texas;
Raymond POE, Montana;
Roosville POE, Montana;
Rouses Point POE, New York;
San Antonio International Airport, Texas;
San Diego (Lindbergh Field) International Airport, California;
San Diego Seaport, California;
San Francisco International Airport, California;
San Juan International Airport and Seaport, Puerto Rico;
Sanford International Airport, Florida;
Sault St. Marie POE, Michigan;
Seattle Seaport, Washington;
Seaway International Bridge/Massena POE, New York;
Seattle–Tacoma International Airport, Washington;
St. Louis International Airport (Lambert Field), Missouri;
St. Thomas Seaport, U.S. Virgin Islands;
Sweetgrass POE, Montana;
Tampa International Airport and Seaport, Florida;
Thousand Islands POE, New York;
Trout River POE, New York
Washington Dulles International Airport, Virginia; and
Ysleta POE, Texas

Notice of Where To Report for Final Registration and Departure

Upon registration, whether registered at a POE upon admission to the United States or at a Service office subsequent to admission, each nonimmigrant alien subject to special registration will be issued an information packet that will list each POE authorized for departue and other instructions on how to comply with 8 CFR 264.1. This packet will also contain specific information regarding hours of operation, directions and contact numbers.

Due to the limited availability of current resources, specifically departure staff and facilities, the Service must limit the POEs authorized for departure registration to effectively capture departure data. As more POEs become available to examine special registrants upon departure, the Service will designate the POEs by notice in the **Federal Register** and make the list available at Service offices and on its Web site at *http://www.ins.usdoj.gov*.

Dated: January 31, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–4130 Filed 2–18–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employment and Training Administration

Indian and Native American Welfare-to-Work Grant Program; Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the reinstatement of the previously-approved reporting system for the Indian and Native American Welfare-to-Work (INA WtW) Grant Program for three more years (October 1, 2001 to September 30, 2004), or until the expiration of the program if sooner. A copy of the previously-approved information collection request (ICR), especially the reporting forms and completion instructions, can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 21, 2003.

ADDRESSES: James C. DeLuca, Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3754 (VOICE) or (202) 693–3818 (FAX) (these are not toll-free numbers) or Internet: *jdeluca@doleta.gov*.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Employment and Training Administration of the Department of Labor is requesting reinstatement of its previously-approved reporting system for the Indian and Native American Welfare-to-Work Grant Program for three more years (October 1, 2001 to September 30, 2004), or until the program expires. Current statutory authorization for the INA WtW program has technically expired, but grantees can continue to expend funds for up to five years "after the date the funds are so provided." However, no current grantee may expend FY 1999 INA WtW funds after September 30, 2004. As a result of the statutory program amendments of 1999 and 2000, the Department has decided that the reporting system requires only relatively minor changes at this time.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The proposed renewal of this ICR will be a continuation of the previously-approved system that will be used by the approximately 34 different INA WtW grantees operating some forty (40) grants that have FY 1998 or FY 1999 funds remaining. It will be the primary reporting vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and wage data, as well as detailed financial data on program expenditures. The previously-approved paperwork burdens are covered under OMB Clearance No. 1205–0386 (expiration date 09/30/2001). However, because of the significant reduction in the number of grantees still operating INA WtW programs, those burden estimates have not been included in the following burden estimates. For ease of analysis, the following burden estimate is broken down into the two main components of INA WtW program operation: (1) Recordkeeping; and (2) reporting.

Type of Review: Reinstatement.

Agency: Employment and Training Administration.

Title: Reporting system for Indian and Native American Welfare-to-Work Grant Program.

OMB Number: 1205–0386.

Catalog of Federal Domestic Assistance Number: 17.254.

Recordkeeping Requirements: Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53].

Affected Public: Federally-recognized tribes, Alaska Native regional non-profit corporations, and/or consortia of any of the above.

Total Estimated Burden: 2,880 hours (reporting); 19,800 hours (recordkeeping) Detailed breakdown of the above-estimated burden hour requirements for the INA WtW program are as follows: (It should be noted that the FY 1998 and FY 1999 INA WtW grants are funded separately, by law. Therefore, even though some grantees are still operating both programs, these burden estimates are done as if the tribe were two separate entities, since the two grants must be reported upon separately and separate records must be kept on expenditures and participants.)

Required activity	INA WtW form no.	# of respondents	Responses per year	Total responses	Hours per response	Total burden hrs.
Participant Recordkeeping	.....	40	.....	6,600	3.00	19,800
(Reporting) Financial Status Report	ETA 9069–1	40	4	160	9	1,440
Participation and Characteristics Rpt	ETA 9069	40	4	160	9	1,440
Totals	.....	40	8	6,920	21	22,680

Note: Recordkeeping estimates are based on the estimated current INA WtW caseload times an estimated average of 3.00 hours per participant record. This is currently the approximate experience with actual INA WtW performance. Also, this burden estimate does not include those INA WtW grantees participating in the demonstration under Public Law 102–477. Any INA WtW burden estimate(s) for "477 grantees" would be included under the Bureau of Indian Affairs' OMB Clearance Number 1076–0135. The individual time per response (whether plan, record, or report) varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each fiscal year. If the grantee has a fully-developed and automated MIS, the response time is limited to one-time programming plus processing time for each response. It is the Department's desire to see as many INA WtW grantees as possible become computerized, so that response time for planning and reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

Estimated Grantee Burden Costs

(There are no capital/start-up costs involved in any INA WtW activities).

Recordkeeping: 19,800 hours times an estimated cost per grantee hour of $20.00 (including fringes) = $396,000.

Reporting: 2,880 hours times $20.00 = $57,600 per year.

Total estimated burden costs: $401,760 (nationwide).

As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. All costs associated with the required submissions outlined

above, whether for recordkeeping or reporting purposes, are allowable grant expenses. Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget continuation of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 11th day of February, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 03–3923 Filed 2–18–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Independence Coal Company, Inc.

[Docket No. M–2003–006–C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) at its White Oak Deep Mine (MSHA I.D. No. 46–08933) located in Boone County, West Virginia. The petitioner would like to use a 2400-volt power center to power a continuous miner with high-voltage trailing cable inby the last open crosscut and within 150 feet of pillar workings. The petitioner has outlined in this petition specific terms and conditions that will be used to protect the 2400-volt trailing cable. The petitioner requests an amendment to its previous petition for modification, docket number M–2002–041–C, to allow the HV trailing cable to be treated just as the 995-volt trailing cable without jeopardizing any safety issues.

2. Independence Coal Company, Inc.

[Docket No. M–2003–007–C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) at its Jack's Branch Buffalo Creek Mine (MSHA I.D. No. 46–08513) located in Boone County, West Virginia. The petitioner would like to use a 2400-volt power center to power a continuous miner with high-voltage trailing cable inby the last open crosscut and within 150 feet of pillar workings. The petitioner has outlined in this petition specific terms and conditions that will be used to protect the 2400-volt trailing cable. The petitioner requests an amendment to its previous petition for modification, docket number M–2002–041–C, to allow the HV trailing cable to be treated just as the 995-volt trailing cable without jeopardizing any safety issues.

3. KenAmerican Resources, Inc.

[Docket No. M–2003–008–C]

KenAmerican Resources, Inc., 7590 State Route 181, Central City, Kentucky 42330 has filed a petition to modify the application of 30 CFR 75.519–1(b) (Main power circuits; disconnecting switches; locations) at its Paradise Mine (MSHA I.D. No. 15–17741) located in Muhlenberg County, Kentucky. The existing standard requires that "in an instance on which a main power circuit enters the underground area through a shaft or borehole, a disconnecting switch be installed underground within 500 feet of the bottom of the safe or borehole." The petitioner proposes to move its disconnecting switch to the main travelway in the 2nd crosscut from the slope bottom. The switch will be located approximately 750 feet–800 feet of cable length from the bottom of the power borehole. The petitioner states that its proposed alternative method would allow them to put additional roof support in the area where the switch is presently located. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Alfred Brown Coal Company

[Docket No. M–2003–009–C]

Alfred Brown Coal Company, 71 Hill Road, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 49.2(b) (Availability of mine rescue teams) at its 7 Ft. Slope Mine (MSHA I.D. No. 36–08893) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that an attempt to utilize five or more rescue team members in the mine's confined working places would result in diminution of safety to both the miners at the mine and members of the rescue team.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before March 21, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 11th day of February 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–3881 Filed 2–18–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–015)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

Federal Register Citation of Previous Announcement: 68 FR 3280, Notice Number 03–005, January 23, 2003.

Previously Announced Date of Meeting: February 21, 2003, 12 Noon–1 p.m. Eastern Standard Time.

Meeting has been cancelled and will be rescheduled for a later date.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Pagel, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4621.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3996 Filed 2–18–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–016)]

Aerospace Medicine Occupational Health Advisory Committee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aerospace Medicine Occupational Health Advisory Committee.

DATES: Friday, March 14, 2003, 9 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 3H46 (MIC 3), Washington, DC. Attendees must check in at the Security Desk at the West Lobby (4th and E Streets) and be escorted to the conference room.

FOR FURTHER INFORMATION CONTACT: Ms. Pam Barnes, Code AM, National Aeronautics and Space Administration, Washington, DC, 20546, 202/358–2390.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks by Chief Health and Medical Officer
—Charter of Committee replacing former Aerospace Medicine Occupational Health Advisory Subcommittee
—Aerospace Medicine Highlights and Issues
—Occupational Health Highlights and Issues
—Open discussion and action assignments
—Next Meeting
—Closing Comments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the NASA Advisory Council which is also meeting at the Stennis Space Center on March 19 and 20, 2003. Visitors will be requested to sign a visitor's register. Due to the increased security at NASA facilities, any members of the public who wish to attend this first meeting of the Aerospace Medicine Occupational Health Advisory Committee must provide their name, date and place of birth, citizenship, social security number, or passport and visa information (number, country of issuance and expiration), business address and phone number, if any. This information is to be provided at least 72 hours (5 PM EDT on March 14, 2003) prior to the date of the public meeting. Identification information is to be provided to Pam Barnes, (202) 358–2390, pbarnes@hq.nasa.gov. Failure to timely provide such information may result in denial of attendance. Photo identification may be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202/358–1600).

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–3997 Filed 2–18–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Meeting

TIME AND DATE: 10 a.m., Thursday, February 20, 2003.

PLACE: Board Room, 7th Floor Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.

2. Proposed Rule: Part 709 of NCUA's Rules and Regulations, Addition to Swap Agreement to the Definition of a Qualified Financial Contract.

RECESS: 11:15 am.

TIME AND DATE: 11:30 a.m., Thursday, February 20, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and (9)(B).

2. One (1) Insurance Appeal. Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–4041 Filed 2–13–03; 4:08 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Meetings; Sunshine Act; Agenda

TIME AND PLACE: 9:30 a.m., Wednesday, February 26, 2003.

PLACE. NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

7532 Highway Accident Report—Collision of Greyhound Lines, Inc., Motorcoach and DelCar Trucking Truck Tractor-Semitrailer, Loraine, Texas, on June 9, 2002.

News Media Contact: Telephone (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: February 14, 2003.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 03–4084 Filed 2–14–03; 12:15 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 60—"Disposal of High-Level Radioactive Wastes in Geologic Repositories".

2. *Current OMB approval number:* 3150–0127.

3. *How often the collection is required:* The information need only be submitted one time.

4. *Who is required or asked to report:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste

geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, currently under investigation by the U.S. Department of Energy, which is now regulated under 10 CFR Part 63).

5. *The number of annual respondents:* 1; however, none are expected in the next three years.

6. *The number of hours needed annually to complete the requirement or request:* 121 hours; however, none are expected in the next three years.

7. *Abstract:* Part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site proposed by the U.S. Department of Energy). Representatives of States or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. As provided in § 60.1, the regulations in 10 CFR Part 60 no longer apply to the licensing of a geologic repository at Yucca Mountain. All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR Part 63, and were approved by the Office of Management and Budget under control number 3150–0199 (§ 63.8). The Yucca Mountain site is regulated under 10 CFR Part 63 (66 FR 55792, November 2, 2001).

Submit, by April 21, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 12th day of February, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–3935 Filed 2–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Monticello Nuclear Generating Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.60, "Acceptance criteria for fracture prevention measures for light-water nuclear power reactors for normal operation," and 10 CFR Part 50, Appendix G, "Fracture Toughness Requirements," for Facility Operating License No. DPR–22, issued to the Nuclear Management Company, LLC (the licensee), for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, which would allow the use of American Society of Mechanical Engineers *Boiler and Pressure Vessel Code* (ASME Code) Code Case N–640 as the basis for revised reactor vessel pressure and temperature (P/T) limit curves in the Monticello Technical Specifications (TSs).

The regulation at 10 CFR Part 50, Section 50.60(a), requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 requires that P/T limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak-rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the ASME Code, Section XI, Appendix G, limits.

ASME Code Case N–640 permits the use of alternate reference fracture toughness (*i.e.*, use of "K_{IC} fracture toughness curve" instead of "K_{IA} fracture toughness curve," where K_{IC} and K_{IA} are "Reference Stress Intensity Factors," as defined in ASME Code, Section XI, Appendices A and G, respectively) for reactor vessel materials in determining the P/T limits. Since the K_{IC} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, provides greater allowable fracture toughness than the corresponding K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1, using ASME Code Case N–640 to establish the P/T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G. Therefore, an exemption to apply ASME Code Case N–640 is required.

The proposed action is in accordance with the licensee's application dated April 22, 2002, as supplemented by letter dated September 16, 2002.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–640 in order to revise the method used to determine the P/T limits because continued use of the present curves unnecessarily restricts the P/T operating window. Since the P/T operating window is defined by the P/T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, procedure, continued operation of Monticello with these P/T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 °F in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P/T curves, as allowed by ASME Code Case N–640, would not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at a lower coolant temperature.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant adverse environmental impacts associated with the proposed action.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for Monticello.

Agencies and Persons Consulted

On February 11, 2003, the staff consulted with the Minnesota State official, Nancy Campbell of the Department of Commerce, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated April 22, 2002, as supplemented by letter dated September 16, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of February 2003.

For the Nuclear Regulatory Commission.

L. Raghavan,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3936 Filed 2–18–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47354; File No. SR–NASD–2002–180]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Prohibition Against Guarantees and Sharing in Customer Accounts

February 12, 2003.

On December 18, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NASD Rule 2330(e) to clarify that members and their associated persons are prohibited from guaranteeing any customer against loss in connection with any securities transaction or in any securities account of the customer. Additionally, the proposal would require that associated persons obtain written authorization from their employing member firm and the customer before sharing in a customer's account under Rule 2330(f). The proposal would delete the requirement that members and associated persons obtain the written authorization of the member carrying the account before sharing in a customer's account from Rule 2330(f). Notice of the proposed rule change was published for comment in the **Federal Register** on January 6, 2003.[1] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[2] The Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act,[3] which requires, among other things, that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposal should facilitate compliance with Rule 2330(e) by clarifying that members and their associated persons are prohibited from making guarantees to any customer, not just those whose accounts are carried by the member or those for whom a member is effecting a securities transaction. The proposal should also strengthen the regulatory protections provided in Rule 2330(f) by requiring members and their associated persons to obtain the prior written authorization of the customer before sharing in any customer account. Finally, the Commission believes that requiring associated persons who wish to share in a customer account to obtain authorization from their employer is a more effective way to detect and deter misconduct than requiring such authorization from the member carrying the account.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the

[1] *See* Securities Exchange Act Release No. 47103 (December 30, 2002), 68 FR 595.

[2] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[3] 15 U.S.C. 78o(b)(6).

[4] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–NASD–2002–180) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3943 Filed 2–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47344; File No. SR–NASD–2003–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto, by the National Association of Securities Dealers, Inc. To Clarify Rule 4701(o) Regarding the Ability of UTP Exchanges To Enter Non-Attributable Quotes/Orders into Nasdaq's SuperMontage System

February 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by Nasdaq. On January 30, 2003, Nasdaq filed Amendment No. 1 to the proposal.[3] On February 6, 2003, Nasdaq filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4701(o) to clarify the ability of UTP Exchanges to enter Non-Attributable Quotes/Orders into the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). The text of the proposed rule change is below. Proposed new language is *italicized.*

4700. NASDAQ National Market Execution System (NNMS)

4701. Definitions—Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (n) No Change.

(o) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant or NNMS Order Entry Firm and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility. *UTP Exchanges may submit Non-Attributable Quote/Order(s) in conformity with Rule 4710(e).*

(p) through (jj) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 1, 2002, Nasdaq filed SR–NASD–2002–91 with the Commission setting forth rules governing the entry of orders and quotes by UTP Exchanges into Nasdaq's SuperMontage system.[5] As explained in that filing, UTP Exchanges that elect to participate in the system are allowed to enter a single bid Quote/Order and a single offer Quote/Order representing their principal trading interest that will displayed along with the UTP Exchange's identifier in the Nasdaq Quotation Montage. If that Attributed Quote/Order falls with the number of price levels subject to aggregation, that UTP Quote/Order will be included in the total aggregated share amounts displayed by the system. For their agency Quotes/Orders, UTP Exchanges that elect to participate in SuperMontage can send one, or multiple, Non-Attributable Quote/Orders to the system. These Quotes/Orders will be displayed under SuperMontage's SIZE MMID. In order to make clear the ability of participating UTP Exchanges to enter Non-Attributable Quotes/ Orders for their agency customers, Nasdaq proposes to amend the definition of Non-Attributable Quote/Order in NASD Rule 4701(o) to reference NASD Rule 4710(e) that authorizes and governs UTP Exchange capabilities in SuperMontage.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[6] in general, and with section 15A(b)(6) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has not solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq believes the proposed rule change clarifies a functionality that is already available to UTP Exchanges. In particular, as already set forth in NASD Rule 4710(e), the proposed rule change makes clear that a UTP Exchange participating in the SuperMontage may enter Non-Attributable Quotes/Orders for their agency customers into the system using the SIZE MMID.[10]

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.[11] The Commission notes that this proposal merely clarifies the ability of UTP Exchanges to enter Non-Attributable Quotes/Orders, as currently permitted by the system.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–05 and should be submitted by March 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3944 Filed 2–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47351; File No. SR–NASD–2002–60]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Permanent Approval of the Primex Auction System®

February 11, 2003.

I. Introduction

On May 1, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] requesting permanent approval of the Primex Auction System® ("Primex" or "System"). The proposed rule change was published for public comment in the **Federal Register** on May 31, 2002.[3] On May 28, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] The comment period expired on June 21, 2002.[5] On July 25, 2002, the Commission received one comment letter on the Original Proposal.[6] On October 7, 2002, Nasdaq filed a response to the NYSE Comment Letter.[7] On November 1, 2002, Nasdaq filed Amendment No. 2 to the proposed rule change.[8] On February 4, 2003, Nasdaq filed Amendment No. 3 to the proposed rule change.[9]

This order approves the proposed rule change. In addition, the Commission is publishing this notice to solicit comments on Amendment Nos. 1, 2, and 3 from interested persons, and approving Amendment Nos. 1, 2, and 3 on an accelerated basis.

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 30, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq provided a basis for waiving the 30-day operative delay.

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 6, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq amended the proposed rule change language for Rule 4701(o) to reflect changes approved by the Commission in Release No. 34–47301 (January 31, 2003), 68 FR 6236 (February 6, 2003). For the purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 6, 2003, the date Nasdaq filed Amendment No. 2.

[5] *See* Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (File No. SR–NASD–2002–91 regarding the voluntary participation of national securities exchanges in the SuperMontage).

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *See* Amendment No. 1, *supra* note 3.

[11] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45983 (May 23, 2002), 67 FR 38152 ("Original Proposal").

[4] *See* letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 1, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq removed the following language inadvertently included in proposed NASD Rule 5013(c)(2): "Participants that are Primex Auction Market Makers for a security may submit Market Orders in that security for an immediate (*i.e.*, "zero second") Auction, provided the Participant attaches certain match parameters as set forth in proposed NASD Rule 5014(b). Market Orders for at least 10,000 shares or $200,000 in market value are also eligible for a zero second Auction, regardless of whether or not match parameters are attached."

[5] Nasdaq has granted the Commission several extensions of time to consider Nasdaq's proposal, the most recent extending the time period until February 14, 2003.

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission, dated July 24, 2002 ("NYSE Comment Letter").

[7] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated October 7, 2002 ("Nasdaq Response Letter").

[8] *See* letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated October 31, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq seeks permanent approval of the following changes to Nasdaq's application of Primex: (1) Elimination of the end-of-day anonymity feature; (2) implementation of a system change to prohibit appropriately marked orders from executing in violation of the NASD short sale rule; (3) amendments to proposed NASD Rule 5020 to reflect that Nasdaq delayed for an additional calendar quarter the rule requiring Primex Auction Market Makers ("PAMMs") to submit a certain percentage of their orders to Primex; (4) amendments to proposed NASD Rule 5016 to reflect that orders not fully executed in Primex can be forwarded to the SuperMontage version ("SuperMontage") of the Nasdaq National Market Execution System ("NNMS"); and (5) the addition of two new conditions that can be attached to orders submitted to Primex: an Anti-Internalization Qualifier and an All or None condition.

[9] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division, Commission, dated February 3, 2003 ("Amendment No. 3"). In Amendment No. 3, Nasdaq seeks permanent approval to (1) change the minimum size requirement for Predetermined Relative Indications from a tiered structure depending on the amount of price improvement, to a standard minimum size requirement of 100 shares; (2) reprogram the System to reject trading interest marked as "short" or "short exempt" in any exchange-listed security eligible for participation in the InterMarket Trading System; and (3) modify proposed NASD Rule 5017 to be consistent with the system change relating to short sales set forth in Amendment No. 2. Telephone call among Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq; Gordon Fuller, Counsel to the Assistant Director, Division, Commission, and Jennifer Lewis, Attorney, Division, Commission, on February 7, 2003.

II. Background

Nasdaq has operated Primex as a facility of the NASD since December 17, 2001. Primex operates as a Pilot Trading System pursuant to a temporary, two-year exemption from the rule filing requirements of Section 19(b) of the Act [10] under Rule 19b–5 under the Act.[11] Nasdaq represents that Primex has exceeded the volume threshold required to maintain its status as a Pilot Trading System pursuant to Rule 19b–5 under the Act.[12] Accordingly, Nasdaq now seeks permanent approval of the Primex rules. Pending such approval, the NASD submitted a proposed rule change setting forth the rules governing Primex and permitting Nasdaq to continue to operate Primex on a temporary basis.[13]

III. Brief Description of Primex [14]

Participants

Primex is a voluntary system available to any NASD member and other entities that a member chooses to sponsor. To access the System, a member must be in good standing and have executed the necessary agreements with Nasdaq. Members granted access to the System are referred to as Primex Auction System Participants ("Participants"), and can access Primex for their customers or for themselves. Entities that are not members can access the System by becoming a Sponsored Subscriber of a Participant ("Sponsored Subscriber"). The Participant assumes responsibility for all activity conducted through the System by the Sponsored Subscriber.

There are two categories of Primex Participants: Primex Auction Market Makers ("PAMMs") and Crowd Participants. By becoming a Participant, a member automatically receives the right to trade as a Crowd Participant for any security eligible for trading in the System. In general, Crowd Participants can view all orders exposed in the System; interact with any order in the System; submit orders to the System; and trade as principal, agent, or riskless principal. In addition, PAMMs are entitled to exercise certain matching rights that allow a PAMM to commit capital to its customer orders in conjunction with the order exposure process; provide execution guarantees for its own customer orders submitted to the System; and use certain types of orders that permit the PAMM to facilitate block trades and "clean crosses." PAMMs are also entitled to share in transaction revenue paid by other Participants when those other Participants execute against a PAMM's customer orders.

To become a PAMM, a member must register as such with Nasdaq for each security in which the member wishes to trade in such capacity. Members that seek to become PAMMs also must be registered as Nasdaq market makers with respect to Nasdaq-listed securities (*i.e.*, Nasdaq National Market® and The Nasdaq SmallCap Market℠ securities) or Consolidated Quotation Services ("CQS") market makers with respect to exchange-listed securities. With respect to any security eligible for which a Participant is registered as a PAMM, such PAMM must submit to the System a minimum percentage [15] of its Mandatory Eligible [16] public customer orders (including customer orders of another broker-dealer that directs such orders to the PAMM) for those securities in which it is registered as a PAMM.

Orders

Participants may submit unpriced market orders, as well as orders that have specified, fixed prices that are marketable or priced between the NBBO. Orders can be submitted in any round lot or mixed lot, but odd lot orders are not accepted. Fixed price orders are eligible only for "immediate or cancel" treatment.

Participants can choose the maximum duration of the exposure for their orders. Unpriced market orders generally have a default maximum broadcast period of 15 seconds, but executions can take place sooner if there are satisfactory responses from the crowd at any time during the exposure of the order. Executions can occur instantaneously when there is crowd trading interest residing in the System. Trading interest can reside in the System when Participants define their interest in advance of an order being placed, or when other, contra side orders are already in the process of being exposed. In addition, Participants also may elect to have the order exposed for an immediate or "zero second" execution, depending on the size of the order or, as described below, guarantee an execution by committing liquidity in the absence of satisfactory interest from the crowd. Transactions always are executed at or within the NBBO.

An order also can be submitted with a condition attached requiring a minimum amount of price improvement relative to the current NBBO at the time of execution. A Participant utilizing this feature for an order to buy would specify, when entering the order into the System, that the order be executed only if the exposure yields an execution with price improvement of 3 cents below the "Best Offer" as publicly displayed in the NBBO at the time of execution.

PAMMs are entitled to attach certain match parameters to customer orders they submit to the System. For example, a PAMM may submit a customer order with a 50% match parameter. Any interest provided by the crowd is matched in both size and price by a corresponding execution with the PAMM. The PAMM must be willing to execute the entire order when using this match parameter, in the absence of sufficient response from the crowd.

PAMMs also can submit customer orders with a Two Cent Match parameter. This function allows the PAMM entering the order to execute the customer order, provided it is willing to match the price established by the crowd for the entire order to the extent the price offered by the crowd is within two cents of the NBBO. If there is crowd interest willing to provide more than two cents of price improvement, the PAMM loses that portion of the order to the crowd.

PAMMs also are entitled to provide execution guarantees within the System. This feature ensures that any balance of an order remaining after exposing it to the crowd will receive a liquidity guarantee, established by the PAMM for each order submitted, at a price at least as good as the NBBO at that time.

Any condition, match parameter, or guarantee must be attached to an order at the time it is submitted to the System. The existence of any condition, match parameter, or guarantee that may be attached to an order is never communicated or displayed to the crowd.

The System also provides participants the option of having the balance of an unexecuted order returned to them or forwarded to other Nasdaq systems for execution. Participants must indicate their preference upon submission of an order to the System. For example, a Participant can submit an order with an indication that it should be forwarded to another Nasdaq system if the order is not completely executed in Primex. To the extent the exposure concludes and there is a portion of the order remaining, that balance will be converted by the System to an order that is forwarded to SuperSoes (for Nasdaq National Market securities), SuperMontage, or ITS/CAES (for exchange-listed securities, provided the participant also is an ITS/CAES market maker). A Participant's preference is not displayed, exposed or communicated to any other Participant.

Responses and Indicqtions

Participants may submit Responses and Indications to the System, for the purpose of interacting with orders on Primex. Responses and Indications are not communicated to any Participant, except to the extent they result in an execution with an order. Responses and Indications cannot execute against other Responses and Indications. Responses are instructions submitted to the System by Participants to interact with available orders exposed on Primex. Responses may be either a Fixed Price Response (*e.g.*, buy 1,000 at $20) or a Relative Priced Response (*e.g.*, buy 1,000 at the bid plus 3 cents).

Indications are instructions submitted to the System to interact with future orders exposed on Primex by either the next day or the next five days, as selected by the Participant. An Indication may be a Predefined Relative Indication ("PRI") or a Go-Along Indication. PRIs have no specific fixed price, but are expressed at time of entry in terms relative to the best bid or offer publicly displayed at such time when the System activates the PRI against orders on Primex. PRIs are ranked in relative price/time priority among all other PRIs and any same-side orders currently being exposed. When activated by the System, a PRI will match against orders at a price equal to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed at that time in the NBBO, plus or minus (respectively) the relative price term associated with that PRI; provided that such price also satisfies any applicable condition associated with the order to which it is responding. All PRIs must be for at least 100 shares. The System will only accept PRIs that meet the required amounts of price improvement (set forth in proposed NASD Rule 5018(c)(1)(C)). Participants may associate a Per Auction Maximum size with a PRI, which will provide the Participant with an opportunity to withdraw the PRI once the Per Auction Maximum is exhausted.

Go-Along Indications also have no specific fixed price, and are also expressed at time of entry in terms relative to the best bid or offer publicly displayed at such time when the System activates the PRI against orders on Primex. Go-Along Indications are only activated when there has been at least one other contemporaneous Crowd execution at the NBBO, provided there are no PRIs available or orders being exposed. Each Go-Along Indication is required to be for at least 10,000 shares.

All orders submitted to the System are identified as either a Public Order (in general, an order for the account of a customer) or a Professional Order (in general, an order for the proprietary account of a broker-dealer). This status is not communicated to any other Participant, but is used to determine whether an order is available to interact with the Response or Indication of a Crowd Participant. A Participant that responds to orders on Primex can choose whether its Responses and Indications interact with both Public and Professional Orders, or just Public Orders. However, a Participant entering an order does not have the ability to select or control whether public or professional interest may interact with the order.

IV. NYSE Comment Letter and Nasdaq Response

In the NYSE Comment Letter, the NYSE argued against the Commission granting permanent approval to Primex. The NYSE argued that the Commission must evaluate whether Primex complies with Nasdaq's regulatory obligations as an exchange pursuant to Section 6 of the Act,[17] even though Nasdaq's exchange application is pending with the Commission. The NYSE argued, among other things, that Primex's true character is not that of an auction, but rather, an anti-competitive dealer internalization system. For example, the NYSE argued that Primex's "match mechanism" for dealer guarantees allows dealers to jump ahead of pre-existing customer orders.

In the Nasdaq Response Letter, Nasdaq stated that it would respond to all of the comments raised by the NYSE Comment Letter, even though it is only required to comply with the requirements of Section 15A of the Act [18] because of its current status as a registered securities association. Nasdaq further stated that Primex is fully consistent with these statutory obligations.

The NYSE argued that the requirement that PAMMs submit 80% of their order flow is anti-competitive and compromises the ability of broker-dealers to comply with their best execution obligations. The NYSE further stated that the 80% requirement is an off-board trading restriction which conditions the ability of any member to effect any transaction otherwise than on Primex. The NYSE also believes the requirement unfairly discriminates against members with high volume of order flow.

Nasdaq responded that the 80% delivery requirement applies only to those dealers who wish to take advantage of the benefits of certain rebates and features available to PAMMs. Nasdaq stated that the only penalty for not meeting the 80% delivery requirement is to be ineligible for PAMM status; there are no disciplinary sanctions for failing to meet the 80% requirement, and such dealers will still have access to the other features of Primex. Nasdaq contended that the requirement does not place participant in a position where it must choose between violating a NASD rule and its duty of best execution; rather, each participant is free to execute its orders in whichever manner it believes can obtain best execution. Finally, Nasdaq stated that all orders that are exposed in Primex are eligible for the 80% test, even if they are executed elsewhere.

Nasdaq further argued that the 80% requirement is designed to encourage dealers with customer order flow to expose customer's orders to the public. It asserted that, without the 80% requirement, the market would believe that dealers were only posting unwanted orders.

NYSE argued that Primex allows participating dealers to provide customers with trade prices no better than if their orders had been internalized, and therefore should not claim to offer an auction-type execution. NYSE contended that there are no true market makers on Primex because no participant has an affirmative obligation to provide the liquidity of continuous two-sided quotations. NYSE further argued that Primex does not display quotes or even the existence of any trading interest in the "virtual" trading crowds that Nasdaq claims exists as a source of liquidity, nor does it display most orders entered onto the system to interact with the putative trading crowd. NYSE stated that customer orders may be entered for immediate auction, which it argued would not provide any opportunity for participants to respond.

Nasdaq responded that Primex is designed to expose to a broader audience orders that might otherwise be internalized. Moreover, Nasdaq stated that even if such orders are internalized, federal securities laws do not prohibit

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[10] 15 U.S.C. 78s(b).

[11] 17 CFR 240.19b–5.

[12] 17 CFR 240.19b–5. *See* Securities Exchange Act Release No. 45983 (May 23, 2002), 67 FR 38152 ("Original Proposal").

[13] Notice of the filing and the immediate effectiveness of the proposed rule change was published on May 31, 2002 in the **Federal Register**. *See* Securities Exchange Act Release No. 45982 (May 23, 2002), 67 FR 38163.

[14] *See* the Original Proposal for a more detailed description of Primex and the NASD Rules governing Primex.

[15] *See* proposed NASD Rule 5020.

[16] *See* proposed NASD Rule 5011 (definition of "Mandatory Eligible Order") and proposed NASD Rule 5020.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78o-3.

internalization. In addition, some customers value speed more than other factors. Speed has become an indication of execution quality. Nasdaq characterized Primex's use of PRIs as designed to ensure that notwithstanding the need for speed on the order entry side, there would still remain a fair and reasonable opportunity for any and all crowd participants to respond to such order flow if they choose to do so, regardless of the auction selected. Nasdaq argued that Primex's technology allows this immediate interaction.

The NYSE argued that Primex artificially limits the ability of dealers to enter PRIs below established minimum sizes, thereby discouraging trading interest and constraining liquidity. As a result of consultation with members, Nasdaq has modified the minimum size requirements for PRIs to a less burdensome standard requirement of 100 shares.

The NYSE argued that Primex participants may selectively trade against agency orders alone by using a mechanism to screen out professional orders. NYSE contends that this is discriminatory, not an auction, and acts as a disincentive to participation.

Nasdaq responded that this feature ensures that any price improvement or enhanced liquidity opportunities be reserved for public customers, and not necessarily professional traders who could otherwise take advantage of the System's benefits and "pre-empt" the ability of a public customer to receive such benefits.

The NYSE argued that Primex's fee structure penalizes liquidity providers. Fees are charged to liquidity providers, and rebates are given when PRIs result in a trade. The NYSE believes the fee structure formalizes a payment for order flow arrangement to compensate PAMMs when they are displaced from internalizing their own customer orders.

Nasdaq stated that even though the fee structure is not included in the proposed rule change and thus not before the Commission for review, it would respond to the NYSE's arguments. Nasdaq explained that orders exposed in Primex are not charged for an execution so as to avoid any penalty that would discourage participants, particularly dealers, from exposing customer order flow to others. A fee is charged only to those who choose to respond to such order flow with Primex's unique bidding tools. Nasdaq also responded that it is not required to have a uniform pricing principle for all of its systems. The only requirement is an equitable allocation of reasonable fees among members, and the fees for Primex comply with this standard.

The NYSE argued that Primex fails to provide a market structure that ensures its participants comply with Rule 10a–1 under the Act (the "Short Sale Rule").[19] As a result of consultation with members, Nasdaq has implemented a system modification that will prohibit appropriately marked orders from executing in violation of NASD Rule 3350, the NASD short sale rule.[20] In addition, Nasdaq has reprogrammed the System to reject trading interest marked as "short" or "short exempt" in any exchange-listed security eligible for participation in the InterMarket Trading System.[21]

The NYSE argued that Nasdaq has not provided any market data or analysis regarding its trading history for public evaluation. In addition, individual market makers have opted to include Primex executions within their own "market center" reports, rather than as orders routed to and executed on another market system. Primex includes these trades in statistics used in its advertising and press releases.

The Nasdaq responded that it has been working closely with SEC staff to confirm how Rule 11Ac1–5 will be applied to Primex.

V. Amendment No. 2

In Amendment No. 2, Nasdaq seeks permanent approval of the following changes to Nasdaq's application of Primex: (1) Elimination of the end-of-day anonymity feature; (2) implementation of a system modification that will prohibit appropriately marked orders from executing in violation of NASD Rule 3350, the NASD short sale rule; (3) amendments to proposed NASD Rule 5016 to reflect that orders not fully executed in Primex can be forwarded to SuperMontage once it is available for a particular security; (4) the addition of two new conditions that can be attached to orders submitted to Primex, the Anti-Internalization Qualifier ("AIQ") and the All or None ("AON") condition; and (5) amendments to proposed NASD Rule 5020 to reflect that Nasdaq delayed for an additional calendar quarter the rule requiring PAMMs to submit a certain percentage of their orders to the System. The amended rule text follows. New language is italicized; deleted language is in brackets.

5011. Definitions

For purposes of this Rule Series, unless the context requires otherwise:

(a) "Application" or "Nasdaq Application" as used in this Rule Series, and "Nasdaq Application of the Primex Auction System" as used throughout the NASD Rules means the voluntary Nasdaq trading service facility that permits NASD member firms, among other things, to submit orders in Primex Eligible Securities to be exposed to a Crowd of Participants in an [anonymous,] electronic auction format for the purpose of obtaining an execution for their own account or the account of a customer; to have required reports of any resulting trades automatically disseminated to the public and the industry; and to "lock in" these trades as necessary by sending both sides to the applicable clearing agency designated by the Participants involved for clearance and settlement, all in accordance with this Rule Series and other applicable rules and policies of Nasdaq.

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5016. Option to Route Orders Outside of the System After Exposure in the Application

(a) *(1)* All Market Orders submitted to the Application shall include an identifier as to whether any unexecuted balance, after the order is exposed to the Crowd, should be forwarded to *the* SuperSoes℠ *version of the Nasdaq National Market Execution System*, in the case of a Nasdaq security, or to ITS/CAES, in the case of an exchange-listed security, or whether the order should be returned to the entering Participant. This option to route orders outside of the Application to *SuperSoes or ITS/CAES* is available for Market Orders only. Orders submitted to the Application with a specified, fixed price cannot be automatically forwarded to *SuperSoes or ITS/CAES* [Nasdaq's other execution systems].

Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.

(2) For securities eligible for the SuperMontage version of the Nasdaq National Market Executions System, all orders submitted to the Application shall include an identifier as to whether any unexecuted balance, after the order is exposed to the Crowd, should be forwarded to SuperMontage, or whether the order should be returned to the entering Participant. Orders forwarded to SuperMontage will be treated as immediate or cancel orders. Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.

(b) No changes.

5020. Market Maker Participation

(a) No Change.

(b) With respect to each security in which a Participant is registered as a Primex Auction Market Maker, the Participant shall:

(1) No Change.

(2) No Change.

(3) submit to the Application a minimum of 80%* of the number of its Mandatory Eligible Orders (including customer orders of another broker-dealer that has directed such orders to the Participant) as soon as practicable upon receipt by the Participant, for the purpose of exposing such orders to the Primex Crowd. Mandatory Eligible Orders do not include:

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5021. [Anonymity, Execution,] Reporting[,] and Clearing

(a) [Anonymity—The Application will process all activity among Participants on an anonymous basis until the end of the day.] After facilitating an execution, the Application will send an execution report to all Participants involved as soon as practicable. The execution report will indicate the details of the transaction, and [but will not] contain the identity of the contra-party. [At the end of each trading day, the actual contra-party for executions obtained within the Application will be made available to the Participants involved through Nasdaq's systems. For regulatory and other necessary purposes, the NASD and Nasdaq will have the ability to determine the identity of the actual contra-parties at any time.]

(b) [Tape Reporting and Clearing—]Matches within the Application are executed and reported through Nasdaq systems for public tape reporting and forwarding to NSCC for clearing, where necessary. Participants (or their clearing brokers) are the parties responsible for the clearance and settlement of all trades executed through the Application. Once a transaction is executed, Participants do not have the ability within the Application to modify or reallocate any portion of the execution to a clearing broker other than the clearing broker that the Application associates with the [Participant] transaction at the time of execution. Neither the NASD (and its affiliates) nor any operator or administrator of the Primex Auction System shall be directly or indirectly a party to any transaction entered into, matched, or otherwise effected through the Application[, notwithstanding that, for the remainder of the trading day after a transaction, the actual contra-parties have not had their identities disclosed to each other by the Application].

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Nasdaq represents that it eliminated the end-of day anonymity feature to respond to concerns raised by clearing firms, and to harmonize the anonymity features of Primex and SuperMontage. Nasdaq represents that Primex continues to offer pre-trade anonymity, which also is a feature of SuperMontage.

Nasdaq states that Primex originally was designed with an anonymity feature that masked until the end of the day the identity of parties trading in the System. When a match occurred in Primex, the parties would be notified that they executed a trade, but they would not know the identity of their counterparty until the end of the day.[22] At the end of the day, the System would send messages to the parties revealing the identities of their counterparties. A participant would receive a message for each trade executed in the System. Nasdaq represents that the messages formats were unique to Primex, which required Primex users to program their internal systems to recognize the messages. Nasdaq believes this additional programming requirement created a disincentive for firms to participate in Primex. Nasdaq states that, in particular, clearing firms expressed a concern about the additional programming requirements, and some chose not to make the changes and thus not participate in Primex. Nasdaq states that when a clearing firm chose not to participate, its correspondent firms also could not participate.

Nasdaq represents that it eliminated the anonymity feature to remove this disincentive. With the end-of-day anonymity feature removed, the parties to a trade will be informed of their counterparty's identity immediately upon a match. Therefore, the need for the messages at the end of the day is eliminated. Nasdaq expects this change will result in greater participation in Primex.

To further encourage participation in Primex, Nasdaq represents that it added a feature to assist members in complying with the NASD short sale rule. Specifically, Nasdaq represents that the System has been reprogrammed to prevent appropriately marked orders from executing in violation of this rule. An order that is marked to indicate that it is short sale, for which no exemption from the short sale rule is available (*e.g.*, the market maker exemption), will not execute at or below the current best bid when the current best bid as displayed by Nasdaq is below the preceding best bid in the security.

Primex also has been modified to account for Nasdaq simultaneously operating SuperSoes and SuperMontage. Primex always provided members an option to have certain orders routed to other Nasdaq execution systems after exposure in Primex.[23] Nasdaq represents that, when Primex began operation, the SuperSoes version of NNMS was the only system to which orders in Nasdaq-listed stocks could be forwarded. Recently, however, Nasdaq began to phase in the SuperMontage version of NNMS on a security-by-security basis. As such, until the phase-in is complete, Nasdaq simultaneously will operate SuperSoes and SuperMontage. Accordingly, Primex has the functionality to route orders to

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[19] 17 CFR 240.10a–1.

[20] Telephone call among Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, Gordon Fuller, Counsel to the Assistant Director, Division, Commission, and Jennifer Lewis, Attorney, Division, Commission, on October 24, 2002. *See* Amendment No. 2, *supra* note 8.

[21] *See* Amendment No. 3, *supra* note 9.

*The 80% test will be applied on a quarterly basis, and will be phased in as follows: For the calendar quarters commencing on October 1, 2001; January 1, 2002; April 1, 2002; [and] July 1, 2002, *and October 1, 2002*, any participant may register in any eligible security as a Primex Auction Market Maker and maintain that status during such calendar quarters without regard to the percentage of its orders it submits to the System for such security during that time, provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

Beginning with the calendar quarter that commences on [October 1, 2002] *January 1, 2003*, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until [December 31, 2002] *March 30, 2003* only if it submitted at least 50% of its Mandatory Eligible Orders during the calendar quarter that commences on [July] *October* 1, 2002 (or during such portion of the calendar quarter that commences on [July] *October* 1, 2002 in which the participant was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules. A participant that is newly registering as a Primex Auction Market Maker for a particular security any time after the start of the calendar quarter that commences on [October 1, 2002] *January 1, 2003* may maintain its status as such until the end of the calendar quarter in which it registered without regard to the percentage of its orders it submits to the System for such security during that time.

Beginning with the calendar quarter that commences on [January] *April* 1, 2003, and each calendar quarter thereafter, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until the end of that calendar quarter only if it submitted at least 80% of its Mandatory Eligible Orders during the previous calendar quarter (or during the portion of such previous calendar quarter in which it was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

[22] The anonymity feature only masked the identity from the parties to the trade. Nasdaq staff could obtain the identity of the parties immediately.

[23] *See* proposed NASD Rule 5016.

either of these systems, depending on whether the security is eligible for SuperSoes or SuperMontage. Nasdaq states that the functionality for routing orders to either SuperSoes or SuperMontage generally is the same. Only orders that are marked for routing outside Primex will be routed to SuperSoes or SuperMontage, and only after the order has been exposed in Primex and an unexecuted balance remains. While only Market Orders can be routed to SuperSoes, both Fixed Price Orders [24] and Market Orders will be eligible for routing to SuperMontage. Orders routed to SuperMontage will be considered as immediate or cancel orders.

To permit Primex to operate more efficiently with SuperMontage, Nasdaq also modified the System to allow it to accept orders with AIQ and AON conditions. These conditions can be attached to orders submitted to SuperMontage, but Primex originally was not designed to accept these types of orders. The AIQ functionality, when selected, can preclude an order from executing against proprietary interest from the same firm. The AIQ condition may be applied to orders, responses and indications. The function is designed to prevent intra-firm trades that may not be permissible for certain types of accounts, such as those subject to ERISA or an investment advisory relationship.

The AON functionality allows Primex subscribers to place a condition on certain orders that ensures the order will be executed in its entirety or not at all. The AON condition can be used for orders that the subscriber exposes for a "zero-second" auction.

Finally, Nasdaq is modifying the language in proposed NASD Rule 5020 to reflect that it has delayed for an additional calendar quarter the rule implementing the requirement that PAMMs submit a certain percentage of Mandatory Eligible Orders [25] to the System to be eligible for certain features of the System (the "percentage test"). Some firms, especially those that are now expected to participate in Primex because the anonymity feature has been removed, need to reprogram their internal systems to make Primex an order routing destination. Nasdaq believes delaying the percentage test will allow firms to make these changes and gain experience with the System. The percentage test will continue to be measured on a quarterly basis. However, the phase-in schedule was amended to implement the test starting with the calendar quarter that begins on January 1, 2003, instead of October 1, 2002. Specifically, beginning on January 1, 2003, a participant previously registered as a PAMM can retain this status if it submitted to the System 50% of its Mandatory Eligible Orders during the calendar quarter that commences on October 1, 2002. Beginning on April 1, 2003, and every calendar quarter thereafter, a PAMM can retain its status if it submits 80% of its Mandatory Eligible Orders during the previous calendar quarter.

[24] The term Fixed Price Order is defined in proposed NASD Rule 5011(a) as an order submitted to Primex to purchase or sell a security at a specified, fixed price or better.

[25] The term "Mandatory Eligible Order" is defined in proposed NASD Rules 5011 and 5020.

VI. Amendment No. 3

In Amendment No. 3, Nasdaq seeks permanent approval to (1) change the minimum size requirement for Predetermined Relative Indications from a tiered structure depending on the amount of price improvement, to a standard minimum size requirement of 100 shares, regardless of the amount of price improvement offered; (2) reprogram the System to reject trading interest marked as "short" or "short exempt" in any exchange-listed security eligible for participation in the InterMarket Trading System; and (3) modify proposed NASD Rule 5017 to be consistent with the system change relating to short sales set forth in Amendment No. 2. The amended rule text follows. New language is italicized; deleted language is in brackets.

5017. Short Sales

* * * * *

(a) Participants [are responsible for] *must properly identify trading interest as a long sale, short sale, or short sale exempt.* [complying with applicable short sale rules when using the Application. No Participant shall submit to the Application an order for a security that, if executed, would result in a "short sale" as that term is defined in Exchange act Rule 3b–3, unless the transaction would be exempt from, or otherwise permissible under, the requirements of NASD Rule 3350 or Exchange Act Rule 10a–1, as applicable.]

(b) The Application will not process trading interest to sell short a Nasdaq-listed security if the execution of such trading interest will violate Rule 3350.

(c) The Application will reject trading interest identified as a short sale or short sale exempt in any exchange-listed security eligible for participation in the InterMarket Trading System.

5018. Responses and Indications

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(c) Indications—Indications are instructions, with the characteristics set forth below, submitted to the Application by Participants to interact with orders exposed in an Auction. An Indication may be a Predefined Relative Indication ("PRI") or a Go-Along Indication.

(1) Predefined Relative Indications

(A) No changes.

(B) At the time of its original entry, each PRI submitted to the Application must be for *at least 100 shares.* [the following share amounts:

(i) NBBO PRIs must be for at least 3000 shares upon entry;

(ii) NBBO +/-.01 or .02 must be for at least 2000 shares upon entry;

(iii) NBBO +/-.03 or greater must be for at least 1000 shares upon entry.]

(C) No changes.

(D) No changes.

(E) No changes.

* * * * *

Nasdaq represents that the graduated PRI size requirement was intended to make it less expensive to offer greater price improvement by requiring less of a share commitment as more price improvement was offered. Discussion with current and prospective users of Primex indicated to Nasdaq that the minimum size requirements are a disincentive to using PRIs because many of the trading strategies that would employ PRIs are most effective if the user has flexibility in the number of shares that must be committed. Nasdaq therefore proposes to eliminate the graduated, minimum size requirement and instead require a commitment of 100 shares, regardless of the amount of price improvement offered. With this change, Primex users would be able to enter PRIs for any round or mixed lot greater than 100 shares. Nasdaq believes this modification will encourage more users to submit PRIs, thus increasing the liquidity in Primex and the opportunities for price improvement.

VII. Discussion

After careful consideration, the Commission finds, for the reasons discussed below, that the proposed rule change, as amended, is consistent with the Act and the rules and regulations applicable to the NASD, a registered securities association.[26] We do not believe, as the NYSE suggests, that the fact that Primex allows dealers to internalize customer orders should be viewed as a reason to deny permanent approval of Primex. The Commission believes that Primex may provide an opportunity for customer orders to receive price improvement, even if the customer order is internalized. In addition, the Commission believes that Primex may provide an opportunity for customer orders to be exposed to possible execution by market participants other than the Primex participant that brought the order to Primex. The Commission notes that its analysis of these issues may change in the context of Nasdaq's exchange application.

In addition, the Commission believes the proposal is consistent with Rule 19b–5(f)(1) under the Act,[27] because it has been submitted within two years after commencement of the operation of the System.

The Commission finds good cause for approving Amendment No. 1 of the proposed rule change prior to the thirtieth day after notice of the publication in the **Federal Register**. The language to be deleted by the amendment was inadvertently included; Amendment No. 1 reflects the current rules governing Primex's operation. The Commission also finds good cause for approving Amendment No. 2 of the proposed rule change prior to the thirtieth day after notice of the publication in the **Federal Register**. Amendment No. 2 also reflects the current rules governing Primex's operation. In addition, Amendment No. 2 removes a disincentive to participation in Primex by deleting a programming requirement associated with an end-of-day anonymity feature; assists participants in complying with the Short Sale Rule by adding a useful feature that prevents violative orders from executing on the System; promotes opportunities for greater order interaction and possible price improvement by allowing unexecuted Primex orders to be routed to SuperMontage; and enhances Primex as a potential order-routing destination by providing firms with additional time to program their internal systems to accommodate Primex. The Commission also finds good cause for approving Amendment No. 3 of the proposed rule change prior to the thirtieth day after notice of the publication in the **Federal Register**. Amendment No. 3 also reflects the current rules governing Primex's operation. In addition, Amendment No. 3 assists participants in complying with the Short Sale Rule and removes a disincentive to participation in Primex by implementing a less restrictive minimum size requirement for PRIs. The Commission believes Amendment Nos. 1, 2, and 3 are consistent with Sections 15A(b)(6) and (11), and 11A(a)(1)(C) of the Act,[28] and Rule 19b–5 under the Act,[29] and therefore the approval of Amendment Nos. 1, 2, and 3 on an accelerated basis is appropriate.

[26] In this regard, the Commission disagrees with NYSE's argument that it must apply statutory requirements applicable to registered exchanges to Primex. The Commission notes that Nasdaq operates Primex as a facility of the NASD. The NASD is a registered securities association under Section 15A of the Act and is not a registered exchange under Section 6 of the Act. Nasdaq's application for registration as an exchange is pending with the Commission.

[27] 17 CFR 240.19b–5(f)(1).

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3, including whether the proposed amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–60 and should be submitted by March 12, 2003.

VIII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NASD–2002–60) is approved and Amendment Nos. 1, 2, and 3 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

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[28] 15 U.S.C. 78o–3(b)(6) and (11), and 15 U.S.C. 78k–1(a)(1)(C).

[29] 17 CFR 240.19b–5.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47350; File No. SR–NASD–2003–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of the Dreyer's Grand Ice Cream Holdings, Inc. Callable Puttable Common Stock

February 11, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the Dreyer's Grand Ice Cream Holdings, Inc. ("New Dreyer's") class A callable puttable common stock ("Common Stock").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to list for trading the New Dreyer's Common Stock under NASD Rule 4420(f). Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities which cannot be readily categorized under traditional listing guidelines.[3] Nasdaq believes that it is appropriate to list the New Dreyer's Common Stock under NASD Rule 4420(f) because it combines the features of more than one category of currently listed securities, specifically common stock with a put right and a call right.[4]

Dreyer's Grand Ice Cream, Inc. ("Dreyer's") has entered into an Agreement and Plan of Merger and Contribution ("Merger Agreement") with Nestle Holdings, Inc. ("Nestle") and its affiliates to combine Dreyer's with Nestle's United States frozen dessert business. The combination will result in both Dreyer's and Nestle Ice Cream Company, LLC, which holds Nestle's United States frozen dessert business, becoming wholly-owned subsidiaries of a newly formed Delaware corporation, which is named New December, Inc. ("New December") and which will be renamed New Dreyer's.[5]

As described in the registration statement filed by New December, if the transactions contemplated by the Merger Agreement are completed, the public shareholders of Dreyer's will receive the New Dreyer's Common Stock. Each holder of the New Dreyer's Common Stock will have the option to require New Dreyer's to redeem out of legally available funds all or part of the New Dreyer's Common Stock held by the holder at a price of $83.00 per share during each of the following put periods: (1) The period beginning on December 1, 2005 and ending on January 13, 2006; and (2) the period beginning on April 3, 2006 and ending on May 12, 2006. Prior to the start of each put period, New Dreyer's will be required to give notice of the availability of the put right to the holders of the New Dreyer's Common Stock. Notwithstanding the foregoing, New Dreyer's will be relieved of its redemption obligations in respect of any put right upon the occurrence of a triggering event, which means either a substantial adverse change determination or an insolvency event as described in the registration statement. During the call period beginning on January 1, 2007 and ending on June 30, 2007, the New Dreyer's Common Stock may be redeemed by New Dreyer's out of legally available funds, in whole but not in part, at a price of $88.00 per share, upon Nestle's request.

As set forth in the registration statement, prior to the expiration of the two put periods, the existence of the put right will likely be influential in determining the market price at which the New Dreyer's Common Stock will trade. However, the market price of the New Dreyer's Common Stock is not guaranteed at the completion of the transactions or thereafter, and may be adversely affected in the event that the ability of the New Dreyer's Common Stock holders to exercise the put right or to receive proceeds upon exercise of the call right is impaired or diminished. Moreover, after the expiration of the two put periods, the market price of the Common Stock, to the extent still outstanding, may decline significantly. Although Nestle is prohibited from proposing a business combination transaction during the period beginning on July 1, 2007 and ending on July 1, 2008 at a price lower than $88.00 per share of the New Dreyer's Common Stock, there are no price protections for business combination transactions after July 1, 2008.

Furthermore, at the expiration of the call period on July 1, 2007, the New Dreyer's Common Stock will convert into New Dreyer's class B common stock and Nestle will no longer be contractually restricted from controlling more than 50% of the New Dreyer's board of directors, and may use its controlling vote as a New Dreyer's stockholder to elect any number or all of the members of New Dreyer's board of directors. Also, after July 1, 2007, Nestle will have no restrictions on its ability to sell or transfer its New Dreyer's Common Stock on the open market, in privately negotiated transactions or otherwise, and these sales or transfers could create a substantial decline in the price of the outstanding shares of the New Dreyer's Common Stock or, if these sales or transfers were made to a single buyer or group of buyers, could transfer control of New Dreyer's to a third party.

In addition, the existence of the call right may prevent the New Dreyer's Common Stock from trading above the call price of $88.00 per share even if New Dreyer's future growth and/or market conditions were to otherwise warrant a per share valuation in excess of that price. If the call right is exercised, the Common Stock holders would participate in this increased valuation only to the extent of the $88.00 per share of the Common Stock redemption price.

Upon the occurrence of a triggering event, the New Dreyer's Common Stock will be redeemed, in whole but not in part, at a price per share equal to the triggering event price. The triggering event price will be determined on the basis of a discount to the put price of $83.00 per share of the New Dreyer's Common Stock and will depend on the date of the triggering event. Upon New Dreyer's receipt of a written request from Nestle for the redemption of the New Dreyer's Common Stock under the call right, including in connection with a triggering event, New Dreyer's will be required to give notice of the exercise of the call right and the redemption of the Common Stock to New Dreyer's Common Stock holders.

The New Dreyer's Common Stock will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units; and

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, New Dreyer's will satisfy the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[6] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the New Dreyer's Common Stock, Nasdaq will distribute a circular to members providing guidance regarding the features of the Common Stock and members' responsibilities (including suitability recommendations) when handling transactions in callable puttable common stock and highlighting the characteristics and risks of the Common Stock. In particular, Nasdaq will inform members that customer confirmations involving the New Dreyer's Common Stock should identify the security as a callable and puttable instrument and that a customer may contact the member for more information concerning the security.[7] Furthermore, given the put and call features of the Common Stock, the circular will indicate that Nasdaq suggests that transactions in the Common Stock be recommended only to investors whose accounts have been approved for options trading. If a customer has not been approved for options trading, or does not wish to open an options account, the member should ascertain whether the Common Stock is suitable for the customer. Pursuant to NASD Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, members recommending a transaction in the Common Stock must, among other things, have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The New Dreyer's Common Stock will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least $1 million. The Common Stock also must have at least two registered and active market makers as required by NASD Rule 4310(c)(1).

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Common Stock. Specifically, NASD will rely on its current surveillance procedures governing equity securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[8] in general, and furthers the objectives of Section 15A(b)(6) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–16 and should be submitted by March 12, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Nasdaq requests that the Commission approve this filing on an accelerated basis because Nasdaq believes that the proposal does not raise any novel issues. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, with the requirements of Section 15A(b)(6) of the Act[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[11]

The Commission notes that the New Dreyer's Common Stock has both callable and puttable features. In particular, shareholders of Dreyer's will receive the Common Stock, subject to the completion of certain transactions in the Merger Agreement, with the option of redeeming all or part of their Common Stock at a price of $83.00 per share during two put periods: (1) The period between December 1, 2005 and January 13, 2006; and (2) the period between April 3, 2006 and May 12, 2006. However, as described in the registration statement, New Dreyer's would be relieved of its redemption obligations upon the occurrence of a substantial adverse change determination or an insolvency event. In addition, the Commission notes that New Dreyer's will retain an option to call the shares of Common Stock, upon Nestle's request, during the period between January 1, 2007 and June 30, 2007, in whole but not in part, at a price of $88.00 per share.

Because of the Common Stock's callable and puttable features, there are several issues regarding trading of this type of hybrid product. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the New Dreyer's Common Stock.[12] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations,[13] and compliance

[3] *See* Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993) ("1993 Order").

[4] *Id.*; *see also* Securities Exchange Act Release No. 32378 (May 27, 1993), 58 FR 31770 (June 4, 1993).

[5] For further information regarding the Merger Agreement, see the registration statement filed by New December with the Commission (File No. 333–101052).

[6] NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on Nasdaq or the New York Stock Exchange ("NYSE") or be an affiliate of a company listed on Nasdaq or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-cade basis.

[7] *See* NASD IM–2110–6, Confirmation of Callable Common Stock.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* 1993 Order, *supra* note 3.

[13] As discussed above, Nasdaq will advise members and employees thereof recommending a transaction in the Common Stock to: (1) Determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of.

Continued

requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Common Stock.

The Commission notes that Nasdaq will distribute a circular to its members that provides guidance regarding members' compliance responsibilities and requirements, including heightened suitability recommendations, when handling transactions in callable puttable common stock, and that highlights the special risks and characteristics associated with the Common Stock. Specifically, among other things, the circular will inform members that customer confirmations involving the New Dreyer's Common Stock should identify the security as a callable and puttable instrument and that a customer may contact the member for more information concerning the security. Nasdaq represents that the circular will also indicate that, given the put and call features of the Common Stock, Nasdaq will suggest that transactions in the Common Stock be recommended only to investors whose accounts have been approved for options trading. Nasdaq further represents that, if a customer has not been approved for options trading, or does not wish to open an options account, the member should ascertain whether the Common Stock is suitable for the customer pursuant to NASD Rule 2310 and IM–2310–2. The Commission believes that the distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the New Dreyer's Common Stock and who are able to bear the financial risks associated with transactions in the Common Stock will acquire and trade the Common Stock.

In addition, Nasdaq represents that the circular will identify the following specific risks associated with the Common Stock.[14] The circular will note that members should inform customers that the price at which the New Dreyer's Common Stock will trade may be influenced, prior to the expiration of the two put periods, by the existence of the put right. The circular will also note that the final rate of return on the Common Stock may be less than the market price of the Common Stock, and that after the expiration of the two put periods, the market price of the Common Stock may decline significantly. Furthermore, customers should be aware that after the expiration of the call period on July 1, 2007, the New Dreyer's Common Stock will be converted into New Dreyer's class B common stock, and that Nestle will no longer be held to certain controlling interest and sale restrictions, as discussed above. The Commission believes that to some extent the financial risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities, and that the issuers of securities to be listed on Nasdaq or the NYSE or be an affiliate of a company listed on Nasdaq or the NYSE. In addition, the NASD's hybrid listing standards further require that the Common Stock have at least $4 million in market value.

Furthermore, the Commission notes that Nasdaq represents that NASD's surveillance procedures for the Common Stock will be the same as its current surveillance procedures for equity securities, and that Nasdaq represents that such surveillance procedures are adequate for this product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will facilitate the trading of New Dreyer's Common Stock. Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[15] to approve the proposal on an accelerated basis.

The Commission is approving Nasdaq's proposed listing standards for the New Dreyer's Common Stock. The Commission specifically notes that, notwithstanding approval of the listing standards for the Common Stock, other similarly structured products will require review by the Commission prior to being traded on Nasdaq.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2003–16) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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and is able to bear the financial risk of, the transaction.

[14] Telephone conversation between John Nachmann, Senior Attorney, Office of General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on February 11, 2003.

[15] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47356; File No. SR–OC–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by OneChicago, LLC Relating to Initial Listing Standards of Single Stock Futures

February 12, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–7 under the Act,[2] notice is hereby given that on January 23, 2003, OneChicago, LLC ("OneChicago" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in items I, II, and III below, which items have been prepared by OneChicago. On January 27, 2003, OneChicago filed Amendment No. 1 to the proposed rule change.[3] On February 5, 2003, OneChicago filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"). OneChicago filed a written certification with the CFTC under section 5c(c) of the Commodity Exchange Act[5] on January 23, 2003.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter dated January 24, 2003, from Madge M. Hamilton, Deputy General Counsel, OneChicago, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected technical errors in the proposed rule text and added proposed rule text that was inadvertently omitted in its initial filing.

[4] *See* letter dated February 3, 2003, from Madge M. Hamilton, Deputy General Counsel, OneChicago, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission ("Amendment No. 2"). In Amendment No. 2, the Exchange amended section II.A.2 of the proposal to specify that the proposed rule change was consistent with section 6(b)(5) of the Act. In addition the Exchange amended section II.C of the proposal to state that the Exchange has not received any comments on the proposal.

[5] 7 U.S.C. 7a–2(c).

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago proposes to amend its initial listing standards for a security futures product based on a single security ("single stock future") relating to the pricing of the underlying security.

The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in brackets.

Eligibility and Maintenance Criteria for Security Futures Products

I. Initial listing standards for a security futures product based on a single security.

A. For a security futures product that is physically settled to be eligible for initial listing, the security underlying the futures contract must meet each of the following requirements:

(i)—(vii) No Change

(viii) If the underlying security is a "covered security" as defined under section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading. For purposes of this provision, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.

Requirement (viii) as Applied to Restructure Securities: Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, OneChicago may "look back" to the market price history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

(a) The Restructure Security has an aggregate market value of at least $500 million;

(b) The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

(c) The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

(d) The revenues attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term "Relevant Percentage" means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; and (ii) 33⅓%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, OneChicago will use the Restructure Security's closing price on its primary market on the last business day prior to the Selection Date, or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, OneChicago will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Restructure Securities Issued in Public Offering or Rights Distribution: In determining whether a Restructure Security that is distributed pursuant to a public offering or a rights distribution satisfies requirement (viii), OneChicago may look back to the market price history of the Original Equity Security if: (i) The foregoing Look-Back Test is satisfied; (ii) the Restructure Security trades "regular way" on an Exchange or automatic quotation system for at least five trading days immediately preceding the Selection Date; and (iii) at the close of trading on each trading day on which the Restructure Security trades "regular way" prior to the Selection Date, as well as at the opening of trading on Selection Date, the market price of the Restructure Security was at least $3.00.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, OneChicago will not rely upon the market price history of an Original Equity Security for any trading day unless it also relies upon the trading volume history for that trading day. In addition, once OneChicago commences to rely upon a Restructure Security's trading volume and market price history for any trading day, OneChicago will not rely upon the trading volume and market price history of the related Original Equity Security for any trading day thereafter.

(ix) If the underlying security is not a "covered security" as defined under section 18(b)(1)(A) of the Securities Act of 1933, [I]it must have had a market price per security of at least $7.50, as measured by the lowest closing price reported in any market in which it has traded, for the majority of business days during the three calendar months preceding the date of selection.

Requirement [(viii)] *(ix)* as Applied to Restructure Securities: Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, OneChicago may "look back" to the market price history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

(a) The Restructure Security has an aggregate market value of at least $500 million;

(b) The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

(c) The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

(d) The revenues attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term "Relevant Percentage" means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security;

and (ii) 33⅓%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, OneChicago will use the Restructure Security's closing price on its primary market on the last business day prior to the Selection Date, or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, OneChicago will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Restructure Securities Issued in Public Offering or Rights Distribution: In determining whether a Restructure Security that is distributed pursuant to a public offering or a rights distribution satisfies requirement [(viii)]*(ix)*, OneChicago may look back to the market price history of the Original Equity Security if: (i) The foregoing Look-Back Test is satisfied; (ii) the Restructure Security trades "regular way" on an Exchange or automatic quotation system for at least five trading days immediately preceding the Selection Date; and (iii) at the close of trading on each trading day on which the Restructure Security trades "regular way" prior to the Selection Date, as well as at the opening of trading on Selection Date, the market price of the Restructure Security was at least $7.50.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, OneChicago will not rely upon the market price history of an Original Equity Security for any trading day unless it also relies upon the trading volume history for that trading day. In addition, once OneChicago commences to rely upon a Restructure Security's trading volume and market price history for any trading day, OneChicago will not rely upon the trading volume and market price history of the related Original Equity Security for any trading day thereafter.

[(ix)] *(x)* If the underlying security is an ADR:

(a) OneChicago must have in place an effective surveillance sharing agreement with the primary exchange in the home country where the stock underlying the ADR is traded;

(b) The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, or in markets with which OneChicago has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock over the three-month period preceding the dates of selection of the ADR for futures trading ("Selection Date");

(c)(1) The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, and in markets with which OneChicago has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 20% of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three-month period preceding the Selection Date;

(2) The average daily trading volume for the ADR in the U.S. markets over the three-month period preceding the Selection Date is at least 100,000 receipts; and

(3) The daily trading volume for the ADR is at least 60,000 receipts in the U.S. markets on a majority of the trading days for the three-month period preceding the Selection Date; or

(d) The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing.

[(x)] *(xi)* OneChicago will not list for trading any security futures product where the underlying security is a Restructure Security that is not yet issued and outstanding, regardless of whether the Restructure Security is trading on a "when issued" basis or on another basis that is contingent upon the issuance or distribution of securities.

II. Maintenance standards for a security futures product based on a single security.

A. [Absent exceptional circumstances,] OneChicago will not open for trading any security futures product that is physically settled with a new delivery month, and may prohibit any opening purchase transactions in the security futures product already trading, to the extent it deems such action necessary or appropriate, unless the underlying security meets each of the following maintenance requirements; provided that, if the underlying security is an ETF Share, TIR or Closed-End Fund Share, the applicable requirements for initial listing of the related security futures product (as described in I.A. above) shall apply in lieu of the following maintenance requirements:

(i) It must be registered under section 12 of the Exchange Act.

(ii) There must be at least 6,300,000 shares or receipts evidencing the underlying security outstanding that are owned by persons other than those who are required to report their security holdings pursuant to section 16(a) of the Exchange Act.

(iii) There must be at least 1,600 securityholders.

(iv) It must have had an average daily trading volume (across all markets in which the underlying security is traded) of least 82,000 shares or receipts evidencing the underlying security in each of the preceding 12 months.

Requirement (iv) as Applied to Restructure Securities:

If a Restructure Security is approved for a security futures product trading under the initial listing standards in section I, the average daily trading volume history of the Original Equity Security (as defined in section I) prior to the commencement of trading in the Restructure Security (as defined in section I), including "when-issued" trading, may be taken into account in determining whether this requirement is satisfied.

(v) It must have had a market price per security of at least $5.00, as measured by the highest closing price reported in any market in which it has traded, for a majority of business days during the preceding six calendar months; provided, however, that OneChicago may waive this requirement and open for trading a security futures product with a new delivery month, if:

(a) The aggregate market value of the underlying security equals or exceeds $50 million;

(b) Customer open interest (reflected on a two-sided basis) equals or exceeds 4,000 contracts for all delivery months;

(c) Its average daily trading volume (in all markets in which the underlying security is traded) has been at least 109,000 shares or receipts evidencing the underlying security in each of the preceding 12 months; and

(d) The market price per share or receipt of the underlying security closed at $3.00 or above on a majority of the business days during the preceding six calendar months, as measured by the highest closing price for the underlying security reported in any market in which the underlying security traded, and the market price per share or receipt of the underlying security is at least $3.00 at the time such additional series are authorized for trading. During the next consecutive six calendar month period, to satisfy this paragraph, the market price per share or receipt of the underlying security must be at least $4.00.

Requirement (v) as Applied to Restructure Securities:

If a Restructure Security is approved for security futures product trading under the initial listing standards in section I, the market price history of the Original Equity Security prior to the commencement of trading in the Restructure Security, including "when-issued" trading, may be taken into account in determining whether this requirement is satisfied.

(vi) If the underlying security is an ADR and was initially deemed appropriate for security futures product trading under paragraph [(viii)(b)] *(x)(b)* or [(viii)(c)] *(x)(c)* in section I, OneChicago will not open for trading security futures products having additional delivery months on the ADR unless:

(a) The percentage of worldwide trading volume in the ADR and other related securities that takes place in the U.S. and in markets with which OneChicago has in place an effective surveillance sharing agreement for any consecutive three-month period is: (1) At least 30%, without regard to the average daily trading volume in the ADR; or (2) at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at least 70,000 receipts;

(b) OneChicago has in place an effective surveillance sharing agreement with the primary exchange in the home country where the security underlying the ADR is traded; or

(c) The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing.

B—D No Change.

III. No Change.

IV. No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to amend its Eligibility and Maintenance Criteria for Security Futures Products ("Listing Standards") pertaining to the price requirement of an underlying security for the initial listing of a single stock future. OneChicago's current initial Listing Standards for single stock futures require, among other things, that the market price of the underlying security, as measured by the lowest closing price reported in any market, be at least $7.50 for the majority of business days during the three calendar months preceding the selection. Provided all other initial Listing Standards requirements are met, the proposed rule change would permit a single stock future to be listed on a "covered security" as defined under section 18(b)(1)(A) for the Securities Act of 1933 ("Securities Act")[6] that has a market price of at least $3.00 for the five consecutive business days prior to the date on which OneChicago submits a certificate to The Options Clearing Corporation ("OCC") for listing and trading the future contract.[7] The market price of the underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. The proposed rule change also amends the initial Listing Standards to require that an underlying security that is not a "covered security" meet OneChicago's current price requirement that it have a market price of $7.50 for the majority of the trading days for the three calendar months preceding selection.

OneChicago states that the proposed rule change would permit OneChicago to list single stock futures that would be beneficial to investors for hedging and speculative purposes, while still providing adequate protection for investors. Under current market conditions, some securities meet all of the requirements in the initial Listing Standards for securities underlying a single stock future, except for the market price requirement of $7.50. OneChicago believes that if those securities are "covered securities" and they meet the other requirements in the initial Listing Standards, it is appropriate to require the underlying security to have a market price of $3.00 or above for the five business days preceding the notification to OCC. A "covered security" as used in the proposed rule change would be a security that is listed or authorized for listing on NYSE, Amex, or Nasdaq. As the Chicago Board Options Exchange, Inc. ("CBOE") noted in its proposed rule change requesting a similar amendment, "this particular criteria [no longer] serves to accomplish its presumed intended purpose, *i.e.*, to prevent the proliferation of option classes on overlying securities that lack liquidity needed to maintain fair and orderly markets."[8]

OneChicago states that its initial Listing Standard requirements, as well as the listing requirements of the NYSE, Amex and Nasdaq, would provide adequate investor protection. Under OneChicago's initial Listing Standards, a "covered security" would still be required to have: a minimum of 7,000,000 shares owned by public investors;[9] a minimum of 2,000 securityholders;[10] and an average daily trading volume ("ADTV") of at least 109,000 shares in each of the preceding 12 months[11] in order for OneChicago to list a single stock future on the security. In addition to the initial Listing Standard requirements, OneChicago will monitor and adhere to its maintenance standards for single stock futures.

[6] Section 18(b)(1)(A) of the Securities Act provides that, "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange [("NYSE")] or the American Stock Exchange [("Amex")], or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market [("Nasdaq")] (or any successor to such entities). * * *" 15 U.S.C. 77r(b)(1)(A). The term "covered security" would not include those securities defined under section 19(b)(1)(B) of the Securities Act. 15 U.S.C. 77r(b)(1)(B).

[7] The proposed rule change amends OneChicago's Listing Standard I.A.viii and renumbers the subsequent initial listing standards requirements for single stock futures. The proposed rule change also makes a conforming amendment to Listing Standard II.A.vi. In addition, the proposed rule change deletes, "Absent exceptional circumstances" in OneChicago's Listing Standard II.A.

[8] *See* Securities Exchange Act Release No. 46957 (December 6, 2002), 67 FR 77106 (December 16, 2002) (publishing SR–CBOE–2002–62 for public comment).

[9] OneChicago's Listing Standard I.A.iv.

[10] OneChicago's Listing Standard I.A.v.

[11] OneChicago's Listing Standard I.A.vi. OneChicago notes that the comparable option listing standards requires a trading volume of at least 2,400,000 shares in the preceding 12 months. The Division of Market Regulation's Staff Legal Bulletin No. 15, which provided guidance to exchanges developing listing standards for security futures, states that a minimum monthly trading volume of 2,400,000 million shares is comparable to an average daily trading volume of 109,000 shares for the preceding 12 months. *See* Division of Market Regulation: Staff Legal Bulletin No. 15, Listing Standards for Trading Securities Futures Products (September 5, 2001), n. 6. The 109,000 figure was arrived at by dividing 2.4 million by 22, which is the typical number of trading days in a calendar month.

In addition to investor protections provided by the Listing Standards requirements, the design of the proposed rule change provides safeguards against price manipulation and provides a reliability test for stability in reasonable time period for qualifying the price of the underlying security. The proposed rule change requires that the "covered security" have a price on the primary market above $3.00 for five days prior to notifying OCC of OneChicago's intent to list and trade the single stock future. This provision is designed to prevent the manipulation of the price of the "covered security" immediately prior to the listing of a single stock future. First, the price of a "covered security" must be above $3.00 for five business days, which makes it more difficult for someone to enter the underlying market to manipulate the price. In addition, the price of the "covered security" must be on the primary market, *i.e.*, NYSE, Amex or Nasdaq, which would be more liquid and thus more difficult to manipulate. In determining to list any single stock futures, OneChicago must ensure that its own systems, including price dissemination system, have the capacity to handle the potential increased capacity requirements.

Section 6(h)(3)(C) of the Act requires that Listing Standards for security futures "be no less restrictive than comparable Listing Standards for options traded on a national securities exchange * * *."[12] The Commission has approved a similar rule change for the CBOE.[13] Since CBOE has a comparable Listing Standard, OneChicago believes that the proposed rule change meets the requirement of section 6(h)(3)(C) of the Act.[14]

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act[15] in that it promotes competition, is designed to prevent fraudulent and manipulative acts and practices, and is designed to protect investors and the public interest. The proposed rule change would promote competition and is designed to protect investors and the public interest by providing products that could be used by investors for hedging and speculative purposes, while at the same time providing investor protection through the design of the proposed rule change and the Listing Standard requirements that would be applicable.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed rule change will not unduly burden competition. In fact, OneChicago believes the proposed rule change would promote competition by permitting OneChicago to list a broader array of single stock futures, without jeopardizing investor protection.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and no comments on the proposed rule change have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on January 23, 2003, except that the technical changes made in Amendment Nos. 1 and 2 have become effective on January 24, 2003, and February 4, 2003, respectively. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of OneChicago. All submissions should refer to File No. SR–OC–2003–01 and should be submitted by March 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3942 Filed 2–18–03; 8:45 am]

BILLING CODE 8010–01–U

[12] 15 U.S.C. 78f(h)(3)(C).

[13] Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62).

[14] 15 U.S.C. 17f(h)(3)(C).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(1).

[17] 17 CFR 200.30–3(a)(75).

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4280]

Imposition of Chemical and Biological Weapons Proliferation Sanctions Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that two foreign persons have engaged in chemical/biological weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authority of which was most recently continued by Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Director, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to Section 81(a) of the Arms Export Control Act (22 U.S.C. 2798(a)) and Section 11C(a) of the Export Administration Act of 1979 (50 U.S.C. app. 2410C(a)) as continued by Executive Order 13222 of August 17, 2001 (hereinafter referred to as the "Export Administration Act"), Executive Order 12851 of June 11, 1993, and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the Under Secretary of State for Arms Control and International Security Affairs has determined that the following foreign persons have engaged in chemical/biological weapons proliferation activities that require the imposition of measures as described in section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app 2410C(c)):

NEC Engineers Private, Ltd., and its successors (company originally based in India, but now also operating in the Middle East and Eurasia); and

Hans Raj Shiv (previously residing in India, and believed to be in the Middle East).

Accordingly, until further notice and pursuant to the provisions of section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act (50 U.S.C. app 2410c(c)), the following measures are imposed on these foreign persons and their successors:

1. *Procurement Sanction:* The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned persons and their successors; and

2. *Import Sanction:* The importation into the United States of products produced by the sanctioned persons and their successors shall be prohibited.

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided in the Executive Order 12851 of June 11, 1993, and will remain in place for at least one year and until further notice.

Dated: February 11, 2003.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–3956 Filed 2–18–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14501]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice announces a teleconference of the Merchant Marine Personnel Advisory Committee (MERPAC). The purpose of the teleconference is for MERPAC to discuss and prepare comments to the docket of the Coast Guard's national security legislation for merchant vessel personnel [USCG–2002–14069]. MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: The teleconference call will take place on Tuesday, March 4, 2003, from 1 p.m. until 2 p.m., EST.

ADDRESSES: Members of the public may participate by dialing 1–202–493–2151. Public participation is welcomed; however, the number of teleconference lines is limited, and lines are available first-come, first-served. Members of the public may also participate by coming to Room 1204, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. We request that members of the public who plan to attend this meeting notify Mr. Mark Gould at 202–267–6890 so that he may notify building security officials. You may also gain access to this docket at *http://dms.dot.gov/search/searchFormSimple.cfm*.

FOR FURTHER INFORMATION CONTACT: Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Gould, Assistant to the Executive Director, telephone 202–267–0213, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register** [5 U.S.C. App. 2]. MERPAC is chartered under that Act. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety, Security, and Environmental Protection, on issues of merchant marine personnel such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, and developing standards of competency for ship's security officers.

Tentative Agenda

Tuesday, March 4, 2003

1 p.m.–1:05 p.m.

Welcome and Opening Remarks—MERPAC Chairman Andrew McGovern.

1:05 p.m.–1:30 p.m.

Open discussion on the docket of the Coast Guard's national security legislation affecting merchant vessel personnel.

1:30 p.m.–1:50 p.m.

Public comment period.

1:50 p.m.

MERPAC vote on recommended comments to the docket.

2 p.m.

Adjourn.

This tentative agenda is subject to change.

Public Participation

The Chairman of MERPAC is empowered to conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. During its teleconference, the committee welcomes public comment. The committee will make every effort to hear the views of all interested parties, including the public. Written comments may be submitted to CDR Brian J. Peter, Executive Director, MERPAC, Commandant (G–MSO–1), 2100 Second Street, SW., Washington DC 20593–0001.

Minutes

The teleconference will be recorded, and a summary will be available for public review and copying about 30 days following the teleconference meeting at *http://www.uscg.mil/hq/g-m/advisory/merpac/merpac.htm*. This summary will also be available for viewing in the Docket at *http://dms.dot.gov*.

Dated: February 12, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection.

[FR Doc. 03–3977 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD05–03–003]

Navigable Waters and Jurisdiction; Lake Fontana, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice; proposed change to navigability status.

SUMMARY: The Coast Guard plans to modify the agency navigability status of Lake Fontana, an impoundment of Little Tennessee River, wholly located in western North Carolina so that Lake Fontana will no longer be navigable for purposes of Coast Guard jurisdiction. The Coast Guard seeks your comments before we change the navigability status of the lake.

DATES: Comments and related material must reach the Coast Guard on or before March 21, 2003.

ADDRESSES: You may mail comments and related material to Commander, Fifth Coast Guard District Legal Office, Federal Building 2nd Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christine N. Cutter, Legal Advisor, Fifth Coast Guard District, at telephone number (757) 398–6291.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number for this notice CGD05–03–003, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission has reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background

The Coast Guard, in a letter dated January 6, 1954, determined that Lake Fontana, an impoundment of Little Tennessee River, wholly located in western North Carolina, is a navigable body of water of the United States for purposes of Coast Guard jurisdiction. The Coast Guard's determination relied primarily on a letter from the Tennessee Valley Authority (TVA) dated September 24, 1953. The TVA letter further referenced a 1953 tentative decision by the Federal Power Commission (FPC), which determined that the Little Tennessee River was a navigable water of the United States from its mouth to a point above the former site of Bushnell, North Carolina, which is upstream of Fontana Dam at mile marker 61.

After the Coast Guard issued its determination, on March 4, 1954, the Federal Power Commission issued a final decision *In the Matters of Aluminum Company of America, Knoxville Power Company; Carolina Aluminum Company,* Docket Nos. IT–5696; 5697, 5698 Opinion No. 267, 13 F.P.C. 14; 1954. The final decision was rendered after all parties had the opportunity to present additional evidence on the issue of navigability. Briefs and exceptions to the tentative and initial decisions were filed and oral argument was heard on the case. Therefore, the final decision considered all the relevant evidence for determining navigability on the Little Tennessee River. The final decision failed to reference information contained in the tentative decision on logs being floated down the Little Tennessee River from Bushnell, NC. The Federal Power Commission determined that the Little Tennessee River is a navigable body of water of the United States from its mouth to at least the mouth of Abrams Creek at mile 37. Therefore, Lake Fontana, which is formed at mile 61 by the construction of the Fontana Dam, was not considered by the Commission as a navigable body of water of the United States. The Coast Guard did not make a corresponding change to its navigability determination to reflect the FPC's final decision.

In addition, there are no federal court decisions or congressional actions concerning Lake Fontana's navigability. As a point of clarification, the Department of Energy Organization Act abolished the Federal Power Commission (FPC), on October 1, 1977 and the new agency the Federal Energy Regulatory Commission inherited most of the FPC's responsibilities.

Purpose

While the Coast Guard is not required to provide notice of a change in navigability status, this document serves to bring to the attention of the public and the State of North Carolina the Coast Guard's intention to change the navigability status on Lake Fontana that has been in effect since 1954. Reliable evidence as contained in the final decision by the Federal Power Authority supports the navigability of the Little Tennessee River up to mile 37. Therefore, the Coast Guard plans to amend its navigability determination of Lake Fontana to be non-navigable for purposes of Coast Guard jurisdiction.

When making a determination whether a particular body of water qualifies as navigable water for purposes of Coast Guard jurisdiction, the Code of Federal Regulations and federal case law are controlling. The statutory provisions were derived from the test for navigability as pronounced in *The Daniel Ball,* 77 U.S. 557 (1870). Title 33 CFR 2.05–25 (a)(3) defines waters such as Lake Fontana—that is, internal waters not subject to tidal influence—as navigable waters if such waters "are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce notwithstanding natural or man-made obstruction that require portage."

The Coast Guard's administrative determination regarding a body of water's navigability status is solely for the purpose of administering and enforcing applicable Coast Guard laws and regulations. This planned change in determination would not be conclusive on the issue of whether a body of water is navigable water for other federal purposes.

Dated: February 5, 2003.

J. D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–3982 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Ankeny Regional Airport, Ankeny, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Ankeny Regional Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before March 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, Missouri 64106–2325.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dave L. Joens, P.E.& P.L.S. at the following address: Polk County Aviation Authority, 5885 NE., 14th Street, Des Moines, IA 50313.

FOR FURTHER INFORMATION CONTACT: Nicoletta Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust, Kansas City, MO 64106–2325, (816) 329–2642.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Ankeny Regional Airport under the provisions of AIR 21.

On February 6, 2003, the FAA determined that the request to release property at the Ankeny Regional Airport submitted by the Polk County Aviation Authority, met the procedural requirements of the Federal Aviation Administration. The FAA will approve or disapprove the request, in whole or in part, no later than May 30, 2003.

The following is a brief overview of the request.

The Polk County Airport Authority requests the release of approximately 4.91 acres of airport property. The purpose of this release is to transfer ownership to the Iowa Department of Transportation (IDOT) for an interchange project located south of the airport property. The land is currently not being used for aeronautical purposes. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the request in person at the Polk County Airport Authority, Des Moines, Iowa.

Issued in Kansas City, Missouri, on February 6, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03–3972 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–B–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping for Air Traffic Procedural Changes Associated With the Northern Utah Airspace Initiative

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement and conduct scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA), Northwest Mountain Region, is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. 4332(2)(C) that the FAA intends to prepare an Environmental Impact Statement (EIS) for the proposed Northern Utah Airspace Initiative. This Notice of Intent is published as required by the President's Council on Environmental Quality (CEQ) Regulations implementing the provisions of NEPA, 40 CFR parts 1500–1508. This EIS will assess the potential environmental impacts resulting from proposed modifications to air traffic routings in the metropolitan Salt Lake City and surrounding areas. Airports in this area include Salt Lake City International Airport, Ogden-Hinckley Airport, Hill Air Force Base, and the Provo Airport, as well as other smaller general aviation use airports. All reasonable alternatives will be considered including a no-change alternative/option. In order to ensure that all significant issues pertaining to the proposed action are identified, public participation, through public scoping meetings; will be held.

FOR FURTHER INFORMATION CONTACT: Clark Desing, (801) 325–9626, PO Box 22867, AMF, Salt Lake City, Utah, 84122 or see the following Web site: *http://www2.faa.gov/ats/nar/nw_mt/nw_mt_salt.htm.*

SUPPLEMENTARY INFORMATION: The Northern Utah Airspace Initiative will examine the airspace surrounding the Salt Lake City International Airport, up to the en route structure. The airports in the study area are: Salt Lake City International Airport, Ogden-Hinckley Airport, Hill Air Force Base, and the Provo Airport, as well as other smaller general aviation use airports.

In response to existing and forecast aviation demand generating a significant flow of air traffic in the study area, the FAA is examining alternative ways to modify air traffic routes and procedures to avoid degradation of safety, improve efficiency, and meet future traffic demands. The airspace redesign team is using sophisticated modeling tools to develop viable air traffic control (ATC) alternatives to current operations. The FAA will examine methods that will take advantage of new and emerging ATC technologies, improved performance characteristics of modern aircraft, as well as improvements in navigation capabilities. The proposal will address the merits of a 4-corner post concept with consideration of an additional downwind. The project is not associated with any airport development projects or construction of any physical facilities.

As part of the airspace redesign effort, the FAA will provide detailed analyses that will be use to evaluate the potential environmental impacts in the study area. During scoping, and upon publication of a draft EIS and a final EIS, the FAA will be contacting and coordinating with federal, state, and local agencies, as well as the public, to obtain comments and suggestions regarding the EIS for the proposed project. The EIS will assess impacts and reasonable alternatives including a "no change" alternative, pursuant to NEPA; FAA Order 1050.1, Policies and Procedures for Assessing Environmental Impacts; DOT Order 5610.1, Procedures for Considering Environmental Impacts; and the President's Council on Environmental Quality (CEQ) Regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508, and other appropriate Agency guidance.

Public Scoping Process: The FAA will use the scoping process as outlined in the Council on Environmental Quality (CEQ) Regulations and guidelines to facilitate public involvement. Concerned individuals and agencies are invited to express their views either in writing, or by providing oral comments at a scoping meeting. The purpose of a scoping process and scoping meetings are: (1) To provide a description of the proposed action; (2) to provide an early and open process to determine the scope of issues to be addressed and to identify potentially significant issues or impacts related to the proposed action that should be analyzed in the EIS, (3) to identify other coordination and any permit requirements associated with the proposed action, (4) to identify and eliminate from detailed study those issues that are not significant or those that have been adequately addressed during a prior environmental review process.

The FAA has scheduled three public scoping meetings. Each meeting will be held from 7 p.m. to 9 p.m. at sites listed below. Each of the meetings will begin with an overview of the project (7 p.m.–7:30 p.m.) and will be followed by an informal open house period (7:30 p.m.–9 p.m.) The open house portion of each public scoping meeting will include redesign displays and graphics and will provide an opportunity for one-on-one interaction between the representatives of the FAA and the general public. Comments will be received via court reporter or written comment forms throughout the duration of the meeting. Formal comments for the record will not be accepted via E-mail. Meeting dates and locations are:

—March 18, 2003—Marriott City Center, Salt Lake City, UT.
—March 19, 2003—Marriott Hotel, Provo, UT.
—March 20, 2003—Marriott Hotel, Ogden, UT.

In accordance with NEPA coordination requirements, the FAA has scheduled one meeting that will be dedicated primarily to federal, state and local agency staff, and Native American

governments. This meeting is scheduled on March 18, 2003, from 1 p.m. to 3 p.m. at the Marriott City Center, Salt Lake City. Although this meeting will be held primarily for the benefit of federal, tribal, state and local agency staff, it will also be open to the public.

The scoping period begins with this announcement. To ensure that all issues are identified, the FAA is requesting comments and suggestions on the project scope from all interested federal, state and local agencies and other interested parties. In furtherance of this effort, the FAA has established an Internet Website that can be accessed at: *http://www2.faa.gov/ats/nar/nw_mt/nw_mt_salt.htm*. Additional information about the Northern Utah Airspace Initiative, including the scoping meeting schedule and meeting locations can be found at this Internet site. Additionally, the FAA will be maintaining the following telephone number for general information: (801) 325–9626.

DATES: The FAA will accept written scoping comments through May 16, 2003. Such comments should be directed to the following address: Northern Utah Airspace Initiative, PO Box 22867, AMF, Salt Lake City, UT 84122.

Issued in Renton, Washington on February 11, 2003.

Raul C. Trevino,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–3975 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–06]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 11, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington DC 20590–0001. You must identify the docket number FAA–2003–14299 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb ((425) 227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on February 13, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–14299.

Petitioner: Structural Integrity Engineering.

Sections of 14 CFR Affected: 25.783(h); 25.807(g)(1) and (i)(1); 25.810(a)(1); 25.812(b)(2), (e), and (h); 25.813(b); 25.857(e); 25.1445(a)(2); and 25.1447(c)(1).

Description of Relief Sought: To permit Structural Integrity Engineering exemption from the above-referenced regulations to allow carriage of up to four persons in addition to two crewmembers in the flight compartment of Boeing 757–200 converted special freighter airplanes.

[FR Doc. 03–3966 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held March 5–6, 2003, starting at 8:30 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- March 5:
- Opening Plenary Session (Welcome and Introductory Remarks, Approval of Agenda, Approval of Minutes, Review of Action Items).
- Report from Working Group 1.
- Review of Product Registry Document.
- Review of DO–267 Change 1 Draft.
- March 6:
- Review and Progress DO–267 Change 1 Draft.
- Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC on February 11, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–3976 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–03–1–00–GLH To Impose of Passenger Facility Charge (PFC) at Mid Delta Regional Airport, Greenville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Mid Delta Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office; 100 West Cross Street, Suite B; Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Darrell Foreman, Airport Director of the City of Greenville, Mississippi at the following address: 166 Fifty Ave., Suite 300; Greenville, MS 38703.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Greenville under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Patrick D. Vaught, Program Manager, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9885. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Mid Delta Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 10, 2003, the FAA determined that the application to impose a PFC submitted by the City of Greenville was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 7, 2003.

The following is a brief overview of the application.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: October 31, 2005.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $86,610.

Brief description of proposed project(s):

1. Terminal Area Drainage Improvements and Parking Lot Relocation.

2. Rehabilitate Runway 9/27 and Convert to Taxiway.

3. Terminal Building Fire Escape Stairwell Project.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO—Air Taxi/Commercial Operators filing Form 1800–31.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Greenville, Mississippi.

Issued in Jackson, Mississippi on February 10, 2003.

Wayne Atkinson,

Manager, Jackson Airports District Office.

[FR Doc. 03–3971 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–112–06]

Below Deck Class C Cargo Compartment Smoke Penetration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on smoke penetration tests conducted under the provisions of § 25.857.

DATES: Send your comments on or before March 21, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Stephen Happenny, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Propulsion and Mechanical Systems Branch, ANM–112, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2147; fax (425) 227–1320; e-mail: *stephen.happenny@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, "Comments to Policy Statement No. ANM–03–112–06."

Use the following format when preparing your comments.

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy will further simplify the certification process pertaining to the acceptable amount of smoke penetration permitted into the cabin during a below deck Class C cargo compartment smoke penetration test. It will provide clarification to the test criteria given for the means of compliance as addressed in AC 25–9A as well as supplement that material.

Issued in Renton, Washington, on February 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3974 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–01–03]

Factors To Consider When Reviewing an Applicant's Proposed Human Factors Methods of Compliance for Flight Deck Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA), announces the availability of final policy that clarifies current FAA policy with respect to compliance with human factors-related regulations during certification projects on transport category airplanes.

DATES: This final policy was issued by the Transport Airplane Directorate on February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Boyd, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplanes & Fightcrew Interface Branch, ANM–111, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1138; fax (425) 227–1320; e-mail: *9–ANM–111–human-factors@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in the **Federal Register** on May 16, 2001 (66 FR 27196). Seven (7) commenters responded to the request for comments.

Background

The final policy provides guidance with respect to the recommended content of a Human Factors Certification Plan. A Human Factors Certification Plan is not a required document, but may be included as part of a transport category airplane certification project if an applicant so chooses. These recommendations can be used as a means by which the applicant and the FAA can establish an early and formal written agreement on the methods of compliance for regulations that relate to human factors and that are applicable to the certification project.

The final policy as well as the disposition of public comments received are available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on February 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3973 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New York Susquehanna and Western Railway

[Docket Number: FRA–2002–14086]

The New York Susquehanna and Western Railway (NYSW) seeks a permanent waiver of compliance from the requirement that a *Qualified maintenance person* (QMP), as defined in *Passenger Equipment Safety Standards*, 49 CFR 238.5, be a person whose primary responsibility includes work generally consistent with troubleshooting, inspection, maintenance, or repair of the equipment being inspected or tested. NYSW indicates they are operating passenger service utilizing a single Budd Rail Diesel Car (RDC) over a light density rail line within the City of Syracuse, NY. The service operates between 11:15 a.m. and 6:35 p.m. during the months of June, July, and August, and five days a week the rest of the year. The railroad indicates that they have met all requirements to designate the operating crew as a QMP with the exception of the primary responsibility requirement.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–14086) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 400 7th Street, SW., Room PL–401 (Plaza Level), Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on February 13, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–3983 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

San Luis Central Railroad

[Docket Number FRA–2002–14084]

The San Luis Central Railroad (SLC) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR Part 223, that requires certified glazing for two locomotives. The SLC is located in Monte Vista, Colorado. The SLC states they operate as a short line railroad and have yard limits of 13 miles. Both locomotives are presently equipped with laminated tinted glass with .030 lamination and an AS–1 rating. The present glazing is in good condition.

The two locomotives, specifically SLC 70 and SLC 71, operate alternating one at a time and noted locomotives never operate on any other railroad lines and have a record of good compliance with the Federal Railroad Administration (FRA). The two locomotives are in very good condition. There is also no record of vandalism on their property.

The field investigation reveals the terrain in the SLC traverses is largely farm grade. The grade of the track is flat with a few short curves.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2002–14084) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on February 13, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–3984 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket Number FRA–2002–14116

Applicant: Canadian National Railway, Mr. Kenneth J. Bagby, Signals Supervisor, 3460 Bristol Road, Flint, Michigan 48507.

The Canadian National Railway (CN) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, Part 236, Section 236.408, to the extent that route locking need not be provided for the "32nd Street Crossover" power-operated switches at milepost 333.28 in the existing traffic control system at Port Huron, Michigan, on the Flint Subdivision, Midwest Division.

Applicant's justification for relief: The installation is not uncommon in the railroad industry and provides all of the requisite components and safety features of a standard interlocking or an electric lock location that would be found in TCS territory. CN has three similar installations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 400 7th Street, SW., Room PL–401 (Plaza Level), Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on February 13, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–3985 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Wilton Scenic Railroad

[Docket Number FRA–2002–14085]

The Wilton Scenic Railroad seeks a permanent waiver of compliance for two MU passenger type locomotives from the requirements of the Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing in all windows, and the requirement to equip the passenger compartments with emergency window exits. The railroad indicates that the MU locomotives numbered RDC 1 and RDC 3 are equipped with glazing material approved for use in Canada. If approved the MU locomotives would be utilized in tourist and scenic train operations between Wilton and Greenfield, New Hampshire, over track owned by the State of New Hampshire and maintained by the Milford Bennington Railroad.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number *e.g.*, Waiver Petition Docket Number FRA–2002–14085) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 400 7th Street, SW., Room PL–401 (Plaza Level),

Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on February 13, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–3986 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 29, 2002. No comments were received.

DATES: Comments must be submitted on or before March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Rita C. Jackson, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–5755; FAX: 202–493–2288, or E-MAIL: *rita.jackson@marad.dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Service Obligation Compliance Report.

OMB Control Number: 2133–0509.

Type of Request: Extension of currently approved collection.

Affected Public: Every student and graduate of the U.S. Merchant Marine Academy and every subsidized State maritime academy student.

Form(s): MA–930.

Abstract: The Maritime Education and Training Act of 1980, imposes a service obligation on every graduate of the U.S. Merchant Marine Academy and every subsidized State maritime academy graduate who received a student incentive payment. This mandatory service obligation is for the Federal financial assistance the graduate received as a student and requires the graduate to maintain a license as an officer in the merchant marine and to report on reserve status, training, and employment for applicable periods.

Annual Estimated Burden Hours: 1150 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on February 10, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–3918 Filed 2–18–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34311]

United States Steel Corporation—Acquisition of Control Exemption—Delray Connecting Railroad Company

United States Steel Corporation (U.S. Steel), a noncarrier, has filed a notice of exemption to acquire control, through stock purchase, of Delray Connecting Railroad Company (Delray), a Class III railroad and a wholly owned subsidiary of National Steel Corporation (National Steel).[1]

U.S. Steel owns 100% of Transtar, Inc. (Transtar), a noncarrier holding company and, through that ownership, indirectly owns and controls one Class II and four Class III railroads.[2]

The transaction is expected to be consummated early in the second quarter of 2003.

U.S. Steel states that: (i) The railroads (Delray and the Transtar Railroads) do not connect; (ii) the transaction is not part of a series of anticipated transactions that would connect these railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because U.S. Steel already controls one Class II and four Class III railroads by virtue of its control of Transtar, this grant will be made subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34311, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard J. Munsch, 600 Grant Street, Room 1500, Pittsburgh, PA 15219–2800 and Vincent P. Szeligo, 1450 Two Chatham Center, Pittsburgh, PA 15219–3427.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: February 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3948 Filed 2–18–03; 8:45 am]

BILLING CODE 4915–00–P

[1] On March 6, 2002, National Steel and several of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court in the Northern District of Illinois (Case 02–08699). Delray did not file a bankruptcy petition and is not a party to the National Steel bankruptcy proceeding. On January 9, 2003, U.S. Steel announced execution of an Asset Purchase Agreement with National Steel and 12 subsidiaries involving U.S. Steel's acquisition of substantially all of their steelmaking and finishing assets.

[2] The "Transtar Railroads" are: Birmingham Southern Railroad Company, Elgin, Joliet and Eastern Railway Company (the Class II railroad), The Lake Terminal Railroad Company, McKeesport Connecting Railroad Company, and Union Railroad Company. Common control of these railroads by U.S. Steel (formerly USX Corporation) was authorized by the Board in *USX Corporation—Control Exemption—Transtar, Inc.*, STB Finance Docket No. 33942 (STB served Nov. 30, 2000) and in *Transtar Holdings, L.P.—Corporate Family Exemption—Transtar, Inc.*, STB Finance Docket No. 32411 (STB served Dec. 29, 1993).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34312]

Big 4 Terminal Railroad Corporation—Acquisition and Operation Exemption—Wabash Central Railroad Corporation

Big 4 Terminal Railroad Corporation (Big 4), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Wabash Central Railroad Corporation (WBRC) and operate approximately 1.5 miles of rail line currently owned by RMW Ventures, L.L.C. (RMW)[1] and currently operated by WBRC.[2] Big 4 is seeking to sublease and operate the following track, terminal facilities, and properties at or near Craigville, Wells County, IN: A 40 foot right-of-way being 20 feet of either side of the center line of the main track from milepost 117 (Railroad Valuation Station #6177 + 60) to milepost 118.53 (Railroad Valuation Station #6258 + 14) on the east side of County Road #204N, together with all connecting spur and yard tracks. Big 4 will connect with WBRC and conduct terminal switching operations at Craigville in order to improve switching service to shippers served by these facilities. WBRC will continue to operate over the remaining portion of the line.

The effective date of the exemption was January 30, 2003 (7 days after the notice was filed) and the parties expected to consummate the transaction on or after January 31, 2003.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34312, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, 127 Lexington Avenue, Suite 100, Altoona, PA 16601.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: February 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3949 Filed 2–18–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The line was formerly owned by Wabash Central, L.L.C., a Class III rail carrier. In *RMW Ventures, L.L.C.-Corporate Family Transaction Exemption-C&NC, L.L.C., Maumee & Western, L.L.C., and Wabash Central, L.L.C.*, STB Finance Docket No. 33541 (STB served Mar. 10, 1998), Wabash Central, L.L.C., along with two other Class III rail carriers, was merged into RMW.

[2] In 1998, WBRC acquired operating rights over a 26.4-mile line of railroad, including the segment involved here, and incidental trackage rights between Craigville, IN (milepost 117.8), and Van Buren, IN (milepost 108.6). *See Wabash Central Railroad Corporation-Operation Exemption-Wabash Central, L.L.C.*, STB Finance Docket No. 33536 (STB served Jan. 16, 1998).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Payments to Persons Who Hold Certain Categories of Judgments Against Cuba or Iran

February 19, 2003.

AGENCY: Department of the Treasury; Office of Foreign Assets Control.

ACTION: Notice.

SUMMARY: This notice specifies the Secretary of the Treasury's intention to pay on March 21, 2003 certain claims filed pursuant to section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, Public Law no. 106–386, as amended by the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law 107–228. Section 2002 directs the Secretary to make payments to persons who hold certain categories of judgments against Cuba or Iran in suits brought under 28 U.S.C. 1605(a)(7).

This notice also specifies the procedures necessary for persons filing applications after November 26, 2002, to establish eligibility for payments authorized by section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (the "VTVPA"), Public Law no. 106–386, as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law no. 107–228, and as further amended by section 201 of the Terrorism Risk Insurance Act of 2002 (the "TRIA"), Public Law no. 107–297. The publication of this notice necessarily precedes the making of payments in order to implement the TRIA's amendments to the VTVPA. This notice supersedes the two notices previously published by the Department of the Treasury ("the Treasury") on November 22, 2000, and December 15, 2000, at 65 FR 70382 and 65 FR 78533, respectively, for all such applications filed after November 26, 2002. The rules set forth in the two preceding notices shall continue to apply to applications filed with the Treasury prior to November 26, 2002, that are still pending before the Treasury. Applications filed with the Treasury before November 26, 2002, that were determined to be ineligible for payment are no longer pending before the Treasury. Those applicants previously determined to be ineligible for payment, but who may now be eligible due to amendments of section 2002, must therefore file new applications with the Treasury pursuant to the rules set forth in this new notice.

This notice also sets forth estimates of the funds available for payment of eligible Iran-related claims for payment under section 2002 that are filed with the Treasury after November 26, 2002.

DATES: This notice is effective February 19, 2003.

FOR FURTHER INFORMATION CONTACT: For questions regarding submission of applications, Rochelle E. Stern, Chief, Policy Planning and Program Management Division, Office of Foreign Assets Control, tel.: 202/622–2500. For legal questions, Office of the Chief Counsel (Foreign Assets Control), tel.: 202/622–2410.

Part 1. Payment of Certain Claims on March 21, 2003

The Treasury expects to complete the processing of payment on March 21, 2003 to certain claimants pursuant to section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (the "VTVPA"), Public Law No. 106–386, as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law No. 107–228. The claimants scheduled to receive payment on March 21, 2003 are those who filed lawsuits against Iran on June 6, 2000, received judgments in the lawsuit entitled Carlson v. The Islamic Republic of Iran, Civil Case No. 00–CV–1309 (D.D.C.), and filed claims for payment with the Treasury prior to November 26, 2002.

Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (the "VTVPA"), Public Law No. 106–386, as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law No. 107–228, and as further amended by section 201 of the Terrorism Risk Insurance Act of 2002 (the "TRIA"), Public Law No. 107–297 will hereinafter be referred to as "section 2002".

Part 2. Applicants; Deadlines for Submission of Applications

The term "Applicant," as used herein, refers to a person described in section 2002(a)(2) as eligible for payment under such section 2002 and who files a claim for payment with the Treasury after November 26, 2002. A person described in section 2002(a)(2) is

(1) A person who, as of July 20, 2000, held a final judgment awarding compensatory damages on a claim or claims brought under section 1605(a)(7) of title 28, United States Code, against Iran or Cuba, or the right to payment of an amount awarded as a judicial sanction with respect to such claim or claims, or

(2) a person who filed a suit under such section 1605(a)(7) on February 17, 1999, December 13, 1999, January 28, 2000, March 15, 2000, June 6, 2000, July 27, 2000, any other date before October 28, 2000, or January 16, 2002, and holds a final judgment awarding compensatory damages against either Iran (as described below) or Cuba in such suit. With respect to those who filed suits against Iran, such persons must hold final judgments for compensatory damages issued as of November 26, 2002, or must have filed suit on January 16, 2002.

Those who filed claims with the Treasury prior to November 26, 2002, and whose claims were denied, but who may now be eligible for payment due to amendments to Public Law 106–386, must resubmit applications in accordance with this notice. The requirements of Parts 2 through 6 of this notice do not apply to claimants who have already received payment or whose claims are still pending with the Treasury.

Each Applicant must submit a separate, complete application containing all the information and documentation described in Part 3, below. If an Applicant is currently represented by counsel, his or her application must be submitted through that counsel.

Section 2002 distinguishes between final judgments issued as of and after November 26, 2002. In the case of Applicants holding final judgments that were issued as of November 26, 2002, complete applications for payment, as described in Part 3, below, must be received in the Department of the Treasury's Office of Foreign Assets Control by April 7, 2003. In the case of any Applicant holding a final judgment issued after November 26, 2002, in the case filed on January 16, 2002, and identified in section 2002(a)(2)(A) with respect to Iran, complete applications for payment, as described in Part 3, below, must be received in the Office of Foreign Assets Control within 20 calendar days after the date such judgment becomes final.

Part 3. Applications for Payment

Applications for payment under section 2002 must be sent to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Attn: Rochelle E. Stern. Applications must contain all of the information and documentation as specified in this Part 3. Applications must be sent by overnight mail or by overnight courier. Applications sent electronically, via facsimile, by hand delivery, certified mail, or any other means other than overnight mail or overnight courier shall be deemed noncomplying. All information and documentation required by paragraphs (a) through (f) below must be submitted to the noted address by overnight mail or by overnight courier.

All information required by paragraphs (a) through (f) of this Part 3 is to be provided in the order set forth below and numbered correspondingly.

(a) Information Regarding Applicant and Payment.

(1) Information Regarding Applicant: An Applicant shall submit the following information:

(A) name, address, telephone number, and, if available, facsimile number of Applicant and Applicant's social security number or taxpayer identification number; and

(B) if the Applicant is represented by counsel, name(s), address(es), telephone number(s), and facsimile number(s) of Applicant's counsel.

(2) Payment Information: Payments will be made by electronic funds transfer. Payments will be made only to the Applicant or the Applicant's counsel. The application shall designate which of these parties is to receive the payment by including one of the following two statements:

"Payment of amounts owing to [insert name of Applicant] under section 2002 shall be made to [insert name of Applicant]."

"Payment of amounts owing to [insert name of Applicant] under section 2002 shall be made to [insert name of Applicant's counsel]."

An Applicant shall submit the following information:

(A) name of person or entity to whom payment is to be made [insert name of Applicant or Applicant's counsel] (the "payee");

(B) American Bankers Association Routing and Transit Code number of the bank holding payee's account (include copy of canceled check or savings deposit slip);

(C) name and address of payee's bank;

(D) payee's bank account number;

(E) type of account (checking or savings); and

(F) social security number or taxpayer identification number of payee.

(b) Documentation on Compensatory Damages.

An Applicant shall submit a copy of the final judgment awarding the Applicant compensatory damages on a claim or claims brought by the Applicant under 28 U.S.C. 1605(a)(7). This copy must be certified by the clerk of the court that awarded the judgment.

In addition, the Applicant must submit a statement signed pursuant to 28 U.S.C. 1746 identifying what proportion, if any, of his compensatory damage award has been paid. This statement must also provide a description of all ongoing attachment and/or execution proceedings relating to the Applicant's judgment, including the case name and number, the name and location of the court where such proceeding has been filed, the date of filing, and the names of all parties involved.

(c) Documentation on Punitive Damages.

An Applicant who elects to receive 110 percent of compensatory damages, as allowed under section 2002(a)(1)(A), shall submit a copy of the final judgment awarding the Applicant punitive damages on a claim or claims brought by the Applicant under 28 U.S.C. 1605(a)(7). This copy must be certified by the clerk of the court that awarded the judgment.

In addition, the Applicant must submit a statement signed pursuant to 28 U.S.C. 1746 identifying what proportion, if any, of his punitive damage award has been paid. This statement must also provide a description of all ongoing attachment and/or execution proceedings relating to the Applicant's judgment, including the case name and number, the name and location of the court where such proceeding has been filed, the date of filing, and the names of all parties involved.

(d) Documentation on Sanctions.

(1) An Applicant seeking payment of amounts awarded as sanctions by judicial order on April 18, 2000 (as corrected on June 2, 2000) in connection with a claim or claims brought by the Applicant under 28 U.S.C. 1605(a)(7) shall submit a copy of the judicial order of April 18, 2000 (as corrected on June 2, 2000) awarding the Applicant sanctions. The copy must be certified by the clerk of the court that issued the order.

(2) The Applicant must also establish that this order is final and not subject to further appellate review. The Applicant can so establish by providing one of the following:

(A) a copy of a judgment of dismissal by the U.S. Court of Appeals of any pending appeal from the sanctions order, which copy must be certified by the clerk of the court of appeals;

(B) a signed statement that the time to appeal the sanctions order has expired without a notice of appeal having been filed, or a signed written waiver of the right to seek any further review of any adverse aspect of the sanctions order from any party that would have a basis for seeking review of that decision;

(C)(i) a copy of a final decision by the U.S. Court of Appeals on the sanctions order that affirms or otherwise leaves intact the sanctions order, in whole or in part, and that has been certified by the clerk of the Court of Appeals and,

(ii)(I) a citation to the order of the U.S. Supreme Court denying certiorari or dismissing any pending petition for a writ of certiorari;

(II) a signed statement that the time to petition for a writ of certiorari has expired, without such a petition having been filed; or

(III) if the time to petition for a writ of certiorari has not expired, a signed written waiver from all unsuccessful appellants of their right to petition for a writ of certiorari; or

(D) a copy of a final decision by the U.S. Supreme Court on the sanctions order that affirms or otherwise leaves intact the sanctions order, in whole or in part.

(e) Documentation on Final Judgment or Date Suit Commenced.

In order to receive payment, an Applicant must meet one of the following two requirements documenting the final judgment and, where applicable, the date on which the Applicant's suit commenced.

(1) To meet the first requirement, the Applicant must establish that he or she had, as of July 20, 2000, a final judgment for a claim or claims brought under 28 U.S.C. 1605(a)(7) or the right to payment of an amount awarded as a judicial sanction with respect to such claim or claims. The Applicant can establish that he or she had a final judgment for a claim or claims brought under 28 U.S.C. 1605(a)(7) as of July 20, 2000, by submitting the judgment specified in Part 3(b) above, which must be dated July 20, 2000, or earlier, along with all appellate orders on that judgment, if any, and a signed statement demonstrating why further appellate review is unavailable. The Applicant can establish that he or she had a right to payment of an amount awarded as a judicial sanction by submitting the order specified in Part 3(d) above, which must be dated July 20, 2000, or earlier, along with proof that this order is final and not subject to further appellate review.

(2) If an Applicant does not satisfy paragraph (1) above, the Applicant shall submit satisfactory proof of the following:

(A) The date on which the Applicant filed a suit against Iran or Cuba under 28 U.S.C. 1605(a)(7). This proof shall be in the form of a docket sheet or other document that has been certified by the clerk of the court in which the suit was filed. Applicants proceeding under this paragraph shall be eligible for payment only if suit was filed on February 17, 1999, December 13, 1999, January 28, 2000, March 15, 2000, June 6, 2000, July 27, 2000, any other date before October 28, 2000, or January 16, 2002.

(B) That Applicant has a final judgment in a suit described in Part 3(e)(2)(A) above. The Applicant can satisfy this requirement by submitting the judgment specified in Part 3(b) above, along with all appellate orders on that judgment, if any, and a signed statement demonstrating why further appellate review is unavailable. Applicants shall be eligible for payment only if such judgment was issued as of November 26, 2002, with the exception of any final judgment entered in the case filed on January 16, 2002.

(f) Election of Payment Option and Associated Relinquishment.

(1) All Applicants must elect a payment option established by section 2002. If the Applicant has received an award of punitive damages, the Applicant shall elect to receive either 110 percent or 100 percent of the compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, the amount awarded as sanctions on or in connection with a claim or claims brought under 28 U.S.C. 1605(a)(7). If the Applicant has not received an award of punitive damages, the Applicant shall elect to receive 100 percent of the compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, the amount awarded as sanctions on or in connection with a claim or claims brought under 28 U.S.C. 1605(a)(7). It is not within the Department of the Treasury's purview to advise Applicants on which option they should select.

By electing one of these options, the Applicant relinquishes certain claims and rights, as specified in section 2002. See section 2002(a)(2)(B)-(D). If an Applicant elects to receive 110 percent of the compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, the amount awarded as sanctions on or in connection with a claim or claims brought under 28 U.S.C. 1605(a)(7) (110 percent option), the Applicant must relinquish all claims and rights to compensatory damages and amounts awarded as judicial sanctions, as well as all claims and rights to punitive damages. Section 2002(a)(2)(B)–(C).

If an Applicant elects to receive 100 percent of the compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, the amount awarded as sanctions on or in connection with a claim or claims brought under 28 U.S.C. 1605(a)(7) (100 percent option), the Applicant must relinquish all claims and rights to compensatory damages and amounts awarded as judicial sanctions, as well as "all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal, that is the subject of awards rendered by such tribunal, or that is subject to section 1610(f)(1)(A) of title 28, United States Code." Section 2002(a)(2)(D). Title 28 U.S.C. 1610(f)(1)(A), in turn, addresses "any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)) ("TWEA"), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702) ("IEEPA"), or any other proclamation, order, regulation, or license issued pursuant thereto." 28 U.S.C. 1610(f)(1)(A). Virtually every transaction involving Cuban property within the jurisdiction of the United States is "prohibited or regulated" pursuant to TWEA. Additionally, almost every transaction involving Iranian property within the jurisdiction of the

United States is "prohibited or regulated" pursuant to IEEPA. Section 2002(a)(2)(D) therefore prohibits an Applicant who elects the 100 percent option from seeking to execute his or her punitive damage award against, or from seeking to attach, virtually all Iranian or Cuban assets within the jurisdiction of the United States.

To make an election, the Applicant must submit two declarations as set forth in Parts 3(f)(3–4) below. The Applicant must submit (1) either the declaration set forth in Part 3(f)(3)(A) or that set forth in Part 3(f)(3)(B), and (2) the declaration set forth in Part 3(f)(4). All declarations submitted must be completed in full.

In making payments under section 2002, subject to funds availability, the Secretary will pay post-judgment interest on 110 percent of compensatory damages or 100 percent of compensatory damages, according to whether the Applicant elects to receive payment equaling 110 or 100 percent of compensatory damages. The Secretary will not pay post-judgment interest on portions of the judgment for which the Applicant is not entitled to receive payment under section 2002, including amounts awarded as punitive damages. Nor will the Secretary pay post-judgment interest on the amounts awarded as sanctions, as section 2002(a)(1) does not provide for payment of post-judgment interest on sanctions awards.

(2) Section 201 of the Terrorism Risk Insurance Act of 2002 (the "TRIA"), Public Law No. 107–297 ("section 201").

Section 201 amends section 2002 by, inter alia, establishing a partial, pro rata payment mechanism, which is described in Part 5 below. This partial payment mechanism, set forth in new subsection (d) of section 2002, will come into effect in the event that the Secretary of the Treasury determines that 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in judgments issued as of November 26, 2002, in cases identified in section 2002(a)(2)(a) with respect to Iran. If this determination is made, the payment an Applicant receives will be less than the full amount of unpaid compensatory damages awarded to the Applicant and will not include amounts necessary to pay post-judgment interest under 28 U.S.C. 1961.

Section 201 also amends section 2002 to provide, in new subsection (d)(5), that any person receiving less than the full amount of compensatory damages awarded to that party in a judgment to which new subsection (d) applies shall not be required to make the election set forth in section 2002(a)(2)(B) (*i.e.*, relinquishing all claims and rights to compensatory damages and judicial sanctions) or, with respect to section 2002(a)(2)(D), the election relating to relinquishment of any right to execute or attach property that is subject to section 1610(f)(1)(A) of title 28, United States Code. However, such person shall be required to relinquish rights set forth (1) in section 2002(a)(2)(C) (*i.e.*, all rights and claims to punitive damages), and (2) in section 2002(a)(2)(D) with respect to enforcement against property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

To take account of new subsection (d)(5), the elections of the 110 percent option and the 100 percent option that appeared in prior **Federal Register** notices on this subject have been amended, as set forth in Part 3(f)(3) below. The amendments provide that, in the event the Secretary makes the determination that funds are inadequate as specified in section 2002(d)(1)(A), the payment the Applicant receives will be less than the full amount of unpaid compensatory damages, and such payment will not include amounts necessary to pay post-judgment interest under 28 U.S.C. 1961. In that event, the relinquishments already made in the declarations and described in Part 3(f)(1) above shall be null and void, and, in lieu thereof, the Applicant, as required by new subsection (d)(5), relinquishes all rights and claims to punitive damages and all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

(3) To make an election, the Applicant must submit two declarations as set forth in Parts 3(f)(3–4) below. The Applicant must submit (1) either the declaration set forth in Part 3(f)(3)(A) or that set forth in Part 3(f)(3)(B), and (2) the declaration set forth in Part 3(f)(4). The Applicant must sign each declaration pursuant to 28 U.S.C. 1746. All declarations submitted must be completed in full.

To make the election, the Applicant shall submit one of the two declarations set forth in (A) and (B) below. As set forth in Part 3(f)(1) above, applicants who have received awards of punitive damages shall elect either the declaration set forth in (A) or (B) below. Applicants who have not received awards of punitive damages shall use the declaration set forth in (B) below.

(A) "I, _____ (insert name of Applicant), elect to receive 110 percent of the amount awarded to me as compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, amounts awarded as judicial sanctions on or in connection with the claim or claims I brought under 28 U.S.C. 1605(a)(7). By so electing, I state that I have been awarded a judgment that includes an award of punitive damages. I further state, as required by section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, P.L. No. 106–386 as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law No. 107–228, and as further amended by section 201 of the Terrorism Risk Insurance Act of 2002, Public Law No. 107–297 ("section 2002"), that I relinquish (a) all claims and rights to compensatory damages and amounts awarded as judicial sanctions under such judgments and any related interest, costs, and attorneys fees, and (b) all claims and rights to punitive damages awarded in connection with such claim or claims and any related interest, costs, and attorneys fees. In relinquishing these above-mentioned claims and rights, I recognize that I relinquish any rights to seek writs of attachment, execution, or garnishment, or any other form of post-judgment process intended to obtain partial or complete satisfaction of any amounts awarded in connection with the claim or claims under 28 U.S.C. 1605(a)(7) for which I am electing to receive payment.

"I understand that this relinquishment is irrevocable once the payment is credited to the bank account I have identified in this application. I further agree and acknowledge that, pursuant to section 2002(c), once the payment is credited to the bank account I have identified in this application, and to the extent such payment is made under section 2002(b)(2)(B), the United States shall be fully subrogated and assigned to all of my rights as a judgment creditor, and to the rights, if any, of any other person or entity to whom payments are made (collectively 'payees'), against the debtor foreign state. Such subrogation and assignment of payees' rights as judgment creditors is binding on their guardians, heirs, executors, administrators or assigns.

"In the event that the Secretary of the Treasury determines that 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in judgments issued as of November 26, 2002, in cases

identified in section 2002(a)(2)(A) with respect to Iran, I understand that the payment that I receive will be less than the full amount of compensatory damages awarded to me and that such payment will not include amounts necessary to pay post-judgment interest under 28 U.S.C. 1961. In that event, the relinquishment set forth above shall be null and void and, in lieu thereof, as required by section 2002(d)(5), I hereby relinquish (1) all rights and claims to punitive damages awarded in connection with the claim or claims I brought under 28 U.S.C. 1605(a)(7) and any related interest, costs, and attorneys fees, and (2) all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

"I understand that the relinquishment that I make in the event of any pro rata distribution is irrevocable once the payment is credited to the bank account I have identified in this application. I further agree and acknowledge that, pursuant to section 2002(c), once the payment is credited to the bank account I have identified in this application, and to the extent such payment is made under section 2002(b)(2)(B), the United States shall be subrogated and assigned, to the extent of such payment, to my rights as a judgment creditor, and to the rights, if any, of any other person or entity to whom payments are made (collectively "payees"), against the debtor foreign state. Such subrogation and assignment of payees' rights as judgment creditors is binding on their guardians, heirs, executors, administrators or assigns.

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (insert date)."

(B) "I, _____ (insert name of Applicant), elect to receive 100 percent of the amount awarded to me as compensatory damages, amounts necessary to pay post-judgment interest under 28 U.S.C. 1961, and, where applicable, amounts awarded as judicial sanctions on or in connection with the claim or claims I brought under 28 U.S.C. 1605(a)(7). By so electing, as required by section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, P.L. No. 106–386 as amended by section 686 of the Foreign Relations Authorization Act, Fiscal Year 2003, Public Law No. 107–228, and as further amended by section 201 of the Terrorism Risk Insurance Act of 2002, Public Law No. 107–297 ("section 2002"), I relinquish (a) all claims and rights to compensatory damages and amounts awarded as judicial sanctions under such judgments and any related interest, costs, and attorneys fees, and (b) all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal, that is the subject of awards rendered by such tribunal, or that is subject to 28 U.S.C. 1610(f)(1)(A). In relinquishing these above-mentioned claims and rights, I recognize that I relinquish any rights to seek writs of attachment, execution, or garnishment, or any other form of post-judgment process directed against property that is at issue in claims against the United States before an international tribunal, that is the subject of awards rendered by such tribunal, or that is subject to 28 U.S.C. 1610(f)(1)(A) and intended to obtain partial or complete satisfaction of any amounts awarded in connection with the claim or claims under 28 U.S.C. 1605(a)(7) for which I am electing to receive payment.

"I understand that this relinquishment is irrevocable once the payment is credited to the bank account I have identified in this application. I further agree and acknowledge that, pursuant to section 2002(c), once the payment is credited to the bank account I have identified in this application, and to the extent such payment is made under section 2002(b)(2)(B), the United States shall be fully subrogated and assigned to all of my rights as a judgment creditor, and to the rights, if any, of any other person or entity to whom payments are made (collectively "payees"), against the debtor foreign state. Such subrogation and assignment of payees' rights as judgment creditors is binding on their guardians, heirs, executors, administrators or assigns.

"In the event that the Secretary of the Treasury determines that 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in judgments issued as of November 26, 2002, in cases identified in section 2002(a)(2)(A) with respect to Iran, I understand that the payment that I receive will be less than the full amount of compensatory damages awarded to me and that such payment will not include amounts necessary to pay post-judgment interest under 28 U.S.C. 1961. In that event, the relinquishment set forth above shall be null and void and, in lieu thereof, as required by section 2002(d)(5), I hereby relinquish (1) all rights and claims to punitive damages awarded in connection with the claim or claims I brought under 28 U.S.C. 1605(a)(7) and any related interest, costs, and attorneys fees, and (2) all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

"I understand that the relinquishment that I make in the event of any pro rata distribution is irrevocable once the payment is credited to the bank account I have identified in this application. I further agree and acknowledge that, pursuant to section 2002(c), once the payment is credited to the bank account I have identified in this application, and to the extent such payment is made under section 2002(b)(2)(B), the United States shall be subrogated and assigned, to the extent of such payment, to my rights as a judgment creditor, and to the rights, if any, of any other person or entity to whom payments are made (collectively "payees"), against the debtor foreign state. Such subrogation and assignment of payees' rights as judgment creditors is binding on their guardians, heirs, executors, administrators or assigns.

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (insert date)."

(4) In addition, all Applicants shall submit the following declaration, which, pursuant to 28 U.S.C. 1746, must be signed by the applicant and, if the payee is different from the applicant, the payee.

"I/We &_____, (insert name of Applicant) and & _____ (insert name of payee, if different from Applicant) am/are entitled to the entire amount to be paid in this application. No other person, corporation, law firm, or other entity whatsoever either claims or is otherwise entitled to receive any portion of this payment from the United States of America. If any other person, corporation, law firm, or other entity (a "Third Party") is ever determined by a final judgment of a court of the United States to be entitled to all or part of the payment made to the Applicant and payee (as named above), we (the Applicant and payee) promise immediately to reimburse, with interest, the United States for whatever amount of money is paid by it to a Third Party, and agree further to indemnify and hold harmless the United States for any such claims for payment asserted by a Third Party against the United States.

"I/we declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (insert date)."

Part 4. Sources of Funds for Payment

Section 2002 specifies the sources and amount of funds available for the payments authorized by that section.

See section 2002(b). For purposes of funding payments in connection with judgments and sanctions against Cuba, section 2002 provides that the President shall vest and liquidate up to and not exceeding the amount of property of the Government of Cuba and sanctioned entities in the United States or any commonwealth, territory, or possession thereof that has been blocked pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, or regulation issued thereunder. It further provides that for the purposes of paying amounts for judicial sanctions, payment shall be made from funds or accounts subject to sanctions as of April 18, 2000, or from blocked assets of the Government of Cuba. See section 2002(b)(1).

For purposes of funding payments in connection with judgments against Iran, section 2002 provides that the Secretary shall make payments from amounts paid and liquidated from (a) rental proceeds accrued on the date of the enactment of the VTVPA from Iranian diplomatic and consular property located in the United States, and (b) funds not otherwise made available in an amount not to exceed the total of the amount in the Iran Foreign Military Sales Program account within the Foreign Military Sales Fund on the date of the enactment of the VTVPA to the extent provided by section 2002(b)(2)(B). The amount of funds made available by (a), above, will be determined based in part on information provided by the Department of State. The amount of funds initially made available by (b), above, was determined based on information provided by the Department of Defense.

Part 5. Payments to Applicants

Payments described in this Part are made pursuant to section 2002(d).

(a) Judgments issued as of November 26, 2002

(1) Following the expiration of the period for submitting claims as described in Part 2 of this notice, the Secretary promptly will determine whether 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in eligible final judgments issued as of November 26, 2002, to Applicants. See section 2002(d)(1)(A).

(2) In the event that the Secretary determines that 90 percent of the amounts available to be paid under section 2002(b)(2) are inadequate to pay the total amount of compensatory damages awarded in eligible final judgments issued as of November 26, 2002 to Applicants in cases identified in section 2002(a)(2)(A) with respect to Iran, the Secretary will, not later than 60 days after making such determination, make payment from such amounts available to be paid under section 2002(b)(2) to each Applicant to which such a judgment has been issued in an amount equal to a share, calculated under section 2002 (d)(1)(B), of 90 percent of the amounts available to be paid under section 2002 (b)(2) that have not been subrogated to the United States under section 2002 as of November 26, 2002.

(3) The share that is payable to an Applicant under (a) of this Part 5, including any Applicant issued a final judgment as of November 26, 2002, in a suit filed on a date added by the amendment made by section 686 of Public Law 107–228, shall be equal to the proportion that the amount of unpaid compensatory damages awarded in a final judgment issued to that Applicant bears to the total amount of all unpaid compensatory damages awarded to all Applicants to whom such judgments have been issued as of November 26, 2002, in cases identified in section 2002(a)(2)(A) with respect to Iran.

(b) Subsequent Judgment

The Secretary will pay to any Applicant awarded a final judgment after November 26, 2002, in the case filed on January 16, 2002, and identified in section 2002 (a)(2)(A) with respect to Iran, an amount equal to a share, calculated under section 2002(d)(2)(B), of the balance of the amounts available to be paid under section 2002(b)(2) that remain following the disbursement of all payments as described in (a) of this Part 5. The Secretary will make such payment not later than 30 calendar days after such judgment becomes final. To the extent that funds are available, the amount paid to such Applicant will be the amount the Applicant would have been paid as described in (a) of this Part 5 if the Applicant had been awarded the judgment prior to November 26, 2002.

(c) Additional Payments

(1) Not later than 30 calendar days after the disbursement of all payments described in (a) and (b) of this Part 5, the Secretary will make an additional payment to each Applicant who received a payment under (a) or (b) of this Part 5 in an amount equal to a share, calculated as described below, of the balance of the amounts available to be paid under section 2002(b)(2) that remain following the disbursement of all payments as described in (a) and (b) of this Part 5.

(2) The share payable to each such Applicant shall be equal to the proportion that the amount of compensatory damages awarded that Applicant bears to the total amount of all compensatory damages awarded to all Applicants who received a payment as described in (a) or (b) of this Part 5.

Part 6. Available Funds for Iran-Related Claims

Congress has directed that payments of eligible Iran-related claims pursuant to section 2002 be made from the following two sources of funds:

(2) Judgments Against Iran.—For purposes of funding payments under subsection (a) in the case of judgments against Iran, the Secretary of the Treasury shall make such payments from amounts paid and liquidated from—

(A) rental proceeds accrued on the date of the enactment of this Act from Iranian diplomatic and consular property located in the United States; and

(B) funds not otherwise made available in an amount not to exceed the total of the amount in the Iran Foreign Military Sales Program account within the Foreign Military Sales Fund on the date of the enactment of this Act.

Section 2002(b)(2).

With respect to the funds referred to in section 2002(b)(2)(A), the Treasury anticipates that approximately $7.8 million in rental proceeds accrued as of October 28, 2000, from Iranian diplomatic and consular property located in the United States will be available for the payment of the eligible claims filed with the Treasury after November 26, 2002, including but not limited to any claims re-filed with the Treasury after having been denied prior to November 26, 2002.

With respect to the funds referred to in section 2002(b)(2)(B), the Treasury anticipates that approximately $14 million will be available for the payment of the eligible claims filed with the Treasury after November 26, 2002, pursuant to section 2002, including but not limited to any claims re-filed with the Treasury after having been denied prior to November 26, 2002.

With respect to the funds referred to in section 20029b)(2)(A), the Treasury anticipates that approximately $14 million will be available for the payment of the eligible claims filed with the Treasury after November 26, 2002, pursuant to section 2002, including but not limited to any claims re-filed with the Treasury after having been denied prior to November 26, 2002.

Part 7. Notice Requirements Inapplicable

This notice advises applicants of the availability of funds pursuant to section 2002 and explains the nature of the information and documentation requirements established by that section. Accordingly, it has been determined that notice and public procedure are not required pursuant to 5 U.S.C. 553(a). Moreover, notice and public procedure are unnecessary pursuant to 5 U.S.C. 553(b)(B) because this notice merely explains the requirements of section 2002 and does not affect the substantive rights of applicants under that section. Notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B) because section 2002 requires that payments be made "promptly," see section 2002(a)(1), and it is in the public interest to establish the procedures to request payments without delay.

Part 8. Paperwork Reduction Act

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget (OMB) pursuant to section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 1505–0177. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection that does not display a currently valid OMB control number. The collection of information specified in this notice is required to enable the Department of the Treasury to determine the eligibility of an applicant under section 2002. The collection of information is voluntary, but it is required to obtain a payment authorized by section 2002. The estimated average burden per applicant is 3 hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the agency contact specified earlier in this notice and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

The figures provided above are only estimates of amounts available and may be subject to change.

Dated: February 7, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 12, 2003.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–3925 Filed 2–13–03; 1:47 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0227]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration; Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the burden estimates relating to customer satisfaction surveys.

The purpose of this submission is to request a revision of a currently approved data collection under 2900–0227. VA plans to incorporate a revision of Part II (Census of Health of Veterans, SF 36 and VA Forms 10–21034 and 20–20134a through f) of the former 2900–0609. The consolidation of these existing data collections will decrease the public's reporting burden. These voluntary customer service surveys meet the requirements of Executive Order 12862, Setting Customer Service Standards.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 21, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov*. Please refer to "OMB Control No. 2900–0609" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Nation-wide Customer Satisfaction Surveys.

OMB Control Number: 2900–0227.

Type of Review: Revision of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and Departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. VHA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VHA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households.

Titles:

a. Prosthetics Care and Service, VA Form 10–0142b.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3.

d. Food Service and Nutritional Care Analysis, VA Form 10–5387.

OMB Control Number: 2900–0227.

Type of Review: Revision of a currently approved collection.

Abstract: Most customer satisfaction surveys will be recurring so that VHA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the

minimum amount of information necessary to determine customer needs and to evaluate VHA's performance.

The areas of concern to VHA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys and focus groups. Participation in the surveys will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. VHA will consult with OMB regarding each specific information collection during this approval period.

Affected Public: Individuals or Households.

Estimated Annual Burden: 207,287 hours.

a. Prosthetics Care and Service, VA Form 10–0142b — 7,200.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1 — 35,000.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3 — 160,500.

d. Food Service and Nutritional Care Analysis, VA Form 10–5387 — 4,587.

Estimated Average Burden Per Respondent: 23 minutes.

a. Prosthetics Care and Service, VA Form 10–0142b — 24 minutes.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1 — 30 minutes.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3 — 30 minutes.

d. Food Service and Nutritional Care Analysis, VA Form 10–5387 — 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 546,600.

a. Prosthetics Care and Service, VA Form 10–0142b — 18,000.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1 — 70,000.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3 — 321,000.

d. Food Service and Nutritional Care Analysis, VA Form 10–5387 — 137,600.

Dated: February 5, 2003.

By direction of the Secretary.

Martin Hill,

Management Analyst, Records Management Service.

[FR Doc. 03–4003 Filed 2–18–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 33

Wednesday, February 19, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[ID–02–002; FRL–7422–3]

Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho

Correction

In the issue of Wednesday, February 12, 2003, on page 7174, in the third column, in the correction of rule document 03–856, under **§ 81.313 [Corrected]**, in the first line, "§ 83.313" should read " § 81.313".

[FR Doc. C3–856 Filed 2–18–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
February 19, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rio Grande Silvery Minnow; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH91

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rio Grande Silvery Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*) (silvery minnow), an endangered species under the Endangered Species Act of 1973, as amended (Act). On June 6, 2002, we proposed that 212 miles (mi) (339 kilometers (km)) be designated as critical habitat for the silvery minnow. The silvery minnow critical habitat designation in the Rio Grande extends from Cochiti Dam, Sandoval County, New Mexico (NM) downstream to the utility line crossing the Rio Grande, a permanent identified landmark in Socorro County, NM, a total of approximately 157 mi (252 km), referred to as the "middle Rio Grande." The designation also includes the tributary Jemez River from Jemez Canyon Dam in NM to the upstream boundary of Santa Ana Pueblo, which is not included. The critical habitat designation defines the lateral extent (width) as those areas bounded by existing levees or, in areas without levees, 300 feet (ft) (91.4 meters (m)) of riparian zone adjacent to each side of the bankfull stage of the middle Rio Grande. The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta within this area are not included in the final critical habitat designation. Except for these areas, the final remaining portion of the silvery minnow's occupied range in the middle Rio Grande in NM is being designated as critical habitat. This publication also provides notice of the availability of the final economic analysis and the final Environmental Impact Statement (EIS) for this final rule.

This final rule and EIS are being issued pursuant to a court order. On November 21, 2000, the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt*, 206 F. Supp. 2d 1156 (D.N.M. 2000), set aside the July 6, 1999, critical habitat designation for the minnow and ordered us to issue both an EIS pursuant to the National Environmental Policy Act (NEPA) and a new proposed rule designating critical habitat for the silvery minnow.

DATES: This final rule is effective March 21, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113.

You may obtain copies of the final rule, the economic analysis, or the final EIS from the field office address above or by calling 505–346–2525. All documents are also available from our Web site at *http://ifw2es.fws.gov/Library/*.

If you would like copies of the regulations on listed wildlife or have questions about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section above); telephone: 505–346–2525. Division of Endangered Species (see **ADDRESSES** section above); telephone 505–248–6920; facsimile 505–248–6788.

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980). The species was first described by Girard (1856) from specimens taken from the Rio Grande near Fort Brown, Cameron County, TX. It is a stout silvery minnow with moderately small eyes and a small, slightly oblique mouth. Adults may reach 3.5 inches (in) (90 millimeters (mm)) in total length (Sublette *et al.* 1990). Its dorsal fin is distinctly pointed with the front of it located slightly closer to the tip of the snout than to the base of the tail. The fish is silver with emerald reflections. Its belly is silvery white, its fins are plain, and barbels are absent (Sublette *et al.* 1990).

This species was historically one of the most abundant and widespread fishes in the Rio Grande Basin, occurring from Española, NM, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, NM, downstream to its confluence with the Rio Grande (Pflieger 1980). The silvery minnow is extirpated from the Pecos River and also from the Rio Grande downstream of Elephant Butte Reservoir and upstream of Cochiti Reservoir (Bestgen and Platania 1991). The current distribution of the silvery minnow is limited to the Rio Grande between Cochiti Dam and Elephant Butte Reservoir. Throughout much of its historic range, the decline of the silvery minnow has been attributed to modification of the flow regime (hydrological pattern of flows that vary seasonally in magnitude and duration, depending on annual precipitation patterns such as runoff from snowmelt) and channel drying resulting from impoundments, water diversion for agriculture, stream channelization, and perhaps both interactions with non-native fish and decreasing water quality (Cook *et al.* 1992; Bestgen and Platania 1991; Service 1999; Buhl 2001).

Much of the species' life history information detailed below comes from studies conducted within the middle Rio Grande, the current range of the silvery minnow. Nevertheless, we believe that our determinations for other areas outside of the middle Rio Grande, but within the historic range of the silvery minnow, are consistent with the data collected to date on the species' ecological requirements (*e.g.*, Service 1999).

The role of the plains minnow (*Hybognathus placitus*) in the decline and extirpation of the silvery minnow from the Pecos River is uncertain; however, the establishment of the plains minnow coincided with the disappearance of the silvery minnow from the Pecos River (Bestgen and Platania 1991; Cook *et al.* 1992). Cook *et al.* (1992) believed that the non-native plains minnow was introduced into the Pecos drainage prior to 1964, and was probably the result of the release of "bait minnows" collected from the Arkansas River drainage. It is unclear, however, if populations of the native silvery minnow were depleted prior to the introduction of the plains minnow, or if the reduction and extirpation of the silvery minnow was a consequence of the interactions between the two species (C. Hoagstrom, U.S. Fish and Wildlife Service, pers. comm. 2001). One theory is that the plains minnow may be more tolerant of modified habitats and, therefore, was able to replace the silvery minnow in the degraded reaches of the Pecos River. Nevertheless, the plains minnow has experienced population declines within its native range from highly variable water levels, unstable streambeds, and fluctuating water temperatures (Cross *et al.* 1985, cited in Taylor and Miller 1990). Although the interactions (*e.g.*, hybridization or competition) between the silvery minnow and the introduced plains minnow are believed by some to be one of the primary causes for the extirpation of the silvery minnow in the Pecos River, this hypothesis is unsubstantiated (Hatch *et al.* 1985; Bestgen *et al.* 1989; Cook *et al.* 1992). Currently, New Mexico State University is conducting research on the plains minnow and silvery minnow to determine if the two species hybridize. These studies are ongoing and results should be available in 2003 (C. Caldwell, U.S. Geological Survey, Biological Resources Division pers. comm. 2002).

Within its native range, the plains minnow is sympatric (occurs at the same localities) with other species of *Hybognathus*, but is separated ecologically from them. For example, the plains minnow is found in the main river channel where the substrate is predominantly sand, whereas related species such as the western silvery minnow (*Hybognathus argyritis*) predominate in backwaters and protected areas with little to no current and sand or silt substrate (Pflieger 1997). Consequently, if the silvery minnow and plains minnow do not hybridize, they may be ecologically segregated and able to co-exist.

The plains minnow and silvery minnow appear to have little in the way of behavioral or physiological isolating mechanisms and may hybridize (Cook *et al.* 1992); yet the combined effects of habitat degradation (*i.e.*, modification of the flow regime, channel drying, water diversion, and stream channelization) may be another potential explanation for the silvery minnow's extirpation from the Pecos River (Bestgen and Platania 1991; C. Hoagstrom, pers. comm. 2001). We acknowledge that no conclusive data exist to determine the cause of extirpation of the silvery minnow from the Pecos River.

The silvery minnow has also been extirpated from the Rio Grande downstream of Elephant Butte Reservoir, NM, to the Gulf of Mexico, Texas (TX), including the river reach within Big Bend National Park (Hubbs *et al.* 1977; Bestgen and Platania 1991). Reasons for the species' extirpation in the lower Rio Grande are also uncertain. The last documented collection of a silvery minnow in the Big Bend area was 1961, but reexamination of that specimen revealed it was a plains minnow (Bestgen and Propst 1996). Therefore, the last silvery minnow from the lower Rio Grande was apparently collected in the late 1950s (Trevino-Robinson 1959; Hubbs *et al.* 1977; Edwards and Contreras-Balderas 1991).

Prior to measurable human influence on the middle Rio Grande, starting in the 1300's, (Biella and Chapman 1977), the Rio Grande was a perennially flowing, aggrading river with a shifting sand substrate. In general, the river was slightly sinuous and braided, and freely migrated across the floodplain. Strong evidence now suggests that the middle Rio Grande started drying up on a fairly regular basis only after the development of Colorado's San Luis Valley in the 1870's. Prior to this, there are only two examples of its flow ceasing, during prolonged, severe droughts in 1752 and 1861. Over the past century, and particularly in the last few decades, the middle Rio Grande has been frequently dewatered, particularly in the river reach from Isleta Diversion Dam to the San Acacia Diversion Dam (Isleta reach) and the reach from San Acacia Diversion Dam to Elephant Butte Reservoir (San Acacia reach) (Middle Rio Grande Conservancy District (MRGCD) 1999; Scurlock and Johnson 2001; Scurlock 1998).

Decline of the species in the middle Rio Grande probably began in 1916 when the gates of Elephant Butte Dam were closed. Construction of the dam signaled the beginning of an era of dam construction on the mainstem Rio Grande that resulted in five major mainstem dams within the silvery minnow's historic range (Shupe and Williams 1988). These dams (Cochiti, Elephant Butte, Caballo, International Amistad, and International Falcon) allowed manipulation and diversion of the river's flow. Often this manipulation severely altered the flow regime and likely precipitated the decline of the silvery minnow (Bestgen and Platania 1991). Water management and use has resulted in a large reduction of suitable habitat for the silvery minnow. Lack of water is likely the single most important limiting factor for the survival of the species (Service 1999). Agriculture accounts for 90 percent of the water consumption in the middle Rio Grande (Bullard and Wells 1992). The average annual diversion of water in the middle Rio Grande by the MRGCD was 535,280 acre-feet (af) for the period from 1975 to 1989 (U.S. Bureau of Reclamation (BOR) 1993). The silvery minnow historically survived low flow periods because such events were infrequent and of lesser magnitude, and there were no diversion dams to restrict free movement of silvery minnows in the river (59 FR 36988). Concurrent with construction of the mainstem dams was an increase in the abundance of non-native fish (largemouth bass (*Micropterus salmoides*), smallmouth bass (*M. dolomieu*)) as these species were stocked into the reservoirs created by the dams (*e.g.*, Cochiti Reservoir) (Sublette *et al.* 1990). Once established, these species often completely replaced the native fish fauna (Propst *et al.* 1987; Propst 1999).

Development of agriculture and the growth of cities within the historic range of the silvery minnow resulted in a decrease in the quality of river water caused by municipal and agricultural runoff (*i.e.*, sewage and pesticides) that may have also adversely affected the range and distribution of the silvery minnow. Historically there were four other small native fish species (speckled chub (*Macrohybopsis aestivalis*); Rio Grande shiner (Notropis jemezanus); phantom shiner (*Notropis orca*); and Rio Grande bluntnose shiner (*Notropis simus simus*)) within the middle Rio Grande that had similar reproductive attributes, but these species are now either extinct or extirpated (Platania 1991).

The various life history stages of the silvery minnow require shallow waters with a sandy and silty substrate that is generally associated with a meandering river that includes sidebars, oxbows, and backwaters (C. Hoagstrom, pers. comm, 2001; Bestgen and Platania 1991; Platania 1991). However, physical modifications to the Rio Grande over the last century—including the construction of dams, levees, and channelization of the mainstem—have altered much of the habitat that is necessary for the species to persist (Service 1999). Channelization has straightened and shortened mainstem river reaches; increased the velocity of the current; and altered riparian vegetation, instream cover, and substrate composition (BOR 2001a). Adult silvery minnows occur in shallow braided runs over sand substrate, but rarely in habitat with substrate of gravel or cobble (Platania 1991; Dudley and Platania 1997; Platania and Dudley 1997; Remshardt *et al.* 2001).

The silvery minnow is a pelagic spawning species; *i.e.*, its eggs flow in the water column. The silvery minnow is the only surviving small, native pelagic spawning minnow in the middle Rio Grande, and its range has been reduced to only 5 percent of its historic extent. Although the silvery minnow is a hearty fish, capable of withstanding many of the natural stresses of the desert aquatic environment, most individual silvery minnows live only one year (Bestgen and Platania 1991). Thus, a successful annual spawn is key to the survival of the species (Platania and Hoagstrom 1996; Service 1999; Dudley and Platania 2001, 2002b). The

silvery minnow's range has been so greatly restricted that the species is extremely vulnerable to catastrophic events, such as a prolonged period of low or no flow (*i.e.*, the loss of all surface water) (59 FR 36988; Dudley and Platania 2001).

In the middle Rio Grande, the spring runoff coincides with and may trigger the silvery minnow's spawn (Platania and Hoagstrom 1996; Service 1999; Dudley and Platania 2001). For example, 1,850 cubic feet per second (cfs) of water was released from Cochiti Reservoir on May 13, 2002, to provide for silvery minnow spawning. Following the release, a significant spawning event occurred in the middle Rio Grande. During a spawn, semibuoyant (floating) eggs drift downstream in the water column (Smith 1999; Dudley and Platania 2001) (see "Primary Constituent Elements" section of this final rule for further information on spawning). However, diversion dams are believed to act as instream barriers and prevent silvery minnows from moving upstream after hatching (Service 2001b; Dudley and Platania 2001; 2002a). In fact, the continued downstream displacement and decline of the silvery minnow in the middle Rio Grande is well documented (Dudley and Platania 2001).

During the irrigation season (approximately March 1 to October 31 of each year) in the middle Rio Grande, silvery minnow often become stranded in the diversion channels (or irrigation ditches), where they are unlikely to survive (Smith 1999; Lang and Altenbach 1994). For example, when the irrigation water in the diversion channels is used on agricultural fields, the possibility for survival of silvery minnows in the irrigation return flows (excess irrigation water that flows from agricultural fields and is eventually returned to the river) is low, because silvery minnows perish in canals because of unsuitable habitat, dewatering, or predation (Lang and Altenbach 1994). Unscreened diversion dams also entrain (trap) silvery minnow fry (fish that have recently emerged from eggs) and semibuoyant eggs (Smith 1998; 1999). However, some irrigation water is returned to the river via irrigation waterways in the reach of the middle Rio Grande from the Isleta reach, which helps sustain flow in certain segments of this reach. Nevertheless, we do not have evidence that these riverside drains offer suitable refugia for the silvery minnow.

Perhaps even more problematic for the silvery minnow in the middle Rio Grande are drought years during the irrigation season when there may be little supplemental water (water that is used to augment river flows) available. Compounding this problem is stream bed aggradation (*i.e.*, the river bottom is rising due to sedimentation) below San Acacia, NM, where the bed of the river is now perched above the bed of the low flow conveyance channel (LFCC). The LFCC is immediately adjacent to and parallels the Rio Grande for approximately 75 mi (121 km) and was designed to expedite delivery of water to Elephant Butte Reservoir, pursuant to the Rio Grande Compact of 1939. The LFCC diverted water from the Rio Grande from 1959 to 1985. Because the river bed is now above the LFCC, waters in the mainstem of the river are drained from the river bed into the LFCC. The LFCC has the capacity to take approximately 2,000 cfs of the river's flow, via gravity. If natural river flow is 2,000 cfs or less, the LFCC can dewater the Rio Grande from its heading at the San Acacia Diversion Dam south to Elephant Butte Reservoir.

However, the LFCC has not been fully operational since 1985 because of siltation of the lower end (*i.e.*, stream bed aggradation) at Elephant Butte Reservoir. Even without water diversion into the LFCC, seepage from the river to the LFCC is occurring and causing some loss of surface flows in the river channel (BOR 2001a). In effect, water is drained from the Rio Grande into the LFCC thereby resulting in water losses in the reach from the San Acacia reach. During some years this can result in prolonged recurring periods of low or no flow.

It is believed that, historically, the silvery minnow was able to withstand periods of drought primarily by retreating to pools and backwater refugia, and swimming upstream to repopulate upstream habitats (Deacon and Minckley 1974; J. Smith, U.S. Fish and Wildlife Service, pers. comm. 2001). Platania (1995) posits that after prolonged recurring periods of low or no flow the silvery minnow may have been able to repopulate downstream habitat the following year because eggs drifted from upstream populations (Platania 1995). Although able to survive droughts historically through such movements, the present-day middle Rio Grande dries and dams prevent upstream movement. As a result silvery minnows can become trapped in dewatered reaches and may die in isolated pools before the river becomes wetted again. The inability of the population to find adequate refugia during prolonged recurring periods of low or no flow and to repopulate extirpated reaches creates a very unstable population (Service 2001b).

In some isolated pools, Smith and Hoagstrom (1997) and Smith (1999) documented complete mortality of silvery minnows in the middle Rio Grande in both 1996 and 1997 during prolonged periods of low or no flow. These studies documented both the relative size of the isolated pool (*i.e.*, estimated surface area and maximum depth) in relation to pool longevity (*i.e.*, number of days the isolated pool existed) and the fish community within isolated pools. Isolated pools found during these conditions typically only lasted for about 48 hours before drying up completely (Smith 1999). Those isolated pools that persisted longer than 48 hours lost greater than 81 percent of their estimated surface area and greater than 26 percent of their maximum depth within 48 hours. Moreover, isolated pools receive no surface inflow, water temperatures increase, and dissolved oxygen decreases; depending on location, size, and duration of the prolonged recurring periods of low or no flow, these factors may result in the death of all fish (Tramer 1977; Mundahl 1990; Platania 1993b; Ostrand and Marks 2000; Ostrand and Wilde 2001). Therefore, when periods of low or no flow are longlasting (over 48 hours), complete mortality of silvery minnows in isolated pools can occur.

Formation of isolated pools also increases the risk of predation of silvery minnows in drying habitats. Predators, primarily fish and birds, have been observed in high numbers in the middle Rio Grande, consuming fish in drying, isolated pools where those fish become concentrated and are more vulnerable to predation (J. Smith, pers. comm. 2001).

The potential for prolonged recurring periods of low or no flow in the middle Rio Grande becomes particularly significant for the silvery minnow below the San Acacia Diversion Dam, where most silvery minnows have been recently captured. In the river reach above (north of) the San Acacia Diversion Dam, return flows from current irrigation operations and other activities are routed back into the mainstem of the middle Rio Grande. At times, this can provide a fairly consistent flow in particular stretches of the Isleta reach. However, at the San Acacia Diversion Dam, once diversions are made (*i.e.*, to irrigation canals, as well as seepage losses to the LFCC) the return flows continue in off-river channels (with a few exceptions at Brown's Arroyo and the 10-mile outfall of the LFCC) until they enter Elephant Butte Reservoir. Thus, unlike in the Isleta reach, the silvery minnow does not receive the benefit of irrigation return flows in the San Acacia reach.

Previous Federal Action

We proposed to list the silvery minnow as an endangered species with critical habitat on March 1, 1993 (58 FR 11821). The comment period, originally scheduled to close on April 30, 1993, was extended to August 25, 1993 (58 FR 19220; April 13, 1993). That extension allowed us to conduct public hearings and to receive additional public comments. Public hearings were held in Albuquerque and Socorro, NM, on the evenings of June 2 and 3, 1993, respectively. After a review of all comments received in response to the proposed rule, we published the final rule to list the silvery minnow as endangered on July 20, 1994 (59 FR 36988).

Section 4(a)(3) of the Act requires that the Secretary, to the maximum extent prudent and determinable, designate critical habitat at the time a species is listed as endangered or threatened. Our regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. At the time the silvery minnow was listed, we found that critical habitat was not determinable because there was insufficient information to allow us to perform the required analyses of the impacts of the designation.

We contracted for an economic analysis of the proposed critical habitat designation in September 1994, and a draft analysis was prepared and provided to us on February 29, 1996. The draft document was then provided to all interested parties on April 26, 1996. That mailing included 164 individuals and agencies, all affected Pueblos in the valley, all county commissions within the occupied range of the species, and an additional 54 individuals who had attended the public hearings on the proposed listing and who had requested that they be included on our mailing list, particularly for the economic analysis. At that time, we notified the public that, because of a moratorium on final listing actions and determinations of critical habitat imposed by Public Law 104–6, no work would be conducted on the analysis or on the final decision concerning critical habitat. However, we solicited comments from the public and agencies on the document for use at the time such work resumed.

On April 26, 1996, the moratorium was lifted. Following the waiver of the moratorium, we reactivated the listing program that had been shut down for over a year and faced a backlog of 243 proposed species listings. In order to address that workload, we published, on May 16, 1996, our Listing Priority Guidance for the remainder of Fiscal Year 1996 (61 FR 24722). That guidance identified the designation of critical habitat as the lowest priority upon which we could expend limited funding and staff resources. Subsequent revisions of the guidance for Fiscal Years 1997 (December 5, 1996; 61 FR 64475) and for 1998–1999 (May 8, 1998; 63 FR 25502) retained critical habitat as the lowest priority for the listing program within the Service. Thus, no work resumed on the economic analysis.

On February 22, 1999, in *Forest Guardians* v. *Babbitt*, Civ. No. 97–0453 JC/DIS, the United States District Court for the District of New Mexico ordered us to publish a final determination with regard to critical habitat for the silvery minnow within 30 days. The deadline was subsequently extended by the court to June 23, 1999. On July 6, 1999, we published a final designation of critical habitat for the silvery minnow (64 FR 36274), pursuant to the court order.

On November 21, 2000, the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt*, 206 F. Supp. 2d 1156 (D.N.M. 2000), set aside the July 6, 1999, critical habitat designation because we had not issued an EIS, hence we were ordered to issue both an EIS pursuant to the National Environmental Policy Act (NEPA) and a new proposed rule designating critical habitat for the silvery minnow. This final rule and the EIS are being issued pursuant to that court order.

On April 5, 2001, we mailed approximately 500 copies of a preproposal notification letter to the 6 middle Rio Grande Indian Pueblos (Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta), various governmental agencies, interested individuals, and the New Mexico Congressional delegation. The letter informed them of our intent to prepare an EIS for the proposed designation of critical habitat for the silvery minnow and announced public scoping meetings pursuant to NEPA. On April 17, 23, 24, and 27, 2001, we held public scoping meetings in Albuquerque, NM; Carlsbad, NM; Fort Stockton, TX; and Socorro, NM, respectively. We solicited oral and written comments and input. We were particularly interested in obtaining additional information on the status of the species or information concerning threats to the species. The comment period closed June 5, 2001.

We received approximately 40 comments during the EIS scoping process. During April 2001, we contracted with Industrial Economics Incorporated for an economic analysis and the Institute of Public Law at the University of New Mexico School of Law for an EIS on the proposed critical habitat designation.

Following the closing of the scoping comment period, we outlined possible alternatives for the EIS. We held a meeting on September 12, 2001, to solicit input on the possible alternatives from the Rio Grande Silvery Minnow Recovery Team (Recovery Team) and other invited participants including individuals from the Carlsbad Irrigation District, Fort Sumner Irrigation District, the States of New Mexico and Texas, and potentially affected Pueblos and Tribes. Following this meeting, we sent letters to the Recovery Team and other invited participants, including Tribal entities and resource agencies in NM and TX, to solicit any additional information (particularly biological, cultural, social, or economic data) that may be pertinent to the economic analysis or EIS. We received 10 comments in response to our requests for additional information. We fully considered the information provided in the comment letters as we developed the alternatives analyzed in the draft EIS, which included the proposed rule as our preferred alternative.

On June 6, 2002, we proposed that 212 mi (339 km) be designated as critical habitat for the silvery minnow (67 FR 39206). The comment period for the proposed rule, draft EIS, and draft Economic Analysis was originally scheduled to close on September 4, 2002, but was extended until October 2, 2002 (67 FR 57783).

In this final rule, we determine that a river reach in the lower Rio Grande in Big Bend National Park downstream of the park boundary to the Terrell/Val Verde County line, TX (lower Rio Grande), and a river reach in the middle Pecos River, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM (middle Pecos River), are essential to the conservation of the silvery minnow. However, these areas are not designated as critical habitat because of our analysis under section 4(b)(2) (*see* "Exclusions Under Section 4(b)(2) of the Act" section of this rule). This critical habitat designation includes the middle Rio Grande from Cochiti Dam to the utility line crossing the Rio Grande just east of the Bosque Well as demarcated on USGS Paraje Well 7.5 minute quadrangle (1980), Socorro County, NM, with the Universal Transverse Mercator

(UTM) coordinates of UTM Zone 13: 311474 E, 3719722 N, as referenced with the 1927 North American Datum (NAD27). The designation also includes the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, which is not included (*see* the "Regulation Promulgation" section of this rule for exact descriptions of boundaries of critical habitat), and no other reaches within the historic range of the silvery minnow. We have also not included four areas of the middle Rio Grande in the critical habitat because of Tribal management plans and other relevant issues (*see* "Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section of this rule). Therefore, we are only designating some sections of the river reaches currently occupied by the silvery minnow.

This final rule is selected as the preferred alternative in the final EIS, pursuant to NEPA, which we were required to prepare under court order from the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt*, 206 F. Supp. 2d 1156 (D.N.M. 2000). The two reaches referenced above (*i.e.*, middle Pecos River and lower Rio Grande) were also analyzed in the EIS and Economic Analysis. We followed the procedures required by the Act, NEPA, and the Administrative Procedure Act during this Federal rulemaking process. Therefore, we solicited public comment on all reaches identified in the proposed rule as essential, including whether any of these or other areas should be excluded from the final designation pursuant to section 4(b)(2). As required by law, we have considered all comments received on the proposed rule, the draft EIS, and the draft economic analysis before making this final determination.

Recovery Plan

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting the species, and estimate time and cost for implementing the recovery measures needed. Although a recovery plan is not a regulatory document (*i.e.*, recovery plans are advisory documents because there are no specific protections, prohibitions, or requirements afforded to a species solely on the basis of a recovery plan), the information contained in the Rio Grande Silvery Minnow Recovery Plan (Recovery Plan) was considered in developing this critical habitat designation.

On July 1, 1994, the Recovery Team was established by the Service pursuant to section 4(f)(2) of the Act and our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (July 1, 1994; 59 FR 34272). Stakeholder involvement in the development of recovery plans helps minimize the social and economic impacts that could be associated with recovery of endangered species. Numerous individuals, agencies, and affected parties were involved in the development of the Recovery Plan or otherwise provided assistance and review (Service 1999). On July 8, 1999, we finalized the Recovery Plan (Service 1999), pursuant to section 4(f) of the Act.

The Recovery Plan recommends recovery goals for the silvery minnow, as well as procedures to better understand the biology of the species. The primary goals of the Recovery Plan are to: (1) Stabilize and enhance populations of silvery minnow and its habitat in the middle Rio Grande valley and (2) reestablish the silvery minnow in at least three other areas of its historic range (Service 1999). The reasons for determining that these three areas were necessary for recovery include: (1) Consideration of the biology of the species [*e.g.*, few silvery minnows live more than 12 to 14 months, indicating the age-1 fish (*i.e.*, all fish born in 2000 that remain alive in 2001 would be age-1 fish) are almost entirely responsible for perpetuation of the species); (2) the factors in each reach that may inhibit or enhance reestablishment and security of the species vary among areas; and (3) it is unlikely that any single event would simultaneously eliminate the silvery minnow from three geographic areas (Service 1999).

In accordance with the Recovery Plan, we have initiated a captive propagation program for the silvery minnow (Service 1999; Brooks 2001). Silvery minnows are currently being propagated at five facilities in NM and one in South Dakota (SD); one additional NM facility will come on-line in 2003. We currently have silvery minnows housed at: (1) The Service's Dexter National Fish Hatchery and Technology Center, NM; (2) the Service's Mora National Fish Hatchery and Technology Center, NM; (3) the City of Albuquerque's Biological Park, NM; (4) the New Mexico State University, NM; (5) the New Mexico Department of Game and Fish's Rock Lake State Fish Hatchery, NM; and (6) the U.S. Geological Survey Biological Resources Division's Yankton Laboratory, SD (J. Brooks, pers. comm., 2002). Progeny of these fish are being used to augment the middle Rio Grande silvery minnow population, but could also be used in future augmentation or reestablishment programs for the silvery minnow in other river reaches (J. Remshardt, New Mexico Fishery Resources Office, pers. comm. 2001).

We have also salvaged and transplanted silvery minnows within the middle Rio Grande in recent years (Service 1996, 1998, 1999, 2000, 2001, 2002). Approximately 225,500 silvery minnow larvae and adults have been released (*i.e.*, stockings from captive bred fish or translocated from downstream reaches) since May 1996 (J. Remshardt, U.S. Fish and Wildlife Service, pers. comm. 2001). For example, in late 2001, the University of New Mexico (UNM) released 11,900 silvery minnows into the San Acacia Reach. In June 2002, we released 2,500 marked silvery minnows within the Angostura Reach. These fish were marked to determine the movement of silvery minnows in the wild. Results of studies of the effectiveness of these releases will be useful for evaluating future efforts to reintroduce the species. These results should be available in 2003 (R. Dudley and S. Platania, UNM, pers. comm. 2002).

We have also continued working with the Recovery Team since the Recovery Plan was finalized. We believe this critical habitat designation and our conservation strategy (*see* "Exclusions Under Section 4(b)(2) of the Act" section below) are consistent with the Recovery Plan (Service 1999). The purpose of the Recovery Plan is to outline the research and data collection activities that will identify measures to ensure the conservation of the silvery minnow in the wild. We believe this critical habitat designation and our conservation strategy are consistent with the recommendations of the Recovery Plan and Recovery Team.

Summary of Comments and Recommendations

In the June 6, 2002, proposed rule, we requested all interested parties to submit comments or information concerning the designation of critical habitat for the silvery minnow (67 FR 39206). During the comment period, we held public hearings in Socorro and Albuquerque on June 25, and 26, 2002, respectively. We published newspaper notices inviting public comment and announcing the public hearings in the following newspapers in NM: Albuquerque Journal, Albuquerque Tribune, Socorro Defensor Chieftain, Sante Fe New Mexican, and Las Cruces Sun. Transcripts of these hearings are available for inspection (*see* **ADDRESSES** section). The comment period was originally scheduled to close on September 4, but was extended until October 2, 2002 (September 12, 2002; 67 FR 57783). We contacted all appropriate State and Federal agencies, Tribes, county governments, scientific organizations, and other interested parties and invited them to comment. On June 6, 2002, we hosted a teleconference to provide a short presentation and answer questions by reporters on all aspects of the proposed critical habitat designation, the draft economic analysis, and draft EIS. We also provided notification of these documents through e-mail, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, Tribes, and interest groups. We also published all of the associated documents on our Region 2 Internet site following their release on June 6, 2002.

We solicited five independent experts who are familiar with this species to peer review the proposed critical habitat designation. Only one of the peer reviewers submitted comments, and these supported the proposed designation. We also received a total of 34 oral and 54 written comments. Of the oral comments, 10 supported critical habitat designation and 24 opposed designation. Of the written comments, 17 supported critical habitat designation, 22 opposed designation, and 15 were neutral or provided additional information. We reviewed all comments received for substantive issues and new data regarding critical habitat and the silvery minnow, the draft economic analysis, and the draft EIS. In the following summary of issues we address all comments received on all three documents during the comment periods and public hearing testimony. Comments of a similar nature are grouped into issues.

Issue 1: Biological Concerns

(1) *Comment:* Some commenters state that the extent of critical habitat proposed by us is inadequate to address survival and recovery of the species (*e.g.*, critical habitat for the silvery minnow should be expanded beyond the current proposal). Recommendations for additional areas designated include the Rio Grande from Caballo to the NM-TX border, the area from the confluence of the Rio Conchas to the downstream boundary of Big Bend National Park, and the Pecos River from Sumner to Brantley Reservoir.

Our Response: Our analysis of the following two areas—(1) the river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM; and (2) the river reach in the lower Rio Grande in Big Bend National Park downstream of the National Park boundary to the Terrell/Val Verde County line, TX—finds that the benefits of excluding these areas from the designation of critical habitat outweigh the benefits of including them (*see* "Exclusions Under Section 4(b)(2)" section). Although we believe these areas are essential to the conservation of the silvery minnow, these areas are not designated as critical habitat.

It is critical to the recovery of the silvery minnow that we reestablish the species in areas outside of its current occupied range. We believe that one of the goals of the Recovery Plan can be fulfilled by reestablishing the silvery minnow in areas of its historic range using the flexibility provided for in section 10(j) of the Act. In order to achieve recovery for the silvery minnow, we need assistance from local stakeholders to ensure the success of reestablishing the minnow in areas of its historic range. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Critical habitat is often viewed negatively by the public since it is not well understood and there are many misconceptions about how it affects private landowners (E. Hein, U.S. Fish and Wildlife Service, pers. comm, 2002). It is important for recovery of this species that we have the support of the public when we move toward meeting the second recovery goal of reestablishing the species in areas of its historic range.

The reasons why other areas of the silvery minnow's historic range were not designated as critical habitat are detailed within the "Reach-by-Reach Analysis" section below. If, in the future, we determine from information or analysis that those areas designated in this final rule need further refinement or if we identify and determine additional areas to be essential to the conservation of the species and requiring special management or protection, we will evaluate whether a revision of critical habitat is warranted at that time.

(2) *Comment:* The current proposal for critical habitat for the silvery minnow is contrary to the recommendations of the Rio Grande Silvery Minnow Recovery Team and the Recovery Plan. The proposed designation is deficient in its omission of critical habitat in the "three other areas within its historic range" as required by the Recovery Plan. Our proposal to not designate the lower Rio Grande as critical habitat has no factual basis.

Our Response: It is important to note that we utilized the recommendations of the Recovery Team in the Recovery Plan, consistent with this definition of conservation, to conclude that the middle Rio Grande and the middle Pecos River from Sumner Dam to Brantley Dam, NM, and the lower Rio Grande from the upstream boundary of Big Bend National Park downstream through the area designated as a wild and scenic river to the Terrell/Val Verde County line, TX, are "essential to the conservation of" the silvery minnow. Although the middle Pecos River and the lower Rio Grande are not designated as critical habitat, we believe they are important for the recovery of the silvery minnow. Thus, we concur with the Recovery Plan that reestablishment of the silvery minnow within additional geographically distinct areas, within its historical range, is necessary to ensure the minnow's survival and recovery (Service 1999). However, recovery is not achieved by designating critical habitat. The Act provides for other mechanisms that will provide for reestablishment of the minnow outside of the middle Rio Grande and the eventual recovery of the silvery minnow. In addition, please see responses 1 and 44 for information related to this particular issue.

(3) *Comment:* The Service appears to be greatly concerned that critical habitat could jeopardize the trust and spirit of cooperation that has been established over the last several years because critical habitat designation would be viewed as an unwarranted and unwanted intrusion in the middle Pecos and lower Rio Grande. However, the same arguments can be made in the middle Rio Grande.

Our Response: The middle Pecos and lower Rio Grande are essential to the conservation of the silvery minnow. Still, the silvery minnow has been extirpated from these areas of its historic range and we believe that the appropriate means to potentially reestablish the species is through use of the 10(j) experimental population rule (*see* "Exclusions Under Section 4(b)(2)" section). We also have not included areas within the middle Rio Grande where we believe adequate special management is in place and because of other relevant issues (*see* "Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section).

However, we determine that other areas of the middle Rio Grande meet the definition of critical habitat, and we did not exclude these areas under section 4(b)(2) based upon economic or other relevant impacts.

We are actively involved with ensuring conservation benefits to the listed species within the middle Rio Grande by participating in a collaborative working group to develop a long-term strategy/solution (Middle Rio Grande Endangered Species Act Collaborative Program). We believe this type of cooperative program is an important opportunity to achieve and facilitate conservation of the minnow, while allowing water activities to continue.

(4) *Comment:* It is well documented that the Rio Grande has historically gone dry. The current proposal to keep the river running throughout the year is not reasonable, feasible, or necessary. You are attempting to create a habitat that has never existed. The proposed rule does not identify minimum flow requirements to maintain the primary constituent elements. Critical habitat will only increase the "bureaucratic red tape," not silvery minnow habitat.

Our Response: Critical habitat primarily focuses on the maintenance of habitat features identified as primary constituent elements. Critical habitat does not serve to create these features where they do not currently exist.

We agree that some areas designated as critical habitat within the middle Rio Grande have the potential for periods of low or no flow under certain conditions (*see* "Primary Constituent Elements" section). We also recognize that the critical habitat designation specifically includes some areas that have lost flow periodically (MRGCD 1999; Scurlock and Johnson 2001; Scurlock 1998). We nevertheless believe these areas are essential to the conservation of the silvery minnow because they likely serve as connecting corridors for fish movement between areas of sufficient flowing water (*e.g., see* Deacon and Minckley 1974; Eberle et al. 1993). Additionally, we believe the designated critical habitat is essential for the natural channel geomorphology (the topography of the river channel) to maintain habitat, such as pools, by removing or redistributing sediment during high flow events (*e.g., see* Simpson *et al.* 1982; Middle Rio Grande Biological Interagency Team 1993). Therefore, we believe that the inclusion of an area that has the potential for periods of low or no flow as critical habitat will ensure the long-term survival and recovery of silvery minnow. As such, we believe that the primary constituent elements as described in this final rule provide for a flow regime that allows for short periods of low or no flow.

The primary constituent elements identified below provide a qualitative description of those physical and biological features necessary to ensure the conservation of the silvery minnow. We did not identify quantitative estimates of specific minimum thresholds (*e.g.*, minimum flows or depths), because we believe these estimates vary seasonally and annually, and by river reach within the designated critical habitat. Thus, we believe these thresholds are appropriately enumerated through section 7 provisions 7(a)(1) and 7(a)(2) (*e.g., see* Service 2001b), which can be easily changed if new information reveals effects to critical habitat in a manner or extent not previously considered (*see* 50 CFR 402.16(b)).

We based this final rule on the best available scientific information, including the recommendations in the Recovery Plan (Service 1999). We have designated only river reaches that currently contain the primary constituent elements (described below) during all or a part of the year and that are currently occupied by the minnow. We did not include river reaches where the current or potential suitability for the silvery minnow is unknown. Consequently, we are not attempting to create habitat conditions or minimum flow requirements, but rather, we will review projects that have a Federal nexus to ensure that any proposed actions do not adversely affect the current primary constituent elements to the extent that the designated critical habitat will be adversely modified or destroyed.

(5) *Comment:* The silvery minnow is doing very well in its current situation and is not vulnerable to a single catastrophic event. The captive breeding program is flourishing and it seems reasonable that you could release many millions of silvery minnows each spring. Therefore, you should not condemn the river to support a species that has an arbitrary designation and is not truly endangered.

Our Response: The purpose of the Act is to conserve listed species and the ecosystems on which they depend. Relegating a species to captivity does not conserve the ecosystem on which they depend. Controlled propagation is not a substitute for addressing factors responsible for an endangered or threatened species' decline. Therefore, our first priority is to recover wild populations in their natural habitat wherever possible, without resorting to the use of controlled propagation. This position is fully consistent with the Act. Moreover, there has been insufficient time to develop a captive propagation management plan that captures the majority of genetic variability of the minnow in the wild to maximize the low genetic diversity in captively propagated silvery minnows (Turner 2002).

We reviewed the best scientific and commercial data available to determine that the silvery minnow should be classified as an endangered species on July 20, 1994 (59 FR 36988). Procedures found at section 4(a)(1) of the Act, and regulations (50 CFR Part 424) issued to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. There is no evidence to suggest that the silvery minnow is recovered, and recovery goals outlined in the Recovery Plan have not yet been met. Therefore, we do not agree that the silvery minnow is "doing very well in its current situation." Additionally, the silvery minnow occupies less than 5 percent of its historic range, and the likelihood of extinction from catastrophic events is high because of its limited range (Hoagstrom and Brooks 2000, Service 1999).

(6) *Comment:* In the proposed rule, the Service suggests that the primary constituent elements for the silvery minnow and Pecos bluntnose shiner are compatible. However, if this were the case, the silvery minnow would not be extirpated from the Pecos River.

Our Response: We continue to believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat (*e.g.*, clean permanent water; a main river channel habitat with sandy substrate; and a low velocity flow (February 20, 1987; 52 FR 5295)) are compatible with our conservation strategy for repatriating the silvery minnow. There are no conclusive data to substantiate any reasons for extirpation of the silvery minnow from the Pecos River. Primary constituent elements are those physical and biological habitat components that are essential for the conservation of the species, and are not determined based upon the species' presence. The absence of silvery minnows from the Pecos River does not mean that the minnow's primary constituent elements are not present. (Also refer to the "Background" section for information on the role of the plains minnow (*Hybognathus placitus*) in the decline and extirpation of the silvery minnow from the Pecos River).

(7) *Comment:* One of the most significant threats to native fish in the southwestern United States is non-native fish; however, the Service did not provide any information on whether non-native fish affect the silvery minnow or its habitat.

Our Response: In the proposed critical habitat designation rule, we stated: "Habitat alteration and loss, and non-native competition, predation, and other effects are inextricably intertwined and have contributed substantially to the endangered status of the silvery minnow (Service 1999; Dudley and Platania 2001). Furthermore, habitat alteration has been a significant contributor to non-native fish invasion, competition, and adverse effects. In turn, non-native species have likely contributed significantly to the inability of native fish, such as the silvery minnow, to persist in altered environments (Hubbs 1990; Propst 1999)" (June 6, 2002; 67 FR 39206).

(8) *Comment:* There is a notable lack of data in your reports concerning the plains minnow found within the middle Rio Grande.

Our Response: Although the plains minnow was found infrequently in a survey of bait-fishing stores within the Rio Grande Basin (Schmitt 1975), the plains minnow has never been documented in the wild within the middle Rio Grande (R. Dudley, American Southwest Ichthyological Research Foundation, pers. comm., 2002; K. Bestgen, Colorado State University, Larval Fish Laboratory, pers. comm., 2002). The silvery minnow and plains minnow can be distinguished from each other by morphological and genetic differences (Bestgen and Propst 1996; Cook *et al.* 1992). Therefore, we believe that "a lack of data" is reflective of a lack of presence of the plains minnow in the middle Rio Grande.

(9) *Comment:* Critical habitat could result in the loss of flood pulses for uses such as periodic flooding of the bosque.

Our Response: The silvery minnow requires a spike in early spring to trigger spawning (Platania and Dudley 2000). Critical habitat will not result in the loss of this pulse of water. In fact, this hydrologic event could also periodically flood some areas of the bosque (bosque is the riparian areas adjacent to the Rio Grande).

(10) *Comment:* One commenter believes the Service overlooked important information that silvery minnows can bury in the wet sand and survive extensive periods, especially when the river bed is dry. This commenter states that when the river is dry, silvery minnows have been found by digging in the sand.

Our Response: There is no information in the scientific literature or provided by biologists researching the silvery minnow to indicate that the species can either bury underground or survive in the wet sand when the river is dry. Available evidence indicates that silvery minnows die only minutes after being removed from water.

(11) *Comment:* The Service should consider the use of irrigation ditches to recover the silvery minnow.

Our Response: Ephemeral or perennial irrigation canals and ditches, including the LFCC (*i.e.*, downstream of the southern boundary of Bosque del Apache National Wildlife Refuge to the headwaters of Elephant Butte Reservoir) do not offer suitable refugia and are not useful for conservation of the silvery minnow because they do not contain the primary constituent elements and the habitat is not sufficient to support viable populations of silvery minnow for extended periods of time (*see also* BOR 2001c). Silvery minnows found in canals and ditches are believed to represent silvery minnows that became entrapped due to the diversion of irrigation water from the mainstem middle Rio Grande. Nevertheless, we are aware that a study is being conducted by New Mexico State University to evaluate the usefulness of irrigation canals and ditches to the silvery minnow (Thompson 2002). We will assess the results of this study when they are available.

(12) *Comment:* Why does the Service indicate that agricultural runoff is detrimental to the silvery minnow, when the return flows are an important source of water for the species?

Our Response: We recognize that under current irrigation operations, the delivery of irrigation water and associated return flows play an important role in supporting fish survival in the lower reaches of the river. The return flows also help to provide water to meet Rio Grande Compact delivery obligations. Irrigation water deliveries to MRGCD and the six middle Rio Grande Pueblos provide "carriage" water that facilitates the more efficient delivery of supplemental water to benefit the silvery minnow. However, as noted in the background section, development of agriculture and the growth of cities within the historic range of the silvery minnow may have resulted in a decrease in the quality of river water through municipal and agricultural runoff (*i.e.*, sewage and pesticides).

Issue 2: Procedural and Legal Compliance

(13) *Comment:* The U.S. Army Corps of Engineers (Corps) should be held responsible for the plight of the silvery minnow because they constructed Cochiti Dam and drastically altered the species' habitat.

Our Response: The effects of past and ongoing human and natural factors leading to the current status of the silvery minnow is called the environmental baseline. The environmental baseline is a snapshot of the species' status at any point in time, and is updated when we conduct a section 7 biological opinion. No single entity can be held responsible for the status of the silvery minnow. However, the Corps is (as are many other entities) included in the Middle Rio Grande Endangered Species Act Collaborative Program and is part of the long-term solution to develop and implement activities to conserve the minnow.

(14) *Comment:* We must specify in the final rule for critical habitat whether the experimental population under section 10(j) of the Act would be essential or nonessential.

Our Response: When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species on the basis of the best available information. Any future recovery efforts, including repatriation of the species to areas of its historical range under section 10(j) of the Act, will be conducted in accordance with the pertinent sections of the Act, NEPA, and Federal rulemaking procedures. A NEPA analysis is necessary to carefully consider information concerning every significant environmental impact among all the alternatives and select a preferred alternative. We find that nonessential designations garner wider and more meaningful public support. However, at this time we cannot determine the type of 10(j) rule that may be proposed for the minnow.

(15) *Comment:* The establishment of experimental populations is purely speculative because according to the Service's regulations, the establishment of an experimental population requires an agreement among the Service, affected States, Federal agencies, and landowners. An agreement is unlikely to happen.

Our Response: We believe that the use of section 10(j) will encourage local cooperation through management flexibility. Our regulations state that we shall consult with appropriate State fish

and wildlife agencies, local government entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules (50 CFR 17.81(d)). As noted above, any future recovery efforts, including reintroduction of the species to areas of its historic range, will be conducted in accordance with NEPA and the Act.

(16) *Comment:* Executive Orders 12866 and 12988 appear to apply to the proposed designation of critical habitat.

Our Response: We again read through the comments and information provided concerning Executive Orders 12866 ("Regulatory Planning and Review") and 12988 ("Civil Justice Reform"). While the commenter did not adequately explain the rationale for why they believe our initial determinations in the proposed critical habitat designation were inadequate, we found nothing to warrant changing our original determinations about the applicability of these Executive Orders.

(17) *Comment:* How can critical habitat include the Isleta reach that the District Court for the District of New Mexico has determined could be dry? The District Court order provides for the potential draining of Heron Reservoir. If the current drought continues through 2003, potentially 75 percent of critical habitat could be dry. The court order from the District Court changes all of the previous analyses and conclusions concerning critical habitat designation. The Service has not considered Judge Parker's recent court order to provide water for the silvery minnow. The Service must consider and analyze all sources of storage water that will now be used for the silvery minnow.

Our Response: On September 23, 2002, the District Court for the District of New Mexico ordered the following: (1) The BOR must provide sufficient flows of water for the remainder of 2002 to maintain a flow of 50 cfs at San Acacia Diversion Dam, and to maintain a flow in the Albuquerque Reach from Angostura Diversion Dam to Isleta Diversion Dam; (2) if necessary to meet these flow requirements for the remainder of 2002, the BOR must release water from Heron Reservoir in 2002; and (3) the Federal Government must compensate those, if any, whose contractual rights to water are reduced in order to meet the flow requirements (*Rio Grande Silvery Minnow* v. *Keys*, Civ. No. 99–1320 JP/RLP–ACE).

In a court order issued October 16, 2002, the Tenth Circuit Court of Appeals stayed the District Court's order (*Rio Grande Silvery Minnow* v. *Keys*, Civ. No. 02–2254, 02–2255, 02–2267). The court order from the District Court for the District of New Mexico is currently under appeal in the Tenth Circuit Court of Appeals and a written decision has not been issued. On the basis of the consultation history of the silvery minnow, we do not anticipate that the voluntary supplemental water program discussed in responses to comments 56 and 57 will change. Because we anticipate that supplemental flows to avoid destruction or adverse modification of critical habitat will be similar, if not identical, to what is currently required to avoid jeopardizing the species, we do not believe that critical habitat will result in additional flow requirements during consultation. Nevertheless, future section 7 consultations will evaluate whether proposed actions jeopardize the continued existence of the silvery minnow or adversely modify or destroy critical habitat. Each consultation will be evaluated on a case-by-case basis following our regulations (50 CFR part 402).

(18) *Comment:* The Service should consider water table augmentation to satisfy the primary constituent elements rather than flow augmentation. Habitat restoration activities need to move forward quickly because the supplemental water program cannot continue at the current level.

Our Response: We appreciate these and other numerous suggestions we received regarding special management considerations. Water table augmentation and habitat restoration activities may provide for the maintenance and improvement of one or more of the primary constituent elements important for the species' long-term conservation. These types of special management activities, as well as other measures to avoid or minimize incidental take, will be reviewed during consultations with Federal agencies. (Refer to our response to comment 3 above for information on the collaborative working group.)

(19) *Comment:* The Service should consider the affidavits that were filed in September 2002, in response to the court case (*Rio Grande Silvery Minnow* v. *Keys*, Civ. No. 99–1320 JP/RLP–ACE). These include: Dr. Thomas Wesche, Subhas K. Shah, Sterling Grogan, Dr. Richard Valdez, Christopher S. Altenbach, John Whipple, John M. Stomp III, Rolf-Schmidt-Peterson, F. Lee Brown, and Walter G. Hines.

Our Response: We have considered the affidavits and found that none of the information appears to contradict the relevant conclusions for this final designation of critical habitat.

(20) *Comment:* The Service needs to consult with the State Department and Mexico as directed by Executive Order 12114 because the designation of critical habitat in the lower Rio Grande may have international implications.

Our Response: We are not designating critical habitat along the international border in the lower Rio Grande. We did not consult with the State Department and Mexico because we believe that the action of designating critical habitat within the middle Rio Grande will not have significant effects on the environment outside the geographical borders of the United States and its territories.

(21) *Comments:* The economic analysis and proposed critical habitat demonstrate a complete disregard for the unique culture and historic heritage associated with agriculture within the middle Rio Grande.

Our Response: As described in the final EIS, we are aware of the unique heritage associated with agriculture within the middle Rio Grande. Still, the regulatory requirements associated with critical habitat do not apply to any agricultural activities, including farming or livestock grazing, or any other activity carried out on private land that does not require and/or involve a Federal permit, authorization, or funding. Because the silvery minnow is listed as endangered, Federal agencies already are required to consult with us on any of their actions that are likely to adversely affect the species and to ensure that their actions do not jeopardize the species' continued existence, regardless of whether critical habitat has been designated. Therefore, we do not believe the designation of critical habitat for the silvery minnow will result in any significant additional regulatory burden on landowners or affect the use of their private property.

(22) *Comment:* No one was aware that the silvery minnow was going to be listed in 1994. Once a species is listed, critical habitat appears to be an unavoidable consequence.

Our Response: On February 19, 1991, about 80 prelisting proposal letters of inquiry were mailed to various governmental agencies, knowledgeable individuals, and the New Mexico Congressional delegation. On March 20, 1992, we held a meeting in Albuquerque, NM, with various interested governmental and private entities to explore existing or potential flexibility in water delivery schedules that might avoid dewatering of the Rio Grande within the range of the silvery minnow. In the March 1, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period originally scheduled to close on April 30, 1993, was extended until August 25, 1993 (58 FR 19220), to conduct public hearings and allow submission of additional comments. We also published notices of the proposed listing in five local newspapers and mailed copies of the proposed rule to list the silvery minnow as endangered to 148 different government agencies, private organizations, and interested individuals, including all counties having lands that border on or were within the area being proposed for critical habitat designation. Two public hearings were also held. Prior to listing the silvery minnow as endangered, we fully met the requirements of the Act for public notification. As discussed in the "Previous Federal Action" section of this rule, section 4 of the Act requires us to designate critical habitat at the time of listing, unless a determination is made that such designation is not prudent or not determinable. If a not determinable determination is made, we would have an additional year to make such a determination.

(23) *Comment:* The proposed rule and associated documents did not mention how critical habitat and section 7 consultation may affect the National Pollution Discharge Elimination System, water quality issues, or flood control structures.

Our Response: The EIS analyzed the impacts to the Albuquerque Metropolitan Arroyo Flood Control Authority, National Pollution Discharge Elimination System (NPDES) permitting, and other impacts on water quality (also see "Effect of Critical Habitat Designation" below). The final EIS found that the silvery minnow will most likely be protected by existing water quality standards, and that changes to current EPA discharge permitting activities are expected to be minimal, although the possibility exists for EPA's consultations with us to change as more becomes known about the water quality needs of the silvery minnow.

It is important to note that section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the "destruction or adverse modification" of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Where no such Federal agency action is involved, critical habitat designation has no effect on private landowners, State, or Tribal activities.

(24) *Comment:* How will critical habitat affect the City of Albuquerque's Drinking Water Project?

Our Response: Analysis of effects to listed species will be addressed in detail during section 7 consultation between the BOR and us. The section 7 consultation will determine whether the City of Albuquerque's Drinking Water Project jeopardizes the continued existence of the silvery minnow or adversely modifies or destroys critical habitat. As we have in the past, we will continue to work with the City of Albuquerque on conservation issues for the silvery minnow (*see* our response to comment 57 below).

(25) *Comment:* The Service proposed a 300-ft (91.4-m) lateral width for the boundary of critical habitat, but there is no site specific information to determine whether any particular area even has a floodplain or whether the floodplain, if present, extends 300 ft (91.4 m).

Our Response: We recognize that the lateral width of riparian areas fluctuates considerably in the middle Rio Grande. The 300-ft (91.4-m) lateral width includes the riparian zone, if present, that is adjacent to each side of the middle Rio Grande. We believe the riparian zone adjacent to the river channel provides an important function for the protection and maintenance of the primary constituent elements and is essential to the conservation of the species.

Developed lands within the 300-ft (91.4-m) lateral width are not considered critical habitat because they do not include the primary constituent elements. These lands were specifically excluded from the designation and include: developed flood control facilities, existing paved roads, bridges, parking lots, dikes, levees, diversion structures, railroad tracks, railroad trestles, water diversion and irrigation canals outside of natural stream channels, the low flow conveyance channel, active gravel pits, cultivated agricultural land, and residential, commercial, and industrial developments.

(26) *Comment:* The Service only considered excluding the Cochiti or San Acacia Reach. No other reaches were considered for exclusion within the middle Rio Grande.

Our Response: We did not include four areas within the Angostura and Isleta Reaches (*see* "Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section below). Additionally, we solicited comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas as critical habitat. We requested information on any lands included in the proposed rule for which there was special management and protection in place such that those lands could not be included as critical habitat. We reviewed and considered all of the information and comments received and concluded that special management or protection is provided only for the management plans we received during the comment period from the Pueblos of Santo Domingo, Santa Ana, Sandia, and Isleta. Consequently, no other areas were determined to be not essential for inclusion for the final critical habitat designation.

(27) *Comment:* The City of Albuquerque requested that we exclude existing projects, facilities, and structures within the designated critical habitat.

Our Response: The City of Albuquerque did not provide a list describing the specific projects, facilities, or structures. However, some existing facilities and structures are excluded from the designation because they do not include the primary constituent elements. See response to comment 25 and the "Regulation Promulgation" section of this rule for specific exclusions.

(28) *Comment:* The designation of critical habitat will seize control of our water through Federal regulations and Federal courts. Elected officials and State Engineers are constitutionally responsible for decisions on state water management.

Our Response: An area designated as critical habitat is not a refuge or sanctuary for the species. Listed species are protected by the Act whether or not they are in an area designated as critical habitat.

We published required determinations in the proposed and final rules, including one in accordance with Executive Order 13132, which considered whether this rule has significant Federalism effects (*see* "Required Determinations" section below). We requested information from and coordinated development of the

proposed and final rules with appropriate resource agencies in NM and TX (*e.g.*, during the EIS scoping and proposed rule public comment period). During the open comment period for the proposed rule, we met on several occasions with the New Mexico Interstate Stream Commission (NMISC) to further coordinate and address issues concerning the designation of critical habitat for the silvery minnow.

We do not anticipate that this regulation will intrude on State policy or administration, change the role of the Federal or State government, or affect fiscal capacity. For example, we have conducted two formal consultations, one of which included a formal conference, with the Corps and BOR, and non-Federal entities over actions related to water operations on the middle Rio Grande (Service 2001b, 2002a). In our experience, the vast majority of such projects can be successfully implemented with, at most, minor changes that avoid significant economic impacts to project proponents.

(29) *Comment:* Other than the initial scoping letter, the City of Socorro or Bernalillo County was not contacted for either development of the EIS or economic analysis. Several other commenters voiced concern that they were not directly contacted for their opinions on the economic impacts of critical habitat designation.

Our Response: On April 5, 2001, the **Federal Register** notice announcing public scoping meetings and development of a draft EIS was mailed to the Mayor of Socorro and the Socorro County Board of Commissioners and to Bernalillo County Commissioners. Moreover, on October 4, 2001, our EIS contractor mailed letters to the Chairman of Socorro County Board of Commissioners and the Bernalillo County Manager, and on August 22, 2001, a letter was mailed to the Mayor of the City of Socorro requesting specific information for the development EIS. We did not receive any response to these letters. Economic Analysis contractors utilized databases with information provided by the County of Socorro.

It was not feasible to contact every potential stakeholder in order for us to develop a draft economic analysis. We believe we were able to understand the issues of concern to the local communities on the basis of our review of public comments submitted on the proposed rule and draft economic analysis, transcripts from public hearings, and detailed discussions with 65 local governments. To clarify issues, we solicited information and comments from representatives of Federal, State, Tribal, and local government agencies, as well as some landowners.

(30) *Comment:* The amount of time and information available were insufficient for more detailed responses.

Our Response: On June 6, 2002, we published the proposed critical habitat determination in the **Federal Register** (67 FR 39205), announced public hearings, and invited public comment for 90 days. The public hearings were held on June 25 and 26. These public hearings were also announced in several newspapers (described above under the introduction of the "Summary of Comments and Recommendations" section). On June 6, we mailed the proposed rule and information on how to obtain the draft economic analysis and draft EIS to over 600 different interested parties. All of the documents were also available at the hearings, from us by request, or by download from our Web site. On August 28, we mailed a prepublication notice of the comment period extension. The comment period was subsequently extended and closed on October 2, 2002.

(31) *Comment:* The Service held public hearings only to fulfill a legal obligation and will not pay attention to any public comment.

Our Response: All comments received, including oral comments provided at the public hearing, were carefully evaluated before we made a final determination. In fact, we used special management plans received during the public comment period and other relevant issues to determine specific areas to not include for the final critical habitat designation.

(32) *Comment:* Some commenters asked whether critical habitat designation would affect the building or maintenance of flood control systems (*e.g.*, levee) to protect the town of Socorro and other areas within the designation.

Our Response: Levees are specifically excluded from the designation (*see* "Regulation Promulgation" section below). Since 1995, the Corps has entered into section 7 consultation with us regarding its water operations, flood control and levee maintenance, bridge construction, section 404 permitting under the Clean Water Act, and other activities. Through this process, we have reviewed various Corps projects to ensure that the continued existence of the silvery minnow is not jeopardized and that previously designated critical habitat was not adversely modified or destroyed. Since the silvery minnow was federally listed, no Corps projects have been stopped, delayed, or altered in a significant way resulting from section 7 consultation. The draft EIS noted that the Corps will likely propose a design and develop a plan for construction that would permit levees to be rehabilitated without adversely modifying critical habitat.

It is also important to note that we have a special category of section 7 consultation, and corresponding regulations (50 CFR 402.05) called "Emergency Consultations." The consultation process does not affect the ability of an agency to respond to emergency events such as levee failure or fire. During emergency events, our primary objective is to provide recommendations for minimizing adverse effects to listed species without impeding response efforts. During emergency events, protecting human life and property comes first every time. Consequently, no constraints for protection of listed species or their critical habitat are ever recommended if they place human lives or structures (*e.g.*, houses) in danger. We are currently working with many of our Federal partners to provide technical assistance, coordination, and, in some instances, section 7 consultation for proactive projects to reduce the potential for emergency events (*e.g.*, wildland urban interface fuels management).

(33) *Comment:* The designation of critical habitat will impose section 9 restrictions against taking of silvery minnow in areas that do not currently have those restrictions (*e.g.*, within the headwaters of Elephant Butte Reservoir).

Our Response: Section 9 of the Act prohibits the harm or harassment of individuals of listed species. There are no section 9 take prohibitions for critical habitat. Within the middle Rio Grande, prohibitions against take are in effect regardless of whether or not critical habitat has been designated because we consider this area occupied by the silvery minnow. Whether or not a species has designated critical habitat, it is protected from any actions resulting in an unlawful take under section 9 of the Act.

(34) *Comment:* The Service needs to provide specific analyses on whether each reach contains or is void of primary constituent elements. The constituent elements described are vague and violate 50 CFR 424.12(c), lack sufficient detail and justification, and should include a more specific description that defines what constitutes critical habitat. Several commenters were concerned that the mapping lacked precision for use by the public and the critical habitat boundaries are ambiguous and difficult

to identify. Information is available for us to refine the 300-foot lateral width including National Wetlands Inventory data. The Rio Grande Compact Engineer Advisor from the State of Colorado submitted comments in October 2001 that suggested we use the "daily" Elephant Butte Reservoir water line as the lower terminus of critical habitat. Comments submitted in October 2002 suggested that the boundary as proposed would change from day to day and create total chaos in the operation of Elephant Butte Dam and Reservoir.

Our Response: The critical habitat designation includes the middle Rio Grande from Cochiti Dam to the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N, just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980), Socorro County, NM. The designation also includes the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, which is not included. (see the "Regulation Promulgation" section of this rule for exact descriptions of boundaries of critical habitat). We believe that with the revision to the downstream terminus of critical habitat, the boundary should be clear. Moreover, this final rule describes in the greatest detail possible the primary constituent elements important to the silvery minnow. In addition, please see responses to comments 26 and 45 for information related to this particular issue.

In our proposal and this final rule, we indicate our belief that the primary constituent elements provide for a flow regime that allows for short periods of low or no flow. In the proposal, we also highlighted the difficulties in describing the existing conditions of areas with low or no flow and solicited further information to refine the primary constituent elements and how they relate to the existing conditions (*e.g.*, flow regime). We noted that flow requirements are dynamic and change during the year and among years. The status of the species also contributes to specific flow requirements at specific areas or stream gages, for example. Consultation under section 7, rather than regulation, is the proper procedure for outlining specific flow requirements.

During the comment period we requested, but did not receive, any information that would either enable us to further refine the primary constituent elements or conduct further analysis on whether particular reaches contained or lacked one or more primary constituent elements. Further, while we welcome and encourage additional studies on the biological requirements of the silvery minnow, we believe the best available information has been used in defining the primary constituent elements necessary for the species' conservation. Nevertheless, we recognize that not all of the developed lands area within the boundaries of the designation will contain the habitat components essential to the conservation of the silvery minnow. For this reason, some developed lands are excluded by definition (*see* the "Regulation Promulgation" section below).

We considered National Wetlands Inventory data and other sources of information to refine the lateral width of the designation. Because of the dynamic nature of the Rio Grande and the corresponding ephemeral nature of wetland and riparian vegetation adjacent to the river (Middle Rio Grande Biological Interagency Team 1993; Taylor *et al.* 1999; BOR 2001c), we believe that using National Wetlands Inventory or other data to select the lateral width of critical habitat would not be consistent with our regulations (50 CFR 424.12(c)), which do not allow us to use ephemeral reference points. Consequently, we are designating critical habitat using specific limits and reference points.

(35) *Comment:* Depletion of stored water in reservoirs by supplemental water releases to benefit critical habitat will affect BOR's ability to deliver water to the MRGCD.

Our Response: According to BOR (2001c), the voluntary supplemental water program for the silvery minnow is not expected to have an adverse affect on the MRGCD. Thus, it is the Service's understanding that BOR's voluntary supplemental water program will be consistent with existing laws and contracts to ensure delivery of water to the MRGCD and to the six middle Rio Grande Pueblos (Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta) (BOR 2001c). Moreover, section 7 consultation has been occurring regardless of critical habitat designation because of the Federal listing alone. We note that despite one of the State's worst droughts in 50 years, "the Rio Grande helped some farms grow bumper crops of alfalfa * * *" (Albuquerque Tribune December 16, 2002).

(36) *Comment:* One commenter believes that the proposed rule should be incontrovertible, but it is currently laced with supposition and conjecture, and it contains no conclusive data.

Our Response: As required by section 4(b)(2), the Service used the best available scientific and commercial data. In accordance with our policy published on July 1, 1994 (59 FR 34270), we sent the proposed rule to five peer reviewers to solicit their expert opinions. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We received only one reply from our peer reviewers. The peer reviewer concluded that our proposal was scientifically sound.

(37) *Comment:* It does not appear that your EIS analyzed evaporation losses from restoration activities.

Our Response: This issue is discussed in the EIS. We concluded that the extent to which riverine and riparian restoration results in a net gain or net loss to the water supply depends on the design of the project.

(38) *Comment:* Several commenters suggested that the San Acacia reach be excluded from the designation because of economic or other relevant impacts.

Our Response: This is described as alternative D in the EIS. The analysis in the EIS found a lower likelihood that habitat essential for the conservation of the silvery minnow would be preserved if this reach were excluded from the critical habitat designation. We also conclude in this final rule that this area is essential to the conservation of the silvery minnow because it likely serves as connecting corridors for fish movements between areas of sufficient flowing water (*e.g.*, *see* Deacon and Minckley 1974; Eberle *et al.* 1993). Moreover, this reach is important because the additional loss of any habitat that is currently occupied could increase the likelihood of extinction (Hoagstrom and Brooks 2000, Service 1999).

(39) *Comment:* Several commenters noted that the San Acacia reach has historically experienced prolonged periods of low or no flow, but the construction of reservoirs has actually benefitted the silvery minnow by allowing runoff to extend over a longer time period than was previously possible.

Our Response: The construction and operation of reservoir dams has changed the natural flow regime of the river and thus may affect the survival of the Rio Grande silvery minnow. In the proposed rule, we acknowledged the historic periods of drying in the middle Rio Grande and suggested that reservoirs can facilitate management of water on the Rio Grande to avoid prolonged periods of low or no flow and provide sufficient flowing water during critical time periods, such as from May to October (Service 2001a, 2001b). Reservoirs and diversion dams have fragmented the middle Rio Grande and prevented silvery minnows from movement upstream after hatching

(Service 2001b; Dudley and Platania 2001; 2002a). Still, availability of flow is likely not the only factor affecting the silvery minnow (July 20, 1994; 59 FR 36988).

(40) *Comment:* The designation of critical habitat within the middle Rio Grande will Federalize the water administration and usurp the powers of TX, NM, and Colorado to regulate their water.

Our Response: Designation of critical habitat will not affect the authorities of TX, NM, and Colorado to regulate their water. In fact, critical habitat applies only to actions carried out, funded, or permitted by the Federal Government.

(41) *Comment:* The proposed rule suggests that future section 7 consultations regarding the critical habitat designation will be analyzed on a case-by-case basis and can provide for flexibility. However, one commenter was concerned that current consultations will affect the outcome of future consultations, resulting in overly restrictive measures.

Our Response: Our regulations require that we use the best scientific and commercial data available for consultations (50 CFR 402.14(d)). This information is used to update and analyze the effects of past and ongoing human and natural activities or events that have led up to the current status of the species and its habitat. One of the benefits of formal consultation is that we are required to provide an up-to-date biological status of the species or critical habitat (*i.e.*, environmental baseline), which is used to evaluate a proposed action. Consequently, the status of the species or critical habitat influences the outcome of a particular consultation more than when that consultation is conducted.

(42) *Comment:* If the bankfull width of the middle Rio Grande increases, would the additional area be considered critical habitat? It is not clear which lands within the critical habitat boundary are considered critical habitat.

Our Response: Lands are considered critical habitat when they are within critical habitat boundaries, contain one or more of the primary constituent elements, and require special management and protection. In this case those boundaries are based in part on the bankfull stage, which can easily be determined by visual or physical indicators including: the top of the highest depositional features (*e.g.*, point bars), staining of rocks, exposed root hairs, and other features (Rosgen 1996). Federal actions conducted in areas within or outside the boundary of the mapped critical habitat that do not contain any of the primary constituent elements would not trigger a section 7 consultation unless those activities may affect the silvery minnow or the primary constituent elements in the adjacent critical habitat (*see* "Effect of Critical Habitat Designation" section).

(43) *Comment:* The Service cannot substitute the proposed conservation strategy for critical habitat; critical habitat triggers section 7 consultation, whereas the proposed conservation strategy offers no protection to the silvery minnow.

Our Response: We believe that the benefits of excluding the middle Pecos River and lower Rio Grande outweigh the benefits of their inclusion as critical habitat (*see* "Exclusions Under Section 4(b)(2) of the Act" section below). We conclude that the exclusion of these areas is consistent with the Recovery Plan (Service 1999) and consistent with our regulations (50 CFR 424.19), and that the added management flexibility provided under section 10(j) will be beneficial to the conservation of the silvery minnow. Additionally, the adverse modification standard serves to preserve the status quo of critical habitat during section 7 consultations. But critical habitat, by itself, does not help to reestablish minnows into areas where they have been extirpated—a primary goal of the Recovery Plan for the minnow.

(44) *Comment:* If the lateral boundary of critical habitat extends from the bankfull stage, how does one determine the point of bankfull stage when the Rio Grande is not at this stage?

Our Response: Bankfull stage is the point at which the river overflows its lowest bank, which is the elevation at which flow can be carried by the main channel before spilling over into the floodplain. The bankfull stage is not defined by water, and can easily be determined by visual or physical indicators including: the top of the highest depositional features (*e.g.*, point bars), staining of rocks, exposed root hairs, and other features (Rosgen 1996).

(45) *Comment:* The designation for the silvery minnow and related documents are flawed and inaccurate, contain numerous errors, and make improper assumptions.

Our Response: As previously discussed, section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We published our proposed designation of critical habitat for the silvery minnow in the **Federal Register** on June 6, 2002 (67 FR 39206). The draft EIS and draft economic analysis of the proposed critical habitat designation were made available for review and public comment concurrently with the proposed rule during the public comment period. Based on the public comments received during the open comment period, a final EIS and final Economic Analysis of critical habitat for the silvery minnow were completed. These documents and this final rule addressed or took into consideration information and concerns raised through the comment period. Please refer to the final EIS and final Economic Analysis. Copies of both the draft and final EIS and the draft and final economic analysis are in the supporting record for this rulemaking and can be inspected or obtained by contacting the New Mexico Ecological Services Field Office (refer to the **ADDRESSES** section of this rule).

(46) *Comment:* The draft economic analysis is not a full analysis. It is still an incremental analysis, and it is not in compliance with the recent Tenth Circuit Court ruling on the endangered southwestern willow flycatcher (*Empidonax traillii extimus*) critical habitat.

Our Response: The economic analysis is a full analysis. Our standard best practice in economic analyses is to apply an approach that measures costs, benefits, and other impacts arising from a regulatory action against a baseline scenario of the world without the regulation. Guidelines on economic analyses, developed in accordance with the recommendations set forth in Executive Order 12866 ("Regulatory Planning and Review"), for both the Office of Management and Budget and the Department of the Interior, note the appropriateness of the approach: "The baseline is the state of the world that would exist without the proposed action. All costs and benefits that are included in the analysis should be incremental with respect to this baseline." When viewed in this way, the economic impacts of critical habitat designation involve evaluating the "without critical habitat" baseline versus the "with critical habitat" scenario. Impacts of a designation equal the difference, or the increment, between these two scenarios. Measured differences between the baseline and the scenario in which critical habitat is designated may include (but are not limited to) changes in land use, environmental quality, property values, or time and effort expended on consultations and other activities by Federal landowners, Federal action agencies, and, in some instances, State and local governments and/or private third parties. Incremental changes may be either positive (benefits) or negative (costs).

In *New Mexico Cattle Growers Ass'n v. U.S. Fish and Wildlife Service*, 248 F.3d 1277, however, the Tenth Circuit recently held that the baseline approach to economic analysis of critical habitat designations used by us for the southwestern willow flycatcher designation was "not in accord with the language or intent of the ESA." In particular, the court was concerned that we had failed to analyze any economic impact that would result from the designation, because it took the position in the economic analysis that there was no economic impact from critical habitat that was incremental to, rather than merely co-extensive with, the economic impact of listing the species. We had therefore assigned all of the possible impacts of critical habitat designation to the listing of the species, without acknowledging any uncertainty in this conclusion or considering such potential impacts as transaction costs, reinitiations, or indirect costs. The court rejected the baseline approach incorporated in that designation.

In our analysis, we addressed the Tenth Circuit's concern that we give meaning to the Act's requirement of considering the economic impacts of critical habitat designation by acknowledging the uncertainty of assigning certain post-designation economic impacts (particularly section 7 consultations) as having resulted from either the listing or the designation. We believe that for many species the designation of critical habitat has a relatively small economic impact, particularly in areas where consultations have been ongoing with respect to the species. This is because the majority of the consultations and associated project modifications, if any, already consider habitat impacts and, as a result, the process is not likely to change significantly as a result of the designation of critical habitat. Nevertheless, we recognize that the nationwide history of consultations on critical habitat is not broad, and, in any particular case, there may be considerable uncertainty whether an impact results from the critical habitat designation or the listing alone. We also understand that the public wants to know more about the kinds of costs section 7 consultations impose and frequently believes that critical habitat designation could require additional project modifications. Therefore, the final economic analysis incorporates two baselines. One addresses the impacts of critical habitat designation that may be "attributable co-extensively" to the listing of the species. Because of the potential uncertainty about the benefits and economic costs resulting from critical habitat designations, we believe it is reasonable to estimate the upper bounds of the cost of project modifications on the basis of the benefits and economic costs of project modifications that would be required by consultation under the jeopardy standard. It is important to note that the inclusion of impacts attributable co-extensively to the listing does not convert the economic analysis into a tool to be considered in the context of a listing decision. As the court reaffirmed in the southwestern willow flycatcher decision, "the ESA clearly bars economic considerations from having a seat at the table when the listing determination is being made." The other baseline, the lower boundary baseline, will be a more traditional rulemaking baseline. The economic analysis attempts to provide our best analysis of which of the effects of future section 7 consultations actually result from the regulatory action under review (*i.e.*, the critical habitat designation). These costs will in most cases be the costs of additional consultations, reinitiated consultations, and additional project modifications that would not have been required under the jeopardy standard alone, as well as costs resulting from uncertainty and perceptional impacts on markets. The final economic analysis provides a detailed study concerning the baseline and potential incremental effects of the designation of critical habitat for the silvery minnow, and we believe it is in compliance with the Tenth Circuit's decision in *New Mexico Cattle Growers Ass'n* v. *U.S. Fish and Wildlife Service*, 248 F:3d 1277.

Issue 3: Tribal and Pueblo Concerns

(47) *Comment:* The Service is legally mandated to have Government-to-Government consultations with affected Tribes and Pueblos. The designation will affect the trust assets of Tribes and Pueblos. Will the designation of critical habitat affect the Pueblos of Taos, San Juan, or the Jicarilla Apache Nation?

Our Response: In accordance with Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (May 4, 1994; 59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we recognize the need to consult with Federally recognized Indian Pueblos and Tribes on a Government-to-Government basis. Section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including Indian Pueblos and Tribes.

We were available to confer with the affected Indian Pueblos and Tribes during the comment period for this proposed rule. Recognizing our Federal trust responsibility, we met with the following Pueblos and Tribes (some meetings were to provide technical assistance and are not considered Government-to-Government consultations): Jicarilla Apache Nation (October 22, 2001; January 9 and 25, 2002; March 7, 2002), San Juan (December 11, 2001; February 25, 2002; September 6, 2002), Isleta (July 25, 2002; August 8 20, 2002), Sandia (October 22, 2001; February 12, 2002; September 25, 2002), Santa Ana (December 11, 2001; July 9 and 10, 2002; August 2 and 6, 2002; September 13, 2002), Santo Domingo (August 8, 2002), and Taos Pueblos (April 2, 2002; September 11, 2002; October 23, 2002) to discuss how they might be affected by the designation of critical habitat or other issues related to the Act. We provided technical assistance to Santo Domingo, Santa Ana, Sandia, and Isleta Pueblos in the development of their management plans (*see* "Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section of this rule below).

The designation of critical habitat is not anticipated to impact Indian Trust Assets, which are legal interests in assets held in trust by the United States Government for Tribes and Pueblos. Water rights are considered an Indian Trust Asset. For an impact to occur, the designation of critical habitat would need to diminish the Tribe's access to or the value of any Indian Trust Asset. For example, the BOR recently indicated that the six middle Rio Grande Pueblos would receive prior and paramount water deliveries through November 15, 2002, and that future deliveries of prior and paramount water for the six middle Rio Grande Pueblos will also be ensured. Prior and paramount water deliveries are not dependent on, and are not expected to affect, supplemental water deliveries for the silvery minnow (BOR 2002). We also do not believe that other Tribes or Pueblos (*e.g.*, Taos and San Juan Pueblos, Jicarilla Apache Nation) outside of the critical habitat designation will be affected. We believe that the consultation history of the silvery minnow demonstrates that previous section 7 consultations have not affected or impaired Indian Pueblo

and Tribal trust resources within the area we are designating as critical habitat (*e.g., see* Service 2001b). During consultation, measures taken to avoid destruction or adverse modification of critical habitat will likely be similar if not identical to what is currently required to avoid jeopardizing the silvery minnow. Consequently, we do not believe that critical habitat will result in requirements during consultation, and do not believe critical habitat will affect Indian Trust Assets.

(48) *Comment:* The Service completely omits Pueblos from the analysis under the Regulatory Flexibility Act.

Our Response: We are certifying that this final rule will not have a significant effect on a substantial number of small entities, including Indian Tribes and Pueblos (*see* "Required Determinations" section below).

(49) *Comment:* Critical habitat will require the maintenance of river flows which will adversely affect Pueblos by limiting the amount of water available. Pueblos may have substantial unused water rights. If critical habitat limits depletions, the designation would disproportionately affect Pueblos.

Our Response: We do not anticipate that the designation of critical habitat will alter the administration of the supplemental water program. Thus, delivery of water to middle Rio Grande contractors and Pueblos is ensured (BOR 2001c). Environmental justice-related impacts of preferred alternatives for critical habitat designation are discussed in Chapter 4 of the EIS. Nothing in the final rule or the EIS is intended to preclude new depletions resulting from the exercise of senior Indian water rights. In addition, please see response to comment 48 for information related to this particular issue.

Issue 4: Other Relevant Issues

(50) *Comment:* The Service has continued to ignore the economic consequences of designating critical habitat for the silvery minnow on the Pecos River.

Our Response: The Pecos River is not designated as critical habitat for the silvery minnow.

(51) *Comment:* In the Economic Analysis, why is it assumed that all the water required to meet supplemental flows will all come from NM agriculture? The Rio Grande flows through three states, so why will the burden of ensuring the survival of the silvery minnow be placed upon the water users in the middle Rio Grande? Are interstate water rights transfers (*i.e.*, sale or lease) possible under existing Federal or State law?

Our Response: The Economic Analysis assumed that water resources in NM are limited, which is demonstrated by an active market in which water rights move between willing buyers and sellers within the confines of State and Federal regulations. From 1976 to 2000, the purchasers of water rights in the middle Rio Grande were generally municipalities (61 percent of purchasers); however, other sectors participate as buyers in this market as well. During the same time frame, the sellers of water rights in the middle Rio Grande were primarily agriculture (90 percent of sellers) reflecting the fact that the majority of the water rights (as measured by total volume of water reflected in these rights) are currently held in the agriculture sector. Given these data, it was assumed that any water provided to the silvery minnow by supplementing present water flow conditions would come from currently held irrigation water rights because these tend to have greater flexibility than water rights for municipal or commercial uses. Thus, the economic analysis focused on the area within the middle Rio Grande for providing supplemental water, and did not consider interstate transfers of water. In general, our economic analyses consider the impacts within the geographic area being proposed as critical habitat. For example, in this case the economic analysis considered the area proposed as critical habitat in the middle Rio Grande, as well as the other two areas found to be essential to the conservation of the minnow (*i.e.*, middle Pecos River and Lower Rio Grande). While interstate water rights transfers (*i.e.*, sale or lease) may be possible under existing Federal or State law, we concluded that such transfers were beyond the scope of our economic analysis.

(52) *Comment:* The Economic Analysis severely underestimates the costs associated with providing 40,000 af of supplemental water because it did not estimate transaction costs associated with the purchase or lease of water rights.

Our Response: Easter *et al.* (1999) found that transaction costs associated with purchase or lease of water rights must be kept low for an effective water market. For example, they estimated that transaction costs range from about $17 to $190 per af. Another example indicates that a 10 percent commission is common for completing the sale or lease of a water right in NM (Turner 2002a; *http://www.waterbank.com/Agreements/Agency%20Agreement.htm*). Based on these and other data, the final Economic Analysis estimates that the average transaction cost is likely $333 and $183 for the Rio Grande and Pecos, respectively. Consequently, the estimated transaction costs would be approximately 7 to 10 percent of the total price of an acre-foot. These estimates do not change our required determinations below.

(53) *Comment:* The Service should have used the Upper Rio Grande Water Operations Model (URGWOM) to determine the amount of supplemental water to meet the target flow of 50 cfs at the San Marcial Floodway gage. The Service did not use the best scientific and commercial data available because you failed to engage the State of New Mexico and use their expertise, data, and models.

Our Response: On September 5, 2001, we invited the NMISC to participate in the development of the EIS as a cooperating agency. On October 3, 2001, the NMISC accepted our invitation. On April 9, 2002, the Service requested the expert review of the preliminary predecisional draft EIS and preliminary predecisional draft economic analysis from the NMISC, as a cooperating agency. We requested the review because the NMISC has jurisdiction by law or special expertise over water resources and environmental impacts involved with the Service's action of designating critical habitat. We specifically requested that the review focus on the accuracy of information and analyses as described in the draft documents. On April 25, 2002, the NMISC requested additional information from the Service and our contractors. During the open comment period for the proposed rule, we met on July 2 and 22, 2002, with the NMISC to further coordinate the designation of critical habitat and clarify the additional information requested. Nevertheless, we could not rely on data from URGWOM to develop the final rule because the information has yet to be submitted.

A focal point of discussions with the NMISC was the use of URGWOM for estimating the amount of supplemental water needed to maintain flows in the middle Rio Grande. During these meetings and in a July 16, 2002, letter, we indicated that on the basis of discussions between our contractor and the NMISC, and according to the May 9, 2002, notes from the URGWOM Steering Committee meeting, we understood that URGWOM was still being calibrated and validated. It was also our understanding that URGWOM and the relevant input and output data have not been tested by all the cooperating agencies for the Upper Rio Grande Water Operations Review EIS and would not be made publicly available until this occurs. As noted in the April 11, and September 12, 2002, notes from the URGWOM Steering Committee meetings: (1) The consensus of the Steering Committee members was that the latest version of URGWOM should not be released until it has been tested and is ready for public use; (2) the data and results for various model runs were not totally successful, but furthered the model debugging, testing, and evaluation; (3) the middle Rio Grande valley water depletions are modeled too high; (4) the water planning model is currently simplistic and rough; and (5) water operations modeling is still undergoing troubleshooting, repairs, and enhancements. Thus, we conclude that URGWOM is not available for use in the economic analysis.

Nevertheless, during the July 22, 2002, meeting with the NMISC, it was agreed that the NMISC would run URGWOM and provide detailed comments, data, output, and interpretation to us during the open comment period on this and other relevant analyses. We also requested that the NMISC assist us in determining the economic costs of providing water to meet Rio Grande Compact delivery obligations separate from the economic costs of leaving water in the river for the silvery minnow. The NMISC indicated in its October 2, 2002, comments on the proposed critical habitat designation that the data and analyses were nearly complete and a report interpreting the results would be submitted in November 2002. Additional comments or data were not submitted. If additional comments or data had been submitted after October 2, 2002, we would not have considered them in the development of this final rule, the economic analysis, or the EIS because the data, analyses, and report would not have been submitted during the open comment period, and other parties would not have had the full opportunity to review and comment on the material.

Section 4(b)(2) of the Act states critical habitat shall be designated on the basis of the best scientific data available. We must make this determination on the basis of the information available at this time, and we are not allowed to delay our decision until further information is submitted. Therefore, we conclude the current hydrological model used in the economic analysis is the best scientific information available at this time, as required by the Act.

(54) *Comment:* The Economic Analysis appears to underestimate the amount of supplemental water that is required to maintain flows specified by the biological opinion on the middle Rio Grande.

Our Response: From our experience, it is nearly impossible to guarantee continuous flow in the middle Rio Grande at all times of the year, regardless of the extremity of conditions. As a result, our analysis calculates the annual deficit of water below the required minimum flow in the 95th percentile and the 50th percentile worst-case (*e.g.*, driest) year. This calculation results in an average annual deficit of 40,427 af/year in the middle Rio Grande. This estimate of supplemental water is within the range of other estimates of supplemental water required to maintain instream flow in the middle Rio Grande. Since 1996, the BOR has leased water each year to maintain instream flow during this dry period. In 2001, 22,000 af of supplemental water, from the conservation water agreement, was released and was sufficient to meet the supplemental flow requirements outlined in the June 29, 2001, biological opinion (J. Smith, pers. comm., 2002). In addition, Balleau Groundwater, Inc. (1999) estimated that it would require 52,600 af of water released from Cochiti to maintain a flow of 200 cfs at San Acacia in an average year. Therefore, we believe our estimate of approximately 40,000 af of supplemental water is accurate.

(55) *Comment:* The Service's analyses do not take into account upstream storage that would be needed to provide for supplemental flows, nor did the Service address storage of native water when storage is restricted in upstream reservoirs (*e.g., see* Rio Grande Compact, Article VII).

Our Response: The hydrologic model used in the economic analysis did not attempt to model the location of water used to supplement instream flow, but rather provided the amount of supplementary water needed at the San Acacia (middle Rio Grande) and Acme (middle Pecos River) gages. We did not identify sources of supplemental water (*e.g.*, storage) within this designation, because these sources can vary annually. Moreover, the Federal agencies have discretion on selecting specific sources and storage of supplemental water (BOR 2001c; Corps 2001). The amount of supplemental flows will be dependent upon the environmental baseline of the silvery minnow, the proposed action by the Federal agency, and those discretionary actions that are part of the consultation.

(56) *Comment:* Future supplemental water will not be available in the middle Rio Grande as it was from 1996 to 2002.

Our Response: As with all biological opinions, if the Federal action agency, (*i.e.*, the BOR in the June 29, 2001, biological opinion) cannot meet the measures described in the biological opinion that must be undertaken, reinitiation of formal consultation is required. In the middle Rio Grande, if supplemental water is not available to meet target flows contained in a biological opinion, then reinitiation of consultation would be required. Reinitiation of consultation has no bearing on the designation of critical habitat for the silvery minnow.

(57) *Comment:* The designation will steal water from an already drought-stricken area. Critical habitat will devastate the farming culture.

Our Response: The maintenance of river flows has been implemented through BOR's voluntary supplemental water program. This program is being implemented within the existing water rights framework, including Federal Indian water rights, San Juan-Chama contract rights, and state law water rights administered by the State of New Mexico. Supplemental flows to avoid destruction or adverse modification of critical habitat will likely be similar if not identical to what is currently required to avoid jeopardizing the species.

During the 2000 irrigation season, most of the supplemental water used to support the silvery minnow was provided through BOR leases of San Juan-Chama Project water from the City of Albuquerque. The City in turn provided that water to the MRGCD to finish the irrigation season, while allowing native Rio Grande flows to remain in the river without diversion. Moreover, in June 2002, the City of Albuquerque signed two agreements to provide 40,000 af of water to the BOR for supplemental flows for the silvery minnow and an additional 70,000 af of water to extend the MRGCD irrigation season from June to September 2002.

The BOR supplemental water program has been implemented on a year-to-year basis since 1997. During this period, no irrigation water has been used to augment river flows without being replaced (BOR 2001c). For example, the water that was leased from San Juan-Chama contractors and released during 2000 was used by MRGCD for irrigation and was exchanged for an equivalent amount of native Rio Grande water to provide supplemental flows for the silvery minnow. We believe that these types of collaborative actions will continue and do not anticipate that the

amount of supplemental instream flow, required by past section 7 consultations (*e.g.*, Service 2001b), will increase because an area is designated as critical habitat.

(58) *Comment:* The Service should analyze the impacts on groundwater, urban development, and operation of canals and other irrigation structures.

Our Response: The EIS analyzes impacts on water rights and management, land ownership and use, social and economic impacts, and a variety of other environmental consequences.

(59) *Comment:* The Service should consider the positive impact of critical habitat designation in the region's economy.

Our Response: The potential benefits of critical habitat are described in the economic analysis and EIS.

(60) *Comment:* It is currently impossible with the natural flow regime (*i.e.*, after all managed uses of water are curtailed) to maintain the primary constituent elements related to water flow. The primary constituent element that indicates conditions "do not increase prolonged periods of low or no flow" presume a baseline is known.

Our Response: Critical habitat is designated on the basis of existing conditions within each of the river reaches. We acknowledge that some of these areas have the potential for no to low flow during certain seasons or years. This primary constituent element provides water of sufficient flows to reduce the formation of isolated pools, and is essential to the conservation of the silvery minnow because the species cannot withstand permanent drying of long stretches of river. In addition, please see response to comment 35 for information related to this particular issue.

(61) *Comment:* There is not enough information known about the silvery minnow or about the impacts of the designation to perform the required analyses.

Our Response: This final determination constitutes our best assessment of areas needed for the conservation of the silvery minnow. We must make this determination on the basis of the information available at this time, and we may not delay our decision until more information about the species and its habitat are available. *Southwest Center for Biological Diversity* v. *Babbitt*, 215 F.3d 58 (D.C. Cir. 2000).

(62) *Comment:* The Service concludes that low or no-flow conditions have become more prevalent in the last few decades. The hydrological data demonstrate that this is not true. These unfounded claims indicate that a thorough hydrologic analysis of the middle Rio Grande should be completed using hydrological variability techniques (*e.g.*, Richter *et al.* 1997).

Our Response: We have revised the "Background" section of this final rule. We are participating in the Upper Rio Grande Basin Water Operations Review and EIS with the Joint Lead Agencies and other cooperators, including the Corps, BOR, and the NMISC, to comprehensively review the water operations activities that are conducted under the existing authorities in the Rio Grande Basin above Fort Quitman, TX. Hydrological variability techniques (*e.g.*, Richter *et al.* 1997) can guide river managers to define and adopt interim management targets before conclusive long-term research results are available. The Federal agencies have discretion when selecting specific river management targets and activities (*e.g.*, sources and storage of supplemental water (BOR 2001c; Corps 2001)). Consequently, hydrological variability techniques could be applied to river management targets and activities at the discretion of the Federal agencies, but are beyond the scope of this designation.

(63) *Comment:* One commenter questioned why, although approximately 200,000 af of water were released in the summer of 2000 to save the silvery minnow from extinction, the species suffered one of its most significant declines during this artificially wet period. NM and other signatories of the Rio Grande Compact cannot afford this waste of water.

Our Response: In the spring of 2000, as a result of court-ordered mediation (*Minnow* v. *Keys*, Civ. No. 99–1230 JP/KBM–ACE), BOR, through voluntary leases and repayment agreements, and in cooperation with other entities, provided 168,000 af of water to the Rio Grande for the silvery minnow and for irrigation purposes during the year 2000. Data from silvery minnow population monitoring studies in 2001 indicated a slight increase of the population in the Angostura, Isleta, and San Acacia Reaches (Dudley and Platania 2001). Without efforts to maintain at least some flow in the Rio Grande in 2000, it is likely that the silvery minnow might have been extirpated from the middle Rio Grande (Dudley and Platania 2001). It is also important to note that, at least partially as a result of these supplemental flows, NM realized a credit of 100,000 af toward its current and future delivery obligations to TX under the Rio Grande Compact (BOR 2001c).

(64) *Comment:* Because of the silvery minnow, the Service has not allowed the BOR to maintain a channel through the delta area north of Elephant Butte Reservoir.

Our Response: On May 8, 2000, we received a biological assessment from BOR concerning the creation of a temporary channel through the upstream delta of Elephant Butte Reservoir. BOR proposed to implement several conservation measures-these were included and described in their biological assessment as part of the project. On August 4, 2000, we completed consultation by concurring with BOR's determination that the project "may affect but is not likely to adversely affect" the silvery minnow or its designated critical habitat, that it "may affect but is not likely to adversely affect" the southwestern willow flycatcher, and that it will have "no effect" on the bald eagle. During September 2000 and April 2001, BOR provided supplementary information and clarifications on the project activities. No additional effects were anticipated and it is our understanding that BOR is proceeding with the construction of the temporary channel in full compliance with its responsibilities under the Act. In a letter dated August 30, 2002, from the Service's New Mexico Ecological Services Field Office to the New Mexico Office of the State Engineer, we reiterated that environmental compliance with the Act had been achieved. In the letter, we specifically asked whether the State Engineer believed that further environmental clearances were required for the completion of the temporary channel. We did not receive a response to the August 30, 2002, letter.

(65) *Comment:* Many environmental groups are using the silvery minnow to further their agendas of stopping growth and development.

Our Response: The recovery of the silvery minnow follows our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (July 1, 1994; 59 FR 34272). Numerous individuals, agencies, environmental groups, and affected parties were involved in the development of the Recovery Plan or otherwise provided assistance and review (Service 1999). We believe this stakeholder involvement will minimize the social and economic impacts that could be associated with recovery of this endangered species.

Section 4(a)(3) of the Act requires that the Secretary, to the maximum extent prudent and determinable, designate critical habitat at the time a species is

listed as endangered or threatened. As noted under the "Background Section" above, when the silvery minnow was listed as endangered in 1994, we found that critical habitat was not determinable. Subsequently, we were ordered to publish a final determination regarding critical habitat for the silvery minnow, *Forest Guardians* v. *Babbitt*, Civ. No. 97–0453 JC/DIS. On July 6, 1999, we published a final designation of critical habitat for the silvery minnow (64 FR 36274), pursuant to the court order.

Critical habitat will affect private, State, or Tribal activities when Federal funding, permitting, or authorization is involved. If there is Federal involvement, consultation will be completed within the statutory time frames. The process of section 7 consultation does not stop growth or development.

(66) *Comment:* Your last economic analysis found that there would be no impacts associated with the designation of critical habitat for the silvery minnow.

Our Response: We were required to prepare a new critical habitat designation under the court order from the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt*, 206 F. Supp. 2d 1156 (D.N.M. 2000). We prepared a new economic analysis, a draft EIS, and a new proposed rule pursuant to that court order. A new economic analysis was completed to address this revised final designation, the previous economic analysis is not reflective of this designation or our current approach for analyzing economic impacts.

(67) *Comment:* The economic analysis only considered the middle Rio Grande as an entire unit and did not evaluate economic impacts to different areas within the middle Rio Grande. An economic analysis that does not take local land and water use into account does not disclose the full economic costs of the designation and is of no benefit to the Service or the public.

Our Response: The economic analysis includes specific analyses within the area designated as critical in the middle Rio Grande by estimating the cost of designating critical habitat in each of the five reaches. The analysis utilized all information provided by the Federal, State, local, and Tribal respondents operating in the area, including models created by and technical assistance from the New Mexico State University Agricultural Extension Service. Information concerning the local and regional economy was analyzed to conclude that there would not be significant economic impacts associated with the designation of critical habitat for the silvery minnow (*see also* the "Economic Analysis" section of this rule).

(68) *Comment:* The draft economic analysis uses alfalfa as the basis for calculating the cost of forgone production and secondary economic impacts. The estimated economic impacts were likely underestimated because alfalfa makes up about 56 percent of the agricultural crops in the middle Rio Grande. The costs of forgone production on the other 44 percent of agricultural crops would likely be higher, since alfalfa is a relatively low-value, high-water-consuming crop.

Our Response: Based on interviews with local crop scientists and because of the dominant status, annual planting cycle, and relatively high water requirements of alfalfa, the economic analysis assumes that acres retired from planting will be those devoted to the alfalfa crop. However, the economic analysis indicated that this assumption is likely to be conservative and to overstate effects on the regional economy when compared with modeling reductions in water available to other crops. A second calculation using a reduction in hay production is included in the final economic analysis to provide comparison. Modeling the same reductions in water available to the second most prevalent crop in each study area (pasture hay for the middle Rio Grande and cotton for the Pecos) produces a total value of forgone production that is 3 percent less than that produced by modeling removals from alfalfa. Given that 90 percent of the irrigated acreage in the middle Rio Grande study area and over 75 percent of the irrigated acreage in the Pecos study area are devoted to the two dominant crops, it is likely that water removed from irrigation would come from one of these two crops, validating the assumptions set forth in the economic analysis.

(69) *Comment:* The draft economic analysis does not consider that NM has had an active water market for years and many farmers have not chosen to sell their water rights. Consequently, the acquisition of water to meet supplemental flows may not be available.

Our Response: Under New Mexico State law, users of water must hold a water right. Such rights are treated as property rights, and are traded in a market. Since a competitive market exists for water rights in NM, it is assumed that the price of these rights represents the expected economic benefit of water made available by these rights, in its highest and best use. That is, in paying for water rights, buyers are making clear the implicit value of the water to them. The economic analysis concluded that (1) there is an active market in NM to move water to uses other than the original use; (2) there are multiple buyers and sellers of water rights; and (3) the price of water rights can be predicted from expected underlying economic factors.

Studies and historic and current data indicate that "water flows uphill toward money" (Brookshire *et al.* 2002; Hall 2002). In other words, water will move toward the highest valued use in accordance with the economy. For example, 90 percent of all water rights transferred (*i.e.*, leased or sold) in the middle Rio Grande from 1976 to 2000 were previously held by irrigation (Brookshire *et al.* 2002). Consequently, we believe that the voluntary acquisition of water to meet supplemental flows will be available.

(70) *Comment:* The economic analysis underestimates the farmland removed from production to provide for supplemental flows.

Our Response: The economic analysis used models created by the New Mexico Cooperative Extension Service and NM agricultural statistics from the New Mexico Agricultural Statistics Service to estimate costs and returns for the State's farming industry in 2001. The commenter did not provide any data for us to consider and did not explain why he or she believes our estimates to be inadequate.

(71) *Comment:* Agricultural production in the middle Rio Grande valley is on a scale that does not allow comparison to agriculture elsewhere in the United States. Consequently, the values of agriculture are as much social and cultural as they are economic. The Service should consider these values before finalizing the designation.

Our Response: The economic analysis estimated: (1) The opportunity cost of water needed to supplement instream flow; (2) direct, indirect, and induced economic effects resulting from the resulting changes in the use of water, including cultural and secondary impacts on water sellers and communities; and (3) costs of section 7 consultations. The EIS also analyzed the social and economic impacts, impacts on land use, and impacts on cultural resources. Please refer to the economic analysis and EIS for a complete analysis of these impacts.

(72) *Comment:* The economic analysis assumed that the market for water rights may not result in actual delivery of "wet water" (*i.e.*, water in the river) once the middle Rio Grande is adjudicated.

Our Response: Water rights in the middle Rio Grande are not adjudicated and much of the water uses are not metered (Whitney *et al.* 1996). Adjudicating water rights (*i.e.*, a judicial determination and definition of water rights within a river system that quantifies and establishes the legal right to use water) in the middle Rio Grande would, in conjunction with a metering program, allow for improved administration of water rights and improved water management (Whitney *et al.* 1996). However, an adjudication may not be completed for the middle Rio Grande in the foreseeable future.

The State Engineer of New Mexico has indicated that as water markets begin to develop in the state, there will be a natural tendency to attempt to transfer paper water rights (New Mexico Office of the State Engineer 2001). The State Engineer is charged with water rights adjudications (New Mexico Office of the State Engineer 2001). The existing adjudication system is being examined to allow the entire State to be adjudicated (New Mexico Office of the State Engineer 2001). Moreover, the State Engineer of New Mexico has three criteria that must be met in order for state law water rights to be transferred: (1) The right must be valid, with a valid priority date; (2) the water must be put to beneficial use; and (3) the transferred water right must not impair the rights of others, including compact deliveries. For these reasons, we believe that the sale or lease of water rights will result in the delivery of "wet water."

(73) *Comment:* The prevailing price of water rights in the middle Rio Grande will substantially increase when more than 40,000 af water rights are sold and removed from the water rights market.

Our Response: The price of water rights is significantly affected by the type of buyer (*e.g.*, municipal, private, Federal/State) and has increased in NM over the last several decades (Brookshire *et al.* 1999). However, water markets remain highly localized, with significantly different prices in each market. Nevertheless, the value used in the economic analysis reflects the current price of water rights resulting from the voluntary acquisition of supplemental water. We expect these types of voluntary programs to continue, and do not anticipate that the amount of supplemental water (*i.e.*, demand) in previous consultations (*e.g.*, Service 2001b) will increase because critical habitat is designated. In addition, please see response to comment 57 for information related to this particular issue.

(74) *Comment:* The economic analysis does not explain why a 20-year time period was selected.

Our Response: The economic analysis stated that activities occurring greater than 20 years in the future are difficult to predict, and the outcomes of such activities are even more uncertain. The 20-year time horizon was selected because population forecasts as well as local and regional planning documents use similar time horizons.

(75) *Comment:* The economic analysis does not explicitly address whether the benefits of excluding a particular reach outweigh the benefits of including the reach as critical habitat.

Our Response: We use the economic analysis and other relevant information to conduct analyses under section 4(b)(2) of the Act. If relevant to a particular critical habitat designation, these considerations are included in the final rule (50 CFR 424.19). For a detailed discussion, *see* the "Exclusions Under Section 4(b)(2) of the Act" and "Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" sections below.

Summary of Changes From the Proposed Rule

In the development of this final designation of critical habitat for the silvery minnow we made several changes to the proposed critical habitat designation based on our review of public comments received on the proposed designation, the draft economic analysis, and the draft EIS and further evaluation of lands proposed as critical habitat. As discussed in the "Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section of this final rule, we evaluated the lands proposed as critical habitat for the Pueblos of Santo Domingo, Santa Ana, Sandia, and Isleta. Because each of these Pueblos submitted management plans that provide for special management considerations or protections for the silvery minnow and because of other relevant issues, (*see* "Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section below), these lands were not included in the final critical habitat designation.

The downstream boundary of critical habitat differs from that described in the proposed rule. In the proposal, the boundary was Elephant Butte Reservoir Dam, with the reservoir specifically excluded by definition (June 6, 2002; 67 FR 39206). However, in this final rule, we selected the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N, just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980). This downstream boundary of critical habitat was selected because it is a permanent identified landmark that is found on a standard topographic map. The area below this boundary (*i.e.*, from the utility line downstream to Elephant Butte Reservoir Dam) has the potential to be inundated by the reservoir and may not provide those physical or biological features essential to the conservation of the species and is therefore not designated as critical habitat.

During the open comment period, the BOR provided GIS maps that identified the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N, just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980) (M. Porter, BOR, pers. comm., 2002). Consequently, we revised the boundary for the designation because we find that the area downstream of the utility line is not essential to the conservation of the silvery minnow and we believe that the boundary, as originally proposed, was confusing as evidenced by many commenters, including the Elephant Butte Irrigation District, the NMISC, and others.

We further reviewed existing information (Platania and Dudley 2001a) to determine if the area from the designated critical habitat boundary to the headwaters of Elephant Butte Reservoir is essential to the conservation of the silvery minnow. For example, the location for the silvery minnow spawning study (Platania and Dudley 2000, 2001a) is just downstream of the critical habitat boundary. The study location was selected to maximize the potential number of silvery minnow eggs collected by rescuing those eggs destined to drift into Elephant Butte Reservoir. Currently, if silvery minnow spawn in the area from the designated critical habitat boundary to the headwaters of Elephant Butte Reservoir, the floating eggs would enter the reservoir in just a few hours. Once the eggs and larvae enter the reservoir, they would be subjected to predation (Platania and Dudley 2001a). We find that silvery minnow eggs and larvae in this reach contribute little to the survival or recovery of the species. Consequently, the area from the designated critical habitat boundary to the headwaters of Elephant Butte Reservoir is not essential to the conservation of the silvery minnow. Because of these reasons, we also believe that the exclusion of this area from the designated critical habitat will not lead to the extinction of the species. It should be noted that the Service, in collaboration with other State and Federal agencies, rescues silvery minnow eggs in the lower San Acacia Reach for use in captive propagation and subsequent augmentation of the silvery minnow in the middle Rio Grande.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires us to base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from a critical habitat designation when the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. Our analysis of the following two areas: (1) The river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM; and (2) the river reach in the lower Rio Grande in Big Bend National Park downstream of the National Park boundary to the Terrell/Val Verde County line, TX, concludes that the benefits of excluding these areas from the designation of critical habitat outweigh the benefits of including them. Therefore, we are not designating these areas as critical habitat.

(1) Benefits of Inclusion

The benefits of inclusion of the river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM, would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. Historically, no consultations have occurred on the Pecos River for the silvery minnow since the area is not occupied by the species. However, while critical habitat designation could provide some benefit to the silvery minnow, in fact, consultations are already occurring for another listed fish with similar habitat requirements. The Pecos bluntnose shiner (*Notropis simus pecosensis*) was federally listed in 1987 and portions of the Pecos River are designated as critical habitat for the Pecos bluntnose shiner (February 20, 1987; 52 FR 5295). As stated in the "Criteria for Identifying Critical Habitat" section of this rule, these fish species belong to the same guild of broadcast spawners with semibuoyant eggs and also spawn during high flow events with eggs and larvae being distributed downstream (Bestgen *et al.* 1989). Therefore, flow regime operations in this reach that benefit the Pecos bluntnose shiner also provide benefits to silvery minnow habitat. We also believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat are compatible with the primary constituent elements for the silvery minnow (*see* "Criteria for Identifying Critical Habitat" section below). Thus, we find that little additional benefit through section 7 consultation would occur as a result of the overlap between habitat suitable for the silvery minnow and the Pecos bluntnose shiner listing and critical habitat designation.

In *Sierra Club* v. *Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including the middle Pecos River because the final rule identifies all areas that are essential to the conservation of the silvery minnow, regardless of whether all of these areas are included in the regulatory designation. Consequently, we believe that the informational benefits will be provided to the middle Pecos River, even though this reach is not designated as critical habitat.

The economic analysis recognizes that while consultations regarding the Pecos River will occur without a silvery minnow critical habitat designation, those consultations would not consider the silvery minnow. However, because of the similar life history requirements of these species, we do not anticipate that the outcomes of such consultations would be altered. We recognize, as does the economic analysis, that the middle Pecos River area (as described above) covers about twice the length of the area designated for the Pecos bluntnose shiner. Historically, two formal consultations and two informal consultations occurred annually for the Pecos bluntnose shiner. The economic analysis assumes that twice as many consultations would occur if this area were designated as critical habitat for the silvery minnow, since the area would be doubled in size. However, the economic analysis also recognizes that this is likely an overstatement of the actual increase in consultations because consultations frequently occur on projects located outside of Pecos bluntnose shiner critical habitat, because of the interdependent nature of the river system and the presence of the species. Consequently, we do not believe that designating critical habitat within this river reach would provide additional benefits for the silvery minnow, because currently the activities that occur outside of critical habitat designated for the Pecos bluntnose shiner are also the subject of consultation. In the absence of the silvery minnow, we find little benefit to including this river reach in the critical habitat for the silvery minnow because of the presence of the Pecos bluntnose shiner and its designated critical habitat. Current and ongoing conservation activities for the Pecos bluntnose shiner are compatible with those of the silvery minnow such that reestablishment of the silvery minnow in this stretch of river should not be precluded in the future. Thus, we determine that any additional benefit from a designation of critical habitat in this river reach does not outweigh the benefit of excluding this area, as discussed below in the "Benefits of Exclusion" section.

The benefits of inclusion of the river reach in the lower Rio Grande in Big Bend National Park downstream of the park boundary to the Terrell/Val Verde County line, TX, would also result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. However, as indicated in the economic analysis, we anticipate very little consultation activity within this area. The economic analysis (section 6.3.3) estimates that over the next 20 years there would be a total of 12 formal consultations and 6 informal consultations if silvery minnow critical habitat were designated. The only Federal action that we are aware of within the river reach of the lower Rio Grande downstream of Big Bend National Park is the Big Bend National Park oversight and permitting authority for float trips, scientific research permits, environmental education, and law enforcement (R. Skiles, Big Bend National Park, pers. comm. 2001). Therefore, unless there are other types of Federal permitting or authorization within this area, private and State-owned lands would not be affected. Additional activities that were used to estimate the numbers of consultations

for this area include: National Park management activities (*e.g.*, pesticide application and fishing regulations), U.S. International Boundary and Water Commission channel maintenance activities, certain Service activities (*e.g.*, fire management plans, fish stocking), and the U.S. Environmental Agency (EPA) NPDES permitting for the Presidio or Lajitas wastewater treatment facility. We find sufficient regulatory and protective conservation measures in place from the consultations regarding the activities described above. We believe there would be little benefit to a designation in this reach because this area is protected and managed by the National Park Service and the number of consultations expected to occur in this area is relatively low.

As above, we believe that heightened public awareness of a listed species and its habitat may facilitate conservation efforts. Nevertheless, we believe that there would be little additional informational benefit gained from including the lower Rio Grande within designated critical habitat for the silvery minnow because we have identified in this final designation those areas that we believe are essential to the conservation of the species. For these reasons, we determine that any additional benefit of designation of critical habitat in this river reach does not outweigh the benefit of excluding this area, as discussed below.

(2) Benefits of Exclusion

As discussed in the "Recovery Plan" section of this rule, the primary goals of the silvery minnow Recovery Plan are to: (1) Stabilize and enhance populations of the silvery minnow and its habitat in the middle Rio Grande valley; and (2) reestablish the silvery minnow in at least three other areas of its historic range (Service 1999). We believe that the best way to achieve the second recovery goal will be to use the authorities under section 10(j) of the Act. Consequently, this final rule outlines our conservation strategy that we believe is consistent with the species' Recovery Plan. The conservation strategy is to reestablish the silvery minnow, under section 10(j) of the Act, within areas of its historic range, possibly including the river reach in the middle Pecos River and the river reach in the lower Rio Grande. Since the silvery minnow is extirpated from these areas and natural repopulation is not possible without human assistance, we believe a 10(j) rule is the appropriate tool to achieve this recovery objective. Nevertheless, any future recovery efforts, including reintroduction of the species to areas of its historic range, must be conducted in accordance with NEPA and the Act. An overview of the process to establish an experimental population under section 10(j) of the Act is described below.

Section 10(j) of the Act enables us to designate certain populations of federally listed species that are released into the wild as "experimental." The circumstances under which this designation can be applied are the following: (1) The population is geographically separate from non-experimental populations of the same species (*e.g.*, the population is reintroduced outside the species' current range but within its probable historic range); and (2) we determine that the release will further the conservation of the species. Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' status elsewhere in its range. Threatened status gives us more discretion in developing and implementing management programs and special regulations for a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. In situations where we have experimental populations, certain section 9 prohibitions (*e.g.*, harm, harass, capture) that apply to endangered and threatened species may no longer apply, and a special rule can be developed that contains the prohibitions and exceptions necessary and appropriate to conserve that species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, on the basis of the best available information. Nonessential experimental populations located outside National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing. Thus, for nonessential experimental populations, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: Section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which requires Federal agencies to informally confer with us on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Experimental populations determined to be "essential" to the survival of the species would remain subject to the consultation provisions of section 7(a)(2) of the Act.

In order to establish an experimental population, we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with NEPA. Also, our regulations require that, to the extent practicable, a regulation issued under section 10(j) of the Act represent an agreement between us, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (*see* 50 CFR 17.81(d)).

The flexibility gained by establishment of an experimental population through section 10(j) would be of little value if a designation of critical habitat overlaps it. This is because Federal agencies would still be required to consult with us on any actions that may adversely modify critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat. In fact, section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species.

The second goal of the Recovery Plan is to reestablish the silvery minnow in areas of its historic range. We strongly believe that, in order to achieve recovery for the silvery minnow, we would need the flexibility provided for in section 10(j) of the Act to help ensure the success of reestablishing the minnow in the middle Pecos River and lower Rio Grande areas. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Critical habitat is often viewed negatively by the public since it is not well understood and there are many misconceptions about how it affects private landowners (Patlis 2001). We believe it is important for recovery of this species that we have the support of the public when we move toward meeting the second recovery goal. It is critical to the recovery of the silvery minnow that we reestablish the species in areas outside of its current occupied range. The current population of silvery minnow in the middle Rio Grande is in an imperiled state, making reestablishment into other portions of its historic range extremely important.

As noted above, nonessential experimental populations located within the National Park System are treated, for purposes of section 7 of the Act, as if they are listed as threatened (50 CFR 17.83(b)). Thus, a nonessential experimental population established in the river reach in the lower Rio Grande downstream of the Big Bend National Park boundary (*i.e.*, within the reach designated as a wild and scenic river) to the Terrell/Val Verde County line, TX, would be treated, for purposes of section 7, as a threatened species because this area is a component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service and is considered part of the National Park System (16 U.S.C. 1281(c)). These lands downstream of Big Bend National Park are owned by the State of Texas (Black Gap Wildlife Management Area) and approximately 12 to 15 private landowners. The National Park Service's management authority in the wild and scenic river designation currently extends 0.25 mi from the ordinary high water mark.

For the past two years, Big Bend National Park has been working on a management plan for the "outstanding remarkable values of the Rio Grande wild and scenic river" (F. Deckert, Big Bend National Park, pers. comm. 2002). The development of the river management plan has involved stakeholders, including private landowners and the State of Texas. Throughout the stakeholder-based planning process, the Park has built trust among diverse and competing interests by encouraging open dialogue regarding various river management issues. If critical habitat were designated in this river reach, the introduction of additional Federal influence could jeopardize the trust and spirit of cooperation that has been established over the last several years (F. Deckert, pers. comm. 2002). The designation of critical habitat would be expected to adversely impact our, and possibly the Park's, working relationship with the State of Texas and private landowners, and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion.

The National Park Service expects to complete and finalize its management plan and EIS in 2003. We will review the river management plan when the draft EIS is released to suggest management recommendations for this river reach that are consistent with the recovery needs of the silvery minnow. We believe this area has the greatest potential for repatriating the species within an area of its historic range and believe this river reach also has the greatest potential for developing an experimental population under section 10(j) of the Act. In order for an experimental population to be successful, the support of local stakeholders—including the National Park Service, the State of Texas, private landowners, and other potentially affected entities—is crucial. In light of this and the fact that the river management plan will soon be completed, we find that significant benefits result from excluding this river reach from designation of critical habitat.

On the middle Pecos River, we acknowledge that the NMISC has been actively acquiring and leasing water rights to meet the State's delivery obligations to TX as specified in the Pecos River Compact and pursuant to an Amended Decree entered by the U.S. Supreme Court. For example, between 1991 and 1999, $27.8 million was spent on the Pecos River water rights acquisition program. NM faced a shortfall in its Pecos River Compact delivery obligations for the year 2001 and the possibility of priority administration, in which the State Engineer would order junior water rights holders not to use water. Given this tight water situation and the Pecos River Compact delivery obligations, we believe that the flexibility of section 10(j) would be especially appropriate in the middle Pecos. Economic costs associated with endangered species management and critical habitat designation for the silvery minnow are discussed in the economic analysis. There are a variety of current and potential future costs associated with the ongoing water management and water reallocation on the middle Pecos River. The economic analysis and EIS discuss and analyze these costs in greater detail. We used the economic analysis and EIS to make our determinations on the benefits of including or excluding areas from the designation of critical habitat. Prior to making our final determination, we considered comments on the economic and other relevant impacts of all of the areas we determined to be essential for the conservation of the silvery minnow.

In summary, we believe that the benefits of excluding the middle Pecos River and lower Rio Grande outweigh the benefits of their inclusion as critical habitat. Including these areas may result in some benefit through additional consultations with Federal agencies whose activities may affect critical habitat. However, overall this benefit is minimal because of the presence of the Pecos bluntnose shiner and its critical habitat in the middle Pecos River and the minimal number of estimated future consultations that are expected to occur within Big Bend National Park and the wild and scenic river designation that extends beyond the Park's boundaries. On the other hand, an exclusion will greatly benefit the overall recovery of the minnow by allowing us to move forward using the flexibility and greater public acceptance of section 10(j) of the Act to reestablish minnows in other portions of its historic range where it no longer occurs. This is likely the most important step in reaching recovery of this species and we believe that section 10(j), as opposed to a critical habitat designation, is the best tool to achieve this objective. Thus, we believe that an exclusion of these two areas outweighs any benefits that could be realized through a designation of critical habitat and we have not included these two areas within this critical habitat designation.

The Pecos River and lower Rio Grande reaches were historically occupied but are currently unoccupied by the silvery minnow (Hubbs 1940; Trevino-Robinson 1959; Hubbs *et al.* 1977; Bestgen and Platania 1991). The silvery minnow occupies less than 5 percent of its historic range, and the likelihood of extinction from catastrophic events is high because of its limited range (Hoagstrom and Brooks 2000; Service 1999). However, if critical habitat were designated in the middle Pecos River or lower Rio Grande, the likelihood of extinction of the species from the occupied reach of the middle Rio Grande would not decrease because critical habitat designation is not a process to reestablish additional populations within areas outside of the current known distribution. We believe that the exclusion of the river reaches of the middle Pecos River and the lower Rio Grande will not lead to the extinction of the species.

Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)

In the proposed rule for the designation of critical habitat for the silvery minnow (June 6, 2002; 67 FR 39213), we indicated that if any management plans are submitted during the open comment period, we would

consider whether such plans provide adequate special management or protection for the species. We also indicated that we would use this information in determining which, if any, river reaches or portions of river reaches within the middle Rio Grande should not be included in the final designation of critical habitat for the silvery minnow. We based this discussion on section 3(5) of the Act, which defines critical habitat, in part, as areas within the geographical area occupied by the species "on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection." We noted that "special management considerations or protection" is a term that originates in the definition of critical habitat and that adequate special management consideration or protection can be provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. The three criteria identified in the proposed rule for determining if a plan provides adequate special management or protection are as follows: (1) A current plan or agreement must be complete and provide sufficient conservation benefit to the species; (2) the plan or agreement must provide assurances that the conservation management strategies will be implemented; and (3) the plan or agreement must provide assurances that the conservation management strategies will be effective (*i.e.*, provide for periodic monitoring and revisions as necessary).

In a recent opinion (*Center for Biological Diversity* v. *Norton, Civ. No. 01–409 TUC DCB* D. Ariz. Jan. 13, 2003), a federal district court determined that our definition of critical habitat, as it applies to special management, is not correct. The court stated that "whether habitat does or does not require special management is not determinative on whether the habitat is "critical" to a threatened or endangered species." Although we do not necessarily agree with the court's analysis, we nevertheless do not intend to delete areas from this final designation because additional special management is not required. We do however, as explained below, believe that the management plans submitted by the Pueblos of Santo Domingo, Santa Ana, Sandia, and Isleta during the comment period provide for special management of the silvery minnow on their lands and we have, as explained below, excluded their lands under section 4(b)(2) of the Act.

During the open comment period, we worked with the Pueblos of Santo Domingo, Santa Ana, Sandia, and Isleta to develop voluntary measures to conserve the silvery minnow on their lands. These Pueblos each completed special management plans for the silvery minnow and submitted them to us during the open comment period. Excluding the Tribal lands in this designation of critical habitat for the silvery minnow will not adversely affect the conservation and future delisting of the species. Whether or not a species has designated critical habitat, that species is protected from any actions resulting in an unlawful take, under section 9 of the Act, and from Federal actions that could jeopardize the species' continued existence. The four Pueblo plans are summarized below:

(1) Santo Domingo Tribe Rio Grande Silvery Minnow Management Plan (Santo Domingo management plan): A resolution was passed by the Santo Domingo Tribal Council for the Santo Domingo management plan to exercise the Tribe's sovereign status and provide for special management protections and conservation of the silvery minnow. The Santo Domingo management plan sets the goal of gathering and analyzing data to formulate and prioritize actions to improve the status of these lands. Additionally, the Santo Domingo Tribe will attempt to secure funding to: (1) Determine and quantify the extent of the silvery minnow population and habitat found on Santo Domingo lands; (2) develop management actions and strategies to address the threats to the species and provide protection of silvery minnow populations and habitat; (3) develop methods and protocols for gathering, storing, and monitoring data for the Rio Grande watershed; and (4) analyze, revise, and strengthen the Santo Domingo management plan to promote long-term improvement of the watershed and protect the silvery minnow and other species.

The Santo Domingo Tribe intends to coordinate with us to follow methods and protocols that were provided to the Tribe in 2001 to survey for silvery minnows or habitat, to conduct water quality sampling, to develop water quality standards, and to devise relocation or augmentation protocols (Santo Domingo 2002; Service 2001e). The Santo Domingo management plan organizes these activities into silvery minnow population and habitat monitoring, silvery minnow research, bosque (the riparian areas adjacent to the Rio Grande) restoration, and data sharing. Because Santo Domingo commits to implementing these activities, we find that the Santo Domingo management plan provides significant conservation benefit to the silvery minnow. We believe that the resolution passed by the Santo Domingo Tribal Council and the development of the Santo Domingo management plan demonstrate that the management plan will be implemented. The Santo Domingo management plan specifically provides periodic updates as appropriate, including updates based upon silvery minnow population and habitat monitoring and research.

(2) Santa Ana Management Plan: During the open comment period, the Pueblo of Santa Ana submitted comments and a draft safe harbor agreement to us. The comments and draft safe harbor agreement indicate that the Pueblo is currently enhancing, restoring, and maintaining habitat for the silvery minnow and other species. The Pueblo's current natural resource programs—along with the draft safe harbor agreement—will, along with providing other conservation benefits, serve as the foundation for managing the silvery minnow and other species within the Pueblo's lands. The Pueblo has actively coordinated with us to implement these voluntary conservation programs to augment the silvery minnow population within its lands and intends to continue its existing natural resource management programs that currently provide special management considerations or protections for the silvery minnow. These programs include ecosystem restoration, range and wildlife, water resources, GIS, and environmental education. The ecosystem restoration program concentrates on the restoration of riparian, wetland, and riverine systems by eradicating non-native plant species and restoring native wildlife habitat, including habitat for the silvery minnow. Its current scope includes developing methods and implementing bosque, wetland, and channel restoration along the Rio Grande within the boundaries of the Pueblo and in the Rio Jemez watershed. The range and wildlife program concentrates on improving the health of the Pueblo's rangeland. The water resources program is responsible for surface water and groundwater projects and programs ongoing and in development at the Pueblo. Activities currently being implemented and anticipated to continue focus on water quality standards development, technical support for water rights establishment, conserving riparian areas, improving water quality, and reestablishing natural hydrologic processes. These natural resource management programs will collect monitoring data such as water quality information, stream geomorphologic assessments, aquatic studies, and vegetation surveys. We expect that periodic updates of information as well as water management improvements will occur because their natural resource programs incorporate monitoring and adaptive management principles.

We believe that Santa Ana Pueblo currently provides, and will continue to provide, special management for the conservation of the silvery minnow through its existing natural resource management programs. Because Santa Ana commits to implementing the activities described above, we conclude that the management of Santa Ana Pueblo lands and those described under the draft safe harbor agreement provide significant conservation benefit to the silvery minnow. We believe that the existing natural resource program and draft safe harbor agreement demonstrate that these voluntary management activities will be implemented. In fact, we have previously commented that Santa Ana's active restoration program includes many standard recommendations we make concerning fish and wildlife and their habitat, such as expansion of shallow, low-velocity habitat in the Rio Grande, creation and restoration of riparian and wetland areas, protection and enhancement of aquatic habitat, and establishment of native plant species in riparian areas cleared of non-native vegetation (Service 2001f). The Santa Ana natural resource program and draft safe harbor agreement also provide for periodic updates as appropriate.

(3) Pueblo of Sandia Bosque Management Plan (Sandia management plan): A resolution passed by the Pueblo of Sandia Tribal Council adopts the management plan. The resolution, among other things, identifies that the Sandia management plan formalizes bosque restoration activities, thus demonstrating the Pueblo's commitment to protect the bosque, including the silvery minnow. The Sandia management plan provides a conservation benefit to the silvery minnow by enhancing and restoring the species' habitat through bosque restoration efforts, water quality monitoring, fire prevention activities, wetland enhancements, and natural pond restoration. The goals of the Sandia management plan are to: (1) Create and sustain diverse habitats within the bosque; (2) reduce and eradicate invasive species; (3) plant native grasses, trees, and shrubs; (4) increase water retention and yield of the riparian area; (5) encourage the reintroduction of native species, including the silvery minnow and the Southwestern willow flycatcher; and (6) continue water quality monitoring to determine if degradation has contributed to the decline of the silvery minnow. The Pueblo also developed specific objectives to provide for special management considerations or protections of the silvery minnow, including: determining silvery minnow distribution, abundance, mesohabitat and habitat preference, and evaluating water quality impacts. Additionally, the Pueblo will prepare a feasibility study for creating silvery minnow habitat and will continue cooperative research efforts with us.

As an example of current protection, Sandia Pueblo has surface water quality standards pursuant to the Clean Water Act. To support these standards, the Pueblo has an intensive monitoring program to assess water quality compliance in relation to its established standards. In addition, the Pueblo is currently engaged with us in conducting a water quality study. The study is designed to assess water quality in relation to the silvery minnow and its habitat. The results of this study will be used to develop and promote long-term strategies that will protect and conserve the silvery minnow.

We find that the Sandia management plan is complete and provides significant conservation benefit to the silvery minnow as described above. We believe that the resolution passed by the Pueblo of Sandia Tribal Council concerning the Sandia management plan demonstrates that the management plan will be implemented. The Sandia management plan also will be periodically updated, as appropriate, on the basis of results of ongoing Federal and State agency programs and studies.

(4) The Pueblo of Isleta Riverine Management Plan: Rio Grande Silvery Minnow (Isleta management plan). A resolution passed by the Tribal Council of the Pueblo of Isleta adopts the Isleta management plan. The resolution, among other things, demonstrates the Pueblo's commitment through the Isleta management plan to protect, conserve, and promote the management of the silvery minnow and its associated habitat within the boundaries of Isleta Pueblo. Management activities covered by the Isleta Management Plan include silvery minnow population monitoring, habitat protection, and habitat restoration.

As an example of current protection, Isleta Pueblo has surface water quality standards pursuant to the Clean Water Act. The EPA has taken the surface water quality standards developed by Isleta Pueblo into consideration in the development of point source discharge permits; these standards minimize potential water quality impacts on water uses and resources, including the protection of the silvery minnow. The Pueblo regularly monitors compliance with these surface standards, and is currently engaged with us in conducting a water quality study. The study is designed to assess water quality in relation to the silvery minnow and its habitat. The results of this study will be used to develop and promote long-term strategies that will protect and conserve the silvery minnow.

The Isleta management plan sets the overall management goals of (1) determining, quantifying, and assessing silvery minnow populations within Isleta Pueblo; (2) developing and refining management actions to address potential threats to the silvery minnow; (3) prescribing measures to sustain existing silvery minnow populations and habitat and enhance numbers; and (4) promoting a comprehensive integrated resource management approach for the riverine ecosystem. These goals, conducted in cooperation with the FWS, will be accomplished by silvery minnow population and habitat assessment and monitoring, including surveys, egg sampling and collection, and silvery minnow rescues.

We find that the Isleta management plan is complete and the commitment to implement the activities described above provides significant conservation benefit to silvery minnow. We believe that the resolution passed by the Tribal Council of the Pueblo of Isleta concerning the final Isleta management plan demonstrates that the management plan will be implemented. The Isleta management plan specifically provides periodic updates as appropriate, including updates based upon silvery minnow population, habitat, and water quality monitoring and studies.

Section 4(b)(2) allows the Service to exclude areas form critical habitat designation if the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat, unless exclusion would result in the extinction of the species. If excluding an area from a critical habitat designation will provide substantial conservation benefits, and at the same time including the area fails to confer a counter-balancing positive regulatory or educational benefit to the species, then the benefits of excluding the area from critical habitat outweigh the benefits of including it.

The Service has analyzed the benefits of including the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta as part of the critical habitat designation and the benefits of excluding these areas, and determined that the benefits of exclusion outweigh those of inclusion. A major factor in the analysis described below is that, even if excluded, these river reaches owned and managed by the Pueblos will nonetheless receive special management and protection through the Pueblos management plans, which were submitted during the open comment period for the proposed rule. Under these management plans, the silvery minnow will benefit from monitoring, restoration, enhancement, and survey efforts. The Service has also determined that exclusion would not result in the extinction of the species.

(1) Benefits of Inclusion

There are few additional benefits of including the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta in this critical habitat designation beyond what will be achieved through the implementation of their management plans. The principal benefit of any designated critical habitat is that activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. If adequate protection can be provided in another manner, the benefits of including any area in critical habitat are minimal. The economic analysis found that the Bureau of Indian Affairs (BIA) has no consultation history for the silvery minnow (*i.e.*, no consultations have been conducted since the species was listed). However, the economic analysis found that, consultations may occur in the future for water trades or voluntary leasing that would benefit the silvery minnow. The economic analysis estimated 6 informal consultations may occur over the next 20 years, resulting from these beneficial water trades, but that no formal consultations were likely. These consultations would occur regardless of whether critical habitat is designated, because the species occupies these four areas. Section 7 consultation under the jeopardy standards will still be required for activities affecting the silvery minnow. Beyond these informal consultations, we do not expect any additional consultations.

Although we believe the likelihood of additional consultations is small, consultation requirements under section 7 of the Act would be triggered as a result of the funding or permitting processes administered by the Federal agency involved. The benefit of critical habitat designation would ensure that any actions funded by or permits given by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, projects would still trigger consultation requirements under the Act because the silvery minnow is currently present in the middle Rio Grande. Given that no consultations have occurred with the BIA or the Pueblos since the silvery minnow was listed as endangered in 1994 and the overall low likelihood of Federal projects being proposed in these areas, the Service believes there is almost no regulatory benefit of a critical habitat designation in this area. Consequently, the designation of critical habitat in these areas would provide minimal, if any, regulatory benefit to the species.

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the silvery minnow and its habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable. However, the Pueblos are already working with the Service to address the habitat needs of the species. Further, these areas were included in the proposed designation, which itself has reached a wide audience, and has thus provided information to the broader public about the conservation value of these areas. Thus, the educational benefits that might follow critical habitat designation, such as providing information to the BIA , BOR, or Pueblos on areas that are important for the long-term survival and conservation of the species, have already been provided by proposing these areas as critical habitat. Alternatively, the same or greater educational benefits will be provided to these lands if they are excluded from the designation, because the management plans provide for conservation benefits above any that would be provided by designating critical habitat. For example, the educational aspects are likely greater for these areas if they are not included in the designation because the Pueblos will continue to work cooperatively toward the conservation of the silvery minnow, which will include continuing, initiating, and completing scientific studies (*see* discussion below). For these reasons, then, we believe that designation of critical habitat would have few, if any, additional benefits beyond those that will result from continued consultation under the jeopardy standard.

(2) Benefits of Exclusion

The benefits of excluding the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta from designated critical habitat are more significant. The proposed critical habitat designation included 29.5 mi (47.5 km) of river through these areas. We believe that not designating critical habitat on these areas would have substantial benefits including: (1) The furtherance of our Federal Trust obligations and our deference to the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta to develop and implement Tribal conservation and natural resource management plans for their lands and resources within the Rio Grande ecosystem, which includes the silvery minnow and its habitat; (2) the establishment and maintenance of effective working relationships to promote the conservation of the silvery minnow and its habitat; (3) the allowance for continued meaningful collaboration and cooperation in scientific studies to learn more about the life history and habitat requirements of the species; and (4) providing conservation benefits to the Rio Grande ecosystem and the silvery minnow and its habitat that might not otherwise occur.

As detailed above, we met with Pueblos and Tribes to discuss how each might be affected by the designation of critical habitat. During the open comment period, we established effective working relationships with the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta. As part of our relationship, we provided technical assistance to each of these four Pueblos to develop voluntary measures to conserve the silvery minnow and its habitat on their lands. These voluntary measures are contained within special management plans that each of these Pueblos submitted during the open comment period (*see* discussion above). These actions were conducted in accordance with Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental

Manual of the Department of the Interior (512 DM 2). We believe that these Pueblos should be the governmental entities to manage and promote the conservation of the silvery minnow on their lands. During our meetings with each of these Pueblos, we recognized and endorsed their fundamental right to provide for resource management activities, including those relating to the Rio Grande ecosystem. Much of our discussions centered on providing technical assistance to the Pueblos to develop, continue, or expand natural resource programs such that the designation of critical habitat for the silvery minnow would likely be unnecessary.

We find that other conservation benefits could be provided to the Rio Grande ecosystem and the silvery minnow and its habitat by excluding the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta from the designation. For example, as part of maintaining an effective working relationship with each Pueblo, conservation benefits, including silvery minnow augmentation, population and habitat monitoring, silvery minnow research, habitat restoration, and the development of water leases may be possible. In fact, during our discussions with each of the Pueblos, we were informed that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. To this end, we found that each Pueblo would prefer to work with us on a Government-to-Government basis. For these reasons, we believe that our working relationships with the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta would be maintained if they are excluded from the designation of critical for the silvery minnow. We view this as a substantial benefit.

Proactive voluntary conservation efforts are necessary to promote the recovery of the silvery minnow (Service 1999). Consideration of this issue is especially important in areas where the status of the species is uncertain or unknown. Recovery of the silvery minnow will require access to all areas of the middle Rio Grande and permission for monitoring and other efforts (*e.g.*, augmentation of the existing population, water leasing, etc). Because we have not had permission from the Pueblos within the Cochiti reach, surveys to determine the status of the silvery minnow have not been conducted since the mid-1990s (Platania 1995; Hoagstrom and Brooks 2000). Pueblo cooperation is essential to obtain permission for these monitoring activities. As described above, the Santo Domingo intends to coordinate with us to survey for silvery minnows or habitat, to conduct water quality sampling, to develop water quality standards, and to devise relocation or augmentation protocols. Santa Ana Pueblo will continue to actively coordinate with us to implement a variety of voluntary conservation programs to augment the silvery minnow population within its lands and intends to continue its existing natural resource management programs that currently provide special management considerations or protections for the silvery minnow. Sandia Pueblo intends to enhance and restore the species' habitat through bosque restoration efforts, water quality monitoring, fire prevention activities, wetland enhancements, and natural pond restoration. Finally, Isleta Pueblo intends to protect, conserve, and promote the management of the silvery minnow and its associated habitat including population monitoring, habitat protection, habitat restoration, and continued water quality standards. Consequently, we view each of the special management plans as a starting point for cooperative and productive relationships that have the potential to provide additional substantive conservation benefits to the silvery minnow and its habitat. The additional benefits would be less likely if critical habitat was designated because the Pueblos view critical habitat as an intrusion on their ability to manage their own lands and trust resources.

The special management plans and comments submitted by each of the Pueblos documents that meaningful collaborative and cooperative scientific studies will begin or continue within their lands. These commitments demonstrate the willingness of each of the Pueblos to work cooperatively with us toward landscape-scale conservation efforts that will benefit the silvery minnow. Each of the Pueblos has committed to several ongoing or future management, restoration, enhancement, and survey activities that would not occur as a result of critical habitat designation. The Pueblos of Sandia and Isleta are currently participating in a water quality study with us. Santo Domingo Pueblo indicated that, among other activities, it will attempt to secure funding to implement silvery minnow and habitat inventories, water quality sampling, and the development of water quality standards. Santa Ana indicated that water quality data, stream geomorphology assessments, and aquatic and vegetation studies will continue. Therefore, we believe that the results of these or other similar studies will be used to develop and promote long-term strategies that will protect and conserve the silvery minnow and its habitat within the Pueblo lands of Santa Domingo, Santa Ana, Sandia, and Isleta. The benefits of excluding these areas from critical habitat will encourage the continued cooperation and development of data-sharing protocols and scientific studies as part of implementing the special management plans. If these areas were designated as critical habitat, we believe it is unlikely that much of this information would be available to us.

In addition to management actions described above to address the conservation needs of the silvery minnow, we discussed with each of the Pueblos possible future amendments to the special management plans to include voluntary conservation efforts for other listed species and their habitat (*e.g.*, southwestern willow flycatcher). All of the Pueblos indicated their willingness to work cooperatively with us to benefit other listed species. However, these future voluntarily management actions will likely be contingent upon whether lands on these four Pueblos are designated as critical habitat for the silvery minnow. Thus, a benefit of excluding these lands would be future voluntary conservation efforts that would benefit other listed species.

In summary, the benefits of including the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta in critical habitat are small, and are limited to minor educational benefits. The benefits of excluding these areas from being designated as critical habitat for silvery minnow are more significant, and include encouraging the continued development and implementation of the special management measures such as monitoring, survey, enhancement, and restoration activities that are planned for the future or are currently being implemented. These programs will allow the Pueblos to manage their natural resources to benefit the Rio Grande ecosystem and silvery minnow, without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to the species that would not otherwise be available to encourage and maintain cooperative working relationships. We find that the benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas.

As noted above, the Service may exclude areas from the critical habitat designation only if it is determined, "based on the best scientific and

commercial data available; that the failure to designate such area as critical habitat will result in the extinction of the species concerned." Here, we have determined that exclusion of the Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta from the critical habitat designation will not result in the extinction of the silvery minnow. First, activities on these areas that may affect the silvery minnow will still require consultation under section 7 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. Therefore, even without critical habitat designation on these lands, activities that occur on these lands cannot jeopardize the continued existence of the silvery minnow. Second, each of the Pueblos have committed to protecting and managing according to their special management plans and natural resource management objectives. In short, the Pueblos have committed to greater conservation measures on these areas than would be available through the designation of critical habitat. With these natural resource measures, we have concluded that this exclusion from critical habitat will not result in the extinction of the silvery minnow. Accordingly, we have determined that the Pueblo lands of Santa Domingo, Santa Ana, Sandia, and Isleta should be excluded under subsection 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species. For this reason, we are excluding from this critical habitat designation the Pueblo lands of Santa Domingo, Santa Ana, Sandia, and Isleta.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat designation on the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation if we determine that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction of the species.

Designation of critical habitat helps focus conservation activities by identifying areas that are essential to the conservation of the species and alerting the public and land management agencies to the importance of an area to conservation. Within areas currently occupied by the species, critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Where no such Federal agency action is involved, critical habitat designation has no bearing on private landowners, State, or Tribal activities. Aside from the added protection provided under section 7, critical habitat does not provide other forms of protection to designated lands.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits. Critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans under section 10 of the Act, or conservation planning efforts for other species if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the silvery minnow, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the Recovery Plan (Service 1999), data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits, and comments received on the previous proposed and final rule, draft economic analysis, and environmental assessment. We have emphasized areas known to be occupied by the silvery minnow and described other river reaches that were identified in the Recovery Plan which we believe are important for possible reintroduction and recovery (Service 1999).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat designations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and, within areas currently occupied by the species, may require special management considerations or protection. Those physical and biological features may include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The various life-history stages of the silvery minnow require diverse habitats. The following discussion summarizes the biological requirements of the silvery minnow relevant to identifying the primary constituent elements of its critical habitat.

The silvery minnow historically inhabited portions of the wide, shallow rivers and larger streams of the Rio Grande basin, predominantly the Rio Grande and the Pecos River (Bestgen and Platania 1991). Survey results indicated that adults were common in shallow and braided runs over sand substrate, and almost never occurred in habitats with bottoms of gravel or cobble, while young-of-year fish (less than 1 year old) occupied shallow, low-velocity backwaters with sand-silt substrates (Dudley and Platania 1997; Platania and Dudley 1997; Platania 1991; Remshardt *et al.* 2001). Young-of-year silvery minnows were infrequently found at the same time in the same habitat as adults. River reaches dominated by straight, narrow, incised (deep) channels with rapid flows are not typically occupied by the silvery minnow (Bestgen and Platania 1991).

The habitats most often occupied by silvery minnow were characterized by low (<20 cm) to moderate depths (31 to 40 cm), little (<10 cm/s) to moderate (11 to 30 cm/s) water velocity, and silt and sand substrata (Dudley and Platania 1997; Remshardt *et al.* 2001). It is believed that silvery minnow select debris piles, pools, and backwaters as habitat, and generally avoid main channel runs (Dudley and Platania 1997).

The silvery minnow is believed to be a generalized forager, feeding upon items suspended in the water column and items lying on the substrate (*e.g.*, plankton, algae, diatoms) (Sublette et al. 1990; Dudley and Platania 1997; Service 1999). The silvery minnow's elongated and coiled gastrointestinal tract suggests that detritus (partially decomposed plant or animal matter), including sand and silt, is scraped from the river bottom (Sublette et al. 1990). Other species of *Hybognathus* have similar food habits, consuming rich organic ooze and detritus found in silt or mud substrates (Pflieger 1997).

The silvery minnow is a pelagic spawner, with each female capable of producing an average of 3,000 semibuoyant, non-adhesive eggs during a spawning event (Platania 1995; Platania and Altenbach 1998). Collection of eggs in the middle of May, late May, early June, and late June suggest a contracted spawning period in response to a spring runoff or spike (increase in flow that occurs when winter snows melt) (Service 1999; BOR 2001a). However, the peak of egg production appears to occur in mid-May (Smith 1998, 1999). If the spring spike occurs at the wrong time or is reduced, then silvery minnow reproduction could be impacted. Similar to other species of *Hybognathus* in other drainages (Lehtinen and Layzer 1988; Taylor and Miller 1990), the silvery minnow appears capable of multiple spawns. For example, a late spawn was documented in the Isleta and San Acacia reaches on July 24, 25, and 26, 2002, following a high flow event produced by a thunderstorm (see also Dudley and Platania 2002d). This spawn was smaller than the typical spawning event in May, but a significant number of eggs was collected (N = 496) in 2 hours of effort (J. Smith, NMESFO, pers. comm. 2002). In 2002, small spawning events (a few eggs in each spawn) have been documented in all reaches except the Cochiti Reach as late as August 7 (J. Smith, NMESFO, pers. comm. 2002).

Platania (1995, 2000) found that early development and hatching of eggs is correlated with water temperature. Silvery minnow eggs raised in 30°C water hatched in about 24 hours, while eggs reared in 20°C water hatched within 50 hours. Eggs were 1.6 mm (0.06 in) in size upon fertilization, but quickly swelled to 3 mm (0.12 in). Recently hatched larval fish are about 3.7 mm (0.15 in) in standard length and grow about 0.15 mm (0.005 in) per day during the larval stages. Eggs and larvae remain in the drift for 3 to 5 days, and may be transported from 134 to 223 mi (216 to 359 km) downstream depending on river flows and habitat conditions (*e.g.*, debris piles, low velocity backwaters) (Platania and Altenbach 1998). About 3 days after hatching, the larvae begin moving to low-velocity habitats where food (mainly phytoplankton and zooplankton) is abundant and predators are scarce. Because eggs and larvae can be swept downstream, where recruitment (that portion of young-of-the-year fish added to the breeding population) of fish may be poor in the current degraded condition of the middle Rio Grande (*e.g.*, channelization, banks stabilization, levee construction, disruption of natural processes throughout the floodplain, etc.), adequate stream length appears to be an important determinant of reproductive success.

Platania (1995) indicated that the downstream transport of eggs and larvae of the silvery minnow over long distances may have been, historically, beneficial to the survival of their populations. This behavior could have promoted recolonization of reaches impacted during periods of natural drought (Platania 1995). Alternatively, in a natural functioning river system (*e.g.*, a natural, unregulated flow regime), a variety of low-velocity refugia (*e.g.*, oxbows, backwaters, etc.) would have been available for silvery minnow, and lengthy downstream drift of eggs and larvae may not have been common (J. Brooks, U.S. Fish and Wildlife Service pers. comm., 2001). Currently, the release of floating silvery minnow eggs may replenish downstream reaches, but the presence of the diversion dams (Angostura, Isleta, and San Acacia Diversion Dams) prevents recolonization of upstream habitats (Platania 1995). As upstream reaches are depleted upstream, and diversion structures prevent upstream movements, population decline of the species within river reaches may occur through loss of connectivity (*i.e.*, preventing upstream movement of fish). Silvery minnows, eggs, and larvae are also transported downstream to Elephant Butte Reservoir, where it is believed that survival of these fish is highly unlikely because of poor habitat, and, more importantly, because of predation from reservoir fishes (Service 2001b). The population center (*i.e.*, the river reach that contains the majority of adult silvery minnows) is believed to have moved farther downstream over the last several years (Dudley and Platania 2001; 2002a; 2002b). For example, in 1997, it was estimated that 70 percent of the silvery minnow population was found in the reach below San Acacia Diversion Dam (Dudley and Platania 1997). Moreover, during surveys in 1999, over 95 percent of the silvery minnows captured occurred downstream of San Acacia Diversion Dam (Dudley and Platania 1999a; Smith and Jackson 2000). Probable reasons for this distribution include: (1) The spawning of semibuoyant eggs during the spring and early summer high flows, resulting in downstream transport of eggs and larval fish; (2) diversion dams that restrict or preclude the movement of fish into upstream reaches; and (3) reduction in the amount of available habitat due to the current degraded condition of some areas within the middle Rio Grande (*e.g.*, channelization, streambed degradation, reduction in off-channel habitat, and the general narrowing and incising of the stream channel) (Platania 1998; Lagassee 1981; BOR 2001).

Most Great Plains streams are highly variable environments. Fish in these systems (*e.g.*, the Rio Grande) are subjected to extremes in water temperatures, flow regimes, and overall water quality conditions (especially the concentration of dissolved oxygen). Native fish in these streams often exhibit life history strategies and microhabitat preferences that enable them to cope with these natural conditions. For example, Matthews and Maness (1979) reported that the synergistic (combined) effects of high temperature, low oxygen, and other

stressors probably limit fishes in streams of the Great Plains.

The silvery minnow evolved in a highly variable ecosystem, and is likely more tolerant of elevated temperatures and low dissolved oxygen concentrations for short periods than other non-native species. Although little is known about the upper tolerance limits of the silvery minnow, when water quality conditions degrade, stress increases, and fish generally die (*e.g.*, see Matthews and Maness 1979; Ostrand and Wilde 2001). Generally, it is believed that during periods of low flow or no flow, Great Plains fishes seek refugia in large isolated pools, backwater areas, or adjoining tributaries (Deacon and Minckley 1974; Matthews and Maness 1979). Fish in these refugia strive to survive until suitable flow conditions return and these areas reconnect with the main river channel. This pattern of retraction and recolonization of occupied areas in response to flow and other habitat conditions is typical of fishes that endure harsh conditions of Great Plains rivers and streams (Deacon and Minckley 1974; Matthews and Maness 1979).

Localized reductions in abundance are not typically a concern where sufficient numbers of the species survive, because river reaches can be recolonized when conditions improve. However, habitat conditions such as oxbows, backwaters, or other refugia that were historically present on the Rio Grande and Pecos River and were a component of natural population fluctuations (*e.g.*, extirpation and recolonization) have been dramatically altered or lost (Bestgen and Platania 1991; Hoagstrom 2000; BOR 2001a, 2001b). Over the past several decades, the extent of areas in the Rio Grande and Pecos Rivers that have periodically lost flow has increased due to human alterations of the watersheds and stream channels and diversion of the streamflows (Service 1994).

Variation in stream flow (*i.e.*, flow regime) strongly affects some stream fish (Schlosser 1985). For example, juvenile recruitment of some stream fish is highly influenced by stable flow regimes (Schlosser 1985; Hoagstrom 2000). When sufficient flows persist and other habitat needs are met, then recruitment into the population is high. Silvery minnows and other Great Plains or desert fishes cannot currently survive when conditions lead to prolonged recurring periods of low or no flow of long stretches of river (Hubbs 1974; Hoagstrom 2000). Fish mortality likely begins from degraded water quality (*e.g.*, increasing temperatures, p.H., and decreasing dissolved oxygen) and loss of refuge habitat prior to prolonged periods of low or no flow (J. Brooks, pers. comm 2001; Ostrand and Wilde 2001). For instance, a reduction of stream flow reduces the amount of water available to protect against temperature oscillations, and high temperatures from reduced water flow frequently kill fish before prolonged periods of no flow occurs (Hubbs 1990).

It is also possible that fish may subsequently die from living under suboptimal conditions or that their spawning activities may be significantly disrupted (Hubbs 1974; Platania 1993b). Such conditions are in part responsible for the current precarious status of the silvery minnow. For example, management of water releases from reservoirs, evaporation, diversion dams, and irrigation water deliveries have resulted in dewatered habitat—causing direct mortality and isolated pools that cause silvery minnow mortality as a result of poor water quality and predation from other fish and predators. Despite efforts to manage water resources to benefit the silvery minnow, periods of intermittency have and continue to occur. Portions of the middle Rio Grande were dewatered in the period 1996 through 2001 (Service 2001b; J. Smith, pers. comm. 2001). In 1996, about 34 mi (58 km) out of the 56 mi (90 km) from the San Acacia Diversion Dam to Elephant Butte Reservoir were dewatered. In 1997, water flows ceased at the south boundary of the Bosque del Apache National Wildlife Refuge, resulting in the dewatering of 14 mi (22.5 km) of silvery minnow habitat. In 1998, the Rio Grande was discontinuous within the Bosque del Apache National Wildlife Refuge, dewatering about 20 mi (32 km) of habitat. In 1999, flows ceased about 1 mi upstream of the Bosque del Apache National Wildlife Refuge northern boundary, dewatering about 24 mi (39 km) of habitat. A similar event occurred in 2000, but not to the extent of the 1999 drying. In 2001, approximately 9 combined mi (14 km) of river dried within the Bosque del Apache National Wildlife Refuge and south of San Marcial (Smith 2001). Drying occurred during the 2002 irrigation season in the Isleta and San Acacia Reaches. Between June and August 2002, approximately 25 mi of river in the San Acacia Reach and 14 mi in the Isleta Reach dried. Because of prolonged recurring periods of low or no flow through multiple years, the status of the silvery minnow has declined to alarmingly low levels (Dudley and Platania 2001, 2002a, 2002b, 2002c, 2002d, 2002e).

The primary constituent elements identified below provide a qualitative description of those physical and biological features necessary to ensure the conservation of the silvery minnow. We acknowledge that if thresholds were established as part of a critical habitat designation, they could be revised if new data became available (50 CFR 424.12(g)); however, the process of new rulemaking can take years (*see* 50 CFR 424.17), as opposed to reinitiating and completing a formal consultation, which takes months (*see* 50 CFR 402.14). Formal consultation provides an up-to-date biological status of the species or critical habitat (*i.e.*, environmental baseline) which is used to evaluate a proposed action during formal consultations. Consequently, we believe it is more prudent to pursue the establishment of specific thresholds through formal consultation.

This final rule does not explicitly state what might be included as special management for a particular river reach within the middle Rio Grande. We anticipate that special management actions will likely be developed as part of the section 7 consultation process. Special management might entail a suite of actions including re-establishment of hydrologic connectivity within the floodplain, widening the river channel, or placement of woody debris or boulders within the river channel (J. Smith, pers. comm., 2001).

It is important to note that some areas within the middle Rio Grande critical habitat have the potential for periods of low or no flow under certain conditions (*e.g.*, *see* discussion above on middle Rio Grande). We recognize that the critical habitat designation specifically includes some areas that have lost flow periodically (MRGCD 1999; Scurlock and Johnson 2001; Scurlock 1998). It is our belief that the river reach below San Acacia Diversion Dam on the middle Rio Grande is likely to experience periods of low or no flow under certain conditions, and we are not able to predict with certainty which areas will experience these conditions. We believe this area is essential to the conservation of the silvery minnow because it likely serves as connecting corridors for fish movements between areas of sufficient flowing water (*e.g.*, *see* Deacon and Minckley 1974; Eberle *et al.* 1993). Additionally, we believe this area is essential for the natural channel geomorphology (the topography of the river channel) to maintain or re-create habitat, such as pools, by removing or redistributing sediment during high flow events (*e.g.*, *see* Simpson *et al.* 1982; Middle Rio Grande Biological Interagency Team 1993). Therefore, we believe that the inclusion of an area that has the potential for periods of low or no flow as critical habitat will ensure the conservation of the silvery minnow. As such, we believe that the primary constituent elements as described in this final rule could allow for short periods of low or no flow. Because of the difficulties in describing the existing conditions of this area (*see* above) and defining the primary constituent elements to reflect such a flow regime, we solicited comments in the proposed critical habitat designation rule for information related to the designation of critical habitat in this area that may experience periods of low or no flow, and, in particular, the primary constituent elements and how they related to the existing conditions (*e.g.*, flow regime). We did not receive any additional information or comments on these areas to refine the primary constituent elements in this final designation.

Federal agencies with discretion over water management actions that affect critical habitat will be required to consider critical habitat and possibly enter into consultation under section 7 of the Act. These consultations will evaluate whether any Federal discretionary actions destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. The adverse modification analysis will likely evaluate whether the adverse effect of prolonged recurring periods of low or no flow is of sufficient magnitude (*e.g.*, length of river) and duration that it would appreciably diminish the value of critical habitat for the survival and recovery of the silvery minnow. For example, the effect of prolonged periods of low or no flow on the habitat quality (*e.g.*, depth of pools, water temperature, pool size) and the extent of fish mortality is related to the duration of the event (Bestgen and Platania 1991). All of these factors will be analyzed under section 7 of the Act, if they are part of an action proposed by a Federal agency. Additionally, any Federal agency whose actions influence water quantity or quality in a way that may affect critical habitat or the silvery minnow must enter into section 7 consultation with us. Still, these consultations cannot result in biological opinions that require actions that are outside an action agency's legal authority and jurisdiction (50 CFR 402.02).

We determined the primary constituent elements of critical habitat for the silvery minnow based on studies on their habitat and population biology, including, but not limited to the following studies: Bestgen and Platania 1991; Service 1999; Dudley and Platania 1997, 2001, 2002a; Platania and Altenbach 1998; Platania 1991, 2000; Service 2001; Smith 1998, 1999; Hoagstrom 2000; Remshardt *et. al* 2001. The primary constituent elements are as follows:

1. A hydrologic regime that provides sufficient flowing water with low to moderate currents capable of forming and maintaining a diversity of aquatic habitats, such as, but not limited to the following: Backwaters (a body of water connected to the main channel, but with no appreciable flow), shallow side channels, pools (that portion of the river that is deep with relatively little velocity compared to the rest of the channel), eddies (a pool with water moving opposite to that in the river channel), and runs (flowing water in the river channel without obstructions) of varying depth and velocity—all of which are necessary for each of the particular silvery minnow life-history stages in appropriate seasons. The silvery minnow requires habitat with sufficient flows from early spring (March) to early summer (June) to trigger spawning, flows in the summer (June) and fall (October) that do not increase prolonged periods of low or no flow, and a relatively constant winter flow (November through February);

2. The presence of low-velocity habitat (including eddies created by debris piles, pools, or backwaters, or other refuge habitat (*e.g.*, connected oxbows or braided channels)) within unimpounded stretches of flowing water of sufficient length (*i.e.*, river miles) that provide a variety of habitats with a wide range of depth and velocities;

3. Substrates of predominantly sand or silt; and

4. Water of sufficient quality to maintain natural, daily, and seasonally variable water temperatures in the approximate range of greater than 1 °C (35 °F) and less than 30 °C (85 °F) and reduce degraded water quality conditions (decreased dissolved oxygen, increased pH, etc.).

We determined that these primary constituent elements of critical habitat provide for the physiological, behavioral, and ecological requirements of the silvery minnow. The first primary constituent element provides water of sufficient flows to reduce the formation of isolated pools. We conclude this element is essential to the conservation of the silvery minnow because the species cannot withstand permanent drying (loss of surface flow) of long stretches of river. Water is a necessary component for all silvery minnow life-history stages and provides for hydrologic connectivity to facilitate fish movement. The second primary constituent element provides habitat necessary for development and hatching of eggs and the survival of the silvery minnow from larvae to adult. Low-velocity habitat provides food, shelter, and sites for reproduction, which are essential for the survival and reproduction of silvery minnow. The third primary constituent element provides appropriate silt and sand substrates (Dudley and Platania 1997; Remshardt *et al.* 2001), which we and other scientists conclude are important in creating and maintaining appropriate habitat and life requisites such as food and cover. The final primary constituent element provides protection from degraded water quality conditions. We conclude that when water quality conditions degrade (*e.g.*, water temperatures are too high, pH levels are too low, and dissolved oxygen concentrations are too low), silvery minnows will likely be injured or die.

Criteria for Identifying Critical Habitat

The primary objective in designating critical habitat is to identify areas that are considered essential for the conservation of the species, and to highlight specific areas where management considerations should be given highest priority. In determining critical habitat for the silvery minnow, we have reviewed the overall approach to the conservation of the silvery minnow undertaken by the local, State, Tribal, and Federal agencies operating within the species' historic range since the species' listing in 1994, and the previous proposed (March 1, 1993; 58 FR 11821) and final critical habitat rules (July 6, 1999; 64 FR 36274). We have also outlined our conservation strategy to recover the species (*see* "Exclusions Under Section 4(b)(2) of the Act" section above) and considered the features and steps necessary for recovery and habitat requirements described in the Recovery Plan (Service 1999). We considered information provided by our New Mexico Fishery Resources Office and other biologists, and also utilized our own expertise. We also reviewed the biological opinion issued June 29, 2001, to the BOR and the Corps for impacts to the silvery minnow from water operations in the middle Rio Grande (Service 2001b), and the biological opinion issued to the BOR for discretionary actions related to water management on the Pecos River in NM (Service 2001a). We reviewed available information that pertains to the habitat requirements of this species, including material received during the initial

public comment period on the proposed listing and designation, the information received following the provision of the draft economic analysis to the public on April 26, 1996, the comments and information provided during the 30-day comment period that opened on April 7, 1999, including the public hearing, and the comments and information received during the 60-day comment period opened on April 5, 2001, for the notice of intent to prepare an EIS and public scoping meetings held on April 17, 23, 24, and 27, 2001 (April 7, 1999; 64 FR 16890). We also considered information and comments received on the recent proposal to designate critical habitat (June 6, 2002; 67 FR 39206).

Since the listing of the silvery minnow in 1994 (July 20, 1994; 59 FR 36988), no progress has been made toward reestablishing this species within unoccupied areas (*e.g.*, river reaches on the middle Pecos, lower Rio Grande). Because the silvery minnow has been extirpated from these areas, Federal agencies have not consulted with us on how their discretionary actions may affect the silvery minnow. We conclude these areas (*e.g.*, river reaches on the middle Pecos and the lower Rio Grande) are essential to the conservation of the minnow, but we have not designated them as critical habitat (*see* "Exclusions Under Section 4(b)(2) of the Act" section).

This critical habitat designation differs from the final critical habitat designation we made in 1999 (July 6, 1999; 64 FR 36274), which was subsequently set aside by court order. The differences also reflect the best scientific and commercial information analyzed in the context of the final Recovery Plan (*see* "Recovery Plan" discussion above) and our conservation strategy for this species. Although we could have designated two additional critical habitat units to respond to the Recovery Plan's recommendation that additional areas are required to achieve recovery (Service 1999) (*see* "Recovery Plan" discussion above), we believe that inclusion of these areas under a critical habitat regulation could hinder our future conservation strategy (*see* "Exclusions Under Section 4(b)(2) of the Act" section above) and actually impede recovery of the silvery minnow.

Recovery requires protection and enhancement of existing populations and reestablishment of populations in suitable areas of historic range. The Recovery Plan identifies "the necessity of reestablishing silvery minnow in portions of its historic range outside of the middle Rio Grande in New Mexico." The Recovery Plan identified potential areas for reestablishment of silvery minnow in certain river reaches of the Rio Grande and Pecos River. The Recovery Plan also recommended a thorough analysis of the reestablishment potential of specific river reaches within the historic range of the silvery minnow.

We have determined that one of the most important goals to be achieved toward the conservation of this species is the establishment of secure, self-reproducing populations in areas outside of the middle Rio Grande, but within the species' historic range (Service 1999). Thus, we have outlined our conservation strategy for the silvery minnow (*see* "Exclusions Under Section 4(b)(2) of the Act" section above). Because the species occupies less than 5 percent of its historic range and the likelihood of extinction from a catastrophic event is greatly increased (Hoagstrom and Brooks 2000; Service 1999), we believe that additional populations should be established within certain unoccupied reaches (*i.e.*, areas outside of the current known distribution). Nevertheless, any future recovery efforts, including reintroduction of the species to areas of its historic range, must be conducted in accordance with NEPA and the Act.

The recent trend in the status of the silvery minnow has been characterized by dramatic declines in numbers and range despite the fact that this species evolved in rapidly fluctuating, harsh environments. Moreover, none of the threats affecting the silvery minnow has been eliminated since the fish was listed (July 20, 1994; 59 FR 36988), and its status continues to decline (Dudley and Platania 2001, 2002b, 2002c, 2002d, 2002e). The known silvery minnow population within the middle Rio Grande has become fragmented and isolated and is vulnerable to those natural or manmade factors that might further reduce population size (Dudley and Platania 2001, 2002a, 2002b). Because there have been low spring peak flows in the Rio Grande in some recent years (*e.g.*, 2000) and a related decrease in silvery minnow spawning success, the population size of silvery minnow continued to decline through the winter of 2002 (Dudley and Platania 2001, 2002a, 2002b, 2002c, 2002d, 2002e). We conclude that the species' vulnerability to catastrophic events, such as prolonged periods of low or no flow, has increased since the species was listed as endangered in 1994 (July 20, 1994; 59 FR 36988).

It is widely recognized that major efforts to reintroduce the silvery minnow to large reaches of its historic habitat in the Rio Grande and Pecos River will not likely occur without either natural or induced changes in the river, including changes affecting the existing fish community, habitat restoration, and coordinated water management (*e.g.*, Service 1999). Nevertheless, we conclude that conservation of the silvery minnow requires habitat conditions that will facilitate population expansion or reintroduction. As an example, we are currently involved in developing several efforts to assist in the recovery of the silvery minnow and other imperiled species (*e.g.*, Federal and non-Federal efforts to create a middle Rio Grande Endangered Species Act Collaborative Program). Any future habitat restoration efforts conducted by us or other Federal agencies within the species' historic habitat will be analyzed through NEPA and will be conducted in accordance with the pertinent sections of the Act and Federal rulemaking procedures.

As discussed above in the comments section, non-native fish species may adversely affect the silvery minnow. However, non-native fish have the potential to be removed or reduced to acceptable levels using a variety of control or management techniques. For example, the New Mexico State Game Commission recently passed a regulation limiting the species that can be used as baitfish in the Pecos River (New Mexico Department of Game and Fish 2000). As part of the Federal rulemaking process, we sought further information regarding the role of unoccupied river reaches within the historic range of the silvery minnow, including those reaches with non-native fish species (*e.g.*, plains minnow) present or those reaches that have the potential for low or no flow events. We were particularly interested in assistance in describing the existing habitat (*e.g.*, flow) conditions for the river reach below San Acacia Diversion Dam on the middle Rio Grande. However, we did not receive additional information on these areas to refine this final designation.

It is important to note that the mere presence of non-native aquatic species does not eliminate an area from being considered for designation as critical habitat. For example, the relationship between the introduction of the plains minnow and extirpation of the silvery minnow is unclear (see discussion above). Although the Recovery Plan suggested that the plains minnow would be the primary limiting factor precluding successful reestablishment of the silvery minnow to the Pecos River (Service 1999), we have little data from which to draw firm conclusions for the extirpation of the silvery minnow from the Pecos River. We recognize that any efforts to reestablish the silvery minnow to unoccupied river reaches must fully analyze and consider a variety of habitat management techniques, including the control or management of non-native fish. Consequently, we invited comments or information relating to the status of the plains minnow in the Pecos River and this area not being proposed as critical habitat. We were especially interested in observations of related species of *Hybognathus* and any behavioral or reproductive mechanisms that might provide for ecological separation in areas where two or more species of *Hybognathus* co-occur. We did not receive any additional information concerning this aspect of the designation.

Portions of the Pecos River include designated critical habitat for the Pecos bluntnose shiner (52 FR 5295). The Pecos bluntnose shiner critical habitat includes a 64 mi (103 km) reach of the Pecos River extending from a point 10 mi (16 km) south of Fort Sumner, NM, downstream to the De Baca and Chaves County line and a 37 mi (60 km) reach from near Hagerman, NM, to near Artesia, NM (52 FR 5295). There are current protections in place for the Pecos bluntnose shiner in the river reach from Sumner to Brantley Reservoirs on the Pecos River; consequently, we believe that the designation of critical habitat would provide little additional benefit for the silvery minnow above the current jeopardy and adverse modifications standards for the Pecos bluntnose shiner (*see* "Exclusions Under Section 4(b)(2) of the Act" section above).

The Pecos bluntnose shiner inhabits main-channel habitats with sandy substrates, low-velocity flows, and depths from 17 to 41 cm (7 to 16 in) (Hatch *et al.* 1985). Adult Pecos bluntnose shiners use main-channel habitats, with larger individuals found mainly in more rapidly flowing water (greater than 40 cm/sec, 1.25 ft/sec), but preferences for particular depths were not found (Hoagstrom *et al.* 1995). Young of the year use the upstream reaches between Sumner and Brantley Reservoirs, which provide shallow, low-velocity habitat. These reaches also maintain such habitat at high (bankfull) discharge, providing refugia from swift, deep water. Pecos bluntnose shiner and related mainstream cyprinids (*e.g.*, silvery minnow) are adapted to exploit features of Great Plains rivers (Hoagstrom 2000). These fish species belong to the same guild of broadcast spawners with semibuoyant eggs and also spawn during high flow events in the Pecos River, with eggs and larvae being distributed downstream to colonize new areas (Bestgen *et al.* 1989). The habitat features used by the Pecos bluntnose shiner are largely affected by ongoing Sumner Dam operations (*e.g.*, block releases). Nevertheless, any flow regime operations in this reach that benefit the Pecos bluntnose shiner would also benefit the silvery minnow. We believe they could both occupy the same river reach in the future with little to no interspecific competition, in part because these species historically coexisted (Bestgen and Platania 1991) and microhabitat partitioning has been documented for related species of southwestern fish (Matthews and Hill 1980). Therefore, we believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat (*e.g.*, clean permanent water; a main river channel habitat with sandy substrate; and a low velocity flow (February 20, 1987; 52 FR 5295)) are compatible with our conservation strategy for repatriating the silvery minnow.

Lateral Extent of Critical Habitat

The critical habitat designation defines the lateral extent as those areas bounded by existing levees, or in areas without levees, the lateral extent of critical habitat is defined as 300 ft (91.4 m) of riparian zone adjacent to each side of the middle Rio Grande. Thus, the lateral extent of critical habitat does not include areas adjacent to the existing levees but within the 300-ft (91.4-m) lateral width outside the existing levees (*i.e.*, these areas are not designated as critical habitat, even though they may be within the 300-ft lateral width). This designation of critical habitat will not remove existing levees. We recognize that these areas can be important for the overall health of river ecosystems, but these areas have almost no potential for containing the primary constituent elements because they are separated from the river by the levees and are rarely inundated by water. Therefore, they are not included in the designation because we conclude they are not essential to the conservation of the silvery minnow. Nevertheless, these and other areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section7(a)(1) of the Act, the regulatory protections afforded by the jeopardy standard in section 7(a)(2) of the Act, and take prohibitions in section 9 of the Act.

For each river reach within the middle Rio Grande, the upstream and downstream boundaries are described below. Critical habitat includes the river channels within the identified reaches and areas within these reaches potentially inundated during high-flow events. Critical habitat includes the area of bankfull width plus 300 ft (91.4 m) on either side of the banks. The bankfull width is the width of the stream or river at bankfull stage (*i.e.*, the flow at which water begins to leave the channel and move into the floodplain (Rosgen 1996)). Bankfull stage, while a function of the size of the stream, is a fairly consistent feature related to the formation, maintenance, and dimensions of the stream channel (Rosgen 1996). This 300-ft (91.4-m) width defines the lateral extent of those areas we believe are essential to the species' conservation. Although the silvery minnow cannot be found in these areas when they are dry, these areas likely provided backwater habitat and were sometimes flooded in the past (Middle Rio Grande Biological Interagency Team 1993); therefore, they may provide habitat during high-water periods. As discussed in this section, we determined that the areas within the 300-ft (91.4-m) lateral width are essential to the conservation of the silvery minnow.

We determined the 300-ft (91.4-m) lateral extent for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area (50 CFR 424.12). Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), we found that it was not included on standard topographic maps, and the information was not readily available from FEMA or from the Corps for the areas we are designating. We suspect this is related to the remoteness of various river reaches. We received comments in relation to other sources of information (*e.g.*, National Wetlands Inventory maps) to refine the lateral extent of critical habitat (see comments section above). After evaluating this information, we concluded that our designation accurately delineates the boundary of critical habitat. We selected the 300-ft (91.4-m) lateral extent, rather than some other delineation, for three reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (*i.e.*, the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas for larval and juvenile silvery minnow, allow the river to meander within its

main channel in response to large flow events, and recreate the mosaic of habitats necessary for the conservation of the silvery minnow); (2) conservation of the adjacent riparian zone also helps provide essential nutrient recharge and protection from sediment and pollutants, which contributes to successful spawning and recruitment of silvery minnows; and (3) vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (*e.g.*, aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (March 9, 2000; 65 FR 12897; Middle Rio Grande Biological Interagency Team 1993).

This critical habitat designation takes into account the naturally dynamic nature of riverine systems and recognizes that floodplains (including riparian areas) are an integral part of the stream ecosystem. For example, riparian areas are seasonally flooded habitats (*i.e.*, wetlands) that are major contributors to a variety of vital functions within the associated stream channel (Federal Interagency Stream Restoration Working Group 1998, Brinson *et al.* 1981). They are responsible for energy and nutrient cycling, filtering runoff, absorbing and gradually releasing floodwaters, recharging groundwater, maintaining streamflows, protecting stream banks from erosion, and providing shade and cover for fish and other aquatic species. Healthy riparian areas help ensure water courses maintain the habitat components essential to aquatic species (*e.g.*, *see* U.S.D.A. Forest Service 1979; Middle Rio Grande Biological Interagency Team 1993; Briggs 1996), including the silvery minnow. Habitat quality within the mainstem river channels in the historic range of the silvery minnow is intrinsically related to the character of the floodplain and the associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (*e.g.*, substrate, water quality, and water quantity) in the middle Rio Grande (Middle Rio Grande Biological Interagency Team 1993). Among other things, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain channel morphology and geometry. We believe a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, is important in maintaining the stream conditions necessary for long-term conservation of the silvery minnow.

Human activities that occur outside the river channel can have a demonstrable effect on physical and biological features of aquatic habitats. However, not all of the activities that occur within a floodplain will have an adverse impact on the silvery minnow or its habitat. Thus, in determining the lateral extent of critical habitat along riverine systems, we must consider the definition of critical habitat under the Act. That is, critical habitat must be determined to be essential to a species' conservation and, within areas currently occupied by the species, must be in need of special management considerations or protection.

We do not believe that the entire floodplain is essential to the conservation of the species, and we are not proposing to designate the entire floodplain as critical habitat. However, the river channel alone is not sufficient to ensure the conservation of the silvery minnow. For the reasons discussed above, we believe that the riparian zone adjacent to the river channel provides an important function for the protection and maintenance of the primary constituent elements and is essential to the conservation of the species.

The lateral extent (width) of riparian corridors fluctuates considerably on the Rio Grande. The appropriate width for riparian protection has been the subject of several studies (Castelle *et al.* 1994). Most Federal and State agencies generally consider a zone 23 to 46 m (75.4 to 150.9 ft) wide on each side of a stream to be adequate to help improve or maintain local water quality (Natural Resource Conservation Service 1998, 2000; Lynch *et al.* 1985), although lateral widths as wide as 152 m (500 ft) have been recommended for achieving flood attenuation benefits (Corps 1999). In most instances, however, these riparian areas are primarily intended to reduce detrimental impacts to the stream (*i.e.*, protect the stream) from sources outside the river channel such as agricultural runoff. Generally, we believe a lateral distance of 300 ft (91.4 m) on each side of the stream beyond the bankfull stage to be appropriate for the protection of riparian and wetland habitat and the natural processes involved in the maintenance and improvement of water quality (*e.g.*, see Middle Rio Grande Biological Interagency Team 1993). We believe this lateral width will help ensure the protection of one or more primary constituent elements (*e.g.*, water quality) of the critical habitat. Thus, within the area designated as critical habitat in the middle Rio Grande, we conclude that the 300-ft (91.4-m) lateral width is essential to the conservation of the species.

We did not map critical habitat in sufficient detail to exclude all developed areas and other lands unlikely to contain primary constituent elements essential for silvery minnow conservation. Some developed lands within the 300-ft (91.4-m) lateral extent are not considered critical habitat because they do not contain the primary constituent elements and they are not essential to the conservation of the silvery minnow. Lands located within the exterior boundaries of the critical habitat designation, but not considered critical habitat, include: Developed flood control facilities; existing paved roads; bridges; parking lots; dikes; levees; diversion structures; railroad tracks; railroad trestles; water diversion and irrigation canals outside of natural stream channels; the low flow conveyance channel; active gravel pits; cultivated agricultural land; and residential, commercial, and industrial developments. These developed areas do not contain any of the primary constituent elements and do not provide habitat or biological features essential to the conservation of the silvery minnow. However, some activities in these areas, like activities in other areas not included within the designation (if Federally funded, authorized, or carried out), may affect the primary constituent elements of the critical habitat and, therefore, may be affected by the critical habitat designation, as discussed later in this rule.

Reach-by-Reach Analysis

We conducted a reach-by-reach analysis of the entire known historic range of the silvery minnow to evaluate and select river reaches that require special management or protection, or are essential to the conservation of the species. As identified in the Recovery Plan (*see* "Recovery Plan" section above), important factors we considered in determining whether areas were essential to the conservation of the species include presence of other members of the reproductive guild (*e.g.* pelagic spawners, species with semibuoyant eggs), habitat suitability (*e.g.*, appropriate substrate), water quality, and presence of non-natives (*e.g.*, competitors, predators, other species of *Hybognathus*). These important factors were evaluated in conjunction with the variable flow regime of each reach. Each of the river reaches, to some extent, has a varying flow regime. However, the fact that a river reach may at times experience a prolonged period of low or no flow as a result of a varying flow regime does not preclude the area from being considered essential to the conservation of the species and, further, from being designated as critical habitat. Based on our reach-by-reach analysis, we have determined which reaches are essential for the conservation of the species.

We are designating the middle Rio Grande as critical habitat. This area contains all of the primary constituent elements during some or all of the year (see the "Regulation Promulgation" section of this rule for exact descriptions of boundaries of designated critical habitat). We conclude that this critical habitat can provide for the physiological, behavioral, and ecological requirements of the silvery minnow. The designated critical habitat is within the middle Rio Grande from immediately downstream of Cochiti Reservoir to the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722N, just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980), including the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, which is not included. The designation also defines the lateral extent (width) as those areas bounded by existing levees or, in areas without levees, 300 ft (91.4 m) of riparian zone adjacent to each side of the bankfull stage of the middle Rio Grande. We did not include the Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta within the middle Rio Grande. The downstream boundary of the designated critical habitat is determined to be the utility line crossing (see the "Regulation Promulgation" section of this rule for exact descriptions of boundaries of designated critical habitat). Although we determined that other areas are essential to the conservation of the silvery minnow (*i.e.*, the middle Pecos River from immediately downstream of Sumner Dam to Brantley Dam, NM, and the lower Rio Grande from the upstream boundary of Big Bend National Park to Terrell/Val Verde County line, TX), these areas are not designated as critical habitat. A description of each river reach within the silvery minnow's historic range is provided below. We also provide our reasons for determining whether each reach is essential to the conservation of the species and whether we are designating critical habitat for each of the identified reaches. We conclude that we can secure the long-term survival and recovery of this species with the establishment of future experimental populations under section 10(j) of the Act, along with the critical habitat in the middle Rio Grande.

The historic range of the species in the Rio Grande is from Española, NM, to the Gulf of Mexico, and in the Pecos River (a major tributary of the Rio Grande) from Santa Rosa, NM, downstream to its confluence with the Rio Grande (Pflieger 1980; Bestgen and Platania 1991). We separated the historic range of the silvery minnow into 12 river reaches: (1) Upstream of Cochiti Reservoir to the confluence of the Rio Chama and Rio Grande, NM; (2) middle Rio Grande from Cochiti Reservoir downstream to the Elephant Butte Dam, including the Jemez River from the Jemez Canyon Dam to the confluence of the Rio Grande; (3) downstream of Elephant Butte Dam to the Caballo Dam, NM; (4) downstream of Caballo Dam, New Mexico, to the American Dam, TX; (5) downstream of American Reservoir, to the upstream boundary of Big Bend National Park, TX; (6) the upstream boundary of Big Bend National Park to the southern boundary of the wild and scenic river designation at Terrell/Val Verde County line, TX; (7) the Terrell/Val Verde County line, TX, to the Amistad Dam, TX; (8) downstream of Amistad Dam to the Falcon Dam, TX; (9) downstream of the Falcon Dam to the Gulf of Mexico, TX; (10) Pecos River from Santa Rosa Reservoir to Sumner Dam, Guadalupe County, NM; (11) Sumner Dam to the Brantley Dam, NM; (12) Brantley Dam, NM, to the Red Bluff Dam, TX; and (13) Red Bluff Dam to the confluence of the Rio Grande, TX. Each of these reaches is analyzed below.

1. Upstream of Cochiti Reservoir to the confluence of the Rio Chama and Rio Grande, Rio Arriba, Sante Fe, and Sandoval Counties, NM. Currently, this reach is dominated by cool water, which is not considered suitable for the silvery minnow (Platania and Altenbach 1998). The majority of this reach is bounded by canyons, with substrate dominated by gravel, cobble, and boulder (Service 1999). The flow regime is also highly variable seasonally because of irrigation and other agricultural needs, as well as recreational and municipal uses. This river reach is highly manipulated by releases from El Vado and Abiquiu Reservoirs (J. Smith, pers. comm. 2001). Furthermore, silvery minnow populations may have been historically low for some areas of this reach, supporting only small outlier populations (Bestgen and Platania 1991). Currently, this reach is dominated by cool or cold water species, which have almost completely replaced the native fish species (Service 1999). The stream length in this reach is inadequate (*e.g.*, less than 134 to 223 mi (216 to 358.8 km)) to ensure the survival of downstream drift of eggs and larvae and recruitment of adults (Platania and Altenbach 1998). Further investigation may be needed in this reach to evaluate potential future recovery actions. For these reasons, we conclude that habitat for silvery minnow within this river reach is generally degraded and unsuitable, and is not essential to the conservation of the silvery minnow. Therefore, this river reach is not designated as critical habitat.

2. Middle Rio Grande from Cochiti Reservoir downstream to the Elephant Butte Dam, including the Jemez River from the Jemez Canyon Dam to the confluence of the Rio Grande, Sandoval, Bernalillo, Valencia, and Socorro Counties, NM. The middle Rio Grande is currently occupied, and the status of the silvery minnow within this segment is unstable (Bestgen and Platania 1991; Dudley and Platania 1999; Platania and Dudley 2001; 2002a, 2002b). This area currently contains the primary constituent elements (described above) during all or part of the year and is considered suitable habitat for the silvery minnow, as shown by the presence of the silvery minnow within this reach. The river reaches that are designated as critical habitat are degraded from lack of floodplain connectivity, non-native vegetation, stabilized banks (*e.g.*, jetty jacks), streambed aggradation, and decreasing channel width, increasing depths, and increasing velocities (BOR 2001a; Service 2001b). Thus, conservation of the silvery minnow requires stabilizing populations within the middle Rio Grande, including special management considerations or protections (*e.g.*, habitat management and/or restoration).

The middle Rio Grande is essential to the conservation of the silvery minnow (*see* discussion below), and therefore, except for the land of Santo Domingo, Santa Ana, Sandia, and Iselta Pueblos, we designate the following reaches as a critical habitat. This designated critical habitat does not include the ephemeral or perennial irrigation canals and ditches, including the LFCC (*i.e.*, downstream of the southern boundary of Bosque del Apache National Wildlife Refuge to the headwaters of Elephant Butte Reservoir) that are adjacent to a portion of the river reach within the middle Rio Grande because these areas do not offer suitable refugia for the silvery minnow. The river reaches in the middle Rio Grande critical habitat include (*see* "Regulation Promulgation" section of this rule for exact

descriptions of boundaries of designated critical habitat):

a. Jemez Canyon Reach—5 mi (8 km) of the Jemez River from the Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, which is not included. This reach of river is manipulated by releases from Jemez Canyon Dam. Releases from this reservoir are determined by downstream needs and flood events occurring in the Jemez River. Silvery minnows historically occupied this reach of the Jemez River and have recently been collected there (Sublette *et al.* 1990; Corps 2001). The water within this reach is continuous to the confluence with the Rio Grande and currently contains the primary constituent elements (described above) during all or a part of the year. Although this reach currently provides suitable habitat for the silvery minnow, we believe that it is important to ensure that special management actions are implemented within this river reach. We also conclude that this area is essential to the conservation of the silvery minnow, because the additional loss of any habitat that is currently occupied could increase the likelihood of extinction (Hoagstrom and Brooks 2000, Service 1999). Moreover, if the species or habitat were severely impacted within this reach, the continued existence of silvery minnows in downstream reaches would be affected (*i.e.*, the extirpation of fish within this reach would create a very unstable population within the downstream reaches). Thus, we designate the upstream section of the Jemez River as critical habitat for the silvery minnow.

b. Cochiti Reservoir Dam to Angostura Diversion Dam (Cochiti Reach)—21 mi (34 km) of river immediately downstream of Cochiti Reservoir to the Angostura Diversion Dam, not including the lands of Santo Domingo Pueblo. This reach is somewhat braided and is dominated by clear water releases from Cochiti Reservoir (Richard 2001). Since Cochiti Reservoir was filled, the downstream substrate has changed from a coarse sand to a gravel/cobble/sand substrate (Hoagstrom and Brooks 2000; Baird 2001; Richard 2001). Silvery minnows were collected immediately downstream of Cochiti Dam in 1988 (Platania 1993). Although the Cochiti reach has not been monitored since the mid-1990s (Platania 1995; Hoagstrom and Brooks 2000), it is believed that silvery minnow may still be present within this reach, but reduced in abundance (*e.g.*, Dudley and Platania 2002a). For example, silvery minnows were documented near the Angostura Diversion Dam in 2001 (Platania and Dudley 2001, 2002a; Service 2001c). In this reach, water releases from Cochiti Reservoir have scoured sand from the stream channel and reduced the downstream temperatures (Bestgen and Platania 1991; Platania 1991; (July 20, 1994) 59 FR 36988; Service 1999; Hoagstrom 2000). These effects (*e.g.*, low water temperatures) may inhibit or prevent reproduction among Rio Grande Basin cyprinids (minnows) (Platania and Altenbach 1998), but it is unknown if water temperatures have affected silvery minnow reproduction within this reach. Although reservoirs can modify river flows and habitat (*e.g.*, the downstream river reaches have increased in depth and water velocity) (Hoagstrom 2000), we believe this river reach is essential to the conservation of the silvery minnow because we believe it is still occupied by the species and contributes to its survival in downstream reaches (because the eggs and larvae of the silvery minnow drift in the water column and may be transported downstream depending on river flows and habitat conditions). We reviewed aerial photographs from 1997 and other information, and have determined that the river through this reach is braided in areas and contains many side channels (*e.g.*, Richard 2001). We also spoke with the Corps and have concluded that there is a high potential to increase the amount of suitable habitat (*e.g.*, debris piles, low velocity backwaters, side channels) within the entire reach, but particularly in the proximity of the confluences of Galisteo Creek and the Rio Grande and the Sante Fe River and the Rio Grande (D. Kreiner, U.S. Army Corps of Engineers, pers. comm. 2001). Thus, we conclude special management is needed in this reach. We conclude that this area contains suitable habitat for the silvery minnow and contains the primary constituent elements (described above) during all or part of the year. Therefore, this reach is designated as critical habitat.

c. Angostura Diversion Dam to Isleta Diversion Dam (Angostura Reach)—38 mi (61 km) (of river immediately downstream of the Angostura Diversion Dam to the Isleta Diversion Dam, not including the lands of Santa Ana and Sandia Pueblos. Silvery minnows and suitable habitat are still present throughout this reach of the river, although their abundance appears to be low (Dudley and Platania 2001, 2002a, 2002b; Service 2002). This reach is relatively wide at 183 m (600 ft) and the substrate is mostly coarse sand to gravel (Baird 2001). The river bank within this reach is dominated by bank stabilization (e.g., jetty jacks), which has led to the floodplain being predominantly disconnected from the river. Bank stabilization devices and other flood control operations (e.g., channelization) have led to flows that seldom exceed channel capacity, such that the river dynamics that likely provided backwater habitat for the silvery minnow no longer function naturally. These river processes historically shaped and reshaped the river, constantly redefining the physical habitat and complexity of the river. Historical large flow events allowed the river to meander, thereby creating and maintaining the mosaic of habitats necessary for the survival of the silvery minnow and other native fish (Middle Rio Grande Biological Interagency Team 1993). We conclude that the creation and maintenance of these habitats is essential to the conservation of the silvery minnow. We believe that special management is necessary in this and other downstream reaches within the middle Rio Grande to create and maintain the habitat complexity (e.g., backwater areas, braided channels) that was historically present but may not be currently present in these river reaches. This reach currently contains the primary constituent elements (described above) during all or a part of the year. Thus, we designate this reach as critical habitat.

d. Isleta Diversion Dam to San Acacia Diversion Dam (Isleta Reach)—56 mi (90 km) of river downstream of the Isleta Diversion Dam to the San Acacia Diversion Dam, not including the lands of Isleta Pueblo. The river bank within this reach is also dominated by bank stabilization (e.g., jetty jacks), and the floodplain is predominantly disconnected from the river. The substrate is mostly sand and silt and there are many permanent islands within the river channel (J. Smith, pers. comm. 2001). This reach provides continuous water flow in most years with infrequent periods of low or no flow (Service 2001b). Nevertheless, flows vary markedly in magnitude, from high spring to low summer flows. The variable flow regime is a result of irrigation demand, irrigation returns (e.g., augmented flow), precipitation, temperature, and sediment transport. This reach also contains numerous arroyos and small tributaries that provide water and sediment during rainstorm events, which may periodically augment river flows (Service 2001b; J. Smith, pers. comm. 2001). Silvery minnows and suitable habitat are still present throughout this reach of the river; however, abundance appears to be low (Dudley and Platania 2001, 2002a, 2002b; Service 2002). Nevertheless, we conclude that this area is essential to the conservation of the silvery minnow because the additional loss of any habitat that is currently occupied could increase the likelihood of extinction (Hoagstrom and Brooks 2000, Service 1999). Similarly, if the species or habitat were severely impacted within this reach, the continued existence of silvery minnows in downstream reaches would be affected (i.e., the extirpation of fish within this reach would create a very unstable population within the downstream reaches). This reach currently contains the primary constituent elements (described above) during all or part of the year. We believe that special management is necessary within this reach to create and maintain the habitat complexity (e.g., backwater areas, debris piles, meandering river) that was historically but may not be currently be present within this reach. Thus, we designate this reach as critical habitat.

e. San Acacia Diversion Dam to the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N, near Elephant Butte Reservoir (San Acacia Reach)—9 mi (14.5 km) of river immediately downstream of the San Acacia Diversion Dam to the utility line crossing the Rio Grande with UTM coordinates of UTM Zone 13: 311474 E, 3719722N. The channel width within this reach varies from approximately 15 m (50 ft) to approximately 198 m (650 ft). The substrate is mostly sand and silt. The flow regime within this reach was historically, and is currently highly variable. In fact, this stretch may not have provided continuous flow in some years prior to the 1900s (MRGCD 1999; Scurlock and Johnson 2001).

Currently, the river channel has been highly modified by water depletions from agricultural and municipal use, dams and water diversion structures, bank stabilization, and the infrastructure for water delivery (e.g., irrigation ditches). These modifications have led to the loss of sediment, channel drying, separation of the river from the floodplain, and changes in river dynamics and resulting channel morphology. Consequently, this reach requires special management considerations similar to those discussed above. This reach currently contains the primary constituent elements (described above) during all or a part of the year. Although the silvery minnow continues to be widespread within this reach with higher abundance than the Angostura or Isleta reaches (Dudley and Platania 2001, 2002a, 2002b), the variable flow regime and modifications to the river have increased the potential for short- and long-term impacts not only to the silvery minnow, but also to its habitat. Thus, we determine that this area is essential to the conservation of the species and in need of special management considerations or protections; we designate this reach as critical habitat.

3. Downstream of Elephant Butte Reservoir to the Caballo Dam, Sierra County, NM. This short 16-mi (26-km) reach is highly channelized with widely variable flow regimes. Construction of Elephant Butte and Caballo Reservoirs in 1916 and 1938, respectively, severely altered the flows and habitat within this reach (Bestgen and Platania 1991). The silvery minnow has not been documented within this reach since 1944 (Service 1999). This river reach is currently highly channelized to expedite water deliveries and very few native fish remain (Propst *et al.* 1987; International Boundary and Water Commission 2001). This reach is subject to prolonged periods of low or no flow and there is no spring runoff spike (Service 1999). Altered flow regimes will continue to affect habitat quality in this reach, which does not contain suitable habitat for the silvery minnow. The stream length in this reach is inadequate (e.g., less than 134 to 223 mi (216 to 358.8 km)) to ensure the survival of downstream drift of eggs and larvae and recruitment of adults (Platania and Altenbach 1998). We conclude this area is not essential to the conservation of the species. Therefore, this river reach is not designated as critical habitat.

4. Downstream of Caballo Dam to American Reservoir Dam, Sierra and Dona Ana Counties, NM, and El Paso, County, TX. This approximately 110-mi (176-km) reach has a highly regulated flow regime from releases of water stored in Caballo Reservoir. This reach is also highly channelized with winter flows near zero in the upper portions, and does not contain suitable habitat for the silvery minnow (Service 1999; IBWC 2001a). Silvery minnows have not been reported from this reach since 1944 (Bestgen and Platania 1991, Service 1999). The reach is currently inhabited by many non-native fish species (IBWC 2001a). Due to lack of suitable habitat, and diminished and highly regulated flow (IBWC 2001a), this reach of river no longer contains suitable habitat for the silvery minnow and is not essential to the conservation of the species. Thus, this reach is not designated as critical habitat.

5. Downstream of American Reservoir to the upstream boundary of Big Bend National Park, El Paso, Hudspeth, and Presidio, Counties, TX. Portions of this reach, primarily upstream of Presido, TX, are continually dewatered, especially between Fort Quitman and Presidio (Hubbs *et al.* 1977; Department of Interior 1998). River flow is augmented downstream of Presido by waters flowing from the Rio Conchos. The near-continuous input of municipal waste has led to a deterioration of water quality, with corresponding changes to the ichthyofauna (fish species assemblage within a region) (Hubbs *et al.* 1977; Bestgen and Platania 1988; IBWC 1994; El-Hage and Moulton 1998a). Flows in this reach consist of a blend of raw river water, treated municipal waste from El Paso, TX, untreated municipal water from Juarez, Mexico, irrigation return flow, and the occasional floodwater (Texas Water Development Board 2001). Water temperature patterns can be elevated and oxygen levels decreased by the input of various pollutants (e.g., nitrogen, phosphorus) (Texas Water Development Board 2001; IBWC 2001b). Water quality is believed to improve farther downstream of the confluence of the Rio Conchos and Rio Grande. The development of agriculture and population growth in this area has resulted in a decrease of water quantity and quality, which has had a significant impact on the range and distribution of many fish species within this reach (IBWC 1994; El-Hage and Moulton 1998a). There are no current or museum records of silvery minnow from this reach (Service 1999). Because of upstream dewatering and the degraded water quality, we believe this reach of river would never provide suitable habitat for the silvery minnow. Thus, this river reach is not essential to the conservation of the silvery minnow and is not designated as critical habitat.

6. The upstream boundary of Big Bend National Park 2 mi (3.2 km) downstream of Lajitas), Brewster County, to the southern boundary of the wild and scenic river designation at Terrell/Val Verde County line, TX. This approximately 230–mi (368–km) reach of the lower Rio Grande was historically occupied but is currently unoccupied by the silvery minnow (Hubbs 1940; Trevino-Robinson 1959; Hubbs *et al.* 1977; Bestgen and Platania 1991). The continuing presence of members of the pelagic spawning guild (e.g., speckled chub and Rio Grande shiner) are evidence that the lower Rio Grande through Big Bend National Park area may support reestablishment of the

silvery minnow (Platania 1990; IBWC 1994). Moreover, water quality, compared to the reach upstream of the Park, is greatly improved in this reach by the many freshwater springs within Big Bend National Park (MacKay 1993; R. Skiles, pers. comm. 2001; IBWC 1994). This area is protected and managed by the National Park Service, and the river currently supports a relatively stable hydrologic regime (R. Skiles, pers. comm. 2001). The National Park Service's management authority over the wild and scenic river designation currently extends 0.25 mi (0.4 km) from the ordinary high water mark. Thus, the area designated as a wild and scenic river outside of Big Bend National Park is currently managed by the National Park Service under its authorities and is considered part of the National Park System.

As discussed above, we have determined that recovery of the silvery minnow requires reestablishing populations outside of the middle Rio Grande (*see* "Recovery Plan" section above) and should include areas within the lower Rio Grande. Because the silvery minnow has been extirpated from this reach, Federal agencies have determined that their actions will not adversely affect the silvery minnow and therefore have not consulted with us under section 7(a)(2) about their actions related to this reach. We believe it is important to ensure that the assistance of Federal agencies, the State of Texas resource agencies, and non-Federal entities in future recovery actions, such as the establishment of an experimental population, is not compromised. Although Big Bend National Park expressed support for a critical habitat designation for the silvery minnow within the National Park, it also indicated that if areas outside the National Park but within the wild and scenic river were included, their attempts at developing a river management plan could be compromised (F. Deckert, Big Bend National Park, pers. comm.).

We have determined that this reach is essential to the conservation of the silvery minnow. However, our conservation strategy for the silvery minnow is to establish populations within its historic range under section 10(j) of the Act, and all or portions of this river reach could be included in such an effort. We believe that this area will contribute to the recovery of the silvery minnow, but have not designated this river reach as critical habitat.

7. The Terrell/Val Verde County line, TX to the Amistad Dam, TX. This short reach is highly influenced by the Amistad Dam at its terminus. It is also believed that introduced fish played a role in the extirpation of silvery minnow in this reach (Bestgen and Platania 1991). Water quality conditions within this reach are generally degraded, and are also a concern for this reach, particularly during low-flow conditions (Texas Water Development Board 2001; Texas Natural Resource Conservation Commission 1996). For these reasons, we do not believe that this river reach is essential to the conservation of the silvery minnow; therefore, it is not designated as critical habitat.

8. Downstream of the Amistad Dam to the Falcon Dam, Val Verde, Kinney, Maverick, Web, Zapata, and Starr Counties, TX. This reach provides continuous base flows ranging between 500 and 3000 cfs (Service 1999), but the reach is highly urbanized and has many instream barriers (*e.g.*, earthen dams) at Maverick, Eagle Pass, and Indio that would prevent movements of silvery minnow. Water quality is also a potential concern for this reach, particularly during low-flow conditions (Texas Water Development Board 2001; Texas Natural Resource Conservation Commission 1996). This reach is heavily channelized with little to no stream braiding and inappropriate substrate (*e.g.*, cobble) in areas. There is no suitable habitat for the silvery minnow within this reach, and the species was last recorded here in the 1950s (Service 1999). The fish community within this reach is dominated by warm water non-native predators (Platania 1990; Service 1999). Because this reach does not have suitable habitat for the silvery minnow and water quality during variable flow conditions is a concern, this reach of river is not essential to the conservation of the silvery minnow and is not designated as critical habitat.

9. Downstream of Falcon Reservoir to the Gulf of Mexico, Starr, Hildago, and Cameron, Counties, TX. The silvery minnow historically occupied this reach of river (Service 1999). In fact, the type locality (the location from which the species was originally described) for the species is Brownsville, TX (Hubbs and Ortenburger 1929). However, the last collection of the silvery minnow occurred in 1961 just downstream of Falcon Reservoir (Bestgen and Platania 1991). The flow regime of this reach of the Rio Grande is highly influenced by releases from Falcon Reservoir. Most of the tributary inflow is controlled or influenced by small impoundments off the main river channel. The lower portion of this reach is often dewatered, with the river flow stopping before the confluence with the Gulf of Mexico (IBWC 2001b). The fish community in this reach of the Rio Grande has shifted significantly toward estuarine (a mixture of fresh and salt water) type species (IBWC 1994; Contreras-B. and Lozano-V.1994). There has also been a significant loss of the native fish fauna in the Mexican tributaries in the last several decades (Hubbs *et al.* 1977; Almada-Villela 1990; Platania 1990), apparently from poor water quality (*e.g.*, Texas Water Development Board 2001; Texas Natural Resource Conservation Commission 1996). Finally, invasive weeds (*e.g.*, hydrilla and hyacinth) have clogged many areas of this reach and have reduced the amount of dissolved oxygen in the water (IBWC 2001b). Because this reach does not have suitable habitat, there appears to be little benefit in trying to intensively manage the flow regime in this reach of river. For these reasons, this reach is not considered essential to the conservation of the silvery minnow and is not designated as critical habitat.

10. Pecos River from Santa Rosa Reservoir to Sumner Dam, Guadalupe County, NM. This reach is approximately 55 mi (89 km) and is typified by wide fluctuations in flow regimes from upstream releases from Santa Rosa Reservoir (Hoagstrom 2000). Within this reach there is one diversion at Puerto del Luna, NM. The silvery minnow has not been collected within this reach since 1939 (Bestgen and Platania 1991; Service 1999). The habitat in this reach is not suitable for the silvery minnow because much of the surrounding topography is composed of steep cliffs and canyons (Hoagstrom 2000). Canyon habitat does not provide suitable habitat (*e.g.*, shallow, braided, streams with sandy substrates) for the silvery minnow (Bestgen and Platania 1991; Dudley and Platania 1997; Remshardt *et al.* 2001). Because of the short length of this reach, fluctuations in the flow regime, and the absence of suitable habitat for the silvery minnow, this reach of river is not essential to the conservation of the silvery minnow and is not designated as critical habitat.

11. Middle Pecos Reach—approximately 214 mi (345 km) of river immediately downstream of Sumner Reservoir to the Brantley Reservoir Dam in De Baca, Chaves, and Eddy Counties, NM. The Pecos River was historically occupied but is currently unoccupied by the silvery minnow (Bestgen and Platania 1991). In fact, the silvery minnow was once one of the most common fish species present between Sumner and Avalon Reservoir (the area currently inundated by Brantley Reservoir) (Bestgen and Platania 1991). The Pecos River can support a relatively stable hydrologic regime between Sumner and Brantley Reservoirs, and, until summer 2001, this stretch had maintained continuous flow for about the last 10 years (D. Coleman, pers. comm. 2001). Groundwater seepage areas and base flow supplementation from Sumner Dam bypasses can offer a degree of stability for the river flow, especially during low flow periods (Hatch *et al.* 1985; Service 2001). Still, segments of this river reach were dewatered for at least 5 days during summer 2001 (D. Coleman, pers. comm 2001). Although springs and irrigation return flows maintain water flow in the lower portions of this river reach during times when no water is being released from Sumner Dam, periods of low discharge or intermittency have the potential to impact much of the suitable habitat within portions of this reach (Service 2001).

After the construction of Sumner Dam, major channel incision (deepening) occurred during the 1949 to 1980 period, accompanied by salt cedar (*Tamarix ramosissima*) proliferation along the river banks (Hoagstrom 2000). High-velocity flows within the incised river channel can displace eggs from pelagic spawners such as the silvery minnow. This channel incision also reduced the areas of low-velocity habitat within this river reach (Hoagstrom 2000). Recently, lengthy reservoir releases such as those that occurred in 1988 (36 days) and in 1989 (56 days) have been shortened to about 10 days, which has benefitted species such as the Pecos bluntnose shiner (Service 2001). Nevertheless, historic block releases of water from Sumner Reservoir have modified river flows and habitat (*e.g.*, the downstream river reaches have increased in depth and water velocity) (Hoagstrom 2000).

The recovery of the silvery minnow requires reestablishing populations outside of the middle Rio Grande (Service 1999). We believe that reintroduction is required outside of the area presently occupied by the species (*i.e.*, the middle Rio Grande) to ensure the recovery of the silvery minnow (50 CFR 424.12(e)) (see "Recovery Plan" section above). We recognize that habitat within this river reach is degraded, but believe this reach within the middle Pecos River may provide one of the most promising areas for conducting recovery efforts because we believe it still contains habitat suitable for the silvery minnow (Hoagstrom 2000). The continuing presence of members of the pelagic spawning guild (*e.g.*, speckled chub, Rio Grande shiner, Pecos bluntnose shiner) is evidence that this reach of the Pecos River contains habitat suitable for the silvery minnow and may support reestablishment of the species (Hoagstrom 2000).

Federal agencies have not consulted with us on how their actions will affect the silvery minnow, because the species no longer occurs within the Pecos River (D. Coleman, pers. comm. 2001). Because habitat suitable for the silvery minnow is still present within this river reach, we find that this river reach is essential to the conservation of the species. Although we have determined that this reach is essential to the conservation of the silvery minnow, we have not designated this area as critical habitat (see "Exclusions Under Section 4(b)(2) of the Act" section above). Our conservation strategy is to develop, through Federal rulemaking procedures, one or more experimental populations within the historic range of the silvery minnow. We believe this river reach may provide a suitable area for an experimental population.

12. Downstream of Brantley Reservoir, Eddy County, NM to Red Bluff Reservoir, Loving and Reeves Counties, TX. This reach is short, with a highly variable flow regime that is dependent on agricultural demand. This reach is also highly segmented, with small closely placed impoundments (*e.g.*, permanent and temporary diversion dams) that pond water, impede fish movements, and would not allow for adequate stream length (*e.g.*, 134 to 223 mi (216 to 358.8 km)) to ensure the survival of downstream drift of eggs and larvae and recruitment of adults (Platania and Altenbach 1998). Additionally, agricultural and oil field pollution and Permian salts (*i.e.*, brine) are added to the river in this reach, decreasing the water quality to levels that likely would not support the silvery minnow (Campbell 1959; Larson 1994). The silvery minnow was historically uncommon within this reach; only14 specimens from two collections are known (Bestgen and Platania 1991). Due to the short length of this reach, fluctuations in the flow regime, degraded water quality; and the absence of suitable habitat for the silvery minnow, this reach is not considered essential to the conservation of the silvery minnow and is not designated as critical habitat.

13. Downstream of Red Bluff Reservoir to the confluence with the Rio Grande, Loving, Reeves, Pecos, Ward, Crane, Crockett, and Terrell Counties, TX. Historically silvery minnows occurred in this reach, though their exact distribution and abundance is unclear (Campbell 1958; Trevino-Robinson 1959; James and De La Cruz 1989; Linam and Kleinsasser 1996; Garrett 1997; Service 1999). Bestgen and Platania (1991) suggest that silvery minnows may have been uncommon within this reach because of pond habitat and high water salinity. However, this area may not have been well surveyed when the silvery minnow was still extant in the Pecos River (D. Propst, New Mexico Game and Fish, pers. comm. 2001). Sampling the middle and lower parts of this river reach has been historically difficult because of dense vegetation, steep canyon banks, and lack of public access (Campbell 1959). The upper segment of this reach can be characterized as devoid of suitable habitat, and has a highly variable flow regime from release of water from Red Bluff Reservoir for agricultural use. Indeed, many freshwater springs that historically augmented the Pecos River throughout this reach have recently diminished or gone dry (Campbell 1959; Brune 1981 cited in Hoagstrom 2000; Barker *et al.* 1994; El-Hage and Moulton 1998b). The water quality in this upper portion is also poor and dominated by high salinity (generally exceeding 5 parts per thousand) (Hiss 1970; Hubbs 1990; Linam and Kleinsasser 1996; Miyamoto *et al.* 1995; El-Hage and Moulton 1998b). Additionally, algal blooms (*Prymnesium parvum*) have essentially eliminated all the fishes throughout from Malaga, NM, to Amistad Dam, TX (James and De la Cruz 1989; Hubbs 1990; Rhodes and Hubbs 1992). The river channel is also somewhat incised and dominated by non-native vegetation in parts (Koidin 2000; Harman 1999; IBWC 2001b). Agricultural needs diminish south of Girvin, TX, and water quality conditions (*e.g.*, salinity) generally begin to improve downstream from the confluence of Independence Creek to Amistad Dam (Hubbs 1990; Linam and Kleinsasser 1996). This improvement could result from the freshwater springs within the lower 100 mi (160 km) stretch of this reach. Nevertheless, gaging records from the lower segment indicate that there is virtually no flow during drought conditions (Texas Water Development Board 2001); further, water quality (*e.g.*, total dissolved solids) at Shumla Bend, just upstream of Amistad Reservoir, would be expected to have a deleterious effect on aquatic life (IBWC 1994).

We did not include this reach because the current or potential suitability for the silvery minnow is unknown; detailed habitat studies have not been conducted in this reach. Moreover, it is believed that this area contains a network of steep canyons, with rock and coarse gravel substrate (Campbell 1959;

Texas Parks and Wildlife 1999). Canyon habitat reduces river channel width, which decreases sinuosity and meandering, and creates deep channels that do not provide suitable habitat (*e.g.*, shallow, braided streams with sandy substrates) (Bestgen and Platania 1991; Dudley and Platania 1997; Remshardt *et. al* 2001). Additionally, the presence of algal blooms will continue to affect water quality in this reach. For these reasons, we do not believe that this reach is essential to the conservation of the silvery minnow. It is unknown whether this reach contains or has the potential to develop the primary constituent elements. Although portions of this river reach may contain fresh water (*i.e.*, salinity less than 1 part per thousand), we suspect that much of this river reach may never provide suitable habitat for the silvery minnow, and it is not designated as critical habitat. On June 6, 2002, we proposed designating 212 mi of critical habitat for the silvery minnow. This final rulo designates 157 mi as critical habitat for the silvery minnow.

Land Ownership

Except for the river reaches on Pueblos lands covered by special management plans (see "Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section), the designated critical habitat for the silvery minnow encompasses river reaches where the species has been collected in the recent past and where it is currently known to exist. Critical habitat for the silvery minnow includes both the active river channel and the area of bankfull width plus 300 feet on either side of the banks, except in areas narrowed by existing levees.

Ownership of the river channel and the lateral width along the bank is unclear in the designated critical habitat of the middle Rio Grande. However, most of the land in the middle Rio Grande valley that abuts critical habitat is within the administrative boundaries of the MRGCD. The MRGCD is a political subdivision of the State of New Mexico that provides for irrigation, flood control, and drainage of the middle Rio Grande valley in NM, from Cochiti Dam downstream 150 mi (285 km) to the northern boundary of the Bosque del Apache National Wildlife Refuge. Within these 150 mi are also the lands of the communities of Algodones, Bernalillo, Rio Rancho, Corrales, Albuquerque, Los Lunas, Belen, Socorro, and a number of smaller incorporated and unincorporated communities. Other landowners, sovereign entities, and managers include: the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta; the BOR; the Service; the U.S. Bureau of Land Management (BLM); New Mexico State Parks Division; New Mexico Department of Game and Fish; New Mexico State Lands Department; and the Corps. The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta include 29.5 river mi (47.5 km), and are not included in the final designation.

Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including ourselves, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, Indian Pueblos and Tribes, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Activities on Federal lands that may affect the silvery minnow or its critical habitat will require section 7 consultation. Actions on private, State, or Indian Pueblo and Tribal lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect critical habitat. Federal actions not affecting the species or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated and if no significant new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Regulations at 50 CFR 402.16 also require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director of the Service believes would avoid the likelihood of jeopardizing the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify critical habitat, we will analyze the effects of the action in relation to designated critical habitat (Service and National Marine Fisheries Service 1998). Therefore, the analysis (*i.e.*, the determination whether an action destroys or adversely modifies critical habitat) conducted through consultation or conferencing should evaluate whether that loss, when added to the environmental baseline, is likely to appreciably diminish the capability of critical habitat to satisfy essential

requirements of the species. In other words, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for the silvery minnow is appreciably reduced (50 CFR 402.02).

A number of Federal agencies or departments fund, authorize, or carry out actions that may affect the silvery minnow and its designated critical habitat. We have reviewed and continue to review numerous activities proposed within the range of the silvery minnow that are currently the subject of formal or informal section 7 consultations. A wide range of Federal activities have the potential to destroy or adversely modify critical habitat of the silvery minnow. These activities may include land and water management actions of Federal agencies (*e.g.*, Corps, BOR, Service, and the Bureau of Indian Affairs) and related or similar actions of other federally regulated projects (*e.g.*, road and bridge construction activities by the Federal Highway Administration; dredge and fill projects, sand and gravel mining, and bank stabilization activities conducted or authorized by the Corps; construction, maintenance, and operation of diversion structures; management of the conveyance channel; levee and dike construction and maintenance by the BOR; and NPDES permits authorized by the EPA). These types of activities have already been examined under consultation with us upon listing the species as endangered and in our previous designation of critical habitat. We expect that the same types of activities will be reviewed in section 7 consultation now that critical habitat is again designated. However, there is some potential for an increase in the number of proposed actions we review under section 7 of the Act from actions proposed in areas that are contained within the 300-foot lateral width. We believe that we currently review most actions (*e.g.*, indirect effects) that could affect silvery minnow through section 7 that occur in this lateral width, but acknowledge that an explicit boundary could result in a slight increase in consultations.

Activities that we are likely to review under section 7 of the Act include, but are not limited to:

1. Significantly and detrimentally altering the river flow or the natural flow regime of any of the river reaches designated in the middle Rio Grande. Possible actions would include groundwater pumping, impoundment, and water diversion with a Federal nexus (*i.e.*, activities that are authorized, funded, or carried out by a Federal agency). We note that such flow reductions that result from actions affecting tributaries of the designated river reaches may also destroy or adversely modify critical habitat.

2. Significantly and detrimentally altering the characteristics of the 300-ft (91.4-m) lateral width (*e.g.*, parts of the floodplain) in the designated critical habitat of the middle Rio Grande. Possible actions would include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development with a Federal nexus.

3. Significantly and detrimentally altering the channel morphology (*e.g.*, depth, velocity) of any of the river reaches within the designation. Possible actions would include channelization, impoundment, road and bridge construction, deprivation of substrate source, reduction of available floodplain, removal of gravel or floodplain terrace materials, reduction in stream flow, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances with a Federal nexus.

4. Significantly and detrimentally altering the water quality within the designation. Possible actions with a Federal nexus would include EPA's NPDES permitting or the release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point).

5. Introducing, spreading, or augmenting non-native aquatic species within the designation. Possible actions with a Federal nexus would include fish stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers.

Not all of the identified activities are necessarily of current concern within the middle Rio Grande. However, they do indicate the potential types of activities that will require consultation and, therefore, may be affected by the designation of critical habitat. We do not expect that the designation of critical habitat will result in a significant regulatory burden above that already in place because of the presence of the listed species. However, areas included within the 300-ft (91.4-m) lateral width of the designation that are not currently occupied by the species may result in an additional regulatory burden when there is a Federal nexus (Federal funding, authorization, or permit).

As discussed previously, Federal actions that are found likely to destroy or adversely modify critical habitat may often be modified, through development of reasonable and prudent alternatives, in ways that will remove the likelihood of destruction or adverse modification of critical habitat. Such project modifications may include such things as adjustment in timing of projects to avoid sensitive periods for the species and its habitat; replanting of riparian vegetation; minimization of work and vehicle use in the main river channel or the 300-ft (91.4-m) lateral width; restriction of riparian and upland vegetation clearing in the 300-ft (91.4-m) lateral width; fencing to exclude livestock and limit recreational use; use of alternative livestock management techniques; avoidance of pollution; minimization of ground disturbance in the 300-foot lateral width; use of alternative material sources; storage of equipment and staging of operations outside the 300-foot lateral width; use of sediment barriers; access restrictions; and use of best management practices to minimize erosion.

The silvery minnow does not need a large quantity of water to survive but it does need a sufficient amount of flowing water to reduce prolonged periods of low or no flow and minimize the formation of isolated pools. The identification of primary constituent elements for the silvery minnow is not intended to create a high-velocity, deep flowing river, with a bank-to-bank flow. The silvery minnow does not require such habitat characteristics. Instead, the silvery minnow requires habitat with sufficient flows through the irrigation season to avoid prolonged periods of low or no flow; additionally, a spike in flow in the late spring or early summer to trigger spawning, and a relatively constant winter flow are also required.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, New Mexico Ecological Services Field Office (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections). If you would like copies of the regulations on listed wildlife or have questions about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Division of Endangered Species (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections).

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis

of the best scientific and commercial information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this final rule on the best available scientific information, including the recommendations in the Recovery Plan (Service 1999). In order to make a final critical habitat designation, we furthered utilized the economic analysis and our analysis of other relevant impacts, and considered all comments and information submitted during the public hearing and comment period. No areas proposed as critical habitat were excluded or modified because of economic impacts. However, we have excluded areas from the final designation on the basis of a final determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat (*see* "Exclusions Under Section 4(b)(2) of the Act" section). In accordance with section 4(b)(2) of the Act, we cannot exclude areas from critical habitat when their exclusion will result in the extinction of the species. We have prepared an economic analysis that was available for public review and comment during the comment period for the proposed rule. You can request copies of the economic analysis and EIS from the New Mexico Ecological Services Field Office (*see* **ADDRESSES** section).

Section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Executive Order 12866 defines "significant regulatory action," in part, as a regulatory action that is likely to result in a rule that may have an annual effect on the economy of $100 million or more. The final Economic Analysis for this rule estimates that the potential economic effects could range from $1.9 to $16.2 million annually. This includes potential economic effects related to consultations, project modifications, and providing target flows, including those effects that may be attributed co-extensively with the listing of the species. Thus, we do not believe that the adverse modification prohibition (from critical habitat designation) will have significant economic effects such that it will have an annual economic effect of $100 million or more. We recognize, however, that while the impacts may not be considered "significant" under Executive Order 12866, there will be some economic impact within the middle Rio Grande area. Additionally, the final Economic Analysis recognizes the benefits associated with conservation of an endangered species. The economic analysis provides information on the social welfare benefits associated with maintaining instream flows in the Middle Rio Grande (e.g., ecological improvements, recreational opportunities, and protection afforded to other species). These benefits are described in detail in the final Economic Analysis. On the basis of our evaluation of lands proposed as critical habitat, we believe that the designation of the lands in this final rule as critical habitat are essential to the conservation of the silvery minnow, and these lands are currently occupied by the species. Consequently, none of the proposed lands have been excluded from the designation on the basis of potential economic impacts pursuant to section 4(b)(2) of the Act.

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (May 9, 1994, 59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we believe that, to the maximum extent possible, Indian Pueblos and Tribes should be the governmental entities to manage their lands and tribal trust resources. To this end, we support tribal measures that preclude the need for Federal conservation regulations. We provided technical assistance to Indian Pueblos and Tribes who asked for assistance in developing and expanding tribal programs for the management of healthy ecosystems so that Federal conservation regulations, such as designation of critical habitat, on tribal lands are unnecessary.

The Presidential Memorandum of April 29, 1994, also requires us to consult with the Indian Pueblos and Tribes on matters that affect them, and section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including Indian Pueblos and Tribes. Recognizing a government-to-government relationship with Indian Pueblos and Tribes and our Federal trust responsibility, we have and will continue to consult with the Indian Pueblos and Tribes that might be affected by the designation of critical habitat.

We consulted with the affected Indian Pueblos and Tribes during the comment period for the proposed rule to gain information on: (1) Possible effects if critical habitat were designated on Tribal lands; and (2) possible effects on tribal resources resulting from the proposed designation of critical habitat on non-tribal lands. At their request, we met with each potentially affected Pueblo or Tribe to ensure that government-to-government consultation on proposed critical habitat issues occurred in a timely manner.

Designation of Critical Habitat on Tribal Lands

Section 3(5) of the Act defines critical habitat, in part, as areas within the geographical area occupied by the species "on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection." We included lands of the Indian Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta in the proposed designation of critical habitat for the silvery minnow; however, Santo Domingo, Santa Ana, Sandia, and Isleta were not included for the final designation because they submitted sufficient management plans during the open comment period, and we concluded that these river reaches did not meet the definition of critical habitat because adequate special management is being provided for the silvery minnow on these lands. The plans and our analysis of other relevant issues are summarized above under the "Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section.

Effects on Tribal Trust Resources From Critical Habitat Designation on Non-Tribal Lands

We do not anticipate that the proposal of critical habitat on non-tribal lands will result in any impact on tribal trust resources or the exercise of tribal rights. However, in complying with our tribal trust responsibilities, we communicated with all Indian Pueblos and Tribes potentially affected by the designation. At their request, we arranged meetings with them during the comment period on potential effects to them or their resources that may result from critical habitat designation. We sent preproposal letters and the proposed rule and associated documents to all affected Indian Pueblos, including Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, Isleta, and San Juan, and solicited additional information from them regarding biological, cultural, social, or economic data pertinent to the proposed rule, economic analysis, or EIS. We will continue to provide assistance to and cooperate with Indian Pueblos and Tribes that potentially could be affected by this critical habitat designation at their request.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule as the Office of Management and Budget (OMB) determined that this rule may raise novel legal or policy issues, but was not reviewed by OMB due to the court ordered deadline. We prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft economic analysis was made available for public comment, and we considered those comments during the preparation of this rule. The draft analysis indicates that this rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Under the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions related to critical habitat on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Because of the potential for impacts on other Federal agencies' activities, we reviewed this action for any inconsistencies with other Federal agency actions. We believe that this rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, except those involving Federal agencies which would be required to ensure that their activities do not destroy or adversely modify designated critical habitat. As discussed above, we do not anticipate that the adverse modification prohibition (from critical habitat designation) will have any significant economic effects such that it will have an annual economic effect of $100 million or more. OMB has determined that the critical habitat portion of this rule will raise novel legal or policy issues, but this rule was not reviewed by OMB due to the court ordered deadline. The final rule follows the requirements for designating critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 804(2)), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that the rule will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

The economic analysis determined whether this critical habitat designation potentially affects a "substantial number" of small entities in counties supporting critical habitat areas. It also quantifies the probable number of small businesses that experience a "significant effect." While SBREFA does not explicitly define either "substantial number" or "significant effect," the Small Business Administration (SBA) and other Federal agencies have interpreted these terms to represent an impact on 20 percent or more of the small entities in any industry and an effect equal to 3 percent or more of a business' annual sales.

Based on the past consultation history for the silvery minnow, wastewater discharges from municipal treatment plants are the primary small business activities anticipated to be affected by the designation of critical habitat. To be conservative, (i.e., more likely to overstate impacts than understate them), the economic analysis assumes that a unique company will undertake each of the projected consultations in a given year, and so the number of businesses affected is equal to the total annual number of consultations (both formal and informal).

The first step was to estimate the number of small businesses affected. As shown in Exhibit 1 below, the following calculations yield this estimate:

- Estimate the number of businesses within the study area affected by section 7 implementation annually (assumed to be equal to the number of annual consultations);
- Calculate the percent of businesses in the affected industry that are likely to be small;
- Calculate the number of affected small businesses in the affected industry;
- Calculate the percent of small businesses likely to be affected by critical habitat.

EXHIBIT 1.—ESTIMATED ANNUAL NUMBER OF SMALL BUSINESSES AFFECTED BY CRITICAL HABITAT DESIGNATION: THE "SUBSTANTIAL" TEST

Industry name	Sanitary services ISC [1] 4959
Annual number of affected businesses in industry:	
By formal consultation	0.13
(Equal to number of annual consultations): [2]	
By informal consultation	0.75
Total number of all businesses in industry within study area	6
Number of small businesses in industry within study area	6
Percent of businesses that are small (Number of small businesses)/(Total Number of businesses)	100%
Annual number of small businesses affected (Number of affected businesses)*(Percent of small businesses)	0.88
Annual percentage of small businesses affected (Number of small businesses affected)/(Total number of small businesses); >20 percent is substantial	15%

[1] ISC = Interstate Stream Commission.

[2] Note that because these values represent the probability that small businesses will be affected during a 1-year time period, calculations may result in fractions of businesses. This is an acceptable result, as these values represent the probability that small businesses will be affected.

This calculation reflects conservative assumptions and nonetheless yields an estimate that is still far less than the 20 percent threshold that would be considered "substantial." As a result, this analysis concludes that a significant economic impact on a substantial number of small entities will *not* result from the designation of critical habitat for the silvery minnow. Nevertheless, an estimate of the number of small businesses that will experience effects at a significant level is provided below.

Costs of critical habitat designation to small businesses consist primarily of the cost of participating in section 7 consultations and the cost of project modifications. To calculate the likelihood that a small business will experience a significant effect from critical habitat designation for the silvery minnow, the following calculations were made:

- Calculate the per-business cost. This consists of the unit cost to a third party of participating in a section 7 consultation (formal or informal) and the unit cost of associated project modifications. To be conservative, the economic analysis uses the high-end estimate for each cost.
- Determine the amount of annual sales that a company would need to have for this per-business cost to constitute a "significant effect." This is calculated by dividing the per-business cost by the 3 percent "significance" threshold value.
- Estimate the likelihood that small businesses in the study area will have annual sales equal to or less than the threshold amount calculated above. This is estimated using national statistics on the distribution of sales within industries.
- Based on the probability that a single business may experience significant effects, calculate the expected value of the number of businesses likely to experience a significant effect.
- Calculate the percent of businesses in the study area within the affected industry that are likely to be affected significantly.

Calculations for costs associated with designating critical habitat for the silvery minnow are provided in Exhibit 2 below.

EXHIBIT 2.—ESTIMATED ANNUAL EFFECTS ON SMALL BUSINESSES: THE "SIGNIFICANT EFFECT" TEST

Industry	Sanitary Services ISC[1] 4959	
	Formal consultations with project modifications	Informal consultations
Annual Number of Small Businesses Affected (from final Economic Analysis)	0.13	0.75
Per-Business Cost	$34,100	$2,900
Level of Annual Sales Below which Effects Would Be Significant (Per-Business Cost/3%)	$1,136,667	$96,667
Probability that Per-Business Cost is Greater than 3% of Sales for Small Business[2]	48%	3%
Probable Annual Number of Small Businesses Experiencing Significant Effects (Number Small Businesses)* (Probability of Significant Effect)	0.06	0.02
Total Annual Number of Small Businesses Bearing Significant Costs in Industry	0.08	
Total Annual Percentage of Small Businesses Bearing Significant Costs in Industry	1.4%	

[1] ISC = Interstate Stream Commission.

[2] This probability is calculated based on national industry statistics obtained from the *Robert Morris Associated Annual Statement of Studies: 2001–2002*, which provides data on the distribution of annual sales in an industry within the following ranges: $0–1 million, $1–3 million, $3–5 million, $5–10 million, $10–25 million, and $25+ million. This analysis uses the ranges that fall within the SBA definition of small businesses (*i.e.*, for industries in which small businesses have sales of less than $5.0 million, it uses $0–1 million, $1–3 million, and $3–5 million) to estimate a distribution of sales for small businesses. It then calculates the probability that small businesses have sales below the threshold value, using the following components: (1) All small businesses (expressed as a percentage of all small businesses) in ranges whose upper limits fall below the threshold value experience the costs as significant; (2) for the range in which the threshold value falls, the percentage of companies in the bin that fall below the threshold value is calculated as [(threshold value—range minimum)/(bin maximum—range minimum)] × percent of small businesses captured in range. This percentage is added to the percentage of small businesses captured in each of the lower ranges to reach the total probability that small businesses have sales below the threshold value. Note that in instances in which the threshold value exceeds the definition of small businesses (*i.e.*, the threshold value is $10 million and the definition of small businesses is sales less than $5.0 million), all small businesses experience the effects as significant.

Because the costs associated with designating critical habitat for the silvery minnow are likely to be significant for less than one small businesses per year (approximately 1 percent of the small businesses in the sanitary services industry) in the affected counties, the economic analysis concludes that a significant economic impact on a substantial number of small entities will *not* result from the designation of critical habitat for the silvery minnow. This would be true even if all of the effects of section 7 consultation on these activities were attributed solely to the critical habitat designation.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We have a very good consultation history for the silvery minnow; thus, we can describe the kinds of actions that have undergone consultations. Within the critical habitat designated in the middle Rio Grande, the BLM has the highest likelihood of any Federal agency to undergo section 7 consultation for actions relating to energy supply, distribution, or use. However, since 1994, the BLM has not conducted any consultations for resource management plans that relate to energy supply, distribution, or use. We do not anticipate the development of oil and gas leases within the area we are designating as critical habitat (J. Smith, pers. comm. 2001). Nevertheless, if we were to consult on a proposed BLM energy-related action, the outcome of that consultation likely would not differ from the BLM's policy of not allowing oil and gas development within the 100-year floodplain. For these reasons, we do not anticipate that this rule will be a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. On the basis of information contained in the Economic Analysis, this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat or take the species under section 9.

2. This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights," March 18, 1988; 53 FR 8859), we have analyzed the potential takings implications of the designation of critical habitat for the silvery minnow. The takings implications assessment concludes that this final rule does not pose significant takings implications. A copy of this assessment can be obtained by contacting the New Mexico Ecological Services Field Office (*see* **ADDRESSES** section).

On the basis of the above assessment, we find that this final rule designating critical habitat for the silvery minnow does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this final rule with appropriate resource agencies in NM and TX (*i.e.*, during the EIS scoping period and proposed rule comment period). We will continue to coordinate with the appropriate agencies.

We do not anticipate that this regulation will intrude on State policy or administration, change the role of the Federal or State government, or affect fiscal capacity. We have conducted two formal section 7 consultations with the Corps and BOR, and a non-Federal agency (MRGCD) over actions related to water operations on the middle Rio Grande (Service 2001b, 2002a). As a result, we do not believe that this designation of critical habitat will have significant Federalism effects. For example, in the recent formal section 7 consultations, the MRGCD's regulatory burden requirement was only affected to the extent that the MRGCD was acting as the United States' agent for the operation and maintenance of facilities. Federal agencies also must ensure, through section 7 consultation with us, that their activities do not destroy or adversely modify designated critical habitat. Nevertheless, we do not anticipate that the amount of supplemental instream flow, provided by past consultations (*e.g.*, Service 2001b), will increase because an area is designated as critical habitat. This rule also will not change the appropriation of water rights within the area designated as critical habitat. For these reasons, we do not anticipate that the designation of critical habitat will change State policy or administration, change the role of the Federal or State government, or affect fiscal capacity.

Within the 300-ft (91.4-m) lateral width, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Any action that lacked Federal involvement would not be affected by the critical habitat designation. Should a Federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with, at most, minor changes that avoid significant economic impacts to project proponents.

The designation may have some benefit to these governments—the areas essential to the conservation of the species would be clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species would be identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist these local governments in long-range planning (where otherwise they would wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the silvery minnow.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the Ninth Circuit *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), *cert. denied*, 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of the silvery minnow, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA

analysis for critical habitat designation. Additionally, on November 21, 2000, the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District* v. *Babbitt*, 206 F. Supp. 2d 1156 (D.N.M. 2000), set aside the July 9, 1999, critical habitat designation and ordered us to issue within 120 days both an EIS and a new proposed rule designating critical habitat for the silvery minnow. We have prepared this designation and the EIS pursuant to that court order.

Government-to-Government Relationship With Indian Pueblos and Tribes

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we understand that we must conduct relations to recognized Federal Indian Pueblos and Tribes on a Government-to-Government basis. Therefore, we solicited information from the Indian Pueblos and Tribes and arranged meetings with those that requested during the comment period to discuss potential effects to them or their resources that may result from critical habitat designation.

References Cited

A complete list of all references cited in this final rule is available upon request from the New Mexico Ecological Services Field Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are the New Mexico Field Office staff (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.95(e) by revising critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*), to read as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.* * * *

Rio Grande Silvery Minnow (*Hybognathus amarus*)

(1) Designated critical habitat is depicted for Socorro, Valencia, Bernalillo, and Sandoval Counties, New Mexico, on the map and as described below.

(2) For each river reach, the upstream and downstream boundaries are described below. Critical habitat includes the stream channels within the identified river reaches and areas within these reaches included within the existing levees, or if no levees are present, then within a lateral distance of 300 ft (91.4 m) on each side of the river width at bankfull stage. Bankfull stage is the flow at which water begins to leave the channel and move into the floodplain. The bankfull stage is not defined by water, and can be determined by visual or physical indicators, including: The top of the highest depositional features (*e.g.*, point bars), staining of rocks, exposed root hairs, and other features.

(3) Within these areas the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include the following:

(i) A hydrologic regime that provides sufficient flowing water with low to moderate currents capable of forming and maintaining a diversity of aquatic habitats, such as, but not limited to the following: Backwaters (a body of water connected to the main channel, but with no appreciable flow), shallow side channels, pools (that portion of the river that is deep with relatively little velocity compared to the rest of the channel), eddies (a pool with water moving opposite to that in the river channel), and runs (flowing water in the river channel without obstructions) of varying depth and velocity—all of which are necessary for each of the particular silvery minnow life-history stages in appropriate seasons (*e.g.*, the silvery minnow requires habitat with sufficient flows from early spring (March) to early summer (June) to trigger spawning, flows in the summer (June) and fall (October) that do not increase prolonged periods of low or no flow, and a relatively constant winter flow (November through February));

(ii) The presence of eddies created by debris piles, pools, or backwaters, or other refuge habitat (*e.g.*, connected oxbows or braided channels) within unimpounded stretches of flowing water of sufficient length (*i.e.*, river miles) that provide a variation of habitats with a wide range of depth and velocities;

(iii) Substrates of predominantly sand or silt; and

(iv) Water of sufficient quality to maintain natural, daily, and seasonally variable water temperatures in the approximate range of greater than 1 °C (35 °F) and less than 30 °C (85 °F) and reduce degraded conditions (*e.g.*, decreased dissolved oxygen, increased pH).

(4) The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta are not designated.

(5) Designated critical habitat is depicted on the following map for the middle Rio Grande, which includes the area from Cochiti Reservoir downstream to the utility line crossing the Rio Grande just east of the Bosque Well as demarcated on USGS Paraje Well 7.5 minute quadrangle (1980), with the Universal Transverse Mercator (UTM) coordinates of UTM Zone 13: 311474 E, 3719722 N (as referenced with the 1927 North American Datum (NAD27)), Sandoval, Bernalillo, Valencia, and Socorro Counties, New Mexico. The designation also includes the upper section of the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, Sandoval County. The river reaches in the middle Rio Grande include:

(i) Jemez Canyon Reach—1 mi (1.6 km) of the Jemez River immediately downstream of Jemez Canyon Dam to the upstream boundary Santa Ana Pueblo;

(ii) Cochiti Diversion Dam to Angostura Diversion Dam (Cochiti Reach)—21 mi (34 km) of river immediately downstream of Cochiti Reservoir to the Angostura Diversion Dam;

(iii) Angostura Diversion Dam to Isleta Diversion Dam (Angostura Reach)—38 mi (61 km) of river immediately downstream of the Angostura Diversion Dam to the Isleta Diversion Dam;

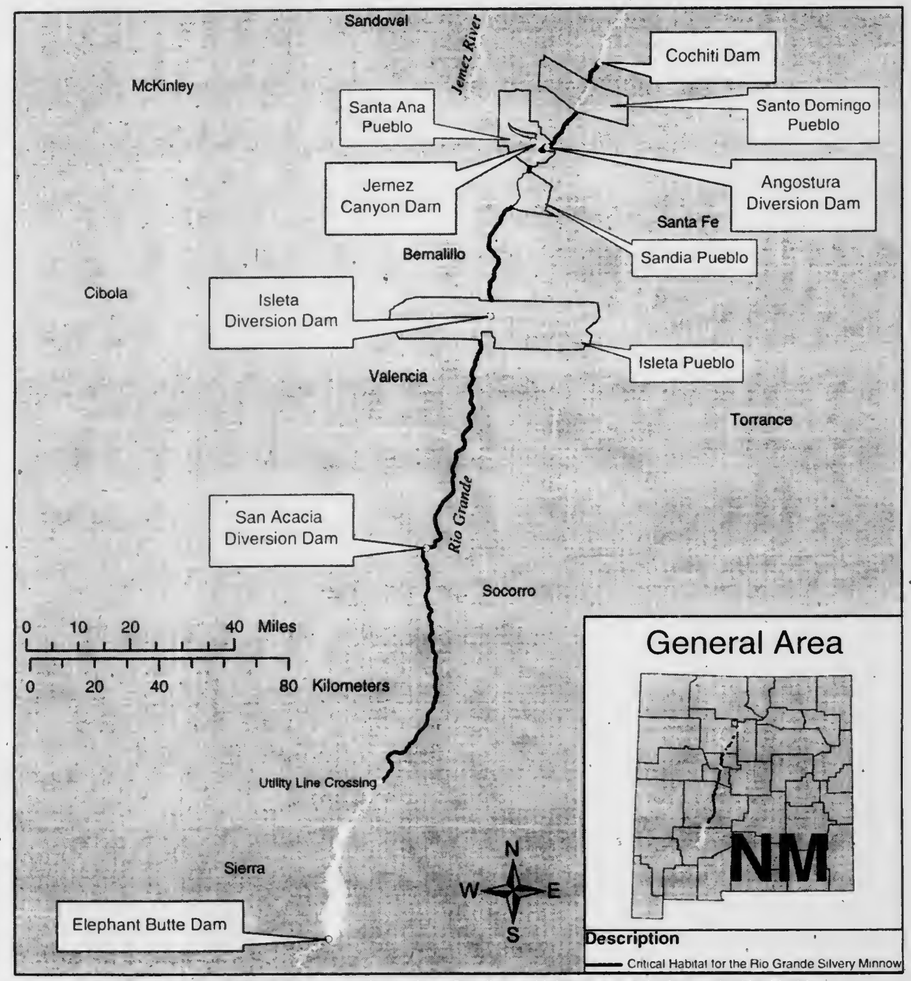
(iv) Isleta Diversion Dam to San Acacia Diversion Dam (Isleta Reach)—56 mi (90 km) of river immediately downstream of the Isleta Diversion Dam to the San Acacia Diversion Dam; and

(v) San Acacia Diversion Dam to the Elephant Butte Dam (San Acacia Reach)—92 mi (147 km) of river immediately downstream of the San Acacia Diversion Dam to the utility line crossing the Rio Grande just east of the Bosque Well demarcated on USGS Paraje Well 7.5 minute quadrangle (1980) with UTM coordinates of UTM Zone 13: 311474 E, 3719722 N.

(vi) Map Follows:

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Critical Habitat for the Rio Grande Silvery Minnow *(Hybognathus amarus)*



The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta are not designated critical habitat (see 'Regulation Promulgation' section of this rule for exact descriptions of boundaries of designated critical habitat).

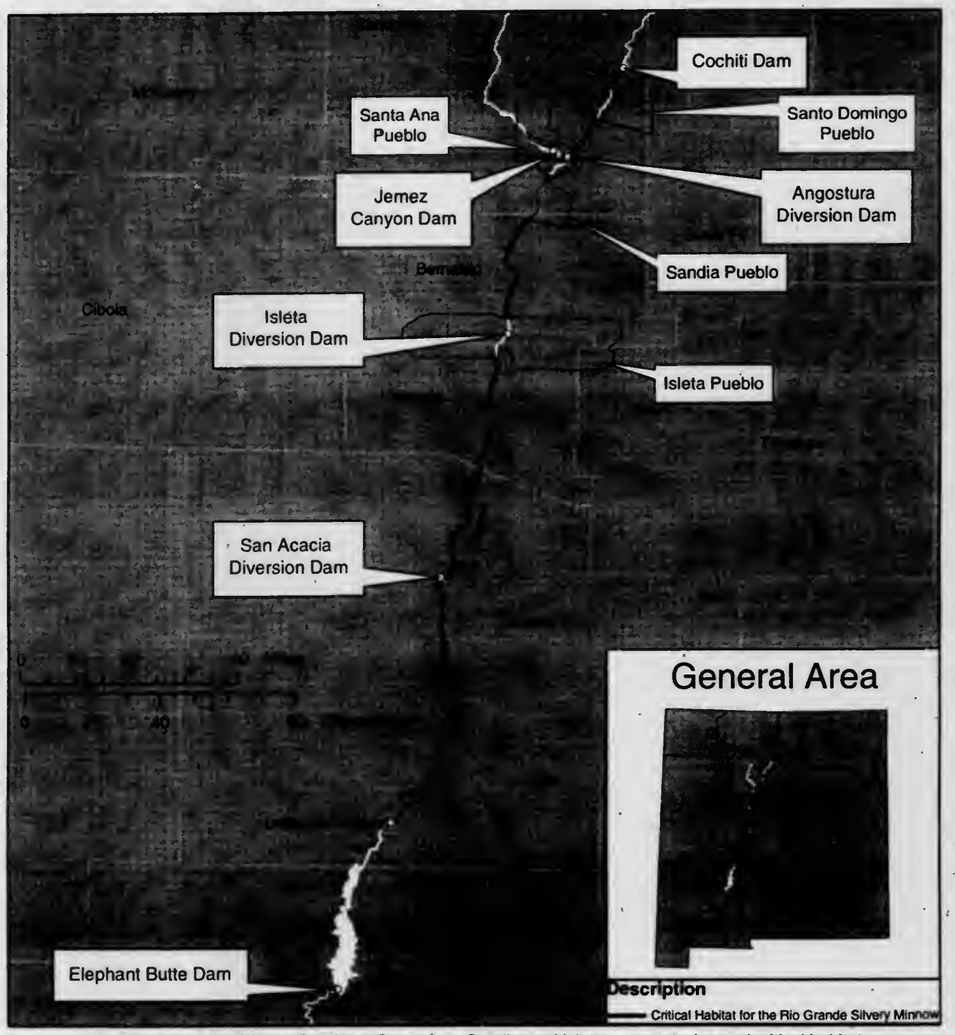
DISCLAIMER

This map is a graphical representation of Rio Grande Silvery Minnow critical habitat and is provided for illustrative purposes only. The map and [GIS (vector and/or raster)] files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resource, data and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

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VOL 68 ISS 33 FE 19 2003 UMI

Critical Habitat for the Rio Grande Silvery Minnow *(Hybognathus amarus)*



The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta are not designated critical habitat (see 'Regulation Promulgation' section of this rule for exact descriptions of boundaries of designated critical habitat).

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This map is a graphical representation of Rio Grande Silvery Minnow critical habitat and is provided for illustrative purposes only. The map and [GIS (vector and/or raster)] files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resource, data and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

BILLING CODE 4310–55–C

(6) This designation does not include the ephemeral or perennial irrigation canals and ditches outside of natural stream channels, including the low flow conveyance channel that is adjacent to a portion of the river reach within the middle Rio Grande (*i.e.*, downstream of the southern boundary of Bosque del Apache National Wildlife Refuge to the Elephant Butte Dam).

(7) Lands located within the exterior boundaries of the critical habitat designation (*i.e.*, within the existing levees, or if no levees are present, then within a lateral distance of 300 ft (91.4 m) on each side of the stream width at bankfull discharge) that are not considered critical habitat and are therefore excluded by definition, include: Developed flood control facilities; existing paved roads; bridges; parking lots; dikes; levees; diversion structures; railroad tracks; railroad trestles; water diversion and irrigation canals outside of natural stream channels; the low flow conveyance channel; active gravel pits; cultivated agricultural land; and residential, commercial, and industrial developments.

* * * * *

Dated: January 31, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–3255 Filed 2–18–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
February 19, 2003

Part III

Securities and Exchange Commission

17 CFR Part 201
Rules of Practice; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–8190; 34–47355; 35–27650; 39–2405; IA–2109; IC–25933; File No. S7–04–03]

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing for comment amendments to its Rules of Practice to formalize new policies designed to improve the timeliness of its administrative proceedings. The proposed changes include specifying in all orders instituting proceedings a maximum time period for completion by an administrative law judge of the initial decision in the proceeding, establishing policies disfavoring requests that would delay proceedings once instituted, and creating time limits for the negotiation and submission of offers of settlement to the Commission. If these proposed changes are adopted, the Commission intends to take additional steps to reduce delay in its internal deliberations on appeals from hearing officers' initial decisions and from final determinations of self-regulatory organizations and, accordingly, proposes to amend current guidelines for issuance of Commission opinions.

DATES: Comments should be received on or before March 21, 2003.

ADDRESSES: To help us process and review your comments efficiently, comments should be sent by hard copy or by e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Alternatively, comments may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–04–03; this file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comments will be posted on the Commission's Internet Web site (*http://www.sec.gov*). The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Interested persons submitting comments should only submit information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Margaret H. McFarland, Deputy Secretary, or J. Lynn Taylor, Assistant Secretary, at (202) 942–7070, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rules 161, 360, 450, and 900 of its Rules of Practice [17 CFR 201.161, 201.360, 201.450, and 201.900].

I. Discussion

The Commission adopted, after notice and comment, comprehensive revisions to its Rules of Practice that became effective on July 24, 1995. These revisions were the result of an approximately two-and-a-half year study by the Commission's Task Force on Administrative Proceedings that culminated in a comprehensive report. The Task Force found that the fundamental structure of the Commission's administrative process was sound and successfully protected the essential interests of respondents, investors, and the public, but that some changes were necessary. The Task Force recommended changes to the Rules of Practice in an effort to set forth applicable procedural requirements more completely, in a format easier to use, and to streamline procedures that had become burdensome.

Promoting the timely adjudication and disposition of administrative proceedings was one of the principal goals of this project. While many of the rule amendments were designed to improve efficiency and timeliness, the Commission as part of this project did not impose firm deadlines for completion of the proceedings. Instead it included, as Rule 900, a series of non-binding goals for the completion of each step in the administrative process. Rule 900 included a ten month guideline for completion of the hearing and issuance of the initial decision by the administrative law judge and it contained an eleven month target for completion of deliberations by the Commission when it reviews appeals of administrative law judges' initial decisions and appeals of determinations of the securities self-regulatory organizations. In the seven years since the adoption of these non-binding targets, the Commission and its administrative law judges have generally failed to meet these goals.

Based upon this experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved only through the adoption of mandatory deadlines and procedures designed to meet these deadlines. Because there is a wide variation in the subject matter, complexity and urgency of administrative proceedings, the Commission believes that a "one-size-fits-all" approach to timely disposition is not feasible. Instead the Commission is considering adoption of a procedure in which it would specify, in the order instituting proceedings, a deadline for completion of the hearings process and the issuance of an initial decision. In every non-settled administrative proceeding, the Commission's Order Instituting Proceedings would specify the maximum time for completion of the hearing and issuance of the initial decision. This deadline would be either 90, 180, or 270 days, in the Commission's discretion, after consideration of the type of proceeding, the complexity of the matter, and its urgency.

As provided in amended Rule 360, if during the proceeding the presiding hearing officer were to decide that the proceeding could not be concluded in the time specified, the hearing officer could request an extension of the stated deadline. To obtain an extension, the hearing officer would first consult with the Chief Administrative Law Judge. If the Chief ALJ concurs in the need for an extension, the Chief ALJ would file a motion with the Commission on behalf of the hearing officer explaining why circumstances require an extension and specifying the length of the extension. An extension could be granted by the Commission, in its discretion, on the basis of the motion filed by the Chief ALJ. Parties to the proceeding would be provided copies of the motion and could separately or jointly file in support of or in opposition to the request. Any such motion by the Chief ALJ would have to be filed no later than thirty days prior to the expiration of the time period specified in the Order Instituting Proceedings.

To complement this new procedure, the Commission is also proposing to amend Rule 161 to make explicit a policy of strongly disfavoring extensions, postponements or adjournments except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. This proposed amendment to Rule 161 would effect a significant change in administrative cease and desist proceedings. Section 21C(b) of the Securities Exchange Act of 1934 (and parallel provisions in the other Federal securities laws) requires that the notice instituting proceedings "shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served." Under current practice, parties routinely request extensions of the 60-day deadline, and the hearing officers routinely grant such requests. The proposed amendment would exempt these requests from the policy of strongly disfavoring such requests, absent a strong showing of substantial prejudice. Comment is requested on the impact of the proposed change on the scheduling of cease and desist proceeding hearings, in particular whether respondents will have adequate time to prepare for a hearing 60 days after service of the notice for the proceeding.

If these or substantially similar rules are adopted, the Commission intends to provide guidance to its staff that they should not seek or support extensions or stays not consistent with this standard. Similarly, staff would be instructed to adopt new procedures to ensure that settlement negotiations do not delay the hearing process. These proposed procedures are described in proposed Rule 161(d)(2).

Finally, the Commission recognizes that it too must shoulder responsibility for delays in its appellate review process. During the past year, the Commission has changed certain internal processes in an effort to reduce delay in its deliberations. Building upon these changes, if these rule proposals are adopted, Commission staff involved in the adjudicative process will be provided instructions designed to substantially reduce the time taken to complete its appellate review duties. Accordingly, the Commission is proposing an amendment to Rule 900 reducing the guideline for issuance of Commission opinions from eleven months to seven months from the date of an appeal.

As part of this initiative to expedite appellate review, the Commission is proposing to amend Rule 450 to provide that opening briefs must be filed within 30 days of the date of a briefing schedule order rather than the current 40 days.

II. Administrative Procedure Act and Regulatory Flexibility Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, also does not apply. Nonetheless, the Commission has determined that it would be useful to publish these proposed rule changes for notice and comment, before adoption.

Following the expiration of the comment period, after consideration of all comments received, the Commission intends to take prompt action on this proposal.

III. Statutory Basis and Text of Proposed Amendment

These rule amendments are proposed pursuant to section 19 of the Securities Act, 15 U.S.C. 77s; section 23 of the Securities Exchange Act, 15 U.S.C. 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 201—RULES OF PRACTICE

1. The authority citation for part 201, Subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12.

2. Section 201.161 is amended by:

a. Removing paragraph (b)(1);

b. Redesignating paragraph (b)(2) as paragraph (d)(1); and

c. Adding paragraphs (c) and (d)(2).

The additions read as follows:

§ 201.161 Extensions of time, postponements and adjournments.

* * * * *

(c)(1) *Considerations in determining whether to extend time limits or grant postponements, adjournments, and extensions.* In considering all motions or requests pursuant to paragraph (a) or (b) of this section, the Commission or the hearing officer should adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case. In determining whether to grant any requests, the Commission or hearing officer shall consider, in addition to any other relevant factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request;

(iv) The impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and

(v) Any other such matters as justice may require.

(2) This policy of strongly disfavoring requests for postponement will not apply to any request by a respondent to postpone commencement of a cease and desist proceeding hearing beyond the statutory 60 day period.

(d)(1) *Time limit.* * * *

(2) *Stay pending Commission consideration of offers of settlement.* If the Commission staff and one or more respondents in the proceeding file a joint motion notifying the hearing officer that they have agreed in principle to a settlement on all major terms, then the hearing officer shall stay the proceeding as to the settling respondent(s), or in the discretion of the hearing officer as to all respondents, pending completion of Commission consideration of the settlement offer. Any such stay will be contingent upon the settling respondent(s) submitting to the Commission staff, within fifteen business days of the stay, a signed offer of settlement in conformance with § 201.240, and within twenty business days of receipt of the signed offer, the staff submitting the settlement offer and accompanying recommendation to the Commission for consideration. If the parties fail to meet either of these deadlines or if the Commission rejects the offer of settlement, the hearing officer must be promptly notified and, upon notification of the hearing officer, the stay shall lapse and the proceeding will continue.

3. Section 201.360 is amended by:

a. Redesignating paragraph (a) as paragraph (a)(1); and

b. Adding paragraph (a)(2).

The addition reads as follows:

§ 201.360 Initial decision of hearing officer.

(a)(1) * * *

(2) *Time period for filing initial decision.* In the Order Instituting Proceedings, the Commission will specify a time period in which the hearing officer's initial decision must be filed with the Secretary. In the

Commission's discretion, after consideration of the nature, complexity, and urgency of the subject matter, and, with due regard for the public interest and the protection of investors, this time period will be either 90, 180 or 270 days from the date of the Order. In the event that the hearing officer presiding over the proceeding determines that it will not be possible to issue the initial decision within the specified period of time, the hearing officer should consult with the Chief Administrative Law Judge. Following such consultation, the Chief Administrative Law Judge may determine, in his or her discretion, to submit a motion to the Commission requesting an extension of the time period for filing the initial decision. This motion must be filed no later than 30 days prior to the expiration of the time specified in the Order for issuance of an initial decision. The motion will be served upon all parties in the proceeding, who may file with the Commission statements in support of or in opposition to the motion. If the Commission determines that additional time is necessary or appropriate in the public interest, the Commission shall issue an order extending the time period for filing the initial decision.

* * * * *

§ 201.450 [Amended]

4. Section 201.450 is amended by revising the phrase "within 40 days" to read "within 30 days" in the second sentence of paragraph (a).

§ 201.900 [Amended]

5. Section 201.900 is amended by:

a. Removing paragraph (a)(1)(i);

b. Redesignating paragraphs (a)(1)(ii) through (a)(1)(iv) as paragraphs (a)(1)(i) through (a)(1)(iii); and

c. In newly redesignated paragraph (a)(1)(iii), revise the phrase "within 11 months" to read "within seven months".

By the Commission.

Dated: February 12, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–3915 Filed 2–18–03; 8:45 am]

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Federal Register

Wednesday,
February 19, 2003

Part IV

Department of Education

34 CFR Part 34

Administrative Wage Garnishment; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 34

Administrative Wage Garnishment

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Final regulations.

SUMMARY: These regulations implement for the Department of Education the provisions for administrative wage garnishment in the Debt Collection Improvement Act of 1996 (DCIA). The DCIA authorizes Federal agencies to garnish administratively, that is, without court order, the disposable pay of an individual who is not a Federal employee to collect a delinquent nontax debt owed to the United States. These regulations implement this authority for a debt owed to the United States under a program administered by the Department of Education.

DATES: These regulations are effective March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Marian E. Currie, U.S. Department of Education, Union Center Plaza Room 41B4, 830 First Street NE, Washington DC 20202, Telephone: (202) 377–3212 or via Internet: *marian.currie@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On April 12, 2002, the Secretary published in the **Federal Register** a notice of proposed rulemaking (NPRM) (67 FR 18072) for implementation of the wage garnishment authority in the DCIA. This document contains the final regulations for the rules that were proposed in that NPRM. These final regulations contain a few changes from the NPRM.

Analysis of Comments and Changes

In response to the NPRM, we received comments from two parties. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Although a substantial number of small entities will be subject to these regulations and to the certification requirement in these regulations, as explained in the NPRM, the requirements will not have a significant economic impact on these entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF at the following site: *http://ifap.ed.gov*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 34

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearing and appeal procedures, Salaries, Wages.

Dated: February 12, 2003.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new part 34 to read as follows:

PART 34— ADMINISTRATIVE WAGE GARNISHMENT

Sec.

34.1 Purpose of this part.
34.2 Scope of this part.
34.3 Definitions.
34.4 Notice of proposed garnishment.
34.5 Contents of a notice of proposed garnishment.
34.6 Rights in connection with garnishment.
34.7 Consideration of objection to the rate or amount of withholding.
34.8 Providing a hearing.
34.9 Conditions for an oral hearing.
34.10 Conditions for a paper hearing.
34.11 Timely request for a hearing.
34.12 Request for reconsideration.
34.13 Conduct of a hearing.
34.14 Burden of proof.
34.15 Consequences of failure to appear for an oral hearing.
34.16 Issuance of the hearing decision.
34.17 Content of decision.
34.18 Issuance of the wage garnishment order.
34.19 Amounts to be withheld under a garnishment order.
34.20 Amount to be withheld under multiple garnishment orders.
34.21 Employer certification.
34.22 Employer responsibilities.
34.23 Exclusions from garnishment.
34.24 Claim of financial hardship by debtor subject to garnishment.
34.25 Determination of financial hardship.
34.26 Ending garnishment.
34.27 Actions by employer prohibited by law.
34.28 Refunds of amounts collected in error.
34.29 Enforcement action against employer for noncompliance with garnishment order.
34.30 Application of payments and accrual of interest.

Authority: 31 U.S.C. 3720D, unless otherwise noted.

§ 34.1 Purpose of this part.

This part establishes procedures the Department of Education uses to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent debt owed to the United States.

(Authority: 31 U.S.C. 3720D)

§ 34.2 Scope of this part.

(a) This part applies to collection of any financial obligation owed to the United States that arises under a program we administer.

(b) This part applies notwithstanding any provision of State law.

(c) We may compromise or suspend collection by garnishment of a debt in accordance with applicable law.

(d) We may use other debt collection remedies separately or in conjunction with administrative wage garnishment to collect a debt.

(e) To collect by offset from the salary of a Federal employee, we use the procedures in 34 CFR part 31, not those in this part.

(Authority: 31 U.S.C. 3720D)

§ 34.3 Definitions.

As used in this part, the following definitions apply:

Administrative debt means a debt that does not arise from an individual's obligation to repay a loan or an overpayment of a grant received under a student financial assistance program authorized under Title IV of the Higher Education Act.

Business day means a day Monday through Friday, unless that day is a Federal holiday.

Certificate of service means a certificate signed by an authorized official of the U.S. Department of Education (the Department) that indicates the nature of the document to which it pertains, the date we mail the document, and to whom we are sending the document.

Day means calendar day. For purposes of computation, the last day of a period will be included unless that day is a Saturday, a Sunday, or a Federal legal holiday; in that case, the last day of the period is the next business day after the end of the period.

Debt or *claim* means any amount of money, funds, or property that an appropriate official of the Department has determined an individual owes to the United States under a program we administer.

Debtor means an individual who owes a delinquent nontax debt to the United States under a program we administer.

Disposable pay. This term—

(a)(1) Means that part of a debtor's compensation for personal services, whether or not denominated as wages, from an employer that remains after the deduction of health insurance premiums and any amounts required by law to be withheld.

(2) For purposes of this part, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld under a court order; and

(b) Includes, but is not limited to, salary, bonuses, commissions, or vacation pay.

Employer. This term—

(a) Means a person or entity that employs the services of another and that pays the latter's wages or salary;

(b) Includes, but is not limited to, State and local governments; and

(c) Does not include an agency of the Federal Government.

Financial hardship means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents.

Garnishment means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order.

We means the United States Department of Education.

Withholding order. (a) This term means any order for withholding or garnishment of pay issued by this Department, another Federal agency, a State or private non-profit guaranty agency, or a judicial or administrative body.

(b) For purposes of this part, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

You means the debtor.

(Authority: 31 U.S.C. 3720D)

§ 34.4 Notice of proposed garnishment.

(a) We may start proceedings to garnish your wages whenever we determine that you are delinquent in paying a debt owed to the United States under a program we administer.

(b) We start garnishment proceedings by sending you a written notice of the proposed garnishment.

(c) At least 30 days before we start garnishment proceedings, we mail the notice by first class mail to your last known address.

(d)(1) We keep a copy of a certificate of service indicating the date of mailing of the notice.

(2) We may retain this certificate of service in electronic form.

(Authority: 31 U.S.C. 3720D)

§ 34.5 Contents of a notice of proposed garnishment.

In a notice of proposed garnishment, we inform you of—

(a) The nature and amount of the debt;

(b) Our intention to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and collection costs are paid in full; and

(c) An explanation of your rights, including those in § 34.6, and the time frame within which you may exercise your rights.

(Authority: 31 U.S.C. 3720D)

§ 34.6 Rights in connection with garnishment.

Before starting garnishment, we provide you the opportunity—

(a) To inspect and copy our records related to the debt;

(b) To enter into a written repayment agreement with us to repay the debt under terms we consider acceptable;

(c) For a hearing in accordance with § 34.8 concerning—

(1) The existence, amount, or current enforceability of the debt;

(2) The rate at which the garnishment order will require your employer to withhold pay; and

(3) Whether you have been continuously employed less than 12 months after you were involuntarily separated from employment.

(Authority: 31 U.S.C. 3720D)

§ 34.7 Consideration of objection to the rate or amount of withholding.

(a) We consider objections to the rate or amount of withholding only if the objection rests on a claim that withholding at the proposed rate or amount would cause financial hardship to you and your dependents.

(b) We do not provide a hearing on an objection to the rate or amount of withholding if the rate or amount we propose to be withheld does not exceed the rate or amount agreed to under a repayment agreement reached within the preceding six months after a previous notice of proposed garnishment.

(c) We do not consider an objection to the rate or amount of withholding based on a claim that by virtue of 15 U.S.C. 1673, no amount of wages are available for withholding by the employer.

(Authority: 31 U.S.C. 3720D)

§ 34.8 Providing a hearing.

(a) We provide a hearing if you submit a written request for a hearing concerning the existence, amount, or enforceability of the debt or the rate of wage withholding.

(b) At our option the hearing may be an oral hearing under § 34.9 or a paper hearing under § 34.10.

(Authority: 31 U.S.C. 3720D)

§ 34.9 Conditions for an oral hearing.

(a) We provide an oral hearing if you—

(1) Request an oral hearing; and

(2) Show in the request a good reason to believe that we cannot resolve the issues in dispute by review of the documentary evidence, by demonstrating that the validity of the claim turns on the credibility or veracity of witness testimony.

(b) If we determine that an oral hearing is appropriate, we notify you how to receive the oral hearing.

(c)(1) At your option, an oral hearing may be conducted either in-person or by telephone conference.

(2) We provide an in-person oral hearing with regard to administrative debts only in Washington D.C.

(3) We provide an in-person oral hearing with regard to debts based on student loan or grant obligations only at our regional service centers in Atlanta, Chicago, or San Francisco.

(4) You must bear all travel expenses you incur in connection with an in-person hearing.

(5) We bear the cost of any telephone calls we place in order to conduct an oral hearing by telephone.

(d)(1) To arrange the time and location of the oral hearing, we ordinarily attempt to contact you first by telephone call to the number you provided to us.

(2) If we are unable to contact you by telephone, we leave a message directing you to contact us within 5 business days to arrange the time and place of the hearing.

(3) If we can neither contact you directly nor leave a message with you by telephone—

(i) We notify you in writing to contact us to arrange the time and place of the hearing; or

(ii) We select a time and place for the hearing, and notify you in writing of the time and place set for the hearing.

(e) We consider you to have withdrawn the request for an oral hearing if—

(1) Within 15 days of the date of a written notice to contact us, we receive no response to that notice; or

(2) Within five business days of the date of a telephone message to contact us, we receive no response to that message.

(Authority: 31 U.S.C. 3720D)

§ 34.10 Conditions for a paper hearing.

We provide a paper hearing—

(a) If you request a paper hearing;

(b) If you requested an oral hearing, but we determine under § 34.9(e) that you have withdrawn that request;

(c) If you fail to appear for a scheduled oral hearing, as provided in § 34.15; or

(d) If we deny a request for an oral hearing because we conclude that, by a review of the written record, we can resolve the issues raised by your objections.

(Authority: 31 U.S.C. 3720D)

§ 34.11 Timely request for a hearing.

(a) A hearing request is timely if—

(1) You mail the request to the office designated in the garnishment notice and the request is postmarked not later than the 30th day following the date of the notice; or

(2) The designated office receives the request not later than the 30th day following the date of the garnishment notice.

(b) If we receive a timely written request from you for a hearing, we will not issue a garnishment order before we—

(1) Provide the requested hearing; and

(2) Issue a written decision on the objections you raised.

(c) If your written request for a hearing is not timely—

(1) We provide you a hearing; and

(2) We do not delay issuance of a garnishment order unless—

(i) We determine from credible representations in the request that the delay in filing the request for hearing was caused by factors over which you had no control; or

(ii) We have other good reason to delay issuing a garnishment order.

(d) If we do not complete a hearing within 60 days of an untimely request, we suspend any garnishment order until we have issued a decision.

(Authority: 31 U.S.C. 3720D)

§ 34.12 Request for reconsideration.

(a) If you have received a decision on an objection to garnishment you may file a request for reconsideration of that decision.

(b) We do not suspend garnishment merely because you have filed a request for reconsideration.

(c) We consider your request for reconsideration if we determine that—

(1) You base your request on grounds of financial hardship, and your financial circumstances, as shown by evidence submitted with the request, have materially changed since we issued the decision so that we should reduce the amount to be garnished under the order; or

(2)(i) You submitted with the request evidence that you did not previously submit; and

(ii) This evidence demonstrates that we should reconsider your objection to the existence, amount, or enforceability of the debt.

(d)(1) If we agree to reconsider the decision, we notify you.

(2)(i) We may reconsider based on the request and supporting evidence you have presented with the request; or

(ii) We may offer you an opportunity for a hearing to present evidence.

(Authority: 31 U.S.C. 3720D)

§ 34.13 Conduct of a hearing.

(a)(1) A hearing official conducts any hearing under this part.

(2) The hearing official may be any qualified employee of the Department whom the Department designates to conduct the hearing.

(b)(1) The hearing official conducts any hearing as an informal proceeding.

(2) A witness in an oral hearing must testify under oath or affirmation.

(3) The hearing official maintains a summary record of any hearing.

(c) Before the hearing official considers evidence we obtain that was not included in the debt records available for inspection when we sent notice of proposed garnishment, we notify you that additional evidence has become available, may be considered by the hearing official, and is available for inspection or copying.

(d) The hearing official considers any objection you raise and evidence you submit—

(1) In or with the request for a hearing;

(2) During an oral hearing;

(3) By the date that we consider, under § 34.9(e), that a request for an oral hearing has been withdrawn; or

(4) Within a period we set, ordinarily not to exceed seven business days, after—

(i) We provide you access to our records regarding the debt, if you requested access to records within 20 days after the date of the notice under § 34.4;

(ii) We notify you that we have obtained and intend to consider additional evidence;

(iii) You request an extension of time in order to submit specific relevant evidence that you identify to us in the request; or

(iv) We notify you that we deny your request for an oral hearing.

(Authority: 31 U.S.C. 3720D)

§ 34.14 Burden of proof.

(a)(1) We have the burden of proving the existence and amount of a debt.

(2) We meet this burden by including in the record and making available to the debtor on request records that show that—

(i) The debt exists in the amount stated in the garnishment notice; and

(ii) The debt is currently delinquent.

(b) If you dispute the existence or amount of the debt, you must prove by a preponderance of the credible evidence that—

(1) No debt exists;

(2) The amount we claim to be owed on the debt is incorrect; or

(3) You are not delinquent with respect to the debt.

(c)(1) If you object that the proposed garnishment rate would cause financial hardship, you bear the burden of proving by a preponderance of the credible evidence that withholding the amount of wages proposed in the notice would leave you unable to meet the basic living expenses of you and your dependents.

(2) The standards for proving financial hardship are those in § 34.24.

(d)(1) If you object on the ground that applicable law bars us from collecting the debt by garnishment at this time, you bear the burden of proving the facts that would establish that claim.

(2) Examples of applicable law that may prevent collection by garnishment include the automatic stay in bankruptcy (11 U.S.C. 362(a)), and the preclusion of garnishment action against a debtor who was involuntarily separated from employment and has been reemployed for less than a continuous period of 12 months (31 U.S.C. 3720D(b)(6)).

(e) The fact that applicable law may limit the amount that an employer may withhold from your pay to less than the amount or rate we state in the garnishment order does not bar us from issuing the order.

(Authority: 31 U.S.C. 3720D)

§ 34.15 Consequences of failure to appear for an oral hearing.

(a) If you do not appear for an in-person hearing you requested, or you do not answer a telephone call convening a telephone hearing, at the time set for the hearing, we consider you to have withdrawn your request for an oral hearing.

(b) If you do not appear for an oral hearing but you demonstrate that there was good cause for not appearing, we may reschedule the oral hearing.

(c) If you do not appear for an oral hearing you requested and we do not reschedule the hearing, we provide a paper hearing to review your objections, based on the evidence in your file and any evidence you have already provided.

(Authority: 31 U.S.C. 3720D)

§ 34.16 Issuance of the hearing decision.

(a) *Date of decision.* The hearing official issues a written opinion stating his or her decision, as soon as practicable, but not later than 60 days after the date on which we received the request for hearing.

(b) If we do not provide you with a hearing and render a decision within 60 days after we receive your request for a hearing—

(1) We do not issue a garnishment order until the hearing is held and a decision rendered; or

(2) If we have already issued a garnishment order to your employer, we suspend the garnishment order beginning on the 61st day after we receive the hearing request until we provide a hearing and issue a decision.

(Authority: 31 U.S.C. 3720D)

§ 34.17 Content of decision.

(a) The written decision is based on the evidence contained in the hearing record. The decision includes—

(1) A description of the evidence considered by the hearing official;

(2) The hearing official's findings, analysis, and conclusions regarding objections raised to the existence or amount of the debt;

(3) The rate of wage withholding under the order, if you objected that withholding the amount proposed in the garnishment notice would cause an extreme financial hardship; and

(4) An explanation of your rights under this part for reconsideration of the decision.

(b) The hearing official's decision is the final action of the Secretary for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(Authority: 31 U.S.C. 3720D)

§ 34.18 Issuance of the wage garnishment order.

(a)(1) If you fail to make a timely request for a hearing, we issue a garnishment order to your employer within 30 days after the deadline for timely requesting a hearing.

(2) If you make a timely request for a hearing, we issue a withholding order within 30 days after the hearing official issues a decision to proceed with garnishment.

(b)(1) The garnishment order we issue to your employer is signed by an official of the Department designated by the Secretary.

(2) The designated official's signature may be a computer-generated facsimile.

(c)(1) The garnishment order contains only the information we consider necessary for your employer to comply with the order and for us to ensure proper credit for payments received from your employer.

(2) The order includes your name, address, and social security number, as well as instructions for withholding and information as to where your employer must send the payments.

(d)(1) We keep a copy of a certificate of service indicating the date of mailing of the order.

(2) We may create and maintain the certificate of service as an electronic record.

(Authority: 31 U.S.C. 3720D)

§ 34.19 Amounts to be withheld under a garnishment order.

(a)(1) After an employer receives a garnishment order we issue, the employer must deduct from all disposable pay of the debtor during each pay period the amount directed in the garnishment order unless this section or § 34.20 requires a smaller amount to be withheld.

(2) The amount specified in the garnishment order does not apply if other law, including this section, requires the employer to withhold a smaller amount.

(b) The employer must comply with our garnishment order by withholding the lesser of—

(1) The amount directed in the garnishment order; or—

(2) The amount specified in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment); that is, the amount by which a debtor's disposable pay exceeds an amount equal to 30 times the minimum wage. (See 29 CFR 870.10.)

(Authority: 31 U.S.C. 3720D)

§ 34.20 Amount to be withheld under multiple garnishment orders.

If a debtor's pay is subject to several garnishment orders, the employer must comply with our garnishment order as follows:

(a) Unless other Federal law requires a different priority, the employer must pay us the amount calculated under § 34.19(b) before the employer complies with any later garnishment orders, except a family support withholding order.

(b) If an employer is withholding from a debtor's pay based on a garnishment order served on the employer before our order, or if a withholding order for family support is served on an employer at any time, the employer must comply with our garnishment order by withholding an amount that is the smaller of—

(1) The amount calculated under § 34.19(b); or

(2) An amount equal to 25 percent of the debtor's disposable pay less the amount or amounts withheld under the garnishment order or orders with priority over our order.

(c)(1) If a debtor owes more than one debt arising from a program we administer, we may issue multiple garnishment orders.

(2) The total amount withheld from the debtor's pay for orders we issue under paragraph (c)(1) of this section does not exceed the amounts specified in the orders, the amount specified in § 34.19(b)(2), or 15 percent of the debtor's disposable pay, whichever is smallest.

(d) An employer may withhold and pay an amount greater than that amount in paragraphs (b) and (c) of this section if the debtor gives the employer written consent.

(Authority: 31 U.S.C. 3720D)

§ 34.21 Employer certification.

(a) Along with a garnishment order, we send to an employer a certification in a form prescribed by the Secretary of the Treasury.

(b) The employer must complete and return the certification to us within the time stated in the instructions for the form.

(c) The employer must include in the certification information about the debtor's employment status, payment frequency, and disposable pay available for withholding.

(Authority: 31 U.S.C. 3720D)

§ 34.22 Employer responsibilities.

(a)(1) Our garnishment order indicates a reasonable period of time within which an employer must start withholding under the order.

(2) The employer must promptly pay to the Department all amounts the employer withholds according to the order.

(b) The employer may follow its normal pay and disbursement cycles in complying with the garnishment order.

(c) The employer must withhold the appropriate amount from the debtor's wages for each pay period until the employer receives our notification to discontinue wage garnishment.

(d) The employer must disregard any assignment or allotment by an employee that would interfere with or prohibit the employer from complying with our garnishment order, unless that assignment or allotment was made for a family support judgment or order.

(Authority: 31 U.S.C. 3720D)

§ 34.23 Exclusions from garnishment.

(a) We do not garnish your wages if we have credible evidence that you—

(1) Were involuntarily separated from employment; and

(2) Have not yet been reemployed continuously for at least 12 months.

(b) You have the burden of informing us of the circumstances surrounding an involuntary separation from employment.

(Authority: 31 U.S.C. 3720D)

§ 34.24 Claim of financial hardship by debtor subject to garnishment.

(a) You may object to a proposed garnishment on the ground that withholding the amount or at the rate stated in the notice of garnishment would cause financial hardship to you and your dependents. (See § 34.7)

(b) You may, at any time, object that the amount or the rate of withholding which our order specifies your employer must withhold causes financial hardship.

(c)(1) We consider an objection to an outstanding garnishment order and provide you an opportunity for a hearing on your objection only after the order has been outstanding for at least six months.

(2) We may provide a hearing in extraordinary circumstances earlier than six months if you show in your request for review that your financial circumstances have substantially changed after the notice of proposed garnishment because of an event such as injury, divorce, or catastrophic illness.

(d)(1) You bear the burden of proving a claim of financial hardship by a preponderance of the credible evidence.

(2) You must prove by credible documentation—

(i) The amount of the costs incurred by you, your spouse, and any dependents, for basic living expenses; and

(ii) The income available from any source to meet those expenses.

(e)(1) We consider your claim of financial hardship by comparing—

(i) The amounts that you prove are being incurred for basic living expenses; against

(ii) The amounts spent for basic living expenses by families of the same size and similar income to yours.

(2) We regard the standards published by the Internal Revenue Service under 26 U.S.C. 7122(c)(2) (the "National Standards") as establishing the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to, your family.

(3) We accept as reasonable the amount that you prove you incur for a type of basic living expense to the extent that the amount does not exceed the amount spent for that expense by families of the same size and similar income according to the National Standards.

(4) If you claim for any basic living expense an amount that exceeds the amount in the National Standards, you must prove that the amount you claim is reasonable and necessary.

(Authority: 31 U.S.C. 3720D)

§ 34.25 Determination of financial hardship.

(a)(1) If we conclude that garnishment at the amount or rate proposed in a notice would cause you financial hardship, we reduce the amount of the proposed garnishment to an amount that we determine will allow you to meet proven basic living expenses.

(2) If a garnishment order is already in effect, we notify your employer of any change in the amount the employer must withhold or the rate of withholding under the order.

(b) If we determine that financial hardship would result from garnishment based on a finding by a hearing official or under a repayment agreement we reached with you, this determination is effective for a period not longer than six months after the date of the finding or agreement.

(c)(1) After the effective period referred to in paragraph (b) of this section, we may require you to submit current information regarding your family income and living expenses.

(2) If we conclude from a review of that evidence that we should increase the rate of withholding or payment, we—

(i) Notify you; and

(ii) Provide you with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in § 34.24.

(Authority: 31 U.S.C. 3720D)

§ 34.26 Ending garnishment.

(a)(1) A garnishment order we issue is effective until we rescind the order.

(2) If an employer is unable to honor a garnishment order because the amount available for garnishment is insufficient to pay any portion of the amount stated in the order, the employer must—

(i) Notify us; and

(ii) Comply with the order when sufficient disposable pay is available.

(b) After we have fully recovered the amounts owed by the debtor, including interest, penalties, and collection costs, we send the debtor's employer notification to stop wage withholding.

(Authority: 31 U.S.C. 3720D)

§ 34.27 Actions by employer prohibited by law.

An employer may not discharge, refuse to employ, or take disciplinary action against a debtor due to the issuance of a garnishment order under this part.

(Authority: 31 U.S.C. 3720D)

§ 34.28 Refunds of amounts collected in error.

(a) If a hearing official determines under §§ 34.16 and 34.17 that a person does not owe the debt described in our notice or that an administrative wage garnishment under this part was barred by law at the time of the collection action, we promptly refund any amount collected by means of this garnishment.

(b) Unless required by Federal law or contract, we do not pay interest on a refund.

(Authority: 31 U.S.C. 3720D)

§ 34.29 Enforcement action against employer for noncompliance with garnishment order.

(a) If an employer fails to comply with § 34.22 to withhold an appropriate amount from wages owed and payable to an employee, we may sue the employer for that amount.

(b)(1) We do not file suit under paragraph (a) of this section before we terminate action to enforce the debt as a personal liability of the debtor.

(2) However, the provision of paragraph (b)(1) of this section may not apply if earlier filing of a suit is necessary to avoid expiration of any applicable statute of limitations.

(c)(1) For purposes of this section, termination of an action to enforce a debt occurs when we terminate collection action in accordance with the FCCS, other applicable standards, or paragraph (c)(2) of this section.

(2) We regard termination of the collection action to have occurred if we have not received for one year any payments to satisfy the debt, in whole or in part, from the particular debtor whose wages were subject to garnishment.

(Authority: 31 U.S.C. 3720D)

§ 34.30 Application of payments and accrual of interest.

We apply payments received through a garnishment in the following order—

(a) To costs incurred to collect the debt;

(b) To interest accrued on the debt at the rate established by—

(1) The terms of the obligation under which it arises; or

(2) Applicable law; and

(c) To outstanding principal of the debt.

(Authority: 31 U.S.C. 3720D)

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Analysis of Comments and Changes

An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss issues according to subject, under the sections of the regulations to which they pertain.

Scope of Garnishment Authority; Collection of Student Loans (§§ 34.1 and 34.2)

Comment: One commenter contended that the Department lacks legal authority to use the garnishment power in the DCIA to collect student loans, because the commenter views section 488A of the Higher Education Act, 20 U.S.C. 1095a, as restricting the Department's garnishment authority to ten percent of disposable pay.

Discussion: The commenter bases this contention not on the terms of the DCIA, but on a rule of statutory construction that where two statutes authorize an action, the more specific of the two sets the limits to that authority. Section 488A of the HEA authorizes the Secretary of Education and guaranty agencies to garnish up to ten percent of debtor pay to collect student loans, while the DCIA authorizes Federal agencies to garnish up to fifteen percent of debtor pay. The commenter views the HEA as the more specific of the two statutes, and contends that the HEA limits the Department's garnishment power to the ten percent rate it authorizes. We disagree that the HEA is the more specific of the two statutes; both statutes apply to a distinctive category of entities. The HEA extended garnishment authority to the Department and to some 36 separate State and non-profit entities operating as guaranty agencies, and empowers the latter group to collect both on their own behalf and on behalf of the Federal government.[1] The DCIA applies only to Federal agencies, and applies exclusively to collection of debts owed to the Federal Government.

Even if the HEA were the more specific of the two authorities, the rule that the more specific of two potentially applicable statutes controls is merely one of several tools used to discern the intent of Congress. Another way to determine the intent of Congress when two potentially-applicable statutes adopt inconsistent terms is to view the more recent of the two as embodying the current intent of Congress. The 1996 DCIA is the more recent of the two statutes. Thus, Congress' intent to allow garnishment at 15 percent supersedes the HEA's more limited authority.

Looking to the more recent of two statutes to discern Congress' intent is particularly apt because the DCIA garnishment provision is both more recently enacted and part of a comprehensive scheme inconsistent with the limits of the earlier HEA authority. The DCIA supersedes the more limited authority in HEA section 488A because the DCIA garnishment authority is an addition to a comprehensive statutory scheme (31 U.S.C. 3701–3720E) for enforcement of Federal debts, including student loan debts. That scheme includes, for example, authority under 31 U.S.C. 3720A to collect Federal debt by tax refund offset, and, under 31 U.S.C. 3711(g), to report delinquent Federal debt to credit bureau. Thus, because Congress intended this statutory scheme as in effect before the 1996 DCIA amendments to apply to student loans, there is no reason to infer that Congress did not intend the garnishment provision added by the DCIA to this scheme in 1996 to apply to student loans as well.

Changes to the roles of specific Federal agencies made by the DCIA show that Congress intended that the tools available under this statutory scheme, including garnishment, be used to collect student loans. For the first time, the DCIA required Federal agencies to transfer collection responsibility for their delinquent debt to Treasury, or to other Federal agencies which were designated "debt collection centers." The DCIA authorizes Treasury, as well as these designated "debt collection centers," to use all the collection tools provided in the DCIA, including its garnishment provision, to collect debts which they "cross-service." Education has been designated a debt collection center for student loans, thus, it is illogical to infer any congressional intent to bar Education from using the same DCIA garnishment authority to collect Federal student loan debts that Treasury and other agencies are meant to use to collect Federal debts.

Moreover, if Education had not been designated a debt collection center, the DCIA would have required Education to transfer its student loan debts to Treasury (or another agency designated as a collection center) for cross-servicing. Treasury plainly has full authority to use DCIA garnishment to collect any debts transferred to it for servicing, including student loans from Education. Thus, because Treasury or other Federal agencies would have power to collect those very student loans at the 15 percent rate, it is illogical to infer any congressional intent to restrict garnishment to the lesser HEA level when those same loans are serviced by Education itself.

The text of the DCIA itself shows that the absence of any language excluding student loans from garnishment under 31 U.S.C. 3720D was no oversight. The DCIA expanded the scope of Federal offsets by amending 31 U.S.C. 3716 to authorize offset by Treasury against such Federal payments as Social Security benefits, 31 U.S.C. 3716(b)(3), but expressly excluded title IV HEA student assistance payments from offset. 31 U.S.C. 3716(b)(1)(C). That express exclusion of student aid from the DCIA offset provision, contrasted against the absence of any reference to student loans in the DCIA garnishment provision—a provision copied almost verbatim from HEA section 488A—shows that Congress spoke clearly when it meant to exclude student aid from the reach of the DCIA tools, and intended no exclusion of student loans from the DCIA garnishment provision.

In addition to the language of the statute itself, the legislative context of the garnishment provision shows that Congress intended the Department to use this DCIA authority to collect student loans. The subcommittee in which the provision originated understood from testimony before it that the provision would increase Education's authority to 15 percent to garnish

[1] Guarantors are authorized to collect "the amount owed" by the defaulter, 20 U.S.C. 1095a(a), which includes that portion of the loan debt not covered by Federal reinsurance, as well as that portion of the recovery that the guarantor is authorized to retain. 20 U.S.C. 1078(c)(1), 1078(c)(6).

debtor wages to collect student loans.[2] Subsequent oversight action by that subcommittee[3] and by the General Accounting Office[4] at the request of the subcommittee demonstrate the subcommittee's expectation, and Education's intention, that Education would implement the DCIA 15 percent wage garnishment authority to collect student loans.

For these reasons, the Department considers unfounded the view that the HEA garnishment authority precludes use of the DCIA garnishment authority to collect student loans.

Changes: None.

Comment: One commenter objected that the explanation for the Department's implementation of DCIA garnishment authority in these regulations left confusion about whether current FFELP regulations, which address garnishment under HEA section 488A by student loan guarantors, will continue to apply to those guarantors, and invited speculation about whether student loan guarantors would continue to garnish to collect debts they held, and if so, whether the HEA, rather than the DCIA, authorized them to do so.

Discussion: The statements made by the Department regarding its intention to use DCIA garnishment authority make no suggestion that the role and authority of student loan guarantors has changed. The HEA expressly authorizes student loan guarantors to collect by garnishment, and nothing in the DCIA expressly or implicitly addresses the authority of guarantors to garnish. Regulations adopted under the Federal Family Education Loan Program (FFELP) at 34 CFR 682.410(b)(9) to implement that authority for guarantors expressly apply to action by FFELP loan guarantors to conduct garnishment under HEA section 488A. Those regulations do not state or imply that they apply to the Department, either when the Department conducted garnishment under HEA section 488A or under any other authority. Because the FFELP regulations in most instances closely track the language of HEA section 488A, the Department, by following the provisions of the statute itself, generally conformed to those regulations. Because the DCIA garnishment provision mirrors HEA section 488A, the Department's reasons for interpreting and implementing several DCIA provisions apply with equal force to identical terms of HEA section 488A, which the Department has authority to interpret. That reasoning therefore helps clarify the intent of identical language found in both statutes. Discussion of the HEA in the explanation for this rule did not suggest that the Department considered student loan guarantors to be authorized to collect under the DCIA authority.

Changes: None.

Computation of Time and System Changes (§ 34.3)

Comment: A commenter objects that adopting definitions of "day" and "business day" may require modification of current systems for mailings. As an example, the commenter stated that the garnishment order cannot be issued until 30 days after the date of the notice, and the proposed rule provides that if the last day of a period is a Saturday, Sunday, or Federal holiday, the period runs to the next business day. Thus, the rule would be violated if a contractor were to mail a garnishment order exactly 30 days after the date of the notice, if that 30th day fell on a Saturday or Sunday.

Discussion: These rules adopt verbatim the definitions and approach adopted by Treasury in its rule, which mirror rules almost invariably applied in litigation. The only act we take under this rule within a specified number of days after an event or deadline is the issuance of the garnishment order; § 34.4 states that we provide notice of the proposed garnishment "at least" 30 days before we begin garnishment, and § 34.18(a)(1) provides that we issue a garnishment order "within 30 days after the deadline for timely requesting a hearing" or "within 30 days after a decision." The Department is responsible for ensuring that its garnishment activities, and the actions of contractors as needed to support those activities, conform to this rule. We therefore see no basis for the complaint that the rule would require modification of systems used to create and mail the notices and orders Education now uses in its garnishment process.

Changes: None.

Rights in Connection With Garnishment (§ 34.6)

Comment: A commenter objected that the regulations do not articulate specific defenses that may be available to the debtor as grounds for objection to the proposed garnishment, and urged that the rule should mandate use of a form request for hearing of the kind now used by the Department for garnishment action to collect student loans.

Discussion: The Department has used, and will continue to use for collection of student loan debts, a form Request for Hearing that lists potentially available grounds for objection. Because this regulation applies to garnishment to collect any debts held by the Department, the Department did not consider it necessary to adopt any specific provisions applicable only to some debts. The Department has no intention to change this procedure for student loans. However, neither the statute, Treasury regulations, nor due process requires use of a notice that lists potentially available defenses. There is no need to include in these regulations provisions that would imply that such a duty exists.

Changes: None.

Comment: A commenter urged that the regulations should specifically require the Department to give notice that a debtor may object to garnishment on the ground that the debtor was recently reemployed after involuntary separation.

Discussion: The Department agrees that debtors may not be aware that they may object on the grounds that the debtor has been recently been reemployed after involuntary separation from employment. The notice and the request for hearing now used by the Department for HEA garnishment explain this option. Because this objection applies regardless of the nature of the debt to be collected, the Department agrees that the regulations should commit to providing express notice of this option.

Changes: The regulations are modified in § 34.6 to provide that the pre-garnishment notice includes an explanation of the availability of objection on the grounds of recent reemployment after involuntary separation.

Comment: A commenter urged that the regulations should specifically require notice to the debtor that limits on withholding imposed by 15 U.S.C. 1671 *et seq.* may preclude actual withholding of pay.

Discussion: Neither the Department, nor any other garnishing creditor, can reliably determine whether, and for what period, 15 U.S.C. 1673 may bar an employer from honoring a particular garnishment order. That statute imposes the duty on the employer to honor its limits, because only the employer actually knows both the amount of the debtor's disposable pay and the number, amount, relative priority, and duration of all withholding orders that may affect the debtor. The court or administrative body that issues a garnishment order meets its duty under 15 U.S.C. 1673(c) by stating in the garnishment order that the employer must pay no more than the amount permitted by that statute. Standard Form 329B, the garnishment order prescribed for Federal agencies by Treasury, thus directs the employer to pay the lesser of the amount permitted under 15 U.S.C. 1673 or the amount determined by the agency (either 15 percent of disposable pay or a lesser amount).

Therefore, these regulations, consistent with Treasury regulations, do not recognize as a valid defense to a garnishment action a contention by the debtor that the proposed withholding order, if honored by the employer, would result in withholding amounts greater than those permitted by 15 U.S.C. 1673. Because this statute provides no defense to the debtor in a proceeding under this part, it does not affect the debtor's ability to respond in a meaningful manner in the proposed garnishment. We note that neither 15 U.S.C. 1671 *et seq.*, the garnishment statutes themselves (HEA section 488A or 31 U.S.C. 3720D), nor Treasury regulations require the creditor who intends to garnish to include in the notice or complaint initiating collection action an explanation of the effect of 15 U.S.C. 1673. There appears to be little value in including an explanation of this statute in the notice, which is intended to explain the debtor's rights in the garnishment proceeding.

Changes: None.

Comment: A commenter stated that the regulations lacked language to mirror the assurance in the preamble that the Department provides hearings even if the request for a hearing is not made timely, and that the regulations should include this assurance.

Discussion: Section 34.8 requires the debtor to make any request for a hearing in writing, regardless of the type of hearing sought. Section 34.11(c)(1) expressly states that we provide a hearing even if that written request for a hearing is untimely. That provision contains the assurance that the commenter describes, and no additional language is needed to ensure that right.

Changes: None.

Comment: A commenter stated that regulations should require that the Department make available for inspection by the debtor prior to the hearing any evidence on which the Department intends to rely to establish the existence and amount of the debt.

Discussion: The proposed rule, in §§ 34.5 and 34.6(a), stated that the Department would explain in the pre-garnishment notice that the debtor may inspect and copy records regarding the debt, and in § 34.14(a)(2) further provided that the Department would, on request, make available to the debtor, as part of the hearing process, the evidence which we believe establishes the existence and amount of the debt. These provisions ensure that the debtor has an opportunity to examine the evidence on which the Department's claim rests, in a timely manner, that permits the debtor effectively to respond with evidence and argument before a decision is issued. No change is needed.

Changes: None.

Conditions for an Oral Hearing (§ 34.9)

Comment: A commenter objected to the requirement that the objecting debtor who seeks an oral hearing must state reasons why the objection cannot be satisfactorily reviewed based on the records, including any material provided by the debtor. The commenter objected that this requirement places an unfair burden on borrowers, many of whom may be low-income or unsophisticated.

Discussion: By requiring the debtor to show that an oral hearing is actually needed to resolve the disputed facts, the regulations adopt the same approach used in judicial proceedings, the paradigm of due process. Courts routinely dispose of defenses—including those raised by pro se or unsophisticated defendants—through summary judgment rulings, and that disposition meets constitutional due process standards. The Department has limited resources available to conduct oral hearings; published statistics show that the Department received approximately 9000 requests for hearings in its HEA garnishment actions in FY 2000. General Accounting Office: Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment (GAO–02–313) p. 16. Limitations on resources do not warrant curtailing the rights of debtors, but do militate in favor of the Department, like Federal courts exercising summary judgment authority, avoiding unnecessary hearings.

Consistent with Treasury regulations applicable to offset proceedings, 31 CFR 901.3(e), and to DCIA garnishment actions, 31 CFR 285.11(e), the Department in these regulations simply requires the debtor who seeks an oral hearing to show a good reason why we cannot resolve the disputed issues by reviewing the debt records. This is a common-sense standard that we have generously applied for years in Federal offset proceedings. The Department sees no readily articulated and sensible lesser standard, and no reason to commit in these regulations to provide an oral hearing on request regardless of the nature of the objection or the kind of evidence available.

Proposed § 34.10(a) stated that a paper hearing would be held upon request, but inadvertently omitted the word "or" before stating that paper hearings would be provided if we conclude that we can resolve the issues raised by an objection without an oral hearing.

Changes: Section 34.10(a) of the proposed rule is revised to state that we provide a paper hearing upon request by the debtor or if an oral hearing was requested but we determine that we can resolve the issues raised by the objection through a review of the written record regarding the debt.

Comment: A commenter urged that, for in-person or telephone hearings, the regulations be revised to state that the Department must send a copy of the hearing file to the debtor prior to the hearing.

Discussion: The Department has used, and will continue to use, a pre-garnishment notice that encourages the debtor to request copies of the records that pertain to the debt to be collected by garnishment, and to do so before the hearing, and indeed before the submission of the actual objection to the proposed garnishment. The proposed rule in § 34.5(c)(1) provides that the Department makes these records available on request. If the debtor does not choose to request and review these records, we see no need to incur the expense of sending the records to the debtor.

Changes: None.

Conduct of Hearings (§ 34.13)

Comment: One commenter disagreed with the statement in the preamble that contractors cannot rule on debtor objections. The commenter considered the statement that this activity was an inherently governmental function to imply that student loan guarantors could not use independent hearing officials, including administrative law judges and other parties, whom they retain by contract.

Discussion: The Department intended no inference that student loan guarantors could not use contracts to retain independent hearing officials. HEA section 488A requires student loan guarantors to appoint administrative law judges or to retain independent hearing officials, not under the supervision or control of the guarantor, to adjudicate debtor objections to the proposed garnishment; that retainer agreement will obviously be embodied in a contract with the hearing official. As Treasury stated in promulgating controlling regulations, Federal agencies "may not contract out 'inherently governmental functions,' . . . [but] contractors can[ ] assist agencies" by mailing notices, orders authorized by the agency, receiving documents from debtors and employers, and arranging repayment agreements approved by the agency. 63 FR 25137. Unlike these supporting functions, adjudication of debtor disputes to the compulsory taking of a portion of their wages by garnishment is an inherently governmental function. The Department therefore cannot use contractors to decide debtor objections. The Department recognizes that the HEA requires guarantors to use individuals, including administrative law judges, who are independent of the guarantor to perform this adjudication function. We fully agree that guarantors can arrange for these services by contracts.

Changes: None.

Comment: One commenter agreed with the statement that only qualified employees of the Department may conduct hearings, but objected to the statement that the Department may use contracted services to analyze debtor objections and propose appropriate findings to those objections. The commenter requested that the Department clarify that any findings proposed by contractors are not final, and that Department hearing officials must exercise independent judgment and provide independent rationales for decisions. The commenter further urged that the regulations bar use of employees of collection agencies or other agencies collecting debts on behalf of the Department to analyze objections. The commenter urged that contractors receive specific training on borrower defenses and other critical hearing procedures.

Discussion: The Department agrees with the commenter that Department contractors cannot conduct hearings or rule on objections to garnishment, because those are inherently governmental functions. As discussed earlier, HEA section 488A expressly requires guarantors to use independent hearing officials not under the control of the guarantor to judge debtor objections to garnishment. In contrast, both HEA section 488A and 31 U.S.C. 3720D direct the Department itself to provide a hearing and decide debtor objections. The Department cannot, therefore, delegate this duty to a contractor. This does not, however, preclude use of contractors to analyze debtor objections and propose resolutions on those objections.

Department officials must therefore consider the objections raised by each debtor, and must issue a decision on those objections. Unless and until a Department official makes findings and issues a decision, there is no ruling on a debtor's objections.

[2] Hearing on H.R. 2234, the Debt Collection Improvement Act of 1995, before the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, 104th Cong., 1st Sess. on H.R. 2234, Sept. 8, 1995 at 70, 159, 253. Moreover, the Congressional Budget Office estimated substantial increased recoveries on defaulted loans from these DCIA proposals. See 142 Cong. Rec. S1825 (Memorandum from John Righter, CBO, to Patrick Windham, Sen. Committee on Commerce, Science, and Transportation, regarding Preliminary scoring of the "Debt Collection Improvement Act of 1996," Chapter 2 of a proposed amendment to H.R. 3019). As explained by cognizant staff, CBO based its estimates on the understanding that Education would use fully these DCIA tools, including garnishment, to collect defaulted student loans.

[3] Hearing on Federal Debt Collection Practices before the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, 105th Cong., 1st Sess., Nov. 12, 1997, at 90, 91.

[4] General Accounting Office: Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment (GAO–02–313).

The Department agrees that contractors used to prepare recommendations should be trained to properly analyze debtor objections. However, because contractor analyses of those objections are clearly no more than recommendations to Department staff and have no binding effect whatever on the debtor, we see no need to include language in the regulations to characterize contractor analyses.

Debtors have the right, under these regulations, to avoid garnishment by entering a voluntary repayment agreement. The Department uses its collection contractors to negotiate repayment terms with those debtors sent notice of garnishment who wish to repay voluntarily. Collection contractors have a financial interest in recovery, whether by garnishment or by voluntary payment, and the Department does not use them to prepare recommended analysis for a hearing on any objection, including hardship objections. These regulations ensure a hearing by a designated Department official for any debtor who does not agree to repay voluntarily and has requested a hearing.

Changes: None.

Comment: A commenter opined that the regulations should adopt guidelines and training procedures for any Department staff designated to conduct hearings of debtor objections. The commenter urged that the regulations should require the Department to provide debtors a list of hearing officials available for review of their objections so that they may object to those they consider unqualified or biased.

Discussion: Any decision issued by the Department on debtor objections to garnishment is subject to judicial review under Administrative Procedure Act (APA). The Department has a strong interest in seeing that Department staff who conduct hearings do so in conformance with applicable substantive and procedural law. Therefore, the Department sees little value in adding generalized language to this part that would purport to govern its own internal training procedures.

The commenter points to no administrative or judicial tribunal that allows debtors to select the individual to hear their cases, and shows no good reason to adopt that course in this part. The commenter urged that this would permit a debtor to reject a particular individual who the debtor considers biased against the debtor. A debtor who objects to a hearing official as biased, can object as part of the hearing process to that individual serving as hearing official.[5] Hearings under this part are not subject to 5 U.S.C. 556, which requires the agency to consider and include in the administrative record its ruling on any objection to a proposed hearing official. However, the Department must meet that test, because it must consider and rule on any objection raised by the debtor, including an objection that the hearing official is biased. That determination, and any claim that a decision was the result of bias by the hearing official, may be tested on judicial review.

No Department hearing official benefits financially from the outcome of a hearing, and Federal ethics rules prohibit a hearing official from participating in a matter in which the individual has a financial interest. 5 CFR 2635.402(a). The Department therefore sees no need to add provisions to these regulations offering debtors a choice of hearing officials as a remedy for speculation that some Department official may harbor bias against a particular debtor.

Changes: None.

Content of Decision; Basis of Decision on Evidence Considered at Hearing (§ 34.17)

Comment: A commenter stated that regulations should require that hearing decisions be based only on evidence presented at the hearing and should clearly state the grounds for denial of an objection.

Discussion. Section 34.17 of the proposed rule provided that the decision would include the hearing official's conclusions and reasoning for each objection presented. We agree that the decision must rest on evidence presented in the hearing, but that hearing process is informal and may extend beyond the actual oral hearing. The regulations do not bar debtors from presenting in oral hearings objections not raised in the request for hearing, and do not require debtors who seek oral hearings to disclose all the evidence on which they will rely to support an objection. Because new objections and evidence first presented by the debtor during an oral hearing may require the Department to obtain further evidence in order to evaluate, the hearing official may leave the record open both for the Department and for the debtor. We may need to obtain additional evidence to respond to objections and evidence submitted by a debtor in either an oral or paper hearing.

To ensure that evidence we may obtain after the notice is sent is fairly considered in the hearing process, the debtor must have an opportunity to examine and respond to that evidence before the hearing official makes his or her decision. Therefore, if we intend to consider evidence that was not included in our records of the debt that were available for inspection prior to the hearing, the hearing official will consider that evidence only after we notify the debtor, make that evidence available to the debtor, and provide a reasonable period for rebuttal evidence and argument by the debtor.

The proposed regulations did not address the situation in which the debtor learns after filing the request for hearing that specific relevant evidence is available, and wishes to submit that evidence and have it considered in the proceeding. We believe that the debtor should have the opportunity to do so, if that evidence can be promptly acquired and produced. To ensure that this opportunity does not unduly delay completion of the hearing and issuance of the decision, it is reasonable to expect the debtor to make a specific request that the record be held open for consideration of such evidence, and to describe in that request what the evidence is, and why it is relevant.

The proposed regulations did not address situations in which a debtor requests access to records, and then seeks to submit evidence and objection based on a review of our records of the debt, or seeks—but is denied—an oral hearing at which he or she would offer evidence and objections. Department regulations for the Treasury Offset Program assure a debtor who seeks access to Department debt records with reasonable diligence—within 20 days of the date of the notice of proposed offset—an extended deadline for presenting evidence and argument opposing the offset. 34 CFR 30.33(d). A similar assurance is appropriate in these proceedings. Finally, the regulations can clarify that a debtor who intended to present evidence and objection at an oral hearing should have an opportunity to submit both in written form if that request for an oral hearing is denied.

The time provided for submission of evidence and objections not included in the request for hearing may vary depending on the situation. We believe that this period should ordinarily be at least seven business days, but could in particular circumstances be shorter, or, as resources may permit, longer. In any event, the particular deadline applicable in each situation should be communicated to the debtor.

Changes: Section 34.17 is modified to provide that the decision rests on evidence in the hearing record, and includes a description of the evidence considered in making that decision. Section 34.13 is modified to add a new paragraph (d) to state the instances in which the hearing official will accept evidence and argument not included in the request for hearing or presented during an oral hearing. Section 34.13(d)(4)(i) provides that if the debtor requests access to records within 20 days of the date of the notice, the debtor may submit evidence and objection for a limited time after we provide the requested records. Section 34.13(d)(4)(ii) and (c) provide that if we obtain and intend to have considered in the hearing process evidence that was not included in the records that were available for inspection by the debtor when notice was sent, we first notify the debtor regarding the new evidence, make this evidence available to the debtor, and provide a reasonable period for rebuttal evidence and argument. Section 34.13(d)(4)(iii) provides for a brief extension of time, upon request, for a debtor to submit specifically-identified evidence not previously presented, and to raise an objection based on that evidence. Section 34.13(d)(4)(iv) provides an opportunity to submit evidence and argument after a request for an oral hearing is denied.

Comment: A commenter urged that the regulations require that information about reconsideration and appeal rights be included in the decision, and that this information be displayed in the decision in large bold letters.

Discussion: The regulations now state that the garnishment hearing decision is final agency action for purposes of the judicial review under the APA. We have no administrative appeal procedures for garnishment decisions, and therefore no administrative appeal rights to explain in the decision. We currently state in a garnishment decision that the debtor may contest the ruling by filing suit in Federal district court and we expect to continue to do so. These regulations do create reconsideration rights, and we agree that the decision offers a useful vehicle for presenting those rights to the debtor.

Changes: Section 34.17(a) is modified to provide that the decision includes an explanation of reconsideration rights available to the debtor.

Comment: A commenter believed that we should state that the position taken in the proposed rule regarding the effect of a failure to issue a decision within 60 days of an untimely request for a hearing applies as well to garnishment action by guarantors under the HEA.

Discussion: We stated in the preamble that the statutory requirement that a hearing decision be issued within 60 days of the debtor's request does no more than require the garnishing party to suspend any outstanding garnishment order if a hearing decision is not issued within 60 days of the debtor's request, but does not bar resumption of garnishment, or, if an order has not been issued, issuance of the order, after an adverse hearing decision is issued. As explained there, this conclusion follows from well-established case law addressing the effect of statutory deadlines on agency action. *United States* v. *James Daniel Good Real Property*, 510 U.S. 43, 63 (1993); *United States* v. *Montalvo-Murillo*, 495 U.S. 711 (1990); *Brock* v. *Pierce County*, 476 U.S. 253 (1986). Pursuant to the principle articulated in these rulings, failure by a guarantor to meet the HEA 60-day decision requirement, like a failure to meet the same duty under the DCIA addressed in these rules, does no more than suspend the garnishor's right to issue or continue in effect an existing garnishment order.

Changes: None

Financial Hardship; Reconsideration (§§ 34.24, 34.25)

Comment: A commenter stated that provisions regarding the right to claim financial hardship were inconsistent and should be clarified to allow the debtor to raise hardship at any time.

Discussion: The regulations provide that the debtor may object to garnishment on financial hardship grounds at any time, but that the Department in general commits to provide a hearing on a hardship objection no earlier than six months after we issue a garnishment order. The Department recognizes that in some instances, financial circumstances may change substantially within a relatively short time, so that a debtor not faced with hardship at the time of the notice or hearing may suffer financial setbacks before six months of garnishment have been completed. The regulations therefore provide that the Department will consider a hardship objection raised within that six-month period if in the judgment of the Department, the debtor shows in the request for review that his or her financial circumstances have substantially worsened after the notice of proposed garnishment on account of an event such as disability, divorce, or catastrophic illness.

Section 34.7 of the proposed regulations stated that we provided no hearing regarding objection to the rate or amount of withholding on a new garnishment action if, within the past 12 months, we had begun garnishment proceedings and determined in those proceedings an appropriate withholding amount, either by decision or by terms of voluntary agreement. This section applies to those circumstances in which we start garnishment to collect a different debt than that which we have already issued a garnishment order, or we start garnishment action to enforce a debt after the debtor breached an agreement to repay that debt after we had given notice of intent to collect that debt by garnishment. In both voluntary repayment agreements and hardship determinations, the Department typically states that the determination is effective for a period of six months, after which the debtor must demonstrate that he or she cannot pay more than the installment amount agreed to or the withholding rate determined to be appropriate. The 12-month period in proposed § 34.7(b) would have been inconsistent with this practice and with the general commitment in proposed § 34.24(c)(1) to consider a hardship objection within six months after the garnishment took effect.

Changes. Section 34.7(b) is revised first to state that a hearing is available to contest the amount or rate of a proposed garnishment only if the rate or amount there proposed exceeds the rate or amount we had agreed to within the preceding six months in an agreement resolving a prior garnishment proposal. Second, the same provision is revised to remove the restriction of hardship objection where a hearing decision within the preceding 12 months had set the withholding rate or amount.

Comment: A commenter objected that the grounds for hardship should not be compared to the grounds for undue hardship discharge of student loans in bankruptcy. The commenter disagrees that the case law interpreting the undue hardship requirement provides useful guidance, because a hardship determination under this rule is binding for six months, while a bankruptcy hardship determination in bankruptcy is permanent and takes into account the expected long-term financial difficulties of the debtor.

Discussion: The commenter suggests that the degree of financial hardship that merits a financial hardship under this rule differs from, and is less than, the kind of financial hardship needed to support a claim of undue hardship in bankruptcy. The observation is accurate, because these regulations measure hardship using the national standards, which compare the debtor's expenses to the average amounts incurred by families of similar size and income, while bankruptcy hardship analysis compares the debtor's expenses to those needed to maintain what case law refers to as a "minimal standard of living." *Brunner* v. *N.Y. Higher Educ. Serv. Corp.*, 831 F.2d 395, 396 (2nd Cir. 1987). The amounts spent for living expenses by peers of the debtor will in many instances significantly exceed those justifiable for a minimal standard of living.[6]

Under these regulations, the debtor bears the burden of proving the necessity of any amounts claimed in excess of the average amounts spent by his or her peers. The debtor may contend that above-average expenses are needed for housing costs, retirement savings, tuition for private schools, charitable contributions, vehicles, utilities, and telephone charges which the debtor now incurs. Bankruptcy courts routinely address these claims in evaluating undue hardship claims; that case law can provide guidance in considering whether a debtor carries his or her burden under these regulations of proving that above-average expenses are necessary.

Changes: None.

Comment: A commenter urged that the Department include with the notice of proposed garnishment a separate form for debtors to use to claim financial hardship, which would explain the grounds for a hardship claim and how to obtain a hearing on the objection.

Discussion: The notice currently used by the Department, and that which the Department intends to use for garnishment under these regulations, explains the debtor's right to contest the proposed garnishment on both substantive and hardship grounds. The Department may modify the format of the notice as experience demonstrates that particular changes are useful.

The Department currently sends financial statement forms to those debtors who state on their request for hearing that they intend to object on hardship grounds. The overwhelming majority of objections to proposed garnishments that the Department now receives are based on financial hardship. The Department agrees that a self-explanatory form has proven very useful to encourage debtors to present their financial circumstances in a way that makes analysis of the objection by the Department easier, but sees no reason to commit at this point in regulations to a particular form, or to a particular method of providing that form to debtors.

Changes: None.

Comment: A commenter asked that we state that positions taken in the proposed rule regarding the burden of proof of hardship and the need to present that claim by completing a financial statement disclosing the income and assets available to meet the needs of the debtor and his or her family, apply to garnishment proceedings by guaranty agencies under HEA section 488A.

Discussion. Because the debtor alone has evidence needed to prove financial hardship, we believe that financial hardship is like an affirmative defense to a claim, such as repayment. As a matter of common sense and common law, the person who claims an affirmative defense bears the burden of proving that defense by a preponderance of the credible evidence. We provide a financial statement form for debtors who claim hardship to complete, and we intend to

[5] Grounds for disqualification in proceedings under this part would include those applicable to Federal court proceedings; as pertinent here, Federal law requires disqualification of a judge in a Federal court proceeding who has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts. 28 U.S.C. 455(b)(1).

[6] The *Brunner* test includes two other steps not relevant to hardship claims in garnishment proceedings.

continue to do so. The rule itself does not bar consideration of evidence presented in other forms.

Fair consideration of hardship claims depends on full and accurate disclosure of the income and assets available to meet the needs of the debtor and his or her family. Hearing officials should reject as unsupported those hardship claims by debtors who fail to disclose completely and—for written records hearings—in a form that bears some indicia of trustworthiness, such as a statement or affirmation that the disclosure is made under penalty of perjury.

Independent hearing officials conducting hearings under HEA section 488A must rule in accordance with applicable law, including Department program regulations.

FFELP regulations do not contain any provision that expressly allocates the burden of proof of financial hardship. Section 34.21(d) does not bind either debtors whose loans are collected by guarantors, or hearing officials used by the guarantors, but rests on principles that courts generally apply to allocating the burden of proof between litigants. Those principles, as well as common sense, should persuade FFELP hearing officials to place on the debtor the burden of proof and persuasion of a hardship claim.

As noted above, § 34.21 does not require the debtor to use a particular financial statement form to prove hardship in garnishment proceedings under these regulations; a guarantor may adopt a rule that requires debtors to use a particular form to prove hardship in its garnishment proceedings.

Chonges: None.

Comment: A commenter urged that we state that the National Standards adopted by the Internal Revenue Service (IRS) also apply to evaluation of hardship claims raised in garnishment proceedings under the HEA.

Discussion: As discussed in response to other comments, these rules apply only to debtors subject to Department garnishment action under the DCIA, and these regulations do not bind debtors in garnishment actions under the HEA by either the Department or guarantors. However, we strongly believe that the Standards provide unique and well-founded, empirically-based benchmarks of amounts needed for basic living expenses. These regulations stipulate that amounts spent up to these benchmarks are reasonable and necessary, and create an explicit rebuttable presumption that amounts claimed in excess of these benchmarks are not necessary.

Under both the HEA and the DCIA, as discussed in response to other comments, the debtor bears the burden of proof and burden of persuasion that particular expense amounts are necessary. In absence of a FFELP regulation that expressly adopts the Standards, a hearing official could conceivably accept an expense claim as necessary based on the official's own judgment, even though the claimed amount exceeded the Standards and the debtor presented no evidence to support the need for that amount. We strongly believe that such a judgment would not be well-founded. The Department believes that hearing officials in HEA garnishment proceedings should accept the Standards as persuasive evidence of the amounts reasonable and necessary, and should require any debtor who claims larger amounts are needed to support that contention by persuasive evidence. If debtors in HEA garnishment proceedings are properly held to their burden of proof, there should be little practical difference between the presumption created in these regulations and the use of the Standards as reliable empiric evidence of reasonableness.

Changes: None.

Amount Withheld Under Garnishment Order (§ 34.19)

Comment: A commenter objected to the proposal that the Department might issue multiple garnishment orders under this rule regarding a debtor who owes several debts to the Department. The commenter believes that neither the DCIA nor the HEA allows multiple garnishment orders, and believes that Congress intended to limit garnishment to 10 percent of disposable pay.

Discussion: Treasury rules interpret the DCIA to allow a Federal agency that holds several claims against a debtor to issue more than one garnishment order to recover those claims. 31 CFR 285.11(i)(3)(iii). However, the comment is well taken that the total amount that may be withheld pursuant to orders issued by a single agency cannot exceed 15 percent of the debtor's disposable pay. 31 CFR 285.11(i)(2), (3)(iii).

Changes: The regulations are modified in § 34.20(b) to state that the aggregate amount that may be withheld by an employer pursuant to one or more orders we issue may not exceed 15 percent of the debtor's disposable pay.

Comment: A commenter urged that § 34.19 be changed to state that the amount required to be withheld by the employer be 15 percent of disposable pay, rather than the amount directed in the garnishment order. The commenter believed this change to be needed to make the employer and debtor both aware of their potential liability if they do not enter into voluntary repayment of the debt. The commenter also believed that the change to the proposed language would help the employer validate that the amount demanded in the order is accurate.

Discussion: Section 34.19 describes the amount that the employer must withhold pursuant to the garnishment order. That order is sent to the employer, not the debtor, and therefore has no effect on the debtor's ability to repay voluntarily. The notice, on the other hand, is sent to the debtor and warns of the potential garnishment of 15 percent of disposable pay; the notice is intended to motivate the debtor to repay voluntarily. If we determine that withholding at that rate would cause hardship, but that withholding a smaller amount would not do so, we must order the employer to withhold that lesser amount. HEA section 488A similarly requires guarantors, and the Department when garnishing under that HEA authority, to order withholding of a lesser amount if the debtor proves that withholding ten percent would cause hardship. In any case, the order must always state clearly the amount to be withheld, whether as a percentage of disposable pay or as a specific amount. The employer has no standing to scrutinize or object to a garnishment order, and has no need to be assured that the amount claimed is accurate. That duty lies with the government or the guarantor; the employer is entitled to rely on the garnishing creditor's representation that the debt is owed, and no change is needed to facilitate a review that the employer need not conduct.

Changes: None.

Comment: A commenter urged that we state that the position taken in § 34.24(c)(1) of the proposed rule, that we will consider or reconsider an objection on hardship grounds only after an order has been outstanding for six months, applies to garnishment action by student loan guarantors under the HEA.

Discussion: These regulations allow the debtor to raise or renew a hardship claim after an order has been outstanding for six months, but also allow consideration of a hardship claim earlier if the debtor demonstrates substantially worsened financial circumstances. 34 CFR 34.24(c)(2). This standard provides a reasonable balance between the debtor's interest in having potentially changed circumstances promptly evaluated and the government's need for finality for its determinations. This regulation is a procedural rule binding only in garnishment proceedings under this part. In the absence of a comparable FFELP regulation, however, whether and when a guarantor provides for reconsideration of a hardship claim remains a case-by-case determination.

Changes: None.

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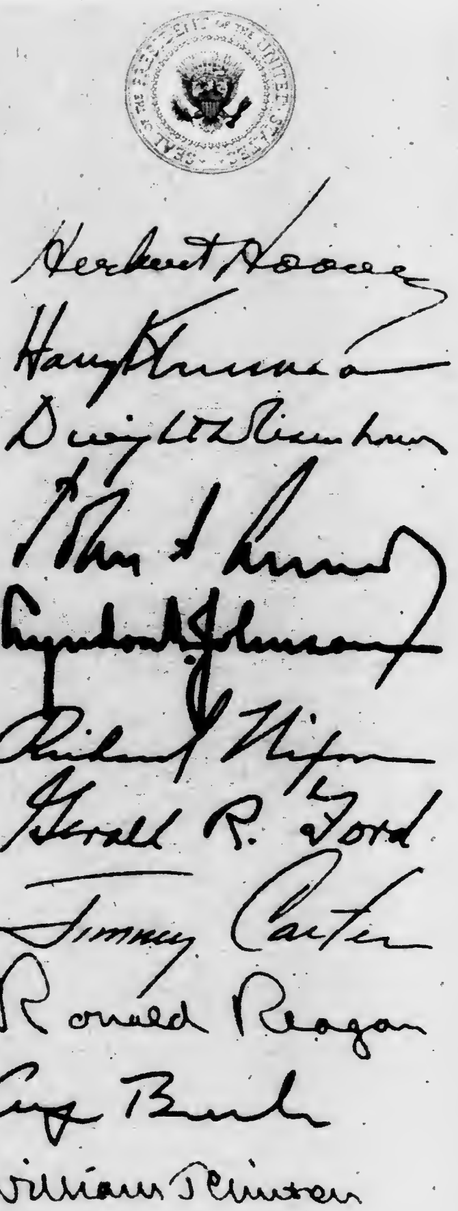
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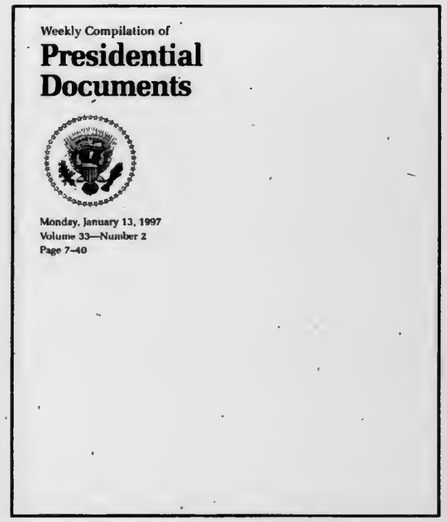
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Federal Register

2–20–03 Thursday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for the administration of an oxytetracycline injectable solution to lactating dairy cattle.

DATES: This rule is effective February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Terr., St. Joseph, MO 64506–0457, filed a supplement to approved ANADA 200–123 that provides for the use of MAXIM–200 (oxytetracycline) Injection as a treatment for various bacterial diseases in cattle and swine. The supplemental ANADA provides for the administration of this oxytetracycline injectable solution to lactating dairy cattle. The supplemental ANADA is approved as of November 19, 2002, and the regulations are amended in 21 CFR 522.1660 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (d)(1)(iii) in the eighth sentence by removing "sponsors 059130 and 061623"; and adding in its place "sponsor 061623"; and in the ninth sentence by removing "and 055529" and adding in its place "055529, and 059130".

Dated: January 21, 2003.

Steven F. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–3434 Filed 2–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 021303C]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-Pelagic Trawl Gear in the Red King Crab Savings Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the interim 2003 red king crab prohibited species catch (PSC) limit that is specified for the RKCSS of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The interim 2003 red king crab PSC limit that is specified for the RKCSS of the BSAI is 5,231 animals as established by the interim 2003 harvest specifications for Groundfish of the BSAI (67 FR 78739, December 26, 2002).

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the interim 2003 red

king crab PSC limit specified for the RKCSS will be caught. Consequently, NMFS is closing the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim 2003 red king crab PSC limit, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 14, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4103 Filed 2–14–03; 2:17 pm]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 021403C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 17,2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA is 7,979 metric tons (mt) as established by the interim 2003 harvest specifications of groundfish for the GOA (67 FR 78733, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,929 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 14, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4104 Filed 2–14–03; 2:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 34
Thursday, February 20, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–77–AD]

Airworthiness Directives; Various Transport Category Airplanes Manufactured by McDonnell Douglas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to various transport category airplanes manufactured by McDonnell Douglas. This proposal would require a one-time test of the fire extinguishers for the engine and auxiliary power unit (APU) to determine the capability of the firex electrical circuits to fire discharge cartridges, and troubleshooting actions, if necessary. This action is necessary to prevent failure of the fire extinguishers to fire discharge cartridges, which could result in the inability to put out a fire in an engine or in the APU. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–77–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–77–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fire extinguishers for the engine and the auxiliary power unit (APU) had failed to discharge when commanded on a McDonnell Douglas Model DC–9–81 airplane and a Model DC–9–33F airplane. In one event, investigation revealed contamination of the circuit breaker contacts. In the other, investigation revealed high resistance of the discharge switch electrical contacts.

This condition, if not corrected, could result in failure of the firex electrical circuits to fire the discharge cartridges, which could result in the inability to put out a fire in an engine or APU.

Similar Models

The fire extinguisher system on the following airplane models are equipped with firex system fire extinguishers: Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–50 series airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–60 series airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–70 series airplanes; Model DC–8–71F, DC–8–72F, and Model DC–8–73F airplanes; Model DC–9–10 series airplanes; Model DC–9–20 series airplanes; Model DC–9–30 series airplanes; Model DC–9–40 series airplanes; Model DC–9–50 series airplanes; Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30, DC–10–30F (KC10A and KDC–10) airplanes; Model

DC–10–40 and DC–10–40F airplanes; Model MD–10–10F and MD–10–30F airplanes; Model MD–11 and -11F airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved the Boeing and McDonnell Douglas Alert Service Bulletins (ASBs) as applicable to the appropriate airplane models specified in the following table.

McDonnell Douglas Models—	As listed in—
Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–61, DC–8–62, and DC–8–63 airplanes; DC–8–61F, DC–8–62F, and DC–8–63F airplanes; DC–8–71, DC–8–72 and DC–8–73 airplanes; DC–8–71F, DC–8–72F, and DC–8–73F airplanes.	Boeing Alert Service Bulletin DC 8–26A042, including Appendix A and Evaluation Form, dated January 31, 2002.
Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; DC–9–51 airplanes; DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and MD–88 airplanes.	McDonnell Douglas Alert Service Bulletin DC9–26A029, Revision 01, including Evaluation Form, dated May 8, 2001.
Model DC–10–10 and DC–10–10F airplanes; DC–10–15 airplanes; DC–10–30 and DC–10–30F (KC10A and KDC–10) airplanes; DC–10–40 and DC–10–40F airplanes; MD–10–10F and MD–10–30F airplanes.	McDonnell Douglas Alert Service DC10–26A050, including Evaluation Form, dated July 31, 2000.
Model MD–11 and MD–11F airplanes	McDonnell Douglas Alert Service Bulletin MD11–26A039, Revision 01, including Evaluation Form, dated November 21, 2002.
Model MD–90–30 airplanes	McDonnell Douglas Alert Service Bulletin MD90–26A005, including Evaluation Form, dated July 31, 2000.

These ASBs describe procedures for a one-time test of the fire extinguishers for the engines and APU to determine the capability of the firex electrical circuits to fire discharge cartridges. Additionally, the ASBs reference the airplane maintenance manual (AMM) for additional information on troubleshooting procedures in the event any test fails. Accomplishment of the actions specified in the applicable ASB is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the ASBs described previously, except that this proposed AD would not require completion of any Evaluation Forms that are attached to the ASBs decribed previously.

Cost Impact

There are approximately 3,311 airplanes of the affected designs in the worldwide fleet. The FAA estimates that 1,553 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 4 work hours and 7 work hours per airplane (depending upon airplane model) to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $372,720 and $652,260, or between $240 and $420 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–77–AD.

Applicability: This AD applies to the airplanes listed in the following Table of this AD, certificated in any category:

TABLE.—APPLICABILITY

McDonnell Douglas Models—	As listed in—
Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–61, DC–8–62, and DC–8–63 airplanes; DC–8–61F, DC–8–62F, and DC–8–63F airplanes; DC–8–71, DC–8–72 and DC–8–73 airplanes; DC–8–71F, DC–8–72F, and DC–8–73F airplanes.	Boeing Alert Service Bulletin DC 8–26A042, including Appendix A and Evaluation Form, dated January 31, 2002
Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; DC–9–51 airplanes; DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and MD–88 airplanes.	McDonnell Douglas Alert Service Bulletin DC9–26A029, Revision 01, including Evaluation Form, dated May 8, 2001.
Model DC–10–10 and DC–10–10F airplanes; DC–10–15 airplanes; DC–10–30 and DC–10–30F (KC10A and KDC–10) airplanes; DC–10–40 and DC–10–40F airplanes; MD–10–10F and MD–10–30F airplanes.	McDonnell Douglas Alert Service DC10–26A050, including Evaluation Form, dated July 31, 2000.
Model MD–11 and MD–11F airplanes	McDonnell Douglas Alert Service Bulletin MD11–26A039, Revision 01, including Evaluation Form, dated November 21, 2002
Model MD–90–30 airplanes	McDonnell Douglas Alert Service Bulletin MD90–26A005, including Evaluation Form, dated July 31, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine and auxiliary power unit (APU) fire extinguishers to fire discharge cartridges, which could result in the inability to put out a fire in an engine or in the APU; accomplish the following:

Testing the Firex Electrical Circuits

(a) Within 18 months after the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later: Test the capability of the electrical circuits of the firex fire extinguishers for the engine and the APU, per the applicable alert service bulletin (ASB) listed in the Applicability Table of this AD. However, this AD does not require completion and submission of any Evaluation Forms attached to those ASBs.

(1) If any electrical circuit of the firex fire extinguishers for the APU does not pass the testing, before further flight, accomplish the troubleshooting procedures specified in the applicable ASB. Dispatch with an inoperative APU is permitted for the amount of time specified in the Minimum Equipment List. Dispatch after that time is not permitted until the circuits are repaired per the Boeing Standard Wiring Practices Manual (SWPM) D6–82481.

(2) If any electrical circuit of the firex fire extinguishers for the engine does not pass the testing, before further flight, accomplish the troubleshooting procedures specified in the applicable ASB and repair per SWPM D6–82481. Dispatch is not permitted until the circuits have been repaired.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 12, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4028 Filed 2–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to Rolls-Royce (RR) plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines. That proposal would have required initial and repetitive ultrasonic inspections of low pressure compressor (LPC) fan blade roots for cracks, and relubrication of LPC fan blades before reinstallation. That proposal was prompted by the discovery of cracks on LPC fan blade roots during an engine overhaul. This action revises the proposed rule by introducing an alternative technique to ultrasonically inspect installed fan blades on-wing using a surface wave ultrasonic probe. This action also adds the application of

Metco 58 blade root coating as an optional terminating action. The actions specified by this proposed AD are intended to detect cracks in LPC fan blade roots, which if not detected, could lead to uncontained multiple fan blade failure, and damage to the airplane.

DATES: Comments must be received by April 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242–424; fax: 011–44–1332–249–936. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7176; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to RR plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines, was published as an NPRM in the **Federal Register** on August 9, 2001 (66 FR 41808). That NPRM would have required initial and repetitive ultrasonic inspections of LPC fan blade roots for cracks, and relubrication of LPC fan blades before reinstallation. That NPRM was prompted by the discovery of cracks on LPC fan blade roots during an engine overhaul. That condition, if not corrected, could result in uncontained multiple fan blade failure, and damage to the airplane.

The FAA received the following comments on the initial NPRM. The latest revision to RR Mandatory Service Bulletin (MSB) RB.211–72–C879, Revision 3, dated October 9, 2002, addresses those comments.

Two commenters request the incorporation of Metco 58 blade root coating as a terminating action to the AD inspection requirements.

The FAA agrees. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), has notified the FAA that incorporation of Metco 58 blade root coating using RR Service Bulletin (SB) RB.211–72–C946, dated August 6, 2002, is considered a terminating action to the inspections. The FAA has examined the information provided by RR and the CAA and agrees with the conclusions. Incorporation of Metco 58 blade root coating has been added to the proposed AD as a terminating action.

One commenter requests a draw down inspection schedule for engines that have not previously had repetitive inspections. The commenter states that due to the age of its fleet, it would be difficult to do repetitive inspections in accordance with the AD.

The FAA does not agree with the request due to the potential safety hazard associated with a possible multiple fan blade release. However, RR MSB RB211–72–C879, Revision 3, dated October 9, 2002, allows an alternative on-wing ultrasonic inspection method.

Since the above comments expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Manufacturer's Service Information

RR has issued MSB RB.211–72–C879, Revision 3, dated October 9, 2002, that specifies ultrasonic inspection of high cyclic life blades on-wing with either the LPC fan blades in place or removed from the LPC. The CAA classified this service bulletin as mandatory and issued AD 002–01–2000 in order to ensure the airworthiness of these RR engines in the UK.

Bilateral Agreement Information

These engines are manufactured in the United Kingdom (UK), and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other RR RB211–535E4 series turbofan engines of the same type design, that are used on Boeing 757 airplanes registered in the United States, the proposed AD would require initial and repetitive ultrasonic inspections of LPC fan blade roots on-wing and during overhaul, and relubrication, according to accumulated life cycles.

Economic Analysis

There are approximately 1,021 engines of the affected design in the worldwide fleet. The FAA estimates that 545 engines installed on aircraft of U.S. registry would be affected by this proposed AD. It will take approximately 7.0 work hours per engine to conduct an on-wing initial inspection, and 2 hours per engine to do an overhaul initial inspection of the proposed actions. The average labor rate is $60 per work hour. Since the actions are inspections, there are no required parts costs. Based on these figures, the FAA estimates the total cost for on-wing initial inspections only, of the proposed AD on U.S. operators, to be $228,900, and for overhaul initial inspections only, to be $65,400.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive: Rolls-Royce plc: Docket No. 2000–NE–13–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce (RR) plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines with low pressure compressor (LPC) fan blades with the part numbers (P/N's) listed in the following Table 1 of this AD. These engines are installed on, but not limited to Boeing 757 and Tupolev Tu204 series airplanes. Table 1 follows:

TABLE 1.—APPLICABLE LPC FAN BLADE P/N'S

UL16135	UL16171	UL16182	UL19643	UL20044
UL20132	UL20616	UL21345	UL22286	UL23122
UL24525	UL24528	UL24530	UL24532	UL24534
UL27992	UL28601	UL28602	UL29511	UL29556
UL30817	UL30819	UL30933	UL30935	UL33707
UL33709	UL36992	UL37090	UL37272	UL37274
UL37276	UL37278	UL38029	UL38032	

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To detect cracks in LPC fan blade roots, which if not detected, could lead to uncontained multiple fan blade failure, and damage to the airplane, do the following:

(a) If you have a full set of fan blades, modified using RR SB RB.211–72–C946, dated August 6, 2002, that can be identified by a blue triangle etched on the blade airfoil suction surface close to the leading edge tip of each blade, no further action is required.

(b) On RB211–535E4 engines, operated to Flight Profile A, ultrasonically inspect, and if required, relubricate using the following Table 2:

TABLE 2.—RB211–535E4 FLIGHT PROFILE A

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	17,350.	(i) Root Probe, inspect and relubricate, OR.	RB.211–72–C879 Revision 3, 3.A.(1) through 3.A.(7), dated October 9, 2002.	1,400.
		(ii) Wave Probe	RB.211–72–C879 Revision 3, 3.B.(1) through 3.B.(7), dated October 9, 2002.	1,150.
(2) In Shop	17,350.	Root Probe, inspect and relubricate.	RB.211–72–C879 Revision 3, 3.C.(1) through 3.C.(4), dated October 9, 2002.	1,400.

(c) On RB211–535E4 engines, operated to Flight Profile B, ultrasonically inspect, and if required, relubricate using the following Table 3:

TABLE 3.—RB211–535E4 FLIGHT PROFILE B

Engine location	Initial inspection ithin (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	12,350.	(i) Root Probe, inspect and relubricate, OR.	RB.211–72–C879 Revision 3, 3.A.(1) through 3.A.(7), dated October 9, 2002.	850.
		(ii) Wave Probe	RB.211–72–C879 Revision 3, 3.B.(1) through 3.B.(7), dated October 9, 2002.	700.
(2) In Shop	12,350.	Root Probe, inspect and relubricate.	RB.211–72–C879 Revision 3, 3.C.(1) through 3.C.(4), dated October 9, 2002.	850.

(d) On RB211–535E4 engines, operated to combined Flight Profile A and B, ultrasonically inspect, and if required, relubricate using the following Table 4:

TABLE 4.—RB211–535E4 FLIGHT PROFILE A AND B

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	65% hard life (To calculate, Compliance Section 1.C.(4)).	(i) Root Probe, inspect and relubricate, OR.	RB.211–72–C879 Revision 3, 3.A.(1) through see 3.A.(7), dated October 9, 2002.	As current flight profile.
		(ii) Wave Probe.	RB.211–72–C879 Revision 3, 3.B.(1) through 3.B.(7), dated October 9, 2002.	As current flight profile.
(2) In Shop	65% hard life (To calculate, Compliance Section 1.C.(4)).	Root Probe, inspect and relubricate.	RB.211–72–C879 Revision 3, 3.C.(1) through see 3.C.(4), dated October 9, 2002.	As current flight profile.

Note 2: Fan blades that have been operated within RB211–535E4 Flight Profile A and B will have final life as defined in the Time Limits Manual. See References Section 1.G.(3), of MSB RB.211–72–C879, Revision 3, dated October 9, 2002.

(e) On RB211–535E4–B engines, ultrasonically inspect, and if required, relubricate using the following Table 5:

TABLE 5.—RB211–535E4–B

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat within (CSN) inspection
(1) On-wing.	17,000	(i) Root Probe, inspect and relubricate OR.	RB.211–72–C879 Revision 3, 3.A.(1) through 3.A.(7), dated October 9, 2002.	1,200.
		(ii) Wave Probe.	RB.211–72–C879 Revision 3, 3.B.(1) through 3.B.(7), dated October 9, 2002.	1,000.
(2) In Shop	17,000	Root Probe, inspect and relubricate.	RB.211–72–C879 inspect and Revision 3, 3.C.(1) through 3.C.(4), dated October 9, 2002.	1,200

Optional Terminating Action

(f) Application of Metco 58 blade root coating using RR SB RB.211–72–C946, Revision 1, dated August 6, 2002, constitutes terminating action to the repetitive inspection requirements specified in paragraphs (b), (c), (d), and (e) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Note 4: The subject of this AD is addressed in CAA airworthiness directive AD 002–01–2000, dated October 9, 2002.

Issued in Burlington, Massachusetts, on February 10, 2003.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–4057 Filed 2–19–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–32–AD]

RIN 2120–AA64

Airworthiness Directives; NARCO Avionics Inc. AT150 Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to certain serial numbers (SN's) of NARCO Avionics Inc. AT150 transponders. This proposal would require modification to the transponder by adding a resistor and transistor to the circuit board. This proposal is prompted by reports of AT150 transponders not recognizing and responding properly to Mode S interrogations from Mode S ground stations and Traffic Alert and Collision Avoidance System (TCAS–II) airborne equipment. The actions specified by the proposed AD are intended to prevent loss of aircraft airspace separation and the possibility of mid-air collision.

DATES: Comments must be received by April 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from NARCO Avionics Inc., 270 Commerce Drive, Fort Washington, PA 19034; telephone (215) 643–2905; fax (215) 643–2007. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Balram Rambrich, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256–7507; fax (516).256–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–32–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On March 20, 2002, the FAA was made aware of twelve AT150 transponders that failed to recognize and respond to Mode S interrogations from Mode S ground stations and TCAS–II airborne equipment during random testing performed by FAA Flight Standards safety inspectors. Subsequently, the manufacturer determined that "Chassis Level A" AT150 transponders have a design error, which causes the P4 pulse not to be presented, causing the transponders to shut down. This condition, if not corrected, could result in loss of aircraft airspace separation, and the possibility of mid-air collision. This proposal is only applicable to NARCO Avionics Inc. AT150 transponders with "Chassis Level A", serial numbers 10000 through 12598 inclusive.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of NARCO Avionics Inc. service bulletin (SB) AT150 No. 6, dated January 31, 2003, that describes procedures for modification of the affected transponders, by adding a resistor and transistor to the circuit board to allow proper operation and changing them to "Chassis Level B". The SB also describes procedures for transponder testing after the modification is complete.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other NARCO Avionics Inc. AT150 transponders of the same type design, the proposed AD would require:

- For transponders not modified in accordance with NARCO Avionics Inc. service bulletin (SB) AT150 No. 1, dated July 29, 1977, modification of "Chassis Level A" transponders, serial numbers 10000 through 12598 inclusive, by adding a resistor and transistor to the circuit board, changing transponder to "Chassis Level B", and transponder testing after the modification; AND
- For transponders modified in accordance with NARCO Avionics Inc. SB AT150 No. 1, dated July 29, 1977, changing transponder to "Chassis Level B", and transponder testing.

The actions would be required to be done in accordance with the service bulletin described previously.

Economic Analysis

The FAA estimates that 2,598 NARCO Avionics Inc. "Chassis Level A" AT150 transponders could be affected by this proposal if all were installed in aircraft of U.S. registry. Approximately one work hour per transponder will be needed to perform the proposed actions,

at an average labor rate of $60 per work hour. Required parts would cost approximately $12 per transponder. Based on these figures, the total estimated cost of the proposed AD to U.S. operators could be $187,056.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

NARCO AVIONICS INC. AT150 TRANSPONDERS: Docket No. 2002–NE–32–AD.

Applicability: This airworthiness directive (AD) is applicable to NARCO Avionics Inc. AT150 transponders with "Chassis Level A", serial numbers (SN's) 10000 through 12598 inclusive. These transponders might be installed on, but not limited to the following aircraft:

Cessna Aircraft Company

172, 182, R182, T182, 206, P206, U206, TP206, 210, T210, P210, 310, E310, T310, and 421 series airplanes.

Twin Commander Aircraft Company

500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes.

The New Piper Aircraft Corporation

PA–31, PA–32, and PA–34 series airplanes.

Raytheon Aircraft Company

E33, F33, G33, 35, J35, K35, L35, M35, P35, S35, V35, 36, A26, B36, D55, E55, 56, A56, 58, 58A, 95, B95, D95, and E95 series airplanes.

Mooney Aircraft Corporation

M20 series airplanes.

McDonnell Douglas Helicopter Company

Model 500N rotorcraft.

Note 1: This AD applies to each transponder identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For transponders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent loss of aircraft airspace separation, and the possibility of mid-air collision, do the following:

Transponders Not Modified In Accordance With Service Bulletin AT150 No. 1

(a) For AT150 transponders with a SN listed in this AD that are not modified in accordance with service bulletin (SB) AT150 No. 1, dated July 29, 1977, within six months after the effective date of this AD, do the following:

(1) Install resistor part number (P/N) 755610028 and transistor P/N 312180102; and

(2) Change transponder to "Chassis Level B"; and

(3) Test transponders in accordance with the Corrective Action, Testing the Modification, and Return to Service paragraphs of SB AT150 No. 6, dated January 31, 2003.

Transponders Modified In Accordance With Service Bulletin AT150 No. 1

(b) For AT150 transponders with a SN listed in this AD, that are modified in accordance with SB AT150 No. 1, dated July 29, 1977, do the following:

(1) Within six months after the effective date of this AD, change transponder to "Chassis Level B"; and

(2) Test transponders in accordance with the Testing the Modification paragraph of SB AT150 No. 6, dated January 31, 2003; and

(3) Perform a bench test to the transponder before returning it to service. Information on bench testing can be found in AT150 Manual P/N 03606–0600.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on February 12, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–4056 Filed 2–19–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N–384H and 96P–0500]

RIN 0910–AC49

Food Labeling; Nutrient Content Claims, Definition of Sodium Levels for the Term "Healthy"

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation for sodium levels for foods that use the nutrient content claim "healthy." The agency is proposing that a previously established, but not yet implemented, more restrictive, second-tier sodium level would be permitted to take effect as a criterion that individual foods must meet to qualify to bear the term "healthy." The agency is proposing to retain the current first-tier sodium level for meal and main dish products because implementing the second-tier sodium level could result in the substantial elimination of meal and main dish products bearing the claim "healthy" from the marketplace. After evaluating data from various sources, the agency believes that the proposed sodium levels will help consumers achieve a total diet that is consistent with current dietary recommendations, as the proposed levels will give consumers a reasonable number of "healthy" products from which to choose. The agency has also revised the regulatory text for the definition of "healthy" to clarify the scope of the regulation and conform to the Presidential Memorandum instructing Federal agencies to use plain language.

DATES: Submit written or electronic comments by May 6, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1798.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 10, 1994 (59 FR 24232), FDA published a final rule amending § 101.65 (21 CFR 101.65) to define the term "healthy" as an implied nutrient content claim under section 403(r) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)). The final rule defined criteria for use of the implied nutrient content claim "healthy," or a related term (e.g., "health," "healthful") on individual foods, including raw, single-ingredient seafood, and game meat, and on meal and main dish products. It also established two separate timeframes in which different criteria for sodium content would be effective for foods bearing a "healthy" claim (i.e., before January 1, 1998, and after January 1, 1998).

Before January 1, 1998, under § 101.65(d)(2)(ii)(A) and (d)(2)(ii)(B), for an individual food to qualify to bear the term "healthy" or a related term, the food could contain no more than 480 milligrams (mg) of sodium (first-tier sodium level): (1) Per reference amount customarily consumed per eating occasion (reference amount); (2) per serving size listed on the product label (serving size); and (3) per 50 grams (g) for products with small reference amounts (i.e., less than or equal to 30 g or less than or equal to 2 tablespoons). After January 1, 1998 (§ 101.65(d)(2)(ii)(C)), an individual food bearing the term "healthy," or a related term, could contain no more than 360 mg of sodium (second-tier sodium level) per reference amount, per serving size, and per 50 g for products with small reference amounts. The agency derived this 360 mg sodium level by applying a 25 percent reduction to the original sodium disclosure level of 480 mg for individual foods (59 FR 24232 at 24240).[1]

To qualify to bear "healthy" or a related term, meal and main dish products could contain no more than 600 mg of sodium (first-tier sodium level) per serving size before January 1, 1998 (§ 101.65(d)(4)(ii)(A)), and no more than 480 mg of sodium (second-tier sodium level) per serving size after January 1, 1998 (§ 101.65(d)(4)(ii)(B)). The agency selected the 480 mg level because it was low enough to assist consumers in meeting dietary goals, while simultaneously giving consumers who eat such foods the flexibility to consume other foods whose sodium content is not restricted; because there were many individual foods and meal-type products on the market that contained less than 600 mg sodium; and because comments suggesting other levels did not provide supporting data (59 FR 24232 at 24240). Higher levels of sodium were rejected in the earlier rulemaking (59 FR 24232 at 24239) because the agency determined higher levels would not be useful to consumers wanting to use foods labeled "healthy" to limit their sodium intake to achieve current dietary recommendations.

On December 13, 1996, FDA received a petition from ConAgra, Inc. (the petitioner) requesting that the agency amend § 101.65(d) to "eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second-tier levels of 360 mg sodium for individual foods and 480 mg sodium for meals and main dishes" (FDA Docket No. 96P–0500/CP1, p. 3). As an alternative, the petitioner requested that the January 1, 1998, effective date for the second-tier sodium levels be delayed until such time as food technology "catches up" with FDA's goal of reducing the sodium content of foods and there is a better understanding of the relationship between sodium and hypertension.

FDA responded to ConAgra's petition in the **Federal Register** of April 1, 1997 (62 FR 15390), by announcing a partial stay of the second-tier sodium levels in § 101.65(d)(2)(ii)(C) and (d)(4)(ii)(B) until January 1, 2000. This stay was intended to allow time for FDA to: (1) Reevaluate the second-tier sodium levels based on the data contained in the petition and any additional data that the agency might receive; (2) conduct any necessary rulemaking; and (3) give industry an opportunity to respond to the rule or to any change in the rule that might result from the agency's reevaluation.

On December 30, 1997 (62 FR 67771), FDA published an advance notice of proposed rulemaking (ANPRM) announcing that it was considering whether to initiate rulemaking to reevaluate and possibly amend the implied nutrient content regulations pertaining to use of the term "healthy." FDA requested comments on whether it should propose to amend the sodium levels for the term "healthy." Comments

[1] Under § 101.13(h)(1) (21 CFR 101.13(h)(1)), individual foods containing more than 480 mg sodium per reference amount, per labeled serving size, or per 50 g (if the reference amount is 30 g or less or 2 tablespoons or less) must bear a label statement referring consumers to information about the amount of sodium in the food. Such nutrient disclosures are required when a food contains more than certain amounts of total fat, saturated fat, sodium, and cholesterol and that food bears a nutrient content claim. *id.*, see section 403(r)(2)(B) of the act. The agency developed disclosure levels based on dietary guidelines and taking into account the significance of the food in the total daily diet, based on daily reference values for total fat, saturated fat, cholesterol, and sodium (58 FR 2302 at 2307, January 6, 1993).

suggesting that the agency should amend the "healthy" definition were asked to address what the amended regulation should require to ensure that the term "healthy" could appear on a significant number of foods, without being "so broadly defined as to lose its value in highlighting foods that are useful in constructing a diet that is consistent with dietary guidelines" (62 FR 67771 at 67772). FDA asked those who believed the second-tier sodium requirements were appropriate and should not be changed to provide data demonstrating that the second-tier "healthy" definition was not so restrictive as to effectively preclude the use of the term.

In the ANPRM, FDA requested data or evidence on what would happen to the use of the term "healthy" in the marketplace if the second-tier sodium levels were to take effect. In addition, the agency asked how many "healthy" products would be eliminated if the second-tier sodium levels were to take effect and whether there would be other impacts on the number of consumer choices. The agency also asked for data regarding the technological feasibility of reducing the sodium content of individual foods, including raw, single-ingredient seafood and game meats, to 360 mg per reference amount and of reducing the sodium content of meals and main dishes to 480 mg sodium per serving size.

FDA also requested information and views on consumer acceptance of foods at the second-tier sodium levels. The agency further requested information about the availability or lack of availability of acceptable sodium substitutes, the difficulties in manufacturing different lines of food products with lowered sodium levels, and the impact of these lower sodium levels on the shelf-life stability and safety of the food. FDA also requested comments on other approaches to reducing the amount of sodium in foods that bear the term "healthy" (62 FR 67771 at 67773 and 67774).

If comments responding to the ANPRM revealed agreement that there were technological hurdles that could not be overcome for all foods or certain types of food, the agency stated that it would be interested in exploring different options for maximizing the public health gains expected from reducing dietary sodium levels. The agency identified four options. First, the agency could make no changes in the stayed rule, and the second-tier sodium levels in § 101.65(d)(2)(ii) and (d)(4)(ii) would become effective at the end of the stay period. This was identified as the default option if industry failed to provide evidence, data, or arguments that supported amending the rule. Second, as requested by the petitioner, FDA could propose to amend the definition of "healthy" to make the first-tier sodium levels the qualifying levels for all food products, and to delete in their entirety the second-tier sodium levels. Third, the agency could continue the stay based on data and information submitted in response to the ANPRM suggesting technological advancements could be made but would require more time. Fourth, the agency could reconsider the second-tier sodium levels and create new levels based on other factors such as percentile reductions based on market basket norms (62 FR 67771 at 67774).

In response to requests for an extension to coincide with the end of the comment period for the U.S. Department of Agriculture's (USDA's) interim final rule on the use of "healthy" on the label or labeling of meat and poultry products (63 FR 7279, February 13, 1998), FDA extended the closing date of the comment period for the ANPRM, from March 16, 1998, to May 19, 1998 (63 FR 13154, March 18, 1998).

In the **Federal Register** of March 16, 1999 (64 FR 12886), FDA published a final rule extending the partial stay of the second-tier sodium requirements in § 101.65 until January 1, 2003. The agency noted that it took this action to provide time for: (1) FDA to reevaluate the supporting and opposing information received in response to the ConAgra petition, (2) the agency to conduct any necessary rulemaking on the sodium limits for the term "healthy," and (3) companies to respond to any changes that may result from agency rulemaking. On May 8, 2002 (67 FR 30795), FDA issued another final rule to extend the partial stay of the second-tier sodium requirements in § 101.65 until January 1, 2006.

While the partial stay was pending, USDA and the Department of Health and Human Services jointly published the "Dietary Guidelines for Americans 2000" (dietary guidelines) (Ref. 1). This report provides recommendations for nutrition and dietary guidelines for the general public and suggests a diet with a moderate sodium intake, not exceeding 2,400 mg per day. The health concerns relating to high salt intake are high blood pressure and loss of calcium from bones, which may lead to risk of osteoporosis and bone fractures (Ref. 1).

II. Summary of Comments From the ANPRM

FDA received 22 responses, each containing one or more comments, to the December 30, 1997, ANPRM.

Most of the comments stated that the requirements for the use of the term "healthy" should be amended and presented evidence to persuade the agency to change the sodium levels. The comments provided information that a large number of meal and main dish products currently labeled as "healthy" would not be able to meet the "healthy" definition should the second-tier sodium levels take effect. The comments also stated that technological advances have not yet yielded an acceptable salt substitute.

Several comments discussed the possibility of the agency engaging in rulemaking to set new sodium levels. For instance, a few comments suggested using a sodium level based on a percentile reduction from the market-basket norm (e.g., 25 percent less sodium than otherwise comparable products that are currently on the market). The levels could be established for each food category or for those particular food items having difficulty meeting the second-tier sodium levels. One comment objected to "relaxing" the standards and suggested even tighter regulation in the interest of public health (200 mg for individual foods and 400 mg for meal products).

A few comments stated that the second-tier sodium levels were reasonable and should no longer be delayed. Evidence presented in these comments consisted of: (1) Information suggesting that manufacturers could conform to the second-tier sodium levels without presenting food safety concerns, and (2) summary lists of products that would remain in the marketplace if the second-tier sodium levels took effect.

The remaining comments did not directly address the issue of whether FDA should amend the sodium levels, but, rather, provided general information or opinions regarding sodium levels. For example, one such comment stated that there are health risks associated with a low-sodium diet.

FDA used information provided in the comments, along with information the agency gathered through an independent data analysis, to determine its proposed action.

III. Proposed Action

A. Introduction

The agency established a definition for the term "healthy" as an implied nutrient content claim (59 FR 24232).

The fundamental purpose of a "healthy" claim is to highlight those foods that, based on their nutrient levels, are particularly useful in constructing a diet that conforms to current dietary guidelines, which suggest that daily sodium intake not exceed 2,400 mg (Ref. 1). To assist consumers in constructing such a diet, a reasonable number of "healthy" foods should be available in the marketplace.

FDA stated in the ANPRM that its goal was to establish sodium levels for the definition of "healthy" that are not so restrictive as to preclude the use of the term "healthy," and not so broadly defined as to cause the term to lose its value in identifying useful products for constructing a healthy diet (62 FR 67771 at 67772).

To assess the number of "healthy" products in the marketplace, FDA conducted a marketplace data analysis (Ref. 2) using information from the Information Resources, Inc. (IRI) InfoScan database. The IRI InfoScan database contains dollar and sales information for food and dietary supplement products. InfoScan includes information collected weekly from a selected group of grocery, drug, and mass merchandiser stores across the continental United States with annual sales of $2 million and above (sample store data)—more than 32,000 retail establishments. The retail stores are statistically selected, and the database contains sales data for all products in these retail stores that are scanned (i.e., sold) at check out. IRI applies projection factors to the sample store data to estimate total sales in the continental United States from stores that have annual sales of $2 million and above. Using the IRI InfoScan database, FDA estimated the number of "healthy" brands and "healthy" products in the marketplace during 1993 to 1999.

In the following discussion of the marketplace data analysis, the term "brands" refers to brand names (not manufacturers) in the IRI InfoScan database (e.g., Healthy Choice, Health Valley, Healthline), while the term "products" refers to the different items (i.e., separate Universal Product Codes) sold under that brand name (e.g., raisin bran versus corn flakes; 12-ounces (oz) package versus 16-oz package) (Ref. 2).

B. Individual Foods

1. Conventional Foods

In the marketplace data analysis of "healthy" individual foods, the agency estimated the total number of "healthy" products and brands available in 1993, in 1999, and any time in the timeframe from 1993 to 1999. The agency also estimated the number of "healthy" individual foods for specific food categories. FDA does not have any data to determine either the number of "healthy" products or the pace of increase in the availability of "healthy" products prior to 1993. When compiling the marketplace data analysis, the agency considered all conventional foods that did not meet the meal or main dish definition in § 101.13(l) and (m) (including soups, salads (e.g., precut in a bag, prepared refrigerated salads), and single-ingredient seafood and game meats) to be individual foods. FDA considered dietary supplements separately using a different database. Dietary supplements are discussed in section III. B.2 of this document.

FDA estimated that in 1999 the marketplace had 872 "healthy" individual food products available to the consumer, compared to 842 such products available in 1993 (Ref. 2). There was also an increase in the number of "healthy" brands for individual foods in the marketplace from 1993 to 1999. In 1993, only 50 brands carried a "healthy" product, while 69 brands were available in 1999.

Considering that the 1993 figures are representative of the marketplace prior to the 1994 final rule defining "healthy," the increase in "healthy" products shows that, in addition to manufacturers being able to comply with the definition established in 1994, they have also been able to develop additional "healthy" products. Manufacturers have increased the number of available "healthy" brands as well as the number of available "healthy" products at or below the first-tier sodium level.

There has been an increase in the number of "healthy" individual food products in many of the specific food categories defined by IRI (Ref. 2). For example, in the IRI category of "Salty Snacks" (e.g., pretzels, potato chips), there were 18 available "healthy" products in 1993 and 46 in 1999, with 3 "healthy" brands available in 1993 and 5 in 1999. For popcorn products identified in the IRI category of "Popcorn/Popcorn Oil," no "healthy" products existed in 1993, but in 1999 there were 10 "healthy" products and 2 "healthy" brands in the marketplace. Similarly, in the IRI category "Fresh Breads & Rolls," 21 "healthy" products and 5 "healthy" brands were on the market in 1993, while in 1999, 64 "healthy" products and 9 brands were available. Increases can also be seen in the IRI category of "FZ [Frozen] Seafood"; 14 "healthy" products were available in 1993, while 22 were available to consumers in 1999, with 3 "healthy" brands in both 1993 and 1999. These are only a few examples of increases in the number of "healthy" individual food products available to the consumer.

Not all food categories, however, had an increase in the number of "healthy" products from 1993 to 1999. For instance, foods in the IRI categories "Cold Cereal," "Cookies," Dried Fruit," "Salad Dressings—SS" (where SS stands for shelf stable), "Sauce," and "Carbonated Beverages" saw a drop in the number of "healthy" products available from 1993 to 1999 (Ref. 2). For food categories such as cold cereal, salad dressing, and sauces, sodium may have been a factor in the decrease in the number of products available from 1993 to 1999 because the sodium levels in these products cover a very wide range, and some exceed the first-tier requirement for products labeled as "healthy" (Ref. 3). However, based on typical sodium levels for other food categories, such as cookies, dried fruit, and carbonated beverages, it is unlikely that sodium was responsible for the decrease in the number of these "healthy" products in the marketplace because typical sodium levels are below both the first- and second-tier sodium levels (Ref. 3).

In addition, certain food categories generally contain little sodium. Foods such as fish, fruit juices, hot cereals, rice, vegetables, pastas, and yogurt typically have considerably less than 360 mg sodium per reference amount and per serving size (Ref. 3). For most of these foods, there was an increase or no change in the number of brands and products available in 1999 compared to 1993 (Ref. 2). There was a decrease in the number of vegetable and pasta products labeled "healthy;" however, there is no reason to believe that this decrease was due to the sodium content. Because these categories of food generally contain little sodium, the proposed second-tier sodium level is unlikely to have an impact on the number of "healthy" products in the marketplace.

The agency also evaluated data from the 1997 Food Label and Package Survey (FLAPS) (Ref. 4), which represents data collected in 1997 from a limited number of product brands in specific food categories. The agency reviewed this database because it includes data that were not available in the marketplace data analysis, including information on claims and other information included on product labels. For example, FDA found a number of "healthy" claims on individual foods (Ref. 4), such as "Healthy real egg product" and "Apple sauce is a

delicious and healthy fruit product, which contains no fat, very low sodium, and no cholesterol." Such statements are implied nutrient content claims for "healthy" that the marketplace data analysis did not identify because the term "healthy" was not part of the brand name of the product. This leads FDA to believe that there are individual foods in the market place bearing "healthy" claims in addition to those identified in the marketplace data analysis. As some "healthy" claims are not part of the brand name of the product and, therefore, were not captured in the marketplace data analysis, it is likely that the number of "healthy" individual foods included in that analysis underestimates the number of individual food products bearing "healthy" claims.

The agency notes that individual foods with reference amounts on the lower end of the scale are also less likely to be affected by adoption of the second-tier sodium level because they are able to claim the same 360 mg sodium level for a "healthy" product as other individual foods with larger reference amounts. For example, bread or rolls have a reference amount of 50 g (§ 101.12(b) (21 CFR 101.12(b)), table 2, "Bakery products: Breads (excluding sweet quick type), rolls"). A 50 g serving of bread or rolls typically contains less than 360 mg sodium (Ref. 3) and would meet the second-tier criterion. Contrast that with individual foods such as pasta or potato salad, which have a reference amount of 140 g (§ 101.12(b), table 2 "Salads: Pasta or potato salad"). Assuming other aspects of the "healthy" definition are met, 140 g of pasta or potato salad must contain no more than 360 mg sodium to be considered "healthy," although the reference amount for pasta or potato salad (140 g) is almost three times that of bread or rolls (50 g). Many other individual foods are similar to the bread and rolls, having a reference amount on the lower end of the scale, which allows those products more flexibility in their sodium level.

Additionally, the agency believes that some individual foods may be close to meeting the second-tier sodium level. If the second-tier sodium level goes into effect, manufacturers may choose to reformulate such products in order to retain a "healthy" claim.

The ConAgra petition and other comments identified a few specific categories of individual foods for which the ability to make "healthy" claims could be negatively affected by permitting the second-tier sodium levels to take effect (e.g., soups, cheeses, frankfurters, and luncheon meats). FDA examined the marketplace data analysis for these specific food categories (Ref. 2).

The total number of "healthy" wet and dry soup products available in the marketplace increased during 1993 through 1999. In 1993, 104 "healthy" soup products were on the market. In 1999, over 20 more products were available, for a total of 126 "healthy" soup products in 1999. The number of "healthy" brands remained steady at six in both 1993 and 1999.

The petitioner indicated that its "healthy" soup products would not be able to meet the second-tier sodium level. The petitioner stated that it had expended numerous resources (e.g., consulting with experts in the field of food technology and conducting research and development programs with flavor companies) and was not able to find a satisfactory salt replacement for its "healthy" line of soups.

On the other hand, a comment by a major manufacturer of soups claimed that it has been able to reduce the sodium levels in its "healthy" soups and is currently able to meet the second-tier sodium level for "healthy" individual foods. The comment from this major soup manufacturer indicated that it was able to reformulate its "healthy" soup product line by modifying the flavor system with ingredient changes on a product by product basis. The comment also noted that reducing sodium in a product is technically difficult but not unsolvable and that the flavor profile of a product can be manipulated so that it maintains consumer appeal.

Because one major soup manufacturer has been able to develop a "healthy" soup line that meets the second-tier sodium level for "healthy" individual foods, FDA tentatively concludes that it is technologically feasible to produce a "healthy" soup product that meets the second-tier sodium level and is palatable to consumers. The petitioner also stated that cheese might not be able to meet the second-tier "healthy" sodium requirement because salt is required in the manufacturing process and cannot be reduced without jeopardizing taste and texture. The petitioner also contended that if FDA permits the second-tier sodium level to take effect for individual foods, there will be no "healthy" version of cheese in the marketplace.

Another comment stated that if it is not possible to manufacture a "healthy" cheese, then no exception should be made, and cheese products should be removed from the "healthy" marketplace until manufacturers are capable of producing a cheese that meets the "healthy" definition.

The petitioner's comments regarding cheese are reinforced by the trend seen by FDA in its marketplace data analysis (Ref. 2). For example, there has been a general decline in the number of "healthy" cheeses in the marketplace. In 1993, before the final rule defining "healthy" was issued, there were a total of 60 "healthy" cheese products with 3 different brands on the market; however, in 1999, the numbers dropped to 32 products with only 1 brand in the marketplace. Furthermore, in Spring 2001, FDA staff made an informal telephone inquiry to the customer service center of the only manufacturer of "healthy" cheese identified in the marketplace data analysis for 1999 (Ref. 5). The manufacturer indicated that its "healthy" line of cheese had been discontinued. To the best of the agency's knowledge, no new manufacturer has entered the "healthy" cheese market.

FDA agrees that cheese generally requires salt in the manufacturing process. Cheese is made from the coagulation of milk into curds and whey. The whey is drained off and salt (sodium chloride) is typically added to the curd to control microbial growth and enzyme activity, assist in curd synthesis (whey expression), and directly cause changes in cheese proteins that will influence cheese texture (Ref. 6). The agency requests comments on whether salt is the limiting element in achieving a "healthy" cheese and whether salt can be removed from the cheese-making process.

FDA notes that "healthy" cheeses may have been removed from the marketplace for reasons other than the sodium requirement. Some "healthy" cheeses (e.g., light mozzarella cheeses) were able to meet the proposed second-tier sodium level for "healthy" individual foods; nonetheless, those products were removed from the marketplace (Ref. 5). In addition to sodium, cheese also typically contains fat and saturated fat, which have been identified as nutrients to limit when constructing a "healthy" diet (Ref. 1). Because the "healthy" claim sets limits on all three nutrients, the multiple requirements may be the reason why "healthy" cheeses are no longer in the marketplace. FDA requests comments that would help clarify whether it is the sodium limit, the fat or saturated fat limits, the combination of limits, or some other factor or factors that have resulted in manufacturers discontinuing the manufacture and marketing of "healthy" cheeses.

Further, the agency is not persuaded that it is necessary to provide for "healthy" cheese since the lack of a "healthy" cheese product is not likely to prevent consumers from constructing a diet consistent with dietary guidelines. Although cheese contributes calcium to the diet (Ref. 1), consumers can obtain their reference daily intake (RDI) of calcium from many other sources such as low-fat milk, yogurt, and dark-green leafy vegetables, to name a few.

For consumers who choose to eat cheese, there are alternative cheese products such as "reduced fat" or "reduced sodium" cheeses. These claims accurately describe the specific attributes of the product without claiming that it conforms to the requirements for "healthy."

FDA also is concerned that treating cheese differently from other foods could be misleading to consumers trying to construct a healthy diet. Cheese has a small reference amount (30 g) (§ 101.12(b), table 2, "Dairy Products and Substitutes: Cheese, all others except those listed as separate categories—includes cream cheese and cheese spread"), and therefore, more than one serving can be consumed easily. In general, approximately 32 g to 46 g of cheese is consumed per eating occasion (Ref. 7). Because the actual amount consumed is typically larger than the reference amount (30 g), it appears that consumers will be better served if the second-tier sodium level applies to all foods, including cheese. Applying the second-tier sodium level to cheese will help maintain a reasonable sodium intake even for those people who consume larger amounts of cheese.

However, FDA invites comments on whether having no "healthy" cheeses may have a negative impact on consumers, and if so, whether the agency could establish a reasonable alternative sodium requirement for "healthy" cheese. Alternative methods might include: (1) Leaving cheese at the current first-tier sodium level for "healthy" individual foods (480 mg) or (2) establishing "healthy" sodium levels based on a percent reduction of market-basket norms.

The first alternative of leaving cheese at the current first-tier sodium level for "healthy" individual foods may encourage cheese manufacturers to reenter the marketplace, since they would no longer have to face uncertainty as to whether the sodium level would be reduced to the second-tier level. The marketplace data analysis showed that there were 32 "healthy" cheese products in 1999, demonstrating that manufacturers were capable of producing a "healthy" cheese at the current first-tier sodium level.

The second alternative of establishing a "healthy" sodium level based on a market-basket norm may not be practical for all individual foods but may be appropriate for cheese because of its special manufacturing process. To consider both alternatives, it would be helpful to have additional information, such as: (1) The sodium levels for various cheeses currently in the marketplace that do not bear the term "healthy" (i.e., the current market-basket norm) and what might be an achievable percent reduction for sodium from that market-basket norm; (2) the impact that exempting cheese, not exempting cheese, or establishing an alternative sodium level would have on diets; (3) the minimum levels of sodium that can be achieved in the production of an acceptable cheese product; (4) the technology available to reduce sodium levels in cheese products; and (5) the extent to which salt (sodium chloride) is required in the cheese-making process.

Comments received in response to the ANPRM also indicated that frankfurters and luncheon meat may have difficulty meeting the second-tier sodium level of the "healthy" definition. However, those products fall outside FDA's jurisdiction, as they are regulated by USDA; therefore, they are not addressed in this proposal.

Another issue raised by the petitioner was the role of salt as a preservative in refrigerated foods, particularly meat and poultry products, because the petitioner contended that refrigeration alone cannot be relied upon to ensure food safety. However, a comment stated that the difference between the first-tier (480 mg) and the second-tier (360 mg) sodium levels is insignificant with respect to food safety. The comment noted that sodium does not protect against microbiological contamination in processed meats and that no one factor is responsible for product safety.

Again, since meat and poultry fall outside FDA's jurisdiction, they will not be addressed in this rulemaking. The agency requests comments on whether sodium levels of 360 to 480 mg are protective and play a role in food safety for foods that FDA regulates; whether changing from the first- to the second-tier sodium level would negatively impact food safety; and what other preservation methods could be used to ensure food safety in conjunction with lower sodium levels.

Based on the data summarized, it appears that: (1) A reasonable number of "healthy" individual food products were available in the marketplace from 1993 through 1999; (2) in many food categories there has been an increase in the number of "healthy" products and brands; and (3) many "healthy" individual foods, such as those with reference amounts at the lower end of the scale or those that typically contain limited amounts of sodium, would remain unaffected by the proposed change to the second-tier sodium level for individual foods. Therefore, with the possible exception of cheeses, the overall impact of permitting the second-tier sodium level to take effect for individual foods appears to be limited to minor reductions in the number of "healthy" products in some food categories.

Accordingly, the agency tentatively concludes that the second-tier sodium level is the appropriate sodium requirement for the "healthy" definition for individual foods. The agency believes the second-tier sodium level provides a meaningful definition of "healthy" that will enable consumers to construct a diet that is consistent with current dietary guidelines but is not so narrowly defined as to disqualify many foods that are recommended to be in the diet (59 FR 24232 at 24240).

Therefore, the agency is proposing not to amend the second-tier "healthy" sodium level of 360 mg for individual foods in current § 101.65(d)(2)(ii)(C)(*1*) and (d)(2)(ii)(C)(*2*), and (d)(3)(ii)(C)(*1*) and (d)(3)(ii)(C)(*2*). These paragraphs are being revised in format, however, as discussed in section III. F of this document. The second-tier sodium level for individual foods is to take effect at the end of the stay period, January 1, 2006 (67 FR 30795).

The agency is requesting comments and information on the potential impact of the second-tier sodium level on specific individual food categories. In particular, FDA is seeking information on the range of sodium content in food categories and the proportion of products that contain sodium at or below the first- and second-tier levels of current § 101.65.

2. Dietary Supplements

Dietary supplements, like other individual foods, must meet all of the requirements in § 101.65(d)(2) to make "healthy" claims. FDA has evaluated data for dietary supplements and tentatively concludes that permitting the second-tier sodium level to go into effect is unlikely to reduce the availability of "healthy" dietary supplements. The agency assessed the prevalence of dietary supplement products that contain salt or sodium and are labeled as "healthy." The agency used a database developed by Research Triangle Institute (RTI) (Ref. 8), which includes detailed information on approximately 3,000 dietary supplement

products collected between November 1999 and February 2000, including information from labels of products purchased from retail establishments and information taken from mail-order catalogs and Internet sites. In selecting dietary supplement products, RTI used the definition of "dietary supplement" from the Dietary Supplement Health and Education Act of 1994 (Public Law 103–417), which includes, among other things, vitamins, minerals, herbs and other botanicals, and amino acids (section 201(ff) of the act (21 U.S.C. 321(ff))). RTI included only information available to consumers at the point-of-sale.

The RTI sampling procedure was designed to include the maximum number of different products and different ingredients, which led to a relatively greater variety of products than would be representative of consumer purchase patterns. In order to get as many products as possible with different characteristics, RTI over-sampled health food stores. This led to an over-sample of herbals and botanicals, which, according to the database, are more likely to contain sodium. Thus, the design of the survey (e.g., how the products were sampled) would be likely to lead to an overestimate of the percentage of dietary supplements that contain sodium.

FDA recognizes that the RTI database cannot be used to make precise, quantitative estimates of dietary supplement characteristics; nevertheless, in the absence of other available data, FDA used these data to estimate the proportion of dietary supplement products that might be affected by permitting the second-tier sodium requirements to take effect for the term "healthy." FDA found these data useful as they allow for a conservative estimate of the impact of the proposed rule on dietary supplement products, because it is likely that a smaller proportion of products will be impacted than the proportion calculated under this assessment. FDA requests comments on this assessment of dietary supplement products that may contain sodium and welcomes any additional available data concerning dietary supplements.

To estimate the proportion of dietary supplement products in this dataset that contain sodium, FDA reviewed the ingredient information in the RTI database, which includes information on the first 30 ingredients contained in the product. The agency searched for ingredients containing either the term "salt" (sodium chloride), the most common source of sodium in foods, or the term "sodium" (e.g., sodium benzoate). This process would not have identified ingredients containing other sources of sodium (i.e., ingredients that include sodium-containing components that do not include sodium in their name). FDA identified 133 dietary supplement products in this dataset (4 percent) containing the terms "sodium" or "salt" in one or more of the first 30 ingredients.

To estimate the proportion of dietary supplement products in this dataset that may contain sodium and also bear a claim for "healthy," FDA reviewed the database for brand names, product names, and claims on the 133 dietary supplement products. The agency found 1 product with the term "health" in the brand name, 1 product with the term "health" in the product name and also in the product claim, and 32 products with claims containing the terms "health" or "healthy." Most of the claims on the products were structure/function claims under 21 CFR 101.93(f) (e.g., "Helps promote bone health") or health claims under 21 CFR 101.14 (e.g., "Enough calcium helps maintain good bone health and reduce the risk of osteoporosis"); such claims would not be considered "healthy" claims under § 101.65(d). FDA did, however, identify 11 products in this dataset (0.4 percent) bearing "healthy" claims under § 101.65(d) either as part of the brand or product name or as a separate claim on the product (Ref. 8). Since this dataset over-sampled products that are more likely to contain sodium, it is likely that less than one percent of dietary supplement products would potentially be affected by requiring individual foods bearing the claim "healthy" to meet the proposed, second-tier sodium requirement.

In addition to the relatively small proportion of dietary supplement products overall that contain sodium and bear "healthy" claims, judging from our sample of 11 products in this dataset, the amount of sodium contained in these dietary supplement products is probably quite limited for a variety of reasons. Since ingredients are listed on product labels in descending order of predominance by weight (21 CFR 101.4), the amount of sodium in dietary supplement products is likely to be small because the sodium-containing ingredients tend to be minor ingredients (Ref. 8). Furthermore, dietary supplement products tend to have small serving sizes (e.g., pills, capsules, packets, teaspoons).

In addition, only a small proportion of most sodium-containing dietary supplement ingredients is actually sodium. For example, salt (sodium chloride) is the ingredient with the highest proportion of sodium, about 40 percent. The agency calculated the percentage of sodium for the other sodium-containing ingredients about which the agency had sufficient information, and these other ingredients contain a significantly smaller proportion of sodium, varying from around 12 to 27 percent (Ref. 8). Thus, dietary supplements are likely to contain limited amounts of sodium because the sodium-containing ingredients themselves contain limited amounts of sodium.

An example may help to illustrate how the two factors discussed work in tandem to limit the amount of sodium in dietary supplement products. Only one of the 11 products bearing a healthy claim listed salt as an ingredient. This product lists salt as the 14th ingredient in order of predominance. Thus, the amount of sodium in that particular dietary supplement product is likely to be small since it is only 40 percent of a very minor ingredient.

Also, unlike conventional food products that use salt to improve taste, dietary supplement products are taken to supplement the diet and are not generally consumed for their taste. Most dietary supplement products are in pill, tablet, or capsule form (Ref. 8) and are swallowed without chewing. Therefore, since taste is not a factor for most of these products, manufacturers selecting ingredients for their dietary supplement products can easily avoid sodium-containing ingredients if they are trying to limit the sodium content in order to make "healthy" claims.

Thus, given the foregoing information and observations based on the RTI data sample, FDA does not anticipate that the sodium content of dietary supplement products will have an impact on their ability to qualify for "healthy" claims. Furthermore, the agency received no comments to the ANPRM from dietary supplement manufacturers indicating that dietary supplement products currently making "healthy" claims would be affected. Thus, FDA does not believe that changing the sodium content requirement for individual foods bearing "healthy" claims will adversely affect dietary supplement manufacturers wishing to make such claims. The agency requests comments on whether its assessment regarding dietary supplement products is accurate and whether or not the availability of dietary supplement products bearing a "healthy" claim would be adversely affected by this rulemaking. FDA requests specific information on such products, including the numbers and types of products affected, the current level of sodium in the products, and the types of "healthy" claims that are being made.

C. Meal and Main Dish Products

For purposes of this section, meal and main dish products, which are defined separately in § 101.13(l) and (m), will be considered together. This is consistent with earlier treatment in the proposed rule, the final rule, the partial stays, and the ANPRM.

To assess the status of meal and main dish products, the agency separated the data on meal and main dish products from the data on other products in the marketplace data analysis. When determining the number of products and brands that fall within the meal and main dish category, the agency included chili with meal or main dish products. In performing this assessment, the agency considered three categories: (1) Frozen meals and main dishes, (2) refrigerated and shelf-stable meals and main dishes, and (3) chili. FDA identified 148 meal and main dish products labeled "healthy" among 10 brands in the IRI analysis (Ref. 2). The 1997 FLAPS did not identify any meals or main dishes that used a "healthy" claim but were not from a "healthy" brand (Ref. 4).

The petitioner stated that a number of "healthy" meal and main dish products would "disappear" if the second-tier sodium levels were to take effect for meal and main dish products. The petitioner further indicated that it would not be able to produce many meal or main dish products that meet the second-tier sodium level and that are palatable. The petitioner also commented that some weight-control meal and main dish products are substantially higher in sodium than the second-tier level established for "healthy" meal and main dish products.

The petitioner provided the agency with data regarding how the current first-tier sodium levels for the "healthy" definition aid the consumer in achieving a diet that is consistent with dietary guidelines. The data included a sample menu of an average adult's daily consumption of "healthy" individual foods and meal and main dish products at the current first-tier sodium levels (Ref. 9). The sample menu demonstrated that an adult using "healthy" as a guidepost could obtain a diet with a sodium level close to the recommended daily sodium intake (Ref. 1).

In contrast, another comment supported permitting the second-tier sodium level for "healthy" meal and main dish products to take effect and claimed that the lower sodium level is attainable. However, that comment did not come from a firm that produces "healthy" meal or main dish products. In addition, the comment did not provide any basis for concluding that a reasonable number of "healthy" meal and main dish products would remain in the marketplace if the second-tier sodium levels were to take effect for meal and main dish products.

Based on the marketplace data analysis, the agency found that there were a limited number of "healthy" meal and main dish products that met the current first-tier sodium level. The agency further found a general decline in the number of meal and main dish products available in 1999 compared to 1993 (Ref. 2).

The number of "healthy" frozen meals and main dishes decreased from 177 products in 1993 to 119 products in 1999. During 1993 through 1999, 272 "healthy" frozen meal and main dish products were placed on the market, with less than half surviving until 1999. Similarly, the number of "healthy" frozen meal or main dish product brands has also decreased. In 1993, there were nine "healthy" brands available, and only six brands remained in 1999.

The number of "healthy" shelf-stable or refrigerated meal and main dish products also has decreased, with 23 products available in 1993 and only 11 products in 1999 (Ref. 2). During 1993 through 1999, 33 "healthy" shelf-stable and refrigerated meals and main dish products were introduced into the market, with only 30 percent of those products surviving in 1999. The number of brands marketing a "healthy" shelf-stable or refrigerated meal or main dish product has dropped slightly, with five brands available in 1993, and four brands in 1999. Only "healthy" chili products have increased in number from 10 in 1993 to 18 in 1999, and from 1 to 2 brands in that same timeframe.

Overall, the number of available meal and main dish products (including frozen, shelf-stable, refrigerated, and chili products) decreased by 30 percent, from 210 products in 1993 to 148 products in 1999 (Ref. 2). This appears to indicate that providing consumers with a palatable "healthy" product at the current, first-tier sodium level is difficult.

The limited number of "healthy" meal and main dish products affects FDA's goal to provide a definition for "healthy" that permits consumers access to a reasonable number of products that bear the "healthy" claim. If FDA were to allow the second-tier sodium level for "healthy" meal and main dish products to take effect, there would likely be an even greater reduction in the number of available "healthy" meal and main dish products in the marketplace. Furthermore, some manufacturers of "healthy" meal and main dish products might choose to limit only fat or calorie levels and change to "lean," "low calorie," or "low fat" claims. Although those claims do provide some assistance to consumers who are trying to construct a diet consistent with dietary guidelines, there are additional nutritional benefits in products bearing a "healthy" claim. "Healthy" meal and main dish products, in addition to meeting the sodium limit, also meet the definition of "low" for fat and saturated fat; contain no more than 90 mg of cholesterol per serving size, and contain at least 10 percent of the RDI or daily reference value per serving size of two (for main dish products) or three (for meal products) of the following nutrients: Vitamin A, vitamin C, calcium, iron, protein, and fiber (§ 101.65(d)).

Moreover, FDA finds the petitioner's comment that a number of meal and main dish products would "disappear" to be persuasive because the petitioner is one of only a few manufacturers currently producing "healthy" meal and main dish products. The marketplace data analysis for "healthy" meal and main dish products and brands showed that there were a limited number of "healthy" meal and main dish manufacturers, with one manufacturer producing most of the "healthy" meal and main dish products. In 1999, most of the meal and main dish products available were frozen dinners and entrées. There were only 6 "healthy" brands of frozen meal and main dish products, and 5 of the brands comprised only 16 percent of the products available (Ref. 2). The remaining 84 percent of "healthy" meal and main dish products were manufactured by the petitioner. Between 1993 and 1999, there were 10 brands marketed by firms other than the petitioner. Five brands that were available for sale in 1993 had completely disappeared from the market by 1999; two brands had significantly fewer products for sale; two brands that were not available in 1993 offered only a few products in 1999; and one brand had more products for sale in 1999 than in 1993. The petitioner also had more "healthy" products for sale in 1999 than in 1993. Considering the petitioner's expertise in the "healthy" frozen meal and main dish market, and the trends seen in the marketplace, FDA believes that the petitioner raised valid concerns about the second-tier sodium level for meal and main dish products.

Furthermore, the sodium content of the sample menu provided by the

petitioner in support of retaining the first-tier sodium levels is close to the recommended daily sodium intake set forth in the dietary guidelines (Ref. 9). FDA believes that minor adjustments, such as the lower sodium level the agency is proposing for "healthy" individual foods, would be sufficient to bring such a menu within dietary guidelines.

The 1997 FLAPS data (Ref. 4) did not contain any additional "healthy" claims for meal and main dish products that were not already identified in the marketplace data analysis. This further supports the contention that there are a limited number of "healthy" meal and main dish products in the marketplace.

Meal and main dish products make a major contribution to the total daily diet, and FDA believes that sodium requirements for these products should reflect this contribution, while remaining consistent with current dietary guidelines. For example, under § 101.13(l), a meal is defined as weighing at least 10 oz per labeled serving and containing not less than three-40 g portions of food, or combinations of foods, from two or more of the four food groups: (1) Bread, cereal, rice, and pasta; (2) fruits and vegetables; (3) milk, yogurt, and cheese; and (4) meat, poultry, fish, dry beans, eggs, and nuts. Under the first-tier sodium requirement, a "healthy" meal must fall within the 600 mg sodium level per serving size of not less than 10 oz (282 g), or approximately 2.1 mg sodium per g of food. A "healthy" main dish, under § 101.13(m), must contain not less than 40 g of food, or combinations of foods, from each of at least two of the four food groups, and must contain 600 mg or less sodium per serving size of 6 oz (170 g), or approximately 3.5 mg sodium per g of food.

By contrast, the first-tier sodium level for "healthy" meal and main dish products is more stringent than the sodium level of a meal consisting of "healthy" individual foods at the second-tier sodium level. For example, both fresh or frozen vegetables and cooked fish/shellfish have reference amounts of 85 g (§ 101.12(b), table 2, "Vegetables: All other vegetables without sauce: fresh, canned, or frozen" and "Fish, Shellfish, Game Meats, and Meat or Poultry Substitutes: Entrees without sauce, e.g., plain or fried fish and shellfish, fish and shellfish cake"). Prepared fried potatoes have a reference amount of 70 g (§ 101.12(b), table 2, "Potatoes and Sweet Potatoes/Yams: French fries, hash browns, skins, or pancakes"). Under the second-tier sodium definition of "healthy," individual foods are limited to 360 mg sodium per reference amount and per serving size. The sodium levels under these requirements would be approximately 4.2 mg sodium per g of fish or vegetables and approximately 5.1 mg sodium per g of potato. These levels are more than 200 percent higher than the sodium level that "healthy" meals are required to meet at the first-tier sodium level (2.1 mg sodium per g of food) and 120 percent higher than the first-tier sodium level for "healthy" main dish products (3.5 mg sodium per g of food). These examples demonstrate that the first-tier sodium level for "healthy" meal and main dish products is already more stringent than the second-tier sodium level proposed for "healthy" individual foods typically included in such meals and main dishes.

Furthermore, the first-tier sodium level proposed for "healthy" meal and main dish products is proportionate to and adequately reflects their contribution to the total daily diet while remaining consistent with current dietary guidelines. If each meal or main dish product has a maximum of 600 mg sodium and if one meal or main dish product is consumed at each of three meals during a typical day, then this accounts for a total of 1,800 mg sodium from meal and main dish products. This is consistent with previous agency assumptions that daily food consumption patterns include three meals and a snack with about 25 percent of the daily intake contributed by each (final rule on nutrient content claims (58 FR 2302 at 2380, January 6, 1993)). The 1,800 mg sodium level is well below the suggested 2,400 mg recommendation (Ref. 1) and allows for flexibility in the rest of the daily diet (i.e., the snack).

A number of comments to the ANPRM addressed whether there is an acceptable salt substitute that could be used to replace salt in meal and main dish products. Most of those comments indicated that currently it is not technologically feasible to manufacture a "healthy" meal or main dish product that uses a salt substitute to help meet the second-tier sodium level. Many flavor manufacturers stated that although they have been working towards a flavor profile to replicate salt, an acceptable salt substitute is not yet available. The comments stated that some of the salt substitutes currently available are ammonium salt and potassium chloride. The comments further stated that these are not effective salt substitutes because they leave an off or bitter aftertaste and require a masking of that aftertaste that is not always successful. One flavor manufacturer asserted that it is not necessary to change the sodium requirements for the definition of "healthy" because this manufacturer had created a salt substitute that is acceptable for use in most processed foods. However, the petitioner described working with that manufacturer and using that salt substitute to try to reduce sodium in their products (e.g., frozen entrées) without success.

It appears that technological advances have not yet yielded an acceptable salt substitute that would allow meal and main dish products to meet the second-tier sodium level for the definition of "healthy." Furthermore, the second-tier sodium levels have been stayed several times to give manufacturers more time to develop alternatives. Because of the apparent difficulty of producing an acceptable salt substitute, FDA is no longer convinced that providing additional time will lead to the development in the near future of a salt substitute that is acceptable to manufacturers and palatable to consumers.

FDA tentatively concludes that the first-tier sodium level for meal and main dish products allows a "healthy" definition that is neither too strictly nor too broadly defined. The first-tier sodium level will allow consumers to meet current dietary guidelines for sodium intake while still maintaining flexibility in the diet. Additionally, the agency believes that by retaining the first-tier sodium level, a reasonable number of "healthy" meal and main dish products will remain available to consumers. Therefore, the agency has tentatively concluded that the current first-tier level of 600 mg sodium per serving size should be retained as the sodium criterion for "healthy" meal and main dish products. Accordingly, the agency is proposing to eliminate the second-tier sodium level of 480 mg for meal and main dish products and to make the first-tier sodium level permanent for those products.

D. Conclusion

FDA is proposing to permit the previously-established, second-tier sodium level to take effect for "healthy" individual foods and to retain the first-tier sodium level for "healthy" meal and main dish products. FDA believes that this combination of actions is necessary to provide for a reasonable number of "healthy" products in the marketplace. The marketplace data analysis indicated that the number of "healthy" individual foods has been increasing while the number of "healthy" meal and main dish products has been decreasing.

Further, the first-tier sodium level for "healthy" meal and main dish products provides a lower sodium intake than the amount that would be consumed if a meal or main dish product consisted of "healthy" individual foods at the second-tier sodium level. The agency believes that the proposed sodium requirements represent levels that are achievable by manufacturers but sufficiently restrictive to provide consumers with a meaningful definition of the term "healthy" that will assist them in constructing a diet consistent with dietary guidelines. Thus, FDA tentatively concludes that the second-tier sodium level is appropriate for individual foods, and the first-tier sodium level is appropriate for "healthy" meal and main dish products.

E. Clarification

To clarify the scope of implied nutrient content claims under § 101.65(d), FDA is modifying § 101.65(d)(1) to specify that a claim that suggests that a food, because of its nutrient content, may be useful in maintaining healthy dietary practices, is an implied nutrient content claim if it is made in connection with either an explicit or implied claim or statement about a nutrient. This change makes the regulatory text consistent with the preamble discussions in both the proposed and final rules (58 FR 2944 at 2945, January 6, 1993; 59 FR 24232 at 24235, May 10, 1994), where FDA made clear that claims made in association with an implied claim or statement about a nutrient would be covered by the regulation. Thus, the regulation now states that a claim that suggests that a food, because of its nutrient content, may help consumers maintain healthy dietary practices, is an implied nutrient content claim if it is made in connection with an explicit or implicit claim or statement about a nutrient.

F. Plain Language

By January 1, 1999, Federal agencies were to use plain language in all proposed and final rulemaking documents published in the **Federal Register** (Ref. 10). FDA is therefore proposing to revise the format in § 101.65(d) for all nutrient requirements for the term "healthy." The codified language is currently in a text-based format. FDA is proposing a summary table format. This new format should aid the reader in comprehending and following these regulations.

Finally, FDA is proposing several minor changes in the wording of § 101.65(d) to make the regulation more concise and easier to understand. These changes are not intended to affect the meaning of the regulation.

IV. Environmental Impact

The agency tentatively concludes under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Economic Impacts

A. Preliminary Regulatory Impact Analysis

FDA has examined the economic impacts of the proposed rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, public safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. The Office of Management and Budget has determined that this proposed rule is a significant regulatory action under Executive Order 12866, although it is not economically significant.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). This proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million, adjusted for inflation. The current inflation-adjusted statutory threshold is $115 million.

1. The Need for Regulation

To bear the term "healthy," products must not exceed established levels for fat, saturated fat, cholesterol, and sodium. The existing regulation states that meals and main dishes, as defined in § 101.13(l) and (m) respectively, must have sodium levels no higher than 600 mg per serving size (usually the entire meal) in the first-tier compliance period, and sodium levels no higher than 480 mg per serving size in the second-tier compliance period, which was originally scheduled to begin on January 1, 1998. The regulation also states that "healthy" foods other than meals and main dishes must have sodium levels no higher than 480 mg per reference amount in the first-tier compliance period, and sodium levels no higher than the second-tier 360 mg per serving size thereafter. The agency initially stayed the second-tier sodium levels until January 1, 2000 (62 FR 15390, April 1, 1997). FDA has since extended the stay twice: First until January 1, 2003 (64 FR 12886), and more recently until January 1, 2006 (67 FR 30795, May 8, 2002).

In December 1996, ConAgra petitioned FDA to eliminate the second-tier, lower sodium levels. The petitioner claimed that these levels were too difficult to meet, and therefore would force the removal from the market of many products that were still healthy and contained less sodium than their direct competitors.

This proposal modifies the definition of the term "healthy" in only one respect: It makes the first-tier sodium level of 600 mg permanent for meals and main dishes. "Healthy" individual foods still would have to comply with the second-tier limit of 360 mg per serving once that limit goes into effect.

2. Regulatory Options

FDA identified several options in the ANPRM: (1) Make no change to the current rule, i.e. allow the second-tier sodium levels to go into effect; (2) amend the definition of "healthy" as requested in the petition, i.e. eliminate the second-tier sodium levels; (3) continue the stay to give producers time to develop technological alternatives to sodium; or (4) consider different second-tier sodium limits. Analyzing probable technological change (option 3) is beyond the scope of this analysis; innovation is very difficult to predict. FDA views any technological change as mitigating the eventual cost of this rule, but requests comments as to how to quantify this effect.

Also, analyzing alternative second-tier sodium limits in terms of net benefits (option 4) is not feasible in this analysis. The optimum sodium level for individual foods, meals, and main dishes balances the health benefits of limiting sodium intake with the cost to industry and of making food product preparation more complicated and the cost to consumers of limiting product choice. In the analysis that follows, we

argue that the first-tier sodium level strikes that balance better than the second-tier level for meals and main dishes, but that the second-tier level strikes the balance better for individual foods. Other sodium levels may perform well in this type of analysis, but FDA has no way of differentiating health effects or manufacturing costs due to marginal differences in the allowable sodium content of "healthy" food products.

Therefore, the options we consider for this analysis are option 1 (allow second-tier levels to take effect) and option 2 (eliminate second-tier levels), split into separate categories for individual foods (2a) and meals and main dishes (2b). The proposed rule would adopt 2b, but not 2a.

1. Implement the current rule without modification, which would make the second-tier sodium levels effective on January 1, 2006.
2a. Amend the current rule, adopting as permanent the first-tier sodium level for all or specific "healthy" individual foods.
2b. Amend the current rule, adopting as permanent the first-tier sodium level for "healthy" meals and main dishes.
2c. Amend the current rule, adopting as permanent the first-tier sodium levels for "healthy" meals and main dishes and for all or specific "healthy" individual foods.

The "baseline" in this case is the current rule or option 1, so the benefits of the other options are the reformulation, rebranding, and relabeling costs avoided by retaining the first-tier sodium content requirements for individual foods or meals and main dishes. The cost of the other options is the negative health impact due to a net increase in sodium intake under options 2a, 2b, and 2c.

Option 2a: Retain the First-Tier Sodium Level for Individual "Healthy" Foods. FDA considers the current rule's second-tier sodium level for "healthy" appropriate for individual foods. Although this analysis does not quantify in detail the net benefit associated with lower sodium levels in food, the costs associated with option 2a in all likelihood outweigh the benefits. The agency does not have the information necessary to calculate the effects on the market of the 870 foods that use a "healthy" claim, but FDA invites comments regarding how to quantify the qualitative effects summarized here.

Benefits of Option 2a. The benefits are the reformulation, rebranding, and relabeling costs avoided by manufacturers if they do not have to modify their products to meet the second-tier sodium level for individual foods. In the market analysis, FDA identified 870 individual food products among 69 brands that make a "healthy" claim (Ref. 2). The FLAPS survey also identified several additional individual foods that make a "healthy" claim but are not from a "healthy" brand (Ref. 4). However, according to the comments on the ANPRM and subsequent analysis by FDA, only 3 of the over 80 food product categories would have material trouble meeting the second-tier "healthy" sodium level: Soups, cheeses, and meats (primarily frankfurters and ham). Of the three food product categories that FDA tentatively concludes are impacted by this option, sodium levels for "healthy" meats are regulated by USDA and therefore are not part of this analysis. Discussions on cheese and soup categories follow.

Other individual foods in other categories may have costs associated with meeting the second-tier sodium level, but FDA has no information concerning costs for those other individual foods. FDA invites comments on the costs that may be incurred by other "healthy" individual foods, including dietary supplements, in meeting the second-tier sodium level.

Cheese. Reformulating cheeses to meet the second-tier sodium level would be difficult. However, FDA believes that, as of May 2001, every "healthy" cheese product had already been taken off the market. FDA identified 32 "healthy" cheeses, under one brand, on the market in 1999 according to the marketplace data analysis (Ref. 2). In an informal telephone inquiry, FDA confirmed that by May 2001, there were no longer "healthy" cheeses produced under this brand (Ref. 5).

Having no products to analyze prevents FDA from performing a detailed analysis of the potential impact of the second-tier sodium level on cheese. "Healthy" cheeses could have been taken off the market for several reasons. First, an aspect of the product unrelated to sodium content (e.g. lower fat requirements) could have been responsible for low product demand. If so, option 2a would not lead to any societal benefits through influencing the market for cheese. Second, firms may not be able to create an acceptable "healthy" cheese product even under the first-tier sodium level for individual foods. This means that there would be no cost or benefit difference between the first and second tiers of sodium content. Third, if "healthy" cheeses were taken off the market in anticipation of being unable to comply with the second-tier sodium level, adopting option 2a would probably encourage producers to re-introduce "healthy" cheese products.

In this case, FDA believes it likely that sodium content was not the primary factor in the decision to take "healthy" cheeses off the market. Many light mozzarella cheeses currently have a sodium content lower than second-tier sodium levels—between 167 and 357 mg per 50 g serving in our examples from Washington, DC, area grocery stores (Ref. 5)—and the "healthy" version of this cheese was among the most popular sellers among all "healthy" cheeses but was still pulled from the market (Ref. 2).

Soups. Costs associated with the current rule, and therefore benefits of avoiding these costs under option 2a, would be small for soups. "Healthy" soups had about a 7 percent market share by sales in 1999, but a major producer of "healthy" soups supports the second-tier sodium level; this is persuasive evidence that the private benefits to producers of preserving "healthy" as a high-quality health signal can be as valuable as the private cost of reformulation. This producer states in its comments to the ANPRM that, for most major varieties of its brand of "healthy" soup, it was able to achieve taste parity under the second-tier sodium level. However, another major soup producer does not support the second-tier level.

Costs of Option 2a. The principal costs of this option are all associated with the deterioration of "healthy" as a signal of a truly healthy individual food.

Based on the comments to the ANPRM, over 90 percent of "healthy" individual foods could meet the second-tier sodium limit without material adverse changes in taste or texture. Cheeses and soups represent a small percentage of all "healthy" individual foods. Retaining the first-tier sodium level for all individual foods would diminish the effectiveness of the "healthy" low sodium signal substantially, compared to the current rule. Alternatively, if FDA retained the first-tier "healthy" sodium level only for soups and cheeses, FDA believes this inconsistency would also diminish the usefulness of the term "healthy" as a low sodium signal.

In addition, the current and proposed rule's second-tier level for individual foods is more consistent with the "healthy" definition for meals and main dishes. As explained in detail in section III of this document, the first-tier sodium level for combinations of "healthy" individual foods allows significantly more sodium than when those same foods are combined into meals and main dishes. "Healthy" meal and main dish products must contain at least two noncondiment food groups; and still can only contain 600 mg sodium per meal or main dish under the first-tier sodium level. In contrast, two "healthy" individual foods combined in exactly the same way could contain 720 mg sodium under the stayed second-tier level, and up to 960 mg sodium under option 2a, or 40 percent of the RDI. The current and proposed rule's second-tier level for individual foods is fairly consistent with the meal and main dish first-tier sodium level, but the first-tier difference of up to 360 mg sodium between a meal and two individual foods is substantial and could have a health effect if consumers are using "healthy" specifically as a low sodium signal. FDA believes this inconsistency in the labeling claim "healthy" could lead to higher sodium intake, if the first-tier sodium level were to remain in effect for individual foods.

FDA believes that the major cost of option 2a is the increased health risk caused by higher sodium intake due to retaining the higher first-tier sodium level for individual foods. FDA further believes that the costs of this option outweigh the benefits of adopting as permanent the first-tier sodium limit for all or particular individual foods.

Option 2b: Retain the First-Tier Sodium Level for Meals and Main Dishes (the Proposed Rule).

Costs of Option 2b. The cost of this option, as in option 2a for individual foods, is the increased health risk due to higher sodium intake. However, FDA finds that adopting option 2b will not significantly affect the average amount of sodium consumed in an overall diet. The net increase in sodium intake under the proposed rule is insubstantial even under the most favorable assumptions of the effects of the current rule. Under some plausible scenarios, the average amount of sodium consumed could remain the same or actually increase if the current rule were implemented without amendment.

In the original analysis of the regulation defining the "healthy" claim, FDA referred to the many benefits of improved nutrition labeling, including decreased rates of cancer, coronary heart disease, obesity, hypertension, and allergic reactions to food. FDA also considered "healthy" claims an important contributor to the $4.4 billion to $26.5 billion benefit of improved food labels over the 20 years following the rule (59 FR 24232 at 24247 and 24248).

Several comments on the 1997 ANPRM expressed concern that "healthy" claims at the first-tier sodium level may undermine consumer attempts to improve their diets and health, as these meals are not truly healthy. An inaccurate "healthy" claim is not a useful signal that a product is indeed healthy.

In order to get a rough estimate of the difference in sodium intake between the current and proposed rule, we took a sample of 106 frozen meals and main dishes from a Washington, DC area grocery store (Ref. 5). The agency believes this sample is reasonably representative of the U.S. prepared dinner market, although it may not encompass all meal and main dish choices available nationwide. We also tested these results with a second Web-based sample (Ref. 5).

According to the Washington, DC grocery store sample, the current market for meals and main dishes can be characterized as having three segments. The first is the bargain segment, with two or three producers that offer basic meals, usually priced from $1 to $1.50 lower than the average product on the market. The second segment, or "normal" market, also has two or three major producers, with prices ranging from slightly lower to the same as the health-positioned goods in the third segment. Products in the second segment appear to compete mainly on taste or price rather than health attributes, although such products sometimes make health-related or dietary claims (e.g., "low-fat"). The third segment is the "claims" segment, which includes the "healthy" branded products, low-fat products, and more expensive specialty dishes such as organic goods. Many of these products prominently display fat and calorie information on the front of the package; these brands clearly use nutritional content as a marketing tool.

According to our analysis (Ref. 5), the "healthy" branded goods have the lowest average sodium content among the "claims" brands and the lowest average sodium content on the market. On average, they have 42 mg less sodium per meal than their next lowest competitor. Both the "healthy" branded goods and their main competitor that does not make "healthy" claims have average sodium levels under the first-tier limit of 600 mg for meals and main dishes.

We explore several possible consumer and producer responses to option 2b—retaining the first-tier sodium level for meals and main dishes—as compared to option 1—allowing the second-tier sodium level to go into effect—in the following scenarios. If FDA adopted option 1, firms would respond to the imposition of the second-tier sodium level for meals and main dishes in a strategic way. Among the "healthy" brands, producers would have the option of either reformulating their products to meet the second-tier level, or relabeling their products without the "healthy" claim or the "healthy" brand name. The concern here is the consumer response to these actions. Reformulated products may be less palatable or more expensive, leading to a loss of market share. Rebranded (or relabeled) products would no longer carry the "healthy" claim and therefore would not be subject to a sodium limit. Indeed, several independent comments to the ANPRM expressed concern that lowering the sodium requirement to the second-tier level could encourage a consumer to switch to higher sodium alternatives.

The scenarios are summarized in table 1 of this document. The first number in each cell is the average amount of sodium in mg and the second number in parentheses is the market share for each brand. The average sodium content amounts of 551 mg, 593 mg, 722 mg, and 856 mg per meal are the result of analysis explained in a technical memo (Ref. 5). The "healthy" brand has slightly over 9 percent of the total frozen dinner meal market when measured by sales volume, and the non-"healthy" brand 1 in the "claims" segment of the market has 10.5 percent. Nonfrozen meals and main dishes, including chili, are also important in the overall market, but 99 percent of the sales of the "healthy" brand and 100 percent of the sales of "claims" brand 2 are in the frozen meal category. The "other" brands in table 1 of this document represent the normal and bargain market segments previously described. We assume that the three "claims" brands in this analysis are a reasonable approximation to the "claims" market segment as previously described in this document. Each of their shares in the total market is divided by the sum of the shares of the three brands in the total market, which makes their market shares in the "claims" segment of the market (.45 + .52 +.03) equal to 1.

TABLE 1.—SODIUM CONSUMPTION SCENARIO ANALYSIS FOR SAMPLE 1 MEALS AND MAIN DISHES

Scenario	Healthy Brand Sodium mg (Market Share)	Claims Brand 1 Sodium mg (Market Share)	Claims Brand 2 Sodium mg (Market Share)	Other Sodium mg (Market Share)	Average Sodium mg
(1) Present market	551 (.45)	593 (.52)	722 (.03)	856 (0)	579
(2) Perfect reformulation (option 1)	476 (.45)	593 (.52)	722 (.03)	856 (0)	544
(3) Switch point, random share loss (option 1)	476 (.45 - .142)	593 (.52 + .047)	722 (.03 + .047)	856 (.047)	579
(4) Switch point, equal share loss to claims competitors (option 1)	476 (.45 - .193)	593 (.52 + .097)	722 (.03 + .097)	856 (0)	579
(5) Reformulation up (option 2b)	600 (.45)	593 (.52)	722 (.03)	856 (0)	600
(6a) Combined total response to option 1.	480 (.45 - .113)	593 (.52 + .056)	722 (.03 + .056)	856 (0)	566
(6b) Combined total response to option 2b.	580 (.45 + .04)	593 (.52 - .02)	722 (.03 - .02)	856 (0)	588
(6) Total effect (6b–6a)	———	———	———	———	22

Since option 1, or not amending the current rule, is the baseline for exploring the effect of option 2b, the first five scenarios are designed to demonstrate how different responses to the current rule (option 1) and the proposed rule (option 2b) affect the average amount of sodium consumed. Scenarios 6a and 6b combine the responses in the previous scenarios in an attempt to capture the total effect of the proposed rule. The last row, in the last column, is the total change in sodium when comparing the proposed rule (6b) to the option 1 (6a) (scenario 6—"total effect").

Scenario 1: The Present Market. The first-tier sodium level applies until 2006, but firms may be trying to prepare for the second-tier sodium level, causing the average amount of sodium in the "healthy" brand to be lower than it would be under the proposed rule. The average "claims" segment meal, as reported in the last column of table 1 of this document, contains 579 mg sodium, the average "healthy" brand meal contains 551 mg sodium, and several "healthy" brand meals in this sample are under the second-tier sodium level of 480 mg sodium.

Scenario 2: Perfect Reformulation. Under the very optimistic perfect reformulation assumption, where the "healthy" manufacturer could replicate every aspect of its product except the sodium level, the sodium level of the average "claims" segment meal would decrease to 544 mg (476*.45 + 593*.52 + 722*.03) under option 1. The difference between this and the current market is 1.5 percent of the RDI of 2400 mg/day.

Scenario 3: Random Loss of Market Share. Some "healthy" brand consumers may switch to other products if manufacturers of "healthy" products cannot perfectly reformulate their products. In this scenario, the "healthy" brand loses market share to each of its competitors and to the rest of the market ("other" brands) in equal amounts. If the loss of market share is small, sodium levels will still decline under option 1. However, the average sodium level per meal and per main dish would not change if the "healthy" product lost 32 percent of its market (14 percent of the "claims" market) under these assumptions.

Scenario 4: Loss of Market Share to Claims Competitors. Consumers are likely to switch from "healthy" products to other "claims" products. Since these alternatives have less sodium than the rest of the frozen foods market, the amount of "healthy" business lost that would still leave average sodium levels lower or unchanged would be higher than in scenario 3 under option 1. If the "healthy" product lost 43 percent of its market share (which is smaller than the 45 percent of their products one major producer of "healthy" products stated the current rule would adversely affect) equally to both "claims" competitors, the average "claims" segment meal's sodium content would be unchanged at 579 mg.

Scenario 5: Reformulation Up to First-Tier Limit. Here, we assume that only the current belief that the second-tier restrictions will become effective discourages the "healthy" product from increasing the amount of sodium up to the first-tier limit. Therefore, under the proposed rule, every "healthy" meal and main dish would contain 600 mg of sodium per meal. These meals and main dishes would no longer be the low sodium products in the market, but they would still be the second lowest sodium products among major producers, with "claims" brand 1 slightly lower. The average meal and main dish in the "claims" market would increase to 600 mg as well, which is 21 mg per meal more than the current amount and 56 mg more than the total under scenario 2, the most optimistic, perfect reformulation total.

Scenario 6: Total Effect. Scenario 6, which is scenario 6a (combined total response to option 1) subtracted from scenario 6b (combined total response to option 2b), represents the agency's estimate of the total effects of option 2b, which would adopt as permanent the first-tier sodium level for "healthy" meals and main dishes. In scenarios 6a and 6b, we make behavioral assumptions for both option 1 and option 2b.

Scenario 6a: Combined Total Response to Option 1. Of the "healthy" meals and main dishes in this sample, 75 percent are above and 25 percent are below the second-tier sodium level of 480 mg. If the second-tier sodium level were to take effect, we assume that the meals and main dishes already below 480 mg (25 percent of the total) would be reformulated up to 480 mg. Based on comments to the ANPRM, we assume that 37.5 percent of all "healthy" meals and main dishes (one-half of the 75 percent of "healthy" meals and main dishes currently above 480 mg) would be reformulated down to 480 mg of sodium without a loss of taste. An additional 19 percent of all healthy meals and main dishes (one-fourth of the 75 percent of "healthy" meals and main dishes currently above 480 mg) would be reformulated even though the reformulation would lead to some loss of taste. The remaining 19 percent of all healthy meals and main dishes (one-fourth of the 75 percent of "healthy" meals and main dishes currently above 480 mg) would either have "healthy" removed from the label or cease being produced.

The total response of producers to the second-tier level of 480 mg would therefore be:

- Producers increase the sodium level to 480 mg for the 25 percent of "healthy" meals and main dishes that are currently below 480 mg of sodium.
- Producers reduce the sodium level to 480 mg for 56 percent of "healthy" meals and main dishes (37.5 percent with no loss of taste, 19 percent with some loss of taste).
- Producers either drop "healthy" from the label or cease producing 19 percent of all "healthy" meals and main dishes.

In this scenario, consumers respond to the loss of taste and disappearance of products by switching choices within the "claims" segment of the market, which includes "healthy" and similar meals and main dishes. They switch with equal probability to any one of the three brands in the "claims" segment, which means that one-third will switch to another "healthy" product and two-thirds will switch to non-"healthy" products. The market share loss of the "healthy" brand is therefore 25 percent of its market, or two-thirds of the 37.5 percent of the market that experiences loss of taste, or disappearance of products. This is 11.3 percent of the total "claims" market. The average sodium intake implied by the market activity in this scenario under option 1 is 566 mg per meal.

Scenario 6b: Combined Total Response to Option 2b. We assume that producers will reformulate most, but not all, of the "healthy" products to the first-tier limit. We believe producers of "healthy" products will choose to position themselves as a slightly lower sodium alternative in this market, as they are currently positioned, but reformulate to increase sodium for taste reasons. Because of improved taste, these producers increase their market share by 10 percent under this scenario, so the average sodium intake under the proposed amendment would be 588 mg per meal.

The difference between scenarios 6a and 6b is the best estimate of the "sodium cost" of the proposed rule, which is only 22 mg per meal.

FDA's technical memo (Ref. 5) repeats the basic parts of this analysis for a second sample of products pulled from the Web sites of a producer of "healthy" products and a "claims" segment producer, which we performed as a stress test of the first sample conclusions. The result from this somewhat different sample of meal products is quite close to the 22 mg "sodium cost" calculated in scenario 6 of table 1 of this document.

According to our analysis, the sodium increase under option 2b, the proposed rule, would be insubstantial. Almost all studies linking sodium's influence on hypertension, coronary heart disease, and stroke consider the effect of a change in sodium consumption two orders of magnitude larger than these changes. A 100 mmol (2,300 mg) difference per day is typical in both clinical and epidemiological studies; these studies do not address the relative dose-response relationship of the small sodium intake differences found in the scenarios. Even if the effect were linear (i.e., even if the health risk associated with the mg change per day in sodium due to this proposed rule were a simple percentage of the 2,300 mg risk), the total statistical lives saved by implementing the second-tier sodium level for meals and main dishes would be less than 1 under the total effects calculation in table 1 of this document and in the results of the second sample (Ref. 5). However, FDA does not make this linear assumption. FDA believes that the health effects from this low level of sodium increase are negligible.

Benefits of Option 2b. The benefits of avoiding reformulation and relabeling costs under this option are substantial. As discussed in section III. C of this document, FDA identified 148 meal and main dish products labeled "healthy" among 10 brands.

Producers would have to expend resources to reformulate their meals to meet the second-tier sodium level. Lost market share due to product reformulation would not be a net loss, but rather a transfer from one company to another. Reformulation costs themselves are the lower limit of the cost to society of the current rule. If producers could reformulate perfectly, without altering any property other than sodium content, then reformulation would be the total cost of the rule. But if they could not replicate the desirable characteristics of their product, consumers would also suffer the utility loss of a market with fewer meal choices. This is a concern, since some dieticians recommend "healthy" claim products for their lower sodium content.

In the product samples used for the scenario analyses regarding the cost of the second-tier sodium level on meals and main dishes, a significant percentage (around 75 percent in the store-based sample and 50 percent in the Web site sample) of the major "healthy" producer's products are above the second-tier sodium levels. If this is representative of the market as a whole, then approximately 74 to 111 products would need to reduce their sodium to meet the second-tier level. In estimating the total effects of the second-tier sodium level on meals and main dishes, we assumed 56 percent reformulation, or 83 of the 148 products on the market (see scenario 6a, in table 1 of this document).

Preliminary testing costs incurred in the first stage of reformulation—according to comments on the ANPRM received from a frozen meal "healthy" brand producer that has begun investigating possible reformulation—are well over $1 million, but we do not have detailed reformulation cost estimates for meals and main dishes. The following reformulation cost estimations are based on a detailed example of tortilla chip reformulation, but the steps are typical of food reformulation in general. FDA requests information on any reformulation processes for the meal and main dish industry that are different from those described here.

The reformulation process typically starts in a laboratory, where researchers develop a new lower sodium formula for their meals. Then the company investigates availability and price of new ingredients (herbs, for example) and new equipment. If the reformulated meal passes these obstacles, it moves to the test kitchen, where researchers produce the product in small batches. If approved at this level, the meal graduates to a pilot plant. Cooking the product in large runs at the pilot plant may prove unsuccessful and require a manufacturer to restart the reformulation process, incurring additional expense. However, if pilot plant tests go well, full scale plant trials commence.

For reformulation of a meal, FDA assumes 5,000 hours of professional time at $30 per hour, $190,000 for development and pilot plant operating expenses, and $100,000 for market

testing per product, based on this industry example. Since this reformulation would be undertaken to keep an existing product, we assume no relabeling or marketing costs. The total reformulation costs are therefore $440,000 per product, or $36,520,000 for the 83 meals assumed to be reformulated if adopting the second-tier sodium levels for meals and main dishes under scenario 6a. This cost would be incurred in the first year or two after the introduction of the rule. Assuming 50 percent of the cost is incurred per year for 2 years, and ignoring the time discount, the cost is $18,260,000 per year.

Regardless of the relative costs of reformulation, FDA believes that a substantial number of market participants will choose to rebrand or relabel their products out of the "healthy" category if it becomes too restrictive. This has already happened under the current first-tier level: The number of "healthy" meals and main dish products dropped from 210 to 148 from 1993 through 1999, and the number of "healthy" brands dropped from 13 to 10. This time period spans the adoption of the current definition of "healthy" in 1994.

In this case, the direct costs of relabeling the product and conducting a marketing campaign would be social costs, since they represent extra investment that will not increase or improve the choice of products for consumers. Although FDA has no information about the costs of this type of rebranding activity to the manufacturer, they are most likely substantial.

However, the market may put a premium on "healthy" brands. This premium is a good measure of what consumers are willing to pay for the "healthy" signal. Since consumers would presumably be paying less for a less valuable product, the total effect of rebranding on consumer utility is negative but limited. However, firms have made an investment in the "healthy" brand based on an expected return closely related to this "willingness to pay" premium, and this investment would now be worthless if the product is unable to use the "healthy" claim. If the new definition of "healthy" with the second-tier sodium level is no more useful a health signal than the old definition, as we argue, this lost investment is a cost to society. In the original analysis of the regulation defining "healthy" (59 FR 24232 at 24247), which was issued in 1994, FDA estimated that the average premium (measured as the selling price difference) that the market placed on "healthy" brand goods was $0.57 per 16 oz equivalent. FDA used the Washington, DC store sample of 106 meals and main dishes referred to earlier to reestimate this premium for 2000, with similar results.

According to the analysis in FDA's technical memorandum (Ref. 5), the "healthy" brand competitor has a significant $0.32 premium over the other major health positioned producer in this market, and at least as high a premium over the other major claims producer. Excluding the specialty organic products, the "healthy" brand is the highest priced product on the market in our sample. FDA believes $0.32 to be a reasonable estimate of the market premium for the "healthy" brand. At average serving sizes of 10 oz, this translates into a $0.51 premium per 16 oz, which is very close to the $0.57 premium estimated in 1994.

In the 1994 analysis, the total value of each brand was based on this premium and average sales volumes. Sales of the brands still in the market were approximately 1.3 million units per product in 1999 (Ref. 2). Under the assumption of 19 percent rebranding in order for meals and main dishes to comply with the second-tier sodium level (scenario 6a), 28 products would be changed, with a total lost premium of $11,648,000 per year (28 products x $0.32 premium lost x average sales of 1.3 million units per year).

Adding this to the reformulation costs of the 83 products yields a total cost estimate of $29,908,000 for years one and two, and a residual of the lost premium of $11,648,000 for what would have been the rest of the normal life cycle of the lost "healthy" brand. Clearly, these costs are very large for a rule which would lead to little or no health benefit for the population, and avoiding these costs represents a large benefit of option 2b, the proposed rule.

Option 2c: Retain the First-Tier Sodium Levels for "Healthy" Meals and Main Dishes and Individual "healthy" Foods. The benefits and costs of option 2c are very close to the sum of the benefits and costs associated with options 2a and 2b. However, as stated in the discussion of option 2a previously in this document, retaining the first tier sodium levels for "healthy" individual foods would significantly decrease the consistency between sodium levels in "healthy" meals and main dishes and the sodium levels in meals put together by combining "healthy" individual foods. The less consistent the sodium levels in "healthy" meals and individual foods, the less consistent, and therefore less useful, is the low sodium signal conveyed by the "healthy" label.

Costs of Option 2c. The cost of this proposed amendment, as with option 2a for individual foods, and option 2b for meals and main dishes, is the increased risk due to higher sodium intake and the diminishing effectiveness of the "healthy" low sodium signal. Since option 2c is essentially combining options 2a and 2b, the costs associated with a higher sodium intake are roughly the sum of the costs associated with options 2a and 2b.

As discussed previously in detail in this document, the average increased sodium intake occurring under option 2b is insubstantial (roughly 22 mg per meal) and the health effects from this low level of sodium increase are negligible. As stated previously, even under the conservative assumption of a linear dose response, the statistical lives saved by decreasing allowable sodium in "healthy" meals and main dishes to tier-2 levels would be less than 1. Furthermore, the effectiveness of the "healthy" low sodium signal would not be diminished since tier-1 levels of sodium for meals and main dishes allow for even less sodium than would appear in a meal composed of tier-2 individual "healthy" ingredients.

However, the potential increase in sodium intake, as discussed in detail under option 2a, due to relaxing the current level of sodium allowable in individual "healthy" foods, as well as the costs associated with the deterioration of the "healthy" signal, is significant.

Therefore, FDA believes the costs of option 2c, due to the reduced effectiveness of the "healthy" low sodium signal and the health risks due to increased sodium intake are significant, but only negligibly higher than those costs described for option 2a.

Benefits of Option 2c. The benefits of avoiding reformulation, rebranding, and relabeling costs under this option are roughly the sum of the benefits associated with options 2a and 2b.

FDA estimates, as discussed in the benefits section of option 2a, that the benefits of avoiding reformulation and relabeling costs associated by retaining the first-tier sodium levels for individual "healthy" foods are small.

As discussed in the benefits section of option 2b, the benefits of avoiding reformulation, rebranding, and relabeling costs by retaining first-tier sodium levels for "healthy" meals and main dishes are substantial. FDA estimates the total cost of reformulation and relabeling avoided in option 2b is $29,908,000 for years one and two, and $11,648,000 per year thereafter.

Therefore, FDA believes the benefits of option 2c, due to the avoided reformulation and relabeling costs associated with implementing the tier-2 sodium levels for both "healthy" meal and main dishes and "healthy" individual foods, are substantial but only slightly higher than those benefits described for option 2b.

Net Benefits of Option 2c. The net benefits of option 2c, retaining the first-tier level of sodium for both "healthy" meals and main dishes and individual "healthy" foods, are roughly the sum of the net benefits of options 2a and 2b.

The net benefits of option 2a, retaining the first-tier level of sodium for individual "healthy" foods are negative. The costs due to the health risk associated with increased sodium intake and the lost consistency and meaning of the "healthy" low sodium signal outweigh the benefits due to avoided reformulation, rebranding, and relabeling costs.

The net benefits of option 2b, retaining the first-tier level of sodium for "healthy" meals and main dishes are positive. The benefits in avoided reformulation, rebranding and relabeling costs substantially outweigh the negligible costs due to a very small potential increase in average daily sodium intake.

Since the net benefits of retaining the first-tier sodium level for "healthy" meals and main dishes are so substantial, FDA believes the net benefits of 2c, roughly the sum of the net benefits associated with 2a and 2b, are positive, but lower than the net benefits of the proposed rule, which would adopt as permanent the first-tier sodium limits for meals and main dishes only.

3. Net Benefits of the Proposed Rule

This analysis attempts to take limited data to illustrate in some detail what would actually take place in the market under the proposed rule. First, the costs to the "healthy" signal's meaning and consistency outweigh the benefits of retaining the first-tier sodium level for individual foods. However, the meal and main dish analysis shows that while the benefits of retaining the first-tier sodium level (the costs foregone) are substantial for companies that would need to reformulate to comply with the second-tier sodium level or rebrand and relabel themselves out of the "healthy" market, the health costs associated with retaining the first-tier sodium level are both unquantifiable and most likely quite insubstantial or nonexistent. Therefore, the net benefits of the proposed rule, which would allow the second-tier sodium level to go into effect for individual foods but would adopt as permanent the first-tier sodium level for meals and main dishes, are positive.

B. Small Entity Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic effect of the rule on small entities. FDA finds that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would make permanent the less restrictive fist-tier sodium level that meals and main dishes must meet to make a "healthy" claim. Without this proposed rule, the more restrictive second-tier sodium level would raise the costs of making a "healthy" claim on such products. If a small business were to market a "healthy" meal or main dish, it would be able to do so at lower cost under the proposed rule than if FDA left the current rule unmodified.

This proposed rule does not modify the current rule for the sodium content of "healthy" individual foods, under which the second-tier sodium level for those foods will take effect in 2006. Although the proposed rule does not impose a cost on small businesses over and above the rule that would otherwise be in place, FDA could lower the cost to small businesses of making a "healthy" claim by adopting as permanent the first-tier sodium level for individual foods.

As stated in the preliminary regulatory impact analysis discussed earlier, manufacturers of "healthy" foods in three categories—cheeses, soups, and some meats—are likely to be affected by the implementation of the second-tier sodium level. These foods are discussed in this document. As FDA has no information concerning costs for other individual foods and has received no comments indicating that manufacturers of these other foods would have difficulty meeting the second-tier sodium level, the agency tentatively concludes that the impact on small entities producing other types of "healthy" individual foods is not significant. FDA invites comments regarding small entities producing other "healthy" individual foods that may be adversely impacted by this proposed rule.

Of the affected individual food categories, meat is regulated by the USDA and is not part of this analysis. The Small Business Administration (SBA) considers a cheese manufacturer small if it employs 500 or fewer workers, but no small or large business currently produces "healthy" cheese. The SBA considers a miscellaneous food manufacturer (neither SBA nor the Census Bureau specifically tracks soup producers) small if it employs 500 or fewer employees. According to the 1999 survey of foods used for this analysis, six companies produce "healthy" soups (Ref. 2), but none of these companies qualifies as a small business according to the standard SBA criteria. According to the 1999 Statistics for Businesses from the United States Census Bureau, over 90 percent of food manufacturers are small by the standard SBA criteria, so new entries into this industry in the future are likely to be small businesses. FDA tentatively concludes that this proposed rule will not have a significant impact on small entities.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has tentatively determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has tentatively concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Department of Agriculture and Department of Health and Human Services, "Dietary Guidelines for Americans," 5th ed., U.S. Government Printing Office, Washington, DC, 2000.
2. Anderson, Ellen M., memorandum to file, September 3, 2002.
3. Kim, Heili, memorandum to file, July 16, 2001.
4. Anderson, Ellen M. and Heili Kim, memorandum to file, August 30, 2001.
5. Mancini, Dominic, memorandum to file, May 23, 2002.
6. *Cheese: Chemistry, Physics and Microbiology*, edited by P.F. Fox Chapman & Hall, 2d ed.
7. Kim, Heili, memorandum to file, May 15, 2001.
8. Anderson, Ellen M., memorandum to file, August 19, 2002.
9. Kim, Heili, memorandum to file, May 15, 2001.
10. National Partnership for Reinventing Government, Plain Language Action Network, Presidential Memorandum on Plain Language (www.plainlanguage.gov/cites/memo.htm).

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.65 is amended by revising paragraph (d) to read as follows:

§ 101.65 Implied nutrient content claims and related label statements.

* * * * *

(d) *General nutritional claims.* (1) This paragraph covers labeling claims that are implied nutrient content claims because they:

(i) Suggest that a food because of its nutrient content may help consumers maintain healthy dietary practices; and

(ii) Are made in connection with an explicit or implicit claim or statement about a nutrient (e.g., "healthy, contains 3 grams of fat").

(2) You may use the term "healthy" or related terms (e.g., "health," "healthful," "healthfully," "healthfulness," "healthier," "healthiest," "healthily," and "healthiness") as an implied nutrient content claim on the label or in labeling of a food that is useful in creating a diet that is consistent with dietary recommendations if:

(i) The food meets the following conditions for fat, saturated fat, cholesterol, and other nutrients:

If the food is...	The fat level must be...	The saturated fat level must be...	The cholesterol level must be...	The food must contain...
(A) A raw fruit or vegetable	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	N/A
(B) A single-ingredient or a mixture of frozen or canned fruits and vegetables	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	N/A
(C) An enriched cereal-grain product	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)(2)	The disclosure level for cholesterol specified in § 101.13(h) or less	N/A
(D) A raw, single-ingredient seafood or game meat	Less than 5 grams (g) fat per RA[1] and per 100 g	Less than 2 g saturated fat per RA and per 100 g	Less than 95 milligrams (mg) cholesterol per RA and per 100 g	At least 10 percent of the RDI[2] or the DRV[3] per RA of one or more of vitamin A, vitamin C, calcium, iron, protein, or fiber
(E) A meal product as defined in § 101.13(l) or a main dish product as defined in § 101.13(m)	Low fat as defined in § 101.62(b)(3)	Low saturated fat as defined in § 101.62(c)	90 mg or less cholesterol per SS[4]	At least 10 percent of the RDI or the DRV per SS of two nutrients (for a main dish) or of three nutrients (for a meal) of the following six nutrients—vitamin A, vitamin C, calcium, iron, protein, or fiber
(F) A food not specifically listed in this document	Low fat as defined in § 101.62(b)(2)	Low saturated fat as defined in § 101.62(c)	The disclosure level for cholesterol specified in § 101.13(h) or less	At least 10 percent of the RDI or the DRV per RA of one or more of vitamin A, vitamin C, calcium, iron, protein, or fiber

[1] RA means Reference Amount Customarily Consumed per Eating Occasion (§ 101.12(b)).
[2] RDI means Reference Daily Intake (§ 101.9(c)(8)(iv)).
[3] DRV means Daily Reference Value (§ 101.9(c)(9)).
[4] SS means Serving Size Listed on the Label (§ 101.9(b)), also referred to as Labeled Serving Size.

(ii) The food meets the following conditions for sodium:

If the food is...	The sodium level must be..
(A) A food with a RA[1] that is *greater* than 30 g or 2 tablespoons (tbsp)	360 mg or less sodium per RA and per SS[2]
(B) A food with a RA that is *equal to or less than* 30 g or 2 tbsp	360 mg or less sodium per 50 g[3]
(C) A meal product as defined in § 101.13(l) or a main dish product as defined in § 101.13(m)	600 mg or less sodium per SS

[1] RA means Reference Amount Customarily Consumed per Eating Occasion (§ 101.12(b)).
[2] SS means Serving Size Listed on the Label (§ 101.9(b)), also referred to as Labeled Serving Size.
[3] For dehydrated food that is typically reconstituted with water or a liquid that contains insignificant amounts per RA of all nutrients (as defined in § 101.9(f)(1)), the 50 g refers to the "prepared" form of the product.

(iii) The food complies with the definition and declaration requirements in part 101 of this chapter for any specific nutrient content claim used in labeling the food;

(iv) For foods in paragraph (d)(2)(i)(B) of this section, you may add ingredients that do not change the nutrient profile;

(v) Enriched cereal-grain products in paragraph (d)(2)(i)(C) of this section must conform to a standard of identity in part 136, 137, or 139 of this chapter; and

(vi) If you add a nutrient to the foods in paragraph (d)(2)(i)(D), (d)(2)(i)(E), or (d)(2)(i)(F) of this section to meet the 10 percent requirement, that addition must be consistent with the fortification policy for foods in § 104.20 of this chapter.

Dated: February 13, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4100 Filed 2–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

National Security Agency/Central Security Services

32 CFR Part 322

[NSA Reg. 10–35]

Privacy Act; Implementation

AGENCY: National Security Agency/Central Security Services, DOD.

ACTION: Proposed rule.

SUMMARY: The National Security Agency/Central Security Services (NSA/CSS) is proposing to revise its Privacy Act Program procedural and exemption rules.

Revisions to the procedural rule include updating the responsibilities assigned to NSA/CSS personnel, and establishing a queue to process Privacy Act requests. Requesters will no longer be required to wait a long period of time to learn that the Agency has a no records responsive to their requests or to obtain records that require minimal review.

The NSA/CSS exemption rules are being revised to add specific subsections of 5 U.S.C. 552a from which information may be exempt, and to add the reasons for taking the specific subsections.

DATES: Comments must be received on or before April 21, 2003 to be considered by this agency.

ADDRESSES: Send comments to the National Security Agency, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act". It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism". It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 322

Privacy.

Accordingly, it is proposed that 32 CFR part 322 be revised to read as follows:

PART 322—NSA/CSS PRIVACY ACT PROGRAM

Sec.

322.1 Purpose and applicability.
322.2 Definitions.
322.3 Policy.
322.4 Responsibilities.
322.5 Procedures.
322.6 Establishing exemptions.
322.7 Exempt systems of records.

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 322.1 Purpose and applicability.

(a) This part implements the Privacy Act of 1974 (5 U.S.C. 552a), as amended and the Department of Defense Privacy Program (32 CFR part 310) within the National Security Agency/Central Security Service (NSA/CSS); establishes policy for the collection and disclosure of personal information about individuals; assigns responsibilities and establishes procedures for collecting personal information and responding to first party requests for access to records,

amendments of those records, or an accounting of disclosures.

(b) This part applies to all NSA/CSS elements, field activities and personnel and governs the release or denial of any information under the terms of the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

§ 322.2 Definitions.

(a) *Access.* The review of a record or a copy of a record or parts thereof in a system of records by an individual.

(b) *Confidential source.* A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

(c) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(d) *Employees of NSA/CSS.* Individuals employed by, assigned or detailed to the NSA/CSS. This part also applies to NSA/CSS contractor personnel who administer NSA/CSS systems of records that are subject to the Privacy Act.

(e) *FOIA Request:* A written request for NSA/CSS records, made by any person, that either explicitly or implicitly invokes the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended. FOIA requests will be accepted by U.S. mail or its equivalent, facsimile, or the Internet, or employees of NSA/CSS may hand deliver them.

(f) *Individual.* A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not individuals.

(g) *Maintain.* Includes maintain, collect, use or disseminate.

(h) *Medical Records.* Documents relating to the physical care and treatment of an individual.

(i) *Privacy Act Request.* A written request containing a signature submitted by a U.S. citizen or alien admitted for permanent residence for access to or amendment of records on himself/herself which are contained in a PA system of records. PA requests will be accepted via mail or facsimile, or NSA/CSS employees may hand deliver them. Digital signatures will be accepted via the Internet by October 21, 2003. Until then, PA requests will not be accepted via the Internet. Requests received via the Internet will not be acknowledged. Regardless of whether the requester cites the FOIA, PA, or no law, the request for records will be processed under both this part and the FOIA. Requests for amendments will be processed pursuant to the PA.

(j) *Personal information.* The collection of two or more pieces of information that is about an individual: *e.g.* name and date of birth, Social Security Number.

(k) *Personal notes.* Notations created in paper or electronic form for the convenience and at the discretion of the originator, for the originator's eyes only, and over which NSA/CSS exercises no control. Personal notes are not agency records within the meaning of the Privacy Act (PA) or the Freedom of Information Act (FOIA). However, once the personal note, or information contained therein, is shared with another individual, it becomes an Agency record and is subject to the provisions of the FOIA and, if appropriate, the PA.

(l) *Psychological Records.* Documents relating to the psychological care and treatment of an individual.

(m) *Record.* Any item, collection, or grouping of information, whatever the storage media (paper, electronic, etc.) about an individual or his or her education, financial transactions, medical history, criminal or employment history, and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice print, or a photograph. The record must be in existence and under the control of NSA/CSS at the time a request is made.

(n) *Routine use.* The disclosure of a record outside NSA/CSS or the DoD for a use that is compatible with the purpose for which the information was collected and maintained by NSA/CSS. The routine use must be included in the published system of records.

(o) *System of Records.* A group of records under the control of a federal agency from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to an individual.

§ 322.3 Policy.

(a) The National Security Agency/Central Security Service shall maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the Agency, and that is required or authorized to be maintained by statute or Executive Order. Information about an individual shall, to the greatest extent practicable, be collected directly from the individual if the information may result in adverse determinations about the individual's rights, benefits, and privileges under any Federal program. Records used by this Agency in making adverse determinations about an individual shall be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual. The Agency shall protect the privacy of individuals identified in its records, and shall permit an individual to request access to personal information in records on himself/herself and to request correction or amendment of factual information contained in such records. These policies are consistent with the spirit and intent of the PA, and are subject to exemptions under the Act, as defined in § 322.7, and legal requirements to protect sensitive NSA information such as the intelligence sources and methods the Agency employs to fulfill its mission.

(b) Pursuant to written requests submitted in accordance with the PA, the NSA/CSS shall make records available consistent with the Act and the need to protect government interests pursuant to subsections (d) and (k) of the Privacy Act. Oral requests for information shall not be accepted. Before the Agency responds to a request, the request must comply with the provisions of this part.

(c) In order that members of the public have timely access to unclassified information regarding NSA activities, requests for information that would not be withheld if requested under the FOIA or the PA may be honored through appropriate means without requiring the requester to invoke the FOIA or the PA. Although a record may require minimal redaction before its release, this fact alone shall not require the Agency to direct the requester to submit a formal FOIA or PA request for the record.

§ 322.4 Responsibilities.

(a) The Director's Chief of Staff (DC) is responsible for overseeing the administration of the PA. The Director of Policy (DC3), or the Deputy Director of Policy, if so designated, shall carry out this responsibility on behalf of the Chief of Staff and shall:

(1) Provide policy guidance to NSA/CSS on PA issues.

(2) Provide policy guidance to PA coordinators for processing PA requests from NSA/CSS employees who will be using the records within NSA/CSS spaces.

(3) Provide training of NSA/CSS employees and contractors in the requirements of the PA. Specialized training is provided to special investigators and employees who deal with the news media or the public.

(4) Receive, process, and respond to PA requests from individuals and employees who require the information for use outside of NSA/CSS spaces.

(i) Conduct the appropriate search for and review of records.

(ii) Provide the requester with copies of all releasable material.

(iii) Notify the requester of any adverse determination, including his/her right to appeal an adverse determination to the NSA/CSS Appeal Authority.

(iv) Assure the timeliness of responses.

(5) Receive, process and respond to PA amendment requests to include:

(i) Obtain comments and supporting documentation from the organization originating the record.

(ii) Conduct a review of all documentation relevant to the request.

(iii) Advise the requester of the Agency's decision.

(iv) Notify the requester of any adverse determination, including his/her right to appeal the adverse determination to the NSA/CSS Appeal Authority.

(v) Direct the appropriate Agency organization to amend a record and advise other record holders to amend the record when a decision is made in favor of a requester.

(vi) Assure the timeliness of responses.

(6) Ensure that Agency employees (internal requesters) that have access to NSA/CSS spaces are given access to all or part of a PA record to which the employee was denied by the record holder when, after a review of the circumstances by the Director of Policy, it is determined that access should be granted. For those individuals who do not have access to NSA/CSS spaces see § 322.6 of this part.

(7) Conduct Agency reviews in accordance with OMB Circular A–130 [1] and 32 CFR part 310.

(8) Deposit in the U.S. Treasury all fees collected as a result of charges levied for the duplication of records provided under the PA and maintain the necessary accounting records for such fees.

(b) The NSA/CSS Privacy Act Appeal Authority is designated as the reviewing authority for requests for review of denials by the Director of Policy to provide access to a record and/or to amend a record. The PA Appeal Authority is the Deputy Director, NSA. In the absence of the Deputy Director, the Director's Chief of Staff serves as the Appeal Authority.

(c) The General Counsel (GC) or his designee shall:

(1) Advise on all legal matters concerning the PA.

(2) Advise the Director of Policy and other NSA/CSS organizations, as appropriate, of legal decisions including rulings by the Justice Department and actions by the DoD Privacy Board involving the PA.

(3) Review proposed responses to PA requests to ensure legal sufficiency, as appropriate.

(4) Provide a legal review of proposed Privacy Act notices and amendments for submission to the Defense Privacy Office.

(5) Assist, as required, in the preparation of PA reports for the Department of Defense and other authorities.

(6) Review proposals to collect PA information for legal sufficiency, assist in the development of PA statements and warning statements when required and approve prior to use.

(7) Represent the Agency in all judicial actions related to the PA by providing support to the Department of Justice and by keeping the DoD Office of General Counsel apprised of pending PA litigation. A litigation status sheet will be provided to the Defense Privacy Office.

(8) Assist in the education of new and current employees, including contractors, to the requirements of the PA.

(9) Review PA and PA Amendment appeals, prepare responses, and submit them to the NSA/CSS Appeal Authority for final decision.

(10) Notify the Director of Policy of the outcome of all appeals.

(d) The Associate Director for Human Resources Services or designee shall:

(1) Establish the physical security requirements for the protection of personal information and ensure that such requirements are maintained.

(2) Establish and ensure compliance with procedures governing the pledging of confidentiality to sources of information interviewed in connection with inquiries to determine suitability, eligibility or qualifications for Federal employment, Federal contracts, or access to classified information.

(3) Retain copies of records processed pursuant to the PA. The retention schedule is six years from the date records were provided to the requester if deletions were made and two years if records were provided in their entirety.

(4) Ensure the prompt delivery of all PA requests to the Director of Policy.

(5) Ensure the prompt delivery of all Privacy Act appeals of an adverse determination to the NSA/CSS PA Appeal Authority staff.

(6) Ensure that forms used to collect PA information meet the requirements of the PA.

(7) Compile, when required, estimates of cost incurred in the preparation or modification of forms requiring PA Statements.

(8) Assist in the development of training courses to educate new and current Agency employees, including contractors, of the provisions of the PA.

(9) Respond to PA requests for access to records, as appropriate.

(10) Establish procedures for the protection of personal information and ensure compliance with the procedures.

(e) The Inspector General (IG) shall:

(1) Be alert to Privacy Act compliance and to managerial administrative, and operational problems associated with the implementation of this part and document any such problems and remedial actions, if any, in official reports to responsible Agency officials, when appropriate.

(2) Respond, as appropriate, to PA requests.

(3) Establish procedures for the protection of personal records under the control or in the possession of OIG and ensure compliance with the procedures.

(f) Chiefs of Directorates, Associate Directorates, and Field Elements shall:

(1) Ensure that no systems or subsets of Systems of Records other than those published in the **Federal Register** are maintained within their components or field elements.

(2) Establish rules of conduct for persons who design, use or maintain Systems of Records within their components or field elements and ensure compliance with these rules.

(3) Establish, in consultation with the Associate Director of Human Resources or designee, the physical security requirements for the protection of personal information and ensure that such requirements are maintained.

(4) Ensure that no records are maintained within their components or field elements which describe how any individual exercises rights guaranteed by the First Amendment to the

[1] Available from *http://www.whitehouse.gov/omb/circulars/index.html.*

Constitution of the United States unless expressly authorized by statute, or by the individual about whom the record is maintained, or unless pertinent to, and within the scope of, an authorized law enforcement activity.

(5) Ensure that records contained in the Systems of Records within their components or field elements are not disclosed to anyone other than in conformance with the Privacy Act, to include the routine uses for such records published in the **Federal Register**.

(6) Maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute and Executive Order.

(7) Maintain all records which are used by the Agency in making any determination about any individual with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in any determination.

(8) Establish procedures for protecting the confidentiality of personal records maintained or processed by computer systems and ensure compliance with the procedures.

(9) Designate a primary and alternate PA coordinator to be responsible for PA matters and inform the Office of Policy of the designations. Subordinate PA coordinators may be appointed at office level.

(10) Ensure that the Privacy Act coordinators acquire the necessary training in the theory and administration of the Privacy Act.

(11) Ensure that the Privacy Act coordinators conduct, to the extent practicable, on-the-job PA training of supervisors and records handlers in their organizations.

(12) Respond to PA requests to review records, as appropriate.

(13) Establish procedures for the protection of personal records and ensure compliance with the procedures.

(14) Establish procedures to ensure that requests for copies of PA records needed for external use, outside of NSA/CSS, shall be delivered to the Director of Policy immediately upon receipt once the request is identified as a Privacy Act request or appears to be intended as such a request.

(15) Publish, as necessary, internal PA procedures which are consistent with the Privacy Act and this part.

(16) Maintain an accounting of disclosures of records as described in § 322.5 of this part.

(17) Coordinate with the Office of the General Counsel any proposed new record systems or changes (either alterations or amendments) to existing systems. Notice of new record systems or alterations to existing systems must be published in the **Federal Register** at least 30 days and Congress and the Office of Management and Budget must be given 40 days to review the new/altered system before implementation.

(18) Collect and forward to the Director of Policy information necessary to prepare reports, as requested.

(19) Respond promptly to the Director of Policy and the PA Appeal Authority decisions concerning the granting access to records, amending records, or filing statements of disagreements.

(20) Ensure that forms (paper or electronic) used to collect PA information meet the requirements of the PA.

(21) Establish procedures to ensure that requests to conduct computer matching are forwarded to the Director of Policy.

(g) Each field element shall designate a Privacy Act (PA) Coordinator to ensure compliance with this part and to receive and, where appropriate, process PA requests. Section 322.6 of this part describes the procedure for individuals to gain access to records and the responsibilities of the PA Coordinators. Consistent with the provisions of 32 CFR parts 285 and 286 and 32 CFR part 310 special procedures apply to the disclosure of certain medical records and psychological records. Field elements should consult the PA Coordinator of the Office of Occupational Health, Environment and Safety Services before disclosing such information. (See paragraph (d)(9) of this section.)

(h) All NSA/CSS organizations and field elements responsible for electronic/paper forms or other methods used to collect personal information from individuals shall determine, with General Counsel's concurrence, which of those forms or methods require Privacy Act Statements and shall prepare the required statements. The Office of Policy requires all organizations or elements using such forms or methods shall ensure that respondents read, understand, and sign the statements before supplying the requested information. In addition, organizations must obtain the Director of Policy and the Office of General Counsel approval prior to the collection of personal information in electronic format.

§ 322.5 Procedures.

(a) The Director of Policy, or the Deputy Director of Policy, if so designated, shall provide guidance to Privacy Act Coordinators for processing requests and releasing NSA/CSS information within the confines of the NSA/CSS. If any organization or element believes a request to review a PA record should be denied, it shall advise the requester of the procedures for requesting a review of the circumstances of the case by the Director of Policy.

(b) Persons Authorized Access to NSA/CSS Facilities:

(1) Requests from NSA/CSS affiliates with authorized access to NSA/CSS facilities to review and/or obtain a copy of PA records in a Systems of Records for use within NSA/CSS spaces or for the inspection of an accounting of disclosures of the record shall be in writing, using the Privacy Act Information Request form. Requests shall normally be submitted directly to the Privacy Act Coordinator in the office holding the record. In the case of requests for access to records maintained in the individual's own organization, the Privacy Act Coordinator for that organization shall direct the requester to the person or office holding the record. A Privacy Act Information Request form shall be submitted to the holder of each record desired. The Privacy Act Coordinator shall assist supervisors and record handlers in processing the request and shall maintain an accounting for reporting purposes. Individuals shall not be permitted to review or obtain an internal copy of IG, OGC and/or certain security records. The Personnel File, which was available upon request prior to the implementation of the Privacy Act, shall continue to be available for review without citing the Privacy Act or using the Privacy Act Information Request form.

(2) Requests to obtain a copy of PA records for use outside of NSA/CSS shall be forwarded to the Director of Policy, FOIA/PA Services (DC321) using the Privacy Act Information Request form or in any written format and must contain the individual's full name, signature, social security number, description of the records sought and a work or home phone number. Requests shall be processed pursuant to the Privacy Act and the FOIA.

(c) Persons Not Authorized Access to NSA/CSS Facilities:

(1) Requests from individuals who do not have authorized access to NSA/CSS facilities must be in writing, contain the individual's full name, current address, signature, social security number and a description of the records sought. The mailing address for the FOIA/PA office is: National Security Agency, ATTN: FOIA/PA Services (DC321), 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

(2) FOIA/PA Services may, at its discretion, require an unsworn declaration or a notarized statement of identity. In accordance with 28 U.S.C. 1746, the language for an unsworn declaration is as follows:

(i) If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

(ii) If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

(d) General Provisions Regarding Access and Processing Procedures:

(1) The requester need not state a reason or otherwise justify the request. If the requester wishes to be accompanied by another person, the individual may be required to furnish a statement authorizing discussion or disclosure of the records in the presence of the other individual. If the requester wishes another person to obtain the records on his/her behalf, the requester shall provide a written statement appointing that person as his/her representative, authorizing that individual access to the records and affirming that such access shall not constitute an invasion of the requester's privacy or a violation of his/her rights under the Privacy Act. In addition, requests from parents or legal guardians for records on a minor may be accepted providing the individual is acting on behalf of the minor and evidence is provided to support his or her parentage (birth certificate showing requester as a parent) or guardianship (a court order *establishing guardianship*).

(2) The Director of Policy and FOIA/PA Services (DC321) shall endeavor to respond to a direct request to the NSA/CSS within 20 working days of receipt. In the event the FOIA/PA Services cannot respond within 20 working days due to unusual circumstances, the requester shall be advised of the reason for the delay and negotiate a completion date with the requester. Direct requests to NSA/CSS shall be processed in the order in which they are received. Requests referred to NSA/CSS by other government agencies shall be placed in the processing queue according to the date the requester's letter was received by the referring agency, if that date is known. If it is not known, it shall be placed in the appropriate processing queue according to the date of the requester's letter.

(3) FOIA/PA requests for copies of records shall be worked in chronological order within six queues ("super easy," "sensitive/personal easy," "non-personal easy," "sensitive/personal voluminous," "non-personal complex," and "expedite"). The processing queues are defined as follows:

(i) Super Easy Queue—The super easy queue is for requests for which no responsive records are located or for material that requires minimal specialized review.

(ii) Sensitive/Personal Easy Queue—The sensitive/personal easy queue contains FOIA and PA records that contain sensitive personal information, typically relating to the requester or requester's relatives, and that do not require a lengthy review. DC321 staff members who specialize in handling sensitive personal information process these requests.

(iii) Non-Personal Easy Queue—The non-personal easy queue contains all other types of NSA records not relating to the requester, that often contain classified information that may require coordinated review among NSA components, and that do not require a lengthy review. DC321 staff members who specialize in complex classification issues process these requests.

(iv) Sensitive/Personal Voluminous Queue—The sensitive/personal voluminous queue contains FOIA and PA records that contain sensitive personal information, typically relating to the requester or requester's relatives, and that require a lengthy review because of the high volume of responsive records. These records may also contain classified information that may require coordinated review in several NSA components. DC321 staff members who specialize in handling *sensitive personal information process* these requests.

(v) Non-Personal Complex Queue—The non-personal complex queue contains FOIA records not relating to the requester that require a lengthy review because of the high volume and/or complexity of responsive records. These records contain classified, often technical information that requires coordinated review among many specialized NSA components, as well as consultation with other government agencies. DC321 staff members who specialize in complex classification issues process these requests.

(vi) Expedite Queue—Cases meeting the criteria for expeditious processing as defined in this section will be processed in turn within that queue by the appropriate processing team.

(4) Requesters shall be informed immediately if no responsive records are located. Following a search for and retrieval of responsive material, the initial processing team shall determine which queue in which to place the material, based on the criteria above, and shall so advise the requester. If the material requires minimal specialized review (super easy), the initial processing team shall review, redact if required, and provide the non-exempt responsive material to the requester immediately. The appropriate specialized processing team on a first in, first out basis within its queue shall process all other material. These procedures are followed so that a requester will not be required to wait a long period of time to learn that the Agency has no records responsive to his request or to obtain records that require minimal review.

(5) Requests for expeditious processing must include justification and a statement certifying that the information is true and correct to the best of the requester's knowledge. Expedited processing shall be granted if the requester demonstrates a compelling need for the information. Compelling need is defined as the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or there would be an imminent loss of substantial due process rights.

(6) A request for expedited handling shall be responded to within 10 calendar days of receipt. The requester shall be notified whether his/her request meets the criteria for expedited processing within that time frame. If a request for expedited processing has been granted, a substantive response shall be provided within 20 working days of the date of the expedited *decision. If a substantive response* cannot be provided within 20 working days, a response shall be provided as soon as practicable and the chief of FOIA/PA Services shall attempt to negotiate an acceptable completion date with the requester, taking into account the number of cases preceding it in the expedite queue and the volume or complexity of the responsive material.

(7) Upon receipt of a request, FOIA/PA Services (DC321) shall review the request and direct the appropriate PA coordinator to search for responsive records. If the search locates the requested records, the PA coordinator shall furnish copies of the responsive documents to the FOIA/PA office that in turn shall make a determination as to the releasability of the records. All releasable records, or portions thereof, shall be provided to the requester. However, if information is exempt pursuant to the FOIA and PA, the

requester shall be advised of the statutory basis for the denial of the information and the procedure for filing an appeal. In the instance where no responsive records are located, the requester shall be advised of the negative results and his/her right to appeal what could be considered an adverse determination. NSA does not have the authority to release another agency's information; therefore, information originated by another government agency shall be referred to the originating agency for its direct response to the requester or for review and return to NSA for response to the requester. The requester shall be advised that a referral has been made, except when notification would reveal exempt information.

(8) The requester shall not be charged a fee for the making of a comprehensible copy to satisfy the request for a copy of the documents. The requester may be charged for duplicate copies of the documents. However, if the direct cost of the duplicate copy is less than $25.00, the fee shall be waived. Duplicating fees shall be assessed according to the following schedule: Office Copy $.15 per page, Microfiche $.25 per page, and Printed Material $.02 per page. All payments shall be made by certified check or money order made payable to the Treasurer of the United States.

(9) A medical/psychological record shall normally be disclosed to the individual to whom it pertains. However, and consistent with 5 U.S.C. 552a(f)(3) of the Privacy Act, if in the judgment of an authorized Agency physician, the release of such information could have an adverse effect on the individual, the individual shall be advised that it is in his best interest to receive the records through a physician of the requester's choice or, in the case of psychological records, through a licensed Psychiatrist or licensed Clinical Psychologist of the requester's choice. NSA/CSS may require certification that the individual is licensed to practice the appropriate specialty. Although the requester shall pay any fees charged by the physician or psychologist, NSA/CSS encourages individuals to take advantage of receiving their records through this means. If, however, the individual wishes to waive receiving the records through this means, the records shall be sent directly to the individual.

(10) Recipients of requests from NSA/CSS employees and affiliates for access to records within the confines of the NSA/CSS campus shall acknowledge the request within 10 working days of receipt, and access should be provided within 20 working days. If, for good cause, access cannot be provided within that time, the requester shall be advised in writing as to the reason and shall be given a date by which it is expected that access can be provided. If an office denies a request for access to a record, or any portion thereof, it shall notify the requester of its refusal and the reasons for it and shall advise the individual of the procedures for requesting a review of the circumstances by the Director of Policy. If the Director of Policy denies a request for access to a record or any portion thereof, the requester shall be notified of the refusal and the reasons the information was denied. The Director of Policy shall also advise the requester of the procedure for appealing to the NSA/CSS Privacy Act Appeal Authority. (See paragraph (e) of this section).

(11) Although classified portions of NSA/CSS records are exempt from disclosure pursuant to exemption (k)(1) of the Privacy Act and exemption (b)(1) of the FOIA, NSA, in its sole discretion, may choose to provide an NSA affiliate access to the classified portions of records about the affiliate if the affiliate possesses the requisite security clearance, special access approvals, and appropriate need-to-know for the classified information at issue. Classified records may only be accessed by fully cleared personnel in NSA/CSS spaces. Disclosure of classified records under this provision shall not operate as a waiver of PA exemption (k)(1), FOIA exemption (b)(1), or of any other exemption or privilege that would otherwise authorize the Agency to withhold the classified records from disclosure. NSA's determination regarding an affiliate's need-to-know is not subject to appeal under this or any other authority. All copies of classified records made available to an NSA affiliate under the procedures of this Part shall carry the following statement: "This classified material is provided to you under the provisions of the Privacy Act of 1974. Furnishing you this material does not relieve you of your obligations under the laws of the United States (See, e.g., section 798 of Title 18, U.S. Code) to protect classified information. You may retain this material under proper protection as specified in the NSA/CSS Classification Manual; you may not remove it from NSA/CSS facilities."

(12) The procedures described in this part do not entitle an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding, nor do they require that a record be created.

(13) Requesting or obtaining access to records under false pretenses is a violation of the Privacy Act and is subject to criminal penalties.

(e) Appeal of Denial of an Adverse Determination:

(1) Any individual advised of an adverse determination shall be notified of the right to appeal the initial decision within 60 calendar days of the date of the response letter and that the appeal must be addressed to the NSA/CSS FOIA/PA Appeal Authority, National Security Agency, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755–6248. The following actions are considered adverse determinations:

(i) Denial of records or portions of records.

(ii) Inability of NSA/CSS to locate responsive records.

(iii) Denial of a request for expeditious treatment.

(iv) Non-agreement regarding completion date of request.

(v) The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes the appeal should be granted.

(2) The GC or his/her designee shall process appeals and make a recommendation to the Appeal Authority:

(i) Upon receipt of an appeal regarding the denial of information or the inability of the Agency to locate records on an individual, the GC or his/her designee shall provide a legal review of the denial and/or the adequacy of the search for responsive material, and make other recommendations as appropriate.

(ii) If the Appeal Authority determines that additional information may be released, the information shall be made available to the requester within 20 working days from receipt of the appeal. The conditions for responding to an appeal for which expedited treatment is sought by the requester are the same as those for expedited treatment on the initial processing of a request.

(iii) If the Appeal Authority determines that the denial was proper, the requester must be advised 20 days after receipt of the appeal that the appeal is denied. The requester likewise shall be advised of the basis for the denial and the provisions for judicial review of the Agency's appellate determination.

(iv) If a new search for records is conducted and produces additional records, the additional material shall be forwarded to the Director of Policy, as the initial denial authority (IDA), for review. Following review, the Director of Policy shall return the material to the GC with its recommendation for release or withholding. The GC will provide a legal review of the material, and the Appeal Authority shall make the release determination. Upon denial or release of additional information, the Appeal Authority shall advise the requester that more material was located and that the IDA and the Appeal Authority each conducted an independent review of the documents. In the case of denial, the requester shall be advised of the basis of the denial and the right to seek judicial review of the Agency's action.

(v) When a requester appeals the absence of a response to a request within the statutory time limits, the GC shall process the absence of a response as it would denial of access to records. The Appeal authority shall advise the requester of the right to seek judicial review.

(vi) Appeals shall be processed using the same multi-track system as initial requests. If an appeal cannot be responded to within 20 days, the requirement to obtain an extension from the requester is the same as with initial requests. The time to respond to an appeal, however, may be extended by the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request. That is, if the initial request is processed within 20 days so that the extra 10 days of processing which an agency can negotiate with the requester are not used, the response to the appeal may be delayed for that 10 days (or any unused portion of the 10 days).

(f) Amendment of Records:

(1) Minor factual errors may be corrected without resort to the Privacy Act or the provisions of this part, provided the requester and record holder agree to that procedure. Whenever possible, a copy of the corrected record should be provided to the requester.

(2) Requests for substantive changes to include deletions, removal of records, and amendment of significant factual information, because the information is incorrect or incomplete, shall be processed under the Privacy Act and the provisions of this part. The PA amendment process is limited to correcting records that are not accurate (factually correct), relevant, timely or complete.

(3) The amendment process is not intended to replace other existing NSA/CSS Agency procedures such as those for registering grievances or appealing performance appraisal ratings. Also, since the amendment process is limited to correcting factual information, it may not be used to challenge official judgments, such as performance ratings, promotion potential, and performance appraisals as well as subjective judgments made by supervisors, which reflect his/her observations and evaluations.

(4) Requests for amendments must be in writing, include the individual's name, signature, a copy of the record under dispute or sufficient identifying particulars to permit timely retrieval of the affected record, a description of the information under dispute and evidence to support the amendment request. The mailing address for the FOIA/PA office is National Security Agency, ATTN: FOIA/PA Services (DC321), 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755–6248. Individuals who have access to NSA/CSS spaces may send their request through the internal mail system to DC321.

(5) FOIA/PA Services (DC321) shall acknowledge the amendment request within 10 working days of receipt and respond within 30 working days. The organization/individual who originated the information under dispute shall be given 10 working days to comment. On receipt of a response, FOIA/PA Services (DC321) shall review all documentation and determine if the amendment request shall be granted. If FOIA/PA Services (DC321) agrees with the request, it shall notify the requester and the office holding the record. The latter shall promptly amend the record and notify all holders and recipients of the records of the correction. If the amendment request is denied, the requester shall be advised of the reasons for the denial and the procedures for filing an appeal.

(g) Appeal of Refusals to Amend Records:

(1) If the Director of Policy, as the Initial Denial Authority, refuses to amend any part of a record it shall notify the requester of its refusal, the reasons for the denial and the procedures for requesting a review of the decision by the NSA/CSS Appeal Authority. The Appeal Authority shall render a final decision within 30 working days, except when circumstances necessitate an extension. If an extension is necessary, the requester shall be informed, in writing, of the reasons for the delay and of the approximate date on which the review is expected to be completed. If the NSA/CSS Appeal Authority determines that the record should be amended, the requester, FOIA/PA Services, and the office holding the record will be advised. The latter shall promptly amend the record and notify all recipients.

(2) If the NSA/CSS Privacy Act Appeal Authority denies any part of the request for amendment, the requester shall be advised of the reasons for denial. his or her right to file a concise statement of reasons for disputing the information contained in the record, and his or her right to seek judicial review of the Agency's refusal to amend the record. Statements of disagreement and related notifications and summaries of the Agency's reasons for refusing to amend the record shall be processed in the manner prescribed by 32 CFR part 310.

(h) Disclosures and Accounting of Disclosures

(1) No record contained in a System of Records maintained within the Department of Defense shall be disclosed by any means of communication to any person, or to any agency outside the Department of Defense, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record will be:

(i) To those officials and employees of the Agency who have a need for the record in the performance of their duties and the use is compatible with the purpose for which the record is maintained.

(ii) Required to be disclosed under the Freedom of Information Act, as amended.

(iii) For a routine use as described in NSA/CSS systems of records notices. The DoD "Blanket Routine Uses" may also apply to NSA/CSS systems of records. (See Appendix C to 32 CFR part 310).

(iv) To the Bureau of the Census for the purpose of planning or carrying out a census or survey or related activity authorized by law.

(v) To a recipient who has provided the Department of Defense or the Agency with advance, adequate written assurance that:

(A) The record will be used solely as a statistical research or reporting record;

(B) The record is to be transferred in a form that is not individually identifiable (*i.e.*, the identity of the individual cannot be determined by combining various statistical records); and

(C) The record will not be used to make any decisions about the rights, benefits, or entitlements of an individual.

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the

Archivist of the United States or the designee of the Archivist to determine whether the record has such value. A record transferred to a Federal records center for safekeeping or storage does not fall within this category since Federal records center personnel act on behalf of the Department of Defense in this instance and the records remain under the control of the NSA/CSS. No disclosure accounting record of the transfer of records to Federal records center need be maintained.

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the NSA/CSS specifying the particular portion and the law enforcement activity for which the record is sought. Blanket requests for all records pertaining to an individual will not be accepted. A record may also be disclosed to a law enforcement agency at the initiative of the NSA/CSS when criminal conduct is suspected, provided that such disclosure has been established in advance as a "routine use."

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual to whom the record pertains.

(ix) To Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee. This does not authorize the disclosure of any record subject to this part to members of Congress acting in their individual capacities or on behalf of their constituents, unless the individual consents.

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(xi) Pursuant to an order of a court of competent jurisdiction.

(A) When a record is disclosed under compulsory legal process and when the issuance of that order or subpoena is made public by the court that issued it, efforts shall be made to notify the individual to whom the record pertains. This may be accomplished by notifying the individual by mail at his most recent address as contained in the Component's records.

(B) Upon being served with an order to disclose a record, the General Counsel shall endeavor to determine whether the issuance of the order is a matter of public record and, if it is not, seek to be advised when it becomes public. An accounting of the disclosure shall be made at the time the NSA/CSS complies with the order or subpoena.

(xii) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

(2) Except for disclosures made in accordance with paragraphs (h)(1)(i) and (ii) of this section, an accurate accounting of disclosures shall be kept by the record holder in consultation with the Privacy Act Coordinator.

(i) The accounting shall include the date, nature, and purpose of each disclosure of a record to any person or to another agency; and the name and address of the person or agency to whom the disclosure is made. There need not be a notation on a single document of every disclosure of a particular record, provided the record holder can construct from its System the required accounting information:

(A) When require by the individual;

(B) When necessary to inform previous recipients of any amended records, or

(C) When providing a cross reference to the justification or basis upon which the disclosure was made (including any written documentation as required in the case of the release of records for statistical or law enforcement purposes).

(ii) The accounting shall be retained for at least five years after the last disclosure, or for the life of the record, whichever is longer. No record of the disclosure of this accounting need be maintained.

(iii) Except for disclosures made under paragraph (h)(1)(vii) of this section, the accounting of disclosures shall be made available to the individual to whom the record pertains. The individual shall submit a Privacy Act Information Request form to the Privacy Act Coordinator in the office keeping the accounting of disclosures.

(3) Disclosures made under circumstances not delineated in paragraphs (h)(1)(i) through (xii) of this section shall only be made after written permission of the individual involved has been obtained. Written permission shall be recorded on or appended to the document transmitting the personal information to the other agency, in which case no separate accounting of the disclosure need be made. Written permission is required in each separate case; *i.e.*, once obtained, written permission for one case does not constitute blanket permission for other disclosures.

(4) An individual's name and address may not be sold or rented unless such action is specifically authorized by law. This provision shall not be construed to require withholding of names and addresses otherwise permitted to be made public. Lists or compilations of names and home addresses, or single home addresses will not be disclosed, without the consent of the individual involved, to the public, including, but not limited to individual Congressmen, creditors, and commercial and financial institutions. Requests for home addresses may be referred to the last known address of the individual for reply at his discretion and the requester will be notified accordingly.

§ 322.6 Establishing exemptions.

(a) Neither general nor specific exemptions are established automatically for any system of records. The head of the DoD Component maintaining the system of records must make a determination whether the system is one for which an exemption properly may be claimed and then propose and establish an exemption rule for the system. No system of records within the Department of Defense shall be considered exempted until the head of the Component has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register**.

(b) No system of records within NSA/CSS shall be considered exempt under subsection (j) or (k) of the Privacy Act until the exemption rule for the system of records has been published as a final rule in the **Federal Register**.

(c) An individual is not entitled to have access to any information compiled in reasonable anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(d) Proposals to exempt a system of records will be forwarded to the Defense Privacy Office, consistent with the requirements of 32 CFR part 310, for review and action.

(e) Consistent with the legislative purpose of the Privacy Act of 1974, NSA/CSS will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NSA/CSS's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above

nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(f) Do not use an exemption to deny an individual access to any record to which he or she would have access under the Freedom of Information Act (5 U.S.C. 552).

(g) Disclosure of records pertaining to personnel, or the functions and activities of the National Security Agency shall be prohibited to the extent authorized by Pub. L. 86–36 (1959) and 10 U.S.C. 424.

(h) Exemptions NSA/CSS may claim.

(1) General exemption. The general exemption established by 5 U.S.C. 552a(j)(2) may be claimed to protect investigative records created and maintained by law enforcement activities of the NSA.

(2) Specific exemptions. The specific exemptions permit certain categories of records to be exempt from certain specific provisions of the Privacy Act.

(i) (k)(1) exemption. Information properly classified under Executive Order 12958 and that is required by Executive Order to be kept secret in the interest of national defense or foreign policy.

(ii) (k)(2) exemption. Investigatory information compiled for law-enforcement purposes by non-law enforcement activities and which is not within the scope of Sec. 310.51(a). If an individual is denied any right, privilege or benefit that he or she is otherwise entitled by federal law or for which he or she would otherwise be eligible as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This subsection when claimed allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(iii) (k)(3) exemption. Records maintained in connection with providing protective services to the President and other individuals identified under 18 U.S.C. 3506.

(iv) (k)(4) exemption. Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8.

(v) (k)(5) exemption. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(vi) (k)(6) exemption. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(vii) (k)(7) exemption. Evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

§ 322.7 Exempt systems of records.

(a) All systems of records maintained by the NSA/CSS and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein, which contain isolated items of properly classified information.

(b) GNSA 01:

(1) *System name:* Access, Authority and Release of Information File.

(2) *Exemption:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation. thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(c) GNSA 02:

(1) *System name:* Applicants.

(2) *Exemption:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to

5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(d) GNSA 03:

(1) *System name:* Correspondence, Cases, Complaints, Visitors, Requests.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5)

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(e) GNSA 04:

(1) *System name:* Military Reserve Personnel Data Base.

(2) *Exemption:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(f) GNSA 05:

(1) *System name:* Equal Employment Opportunity Data.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) and (k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(g) GNSA 06:

(1) *System name:* Health, Medical and Safety Files.

(2) *Exemption:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5) and (k)(6).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(h) GNSA 08:

(1) *System name:* Payroll and Claims.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(i) GNSA 09:

(1) *System name:* Personnel File.

(2) *Exemption:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5) and (k)(6).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(j) GNSA 10:

(1) *System name:* Personnel Security File.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(5), and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2), (k)(5), and (k)(6).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(k) GNSA 12:

(1) *System name:* Training.

(2) *Exemption:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5), and (k)(6).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5), and (k)(6).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and

access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(l) GNSA 13:

(1) *System name:* Archival Records.

(2) *Exemption:* (i) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(m) GNSA 14:

(1) *System name:* Library Patron File Control System.

(2) *Exemption:* (i) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(n) GNSA 15:

(1) *System name:* Computer Users Control System.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(o) GNSA 17:

(1) *System name:* Employee Assistance Service (EAS) Case Record System.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation.

Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(p) GNSA 18:

(1) *System name:* Operations Files.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the provisions of 5 U.S.C.

552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

Dated: February 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Notices

Federal Register

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commission on the Application of Payment Limitations for Agriculture

Payment Limitations

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commission on the Application of Payment Limitations for Agriculture (Commission) was mandated by section 1605 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act), Public Law 107–171. The Farm Service Agency (FSA) provides administrative and financial support for the Commission, using Commodity Credit Corporation (CCC) funds. The Commission will study the effects of further limitations on the receipt of direct payments, counter-cyclical payments, loan deficiency payments and marketing loan gains by individuals and other entities. The study is to be transmitted to the President, the Committee on Agriculture, Nutrition and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives. The Commission is also authorized to make recommendations it deems appropriate, which may include the feasibility of improving the application and effectiveness of payment limitations.

The Commission held its first meeting on January 23 and 24, 2003, in Washington, D.C. The Commission concluded that public input would be helpful in conducting its assessments of payment limitations. This notice provides the public the opportunity to comment on key issues that the Commission expects to address in its study.

DATES: Comments must be received in writing by March 24, 2003.

ADDRESSES: Send comments in writing, by mail, to Payment Limit Commission Comments, USDA/FSA/EPAS, Stop 0508, 1400 Independence Ave., SW, Washington, DC 20250–0508, or by email to *payment.limit.comm@wdc.usda.gov*. This notice may also be accessed via the Internet through the FSA homepage, at *http://www.fsa.usda.gov*. All comments, including names and addresses when provided, are placed in the record and are available for public inspection.

FOR FURTHER INFORMATION CONTACT: John Jinkins, USDA/FSA/EPAS, Stop 0508, 1400 Independence Ave., SW., Washington, DC 20250–0508; telephone: (202) 720–2100; fax: (202) 690–2186; submit e-mail to: *John.Jinkins@usda.gov*. Subject: Payment Limits.

SUPPLEMENTARY INFORMATION:

General Information about the Commission

The 2002 Act directed that the Commission consist of three members appointed by the Secretary of Agriculture; three members appointed by the Committee on Agriculture, Nutrition, and Forestry of the Senate; three members appointed by the Committee on Agriculture of the House of Representatives; and the USDA Chief Economist. The Secretary of Agriculture designated the USDA Chief Economist to serve as Commission Chairperson. The 2002 Act directs the Commission to conduct a study on the effects of further payment limitations on the receipt of direct payments, counter-cyclical payments and marketing loan gains and loan deficiency payments. The study is to be transmitted to the President, the Committee on Agriculture, Nutrition and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives. The Commission is also authorized to make recommendations it deems appropriate. The Commission is to report the results of its study by May 13, 2003.

The Joint Explanatory Statement of the Committee of Conference for the 2002 Act indicates that the Managers of the Conference intended for the Commission to examine the feasibility of improving the application and effectiveness of payment limitations, including the use of commodity certificates and the unlimited forfeiture of loan collateral. The 2002 Act also provides the Commission the authority to hold hearings, take testimony and receive evidence it considers necessary to conduct the study.

At its initial meeting in January 2003, the Commission concluded that public hearings are not feasible given the time available to complete its study. However, the Commission concluded that public comments on the payment limitation issues to be addressed by the Commission would be helpful. Consequently, the Commission decided to seek written comments from the public.

Key Issues for Comment

The Commission is specifically interested in receiving public input on the following:

1. The impacts of further payment limitations on the receipt of direct payments, counter-cyclical payments, marketing loan gains and loan deficiency payments on:

(a) Farm income;
(b) Land values;
(c) Rural communities;
(d) Agribusiness infrastructure;
(e) Planting decisions of producers affected; and
(f) Prices of all agricultural commodities, including fruits and vegetables and other specialty crops.

Comments are encouraged on the impact of farm program payments on the above and on the effects of further limitations on these issues. The range of effects is likely to depend on what further limitations are being evaluated. The phrase "further limitations" is not defined in the 2002 Act. The Commission believes that further limitations would be limitations that would result in total payments to producers being less than the level that would prevail under the payment limitations of the 2002 Act. Further limitations could be achieved a number of ways including: (1) Reducing the current dollar limitations imposed on specific types of payments, such as direct payments, that can be received by a producer, (2) restricting the number or types of entities eligible for payments, or (3) restricting or precluding payments based on a variety of other criteria, such as income. Each of these approaches may have different effects on producers and the agricultural economy, even if the total dollar reduction in payments is equal. The Commission welcomes comments on the effects of payments

and further payment limitations under alternative approaches. The Commission requests that commentors identify the approaches they are assessing along with analytical methods and data employed to reach their conclusions.

2. The feasibility of improving the application and effectiveness of payment limitations, including the use of commodity certificates and the unlimited forfeiture of loan collateral: Payment limits currently involve complex determinations by the Farm Service Agency on the eligibility of persons for payments. Compliance with payment limitation provisions may involve extensive documentation of business organization and other information. It appears that the payment limit program results in a range of costs on producers and the government. The Commission seeks comments on the feasibility of improving the administration of payment limitations and reducing these costs. Questions have also been raised regarding the effectiveness of payment limitations. One measure of effectiveness is the degree to which payment limitations reduce payments that otherwise would be made. Some estimates suggest the amount of payments not made to producers participating in farm programs as a result of payment limitations is relatively small compared with the level of payments that are made. Other measures of effectiveness may be appropriate to assess, including possible impacts on the structure and size of farms. The Commission seeks comments on the effectiveness of payment limitations and the feasibility of making payment limits more effective in cost-efficient ways.

3. The expected response of farmers and ranchers if payment limitations become more stringent. For example, would affected producers increase or reduce farm size? Would producers shift production to alternative commodities? Would producers change the legal organization of their businesses? Some commentors may be able to poll producers on how they might react to alternative approaches to tightening payment limitations, If so, the Commission requests information on the types and locations of farms surveyed.

4. Any other information relevant to the study objectives of the Commission.

Regulatory Findings

This notice is being issued to obtain public comment regarding issues associated with the study of the Commission on the Application of Payment Limitations for Agriculture. There are no regulatory findings associated with this notice.

Signed in Washington, DC, on February 13, 2003.

Keith Collins,

Chairman, Commission on the Application of Payment Limitations for Agriculture.

[FR Doc. 03–4082 Filed 2–19–03; 8:45 am]

BILLING CODE 3510–05–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. FV–03–328]

United States Standards for Grades of Frozen Celery

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to create new United States Standards for Grades of Frozen Celery. USDA received a petition from a grower and a processor of celery to create grade standards for frozen celery that will include a description of the product, style, sample unit size, grades, ascertaining the grade by sample, and ascertaining the grade by lot. The proposed standard is intended to provide a common language for trade, and a means of measuring value in the marketing of frozen celery.

DATES: Comments may be submitted on or before April 21, 2003.

ADDRESSES: Written comments may be submitted to: Karen L. Kaufman, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247,1400 Independence Avenue SW., Washington, D.C. 20250–0247; fax (202) 690–1087; or e-mail *karen.kaufman@usda.gov*.

Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection at the address listed above during regular business hours and on the Internet.

The draft of the United States Standards for Grades of Frozen Celery are available either through the address cited above or by accessing AMS's Home Page on the Internet at: *http://www.ams.usda.gov/fv/ppbdocketlist.htm*. Any comments received regarding this proposed standard will also be posted on that site.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman at (202) 720–5021 or e-mail at *karen.kaufman@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables are maintained by USDA/AMS/Fruit and Vegetable Programs and may be obtained by writing to the above address or on the internet at *http://www.ams.usda.gov/standards/standpfv.htm*.

AMS is proposing to establish the U.S. Standards for Grades of Frozen Celery using the procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Proposed by the Petitioner

The petitioner, a grower and a processor of celery, requested that USDA develop a standard for frozen celery to be used by the industry. The petitioner provided information on style, sample size and description to AMS to develop the standard. AMS visited the petitioner's facility to collect information on grades of frozen celery and how to ascertain the grade of a sample and of a lot.

AMS prepared a discussion draft of the frozen celery standard, and distributed copies for input to the petitioner, the American Frozen Food Institute (AFFI), and the National Food Processors Association (NFPA). Input from the above groups was used to develop the proposed standard.

Proposed by Fruit and Vegetable Programs, AMS

A notice proposing to create new United States Standards for Grades of Frozen Celery based on the petition was published in the May 2, 2001, **Federal Register** (66 FR 21908). AMS received four comments in response to the notice. All of the responses but one were generally in favor of the new standard. These comments are available by accessing AMS's Home Page on the Internet at: *http://www.ams.usda.gov/fv/ppb.html*.

One commentor did not see the need for a standard for frozen celery and felt the standard was too subjective. The other commentors were in favor of a standard for frozen celery and proposed changes to the Table I-Allowances For Defects In Frozen Celery for grade "A" and "B," "sliced" and "diced" styles. These changes included a reduction in the sample size for Table I from a maximum-per 500 grams to maximum-per 283 grams for a 10-ounce portion, a separate allowance for seriously blemished units from blemished units, decrease the number of leaf material larger than a ¼" from "20 pieces" to "10 pieces," change mechanical damage from "no more than 3 pieces" to "no more than 3% by weight" and for insect damaged change from "none" to "0.5%."

Based on these comments, AMS has revised the proposed standard for grades of frozen celery. AMS is proposing to establish the U.S. Standards for Grades of Frozen Celery following the standard format for U.S. Grade Standards. AMS is proposing to define "frozen celery" and establish "sliced" and "diced" as the style designations. The proposal will also define the quality factors that affect frozen celery and determine sample unit sizes for this commodity.

This proposal will establish the grade levels "A," "B" and "Substandard" and assign the corresponding score points for each level. The proposed tolerance for each quality factor as defined for each grade level will be established.

The grade of a sample unit of frozen celery will be ascertained by considering the factors of varietal characteristics flavor and odor, which are not scored; the ratings for the factors of color, defects, and character, which are scored; the total score; and the limiting rules which apply. This proposal will provide a common language for trade, a means of measuring value in the marketing of frozen celery, and provide guidance in the effective utilization of frozen celery. The official grade of a lot of frozen celery covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Food Products (§ 52.1 to 52.83).

This notice provides for a 60 day comment period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: February 13, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–4081 Filed 2–19–03; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, February 24, 2003. The meeting will include routine business including outreach to the public, conflict of interest, and a presentation on USFS Fire Fuels Management activities.

DATES: The meeting will be held February 24, 2003 from 4 p.m. until 6:30 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 11, 2003.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 03–4025 Filed 2–19–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Determining Fees for Recreation Residences Permits During the Transition Period of the Cabin User Fee Fairness Act of 2000

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of interim directive.

SUMMARY: The Forest Service is issuing an interim directive to provide direction to Forest Service employees for assessing fees for recreation residence special use permits pursuant to the Cabin User Fee Fairness Act of 2000. The direction in this interim directive applies during the transition period as provided by section 614 of the act until the agency adopts final rules, directives, and appraisal guidelines. This interim directive is issued as ID 2709.11–2003–1 to Forest Service Handbook 2709.11, chapter 30.

DATES: This interim directive is effective February 20, 2003.

ADDRESSES: This interim directive (ID 2709.11–2003–1) is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives*. Single paper copies of the interim directive also are available by contacting Randy Karstaedt, Forest Service, USDA, Lands Staff (Mail Stop 1124), 1400 Independence Avenue, SW., Washington, DC 20250–1124 (telephone 202–205–1256).

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff (202–205–1256), Forest Service, USDA.

SUPPLEMENTARY INFORMATION: The Forest Service is currently developing proposed regulations, directives, and appraisal guidelines in response to the requirements of the Cabin User Fee Fairness Act of 2000 (CUFFA). The agency will publish notice of these documents in the **Federal Register** at a later date for public comment. Until final regulations, directives, and appraisal guidelines are adopted, the Forest Service will determine recreation residence fees and manage recreation residence permits during the transition period consistent with (1) the provisions in section 614 of CUFFA, (2) current agency directives applicable to the administration of permits and assessment of fees for recreation residences, and (3) the direction contained in interim directive (ID) 2709.11–2003–1 issued to Forest Service Handbook (FSH) 2709.11, chapter 30.

Dated: February 12, 2003.

Dale N. Bosworth,

Chief.

[FR Doc. 03–4098 Filed 2–19–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of the Advisory Committee on Agriculture Statistics Meeting

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the National Agricultural Statistics Service (NASS) announces a meeting of the Advisory Committee on Agriculture Statistics.

DATES: The Advisory committee meeting will take place on February 24, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at The Brown—A Camberley Hotel, 335 Broadway, Louisville, Kentucky. The public may file written comments before or within a reasonable time after the meeting to: Carol House, Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Ave., SW., South Building, Room 4117, Washington, DC 20250–2000.

FOR FURTHER INFORMATION CONTACT: Carol House, Telephone: 202–720–4333, Fax: 202–720–9013, or e-mail: *chouse@nass.usda.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Agriculture Statistics consists of 25 members appointed from 7 categories covering a broad range of agricultural disciplines and interests. During this meeting, the Advisory Committee will discuss: (1) Administrative Data, (2) Advisory Subcommittee for Hogs, (3) Publicity and Product Release Plan for the 2002 Census of Agriculture, and (4) Overview of the 2002 Census of Agriculture. The committee will observe and review NASS's data processing activities on Tuesday, February 25.

This advisory committee meeting will be open to the public. There will be an opportunity for public questions and comment during the meeting at 3:45 p.m. The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Agriculture Statistics and will be kept on file for public review in the office of the Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, Washington, DC 20250.

Dated February 10, 2003, at Washington, DC.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 03–4030 Filed 2–19–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of the Advisory Committee on Agriculture Statistics Hog Subcommittee Meeting

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the National Agricultural Statistics Service (NASS) announces a meeting of the Advisory Committee on Agriculture Statistics Hog Subcommittee.

DATES: The subcommittee meeting will take place on February 25, 2003, from 2 p.m. to 5 p.m.

ADDRESSES: The meeting will take place at The Brown—A Camberley Hotel, 335 Broadway, Louisville, Kentucky. The public may file written comments before or within a reasonable time after the meeting to: Carol House, Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Ave., SW., South Building, Room 4117, Washington, DC 20250–2000.

FOR FURTHER INFORMATION CONTACT: Carol House, Telephone: 202–720–4333, Fax: 202–720–9013, or e-mail: *chouse@nass.usda.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Agriculture Statistics Hog Subcommittee consists of 3 members from the Advisory Committee on Agriculture Statistics and 8 members from hog industry. During this meeting, the Subcommittee will discuss the hog estimation program.

This Subcommittee meeting will be open to the public. There will be an opportunity for public questions and comments during the meeting at 3 p.m. The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Agriculture Statistics and will be kept on file for public review in the office of the Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, Washington, DC 20250.

Dated February 10, 2003, at Washington, DC.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 03–4031 Filed 2–19–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice Inviting Applications for Recognition as a State Rural Development Council

AGENCY: Rural Business-Cooperative Service (RBS), USDA.

ACTION: Notice inviting applications.

SUMMARY: This Notice invites applications for recognition as a State Rural Development Council (SRDC) pursuant to the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill). SRDCs are members of the National Rural Development Partnership (NRDP), more fully described elsewhere in this Notice. Applicants must meet the eligibility requirements in the 2002 Farm Bill and this Notice, submit an application for recognition, and submit evidence of ability to provide the requisite matching funds if federal funding is provided.

Recognition by the Secretary does not guarantee that a State Rural Development Council will automatically receive funding from the U.S. Department of Agriculture (USDA) or any other Federal agency, but will enable Federal agencies to make grants, gifts, contributions, provide technical assistance, or enter into contracts or cooperative agreements with the SRDC, in addition to making the SRDC automatically a part of the recomprised National Rural Development Partnership.

DATES: Applications must be submitted by 5 p.m. Eastern Time, April 21, 2003. Applications received after that date will be reviewed on a first come basis in order to receive Federal recognition. Applicants are encouraged to apply as soon as possible. Due to delays in the receipt of federal government mail through the U.S. Postal Service, applications should be sent by an express mail service (*e.g.*, UPS, Federal Express).

ADDRESSES: Entities wishing to apply for assistance may download the application requirements delineated in this Notice from the NRDP Web site at: *http://www.rurdev.usda.gov/nrdp/nia.html*. Applicants may also request application packages from: Tia Trout, United States Department of Agriculture National Rural Development Partnership, MAIL STOP 3205, Room 4225, 1400 Independence Ave., SW., Washington, DC 20250–3205, telephone (202) 720–1534, e-mail *tia.trout@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Tia Trout, USDA National Rural Development Partnership, MAIL STOP 3205, Room 4225, 1400 Independence Ave., SW., Washington, DC 20250–3205, telephone (202) 690–1534, e-mail *tia.trout@usda.gov*. Information may also be obtained at the following Web site: *http://www.rurdev.usda.gov/nrdp*.

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under number 10.353. This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), USDA invites comments on the information collection requirement in this notice. These requirements have been granted emergency clearance by the Office of Management and Budget under OMB Control Number 0570–0043.

Comments on this notice must be received by April 21, 2003.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments on these information collections should refer to the OMB control number. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. Mail courier service deliveries requiring a street address delivery should be sent to the same attention at 300 E Street, SW., 3rd Floor, Washington, DC 20546.

Title: National Rural Development Partnership.

Type of Request: New collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6.0 hours per Application.

Respondents: Joint proposals among public bodies, non profit and for-profit entities, including associations, in incorporated form or limited liability companies, tribal governments, and cooperatives.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 50.

Estimated Total Annual Burden on Respondents: 300 hours.

Background

The National Rural Development Partnership began in 1990 as a component of the President's Initiative on Rural America. Eight pilot SRDCs were formed in 1990; ten years later, 40 SRDCs were in place.

The 2002 Farm Bill authorizes the continuation of the National Rural Development Partnership, with a slightly modified membership structure. The Farm Bill specifies that membership in the reconstituted National Rural Development Partnership is to consist of a National Rural Development Coordinating Committee (NRDCC) and the SRDCs. The National Rural Development Coordinating Committee will be the subject of a separate appointment process and notice.

The 2002 Farm Bill statutorily recognizes the National Rural Development Partnership and authorizes appropriations specific to it and its members. The statute provides eligibility criteria for recognition as a State Rural Development Council. It is contemplated that the NRDP and its components (SRDCs and the NRDCC) will receive funding from a variety of sources: Federal, state, and private. USDA is responsible for recognizing, and entering into a recognition agreement with, each selected SRDC in accordance with statutory criteria.

Each SRDC that previously participated in the National Rural Development Partnership, and is interested in continuing to be recognized as an SRDC, must apply and be recognized pursuant to this Notice. New applicants are also invited to apply. Potential applicants within a state are encouraged to work together to develop a single application. Only one SRDC per state will be recognized.

A more extensive history can be found at the following Web site: *http://www.rurdev.usda.gov/nrdp/about*.

Definitions

Funding Entity refers to the responsible legal entity which is to receive, hold and disburse funds received from the National Rural Development Partnership for a SRDC.

National Rural Development Partnership (NRDP) refers jointly to recognized State Rural Development Councils and the National Rural Development Coordinating Committee.

National Rural Development Coordinating Committee (NRDCC) refers to a group to be composed of entities and representatives to be approved by the Secretary pursuant to a separate notice further implementing section 6021 of the 2002 Farm Bill.

Rural Area means all the territory of a State that is not within the boundaries of any standard metropolitan statistical area, and all territory within any standard metropolitan statistical area within a census tract having a population density of less than 20 persons per square mile, as determined by the Secretary according to the most recent census of the United States as of any date.

State includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, to the extent the Secretary determines it to be feasible and appropriate, the Freely Associated States and the Federated States of Micronesia.

State Rural Development Council (SRDC) refers to an entity recognized as such by the Secretary in an agreement with USDA that confirms the Council meets the eligibility criteria in the 2002 Farm Bill.

2002 Farm Bill refers to Farm Security and Rural Investment Act, Public Law 107–171, enacted on May 13, 2002. Section 6021 of this Act authorizes the Secretary to continue the National Rural Development Partnership and authorizes appropriations for this program.

Eligibility Requirements

As specified in the 2002 Farm Bill, a State Rural Development Council shall:

1. Be composed of representatives of Federal, State, local and tribal governments, nonprofit organizations, regional organizations, the private sector, and other entities committed to rural advancement;

2. Operate with a nonpartisan and nondiscriminatory membership that is broad and representative of the economic, social, and political diversity of the state;

3. Have a structure such that the membership is responsible for the governance and operations of the SRDC; and

4. Provide matching funds, or in-kind goods or services, to support the activities of the SRDC, as more fully described below.

Recognition Agreement

SRDCs will enter into a Recognition Agreement with USDA. The Recognition Agreement will conform in all material respects to the form of agreement provided in Appendix A to this Notice, and will provide for a specific term of recognition. It will require compliance with any regulations as may be promulgated by USDA with respect to the NRDP that are not in conflict with this Notice or any enforceable Recognition Agreement.

Duties post-Recognition

As specified in the 2002 Farm Bill, upon entering into a recognition agreement with USDA, the SRDC must:

1. Facilitate collaboration among Federal, State, local, and tribal governments and the private and nonprofit sectors in the planning and implementation of programs and policies that have an impact on rural areas of the State;

2. Monitor, report, and comment on policies and programs that address, or fail to address, the needs of the rural areas of the State;

3. In conjunction with the NRDCC, facilitate the development of strategies to reduce or eliminate conflicting or duplicative administrative or regulatory requirements of Federal, State, local, and tribal governments;

4. Provide to the NRDCC an annual plan with goals and performance measures; and

5. Submit to the NRDCC an annual report on the progress of the SRDC in meeting the goals and measures established in the annual plan.

Further, to assure continuing Farm Bill compliance, changes made to the SRDC's bylaws, organizational structure, rules of governance, or any other modifications that change the SRDC's structure or rules of operation must be provided to USDA immediately.

Each federally-funded SRDC must, as required by the NRDCC, submit an annual report to the NRDCC on the use of the funds, including a description of strategic plans, goals, performance measures and outcomes for the SRDC.

Contents of Application Package

A completed application must include the following:

(1) A brief description of the State Rural Development Council, including the legal structure, membership categories (*e.g.*, corporate, individual, government agency), and the responsible contact person.

(2) Organizational documents for the SRDC and, if different from the SRDC, the proposed Funding Entity. If the SRDC has 501(c)(3) not for profit corporation status, for example, the organizational documents would consist of the corporate charter and any other document that addresses the legal relationship among the members. If the SRDC has a legal structure other than a corporate form, the organizational documents must reflect how the SRDC was established and the legal relationship among the members.

(3) Rules of governance for the SRDC. The rules of governance must provide evidence that the membership is totally responsible for the governance and operations of the SRDC. If the SRDC has 501(c)(3) not for profit corporation status, for example, a copy of the bylaws must be provided. The RBS reserves the right to grant provisional recognition until June 30, 2004 to an SRDC applicant that must consult with other officials on limited governance matters.

(4) A representative list of members, which must identify a minimum of one, and a maximum of five, member(s) of the Council from each of the following six or (if applicable) seven institutional categories: (a) Federal government, (b) state government, (c) local government, (d) regional organizations, (e) not for profit corporations, (f) private for profit corporations, and (if applicable) (g) federally recognized tribal government. It is acceptable that some members on this representative list come from institutions committed to rural advancement that are not included in the aforementioned categories; such representatives should be placed in category (h) other entities committed to rural advancement (this could include colleges, universities, foundations, etc.). Provide the following information for each member person listed: Name, Institutional affiliation, Institutional category, Contact information (mailing address, telephone and fax numbers, and email address).

(5) A copy of the Council's written policy indicating that it operates in a nonpartisan and nondiscriminatory manner, or, in the alternative, a statement, signed by the Council Chair, indicating that the Council operates in a nonpartisan and nondiscriminatory manner.

(6) (a) A summary description of the key economic, social, and political regions of the rural areas of the state and (b) a summary description of how the Council represents the economic, social and political make-up of the state's rural areas (*e.g.*, cross-reference the members presented in item (4) above with the regions presented here). This section (6) of the application should not exceed two pages.

(7) Evidence that the SRDC is likely to have sufficient matching funds or in-kind goods or services for the period July 1, 2003 through May 13, 2007 to provide at least 33% in-kind or monetary match for any federal funds that might be provided under the provisions of the 2002 Farm Bill to cover SRDC activities during that period. Such evidence shall include letters of intent (or similar documents) from each organization that will provide matching funds or in-kind goods or services. For the period July 1, 2003 through June 30, 2004, these letters shall indicate intent to provide at least $25,000 (in total, across all letters) in matching funds or in-kind goods or services. In addition, these letters shall indicate intent to provide additional matching funds or in-kind goods and services for the period July 1, 2004 through May 13, 2007.

Evaluation Considerations

The application materials will be reviewed to confirm that the basic eligibility criteria set forth in the 2002 Farm Bill are met. USDA may seek to independently verify that the representations made in the application are correct.

Application Selection Process

All applicants are encouraged to apply in a timely manner. Applications will be reviewed beginning April 21, 2003. An application may be submitted after this date subject to the proviso that it will not be considered if an SRDC for that State has already been granted recognition and remains in good standing under its Recognition Agreement. In the event that more than one application is received for a state, USDA will permit the applicants to work together to develop a single application that may be resubmitted, such that each state is represented by only one SRDC. In the event multiple applicants that are acceptable from one state do not wish to work together to develop a single application, USDA will choose one of those applicants to be the recognized SRDC. In this case, RBS will use the following criterion to choose the SRDC: Which applicant has the largest number of institutions represented as members (as reported in Item (4) above)? If two or more acceptable applicants are tied on that score, the tie-breaker will be: Which applicant has the largest match (as reported in Item (7) above)?

What and Where to Submit

A complete, original application may be electronically sent as an e-mail attachment to *tia.trout@usda.gov*. If applications are submitted electronically, a signature page must be submitted in hard copy or via fax. Alternatively, an original application package plus two paper copies may be submitted in hard copy to: Tia Trout, USDA National Rural Development Partnership, MAIL STOP 3205, Room 4225, 1400 Independence Ave., SW., Washington, DC 20250–3205.

Dated: February 3, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

Appendix A

Form of Recognition Agreement

Recognition Agreement Between [SRDC] and The United States Department of Agriculture (USDA)

Parties

SRDC Chair or Co-Chairs _____
SRDC Executive Director _____
USDA _____
Administrator—Rural Business-Cooperative Service

Purpose

The purpose of this Agreement is to confer recognition upon [SRDC] as the State Rural Development Council for the state of _____ a term ending May 13, 2007 unless earlier terminated for failure to maintain the requirements for ongoing eligibility pursuant to the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill).

Background

The National Rural Development Partnership authorized by section 6021 of the 2002 Farm Bill is composed of a National Rural Development Coordinating Committee (the Coordinating Committee) and State Rural Development Councils. The purposes of the Partnership are to empower and build the capacity of States and rural communities to design flexible and innovative responses to their own special rural development needs, with local determinations of progress and selection of projects and activities. Accordingly, the legislation requires that a State Rural Development Council (1) be composed of representatives of Federal, State, local, and tribal governments, nonprofit organizations, regional organizations, the private sector, and other entities committed to rural advancement, (2) have a nonpartisan and nondiscriminatory membership that is broad and representative of the economic, social, and political diversity of the State, and (3) that the membership shall be responsible for the governance and operations of the State Rural Development Council.

Agreement

The [SRDC] hereby represents the following:

1. The membership of the SRDC meets and will continue to meet on an ongoing basis the eligibility requirements for recognition as a member of the NRDP set forth in the 2002 Farm Bill.

2. The entity which shall undertake fiscal responsibilities on behalf of the SRDC for purposes of any USDA funding is [name of Funding Entity/Address]. The officer who is authorized to enter into agreements on behalf of the Funding Entity is [Name, Title].

3. The person who is authorized to represent the SRDC in meetings of the NRDP and enter into contracts and receive notices on behalf of the SRDC is: [Name, Title, Address]

The [SRDC] hereby undertakes to perform the following duties:

1. Facilitate collaboration among Federal, State, local, and tribal governments and the private and nonprofit sectors in the planning and implementation of programs and policies that have an impact on rural areas of the State;

2. Monitor, report, and comment on policies and programs that address, or fail to address, the needs of the rural areas of the State; and

3. As part of the NRDP, in conjunction with the Coordinating Committee, facilitate the development of strategies to identify and reduce or eliminate conflicting or duplicative administrative or regulatory requirements of Federal, State, local, and tribal governments.

Furthermore, the [SRDC] agrees to:

(a) Provide to the Coordinating Committee an annual plan with goals and performance measures; and

(b) Submit to the Coordinating Committee an annual report on the progress of the [SRDC] in meeting the goals and measures.

The [SRDC] hereby agrees to provide matching funds or in-kind goods or services, as required by statute, to support the activities of the undersigned, in an amount that is at least 33 percent of the amount of Federal funds received from a Federal agency, except where the Federal funds in question are (a) to support one or more specific programs or project activities or (b) to reimburse the SRDC for services provided to the funding Federal agency.

The [SRDC] hereby agrees to provide evidence on an on-going basis that the SRDC is in compliance with this Agreement. For example, as and when the Council modifies its bylaws, organizational structure, rules of governance, and/or makes any other modifications that change the SRDC's structure or rules of operations, such changes must be provided to USDA immediately.

Furthermore, the [SRDC] understands that if it applies to USDA–RD for federal funding for its core operations, it must comply with all federal requirements regarding financial management, good standing, criminal convictions, debarment, civil rights and any other applicable laws.

Recognition

The USDA hereby recognizes [name of SRDC] as a State Rural Development Council and member of the National Rural Development Partnership. All correspondence shall be directed to USDA, care of [David Sears, National Partnership Office, email, telephone].

Programming, Budgeting, Funding, and Reimbursement Arrangement

This Recognition Agreement does not commit USDA or the federal government to provide any financial assistance.

Authority

The USDA authority for entering into this Recognition Agreement is Section 6021 of Public Law 107–171 (May 13, 2002). This Recognition Agreement is subject to Section 6021 of the 2002 Farm Bill, the Notice Inviting Applications for Recognition, future SRDC regulations not otherwise inconsistent with this Recognition Agreement and all other applicable laws.

Approvals

The signatories hereby certify that they have the authority to enter into this Recognition Agreement.

Revocation

Upon written notice from USDA of a failure to perform or other default under this Agreement, the SRDC has 90 days from the date of the USDA written notice to cure the failure to perform or the default. USDA may terminate this agreement, thereby revoking recognition, upon written notice to the SRDC for failure of the SRDC to cure a failure to perform or otherwise cure a default under this Recognition Agreement.

The SRDC may terminate this Recognition Agreement upon 90 days written notice to USDA.

Effective Date

This Recognition Agreement will become effective upon the signature of all parties and shall remain in effect until the earlier of May 13, 2007 or termination by either party. Its provisions can be amended or supplemented in writing as may be agreed upon.

Administrator
Rural Business-Cooperative Service
Administrator

[Date]

[ ] Chair
SRDC

[Date]

[ ] Executive Director
SRDC

[Date]

[FR Doc. 03–4040 Filed 2–19–03; 8:45 am]
BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

[Docket No.: 030213030–3030–01]

Office of the General Counsel; Guidelines for the Proper Consideration of Small Entities in Rulemaking

AGENCY: Office of the General Counsel, Department of Commerce.

ACTION: Notice of availability.

SUMMARY: The Department of Commerce (Department) announces the availability of its guidelines for the proper consideration of small entities in agency rulemaking pursuant to Executive Order 13272. The purpose of these guidelines is to establish procedures and policies to promote compliance with the Regulatory Flexibility Act of 1980 (RFA). These guidelines ensure that the Department properly considers the potential impacts of its rulemakings on small business, small governmental jurisdictions, and small organizations during the rulemaking process.

ADDRESSES: To obtain a copy of the Department's guidelines, please send a written request to Daniel Cohen, Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, 1401 Constitution Ave., Suite 5876, Washington, DC 20230, or visit the following Web site: *http://www.ogc.doc.gov/ogc/legreg/regulati.htm.*

FOR FURTHER INFORMATION CONTACT: For further information, please contact Tricia Choe, Attorney-Advisor, Office of the Assistant General Counsel for Legislation at (202) 482–4265.

SUPPLEMENTARY INFORMATION: On August 13, 2002, the President signed Executive Order 13272 entitled Proper Consideration of Small Entities in Agency Rulemaking. Executive Order 13272 requires federal agencies to issue policies and procedures to ensure that the potential impacts of agency rules in small businesses, small organizations, and small governmental jurisdictions are properly considered during the rulemaking process consistent with the statutory mandates of the Regulatory Flexibility Act of 1980 (RFA). *See* 5 U.S.C. 601 *et seq.* The intent of the Order is to ensure that agencies work closely with the Office of Advocacy at the Small Business Administration to address small business issues as early as possible in the regulatory process, particularly as they relate to disproportionate regulatory burden.

Pursuant to the requirements of the Order, the Department of Commerce prepared guidelines that establish procedures and policies ensuring compliance with the RFA. These guidelines ensure that the Department properly considers the potential impacts of rules on small business, small governmental jurisdictions, and small organizations during the rulemaking process. Specifically, the document provides guidance concerning the formulation of the initial regulatory flexibility analysis and final regulatory flexibility analysis, the certification process, and the SBA review process.

On November 13, 2002, the Department submitted a draft of the guidelines to SBA for review and comment. After reviewing the guidelines, SBA requested that the Department make minor editorial revisions and include the Department's procedure for notifying SBA of proposed rules that may have a significant economic impact on a substantial number of small entities. The Department addressed all of SBA's comments. The Department now makes available to the public its guidelines. To obtain a copy of the guidelines, please see the **ADDRESSES** section of this notice.

Dated: February 13, 2003.

Theodore W. Kassinger,

General Counsel, Department of Commerce.

[FR Doc. 03–4032 Filed 2–19–03; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–809]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On November 12, 2002, the United States Court of International Trade (CIT) affirmed the remand determination of the Department of Commerce (the Department) in the 1997–98 administrative review for Altos Hornos de Mexico, S.A. de C.V. (AHMSA) arising from the antidumping duty order on certain cut-to-length carbon steel plate from Mexico. *See Altos Hornos de Mexico, S.A. de C.V. v. United States of America, Bethlehem Steel Corporation and United States Steel Corporation*, Consol. Ct. No. 01–00018, Slip Op. 02–136 (CIT November 12, 2002) (the November 12, 2002 Court order). As there is now a final court decision, we are amending the amended final results of the review in this matter. We will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

EFFECTIVE DATE: February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Michael Heaney, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street N.W. and Constitution Avenue, N.W.,Washington D.C. 20230; telephone (202) 482–5222 or (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published the antidumping duty order on steel plate from Mexico (58 FR 44165). On February 18, 2000, the Department published the final results of the 1997–1998 administrative review. *See Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 8338, February 18, 2000. The Department published three successive sets of amended results, on November 2, 2000 (65 FR 65830), December 12, 2000 (65 FR 77566), and January 24, 2001 (66 FR 7619).

Following the January 24, 2001 amended results, the foreign producer, AHMSA, contested certain aspects of the Department's final and amended final results at the CIT. The Department requested a voluntary remand, and on April 15, 2002, the CIT remanded the amended final results to the Department. On June 28, 2002, the Department issued its remand redetermination. *See Redetermination Pursuant to Court Remand Order in Altos Hornos de Mexico, S.A. de C.V. v. United States, et. al.*, Court No. 01–00018, June 28, 2002. *See also* Memorandum to the File from T. Killiam, Case Analyst, "Analysis of Programming Revisions in the Final Remand Results of Review of Cut-to-Length Carbon Steel Plate from Mexico A-201–809), June 28, 2002; and Memorandum to Neal Halper, Director, Office of Accounting, from Peter S. Scholl, Senior Accountant, "Final Remand Redetermination - Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Mexico," June 28, 2002. In the remand determination, the Department used historical and inflation-adjusted information previously placed on the record by AHMSA to calculate a revised financial expense rate, and applied this revised rate to AHMSA's historical cost of manufacturing.

On November 12, 2002, the CIT sustained the Department's remand results.

Amendment to Final Results

The time period for appealing the CIT's decision sustaining the Department's remand results has expired and no party has appealed this decision. Therefore, pursuant to section 516 A(c) of the Tariff Act, (19 U.S.C. 1516a(c)), we are amending our final results of review for the period August 1, 1997 through July 1, 1998, to reflect the findings in the remand results.

The revised weighted-average margin for AHMSA is as follows:

Manufacturer/Exporter	Margin (percent)
AHMSA	0.07 (*de minimis*)

The Department will issue appraisement instructions directly to Customs to liquidate without regard to antidumping duties all entries of AHMSA's subject merchandise during the POR, as provided in 19 C.F.R. 351.106(c)(2). The above amended rate will not affect AHMSA's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

We are issuing and publishing this determination in accordance with section 751(a)(1) of the Tariff Act, (19 U.S.C. 1675(a)(1)).

Dated: February 11, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4131 Filed 2–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–861]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value.

SUMMARY: We preliminarily determine that polyvinyl alcohol from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of this preliminary determination.

EFFECTIVE DATE: February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Gregory E. Kalbaugh, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that polyvinyl alcohol (PVA) from Japan is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 61591 (Oct. 1, 2002)) (*Initiation Notice*), the following events have occurred:

On September 30, 2002, we received scope comments from Celanese Ltd. and E.I. Dupont de Nemours & Co. (collectively, the petitioners), in which the petitioners requested that we revise the scope to exclude PVA used as, or in the manufacture of, excipients.

On October 11, 2002, the petitioners and two Japanese producers, Kuraray Co., Ltd. (Kuraray) and Marubeni Specialty Chemicals, Inc. (Marubeni), submitted comments on the model-matching criteria to be used by the Department. On October 15, 2002, Marubeni submitted an amendment to its model-matching comments.

On October 21, 2002, we received requests to exclude certain additional products from the scope of this investigation from Kuraray and two importers of PVA (*i.e.*, Oxyvinyls, LP and Ricoh Electronics, Inc.).

Also on October 21, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of PVA from Japan are materially injuring the United States industry. *See* ITC Investigation Nos. 731-TA-1014–1018 (Publication No. 3553, *Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 65597 (Oct. 25, 2002)).

On October 22, 2002, we issued antidumping questionnaires to Denki Kagaku Kogyo Kabushiki Kaisha (Denki Kagaku), Japan VAM & POVAL Co., Ltd. (Japan VAM & POVAL), Kuraray, and the Nippon Synthetic Chemical Industry Co., Ltd. (Nippon Gohsei), the producers/exporters accounting for all known exports of subject merchandise from Japan during the period of investigation (POI). For further discussion, see the memorandum to Louis Apple, Director, Office 2, from the Team entitled "Antidumping Duty Investigation of Polyvinyl Alcohol from Japan - Selection of Respondents," dated October 22, 2002.

On November 19, 2002 and November 25, 2002, respectively, Kuraray and Nippon Gohsei submitted responses to Section A of the Department's questionnaire. Both Japan VAM & POVAL and Denki Kagaku failed to respond to the Department's questionnaire. For further discussion, see the "Facts Available (FA)" section of this notice.

On December 5, 2002, Kuraray notified the Department that it would no longer participate in this investigation, and it requested that the Department remove all of its business proprietary information from the record of this proceeding. On December 11, 2002, the Department destroyed Kuraray's business proprietary information and notified Kuraray of this action. For further discussion, see the "Facts Available (FA)" section of this notice.

On December 13, 2002, the petitioners and Nippon Gohsei submitted additional model-matching comments.

On December 23, 2002, the petitioners agreed to the exclusion requests made on October 21, 2002. On January 9, 2003, Kuraray requested that the Department modify the scope language in the petitioners' December 23, 2002, submission to avoid unnecessary restrictions on imports of certain of the products covered by that submission which are not manufactured in the United States. On January 22, 2003, the petitioners agreed to the majority of Kuraray's proposed revisions. Accordingly, certain exclusions have now been incorporated into the scope. For further discussion, see the "Scope Comments" section below.

On January 27, 2003, Japan VAM & POVAL requested that the Department revise the scope to exclude certain additional copolymers. Also on January 27, 2003, Nippon Gohsei requested that the Department modify the scope language in the petitioners' December 23, 2002, submission to avoid unnecessary restrictions on imports of the remaining copolymers covered by

that submission not addressed in Kuraray's January 9, 2003, letter. On February 4, 2003, the petitioners agreed to all of the revisions requested by Nippon Gohsei, and an additional revision requested by Kuraray. On February 5, 2003, the petitioners submitted a letter noting that they were in the process of reviewing Japan VAM & POVAL's exclusion request, and had not yet agreed to the exclusion request. Because there was insufficient time to properly consider Japan VAM & POVAL's exclusion request, we will address it in the final determination.

In December 2002 and January 2003, we received responses to the remaining sections of the Department's original questionnaire, as well as certain supplemental questionnaires, from Nippon Gohsei.

Period of Investigation

The POI is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002).

Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:
1) PVA in fiber form.
2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.
3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.
4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.
5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.
6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.
8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.
9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.
11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the initiation notice. *See* the *Initiation Notice*, 67 FR at 61591.

On September 30, 2002, the petitioners requested that we exclude PVA used as, or in the manufacture, of excipients.

On October 21, 2002, Kuraray and two importers of PVA (*i.e.*, Ricoh Electronics and Oxyvinyls) requested that the Department also revise the scope to exclude various PVA products with specific physical characteristics and/or specific end-uses. These products included: 1) C-polymers - certain copolymers of PVA and cationic monomer; 2) K-polymers - certain copolymers of PVA and carboxylic acid for use in a paper application; 3) M-polymers - certain copolymers of PVA and thiol for use in emulsion polymerization of non-vinyl acetic material; 4) MP-polymers - certain copolymers of PVA and paraffin; 5) R-polymers - certain copolymers of PVA and silan that are used in paper coating applications; and 6) PVA hydrolyzed at less than 83 percent. Each of the exclusion requests specified ranges of hydrolysis and viscosity and maximum levels of volatiles and ash, by weight.

On December 23, 2002, the petitioners agreed to these requests, shown as items 2, 3, and 5 through 13 in the "Scope of Investigation" section above, and modified as noted below.

On January 9, 2003, Kuraray requested that the Department broaden these exclusions to cover certain additional products not produced in the United States. Specifically, Kuraray requested that the scope exclusions agreed to by the petitioners with respect to certain copolymer products specify a minimum percentage of the non-PVA monomers present in these copolymer products outlined above (*i.e.*, cationic monomer, carboxylic acid, thiol, and paraffin) instead of specifying exact levels of hydrolysis, viscosity, volatiles, and ash content as noted in the petitioners' December 23, 2002, submission.

On January 22, 2003, the petitioners agreed to the majority of the modifications proposed by Kuraray. Specifically, with respect to copolymers of PVA and carboxylic acid, the petitioners agreed to remove the specifications for hydrolysis, viscosity, volatiles, and ash content from the proposed exclusion language. However, the petitioners did not agree to change the end-use requirement in the proposed exclusion from "certified for use in a paper application" to "certified not for use in the production of textiles." With respect to copolymers of PVA and paraffin, the petitioners agreed to remove the specification for hydrolysis, viscosity, volatiles, and ash content from the proposed exclusion language. However, the petitioners did not agree to change the concentration level of the additional monomer from one percent to 0.5 percent (or lower). Finally, the petitioners agreed to lower the viscosity level of homopolymers hydrolyzed greater than 85 percent from 90 to 80 centipoise, provided that, when the product has a viscosity of greater than or equal to 80 centipoise and less than 90 centipoise, it is certified for use in an ink-jet application. Accordingly, certain exclusions have now been incorporated into the scope. *See* the "Scope of the Investigation" section above.

On January 27, 2003, Japan VAM & POVAL, one of the mandatory respondents who has not responded to the Department's questionnaire, requested that the Department revise the scope to exclude certain PVA products with specific physical characteristics and/or specific end-uses. These products include: D-copolymers (*i.e.*, certain copolymers of PVA and diacetoneacrylamide) for use in a paper application.

Additionally, on January 27, 2003, Nippon Gohsei requested that the remaining scope exclusions agreed to by the petitioners but not addressed in Kuraray's January 9, 2003, submission specify a minimum percentage of the non-PVA monomers (*i.e.*, sulfonic acid, acetoacetylate, polyethylene oxide, or quaternary amine) instead of specifying exact levels of hydrolysis, viscosity, volatiles, and ash content as noted in the petitioners' December 23, 2002, submission.

On February 4, 2003, the petitioners agreed to all of the revisions requested by Nippon Gohsei. In addition, the petitioners also agreed to revise the scope to exclude certain copolymers covalently bonded with silan uniformly present on all polymer chains in a concentration equal to or greater than one mole percent, certified for use in paper coating applications, pursuant to a request made by Kuraray.

As noted above, on February 5, 2003, the petitioners submitted a letter noting that they were in the process of reviewing Japan VAM & POVAL's exclusion request, and had not yet agreed to the exclusion request. Because there was insufficient time to properly consider Japan VAM & POVAL's exclusion request, we will address it in the final determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On October 22, 2002, the Department issued its questionnaire to Denki Kagaku, Japan VAM & POVAL, and Kuraray. Neither Denki Kagaku nor Japan VAM & POVAL responded to the Department's questionnaires. Moreover, on December 5, 2002, Kuraray informed the Department that it did not intend to participate in this investigation. Because these companies failed to supply necessary information, we have applied FA to calculate their dumping margins, pursuant to section 776(a)(2)(B) of the Act.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Each of the respondents was notified in the Department's questionnaires that failure to submit the requested information by the date specified might result in use of FA. As a general matter, it is reasonable for the Department to assume that Denki Kagaku, Japan VAM & POVAL, and Kuraray possessed the records necessary for this investigation and that by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. As the respondents failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act.

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.*

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. *See* the September 25, 2002, *Initiation Checklist*, on file in the Central Records Unit, Room B-099, of the Main Commerce Department building, for a discussion of the margin calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based.

In selecting from among the facts otherwise available and using an adverse inference, we reviewed the information provided in the petition and in the response submitted by Nippon Gohsei. The petition contained a margin calculation for each of two products sold by Kuraray. *See* below for a review of the methodology used by the petitioners for their calculations of EP and NV. Because these margins were higher than the margin that we calculated for Nippon Gohsei, we selected these margins for purposes of corroboration.

Export Price

With respect to the margins in the petition, EP was based on POI price quotes for the sale of PVA produced by Kuraray to customers in the United States. The petitioners calculated net U.S. prices for PVA by deducting a distributor mark-up, where applicable, and certain movement charges.

We corroborated the U.S. prices from the petition by comparing them to prices of comparable products sold by Nippon Gohsei. We found that Nippon

Gohsei made U.S. sales of comparable products at similar prices to the U.S. prices from the petition, thus corroborating the prices provided in the petition. For ocean freight expense, we likewise found that the petition contained the same expense for each of the two products and that sales by Nippon Gohsei with ocean freight in excess of these amounts of expenses were sufficient to corroborate the amounts provided in the petition. We were unable to corroborate the U.S. inland freight charges from the petition since no such charges were reported by Nippon Gohsei. The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the EP calculations in the petition. Specifically, we attempted to locate inland freight charges through publicly available sources, but we were unable to do so.

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(d). Additionally, the SAA specifically states that where "corroboration may not be practicable in a given circumstance, the Department need not prove that the facts available are the best alternative information." *See* the SAA at 870. For further discussion, see the February 12, 2003, memorandum to the file from the team entitled "Corroboration of Data Contained in the Petition for Assigning Facts Available Rates" (Corroboration Memo).

Normal Value

The petitioners based NV on home market price quotes from Kuraray for PVA of a comparable grade to the products exported to the United States. These price quotes were contemporaneous with the U.S. price quotes used as the basis for EP. In addition, the petitioners alleged that sales of PVA products in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we found reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country-wide cost investigation. Pursuant to section 773(b)(3) of the Act, COP consisted of the cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COP based on the experience of a U.S. PVA producer during the 2001 fiscal year, adjusted for known differences between costs incurred to manufacture PVA in the United States and Japan.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Japan on constructed value (CV). The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute the COP. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon the amount reported in Kuraray's 2001 financial statements.

We found that Nippon Gohsei made sufficient home market sales at prices similar to the home market prices provided in the petition. One COP amount was provided in the petition for the two products sold by Kuraray. We were able to corroborate this amount, since the highest COP reported by Nippon Gohsei for a comparable product was similar to the COP provided in the petition. For further discussion, see the Corroboration Memo.

Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petition to be corroborated to the extent practicable for purposes of this preliminary determination.

Accordingly, in selecting AFA with respect to Denki Kagaku, Japan VAM & POVAL, and Kuraray, we have applied the margin rate of 144.16 percent, which is the highest estimated dumping margin set forth in the notice of initiation. *See* the *Initiation Notice*, 67 FR at 61593.

Fair Value Comparisons

To determine whether sales of PVA from Japan to the United States were made at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Nippon Gohsei in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics discussed below.

In October 2002, Kuraray, Marubeni, and the petitioners submitted comments on the model-matching criteria to be used by the Department. Based on these comments, we proposed to match products sold in the United States to products sold in the home market in the ordinary course of trade that were identical with respect to the following hierarchy of characteristics: molecular structure, hydrolysis, viscosity, degree of modification, particle size, tackifier, defoamer, ash, color, volatiles, and visual impurities. We invited interested parties to submit additional comments on these criteria prior to the preliminary determination.

In December 2002, the petitioners requested that the Department revise the proposed model-matching hierarchy to place hydrolysis and viscosity as the most important criteria.

Also in December 2002, Nippon Gohsei requested the Department revise the particle size field of the hierarchy to include PVA in standard, fine, pellet, and liquid forms. In addition, Nippon Gohsei requested that the Department add the field SOLH/U in order to distinguish between PVA sold in dry form versus liquid form. Finally, Nippon Gohsei requested that the Department allow respondents to report hydrolysis, viscosity, and degree of modification in ranges.

After analyzing these comments, we have reconsidered the model-matching hierarchy and revised it as follows: 1) we added as the most important criterion whether the product is a homo- or a co- polymer; 2) we placed hydrolysis and viscosity before molecular structure (*i.e.*, the type of copolymer); 3) we accepted the proposed changes to particle size field suggested by Nippon Gohsei; and 4) we allowed the reporting of hydrolysis, viscosity, and degree of modification in ranges. All other characteristics remained the same. For further discussion, see the memorandum entitled "Concurrence Memorandum for the Preliminary Determination in the Investigation of Polyvinyl Alcohol from Japan," dated February 12, 2003 (the Concurrence Memorandum), on file in room B-099 of the Department's Central Records Unit (CRU).

Export Price

In accordance with section 772(a) of the Act, we based our calculations on EP because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser prior to importation. In cases where Nippon Gohsei sold pursuant to multiple-shipment sales agreements, we used the date of the sales agreement, where available, as the date of sale. Where the date of the sales agreement was not known, we used the date of shipment as the date of sale because this date preceded the date of invoice. For further discussion, see the Concurrence Memo.

We based EP on the packed delivered prices to unaffiliated purchasers in either Japan or the United States. Where appropriate, we made adjustments for billing errors. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, loading expenses, international freight, and marine insurance.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Affiliated-Party Transactions and Arm's-Length Test

Nippon Gohsei reported sales of the foreign like product to affiliated end-users. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to the affiliated party was, on average, 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. Consistent with section 351.403(c) of the Department's regulations, we excluded from our analysis those sales where the price to the affiliated parties was less than 99.5 percent of the price to the unaffiliated parties.

C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of PVA in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COPs. *See* the *Initiation Notice*, 67 FR at 61594.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), including interest expenses. *See* the "Test of Home Market Sales Prices" section below for treatment of home market selling expenses. We relied on the COP data submitted by Nippon Gohsei, except as noted below:

- We revised the reported costs for raw materials and utilities obtained from an affiliated party using facts available because Nippon Gohsei failed to report either the affiliate's costs and/or the market price for these inputs, as required by section 773(f)(3) of the Act (*i.e.*, the "major input" rule). Because Nippon Gohsei stated that it attempted to obtain the necessary cost data from its affiliate but was unable to compel its affiliate to provide this information, we have used "gap-filler" facts available for the affiliate's costs and/or a market price in accordance with our practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea*, 65 FR 16880 (Mar. 30, 2000) and accompanying Issues and Decision Memorandum at *Comment 6*. As "gap-filler" facts available, we derived a cost and/or a market price for these inputs using data contained in the petition. We then used the higher of these costs, the market price, or the reported transfer prices, in accordance with section 773(f)(3) of the Act.
- We included the total amount of research and development expense incurred by Nippon Gohsei during the cost reporting period in the G&A rate calculation. We also included gain and loss on sale of fixed assets, and other operating incomes and expenses in the G&A rate calculation.

For further discussion, see the memorandum from Sheikh M. Hannan to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Adjustments for the Preliminary Determination," dated February 12, 2003.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were adjusted for billing errors and were exclusive of any applicable movement charges, and direct and indirect selling expenses. We recalculated indirect selling expenses for certain sales made through affiliated parties to capture the additional layer of indirect selling expenses incurred by the affiliate. For further discussion, see the memorandum to the File from the Team Re: Calculations Performed for The Nippon Synthetic Chemical Industry Co., Ltd. for the Preliminary Determination in the 2001–2002 Antidumping Duty Investigation of Polyvinyl Alcohol from Japan, dated February 12, 2003, which is available in room B-099 of the Department's CRU. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the

COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Nippon Gohsei's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Level of Trade

In accordance with section 773(a)(1)(B)(i), to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[1] including selling functions,[2] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[3]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, Court Nos. 00–1058,-1060 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

We obtained information from Nippon Gohsei regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Nippon Gohsei for each channel of distribution. *See* page A-11 and exhibit 9 of Nippon Gohsei's November 22 section A response; *see also* pages 9 through 17 and exhibit 7 of Nippon Gohsei's January 13 response to the Department's supplemental questionnaire.

Nippon Gohsei reported sales through twelve channels of distribution in the home market, including: 1) sales through affiliated distributors to the unaffiliated distributors or end-users; and 2) direct sales to unaffiliated distributors and affiliated and unaffiliated end-users. Nippon Gohsei stated that it performed the following selling functions/services in the home market with respect to these channels of distribution: market research, price negotiations with customers, order processing, interactions with customers, forward inventory maintenance, technical advice, warranty services, freight arrangements, advertising, and just-in-time delivery. In addition, Nippon Gohsei provided information indicating that its affiliated resellers perform an additional layer of selling functions to customers in the home market.

We first noted that sales by Nippon Gohsei through affiliated distributors pass through two companies before reaching the customer, whereas sales in the other chains of distribution pass directly to the customer. We then examined whether any differences existed with respect to the selling functions performed by Nippon Gohsei in making sales within each of these broad channels of distribution (*i.e.*, through affiliates and direct to the customer). For the sales through Nippon Gohsei's affiliated distributors, we conducted our LOT analysis based on: 1) the selling activities performed by Nippon Gohsei to sell to the affiliated sellers; and 2) the selling activities performed by the affiliated reseller to sell to its unaffiliated customers. The information on the record indicates that the selling functions performed by both Nippon Gohsei and by its affiliated resellers in connection with sales through affiliated resellers are almost identical. Therefore, we find that sales through affiliated parties in the home market constitute one LOT.

Nippon Gohsei also made sales to affiliated and unaffiliated home market end-users and unaffiliated home market distributors. The information on the record also indicates that the selling functions performed in selling directly to end-users and selling to unaffiliated distributors were also substantially the same. Accordingly, we do not find the differences in selling functions so significant as to warrant finding a distinct LOT for sales through these channels. However, when these functions are compared to those for sales through affiliated resellers, we find that Nippon Goshei and its affiliates provide an additional layer of selling functions that is substantially greater than the selling functions provided for direct sales. Consequently, we preliminarily find that Nippon Gohsei made sales at two LOTs in the home market: 1) sales through affiliated parties, and 2) direct sales to affiliated and unaffiliated customers.

For its sales to the United States, Nippon Gohsei reported two channels of distribution, including sales to unaffiliated trading companies and direct sales to end-users. Nippon Gohsei stated that it performed the following selling functions/services in the U.S. market: market research, price negotiations with customers, order processing, interactions with customers, forward inventory maintenance, technical advice, warranty services, freight arrangements, advertising, and just-in-time delivery. The information on the record indicates that the selling functions performed in selling directly to end-users and selling to unaffiliated distributors were also virtually identical. Like Nippon Gohsei's sales to unaffiliated parties in the home market, the differences between the claimed channels in the U.S. market are not substantial enough to warrant a finding of separate LOTs. Therefore, we preliminarily find that Nippon Gohsei made sales through one LOT in the U.S. market: sales to unaffiliated parties. We further preliminarily find that the U.S. LOT is the same as the home market LOT for sales to unaffiliated parties because the selling functions performed by Nippon Gohsei are substantially the same in both markets. Consequently, we compared Nippon Gohsei's EP sales to its sales at the same LOT in the home market. Where we could not compare EP sales to home market sales of the most similar product at the same LOT, we made an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For further discussion, see the Concurrence Memo.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. Where appropriate, we made adjustments for billing errors. We also made deductions, where appropriate, for movement expenses, including inland freight (plant to distribution warehouse and plant/warehouse to customer) and warehousing under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and bank charges.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Finally, we made an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412, where appropriate.

Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the U.S. dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. Accordingly, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, except where Nippon Gohsei demonstrated that its exchange rates were established by forward exchange contracts.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (in percent)
Denki Kagaku Kogyo Kabushiki Kaisha	144.16
Japan VAM & POVAL Co., Ltd.	144.16
Kuraray Co., Ltd.	144.16
The Nippon Synthetic Chemical Industry Co., Ltd.	24.82
All Others	24.82

Pursuant to section 735(c)(5)(A) of the Act, we have excluded from the calculation of the All Others rate margins which are zero or *de minimis*, or determined entirely on facts available. Because we determined the margin for the three non-participating respondents entirely on facts available, we used Nippon Gohsei's margin as the All Others rate.

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. *See* 19 CFR 351.309.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the PVA selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services, where applicable.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 10 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310.

We will make our final determination no later than 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: February 12, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4132 Filed 2–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

National Renewable Energy Laboratory; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–051.

Applicant: National Renewable Energy Laboratory, Golden, CO 80401.

Instrument: Ignition Quality Tester.

Manufacturer: Advanced Engine Technology Ltd., United Kingdom.

Intended Use: See notice at 68 FR 742, January 7, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides standardized measurements of ignition delay, maximum chamber temperature, heat rise and autoignition temperature for diesel and alternative fuel and additive compounds. The U.S. Department of Agriculture and Southwest Research Institute advised February 4, 2003 that (1) this capability is pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–4133 Filed 2–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–004.

Applicant: University of Kentucky, Chem/Physics Building, Room 177, Lexington, KY 40506.

Instrument: IR Image Furnace, Model SCII-MDH–11020.

Manufacturer: NEC Machinery Corporation, Japan.

Intended Use: The instrument is intended to be used for synthesis of single crystals of oxides such as ruthenatium and copper for fundamental materials research and to understand their magnetic and electronic properties.

Application accepted by Commissioner of Customs: January 24, 2003.

Docket Number: 03–005.

Applicant: Northwestern University, Searle 5–474, MC S205, 320 East Superior Street, Chicago, IL 60637.

Instrument: MSM System Series 300 Yeast Manipulator and Micro Zapper.

Manufacturer: Singer Instrument Company Limited, United Kingdom.

Intended Use: The instrument is intended to be used to study the biological function of yeast SWI/SNF chromatin remodeling complex. Experiments to be conducted include yeast mating, sporulation and zygote isolation.

Application accepted by Commissioner of Customs: January 30, 2003.

Docket Number: 03–006.

Applicant: MetroHealth Medical Center, 2500 MetroHealth Drive, Cleveland, OH 44109–1998.

Instrument: Electron Microscope, Model Tecnai G_2 12 TWIN.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used for research which will include:

1. Structural alterations in pulmonary vasculature caused by embolized particles present in pharmaceutical tablets.

2. Structural-correlative studies of lung morphology in patients with acute lung injury, including adult respiratory distress syndrome.

3. Evaluation of ultrastructural abnormalities of human and animal neoplasms including pulmonary and extrapulmonary tumors.

4. Defining new ultrastructural abnormalities of respiratory cilia which may play a role in "immotile cilia syndrome" and the development of bronchiectasis.

5. Response of the human lung to mineral dusts.

6. Defining gene function in disease pathogenesis.

7. Determining which neurotransmitter peptides are localized in DiO-labelled synaptic terminals of the aortic depressor nerve.

Application accepted by Commissioner of Customs: February 4, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–4134 Filed 2–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 030123017–3017–01]

RIN: 0693–ZA50

Small Grants Programs; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the following programs are soliciting applications for financial assistance for FY 2003: (1) The Precision Measurement Grants Program; (2) the 2003 Summer Undergraduate Research Fellowships (SURF) in the areas of Electronics and Electrical Engineering, Manufacturing Engineering, Chemical Science and Technology, Physics, Materials Science and Engineering, Building and Fire Research, and Information Technology; (3) the Electronics and Electrical Engineering Laboratory Grants Program; (4) the Manufacturing Engineering Laboratory Grants Program; (5) the Chemical Science and Technology Laboratory Grants Program; (6) the Physics Laboratory Grants Program; (7) the Materials Science and Engineering Laboratory Grants Program; (8) the Building Research Grants and Cooperative Agreements Program; and (9) the Fire Research Grants Program.

The Precision Measurement Grants Program is seeking proposals for significant, primarily experimental, research in the field of fundamental measurement or the determination of fundamental constants.

The programs "SURFing the Electronics and Electrical Engineering Laboratory," "SURFing the Manufacturing Engineering Laboratory," "SURFing the Chemical Science and Technology Laboratory," "SURFing the Physics Laboratory," "SURFing the Materials Science and Engineering Laboratory," "SURFing the Building and Fire Research Laboratory," and "SURFing the Information Technology Laboratory," will provide an opportunity for the NIST Electronics and Electrical Engineering Laboratory (EEEL), Manufacturing Engineering Laboratory (MEL), Chemical Science and Technology Laboratory (CSTL) Physics Laboratory (PL), Materials Science and Engineering Laboratory (MSEL), Building and Fire Research Laboratory (BFRL), and Information Technology Laboratory (ITL), and the National Science Foundation (NSF) to join in a partnership to encourage outstanding undergraduate students to pursue careers in science and engineering.

The EEEL program will provide research opportunities with internationally known NIST scientists in the fields of semiconductors (including mainstream silicon, power devices, and compound semiconductors), fundamental electrical measurements, electronic instrumentation, electrical systems, and electronic information. The MEL program will provide research opportunities with internationally known NIST scientists in the fields of intelligent systems, manufacturing metrology, precision engineering, and manufacturing systems integration. The CSTL program will provide research opportunities with internationally known NIST scientists in the fields of chemical characterization of materials, process metrology, chemical and biochemical sensing, nanotechnology, healthcare measurements, environmental measurements, microelectronics, physical property data, chemical and biochemical data, bio-molecules and materials, DNA technologies, and international measurement standards. The PL program will involve students in world-class atomic, molecular, optical (AMO) and radiation physics research with internationally known physicists in the NIST Physics Laboratory. The MSEL program will provide research opportunities with internationally known NIST scientists in the fields of ceramics, solid state chemistry, metallurgy, polymers, neutron condensed matter science, and materials reliability. The BFRL program will provide research opportunities with internationally known NIST scientists in the fields of building materials (concrete, coating), structure (earthquake), building environment (indoor air quality, thermal machinery), and fire science and engineering. The ITL program will provide research opportunities with internationally known NIST scientists in the fields of networking, software quality, security, information access, convergent systems, mathematical science, and statistics. The NIST Program Directors will work with physics, chemistry, materials science, manufacturing engineering, intelligent systems, automated production, precision engineering, information technology, building materials, constructed structures, and other science-related department chairs and directors of multi-disciplinary academic organizations to identify outstanding undergraduates (including graduating seniors) who would benefit from off-campus summer research in an honors academy environment.

The Electronics and Electrical Engineering Laboratory (EEEL) Grants Program provides grants and cooperative agreements for the development of fundamental electrical metrology and of metrology supporting industry and government agencies in the broad areas of semiconductors, electronic instrumentation, radio-frequency technology, optoelectronics, magnetics, video, electronic commerce as applied to electronic products and devices, the transmission and distribution of electrical power; national electrical standards (fundamental, generally quantum-based physical standards), and law enforcement standards.

The Manufacturing Engineering Laboratory (MEL) Grants Program will provide grants and cooperative agreements in the following fields of research: Dimensional Metrology for Manufacturing, Mechanical Metrology for Manufacturing, Intelligent Systems, and Information Systems Integration for Applications in Manufacturing.

The Chemical Science and Technology Laboratory (CSTL) Grants Program will provide grants and cooperative agreements in the following fields of measurement science research, focused on reference methods, reference materials and reference data: Biotechnology, Process Measurements, Surface and Microanalysis Science, Physical and Chemical Properties, and Analytical Chemistry.

The Physics Laboratory (PL) Grants Program will provide grants and cooperative agreements in the following fields of research: Electron and Optical Physics, Atomic Physics, Optical Technology, Ionizing Radiation, and Time and Frequency.

The Materials Science and Engineering Laboratory (MSEL) Grants Program will provide grants and cooperative agreements in the following fields of research: Ceramics, Metallurgy, Polymer Sciences, Neutron Scattering Research and Spectroscopy.

The Building Research Grants and Cooperative Agreements Program will provide grants and cooperative agreements in the following fields of research: Structures, Construction Metrology and Automation, Inorganic Materials, Polymeric Materials, Thermal Machinery, Mechanical Systems and Controls, Heat Transfer and Alternative Energy Systems, Computer Integrated Construction, Indoor Air Quality and Ventilation.

The Fire Research Grants Program will provide funding for innovative ideas in the fire research area generated by the proposal writer, who chooses the topic and approach, consistent with the program description and objectives of this notice.

SUPPLEMENTARY INFORMATION:

Precision Measurement Grants Program

Dates: Applicants for the Precision Measurement Grants Program must submit an abbreviated proposal for preliminary screening. Based on the merit of the abbreviated proposal, applicants will be advised whether a full proposal should be submitted. The abbreviated proposals must be received at the address listed below no later than 5 p.m. eastern standard time on March 24, 2003. Proposals received after this deadline will be returned with no further consideration. Finalists will be selected by approximately May 9, 2003, and will be requested to submit full proposals to NIST by close of business on June 20, 2003. NIST expects to issue awards on or before September 30, 2003.

Addresses: For the Precision Measurement Grants Program, applicants are requested to direct technical questions and submit an abbreviated proposal (original and two signed copies), with a description of their proposed work of no more than five double spaced pages to: Dr. Peter J. Mohr, Manager, NIST Precision Measurement Grants Program, National Institute of Standards and Technology, Bldg. 225, Rm. B161, 100 Bureau Drive, Stop 8401, Gaithersburg, MD 20899–8401. Tel: (301) 975–3217. E-mail: *mohr@nist.gov*. Web site: *http://physics.nist.gov/pmg*.

Although applicants are not required to submit more than three copies of the proposal, the normal review process for the Precision Measurement Grants Program utilizes 10 copies. Applicants are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5″ × 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed.

Authority: The authority for the Precision Measurement Grants Program is as follows: As authorized by 15 U.S.C. 272 (b) and (c), NIST conducts directly, and supports through grants and cooperative agreements, a basic and applied research program in the general area of fundamental measurement and the determination of fundamental constants of nature.

Program Description and Objectives: The program description and objectives for the Precision Measurement Grants Program are as follows: as part of its research program, since 1970 NIST has awarded Precision Measurement Grants primarily to universities and colleges so that faculty may conduct significant, primarily experimental research in the field of fundamental measurement or the determination of fundamental constants. NIST sponsors these grants and cooperative agreements primarily to encourage basic, measurement-related research in universities and colleges and other research laboratories and to foster contacts between NIST scientists and those faculty members of academic institutions and other researchers who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for researchers to pursue new, fundamental measurement ideas for which other sources of support may be difficult to find. There is some latitude in research topics that will be considered under the Precision Measurement Grants Program. The key requirement is that the proposed project support NIST's ongoing work in the field of basic measurement science, which includes:

1. Experimental and theoretical studies of fundamental physical phenomena which test the basic laws of physics or which may lead to new or improved fundamental measurement methods and standards.

2. The determination of important fundamental physical constants.

Although proposals for either experimental or theoretical research will be considered, the former will be given preference because of the more immediate applicability of experimental work to metrology. Proposals from workers at the assistant and associate professor level who have some record of accomplishment are especially encouraged in view of the comparative difficulty researchers have in obtaining funds at the early stages of their careers.

Typical projects which have been funded through the NIST Precision Measurement Grants Program include:

(1) Precision optical spectroscopy of positronium, S. Chu, Stanford University.

(2) Spectroscopy of francium: towards a precise parity nonconservation measurement in a laser trap, L. A. Orozco, State University of New York at Stony Brook.

(3) Measurement of Newton's constant G using a new method, J.H. Gundlach, University of Washington.

(4) Measurement of the polarization of the cosmic microwave background, S.T. Staggs, Princeton University.

(5) Combining the quantum Hall and AC Josephson effects for electric current metrology, E.A. Gwinn, University of California, Santa Barbara.

(6) A test of CPT symmetry using a new K–^{3}He self-compensating magnetometer, M.V. Romalis, University of Washington.

Eligibility: Eligible applicants are institutions of higher education, other non-profits, commercial organizations, international organizations, State, local and Indian tribal governments and Federal agencies with appropriate legal authority.

Award Period and Funding Availability: Applicants should propose multi-year projects for up to three years at no more than $50,000 per year. NIST anticipates spending $100,000 this year for two new grants at $50,000 each for the first year of the research projects. NIST may award all, none or some of these new awards. Second and third year funding will be at the discretion of NIST, based on satisfactory performance, continuing relevance to program objectives, and the availability of funds.

Proposal Review Process: For the Precision Measurement Grants Program, to simplify the proposal writing and evaluation process, the following selection procedure will be used:

Applicants will initially submit abbreviated proposals, containing a description of the proposed project, including sufficient information to address the evaluation criteria, with a total length of no more than five double spaced pages, to the mailing address given above in the *Addresses* section. These proposals will be screened to determine whether they address the requirements outlined in this notice. Proposals that do not meet those requirements will not be considered further. Eight independent, objective individuals, at least half of whom are NIST employees, and who are knowledgeable about the scientific areas that the program addresses will conduct a technical review of each proposal, based on the evaluation criteria described in the Evaluation Criteria section for this program. The proposals will then be ranked based on the average of the reviewers' rankings. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but ranks will be determined on an individual basis, not as a consensus.

The Precision Measurement Grants Program manager, the selecting official, will then select approximately four to eight finalists. In selecting finalists, the selecting official will take into consideration the results of the reviewers' evaluations, including rank, and relevance to the program objectives described above.

Finalists will then be asked to submit full proposals containing a description of the proposed project, including sufficient information to address the evaluation criteria, with a length of no more than ten (10) double spaced pages in addition to the federally mandated forms and certifications, to the mailing address given above in the **ADDRESSES** section. The same independent reviewers will then evaluate the detailed proposals based on the same evaluation criteria, and the proposals will be ranked as previously described. In selecting proposals that will be recommended for funding, the selecting official will take into consideration the results of the reviewers' evaluations, including rank, and relevance to the program objectives described in the Program Description and Objectives section for this program.

The final approval of selected applications and award of grants or cooperative agreements will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible.

Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award.

The decision of the Grants Officer is final.

Evaluation Criteria: The evaluation criteria to be used in evaluating the abbreviated application proposals and full proposals are:

1. *The importance of the proposed research*—Does it have the potential of answering some currently pressing question or of opening up a whole new area of activity?

2. *The relationship of the proposed research to NIST's ongoing work*—Will it support one of NIST's current efforts to develop a new or improved fundamental measurement method or physical standard, test the basic laws of physics, or provide an improved value for a fundamental constant?

3. *The feasibility of the research and the potential impact of the grant*—Is it likely that significant progress can be made in a three year time period with the funds and personnel available and that the funding will enable work that would otherwise not be done with existing or potential funding?

4. *The qualifications of the applicant*—Does the educational and employment background and the quality of the research, based on recent publications, of the applicant indicate that there is a high probability that the proposed research will be carried out successfully?

Each of these factors is given equal weight in the evaluation process.

Matching Requirements: The Precision Measurement Grants Program does not require any matching funds.

Application Kit: For the Precision Measurement Grants Program, an application kit, containing all required application forms and certifications will be provided to the finalists by Ms. Bonnie Whipp, (301) 975–4750.

EEEL, MEL, CSTL, PL, MSEL, BFRL, and ITL SURF Programs

Dates: All SURF Program proposals must be received no later than the close of business March 24, 2003.

Addresses: For all SURF Programs, applicant institutions must submit one signed original and two copies of the proposal to: Attn.: Ms. Anita Sweigert, Administrative Coordinator, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400. Tel: (301) 975–4200. E-mail: *anita.sweigert@nist.gov*. Web site: *http://www.surf.nist.gov/surf2.htm*.

Technical questions for the programs should be directed to the following contact persons: For the EEEL SURF *Program*, Dr. David Newell, Tel: (301) 975–4228, E-mail: *david.newell@nist.gov;* for the MEL SURF Program, Ms. Lisa Jean Fronczek, Tel: (301) 975–6633, E-mail: *lfronczek@nist.gov;* for the CSTL SURF Program, Dr. Albert Lee, Tel: (301) 975–2857, E-mail: *albert.lee@nist.gov* or Jeanice Brown Thomas, Tel: (301) 975–3120, E-mail: *jeanice.brownthomas@nist.gov;* for the PL SURF Program, Dr. Marc Desrosiers, Tel: (301) 975–5639, E-mail: *marc.desrosiers@nist.gov;* for the MSEL SURF Program, Dr. Terrell A. Vanderah, Tel: (301) 975–5785, E-mail: *terrell.vanderah@nist.gov;* for the *BFRL SURF Program*, Dr. Chris White, Tel: (301) 975–6016, E-mail: *cwhite@nist.gov*, or Dr. Chiara Ferraris, Tel: (301) 975–6711, E-mail: *chiara.ferraris@nist.gov;* and for the *ITL SURF Program*, Dr. Larry Reeker, Tel: (301) 975–5147, E-mail: *larry.reeker@nist.gov*.

Authority: The authority for the *SURF Programs* is as follows: 15 U.S.C. 278g–l authorizes NIST to fund financial assistance awards to students at institutions of higher learning within the United States. These students must show promise as present or future contributors to the missions of NIST. Cooperative agreements are awarded to assure continued growth and progress of science and engineering in the United States, including the encouragement of women and minority students to continue their professional development.

Program Description and Objectives: The objective of the SURF Programs is to build a mutually beneficial relationship between the student, the institution of higher learning, and NIST.

The program description for the SURF Programs is as follows: NIST is one of the nation's premiere research institutions for the physical and engineering sciences and, as the lead Federal agency for technology transfer, it provides a strong interface between government, industry and academia. NIST embodies a special science culture, developed from a large and well-equipped research staff that enthusiastically blends programs that address the immediate needs of industry with longer-term research that anticipates future needs. This occurs in few other places and enables the EEEL, MEL, CSTL, PL, MSEL, BFRL, and ITL to offer unique research and training opportunities for undergraduates, providing them a research-rich environment and exposure to state of the art equipment.

NIST's EEEL strives to be the world's best source of fundamental and industrial-reference measurement methods and physical standards for electrotechnology. To be a world-class resource for semiconductor measurements, data, models, and standards focused on enhancing U.S. technological competitiveness in the world market, research is conducted in semiconductor materials, processing, devices, and integrated circuits to provide, through both experimental and theoretical work, the necessary basis for understanding measurement-related requirements in semiconductor technology. To provide the world's most technically advanced and fundamentally sound basis for all electrical measurements in the United States, the EEEL's research projects include maintaining and disseminating the national electrical standards, developing the measurement methods and services needed to support electrical materials, components, instruments, and systems used for the generation, transmission, and application of conducted electrical power, and related activities in support of the electronics industry including research on video technology and electronic product data exchange.

NIST's MEL conducts theoretical and experimental research in length, mass, force, vibration, acoustics, and ultrasonics, as well as intelligent machines, precision control of machine tools, and information technology for the integration of all elements of a product's life cycle. Much of this applied research is devoted to overcoming barriers to the next technological revolution, in which manufacturing facilities are spread across the globe. MEL's research and development leads to standards, test methods and data that are crucial to industry's success in exploiting advanced manufacturing technology. Critical components of manufacturing at any level are measurement and measurement-related standards, not just of products, but increasingly of information about products and processes. Thus, MEL programs enhance both physical and information-based measurements and standards. Research projects can be theoretical or experimental, and will range in focus from intelligent machine control, characterizing a manufacturing process or improving product data exchange in manufacturing and related industries such as healthcare, to the accurate measurement of an artifact's dimensions.

NIST's CSTL strives to be a world-class research laboratory that is recognized by the nation as the primary source for the chemical, biochemical, and chemical engineering measurements, data, models, and reference standards that are required to enhance U.S. industrial competitiveness in the world market. CSTL is the primary reference laboratory for chemical measurements, entrusted with developing, maintaining, advancing, and enabling the chemical measurement system for the United States of America, thereby enhancing industry's productivity and competitiveness, establishing comparability of measurements to facilitate equity of global trade, and improving public health, safety, and environmental quality. CSTL's activities include: Transportation, Biomaterials, Biotechnology, Chemical and Allied Products, Energy Systems, Environmental Technology and Systems, Health and Medical Products and Services, Industrial and Analytical Instruments and Services, Forensics, Microelectronics, Food and Nutritional Products, International Measurement Standards, Data and Informatics, and emerging Technologies (Nanotechnology, Molecular Electronics, Microfluidics, Combinatorial Chemistry).

Attending to the long-term needs of many U.S. high-technology industries, NIST's PL conducts basic research in the areas of quantum, electron, optical, atomic, molecular, and radiation physics. To achieve these goals, PL staff develop and utilize highly specialized equipment, such as polarized electron microscopes, scanning tunneling microscopes, lasers, and x-ray and synchrotron radiation sources. Research projects can be theoretical or experimental and will range in focus from computer modeling of fundamental processes through trapping atoms and choreographing molecular collisions, to standards for radiation therapy.

NIST's MSEL conducts basic research in the electronic, magnetic, optical, superconducting, mechanical, thermal, chemical, and structural properties of metals, ceramics, polymers, and composites. Much of this applied research is devoted to overcoming barriers to the next technological revolution, in which individual atoms and molecules will serve as the fundamental building blocks of devices. Preparation of unique materials by atomic level tailoring of multi-layers, perfect single crystals, and nanocomposites are just some of the future technologies being developed and explored in NIST's MSEL. To achieve these goals, staff develop and utilize highly specialized equipment, such as high resolution electron microscopes, atomic force microscopes, neutron scattering instruments, x-ray diffraction sources, lasers, magnetometers, plasma furnaces, melt spinners, molecular beam epitaxy systems, and thermal spray systems. Research projects can be theoretical or experimental and will range in focus from the structural, chemical, and morphological characterization of advanced materials made in the NIST laboratories to the accurate measurement of the unique properties possessed by these special materials.

NIST's BFRL provides technical leadership and participates in developing the measurement and standards infrastructure related to materials critical to U.S. industry, academia, government, and the public. Building and Fire Research programs at NIST cover a full range of materials issues from design to processing to performance. Separate research initiatives address concrete, coating, earthquake resistance of structures, fire science and engineering, the theory and modeling of materials, and materials reliability. Through laboratory-organized consortia and one-on-one collaborations, BFRL's scientists and engineers work closely with industrial researchers, manufacturers of high-technology products, and the major users of advanced materials.

NIST's ITL responds to industry and user needs for objective, neutral tests for information technology. These are enabling tools that help companies produce the next generation of products and services, and that help industries and individuals use these complex products and services. ITL works with industry, research and government organizations to develop and demonstrate tests, test methods, reference data, proof of concept implementations and other infrastructural technologies. Program activities include: high performance computing and communications systems; emerging network technologies; access to, exchange, and retrieval of complex information; computational and statistical methods; information security; and testing tools and methods to improve the quality of software.

SURF students will have the opportunity to work one-on-one with our nation's top scientists and engineers. It is anticipated that successful SURF students will move from a position of reliance on guidance from their research advisors to one of research independence during the twelve-week period. One goal of this partnership is to provide opportunities for our nation's next generation of scientists and engineers to engage in world-class scientific research at NIST, especially in ground-breaking areas of emerging technologies. This carries with it the hope of motivating individuals to pursue a Ph.D. in physics, chemistry, materials science, engineering, mathematics, or computer science, and to consider research careers. The SURF Programs will help to forge partnerships with NSF and with post-secondary institutions that demonstrate strong, hands-on undergraduate science curricula, especially those with a demonstrated commitment to the education of women, minorities, and students with disabilities.

Eligibility: The EEEL, MEL, CSTL, PL, MSEL, BFRL, and ITL, SURF Programs are open to colleges and universities in the United States and its territories with degree granting programs in materials science, chemistry, engineering, computer science, mathematics, or physics. Participating students must be U.S. citizens or permanent U.S. residents.

Funding Availability: Funds budgeted for payment to students under these programs are stipends, not salary. The SURF Programs will not authorize funds for indirect costs or fringe benefits.

For the EEEL SURF Program, the NIST EEEL anticipates receiving funding as a NSF REU Program at the level of $73,000 per year. It is anticipated that the funding for the EEEL SURF Program will provide for the costs of stipends, travel and lodging, and the conference attendance for approximately eleven students.

For the MEL SURF Program, the NIST MEL anticipates receiving funding as a NSF REU Program at the level of $52,000 per year. For the CSTL SURF Program, the NIST CSTL will pursue funding as a NSF REU Program at the level of $40,000 per year and may contribute additional NIST CSTL funds to support additional students. For the BFRL SURF Program, the NIST BFRL anticipates receiving funding as a NSF REU Program at the level of $50,000 per year. For the ITL SURF Program, the NIST ITL anticipates receiving funding as a NSF REU Program at the level of $50,000 per year. It is anticipated that the funding for the MEL, CSTL, BFRL and ITL SURF Programs will provide for the costs of stipends, travel and lodging, and the conference attendance of eight students for each program.

For the PL SURF Program, the NIST PL will commit approximately $50,000 to support these cooperative agreements. The NIST PL's REU Program is anticipating renewal of funding by the NSF at the level of $85,000 per year. The anticipated direct costs for stipends, travel, lodging, and conference attendance for 22 students is about $135,000.

For the MSEL SURF Program, the NIST MSEL anticipates receiving funding as a NSF REU Program at the level of $70,000 per year. It is anticipated that this funding will provide for the costs of stipends, travel and lodging, and the conference attendance of 10 students.

The actual number of awards made under this announcement will depend on the actual costs. For all SURF Programs described in this notice, it is expected that individual awards to institutions will range from approximately $3,000 to $70,000. NIST is in the process of determining whether NIST will contract directly with apartment complexes for student housing, or whether funding for student housing will be included in cooperative agreements awarded as a result of this notice. Selected applicants will be informed prior to award whether housing will be provided via the cooperative agreement or provided separately by NIST.

Proposal Review Process: All SURF Program proposals are submitted to the Administrative Coordinator. Each proposal is examined for completeness and responsiveness. Substantially incomplete or non-responsive proposals will not be considered for funding, and the applicant will be notified. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed. Proposals should include the following:

(A) Student Information:

(1) Student application information cover sheet;

(2) Academic transcript for each student nominated for participation (students must have a recommended G.P.A. of 3.0 or better, out of a possible 4.0);

(3) A personal statement from each student and statement of commitment to participate in the 2003 SURF program, including a description of the student's prioritized research interests;

(4) A resume for each student;

(5) Two letters of recommendation for each student;

(6) Verification of U.S. citizenship or permanent legal resident status for each student; and

(7) Verification of health coverage for each student.

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research programs; and

(2) A summary list of the student(s) being nominated.

Institution proposals will be separated into student/institution packets. Each student/institution packet will be comprised of the required application forms, including a complete copy of the student information and a complete copy of the institution information. The student/institution packets will be directed to the SURF Program designated by the student as his/her first choice. Each SURF Program will have three independent, objective NIST employees who are knowledgeable in the scientific areas that the program addresses conduct a technical review of each student/institution packet based on the Evaluation Criteria for the SURF Programs described in this notice. Each technical reviewer will recommend that each student/institution packet be placed into one of three categories: Priority funding; fund if possible; and do not fund. Each student/institution packet will then be placed into one of the three categories by the Program's Director, who will take into consideration the reviewers' recommendations, the relevance of the student's course of study to the program objectives of the NIST laboratory in which that SURF Program resides as described in the Program Description and Objectives section of this notice, the relevance of the student's statement of commitment to the goals of the SURF Program, and the availability of funding.

Student/institution packets placed in the priority funding category will be selected for funding in that SURF Program. Student/institution packets placed in the do not fund category will not be considered for funding.

Student/institution packets placed in the Fund if Possible Category will be considered for funding by the SURF Program designated by the student as his/her second choice. In making selections for funding, the Director of the student's second choice SURF Program will take into consideration the recommendations of the reviewers who conducted the technical reviews for the student's first choice SURF Program, the program objectives of the NIST laboratory in which the student's second choice SURF Program resides as described in the Program Description and Objectives section of this notice, the relevance of the student's statement of commitment to the goals of the SURF Program, and the availability of funding.

Students not selected for funding by their first or second choice SURF Program, and students who did not designate a second choice, will then be considered for funding from all SURF Programs that still have slots available. In making selections for funding, the SURF Program Directors will take into consideration the recommendations of the reviewers who conducted the technical reviews for the student's first choice SURF Program, the program objectives of the NIST laboratory in which their SURF Program resides as described in the Program Description and Objectives section of this notice, the relevance to the goals of the SURF Program, and the availability of funding.

Student/institution packets placed in the fund if possible category, but not selected through the process described above, will not be funded.

The final approval of selected applications and award of cooperative agreements will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by

the agency prior to award. The decision of the Grants Officer is final.

Evaluation Criteria: For the SURF Programs, the evaluation criteria are:

Evaluation of student's academic ability and commitment to program goals: includes evaluation of the following: completed course work; expressed research interest; compatibility of the expressed research interest with SURF Program research areas; research skills; grade point average in courses relevant to the SURF Program; career goals; honors and activities.

Evaluation of applicant institution's commitment to program goals: includes evaluation of the following: the institution's academic department(s) relevant to the discipline(s) of the student(s).

Each of these factors is given equal weight in the evaluation process.

Award Period: The SURF Programs are anticipated to run from May 27 through August 15, 2003; adjustments may be made to accommodate specific academic schedules (*e.g.*, a limited number of 9-week cooperative agreements).

Matching Requirements: The SURF Programs do not require any matching funds.

Application Kit: For the EEEL, MEL, CSTL, PL, MSEL, BFRL, and ITL SURF Programs, an application kit, containing all required forms and certifications, may be obtained by contacting Ms. Anita Sweigert, (301) 975–4200; websites for each program's application kit may be accessed through the following Web site: *http://www.surf.nist.gov/surf2.htm.*

Electronics and Electrical Engineering Laboratory (EEEL) Grants Program

Dates: The Electronics and Electrical Engineering Laboratory Grants Program proposals must be received no later than the close of business September 30, 2003. Proposals received after June 30, 2003, will continue to be processed and considered for funding but may be funded in the next fiscal year, subject to the availability of funds.

Addresses: For the Electronics and Electrical Engineering Laboratory Grants Program, submit one signed original and two copies of the proposal package to: Electronics and Electrical Engineering Laboratory, Attn.: Sheilda Bryner, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8100, Gaithersburg, MD 20899–8100. Tel.:(301) 975–2220. Fax: (301) 975–4091.

Authority: As authorized by 15 U.S.C. 272(b) and (c), the NIST Electronics and Electrical Engineering Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Program Description and Objectives: The Electronics and Electrical Engineering Laboratory Grants Program solicits proposals in support of the broad program objectives identified below.

The Electronics and Electrical Engineering Laboratory Grants Program supports the formal mission of the Electronics and Electrical Engineering Laboratory, which is to strengthen the U.S. economy and improve the quality of life by providing measurement science and technology, and by advancing standards, primarily for the electronics and electrical industries.

More specifically, the Electronics and Electrical Engineering Laboratory Grants Program solicits proposals to support specific programs in the areas of metrology for semiconductors (including mainstream silicon, power devices, and compound semiconductors), superconductors (including cryoelectronics and bulk superconductors), electronic instrumentation, optoelectronics, magnetics (including bulk magnetic materials and magnetic data storage), video (including flat-panel displays), electronic commerce as applied to electronic products and devices, the transmission and distribution of electrical power, national electrical standards (fundamental, generally quantum-based physical standards), and law enforcement (clothing, communication systems, emergency equipment, investigative aids, protective equipment, security systems, vehicles, speed-measuring equipment, weapons, and analytical techniques and standard reference materials used by the public safety community).

For details on these various activities, please see the Electronics and Electrical Engineering Laboratory Web site at *http://www.eeel.nist.gov.* Note that documents describing the current programs for the five participating technical divisions and two offices are available through the home page.

Technical contacts for these areas are:

Semiconductors

Semiconductor Electronics Division—Division Chief: Dr. David G. Seiler; (301) 975–2054; *david.seiler@nist.gov.*

Office of Microelectronics Programs—Director: Dr. Stephen Knight; (301) 975–4400; *stephen.knight@nist.gov.*

Superconductors (Bulk); Magnetics

Magnetic Technology Division—Division Chief: Dr. Alan F. Clark; (303) 497–5477; *aclark@boulder.nist.gov.*

Superconductors (Cryoelectronics); National Electrical Standards (Josephson Array Development)

Electromagnetic Technology Division—Division Chief: Dr. Richard E. Harris; (303) 497–3678; *richard.harris@boulder.nist.gov.*

Electronic Instrumentation; Video; Electronic Commerce; National Electrical Standards (Other Than Josephson Array Development)

Electricity Division—Division Chief: Dr. James K. Olthoff; (301) 975–2400; *james.olthoff@nist.gov.*

Optoelectronics

Optoelectronics Division; Office of Optoelectronics Programs—Division Chief and Office Director: Dr. Gordon W. Day; (303) 497–5432; *gwday@boulder.nist.gov.*

Law enforcement

Office of Law Enforcement Standards—Director: Dr. Kathleen Higgins; (301) 975–2757; *kathleen.higgins@nist.gov.*

Eligibility: The Electronics and Electrical Engineering Laboratory Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Funding Availability: Over the past three years, the Electronics and Electrical Engineering laboratory funded a total of approximately $1,500,000 in grants and cooperative agreements. The amount available each year fluctuates considerably based on programmatic needs. Individual awards are expected to range between $5,000 and $150,000.

Proposal Review Process: For the Electronics and Electrical Engineering Laboratory Grants Program, proposals will be distributed to the appropriate Division Chief or Office Director or designee based on technical area by one or more technical professionals familiar with the programs of the Electronics and Electrical Engineering Laboratory. The proposals will be reviewed in a two-step process. First, at least three independent, objective individuals knowledgeable about the particular scientific area described in the Program Description and Objectives section above that the proposal addresses will conduct a technical review of each proposal, based on the evaluation criteria described below.

Reviews will be conducted on a quarterly basis, and all proposals received during the quarter will be ranked based on the reviewers' scores. Second, the Division Chief or Office Director will make application selections. In making application selections, the Division Chief or Office Director will take into consideration the results of the reviewers' evaluations, the compatibility of the applicant's proposal with the program objectives of the particular division or office that the proposal addresses, the availability of funding, and relevance to the objectives of the Electronics and Electrical Engineering Laboratory Grants Program, as described above. The final approval of selected applications and award of financial assistance will be made by the *NIST Grants Officer* based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Evaluation Criteria: For the Electronics and Electrical Engineering Laboratory Grants Program, the evaluation criteria and weights to be used by the technical reviewers in evaluating the proposals are as follows:

Proposal addresses specific program objectives as described in this notice (25%);

Proposal provides evidence of applicant's expertise in relevant technical area (20%);

Proposal offers innovative approach (20%);

Proposal provides realistic schedule with defined milestones (20%);

Proposal provides adequate rationale for budget (15%).

Award Period: For the Electronics and Electrical Engineering Laboratory Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the Electronics and Electrical Engineering Laboratory Grants Program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (*i.e.*, the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Matching Requirements: The Electronics and Electrical Engineering Laboratory Grants Program does not require any matching funds.

Application Kit: An application kit, containing all required application forms and certifications is available on the web at *http://www.eeel.nist.gov/eeel grants/* or by contacting: Sheilda Bryner, (301) 975–2220, *sheilda.bryner@nist.gov.*

Manufacturing Engineering Laboratory (MEL) Grants Program

Dates: The MEL Grants Program proposals must be received no later than the close of business September 30, 2003. Proposals received after June 30, 2003, will continue to be processed and considered for funding but may be funded in the next fiscal year, subject to the availability of funds. Each applicant must submit one signed original and two copies of each proposal along with a Grant Application (Standard Form 424 REV. 7/97 and other required forms).

Addresses: For the MEL Grants Program, submit one signed original and two copies of the proposal, clearly marked to identify the field of research, to: Manufacturing Engineering Laboratory, Attn: Mrs. Barbara Horner, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8200, Building 220, Room B322, Gaithersburg, Maryland 20899–8200. Tel: (301) 975–4345. E-mail: *barbara.horner@nist.gov.*

Authority: As authorized under 15 U.S.C. 272(b) and (c), the MEL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Program Description and Objectives: All proposals submitted must be in accordance with the program objectives listed below. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

I. *Precision Engineering Division, 821*—The primary objective is to support laboratory programs in the areas of Engineering Metrology, Large-Scale Metrology, Nanometer-Scale Metrology, and Surface Metrology. The contact person for this division is: Dr. Dennis Swyt, and he may be reached at (301) 975–3463; *dennis.swyt@nist.gov.*

II. *Manufacturing Metrology Division, 822*—The primary objective is to support laboratory programs in Mechanical Metrology; Advanced Optics Metrology; Predictive Process Engineering; and Smart Machine Tools. The contact person for this division is: Dr. E. Clayton Teague, and he may be reached at (301) 975–6600; *clayton.teague@nist.gov.*

III. *Intelligent Systems Division, 823*—The primary objective is to support laboratory programs in Intelligent Open Architecture Control of Manufacturing Systems, Intelligent Controls of Mobility Systems, and Intelligent Systems. The contact person for this division is: Mr. Albert Wavering, and he may be reached at (301) 975–3418; *albert.wavering@nist.gov.*

IV. *Manufacturing Systems Integration Division, 826*—The primary objective is to pursue semantics- and ontology-based systems integration technology and standards through support of laboratory programs in Manufacturing Enterprise Integration; Manufacturing Simulation and Visualization; Integrated Simulations for Homeland Defense and Emergency Response; Product Engineering; Healthcare Informatics; and Meso-Micro-Nano-Manufacturing. The contact person for this division is: Dr. Steven R. Ray, and he may be reached at (301) 975–3508; *steven.ray@nist.gov.*

Eligibility: The MEL Grants Program is be open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Funding Availability: In fiscal year 2003, the MEL Grants Program anticipates funding of approximately $750,000, including new awards and continuing projects. Individual awards are expected to range from approximately $25,000 to $300,000.

Proposal Review Process: Responsive proposals will be reviewed in a two-step process. First, at least three independent, objective individuals knowledgeable about the particular scientific area described in the section above that the proposal addresses will conduct a technical review of proposals,

based on the evaluation criteria described below. Reviews will be conducted no less than once per quarter, and all proposals since the last review session will be ranked based on the reviewers' scores. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but ranks will be determined on an individual basis, not as a consensus. Second, the Division Chief or Laboratory Director will make application selections.

In making application selections, the Division Chief or Laboratory Director will take into consideration the results of the reviewers' evaluations, the compatibility of the applicant's proposal with the program objectives of the particular division that the proposal addresses, the availability of funds, and relevance to the objectives of the MEL Grants Program. These objectives are described above in the Program Objectives. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Evaluation Criteria: For the MEL Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of manufacturing engineering and metrology research.

3. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

4. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary NIST or other facilities and overall support to accomplish project objectives.

Each of these factors will be given equal weight in the evaluation process.

Award Period: For the MEL Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the MEL program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (*i.e.*, the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Matching Requirements: The MEL Grants Program does not require any matching funds.

Application Kit: An application kit, containing all required application forms and certifications is available by electronic mail to: Mrs. Barbara Horner, *barbara.horner@nist.gov*. Alternatively, Mrs. Horner can be contacted at (301) 975–4345.

Chemical Science and Technology Laboratory Grants Program

Dates: The Chemical Science and Technology Laboratory Grants Program proposals must be received no later than the close of business September 30, 2003. Proposals received after June 30, 2003, will continue to be processed and considered for funding but may be funded in the next fiscal year, subject to the availability of funds.

Addresses: For the Chemical Science and Technology Laboratory Grant Program applicants are requested to submit one signed original and two copies of the proposal clearly marked to identify the field of research to: Attn: Dr. William F. Koch, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8300, Gaithersburg, MD 20899–8300. Tel (301) 975–8301. E-Mail: *william.koch@nist.gov*.

Authority: As authorized under 15 U.S.C. 272 (b) and (c), the Chemical Science and Technology Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Program Description and Objectives: All proposals submitted to the Chemical Science and Technology Laboratory Grants Program must be in accordance with the program objectives and programs listed below. Proposals submitted to the CSTL Grants Program must address a specific measurement issue relevant to one of the stated CSTL Programs, and must be directed to a specific Division. The appropriate Division Chief for each field of research may be contacted for clarification of the program objectives. Additional information about the Divisions and CSTL Programs may be obtained at the following Web site: *http://www.cstl.nist.gov/*.

CSTL is the United States' primary reference laboratory for chemical measurements, entrusted with developing, maintaining, advancing, and enabling the Nation's chemical measurement system, thereby enhancing industry's productivity and competitiveness, establishing comparability of measurements to facilitate equity of global trade, and improving public health, safety, and environmental quality. CSTL focuses its activities in measurement science research on reference methods, reference materials and reference data, and directs these efforts in support of the following specific Program areas aligned with industrial segments and National priorities:

1. Automotive and Aerospace;
2. Biomaterials;
3. Pharmaceuticals and Biomanufacturing;
4. Chemical and Allied Products;
5. Energy Systems;
6. Environmental Technologies and Services;
7. Food and Nutritional Products;
8. Forensics and Homeland Security;
9. Health and Medical Products and Services;
10. Industrial and Analytical Instruments and Services;
11. Microelectronics.

These Programs are structured to support CSTL's three objectives:

- Provide the national traceability and international comparability structure for measurements in chemistry, chemical engineering, and biotechnology.
- Assure that U.S. industry has access to accurate and reliable data and predictive models to determine the chemical and physical properties of materials and processes.
- Anticipate and address next-generation measurement needs of the Nation. CSTL conducts its research and is organized along disciplinary lines:

Biotechnology Division: DNA chemistry, sequencing; Protein structure, properties, and modeling; Biomaterials; Biocatalysis and bioprocessing measurements. The contact person for this division is: Dr. Vincent L. Vilker, and he may be reached at (301) 975–2629.

Process Measurements Division: Research, calibration services and provision of primary standards for temperature, pressure, vacuum, humidity, fluid flow, air speed, liquid density and volume, and gaseous leak-rate measurements; Sensor research. The contact person for this division is: Dr. James R. Whetstone, and he may be reached at (301) 975–2609.

Surface and Microanalysis Science Division: Nanoscale chemical characterization; Particle characterization and standards; Electronic and advanced materials characterization; Surface and interface chemistry; Advanced isotope metrology. The contact person for this division is: Dr. Richard R. Cavanagh, and he may be reached at (301) 975–2368.

Physical and Chemical Properties Division: Basic reference data; Data for process and product design; Properties of energy-related fluids; Fundamental studies of fluids; Cryogenic technologies; Computational chemistry. The contact person for this division is: Dr. Mickey Haynes, and he may be reached at (303) 497–3247.

Analytical Chemistry Division: Chemical measurements research and services in: Analytical sensing technologies; Classical analytical methods; Gas metrology; Laboratory automation technology; Nuclear analytical methods; Organic analytical methods; and Spectrochemical measurement methods. The contact person for this division is: Dr. Willie E. May, and he may be reached at (301) 975–3108.

Eligibility: The Chemical Science and Technology Laboratory Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Funding Availability: In fiscal year 2003, the Chemical Science and Technology Laboratory anticipates funding of approximately $1,000,000. Individual awards are expected to range from approximately $5,000 to $100,000.

No funds have been set aside specifically for support of the CSTL Grants Program. The availability of funds depends upon actual authorization of funds and other costs expected to be incurred by individual divisions within the laboratory. Where funds are identified as available for grants, those funds will be awarded to highly ranked proposals as determined by the process described in this notice.

Proposal Review Process: For the Chemical Science and Technology Laboratory Grants Program, proposals will be reviewed in a three-step process. First, the Deputy Director of CSTL, or appropriate CSTL Division Chief, will determine the compatibility of the applicant's proposal with CSTL Program Areas, the alignment of the measurement issue that the proposal addresses with division activities, and the relevance to the objectives of the Chemical Science and Technology Laboratory Grants Program. These objectives are described in the "Program Objectives" section. If it is determined that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. If it is determined that all funds available for the CSTL Grants Program for the given year have been exhausted, the proposal will not be reviewed for technical merit. If a proposal is determined to be incomplete or non-responsive, or if it is determined that all available funds have been exhausted, the CSTL Grants Program will retain one copy of the proposal for three years for record keeping purposes. The remaining copies will be destroyed.

Second, at least three independent, objective individuals knowledgeable about the particular measurement science area described in the section above that the proposal addresses will conduct a technical review of each proposal, based on the evaluation criteria described below. Reviews will be conducted on a quarterly basis, and all responsive, complete proposals received and reviewed since the last quarter will be ranked based on the reviewers' scores. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but ranks will be determined on an individual basis, not as a consensus.

Third, the Division Chief will make application selections, taking into consideration the results of the reviewers' evaluations, the availability of funds, and the relevance of the proposal to the programmatic priorities of the Division described in the Program Description and Objectives section above.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decisions of the Grants Officer are final.

Evaluation Criteria: For the Chemical Science and Technology Laboratory Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.

4. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of measurement science, especially as it pertains to reference methods, reference materials and reference data in Chemical Science and Technology.

Each of these factors will be given equal weight in the evaluation process.

Award Period: For the Chemical Science and Technology Laboratory Grant Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the Chemical Science and Technology Laboratory program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (*i.e.* the scopes of work for each funding period must produce identifiable and

meaningful results in and of themselves).

Matching Requirements: The Chemical Science and Technology Laboratory Grants Program does not require any matching funds.

Contact: For information on the Chemical Science and Technology Laboratory Grants Program, please contact Dr. William Koch, (301) 975–8301.

Application Kit: For the CSTL Grants Program, an application kit, containing all required application forms and certifications is available by contacting Mr. Neil Alderoty, (301) 975–8303.

Physics Laboratory Grants Program.

Dates: The Physics Laboratory Grants Program proposals must be received no later than the close of business September 30, 2003. Proposals received after June 30, 2003, will continue to be processed and considered for funding but may be funded in the next fiscal year, subject to the availability of funds.

Addresses: For the Physics Laboratory Grant Program applicants are requested to submit one signed original and two copies of the proposal clearly marked to identify the field of research to: Attn. Ms. Anita Sweigert, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400. Tel (301) 975–4200. E-Mail: *anita.sweigert@nist.gov*.

Authority: As authorized under 15 U.S.C. 272 (b) and (c), the Physics Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Program Description and Objectives: All proposals submitted to the Physics Laboratory Grants Program must be in accordance with the program objectives listed below. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

I. *Electron and Optical Physics Division, 841*—The objective is to supplement division activities in characterization of nanometer-scale electronic and magnetic structures, characterization of EUV optical components to support semiconductor lithography and ultraviolet radiometric metrology, and to support ongoing activities in Bose-Einstein condensation and quantum information. The contact person for this division is: Dr. Charles W. Clark and he may be reached at (301) 975–3709.

II. *Atomic Physics Division, 842*—The primary objective is to support division programs aimed at determining basic atomic properties and developing new metrology techniques in atomic spectroscopy, quantum processes, plasma radiation, laser cooling and trapping, and quantum metrology. The contact person for this division is: Dr. Wolfgang L. Wiese and he may be reached at (301) 975–3200.

III. *Optical Technology Division, 844*—The primary objective is to develop, improve and maintain national standards for radiation thermometry, spectroradiometry, photometry, and spectrophotometry as well as conduct basic theoretical and experimental research on the photophysical and photochemical properties of materials, in radiometric and spectroscopic techniques and instrumentation, and in the application of optical technologies. The contact person for this division is: Dr. Albert C. Parr and he may be reached at (301) 975–2316.

IV. *Ionizing Radiation Division, 846*—The primary objective is to provide primary standards, measurement methods, and technology to support the Division's work in meeting national needs in radiation interactions and dosimetry, neutron interactions and dosimetry, and radioactivity including both theoretical/experimental and applied research programs in Homeland Security and Health Care. The contact person for this division is: Dr. Bert M. Coursey and he may be reached at (301) 975–5584.

V. *Time and Frequency Division, 847*—The primary objective is to supplement division basic and applied research programs in the areas of phase noise measurements, network synchronization, ion storage, atomic standards and optical frequency measurements in support of future standards, dissemination services, and measurement methods. The contact person for this division is: Dr. Donald B. Sullivan and he may be reached at (303) 497–3772.

Eligibility: The Physics Laboratory Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Funding Availability: In fiscal year 2003, the Physics Laboratory anticipates funding of approximately $2,000,000, including new awards and continuing projects. Funding availability will be apportioned by quarter. Individual awards are expected to range from approximately $5,000 to $300,000.

Proposal Review Process: For the Physics Laboratory Grants Program, responsive proposals will be considered as follows: first, at least three independent, objective individuals knowledgeable about the particular scientific area described in the section above that the proposal addresses will conduct a technical review of each proposal, based on the evaluation criteria described below. Reviews will be conducted on a monthly basis, and all proposals received during the month will be ranked based on the reviewers' scores. If non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Next, the Division Chief will make final application selections, taking into consideration the results of the reviewers' evaluations, including rank; the compilation of a slate that, when taken as a whole, is likely to best further the program goals described above; and the availability of funds.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible.

Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award.

The decisions of the Grants Officer are final.

Evaluation Criteria: For the Physics Laboratory Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary NIST or other facilities and overall support to accomplish project objectives.

4. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of physics.

Each of these factors will be given equal weight in the evaluation process.

Award Period: For the Physics Laboratory Grant Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year project is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the Physics Laboratory program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, *i.e.*, the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Matching Requirements: The Physics Laboratory Grants Program does not require any matching funds.

Application Kit: For the Physics Laboratory Grants Program, an application kit, containing all required application forms and certifications is available by contacting Ms. Anita Sweigert, (301) 975–4201.

MSEL Grants Program

Dates: The MSEL Grants Program proposals must be received no later than the close of business September 30, 2003. Proposals received after June 30, 2003, will continue to be processed and considered for funding but may be funded in the next fiscal year, subject to the availability of funds. Each applicant must submit one signed original and two copies of each proposal along with a Grant Application, (Standard Form 424 REV. 7/97 and other required forms).

Addresses: For the MSEL Grants Program, submit one signed original and two copies of the proposal, clearly marked to identify the field of research, to: Materials Science and Engineering Laboratory, Attn.: Ms. Marlene Taylor, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8501, Building 223, Room A305, Gaithersburg, Maryland 20899–8501. Tel: (301) 975–5653. E-mail: *marlene.taylor@nist.gov*.

Authority: The authority for the MSEL Grants Program is as follows: as authorized under 15 U.S.C. 272 (b) and (c), the MSEL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Program Description and Objectives: All proposals submitted to the MSEL Grants Program must be in accordance with the program objectives listed below. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

I. *Laboratory Office, 850*—The primary objective is to supplement Materials Science and Engineering Laboratory activities of importance to materials science generally, including portions of Federal research and development programs performed in concert with other Federal agencies; and theoretical and computational materials science. The contact person for the Laboratory Office is: Dr. Stephen W. Freiman and he may be reached at (301) 975–5658 or by e-mail at *stephen.freiman@nist.gov*.

II. *Ceramics Division, 852*—The primary objective is to supplement division activities in the area of combinatorial tools, nanotribology, nano- and micro-electronic materials, dielectric ceramics, interfacial chemistry, and microstructural analysis. The contact person for this division is: Dr. Ronald Munro and he may be reached at (301) 975–6127 or by e-mail at *ronald.munro@nist.gov*.

III. *Materials Reliability Division, 853*—The primary objective is to supplement division activities in the area of micro- and nano-scale property measurement. The contact person for this division is: Dr. Thomas Siewert and he may be reached at (303) 497–3523 or by e-mail at *siewert@boulder.nist.gov*.

IV. *Polymers Division, 854*—The primary objective is to support division programs in electronics materials, biomaterials, combinatorial methods, nano-structured materials and processing characterization through participation in research on metrology, synthesis, processing and characterization of structure, mechanical, thermal and electrical properties. The contact person for this division is: Dr. Bruno Fanconi and he may be reached at (301) 975–6769 or by e-mail at *bruno.fanconi@nist.gov*.

V. *Metallurgy Division, 855*—The primary objective is to develop techniques to predict, measure and control transformations, phases, microstructure and kinetic processes as well as mechanical, physical and chemical properties in metals and their alloys. The contact person for this division is: Dr. Frank W. Gayle and he may be reached at (301) 975–6161 or by e-mail at *frank.gayle@nist.gov*.

VI. *NIST Center for Neutron Research, 856*—The primary objective is to develop high resolution cold and thermal neutron scattering research approaches and related physics, chemistry, macromolecular and materials applications. Awards to universities for participation by university students in the NIST/NSF Center for High Resolution Scattering are also funded under this program. The contact person for this division is: Dr. John J. Rush and he may be reached at (301) 975–6231 or by e-mail at *john.rush@nist.gov*.

Eligibility: The MSEL Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Funding Availability: In fiscal year 2003, the MSEL Grants Program anticipates funding of approximately $6,000,000, including new awards and continuing projects. Most grants and cooperative agreements are expected to be in the $25,000 to $100,000 per year range.

Proposal Review Process: For the MSEL Grants Program proposals will be reviewed in a two-step process. First, at least three independent, objective individuals knowledgeable about the particular scientific area described in the section above that the proposal addresses will conduct a technical review of proposals, as they are received on a rolling basis, based on the evaluation criteria. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but ranks will be determined on an individual basis, not as a consensus. Second, the Division Chief or Center Director will make application selections. In making application selections, the Division Chief or Center Director will take into consideration the results of the reviewers' evaluations, the compatibility of the applicant's proposal with the program objectives of the particular division or center that the proposal addresses, the availability of funds, and relevance to the objectives of the MSEL Grants Program. These objectives are described above in the "Program Objectives" section. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that

best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Evaluation Criteria: For the MSEL Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary NIST or other facilities and overall support to accomplish project objectives.

4. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of materials science and engineering and neutron research.

Each of these factors will be given equal weight in the evaluation process.

Award Period: For the MSEL Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the MSEL program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (*i.e.*, the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Matching Requirements: The MSEL Grants Program does not require any matching funds.

Application Kit: For the MSEL Grants Program, an application kit, containing all required application forms and certifications is available by contacting Ms. Marlene Taylor, (301) 975–5653.

Building Research Grants and Cooperative Agreements Program

Dates: The Building Research Grants and Cooperative Agreements Program proposals must be received no later than the close of business September 30, 2003. Proposals received after June 30, 2003 will continue to be processed and considered for funding but may be funded in the next fiscal year, subject to the availability of funds.

Addresses: For the Building Research Grants and Cooperative Agreements Program, submit one signed original and two copies of the proposal package to: Building and Fire Research Laboratory, Attn.: Karen Perry, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8602, Gaithersburg, MD 20899–8602. Tel.: (301) 975–5910. Fax: (301) 975–4032.

Authority: As authorized by 15 U.S.C. 272(b) and (c), the NIST Building and Fire Research Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Program Description and Objectives: The Building Research Grants and Cooperative Agreements Program supports the formal mission of the Building and Fire Research Laboratory, which is to meet the measurement and standards needs of the Building and Fire communities. All proposals submitted must be in accordance with the program objectives listed below. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

1. *Materials and Construction Research Division, 861*—The primary objective is to support laboratory programs in the areas of Structures, Construction Metrology and Automation, Inorganic Materials, and Polymeric Materials (including safety, security, and sustainability of building and physical infrastructure, service-life performance of building materials, and construction cycle time). The contact person for this division is: Dr. Shyam Sunder, and he may be reached at (301) 975–6713.

2. *Building Environment Division, 863*—The primary objective is to support laboratory programs in the areas of Thermal Machinery, Mechanical Systems and Controls, Heat Transfer and Alternative Energy Systems, Computer Integrated Construction and Indoor Air Quality and Ventilation (including cybersecurity, critical infrastructure protection of building management and control systems, and life-cycle information management in buildings). The contact person for this division is: Dr. George E. Kelly, and he may be reached at (301) 975–5850.

For details on these various activities, please see the Building and Fire Research Laboratory website at *http://www.bfrl.nist.gov.* Note that documents describing the current programs for the two technical divisions are available through the homepage.

Eligibility: The Building Research Grants and Cooperative Agreements Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Funding Availability: Over the past three years, the building divisions of the Building and Fire Research Laboratory funded a total of approximately $1,000,000 in grants and cooperative agreements. The amount available each year fluctuates considerably based on programmatic needs. Individual awards are expected to range between $5,000 and $150,000.

Proposal Review Process: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for recordkeeping purposes. The remaining copies will be destroyed.

Responsive proposals will be forwarded to the appropriate Division Chief, who will assign them to appropriate reviewers. At least three independent, objective individuals knowledgeable about the particular scientific area described above that the proposal addresses will conduct a technical review of each proposal, based on the evaluation criteria described below. When non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. Reviews will be conducted no less than once per quarter, and all proposals since the last review session will be ranked based on the reviewers' scores.

Next, the Division Chief or Laboratory Director will make application selections. In making application selections, the Division Chief or Laboratory Director will take into consideration the results of the evaluations, the scores of the reviewers, the availability of funds, and relevance to the objectives of the Building Systems Research Grants and Cooperative Agreements Program, as described in the Program Description and Objectives section for this program.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time. The Program will retain one copy of each application that is not funded for three years for recordkeeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: The Divisions will score proposals based on the following criteria and weights:

1. *Technical quality of the research.* Reviewers will assess the rationality, innovation and imagination of the proposal and the fit to NIST's in-house building research programs. (0–35 points)

2. *Potential impact of the results.* Reviewers will assess the potential impact and the technical application of the results to our in-house programs and the building industry. (0–25 points)

3. *Staff and institution capability to do the work.* Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–20 points)

4. *Match of budget to proposed work.* Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–20 points)

Award Period: For the Building Research Grants and Cooperative Agreements Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the Building Research Grants and Cooperative Agreements Program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (*i.e.*, the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Matching Requirements: The Building Research Grants and Cooperative Agreements Program does not require any matching funds.

Application Kit: An application kit, containing all required application forms and certifications is available by contacting: Karen Perry, (301) 975–5910.

Fire Research Grants Program

Dates: The Fire Research Grants Program proposals must be received no later than the close of business September 30, 2003. Proposals received after April 30, 2003, will continue to be processed and considered for funding but may be funded in the next fiscal year, subject to the availability of funds.

Addresses: For the Fire Research Grants Program submit one signed original and two copies of the proposal to: Building and Fire Research Laboratory (BFRL), Attn.: Ms. Wanda Duffin, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8660, Gaithersburg, Maryland 20899–8660. Tel: (301) 975–6863. E-mail: *wanda.duffin@nist.gov.* Web site: *http://www.bfrl.nist.gov.*

Authority: As authorized by 15 U.S.C. 278f, the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program.

Program Description and Objectives: The program description and objectives for the Fire Research Grants Program are as follows:

A. *Analysis and Prediction:* The objectives are to develop understanding and predictive methods for dynamic fire phenomena to advance fire science and engineering practice and to perform research to understand the heat and mass transfer processes occurring in fires in order to improve predictions of the growth, spread, suppression, and emissions transport from fires of all scales. Experiments and metrology are developed and used to develop, support, and verify advanced computer simulations of fire phenomena, fire hazards, fire protection, and fire fighting. The contact person for this group is: Dr. Anthony Hamins, and he may be reached at (301) 975–6598.

B. *Fire Metrology:* The objective is to apply measurement science in the development and quantification of new and existing measurement methods for studying fire growth, fire-induced flows, flame radiation, smoke formation and dynamics, species production, heat transfer, fire suppression, and fire detection. The contact person for this group is: Dr. George Mulholland, and he may be reached at (301) 975–6695.

C. *Fire Fighting Technology:* The objectives are to conduct research that enables advances in fire fighter safety, fire ground operations, and effectiveness of the fire service; develop and apply measurements, modeling, and technology, and improve the understanding of the behavior, prevention and control of fires to enhance: fire fighting operations and equipment, fire suppression, fire investigations, and disaster response; and provide input, including experimental data, fire modeling and test protocols, to advance the effectiveness of fire safety standards and codes. The contact person for this group is Mr. Nelson Bryner, and he may be reached at (301) 975–6868.

D. *Integrated Performance Assessment:* The objective is to produce tools utilizing enhanced data and prediction methods to quantify fire events for fire hazard and risk assessment; for fire fighting operations and training; for fire investigations; and for performance evaluations of fire protection systems in buildings, transportation systems, and vehicles in response to fire. Stakeholders include architects and design engineers; manufacturers of building materials, products, and furnishings; code developers, enforcers, and regulatory authorities; and those exposed to direct risk such as building owners, occupants, the fire service, and the general public. The contact person for this group is: Dr. Kathy Notarianni, and she can be reached at (301) 975–6883.

E. *Materials and Products:* The objective is to perform research enabling the confident development by industry of new, less-flammable materials and products. This capability is based on understanding fundamentally the mechanisms that control the ignition, flame spread and burning rate of materials, as well as and the chemical and physical characteristics that affect these aspects of flammability. This includes: Developing methods of measuring the response of a material to

fire conditions that enable assured prediction of the full-scale performance of the final product; developing computational molecular dynamics and other mechanistic approaches to understand flame retardant mechanisms and the effects of polymer chemical structure on flammability; characterizing the burning rates of charring and non-charring polymers and composites; and delineating and modeling the enthalpy and mass transfer mechanisms of materials combustion. The contact person for this group is Dr. Jeffrey Gilman, and he can be reached at (301) 975–6573.

Eligibility: The Fire Research Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Funding Availability: For the Fire Research Grants Program, the annual budget is approximately $1.3 million. Because of commitments for the support of multi-year projects and because proposals may have been deferred from the previous year's competition, only a portion of the budget is available to fund applications received in response to this notice. Most grants and cooperative agreements are in the $10,000 to $100,000 per year range, with a maximum requested duration of three years.

Proposal Review Process: Prospective proposers are encouraged to contact the above researchers to determine the extent of interest prior to preparation of a detailed proposal. Responsive proposals will be assigned, as received on a rolling basis, to the appropriate group leader of the five programs listed above in the program description and objectives. Proposals are evaluated for technical merit based on the evaluation criteria described below by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies, and experts from the fire research community at large. When non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. Group leaders will make funding recommendations to the Division Chief based on the technical evaluation score and the relationship of the work proposed to the objectives of the program.

In making application selections, the Division Chief will take into consideration the results of the evaluations, the scores of the reviewers, the group leader's recommendation, the availability of funds, and relevance to the objectives of the Fire Research Grants Program, as described in the Program Description and Objectives section for this program. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Evaluation Criteria: For the Fire Research Grants Program, the technical evaluation criteria are as follows:

a. *Technical quality of the research.* Reviewers will assess the rationality, innovation and imagination of the proposal and the fit to NIST's in-house fire research program. (0–35 points).

b. *Potential impact of the results.* Reviewers will assess the potential impact and the technical application of the results to our in-house programs and the fire safety community. (0–25 points)

c. *Staff and institution capability to do the work.* Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–20 points)

d. *Match of budget to proposed work.* Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–20 points)

Award Period: For the Fire Research Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year project is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Funding for each subsequent year of a multi-year proposal will be contingent on satisfactory progress, continuing relevance to the mission of the NIST Fire Research Program, and the availability of funds.

Matching Requirements: The Fire Research Grants Program does not require any matching funds.

Application Kit: For the Fire Research Grants Program, an application kit, containing all required application forms and certifications is available by contacting Ms. Wanda Duffin, (301) 975–6863, Web site: *http://www.bfrl.nist.gov.*

Additional Information: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation. In addition, the following information is applicable to all programs described above.

Collaborations with NIST Employees: All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property, to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. sec. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section 20 of the Department of Commerce Pre-Award Notification Requirements, 66 FR 49917 (2001), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Funding Availability: For all Financial Assistance programs listed above, awards are contingent on the availability of funds.

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609.

For Further Information Contact: All grants related administration questions concerning these programs should be directed to the NIST Grants and Agreements Manangement Division at (301) 975–6328.

Where websites are referenced within this notice, those without internet access may contact the appropriate Program official to obtain information.

Initial Screening of all Applications: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Fees and/or Profit: It is not the intent of NIST to pay fee or profit for any of the financial assistance awards that may be issued pursuant to this announcement.

Automated Standardized Application for Payment System (ASAP): During FY 2002 and becoming mandatory in FY 2003, the Department of Commerce will begin using the Department of Treasury's ASAP. NIST began using the ASAP system in July 2001 and continues to establish new accounts in ASAP. Awards made pursuant to this announcement may contain the ASAP payment clause. In order to receive payments for services under these awards, recipients will be required to register with the Department of Treasury and indicate whether or not they will use the on-line or voice response method of withdrawing funds from their ASAP established accounts. More information regarding ASAP can be found on-line at *http://www.fms.treas.gov/asap/index.html.*

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

On December 3, 2000, the U.S. Department of Health and Human Services (DHHS) introduced a new Federalwide Assurance of Protection of Human Subjects (FWA). The FWA covers all of an institution's Federally-supported human subjects research, and eliminates the need for other types of Assurance documents. The Office for Human Research Protections (OHRP) has suspended processing of multiple project assurance (MPA) renewals. All existing MPAs will remain in force until further notice. For information about FWAs, please see the OHRP Web site at *http://ohrp.osophs.dhhs.gov/irbasur.htm.*

In accordance with the DHHS change, NIST will continue to accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current, valid MPA from DHHS. NIST also will accept the submission of human subjects protocols that have been approved by IRBs possessing a current, valid FWA from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

On August 9, 2001, the President announced his decision to allow Federal funds to be used for research on existing human embryonic stem cell lines as long as prior to his announcement (1) the derivation process (which commences with the removal of the inner cell mass from the blastocyst) had already been initiated and (2) the embryo from which the stem cell line was derived no longer had the possibility of development as a human being. NIST will follow guidance issued by the National Institutes of Health at *http://escr.nih.gov/* for funding such research.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanased, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Matching Funds: Although many of the programs described in this notice do not require cost share, if it is determined that your proposal falls within the authority of 19 U.S.C. 2543–45 cost share will be required as follows:

Pursuant to 19 U.S.C. 2543–45, financial assistance shall not exceed 75 percent of such program or activity, when the primary purpose of such program or activity is—

(1) To increase the awareness of proposed and adopted standards-related activities;

(2) To facilitate international trade through the appropriate international and domestic standards-related activities;

(3) To provide adequate United States representation in international standards-related activities; and

(4) To encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

Type of Funding Instrument: The funding instrument will be a grant or cooperative agreement, depending on the nature of the proposed work. A grant will be used unless NIST is "substantially involved" in the project, in which case a cooperative agreement will be used. A common example of substantial involvement is collaboration between NIST scientists and recipient scientists or technicians. Please see the DoC Grants and Cooperative Agreements Interim Manual which may be found on the Internet at *http://www.osec.doc.gov/oebam/GCA_manual.htm*. NIST will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for contractual arrangements for services and products for delivery to NIST is not available under this announcement.

If a proposal submitted under this Notice is not properly funded by a grant or cooperative agreement, NIST will consider whether the proposal may be appropriately funded through procurement, interagency agreement, or another mechanism that does not involve a grant or cooperative agreement. NIST's review and consideration of that proposal will be consistent with the requirements applicable to that funding mechanism.

Indirect Costs: For the EEEL, MEL, CSTL, Physics, MSEL, BFRL, and ITL SURF Programs, no Federal funds will be authorized for Indirect Costs (IDC) nor fringe benefits; however, an applicant may provide for IDC and/or fringe benefits under his/her portion of Cost Sharing.

Classification: This funding notice was determined to be "not significant" for purposes of Executive Order 12866.

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Applications under these programs are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: February 13, 2003.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 03–4129 Filed 2–19–03; 8:45 am]

BILLING CODE 3510–13–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Director, Administration and Management.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Director, Administration and Management announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 21, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to The Office of the Director, Administration and Management/Quality Management Office, ATTN: Ms. Joyce Mussey, 1777 N. Kent St., Suite 14038, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Office of the Director, Administration and Management/Quality Management Office (703) 588–8142/8150.

Title and OMB Number: Interactive Customer Evaluation System; OMB Number 0704–420.

Needs and Uses: The Interactive Customer Evaluation System automates and minimizes the use of the current manual paper comment cards and other customer satisfaction collection medium, which exist at various customer service locations throughout the Department of Defense.

Affected Public: Individuals or Households; Business or Other For-Profit.

Annual Burden Hours: 165.

Number of Respondents: 3300.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Members of the public who respond on the Interactive Customer Evaluation system are authorized customers and have been provided a service through DoD customer service organizations. They have the opportunity to give automated feedback to the service provider on the quality of their experience and their satisfaction level. They also have the opportunity to provide any comments that might be beneficial in improving the process and in turn the service to the customer. This is a management tool for improving customer services.

Dated: February 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4069 Filed 2–19–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 24, 2003.

Title and OMB Number: Evaluation of Reasons for Non-Acceptance of Department of Army Civilian Jobs Offers; OMB Number 0702—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 2,500.

Responses per Respondent: 1.

Annual Responses: 2,500.

Average Burden per Response: 7 minutes.

Annual Burden Hours: 292.

Needs and Uses: Applicants for Department of Army civilian jobs will be surveyed to assess reasons why they declined Army job offers. The purpose of the survey is to determine which factors contributed to the job candidate's non-acceptance and to make recommendations for improvements.

Affected Public: Individuals or Households.

Frequency: Semi-Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4070 Filed 2–19–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0145]

Federal Acquisition Regulation; Submission for OMB Review; Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0145).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning use of data universal numbering system (DUNS) as primary contractor identification. A request for public comments was published in the **Federal Register** at 67 FR 77479 on December 18, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before March 24, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA, (202) 208–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of $25,000.00 to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers insert the Federal Acquisition Regulation (FAR) provision 52.204–6, Data Universal Numbering System (DUNS) Number in solicitations they expect will result in contracts in excess of $25,000.00. This provision requires offerors to submit their DUNS number with their offer. If the offeror does not have a DUNS number, the provision provides instructions on obtaining one.

B. Annual Reporting Burden

Respondents: 35,694.

Responses Per Respondent: 4.00.

Annual Responses: 142,776.

Hours Per Response: .0200.

(Averaged).

Total Burden Hours: 2,852.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: February 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–4021 Filed 2–19–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026]

Federal Acquisition Regulation; Submission for OMB Review; Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0026).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning change order accounting. A request for public comments was published in the **Federal Register** at 67 FR 71941 on December 3, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on

valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before March 24, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Respondents: 8,750.
Responses Per Respondent: 18.
Annual Responses: 157,500.
Hours Per Response: .084.
Total Burden Hours: 13,230.

C. Annual Recordkeeping Burden

Recordkeepers: 8,750.
Hours Per Recordkeeper: 1.5.
Total Recordkeeping Burden Hours: 13,125.
Total Burden Hours: 26,355.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: February 11, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–4101 Filed 2–19–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0130]

Federal Acquisition Regulation; Submission for OMB Review; Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0130).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate. A request for public comments was published at 67 FR 71941 on December 3, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before March 24, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA, (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the North American Free Trade Agreement (NAFTA) Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and NAFTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and NAFTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

B. Annual Reporting Burden

Respondents: 1,140.
Responses Per Respondent: 5.
Annual Responses: 5,700.
Hours Per Response: .167.
Total Burden Hours: 952.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0130, Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate, in all correspondence.

Dated: February 11, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–4102 Filed 2–19–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

AGENCY: Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: this notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: March 20–21, 2003,

ADDRESSES: RAND, 1200 S. Hayes Street, 4th floor, Arlington, VA 22202–5050. Mail written presentations and requests to register to attend the open public session to: Hillary Peck, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its web site at *http://www.rand.org/organization/nsrd/terrpanel;* it can also be reached at (703) 413–1100 extension 5683.

SUPPLEMENTARY INFORMATION: Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Proposed Schedule and Agenda

Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 9 a.m. until 5:30 p.m. on March 20, 2003 and from 8:30 a.m. until 3 p.m. on March 21, 2003. Time will be allocated for public comments by individuals or organizations at the end of the meeting on March 21.

Dated: February 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4073 Filed 2–19–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting date change.

SUMMARY: On Friday, December 13, 2002 (67 FR 76728), the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on Seabasing. The meetings originally scheduled for February 25–26, 2003, have been changed to February 26-27, 2003. The meetings will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: February 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4071 Filed 2–19–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Unexploded Ordnance (UXO) will meet in closed session on April 22–23, 2003, and May 13–14, 2003, at SAIC Inc., 4001 N. Fairfax Street, Arlington, VA. This Task Force will review modern technology that can be exploited or developed to reduce the extremely high cost of UXO clean up.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on Scientific and Technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate the Department's ability to exploit modern technology to reduce the extremely high cost of UXO clean up and improve its effectiveness for both contaminated land and water ranges and help accomplish the job in a reasonable time; and science and technologies that can be developed to support and sustain continued live fire training and testing of munitions at ranges across the United States with an acceptable environmental impact.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(b)(1) and that, accordingly, these meetings will be closed to the public.

Dated: February 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4072 Filed 2–19–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting. The announcement of the meeting is being published in less than the 15 day requirement by law because of scheduling conflicts.

DATE: The meeting will be held at 0900, Wednesday, February 5, 2003.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1), and that

accordingly, this meeting will be closed to the public.

Dated: February 4, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4068 Filed 2–19–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice of Altered System of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to alter an existing system of records notice in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration consists of adding four routine uses to permit the release of information to:

The Army Emergency Relief, Navy-Marine Corps Relief Society, and Air Force Assistance Fund to process allotments for repayment of interest-free loans from the society and retiree charitable allotments in support of fund drives initiated by the Secretaries of the Army, Navy, and Air Force. The information will be used to process allotments on behalf of service members and retirees.

Officials and employees of the American Red Cross in the performance of their official duties relating to the assistance of the members and their dependents and relatives.

Former spouses for purposes of providing information, consistent with the requirements of 10 U.S.C. 1450(f)(3), regarding Survivor Benefit Plan coverage.

Spouses for purposes of providing information, consistent with the requirements of 10 U.S.C. 1448(a), regarding Survivor Benefit Plan coverage.

DATES: This action will be effective without further notice on March 24, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: FOIA/PA Program Manager, Defense Finance and Accounting Service—Denver Center, Specialized Legal Support Division, Office of General Counsel, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft on (303) 676–7514.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Finance and Accounting Service records system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 27, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7347b

SYSTEM NAME:

Defense Military Retiree and Annuity Pay System (April 12, 1999, 64 FR 17629).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–2055."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapters 61, 63, 65, 67, 69, 71, 73, 74; Pub. L. 92–425; DoD Financial Management Regulation 7000.14–R, Volume 7B; and E.O. 9397 (SSN)."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the fourth paragraph and replace with "Information is provided to individuals authorized to receive retired and annuitant payments on behalf of retirees or annuitants."

Add four new paragraphs to the entry.

The Army Emergency Relief, Navy-Marine Corps Relief Society, and Air Force Assistance Fund to process allotments for repayment of interest-free loans from the society and retiree charitable allotments in support of fund drives initiated by the Secretaries of the Army, Navy, and Air Force. The information will be used to process allotments on behalf of service members and retirees.

Officials and employees of the American Red Cross in the performance of their official duties relating to the assistance of the members and their dependents and relatives.

Former spouses for purposes of providing information, consistent with the requirements of 10 U.S.C. 1450(f)(3), regarding Survivor Benefit Plan coverage.

Spouses for purposes of providing information, consistent with the requirements of 10 U.S.C. 1448(a), regarding "Survivor Benefit Plan coverage."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Disposition for Retired and Annuitant Pay records range from 30 days to 56 years. The administrative records such as, change of address, electronic messages, or tax records, that are not pay affecting, are destroyed using a retention of 30 days to less than 6 years. All pay affecting documents such as retirement documents, account computation information, or entitlement/eligibility records are retained for six years or more, and the pay histories are retained for 56 years."

* * * * *

T7347b

SYSTEM NAME:

Defense Military Retiree and Annuity Pay System.

SYSTEM LOCATION:

Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military retirees, their dependents, and their survivors. Categories of records in the system:

Military retiree and annuitant pay master files with supporting documentation relating to entitlements and deductions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C., Chapters 61, 63, 65, 67, 69, 71, 73, 74; Pub.L. 92–425; DoD Financial Management Regulation 7000.14–R, Volume 7B; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain pay and personnel information for use in the computation of military retired pay and survivor annuity pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records are provided to the Internal Revenue Service for normal wage and tax withholding.

Disclosures are made to the Department of Veterans Affairs (DVA) regarding establishments, changes and discontinuing of DVA compensation to retirees and annuitants.

Information is provided to individuals authorized to receive retired and annuitant payments on behalf of retirees or annuitants.

The Army Emergency Relief, Navy-Marine Corps Relief Society, and Air Force Assistance Fund to process allotments for repayment of interest-free loans from the society and retiree charitable allotments in support of fund drives initiated by the Secretaries of the Army, Navy, and Air Force. The information will be used to process allotments on behalf of service members and retirees.

Officials and employees of the American Red Cross in the performance of their official duties relating to the assistance of the members and their dependents and relatives.

Former spouses for purposes of providing information, consistent with the requirements of 10 U.S.C. 1450(f)(3), regarding Survivor Benefit Plan coverage.

Spouses for purposes of providing information, consistent with the requirements of 10 U.S.C. 1448(a), regarding Survivor Benefit Plan coverage.

The DoD "Blanket Routine Uses" published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders/notebooks/binder/visible file binders/cabinets/card files, computer magnetic tapes and paper printouts, on roll microfilm, microfiche, and optical disk.

RETRIEVABILITY:

Retrieved by name and Social Security Number of the retiree or annuitant.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Disposition for Retired and Annuitant Pay records range from 30 days to 56 years. The administrative records such as, change of address, electronic messages, or tax records, that are not pay affecting, are destroyed using a retention of 30 days to less than 6 years. All pay affecting documents such as retirement documents, account computation information, or entitlement/eligibility records are retained for six years or more, and the pay histories are retained for 56 years.

SYSTEM MANAGER(S) AND ADDRESS:

Policy official: Director of Continuing Government Activity, Defense Finance and Accounting Service—Cleveland, (DFAS–PD/CL), 1240 East Ninth Street, Cleveland, OH 44199–2055.

Record holder: Systems Manager, Affiliated Computer Systems, Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland OH 44199–2055.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service—Cleveland, Office of General Counsel, (DFAS–GA/CL), 1240 East Ninth Street, Cleveland, OH 44199–8006.

The requester should be able to provide sufficient proof of identity, such as name, Social Security Number, place of employment, or other information available from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Finance and Accounting Service—Cleveland, Office of General Counsel, (DFAS–GA/CL), 1240 East Ninth Street, Cleveland, OH 44199–8006.

The requester should be able to provide sufficient proof of identity, such as name, Social Security Number, place of employment, or other information available from the record itself.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

RECORD SOURCE CATEGORIES:

From the individual concerned; financial, educational, and medical institutions; other DoD Components; state or local governments; and source documents such as reports. Members' survivors, members, guardians of survivors (children), private law firms which are executors of estates in casualty cases, and other government agencies such as the Department of Veterans Affairs and the Social Security Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–4067 Filed 2–19–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to Delete Systems of Records.

SUMMARY: The Defense Information Systems Agency is deleting three systems of records notices from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 24, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 681–2066.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the

Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

KDCE.01

SYSTEM NAME:

Visit Notification/Clearance Verification Records NR501–11 (February 22, 1993, 58 FR 10562).

Reason: The notice was published to cover records being maintained at the DISA facility located in Reston, VA. The facility has since been vacated, therefore, records collected and maintained in this system of records were destroyed one year after facility was vacated.

KDCE.02

SYSTEM NAME:

Parking Permit Control Files 501–07 (February 22, 1993, 58 FR 10562).

Reason: The notice was published to cover records being maintained at the DISA facility located in Reston, VA. The facility has since been vacated, therefore, records collected and maintained in this system of records have been destroyed.

KDTI.01

SYSTEM NAME:

Permanent Change of Stations Records (August 22, 2000, 65 FR 50974).

Reason: This system of records was never activated. No records were ever collected or maintained under this system of records notice.

[FR Doc. 03–4065 Filed 2–19–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on March 24, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 27, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S180.30 DSCR

SYSTEM NAME:

FOIA and Privacy Act Request Tracking System.

SYSTEM LOCATION:

Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA 23297–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed Freedom of Information Act (FOIA) or Privacy Act requests with the Defense Supply Center Richmond (DSCR).

CATEGORIES OF RECORDS IN THE SYSTEM:

The database includes name of requester, business or home address, business or home telephone and facsimile numbers, email address, pre-assigned Commercial and Government Entity code (if provided), a description of the records sought, and any additional details voluntarily included in the text of the request. The database also includes machine-entered information such as case number, date of receipt, and suspense date and human entered information such as processing costs, closeout date, final action on request, and similar administrative details. Where personal information is sought, the database may also include Social Security Number for identification purposes. The database does not include copies of the requested records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act; 5 U.S.C. 552a, The Privacy Act of 1974, as amended; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; and E.O. 9397 (SSN).

PURPOSE(S):

The records are maintained to administer the Freedom of Information and Privacy Act programs and to track requests received within DSCR. The files are also used to prepare annual and ad hoc reports.

Statistical data with all personal identifiers removed may be used by management for workload or manpower assessment and control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically.

RETRIEVABILITY:

Records are retrieved by case number, individual's name, or business entity.

SAFEGUARDS:

Access to the database is limited to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures. Employees are periodically briefed on the consequences of improperly accessing restricted databases.

RETENTION AND DISPOSAL:

Cases involving full and partial denials; fee waiver, requester category, and expedited treatment denials; or other adverse determinations are maintained for 6 years. Cases involving full releases or administrative dispositions (such as transfers to other agencies; withdrawals by requester; inadequate descriptions; failure to pay fees; or other instances of noncompliance on the requester's part) are maintained for 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information/Privacy Act Officer, Defense Supply Center Richmond, ATTN: DSCR–SP, 8000 Jefferson Davis Highway, Richmond, VA 23297–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Supply Center Richmond, ATTN: SP, 8000 Jefferson Davis Highway, Richmond, VA 23297–5100.

Written requests should contain the full name and current address, telephone number of the individual, and approximate time frame involved.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Supply Center Richmond, ATTN: DSCR–SP, 8000 Jefferson Davis Highway, Richmond, VA 23297–5100.

Written requests should contain the full name, current address, and telephone number of the individual. Depending on the nature of the records involved, requesters may be asked to supply Social Security Number and a notarized statement or a signed and dated unsworn declaration (in accordance with 28 U.S.C. 1746) stating under penalty of perjury that the information contained in the request for access, including their identity, is true and correct.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Data is provided by the record subject, the FOIA/Privacy Act staff, and program software.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–4066 Filed 2–19–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Transfer of Jurisdiction of a Portion of Joliet Army Ammunition Plant to the Department of Agriculture for the Midewin National Tallgrass Prairie

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: On October 25, 2002, in accordance with PL 104–106, Title XXIX, Subtitle A, entitled "Illinois Land Conservation Act of 1995", the Department of the Army signed a Secretariat Memorandum to transfer approximately 10.5 acres of land at Joliet Army Ammunition Plant, Illinois to the Department of Agriculture for use by the Forest Service as the Midewin National Tallgrass Prairie. The purpose of this notice is to effect that transfer pursuant to the provisions of section 2912 (e)(2) of Pub. L. 104–106.

This is a partial transfer of the entire acreage contemplated by the statute. Additional transfers will be made in the future. A legal description dated March 6, 2001 of the property, which is the subject of the partial transfer, is on file with the U.S. Army Engineer District, Corps of Engineers, Louisville, Kentucky and the Office of the Regional Forester, USDA, Forest Service.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd A. Foe, 502–315–6959.

ADDRESSES: Documents are on file at locations:

1. U.S. Army Engineer District, Louisville, Corps of Engineers, PO Box 59, Louisville, Kentucky 40201–0059.

2. Office of the Regional Forester, USDA, Forest Service, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

SUPPLMENTARY INFORMATION: None.

Michael G. Barter,

Chief, Real Estate Division.

[FR Doc. 03–4024 Filed 2–19–03; 8:45 am]

BILLING CODE 3710–JB–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 21, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 13, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: High Education Act (HEA) Title II Reporting Forms on Teacher Quality and Preparation.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary). Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden: Responses: 1309. Burden Hours: 127624.

Abstract: The Higher Education Act of 1998 calls for annual reports from states and institutions of higher education on the quality of teacher education and related matters (Pub. L. 105–244, section 207:20 U.S.C. 1027). The purpose of the reports is to provide greater accountability in the preparation of America's teaching forces and to provide information and incentives for its improvement. Most institutions of higher education that have teacher preparation programs must report annually to their states on the performance of their program completers on teacher certification tests. States, in turn, must report test performance information, institution by institution, to the Secretary of Education, along with institutional ranking. They must also report on their requirements for licensing teachers, state standards, alternative routes to certification, waivers, and related items. Annually reports form institutions are due to the states, beginning April 7 each year; reports from the states are due annually to the Secretary, beginning October 7 each year; the Secretary's report is due annually to Congress, beginning April 7 each year. These dates are one year later than the dates in the legislation.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov.* Requests may also be faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–4050 Filed 2–19–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 24, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 13, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension of a currently approved collection.

Title: Scholarship Contract & Teaching Verification Form for Title II HEA Scholarship Recipients (JS).

Frequency: On Occasion Semi-Annually Annually.

Affected Public: Individuals or household (primary). Not-for-profit institutions. State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 4450. Burden Hours: 3250.

Abstract: Students receiving scholarships under section 204(3) of the Higher Education Act incur a service obligation to teach in a high-need school in a high-need LEA. This information collection consists of: (1) a contract to be executed when funds are first awarded; (2) an addendum to the contract to be signed when subsequent funds are awarded; (3) a teaching verification form to be used by students to document their compliance with the contract's conditions.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–4049 Filed 2–19–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Alabama Department of Education; Written Findings and Compliance Agreement

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of written findings and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means of bringing about such compliance. On March 27, 2002, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) entered into a compliance agreement with the Alabama Department of Education (ALDE). Under section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Grace A. Ross, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., room 3W118, Washington, DC 20202. Telephone: (202) 260–0967.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under title I, part A of the Elementary and Secondary Education Act of 1965 (title I), each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Each State also was required to develop or adopt performance standards, aligned with its content standards, which describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000–2001 school year, each State was required to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

The Alabama Department of Education (ALDE) submitted, and the Department approved, evidence that it has content standards in at least reading/language arts and mathematics. In October 2000, ALDE submitted evidence of its final assessment system. The Department submitted that evidence to a panel of three assessment experts for peer review and following that review the Acting Assistant Secretary determined that Alabama must enter a compliance agreement with the Department. The ALDE submitted additional information and this evidence was peer reviewed in August 2001. Following that review, the Assistant Secretary for Elementary and Secondary Education concluded that ALDE's proposed final assessment system and performance standards did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law" applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (a)(4).

In a letter dated November 19, 2001, to Dr. Edward R. Richardson, Superintendent of Schools for the Alabama Department of Education, the Assistant Secretary notified ALDE that, in order to remain eligible to receive Title I funds, it must enter into a compliance agreement with the Department. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements, and that a compliance agreement is a viable means for bringing about such compliance.

On April 8, 2002, the Assistant Secretary issued written findings, holding that compliance by ALDE with the title I standards and assessment requirements is genuinely not feasible until a future date. Having first submitted its assessment system for peer review in October 2000, ALDE was not able to make the significant changes to its system that the Department's peer review required in time to meet the spring 2001 statutory deadline to have approved assessments in place. As a result, ALDE administered its unapproved assessment system in 2001. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps ALDE has already taken to comply, its commitment of resources, and the plan it has developed for further action. The agreement sets out the action plan that ALDE must meet to come into compliance with the title I requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely ALDE's progress in meeting the terms of the compliance agreement. Both the Superintendent of ALDE, Dr. Edward R. Richardson, and the Assistant Secretary signed the agreement on March 27, 2002.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Assistant Secretary's written findings is set forth as appendix A and the compliance agreement is set forth as appendix B of this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in Text or Adobe Portable Document Format (PDF), on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(**Authority:** 20 U.S.C. 1234c, 1234f, 6311)

Dated: February 13, 2003.

Eugene W. Hickock,

Under Secretary of Education.

Appendix A—Text of the Written Findings of the Assistant Secretary for Elementary and Secondary Education

I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c and 1234f, that the Alabama Department of Education (ALDE) has failed to comply substantially with certain requirements of title I, part A of the Elementary and Secondary Education Act of 1965 (title I), 20 U.S.C. 6301 *et seq.*, and that it is not feasible for ALDE to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that ALDE failed to meet a number of the title I requirements concerning the development of performance standards and an aligned assessment system within the statutory timeframe.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with ALDE to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these

findings, ALDE will be eligible to receive title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of title I, part A and other applicable Federal statutory and regulatory requirements.

II. Relevant Statutory and Regulatory Provisions

A. Title I, Part A of the Elementary and Secondary Education Act of 1965

Title I, part A of the Elementary and Secondary Education Act of 1965 (title I), 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student performance standards. Under title I, each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards.

By the 2000–2001 school year, title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards. These assessments must meet the following requirements:

- The assessments must be aligned to a State's content and performance standards.
- They must be administered annually to students in at least one grade in each of three grade ranges: grades 3 through 5, grades 6 through 9, and grades 10 through 12.
- They must be valid and reliable for the purpose for which they are used and of high technical quality.
- They must involve multiple measures, including measures that assess higher-order thinking skills.
- They must provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient students.
- They must provide individual reports on the students tested.
- Results from the assessments must be disaggregated and reported by major racial and ethnic groups and other categories.
- 20 U.S.C. 6311(b)(3).[1]

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is "failing to comply substantially with any requirement of law applicable to such funds." 20 U.S.C. 1234c. In such case, the Assistant Secretary is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (a)(4).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the available evidence, the Assistant Secretary determines that compliance until a future date is genuinely not feasible and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and publish those findings, together with the substance of any compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A compliance agreement must set forth an expiration date, not later than three years from the date of these written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. 1234f(c)(1). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect. 20 U.S.C. 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement no longer in effect and may take any of the compliance actions described previously. 20 U.S.C. 1234f(d).

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement Is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and ALDE is appropriate, the Assistant Secretary must first determine whether compliance by ALDE with the title I standards and assessment requirements is genuinely not feasible until a future date. 20 U.S.C. 1234f(b). The second issue that the Assistant Secretary must resolve is whether ALDE will be able, within a period of up to three years, to come into compliance with the title I requirements. Not only must ALDE come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible, then a compliance agreement between the Assistant Secretary and ALDE would not be appropriate.

B. ALDE Has Failed To Comply Substantially With Title I Standards and Assessment Requirements

In October 2000, ALDE submitted evidence of its final assessment system. The Assistant Secretary submitted that evidence to a panel of three assessment experts for peer review. Alabama submitted additional information and this evidence was peer reviewed in August 2001. Following that review, the Assistant Secretary for Elementary and Secondary Education concluded that ALDE's proposed final assessment system did not meet a number of the title I requirements. Specifically, the Assistant Secretary determined that ALDE must do the following:

- Develop or select an academic assessment system that represents the full range of the ALDE's academic content standards and academic achievement standards in at least reading/language arts and mathematics and is consistent with the title I requirements for use of multiple measures of student achievement, including measures that assess higher-order thinking and understanding. Document the alignment of the assessment system with ALDE's academic content and student achievement standards.
- Provide evidence that the State assessment shall be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards for such assessments.
- Provide evidence supporting the proposed Alabama Student Assessment Program that includes information on the financial capacity of Alabama to complete this system so that it meets the requirements of title I, including performance standards, alignment, technical quality, inclusion of all students, reporting, and use in the State's accountability system.
- Provide evidence of performance standards having three performance levels, with cut scores for all components of the assessment system, and the process to be used to determine that these performance standards are aligned with content standards and performance descriptors for all components of the assessment system incorporated into the State's accountability system.
- Provide evidence of participation rates for each grade assessed, each subject (reading and math), and, for students with disabilities (SWD) and limited English proficiency (LEP) populations, the total enrollment, number assessed, and number exempted. The number assessed should be broken down by types of assessment accommodation (regular, standard accommodations, non-standard accommodations, and alternate) for all components of the State assessment system that are included in the accountability system.
- Provide evidence of an approved comprehensive policy on assessment guidelines and accommodations for LEP students, clear guidance to LEAs and schools related to the use of language proficiency tests for the LEP team decisions on accommodations for assessments, and a plan for implementing the new LEP inclusion policies and for monitoring LEA compliance with those policies.
- Provide evidence on the process used to incorporate data for SWD and LEP students into the assessment and accountability systems.
- Provide evidence regarding the extent to which all components of the Alabama assessment program contribute to the alignment of the content and performance standards; a description of the State's approach for ensuring alignment; and information on the cognitive complexity of all of the Alabama assessments.
- Provide evidence of a technical manual for the writing component and technical information on all the proposed components when they are available.
- Provide evidence to show how Alabama will disaggregate its performance data in grade spans 3–5 and 6–9 by economically disadvantaged students versus non-economically disadvantaged, race/ethnicity, and LEP status at the State, LEA, and school levels and on how Alabama will disaggregate its performance data by all the required categories at the high school level.
- Provide evidence on how ALDE will provide individual student reports and State, LEA, and school profiles by student performance standards and how it will report and disseminate student performance information to the necessary stakeholders at the LEA and school levels.

C. ALDE Cannot Correct Immediately Its Noncompliance With the Title I Standards and Assessment Requirements

Under the title I statute, ALDE was required to implement its final assessment system no later than the 2000–2001 school year. 20 U.S.C. 6311(b)(6). ALDE submitted evidence of its assessment system in October 2000 and August 2001 but the Assistant Secretary determined, on the basis of that evidence, that ALDE's system did not fully meet the title I requirements. Due to the enormity and complexity of developing a new assessment system that addressed the Assistant Secretary's concerns, ALDE was not able to complete that task between the time it first submitted its system for review and the spring 2001 assessment window. Thus, in spring 2001, ALDE administered the assessment that the Assistant Secretary had determined did not meet the title I requirements. As a result, the Assistant Secretary finds that it is not genuinely feasible for ALDE to come into compliance until a future date.

D. ALDE Can Meet the Terms and Conditions of a Compliance Agreement and Come into Full Compliance With the Requirements of Title I Within Three years

At the public hearing, ALDE presented evidence of its commitment and capability to come into compliance with the title I standards and assessment requirements within three years. For example, Alabama successfully amended a law in 2000 that required the State Board of Education to implement a nationally normed test to assist in the assessment of student achievement in grades three through 11. Since that time, the State has been busy designing a new accountability system and adopting a new assessment plan for its schools, one that maintains high standards and comports with Federal law.

Finally, ALDE has developed a comprehensive action plan, incorporated into the compliance agreement, that sets out a very specific schedule that ALDE has agreed to meet during the next three years for attaining compliance with the title I standards and assessment requirements. As a result, ALDE is committed not only to coming into full compliance within three years, but to meeting a stringent, but reasonable, schedule for doing so. The action plan also demonstrates that ALDE will be well on its way to meeting the new standards and assessment requirements of the No Child Left Behind Act of 2001. The compliance agreement also sets out documentation and reporting procedures that ALDE must follow. These provisions will allow the Assistant Secretary to ascertain promptly whether ALDE is meeting each of its commitments under the compliance agreement and is on schedule to achieve full compliance within the effective period of the agreement.

The task of developing an assessment system that meets the title I requirements is not a quick or easy one. However, the Assistant Secretary has determined that, given the commitment of ALDE to comply with the terms and conditions of the compliance agreement, it is possible for ALDE to come into full compliance with the title I standards and assessment requirements within three years.

IV. Conclusion

For the foregoing reasons, the Assistant Secretary finds the following:

[1] On January 8, 2002, title I of the Elementary and Secondary Education Act was reauthorized by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107–110). The NCLB made several significant changes to the Title I standards and assessment requirements. First, it requires that each State develop academic content and student achievement standards in science by the 2005–06 school year. Second, by the 2005–06 school year, it requires a system of aligned assessments in each of grades 3 through 8 and once during grades 10 through 12. Third, it requires science assessments in at least three grade spans by the 2007–08 school year. Fourth, the NCLB significantly changes the definition of adequate yearly progress each State must establish to hold schools and school districts accountable, based on data from the 2001–02 test administration. Finally, by the 2002–03 school year, the NCLB requires State and school district report cards that include, among other things, assessment results disaggregated by various subgroups, two-year trend data, and percent of students tested.

(1) That full compliance by ALDE with the standards and assessment requirements of title I is not feasible until a future date; and (2) that ALDE can meet the terms and conditions of the attached compliance agreement and come into full compliance with the title I standards and assessment requirements within three years of the date of these findings. Therefore, the Assistant Secretary has determined that it is appropriate to enter into a compliance agreement with ALDE. Under the terms of 20 U.S.C. 1234f, that compliance agreement becomes effective on the date of these findings.

Dated: March 27, 2002.

Susan B. Neuman,

Assistant Secretary, Office of Elementary and Secondary Education.

Appendix B—Text of the Compliance Agreement

Compliance Agreement Under Title I of the Elementary and Secondary Education Act Between the United States Department of Education and the Alabama Department of Education

Introduction

Title I of the Elementary and Secondary Education Act of 1965 (title I) required each State, including the District of Columbia and Puerto Rico, to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Title I also required each State to develop or adopt performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards. By the 2000–2001 school year, title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards.

The Alabama Department of Education (ALDE) was not able to meet these requirements by the statutory deadlines. In order to be eligible to continue to receive title I funds while working to comply with the statutory requirements, Dr. Edward R. Richardson, Superintendent of ALDE, indicated ALDE's interest in entering into a compliance agreement with the Office of Elementary and Secondary Education (OESE) of the United States Department of Education. On January 31, 2002, OESE conducted a public hearing regarding ALDE's ability to come into compliance with the title I standards and assessment requirements within three years. Based on testimony at that hearing, Dr. Joseph Morton, Deputy State Superintendent, determined that "Alabama was one of the states that did not meet the deadline for title I compliance with all rules and regulations." The Deputy State Superintendent stated, "I am here today to testify that it can be done within a three-year span from the date of initiation of a signed compliance agreement." The Deputy State Superintendent's written findings are attached to, and incorporated by reference into, this Agreement.

Pursuant to this Compliance Agreement under 20 U.S.C. 1234f, ALDE must be in full compliance with the requirements of title I no later than three years from the date of the Assistant Secretary's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. Specifically, ALDE must meet, and document that it has met, the following requirements:

1. Develop or select an academic assessment system that represents the full range of ALDE's academic content standards and academic achievement standards in at least reading/language arts and mathematics and is consistent with the title I requirements for use of multiple measures of student achievement, including measures that assess higher-order thinking and understanding. Document the alignment of the assessment system with ALDE's academic content and student achievement standards.

2. Provide evidence that the State assessment shall be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards for such assessments.

3. Provide evidence supporting the proposed Alabama Student Assessment Program that includes information on the financial capacity of Alabama to complete this system so that it meets the requirements of title I, including performance standards, alignment, technical quality, inclusion of all students, reporting, and use in the State's accountability system.

4. Provide evidence of performance standards having three performance levels, with cut scores for all components of the assessment system, and the process to be used to determine that these performance standards are aligned with content standards and performance descriptors for all components of the assessment system incorporated into your State's accountability system.

5. Provide evidence of participation rates for each grade assessed, each subject (reading and math), and, for SWD and LEP populations, the total enrollment, number assessed, and number exempted. The number assessed should be broken down by types of assessment accommodation (regular, standard accommodations, non-standard accommodations, and alternate) for all components of the State assessment system that you included in the accountability system.

6. Provide evidence of an approved comprehensive policy on assessment guidelines and accommodations for LEP students, clear guidance to LEAs and schools related to the use of language proficiency tests for the LEP team decisions on accommodations for assessments, and a plan for implementing the new LEP inclusion policies and for monitoring LEA compliance with those policies.

7. Provide evidence on the process used to incorporate data for SWD and LEP students into the assessment and accountability systems.

8. Provide evidence regarding the extent to which all components of the Alabama assessment program contribute to the alignment of the content and performance standards, a description of your State's approach for ensuring alignment; and information on the cognitive complexity of all of the Alabama assessments.

9. Provide evidence of a technical manual for the writing component and technical information on all the proposed components when they are available.

10. Provide evidence to show how Alabama will disaggregate its performance data in grade spans 3–5 and 6–9 by economically disadvantaged students versus non-economically disadvantaged, race/ethnicity, and LEP status at the State, LEA, and school levels and on how Alabama will disaggregate its performance data by all the required categories at the high school level.

11. Provide evidence on how your agency will provide individual student reports and State, LEA, and school profiles by student performance standards and how it will report and disseminate student performance information to the necessary stakeholders at the LEA and school levels.

During the period that this Compliance Agreement is in effect, ALDE is eligible to receive title I, part A funds if it complies with the terms and conditions of this Agreement, as well as the provisions of title I, part A and other applicable Federal statutory and regulatory requirements. Specifically, the Compliance Agreement sets forth action steps ALDE must meet to come into compliance with the title I standards and assessment requirements. ALDE must submit documentation concerning its compliance with these action steps.

The action steps incorporated into this Compliance Agreement may be amended by joint agreement of the parties, provided full compliance can still be accomplished by the expiration date of the Agreement.

In addition to all of the terms and conditions set forth above, ALDE agrees that its continued eligibility to receive title I, part A funds is predicated upon compliance with statutory and regulatory requirements of that program that have not been addressed by this Agreement, including the requirements of the No Child Left Behind Act of 2001.

If ALDE fails to comply with any of the terms and conditions of this Compliance Agreement, including the action steps, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order. 20 U.S.C. § 1234f(d).

For the Alabama Department of Education:

Dated: March 27, 2002.

Edward R. Richardson,

State Superintendent of Schools.

For the United States Department of Education:

Dated: March 27, 2002.

Susan B. Neuman,

Assistant Secretary, Office of Elementary and Secondary Education.

Date this compliance agreement becomes effective: April 8, 2002.

Expiration date of this agreement: April 8, 2005.

BILLING CODE 4000–01–P

3/28/02

STATE OF ALABAMA
ACTION PLAN FOR TITLE I COMPLIANCE AGREEMENT

Action Steps	Completion/ Submission Date to USDOE	Responsible Office	Documentation
Financial Capacity:			
1. Pursue funding though state legislature to support assessment and accountability system.	9-30-01	State Superintendent	FY2002 budget
2. Pursue increased funding for FY2003 to support proposed changes in the assessment and accountability system through state legislature currently in session.	9-30-02	State Superintendent	FY2003 budget
Assessment (IASA Sec. 1111(b):			
1. Send copy of RFP requesting services for CRT (augmented NRT) test development and administration to U.S. Department of Education.	4-30-02	Student Assessment	Copy of RFP Addendum to RFP
2. Release RFP for test development and administration of *Alabama Direct Assessment of Writing: Grade Ten.*	4-30-02	Student Assessment	Copy of RFP
3. Negotiate agreement with vendor for services to develop and administer *Alabama Direct Assessment of Writing: Grade Ten.*	7-31-02	Student Assessment	Purchase order
4. Meet with vendor to plan the design and implementation of development and pilot of *Alabama Direct Assessment of Writing: Grade Ten.*	7-31-02	Student Assessment	Minutes of planning meeting
5. Select norm-referenced test (NRT) in Grades 3-8 that allows augmentation in reading/language arts and mathematics in order to ensure alignment with Alabama content standards, resulting in CRT (augmented NRT).*	9-30-02	Student Assessment	Recommendation of Test Selection Committee and Technical Advisory Committee (4-member, external advisory group of university professors with expertise in research/measurement and education of students of special populations)

			State Board of Education resolution
6. Negotiate agreement with vendor for services to administer NRT, augment NRT, pilot CRT (augmented NRT), and administer CRT (augmented NRT).	9-30-02	Student Assessment	Purchase order
7. Meet with vendor to plan the design and implementation of augmentation of NRT (including validity, reliability, and bias studies).	10-31-02	Student Assessment	Minutes of planning meeting
8. Develop and pilot *Alabama Direct Assessment of Writing: Grade Ten* with appropriate accommodations for students with disabilities and LEP.	2-28-03	Student Assessment	Test blueprint Testing schedule Test administration manual
9. Customization of NRT by augmenting test items in Grades 3-8 in order to (1) ensure alignment with Alabama's content standards	8-31-03	Student Assessment	Documentation of alignment of customized NRT to Alabama's content standards

resulting in CRT (augmented NRT), and (2) include measures of higher order thinking skills and understanding.*			Test blueprint
10. Pilot CRT (augmented NRT) in Grades 3-8 with appropriate accommodations for students with disabilities and LEP.*	11-30-03	Student Assessment	Testing schedule Test administration manual
Content Standards (IASA Sec. 1111(b)(1)(D)(i) :			
1. Document involvement of a broad base of stakeholders in the revision of content standards.	8-31-02	Curriculum Development	List of committee members
2. Review, revise, and adopt Alabama's content standards in language arts.	10-31-02	Curriculum Development	Description of process followed State Board of Education resolution Copy of revised content standards
3. Review, revise, and adopt Alabama's content	2-28-03	Curriculum Development	Description of process followed

standards in mathematics.			State Board of Education resolution Copy of revised content standards
Academic Achievement Standards (IASA Sec. 1111(b)(1):			
1. Review and revise Alabama's labels for academic achievement standards.	7-31-02	Student Assessment	Recommendation of Test Advisory Committee State Board of Education resolution
2. Document involvement of a broad base of stakeholders in the development of the academic achievement standards for the *Alabama Alternate Assessment* (AAA).	7-31-02	Student Assessment and Special Education	List of committee members
3. Standard setting to establish academic achievement standards for the AAA.	7-31-02	Student Assessment and Special Education	Description of process followed Report of results of standard setting
4. Document involvement of a broad base of stakeholders in the development of the working draft of academic achievement standards descriptors and exemplars for the CRT (augmented NRT).	2-28-03	Student Assessment and Curriculum Development	List of committee members
5. Working draft of academic achievement standards descriptors and exemplars to be used in development of CRT (augmented NRT).	2-28-03	Student Assessment and Curriculum Development	Copy of working draft of academic achievement standards descriptors and exemplars
6. Document involvement of a broad base of stakeholders in the development of the academic achievement standards for the *Alabama Occupational Portfolio Assessment* (AOPA).	7-31-03	Student Assessment and Special Education	List of committee members
7. Standard setting to establish academic achievement standards for the AOPA.	7-31-03	Student Assessment and Special Education	Description of process followed Report of results of standard setting
8. Document involvement of	7-31-04	Student	List of committee members

a broad base of stakeholders in the standard setting process (descriptors, exemplars, and cut scores) for the CRT (augmented NRT) and the *Alabama High School Graduation Exam* (AHSGE).		Assessment	
9. Standard setting to establish academic achievement standards including final descriptors, exemplars, and cut scores for CRT (augmented NRT)* and AHSGE (addition of advanced level).	7-31-04	Student Assessment	Description of process followed Report of results of standard settings State Board of Education resolution
Content, Grade Levels, and Administration (IASA Sec. 1111(b)(3)(A)(D)(E):			
1. Adoption of Proposed Alabama Student Assessment Program to include multiple measures which assess higher-order thinking skills and understanding to be administered annually to all students in the designated grades and content areas.	7-31-02	Student Assessment	Recommendation of Test Advisory Committee (principles and assessments) State Board of Education resolution.

2. Administer new NRT in Grades 3-8 (transitional assessments) that will be used for accountability purposes for the spring 2003.	4-30-03	Student Assessment	Testing schedule
3. Administer *Alabama Direct Assessment of Writing: Grade Ten.*	2-28-04	Student Assessment	Testing schedule Test administration manual
4. Administer CRT (augmented NRT) in Grades 3-8.*	4-30-04	Student Assessment	Testing schedule Test administration manual

Inclusion (IASA Sec. 1111(b)(3)(A)(F):			
1. Administer *Alabama Alternate Assessment* (AAA) [assessment for special education students in Grades K-12 who cannot participate in the regular state assessments] and develop and pilot *Alabama Occupational Portfolio. Assessment* (AOPA) [assessment for special education students in	4-30-02	Student Assessment and Special Education	Testing schedule Test administration manuals

Grades 11 and 12 who are exiting with an Alabama Occupational Diploma; small percentage of students whose IEP Teams determine this to be the exit document the students will pursue].			
2. Monitor the inclusion of students with disabilities receiving special education services in the state assessment program.	6-30-02 (annually)	Special Education	Focused Review Reports and LEA Profile
3. Educate local education agencies (LEAs) regarding the participation of all students in the Alabama Student Assessment Program.	7-31-02	Student Assessment and Special Education	Agendas from 2002 Spring System Test Coordinator's Workshop and Special Education Coordinator's Meeting and the Student Assessment Handbook, section "Special Services." PowerPoint presentation from February 7, 2002, teleconference with Special Education Coordinators

			Flyer announcing assessment sessions at the 2002 Special Education Summer Academy
4. Survey of LEAs to determine the need for tests in languages other than English (number of LEP students by grade by primary home language).	10-31-02	Student Assessment and Federal Programs	Copy of survey form Results of survey
5. Review and revise *Alabama Student Assessment Program Policies and Procedures for Students of Special Populations*, Bulletin 1998, No. 11 (Includes appropriate accommodations for special education students, 504 students, and LEP students).	5-31-03	Student Assessment	Revised document
6. Monitor the inclusion of LEP students in the state assessment program.	6-30-03 (annually)	Federal Programs	Forms to be developed
7. Educate LEAs on revised *Alabama Student Assessment*	7-31-03	Student Assessment	Training schedule

Program Policies and Procedures for Students of Special Populations, Bulletin 1998, No. 11.			Copy of training materials
Alignment (IASA Sec. 1111(b)(3)(B) :			
1. Request technical assistance from U.S. Department of Education regarding revision of content standards and the relationship to assessments.	4-30-02	Student Assessment	Letter requesting assistance
2. Contract with consultants regarding revision of content standards and development of academic achievement standards to include alignment in reading/language arts and mathematics.	5-31-02	Curriculum Development and Student Assessment	Copy of contracts
3. Analysis of alignment of the *Alabama Direct Assessment of Writing: Grade Ten* with the content standards and academic achievement standards identifying any weaknesses.	11-30-02	Student Assessment	Report of Content and Bias Review Committee Report of Independent Evaluator

Make needed adjustments to ensure alignment.			
4. Analysis of alignment of the customized CRT (augmented NRT) with content standards and academic achievement standards identifying any weaknesses. Make needed adjustments to ensure alignment.	8-31-03	Student Assessment	Report of Content and Bias Review Committees Report of Independent Evaluator
5. Based on data of first administration, make necessary adjustments of academic achievement standards descriptors and exemplars in order to ensure alignment with content standards and the *Alabama Direct Assessment of Writing: Grade Ten.*	8-31-04	Student Assessment	Report of committee Copy of final academic achievement standards descriptors and exemplars
6. Conduct standard setting for CRT (augmented NRT) assessments in order to establish cut scores for academic achievement levels using data from the first administration. Make any	7-31-04	Student Assessment	Report of committees Copy of final academic achievement standards descriptors and exemplars

necessary adjustments of academic achievement standards descriptors and exemplars in order to ensure alignment with content standards and the CRT (augmented NRT).			
Technical Quality (IASA Sec. 1111(b)(3)(C):			
1. Report technical data for the AAA and *Alabama Direct Assessment of Writing: Grade Five* and *Alabama Direct Assessment of Writing: Grade Seven* (ADAW:5&7).	8-31-02	Student Assessment	Technical reports
2. Report technical data for NRT.	10-31-02	Student Assessment	Technical report
3. Report technical data for the AOPA.	10-31-03	Student Assessment	Technical report
4. Report technical data for the *Alabama Direct Assessment of Writing: Grade Ten* (ADAW:10).	10-31-03	Student Assessment	Technical report
5. Report technical data for CRT (augmented NRT).*	12-31-04	Student Assessment	Technical report

Reporting (IASA Sec. 1111(b)(3)(H):			
1. Develop reports that communicate to educators, parents, and stakeholders how the assessment relates to the content standards and the academic achievement standards for the *Alabama Direct Assessment of Writing: Grade Ten.*	4-30-04	Student Assessment	Copy of reports
2. Develop reports that communicate to educators, parents, and stakeholders how the assessment relates to the content standards and the academic achievement standards for the CRT (augmented NRT).	5-31-04	Student Assessment	Copy of reports
3. Develop and pilot new standards-based accountability system using state assessments that include all students.	8-31-04	Student Assessment and Information System Services	Accountability model State Board of Education resolution

4. Report accountability system incorporating academic achievement standards.	8-31-04 (annually)	Student Assessment, Information System Services, and Office of Communication	Press release, reports to LEAs, and post on website
Disaggregated Reporting (IASA Sec. 1111(b)(3)(I):			
1. Report achievement data for current assessments including disaggregation and participation rates by subgroups.	8-31-02	Student Assessment, Information System Services, and Office of Communication	Press release, reports to LEAs, and post on website
2. Report achievement data for new assessments including disaggregation and participation rates by subgroups.	8-31-04 (annually)	Student Assessment, Information System Services, and Office of Communication	Press release, reports to LEAs, and post on website
No Child Left Behind Act of 2001:			
1. Review, revise, and adopt Alabama's content standards in science. - Distributed for stakeholder review and	8-31-04	Curriculum Development	State Board of Education resolution Copy of revised content standards

comment. - Completed and adopted by State Board of Education.	8-31-05		
2. Development of standards-based assessments in Grades 3, 5, and 7. - Complete test blueprints. - Draft and field test items. - Pilot assessments.	11-30-03 4-30-04 4-30-05	Student Assessment	Test blueprint Field test data Pilot test administration manuals
3. Dissemination of disaggregated data (gender, major racial/ethnic groups, English proficiency status, migrant status, students with disabilities as compared to nondisabled students, and economically disadvantaged students as compared to students who are not economically disadvantaged) at school	8-31-02 as available 8-31-03 all subgroups (annually)	Student Assessment, Information System Services, and Office of Communication	Sample reports based on tests administered in 2001-02

and district levels for assessments currently in use.			
4. Distribution of an itemized score analysis to support instructional improvement.	8-31-03 (annually)	Student Assessment and Office of Communication	Sample report based on tests administered in 2001-02
5. Implementation of the English language proficiency testing required under Title I and Title III. - Issue RFP. - Selection and approval of assessment. - Educate LEAs on language proficiency assessment. - Administer to all LEP students. - Define annual measurable objectives for gains in English proficiency as required in Sec. 3122.	8-31-03 (annually)	Student Assessment and Federal Programs	Copy of RFP Report of committee Training schedule Testing schedule Report of committee Copy of reports

- Report results as required by NCLB.			
6. Participate in the National Assessment of Educational Progress in 2003 and 2005 and, if selected, participate in the field test in off-years.	3-31-02	Student Assessment	Consolidated application
7. Distribution of state report card as required under Section 1111 of Title I to include: - Disaggregation of student achievement results by performance levels. - Percent of students not tested (disaggregated). - Comparison of annual objectives and actual performance for each student group. - All other report	9-30-02 8-31-03 8-31-05	Office of Communication	Copy of state report card

card requirements will be met as quickly as possible consistent with implementation of final assessments.			
8. A. Continued identification of schools in need of improvement based on data from the current assessments for all students in the grades assessed, and to also include: - Report performance of subgroups (of statistically reliable size). - Report the application of the 95% participation rule. - High school graduation rates and the other indicators required by NCLB. B. Establish AYP baseline, based on data from new assessments for all students in the grades	9-30-02 as available 8-31-03 8-31-03 8-31-04 8-31-05	Student Assessment, Information System Services, and Office of Communication	Description of school accountability system; to include the data source (assessments) and formula or decision sequence used to determine school classifications List of schools and districts identified for improvement Communication of baseline values and AYP design to schools and districts List of schools and districts identified for improvement

assessed. - Use transitional rules under NCLB, Sec. 1116 to identify schools and districts in need of improvement.			
9. Annual report to the Secretary as described in Sec. 1111(h)(4). - Information on state progress in developing all required state assessments. - Student achievement data disaggregated. - Data on acquisition of English proficiency by LEP. - Number and names of schools identified for school improvement, the reason for identification, and measures taken to address achievement problems.	8-31-02 (annually) 8-31-03 8-31-03 8-31-03 8-31-03 8-31-03 8-31-03	Federal Programs	Annual report to the Secretary

		Implementation and documentation of choice, supplemental services, corrective actions, as appropriate
	Federal Programs	
8-31-03		
- Number of students and schools that participated in public school choice and supplemental services. - Information on quality of teachers and percent of classes taught by highly qualified teachers.		
10. All other requirements of NCLB pertaining to schools identified for improvement, corrective action, or restructuring during the period of the compliance agreement.		

* Note: No final decision has been made to augment a NRT in Grades 3, 5, and 7. Instead, a CRT may be developed and no NRT will be administered. This decision will be made after a review of the NRT that is selected in September 2002 and after input from the Test Advisory

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DEPARTMENT OF EDUCATION

Idaho State Department of Education; Written Findings and Compliance Agreement

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of written findings and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means of bringing about such compliance. On March 29, 2002, the Assistant Secretary for Elementary and Secondary Education Dr. Susan B. Neuman entered into a compliance agreement with the Idaho State Department of Education (ISDE). Under section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Zollie Stevenson, Jr., U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., room 3W200, Washington, DC 20202. Telephone: (202) 260–1824.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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SUPPLEMENTARY INFORMATION: Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Each State also was required to develop or adopt performance standards, aligned with its content standards, which describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000–2001 school year, each State was required to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

ISDE submitted, and the Department approved, evidence that it has content standards in at least reading/language arts and mathematics. In October 2000, ISDE submitted evidence of its final assessment system. The Department submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education Tom Corwin concluded that ISDE's proposed final assessment system did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law" applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law.

20 U.S.C. 1234c(a)(1) through (a)(4).

In a letter dated October 16, 2001 to Dr. Marilyn L. Howard, State Superintendent of Public Instruction for Idaho, the Assistant Secretary Dr. Susan B. Neuman notified the ISDE that, in order to remain eligible to receive Title I funds, it must enter into a compliance agreement with the Department. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements, and that a compliance agreement is a viable means for bringing about such compliance.

On March 29, 2002, the Assistant Secretary issued written findings, holding that compliance by ISDE with the Title I standards and assessment requirements is genuinely not feasible until a future date. Having submitted its assessment system for peer review in October 2000, ISDE was not able to make the significant changes to its system that the Department's review required in time to meet the spring 2001 statutory deadline to have approved assessments in place. As a result, ISDE administered its unapproved assessment system in 2001. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps the ISDE has already taken to comply, its commitment of resources, and the plan it has developed for further action. The agreement sets out the action plan that ISDE must meet to come into compliance with the Title I requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely the ISDE's progress in meeting the terms of the compliance agreement. The Idaho State Superintendent of Public Instruction, Dr. Marilyn L. Howard, signed the agreement on March 22, 2002 and the Assistant Secretary signed it on March 29, 2002.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Assistant Secretary's written findings is set forth as appendix A and the compliance agreement is set forth as appendix B of this notice.

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(Authority: 20 U.S.C. 1234c, 1234f, 6311)

Dated: February 13, 2003.

Eugene W. Hickok,

Under Secretary of Education.

Appendix A—Text of the Written Findings of the Assistant Secretary for Elementary and Secondary Education

I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c and 1234f, that the Idaho State Department of Education (ISDE) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, and that it is not feasible for the ISDE to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that ISDE failed to meet a number of the Title I requirements concerning the development of performance standards and an aligned assessment system within the statutory timeframe.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with the ISDE to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these findings, the ISDE will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements.

II. Relevant Statutory and Regulatory Provisions

A. Title I, Part A of the Elementary and Secondary Education Act of 1965

Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student performance standards. Under Title I, each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards.

By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards. These assessments must meet the following requirements:

- The assessments must be aligned to a State's content and performance standards.
- They must be administered annually to students in at least one grade in each of three grade ranges: Grades 3 through 5, grades 6 through 9, and grades 10 through 12.
- They must be valid and reliable for the purpose for which they are used and of high technical quality.
- They must involve multiple measures, including measures that assess higher-order thinking skills.
- They must provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient students.
- They must provide individual reports.
- Results from the assessments must be disaggregated and reported by major racial and ethnic groups and other categories.

20 U.S.C. 6311(b)(3).[1]

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is "failing to comply substantially with any requirement of law applicable to such funds." 20 U.S.C. 1234c. In such case, the Assistant Secretary is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (a)(4).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the available evidence, the Assistant Secretary determines that compliance until a future date is genuinely not feasible and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and publish those findings, together with the substance of any compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A compliance agreement must set forth an expiration date, not later than three years from the date of these written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. 1234f(c)(1). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect. 20 U.S.C. 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement no longer in effect and may take any of the compliance actions described previously. 20 U.S.C. 1234f(d).

[1] On January 8, 2002, title I of the Elementary and Secondary Education Act was reauthorized by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107–110). The NCLB made several significant changes to the Title I standards and assessment requirements. First, it requires that each State develop academic content and student achievement standards in science by the 2005–06 school year. Second, by the 2005–06 school year, it requires a system of aligned assessments in each of grades 3 through 8 and once during grades 10 through 12. Third, it requires science assessments in at least three grade spans by the 2007–08 school year. Fourth, the NCLB significantly changes the definition of adequate yearly progress each State must establish to hold schools and school districts accountable, based on data from the 2001–02 test administration. Finally, by the 2002–03 school year, the NCLB requires State and school district report cards that include, among other things, assessment results disaggregated by various subgroups, two-year trend data, and percent of students tested.

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement Is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and the ISDE is appropriate, the Assistant Secretary must first determine whether compliance by the ISDE with the Title I standards and assessment requirements is genuinely not feasible until a future date. 20 U.S.C. 1234f(b). The second issue that the Assistant Secretary must resolve is whether the ISDE will be able, within a period of up to three years, to come into compliance with the Title I requirements. Not only must the ISDE come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible, then a compliance agreement between the Assistant Secretary and the ISED would not be appropriate.

B. The ISDE Has Failed To Comply Substantially With Title I Standards and Assessment Requirements

In October 2000, the ISDE submitted evidence of its final assessment system. The Assistant Secretary submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education Thomas Corwin concluded that ISDE's proposed final assessment system did not meet a number of the Title I requirements. Specifically, the Acting Deputy Assistant Secretary determined that the ISDE must do the following:

- Provide information on Idaho's proposed standards based assessment system.
- Provide evidence that its accountability system will allow the results of the Idaho final assessment system, including local assessments where applicable, to be the primary indicators of adequate yearly progress.
- Provide evidence that performance standards have been developed and implemented and that they are aligned with Idaho's content standards and the Idaho assessment system that is being developed.
- Provide clear and concise information on the enrollment of limited English proficient students and students with disabilities in the State at the assessed grade levels and provide information on the number of limited English proficient students and students with disabilities who take the standard form of the Idaho assessments and the Idaho assessments with accommodations, and the number of those students exempted or excluded from the Idaho assessment program.
- Provide a copy of its inclusion policy for limited English proficient students and provide documentation that the State Board of Education has approved it. Included in that policy should be information on accommodations for limited English proficient students. A plan for implementing the new inclusion policies and for monitoring LEA compliance with the new inclusion policies when they are approved should also be provided.
- Submit information on the technical quality of the Idaho alternate assessment for students with disabilities as well as information that indicates the extent to which accommodations associated with the norm-referenced tests and State-developed assessments yield valid results for students with disabilities, as well as information regarding any accommodations that are planned for the Direct Mathematics and Writing assessments and the technical quality of those accommodated assessments.
- Document how it will incorporate performance data for all Idaho students into its reporting of results for assessment and accountability purposes.
- Provide evidence regarding the extent to which the components of the Idaho Assessment Program are aligned with Idaho standards.
- Provide technical information on each of the components of the Idaho Assessment Program and information on how Idaho ensures the fairness of its assessments for all students.
- Provide evidence on how the multiple measures that have been incorporated in the Idaho Assessment Program affect the validity, reliability, and fairness of those assessments.
- Disaggregate student performance by gender, race/ethnicity, migrant status, disability (versus non-disability), economic disadvantage (versus non-disadvantaged), and limited English proficiency status at the LEA and school levels. In addition, Idaho must add economic disadvantage to the categories that are currently being disaggregated at the State level.
- Define for LEAs which students are to be included in determining adequate yearly progress (AYP) for schools and LEAs.
- Provide a plan for evaluating the AYP of its small schools and K–3 schools.

C. The ISDE Cannot Correct Immediately Its Noncompliance With the Title I Standards and Assessment Requirements

Under the Title I statute, ISDE was required to implement its final assessment system no later than the 2000–2001 school year. 20 U.S.C. 6311(b)(6). ISDE submitted evidence of its assessment system in October 2000, but the Acting Deputy Assistant Secretary determined, on the basis of that evidence, that ISDE's system did not fully meet the Title I requirements. Due to the enormity and complexity of developing a new assessment system that addressed the Acting Deputy Assistant Secretary's concerns, the ISDE was not able to complete that task between the time it submitted its system for review and the Idaho 2001 assessment window. Thus, in 2001, the ISDE administered assessments that the Acting Deputy Assistant Secretary had determined did not meet the Title I requirements. As a result, the Assistant Secretary finds that it is not genuinely feasible for ISDE to come into compliance until a future date.

D. The ISDE Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Title I Within Three Years

At the public hearing, the ISDE presented evidence of its commitment and capability to come into compliance with the Title I standards and assessment requirements within three years. For example, Idaho entered into a contract to develop reading and mathematics assessments within one year at grades 4, 8 and 10. Idaho has established a process for developing performance descriptors and to define performance levels for its assessment system with broad based involvement of Idaho citizens and has established a timeline for approving the performance descriptors and performance levels. Idaho has also received approval from the Department for its academic content standards.

Finally, the ISDE has developed a comprehensive action plan, incorporated into the compliance agreement, that sets out a very specific schedule that the ISDE has agreed to meet during the next three years for attaining compliance with the Title I standards and assessment requirements. As a result, the ISDE is committed not only to coming into full compliance within three years, but to meeting a stringent, but reasonable, schedule for doing so. The action plan also demonstrates that the ISDE will be well

on its way to meeting the new standards and assessment requirements of the No Child Left Behind Act of 2001. The compliance agreement also sets out documentation and reporting procedures that the ISDE must follow. These provisions will allow the Assistant Secretary to ascertain promptly whether the ISDE is meeting each of its commitments under the compliance agreement and is on schedule to achieve full compliance within the effective period of the agreement.

The task of developing an assessment system that meets the Title I requirements is not a quick or easy one. However, the Assistant Secretary has determined that, given the commitment of the ISDE to comply with the terms and conditions of the compliance agreement, it is possible for the ISDE to come into full compliance with the Title I standards and assessment requirements within three years.

IV. Conclusion

For the foregoing reasons, the Assistant Secretary finds the following: (1) That full compliance by the ISDE with the standards and assessment requirements of Title I is not feasible until a future date; and (2) that the ISDE can meet the terms and conditions of the attached compliance agreement and come into full compliance with the Title I standards and assessment requirements within three years of the date of these findings. Therefore, the Assistant Secretary has determined that it is appropriate to enter into a compliance agreement with the ISDE. Under the terms of 20 U.S.C. 1234f, that compliance agreement becomes effective on the date of these findings.

Dated: March 29, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Compliance Agreement Under Title I of the Elementary and Secondary Education Act Between the United States Department of Education and the Idaho State Department of Education

Introduction

Title I of the Elementary and Secondary Education Act of 1965 (Title I) required each State, along with the District of Columbia and Puerto Rico, to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Title I also required each State to develop or adopt performance standards, aligned with its content standards, that describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

The Idaho State Department of Education (SDE) was not able to meet these requirements by the statutory deadlines. In order to be eligible to continue to receive Title I funds while working to comply with the statutory requirements, Dr. Marilyn Howard, Idaho's Superintendent of Public Instruction, indicated the Idaho SDE's interest in entering into a compliance agreement with the Office of Elementary and Secondary Education (OESE) of the United States Department of Education. On December 13, 2001, OESE conducted a public hearing regarding Idaho SDE's ability to come into compliance with the Title I standards and assessment requirements within three years. Based on testimony at that hearing, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) determined that compliance by Idaho SDE with the Title I standards and assessment requirements was genuinely not feasible until a future date because of the "magnitude and complexity of meeting those requirements." The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps Idaho SDE has already taken to address its noncompliance, its commitment of resources, and the plans it has developed for further action. These plans are summarized in the Commitments and Timetable below.

Pursuant to this Compliance Agreement under 20 V.S.C. sec. 1234f, Idaho SDE must be in full compliance with the requirements of Title I no later than three years from the date of the Assistant Secretary's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. Specifically, Idaho SDE must ensure and document that it will have met the following requirements:

1. Provide information on Idaho's proposed standards based assessment system. Provide a copy of the development contract for the new assessment system.

2. Provide evidence that performance standards have been developed and implemented and that they are aligned with Idaho's content standards.

3. Provide a copy of the Limited English Proficient student (LEP) inclusion policy and documentation of State approval. Include in the LEP policy information on accommodations for LEP students. Provide a plan for implementing the new LEP inclusion policies and for monitoring LEA compliance with the new inclusion policies when they are approved. Provide clear and concise information on the enrollment of LEP students and students with disabilities (SWD) in the state at the assessed grade levels and provide information on the number of LEP students and SWDs who take the standard form of the Idaho assessments and the Idaho assessments with accommodations, and the number of those students excluded from the Idaho assessment program.

4. Provide evidence that the components of the Idaho Assessment Program are aligned with Idaho standards. Provide evidence that Idaho assessments are cognitively complex. Identify gaps and weaknesses of the assessment system. Provide evidence on how the multiple measures incorporated in the Idaho Assessment Program affect the validity, reliability, and fairness of those assessments.

5. Provide technical information on each of the components of the Idaho Assessment Program. Provide information on how Idaho will ensure the fairness of its assessments for all students. Submit information on the technical quality of the Idaho alternate assessment for SWD as well as information that indicates the extent to which accommodations yield valid results for SWD.

6. Provide evidence that student performance will be disaggregated by gender, race/ethnicity, migrant status, disability (versus non-disability), economic disadvantage (versus non-disadvantaged), and limited English proficiency status at the school, district, and state levels.

7. Demonstrate that the Idaho SDE has developed or adopted a set of high-quality, yearly student assessments that will be used as the primary means of determining the yearly performance of each local educational agency and school served under Title I, Part A. Provide evidence that the accountability system will allow the results of the Idaho final assessment system to be the primary indicators of adequate yearly progress. Document the incorporation of performance data for SWD and LEP students into the reporting of results for assessment and accountability purposes.

8. Provide a plan for evaluating the adequate yearly progress of small schools and K–2 schools.

9. Describe plans to comply with the No Child Left Behind Act of 200 I assessment and accountability requirements.

During the period that this Compliance Agreement is in effect, Idaho SDE is eligible to receive Title I, Part A funds if it complies with the terms and conditions of this Agreement, as well as the provisions of Title I, Part A and other applicable federal statutory and regulatory requirements. Specifically, the Compliance Agreement sets forth below action steps Idaho SDE must meet to come into compliance with its Title I obligations.

Compliance Agreement, April 2002

U.S. Dept. of Education/Idaho State Dept. of Education

The action steps incorporated into this Compliance Agreement may be amended by joint agreement of the parties, provided full compliance can still be accomplished by the expiration date of the Agreement.

In addition to all of the terms and conditions set forth above, Idaho agrees that its continued eligibility to receive Title I, Part A funds is predicated upon compliance with statutory and regulatory requirements of that program that have not been addressed by this Agreement, including the requirements of the No Child Left Behind Act of 2001.

If the Idaho SDE fails to comply with any of the terms and conditions of this Compliance Agreement, including the action steps below, the U.S. Department of Education may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order.

For Idaho's State Department of Education:
Dated: March 22, 2002.

Dr. Marilyn Howard,
Superintendent.

For the United States Department of Education:
Dated: March 22, 2002.

Susan B. Neuman,
Assistant Secretary, Office of Elementary and Secondary Education.

Date this Compliance Agreement becomes effective (Date of Assistant Secretary's Written Decision and Findings): March .21–, 2002.

Expiration Date of this Agreement: March –.29—, 2005.

Compliance Agreement, April 2002

U.S. Dept. of Education/Idaho State Dept. of Education

BILLING CODE 4000–01–P

Idaho
Title I Compliance Agreement
Action Plan/Timeline

Goal 1: Provide information on Idaho's proposed standards based assessment system.

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
1.1	Develop a Memorandum of Understanding to secure services for test development, administration, scoring and reporting.	MOU signed by Superintendent of Public Instruction and State Board of Education, Committee Member Lists	SDE, Test Coordinator, Bureau of Federal Programs, Title I	April 30, 2002	State, Title I
1.2	Provide MOU to U.S. Department of Education.	MOU signed by Superintendent of Public Instruction and State Board of Education, Committee Member Lists	SDE, Test Coordinator, Bureau of Federal Programs, Title I	April 30, 2002	State, Title I
1.3	Negotiate and sign a contract for services needed to develop an assessment system.	Release of contract	SDE, Test Coordinator, Bureau of Federal Programs, Title I	April 30, 2002	State, Title II, Title VI, Special Education
1.4	Provide contract to U.S. Department of Education.	Signed contract	SDE, Test Coordinator, Bureau of Federal Programs, Title I	April 30, 2002	State, Title I
1.5	Grades 4 and 8: Complete detailed design, testing blueprint and implementation activities required to create test items and test forms adequate to serve the purposes specified in the State's assessment ensuring validity, reliability and fairness.	Test Design Document; Validity and Reliability Studies, Bias Review	SDE, Test Coordinator, Bureau of Federal Programs, Title I	August 31, 2002	State, Title III, Title VI, Title II, Special Education
1.6	Develop procedures for test administration, scoring, data analysis, and reporting to meet high technical standards.	Copies of protocol and procedures manual	SDE, Test Coordinator, Bureau of Special Education, Title I	Oct. 31, 2002 & on going	Title VI, Special Education, State
1.7	Develop reports that are technically adequate for school and district accountability.	Copies of reports and accountability standards	SDE, Bureau of Technology, Test Coordinator, Bureau of Special Education, Title I, Bureau of Federal Programs	Oct. 31, 2002 & on going	Title VI, Special Education, State
1.8	Administer pilot tests for grades 4, 8	Letter NWREL and Report re: Alignment Study	SDE, Test Coordinator, Bureau of Federal Programs	December 31, 2002	Title VI, State
1.9	Procedures for test administration, scoring, data analysis, and reporting to meet high technical standards sent to U.S. Department of Education.	Copies of protocol and procedures manual	SDE, Test Coordinator, Bureau of Special Education, Title I	Oct. 31, 2002	Title VI, Special Education, State
1.10	Final review for completeness of items and review for bias for grades 4 and 8.	Report from NWREL and NWEA	SDE, Test Coordinator, Bureau of Federal Programs	January 31, 2003	Title III, Title VI, State
1.11	Complete test items and review for bias to ensure that results measured the standards for students of diverse backgrounds.	Blueprints of Pilot Tests	SDE, State Test Coordinator, Bureau of Federal Programs, Title I	October 31, 2002	Title VI, State, Title II, Title III

1.12	Grades: 4 and 8 Administer Grade 4 and 8 tests	Schedule for administration Written confirmation that the test was administered	SDE, Test Coordinator	May 31, 2003	Title I
1.13	Demonstrate that there will be no gaps in the assessment plan.	Copy of assessment plan for grades 4, 8, and 10 (as compared to previous plan) Reference State Board Rules on Thoroughness	SDE, State Test Coordinator, Bureau of Federal Programs, Title I	April 30, 2003	Title II
1.14	Grade: 10 Complete detailed design, testing blueprint and implementation activities required to create test items and test forms adequate to serve the purposes specified in the State's assessment ensuring validity, reliability and fairness.	Test blueprint, Test design Document; Validity and Reliabillty Studies, Bias Review	State Board of Education	January 31, 2002	State Board of Education
1.15	Grade: 10 Complete test items and review for bias to ensure that results measured the standards for students of diverse backgrounds.	Test item specification document Reports of reviews	SDE, State Test Coordinator, Bureau of Federal Programs, Title I, State Board of Educatlon	January 31, 2002	Title VI, State, Title II, Title III
1.16	Grade: 10 Administer field test of items to all 9th graders and a representative sample of 10th, 11th, and 12th graders.	Schedule for administration Written confirmation that the test was administered	SDE, Test Coordinator, Bureau of Federal Programs, Bureau of Curriculum and Accountability, Title I, State Board of Education	April 30, 2002	State Board of Education
1.17	Grade: 10 Technical review of field-tested items.	Technical report of tested items (from NWEA)	State Board of Education, SDE, Test Coordinator	July 31, 2002	State Board of Education
1.18	Grade: 10 Pilot test	Schedule of pilot test dates Written confirmation that the test was administered	State Board of Education, SDE, Test Coordinator	October 31, 2002	State Board of Education
1.19	Grade: 10 Conduct an external alignment study of test to state standards.	Alignment study	SDE, Test Coordinator, Bureau of Federal Programs	January 31, 2003	Title II

1.20	Grade: 10 Final review for completeness of items and review for bias for grade 10.	Report from NWREL and NWEA	SDE, Test Coordinator, Bureau of Federal Programs	March 31, 2003	Title III, Title VI, State
1.21	Grade: 10 Administer Grade 10 ISAT.	Schedule for administration Written confirmation that the test was administered	State Board of Education, SDE, Test Coordinator	May 31, 2003	State Board of Education
1.22	Grades: 3,7 Complete detailed design, testing blueprint and implementation activities required to create test items and test forms adequate to serve the purposes specified in the State's assessment ensuring validity, reliability and fairness.	Test Design Document; Validity and Reliability Studies, Bias Review	SDE, Test Coordinator, Bureau of Federal Programs, Title I	Aug. 31, 2003	State, Title III, Title VI, Title II, Special Education
1.23	Complete test items and review for bias to ensure that results measured the standards for students of diverse backgrounds.	Blueprints of Pilot Tests	SDE, State Test Coordinator, Bureau of Federal Programs, Title I	October 31, 2003	Title VI, State, Title II, Title III
1.24	Administer pilot tests for grades 3 and 7.	Letter NWREL and Report re: Alignment Study	SDE, Test Coordinator, Bureau of Federal Programs	December 31, 2003	Title VI, State
1.25	Conduct an external alignment study of test to state standards.	Alignment study	SDE, Test Coordinator, Bureau of Federal Programs	Jan. 31, 2004	Title VI
1.26	Final review for completeness of items and review for bias for grades 3 and 7.	Report from NWREL and NWEA	SDE, Test Coordinator, Bureau of Federal Programs	January 31, 2004	Title III, Title VI, State
1.27	Grades: 3 and 7 Administer Grade 3 and 7 tests	Schedule for administration Written confirmation that the test was administered	SDE, Test Coordinator	May 31, 2004	Title I
1.28	Demonstrate that there will be no gaps in the assessment plan.	Copy of assessment plan for grades 3,4,7,8, and 10 (as compared to previous plan) Reference State Board Rules on Thoroughness	SDE, State Test Coordinator, Bureau of Federal Programs, Title I	April 30, 2004	Title VI
1.29	Grades: 5,6 Complete detailed design, testing blueprint and implementation activities required to create test items and test forms adequate to serve the purposes specified in the State's assessment ensuring validity, reliability and fairness.	Test Design Document; Validity and Reliability Studies, Bias Review	SDE, Test Coordinator, Bureau of Federal Programs, Title I	Aug. 31, 2004	State, Title III, Title VI, Title II, Special Education
1.30	Complete test items and review for bias to ensure that results measured the standards for students of diverse backgrounds.	Blueprints of Pilot Tests	SDE, State Test Coordinator, Bureau of Federal Programs, Title I	October 31, 2004	Title VI, State, Title II, Title III

1.31	Administer pilot tests for grades 5 and 6.	Letter NWREL and Report re: Alignment Study	SDE, Test Coordinator, Bureau of Federal Programs	December 31, 2004	Title VI, State
1.32	Conduct an external alignment study of test to state standards.	Alignment study	SDE, Test Coordinator, Bureau of Federal Programs	Jan. 31, 2005	Title II
1.33	Final review for completeness of items and review for bias for grades 5 and 6.	Report from NWREL and NWEA	SDE, Test Coordinator, Bureau of Federal Programs	January 31, 2005	Title III, Title VI, State
1.34	Grades: 5 and 6 Administer Grade 5 and 6 tests	Schedule for administration Written confirmation that the test was administered	SDE, Test Coordinator	May 31, 2005	Title I
1.35	Demonstrate that there will be no gaps in the assessment plan.	Copy of assessment plan for grades 3,4,5, 6, 7,8, and 10 Reference State Board Rules on Thoroughness	SDE, State Test Coordinator, Bureau of Federal Programs, Title I	April 30, 2005	Title VI
1.36	Administer tests.	Superintendent's letter with testing schedule	SDE, Test Coordinator	May 31, 2004	Title VI, Special Education, State

Goal 2: Provide evidence that performance standards nave been developed and implemented and that they are aligned with Idaho's content standards and the Idaho assessment system that is being developed.

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
2.1	Establish a process for developing performance standards, including what processes will be involved in writing the descriptors e.g. performance descriptors, assessments in reading/language arts and math with at least two performance levels, aligned with content standards, challenging for all, broad based involvement, and performance standards the same for all students.	Written narrative outlining the process Descriptor development agenda Power Point presentations by consultants Descriptor development routine	SDE, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Federal Programs	August 31, 2002	Title I, State, Title II
2.2	Determine performance levels that describe at least two levels of high performance: such as Proficient and Advanced, to determine how well students are mastering the material in Idaho's Content Standards and a third performance level: such as Partially Proficient, to provide complete information of lower performing students towards achieving the proficient and advanced levels of performance.	Copy of Performance Levels Description of Process	SDE, Test Coordinator, Bureau of Curriculum and Accountability, Title I, Bureau of Federal Programs, Bureau of Special Education	August 31, 2002	Title I, State, Title II
2.3	Document involvement of a broad base of education stakeholders in the development of performance descriptors ensuring diversity in the composition of the group, especially in the areas of expertise in special education and limited English proficient expertise.	Committee Members Outline of work plan Meeting agendas	SDE, Test Coordinator, Bureau of Curriculum and Accountability, Title I, Bureau of Special Education, LEP	August 31, 2002	Title I, State, Title II
2.4	Document that the State has formally approved the draft performance descriptors.	Letter from State Superintendent of Public Instruction	Federal Bureau Chief	August 31, 2002	Title I, State
2.5	Develop grades 4, 8, and 10 performance descriptors to be sent to U.S. Department of Education.	Written descriptors Written description of the process used to develop Letter from State Superintendent of Public Instruction	SDE, Test Coordinator, Bureau of Curriculum and Accountability, Title I	August 31, 2002	Title I, State, Title II
2.6	Review and finalize performance descriptors based on pilot assessment results.	Finalized written descriptors Agenda	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and	December 31, 2002	Title I, Title VI, Special Education State

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
		Committee Lists	Accountability, Bureau of Special Education		
2.7	Administer on grade level, state approved assessment for grades 4, 8, and 10, based on content standards and draft performance descriptors.	Test Blueprints, MOU, Copies of Reports	SDE, Test Coordinator	May 31, 2003	Title VI, State
2.8	Document involvement of a broad base of education stakeholders in the setting of cut scores ensuring diversity in the composition of the group, including expertise in the areas of special education and limited English proficiency.	Committee Lists Agenda	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2003	Title I, Title VI, Special Education State
2.9	Set cut scores on assessments by selecting a process and finalize procedures.	Description of the process for setting cut scores Cut Score Recommendations determined from technical information Formulas for Standard and Alternate Assessment Alternate Assessment Portfolio and Administrator's Manual	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2003	Title I, Title VI, Special Education State
2.10	Document that all students are included in the cut scores and that the cut scores are challenging for all students.	Summary of participation Testing Contractor NWREL Policy Governing Thoroughness and inclusion of all students	SDE, Test Coordinator Bureau of Federal Programs, NWEA	August 31, 2003	Title I, Title VI, Special Education State
2.11	Document that the State has formally approved the performance standards.	Letter from State Superintendent of Public Instruction	Federal Bureau Chief	August 31, 2003	Title I, State
2.12	Document that the cut scores are aligned with the performance standards and the content standards.	Final Alignment Study Report	SDE, Test Coordinator Bureau of Federal Programs	August 31, 2003	Title I, Title VI, Special Education State
2.13	Review and finalize performance standards based on assessment results that are aligned with the content standards for grades 4 and 8.	Finalized written descriptors Agenda Committee Lists	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	December 31, 2003	Title I, Title VI, Special Education State

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
2.14	Send documentation to the U.S. Department of Education for formal peer review of performance cut scores.		SDE, Test Coordinator Bureau of Federal Programs	December 31, 2003	Title I, Title VI, Special Education State
2.15	Grades 3 and 7: Develop Grades 3 and 7 performance descriptors to be sent to U.S. Department of Education.	Written descriptors Written description of the process used to develop Letter from State Superintendent of Public Instruction	SDE, Test Coordinator, Bureau of Curriculum and Accountability, Title I	August 31, 2003	Title I, State, Title II
2.16	Review and finalize grades 3 and 7 performance descriptors based on pilot assessment results.	Finalized written descriptors Agenda Committee Lists	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	December 31, 2003	Title I, Title VI, Special Education State
2.17	Administer developed assessments based on content standards and draft performance descriptors.	Test Blueprints, MOU, Copies of Reports	SDE, Test Coordinator	May 31, 2004	Title VI, State
2.18	Document involvement of a broad base of education stakeholders in the setting of cut scores ensuring diversity in the composition of the group, including expertise in the areas of special education and limited English proficiency.	Committee Lists Agenda	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2004	Title I, Title VI, Special Education State
2.19	Set cut scores on assessments by selecting a process and finalize procedures.	Description of the process for setting cut scores Cut Score Recommendations determined from technical information Formulas for Standard and Alternate Assessment Alternate Assessment Portfolio and Administrator's Manual	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2004	Title I, Title VI, Special Education State
2.20	Document that all students are included in the cut scores and that the cut scores are challenging for all students.	Summary of participation Testing Contractor NWREL Policy Governing Thoroughness and inclusion of all students	SDE, Test Coordinator Bureau of Federal Programs, NWEA	August 31, 2004	Title I, Title VI, Special Education State

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
2.21	Document that the State has formally approved the performance standards.	Letter from State Superintendent of Public Instruction	Federal Bureau Chief	August 31, 2004	Title I, State
2.22	Document that the cut scores are aligned with the performance standards and the content standards.	Final Alignment Study Report	SDE, Test Coordinator Bureau of Federal Programs	August 31, 2004	Title I, Title VI, Special Education State
2.23	Review and finalize performance standards based on assessment results that are aligned with the content standards for grades 4 and 8.	Finalized written descriptors Agenda Committee Lists	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	December 31, 2004	Title I, Title VI, Special Education State
2.24	Send documentation to the U.S. Department of Education for formal peer review of performance cut scores.		SDE, Test Coordinator Bureau of Federal Programs	December 31, 2004	Title I, Title VI, Special Education State
2.25	Grades 3 and 7: Develop Grades 3 and 7 performance descriptors to be sent to U.S. Department of Education.	Written descriptors Written description of the process used to develop Letter from State Superintendent of Public Instruction	SDE, Test Coordinator, Bureau of Curriculum and Accountability, Title I	August 31, 2003	Title I, State, Title II
2.26	Review and finalize grades 3 and 7 performance descriptors based on pilot assessment results.	Finalized written descriptors Agenda Committee Lists	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	December 31, 2003	Title I, Title VI, Special Education State
2.27	Administer developed assessments based on content standards and draft performance descriptors.	Test Blueprints, MOU, Copies of Reports	SDE, Test Coordinator	May 31, 2004	Title VI, State
2.28	Document involvement of a broad base of education stakeholders in the setting of cut scores ensuring diversity in the composition of the group, including expertise in the areas of special education and limited English proficiency.	Committee Lists Agenda	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2004	Title I, Title VI, Special Education State
2.29	Set cut scores on assessments by selecting a process and finalize procedures.	Description of the process for setting cut scores Cut Score Recommendations determined from technical information Formulas for Standard and Alternate Assessment	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2004	Title I, Title VI, Special Education State

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
		Alternate Assessment Portfolio and Administrator's Manual			
2.30	Document that all students are included in the cut scores and that the cut scores are challenging for all students.	Summary of participation Testing Contractor NWREL Policy Governing Thoroughness and inclusion of all students	SDE, Test Coordinator Bureau of Federal Programs, NWEA	August 31, 2004	Title I, Title VI, Special Education State
2.31	Document that the State has formally approved the performance standards.	Letter from State Superintendent of Public Instruction	Federal Bureau Chief	August 31, 2004	Title I, State
2.32	Document that the cut scores are aligned with the performance standards and the content standards.	Final Alignment Study Report	SDE, Test Coordinator Bureau of Federal Programs	August 31, 2004	Title I, Title VI, Special Education State
2.33	Review and finalize performance standards based on assessment results that are aligned with the content standards for grades 4 and 8.	Finalized written descriptors Agenda Committee Lists	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	December 31, 2004	Title I, Title VI, Special Education State
2.34	Send documentation to the U.S. Department of Education for formal peer review of performance cut scores.		SDE, Test Coordinator Bureau of Federal Programs	December 31, 2004	Title I, Title VI, Special Education State
2.35	Grades 5 and 6: Develop Grades 5 and 6 performance descriptors to be sent to U.S. Department of Education.	Written descriptors Written description of the process used to develop Letter from State Superintendent of Public Instruction	SDE, Test Coordinator, Bureau of Curriculum and Accountability, Title I	August 31, 2004	Title I, State, Title II
2.36	Review and finalize grades 5 and 6 performance descriptors based on pilot assessment results.	Finalized written descriptors Agenda Committee Lists	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	December 31, 2004	Title I, Title VI, Special Education State
2.37	Administer developed assessments based on content standards and draft performance descriptors.	Test Blueprints, MOU, Copies of Reports	SDE, Test Coordinator	May 31, 2005	Title VI, State
2.38	Document involvement of a broad base of education stakeholders in the setting of cut scores ensuring diversity in the composition of the group, including expertise in the areas of special education and limited English proficiency.	Committee Lists Agenda	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2005	Title I, Title VI, Special Education State

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
2.39	Set cut scores on assessments by selecting a process and finalize procedures.	Description of the process for setting cut scores Cut Score Recommendations determined from technical information Formulas for Standard and Alternate Assessment Alternate Assessment Portfolio and Administrator's Manual	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2005	Title I, Title VI, Special Education State
2.40	Document that all students are included in the cut scores and that the cut scores are challenging for all students.	Summary of participation Testing Contractor NWREL Policy Governing Thoroughness and inclusion of all students	SDE, Test Coordinator Bureau of Federal Programs, NWEA	August 31, 2005	Title I, Title VI, Special Education State
2.41	Document that the State has formally approved the performance standards.	Letter from State Superintendent of Public Instruction	Federal Bureau Chief	August 31, 2005	Title I, State
2.42	Document that the cut scores are aligned with the performance standards and the content standards.	Final Alignment Study Report	SDE, Test Coordinator Bureau of Federal Programs	August 31, 2005	Title I, Title VI, Special Education State
2.43	Review and finalize performance standards based on assessment results that are aligned with the content standards for grades 4 and 8.	Finalized written descriptors Agenda Committee Lists	SDE, Bureau of Federal Programs, Test Coordinator, Bureau of Curriculum and Accountability, Bureau of Special Education	December 31, 2005	Title I, Title VI, Special Education State
2.44	Send documentation to the U.S. Department of Education for formal peer review of performance cut scores.		SDE, Test Coordinator Bureau of Federal Programs	December 31, 2005	Title I, Title VI, Special Education State

Goal 3: Provide a copy of the LEP and SWD inclusion policy and provide documentation showing it has been approved by the State Board of Education. Idaho will provide clear and concise information on the enrollment of LEP students and SWD in the State at the assessed grade levels and the number of those students who take the standard form of the Idaho assessment, the Idaho Assessment with accommodations, and the number of students excluded from the Idaho assessment program.

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
3.1	**Develop consistent coding assignments on student protocols for statewide assessments.**	Coding assignments will be implemented for all state assessments.	Bureau of Special Education, Bureau of Curriculum & Accountability	June 30, 2002	Special Education, State
3.2	Modify LEP and SWD policy that includes information on accommodations for LEP and SWD students.	Copy of Policy and Rules governing Thoroughness: 111- Assessments in Public Schools; 04- Testing Populations	SDE, Title I, LEP, Bureau of Special Education, SBOE	August 31, 2002	Title III, Title I,
3.3	Provide clear and concise information on the enrollment of LEP and SWD students in the State at the assessed grade levels	Copies of Disaggregated Test Reports School Profiles Annual LEP Child Count December 1 Annual Child Count information (Child count procedure are included) and performance Report Annual Legislative Report Special study commissioned by legislature (HCR 54)	SDE, LEP, Bureau of Special Education, State Test Coordinator, Title I	August 31, 2002	State, Title III, Title VI, Special Education
3.4	Investigate the accommodations and/or adaptations for LEP and SWD taking the tests under development with NWEA.	Test Guidelines and Manual	SDE, Test Coordinator, LEP, Bureau of Special Education	December 31, 2002	State, Title III, Title II, Special Education

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
3.5	Develop a plan to modify, based on new assessments, Idaho's inclusion policy, to include accommodations or adaptations for LEP students and SWD.	Copy of new guidelines and policy Superintendent of Public Instructions approval letter	SDE, Test Coordinator, LEP, Bureau of Special Education	January 31, 2003	State, Title III, Special Education Title II
3.6	Develop a plan for implementing the LEP and SWD inclusion policies and for monitoring LEA compliance with the inclusion policies.	Dissemination of plan to LEAs and public Agenda on community meetings	SDE, Test Coordinator, LEP, Bureau of Special Education	January 31, 2003	State, Title III, Special Education
3.7	All LEP and SWD will be required to take state assessments (with or without accommodations/adaptations) and the results will be included in the state's accountability reports.	State's Accountability Reports	SDE, Test Coordinator, LEP, Bureau of Special Education; Contractor NWEA	May 31, 2003	State, Title III, Special Education Title II
3.8	Provide information on the number of LEP and SWD students who take the standard form of the Idaho assessments.	Copy of Disaggregated Testing data	SDE, Test Coordinator, LEP, Bureau of Special Education, Contractor NWEA	July 31, 2003	State, Special Education
3.9	**Provide complete participation data for students with disabilities and LEP students so that the State's inclusion policies relating to assessment, reporting, and accountability can be evaluated and submit to U.S. Department of Education**	Participation Report	Office of Technology and Information Services SDE, Test Coordinator, LEP, Bureau of Special Education, Contractor NWEA	August 31, 2003	State, Special Education
3.10	Provide the number of LEP and SWD students excluded from the Idaho assessment program.	Annual Testing Reports and test manual	SDE, Test Coordinator, LEP, Bureau of Special Education, Contractor NWEA	August 31, 2003	State, Special Education
3.11	**Ensure consistent implementation of standards and assessment with regard to students with disabilities.**	Bureau of Special Education Implementation Manual, September 2002 Idaho Alternate Assessment Administration Manual, 2001 Training modules on IEP assessment decisions	Bureau of Special Education	April 30, 2002	Bureau of Special Education, State
3.12	**Document all districts in Idaho currently use the Idaho Alternate Assessment (IAA) for students who are not able to participate in the general statewide assessments.**	Participation data reported on state and district data reports. Results from 2001-2002 IAA will be evaluated by an outside contractor	Bureau of Special Education	April 30, 2002	

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
3.13.	Ensure broad based participation in the development and piloting of the IAA.	Final report from Dr. Stephen Elliott on the 2000-2001 evaluation of the Idaho Alternate Assessment	Bureau of Special Education	April 30, 2002	
3.14	Provide disaggregated assessment performance data on students with disabilities.	Annual district data reports Bureau of Special Education monitoring system Title 1 Annual Performance Report	Bureau of Special Education	August 31, 2003	Special Education

Goal 4: Provide evidence that the components of the Idaho assessment program are aligned with Idaho standards. Provide evidence that Idaho assessments are cognitively complex. Identify gaps and weaknesses of the assessment system. Provide evidence on how the multiple measures incorporated in the Idaho assessment program affect the validity, reliability, and fairness of those assessments.

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
4.1	Develop a process to ensure alignment of content standards for grades 4, 8, and 10, with the assessment. Consider validity, reliability and cognitive complexity.	Agreement with NWREL detailing services	SDE, Test Coordinator, Bureau of Federal Programs, Title I	August 31, 2002	Title I, Title VI, State Title II
4.2	Idaho will contract with experts to conduct studies with regard to new assessment system to assure that it is aligned with Idaho content and performance standards.	Test Contractor Report NWREL contract for alignment study Alternate Assessment alignment study by Dr. Stephen Elliott	SDE, Test Coordinator Title I, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2002	Title I Title II State Special Education
4.3	Document how performance descriptors are aligned with the content standards.	NWREL Alignment Report	SDE, Test Coordinator, Bureau of Curriculum and Accountability, Title I	August 31, 2003	Title I, State, Title II
4.4	Complete an analysis of the alignment of the assessment and standards identifying any gaps and weaknesses in the alignment.	NWREL Alignment Report	SDE, Test Coordinator, Bureau of Federal Programs, Title I	August 31, 2003	Title II, Title I, Title VI, State
4.5	Complete any needed adjustments in the test forms for grades 4, 8, 10.	NWREL Alignment Report NWEA technical report	SDE, Test Coordinator, Bureau of Federal Programs	December 31, 2003	Title VI, Special Education, State
4.6	Results of alignment study sent to U.S. Department of Education.	Alignment Study	SDE, Test Coordinator	March 31, 2004	Title VI, Special Education, State

Goal 5: Provide technical information on each of the components of the Idaho Assessment Program. Provide information on how Idaho will ensure the fairness of its assessments for all students. Submit information on the technical quality of Idaho's alternate assessments for SWD as well as information that indicates the extent to which accommodations yield valid results for SWD.

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
5.1	Establish external technical advisory team to review technical quality of the Idaho assessment system.	List of team members Vitae of team members Minutes from quarterly meetings	State Superintendent of Public Instruction, Test Coordinator,	April 31, 2002	Title II
5.2	Complete detailed design, testing blueprint and implementation activities required to create test items and test forms adequate to serve the purposes specified in the State's assessment ensuring validity, reliability and fairness for grades 4, 8, and 10.	Test Design Document; Validity and Reliability Studies, Bias Review	SDE, Test Coordinator, Bureau of Federal Programs, Title I	August 31, 2002	State, Title III, Title VI, Title II, Special Education
5.3	Provide evidence that Idaho assessments possess cognitive complexity.	Test Contractor Report NWREL Alignment Study Test Blueprints	SDE, Test Coordinator Title I, Bureau of Curriculum and Accountability	January 31, 2003	Title I Title II State
5.4	Identify gaps and weaknesses of the assessment system.	Test Contractor Report NWREL Alignment Study	SDE, Test Coordinator Title I, Bureau of Curriculum and Accountability	January 31, 2003	Title I Title II State
5.5	Provide evidence on how the multiple measures that have been incorporated in the Idaho Assessment Program affect the validity, reliability, equity, lack of bias, and fairness of those assessments.	Test Contractor Report NWREL Alignment Study	SDE, Test Coordinator Title I, Bureau of Curriculum and Accountability	January 31, 2003	Title I Title II State
5.6	Review of technical quality sent to U.S. Department of Education.	Technical Quality Reports	SDE, Test Coordinator	August 31, 2003	Title VI, Special Education, State
5.7	Develop technical manuals that contain such information as validity, reliability, fairness/accessibility, cognitive complexity, and comparability of results.	Technical Manuals	SDE, Test Coordinator, Bureau of Special Education, Title I	August 31, 2003	Title VI, Special Education, State

Goal 6: Provide evidence that student performance will be disaggregated by gender, race/ethnicity, migrant status, disability (versus non-disability), economic disadvantage (versus non-disadvantaged), and limited English proficiency status at the school, district, and state level.

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
6.1	Describe procedures for annually reporting results.	Annual School, District, and State Accountability Report Cards	SDE Continuous School Improvement Team and Bureau of Technology	August 31, 2002	State, Title I, Title VI
6.2	Provide a workplan and timeline for the development and dissemination of these performance profiles for every district and school.	Workplan and Timeline	SDE Continuous School Improvement Team and Bureau of Technology	August 31, 2002	State, Title I, Title VI
6.3	Document that all students are included in school profiles.	Annual School, District, and State Accountability Report Cards	SDE Continuous School Improvement Team and Bureau of Technology	August 31, 2002	State, Title I, Title VI
6.4	Develop template for Continuous School Improvement Profile and Processes.	Minutes of Workgroup Meetings	SDE Continuous School Improvement Team and Bureau of Technology	August 31, 2002	State, Title I, Title VI
6.5	Implement data collection system • Statewide training of teachers and stakeholders • Redesign assessment answer sheets • Establish a uniform code for information about the participation of sub-population groups	Workplan and Timeline Agenda Minutes of Meetings Power Point Presentations	SDE Continuous School Improvement Team and Bureau of Technology	August 31, 2002	State, Title I, Title VI
6.6	Design a reporting template that has all reporting categories of disaggregated student achievement by student performance levels.	Reporting Template SDE Web Site	SDE Continuous School Improvement Team and Bureau of Technology	August 31, 2002	State, Title I, Title VI

Goal 7: Demonstrate that the State has developed or adopted a set of high-quality, yearly student assessments that will be used as the primary means of determining the yearly performance of each local educational agency and school served under Title I, Part A. Provide evidence that the accountability system will allow the results of the Idaho final assessment system to be the primary indicator of adequate yearly progress. Document the incorporation of performance data for SWD and LEP students into the reporting of results for assessment and accountability purposes.

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
7.1	Describe the plan to include only State level tests, as outlined in our assessment plan and compliance agreement to be used as the academic measures of progress in the accountability system will allow the results of the Idaho final assessment system, and to be the primary indicators of adequate yearly progress.	Copy of proposed state assessment plan for the next five years State Board of Education Rules Governing Thoroughness Memorandum of Understanding with NWEA	SDE, Test Coordinator, Title I, State Superintendent of Public Instruction	June 30, 2002	Title I, State, Title II
7.2	Idaho will develop a definition of adequate yearly progress that requires continuous improvement towards goal of having all students reaching proficiency.	AYP guide 2003 Consolidated State Plan	Test Coordinator, Title I, Federal Bureau Chief	August 31, 2002	Title I, State, Title II

Goal 8: Provide a plan for evaluating the AYP of its small schools and K-2 schools.

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
8.1	Research various strategies for evaluating AYP in small schools and K-2 schools.	Samples from other states	SDE, Title I, State, Test Coordinator, Bureau of Special Education	August 31, 2002	Title I, Title II
8.2	Design a plan that will include performance of multiple grades for evaluating AYP of small schools and K-2 schools incorporating assessment data from state assessments.	Copy of plan and description of process	SDE, Title I, State, Test Coordinator, Bureau of Special Education	June 30, 2002	Title I, Title II

Goal 9: Comply with the NCLB Act of 2001 assessment and accountability requirements.

	Component or Measurable Outcome	Documentation	Office Responsible	Date	Fiscal Resources
9.1	Compliance agreement will have until 6 months from the date of the agreement or 30 days after publication of final regulations (whichever comes first) to determine the specific tasks and dates required to satisfy each goal of NCLB.	Documented in Consolidated Application	Title I	Oct. 31, 2002	State and Title II
9.2	Technical assistance pending from US Department of Education.	Documented in Consolidated Application Letter requesting USDE assistance	US Dept of Ed	March 31, 2002 and ongoing	US Department of Education
9.3	Participation in the National Assessment of Educational Progress in 2003 and 2005 and, if selected, participation in the field test in off years.	Documented in Consolidated Application	Federal Programs and Test Coordinator	March 31, 2002 and ongoing	NAEP
9.4	Content standards in science: Distributed for stakeholder review and comment Completed and adopted by Board of Education	List of participants involved in developing and reviewing MCREL Summary Report Administrative Rules of State Board of Education Idaho Achievement Standards approved by Office of Elementary and Secondary Education, August 2001	Bureau of Curriculum and Accountability	April 8, 2001	State Resources

9.5	Develop standards-based assessments in remaining grades 3-8 Complete test blueprint Develop & field test items Pilot assessments in the grades not tested in 2004	Test blueprint Field test data Pilot administration manual Memorandum of Understanding with Contractor, SDE, and SBOE	LEP, Title I, Bureau of Special Education, Test Coordinator, Bureau of Curriculum and Accountability	Fall 2003 Spring 2004 Spring 2005	State and Title VI
9.6	Distribution of an itemized score analysis to support instructional improvement.	Sample report based on test administered in 2001-02	SDE, Test Coordinator, NWEA	August 31, 2003	State and Title VI
9.7	Implementation of the English language proficiency testing required under Title I and Title III Identify test that will be used Administer to all LEP students Define annual measurable objectives for gains in English proficiency as required in Sec. 3122 Report results as required by NCLB Language proficiency must be assessed two years after exiting program.	Instructions to schools, test administration manuals, sample reports Memorandum of Understanding with Contractor	LEP, Title I, Bureau of Special Education, Test Coordinator	2002-03 and Annually thereafter	Title III, Title II, Title VI, and Special Education
9.8	Distribution of a state report card as required under Section 1111 of Title I. State report card must include the following assessment components by dates shown • Disaggregated student achievement results by performance level by August 31, 2002 • Percent of students not tested, disaggregated by August 31, 2002 • Comparison between annual objectives and actual performance for each student group by August 31, 2004 All other report card requirements must be met as quickly as possible, consistent with implementation of final assessments.	Copy of state report card	Test Coordinator, Bureau of Special Education, Title I	August 2002 and ongoing	State, Title VI, Special Education
9.9	Continued identification of schools in need of improvement, based on data from the current assessment(s) for all children in the grades assessed and, to also include:	Description of school accountability system, to include the data source (assessments) and formula or decision sequence used to	Test Coordinator, Bureau of Special Education, Title I	August 31, 2002 and ongoing	State, Title V, Special Education

	• Performance of subgroups (of statistically reliable size) • Application of the 95% participation rule • HS graduation and the other indicators required by NCLB	determine school classifications. List of schools & districts identified for improvement			
9.10	Establish AYP baseline, based on data from the new assessment(s) for all children in the grades assessed Use transitional rules under NCLB, Sec. 1116 to identify schools in need of improvement	Communication of baseline values and AYP design to schools and districts List of schools & districts identified for improvement	Title I, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2003	State, Title I, Special Education
9.11	Annual report to the Secretary as described in Section 1111(h)(4) • Information on State progress in developing all required academic assessments (2002-03) • Student achievement data, disaggregated (2002-03) • Data on acquisition of English proficiency by LEP (2002-03) • Number and names of schools identified for school improvement, the reason for identification, and measures taken to address achievement problems • Number of students and schools that participated in public school choice and supplemental services • Information on quality of teachers and percent of classes taught by highly qualified (2002-03)	Data will be reported as part of the Annual Title I Performance Report	Title I, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2002 and Annually thereafter	State, Title I, Special Education
9.12	All other requirements of NCLB pertaining to schools identified for improvement, corrective action, or restructuring during the period of the compliance agreement	Implementation and documentation of choice, supplemental services, corrective actions, as appropriate	Title I, Bureau of Curriculum and Accountability, Bureau of Special Education	August 31, 2002 and ongoing	State, Title I, Special Education

[FR Doc. 03-4076 Filed 2-19-03; 8:45 am]
BILLING CODE 4000-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–7–000]

AIM Pipeline, LLC; Notice of Petition for Rate Approval

February 13, 2003.

Take notice that on February 3, 2003, AIM Pipeline, LLC (AIM) filed, pursuant to section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval for transportation services rendered pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). AIM proposes a system-wide maximum interruptible transportation rate of $0.2711 per MMBtu effective February 1, 2003.

AIM's petition states that it is an intrastate pipeline company within the meaning of section 2(16) of the NGPA, 15 U.S.C. 3301(16). AIM provides interruptible transportation service pursuant to section 311(a)(2) of the NGPA through its facilities located in Mississippi.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before March 3, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits I the docket number field to access the document. For assistant, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contract (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4122 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–5–003]

Algonquin Gas Transmission Company Notice of Amendment

February 13, 2003.

Take notice that on February 5, 2003, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP01–5–003, an application, pursuant to Section 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's regulations to amend the certificate of public convenience and necessity issued December 21, 2001, in Docket No. CP01–5–000, as amended June 4, 2002, in Docket No. CP01–5–002, for Algonquin's HubLine project, as more fully described in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Algonquin requests authorization to construct approximately 6.64 miles of 24-inch pipeline and 0.31 miles of 8-inch pipeline extending from the terminus of the originally certificated Deer Island Lateral portion of Algonquin's HubLine project across Boston Harbor through portions of East Boston, Chelsea, and Everett, Massachusetts to a connection with Algonquin's existing J-System. Algonquin also proposes to construct three meter stations and other related facilities. Algonquin refers to the proposed new facilities as the Everett Extension project, while referring to the Everett Extension project and the Deer Island Lateral, collectively, as HubLine Phase II. The total cost of the HubLine Phase II facilities is estimated to be approximately $110 million.

Algonquin also requests authorization to implement a revised initial incremental surcharge for service on the entire HubLine Phase II facilities in lieu of the previously approved rate for service solely on the Deer Island Lateral. Algonquin states that firm transportation service will be rendered to HubLine Phase II shippers pursuant to Algonquin's Rate Schedule AFT–1. Algonquin proposes no change to the previously approved surcharge for service on the HubLine mainline facilities.

Algonquin requests that the Commission issue a final certificate granting the authorizations requested on or before December 15, 2003, in order to place the HubLine Phase II facilities into service in a time frame consistent with that of the shippers who have requested service on such facilities. Relatedly, Algonquin has requested an extension of the originally authorized time to construct and place into service the Deer Island Lateral to coincide with that of the Everett Extension project, thereby enabling Algonquin to construct the HubLine Phase II facilities at one time.

Any questions regarding this application should be directed to Mr. Steven E. Tillman, General Manager, Regulatory affairs, Algonquin Gas Transmission Company, P.O. Box 1642, Houston, Texas 77251–1642, or call (713) 627–5113 or FAX (713) 627–5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process.

Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4112 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–228–001]

Alliance Pipeline L.P.; Notice of Compliance Filing

February 13, 2003.

Take notice that on February 6, 2003., Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 253, proposed to become effective February 1, 2003.

On December 31, 2002, Alliance filed First Revised Sheet No. 253 to amend the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Alliance to terminate a temporary release of capacity, upon 30-days written notice to the replacement shipper, where (i) Alliance has terminated the releasing shipper's Firm Transportation Agreement or Master Capacity Release Agreement in accordance with GTC Section 8 (Default and Termination); and (ii) the rate stated in the replacement shipper's applicable Capacity Release Schedule is less than the rate that the releasing shipper was obligated to pay Alliance.

Alliance further proposed that a replacement shipper may avoid termination of the temporary release if, prior to the end of the 30-day notice period, the replacement shipper agrees that, beginning the first day after the end of the 30-day notice period, it will pay, for the remainder of the term of the release, either the rate the former releasing shipper was obligated to pay Alliance, the maximum applicable Recourse Reservation and Usage Charges as stated in the tariff for the applicable service, or a rate mutually agreed upon by Alliance and the Shipper.

By order issued January 30, 2003, the Commission accepted Alliance's filing, to be effective February 1, 2003, subject to Alliance filing clarifying language specifying that the replacement shipper may retain the released capacity by agreeing to pay the "lesser of" the available rate options. By its filing, Alliance is proposing to add the required clarifying language. Alliance states further that, because the relative relationship between its recourse and negotiated rates will not necessarily remain static over the term of any particular release of capacity, it is also adding further clarifying language to provide the replacement shipper with the right to determine which of the available rate options will provide the lowest effective rate over the remaining term of a capacity release.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Protest Date:* February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4125 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–161–028]

Columbia Gas Transmission Corporation; Notice of Refund Report

February 13, 2003.

Take notice that on October 21, 2002, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing a report on the flow-back to customers of funds received from insurance carriers for environment costs attributable to Columbia Gas' Docket No. RP91–161 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on their fixed cost responsibility for services on the Columbia Gas system during the period December 1, 1991 through January 31, 1996, the period of the Docket No. RP91–161 settlement.

Columbia Gas further states that it provided copies of the report to all customers who received a share of the environmental issuance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4126 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–075]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

February 13, 2003.

Take notice that on February 7, 2003., Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 20C; Third Revised Sheet No. 20E; Third Revised Sheet No. 20F; and Third Revised Sheet No. 20G, with an effective date of February 1, 2003.

Columbia Gulf states that it is filing these tariff sheets to comply with the Commission's orders approving negotiated rate agreements in Docket Nos. RP96–389–052, 055, 060 and 067. The instant filing contains revised tariff sheets reflecting the rate effective on February 1, 2003.

Columbia Gulf states further that it has served copies of the filing on all

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4127 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–534–004]

Guardian Pipeline Company, L.L.C.; Notice of Negotiated Rates

February 13, 2003.

Take notice that on February 11, 2003., Guardian Pipeline Company, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 6, proposed to be effective February 1, 2003.

Guardian states that the purpose of this filing is to reflect a change in the primary receipt points on a negotiated rate agreement that was amended to be effective February 1, 2003.

Guardian states that copies of this tariff filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4124 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–293–000]

North Branch Resources, LLC; Notice of Issuance of Order

February 13, 2003.

North Branch Resources, LLC (North Branch) filed an application requesting authority to transact at market-based rates along with the accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates. North Branch also requested waiver of various Commission regulations. In particular, North Branch requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by North Branch.

On February 11, 2003., pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by North Branch should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 13, 2003.

Absent a request to be heard in opposition by the deadline above, North Branch is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of North Branch, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of North Branch's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4115 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–38–004]

Northern Natural Gas Company; Notice of Compliance Filing

February 13, 2003.

Take notice that on February 10, 2003., Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of February 23, 2003:

Substitute Second Revised Sheet No. 284
Substitute Third Revised Sheet No. 285
Substitute Original Sheet No. 285A
Original Sheet No. 285B
Sixth Revised Sheet No. 289

Northern states that the filing is being made in compliance with the Commission's order issued on January 29, 2003, in Docket No. GT02–38, *et al.* (Order) regarding the creditworthiness and capacity release provisions of Northern's tariff.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4117 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–300–001]

Pacific Gas and Electric Company; Notice of Filing

February 13, 2003.

Take notice that on February 12, 2003, Pacific Gas and Electric Company (PG&E) filed an errata to replace and correct tariff sheets to its December 20, 2002 filing of Transmission Owner Tariff (TO Tariff) rate for the Transmission Revenue Balancing Account Adjustment, the Reliability Services rate, and the Transmission Access Charge Balancing Account Adjustment also set forth in its TO Tariff. The Errata corrects certain word processing errors in Appendices I and II of the filing. None of the replacement pages contains a change in rates as originally proposed in the December 20, 2002 filing.

PG&E states that copies of this filing have been served upon the California Independent System Operator (ISO), Scheduling Coordinators registered with the ISO, Southern California Edison Company, San Diego Gas &Electric Company, the California Public Utilities Commission and other parties to the official service lists in this docket and recent TO Tariff rate cases, FERC Docket Nos. ER00–2360–000 and ER01–66–000.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: February 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4116 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–035]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

February 13, 2003.

Take notice that on February 11, 2003., PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Fourth Revised Sheet No. 15 and First Revised Sheet No. 18. GTN requests that the Commission accept the proposed tariff sheets to be effective February 11, 2003.

GTN states that these sheets are being filed to reflect the implementation of three negotiated rate agreements.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4128 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–243–002]

Pine Needle LNG Company, LLC; Notice of Compliance Filing

February 13, 2003.

Take notice that on February 7, 2003, Pine Needle LNG Company, LLC (Pine Needle), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, 2nd Sub Second Revised Sheet No. 89 and Substitute Original Sheet No. 89A, with an effective date of January 1, 2003.

Pine Needle states that the instant filing is submitted in compliance with the Commission's letter order issued January 24, 2003 (January 24 Order) in the referenced docket. The January 24 Order directed Pine Needle to refile, within 15 days of the order, tariff sheets to implement NAESB Standards 2.3.32, 4.3.23 and 4.3.54 to the extent these standards pertain to matters other than netting and trading and imbalances.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4123 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of Executive Summary and Index Templates

February 13, 2003.

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, Respondent

[Docket No. EL00–95–075]

Investigation of Practices of the California Independent System Operator and the California Power Exchange and Puget Sound Energy, Inc., et al. Complainant, v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement Respondent

[Docket Nos. EL00–98–063, Docket No. EL01–10–007]

Pursuant to the orders issued on February 10, 2003., in the above captioned dockets,[1] the Commission has posted on its Web site (*http://www.ferc.gov*) the guidelines and templates for parties that will be making additional submissions. This information can be found in the "What's New at FERC" window.

All parties making these submissions must follow the posted instructions and use the provided templates for filing their executive summary and their indices of additional information.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4113 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

[1] San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv., *et al.*, 102 FERC ¶ 61,164 (2003), and Puget Sound Energy, Inc., *et al.*, 102 FERC ¶ 61,163 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–648–003, et al.]

Sithe New Boston, LLC, et al.; Electric Rate and Corporate Filings

February 12, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sithe New Boston, LLC

[Docket No. ER02–648–003]

Take notice that on February 10, 2003, Sithe New Boston, LLC filed a refund report in the above-captioned proceeding.

Comment Date: March 3, 2003.

2. New England Power Pool ISO New England Inc.

[Docket No. ER02–2330–009]

Take notice that on February 7, 2003, ISO New England Inc., submitted its notice in the above docket that the NEPOOL System Rules and computer programs necessary to implement New England's standard market design are fully in place and functional, a precondition to the effectiveness of the new markets, and that the ISO has advised the Commission that the current schedule calls for implementation of the new markets on March 1, 2003.

ISO New England, Inc., states that copies of said filing have been served upon NEPOOL Participants as well as upon the governors and utility regulatory agencies of the six New England States.

Comment Date: February 24, 2003.

3. Union Power Partners, L.P.

[Docket No. ER03–275–001]

Take notice that on February 10, 2003., Union Power Partners, L.P., (UPP) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its filing submitted December 13, 2002 requesting to amend the Western Systems Power Pool (WSPP) Agreement to include UPP as a participant. UPP requests that the Commission allow the amendment to the WSPP Agreement to become effective on December 11, 2002.

UPP states that a copy of this filing has been served upon the WSPP Executive Committee Chair, WSPP Operating Committee Chair, WSPP General Counsel, and Arizona Public Service Company.

Comment Date: March 3, 2003.

4. Ameren Services Company

[Docket No. ER03–464–001]

Take notice that on February 7, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service between ASC and Soyland Power Cooperative, Inc. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER03–464–000 with a revised, unexecuted Agreement.

Comment Date: February 28, 2003.

5. Ohio Valley Electric Corporation

[Docket No. ER03–511–000]

Take notice that on February 10, 2003, Ohio Valley Electric Corporation (OVEC) tendered for filing a Notice of Cancellation of the Non-Firm Point-to-Point Transmission Service Agreement, dated as of October 23, 1996, between OVEC and Western Power Services, Inc. (WPS), designated as Service Agreement No. 2 under OVEC's FERC Electric Tariff, Original Volume No. 1. OVEC proposes an effective date of April 8, 2002.

OVEC states that a copy of this filing was served upon Western.

Comment Date: March 3, 2003.

6. CL Power Sales Six, L.L.C.

[Docket No. ER03–512–000]

Take notice that on February 10, 2003., CL Power Sales Six, L.L.C., tendered for filing a Notice of Cancellation of its authorization to engage in wholesale electric energy transactions at market-based rates, filed on August 7, 1996.

Comment Date: March 3, 2003.

7. Invenergy Energy Marketing LLC

[Docket No. ER03–513–000]

Take notice that on February 10, 2003., Invenergy Energy Marketing LLC (Invenergy) filed a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1, with a proposed effective date of October 1, 2002. Invenergy states that it no longer engaged in the power marketing business, will not conduct power marketing activities in the future, and has no outstanding power sales contracts; accordingly, Invenergy states that no purchasers will be affected by the Notice of Cancellation.

Comment Date: March 3, 2003.

8. Duke Energy Marketing Corp.

[Docket No. ER03–514–000]

Take notice that, on February 10, 2003, Duke Energy Marketing Corp., tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, in order to reflect the cancellation of its market-based rate tariff, designated as Rate Schedule FERC No. 1, Revision No. 1, originally accepted for filing in Docket No. ER96–109–000.

Comment Date: March 3, 2003.

9. Black Oak Capital, LLC

[Docket No. ER03–515–000]

Take notice that on February 10, 2003, Black Oak Capital, LLC (Black Oak) petitioned the Federal Energy Regulatory Commission (Commission)

for acceptance of Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Black Oak states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer; is not in the business of generating or transmitting electric power; and, is an independent electricity marketer with a sole purpose of buying and selling electricity in the wholesale electricity market.

Comment Date: March 3, 2003.

10. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ES03–24–000]

Take notice that on February 6, 2003, Florida Keys Electric Cooperative Association, Inc. (Florida Keys) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make short-term borrowings in an amount not to exceed $8.7 million under agreements with CoBank, ACB and the National Rural Cooperative Finance Corporation.

Florida Keys also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: March 5, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4114 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Studies Requests, Establishing Procedural Schedule for Licensing, and a Deadline for Submission of Final Amendments

February 13, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License, constructed project.

b. *Project No.:* 11810–004.

c. *Date Filed:* January 30, 2003.

d. *Applicant:* City of Augusta.

e. *Name of Project:* Augusta Canal Project.

f. *Location:* Adjacent to the Savannah River, in Richmond County, Georgia, near the town of Augusta, Georgia. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant:* Max Hicks, Director, Utilities Department, 360 Bay Street, Suite 180, Augusta, Georgia 30901, (706) 312–4121.

i. *FERC Contact:* Monte TerHaar, (202)-502–6035 or *monte.terhaar@ferc.gov*.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperation status should follow the instruction for filing comments described in item l below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant. Parties who would like to request additional scientific studies should follow the instruction for filing comments described in item l below.

l. *Deadline for filing comments on the application*: 60 days from date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. This application is not ready for environmental analysis at this time.

n. *The proposed project description*: The City of Augusta does not propose to construct hydroelectric generation facilities and the project would produce no power. Augusta is proposing to license parts of the Augusta Canal system which pass flows for use by three existing hydroelectric projects located in the Augusta Canal. These projects are the 1.2 megawatt (MW) Enterprise Project (No. 2935), the 2.475 MW Sibley Mill Project (No. 5044), and the 2.05 MW King Mill Project (No. 9988). The proposed project would consist of the following: (1) The 1,666-foot-long stone-masonry Augusta Diversion Dam; (2) the 2,250-foot-long Savannah River impoundment between Steven's Creek Dam and the Augusta Diversion Dam; and (3) the first level of the Augusta Canal, which extends about 7 miles between the Augusta Diversion Dam and the Thirteenth Street gates.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Georgia State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, part 800.

q. *Procedural schedule*: At this time we do not anticipate the need for preparing a draft EA. We intend to prepare one, multi-project environmental document which will include the Augusta Canal Project (P–11810), the Enterprise Project (P–2935), and the Sibley Mill Project (P–5044). The EA will include our recommendations for operating procedures and environmental enhancement measures that should be part of any license issued by the Commission. Recipients will have 60 days to provide the Commission with any written comments on the EA. All comments filed with the Commission will be considered in the Order taking final action on the license applications. However, should substantive comments requiring re-analysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Scoping Document 1—March 2003.

Comments on Scoping Document 1—May 2003.

Issue acceptance letter/request additional information—May 2003.

Additional Information Due—July 2003.

Notice of ready for environmental analysis/Notice soliciting final terms and conditions—July 2003.

Deadline for Agency Recommendations—September 2003.

Notice of the availability of the EA—November 2003.

Public Comments on EA due—January 2003.

Ready for Commission's decision on the application—March 2004

r. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R Salas,

Secretary.

[FR Doc. 03–4118 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests and Establishing Procedures for Relicensing

February 13, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 1979–012.

c. *Date Filed:* June 21, 2002.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Alexander Hydroelectric Project.

f. *Location:* On the Wisconsin River near the City of Merrill, Lincoln County, Wisconsin. The project occupies 3.59 acres of public land administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. David W. Harpole, Wisconsin Public Service Corporation, 700 N. Adams Street, PO Box 19002, Green Bay, Wisconsin. 54307 (920) 433–1264.

i. *FERC Contact:* Michael Spencer, *michael.spencer@FERC.fed.us*, (202) 502–6093.

j. *Deadline for filing motions to intervene and protests*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie Salas, Secretary Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis*: This application is not ready for environmental analysis at this time.

l. *Description of Project*: The existing project consists of: (1) A dam, described from east to west side as comprised of a gated spillway controlled by 11 Taintor gates each measuring 26-feet-wide and 15-feet-high, the powerhouse, a 385-foot-long concrete wall with earth backfill, and a 515-foot-long, 20-foot-high earthen embankment dam; (2) a reservoir with a surface area of 803 acres and, a 7,000 acre-foot storage volume at normal pond elevation; (3) the powerhouse contains three generating units with an total installed capacity of 4,200-kilowatts (4) a transmission substation; and (5) appurtenant facilities. The applicant estimates that the average annual generation is 23,550 megawatt-hours.

m. *Locations of the application*: A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Procedural schedule*: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so.

Issue Scoping Document 1 for comments—March 2003.

Request Additional Information—May 2003.

Issue Scoping Document 2—August 2003.

Notice of application is ready for environmental analysis—August 2003.

Notice of the availability of the draft EA—December 2003.

Notice of the availability of the final EA—April 2004.

Ready for Commission's decision on the application—April 2004.

o. This notice also consists of the following standard paragraphs:

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with

the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—All filings must (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4119 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

February 13, 2003.

Take notice that the following hydroelectric subsequent license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License for a Major Water Power Project.

b. *Project No.:* P–2181–014.

c. *Date filed:* February 10, 2003.

d. *Applicant:* Northern States Power Company (d/b/a Xcel Energy).

e. *Name of Project:* Menomonie Hydroelectric Project.

f. *Location:* On the Red Cedar River, City of Menomonie, Dunn County, Wisconsin. This project would not use federal lands and there are no federal lands within the project's boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. William Zawacki, Director, Hydro Plants, or Ms. Kristina Bourget, Esq., Northern States Power Company (d/b/a Xcel Energy), 1414 West Hamilton Avenue, PO Box 8, Eau Claire, Wisconsin 54702–0008, 715–836–1136 or 715–839–1305, respectively, or Mr. William J. Madden, Jr., Esq., Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, 202–371–5715.

i. *FERC Contact:* John Ramer, *john.ramer@ferc.gov* (202) 502–8969.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days after the application filing(*i.e.*, by April 10, 2003.) and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* April 10, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Menomonie Hydroelectric Project consists of the following existing facilities: (1) A 624-foot-long by about 40-foot-high dam, topped with five, 40-foot-wide by 19-foot-high and one, 9-foot-high by 25-foot-wide, steel Tainter gates and with a total dam discharge capacity of 62,000 cubic feet per second(cfs); (2) a 1,405-acre reservoir (Lake Menomin) with a gross storage capacity of about 15,000-acre feet; (3) a 72-foot-long by about 50-foot-wide by 40-foot-high powerhouse containing two, vertical-shaft Kaplan turbine-generators with a combined total maximum hydraulic capacity of 2,700 cfs and with a total installed generating capacity of about 5.4 megawatts (MW) and producing a total of 23,358,292 kilowatt-hours (kWh) annually; (4) a substation containing a 69 kilovolt (kV) bus from which power flows to serve the applicant's interconnected electrical system or to a 12.5 kv local distribution system; along with (5) appurtenant facilities, such as, govenors and electric switchgear. The dam and existing project facilities are owned by Northern States Power Company (d/b/a Xcel Energy).

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link—select "Docket #" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TYY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in the spring of 2004.

Issue Acceptance or Deficiency Letter—June 2003.

Issue Scoping Document—July 2003.

Notice that application is ready for environmental analysis—October 2003.

Notice of the availability of the EA—March 2004.

Ready for Commission decision on the application—May 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4120 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

February 13, 2003.

Take notice that the following hydroelectric subsequent license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License for a Major Water Power Project.

b. *Project No.:* P–2697–014.

c. *Date filed:* February 10, 2003.

d. *Applicant:* Northern States Power Company (d/b/a Xcel Energy).

e. *Name of Project:* Cedar Falls Hydroelectric Project.

f. *Location:* On the Red Cedar River, Dunn County, Wisconsin. This project would not use federal lands; however, a 2.4 acre island owned by the Bureau of Land Management located at the confluence of Red Cedar River and Tainter Lake is within the project's boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. William Zawacki, Director, Hydro Plants, or Ms. Kristina Bourget, Esq., Northern States Power Company (d/b/a Xcel Energy), 1414 West Hamilton Avenue, PO Box 8, Eau Claire, Wisconsin 54702–0008, 715–836–1136 or 715–839–1305, respectively, or Mr. William J. Madden, Jr., Esq., Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, 202–371–5715.

i. *FERC Contact:* John Ramer, john.ramer@ferc.gov (202) 502–8969.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days after the application filing(*i.e.*, by April 10, 2003.) and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* April 10, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Cedar Falls Hydroelectric Project consists of the following existing facilities: (1) A 510-foot-long by about 50-foot-high dam, topped with two, 23-foot-wide by 5-foot-high, steel Tainter gates and with a total dam discharge capacity of 57,000 cubic feet per second(cfs); (2) a 1,752-acre reservoir (Tainter Lake) with a gross storage capacity of about 23,000-acre feet; (3) a 140-foot-long by 150-foot-wide by 42-foot-high powerhouse containing three 2,000 kilowatt (kW) horizontal generators with Francis turbines with a total maximum hydraulic capacity of 2,500 cfs and with a total installed generating capacity of 7.1megawatts (MW) and producing a total of 33,678,351 kilowatt-hours (kWh) annually; (4) a substation containing a 69 kilovolt (kV) bus from which power flows to four 69 kV transmission lines which serve the applicant's interconnected electrical system or to a 10,500 kva transformer that serves a local distribution load; along with (5) appurtenant facilities, such as, govenors and electric switchgear. The dam and existing project facilities are owned by Northern States Power Company (d/b/a Xcel Energy).

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link—select "Docket #" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TYY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in the spring of 2004.

Issue Acceptance or Deficiency Letter, June 2003.

Issue Scoping Document, July 2003.

Notice that application is ready for environmental analysis, October 2003.

Notice of the availability of the EA, March 2004.

Ready for Commission decision on the application, May 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4121 Filed 2–19–03; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 011409–008

Title: Transpacific Carrier Services, Inc. Agreement

Parties: Westbound Transpacific Stabilization Agreement; Transpacific Space Utilization Agreement; Asia North America Eastbound Rate Agreement; Transpacific Stabilization Agreement;American President Lines, Ltd.; APL Moller-Maersk Sealand; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; COSCO Container Lines Company, Ltd.; Evergreen Marine Corporation; Hanjin Shipping Co., Ltd.;Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.;Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Orient Overseas Container Line, Inc.; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; and Yangming Lines

Synopsis: The amendment adds China Shipping Container Lines Co., Ltd. as a party to the agreement.

By Order of the Federal Maritime Commission

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–4142 Filed 2–19–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date reissued
17310N	J.M.C. Transport Corporation., 9133 South La Cienega Blvd. #120, Inglewood, CA 90301	December 8, 2002.
17151N	Ultra Air Cargo, Inc., 555 S. Isis Avenue, Inglewood, CA 90301	November 1, 2002.
3883F	Brye International, Inc., 108 South Franklin Avenue Suite 15, Valley Stream, NY 11580	December 3, 2002.
4175NF	Silken Fortress Corporation, dba Transcargo International, 5858 S. Holmes Avenue, Los Angeles, CA 90001.	December 8, 2002.

Dated: February 13, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–4144 Filed 2–19–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number : 4217F

Name : Reliable Van & Storage Co., Inc.

Address : 550 Division Street, Elizabeth, NJ 07201

Date Revoked : January 15, 2003.

Reason : Failed to maintain a valid bond.

License Number : 17151F

Name : Ultra Air Cargo Inc.

Address : 555 S. Isis Avenue, Inglewood, CA 90301

Date Revoked : November 1, 2002.

Reason : Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–4143 Filed 2–19–03; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

Notice of Web Site Location for Annual Motor Vehicle Reports

AGENCY: General Services Administration (GSA).

SUMMARY: Under the provisions of the Energy Policy Act of 1992, as amended, and the reporting obligations under 42 U.S.C. 13218(b), GSA hereby provides, for public review, access to annual reports covering motor vehicle acquisitions beginning with the year 1999. Each report details the fuel type, vehicle classification and number of vehicles required in the covered fiscal year. These reports are accessible on the agency's Web site located at *http://www.gsa.gov/fleetreports.*

FOR FURTHER INFORMATION CONTACT: John Hughes, Administrative Management Division (CAI), GSA (202) 501–2162.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice; correction.

SUMMARY: The Office of the Secretary, HHS, published a notice in the **Federal Register** of January 2, 2003, concerning a finding of scientific misconduct regarding Dr. Ganz. The document contained the incorrect middle initial of Dr. Ganz.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, (301) 443–5330.

Correction

In the **Federal Register** of January 2, 2003, in FR Doc. 02–33079, on page 123, in the third column, first paragraph, correct the name of Michael E. Ganz, M.D. to read: Michael B. Ganz, M.D.

Dated: February 13, 2003.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–4088 Filed 2–19–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–191]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from October 2002 through December 2002. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on December 4, 2002 (67 FR 72216). This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)).

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 1825, Century Blvd, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between September 1, 2002 and December 31, 2002, public health assessments were issued for the sites listed below:

NPL Sites

Arkansas

Mountain Pine Pressure Treating (PB2003–100516).

Florida

Naval Air Station Cecil Field (a/k/a USN Air Station Cecil Field) (PB2003–101531).

Illinois

Lisle Residential Wells I (a/k/a Lockformer Company) (PB2003–100143).

Louisiana

Central Wood Preserving Company (PB2003–100517) Ruston Foundry (PB2003–100079).

New Hampshire

Gardner-Roussell Park and Dr. Norman W. Crisp Elementary School (a/k/a Dr. Crisp School/Gardner Roussell Park) (PB2003–100503).

New Jersey

Boeing Michigan Aeronautical Research Center/McGuire Missile (PB2003–100508).

McGuire Air Force Base #1 (PB2003–100509)

New York

Huntington Landfill (a/k/a Huntington Town Landfill) (PB2003–100504).

Peter Cooper-Markham (a/k/a Peter Cooper Corporation (MARKHAMS)) (PB2003–100154).

Smithtown Groundwater Contamination (a/k/a Smithtown Ground Water Contamination) (PB2003–100147).

Pennsylvania

Naval Air Warfare Center (a/k/a Naval Air Development Center (8 Waste Areas)) (PB2003–100510).

Non NPL Petitioned Sites

None

Dated: February 12, 2003.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 03–4026 Filed 2–19–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 67, No. 125, pp. 43632–43633, dated Friday, June 28, 2002; Vol. 67, No. 207, p. 65589, dated Friday, October 25, 2002) is amended to reflect a change to the organizational structure of CMS by establishing the Office of Health Insurance Portability and Accountability Act Standards.

The specific amendments to part F are described below:

- Section F.10. (Organization) is amended to read as follows:

1. Public Affairs Office (FAC)
2. Center for Beneficiary Choices (FAE)
3. Office of Legislation (FAF)
4. Center for Medicare Management (FAH)
5. Office of Equal Opportunity and Civil Rights (FAJ)
6. Office of Research, Demonstration, and Information (FAK)
7. Office of Clinical Standards and Quality (FAM)
8. Office of the Actuary (FAN)
9. Center for Medicaid and State Operations (FAS)
10. Northeastern Consortium (FAU)
11. Southern Consortium (FAV)
12. Midwestern Consortium (FAW)
13. Western Consortium (FAX)
14. Office of Operations Management (FAY)
15. Office of Internal Customer Support (FBA)
16. Office of Information Services (FBB)
17. Office of Financial Management (FBC)
18. Office of Strategic Operations and Regulatory Affairs (FGA)
19. Office of Health Insurance Portability and Accountability Act Standards (FHA)

- Section F.20. (Functions) is amended by deleting the functional

statement in its entirety for the Office of Operations Management. The new functional statement reads as follows:

14. Office of Operations Management (FAY)

• Analyzes and evaluates project time lines, schedules, and new methodologies. Evaluates and recommends project management alternatives to the Deputy Administrator/COO and the Agency.

• Prepares and presents recommendations to the Administrator, Deputy Administrator/COO and other high level CMS and Department officials on planning, leadership, implementation and policy issues concerning modifications to existing and proposed operating policies that will improve the administration and operations of programs and the Agency as a whole.

• Collaborates with appropriate CMS component(s) to collect and disseminate data on health care and insurance market trends that affect CMS' business risk profile. The Risk Management Staff has the lead for monitoring indicators of risk associated with the operations of CMS and our business partners.

• Surveys risk assessment techniques in use in the private and public sectors and identifies and applies the most useful ones for CMS. Helps develop new risk assessment techniques and keeps abreast of methodological developments in the professional literature.

• Promotes and teaches risk assessment methods to business owners throughout CMS. Promotes awareness of the importance of risk analysis as a component of business planning and trains CMS staff in specific techniques and their applicability in particular situations.

• Provides consulting services internally to Agency management and staff to identify processes or contracts that need improvement, to develop improvement strategies, and to monitor processes and improvements over time.

• Participates in agency-wide initiatives to streamline operations, improve accountability and performance, and implement management best practices. Provides leadership, training, and coaching in the implementation of the initiatives. Promotes a continuous improvement ethos.

Specific Project Management Functions

• Develops, in conjunction with staff in CMS centers and offices, major project plans, implementation schedules and post implementation evaluations.

• Promotes project planning principles throughout the Agency and provides technical guidance to the Agency on project planning and management techniques.

• Reports to the COO and senior officials on progress of Agency priority projects. Negotiates with and supports project and component heads regarding project schedules, progress, etc.

• Prepares and presents recommendations to senior officials regarding major projects.

• Analyzes and evaluates project time lines, schedules, and new methodologies. Evaluates and recommends project management alternatives to the Deputy Administrator/COO and the Agency.

• Collaborates with the Risk Management Staff, Operational Review Staff, and CMS senior management to identify and address enterprise-wide risk factors that lead to ineffective or inefficient operations.

• Conducts process control analysis and tracking to ensure projects are running smoothly.

• Prepares and presents recommendations to the Administrator, Deputy Administrator/COO and other high level CMS and Department officials on planning, leadership, implementation and policy issues concerning modifications to existing and proposed operating policies that will improve the administration and operations of programs and the Agency as a whole.

Specific Operational Review Functions

• Identifies operational vulnerabilities in CMS and develops and executes an internal audit plan for each fiscal year, subject to approval by the Deputy Administrator and other senior leadership of CMS.

• Plans and conducts targeted internal audits and makes recommendations to strengthen internal audits and improve the operations of the Agency. The subjects of these reviews will be determined through regular periodic consultation with the Project Management Staff, Risk 3 Management Staff, the Director of the Office of Operations Management, and the Deputy Administrator. Drafts written reports summarizing conclusions and presents findings to appropriate officials for follow-up actions.

• Monitors the implementation of corrective actions relative to ORS recommendations, as well as those resulting from selected OIG/GAO audits to assure results and accountability.

• Reviews and evaluates enterprise-wide programs, projects, and processes to assess their effectiveness and efficiency, compliance with laws, regulations, or adequacy of management processes.

• Provides consulting services internally to Agency management and staff to identify processes or contracts that need improvement, to develop improvement strategies, and to monitor processes and improvements over time.

• Participates in agency-wide initiatives to streamline operations, improve accountability and performance, and implement management best practices. Provides leadership, training, and coaching in the implementation of the initiatives. Promotes a continuous improvement ethos.

• Collaborates with the Risk Management Staff, Project Management Staff, and CMS senior management to identify and address enterprise-wide risk factors that lead to ineffective or inefficient operations.

• Serves as the Agency focal point for implementation of OMB Circular A–76 and Federal Activities Reform Act and Competitive Outsourcing Initiative.

• Coordinates the development of the Agency's submission to the OMB mandated Performance Assessment Rating Tool that links Agency program performance to the budget process. Serves as Agency liaison with the Department and OMB.

Special Racial and Ethnic Health Initiatives Functions

• Develops and sustains external contacts and partnerships regarding racial and ethnic health issues. Works collaboratively with the DHHS Office of Minority Health with responsibility for coordinating CMS activities with Departmental and White House initiatives that are directed by Executive Orders. Collaborates with the academic community, professional societies, civic, and social groups and non-government agencies concerning health problems of special populations.

• Provides direction in setting priorities, establishing goals and objectives, defining appropriate interventions, and assisting in determining evaluation tools for racial and ethnic health activities.

• Coordinates consolidated reporting on communication and educational activities targeting racial and ethnic populations.

Faith-Based and Community Initiatives Functions

• Coordinates a comprehensive effort to incorporate faith-based and other community organizations into CMS programs and initiatives.

• Develops and coordinates effective outreach and education efforts to disseminate information regarding CMS programs, contracting opportunities, and other initiatives to faith-based and other community organizations.

19. Office of Health Insurance Portability and Accountability Act Standards (FHA)

• Develops, implements and administers the enforcement of the Health Insurance Portability and Accountability Act (HIPAA) including portability, transactions, code sets, identifiers, and security.

• Develops, implements and administers the enforcement of the Administrative Simplification Compliance Act (ASCA).

• Develops regulations to enforce the provisions of the HIPAA and the ASCA. Also develops regulations and guidance materials on HIPAA standards.

• Educates and reaches out to the public and internal CMS staff on HIPAA issues. Formulates and coordinates a public relations campaign, prepares and delivers presentations and speeches, responds to inquires on HIPAA issues, and liaisons with industry representatives.

• Works with Federal departments and agencies to identify and adopt universal messaging and clinical health data standards, and represents CMS and HHS in national projects supporting the national health enterprise architecture and the National Health Information Infrastructure.

• Provides technical assistance regarding HIPAA standards and their implementation.

• Collaborates with the Department, especially the Office for Civil Rights, on HIPAA policy issues.

• Coordinates and provides guidance on legislative and regulatory issues.

• Provides assistance and guidance for HIPAA-related budget formulation and execution activities.

• Oversees the enforcement of the insurance portability provisions of HIPAA related to non-Federal governmental health plans and States.

Dated: November 21, 2002.

Ruben J. King-Shaw, Jr.,

Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 03–4086 Filed 2–19–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0259]

Agency Information Collection Activities; Announcement of OMB Approval; Telephone Questionnaire Administration to Control Subjects Recruited into FDA Lyme Vaccine Safety Study, "A Case-Control Study of HLA Type and T-Cell Reactivity to Recombinant Outer Surface Protein A and Human Leukocyte Function-Associated Antigen-1"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled Telephone Questionnaire Administration to Control Subjects Recruited into FDA Lyme Vaccine Safety Study, "A Case-Control Study of HLA Type and T-Cell Reactivity to Recombinant Outer Surface Protein A and Human Leukocyte Function-Associated Antigen-1" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 18, 2002 (67 FR 64397), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0501. The approval expires on June 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 10, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–4090 Filed 2–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Contaminants and Natural Toxicants Subcommittee of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Contaminants and Natural Toxicants Subcommittee of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 18, 2003, from 8 a.m. to 6 p.m.; and on March 19, 2003, from 8:30 a.m. to 3 p.m.

Location: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Rd., Conference Center, Riverdale, MD, 301–734–8010.

Contact Person: Jeanne E. Latham, Center for Food Safety and Applied Nutrition (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1756, or FDA Advisory Committee Information Line, 1–800–741–8138 301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The meeting's purpose is to discuss the scientific issues and principles involved in assessing and evaluating *Enterobacter sakazakii* contamination in powdered infant formula, risk reduction strategies based on available data, and research questions and priorities. To ensure the presence of the most relevant expertise, the membership of the subcommittee, which has expertise in contaminants, will be augmented by consultants with expertise in infant formula.

The background material for this meeting will be posted on the Internet when available or one working day before the meeting at http://www.cfsan.fda.gov/~lrd/vidtel.html.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 3, 2003. Oral

presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. on March 18, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jeanne E. Latham at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–4089 Filed 2–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 12 and 13, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, or email: cliffordj@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug applications approved under 21 CFR 314.500 (Subpart H, accelerated approval) in an open session on March 12 and 13, 2003, to: (1) Review the status of phase IV clinical studies; (2) identify difficulties associated with completion of phase IV commitments; and (3) provide advice to sponsors to assist in the planning and execution of postmarketing commitments of newly approved drugs. On March 12, 2003, the committee will discuss phase IV commitments of: (1) new drug application (NDA) 50–718 DOXIL (doxorubicin HCl, Johnson and Johnson Pharmaceutical Research and Development, L.L.C.) for the treatment of Kaposi's Sarcoma in acquired immune deficiency syndrome (AIDS) patients with disease that has progressed on prior combination therapy or in patients who are intolerant to such therapy; (2) NDA 50–718/S–006 DOXIL (Doxorubicin HCl, Johnson and Johnson Pharmaceutical Research and Development, L.L.C.) for the treatment of metastatic ovarian cancer in patients with disease that is refractory to both paclitaxel and platinum-based chemotherapy regimens; (3) biologics license application (BLA) 97–1325 ONTAK (deneluekin diftitox, Ligand Pharmaceuticals) for the treatment of persistent or recurrent cutaneous T-cell lymphoma whose malignant cells express the CD25 component of the IL–2 receptor; and (4) NDA 20–221/S–002, ETHYOL injection (amifostine, MedImmune Oncology, Inc.) for reducing the cumulative renal toxicity associated with repeated administration of cisplatin in patients with advanced nonsmall cell lung cancer. On March 13, 2003, the committee will discuss phase IV commitments of: (1) NDA 21–174, MYLOTARG (gemtuzumab ozogamicin, Wyeth-Ayerst Laboratories, Inc.) for the treatment of CD33 positive acute myeloid leukemia in first relapse of patients who are 60 years of age or older and who are not considered candidates for cytotoxic chemotherapy; (2) NDA 21–041, DEPOCYT (cytarabine, SkyePharma, Inc.) for the intrathecal treatment of lymphomatous meningitis; (3) NDA 21–156 CELEBREX (celecoxib, Pharmacia Corp.) indicated in the reduction in number of adenomatous colorectal polyps in familial adenomatous polyposis patients; and (4) NDA 21–029, TEMODAR (temozolomide, Schering Corp.) for the treatment of adult patients with refractory anaplastic astrocytoma.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 3, 2003. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m. and 12:30 p.m. to 1 p.m. on both days. Time allotted for each presentation may be limited. Additional open public sessions may be conducted after the presentations for interested persons who have submitted their request to speak by March 3, 2003, to address issues specific to the topic before the committee. Those desiring to make formal oral presentations should notify the contact person before March 3, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Johanna Clifford at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–4000 Filed 2–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–04]

Notice of Proposed Information Collection: Comment Request; Fee or Roster Designation, HUD Conditions and Appraisal Report

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wyne—Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Fee or Roster Designation, HUD Conditions and Appraisal Report.

OMB Control Number, if applicable: 2502–0538.

Description of the need for the information and proposed use: This information is gathered from real estate appraisers seeking HUD acceptance. The information collection provides for a more thorough and complete appraisal of prospective HUD-insured single-family properties ensuring that mortgages are acceptable for FHA insurance and thereby protecting the interest of HUD and the taxpayers in the FHA insurance fund.

Agency form numbers, if applicable: HUD–92563, HUD–92564–VC, HUD–92564–HS, HUD–92564–CN, and Fannie Mae Forms 1004 and 1004B.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 576,720; the number of respondents is 16,440 generating 3,601,440 annual responses; the frequency per response is on occasion; and the estimated time needed to prepare the responses varies from 5 minutes to 30 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 12, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–4038 Filed 2–19–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–05]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Fair Housing Initiatives Program Application

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: March 6, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Lauren_Wittenberg@omb.eop.gov*; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed revision to the currently approved information collection for selecting applicants for the Fair Housing Initiatives (FHIP) Program grants.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Fair Housing Initiatives Program Application.

Description of Information Collection: This is a revision to the currently

approved information collection for selecting applicants for the Fair Housing Initiatives (FHIP) Program grants which will be part of the 2003 Notice of Funding Availability (NOFA). These grants are to fund fair housing enforcement and/or education and outreach activities under the following initiatives: Administrative Enforcement; Private Enforcement; Education and Outreach; and Fair Housing Organizations. Proposed revisions to the currently approved collections would include a certification requirement that FHIP funds will not be used to settle a claim, satisfy a judgment, or fulfill a court order in any defensive litigation or that key project personnel have no prior felony convictions or convicted of crimes involving fraud or perjury; descriptions of how program activities will support HUD goals, identify performance measures/outcomes in support of these goals, and identify baseline conditions and target levels of the performance measures that each applicant plans to achieve in reports submitted to HUD. It would also require the submission of two budgets: at 80 percent funding level and at 100 percent funding level.

OMB Control Number: 2529–0033.

Agency Form Numbers: HUD forms 40076–FHIP, 424, 424B, 424C, 424CB, 424CBW, 2880, 2990, 2991, 2993, 2994, and OMB SF LLL.

Members of Affected Public: Not-for-profit institutions, State, Local or Tribal Government, Business or other for-profit.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 28,220, number of respondents is 400 frequency response is 4 per annum, and the total hours per respondent is 100.5.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 13, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–4036 Filed 2–19–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4558–N–11]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 202(c) of the National Housing Act, this document provides notice of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: D. Jackson Kinkaid, Secretary to the Mortgagee Review Board, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202) 708–3041, extension 3574 (this is not a toll-free number). A telecommunications device for hearing and speech-impaired individuals is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), requires that HUD "publish a description of and the cause for administrative action against a HUD-approved mortgagee" by HUD's Mortgagee Review Board. In accordance with the requirements of section 202(c)(5), notice is given of administrative actions that have been taken by the Mortgagee Review Board from January 1, 2002, through March 31, 2002.

1. Allied Financial Services, Inc., Birmingham, AL

[Docket No. 00–1344–MR]

Action: In a letter dated December 13, 2000, the Board withdrew HUD's approval, specifically, the approval of the Federal Housing Administration (HUD/FHA), of Allied Financial Services, Inc.'s (AFS) approval for three years. The Board also voted to impose a civil money penalty.

Cause: The Board took this action based on the following violations of HUD/FHA requirements: AFS failed to file annual loan origination reports for 1997–1999, which supplements the requirements of the Home Mortgage Disclosure Act; AFS used false documentation to originate a HUD/FHA loan; AFS failed to ensure that only AFS employees process HUD/FHA loans; AFS employed a loan officer who was not an exclusive employee; and AFS failed to provide complete loan origination files and/or documents for review.

2. Custom Mortgage Corporation, San Antonio, TX

[Docket No. 01–1543–MR]

Action: Settlement Agreement signed January 11, 2002. Without admitting fault or liability, Custom Mortgage Corporation (CMC) agreed to pay a civil money penalty.

Cause: The Board took this action based on the following violations of HUD/FHA requirements: CMC failed to maintain and implement a Quality Control Plan in compliance with HUD/FHA requirements; CMC accepted eleven loans originated by personnel not employed by CMC; and CMC paid fees and compensation to unauthorized individuals in connection with nine loans.

3. Fidelity Mortgage & Funding Co., Memphis, TN

[Docket No. 01–1415–MR]

Action: In a letter dated February 12, 2002, the Board withdrew the HUD/FHA approval of Fidelity Mortgage & Funding Co. (Fidelity) approval for five years. In addition, the Board voted to impose a civil money penalty.

Cause: The Board took these actions based on the following findings of violations of HUD/FHA requirements: In 106 loans, Fidelity allowed non-employees to participate in the origination of loans to be insured by HUD/FHA; and Fidelity failed to develop, maintain, and implement a Quality Control Plan that meets HUD guidelines.

4. First Mortgage of Indiana, Inc., Indianapolis, IN

[Docket No. 99–1031–MR]

Action: Settlement Agreement signed January 30, 2002. Without admitting fault or liability, First Mortgage of Indiana, Inc. (FMI) agreed to pay a civil money penalty.

Cause: The Board took this action based on the following violations of HUD/FHA requirements: FMI failed to maintain and implement a Quality Control Plan in compliance with HUD/FHA requirements; and FMI charged certain fees which were not allowed; and FMI used a rubber stamp to sign the Lender's Certification on page four of HUD Form 92900–A prior to closing.

5. Golden Empire Mortgage, Inc., Bakersfield, CA [Docket No. 98–853–MR]

Action: Settlement Agreement was signed March 26, 2002. Without admitting fault or liability, Golden Empire Mortgage, Inc. (GEM) agreed to pay a civil money penalty. In addition, GEM agreed to indemnify HUD for any losses incurred on 12 loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements: GEM failed to notify HUD of violations which were discovered by GEM's own quality control review; GEM failed to notify HUD that certain fraudulent documents were discovered during GEM's quality control review; GEM permitted straw buyers to qualify for HUD/FHA insured mortgages; GEM failed to require that all borrowers meet their required investment; GEM failed to correctly calculate the borrower's income in certain loans; and GEM failed to require that all repairs and/or valuation conditions were satisfied.

6. Jack Johnson and Associates, Inc., d/b/a Home Equity Mortgage, Riverside, CA

[Docket No. 00–1348–MR]

Action: Settlement Agreement signed February 7, 2002. The Board withdrew the HUD/FHA approval of JJAI for a period of five years. Without admitting fault or liability, Jack Johnson and Associates, Inc. (JJAI), doing business as (d/b/a) Home Equity Mortgage agreed to pay a civil money penalty.

Cause: The Board took this action based the following violations of HUD/FHA requirements: JJAI failed to file annual loan origination reports for 1992–1999, which supplements the requirements of the Home Mortgage Disclosure Act; JJAI failed to maintain and implement a quality control plan in compliance with HUD requirements; JJAI permitted an investor to circumvent the restrictions on FHA insured loans to investors; JJAI permitted false information to be used in originating loans and obtaining HUD/FHA mortgage insurance; and JJAI allowed non-employees to take loan applications for three FHA-insured loans.

7. Pac West Financial Corporation, Ontario, CA

[Docket No. 01–1406–MR]

Action: Settlement Agreement signed January 11, 2002. Without admitting fault or liability, Pac West Financial Corporation (PWF) agreed to pay a civil money penalty. In addition, PWF agreed to indemnify HUD for any losses incurred on eight loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements: PWF failed to maintain and implement a Quality Control Plan in compliance with HUD requirements; PWF failed to file annual reports regarding loan activity; PWF used falsified documentation and/or conflicting information in originating 8 loans and obtaining HUD/FHA mortgage insurance; PWF allowed mortgagors to sign loan documents in blank form in two cases; and PWF failed to ensure that gift letters met HUD requirements in 18 loans.

8. Ron Simpson & Associates d/b/a Rockwell Mortgage Company, Farmington Hills, MI

[Docket No. 011497–MR]

Action: Settlement Agreement signed March 7, 2002. Without admitting fault or liability, Ron Simpson & Associates, d/b/a Rockwell Mortgage Company (RMC), agreed to pay a civil money penalty.

Cause: The Board took this action based on the following violations of HUD/FHA requirements: RMC employed loan officers who were not exclusive employees; RMC failed to implement and maintain a Quality Control Plan in complete conformity with HUD/FHA requirements; RMC failed to maintain complete origination files and; RMC charged borrowers fees not permitted by HUD.

9. Southern Mortgage Investment Corporation, Winter Park, FL

[Docket No. 01–1480–MR]

Action: In a letter dated May 8, 2002, the Board withdrew the HUD/FHA approval of Southern Mortgage Investment Corporation (SMIC) approval for three years. In addition, they agreed to pay a civil money penalty.

Cause: The Board took this action based on the following violations of HUD/FHA requirements: SMIC failed to establish and maintain a Quality Control Plan for the origination of HUD/FHA insured mortgages; SMIC allowed the handling of loan documents by an interested third party; and SMIC failed to maintain complete loan files.

10. Underline, Inc., d/b/a Advantage Mortgage Services, Santa Ana, CA

[Docket No. 01–1604–MR]

Action: Settlement Agreement was signed on March 20, 2002. Without admitting fault or liability, Underline, Inc.(UI) d/b/a/ Advantage Mortgage Services agreed to pay a civil money penalty.

Cause: The Board took this action based on the following violations of HUD requirements: UI allowed non-employees to originate HUD/FHA insured loans, and UI failed to implement a Quality Control Plan in compliance with HUD requirements by allowing non-employees to originate HUD/FHA insured loans.

11. Utah Mortgage Loan Corporation, Midvale, UT

[Docket No. 00–1342–MR]

Action: Settlement Agreement letter was signed February 9, 2002. Without admitting fault or liability, Utah Mortgage Loan Corporation (UMLC) agreed to pay a civil money penalty.

Cause: The Board took this action based on the following violations of HUD/FHA requirements: UMLC failed to maintain and implement a Quality Control Plan in compliance with HUD requirements; UMLC permitted non-UMLC employees to originate FHA loan applications; UMLC failed to pay the operating expenses of an employee; UMLC paid unallowable fees/compensation in connection with HUD/FHA insured mortgages to non-employees; UMLC paid origination commissions to UMLC Direct Endorsement Underwriter who also performed the Quality Control Audits on HUD/FHA loans; and UMLC leased office space to another entity that was not physically separate and apart from UMLC.

Dated: February 6, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner, Chairman, Mortgagee Review Board.

[FR Doc. 03–4037 Filed 2–19–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for Agassiz National Wildlife Refuge in Northwestern Minnesota.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) and its implementing regulations, for the Agassiz National Wildlife Refuge located in Marshall County, Minnesota.

The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration

Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain additional suggestions and information on the scope of alternatives and impacts to be considered.

Open house style meetings and focus group meetings will also be held throughout the scoping phase of the CCP development process. In addition, the Service is inviting comments on archaeological, historic, and traditional cultural sites in accordance with the National Historic Preservation Act.

Special mailings, newspaper articles, and other media announcements will inform people of the opportunities for written input throughout the CCP planning process. Information on the CCP planning process will be posted on the Internet at *http://www.midwest.fws.gov/planning/agassiz.htm*

ADDRESSES: Address comments to Refuge Manager, Agassiz National Wildlife Refuge, 22996 290th Street NE., Middle River, MN 56737. Comments may also be submitted electronically at *r3planning@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Refuge Manager, Agassiz National Wildlife Refuge, Phone: (218)–449–4115.

SUPPLEMENTARY INFORMATION: By Federal Law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes.

The CCP planning process will consider many elements, including wildlife and habitat management, habitat protection and acquisition, wilderness preservation, public recreational activities, industrial use, and cultural resource preservation. Public input into this planning process is essential.

The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Service will prepare in Environmental Assessment (EA) in accordance with procedures for implementing NEPA found in the Departmental Manual 516 DM 6, Appendix 1.

The Service will contract for a cultural resources overview study in support of the comprehensive conservation plan. The professional study will identify known sites on the refuge. We are also asking the public to identify any cultural sites that are important to them.

Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available in late 2003.

Dated: November 8, 2002.

William F. Hartwig,

Regional Director.

[FR Doc. 03–4027 Filed 2–19–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW150210, WYW150318, WYW151134, WYW151643, WYW154001]

Notice of Availability of South Powder River Basin Coal Draft Environmental Impact Statement and Federal Coal Notice of Hearing, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) of a Draft Environmental Impact Statement (DEIS) on four maintenance lease applications received for five Federal coal tracts in the decertified Powder River Federal Coal Production Region, Wyoming, and Notice of public hearing.

SUMMARY: Under the National Environmental Policy Act (NEPA) and the implementing regulations, the Bureau of Land Management (BLM) announces the availability of the South Powder River Basin Coal DEIS and announces a public hearing pursuant to 43 Code of Federal Regulations (CFR) 3425.4.

The DEIS analyzes and discloses to the public direct, indirect, and cumulative environmental impacts of issuing five Federal coal leases in the Wyoming portion of the Powder River Basin. The tracts are being considered for sale as a result of the following coal lease applications received from existing mines in the Wyoming Powder River Basin:

- On March 10, 2000, Powder River Coal Company applied for a maintenance coal lease for approximately 4,500 acres (approximately 564 million recoverable tons of coal) in two tracts adjacent to the North Antelope/Rochelle Mine Complex in Campbell County, Wyoming. The tracts, which are referred to as the NARO North Lease by Application (LBA) Tract and the NARO South LBA Tract, were assigned case numbers WYW150210 and WYW154001, respectively;
- On March 23, 2000, Ark Land Company applied for a maintenance coal lease for approximately 2,799.5 acres (approximately 383.6 million in-place tons of coal) adjacent to the Black Thunder Mine in Campbell County, Wyoming. The tract, which is referred to as the Little Thunder LBA Tract, was assigned case number WYW150318.
- On June 14, 2001, Ark Land Company filed an application to modify the Little Thunder LBA Tract. As currently filed, the tract includes approximately 3449.3 acres and 440 million tons of recoverable coal reserves;
- On July 28, 2000, Triton Coal Company applied for a maintenance coal lease for approximately 1870.6 acres (approximately 173.2 million in-place tons of coal) adjacent to the North Rochelle Mine in Campbell County, Wyoming. The tract, which is referred to as the West Roundup LBA Tract, was assigned case number WYW151134; and,
- On September 12, 2000, Antelope Coal Company applied for a maintenance coal lease for approximately 3,500 acres (approximately 292.5 million in-place tons of coal) adjacent to the Antelope Mine in Campbell and Converse Counties, Wyoming. The tract, which is referred to as the West Antelope LBA Tract, was assigned case number WYW151643.
- On June 27, 2001, Antelope Coal Company filed an application to modify the West Antelope LBA Tract. As currently filed, the tract includes approximately 3,542 acres and 293.9 million tons of in place coal reserves.

The purpose of the public hearing is to solicit comments on the DEIS from the public on the proposed competitive sales of the Federal coal included in the NARO North, NARO South, Little Thunder, West Roundup, and West Antelope LBA tracts, and on the fair market value and maximum economic recovery of the Federal coal included in the five tracts.

DATES: Written comments on the DEIS will be accepted for 60 days following the date that EPA publishes their NOA of the DEIS in the **Federal Register**. Requests to be included on the mailing list and to receive copies of the DEIS and notification of the comment period and hearing date should be sent to the address, facsimile number, or electronic address (address) listed below.

The BLM asks that those submitting comments on the DEIS make them as specific as possible with reference to page numbers and chapters of the document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered and included as part of the BLM decision-making process.

Future notification of public meetings, or other public involvement activities, concerning the proposed sales will be provided through public notices, news media releases, or mailings. These notifications will provide at least 15 days notice of public meetings or gatherings and 30 days notice of written comments requests.

ADDRESSES: Please address questions, comments, or concerns to the Casper Field Office, Bureau of Land Management, Attn: Nancy Doelger, 2987 Prospector Drive, Casper, Wyoming 82604, fax them to 307–261–7587, or send e-mail comments to the attention of Nancy Doelger at *casper_wymail@blm.gov*. A copy of the DEIS has been sent to affected Federal, State, and local Government agencies; persons, and entities identified as potentially being affected by a decision to lease the Federal coal in these tracts; and persons who indicated to the BLM that they wished to receive a copy of the DEIS. Copies of the DEIS are available for public inspection at the following BLM office locations: Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; Bureau of Land Management, Casper Field Office, 2987 Prospector Lane, Casper, Wyoming 82604. Comments, including names and street addresses of respondents, will be available for public review at the address listed above during regular business hours (7:45 a.m. through 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or telephone: 307–261–7600.

SUPPLEMENTARY INFORMATION: The five Federal coal tracts being considered for leasing are adjacent to four mines located south and east of Wright, Wyoming. The operators of these mines applied to lease the tracts as maintenance tracts to extend the life of their existing mining operations under the provisions of the Leasing on Application regulations at 43 CFR 3425. The following paragraphs provide descriptions of the tracts as they were applied for.

On March 13, 2000, Powder River Coal Company filed a coal lease application for the following lands in two tracts adjacent to the North Antelope/Rochelle Mine Complex in Campbell County, Wyoming:

NARO North—(WYW150210)

T. 42 N., R. 70 W., 6th PM, Wyoming,
Sec. 28, lots 5 thru 16;
Sec. 29, lots 5 thru 16;
Sec. 30, lots 9 thru 20;
T. 42 N., R. 71 W., 6th PM, Wyoming,
Sec. 25, lots 5 thru 15;
Sec. 26, lots 7 thru 10;
Sec. 35, lots 1, 2, 7 thru 10, 15, 16.
Containing 2,369.25 acres, more or less.

NARO South—WYW 154001

T. 41 N., R. 70 W., 6th PM, Wyoming,
Sec. 19, lots 6 thru 11, 12 (S½), 13 thru 20;
Sec. 20, lots 5 (S½), 6 (S½), 7 (S½), 8 (S½), 9 thru 16;
Sec. 21, lots 5 (S½), 12, 13;
Sec. 28, lots 3 thru 6, 11, NE¼ SW¼;
Sec. 29, lots 1 thru 12;
Sec. 30, lots 5 thru 12.
Containing 2,133.635 acres, more or less.

The tracts as applied for include an estimated 564 million tons of recoverable coal. According to the application filed for the NARO North and NARO South LBA Tracts, mining the coal included in these maintenance tracts would extend the life of the North Antelope/Rochelle Mine Complex.

On March 23, 2000, Ark Land Company filed a coal lease application for lands adjacent to the Black Thunder Mine in Campbell County, Wyoming. The following lands are included in the tract as currently filed:

Little Thunder—WYW150318

T. 43 N., R. 71 W., 6th PM, Wyoming,
Sec. 2, lots 5, 6, 11 thru 14, 19, 20;
Sec. 11, lots 1, 2, 7 thru 10, 15, 16;
Sec. 12, lots 2 (W½ & SE¼), 3 thru 16;
Sec. 13, lots 1 thru 16;
Sec. 14, lots 1, 2, 6 thru 9, 14, 15;
Sec. 24, lots 1 thru 16;
Sec. 25, lots 1, 2, 7 thru 10, 15, 16.
T. 44 N., R. 71 W., 6th PM, Wyoming,
Sec. 35, lots 1, 2, 7 thru 10, 15, 16.T. 44.
Containing 3,449.317 acres more or less.

The tract includes an estimated 440 million tons of in-place coal. According to the application, the coal is needed to maintain existing mining operations at the Black Thunder Mine and would be used for electric power generation.

On July 28, 2000, Triton Coal Company, LLC filed a coal lease application for the following lands adjacent to the North Rochelle Mine in Campbell County, Wyoming:

West Roundup—WYW151134

T. 42 N., R. 70 W., 6th PM, Wyoming,
Sec. 6, lots 8–19, 20 (N½), 21 (N½), 22 (N½), 23 (N½);
Sec. 7, lots 5 (S½), 6 (S½), 7 (S½), 8 (S½), 9 thru 14;
Sec. 8, lots 1 (SW¼), 2 (S½), 3 (S½), 4 (S½), 5 thru 12;
Sec. 9, lots 5 (SW¼), 11, 12, 14;
T. 43 N., R. 70 W., 6th PM, Wyoming,
Sec. 3, lots 13 thru 20.
T. 42 N., R. 71 W., 6th PM, Wyoming
Sec. 1, lots 5, 6, 11 thru 13.
Containing 1,870.638 acres more or less.

The tract includes an estimated 173.2 million tons of in-place coal.

On September 12, 2000, Antelope Coal Company filed a coal lease application for lands adjacent to the Antelope Mine in Campbell and Converse Counties, Wyoming. The following lands are included in the tract as currently filed:

West Antelope—WYW151643

T. 40 N., R. 71 W., 6th PM, Wyoming,
Sec. 3, lots 15 thru 18;
Sec. 4, lots 5 thru 20;
Sec. 5, lots 5 thru 7, 10 thru 15, 19, 20;
Sec. 9, lot 1;
Sec. 10, lots 3, 4;
T. 41 N., R. 71 W., 6th PM, Wyoming,
Sec. 28, lots 1 thru 16;
Sec. 29, lots 1 thru 16;
Sec. 32, lots 1 thru 3, 6 thru 11, 14 thru 16;
Sec. 33, lots 1 thru 16.
Containing 3,542.19 acres more or less.

The West Antelope tract includes an estimated 293.9 million tons of in-place coal. According to the application, mining this coal would extend the life of the existing mine and the coal would be mined for sale to electrical power generating plants. Each of the mines adjacent to the LBA tracts described above (the North Antelope/Rochelle, Black Thunder, North Rochelle, and Antelope mines, respectively) has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality and an approved air quality permit from the Air Quality Division of the Wyoming Department of Environmental Quality. Each of these mines has previously acquired one or more maintenance coal leases using the LBA process.

The DEIS analyzes leasing each of the five tracts (described above) as a separate Proposed Action. As part of the coal leasing process, BLM has identified and is evaluating other tract configurations for these tracts which add or subtract Federal coal to avoid bypassing coal or to increase estimated fair market value of the unleased Federal coal in this area. The tract configurations that BLM has identified for each tract are described and analyzed as alternatives in the DEIS. The DEIS also analyzes the alternative of rejecting each application to lease Federal coal as the No Action Alternative for each tract.

The agency-preferred alternative will vary for each tract, depending on which tract configuration is determined to best advance the public interest in avoiding bypassing Federal coal and obtaining the fair market value of the Federal coal.

The Proposed Actions and Alternatives being considered in the DEIS are in conformance with the "Approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office" (April 2001), the USDA Forest Service "Final EIS for the Northern Great Plains Management Plans Revision" (May 2001) and the BLM "Platte River Resource Area Resource Management Plan" (1985)

The USDA Forest Service (Forest Service) is a cooperating agency in the preparation of the DEIS. The surface of some of the land included for consideration for leasing in three of the tracts (NARO North, Little Thunder, and West Roundup) is National Forest System land administered by the Forest Service as part of the Thunder Basin National Grasslands.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in the preparation of the DEIS. If the tracts are leased as maintenance tracts, each new lease must be incorporated into the existing mining and reclamation plan for the adjacent mine and the Secretary of the Interior must approve each revision to the MLA (Mineral Leasing Act) mining plan for each mine before the Federal coal in each tract can be mined. OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plans to the office of the Secretary of the Interior if any or all of these tracts are leased.

Dated: December 10, 2002.

Alan L. Kesterke,

Acting State Director.

[FR Doc. 03–4177 Filed 2–19–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Wednesday and Thursday, April 2 and 3, 2003, at Granzella's Inn, 391 Sixth St., Williams, Calif. On April 2, the meeting convenes at 10 a.m. for a field trip to public lands managed by the BLM Ukiah Field Office. Members of the public are welcome. They must provide their own transportation and lunch. On April 3, the meeting begins at 8 a.m. in the Conference Room at Granzella's. Time for public comments has been set aside for 1 p.m. on April 3.

FOR FURTHER INFORMATION CONTACT: Rich Burns, BLM Ukiah field manager, 2550 North State St., Ukiah, CA, (707) 468–4000; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics will include council comments on proposed changes to BLM's grazing regulations, proposals for wind energy development, and discussion about the voting protocol established in the RAC charter. The council will also hear status reports from the managers of the BLM's Arcata, Ukiah and Redding field offices.

All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: February 13, 2003.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–4033 Filed 2–19–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Beaufort Sea Oil and Gas Lease Sale 186

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the Proposed Notice of Sale.

SUMMARY: Alaska OCS, Beaufort Sea; Notice of Availability of the proposed Notice of Sale for proposed Oil and Gas Lease Sale 186 in the Beaufort Sea. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

The proposed Notice of Sale for Sale 186 and a "Proposed Sale Notice Package" containing information essential to potential bidders may be obtained from the Alaska OCS Region, Information Resource Center, Minerals Management Service, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4302. Telephone: (907) 271–6070 or 1–800–764–2627. Certain documents may be viewed and downloaded from the MMS World Wide Web site at *http://www.mms.gov/alaska.*

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for September 24, 2003.

Dated: February 11, 2003.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. 03–4051 Filed 2–19–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act 921 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 13, 2002, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the listed controlled substance to bulk manufacture controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Untied States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 24, 2003.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 5, 2003.

Laurel M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–4097 Filed 2–19–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Aircraft/Vessel Report, Form I–92

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 21, 2002 at 67 FR 70243, allowing for a 60-day public review and comment period on the extension of the proposed information collection. No public comment was received on this information collection

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 24, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Aircraft/Vessel Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–92, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is part of the manifest requirements of Section 231 and 251 of the Immigration and Nationality Act and is used by the Immigration and Naturalization Service and other agencies for data collection and statistical analysis.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at 11 minutes (.183 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 129,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of

Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 14, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–4091 Filed 2–19–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: passenger list, crew list; Form I–418.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 21, 2002 at 67 FR 70243, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 24, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comment and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Passenger List, Crew List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–418, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is prescribed by the Attorney General for the INS for use by masters, owners or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 95,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 95,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 14, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–4092 Filed 2–19–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—"Executive Training for Women—Team Development"

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2003 for a cooperative agreement to fund the project, "Executive Training for Women—Team Building". NIC invites applications for a one year cooperative agreement to design and deliver a three-day team development training program. Participants will be selected graduates of the two prior Executive Leadership Training for Women programs and the participant's chosen senior administrator. The participant has determined that this administrator is critical to her success in her current position, and is supportive of her efforts to succeed and grow in the organization.

This third program offering continues the leadership development of the woman executive by inviting other key personnel into the process to work together as a highly productive and respectful team. This particular team approach should incorporate researched and documented leadership styles of both men and women. The award recipient must become familiar with Phase 1 and Phase 2 of the NIC Executive Leadership Training for Women Program in order to understand the program history and progression to this advanced level of training, designed for selected graduates of the Phase 1 and 2 program. The cooperative agreement includes the responsibility for the program and curriculum design, training of faculty, and the delivery and evaluation of the pilot program in FY 2004. A total of $100,000 is reserved for the project during fiscal year 2003.

This cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. The recipient

of the award will be selected through the competitive solicitation process.

DATES: Applications must be received by 4:00 p.m. Eastern Standard Time on April 15, 2003.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at NIC is still being delayed due to recent events.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, call (202) 307–3106 extension 0 for pickup. Faxed or e-mailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC Web page at *http://www.ncic.org* (click on "Cooperative Agreements"). Hard copies of the application can be obtained by calling Rita Rippetoe, (800) 995–6423, extension 44222 or by e-mail *rrippetoe@bop.gov*.

All technical and or programmatic questions concerning this announcement should be directed to Evelyn Bush at the above address or by calling (800) 995–6423, extension 40376 or (202) 514–0376 or by e-mail via *elbush@bop.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Corrections, Prisons Division, offered the first Executive Training for Women program in 1994. The program was designed to address both the personal and professional aspects of correctional leadership and has continued to build upon the success of that beginning effort. Through a three part series focusing on executive, strategic and organizational leadership, NIC has sought to "close the gap" for women executives in their knowledge, self and observer perception, and recognition of their value to the organization. the ultimate goal of the program is to assist the leader with the final integration of her professional awareness and its value to the agency "team" in problem-solving and policy planning.

Developed in 1993, the first program was conducted in 1994. The program concept dates back to the late 1980's and early 1990's, as the National Institute of Corrections recognized the continued under-representation of women executives in corrections throughout the country. While women have made significant achievements in correctional employment over the last few decades, promotion to the Executive level has been slow. At no time in the history of state departments of corrections in the United States have women held even 20% of all of the Department Director positions. While the entry door into the corrections field swings open wider, it is less so for the promotional door toward advancement. Since entry can no longer be legally prohibited. There are more and more women employed in the field, expecting to be regarded with professional equality and upward mobility opportunities.

NIC's response to the dilemma of women being under-represented in executive level positions in the field of corrections was to establish an Executive Leadership Training for Women Program. With the addition of this third phase, the program is designed to enhance the ability of women to achieve and to function effectively in executive-level positions in state departments of corrections. Phase 1 and 2 have recently (2002) been updated to include the latest research on leadership theories and women's leadership.

Phase 1: Executive Leadership

A five-day program focused on leadership development. A number of assessments are combined with experiential activities and simulations to focus behavior (self-mastery), leadership competency, clarify current and future personal and professional goals, and accelerate promotional achievement.

Phase 2: Strategic Leadership

This three-day follow up program was developed in 1995 based on needs assessments from Phase 1 participants. As an expansion of the first program, key elements included strategic competency, the leader's role in the organization, and the moving the organization forward.

Phase 3: Team Building

The outcome of this cooperative agreement will be a three-day (24 hour) pilot program to build organizational competency by focusing on the group dynamics of the organization and the relationships necessary to succeed. Special attention should be given to the use of innovative problem-solving, and the role of "executive teaming" with recognition of the unique strengths and weaknesses of each team member.

Program Outcomes

Expand agency leadership capacity by addressing partnerships and relationship skills necessary to create a climate for understanding, growth and support of its key personnel;

Incorporate strategies for the organization's success (mission) by the promotion of effective leadership communication for problem solving discussions and policy planning;

Overcoming barriers to team performance by recognition of individual attributes and talents;

Create an atmosphere that encourages "coaching" as an agency benefit.

Purpose: The National Institute of Corrections is seeking applications for a cooperative agreement that will design and deliver a 3-day interactive pilot program, focused on agency team development. The program design must provide the opportunity for the executives to comfortably and effectively work to approach problems and policy planning. Recognizing and valuing the woman's leadership style, the emphasis of this third training program is to successfully integrate the individual styles into creative teams. This is accomplished by bringing the woman leader to the training program together with the next upper-level supervisor that is most supportive of her career efforts and her organizational value. The pilot program will be modified, if necessary, based on the participant and faculty evaluation.

Scope of Work

1. Design and implement a program based on current leadership and gender research which identifies the competencies necessary for a group of people to work as a highly productive and cohesive team. Expected components include, but are not limited to: Communicating Effectively in Teams, Problem Solving & Resolving Team Conflicts, Interrelationship Dynamics and Consensus Building.

2. Awardee must become acquainted with the current Executive Leadership Training for Women Program (Phase 1 and Phase 2) via written materials, participant manual and discussion with the current contractor. Additionally, attendance by one team member is required at the September 2003 Executive program in Maryland.

3. Identify in the proposal specific strategies for assuring a collaborative effort between their project team and NIC. This will include the curriculum review and pre-approval, program planning session, manual materials, and the selection and training of faculty for the program.

4. Conduct a program planning session, prepare program agenda, participant manual, and train staff/faculty for program delivery. All associated overhead slides, presentations, participant manual and any other audio-visual materials, with copyright permission, are to be provided to NIC. (Use CD–Rom.)

5. "Pilot" the Executive Training for Women-Team Development program in FY04 to an audience of 24 to 30 correctional practitioners;

6. Develop an evaluation tool, disseminate to participants and compile a basic analysis of the program, with results to the NIC Project Monitor within 30 days of the 2004 program completion.

7. Applicants are encouraged to include one or more graduates of the NIC Executive Leadership Training Program for Women in their project, i.e. planning meeting, project team. Specific names are not required, but positions must be identified in the budget with respective faculty roles identified.

Specific Requirements

1. Based on research of the existing leadership theories and realizing that those who had studied women executives discovered that the learning process needed to be complimented by a supportive environment. Applicants should consider "The Setting" as well as the style and methods of the program presentation. The location for the training will be recommended by the awardee with the final decision remaining with NIC.

The setting and learning environment incorporated in, and critical to, leadership training suggests the following consideration when attempting to locate a suitable site:

A. private outdoor space, preferably a grassed area to accommodate two groups of ten (10) to twelve (12) to execute team building activities;

B. secluded indoor and outdoor space conducive to individual and team problem solving, and personal reflection time;

C. classroom space that will accommodate 30 adults plus podium, LCD set-up, display table, and refreshment table;

D. dining area (separate from the public and classroom area) that will accommodate up to 30 people,

2. The applicant must demonstrate that the project team is comprised of at least one person with expertise in women's leadership education; one with expertise in executive team building and at least one with correctional administration/management experience at no less than the Warden/Superintendent level. This experience should be clearly identified in the accompanying resumes. Each individual must submit signed letters stating their willingness to work on this project.

3. The person designated as project director is required to be the person who will be on-site and coordinate the 3-day program presentation and who has full decision-making authority to work with the NIC project manager. This person must have experience at the level of a Warden and have enough time dedicated to the project to assure availability for detailed collaboration with the NIC project manager.

4. Participants for the pilot program will be sought from women leaders who have participated in the two previous offerings, advising them of a special opportunity to explore additional leadership training, accompanied by a supportive, senior administrator. Since the size of the program will be limited, the applicant for this cooperative agreement is being asked to propose creative and relevant criteria for the admission of the Executive Woman (+1) to the Phase 3 training.

5. The applicant should provide a clear design of what the 3 day program will look like including, but not limited to, a sessions by topic and time frames, activities/exercises by type and learning objective, and debriefing/processing time frames.

6. Interactive activities should be targeted to increased learning and understanding of team dynamics, strengths, etc. No activities should require a level of physical fitness greater than an average 50 year old person could perform. The majority of the activities should assure that the executive women and the senior administrator from the state interact during the course of the exercises.

7. All proposed interactive team activities should have a specific learning objective. The technique for processing the exercise or activity to achieve the learning objective should be clearly explained.

8. The applicant is to include a variety of interactive team activities, which, after concluding, will be throughly debriefed to achieve the learning objective. Although there is no prohibition from using outdoor, physical activities, such team activities are not to predominate.

9. The awardee must follow all of NIC's procedures and time frames for the provision of training and this must be stated in the proposal;

10. Dates for the training program will be determined by NIC in consultation with the awardee;

11. NIC will receive applications and select participants for the program.

12. Applicants should identify in the proposal specific strategies for assuring a collaborative effort between the project team and the NIC project manager. This will include the planning session, manual materials, and the selection of faculty for the program.

Application Requirements: Applications must be submitted using OMB Standard Form 424, Federal Assistance and attachments. Copies can be downloaded from the NIC Web page at *http://www.nicic.org/services/coop/default.htm*. The applications should be concisely written, typed double spaced and refer to the project by the "NIC Application Number" and Title in this announcement.

Submit an original and two copies. The original should have the applicant's signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts. The narrative portion of this cooperative agreement application should include, at a minimum:

1. A brief paragraph indicating the applicant's understanding of the purpose of this cooperative agreement;

2. One or more paragraphs detailing the applicants understanding of women leadership;

3. A brief paragraph that summarizes the project goals and objectives;

4. A clear description of the methodology that will be used to complete the project and achieve its goals;

5. A clearly developed Project Plan which demonstrates how the various goals and objectives of the project will be achieved through its various activities to produce the required results;

6. Chart of measurable project milestones and time lines for the completion of each milestone;

7. A description of the qualifications of the applicant organization and each project staff;

8. A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and a statement from individual staff that they will be available to work on this project;

9. A budget detailing all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A). A budget narrative must be included which explains how all costs were determined.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum of $100,000 (direct and indirect costs). Participant travel will be arranged for and paid by NIC. All other costs must be outlined in the proposal's budget. Funds may only be used for the activities that are linked to the desired outcome of the project. No funds are transferred to state or local governments. Based upon satisfactory performance of the awardee and the availability of funding in future years, a supplemental award could be made available for continued program delivery.

This project will be a collaborative venture with the NIC Prisons Division.

Antideficiency Act

Nothing contained herein shall be construed to obligate the parties to any expenditure or obligation of funds in excess or in advance of appropriation in accordance with the Antideficiency Act, 31 U.S.C. 1341

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, private agency, educational institution, organization, individuals or team with expertise in the requested areas.

Review Considerations: Applications received under this announcement will be subjected to a 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 03P22. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424 and on the outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number is: 16.601, Title: Training and Staff Development.

Executive Order 12362: This program is not subject to the provisions of Executive Order 12372.

Dated: February 12, 2003.

Morris L. Thigpen,

Director, National Institute of Correction.

[FR Doc. 03–4023 Filed 2–19–03; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—"Operational Practices for Women Offenders"

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2003 for a cooperative agreement to fund the project "Operational Practices for Women Offenders." NIC will award a two year cooperative agreement to review the current training program, develop a curriculum, prepare an accompanying participant and trainer manual and attend the May 2003 program for insight into the current components. In addition, the award recipient will be responsible for the final (NIC approved) curriculum, training of faculty for the program and the delivery of the program in FY 2004, with the participant and trainer manuals in place. A total of $120,00 is reserved for the project during fiscal years 2003 and 2004. The 2003 allocation is $20,000 and the 2004 allocation is $100,000.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. The recipient of the award will be selected through the competitive solicitation process.

DATES: Applications must be received by 4 p.m. Eastern Standard Time on March 27, 2003.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at NIC is still being delayed due to recent events.

Hands delivered applicants should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, call (202) 307–3106, extension 0 for pickup. Faxed or emailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC web page at *www.nicic.org* (Click on "cooperative agreements.") Hard copies of the announcement can be obtained by calling Rita Rippetoe at 1–800–995–6423 extension 44222 or e-mail *rippetoe@bop.gov*.

All technical or programmatic questions concerning this announcement should be directed to Evelyn Bush, Correctional Program Specialist, National Institute of Corrections. She can be reached by calling 1–800–995–6423 extension 40376 or by e-mail at *elbush@bop.gov*. Supplemental information regarding the program can be received by mail or e-mail. Please contact Sharon Floyd at 1–800–995–6423 ext 44072.

SUPPLEMENTARY INFORMATION:

Background: The National Institute of Corrections, Prisons Division, began its work defining critical issues that impact women offenders in 1996. Based on surveys, workshops and state-driven inquiries for assistance and information, NIC began addressing gender-specific needs and services.

The program goal is to provide assistance to state departments of correction around the specific issues and concerns dealing with women offenders.

The "Operational Practices for Women Offenders" program was developed with the practitioner in mind, to help correctional managers increase their understanding of women offenders and enhance their skills for effectively working with them.

The role of the correctional institution has changed a great deal over the past 200 years. The almshouses and dungeons of the early days gave way to custodial institutions and then to reformatories. Today, correctional facilities are making new strides in providing improved conditions, diversity and quality in programming, and availability of educational, vocational, treatment and medical services.

Both theorists and popular viewpoint have played a role in the structure of corrections for the women offender. The current trend is to dispel traditional stereotypes and myths surrounding the woman offender, to develop a realistic picture of the variety of women in the penal system today, and to address the individual and group needs of these women.

As a number of women entering the Criminal Justice system grew, (at a faster rate than men) practitioners felt the impact based on the growing number of operational issues. These included concerns about searches, contraband, privacy, etc. NIC became involved in responding to these requests for assistance to "do it the right way and the appropriate way."

Differences in women's pathways into the criminal justice system and women's behavior while in custody have important implications for the practices in women's prisons. There is significant evidence that the response of women to incarceration, treatment, and rehabilitation differs from that of men.

Gender responsiveness has been defined by Bloom and Covington as "creating an environment that reflects an understanding of the reality of women's lives and addresses the issues

of women." As the criminal justice system becomes more responsive to the issues of managing women offenders, it will be more effective in targeting the pathways to offending that propel women into, and return them to, the criminal justice system.

Taken from Gender Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders, NIC 2002)

Purpose: The National Institute of Corrections is seeking applications for a cooperative agreement that will take over management of an existing program, develop and produce a curriculum with a corresponding participant and trainer's manual. In addition, the awardee will deliver subsequent offerings of the 5 day interactive program. The product should be "user-friendly" so that will be effective and useful to state departments of corrections. The pilot program will be modified, if necessary, based on the final program review and evaluation.

Scope of Work: 1. Review the current NIC training program; design a curriculum that incorporates the most up-to-date research on women offenders with the objective to prepare correctional managers to work effectively with women offenders; describe the methodology for identifying any recommended or significant change.

2. Produce a program curriculum, participant manual and trainer's guide that is user-friendly and designed for interactive, adult learning. All overheads slides, presentations and other audio-visual materials, with copyright permission, are to be included.

3. Conduct a program planning session and train staff/trainers for program delivery;

4. "Pilot" "Operational Practices for Women Offenders" staining program in May 2004 to an audience of 25 to 30 correctional practitioners;

5. Develop, disseminate, and compile results of participant program evaluation, with results to the NIC Project Monitor, within 30 days of the May 2004 program completion.

6. Design and pilot test an impact evaluation instrument to be completed by participants 9–12 months after attending the training.

Specific Requirements: 1. Significant changes to the existing curriculum must be justified with research-based documentation.

2. Attendance of at least one primary team member is required for the duration of the May 2003 program. There must be included in the proposal a statement that this primary team member will attend the training program May 19–23, 2003, with the costs reflected in the budget narrative.

3. The applicant must demonstrate that the project team is comprised of persons with expertise in correctional administration/management with women offenders as well as project staff who specifically have experience in correctional management and gender-specific responsive programming.

4. All identified trainers for the training program must have recent (within five years) experience in working with women offenders, as either staff or consultant. This experiences should be clearly identified in the resume or narrative.

5. The person designated as project director is required to be the person who will manage the 5 day on-site program presentation (2004) and who has full decision-making authority to work with the NIC project manager. This person must have sufficient time dedicated to the project to assure availability for collaboration with the NIC project manager.

6. Applicants should identify in the proposal specific strategies for assuring a collaborative effort between their project team and NIC. This will include the planning session, manual materials, and the selection of trainers for the program. The applicant should demonstrate ability to work collaboratively with NIC from previous work, if applicable.

7. The awardee must follow all of NIC's procedures and time frames for the provision of training and this must be stated in the proposal. Dates for the training program will determined by NIC in consultation with the awardee.

8. Location for the training program will be recommended by the awardee but the final decision for a site will remain with NIC.

Application Requirements: Applications must be submitted using OMB Standard Form 424, Federal Assistance, and attachments. (Copies can be downloaded from the NIC web page at *www.nicic.org/service/coop/default.htm.*) The applications should be concisely written, typed double-spaced and refer to the project by the "NIC Application Number" and Title is this announcement.

Submit an original and two copies. The original should have the applicant's signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

The narrative portion of this cooperative agreement application should include, at a minimum:

1. A brief paragraph indicating the applicant's understanding of this cooperative agreement;

2. One or more paragraphs detailing the applicants understanding of the historical and current views of working with women offenders, and the response for effectively working with women offenders;

3. A brief paragraph summarizing the project goals and objectives;

4. A clear description of the methodology for project completion and achievement of its goals;

5. A clearly developed Project Plan which demonstrates how and when the various goals and objectives of the project will be achieved through its various activities so as to produce the required results;

6. A chart of measurable project milestones and time lines for the completion of each milestone;

7. A description of the qualifications of the applicant organization and each project staff;

8. A description of the staffing plan for the project, including the role of each project staff, the percentage of the time commitment for each (in days), the relationship among the staff (who reports to whom), and a statement from individual staff that they will be available to work on this project and meet the required level of experience.

9. A budget detailing all costs for the project, costs for trainer services and travel, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed. Budget should be divided into object class categories as shown on application Standard Form 424A. A budget narrative must be included which explains how all costs were determined.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum of $120,000 (direct and indirect costs). Participant travel for the program delivery will be paid by NIC and is not included in the funding for this project. Funds may only be used for the activities that are linked to the desired outcome of the project. No funds are transferred to State or local governments. This project will be a collaborative venture with the NIC Prisons Division. NIC retains the right to select the applicants for participation. $20,000 will be allocated for fiscal year 2003, and $100,000 will be allocated for fiscal year 2004.

Antideficiency Act

Nothing contained herein shall be construed to obligate the parties to any expenditure or obligation of funds in excess or in advance of appropriation in accordance with the Antideficiency Act, 31 U.S.C. 1341.

Eligibility Applicants: An eligible applicant is any State or general unit of local government, private agency, educational institution, organization, individuals or team with expertise in the requested areas in order to successfully meet the objectives of this project.

Review Considerations: Applications received under this announcement will be subjected to a 3- to 5-member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 03P21. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424, and on the outside of the envelope in which the application is sent.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

(Catalog of Federal Domestic Assistance Number is: 16.601, Title: Training and Staff Development).

Dated: February 12, 2003.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 03–4022 Filed 2–19–03; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting

AGENCY: National Institute for Literacy (NIFL).

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Board (Advisory Board). This notice also describes the function of the Advisory Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: March 4, 2003 from 9:30 a.m. to 4:30 p.m. and March 5, 2003 from 9:30 a.m. to 1 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Liz Hollis, Special Assistant to the Director, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006. Telephone number (202) 233–2072, e-mail: *ehollis@nifl.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board is established under the Workforce Investment Act of 1998, Title II of Pub. L. 105–220, Sec. 242, the National Institute for Literacy. The Advisory Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Advisory Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Advisory Board 's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Advisory Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Advisory Board on the award of fellowships. The National Institute for Literacy Advisory Board meeting on March 4–5, 2003, will focus on future and current NIFL program activities, the upcoming reauthorization of the Workforce Investment Act, and other relevant literacy activities and issues. Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: February 14, 2003.

Sandra L. Baxter,

Interim Executive Director.

[FR Doc. 03–4141 Filed 2–19–03; 8:45 am]

BILLING CODE 6055–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form N–54A	SEC File No. 270–182	OMB Control No. 3235–0237
Form N–54C	SEC File No. 270–184	OMB Control No. 3235–0236
Form N–6F	SEC File No. 270–185	OMB Control No. 3235–0238

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (the "Act"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collections of information discussed below.

- *Form N–54A under the Investment Company Act of 1940; Notification of Election to be Subject to Sections 55 through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(a) of the Act*

Form N–54A (17 CFR 274.53) is the notification of election to the Commission to be regulated as a business development company. A company making such an election only has to file a Form N–54A once.

It is estimated that approximately 4 respondents per year file with the Commission a Form N–54A. Form N–54A requires approximately 0.5 burden hours per response resulting from creating and filing the information required by the Form. The total burden hours for Form N–54A would be 2.0 hours per year in the aggregate. The estimated annual burden of 2.0 hours represents an increase of 1.0 hour over the prior estimate of 1.0 hour. The increase in burden hours is attributable to an increase in the number of respondents from 3 to 4.

- *Form N–54C under the Investment Company Act of 1940, Notification of Withdrawal of Election to be Subject to Sections 55 through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(c) of the Investment Company Act of 1940*

Form N–54C (17 CFR 274.54) is a notification to the Commission that a company withdraws its election to be regulated as a business development company. Such a company only has to file a Form N–54C once.

It is estimated that approximately 8 respondents per year file with the Commission a Form N–54C. Form N–54C requires approximately 1 burden hour per response resulting from

creating and filing the information required by the Form. The total burden hours for Form N–54C would be 8 hours per year in the aggregate. The estimated annual burden of 8 hours represents a decrease of 4 hours over the prior estimate of 12 hours. The decrease in burden hours is attributable to a decrease in the number of respondents from 12 to 8.

• *Form N–6F under the Investment Company Act of 1940, Notice of Intent to Elect to be Subject to Sections 55 through 65 of the Investment Company Act of 1940*

Certain companies may have to make a filing with the Commission before they are ready to elect on Form N–54A to be regulated as a business development company.[1] A company that is excluded from the definition of "investment company" by section 3(c)(1) of the Investment Company Act of 1940 because it has fewer than one hundred shareholders and is not making a public offering of its securities may lose such an exclusion solely because it proposes to make a public offering of securities as a business development company. Such a company, under certain conditions, would not lose its exclusion if it notifies the Commission on Form N–6F [17 CFR 274.15] of its intent to make an election to be regulated as a business development company. The company only has to file a Form N–6F once.

It is estimated that approximately 0 respondents per year file with the Commission a Form N–6F. Form N–6F requires approximately 0.5 burden hours per response resulting from creating and filing the information required by the Form. The total burden hours for Form N–6F would be 0 hours per year in the aggregate but we are requesting one hour for administrative purposes. The estimated annual burden of 1.0 hour represents no change from the prior estimate of 1.0 hour.

The estimates of average burden hours for Forms N–54A, N–54C and N–6F are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The collections of information under Forms N–54A, N–54C and N–6F are mandatory. The information provided by such Forms is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 11, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4043 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

[1] A company might not be prepared to elect to be subject to Sections 55 through 65 of the Investment Company Act of 1940 because its capital structure or management compensation plan is not yet in compliance with the requirements of those sections.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47363; File No. SR–CTA/CQ–2002–01]

Consolidated Tape Association; Order Approving the Fourth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Second Substantive Amendment to the Restated Consolidated Quotation Plan

February 12, 2003.

I. Introduction

On December 16, 2002, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan Participants ("Participants")[1] submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the CTA and CQ Plans (collectively, the "Plans"), pursuant to Rule 11Aa3–2[2] under the Securities Exchange Act of 1934 ("Act"). The proposal represents the 4th substantive amendment made to the Second Restatement of the CTA Plan ("4th Amendment") and the 2nd substantive amendment to the Restated CQ Plan ("2nd Amendment"), and reflects several changes unanimously adopted by the Participants. The proposed amendments would introduce a capacity planning process into the Plans and would allocate among the Participants the costs associated with their capacity needs under the Plans. Notice of the proposed amendments was published in the **Federal Register** on December 26, 2002.[3]

Through the Notice, and pursuant to Rule 11Aa3–2(c)(4) under the Act,[4] the Commission granted temporary summary effectiveness to the 4th Amendment to the CTA Plan and the 2nd Amendment to the CQ Plan. The Commission received no comments on the proposed amendments. The summary effectiveness expires on June 26, 2002.[5] This order approves the 4th Amendment to the CTA Plan and the 2nd Amendment to the CQ Plan on a permanent basis.

II. Description of the Proposed Amendments

Through the proposed amendments to the Plans, the Participants have introduced a new capacity planning process into the Plans. The Participants will engage in the capacity planning process on a semi-annual basis. The proposed capacity planning process requires each Participant to submit its projected capacity needs directly to the Securities Industry Automation Corporation ("SIAC" or "Processor"), the processor under both Plans. The process avoids any need for Participants to share their individual capacity needs with one another. SIAC will provide each Participant with aggregate capacity projections for all Participants, but will not provide any individual Participant's capacity projections with any other Participant.

Under the proposed plan:

Semi-Annual Planning Cycles:

1. At the start of each semi-annual capacity planning cycle, each Participant will develop and submit to SIAC an initial set of projected capacity needs.

2. Once it receives all of the initial sets of projected capacity needs, SIAC will aggregate the initial projected capacity requirements for all of the Participants and will notify each Participant as to:

a. the initial aggregate capacity projections for all Participants;

b. the percentage of capacity requirements attributable to that Participant; and

c. the amount of any projected excess capacity or any projected deficit capacity.

(SIAC determines the excess or deficit by comparing the capacity that the then existing systems under the Plans can provide and the aggregate projected capacity needs of the Participants.)

3. Each Participant will then notify the Processor of its final projected capacity needs.

4. Based on the information that SIAC provides, CTA and the CQ Operating Committee will determine and advise SIAC of any increase or decrease that they propose to make to the capacity of their respective systems. However, in directing SIAC to make any proposed change, the Participants must cause the system to have no less capacity than the capacity necessary to meet the aggregate projected capacity requirements for the system for all Participants.

5. SIAC will then submit to each Participant a proposal for increasing or decreasing total system capacity and each Participant's proportionate share of the estimated costs for implementing any change. Each Participant's proportionate share of the costs will reflect that Participant's percentage of the final projected capacity requirements for all Participants.

6. SIAC will bill each Participant directly and each Participant will pay SIAC for the services that SIAC renders to it. The cost of the services for each Participant will be its proportionate share of the total cost to all of the Participants.

7. Each Participant will be entitled to use its proportionate share of the final capacity requirements of all Participants and, at no extra cost, of any excess capacity. If the Processor determines that a Participant is using more than its proportionate share of the aggregate capacity and the excess capacity, that Participant may be subject to a fine. The proceeds from any such fine will be distributed to each of the other Participants in accordance with their proportionate shares.

Intra-Cycle Capacity Transfers:

1. In between the semi-annual capacity planning cycles, a Participant may seek to increase or decrease the amount of capacity available to it by notifying SIAC of its desire for more or less capacity. Under those circumstances, a Participant may purchase additional capacity only if another Participant has submitted to SIAC an unfilled request to sell a portion of its capacity or if excess capacity exists in the system at that time. A Participant may sell some of its capacity only if another Participant has submitted to SIAC an unfilled request to purchase additional capacity.

2. If SIAC is able to match Participants' requests to buy and sell capacity within a planning cycle, SIAC will effect the sale for the Participants without revealing either Participant's identity.

3. If a Participant determines to acquire available excess capacity, SIAC shall adjust each Participant's proportionate share of system costs based on the new amount of capacity available to the Participant acquiring the available excess capacity.

4. On a periodic basis, SIAC will determine and inform each Participant of the total amount of the system capacity currently available, whether it is available from available excess capacity or from a Participant that seeks to sell capacity.

Under this plan, SIAC will not disclose to any Participant:

1. The initial or final projected capacity requirements of any other Participant;

2. The percentage of the aggregate amount of capacity attributable to any other Participant; or

3. Any other Participant's between-planning-cycles request to increase or decrease capacity.

The Participants requested that the proposed amendments to the Plans become effective summarily upon publication of notice of the proposed amendments, on a temporary basis not to exceed 120 days, so that the proposed new capacity planning process could be implemented on January 1, 2003, the date of the next capacity planning cycle.[6] The Commission put the proposed amendments to the Plans into effect summarily upon publication of the Notice on December 26, 2002.[7]

III. Discussion

The Commission finds that the proposed amendments to the Plans are consistent with the requirements of the Act and the rules and regulations thereunder,[8] and, in particular, Section 11A(a)(1)[9] of the Act and Rule 11Aa3–2 thereunder.[10]

The Commission notes that, pursuant to Rule 11Aa3–2(c)(4) under the Act[11], it put the proposed 4th Amendment to the CTA Plan and the proposed 2nd Amendment to the CQ Plan into effect summarily upon publication of the proposed amendments. Rule 11Aa3–2(c)(4) under the Act provides that a proposed amendment may be put into effect summarily upon publication of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the Act. The Commission believes that summary effectiveness of the proposed amendments was necessary and appropriate for the new capacity planning process to take effect on January 1, 2003, the date of the next capacity planning cycle.

The Commission believes that an efficient capacity planning process is essential to the proper operation of CTA and administration of the CTA and CQ Plans. The Commission further believes that the proposed amendments to the Plans incorporating a new capacity planning process should address this need. The Commission notes that, under the new capacity planning process, each Participant will be required to submit its projected capacity needs directly to SIAC, and will not have to share its individual capacity needs with other Participants. Furthermore, SIAC will be responsible for providing each Participant with aggregates of both initial and final capacity projections for all Participants, and for directly billing each Participant for its proportionate share of the costs based on its percentage of the final projected capacity requirements for all Participants. The Commission finds that the proposed amendments incorporating this new capacity planning process into the Plans are consistent with Section 11A of the Act[12] and the rules and regulations thereunder.

[1] Each Participant executed the proposed amendments. The Participants are the American Stock Exchange LLC ("AMEX"); Boston Stock Exchange, Inc. ("BSE"); Chicago Board Options Exchange, Inc. ("CBOE"); Chicago Stock Exchange, Inc. ("CHX"); Cincinnati Stock Exchange, Inc. ("CSE"); National Association of Securities Dealers, Inc. ("NASD"); New York Stock Exchange, Inc. ("NYSE"); Pacific Exchange, Inc. ("PCX"); and Philadelphia Stock Exchange, Inc. ("PHLX").

[2] 17 CFR 240.11Aa3–2.

[3] Securities Exchange Act Release No. 47030 (December 18, 2002), 67 FR 78832 ("Notice").

[4] 17 CFR 240.11Aa3–2(c)(4).

[5] Pursuant to Rule 11Aa3–2(c)(4) under the Act, 17 CFR 240.11Aa3–2(c)(4), summary effectiveness granted to national market system plans (or provisions thereof) may not exceed 120 days in length.

[6] Telephone conversation between Thomas E. Haley, Chairman, CTA, and Kathy A. England, Assistant Director, Sapna C. Patel, Attorney, Ian K. Patel, Attorney, Division of Market Regulation, Commission, on December 17, 2002. *See also* letter from Thomas E. Haley, Chairman, CTA, to Kathy A. England, Assistant Director, Division, Commission, dated December 16, 2002. The Commission notes that the original filing of the proposed amendments to the Plans incorrectly stated that the proposed amendments would take effect upon filing with the Commission because they are concerned solely with the administration of the Plans.

[7] *See* Notice, *supra* note 3.

[8] In approving the proposed plan amendments, the Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 240.11Aa3–2.

[11] 17 CFR 240.11Aa3–2(c)(4).

[12] 15 U.S.C. 78k–1.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [13] and paragraph (c)(2) of Rule 11Aa3–2 [14] thereunder, that the proposed 4th Amendment to the CTA Plan and the proposed 2nd Amendment to the CQ Plan are approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4093 Filed 2–19–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47345; File No. SR–Amex–2002–89]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Crossing Procedures for Clean Agency Crosses

February 11, 2003.

On November 5, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader acting as principal. The Amex filed an amendment to the proposed rule change on December 23, 2002.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 7, 2003.[4] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of section 6 of the Act [6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act [7] in that the Rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change, while eliminating the opportunity for specialists and Registered Traders to effect a proprietary transaction to provide price improvement to one side of a clean cross or the other, preserves auction market principles by providing the possibility of price improvement (because members must follow Amex Rule 151 crossing procedures), and by requiring that members trade with other market interest having time priority at that price before trading with any part of the cross transaction. In addition, the Commission believes that the proposal will enhance competition among markets in the execution of agency crosses.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [8], that the proposed rule change, as amended (SR–AMEX–2002–89), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4045 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2(c)(2).

[15] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated December 20, 2002, and enclosures ("Amendment No. 1"). Amendment No. 1 corrected a typographical error in the text of the proposed amendment.

[4] Securities Exchange Act Release No. 47113 (December 31, 2002), 68 FR 818.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2). proposed rule change, as amended (SR–Amex–2002–89), be, and hereby is, approved.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47346; File No. SR–CBOE–2002–26]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Increasing Position and Exercise Limits for Options on the DIAMONDS Trust

February 11, 2003.

I. Introduction

On May 20, 2002, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase position and exercise limits for options on the DIAMONDS Trust ("DIA"). The proposed rule change was published for comment in the **Federal Register** on November 6, 2002.[3] The Commission received no comments on the proposal. On February 4, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, and notices and grants accelerated approval to Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The CBOE proposes to increase position and exercise limits for options on the DIA from 75,000 to 300,000 contracts on the same side of the market. Consistent with the reporting requirement for QQQ options, the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the DIA option class, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for DIA options.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46743 (October 30, 2002), 67 FR 67673 (November 6, 2002).

[4] *See* Letter from Christopher R. Hill, Attorney II, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 3, 2003 ("Amendment No. 1"). In Amendment No. 1, the CBOE corrected erroneous text in CBOE Rule 4.13(b) to maintain the reporting requirement level for DIA options specified in CBOE Rule 4.13 at 10,000 contracts. Amendment No. 1 also corrected similar references to the reporting requirement level that were contained in the SEC Rule 19b–4 filing.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [6] and, in particular, the requirements of section 6 of the Act [7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act [8] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising an index. These same concerns exist for the underlying portfolio securities held by exchange-traded fund shares, which track indexes such as the DIA. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[10]

The Commission has carefully considered the CBOE's proposal to increase position and exercise limits for DIA options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange and the depth and liquidity in both the DIA options and the underlying cash market in DIAs, the Commission believes it is permissible to significantly raise position and exercise limits for DIA options without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for DIA options for several reasons.

First, the Commission believes that the structure of the DIA options and the considerable liquidity of both the underlying cash and options market for DIA options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against. In this regard, the CBOE notes that DIA, based on the Dow Jones Industrial Average, is among the most actively traded exchange-traded funds, averaging 4.5 million shares per day during the first six months of 2002. Moreover, the components comprising the fund are themselves among the most actively traded and widely held securities listed in the U.S. These factors provide support for higher limits for the DIA options and differentiate them from other equity options (including options on other exchange-traded fund shares).

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the CBOE, under CBOE Rules 4.13 and 12.10, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in DIA options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange under CBOE Rule 4.13 will help protect against potential manipulation. The Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the DIA option class, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for DIA options.[11] This information should help the CBOE to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the DIA options and the underlying DIA noted above, warrant approval of the Exchange's proposal.[12]

[5] *See* CBOE Rule 4.13(a).

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[10] *Id.*

[11] *See* CBOE Rule 4.13(a).

[12] Of course, the Commission expects that CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the

Continued

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 corrects an error in the proposed rule language and in the Rule 19b–4 rule filing to affirm that the reporting requirement level for DIA options will be set at 10,000 contracts. This is the current level under CBOE rules and remains unchanged. The Commission, therefore, believes that there is good cause to grant accelerated approval of Amendment No. 1, consistent with Section 6(b)(5) of the Act [13] and section 19(b)[14] of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–CBOE–2002–26 and should be submitted by March 13, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [15], that the proposed rule change (SR–CBOE–2002–26), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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underlying DIA, should any unanticipated adverse market effects develop due to the increased limits.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47353; File No. SR–NYSE–2002–58]

Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change by New York Stock Exchange To Amend the Exchange's Automatic Execution Facility (NYSE Direct+)

February 12, 2003.

On November 1, 2002, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 1005 to permit entry of limit orders up to 1,099 shares within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the trading floor ("Floor") has procedures to monitor compliance with the separate terminal requirement. On December 10, 2002, the rule proposal was published for comment in the **Federal Register**.[3] The Commission received 103 comments generally in favor of the proposed rule change. This order approves the proposed rule.

I. Description of the Proposed Rule Change

The NYSE Direct+ pilot [4] provides for the automatic execution of limit orders of 1099 shares or less (known as an "NX order" or auto ex order) against trading interest reflected in the Exchange's published quotation. It is not mandatory that all limit orders of 1099 shares be entered as NX orders; rather, the member organization entering the order, or its customer if enabled by the member organization, can choose to enter an NX order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest.

NYSE Rule 1005 currently provides that an NX order for any account in which the same person is directly or indirectly interested may only be entered at 30 second intervals. The restriction against the same customer entering an order within 30 seconds focuses on the identity of the ultimate beneficial owner of an account. Thus, an order cannot be entered for the same beneficial owner within 30 seconds. According to the NYSE, the purpose of this restriction is to limit the ability of a trader to circumvent the restriction on order size by breaking a large order into smaller components and repetitively entering them to exhaust liquidity at the published bid or offer price. The restriction in NYSE Rule 1005 applies across an entire firm, even if separate traders are making independent decisions with respect to an account in which the firm has an interest.

The Exchange is proposing to amend NYSE Rule 1005 to permit entry of NX orders within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the Floor has procedures to monitor compliance with the separate terminal requirement. Such procedures, at a minimum, must require member organization compliance departments to review patterns of order entry from individual terminals on a periodic basis to ensure compliance with the 30 second requirement.

I. Summary of Comments

The Commission received 103 comment letters generally supporting the proposed amendment to NYSE Direct +.[5] Many commenters stated that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46943 (December 4, 2002), 67 FR 75893.

[4] See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–2000–18) (approving the NYSE Direct + pilot). The one-year pilot was subsequently extended for another year in Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50). The pilot was recently extended through December 23, 2003. See Securities Exchange Act Release No. 46906 (November 25, 2002) 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47). The proposed rule change, if approved, would be part of the pilot and, thus, would expire on December 23, 2003 unless extended. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Special Counsel, Division of Market Regulation, Commission, December 3, 2002.

[5] A number of letters were from registered representatives and registered principals of Heartland Securities. These letters are identified individually. See letters to Jonathan G. Katz, Secretary, Commission, from Christopher Andrews, dated November 19, 2002 ("Andrews Letter"); Christopher Ball, undated ("Ball Letter"); Dror Ben-Aharon, undated ("Ben-Aharon Letter"); Alexander Benetti, dated November 19, 2002 ("Benetti Letter"); Patrick K. Blackburn, Executive Vice President, ABN-AMRO, dated December 23, 2002 ("ABN–AMRO Letter"); Eliav Bock, dated November 19, 2002 ("Bock Letter"); Arthur Brachowski, dated November 20, 2002 ("Brachowski Letter"); Thomas Bradshaw, undated ("Bradshaw Letter"); Blake C. Byczek, dated November 19, 2002 ("Byczek Letter"); Richard Cammarata, undated ("Cammarata Letter"); Coreina Chan, dated November 19, 2002 ("Chan Letter "); Jireh Chao, Jr., undated ("Chao, Jr. Letter"); Jake Chun, undated ("Chun Letter"); Robert Cope, dated November 19, 2002 ("Cope Letter"); Daniel J. Cosenza, dated November 19, 2002 ("Cosenza Letter"); Dario Cosic, dated November 19, 2002 ("Cosic Letter"); Jay Crosby, undated ("Crosby Letter"); Glen Cutler, undated ("Cutler Letter"); Francis B. DeLuca, undated ("Deluca Letter"); Brian Dershow, dated November 19, 2002 ("Dershow Letter"); Timothy K. Dolnier, undated ("Dolnier Letter"); David Dondero, undated ("Dondero Letter"); Michael Elmes, undated ("Elmes Letter"); Michael Elzahr, dated November 20, 2002 ("Elzhar Letter"); Tolga Erman, undated ("Erman Letter"); Michael Feeney, undated ("Feeney Letter"); Chris Freddo, undated ("Freddo Letter"); Elizabeth Goldstein, dated November 19, 2002 ("Goldstein Letter"); Jeff Gregario, undated ("Gregario Letter"); Cary S. Grill, dated November 19, 2002 ("Grill Letter"); Brian Gutbrod, undated ("Gutbrod Letter"); Charles William Hansford, dated November 19, 2002 ("Hansford Letter"); Zachary Hepner, November 18, 2002 ("Hepner Letter"); James Hochleutner, undated ("Hochleutner Letter"); Jonathan W. Hodges, dated November 20, 2002 ("Hodges Letter"); Edward E. Hong, undated ("Hong Letter"); Bradford O. Hotchkiss, dated November 18, 2002 ("Hotchkiss Letter"); Brian Ingram, dated November 20, 2002 ("Ingram Letter"); Aaron Israel, undated ("Israel Letter"); Jeremy Ives, dated November 19, 2002 ("Ives Letter"); Kevin Jahng, dated November 19, 2002 ("Jahng Letter"); Joel Jones, undated ("Jones Letter"); Matthew Keegan, dated November 19, 2002 ("Keegan Letter"); John Kernan, undated ("Kernan Letter"); Saeyoon Kim, dated November 19, 2002 ("Kim Letter"); Keith Kirstein, dated November 19, 2002 ("Kirstein Letter"); Gregory Kleiman, undated ("Kleiman Letter"); Eric P. Knight, undated ("Knight Letter"); David Kobin, dated November 18, 2002 ("Kobin Letter"); Aaron Kravitz, dated November 19, 2002 ("Kravitz Letter"); Ira Landsman, dated November 19, 2002 ("Landsman Letter"); Richard Lay, dated November 19, 2002 ("Lay Letter"); Samson Leung, undated ("Leung Letter"); Bronson C. Lingamfelter, undated ("Lingamfelter Letter"); Alex J. Lopez, undated ("Lopez Letter"); Michael Lucarello, undated ("Lucarello Letter"); Eugene Lum, dated November 19, 2002 ("Lum Letter"); Richard Lutz, undated ("Lutz Letter"); Jefferson Magat, dated November 19, 2002 ("Magat Letter"); Dax L. Mathews, dated November 19, 2002 ("Mathews Letter"); Kevin Medvin, ("Medvin Letter"); Robert Merrill, dated November 19, 2002 ("Merrill Letter"); Marc Miller, dated November 18, 2002 ("Miller Letter"); John J. Morgan, dated November 20, 2002 ("Morgan Letter"); Angelo Nicoletta, dated November 19, 2002 ("Nicoletta Letter"); Charles Nierling, dated November 19, 2002 ("Nierling Letter"); Michael O'Malley, dated November 20, 2002 ("O'Malley Letter"); Robert L. Oliver, Jr., November 17, 2002 ("Oliver, Jr. Letter"); Chris M. Paper, undated ("Paper Letter"); Boris Piskun, dated November 19, 2002 ("Piskun Letter"); Tal Plotkin, dated November 20, 2002 ("Plotkin Letter"); Frank Raffaele, dated November 18, 2002 ("F. Raffaele Letter"); John J. Raffaele, dated November 18, 2002 ("J. Raffaele Letter"); Richard Rebatta, dated November 18, 2002 ("Rebatta Letter"); John Schmidt, dated November 18, 2002 ("Schmidt Letter"); Matthew Schroeder, November 19, 2002 ("Schroeder Letter"); Jonathan Schuldenfrei, dated November 20, 2002 ("Schuldenfrei Letter"); David Schwarz, dated November 18, 2002 ("Schwarz Letter"); Drew Aaron Segal, dated November 19, 2002 ("Segal Letter"); Sinan Selcuk, dated November 19, 2002 ("Selcuk Letter"); Tal Sharon, dated November 20, 2002 ("Sharon Letter"); Theodore Siegel, dated November 20, 2002 ("Siegel Letter"); Dan Solomon, dated November 20, 2002 ("Solomon Letter"); Douglas Song, dated November 19, 2002 ("Song Letter"); Doug Squires, dated November 19, 2002 ("Squires Letter"); Igor Stancevic, dated November 19, 2002 ("Stancevic Letter"); Joe Tan, dated November 20, 2002 ("Joe Letter"); Howard Teitelman, dated November 19, 2002 ("Teitelman Letter"); Harlan Thompson, undated ("Thomson Letter"); Richard J. Travers III, dated November 19, 2002 ("Travers III Letter"); Michael W. Vaughn, dated November 19, 2002 ("Vaughn Letter"); Isaak Volodarsky, dated November 19, 2002 ("Volodarsky Letter"); Eric Walania, dated November 20, 2002 ("Walania Letter"); Alexander Wang, dated November 20, 2002 ("Wang Letter"); Sean Ward, dated November 19, 2002 ("Ward Letter"); Matthew Weinshall, dated November 20, 2002 ("Weinshall Letter"); Joshua Weitnraub, dated November 19, 2002 ("Weintraub Letter"); Scott Westrick, dated November 19, 2002 ("Westrick Letter"); Travis P. Whitten, undated ("Whitten Letter"); Jimmie E. Williams, dated November 19, 2002 ("Williams Letter"); Kevin Yang, dated November 20, 2002 ("Yang Letter"); Paul Yiacas, undated ("Yiacas Letter"); and Daniel You, dated November 19, 2002 ("You Letter").

[6] See e.g., Solomon Letter; Landsman Letter; Sharon Letter; Knight Letter; Jahng Letter; Hochleutner Letter; Chao, Jr. Letter; Dershow Letter; Cammarata Letter; Cosenza Letter; and Weinshall Letter.

[7] See e.g., Chan Letter; J. Raffaele Letter; Volodarsky Letter; Plotkin Letter; Erman Letter; and Tan Letter.

[8] See Weinshall Letter.

[9] See e.g., Feeney Letter; Squires Letter; Stancevic Letter; Miller Letter; Vaughn Letter; Paper Letter; and Whitten Letter.

[10] See e.g., Jones Letter; Piskun Letter; Cosic Letter; Schroeder Letter; Westrick Letter; and Freddo Letter.

[11] See e.g., Selcuk Letter; Kravitz Letter; Lay Letter; Dolnier Letter; and Elzahr Letter.

[12] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

proposed rule change would level the playing field between large and small firms [6] and allow greater access to the NYSE floor.[7] Specifically, one commenter noted that "[w]hile larger firms have NYSE floor brokers and hence direct access to the liquidity of the market and exposure to block orders, smaller firms must rely on the DOT system and Direct Plus."[8] Commenters also stated that the proposal would provide greater transparency and liquidity in the market place.[9] Other comments stated that the proposed amendment would increase speed of executions.[10] Finally, many commenters stated that traders at a firm who make independent decisions should not be considered to be "one firm" for purposes of complying with the 30 second restriction in NYSE Rule 1005.[11]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission believes the proposed rule change is consistent with section 6(b)(5) of the Act,[13] which requires among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest. The Commission believes that the proposed rule change is a reasonable expansion of the Direct + pilot and should allow individual traders greater flexibility and access to the trading interest reflected in the Exchange's published quotation. In addition, the Commission believes that the separate terminal requirement should help to ensure that traders are not circumventing the restriction on order size. The Commission notes that the Exchange has represented that it will surveil for compliance with this requirement when conducting periodic reviews of member organizations.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2002–58) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4044 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b)(5).

[14] Id.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47352; File No. SR–PCX–2003–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange

February 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] notice is hereby given that on February 10, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PCX Rule 3.6 in order to amend its pricing requirement for securities that underlie options traded on the Exchange ("underlying security"). The text of the proposed rule change follows. Additions are in *italics*. Deleted text is in brackets.

Rules of the Board of Governors

Rule 3.6. The underlying securities of option contracts traded on the Exchange shall be approved for Exchange transactions by the Board of Governors following the recommendation of the Options Listing Committee. In approving underlying securities, both the Options Listing Committee and the Board shall give due regard to, and the Board shall promulgate guidelines relative to, the following factors:

(a)—No change.

(1)–(3)—No change.

(4) [Either (i) the market price per share of the underlying security will have been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price recorded in any market in which the underlying security traded on each of the subject days;] *(A) If the underlying security is a "covered security" as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. For purposes of this rule, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.*

(B) If the underlying security is not a "covered security", the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days, or [(ii)](a) the underlying security meets the guidelines for continued listing in Rule 3.7; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts; and

(5)—No change.

(b)–(c)—No change.

Commentary:

.01–.04—No change.

.05 (a)–(c)—No change.

(d) In the case of a Restructured Transaction that satisfies either or both of the conditions of subsections (a)(1) and (a)(2) to this Commentary .05 in which shares of a Restructured Security are sold in a public offering or pursuant to a rights distribution:

(i)—No Change.

(ii) the exchange may certify that the market price of the Restructure Security satisfies the requirement of Rule 3.6(a)(4) by relying on the market price history of the Original Security prior to the ex-date for the Restructuring Transaction in the manner described by subsection (a) to this Commentary .05, but only if the Restructure Security has traded "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as the opening of trading on the date of selection the market price of the Restructure Security was at least $7.50; *or, if the Restructure Security is a Covered Security as defined in paragraph (a)(4) above, the market price of the Restructure Security was at least $3.00;* and

(iii)—No change.

.06– .07—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its pricing requirement for underlying securities. Currently, PCX Rule 3.6 requires that the market price per share of any underlying security must be at least $7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

The Exchange now proposes to amend Rule 3.6 to provide that, for underlying securities that are deemed Covered Securities, as defined under section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act"),[3] the closing market price of the underlying security must be at least $3.00 per share for the five previous consecutive business days prior to the date on which PCX submits an option issue certification. For underlying securities that are not Covered Securities, the Exchange states that the current $7.50 price per share requirement would continue to apply.

When the $7.50 price requirement was first implemented, the listed options market was in its infancy. Now more than twenty-eight years after the PCX first started trading listed options, the Exchange states the listed options market is a mature market with sophisticated investors. The Exchange does not believe that this particular criteria serves to accomplish its presumed intended purpose, *i.e.*, to prevent the proliferation of option issues on overlying securities that lack liquidity needed to maintain fair and orderly markets. The Exchange states that it now seeks to move away from what it believes is a paternalistic approach to listing standards and allow the desires of its customers and the workings of the marketplace to determine the securities on which the Exchange will list options.

In determining to list any number of new option classes, the Exchange must ensure that its own systems and those of the Options Price Reporting Authority ("OPRA") have the capacity to handle the potential increased capacity requirements. Also, due to recent trends in the securities markets, there has been a marked increase in the number of underlying securities that, but for the pricing standard, would otherwise qualify for options listing on the Exchange. The Exchange states that changing the pricing standard to the proposed $3.00 market price per share requirement would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection.

The Exchange notes that although this proposal amends the closing market price for an underlying security which is deemed a Covered Security, as well as the time period for which it must trade at that price prior to it being listed on the Exchange, the Exchange will continue to maintain its initial listing standards. The Exchange does not propose to amend any of the other criteria in PCX Rule 3.6, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and, that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months. Additionally, by requiring the underlying security to be listed on the New York Stock Exchange, Inc., American Stock Exchange LLC ("Amex"), or Nasdaq National Market System ("Nasdaq"),[4] the Exchange states that this would ensure that the underlying security meets the highest listing standards in the securities industry. However, if the underlying security does not qualify as a Covered Security, the $7.50 market price per share standard still will apply.

The Exchange believes that the proposed $3.00 market price per share standard is also consistent with the guideline price in the PCX Delisting Criteria Rule 3.7 which is used to determine whether an underlying security previously approved for Exchange options transactions no longer meets the requirements for the continuance of approval. Commentary .02 to PCX Rule 3.7 sets a $3 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security that was previously approved for options trading under PCX Rule 3.6. As long as a $3.00 standard is recognized as an acceptable pricing standard for options trading, albeit as a standard for continued listing, the Exchange believes that the proposed $3.00 should be the threshold standard for initial listing standards as well.

The Exchange also proposes, as a safeguard against price manipulation, that the underlying security have a closing market price of at least $3.00 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. The market price of such underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. The Exchange believes that a "look back" period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security.

The Exchange also believes that the proposed rule change would encourage the delisting of inactive option classes, particularly those classes in which the market price of the underlying security is below $7.50. Currently, a Lead Market Maker ("LMM") on the Exchange to whom an option class has been allocated may be reluctant to delist an inactive option class if the market price of the underlying security is below $7.50 because once delisted, the Exchange's current initial listing criteria must be met to re-list the option class, including the requirement that the market price per share of the underlying security be at least $7.50 for the majority of business days during the preceding three months. The Exchange also notes that the Commission recently granted PCX approval to list additional series on an option class even though the market price of the underlying security is below $3, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add new series, including the $3 price requirement.[5]

The proposed $3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with the Exchange's existing quarterly delisting program,[6] would contribute to reducing unnecessary quote traffic.

Finally, for the purposes of consistency within the PCX Rules, the Exchange proposes to amend PCX Rule 3.6 Commentary .05 with respect to Restructure Securities. Currently, Commentary .05 provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of PCX Rule 3.6 and specifically references the $7.50 market price per share. In order to make the Rule consistent with the pricing standard change of this proposal, the amended rule would reflect that the market price standard for Restructure Securities also will be reduced from $7.50 to $3.00 as long as the Restructure Security is a Covered Security.

2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and demanded by them without sacrificing any investor protection. As such, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general and furthers the objectives of section 6(b)(5)[8] in particular in that it will promote just and equitable principles of trade; facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[2] 17 CFR 240.19b–4.

[3] Section 18(b)(1)(A) of the 1933 Act provides that, "(a) security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market * * *" 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Rule 3.6 and Commentary .05 herein, would not include those securities defined under Section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

[4] *See* 15 U.S.C. 77r(b)(1)(A).

[5] *See* Securities Exchange Act Release No. 46406 (August 23, 2002), 67 FR 55446 (August 29, 2002) (approving SR–PCX–2002–51). The Exchange represents that these rules are consistent with similar rules regarding listing and maintenance standards of the American Stock Exchange LLC ("Amex"), International Securities Exchange, Inc. ("ISE"), Chicago Board of Options Exchange, Inc. ("CBOE") and the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Interpretation and Policy .02 to CBOE Rule 5.4; Commentary .02 to Amex Rule 916; Commentary .02 to Phlx Rule 1010; and ISE Rule 503(c).

[6] The Exchange states that it maintains an active delisting program which requires the quarterly delisting of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4[10] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[11] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the 30-day operative date and the five-day pre-filing notice requirement in order for it to implement the proposed rule change as quickly as possible. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the CBOE, which was published for public notice and comment.[12] As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period as well as the five-day pre-filing notice requirement,[13] and, therefore, the proposal is effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2003–06 and should be submitted by March 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4047 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62).

[13] For purposes only of waiving the five-day pre-filing notice requirement and the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47359; File No. SR–Phlx–2003–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Automatic Execution of Eligible Orders During Locked Markets

February 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[6] to provide for the automatic execution of eligible orders during locked markets (*i.e.*, 2 bid, 2 offer). Below is the of the proposed rule change. Proposed new language is italized. Proposed deletions are in [brackets].

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c) (i)—(iii) No change.

(iv) Except as otherwise provided in this Rule, in the following circumstances, an order otherwise eligible for AUTO–X will instead be manually handled by the specialist:

(A) the Exchange's disseminated market is crossed (*i.e.*, 2⅛ bid, 2 offer) [or locked (*i.e.*, 2 bid, 2 offer)], or crosses [or locks] the disseminated market of another options exchange;

(B)—(I) No change.

(d)—(j) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Phlx asked the Commission to waive the 5-day pre-filing requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Phlx Rule 1080.

Commentary: No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to increase automated options order handling by enabling the Exchange to automatically execute eligible inbound orders during a locked market (*i.e.*, 2 bid, 2 offer).[7]

Currently, Exchange Rule 1080(c)(iv)(A) provides that inbound orders otherwise eligible for automatic execution via AUTO–X will instead be manually handled by the specialist when the Exchange's disseminated market is crossed (*i.e.*, 2⅛ bid, 2 offer) or locked, or crosses or locks the disseminated market of another options exchange.[8] The proposal would amend Exchange Rule 1080(c)(iv)(A) to delete references to locked markets, such that all inbound orders that are otherwise eligible for automatic execution via AUTO–X would be automatically executed during locked markets. The Exchange believes that this should provide for the automatic execution of a greater number of eligible inbound orders than under the current rules. Orders received during crossed markets would continue to be handled manually by the specialist.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirement under section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest by providing automatic executions for eligible orders during locked markets, which should result in a greater number of automatic executions for orders on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally must not become operative prior to 30 days after the date of the filing. In addition, a self-regulatory organization filing a proposed rule change under Rule 19b–4(f)(6)(iii) normally must give the Commission written notice of its intent to file the proposed rule change five days prior to the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive both the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to allow automatic execution of eligible orders during locked markets.

The Commission believes it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal immediately operative.[12] Accelerating the operative date and waiving the pre-filing requirement should permit the Exchange to provide for a greater number of eligible inbound orders to be automatically executed during locked markets. The proposed rule change should help provide faster execution of certain eligible orders, while reducing the burden on the Exchange's specialists with respect to manual execution of these orders during locked markets. The proposal should benefit customers using the Auto-X system, as well as customers whose orders are residing in the Exchange's book during locked markets because more orders should be more timely executed during locked markets.

Furthermore, the Commission notes that Phlx's proposal is similar to proposed rule changes that were approved previously by the Commission.[13] Thus, the proposed rule

[7] The Exchange notes that it has previously filed to allow for the automatic execution of eligible inbound customer orders during a locked market. *See* File No. SR–Phlx–2002–86. Because other proposed rule changes included in that filing remain under discussion between Exchange staff and Commission staff as of the filing date of the instant proposal, the Exchange is submitting the instant proposed rule change in order to expedite the automatic execution of eligible orders during locked markets. Upon the completion of discussions with Commission staff, the Exchange intends to amend File No. SR–Phlx–2002–86 to, *inter alia*, delete from that proposal those provisions that are included in the instant proposal.

[8] Under the *Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions*, the Exchange (and the other respondent exchanges, the American Stock Exchange LLC, the Chicago Board Options Exchange, and the Pacific Exchange, Inc.) were required to adopt new, or amend existing, rules concerning automatic quotation and execution systems which specify the circumstances, if any, under which automated execution systems be disengaged or operated in any manner other than the normal manner set forth in the Exchange's rules and require the documentation of the reasons for each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File 3–10282 (the "Settlement Order"). Pursuant to the Settlement Order, the Exchange adopted Rule 1080(c)(iv) to codify situations in which orders are handled manually. At this time, the Exchange is proposing to automatically execute eligible inbound orders in one particular situation (*i.e.*, during locked markets) that currently involves manual handling.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See* Securities Exchange Release Nos. 42167 (November 22, 1999), 64 FR 66954 (November 30, 1999) (order approving CBOE Rule 6.8, Interpretation and Policy .02(b)(iv)); and 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (order relating to PCX's Automatic Execution System). Pursuant to telephone conversation

Continued

change concerns issues that previously have been the subject of full comment periods pursuant to section 19(b) of the Act.[14] Accordingly, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–03 and should be submitted by March 13, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4048 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4264]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9 a.m. to 12 noon on Thursday, March 6, 2003 in Room 1105 at the U.S. Department of State, 2201 C Street NW., Washington, DC 20520. The meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne and Committee Chairman R. Michael Gadbaw.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. Proposed topics for the March 6 meeting are: economic security, investment issues, and a draft UN Convention Against Corruption.

The public may attend these meetings as seating capacity allows. The media are welcome but discussions are off the record. Admittance to the Department of State building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the Advisory Committee Executive Secretariat by fax (202) 647–5936 (Attention: Gwendolyn Jackson); Tel: (202) 647–0847; or email: (*jacksongl@state.gov*) by March 4, 2003.

On the date of the meeting, persons who have pre-registered should come to the 23rd Street entrance. One of the following valid means of identification is required for admittance: a U.S. driver's license with photo, a passport, or a U.S. Government identification.

For further information about the meeting, please contact Eliza Koch, ACIEP Secretariat, Office of Economic Policy and Public Diplomacy, Economic Bureau, U.S. Department of State, Room 3526, 2201 C Street NW., Washington, DC 20520, Tel (202) 647–1310.

Dated: February 14, 2003.

Daniel A. Clune,

Director, Office of Economic Policy and Public Diplomacy, Department of State.

[FR Doc. 03–4099 Filed 2–19–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2003–14496]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0586, 2115–0053, 2115–0025, and 2115–0007

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of four Information Collection Requests (ICRs). The ICRs comprise (1) Marine Occupational Health and Safety Standards for Benzene—46 CFR part 197, subpart C, (2) Request for Designation and Exemption of Oceanographic Research Vessels, (3) Oil Record Book for Ships, and (4) Application for Vessel Inspection and Waiver. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before April 21, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–14496] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2003–14496], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Marine Occupational Health and Safety Standards for Benzene—46 CFR part 197, subpart C.

OMB Control Number: 2115–0586.

Summary: To protect marine workers from exposure to toxic benzene vapor, the Coast Guard implemented 46 CFR part 197, subpart C.

Need: This information collection is vital to verifying compliance.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 59,766 hours a year.

2. *Title:* Request for Designation and Exemption of Oceanographic Research Vessels.

OMB Control Number: 2115–0053.

Summary: 46 U.S.C. 2113 authorizes the Secretary of Transportation to exempt Oceanographic Research Vessels, by rule, from certain parts of Subtitle II of Title 46, Shipping, of the United States Code, concerning vessels and seamen.

Need: This information is necessary to ensure that a vessel qualifies for exemption.

Respondents: Owners or operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 21 hours a year.

3. *Title:* Oil Record Book for Ships.

OMB Control Number: 2115–0025.

Summary: The Act to Prevent Pollution from Ships (APPS) and the International Convention for Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78), require the entry into an Oil Record Book (CG–4602A) of information about oil carried as cargo or fuel. The maintenance of the Book constitutes the collection of information. The requirement for it appears at 33 CFR 151.25.

Need: This information helps to verify sightings of actual violations of the APPS, to determine the level of compliance with MARPOL 73/78, and to reinforce the provisions against discharge.

Respondents: Operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 29,048 hours a year.

4. *Title:* Application for Vessel Inspection and Waiver.

OMB Control Number: 2115–0007.

Summary: The collection of information requires the owner, operator, agent, or master of a vessel to apply in writing to the Coast Guard before the commencement of the inspection for certification, or when, in the interest of national defense, a waiver from the requirements of navigation and vessel inspection seems desirable.

Need: 46 U.S.C. 3306 and 3309 authorize the Coast Guard to establish rules to protect life, property, and the environment by inspecting vessels. The reporting requirements of the Application for Inspection of U.S. Vessels and the Application for Waiver and Waiver Order are part of the Coast Guard's Marine Safety Program.

Respondents: Owners, operators, agents, or masters of vessels, or interested Federal agencies.

Frequency: On occasion, yearly, or on a 5-year cycle.

Burden: The estimated burden is 677 hours a year.

Dated: February 12, 2003.

Clifford I. Pearson,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 03–4147 Filed 2–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14495]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet as required to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: TSAC will meet on Wednesday, March 19, 2003, from 8 a.m. to 12:30 p.m. The working groups will meet on Tuesday, March 18, 2003, from 8 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 28, 2003. Requests to have a copy of your material distributed to each member of the Committee or working groups should reach the Coast Guard on or before February 28, 2003.

ADDRESSES: On March 19, 2003, TSAC will meet in the East and West Meeting Rooms, the Hotel Monteleone hotel, 214 Rue Royale New Orleans, Louisiana 70130–2201. On March 18, 2003, the working groups will meet in the Vieux Carre Room at the same address and then, if necessary, move to separate spaces designated at that time. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and a draft task statement are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, or Petty Officer Bryan Wick, telephone 202–267–0214, fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Committee Meeting

The agenda tentatively includes the following:

(1) Status Report of the Crew Alertness Working Group;

(2) Status Report of the Towing Vessel Regulatory Review Working Group;

(3) Status Report of the Maritime Security Working Group and Consideration of any Recommendations to the Coast Guard Regarding Potential Rules;

(4) Status Report of the Study Group on Adequacy of Navigation Lights for Inland River Barge Tows; and

(5) Consideration of a draft Task Statement regarding the issue of travel, or "deadhead," time.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than February 28, 2003. Written material for distribution at a meeting should reach the Coast Guard no later

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between Richard Rudolph, Director and Counsel, Phlx, and Hong-Anh Tran, Special Counsel, Division of Market Regulation, Commission, on February 11, 2003.

[14] 15 U.S.C. 78s(b).

[15] 17 CFR 200.30–3(a)(12).

than February 28, 2003. If you would like a copy of your material distributed to each member of the committee or working groups in advance of a meeting, please submit 17 copies to the Assistant Executive Director no later than February 28, 2003. You may also submit this material electronically to the e-mail address in **FOR FURTHER INFORMATION CONTACT**, no later than February 28, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: February 12, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–4146 Filed 2–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14500]

Merchant Mariners' Documents: Forms and Procedures for Renewals and Issuances

AGENCY: Coast Guard, DOT.

ACTION: Notice of policy.

SUMMARY: The Coast Guard suspended renewing and issuing Merchant Mariners' Documents (MMDs) using the previously issued form and has begun renewing and reissuing MMDs using a new form. The new MMD form is more tamper-resistant and facilitates verification of an MMD holder's identity, citizenship, and qualifications to work aboard U.S.-flagged vessels. MMDs in the new form will enhance maritime security.

DATES: The Coast Guard began renewing MMDs using the new form on February 3, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Donald J. Kerlin, Deputy Director, Coast Guard National Maritime Center (NMC), (202) 493–1006.

SUPPLEMENTARY INFORMATION:

Background

MMDs both serve as identity cards for merchant mariners and provide information about the mariners' professional qualifications. MMDs, in the previously issued form (CG–2838 [Rev. 7–94]), serve the second of these purposes well enough; however, they no longer serve the first with sufficient confidence. The Coast Guard is replacing them using a new form (CG–2838 [Rev 09/02]) that will be issued through a more secure process. The Coast Guard will make every effort to effect a smooth and easy transition from the previously issued form to the new form. The Coast Guard will begin issuing MMDs in the new form to new applicants as soon as possible.

The Coast Guard also is considering whether to allow mariners to replace their previously issued MMDs with new MMDs on an accelerated basis, *i.e.,* at an earlier date than current expiration date. To ensure that only eligible mariners receive MMDs, the Coast Guard will conduct a criminal-record review of mariners seeking renewal or re-issuance of a previously issued MMD, or issuance of an original MMD. The review may include verification of identities; criminal histories; and sobriety (as gauged from, among other sources, the National Drivers' Register). This review will be consistent with applicable law and Coast Guard regulations set forth in Title 46, Code of Federal Regulations (46 CFR 12.02–4). Because of the importance of establishing positive proof of identity to facilitate the background investigation, it will be necessary for holders of, and applicants for, an MMD to be present at a Regional Examination Center (REC) to be fingerprinted.

Mariners may encounter delays incident to the new processes' going into practice and the delays may persist for some weeks. Holders and new applicants seeking re-issuance, renewal, and original issuance of their MMDs should inquire at their nearest REC, a list of which appears at 46 CFR 12.01–7, or contact Mr. Donald Kerlin at the National Maritime Center, 4200 Wilson Boulevard, Suite 630, Arlington, VA 22203–1804, (202) 493–1006.

Authority

46 U.S.C. 7301, 7302, 7303, 7304, 7305, 7503, 7505, and 49 CFR 1.46.

Dated: February 13, 2003.

Kevin J. Eldridge,

Reor Admiral, Coast Guard, Assistant Commandant for Governmental and Public Affairs.

[FR Doc. 03–4145 Filed 2–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Harmonization Initiatives

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Aviation Administration and the Joint Aviation Authorities will convene meetings to accept input from the public on the Harmonization Work Program. The Federal Aviation Administration and the Joint Aviation Authorities use the Harmonization Work Program to carry out a commitment to harmonize, to the maximum extent possible, various rules. These rules include the operation and maintenance of civil aircraft, and the standards, practices, and procedures governing the design materials, workmanship, and construction of civil aircraft, aircraft engines, and other components. The purpose of this meeting is to give the public an opportunity to provide input to the Harmonization Work Program. This notice announces the date, time, location, and procedures for the public meeting.

DATES: The public meeting will be held on March 4, 2003, starting at 10:30 a.m. Written comments are invited and must be received by February 24, 2003.

ADDRESSES: The public meeting will be held at Central Joint Aviation Authorities, 8–10 Staturnusstraat, Hoofddorp, The Netherlands. Persons unable to attend the meeting may mail their comments in triplicate to: Florence Hamn, Federal Aviation Administration, Office of Rulemaking, ARM–200, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to attend and present a statement at the meeting or questions about the logistics of the meeting should be directed to Florence Hamn, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3625, telefax (202) 267–5075.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration and the Joint Aviation Authorities will convene meetings to accept input from the public on the Harmonization Work Program. On March 3, there will be an authorities only meeting that addresses various certification, operations, maintenance, and harmonization issues. The March 4 public meeting will begin at 10:30 a.m. and the agenda will include:

- Debrief on Items from Authorities only meeting of the Harmonization Management Team (HMT).
- Debrief on Operations/ Maintenance/Licensing Harmonization Group specific items.
- Debrief on Certification Codes Harmonization Group specific items.
- FAA/JAA 20th International Conference, May 29–June 3, 2002.
- Review/Approval of Minutes of November 18–19 HMT meeting.
- Update on Airworthiness Rulemaking Prioritization Activities.
- Any Other Business.

Individuals wishing to attend and participate in the meetings must submit name, address, telephone/fax/email, and citizenship information to the person listed under the title **FOR FURTHER INFORMATION CONTACT** not later than February 24, 2003. The list of attendees must be submitted to the Joint Aviation Authorities before the meeting for security reasons and to prepare name badges that must be worn while in the building.

Lodging Arrangements: There are multiple hotels located near the meeting location. For further information about lodging, please contact the person listed under the title **FOR FURTHER INFORMATION CONTACT.**

Participation at the Meetings

The FAA should receive requests from persons who wish to present oral statements at the public meetings by February 24, 2003. Such requests should be sent to Florence Hamn as listed in the section titled **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented, and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if time is available; however, the name of those individuals may not appear on the written agenda.

The FAA will prepare a final agenda of speakers, which will be available at the meeting. Every effort will be made to accommodate as many speakers as possible. In addition, the time allocated to each speaker may be less than the amount of time requested.

Meeting Procedures

The following procedures are established to facilitate the meetings:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meetings will be open to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room.

(2) There will be morning and afternoon breaks and lunch breaks.

(3) The meetings may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled.

(4) An individual, whether speaking in a personal or a representative capacity for an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if more time is available.

(5) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(6) Representatives of the FAA and JAA will preside over the meetings.

(7) The FAA and JAA will review and consider all material presented by participants at the meetings. Position papers or material presenting views or information related to proposed harmonization initiatives may be accepted at the discretion of the FAA and JAA presiding officers. The FAA requests that persons participating in the meetings provide five (5) copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(8) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA or JAA.

(9) The meetings are designed to solicit public views and more complete information on proposed harmonization initiatives. Therefore, the meetings will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC, on February 14, 2003.

Florence L. Hamn,

Acting Manager, Aircraft and Airport Rules Division.

[FR Doc. 03–4054 Filed 2–14–03; 1:49 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bronx County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed construction project for the Bruckner-Sheridan Expressway Interchange and for Improved Access to the Hunts Point Peninsula, in Bronx County, New York.

FOR FURTHER INFORMATION CONTACT: Douglas Currey, P.E., Regional Director, New York State Department of Transportation, Hunters Point Plaza 47–40 21st Street, Long Island City, New York 11101, Telephone: (718) 482–4526; *or* Robert Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an Environmental Impact Statement on the proposal to improve safety and traffic flow at the Bruckner Expressway (I–278) at its interchange with the Arthur V. Sheridan Expressway (I–895) as well as to improve access in and out of the Hunts Points Peninsula from the Expressway System.

The objectives of the project are:

- Effectively move people and goods in faster, safer and easier ways by improving the existing roadways, bridges, bicycle paths and pedestrian walkways. This will include improvements to the Bruckner-Sheridan Interchange and local arterials for a better access into and from the Hunts Point Peninsula.
- Reduce the number of accidents in the project area and increase pedestrian safety at busy intersections, such as at Bruckner Boulevard and Hunts Points Ave.
- Support economic development by providing easier access to and from the Hunts Point Peninsula, while eliminating the bottlenecks at the Bruckner Expressway.
- Enhance the quality of life for the residential community by reducing the volume of commercial vehicles on residential streets and easing congestion

for motorists traveling through the project area.

• Support environmental enhancements in coordination with City, State and Federal Agencies.

Alternatives: Various alternatives have already been identified through past studies. The findings of the past studies will be used as a starting point and will be included with new alternatives that will be developed through an extensive public scoping process. The list of alternatives and solutions will be refined throughout the scoping process as the public's comments and suggestions are taken into consideration.

Alternatives identified to date include:

No Action—An analysis of the current infrastructure and the likely state of the area's infrastructure, levels of congestion, *etc.* in the future without any improvements.

Transportation Systems Management—This would provide a strategy to make the most of the current transportation network with minimal capital investment. Emphasis will be placed on operating improvements and strategic upgrades such as the installation of various traffic control devices (*e.g.*, Directional Signs) throughout the corridor.

Build—These includes the long-term alternatives and are more detailed and complex:

• Reconstruction of the Bruckner-Sheridan Interchange to improve highway geometrics in the area adjacent to the Bronx River by creating flyover structures above the Bronx River. This alternative was identified in the Expanded Project Proposal and will be further investigated during the EIS Process.

• Improve Access into and out the Hunts Point Peninsula via Edgewater Road, by reconstructing the southern terminus of the Sheridan Expressway. This alternative was identified in the Expanded Project Proposal and will be further investigated during the EIS Process.

• Construction of Ramps from the Bruckner Expressway at Leggett Avenue at the Bruckner Expressway is also aimed at improved access to the Hunts Point Peninsula. This alternative was identified during past public involvement and will be expanded upon during this process.

• Construction of a road/rail improvement to Hunts Point from Port Morris along the water and rail lines to improve access in and out the Hunts Point Peninsula.

• Deconstruction of the Sheridan Expressway will be investigated as a potential element of some alternatives.

Letters describing the proposed action and soliciting comments will be sent to Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. In addition to scoping discussion with these interested parties, the general public will have the opportunity to make scoping comments both in writing and in person at Public Information/Scoping Meetings that will be held at the Hunts Point Branch Regional Library, 877 Southern Boulevard, Bronx, NY 10459, on March 18, 2003, from 5 p.m. to 9 p.m., and at the Bronx Borough Board Briefing Room, 198 East 161st Street, 2nd Floor, Bronx, NY 10451, on March 20, 2003, from 5 p.m. to 9 p.m. After the DEIS is prepared, it will be available for public and agency review and comment. This will be followed by a public hearing. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action area addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the NYSDOT and FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: February 12, 2003.

David M. Hart,

Senior Operations Engineer, Federal Highway Administration, Albany, NY.

[FR Doc. 03–4029 Filed 2–19–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 5, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 24, 2003 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0032.
Form Number: Customs Form 5125.
Type of Review: Extension.
Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use.

Description: The Customs Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels and foreign or domestic vessels involved in international trade. The form also certifies the use: total consumption or partial consumption with secure storage for use of next voyage.

Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 42 hours.
OMB Number: 1515–0050.
Form Number: Customs Forms 3347 and 3347-A.
Type of Review: Extension.
Title: **CUSTOMS FORM 3347:** Declaration of Owner Merchandise Obtained in Pursuance of Purchase; and **CUSTOMS FORM 3347–A:** Declaration of Importer of Record When Entry is Made by an Agent.

Description: Customs Forms 3347 and 3347–A allow an agent to submit, subsequent to making the entry, the declaration of the importer of record which is required by statute. These forms also permit a nominal importer of record to file the declaration of the actual owner.

Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 5,700.
Estimated Burden Hours Per Respondent/Recordkeeper: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 570 hours.
OMB Number: 1515–0108.
Form Number: None.
Type of Review: Extension.
Title: Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.

Description: The declaration is used under conditions where articles are imported and then exported and then reimported free of duty due to the declaration, it is used to ensure Customs control over duty-free merchandise.

Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 500.
Estimated Burden Hours Per Respondent /Recordkeeper: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 250 hours.
OMB Number: 1515–0142.
Form Number: None.
Type of Review: Extension.
Title: Transfer of Cargo to a Container Station.

Description: The container station operator may file an application for transfer of a container intact to a container station which is moved from the place of unlading or from a bonded carrier after transportation in-bond before filing of the entry for the purpose of breaking bulk and redelivery.

Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 380.
Estimated Burden Hours Per Respondent/Recordkeeper: 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2,513 hours.
OMB Number: 1515–0173.
Form Number: None.
Type of Review: Extension.
Title: Blanket Certification of Chemical Substances.

Description: The Customs Regulations require an importer's certification in connection with the importation of chemical substances subject to the Toxic Substances Control Act. This collection reduces the regulatory burden by permitting use of a blanket certification for multiple shipments in lieu of a separate certification for each individual shipment.

Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 300.
Estimated Burden Hours Per Respondent /Recordkeeper: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 75 hours.
OMB Number: 1515–0222.
Form Number: None.
Type of Review: Extension.
Title: Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission.

Description: This collection of information is required to ensure compliance with section 337 of the Tariff Act of 1930, regarding bond procedures for the entry of articles subject to exclusion orders by the International Trade Commission.

Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 50.
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 50 hours.

Clearance Officer: Tracey Denning (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA, Clearance Officer.

[FR Doc. 03–4034 Filed 2–19–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 5, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 24, 2003 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0005.
Form Number: FinCEN 103 (IRS Form 8362).
Type of Review: Revision.
Title: Currency Transaction Reports by Casinos.

Description: Casinos file Form 103 for currency transactions in excess of $10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 103.22(a)(2). The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes.

Respondents: Business or other for-profit, Federal Government.
Estimated Number of Respondents/Recordkeepers: 550.
Estimated Burden Hours Per Respondent/Recordkeeper: 24 minutes.
Estimated Total Reporting/Recordkeeping Burden: 79,200 hours.

Clearance Officer: Steve Rudzinski (703) 905–3845, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–4035 Filed 2–19–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Extension of and Changes to the General Program Test Regarding Post Entry Amendment Processing

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces that the general program test regarding post entry amendment processing is being extended for a one year period. The document also announces minor modifications to the test: a database enhancement that permits participants to use any Microsoft Word software to interface with Customs database and a change of the location to where quarterly reports should be mailed. Also, the document announces that the database program name has changed to "Post Summary Adjustment." Except for these changes, the test will continue to operate in accordance with the notice published in the **Federal Register** on November 28, 2000.

DATES: The test allowing post entry amendment to entry summaries is extended to December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Debbie Scott (202/927–1962) or Don Yando (Chief; 202/927–1082), Entry and Drawback Management Branch, Office of Field Operations.

SUPPLEMENTARY INFORMATION:

Background

Customs announced and explained the post entry amendment processing test in a general notice document published in the **Federal Register** (65 FR 70872) on November 28, 2000. That notice announced that the test would commence no earlier than December 28, 2000, and run for approximately one year. On January 7, 2002, Customs published a general notice in the **Federal Register** (67 FR 768) extending the test for a one year period to December 31, 2002.

The test allows importers to amend entry summaries (not informal entries) prior to liquidation by filing with Customs either an individual amendment letter upon discovery of an error or a quarterly tracking report covering any errors that occurred during the quarter. The November 28, 2000, general notice explained how to file post entry amendments for revenue related errors and non-revenue related errors and the consequences of misconduct by importers during the test. It also provided that there are no application procedures or eligibility requirements.

This document announces that the test is being extended to December 31, 2003. To participate in the test, an importer need only follow the procedure for making a post entry amendment set forth in the November 28, 2000, general notice.

In addition, based on comments received in response to the November 28, 2000, general notice and Customs evaluation of the program, Customs is making two changes to the test. The first pertains to the kind of software that is required to participate in the test. Up to now, a test participant needed Microsoft Word 97 or 98 to interface with the program database. Now, due to an enhancement of the database, a participant may use any Microsoft Word software to interface with the database.

The second change pertains to the mailing of quarterly reports to Customs. Up to now, quarterly reports were mailed to Customs Headquarters. Now, these reports must be mailed to the port director of the port of entry handling the entry summaries involved.

Both of these changes are effective upon publication of this document in the **Federal Register**.

Finally, Customs notes that the name for the test under the database has been changed from "Post Entry Amendment" to "Post Summary Adjustment." The test program itself will continue to be known as the "Post Entry Amendment" (or PEA) test program. Customs also notes that the test may be further extended if warranted. Additional information on the post entry amendment procedure can be found under "Importing and Exporting" at *http://www.customs.gov.*

Dated: February 12, 2003

Jayson P. Ahern,

Assistant Commissioner; Office of Field Operations.

[FR Doc. 03–4078 Filed 2–19–03; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 68, No. 34

Thursday, February 20, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

CONSUMER PRODUCT SAFETY COMMISSION

Petition HP 01–3 Requesting a Ban of Chromated Copper Arsenate (CCA)-Treated Wood in Playground Equipment

Correction

In notice document 03–3824 beginning on page 7510 in the issue of Friday, February 14, 2003, make the following corrections:

1. On page 7510, in the second column, under the **SUMMARY** heading, in the first paragraph, in the fourth line, "CPCS" should read, "CPSC".

2. On the same page, under the same heading, in the same paragraph, in the eighth line, "CPSE" should read, "CPSC".

3. On the same page, in the third column, under the **ADDRESSES** heading, in the sixth line, "*spsc–os@cpsc.gov*" should read, "*cpsc–os@cpsc.gov*".

[FR Doc. C3–3824 Filed 2–19–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 55

[Notice No. 968]

RIN 1512–AB48

Commerce in Explosives (2000R–9P)

Correction

In proposed rule document 03–1946 beginning on page 4406 in the issue of Wednesday, January 29, 2003 make the following correction:

§ 55.208 [Corrected]

On page 4420, in §55.208, in the first column, in paragraph (a)(2)(i), in the fourth line, "January 29, 2004" should read "[Insert Date 1 Year After the Date of Publication of the Final Rule in the Federal Register]".

[FR Doc. C3–1946 Filed 2–19–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
February 20, 2003

Part II

Department of Health and Human Services

Office of the Secretary

45 CFR Parts 160, 162, and 164
Health Insurance Reform: Security Standards; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160, 162, and 164

[CMS–0049–F]

RIN 0938–AI57

Health Insurance Reform: Security Standards

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule adopts standards for the security of electronic protected health information to be implemented by health plans, health care clearinghouses, and certain health care providers. The use of the security standards will improve the Medicare and Medicaid programs, and otherFederal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general by establishing a level of protection for certain electronic health information. This final rule implements some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability andAccountability Act of 1996 (HIPAA).

DATES: *Effective Date:* These regulations are effective on April 21, 2003.

Compliance Date: Covered entities, with the exception of small health plans, must comply with the requirements of this final rule by April 21, 2005. Small health plans must comply with the requirements of this final rule by April 21, 2006.

FOR FURTHER INFORMATION CONTACT: William Schooler, (410) 786–0089.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html.*

I. Background

The Department of Health and Human Services (HHS) Medicare Program, other Federal agencies operating health plans or providing health care, State Medicaid agencies, private health plans, health care providers, and health care clearinghouses must assure their customers (for example, patients, insured individuals, providers, and health plans) that the integrity, confidentiality, and availability of electronic protected health information they collect, maintain, use, or transmit is protected. The confidentiality of health information is threatened not only by the risk of improper access to stored information, but also by the risk of interception during electronic transmission of the information. The purpose of this final rule is to adopt national standards for safeguards to protect the confidentiality, integrity, and availability of electronic protected health information. Currently, no standard measures exist in the health care industry that address all aspects of the security of electronic health information while it is being stored or during the exchange of that information between entities.

This final rule adopts standards as required under title II, subtitle F, sections 261 through 264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191. These standards require measures to be taken to secure this information while in the custody of entities covered by HIPAA (covered entities) as well as in transit between covered entities and from covered entities to others.

The Congress included provisions to address the need for safeguarding electronic health information and other administrative simplification issues in HIPAA. In subtitle F of title II of that law, the Congress added to title XI of the Social Security Act a new part C, entitled "Administrative Simplification" (hereafter, we refer to the Social Security Act as "the Act"; we refer to the other laws cited in this document by their names). The purpose of subtitle F is to improve the Medicare program under title XVIII of the Act, the Medicaid program under title XIX of the Act, and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements to enable the electronic exchange of certain health information.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose requirements on HHS, health plans, health care clearinghouses, and certain health care providers. These statutory sections are discussed in the Transactions Rule, at 65 FR 50312, on pages 50312 through 50313, and in the final rules adopting Standards for Privacy of Individually Identifiable Health Information, published on December 28, 2000 at 65 FR 82462 (Privacy Rules), on pages 82470 through 82471, and on August 14, 2002 at 67 FR 53182. The reader is referred to those discussions.

Section 1173(d) of the Act requires the Secretary of HHS to adopt security standards that take into account the technical capabilities of record systems used to maintain health information, the costs of security measures, the need to train persons who have access to health information, the value of audit trails in computerized record systems, and the needs and capabilities of small health care providers and rural health care providers. Section 1173(d) of the Act also requires that the standards ensure that a health care clearinghouse, if part of a larger organization, has policies and security procedures that isolate the activities of the clearinghouse with respect to processing information so as to prevent unauthorized access to health information by the larger organization. Section 1173(d) of the Act provides that covered entities that maintain or transmit health information are required to maintain reasonable and appropriate administrative, physical, and technical safeguards to ensure the integrity and confidentiality of the information and to protect against any reasonably anticipated threats or hazards to the security or integrity of the information and unauthorized use or disclosure of the information. These safeguards must also otherwise ensure compliance with the statute by the officers and employees of the covered entities.

II. General Overview of the Provisions of the Proposed Rule

On August 12, 1998, we published a proposed rule (63 FR 43242) to establish a minimum standard for security of electronic health information. We proposed that the standard would require the safeguarding of all electronic health information by covered entities. The proposed rule also proposed a standard for electronic signatures. This final rule adopts only security standards. All comments concerning the proposed electronic signature standard, responses to these comments, and a final rule for electronic signatures will be published at a later date. A detailed discussion of the provisions of the August 12, 1998 proposed rule can be found at 63 FR 43245 through 43259.

We originally proposed to add part 142, entitled "Administrative Requirements," to title 45 of the Code of Federal Regulations (CFR). It has now been determined that this material will reside in subchapter C of title 45, consisting of parts 160, 162, and 164. Subpart A of part 160 contains the general provisions applicable to all the Administrative Simplification rules; other subparts of part 160 will contain other requirements applicable to all standards. Part 162 contains the standards for transactions and code sets and will contain the identifier standards. Part 164 contains the standards relating to privacy and security. Subpart A of part 164 contains general provisions applicable to part 164; subpart E contains the privacy standards. Subpart C of part 164, which is adopted in this final rule, adopts standards for the security of electronic protected health information.

III. Analysis of, and Responses to, Public Comments on the Proposed Rule

We received approximately 2,350 timely public comments on the August 12, 1998 proposed rule. The comments came from professional associations and societies, health care workers, law firms, health insurers, hospitals, and private individuals. We reviewed each commenter's letter and grouped related comments. Some comments were identical. After associating like comments, we placed them in categories based on subject matter or based on the section(s) of the regulations affected and then reviewed the comments.

In this section of the preamble, we summarize the provisions of the proposed regulations, summarize the related provisions in this final rule, and respond to comments received concerning each area.

It should be noted that the proposed Security Rule contained multiple proposed "requirements" and "implementation features." In this final rule, we replace the term "requirement" with "standard." We also replace the phrase "implementation feature" with "implementation specification." We do this to maintain consistency with the use of those terms as they appear in the statute, the Transactions Rule, and the Privacy Rule. Within the comment and response portion of this final rule, for purposes of continuity, however, we use "requirement" and "implementation feature" when we are referring specifically to matters from the proposed rule. In all other instances, we use "standard" and "implementation specification."

The proposed rule would require that each covered entity (as now described in § 160.102) engaged in the electronic maintenance or transmission of health information pertaining to individuals assess potential risks and vulnerabilities to such information in its possession in electronic form, and develop, implement, and maintain appropriate security measures to protect that information. Importantly, these measures would be required to be documented and kept current.

The proposed security standard was based on three basic concepts that were derived from the Administrative Simplification provisions of HIPAA. First, the standard should be comprehensive and coordinated to address all aspects of security. Second, it should be scalable, so that it can be effectively implemented by covered entities of all types and sizes. Third, it should not be linked to specific technologies, allowing covered entities to make use of future technology advancements.

The proposed standard consisted of four categories of requirements that a covered entity would have to address in order to safeguard the integrity, confidentiality, and availability of its electronic health information pertaining to individuals: administrative procedures, physical safeguards, technical security services, and technical mechanisms. The implementation features described the requirements in greater detail when that detail was needed. Within the four categories, the requirements and implementation features were presented in alphabetical order to convey that no one item was considered to be more important than another.

The four proposed categories of requirements and implementation features were depicted in tabular form along with the electronic signature standard in a combined matrix located at Addendum 1. We also provided a glossary of terms, at Addendum 2, to facilitate a common understanding of the matrix entries, and at Addendum 3, we mapped available existing industry standards and guidelines to the proposed security requirements.

A. General Issues

The comment process overwhelmingly validated our basic assumptions that the entities affected by this regulation are so varied in terms of installed technology, size, resources, and relative risk, that it would be impossible to dictate a specific solution or set of solutions that would be useable by all covered entities. Many commenters also supported the concept of technological neutrality, which would afford them the flexibility to select appropriate technology solutions and to adopt new technology over time.

1. Security Rule and Privacy Rule Distinctions

As many commenters recognized, security and privacy are inextricably linked. The protection of the privacy of information depends in large part on the existence of security measures to protect that information. It is important that we note several distinct differences between the Privacy Rule and the Security Rule.

The security standards below define administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of electronic protected health information. The standards require covered entities to implement basic safeguards to protect electronic protected health information from unauthorized access, alteration, deletion, and transmission. The Privacy Rule, by contrast, sets standards for how protected health information should be controlled by setting forth what uses and disclosures are authorized or required and what rights patients have with respect to their health information.

As is discussed more fully below, this rule narrows the scope of the information to which the safeguards must be applied from that proposed in the proposed rule, electronic health information pertaining to individuals, to protected health information in electronic form. Thus, the scope of information covered in this rule is consistent with the Privacy Rule, which addresses privacy protections for "protected health information." However, the scope of the Security Rule is more limited than that of the Privacy Rule. The Privacy Rule applies to protected health information in any form, whereas this rule applies only to protected health information in electronic form. It is true that, under section 1173(d) of the Act, the Secretary has authority to cover "health information," which, by statute, includes information in other than electronic form. However, because the proposed rule proposed to cover only health information in electronic form, we do not include security standards for health information in non-electronic form in this final rule.

We received a number of comments that pertained to privacy issues. These issues were considered in the development of the Privacy Rule and many of these comments were addressed in the preamble of the Privacy Rule. Therefore, we are referring the reader to that document for a discussion of those issues.

2. Level of Detail

We solicited comments as to the level of detail expressed in the required implementation features; that is, we specifically wanted to know whether commenters believe the level of detail of any proposed requirement went beyond what is necessary or appropriate. We received numerous comments expressing the view that the security standards should not be overly prescriptive because the speed with which technology is evolving could make specific requirements obsolete and might in fact deter technological progress. We have accordingly written the final rule to frame the standards in terms that are as generic as possible and which, generally speaking, may be met through various approaches or technologies.

3. Implementation Specifications

In addition to adopting standards, this rule adopts implementation specifications that provide instructions for implementing those standards.

However, in some cases, the standard itself includes all the necessary instructions for implementation. In these instances, there may be no corresponding implementation specification for the standard specifically set forth in the regulations text. In those instances, the standards themselves also serve as the implementation specification. In other words, in those instances, we are adopting one set of instructions as both the standard and the implementation specification. The implementation specification would, accordingly, in those instances be required.

In this final rule, we adopt both "required" and "addressable" implementation specifications. We introduce the concept of "addressable implementation specifications" to provide covered entities additional flexibility with respect to compliance with the security standards.

In meeting standards that contain addressable implementation specifications, a covered entity will ultimately do one of the following: (a) Implement one or more of the addressable implementation specifications; (b) implement one or more alternative security measures; (c) implement a combination of both; or (d) not implement either an addressable implementation specification or an alternative security measure. In all cases, the covered entity must meet the standards, as explained below.

The entity must decide whether a given addressable implementation specification is a reasonable and appropriate security measure to apply within its particular security framework. This decision will depend on a variety of factors, such as, among others, the entity's risk analysis, risk mitigation strategy, what security measures are already in place, and the cost of implementation. Based upon this decision the following applies:

(a) If a given addressable implementation specification is determined to be reasonable and appropriate, the covered entity must implement it.

(b) If a given addressable implementation specification is determined to be an inappropriate and/or unreasonable security measure for the covered entity, but the standard cannot be met without implementation of an additional security safeguard, the covered entity may implement an alternate measure that accomplishes the same end as the addressable implementation specification. An entity that meets a given standard through alternative measures must document the decision not to implement the addressable implementation specification, the rationale behind that decision, and the alternative safeguard implemented to meet the standard. For example, the addressable implementation specification for the integrity standard calls for electronic mechanisms to corroborate that data have not been altered or destroyed in an unauthorized manner (see 45 CFR 164.312(c)(2)). In a small provider's office environment, it might well be unreasonable and inappropriate to make electronic copies of the data in question. Rather, it might well be more practical and afford a sufficient safeguard to make paper copies of the data.

(c) A covered entity may also decide that a given implementation specification is simply not applicable (that is, neither reasonable nor appropriate) to its situation and that the standard can be met without implementation of an alternative measure in place of the addressable implementation specification. In this scenario, the covered entity must document the decision not to implement the addressable specification, the rationale behind that decision, and how the standard is being met. For example, under the information access management standard, an access establishment and modification implementation specification reads: "implement policies and procedures that, based upon the entity's access authorization policies, establish, document, review, and modify a user's right of access to a workstation, transaction, program, or process" (45 CFR 164.308(a)(4)(ii)(c)). It is possible that a small practice, with one or more individuals equally responsible for establishing and maintaining all automated patient records, will not need to establish policies and procedures for granting access to that electronic protected health information because the access rights are equal for all of the individuals.

a. *Comment:* A large number of commenters indicated that mandating 69 implementation features would result in a regulation that is too burdensome, intrusive, and difficult to implement. These commenters requested that the implementation features be made optional to meet the requirements. A number of other commenters requested that all implementation features be removed from the regulation.

Response: Deleting the implementation specifications would result in the standards being too general to understand, apply effectively, and enforce consistently. Moreover, a number of implementation specifications are so basic that no covered entity could effectively protect electronic protected health information without implementing them. We selected 13 of these mandatory implementation specifications based on (1) the expertise of Federal security experts and generally accepted industry practices and, (2) the recommendation for immediate implementation of certain technical and organizational practices and procedures described in Chapter 6 of *For The Record: Protecting Electronic Health Information*, a 1997 report by the National Research Council (NRC). These mandatory implementation specifications are referred to as required implementation specifications and are reflected in the NRC report's recommendations. Risk Analysis and Risk management are found in the NRC recommendation title System Assessment; Sanction Policy is required in the Sanctions recommendation; Information system Activity Review is discussed in Audit Trails; Response and Reporting circumstances.

In addition, a number of voluntary national and regional organizations have been formed to address HIPAA implementation issues and to facilitate

communication among trading partners. These include the Strategic National Implementation Process (SNIP) developed under the auspices of the Workgroup for Electronic Data Interchange (WEDI), an organization named in the HIPAA statute to consult with the Secretary of HHS on HIPAA issues. Some of these organizations have developed white papers, tools, and recommended best practices addressing a number of HIPAA issues, including security. Covered entities may wish to examine these products to determine if they are relevant and useful in their own implementation efforts. A partial list of these organizations can be found at *http://www.wedi/snip./org.* We believe that these and other future industry-developed guidelines and/or models may provide valuable assistance to covered entities implementing these standards but must caution that HHS does not rate or endorse any such guidelines and/or models and the value of its content must be determine by the user.

b. *Comment:* Many commenters asked us to develop guidelines and models to aid in complying with the Security Rule. Several commenters either offered to participate in the development of guidelines and models or suggested entities that should be invited to participate.

Response: We agree that creation of compliance tools and guidelines for different business environments could assist covered entities to implement the HIPAA Security Rule. We plan to issue guidance documents after the publication of this final rule. However, it is critical for each covered entity to establish policies and procedures that address its own unique risks and circumstances.

In addition, a number of voluntary national and regional organizations have been formed to address HIPAA implementation issues and to facilitate communication among trading partners. These include the Strategic National Implementation Process (SNIP) developed under the auspices of the Workgroup for Electronic Data Interchange (WEDI), an organization named in the HIPAA statute to consult with the Secretary of HHS on HIPAA issues. Some of these organizations have developed white papers, tools, and recommended best practices addressing a number of HIPAA issues, including security.

Covered entities may wish to examine these products to determine if they are relevant and useful in their own implementation efforts. A partial list of these organizations can be found at *http://www.snip.wedi.org.* We believe that these and other future industry-developed guidelines and/or models may provide valuable assistance to covered entities implementing these standards but must caution that HHS does not rate or endorse any such guidelines and/or models and the value of its content must be determined by the user.

4. Examples

Comment: We received a number of comments that demonstrated confusion regarding the purpose of the examples of security solutions that were included throughout the proposed rule. Commenters stated that they could not, or did not wish to, adopt various security measures suggested in examples. Other commenters asked that we include additional options within the examples. Some commenters referred specifically to the example provided in the proposed rule demonstrating how a small or rural provider might comply with the standards. One commenter asked for clarification that the examples are not mandatory measures that are required to demonstrate compliance, but are merely meant as a guide when implementing the security standards. Another commenter expressed support for the use of examples to clarify the intent of text descriptions.

Response: We wish to clarify that examples are used only as illustrations of possible approaches, and are included to serve as a springboard for ideas. The steps that a covered entity will actually need to take to comply with these regulations will be dependent upon its own particular environment and circumstances and risk assessment. The examples do not describe mandatory measures, nor do they represent the only, or even the best, way of achieving compliance. The most appropriate means of compliance for any covered entity can only be determined by that entity assessing its own risks and deciding upon the measures that would best mitigate those risks.

B. Applicability (§ 164.302)

We proposed that the security standards would apply to health plans, health care clearinghouses, and to health care providers that maintain or transmit health information electronically. The proposed security standards would apply to all electronic health information maintained or transmitted, regardless of format (standard transaction or a proprietary format). No distinction would be made between internal corporate entity communication or communication external to the corporate entity. Electronic transmissions would include transactions using all media, even when the information is physically moved from one location to another using magnetic tape, disk, or other machine readable media. Transmissions over the Internet (wide-open), extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, and private networks would be included. We proposed that telephone voice response and "faxback" systems (a request for information made via voice using a fax machine and requested information returned via that same machine as a fax) would not be included but we solicited comments on this proposed exclusion.

This final rule simplifies the applicability statement greatly. Section 164.302 provides that the security standards apply to covered entities; the scope of the information covered is specified in § 164.306 (see the discussion under that section below regarding the changes and revisions to the scope of information covered).

1. *Comment:* A number of commenters requested clarification of who must comply with the standards. The preamble and proposed § 142.102 and § 142.302 stated: "Each person described in section 1172(a) of the Act who maintains or transmits health information shall maintain reasonable and appropriate administrative, technical, and physical safeguards." Commenters suggested that this statement is in conflict with the law, which defines a covered entity as a health plan, a clearinghouse, or a health care provider that conducts certain transactions electronically. The commentors apparently did not realize that section 1172(a) of the Act contains the definition of covered entities.

Response: Section 164.302 below makes the security standards applicable to "covered entities." The term "covered entity" is defined at § 160.103 as one of the following: (1) A health plan; (2) a health care clearinghouse; (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by part 162 of title 45 of the Code of Federal Regulations (CFR). The rationale for the use and the meaning of the term "covered entity" is discussed in the preamble to the Privacy Rule (65 FR 82476 through 82477).

As that discussion makes clear, the standards only apply to health care providers who engage electronically in the transactions for which standards have been adopted.

2. *Comment:* Several commenters recommended expansion of applicability, either to other specific entities, or to all entities involved in health care. Others wanted to know whether the standards apply to entities such as employers, public health organizations, medical schools, universities, research organizations, plan brokers, or non-EDI providers. One commenter asked whether the standards apply to State data organizations operating in capacities other than as plans, clearinghouses, or providers. Still other commenters stated that it was inappropriate to include physicians and other health care professionals in the same category as plans and clearinghouses, arguing that providers should be subject to different, less burdensome requirements because they already protect health information.

Response: The statute does not cover all health care entities that transmit or maintain individually identifiable health information. Section 1172(a) of the Act provides that only health plans, health care clearinghouses, and certain health care providers (as discussed above) are covered. With respect to the comments regarding the difference between providers and plans/clearinghouses, we have structured the Security Rule to be scalable and flexible enough to allow different entities to implement the standards in a manner that is appropriate for their circumstances. Regarding the coverage of entities not within the jurisdiction of HIPAA, *see* the Privacy Rule at 82567 through 82571.

3. *Comment:* One commenter asked whether the standards would apply to research organizations, both to those affiliated with health care providers and those that are not.

Response: Only health plans, health care clearinghouses, and certain health care providers are required to comply with the security standards. Researchers who are members of a covered entity's work force may be covered by the security standards as part of the covered entity. *See* the definition of "workforce" at 45 CFR 160.103. Note, however, that a covered entity could, under appropriate circumstances, exclude a researcher or research division from its health care component or components (*see* § 164.105(a)). Researchers who are not part of the covered entity's workforce and are not themselves covered entities are not subject to the standards.

4. *Comment:* Several commenters stated that internal networks and external networks should be treated differently. One commenter asked for further clarification of the difference between what needs to be secured external to a corporation versus the security of data movement within an organization. Another stated that complying with the security standards for internal communications may prove difficult and costly to monitor and control. In contrast, one commenter stated that the existence of requirements should not depend on whether use of information is for internal or external purposes.

Another commenter argued that the regulation goes beyond the intent of the law, and while communication of electronic information between entities should be covered, the law was never intended to mandate changes to an entity's internal automated systems. One commenter requested that raw data that are only for the internal use of a facility be excluded, provided that reasonable safeguards are in place to keep the raw data under the control of the facility.

Response: Section 1173(d)(2) of the Act states: Each person described in section 1172(a) who maintains or transmits health information shall maintain reasonable and appropriate administrative, technical, and physical safeguards—(A) to ensure the integrity and confidentiality of the information; (B) to protect against any reasonably anticipated—(i) threats or hazards to the security or integrity of the information; and (ii) unauthorized uses or disclosures of the information; and (C) otherwise to ensure compliance with this part by the officers and employees of such person.

This language draws no distinction between internal and external data movement. Therefore, this final rule covers electronic protected health information at rest (that is, in storage) as well as during transmission. Appropriate protections must be applied, regardless of whether the data are at rest or being transmitted. However, because each entity's security needs are unique, the specific protections determined appropriate to adequately protect information will vary and will be determined by each entity in complying with the standards (*see* the discussion below).

5. *Comment:* Several commenters found the following statement in the proposed rule (63 FR 43245) at section II.A. confusing and asked for clarification: "With the exception of the security standard, transmission within a corporate entity would not be required to comply with the standards."

Response: In the final Transactions Rule, we revised our approach concerning the transaction and code set exemptions, replacing this concept with other tests that determine whether a particular transaction is subject to those standards (*see* the discussion in the Transactions Rule at 65 FR 50316 through 50318). We also note that the Privacy Rule regulates a covered entity's use, as well as disclosure, of protected health information.

6. *Comment:* One commenter stated that research would be hampered if proposed § 142.306(a) applied. The commenter believes that research uses of health information should be excluded or the standard should be revised to allow appropriate flexibility for research depending on the risk to patients or subjects (for example, if the information is anonymous, there is no risk, and it would not be necessary to meet the security standards).

Response: If electronic protected health information is de-identified (as truly anonymous information would be), it is not covered by this rule because it is no longer electronic protected health information (*see* 45 CFR 164.502(d) and 164.514(a)). Electronic protected health information received, created, or maintained by a covered entity, or that is transmitted by covered entities, is covered by the security standards and must be protected. To the extent a researcher is a covered entity, the researcher must comply with these standards with respect to electronic protected health information. Otherwise, the conditions for release of such information to researchers is governed by the Privacy Rule. *See,* for example, 45 CFR 164.512(i), 164.514(e) and 164.502(d). These standards would not apply to the researchers as such in the latter circumstances.

7. *Comment:* One commenter asked to what extent individual patients are subject to the standards. For example, some telemedicine practices support the use of diagnostic systems in the patient's home, which can be used to conduct tests and send results to a remote physician. In other cases, patients may be responsible for the filing of insurance claims directly and will need the ability to verify facts, confirm receipt of claims, and so on. The commenter asked if it is the intent of the rule to include electronic transmission to or from the patient.

Response: Patients are not covered entities and, thus, are not subject to these standards. With respect to transmissions from covered entities, covered entities must protect electronic protected health information when they transmit that information. *See* also the discussion of encryption in section III.G.

C. Transition to the Final Rule

The proposed rule included definitions for a number of terms that have now already been promulgated as part of the Transactions Rule or the Privacy Rule. Comments related to the definitions of "code set," "health care" clearinghouse," "health plan," "health care provider," "small health plan," "standard" and "transaction," are addressed in the Transactions Rule at 65 FR 50319 through 50320. Comments concerning the definition of "individually identifiable health information" are discussed below, but are also addressed in the Privacy Rule at 65 FR 82611 through 82613. In addition, a few terms were redefined in the final Standards for Privacy of Individually Identifiable Health Information (67 FR 53182), issued on August 14, 2002 (Privacy Modifications). Certain terms that were defined in the proposed rule are not used in the final rule because they are no longer necessary. Other terms defined in the proposed rule are defined within the explanation of the standards in the final rule and are discussed in the preamble discussions in § 164.308 through § 164.312.

Definitions of terms relevant to the security standards now appear in the regulations text provisions as indicated below:

§ 160.103: Definitions of the following terms relevant to this rule appear in § 160.103: "business associate," "covered entity," "disclosure," "electronic media," "electronic protected health information," "health care," "health care clearinghouse," "health care provider," "health information," "health plan," "individual," "individually identifiable health information," "implementation specification," "organized health care arrangement," "protected health information," "standard," "use," and "workforce." These terms were discussed in connection with the Transaction and Privacy Rules and with the exception of the terms "covered entity" "disclosure" "electronic protected health information," "health information," "individual," "organized health care arrangement," "protected health information," and "use," we will not discuss them in this document. We note that the definition of those terms are not changed in the final rule.

§ 162.103: We have moved the definition of "electronic media" at § 162.103 to § 160.103 and have modified it to clarify that the term includes storage of information. The term "electronic media" is used in the definition of "protected health information." Both the privacy and security standards apply to information "at rest" as well as to information being transmitted.

We note that we have deleted the reference to § 162.103 in paragraph (1)(ii) of the definition of "protected health information," since both definitions, "electronic media" and "protected health information," have been moved to this section. Also, it is unnecessary, because the definitions of § 160.103 apply to all of the rule in parts 160, 162, and 164.

We have also clarified that the physical movement of electronic media from place to place is not limited to magnetic tape, disk, or compact disk. This clarification removes a restriction as to what is considered to be physical electronic media, thereby allowing for future technological innovation. We further clarified that transmission of information not in electronic form before the transmission, for example, paper or voice, is not covered by this definition.

§ 164.103: The following term "plan sponsor" now appears in the new § 164.103, which consists of definitions of terms common to both subpart C and subpart E (the privacy standards). This definition was moved, without substantive change, from § 164.501 and has the meaning given to it in that section, and comments relating to this definition are discussed in connection with that section in the Privacy Rule at 65 FR 82607, 82611 through 82613, 82618 through 82622, and 82629.

§ 164.304: Definitions specifically applicable to the Security Rule appear in § 164.304, and these are discussed below. These definitions are from, or derived from, currently accepted definitions in industry publications, such as, the International Organization for Standards (ISO) 7498–2 and the American Society for Testing and Materials (ASTM) E1762–95.

The following terms in § 164.304 are taken from the proposed rule text or the glossary in Addendum 2 of the proposed rule (63 FR 43271), were not commented on, and/or are unchanged or have only minor technical changes for purposes of clarification and are not discussed below: "access," "authentication," "availability," "confidentiality," "encryption," "password," and "security."

§ 164.314: Four terms were defined in § 164.504(a) of the Privacy Rule ("common control," "common ownership," "health care component," and "hybrid entity"). Because these terms apply to both security and privacy, their definitions have been moved to § 164.103 without change. Those terms are discussed in the Privacy Rule at 65 FR 82502 through 82503 and at 67 FR 53203 through 53207.

1. Covered Entity (§ 160.103)

Comment: One commenter asked if transcription services were covered entities. The question arose because transcription is often the first electronic or printed source of clinical information. Concern was expressed about the application of physical safeguard standards to the transcribers working for transcription companies or health care providers, either as employees or as independent contractors.

Another commenter expressed concern that scalability was limited to only small providers. The commenter explained that Third Party Administrators (TPAs) allow claim processors to work at home. Some TPAs have noted that it would be impossible to comply with the security standards for home-based claims processors.

Response: A covered entity's responsibility to implement security standards extends to the members of its workforce, whether they work at home or on-site. Because a covered entity is responsible for ensuring the security of the information in its care, the covered entity must include "at home" functions in its security process. While an independent transcription company or a TPA may not be covered entities, they will be a business associate of the covered entity because their activities fall under paragraph (1)(i)(a) of the definition of that term. For business associate provisions see proposed preamble section III.E.8. and § 164.308(b)(1) and § 164.314(c) of this final rule.

2. Health Care and Medical Care (§ 160.103)

Comment: One commenter asked whether "medical care," which is defined in the proposed rule, and "health care," which is not, are synonymous.

Response: The term "medical care," as used in the proposed rule (63 FR 43242), was intended to be synonymous with "health care." The term ldquo;medical care" is not included in this final rule. It is, however, included in the definition of "health plan," where its meaning is not synonymous with "health care." For a full discussion of this issue and its resolution, *see* the Privacy Rule (65 FR 82578).

3. Health Information and Individually Identifiable Health Information 160.103)

We note that the definitions of "health information" and "individually identifiable health information" remain unchanged from those published in the Transactions and Privacy Rules.

a. *Comment:* A number of commenters asked that the definition of "health information" be expanded to include information collected by additional entities. Several commenters wanted the definition to include health information collected, maintained, or transmitted by any entity, and one commenter suggested the inclusion of aggregated information not identifiable to an individual. Several commenters asked that eligibility information be excluded from the definition of information. Several commenters wanted the definition broadened to include demographics.

Response: Our definition of health information is taken from the definition in section 1171(4) of the Act, which provides that health information relates to the health or condition of an individual, the provision of health care to an individual, or payment for the provision of health care to an individual. The statutory definition also specifies the entities by which health information is created or received. We note that, because "individually identifiable health information" is a subset of "health information" and by statute includes demographic information, "health information" necessarily includes demographic information. We think this is clear as a matter of statutory construction and does not require further regulatory change.

b. *Comment:* Several commenters asked that we clarify the difference between "health information" and "individually identifiable" and "health information pertaining to an individual" as used in the August 12, 1998 proposed rule (63 FR 43242). Additionally, commenters asked that we be more consistent in the use of these terms and recommended use of the term "individually identifiable health information."

Two commenters stated that it is important to distinguish between "health information pertaining to an individual" and "individually identifiable health information," as in reporting statistics at various levels there will always be a need to bring forth information pertaining to an individual.

One commenter recommended that the standards apply only to individually identifiable health information. Another stated that in § 142.306(b) of the proposed rule, "health information pertaining to an individual" should be changed to "individually identifiable health information," as nonidentifiable information can be used for utilization review and other purposes. As written, the regulation text could limit the ability to use data, for example, from a clearinghouse for compliance monitoring.

Response: In general, we agree with these commenters, and note that these comments are largely mooted by the decision, reflected in § 164.306 below and discussed in section III.D.1. of this final rule, to cover only electronic protected health information in this final rule.

c. *Comment:* Several commenters stated that the definition of "individually identifiable health information" is not in the regulations and should be added.

Response: We note that the definition of "individually identifiable health information" appears at § 160.103, which applies to this final rule.

4. Protected Health Information (§ 160.103)

This term is moved from § 164.501 to § 160.103 because it applies to both subparts C (security) and E (privacy). See 67 FR 53192 through 531936 regarding the definition of "protected health information."

Also, the term "electronic media" is included in paragraphs (1)(i) and (ii) of the definition of "protected health information," as specified in this section.

In addition, we added the definitions of "covered functions," "plan sponsor," and "Required by law" to § 164.103.

5. Breach (§ 164.304)

Comment: One commenter asked that "breach" be defined.

Response: The term "breach" has been deleted and therefore not defined. Instead, we define the term "security incident," which better describes the types of situations we were referring to as breaches.

6. Facility (§ 164.304)

This new term has been added as a result of changing the name of the "physical access control" standard to "facility access control." This change was made based on comments indicating that the original term was not descriptive. We have defined the term "facility" as the physical premises and interior and exterior of a building.

7. Security Incident (§ 164.304)

Comment: We received comments asking that this term be defined.

Response: This final rule defines "Security incident" in § 164.304 as "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system."

8. System (§ 164.304)

Comment: One commenter asked that "system" be defined.

Response: This final rule defines "system," in the context of an information system, in § 164.304 as "an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people."

9. Workstation (§ 164.304)

Comment: One commenter expressed concern that the use of the term "workstation" implied limited applicability to fixed devices (such as terminals), excluding laptops and other portable devices.

Response: We have added a definition of the term "workstation" to clarify that portable devices are also included. This final rule defines workstation as "an electronic computing device, for example, a laptop or desktop computer, or any other device that performs similar functions, and electronic media stored in its immediate environment."

10. Definitions Not Adopted

Several definitions in the proposed regulations text and glossary are not adopted as definitions in the final rule: "participant," "contingency plan," "risk," "role-based access control," and "user-based access control." The terms "participant," "role-based access control," and "user-based access control" are not used in this final rule and thus are not defined. "Risk" is not defined as its meaning is generally understood. While we do not define the term, we address "contingency plan" as a standard in § 164.308(a)(7) below.

a. *Comment:* We received comments requesting that we define the following terms: "token" and "documentation."

Response: These terms were defined in Addendum 2 of the proposed rule. In this final rule, we do not adopt a definition for "token" because it is not used in the final rule. "Documentation" is discussed in § 164.316 below.

b. *Comment:* We received several comments that "small" and "rural" should be defined as those terms apply to providers. We received an equal number of comments stating that there is no need to define these terms. One commenter stated that definitions for these terms would be necessary only if special exemptions existed for small and rural providers. Several commenters suggested initiation of a study to determine limitations and potential barriers small and rural providers will have in implementing these regulations.

Response: The statute requires that we address the needs of small and rural providers. We believe that we have done this through the provisions, which require the risk assessment and the response to be assessment based on the needs and capabilities of the entity. This scalability concept takes the needs of those providers into account and eliminates any need to define those terms.

c. *Comment:* In the proposed rule, we proposed the following definition for the term "Access control": "A method of restricting access to resources, allowing only privileged entities access. Types of access control include, among others, mandatory access control, discretionary access control, time-of-day, classification, and subject-object separation." One commenter believed the proposed definition is too restrictive and requested revision of the definition to read: "Access control refers to a method of restricting access to resources, allowing access to only those entities which have been specifically granted the desired access rights." Another commenter wanted the definition expanded to include partitioned rule-based access control (PRBAC).

Response: We agree with the commenter who suggested that the definition as proposed seemed too restrictive. In this case, as in many others, a number of commenters believed the examples given in the proposed rule provided the only acceptable compliance actions. As previously noted, in order to clarify that the examples listed were not to be considered all-inclusive, we have generalized the proposed requirements in this final rule. In this case, we have also generalized the requirements and placed the substantive provisions governing access control at § 164.308(a)(4), § 164.310(a)(1), and § 164.312(a)(1). With respect to PRBAC, the access control standard does not exclude this control, and entities should adopt it if appropriate to their circumstances.

D. General Rules (§ 164.306)

In the proposed rule, we proposed to cover all health information maintained or transmitted in electronic form by a covered entity. We proposed to adopt, in § 142.308, a nation-wide security standard that would require covered entities to implement security measures that would be technology-neutral and scalable, and yet integrate all the components of security (administrative procedures, physical safeguards, technical security services, and technical security mechanisms) that must be in place to preserve health information confidentiality, integrity, and availability (three basic elements of security). Since no comprehensive, scalable, and technology-neutral set of standards currently exists, we proposed to designate a new standard, which would define the security requirements to be fulfilled.

The proposed rule proposed to define the security standard as a set of scalable, technology-neutral requirements with implementation features that providers, plans, and clearinghouses would have to include in their operations to ensure that health information pertaining to an individual that is electronically maintained or electronically transmitted remains safeguarded. The proposed rule would have required that each affected entity assess its own security needs and risks and devise, implement, and maintain appropriate security to address its own unique security needs. How individual security requirements would be satisfied and which technology to use would be business decisions that each entity would have to make.

In the final rule we adopt this basic framework. In § 164.306, we set forth general rules pertaining to the security standards. In paragraph (a), we describe the general requirements. Paragraph (a) generally reflects section 1173(d)(2) of the Act, but makes explicit the connection between the security standards and the privacy standards (see § 164.306(a)(3)). In § 164.306(a)(1), we provide that the security standards apply to all electronic protected health information the covered entity creates, receives, maintains, or transmits. In paragraph (b)(1), we provide explicitly for the scalability of this rule by discussing the flexibility of the standards, and paragraph (b)(2) of § 164.306 discusses various factors covered entities must consider in complying with the standards.

The provisions of § 164.306(c) provide the framework for the security standards, and establish the requirement that covered entities must comply with the standards. The administrative, physical, and technical safeguards a covered entity employs must be reasonable and appropriate to accomplish the tasks outlined in paragraphs (1) through (4) of § 164.306(a). Thus, an entity's risk analysis and risk management measures required by § 164.308(a)(1) must be designed to lead to the implementation of security measures that will comply with § 164.306(a).

It should be noted that the implementation of reasonable and appropriate security measures also supports compliance with the privacy standards, just as the lack of adequate security can increase the risk of violation of the privacy standards. If, for example, a particular safeguard is inadequate because it routinely permits reasonably anticipated uses or disclosures of electronic protected health information that are not permitted by the Privacy Rule, and that could have been prevented by implementation of one or more security measures appropriate to the scale of the covered entity, the covered entity would not only be violating the Privacy Rule, but would also not be in compliance with § 164.306(a)(3) of this rule.

Paragraph (d) of § 164.306 establishes two types of implementation specifications, required and addressable. It provides that required implementation specifications must be met. However, with respect to implementation specifications that are addressable, § 164.306(d)(3) specifies that covered entities must assess whether an implementation specification is a reasonable and appropriate safeguard in its environment, which may include consideration of factors such as the size and capability of the organization as well as the risk. If the organization determines it is a reasonable and appropriate safeguard, it must implement the specification. If an addressable implementation specification is determined not to be a reasonable and appropriate answer to a covered entity's security needs, the covered entity must do one of two things: implement another equivalent measure if reasonable and appropriate; or if the standard can otherwise be met, the covered entity may choose to not implement the implementation specification or any equivalent alternative measure at all. The covered entity must document the rationale behind not implementing the implementation specification. See the detailed discussion in section II.A.3.

Paragraph (e) of § 164.306 addresses the requirement for covered entities to maintain the security measures

implemented by reviewing and modifying the measures as needed to continue the provision of reasonable and appropriate protections, for example, as technology moves forward, and as new threats or vulnerabilities are discovered.

1. Scope of Health Information Covered by the Rule (§ 164.306(a))

We proposed to cover health information maintained or transmitted by a covered entity in electronic form. We have modified, by narrowing, the scope of health information to be safeguarded under this rule from that which was proposed. The statute requires the privacy standards to cover individually identifiable health information. The Privacy Rule covers all individually identifiable information except for: (1) Education records covered by the Family and Educational Rights and Privacy Act (FERPA); (2) records described in 20 U.S.C. 1232g(a)(4)(B)(iv); and (3) employment records. (see the Privacy Rule at 65 FR 82496. See also 67 FR 53191 through 53193). The scope of information covered in the Privacy Rule is referred to as "protected health information." Based upon the comments we received, we align the requirements of the Security and Privacy Rules with regard to the scope of information covered, in order to eliminate confusion and ease implementation. Thus, this final rule requires protection of the same scope of information as that covered by the Privacy Rule, except that it only covers that information if it is in electronic form.

We note that standards for the security of all health information or protected health information in nonelectronic form may be proposed at a later date.

a. *Comment:* One commenter stated that the rule should apply to aggregate information that is not identifiable to an individual. In contrast, another commenter asked that health information used for statistical analysis be exempted if the covered entity may reasonably expect that the removed information cannot be used to re-identify an individual.

Response: As a general proposition, any electronic protected health information received, created, maintained, or transmitted by a covered entity is covered by this final rule. We agree with the second commenter that certain information, from which identifiers have been stripped, does not come within the purview of this final rule. Information that is de-identified, as defined in the Privacy Rule at § 164.502(d) and § 164.514(a), is not "individually identifiable" within the meaning of these rules and, thus, does not come within the definition of "protected health information." It accordingly is not covered by this final rule. For a full discussion of the issues of de-identification and re-identification of individually identifiable health information see 65 FR 82499 and 82708 through 82712 and 67 FR 53232 through 53234.

b. *Comment:* Several commenters asked whether systems that determine eligibility of clients for insurance coverage under broad categories such as medical coverage groups are considered health information. One commenter asked that we specifically exclude eligibility information from the standards.

Response: We cannot accept the latter suggestion. Eligibility information will typically be individually identifiable, and much eligibility information will also contain health information. If the information is "individually identifiable" and is "health information," (with three very specific exceptions noted in the general discussion above) and it is in electronic form, it is covered by the security standards if maintained or transmitted by a covered entity.

c. *Comment:* Several commenters requested clarification as to whether the standards apply to identifiable health information in paper form. Some commenters believed the rule should be applicable to paper; others argued that it should apply to all confidential, identifiable health information.

Response: While we agree that protected health information in paper or other form also should have appropriate security protections, the proposed rule proposing the security standards proposed to apply those standards to health information in electronic form only. We are, accordingly, not extending the scope in this final rule.

We may establish standards to secure protected health information in other media in a future rule, in accordance with our statutory authority to do so. See discussion, supra, responding to a comment on the definition of "health information" and "individually identifiable health information."

d. *Comment:* The proposed rule would have excluded "telephone voice response" and "faxback" systems from the security standards, and we specifically solicited comments on that issue. A number of commenters agreed that telephone voice response and faxback should be excluded from the regulation, suggesting that the privacy standards rather than the security standards should apply. Others wanted those systems included, on the grounds that inclusion is necessary for consistency and in keeping with the intent of the Act. Still others specifically wanted personal computer-fax transmissions included. One commenter asked for clarification of when we would cover faxes, and another commenter asked why we were excluding them. Several commenters suggested that the other security requirements provide for adequate security of these systems.

Response: In light of these comments, we have decided that telephone voice response and "faxback" (that is, a request for information from a computer made via voice or telephone keypad input with the requested information returned as a fax) systems fall under this rule because they are used as input and output devices for computers, not because they have computers in them. Excluding these features would provide a huge loophole in any system concerned with security of the information contained and/or processed therein. It should be noted that employment of telephone voice response and/or faxback systems will generally require security protection by only one of the parties involved, and not the other. Information being transmitted via a telephone (either by voice or a DTMP tone pad) is not in electronic form (as defined in the first paragraph of the definition of "electronic media") before transmission and therefore is not subject to the Security Rule. Information being returned via a telephone voice response system in response to a telephone request is data that is already in electronic form and stored in a computer. This latter transmission does require protection under the Security Rule.

Although most recently made electronic devices contain microprocessors (a form of computer) controlled by firmware (an unchangeable form of computer program), we intend the term "computer" to include only software programmable computers, for example, personal computers, minicomputers, and mainframes. Copy machines, fax machines, and telephones, even those that contain memory and can produce multiple copies for multiple people are not intended to be included in the term "computer." Therefore, because "paper-to-paper" faxes, person-to-person telephone calls, video teleconferencing, or messages left on voice-mail were not in electronic form before the transmission, those activities are not covered by this rule. See also the definition of "electronic media" at § 160.103.

We note that this guidance differs from the guidance regarding the applicability of the Transactions Rule to faxback and voice response systems. HHS has stated that faxback and voice response systems are not required to follow the standards mandated in the Transactions Rule. This new guidance refers only to this rule.

e. *Comment:* One commenter asked whether there is a need to implement special security practices to address the shipping and receiving of health information and asked that we more fully explain our expectations and solutions in the final rules.

Response: If the handling of electronic protected health information involves shipping and receiving, appropriate measures must be taken to protect the information. However, specific solutions are not provided within this rule, as discussed in section III.A.3 of this final rule. The device and media controls standard under § 164.310(d)(1) addresses this situation.

f. *Comment:* One commenter wanted the "HTML" statement reworded to eliminate a specific exemption for HTML from the regulation.

Response: The Transactions Rule did not adopt the proposed exemption for HTML. The use of HTML or any other electronic protocol is not exempt from the security standards. Generally, if protected health information is contained in any form of electronic transmission, it must be appropriately safeguarded.

g. *Comment:* One commenter asked to what degree "family history" is considered health information under this rule and what protections apply to family members included in a patient's family history.

Response: Any health-related "family history" contained in a patient's record that identifies a patient, including a person other than the patient, is individually identifiable health information and, to the extent it is also electronic protected health information, must be afforded the security protections.

h. *Comment:* Two commenters asked that the rule prohibit re-identification of de-identified data. In contrast, several commenters asked that we identify a minimum list or threshold of specific re-identification data elements (for example, name, city, and ZIP) that would fall under this final rule so that, for example, the rule would not affect numerous systems, for example, network adequacy and population-based clinical analysis databases. One commenter asked that we establish a means to use re-identified information if the entity already has access to the information or is authorized to have access.

Response: The issue of re-identification is addressed in the Privacy Rule at § 164.502(d) and § 164.514(c). The reader is referred to those sections and the related discussion in the preamble to the Privacy Rule (65 FR 82712) and the preamble to the Privacy Modifications (67 FR 53232 through 53234) for a full discussion of the issues of re-identification. We note that once information in the possession (or constructive possession) of a covered entity is re-identified and meets the definition of electronic protected health information, the security standards apply.

2. Technology-Neutral Standards

Comment: Many commenters expressed support for our efforts to develop standards for the security of health information. A number of comments were made in support of the technology-neutral approach of the proposed rule. For example, one commenter stated, "By avoiding prescription of the specific technologies health care entities should use to meet the law's requirements, you are opening the door for industry to apply innovation. Technologies that don't currently exist or are impractical today could, in the near future, enhance health information security while minimizing the overall cost." Several other commenters stated that the requirements should be general enough to withstand changes to technology without becoming obsolete. One commenter anticipates no problems with meeting the standards.

In contrast, one commenter suggested that whenever possible, specific technology recommendations should provide sufficient detail to promote systems interoperability and decrease the tendency toward adoption of multiple divergent standards. Several commenters stated that by letting each organization determine its own rules, the rules impose procedural burdens without any substantive benefit to security.

Response: The overwhelming majority of comments supported our position. We do not believe it is appropriate to make the standards technology-specific because technology is simply moving too fast, for example, the increased use and sophistication of internet-enabled hand held devices. We believe that the implementation of these rules will promote the security of electronic protected health information by (1) providing integrity and confidentiality; (2) allowing only authorized individuals access to that information; and (3) ensuring its availability to those authorized to access the information. The standards do not allow organizations to make their own rules, only their own technology choices.

3. Miscellaneous Comments

a. *Comment:* Some commenters stated that the requirements and implementation features set out in the proposed rule were not specific enough to be considered standards, and that the actual standards are delegated to the discretion of the covered entities, at the expense of medical record privacy. Several commenters stated that it was inappropriate to balance the interests of those seeking to use identifiable medical information without patient consent against the interest of patients. Several other commenters believe that allowing covered entities to make their own decisions about the adequacy and balance of security measures undermined patient confidentiality interests, and stated that the proposed rule did not appear to adequately consider patient concerns and viewpoints.

Response: Again, the overwhelming majority of commenters supported our approach. This final rule sets forth requirements with which covered entities must comply and labels those requirements as standards and implementation specifications. Adequate implementation of this final rule by covered entities will ensure that the electronic protected health information in a covered entity's care will be as protected as is feasible for that entity.

We disagree that covered entities are given complete discretion to determine their security polices under this rule, resulting in effect, in no standards. While cost is one factor a covered identity may consider in determining whether to implement a particular implementation specification, there is nonetheless a clear requirement that adequate security measures be implemented, see 45 CFR 164.306(b). Cost is not meant to free covered entities from this responsibility.

b. *Comment:* Several commenters requested we withdraw the regulations, citing resource shortages due to Y2K preparation, upcoming privacy legislation, and/or the "excessive micro-management" contained in the rules. One commenter stated that, to insurers, these rules were onerous, not necessary, and not justified as cost-effective, as they already have effective practices for computer security and are subject to rigorous State laws for the safeguarding of health information. Another

commenter stated that these rules would adversely affect a provider's practice environment.

Response: The HIPAA statute requires us to promulgate a rule adopting security standards for health information. Resource concerns due to Y2K should no longer be an issue. Covered entities will have 2 years (or, in the case of small health plans, 3 years) from the adoption of this final rule in which to comply. Concerns relative to effective and compliance dates and the Privacy Rule are discussed under § 164.318, Compliance dates for initial implementation, below and at 65 FR 82751 through 82752.

We disagree that these standards will adversely affect a provider's practice environment. The scalability of the standards allows each covered entity to implement security protections that are appropriate to its specific needs, risks, and environments. These protections are necessary to maintain the confidentiality, integrity, and availability of patient data. A covered entity that lacks adequate protections risks inadvertent disclosure of patient data, with resulting loss of public trust, and potential legal action. For example, a covered entity with poor facility access controls and procedures would be susceptible to hacking of its databases. A provider with appropriate security protections already in place would only need to ensure that the protections are documented and are reassessed periodically to ensure that they continue to be appropriate and are actually being implemented. Our decision to classify many implementation specifications as addressable, rather than mandatory, provides even more flexibility to covered entities to develop cost-effective solutions. We believe that insurers who already have effective security programs in place will have met many of the requirements of this regulation.

c. *Comment:* One commenter believes the rule is arbitrary and capricious in its requirements without any justification that they will significantly improve the security of medical records and with the likelihood that their implementation may actually increase the vulnerability of the data. The commenter noted that the data backup requirements increase access to data and that security awareness training provides more information to employees.

Response: The standards are based on generally accepted security procedures, existing industry standards and guidelines, and recommendations contained in the National Research Council's 1997 report *For The Record: Protecting Electronic Health Information*, Chapter 6. We also consulted extensively with experts in the field of security throughout the health care industry. The standards are consistent with generally accepted security principles and practices that are already in widespread use.

Data backup need not result in increased access to that data. Backups should be stored in a secure location with controlled access. The appropriate secure location and access control will vary, based upon the security needs of the covered entity. For example, a procedure as simple as locking backup diskettes in a safe place and restricting who has access to the key may be suitable for one entity, whereas another may need to store backed-up information off-site in a secure computer facility. The information provided in security awareness training heightens awareness of security anomalies and helps to prevent security incidents.

d. *Comment:* Several commenters suggested that the proposed rule appears to reflect the Medicare program's perspective on security risks and solutions, and that it should be noted that not all industry segments share all the same risks as Medicare. One commenter stated that as future proposed rules are drafted, we should solicit input from those most significantly affected, for example, providers, plans, and clearinghouses.

Others stated that Medicaid agencies were not sufficiently involved in the discussions and debate. Still another stated that States would be unable to perform some basic business functions if all the standards are not designed to meet their needs.

Response: We believe that the standards are consistent with common industry practices and equitable, and that there has been adequate consultation with interested parties in the development of the standards. These standards are the result of an intensive process of public consultation. We consulted with the National Uniform Billing Committee, the National Uniform Claim Committee, the American Dental Association, and the Workgroup for Electronic Data Interchange, in the course of developing the proposed rule. Those organizations were specifically named in the Act to advise the Secretary, and their membership is drawn from the full spectrum of industry segments. In addition, the National Committee on Vital and Health Statistics (NCVHS), an independent advisory group to the Secretary, held numerous public hearings to obtain the views of interested parties. Again, many segments of the health care industry, including provider groups, health plans, clearinghouses, vendors, and government programs participated actively. The NCVHS developed recommendations to the Secretary, which were relied upon as we developed the proposed rule. Finally, we note that the opportunity to comment was available to all during the public comment period.

e. *Comment:* One commenter stated that there is a need to ensure the confidentiality of risk analysis information that may contain sensitive information.

Response: The information included in a risk analysis would not be subject to the security standards if it does not include electronic protected health information. We agree that risk analysis data could contain sensitive information, just as other business information can be sensitive. Covered entities may wish to develop their own business rules regarding access to and protections for risk analysis data.

f. *Comment:* One commenter expressed concern over the statement in the preamble of the proposed rule (63 FR 43250) that read: "No one item is considered to be more important than another." The commenter suggested that security management should be viewed as most critical and perhaps what forms the foundation for all other security actions.

Response: The majority of comments received on this subject requested that we prioritize the standards. In response, we have regrouped the standards and implementation specifications in what we believe is a logical order within each of three categories: "Administrative safeguards," "Physical safeguards," and "Technical safeguards." In this final rule, we order the standards in such a way that the "Security management process" is listed first under the "Administrative safeguards" section, as we believe this forms the foundation on which all of the other standards depend. The determination of the specific security measures to be implemented to comply with the standards will, in large part, be dependent upon completion of the implementation specifications within the security management process standard (see § 164.308(a)(1)). We emphasize, however, that an entity implementing these standards may choose to implement them in any order, as long as the standards are met.

g. *Comment:* One commenter stated that there is a need for requirements concerning organizational practices (for example, education, training, and security and confidentiality policies), as well as technical practices and procedures.

Response: We agree. Section 164.308 of this final rule describes administrative safeguards that address these topics. Section 164.308 requires covered entities to implement standards and required implementation specifications, as well as consider and implement, when appropriate and reasonable, addressable implementation specifications. For example, the security management process standard requires implementation of a risk analysis, risk management, a sanction policy, and an information system activity review. The information access management standard requires consideration, and implementation where appropriate and reasonable, of access authorization and access establishment and modification policies and procedures. Other areas addressed are assigned security responsibility, workforce security, security awareness and training, security incident procedures, contingency planning, business associate contracts, and evaluation.

h. *Comment:* One commenter stated that internal and external security requirements should be separated and dealt with independently.

Response: The presentation of the standards within this final rule could have been structured in numerous ways, including by addressing separate internal and external security standards. We chose the current structure as we considered it a logical breakout for purposes of display within this final rule. Under our structure a covered entity may apply a given standard to internal activities and to external activities. Had we displayed separately the standards for internal security and the standards for external security, we would have needed to describe a number of the standards twice, as many apply to both internal and external security. However, a given entity may address the standards in whatever order it chooses, as long as the standards are met.

i. *Comment:* Two commenters stated that the standards identified in Addendum 3 of the proposed rule may not all have matured to implementation readiness.

Response: Addendum 3 of the proposed rule cross-referred individual requirements on the matrix to existing industry standards of varying levels of maturity. Addendum 3 was intended to show what we evaluated in searching for existing industry standards that could be adopted on a national level. No one standard was found to be comprehensive enough to be adopted, and none were proposed as the standards to be met under the Security Rule.

j. *Comment:* One commenter suggested we include a revised preamble in the final publication. Another questioned how clarification of points in the preamble will be handled if the preamble is not part of the final regulation.

Response: Preambles to proposed rules are not republished in the final rule. The preamble in this final rule contains summaries of the information presented in the preamble of the proposed rule, summaries of the comments received during the public comment period, and responses to questions and concerns raised in those comments and a summary of changes made. Additional clarification will be provided by HHS on an ongoing basis through written documents and postings on HHS's websites.

k. *Comment:* One commenter asked that we clarify that no third party can require implementation of more security features than are required in the final rule, for example, a third party could not require encryption but may choose to accept it if the other party so desires.

Response: The security standards establish a minimum level of security to be met by covered entities. It is not our intent to limit the level of security that may be agreed to between trading partners or others above this floor.

l. *Comment:* One commenter asked how privacy legislation would affect these rules. The commenter inquired whether covered entities will have to reassess and revise actions already taken in the spirit of compliance with the security regulations.

Response: We cannot predict if or how future legislation may affect the rules below. At present, the privacy standards at subpart E of 42 CFR part 164 have been adopted, and this final rule is compatible with them.

m. *Comment:* One commenter stated that a data classification policy, that is a method of assigning sensitivity ratings to specific pieces of data, should be part of the final regulations.

Response: We did not adopt such a policy because this final rule requires a floor of protection of all electronic protected health information. A covered entity has the option to exceed this floor. The sensitivity of information, the risks to and vulnerabilities of electronic protected health information and the means that should be employed to protect it are business determinations and decisions to be made by each covered entity.

n. *Comment:* One commenter stated that this proposed rule conflicts with previously stated rules that acceptable "standards" must have been developed by ANSI-recognized Standards Development Organizations (SDOs).

Response: In general, HHS is required to adopt standards developed by ANSI-accredited SDOs when such standards exist. The currently existing security standards developed by ANSI-recognized SDOs are targeted to specific technologies and/or activities. No existing security standard, or group of standards, is technology-neutral, scaleable to the extent required by HIPAA, and broad enough to be adopted in this final rule. Therefore, this final rule adopts standards under section 1172(c)(2)(B) of the Act, which permits us to develop standards when no industry standards exist.

o. *Comment:* One commenter stated that this regulation goes beyond the scope of the law, unjustifiably extending into business practices, employee policies, and facility security.

Response: We do not believe that this regulation goes beyond the scope of the law. The law requires HHS to adopt standards for reasonable and appropriate security safeguards concerning such matters as compliance by the officers and employees of covered entities, protection against reasonably anticipated unauthorized uses and disclosures of health information, and so on. Such standards will inevitably address the areas the commenter pointed to.

The intent of this regulation is to provide standards for the protection of electronic protected health information in accordance with the Act. In order to do this, covered entities are required to implement administrative, physical, and technical safeguards. Those entities must ensure that data are protected, to the extent feasible, from inappropriate access, modification, dissemination, and destruction. As noted above, however, this final rule has been modified to increase flexibility as to how this protection is accomplished.

p. *Comment:* One commenter stated that all sections regarding confidentiality and privacy should be removed, since they do not belong in this regulation.

Response: As the discussion in section III.A above of this final rule makes clear, the privacy and security standards are very closely related. Section 1173(d)(2) of the Act specifically mentions "confidentiality" and authorizes uses and disclosures of information as part of what security safeguards must address. Thus, we cannot omit all references to confidentiality and privacy in discussions of the security standards.

However, we have relocated material that relates to both security and privacy (including definitions) to the general section of part 164.

q. *Comment:* One commenter asked that data retention be addressed more specifically, since this will become a significant issue over time. It is recommended that a national work group be convened to address this issue.

Response: The commenter's concern is noted. While the documentation relating to Security Rule implementation must be retained for a period of 6 years (see § 164.316(b)(2)), it is not within the scope of this final rule to address data retention time frames for administrative or clinical records.

r. *Comment:* One commenter stated that requiring provider practices to develop policies, procedures, and training programs and to implement record keeping and documentation systems would be tremendously resource-intensive and increase the costs of health care.

Response: We expect that many of the standards of this final rule are already being met in one form or another by covered entities. For example, as part of normal business operations, health care providers already take measures to protect the health information in their keeping. Health care providers already keep records, train their employees, and require employees to follow office policies and procedures. Similarly, health plans are already frequently required by State law to keep information confidential. While revisions to a practice's or plan's current activities may be necessary, the development of entirely new systems or procedures may not be necessary.

s. *Comment:* One commenter stated that there is no system for which risk has been eliminated and expressed concern over phrases such as covered entities must "assure that electronic health information pertaining to an individual remains secure."

Response: We agree with the commenter that there is no such thing as a totally secure system that carries no risks to security. Furthermore, we believe the Congress' intent in the use of the word "ensure" in section 1173(d) of the Act was to set an exceptionally high goal for the security of electronic protected health information. However, we note that the Congress also recognized that some trade-offs would be necessary, and that "ensuring" protection did not mean providing protection, no matter how expensive. See section 1173(d)(1)(A)(ii) of the Act. Therefore, when we state that a covered entity must ensure the safety of the information in its keeping, we intend that a covered entity take steps, to the best of its ability, to protect that information. This will involve establishing a balance between the information's identifiable risks and vulnerabilities, and the cost of various protective measures, and will also be dependent upon the size, complexity, and capabilities of the covered entity, as provided in § 164.306(b).

E. Administrative Safeguards (§ 164.308)

We proposed that measures taken to comply with the rule be appropriate to protect the health information in a covered entity's care. Most importantly, we proposed to require that both the measures taken and documentation of those measures be kept current, that is, reviewed and updated periodically to continue appropriately to protect the health information in the care of covered entities. We would have required the documentation to be made available to those individuals responsible for implementing the procedure.

We proposed a number of administrative requirements and supporting implementation features, and required documentation for those administrative requirements and implementation features.

In this final rule, we have placed these administrative standards in § 164.308. We have reordered them, deleted much of the detail of the proposed requirements, as discussed below, and omitted two of the proposed sets of requirements (system configuration requirements and a requirement for a formal mechanism for processing records) as discussed in paragraph 10 of the discussion of § 164.308 of section III.E. of this preamble. Otherwise, the basic elements of the administrative safeguards are adopted in this final rule as proposed.

1. Security Management Process (§ 164.308(a)(1)(i))

We proposed the establishment of a formal security management process to involve the creation, administration, and oversight of policies to address the full range of security issues and to ensure the prevention, detection, containment, and correction of security violations. This process would include implementation features consisting of a risk analysis, risk management, and sanction and security policies.

We also proposed, in a separate requirement under administrative procedures, an internal audit, which would be an in-house review of the records of system activity (for example, logins, file accesses, and security incidents) maintained by an entity.

In this final rule, risk analysis, risk management, and sanction policy are adopted as required implementation specifications although some of the details are changed, and the proposed internal audit requirement has been renamed as "information system activity review" and incorporated here as an additional implementation specification.

a. *Comment:* Three commenters asked that this requirement be deleted. Two commenters cited this requirement as a possible burden. Several commenters asked that the implementation features be made optional.

Response: This standard and its component implementation specifications form the foundation upon which an entity's necessary security activities are built. See NIST SP 800–30, "Risk Management Guide for Information Technology Systems," chapters 3 and 4, January 2002. An entity must identify the risks to and vulnerabilities of the information in its care before it can take effective steps to eliminate or minimize those risks and vulnerabilities. Some form of sanction or punishment activity must be instituted for noncompliance. Indeed, we question how the statutory requirement for safeguards "to ensure compliance * * * by a [covered entity's] officers and employees" could be met without a requirement for a sanction policy. See section 1176(d)(2)(C) of the Act. Accordingly, implementation of these specifications remains mandatory. However, it is important to note that covered entities have the flexibility to implement the standard in a manner consistent with numerous factors, including such things as, but not limited to, their size, degree of risk, and environment. We have deleted the implementation specification calling for an organizational security policy, as it duplicated requirements of the security management and training standard.

We note that the implementation specification for a risk analysis at § 164.308(a)(1)(ii)(A) does not specifically require that a covered entity perform a risk analysis often enough to ensure that its security measures are adequate to provide the level of security required by § 164.306(a). In the proposed rule, an assurance of adequate security was framed as a requirement to keep security measures "current." We continue to believe that security measures must remain current, and have added regulatory language in § 164.306(e) as a more precise way of communicating that security measures in general that must be periodically reassessed and updated as needed.

The risk analysis implementation specification contains other terms that merit explanation. Under § 164.308(a)(1)(ii)(A), the risk analysis must look at risks to the covered entity's electronic protected health information. A thorough and accurate risk analysis would consider "all relevant losses" that would be expected if the security measures were not in place. "Relevant losses" would include losses caused by unauthorized uses and disclosures and loss of data integrity that would be expected to occur absent the security measures.

b. *Comment:* Relative to the development of an entity's sanction policy, one commenter asked that we describe the sanction penalties for breach of security. Another suggested establishment of a standard to which one's conduct could be held and adoption of mitigating circumstances so that the fact that a person acted in good faith would be a factor that could be used to reduce or otherwise minimize any sanction imposed. Another commenter suggested sanction activities not be implemented before the full implementation and testing of all electronic transaction standards.

Response: The sanction policy is a required implementation specification because—(1) the statute requires covered entities to have safeguards to ensure compliance by officers and employees; (2) a negative consequence to noncompliance enhances the likelihood of compliance; and (3) sanction policies are recognized as a usual and necessary component of an adequate security program. The type and severity of sanctions imposed, and for what causes, must be determined by each covered entity based upon its security policy and the relative severity of the violation.

c. *Comment:* Commenters requested the definitions of "risk analysis" and "breach."

Response: "Risk analysis" is defined and described in the specification of the security management process standard, and is discussed in the preamble discussion of § 164.308(a)(1)(ii)(A) of this final rule. The term breach is no longer used and is, therefore, not defined.

d. *Comment:* One commenter asked whether all health information is considered equally "sensitive," the thought being that, in determining risk, an entity may consider the loss of a smaller amount of extraordinarily sensitive data to be more significant than the loss of a larger amount of routinely collected data. The commenter stated that common reasoning would suggest that the smaller amount of data would be considered more sensitive.

Response: All electronic protected health information must be protected at least to the degree provided by these standards. If an entity desires to protect the information to a greater degree than the risk analysis would indicate, it is free to do so.

e. *Comment:* One commenter asked that we add "threat assessment" to this requirement.

Response: We have not done this because we view threat assessment as an inherent part of a risk analysis; adding it would be redundant.

f. *Comment:* We proposed a requirement for internal audit, the in-house review of the records of system activity (for example, logins, file accesses, and security incidents) maintained by an entity. Several commenters wanted this requirement deleted. One suggested the audit trail requirement should not be mandatory, while another stated that internal audits would be unnecessary if physical security requirements are implemented.

A number of commenters asked that we clarify the nature and scope of what an internal audit covers and what the audit time frame should be. Several commenters offered further detail concerning what should and should not be required in an internal audit for security purposes. One commenter stated that ongoing intrusion detection should be included in this requirement. Another wanted us to specify the retention times for archived audit logs.

Several commenters had difficulty with the term "audit" and suggested we change the title of the requirement to "logging and violation monitoring."

A number of commenters stated this requirement could result in an undue burden and would be economically unfeasible.

Response: Our intent for this requirement was to promote the periodic review of an entity's internal security controls, for example, logs, access reports, and incident tracking. The extent, frequency, and nature of the reviews would be determined by the covered entity's security environment. The term "internal audit" apparently, based on the comments received, has certain rigid formal connotations we did not intend. We agree that the implementation of formal internal audits could prove burdensome or even unfeasible, to some covered entities due to the cost and effort involved. However, we do not want to overlook the value of internal reviews. Based on our review of the comments and the text to which they refer, it is clear that this requirement should be renamed for clarity and that it should actually be an implementation specification of the security management process rather than an independent standard. We accordingly remove "internal audit" as a separate requirement and add "information system activity review" under the security management process standard as a mandatory implementation specification.

2. Assigned Security Responsibility (§ 164.308(a)(2))

We proposed that the responsibility for security be assigned to a specific individual or organization to provide an organizational focus and importance to security, and that the assignment be documented. Responsibilities would include the management and supervision of (1) the use of security measures to protect data, and (2) the conduct of personnel in relation to the protection of data.

In this final rule, we clarify that the final responsibility for a covered entity's security must be assigned to one official. The requirement for documentation is retained, but is made part of § 164.316 below. This policy is consistent with the analogous policy in the Privacy Rule, at 45 CFR 164.530(a), and the same considerations apply. See 65 FR 82744 through 87445. The same person could fill the role for both security and privacy.

a. *Comment:* Commenters were concerned that delegation of assigned security responsibility, especially in large organizations, needs to be to more than a single individual. Commenters believe that a large health organization's security concerns would likely cross many departmental boundaries requiring group responsibility.

Response: The assigned security responsibility standard adopted in this final rule specifies that final security responsibility must rest with one individual to ensure accountability within each covered entity. More than one individual may be given specific security responsibilities, especially within a large organization, but a single individual must be designated as having the overall final responsibility for the security of the entity's electronic protected health information. This decision also aligns this rule with the final Privacy Rule provisions concerning the Privacy Official.

b. *Comment:* One commenter disagreed with placing assigned security responsibility as part of physical safeguards. The commenter suggested that assigned security responsibility should be included under the Administrative Procedures.

Response: Upon review of the matrix and regulations text, we agree with the commenter, because this requirement involves an administrative decision at the highest levels of who should be responsible for ensuring security measures are implemented and maintained. Assigned security responsibility has been removed from "Physical safeguards" and is now located under "Administrative safeguards" at § 164.308.

3. Workforce Security (§ 164.308(a)(3)(i))

We proposed implementation of a number of features for personnel security, including ensuring that maintenance personnel are supervised by a knowledgeable person, maintaining a record of access authorizations, ensuring that operating and maintenance personnel have proper access authorization, establishing personnel clearance procedures, establishing and maintaining personnel security policies and procedures, and ensuring that system users have proper training.

In this final rule, to provide clarification and reduce duplication, we have combined the "Assure supervision of maintenance personnel by authorized, knowledgeable person" implementation feature and the "Operating, and in some cases, maintenance personnel have proper access authorization" feature into one addressable implementation specification titled "Authorization and/or supervision."

In a related, but separate, requirement entitled "Termination procedures," we proposed implementation features for the ending of an employee's employment or an internal or external user's access. These features would include things such as changing combination locks, removal from access lists, removal of user account(s), and the turning in of keys, tokens, or cards that allow access.

In this final rule, "Termination procedures" has been made an addressable implementation specification under "Workforce security." This is addressable because in certain circumstances, for example, a solo physician practice whose staff consists only of the physician's spouse, formal procedures may not be necessary.

The proposed "Personnel security policy/procedure" and "record of access authorizations" implementation features have been removed from this final rule, as they have been determined to be redundant. Implementation of the balance of the "Workforce security" implementation specifications and the other standards contained within this final rule will result in assurance that all personnel with access to electronic protected health information have the required access authority as well as appropriate clearances.

a. *Comment:* The majority of comments concerned the supervision of maintenance personnel by an authorized knowledgeable person. Commenters stated this would not be feasible in smaller settings. For example, the availability of technically knowledgeable persons to ensure this supervision would be an issue. We were asked to either reword this implementation feature or delete it.

Response: We agree that a "knowledgeable" person may not be available to supervise maintenance personnel. We have accordingly modified this implementation specification so that, in this final rule, we are adopting an addressable implementation specification titled, "Authorization and/or supervision," requiring that workforce members, for example, operations and maintenance personnel, must either be supervised or have authorization when working with electronic protected health information or in locations where it resides (see § 164.308(a)(3)(ii)(A)). Entities can decide on the feasibility of meeting this specification based on their risk analysis.

b. *Comment:* The second largest group of comments requested assurance that, with regard to the proposed "Personnel clearance procedure" implementation feature, having appropriate clearances does not mean performing background checks on everyone. We were asked to delete references to "clearance" and use the term "authorization" in its place.

Response: We agree with the commenters concerning background checks. This feature was not intended to be interpreted as an absolute requirement for background checks. We retain the use of the term "clearance," however, because we believe that it more accurately conveys the screening process intended than does the term "authorization." We have attempted to clarify our intent in the language of § 164.308(a)(3)(ii)(B), which now reads, "Implement procedures to determine that the access of a workforce member to electronic protected health information is appropriate." The need for and extent of a screening process is normally based on an assessment of risk, cost, benefit, and feasibility as well as other protective measures in place. Effective personnel screening processes may be applied in a way to allow a range of implementation, from minimal procedures to more stringent procedures based on the risk analysis performed by the covered entity. So long as the standard is met and the underlying standard of § 164.306(a) is met, covered entities have choices in how they meet these standards. To clarify the intent of this provision, we retitle the implementation specification "Workforce clearance procedure."

c. *Comment:* One commenter asked that we expand the implementation features to include the identification of the restrictions that should be placed on members of the workforce and others.

Response: We have not adopted this comment in the interest of maintaining flexibility as discussed in § 164.306. Restrictions would be dependent upon job responsibilities, the amount and type of supervision required and other factors. We note that a covered entity should consider in this regard the applicable requirements of the Privacy Rule (*see*, for example, § 164.514(d)(2) (relating to minimum necessary requirements), and § 164.530(c) (relating to safeguards).

Comment: One commenter believes that the proposed "Personnel security" requirement was reasonable, since an administrative determination of trustworthiness is needed before allowing access to sensitive information. Two commenters asked that we delete the requirement entirely. A number of commenters requested that we delete the implementation features. Another commenter stated that all the implementation features may not be applicable or even appropriate to a given entity and should be so qualified.

Response: While we do not believe this requirement should be eliminated, we agree that all the implementation specifications may not be applicable or even appropriate to a given entity. For example, a personal clearance may not be reasonable or appropriate for a small provider whose only assistant is his or her spouse. The implementation specifications are not mandatory, but must be addressed. This final rule has been changed to reflect this approach (see § 164.308(a)(3)(ii)(B)).

e. *Comment:* The majority of commenters on the "Termination procedures" requirement asked that it be made optional, stating that it may not be applicable or even appropriate in all circumstances and should be so qualified or posed as guidelines. A number of commenters stated that the requirement should be deleted. One commenter stated that much of the material covered under the "Termination procedures" requirement is already covered in "Information access control." A number of commenters stated that this requirement was too detailed and some of the requirements excessive.

Response: Based upon the comments received, we agree that termination procedures should not be a separate standard; however, consideration of termination procedures remains relevant for any covered entity with employees, because of the risks associated with the potential for unauthorized acts by former employees, such as acts of retribution or use of proprietary information for personal gain. We further agree with the reasoning of the commenters who asked that these procedures be made optional; therefore, "Termination procedures" is now reflected in this final rule as an addressable implementation specification. We also removed reference to all specific termination activities, for example, changing locks, because, although the activities may be considered appropriate for some covered entities, they may not be reasonable for others.

f. *Comment:* One commenter asked whether human resource employee termination policies and procedures must be documented to show the types of security breaches that would result in termination.

Response: Policies and procedures implemented to adhere to this standard must be documented (see § 164.316 below). The purpose of termination procedure documentation under this implementation specification is not to detail when or under which circumstances an employee should be terminated. This information would more appropriately be part of the entity's sanction policy. The purpose of termination procedure documentation is to ensure that termination procedures include security-unique actions to be followed, for example, revoking passwords and retrieving keys when a termination occurs.

4. Information Access Management (§ 164.308(a)(4))

We proposed an "information access control" requirement for establishment and maintenance of formal, documented policies and procedures defining levels of access for all personnel authorized to access health information, and how access is granted and modified. In § 164.308(a)(4)(ii)(B) and (C) below, the proposed implementation features are made addressable specifications. We have added in § 164.308(a)(4)(ii)(A), a required implementation specification to isolate health care clearinghouse functions to address the provisions of section 1173(d)(1)(B) of the Act which related to this area.

a. *Comment:* One commenter asked that the requirement be deleted, expressing the opinion that this requirement goes beyond "reasonable boundaries" into regulating common business practices. In contrast, another asked that we expand this requirement to identify participating parties and access privileges relative to specific data elements.

Response: We disagree that this requirement improperly imposes upon business functions. Restricting access to those persons and entities with a need for access is a basic tenet of security. By this mechanism, the risk of inappropriate disclosure, alteration, or destruction of information is minimized. We cannot, however, specifically identify participating parties and access privileges relative to data elements within this regulation. These will vary depending upon the entity, the needs within the user community, the system in which the data resides, and the specific data being accessed. This standard is consistent with § 164.514(d) in the Privacy Rule (minimum necessary requirements for use and disclosure of protected health information), and is, therefore, being retained.

b. *Comment:* Several commenters asked that we not mandate the implementation features, but leave them as optional, a suggested means of compliance. The commenters noted that this might make the rules more scalable and flexible, since this approach would allow providers to implement safeguards that best addressed their needs. Along this line, one commenter expressed the belief that each organization should implement features deemed necessary based on its own risk assessment.

Response: While the information access management standard in this final rule must be met, we agree that the implementation specifications at § 164.308(a)(4)(ii)(B) and (C) should not be mandated but posed as a suggested means of compliance, which must be addressed. These specifications may not be applicable to all entities based on their size and degree of automation. A fully automated covered entity spanning multiple locations and involving hundreds of employees may determine it has a need to adopt a formal policy for access authorization, while a small provider may decide that a desktop standard operating procedure will meet the specifications. The final rule has been revised accordingly.

c. *Comment:* Clarification was requested concerning the meaning of "formal."

Response: The word "formal" has caused considerable concern among commenters, as it was thought "formal" carried the connotation of a rigidly defined structure similar to what might be found in the Department of Defense instructions. As used in the proposed rule, this word was not intended to convey such a strict structure. Rather, it was meant to convey that documentation should be an official organizational statement as opposed to word-of-mouth or cryptic notes scratched on a notepad. While documentation is still required (see § 164.316), to alleviate confusion, the word "formal" has been deleted.

d. *Comment:* One commenter asked that we clarify that this requirement relates to both the establishment of policies for the access control function and to access control (the implementation of those policies).

Response: "Information access management" does address both the establishment of access control policies and their implementation. We use the term "implement" to clarify that the procedures must be in use, and we believe that the requirement to implement policies and procedures requires, as an antecedent condition, the establishment or adaptation of those policies and procedures.

5. Security Awareness and Training (§ 164.308(a)(5)(i))

We proposed, under the requirement "Training," that security training be required for all staff, including management. Training would include awareness training for all personnel, periodic security reminders, user education concerning virus protection, user education in the importance of monitoring login success/failure, and how to report discrepancies, and user education in password management.

In this final rule, we adopt this proposed requirement in modified form. For the standard "Security awareness and training;" in § 164.308(a)(5), we require training of the workforce as reasonable and appropriate to carry out their functions in the facility. All proposed training features have been combined as implementation specifications under this standard. Specific implementation specifications relative to content are addressable. The "Virus protection" implementation feature has been renamed "protection from malicious software," because we did not intend by the nomenclature to exclude coverage of malicious acts that might not come within the prior term, such as worms.

a. *Comment:* One commenter believes that security awareness training for all

system users would be too difficult to do in a large organization.

Response: We disagree with the commenter. Security awareness training is a critical activity, regardless of an organization's size. This feature would typically become part of an entity's overall training program (which would include privacy and other information technology items as well). For example, the Government Information Systems Reform ACT (GISRA) of 2000 requires security awareness training as part of Federal agencies' information security programs, including Federal covered entities, such as the Medicare program. In addition, National Institute of Standards and Technology (NIST) SP 800–16, *Information Technology Security Training Requirements, A role and performance base model, April 1998*, provides an excellent source of information and guidance on this subject and is targeted at industry as well as government activities. We also note that covered entities must have discretion in how they implement the requirement, so they can incorporate this training in other existing activities. One approach would be to require this training as part of employee orientation.

b. *Comment:* A number of commenters asked that this requirement be made optional or used as a guideline only. Several commenters stated that this requirement is too specific and is burdensome. Several asked that the implementation features be removed.

Several others stated that this requirement is not appropriate for agents or contractors. One commenter asked how to apply this requirement to outsiders having access to data. Another asked if this requirement included all subcontractor staff. Others stated that contracts, signed by entities such as consultants, that address training should be sufficient.

Response: Security training remains a requirement because of its criticality; however, we have revised the implementation specifications to indicate that the amount and type of training needed will be dependent upon an entity's configuration and security risks. Business associates must be made aware of security policies and procedures, whether through contract language or other means. Covered entities are not required to provide training to business associates or anyone else that is not a member of their workforce.

c. *Comment:* Several commenters questioned why security awareness training appeared in two places, under "Physical safeguards" as well as "Administrative safeguards." Others questioned the appropriateness of security awareness training under "Physical safeguards."

Response: We reviewed the definitions of the proposed "Awareness training for all personnel" ("Administrative safeguards") implementation feature and the proposed "Security awareness training" ("Physical safeguards") requirement. We agree that, to avoid confusion and eliminate redundancy, security awareness and training should appear in only one place. We believe the appropriate location for it is under "Administrative safeguards," as such training is essentially an administrative function.

d. *Comment:* Several commenters objected to the blanket requirement for security awareness training of individuals who may be on site for a limited time period (for example, a single day).

Response: Each individual who has access to electronic protected health information must be aware of the appropriate security measures to reduce the risk of improper access, uses, and disclosures. This requirement does not mean lengthy training is appropriate in every instance; there are alternative methods to inform individuals of security responsibilities (for example, provisions of pamphlets or copies of security policies, and procedures).

e. *Comment:* One commenter asked that "training" be changed to "orientation."

Response: We believe the term "training," as presented within this rule is the more appropriate term. The rule does not contemplate a one-time type of activity as connoted by "orientation," but rather an on-going, evolving process as an entity's security needs and procedures change.

f. *Comment:* Several commenters asked how often training should be conducted and asked for a definition of "periodic," as it appears in the proposed implementation feature "Periodic security reminders." One asked if the training should be tailored to job need.

Response: Amount and timing of training should be determined by each covered entity; training should be an on-going, evolving process in response to environmental and operational changes affecting the security of electronic protected health information. While initial training must be carried out by the compliance date, we provide flexibility for covered entities to construct training programs. Training can be tailored to job need if the covered entity so desires.

6. Security Incident Procedures (§ 164.308(a)(6))

We proposed a requirement for implementation of accurate and current security incident procedures: formal, documented report and response procedures so that security violations would be reported and handled promptly. We adopt this standard in the final rule, along with an implementation specification for response and reporting, since documenting and reporting incidents, as well as responding to incidents are an integral part of a security program.

a. *Comment:* Several commenters asked that we further define the scope of a breach of security. Along this same line, another commenter stated that the proposed security incident procedures were too vague as stated. We were asked to specify what a security incident would be, what the internal chain for reporting procedures would be, and what should be included in the documentation (for example, hardware/software, personnel responses).

Response: We define a security incident in § 164.304. Whether a specific action would be considered a security incident, the specific process of documenting incidents, what information should be contained in the documentation, and what the appropriate response should be will be dependent upon an entity's environment and the information involved. An entity should be able to rely upon the information gathered in complying with the other security standards, for example, its risk assessment and risk management procedures and the privacy standards, to determine what constitutes a security incident in the context of its business operations.

b. *Comment:* One commenter asked what types of incidents must be reported to outside entities. Another commented that we clarify that incident reporting is internal.

Response: Internal reporting is an inherent part of security incident procedures. This regulation does not specifically require any incident reporting to outside entities. External incident reporting is dependent upon business and legal considerations.

c. *Comment:* One commenter stated that network activity should be included here.

Response: We see no reason to exclude network activity under this requirement. Improper network activity should be treated as a security incident, because, by definition, it represents an improper instance of access to or use of information.

d. *Comment:* One commenter stated that this requirement should address suspected misuse also.

Response: We agree that security incidents include misuse of data; therefore, this requirement is addressed.

e. *Comment:* Several commenters asked that this requirement be deleted. One commenter asked that we delete the implementation features.

Response: As indicated above, we have adopted the proposed standard and combined the implementation specifications.

7. Contingency Plan (§ 164.308(a)(7)(i))

We proposed that a contingency plan must be in effect for responding to system emergencies. The plan would include an applications and data criticality analysis, a data backup plan, a disaster recovery plan, an emergency mode operation plan, and testing and revision procedures.

In this final rule, we make the implementation specifications for testing and revision procedures and an applications and data criticality analysis addressable, but otherwise require that the contingency features proposed be met.

a. *Comment:* Several commenters suggested the contingency plan requirement be deleted. Several thought that this aspect of the proposed regulation went beyond its intended scope. Another believed that more discussion and development is needed before developing regulatory guidance on contingency plans. Others wanted this to be an optional requirement. In contrast, one commenter requested more guidance concerning contingency planning. Still others wanted to require that a contingency plan be in place but stated that we should not regulate its contents. One comment stated that data backup, disaster recovery, and emergency mode operation should not be part of this requirement.

Response: A contingency plan is the only way to protect the availability, integrity, and security of data during unexpected negative events. Data are often most exposed in these events, since the usual security measures may be disabled, ignored, or not observed.

Each entity needs to determine its own risk in the event of an emergency that would result in a loss of operations. A contingency plan may involve highly complex processes in one processing site, or simple manual processes in another. The contents of any given contingency plan will depend upon the nature and configuration of the entity devising it.

While the contingency plan standard must be met, we agree that the proposed testing and revision implementation feature should be an addressable implementation specification in this final rule. Dependent upon the size, configuration, and environment of a given covered entity, the entity should decide if testing and revision of all parts of a contingency plan should be done or if there are more reasonable alternatives. The same is true for the proposed applications and data criticality analysis implementation feature. We have revised the final rule to reflect this approach.

b. *Comment:* One commenter believed that adhering to this requirement could prove burdensome. Another stated that testing of certain parts of a contingency plan would be burdensome, and even infeasible, for smaller entities.

Response: Without contingency planning, a covered entity has no assurance that its critical data could survive an emergency situation. Recent events, such as September 11, 2001, illustrate the importance of such planning. Contingency planning will be scalable based upon, among other factors, office configuration, and risk assessment. However, in response to the scalability issue raised by the commenter, we have made the testing and revision implementation specification addressable (see § 164.308(a)(7)(ii)).

c. *Comment:* Two commenters considered a 2-year implementation time frame for this requirement inadequate for large health plans. Another commenter stated that implementation of measures against natural disaster would be too big an issue for this regulation.

Response: The statute sets forth the compliance dates for the initial standards. The statute requires that compliance with initial standards is not later than 2 years after adoption of the standards for all covered entities except small health plans for which the compliance date is not later than 3 years after adoption.

The final rule calls for covered entities to consider how natural disasters could damage systems that contain electronic protected health information and develop policies and procedures for responding to such situations. We consider this to be a reasonable precautionary step to take since in many cases the risk would be deemed to be low.

d. *Comment:* A commenter requested clarification of the term "Emergency mode" with regard to the proposed "Emergency mode operation plan" implementation feature.

Response: We have clarified the "Emergency mode operations plan" to show that it only involves those critical business processes that must occur to protect the security of electronic protected health information during and immediately after a crisis situation.

8. Evaluation (§ 164.308(a)(8))

We proposed that certification would be required and could be performed internally or by an external accrediting agency. We solicited input on appropriate mechanisms to permit an independent assessment of compliance. We were particularly interested in input from those engaging in health care electronic data interchange (EDI), as well as independent certification and auditing organizations addressing issues of documentary evidence of steps taken for compliance; need for, or desirability of, independent verification, validation, and testing of system changes; and certifications required for off-the-shelf products used to meet the requirements of this regulation. We also solicited comments on the extent to which obtaining external certification would create an undue burden on small or rural providers.

In this final rule, we require covered entities to periodically conduct an evaluation of their security safeguards to demonstrate and document their compliance with the entity's security policy and the requirements of this subpart. Covered entities must assess the need for a new evaluation based on changes to their security environment since their last evaluation, for example, new technology adopted or responses to newly recognized risks to the security of their information.

a. *Comment:* We received several comments that certification should be performed externally. A larger group of commenters preferred self-certification. The majority of the comments, however, were to the effect that external certification should be encouraged but not mandated.

A number of commenters thought that mandating external certification would create an undue financial burden, regardless of the size of the entity being certified. One commenter stated that external certification would not place an undue burden on a small or rural provider.

Response: Evaluation by an external entity is a business decision to be left to each covered entity. Evaluation is required under § 164.308(a)(8), but a covered entity may comply with this standard either by using its own workforce or an external accreditation agency, which would be acting as a business associate. External evaluation may be too costly an option for small entities.

b. *Comment:* Several commenters stated that the certification should cover all components of the proposed rule, not just the information systems.

Response: We agree. We have revised this section to reflect that evaluation would be both technical and nontechnical components of security.

c. *Comment:* A number of commenters expressed a desire for the creation of certification guides or models to complement the rule.

Response: We agree that creation of compliance guidelines or models for different business environments would help in the implementation and evaluation of HIPAA security requirements and we encourage professional associations and others to do so. We may develop technical assistance materials, but do not intend to create certification criteria because we do not have the resources to address the large number of different business environments.

d. *Comment:* Some commenters asked how certification is possible without specifying the level of risk that is permissible.

Response: The level of risk that is permissible is specified by § 164.306(a). How such risk is managed will be determined by a covered entity through its security risk analysis and the risk mitigation activities it implements in order to ensure that the level of security required by § 164.306 is provided.

e. *Comment:* Several commenters requested creation of a list of Federally "certified" security software and off-the-shelf products. Several others stated that this request was not feasible. Regarding certification of off-the-shelf products, one commenter thought this should be encouraged, but not mandated; several thought this would be an impractical endeavor.

Response: While we will not assume the task of certifying software and off-the-shelf products for the reason described above, we have noted with interest that other Government agencies such as the National Institute of Standards and Technology (NIST) are working towards that end. The health care industry is encouraged to monitor the activity of NIST and provide comments and suggestions when requested (see *http://www.niap.nist.gov.*).

f. *Comment:* One commenter stated, "With HCFA's publishing of these HIPAA standards, and their desire to retain the final responsibility for determining violations and imposing penalties of the statute, it also seems appropriate for HCFA to also provide certifying services to ensure security compliance."

Response: In view of the enormous number and variety of covered entities, we believe that evaluation can best be handled through the marketplace, which can develop more usable and targeted evaluation instruments and processes.

8. Business Associate Contracts or Other Arrangements (§ 164.308(b)(1))

In the proposed rule § 142.308(a)(2) "Chain of trust" requirement, we proposed that covered entities be required to enter into a chain of trust partner agreement with their business partners, in which the partners would agree to electronically exchange data and protect the integrity, confidentiality, and availability of the data exchanged. This standard has been modified from the proposed requirement to reflect, in § 164.308(b)(1) "Business associate contracts and other arrangements," the business associate structure put in place by the Privacy Rule.

In this final rule, covered entities must enter into a contract or other arrangement with persons that meet the definition of business associate in § 160.103. The covered entity must obtain satisfactory assurances from the business associate that it will appropriately safeguard the information in accordance with these standards (see § 164.314(a)(1)).

The comments received on the proposed chain of trust partner agreements are discussed in section 2 "Business associate contracts and other arrangements" of the discussion of § 164.314 below.

9. Proposed Requirements Not Adopted in This Final Rule

a. Security Configuration Management

We proposed that an organization would be required to implement measures, practices, and procedures regarding security configuration management. They would be coordinated and integrated with other system configuration management practices for the security of information systems. These would include documentation, hardware and/or software installation and maintenance review and testing for security features, inventory procedures, security testing, and virus checking.

Comment: Several commenters asked that the entire requirement be deleted. Several others asked that the inventory and virus checking implementation features be removed as they believe those features are not germane to security configuration management. A number of commenters requested that security testing be deleted because this implementation feature is too detailed, unreasonable, impractical, and beyond the scope of the legislation. Others stated that the testing would be very complex and expensive. Others wanted more clarification of what we intend by security testing, and how much would be enough. A number of commenters asked that all of the implementation features be deleted. Others asked that the implementation features be made optional. Several commenters wanted to know the scope of organizational integration required. Several others asked if what we meant by Security Configuration Management was change or version control.

Response: Upon review, this requirement appears unnecessary because it is redundant of other requirements we are adopting in this rule. A covered entity will have addressed the activities described by the features under this proposed requirement by virtue of having implemented the risk analysis, risk management measures, sanction policies, and information systems criticality review called for under the security management process. The proposed documentation implementation feature has been made a separate standard (see § 164.316). As a result, the Security Configuration Management requirement is not adopted in this final rule.

b. Formal Mechanism for Processing Records

The proposed rule proposed requiring a formal mechanism for processing records, and documented policies and procedures for the routine and nonroutine receipt, manipulation, storage, dissemination, transmission, and/or disposal of health information. This requirement has not been adopted in the final rule.

Comment: Several commenters thought this requirement concerned the regulation of formal procedures for how an entity does business and stated that such procedures should not be regulated. Others asked for additional clarification of what is meant by this requirement. One commenter thought the requirement too ambiguous and asked for clarification as to whether we meant such things as "the proper handling of storage media, databases, transmissions," or "the clinical realm of processes."

Two commenters asked how extensive this requirement would be and whether systems' user manuals and policies and procedures for handling health information would suffice and what level of detail would be expected. Several thought this requirement could result in a significant resource and monetary burden to develop and maintain formal procedures. Two asked for an explanation of the benefit to be derived from this requirement.

One asked that covered entities be required to document processes that create a security risk only and suggested that a risk assessment would determine the need for this documentation.

Response: We agree with the commenters that the standard is ambiguous, and upon review, is unnecessary because the remaining standards, for example, device and media controls, provide adequate safeguards. Accordingly, this requirement is not adopted in this final rule.

F. Physical Safeguards (§ 164.310)

We proposed requirements and implementation features for documented physical safeguards to guard data integrity, confidentiality, and availability. We proposed to require safeguards in the following areas: Assigned security responsibility; media controls; physical access controls; policies and guidelines on workstation use; a secure workstation location; and security awareness training. A number of specific implementation features were proposed under the media controls and physical access controls requirements.

In § 164.310 of this final rule, most of the proposed implementation features are adopted as addressable implementation specifications. The proposed requirements for the assigned security responsibility and security awareness training requirements are relocated in § 164.308.

1. General Comments

a. *Comment:* Several commenters made suggestions to modify the language to more clearly describe "Physical safeguards."

Response: In response to comments, we have revised the definition of "Physical safeguards" to read as follows: "Physical safeguards are security measures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion."

b. *Comment:* One commenter was concerned that electronic security systems could not be used in lieu of physical security systems.

Response: This final rule does not preclude the use of electronic security systems in lieu of, or in combination with, physical security systems to meet a "Physical safeguard" standard.

2. Facility Access Controls (§ 164.310(a)(1))

We proposed, under the "Physical access controls" requirement, formal, documented policies and procedures for limiting physical access to an entity while ensuring that properly authorized access is allowed. These controls would include the following implementation features: disaster recovery, emergency mode operation, equipment control (into and out of site), a facility security plan, procedures for verifying access authorizations before physical access, maintenance records, need-to-know procedures for personnel access, sign-in for visitors and escort, if appropriate, and testing and revision.

In § 164.310(a)(2) below, we combine and restate these as addressable implementation specifications. These are contingency operations, facility security plan, access control and validation procedures, and maintenance records.

a. *Comment:* Many commenters were concerned because the proposed language would require implementation of all physical access control features. Other commenters were concerned that the language did not allow entities to use the results of their risk assessment and risk management process to arrive at the appropriate solutions for them.

Response: We agree that implementation of all implementation specifications may not be appropriate in all situations. While the facility access controls standard must be met, we agree that the implementation specifications should not be required in all circumstances, but should be addressable. In this final rule, all four implementation specifications are addressable.

We have also determined, based on "level of detail" comments requesting consolidation of the list of implementation features, that the proposed implementation feature "Equipment control (into and out of site)" was redundant. "Equipment control" is already covered under the "Device and media controls" standard at § 164.310(d)(1). Accordingly, we have eliminated it as a separate implementation specification.

b. *Comment:* One commenter raised the issue of a potential conflict of authority between those having access to the data and those responsible for checking and maintaining access controls.

Response: Any potential conflicts should be identified, addressed, and resolved in the policies and procedures developed according to the standards under § 164.308.

c. *Comment:* Several commenters questioned whether "Physical Access Controls" was a descriptive phrase to describe a technology to be used, or whether the phrase referred to a facility.

Response: We agree that the term "Physical" may be misleading; to remove any confusion, the requirement is reflected in this final rule as a standard titled "Facility access controls." We believe this is a more precise term to describe that the standard, and its associated implementation specifications, is applicable to an entity's business location or locations.

d. *Comment:* Several commenters requested that the disaster recovery and emergency mode operations features be moved to "Administrative safeguards." Other commenters recommended that disaster recovery and emergency mode operations should be replaced by, and included in, a "Contingency Operations" implementation feature.

Response: The "Administrative safeguards" section addresses the contingency planning that must be done to contend with emergency situations. The placement of the disaster recovery and emergency mode operations implementation specifications in the "Physical safeguards" section is also appropriate, however, because "Physical safeguards" defines the physical operations (processes) that provide access to the facility to implement the associated plans, developed under § 164.308. We agree, however, that the term "contingency operations" better describes, and would include, disaster recovery and emergency mode operations, and have modified the regulation text accordingly (see § 164.310(a)(1)).

e. *Comment:* Commenters were concerned about having to address in their facility security plan the exterior/interior security of a building when they are one of many occupants rather than the sole occupant. Additional commenters were concerned that the responsibility for physical security of the building could not be delegated to a third party when the covered entity shares the building with other offices.

Response: The facility security plan is an addressable implementation specification. However, the covered entity retains responsibility for considering facility security even where it shares space within a building with other organizations. Facility security measures taken by a third party must be considered and documented in the covered entity's facility security plan, when appropriate.

3. Workstation Use (§ 164.310(b))

We proposed policy and guidelines on workstation use that included documented instructions/procedures delineating the proper functions to be performed and the manner in which those functions are to be performed (for example, logging off before leaving a workstation unattended) to maximize the security of health information. In this final rule, we adopt this standard.

Comment: One commenter was concerned most people may be misled by the use of "terminal" as an example in the definition of workstation. The concern was that the standard only addresses "fixed location devices," while in many instances the workstation has become a laptop computer.

Response: For clarity, we have added the definition of "workstation" to § 164.304 and deleted the word "terminal" from the description of workstation use in § 164.310(b).

4. Workstation Security (§ 164.310(c))

We proposed that each organization would be required to put in place physical safeguards to restrict access to information. In this final rule, we retain the general requirement for a secure workstation.

Comment: Comments were directed toward the example profiled in the definition of a secure workstation location. It was believed that what constitutes a secure workstation location must be dependent upon the entity's risk management process.

Response: We agree that what constitutes an appropriate solution to a covered entity's workstation security issues is dependent on the entity's risk analysis and risk management process. Because many commenters incorrectly interpreted the examples as the required and only solution for securing the workstation location, we have modified the regulations text description to generalize the requirement (see § 164.310(c)). Also, for clarity, the title "Secure workstation location" has been changed to "Workstation security" (see also the definition of "Workstation" at § 164.304).

5. Device and Media Controls (§ 164.310(d)(1))

We proposed that covered entities have media controls in the form of formal, documented policies and procedures that govern the receipt and removal of hardware and/or software (for example, diskettes and tapes) into and out of a facility. Implementation features would have included "Access control," "Accountability" (tracking mechanism), "Data backup," "Data storage," and "Disposal."

In this final rule, we adopt most of these provisions as addressable implementation specifications and add a specification for media re-use. We change the name from "Media controls" to "Device and media controls" to more clearly reflect that this standard concerns hardware as well as electronic media. The proposed "Access control" implementation feature has been removed, as it is addressed as part of other standards (see section III.C.12.c of this preamble).

a. *Comment:* One commenter was concerned about the exclusion of removable media devices from examples of physical types of hardware and/or software.

Response: The media examples used were not intended to represent all possible physical types of hardware and/or software. Removable media devices, although not specifically listed, are not intended to be excluded.

b. *Comment:* Comments were made that the issue of equipment re-use or recycling of media containing mass storage was not addressed in "Media controls."

Response: We agree that equipment re-use or recycling should be addressed, since this equipment may contain electronic protected health information. The "Device and media controls" standard is accordingly expanded to include a required implementation specification that addresses the re-use of media (see § 164.310(d)(2)(ii)).

c. *Comment:* Several commenters asked for a definition of the term "facility," as used in the proposed "Media controls" requirement description. Commenters were unclear whether we were talking about a corporate entity or the physical plant.

Response: The term "facility" refers to the physical premises and the interior and exterior of a building(s). We have added this definition to § 164.304.

d. *Comment:* Several commenters believe the "Media controls" implementation features are too onerous and should be deleted.

Response: While the "Device and media controls" standard must be met, we believe, based upon further review, that implementation of all specifications would not be necessary in every situation, and might even be counter-productive in some situations. For example, small providers would be unlikely to be involved in large-scale moves of equipment that would require systematic tracking, unlike, for example, large health care providers or health plans. We have, therefore, reclassified the "Accountability and data backup" implementation specification as addressable to provide more flexibility in meeting the standard.

e. *Comment:* One commenter was concerned about the accountability impact of audit trails on system resources and the pace of system services.

Response: The proposed audit trail implementation feature appears as the addressable "Accountability" implementation specification. The name change better reflects the purpose and intended scope of the implementation specification. This implementation specification does not address audit trails within systems and/or software. Rather it requires a record of the actions of a person relative to the receipt and removal of hardware and/or software into and out of a facility that are traceable to that person. The impact of maintaining accountability on system resources and services will depend upon the complexity of the mechanism to establish accountability. For example, the appropriate mechanism for a given entity may be manual, such as receipt and removal restricted to specific persons, with logs kept. Maintaining accountability in such a fashion should have a minimal, if any, effect on system resources and services.

f. *Comment:* A commenter was concerned about the resource expenditure (system and fiscal) for total e-mail backup and wanted a clarification of the extensiveness of data backup.

Response: The data an entity needs to backup, and which operations should be used to carry out the backup, should be determined by the entity's risk analysis and risk management process. The data backup plan, which is part of the required contingency plan (see § 164.308(a)(7)(ii)(A)), should define exactly what information is needed to be retrievable to allow the entity to continue business "as usual" in the face of damage or destruction of data, hardware, or software. The extent to which e-mail backup would be needed would be determined through that analysis.

G. Technical Safeguards (§ 164.312)

We proposed five technical security services requirements with supporting implementation features: Access control; Audit controls; Authorization control; Data authentication; and Entity authentication. We also proposed specific technical security mechanisms for data transmitted over a communications network, Communications/network controls with supporting implementation features; Integrity controls; Message authentication; Access controls; Encryption; Alarm; Audit trails; Entity authentication; and Event reporting.

In this final rule, we consolidate these provisions into § 164.312. That section now includes standards regarding access controls, audit controls, integrity (previously titled data authentication), person or entity authentication, and transmission security. As discussed below, while certain implementation specifications are required, many of the proposed security implementation features are now addressable implementation specifications. The function of authorization control has been incorporated into the information access management standard under § 164.308, Administrative safeguards.

1. Access Control (§ 164.312(a)(1))

In the proposed rule, we proposed to require that the access controls requirement include features for emergency access procedures and provisions for context-based, role-based, and/or user-based access; we also proposed the optional use of encryption as a means of providing access control. In this final rule, we require unique user identification and provision for emergency access procedures, and retain encryption as an addressable implementation specification. We also make "Automatic logoff" an addressable implementation specification. "Automatic logoff" and "Unique user identification" were formerly implementation features under the proposed "Entity authentication" (see § 164.312(d)).

a. *Comment:* Some commenters believe that in specifying "Context," "Role," and "User" based controls, use of other controls would effectively be excluded, for example, "Partition rule-based access controls," and the development of new access control technology.

Response: We agree with the commenters that other types of access controls should be allowed. There was no intent to limit the implementation features to the named technologies and this final rule has been reworded to make it clear that use of any appropriate access control mechanism is allowed. Proposed implementation features titled "Context-based access," "Role-based access," and "User-based access" have been deleted and the access control standard at § 164.312(a)(1) states the general requirement.

b. *Comment:* A large number of comments were received objecting to the identification of "Automatic logoff" as a mandatory implementation feature. Generally the comments asked that we not be so specific and allow other forms of inactivity lockout, and that this type of feature be made optional, based more on the particular configuration in use and a risk assessment/analysis.

Response: We agree with the comments that mandating an automatic logoff is too specific. This final rule has been written to clarify that the proposed implementation feature of automatic logoff now appears as an addressable access control implementation specification and also permits the use of an equivalent measure.

c. *Comment:* We received comments asking that encryption be deleted as an implementation feature and stating that encryption is not required for "data at rest."

Response: The use of file encryption is an acceptable method of denying access to information in that file. Encryption provides confidentiality, which is a form of control. The use of encryption, for the purpose of access control of data at rest, should be based upon an entity's risk analysis. Therefore, encryption has been adopted as an addressable implementation specification in this final rule.

d. *Comment:* We received one comment stating that the proposed implementation feature "Procedure for emergency access," is not access control and recommending that emergency access be made a separate requirement.

Response: We believe that emergency access is a necessary part of access controls and, therefore, is properly a required implementation specification of the "Access controls" standard. Access controls will still be necessary under emergency conditions, although they may be very different from those used in normal operational circumstances. For example, in a situation when normal environmental systems, including electrical power, have been severely damaged or rendered inoperative due to a natural or man-made disaster, procedures should be established beforehand to provide guidance on possible ways to gain access to needed electronic protected health information.

2. Audit Controls (§ 164.312(b))

We proposed that audit control mechanisms be put in place to record and examine system activity. We adopt this requirement in this final rule.

a. *Comment:* We received a comment stating that "Audit controls" should be an implementation feature rather than the standard, and suggesting that we change the title of the standard to "Accountability," and provide additional detail to the audit control implementation feature.

Response: We do not adopt the term "Accountability" in this final rule because it is not descriptive of the requirement, which is to have the capability to record and examine system activity. We believe that it is appropriate to specify audit controls as a type of technical safeguard. Entities have flexibility to implement the standard in a manner appropriate to their needs as deemed necessary by their own risk analyses. For example, see NIST Special Publication 800–14, *Generally Accepted Principles and Practices for Securing Information Technology Systems* and NIST Special Publication 800–33, *Underlying Technical Models for Information Technology Security.*

b. *Comment:* One commenter recommended that this final rule state that audit control mechanisms should be implemented based on the findings of an entity's risk assessment and risk analysis. The commenter asserted that audit control mechanisms should be utilized only when appropriate and necessary and should not adversely affect system performance.

Response: We support the use of a risk assessment and risk analysis to determine how intensive any audit control function should be. We believe that the audit control requirement should remain mandatory, however, since it provides a means to assess activities regarding the electronic protected health information in an entity's care.

c. *Comment:* One commenter was concerned about the interplay of State and Federal requirements for auditing of privacy data and requested additional guidance on the interplay of privacy rights, laws, and the expectation for audits under the rule.

Response: In general, the security standards will supercede any contrary provision of State law. Security standards in this final rule establish a minimum level of security that covered entities must meet. We note that covered entities may be required by other Federal law to adhere to additional, or more stringent security measures. Section 1178(a)(2) of the statute provides several exceptions to this general rule. With regard to protected health information, the preemption of State laws and the relationship of the Privacy Rule to other Federal laws is discussed in the Privacy Rule beginning at 65 FR 82480; the preemption provisions of the rule are set out at 45 CFR part 160, subpart B.

It should be noted that although the Privacy Rule does not incorporate a requirement for an "audit trail" function, it does call for providing an accounting of certain disclosures of protected health information to an

individual upon request. There has been a tendency to assume that this Privacy Rule requirement would be satisfied via some sort of process involving audit trails. We caution against assuming that the Security Rule's requirement for an audit capability will satisfy the Privacy Rule's requirement regarding accounting for disclosures of protected health information. The two rules cover overlapping, but not identical information. Further, audit trails are typically used to record uses within an electronic information system, while the Privacy Rule requirement for accounting applies to certain disclosures outside of the covered entity (for example, to public health authorities).

3. Integrity (§ 164.312(c)(1))

We proposed under the "Data authentication" requirement, that each organization be required to corroborate that data in its possession have not been altered or destroyed in an unauthorized manner and provided examples of mechanisms that could be used to accomplish this task. We adopt the proposed requirement for data authentication in the final rule as an addressable implementation specification "Mechanism to authenticate data," under the "Integrity" standard.

a. *Comment:* We received a large number of comments requesting clarification of the "Data authentication" requirement. Many of these comments suggested that the requirement be called "Data integrity" instead of "Data authentication." Others asked for guidance regarding just what "data" must be authenticated. A significant number of commenters indicated that this requirement would put an extraordinary burden on large segments of the health care industry, particularly when legacy systems are in use. Requests were received to make this an "optional" requirement, based on an entity's risk assessment and analysis.

Response: We adopt the suggested "integrity" terminology because it more clearly describes the intent of the standard. We retain the meaning of the term "Data authentication" under the addressable implementation specification "Mechanism to authenticate data," and provide an example of a potential means to achieve data integrity.

Error-correcting memory and magnetic disc storage are examples of the built-in data authentication mechanisms that are ubiquitous in hardware and operating systems today. The risk analysis process will address what data must be authenticated and should provide answers appropriate to the different situations faced by the various health care entities implementing this regulation.

Further, we believe that this standard will not prove difficult to implement, since there are numerous techniques available, such as processes that employ digital signature or check sum technology to accomplish the task.

b. *Comment:* We received numerous comments suggesting that "Double keying" be deleted as a viable "Data authentication" mechanism, since this practice was generally associated with the use of punched cards.

Response: We agree that the process of "Double keying" is outdated. This final rule omits any reference to "Double keying."

4. Person or Entity Authentication (§ 164.312(d))

We proposed that an organization implement the requirement for "Entity authentication", the corroboration that an entity is who it claims to be. "Automatic logoff" and "Unique user identification" were specified as mandatory features, and were to be coupled with at least one of the following features: (1) A "biometric" identification system; (2) a "password" system; (3) a "personal identification number"; and (4) "telephone callback," or a "token",system that uses a physical device for user identification.

In this final rule, we provide a general requirement for person or entity authentication without the specifics of the proposed rule.

Comment: We received comments from a number of organizations requesting that the implementation features for entity authentication be either deleted in their entirety or at least be made optional. On the other hand, comments were received requesting that the use of digital signatures and soft tokens be added to the list of implementation features.

Response: We agree with the commenters that many different mechanisms may be used to authenticate entities, and this final rule now reflects this fact by not incorporating a list of implementation specifications, in order to allow covered entities to use whatever is reasonable and appropriate. "Digital signatures" and "soft tokens" may be used, as well as many other mechanisms, to implement this standard.

The proposed mandatory implementation feature, "Unique user identification," has been moved from this standard and is now a required implementation specification under "Access control" at § 164.312(a)(1). "Automatic logoff" has also been moved from this standard to the "Access control" standard and is now an addressable implementation specification.

5. Transmission Security (§ 164.312(e)(1))

Under "Technical Security Mechanisms to Guard Against Unauthorized Access to Data that is Transmitted Over a Communications Network," we proposed that "Communications/network controls" be required to protect the security of health information when being transmitted electronically from one point to another over open networks, along with a combination of mandatory and optional implementation features. We proposed that some form of encryption must be employed on "open" networks such as the Internet or dial-up lines.

In this final rule, we adopt integrity controls and encryption, as addressable implementation specifications.

a. *Comment:* We received a number of comments asking for overall clarification as well as a definition of terms used in this section. A definition for the term "open networks" was the most requested action, but there was a general expression of dislike for the manner in which we approached this section, with some comments suggesting that the entire section be rewritten. A significant number of comments were received on the question of encryption requirements when dial-up lines were to be employed as a means of connectivity. The overwhelming majority strongly urged that encryption not be mandatory when using any transmission media other than the Internet, but rather be considered optional based on individual entity risk assessment/analysis. Many comments noted that there are very few known breaches of security over dial-up lines and that nonjudicious use of encryption can adversely affect processing times and become both financially and technically burdensome. Only one commenter suggested that "most" external traffic should be encrypted.

Response: In general, we agree with the commenters who asked for clarification and revision. This final rule has been significantly revised to reflect a much simpler and more direct requirement. The term "Communications/network controls" has been replaced with "Transmission security" to better reflect the requirement that, when electronic protected health information is transmitted from one point to another, it must be protected in a manner commensurate with the associated risk.

We agree with the commenters that switched, point-to-point connections, for example, dial-up lines, have a very small probability of interception.

Thus, we agree that encryption should not be a mandatory requirement for transmission over dial-up lines. We also agree with commenters who mentioned the financial and technical burdens associated with the employment of encryption tools. Particularly when considering situations faced by small and rural providers, it became clear that there is not yet available a simple and interoperable solution to encrypting e-mail communications with patients. As a result, we decided to make the use of encryption in the transmission process an addressable implementation specification. Covered entities are encouraged, however, to consider use of encryption technology for transmitting electronic protected health information, particularly over the internet.

As business practices and technology change, there may arise situations where electronic protected health information being transmitted from a covered entity would be at significant risk of being accessed by unauthorized entities. Where risk analysis showed such risk to be significant, we would expect covered entities to encrypt those transmissions, if appropriate, under the addressable implementation specification for encryption.

We do not use the term "open network" in this final rule because its meaning is too broad. We include as an addressable implementation specification the requirement that transmissions be encrypted when appropriate based on the entity's risk analysis.

b. *Comment:* We received comments requesting that the implementation features be deleted or made optional. Three commenters asked that the requirement for an alarm be deleted.

Response: This final rule has been revised to reflect deletion of the following implementation features: (1) The alarm capability; (2) audit trail; (3) entity authentication; and (4) event reporting. These features were associated with a proposed requirement for "Communications/network controls" and have been deleted since they are normally incorporated by telecommunications providers as part of network management and control functions that are included with the provision of network services. A health care entity would not expect to be responsible for these technical telecommunications features. "Access controls" has also been deleted from the implementation features since the consideration of the use of encryption will satisfy the intent of this feature. We retain as addressable implementation specifications two features: (1) "Integrity controls" and "encryption". "Message authentication" has been deleted as an implementation feature because the use of data authentication codes (called for in the "integrity controls" implementation specification) satisfies the intent of "Message authentication."

c. *Comment:* A number of comments were received asking that this final rule establish a specific (or at least a minimum) cryptographic algorithm strength. Others recommended that the rule not specify an encryption strength since technology is changing so rapidly. Several commenters requested guidelines and minimum encryption standards for the Internet. Another stated that, since an example was included (small or rural providers for example), the government should feel free to name a specific encryption package. One commenter stated that the requirement for encryption on the Internet should reference the "CMS Internet Security Policy."

Response: We remain committed to the principle of technology neutrality and agree with the comment that rapidly changing technology makes it impractical and inappropriate to name a specific technology. Consistent with this principle, specification of an algorithm strength or specific products would be inappropriate. Moreover, rapid advances in the success of "brute force" cryptanalysis techniques suggest that any minimum specification would soon be outmoded. We maintain that it is much more appropriate for this final rule to state a general requirement for encryption protection when necessary and depend on covered entities to specify technical details, such as algorithm types and strength. Because "CMS Internet Security Policy" is the policy of a single organization and applies only to information sent to CMS, and not between all covered entities, we have not referred to it here.

d. *Comment:* The proposed definition of "Integrity controls" generated comments that asked that the word "validity" be changed to "Integrity." Commenters were concerned about the ability of an entity to ensure that information was "valid."

Response: We agree with the commenters about the meaning of the word "validity" in the context of the proposed definition of "Integrity controls." We have named "integrity controls" as an implementation specification in this final rule to require mechanisms to ensure that electronically transmitted information is not improperly modified without detection (see § 164.312(c)(1)).

e. *Comment:* Three commenters asked for clarification and guidance regarding the unsolicited electronic receipt of health information in an unsecured manner, for example, when the information was submitted by a patient via e-mail over the Internet. Commenters asked for guidance as to what was their obligation to protect data received in this manner.

Response: The manner in which electronic protected health information is received by a covered entity does not affect the requirement that security protection must subsequently be afforded to that information by the covered entity once that information is in possession of the covered entity.

6. Proposed Requirements Not Adopted in This Final Rule

a. *Authorization Control*

We proposed, under "Technical Security Services to Guard Data Integrity, Confidentiality, and Availability," that a mechanism be required for obtaining consent for the use and disclosure of health information using either "Role-based access" or "User-based access" controls. In this final rule, we do not adopt this requirement.

Comment: We received a large number of comments regarding use of the word "consent." It was pointed out that this could be construed to mean patient consent to the use or disclosure of patient information, which would make this a privacy issue, rather than one of security. Other comments suggested deletion of the requirement in its entirety. We received a comment asking for clarification about the distinction between "Access control" and "Authorizations."

Response: These requirements were intended to address authorization of workforce members and others for the use and disclosure of health information, not patient consent. Upon reviewing the differences between "Access control" and "Authorization control," we found it to be unnecessary to retain "Authorization control" as a separate requirement. Both the access control and the authorization control proposed requirements involved implementation of types of automated access controls, that is, role-based access and user-based access. It can be argued that the process of managing access involves allowing and restricting access to those individuals that have been authorized to access the data. The intent of the proposed authorization control implementation feature is now

incorporated in the access authorization implementation specification under the information access management standard in § 164.308(a)(4). Under the information access management standard, a covered entity must implement, if appropriate and reasonable to its situation, policies and procedures first to authorize a person to access electronic protected health information and then to actually establish such access. These policies and procedures will enable entities to follow the Privacy Rule minimum necessary requirements, which provide when persons should have access to information.

H. Organizational Requirements (§ 164.314)

We proposed that each health care clearinghouse must comply with the security standards to ensure all health information and activities are protected from unauthorized access. If the clearinghouse is part of a larger organization, then unauthorized access by the larger organization must be prevented. We also proposed that parties processing data through a third party would be required to enter into a chain of trust partner agreement, a contract in which the parties agree to electronically exchange data and to protect the transmitted data in accordance with the security standards.

In this final rule, we have adopted the concepts of hybrid and affiliated entities, as previously defined in § 164.504, and now defined in § 164.103, and business associates as defined in § 160.103, to be consistent with the Privacy Rule. General organizational requirements related to affiliated covered entities and hybrid entities are now contained in a new § 164.105. The proposed chain of trust partner agreement has been replaced by the standards for business associate contracts or other arrangements and the standards for group health plans. Consistent with the statute and the policy of the Privacy Rule, this final rule does not require noncovered entities to comply with the security standards.

1. Health Care Clearinghouses

The proposed rule proposed that if a health care clearinghouse were part of a larger organization, it would be required to ensure that all health information pertaining to an individual is protected from unauthorized access by the larger organization; this statement closely tracked the statutory language in section 1173(d)(1)(B) of the Act. Since the point of the statutory language is to ensure that health care information in the possession of a health care clearinghouse is not inappropriately accessed by the larger organization of which it is a part, this final rule implements the statutory language through the information access management provision of § 164.308(a)(4)(ii)(A).

The final rule, at § 164.105, makes the health care component and affiliated entity standards of the Privacy Rule applicable to the security standards. Therefore, we have not changed those standards substantively. In pertaining to the Privacy Rule, we have simply moved them to a new location in part 164. Any differences between § 164.105 and § 164.504(a) through (d) reflects the addition of requirements specific to the security standards.

The health care component approach was developed in response to extensive comment received principally on the Privacy Rule. See 65 FR 82502 through 82503 and 82637 through 82640 for a discussion of the policy concerns underlying the health care component approach. Since the security standards are intended to support the protection of electronic information protected by the Privacy Rule, it makes sense to incorporate organizational requirements that parallel those required of covered entities by the Privacy Rule. This policy will also minimize the burden of complying with both rules.

a. *Comment:* Relative to the following preamble statement (63 FR 43258): "If the clearinghouse is part of a larger organization, then security must be imposed to prevent unauthorized access by the larger organization." One commenter asked what is considered to be "the larger organization." For example, if a clearinghouse function occurs in a department of a larger business entity, will the regulation cover all internal electronic communication, such as e-mail, within the larger business and all external electronic communication, such as e-mail with its owners?

Response: The "larger organization" is the overall business entity that a clearinghouse would be part of. Under the Security Rule, the larger organization must assure that the health care clearinghouse function has instituted measures to ensure only that electronic protected health information that it processes is not improperly accessed by unauthorized persons or other entities, including the larger organization. Internal electronic communication within the larger organization will not be covered by the rule if it does not involve the clearinghouse, assuming that it has designated health care components, of which the health care clearinghouse is one. External communication must be protected as sent by the clearinghouse, but need not be protected once received.

b. *Comment:* One commenter asked that the first sentence in § 142.306(b) of the proposed rule, "If a health care clearinghouse is part of a larger organization, it must assure all health information is protected from unauthorized access by the larger organization" be expanded to read, "If a health care clearinghouse or any other health care entity is part of a larger organization . . ."

Response: The Act specifically provides, at section 1173(d)(1)(B), that the Secretary must adopt standards to ensure that a health care clearinghouse, if part of a larger organization, has policies and security procedures to protect information from unauthorized access by the larger organization.

Health care providers and health plans are often part of larger organizations that are not themselves health care providers or health plans. The security measures implemented by health plans and covered health care providers should protect electronic protected health information in circumstances such as the one identified by the commenter. Therefore, we agree with the comment that the requirement should be expanded as suggested by the commenter. In this final rule, those components of a hybrid entity that are designated as health care components must comply with the security standards and protect against unauthorized access with respect to the other components of the larger entity in the same way as they must deal with separate entities.

2. Business Associate Contracts and Other Arrangements

We proposed that parties processing data through a third party would be required to enter into a chain of trust partner agreement, a contract in which the parties agree to electronically exchange data and to protect the transmitted data. This final rule narrows the scope of agreements required. It essentially tracks the provisions in § 164.502(e) and § 164.504(e) of the Privacy Rule, although appropriate modifications have been made in this rule to the required elements of the contract.

In this final rule, a contract between a covered entity and a business associate must provide that the business associate must—(1) implement safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity; (2) ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate safeguards; (3) report to the covered entity any security incident of which it becomes aware; (4) make its policies and procedures, and documentation required by this subpart relating to such safeguards, available to the Secretary for purposes of determining the covered entity's compliance with this subpart; and (5) authorize termination of the contract by the covered entity if the covered entity determines that the business associate has violated a material term of the contract.

When a covered entity and its business associate are both governmental entities, an "other arrangement" is sufficient. The covered entity is in compliance with this standard if it enters into a memorandum of understanding with the business associate that contains terms that accomplish the objectives of the above-described business associate contract. However, the covered entity may omit from this memorandum the termination authorization required by the business associate contract provisions if this authorization is inconsistent with the statutory obligations of the covered entity or its business associate. If other law (including regulations adopted by the covered entity or its business associate) contains requirements applicable to the business associate that accomplish the objectives of the above-described business associate contract, a contract or agreement is not required. If a covered entity enters into other arrangements with another governmental entity that is a business associate, such arrangements may omit provisions equivalent to the termination authorization required by the business associate contract, if inconsistent with the statutory obligation of the covered entity or its business associate.

If a business associate is required by law to perform a function or activity on behalf of a covered entity or to provide a service described in the definition of business associate in § 160.103 of this subchapter to a covered entity, the covered entity may permit the business associate to receive, create, maintain, or transmit electronic protected health information on its behalf to the extent necessary to comply with the legal mandate without meeting the requirements of the above-described business associate contract, *provided that* the covered entity attempts in good faith to obtain satisfactory assurances as required by the above described business associate contract and documents the attempt and the reasons that these assurances cannot be obtained.

We have added a standard for group health plans that parallels the provisions of the Privacy Rule. It became apparent during the course of the security and privacy rulemaking that our original chain of trust approach was both overly broad in scope and failed to address appropriately the circumstances of certain covered entities, particularly the ERISA group health plans. These latter considerations and the solutions arrived at in the Privacy Rule are described in detail in the Privacy Rule at 65 FR 82507 through 82509. Because the purpose of the security standards is in part to reinforce privacy protections, it makes sense to align the organizational policies of the two rules. This decision should also make compliance less burdensome for covered entities than would a decision to have different organizational requirements for the two sets of rules.

Thus, we have added at § 164.314(b) a standard for group health plan that tracks the standard at § 164.504(f) very closely. The purpose of these provisions is to ensure that, except when the electronic protected health information disclosed to a plan sponsor is summary health information or enrollment or disenrollment information as provided for by § 164.504(f), group health plan documents provide that the plan sponsor will reasonably and appropriately safeguard electronic protected health information created, received, maintained or transmitted to or by the plan sponsor on behalf of the group health plan. The plan documents of the group health plan must be amended to incorporate provisions to require the plan sponsor to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the group health plan; ensure that the adequate separation required by § 164.504(f)(2)(iii) is supported by reasonable and appropriate security measures; ensure that any agents, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate safeguards to protect the information; report to the group health plan any security incident of which it becomes aware; and make its policies and procedures and documentation relating to these safeguards available to the Secretary for purposes of determining the group health plan's compliance with this subpart.

a. *Comment:* Several commenters expressed confusion concerning the applicability of proposed § 142.104 to security.

Response: The proposed preamble included language generally applicable to most of the proposed standards under HIPAA. Proposed § 142.104 concerned general requirements for health plans relative to processing transactions. We proposed that plans could not refuse to conduct a transaction as a standard transaction, or delay or otherwise adversely affect a transaction on the grounds that it was a standard transaction; health information transmitted and received in connection with a transaction must be in the form of standard data elements; and plans conducting transactions through an agent must ensure that the agent met all the requirements that applied to the health plan. Except for the statement that a plan's agent ("business associate" in the final rule) must meet the requirements (which would include security) that apply to the health plan, this proposed section did not pertain to the security standards and was addressed in the Transaction Rule.

b. *Comment:* The majority of comments concerned proposed rule language stating "the same level of security will be maintained at all links in the chain * * *" Commenters believed the current language will have an adverse impact on one of the security standard's basic premises, which is scalability. It was requested that the language be changed to indicate that, while appropriate security must be maintained, all partners do not need to maintain the same level of security.

A number of commenters expressed some confusion concerning their responsibility for the security of information once it has passed from their control to their trading partner's control, and so on down the trading partner chain. Requests were made that we clarify that chain of trust partner agreements were really between two parties, and that, if a trading partner agreement has been entered into, any given partner would not be responsible, or liable, for the security of data once it is out of his or her control.

In line with this concern, several commenters were concerned that they would have some responsibility to ensure the level of security maintained by their trading partner.

Several commenters believe a chain of trust partner agreement should not be a security requirement. One commenter stated that because covered entities must already conform to the regulation

requirements, a "chain of trust" agreement does not add to overall security. Compliance with the regulation should be sufficient.

Response: We believe the commenters are correct that the rule as proposed would—(1) not allow for scalability; and (2) would lead an entity to believe it is responsible, and liable, for making sure all entities down the line maintain the same level of security. The confusion here seems to come from the phrase "same level of security." Our intention was that each trading partner would maintain reasonable and appropriate safeguards to protect the information. We did not mean that partners would need to implement the same security technology or measures and procedures.

We have replaced the proposed "Chain of trust" standard with a standard for "Business associate contracts and other arrangements."

When another entity is acting as a business associate of a covered entity, we require the covered entity to require the other entity to protect the electronic protected health information that it creates, receives, maintains or transmits on the covered entity's behalf. The level of security afforded particular electronic protected health information should not decrease just because the covered entity has made the business decision to entrust a business associate with using or disclosing that information in connection with the performance of certain functions instead of doing those functions itself. Thus, the rule below requires covered entities to require their business associates to implement certain safeguards and take other measures to ensure that the information is safeguarded (see § 164.308(b)(1) and § 164.314(a)(1)).

The specific requirements of § 164.314(a)(1) are drawn from the analogous requirements at 45 CFR 164.504(e) of the Privacy Rule, although they have been adapted to reflect the objectives and context of the security standards. Compare, in particular, 45 CFR 164.504(e)(2)(ii) with § 164.314(a)(1). We have not imported all of the requirements of 45 CFR 164.504(e), however, as many have no clear analog in the security context (see, for example, 45 CFR 164.504(e)(2)(i) regarding permitted and required uses and disclosures made by a business associate). HHS had previously committed to reconciling its security and privacy policies regarding business associates (see 65 FR 82643). The close relationship of many of the organizational requirements in section 164.314 with the analogous requirements of the Privacy Rule should facilitate the implementation and coordination of security and privacy policies and procedures by covered entities.

In contrast, when another entity is not acting as a business associate for the covered entity, but rather is acting in the capacity of some other sort of trading partner, we do not require the covered entity to require the other entity to adopt particular security measures, as previously proposed. This policy is likewise consistent with the general approach of the Privacy Rule (see the discussion in the Privacy Rule at 65 FR 82476). The covered entity is free to negotiate security arrangements with its non-business associate trading partners, but this rule does not require it to do so.

A similar approach underlies § 164.314(b) below. These provisions are likewise drawn from, and intended to support, the analogous privacy protections provided for by 45 CFR 164.504(f) (see the discussion of § 164.504(f) of the Privacy Rule at 65 FR 82507 through 82509, and 82646 through 82648). As with the business associate contract provisions, however, they are imported and adapted only to the extent they make sense in the security context. Thus, for example, the requirement at § 164.504(f)(2)(ii)(C) prohibits the plan documents from permitting disclosure of protected health information to the plan sponsor for employment-related purposes. As this prohibition goes entirely to the permissibility of a particular type of disclosure, it has no analog in § 164.314(b).

c. *Comment:* Several commenters stated that if security features are determined by agreements established between "trading partners," as stated in the proposed regulations, there should be some guidelines or boundaries for those agreements so that extreme or unusual provisions are not permitted.

Response: This final rule sets a baseline, or minimum level, of security measures that must be taken by a covered entity and stipulates that a business associate must also implement reasonable and appropriate safeguards. This final rule does not, however, prohibit a covered entity from employing more stringent security measures or from requiring a business associate to employ more stringent security measures. A covered entity may determine that, in order to do business with it, a business associate must also employ equivalent measures. This would be a business decision and would not be governed by the provisions of this rule. Security mechanisms relative to the transmission of electronic protected health information between entities may need to be agreed upon by both parties in order to successfully complete the transmission. However, the determination of the specific transmission mechanisms and the specific security features to be implemented remains a business decision.

d. *Comment:* Several commenters asked whether existing contracts could be used to meet the requirement for a trading partner agreement, or does the rule require entry into a new contract specific to this purpose. Also, the commenters want to know about those whose working agreements do not involve written contractual agreement: Do they now need to set up formal agreements and incur the additional expense that would entail?

Response: This final rule requires written agreements between covered entities and business associates. New contracts do not have to be entered into specifically for this purpose, if existing written contracts adequately address the applicable requirements (or can be amended to do so).

e. *Comment:* Several commenters asked whether covered entities are responsible for the security of all individual health information sent to them, or only information sent by chain of trust partners. They also asked if they can refuse to process standard transactions sent to them in an unsecured fashion. In addition, they inquired if they can refuse to send secured information in standard transactions to entities not required by law to secure the information. One commenter asked if there is a formula for understanding in any particular set of relationships where the ultimate responsibility for compliance with the standards would lie.

Response: Pursuant to the Transactions Rule, if a health plan receives an unsecured standard transaction, it may not refuse to process that transaction simply because it was sent in an unsecured manner. The health plan is not responsible under this rule, for how the transaction was sent to it (unless the transmission was made by a business associate, in which case different considerations apply); however, once electronic protected health information is in the possession of a covered entity, the covered entity is responsible for the security of the electronic protected health information received. The covered entity must implement technical security mechanisms to guard against unauthorized access to electronic protected health information that is transmitted over an electronic communication network. In addition, the rule requires the transmitting

covered entity to obtain written assurance from a business associate receiving the transmission that it will provide an adequate level of protection to the information. For the business associate provisions, see § 164.308(b) and § 164.314(a) of this final rule.

f. *Comment:* One commenter asked what security standards a vendor having access to a covered entity's health information during development, testing, and repair must meet and wanted to know whether the rule anticipates having a double layer of security compliance (one at the user level and one at the vendor level). If so, the commenter believes this will cause duplication of work.

Response: In the situation described, the vendor would be acting as a business associate. The covered entity must require the business associate to implement reasonable and appropriate security protections of electronic protected health information. This requirement, however, does not impose detailed requirements for how that level of protection must be achieved. The resulting flexibility should permit entities and their business associates to adapt their security safeguards in ways that make sense in their particular environments.

g. *Comment:* A number of commenters requested sample contract language or models of contracts. We also received one comment that suggested that we should not dictate the contents of contracted agreements.

Response: We will consider developing sample contract language as part of our guideline development.

I. Policies and Procedures and Documentation Requirements (§ 164.316)

We proposed requiring documented policies and procedures for the routine and nonroutine receipt, manipulation, storage, dissemination, transmission, and/or disposal of health information. We proposed that the documentation be reviewed and updated periodically.

We have emphasized throughout this final rule the scalability allowed by the security standards. This final rule requires covered entities to implement policies and procedures that are reasonably designed, taking into account the size and type of activities of the covered entity that relate to electronic protected health information, and requires that the policies and procedures must be documented in written form, which may be in electronic form. This final rule also provides that a covered entity may change its policies and procedures at any time, provided that it documents and implements the changes in accordance with the applicable requirements. Covered entities must also document designations, for example, of affiliation between covered entities (see § 164.105(b)), and other actions, as required by other provisions of the subpart.

1. *Comment:* One commenter wanted development of written policies regarding such things as confidentiality and privacy rights for access to medical records, and approval of research by a review board when appropriate.

Response: These issues are covered in the Privacy Rule (65 FR 82462) (see, in particular, § 164.512(i), § 164.524, and § 164.530(i)).

2. *Comment:* One commenter asked if standards will override agreements that require others to maintain hardcopy documentation (for example, signature on file) and no longer require submitters to maintain hardcopy documentation.

Response: The security standards will require a minimum level of documentation of security practices. Any agreements between trading partners for the exchange of electronic protected health information that impose additional documentation requirements will not be overridden by this final rule.

3. *Comment:* One commenter stated that there should be a requirement to document only applications deemed necessary by an applications and data criticality assessment.

Response: Electronic protected health information must be afforded security protection under this rule regardless of what application it resides in. The measures taken to protect that information must be documented.

4. *Comment:* One commenter asked how detailed the documentation must be. Another commenter asked what "kept current" meant.

Response: Documentation must be detailed enough to communicate the security measures taken and to facilitate periodic evaluations pursuant to § 164.308(a)(8). While the term "current" is not in the final rule, this concept has been adopted in the requirement that documentation must be updated as needed to reflect security measures currently in effect.

5. *Comment:* We received one comment concerning review and updating of implementing documentation suggesting that "periodically" be changed to "at least annually."

Response: We believe that the requirement should remain as written, in order to allow individual entities to establish review and update cycles as deemed necessary. The need for review and update will vary dependent upon a given entity's size, configuration, environment, operational changes, and the security measures implemented.

J. Compliance Dates for Initial Implementation (§ 164.318)

We proposed that how the security standard would be implemented by each covered entity would be dependent upon industry trading partner agreements for electronic transmissions. Covered entities would be able to adapt the security matrix to meet business needs. We suggested that requirements of the security standard may be implemented earlier than the compliance date. However, we would require implementation to be complete by the applicable compliance date, which is 24 months after adoption of the standard, and 36 months after adoption of the standard for small health plans, as provided by the Act. In the proposed rule, we suggested that an entity choosing to convert from paper to standard EDI transactions, before the effective date of the security standard, consider implementing the security standard at the same time.

In this final rule the dates by which entities must be in compliance with the standards are called "compliance dates," consistent with our practice in the Transactions, Privacy, and Employer Identifier Rules. Section 164.318 in this final rule is also organized consistent with the format of those rules. The substantive requirements, which are statutory, remain unchanged.

Many of the comments received concerning effective dates and compliance dates, including the compliance dates for modifications of standards, were addressed in the Transactions Rule. Those that were not addressed in that publication are presented below.

1. *Comment:* A number of commenters expressed support for the effective dates of the rules and stated that they should not be delayed. In contrast, one commenter stated that we should delay this rule to allow for an open consensus building debate to occur concerning security. One commenter asked that the rule be delayed until after implementation of the ICD-CM changes.

A number of comments were received expressing the opinion that the security regulation should not be published until either the Congress has enacted legislation governing standards with respect to the privacy of individually identifiable health information, or the Secretary of HHS has promulgated final regulations containing these standards. One commenter stated, "we find

ourselves in the difficult position of reacting to proposed rules setting the standards for how information should be physically and electronically protected, without having reached agreement on the larger issues of consent for and disclosure of individual medical information."

Response: The effective date of the final rule is 60 days after this final rule is published in the **Federal Register**. The statute sets forth the compliance dates for the standards. Covered entities must comply with this final rule no later than 24 months (36 months for small plans) after the effective date.

The final Privacy Rule has already been published. We note that numerous comments concerning the timing of the adoption of privacy and security standards were also received in the privacy rulemaking and are discussed in the Privacy Rule at 65 FR 82752.

2. *Comment:* One commenter asked that proposed § 142.312 be rewritten to separate the effective dates for the Security Rule and the Transactions Rule.

Response: The proposed rule incorporated general language applicable to all the proposed Administrative Simplification standards. Language concerning standards other than Security is not included in § 164.318. Because this final rule is adopted after the Transactions Rule was adopted, the compliance dates for the security standards differ from those for the transactions standards. Comments concerning general effective dates were addressed in the Transactions Rule. Comments specific to the security standards are addressed here.

3. *Comment:* Several commenters suggested that we not allow early implementation of the Security Rules. A number of others asked that we allow, but not require, early implementation by willing trading partners. Another commenter suggested that early implementation by willing trading partners be allowed as long as the data content transmitted is equal to that required by statute. Another commenter requested that it be stipulated that entities cannot implement less than 1 year from the date of this final rule and then only after successful testing, and that a "start testing by" date be defined.

Response: Whether or not to implement before the compliance date is a business decision that each covered entity must make. Moreover, the vast majority of the standards address internal policies and procedures that can be implemented at any time without any impact on trading partners.

4. *Comment:* One commenter asked us to establish a research site or test laboratory for a trial implementation.

Response: The concept of a "trial implementation" that would have widespread relevance is inconsistent with our basic principles of flexibility, scalability, and technology-neutrality.

5. *Comment:* One commenter stated that the 2-year time frame for implementation of a contingency plan is too short for health plans that serve multiple regions of the country.

Response: The Congress mandated that entities must be in compliance 2 years from the initial standard's adoption date (3 years for small plans).

K. Appendix

The proposed rule contained three addenda. Addendum 1 set out in matrix form the proposed requirements and related implementation features of the proposed rule. Addendum 2 set out in list form a glossary of terms with citations to the sources of those terms. Addendum 3 identified and mapped areas of overlap in the proposed security standard and implementation features.

This final rule retains only the first proposed addendum, the matrix, as an appendix, that is modified to reflect the changes in the administrative, physical, and technical safeguard portions of the rule below. Numerous terms in the glossary now appear in the rule below, typically (but not always) as definitions.

1. *Comment:* Over two-thirds of the comments received on this topic asked that the matrix be incorporated into the final rule. One commenter asked that a simplified version be made part of the final rule. Six commenters wanted it kept in this final rule as an addendum. One commenter stated that it should be in an appendix to the rule, while others stated that it should not be included in this final rule.

Response: Since a significant majority of commenters requested retention of the matrix, it has been incorporated into this final rule as an appendix. The matrix displays, in tabular form, the administrative, physical, and technical safeguard standards and relating implementation specifications described in this final rule in § 164.308, § 164.310, and § 164.312. It should be noted that the requirements of § 164.105, § 164.314, and § 164.316 are not presented in the matrix.

2. *Comment:* A large majority of commenters stated that the glossary located in Addendum 2 of the proposed rule should be included as part of the final rule. Several commenters asked that it be incorporated into the definitions section of the final rule. One commenter stated that the glossary should not be part of this final rule.

Response: The terms defined in the glossary in Addendum 2 of the proposed rule are found throughout this final rule, either as part of the text of § 164.306 through § 164.312 or under § 164.304, as appropriate. We included only terms relevant to the particular standards and implementation specifications being adopted.

3. *Comment:* Several commenters requested that the mapped matrix located in Addendum 3 of the proposed rule be included in this final rule, either as part of the rule or as an addendum, while others stated that it should not be part of this final rule. Several commenters cited items to be added to the mapped matrix.

Response: The mapped matrix was merely a snapshot of current standards and guidelines that the implementation team was able to obtain for review during the development of the security and electronic signature requirements and was provided in the proposed rule as background material. Since this matrix has not been fully populated or kept up-to-date, it is not being published as part of this final rule. Where relevant, we do reference various standards and guidelines indicated in the matrix in this preamble.

L. Miscellaneous Issues

1. Preemption

The statute requires generally that the security standards supersede contrary provisions of State law including State law requiring medical or health plan records to be maintained or transmitted in written rather than electronic formats. The statute provides certain exceptions to the general rule; section 1178(a)(2) of the Act identifies conditions under which an exception applies. The proposed rule did not provide for a process for making exception determinations; rather, a process was proposed in the privacy rulemaking and was adopted with the Privacy Rule (see part 160, subpart B). This process applies to exception determinations for all of the Administrative Simplification rules, including this rule.

a. *Comment:* Several commenters stated that the proposed rule does not include substantive protections for the privacy rights of patients' electronic medical records, while the rule attempts to preempt State privacy laws with respect to these records. Comments stated that, by omitting a clarification of State privacy law applicability, the proposed rule creates confusion. They believe that the rule must contain express and specific exemptions of State laws with respect to medical privacy.

Response: The Privacy Rule establishes standards for the rights of patients in regard to the privacy of their medical records and for the allowable uses and disclosures of protected health information. The identified concerns were discussed in the Privacy Rule (see 65 FR 82587 through 82588). The security standards do not specifically address privacy but will safeguard electronic protected health information against unauthorized access or modification.

b. *Comment:* One commenter asked how these regulations relate to confidentiality laws, which vary from State to State.

Response: It is difficult to respond to this question in the abstract without the benefit of reference to a specific State statute. However, in general, these security standards will preempt contrary State laws. Per section 1178(a)(2) of the Act, this general rule would not hold if the Secretary determines that a contrary provision of State law is necessary for certain identified purposes to prevent fraud and abuse; to ensure appropriate State regulation of insurance and health plans; for State reporting on health care delivery costs; or if it addresses controlled substances. See 45 CFR part 160 subpart B. In such case, the contrary provision of State law would preempt a Federal provision of these security standards. State laws that are related but not contrary to this final rule, will not be affected.

Section 1178 of the Act also limits the preemptive effect of the Federal requirements on certain State laws other than where the Secretary makes certain determinations. Section 1178(b) of the Act provides that State laws for reporting of disease and other conditions and for public health surveillance, investigation, or intervention are not invalidated or limited by the Administrative Simplification rules. Section 1178(c) of the Act provides that the Federal requirements do not limit States' abilities to require that health plans report or provide access to certain information.

c. *Comment:* Several commenters stated that allowing State law to establish additional security restrictions conflicts with the purpose of the Federal rule and/or would make implementation very difficult. One commenter asked for clarification as to whether additional requirements tighter than the requirements outlined in the proposed rule may be imposed.

Response: The general rule is that the security standards in this final rule supersede contrary State law. Only where the Secretary has granted an exception under section 1178(a)(2)(A) of the Act, or in situations under section 1178(b) or (c) of the Act, will the general rule not hold true. Covered entities may be required to adhere to stricter State-imposed security measures that are not contrary to this final rule.

2. Enforcement

The proposed rule did not contain specific enforcement provisions. This final rule likewise does not contain specific enforcement provisions; it is expected that enforcement provisions applicable to all Administrative Simplification rules will be proposed in a future rulemaking.

a. *Comment:* One commenter voiced support for the proposed rule's approach. Another stated that the process is poorly defined. One commenter stated that fines should be eliminated, or the scope of activity subject to fines should be more narrowly defined.

While a number of commenters were of the opinion that HHS must retain enforcement responsibility, stating that it would be unconstitutional to give it to a private entity, several others stated that it may not be practical for HHS to retain the responsibility for determining violations and imposing penalties specified by the statute. A concern was voiced over HHS's ability to fairly and consistently apply the rules due to budget constraints. Several commenters support industry solutions to enforcement with some level of government involvement. One commenter recommended a single audit process using accrediting bodies already in place. Another stated that entities providing accreditation services should not be involved in enforcement as this would result in a conflict of interest.

Clarification was requested, including the use of examples, concerning what constitutes a violation, and how a penalty applies to a "person." Commenters asked if the term "person" referred to the people responsible for the system and how penalties would apply to corporations and other entities.

Response: It is expected that enforcement of HIPAA standards will be addressed in regulations to be issued at a later date.

b. *Comment:* Several commenters stated that enforcement of the security standards will be arbitrarily delegated to private businesses that compete with physicians and with each other.

Response: These comments are premature for the reasons stated above.

3. Comment Period

The comment period on the proposed rule was 60 days.

Comment: We received comments suggesting that significant changes to the standards could occur in the final rule as a result of changes made in response to comments. The commenter believes such changes could adversely affect payers and providers, and suggested that the rule should be republished as a proposed rule with a new comment period to allow additional comments concerning any changes. A "work-in-progress" approach was also suggested, to give all stakeholders time to read, analyze, and comment upon evolving versions of a particular proposed rule.

Response: We have not accepted these suggestions. The numerous comments received were thoughtful, analytical, detailed, and addressed every area of the proposed rule. This response to the proposed rule indicates that the public had ample time to read, analyze, and comment upon the proposed rule. If we were to treat the rule as a "work-in-progress" and issue evolving versions, allowing for comments to each version, we would never implement the statute and achieve administrative simplification as directed by the Congress.

M. Proposed Impact Analysis

The preamble to the Transactions Rule contains comments and responses on the impact of all the administrative simplification standards in general except privacy. Comments and responses specific to the relative impact of implementing this final rule are presented below.

a. *Comment:* Several commenters stated that the proposed security standards are complex, costly, administratively burdensome, and could result in decreased use of EDI. One commenter stated that this rule runs counter to the explicit intent of Administrative Simplification that requires, "any standard adopted under this part shall be consistent with the objective of reducing the administrative costs of providing and paying for health care."

Several commenters expressed concern that there was no cost benefit analysis provided for these proposed regulations, stating that, faced with increasingly limited resources, it is essential that a security standards cost/benefit analysis for all health care trading partners be provided. Another said an independent cost estimate by the General Accounting Office (GAO) should be performed on these rules and

HHS cost estimates should be publicized for comparison purposes.

Still another commenter stated that HHS must provide accurate public sector implementation cost figures and provide funds to offset the cost burden.

One commenter asked for cost benefit evaluations to understand the relationship between competing technologies, levels of security and potential threats to be guarded against. These would demonstrate the costs and the benefits to be gained for both large and small organizations and would provide an understanding of how the levels of security vary by organization size and what the inducements and support available to facilitate adoption are. One commenter suggested that we establish a workgroup to more fully assess the costs and provide Federal funds to offset implementation costs.

One commenter noted a seeming disconnect between two statements in the preamble. Section A, Security standards, states, "no individual small entity is expected to experience direct costs that exceed benefits as a result of this rule." In contrast, section E, Factors in establishing the security standards reads, "We cannot estimate the per-entity cost of implementation because there is no information available regarding the extent to which providers', plans', and clearinghouses' current security practices are deficient."

Response: We are unable to estimate, of the nation's 2 million-plus health plans and 1 million-plus providers that conduct electronic transactions, the number of entities that would require new or modified security safeguards and procedures beyond what they currently have in place. Nor are we able to estimate the number of entities that neither conduct electronic transactions nor maintain individually identifiable electronic health information but may become covered entities at some future time. As we are unable to estimate the number of entities and what measures are or are not already in place, or what specific implementation will be chosen to meet the requirements of the regulation, we are also unable to estimate the cost to those entities.

However, the use of electronic technology to maintain or transmit health information results in many new and potentially large risks. These risks represent expected costs, both monetary and social. Leaving risk assessment up to individual entities will minimize the impact and ensure that security effort is proportional to security risk.

As discussed earlier, the security requirements are both scalable and technically flexible. We have made significant changes to this final rule, reducing the number of required implementation features and providing for greater flexibility in satisfaction of the requirements. In other words, we have focused more on what needs to be done and less on how it should be accomplished.

We have removed the statement regarding the extent of costs versus benefits for small entities.

b. *Comment:* One commenter stated that on page 43262 of the proposed rule, it indicate that complexity of conversion to the security standards would be affected by the choice to use a clearinghouse. The commenter stated that this choice would have little effect on implementation of security standards. Another commenter stated that the complexity (and cost) of the conversion to meet the security standards is affected by far more than just the "volume of claims health plans process electronically and the desire to transmit the claims or to use the services of a VAN or clearinghouse" as is stated on page 43262. Because the security standards apply to internal systems as well as to transactions between entities, a number of additional factors must be considered, for example, modification of existing security mechanisms, legacy systems, architecture, and culture.

Response: We agree. We have modified the Regulatory Impact Analysis section to take into account that there are other factors involved, such as the architecture and technology limitations of existing systems.

c. *Comment:* One commenter stated that States will need 90 percent funding of development and implementation, without the burden of an advanced planning documents requirement, from us for this costly process to succeed. Any new operational obligation should be 100 percent funded. Also human resource obligations will be significant. Some States believe they will have difficulty obtaining the budget funds for the State share of the costs. State Medicaid agencies, as purchasers, may also face paying the implementation costs of health care providers, clearinghouses, and health plans in the form of higher rates.

Response: The statute does not authorize any new or special funding for implementation of the regulations. Medicaid system changes, simply because they are "HIPAA related" do not automatically qualify for 90 percent Federal funding participation. As with any systems request, the usual rules will be applied to determine funding eligibility for State HIPAA initiatives. Nevertheless, HHS recognizes that there are significant issues regarding the funding and implementation of HIPAA by Medicaid State agencies, and intends to address them through normal channels of communication with States.

d. *Comment:* One commenter stated that the proposed rule does not establish how the security standards will contribute to reduced cost for providers. One commenter expected the unintended result of this regulation will be impediment of EDI growth and perhaps even a decline in EDI use by providers. Another stated that the proposed rule actively discourages physician EDI participation by suggesting a fallback to paper processing for those unable to meet the cost of highly complex security compliance.

Response: Ensuring the integrity of an electronic message, its delivery to the correct person, and its confidentiality must be an integral part of conducting electronic commerce. We believe that the consistent application of the measures provided in this rule will actually encourage use of EDI because it will provide increased confidence in the reliability and confidentiality of health information to all parties involved. Also, the implementation of these security requirements will reduce the potential overall cost of risk to a greater extent than additional security controls will increase costs. Put another way, the potential cost of not reasonably addressing security risks could substantially exceed the cost of compliance.

e. *Comment:* One commenter stated that the implementation impact of the technical safeguards is clearly understated for physicians who use digitally-based equipment that has been in place for some time. The commenter believes that the rule will likely have greatest impact on the installed base of digital systems, including imaging modalities and other medical devices that store or transmit patient information because software for legacy systems will likely require retrofitting or replacement to come into compliance. The commenter believes that this is a negative impact and would outweigh any benefits derived from the potential risk of security breaches. The commenter recommended compliance for digital imaging devices be extended by an additional 3 years to allow time to upgrade systems and defray the associated costs.

Response: Compliance dates for the initial implementation of the initial standards are statutorily prescribed; therefore, we are unable to allow additional time outside of the statutory timeframes for compliance.

f. *Comment:* A commenter stated that, as a new regulatory mandate, HIPAA costs must be factored into any base year calculations for the proposed prospective payment system. Without an adjustment, this will be another regulatory mandate that comes at the cost of patient care.

Response: Costs included in the prospective payment system are legislatively mandated. The Congress did not direct the inclusion of HIPAA costs into the system, so they are not included. However, the Department believes that the HIPAA standards will provide savings to the provider community over the next 10 years.

g. *Comment:* One commenter suggested that we include requirements for how a compliant business could dually operate—(1) in a HIPAA compliant manner; and (2) in their former noncompliant manner in order to accommodate doing business with other organizations that are not yet compliant.

Response: The statute imposes a 2-year implementation period between the adoption of the initial standards and the date by which covered entities (except small health plans) must be in compliance. An entity may come into compliance at any point in time during the 2 years. Therefore, the rule does not require a covered entity to comply before the established compliance date. Those entities that come into compliance before the 2-year deadline should decide how best to deal with entities that are not yet compliant. Further, we note that, generally speaking, compliance by a covered entity with these security rules will not hinge on compliance by other entities.

h. Comment: One commenter stated that privacy legislation could impose significant changes to written policies and procedures on authorization, access to health information, and how sensitive information is disclosed to others. The commenter believes these changes could mean the imposition of security requirements different from those contained in the proposed rule, and money spent complying with the security provisions could be ill spent if significant new requirements result from the privacy legislation.

Response: The privacy standards at subpart E of 42 CFR part 164 are now in effect, and this final rule is compatible with them. If, in the future, the Congress passes a law whose provisions differ from these standards, the standards would have to be modified.

i. Comment: One commenter stated that the private sector should develop educational tools or models in order to assist physicians, other providers, and health plans to comply with the security regulations.

Response: We agree. The health care industry is striving to do this. HHS is also considering provider outreach and education activities.

IV. Provisions of the Final Regulation

We have made the following changes to the provisions of the August 12, 1998 proposed rule. Specifically, we have—

- Changed the CFR part from 142 to 164.
- Removed information throughout the document pertaining to electronic signature standards. Electronic signature standards will be published in a separate final rule.
- Replaced the word "requirement," when referring to a standard, with "standard." Replaced "Implementation feature" with "Implementation specification."
- Made minor modifications to the text throughout the document for purposes of clarity.
- Modified numerous implementation features so that they are now addressable rather than mandatory.
- Removed the word "formal" when referring to documentation.
- Revised the phrase "health information pertaining to an individual" to "electronic protected health information."
- Added the following definitions to § 160.103: "Disclosure," "Electronic protected health information," "Electronic media," "Organized health care arrangement," and "Use."
- Removed proposed § 142.101 as this information is conveyed in § 160.101 and § 160.102 of the Privacy Rule (65 FR 82798). Removed proposed § 142.102 as it is redundant.
- Removed the following definitions from proposed § 142.103 since they are pertinent to other administrative simplification regulations and are defined elsewhere: code set, health care clearinghouse, health care provider, health information, health plan, medical care, small health plan, standard, and transaction.
- Moved the following definitions from § 164.501 to § 164.103 (proposed § 142.103): " "Plan sponsor" and "Protected health information." Added definitions of "Covered functions" and "Required by law."
- Removed proposed § 142.104, "General requirements for health plans," and proposed § 142.105, "Compliance using a health care clearinghouse," since these sections are not pertinent to the security standards.
- Removed proposed § 142.106, "Effective dates of a modification to a standard or implementation specification," since this information is covered in the "Standards for Electronic Transactions" final rule (65 FR 50312).
- Moved proposed § 142.302 to § 164.302. Changed the section heading from "Applicability and scope" to "Applicability." Modified language to state that covered entities must comply with the security standards.
- Moved proposed § 142.304 to § 164.304. Modified language to remove definitions of words and concepts not used in this final rule: "Access control," "Contingency plan," "Participant," "Role-based access control," "Token," and "User-based access."
- Moved proposed § 142.304 to § 164.304. Modified language to add definitions requested by commenters; previously published in Addendum 2 but not in the draft regulation itself; or necessitated by the change of scope to electronic protected health information and alignment with the Privacy Rule to include: "Administrative safeguards," "Availability," "Confidentiality," "Data," "Data authentication Code," "Integrity," "Electronic protected health information," "Facility," "Information System," "Security or security measures," "Security incident," "Technical safeguards," "User," and "Workstation."
- Moved definitions related to privacy from § 164.504 to new § 164.103: "Common control," "Common ownership," "Health care component," "Hybrid entity."
- Moved proposed § 142.306, "Rules for the security Standard," to § 164.306. Modified language to more clearly state the general requirements of the final rule relative to the standards and implementation specifications contained therein. Retitled the section as "Security standards: General Rules."
- Moved proposed § 142.308 to § 164.308. Where this section was proposed to contain all of the security standards in paragraphs (a) through (d), it now encompasses the Administrative safeguards.
- Moved and reorganized proposed § 142.308 (a) through (d) requirements to § 164.308, § 164.310, and § 164.312.
- Moved proposed § 142.308(a)(1), "Certification," to § 164.308(a)(8). Modified language to indicate both technical and nontechnical evaluation is involved and renamed "Evaluation".
- Moved proposed § 142.308(a)(2), "Chain of trust," to § 164.308(b)(1), renamed to "Business associate contracts and other arrangements," and revised language to redefine who must enter into a contract under this rule for the protection of electronic protected health information.
- Moved proposed § 142.308(a)(3), "Contingency plan," to

§ 164.308(a)(7)(i). Modified language to state that two implementation specifications, "Applications and data criticality analysis" and "Testing and revision procedures," are addressable.

• Removed "Formal mechanism for processing records" (proposed § 142.308(a)(4)) since this requirement was determined to be in part intrusive into business functions and in part redundant.

• Moved proposed § 142.308(a)(5), "Information access control," to § 164.308(a)(4)(i) and renamed as "Information access management." Removed the word "formal" from description. Modified language to state that two implementation specifications ("Access Authorization" and Access Establishment and Modification") are addressable.

• Moved proposed § 142.308(a)(6), "Internal audit," to § 164.308(a)(1)(ii)(D) as an implementation specification under the "Security management process" standard since this was determined to be a more logical placement of this item. Retitled, for clarity, "Information system activity review."

• Moved proposed § 142.308(a)(7), "Personnel security," to § 164.308(a)(3)(i) and retitled "Workforce security." Modified language to state that implementation specifications are addressable.

• Combined proposed § 142.308(a)(7)(i), and § 142.308(a)(7)(iii) ("Assuring supervision of maintenance personnel by an authorized, knowledgeable person" and "Assuring that operations and maintenance personnel have proper access authorization,") under § 164.308(a)(3)(ii)(A) and renamed to "Authorization and/or supervision." Modified description for clarity.

• Moved proposed § 142.308(a)(7)(iv), "Personnel clearance procedure," to § 164.308(a)(3)(ii)(B), renamed to "Workforce clearance procedure," and modified description for clarity.

• Removed proposed § 142.308(a)(7)(v), "Personnel security policies and procedures," as this feature was determined to require redundant effort.

• Removed proposed § 142.308(a)(7)(vi), "Security awareness training." Information concerning this subject has been incorporated under § 164.308(a)(5)(i), "Security awareness and training."

• Removed proposed § 142.308(a)(8), "Security configuration management," and all implementation features, except "Documentation" (hardware and/or software installation, Inventory, Security testing, and Virus checking), since this requirement was determined to be redundant. "Documentation" has been made a discrete standard at § 164.316.

• Moved proposed § 142.308(a)(9), "Security incident procedures," to § 164.308(a)(6)(i) and reworded for clarity. Combined "Report procedures" and "Response procedures" features into a single required implementation specification, named "Response and Reporting" at § 164.308(a)(6)(ii).

• Moved proposed § 142.308(a)(10), "Security management process," to § 164.308(a)(1).

• Moved proposed § 142.308(a)(10)(i), "Risk analysis," to § 164.308(a)(1)(ii)(A).

• Moved proposed § 142.308(a)(10)(ii), "Risk management," to § 164.308(a)(1)(ii)(B).

• Moved proposed § 142.308(a)(10)(iii), "Sanction policy," to § 164.308(a)(1)(ii)(C).

• Removed proposed § 142.308(a)(10)(iv), "Security policy," since this requirement was determined to be redundant.

• Moved proposed § 142.308(a)(11), "Termination," to § 164.308(a)(3)(ii)(C) as an addressable implementation specification under the "Workforce security" standard, and renamed as "Termination procedures". Removed "Termination" implementation features (changing locks, removal from access lists, removal of user accounts, turning in of keys, tokens, or cards) since these were determined to be too specific.

• Moved proposed § 142.308(a)(12), "Training," to § 164.308(a)(5)(i) and renamed as "Security awareness and training." Language modified to incorporate all training information under this one standard. Revised and made addressable all implementation specifications under this standard.

• Moved proposed § 142.308(b), "Physical safeguards to guard data integrity, confidentiality and availability," to § 164.310 and renamed as "Physical safeguards." Removed specific reference to locks and keys.

• Moved proposed § 142.308(b)(1), "Assigned security responsibility requirement," to § 164.308(a)(2) since this has been determined to be an administrative procedure. Modified language to clarify that responsibility could be assigned to more than one individual.

• Moved proposed § 142.308(b)(2), "Media controls," to § 164.310(d)(1) and renamed as "Device and media controls." Removed the word "formal." Added "Media re-use" as a required implementation specification at § 164.310(d)(2)(ii).

• Removed proposed § 142.308(b)(2)(i), "Access control," implementation feature as it was determined to be redundant.

• Moved proposed § 142.308(b)(2)(ii), "Accountability" implementation feature to § 164.310(d)(2)(iii), and made it an addressable implementation specification.

• Combined proposed § 142.308(b)(2)(iii), "Data backup," implementation feature with proposed § 142.308(b)(2)(iv), "Data storage" implementation feature, renamed as "Data backup and storage", moved to § 164.310(d)(2)(iv), and made it an addressable implementation specification.

• Moved proposed § 142.308(b)(2)(v), "Data disposal," implementation feature to § 164.310(d)(2)(i) and made it a required implementation specification.

• Moved proposed § 142.308(b)(3),"Physical access controls," to § 164.310(a)(1) and renamed as "Facility access controls." Removed word "formal."

• Moved proposed § 142.308(b)(3)(i), "Disaster recovery," implementation feature to § 164.310(a)(2)(i). It is now part of the "Contingency operations" implementation specification.

• Moved proposed § 142.308(b)(3)(ii), "Emergency mode operations," implementation feature to § 164.310(a)(2)(i). It is now part of the "Contingency operations" implementation specification.

• Removed proposed § 142.308(b)(3)(iii), "Equipment control (into and out of site)," as this information is now covered under § 164.310(d)(1), "Device and media controls."

• Moved proposed § 142.308(b)(3)(iv), "A facility security plan," to § 164.310(a)(2)(ii).

• Moved proposed § 142.308(b)(3)(v), "Procedure for verifying access authorizations," to § 164.310(a)(2)(iii) and renamed as "Access control and validation procedures." Removed the word "formal" from text.

• Moved proposed § 142.308(b)(3)(vi), "Maintenance records," to § 164.310(a)(2)(iv).

• Moved proposed § 142.308(b)(3)(vii), "Need to know procedures for personnel access," to sect; 164.310(a)(2)(iii) and renamed as "Access control and validation procedures."

• Moved proposed § 142.308(b)(3)(viii), "Procedures to sign in visitors and provide escort, if appropriate," to § 164.310(a)(2)(iii) and renamed as "Access control and validation procedures."

• Moved proposed § 142.308(b)(3)(ix), "Testing and revision," to § 164.310(a)(2)(iii) and renamed as "Access control and validation procedures."

• Moved proposed § 142.308(b)(4), "Policy and guidelines on workstation use," to § 164.310(b) and renamed as "Workstation use."

• Moved proposed § 142.308(b)(5), "Secure work station location," to § 164.310(c) and renamed as "Workstation security."

• Removed proposed § 142.308(b)(6), "Security awareness training," as a separate requirement. This requirement has been incorporated under § 164.308(a)(5)(i), "Security awareness and training."

• Combined and moved proposed § 142.308(c) and § 142.308(d), "Technical security services to guard data integrity, confidentiality and availability" and "Technical security mechanisms," to § 164.312 and renamed as "Technical safeguards."

• Removed proposed § 142.308(c)(1) since it is no longer pertinent.

• Moved proposed § 142.308(c)(1)(i), "Access control," to § 164.312(a)(1).

• Moved proposed § 142.308(c)(1)(i)(A), "Procedure for emergency access," to § 164.312(a)(2)(ii), and renamed as "Emergency access procedures."

• Removed proposed § 142.308(c)(1)(i)(B).

• Removed proposed § 142.308(c)(1)(i)(B)(1), "Context-based access," § 142.308(c)(1)(i)(B)(2), "Role-based access," and § 142.308(c)(1)(i)(B)(3), "User-based access," since these features were deemed too specific and were perceived as the only options permissible.

• Moved proposed § 142.308(c)(1)(i)(C), "Optional use of encryption," to § 164.312(a)(2)(iv) and retitled "Encryption and decryption."

• Moved proposed § 142.308(c)(1)(ii), "Audit controls," to § 164.312(b).

• Removed proposed § 142.308(c)(1)(iii), "Authorization control," and all implementation features (Role-based access, User-based access) since this function has been incorporated into § 164.308(a)(4), "Information access management."

• Moved proposed § 142.308(c)(1)(iv), "Data authentication," to § 164.312(c)(1), and retitled as "Integrity." Reworded part of description and placed in § 164.312(c)(2), "Mechanism to authenticate data," a new, addressable implementation specification. Removed reference to double keying.

• Moved proposed § 142.308(c)(1)(v), "Entity authentication," to § 164.312(d) and retitled as "Person or entity authentication."

• Moved proposed § 142.308(c)(1)(v)(A), "Automatic logoff," to § 164.312(a)(2)(iii).

• Moved proposed § 142.308(c)(1)(v)(B), "Unique user identification," to § 164.312(a)(2)(i).

• Removed proposed § 142.308(c)(1)(v)(C) since text is no longer pertinent.

• Removed proposed § 142.308(c)(1)(v)(C)(2), "Password," as too specific.

• Removed proposed § 142.308(c)(1)(v)(C)(3), "PIN," as too specific.

• Removed proposed § 142.308(c)(1)(v)(C)(4), "Telephone callback," as too specific.

• Removed proposed § 142.308(c)(1)(v)(C)(5), "Token," as too specific.

• Removed proposed § 142.308(c)(2), as no longer relevant.

• Moved proposed § 142.308(d)(1), "Communications or network controls," to § 164.312(e)(1) and renamed as "Transmission security."

• Removed proposed § 142.308(d)(1)(i), since it is no longer pertinent.

• Moved proposed § 142.308(d)(1)(i)(A), "Integrity controls," to § 164.312(e)(2)(i) and reworded for clarity.

• Removed proposed § 142.308(d)(1)(i)(B), "Message authentication," since this subject is now covered under § 164.312(e)(2)(i), "Integrity controls."

• Removed proposed § 142.308(d)(1)(ii) text since it is no longer pertinent.

• Removed proposed § 142.308(d)(1)(ii)(A), "Access controls."

• Moved proposed § 142.308(d)(1)(ii)(B), "Encryption," to § 164.312(e)(2)(ii) and reworded to enhance flexibility and scalability.

• Removed proposed § 142.308(d)(2) text regarding: "Network controls," and all implementation features ("Alarm," "Audio trail," "Entity authentication," "Event reporting").

• Removed proposed § 142.310, "Electronic signature," and all subheadings. This section will be issued as a separate future regulation.

• Moved proposed § 142.310 "Electronic signature Standard," to § 164.310. Where this section was proposed to contain the electronic signature standard, it now encompasses the "Physical safeguards."

• Moved proposed § 142.312, "Effective date of the implementation of the security and electronic signature standards," to § 164.318 and retitled as "Compliance dates for the initial implementation of the security standards." Reworded and retitled subsections.

• Added § 164.105, "Organizational requirements," with two standards, "Health care component and "Affiliated covered entities" with related implementation specifications.

• Added § 164.310(d)(2)(ii), "Media re-use procedures," implementation specification.

• Added § 164.312, "Technical safeguards," encompassing the combined technical services and technical mechanisms standards (proposed § 142.308(c) and (d)).

• Added § 164.314, "Organizational requirements."

• Added § 164.314(a)(1), "Business associate contracts or other arrangements" standard and related implementation specifications.

• Added § 164.314(b)(1), "Requirements for group health plans" standard and related implementation specifications.

• Added § 164.316, "Policies and procedures and documentation requirements."

• Added § 164.316(a), "Policies and procedures" standard.

• Added § 164.316(b)(1), "Documentation" standard and related implementation specifications.

• Added § 164.318, "Compliance dates for the initial implementation of the security standards."

• Renamed Addendum 1 as Appendix A.

• Removed Addendum 2. Definitions of terms used in this final rule are now incorporated into § 164.103 and § 164.304, or within the rule itself.

• Removed Addendum 3.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

As discussed below, we are soliciting comment on the recordkeeping requirements, as referenced in § 164.306, § 164.308, § 164.310, § 164.314, and § 164.316 of this document.

Section 164.306 Security Standards: General Rules

Under paragraph (d), a covered entity must, if implementing the implementation specification is not reasonable and appropriate, document why it would not be reasonable and appropriate to implement the implementation specification.

We estimate that 75,000 entities will be affected by this requirement and that they will have to create documentation 3 times for this requirement. We estimate each instance of documentation will take .25 hours, for a one-time total burden of 56,250 hours.

Section 164.308 Administrative Safeguards

Under this section, a covered entity must document known security incidents and their outcomes.

We estimate that there will be 50 known incidents annually and that it will take 8 hours to document this requirement, for an annual burden of 400 hours.

This section further requires that each entity have a contingency plan, with specified components.

We estimate that there will be 60,000 entities affected by this requirement and that it will take each entity 8 hours to comply, for a total one-time burden of 480,000 hours.

This section also requires that the written contract or other arrangement with a business associate document the satisfactory assurances that the business associate will appropriately safeguard the information through a written contract or other arrangement with the business associate that meets the applicable requirements of § 164.314(a).

We believe that the burden associated with this requirement is not subject to the PRA. It is good business practice for entities to document their arrangements via written contracts and as such is usual and customary among the entities subject to them. A burden associated with a requirement conducted in the normal course of business is exempt from the PRA as defined in 5 CFR 1320.3(b)(2).

Section 164.310 Physical Safeguards

This section requires that a covered entity implement policies and procedures to document repairs and modifications to the physical components of a facility that are related to security (for example, hardware, walls, doors, and locks).

We believe that 15,500 entities will have to repair or modify physical components, most of which will need to be done in the first year of implementation. In the following years, we estimate that 500 entities will need to make repairs or modifications. We estimate that it will take 10 minutes to document each repair or modification for a burden of 2,583 hours the first year and 83 hours annually subsequently.

This section requires that a covered entity create a retrievable, exact copy of electronic protected health information, where needed, before movement of equipment.

We believe that the burden associated with this requirement is not subject to the PRA. It is good business practice for entities to backup their data files, and as such is usual and customary among the entities subject to them. A burden associated with a requirement conducted in the normal course of business is exempt from the PRA as defined in 5 CFR 1320.3(b)(2).

Section 164.314 Organizational Requirements

This section requires that a covered entity report to the Secretary problems with a business associate's pattern of an activity or practice of the business associate that constitute a material breach or violation of the business associate's obligation under the contract or other arrangement if it is not feasible to terminate the contract or arrangement.

We believe that 10 entities will need to comply with this reporting requirement and that it will take them 60 minutes to comply with this requirement for an annual burden of 10 hours.

This section also requires that a covered entity may, if a business associate is required by law to perform a function or activity on behalf of a covered entity or to provide a service described in the definition of business associate as specified in § 160.103 of this subchapter to a covered entity, permit the business associate to create, receive, maintain, or transmit electronic protected health information on its behalf to the extent necessary to comply with the legal mandate without meeting the requirements of paragraph (a)(2)(i) of this section, provided that the covered entity attempts in good faith to obtain satisfactory assurances as required by paragraph (a)(2)(ii)(A) of this section, and documents the attempt and the reasons that these assurances cannot be obtained.

We believe that this situation will affect 20 entities and that it will take 60 minutes to document attempts to obtain assurances and the reasons they cannot be obtained for an annual burden of 20 hours.

This section further requires that business associate contracts or other arrangements and group health plans must require the business entity and plan sponsor, respectively, to report to the covered entity any security incident of which it becomes aware.

We believe that the burden associated with this requirement is not subject to the PRA. It is good business practice for entities to document their agreements via written contracts, and as such is usual and customary among the entities subject to them. A burden associated with a requirement conducted in the normal course of business is exempt from the PRA as defined in 5 CFR 1320.3(b)(2).

Section 164.316 Policies and Procedures and Documentation Requirements

Paragraph (b)(1), *Standard: Documentation*, of this section requires a covered entity to—

(i) Maintain the policies and procedures implemented to comply with this subpart in written (which may be electronic) form; and

(ii) If an action, activity, assessment, or designation is required by this subpart to be documented, maintain a written (which may be electronic) record of the action, activity, assessment, or designation.

We estimate that it will take the 4,000,000 entities covered by this final rule 16 hours to document their policies and procedures, for a total one-time burden of 64,000,000 hours.

The total annual burden of the information collection requirements contained in this final rule is 64,539,264 hours. These information collection requirements will be submitted to OMB for review under the PRA and will not become effective until approved by OMB.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Reports Clearance Officer, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Julie Brown, CMS–0049–F; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

IV. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). Although we cannot determine the specific economic impact of the standards in this final rule (and individually each standard may not have a significant impact), the overall impact analysis makes clear that, collectively, all the standards will have a significant impact of over $100 million on the economy. Because this rule affects over 2 million entities, a requirement as low as $50 per entity would render this rule economically significant. This rule requires each of these entities to engage in, for example, at least some risk assessment activity; thus, this rule is almost certainly economically significant even though we do not have an estimate of the marginal impact of the additional security standards. However, the standards adopted in this rule are considerably more flexible than those anticipated in the overall impact analysis. Therefore, their implementation costs should be lower than those assumed in the impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. While each standard may not have a significant impact on a substantial number of small entities, the combined effects of all the standards are likely to have a significant effect on a substantial number of small entities. Although we have certified this rule as having a significant impact, we have previously discussed the impact of small entities in the RFA published as part of the August 17, 2000 final regulation for the Standards for Electronic Transactions (65 FR 50312), on pages 50359 through 50360. That analysis included the impact of the set of HIPAA standards regulations (transactions and code sets, identifiers, and security). Although we discussed the impact on small entities in the previous analysis, we would like to discuss how this final rule has been structured to minimize the impact on small entities, compared to the proposed rule.

The proposed rule mandated 69 implementation features for all entities. A large number of commenters indicated that mandating such a large number would be burdensome for all entities. As a result, we have restructured this final rule to permit greater flexibility. While all standards must be met, we are now only requiring 13 implementation specifications. The remainder of the implementation specifications is "addressable." For addressable specifications, an entity decides whether each specification is a reasonable and appropriate security measure to apply within its particular security framework. This decision is based on a variety of factors, for example, the entity's risk analysis, what measures are already in place, the particular interest to small entities, and the cost of implementation.

Based on the decision, an entity can—(1) implement the specification if reasonable and appropriate; (2) implement an alternative security measure to accomplish the purposes of the standard; or (3) not implement anything if the specification is not reasonable and appropriate and the standard can still be met.

This approach will provide flexibility for all entities, and especially small entities that would be most concerned about the cost and complexity of the security standards. Small entities can look at the addressable implementation specifications and tailor their compliance based on their risks and capabilities of addressing those risks.

The required risk analysis is also a tool to allow flexibility for entities in meeting the requirements of this final rule. The risk analysis requirement is designed to allow entities to look at their own operations and determine the security risks involved. The degree of response is determined by the risks identified. We assume that smaller entities, who deal with smaller amounts of information would have smaller physical facilities, smaller work forces, and therefore, would assume less risk. The smaller amount of risk involved means that the response to that risk can be developed on a smaller scale than that for larger organizations.

Individuals and States are not included in the definition of a small entity. However, the security standards will affect small entities, such as providers and health plans, and vendors in much the same way as they affect any larger entities. Small providers who conduct electronic transactions and small health plans must meet the provisions of this regulation and implement the security standards. A more detailed analysis of the impact on small entities is part of the impact analysis published on August 17, 2000 (65 FR 50312), which provided the impact for all of the HIPAA standards, except privacy. As we discussed above, the scalability factor of the standards means that the requirements placed upon small providers and plans would be consistent with the complexity of their operations. Therefore, small providers and plans with appropriate security processes in place would need to do relatively little in order to comply with the standards. Moreover, small plans will have an additional year to come into compliance.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. While this rule may have a significant impact on small rural hospitals, the impact should be minimized by the scalability factors of the standards, as discussed above in the impact on all small entities. In addition, we have previously discussed the impact of small entities in the RIA published as part of the August 17, 2000 final regulation for the Standards for Electronic Transactions.

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995

also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We estimate that implementation of all the standards will require the expenditure of more than $110 million by the private sector. Therefore, the rule establishes a Federal private sector mandate and is a significant regulatory action within the meaning of section 202 of UMRA (2 U.S.C. 1532). We have included the statements to address the anticipated effects of these rules under section 202.

These standards also apply to State and local governments in their roles as health plans or health care providers. Because these entities, in their roles as health plans or providers, must implement the requirements in these rules, the rules impose unfunded mandates on them. Further discussion of this issue can be found in the previously published impact analysis for all standards (65 FR 50360 through 50361).

The anticipated benefits and costs of the security standards, and other issues raised in section 202 of the UMRA, are addressed in the analysis below, and in the combined impact analysis. In addition, as required under section 205 of the UMRA (2 U.S.C. 1535), having considered a reasonable number of alternatives as outlined in the preamble to this rule, HHS has concluded that this final rule is the most cost-effective alternative for implementation of HHS's statutory objective of administrative simplification.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The proposed rule was published before the enactment of Executive Order 13132 of August 4, 1999, Federalism (published in the **Federal Register** on August 10, 1999 (64 FR 43255)), which required meaningful and timely input by State and local officials in the development of rules that have Federalism implications). However, we received and considered comments on the proposed rule from State agencies and from entities who conduct transactions with State agencies. Several of the comments referred to the costs that will result from implementation of the HIPAA standards. As we stated in the impact analysis, we are unable to estimate the cost of implementing security features as implementation needs will vary dependent upon a risk assessment and upon what is already in place. However, the previously referenced impact analysis in the August 17, 2000 final rule (65 FR 50312) showed that Administrative Simplification costs will be offset by future savings.

In complying with the requirements of part C of title XI, the Secretary established interdepartmental implementation teams who consulted with appropriate State and Federal agencies and private organizations. These external groups consisted of the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Standards and Security, the Workgroup for Electronic Data Interchange (WEDI), the National Uniform Claim Committee (NUCC), the National Uniform Billing Committee (NUBC), and the American Dental Association (ADA). The teams also received comments on the proposed regulation from a variety of organizations, including State Medicaid agencies and other Federal agencies.

B. Anticipated Effects

The analysis in the August 2000, Transaction Rule included the expected costs and benefits of the administrative simplification regulations related to electronic systems for 10 years. Although only the electronic transaction standards were promulgated in the transaction rule, HHS expected affected parties to make systems compliance investments collectively because the regulations are so integrated. Moreover, the data available to us were also based on the collective requirements of this regulation. It is not feasible to identify the incremental technological and computer costs for each regulation. Although HHS is issuing rules under HIPAA sequentially, affected entities and vendors are bundling services, that is, they have been anticipating the various needs and are designing relatively comprehensive systems as they develop hardware and software. For example, a vendor developing a system for electronic billing would also anticipate and include security features, even in the absence of any regulation. Moreover, a draft of the security rule was first published in 1998. Even though the final is different (and less burdensome), vendors had a reasonable indication of the direction policy would go. Thus, in preparing the electronic transaction rule, we recognized and included costs that might theoretically be associated with security or other HIPPA rules. Hence, some of the "costs" of security have already been accounted for in the Standards for Electronic Transactions cost estimate (45 CFR parts 160 and 162), which was published in the **Federal Register** on August 17, 2000 (65 FR 50312).

This analysis showed that the combined impact of the Administrative Simplification standards is expected to save the industry $29.9 billion over 10 years. We are including in each subsequent rule an impact analysis that is specific to the standard or standards in that rule, but the impact analysis will assess only the incremental cost of implementing a given standard over another. Thus, the following discussion contains the impact analysis for the marginal costs of the security standards in this final rule.

The following describes the specific impacts that relate to the security standards. The security of electronic protected health information is, and has been for some time, a basic business requirement that health care entities ignore at their peril. Instances of "hacking" and other security violations may be widely publicized, and can seriously damage an institution's community standing. Appropriate security protections are crucial for encouraging the growth and use of electronic data interchange. The synergistic effect of the employment of the security standards will enhance all aspects of HIPAA's Administrative Simplification requirements. In addition, it is important to recognize that security is not a one-time project, but rather an on-going, dynamic process.

C. Changes From the 1998 Impact Analysis

The overall impact analysis for Administrative Simplification was first published on May 7, 1998 (63 FR 25320) in the proposed rule for the National Provider Identifier standard (45 CFR part 142), the first of the proposed Administrative Simplification rules. That impact analysis was based on the industry situation at that time, used statistics which were current at that time, and assumed that all of the HIPAA standards would be implemented at roughly the same time, which would permit software changes to be made less expensively. While the original impact analysis represented our best information at that time, we realize that the state of the industry, and of security technology, has changed since 1998. We discuss several of those changes and how they affect the impact of this regulation.

1. Changes in Technology

The state of technology for health care security has changed since 1998. New technologies to protect information have been developed over the past several years. As a result, HHS has consulted with the Gartner Group, a leading technology assessment organization, regarding what impact these changes in the industry might have on the expected impact of this regulation. The Gartner analysis indicated that the cost of meeting the requirements of a reasonable interpretation of the security rule in 2002 is probably less than 10 percent higher in 2002 than it was in 1998. This increase is mainly driven by more active threats and increased personnel costs offsetting decreases in technology costs over the past 4 years. However, spending by companies who have anticipated the security rule or who have independently made business decisions to implement security policies and procedures as good business practice(s) has already occurred, and probably will cancel out the increased costs of implementation. Therefore, Gartner expects the cost of complying with the HIPAA security standards to be about the same now as it was in 1998.

2. Synchronizing Standards

The timelines for the implementation of the initial HIPAA standards (transactions, identifiers, and security) are no longer closely synchronized. However, we do not believe that this lack of synchronization will have a significant impact on the cost of implementing security. The analysis provided by the Gartner group indicated that implementing security standards is being viewed by entities as a separate task from implementing the transaction standards, and that this is not having a significant impact on costs. As with other HIPAA standards, most current entities will have a 2-year implementation period before compliance with the standards is required. Covered entities will develop their own implementation schedules, and may phase in various security measures over that time period.

3. Relationship to Privacy Standards

The publication of the final Privacy Rules (45 CFR parts 160 and 164) on December 28, 2000 in the **Federal Register** (65 FR 82462) and on August 14, 2002 (67 FR 53182) has affected the impact of this regulation significantly. Covered entities must implement the privacy standards by April 14, 2003 (April 14, 2004 for small health plans). The implementation of privacy standards reduces the cost of implementing the security standards in two significant areas.

First, we have made substantial efforts to ensure that the many requirements in the security standards parallel those for privacy, and can easily be satisfied using the solutions for privacy. Administrative requirements like the need for written policies, responsible officers, and business associate agreements that are already required by the Privacy Rule can also serve to meet the security standards without significant additional cost. The analysis of data flows and data uses that covered entities are doing so as to comply with the Privacy Rule should also serve as the starting point for parallel analysis required by this final rule.

Second, it is likely that covered entities will meet a number of the requirements in the security standards through the implementation of the privacy requirements. For example, in order to comply with the Privacy Rule requirements to make reasonable efforts to limit the access of members of the work force to specified categories of protected health information, covered entities may implement some of the administrative, physical, and technical safeguards that the entity's risk analysis and assessment would require under the Security Rule. E-mail authentication procedures put into place for privacy protection may also meet the security standards, thereby eliminating the need for additional investments to meet these standards. As a result, covered entities that have moved forward in implementing the privacy standards are also implementing security measures at the same time. Since the proposed security standards proposed rule represents the most authoritative guidance now available on the nature of these standards, some entities have been using them to develop their security measures. Those entities should face minimal incremental costs in implementing the final version of these standards.

We are unable to quantify these overlaps, but we believe they may reduce the cost of implementing these security standards. The analysis provided to the HHS by the Gartner Group also stated that compliance with the Privacy Rule will have a moderate effect on the cost of compliance with the Security Rule, reducing it slightly.

4. Sensitivity to Security Concerns as a Result of September 11, 2001

In our discussions with the Gartner Group, they indicated that they saw little evidence of increased security awareness in health care organizations as a result of the events of September 11, 2001. However, a survey conducted by Phoenix Health Systems in the winter of 2002 showed that 65 percent of the respondents to the survey (hospitals, payers, vendors, and clearinghouses) have moderately to greatly increased their attention on overall security. If these organizations have already made investments in security that meet some of the requirements of this rule, it will reduce their added costs of compliance. However, HHS can make no clear statement of the impact of this attention.

D. Guiding Principles for Standard Selection

The implementation teams charged with designating standards under the statute have defined, with significant input from the health care industry, a set of common criteria for evaluating potential standards. These criteria are based on direct specifications in the HIPAA, the purpose of the law, and principles that support the regulatory philosophy set forth in the E.O. 12866 of September 30, 1993, and the Paperwork Reduction Act of 1995. In order to be designated as such, a standard should do the following:

- Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic health care transactions. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses. This principle supports the regulatory goal of cost-effectiveness.
- Be consistent and uniform with the other HIPAA standards (that is, their data element definitions and codes, and their privacy and security requirements) and, secondarily, with other private and public sector health data standards. This principle supports the regulatory goals of consistency and avoidance of incompatibility, and it establishes a performance objective for the standard.
- Have low additional development and implementation costs relative to the benefits of using the standard. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Be supported by an ANSI-accredited standards developing organization or other private or public organization that would ensure continuity and efficient updating of the standard over time. This principle supports the regulatory goal of predictability.
- Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster. This

principle establishes a performance objective for the standard.

• Be technologically independent of the computer platforms and transmission protocols used in health transactions, except when they are explicitly part of the standard. This principle establishes a performance objective for the standard and supports the regulatory goal of flexibility.

• Be precise and unambiguous but as simple as possible. This principle supports the regulatory goals of predictability and simplicity.

• Keep data collection and paperwork burdens on users as low as is feasible. This principle supports the regulatory goals of cost-effectiveness and avoidance of duplication and burden.

• Incorporate flexibility to adapt more easily to changes in the health care infrastructure (for example, new services, organizations, and provider types) and information technology. This principle supports the regulatory goals of flexibility and encouragement of innovation.

We assessed a wide variety of security standards and guidelines against the principles listed above, with the overall goal of achieving the maximum benefit for the least cost. As we stated in the proposed rule, we found that no single standard for security exists that encompasses all the requirements that were listed in the law. However, we believe that the standards we are adopting in this final rule collectively accomplish these goals.

E. Affected Entities

1. Health Care Providers

Covered health care providers may incur implementation costs for establishing or updating their security systems. The majority of costs to implement the security standard (purchase and installation of appropriate computer hardware and software, and physical safeguards) would generally be incurred in the initial implementation period for the specific requirements of the security standard. Health care providers that do not conduct electronic transactions for which standards have been adopted are not affected by these regulations.

2. Health Plans

All health plans, as the term is defined in regulation at 45 CFR 160.103, must comply with these security standards. In addition, health plans that engage in electronic health care transactions may have to modify their systems to meet the security standards. Health plans that maintain electronic health information may also have to modify their systems to meet the security standards. This conversion would have a one-time cost impact on Federal, State, and private plans alike.

We recognize that this conversion process has the potential to cause business disruption of some health plans. However, health plans would be able to schedule their implementation of the security standards and other standards in a way that best fits their needs, as long as they meet the deadlines specified in the HIPAA law and regulations. Moreover, small plans (many of which are employer-sponsored) will have an additional year in which to achieve compliance. Small health plans are defined at 45 CFR 160.103 as health plans with annual receipts of $5 million or less.

3. Clearinghouses

All health care clearinghouses must meet the requirements of this regulation. Health care clearinghouses would face effects similar to those experienced by health care providers and health plans. However, because clearinghouses represent one way in which providers and plans can achieve compliance, the clearinghouses' costs of complying with these standards would probably be passed along to those entities, to be shared over the entire customer base.

4. System Vendors

Systems vendors that provide computer software applications to health care providers and other billers of health care services would likely be affected. These vendors would have to develop software solutions that would allow health plans, providers, and other users of electronic transactions to protect these transactions and the information in their databases from unauthorized access to their systems. Their costs would also probably be passed along to their customer bases.

F. Factors in Establishing the Security Standard

1. General Effect

In assessing the impact of these standards, it is first necessary to focus on the general nature of the standards, their scalability, and the fact that they are not dependent upon specific technologies. These factors will make it possible for covered entities to implement them with the least possible impact on resources. Because there is no national security standard in widespread use throughout the industry, adopting any of the candidate standards would require most health care providers, health plans, and health care clearinghouses to at least conduct an assessment of how their current security measures conform to the new standards. However, we assume that most, if not all, covered entities already have at least some rudimentary security measures in place. Covered entities that identify gaps in their current measures would need to establish or revise their security precautions.

It is also important to note that the standards specify what goals are to be achieved, but give the covered entity some flexibility to determine how to meet those goals. This is different from the transaction standards, where all covered entities must use the exact same implementation guide. With respect to security, covered entities will be able to blend security processes now in place with new processes. This should significantly reduce compliance costs.

Based on our analysis and comments received, the security standards adopted in this rule do not impose a greater burden on the industry than the options we did not select, and they present significant advantages in terms of universality and flexibility.

We understand that some large health plans, health care providers, and health care clearinghouses that currently exchange health information among trading partners may already have security systems and procedures in place to protect the information from unauthorized access. These entities may not incur significant costs to meet the security standards. Large entities that have sophisticated security systems in place may only need minor revisions or updates to their systems to meet the security standards, or indeed, may not need to make any changes in their systems.

While small providers are not likely to have implemented sophisticated security measures, they are also not as likely to need them as larger covered entities. The scalability principle allows providers to adopt measures that are appropriate to their own circumstances.

2. Complexity of Conversion

The complexity of the conversion to the security standards could be significantly affected by the volume of transactions that covered entities transmit and process electronically and the desire to transmit directly or to use the services of a Value Added Network (VAN) or a clearinghouse. If a VAN or clearinghouse is used, some of the conversion activities would be carried out by that organization, rather than by the covered entity. This would simplify conversion for the covered entity, but makes the covered entity dependent on the success of its business associate. The architecture, and specific technology limitations of existing systems could also affect the complexity of the conversion (for example, certain practice management software that does not contain password protection will require a greater conversion effort than software that has a password protection option already built into it).

3. Cost of Conversion

Virtually all providers, health plans, and clearinghouses that transmit or store data electronically have already implemented some security measures and will need to assess existing security, identify areas of risk, and implement additional measures in order to come into compliance with the standards adopted in this rule. We cannot estimate the per-entity cost of implementation because there is no information available regarding the extent to which providers', plans', and clearinghouses' current security practices are deficient. Moreover, some security solutions are almost cost-free to implement (for example, reminding employees not to post passwords on their monitors), while others are not.

Affected entities will have many choices regarding how they will implement security. Some may choose to assess security using in-house staff, while others will use consultants. Practice management software vendors may also provide security consultation services to their customers. Entities may also choose to implement security measures that require hardware and/or software purchases at the time they do routine equipment upgrades.

The security standards we adopt in this rule were developed with considerable input from the health care industry, including providers, health plans, clearinghouses, vendors, and standards organizations. Industry members strongly advocated the flexible approach we adopt in this rule, which permits each affected entity to develop cost-effective security measures appropriate to their particular needs. We believe that this approach will yield the lowest implementation cost to industry while ensuring that electronic protected health information is safeguarded.

All of the nation's health plans (over 2 million) and providers (over 600,000) will need to conduct some level of gap analysis to assess current procedures against the standards. However, we cannot estimate the number of covered entities that would have to implement additional security systems and procedures to meet the adopted standards. Also, we are not able to estimate the number of providers that do not conduct electronic transactions today but may choose to do so at some future time (these would be entities that send and receive paper transactions and maintain paper records and thus would not be affected). We believe that the security standards represent the minimum necessary for adequate protection of health information in an electronic format and as such should be implemented by all covered entities. As discussed earlier in this preamble, the security requirements are both scalable and technically flexible; and while the law requires each health plan that is not a small plan to comply with the security and electronic signature requirements no later than 24 months after the effective date of the final rule, small plans will be allowed an additional 12 months to comply.

Since we are unable to estimate the number of entities that may need to make changes to meet the security standards, we are also unable to estimate the cost for those entities. However, we believe that the cost of establishing security systems and procedures is a portion of the costs associated with converting to the administrative simplification standards that are required under HIPAA, which are estimated in the previously referenced impact analysis.

This discussion on conversion costs relates only to health plans, health care providers, and health care clearinghouses that are required to implement the security standards. The cost of implementing security systems and procedures for entities that do not transmit, receive, or maintain health information electronically is not a cost imposed by the rule, and thus, is not included in our estimates.

G. Alternatives Considered

In developing this final rule, the Department considered some alternatives. One alternative was to not issue a final rule. However, this would not meet the Department's obligations under the HIPAA statute. It would also leave the health industry without a set of standards for protecting the security of health information. The vast majority of commenters supported our efforts in developing a set of standards. Thus, we concluded that not publishing a final rule was not in the best interests of the industry and not in the best interests of persons whose medical information will be protected by these measures.

A second alternative was to publish the final rule basically unchanged from the proposed rule. Although most commenters supported the approach of the proposed rule, there were significant objections to the number of required specifications, concerns about the scope of certain requirements, duplication and ambiguity of some requirements, and the overall complexity of the approach. Based on those comments, it was clear that revisions had to be made. In addition, the proposed rule was developed before the Privacy Rule requirements were developed. Thus, it did not allow for any alignment of requirements between the Privacy and Security standards.

As a result, the Department determined that an approach that modified the proposed rule and aligned the requirements with the Privacy standards was the preferred alternative.

V. Federalism

Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64 FR 43255), requires us to ensure meaningful and timely input by State and local officials in the development of rules that have Federalism implications. Although the proposed rule for security standards was published before the enactment of this Executive Order, the Department consulted with State and local officials as part of an outreach program in the process of developing the proposed regulation. The Department received comments on the proposed rule from State agencies and from entities that conduct transactions with State agencies. Many of these comments were concerned with the burden that the proposed security standards would place on their organizations. In response to those comments, we have modified the security standards to make them more flexible and less burdensome.

In complying with the requirements of part C of Title XI, the Secretary established an interdepartmental team who consulted with appropriate State and Federal agencies and private organizations. These external groups included the NCVHS Workgroup on Standards and Security, the Workgroup for Electronic Data Interchange, the National Uniform Claim Committee, and the National Uniform Billing Committee. Most of these groups have State officials as members. We also received comments on the proposed regulation from these organizations.

In accordance with the provisions of Executive Order 12866, this rule has been reviewed by the Office of Management and Budget.

List of Subjects

45 CFR Part 160

Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health

records, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements.

45 CFR Part 162

Administrative practice and procedure, Health facilities, Health insurance, Hospitals, Medicaid, Medicare, report and recordkeeping requirement.

45 CFR Part 164

Administrative practice and procedure, Health facilities, Health insurance, Hospitals, Medicaid, Medicare, Electronic Information System, Security, Report and recordkeeping requirement.

For the reasons set forth in the preamble, the Department of Health and Human Services amends title 45, subtitle A, subchapter C, parts 160, 162, and 164 as set forth below:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 160 continues to read as follows:

Authority: Sec. 1171 through 1179 of the Social Security Act, (42 U.S.C. 1320d–1329d–8) as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031 and sec. 264 of Pub. L. 104–191 (42 U.S.C. 1320d–2(note)).

2. In § 160.103, the definitions of "disclosure", "electronic media", "electronic protected health information," "individual," "organized health care arrangement", "protected health information," and "use" are added in alphabetical order to read as follows:

§ 160.103 Definitions.

* * * * *

Disclosure means the release, transfer, provision of, access to, or

divulging in any other manner of information outside the entity holding the information.

* * * * *

Electronic media means:

(1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or

(2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

Electronic protected health information means information that comes within paragraphs (1)(i) or (1)(ii) of the definition of *protected health information* as specified in this section.

* * * * *

Individual means the person who is the subject of protected health information.

* * * * *

Organized health care arrangement means:

(1) A clinically integrated care setting in which individuals typically receive health care from more than one health care provider;

(2) An organized system of health care in which more than one covered entity participates and in which the participating covered entities:

(i) Hold themselves out to the public as participating in a joint arrangement; and

(ii) Participate in joint activities that include at least one of the following:

(A) Utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities or by a third party on their behalf;

(B) Quality assessment and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or

(C) Payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement and if protected health information created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk.

(3) A group health plan and a health insurance issuer or HMO with respect to such group health plan, but only with respect to protected health information created or received by such health insurance issuer or HMO that relates to individuals who are or who have been participants or beneficiaries in such group health plan;

(4) A group health plan and one or more other group health plans each of which are maintained by the same plan sponsor; or

(5) The group health plans described in paragraph (4) of this definition and health insurance issuers or HMOs with respect to such group health plans, but only with respect to protected health information created or received by such health insurance issuers or HMOs that relates to individuals who are or have been participants or beneficiaries in any of such group health plans.

Protected health information means individually identifiable health information:

(1) Except as provided in paragraph (2) of this definition, that is:

(i) Transmitted by electronic media;

(ii) Maintained in electronic media; or

(iii) Transmitted or maintained in any other form or medium.

(2) *Protected health information* excludes individually identifiable health information in:

(i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;

(ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and

(iii) Employment records held by a covered entity in its role as employer.

* * * * *

Use means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

* * * * *

PART 162—ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 162 is revised to read as follows:

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d–1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

§ 162.103 [Amended]

2. In § 162.103, the definition of "electronic media" is removed.

PART 164—SECURITY AND PRIVACY

1. The authority citation for part 164 is revised to read as follows:

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d–1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and 42 U.S.C. 1320d–2 and 1320d–4, sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

2. A new § 164.103 is added to read as follows:

§ 164.103 Definitions.

As used in this part, the following terms have the following meanings:

Common control exists if an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of another entity.

Common ownership exists if an entity or entities possess an ownership or equity interest of 5 percent or more in another entity.

Covered functions means those functions of a covered entity the performance of which makes the entity a health plan, health care provider, or health care clearinghouse.

Health care component means a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with § 164.105(a)(2)(iii)(C).

Hybrid entity means a single legal entity:

(1) That is a covered entity;

(2) Whose business activities include both covered and non-covered functions; and

(3) That designates health care components in accordance with paragraph § 164.105(a)(2)(iii)(C).

Plan sponsor is defined as defined at section 3(16)(B) of ERISA, 29 U.S.C. 1002(16)(B).

Required by law means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. *Required by law* includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

3. Section 164.104 is revised to read as follows:

§ 164.104 Applicability.

(a) Except as otherwise provided, the standards, requirements, and implementation specifications adopted under this part apply to the following entities:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

(b) When a health care clearinghouse creates or receives protected health information as a business associate of another covered entity, or other than as a business associate of a covered entity, the clearinghouse must comply with § 164.105 relating to organizational requirements for covered entities, including the designation of health care components of a covered entity.

4. A new § 164.105 is added to read as follows:

§ 164.105 Organizational requirements.

(a)(1) *Standard: Health care component.* If a covered entity is a hybrid entity, the requirements of subparts C and E of this part, other than the requirements of this section, § 164.314, and § 164.504, apply only to the health care component(s) of the entity, as specified in this section.

(2) *Implementation specifications:*

(i) *Application of other provisions.* In applying a provision of subparts C and E of this part, other than the requirements of this section, § 164.314, and § 164.504, to a hybrid entity:

(A) A reference in such provision to a "covered entity" refers to a health care component of the covered entity;

(B) A reference in such provision to a "health plan," "covered health care provider," or "health care clearinghouse," refers to a health care component of the covered entity if such health care component performs the functions of a health plan, health care provider, or health care clearinghouse, as applicable;

(C) A reference in such provision to "protected health information" refers to protected health information that is created or received by or on behalf of the health care component of the covered entity; and

(D) A reference in such provision to "electronic protected health information" refers to electronic protected health information that is created, received, maintained, or transmitted by or on behalf of the health care component of the covered entity.

(ii) *Safeguard requirements.* The covered entity that is a hybrid entity must ensure that a health care component of the entity complies with the applicable requirements of this section and subparts C and E of this part. In particular, and without limiting this requirement, such covered entity must ensure that:

(A) Its health care component does not disclose protected health information to another component of the covered entity in circumstances in which subpart E of this part would prohibit such disclosure if the health care component and the other component were separate and distinct legal entities;

(B) Its health care component protects electronic protected health information with respect to another component of the covered entity to the same extent that it would be required under subpart C of this part to protect such information if the health care component and the other component were separate and distinct legal entities;

(C) A component that is described by paragraph (a)(2)(iii)(C)(*2*) of this section does not use or disclose protected health information that it creates or receives from or on behalf of the health care component in a way prohibited by subpart E of this part;

(D) A component that is described by paragraph (a)(2)(iii)(C)(*2*) of this section that creates, receives, maintains, or transmits electronic protected health information on behalf of the health care component is in compliance with subpart C of this part; and

(E) If a person performs duties for both the health care component in the capacity of a member of the workforce of such component and for another component of the entity in the same capacity with respect to that component, such workforce member must not use or disclose protected health information created or received in the course of or incident to the member's work for the health care component in a way prohibited by subpart E of this part.

(iii) *Responsibilities of the covered entity.* A covered entity that is a hybrid entity has the following responsibilities:

(A) For purposes of subpart C of part 160 of this subchapter, pertaining to compliance and enforcement, the covered entity has the responsibility of complying with subpart E of this part.

(B) The covered entity is responsible for complying with § 164.316(a) and § 164.530(i), pertaining to the implementation of policies and procedures to ensure compliance with applicable requirements of this section and subparts C and E of this part, including the safeguard requirements in paragraph (a)(2)(ii) of this section.

(C) The covered entity is responsible for designating the components that are part of one or more health care components of the covered entity and documenting the designation in accordance with paragraph (c) of this section, provided that, if the covered entity designates a health care component or components, it must include any component that would meet the definition of covered entity if it were a separate legal entity. Health care component(s) also may include a component only to the extent that it performs:

(*1*) Covered functions; or

(*2*) Activities that would make such component a business associate of a

component that performs covered functions if the two components were separate legal entities.

(b)(1) *Standard: Affiliated covered entities.* Legally separate covered entities that are affiliated may designate themselves as a single covered entity for purposes of subparts C and E of this part.

(1) *Implementation specifications:*

(i) *Requirements for designation of an affiliated covered entity.*

(A) Legally separate covered entities may designate themselves (including any health care component of such covered entity) as a single affiliated covered entity, for purposes of subparts C and E of this part, if all of the covered entities designated are under common ownership or control.

(B) The designation of an affiliated covered entity must be documented and the documentation maintained as required by paragraph (c) of this section.

(ii) *Safeguard requirements.* An affiliated covered entity must ensure that:

(A) The affiliated covered entity's creation, receipt, maintenance, or transmission of electronic protected health information complies with the applicable requirements of subpart C of this part;

(B) The affiliated covered entity's use and disclosure of protected health information comply with the applicable requirements of subpart E of this part; and

(C) If the affiliated covered entity combines the functions of a health plan, health care provider, or health care clearinghouse, the affiliated covered entity complies with § 164.308(a)(4)(ii)(A) and § 164.504(g), as applicable.

(c)(1) *Standard: Documentation.* A covered entity must maintain a written or electronic record of a designation as required by paragraphs (a) or (b) of this section.

(2) *Implementation specification: Retention period.* A covered entity must retain the documentation as required by paragraph (c)(1) of this section for 6 years from the date of its creation or the date when it last was in effect, whichever is later.

5. A new subpart C is added to part 164 to read as follows:

Subpart C—Security Standards for the Protection of Electronic Protected Health Information

Sec.
164.302 Applicability.
164.304 Definitions.
164.306 Security standards: General rules.
164.308 Administrative safeguards.
164.310 Physical safeguards.
164.312 Technical safeguards.
164.314 Organizational requirements.
164.316 Policies and procedures and documentation requirements.
164.318 Compliance dates for the initial implementation of the security standards.

Appendix A to Subpart C of Part 164—Security Standards: Matrix

Authority: 42 U.S.C. 1320d–2 and 1320d–4.

§ 164.302 Applicability.

A covered entity must comply with the applicable standards, implementation specifications, and requirements of this subpart with respect to electronic protected health information.

§ 164.304 Definitions.

As used in this subpart, the following terms have the following meanings:

Access means the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource. (This definition applies to "access" as used in this subpart, not as used in subpart E of this part.)

Administrative safeguards are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the covered entity's workforce in relation to the protection of that information.

Authentication means the corroboration that a person is the one claimed.

Availability means the property that data or information is accessible and useable upon demand by an authorized person.

Confidentiality means the property that data or information is not made available or disclosed to unauthorized persons or processes.

Encryption means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.

Facility means the physical premises and the interior and exterior of a building(s).

Information system means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.

Integrity means the property that data or information have not been altered or destroyed in an unauthorized manner.

Malicious software means software, for example, a virus, designed to damage or disrupt a system.

Password means confidential authentication information composed of a string of characters.

Physical safeguards are physical measures, policies, and procedures to protect a covered entity's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

Security or Security measures encompass all of the administrative, physical, and technical safeguards in an information system.

Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

Technical safeguards means the technology and the policy and procedures for its use that protect electronic protected health information and control access to it.

User means a person or entity with authorized access.

Workstation means an electronic computing device, for example, a laptop or desktop computer, or any other device that performs similar functions, and electronic media stored in its immediate environment.

§ 164.306 Security standards: General rules.

(a) *General requirements.* Covered entities must do the following:

(1) Ensure the confidentiality, integrity, and availability of all electronic protected health information the covered entity creates, receives, maintains, or transmits.

(2) Protect against any reasonably anticipated threats or hazards to the security or integrity of such information.

(3) Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under subpart E of this part.

(4) Ensure compliance with this subpart by its workforce.

(b) *Flexibility of approach.*

(1) Covered entities may use any security measures that allow the covered entity to reasonably and appropriately implement the standards and implementation specifications as specified in this subpart.

(2) In deciding which security measures to use, a covered entity must take into account the following factors:

(i) The size, complexity, and capabilities of the covered entity.

(ii) The covered entity's technical infrastructure, hardware, and software security capabilities.

(iii) The costs of security measures.

(iv) The probability and criticality of potential risks to electronic protected health information.

(c) *Standards.* A covered entity must comply with the standards as provided in this section and in § 164.308, § 164.310, § 164.312, § 164.314, and § 164.316 with respect to all electronic protected health information.

(d) *Implementation specifications.* In this subpart:

(1) Implementation specifications are required or addressable. If an implementation specification is required, the word "Required" appears in parentheses after the title of the implementation specification. If an implementation specification is addressable, the word "Addressable" appears in parentheses after the title of the implementation specification.

(2) When a standard adopted in § 164.308, § 164.310, § 164.312, § 164.314, or § 164.316 includes required implementation specifications, a covered entity must implement the implementation specifications.

(3) When a standard adopted in § 164.308, § 164.310, § 164.312, § 164.314, or § 164.316 includes addressable implementation specifications, a covered entity must—

(i) Assess whether each implementation specification is a reasonable and appropriate safeguard in its environment, when analyzed with reference to the likely contribution to protecting the entity's electronic protected health information; and

(ii) As applicable to the entity—

(A) Implement the implementation specification if reasonable and appropriate; or

(B) If implementing the implementation specification is not reasonable and appropriate—

(1) Document why it would not be reasonable and appropriate to implement the implementation specification; and

(2) Implement an equivalent alternative measure if reasonable and appropriate.

(e) *Maintenance.* Security measures implemented to comply with standards and implementation specifications adopted under § 164.105 and this subpart must be reviewed and modified as needed to continue provision of reasonable and appropriate protection of electronic protected health information as described at § 164.316.

§ 164.308 Administrative safeguards.

(a) A covered entity must, in accordance with § 164.306:

(1)(i) *Standard: Security management process.* Implement policies and procedures to prevent, detect, contain, and correct security violations.

(ii) *Implementation specifications:*

(A) *Risk analysis* (Required). Conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information held by the covered entity.

(B) *Risk management* (Required). Implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level to comply with § 164.306(a).

(C) *Sanction policy* (Required). Apply appropriate sanctions against workforce members who fail to comply with the security policies and procedures of the covered entity.

(D) *Information system activity review* (Required). Implement procedures to regularly review records of information system activity, such as audit logs, access reports, and security incident tracking reports.

(2) *Standard: Assigned security responsibility.* Identify the security official who is responsible for the development and implementation of the policies and procedures required by this subpart for the entity.

(3)(i) *Standard: Workforce security.* Implement policies and procedures to ensure that all members of its workforce have appropriate access to electronic protected health information, as provided under paragraph (a)(4) of this section, and to prevent those workforce members who do not have access under paragraph (a)(4) of this section from obtaining access to electronic protected health information.

(ii) *Implementation specifications:*

(A) *Authorization and/or supervision* (Addressable). Implement procedures for the authorization and/or supervision of workforce members who work with electronic protected health information or in locations where it might be accessed.

(B) *Workforce clearance procedure* (Addressable). Implement procedures to determine that the access of a workforce member to electronic protected health information is appropriate.

(C) *Termination procedures* (Addressable). Implement procedures for terminating access to electronic protected health information when the employment of a workforce member ends or as required by determinations made as specified in paragraph (a)(3)(ii)(B) of this section.

(4)(i) *Standard: Information access management.* Implement policies and procedures for authorizing access to electronic protected health information that are consistent with the applicable requirements of subpart E of this part.

(ii) *Implementation specifications:*

(A) *Isolating health care clearinghouse functions* (Required). If a health care clearinghouse is part of a larger organization, the clearinghouse must implement policies and procedures that protect the electronic protected health information of the clearinghouse from unauthorized access by the larger organization.

(B) *Access authorization* (Addressable). Implement policies and procedures for granting access to electronic protected health information, for example, through access to a workstation, transaction, program, process, or other mechanism.

(C) *Access establishment and modification* (Addressable). Implement policies and procedures that, based upon the entity's access authorization policies, establish, document, review, and modify a user's right of access to a workstation, transaction, program, or process.

(5)(i) *Standard: Security awareness and training.* Implement a security awareness and training program for all members of its workforce (including management).

(ii) *Implementation specifications.* Implement:

(A) *Security reminders* (Addressable). Periodic security updates.

(B) *Protection from malicious software* (Addressable). Procedures for guarding against, detecting, and reporting malicious software.

(C) *Log-in monitoring* (Addressable). Procedures for monitoring log-in attempts and reporting discrepancies.

(D) *Password management* (Addressable). Procedures for creating, changing, and safeguarding passwords.

(6)(i) *Standard: Security incident procedures.* Implement policies and procedures to address security incidents.

(ii) *Implementation specification: Response and Reporting* (Required). Identify and respond to suspected or known security incidents; mitigate, to the extent practicable, harmful effects of security incidents that are known to the covered entity; and document security incidents and their outcomes.

(7)(i) *Standard: Contingency plan.* Establish (and implement as needed) policies and procedures for responding to an emergency or other occurrence (for example, fire, vandalism, system failure, and natural disaster) that damages systems that contain electronic protected health information.

(ii) *Implementation specifications:*

(A) *Data backup plan* (Required). Establish and implement procedures to create and maintain retrievable exact copies of electronic protected health information.

(B) *Disaster recovery plan* (Required). Establish (and implement as needed) procedures to restore any loss of data.

(C) *Emergency mode operation plan* (Required). Establish (and implement as needed) procedures to enable continuation of critical business processes for protection of the security of electronic protected health information while operating in emergency mode.

(D) *Testing and revision procedures* (Addressable). Implement procedures for periodic testing and revision of contingency plans.

(E) *Applications and data criticality analysis* (Addressable). Assess the relative criticality of specific applications and data in support of other contingency plan components.

(8) *Standard: Evaluation.* Perform a periodic technical and nontechnical evaluation, based initially upon the standards implemented under this rule and subsequently, in response to environmental or operational changes affecting the security of electronic protected health information, that establishes the extent to which an entity's security policies and procedures meet the requirements of this subpart.

(b)(1) *Standard: Business associate contracts and other arrangements.* A covered entity, in accordance with § 164.306, may permit a business associate to create, receive, maintain, or transmit electronic protected health information on the covered entity's behalf only if the covered entity obtains satisfactory assurances, in accordance with § 164.314(a) that the business associate will appropriately safeguard the information.

(2) This standard does not apply with respect to—

(i) The transmission by a covered entity of electronic protected health information to a health care provider concerning the treatment of an individual.

(ii) The transmission of electronic protected health information by a group health plan or an HMO or health insurance issuer on behalf of a group health plan to a plan sponsor, to the extent that the requirements of § 164.314(b) and § 164.504(f) apply and are met; or

(iii) The transmission of electronic protected health information from or to other agencies providing the services at § 164.502(e)(1)(ii)(C), when the covered entity is a health plan that is a government program providing public benefits, if the requirements of § 164.502(e)(1)(ii)(C) are met.

(3) A covered entity that violates the satisfactory assurances it provided as a business associate of another covered entity will be in noncompliance with the standards, implementation specifications, and requirements of this paragraph and § 164.314(a).

(4) *Implementation specifications: Written contract or other arrangement* (Required). Document the satisfactory assurances required by paragraph (b)(1) of this section through a written contract or other arrangement with the business associate that meets the applicable requirements of § 164.314(a).

§ 164.310 Physical safeguards.

A covered entity must, in accordance with § 164.306:

(a)(1) *Standard: Facility access controls.* Implement policies and procedures to limit physical access to its electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed.

(2) *Implementation specifications:*

(i) *Contingency operations* (Addressable). Establish (and implement as needed) procedures that allow facility access in support of restoration of lost data under the disaster recovery plan and emergency mode operations plan in the event of an emergency.

(ii) *Facility security plan* (Addressable). Implement policies and procedures to safeguard the facility and the equipment therein from unauthorized physical access, tampering, and theft.

(iii) *Access control and validation procedures* (Addressable). Implement procedures to control and validate a person's access to facilities based on their role or function, including visitor control, and control of access to software programs for testing and revision.

(iv) *Maintenance records* (Addressable). Implement policies and procedures to document repairs and modifications to the physical components of a facility which are related to security (for example, hardware, walls, doors, and locks).

(b) *Standard: Workstation use.* Implement policies and procedures that specify the proper functions to be performed, the manner in which those functions are to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstation that can access electronic protected health information.

(c) *Standard: Workstation security.* Implement physical safeguards for all workstations that access electronic protected health information, to restrict access to authorized users.

(d)(1) *Standard: Device and media controls.* Implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain electronic protected health information into and out of a facility, and the movement of these items within the facility.

(2) *Implementation specifications:*

(i) *Disposal* (Required). Implement policies and procedures to address the final disposition of electronic protected health information, and/or the hardware or electronic media on which it is stored.

(ii) *Media re-use* (Required). Implement procedures for removal of electronic protected health information from electronic media before the media are made available for re-use.

(iii) *Accountability* (Addressable). Maintain a record of the movements of hardware and electronic media and any person responsible therefore.

(iv) *Data backup and storage* (Addressable). Create a retrievable, exact copy of electronic protected health information, when needed, before movement of equipment.

§ 164.312 Technical safeguards.

A covered entity must, in accordance with § 164.306:

(a)(1) *Standard: Access control.* Implement technical policies and procedures for electronic information systems that maintain electronic protected health information to allow access only to those persons or software programs that have been granted access rights as specified in § 164.308(a)(4).

(2) *Implementation specifications:*

(i) *Unique user identification* (Required). Assign a unique name and/or number for identifying and tracking user identity.

(ii) *Emergency access procedure* (Required). Establish (and implement as needed) procedures for obtaining necessary electronic protected health information during an emergency.

(iii) *Automatic logoff* (Addressable). Implement electronic procedures that terminate an electronic session after a predetermined time of inactivity.

(iv) *Encryption and decryption* (Addressable). Implement a mechanism to encrypt and decrypt electronic protected health information.

(b) *Standard: Audit controls.* Implement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic protected health information.

(c)(1) *Standard: Integrity.* Implement policies and procedures to protect electronic protected health information from improper alteration or destruction.

(2) *Implementation specification: Mechanism to authenticate electronic protected health information* (Addressable). Implement electronic mechanisms to corroborate that electronic protected health information has not been altered or destroyed in an unauthorized manner.

(d) *Standard: Person or entity authentication.* Implement procedures to verify that a person or entity seeking access to electronic protected health information is the one claimed.

(e)(1) *Standard: Transmission security.* Implement technical security measures to guard against unauthorized access to electronic protected health information that is being transmitted over an electronic communications network.

(2) *Implementation specifications:*

(i) *Integrity controls* (Addressable). Implement security measures to ensure that electronically transmitted electronic protected health information is not improperly modified without detection until disposed of.

(ii) *Encryption* (Addressable). Implement a mechanism to encrypt electronic protected health information whenever deemed appropriate.

§ 164.314 Organizational requirements.

(a)(1) *Standard: Business associate contracts or other arrangements.*

(i) The contract or other arrangement between the covered entity and its business associate required by § 164.308(b) must meet the requirements of paragraph (a)(2)(i) or (a)(2)(ii) of this section, as applicable.

(ii) A covered entity is not in compliance with the standards in § 164.502(e) and paragraph (a) of this section if the covered entity knew of a pattern of an activity or practice of the business associate that constituted a material breach or violation of the business associate's obligation under the contract or other arrangement, unless the covered entity took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful—

(A) Terminated the contract or arrangement, if feasible; or

(B) If termination is not feasible, reported the problem to the Secretary.

(2) *Implementation specifications* (Required).

(i) *Business associate contracts.* The contract between a covered entity and a business associate must provide that the business associate will—

(A) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity as required by this subpart;

(B) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;

(C) Report to the covered entity any security incident of which it becomes aware;

(D) Authorize termination of the contract by the covered entity, if the covered entity determines that the business associate has violated a material term of the contract.

(ii) *Other arrangements.*

(A) When a covered entity and its business associate are both governmental entities, the covered entity is in compliance with paragraph (a)(1) of this section, if—

(*1*) It enters into a memorandum of understanding with the business associate that contains terms that accomplish the objectives of paragraph (a)(2)(i) of this section; or

(*2*) Other law (including regulations adopted by the covered entity or its business associate) contains requirements applicable to the business associate that accomplish the objectives of paragraph (a)(2)(i) of this section.

(B) If a business associate is required by law to perform a function or activity on behalf of a covered entity or to provide a service described in the definition of business associate as specified in § 160.103 of this subchapter to a covered entity, the covered entity may permit the business associate to create, receive, maintain, or transmit electronic protected health information on its behalf to the extent necessary to comply with the legal mandate without meeting the requirements of paragraph (a)(2)(i) of this section, provided that the covered entity attempts in good faith to obtain satisfactory assurances as required by paragraph (a)(2)(ii)(A) of this section, and documents the attempt and the reasons that these assurances cannot be obtained.

(C) The covered entity may omit from its other arrangements authorization of the termination of the contract by the covered entity, as required by paragraph (a)(2)(i)(D) of this section if such authorization is inconsistent with the statutory obligations of the covered entity or its business associate.

(b)(1) *Standard: Requirements for group health plans.* Except when the only electronic protected health information disclosed to a plan sponsor is disclosed pursuant to § 164.504(f)(1)(ii) or (iii), or as authorized under § 164.508, a group health plan must ensure that its plan documents provide that the plan sponsor will reasonably and appropriately safeguard electronic protected health information created, received, maintained, or transmitted to or by the plan sponsor on behalf of the group health plan.

(2) *Implementation specifications* (Required). The plan documents of the group health plan must be amended to incorporate provisions to require the plan sponsor to—

(i) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the group health plan;

(ii) Ensure that the adequate separation required by § 164.504(f)(2)(iii) is supported by reasonable and appropriate security measures;

(iii) Ensure that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate security measures to protect the information; and

(iv) Report to the group health plan any security incident of which it becomes aware.

§ 164.316 Policies and procedures and documentation requirements.

A covered entity must, in accordance with § 164.306:

(a) *Standard: Policies and procedures.* Implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of this subpart, taking into account those factors specified in § 164.306(b)(2)(i), (ii), (iii), and (iv). This standard is not to be construed to permit or excuse an action that violates any other standard, implementation specification, or other requirements of this subpart. A covered entity may change its policies and procedures at any time, provided that the changes are documented and are implemented in accordance with this subpart.

(b)(1) *Standard: Documentation.*

(i) Maintain the policies and procedures implemented to comply with this subpart in written (which may be electronic) form; and

(ii) If an action, activity or assessment is required by this subpart to be documented, maintain a written (which may be electronic) record of the action, activity, or assessment.

(2) *Implementation specifications:*

(i) *Time limit* (Required). Retain the documentation required by paragraph (b)(1) of this section for 6 years from the date of its creation or the date when it last was in effect, whichever is later.

(ii) *Availability* (Required). Make documentation available to those persons responsible for implementing the procedures to which the documentation pertains.

(iii) *Updates* (Required). Review documentation periodically, and update as needed, in response to environmental or operational changes affecting the security of the electronic protected health information.

§ 164.318 Compliance dates for the initial implementation of the security standards.

(a) *Health plan.*

(1) A health plan that is not a small health plan must comply with the applicable requirements of this subpart no later than April 20, 2005.

(2) A small health plan must comply with the applicable requirements of this subpart no later than April 20, 2006.

(b) *Health care clearinghouse.* A health care clearinghouse must comply with the applicable requirements of this subpart no later than April 20, 2005.

(c) *Health care provider.* A covered health care provider must comply with the applicable requirements of this subpart no later than April 20, 2005.

Appendix A to Subpart C of Part 164—Security Standards: Matrix

Standards	Sections	Implementation Specifications (R)=Required, (A)=Addressable
Administrative Safeguards		
Security Management Process	164.308(a)(1)	Risk Analysis (R)
		Risk Management (R)
		Sanction Policy (R)
		Information System Activity Review (R)
Assigned Security Responsibility	164.308(a)(2)	(R)
Workforce Security	164.308(a)(3)	Authorization and/or Supervision (A)
		Workforce Clearance Procedure
		Termination Procedures (A)
Information Access Management	164.308(a)(4)	Isolating Health care Clearinghouse Function (R)
		Access Authorization (A)
		Access Establishment and Modification (A)
Security Awareness and Training	164.308(a)(5)	Security Reminders (A)
		Protection from Malicious Software (A)
		Log-in Monitoring (A)
		Password Management (A)
Security Incident Procedures	164.308(a)(6)	Response and Reporting (R)
Contingency Plan	164.308(a)(7)	Data Backup Plan (R)
		Disaster Recovery Plan (R)
		Emergency Mode Operation Plan (R)
		Testing and Revision Procedure (A)
		Applications and Data Criticality Analysis (A)
Evaluation	164.308(a)(8)	(R)
Business Associate Contracts and Other Arrangement.	164.308(b)(1)	Written Contract or Other Arrangement (R)
Physical Safeguards		
Facility Access Controls	164.310(a)(1)	Contingency Operations (A)
		Facility Security Plan (A)
		Access Control and Validation Procedures (A)
		Maintenance Records (A)
Workstation Use	164.310(b)	(R)
Workstation Security	164.310(c)	(R)
Device and Media Controls	164.310(d)(1)	Disposal (R)
		Media Re-use (R)
		Accountability (A)
		Data Backup and Storage (A)
Technical Safeguards (see § 164.312)		
Access Control	164.312(a)(1)	Unique User Identification (R)
		Emergency Access Procedure (R)
		Automatic Logoff (A)
		Encryption and Decryption (A)
Audit Controls	164.312(b)	(R)
Integrity	164.312(c)(1)	Mechanism to Authenticate Electronic Protected Health Information (A)
Person or Entity Authentication	164.312(d)	(R)
Transmission Security	164.312(e)(1)	Integrity Controls (A)
		Encryption (A)

§164.500 [Amended]

6. § In 164.500(b)(1)(iv), remove the words "including the designation of health care components of a covered entity".

§ 165.501 [Amended]

7. In §164.501, the definitions of the following terms are removed: *Covered functions, Disclosure, Individual, Organized health care arrangement, Plan sponsor Protected health information, Required by law,* and *Use.*

§ 164.504 [Amended]

8. In §164.504, the following changes are made:

a. The definitions of the following terms are removed: *Common control, Common ownership, Health care component,* and *Hybrid entity.*

b. Paragraphs (b) through (d) are removed and reserved.

Authority: Sections 1173 and 1175 of the Social Security Act (42 U.S.C. 1329d–2 and 1320–4).

Dated: January 13, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–3877 Filed 2–13–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 162

[CMS–0003–F and CMS–0005–F]

RINs 0938–AK64 and 0938–AK76

Health Insurance Reform: Modifications to Electronic Data Transaction Standards and Code Sets

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: In this final rule, we respond to public comments received and finalize provisions applicable to electronic data transaction standards from two related proposed rules published in the May 31, 2002, **Federal Register.** We are also adopting proposed modifications to implementation specifications for health care entities and others. In addition, we are adopting modifications to implementation specifications for several electronic transaction standards that were omitted from the May 31, 2002, proposed rules.

EFFECTIVE DATES: These regulations are effective on March 24, 2003. The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Gladys Wheeler, (410) 786–0273.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Electronic Data Interchange

Electronic data interchange (EDI) refers to the electronic transfer of information in a standard format between trading partners. When compared with paper submissions, EDI can substantially lessen the time and costs associated with receiving, processing, and storing documents. The use of EDI can also eliminate inefficiencies and streamline processing tasks, which can in turn result in less administrative burden, lower operating costs, and improved overall data quality.

The health care industry recognizes the benefits of EDI, and many entities in the industry have developed proprietary EDI formats. However, with the increasing use of health care EDI standards, the lack of common, industry-wide standards has emerged as a major obstacle to realizing potential efficiency and savings.

B. Statutory and Regulatory Background

1. Statutory Background

The Congress included provisions to address the need for developing a consistent framework for electronic transactions and other administrative simplification issues in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191, which became law on August 21, 1996. Through subtitle F of title II of that statute, the Congress added to title XI of the Social Security Act (the Act) a new part C, titled "Administrative Simplification." The purpose of this part is to improve the Medicare and Medicaid programs in particular and the efficiency and effectiveness of the health care system in general, by encouraging the development of standards and requirements to enable the electronic exchange of certain health information.

Part C of title XI consists of sections 1171 through 1179 of the Act. Section 1172 of the Act and the implementing regulations make any standard adopted under part C applicable to: (1) Health plans; (2) health care clearinghouses; and (3) health care providers who transmit any health information in electronic form in connection with a transaction covered by 45 CFR part 162.

In general, section 1172 of the Act requires any standard adopted by the Secretary of Health and Human Services (the Secretary) under this part to be a standard that has been developed, adopted, or modified by a standard setting organization (SSO). The Secretary may adopt a different standard if the standard will substantially reduce administrative costs to providers and health plans compared to the alternatives, and the standard is promulgated in accordance with the rulemaking procedures of subchapter III of chapter 5 of title 5, U.S.C.

Section 1172 of the Act also sets forth consultation requirements that must be met before the Secretary may adopt standards. In the case of a standard that is developed, adopted, or modified by an SSO, the SSO must consult with the following Data Content Committees (DCCs) in the course of the development, adoption, or modification of the standard: The National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA). In the case of any other standard, the Secretary is required to consult with each of the above-named groups before adopting the standard and must also comply with the provisions of section 1172(f) of the Act regarding consultation with the National Committee on Vital and Health Statistics (NCVHS).

Section 1173 of the Act requires the Secretary to adopt standards for transactions, and data elements for such transactions, to enable the electronic exchange of health information. Section

1173 lists the transactions and sets out requirements for the specific standards the Secretary is to adopt: Unique health identifiers, code sets, security standards, electronic signatures, and transfer of information among health plans.

Section 1174 of the Act permits the Secretary to make modifications to any established standard after the first year, but not more frequently than once every 12 months. It permits the Secretary to modify an initial standard at any time during the first year of adoption, if he determines that the modification is necessary to permit compliance with the standard.

Section 1175 of the Act requires that covered entities comply with modifications to standards or implementation specifications made after initial adoption by stating that the Secretary will designate a compliance date that may not be earlier than 180 days after the modification is adopted.

We discussed HIPAA-specific legislation in greater detail in the Transactions Rule (65 FR 50312) and the December 28, 2000, final rule, Standards for Privacy of Individually Identifiable Health Information" (65 FR 82462) (the Privacy Rule). Rather than repeating the discussion in its entirety here, we refer the reader to those documents for further information about EDI and the statutory background.

2. Regulatory Background

On May 7, 1998 (63 FR 25272), the Secretary proposed Standards for Electronic Transactions and Code Sets. On August 17, 2000, the final rule on Standards for Electronic Transactions and Code Sets was published in the **Federal Register** (65 FR 50312). In the August 17, 2000, final rule, (the Transactions Rule), the Secretary adopted standards for eight electronic transactions and six code sets. The transactions are:

- Health Care Claims or Equivalent Encounter Information;
- Eligibility for a Health Plan;
- Referral Certification and Authorization;
- Health Care Claim Status;
- Enrollment and Disenrollment in a Health Plan;
- Health Care Payment and Remittance Advice;
- Health Plan Premium Payments; and
- Coordination of Benefits.

The code sets are: International Classification of Diseases, 9th Edition, Clinical Modification, Volumes 1 and 2;

- International Classification of Diseases, 9th Edition, Clinical Modification, Volume 3 Procedures;
- National Drug Codes;
- Code on Dental Procedures and Nomenclature;
- Health Care Financing Administration Common Procedure Coding System; and
- Current Procedural Terminology, 4th Edition.

This final rule adopts modifications to the August 17, 2000 transaction and code set standards.

3. Statutory Requirements and Implementation Instructions for EDI Standards

Section 1172(d) of the Act requires the Secretary to establish specifications for implementing each adopted standard. However, because the implementation instructions are voluminous, they were incorporated by reference in the Transactions Rule. This approach, to incorporate by reference, is commonly used by the **Federal Register** when external organizations are tasked with developing standards that are subsequently adopted as national standards. We are using this approach in this final rule to adopt modifications to the specified standards that were proposed in the May 31, 2002 proposed rules, CMS–0003–P (67 FR 38044) and CMS–0005–P (67 FR 38050).

C. Designated Standard Maintenance Organization (DSMO) Process

In our May 31, 2002, proposed rule, CMS–0005–P (67 FR 38050), we described in detail the process used by the Designated Standard Maintenance Organization (DSMO) Memorandum of Understanding (MOU) for receiving, managing and processing requested changes to the adopted standards. CMS–0005–P identified the six DSMOs and explained that we had used the process specified in the MOU to develop the proposed modifications to standards adopted in regulations. For ease of reference, we have included the DSMO names and respective websites below. Both of the SSOs (Accredited Standards Committee ASC X12N and the National Council for Prescription Drug Programs (NCPDP)) that develop standards adopted by the Secretary are DSMOs.

DSMO Names and Web site Addresses

- Accredited Standards Committee X12N (ASC X12N) (*http://www.x12.org*).
- Health Level Seven, Inc. (HL 7) (*http://www.hl7.org*).
- National Council for Prescription Drug Programs (NCPDP) (*http://www.ncpdp.org*).
- National Uniform Billing Committee (NUBC) (*http://www.nubc.org*).
- National Uniform Claim Committee (NUCC) (*http://www.nucc.org*).
- Dental Content Committee of the American Dental Association (*http://www.ada.org*).

For additional information regarding the DSMO change request process, see the MOU document, which is available at: *www.hipaa-dsmo.org/mou.pdf*.

As we stated in CMS–0005–P (67 FR 38050), a significant number of change requests were submitted through the DSMO process after the initial EDI transaction standards were adopted in the regulations. Many of those change requests were for changes that were considered by the submitters to be essential to permit initial implementation of the standards throughout the entire healthcare industry. Those change requests addressed specific details or elements within the implementation specifications.

Changes considered essential for implementation of the adopted standards were reviewed by the DSMOs and assigned "fast track" status for development within the authority of the DSMO process. (Other changes that were not considered essential are going through the general change request management process set forth in the MOU.) As specified in the MOU, the DSMOs then presented those changes deemed essential for initial implementation to the NCVHS. The NCVHS held public hearings on those proposed changes (transcripts of those hearings are available at *http://www.ncvhs.hhs.gov*). The NCVHS recommended that the Secretary adopt all of the changes proposed by the DSMOs as modifications to the national standards. Those changes are reflected in the modifications to standards that are adopted by this final rule.

II. Provisions of the May 31, 2002, Proposed Rules

In the May 31, 2002, **Federal Register**, we published two proposed rules, CMS–0003–P (67 FR 38044) and CMS–0005–P (67 FR 38050). The two proposed rules proposed to adopt as regulations certain modifications to adopted standards.

The first proposed rule is entitled "Modifications to Standards for Electronic Transactions and Code Sets" (67 FR 38044). Hereafter, for the purposes of this final rule, we refer to this proposed rule as CMS–0003–P. CMS–0003–P contained several proposed modifications that pertained exclusively to revisions to certain electronic data interchange (EDI) standards currently in effect for retail pharmacy transactions and a repeal of the designation of National Drug Codes (NDC) as the standard medical data code set for reporting drugs and biologics on non-retail pharmacy standard transactions.

The second proposed rule is entitled "Modifications to Transactions and Code Set Standards for Electronic Transactions" (67 FR 38050). Hereafter, for the purposes of this final rule, we refer to this proposed rule as CMS–0005–P. CMS–0005–P addressed proposals to adopt limited technical changes to implementation specifications for the transaction standards that were deemed necessary to implement industry-wide EDI standards.

Because both of these proposed rules proposed modifications or technical changes to standards that the Secretary of Health and Human Services (the Secretary) adopted in the August 17, 2000, final rule entitled "Health Insurance Reform: Standards for Electronic Transactions" (65 FR 50312), we are combining them in this final rule. Hereafter, for the purposes of this final rule, we refer to the August 17, 2000, final rule as the "Transactions Rule."

Specifically, in CMS–0003–P, we proposed to adopt the following:

- The National Council for Prescription Drug Programs (NCPDP) Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, for retail pharmacy drug claims, eligibility, and coordination of benefits transactions, to replace the earlier version (Version 1.0) that we had previously adopted in error. In this final rule, we refer to this proposed standard as the "NCPDP Batch Implementation Guide Version 1.1."
- The National Council for Prescription Drug Programs (NCPDP) Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, and the National Council for Prescription Drug Programs (NCPDP) Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, for the referral certification and authorization transaction, to replace the ASC X12N 278—Health Care Services Review standard. In this final rule, we refer to these two proposed standards as the "NCPDP Batch Implementation Guide Version 1.1" and the "NCPDP Telecommunication Guide Version 5.1," respectively.
- ASC X12N 835—Health Care Claim Payment/Advice for the retail pharmacy health care payment and remittance advice transaction, to replace the NCPDP Batch Standard Batch Implementation Guide Version 1.0 and the NCPDP Telecommunication Guide Version 5.1.
- We also proposed to repeal the adoption of the National Drug Code (NDC) as the standard for reporting drugs and biologics on all transactions except retail pharmacy transactions, also termed "non-retail pharmacy" transactions below. This repeal would result in there being no standard in place for reporting drugs and biologics on non-retail pharmacy transactions.

III. Analysis of, and Responses to, Comments on the Proposed Rules

In response to the May 31, 2002, publication of the two proposed rules, we received over 300 timely public comments. The comments came from a variety of sources, including health care associations and societies, entities named in the HIPAA legislation, health plans, DSMOs, health care providers, Federal health plans, and private individuals.

Our process of reviewing and associating like comments identified areas of the proposed rules that required additional review in terms of their effect on policy, consistency, or clarity of the modifications to the standards, and areas that were technical and specifically related to the implementation specifications. We consulted with the DSMOs on technical comments that related specifically to the implementation specifications.

We present comments and responses generally in the order in which the proposals appeared in the May 31, 2002 proposed rules. We begin with comments and responses about the compliance dates, and continue with comments and responses on the proposals in CMS–0003–P (67 FR 38044), and those in CMS–0005–P (67 FR 38050).

A. Compliance Date

Under the Act, as reflected in § 160.104, the Secretary establishes the compliance date for modifications to standards. The compliance date must not be earlier than 180 days after the effective date of the adoption of the modification. We had not proposed a compliance date in the proposed rules.

The Administrative Simplification Compliance Act (ASCA) (Pub. L. 107–105) was enacted on December 27, 2001. This law provided an extension to the compliance date adopted in the Transactions Rule (65 FR 50312) for covered entities that submitted, by October 15, 2002, plans to the Secretary indicating how they will come into compliance by October 16, 2003. Small health plans were not provided with an extension opportunity, but also have a compliance date of October 16, 2003. Because this final rule is modifying standards that are currently in effect and with which compliance is otherwise required, ASCA is relevant. ASCA did not address its effect on those covered entities otherwise required to come into compliance by October 16, 2002, or how modifications to standards were to be implemented.

Comment: Numerous commenters expressed support for the adoption of the modifications and stressed the urgency for implementing the modifications to meet compliance by October 16, 2003. We received some comments requesting clarification for the processing of non-compliant claims submitted before the compliance date of October 16, 2003, but processed after October 16, 2003. A few commenters recommended extensions of up to 90 days after October 16, 2003, to allow for an orderly migration to the adopted modifications. The modifications to the transactions are referred to collectively in this final rule as the "Addenda." One commenter suggested that the Department of Health and Human Services (HHS) establish a transition period as a precedent for implementation of future transaction standard versions, such as ASC X12N 4050. One commenter asked for clarification as to whether the ASCA extension was for 1 year after the 180-day adoption period for the Addenda. We received a few comments concerning the impact that publication of this rule would have on the April 2003 ASCA HIPAA testing requirements. One commenter suggested that HHS adopt the ASC X12N 4050 Version implementation specifications, instead of the ASC X12N 4010 Addenda.

Response: The effective date for this final rule is 30 days after the date of publication in the **Federal Register**. Standards are adopted and implementation specifications are established as of the effective date of this final rule. Trading partner agreements should determine the processing requirements for non-compliant claims submitted by covered entities that have requested a compliance extension for the period between October 16, 2002, and October 16, 2003.

To avoid confusion over the interaction between the compliance dates for the original rule, the compliance dates for these modifications, and the ASCA extension dates, we have revised the regulations text at 45 CFR 162.900. Covered entities, other than small health plans, that have timely submitted a compliance plan will be required to come into compliance with the Transactions Rule as amended

by these modifications no later than October 16, 2003. ASCA, however, complicates the compliance picture greatly.

Hundreds of thousands of entities, including numerous large health plans, have obtained 1-year extensions under ASCA. Consequently, those entities, as well as small health plans, are not required to conduct covered transactions in standard form until October 16, 2003, as clarified at section 162.900. Section 162.923 (a) provides that covered entities must conduct transactions as standard transactions, except as otherwise provided in part 162. Thus, we interpret § 162.923(a), when read with section 162.900, to mean that if both sides to a transaction are not required to conduct it in standard form (that is, if one side is required to conduct the transaction in standard form but the other side is not), neither side is required to conduct it in standard form, provided that the requirements to § 162.925 do not apply. Thus, for example, even where a covered health care provider failed to submit a compliance plan, it would not be required to comply with the Transactions Rule with respect to the covered transactions which it actually conducts during the period of October 16, 2002, through October 15, 2003, insofar as the transactions are with a health plan that is not required to comply during this period because it (1) has obtained a 1-year extension under ASCA, or (2) is a small health plan. Similarly, a health plan that is subject to the October 16, 2002, compliance date would not be required to conduct coordination of benefits in standard form with another health plan, if the latter plan was not conducting the transaction in standard form because it (1) has obtained a 1-year extension under ASCA, or (2) is a small health plan.

Further, even where compliance is required (that is, the October 16, 2002, compliance date applies to both sides to the covered transaction and neither covered entity submitted a compliance plan), we recognize that the modifications adopted as a result of CMS–0003–P and CMS–0005–P are necessary to permit the transactions covered by these proposed rules to be conducted in standard form, and that such transactions could not feasibly be required before the compliance date for the modifications in this final rule, October 16, 2003. We will not invoke our authority to penalize noncompliance with standards that our own delay in issuing this final rule has made infeasible.

With respect to the remaining universe of transactions with which compliance would otherwise be required, as between covered entities that did not submit compliance plans, we recognize that covered entities may find it difficult to determine which of their trading partners must also comply in this interim year, and may in good faith mistakenly assume that the other side to a transaction is exempted from the compliance requirement. We also note that the failure to issue the modifications below earlier has made testing of the standards between trading partners difficult, if not infeasible. Also, complying with the unmodified standards would result in implementation problems and divert resources from complying with the modified standards, which will become the industry standard in October 2003.

In light of these considerations, we have come to two decisions. First, we are affording those covered entities that have a present compliance obligation the opportunity to comply with either the unmodified transaction standards or the modified transaction standards in this interim 1-year period. This policy is reflected in § 162.900(c)(1) below. Second, we intend to take into account the numerous obstacles to compliance that exist and will work with covered entities to bring them into compliance during this interim period, through among other things, corrective action plans. We will reserve our authority to penalize noncompliance for those cases of noncompliance where such voluntary efforts fail or where covered entities fail to make reasonable efforts to come into compliance.

The modifications proposed in the two proposed rules published on May 31, 2002, and promulgated in this final rule were expressly designed and adopted to assist compliance with the standards. These modifications will, no doubt, greatly facilitate the process of becoming compliant.

We accordingly believe that publication of this final rule and the adopted revisions in the Addenda permit sufficient time to meet the ASCA testing requirements for April 2003, and the October 16, 2003, compliance date. Trading partner agreements should determine the processing requirements for non-compliant claims submitted by covered entities that have requested a compliance extension until October 16, 2003.

ASCA provided the option to obtain a 1-year extension to covered entities, excluding small health plans. We have no statutory authority to extend the compliance dates beyond this 1-year extension period. We also believe that extending the compliance dates further, were we permitted to do so, would place additional and unacceptable burdens on covered entities that are compliant on schedule.

With regard to adopting the 4050 Version of the Implementation Guides, it is our understanding that the healthcare industry is in the midst of implementing the 4010 Version of the Implementation Guides. Adopting a new version of the guides would unfairly burden those who are completing the testing and implementation of the 4010 Version. Also, when covered entities are fully functional with the 4010 Version and its Addenda, they will have a better opportunity to assess improvements for future versions of the Implementation Guides.

B. Responses to Comments on CMS–0003–P (67 FR 38044)

1. Retail Pharmacy Batch Transactions

In CMS–0003–P, we proposed that the Secretary adopt the NCPDP Batch Implementation Guide Version 1.1, supporting NCPDP Telecommunication Guide Version 5.1 for the NCPDP Data Record in the Detail Data Record. Adopting this standard would enable covered entities conducting retail pharmacy drug claims or equivalent encounter information, eligibility for a health plan, and coordination of benefits transactions to be able to submit transactions in batches.

We had intended to adopt the NCPDP Batch Implementation Guide Version 1.1 in the Transactions Rule. However, an oversight resulted in the adoption of a batch version that was not the equivalent companion to the telecommunication standard that we adopted. The oversight, if not corrected, would mean that retail pharmacy transactions could not be batched. They would instead have to be submitted individually.

Comment: One commenter observed that the NCPDP Telecommunication Guide Version 5.1 did not contain all the data elements required for their health plan to process the claim.

Response: The NCPDP, which is the SSO that developed the NCPDP Telecommunication Guide Version 5.1, has certified for us that the standard does allow the reporting of information necessary to process retail pharmacy drug claims. Because of the widespread support for this transaction standard as expressed in the public comments received and because of the assurance that essential data elements are present in the NCPDP Telecommunication Guide Version 5.1, the Secretary is adopting that standard in this final rule. That standard and the NCPDP Batch Implementation Guide Version 1.1 are adopted for retail pharmacy drug claims or equivalent encounter information (§ 162.1102), eligibility for a health plan (§ 162.1202), and coordination of benefits (§ 162.1802).

2. Referral Certification and Authorization Transaction

We proposed to adopt the NCPDP Batch Implementation Guide Version 1.1, supporting the NCPDP Telecommunication Guide Version 5.1, for the NCPDP Data Record in the Detail Data Record, as the standard for the referral certification and authorization transaction. Adopting this standard would enable the reporting of all the data that are critical to retail pharmacy prior authorization transactions. This standard would replace the ASC X12N 278—Request for Review and Response Transaction, which, according to information we received from the retail pharmacy industry, does not support data that are critical to retail pharmacy prior authorization transactions. The ASC X12N standards development process for modifying standards could not be completed in time to change the standard to make it useable for retail pharmacy prior authorization transactions before the October 16, 2002, compliance date for the Transactions Rule. The NCPDP standard adequately supports this transaction for retail pharmacy, is currently in widespread industry use, and the revised 278 would not present significant advantages over it. We expect the NCPDP will continue to be the standard in the future. This modification would not affect the standard for dental, professional, and institutional referral certification and authorization transactions, which is the ASC X12N 278 standard transaction.

Comment: One commenter asked if the standard would apply only to retail pharmacy drug referral certifications and authorizations. The commenter believed it should apply to all retail pharmacy referral certifications and authorizations, including supplies.

Response: The standard would only apply to retail pharmacy drug referral certification and authorization transactions.

All of the commenters supported this proposal. We are adopting in this final rule the NCPDP Batch Implementation Guide Version 1.1 that supports the NCPDP Telecommunication Version 5.1, as the referral certification and authorization transaction standard for all retail pharmacy drug claim certification and authorization transactions (§ 162.1302).

3. Health Care Claim Payment and Remittance Advice Transaction

In the May 31, 2002, proposed rule, we proposed to adopt the ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, and any adopted modifications to it, for retail pharmacy transactions. Adopting this standard would enable health plans to generate HIPAA-compliant remittance advice transactions for pharmacies. The NCPDP standard format adopted by the Transactions Rule would not have the capability of generating a per claim remittance advice transaction.

Comment: Several commenters pointed out that the proposed provisions in § 162.1602 list "dental, professional, and institutional health care claims and remittance advice" and recommended adding "retail pharmacy" to that list, or removing the list entirely.

Response: We agree with these comments and note that the ASC X12N 835 is currently the standard for health care claims payment and remittance advice for dental, professional, and institutional claims. Adopting the ASC X12N 835 for retail pharmacy health care claims payment and remittance advice would mean that it would be the standard for all types of health care claims. Therefore, there would be no need to include a list that specifies the applicable claims transactions. In this final rule, we are removing the list at § 162.1602.

Comment: A commenter suggested that pharmacies should not have to implement both ASC X12N and NCPDP standards at this time, and that at some point after the compliance date, future harmonization may be practical.

Response: Many entities today use the formats of more than one Standards Development Organization (SDO) for the electronic transactions they conduct. In addition, many entities are preparing to do so to comply with regulations. In this situation, however, the NCPDP format does not adequately support the health care payment and remittance advice transaction.

The majority of commenters who submitted comments on this proposal supported the adoption of the ASC X12N 835 for this standard, including three major pharmacy organizations. Therefore, in this final rule, we are adopting the ASC X12N 835—Health Care Claim Payment/Advice as the standard for retail pharmacy health care payment and remittance advice (§ 162.1602).

4. National Drug Codes (NDC) Code Set

In CMS–0003–P, we proposed to repeal the National Drug Codes (NDC) as the standard medical data code set for reporting drugs and biologics in institutional, professional, and dental claims (that is, in non-retail pharmacy drug claims). (Drugs are not reported in the adopted standard dental claim transaction.) This repeal would leave no standard in place for use in reporting drugs and biologics on those claims. A health plan could require a provider to use any one of the applicable code sets permitted by the Implementation Guides for that purpose.

The NDC code set is maintained by the Food and Drug Administration (FDA) within HHS. It is required for use on the NCPDP claim format, which is the standard for retail pharmacy drug claims. Retail pharmacies have traditionally used the NDC. However, currently in the professional and institutional health care sectors, the NDC is used much less often. The primary code set used for reporting drugs and biologics in those sectors is the Healthcare Common Procedure Coding System (HCPCS)[1]. In the Transactions Rule, the Secretary adopted the NDC as the standard for reporting drugs and biologics on all claims. The Secretary adopted HCPCS codes as the standard for reporting supplies and orthotic and prosthetic devices and durable medical equipment; and, in combination with the Current Procedure Terminology, Fourth Edition, for reporting physician and numerous other health care services, on all claims.

HCPCS codes are grouped in "series." Each series begins with an alpha character, and similar items are usually grouped under the same single or multiple series. The "J series" is comprised of drugs, primarily generic drugs, and traditionally these drugs have been limited to drugs that are payable under the Medicare program. Several drug codes, however, are present in other HCPCS series for reasons that are not relevant to this discussion. The NDC, on the other hand, is currently assigned to drugs subject to listing requirements under section 510 of the Federal Food, Drug, and Cosmetic Act. The NDC is assigned to generic as well as brand name drugs. HCPCS codes are five positions in length, whereas the NDC adopted by the Transactions Rule, was originally developed as a 10-digit

[1] When the name of the Health Care Financing Administration was changed to the Centers for Medicare & Medicaid Services in 2001, the name of this coding system was changed from the "Health Care Financing Administration Procedure Coding System" to the "Healthcare Common Procedure Coding System."

identifier and, when used in computer systems, may yield an 11-digit number.

With the adoption of the NDC as the standard, the HCPCS codes would not be permitted to be used in a HIPAA-compliant transaction, because the NDC would be the adopted standard for reporting drugs and biologics.

There have been many discussions about the use of the NDC in professional and institutional claims since publication of the Transactions Rule. Many members of the professional and institutional sectors did not believe that the NDC should be used on their claims. The NCVHS held hearings and heard the testimony of members of the health care industry on this issue. Information provided in that testimony led us to develop the proposal to repeal the NDC as the standard for reporting drugs and biologics on all but retail pharmacy drug claims. In CMS–0003–P (67 FR 38044), we explained why the Secretary adopted the NDC and why the Secretary was proposing the repeal.

CMS–0003–P (67 FR 38044) also solicited comments on an alternative proposal to adopt an alternative standard—in place of the NDC, to be used to report drugs and biologics on non-retail pharmacy transactions. We proposed that the HCPCS code set be the alternative standard. Below we discuss comments on the proposal to repeal the NDC and the proposal to adopt an alternative standard for non-retail pharmacy transactions.

We received approximately 200 comments on this issue. The comments fell into three major categories: (1) Repeal the NDC as the standard medical data code set for professional, institutional, and dental claims and have no standard code set; (2) repeal the NDC, but adopt HCPCS as the standard code set; and (3) retain the NDC as the sole standard code set for claims from all sectors.

Comment: A number of commenters supported our proposal to repeal the NDC and adopt no standard in its place. These commenters, many of which were major health care industry organizations, indicated the following: (1) The current Implementation Guide usage of the NDC should remain constant and the Implementation Guide should define when the NDC would be used; (2) if no code set was selected, the Implementation Guides should not permit payers to require providers to use local code sets for drugs and biologics; (3) the cost of converting to the NDC was very high and would not justify the benefits, if any; and (4) not naming a standard would give the industry time to fully evaluate current practices and identify preferred alternatives.

Conversely, the proposed repeal was not favored by some Medicaid State agencies, as they are required to use the NDC to report drugs and biologics to receive drug rebates.

Response: We agree that repealing the NDC and having no standard would be responsive to the needs of health plans and health care providers who want to evaluate further the use of NDC. The absence of a standard would permit the use of any codes as long as that use is supported by the Implementation Guide for the transaction. Repealing the NDC and having no standard would also address the concerns of many health care providers who cited the high cost and low benefit of conversion; they could continue to use HCPCS codes. Having no standard would allow many health care entities to continue their current coding practices, reducing the implementation burden, and would accommodate State agencies' requirement to report NDCs for drug rebate programs. Additionally, if there were no standard, the selection of the code set to be used would likely be specified by health plans via trading partner agreements, as long as the Implementation Guides permitted that selection.

Comment: The majority of commenters supported the repeal of the NDC and the adoption of HCPCS as the sole standard for reporting drugs and biologics on non-retail pharmacy transactions. Many of these commenters were institutional providers. They indicated that drug information, which is often not reported on institutional claims, is rarely used to compute payment because claims are usually paid under prospective payment systems. Since drugs are rarely reported on institutional claims, institutional healthcare providers would derive no benefit from the expensive transition from HCPCS codes to the NDC.

Response: Repealing NDC and adopting HCPCS as the standard would allay the concerns of some health care providers that more health plans might decide to implement the NDC at some point in the future. However, adopting HCPCS as the sole standard would not respond to the needs of health plans and health care providers where the specificity of the NDC is needed to compute payment or collect drug rebates.

Comment: Other commenters supported retaining the NDC as the standard for reporting drugs and biologics on non-retail pharmacy drug claims. Much of the support for retaining the NDC came on behalf of State Medicaid agencies, which must use the NDC in order to receive drug rebates.

Response: As we have indicated, the NDC retains certain advantages over HCPCS, such as in the area of computing payments and collecting drug rebates. Additionally, the NDC enables health care providers and health plans to track effectively the utilization of drugs and access certain manufacturer information regarding the drugs. We also acknowledge that State Medicaid agencies have strongly encouraged retaining the NDC for reporting drugs and biologics on non-retail pharmacy drug claims. Retaining the NDC, therefore, as the standard would respond to the needs of health plans and health care providers who need specificity in computing payments and collecting drug rebates. It would also foster consistent drug coding for claims and among health care providers.

Simply retaining the NDC as the sole standard, however, would not adequately respond to the express concerns of those health care providers who commented that the cost of conversion to NDC would be high while the benefits would be low or non-existent. Moreover, the majority of commenters did not support keeping the NDC as the sole standard for reporting drugs and biologics for non-retail pharmacy sectors. We concluded that adopting either the NDC or the HCPCS would fail to address many of the concerns raised.

In our considerations, we recognized that both the NDC and HCPCS remain two of the most prevalent and useful code sets for reporting drugs and biologics in non-retail pharmacy transactions. The benefits of each code set complement the other's advantages very well.

We therefore decided, as we had proposed in CMS–0003-P, to repeal the adoption of the NDC for institutional and professional claims, while allowing the NDC to remain the standard medical data code set for reporting drugs and biologics for retail pharmacy claims. We believe that this decision best addresses the majority of comments received, in that for institutional and professional claims, the choice of code set will continue to be governed by trading partner agreements. However, we wish to stress that the intent of this decision is to give covered entities the full range of choices in determining which code set to use with respect to these claims, including the HCPCS and NDC codes that have been adopted as standards for other uses. Covered entities that use HCPCS should utilize the established process for requesting new codes, rather than supplementing the code sets with locally developed codes.

The result of this repeal will be that there is no identified standard medical data code set in place for reporting drugs and biologics on non-retail pharmacy transactions. The absence of a code set would not preclude the use of NDC for reporting drugs and biologics by covered entities on standard transactions. Covered entities could continue to report drugs and biologics as they prefer and agree upon with their trading partners.

Comments from the different parts of the industry demonstrated that no one code set is able to meet the different needs now addressed by the NDC and HCPCS. Adopting no standard at this point will allow for innovation, and permit development of new coding systems that meet the full range of business needs. Comments also indicated that the costs for a hospital or other institution to comply with the NDC for reporting drugs and biologics on institutional claims could exceed its costs for adopting all other HIPAA transaction standards. For many health care providers, entire claim systems would need to be replaced, re-engineered, or both.

We also considered the concerns expressed by the NUBC regarding the use of the NDC on institutional claims, including hospital claims. NUBC has indicated that reporting specific drugs on institutional claims introduces a systems technology requirement that is inconsistent with inpatient claims submission and institutional provider reimbursement, which are typically based on a Diagnosis-Related Group or per diem payment methodology. The NUBC has also expressed its belief that the NDC coding system is more suited for inventory control and is not appropriate for institutional provider billing, and further that the NDC pertains to retail pharmacy claims only and should not be applicable to institutional claims.

We are also aware that retaining the NDC as the sole standard for institutional claims would pose significant operational issues on institutional pharmacies because of systems incompatibility among the pharmacies, inpatient medical records, and inpatient accounting systems. Physicians generally order drugs for patients through the hospital pharmacy department by name, unit, and dosage frequency. The pharmacy department however does not reference the NDC to initiate the charge transaction. Additionally, the NDC formats do not provide information related to actual dosages administered, or provide a methodology for multiple billing increments. Attempts by the industry to develop a complete crosswalk from the current HCPCS codes to the NDC have been unsuccessful.

Another important factor in our decision, as we mentioned in CMS–0003-P, was the information we received from the Subcommittee on Standards and Security of the NCVHS as a result of the public hearings it held on February 1, 2001, regarding HIPAA implementation issues and the NDC. In addition to the problems we identified above, concerns expressed during that meeting included the burden of training additional ancillary staff to use the NDC and the potential for increases in medical errors when new system interfaces for drug dispensing systems are created.

The NCVHS in a February 22, 2001, letter to the Secretary recommended that the Secretary repeal the adoption of the NDC as the standard medical data code set for reporting drugs and biologics in standard transactions other than retail pharmacy transactions. It also suggested that HCPCS codes as well as the NDC continue to be used in the standard institutional and professional claim transactions. Moreover, the NCVHS explained that it believes that no drug coding system in existence today meets all the needs of the health care industry. A future coding system that could be used effectively and efficiently for drug inventory, pharmacy transactions, patient care, billing arenas, and ensuring patient safety would be the best answer to this problem, according to the NCVHS.

We note therefore that another significant advantage to repealing the adoption of the NDC for reporting drugs and biologics in non-retail pharmacy standard transactions and not adopting a replacement standard code set at this time is that the industry and HHS will have time to explore the development of a new drug coding system to meet current and future needs of this sector of the health care industry. We would note that the Implementation Guides for institutional and professional claim transactions currently recognize the use of only the NDC and HCPCS codes for drugs and biologics. See the discussion at section G.2 below. The developer of a new code set could request that it be included in the guides via the DSMO maintenance process.

Thus, based on comments received and our own review of the available code sets, we believe that our decision to repeal the adoption of the NDC as the standard medical data code set for reporting drugs and biologics in all non-retail pharmacy transactions is the best and most appropriate decision at this time. Repealing the NDC as the standard medical code set for reporting drugs and biologics in non-retail pharmacy transactions also raises opportunities for the development of a more robust drug coding system that overcomes the deficiencies inherent in the NDC and HCPCS codes for reporting drugs and biologics on standard transactions. For example, because of the inadequacy of existing codes for drug products, and the need for harmonization of medical terminology, the FDA has been working with the National Library of Medicine and the Department of Veterans Affairs to develop improved drug codes.

In preparing this final rule, we consulted with the FDA and noted that the FDA is preparing two new regulations that relate to the use of the NDC number that will be proposed for public comment soon. Both proposed rules will propose changes related to coordinating the NDC with bar coding. It is expected that the proposed changes will make the NDC number more useful to those who choose to use the NDC.

5. Retail Pharmacy Drug Claims

The Transactions Rule adopted the NCPDP transaction as the standard for retail pharmacy drug claims (§ 162.1102(a)), and the ASC X12N 837—Professional Health Care Claim as the standard for professional services (§ 162.1102(c)). Neither of our May 31, 2002, proposed rules solicited comments on the formats to be used by retail pharmacies when submitting claims for drugs, supplies, durable medical equipment, prosthetics, orthotics, and professional services.

The DSMOs are currently discussing this item in their consideration of two pending change requests that were introduced into the DSMO process within the past year. (These requests were not submitted in time to be considered under the "fast track" approach described in this final rule in section I. C., "Designated Standard Maintenance Organization (DSMO) Process.")

In submitting comments on issues presented in our two May 31, 2002, proposed rules, some commenters included comments on the formats for retail pharmacy drug claims for items and services other than drugs. Such items included syringes, which are supplies that are usually purchased with drugs such as insulin. Services included consultations with patients and the administration of vaccines (such as the influenza vaccine) to individuals. The issue of the format on which retail pharmacy supply claims should be billed is tied closely to business

practices of retail pharmacies and the administration of pharmacy and medical benefits by health plans. The Transactions Rule adopted a standard for retail pharmacy drug claims, and adopted standards for professional, institutional, and dental claims. It did not state specifically, except with respect to retail pharmacies using the NCPDP claim format, the particular types of health care providers that would use the professional and institutional ASC X12N 837 standard claim formats. The Implementation Guides themselves do not specify the types of health care providers that are expected to use those standards.

Commenters requested additional clarification of the formats (the implementation specifications) to be used by retail pharmacies in submitting claims for supplies and professional services. Below are specific comments and our responses.

Comment: We received comments requesting that the Secretary adopt the NCPDP format for retail pharmacy supplies and services. We also received some comments requesting that the Secretary adopt both the NCPDP format and the ASC X12N 837 format for submitting claims for supplies and services furnished by retail pharmacies, and allow the type of benefit (pharmacy or medical) to determine which format would be used. Commenters stated that splitting claims by billing drugs using the NCPDP format and supplies using the ASC X12N 837 Professional format was burdensome, and that the real-time functionality achieved with the NCPDP format could not be used for billing the supplies that are furnished in conjunction with dispensing the drug. We received conflicting comments regarding the billing of professional pharmacy services using the NCPDP format. These commenters preferred using the ASC X12N 837 Professional claim for billing professional pharmacy services.

Response: The commenters expressed differing business needs and concerns. Some commenters included supporting rationale and justifications, while others did not. It is apparent that much information still needs to be obtained and analyzed before we consider modifying the standards published in the Transactions Rule. We are aware that the comments do not represent a complete picture of the industry because we did not solicit comments specifically on this issue. Since formats for billing retail pharmacy supplies and professional services were not proposed in CMS–0005-P (67 FR 38050), or CMS–0003-P (67 FR 38044), many people who may have information pertinent to this issue did not comment on it.

Comment: Approximately one-third of the commenters stated that the NCPDP format should not be used by retail pharmacies to submit claims for professional services; they did not provide supporting rationale.

Response: The NCPDP format is not used extensively by retail pharmacies to bill for professional services. Many retail pharmacies currently use the CMS–1500 "Health Insurance Claim" (the professional paper claim) in submitting claims for professional services.

Comment: Some commenters indicated that a more consistent and effective approach would be for retail pharmacies to use the NCPDP format for all claims, regardless of the type of service. Some commenters also elaborated on the benefits of NCPDP's real-time transaction.

Response: This approach would benefit retail pharmacies, which currently use the NCPDP format. However, the Transactions Rule states that claims for drugs are to use the NCPDP claims transaction. This means that retail pharmacy claims that are not for drugs are to use the ASC X12N 837 Professional claims transaction.

Comment: Other commenters believed that both the NCPDP and the ASC X12N formats should be used by retail pharmacies. Some of these commenters stated that drug claims and claims for supplies that are closely related should continue to be billed on the NCPDP format, and that claims for professional services and supplies that are not tied to drugs should be billed on the ASC X12N 837 Professional, which is the adopted standard for claims for supplies and professional services, and is the transaction standard that other health-care providers will use for these types of claims. Several of these commenters indicated that the NCPDP format should be used for claims that fall under pharmacy benefits, and the ASC X12N 837 Professional format should be used for claims that fall under medical benefits. Some commenters expressed concern about the lack of clear industry guidelines for determining pharmacy benefits and medical benefits. Others stated that both formats should be adopted, and that health plans should determine the situations for the use of each.

Response: The Transactions Rule adopts in § 162.1102(a) the NCPDP format for retail pharmacy drug claims and the ASC X12N 837 Professional claim format for claims for supplies and professional services. The Transactions Rule does not specify the items or services that would be billed on the ASC X12N 837 Professional claim. We will be providing additional guidance by other means on this issue.

C. Proposal to Adopt Modifications to the Standards Adopted in the Transactions Rule

We proposed in CMS–0005-P (67 FR 38050) to adopt modifications to certain standards adopted in the Transactions Rule (65 FR 50312). The modifications we proposed were the result of the DSMO process to maintain standards adopted by the Secretary and to process requests for adopting new standards or modifying adopted standards. (The DSMO process is described in section I. C. of this rule.)

The versions of the Addenda adopted in this final rule are referenced by the suffix "A1" and dated October 2002. It is important to note that these versions become final with publication of this final rule. Consequently, the October 2001 date is revised to October 2002 to reflect the final versions of the adopted Addenda.

D. Composition of the Addenda

Addenda are defined as modifications to items in the implementation specifications that could be considered impediments to implementation. They are first published in draft form and go through the rulemaking process before becoming final.

Two hundred thirty-one change requests were submitted to the DSMOs for consideration. Eighty-five were returned to submitters because the Implementation Guides already met the specific business need, or the need was not well substantiated; 21 were determined to be unnecessary for initial implementation and were, therefore, recommended for future changes; six were withdrawn by their submitters; and seven were referred to the Secretary as policy issues requiring resolution. The remaining 115 change requests were approved by the DSMOs and comprise the various Addenda.

Forty-eight of the 115 change requests were maintenance items to correct minor errors, or provide clarifications in the standards. Maintenance changes are technical corrections made by DSMOs to correct typographical errors or other non-substantive changes. Maintenance changes exclude activities related to the adoption of a new standard or implementation specification or modification to an adopted standard or implementation specification. Maintenance changes are typically changes that are obvious to readers of the Implementation Guides, are not controversial, and are essential to implementation. These maintenance items are the result of DSMO change requests that were approved and recommended for adoption via the DSMO process. Therefore, we are not including a discussion of them in this final rule.

The remaining 67 of the 115 change requests were for substantive modifications to the standards, and they are detailed below.

E. Proposed Modifications to the Standards

- Changing usage of data elements from required to situational (about 20 percent of total requested changes).

Required usage of data elements means that particular data elements must be used every time the transaction is conducted. Situational usage of data elements means that, when certain specified situations or conditions exist, particular data elements must be used when the transaction is conducted. Those who submitted DSMO change requests pointed out several data elements for which the adopted standards required usage in all cases, but that was only needed in certain situations. Usage of these data elements was made situational in the Addenda, with the situations explicitly defined. Examples follow:

1. Many health plans store Healthcare Provider Taxonomy Codes when health care providers enroll in the health plan, so there is no need to send this information on every claim. Healthcare Provider Taxonomy Codes are data elements that identify the type, classification, and specialization of providers furnishing health care. The NUCC maintains these codes. The Washington Publishing Company makes the Healthcare Provider Taxonomy Codes available on its Web site (*http://www.wpc-edi.com*). The Healthcare Provider Taxonomy Codes now will be reported only when claim adjudication is known to be impacted by the presence of the code.

2. In another case, "date last seen by physician" (used for certain physical therapy claims) is needed only by Medicare, so usage was changed from required on all claims, to required "when known to impact the payer's adjudication process."

- *Removal of certain data elements* (about 20 percent of changes).

Several data elements were removed because they do not appear to be needed by any covered entity.

- *Allowing certain information to be reported via external code sets rather than via data elements defined in the transaction* (about 20 percent of changes).

ZIP codes, maintained by the U.S. Postal Service, are an example of an external code set. Revisions and updates for transaction data elements adopted by the Transactions Rule must go through the DSMO change request process, while revisions to external code sets require requesters to submit requests to the organizations that maintain the code sets and are not subject to the DSMO review process.

There were several instances where external code sets could be used to indicate certain data elements. The replacement of data elements with external code sets will allow the maintainers of those external code sets to update the codes more easily, as opposed to having the DSMOs make changes to the standards themselves. Two external code sets adopted by the Addenda are special program indicator codes and newborn birth weights.

- *Adding additional functionality to some transactions* (about 40 percent of changes).

Requesters suggested several additional data elements, codes, or loops to enable them to perform certain business functions in the transactions.

These included cross-referencing two subscriber IDs (surviving spouse and dependents) and sending a patient's primary care physician number.

F. Comments on the Modifications Included in the Addenda

CMS–0005–P (67 FR 38050) established the scope for technical comments by limiting comments to only those items being added or changed by the Addenda.

Numerous recommendations and suggestions submitted in the comments, which were not considered critical for implementation, will be considered for improvements or clarifications to future versions of the implementation specifications.

Because the comments were technical in nature, relating to specific data elements and segments, and applied to implementation specifications that were developed and are maintained by external organizations, such as the ASC X12N and the NCPDP, the Secretary could not address all of them directly. Therefore, we analyzed the public comments received to determine which comments fell in this technical category. We consulted with representatives from each of the DSMOs on these technical comments. Some of the technical comments were referred to the external organizations that develop the standards, such as the ASC X12N transaction workgroups, for additional review and consultation.

Comments that did not pertain specifically to the proposed Addenda were considered and determined to be more appropriately addressed through the DSMO Change Request process.

The majority of comments we received generally supported adoption of the proposed Addenda. Most commenters agreed that adopting these proposed changes is necessary to permit successful initial implementation of the standards within the industry. The Workgroup for Electronic Data Interchange (WEDI), the American Hospital Association (AHA), the National Uniform Claim Committee (NUCC), a number of Medicaid State agencies, the Health Insurance Association of America (HIAA), the Blue Cross Blue Shield Association (BCBSA), and the American Medical Association (AMA) were among the numerous health care providers, health plans, and professional organizations that submitted comments expressing support for adoption of the proposed Addenda. Some commenters suggested that work on the implementation specifications continue in order to improve the clarity relating to specific situational data elements and to ensure clear, consistent interpretations and implementation by health plans.

Commenters unanimously supported many specific Addenda items, for example:

- The proposal to use existing UB–92 Condition Codes for reporting special program indicators, as well as UB–92 Value Codes to report newborn birth weights. These changes would eliminate differences in the way this information is handled for electronic and paper submission of claims. It is important wherever possible to follow the same data development paths for both paper and electronic submission in order to simplify the capturing and reporting of billing information.
- The deletion of unneeded data segments and the clarification of ambiguous usage notes.

We discuss other comments on specific modifications below. They are organized according to specific adopted transaction standards.

The Addenda are not stand-alone documents. They are supplemental implementation specifications to the initial standards adopted in the Transactions Rule. In this final rule, we therefore adopt the Addenda as part of the standards to which they apply.

G. Transaction Standard for Health Care Claims or Equivalent Encounter Information

In CMS–0005–P (67 FR 38050), we proposed to adopt the following:

- Addenda to Health Care Claim: Dental, ASC X12N 837, Version 4010, October 2002, Washington Publishing Company, 004010X097A1.
- Addenda to Health Care Claim: Professional, Volumes 1 and 2, ASC X12N 837, Version 4010, October 2002, Washington Publishing Company, 004010X098A1.
- Addenda to Health Care Claim: Institutional, Volumes 1 and 2, ASC X12N 837, Version 4010, October 2002, Washington Publishing Company, 004010X096A1 as the standard for health care claims or equivalent encounter information.

1. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Institutional

Comment: A number of commenters objected to the usage note in the Addenda that requires reporting of HCPCS codes for all outpatient claims, because some outpatient services do not have HCPCS codes established for them. Commonly used revenue codes submitted without HCPCS codes are 250 (pharmacy drugs), 270 (medical supplies), 370 (anesthesia supplies), 710 (recovery room), and 762 (observation). HCPCS codes do not exist for many of these services. The commenters noted that the use of unlisted (miscellaneous) HCPCS codes in situations where a specific HCPCS code does not exist to describe the service or supply could result in the rejection of an entire claim because additional documentation is required for defining the unlisted code. An increase in the use of unlisted codes for these situations would cause significant claim processing delays and rework. Even though there is no additional line-item payment for these revenue codes, they must be submitted because Ambulatory Patient Classification (APC) reimbursement values are calculated by looking at all of the services submitted.

Response: We agree with these commenters that the Addenda proposal to require the use of HCPCS codes on all outpatient claims did not account for those services that do not have assigned HCPCS codes. The usage note was modified by the ASC X12N to indicate that HCPCS codes are only required to be reported for services when a HCPCS code exists for that particular service.

Comment: Several commenters objected to the Addenda's removal of the requirement for diagnosis information on "Hospital Other" bill types. "Other" is defined by the NUBC as diagnostic services, or home health services not under a plan of treatment. For example, a family physician may send blood work to a hospital-based laboratory. The hospital never sees the patient. Some health plans use this diagnosis information to pay or reject claims based on whether a service is medically necessary, experimental, or cosmetic. The adopted Addenda modify the requirement for this diagnosis information by making its use situational, with a note explaining that a diagnosis is not needed for "Religious Non-Medical" claims and "Hospital Other" bill types.

Response: The original transaction standards required this diagnosis information on all inpatient and outpatient claims. The DSMO change request for not requiring the diagnosis information on certain types of claims was strongly supported by the industry because principal diagnosis information is not needed for certain hospital bill types. For example, when a physician sends a patient's blood work to a hospital-based laboratory, the hospital will bill for those services using the "Hospital Other" bill type. The hospital never sees the patient and would have no record of the patient's principal diagnosis information. We support the Addenda change to delete the requirement for principal diagnosis information in all situations, since in many cases obtaining this information creates an administrative burden when it is not readily available and not used.

Comment: We received numerous comments on the Addenda's institutional claim usage of Healthcare Provider Taxonomy Codes, which identify the specialty of a health care provider that provided medical services. In the implementation specification adopted in the Transactions Rule, Healthcare Provider Taxonomy Code information usage was required at the line level and the claim level for institutional claims. The Addenda modify the required use of the Healthcare Provider Taxonomy Code information at the line level and the claim level for institutional claims by making its use situational. The situation that would require its use is if the information is known to impact claim adjudication. Commenters stated that hospitals often have many caregivers involved in the delivery of a particular service, and that it is impractical or impossible in many instances to report a single Healthcare Provider Taxonomy Code or other associated provider identification at the line level. To require such reporting would impose a tremendous burden on hospitals to implement massive new system changes to track which caregivers were responsible for providing each individual service and to incur costs that would never be recouped through payment differentials payers would assign to the service. Commenters suggested that HHS follow the NUBC recommendation to delete all references to the use of Healthcare Provider Taxonomy Codes from the institutional claim Implementation Guides. However, other commenters cited examples and reasons why Medicaid State agencies require the taxonomy information, including determining appropriate reimbursement, editing and auditing claims, routing data for State and Federal reporting, and detecting fraud and abuse. Use of taxonomy information on the institutional claim would allow Medicaid programs to use the most up-to-date information available for claim pricing and payment methodology reports. These commenters indicated that removing taxonomy codes from institutional claims could impact health care provider reimbursement and would involve complex policy changes for Medicaid State agencies.

Response: After extensive deliberation on this issue and evaluation of current business practices among institutional health care providers, ASC X12N has removed the required usage of Healthcare Provider Taxonomy Codes from most segments in the ASC X12N 837 Institutional Implementation Guide. We attempted to find specific situations in the industry documenting the need for this particular Healthcare Provider Taxonomy Code use. Only one health plan identified a specific need for this information at the Billing/Pay To Provider level for the institutional claim. Usage at this level will remain situational to accommodate those business situations when Healthcare Provider Taxonomy Code information is needed.

Comment: Numerous commenters requested that the requirement to report physician name and ID number at the line level be eliminated. The implementation specifications adopted by the Transactions Rule established this requirement. The Addenda changes recommended by the DSMOs modify the required usage to situational. The situation that would require its use is if the information is known to impact claim adjudication. According to current billing practices, an institutional claim form summarizes services and supplies provided by a hospital facility. The attending physician who has ultimate responsibility for coordinating hospital services is reported at the claim level. Line level reporting of each health care provider would be redundant since individual professional services are separately billed according to professional billing guidelines.

Response: After considerable discussion and evaluation of current industry practices, we determined that this information is available, but not currently required, on institutional claims. The implementation specifications adopted by the Transactions Rule established the usage of line level provider information as required when the provider information at the line level was different from that at the claim level. The Addenda for the implementation specifications modify the usage of line level provider information from required to situational. The specific situation when this information would be required is when line level provider information is known to impact claim adjudication.

Comment: A few commenters noted that a usage change instruction for Operating Physician Specialty Information points to an incorrect segment.

Response: We agree with this comment. ASC X12N has made the appropriate corrections and added this modification to the Addenda adopted by this final rule.

2. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Professional

Comment: Several commenters stated that the implementation specification requirement proposed for the use of the NDC conflicted with the proposed regulation text for CMS–0003–P (67 FR 38044). In our CMS–0003–P proposed rule, we proposed repealing the NDC for reporting drugs and biologics on non-retail pharmacy transactions and that no standard for reporting drugs and biologics on non-retail pharmacy transactions be adopted at this time. CMS–0005–P (67 FR 38050) proposed adoption of the Addenda that required usage of the NDC information when necessary to add definition to a particular product. One commenter suggested that this be clarified by adding a mutually defined "ZZ" qualifier to permit usage of any code sets based on trading partner agreements.

Response: This final rule adopts the modified Addenda approved by ASC X12N in October 2002. The Addenda permit use of either the NDC or HCPCS to code drugs and biologics on non-retail pharmacy claims, but (with limited exceptions) do not permit other codes to be used for this purpose. However, this choice of either HCPCS or NDC codes is not consistent with our decision, reflected in § 162.1002(c) below, to repeal the standard code set for drugs and biologics for non-retail pharmacy transactions and to permit the use of all code sets in order to encourage development of a single code set that will meet the needs of the entire health care industry. We expect that the choice of either the HCPCS or the NDC codes afforded by the Addenda will, in the usual case, result in covered entities in the non-retail pharmacy sectors of the industry continuing to code drugs and biologics as they do now, whether by NDC or by HCPCS. The Addenda will thus not create a disincentive for industry to develop, and migrate to, a single code set for use by the industry.

Although we agree that in this respect the Addenda are not consistent with our underlying policy choice regarding the code sets for drugs and biologics for non-retail pharmacy transactions, the adopted Addenda contain many important changes to the Implementation Guides that are essential if industry is to be able to test and implement the transactions in question smoothly and on time. Because we cannot, under the statute, choose among provisions in an industry-adopted standard guide without going through negotiated rule making, the critical need for the remainder of the changes in the Addenda has led us to adopt the Addenda in their present form. We intend, however, to work with industry to align the Addenda with the policy reflected at § 162.1002(c) and adopt a further modification of the standards to effect this alignment in the next update. Should we not be able to reach agreement on the inconsistency between our policy decision and the policy reflected in the Implementation Guides, we intend to pursue our options under the statute that include negotiated rule making. We recognize that the existence of what is, in effect, two standards for coding drugs and biologics within the transactions in question may cause problems between health plans and health care providers and may in some cases result in noncompliance. It is unlikely that we would pursue any such instances of noncompliance, in light of the competing demands for enforcement resources and the inconsistency between our policy decision and the policy reflected in the Implementation Guide.

With respect to the comment about ZZ codes, the adopted Addenda only permit use of ZZ qualifiers for certain situations. Thus, the problem discussed above likewise exists with respect to such codes, and we adopt the same approach thereto.

Comment: One commenter listed three modifications that had been approved by the DSMOs but were not included in the Addenda specifications. These modifications related to Initial Treatment Date, Spinal Manipulation Certifications for Medicare Part B, and the Test Date for Dialysis Patients.

Response: We verified that these modifications were adopted in the proposed Addenda but due to typographical errors were inadvertently not included in the proposed Addenda. ASC X12N has corrected these errors and added these modifications to the Addenda adopted by this final rule.

Comment: We received many comments from anesthesiology providers requesting that we not adopt the proposed usage instruction that allows reporting anesthesia services in minutes only. Current business practices require that reimbursement for anesthesia services be based on total anesthesia time in minutes or units. Adopting this proposed usage instruction in the Addenda would impact reimbursement methodologies and payment amounts for anesthesia providers.

A number of commenters requested HHS to adopt a standard definition for anesthesia time. A generally accepted definition for most payers, including Medicare, that is consistent with the American Society of Anesthesiologists' definition, defines anesthesia time as starting when the practitioner begins to prepare the patient for anesthesia services and ending when anesthesia services are no longer being provided and the patient is safely in postoperative care. However, a minority of payers account for anesthesia time differently, requiring multiple reporting for face-to-face start and stop times, if there are different clinical activities in a particular service. A commenter pointed out that the sporadic need to depart from a widely accepted methodology is burdensome and results in frequent reporting errors.

Response: We agree with the comment to delete the usage instruction requiring the reporting of minutes only for anesthesia services. Based upon various payment systems for anesthesia services that depend upon reporting unit information on claims, and the various methods for calculating one unit of time, we determined that adopting a standard requiring that only minutes be reported would impact anesthesia providers' ability to report their services adequately. Regarding the request for a standard definition for anesthesia time, we believe that the applicable comments actually seek further clarification of health plans' reimbursement policies, which are not the subject of these transaction standards.

Comment: Several commenters objected to a modification of the requirement for spinal and non-spinal manipulation service information. This

information was previously required on all spinal manipulation claims. The Addenda limit this requirement to Medicare Part B chiropractic claims. For some health plans, this information applies to contractual benefit exclusions and is used to adjudicate claims. Since osteopathic manipulation procedure codes can represent either spinal or non-spinal manipulations, the spinal manipulation service information segment is used by some health plans to distinguish between spinal and non-spinal services.

Response: We agree with this comment. ASC X12N has added a usage note to the Addenda adopted by this final rule to require the spinal manipulation service information segment when needed for claim adjudication.

Comment: Numerous commenters supported the Addenda modification that changed the usage for Healthcare Provider Taxonomy Codes from required to situational. However, one commenter suggested that usage of Healthcare Provider Taxonomy Codes be completely removed from the Professional claim Implementation Guide.

Response: Commenters generally supported the Addenda modification for usage of the Healthcare Provider Taxonomy Codes from required to situational. After extensive review and discussion of this topic, we adopt the proposed Addenda's situational usage of Healthcare Provider Taxonomy Codes on the Professional claim.

Comment: We received comments indicating that "Date Last Seen" information was required by a number of payers. The Addenda specified that only Medicare required this information.

Response: We have confirmed that other health plans do need these data. The Secretary adopts the ASC X12N modification for situational usage of this date information when it impacts the health plan's claim adjudication process.

Comment: One commenter requested that a description for the acronym "EPSDT" be added to the Implementation Guide.

Response: We believe that this information will clarify Implementation Guide requirements. Accordingly, the acronym for Early and Periodic Screening for Diagnosis and Treatment ("EPSDT") and its definition will be adopted. ASC X12N revised the Addenda to include this clarification.

Comment: A number of commenters referenced variations in the use of "performing provider" and "rendering provider" information, and questioned the different terminology.

Response: In the Addenda performing provider (PE) and rendering provider (PR) are separate and distinct data elements. "PE" and "PR" have the same business meaning of identifying the provider who furnishes a service. However, these data are named differently because they are referenced in separate sections of the Implementation Guide. "PE" is used to denote the Performing Provider in the PRVO1 section. "PR" denotes the Rendering Provider at the Loop 2310 B segment.

3. Transaction Standard for Health Care Claims or Equivalent Encounter Information: Dental

Comment: We received a number of comments requesting the use of HCPCS modifier codes for dental claims. The commenters stated that using HCPCS modifier codes improves the efficiency of processing electronic dental claims by providing necessary detail and allowing more accurate dental claim adjudication. Other commenters opposed the use of HCPCS modifier codes with the adopted Code on Dental Procedures and Nomenclature standard, stating that most dental billing systems do not support procedure code modifiers. Those commenters pointed out that the use of HCPCS modifier codes is likely to increase paper claims and would perpetuate the current lack of code standardization for payment purposes and undermine the goal of administrative simplification.

Response: The Code on Dental Procedures and Nomenclature (The Code), as maintained and distributed by the American Dental Association (ADA), is the adopted standard code set for reporting dental services. Using HCPCS modifier codes for dental claims reporting would require the adoption of an entire additional code set for standard dental transactions, when only 20 to 30 modifiers are needed. We recognize that no single code set in use today meets all of the business requirements related to the full range of health care services and conditions that exist, and that adopting multiple standards may be a way to address code set inadequacies. Rather than adopt the HCPCS modifier codes in addition to The Code for dental transactions, we suggest working with The Code maintainers, the ADA, to develop and add modifiers that will meet the needs of the dental industry. Dental professionals and the public may submit requests at *http://www.ada.org/prof/prac/manage/benefits/cdtform.html*.

Comment: We received one comment suggesting that the phrase "for services provided or proposed" be added after Dental Health Care Claims (§ 162.1102(b)). The ASC X12N 837 dental claim transaction was designed and is used to submit a request for pre-determination and pre-authorization of dental benefits. Since this function was not identified in the Transactions Rule or in the Addenda, the submission of an electronic inquiry for determining payment for proposed dental services is not an adopted transaction standard. This commenter also suggested that the word "Dental" be deleted from § 162.1302(b), Standard for Referral Certification and Authorization, dental, professional, and institutional referral certification and authorization 004010X094A1 because the adopted implementation specification for ASC X12N 278 states that it is not intended for dental pre-determination pricing, and that instead the ASC X12N 837 Dental transaction should be used for this purpose. The commenter also stated that there is no existing or anticipated need for referral certification and authorization using the ASC X12N 278 for dental services. Dental systems support the ASC X12N 837 Dental for pre-approval of dental benefits. We received conflicting comments from Medicaid-identified commenters who expressed a need for using the ASC X12N 278 for dental referral certification and authorization, and that indicated that all dental systems do not completely support the ASC X12N 837 Dental for pre-approval of dental benefits.

Response: We have determined that the ASC X12N 837 Dental claim is commonly used by the dental industry for pre-determination and pricing of dental services. This function does not meet the definition for the Referral Certification and Authorization Transaction in the Transactions Rule at § 162.1301, and is not a transaction standard adopted by the Transaction Rule, or proposed in CMS–0005–P.

Although not a HIPAA standard, pre-determination and pricing functionality are available for use with the ASC X12N Dental claim. However, ASC X12N has not adopted a standard response transaction for use with this function. ASC X12N will be developing and modeling the business use of the pre-determination and pricing transaction in coordination with the DSMOs for future consideration as a transaction standard and the subject of a later rule.

Based upon comments received, we also have determined that there is an expressed business need for use of the ASC X12N 278 for dental referral certification and authorization. The word "dental" will remain in § 162.1302 so that use of ASC X12N 278 is available for referral certification and authorization of dental transactions.

In summary, adding the phrase "for Services Provided or Proposed" to § 162.1102(b) will not be adopted at this time. However, this does not preclude use of the ASC X12N 837 Dental claim pre-determination and pricing functionality. The ASC X12N 278 will remain available for dental use of the Referral Certification and Authorization Transaction. The dental industry will have available use of the ASC X12N 278 adopted transaction standard for referral certification and authorization transactions and the ASC X12N 837 Dental claim for pre-determination and pricing activities for which no standard has been adopted.

Comment: A number of commenters disagreed with the Addenda modification that added "Assistant Surgeon" and "Rendering Provider" information to both the line level and the claim level for dental claims. Commenters stated that tracking and reporting this information would be an enormous burden for health care providers and not conducive to administrative simplification.

Response: In order to reduce the administrative burden on health care providers and prevent the potential confusion that could result from sending or receiving a claim with both a "Rendering Provider" and an "Assistant Surgeon" at the same level, ASC X12N has added a note to the Addenda instructing the user not to report the "Assistant Surgeon" information when the "Rendering Provider" information is reported at the line level of the claim.

Comment: We received a few comments supporting the Addenda modification that changed the usage from required to situational for Healthcare Provider Taxonomy Codes.

Response: The Addenda modified the use of the Healthcare Provider Taxonomy Codes from required to situational on the dental claim.

Comment: One commenter indicated support for the Addenda and specifically supported the addition of a new code set value in the Addenda, "service provider number," which the commenter maintained was a necessary data element for managed care programs.

Response: This comment supports one of the Addenda modifications adopted by this final rule that was required to permit initial implementation of the standards. Adding the "service provider number" code set value is an example of a technical addition that better defines the implementation specifications.

H. Transaction Standard for Eligibility for a Health Plan

We proposed adoption of the Addenda to Health Care Eligibility Benefit Inquiry and Response, ASC X12N 270/271, Version 4010, October 2002, Washington Publishing Company, 004010X092A1 as the standard for the dental, professional, and institutional health care eligibility benefit inquiry and response transaction.

Comment: We received two comments that expressed support for adoption of the Addenda to the ASC X12N 270/271 transaction.

Response: No additional comments or specific detailed requests were received for these Addenda.

I. Transaction Standard for Referral Certification and Authorization

We proposed adoption of the Addenda to the Health Care Services Review—Request for Review and Response, ASC X12N 278, Version 4010, October 2002, Washington Publishing Company, 004010X094A1 for the dental, professional, and institutional referral certification and authorization transaction.

Comment: We received a number of comments about use of the Logical Observation Identifier Names and Codes (LOINC™). The comments stated that use of this code set was confusing and requested that the usage requirement be deleted or a clarifying note be added. The Addenda state that this code set is not allowed for use under HIPAA at this time. It is unclear why this code set would be included in the Addenda if the code set is not an adopted standard code set.

Response: The LOINC™ code set was intended by the SSOs to increase functionality of the transaction. It has not been adopted as a national standard code set, but can be used in implementing this transaction. The Addenda add the use of the LOINC™ code set as an EDI option for responding to requests for additional information when conducting the standard Referral Certification and Authorization Transaction.

Comment: We received a number of comments suggesting that the Addenda usage notes that allow attachment of electronic documentation to this transaction were confusing because they appeared to conflict with the Claims Attachment Transaction, mandated by HIPAA but not adopted by the Secretary at this time.

Response: The Claims Attachment Transaction standard mandated by HIPAA, but not adopted by the Secretary, is available for voluntary EDI use from the Washington Publishing Company at the following Web site: *www.wpc-edi.com*. The functionality of this transaction allows the electronic transmission of documentation associated with a claim. It can also function as a response for the Referral Certification and Authorization Transaction, when additional information is requested. The use of the electronic attachment with the Referral Certification and Authorization Transaction is considered a two-way transaction: an EDI request and its associated EDI response. Use with the claim transaction can be either a one-way (required attachment is sent with the claim and not as a response to a request), or a two-way transaction. The Addenda do not require the provider to respond to this request for additional information by using the Claims Attachment Transaction. However, if the provider wants to respond using an EDI transaction, the preferred method is the Claims Attachment Transaction.

We agree that further clarification on the circumstances when these two transactions may be used is needed. ASC X12N has modified the standard for the referral certification and authorization implementation specification to illustrate the model use of these transactions for other applications.

Comment: We received one comment that referenced the absence of a needed segment regarding Dependent Detail information. The Dependent Detail loop ID 2010DA for Dependent name 270 DTP date or time period is not referenced in the Addenda. This segment is needed to convey subscriber dependent information when the dependent is the patient.

Response: We agree that this is an error. ASC X12N has corrected it in the adopted Addenda.

Comment: There were approximately 20 highly technical comments relating to requests for clarification, missing elements, misspelling, minor revisions, and improvements to the Implementation Guides.

Response: Because of their technical complexity, these comments that involved modifications to specific loops and data elements in the implementation specifications were referred to the ASC X12N Workgroup. The following is a summary of these comments:

- Four commenters requested minor revisions, which included creating a response code to tell the provider that

additional medical information is needed, correcting a typographical error for repeating a data element, adding a qualifier to enable the provider to link a request with an attachment, and defining two segments that only support paper attachments. These requests have been reflected in the revised Addenda.

- Fourteen of the commenters asked for additional clarification on the appropriate use of the standard for referral certification and authorization as a two-way transaction. The Implementation Guide is modified to illustrate the model use of this transaction to include a follow-up EDI or non-EDI response.
- One commenter asked a question relating to whether a transaction should be rejected if there is no patient event tracking number (TRN) segment for the patient, when the patient is not the subscriber. ASC X12N clarified in the Addenda that the transaction should not be rejected. The TRN usage instruction was made specific about when the data are required.
- One of the commenters requested that a new code be developed to replace the Assigned By Receiver (ABR) code rather than use an existing code to define an element for which it was not intended. A data maintenance request has been approved to have a code added, but it will not be in effect for the ASC X12N 4010 Version of the Implementation Guide.

J. Transaction Standard for Health Care Claim Status

We proposed the adoption of the Addenda to Health Care Claim Status Request and Response, ASC X12N 276/277, Version 4010, October 2002, Washington Publishing Company, 004010X093A1 as the standard for the health care claim status transaction.

We did not receive significant comments on this proposal.

K. Transaction Standard for Enrollment and Disenrollment in a Health Plan

We proposed the adoption of the Addenda to Benefit Enrollment and Maintenance, ASC X12N 834 Benefit Enrollment and Maintenance, Version 4010, October 2002, Washington Publishing Company, 004010X095A1 as the standard for enrollment and disenrollment in a health plan transaction.

We did not receive significant comments on this proposal.

L. Transaction Standard for Health Care Claim Payment/Advice

We proposed the adoption of the Addenda to Health Care Claim Payment/Advice, ASC X12N 835, Version 4010, October 2002, Washington Publishing Company, 004010X091A1 as the standard for dental, professional, institutional, and pharmacy health care payment and remittance advice transactions.

We did not receive significant comments on this proposal.

M. Transaction Standard for Health Care Premium Payments

Comment: A number of commenters pointed out that adoption of the ASC X12N 004010X061 and ASC X12N 004010X061A1 standards were not included in CMS–0005–P.

Response: We received comments pointing out that the transaction standard for Health Care Premium Payments, the ASC X12N 820, 004010X061 and Addenda, 004010X061A1, were omitted from CMS–0005–P. We did not specifically intend to exclude this transaction standard and its Addenda from the proposed rule. The modification for the Addenda to this Implementation Guide provides the same guidance as the Addenda for the other transaction standards; the modification provides guidance to the industry, in section A.1.3.1.2, in handling decimal points in monetary transactions. Nevertheless, we recognize that these Implementation Guide modifications were not expressly identified and separately listed in CMS–0005–P, and thus we are including them as follows in section IV below.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice and public comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking procedures for this final rule because the Addenda modifications for § 162.1702 "Standard for health care premium payments," § 162.1802 "Standards for coordination of benefits," and technical modifications approved by the DSMOs (relating to Initial Treatment Date, Spinal Manipulation Certifications for Medicare Part B, and the Test Date for Dialysis Patients) offer no substantive changes to the standard and Addenda and merely provide explanatory guidance.

The Addenda for the Health Plan Premium Payments Transaction provides the same guidance to the industry as the Addenda for other adopted transactions that were proposed in the proposed rule at 67 FR 38050.

The Coordination of Benefits Transaction Standard is a variation of the health care claim transaction for institutional, dental, and professional providers that was proposed in CMS–0005–P.

The three modifications approved by the DSMOs but not included in the Addenda specifications are merely technical corrections relating to Initial Treatment Date, Spinal Manipulation Certifications for Medicare Part B, and the Test Date for Dialysis Patients for a single transaction standard. These corrections in essence correct a typographical error in the draft Addenda and do not require any data elements to be changed.

We received comments on the standard for the health care claim, and have responded to those in this final rule. Because each of the transaction standards adopted by the Transactions final rule has Addenda that were approved for use by the industry, we are adopting the Addenda for each of the proposed transactions so that implementation of the Addenda for each of the adopted standards will be consistent. Therefore, for good cause, we waive notice and public comment procedures under 5 U.S.C. 553(b)(B).

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

The information collection requirements and associated burdens in §§ 162.1002, 162.1102, 162.1202, 162.1302, 162.1402, 162.1502, 162.1602, 162.1702, and 162.1802 are subject to the PRA. The burden of these standards is addressed under OMB approval number 0938–0866.

We are submitting a copy of these revisions to the regulation sections to OMB for its review of the information collection requirements. We will also submit the all of the revisions for review and reapproval under 0938-0866. These revisions are not effective until OMB has approved them. If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Office of Strategic Operations and Regulatory Affairs, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Baltimore, MD 21244, Attn: Julie Brown, CMS–0003–F/0005–F; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer, CMS–0003–F/0005–F.

VI. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258 which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules. The analysis in the Transactions Rule assumed that the adopted standards will be able to be implemented successfully by the industry. The changes adopted in this final rule are a result of industry analyses that showed certain minor modifications to the adopted standards would be necessary to permit full industry compliance with the standards. These modifications make limited adjustments and corrections to the overall standards and would facilitate the congressional intent of implementation of national electronic standards. Thus, the impact analysis previously published, 65 FR 50350 through 50365, would reflect industry experience in implementing the changes adopted in this rule.

In relation to the prior impact analysis, this final rule imposes no additional burdens and creates no additional costs. All of the modifications adopted in this final rule and proposed in CMS–0003–P (67 FR 38044) and CMS–0005–P (67 FR 38050) are required to facilitate successful implementation of the standards. Their implementation will, in fact, avoid costs that were not anticipated in the impact analysis of the Transactions Rule.

The 115 approved modifications to the standards included 48 maintenance changes (minor error corrections or clarifications), and 67 modifications to the standards. Details of these 67 modifications include—

- Changing the usage of data elements from "required" to "situational" (about 20 percent of changes);
- Removal of certain data elements (about 20 percent of changes);
- Allowing certain data elements to be reported via external code sets rather than data elements in the transaction (about 20 percent of changes); and
- Adding additional functionality to some transactions (about 40 percent of changes).

In particular, institutional and professional providers that have submitted ASCA compliance plans will not be required to retool systems and restructure current operations to accommodate the adopted NDC for reporting drugs and biologics on non-retail pharmacy standard transactions. Estimates reported to the NCVHS indicated that the cost of transitioning to NDCs on institutional claims could easily exceed an institution's cost for adopting all other transaction standards combined. While costs could vary depending on the size of the facility, hospitals estimate the minimum cost at $200,000 per facility to switch from HCPCS codes to NDCs. The industry also estimates that typical physician practices may spend $800 to as much as $100,000 for practice management systems.[2] Although included for purposes of illustration, documentation to substantiate these estimates of the true costs for institutional providers of adopting the NDC as the code set standard for transactions involving drugs and biologics was not provided. Consequently, we do not consider these to be reliable estimates of the true costs for institutional providers of adopting the NDC as the code set standard for transactions involving drugs and biologics. This final rule retracts the adoption of the NDC and does not adopt any standard medical code set for reporting drugs and biologics on nonretail pharmacy transactions. Institutional and professional providers can continue their current practices for reporting drugs and biologics on institutional and professional standard transactions.

[2] Testimony from health care providers to the NCVHS on February 1, 2001.

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. On November 17, 2000, the Small Business Administration (SBA) published a final rule (65 FR 69432) changing the small business size standards for the health care industry. This SBA rule became effective December 18, 2000. The size standards that the SBA now uses are those defined by the North American Industry Classification System. Before that, the SBA used size standards as defined by the Standard Industrial Codes. The size standard is no longer a uniform $5 million in annual revenues for all components in the health care sector. Rather, the size standard now ranges from $6 million to $29 million. The RFA for this final rule is linked to the aggregate RFA for all the Administrative Simplification standards that appeared in the Transactions Rule, which predated the SBA change. It is appropriate, for purposes of this final rule, to continue to use the $5 million small business size standard that was in effect at the time of publication of the Transactions Rule. Maintaining this consistent definition for small business size minimizes confusion in the industry and does not adversely impact entities that were not considered small businesses according to the Transaction Rule definition. Nonprofit organizations are considered small entities. Small government jurisdictions with a population of less than 50,000 are considered small entities. Individuals and States are not considered small entities. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less in any one year. For purposes of the RFA, all retail pharmacies are considered to be small entities. We have determined that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule makes only minor modifications to the regulatory process already put in place by the Transactions Rule (65 FR 50350 through 50365), which will generally reduce compliance burden on covered entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this final rule will not have an additional significant impact on a substantial number of small rural hospitals. This final rule makes only minor modifications to the regulatory process already put in place by the Transactions Rule (65 FR 50350 through 50365), which will generally reduce compliance burden, particularly on hospitals and other institutional providers, who will no longer be required to adopt the NDC for transactions involving drugs and biologics.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule will have no mandated consequential effect on State, local, or tribal governments, or on the private sector when using the Regulatory Impact Analysis for the Transactions Rule (65 FR 50350 through 50365) as a baseline.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this final rule will not significantly affect the rights, roles, and responsibilities of States. This final rule makes only minor modifications to the regulatory process already put in place by the Transactions Rule (65 FR 50350 through 50365), which will generally reduce compliance burden on covered entities.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget (OMB).

List of Subjects in 45 CFR Part 162

Administrative practice and procedure, Electronic transactions, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble of this final rule, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter C, part 162 as follows:

PART 16—ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 162 continues to read as follows:

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C.1320d–1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

2. Section 162.900 is revised to read as follows:

§ 162.900 Compliance dates for transaction standards and code sets.

(a) *Small health plans.* All small health plans must comply with applicable requirements of subparts I through R of this part no later than October 16, 2003.

(b) *Covered entities that timely submitted a compliance plan.* Any covered entity, other than a small health plan, that timely submitted a compliance plan with the Secretary under the provisions of section 2 of Pub. L. 107–105, 115 Stat. 1003 (ASCA) must comply with the applicable requirements of subparts I through R of this part no later than October 16, 2003.

(c) *Covered entities that did not timely submit a compliance plan.*

Any covered entity, other than a small health plan, that did not timely submit a compliance plan under the provisions of section 2 of Pub. L. 107-105, 115 Stat. 1003 (ASCA) must comply with the applicable requirements of subparts I through R of this part—

(1) Beginning on October 16, 2002, and ending on October 15, 2003—

(i) For the corresponding time period; or

(ii) For the time period beginning on October 16, 2003.

(2) Beginning on and after October 16, 2003, for the corresponding time period.

3. Section 162.920 is revised to read as follows:

§ 162.920 Availability of implementation specifications.

A person or an organization may directly request copies of the implementation standards described in subparts I through R of this part from the publishers listed in this section. The Director of the Office of the Federal Register approves the implementation specifications described in this section for incorporation by reference in subparts I through R of this part in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The implementation specifications described in this paragraph are also available for inspection by the public at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; and the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244. Copy requests must be accompanied by the name of the standard, number, if applicable, and version number. Implementation specifications are available for the following transactions:

(a) *ASC X12N specifications.* The implementation specifications for ASC X12N standards may be obtained from the Washington Publishing Company, PMB 161, 5284 Randolph Road, Rockville, MD, 20852–2116; Telephone (301) 949–9740; and FAX: (301) 949–9742. They are also available through the Washington Publishing Company on the Internet at *http://www.wpc-edi.com/.* The transaction implementation specifications are as follows:

(1) The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097 and Addenda to Health Care Claim: Dental, Version 4010, October 2002, Washington Publishing Company, 004010X097A1, as referenced in § 162.1102 and § 162.1802.

(2) The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098 and Addenda to Health Care Claim: Professional, Volumes 1 and 2, Version 4010, October 2002, Washington Publishing Company, 004010X098A1, as referenced in § 162.1102 and § 162.1802.

(3) The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096 and Addenda to Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, October 2002, Washington Publishing Company, 004010X096A1 as referenced in § 162.1102 and § 162.1802.

(4) The ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091, and Addenda to Health Care Claim Payment/Advice, Version 4010, October 2002, Washington Publishing Company, 004010X091A1 as referenced in § 162.1602.

(5) ASC X12N 834—Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company, 004010X095 and Addenda to Benefit Enrollment and Maintenance, Version 4010, October 2002, Washington Publishing Company, 004010X095A1, as referenced in § 162.1502.

(6) The ASC X12N 820—Payroll Deducted and Other Group Premium Payment for Insurance Products, Version 4010, May 2000, Washington Publishing Company, 004010X061, and Addenda to Payroll Deducted and Other Group Premium Payment for Insurance Products, Version 4010, October 2002, Washington Publishing Company, 004010X061A1, as referenced in § 162.1702.

(7) The ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, May 2000, Washington Publishing Company, 004010X094 and Addenda to Health Care Services Review—Request for Review and Response, Version 4010, October 2002, Washington Publishing Company, 004010X094A1, as referenced in § 162.1302.

(8) The ASC X12N–276/277 Health Care Claim Status Request and Response, Version 4010, May 2000, Washington Publishing Company, 004010X093 and Addenda to Health Care Claim Status Request and Response, Version 4010, October 2002, Washington Publishing Company, 004010X093A1, as referenced in § 162.1402.

(9) The ASC X12N 270/271—Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092 and Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010, October 2002, Washington Publishing Company, 004010X092A1, as referenced in § 162.1202.

(b) *Retail pharmacy specifications.* The implementation specifications for retail pharmacy standards may be obtained for a fee from the National Council for Prescription Drug Programs (NCPDP), 9240 E. Raintree Drive, Scottsdale, AZ 85260; Telephone (480) 477–1000; and FAX (480) 767–1042. They may also be obtained through the Internet at *http://www.ncpdp.org.* The transaction implementation specifications are as follows:

(1) The Telecommunication Standard Implementation Guide Version 5, Release 1 (Version 5.1), September 1999, National Council for Prescription Drug Programs, as referenced in § 162.1102, § 162.1202, § 162.1302, § 162.1602, and § 162.1802.

(2) The Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1) for the NCPDP Data Record in the Detail Data Record, National Council for Prescription Drug Programs, as referenced in § 162.1102, § 162.1202, § 162.1302, and § 162.1802.

(3) The National Council for Prescription Drug Programs (NCPDP) equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 0, February 1, 1996, as referenced in § 162.1102, § 162.1202, § 162.1602, and § 162.1802.

4. Section 162.1002 is amended by—

A. Revising the introductory text to the section.

B. Redesignating paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6).

C. In redesignated paragraph (a)(1), further redesignating paragraphs (1) through (5) as paragraphs (a)(1)(i) through (a)(1)(v).

D. In redesignated paragraph (a)(2), further redesignating paragraphs (1) through (4) as paragraphs (a)(2)(i) through (a)(2)(iv).

E. In redesignated paragraph (a)(3), further redesignating paragraphs (1) and (2) as paragraphs (a)(3)(i) and (a)(3)(ii).

F. In redesignated paragraph (a)(5), further redesignating paragraphs (1) through (7) as paragraphs (a)(5)(i) through (a)(5)(vii).

G. In redesignated paragraph (a)(6), further redesignating paragraphs (1) through (3) as paragraphs (a)(6)(i) through (a)(6)(iii).

H. Adding new paragraph (a) introductory text and paragraph (b).

The republication and additions read as follows:

§ 162.1002 Medical data code sets.

The Secretary adopts the following maintaining organization's code sets as the standard medical data code sets:

(a) For the period from October 16, 2002 through October 15, 2003:

* * * * *

(b) For the period on and after October 16, 2003:

(1) The code sets specified in paragraphs (a)(1), (a)(2),(a)(4), and (a)(5) of this section.

(2) *National Drug Codes (NDC),* as maintained and distributed by HHS, for reporting the following by retail pharmacies:

(i) Drugs.

(ii) Biologics.

(3) *The Healthcare Common Procedure Coding System (HCPCS),* as maintained and distributed by HHS, for all other substances, equipment, supplies, or other items used in health care services, with the exception of drugs and biologics. These items include, but are not limited to, the following:

(i) Medical supplies.

(ii) Orthotic and prosthetic devices.

(iii) Durable medical equipment.

5. Section 162.1102 is revised to read as follows:

§ 162.1102 Standards for health care claims or equivalent encounter information transaction.

The Secretary adopts the following standards for the health care claims or equivalent encounter information transaction:

(a) For the period from October 16, 2002 through October 15, 2003:

(1) *Retail pharmacy drug claims.* The National Council for Prescription Drug Programs (NCPDP) Telecommunication Standard Implementation Guide, Version 5, Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 0 February 1, 1996. (Incorporated by reference in § 162.920).

(2) *Dental health care claims.* The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097. (Incorporated by reference in § 162.920).

(3) *Professional health care claims.* The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098. (Incorporated by reference in § 162.920).

(4) *Institutional health care claims.* The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096. (Incorporated by reference in § 162.920).

(b) For the period from October 16, 2002 through October 15, 2003:

(1) *Retail pharmacy drugs claims.* The National Council for Prescription Drug Programs (NCPDP) Telecommunication Standards Implementaiton Guide, Version 5, Release 1, September 1999, and equivalent NCPDP Batch Standards Batch Implementation Guide, Version 1, Release 1, (Version 1.1), January 2000, supporting Telecomunication Version 5.1 for the NCPDP Data Record in the Detail Data Record. (Incorporated by reference in § 162.920).

(2) *Dental, health care claims.* The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097. and Addenda to Health Care Claim: Dental, Version 4010,

October 2002, Washington Publishing Company, 004010X097A1. (Incorporated by reference in § 162.920).

(3) *Professional healt care claims.* The ASC X12N 837—Health Care Claims: Professional, Volumes 1 and 2, Version 4010, may 2000, Washington Publishing Company, 004010X098 and Addenda to Health Care Claims: Professional, Volumes 1 and 2, Version 4010, October 2002, Washington Publishing Company, 004010x098A1. (Incorporated by reference in § 162.920).

(4) *Institutional health care claims.* The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096. (Incorporated by reference in § 162.920).

6. Section 162.1202 is revised to read as follows:

§ 162.1202 Standards for eligibility for a health plan transaction.

The Secretary adopts the following standards for the eligibility for a health plan transaction:

(a) For the period from October 16, 2002 through October 15, 2003:

(1) *Retail pharmacy drugs.* The National Council for Prescription Drug Programs Telecommunications Standards Implementaiton Guide, Version 5, Release 1, September 1999, and equivalent NCPDP Batch Standards Batch Implementation Guide, Version 1, Release 0, February 1, 1996. (Incorporated by reference in § 162.920).

(2) *Dental, professional, and institutional health care eligibility benefit inquiry and response.* The ASC X12N 270/271—Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company,004010X092. (Incorporated by reference in § 162.920).

(b) For the period on and after October 16, 2003:

(1) *Retail pharmacy drug claims.* The National Council for Prescription Drug Programs (NCPDP) Telecommunication Standard Implementation Guide, Version 5, Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record. (Incorporated by reference in § 162.920).

(2) *Dental, professional, and institutional health care eligibility benefit inquiry and response.* The ASC X12N 270/271—Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092. (Incorporated by reference in § 162.920).

(b) For the period on and after October 16, 2003:

(1) *Retail pharmacy drugs.* The National Council for Prescription Drug Programs Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000 supporting Telecommunications Standard Implementation Guide, Version 5, Release 1 (Version 5.1) for the NCPDP Data Record in the Detail Data Record. (Incorporated by reference in § 162.920).

(2) *Dental, professional, and institutional health care eligibility benefit inquiry and response.* The ASC X12N 270/271—Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092 and Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010, October 2002, Washington Publishing Company, 004010X092A1. (Incorporated by reference in § 162.920).

7. Section 162.1302 is revised to read as follows:

§ 162.1302 Standards for referral certification and authorization transaction.

The Secretary adopts the following standards for the referral certification and authorization transaction:

(a) For the period from October 16, 2002, through October 15, 2003: The ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, May 2000, Washington Publishing Company, 004010X094. (Incorporated by reference in § 162.920).

(b) For the period on and after October 16, 2003:

(1) *Retail pharmacy drug referral certification and authorization.* The NCPDP Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunications Standard Implementation Guide, Version 5, Release 1 (Version 5.1) for the NCPDP Data Record in the Detail Data Record. (Incorporated by reference in § 162.920).

(2) *Dental, professional, and institutional referral certification and authorization.* The ASC X12N 278—Health Care Services Review—Request for Review and Response, Version 4010, May 2000, Washington Publishing Company, 004010X094 and Addenda to Health Care Services Review—Request for Review and Response, Version 4010, October 2002, Washington Publishing Company, 004010X094A1. (Incorporated by reference in § 162.920).

8. Section 162.1402 is revised to read as follows:

§ 162.1402 Standards for health care claim status transaction.

The Secretary adopts the following standards for the health care claim status transaction:

(a) For the period from October 16, 2002 through October 15, 2003: The ASC X12N–276/277 Health Care Claim Status Request and Response, Version 4010, May 2000, Washington Publishing Company, 004010X093. (Incorporated by reference in § 162.920).

(b) For the period on and after October 16, 2003: The ASC X12N–276/277 Health Care Claim Status Request and Response, Version 4010, May 2000, Washington Publishing Company, 004010X093 and Addenda to Health Care Claim Status Request and Response, Version 4010, October 2002, Washington Publishing Company, 004010X093A1. (Incorporated by reference in § 162.920).

9. Section 162.1502 is revised to read as follows:

§ 162.1502 Standards for enrollment and disenrollment in a health plan transaction.

The Secretary adopts the following standards for the enrollment and disenrollment in a health plan transaction.

(a) For the period from October 16, 2002 through October 15, 2003: ASC X12N 834—Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company, 004010X095. (Incorporated by reference in § 162.920).

(b) For the period on and after October 16, 2003: ASC X12N 834—Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company, 004010X095 and Addenda to Benefit Enrollment and Maintenance, Version 4010, October 2002, Washington Publishing Company, 004010X095A1. (Incorporated by reference in § 162.920).

10. Section 162.1602 is revised to read as follows:

§ 162.1602 Standards for health care payment and remittance advice transaction.

The Secretary adopts the following standards for the health care payment and remittance advice transaction.

(a) For the period from October 16, 2002 through October 15, 2003:

(1) *Retail pharmacy drug claims and remittance advice.* The NCPDP Telecommunication Standard Implementation Guide, Version 5 Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1 Release 0, February 1, 1996. (Incorporated by reference in § 162.920).

(2) *Dental, professional, and institutional health care claims and remittance advice.* The ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091. (Incorporated by reference in § 162.920).

(b) For the period on and after October 16, 2003: *Health care claims and remittance advice.* The ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091, and Addenda to Health Care Claim Payment/Advice, Version 4010, October 2002, Washington Publishing Company, 004010X091A1. (Incorporated by reference in § 162.920).

11. Section 162.1702 is revised to read as follows:

§ 162.1702 Standards for health plan premium payments transaction.

The Secretary adopts the following standards for the health care premium payments transaction.

(a) For the period from October 16, 2002 through October 15, 2003: The ASC X12N 820—Payroll Deducted and Other Group Premium Payment for Insurance Products, Version 4010, May 2000, Washington Publishing Company, 004010X061. (Incorporated by reference in § 162.920).

(b) For the period on and after October 16, 2003: The ASC X12N 820—Payroll Deducted and Other Group Premium Payment for Insurance Products, Version 4010, October 2002, Washington Publishing Company, 004010X061A1. (Incorporated by reference in § 162.920).

12. Section 162.1802 is revised to read as follows:

§ 162.1802 Standards for coordination of benefits information transaction.

The Secretary adopts the following standards for the coordination of benefits information transaction.

(a) For the period from October 16, 2002 through October 15, 2003:

(1) *Retail pharmacy drug claims.* The National Council for Prescription Drug Programs Telecommunication Standard Implementation Guide, Version 5, Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 0, February 1, 1996. (Incorporated by reference in § 162.920).

(2) *Dental health care claims.* The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097 and Addenda to Health Care Claim: Dental, Version 4010, October 2002, Washington Publishing Company, 004010X097A1. (Incorporated by reference in § 162.920).

(3) *Professional health care claims.* The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098. (Incorporated by reference in § 162.920).

(4) *Institutional health care claims.* The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096. (Incorporated by reference in § 162.920).

(b) For the period on and after October 16, 2003:

(1) *Retail pharmacy drug claims.* The National Council for Prescription Drug Programs Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunications Standard Implementation Guide, Version 5, Release 1 (Version 5.1) for the NCPDP Data Record in the Detail Data Record. (Incorporated by reference in § 162.920).

(2) *Dental health care claims.* The ASC X12N 837—Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097 and Addenda to Health Care Claim: Dental, Version 4010, October 2002, Washington Publishing Company, 004010X097A1. (Incorporated by reference in § 162.920).

(3) *Professional health care claims.* The ASC X12N 837—Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098 and Addenda to Health Care Claim: Professional, Volumes 1 and 2, Version 4010, October 2002, Washington Publishing Company, 004010X098A1. (Incorporated by reference in § 162.920).

(4) *Institutional health care claims.* The ASC X12N 837—Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096 and Addenda to Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, October 2002, Washington Publishing Company, 004010X096A1. (Incorporated by reference in § 162.920).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare— Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 31, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–3876 Filed 2–13–03; 3:07 pm]

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Federal Register

Thursday,
February 20, 2003

Part III

Department of the Interior

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Oil and Gas Drilling Operations; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC43

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Oil and Gas Drilling Operations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule restructures the requirements for oil and gas drilling operations on the Outer Continental Shelf (OCS), adds some new requirements, and converts the regulations into plain language. The restructuring of the rule follows the logical sequence of obtaining approval to drill a well and conducting drilling operations. The final rule also removes overly prescriptive requirements and updates requirements to reflect changes in drilling technology. Restructuring the drilling requirements makes the regulations easier to read, understand, and follow. The technical changes will help ensure that lessees conduct operations in a safe manner.

EFFECTIVE DATE: The rule is effective March 24, 2003. The incorporation by reference of publications listed in the regulation is approved by the Director of the Federal Register as of March 24, 2003.

FOR FURTHER INFORMATION CONTACT: William Hauser, Engineering and Operations Division, at (703) 787–1613.

SUPPLEMENTARY INFORMATION: On June 21, 2000, we published a Notice of Proposed Rulemaking (65 FR 38453), titled "Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Oil and Gas Drilling Operations" to revise the subpart D regulations of part 250, with exception of the regulations on Hydrogen Sulfide under 30 CFR 250.417. The proposed rule had a 90-day comment period that we extended to 120 days on July 27, 2000 (65 FR 46126). The extended comment period closed on October 19, 2000.

Differences Between Proposed and Final Rules Not Directly Related to Comments

In addition to changes we made to the final rule in response to public comments, we reworded several sections to further clarify the requirements. We also changed several section titles to better reflect the intent of the sections. The following are the changes by section:

- Section 250.403—We divided the requirements contained in the table in this section into three new sections. We believe this change provides a better understanding of the requirements. The new sections are:

250.404 What are the requirements for the crown block?

250.405 What are the safety requirements for diesel engines on a drilling rig?

250.406 What additional safety measures must I take when I conduct drilling operations on a platform that has producing wells or has other hydrocarbon flow?

- New § 250.405—We added engines on escape capsules to the list of diesel engines that you do not have to equip with an air intake device. We believe that this device should not be required on an escape capsule. We also revised paragraph (b) by adding the term "remote" to manual air intake shutdown device so that the requirement means the same as the previous requirement. Paragraph (b) now reads as follows: "For a diesel engine that is continuously manned, you may equip the engine with either an automatic or remote manual air intake shutdown device;".
- New § 250.406(b)—This paragraph applies to shutting in producing wells during the movement of a drilling rig on and off a location. We clarified the requirements of this section in response to comments from the Offshore Operators Committee (OOC) (see discussion in OOC comments section). We want to further clarify in the preamble of this rule that the same requirements to shut in producing wells would apply when a lessee moves in a drilling rig or coiled tubing unit to complete or workover a well. We plan to clearly state these requirements for completion and workover activities in revisions of subparts E and F that we anticipate proposing.
- Sections 250.408 and 250.409—We added two new sections to address the use of alternative procedures or equipment during drilling operations and obtaining departures from the drilling regulations. We made this revision to clearly state the procedures for using alternative procedures or equipment and for obtaining departures from the drilling regulations. We also removed phrases similar to "or as otherwise approved by the District Supervisor" throughout the rule because you may request a departure or the use of alternative procedures or equipment with respect to any of the drilling requirements prescribed in the rule, provided the rationale is appropriate.
- Section 250.414—We added an introductory sentence to this section which states that the drilling prognosis must include a brief description of the procedures that you will follow in drilling the well. That description includes the nine items listed (a) through (i) in this section and any other events or procedures that are out of the ordinary for drilling activities. We also moved the paragraph on listing and describing departures or requests to use alternative procedures and equipment to this section.
- Section 250.421(d)—We revised this paragraph to read as follows: "As a minimum, you must cement the annular space 500 feet above the casing shoe and 500 feet above each zone to be isolated." We inserted the phrase "500 feet above" before "each zone" to ensure that there was no confusion about cementing requirements for the intermediate casing. This clarification is consistent with the current regulations.
- Section 250.424—We converted the requirements for pressure testing casing into a table. This will make the requirements easier to understand.
- Section 250.427—We clarified the requirement for when you must conduct a pressure integrity test after drilling new hole below the casing shoe. The original requirement stated a maximum amount that you could drill before conducting the test (50 feet). The revised requirement has both a minimum (10 feet) and a maximum (50 feet) amount that you could drill before conducting the test. This will remove any confusion about how much new formation you must drill before conducting the test.
- Section 250.465(a)(3)—We revised this paragraph to require the submittal of a plat certified by a registered land surveyor when you determine the well's final surface location, water depth, and the rotary kelly bushing elevation. This requirement is consistent with the current regulations. The certified plat serves a useful purpose because it provides certainty to the well's location. In some instances, submittals of non-certified plats or reliance upon the planned location plat provide only a rough idea of where the well may be located.

Changes to Drilling and Well Forms Not Related to Comments

Through a separate process, MMS revised the associated 30 CFR 250, subpart D, drilling and well forms MMS–123, MMS–123S, MMS–124, MMS–125, and MMS–133. We are conducting the form revisions in compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), and as part of our efforts to implement the Government Paperwork Elimination Act and streamline data collection. The revised forms were published for comment in the **Federal Register** on May 1, 2002 (67 FR 21718). In addition to revising some of the data elements on each form, we changed the titles of forms MMS–124 (Sundry Notices and Reports on Wells changed to Application for Permit to Modify), MMS–125 (Well Summary Report changed to End of Operations Report), and MMS–133 (Weekly Activity Report changed to Well Activity Report). In accordance with the PRA, we submitted the revised forms to the Office of Management and Budget (OMB) for approval. The OMB approved the use of the new forms in October 2002 and these final regulations incorporate the changes to the forms.

Comments on the Rule

We received 11 sets of comments on the proposed rule and other considerations for drilling regulations. The comments came from four oil and gas lessees/operators (Chevron USA Production Company, Shell Exploration & Production Company, Torch Operating Company, and Mariner Energy), two drilling contractors (Noble Drilling Services and Rowan Companies), three trade organizations (American Petroleum Institute (API), OOC, and International Association of Drilling Contractors (IADC), one consultant (West, Inc.), and one private citizen (James E. May). You may view these comments and the Notice of Proposed Rulemaking (NPR) on the MMS Web site at address: *http://www.mms.gov/federalregister/PublicComments/rulecomm.htm*. The OOC and IADC provided the most comprehensive sets of comments on the proposed rule. Three of the operators and both drilling contractors fully supported the comments of their respective trade organizations and provided additional comments. The API noted that it worked with OOC in preparing detailed comments on the rule and fully supports the comments submitted by OOC. The OOC presented its comments on specific sections of the rule in a table that identified the section, suggested changes, and provided rationale for those changes. We found this to be an informative format for reviewing comments and have used that format to respond to OOC's comments.

We organized our responses to comments on the NPR into three sections. These sections address the following topics:

I. General comments and comments on other considerations for drilling regulations (*i.e.*, need for regulations on the use of coiled tubing, mandatory use of automated pipe handling systems);

II. Comments on specific sections that OOC did not address in its comments; and

III. OOC's comments on specific sections (table format).

I. General Comments and Responses

- *Comment:* The use of Lessees/Operators/Contractors relates better to these regulations than the use of "I" and "you."

Response: We disagree. The use of "I" and" "you" in the regulations essentially replaces the terms "lessees, operators, and contractors." It is much easier to say "you must" versus the "lessee/operator/contractor must."

- *Comments on Incorporating API Recommended Practice (RP) 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells (API RP 53) into the regulations:* One commenter stated that the incorporation of specific sections of API RP 53 is appropriate because incorporation of the entire document would lack the specificity needed for the regulations. Another commenter recommended that the entire contents of API RP 53 should be incorporated by reference to provide overall guidelines for blowout preventer (BOP) systems.

Response: MMS has incorporated specific sections of API RP 53 into the regulations as proposed. The primary reason for selecting specific sections was to provide needed specificity to the existing requirements. However, API RP 53 provides excellent guidelines for operating and maintaining BOP systems, and MMS will consider incorporating the entire document in a future revision of the drilling regulations.

MMS will also consider the incorporation of other API drilling documents. MMS recently contracted with West, Inc. to review and compare three API Recommended Practices to MMS regulations and IADC's Deepwater Guidelines. The three Recommended Practices are:

1. 16E—Design of Control Systems for Drilling Well Control Equipment;
2. 64—Diverter System Equipment and Operations; and
3. 16Q—Design, Selection, Operation, and Maintenance of Marine Drilling Riser Systems.

West, Inc.'s complete report is available on the MMS Web site at *ftp://www.mms.gov/TARProjects/380/380AA.pdf*.

- *Comments on Automated Pipe Handling Systems:* This topic generated many comments, most of which disagreed with requiring automated pipe handling systems. Comments against requiring these systems included the following:

—Little data exist to support the theory that automated pipe handling systems measurably improve personnel safety;

—Automated pipe handling systems create new safety hazards (i.e., new pipe racking systems have introduced additional tripping hazards to rig floor personnel which have resulted in lost time incidents);

—Costs (including capital and out-of-service time) to retrofit the drilling units would not be justified considering the perceived safety benefits;

—Some drilling units could not be retrofitted due to space limitations and/or due to the added weight of the automated pipe handling equipment; and

—Reliability is an issue with some automated systems

Other comments questioned if automated systems meant totally automated pipe handling systems or just a subset of automated rig floor equipment such as iron roughnecks, spinners, and power slips. Commenters also asked if operations would have to be suspended if the automated systems were not available due to downtime. While the vast majority of the comments were against requiring automated systems, one comment said that MMS should require some automated rig floor equipment, but those requirements should be flexible and a practical application of existing technology.

Response: MMS appreciates the comments industry has provided on this topic, and we now have a better understanding of how a requirement for an automated pipe handling system could impact the drilling industry and drilling operations. One of the purposes for raising this issue in the preamble of the proposed rule was to elicit this information. This final rule does not include any requirements for automated pipe handling systems or automated rig floor equipment. Nor is MMS proceeding with any proposed regulations on these systems at this time.

- *Comments on Best Cementing Practices:* Most comments were along the lines that best cementing practices should be used where possible, but that specific practices should not be mandated by specific requirements. OOC stated that the complexity of cementing operations and a variety of cements are not good candidates for prescriptive requirements. One suggested approach was to supplement current cement compressive strength and height requirements with regulatory

guidelines that would allow the needed flexibility to determine which practices are applicable to the particular down-hole environment. Several commenters noted that they are participating in an API/International Standards Organization (ISO) Cementing Committee to discuss best cementing practices with MMS and develop appropriate guidance for best cementing practices.

Response: MMS will continue with the cementing requirements as proposed in this rule. These requirements are similar to the requirements that were in the previous regulations. As noted in the above comment, MMS is participating in the API/ISO Cementing Committee and will work with the committee to develop appropriate guidelines for cementing practices. We may take further regulatory actions after the committee completes its work.

• *Comment:* One commenter said that the proposed regulations do not protect the environment enough, and that MMS is aware of a substantial number of OCS wells that are leaking oil to the surface and between formations. The commenter asserted that the proposed rule aggravates this problem by using the term "cementing." The commenter asked why MMS allows oil companies to use cement and not other sealants.

Response: MMS believes that the proposed regulations for cementing wells provide adequate protection to the environment. MMS also believes that there are opportunities to improve cements and cementing practices so, over the years, MMS has participated in a number of research projects that examined ways to improve cementing in oil and gas wells. We continue to participate in cementing research efforts and other efforts, such as the API/ISO Cementing Committee, to ensure that cementing technology continues to advance. MMS requires industry to use cement to seal formations and plug wells because it works; however, we will allow industry to use other sealants if they provide equal or better performance than cement. In the past, these generic requests to expand the rules to allow the use of other "sealants" have sometimes actually been attempts to get approval to use clays, gels, and other low compressive strength, non-hardening compounds.

MMS knows of only a few abandoned wells that have leaked after permanent abandonment. When we become aware of an abandoned well that is leaking, we require the operator of record to take immediate action to remedy the situation. Also, to further our awareness of potential leaking abandoned wells, MMS has recently sponsored research to identify leaking abandoned wells by using remote sensing.

• *Comment on regulating coiled tubing drilling:* The OOC commented that MMS was taking the correct approach by not proposing specific regulations for coiled tubing drilling. OOC agreed that a better understanding of these operations and the amount of activity that is likely to take place on the OCS was necessary before drafting regulations. OOC stated that the existing/proposed provisions in subpart D, coupled with the District Supervisors' authority to approve alternative techniques and procedures, adequately addresses the regulatory mandates. OOC also supported the use of API RP 5C7 for Coiled Tubing Operations in Oil and Gas Well Services (API RP 5C7) as a guideline when preparing the appropriate regulations.

Response: MMS will continue to monitor the use of coil tubing on the OCS and will propose additional regulations as needed.

II. Comments on Specific Sections That the OOC Did Not Address in Its Comments

• *Comment on § 250.404 What mobile drilling unit movements must I report?* This requirement should be waived after commencement of the first well on a platform.

Response: We have revised this section to clearly state what rig movements the lessee must report to MMS. This includes the movement of both mobile offshore drilling units (MODU) and platform rigs. We need this information to ensure that our inspectors have the correct information in hand when they arrive at a platform rig to perform an inspection. MMS also needs to know the movement of drilling rigs, coiled tubing units, and snubbing units on and off locations for completion and workover activities, so we will clarify these requirements in revisions of 30 CFR 250, subparts E and F that we anticipate proposing.

• *Comment on § 250.404 What mobile drilling unit movements must I report?* The proposed rule duplicates U.S. Coast Guard (USCG) requirements to report MODU movements under 33 CFR parts 67 and 72. While the proposed rule affects the lessee, the MODU owner is reporting the required information to the USCG. MMS and USCG should share this information so that you can eliminate a reporting requirement.

Response: MMS needs MODU movement information 24 hours in advance of movement to plan our rig inspections. USCG's timing requirements for rig movement notice do not meet our rig inspection planning needs. Based on similar comments during the process to develop the new MMS form to report rig movements, we incorporated "optional" information needed by the USCG so that the form could be used for reporting to either agency.

• *Comment on § 250.412 What requirements must my plat meet?* The lessee or operator should be allowed to decide how to report well location.

Response: MMS must have the coordinates reported in a consistent manner to ensure that the exact well locations are known.

• *Comment on § 250.417 What information must I provide if I intend to use a mobile drilling unit to drill a proposed well?* Paragraph (c) may require a third-party review of a MODU's design by a Certified Verification Agent. This review may involve the MODU's structural components or integrity which would be in direct conflict with the December 1998 Memorandum of Understanding (MOU) between MMS and USCG. Under that MOU, the USCG has full responsibility for the structural integrity of MODUs.

Response: This is not a new requirement (see current regulation at § 250.401(a)(3)). The purpose of this requirement is to address the possible unique drilling unit that a lessee may propose to use in a frontier area. Our intent is to ensure that proper design reviews are conducted before the unit's use at a proposed frontier location. When this situation occurs, MMS will confer with the USCG concerning the drilling unit design and its use at the specified location. If the USCG design review meets our concerns, then MMS will not require additional design reviews. If additional reviews are needed, the District Supervisor will use this requirement to address necessary information. We have revised this paragraph to clarify that this requirement applies only to frontier areas where the drilling unit design is unique or the unit has not been proven for use in the proposed environment. MMS will follow the 1998 MMS/USCG MOU to the extent possible to minimize duplicating design requirements of both agencies.

• *Comments on § 250.417(h) and 250.418(a).* The IADC and two drilling contractors commented that these paragraphs indicate that MMS is maintaining files of rig-specific information. While such action by MMS is clearly in a drilling contractor's interest, they could not find the authority for MMS to maintain files on individual drilling rigs or to transfer this information between the files of lessees/operators.

The commenters were frustrated that MMS interprets its legislative authority as precluding direct contact between the agency and rig owners. They are convinced that direct communication between MMS and MODU owners/operators is permissible and advisable. They recommended that MMS should review and approve the use of MODUs and platform rigs on a regional basis. This would eliminate what appears to be a repetitive and non-productive review of identical drilling rig specifications by its District Offices.

Response: The lessee/operator must submit a detailed description of the drilling unit including specifications for all its components, regardless of whether it is a MODU, with the Application for Permit to Drill (APD) a new well. MMS may communicate with the contractor; however, it is the responsibility of the lessee/operator to submit the required information to MMS. Drilling unit documents are part of the APD and are maintained in well data files by MMS.

MMS does maintain limited files (work history, where and when built, depth capability and water depth, safe welding area approval, USCG certificate, etc.) on drilling rigs in the Gulf of Mexico (GOM). This information is useful as a cross reference of submitted information and when the lessee/operator does not include rig-specific information with the APD or sundry notice. Such information is used only within MMS (although much is readily available on the company Web sites) and is not transferred between lessees/operators. MMS only requires submission of this basic rig information and job-specific information such as BOP sketch, diverter sketch, and similar related information. This job-specific information can change due to rental BOPs and diverters or procedural changes.

MMS drilling and workover engineers, as well as inspectors, regularly talk with rig owners, superintendents, pushers, drillers, and operator personnel about rig conditions, pollution, new equipment, training, accidents, etc. Only those items specific to a location, items that must be renewed regularly (certificates), and training are reviewed for each APD or sundry notice, and even some of these are only checked by the inspector once work has started. It is up to the lessee/operator via their contracts to require that rig owners conform to MMS regulations.

• *Comment on § 250.422(b) When may I resume drilling after cementing?* A commenter said that the waiting time before removing the diverter is not necessary.

Response: MMS disagrees. Determining the time when it is safe to remove the diverter is just as important as determining the time for the BOP because several incidents have involved early removal of the diverter.

• *Comment on § 250.423(f) How must I remedy cementing and casing problems and irregularities?* A commenter suggested that field-specific rules rather than general rules should apply to the requirement that you must have at least two cemented casing strings to produce a well.

Response: Field rules could apply if they are established in accordance with § 250.463.

• *Comment on § 250.424(b) What are the requirements for pressure testing casing?* The requirement should allow an exception for horizontal cementing applications.

Response: To obtain an exception for pressure testing casing, you may request approval from the District Supervisor to use alternative procedures (§ 250.408) or obtain a departure (§ 250.409). The District Supervisor will evaluate these requests on a case-by-case basis. Therefore, we did not include an exception for horizontal cementing applications in the requirements.

• *Comment on § 250.430 When must I install a diverter system?* MMS shouldn't require installation of a diverter when returns are taken at the ocean floor (*i.e.*, no casing/riser on which to install a diverter).

Response: The regulations require the installation of a diverter system before you drill a conductor or surface hole. If you want to drill a conductor or surface hole without a diverter, you must include this procedure in your APD and obtain approval from the District Supervisor.

• *Comment on § 250.431 What are the diverter design and installation requirements?* MMS should consider removing statements from the regulations that are not auditable, such as minimizing the number of turns or maximizing the radius of curvature of turns for diverter lines for bottom-founded drilling units. MMS could reference industry standards such as API RP 53 to better define what is required.

Response: MMS will continue with the current performance standards of minimizing the number of turns and maximizing the radius of curvature of turns for diverter lines. We used these standards in past regulations because it is difficult to prescribe measures that will work for each drilling unit. However, in future rulemakings, we will consider incorporating additional standards to address some of the requirements that are difficult to audit.

• *Comment on § 250.433 How must I test the diverter system after installation?* MMS should allow for testing diverters on a 14-day frequency.

Response: MMS conducted several studies on BOP performance before we revised the regulations to allow for testing BOPs on a 14-day frequency. We made sure that extended testing frequency would not compromise safety during drilling operations. MMS will not consider revising the testing frequency for diverters until research shows that an extended testing frequency will not compromise safety.

Comments on § 250.441 What are the requirements for a surface BOP stack?

This section proposed that each surface BOP stack must have at least one preventer equipped with blind-shear rams within 1 year after the effective date of this final rule. This proposed requirement prompted many comments. Four commenters opposed the proposed requirement and provided reasons for their opposition. IADC provided the most comprehensive comments against this proposed requirement. A fifth commenter stated that it also opposed the proposed requirement and said it supported IADC's comments. Three other commenters stated that they supported IADC's and OOC's comments but they did not specifically mention the proposed requirement for blind-shear rams. Two other commenters also provided comments on this proposed requirement and those comments are included below.

A summary of all the comments on the proposed requirements for blind-shear rams follows:

—IADC plotted the incidents over the 20-year period, and its graph showed that the incident rate where blind-shear rams might have prevented a serious blowout is approaching zero. IADC believes that this trend is sufficient to negate the need for MMS to mandate the installation of the blind-shear rams. Possible activities that lead to this declining trend include:

• Greater attention being paid to safety management as a result of Safety and Environmental Management Programs and other initiatives;

• Continuous improvement in well control methods and equipment; and

• Greater attention to the quality of well control training

—IADC also stated the following:

- Successful operation of blind-shear rams (intentional or not) permanently forecloses other well control options;
- MMS did not consider the consequences of inadvertent operation or malfunction of the rams;
- MMS underestimated the number of surface BOP stacks that would need blind-shear rams by 50 percent, thus underestimating the costs by 50 percent; and
- If the final rule requires the blind-shear rams, then industry will need an additional 2 years to comply with the requirement.

—Operating limits of blind-shear rams are frequently unclear for some drilling operations due to pipe grades, mud weights, and wellbore pressures, and that consideration should be given to ensure that these limits are clear

Response: MMS continues to believe that having blind-shear rams in a surface BOP stack is an important safety measure. Blind-shear rams offer an additional opportunity to control the well in a difficult situation. We believe that these rams provide the last line of defense against a blowout when drill pipe or tubing is hung in the BOP stack and there are difficulties in installing or closing the drill string safety valve, inside BOP, or tubing safety valve. Successful operation of the blind-shear rams may prevent damage to the drilling rig, platform, or other facilities, and prevent injuries or the loss of life.

The IADC and industry provided a number of comments on why MMS should not require blind-shear rams in surface BOP stacks. Their most compelling reason against requiring blind-shear rams is industry's recent performance concerning incidents where blind-shear rams might have prevented or minimized a blowout. Those comments are correct in that industry's recent performance is good, especially when compared to the relatively high number of incidents that occurred in the early 1980's. However, there have been three serious incidents where blind-shear rams may have prevented a blowout since 1996 (two incidents occurred in 2001). A brief description of each event follows:

Incident 1—occurred on Platform A, Eugene Island Block 380, on January 24, 1996. During completion operations, the well began to flow while the tubing was extended above the BOP stack. The crew tried to stab the top drive into the top of the tubing but the flow had increased and they were unable to make the connection. The driller closed the blind rams to reduce the flow but that did not help. Gas began to flow out of the top of the tubing, so the drilling crew closed the pipe rams and annular preventer and evacuated the rig floor. During the evacuation of the rig and platform, the well caught fire. The fire destroyed the rig substructure and derrick and severely damaged other parts of the rig. Fortunately there were no injuries or pollution. After investigating the accident, MMS' investigation team recommended that blind-shear rams should be required in surface BOP stacks. The investigation report can be found on our Web site at: *http://www.gomr.mms.gov/homepg/offshore/safety/acc_repo/98–0012.pdf.*

Incident 2—occurred on Platform A Eugene Island Block 277, on July 6, 2001. While killing a kick that occurred during workover operations, the pressure safety valve on the mud pump ruptured. The well then flowed uncontrolled through the drill pipe and the ruptured pressure safety valve. The area around the rig equipment and drill floor became inundated with a hazardous accumulation of gas and formation sand which forced all personnel to evacuate to a standby boat. Fortunately there were no injuries and only major damages to the rig. The investigation report can be found on our Web site at: *http://www.gomr.mms.gov/homepg/offshore/safety/acc_repo/2002-040.pdf.*

Incident 3—occurred on a jack-up drilling rig drilling in Brazos Block 417. on July 13, 2001. During drilling operations, the well began to flow while the crew was making up the next joint of drill pipe in the mouse hold. The rig floor safety valve was stabbed but would not close with two men applying torque to the handle. Both men were burned on their arms and back by the hot mud. Because of the high temperature of the mud, the men had to put on slicker suits and were sprayed with water to continue working on the rig floor. A third man assisted in the attempt to close the valve and sufficient torque was applied to the closing handle to shear it off at the key opening of the valve. Mud continued flowing out of the drill pipe until it was shooting over the the top of the derrick. Gas began to flow with the mud from the drill pipe and it became unsafe to work on the rig floor. The crew was ordered to abandon the rig. After the rig was abandoned, it was discovered that the night supervisor was missing. The Coast Guard searched for two days but the night supervisor was never found. The BOP stack, casing and drill pipe were damaged by high pressure gas and sand that flowed from the well. The rig was also damaged by the gas and sand flow. The investigation report can be found on our Web site at: *http://www.gomr.mms.gov/homepg/offshore/safety/acc_repo/2002-062.pdf.*

In these incidents, the drilling crews had run out of options to control the well and were forced to abandon the rig. We believe that the injuries, the fatality, and rig damages could have been avoided if blind-shear rams were in the BOP stack and were closed prior to evacuating the rig. Similar incidents have occurred during drilling, workover, and completion operations in the past, and blind-shear rams stopped the blowout. Similar incidents are very likely to occur in the future.

In the preamble of the proposed rule, MMS stated that it had reviewed the blowouts that have occurred since 1977 and found at least 12 incidents where blind-shear rams had helped or could have helped control the situation. Upon closer review of our records, we have identified 24 incidents where blind-shear rams either helped control a blowout or may have helped prevent a blowout (these records include MMS's database, memoranda, accident reports, investigations, operator letters, and operator investigations). The table below gives the date, location, and a brief description of each of those incidents. There were 10 fatalities, 23 injuries, 3 rigs destroyed, and 9 rigs damaged during those incidents. Furthermore, six of the investigation reports recommended that blind-shear rams be installed in surface BOP stacks. Considering that the installation of blind-shear rams provides an additional means of controlling a blowout and can help prevent future injuries, fatalities, and protect property and the environment, MMS will require the installation of blind-shear rams in surface BOP stacks.

Date	Block/lease #	Description of incident
6/23/77	Eugene Island 307, G 2110	Blowout while running dual completion string. Tubing was 84 feet above the drill floor when well began blowing through the tubing. The tubing safety valve could not be installed so blind rams were closed but only crimped the tubing. Crew evacuated the rig safely. The blowout was controlled later that day. The Investigation Report recommended that the U.S. Geological Survey require shear rams on all BOP stacks.

Date	Block/lease #	Description of incident
7/20/77	West Cameron 110, OCS 081 ..	Blowout occurred during workover operations. Well began to flow while pulling out of the hole. Drill string safety valve was installed but could not be closed. Blind rams were closed to restrict the flow but had no effect. There were no injuries. Well Control Team secured well 4 days later.
11/26/77	Eugene Is. 307 G, 2110	Well blew out while running into the hole during completion operations. All of the BOP's were closed but the well continued to flow. The flow was too great to stab the drill string safety valve. After 6 hours of attempting to diminish the flow through the drill pipe, the crew was able to install and close the drill string safety valve.
8/4/78	Grand Isle 41, G 0129	Blowout occurred during completion operations. Drill string safety valve could not be closed after well began to flow. After 15 minutes, the driller regained control of the well by closing blind-shear rams. There were no injuries.
3/5/79	S. Marsh Island 281, G 2600 ...	While attempting to correct lost returns and stuck pipe problems, the well began to flow. The crew could not close the drill string safety valve when the well kicked the final time. There were eight fatalities and considerable damage to rig. The USCG Investigation Report (Oil & Gas Journal, p. 148, Nov. 17, 1980) concluded that shear rams could prevent similar casualties in the future.
8/24/80	Vermilion 348, G 2271	The well kicked while making up gravel pack assembly. The blind and pipe rams were closed on 4½" pipe portion of gravel pack assembly but did not seal the well. The drilling rig and portion of platform were destroyed. There were four minor injuries in the crew evacuation. The well bridged 37 days later.
1/12/81	High Island 38, G 0477	Blowout occurred while circulating out a kick. The well blew out through the neck on the swivel. The lower kelly cock was left 12 feet above the drill floor and was not closed. The blowout lasted approximately 12 hours, catching fire towards the end of the incident. Three people suffered overexposure after the evacuation and one later died.
7/26/81	South Pelto 18, G3589	Blowout during completion operations. While circulating mud, the well kicked. Crew closed upper kelly cock but it leaked. Operator closed blind-shear rams and evacuated platform. Gas leaked through the blind-shear rams but the rig never caught fire. Well was controlled 4 days later. One person suffered a broken leg and bruises during the evacuation.
10/5/81	Eugene Island 273, G 0987	Blowout occurred when the tubing parted during completion operations. The well was controlled after 38.5 hours by installing and closing blind-shear rams. The Investigation Report recommended that BOP stacks have blind-shear rams for completion operations. There were no injuries during the evacuation.
11/28/81	Viosca Knoll 900, G 2445	Blowout occurred during workover operations. The well kicked while pulling out of the hole. The BOPs were closed, but the flow through the drill string was too great to stab the drill string safety valve. The blowout lasted 24 hours. There was some pollution but no injuries and minimal damages.
4/19/82	Galveston 391, G 3740	Blowout occurred while completing the well. A drill string safety valve could not be installed because the drill pipe was above the monkey board. Well bridged over in 3 hours. There were no injuries and only minimal damage to the platform and rig.
5/15/82	S. Marsh Island 155, G 4110 ...	While circulating a kick, an explosion and fire occurred under the rig floor and at the shale shaker. Blind-shear rams were activated and the well was shut in. Three people suffered minor injuries during the evacuation.
7/14/82	West Cameron 65, G 2825	Fishing operation when well began to kick. While attempting to control kick, the stand pipe blew out and the drilling crew could not close either of the kelly valves. Jackup rig was destroyed and the blowout continued for 57 days. There were no injuries.
12/17/82	West Delta 70, G 0182	Blowout occurred while working over well with a snubbing unit. Blowout pushed top of workstring to a point 30 feet above the highest object on the platform. Blowout was stopped after repeated attempts to function the shear rams.
10/20/83	Eugene Island 10, G 2892	While controlling a kick during a workover, gas began to leak from the threads in the crossover sub and the drill string safety valve. The leak increased as the valve was closed, forcing the abandonment of the rig. The well was killed 6 days later. There was major damage to the rig but no injuries.
12/3/85	West Cameron 648, G 4268	Blowout during workover. Crew unable to stab workstring safety valve into the workstring when fluid began flowing. Three people were injured trying to stab the safety valve. The rig was destroyed and the platform heavily damaged by fire. The blowout lasted 47 days. The Investigation Report recommended that Order 6 be revised to require blind-shear rams in BOP stack during workovers.
3/20/87	Vermilion 226, G 5195	Blowout during completion activities. Blowout through the drill pipe and drill string safety valve failed. The well control team killed the well by installing blind-shear rams and shutting in the well. There were no injuries and only minor damage during the 3-day blowout. The Accident Investigation Report recommended the installation of blind-shear rams in BOP stacks.
5/30/90	Brazos A–23, G 3938	Blowout occurred during testing operations. The blind-shear rams were closed but failed as the rig was being jacked up to clear tubing from the blind rams. Blind rams were closed but gas flowed until well control team killed the well. There were no injuries and only minor damages during the 2-day blowout.
9/9/90	Eugene Island 296, G 2105	During workover operations, well began to flow through tubing after running one stand of collars and one stand of tubing into the well. Crew made at least four unsuccessful attempts to install full opening safety valve. The BOPs were closed but did not stop the blowout. There were eight injuries and rig damage during the 4-day blowout.

Date	Block/lease #	Description of incident
1/24/96	Eugene Island 380, G 2327	During completion operations, the well began to flow while the tubing was extended above the BOP stack. Crew tried to stab the top drive into the top of the tubing but the flow prevented the connection. The driller closed the blind rams to reduce the flow but that did not help. When gas began to flow out of the top of the tubing, the drilling crew closed the pipe rams and annular preventer and evacuated the rig. During the evacuation of the rig and platform, the well caught fire. Fire destroyed the rig substructure and derrick and severely damaged other parts of the rig. MMS investigation report recommended that blind-shear rams be required in surface BOP stacks. (incident 1 in above discussion).
5/31/97	East Cameron 83, G 8641	Blowout during completion operations. Well control team replaced pipe rams with blind-shear rams but found that the tool joint was opposite the rams. There were no injuries, pollution, or fire. Well was out of control for 19 days.
12/2/99	SM58, G 01194	Blowout occurred while running a gravel pack assembly during completion activities. The gravel pack was across the BOP stack when the well began to flow. The BOP's were closed but did not stop the blowout. The well bridged over the next day.
7/6/01	Eugene Island 277, OCS–G 10744.	Blowout occurred during a workover operation. Well flowed uncontrolled through the drill pipe and ruptured pressure safety valve on the mud pump. The area around the rig equipment and drill floor became inundated with a hazardous accumulation of gas and formation sand thus forcing all personnel to evacuate to a standby boat. There were no injuries and only minor damages to the rig. (incident 2 in above discussion).
7/13/01	Brazos 417, OCS–G 22190	Blowout occurred during drilling operations. The well kicked and flowed up the drill pipe. The rig floor safety valve was stabbed but would not close with two men applying torque to the handle. Both men were burned on their arms and back by the hot mud. Because of the high temperature of the mud, the men had to put on slicker suits and were sprayed with water to continue working on the rig floor. The crew was ordered to abandon the rig. After the rig was abandoned, it was discovered that the night supervisor was missing. The Coast Guard searched for two days but the person was never found. The BOP stack, casing and drill pipe were damaged by high pressure gas and sand that flowed from the well. The rig was also damaged by the gas and sand flow. (incident 3 in above discussion).

IADC commented that we underestimated the number of blind-shear rams by approximately 50 percent (80), thus underestimating the costs by 50 percent. We have reexamined the number of rams that industry would have to purchase and found that of the rigs currently active or ready to work, 100 surface BOP stacks did not have blind-shear rams. When rigs temporarily taken out of service are included, 170 sets of blind-shear rams would be needed. Part of our low estimate was due to the increased drilling activity since we prepared the proposed rule and part was due to a low estimate of the number of blind-shear rams already installed in surface BOP stacks. Our recent review found that at least 30 sets of blind-shear rams are currently installed in surface BOP stacks.

MMS made two assumptions when estimating the cost of upgrading existing surface BOP stacks to include blind-shear rams. First, it was projected that all rigs active or ready to work would remain in service for more than the next 3 years. Second, one-half of the rigs temporarily taken out of service would be placed back into long term service over the next 3 years. Increasing the number of blind-shear rams needed to comply with this requirement to 135 sets will raise costs estimated in the proposed rule from $14,000,000 to $14,175,000. The original cost per set of blind-shear rams was overstated ($175,000), and has been reduced ($105,000) according to information obtained recently from BOP manufacturers. Given the number of rams that industry will have to purchase, MMS has allowed a 3-year timeframe for installing the rams versus the 1-year timeframe identified in the proposed rule. This 3-year period will allow industry sufficient time to plan the acquisition and installation of this critical safety equipment. The following table summarizes the costs associated with this requirement.

Requirement	Total cost	Annual costs	Cost to small businesses
Proposed Rule—Install blind-shear rams within 1 year	$14,000,000	$14,000,000 over 1 year	$0
Final Rule—Install blind-shear rams within 3 years	14,175,000	4,725,000 over 3 years	0

Avoidance of future blowout related costs, through the installation of blind-shear rams on all existing drilling rigs with surface BOP stacks, would constitute the potential benefits to lessees and their drilling contractors. In the analysis conducted for this rule, gross benefits are partially offset by the costs to purchase and install blind-shear rams, in surface BOP stacks that don't already have them. Our analysis indicates that implementation of the regulation will most likely result in net present value benefits to lessees and drilling contractors of $22 million. These benefits can be achieved by investing in the acquisition and installation of blind-shear rams for a present value cost of $13 million. Accordingly, the present value of gross industry benefits from this regulation will most likely be $35 million.

As discussed in the proposed rule, we believe that the final rule will not have a significant impact on small drilling contractors. It won't impact small drilling contractors because there is only one that qualifies as a small business, and that contractor has already equipped its surface BOP stacks with blind-shear rams. The drilling contractor indicated that the blind-shear rams were installed as an additional safety precaution.

IADC also commented that MMS did not consider the consequences of the inadvertent operation or malfunction of the blind-shear rams in the proposed rule. We know industry has many years of experience with having blind-shear rams in subsea BOP stacks and that industry has developed safeguards and procedures to prevent the inadvertent operation of this equipment. Also, several operators have many years of experience of having blind-shear rams in surface BOP stacks in the GOM. MMS, therefore, is confident that industry can adequately safeguard the BOP control panels and adequately train its personnel to prevent the inadvertent operation of blind-shear rams.

MMS disagrees with IADC's comment that the successful operation of blind-shear rams permanently forecloses other well control options. Many wells have been controlled after blind-shear rams shut them in. At least four of the wells identified in the table above regained control of the well by lubricating heavyweight drilling fluids into the annulus to kill the well (8/4/78; 10/5/81; 5/15/82; 3/20/87). While lubricating or bullheading fluids into a live well may not be the preferred method for regaining control of a well, it is better than losing total control of the well.

Finally, one commenter indicated that the operating limits of blind-shear rams are frequently unclear for some drilling operations due to pipe grades, mud weights, and wellbore pressures, and that consideration should be given to ensure that these limits are clear. We agree that this is important, so we have added a paragraph to § 250.416(e) that requires the lessee to address these issues. The new paragraph requires the lessee to provide information that shows that the blind-shear or shear rams installed in the BOP stack (both surface and subsea stacks) are capable of shearing the drill pipe in the hole under maximum anticipated surface pressures.

• *Comment on § 250.441 What are the requirements for a surface BOP stack?* MMS should revise the rule to allow an exception for less than four remote-controlled BOPs.

Response: Because you may include this request in your APD submission to the District Supervisor, we did not revise the rule to allow the use of less than four remote-controlled BOPs in certain situations.

• *Comment on § 250.442 What are the requirements for a subsea BOP stack?* One commenter asked why didn't MMS identify the costs associated with the subsea accumulator requirements.

Response: MMS did not specify any costs for this requirement because lessees/operators were already required by the regulations to have an accumulator that provided for fast closure. API RP 53 now provides guidelines for determining the minimum requirements and performance for the subsea accumulator.

• *Comment on § 250.442 What are the requirements for a subsea BOP stack?* A commenter noted that section 13.3 of API RP 53 does not include subsea accumulator volume requirements that can be audited other than the specific response times.

Response: MMS will review BOP test records, including documentation of the closing times of ram and annular preventers, in evaluating BOP system performance.

• *Comment on § 250.443 What associated BOP systems and related equipment must my BOP system include?* MMS should clarify that this section applies to both surface and subsea BOP equipment. The commenter also recommended that MMS consider adopting more sections of API RP 53 and/or API RP 16E instead of having a number of the specific requirements stated in the BOP system sections (250.440 to 250.451). Adoption of these documents would provide a more rigorous standard than the current MMS requirements.

Response: We clarified the intent of this section by revising the title to read "What associated BOP systems and related equipment must my surface and subsurface BOP systems include?" MMS will consider incorporating additional sections of API RP 53 and API RP 16E or possibly the entire document in possible future revisions of the drilling regulations.

• *Comment on § 250.446 What must I do to maintain and inspect my BOP?* MMS should consider incorporating parts of other quality management standards into the regulations, such as API Q1's, "The supplier shall establish and maintain documented procedures for implementing corrective and preventive action * * * and API Spec 16A's, Appendix G, "The operator of drill through equipment manufactured to this specification shall provide a written report to the equipment manufacturer of any malfunction or failure which occurs * * *"

Response: The quality management program incorporated by sections 17.12 and 18.12 in API RP 53 pertains to a planned maintenance system for BOP equipment and to maintaining copies of equipment manufacturer's product alerts and bulletins. The purpose for incorporating these sections was to ensure that BOP equipment is maintained properly. It was not to require equipment specifications or certification requirements for BOP equipment. MMS believes that incorporation of the specific sections of API RP 53 will meet the objective of identifying appropriate maintenance requirements.

• *Comment on § 250.448 What are the BOP pressure tests requirements?* MMS requirements for a low-pressure test provide a lower acceptance standard when compared to sections 17.3.2 and 18.3.2. MMS should consider incorporating these sections into the regulations.

Response: These sections of API RP 53 state the following on low-pressure tests: "When performing the low pressure test, do not apply a higher pressure and bleed down to the low test pressure. The higher pressure could initiate a seal that may continue to seal after the pressure is lowered and, therefore, misrepresenting a low pressure condition." MMS recognizes that this situation could occur on a low-pressure test, but we also recognize that it may be difficult to precisely apply 200 to 300 pounds per square inch (psi) to the component to be tested. Based on our experience and judgment, we have allowed operators to conduct a low-pressure test (200 to 300 psi) if the initial pressurization did not exceed 500 psi. Any pressure higher than 500 psi must be bled to zero and the test reinitiated.

• *Comment on § 250.448 What are the BOP pressure tests requirements?* MMS should consider testing ram preventers at an intermediate pressure, which ranges between 2,000 and 4,500 psi depending on closing ratio, because it provides a better measure of fitness for purpose. This intermediate pressure is another possible mode of failure. These intermediate pressure tests would be conducted initially and on an annual basis.

Response: MMS is unlikely to require such a test until it becomes an accepted industry practice.

• *Comment on § 250.449 What additional BOP testing requirements must I comply with?* The requirement for variable bore rams (VBRs) to pressure test against all sizes of pipe may be more rigorous than the largest and smallest sizes as recommended by API RP 53 (sections 17.5.5 and 18.5.5).

Response: We have revised the requirement in § 250.449(f) to now require you to pressure test VBRs against the largest and smallest sizes of pipe in use, excluding drill collars and bottom-hole tools. This conforms to API RP 53 recommended practice. Also, one of the findings from a 1999 research project, "Reliability of Subsea BOP Systems for Deepwater Application, Phase II DW, by Per Holand of SINTEF Industrial Management," recommended

that we should not require testing VBRs on all sizes. The rationale was that the testing of VBRs on all sizes adds very little to increased safety availability in the BOP due to the redundancy in the stack, and that most failures will occur during the pressure test.

• *Comment on § 250.449 What additional BOP testing requirements must I comply with?* Mandatory pressure testing of the BOP system after landing is not justified considering the extremely low failure rate of BOP components and the fact that the physical act of running the stack imposes little to no stress on the functional components of the BOP system. After a successful stump test, MMS should require only a function test for the BOP stack once it is on bottom. Function testing after landing will ensure that all control circuits are operating properly. This minor revision has a potentially huge beneficial impact by saving lost rig time to the initial BOP pressure test.

Response: We did not revise this requirement as suggested. We believe that the initial pressure test of the BOP stack after landing on the well is critical to ensuring that it functions properly. The results from our 1999 research project on the reliability of deep water subsea BOP systems (Holand, 1999) support our belief. That research project examined data from 83 wells that were drilled using subsea BOP stacks in the deep water GOM. The majority of the wells were spudded during July 1, 1997, to May 1, 1998. The results showed that 15 components failed during the initial pressure tests after the BOP stack landed on the wellhead. Of those 15 failures, 10 were in the control systems and may have been discovered in a function test. However, five other failures occurred (two connectors, one annular preventer, one ram preventer, one choke and kill valve) that may not have been discovered without the initial pressure test. MMS will continue to require the initial pressure test after landing the subsea BOP stack.

• *Comment on § 250.456 What are the required safe drilling fluid program practices?* Paragraph (a) should not require circulating the well before starting out of the hole if you have lost circulation.

Response: MMS believes that pipe should not be pulled out of the hole until a loss circulation pill has been spotted and the well is under control. It is recommended that the top part of the hole be circulated to ensure that the wellbore is clear of gas. Some loss of returns is acceptable while pulling out of the hole; however, excessive loss circulation would require remaining on bottom until the loss was controlled either with a pill or cement.

• *Comment on § 250.456 What are the required safe drilling fluid program practices?* Recommend that MMS eliminate the second sentence in paragraph (e) which says "You must circulate and condition the well, on or near-bottom, unless well or drilling-fluid conditions prevent running the drill pipe back to the bottom." The first sentence of this requirement which says you must take appropriate measures to control the well is sufficient to address this situation.

Response: We did not remove the second sentence of this paragraph because this is a safe drilling practice. However, the sentence in question does allow for not running drill pipe to bottom to circulate the well if conditions prevent it.

• *Comment on § 250.456 What are the required safe drilling fluid program practices?* Recommend that paragraph (f) allow the District Supervisor the discretion to not require the posting of the surface pressure at which the shoe would break down.

Response: We did not revise this paragraph. You may request a departure from this requirement in your APD submission to the District Supervisor.

• *Comment on § 250.456 What are the required safe drilling fluid program practices?* MMS should allow the District Supervisor the discretion to not require degassers in all situations (paragraph (g)).

Response: We did not revise this paragraph. You may request a departure from this requirement in your APD submission to the District Supervisor.

• *Comment on § 250.458 What quantities of drilling fluids are required?* The commenter prefers the current wording over the proposed wording.

Response: The new regulations use a more active style of writing versus the passive style used in the previous regulations. The requirements (and most of the words) are the same.

• *Comments on § 250.459 What are the safety requirements for drilling-fluid-handling areas?* The two drilling contractors and IADC commented that the requirement to classify drilling-fluid-handling areas according to API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, is in conflict with the 1998 MMS/USCG MOU as it relates to MODUs. The MOU assigns regulatory oversight of this subject matter to the USCG. USCG regulations at 46 CFR 108.170 and 108.187 clearly address these matters, as do the Classification Society requirements applicable to MODUs. Accordingly, the requirements in this section should not apply to MODUs.

Response: This is not a new requirement. The USCG is responsible for the inspection on this area for electrical requirements; it is classified due to a possible source for gas coming out of the cuttings. MMS inspects for gas detectors and tests them on a regular basis. If we see anything that does not meet the USCG's requirement, such as an exposed wire, then MMS would shut down operation and require that it be repaired. All drilling-fluid-handling areas are treated the same.

• *Comment on § 250.460 What are the requirements for well testing?* These requirements should not apply if a well test is conducted on a permanent production facility.

Response: Your projected plans for a well test on a permanent production facility must address all appropriate requirements. You may reference another document or plan if it addresses a specific requirement, such as the description of safety equipment.

• *Comment on § 250.465 When must I submit sundry notices to MMS?* An open hole sidetrack to go around junk in the hole and to continue drilling to the original approved APD should not require a sundry notice.

Response: All sidetracks require the submittal of a sundry notice, and the API number is incremented. This allows the logs to be tracked and handled correctly.

III. OOC Comments on Specific Sections

The following table contains the OOC's unedited comments on the proposed requirements for oil and gas drilling operations and our response to those comments. In this table, we have italicized words that OOC wanted added to the regulations and have bracketed words that the OOC wanted deleted from the regulations.

Proposed section	OOC comments	OOC rationale	MMS response
250.198	Incorporate correct editions of API RP 500 and API RP 505 into the regulations.	By FEDERAL REGISTER Notice dated January 4, 2000, MMS incorporated by reference API RP 500, Second Edition and API RP 505, First Edition. Proposed Rule should be modified to state such.	The final rule references the correct documents and editions.
250.401(b)	(b) Have a person onsite *24 hours per day during operations* that represents your interests and can fulfill your responsibilities.	Include 24 hours a day to provide clarity.	We did not add the 24 hours per day because it is unnecessary, but we did add during operations as suggested.
250.401(c)	(c) Ensure that the toolpusher or a member of the drilling crew maintains continuous surveillance of the rig floor from the beginning of drilling operations until the well is abandoned *or completed*, unless you have secured the well with blowout preventers (BOPs), *bridge plugs, cement plugs*, or packers.	Well may go from drilling to completion and not be abandoned. Additionally, bridge plugs and cement plugs are viable options for securing the well.	We made the suggested changes.
250.402	When and how must I secure a well? Whenever you interrupt *drilling* operations, you must install a downhole safety device, such as a cement plug, bridge plug, or packer. You must install the the device [as deep as possible] *at an appropriate depth* within a properly cemented casing string *or liner*.	The use of the phrase "as deep as possible" infers that the device should be set at the bottom of the hole. By changing "as deep as possible" to "an appropriate depth" allows the operator flexibility to choose appropriate setting depths.	We made the suggested changes.
250.402(a)	(a) [Among] The events that may cause you to [interrupt] *temporarily suspend drilling operations or*.	The proposed text regarding what types of events require securing of well downhole is vague and open-ended. Therefore, we recommend the word "among" in paragraph (a) be deleted, and the remainder of the paragraph be amended as recommended to detail the specific type of events, which is consistent with existing requirements.	We did not make the suggested change because there may be other events that cause you to interrupt drilling operations. The wording as suggested would limit the events that would require the installation of a downhole safety device.
250.403(c)	Requested clarity for paragraph (c) When you move a drilling rig or related equipment on a platform. You must shut in each well below the surface and at the wellhead, unless otherwise approved by the District Supervisor.	The language proposed is very vague. It appears that a subsurface shut-in is only required to move a rig while located on a platform (*i.e.* from well to well) and does not address rigging-up and rigging-down. Also applicability to MODUs is unclear (movement of cantilever jack-ups and floaters).	We revised the wording to clearly state when you must shut in each well below the surface and at the wellhead. The final wording is contained in § 250.406.
250.410(b)(3)	Form MMS–123S may require modifications to include additional information requirements. OOC requests that it be allowed to review and provide comments to the MMS, if the form is modified.	We assume that Form MMS–123S will be modified to contain new information requirements. Therefore, we believe it would be beneficial to both industry and the MMS to allow OOC to review the new form.	As previously discussed, MMS revised this form and the other subpart D drilling and well forms through a separate process. We provided an opportunity to comment on the revised forms and note that OOC did comment.
250.413(h)	(h) delete	We recommend that Line (h) be deleted. It is not clear how is this additional summary is to be submitted. (*i.e.* Is it to be included in Form MMS 123S or is it a narrative summary to part of the ADP, or is it a separate submittal?) The language as proposed is unclear, and OOC is not sure of the intent, or the purpose of this additional reporting requirement. Additionally, the summary report of the shallow hazards site survey will have been previously submitted with the EP/DOCD under which the well will be drilled.	The revised paragraph (h) now says that your well drilling design criteria must include a summary report of the shallow hazards site survey if it was not previously submitted.

Proposed section	OOC comments	OOC rationale	MMS response
250.414 (a), (b), (d), (e), (f) and (g).	Clarity is requested for lines (a), (b), (d), (e), (f) and (g)—What items must my drilling prognosis include? (a) Projected plans for coring at specified depths; (b) Projected plans for logging; (d) Estimated depths to the top of significant marker formations; (e) Estimated depths to significant porous and permeable zones containing fresh water, oil, gas, or abnormally pressured formation fluids; (f) Estimated depths to *major* faults; and (g) Estimated depths of permafrost, if applicable.	Currently the majority this of data is captured in the APD Information Spreadsheet. However, will the proposed form MMS–123S include other required data, such as estimated depths to the top of significant marker formations, major faults, etc? OOC assumes that the intent of the requirement is to identify faults that can potentially lead to problems while drilling. Therefore, it is recommended that the language be modified to include major faults only.	With the exception of providing the estimated depths to faults, these requirements were contained in §250.415(f)(5) of the current regulations. You may use form MMS–123S to provide as much of this information as appropriate. Information you do not include on that form must be included with the drilling prognosis. As for estimating the depths to faults, we made the suggested change to require only the estimated depths to major faults.
250.415(a)	Hole sizes and casing sizes, including: weights; grades; [tension] collapse, and burst values; types of connection; and setting depths (measured and TVD).	The requirement for including the tension value has been deleted from the proposed language. This information has not been required in the past. The need to now require this information is unclear. If this requirement remains, will the ADP Information Spreadsheet/form MMS–123S, be revised to capture these values?	We made this suggested change. We will continue to require the tension casing design safety factor which is covered in paragraph (b).
250.417(a)	(a) If sufficient environmental information and data are not available, the District Supervisor may require you to collect and report this information *during the period of operation. The information to be collected and reported will be related to the structural integrity of the drilling unit and the safe conduct of operations.*	Clarity. The proposed language is too broad and does not present under which conditions the additional data would be required.	We added the phrase "during operations" to the requirement as suggested. We did not add the second sentence because it is unnecessary. The context of the section sets the limits for the type of information to be collected.
250.417(b)	(b) The District Supervisor may require you to conduct additional surveys and soil borings before approving the APD, *if the District Supervisor cannot make a determination that the proposed drilling unit can be supported at the specific site.*	Clarity. The proposed language is too broad and does not present under which conditions the additional data would be required.	The sentence was revised as follows: The District Supervisor may require you to conduct additional surveys and soil borings before approving the APD if additional information is needed to make a determination that the conditions are capable of supporting the drilling unit.
250.420(b)(1)	(b) Casing Requirements. (1) You must design casing (including liners) to withstand the anticipated stresses imposed by tensile, compressive, and buckling loads; burst and collapse pressures; thermal effects[; and combinations thereof].	OOC recommends that the phrase "and combinations thereof" be deleted because this statement is vague as to what combinations must be considered.	We did not make the suggested change. This is not a new requirement (currently in §250.404(a)(3)). You must design casing to withstand all combinations.
250.420(b)(2)	(2) The casing design must include safety measures that ensure well control during drilling [and safe operations during the life of the well].	OOC recommends that the phrase "and safe operations during the life of the well" be deleted because it is too broad.	We did not make the suggested change. You must design your casing for the life of the well.
250.421(b)	(b) Use enough cement to fill the annular space back to the mud line. Verify annular fill by observing cement returns. If you cannot observe cement returns, use additional cement to ensure fill back to the mud line. *Excess cement may be washed out from the annulus below the mud line to a sufficient depth as necessary to facilitate well abandonment operations.* For drilling * * *	Cement in the annular area between the conductor and the drive/structural pipe can cause difficulty in cutting pipe and clearing the location below the mud line.	We did not make this suggested change. Washing out or displacing cement is covered by §250.418(g). That paragraph now says that washing out cement must be addressed in the APD.

Proposed section	OOC comments	OOC rationale	MMS response
250.421(f)	If you use a liner as conductor or surface casing, you must set the top of the liner at least 200 feet above the previous casing/liner shoe. If you use a liner as an intermediate or production casing, you must set the top of the liner at least 100 feet above the previous casing shoe, *unless otherwise approved by the District Supervisor.*	It is common practice to achieve the liner-lap lengths discussed herein. However, there are instances when this is undesirable and, in those cases, a liner top packer is typically installed to ensure a good seal. The recommended language change will provide the District Supervisor the flexibility to approve a shorter liner-lap.	We did not make the suggested change of adding "unless otherwise approved by the District Supervisor." In fact, we have removed that phrase from many sections because it is unnecessary. The District Supervisor has the flexibility to approve many requests without that phrase in the regulations. To emphasize this flexibility, we have added to the drilling regulations two sections: §250.408, "May I use alternative procedures or equipment during drilling operations?", and §250.409, "May I obtain departures from these drilling requirements?"
250.421(f)	* * * If you use a liner as an intermediate or production casing, you must set the top of the liner at least 100 feet above the previous casing shoe.	Existing regulations include language that prohibits the use of a production liner when landed in a surface casing. Is this no longer the case?.	We have revised this paragraph to read "If you use a liner as an intermediate string below a surface string or production casing below an intermediate string, you must set the top of the liner at least 100 feet above the previous casing shoe." MMS does not allow production liner to be set inside the surface casing, thereby to be used for production except in very limited conditions. Each such liner set departure must be individually reviewed.
250.422(b)	When may I resume drilling after cementing? * * * (b) If you plan to nipple down your diverter or BOP stack during the 8- or 12-hour waiting time, you must determine, [in advance] when it will be safe to conduct this activity. Your determination must be *based on a knowledge of formations conditions encountered, presence of potential drilling hazards, actual well conditions while drilling, cementing and post cementing as well as past experience.*	The term "in advance" in the proposed text is very vague. We recommend it be removed and the actual information necessary to make the determination be stated. However, we do agree that the performance-based language as written in §250.422(b) is appropriate. That is, making the operator responsible for assessing when it is safe to nipple down well control equipment. As a prudent operator, this assessment is made based on a knowledge of formations conditions encountered, presence of potential drilling hazards, actual well conditions while drilling, cementing and post cementing as well as past experience.	We made the following changes to this requirement: We replaced the phrase "in advance" with "before nippling down" because we wanted to ensure that no one made the determination after nippling down. We revised the last sentence of the requirement to include most of the wording suggested.
250.423(b)	(b) Change casing setting depths more than 100 feet *TVD* from the approved APD.	It is recommended that approval be obtained if the casing depth change is more than 100 feet TVD, not measured depth. Additionally, if the casing becomes stuck while running or other hole conditions prevent the running of casing to the projected setting depth, the operator should be allowed to cement the casing without seeking approval, and notify the District Supervisor subsequently.	We changed this paragraph to allow an increase of casing setting depth of up to 100 feet total vertical depth before requiring a submittal to the District Supervisor. In the case where the casing setting depth fell short of the planned depth, you would have to contact the District Supervisor only if the well conditions warranted revising your casing design (see §250.423(a)).
250.423(h)	Submit geologic data and information to the District Supervisor that demonstrates the absence of shallow hydrocarbons or hazards. This information must include logging, [and] drilling fluid-monitoring *and other available geologic data* from wells previously drilled [within 500 feet] *in the immediate vicinity* of the proposed well path down to the next casing point.	The 500-foot limit is too prescriptive. This waiver should be based on the geologic data from an applicable analogous well.	We did not make the suggested change. The 500-foot distance was selected by MMS geologists and drilling engineers as a reasonable distance. MMS can best serve the industry by keeping the 500-foot distance in the regulations (see §250.428(g)).

Proposed section	OOC comments	OOC rationale	MMS response
250.424(a)	(a) You must pressure test each string of casing to 70 percent of its minimum internal yield *or as otherwise approved by the District Supervisor.* This testing requirement does not apply to drive or structural casing. When a diverter is installed on conductor casing, you must test the casing to a minimum of 200 psi. [The District Supervisor may approva or require other casing test pressures.]	There is more than one currently approved method for calculating casing test pressure. We recommend that the alternative test methods be included in the new requirements, or allow the District Supervisor the discretion to approve alternative methods.	We chose not to list the alternative methods for calculating casing test pressure. You should address alternative test pressures or methods in your APD (see § 250.423).
250.431(a)	(a) Use diverter spool outlets and diverter lines that have [an internal diameter] *a nominal diameter* of at least 10 inches for surface wellhead configurations and at least 12 inches for floating drilling operations.	API line pipe is normally used for diverter lines. Line pipe is different than casing. The nominal size of line pipe normally refers to the OD (for larger sizes).	We made the suggested changes.
250.434	(f) After drilling is completed, [retain all the records listed in this section for 2 years at the facility, at the lessee's field office nearest to the facility, or at another location conveniently available to the District Supervisor.] *the lessee must retain all the records listed in this section for 2 years and make them available at the District Supervisor's request.*	To require the lessee to maintain detailed drilling records at the facility or at the nearest field location after drilling is completed is unreasonable, and places an unnecessary recordkeeping burden on the operator. We do maintain these records; however, they are typically maintained in a central record center. The need to maintain test results in the field after the drill operations are completed is unclear. Should the need to review these records arise, they can be supplied at that time.	We deleted paragraph (f) and moved the recordkeeping requirements to §§ 250.466 and 250.467. Section 250.466 requires you to keep drilling records onsite during drilling operations. After completion of drilling activities, you may keep all records at a location of your choice. A table in § 250.467 gives the time periods for keeping all records.
250.440	You must design, install, maintain, *test* and use the BOP system and system components to ensure well control * * *.	Include test in the proposed text to be complete and consistent with the existing requirements.	We made the suggested change.
250.441(b)	(b) Delete	We strongly recommend that this requirement be eliminated. We have reviewed the description of the incidents used by the MMS to justify the proposed requirement to install blind-shear rams in all BOP stacks and disagree with the conclusion that they support the need to require the installation of blind-shear rams. Furthermore, a 13⅝ inch blind-shear rams would cost the drilling contractor an estimated $82,000 plus transportation and installation costs. The total estimated cost imposed by this requirement would be $150,000 per stack.	MMS did not make the suggested change. See response to comments in the previous part of the preamble. As for the $150,000 cost per stack cited by OOC, we have used a cost of $175,000 in our evaluation of impacts.
250.442(b)	(b) You must install a subsea accumulator closing unit, *or equivalent systems* to provide fast closure of the BOP components and to operate all critical functions in case of a loss of the power fluid connection to the surface. The [subsea] accumulator must meet or exceed the provisions of Section 13.3, Accumulator Volumetric Capacity, in API RP 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells. The District Supervisor may approve a suitable alternative method.	Many BOP stacks on floating drilling rigs currently in operation do not meet the proposed requirement to install a subsea accumulator. In lieu of subsea accumulators, the inclusion of redundant power/control lines provides the equivalent protection necessary. Therefore, we recommend the inclusion of the statement "or equivalent system" to the proposed language.	Our changes to this paragraph follow the suggested changes (see § 250.442(c)).

Proposed section	OOC comments	OOC rationale	MMS response
250.442(d)	(d) Before removing the marine drilling riser, you must displace the riser with seawater, *except in the case of an emergency riser disconnect,* You must* * *.	Drillships and semi submersible drilling rigs with automatic station keeping (ASK) systems may experience ASK failures at which time the well must be isolated with the BOP and the marine riser disconnection immediately to prevent damage to well, equipment, and rig. It is therefore impractical to displace the marine riser with seawater prior to an emergency riser disconnect.	We did not make this suggested change. MMS realizes that during an emergency you will not be able to displace the riser with seawater, but this specific case does not need to be addressed in the regulations (see § 250.442(e)).
250.447(b)	(b) Before 14 days have elapsed since your last BOP pressure test, you must begin to test your BOP system before midnight on the 14th day following the conclusion of the previous test. However, the District Supervisor may [require more frequent testing] *require the test to be performed before midnight on the 7th day following the conclusion of the previous test,* if conditions or BOP performance warrant; and	More frequent testing without a specified interval is too broad.	We did not make the suggested change. MMS sees no reason to set a fixed BOP testing interval for when the District Supervisor may require more frequent testing. MMS may choose a test interval between 7 and 14 days depending on conditions or performance. BOP performance that warrants testing at less than 7-day intervals would likely lead to shutting in the drilling unit until you fix the problems.
250.448(b)	(b) High Pressure tests for ram type * * * Clarity requested.	OOC recognizes and appreciates MMS efforts to allow for BOP high-pressure tests requirements to include either testing to rated working pressure, or to 500 psi above the maximum allowable Surface Pressure (MASP) for the applicable section of the hole. However, we recommend that the proposed rule include acceptable methods for calculating MASP, to provide clarity.	MMS will not publish a list of acceptable methods to calculate MASP in the regulations. We don't believe that it is appropriate to limit the number of acceptable methods nor do we believe that such a list would provide clarity.
250.448(c)	(c) High pressure test for annular-type BOPs. The high pressure test must equal 70 percent of the rated 70 percent of the rated working pressure of the equipment, *or as otherwise approved by the District Supervisor.*	Currently approved procedures for testing annular preventers allow for testing to a pressure less than 70% of the working pressure, such as testing to the MASP.	We changed the paragraph to read "The high pressure test must equal 70% of the rated working pressure of the equipment or to a pressure approved in your APD."
250.450(c)	(c) Document the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. [For subsea BOP systems, you must also record the closing times for annular and ram preventers.] You may reference a BOP test plan if it is available at the facility.	The requirement to record closing times should be removed. This requirement is not a common practice. Furthermore, there is no requirement for maximum closing time of a BOP, and it is unclear how the measurement of closing time would be determined (is it from the time the button is pushed until the fluid flow stop, or the time it takes the ram to fully stroke?). We do not see the value added by recording this time. Either, a BOP stack functions properly or not.	Section 250.442(c) requires that "the accumulator system equipment must meet or exceed the provisions of Section 13.3, Accumulator Volumetric Capacity, in API RP 53." Section 13.3.5 in API RP 53 says "For subsea installations, the BOP control system should be capable of closing each ram BOP in 45 seconds or less. Closing should not exceed 60 seconds for annular BOPs." As discussed in the preamble of the proposed rule, we incorporated API RP 53 by reference so that both industry and MMS would have guidelines for determining the minimum requirements and performance standards for subsea accumulators and BOP systems. As for the measurement of closing times, the RP states that "the measurement of closing response time begins at pushing the button or turning the control valve handle to operate the function and ends when the BOP or valve is closed, effecting a seal. A BOP is considered closed when the regulated operating pressure has recovered to its nominal setting."

Proposed section	OOC comments	OOC rationale	MMS response
250.450(g)	(g) After drilling is completed, [retain all the records listed in this section for 2 years at the facility, at the lessee's field office nearest to the facility, or at another location conveniently available to the District Supervisor.] *the lessee must retain all the records listed in this section for 2 years and make them available at the District Supervisor's request.*	To require the lessee to maintain detailed drilling records at the facility or at the nearest field office nearest field location after drilling operations are completed is unreasonable, and places an unnecessary record-keeping burden on the operator. We do not maintain these records; however, they are typically maintained in a central record center. The need to maintain test results in the field after the drill operations are completed is unclear. Should the need to review these records arise, they can be supplied at that time.	We deleted paragraph (g) and moved the record-keeping requirements to §§ 250.466 and 250.467. See previous discussion on § 250.434.
250.457(a)	(a) You must have and maintain drilling fluid-testing equipment on the drilling rig at all times. You must test the drilling fluid, when circulating at least once each tour or more frequently if conditions warrant. You must perform the tests according to industry-accepted practices. Tests must include density, viscosity, and gel strength; hydrogenion concentration; filtration; and any other tests the District Supervisor requires *for monitoring and maintaining drilling fluid quality for safe operations, prevention of downhole equipment problems and for the detection of kicks.* You must record * * *.	There are many times on a rig when circulation does not occur during a tour, or longer, and testing twice per day (once each tour) has no added value. Therefore, we recommend that this be a requirement during circulation only. Furthermore, the proposed text is too broad in regards to what type and why might the District Supervisor require additional test. The recommended language is consistent with the existing requirements.	We agree with the comment and moved the paragraph to become § 250.456(i). The new paragraph says: "When circulating, you must test the drilling fluid at least once each tour or more frequently if conditions warrant. You tests must conform to industry-accepted practices and include density, viscosity, and gel and gel strength; hydrogenion concentration; filtration; and any other tests the District Supervisor requires for monitoring drilling fluid quality, prevention of downhole equipment problems and for kick detection. You must record . . . ."
250.460(a)	Clarity requested	The proposed language is confusing. The title of this section is "What are the requirements for well testing?" However, paragraph (a) discusses determining formation characteristics using formation fluid samples and logging. It seems appropriate to put this paragraph in a section titled "what type samples, survey and tests of the formation are required." Please refer to 30 CFR 250.401(e) in the existing regulations.	We agree with the comment that the two paragraphs don't fit under this title. We moved paragraph (a) to its own section (now § 250.407 "What tests must I conduct to determine reservoir characteristics?)" under general requirements. We then re-titled this section "What are the requirements for conducting a well test?"
250.461(a)	(a) Survey requirements for a vertical well: (1) You must conduct inclination surveys on each vertical well and [digitally] record the results. Survey intervals may not exceed 1,000 feet during the normal course of drilling. (2) You must also conduct a directional survey that provides both inclination and azimuth, *and digitally record the results in electronic format:*	Digitally recording inclination surveys while drilling a vertical well is not necessary or practical. Inclination surveys are used as a process control check to ensure that the well remains near vertical. The subsequent surveys, which include both inclination and azimuth, can be digitally recorded in electronic format. The phrase "electronic format" has been add to clarify that the record should be stored electronically for submittal to MMS, not record as "fingers" on a paper copy.	We made the suggested changes.
250.461(e)	(e) If you drill within 500 feet of an adjacent lease, the Regional Supervisor may require you to furnish a copy of the well's directional survey to the affected leaseholder, *if the leaseholder has requested the survey.*	The adjacent leaseholder should request the survey.	We revised the paragraph by adding the following sentence: "This could occur when the adjoining leaseholder requests a copy of the survey for the protection of correlative rights."
250.462(d)	(d) MMS ordered drill. An MMS authorized representative. The MMS representative will consult with *your onsite representative* before requiring the drill.	Clarifies who will be consulted prior to conducting the drill.	We made the suggested change.

Proposed section	OOC comments	OOC rationale	MMS response
250.465(a)(1)	Receive written or oral approval from the District Supervisor before you begin the intended operation. If you get an oral approval, you must submit form MMS–124 [within 72 hours] *no later than the end of the 3rd business day following the oral approval.* In all cases, you must meet the additional requirements in paragraph (b) of this section.	With weekends and holidays, it is often difficult to meet the 72-hour limitation.	We made the suggested change.
250.466(g)	(g) All other information required by the District Supervisor *in order to evaluate resource evaluation, waste prevention, conservation of natural resources, protection of correlative rights, safety or protection of the environment.*	Proposed language is very broad. The recommended language clarifies under what circumstances will additional information be requested.	We made the suggested changes.
250.467	Delete section	As written, this section appears to be for informational purposes, rather than a requirement. Furthermore, the proposed language is vague. Line (a) discusses an NTL; Line (b) Specifies requirements for GOMR, but is silent on requirements for other regions. Line (c) as written appears that this is not mandatory, but at the discretion of the District Supervisor, and Line (d) eliminates the prescriptive requirements for legible, exact copies of service company records.	We renumbered this section to 250.469. The purpose of this section is to inform you what records the District Supervisor may require you to submit. The paragraphs identify the following: (a) well records, (b) paleontological reports and states that the Regional Supervisor may issue a Notice to Lessees that prescribes the manner, timeframe, and format for submitting this information, and (c) service company reports. We moved the requirements to submit form MMS—133, Well Activity Report, and daily drilling reports to the mandatory §§ 250.468(b) and (c).
250.515 (b) and 250.615 (b).	Delete this requirement	Please refer to rationale previously discussed in Section 250.441 of this document.	MMS did not make the suggested change. See our response to comments for § 250.441.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

The Office of Mangement and Budget (OMB) has designated this a significant rule for OMB review under Executive Order 12866.

(1) The rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The major purpose of this rule is the restructuring of the rule and simplifying the regulatory language. The restructuring and plain language revisions will not result in any economic effects to small or large entities. Some of the technical revisions will have a minor economic effect on lessees and drilling contractors.

Specifically, given the existing industry structure (*i.e.*, the number and size of affected regulated entities remain constant), MMS estimates the cost to implement the rule at $1 million annually.

In addition to the annual costs, the rule requires the installation of blind-shear rams in surface BOP stacks that will result in a one-time cost of $14,175,000. This rule allows a 3-year period for the installation of the new rams. The most significant benefits of preventing or minimizing some blowouts will be the reduced risk of injury or fatality to personnel and of environmental damage. Property damages (including lost productivity) resulting from blowouts will also be reduced by this final rule. Property and financial damages from a blowout or near blowout can range from minimal damage to a facility and the loss of a day's activity to the total loss of the drilling rig and production facility.

MMS believes that the installation of blind-shear rams in surface BOP stacks could prevent or minimize approximately one blowout every 2 years. This estimate comes from the 5 incidents that MMS identified where a blind-shear ram had helped or could have helped prevent or minimize a blowout over the past 10-year period (1992 to present). Considering that a single blowout could cause multiple fatalities, injuries, and tens of millions of dollars in property damage and financial losses, MMS believes that the benefits of this requirement will more than offset the cost of this new requirement.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not affect how lessees or operators interact with other agencies. Nor does this rule affect how MMS will interact with other agencies.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule only addresses the regulatory requirements for obtaining permission to drill on the OCS and the safety of drilling operations.

(4) OMB has determined that this rule raises novel legal or policy issues. The rule has some new policy issues, such as requiring minimum BOP maintenance requirements. OMB has determined that these issues make this rule a significant rule as defined in Executive Order 12866.

Regulatory Flexibility (RF) Act

The Department of the Interior (DOI) certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This rule applies to all lessees and drilling contractors that operate on the OCS. Small lessees and drilling contractors that operate under this final rule would fall under the Small Business Administration's (SBA) North American Industry Classification System codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111 Drilling Oil and Gas Wells. Under these codes, SBA considers all companies with fewer than 500 employees to be a small business. Given the variability in the industry due to changes in the relative prices of oil and natural gas, the numbers of small entities affected by the rule may change over time. Based on data from 1998, we estimate that of the 130 lessees that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent). We also estimate that 10 drilling contractors operate on the OCS, and none of those drilling contractors are classified as a small business. The number of drilling contractors is based on current drilling activity on the OCS, and the size of each drilling contractor is based on research into company statistics.

Drilling requirement costs will be borne by the OCS lessees who explore for and produce oil and are dependent on the number of wells drilled. We estimate that the total annual cost of the new drilling requirements in this rule to be approximately $670,000, as shown in the following table. The table also shows the estimated cost per well for the approximately 700 wells drilled annually on the OCS using a surface BOP stack.

ESTIMATED COSTS OF ADDITIONAL DRILLING REQUIREMENTS

Cost	Cost per well	Total cost for 700 wells drilled annually
One hour per well additional evaluation time on cementing operations @ $100	$100	$70,000
One hour per well additional drilling rig rental @ $850	850	$595,000
Annual reporting and paperwork burden—140 hours @ $50	10	$7,000
Total	960	$672,000

*The annual reporting and paperwork burden for the entire subpart D, "Oil and Gas Drilling Operations" is 111,209 hours as indicated in the Paperwork Reduction Act of 1995 section of this preamble. However, the new burden added when the this rule was proposed is only 140 hours (§ 250.403–100 hours; § 250.460(b)–30 hours; and § 250.461(e)—10 hours).

As indicated in the table, the estimated cost per well is about $1,000. Based on drilling data from 1999, we estimate that the 90 small businesses that explore for and produce oil and gas on the OCS drill about 300 of the 700 wells drilled annually on the OCS using a surface BOP stack. Thus, with the small businesses drilling an average of 3⅓ wells per year, the annual economic effect for each small business is about $3,300, or about $300,000 in total. The estimated additional cost of $1,000 per well is quite small (about .02 percent) when compared to the $5 million average cost of drilling a well. Based on this very low percentage of well cost, we believe that these revisions to the regulations will not have a significant economic effect on any small lessee.

The estimated economic effect of the requirement to use blind-shear rams on surface BOP stacks is the cost to purchase the rams. This requirement imposes no reporting or recordkeeping burden. This requirement primarily will affect drilling contractors operating jackup and platform rigs on the OCS who will be required to purchase the rams. Using information from 2003, the cost for a set of 10,000 pounds per-square-inch rams and associated equipment is about $105,000. Some sets of rams for lower-rated BOP stacks will cost less, while a few sets of rams will cost more for higher-rated BOP stacks, but the average cost will remain at about $105,000.

In the proposed rule we estimated that drilling contractors would need to purchase a total of 80 blind-shear rams to meet the proposed requirements. We have revised that estimate to 135 sets of rams for reasons as discussed in our response to comments. At an average cost of about $105,000, the economic impact will be $14,175,000. The largest drilling contractor may need to purchase up to 40 sets of blind-shear rams, while one drilling contractor will not have to purchase any blind-shear rams because it has already installed blind-shear rams in all of its surface BOP stacks. When asked why, a company executive responded that it was a prudent safety measure. A large contractor may get a minor reduction in the cost with a bulk purchase, but this reduction should not significantly affect the competition between large and small contractors because the unit costs will not vary much. Purchase of the rams to meet the proposed requirements will be an initial one-time cost. A blind-shear ram should last for 20 years if properly maintained.

The blind-shear ram requirement should not hinder the ability of lessees or contractors, including small businesses, to conduct business on the OCS. The final rule provides for a 3-year period after the effective date for drilling contractors to plan and purchase the rams and associated equipment. This will allow contractors sufficient time to obtain the equipment.

The following table summarizes the estimated economic effects associated with this final rule.

Requirement	Frequency	Total cost	Cost to small businesses
New drilling rules	Annual	$672,000	$300,000
Use of blind-shear rams	One-time	14,175,000	0
Total		14,847,000	300,000

We do not believe that this rule will have a significant impact on the lessees and drilling contractors who explore for and produce oil and gas on the OCS, including those that are classified as small businesses.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–REG–FAIR (1–888–734–3247). You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under (5 U.S.C. 804(2)) the SBREFA. The rule:

(1) Does not have an annual effect on the economy of $100 million or more. As described above, we estimate that the annual cost of the rule to be approximately $672,000. The cost for the blind-shear rams will be $14,175,000, which will be spread over a 3-year period. This cost will not cause an annual effect on the economy of $100 million.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The minor increase in drilling costs will not change the way the oil and gas industry conducts business, nor will it affect regional oil and gas prices; therefore, it will not cause major cost increases for consumers, the oil and gas industry, or any Government agencies.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. All lessees and drilling contractors, regardless of nationality, will have to comply with the requirements of this rule. So the rule will not affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act (PRA) of 1995

We examined the proposed rule and these final regulations under section 3507(d) of the PRA. The proposed rulemaking added only a few new information collection requirements, which we submitted to OMB for approval as part of the proposed rulemaking process. There have been some changes to the numbering of sections requiring the collection of information in the final regulations, as well as some clarifications. However, the final regulations do not impose any additional information collection paperwork burden.

MMS regulations in 30 CFR 250, subpart A, at §§ 250.140, 250.141, and 250.142 allow respondents to request the use of "alternative procedures or equipment" and "departures" to operating requirements. However, our information collection submission to OMB (1010–0114) indicated that the burden for these requests is covered under the applicable operating requirement. To account for these non-specific possibilities, as MMS renews the various collections covering subparts of the part 250 regulations and the other 30 CFR parts, as a standard procedure we are now including these requests as a "line item" in the regulation burden charts. Based on comments we received on the proposed subpart D rulemaking, §§ 250.408 and 250.409 of these final regulations specifically address these issues and a line item has been included in the burden chart for this collection. It should be reiterated that these requests are not new information collection requirements. However, this inclusion will ensure that the burden is not overlooked for some operating requirements and will provide for any oversight.

Because of the adjustments discussed in the preceding paragraphs and section numbering changes, before publication, we again submitted the final subpart D information collection to OMB and OMB approved them under OMB control number 1010–0141, with a current expiration date of January 28, 2003. An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The title of the collection of information for this final rule is "30 CFR 250, Subpart D—Oil and Gas Drilling Operations." Respondents include approximately 130 Federal OCS oil and gas or sulphur lessees. The frequency of response varies, depending upon the requirement. Responses are mandatory. MMS will protect proprietary information according to the Freedom of Information Act and 30 CFR 250.196, "Data and information to be made available to the public."

The final regulations convert into plain language and restructure the requirements for oil and gas drilling operations. The approved information collection for this final rule will supersede the collection for current subpart D regulations (OMB control number 1010–0053), which we will cancel when the new subpart D regulations take effect.

We estimate the total annual paperwork "hour" burden for the final rule to be 111,209 hours. Following is a breakdown of the hour burden estimate.

Citation 30 CFR 250 Subpart D	Reporting and recordkeeping requirement	Hour burden	Average number per year	Annual burden hours
402(b)	Request approval to use blind or blind-shear ram or pipe rams and inside BOP.	.25	6 requests	2
403	Notify MMS of drilling rig movement on or off drilling location	.1	20 notices	2
	In Gulf of Mexico OCS Region, rig movements reported on form MMS–144—burden covered under 1010–0150.			
408, 409	Apply for use alternative procedures and/or departures not requested in MMS forms (including discussions with MMS and approvals.	1	20% of 1,200 drilling ops. = 240.	240
408, 409; 410–418, plus various other references in subpart D.	Apply for permit to drill and requests for various approvals required in subpart D (including §§ 250.423, 424, 442(c), 451(g), 456(f)) and obtained via forms MMS–123 (Application for Permit to Drill) and MMS–123S (Supplemental APD Information Sheet), and supporting information and notices to MMS—burden covered under 1010–0044 and 1010–0131.			0
410(a)(3), 417(b)	Reference to Exploration Plan, Development and Production Plan, Development Operations Coordination Document (30 CFR 250, subpart B)—burden covered under 1010–0049.			0
417(a), (b)	Collect and report additional information on case-by-case basis if sufficient information is not available.	4	1 report	4
417(c)	Submit 3rd party review of drilling unit according to 30 CFR 250, subpart I—burden covered under 1010–0058.			0
418(e)	Submit welding and burning plan according to 30 CFR 250, subpart A—burden covered under 1010–0114			0
421; 423; 428	Submit casing and cementing program and revisions or changes	2	20% of 1,200 drilling ops. = 240.	480
424	Caliper, pressure test, or evaluate casing; submit evaluation results; request approval before resuming operations or beginning repairs (every 30 days during prolonged drilling).	5	20% of 1,200 wells = 240.	1,200
456(c), (f)	Perform various calculations; post information (on occasion, daily, weekly).	.25	144 drilling rigs × 52 =7,488.	1,872
459(a)(3)	Request exception to procedure for protecting negative pressure area.	2	5 requests	10
460; 465	Submit revised plans, changes, well/drilling records, etc., on forms MMS–124 (Application for Permit to Modify) or MMS–125 (End of Operations Report)—burden covered under 1010–0045 and 1010–0046			0
460	Submit plans for well testing and notify MMS before test	2	15 plans	30
461(e)	Provide copy of well directional survey to affected leaseholder	1	10 occasions	10
462(a)	Prepare and post well control drill plan for crew members	3	26 plans	78
463(b)	Request field drilling rules be established, amended, or canceled	2.5	6 requests	15
468(a)	Submit well logs	1.5	1,200 logs/surveys	1,800
	Submit directional and vertical-well surveys	.5	1,200 reports	600
	Submit velocity profiles and surveys	.25	55 reports	14
	Submit core analyses	.25	150 analyses	38
468(b); 465(b)(3)	In the GOM OCS Region, submit drilling activity reports on form MMS–133 (Well Activity Report)—burden covered under 1010–0132			0
468(c)	In the Pacific and Alaska OCS Regions during drilling operations, submit daily drilling reports.	1	14 wells × 365 days × 20% = 1,022.	1,022
469	As specified by region, submit well records, paleontological interpretations or reports, service company reports, and other reports or records of operations.	.25	300 submissions	75
490(c)(4), (d)	Submit request for reclassification of H_2S zone; notify MMS if conditions change.	1.7	27 responses	46
490(f); also referred to in 418(d).	Submit contingency plans for operations in H_2S areas (16 drilling, 5 work-over, 6 production).	10	27 plans	270
490(i)	Display warning signs—no burden as facilities would display warning signs and use other visual and audible systems.			0
490(j)(12)	Propose alternatives to minimize or eliminate SO_2 hazards—submitted with contingency plans—burden covered under 250.490(f).			0
490(j)(13)(vi)	Label breathing air bottles—no burden as supplier normally labels bottles; facilities would routinely label if not.			0
490(l)	Notify (phone) MMS of unplanned H_2S releases (approx. 2/year)	.2	49 facilities × 2 = 98	20
490(o)(5)	Request approval to use drill pipe for well testing	2	3 requests	6

Citation 30 CFR 250 Subpart D	Reporting and recordkeeping requirement	Hour burden	Average number per year	Annual burden hours
490(q)(1)	Seal and mark for the presence of H_2S cores to be transported—no burden as facilities would routinely mark transported cores.			0
490(q)(9)	Request approval to use gas containing H_2S for instrument gas	2	3 requests	6
490(q)(12)	Analyze produced water disposed of for H_2S content and submit results to MMS on occasion (approx. weekly).	2.8	4 production platforms × 52 = 208.	582
Reporting Subtotal			12,590 Responses	8,422
404	Perform operational check of crown block safety device; record results (weekly).	.1	144 drilling rigs × 52 = 7,488.	749
426	Perform pressure test on all casing strings and drilling liner lap; record results.	2	144 drilling rigs × approx. 50 per rig = 7,200.	14,400
427(a)	Perform pressure-integrity tests and related hole-behavior observations; record results.	4	425 tests	1,700
434; 467	Perform diverter tests when installed and once every 7 days; actuate system at least once every 24-hour period: record results (average 2 per drilling operation).	2	1,200 drilling ops. × 2 = 2,400.	4,800
450; 467	Perform BOP pressure tests, actuations and inspections when installed; at a minimum every 14 days; as stated for components; record results.	6	144 drilling rigs × approx. 35 per rig = 5,040.	30,240
450, 467	Function test annulars and rams; document results every 7 days between BOP tests (biweekly). Note: this test is part of BOP test when BOP test is conducted.	.16	144 drilling rigs × approx. 20 per rig = 2,880.	461
451(c)	Record reason for postponing BOP test (on occasion—approx. 2/year).	.1	144 drilling rigs × 2 = 288.	29
456(b), (i); 458(b)	Record each drilling fluid circulation; test drilling fluid, record results; record daily inventory of drilling fluid/materials; test and recalibrate gas detectors; record results (on occasion, daily, weekly, quarterly).	1.25	144 drilling rigs × 52 = 7,488.	9,360
462(c)	Perform well-control drills; record results (2 crews weekly)	1	144 drilling rigs × 2 crews × 52 = 14,976.	14,976
466, 467	Retain drilling records for 90 days after drilling is complete; retain casing/liner pressure, diverter, and BOP for 2 years; retain well completion/well workover until well is permanently plugged/abandoned or lease assigned.	1.5	Annual records maintenance for 1,200 wells.	1,800
490(g)(2), (g)(5)	Conduct H_2S training; post safety instructions; document training on occasion and annual refresher (approx. 2/year).	2	49 facilities × 2 = 98	196
490(h)(2)	Conduct weekly drills and safety meetings; document attendance	1	49 facilities × 52 = 2,548	2,548
490(j)(8)	Test H_2S detection and monitoring sensors during drilling; record testing and calibrations on occasion, daily during drilling (approx. 12 sensors per rig).	2	26 drilling rigs × 365 days = 9,490.	18,980
490(j)(8)	Test H_2S detection and monitoring sensors every 14 days during production; record testing and calibrations (approx. 30 sensors/5 platforms + approx. 42 sensors/23 platforms).	3.5	28 production platforms × 26 = 728.	2,548
Recordkeeping Subtotal.			130 Record-keepers	102,787
Total Hour Burden.			12,720	111,209

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. The rule applies to lessees and drilling contractors that operate on the OCS. This rule does not impose costs on States or localities. Any costs will be the responsibility of the lessees and drilling contractors.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings Implications. A Takings Implication Assessment is not required. The rule revises existing operation regulations. It does not prevent any lessee, operator, or drilling contractor from performing operations on the OCS, provided they follow the regulations. Thus, MMS did not need to prepare a Takings Implication Assessment under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

Although OMB has designated this a significant rule under Executive Order 12866, it does not have a significant effect on energy supply, distribution, or use. The rule essentially clarifies the current regulatory requirements for oil and gas drilling on the OCS. The rule also adds a new requirement (blind-shear rams in surface BOP stacks) that will result in a one-time cost to the industry of $14,175,000. However, the

increased safety aspects associated with the new requirement along with the potential for reduced property damages and financial losses will offset the $14,175,000 cost of the new rams. Accordingly the new requirement will not cause a reduction in crude oil supply or an increase in energy prices.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

Unfunded Mandates Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have any Federal mandates, nor does the rule have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: October 24, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR Part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 250.102, in the table in paragraph (b), paragraph (1) is revised to read as follows:

For information about	Refer to
(1) Applications for permit to drill	§ 250.410

3. In § 250.105, in the definition for Facility (3), the citation "§ 250.417(b)" is revised to read "§ 250.490(b)".

4. In § 250.198, in the table in paragraph (e), the following changes are made in alphanumeric order:

A. Add an entry for API RP 53 as set forth below.

B. Revise the entries for ANSI Z88.2–1992, API RP 500, API RP 505, and NACE Standard MR0175–99 as set forth below.

250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at
ANSI Z88.2–1992, American National Standard for Respiratory Protection	§ 250.490(g)(4)(iv), (j)(13)(ii).
API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells, Third Edition, March 1997, API Stock No. G53003.	§ 250.442(c); § 250.446(a).
API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class I, Division 1 and Division 2, Second Edition, November 1997, API Stock No. C50002.	§ 250.114(a); § 250.459; § 250.802(e)(4)(i); § 250.803(b)(9)(i); § 250.1628(b)(3); (d)(4)(i); § 250.1629(b)(4)(i).
API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class I, Zone 0, Zone 1, and Zone 2, First Edition, November 1997, API Stock No. C50501.	§ 250.114(a); § 250.459; § 250.802(e)(4)(i); § 250.803(b)(9)(i); § 250.1628(b)(3); (d)(4)(i); § 250.1629(b)(4)(i).
NACE Standard MR0175–99, Sulfide Stress Cracking Resistant Metallic Materials for Oilfield Equipment, Revised January 1999, NACE Item No. 21302.	§ 250.490(p)(2).

5. In § 250.199, in the table in paragraph (e), the OMB control number "1010–0053" cited in the entry for item (4) is revised to read "1010–0141".

6. In § 250.203, the following changes are made:

A. In paragraphs (b)(5)(i) and (b)(5)(ii), the citation "250.417" is revised to read "250.490".

B. In paragraph (p), the citation "§ 250.414" is revised to read "§ 250.410 through § 250.418".

7. In § 250.204, the following changes are made:

A. In paragraphs (b)(2)(i) and (b)(2)(ii), the citation "§ 250.417" is revised to read § 250.490".

B. In paragraph (t), the citation "§ 250.414" is revised to read "§ 250.410 through § 250.418".

8. In 30 CFR part 250, subpart D, § 250.417 is redesignated as § 250.490, §§ 250.400 through 250.416 are revised, and §§ 250.417 through 250.469 are added, and a new undesignated center heading is added preceding redesignated §§ 250.490 to read as set forth below. For the convenience of the reader, the table of contents for subpart D is also set forth below:

Subpart D—Oil and Gas Drilling Operations

General Requirements

Sec.

250.400 Who is subject to the requirements of this subpart?
250.401 What must I do to keep wells under control?
250.402 When and how must I secure a well?
250.403 What drilling unit movements must I report?
250.404 What are the requirements for the crown block?
250.405 What are the safety requirements for diesel engines used on a drilling rig?
250.406 What additional safety measures must I take when I conduct drilling operations on a platform that has producing wells or has other hydrocarbon flow?
250.407 What tests must I conduct to determine reservoir characteristics?
250.408 May I use alternative procedures or equipment during drilling operations?
250.409 May I obtain departures from these drilling requirements?

Applying for a Permit To Drill

250.410 How do I obtain approval to drill a well?
250.411 What information must I submit with my application?
250.412 What requirements must the location plat meet?
250.413 What must my description of well drilling design criteria address?
250.414 What must my drilling prognosis include?
250.415 What must my casing and cementing programs include?
250.416 What must I include in the diverter and BOP descriptions?
250.417 What must I provide if I plan to use a mobile offshore drilling unit (MODU)?
250.418 What additional information must I submit with my APD?

Casing and Cementing Requirements

250.420 What well casing and cementing requirements must I meet?
250.421 What are the casing and cementing requirements by type of casing string?
250.422 When may I resume drilling after cementing?
250.423 What are the requirements for pressure testing casing?
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250.425 What are the requirements for pressure testing liners?
250.426 What are the recordkeeping requirements for casing and liner pressure tests?
250.427 What are the requirements for pressure integrity tests?
250.428 What must I do in certain cementing and casing situations?

Diverter System Requirements

250.430 When must I install a diverter system?
250.431 What are the diverter design and installation requirements?
250.432 How do I obtain a departure to diverter design and installation requirements?
250.433 What are the diverter actuation and testing requirements?
250.434 What are the recordkeeping requirements for diverter actuations and tests?

Blowout Preventer (BOP) System Requirements

250.440 What are the general requirements for BOP systems and system components?
250.441 What are the requirements for a surface BOP stack?
250.442 What are the requirements for a subsea BOP stack?
250.443 What associated systems and related equipment must all BOP systems include?
250.444 What are the choke manifold requirements?
250.445 What are the requirements for kelly valves, inside BOPs, and drill-string safety valves?
250.446 What are the BOP maintenance and inspection requirements?
250.447 When must I pressure test the BOP system?
250.448 What are the BOP pressure tests requirements?
250.449 What additional BOP testing requirements must I meet?
250.450 What are the recordkeeping requirements for BOP tests?
250.451 What must I do in certain situations involving BOP equipment or systems?

Drilling Fluid Requirements

250.455 What are the general requirements for a drilling fluid program?
250.456 What safe practices must the drilling fluid program follow?
250.457 What equipment is required to monitor drilling fluids?
250.458 What quantities of drilling fluids are required?
250.459 What are the safety requirements for drilling fluid-handling areas?

Other Drilling Requirements

250.460 What are the requirements for conducting a well test?
250.461 What are the requirements for directional and inclination surveys?
250.462 What are the requirements for well-control drills?
250.463 Who establishes field drilling rules?

Applying for a Permit To Modify and Well Records

250.465 When must I submit an Application for Permit to Modify (AMP) or an End of Operations Report to MMS?
250.466 What records must I keep?
250.467 How long must I keep records?
250.468 What well records am I required to submit?
250.469 What other well records could I be required to submit?

Hydrogen Sulfide

250.490 Hydrogen sulfide.

Subpart D—Oil and Gas Drilling Operations

General Requirements

§ 250.400 Who is subject to the requirements of this subpart?

The requirements of this subpart apply to lessees, operating rights owners, operators, and their contractors and subcontractors.

§ 250.401 What must I do to keep wells under control?

You must take necessary precautions to keep wells under control at all times. You must:

(a) Use the best available and safest drilling technology to monitor and evaluate well conditions and to minimize the potential for the well to flow or kick;

(b) Have a person onsite during drilling operations who represents your interests and can fulfill your responsibilities;

(c) Ensure that the toolpusher, operator's representative, or a member of the drilling crew maintains continuous surveillance on the rig floor from the beginning of drilling operations until the well is completed or abandoned, unless you have secured the well with blowout preventers (BOPs), bridge plugs, cement plugs, or packers;

(d) Use personnel trained according to the provisions of subpart O; and

(e) Use and maintain equipment and materials necessary to ensure the safety and protection of personnel, equipment, natural resources, and the environment.

§ 250.402 When and how must I secure a well?

Whenever you interrupt drilling operations, you must install a downhole safety device, such as a cement plug, bridge plug, or packer. You must install the device at an appropriate depth within a properly cemented casing string or liner.

(a) Among the events that may cause you to interrupt drilling operations are:

(1) Evacuation of the drilling crew;

(2) Inability to keep the drilling rig on location; or

(3) Repair to major drilling or well-control equipment.

(b) For floating drilling operations, the District Supervisor may approve the use of blind or blind-shear rams or pipe rams and an inside BOP if you don't have time to install a downhole safety device or if special circumstances occur.

§ 250.403 What drilling unit movements must I report?

(a) You must report the movement of all drilling units on and off drilling locations to the District Supervisor. This includes both MODU and platform rigs. You must inform the District Supervisor 24 hours before:

(1) The arrival of an MODU on location;

(2) The movement of a platform rig to a platform;

(3) The movement of a platform rig to another slot;

(4) The movement of an MODU to another slot; and

(5) The departure of an MODU from the location.

(b) You must provide the District Supervisor with the rig name, lease number, well number, and expected time of arrival or departure.

(c) In the Gulf of Mexico OCS Region, you must report drilling unit movements on form MMS–144, Rig Movement Notification Report.

§ 250.404 What are the requirements for the crown block?

You must have a crown block safety device that prevents the traveling block from striking the crown block. You must check the device for proper operation at least once per week and after each drill-line slipping operation and record the results of this operational check in the driller's report.

§ 250.405 What are the safety requirements for diesel engines used on a drilling rig?

You must equip each diesel engine with an air take device to shut down the diesel engine in the event of a runaway.

(a) For a diesel engine that is not continuously manned, you must equip the engine with an automatic shutdown device;

(b) For a diesel engine that is continuously manned, you may equip the engine with either an automatic or remote manual air intake shutdown device;

(c) You do not have to equip a diesel engine with an air intake device if it meets one of the following criteria:

(1) Starts a larger engine;

(2) Powers a firewater pump;

(3) Powers an emergency generator;

(4) Powers a BOP accumulator system;

(5) Provides air supply to divers or confined entry personnel;

(6) Powers temporary equipment on a nonproducing platform;

(7) Powers an escape capsule; or

(8) Powers a portable single-cylinder rig washer.

§ 250.406 What additional safety measures must I take when I conduct drilling operations on a platform that has producing wells or has other hydrocarbon flow?

You must take the following safety measures when you conduct drilling operations on a platform with producing wells or that has other hydrocarbon flow:

(a) You must install an emergency shutdown station near the driller's console;

(b) You must shut in all producible wells located in the affected wellbay below the surface and at the wellhead when:

(1) You move a drilling rig or related equipment on and off a platform. This includes rigging up and rigging down activities within 500 feet of the affected platform;

(2) You move or skid a drilling unit between wells on a platform;

(3) A mobile offshore drilling unit (MODU) moves within 500 feet of a platform. You may resume production once the MODU is in place, secured, and ready to begin drilling operations.

§ 250.407 What tests must I conduct to determine reservoir characteristics?

You must determine the presence, quantity, quality, and reservoir characteristics of oil, gas, sulphur, and water in the formations penetrated by logging, formation sampling, or well testing.

§ 250.408 May I use alternative procedures or equipment during drilling operations?

You may use alternative procedures or equipment during drilling operations after receiving approval from the District Supervisor. You must identify and discuss your proposed alternative procedures or equipment in your Application for Permit to Drill (APD) (see § 250.414(h)). Procedures for obtaining approval are described in section 250.141 of this part.

§ 250.409 May I obtain departures from these drilling requirements?

The District Supervisor may approve departures from the drilling requirements specified in this subpart. You may apply for a departure from drilling requirements by writing to the District Supervisor. You should identify and discuss the departure you are requesting in your APD (see § 250.414(h)).

Applying for a Permit To Drill

§ 250.410 How do I obtain approval to drill a well?

You must obtain written approval from the District Supervisor before you begin drilling any well or before you sidetrack, bypass, or deepen a well. To obtain approval, you must:

(a) Submit the information required by § 250.411 through 250.418;

(b) Include the well in your approved Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD);

(c) Meet the oil spill financial responsibility requirements for offshore facilities as required by 30 CFR part 253; and

(d) Submit the following forms to the District Supervisor:

(1) An original and two complete copies of form MMS–123, Application for a Permit to Drill (APD), and form MMS–123S, Supplemental APD Information Sheet; and

(2) A separate public information copy of forms MMS–123 and MMS–123S that meets the requirements of § 250.127.

§ 250.411 What information must I submit with my application?

In addition to forms MMS–123 and MMS–123S, you must include the information described in the following table.

Information that you must include with an APD	Where to find a description
(a) Plat that shows locations of the proposed well	§ 250.412
(b) Design criteria used for the proposed well	§ 250.413
(c) Drilling prognosis	§ 250.414
(d) Casing and cementing programs	§ 250.415
(e) Diverter and BOP systems descriptions	§ 250.416
(f) Requirements for using an MODU	§ 250.417

Information that you must include with an APD	Where to find a description
(g) Additional information	§ 250.418

§ 250.412 What requirements must the location plat meet?

The location plat must:

(a) Have a scale of 1:24,000 (1 inch = 2,000 feet);

(b) Show the surface and subsurface locations of the proposed well and all the wells in the vicinity;

(c) Show the surface and subsurface locations of the proposed well in feet or meters from the block line;

(d) Contain the longitude and latitude coordinates, and either Universal Transverse Mercator grid-system coordinates or state plane coordinates in the Lambert or Transverse Mercator Projection system for the surface and subsurface locations of the proposed well; and

(e) State the units and geodetic datum (including whether the datum is North American Datum 27 or 83) for these coordinates. If the datum was converted, you must state the method used for this conversion, since the various methods may produce different values.

§ 250.413 What must my description of well drilling design criteria address?

Your description of well drilling design criteria must address:

(a) Pore pressures;

(b) Formation fracture gradients, adjusted for water depth;

(c) Potential lost circulation zones;

(d) Drilling fluid weights;

(e) Casing setting depths;

(f) Maximum anticipated surface pressures. For this section, maximum anticipated surface pressures are the pressures that you reasonably expect to be exerted upon a casing string and its related wellhead equipment. In calculating maximum anticipated surface pressures, you must consider: drilling, completion, and producing conditions; drilling fluid densities to be used below various casing strings; fracture gradients of the exposed formations; casing setting depths; total well depth; formation fluid types; safety margins; and other pertinent conditions. You must include the calculations used to determine the pressures for the drilling and the completion phases, including the anticipated surface pressure used for designing the production string;

(g) A single plot containing estimated pore pressures, formation fracture gradients, proposed drilling fluid weights, and casing setting depths in true vertical measurements;

(h) A summary report of the shallow hazards site survey that describes the geological and manmade conditions if not previously submitted; and

(i) Permafrost zones, if applicable.

§ 250.414 What must my drilling prognosis include?

Your drilling prognosis must include a brief description of the procedures you will follow in drilling the well. This prognosis includes but is not limited to the following:

(a) Projected plans for coring at specified depths;

(b) Projected plans for logging;

(c) Planned safe drilling margin between proposed drilling fluid weights and estimated pore pressures. This safe drilling margin may be shown on the plot required by § 250.413(g);

(d) Estimated depths to the top of significant marker formations;

(e) Estimated depths to significant porous and permeable zones containing fresh water, oil, gas, or abnormally pressured formation fluids;

(f) Estimated depths to major faults;

(g) Estimated depths of permafrost, if applicable;

(h) A list and description of all requests for using alternative procedures or departures from the requirements of this subpart in one place in the APD. You must explain how the alternative procedures afford an equal or greater degree of protection, safety, or performance, or why you need the departures; and

(i) Projected plans for well testing (refer to § 250.460 for safety requirements).

§ 250.415 What must my casing and cementing programs include?

Your casing and cementing programs must include:

(a) Hole sizes and casing sizes, including: weights; grades; collapse, and burst values; types of connection; and setting depths (measured and true vertical depth (TVD));

(b) Casing design safety factors for tension, collapse, and burst with the assumptions made to arrive at these values;

(c) Type and amount of cement (in cubic feet) planned for each casing string; and

(d) In areas containing permafrost, setting depths for conductor and surface casing based on the anticipated depth of the permafrost. Your program must provide protection from thaw subsidence and freezeback effect, proper anchorage, and well control.

§ 250.416 What must I include in the diverter and BOP descriptions?

You must include in the diverter and BOP descriptions:

(a) A description of the diverter system and its operating procedures;

(b) A schematic drawing of the diverter system (plan and elevation views) that shows: (1) the size of the annular BOP installed in the diverter housing;

(2) spool outlet internal diameter(s);

(3) diverter-line lengths and diameters; burst strengths and radius of curvature at each turn; and

(4) valve type, size, working pressure rating, and location;

(c) A description of the BOP system and system components, including pressure ratings of BOP equipment and proposed BOP test pressures;

(d) A schematic drawing of the BOP system that shows the inside diameter of the BOP stack, number and type of preventers, location of choke and kill lines, and associated valves; and

(e) Information that shows the blind-shear rams installed in the BOP stack (both surface and subsea stacks) are capable of shearing the drill pipe in the hole under maximum anticipated surface pressures.

§ 250.417 What must I provide if I plan to use a mobile offshore drilling unit (MODU)?

If you plan to use a MODU, you must provide:

(a) *Fitness requirements.* You must provide information and data to demonstrate the drilling unit's capability to perform at the proposed drilling location. This information must include the maximum environmental and operational conditions that the unit is designed to withstand, including the minimum air gap necessary for both hurricane and non-hurricane seasons. If sufficient environmental information and data are not available at the time you submit your APD, the District Supervisor may approve your APD but require you to collect and report this information during operations. Under this circumstance, the District Supervisor has the right to revoke the approval of the APD if information collected during operations show that the drilling unit is not capable of performing at the proposed location.

(b) *Foundation requirements.* You must provide information to show that site-specific soil and oceanographic conditions are capable of supporting the proposed drilling unit. If you provided sufficient site-specific information in your EP, DPP, or DOCD, you may reference that information. The District Supervisor may require you to conduct additional surveys and soil borings before approving the APD if additional information is needed to make a determination that the conditions are capable of supporting the drilling unit.

(c) *Frontier areas.* (1) If the design of the drilling unit you plan to use in a frontier area is unique or has not been proven for use in the proposed environment, the District Supervisor may require you to submit a third-party review of the unit's design. If required, you must obtain the third-party review according to § 250.903. You may submit this information before submitting an APD.

(2) If you plan to drill in a frontier area, you must have a contingency plan that addresses design and operating limitations of the drilling unit. Your plan must identify the actions necessary to maintain safety and prevent damage to the environment. Actions must include the suspension, curtailment, or modification of drilling or rig operations to remedy various operational or environmental situations (*e.g.* vessel motion, riser offset, anchor tensions, wind speed, wave height, currents, icing or ice-loading, settling, tilt or lateral movement, resupply capability).

(d) *U.S. Coast Guard (USCG) Documentation.* You must provide the current Certificate of Inspection or Letter of Compliance from the USCG. You must also provide current documentation of any operational limitations imposed by an appropriate classification society.

(e) *Floating drilling unit.* If you use a floating drilling unit, you must indicate that you have a contingency plan for moving off location in an emergency situation.

(f) *Inspection of unit.* The drilling unit must be available for inspection by the District Supervisor before commencing operations.

(g) Once the District Supervisor has approved a MODU for use, you do not need to re-submit the information required by this section for another APD to use the same MODU unless changes in equipment affect its rated capacity to operate in the District.

§ 250.418 What additional information must I submit with my APD?

You must include the following with the APD:

(a) Rated capacities of the drilling rig and major drilling equipment, if not already on file with the appropriate District office;

(b) A drilling fluids program that includes the minimum quantities of drilling fluids and drilling fluid materials, including weight materials, to be kept at the site;

(c) A proposed directional plot if the well is to be directionally drilled;

(d) A Hydrogen Sulfide Contingency Plan (see § 250.490), if applicable, and not previously submitted;

(e) A welding plan (see §§ 250.109 to 250.113) if not previously submitted;

(f) In areas subject to subfreezing conditions, evidence that the drilling equipment, BOP systems and components, diverter systems, and other associated equipment and materials are suitable for operating under such conditions;

(g) A request for approval if you plan to wash out or displace some cement to facilitate casing removal upon well abandonment; and

(h) Such other information as the District Supervisor may require.

Casing and Cementing Requirements

§ 250.420 What well casing and cementing requirements must I meet?

You must case and cement all wells. Your casing and cementing programs must meet the requirements of this section and of §§ 250.421 through 250.428.

(a) *Casing and cementing program requirements.* Your casing and cementing programs must:

(1) Properly control formation pressures and fluids;

(2) Prevent the direct or indirect release of fluids from any stratum through the wellbore into offshore waters;

(3) Prevent communication between separate hydrocarbon-bearing strata;

(4) Protect freshwater aquifers from contamination; and

(5) Support unconsolidated sediments.

(b) *Casing requirements.* (1) You must design casing (including liners) to withstand the anticipated stresses imposed by tensile, compressive, and buckling loads; burst and collapse pressures; thermal effects; and combinations thereof.

(2) The casing design must include safety measures that ensure well control during drilling and safe operations during the life of the well.

(c) *Cementing requirements.* You must design and conduct your cementing jobs so that cement composition, placement techniques, and waiting times ensure that the cement placed behind the bottom 500 feet of casing attains a minimum compressive strength of 500 psi before drilling out of the casing or before commencing completion operations.

§ 250.421 What are the casing and cementing requirements by type of casing string?

The table in this section identifies specific design, setting, and cementing requirements for casing strings and liners. For the purposes of subpart D, the casing strings in order of normal installation are as follows: drive or structural, conductor, surface, intermediate, and production casings (including liners). The District Supervisor may approve or prescribe other casing and cementing requirements where appropriate.

Casing type	Casing requirements	Cementing requirements
(a) Drive or Structural	Set by driving, jetting, or drilling to the minimum depth as approved or prescribed by the District Supervisor.	If you drilled a portion of this hole, you must use enough cement to fill the annular space back to the mudline.
(b) Conductor	Design casing and select setting depths based on relevant engineering and geologic factors. These factors include the presence or absence of hydrocarbons, potential hazards, and water depths. Set casing immediately before drilling into formations known to contain oil or gas. If you encounter oil or gas or unexpected formation pressure before the planned casing point, you must set casing immediately	Use enough cement to fill the calculated annular space back to the mudline. Verify annular fill by observing cement returns. If you cannot observe cement returns, use additional cement to ensure fill-back to the mudline. For drilling on an artificial island or when using a glory hole, you must discuss the cement fill level with the District Supervisor.

Casing type	Casing requirements	Cementing requirements
(c) Surface	Design casing and select setting depths based on relevant engineering and geologic factors. These factors include the presence or absence of hydrocarbons, potential hazards, and water depths.	Use enough cement to fill the calculated annular space to at least 200 feet inside the conductor casing. When geologic conditions such as near-surface fractures and faulting exist, you must use enough cement to fill the calculated annular space to the mudline.
(d) Intermediate	Design casing and select setting depth based on anticipated or encountered geologic characteristics or wellbore conditions.	Use enough cement to cover and isolate all hydrocarbon-bearing zones and isolate abnormal pressure intervals from normal pressure intervals in the well. As a minimum, you must cement the annular space 500 feet above the casing shoe and 500 feet above each zone to be isolated.
(e) Production	Design casing and select setting depth based on anticipated or encountered geologic characteristics or wellbore conditions.	Use enough cement to cover or isolate all hydrocarbon-bearing zones above the shoe. As a minimum, you must cement the annular space at least 500 feet above the casing shoe and 500 feet above the uppermost hydrocarbon-bearing zone.
(f) Liners	If you use a liner as conductor or surface casing, you must set the top of the liner at least 200 feet above the previous casing/liner shoe. If you use a liner as an intermediate string below a surface string or production casing below an intermediate string, you must set the top of the liner at least 100 feet above the previous casing shoe..	Same as cementing requirements for specific casing types. For example, a liner used as intermediate casing must be cemented according to the cementing requirements for intermediate casing.

§ 250.422 When may I resume drilling after cementing?

(a) After cementing surface, intermediate, or production casing (or liners), you may resume drilling after the cement has been held under pressure for 12 hours. For conductor casing, you may resume drilling after the cement has been held under pressure for 8 hours. One acceptable method of holding cement under pressure is to use float valves to hold the cement in place.

(b) If you plan to nipple down your diverter or BOP stack during the 8- or 12-hour waiting time, you must determine, before nippling down, when it will be safe to do so. You must base your determination on a knowledge of formation conditions, cement composition, effects of nippling down, presence of potential drilling hazards, well conditions during drilling, cementing, and post cementing, as well as past experience.

§ 250.423 What are the requirements for pressure testing casing?

The table in this section describes the minimum test pressures for each string of casing. You may not resume drilling or other down-hole operations until you obtain a satisfactory pressure test. If the pressure declines more than 10 percent in a 30-minute test or if there is another indication of a leak, you must re-cement, repair the casing, or run additional casing to provide a proper seal. The District Supervisor may approve or require other casing test pressures.

Casing type	Minimum test pressure
(a) Drive or Structural	Not required
(b) Conductor	200 psi
(c) Surface, Intermediate, and Production	70 percent of its minimum internal yield

§ 250.424 What are the requirements for prolonged drilling operations?

If wellbore operations continue for more than 30 days within a casing string run to the surface:

(a) You must stop drilling operations as soon as practicable, and evaluate the effects of the prolonged operations on continued drilling operations and the life of the well. At a minimum, you must:

(1) Caliper or pressure test the casing; and

(2) Report the results of your evaluation to the District Supervisor and obtain approval of those results before resuming operations.

(b) If casing integrity has deteriorated to a level below minimum safety factors, you must:

(1) Repair the casing or run another casing string; and

(2) Obtain approval from the District Supervisor before you begin repairs.

§ 250.425 What are the requirements for pressure testing liners?

(a) You must test each drilling liner (and liner-lap) to a pressure at least equal to the anticipated pressure to which the liner will be subjected during the formation pressure-integrity test below that liner shoe, or subsequent liner shoes if set. The District Supervisor may approve or require other liner test pressures.

(b) You must test each production liner (and liner-lap) to a minimum of 500 psi above the formation fracture pressure at the casing shoe into which the liner is lapped.

(c) You may not resume drilling or other down-hole operations until you obtain a satisfactory pressure test. If the pressure declines more than 10 percent in a 30-minute test or if there is another indication of a leak, you must re-cement, repair the liner, or run additional casing/liner to provide a proper seal.

§ 250.426 What are the recordkeeping requirements for casing and liner pressure tests?

You must record the time, date, and results of each pressure test in the driller's report maintained under standard industry practice. In addition, you must record each test on a pressure chart and have your onsite representative sign and date the test as being correct.

§ 250.427 What are the requirements for pressure integrity tests?

You must conduct a pressure integrity test below the surface casing or liner and all intermediate casings or liners. The District Supervisor may require you to run a pressure-integrity test at the conductor casing shoe if warranted by local geologic conditions or the planned casing setting depth. You must conduct each pressure integrity test after drilling at least 10 feet but no more than 50 feet of new hole below the casing shoe. You must test to either the formation leak-off pressure or to an equivalent drilling fluid weight if identified in an approved APD.

(a) You must use the pressure integrity test and related hole-behavior observations, such as pore-pressure test results, gas-cut drilling fluid, and well kicks to adjust the drilling fluid program and the setting depth of the next casing string. You must record all test results and hole-behavior observations made during the course of drilling related to formation integrity and pore pressure in the driller's report.

(b) While drilling, you must maintain the safe drilling margin identified in the approved APD. When you cannot maintain this safe margin, you must suspend drilling operations and remedy the situation.

§ 250.428 What must I do in certain cementing and casing situations?

The table in this section describes actions that lessees must take when certain situations occur during casing and cementing activities.

If you encounter the following situation:	Then you must . . .
(a) Have unexpected formation pressures or conditions that warrant revising your casing design.	Submit a revised casing program to the District Supervisor for approval.
(b) Need to increase casing setting depths more than 100 feet true vertical depth (TVD) from the approved APD due to conditions encountered during drilling operations.	Submit those changes to the District Supervisor for approval.
(c) Have indication of inadequate cement job (such as lost returns, cement channeling, or failure of equipment).	(1) Pressure test the casing shoe; (2) Run a temperature survey; (3) Run a cement bond log; or (4) Use a combination of these techniques.
(d) Inadequate cement job	Re-cement or take other remedial actions as approved by the District Supervisor.
(e) Primary cement job that did not isolate abnormal pressure intervals.	Isolate those intervals from normal pressures by squeeze cementing before you complete; suspend operations; or abandon the well, whichever occurs first.
(f) Decide to produce a well that was not originally contemplated for production.	Have at least two cemented casing strings (does not include liners) in the well. Note: All producing wells must have at least two cemented casing strings.
(g) Want to drill a well without setting conductor casing.	Submit geologic data and information to the District Supervisor that demonstrates the absence of shallow hydrocarbons or hazards. This information must include logging and drilling fluid-monitoring from wells previously drilled within 500 feet of the proposed well path down to the next casing point.
(h) Need to use less than required cement for the surface casing during floating drilling operations to provide protection from burst and collapse pressures.	Submit information to the District Supervisor that demonstrates the use of less cement is necessary.
(i) Cement across a permafrost zone	Use cement that sets before it freezes and has a low heat of hydration.
(j) Leave the annulus opposite a permafrost zone uncemented.	Fill the annulus with a liquid that has a freezing point below the minimum permafrost temperature and minimizes opposite a corrosion.

Diverter System Requirements

§ 250.430 When must I install a diverter system?

You must install a diverter system before you drill a conductor or surface hole. The diverter system consists of a diverter sealing element, diverter lines, and control systems. You must design, install, use, maintain, and test the diverter system to ensure proper diversion of gases, water, drilling fluid, and other materials away from facilities and personnel.

§ 250.431 What are the diverter design and installation requirements?

You must design and install your diverter system to:

(a) Use diverter spool outlets and diverter lines that have a nominal diameter of at least 10 inches for surface wellhead configurations and at least 12 inches for floating drilling operations;

(b) Use dual diverter lines arranged to provide for downwind diversion capability;

(c) Use at least two diverter control stations. One station must be on the drilling floor. The other station must be in a readily accessible location away from the drilling floor;

(d) Use only remote-controlled valves in the diverter lines. All valves in the diverter system must be full-opening. You may not install manual or butterfly valves in any part of the diverter system;

(e) Minimize the number of turns (only one 90-degree turn allowed for each line for bottom-founded drilling units) in the diverter lines, maximize the radius of curvature of turns, and target all right angles and sharp turns;

(f) Anchor and support the entire diverter system to prevent whipping and vibration; and

(g) Protect all diverter-control instruments and lines from possible damage by thrown or falling objects.

§ 250.432 How do I obtain a departure to diverter design and installation requirements?

The table below describes possible departures from the diverter requirements and the conditions required for each departure. To obtain one of these departures, you must have discussed the departure in your APD and received approval from the District Supervisor.

If you want a departure to:	Then you must...
(a) Use flexible hose for diverter lines instead of rigid pipe.	Use flexible hose that has integral end couplings.
(b) Use only one spool outlet for your diverter system.	(1) Have branch lines that meet the minimum internal diameter requirements; and (2) Provide downwind diversion capability.
(c) Use a spool with an outlet with an internal diameter of less than 10 inches on a surface wellhead.	Use a spool that has dual outlets with an internal diameter of at least 8 inches.
(d) Use a single diverter line for floating drilling operations on a dynamically positioned drillship.	Maintain an appropriate vessel heading to provide for downwind diversion.

§ 250.433 What are the diverter actuation and testing requirements?

When you install the diverter system, you must actuate the diverter sealing element, diverter valves, and diverter-control systems and control stations. You must also flow-test the vent lines.

(a) For drilling operations with a surface wellhead configuration, you must actuate the diverter system at least once every 24-hour period after the initial test. After you have nippled up on conductor casing, you must pressure-test the diverter-sealing element and diverter valves to a minimum of 200 psi. While the diverter is installed, you must conduct subsequent pressure tests within 7 days after the previous test.

(b) For floating drilling operations with a subsea BOP stack, you must actuate the diverter system within 7 days after the previous actuation.

(c) You must alternate actuations and tests between control stations.

§ 250.434 What are the recordkeeping requirements for diverter actuations and tests?

You must record the time, date, and results of all diverter actuations and tests in the driller's report. In addition, you must:

(a) Record the diverter pressure test on a pressure chart;

(b) Require your onsite representative to sign and date the pressure test chart;

(c) Identify the control station used during the test or actuation;

(d) Identify problems or irregularities observed during the testing or actuations and record actions taken to remedy the problems or irregularities; and

(e) Retain all pressure charts and reports pertaining to the diverter tests and actuations at the facility for the duration of drilling the well.

Blowout Preventer (BOP) System Requirements

§ 250.440 What are the general requirements for BOP systems and system components?

You must design, install, maintain, test, and use the BOP system and system components to ensure well control. The working-pressure rating of each BOP component must exceed maximum anticipated surface pressures. The BOP system includes the BOP stack and associated BOP systems and equipment.

§ 250.441 What are the requirements for a surface BOP stack?

(a) When you drill with a surface BOP stack, you must install the BOP system before drilling below surface casing. The surface BOP stack must include at least four remote-controlled, hydraulically operated BOPs, consisting of an annular BOP, two BOPs equipped with pipe rams, and one BOP equipped with blind or blind-shear rams.

(b) No later than February 21, 2006, your surface BOP stack must include at least four remote-controlled, hydraulically operated BOPs consisting of an annular BOP, two BOPs equipped with pipe rams, and one BOP equipped with blind-shear rams. The blind-shear rams must be capable of shearing the drill pipe that is in the hole.

(c) You must install an accumulator system that provides 1.5 times the volume of fluid capacity necessary to close and hold closed all BOP components. The system must perform with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. If you supply the accumulator regulators by rig air and do not have a secondary source of pneumatic supply, you must equip the regulators with manual overrides or other devices to ensure capability of hydraulic operations if rig air is lost.

(d) In addition to the stack and accumulator system, you must install the associated BOP systems and equipment required by the regulations in this subpart.

§ 250.442 What are the requirements for a subsea BOP stack?

(a) When you drill with a subsea BOP stack, you must install the BOP system before drilling below surface casing. The District Supervisor may require you to install a subsea BOP system before drilling below the conductor casing if proposed casing setting depths or local geology indicate the need.

(b) Your subsea BOP stack must include at least four remote-controlled, hydraulically operated BOPs consisting of an annular BOP, two BOPs equipped with pipe rams, and one BOP equipped with blind-shear rams.

(c) You must install an accumulator closing system to provide fast closure of the BOP components and to operate all critical functions in case of a loss of the power fluid connection to the surface. The accumulator system must meet or exceed the provisions of Section 13.3, Accumulator Volumetric Capacity, in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). The District Supervisor may approve a suitable alternative method.

(d) The BOP system must include an operable dual-pod control system to ensure proper and independent operation of the BOP system.

(e) Before removing the marine riser, you must displace the riser with seawater. You must maintain sufficient hydrostatic pressure or take other suitable precautions to compensate for the reduction in pressure and to maintain a safe and controlled well condition.

§ 250.443 What associated systems and related equipment must all BOP systems include?

All BOP systems must include the following associated systems and related equipment:

(a) An automatic backup to the primary accumulator-charging system. The power source must be independent from the power source for the primary accumulator-charging system. The independent power source must possess sufficient capability to close and hold closed all BOP components.

(b) At least two BOP control stations. One station must be on the drilling floor. You must locate the other station in a readily accessible location away from the drilling floor.

(c) Side outlets on the BOP stack for separate kill and choke lines. If your stack does not have side outlets, you must install a drilling spool with side outlets.

(d) A choke and a kill line on the BOP stack. You must equip each line with two full-opening valves, one of which must be remote-controlled. For a subsea BOP system, both valves in each line must be remote-controlled. In addition:

(1) You must install the choke line above the bottom ram;

(2) You may install the kill line below the bottom ram; and

(3) For a surface BOP system, on the kill line you may install a check valve and a manual valve instead of the remote-controlled valve. To use this configuration, both manual valves must be readily accessible and you must install the check valve between the manual valves and the pump.

(e) A fill-up line above the uppermost BOP.

(f) Locking devices installed on the ram-type BOPs.

(g) A wellhead assembly with a rated working pressure that exceeds the maximum anticipated surface pressure.

§ 250.444 What are the choke manifold requirements?

(a) Your BOP system must include a choke manifold that is suitable for the anticipated surface pressures, anticipated methods of well control, the surrounding environment, and the corrosiveness, volume, and abrasiveness of drilling fluids and well fluids that you may encounter.

(b) Choke manifold components must have a rated working pressure at least as great as the rated working pressure of the ram BOPs. If your choke manifold has buffer tanks downstream of choke assemblies, you must install isolation valves on any bleed lines.

(c) Valves, pipes, flexible steel hoses, and other fittings upstream of the choke manifold must have a rated working pressure at least as great as the rated working pressure of the ram BOPs.

§ 250.445 What are the requirements for kelly valves, inside BOPs, and drill-string safety valves?

You must use or provide the following BOP equipment during drilling operations:

(a) A kelly valve installed below the swivel (upper kelly valve);

(b) A kelly valve installed at the bottom of the kelly (lower kelly valve). You must be able to strip the lower kelly valve through the BOP stack;

(c) If you drill with a mud motor and use drill pipe instead of a kelly, you must install one kelly valve above, and one strippable kelly valve below, the joint of drill pipe used in place of a kelly;

(d) On a top-drive system equipped with a remote-controlled valve, you must install a strippable kelly-type valve below the remote-controlled valve;

(e) An inside BOP in the open position located on the rig floor. You must be able to install an inside BOP for each size connection in the drill string;

(f) A drill-string safety valve in the open position located on the rig floor. You must have a drill-string safety valve available for each size connection in the drill string;

(g) When running casing, you must have a safety valve in the open position available on the rig floor to fit the casing string being run in the hole;

(h) All required manual and remote-controlled kelly valves, drill-string safety valves, and comparable-type valves (*i.e.* kelly-type valve in a top-drive system) must be essentially full-opening; and

(i) The drilling crew must have ready access to a wrench to fit each manual valve.

§ 250.446 What are the BOP maintenance and inspection requirements?

(a) You must maintain your BOP system to ensure that the equipment functions properly. BOP maintenance must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections; Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198).

(b) You must visually inspect your surface BOP system on a daily basis. You must visually inspect your subsea BOP system and marine riser at least once every 3 days if weather and sea conditions permit. You may use television cameras to inspect subsea equipment.

§ 250.447 When must I pressure test the BOP system?

You must pressure test your BOP system (this includes the choke manifold, kelly valves, inside BOP, and drill-string safety valve):

(a) When installed;

(b) Before 14 days have elapsed since your last BOP pressure test. You must begin to test your BOP system before midnight on the 14th day following the conclusion of the previous test. However, the District Supervisor may require more frequent testing if conditions or BOP performance warrant; and

(c) Before drilling out each string of casing or a liner. The District Supervisor may allow you to omit this test if you didn't remove the BOP stack to run the casing string or liner and the required BOP test pressures for the next section of the hole are not greater than the test pressures for the previous BOP test. You must indicate in your APD which casing strings and liners meet these criteria.

§ 250.448 What are the BOP pressure tests requirements?

When you pressure test the BOP system, you must conduct a low-pressure and a high-pressure test for each BOP component. You must conduct the low-pressure test before the high-pressure test. Each individual pressure test must hold pressure long enough to demonstrate that the tested component(s) holds the required pressure. Required test pressures are as follows:

(a) *Low-pressure test.* All low-pressure tests must be between 200 and 300 psi. Any initial pressure above 300 psi must be bled back to a pressure between 200 and 300 psi before starting the test. If the initial pressure exceeds 500 psi, you must bleed back to zero and reinitiate the test.

(b) *High-pressure test for ram-type BOPs, the choke manifold; and other BOP components.* The high-pressure test must equal the rated working pressure of the equipment or be 500 psi greater than your calculated maximum anticipated surface pressure (MASP) for the applicable section of hole. Before you may test BOP equipment to the MASP plus 500 psi, the District Supervisor must have approved those test pressures in your APD.

(c) *High pressure test for annular-type BOPs.* The high pressure test must equal 70 percent of the rated working pressure of the equipment or to a pressure approved in your APD.

(d) *Duration of pressure test.* Each test must hold the required pressure for 5 minutes. However, for surface BOP systems and surface equipment of a subsea BOP system, a 3-minute test duration is acceptable if you record your test pressures on the outermost half of a 4-hour chart, on a 1-hour chart, or on a digital recorder. If the equipment does not hold the required pressure during a test, you must correct the problem and retest the affected component(s).

§ 250.449 What additional BOP testing requirements must I meet?

You must meet the following additional BOP testing requirements:

(a) Use water to test a surface BOP system;

(b) Stump test a subsea BOP system before installation. You must use water to conduct this test. You may use drilling fluids to conduct subsequent tests of a subsea BOP system;

(c) Alternate tests between control stations and pods;

(d) Pressure test the blind or blind-shear ram BOP during stump tests and at all casing points;

(e) The interval between any blind or blind-shear ram BOP pressure tests may not exceed 30 days;

(f) Pressure test variable bore-pipe ram BOPs against the largest and smallest sizes of pipe in use, excluding drill collars and bottom-hole tools;

(g) Pressure test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly;

(h) Function test annular and ram BOPs every 7 days between pressure tests; and

(i) Actuate safety valves assembled with proper casing connections before running casing.

§ 250.450 What are the recordkeeping requirements for BOP tests?

You must record the time, date, and results of all pressure tests, actuations, and inspections of the BOP system, system components, and marine riser in the driller's report. In addition, you must:

(a) Record BOP test pressures on pressure charts;

(b) Require your onsite representative to sign and date BOP test charts and reports as correct;

(c) Document the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. For subsea BOP systems, you must also record the closing times for annular and ram BOPs. You may reference a BOP test plan if it is available at the facility;

(d) Identify the control station and pod used during the test;

(e) Identify any problems or irregularities observed during BOP system testing and record actions taken to remedy the problems or irregularities; and

(f) Retain all records, including pressure charts, driller's report, and referenced documents pertaining to BOP tests, actuations, and inspections at the facility for the duration of drilling.

§ 250.451 What must I do in certain situations involving BOP equipment or systems?

The table in this section describes actions that lessees must take when certain situations occur with BOP systems during drilling activities.

If you encounter the following situation:	Then you must . . .
(a) BOP equipment does not hold the required pressure during a test	Correct the problem and retest the affected equipment.
(b) Need to repair or replace a surface or subsea BOP system	First place the well in a safe, controlled condition (*e.g.*, before drilling out a casing shoe or after setting a cement plug, bridge plug, or a packer).
(c) Need to postpone a BOP test due to well-control problems such as lost circulation, formation fluid influx, or stuck drill pipe.	Record the reason for postponing the test in the driller's report and conduct the required BOP test on the first trip out of the hole.
(d) BOP control station or pod that does not function properly	Suspend further drilling operations until that station or pod is operable.
(e) Want to drill with a tapered drill-string	Install two or more sets of conventional or variable-bore pipe rams in the BOP stack to provide for the following: two sets of rams must be capable of sealing around the larger-size drill string and one set of pipe rams must be capable of sealing around the smaller-size drill string.
(f) Install casing rams in a BOP stack	Test the ram bonnets before running casing.
(g) Want to use an annular BOP with a rated working pressure less than the anticipated surface pressure.	Demonstrate that your well control procedures or the anticipated well conditions will not place demands above its rated working pressure and obtain approval from the District Supervisor.
(h) Use a subsea BOP system in an ice-scour area	Install the BOP stack in a glory hole. The glory hole must be deep enough to ensure that the top of the stack is below the deepest probable ice-scour depth.

Drilling Fluid Requirements

§ 250.455 What are the general requirements for a drilling fluid program?

You must design and implement your drilling fluid program to prevent the loss of well control. This program must address drilling fluid safe practices, testing and monitoring equipment, drilling fluid quantities, and drilling fluid-handling areas.

§ 250.456 What safe practices must the drilling fluid program follow?

Your drilling fluid program must include the following safe practices:

(a) Before starting out of the hole with drill pipe, you must properly condition the drilling fluid. You must circulate a volume of drilling fluid equal to the annular volume with the drill pipe just off-bottom. You may omit this practice if documentation in the driller's report shows:

(1) No indication of formation fluid influx before starting to pull the drill pipe from the hole;

(2) The weight of returning drilling fluid is within 0.2 pounds per gallon (1.5 pounds per cubic foot) of the drilling fluid entering the hole; and

(3) Other drilling fluid properties are within the limits established by the program approved in the APD.

(b) Record each time you circulate drilling fluid in the hole in the driller's report;

(c) When coming out of the hole with drill pipe, you must fill the annulus with drilling fluid before the hydrostatic pressure decreases by 75 psi, or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. You must calculate the number of stands of drill pipe and drill collars that you may pull before you must fill the hole. You must also calculate the equivalent drilling fluid volume needed to fill the hole. Both sets of numbers must be posted near the driller's station. You must use a mechanical, volumetric, or electronic device to measure the drilling fluid required to fill the hole;

(d) You must run and pull drill pipe and downhole tools at controlled rates so you do not swab or surge the well;

(e) When there is an indication of swabbing or influx of formation fluids, you must take appropriate measures to control the well. You must circulate and condition the well, on or near-bottom, unless well or drilling-fluid conditions prevent running the drill pipe back to the bottom;

(f) You must calculate and post near the driller's console the maximum pressures that you may safely contain under a shut-in BOP for each casing string. The pressures posted must consider the surface pressure at which the formation at the shoe would break

down, the rated working pressure of the BOP stack, and 70 percent of casing burst (or casing test as approved by the District Supervisor). As a minimum, you must post the following two pressures:

(1) The surface pressure at which the shoe would break down. This calculation must consider the current drilling fluid weight in the hole; and

(2) The lesser of the BOP's rated working pressure or 70 percent of casing-burst pressure (or casing test otherwise approved by the District Supervisor);

(g) You must install an operable drilling fluid-gas separator and degasser before you begin drilling operations. You must maintain this equipment throughout the drilling of the well;

(h) Before pulling drill-stem test tools from the hole, you must circulate or reverse-circulate the test fluids in the hole. If circulating out test fluids is not feasible, you may bullhead test fluids out of the drill-stem test string and tools with an appropriate kill weight fluid;

(i) When circulating, you must test the drilling fluid at least once each hour, or more frequently if conditions warrant. Your tests must conform to industry-accepted practices and include density, viscosity, and gel strength; hydrogenion concentration; filtration; and any other tests the District Supervisor requires for monitoring and maintaining drilling fluid quality, prevention of downhole equipment problems and for kick detection. You must record the results of these tests in the drilling fluid report; and

(j) In areas where permafrost and/or hydrate zones are present or may be present, you must control drilling fluid temperatures to drill safely through those zones.

§ 250.457 What equipment is required to monitor drilling fluids?

Once you establish drilling fluid returns, you must install and maintain the following drilling fluid-system monitoring equipment throughout subsequent drilling operations. This equipment must have the following indicators on the rig floor:

(a) Pit level indicator to determine drilling fluid-pit volume gains and losses. This indicator must include both a visual and an audible warning device;

(b) Volume measuring device to accurately determine drilling fluid volumes required to fill the hole on trips;

(c) Return indicator devices that indicate the relationship between drilling fluid-return flow rate and pump discharge rate. This indicator must include both a visual and an audible warning device; and

(d) Gas-detecting equipment to monitor the drilling fluid returns. The indicator may be located in the drilling fluid-logging compartment or on the rig floor. If the indicators are only in the logging compartment, you must continually man the equipment and have a means of immediate communication with the rig floor. If the indicators are on the rig floor only, you must install an audible alarm.

§ 250.458 What quantities of drilling fluids are required?

(a) You must use, maintain, and replenish quantities of drilling fluid and drilling fluid materials at the drill site as necessary to ensure well control. You must determine those quantities based on known or anticipated drilling conditions, rig storage capacity, weather conditions, and estimated time for delivery.

(b) You must record the daily inventories of drilling fluid and drilling fluid materials, including weight materials and additives in the drilling fluid report.

(c) If you do not have sufficient quantities of drilling fluid and drilling fluid material to maintain well control, you must suspend drilling operations.

§ 250.459 What are the safety requirements for drilling fluid-handling areas?

You must classify drilling fluid-handling areas according to API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class I, Division 1 and Division 2 (incorporated by reference as specified in § 250.198); or API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class 1, Zone 0, Zone 1, and Zone 2 (incorporated by reference as specified in § 250.198). In areas where dangerous concentrations of combustible gas may accumulate, you must install and maintain a ventilation system and gas monitors. Drilling fluid-handling areas must have the following safety equipment:

(a) A ventilation system capable of replacing the air once every 5 minutes or 1.0 cubic feet of air-volume flow per minute, per square foot of area, whichever is greater. In addition:

(1) If natural means provide adequate ventilation, then a mechanical ventilation system is not necessary;

(2) If a mechanical system does not run continuously, then it must activate when gas detectors indicate the presence of 1 percent or more of combustible gas by volume; and

(3) If discharges from a mechanical ventilation system may be hazardous, then you must maintain the drilling fluid-handling area at a negative pressure. You must protect the negative pressure area by using at least one of the following: a pressure-sensitive alarm, open-door alarms on each access to the area, automatic door-closing devices, air locks, or other devices approved by the District Supervisor;

(b) Gas detectors and alarms except in open areas where adequate ventilation is provided by natural means. You must test and recalibrate gas detectors quarterly. No more than 90 days may elapse between tests;

(c) Explosion-proof or pressurized electrical equipment to prevent the ignition of explosive gases. Where you use air for pressuring equipment, you must locate the air intake outside of and as far as practicable from hazardous areas; and

(d) Alarms that activate when the mechanical ventilation system fails.

Other Drilling Requirements

§ 250.460 What are the requirements for conducting a well test?

(a) If you intend to conduct a well test, you must include your projected plans for the test with your APD (form MMS–123) or in an Application for Permit to Modify (APM) (form MMS–124). Your plans must include at least the following information:

(1) Estimated flowing and shut-in tubing pressures;

(2) Estimated flow rates and cumulative volumes;

(3) Time duration of flow, buildup, and drawdown periods;

(4) Description and rating of surface and subsurface test equipment;

(5) Schematic drawing, showing the layout of test equipment;

(6) Description of safety equipment, including gas detectors and fire-fighting equipment;

(7) Proposed methods to handle or transport produced fluids; and

(8) Description of the test procedures.

(b) You must give the District Supervisor at least 24-hours notice before starting a well test.

§ 250.461 What are the requirements for directional and inclination surveys?

For this subpart, MMS classifies a well as vertical if the calculated average of inclination readings does not exceed 3 degrees from the vertical.

(a) *Survey requirements for a vertical well.* (1) You must conduct inclination surveys on each vertical well and record the results. Survey intervals may not exceed 1,000 feet during the normal course of drilling;

(2) You must also conduct a directional survey that provides both inclination and azimuth, and digitally record the results in electronic format:

(i) Within 500 feet of setting surface or intermediate casing;

(ii) Within 500 feet of setting any liner; and

(iii) When you reach total depth.

(b) *Survey requirements for directional well.* You must conduct directional surveys on each directional well and digitally record the results. Surveys must give both inclination and azimuth at intervals not to exceed 500 feet during the normal course of drilling. Intervals during angle-changing portions of the hole may not exceed 100 feet.

(c) *Measurement while drilling.* You may use measurement-while-drilling technology if it meets the requirements of this section.

(d) *Composite survey requirements.*

(1) Your composite directional survey must show the interval from the bottom of the conductor casing to total depth. In the absence of conductor casing, the survey must show the interval from the bottom of the drive or structural casing to total depth; and

(2) You must correct all surveys to Universal-Transverse-Mercator-Grid-north or Lambert-Grid-north after making the magnetic-to-true-north correction. Surveys must show the magnetic and grid corrections used and include a listing of the directionally computed inclinations and azimuths.

(e) If you drill within 500 feet of an adjacent lease, the Regional Supervisor may require you to furnish a copy of the well's directional survey to the affected leaseholder. This could occur when the adjoining leaseholder requests a copy of the survey for the protection of correlative rights.

§ 250.462 What are the requirements for well-control drills?

You must conduct a weekly well-control drill with each drilling crew. Your drill must familiarize the crew with its roles and functions so that all crew members can perform their duties promptly and efficiently.

(a) *Well-control drill plan.* You must prepare a well control drill plan for each well. Your plan must outline the assignments for each crew member and establish times to complete each portion of the drill. You must post a copy of the well control drill plan on the rig floor or bulletin board.

(b) *Timing of drills.* You must conduct each drill during a period of activity that minimizes the risk to drilling operations. The timing of your drills must cover a range of different operations, including drilling with a diverter, on-bottom drilling, and tripping.

(c) *Recordkeeping requirements.* For each drill, you must record the following in the driller's report:

(1) The time to be ready to close the diverter or BOP system; and

(2) The total time to complete the entire drill.

(d) *MMS ordered drill.* An MMS authorized representative may require you to conduct a well control drill during an MMS inspection. The MMS representative will consult with your onsite representative before requiring the drill.

§ 250.463 Who establishes field drilling rules?

(a) The District Supervisor may establish field drilling rules different from the requirements of this subpart when geological and engineering information shows that specific operating requirements are appropriate. You must comply with field drilling rules and nonconflicting requirements of this subpart. The District Supervisor may amend or cancel field drilling rules at any time.

(b) You may request the District Supervisor to establish, amend, or cancel field drilling rules.

Applying for a Permit to Modify and Well Records

§ 250.465 When must I submit an Application for Permit to Modify (APM) or an End of Operations Report to MMS?

(a) You must submit an APM (form MMS–124) or an End of Operations Report (form MMS–125) and other materials to the Regional Supervisor as shown in the following table. You must also submit a public information copy of each form.

When you	Then you must	And
(1)Intend to revise your drilling plan, change major drilling equipment, or plugback.	Submit form MMS–124 or request oral approval.	Receive written or oral approval from the District Supervisor before you begin the intended operation. If you get an approval, you must submit form MMS–124 no later than the end of the 3rd business day following the oral approval. In all cases, or you must meet the additional requirements in paragraph (b) of this section.
(2) Determine a well's final surface location, water depth, and the rotary kelly bushing elevation.	Immediately Submit a form MMS–124.	Submit a plat certified by a registered land surveyor that meets the requirements of § 250.412.
(3) Move a drilling unit from a wellbore before completing a well.	Submit forms Submit MMS–124 and MMS–125 within 30 days after the susepsion of wellbore operations.	Submit appropriate copies of the well recods.

(b) If you intend to perform any of the actions specified in paragraph (a)(1) of this section, you must meet the following additional requirements:

(1) Your form MMS–124 must contain a detailed statement of the proposed work that will materially change from the approved APD;

(2) Your form MMS–124 must include the present status of the well, depth of all casing strings set to date, well depth, present production zones and productive capability, and all other information specified; and

(3) Within 30 days after completing this work, you must submit form MMS–124 with detailed information about the work to the District Supervisor, unless you have already provided sufficient information in a Well Activity Report, form MMS–133 (§ 250.468(b)).

§ 250.466 What records must I keep?

You must keep complete, legible, and accurate records for each well. You must keep drilling records onsite while drilling activities continue. After completion of drilling activities, you must keep all drilling and other well records for the time periods shown in § 250.469. You may keep these records at a location of your choice. The records must contain complete information on all of the following:

(a) Well operations;

(b) Descriptions of formations penetrated;

(c) Content and character of oil, gas, water, and other mineral deposits in each formation;
(d) Kind, weight, size, grade, and setting depth of casing;
(e) All well logs and surveys run in the wellbore;
(f) Any significant malfunction or problem; and
(g) All other information required by the District Supervisor in the interests of resource evaluation, waste prevention, conservation of natural resources, and the protection of correlative rights, safety, and environment.

§ 250.467 How long must I keep records?

You must keep records for the time periods shown in the following table.

You must keep records relating to	Until
(a) Drilling	Ninety days after you complete drilling operations.
(b) Casing and liner pressure tests, diverter tests, and BOP tests	Two years after the completion of drilling operations.
(c) Completion of a well or of any workover activity that materially alters the completion configuration or affects a hydrocarbon-bearing zone.	You permanently plug and abandon the well or until you forward the records with a lease assignment.

§ 250.468 What well records am I required to submit?

(a) You must submit copies of logs or charts of electrical, radioactive, sonic, and other well-logging operations; directional and vertical-well surveys; velocity profiles and surveys; and analysis of cores to MMS. Each Region will provide specific instructions for submitting well logs and surveys.
(b) For drilling operations in the GOM OCS Region, you must submit form MMS–133, Well Activity Report, to the District Supervisor on a weekly basis.
(c) For drilling operations in the Pacific or Alaska OCS Regions, you must submit form MMS–133, Well Activity Report, to the District Supervisor on a daily basis.

§ 250.469 What other well records could I be required to submit?

The Regional or District Supervisor may require you to submit copies of any or all of the following well records.
(a) Well records as specified in § 250.466;
(b) Paleontological interpretations or reports identifying microscopic fossils by depth and/or washed samples of drill cuttings that you normally maintain for paleontological determinations. The Regional Supervisor may issue a Notice to Lessees that prescribes the manner, timeframe, and format for submitting this information;
(c) Service company reports on cementing, perforating, acidizing, testing, or other similar services; or
(d) Other reports and records of operations.

Hydrogren Sulfide

* * * * *

9. In the newly redesignated § 250.490, paragraphs (g)(4)(iv), (j)(13)(ii), and (p)(2) are revised to read as follows:

§ 250.490 Hydrogen sulfide.

* * * * *

(g) * * *
(4) * * *
(iv) Restrictions and corrective measures concerning beards, spectacles, and contact lenses in conformance with ANSI Z88.2, American National Standard for Respiratory Protection (incorporated by reference as specified in § 250.198);
* * * * *
(j) * * *
(13) * * *
(ii) Design, select, use, and maintain respirators in conformance with ANSI Z88.2 (incorporated by reference as specified in § 250.198).
* * * * *
(p) * * *
(2) Use BOP system components, wellhead, pressure-control equipment, and related equipment exposed to H_2S-bearing fluids in conformance with NACE Standard MR0175–99 (incorporated by reference as specified in § 250.198).
* * * * *

§ 250.504 [Amended]

10. In § 250.504, in the first and last sentences, the citation "§ 250.417" is revised to read "§ 250.490".

§ 250.513 [Amended]

11. In § 250.513, the following changes are made:
A. In paragraph (a), the citation "§ 250.414" is revised to read "§ 250.410 through § 250.418".
B. In paragraph (b)(4), the citation "§ 250.417" is revised to read "§ 250.490".
12. In § 250.515, paragraph (b) is revised to read as follows:

§ 250.515 Blowout prevention equipment.

* * * * *

(b) The minimum BOP system for well-completion operations must meet the appropriate standards from the following table:

When	The minimum BOP stack must include
(1) The expected pressure is less than 5,000 psi.	Three BOPs consisting of an annular, one set of pipe rams, and one set of blind or blind-shear rams.
(2) The expected pressure is 5,000 psi or greater or you use multiple tubing strings.	Four BOPs consisting of an annular, two sets of pipe rams, and one set of blind or blind-shear rams.
(3) You handle multiple tubing strings simultaneously.	Four BOPs consisting of an annular, one set of pipe rams, one set of dual pipe rams, and one set of blind or blind-shear rams.
(4) You use a tapered drill string	At least one set of pipe rams that are capable of sealing around each size of drill string. If the expected pressure is greater than 5,000 psi, then you must have at least two sets of pipe rams that are capable of sealing around the larger size drill string. You may substitute one set of variable bore rams for two sets of pipe rams.
(5) It is after February 21, 2006	At least one set of blind-shear rams. The blind-shear rams must be capable of shearing the drill pipe or tubing in the hole.

* * * * *

§ 250.604 [Amended]

13. In § 250.604, in the first and last sentences, the citation "§ 250.417" is revised to read "§ 250.490".

§ 250.613 [Amended]

14. In § 250.613(b)(3), the citation "§ 250.417" is revised to read "§ 250.490".
15. In § 250.615, paragraph (b) is revised to read as follows:

§ 250.615 Blowout prevention equipment.

* * * * *

(b) The minimum BOP system for well-workover operations with the tree removed must meet the appropriate standards from the following table:

When	The minimum BOP stack must include
(1) The expected pressure is less than 5,000 psi.	Three BOPs consisting of an annular, one set of pipe rams, and one set of blind or blind-shear rams.
(2) The expected pressure is 5,000 psi or greater or you use multiple tubing strings.	Four BOPs consisting of an annular, two sets of pipe rams, and one set of blind or blind-shear rams.
(3) You handle multiple tubing strings simultaneously.	Four BOPs consisting of an annular, one set of pipe rams, one set of dual pipe rams, and one set of blind or blind-shear rams.
(4) You use a tapered drill string	At least one set of pipe rams that are capable of sealing around each size of drill string. If the expected pressure is greater than 5,000 psi, then you must have at least two sets of pipe rams that are capable of sealing around the larger size drill string. You may substitute one set of variable bore rams for two sets of pipe rams.
(5) It is after February 21, 2006	At least one set of blind-shear rams. The blind-shear rams must be capable of shearing the drill pipe or tubing in the hole.

§ 250.807 [Amended]

16. In § 250.807, the citation "§ 250.417" is revised to read "§ 250.490".

§ 250.1105 [Amended]

17a. In § 250.1105(f)(1)(i), the citation "§ 250.417(f)" is revised to read "§ 250.490(f)".

§ 250.1604 [Amended]

17b. In § 250.1604 in paragraph (b), in the first and third sentences, the citation "§ 250.417" is revised to read "§ 250.490".

§ 250.1612 [Amended]

18. In § 250.1612, the citation "§ 250.408" is revised to read "§ 250.462".

§ 250.1614 [Amended]

19. In § 250.1614, in paragraph (b), the citation "§ 250.410(b), (c), (d), and (e)" is revised to read "§ 250.455 through § 250.459"; and the citation "§ 250.410(b)(8)" is revised to read "§ 250.456(g)".

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February 20, 2003

Part IV

Securities and Exchange Commission

17 CFR Part 270

Custody of Investment Company Assets With a Securities Depository; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25934; File No. S7–22–01]

RIN 3235–AG71

Custody of Investment Company Assets With a Securities Depository

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that governs investment companies' use of securities depositories. The amendments expand the types of investment companies that may maintain assets with a depository, and update the conditions they must follow to use a depository. The amendments respond to developments in securities depository practices and commercial law since the rule was adopted.

EFFECTIVE DATES: The amendments are effective on March 28, 2003. The incorporation by reference of certain definitions listed in the rule is approved by the Director of the Federal Register as of March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Hugh P. Lutz, Attorney, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, at (202) 942–0690, in the Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to rule 17f–4 [17 CFR 270.17f–4] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act" or the "Act").[1]

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[1] Unless otherwise noted, all references to "rule 17f–4" or any paragraph of the rule will be to 17 CFR 270.17f–4, as amended.

Executive Summary

The Commission today is adopting amendments to rule 17f–4 under the Investment Company Act, the rule that permits a registered management investment company ("fund") to deposit the securities it owns in a system for the central handling of securities ("securities depository"). The custody practices and commercial law that relate to custody arrangements have changed substantially since we adopted the rule in 1978, and the amendments update and simplify rule 17f–4 to reflect these business and legal developments. The amendments permit additional types of investment companies to rely on the rule, and allow depositories to perform additional functions under the rule. The amendments also eliminate a number of specific custodial compliance requirements of rule 17f–4, and require instead that a fund's custodian, when using a depository, exercise due care in accordance with reasonable commercial standards.

I. Background

Section 17(f) of the Investment Company Act governs the custody of a fund's assets, including its portfolio securities.[2] This section requires a fund to maintain its securities and other investments with certain types of custodians under conditions designed to assure the safety of the fund's assets. It permits a fund to maintain its securities in a system for the central handling of securities (commonly referred to as a "securities depository"), subject to rules adopted by the Commission.[3]

The Commission adopted rule 17f-4 in 1978 to establish conditions for the use of securities depositories by funds.[4] The conditions were designed to limit potential risks to funds using securities depositories, and were drafted to be compatible with the 1978 revisions to Article 8 of the Uniform Commercial Code ("UCC"), which covers the ownership and transfer of investment securities under state law.[5] Since 1978, securities custody practices have changed substantially, as more investors (including funds) have come to hold their securities with depositories such as the Depository Trust Company, either directly or through an intermediary. In 1994, Article 8 was substantially revised to clarify the legal rights of funds and other investors that use securities depositories.[6] In addition, experience with depositories during this period has shown that the use of depositories raises substantially fewer risks than had been apparent in 1978.

In November 2001, we proposed amendments to rule 17f-4 to reflect these significant developments.[7] We received six comment letters on the proposal.[8] Commenters generally favored the amendments, but also recommended several changes that they believed would improve the interaction of the rule with Revised Article 8. In addition, commenters disagreed on whether our rules governing a fund's use of foreign custodians and depositories should apply when a fund holds securities with a U.S. depository that itself holds the securities with a foreign custodian or depository.[9] We are adopting new rule 17f–4 with modifications that respond to many of the issues raised by the commenters.

[2] 15 U.S.C. 80a-17(f).

[3] In 1999, the Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338 (1999), added section 17(f)(6) to the Investment Company Act. Section 17(f)(6) authorizes the Commission to prescribe conditions under which a bank-sponsored fund may maintain fund assets with an affiliated bank. This section is intended to allow the Commission to address self-custody issues such as conflicts of interest and misappropriation of fund assets that could arise when a fund holds its assets with an affiliated bank custodian. The amendments to rule 17f–4 affect the ability of all funds and their custodians to use certain depositories. The amendments do not address specific issues that arise when a fund maintains assets with an affiliated bank custodian, and we are not relying on the authority contained in section 17(f)(6) in adopting these amendments.

[4] *See* Deposits of Securities in Securities Depositories, Investment Company Act Release No. 10453 (Oct. 26, 1978) [43 FR 50869 (Nov. 1, 1978)] ("1978 Adopting Release").

[5] *See* UCC, 1978 Official Text with Comments, Article 8, Investment Securities (West 1978) ("Prior Article 8"); Use of Depository Systems by Registered Management Companies, Investment Company Act Release No. 10053 (Dec. 8, 1977) [42 FR 63722 (Dec. 19, 1977)] ("1977 Reproposing Release") at nn.4–7, 9, 12 and accompanying text (citing provisions of Prior Article 8); 1978 Adopting Release, *supra* note 4, at nn.4 and 6.

[6] Prior Article 8 assumed that issuers would record investors' interests on their own books. Today, investors typically maintain a security through an account with a broker-dealer, bank or other financial institution ("securities intermediary"), which in turn will maintain an account for its customers with a securities depository. The depository generally does not record each investor's interest, but records the interest of the intermediary on behalf of all of its customers. Thus, the individual investor's interest (or "security entitlement") appears only on the books of the intermediary with which the investor maintains an account. Revised Article 8 refers to this type of securities ownership arrangement as an "indirect holding" arrangement, as distinguished from a "direct holding" arrangement in which the investor's ownership interest appears on the issuer's books. *See* Uniform Commercial Code, Revised Article 8—Investment Securities (With Conforming and Miscellaneous Amendments to Articles 1, 4, 5, 9, and 10) (1994 Official Text with Comments) ("Revised Article 8"). Revised Article 8 has been adopted by all 50 states, the District of Columbia, and Puerto Rico.

[7] *See* Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25266 (Nov. 15, 2001) [66 FR 58412 (Nov. 15, 2001)] ("Proposing Release"), at nn.4–19 and accompanying text, for a more detailed discussion of Prior Article 8 and Revised Article 8.

[8] We received the six comment letters from three commenters. Each of the commenters wrote an initial letter, and an additional letter discussing points raised by the other commenters. The comment letters are available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC (File No. S7–22–01).

[9] *See infra* Section II.D.

[10] The amended rule incorporates the definition of "security entitlement" contained in Revised Article 8. *See* rule 17f–4(c)(1). A security entitlement means "the rights and property interest of an entitlement holder with respect to a financial asset" in an indirect holding arrangement. *See* Revised Article 8, *supra* note 6, section 8–102(a)(17). A security entitlement gives the investor a limited pro rata property interest in comparable entitlements (or other interests in securities) maintained by the investor's intermediary with a depository or other intermediary. *See id.*, section 8–503(b) and cmt. 1, and section 8–504 and cmt. 1 (all customers of the securities intermediary share a pro rata property interest in all interests in the same financial asset held by the intermediary).

[11] In addition, the amendments permit a custodian to use an intermediary custodian. *See* rule 17f–4(a).

[12] The proposed amendments would have defined a securities depository as a "system for the central handling of assets in which those assets are treated as fungible and are transferred, pledged, or otherwise acquired or disposed of by bookkeeping entry without physical delivery, or by physical delivery within or through the system." *See* Proposing Release, *supra* note 7 at n.22 and accompanying text. One commenter stated that we could accomplish the same objectives by simply amending the rule to define securities depository by reference to a "clearing corporation" under Article 8 and a "clearing agency" under the Securities Exchange Act of 1934. We agree that this change simplifies the rule text and embodies relevant terms defined elsewhere in the federal securities laws, and the amended rule therefore reflects this revision.

[13] The use of foreign depositories by funds is governed by rule 17f–7 [17 CFR 270.17f–7].

II. Discussion

Rule 17f–4 permits funds to place and maintain "financial assets" corresponding to the fund's "securities entitlements" [10] with a securities depository subject to certain conditions, discussed below.[11] As suggested by a commenter, we have drafted the rule to employ terms used by Revised Article 8 to assure the rule will interact well with that Article, which, as we noted above, is the primary law governing securities ownership under state law.[12]

A. U.S. Depositories

Rule 17f–4 permits funds to keep and maintain securities and other assets in a "securities depository" subject to regulation in the United States.[13] Under the rule, a "securities depository" is a "clearing corporation" that is registered with the Commission as a clearing agency,[14] or a federal reserve bank or other person authorized to operate the federal book-entry system for U.S. Treasury securities. At the suggestion of a commenter, we simplified the definition to describe what a depository is rather than what it does. The rule no longer restricts the functions that a depository may perform. As a result, a fund may use a depository that holds securities that are acquired or disposed of by bookkeeping entry as well as those that are conveyed by physical delivery.

B. Reliance on Rule by Non-Management Companies; Approval of Custody Arrangements

The amendments expand rule 17f–4 to permit any registered investment company, including a unit investment trust ("UIT") or a face-amount certificate company, to use a securities depository.[15] The amendments also eliminate from the rule the requirement that fund directors approve arrangements with depositories, which today largely are routine matters. Commenters supported these changes.[16]

C. Compliance Requirements for the Custodian or Securities Depository

The amendments also eliminate, as proposed, the specific safeguarding requirements that have been in rule 17f–4, and substitute two more general obligations.[17] First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a "securities intermediary" to obtain and thereafter maintain financial assets.[18] If the fund deals directly with a depository, the depository's contract or rules for participants must provide that the depository will meet similar obligations.[19] This condition thus incorporates the minimum standard of care that Revised Article 8 sets forth for circumstances where the parties have not agreed to a standard.[20]

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and

[14] A clearing agency is "any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates." 15 U.S.C. 78c(23)(A).

[15] Rule 17f–4(c)(3). In addition to expanding the types of funds that could rely on rule 17f–4, the Proposing Release would have expanded the types of organizations that could operate as depositories under the rule. The Proposing Release would have allowed a registered transfer agent to operate as a securities depository for purposes of holding shares of other funds. *See* Proposing Release, *supra* note 7, at nn.29–31 and accompanying text. All of the commenters raised issues concerning this proposed change. Two argued that a fund's use of another fund's transfer agent involves self-custody issues that could be addressed in conjunction with rule 17f–2 [17 CFR 270.17f–2], the rule governing fund self-custody arrangements. In light of the issues raised by commenters, we have decided not to adopt the amendment related to mutual fund transfer agents, but instead intend to consider these issues in connection with any future revisions to rule 17f–2. Until then, funds should continue to rely on the staff no-action letters that address arrangements in which funds invest in shares of other funds. *See, e.g.*, United States Trust Co. of New York, SEC Staff No-Action Letter (Apr. 16, 1992) (staff stated it would not recommend enforcement action if trustee maintained UIT's investments in open-end funds with transfer agents of portfolio funds under conditions based on rule 17f–4).

[16] At the suggestion of one commenter, we have eliminated the requirement we included in the proposed amendments that a fund officer approve a depository arrangement. The requirement is unnecessary because a fund officer (or a person with similar authority) would have to execute agreements necessary to permit the fund to use the depository. *See* section 17(f)(2) of the Investment Company Act [15 U.S.C. 80a-17(f)(2)] (requiring that a fund consent to its custodian's deposit of securities with a depository).

[17] These specific requirements were the earmarking, segregation, confirmation, and successor custodian requirements. For a detailed discussion of these requirements, *see* Proposing Release, *supra* note 7, at nn.39–46.

[18] Rule 17f–4(a)(1). We proposed to require a custodian using a depository to "take all actions reasonably necessary or appropriate under applicable commercial or regulatory law" to safeguard fund assets. *See* Proposing Release, *supra* note 7, at nn.48–51 and accompanying text. Two commenters suggested that a better approach to accomplish the intent of that provision would be to require the custodian, as a securities intermediary, to take reasonable steps to preserve rights of the fund as an entitlement holder in financial assets held by the depository. One of these commenters urged us to incorporate into the rule the standard of care provided for by section 504(c) of Article 8 when the parties have not agreed to a standard. Section 504(c) provides that a securities intermediary satisfies the duty relating to maintaining a financial asset in those circumstances if it "exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset." This standard is reflected in the rule.

[19] Rule 17f–4(b)(1)(i).

[20] One commenter questioned our authority to establish compliance requirements for custodians. Section 17(f)(2) of the Investment Company Act authorizes the Commission to adopt rules that establish conditions under which a "registered management company or any * * * custodian" may deposit securities with a securities depository.

financial strength of the custodian.[21] If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will provide similar financial reports.[22]

D. Treatment of U.S. and Foreign Depositories

The Depository Trust Company ("DTC"), the predominant U.S. securities depository, has established linkages with several foreign custodians and depositories through which it holds assets with those foreign institutions. In the Proposing Release, we requested comment on whether a fund, when it holds securities with a U.S. depository that are ultimately custodied with a foreign custodian or depository, should be subject to rules 17f–5 or 17f–7,[23] which establish conditions for the custody of fund assets with foreign custodians and depositories.[24]

Three commenters responded to our request. One commenter, an association of global custodian banks, argued that the failure of the Commission to extend the requirements of rules 17f–5 and 17f–7 would permit funds to circumvent these rules and would deny fund investors the protections of the rules. The Investment Company Institute and DTC opposed the application of the foreign custody rules. They pointed out that U.S. depositories are regulated by the Commission as registered clearing agencies, and that any linkages between them and foreign custodians and depositories are subject to our approval and monitoring. They argued that further regulation would increase the burden on these domestic depositories without enhancing the protection of fund assets.

We have decided not to revise the rule to require the application of our foreign custody rules when a fund holds securities through a U.S. depository that has a linkage to a foreign custodian or depository. As we explained in the Proposing Release, U.S. depositories register with us as clearing agencies under the Securities Exchange Act of 1934,[25] and are subject to rigorous standards for their operations.[26] We approve each proposed linkage to a foreign custodian or depository only when the custodian or depository will provide a level of protection equivalent to that which a U.S. clearing agency must provide.[27] This is a standard considerably higher than we require fund boards to apply in selecting a foreign custodian.[28] We agree with the commenters who argued that the application of the foreign custody rules would impose regulatory burdens without appreciably enhancing the protection of fund assets.[29]

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. As discussed above, the amendments to rule 17f–4 respond to developments in securities custody practices and commercial law that have occurred since the rule was adopted. The amendments expand the types of funds that may rely on the rule, update the rule's compliance requirements, and reduce burdens on fund directors. In the Proposing Release, we requested comment and specific data regarding the costs and benefits of the proposed amendments. We received one comment on the costs and benefits of the amendments. The comment is discussed below.

A. Benefits

The Commission staff estimates that approximately 5,155 entities (including 5,000 registered investment companies, 130 custodians, and 25 possible securities depositories) would benefit from the amendments.[30]

Removes specific custodial compliance requirements. The amendments to rule 17f–4 remove three custodial compliance requirements[31] that have accounted for a significant amount of custodians' time and resources. The Commission staff estimates that custodians currently spend approximately 66,300 hours[32] and $3,694,600[33] annually to comply with these three requirements. In place of these costly requirements, the amendments provide that a fund's custodian, when using a depository, must at a minimum exercise due care in accordance with reasonable commercial standards and that custodians (or securities depositories) provide reports on internal accounting controls to funds. The new compliance requirements are much less prescriptive than those previously contained in rule 17f–4, which will allow custodians some flexibility in determining the most efficient method of safeguarding financial assets. The reduction in the compliance burdens in rule 17f–4 may ultimately benefit fund investors through reduced costs.

Reduces burdens on fund directors. The amendments to rule 17f–4 eliminate the requirement that fund directors approve all custody arrangements and changes to those arrangements. The amendments will benefit fund directors and fund shareholders by eliminating the need for fund directors to approve arrangements that have become increasingly routine. The elimination of this requirement will free directors to spend more time on other, more significant matters.

Updates the rule to reflect current custody practices and commercial law. The amendments to rule 17f–4 will benefit funds, advisers, and custodians by updating the rule to conform to current custody practices and commercial law. As discussed above, rule 17f–4 was adopted in 1978 and was designed to operate in the context of commercial law applicable at that time. Custody practices and commercial law have changed significantly since 1978, and the amendments reflect these developments.

The Commission staff has issued numerous no-action letters in an attempt to keep the rule current with custody practice and commercial law.[34] The amendments will make the rule more transparent by eliminating the need for funds to rely on the staff's no-action letters, and will resolve current and future ambiguities that have arisen and are sure to arise between the application of Revised Article 8 and rule 17f–4.

Expands functions of securities depositories. The amendments expand the functions that a securities depository may perform on behalf of a fund.[35] These amendments therefore may facilitate the use of centralized custody arrangements for investments. Costs would be reduced in the clearing and settlement process, because it is easier to clear and settle transactions with an entity that can hold almost all the assets of the fund, rather than with several entities that hold separate portions of fund assets. Reducing the costs and fees associated with securities depositories and custodians will benefit investors.

B. Costs

The Proposing Release identified one provision in the rule that would impose costs—the requirement that custody contracts be modified to reflect the rule's new, general compliance requirements.[36] One commenter objected to the contract amendment language, and instead recommended that the rule allow the affected parties to determine the specific means of compliance. In response to this comment, we have modified the relevant regulatory language to state that the custodian must be "at a minimum obligated" to exercise due care in accordance with reasonable commercial standards in discharging its duty to obtain and thereafter maintain financial assets.[37] This change provides custodians and funds with some flexibility in determining the specific means of compliance with the rule. The requirements of the rule could be met, for instance, by simply having the custodian send a letter to the fund, citing as consideration the continued ability of the custodian to provide custodial services for the fund. The costs associated with this method of compliance would be minimal.[38]

Rule 17f–4 requires that custodians (or securities depositories) provide reports on internal accounting controls to funds. The costs associated with providing copies of existing reports to funds should be minimal. The amendments do not require the preparation of new reports.

IV. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when it engages in rulemaking and is required to determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[39] The Commission has considered these factors.

As noted above, we received three letters on whether a fund, when it holds securities that are ultimately custodied with a foreign custodian or depository, should be subject to rules 17f–5 or 17f–7. We have decided not to apply the foreign custody rules in these circumstances in part because U.S. depositories are regulated by the Commission as registered clearing agencies, and it would be inefficient to subject these depositories to the additional requirement in rules 17f–5 and 17f–7.[40]

The rule amendments should promote efficiency by eliminating the restrictions on the functions that a depository may perform. The amendments permit a fund to use a depository that holds securities that are acquired or disposed of by bookkeeping entry as well as those that are conveyed by physical delivery. The amendments therefore should facilitate the use of centralized custody arrangement for investors. This change may promote efficiency because it is easier and less costly to clear and settle transactions with a single entity that can hold almost all of the assets of a fund, rather than with several entities. In addition, the rule amendments will promote efficiency by eliminating the requirement that fund directors approve custody arrangements, which will allow directors to focus on other, more important matters, and by eliminating four custodial compliance requirements that are no longer necessary for the protection of fund assets.

The rule amendments will not have a significant impact on competition and capital formation. The amendments may marginally promote competition by permitting all registered investment companies, including UITs and face-amount certificate companies, to rely on the rule. As noted above, previously only registered management investment companies could use a securities depository under the rule.

V. Summary of Final Regulatory Flexiblity Analysis

We have prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604, related to the amendments to rule 17f–4 under the Investment Company Act of 1940 that we are adopting today. A summary of the Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release.[41] Copies of the FRFA and the IRFA may be obtained by contacting Hugh P. Lutz, Attorney, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506

A. Need for Rule Amendments

The FRFA summarizes the background of the amendments. The FRFA also discusses the reasons for the new rule and amendments and the objectives of, and legal basis for, these rulemaking initiatives. Those items are discussed above in this Release.[42] The FRFA discusses the effect of the amendments on small entities.

B. Significant Issues Raised by Public Comment

The Commission received no comments on the IRFA.

C. Small Entities Subject to the Rule Amendments

The FRFA addresses the effect that amendments to rule 17f–4 will have on small entities. For purposes of the

[21] Rule 17f–4(a)(2). As proposed, rule 17f–4 also would have required custodians to provide available reports on the internal accounting controls of any securities depository (or its operator) and any intermediate custodian. In response to comments questioning funds' need for these financial reports, we are not adopting the proposed provision. Because Revised Article 8 generally limits a fund's recourse to its own custodian, reports on intermediaries with which it does not directly deal are likely to be less important to the fund.

[22] Rule 17f–4(b)(1)(ii).

[23] 17 CFR 270.17f–5, 270.17f–7.

[24] See Proposing Release, *supra* note 7, at nn.67–76 and accompanying text.

[25] See section 17A of the Securities Exchange Act [15 U.S.C. 78q–1].

[26] See Proposing Release, *supra* note , at n.73 and accompanying text.

[27] *See, e.g.*, Self-Regulatory Organizations: The Depository Trust Company, Securities Exchange Act Release No. 39657 (Feb. 12, 1998) [63 FR 8725 (Feb. 20, 1998)] (notice of proposed link between DTC and Canadian securities depository); Self-Regulatory Organizations; The Depository Trust Company, Securities Exchange Act Release No. 40523 (Oct. 6, 1998) [63 FR 54739 (Oct. 13, 1998)] (order approving proposed link).

[28] Rule 17f–5 generally requires that a fund's board of directors or its delegate determine that (i) a fund's financial assets will be subject to reasonable care, based on the standards applicable *in the relevant market*, and (ii) the arrangement with the foreign custodian is governed by a written contract that meets specified standards.

[29] Similarly, we have not revised rule 17f–4 to except a fund from the foreign custody rules if the fund maintains financial assets with a foreign custodian or depository with which a U.S. depository has established a link that we have approved. One commenter suggested in an earlier letter that the costs of complying with the foreign custody rules are relatively fixed, and that the addition or subtraction of institutions therefore would not have a significant effect on those costs. *See* Letter from Daniel L. Goelzer, Baker & McKenzie, to C. Hunter Jones, SEC, at p.4 (Oct. 17, 2001). Moreover, the analysis required by rule 17f–7 can provide custodians and funds with current information regarding a foreign depository's expertise and market reputation, the quality of its services, and its financial strength. This information can play an important role in any future custody decisions made by funds and their advisers.

[30] These estimates are based on statistics compiled by Commission staff from January 1, 2002 through December 31, 2002.

[31] The three custodial compliance requirements are the segregation, earmarking, and confirmation requirements.

[32] The staff estimates that, in order to comply with the rule, each custodian spends about 10 hours segregating, 250 hours earmarking, and 250 hours on daily confirmations to funds. (510 hours × 130 custodians = 66,300 total hours by all custodians).

[33] The following is an estimated breakdown of the annual cost for custodians to comply with the three compliance requirements:

Segregation—10 total hours: 5 hours of support staff and 5 hours by professional staff.

Earmarking—250 hours: 125 hours of support staff and 125 hours of professional staff.

Daily Confirmations—250 hours: 250 hours of support staff.

Total: 380 hours of support staff ($31 per hour) and 130 hours of professional staff ($128 per hour). (380 × $31) + (130 × $128) = $28,420 × 130 custodians = $3,694,600.

[34] *See* Proposing Release, *supra* note , at nn.30–34 and accompanying text.

[35] *See supra* Section II.A.

[36] *See* Proposing Release, *supra* note , at nn.85–89 and accompanying text.

[37] Rule 17f–4(a)(1).

[38] Approximately 49 funds deal directly with securities depositories. In these cases, compliance with rule 17f–4 can occur simply by having the depository modify its written rules for its participants, if necessary.

[39] 15 U.S.C. 80a–2(c).

[40] *See supra* Section II.D.

[41] *See* Proposing Release, *supra* note , at Section VI.

[42] *See supra* Section II.

Regulatory Flexibility Act,[43] a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[44] Approximately 4,850 registered investment companies, including approximately 233 registered investment companies that are small entities, will be affected by amended rule 17f–4.[45] Approximately 130 custodians, most of which are banks or registered broker-dealers, will be affected by rule 17f–4. Few if any of these custodians are small entities.[46] Approximately 25 entities that could serve as securities depositories will be affected by the rule;[47] few if any of these entities are small entities. The rule imposes conditions for the use of securities depositories by all funds regardless of the size of the fund, its custodian, or the securities depository. The risks attendant to funds' use of securities depositories do not vary based on the size of the entities involved.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments will significantly ease rule 17f–4's reporting, recordkeeping, and other compliance requirements. The amendments eliminate a number of specific requirements[48] and substitute two general compliance requirements for custodians and depositories.[49] First, the custodian must, at a minimum, exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets.[50] If the fund deals directly with a depository, the fund's contract with the securities depository (or the depository's own written rules for its participants) must provide that the depository will meet similar obligations.[51] Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.[52] If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will provide similar financial reports.[53]

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap, or conflict with the rule amendments.

F. Agency Action to Minimize Effect on Small Entities

In connection with the amendments, the Commission considered the following alternatives: (i) Establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating or simplifying the compliance requirements for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of all or part of the rule.

We do not believe that special compliance, timetable, or reporting requirements or an exemption from coverage of the rule for small entities would be consistent with investor protection. Similarly, any further clarification, consolidation, or simplification of the reporting requirements for small entities could compromise the safeguards embodied in the new rule and amendments. The rule amendments use performance, rather than design standards, in the sense that the amendments require that custodians exercise due care in accordance with reasonable commercial standards in discharging their duty as a securities intermediary to obtain and thereafter maintain financial assets.

VI. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of the amendments to rule 17f–4 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act [44 U.S.C. 3501–3520] ("PRA"). We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Custody of Investment Company Assets with a Securities Depository." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. The OMB control number for rule 17f–4 is 3235–0225.

As discussed above, today we are adopting amendments to rule 17f–4 that are substantially similar to the amendments that we proposed in November 2001. The amendments permit additional types of investment companies to rely on the rule, and allow depositories to perform additional functions under the rule. The amendments also eliminate a number of specific custodial compliance requirements of rule 17f–4, and substitute two more general compliance requirements. None of the commenters addressed the PRA burden associated with these amendments.

VII. Statutory Authority

The Commission is amending rule 17f–4 pursuant to the authority set forth in sections 6(c), 17(f), 26, 28, 30, 31, and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–6(c), 80a–17(f), 80a–26, 80a–28, 80a–29, 80a–30, and 80a–37(a)].

Text of Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is revised to read as follows:

List of Subjects in 17 CFR Part 270

Incorporation by reference, Investment companies, Reporting and recordkeeping requirements, Securities.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted;

* * * * *

2. Section 270.17f–4 is revised to read as follows:

§ 270.17f–4 Custody of investment company assets with a securities depository.

(a) *Custody arrangement with a securities depository.* A fund's custodian may place and maintain financial assets, corresponding to the fund's security entitlements, with a securities depository or intermediary custodian, if the custodian:

(1) Is at a minimum obligated to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain such financial assets;

(2) Is required to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the custodian; and

(3) Requires any intermediary custodian at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the security entitlements of its entitlement holders.

(b) *Direct dealings with securities depository.* A fund may place and maintain financial assets, corresponding to the fund's security entitlements, directly with a securities depository, if:

(1) The fund's contract with the securities depository or the securities depository's written rules for its participants:

(i) Obligate the securities depository at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the fund's security entitlements; and

(ii) Requires the securities depository to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the securities depository; and

(2) The fund has implemented internal control systems reasonably designed to prevent unauthorized officer's instructions (by providing at least for the form, content and means of giving, recording and reviewing all officer's instructions).

(c) *Definitions.* For purposes of this section the terms:

(1) *Clearing corporation, financial asset, securities intermediary, and security entitlement* have the same meanings as is attributed to those terms in § 8–102, § 8–103, and §§ 8–501 through 8–511 of the Uniform Commercial Code, 2002 Official Text and Comments, which are incorporated by reference in this section pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Uniform Commercial Code from the National Conference of Commissioners on Uniform State Laws, 211 East Ontario Street, Suite 1300, Chicago, Il 60611. You may inspect a copy at the following addresses: Louis Loss Library, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, and Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(2) *Custodian* means a bank or other person authorized to hold assets for the fund under section 17(f) of the Act (15 U.S.C. 80a–17(f)) or Commission rules in this chapter, but does not include a fund itself, a foreign custodian whose use is governed by § 270.17f–5 or § 270.17f–7, or a vault, safe deposit box, or other repository for safekeeping maintained by a bank or other company whose functions and physical facilities are supervised by a federal or state authority if the fund maintains its own assets there in accordance with § 270.17f–2.

(3) *Fund* means an investment company registered under the Act and, where the context so requires with respect to a fund that is a unit investment trust or a face-amount certificate company, includes the fund's trustee.

(4) *Intermediary custodian* means any subcustodian that is a securities intermediary and is qualified to act as a custodian.

(5) *Officer's instruction* means a request or direction to a securities depository or its operator, or to a registered transfer agent, in the name of the fund by one or more persons authorized by the fund's board of directors (or by the fund's trustee, if the fund is a unit investment trust or a face-amount certificate company) to give the request or direction.

(6) *Securities depository* means a clearing corporation that is:

(i) Registered with the Commission as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1); or

(ii) A Federal Reserve Bank or other person authorized to operate the federal book entry system described in the regulations of the Department of Treasury codified at 31 CFR 357, Subpart B, or book-entry systems operated pursuant to comparable regulations of other federal agencies.

Dated: February 13, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[43] 5 U.S.C. 601–612.

[44] 17 CFR 270.0–10.

[45] There are approximately 5,000 registered investment companies, including 240 small entities. Approximately 97 percent of registered investment companies (4,850) report that they maintain assets in securities depositories. Assuming that a proportionate number of small entities use securities depositories, then approximately 233 registered investment companies that are small entities will be affected by the rule amendments.

[46] A bank is considered by the Small Business Administration to be a small entity if it has less than $150 million in assets. *See* 13 CFR 121.201 (1999). *See also* 5 U.S.C. 601(3).

[47] This includes approximately 12 Federal Reserve Banks and 13 registered clearing agencies.

[48] *See supra* Section II.C.

[49] Rule 17f–4(a) and (b)(1).

[50] Rule 17f–4(a)(1).

[51] Rule 17f–4(b)(1)(i).

[52] Rule 17f–4(a)(2).

[53] Rule 17f–4(b)(1)(ii).

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H.R. 16/P.L. 108–6

To authorize salary adjustments for Justices and judges of the United States for fiscal year 2003. (Feb. 13, 2003; 117 Stat. 10)

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH13

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Cask System Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 3 to Certificate of Compliance Number 1026. Amendment No. 3 will modify the Technical Specifications. The current Technical Specifications require that if the W–21 canister is required to be removed from its storage cask, then the canister must be returned to the spent fuel building. The modified Technical Specifications will provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, Technical Specifications 3.3.2 and 3.3.3 propose returning the W–21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to Technical Specifications 3.1.1, 3.3.2, and 3.3.3.

DATES: The final rule is effective May 7, 2003, unless significant adverse comments are received by March 24, 2003. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report can be found under ADAMS Accession No. ML023310579. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

CoC No. 1026, the revised Technical Specifications (TS), the underlying Safety Evaluation Report (SER) for Amendment No. 3, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on January 16, 2001 (66 FR 3444), that approved the FuelSolutions™ cask design and added it to the list of NRC-approved cask designs in § 72.214 as CoC No. 1026.

Discussion

On May 28, 2002, and as supplemented October 3, 2002, the certificate holder, BNFL Fuel Solutions, submitted an application to the NRC to

amend CoC No. 1026 to change the W–21 canister Technical Specifications (TS) and bases to provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, TS 3.3.2 and TS 3.3.3 propose returning the W–21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to TS 3.1.1, TS 3.3.2, and TS 3.3.3. No other changes to the FuelSolutions™ cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the FuelSolutions™ cask design listing in § 72.214 by adding Amendment No. 3 to CoC No. 1026. The amendment consists of changes to the TS to provide an alternative to returning the W–21 canister to the spent fuel building by returning it to the transfer casks. The amendment also includes several editorial changes. The particular Technical Specifications that are changed are identified in the NRC staff's SER for Amendment No. 3.

The amended FuelSolutions™ cask system, when used under the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1026 is revised by adding the effective date of Amendment Number 3.

Procedural Background

This rule is limited to the changes contained in Amendment 3 to CoC No. 1026 and does not include other aspects of the FuelSolutions™ cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on May 7, 2003. However, if the NRC receives significant adverse comments by March 24, 2003, then the NRC will publish a document that withdraws this action and will address the comments, received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**, in a subsequent rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the FuelSolutions™ cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the FuelSolutions™ cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment No. 3 will modify the present cask system design to change the W–21 canister Technical Specifications (TS) and bases to provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, TS 3.3.2 and TS 3.3.3 propose returning the W–21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to TS 3.1.1, TS 3.3.2, and TS 3.3.3.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On January 16, 2001 (66 FR 3444), the NRC issued an amendment to part 72 that approved the FuelSolutions™ cask design by adding it to the list of NRC-approved cask designs in § 72.214. On May 28, 2002, and as supplemented October 3, 2002, the certificate holder, BNFL Fuel Solutions Corporation, submitted an application to the NRC to modify the Technical Specifications (TS). The current TS require that if the W–21 canister is required to be removed from its storage cask, then the canister must be returned to the spent fuel building. The modified TS will provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, TS 3.3.2 and TS 3.3.3 propose returning the W–21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to TS 3.1.1, TS 3.3.2, and TS 3.3.3.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and BNFL Fuel Solutions Corporation. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1026 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1026.
Initial Certificate Effective Date: February 15, 2001.
Amendment Number 1 Effective Date: May 14, 2001.
Amendment Number 2 Effective Date: January 28, 2002.
Amendment Number 3 Effective Date: May 7, 2003.
SAR Submitted by: BNFL Fuel Solutions Corporation.
SAR Title: Final Safety Analysis Report for the FuelSolutions™ Spent Fuel Management System.
Docket Number: 72–1026.
Certification Expiration Date: February 15, 2021.

Model Number: WSNF–220, WSNF–221, and WSNF–223 systems; W–150 storage cask; W–100 transfer cask; and the W–21 and W–74 canisters.

* * * * *

Dated in Rockville, Maryland, this 7th day of January, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–4107 Filed 2–20–03; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") is amending the Appliance Labeling Rule ("Rule") to require clothes washer manufacturers to submit their annual energy data for clothes washers on October 1 rather than March 1 as currently required. This change will make FTC's reporting date consistent with that of the Canadian energy labeling program.

EFFECTIVE DATE: February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889); *hnewsome@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Appliance Labeling Rule in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 ("EPCA").[1] The Rule covers, among other things, eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditioners.

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the Department of Energy ("DOE") test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. The Rule requires manufacturers to include, on labels, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models similar to the labeled model.

The Rule requires manufacturers, after filing an initial report, to report annually the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. 16 CFR 305.8(b). Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under Section 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

II. Changes to Reporting Date for Clothes Washers

In a February 7, 2003 letter to Commission staff, the Association of Home Appliance Manufacturers (AHAM) requested that the Commission amend the reporting date for clothes washer data from March 1 to October 1 of each year. This change will ensure that FTC's submission deadline is consistent with the Canadian reporting period for clothes washers. The Canadian program, administered by Natural Resources Canada, provides manufacturers with a three month period to submit data, which usually begins sometime in September of each year. This amendment will allow manufacturers to compile and submit their annual reports to both agencies in the same time period.

For this year, the change in reporting date will also allow manufacturers to provide the FTC with new energy information based on the most recent DOE test procedure for these products. A new DOE test procedure for clothes washers (see 10 CFR Part 430, Subpt. B, App. J1) and a new energy standard for clothes washers will become effective on January 1, 2004.[2] For any particular model, the application of the new test procedure is likely to produce energy consumption figures different from those yielded by the existing DOE test. The current ranges of comparability for clothes washers are based on data for models that have been tested under the current DOE test. AHAM has indicated that it plans to submit data in October 2003 for clothes washers that comply with the 2004 standard and have been tested under the new procedure. This will allow the Commission to review this data and, if appropriate, publish new ranges that reflect new 2004 compliant models tested under the new procedure. Clothes washer labels printed in early 2004 would then provide energy consumption figures and ranges of comparability that reflect the new procedure. By publishing the new ranges as early as possible, the Commission hopes to reduce any confusion that may result from the transition from the old test procedure to the new one.

In its February 7, 2003 letter, AHAM also requested that the Commission allow its members to use the new test results for EnergyGuide labels printed before January 1, 2004. AHAM also proposed clarifying changes to the clothes washer label. The Commission will address these additional issues separately.

III. Non-Substantive Change to Dishwasher Reporting Date

The Commission is also amending the language in the Rule in §§ 305.8(b) and 305.10(a) to eliminate obsolete language related to the publication of ranges and the submission of data for dishwashers in 2002 (see 67 FR 35008 (May 17, 2002)).

IV. Administrative Procedure Act

The amendments published in this notice involve minor, procedural changes to the submission date for data already required by the Rule. These technical amendments merely alter the dates on which compliance is required and do not affect the requirements of the Rule nor do the amendments alter the frequency with which regulated entities must comply with these requirements. Accordingly, the Commission finds for good cause that public comment and a 30-day effective date for these technical, procedural amendments are unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] *See* 62 FR 45484 (August 27, 1997) and 66 FR 3314 (January 12, 2001).

V. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. The amendments merely alter the dates on which compliance is required and do not affect the requirements of the rule nor do the amendments alter the frequency with which regulated entities must comply with these requirements. Thus, the amendments will not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

In a 1988 notice (53 FR 22113), the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[3] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget ("OMB") and assigned OMB Control No. 3084–0068. OMB has again reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. In § 305.8, paragraph (b) is revised to read as follows:

§ 305.8 Submission of data

* * * * *

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators	Aug. 1
Refrigerator-freezers	Aug. 1
Freezers	Aug. 1
Central air conditioners	July 1
Heat pumps	July 1
Dishwashers	June 1
Water heaters	May 1
Room air conditioners	May 1
Furnaces	May 1
Pool heaters	May 1
Clothes washers	Oct. 1
Fluorescent lamp ballasts	Mar. 1
Showerheads	Mar. 1
Faucets	Mar. 1
Water closets	Mar. 1
Urinals	Mar. 1
Fluorescent lamps	Mar. 1 [Stayed]
Medium Base Compact Fluorescent Lamps	Mar. 1 [Stayed]
Incandescent Lamps, incl. Reflector Lamps	Mar. 1 [Stayed]

(2) All revisions to such data (both additions to and deletions from the preceding data) shall be submitted to the Commission as part of the next annual report period.

3. In § 305.10, paragraph (a) is revised to read as follows:

§ 305.10 Ranges of estimated annual energy consumption and energy efficiency ratings.

(a) The range of estimated annual energy consumption or energy efficiency ratings for each covered product (except fluorescent lamp ballasts, showerheads, faucets, water closets or urinals) shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the product. The Commission shall publish revised ranges annually in the **Federal Register**, if appropriate, or a statement that the specific prior ranges are still applicable for the new year. Ranges will be changed if the estimated annual energy consumption or energy efficiency ratings of the products within the range change in a way that would alter the upper or lower estimated annual energy consumption or energy efficiency rating limits of the range by 15% or more from that previously published. When a range is revised, all information disseminated after 90 days following the publication of the revision shall conform to the revised range. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–4079 Filed 2–20–03; 8:45 am]

BILLING CODE 6750–01–P

[3] 44 U.S.C. 3501–3520.

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D001]

Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

SUMMARY: DOD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1008 of the National Defense Authorization Act for Fiscal Year 2001. Section 1008 requires contractors to submit, and DOD to process, payment requests in electronic form.

DATES: *Effective date:* March 1, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before April 22, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D001 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D001.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds a new DFARS subpart and a contract clause to implement section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). The rule—

- Requires contractors to submit electronically, and DOD to process electronically, requests for payment under DOD contracts;
- Requires DOD to transmit any supporting documentation electronically within DOD;
- Identifies three acceptable electronic forms for transmission of payment requests; and
- Identifies six specific situations where using electronic payment methods is unduly burdensome.

DOD published a proposed DFARS rule in the **Federal Register** on May 31, 2002 (67 FR 38057). Seventeen respondents submitted comments on the rule. Based on an analysis of these comments, DOD has made substantive changes to the rule, and, therefore, has published an interim rule with another request for comments. The main difference between the proposed and interim rules is that one of the six exemption categories has changed. In the proposed rule, at DFARS 232.7002(a)(6), an exemption applied to cases where the Secretary of Defense determines that the requirement for using electronic means is unduly burdensome. In the interim rule, the exemption has been revised to apply in those cases where the contractor is unable to submit, or DOD is unable to receive, a payment request in electronic form, and the contracting officer, the payment office, and the contractor mutually agree to an alternative method. This revised exemption provides contracting officers the flexibility to work solutions to unique payment situations to ensure that contractors are paid on time for work they have performed. In addition, the interim rule revises the clause at DFARS 252.246–7000, Material Inspection and Receiving Report, to state that contractor submission of material inspection and receiving information by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA) electronic form fulfills the requirement for a material inspection and receiving report (DD Form 250).

A discussion of the comments on the proposed rule is provided below.

1. *Comment:* Completely support the rule as it will reduce administrative cost, time, and effort, and will further speed payment to the contractor. *DOD Response:* Concur.

2. *Comment:* Does the requirement to submit payment requests in electronic form apply to contracts without solicitations? *DOD Response:* Yes. "Solicitation" means any request to submit offers or quotations to the government, and, therefore, would cover the great majority of procurements. As indicated at DFARS 201.304(6), "The Director of Defense Procurement and Acquisition Policy publishes changes to the DFARS in the **Federal Register** and electronically via the World Wide Web. Each change includes an effective date. Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change." If no solicitation is issued, the rule applies to contracts issued after the effective date.

3. *Comment:* Recommend clarification in DFARS 232.7004 that the contract clause is only to be used in solicitations and contracts resulting from solicitations first issued after October 1, 2002. *DOD Response:* Do not concur. The normal practice is to cite the effective date in the **DATES** section of the **Federal Register** notice, and not in the regulations. This eliminates the need to revise the regulations later to remove obsolete dates. The effective date for this interim rule is March 1, 2003, to allow payment systems to complete the latest upgrades and provide military departments and defense agencies sufficient time to finalize implementation plans with contractors.

4. *Comment:* There are many problems with the WAWF–RA software application, such as—

a. The current version of WAWF–RA does not process Foreign Military Sales (FMS);

b. If a mistake is made when processing the electronic DD Form 250 (Material Inspection and Receiving Report), the program will not allow changes and the submitter has to initiate a completely new DD Form 250. If a change has to be made after the DD Form 250 is accepted, the payment request must be processed manually; and

c. Construction contracts should be exempt, because the percentage of completion progress payments under construction contracts require so much paperwork, and because the contracting officer needs to approve the invoice and make sure the progress payments are correct.

DOD Response: The WAWF–RA software is an evolving application and will mature over time. Various software modules/versions are currently in development that will process additional types of invoices in the future, such as FMS, construction contracts, and discounts. For example, the FMS module will be added to the WAWF–RA system in the spring of 2003. It is noted that, until such time as WAWF–RA processes the above mentioned types of invoices, the contracting officer may authorize a contractor to submit a payment request in other than electronic form (see DFARS 232.7002(a)(6)).

5. *Comment:* The respondent inquired about using WAWF–RA for a contract with the Defense Contract Management Agency (DCMA), but was advised that WAWF–RA was still being tested. *DOD Response:* The various versions of WAWF–RA go through a number of tests before deployment. For example, WAWF–RA, Version 3.0, currently is being tested, with full deployment anticipated in the spring of 2003. The respondent needs to contact DCMA again for further guidance.

6. *Comment:* DOD has not yet put into place fully functional electronic commerce systems that interface with all DOD payment systems for all invoice types. For example, the WAWF–RA system will not currently accept the electronic submission of the following invoice types: performance-based payments, commercial financing requests, invoices containing withholds, corrected invoices, credit invoices, and classified invoices. *DOD Response:* Classified invoices are exempt from the electronic submission requirement in accordance with DFARS 232.7002(a)(3). The other types of invoices and financing requests will be addressed in a future version of WAWF–RA.

7. *Comment:* The benefits of DOD's successful "Direct Submittal" initiative needs to be retained. If invoices must be routed through WAWF–RA rather than directly to the payment systems, WAWF–RA functionally should enable "Direct Submittal" approved contracts to route automatically through to the payment office without any DCMA or Defense Contract Audit Agency (DCAA) manual intervention. To facilitate the electronic payment of invoice requests, government payment practices should be evaluated, and DCMA, DCAA, and the Defense Finance and Accounting Service (DFAS) should issue clear guidance to eliminate, wherever possible, invoice backup documentation and administrative contracting officer (ACO) approvals. *DOD Response:* Submission of invoices under "Direct Submittal" approved contracts will be addressed in a future WAWF–RA version, which is currently being tested.

8. *Comment:* The WAWF–RA system has a major problem, namely, it only allows for 1 MG of attachments. *DOD Response:* WAWF–RA is being modified to accept attachments up to 5 MG.

9. *Comment:* The respondent tried in the past to sign up for Web invoicing, but could not use the application because of a restriction on its use if the DD Form 250 (Material Inspection and Receiving Report) had to be signed by an ACO. Is the restriction still in effect, or is there another form of transmission that can accommodate a signed DD Form 250? *DOD Response:* DFARS 252.246–7000, Material Inspection and Receiving Report, has been revised to state that using WAWF–RA to submit material inspection and receiving information fulfills the requirement for a DD Form 250. WAWF–RA will support ACOs electronically signing material inspection and receiving information when they are accepting supplies or services or when they are approving service invoices.

10. *Comment:* There is a conflict between the proposed DFARS coverage and the existing DFARS concerning the use of DD Form 250, which can be used as a receiving report and/or invoice. Suggest that the language in existing DFARS 246.370 or DFARS Appendix F, Material Inspection and Receiving Report, be revised to conform to the objectives of the WAWF–RA program. *DOD Response:* Concur. Each delivery of supplies or services (except deliveries under Fast Payment Procedures—FAR subpart 13.4) requires evidence of acceptance, which is normally documented by a DD Form 250. Prior to implementation of this rule, DFARS 252.246–7000 required the contractor to prepare and submit the DD Form 250 by following the instructions in DFARS Appendix F. The conflict arose because the DFARS required contractors to submit a paper copy of DD Form 250, whereas the proposed DFARS rule required contractors to submit payment requests, including material inspection and receiving reports, in electronic form. To eliminate the conflict, the rule has been revised at DFARS 252.246–7000 to state that contractor submission of material inspection and receiving information by using the WAWF–RA electronic form fulfills the requirement for a material inspection and receiving report.

11. *Comment:* Exclude DD Form 250 from initial coverage under DFARS 232.7002(b). It will be more cost-effective at the outset to allocate scarce resources to comply first with the statutory requirement for electronic submission of *invoices* and then focus on developing an electronic solution for processing the DD Form 250 receiving reports and other supporting documentation. *DOD Response:* Section 1008(a) Public Law 106–398, as implemented by DFARS 232.7002(b), directs DOD officials to process payment requests and "any additional documentation necessary to support the determination and payment" of the payment requests (*e.g.*, material inspection and receiving information) electronically. The legislation does not permit exclusion of the information on the DD Form 250 from the electronic processing requirement, unless the contractor is not required to submit the payment request electronically.

12. *Comment:* October 1, 2002, is premature for implementation of this requirement:

a. Recommend that DOD not require electronic payment in solicitations until after June 30, 2003; this will give more time for the process to mature and for problems to be worked out.

b. The proposed implementation date of October 1, 2002, is not possible for several reasons, including that the WAWF–RA system is not sufficiently programmed to accept all contract invoices, and training will take time.

c. To avoid a huge influx of vendors on October 1, 2002, new solicitations over $100,000 should be implemented on October 1, 2002, and solicitations under $100,000 should be phased in over the next year.

d. For the past several years, the respondent's company has been in the process of converting to another electronic system, which will go live in the first quarter of 2003. The company intends to wait to switch to the government electronic data interchange (EDI) electronic invoicing system until it transitions to its new system.

e. Not all of DFAS Columbus Commercial Pay Services' entitlement systems will be capable of receiving and processing invoices and receiving reports electronically by the October 2002 implementation date.

f. DFAS Columbus systems will not be able to accommodate the variety of supporting documentation currently required to be submitted with invoices, *e.g.*, the 591 Report on contracts issued by the Defense Reutilization and Marketing Service, and non-standard supporting documentation required for Public Vouchers (SF 1034).

g. Is the date of June 30, 2001, referred to in the **Federal Register** Background **SUPPLEMENTARY INFORMATION** correct, or should it be June 30, 2002?

DOD Response: The original applicability date for compliance with the electronic invoicing legislative requirement was June 30, 2001; however, the legislation also permitted DOD to delay implementation of section 1008 to no later than October 1, 2002. Accordingly, DOD published a notice in the **Federal Register** (66 FR 43841) on August 21, 2001, which announced a delay in implementation until October 1, 2002. Because DOD's automated payment systems were limited to certain types of payment requests, DOD was unable to meet the October 1, 2002, statutory implementation date. By March 1, 2003, the systems will be capable of processing nearly 100 percent of payment requests. For those systems that are not ready, the interim rule provides the contracting officer the

flexibility to work solutions to unique payment situations to ensure that contractors are paid on time for work they have performed.

13. *Comment:* Recommend that DOD establish reasonable and flexible grace periods to enable contractors to convert from paper invoices to electronic submissions as either new DOD payment systems or invoice types are incorporated into the WAWF–RA or other electronic systems. This flexibility should also specifically include permitting a contractor to use only one payment request system for all of its covered contracts. *DOD Response:* Partially concur. Use of an electronic form other than one of the forms listed at DFARS 232.7003(a) was already permitted by DFARS 232.7003(b)(1) of the proposed rule (now DFARS 232.7003(b)). The DFARS language does not prohibit the contractor from using one payment request system for all of its covered contracts. However, DOD has revised the rule at DFARS 252.232–7003(c) to permit, *either before or after contract award*, the contractor (with the agreement of the contracting officer and the payment office) to use a nonelectronic method in certain circumstances.

14. *Comment:* There has not been any word about WAWF–RA in several years. *DOD Response:* Information on DOD's WAWF–RA is readily available from numerous sources on the Internet, including: *http://www.wawftraining.com/* for online WAWF training; *https://rmb.ogden.disa.mil* for general information on WAWF or to register; *www.dcma.mil* (click on Electronic Invoicing) for DCMA; *www.dfas.mil/ecedi* for DFAS; *www.disa.mil* and *wawf-ra@ncr.disa.mil* for the Defense Information Systems Agency; and *www.peoards.navy.mil* (click on Initiatives, WAWF) for the Department of the Navy.

15. *Comment:* Training information and other assistance should be made available, particularly to small businesses, to assist in complying with the interim DFARS rule. It would also be beneficial for DOD to schedule public meetings to discuss important implementation actions required of both DOD activities and contractors. *DOD Response:* Information and training are readily available for contractors and DOD personnel via the Internet addresses identified in DOD Response to Comment #14. Computer-based training is also available on compact disk. DOD military departments and defense agencies also may provide supplemental training.

16. *Comment:* Field activities are not provided additional manning to implement electronic invoicing. Learning to use WAWF–RA is very time consuming, but easy to use after you learn how to use it. There are insufficient travel funds to train vendors in remote Alaskan locations. *DOD Response:* Refer to DOD responses to Comments #14 and #15.

17. *Comment:* Many small businesses will be unable to submit invoices electronically on their own. There is concern about small business contractors that are not on line yet. Some small businesses do not own a computer, and the rule may deter them from doing business with the government. The government's new e-payment requirement may alienate many small businesses. There will be a great deal of difficulty for DOD contractors, particularly small businesses, to comply with the rule. *DOD Response:* DOD invited small businesses to submit comments on the proposed DFARS rule; however, none were received. There is no indication from small business concerns that they will be unable to comply with the rule. In addition, the interim rule removes the higher-level waiver request provision of the proposed rule. The new paragraph (a)(6) of DFARS 232.7002 provides authority for the contracting officer to permit the contractor to submit a payment request using an alternative method, if the contracting officer, the payment office, and the contractor mutually agree.

18. *Comment:* Recommend including a definition of "unduly burdensome" and to whom it applies (contractor or payment office). *DOD Response:* The interim rule removed the term "unduly burdensome." Therefore, a definition is unnecessary.

19. *Comment:* DOD should acknowledge the implementation challenges and address enforcement accordingly. Initially, broad waiver polices should be issued, including requiring clear documentation as part of the contract file without the need for higher-level approvals. *DOD Response:* DOD agrees that higher-level approval of waiver requests is unnecessary. Accordingly, as indicated in DOD Response to Comment #17, the interim rule has been revised to provide authority to the contracting officer.

20. *Comment:* The following types of low volume invoices should be specifically enumerated in DFARS 232.7002(a)(6) (regarding SECDEF waiver if unduly burdensome): alternate liquidation rate billing adjustments, short payment refund requests, retroactive contract price change billings, etc. *DOD Response:* It is inappropriate to waive low volume type invoices, *e.g.*, short payment refund requests, retroactive contract price change billings, etc. (Alternate liquidation rate billing adjustments are not invoices but adjustments to prior billings.) Although current systems may not be able to accommodate electronic processing of them, it is anticipated that future editions of WAWF–RA, Web Invoicing System (WInS), or American National Standards Institute (ANSI) X.12 EDI formats will. If the government is unable to receive such payment requests in electronic form, DFARS 252.232–7003(c) permits the contractor, with the agreement of the contracting officer and the payment office, to use another method.

21. *Comment:* Recommend adding public voucher billings (SF 1034) for cost-reimbursement and time-and-materials contracts to the list of types of payment requests that the contractor must submit in electronic form. *DOD Response:* DFARS 252.232–7003(a)(3) defines payment requests as including both contract financing payments and invoice payments. DFARS 252.232–7003(a)(1) states that contract financing payments and invoice payments have the meanings given in FAR 32.001. Since public vouchers are a type of invoice payment, no change is needed to the rule.

22. *Comment:* Recommend adding a new paragraph (c) to DFARS 232.7002 to make it clear that, while submissions using electronic forms are required, the contracting officer and the contractor may authorize any individual payment request (or group of payment requests) otherwise required to use electronic forms to be submitted using other than electronic forms without constituting a violation of paragraph (b) or paragraph (d) of the 252.232–7003 contract clause. *DOD Response:* DOD agrees that the contracting officer should have discretion on whether to authorize the use of a method other than electronic form. However, rather than adding a new paragraph (c), the interim rule revises the exception at DFARS 232.7002(a)(6) to permit the contractor to submit the payment request in other than electronic form with the agreement of the contracting officer and the payment office.

23. *Comment:* Recommend adding to DFARS 232.7003(b), a description of an acceptable type of concurrence between the payment and contract administration offices, for example, MOU/MOA, or verbal. *DOD Response:* DOD believes it is preferable to provide sufficient flexibility to permit the parties (contracting officer, payment office, and contract administration office) to use any method of documentation that the parties deem appropriate.

24. *Comment:* Recommend adding a new paragraph (7) to DFARS 232.7002(a) to exempt from the inclusion of the clause those situations where the contracting officer knows in advance of the release of the solicitation that, by the time of contract award, contractors will be unable to submit, or the Government will be unable to receive, payment requests using any of the electronic forms, or that there are invoice types for which no cost-effective electronic solution is available. In addition, recommend including a provision (identical to 252.232–7003(b)(4)) to DFARS 232.7003(a) that permits the contracting officer to authorize the use of another electronic form. This authority is particularly critical during the solicitation stage of a procurement. If used, the contracting officer must disclose in the appropriate place in the solicitation the alternatives to the electronic forms designated under 252.232–7003(b)(1) through (b)(3). Paragraph 232.7003(b) is insufficient because it only operates after contract award. *DOD Response:* DOD agrees that it is inappropriate to restrict the contracting officer's exemption authority to only those situations that occur after contract award, and that the exemption authority should apply to both solicitations (pre-award) and contracts (post-award). Accordingly, the interim rule has removed the phrase "after contract award," and provides the contracting officer the authority, either pre-award or post-award, to permit the contractor to use—

a. An electronic form other than one of the forms listed at DFARS 232.7003(a) (*see* DFARS 232.7003(b) and 252.232–7003(b)(4)); or

b. A nonelectronic method (*see* DFARS 232.7002(a)(6) and 252.232–7003(c)).

25. *Comment:* Recommend substituting the word "Government" for the word "DOD" in DFARS 232.7003(b)(2) to be more accurate in assessing capabilities and to be consistent with the use of the phrase in paragraph (c) of 252.232–7003. *DOD Response:* For consistency and because the DFARS only applies to DOD, the term "Government" has been changed to "DOD" in paragraph (c) of 252.232–7003.

26. *Comment:* Recommend adding "as designated by the contracting officer" at the end of the first sentence of 252.232–7003(b), because the contracting officer needs to designate the acceptable format for various reasons, such as standardization at a command, and not all current forms are processed by WAWF–RA and WInS. *DOD Response:* DFARS 232.7003(a) identifies three acceptable electronic forms for the transmission of payment requests, namely, WAWF–RA, WInS, and the ANSI X.12 EDI formats. DOD believes that utilization of these standardized systems will result in more timely and efficient submission and processing of invoices, and will also facilitate timely and accurate payment. However, the proposed and the interim rules do authorize the contracting officer to permit another electronic format (*e.g.*, a locally developed electronic format) if the payment office and the contract administration office concur (*see* DFARS 232.7003(b)).

27. *Comment:* Is there a need to include the agreement of the payment office (as in DFARS 232.7003(b)) in 252.232–7003(c) in order to permit the contractor to use another method of submission of payment requests? In contrast, one respondent recommends adding "and concurred with by the payment office" at the end of DFARS 252.232–7003(b)(4), and another recommends adding "and the payment office" at the end of DFARS 252.232–7003(c). *DOD Response:* Although the contracting officer does have to obtain agreement from the DOD payment office prior to authorizing the contractor to submit a payment request using a different electronic form, this action need not be stipulated in the contract clause at DFARS 252.232–7003. Provisions contained in the contract clause apply to the parties of the contract, namely, the contractor and the contracting officer. Internal DOD procedures need only be included in the text at DFARS subpart 232.70.

28. *Comment:* Recommend adding to DFARS 232.7003(b)(1) a description of electronic forms *other* than those listed. Need clarification of the description of "electronic form" in DFARS 252.232–7003(a)(2). Interpretation of the current wording could lead to the submission of faxed, e-mailed, or scanned documents that are not automatically uploaded into the respective entitlement system. These forms may not have the necessary internal controls associated with receiving these forms. *DOD Response:* The acceptable electronic forms for transmission are WAWF–RA, WInS, and ANSI X.12 EDI formats, as identified in DFARS 232.7003(a) and DFARS 252.232–7003(b). It is not practicable to attempt to list all *other* acceptable electronic forms of transmission that the contracting office may authorize. However, DOD agrees that faxed, e-mail, and scanned documents are *not* considered acceptable electronic means of submission. Therefore, the interim rule revises the definition of "electronic form" at DFARS 252.232–7003(a)(2) by adding the following new sentence: "Facsimile, e-mail, and scanned documents are not acceptable electronic forms."

29. *Comment:* Recommend inserting the phrase "except as provided in 232.7002(a)" at the end of the sentence in DFARS 252.232–7003(a)(3) (*i.e.*, definition of payment request) to recognize that, even though the basic contract payment requests are subject to the standard requirements for using electronic formats, there may be certain specific transactions permitted under the contract where electronic payments would not be feasible or desirable. *DOD Response:* Paragraph (a)(3) of DFARS 252.232–7003 simply defines "payment request." Since it does not address the electronic submission requirement, it would be inappropriate to include a reference to the exceptions in this definition.

30. *Comment:* The respondent is receiving modifications where line items have been established for incremental funding with inspection and acceptance requirements and delivery dates cited. There will not be anything delivered for this funding CLIN. The rule should specify that this type of CLIN should not be established as it impedes the closeout process, and reflects CLINs in the database that will never be satisfied and show up as delinquent line items. *DOD Response:* The comment is outside the scope of this case.

31. *Comment:* Some large businesses indicate that there will be costs for the government to pay for them to switch their method of invoicing. *DOD Response:* The costs to implement a revised method of invoicing is considered a normal cost of doing business and is usually recovered by the contractor as an indirect expense allocable to all contracts. DOD believes that the costs to implement electronic invoicing will be outweighed by the benefits received, such as reduced administrative cost, time, and effort; less payment errors; and more timely payments to contractors.

32. *Comment:* Recommend the use of a program called DESTRAP, which was developed by a local company to process Quality Deficient Reports Form 202. The government owns the rights to this program and it could be modified to use DD Form 250. *DOD Response:* Paragraph (b)(4) of DFARS 252.232–7003 permits the contracting officer to authorize the use of another electronic form.

33. *Comment:* Recommend adding the commercial item financing, FAR clauses 52.232–29 through 52.232–31, to the table in the **Federal Register**. *DOD Response:* The table in the **Federal Register** (67 FR 38057) listed five FAR clauses, currently approved by OMB, that require contractors to collect information in order to provide nonelectronic payment requests. DOD has added the commercial item financing FAR clauses at FAR 52.232–29, Terms for Financing of Purchases of Commercial Items, and FAR 52.232–30, Installment Payments for Commercial Items, to the table since these clauses include the requirement for the contractor to submit payment requests. FAR 52.232–31, Invitation to Propose Financing Terms, invites the offeror to *propose* terms under which the government will make performance-based contract financing payments during contract performance, but does not include the actual requirement for the contractor to submit payment requests, *i.e.*, performance-based financing payments. Therefore, FAR 52.232–31 has not been added to the table in paragraph C. (Paperwork Reduction Act) of the **Federal Register** notice.

34. *Comment:* Concerned that—

(a) DFAS cannot consistently process government purchase card electronic certifications for payment. How will they be consistent with contractors/vendors?

(b) DFAS's current system for receipt of RPR's, invoices, contracts (if not available through the standard procurement system-I) is not consistent; information must be sent multiple times before action/payment is made;

(c) 99 percent of payments made by the respondent's office utilize the government purchase card (an exception). Interest payments have been made to Citibank because of DFAS errors, loss of documents, etc.

DOD Response: The respondent's concerns apply to the government's internal operating procedures, not the proposed DFARS rule, and therefore are outside the scope of this case. However, results from the use of WAWF–RA so far indicate that its use substantially reduces interest payments. For example, DCMA has processed invoices valued at over $700 million using WAWF–RA, with less than $100 in interest penalties.

35. *Comment:* Prompt Payment Act implications regarding invoice receipt dates and the electronic return of improper invoices are not addressed. *DOD Response:* The provisions of the Prompt Payment Act apply to payment requests processed electronically. The Prompt Payment Act is addressed in FAR subpart 32.9 and DFARS subpart 232.9; therefore, it need not be addressed in this DFARS rule.

36. *Comment:* Recommend that DOD describe the interface(s) it will use to accommodate existing contractor systems and quickly publish a detailed implementation schedule for each invoice type, electronic solution, and DOD payment office. *DOD Response:* It is inappropriate to describe electronic interfaces in DFARS; the issue is beyond the scope of the subject case. The respondent's concern will be forwarded to the WAWF–RA Program Office for appropriate action.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DOD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because any start-up costs that contractors will incur to comply with the rule are expected to be minimal, and should be offset by the reduced administrative costs that are expected to result from the electronic submission and processing of invoices. In addition, the rule provides for an exemption to the requirement for electronic submission in cases where the contractor is unable to submit a payment request in electronic form. Therefore, DOD has not performed an initial regulatory flexibility analysis. DOD invites comments from small businesses and other interested parties. DOD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D001.

C. Paperwork Reduction Act

The rule does not impose any additional information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection requirements for contractors to provide nonelectronic payment requests already have been approved by OMB as indicated below.

FAR clause number	Clause title	OMB control number	Expiration date
52.216–7	Allowable Cost and Payment	9000–0069	Dec. 31, 2005
52.232–7	Payments Under Time-and-Materials and Labor-Hour Contracts	9000–0070	July 31, 2005
52.232–12	Advance Payments	9000–0073	July 31, 2005
52.232–16	Progress Payments	9000–0010	Sept. 30, 2005
52.232–29	Terms for Financing of Purchases of Commercial Items	9000–0138	Sept. 30, 2004
52.232–30	Installment Payments for Commercial Items	9000–0138	Sept. 30, 2004
52.232–32	Performance-Based Payments	9000–0138	Sept. 30, 2004

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This action is necessary to implement section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398), which requires contractors to submit, and DOD to process, payment requests in electronic form. The statutory date for implementation of the electronic invoicing requirement was October 1, 2002. However, because DOD's automated payment systems were limited to certain types of payment requests, DOD was unable to meet the October 1, 2002, implementation date. By March 1, 2003, DOD's automated systems will be capable of processing nearly 100 percent of payment requests. Comments received in response to the publication of this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 232—CONTRACT FINANCING

2. Subpart 232.70 is added to read as follows:

Subpart 232.70—Electronic Submission and Processing of Payment Requests

Sec.

232.7000 Scope of subpart.
232.7001 Definitions.
232.7002 Policy.
232.7003 Procedures.
232.7004 Contract clause.

232.7000 Scope of subpart.

This subpart prescribes policies and procedures for submitting and processing payment requests in electronic form to comply with 10 U.S.C. 2227.

232.7001 Definitions.

Electronic form and *payment request*, as used in this subpart, are defined in the clause at 252.232–7003, Electronic Submission of Payment Requests.

232.7002 Policy.

(a) Contractors shall submit payment requests in electronic form, except for—

(1) Purchases paid for with a Governmentwide commercial purchase card;

(2) Awards made to foreign vendors for work performed outside the United States;

(3) Classified contracts or purchases (see FAR 4.401) when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security;

(4) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies;

(5) Purchases to support unusual or compelling needs of the type described in FAR 6.302–2; and

(6) Cases where—

(i) The contractor is unable to submit, or DOD is unable to receive, a payment request in electronic form; and

(ii) The contracting officer, the payment office, and the contractor mutually agree to an alternative method.

(b) DOD officials receiving payment requests in electronic form shall process the payment requests in electronic form. Any supporting documentation necessary for payment, such as receiving reports, contracts, contract modifications, and required certifications, also shall be processed in electronic form.

232.7003 Procedures.

(a) The accepted electronic forms for transmission are—

(1) Wide Area WorkFlow-Receipt and Acceptance (*see* Web site —*https://rmb.ogden.disa.mil);*

(2) Web Invoicing System (*see* Web site—*https://ecweb.dfas.mil);* and

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats (*see* Web site—*http://www.X12.org* for information on EDI formats; *see* Web site—*http://www.dfas.mil/ecedi* for EDI implementation guides).

(b) If the payment office and the contract administration office concur, the contracting officer may authorize a contractor to submit a payment request using an electronic form other than those listed in paragraph (a) of this section.

232.7004 Contract clause.

Except as provided in 232.7002(a), use the clause at 252.232–7003, Electronic Submission of Payment Requests, in solicitations and contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

3. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read "(MAR 2003)"; and

b. In paragraph (b) by adding, in numerical order, the entry "____ 252.232–7003 Electronic Submission of Payment Requests (MAR 2003) (10 U.S.C. 2227).".

4. Section 252.232–7003 is added to read as follows:

252.232–7003 Electronic Submission of Payment Requests.

As prescribed in 232.7004, use the following clause:

Electronic Submission of Payment Requests (MAR 2003)

(a) *Definitions.* As used in this clause—

(1) *Contract financing payment* and *invoice payment* have the meanings given in section 32.001 of the Federal Acquisition Regulation.

(2) *Electronic form* means any automated system that transmits information electronically from the initiating system to all affected systems. Facsmile, e-mail, and scanned documents are not acceptable electronic forms.

(3) *Payment request* means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests using one of the following electronic forms:

(1) Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA). Information regarding WAWF–RA is available on the Internet at *https://rmb.ogden.disa.mil.*

(2) Web Invoicing System (WInS). Information regarding WInS is available on the Internet at *https://ecweb.dfas.mil.*

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats.

(i) Information regarding EDI formats is available on the Internet at *http://www.X12.org.*

(ii) EDI implementation guides are available on the Internet at *http://www.dfas.mil/ecedi.*

(4) Another electronic form authorized by the Contracting Officer.

(c) If the Contractor is unable to submit a payment request in electronic form, or DoD is unable to receive a payment request in electronic form, the Contractor shall submit the payment request using a method mutually agreed to by the Contractor, the Contracting Officer, and the payment office.

(d) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payments requests.

(End of clause)

5. Section 252.246–7000 is revised to read as follows:

252.246–7000 Material Inspection and Receiving Report.

As prescribed in 246.370, use the following clause:

Material Inspection and Receiving Report (MAR 2003)

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR *Supplement.*

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA) electronic form (see paragraph (b)(1) of

the clause at 252.232–7003) fulfills the requirement for a material inspection and receiving report (DD Form 250).

(End of clause)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 223 and 224

[Docket No. 000320077–2302–03; I.D. 062501B]

RIN 0648–AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is amending the turtle excluder device (TED) regulations to enhance their effectiveness in reducing sea turtle mortality resulting from trawling in the southeastern United States. NMFS has determined that: some current approved TED designs do not adequately exclude leatherback turtles and large, immature and sexually mature loggerhead and green turtles; several approved TED designs are structurally weak and do not function properly under normal fishing conditions; and modifications to the trynet and bait shrimp exemptions to the TED requirements are necessary to decrease lethal take of sea turtles. These amendments are necessary to protect endangered and threatened sea turtles in the Atlantic Area (all waters of the Atlantic Ocean south of the North Carolina/Virginia border and adjacent seas, other than the Gulf Area, and all waters shoreward thereof) and Gulf Area (all waters of the Gulf of Mexico west of 81o W. long. and all waters shoreward thereof).

DATES: This final rule will take effect April 15, 2003, however it is not applicable in the Gulf Area until August 21, 2003.

ADDRESSES: Copies of: Epperly, S. P. and W.G. Teas. 2002. Turtle excluder devices - Are the escape openings large enough? Fish. Bull. 100:466–474, can be obtained through the following Web site: *http://fishbull.noaa.gov/fcontent.htm*, or can be requested, along with copies of an Environmental Assessment/Regulatory Impact Review/ Final Regulatory Flexibility Analysis, from the Protected Resources Division, Southeast Regional Office, 9721 Executive Center Drive, North, Suite 102 St. Petersburg, FL, 33702.

FOR FURTHER INFORMATION CONTACT: Robert Hoffman (ph. 727–570–5312, fax 727–570–5517, e-mail *Robert.Hoffman@noaa.gov*), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of trawling activities have been documented in the Gulf of Mexico and along the Atlantic Ocean seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206 and 50 CFR 224.104. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area, Gulf Area, and summer flounder sea turtle protection area, all as defined in 50 CFR 222.102) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs (the flounder TED and the Jones TED), and one type of soft TED (the Parker soft TED).

The TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be at least 97 percent effective in excluding sea turtles during experimental TED testing (50 CFR 223.207(e)). The TED must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape. In the Atlantic Area, these requirements are currently ≥35 inches (≥89 cm) in width and ≥12 inches (gteqt;30 cm) in height. In the Gulf Area, the requirements are ≥32 inches (81 cm) in width and ≥10 inches (≥25 cm) in height (these measurements are taken simultaneously).

The use of TEDs has contributed to population increases documented for Kemp's ridley turtles. Kemp's ridleys are the smallest sea turtle species, and adults can easily pass through the current TED opening dimensions. Once the most critically endangered sea turtle, Kemp's ridley nesting levels have increased from 700–800 per year in the mid–1980's to over 6,000 nests in 2000. Since 1990, corresponding with the more widespread use of TEDs in U.S. waters, the total annual mortality of Kemp's ridley turtles has been reduced by 44–50 percent (TEWG, 2000). NMFS believes that the use of TEDs has had a significant beneficial impact on the survival and recovery of sea turtle species.

NMFS is concerned that TEDs are not adequately protecting all species and size classes of turtles. There is new information showing that 33–47 percent of stranded loggerheads and 1–7 percent of stranded green turtles are too large to fit through the current TED openings. Comprehensive scientific data on the body depths of these turtles were not available when the original TED sizes were specified. The original TED sizes were also much too small to allow leatherback sea turtles the largest species to escape. Instead, NMFS has attempted to address the incidental catch of leatherbacks through a regime of reactive closures that has proven ineffective. There is also concern about the status of loggerhead and leatherback turtle populations: the northern nesting population of loggerheads appears to be stable or declining (TEWG, 2000) and nesting of leatherbacks is declining on several main nesting beaches in the western North Atlantic (NMFS SEFSC, 2001).

NMFS completed a biological opinion (Opinion) in December 2002, on Shrimp Trawling in the Southeastern United States, under the Sea Turtle Conservation Regulations and as managed by the Fishery Management Plans for Shrimp in the South Atlantic and Gulf of Mexico. Based on information in a NOAA technical memorandum completed in November 2002, (NOAA Technical Memorandum NMFS-SEFSC–490) the Opinion estimated that 62,000 loggerhead turtles and 2,300 leatherback turtles are killed as a result of an interaction with a shrimp trawl. Information in this Opinion also indicate that up to 75 percent of the loggerhead turtles in the Gulf of Mexico and about 2.5 percent of

the loggerheads in the Atlantic that encounter a shrimp trawl are too large to escape the current minimum openings. The implementation of this rule, however, is expected to allow all size classes of loggerhead and leatherback turtles to escape. The Opinion estimated that implementation of this rule will decrease shrimp trawl related mortality by 94 percent for loggerheads and 96 percent for leatherbacks.

To protect large green, loggerhead and leatherback turtles NMFS proposed modifying the TED regulations to ensure that TEDs are capable of releasing these large turtles (66 FR 17852, April 5, 2000; 66 FR 50148, October 2, 2001). The proposed changes would have been applicable in all inshore and offshore waters of the Southeast United States as follows: (1) Require all hard TEDs to have a grid with a minimum inside measurement of 32 inch (81 cm) by 32 inch (81 cm); (2) require the use of either the double cover flap TED, a TED with a minimum opening of 71–inch (180–cm) straight-line stretched mesh, or the Parker soft TED with a 96- inch (244–cm) opening; (3) disallow the use of the hooped hard TED; (4) disallow the use of weedless TEDs and the Jones TED; (5) disallow the use of accelerator funnels; (6) require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel; and (7) require the use of tow times on small try nets.

Public Comments

The measures in this final rule are based, in part, on comments received on the Advanced Notice of Proposed Rule Making (ANPR) (65 FR 17852, April 5, 2000), the proposed rule (66 FR 50148, October 2, 2001) and eight public hearings held throughout the southeastern United States. NMFS received 23 comments as a result of the ANPR and 8,273 comments as a result of the proposed rule and public hearings; of the 8,273 responses, 7,714 were letters from the public which were similar in content. NMFS reviewed all of the comments received. Where appropriate, comments are grouped according to general subject matter, and references are made only to some groups or individuals, and not to all groups or individuals who may have made similar comments.

Comment 1: Some fishermen believe that the economic analysis that NMFS completed for the proposed rule is flawed in the following ways: (1) The cost to retrofit TEDs is far too low; (2) the 20 percent profit margin used is too high; (3) the cumulative loss of shrimp as a result of the proposed changes in addition to existing requirements is not considered; (4) an analysis of possible shrimp loss due to the prohibition of accelerator funnels is lacking; (5) the analysis of the economic impact to small businesses is inadequate; (6) the percentage of shrimp loss is too low and should be 15 to 20 percent; (7) information on gear replacement frequency is inaccurate; and (8) the economic analysis does not consider the effects the rule will have on fishermen in combination with depressed shrimp prices.

Response: NMFS has completed a Final Regulatory Flexibility Analysis (FRFA) and Regulatory Impact Review (RIR), in conjunction with an environmental assessment, on this final rule's effects in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order (E.O.) 12866. This EA/RIR/FRFA analyzes this final rule's effects on the shrimp fishery in combination with past TED and Bycatch Reduction Devices (BRD) rules. It also analyzes this final rule's effects on the shrimp fishery in light of current shrimp price information as well as the best available information from existing databases on profit margins, gear costs, and the durability of and cost to replace equipment. The average replacement cost for a leatherback TED was assumed to be $220, 4 TEDS were assumed necessary for small vessels and 8–10 TEDs for large vessels, and the average useful life of a TED was assumed to be 3 years. In the assessment of the proposed rule NOAA Fisheries assumed a 1–year life span for the equipment and used a cost of $45 dollars for replacement. Because the equipment was only expected to last 1 year NOAA Fisheries felt that replacement costs would be low because the fishermen would have to replace the gear anyway so the only actual cost increase would be from the difference in cost of a leatherback TED verses the current TEDs. The assumption of a 20–percent profit margin was eliminated and, instead, vessel profits were internally calculated based on expected revenues and variable costs. Shrimp loss under current regulations as well as the proposed regulations was considered and discussed in the analysis. Estimates of shrimp loss under different TED requirements were derived from test data and provided by the NMFS Southeast Fisheries Science Center (SEFSC). Testing methods are described in the responses to comments 11 and 12 of this section. The tests used currently authorized TEDs which include the use of accelerator funnels.

To incorporate the effects of the depressed shrimp prices, 2001 prices were utilized throughout the assessment. The results of the analysis indicate that, under status quo conditions including depressed shrimp prices, while profits (defined as average revenue minus average variable costs) per vessel in the Southeast shrimp trawl fishery, are expected to increase over the next 5 years, this will be accomplished due to contraction of the fishery in terms of total effort, which is expected to decline by approximately 5.4 percent. The effort contraction is comprised of growth in the small vessel fleet, coupled with reductions in the large vessel fleet. Since large vessels are more costly to operate, the resultant physical profile of the fleet is, on average, smaller with lower variable costs. The net effect is that shrimp landings per vessel increase, while variable costs per vessel decline, resulting in an increase in profits, as defined, per vessel. Revenues remain, however, on the average, insufficient to cover both operating and fixed costs. The net impact of the proposed rule is not expected to significantly adversely affect this outcome, with the change in average profits per vessel ranging from a gain of 0.5 percent to a loss of 2.4 percent from the status quo.

Comment 2: Some fishermen believe that the shrimp fishery is bearing the majority of the burden for the recovery of sea turtles. They feel the government should help them out by implementing such things as: (1) a TEL buy-back program; (2) tax incentives for using TEDs; and (3) price controls and subsidies on shrimp, similar to what corn, soybean, and wheat farmers receive. Fishermen also believe that the government should provide better enforcement of Public Law 101–162 section 609(b). *Response:* Only Congress can authorize programs such as equipment buy-backs, tax incentives, and price controls and subsidies.

Public Law 101–162 section 609(b) prohibits the importation of shrimp harvested with fishing technology that may adversely affect such species of sea turtles. Under section 609, shrimp may be imported from a harvesting nation for which the U.S. government has certified that the nation has demonstrated that its regulatory program governing the incidental taking of sea turtles is comparable to that of the United States. The Court of Appeals for the Federal Circuit recently upheld the government's interpretation of section 609 allowing import of shrimp from countries that are not certified if the exporter and an official of the harvesting nation attest that the individual

shipment of shrimp was harvested under conditions that do not adversely affect sea turtles. *Turtle Island Restoration Network* v. *Evans*, 284 F.3d 1282 (Fed. Cir. March 21, 2002).

NMFS has been actively engaged with the Department of State (DOS) in enforcing section 609 of Public Law 101–162, since it was enacted in 1990. Nations with shrimp fisheries in the Atlantic, Pacific and Indian Oceans, the Caribbean Sea, and the Gulf of Mexico have faced trade restrictions on their commercially harvested shrimp exports to the United States. In most cases, these embargoes remained in place until the national government implemented a sea turtle protection program comparable in effectiveness to that of the United States. Embargoes on wild caught shrimp from nations with ineffective enforcement regimes have also been enacted. NMFS and DOS visit participating countries regularly to observe the performance of the foreign TED programs and ensure that certifications made pursuant to section 609 are based on the best information available. DOS has determined that section 609's embargo provision only applies to wild-harvested shrimp and not to aquacultured shrimp which make up the majority of U. S. imports.

Comment 3: Some fishermen commented that the larger TEDs could not be pulled by boats with small trawls and that large turtles would be unable to pass through the neck of the trawl to reach the grid. Also, a 71–inch (180–cm) opening installed in a small trawl will not properly support the TED. The TED would become wobbly, lose its angle, and may rip away from the trawl.

Response: During their June 2002, TED testing trip to Panama City, FL, NMFS gear technicians tested the 71–inch (180- cm) opening in a small trawl and found that it could be effectively used in a trawl with a 120–mesh extension. The gear technicians used a model leatherback turtle to determine if it could move through the trawl neck and reach the grid. The model turtle is an aluminum pipe frame that is made to resemble a leatherback turtle that is 40 inches wide (102 cm) by 21 inches deep (53 cm). These dimensions are based on the average measurements taken of 15 nesting leatherback turtles. The gear technicians were able to pass the model through the trawl with a 120 mesh extension to the grid and out the 71 inch (180 cm) opening. NMFS believes that the use of a 71 inch (180 cm) TED or the double cover flap TED in a small trawl will be effective for large turtle release and fishing efficiency.

Gear technicians also tested the use of a 140–mesh extension in a small trawl. The trawl's performance was not altered by the use of the larger extension. The larger extension also made the installation of the large TED easier and the extra webbing made for a stronger installation and allowed the TED to maintain its angle better. The model leatherback also passed through the trawl to the grid and out the opening more easily than it did through the trawl with the 120 mesh extension. NMFS believes that fishermen who use small trawls may want to use a 140 mesh extension with the new, larger TED to provide better fishing and turtle release performance.

Comment 4: Some fishermen and the Georgia Department of Natural Resources (GA DNR) believe that the grid size should be 32 inches (81 cm) measured from the outside of the TED frame, not the inside. This is the grid size many fishermen use.

Response: NMFS is requiring a minimum grid size of 32 inches (81 cm) by 32 inches (81 cm) outside measurement, rather than the inside measurement originally proposed. TEDs of this size can be used effectively with the larger escape opening dimensions. This change may eliminate gear replacement costs for many fishermen.

Comment 5: The GA DNR believes that the dimensions of the cuts for the new opening should be the same dimensions as those for the current leatherback TED, not the dimensions that were proposed. GA DNR reports that only 9 out of 61 captains who use the current leatherback TED claim that the TED loses shape faster than the 35 inch (89 cm) by 12 inch (30 cm) TED. They also suggest that to reduce stress in the trawl, the grid should be oval with dimensions of at least 31 inches (79 cm) by 42 inches (107 cm).

Response: NMFS disagrees that the dimensions of the new opening should be those currently required for the leatherback opening. However, NMFS agrees that the dimensions should be altered from the opening specified in the proposed rule. Based on further information from fishermen who use the current leatherback TED and additional testing of the new opening, the cuts for the new 71–inch (181–cm) TED will be as follows: Two 26 inch (66 cm) cuts forward of the TED frame and one 71–inch (181- cm) cut across the top of the opening. NOAA gear technicians tested the 71–inch (181–cm) TED with three different cuts, to determine which cut would be most capable of releasing a leatherback turtle. This testing was conducted by using the model leatherback described in the response to comment 3. The model leatherback passed through the 71–inch (181–cm) TED with an opening made with a 71–inch (181–cm) by 26–inch (66–cm) cut more easily than it did through the 71–inch TED with an opening made with a 71–inch (181 cm) by 20–inch (51–cm) cut; however, there was little to no difference between an opening made with a 71- inch (181–cm) by 26–inch (66–cm) cut and an opening made with an 83–inch (211–cm) by 26–inch (66–cm) cut (the dimensions of the current leatherback TED). NMFS believes that the 71–inch (181- cm) by 26–inch (66–cm) cut results in a stronger TED than the 83- inch (211–cm) by 26–inch (66–cm) cut because the former cut takes out less webbing.

Although an oval grid with measurements of 31 inches (79 cm) by 42 inches (107 cm) may work well with the new opening sizes, NMFS believes that other size and shaped grids will also work well. Allowing different grid sizes and shapes will allow fishermen greater flexibility in customizing their gear to help meet the demands of the different areas in which they fish.

Comment 6: Net makers, fishermen, and various state agencies are concerned with the elimination of gear that works well in their areas such as the Coulon TED, weedless TED, and accelerator funnels. Fishermen believe that the new TED requirements will minimize options to choose gear that will optimize shrimp catch while still protecting turtles.

Response: NMFS agrees and is allowing the weedless TED, hooped hard TED (of which the Coulon TED is one type), and accelerator funnels to be used in certain areas and with certain conditions. These areas and conditions are described in detail in the codified language below, and are only briefly described here. Hooped hard TEDs, of which the Coulon TED is a variety, can be modified to release large loggerhead turtles but cannot be modified to release leatherback turtles; therefore, NMFS believes that this TED, with the modifications to release large loggerheads, can be used in those inshore areas where leatherbacks are uncommon. The weedless TED can be strengthened through the use of a brace bar which will reinforce the grid bars to keep them from bending toward the back of the TED. This will eliminate the problem which caused NMFS to propose banning the weedless TED. Recent testing by gear technicians has shown that accelerator funnels with increased dimensions to allow the escape of large loggerhead and leatherback turtles can work effectively.

Comment 7: Louisiana fishermen encounter a large number of objects and debris that force open the TED flap causing shrimp loss. They claim that contrary to NMFS statements that larger openings will allow debris to escape, the shrimp losses will be compounded with the larger opening as water pressure forces these items to stay against the grid and the same water pressure opens the flap.

Response: The experiences of fishermen on the east coast who have used the leatherback TED extensively indicate that if this TED is properly maintained it will expel debris better than TEDs with smaller openings. NMFS realizes that fishing conditions in the Atlantic may differ from the Gulf; however, NMFS believes that there is a greater chance of debris blocking the grid and holding open the flap in TEDs with smaller openings which may result in greater shrimp loss. Larger openings would prevent the debris from accummulating in front of the TED thereby allowing the flap to close.

Comment 8: Environmental organizations state that the proposed rule allows the use of the Parker soft TED which should be eliminated as an approved TED. They claim soft TEDs stretch over time and are less effective than hard grid TEDs in excluding turtles.

Response: NMFS looked at many aspects of the Parker soft TED's performance over a 30–month period in both the Gulf of Mexico and the Atlantic Ocean. Observer data show a favorable comparison between the efficiency of the Parker TED and approved hard TEDs. Information from NOAA enforcement indicates that the Parker TED is used more in the Atlantic than in the Gulf, but even in the Atlantic the use is low (<50 boats). NOAA enforcement has found that the compliance rate is good on the boats that do use the Parker TED. NMFS' gear specialists provided training to net shop owners, net manufacturers, and fishermen in the proper installation and use of the Parker TED. For these reasons, NMFS believes that this TED can be used effectively to protect turtles. However, as with all TEDs, maintenance is important. For example, netting can stretch over time which can cause a Parker soft TED to lose its shape. Similar maintenance (e.g. to maintain TED angle) is also required for hard TEDs.

Comment 9: Fishing organizations believe the Andrews-style soft TED should be re-certified for use as an approved TED.

Response: NMFS disapproved the use of the Andrews soft TED (61 FR 66933, December 19, 1996) after extensive testing demonstrated that this TED did not exclude turtles effectively. Modifications to the Andrews soft TED were tested by NMFS with direction from an industry-led TED testing advisory panel in 1996, 1997, and 1998. Most design versions of this TED did not pass the small turtle protocol with the exception of two designs tested in 1998. Following the 1997 tests, members of the industry-led soft TED advisory panel evaluated shrimp retention with the modified Andrews TED aboard a commercial shrimp trawler. The panel reported that the modified Andrews TED had an estimated shrimp loss of 20 percent when compared to a hard TED. The TED testing review committee (which is made up of representatives from the shrimp industry, environmental groups and NMFS) recommended that before pursuing final certification of the designs tested in 1998, industry should test these designs for shrimp retention. To NMFS' knowledge, these designs have not been tested for shrimp retention by industry.

Comment 10: Fishermen, environmental organizations, and state agencies believe that the double cover flap TED needs further testing to determine its ability to exclude sea turtles.

Response: Results from NMFS' testing indicate the double cover flap TED design was effective at excluding the model leatherback described in the response to comment 3. During TED testing in 2000, 2001, and 2002, a total of 71 loggerhead turtles (captive-reared 2- and 3–year olds) were exposed to the double cover flap TED under test protocols (5 minute exposure). Of the 71 turtles, 69 escaped and 2 were captured which equates to a 97 percent escape success rate. The model leatherback was sent through the double cover flap a total of 10 times, 5 times in a bottom opening version and 5 times in a top opening version. The test was performed by a diver swimming through the trawl with the model and pushing it through the TED opening. During this test, the diver was able to push the model through either opening with ease. When the model was inverted (simulating the dorsal surface of the turtle being against the TED frame) the diver was still able to push the model through the opening with ease. During offshore testing of the double cover flap TED, aboard the R/V GEORGIA BULLDOG in May 2002, a total of 7 wild turtles were videotaped escaping (all turtles were hard shell turtles and appeared to be loggerheads). The time it took for turtles to escape, once encountering the TED, ranged from 12 seconds to 1 minute and 11 seconds. Based on estimation of carapace length, NMFS believes that both adult and sub-adult turtles were represented in the sample.

Comment 11: Some shrimp fishermen believe that the shrimp loss data gathered by NMFS on the double cover flap TED are flawed in many respects, including: (1) the tests were not conducted in areas representative of where they fish; (2) sample sizes were too small to be statistically valid; (3) the tests were done outside the shrimping season with low catch rates and low loads in the bag end. Higher loads would cause more water to back up and force open the flap and cause additional shrimp loss.

Response: Since publication of the proposed rule, NMFS conducted further testing of the double cover flap TED. From January through August, 2002, the double cover flap TED has been tested against current commercially available TEDs for shrimp loss aboard 12 commercial shrimp trawlers in the Gulf Area, and one trawler in the Atlantic Area. In the Gulf Area, 7 vessels fished in inshore and near shore areas (2 in Texas, 2 in Louisiana, 1 in Mississippi, 1 in Alabama and 1 in Florida). Offshore testing was conducted along the northeast coast of Florida by one vessel, the pink shrimp grounds of southwest Florida by two vessels, Louisiana by two vessels and Texas by one vessel. In order to obtain statistically valid data, a minimum of 20 comparative tows were conducted during each trip. Testing has included the shrimp season openings in Texas, Louisiana, and Mississippi. A total of 305 comparative tows were conducted. The double cover flap TED experienced a 0.1 percent shrimp gain when compared to current commercially available TEDs, which is not statistically different from zero.

Excessive shrimp loss due to back washing and large catch loads were not experienced during the tests to date. Additionally, several vessel captains have remarked that the double cover flap appears to work better in excluding debris such as sticks, grass, and jellyfish.

Comment 12: Fishermen were concerned about missing data on shrimp loss estimates used in the proposed rule. They allege the NMFS report on shrimp loss data did not contain information from 58 tows comparing shrimp loss between the modfication and standard TEDs and that the lack of providing data from all observed tows may reflect selective reporting. They also believe the report lacked information on trawl sizes used during the tests and the size of the shrimp that were caught.

Response: The data set in question resulted from testing conducted in 2000.

That data set did not include unsuccessful tows. Unsuccessful tows are those that include problems which would bias the data in a manner unrelated to the TED, i.e., fouled tickler chain, torn nets, and catches dumped together. As a result, data gathered from such tows can not be used to make a judgment on the functioning of the TED. The 58 tows referenced in this comment had one or more of these problems and were therefore not included in the data set. However, all tows are recorded by the observer and any problems are noted. These records are archived and are available upon request.

Shrimp size is not always recorded by the observer. The database may provide shrimp size for selected trips and can be queried upon request. Trawl sizes varied depending on the captain of the vessel; however, during comparative tows, the size and type of each trawl used during a tow were the same for the control TED and the experimental TED.

Comment 13: Various state agencies and fishermen indicate that large turtles are not found in their state waters. Since 1968, three turtles were recorded caught in shrimp trawl nets during independent fishery trawl surveys conducted in state waters by Alabama, Mississippi, Louisiana and Texas.

Response: NMFS does not agree that the lack of sea turtle captures in state waters during fishery independent sampling represents an absence of sea turtles. Stranding information, observed captures, and survey data indicate that large loggerhead and leatherback turtles can be found in Alabama, Mississippi, Louisiana, and Texas state waters.

The fishery independent sampling that is the subject of these comments is conducted mostly with small trawls of 16 ft. (5 m) or less (although a small percentage were conducted with 40- ft. (12–m) trawls), with short tow times (10 to 15 minutes) which reduce the probability that the trawls would catch sea turtles. The purpose of these sampling programs is generally to record target catch and finfish bycatch and, therefore, are not necessarily representative of shrimp fishing effort and/or areas fished. However, NMFS did consider this information and researched the possibility of allowing the use of smaller TED sizes in all Gulf state waters. Based on the information below, leatherbacks occur in all offshore waters which warrants the use of a TED capable of releasing them.

Strandings in inshore waters likely are underestimated due to the difficulty in surveying areas that generally are marshlands or do not have sandy beaches. For the same reasons, offshore strandings on much of the coastline of Louisiana are underestimated.

The greatest proportion of loggerheads stranding that are too large to fit through current TED openings is in the Gulf Area, where the current minimum height opening is 10 inches (25 cm) (compared to 12 inches (31 cm) in the Atlantic Area). In the western Gulf of Mexico, an annual average of 63 percent of stranded loggerheads offshore and 48 percent of stranded loggerheads inshore were larger than the dimensions of the current minimum TED opening. In the eastern Gulf of Mexico, the values are 89 percent offshore and 80 percent inshore. The proportions are less in the Atlantic Area: 27 percent offshore and 17 percent inshore, but because the number of turtles stranding in the Atlantic Area is higher, the actual number of animals too large to fit through the openings is comparable to the number of strandings that are too large in the Gulf Area. Based on 1995–99 data, each year approximately 250 loggerheads that are too large to fit through existing TED openings strand in each area; approximately 13 percent of these occur in inshore waters. Based on strandings, reported incidental captures, NMFS Beaufort project, Cooperative Marine Turtle Tagging, N.C. public sightings, observer data (Gulf and South Atlantic Fisheries Development Foundation and NMFS), aerial surveys (SETS, Pascagoula Oil Platform Association data, GOM red drum surveys of 1987, 1995, and 1999, NEFSC 1995 and 1998 surveys, CETAP, SEAS92 and SECAS95, MATS95, GulfCet I, GulfCet II, and GoMex surveys), and telemetry tracks, loggerheads are distributed ubiquitously in the Southeast United States, generally occurring in all areas, inshore and offshore, and at all times when shrimp trawling activity is likely to occur.

Leatherback turtles are distributed throughout the Southeast United States, but are not as abundant as loggerheads. Leatherbacks are predominantly found in offshore waters but infrequently enter inshore waters. In the Gulf Area, 8 percent of leatherbacks stranding were found on inshore beaches and in the Atlantic Area 11 percent were reported from inshore waters. The actual number of turtles stranding in inshore waters, however, is small: seven in the Gulf Area from 1995–1999 and 21 in the Atlantic Area for the same time period, for an average of six leatherback turtles stranding annually in southeast inshore waters. Based on the same information used for loggerhead turtles above, leatherbacks occur offshore during all seasons when shrimp trawling activity is expected to occur. The number of strandings on offshore beaches is significantly more than in inshore waters: the average is 56 animals per year in the Atlantic and Gulf Areas offshore beaches combined.

This information is discussed in greater detail in Appendix A of the environmental assessment prepared for this final rule, which can be obtained from NMFS (see **ADDRESSES**).

Comment 14: Fishermen believe that better abundance and distribution data on sea turtles are needed, and that NMFS should identify an acceptable level of strandings. They have observed more turtles today than ever before and anticipate an increase in interactions.

Response: NMFS agrees that increases in stranding levels may be related to increases in certain turtle populations, but the populations of particular concern for this final rule -leatherbacks and northern subpopulation loggerheads- are not increasing. In addition, there are many other factors that could cause strandings to increase including a change in fishing practices. NMFS is unable to identify a stranding level that would trigger an adjustment to management measures. In their 1998 report to NMFS, the Turtle Expert Working Group (TEWG) analyzed existing data on the population status and trends of the loggerhead and Kemp's ridley turtles. The TEWG concluded that an estimation, derived from stranding data, of the maximum number of individual loggerheads or Kemp's ridleys that can be taken incidentally to commercial fishing could not be made. The TEWG determined that strandings were an underestimate of nearshore mortality and were inadequate for determining the population's actual status. Recovery goals for the Atlantic populations are identified in the joint NMFS and U.S. Fish and Wildlife ESA Recovery Plans completed in the early 1990s (see **ADDRESSES** for copies or visit *http://www.nmfs.noaa.gov/endangered.htm*). NMFS agrees that data on abundance and distribution can be improved. NMFS is currently supporting in-water population studies in Florida and North Carolina. NMFS also conducted a pilot aerial survey for loggerhead and leatherback turtles in the coastal waters of the Mid-Atlantic in July 2000, to investigate whether line transect methodology can be used to produce precise estimates of marine turtle abundance. NMFS intends to revise the existing recovery plans in the near future. These revisions will likely include additional research recommendations to improve our understanding of turtle abundance and distribution.

Comment 15: Fishermen are concerned that data are lacking on the causal relationship between strandings and shrimp fishing. For example, in May of 2000, 22 turtles stranded along the South Carolina coast while the shrimp fishery was operating. Yet in May 2001, 21 turtles stranded along that coast in the absence of shrimp fishing. They stated that recreational fishers and boaters, habitat loss, and pollution are all sources of strandings.

Response: NMFS agrees there are many causes that contribute to strandings. Causes include, but are not limited to, diseases, boat strikes, ingestion of marine debris, dredging, power plant entrainment, and incidental capture in fisheries. The cause of death can only be determined in a limited number of cases such as when gear is associated with the carcass. However, there are other sources of data that provide substantial evidence to indicate that shrimp trawling is the main contributing factor to sea turtle mortality (Magnuson *et al.*, 1990; Caillouet *et al.*, 1991, 1996; Crowder *et al.*, 1995; TEWG, 2000). In 1989, a Committee on Sea Turtle Conservation was formed under the auspices of the National Research Council (NRC). The charge to NRC was to review the scientific and technical information pertaining to the conservation of sea turtles and the causes and significance of turtle mortality. The NRC found that, "Of all known factors, by far the most important source of death was the incidental capture of turtles (especially loggerheads and Kemp's ridleys) in shrimp trawling." The NRC report is based on numerous data sources including shrimping effort correlations with stranding levels, independent trawl surveys, and tags returned from turtles that were incidentally captured in shrimp trawl nets. In addition to the NRC report, NMFS' observers have documented incidental capture of sea turtles in shrimp trawl nets throughout the southeastern Atlantic Ocean and Gulf of Mexico. The NMFS Shrimp Trawl Observer Program observed 2,833 sea days between January 2000 and May 2002. During this time NMFS observers documented the incidental capture of 49 sea turtles. These turtles were captured in various locations (4 were captured in the offshore waters of Texas, 5 in the offshore waters of Alabama, 1 in the nearshore waters (state waters) of Alabama, 5 in the nearshore waters of South Carolina, 1 in the offshore waters of Louisiana, 2 in the nearshore waters of Louisiana, 2 in the nearshore waters of Mississippi, 4 in the offshore waters of eastern Florida, 14 in the nearshore waters of western Florida, and 10 in the offshore waters of western Florida).

The November 2000 TEWG report cites studies that show that the use of TEDs has significantly reduced strandings over the period 1980–1997 by an estimated 40 percent in South Carolina and 58 percent in Georgia, relative to strandings estimates without TEDs. The TEWG also indicates that a significant TED effect on strandings is detectable through the time series analysis of biweekly data, in spite of the increasing trend in annual strandings. Recent work in Georgia that takes shrimp landings into account show strandings per unit of shrimp catch were reduced 37 percent with the use of TEDs.

Comment 16: Some environmental groups and state agencies commented that data collected from key nesting beaches in the Atlantic Ocean indicate that the leatherback turtle nesting population may be declining. Globally, leatherbacks are experiencing a severe decline. They also state that the northern nesting population of loggerhead turtles has declined and the portion of the northern nesting population that nests in South Carolina has decreased by as much as 47 percent in the past 20 years. Therefore, they allege that large TEDs are essential to ensure the recovery of these species. Large TEDs allow large juvenile and sexually mature loggerheads and green turtles, as well as leatherback turtles to escape and decrease escape times for all turtles thereby making TEDs more effective.

Response: NMFS is requiring larger openings of TEDs as described in the Summary of the Final Rule and the Provisions and Justification of the Final Rule section of this notice.

Comment 17: Fishermen believe that current data do not justify the use of these larger TEDs in all areas and times. The year-round use of the leatherback TED is unnecessary. Additional research is necessary to ensure that burdens are not placed on the industry without a corresponding benefit to turtles.

Response: Data from multiple sources, including at-sea observer programs, aerial sightings, public reports, incidental captures and strandings documented through the Sea Turtle Stranding and Salvage Network (STSSN), support the use of a TED capable of releasing leatherback turtles in all offshore waters and a TED capable of releasing large loggerhead turtles throughout the southeastern Atlantic Ocean and Gulf of Mexico. Loggerheads are documented in all inshore and offshore areas, whereas leatherbacks are predominantly found in offshore waters but infrequently enter inshore waters. Additionally, both loggerheads and leatherbacks occur in shrimping areas during all seasons when shrimp trawling activity is expected to occur (see NMFS response to Comment 13).

Comment 18: The Gulf and South Atlantic Fisheries Foundation states that there must be appropriate resources to conduct a comprehensive industry review of turtle information and perform analysis of the massive data sets. This would include stock assessment evaluations and economic analysis.

Response: A significant amount of available data were reviewed by the NRC when they made their 1990 findings (see comment 15). The latest stock assessment on the leatherback and loggerhead turtles conducted by NMFS (National Marine Fisheries Service Southeast Fisheries Science Center, 2001) was extensively reviewed by an independent peer review process UM Independent System for Peer Reviews - whose findings supported the quality of the stock assessment and can be obtained upon request (see **ADDRESSES**).

Comment 19: Environmental organizations believe that the effects on sea turtle populations as a result of inadequate TEDs far outweigh the impacts that may occur on nesting beaches; whereas, fishermen believe that nesting beach and nest protection should be stressed before new regulations on fishermen take place.

Response: NMFS shares responsibility with the U.S. Fish and Wildlife Service (USFWS) for sea turtle recovery actions under the ESA. NMFS is responsible for addressing threats in the marine environment while the USFWS oversees recovery actions on the nesting beaches. As outlined in all of the Atlantic sea turtle joint ESA Recovery Plans, both threats on the nesting beaches and in the marine environment must be addressed in order to recover these listed species. Programs to protect nests and hatchlings have been ongoing for many years. A primary example is the joint Mexico/U.S. protection program for Kemp's ridleys at Rancho Nuevo that began in the late 1970s. Nesting beaches throughout the southeastern U.S. are protected by the states, Department of Interior, Department of Defense, and the public. NMFS must continue to reduce incidental capture in shrimp trawl fisheries when data support that modifications to existing TED requirements are necessary.

Comment 20: Environmental organizations feel it is illegal for NMFS to imperil threatened and endangered species by delaying the implementation of this final rule to alleviate short-term

economic impacts. They believe that the provisions of the proposed rule should be implemented as is, without the 1–year delay.

Response: This final rule will be implemented for the Atlantic Area on April 15, 2003, and for the Gulf Area 6 months after its publication in the **Federal Register**. NMFS believes that the 6–month delay in the Gulf Area is appropriate because fishermen in the Gulf Area use smaller TEDs with smaller grids than fishermen in the Atlantic Area, and the Gulf Area also has the majority of hooped hard TED users, bait shrimpers, and weedless TED users. Most fishermen in the Atlantic have been subject to the implementation of the leatherback contingency plan and likely already have the equipment to comply with the new regulations. The GA DNR reports that many shrimpers (up to 60 percent) use the leatherback TED year-round. Net shops in the Atlantic Area are more likely to stock the required equipment. Net shops in the Gulf Area will need additional time to supply the equipment necessary to comply with these new regulations. In addition, the six months will provide opportunity to evaluate preliminary results from the Gulf and South Atlantic Fisheries Foundation study on the shrimp fishery and sea turtles. In the proposed rule, NMFS had initially discussed a 12–month delay in implementation. In light of the additional time allowed for public comment, NMFS now believes that an additional 12–month delay is not warranted.

Comment 21: State agencies from Mississippi, Alabama, Louisiana and Texas believe that their bait shrimp industries are tightly regulated by state laws and additional Federal regulations are unnecessary. Texas Parks and Wildlife believes that the new regulations would require the state to make major changes to their license program to provide bait-only licenses.

Response: NMFS enforcement and gear specialists have seen an increase in boats claiming to be bait shrimpers but possessing more than 32 lb (14.5 kg) of dead shrimp. Increased tow times are necessary to land this much dead shrimp. Longer tow times would increase the likelihood of entangling a sea turtle and, without a TED installed, increase the chance of injury or mortality. When there is no incentive to limit tow times as a part of normal fishing operations, tow time limits are extremely difficult to enforce. Also, the possession of both bait and food shrimping licenses aboard the same vessel may allow such vessels to exploit the bait shrimping exemption as a loophole. Therefore, NMFS is limiting the bait shrimp TED exemption to shrimpers with a valid state bait-shrimp license for which such state license allows the licensed vessel to participate in the bait shrimp fishery only.

The new requirements for bait shrimpers should not affect state programs that have separate bait and food shrimp licenses. The new requirements do not eliminate dual-license programs; rather, dual-license holders will be required to use a TED. Texas Parks and Wildlife can decide whether or not a separate bait-only license is warranted to allow bait shrimpers to fish without a TED.

Comment 22: Environmental groups believe that TEDs should be required on all try nets. Tow time limitations do not work and are unenforceable.

Response: Sea turtles are captured in try nets. The NMFS observer program from 1992 through 1995 documented that try nets accounted for 43 percent of the observed turtle captures. In 2001, shrimpers operating in the Atlantic Area reported capturing more than 20 turtles in their smaller try nets without TEDs installed. NMFS required shrimpers deploying try nets with head rope lengths greater than 12 ft. (3.6 m) or foot rope length greater than 15 ft. (4.6 m) to have a TED installed but exempted the smaller try nets (61 FR 66933, December 19, 1996). Experimental trawling completed in 1994 and 1996 indicated that small try nets (≤ 12 ft. (3.6 m)) were less likely to catch turtles. A total of 100 tows deploying three sizes of try net, 12 ft. (3.6 m), 15 ft. (4.6 m), and 20 ft. (6.2 m), were conducted in Cape Canaveral Ship Channel. Thirty-five turtles were caught. Of these, 17 were caught in the 20–ft. (6.2–m) net, 10 in the 15–ft (4.6–m) net, and 8 in the 12–ft (3.6–m) net. NMFS believes that when used as intended, small try nets pose little threat to turtles. NMFS initially issued this exemption without tow time restrictions because it felt that this type of gear naturally lent itself to short tow times. However, information from GADNR indicates that some fishermen are using try nets as another fishing trawl, towing it for long periods of time. NMFS will continue to monitor this issue. If tow time limitations do not prevent the capture of sea turtles in try nets, then NMFS will consider other alternatives, such as requiring TEDs in all try nets.

Comment 23: Environmental organizations believe that NMFS should allocate adequate funding toward ensuring shrimpers' compliance with these regulations. They believe that one way to accomplish this is to increase enforcement personnel. They also believe that NMFS should establish a mandatory observer program to cover a representative sample of shrimp vessels in the southeastern United States.

Response: NOAA Enforcement, in partnership with the USCG and deputized state law enforcement agencies, have been successful in enforcing these regulations. Further, based on information from these agencies, the vast majority of fishermen follow the regulations.

The NMFS Shrimp Trawl Bycatch Observer Program has observed over 2,800 sea days on shrimp trawl vessels since 2000. This level of observer coverage is expected to continue in the future. NMFS is required to have observer coverage for the shrimp fishery, but the sampling is inadequate, given fleet size. Because of the massive size of the shrimp fleet and the amount of resources (funding and personnel) it would require, the establishment of a sampling program that would result in precise estimates of turtle bycatch has not been possible. Currently, limited resources are focused on specific issues that need evaluation such as testing new TED designs and BRDs.

Comment 24: Fishermen from Alabama, Mississippi, and Louisiana have complied with current TED regulations and additional burdens should not be placed on them without adequate data to support the new requirements.

Response: Shrimpers in the southeastern United States have made great contributions to the protection of endangered species through their use of TEDs over the last decade and more. Those efforts have borne fruit, as evidenced by the population increases of the critically endangered Kemp's ridley turtles, which are small enough to escape through the current TEDs. However, studies have shown that 33–47 percent of the loggerhead turtles stranded throughout the southeastern United States are too large to fit through the current TED openings. This is a much greater percentage than this size group represents in the population at large. The continued disproportionate loss of this size class will seriously hamper recovery efforts for this species, and might require change in its status from threatened to endangered. Leatherback turtles are severely endangered throughout the world. Nesting numbers on their main nesting beach in the western north Atlantic have decreased by 15 to 17 percent per year since 1987. NMFS believes that increasing the size of current TED openings is necessary to ensure the conservation and recovery of these listed species.

Comment 25: Eight years ago the shrimp fishing industry offered a well-funded plan for turtle recovery that included money to protect nesting beaches in Mexico and helped to fund the head start program, in lieu of TEDs, but NMFS would not accept it. Fishermen are willing to pay to protect sea turtles and protect eggs and nests in lieu of TEDs. The money can go to protect nesting beaches and hatch eggs to release into the wild.

Response: Nesting beach habitat conservation plays an important role in the recovery of sea turtles. However, the protection of turtles in the water is equally important. The use of TEDs is a major factor in the recent population increase of Kemp's ridley turtles. Kemp's ridleys are the smallest sea turtles, and adult size animals can pass through the current TED openings. Since 1990, corresponding with the more widespread use of TEDs in U.S. waters, the total annual mortality (including natural mortality) of Kemp's ridleys has been reduced by 44–50 percent. At the same time, nesting has gone from 700–800 nests per year in the late 1980s to approximately 6,000 nests in 2000. This kind of increase in nesting numbers could not have happened without in-water protection provided by TEDs. NMFS believes that the use of TEDs can have a significant impact on the survival and recovery of sea turtles. The majority of loggerhead turtles nesting in the United States takes place on the east coast, where there is comprehensive nesting beach and nest protection. Even with these comprehensive conservation and protection programs in place, the northern nesting population of loggerhead sea turtles (from northeast Florida north) is at best stable and possibly declining, demonstrating that in-water protection of sea turtles is still required to achieve recovery.

Comment 26: Fishermen and environmental organizations believe that NMFS should investigate the impact of recreational shrimping on sea turtles. Recreational trawls may reach 16 ft. (4.88 m) in width with a fleet estimated at 8,000 boats. At 16 ft. (4.88 m) these trawls are the same size as try nets which already require TEDs.

Response: The majority of recreational shrimp fishermen pull their trawls out of the water by hand, and this naturally limits the size of the trawl and the tow times (a large full net would not be able to be retrieved by hand). They must also use tow times as specified at 50 CFR 223.206(d)(3)(i). NMFS believes this fishery poses little threat to sea turtles because of the combination of short tow times and small trawls. Any recreational fisherman who does not pull his or her trawl in by hand must use a TED.

Comment 27: Members of the United States Congress commented that food safety is a national security issue and the proposed rule may result in the United States becoming more dependent on foreign produced foods at a time of national hazard.

Response: NMFS believes regulations to increase the size of current TED openings would allow for adequate protection of listed species, possibly avoiding the curtailment of the shrimp fishery in the southeastern United States, and thus allowing the shrimp fishery to continue to harvest shrimp.

Comment 28: Fishermen believe that NMFS' method for announcing and convening public hearings for the proposed rule was inadequate. NMFS should do direct mailings of notices to shrimpers by using lists that the state agencies have from selling shrimp licenses.

Response: While NMFS procedures for public notification satisfy legal requirements, NMFS agrees that public notification of our proposed actions could be improved. NMFS increased coordination with affected entities, by extending the public comment period on the proposed rule by 90 days, funding a major industry workshop in Tampa, FL, and participating in three industry-sponsored meetings in Louisiana. NMFS is currently developing a mailing list based on public hearing participation to distribute information on future meetings and notices to the people these actions affect.

Provisions and Justification for the Final Rule

NMFS is adopting the proposed measures as a final rule with the changes specified below, based on a review of the public comments and additional analyses of biological and commercial information. The changes to the proposed rule consist of specifying different TED-openings and configurations for inshore and offshore waters and allowing the use of accelerator funnels, hooped hard TEDs, and weedless TEDs with modifications. Once the final rule is published in the **Federal Register** the changes will be effective April 15, 2003, in the Atlantic Area and after 6 months in the Gulf Area.

Summary of the Final Rule

The final amendments to the TED regulations are applicable to trawling in all inshore and offshore waters of the southeastern United States as follows: (a) Require all hard TEDs to have a grid with a minimum outside measurement of 32 inches (81–cm) by 32 inches (81–cm); (b) require the use of either the double cover flap TED, a TED with a minimum opening of 71 inch (180 cm) straight-line stretched mesh, or the Parker soft TED with a minimum 96–inch (244–cm) opening in offshore waters (from the COLREGS demarcation line seaward) and in all inshore waters off of Georgia and South Carolina; and require a TED-opening in all inshore waters (from the COLREGS Demarcation line landward) except for the inshore waters of Georgia and South Carolina of at least 44–inch (112–cm) straight-line stretched mesh measurement with a 20–inch (51–cm) vertical taut height, with each measurement taken separately on all hard TEDs (see Figure 1) or a

Parker soft TED with a 56–inch (142–cm) opening; (c) disallow the use of the hooped hard TED in all offshore waters and in the inshore waters of Georgia and South Carolina; and allow a hooped hard TED in inshore waters, other than Georgia and South Carolina, to have a minimum size of 35 inches (89 cm) by 27 inches (67 cm) on the top opening, with a minimum inside horizontal measurement of at least 35 inches (89 cm) and an inside vertical measurement of at least 30 inches (76 cm) on the front hoop, with a clearance between the deflector bars and the inside of the front hoop no less than 20 inches (51 cm); (d) eliminate the special regulations for the leatherback conservation zone and for flaps on bottom opening TEDs in the shrimp fishery sea turtle conservation areas (SFSTCA); (e) disallow the use of the Jones TED; (f) allow the use of the weedless TED with a brace bar; (g) require all accelerator funnels to have a stretched mesh opening of no less than 44 inches (112 cm) in the 44–inch (112–cm) TED and no less than 71 inches (180 cm) in the 71–inch (180–cm) TED and the double cover flap TED; (h) require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel;(i) require the use of tow times on small try nets; and (k) change the language of the flounder TED rule to clarify that the new escape opening sizes are not required in the Atlantic summer flounder bottom trawl fishery as a result of this rule change, although the agency is currently evaluating the need for such restrictions.

The justification for the changes and adoption of the final modifications to the TED regulations are discussed below for each measure.

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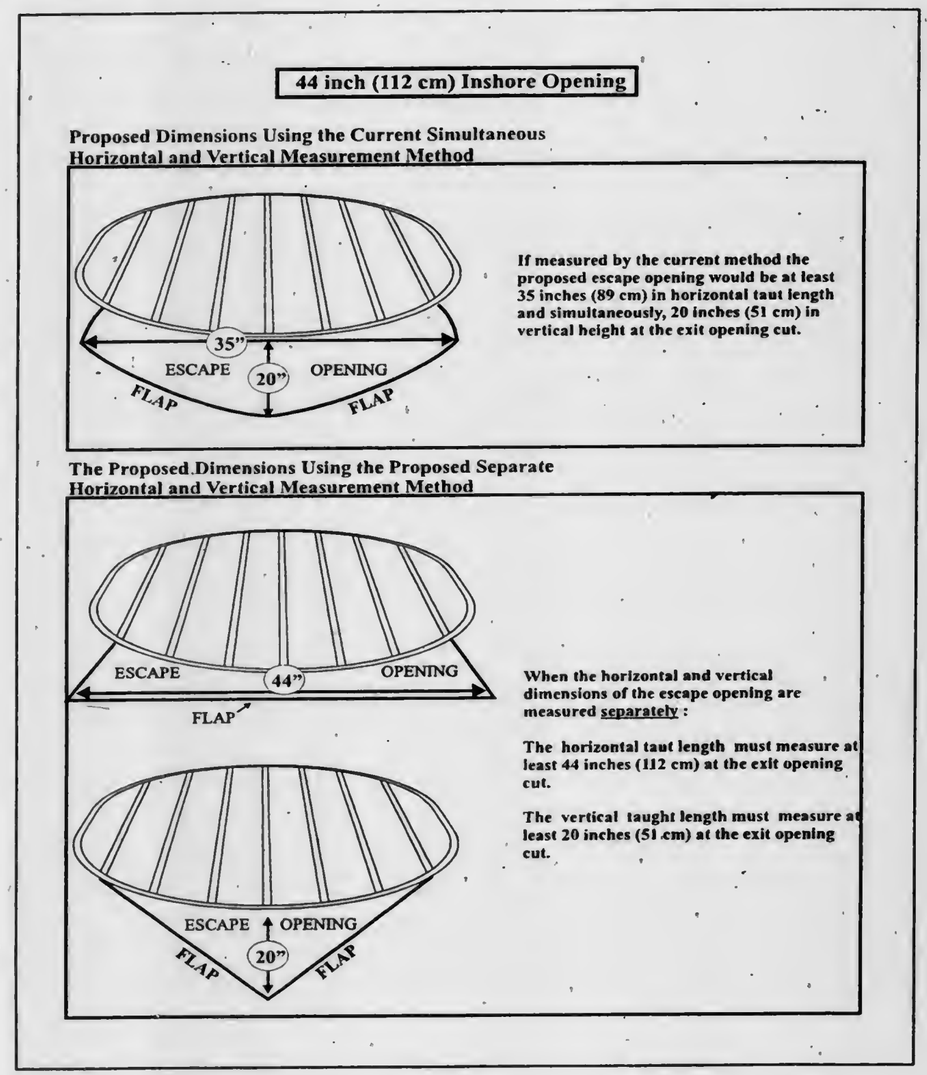


Figure 1

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Increase of the Minimum Size of TED Grids and TED Openings in all Inshore and Offshore Waters of the Southeastern United States

The 71–inch (180–cm) TED, the double cover flap TED, the Parker soft TED with a 96–inch (244–cm) opening, the Parker soft TED with the 56–inch (142–cm) opening and the 44–inch (112–cm) TED are large enough to exclude 100 percent of nesting loggerhead and green turtles based on the information in Epperly and Teas (2002) and the measurements of nesting loggerhead turtles taken by the South Carolina Department of Natural Resources (SCDNR) in the spring and summer of 2000 as referenced in the proposed rule (66 FR 50148). This is particularly important for loggerhead turtles, as population models indicate that a reduction in mortality in these size classes would result in the greatest annual population increase rate (Crouse *et al.*, 1987; Hopewell, 1998).

Leatherback turtles are too large to fit through the current size TED openings; when mature, they can weigh between 600 and 1,300 lb (273 and 591 kg). The use of the 71–inch (180–cm) TED, the double cover flap TED, and the Parker soft TED with a 96–inch (244–cm) opening in all offshore waters in the southeastern United States and the inshore of Georgia and South Carolina will ensure the use of TEDs capable of releasing leatherback turtles in the waters where they are most commonly found and in areas and times not currently covered by the leatherback contingency plan. This final rule eliminates the unplanned, temporary actions implemented under the leatherback conservation zone which will increase predictability for the industry. NMFS believes that the inshore waters of Georgia and South Carolina have a higher potential for the presence of leatherback turtles because they are mostly open sounds with little barrier from nearshore oceanic habitat.

See NMFS response to comment 13 in this document for a summary of the aerial, standings, observer, and other data used to support this rule.

Disallowing the use of the Hooped Hard TED in all Offshore Waters in the Atlantic and Gulf Areas and Changing the Description of a Hooped Hard TED for Use in Inshore Waters

Based on information received from Louisiana fishermen and NMFS gear specialists, the hooped hard TED known as the Coulon TED may work well as a bycatch reduction device. NMFS was considering disallowing the use of hooped hard TEDs in all waters in the proposed rule because of enforcement problems seen with this type of fixed-angle TED installed backwards. Based on the information in Epperly and Teas (2002), and the measurements of nesting loggerheads conducted by the SCDNR in the summer of 2000, the modifications to the hooped hard TED that are part of this rule will give this TED an escape opening large enough to exclude large loggerhead turtles found in inshore waters, which will allow its continued use by some of the fishermen who prefer it.

NMFS is not allowing the use of the hooped hard TED in offshore waters because the design cannot be modified to be large enough to exclude leatherback turtles.

Weedless TEDs; Jones TEDs; and Accelerator Funnels

The structural integrity of the weedless and Jones TEDs does not hold up under commercial use; grid bars bend toward the back of the net. This condition has been shown to severely limit the ability of these TEDs to exclude turtles. Therefore, NMFS is requiring the use of a brace bar to increase the structural integrity of the weedless TED and is disallowing the use of the Jones TED. The brace bar for the weedless TED must be constructed of the same or stronger material as the deflector bars and must be attached across the deflector bars in an area defined by the mid point of the outer frame, and the unattached ends of the deflector bars. The horizontal brace bar may be offset from the deflector bars, using spacers constructed of the same or stronger material. The spacers may not exceed 3 inches in length. The Jones TED can not be practically strengthened with a brace bar.

In the proposed rule NMFS proposed disallowing the use of the accelerator funnel in the 71–inch (180–cm) TED and the double cover flap TED. To exclude large turtles, we felt that the funnel would have to be of such a large size that it would not accelerate water and may hang out the flap causing shrimp loss. However, based on information from fishermen and further investigation by NMFS gear technicians, NMFS found that an accelerator funnel that is large enough to release leatherback and large loggerhead turtles will work in the single grid hard TEDs approved for use in this rule. Accelerator funnels used in the 71–inch (180–cm) TED and the double cover flap TED must be attached according to the current rules and must have an opening of at least 71 inches (180 cm) stretched mesh. Accelerator funnels used in the 44–inch (112–cm) TED must also be attached according to the current rules and must have an opening of at least 44 inches (112 cm) stretched mesh.

Requiring Bait Shrimpers to use TEDs in States Where a State-issued Bait Shrimp License Holder can also Fish for Food Shrimp From the Same Vessel

NMFS enforcement and gear specialists have seen an increase in boats claiming to be bait shrimpers but possessing more than 32 lb (14.5 kg) of dead shrimp. These dead shrimp are likely sold as food shrimp. Landing this much dead shrimp was likely the result of an increase in tow times beyond the shorter tows used to catch live bait. Longer tow times would increase the likelihood of entangling a sea turtle and, without a TED installed, increase the chance of injury or mortality. When there is no incentive to limit tow times as a part of normal fishing operations, tow time limits are extremely difficult to enforce. Also, the possession of both bait and food shrimping licenses aboard the same vessel may allow such vessels to exploit the bait shrimping exemption as a loophole. Therefore, NMFS is limiting the bait shrimp TED exemption to shrimpers with a valid state bait-shrimp license for which such state license allows the licensed vessel to participate in the bait shrimp fishery only.

Requiring the Use of Tow Times on Small Try Nets

Although sea turtles have been documented as having been captured in try nets, experimental trawling completed in 1994 and 1996 indicated that small try nets were much less likely to catch turtles. However, as discussed in NMFS' response to comment 22, turtle captures in try nets may still be a problem. NMFS believes that tow time restrictions will give NMFS an enforcement mechanism to help maintain compliance by the small number of fishermen who do not use try nets as intended. However, NMFS will continue to evaluate this issue. If tow time restrictions do not prevent capture of sea turtles in try nets, then NMFS will evaluate other options, including requiring TEDs in try nets.

Classification

This final rule has been determined to be significant for purposes of Executive Order 12866.

The ESA provides the statutory basis for this final rule.

NMFS prepared a draft Environmental Assessment/Regulatory Impact Review/Regulatory Flexibility Act Analysis (EA/RIR/RFAA) for the proposed rule that discussed the impact on the

environment as a result of the proposed rule. NMFS completed a final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) based on comments received during the comment period. A copy of the final EA/RIR/FRFA is available from NMFS (see **ADDRESSES**).

NMFS completed the FRFA, pursuant to 5 U.S.C. 604, without regard to whether the proposal would have a significant impact on a substantial number of small entities. A summary of this FRFA follows:

The Endangered Species Act provides the statutory basis for this final rule. This final rule will require the use of an approved leatherback TED in all shrimp trawl nets operated in all offshore waters and the inshore waters of Georgia and South Carolina at all times; require the use of an approved loggerhead TED in all shrimp trawls licensed or fishing for food shrimp in all inshore waters at all times; allow the use of the weedless TED with a brace bar; allow the use of hooped hard TEDs in inshore waters with modifications; allow the use of accelerator funnels with certain modifications; and require tow time restrictions on try nets.

The objectives of this final rule are to decrease the mortality of large loggerhead and green turtles; decrease the mortality of large leatherback turtles; decrease the mortality of all threatened and endangered sea turtles incidentally taken by shrimp trawl activity by eliminating TEDs that are not sufficiently effective in releasing sea turtles; improve the enforcement of existing TED regulations; and implement a more efficient and effective management scheme with respect to conserving large leatherback turtles.

An excessive number of endangered or threatened sea turtles are dying each year due to probable interaction with shrimp trawl gear. The Leatherback Contingency Plan with its required surveys and use of emergency rules that close areas to trawl activity to reduce sea turtle mortality has been shown to be inefficient. An alternative management approach is required to both address the excessive mortality of sea turtles and eliminate the need for costly and disruptive closures.

This final rule will impact the Southeast shrimp trawl fishery primarily through the imposition of increased costs associated with the purchase and maintenance of the required gear and through lost revenue opportunities through potential increased shrimp losses associated with the gear.

A fish harvesting business is considered a small business if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of $3.5 million. Based on a compilation of data from the shrimp landings file for the Gulf, Florida trip ticket data, and data from the Georgia shrimp landings system, the maximum known gross revenue for an individual fishing craft in the Gulf and South Atlantic shrimp fisheries in 1999 was approximately $723,656. While this figure could be an underestimate of the true maximum value since currently available data do not allow all shrimp landings from different parts of the region and their associated revenues to be linked to a particular fishing craft, this figure is sufficiently less than $3.5 million to support the presumption that all firms in the Gulf and South Atlantic shrimp trawl fisheries are small business entities.

It is estimated that 11,244 small vessels (vessels less than or equal to 60 ft. (18.3 m)) and 2,368 large vessels (vessels greater than 60 ft. (18.3 m)), or a total of 13,572 vessels operate in the Southeast shrimp trawl fishery. Note that this figure does not include fishing craft that are licensed or known to only participate in shrimp fisheries that use non-trawl gear (i.e., butterfly nets, channel nets, cast nets, skimmer nets, etc.) since these gear types are not subject to the existing or proposed TED requirements. Small vessels in the Southeast shrimp trawl fishery are estimated to harvest an average of 4,752 lb. (2,155.5 kg) of shrimp annually valued at $12,435 in gross revenues, with average variable cost expenditures of $8,708 and generating a profit of $3,727. Large vessels in the Southeast shrimp trawl fishery are estimated to harvest an average of 42,656 pounds of shrimp annually valued at $142,880 in gross revenues, with average variable cost expenditures of $126,089 and generating a profit of $16,089.

Although all participants in the fishery may be affected by the proposed action, it should be noted that the provisions on weedless TEDs and hooped hard TEDs will also be expected to affect specific subsets of the industry. The weedless TED is used by approximately 15 percent of Texas shrimpers in the trawl fishery. Therefore, using the estimate of the 2,355 vessels reporting landings in Texas, 353 vessels would be affected by the weedless TED specifications. With respect to the hooped hard TEDs, it is estimated that 300 vessels currently utilize this gear.

This final rule is expected to decrease annual ex-vessel shrimp gross revenues by $1.8-$7.3 million, reduce variable costs (due to the change in the relative numbers of small vessels vs. large vessels) of production by $1.4-$3.7 million, and reduce profits by $444,000-$3.6 million. Ex-vessel shrimp prices are projected to increase, due to the decline in domestic shrimp harvest, by 0.7–1.7 percent per year. The proposed action is expected to result in a less than 1.0 percent loss in landings, gross revenues and profits in the Southeast shrimp trawl fishery, and result in a maximum loss of employment opportunities of 5.1 percent in the small vessel fleet and 0.5 percent in the large vessel fleet. The small vessel fleet is expected to contract by 400–574 vessels by 2006 relative to status quo conditions as a result of the rule, while the large vessel fleet is expected to contract by up to 11 vessels, also as a result of the rule. The change in average annual profits for the average small business entity operating in the Southeast shrimp trawl fishery due to the proposed action is expected to range from a gain in profits of 0.5 percent to a loss in profits of 2.4 percent over status quo conditions.

NMFS received the following comments regarding economic impacts of the rule through public comment on the proposed rule: (1) The projected cost to retrofit TEDs is too low; (2) the 20-percent profit margin used is too high; (3) the cumulative loss of shrimp as a result of the proposed changes in addition to existing requirements is not considered; (4) an analysis of possible shrimp loss due to the prohibition of accelerator funnels is lacking; (5) the analysis of the economic impact to small businesses is inadequate; (6) the percent shrimp loss is too low and should be 15 to 20 percent; (7) information on gear replacement frequency is inaccurate; and (8) the analysis does not consider the effects the rule will have on fishermen in combination with depressed shrimp prices. In response to these comments, a new Regulatory Impact Review and Final Regulatory Flexibility Analysis were conducted which incorporated information gathered during the public comment period as well as the best available information from existing databases on profit margins, gear costs, and the durability and cost of replacement of equipment. The average replacement cost for a leatherback TED was assumed to be $220, 4 TEDS were assumed necessary for small vessels and 8–10 TEDs for large vessels, and the average useful life of a TED was assumed to be 3 years. The assumption of a 20-percent profit margin was eliminated and, instead, vessel profits were internally calculated based on expected revenues and variable costs. Shrimp loss under current regulations as well as the proposed regulations was considered and discussed in the analysis. Estimates of shrimp loss under different TED requirements were derived from test data and provided by the NMFS SEFSC. The analysis allowed the use of an accelerator funnel, consistent with the rule. To incorporate the effects of the depressed shrimp prices, 2001 prices were utilized throughout the assessment.

Description of Significant Alternatives to the Proposed Rule and Discussion of how the Alternatives Attempt to Minimize Economic Impacts on Small Entities

Other than the status quo alternative, there were 4 alternatives analyzed including the measures in this final rule (preferred action). One of the proposed alternatives, Alternative 1, would increase the standard size opening of TEDs to 35 inches (89 cm) by 20 inches (51 cm) in all areas; change the minimum grid size to at least 32 inches (81 cm) by 32 inches (81 cm) in all areas; redescribe the current version of the leatherback modification; replace the Leatherback Contingency Plan with standardized zones and times where shrimp trawlers are required to have TEDs installed that exclude leatherback turtles; disallow the use of weedless TEDs and the Jones TED; change the requirements for hooped hard TEDs; change the requirements for accelerator funnels; require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel; and require tow time restrictions on trynets. This alternative would reduce the areal and seasonal extent of the leatherback TED requirements from that of the preferred action, but fewer endangered sea turtles would be saved and it is unclear whether costs would be materially reduced. Costs associated with this alternative could be equal to or exceed those of the preferred action.

Alternative 2 would increase the standard size opening of TEDs to 35 inches (89 cm) by 16 inches (41 cm) in all areas; change the minimum grid size to at least 30 inches (81 cm) by 30 inches (81 cm) in all areas; redescribe the current version of the leatherback modification; replace the Leatherback Contingency Plan with standardized zones and times where shrimp trawlers are required to have TEDs installed that exclude leatherback turtles; disallow the use of weedless TEDs and the Jones TED; change the requirements for hooped hard TEDs; change the requirements for accelerator funnels; require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel; and require tow time restrictions on trynets. This alternative would save even fewer sea turtles compared to the preferred action with, again, uncertainty associated with whether any cost savings could be achieved relative to the preferred action.

Alternative 3 would require the use of a TED capable of releasing a leatherback in all waters at all times; change the minimum grid size to a minimum grid size of at least 32 inches (81 cm) by 32 inches (81 cm) in all areas; redescribe the current version of the leatherback modification (71 inch TED); disallow the use of weedless TEDs and the Jones TED; disallow the use of hooped hard TEDs; disallow the use of accelerator funnels; require bait shrimpers to use TEDs in states where a state-issued bait shrimp license holder can also fish for food shrimp from the same vessel; and require tow time restrictions on trynets. This alternative has more stringent requirements and would, while saving the same number of endangered sea turtles as the preferred action, likely do so at a higher cost. The status quo alternative would not achieve the desired biological goals of the action.

Copies of the EA/RIR/FRFA are available (see **ADDRESSES**).

List of Subjects

50 CFR Part 222

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Transportation.

Dated: February 12, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222, 223, and 224 are amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

§ 222.102 [Amended]

2. In § 222.102, the definition: "Leatherback conservation zone" is removed.

PART 223—THREATENED MARINE SPECIES AND ANADROMOUS SPECIES

3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 223.206:

a. Paragraph (d)(2)(ii)(B)(*1*) is removed and paragraphs (d)(2)(ii)(B)(*2*) and (*3*) are re-designated as paragraphs (d)(2)(ii)(B)(*1*) and (*2*), respectively.

b. Paragraph (d)(2)(iv) is removed and paragraph (d)(2)(v) is re-designated as paragraph (d)(2)(iv).

c. Paragraph (d)(5) is removed and reserved.

d. Paragraphs (d)(2)(ii)(A)(*2*) and (*4*) are revised, and new paragraph (d)(2)(ii)(A)(*5*) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(A) * * *

(*2*) Is a bait shrimper that retains all live shrimp on board with a circulating seawater system, if it does not possess more than 32 lb. (14.5 kg) of dead shrimp on board, if it has a valid original state bait-shrimp license, and if the state license allows the licensed vessel to participate in the bait shrimp fishery exclusively;

* * * * *

(*4*) Is in an area during a period for which tow-time restrictions apply under paragraphs (d)(3)(ii) or (iii) of this section, if it complies with all applicable provisions imposed under those paragraphs; or

(*5*) Is using a single test net (try net) with a headrope length of 12 ft (3.6 m) or less and with a footrope length of 15 ft (4.6 m) or less, if it is pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net, in which case the exemption under this paragraph (d)(2)(ii)(A) applies to the test net.

* * * * *

5. In § 223.207, paragraph (a) introductory text, paragraphs (a)(3)(ii), (a)(4) through (a)(8), (b)(1), (b)(2), (d)(2), (d)(3), the headings of paragraphs

(c)(1)(iv)(A) and (B) are revised and a new first sentence is added to paragraph (c)(1)(iv)(A) and a new last sentence is added to paragraph (c)(1)(iv)(B) to read as follows:

§ 223.207 Approved TEDs.

* * * * *

(a) *Hard TEDs.* Hard TEDs are TEDs with rigid deflector grids and are categorized as "hooped hard TEDs" which may only be used in inshore waters, except for the inshore waters of Georgia and South Carolina and "single-grid hard TEDs" such as the Matagorda and Georgia TED (Figures 3 & 4 to this part). Hard TEDs complying with the following generic design criteria are approved TEDs:

* * * * *

(3) * * *

(ii) For any shrimp trawler fishing in the Gulf SFSTCA or the Atlantic SFSTCA, a hard TED with the position of the escape opening at the bottom of the net when the net is in its deployed position, the angle of the deflector bars from the normal, horizontal flow through the interior of the trawl, at any point, must not exceed 55°, and the angle of the bottom-most 4 inches (10.2 cm) of each deflector bar, measured along the bars, must not exceed 45° (Figures 14a and 14b to this part).

(4) *Space between bars.* The space between deflector bars and the deflector bars and the TED frame must not exceed 4 inches (10.2 cm).

(5) *Direction of bars.* The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net, except that up to four of the bottom bars and two of the top bars, including the frame, may run from side to side of the TED. The deflector bars must be permanently attached to the TED frame or to the horizontal bars, if used, at both ends.

(6) *Position of the escape opening.* The escape opening must be made by removing a rectangular section of webbing from the trawl, except for a TED with an escape opening size described at paragraph (a)(7)(ii)(A) for which the escape opening may alternatively be made by making a horizontal cut along the same plane as the TED. The escape opening must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in the deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. The passage from the mouth of the trawl through the escape opening must be completely clear of any obstruction or modification, other than those specified in paragraph (d) of this section.

(7) *Size of escape opening*—(i) *Hooped hard TED.* On a hooped hard TED, the escape opening must have a horizontal measurement no less than 35 inches (89 cm) wide and a forward measurement no less than 27 inches (69 cm). A door frame may not be used over the escape opening; however, a webbing flap may be used as provided in paragraph (d)(3)(i) of this section. The resultant opening with a webbing flap must be a minimum width of 35 inches (89 cm) and a minimum height of 20 inches (51 cm), with each measurement taken simultaneously.

(ii) *Single-grid hard TEDs.* On a single-grid hard TED, the horizontal cut(s) for the escape opening may not be narrower than the outside width of the TED frame minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. Fore-and-aft cuts to remove a rectangular piece of webbing must be made from the ends of the horizontal cuts along a single row of meshes along each side. The overall size of the escape opening must match one of the following specifications:

(A) *44–inch inshore opening.* The escape opening must have a minimum width of 44 inches (112 cm) and a minimum height of 20 inches (51 cm) with each measurement taken separately. A webbing flap, as described in paragraph (d)(3)(i) of this section, may be used with this escape hole, so long as this minimum opening size is achieved. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) *The 71–inch offshore opening:* The two forward cuts of the escape opening must not be less than 26 inches (66 cm) long from the points of the cut immediately forward of the TED frame. The resultant length of the leading edge of the escape opening cut must be no less than 71 inches (181 cm) with a resultant circumference of the opening being 142 inches (361 cm) (Figure 12 to this part). A webbing flap, as described in paragraph (d)(3)(ii) of this section, may be used with this escape hole, so long as this minimum opening size is achieved. Either this opening or the one described in paragraph (a)(7)(ii)(C) of this section must be used in all offshore waters and in all inshore waters in Georgia and South Carolina, but may also be used in other inshore waters.

(C) *Double cover offshore opening.* The two forward cuts of the escape opening must not be less than 20 inches (51 cm) long from the points of the cut immediately forward of the TED frame. The resultant length of the leading edge of the escape opening cut must be no less than 56 inches (142 cm)(Figure 16 to this part illustrates the dimensions of these cuts). A webbing flap, as described in paragraph (d)(3)(iii) of this section, may be used with this escape hole. Either this opening or the one described in paragraph (a)(7)(ii)(B) of this section must be used in all offshore waters but also in all inshore waters in Georgia and South Carolina, and may be used in other inshore waters.

(8) *Size of hoop or grid*—(i) *Hooped hard TED.* The front hoop on a hard TED must have an inside horizontal measurement of at least 35 inches (89 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the top of the front hoop must be at least 20 inches (51 cm).

(ii) *Single-grid hard TED.* A single-grid hard TED must have a minimum outside horizontal and vertical measurement of 32 inches (81 cm). The required outside measurements must be at the mid-point of the deflector grid.

* * * * *

(b) * * *

(1) *Flounder TED.* (Figure 10 to this part). The Flounder TED is approved for use only in the Atlantic summer flounder bottom trawl fishery. The Flounder TED is not an approved TED for use by shrimp trawlers. The Flounder TED must be constructed of at least 1 1/4 inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least 1/8 inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 51 inches (129.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. One or more additional vertical bars running from the bottom bar to the horizontal bar must divide the opening at the bottom into two or more rectangles, each with a maximum height of 10 inches (25.4 cm) and a maximum width of 14 1/2 inches (36.8 cm). This TED must comply with paragraph (a)(2) of this section. The angle of the deflector bars must be between 30 and 55 from the normal, horizontal flow through the interior of the trawl. The entire width of the escape opening from the trawl must

be centered on and immediately forward of the frame at the top of the net when the net is in its deployed position. The escape opening must be at the top of the net and the slope of the deflector bars from forward to aft is upward. The escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction. The cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. The resulting escape opening in the net webbing must measure at least 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height. The vertical measurement must be taken at the midpoint of the horizontal measurement. This TED may not be configured with a bottom escape opening. Installation of an accelerator funnel is not permitted with this TED.

(2) *Weedless TED.* The weedless TED must meet all the requirements of paragraph (a) of this section for single-grid hard TEDs, with the exception of paragraphs (a)(1) and (a)(5) of this section. The weedless TED must be constructed of at least 1–1/4 inch (3.2 cm) outside diameter aluminum with a wall thickness of at least 1/8 inch (0.3 cm). The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net. The ends of the deflectors bars on the side of the frame opposite to the escape opening must be permanently attached to the frame. The ends of the deflector bars nearest the escape opening are not attached to the frame and must lie entirely forward of the leading edge of the outer frame. The ends of the unattached deflector bars must be no more than 4 inches (10.2 cm) from the frame and may not extend past the frame. A horizontal brace bar to reinforce the deflector bars, constructed of the same size or larger pipe as the deflector bars, must be permanently attached to the frame and the rear face of each of the deflector bars at a position anywhere between the vertical mid-point of the frame and the unattached ends of the deflector bars. The horizontal brace bar may be offset behind the deflector bars, using spacer bars, not to exceed 5 inches (12.7 cm) in length and constructed of the same size or larger pipe as the deflector bars. See Figure 15.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(A) *Inshore opening.* This opening is the minimum size opening that may be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina, in which a larger minimum opening is required.* * *

* * * * *

(B) *Offshore opening.* * * * This opening or one that is larger must be used in all offshore waters and in the inshore waters of Georgia and South Carolina. It also may be used in other inshore waters.

* * * * *

(d) * * *

(2) *Accelerator funnel.* An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size of not greater than 1 5/8 inches (4 cm), if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The trailing edge of the accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than one-third of the circumference of the funnel is attached, and if the inside horizontal opening as described above in maintained. In a bottom opening TED only the top one-third of the circumference of the funnel may be attached to the TED. In a top opening TED only the bottom one-third of the circumference of the funnel may be attached to the TED.

(i) In inshore waters, other than the inshore waters of Georgia and South Carolina in which a larger opening is required, the inside horizontal opening of the accelerator funnel must be at least 44 inches (112 cm).

(ii) In offshore waters and the inshore waters of Georgia and South Carolina, the inside horizontal opening of the accelerator funnel must be at least 71 inches (180 cm).

(3) *Webbing flap.* A webbing flap may be used to cover the escape opening under the following conditions: No device holds it closed or otherwise restricts the opening; it is constructed of webbing with a stretched mesh size no larger than 1–5/8 inches (4 cm); it lies on the outside of the trawl; it is attached along its entire forward edge forward of the escape opening; it is not attached on the sides beyond the row of meshes that lies 6 inches (15 cm) behind the posterior edge of the grid; the sides of the flap are sewn on the same row of meshes fore and aft; and the flap does not overlap the escape hole cut by more than 5 inches (13 cm) on either side.

(i) *44–inch inshore TED flap.* This flap may not extend more than 24 inches (61 cm) beyond the posterior edge of the grid.

(ii) *71–inch offshore TED Flap.* The flap must be a 133–inch (338–cm) by 52–inch (132–cm) piece of webbing. The 133–inch (338–cm) edge of the flap is attached to the forward edge of the opening (71–inch (180–cm) edge). The flap may extend no more than 24 inches (61 cm) behind the posterior edge of the grid (Figure 12 to this part illustrates this flap).

(iii) *Double cover flap offshore TED flap.* This flap must be composed of two equal size rectangular panels of webbing. Each panel must be no less than 58 inches (147 cm) wide and may overlap each other no more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The trailing edge of each panel must not extend more than 6 inches (15 cm) past the posterior edge of the grid (Figure 16 to this part). Chafing webbing described in paragraph (d)(4) of this section may not be used with this type of flap.

Figures 12 and 15 to Part 223 [Amended]

6. In part 223, Figures 1, 2 and 11 are removed and reserved; Figures 12a and 12b are removed; new Figure 12 is added; and Figure 15 is revised to read as follows:

BILLING CODE 3510–22–S

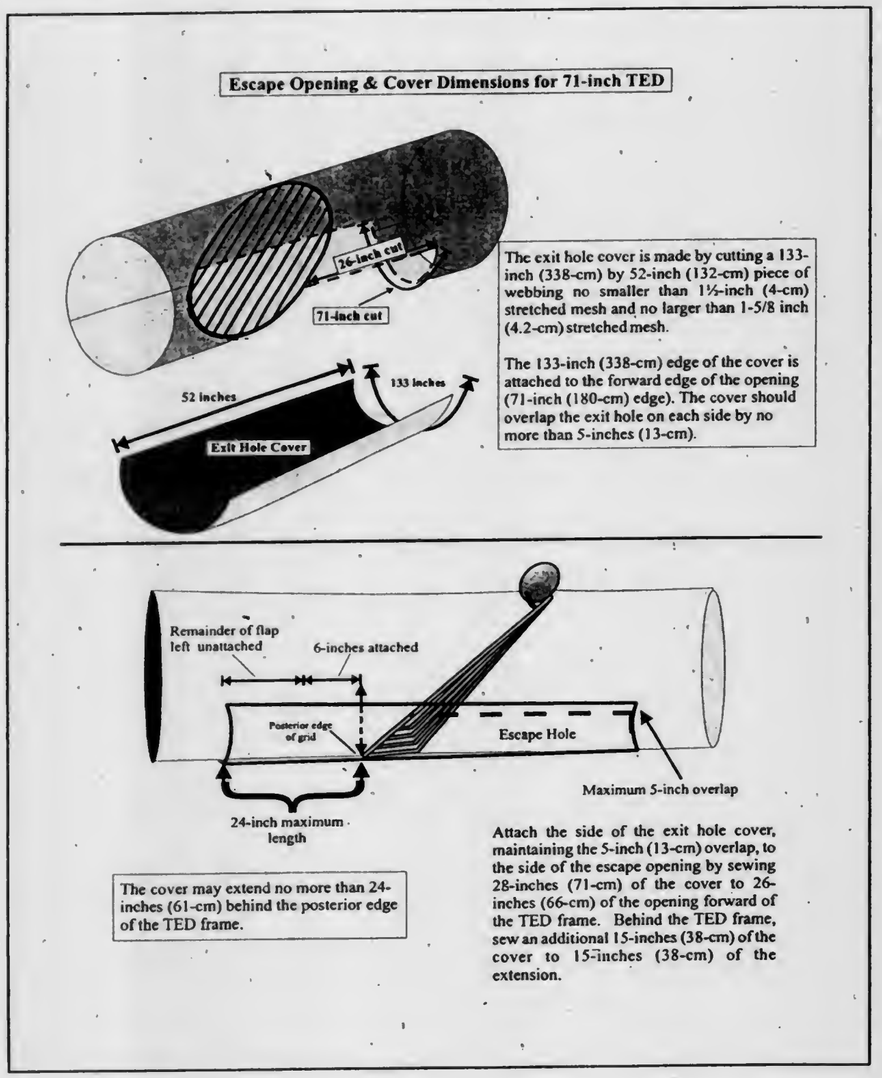


Figure 12 to Part 223.

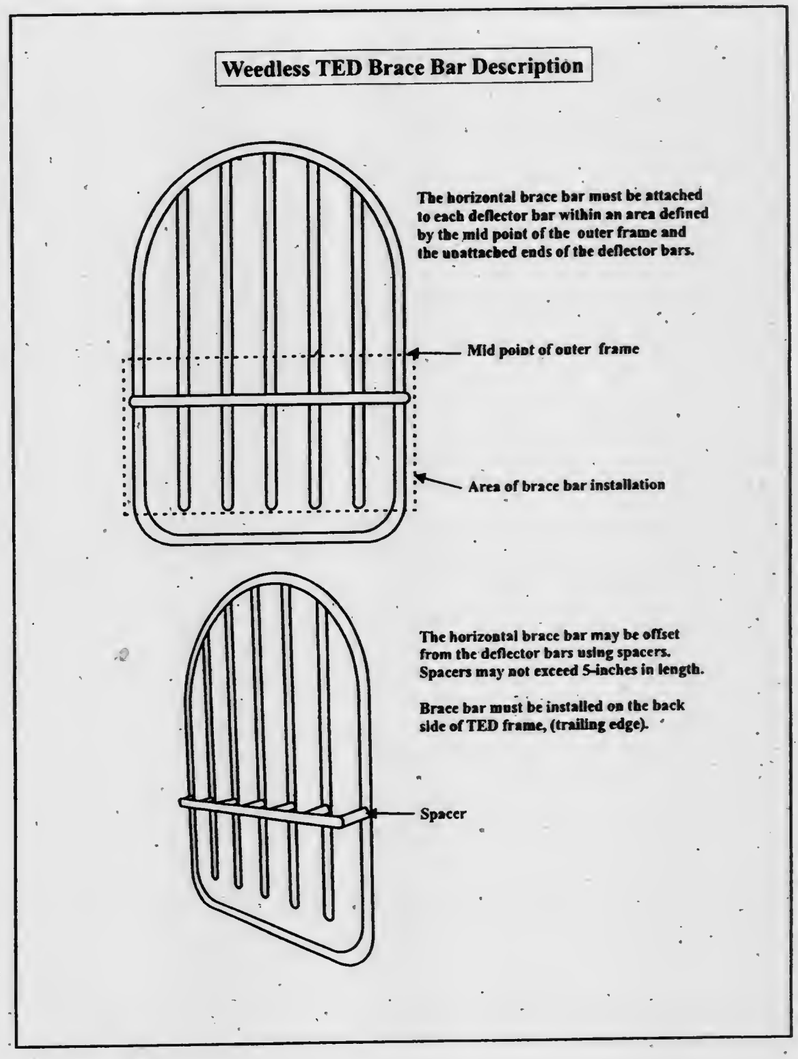


Figure 15 to Part 223

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

7. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.104 [Amended

8. In § 224.104, paragraph (c) is removed, and paragraph (d) is redesignated as paragraph (c).

[FR Doc. 03–4136 Filed 2–20–03; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 68, No. 35
Friday, February 21, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH13

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Cask System Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the BNFL Fuel Solutions (FuelSolutions™) cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 3 to Certificate of Compliance Number 1026. Amendment No. 3 would modify the Technical Specifications. The current Technical Specifications require that if the W–21 canister is required to be removed from its storage cask, then the canister must be returned to the spent fuel building. The modified Technical Specifications would provide an alternative to returning the canister to the spent fuel building by returning it to the transfer cask. Specifically, Technical Specifications 3.3.2 and 3.3.3 propose returning the W–21 canister to the transfer cask while restoring normal storage conditions. The amendment also includes several editorial changes to Technical Specifications 3.1.1, 3.3.2, and 3.3.3.

DATES: Comments on the proposed rule must be received on or before March 24, 2003.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report can be found under ADAMS Accession No. ML023310579. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 3 to CoC No. 1026 and does not include other aspects of the FuelSolutions™ cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on May 7, 2003. However, if the NRC receives significant adverse comments by March 24, 2003, then the NRC will publish a document that withdraws the direct final rule and will subsequently address the comments received in a final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1026 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1026.
Initial Certificate Effective Date: February 15, 2001.
Amendment Number 1 Effective Date: May 14, 2001.
Amendment Number 2 Effective Date: January 28, 2002.
Amendment Number 3 Effective Date: May 7, 2003.
SAR Submitted by: BNFL Fuel Solutions Corporation.
SAR Title: Final Safety Analysis Report for the FuelSolutions™ Spent Fuel Management System.
Docket Number: 72–1026.
Certificate Expiration Date: February 15, 2021.
Model Number: WSNF–220, WSNF–221, and WSNF–223 systems; W–150 storage cask; W–100 transfer cask; and the W–21 and W–74 canisters.

* * * * *

Dated in Rockville, Maryland, this 7th day of January, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–4108 Filed 2–20–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–290–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes. This proposal would require removing the existing oxygen shutoff valve and installing a new oxygen shutoff valve. This action is necessary to prevent rapid adiabatic compression within the oxygen line between the oxygen shutoff valve and the pressure regulator due to a shutoff valve that can be opened quickly, which could result in overheating of the oxygen system, and consequent fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–290–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–290–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–290–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–290–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes. The CAAI advises that a fire occurred in the cockpit on two airplanes during taxiing, when the co-pilot turned on the oxygen system. Investigation revealed that the existing design of the oxygen system allows high-pressure oxygen into the cockpit, which is reduced at a pressure regulator located on the airframe structure adjacent to the co-pilot. If the shutoff valve is opened quickly, a rapid adiabatic compression within the oxygen line between the oxygen shutoff valve and the pressure regulator occurs. This condition, if not corrected, could result in overheating of the oxygen system, and consequent fire in the cockpit.

Other Relevant Rulemaking

The oxygen systems on certain Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes are identical to those on the affected Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124 and 1124A series airplanes. Therefore, the FAA has issued NPRM, Rules Docket 2002–NM–281–AD, to address the identified unsafe condition on certain Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes as well.

Explanation of Relevant Service Information

The manufacturer has issued the following service bulletins, which describe procedures for removing the existing oxygen shutoff valve and installing a new oxygen shutoff valve:

TABLE—SERVICE BULLETINS

For model—	Service bulletin—	Including—
1121, 1121A, 1121B series airplanes.	1121 Commodore Jet (Israel Aircraft Industries) Service Bulletin 1121–35–024, dated September 23, 2002.	Service Bulletin Certificate of Compliance.
1123 series airplanes	1123–Westwind (Israel Aircraft Industries) Service Bulletin 1123–35–048, dated September 23, 2002.	Service Bulletin Certificate of Compliance.
1124 and 1124A series airplanes	1124–Westwind (Israel Aircraft Industries) Service Bulletin 1124–35–137, dated September 23, 2002.	Service Bulletin Certificate of Compliance.

Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified these service bulletins as mandatory and issued Israeli airworthiness directive 35–02–10–12, dated October 17, 2002, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Israeli Airworthiness Directive

The proposed AD would differ from the parallel Israeli airworthiness directive in that it would require accomplishment of the removal and installation of the oxygen shutoff valve within 250 flight hours after the effective date of this AD. The parallel Israeli airworthiness directive recommends accomplishment of those actions within 200 flight hours. As described previously under the heading "Other Relevant Rulemaking," we have issued NPRM, Rules Docket 2002–NM–281–AD, to address the identified unsafe condition on certain Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes. The compliance time in that NPRM, which parallels Israeli airworthiness directive 35–02–07–02, dated August 18, 2002, is within 250 flight hours after the effective date of the AD. Because the identified unsafe condition in both NPRMs and the subject oxygen systems installed on the affected airplane models are identical, we have determined that the compliance time of both of these NPRMs should be the same. In light of these factors, we find a compliance time of within 250 flight hours after the effective date of this AD for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. The compliance time has been coordinated and concurred with by the CAAI.

Differences Between Proposed AD and Relevant Service Bulletin

Operators should note that, although the referenced service bulletins describe procedures for completing a Service Bulletin Certificate of Compliance to record compliance with the service bulletin, this proposed AD would not require those actions.

Cost Impact

The FAA estimates that 300 Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $900 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $414,000, or $1,380 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries, Ltd.: Docket 2002–NM–290–AD.

Applicability: All Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid adiabatic compression within the oxygen line between the oxygen shutoff valve and the pressure regulator due to a shutoff valve that can be opened quickly, which could result in overheating of the oxygen system, and consequent fire in the cockpit, accomplish the following:

Removal and Installation of Oxygen Shutoff Valve

(a) Within 250 flight hours after the effective date of this AD, remove the existing oxygen shutoff valve and install a new oxygen shutoff valve, per the Accomplishment Instructions of the applicable service bulletin specified in the following table:

TABLE—SERVICE BULLETINS

For model—	Service bulletin—	Excluding—
1121, 1121A, 1121B series airplanes.	1121 Commodore Jet (Israel Aircraft Industries) Service Bulletin 1121–35–024, dated September 23, 2002.	Service Bulletin Certificate of Compliance.
1121 series airplanes	1123–Westwind (Israel Aircraft Industries) Service Bulletin 1123–35–048, dated September 23, 2002.	Service Bulletin Certificate of Compliance.
1124 and 1124A series airplanes	1124–Westwind (Israel Aircraft Industries) Service Bulletin 1124–35–137, dated September 23, 2002.	Service Bulletin Certificate of Compliance.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 35–02–10–12, dated October 17, 2002.

Issued in Renton, Washington, on February 13, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4167 Filed 2–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–281–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes. This proposal would require removing the existing oxygen shutoff valve and installing a new oxygen shutoff valve. This action is necessary to prevent rapid adiabatic compression within the oxygen line between the oxygen shutoff valve and the pressure regulator due to a shutoff valve that can be opened quickly, which could result in overheating of the oxygen system and consequent fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–281–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–281–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–281–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–281–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on certain Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes. The CAAI advises that a fire occurred in the cockpit on two Israel Aircraft Industries, Ltd., Model 1124 and 1124A series airplanes during taxiing, when the co-pilot turned on the oxygen system. Investigation revealed that the existing design of the oxygen system allows high-pressure oxygen into the cockpit, which is reduced at a pressure regulator located on the airframe structure adjacent to the co-pilot. If the shutoff valve is opened too quickly, a rapid adiabatic compression within the oxygen line between the oxygen shutoff valve and the pressure regulator may occur. This condition, if not corrected, could result in overheating of the oxygen system, and consequent fire in the cockpit.

The oxygen systems on certain Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes are identical to those on the affected Israel Aircraft Industries, Ltd., Model 1124 and 1124A series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Other Relevant Rulemaking

The FAA has issued NPRM, Rules Docket 2002–NM–290–AD, to address the identified unsafe condition on Israel Aircraft Industries, Ltd., Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes.

Explanation of Relevant Service Information

The manufacturer has issued Astra (Gulfstream Aerospace Corporation) Alert Service Bulletin 1125–35A–114, dated November 28, 2001, including Service Bulletin Certificate of Compliance, which describes procedures for removing the existing oxygen shutoff valve and installing a new oxygen shutoff valve. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified this service bulletin as mandatory and issued Israeli airworthiness directive 35–02–07–02, dated August 18, 2002, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Relevant Service Bulletin

Operators should note that, although the referenced service bulletin describes procedures for completing a Service Bulletin Certificate of Compliance to record compliance with the service bulletin, this proposed AD would not require that action.

Cost Impact

The FAA estimates that 100 Model Astra SPX and 1125 Westwind Astra series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $900 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $138,000, or $1,380 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket 2002–NM–281–AD.

Applicability: Model Astra SPX series airplanes having serial numbers 073 and 079 through 131 inclusive; and Model 1125 Westwind Astra series airplanes having serial numbers 004 though 072 inclusive, and 074 through 078 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid adiabatic compression within the oxygen line between the oxygen shutoff valve and the pressure regulator due to a shutoff valve that can be opened quickly, which could result in overheating of the oxygen system, and consequent fire in the cockpit, accomplish the following:

Removal and Installation of Oxygen Shutoff Valve

(a) Within 250 flight hours after the effective date of this AD, remove the existing oxygen shutoff valve and install a new oxygen shutoff valve, per the Accomplishment Instructions of Astra (Gulfstream Aerospace Corporation) Alert Service Bulletin 1125–35A–114, dated November 28, 2001, excluding Service Bulletin Certificate of Compliance.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 35–02–07–02, dated August 18, 2002.

Issued in Renton, Washington, on February 13, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4166 Filed 2–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–331–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, –320, and –500 Series Airplanes; and Model ATR72–102, –202, –212, and –212A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and Model ATR72–102, –202, –212, and –212A series airplanes. This proposal would require modification of the flight attendant's seat located in the front of the cabin, and follow-on actions. This action is necessary to prevent release of the forward flight attendant's shoulder restraint harness, which could result in injury to the flight attendant in case of turbulence. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, *Attention: Rules Docket No. 2002–NM–331–AD*, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–331–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–331–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–331–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and Model ATR72–102, –202, –212, and –212A series airplanes. The DGAC advises that the inertia-reel harness installed on the forward flight attendant's seat does not ensure effective restraint of the flight attendant's shoulders against the backrest of the seat, and does not adequately restrain head movement. Investigation indicates that such a condition is attributed to the design of the inertia-reel harness. Consequently, in case of turbulence, there is a risk that the head of the flight attendant could hit the partitions located on either side of the forward flight attendant's seat. This condition, if not corrected, could result in injury to the flight attendant.

Explanation of Relevant Service Information

Avions de Transport Regional (ATR) has issued Service Bulletin ATR42–25–0141, dated October 15, 2002 (for certain Model ATR42–200, –300, –320, and –500 series airplanes), and Service Bulletin ATR72–25–1082, dated October 15, 2002 (for certain Model ATR72–102, –202, –212, and –212A series airplanes). These service bulletins specify procedures for modifying the flight attendant's seat located in the front of the cabin. The modification includes replacing the inertia-reel harness with a new fixed harness, and replacing the backrest cover and backrest cushion with new components. Follow-on actions include replacing the seat identification placard with a new placard, and installing a new modification placard near the seat identification placard.

ATR Service Bulletins ATR42–25–0141 and ATR72–25–1082 both reference SICMA Service Bulletin 138–25–008, dated September 18, 2002, as an additional source of service information for procedures to modify the forward flight attendant's seat, and perform follow-on actions.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–539(B), dated October 30, 2002, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as described below.

Difference Between Proposed Rule and French Airworthiness Directive

The French airworthiness directive specifies certain Aerospatiale Model ATR42–400 series airplanes. However, the applicability of this proposed rule does not include that airplane model because the FAA has not issued a type certificate for that model; therefore, that model is not included on the most recent type certificate data sheet for the affected models.

Cost Impact

The FAA estimates that approximately 80 Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes, and Model ATR72–102, –202, –212, and –212A series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,786 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $147,680, or $1,846 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 2002–NM–331–AD.

Applicability: Airplanes listed in the following table, certificated in any category:

Airplane models—	Including models on which these modifications have been installed—	Including models on which these modifications have not been installed—
ATR42–200, –300, and –320 series airplanes.	0384, 1685, or 1991; or modifications per Service Bulletins ATR42–25–0082, ATR42–98–331A, or ATR42–98–409C.	5328 per Service Bulletin ATR42–25–0141, or 619 (*i.e.*, 0619). 8023 per Service Bulletin ATR42–98–025A.
ATR42–500 series airplanes	4181 or 5042	5301 per Service Bulletin ATR42–98–524D. 5328 per Service Bulletin ATR42–25–0141.
ATR72–102, –202, –212, and –212A series airplanes.	None	5328 (replacement of the inertia-reel harness with a fixed harness) per Service Bulletin ATR72–25–1082.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent release of the forward flight attendant's shoulder restraint harness, which could result in injury to the flight attendant in case of turbulence; accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Modify the forward flight attendant's seat located in the front of the cabin (including replacing the inertia-reel harness with a new fixed harness, and replace the backrest cover and backrest cushion with new components), per Avions de Transport Regional (ATR) Service Bulletin ATR42–25–0141, dated October 15, 2002 (for Model ATR42–200, –300, –320, and –500 series airplanes); or Service Bulletin ATR72–25–1082, dated October 15, 2002 (for Model ATR72–102, –202, –212, and –212A series airplanes); as applicable.

Follow-on Actions

(b) Before further flight following accomplishment of the modification required by paragraph (a) of this AD: Accomplish paragraphs (b)(1) and (b)(2) of this AD per ATR Service Bulletin ATR42–25–0141, dated October 15, 2002; or ATR Service Bulletin ATR72–25–1082, dated October 15, 2002; as applicable.

(1) Replace the seat identification placard with a new placard having a new part number (P/N).

(2) Install a new modification placard to indicate accomplishment of the SICMA Service Bulletin 138–25–008, dated September 18, 2002.

Note 2: ATR Service Bulletins ATR42–25–0141 and ATR72–25–1082 reference SICMA Service Bulletin 138–25–008 as an additional source of service information for procedures to modify the forward flight attendant's seat, and to perform follow-on actions (including replacing the seat identification placard with a new placard, and installing a new modification placard).

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2002–539(B), dated October 30, 2002.

Issued in Renton, Washington, on February 13, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4168 Filed 2–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC75

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Safety Measures and Procedures for Pipeline Modifications and Repairs

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: MMS withdraws a proposed rule that was published in the **Federal Register** on August 28, 2001 (66 FR 45236). The proposed rule required all lessees, lease operators, and pipeline right-of-way holders to submit in writing the measures they plan to take and the procedures they plan to follow to ensure the safety of offshore workers and to prevent pollution before beginning any operation that involves cutting into a pipeline or opening a pipeline at a flange. Issues raised during the comment period for the proposed rule led MMS to reevaluate its pipeline permitting procedures. MMS determined that a rewrite of its Subpart J pipeline regulations is a more appropriate course of action. Based on this determination, MMS is withdrawing the proposed rule.

DATES: The proposed rule is withdrawn as of February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Carl W. Anderson, Operations Analysis Branch, at (703) 787–1608 or e-mail at *carl.anderson@mms.gov.*

SUPPLEMENTARY INFORMATION: MMS is authorized to issue and enforce rules to promote safe operations, environmental protection, and resource conservation on the Outer Continental Shelf (OCS). (The OCS Lands Act (43 U.S.C. 1331 *et seq.*) defines the OCS.) Under this authority, MMS regulates pipeline transportation of mineral production and rights-of-way for pipelines and associated facilities. MMS approves all OCS pipeline applications, regardless of whether a pipeline is built and operated under Department of the Interior (DOI) or Department of Transportation (DOT) regulatory requirements. MMS also has sole authority to grant rights-of-way for OCS pipelines.

We received comments from five respondents on the proposed rule. They were the Offshore Operators Committee, Duke Energy Gas Transmission, CMS Panhandle Pipeline Companies, Shell Exploration & Production Company, and Enron Transportation Services Company. They raised a number of questions that gave us reason to reconsider our existing pipeline regulations and internal permitting procedures. We reviewed our regulations regarding platform piping systems under 30 CFR part 250, subpart H—Oil and Gas Production Safety Systems; industry response in emergency repair situations; and the impacts that MMS permitting procedures for pipeline modifications and repairs have on production operations and transportation pipeline operations.

The comments we received on this rule have been helpful in calling attention to certain aspects of our pipeline regulatory program that need upgrading and redefining. Moreover, the review of our internal permitting procedures pointed out the need for increased clarification regarding our overlapping responsibilities with DOT for OCS pipelines. The respective responsibilities of DOI and DOT regarding OCS pipelines are defined in a 1996 Memorandum of Understanding between the two Departments.

Therefore, we concluded that rather than continue with this rulemaking, we should review and rewrite our regulations under 30 CFR part 250, subpart J—Pipelines and Pipeline Rights-of-Way. MMS will rewrite the new subpart J in close cooperation with DOT's Office of Pipeline Safety to ensure, to the extent possible, that the two agencies have compatible regulations governing OCS pipelines. MMS will subsequently publish the new subpart J as a proposed rule. The withdrawal of this rule will not diminish the safety of offshore operations.

, Dated: February 6, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–4149 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing this proposed rule to prescribe minimum standards applicable to dealers in precious metals, stones, or jewels pursuant to the provisions in the U.S.A. Patriot Act of 2001 that require financial institutions to establish anti-money laundering programs.

DATES: Written comments may be submitted on or before April 22, 2003.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov* with the caption in the body of the text, "Attn: section 352—Jewelry Dealer Regulations." Comments also may be submitted by paper mail to FinCEN, PO Box 39, Vienna, VA 22183–0039, "Attn: section 352—Jewelry Dealer Regulations." Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905–3590; the Office of the General Counsel, (202) 622–1927; or the Office of the Assistant General Counsel (Banking and Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (U.S.A. Patriot Act) of 2001 (Pub. L. 107–56) (the "Act"). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), which are codified in subchapter II of chapter 53 of title 31, United States Code.[1] These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. Section 352(c) of the Act directs the Secretary of the Treasury ("Secretary") to prescribe regulations for anti-money laundering programs that are "commensurate with the size, location, and activities" of the financial institutions to which such regulations apply.

Although a dealer "in precious metals, stones, or jewels" ("dealer") is defined as a financial institution under the BSA, 31 U.S.C. 5312(a)(2)(N), FinCEN has not previously defined the term or issued regulations regarding dealers. On April 29, 2002, FinCEN deferred the anti-money laundering program requirement contained in 31 U.S.C. 5318(h) that would have applied to the industry. The purpose of the deferral was to provide FinCEN with time to study the industry and to consider how anti-money laundering controls could best be applied to the industry.[2] This rule defines the term dealer and provides guidance, tailored to the industry, to such entities in complying with section 352.

The industry of dealers encompasses various segments, including: (1) Those who trade in precious metals, including large scale metal suppliers and large and small scale refiners; (2) those who trade loose gemstones; (3) large and small scale manufacturers of jewelry; and (4) retail stores, including independent and chain stores of varying sizes, selling jewelry products to, and buying jewelry products from, the consuming public. The size of businesses in each segment of the industry varies substantially from a single artisan goldsmith to publicly traded commercial manufacturers employing hundreds of people and producing millions of finished pieces every year. The sources of supply vary as well, from large scale producers of fabricated precious metals materials to small dealers selling unique and rare gemstones on an individualized basis. Further, there is an active secondary market for jewelry, loose gemstones, and precious metals, with small firms selling used or antique pieces for scrap value or as unique works of art.

Because dealers are not generally regulated as financial institutions, the industry traditionally has been subject to limited federal financial regulation. Federal laws governing this industry, such as the National Gold and Silver Stamping Act (15 U.S.C. 291–300) and the Lanham Act (15 U.S.C. 1117, 1125), are generally intended to protect consumers against misleading descriptions of the fineness of precious metals or the identity and quality of precious stones and jewels. Similarly, state regulation of the industry is focused on consumer protection.

II. The Anti-Money Laundering Program

The Congressional mandate that all financial institutions establish an anti-money laundering program is a key element in the national effort to prevent and detect money laundering and the financing of terrorism. The mandate recognizes that financial institutions other than depository institutions (which have long been subject to BSA requirements) are vulnerable to money laundering. The legislative history of the Act explains that the anti-money laundering program is not a one-size-fits-all requirement. The general nature of the requirement reflects Congress' intent that each financial institution have the flexibility to tailor its program to fit its business, taking into account factors such as size, location, activities, and risks or vulnerabilities to money laundering. This flexibility is designed to ensure that all firms subject to the anti-money laundering program requirement, from the largest to the smallest firms, have in place policies and procedures appropriate to monitor for anti-money laundering compliance.[3]

Although dealers do not perform the same functions as banking institutions, the industry presents identifiable money laundering risks. Precious metals, precious stones, and jewels constitute easily transportable, highly concentrated forms of wealth. They serve as international mediums of exchange that can be converted into cash anywhere in the world. In addition, precious metals, especially gold, silver, and platinum, have a ready, actively traded market, and can be melted and poured into various forms, thereby obliterating refinery marks and leaving them virtually untraceable. For these reasons, precious metals, precious stones, and jewels can be highly attractive to money launderers and other criminals, including those involved in the financing of terrorism.

In addition, significant incentives currently exist for dealers to minimize financial losses caused by fraud in connection with the valuable products in which they deal. By their very nature, precious metals, precious stones, and jewels are extremely valuable by weight and volume, and fraud perpetrators attempt to incorrectly identify the mass, quality, or fineness of these products. Theft of such items, through the use of counterfeit checks, forged signatures, or other means, is likewise a risk. As such, this industry has long been aware that rigorous anti-fraud measures are a necessity in order to remain economically viable. This proposed rule

[1] Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary the Treasury to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

[2] *See* 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002), as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

[3] *See* U.S.A. Patriot Act of 2001: Consideration of H.R. 3162 Before the Senate (October 25, 2001) (statement of Sen. Sarbanes); Financial Anti-Terrorism act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives (October 17, 2001) (statement of Rep. Kelly) (provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the Act).

seeks to take advantage of those existing practices by focusing the due diligence conducted by dealers to include the potential for money laundering or terrorist financing.

A. Definitions

Section 103.140(a) defines the key terms used in the proposed rule. Paragraph 103.140(a)(1)(i) defines "dealer" as any person who is "engaged in the business of purchasing and selling jewels, precious metals, or precious stones, or jewelry composed of jewels, precious metals, or precious stones." The proposed definition of dealer reflects Treasury's determination that all segments of the industry are vulnerable to money laundering and terrorist financing. Thus, the anti-money laundering requirement contained in the proposed rule covers entities including manufacturers, refiners, wholesalers, retailers, and any other entity engaged in the business of purchasing and selling jewels, precious metals, precious stones, or jewelry.

The proposed definition contains an explicit minimum dollar threshold, to carve out small businesses that may, on a part-time basis, deal in precious metals, stones, jewels, or jewelry. Thus, paragraphs (a)(1)(i)(A) and (B) provide that a person is a "dealer" only if, during the prior calendar or tax year, the person (1) purchased more than $50,000 in jewels, precious metals, precious stones, or jewelry, or (2) received more than $50,000 in gross proceeds from the sale of jewels, precious metals, precious stones, or jewelry. Thus, an amateur silversmith, who sells a portion of his production to finance his hobby, would not be subject to this rule if he were to remain below the proposed threshold. FinCEN specifically solicits comment on the amount of the proposed threshold, and whether an alternative threshold should be employed, such as specific physical quantities of precious metals, stones, or jewels, or other types of thresholds.

In addition to the minimum dollar threshold, the definition of "dealer" contains two exceptions, found in proposed paragraph (a)(1)(ii). The first exception provides that a retailer [4] is a dealer only if it purchased more than $50,000 in jewels, precious metals, precious stones, or jewelry from persons other than dealers during the prior calendar or tax year. Thus, a retailer that purchases jewels, precious metals, precious stones, or jewelry from a dealer (for example, from a wholesaler), would not fall within the definition of "dealer," even if its gross sales of jewels, precious metals, stones, and jewelry exceeded $50,000 in the prior calendar or tax year. However, a retailer that, in the prior calendar or tax year, purchased more than $50,000 in jewels, precious metals, precious stones, or jewelry from sources other than a dealer (for example, from the general public), would be a dealer for purposes of the rule. The rationale for this limited exception is that, in order to abuse this industry, a money launderer must be able to sell as well as purchase the goods. Therefore, there is substantially less risk that a retailer who purchases goods exclusively or almost exclusively from dealers subject to the proposed rule will be abused by money launderers.

The second exception, contained in proposed paragraph (a)(1)(ii)(B), carves out from the definition of "dealer" a person buying or selling value-added fabricated goods containing minor amounts of precious metals or gemstones. Precious metals, stones, and jewels often have minor uses in equipment for which they act as a very small component, for example, in computers or drills with industrial diamond cutting tools, or as reflective coating on windows. Similarly, sapphire bearings may be used in highly precise electronic equipment, because of the toughness exhibited by corundum. Although the amount of precious metals, stones, and jewels contained in each industrial product may be minimal, the high volume production or sale of such products could result in a high volume of sale of precious metals, stones, or jewels. FinCEN has determined that the anti-money laundering program requirement should be imposed on those sectors of the industry that pose the most significant risk of money laundering and terrorist financing, and for this reason, persons who buy and sell value-added fabricated goods containing minor amounts of precious metals or gemstones are excluded from the proposed definition of "dealer."

The term "jewel" is defined in paragraph (a)(2) to include organic substances that have a market-recognized gem level of quality, beauty, and rarity. Certain substances, such as coral, are available in two forms that are not generally transmutable, one that is of gem quality, and another that is of non-gem quality. As proposed, the definition of "jewel" would not include substances that are of non-gem quality.

Paragraph (a)(3) contains a definition of the term "precious metal," which is defined to include gold, silver, and the platinum group of metals, when it is at a level of purity of 0.500 (50 percent) or greater, singly or in any combination. For example, an alloy of 25 percent gold and 30 percent platinum would be a precious metal under the proposed rule. Similarly, this definition excludes the products of a mining firm or refinery that does not deal in precious metals refined to that purity level, but would include 12 karat gold jewelry. The 50 percent threshold is intended to exclude materials that have incidental levels of precious metals, such as polymer resin castings that have been electroplated with gold, or antique mirrors with a thin silver foil on the back. Similarly, operations that process lead ore that may contain smaller amounts of silver or gold would also be excluded. As a result, the focus of the definition is on materials that are predominantly precious metal.

The term "precious stone" is defined in paragraph (a)(4) to include inorganic substances that have a market-recognized gem level of quality, beauty, and rarity. Certain substances, such as diamonds, are available in two forms that are not generally transmutable, one that is of gem quality, and another that is of industrial (or non-gem) quality. For example, diamonds are available in both industrial grades and gem quality grades. However, industrial grade diamonds cannot generally be transformed into gem quality diamonds. Similarly, a flame fusion synthetic corundum may be chemically identical to a gem quality ruby, yet not be a "precious stone." Therefore, precious stones of industrial quality have been carved out of the definition of precious stones.

B. Anti-Money Laundering Program Requirements

Section 103.140(b) requires that each dealer develop and implement an anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering or the financing of terrorist activities. The program must be in writing and should set forth clearly the details of the program, including the responsibilities of the individuals and departments involved. To ensure that this requirement receives the highest level of attention throughout the company, the proposed rule requires that each dealer's program be approved in writing by its senior management.[5] A dealer must make its anti-money laundering program available to Treasury or its designee upon request. While it is permissible for a dealer to delegate certain functions relating to its anti-money laundering program to a third party, the dealer remains responsible for ensuring compliance with these requirements.

Section 103.140(c) sets forth the minimum requirements of a dealer's money laundering program. Section 103.140(c)(1) requires the anti-money laundering program to incorporate policies, procedures, and internal controls based upon the dealer's assessment of the money laundering and terrorist financing risks associated with its line(s) of business. Policies, procedures, and internal controls must also be reasonably designed to ensure compliance with BSA requirements. The only BSA regulatory requirement currently applicable to a dealer is the obligation to report on Form 8300 the receipt of cash or certain non-cash instruments totaling more than $10,000 in one transaction or two or more related transactions.[6] To assure reasonable compliance, the program should be reasonably designed to detect and report not only transactions required to be reported on Form 8300, but also activity designed to evade this reporting requirement. Such activity, commonly known as "structuring," may involve payments of more than $10,000 with multiple money orders, travelers' checks, or cashiers' checks or other bank checks, each with a face amount of less than $10,000. Such methods of payment may be indicative of money laundering, particularly when the payment instruments were obtained from different sources or the payments were made at different times on the same day or were made on consecutive days or close in time. Should dealers become subject to additional requirements, their compliance programs would have to be updated to include appropriate policies, procedures, training, and testing functions relating to such requirements.

Section 103.140(c)(1)(i) provides that, for purposes of making the risk assessment required under section 103.140(c)(1), a dealer must consider all relevant factors, including those listed in the rule. First, the dealer must assess the money laundering and terrorist financing risks associated with its products, customers, suppliers, distribution channels, and geographic locations. In addition, a dealer must take into consideration the extent to which the dealer engages in transactions other than with established customers or sources of supply. Finally, a dealer must analyze the extent to which it engages in transactions for which payment or account reconciliation is routed to or from accounts located in jurisdictions that have been identified as vulnerable to terrorism or money laundering.[7] The proposed rule is intended to give a dealer the flexibility to design its program to meet the specific money laundering and terrorist financing risks presented by the dealer's business, based on the dealer's assessment of such risks.

Section 103.140(c)(1)(ii) provides that a dealer's policies, procedures, and internal controls must be reasonably designed to detect transactions that may involve use of the dealer to facilitate money laundering or terrorist financing. In addition, a dealer's program must incorporate procedures for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing. A dealer that identifies indicators that a transaction may involve money laundering or terrorist financing should take reasonable steps to determine whether its suspicions are justified and respond accordingly, including refusing to enter into, or complete, a transaction that appears designed to further illegal activity.[8] The proposed rule provides flexibility to dealers in developing procedures for making reasonable inquiries under paragraph (c)(1)(ii). For example, a dealer may appropriately determine that reasonable inquiry with respect to a transaction conducted by a new customer or supplier involves considerable scrutiny, including verification of customer identity, income source, or the purpose of a transaction. In contrast, reasonable inquiry with respect to an established customer may not involve additional steps beyond those normally required to complete the transaction, unless the transaction appears suspicious or unusual to the dealer. As explained further below, the determination whether to refuse to enter into, or to terminate, a transaction lies with the dealer. In addition, dealers are encouraged to adopt procedures for voluntarily filing Suspicious Activity Reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (1–866–566–3974).

The proposed rule lists several examples of factors that may indicate that a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include: (1) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from unknown third parties; (2) unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations; (3) attempts by a customer or supplier to maintain a high and unusual degree of secrecy with respect to the transaction, such as a request that normal business records not be kept; (4) purchases or sales that are unusual for the particular customer or supplier or type of customer or supplier; and (5) purchases or sales that are not in conformity with standard industry practice. For example, one money laundering scheme observed in this industry involved a customer who ordered items, paid for them in cash, cancelled the order, and then received a large refund.[9] In one case, funds were laundered through large cash purchases of a dealer's gold at artificially inflated prices, followed by re-purchase by the dealer of the same gold at lower prices.[10] A dealer should make reasonable inquiries when transactions appear to vary from standard industry practice, or from the standard practice of an established customer or supplier. Over- or under-invoicing, structured, complex, or multiple invoice requests, and high-dollar shipments that are over- or under-insured may all be indicia that a transaction involves money laundering or terrorist financing.

The list of factors contained in the proposed rule is intended to provide

[4] The NPRM defines a retailer as a person engaged in the business of selling to the public jewels, precious metals, or precious stones or jewelry composed of jewels, precious metals, or precious stones.

[5] This may be the sole proprietor in the case of a sole proprietorship, the board-of directors, or a committee authorized for this purpose in the case of a corporation, or partners representing a majority interest in a general partnership.

[6] *See* 31 CFR 103.30.

[7] Examples of designations to this effect include the Department of State's designation of a jurisdiction as a sponsor of international terrorism under 22 U.S.C. 2371, the FATF's designation of jurisdictions that are non-cooperative with international anti-money laundering principles, or the Secretary of the Treasury's designation pursuant to 31 U.S.C. 5318A of jurisdictions warranting special measures due to money laundering concerns.

[8] 18 U.S.C. 1956 and 1957 make it a crime for any person, including an individual or company, to engage knowingly in a financial transaction with the proceeds from any of a long list of crimes or types of "specific unlawful activity." Although the standard of knowledge required is "actual knowledge," actual knowledge includes "willful blindness." Thus, a person could be deemed to have knowledge that proceeds were derived from illegal activity if he or she ignored "red flags" that indicated illegality. See, *e.g., U.S.* v. *Finkelstein*, 229 F.3d 90 (2nd Cir. 2000) (owner of jewelry/precious metals business convicted for participation in money laundering scheme; sentence enhancement based on willful blindness of certain funds received derived from narcotics trafficking).

[9] *See United States* v. *Huppert*, 917 F.2d 507 (11th Cir. 1990).

[10] *See Finkelstein*, *supra* n. 8.

examples of indicia of illegal activity, and is by no means exhaustive. Determinations as to whether a transaction should be refused or terminated must be based on the facts and circumstances relating to the transaction and the dealer's knowledge of the customer or supplier in question. It is not intended that dealers automatically refuse to engage in or terminate transactions simply because such transactions involve one or more of the factors listed in the rule. Rather, it is intended that dealers will develop procedures for identifying transactions involving potentially illegal activity, and procedures setting forth the actions that a dealer will take in response to such transactions.

Section 103.140(c)(2) requires that a dealer designate a compliance officer to be responsible for administering the anti-money laundering program. The person (or group of persons) should be competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures throughout the dealer's business. The role of the compliance officer is to ensure that (1) The program is being implemented effectively; (2) the program is updated as necessary; and (3) appropriate persons are trained in accordance with the rule. Whether the compliance officer is dedicated full time to BSA compliance would depend upon the size and complexity of the dealer's business and the risks posed. In all cases, the person responsible for the supervision of the overall program should be an officer or employee of the dealer.

Section 103.140(c)(3) requires that a dealer provide for training of appropriate persons. Employee training is an integral part of any anti-money laundering program. Employees of the dealer must be trained in BSA requirements relevant to their functions and in recognizing possible signs of money laundering that could arise in the course of their duties, so that they can carry out their responsibilities effectively. Such training could be conducted by internal or external seminars, and could include videos, computer-based training, booklets, etc. The level, frequency, and focus of the training should be determined by the responsibilities of the employees and the extent to which their functions bring them in contact with BSA requirements or possible money laundering activity. Consequently, the training program should provide both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding particular employees' roles and functions in the anti-money laundering program.[11] For those employees whose duties bring them in contact with BSA requirements or possible money laundering activity, the requisite training should occur when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

Section 103.140(c)(4) requires that a dealer conduct periodic testing of its program, in order to ensure that the program is indeed functioning as designed. Such testing should be accomplished by personnel knowledgeable regarding BSA requirements. Testing may be accomplished either by dealer employees or unaffiliated service providers so long as those same individuals are not involved in the operation or oversight of the program. The frequency of such a review would depend upon factors such as the size and complexity of the dealer and the extent to which its business model may be more subject to money laundering than other institutions. Any useful recommendations resulting from such review should be implemented promptly or reviewed by senior management.

Section 103.140(d) provides that a dealer must develop and implement an anti-money laundering program within 90 days after enactment of a final rule based on the Notice, or not later than 90 days after the date a person becomes a dealer for purposes of the rule.

III. Regulatory Flexibility Act

It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities. Because the requirements of the proposed rule closely parallel the requirements for anti-money laundering programs for all financial institutions mandated by section 352 of the Act, the costs associated with the establishment and implementation of anti-money laundering programs are attributable to the statute and not the proposed rule. Moreover, FinCEN believes that the definition of "dealer" in section 103.140(a)(1), which excludes dealers who have less than $50,000 in gross proceeds in a year, will exclude most small dealers from the requirements of the rule.

Furthermore, the proposed rule provides for substantial flexibility in how each dealer may meet its requirements. This flexibility is designed to account for differences among dealers, including size. In this regard, the costs associated with developing and implementing an anti-money laundering program will be commensurate with the size of a dealer. If a dealer is small, the burden to comply with section 352 and the proposed rule should be similarly small.

FinCEN specifically solicits comment on the impact of section 352 and the proposed rule on small dealers, particularly whether the proposed $50,000 threshold should be higher or lower, and whether an alternative threshold (such as one based upon specific physical quantities of precious metals, stones, or jewels, or other types of thresholds) would be more appropriate.

IV. Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information in the proposed rule should be sent (preferably by fax ((202)395–6974)) to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, and whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the collection of information (see below), including the number of dealers (as defined in section 103.140(a)(1)) who will be subject to the requirements of the proposed rule; (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The collection of information is the recordkeeping requirement in section 103.140(b). The information will be used by federal agencies to verify compliance by dealers with the provisions of sections 103.140 and 103.141. The collection of information is mandatory.

Estimated Number of Recordkeepers: 20,000.

Estimated Average Annual Burden Per Recordkeeper: The estimated average burden associated with the recordkeeping requirement in section 103.140(b) rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 20,000 hours.

V. Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is amended by adding new § 103.140 to read as follows:

§ 103.140 Anti-money laundering programs for dealers in precious metals, precious stones, or jewels.

(a) *Definitions.* For purposes of this section:

(1) *Dealer.* (i) Except as provided in paragraph (a)(1)(ii) of this section, the term "dealer" means a person engaged in the business of purchasing and selling jewels, precious metals, or precious stones, or jewelry composed of jewels, precious metals, or precious stones, and who, during the prior calendar or tax year:

(A) Purchased more than $50,000 in jewels, precious metals, or precious stones, or jewelry composed of jewels, precious metals, or precious stones; or

(B) Received more than $50,000 in gross proceeds from transactions in jewels, precious metals, precious stones, and jewelry composed of jewels, precious metals, or precious stones.

(ii) The term "dealer" does not include:

(A) A retailer, *i.e.*, a person engaged in the business of sales to the public of jewels, precious metals, or precious stones, or jewelry composed thereof, other than a retailer that, during the prior calendar or tax year, purchased more than $50,000 in jewels, precious metals, precious stones, or jewelry composed of jewels, precious metals, or precious stones, from persons other than dealers (such as members of the general public or persons engaged in other businesses); or

(B) A person who engages in transactions in jewels, precious metals, or precious stones for purposes of fabricating finished goods that contain minor amounts of, or the value of which is not significantly attributable to, such precious metals, precious stones, or jewels.

(2) *Jewel* means an organic substance with gem quality market-recognized beauty, rarity, and value, and includes pearl, amber, and coral.

(3) *Precious metal* means:

(i) Gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, or silver, having a level of purity of 500 or more parts per thousand; and

(ii) An alloy containing 500 or more parts per thousand, in the aggregate, of two or more of the metals listed in paragraph (a)(3)(i) of this section.

(4) *Precious stone* means an inorganic substance with gem quality market-recognized beauty, rarity, and value, and includes diamond, corundum (including rubies and sapphires), beryl (including emeralds and aquamarines), chrysoberyl, spinel, topaz, zircon, tourmaline, garnet, crystalline and cryptocrystalline quartz, olivine peridot, jadeite jade, nephrite jade, spodumene, feldspar, turquoise, lapis lazuli, and opal.

(5) *Person* shall have the same meaning as provided in § 103.11(z).

(b) *Anti-money laundering program requirement.* Each dealer shall develop and implement a written anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering and the financing of terrorist activities. The program must be approved by senior management. A dealer shall make its anti-money laundering program available to the Department of Treasury or its designee upon request.

(c) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the dealer's assessment of the money laundering and terrorist financing risks associated with its line(s) of business. Policies, procedures, and internal controls developed and implemented by a dealer under this section shall include provisions for complying with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and this part.

(i) For purposes of making the risk assessment required by paragraph (c)(1) of this section, a dealer shall take into account all relevant factors including the following:

(A) The type(s) of products the dealer buys and sells, as well as the nature of the dealer's customers, suppliers, distribution channels, and geographic locations;

(B) The extent to which the dealer engages in transactions other than with established customers or sources of supply; and

(C) Whether the dealer engages in transactions for which payment or account reconciliation is routed to or from accounts located in jurisdictions that have been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371; designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative or organization concurs; or designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns.

(ii) A dealer's program shall incorporate policies, procedures, and internal controls to assist the dealer in identifying transactions that may involve use of the dealer to facilitate money laundering or terrorist financing, including provisions for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing, and for refusing to consummate, withdrawing

[11] Appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concerns, what steps should be followed when suspicions arise, and the need to review OFAC and other government lists.

from, or terminating such transactions. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include, but are not limited to:

(A) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from third-parties;

(B) Unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations;

(C) Attempts by a customer or supplier to maintain a high degree of secrecy with respect to the transaction, such as a request that normal business records not be kept;

(D) Purchases or sales that are unusual for the particular customer or supplier, or type of customer or supplier; and

(E) Purchases or sales that are not in conformity with standard industry practice.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in the risk assessment, current requirements of this part, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (c)(3) of this section;

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program; and

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risk assessment conducted by the dealer in accordance with paragraph (c)(1) of this section. Such testing may be conducted by an officer or employee of the dealer, so long as the tester is not the person designated in paragraph (c)(2) of this section or a person involved in the operation of the program.

(d) *Effective date.* A dealer must develop and implement an anti-money laundering program that complies with the requirements of this section on or before May 22, 2003, or not later than 90 days after the date a dealer becomes subject to the requirements of this section.

Dated: February 12, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–4171 Filed 2–20–03; 8:45 am]

BILLING CODE 4810–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–234]

Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Notice of en banc field hearing on broadcast ownership rules.

SUMMARY: On Thursday, February 27, 2003 from 10 a.m. to 4 p.m., the Federal Communications Commission (FCC) will hold an en banc field hearing on broadcast ownership rules at the Greater Richmond Convention Center, 403 N. Third Street, Richmond, VA 23219.

DATES: The hearing will be held on Thursday, February 27, 2003, 10 a.m. to 4 p.m.

ADDRESSES: Location of hearing: The Greater Richmond Convention Center, 403 N. Fifth St. Richmond, VA 23219. Interested members of the public also may participate in this proceeding by filing comments electronically using the Commission's Electronic Comment Filing System (ECFS) and ECFS Express at *http://www.fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Amelia Brown, Consumer & Governmental Affairs Bureau, (202) 418–1400. Press inquiries should be directed to Rosemary Kimball, (202) 418–0511.

SUPPLEMENTARY INFORMATION: The hearing discussions will focus on diversity, competition and localism. (See MB Docket No. 02–277.) Attendance at this field hearing is open to the public. Seating will be available on a first-come, first-served basis. Requests for reasonable accommodations for people with disabilities should be made by sending an e-mail to: *fcc504@fcc.gov.* Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Contact the following Consumer & Governmental Affairs Bureau staff: for sign language interpreters, CART, and other reasonable accommodations, contact Helen Chang, 202–418–0424 (voice), 202–418–0432 (TTY), *hchang@fcc.gov;* for accessible format materials (braille, large print, electronic files, and audio format) contact Brian Millin, 202–418–7426 (voice), 202–418–7365 (TTY), *bmillin@fcc.gov.* Interested members of the public may also participate in this proceeding by filing comments electronically using the Commission's Electronic Comment Filing System (ECFS) and ECFS Express at *http://www.fcc.gov.*

Federal Communications Commission.

Kris A. Monteith,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–4264 Filed 2–20–03; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532, 538, and 552

General Services Administration Acquisition Regulation; Federal Supply Schedule Contracts; Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules; Public Meeting

AGENCIES: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of meeting.

SUMMARY: The General Services Administration (GSA) is sponsoring a second public meeting to further facilitate an open dialogue between the government and interested parties on the implementation of section 211 of the E-Government Act of 2002. A proposed rule was published in the **Federal Register** at 68 FR 3220, January 23, 2003. Section 211 authorizes the Administrator of GSA to provide for the use by States or local governments of its Federal Supply Schedule for "automated data processing equipment (including firmware), software, supplies, support equipment, and services (as contained in Federal Supply Classification Code Group 70)."

DATES: The public meeting will be held on March 10, 2003, at 9 a.m. Eastern standard time.

ADDRESSES: The public meeting will be held in the: GSA Training Room, 1931 Jefferson Davis Highway, Crystal Mall Building #3, Room C–43, Arlington, VA 22202.

The closest Metro access is from the Crystal City station.

If you wish to attend the meeting and/or make presentations on the proposed rule, please contact and submit a copy of your presentation by March 6, 2003, to: General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4033, Attn: Linda Nelson, Washington, DC 20405, Telephone: (202) 501–1900.

Submit electronic presentation materials via e-mail to: *meeting.2002–G505@gsa.gov.*

Please submit only presentations to this e-mail address and cite Public Meeting 2002–G505 in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment on the proposed rule, the presentation must be submitted separately as a public comment as instructed in the proposed rule. (See 68 FR 3220, January 23, 2003.)

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4225, for information pertaining to status or publication schedules. The TTY Federal Relay Number for further information is 1–800–877–8973. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite GSAR case 2002–G505.

Special Accommodations

The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Mrs. Linda Nelson (202–501–1900) at least 5 days prior to the meeting date.

Dated: February 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–4053 Filed 2–20–03; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI45

Endangered and Threatened Wildlife and Plants; Threatened Status and Special Regulation for the Mountain Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On December 5, 2002, we, the Fish and Wildlife Service (Service), published a notice of new information and reopened the comment period to propose listing the mountain plover as a threatened species (67 FR 72396), under authority of the Endangered Species Act of 1973, as amended (Act). We hereby give notice that the comment period is reopened until March 21, 2003.

DATES: The comment period on the proposed listing rule is reopened until March 21, 2003.

ADDRESSES: Written comments and materials should be sent to the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946. You may send electronic mail (e-mail) comments to *fw6_mountainplover@fws.gov.* You also may obtain a copy of the 1999 proposed rule to list the mountain plover (64 FR 7587) and other pertinent documents from this office, or access them at our Web site at *http://www.r6.fws.gov/mtnplover/.* We will make comments and materials we receive available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Leachman at the above address; telephone: 970–243–2778; facsimile: 970–245–6933; or e-mail: *robert_leachman@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1999, we published a proposed rule to list the mountain plover as a threatened species (64 FR 7587). Higher priority listing actions precluded listing work on the mountain plover during Fiscal Years 2000 and 2001. On October 16, 2001, Earthjustice (representing the Biodiversity Legal Foundation, Biodiversity Associates, and Center for Native Ecosystems) submitted a 60-day notice of intent to sue to the Secretary of the Department of the Interior and the Fish and Wildlife Service Regional Director for failure to meet listing deadlines for the mountain plover, as required by section 4(b)(6)(A) of the Act. We responded by publishing a notice of new information and reopening the comment period on the listing proposal on December 5, 2002 (67 FR 72396). The comment period closed on February 3, 2003.

Section 4(b)(5)(E) of the Act requires that public hearings regarding proposals for listing be held promptly when requested by the public within 45 days of the proposal's publication in the **Federal Register**. We received public hearing requests and requests to extend the comment period during the allotted time period from California Congressman Bob Filner, the Oklahoma Farm Bureau, the Kansas Farm Bureau, and Holland and Hart LLP, representing the Petroleum Association of Wyoming. Following discussions with each of these parties, each agreed that informational meetings rather than formal hearings would be acceptable. Therefore, we scheduled, advertised, and conducted informational meetings in El Centro, California, and Elkhart, Kansas. We are also reopening the comment period in response to these requests. Comments already submitted in response to the December 5, 2002, rulemaking document need not be resubmitted and will be fully considered in our decisionmaking on this proposed rule.

Author

The author of this notice is Robert Leachman (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 11, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–4152 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 020403B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of two proposals for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the EFP applications from the University of Rhode Island (URI)

contain all the required information and warrant further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFPs would be consistent with the goals and objectives of the Northeast (NE) Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), and does not detrimentally affect the well being of any stock of fish likely to be taken during the experiment. Therefore, NMFS announces that the Regional Administrator proposes to issue two EFPs that would allow vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the NE United States. The first EFP, hereafter referred to as the summer flounder EFP, would allow for an exemption from the NE summer flounder gear restrictions specified at 50 CFR 648.104. The second EFP, hereafter referred to as the scup EFP, would allow for an exemption from the NE scup closure restrictions specified at 50 CFR 648.121.

For the summer flounder EFP, the exempted fishing activity would support research to test large mesh experimental codends to determine their ability to reduce regulatory discards and bycatch of other species when fishing for commercial summer flounder. The testing will occur off the coast of Rhode Island. For the scup EFP, the exempted fishing activity would support research to test large mesh experimental codends for their ability to reduce sublegal scup discards when fishing for commercial scup. The testing will occur off the coast of Southern New England and the inshore waters of Rhode Island. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on these documents must be received on or before March 10, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope either "Comments on University of Rhode Island Summer Flounder Codend Mesh Size EFP Proposal," or "Comments on University of Rhode Island Scup Codend Mesh Size EFP Proposal."

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135, e-mail: *jason.blackburn@noaa.gov.*

SUPPLEMENTARY INFORMATION: The applications for two EFPs were submitted by URI for research being funded by awards under the Mid-Atlantic Fishery Management Council's Research Set-Aside (RSA) program administered by the NMFS Northeast Region.

Summer Flounder EFP Proposal

The applicant is requesting an exemption for four commercial vessels from the NE summer flounder gear restrictions specified at 50 CFR 648.104 for 24 days of at-sea gear testing. The objective of the research is to test large mesh experimental codends to determine their ability to reduce regulatory discards and bycatch of other species. The experimental design will test the selectivity of four experimental codend mesh sizes and shapes, 6.5 and 7.0 inch diamond mesh, and 7.0 and 8.0 inch square mesh, compared to the selectivity of a control net with a 3–inch small mesh codend. The sea trials would be conducted off the coast of Rhode Island during the months of April through September 2003.

It is estimated that the total catch of summer flounder will be 24,000 lb (10886 kg), with an estimated bycatch of 5,000 lb (2268 kg) of scup, 2,000 lb (907 kg) of longfin squid, and 1,000 lb (454 kg) of black sea bass. These fish will be landed in Rhode Island. It is further estimated that 2,000 lb (907 kg) of summer flounder, 5,000 lb (2268 kg) of scup, and 1,000 lb (454 kg) of black sea bass will be discarded during the research operations. Two URI fisheries researchers would be aboard each vessel during all experimental sea trials. All the areas surveyed during this experiment will be open to fishing, and only fish from legal open seasons will be retained from the Exclusive Economic Zone.

This experimental work is important because it could lead to the development of gear that could improve the size selection of the nets for summer flounder, reduce regulatory discards, and reduce bycatch of other fish species.

Scup EFP Proposal

The applicant is requesting an exemption for one commercial vessel from the NE scup closure restrictions specified at 50 CFR 648.121 for 6 days of at-sea gear testing. The objective of the research is to compare large mesh experimental codends, to a legal sized codend, to determine their ability to reduce sublegal scup discards. The experimental design will test two experimental codend mesh sizes, 6.0 inch and 6.5 inch square mesh. The sea trials would be conducted off the coast of Rhode Island during the months of April through July 2003.

It is estimated that the total catch of scup will be 20,000 lb (9,072 kg), with an estimated bycatch of 1,000 lb (454 kg) of squid, 1,000 lb (454 kg) of summer flounder, and 1,200 lb (544 kg) of black sea bass. These fish will be landed in Rhode Island. It is further estimated that 2,000 lb (907 kg) of scup, and minimal amounts of other species, will be discarded during the research operations. Two URI fisheries researchers would be aboard each vessel during all experimental sea trials. With the exception of scup, only fish from legal open seasons will be retained from the Exclusive Economic Zone.

This experimental work is important because it could lead to the development of gear that could reduce sublegal scup discards, and thereby reduce scup mortality.

Based on the results of the EFPs, these actions could result in future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 13, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4138 Filed 2–20–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 35
Friday, February 21, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on March 20, 2003, at the Inn By The Lake, 3300 Lake Tahoe Blvd., South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held March 20, 2003 beginning at 10 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at Inn By The Lake, 3300 Lake Tahoe Blvd., South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: A report on the Tahoe Intergrate Information Management System (TIIMS), Pathway 2007 science perspective, and update on the USACE Lake Tahoe Framework Study, USFS Fuels Actions Plan status, updates from the Lands and Budget Subcommittees, Cave Rock environmental decision, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: February 13, 2003.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 03–4163 Filed 2–20–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss project development for 2003. Agenda topics will include project form submittals and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. Act 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on February 25, 2003, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7424, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: February 13, 2003.

David T. Bull,

Forest Supervisor.

[FR Doc. 03–4161 Filed 2–20–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) has scheduled two upcoming meetings at the Snohomish County Administration Building, 3000 Rockefeller Ave., Everett, Wa. 98201. The first meeting will be Tuesday, March 18, 2003 in the Willis Tucker Conference Room, 3rd floor. The second meeting will be Tuesday, April 1, 2003 in the Planning Conference Room, 4th floor.

Both meetings will begin at 9 a.m., and continue until about 4 p.m. The agenda item to be covered at both meetings is the review and recommendation of Title II projects for FY 2004.

All Snohomish County Resource Advisory Committee meetings are open to the public Interested citizens are encouraged to attend.

The Snohomish County Resource Advisory Committee advises Snohomish County on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The Snohomish County Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Barbara Busse, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 74920 NE. Stevens Pass Hwy, PO Box 305, Skyhomish, WA 98288 (phone: 360–677–2414) or Terry Skorheim, District Ranger, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 1405 Emens St., Darrington, WA 98241 (phone: 360–436–1155).

Dated: February 11, 2003.

Barbara Busse,

Designated Federal Official.

[FR Doc. 03–4162 Filed 2–20–03; 8:45 am]

BILLING CODE 3410–11–M

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Sunshine Act Notice

TIME AND DATE: 2 p.m., Wednesday, March 12, 2003.

PLACE: The Reserve Officers Association, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Review and approval of the minutes of the March 13, 2002 Board of Trustees meeting.
2. Report on financial status of the Foundation fund.
   A. Review of investment policy and current portfolio.
3. Report on results of Scholarship Review Panel.
   A. Discussion and consideration of scholarship candidates.
   B. Selection of Goldwater Scholars.
4. Other Business brought before the Board of Trustees.

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, President, Telephone: (703) 756–6012.

Gerald J. Smith,
President.
[FR Doc. 03–4335 Filed 2–19–03; 4:02 am]
BILLING CODE 4738–91–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021403A]

Proposed Information Collection; Comment Request; Deep and Shallow-Water Grouper Dealer Reporting

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 22, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149,(phone 305–361–4263).

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishery quotas are established for species in the deep-water and shallow-water management units within the Gulf of Mexico Reef Fish Fishery Management Plan (see 50 CFR 622.42(a)(ii) and (iii)). Existing methods of monitoring these fishery quotas have proven to be ineffective, and for the past two years landings for the species in these management units have exceeded the quotas. The Southeast Fisheries Science Center intends to use the authority under section 50 CFR 622.5(c)(3)(ii) to require dealers to report purchases (landings) on a monthly basis and every two weeks for the last two months of the season (year).

II. Method of Collection

The Southeast Fisheries Science Center will provide a reporting form to each dealer selected to report. The dealer must provide the name and permit number of the company and provide the amount purchased (landed) for the previous month for the individual species in deep and shallow-water management units. NOAA's intent is to provide paper and electronic versions of the form. This form must be faxed or sent as an e-mail attachment to the Southeast Fisheries Science, Miami, FL, within 5 business days of the end of each reporting period (month or two-weeks). For dealers that do not have a rapidfax machine or access to e-mail, pre-addressed, pre-paid envelopes will be provided.

III. Data

OMB Number: 0648–0013.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations (seafood dealers).
Estimated Number of Respondents: 85.
Estimated Time Per Response: 20 minutes.
Estimated Total Annual Burden Hours: 397 hours.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 12, 2003.

Gwellnar Banks,
Management Analyst, Office of the Chief Information Officer.
[FR Doc. 03–4137 Filed 2–20–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021103A]

Fisheries off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 2003 Bank-specific Harvest Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of no harvest guideline for crustaceans.

SUMMARY: NMFS announces that annual harvest guidelines for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) will not be issued for the year 2003.

ADDRESSES: Copies of background material pertaining to this action, which is identical to the action taken in 2001, may be obtained from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at 808–973–2937.

SUPPLEMENTARY INFORMATION: Under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region, 50 CFR 660.50(b)(2), NMFS is required to publish the harvest guidelines for lobster Permit Area 1 around the NWHI. Although the lobster stock is not overfished, the NWHI lobster fishery has been closed since 2000: (1) as a precautionary measure to prevent overfishing of the lobster resources; (2) in compliance with an order of the U.S. District Court for the District of Hawaii to keep the crustacean fisheries closed until an environmental impact statement and a biological opinion have been prepared for the crustacean fisheries in the western Pacific region; and (3) consistent with Executive Orders 13178 and 13196, issued in December 2000 and January 2001, respectively, that appear to close indefinitely the NWHI crustacean fishery.

NMFS announces that it will not be publishing any harvest guideline for this fishery for the year 2003 and no harvest of NWHI lobster resources will be allowed. NMFS intends to conduct biological research on the status of NWHI lobster resources and to examine the resulting data for indications as to the appropriate direction for future fishery management actions.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 13, 2003.

Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 03–4139 Filed 2–20–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110802C]

Coral, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagic Resources, and Snapper-Grouper Fisheries of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an exempted fishing permit.

SUMMARY: NMFS announces the issuance of an exempted fishing permit (EFP) for the North Carolina Aquariums (applicant), headquartered in Raleigh, NC. The EFP would authorize the applicant, with certain conditions, to collect up to 50 red porgy and up to 500 lb (0.23 mt) of coral/live rock each year for 2 years in Federal waters off North Carolina for public display. This EFP is similar to a previously approved EFP that expired on December 31, 2002.

ADDRESSES: Copies of the EFP are available from Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727–570–5305; Fax 727–570–5583; e-mail: *peter.eldridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b).

The North Carolina Aquariums (NCA), is headquarted in Raleigh, NC. The EFP would authorize the applicant, with certain conditions, to collect up to 50 red porgy and up to 500 lb (0.23 mt) of coral/live rock each year for 2 years in Federal waters off North Carolina for public display.

The NCA, located at Roanoke Island, Pine Knoll Shores, and Kure Beach, are public, non-profit, self-supporting institutions established to promote an awareness, understanding, and appreciation of the diverse natural and cultural resources associated with North Carolina's ocean, estuaries, rivers, streams and other aquatic environments. The aquariums represent institutions of major educational and conservation value, offering free admission to school children in groups and extensive field study and outreach programs. The specimens will be maintained in the various NCA.

The proposed collection involves activities otherwise prohibited by regulations implementing the Fishery Management Plans of the South Atlantic Region for Coral, Coral Reefs, and Live/Hard Bottom Habitats, and Snapper-Grouper Fisheries. The applicant requires authorization to harvest and possess corals, live rock, and red porgy taken from Federal waters off North Carolina.

The EFP has a number of conditions concerning the harvest of prohibited species and corals, the gear that can be employed, and bycatch restrictions. The EFP requires an annual report that lists specimens that are taken.

A notice of receipt of the application for this permit was published in the **Federal Register** on November 21, 2002 (67 FR 70216). In addition to announcing the receipt of the application, public comments were requested. No public comments were received. Also, consistent with the requirements of 50 CFR 600.745(b)(3)(i), NMFS provided copies of the EFP application and information to the State of North Carolina, the South Atlantic Fishery Management Council, and the U.S. Coast Guard along with information on the EFP's effects on target species. All of the consulted entities supported the issuance of the EFP.

Failure of the permittee to comply with the terms and conditions of the EFP may be grounds for revocation, suspension or modification of this permit, as well as civil or criminal sanctions.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 13, 2003.

Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 03–4140 Filed 2–20–03; 8:45 am]
BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

National Senior Service Corps; Schedule of Income Eligibility Levels

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: This Notice revises the schedules of income eligibility levels for participation in the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP) of the Corporation for National and Community Service, published in 67 FR 18593, April 16, 2002.

DATES: These guidelines go into effect on March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Corporation for National and Community Service, Ruth Archie, National Senior Service Corps, Attn: Ms. Ruth Archie, 1201 New York Avenue, NW., Washington, DC 20525, by telephone at (202) 606–5000, ext. 289, or e-mail: *rarchie@cns.gov*.

SUPPLEMENTARY: The revised schedules are based on changes in the Poverty Guidelines issued by the Department of Health and Human Services (DHHS), published in 68 FR 6456–6458, February 7, 2003. In accordance with program regulations, the income eligibility level for each State, Puerto Rico, the Virgin Islands and the District of Columbia is 125 percent of the DHHS Poverty Guidelines, except in those areas determined by the Corporation to be of higher cost of living. In such instances, the guidelines shall be 135 percent of the DHHS Poverty levels (*See* attached list of High Cost Areas). The

level of eligibility is rounded to the next higher multiple of $5.00

In determining income eligibility, consideration should be given to the following, as set forth in 45 CFR 2551–2553 dated October 1, 1999, as amended per the **Federal Register**, Vol. 67, No. 188, Friday, September 27, 2002.

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party and, must not exceed 15 percent of the applicable Corporation income guideline.

Annual income is counted for the past 12 months, for serving SCP and FGP volunteers, and is projected for the subsequent 12 months, for applicants to become SCP and FGP volunteers, and includes: The applicant or enrollee's income and the applicant to enrollee's spouse's income, if the spouse lives in the same residence. Sponsors must count the value of shelter, food, and clothing, if provided at no cost the applicant, enrollee or spouse.

Any person whose income is not more than 100 percent of the DHHS Poverty Guideline for her/his specific family unit shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs:

2003 FGP/SCP Income Eligibility Levels

[Based on 125 Percent of DHHS Poverty Guidelines]

States	Family units of			
	One	Two	Three	Four
All, except High Cost Areas, Alaska & Hawaii	$11,225	$15,150	$19,075	$23,000

For family units with more than four members, add $3,925 for each additional member in all States except designated High Cost Areas, Alaska and Hawaii.

2003 FGP/SCP Income Eligibility Levels for High Cost Areas

[Based on 135 Percent of DHHS Poverty Guidelines]

States	Family units of			
	One	Two	Three	Four
All, except Alaska & Hawaii	$12,125	$16,365	$20,605	$24,840
Alaska	15,135	20,440	25,745	31,050
Hawaii	13,950	18,820	23,695	28,570

For family units with more than four members, add: $4,240 for all areas, $5,305 for Alaska, and $4,875 for Hawaii, for each additional member.

The income eligibility levels specified above are based on 135 percent of the DHHS poverty guidelines and are applicable to the following high cost metropolitan statistical areas and primary metropolitan statistical areas:

High Cost Areas

(Including all Counties/Locations Included in that Area as Defined by the Office of Management and Budget)

Alaska

(All Locations)

California

Los Angeles/Compton/San Gabriel/Long Beach/Hawthorne (Los Angeles County)
Santa Barbara/Santa Maria/Lompoc (Santa Barbara County)
Santa Cruz/Watsonville (Santa Cruz County)
Santa Rosa/Petaluma (Sonoma County)
San Diego/El Cajon (San Diego County)
San Jose/Los Gatos (Santa Clara County)
San Francisco/San Rafael (Marin County)
San Francisco/Redwood City (San Mateo County)
San Francisco (San Francisco County)
Oakland/Berkeley (Alameda County)
Oakland/Martinez (Contra Costa County)
Anaheim/Santa Ana (Orange County)
Oxnard/Ventura (Ventura County)

Connecticut

Stamford (Fairfield)

District of Columbia/Maryland/Virginia

District of Columbia and surrounding Counties in Maryland and Virginia.
MD Counties: Anne Arundel, Calvert, Charles, Cecil, Frederick, Howard, Montgomery, Prince Georges, and Queen Anne's Counties.
Va Counties: Arlington, Fairfax, Loudoun, Prince William, Stafford, Alexandria City, Fairfax City, Falls Church City, Manassas City and Manassas Park City.

Hawaii

(All Locations)

Illinois

Chicago/Des Plaines/Oak Park/Wheaton/Woodstock (Cook, DuPage and McHenry Counties)

Massachusetts

Barnstable (Barnstable)
Edgartown (Dukes)
Boston/Malden (Essex, Norfolk, Plymouth, Middlesex and Suffolk Counties)
Worcester (Worcester City)
Brockton/Wellesley/Braintree/Boston (Norfolk County)
Dorchester/Boston (Suffolk County)
Worcester (City)(Worcester County)

New Jersey

Bergen/Passaic/Patterson (Bergen and Passaic Counties)
Jersey City (Hudson)
Middlesex/Somerset/Hunterdon (Hunterdon, Middlesex and Somerset Counties)
Monmouth/Ocean/Spring Lake (Monmouth and Ocean Counties)
Newark/East Orange (Essex, Morris, Sussex and Union Counties)
Trenton (Mercer County)

New York

Nassau/Suffolk/Long Beach/Huntington (Suffolk and Nassau Counties)
New York/Bronx/Brooklyn (Bronx, King, New York, Putnam, Queens, Richmond and Rockland Counties)
Westchester/White Plains/Yonkers/Valhalla (Westchester County)

Ohio

Medina/Lorain/Elyria (Medina/Lorain County)

Pennsylvania

Philadelphia/Doylestown/West Chester/Media/Norristown (Bucks, Chester, Delaware, Montgomery and Philadelphia Counties)

Washington

Seattle (King County)

Wyoming

(All Locations)

The revised income eligibility levels presented here are calculated from the base DHHS Poverty Guidelines now in effect as follows:

2003 DHHS Poverty Guidelines for All States

States	Family Units of			
	One	Two	Three	Four
All, except Alaska & Hawaii	$8,980	$12,120	$15,260	$18,400
Alaska	11,210	15,140	19,070	23,000
Hawaii	10,300	13,940	17,550	21,160

For family units with more than four members, add: $3,140 for all areas, $3,930 for Alaska, and $3,610 for Hawaii, for each additional member.

Authority: These programs are authorized pursuant to 42 U.S.C. 5011 and 5013 of the Domestic Volunteer Service Act of 1973, as amended. The income eligibility levels are determined by the current guidelines published by DHHS pursuant to Sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Dated: February 13, 2003.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 03–4083 Filed 2–20–03; 8:45 am]

BILLING CODE 6050–$$–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 22, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 14, 2003.

John D. Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: Reporting Forms on Teacher Quality and Preparation.

Frequency: Annually.

Affected Public:

State, Local, or Tribal Gov't, SEAs or LEAs (primary), Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden: Responses: 1309; Burden Hours: 127624.

Abstract: The Higher Education Act of 1998 calls for annual reports from states and institutions of higher education on the quality of teacher education and related matters (Pub. L. 105–244, Section 207:20 U.S.C. 1027). The purpose of the reports is to provide greater accountability in the preparation of America's teaching forces and to provide information and incentives for its improvement. Most institutions of higher education that have teacher preparation programs must report annually to their states on the performance of their program completers on teacher certification tests. States, in turn, must report test performance information, institution by institution, to the Secretary of Education, along with institutional ranking. They must also report on their requirements for licensing teachers, state standards, alternative routes to certification, waivers, and related items. Annually reports form institutions are due to the states, beginning April 7 each year; reports from the states are due annually to the Secretary, beginning October 7 each year; the Secretary's report is due annually to Congress, beginning April 7 each year. These dates are one year later than the dates in the legislation.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov*. Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a

telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Direct Loan Program's General Forbearance Request Form.

Frequency: On Occasion.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden: Responses: 1074000; Burden Hours: 214800.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to request forbearance on their loans when they are willing but unable to make their currently scheduled monthly payments because of a temporary financial hardship.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.reese@ed.gov*. Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–4201 Filed 2–20–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than February 28, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: March 6–March 8, 2003.

Times:

March 6: Assessment Development Committee: Closed Session—12 p.m.–2:30 p.m.; Ad Hoc Committee on Background Questions: Open Session–2:30 p.m. to 4:30 p.m.; Ad Hoc Committee on NAEP Sampling Studies: Open Session—2:30 p.m. to 4:30 p.m.; Executive Committee Meeting: Open Session—5 p.m.–6:15 p.m.; Closed Session 6:15 p.m. to 7 p.m.

March 7: Full Board Meeting: Open Session 8:30 a.m.–12 p.m.; Committee Meetings (Open): Assessment Development Committee 10 a.m.–12:00 p.m.; Committee on Standards, Design and Methodology, 10 a.m.–12 p.m.; Reporting and Dissemination Committee, 10 a.m.–12 p.m.; Full Board—Closed Meeting 12 p.m.–1 p.m., Open Meeting 1 p.m.–4:15 p.m.

March 8: Nominations Committee Meeting: Closed Meeting 8 a.m.–9:00 a.m.; Full Board Meeting: Open Session 9 a.m.–12 p.m.

LOCATION: Sheraton Premiere at Tysons Corner, 8661 Leesburg Pike, Arlington, Virginia 22182.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

The Assessment Development Committee will meet in closed session on March 6 from 12 p.m. to 2:30 p.m. to review secure test items for the National Assessment of Educational Progress (NAEP) 2004 Grade 12 Foreign Language Assessment in Spanish. The meeting must be conducted in closed session as disclosure of proposed test items from the 2004 NEAP Foreign Language Assessment would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Executive Committee will meet in partially closed session on March 6 from 6:15 p.m. to 7 p.m. to receive independent cost estimates on contract initiatives for the National Assessment of Educational Program (NAEP) program. The meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 7, 2003 the full Board will convene in open session from 8:30 a.m.–10 a.m. The Board will approve the agenda and hear welcoming remarks from the Superintendent of Fairfax County Public Schools, Daniel Domenech. The Board will then receive the Executive Director's report and a NAEP Update from the Associate Commissioner of NCES, Val Plisko. From 10 a.m. to 12 p.m., the Board's standing committees—the Assessment Development Committee, the Committee on Standards, Design, and Methodology, and the Reporting and Dissemination Committee will meet in open session.

The full Board will meet in partially closed session on March 7, 2003 from 12 p.m. to 1 p.m. to receive results of the 2002 NAEP Reading Assessment. This meeting must be closed because the results of the Reading Assessment are under development and have not been released to the public. Premature disclosure of the information would significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title U.S.C.

The full Board will reconvene in open session on March 7, 2003 from 1 p.m.–4:15 p.m. The Board will receive an update on the 2007 Reading Framework Project at 1 p.m. followed by an update on the NAEP Background Question Framework from 1:30 p.m. to 2:30 p.m. From 2:45 p.m. to 3:45 p.m., the Board will receive a briefing on the American Diploma Project. This session will be followed by an ethics briefing from 3:45 p.m. to 4:15 p.m. upon which the March 7 session of the Board will adjourn.

The Nominations Committee will meet in closed session on March 8, 2003 from 8 a.m. to 9 a.m. to receive nominations for Board membership. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

On March 8, 2003 the full Board will meet in open session from 9 a.m. to 12 p.m. The Board will receive an update on plans for the 12th grade NAEP Commission. This presentation will be followed by Board actions on policies and Committee reports. The March 8, 2003 session of the Board meeting will adjourn at 12 noon.

Summaries of the activities of the closed session and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington DC from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: February 14, 2003.

Charles Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 03–4151 Filed 2–20–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

West Virginia Department of Education; Written Findings and Compliance Agreement

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of written findings and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means of bringing about such compliance. On March 29, 2002, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) entered into a compliance agreement with the West Virginia Department of Education (WVDE). Under section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Dr. Grace A. Ross, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., room 3W118, Washington, DC 20202. Telephone: (202) 260–0967.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Each State also was required to develop or adopt performance standards, aligned with its content standards that describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000–2001 school year, each State was required to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

WVDE submitted, and the Department approved, evidence that it has content standards in at least reading/language arts and mathematics. In August 2000, WVDE submitted evidence of its final assessment system and performance standards. The Department submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Assistant Secretary for Elementary and Secondary Education concluded that WVDE's proposed final assessment system and performance standards did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law" applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (a)(4).

In a letter dated November 8, 2000 to Dr. David Stewart, Superintendent of Schools for the West Virginia Department of Education, the Assistant Secretary notified WVDE that, in order to remain eligible to receive Title I funds, it must enter into a compliance agreement with the Department. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements, and that a compliance agreement is a viable means for bringing about such compliance.

On March 29, 2002, the Assistant Secretary issued written findings, holding that compliance by WVDE with the Title I standards and assessment requirements is genuinely not feasible until a future date. Having submitted its assessment system for peer review in August 2000, WVDE was not able to make the significant changes to its system that the Department's review required in time to meet the spring 2001 statutory deadline to have approved assessments in place. As a result, WVDE administered its unapproved assessment system in 2001. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps WVDE has already taken to comply, its commitment of resources, and the plan it has developed for further action. The agreement sets out the action plan that WVDE must meet to come into compliance with the Title I

requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely WVDE's progress in meeting the terms of the compliance agreement. The Superintendent of WVDE, Dr. David Stewart, signed the agreement on March 22, 2002 and the Assistant Secretary signed it on March 29, 2002.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Assistant Secretary's written findings is set forth as appendix A and the compliance agreement is set forth as appendix B of this notice.

Electronic Access to This Document

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Authority: 20 U.S.C. 1234c, 1234f, 6311)

Dated: February 13, 2003.

Eugene W. Hickock,

Under Secretary of Education.

Appendix A—Text of the Written Findings of the Assistant Secretary for Elementary and Secondary Education

I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c and 1234f, that the West Virginia Department of Education (WVDE) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, and that it is not feasible for WVDE to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that WVDE failed to meet a number of the Title I requirements concerning the development of performance standards and an aligned assessment system within the statutory timeframe.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with WVDE to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these findings, WVDE will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements.

II. Relevant Statutory and Regulatory Provisions

A. Title I, Part A of the Elementary and Secondary Education Act of 1965

Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student performance standards. Under Title I, each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards.

By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards. These assessments must meet the following requirements:

- The assessments must be aligned to a State's content and performance standards.
- They must be administered annually to students in at least one grade in each of three grade ranges: grades 3 through 5, grades 6 through 9, and grades 10 through 12.
- They must be valid and reliable for the purpose for which they are used and of high technical quality.
- They must involve multiple measures, including measures that assess higher-order thinking skills.
- They must provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient students.
- They must provide individual reports.
- Results from the assessments must be disaggregated and reported by major racial and ethnic groups and other categories.

20 U.S.C. 6311(b)(3).[1]

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is "failing to comply substantially with any requirement of law applicable to such funds." 20 U.S.C. 1234c. In such case, the Assistant Secretary is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (a)(4).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the available evidence, the Assistant Secretary determines that compliance until a future date is genuinely not feasible and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and publish those findings, together with the substance of any compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A compliance agreement must set forth an expiration date, not later than three years from the date of these written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. 1234f(c)(1). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect. 20 U.S.C. 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement no longer in effect and may take any of the compliance actions described previously. 20 U.S.C. 1234f(d).

[1] On January 8, 2002, Title I of the Elementary and Secondary Education Act was reauthorized by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107–110). The NCLB made several significant changes to the Title I standards and assessment requirements. First, it requires that each State develop academic content and student achievement standards in science by the 2005–06 school year. Second, by the 2005–06 school year, it requires a system of aligned assessments in each of grades 3 through 8 and once during grades 10 through 12. Third, it requires science assessments in at least three grade spans by the 2007–08 school year. Fourth, the NCLB significantly changes the definition of adequate yearly progress each State must establish to hold schools and school districts accountable, based on data from the 2001–02 test administration. Finally, by the 2002–03 school year, the NCLB requires State and school district report cards that include, among other things, assessment results disaggregated by various subgroups, two-year trend data, and percent of students tested.

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement Is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and WVDE is appropriate, the Assistant Secretary must first determine whether compliance by WVDE with the Title I standards and assessment requirements is genuinely not feasible until a future date. 20 U.S.C. 1234f(b). The second issue that the Assistant Secretary must resolve is whether WVDE will be able, within a period of up to three years, to come into compliance with the Title I requirements. Not only must WVDE come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible, then a compliance agreement between the Assistant Secretary and WVDE would not be appropriate.

B. WVDE Has Failed To Comply Substantially With Title I Standards and Assessment Requirements

In August 2000, WVDE submitted evidence of its final assessment system. The Assistant Secretary submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Assistant Secretary for Elementary and Secondary Education concluded that WVDE's proposed final assessment system did not meet a number of the Title I requirements. Specifically, the Assistant Secretary determined that WVDE must do the following:

- Develop or select an academic assessment system that represents the full range of the WVDE's academic content standards and academic achievement standards in at least reading/language arts and mathematics and is consistent with the Title I requirements for use of multiple measures of student achievement, including measures that assess higher-order thinking and understanding. Document the alignment of the assessment system with WVDE's academic content and student achievement standards.
- Provide evidence that the State assessment will be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards for such assessments.
- Provide evidence of performance standards aligned to content standards.
- Clarify how reasonable accommodations are provided to students with disabilities and limited English proficient students that allow for their scores to be included in the accountability system.
- Clarify how data for students who take the alternate assessment and students administered assessments with non-standard accommodations will be incorporated into the accountability system.
- Provide complete participation data for students with disabilities and limited English proficient students so that the State's inclusion policies relating to assessment, reporting, and accountability can be evaluated.
- Provide individual reports of student achievement relative to the State performance standards.
- Provide school, district, and State level reports using disaggregated data by all the required categories.
- Provide evidence that LEAs are completing and disseminating school and district profiles that include statistically sound disaggregated results.
- Clarify how the State defines "full academic year" for including students in determining adequate yearly progress.

C. WVDE Cannot Correct Immediately Its Noncompliance With the Title I Standards and Assessment Requirements

Under the Title I statute, WVDE was required to implement its final assessment system no later than the 2000–2001 school year. 20 U.S.C. 6311(b)(6). WVDE submitted evidence of its assessment system in August 2000, but the Assistant Secretary determined, on the basis of that evidence, that WVDE's system did not fully meet the Title I requirements. Due to the enormity and complexity of developing a new assessment system that addressed the Assistant Secretary's concerns, WVDE was not able to complete that task between the time it submitted its system for review and the spring 2001 assessment window. Thus, in spring 2001, WVDE administered the assessment that the Assistant Secretary had determined did not meet the Title I requirements. As a result, the Assistant Secretary finds that it is not genuinely feasible for WVDE to come into compliance until a future date.

D. WVDE Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Title I Within Three Years

At the public hearing, WVDE presented evidence of its commitment and capability to come into compliance with the Title I standards and assessment requirements within three years. For example, the following have been developed in the last 18 months: content standards and objectives for core courses grades K–12; performance standards, three levels performance descriptors for those three levels performance for core courses K–12; a comprehensive, completely revised plan for a statewide assessment system that meets both the old law and the provisions of the reauthorization.

Finally, WVDE has developed a comprehensive action plan, incorporated into the compliance agreement, that sets out a very specific schedule that WVDE has agreed to meet during the next three years for attaining compliance with the Title I standards and assessment requirements. As a result, WVDE is committed not only to coming into full compliance within three years, but to meeting a stringent, but reasonable, schedule for doing so. The action plan also demonstrates that WVDE will be well on its way to meeting the new standards and assessment requirements of the No Child Left Behind Act of 2001. The compliance agreement also sets out documentation and reporting procedures that WVDE must follow. These provisions will allow the Assistant Secretary to ascertain promptly whether WVDE is meeting each of its commitments under the compliance agreement and is on schedule to achieve full compliance within the effective period of the agreement.

The task of developing an assessment system that meets the Title I requirements is not a quick or easy one. However, the Assistant Secretary has determined that, given the commitment of WVDE to comply with the terms and conditions of the compliance agreement, it is possible for WVDE to come into full compliance with the Title I standards and assessment requirements within three years.

IV. Conclusion

For the foregoing reasons, the Assistant Secretary finds the following: (1) That full compliance by WVDE with the standards and assessment requirements of Title I is not feasible until a future date; and (2) that WVDE can meet the terms and conditions of the attached compliance agreement and come into full compliance with the Title I standards and assessment requirements within three years of the date of these findings. Therefore, the Assistant Secretary has determined that it is appropriate to enter into a compliance agreement with WVDE. Under the terms of 20 U.S.C. 1234f, that compliance agreement becomes effective on the date of these findings.

Dated: March 29, 2002.

Susan B. Neuman,

Assistant Secretary, Office of Elementary and Secondary Education.

Appendix B—Text of the Compliance Agreement

Compliance Agreement Under Title I of the Elementary and Secondary Education Act Between the United States Department of Education and the West Virginia Department of Education

Introduction

Title I of the Elementary and Secondary Education Act of 1965 (Title I) required each State, including the District of Columbia and Puerto Rico, to develop or adopt, by the 1997–98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Title I also required each State to develop or adopt performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards. By the 2000–2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards.

The West Virginia Department of Education (WVDE) was not able to meet these requirements by the statutory deadlines. In order to be eligible to continue to receive

Title I funds while working to comply with the statutory requirements, Dr. David Stewart, Superintendent of WVDE, indicated WVDE's interest in entering into a compliance agreement with the Office of Elementary and Secondary Education (OESE) of the United States Department of Education. On February 4, 2002 OESE conducted a public hearing regarding WVDE's ability to come into compliance with the Title I standards and assessment requirements within three years. Based on testimony at that hearing, Mr. William Luff, Deputy State Superintendent, testified that compliance by WVDE with the Title I standards and assessment requirements was not possible by this school year. According to the Deputy State Superintendent, when the current State Superintendent was advised, "by the U.S. office, in late spring, that our assumptions about use of the existing assessments were incorrect, he immediately directed the department staff to come into full compliance with the law as quickly as possible."

Pursuant to this Compliance Agreement under 20 U.S.C. 1234f, WVDE must be in full compliance with the requirements of Title I no later than three years from the date of the Assistant Secretary's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. Specifically, WVDE must meet, and document that it has met, the following requirements:

1. Develop or select an academic assessment system that represents the full range of the WVDE's academic content standards and academic achievement standards in at least reading/language arts and mathematics and is consistent with the Title I requirements for use of multiple measures of student achievement, including measures that assess higher-order thinking and understanding. Document the alignment of the assessment system with WVDE's academic content and student achievement standards.

2. Provide evidence that the State assessment shall be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards for such assessments.

3. Provide evidence of performance standards aligned to content standards.

4. Clarify how reasonable accommodations are provided to students with disabilities and limited English proficient students that allow for their scores to be included in the accountability system.

5. Clarify how data for students who take the alternate assessment and students administered assessments with non-standard accommodations will be incorporated into the accountability system.

6. Provide complete participation data for students with disabilities and LEP students so that the State's inclusion policies relating to assessment, reporting, and accountability can be evaluated.

7. Provide individual reports of student achievement relative to the state performance standards.

8. Provide school, district, and State level reports using disaggregated data by all the required categories.

9. Provide evidence that LEAs are completing and disseminating school and district profiles that include statistically sound disaggregated results.

10. Clarify how the State defines "full academic year" for including students in determining adequate yearly progress.

During the period that this Compliance Agreement is in effect, WVDE is eligible to receive Title I, Part A funds if it complies with the terms and conditions of this Agreement, as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements. Specifically, the Compliance Agreement sets forth the action steps WVDE must meet to come into compliance with the Title I standards and assessment requirements (See attached). WVDE must submit documentation concerning its compliance with these action steps.

The action steps, hereby incorporated into this Compliance Agreement by reference may be amended by joint agreement of the parties, provided full compliance can still be accomplished by the expiration date of the Agreement.

In addition to all of the terms and conditions set forth above, WVDE agrees that its continued eligibility to receive Title I, Part A funds is predicated upon compliance with statutory and regulatory requirements of that program that have not been addressed by this Agreement, including the requirements of the No Child Left Behind Act of 2001.

If WVDE fails to comply with any of the terms and conditions of this Compliance Agreement, including the action steps attached hereto the USED may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order following notice and opportunity to be heard in accordance with 20 U.S.C. § 1234d. 20 U.S.C. § 1234f(d).

For the West Virginia Department of Education:

Dated: March 22, 2002.

Dr. David Stewart,

State Superintendent of Schools.

For the United States Department of Education:

Dated: March 22, 2002.

Susan B. Neuman,

Assistant Secretary, Office of Elementary and Secondary Education.

Date this Compliance Agreement becomes effective: April 5, 2002.

TITLE I COMPLIANCE AGREEMENT—WORK PLAN/TIME LINE

	Component or measurable outcome	Public Law 103–382	Documentation	Office responsible	Date
A	**Content Standards**				
A1	Revise West Virginia's content standards in math and reading K–12. *Draft content standards in science.	Sec. 1111(b)(1)(c)	Office of Instructional Services Work Plan.	Instructional Services	April 30, 2002.
A2	Draft content standards sent to U.S. Department of Education.	Sec. 1111(b)(1)(A)	Policy 2520	Instructional Services	April 30, 2002.
A3	Document involvement of a broad base of education stakeholders in the development of content standards ensuring diversity in the composition of the group, especially in the areas of special education and limited English proficient expertise.	Sec. 1111(a)(1)	Committee Lists, Comment Process, Sample Comments.	Instructional Services	April 30, 2002.
A4	Document that the content standards are challenging for all students by providing conclusions from an independent review panel or organization.	Sec. 1111(b)(1)(D)-(i)(iii)	Teacher Comments, Description of Process.	Instructional Services	April 30, 2002.
A5	Document that all students are held to high standards.	Sec. 1111(b)(1)(C)	Policy 2520, Policy 2340, Policy 2510.	Instructional Services	April 30, 2002.
A6	Document that the State has formally approved the content standards. *Including Science.	Sec. 1111(b)(1)(A)	Board Minutes, Policy 2520.	Instructional Services	April 30, 2002.
A7	Send documentation to the U.S. Department of Education for formal peer review of content standards.	Sec. 1111(d)(1)(F)			April 30, 2002.
B	**Performance Descriptors**				
B1	Document a process for determining the foundation for developing performance standards, including what processes will be involved in writing the descriptors.	Sec. 1111(b)(1)(C)	Descriptor development agenda, Power Point presentations by consultants, and descriptor development routine.	Instructional Services	April 30, 2002.
B2	Draft performance levels and performance descriptors for reading 3–10, and math 3–8 and 10.	Sec. 1111(b)(1)(A)	See Section A3, Above	Instructional Services	April 30, 2002.
B3	Document involvement of a broad base of education stakeholders in the development of performance descriptors ensuring diversity in the composition of the group, especially in the areas of special education and limited English proficient expertise.	Sec. 1111(a)(1)	See Section A3, Above	Instructional Services	April 30, 2002.
B4	Draft performance descriptors sent to U.S. Department of Education.	Sec. 1111(b)(1)(A)	Policy 2520	Instructional Services	April 30, 2002.
B5	Document how performance descriptors are aligned with the content standards.	Sec. 1111(b)(1)(D)(ii)(I)	Policy 2520, Description of Process.	Instructional Services	April 30, 2002.
B6	Document that the performance descriptors are challenging for all students.	Sec. 1111(b)(1)(D)(i)(II)	Policy 2520; See Section A3, Above; Description of Process.	Instructional Services	April 30, 2002.
B7	Document that all students are held to the same high performance descriptors.	Sec. 1111(b)(1)(c)	Policy 2510, Policy 2520	Instructional Services	April 30, 2002.
B8	Document that the State has formally approved the draft performance descriptors.	Sec. 1111(b)(1)(A)	Policy 2520, Board Minutes.	Instructional Services	April 30, 2002.

TITLE I COMPLIANCE AGREEMENT—WORK PLAN/TIME LINE—Continued

	Component or measurable outcome	Public Law 103–382	Documentation	Office responsible	Date
B9	Send documentation to the U.S. Department of Education for formal peer review of draft performance descriptors.	Sec. 1111(d)(1)(F)	All of above	Instructional Services	April 30, 2002.
B10	Administer assessments developed based on content standards and draft performance descriptors.	Sec. 1111(b)(3)	Test Blueprints, RFP, Copies of Reports.	Assessment and Student Services.	June 30, 2004.
B11	Review draft performance descriptors based on assessment results.	Sec. 1111(b)(3)(D)	Agenda, Committee Lists.	Instructional Services	September 30, 2004.
B12	Set cut scores to determine performance level of standards based assessment in reading, language arts and math in grades 3–8, 10 by the bookmarking procedure. —standard setting meetings; —psychometric research; —technical studies; —scaling and equating; —programming costs.	Sec. 1111(b)(3)(D)	Formulas for determining standard setting procedure, agenda of meetings Technical Manual.	Assessment and Student Services.	September 30, 2004.
B13	Document involvement of a broad base of education stakeholders in the setting of cut scores ensuring diversity in the composition of the group, especially in the areas of special education and limited English proficient expertise.	Sec. 1111(b)(3)(F) (ii)	Committee Lists, Agenda, Cut Score Recommendations.	Assessment and Student Services.	September 30, 2004.
B14	Document that cut scores for performance levels are challenging for all students;. —Three performance levels —Use bookmarking process.	Sec. 1111(b)(3)(E)	State profile of results of standards based tests by performance levels, schedule of meetings and events.	Assessment and Student Services.	September 30, 2004.
B15	Document that all students are included in the cut scores.	Sec. 1111(b)(3)(A)	Summary of participation	Technology and Information Systems.	September 30, 2004.
B16	Document that the cut scores are aligned with the draft performance descriptors and the content standards.	Sec. 1111(b)(3)(B)	Final Alignment Study Report.	Assessment and Student Services.	September 30, 2004.
B17	Document that the State has formally approved the performance cut scores.	Sec. 1111(b)(3)	Board Minutes	Assessment and Student Services.	December 31, 2004.
B18	Send documentation to the U.S. Department of Education for formal peer review of performance cut scores.	Sec. 1111(d)(1)(F)		Assessment and Student Services.	December 31, 2004.
C1	*Develop an RFP to secure services for test development, administration, scoring and reporting for grades 3–8, 10.		RFP, Committee Member Lists.	Assessment and Student Services.	June 30, 2002.
C2	Send RFP to U.S. Department of Education		RFP, Committee Member Lists.	Assessment and Student Services.	June 30, 2002.
C3	Negotiate and sign a contract for services needed to develop an assessment system.		Release of Purchase Order, RFP.	Assessment and Student Services.	June 30, 2002.
C4	Send contract to U.S. Department of Education.		Release of Purchase Order, RFP.	Assessment and Student Services.	June 30, 2002.
C5	*Complete detailed design and implementation activities required to create test items and test forms adequate to serve the purposes specified in the State's assessment ensuring validity, reliability and fairness for grades 3–8, 10.	Sec. 1111(b)(3)(V)	Test Design Document, Biasing Review, Reliability and Validity Studies.	Assessment and Student Services.	June 30, 2002–December 30, 2003.

C6	Design an approach to ensure alignment of content and performance descriptors with the assessment considering comprehensiveness, emphasis, and depth. —*Internal alignment* Teacher committees —CTB *External Alignment* Norm Webb All alignment studies will address comprehensiveness of tests in terms of gaps and weaknesses, emphasis and depth of knowledge as well as thinking skill distribution.	Sec. 1111 (b)(3)(E)	Letter to Norm Webb for Agreed Services as Vendor.	Assessment and Student Services.	June 30, 2002.
C7	Before pilot, complete an analysis of the alignment of the assessment and standards identifying any gaps and weaknesses in the alignment.	Sec. 1111 (b)(3)(B)	Report from Norm Webb, Vendor.	Assessment and Student Services.	December 30, 2003.
C8	After pilot, complete an analysis of the alignment of the assessment and standards identifying any gaps and weaknesses in the alignment.	Sec. 1111 (b)(3)(B)	Report from Norm Webb, Vendor.	Assessment and Student Services.	March 31, 2004.
C9	Complete test items and review for bias to ensure that results measured the essence of the standards and does so for students of diverse backgrounds. —Internal Bias Review Committee —CTB Bias Review Committee	Sec. 1111 (b)(3)(F)(ii)	Blueprints of Pilot Tests	Assessment and Student Services.	June 30, 2003.
C10	*Administer pilot tests in grades 3–8, 10. Production, distribution, and administration.	Sec. 1111 (b)(3)(E)	Pilot administration manual.	Assessment and Student Services.	December 30, 2003.
C11	Design an approach to ensure alignment of content and performance descriptors with the assessment considering comprehensiveness, emphasis, and depth.	Sec. 1111(b)(3)(E)	Letter to Vendor and Report re: Alignment Study.	Assessment and Student Services.	December 30, 2003.
C12	Complete any needed adjustments in the test forms. Address gaps and weakness and make adjustments.		First and Final Drafts of Test Forms.	Assessment and Student Services.	December 30, 2003.
C13	Results of alignment study sent to U.S. Department of Education.	Sec. 1111(b)(3)(B)	Alignment Study	Assessment and Student Services.	December 30, 2004.
C14	*Administer tests —Production —Distributions —Scoring	Sec. 1111(b)(3)(D)	Superintendent's letter with testing schedule.	Assessment and Student Services.	June 30, 2004.
C15	Develop reports that are technically adequate for school and district accountability.	Sec. 1111(b)(3)(H)	Copies of reports and accountability standards.	Assessment and Student Services.	December 30, 2004.
C16	*Distribution of an itemized score analysis to support instructional improvement.		Sample report based on test administered in 2001–2002.	Assessment and Student Services.	*August 31, 2003 and Annually thereafter.
C17	Develop technical manuals that contain such information as validity, reliability, fairness/accessibility, and comparability of results. —Reports —Revision of reports	Sec. 1111(b)(3)(C)	Technical manuals	Assessment and Student Services.	December 30, 2004.
C18	Develop procedures for test administration, scoring, data analysis, and reporting to meet high technical standards. —Administration manuals —Data Analysis and Technical Data	Sec. 1111(b)(3)(C)	Copies of protocol and procedures manual.	Assessment and Student Services.	December 30, 2003.

TITLE I COMPLIANCE AGREEMENT—WORK PLAN/TIME LINE—Continued

	Component or measurable outcome	Public Law 103–382	Documentation	Office responsible	Date
C19	Procedures for test administration, scoring, data analysis, and reporting to meet high technical standards sent to U.S. Department of Education.	Sec. 1111(b)(3)(C)	Copies of protocol and procedures manual.	Assessment and Student Services.	December 30, 2004.
C20	Review of technical quality sent to U.S. Department of Education.	Sec. 1111(b)(3)(C)	Technical Quality Document.	Assessment and Student Services.	June 30, 2004.
C21	Submit evidence that the assessment includes multiple measures of student performance, including measures that assess higher-order thinking skills and understanding.	Sec. 1111(b)(3)(E)	Vendor report (including matrix) Alignment study.	Assessment and Student Services.	December 30, 2004.
C22	Submit assessment system to U.S. Department of Education for peer review.	Sec. 1111(d)(1)(F)	See Above	Assessment and Student Services.	December 30, 2004.
C23	*Participation in the National Assessment of Educational Progress in 2003 and 2005 and, if selected, participation in the field test in off-years.		Consolidated State Plan	Assessment and Student Services.	May 2002.
D1	Develop policies for including LEP students in the statewide assessment system and revise guidelines for assessment for LEP guidelines.	Sec. 1111(b)(3)(F)(iii)	Policy 2340	Assessment and Student Services.	June 30, 2002.
D2	Develop policies for including students with disabilities in the statewide assessment system and revise guidelines for assessment of students with disabilities.	Sec. 1111(b)(3)(F)(ii)	Policy 2340, Policy 2419, Guidelines for assessment of special education.	Assessment and Student Services.	Policy—April 30, 2002. Guidelines—June 30, 2003.
D3	Document that all students are included in the assessment system, especially LEP and students with disabilities.	Sec. 1111(b)(3)(F)(i)	Comparison of enrolled students with those assessed.	Office of Technology and Information Systems.	December 31, 2004.
D4	Develop statewide monitoring procedures to ensure the inclusion of all students.	Sec. 1111(b)(3)(F)(i)	Policy 2320, OSE Monitoring Document.	Office Special Education	January 2003.
D5	Submit statewide monitoring procedures to ensure the inclusion of all students.	Sec. 1111(b)(3)(F)(i)	See D4	Office of Technology and Information Systems.	December 31, 2004.
D6	Clarify how reasonable accommodations are provided to students with disabilities and limited English proficient students that allow for their scores to be included in the accountability system and submit to U.S. Department of Education.	Sec. 1111(b)(3)(F)(II)	Policy 2340, Guidelines for assessment of special education and LEP students.	Assessment and Student Services.	December 2002, December 2003, December 2004.
D7	Clarify how data for students who take the alternate assessment and students administered assessments with non-standard accommodations will be incorporated into the accountability system and submit to U.S. Department of Education.	Sec. 1111(b)(3)(F)(I)	Policy 2510	Deputy Superintendent	December 2004.
D8	Provide complete participation data for students with disabilities and LEP students to that the State's inclusion policies relating to assessment, reporting, and accountability can be evaluated and submit to U.S. Department of Education.	Sec. 1111(b)(3)(F)(i)	Participation Report	Office of Technology and Information Systems.	December 2002, December 2003, December 2004.
D9	*Implementation of the English language proficiency testing required under Title I and Title III. • Identify test that will be used. • Administer to all LEP students. • Define annual measurable objectives for gains in English proficiency as required in Sec. 3122. • Report results as required by NCLB.		Instructions to schools, test administration manuals, sample reports.	Office of English as a Second Language.	*2002–2003 and Annually thereafter.
	E Reporting				
E1	Design a reporting template for school, district, and state profiles that clearly communicates to educators, parents and stakeholders how the assessments relate to the content and performance standards and submit to U.S. Department of Education.	Sec. 1111(b)(3)(H)	Report Template	Office of Technology and Information Systems.	December 2004.
E2	*Dissemination of disaggregated data at the school and district levels from the assessments currently in use. Assessment reports to include: gender, major racial/ethnic groups, English proficiency status, migrant status, students with disabilities as compared to nondisabled students, and economically disadvantaged students as compared to students who are not economically disadvantaged.	Sec. 1111(b)(3)(I)	Disaggregation Reports	Office of Technology and Information Systems.	*August 31, 2002 (as available). August 31, 2003 (all subgroups) and annually thereafter.
E3	Describe procedures for annually reporting these results and submit to U.S. Department of Education.	Sec. 1111(b)(3)(I)	Description of reporting process (with specific examples).	Office of Technology and Information Systems.	December 2002, December 2003, December 2004.
E4	Submit reporting policies for small groups	Sec. 1111(b)(3)(I)	Policy 2340	Assessment and Student Services.	January 2004.
E5	Provide evidence that LEAs are completing and disseminating school and district profiles to all required audiences that include statistically sound disaggregated results and submit to U.S. Department of Education.	Sec. 1116(a)(3)	WV Code Citation, Letter to LEAs.	Office of Technology and Information Systems.	December 2002, December 2003, December 2004.
E6	Document that all students are included in the school profiles including exempted students, special education students taking the alternate assessment and LEP students and submit to U.S. Department of Education.	Sec. 1111(b)(3)(F)(i)	Reports	Office of Technology and Information Systems.	December 2002, December 2003, December 2004.
E7	Provide individual reports of student achievement relative to the state performance standards and submit to U.S. Department of Education.	Sec. 1111(b)(3)(F)(i)	Reports	Office of Technology and Information Systems.	December 2002 and December 2003 (Quartile), December 2004 (Performance Standards).
E8	Describe strategies to ensure that individual reports go to all parents in understandable ways and submit to U.S. Department of Education.	Sec. 1118(c)(4)(B)	Narrative describing strategies and parent committee lists.	Assessment and Student Services.	December 2002, December 2003, December 2004.
E9	Submit manuals and/or guidelines on the interpretation of these reports and submit to U.S. Department of Education.	Sec. 1118(c)(4)(B)	Manuals	Assessment and Student Services.	December 2002, December 2003, December 2004.
E10	Develop quality control procedures to check accuracy of scoring and reports and submit to U.S. Department of Education.	Sec. 1111(b)(3)(C)	TILSA Quality Control document.	Assessment and Student Services.	December 2002, December 2003, December 2004.

TITLE I COMPLIANCE AGREEMENT—WORK PLAN/TIME LINE—Continued

	Component or measurable outcome	Public Law 103–382	Documentation	Office responsible	Date
E11	*Distribution of a state report card as required under Section 1111 of Title I. State report card must include the following: • Disaggregated student achievement results by performance level. • Percent of student not tested • Comparison between annual objectives and actual performance for each student group All other report card requirements must be met as quickly as possible, consistent with implementation of final assessments. (See E1)		Copy of State Report Card.	Office of Technology and Information Systems.	*Sept. 30, 2002, *Aug. 31, 2003, *Aug. 31, 2004.
E12	*Annual report to the Secretary as described in Section 1111(h)(4). • Information on State progress in developing all required academic assessments. • Student achievement data • Disaggregated data on acquisition of English proficiency by LEP (2002–2003). • Number and names of school identified for school improvement, the reason for identification, and measures taken to address achievement problems. • Number of students and schools that participated in public school choice and supplemental services. • Information on quality of teacher and percent of classes taught by highly qualified (2002–2003).		Part of Annual Title I Performance Report.		*December 2002 and annually thereafter.
F1	Develop a definition of adequate yearly progress that requires continuous improvement toward the goal of all students reaching proficiency and submit to U.S. Department of Education.		Agreed Order Tomblin Committee Agendas PowerPoint Presentations.	Deputy Superintendent ..	December 2002, December 2003, December 2004.
F2	Describe how the State assessments are defined as the primary element in the State's definition of adequate yearly progress for schools and districts and submit to U.S. Department of Education.		See Section F1, Above	Deputy Superintendent ..	December 2002, December 2003, December 2004.
F3	Demonstrate approval of this definition of adequate yearly progress and submit to U.S. Department of Education.		See Section F1, Above Policy 2510, State Board Minutes.	Deputy Superintendent ..	December 2002, December 2003, December 2004.
F4	Clarify how the State defines "full academic year" for including students in determining adequate yearly progress for schools and/or districts and submit to U.S. Department of Education.		Policy 2340, See Section F1, Above.	Assessment and Student Services.	December 2002, December 2003, December 2004.
F5	Document that all students are included in the accountability system including special education students taking the alternate assessment, other special education students, 504 students, and LEP students and submit to U.S. Department of Education.		See Section F1, Above Dissagregation and Participation Report, Policy 2340, See Section D3, Above.	Office of Technology and Information Systems.	December 2002, December 2003, December 2004.

F6	Provide information regarding how the State evaluates the effectiveness of schools that do not contain any of the grades covered by the State assessment system (e.g., K–2 schools) and submit to U.S. Department of Education.		PowerPoint Presentation See Section F1, Above Overview and Excerpt from Reading Assessment.	Deputy Superintendent ..	December 2002, December 2003, December 2004.
F7	Submit the definition of adequate yearly progress to the U.S. Department of Education for peer review.			Deputy Superintendent ..	December 2004.
F8	*A. Continued identification of schools in need of improvement, based on data from the current assessment (s) for all children in the grade assessed and, to also include: • Performance of subgroups (of statistically reliable size). • Application of the 95% participation rule • HS graduation and the other indicators required by NCLB. B. Establish AYP baseline, based on data from the new assessment (s) for all children in the grades assessed. Use transitional rules under NCLB, Sec. 1116 to identify schools in need of improvement.		Description of school accountability system to include the data source (assessments) and formula or decision sequence used to determine school classification. List of schools and districts identified for improvement. Communication of baseline values and AYP design to schools and districts. List of schools and districts identified for improvement.	Deputy Superintendent ..	*Sept. 30, 2002, Aug. 31, 2003, Aug. 31, 2004.
F9	*All other requirements of NCLB pertaining to schools identified for improvement, corrective action, or restructuring during the period of the compliance agreement.		Implementation and documentation of choice, supplemental services, corrective actions, as appropriate.	Office of Instructional Services.	2002–2003 and Annually thereafter.

All items marked with * are No Child Left Behind Act of 2001 requirements. West Virginia will have six months from the date of the Compliance Agreement or 30 days after publication of final regulations (whichever comes first) to determine the specific tasks and dates required to satisfy each goal.

[FR Doc. 03–4075 Filed 2–20–03; 8:45 am]
BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed February 10, 2003, through February 14, 2003, pursuant to 40 CFR 1506.9.

EIS No. 030054, Draft Supplement, BLM, WY, Jack Morrow Hills Coordinated Activity Plan/Draft Green River Resource Management Plan Amendment, Updated Information, Rock Springs, Portions of Sweetwater, Fremont and Subelette Counties, WY, Comment Period Ends: May 15, 2003, Contact: Joe Patti (307) 775–6101. This document is available on the Internet at: *http://www.wy.blm.com.*

EIS No. 030057, Draft Supplement, FHW, FL, FL–23 Extension (Branan Field—Chaffee Road), Construction from FL–134 (103rd Street) to FL–8 (I–10) and FL–10 (US–90/Beaver Street), NPDES and US Army COE Section 404 Permits Issuance, FM No. 209659–1 and FAP No. 9041–047–C, Clay and Duval Counties, FL, Comment Period Ends: April 7, 2003, Contact: Jose Pena (850) 942–9650 Ext. 3033.

EIS No. 230058, Final EIS, FHW, SC, James E. Clyburn Connector Project, Construction of a Two-Lane Rural Roadway Northeast of Orangeburg and Southwest of Sumter, Funding and U.S. Army COE Section 404 Permit Issuance, Calhoun, Sumter and Claredon Counties, SC, Wait Period Ends: April 1, 2003, Contact: Daniel T. Hinton (803) 253–3887.

EIS No. 030059, Final Supplement, NPS, ID, MT, WY, MT, WY, Yellowstone and Grand Teton National Parks and John D. Rockerfeller, Jr., Memorial Parkway, Winter Use Plans, Updated and New Information on New Generation of Snowmobiles that Produce fewer Emissions and are Quieter, Fremont County, ID, Gallatin and Park Counties, MT and Park and Teton Counties, WY, Wait Period Ends: March 24, 2003, Contact: Madeleine VanderHeyden (307) 739–3385.

EIS No. 030060, Final EIS, FTA, NV, Las Vegas Resort Corridor Project, Transportation Improvements, Funding, City of Las Vegas, Clark County, NV, Wait Period Ends: March 24, 2003, Contact: Ray Sukys (415) 744–3115.

EIS No. 030061, Final EIS, FHW, CA, Butte 70/149/99/191 Highway Improvement Project, Update State Route 149 to Four-Lane Expressway from 70 North of Oroville to Route 99 South of Chico, Funding, Right-of-Way Acquisition, and U.S. Army Section 404 Permit Issuance, Butte County, CA, Wait Period Ends: March 24, 2003, Contact: Maiser Khaled (916) 498–5020.

EIS No. 030062, Draft EIS, AFS, MT, Sheep Creek Range Analysis, Proposal to Reorganize Grazing and Special Use Allotments, Grazing and Special Use Permits Issue, Lewis and Clark National Forest, White Sulphur Springs Ranger District, Meagher and Cascade Counties, MT, Comment Period Ends: April 7, 2003, Contact: Eldon Rash (406) 791–7706.

EIS No. 030063, Draft EIS, FHW, MT, Interstate 15 Corridor Project, Transportation Improvements from Montana City to the Lincoln Road Interchange, Funding and U.S. Army COE Section 404 Permit Issuance, Jefferson and Lewis & Clark Counties, MT, Comment Period Ends: April 7, 2003, Contact: Carl James (406) 449–5302.

EIS No. 030064, Final EIS, FHW, IL, U.S. 34/FAP 313 Transportation Facility Improvement Project, U.S. 34 from the Intersection of Carman Road east of Gulfport to Monmouth, Funding and U.S. Army COE Section 404 and NPDES Permits Issuance, Henderson and Warren Counties, IL, Wait Period Ends: March 24, 2003, Contact: Norman R. Stoner (217)492–4600.

Dated: February 19, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–4299 Filed 2–20–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0003; FRL–7291–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL) Committee will be held on March 7-8, 2003, in Salt Lake City, Utah. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of AEGLs for the following chemicals: Acetone, boron trifluoride, carbon disulfide, formaldehyde, hydrogen bromide, iron pentacarbonyl, nitric acid, piperidine, titanium tetrachloride, and vinyl chloride.

DATES: A meeting of the NAC/AEGL Committee will be held from 8 a.m. to 5 p.m. on March 7, 2003, and 8 a.m. to 5 p.m. on March 8, 2003.

ADDRESSES: The meeting will be held at the Eagle Gate East and West, Best Western Salt Lake Plaza Hotel, 122 West South Temple, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO technical information contact, to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for June 2003 in Washington, DC.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: February 13, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 03–4244 Filed 2–20–03; 11:31 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7454–3]

National Advisory Council on Environmental Policy and Technology (NACEPT); Superfund Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT subcommittee on Superfund; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notices is hereby given that the Superfund Subcommittee, a subcommittee of the National Advisory Council on Environmental Policy and Technology (NACEPT), will meet on the date and time described below. The meeting is open to the public. Seating will be on a first-come basis and limited time will be provided for public comment on each day.

DATES: The meeting will be held from 1:30 p.m. to 7 p.m. on March 10, 2003; from 8 a.m. to 5:30 p.m. on March 11, 2003.

ADDRESSES: The meeting will take place at the Phoenix Pointe Hilton Squaw Peak Resort, 7677 North 16th Street Phoenix, AZ 85020.

FOR FURTHER INFORMATION CONTACT: Angelo Carasea, Designated Federal Officer for the NACEPT Superfund Subcommittee, Office of Emergency and Remedial Response, Office of Solid Waste and Emergency Response, MC 5204G, 1200 Pennsylvania Ave., NW., Washington, DC, (703) 603–8828.

SUPPLEMENTARY INFORMATION:

Agenda

This fourth meeting of the Superfund Subcommittee will involve reports from the Subcommittee's working groups about their activities since the last Subcommittee meeting in January 2003. The agenda for the meeting will be available one week prior to the meeting's occurrence.

Public Attendance

The public is welcome to attend all portion of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public sessions are encouraged to contact the Designated Federal Official. Each day will have one public comment period.

Dated: February 14, 2003.

Angelo Carasea,

Designated Federal Officer, NACEPT Superfund Subcommittee.

[FR Doc. 03–4307 Filed 2–20–03; 8:45 am]
BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

Date and Time: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 19, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—January 7, 2003 (Open)

B. Reports

—Corporate Approvals
—Informational Memoranda Issued to FCS on Flood Insurance

C. New Business

1. Regulations

—Capital Risk Weighting ABS/MBS Securities Held by FCS Institutions—Interim Final Rule

2. Other

—Unified Agenda Update and Revisions
—**Federal Register** Notice—Loan Syndication Transactions—Reopening of Comment Period
—Fiscal Year 2002 Financial Audit

Closed Session [1]

—OSMO Report

Dated: February 14, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–4077 Filed 2–19–03; 11:41 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 12, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 22, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0930.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999. Enforcement Procedures for Retransmission Consent Violations Conforming to section 325(e) of the Communications Act of 1934, as amended.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 8.

Estimated Time per Response: 2 hours (multiple responses/year).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 192 hours.

Total Annual Costs: $0.00.

Needs and Uses: Congress directed the Commission to adopt regulations related to retransmission consent pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. Retransmission consent is the process whereby television broadcasters negotiate and consent to carriage of their signals by MVPDs. Television broadcasters will be required to make an election and make status information available for public review. The availability of such information will serve the purpose of informing the public of the method of broadcast signal carriage.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 03–4062 Filed 2–20–03; 8:45 am]

BILLING CODE 6712–10–P

[1] Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fourth, fifth, sixth and seventh meetings of the Network Reliability and Interoperability Council (Council) under its charter renewed as of December 26, 2001. The meetings will be held at the Federal Communications Commission in Washington, DC.

DATES: Friday, March 14, 2003, at 10 a.m. to 1 p.m.; June 13, 2003, at 10 a.m. to 1 p.m.; September 15, 2003, at 1 p.m. to 4 p.m.; and December 6, 2002, at 10 a.m. to 1 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp at 202–418–1096 or TTY 202–418–2989.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that will enhance network security, reliability and interoperability. At the March meeting, the Council will consider proposed network security best practices from various focus groups and review the status of others.

The Council will discuss the progress of working groups that are addressing the topics that are contained in the Council's charter and any additional issues that may come before it.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Jeffery Goldthorp, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by e-mail *jgoldtho@fcc.gov* or U.S. mail (7–A325, 445 12th St., SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov*.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 03–4175 Filed 2–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Sumitomo Trust & Banking Company, Limited, Osaka, Japan; to engage through a joint venture in trust company activities through Sumitomo Trust & Banking Co. (USA), Hobeke, New Jersey, after its conversion from a bank to a trust company. This activity will be conduted pursuant to § 225.28(5) of Regulation Y.

Board of Governors of the Federal Reserve System, February 13, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–4153 Filed 2–20–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

ACTION: Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 13, 2003. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, March 11, by completing the form found on-line at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm*.

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9 a.m. and is expected to conclude at 1 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Check Bounce Protection: Discussion of the impact that check bounce protection programs have on consumers and possible regulatory concerns.

Predatory Lending: Discussion of the effects of state predatory lending laws on credit availability and the appropriateness of federal preemption of state laws.

Truth in Lending Act: Discussion of issues related to credit card disclosures in connection with the Board's review of Regulation Z, which implements the Truth in Lending Act.

Committee Reports: Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, February 13, 2003.

Jennifer J. Johnson

Secretary of the Board

[FR Doc. 03–4154 Filed 2–20–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03035]

Grants for National Academic Centers of Excellence on Youth Violence Prevention; Notice of Availability of Funds for Fiscal Year 2003

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301, 391, 392, and 394 of the Public Health Service Act, [42 U.S.C. 241, 280b, 280b–1, 280b–1a, and 280b–2], as amended. Program regulations are set forth in 42 CFR part 52. The Catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a grant for National Academic Centers of Excellence on Youth Violence Prevention. This program addresses the "Healthy People 2010" focus area related to Injury and Violence Prevention.

The purposes of the program are to: (1) Build the scientific infrastructure necessary to support the development and widespread application of effective youth violence interventions; (2) promote interdisciplinary research strategies to address the problem of youth violence; (3) foster collaboration between academic researchers and communities; and (4) empower communities to address the problem of youth violence.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

C. Eligible Applicants

Assistance will be limited to the following academic health centers, defined as public and private nonprofit universities, colleges, and university-associated teaching hospitals: Virginia

Commonwealth University; University of Michigan; University of Puerto Rico; University of California, Riverside; and University of California, San Diego. Only current recipients of Program Announcement 00043, National Academic Centers of Excellence on Youth Violence Prevention, are eligible to apply. The competition is limited to complete the development, collection and analysis of data from core program components in surveillance, intervention research, etiological research, multi-disciplinary collaboration, community mobilization, and training funding established during the first three years for the developing centers.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funding

Availability of Funds

Approximately $1,900,000 is available in FY 2003 to fund approximately five awards. It is expected that the average award will be $380,000, ranging from $376,000 to $393,000 (including direct or indirect costs). It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of the availability of funds and the following criteria:

(1) The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual statement of work. Progress is demonstrated through presentations at monitoring workshops.

(2) The objectives for the new budget period are realistic, specific, and measurable.

(3) The methods described will clearly lead to achievement of these objectives.

(4) The evaluation plan will allow management to monitor whether the methods are effective.

Use of Funds

Provide a budget to include funds for management functions, non-research activities, and small one-year pilot projects of less than $15,000. The budget should include items for development and implementation of a community response plan for youth violence, and development and implementation of curricula for training of health professionals.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Priority

Funding priority will be given to current recipients of Program Announcement 00043, National Academic Centers of Excellence on Youth Violence Prevention. The competition is limited to complete the development, collection and analysis of data from core program components in surveillance, intervention research, etiological research, multi-disciplinary collaboration, community mobilization, and training funding established during the first three years for the developing centers.

Interested persons are invited to comment on the proposed funding priority. All comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priority is established. If the funding priority changes because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Send comments to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

(1) Demonstrated expertise in:

(a) Research in risk and protective factors for youth violence and/or development and evaluation of preventive interventions for youth violence.

(b) Capacity to develop and facilitate implementation of a multi-disciplinary and multi-organizational community response plan for youth violence.

(2) Provide evidence of capacity to develop, deliver, and maintain a training curriculum for health care professionals.

(3) Provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, *e.g.*, dean of a school or vice president of a university. The director must have no less than 30 percent effort devoted solely to this project.

(4) Demonstrate working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

(5) Provide evidence of involvement of a multi-disciplinary and multi-organizational group of specialists or experts in primary care, behavioral and/or preventive medicine, epidemiology, law and criminal justice, behavioral and social sciences, and/or public health as needed to complete the plans of the center.

(6) Demonstrate through documentation that full working partners must have established curricula and graduate training programs in disciplines relevant to youth violence prevention (*e.g.*, epidemiology, criminology, social sciences, and behavioral sciences).

(7) Demonstrate an established relationship with youth violence prevention programs through letters of commitment. Also include established relationships with organizations/individual leaders in communities where youth violence related injuries occur at high rates. A letter from an appropriate public health agency in support of the proposed center is required.

F. Content

Letter of Intent (LOI)

An LOI is not required for this program.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 pages, double spaced, printed on one side, with one inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. The plan should:

(1) Provide the infrastructure for, and conduct interdisciplinary research relevant to, youth violence.

(2) Support the surveillance of youth violence in the grantees' specific communities.

(3) Develop, evaluate, and more broadly implement effective violence prevention strategies.

(4) Offer mentoring and training initiatives to prepare professionals from various backgrounds to address the issue of youth violence.

(5) Create partnerships with communities to develop plans to address youth violence.

G. Submission and Deadline

Application Forms

Submit the original and two copies of PHS 398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: (770) 488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, April 7, 2003. Submit the application to: Technical Information Management—PA#03035, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A post card will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the eligible applicants section. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamlined review) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

All awards will be determined by the director of the NCIPC based on priority scores assigned to applications by the IRGRC, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) and CDC criteria (a scoring system of 100 to 500 points) to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. Plan for the development of infrastructure and conduct of interdisciplinary research relevant to youth violence (25 percent).

(1) The application will specifically aim to address all the goals of the program, for example, the long-term objectives and intended accomplishments for the proposed center in relation to the problem of preventing youth violence and self-directed violence among the young. If the aims of the application are achieved, how will prevention of youth violence be advanced? What will be the effect of the center's activities on violence prevention efforts within the center's target community or region (*e.g.*, surveillance)?

(2) The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives of the proposed center.

(3) Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities. Project director: Is the proposed center director appropriately trained and well-suited to carry out this work? Is the work proposed appropriate to the experience level of the proposed director and other key faculty and staff?

(4) Adequacy of institutional support and arrangements to ensure successful implementation of activities of the proposed centers, including arrangements for the center director's time commitment and authority, and documentation of relationships and understanding of roles and responsibilities between partner institutions and community organizations.

b. Implement effective violence prevention strategies (20 percent).

Adequacy of plans to conduct pilot projects relevant to the field of violence prevention including: adequacy of the setting and participants for the project, relevance of outcome measurements, expected results, and appropriateness of time lines, cost, and plans for translation/dissemination.

c. Create partnerships with communities to develop plans to address youth violence (20 percent).

Adequacy of plans and arrangements to develop and implement a community response to the problem of youth violence. Incorporate diverse perspectives (*i.e.*, health and mental health professionals, educators, the media, parents, young people, police, criminal/juvenile courts, legislators, public health specialists, and business leaders). Documentation of agreements and clear understanding of roles and responsibilities of partner organizations.

d. Training initiatives to prepare professionals from various backgrounds to address the issue of youth violence (20 percent).

Adequacy of plans and arrangements to develop and implement curricula for training of health care professionals on violent behavior identification, assessment, intervention with high risk youth. Integrate this curriculum into medical, nursing, and other health professional training program.

e. Research Factors (15 percent).

(1) *Significance.* Does this study address an important problem? If the

aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

(2) *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

(3) *Innovation.* Does the project employ novel concepts, approaches, or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

(4) *Investigator.* Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

(5) *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

(6) *Study Samples.* Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

(7) *Dissemination.* What plans have been articulated for disseminating findings?

(8) *Measures of Effectiveness.* The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

f. Budget and justification (reviewed, but not scored). The extent to which the proposal demonstrates appropriateness and justification of the requested budget relative to the activities proposed.

g. Performance Goal (reviewed, but not scored). The application must be aligned with the following performance goal for the National Center for Injury Prevention and Control: Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

h. Human Subjects Protection (reviewed, but not scored). Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

i. Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? (reviewed, but not scored). This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification where representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. The ACIPC federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010," the Institute of Medicine report, "Reducing the Burden of Injury," and the "CDC Injury Research Agenda."

d. Budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports including a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of each budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief summary, 2,500 to 4,000 words written in non-scientific [laymen's] terms, highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia (e.g., state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–1 Human Subjects Requirements.
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–9 Paperwork Reduction Act Requirements.
AR–10 Smoke-Free Workplace Requirement.
AR–11 Healthy People 2010.
AR–12 Lobbying Restrictions.
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
AR–20 Conference Support.

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–4146, *Telephone:* (770) 488–2700.

For business management and budget assistance, contact: Nancy Pillar, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2721, E-mail address: *NPillar@cdc.gov.*

For program technical assistance, contact: Candice Jackson, Project Officer, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, MS K60, Atlanta, GA 30341–3724, *Telephone:* (770) 488–1571, *E-mail address: CJackson@cdc.gov.*

Dated: February 13, 2003.

Sandra R. Manning,

CGFM Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4061 Filed 2–20–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.–5 p.m., March 12, 2003.

8:30 a.m.–3:30 p.m., March 13, 2003.

Place: Sheraton Colony Square Hotel, 188 14th Street NE, Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to Be Discussed: The agenda will include updates from CDC, the Centers for Medicare & Medicaid Services, and the Food and Drug Administration; a report on the recently published CLIA Quality Systems final rule; a report on rapid HIV testing; a demonstration of CytoView™; and various perspectives and discussion on direct access testing. Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of the CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. *Oral Comments:* In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. *Written Comments:* For individuals or groups unable to attend the meeting, the CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Contact Person for Additional Information: Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, Mailstop F–11, Atlanta, Georgia 30341–3717; telephone (770)488–8042; fax (770)488–8279; or via e-mail at *RWhalen@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 13, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4059 Filed 2–20–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meeting.

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE).

Times and Dates: 8:30 a.m.–4 p.m., March 13, 2003. 8:30 a.m.–11:45 a.m., March 14, 2003.

Place: Doubletree Hotel Atlanta/Buckhead, 3342 Peachtree Road, NE.,

Atlanta, Georgia 30326, telephone 404/231–1234, fax 404/231–3112.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Purpose: The Secretary is authorized by the Public Health Service Act, Section 399G, (42 U.S.C. Section 280f, as added by Public Law 105–392) to establish a National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect to:

(1) Foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) research, programs and surveillance; and (2) to otherwise meet the general needs of populations actually or potentially impacted by FAS and FAE.

Matters to Be Discussed: Agenda items include: an update from the National Center on Birth Defects and Developmental Disabilities Scientific Working Group on Diagnostic Guidelines for FAS and Alcohol-Related Neurodevelopmental Disabilities (ARND); an update on activities from the Interagency Coordinating Committee on Fetal Alcohol Syndrome; new research and program updates from the CDC and other Federal agencies; and working group updates. Additional agenda items include: task force discussions on the use of the term fetal alcohol spectrum disorders: What is it? When is it appropriate to use it?; provider education and FAS prevention; development of a clear message for pediatricians, nurses, and other providers: how the FAS diagnosis will benefit the child and family; future topics, and scheduling the next meeting.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: R. Louise Floyd, DSN, RN, Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 4700 Buford Highway, NE, (F–49), Atlanta, Georgia 30333, telephone 770/488–7372, fax 770/488–7361.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: February 13, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4060 Filed 2–20–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 p.m.–10 p.m., March 5, 2003. 8 a.m.–5:30 p.m., March 6, 2003. 8 a.m.–5 p.m., March 7, 2003.

Place: Little America Hotel, 500 South Main Street, Salt Lake City, Utah 84411, telephone (801) 363–6787.

Status: Open 8 p.m.–10 p.m., March 5, 2003. Open 8 a.m.–9 a.m., March 6, 2003. Closed 9 a.m.–5:30 p.m., March 6, 2003. Closed 8 a.m.–5 p.m., March 7, 2003.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas. It is the intent of the NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8–10 p.m. on March 5, 2003 and 8–9 a.m. on March 6, 2003, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the SOHSS to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public In accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michael Galvin, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, telephone (404) 498–2524, fax (404) 498–2569.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 13, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4058 Filed 2–20–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 8 a.m.–5 p.m., March 7, 2003.

Place: The Westin Cincinnati, 21 East Fifth Street, Cincinnati, Ohio 45202, telephone (513) 621–7700, fax (513) 852–5670.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001, the President completed the initial appointment of Board members. The initial tasks of the Board have been to review and provide advice on the proposed, interim, and final rules of HHS.

Purpose: This Board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on the Special Exposure Cohort Notice of Proposed Rule-Making, Workgroup report on dose deconstruction review process, and Board discussion and work session on the Special Exposure Cohort.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 841–4498, fax (513) 458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 13, 2003.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4055 Filed 2–20–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Application for the National Health Service Corps (NHSC) Scholarship Program (OMB No. 0915–0146)—Extension

The National Health Service Corps (NHSC) Scholarship Program's mission is to help alleviate the geographic and specialty maldistribution of physicians and other health practitioners in the United States. Under this program, health professions students are offered scholarships in return for service in a federally designated Health Professional Shortage Area (HPSA). The Scholarship Program provides the NHSC with the health professionals it requires to carry out its mission of providing primary health care to HPSA populations in areas of greatest need. Students are supported who are well qualified to participate in the NHSC Scholarship Program and who want to assist the NHSC in its mission, both during and after their period of obligated service. Scholars are selected for these competitive awards based on the information provided in the application and during the semi-structured personal interview that is conducted by a team of two interviewers who use a structured scoring procedure. Awards are made to applicants that demonstrate a high potential for providing quality primary health care services.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Application	2,000	1	2,000	1	2,000
Interview	1,100	1	1,100	1	1,100
Total	3,100		3,100		3,100

Written comments and recommendations concerning the proposed information collection should be sent within 60 days of this notice to: Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 14, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–4156 Filed 2–20–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and

Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 68 FR 787–793, January 7, 2003). This notice is to amend the functional statements of the Bureau of Primary Health Care. Specifically, this notice (1) abolishes in their entirety the Division of Community and Migrant Health and the Division of Programs for Special Populations; (2) revise the Office of the Associate Administrator; (3) establish the Office of Program Support; the Office of Policy, Evaluation and Data; the Office of Minority and Special Populations; the Division of Health Center Development; the Division of Health Center Management; the Division of Clinical Quality; and the Division of State and Community Assistance.

Section RC–00 Mission

The Bureau of Primary Health Care (BPHC) directs national health programs which improve the health of the Nation by assuring access to high quality comprehensive preventive and primary health care services and improving the health status of the Nation's underserved and vulnerable populations.

Section RC–10 Organization

The Bureau of Primary Health Care (BPHC) headed by the Associate Administrator for Primary Health Care reports directly to the Administrator, Health Resources and Services Administration. The BPHC includes the following components:

(1) Office of the Associate Administrator (RC)
(2) Office of Policy, Evaluation, and Data (RCE)
(3) Office of Minority and Special Populations (RCG)
(4) Division of Health Center Development (RCH)
(5) Division of Health Center Management (RCJ)
(6) Division of Clinical Quality (RCK)
(7) Division of State and Community Assistance (RCL)
(8) Division of National Hansen's Disease Program (RC7)
(9) Division of Immigration Health Services (RC9)

1. In the Office of the Associate Administrator Delete the Migrant Health Advisory Council Function and Place It in the Office of Minority and Special Populations. Revise the Functional Statement of the Office of the Associate Administrator as Follows:

Office of the Associate Administrator (RC)

Provides overall leadership, direction, coordination, and strategic planning in support of Bureau programs. Specifically: (1) Has lead responsibility to bring primary health care services to the Nation's neediest communities; (2) serves as a central point of contact for Bureau communication and information; (3) establishes program policies, goals, and objectives and provides oversight as to their execution; (4) interprets program policies, guidelines, and priorities; (5) stimulates, coordinates and evaluates program development and progress; (6) maintains effective relationships with HRSA, other Department of Health and Human Services (HHS) organizations, other Federal agencies, State and local governments, and other public and private organizations concerned with primary health and improving the health status of the Nation's underserved and vulnerable populations; and (7) plans, directs, coordinates and evaluates Bureau-wide administrative management activities; (8) assures that BPHC's funding recommendations are consistent with authorizing legislation, program expectations and HHS and HRSA policies.

2. Establish the Office of Office of Policy, Evaluation and Data as Follows:

Office of Policy, Evaluation and Data

(1) Provides leadership, direction, and overall coordination of the analysis and clearance of policy across Bureau programs; (2) provides leadership, direction, and coordination for health workforce planning as it supports health center development; (3) serves as focal point to design, establish and implement an evaluation plan for assessing and improving program performance; (4) serves as the focal point for the development and monitoring of the Bureau's Strategic Plan and annual spending plans; (5) provides leadership and overall coordination for tracking and monitoring health center growth; (6) serves as focal point for external communication, publication, and dissemination; (7) provides surveillance, monitoring, and analysis of a variety of media, newsletters, trade journals, and periodicals in order to detect external trends which could potentially affect grantee performance; (8) detects potential trends in program performance data on a State, regional, and national level to inform the development of program policies and the design of evaluation studies to improve program performance; (9) provides consultation to and coordinates activities with other components within HRSA, other Federal agencies, consumer and constituency groups, national and state organizations involved in policy, evaluation and data; and (10) manages the Bureau's executive secretariat functions.

3. Establish the Office of Minority and Special Populations as Follows:

Office of Minority and Special Populations (RCG)

Provides overall coordination of Bureau activities relating to the delivery of health services to special populations such as migrant and seasonal farmworkers, homeless persons, women, and other minority and special populations, including residents of public housing, students served by School-based Health Centers, and Asian American Pacific Islanders. Specifically, (1) ensures that the needs and special circumstances of special populations and the provider organizations that serve them are addressed in internal BPHC policies; (2) advises BPHC staff and leadership about the special needs of special populations; (3) coordinates with private, professional, and academic health care organizations in developing and designing public health interventions aimed at reducing disparities in the health status of the special populations; (4) represents BPHC at regional and national meetings focused on special population issues, and shares information regarding the BPHC's response to such issues; and (5) provides staff support to the National Advisory Council on Migrant Health.

4. In the Division of Programs for Special Populations Delete the Community-based Systems Function and Place It in the Division of Health Center Development (DHCD). Establish the Division of Health Center Development as Follows:

Division of Health Center Development (RCH)

Serves as the organizational focus of the competitive grant process for BPHC. Specifically, DHCD: (1) Provides leadership and direction, including tactical planning for the development and expansion of new health centers, health systems infrastructure, and pharmacy services; (2) manages and expands the number and types of organizations that participate in the 340B drug pricing program; (3) provides pre-application assistance to communities and community-based organizations related to health center development, health systems infrastructure development and pharmacy services development; (4) provides consultation to and coordinates activities with other components within HRSA, other Federal agencies, consumer and constituency groups, national and state organizations involved in implementation of BPHC's competitive process.

5. In the Division of Programs for Special Populations Delete the Functions Guidance Development and Implementation of Plans To Assure Attainment of Measurable Outcomes and Place It in the Division of Health Center Management (DHCM). Establish the Division of Health Center Management as Follows:

Division of Health Center Management (RCJ)

Manages BPHC's funded grants and activities and manages funds and other resources related to increasing clinical, managerial, and financial efficiency. Specifically, the DHCM: (1) Manages the post-award administration of the Consolidated Health Center Program, Black Lung Clinics Program, the Radiation Exposure Screening and Education Program, and the Native Hawaiian Health Care Program; (2) serves as BPHC representative to organizations receiving Bureau grants; (3) promotes a continued focus on efficient and effective care for vulnerable populations, including people at or below 200 percent of poverty, racial and cultural minorities, uninsured people, students served by School-based Health Centers, migrant and seasonal farm workers, homeless individuals and families, public housing residents, and residents of rural and sparsely populated areas; (4) formulates and interprets continuation application guidance, program policy, legislative implementation proposals, regulation, and industry standards with the Division of Clinical Quality and Office Policy Evaluation Data; (5) monitors the performance of specific BPHC funded grants and makes programmatic recommendations; (6) reviews findings and recommendations of periodic and episodic grantee assessments, planning actions needed to assure continuity of services to vulnerable populations and appropriate use of Federal resources; (7) provides consultation to and coordinates activities with other components of HRSA, other Federal agencies, consumer and constituency groups, national and state organizations involved in implementation of program activities; (8) provides technical guidance to grantees on the management and integration of community-based systems of care, the adaptation of successful strategies/models, and the resolution of difficult issues; and (9) identifies and coordinates training and technical assistance needs of service delivery programs with the Division of State and Community Assistance.

6. In the Division of Community and Migrant Health Delete the Function Coordinating and Establishing Guidelines and Standards for Professional Services and Staff Development in BPHC Funded Grants Function and Place it in the Division of Clinical Quality (DQA). Establish the Division of Clinical Quality as Follows:

Division of Clinical Quality (RCK)

(1) Provides clinical and quality leadership for BPHC to meet the initiative to expand health centers; (2) supports BPHC functions to assess the Nation's health care needs of underserved populations and to assist communities in providing quality primary health care services to the underserved and moving towards eliminating health disparities; (3) supports BPHC through assessment of clinical, quality improvement, risk management, and patient safety activities to improve policies, and programs for primary health care including clinical information systems; (4) serves as BPHC clinical and quality liaison with other DHHS organizations, other Federal, State, and private agencies, and organizations for clinical and quality issues for community based primary health care for underserved populations; and (5) coordinates clinical technical assistance program for BPHC health professional and non-health professional staff.

7. In the Immediate Office of the Associate Administrator Delete the Function Integration of State-Based activities into BPHC's Programs and Place It in the Division of State and Community Assistance (DSCA). Establish the Division of State and Community Assistance as Follows:

Division of State and Community Assistance (RCL)

Specifically: (1) Collaborates with other BPHC Divisions and Offices in identifying technical assistance and training needs; (2) provides tactical planning for the development, implementation and evaluation of technical and training assistance; (3) develops mechanisms and resources to address technical assistance and training needs; (4) directs and manages technical assistance resources and activities for BPHC grantees and contractors; (5) manages the loan guarantee program; (6) manages the post-award process for Healthy Communities Access Program, Primary Care Associations, Primary Care Offices, Integrated Services Development Initiative, and Shared Integrated Management Information Systems; (7) coordinates state-based planning/activities for health center strengthening, expanding and quality improvement (Statewide Strategic Planning); (8) provides state-specific policy surveillance; (9) provides consultation to and coordinates activities related to technical assistance and state activities in support of the initiatives to expand health centers with other components of HRSA, other Federal agencies, consumer and constituency groups, national and state organizations; (10) monitors the recovery of high-risk grantees.

Section RC–30 Delegation of Authority

All delegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further re-delegation. I hereby ratify and affirm all actions taken by any DHHS official which involves the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective upon the date of signature.

Dated: February 14, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–4155 Filed 2–20–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a correction of a meeting of the President's New Freedom Commission on Mental Health to be held in March 2003.

Public notice was given in the **Federal Register** on February 7, 2003 (Volume 68, Number 26, page 6496) that the President's New Freedom Commission on Mental Health would be meeting on March 5 and 6, 2003 at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia. The date and time of this meeting have subsequently changed to March 5, 2003, 10:45 a.m. to 5:30 p.m. The agenda of the meeting and contact for additional information remain as announced.

Dated: February 14, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–4157 Filed 2–20–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance of Permit for Endangered Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency issuance of permit for endangered marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On January 31, 2003, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–067519) to Red Caribena de Varamientos (Caribbean Stranding Network, Inc.), San Juan, Puerto Rico, to import one West Indian manatee (*Trichechus manatus*) found in distress in the waters around Virgin Gorda, British Virgin Islands, for rehabilitation and reintroduction purposes. This action was authorized under Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and Sections 104 and 109(h) of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*). The Service determined that an emergency affecting the health and life of the manatee existed, and that no reasonable alternative was available.

On January, 17, 2003, the manatee was discovered in distress (dehydrated and emaciated) off Virgin Gorda and Tortola, BVI. The BVI Department of Conservation and Fisheries requested assistance from the applicant and the Service for relocating and rehabilitating the manatee. The manatee will be placed at the Caribbean Stranding Network's rehabilitation center at Caribbean Marine Mammal Laboratory, Universidad Metropolitana (a manatee rehabilitation facility endorsed by the Service's Jacksonville Field Office under MMPA/ESA enhancement permit PRT–770191). The goal of the importation is to rehabilitate and release the animal back into the wild as soon as feasible.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: February 11, 2003.

Charlie R. Chandler,

Chief, Branch of Permits—Domestic, Division of Management Authority.

[FR Doc. 03–4303 Filed 2–19–03; 1:47 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9277, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately 12 acres located on Nunivak Island, Alaska. Notice of this decision will also be published four consecutive weeks in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4182 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9325, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately 12 acres located on Nunivak Island, Alaska. Notice of this decision will also be published four consecutive weeks in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from:

Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4178 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9326, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately two acres located on Nulnivak Island, Alaska. Notice of this decision will also be published four (4) consecutive weeks in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4183 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–88–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9311, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately four acres located on Nunivak Island, Alaska. Notice of this decision will also be published four (4) consecutive weeks in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4185 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–88–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9301, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately nine acres located on Nunivak Island, Alaska. Notice of this decision will also be published four (4) consecutive weeks in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4186 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–88–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9310, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR § 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately 20 acres located on Nunivak Island, Alaska. Notice of this decision will also be published four (4) consecutive weeks in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4187 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9333, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately nine acres located on Nunivak Island, Alaska. Notice of this decision will also be published four (4) consecutive weeks in the *Anchorage Daily News.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4189 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9263, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately four acres located on Nunivak Island, Alaska. Notice of this decision will also be published four (4) consecutive weeks in the *Anchorage Daily News.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4190 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9300, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately 0.25 acre located on Nunivak Island, Alaska. Notice of this decision will also be published four (4) consecutive weeks in the *Anchorage Daily News.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4191 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9286, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately 31 acres located on Nunivak Island, Alaska. Notice of this decision will also be published four (4) consecutive weeks in the *Anchorage Daily News.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4192 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9281, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately 25 acres of land located on Nunivak Island, Alaska. Notice of this decision will also be published four (4) consecutive weeks in the *Anchorage Daily News.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4193 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9324, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately 22 acres located on Nunivak Island, Alaska. Notice of this decision will also be published four consecutive weeks in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherri Belenski, (907) 271–3333.

Sherri D. Belenski,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4194 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; F–85448, F–93344–NE, DYA–12 & 15]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving oil and gas for conveyance pursuant to the Alaska Native Claims Settlement Act, as amended, will be issued to Doyon, Limited. The oil and gas were reserved to the United States pursuant to the Act of March 8, 1922, as amended and supplemented, in the Native allotment certificate issued for lot 2, U.S. Survey No. 9918, Alaska. The lands are located in T. 3 S., R. 8 W., Fairbanks Meridian, in the vicinity of Nenana, Alaska, and contain 159.93 acres. Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 24, 2003, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Christy Favorite by phone at 907–271–5656, or by e-mail at *cfavorit@ak.blm.gov.*

Christy Favorite,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–4188 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–050–2822–JL–T357]

Notice of Emergency Closure of Public Lands to Motorized Vehicle Use

AGENCY: Bureau of Land Management, Interior (BLM).

ACTION: Notice of emergency closure of certain public lands located in Fremont County, Wyoming to all types of motor vehicle use.

SUMMARY: 43 CFR Subpart 8364—Closure and Restrictions, 8364.1 (a) states: "To protect persons, property, and public lands and resources, the authorized officer may issue an order to close or restrict use of designated public lands." In coordination with the USDA Shoshone National Forest, Washakie Ranger District, the Wyoming Game and Fish Department, Lander Regional Office, and The Nature Conservancy, Red Canyon Ranch, the Lander Field Manager issued an order on September 10, 2002 closing all BLM-administered public land surface, including existing roads and two-tracks, within the perimeter of the Pass Creek Fire to all types of motorized vehicle travel (*e.g.*, all-terrain vehicles, pickups, motorcycles, sport utility vehicles, snowmobiles, *etc.*). The action affects public lands located within the Pass Creek Fire. This action is necessary for the protection of watershed resources and to assure adequate time to allow for

the rehabilitation of the burned area. No motorized vehicle travel into these areas will be allowed, including the retrieval of big game, unless specifically authorized (in writing) by the authorized officer (BLM Lander Field Manager). The following acts are exempt from this action: (1) Access within the area by other means (*e.g.*, foot or horseback); (2) persons with a BLM permit or contract specifically authorizing motor vehicle use; (3) owners or lessees of land in the area; and (4) any federal, state, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty. Extension of the closure order may occur if it is determined that the rehabilitation of the burned area has not been successful. Once rehabilitation of the burned area is determined to be successful, motorized vehicle access is limited to designated roads and two-tracks, as described in the Lander Resource Management Plan (RMP) Record Of Decision (ROD) dated June, 9, 1987.

DATES: This emergency closure will be effective immediately and will remain in effect until September 10, 2004.

FOR FURTHER INFORMATION CONTACT: Ray Hanson, Outdoor Recreation Planner, Bureau of Land Management, 1335 Main Street, P.O. Box 589, Lander, Wyoming, 82520; or contact by phone at 307–332–8420.

SUPPLEMENTARY INFORMATION: The BLM Lander Field Office is responsible for management of public lands within Fremont County. The management of these lands is addressed in the Lander RMP ROD, which was signed June, 9, 1987. The Pass Creek Fire started on August 24, 2002 and burned 13,433 acres, 4,725 acres of which are public lands. It was declared controlled on September 10, 2002. This Emergency Closure is necessary to protect the watershed and allow adequate time for the rehabilitation of the burned area within the Pass Creek Fire.

The following BLM-administered lands are included in this emergency closure: 4,725 acres of BLM-administered public land within the Pass Creek Fire.

Maps of this emergency closure area will be posted with this notice at key locations that provide access into the emergency closure area, as well as at the Lander Field Office, 1335 Main Street, Lander, Wyoming 82520.

Authority for the closure order is provided in regulations 43 CFR Subpart 8364—Closure and Restrictions, 8364.1 (a).

Dated: September 10, 2002.

Jack Kelly,

Field Manager.

[FR Doc. 03–4179 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–03–1610–DJ]

Pinedale Anticline Working Group, Notice of Initiation of the Nomination/Selection Process; Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for membership to the Pinedale Anticline Working Group as part of the Adaptive Environmental Management program for the Pinedale Anticline Project Area in Southwestern Wyoming.

DATES: All nominations should be postmarked by 45 days from date of publication in the **Federal Register**. Final selections will be made by and serve at the discretion of the Secretary of the Interior.

ADDRESSES: You can obtain information and a copy of the notice for the nomination/selection process by writing or visiting the following offices: Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, PO Box 1828, Cheyenne, Wyoming 82003; Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, PO Box 768, Pinedale, Wyoming 82941.

SUMMARY: On August 15, 2002, the Secretary of the Interior signed the Charter to establish the Pinedale Anticline Working Group (PAWG). We are now initiating the process to select the membership of that group. Several interest groups, governmental agencies, and local interests will be given the opportunity to be represented on the PAWG. Individuals or groups interested in becoming a member of the PAWG should submit the specified information within 45 days of receiving this notice.

Nominations and supporting documentation should be sent to: Bureau of Land Management, Pinedale Field Office, ATTN: Eldon Allison, PAWG Coordinator, PO Box 768, Pinedale, Wyoming 82941.

FOR FURTHER INFORMATION CONTACT: Eldon Allison, PAWG Coordinator, BLM, Pinedale Field Office, PO Box 768, Pinedale, Wyoming, 82941, telephone (307) 367–5300.

SUPPLEMENTARY INFORMATION: On August 15, 2002, the Secretary of the Interior signed the Charter to establish the Pinedale Anticline Working Group (PAWG). We are now initiating the process to select the membership of that group. The Charter establishes several membership selection criteria and operational procedures that need to be followed once the Working Group has been established and becomes active. These are listed as follows:

(1) The PAWG will be composed of 9 members who reside in the State of Wyoming. The PAWG members will be appointed by and serve at the pleasure of the Secretary of Interior.

(2) Members of the PAWG will be as follows:

- A representative from the State of Wyoming Office of Federal Land Policy.
- A representative from the Town of Pinedale.
- A representative from the oil/gas operators active in the Pinedale Anticline area.
- A representative from the Sublette County government.
- A representative from statewide or local environmental groups.
- A representative from the landowners within or bordering the Pinedale Anticline area.
- A representative of livestock operators operating within or bordering the Pinedale Anticline area.
- Two members from the public-at-large.

(3) All members should have demonstrated an ability to analyze and interpret data and information, evaluate proposals, identify problems, and promote the use of collaborative management techniques (such as, long term planning, management across jurisdictional boundaries, data sharing, information exchange, and partnerships), and a knowledge of issues involving oil and gas development activities.

(4) The service of the PAWG members shall be as follows:

(a) PAWG members will be appointed for 2-year terms, subject to removal by the Secretary of the Interior. At the discretion of the Secretary of the Interior, members may be reappointed to additional terms.

(b) The Chairperson of the PAWG will be selected by the PAWG at its first meeting.

(c) The term of the Chairperson will not exceed 2 years.

Individuals, or representatives of groups, who wish to become members of the Pinedale Anticline Working Group should complete and submit the following information to this office by March 28, 2003:

A. Representative group to be considered for:

B. Nominee's full name:

C. Business address:

D. Business phone:

E. Home address:

F. Home phone:

G. Occupation/title:

H. Qualifications (education including colleges, degrees, major field of study and/or training):

I. Career highlights (significant related experience, civic and professional activities, elected offices, prior advisory committee experience, or career achievements related to the interest to be represented):

J. Experience in collaborative management techniques, such as long term planning, management across jurisdictional boundaries, data sharing, information exchange and partnerships:

K. Experience in data analysis and interpretation, problem identification and evaluation of proposals:

L. Knowledge of issues involving oil and gas development:

M. *Indicate specific area of interest to* be represented from the following:

1. A representative from the State of Wyoming Office of Federal Land Policy,

2. A representative from the Town of Pinedale,

3. A representative from the oil/gas operators active in the Pinedal, Anticline area,

4. A representative from the Sublette County government,

5. A representative from statewide or local environmental groups,

6. A representative from the landowners within or bordering the Pinedale Anticline area,

7. A representative of livestock operators operating within or bordering the Pinedale Anticline area, or

8. Two representatives from the public-at-large.

N. List any leases, license, permits, contracts or claims that you hold which involve lands or resources administered by the BLM:

O. Attach two or three letters of reference from interests or organization to be represented.

P. Nominated by: include nominator's name, address and telephone number(s).

Q. Date of nomination:

Groups should nominate more than one persona and indicate their preferred order of appointment selection.

Dated: December 20, 2002.

Alan L. Kesterke,

Acting State Director.

[FR Doc. 03–4184 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–1430–EQ; AA–081878]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; R&PP Lease of Public Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands along the Anvik River in western Alaska have been examined and found suitable for classification and opening under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

Seward Meridian

Alaska

T. 31 N., R. 61 W.
NW1/4NE1/4NE1/4, Section 34
SW1/4NW1/4NW1/4, Section 35
Containing 2.00 acres more or less.

This action is a motion by the Bureau of Land Management to make available lands identified in the Management Framework Plan dated November 1981 for the Southwest Planning area available for the erection of structures used to enhance fisheries resources. Due to the remote location of these lands this activity may have potential for research expansion. Lease of these lands for public purpose use would be in the public and Federal government interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska.

Lease of these lands will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing law. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed classification of the lands to the Anchorage Field Manager. In the absence of any adverse comments, the classification will be effective 60 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dorothy Bonds, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, (907) 267–1239.

Dated: December 17, 2002.

Clinton E. Hanson,

Acting Anchorage Field Manager.

[FR Doc. 03–4181 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–5440–EU–K054; WYW 150996]

Realty Action; Conveyance of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; airport conveyance to the City of Worland.

SUMMARY: The following public lands in Washakie County have been found suitable for conveyance to the City of Worland for airport purposes under the Act of May 24, 1928, as amended and 49 U.S.C. 47125 (2000).

Sixth Principal Meridian

T. 46 N., R. 92 W.,
Sec. 19, lots 7 and 12.

The above land contains 80.00 acres.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

SUPPLEMENTARY INFORMATION: Conveyance of the lands is consistent with applicable Federal and county land use plans and will help meet the needs of Washakie County residents. Under this conveyance Runway 16–34 at the Worland Municipal Airport will be extended for safety purposes.

The conveyance will contain reservations to the United States for ditches, canals and all minerals. The patent will also be issued subject to the existing rights of record including a right-of-way, WYW 81769, issued to the BLM for road purposes; a right-of-way,

WYW 144842, issued to Apache Corporation for road purposes; a right-of-way, WYW 84684, issued to El Paso Production Company for road purposes; and a right-of-way, WYW 81774, issued to Continental Resources for road purposes. Additionally, the patent would be subject to the continued grazing use of Roalene Redland-McCarthy under grazing permit GR-491043, until April 17, 2004. Specific covenants required by the Federal Aviation Administration will also be included in the conveyance and are available by contacting the office listed below.

The conveyance is consistent with the Washakie Resource Management Plan. The land is not required for any other Federal purpose.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except applications for airport purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the BLM, Branch of Fluid Minerals, Lands, & Appraisal, (Attn: Tamara Gertsch), Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objection, this proposed realty action will become final.

Dated: December 30, 2002.

Melvin Schlagel,

Realty Officer.

[FR Doc. 03–4180 Filed 2–20–03; 8:45 am]

BILLING CODE 4210–22–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

Notice of Proposed Information Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of the Special Trustee for American Indians (OST) announces a request for public comments concerning the renewal of information collection authorizations. We will be submitting requests to the Office of Management and Budget (OMB) to extend authorizations for OMB Control Nos. 1035–0001, 1035–0002, and 1035–0003. These information collections allow us to collect documents associated with tribes withdrawing their funds held in trust and applying for technical assistance to withdraw funds under 25 CFR part 1200.

Request for Comments: You may send or deliver comments to the addressee in the **ADDRESSES** section below. Please put on your comments the document number found in brackets in the heading of this **Federal Register** notice. Your comments will be summarized and included in the requests to OMB for approval and will become public records. We specifically request your comments on:

(1) Whether the proposed information collection is necessary for the office to perform its functions, including whether the information will be useful.

(2) The accuracy of the office's estimate of the burden.

(3) How to improve the quality, usefulness, and clarity of the information to be collected.

(4) How to minimize the burden on the respondents, including the possible use of automated information collection techniques or other forms of information technology.

DATES: We will consider all comments received by April 22, 2003.

ADDRESSES: You may mail or hand deliver your comments to: Ms. Sarah Yepa, Office of Trust Funds Management, Office of the Special Trustee for American Indians, 505 Marquette, NW, Suite 1000, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Sarah Yepa, Chief, Division of Quality Assurance at (505) 816–1094 or by Fax (505) 816–1377.

SUPPLEMENTARY INFORMATION: The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) allows tribes to withdraw their money held in trust by the U.S. Government. To withdraw their money, tribes must first submit an application and get approval from the Secretary of the Interior. The Reform Act also allows tribes to apply for technical assistance and financial assistance to complete the application. Financial assistance may not always be available. 25 CFR section 1200.13 tells tribes how to submit an application to withdraw their money and section 1200.14 tells them how they can apply for technical and financial assistance.

Burden Statement: The current information collection authorizations expire May 30, 2003. We are not changing the application forms or the estimated annual burden hours. We aren't allowed to conduct or sponsor and you aren't required to respond to a collection of information unless it displays a current valid OMB control number. The application forms and burden estimates are:

1. OMB No. 1035–0001, OST Form No. SF–424A, Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (Specific Budget).

Estimated Annual Burden Hours: 468.

Annual Respondents: 12 American Indian Tribes.

Estimated Burden Per Response: 39 hours.

2. OMB No. 1035–0002, OST Form No. SF–424, Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (General).

Estimated Annual Burden Hours: 156.

Annual Respondents: 12 American Indian Tribes.

Estimated Burden Per Response: 13 hours.

3. OMB No. 1035–0003, Application to Withdraw Tribal Funds from Trust Status (there is no application form for this information).

The collection of this information is used by the Department to determine whether: (a) The tribe's proposed management plan is reasonable; (b) the plan protects against a substantial loss of principal; (c) the investment entity is capable of managing the funds; as well as (d) whether the tribe has taken the proper legal steps to authorize the action.

Estimated Annual Burden Hours: 4,104.

Annual Respondents: 12 American Indian Tribes.

Estimated Burden Per Response: 342 hours.

Burden means the total time, effort, or financial resources expended to disclose or provide information to a federal agency and includes the time needed to review instructions, gather, process, and submit the information.

Douglas A. Lords,

Director, Office of Trust Funds Management.

[FR Doc. 03–4164 Filed 2–20–03; 8:45 am]

BILLING CODE 4310–2W–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on February 3, 2003, a proposed Amendment to Consent Decree ("Amendment") in *United States* v. *Motor Wheel Corp.*, Civil Action No. 1:94–CV–96 was lodged with the United States District Court for the Western District of Michigan.

In 1994, the United States District Court for the Western District of Michigan entered a Consent Decree in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601 et seq. Under the 1994 Decree, the Settling Defendants agreed to perform the remedial action selected by the United States Environmental Protection Agency at the Motor Wheel Disposal Site in Lansing, Michigan and reimburse the United States for past response costs and future response costs.

The remedial action required by the 1994 Decree addressed the contaminant source areas and two shallow zones of groundwater contamination, but did not address the deeper Saginaw aquifer, because that zone had not yet been sufficiently studied. Under the Amendment, Goodyear Tire & Rubber Company, one of the original Settling Defendants, will perform additional remedial work to restore the Saginaw aquifer to drinking water standards.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Motor Wheel Corp.*, D.J. Ref. 90–11–2–753.

The Amendment may be examined at the Office of the United States Attorney, 330 Ionia Ave., Suite 501, Lansing, Michigan, and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois. During the public comment period, the Amendment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Amendment may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–4150 Filed 2–20–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Revision of a Currently Approved Collection Deaths in Custody—series of collections from local jails, State prisons, juvenile and law enforcement detention centers.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 219, page 68887 on November 13, 2002, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 21, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Revision of a currently approved collection.

(2) Title of the Form/Collection: Deaths In Custody—Series of Collections from Local Jails, State Prisons, Juvenile and Law Enforcement Detention Centers. The series includes the forms: Quarterly Summary of Inmate Deaths in State Prison; State Prison Inmate Death Report; Quarterly Summary of Deaths in State Juvenile Residential Facilities; State Juvenile Residential Death Report; Quarterly Report on Inmates Under Jail Jurisdiction; Annual Summary on Inmates Under Jail Jurisdiction; Quarterly Report on Inmates in Private and Multi-Jurisdiction Jails; Annual Summary on Inmates in Private and Multi-Jurisdictional Jails; Quarterly Summary of Deaths in Law Enforcement Custody; and Law Enforcement Custodial Death Report.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number(s): NPS–4, NPS–4A, NPS–5, NPS–5A. CJ–9, CJ–9A, CJ–10, CJ–10A, CJ–11 and CJ–11A. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Local jail administrators, (one reporter from each of the 3,083 local jail jurisdictions in the United states), State prison administrators (one reporter from each of the 50 States and the District of Columbia), and State juvenile correctional administrators (one reporter from each of the 50 States and the District of Columbia) responsible for keeping records on inmates will be

asked to provide information for the following categories: (a) During each reporting quarter, the number of deaths of persons in their custody; and (b) As of January 1 and December 31 of each reporting year, the number of mail and female inmates in their custody (local jails only); and (c) Between January 1 and December 31 of each reporting year, the number of male and female inmates admitted to their custody (local jails only); and (d) The name, date of birth, gender, race/ethnic origin, and date of death for each inmate who died in their custody during each reporting quarter; and (e) The admission date, legal status, and current offenses for each inmate who died in their custody during the reporting quarter; and (f) Whether or not an autopsy was conducted by a medical examiner or coroner to determine the cause of each inmate death that took place in their custody during the reporting quarter; and (g) The location and cause of each inmate death that took place in their custody during the reporting quarter; and (h) In cases where the cause of death was illness/natural causes (including AIDS), whether or not the cause of each inmate death was the result of a pre-existing medical condition, and whether or not the inmate had been receiving treatment for that medical condition; and (i) In cases where the cause of death was accidental injury, suicide, or homicide, when and where the incident causing the inmate's death took place. As part of the conference agreement for FY2000 appropriations, the Bureau of Justice Statistics was directed by the U.S. Congress "to implement a voluntary annual reporting system of all deaths occurring in law enforcement custody." BJS received OMB approval to conduct such as annual collection (OMB No. 1121–0249). In the time since submitting that collection for OMB approval, the President signed The Deaths in Custody Act of 2000 into law (Pub. L. 106–297). To comply with Pub. L. 106–297's new requirement for a quarterly collection of inmate death data from local jails, State prisons, and juvenile facilities, OMB granted BJS an expanded clearance under the existing number (OMB No. 1121–0249) for the following series of forms: NPS–4, NPS–4A, NPS–5, NPS–5A, CJ–9, CJ–9A, CJ–10, and CJ–10A. When this expanded OMB Clearance No. 1121–0249 was ranged in September 2001, BJS had not yet developed a data collection strategy for measuring deaths in law enforcement custody "in the process of arrest", as required by Pub. L. 106–297. At this time, BJS proposes a data collection program to measure these law enforcement deaths which utilizes State-level central reporters (one reporter from each of the 50 States and the District of Columbia) from each State's criminal justice Statistical Analysis Center (SAC) to provide information for the following categories: (a) During each reporting quarter, the number of deaths of persons in the custody of State and local law enforcement during the process of arrest; (b) The deceased's name, date of birth, gender, race/Hispanic origin, and legal status at time of death; (c) The date and location of death, the manner and medical cause of death, and whether an autopsy was performed; (d) The law enforcement agency involved, and the offenses for which the inmate was being charged; (e) In cases of death prior to booking, whether death was the result of a pre-existing medical condition or injuries sustained at the crime or arrest scene, and whether the officer(s) involved used any weapons to cause the death; (f) In cases of death prior to booking, whether the deceased was under restraint in the time leading up to the death, and whether their behavior at the arrest scene included threats or the use of any force against the arresting officers; (g) In cases of death after booking, the time and date of the deceased's entry into the law enforcement booking facility where the death occurred, and the medical and mental condition of the deceased at the time of entry; and (h) In cases of accidental, homicide or suicide deaths after booking) who and what were the means of death (e.g. suicide by means of hanging). In States where the SAC cannot perform this function, a statewide central reporter will be selected from among the following: the State Attorney General's office, the State police, the State Medical Examiner's Office, and the State respondent to the Federal Bureau of Investigation's Uniform Crime Reporting program. This collection will supplement the existing quarterly data collections on State prison, local jail and juvenile correctional facility inmate deaths which the Bureau of Justice Statistics has already begun in order to implement Pub. L. 106–297. The Bureau of Justice Statistics will use this new information to publish an annual report on deaths in custody. The report will be made available to the U.S. Congress, Executive Officer of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics and data.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 3,236 respondents associated with this collection. The estimated average time to respond per form is: Quarterly Summary of Inmate Deaths in State Prisons (NPS–4)/quarterly—51 respondents (average response time = 5 minutes) State Prison Inmate Death Report (NPS–4A)/quarterly—51 respondents (average response time = 30 minutes per reported death) Quarterly Summary of Deaths in State Juvenile Residential Facilities (NPS–5)/quarterly—51 respondents (average response time = 5 minutes) State Juvenile Residential Death Report (NPS–5A)/quarterly—51 respondents (average response time = 30 minutes per reported death) Quarterly Report on Inmate Deaths Under Jail Jurisdiction (CJ–9)/quarterly—2,989 respondents (average response time = 5 minutes + 30 minutes per reported death) Annual Summary on Inmates Under Jail Jurisdiction (CJ–9A)/annual—2,989 respondents (average response time = 15 minutes) Quarterly Report on Inmate Deaths in Private and Multi-Jurisdiction Jails (CJ–10)/quarterly—94 respondents (average response time = 5 minutes + 30 minutes per reported death) Annual Summary on Inmates in Private and Multi-Jurisdiction Jails (CJ–10A)/annual—94 respondents (average response time = 15 minutes) Quarterly Summary of Deaths in Law Enforcement Custody (CJ–11)/quarterly—51 respondents (average response time = 5 minutes) Law Enforcement Custodial Death Report (CJ–11A)/quarterly—51 respondents (average response time = 60 minutes per reported death).

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 4,319 burden hours annually associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: February 14, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–4202 Filed 2–20–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Parole Commission

[(Public Law 94–409) (5 U.S.C. Sec. 552b)]

Record of Vote of Meeting Closure, Sunshine Act

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately 11 a.m. on Tuesday, February 11, 2003 at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide two petitions for reconsideration pursuant to 28 CFR Section 2.27. Two Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr. and John R. Simpson.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: February 11, 2003.

Edward F. Reilly, Jr.

Chairman, Parole Commission.

[FR Doc. 03–4231 Filed 2–19–03; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:
NONE

Volume II:
NONE

Volume III:
NONE

Volume IV:
NONE

Volume V:
NONE

Volume VI:
NONE

Volume VII:
NONE

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features

such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 13th day of February 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–4135 Filed 2–20–03; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143–MLA–2; ASLBP No. 03–810–02–MLA]

Nuclear Fuel Services, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR §§ 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR § 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Nuclear Fuel Services, Inc., Erwin, Tennessee, (Material License Amendment–2).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns requests for hearing submitted on February 6, 2003, by Friends of the Nolichucky River Valley, Inc., the State of Franklin Group of the Sierra Club, the Oak Ridge Environmental Peace Alliance, the Tennessee Environmental Council, and Kathy Helms-Hughes. The requests were filed in response to an NRC staff notice of receipt of a second request from Nuclear Fuel Services, Inc. (NFS), to amend its special nuclear materials license to support downblending and conversion of high-enriched uranium material to low-enriched uranium oxides. This amendment would allow processing operations at its Erwin, Tennessee Blended Low-Enriched Uranium Preparation Facility to prepare low-enriched uranium solutions for a new complex that would manufacture low-enriched nuclear reactor fuel. The notice of receipt of amendment request and opportunity for a hearing were published in the **Federal Register** on January 7, 2003 (68 FR 796).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR §§ 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Cole in accordance with 10 CFR § 2.1203. Their addresses are: Administrative Judge Alan S. Rosenthal, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Administrative Judge Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this thirteenth day of February 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–4111 Filed 2–20–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on March 6–8, 2003, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 20, 2002 (67 FR 70094).

Thursday, March 6, 2003

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:15 a.m.: Peach Bottom License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Exelon Generation Corporation, LLC, regarding the license renewal application for the Peach Bottom Nuclear Plant, Units 2 and 3 and the associated NRC staff's final Safety Evaluation Report.

10:30 a.m.–12:30 p.m.: Reactor Oversight Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff's views concerning ACRS recommendation on thresholds for performance indicators (PIs); staff's efforts associated with risk-based PIs and improvements to the significance determination process (SDP); and staff's activities for resolving apparent conflicts and discrepancies between aspects of the revised reactor oversight process that are risk informed (*e.g.*, SDP) and those that are performance based (*e.g.*, PIs).

1:30 p.m.–3:30 p.m.: Vessel Head Penetration Cracking and Vessel Head Degradation (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding industry responses to NRC Bulletin 2002–02, "Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity," inspection requirements and programs for reactor pressure vessel heads and vessel head penetration nozzles, Electric Power Research Institute's Materials Reliability Program's proposed inspection program, wastage research, and related matters.

3:45 p.m.–5 p.m.: Draft Final Revision 1 to Regulatory Guide 1.180 (DG–1119) "Guidelines for Evaluating Electromagnetic and Radio-Frequency Interference In Safety-Related Instrumentation and Control Systems" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final revision 1 to Regulatory Guide 1.180 (DG–1119) and the staff's resolution of public comments.

5:15 p.m.–7:15 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on Safety Culture.

Friday, March 7, 2003

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Early Site Permit Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft review standard RS–002, "Processing Applications for Early Site Permits," and related matters.

10:45 a.m.–11:45 a.m.: Overview of the Formot and Content of the Fort Calhoun License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the format and content of the Fort Calhoun Nuclear Plant license renewal application, the first plant to submit a license renewal application using the generic license renewal guidance documents.

12:45 p.m.–1:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

1:30 p.m.–1:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2 p.m.–4 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss proposed topics for discussion during the ACRS meeting with the NRC Commissioners which is scheduled to be held on Friday, April 11, 2003, between 9 a.m. and 11 a.m.

4:15 p.m.–7 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, March 8, 2003

8:30 a.m.–1 p.m.: Proposed ACRS Reports (Open)—The Committee will continue to discuss proposed ACRS reports. In addition, the Committee will discuss a draft white paper prepared by the ACRS Senior Fellow on the role and use of PRA in the regulatory decisionmaking process.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: February 13, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–4109 Filed 2–20–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 5, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, March 5, 2003—1:30 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: February 12, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–4110 Filed 2–20–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Solicitation of Public Comments on Spent Fuel Transportation Package Performance Study Test Protocols

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Opening of comment period and public meeting announcement.

SUMMARY: This **Federal Register** notice announces the availability, for public comment, of the Test Protocols Report (draft NUREG–1768) for the NRC's spent nuclear fuel transportation Package Performance Study (PPS). The PPS is a confirmatory research program focused on the probabilities and consequences of severe transportation accidents—the very small fraction of accidents that could result in impact or thermal forces, on casks, that exceed NRC's standards for cask design. The PPS will use a combination of testing and analyses to develop data and validate methods of analysis for use in transportation risk assessments. A public participation process will continue as PPS proceeds, to ensure that stakeholder concerns are considered by the PPS and to support increased public confidence in NRC's regulatory activities, considering potential future increases in the number of spent fuel transports.

The test protocols report describes, at a conceptual level, full-scale spent fuel cask impact and fire physical testing that NRC may sponsor over the next couple of years. The "Executive Summary" of the test protocols report is included in this notice, and full copies of the report are available for comment at NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff* or may be obtained from the contact. Additional copies of the report and other PPS related documents can also be found at the Sandia Web site: *http://ttd.sandia.gov/nrc/modal.html.*

DATES: Written comments will be accepted until May 30, 2003. Comments received after this date and time will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date and time. As part of the public comments period, NRC will hold four (4) facilitated meetings: in Bethesda, Maryland, on March 6, 2003; in Las Vegas, Nevada, on March 12, 2003; in Pahrump, Nevada, on March 13, 2003; and in Rosemont, Illinois, on March 19, 2003. The meetings will be transcribed and transcripts will be made available from the Sandia Web site.

ADDRESSES: NRC recommends that comments be submitted by e-mail, but mail delivery is acceptable. Submit comments to Michael Lesar, Chief Rules and Directives Branch, Office of Administration, Mail Stop: T6–D–59, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; or by internet electronic mail to *nrcrep@nrc.gov*. Comments may also be provided at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/form.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy about any questions on the material in the Test Protocols Report. He can be reached at the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Mail Stop: T–10–D–20, Washington, DC 20555–0001; telephone 301–415–6011 or by internet electronic mail at *ajm1@nrc.gov*.

Any questions on participation in the public meetings should be directed to Mr. Francis X. Cameron; telephone 301–415–1642 or by internet electronic mail at *fxc@nrc.gov*.

SUPPLEMENTARY INFORMATION: The PPS began in 1999 with a scoping phase, consisting of a series of public meetings to identify stakeholder issues with transportation risk studies and identify potential areas of further research. The scoping phase of PPS culminated in 2000 with issuance of the PPS issues and resolution options report (hereafter Issues Report) for comment, and an associated series of public meetings. NRC has since reissued the Issues Report, together with summaries of the public meetings and written comments received, as NUREG/CR–6768. The Issues Report identified the lines of investigation for PPS: (1) Use recent accident statistics/data to reconstruct train and train accident event trees; (2) perform a high-speed impact test on a full-scale rail cask, to compare pre-test analyses with test results; (3) perform a long-duration fire test to compare pre-test analyses with test results; and (4) perform experiments on fuel pellets, rods, and assemblies, to examine failure modes and fracturing properties, to support radioactive material release analyses.

The PPS Test Protocols Report is the first major PPS document since the Issues Report. The Test Protocols Report describes, at a conceptual level, the impact and fire tests that are currently planned for PPS, along with the goals for these tests. Several other PPS tasks, including the accident statistics/data work, historical accidents investigation, and uncertainty/sensitivity analyses for risk assessments, are planned as part of PPS, but they are not part of the Test Protocol, as it focuses on testing. Fuel tests are not discussed in the Test Protocols Report, because those tests are proceeding on a different schedule from the impact and fire tests being conducted under the PPS.

As mentioned, the Test Protocols describe PPS tests at a conceptual level. NRC believes it is prudent to obtain comments on the tests while at a conceptual level, because detailed planning and procurement for a specific series of tests will be a resource-intensive effort, and NRC recognizes that comments could change test approaches and plans. After comments on the Test Protocols have been collected and considered, NRC will modify PPS plans as necessary and direct development of detailed test plans and procedures for each of the PPS testing programs. The detailed plans, procedures, and tests will be made available.

Public Meetings

In addition to soliciting written public comment on the protocols, NRC will conduct public meetings to facilitate discussion and comment on the PPS Test Protocols. The meetings are planned as follows:

- *Workshop:* March 6, 2003, 8 a.m.–5:30 p.m., in the Auditorium at the U.S. Nuclear Regulatory Commission Headquarters, Washington, D.C. 20555–0001;
- *Workshop:* March 12, 2003, 10 a.m.–7 p.m., at the Clark County Building Department, Russell/Cameron Office, 4701 West Russell Road, Las Vegas, Nevada 89118;
- *Public Meeting/Seminar:* March 13, 2003, 6 p.m.–9 p.m., at the Mountain View Casino and Bowl, 1750 South Pahrump Valley Boulevard, Pahrump, Nevada 89048; and
- *Workshop:* March 19, 2003, 8 a.m.–5:30 p.m., at the Embassy Suites Hotel O'Hare, 5500 N. River Road, Rosemont, IL 60018.

The workshops will be convened in a "roundtable format." To have manageable discussions, the number of participants at the table will be limited. NRC, through the meeting facilitator, will ensure that by a broad spectrum of interests participates at the meetings, including citizen and environmental groups, nuclear and transportation, industry, academia, and governmental representatives at the Federal, State, and local level. Other members of the public are welcome to attend, and there will be opportunities to comment on each agenda item to be discussed by roundtable participants. Written comments will also be accepted at all meetings.

Workshop Provisional Agenda [March 6, Washington, DC (8 a.m.–5:30 p.m.); March 12, Las Vegas, NV (10 a.m.–7 p.m.); March 19, Rosemont, IL (8 a.m.–5:30 p.m.)]

Meet and Greet
Work shop objectives, ground rules, agenda overview
Participant Introductions and Concerns
Regulatory and research framework for cask testing/Questions
Overarching Issues: participant participation
Break
Discussion on General Testing Issues
Lunch on your own
Impact Test Issues
Break
Baltimore Tunnel Fire Presentation
Fire Test Issues: participant discussion
Other Issues
Adjourn

Seminar Provisional Agenda (March 13, Pahrump, NV)

NRC Opening remarks and welcome
NRC Activities and Roles for Spent Fuel Transportation
Introduction of Package Performance Study
Break
Test Protocols Report: impact and fire tests
Wrap up
Adjourn

A World-Wide Web site has been established for dissemination of PPS information and documents to interested members of the public. Electronic copies of the Test Protocols Report and additional information on the public meetings can be obtained at *http://ttd.sandia.gov/nrc/modal.htm.*

Executive Summary of Test Protocols Report

The U.S. Nuclear Regulatory Commission (NRC) believes that current regulations and programs for transporting spent nuclear fuel (SNF) result in a high degree of safety. The Agency bases this belief largely on the staff's confidence in the shipping casks NRC certifies. Ongoing confirmatory research regarding transportation safety further supports the Agency's belief.

Under the current regulations, NRC requires that SNF casks must be designed and constructed to survive a sequence of tests designed to simulate postulated accidents. These tests include a 30-foot drop onto an unyielding surface and a 30-minute fully engulfing fire. NRC regulations permit certification through testing, analysis, comparison with similar certified designs, or various combinations of these methods. Typically, the Agency has certified SNF casks using a combination of analyses and testing of scale models or cask components. Previous NRC risk studies have estimated that the Agency's certification standards encompass well over 99 percent of possible transportation accidents.

NRC certification of SNF casks has contributed to an excellent safety record for transporting spent fuel. Further, the characteristics of both fuel and cask systems continue to evolve, and the testing and analytical techniques used in certification applications continue to improve. However, the near-term possibility of a significant increase in the number of spent fuel shipments has focused public attention on the safety of SNF transportation. Despite the excellent record achieved to date and general improvements in cask design and analysis, some stakeholders have voiced concerns regarding transportation safety and the lack of full-scale testing of SNF casks.

NRC believes the safety protection the current transportation regulatory system provides is well-established. NRC's primary role in transportation of spent fuel is certification of the casks used for transport. NRC ensures that shipping casks are robust by regulating their design and construction, by independently confirming the ability of designs to meet the regulations and accident conditions through modeling and analyses, and by overseeing that licensees properly build, use, and maintain the casks. NRC's confidence in casks that it certifies is also supported by ongoing transportation safety research and by the outstanding safety record compiled using NRC-certified casks. Currently, NRC has certified several transportation cask designs that could be used to transport spent fuel, and additional designs are under review.

Package Performance Study

Because of stakeholder concerns and a desire to further validate the computer models used to evaluate the safety of cask transportation, NRC initiated, in 1999, a program known as the Package Performance Study (PPS). Under this ongoing program, the NRC staff is examining the adequacy of the analytical methods and data that are used to estimate the response of transportation casks to those improbable, extreme accidents that might cause radioactive materials to be released to the environment. However, the PPS is not intended to involve the development of new standards for transportation casks.

The NRC staff identified the tasks that are described in this report through two series of public meetings and associated comment periods, during which the staff solicited and discussed the various concerns of citizens, members of the nuclear industry, and governmental organizations. The staff, with contractor support, subsequently rated and summarized those concerns in the "Spent Nuclear Fuel Transportation Package Performance Study Issues Report," NUREG/CR–6768, June 2002, which Sandia National Laboratories (SNL) prepared for NRC. Specifically, on the basis of its review of the public record from both the public meetings and written comments, the NRC staff concluded that the following four tasks would address the primary concerns stakeholders raised:

(1) Use recent accident data to re-analyze the truck and rail accident-speed and fire-duration statistics developed by the Modal Study (Fischer, *et al.*, 1987).

(2) Perform high-speed collision tests on full-scale rail and truck casks [1] and compare the test results with pretest damage predictions developed by computer models.

(3) Expose full-scale rail and truck casks to fully engulfing, long-duration fires and compare the measured cask temperatures with pretest temperature predictions developed by computer models.

(4) Conduct laboratory tests to examine rod failure, pellet fracturing, and the release of particles from the failed rods, and use the test results to determine the response to extreme impacts of fuel pellets, fuel rods, and fuel rods containing fuel pellets.

[1] The "Spent Nuclear Fuel Transportation Package Performance Study Issues Report," NUREG/CR–6768, did not specify the type of transportation cask to be tested; subsequently, NRC has proposed that the PPS test program should involve one rail cask design and one truck cask design.

This report addresses Tasks 2 and 3, listed above. It does not address the reanalysis of rail and truck accident statistics published in the Modal Study because that reanalysis does not involve conducting any tests or experiments. Similarly this report does not discuss NRC's plans regarding laboratory tests to determine the response of spent fuel pellets and rods to extreme accident conditions, because those test are proceeding on a different schedule than the impact and thermal tests being conducted under the PPS.

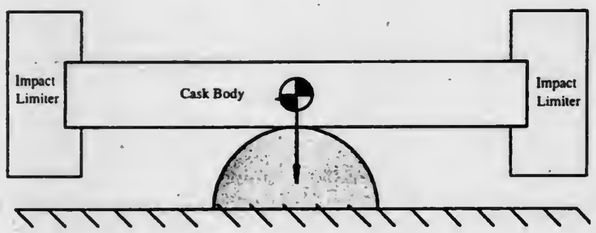
Test Protocols

This report summarizes the field tests that NRC proposes to perform under the PPS, as well as the analyses performed to develop the test summaries. Throughout this report, these summaries are called "test protocols." Publication of these test protocols does not imply any NRC commitment to conduct any of these tests, or to conduct any test exactly as described in this report.

Collision Test Protocol

Within the context of the PPS, NRC plans to conduct separate high-speed impact tests of a full-scale rail spent fuel cask and full-scale truck spent fuel cask, using a drop impact as opposed to a horizontal impact test. The drop impact test was proposed after weighing such factors as test objectives, costs, local environmental and logistical concerns, and modeling issues. The staff will then compare the results of these tests to detailed pre-test damage predictions developed by computer models. (The computer model analyses conducted in the process of developing the preliminary design of the impact test are described in this report.) The staff proposes the following tasks for the collision test protocol:

- Subject a full-scale rail cask to an extreme impact onto a flat, unyielding surface. (The staff proposes an unyielding surface because: (1) The proposed impact test is intended to evaluate cask performance, and an unyielding surface causes all the cask kinetic energy to be spent deforming the cask; and (2) an unyielding surface simplifies the analysis by deforming only the cask and not the target.)
- Equip the lid end of the test cask with an impact limiter; ensure the cask contains a fuel canister, if the test cask design uses canisters, with one real fuel assembly containing surrogate fuel, and sufficient dummy assemblies to fill the canister or cask.
- Structure the test to deliver the impact onto the lid end of the cask that is equipped with the impact limiter.
- Orient the cask so the impact is on the corner or edge of the lid.
- Test cask performance on impact with an unyielding surface at an impact speed of 26.8 to 40.2 meters per second (m/s) (60 to 90 miles per hour (mph)) (based on preliminary analysis of the computer model).
- Subject a full-scale truck cask to an extreme "back-breaker" impact [2] onto one of the internal flat sides of the cask, midway between the impact limiters onto a rigid semi-cylinder, as shown in the following illustration.



- Ensure that the cask contains one real fuel assembly and sufficient dummy assemblies to fill the cask.
- Test cask performance on impact with an unyielding surface at an impact speed of 26.8 to 40.2 m/s (60 to 90 mph) (based on preliminary analysis of the computer model).

Proposed Speed for Rail Impact Test

The NRC staff, with contractor support, obtained preliminary impact analyses to support the development of the test protocols. These analyses spanned the range of impact speeds from 26.8 to 40.2 m/s (60 to 90 mph); this report presents the results of these analyses for impact speeds of 26.8 and 33.5 m/s (60 and 75 mph). The NRC staff reviewed these SNL analyses and developed three criteria for proposing test parameters for the PPS impact and thermal tests. The NRC staff conducted a trial application of these criteria to determine the speed for the rail cask impact. (Appendix A to this report fully describes the three criteria and the trial application.) The NRC staff optimized the benefits of the three criteria [*i.e.*, (1) Enhancing public confidence; (2) validating the computer models; and (3) ensuring realism in the probability of the occurrence of the test parameters]. On the basis of that optimization, the NRC staff proposes the impact speed of 33.5 m/s (75 mph).

Fire Test Protocol

Within the context of the PPS, NRC plans to conduct separate fire tests of a full-scale rail cask and a full-scale truck cask. For these thermal tests, PPS will use a fully engulfing, optically dense fire, which completely surrounds the test specimen and obscures visibility of the test specimen through the flames. In each test, the fire will burn for more than the half-hour duration of the thermal certification test. The NRC staff will compare the measured temperature history of the cask at various points with the detailed pretest predictions developed by computer models. (Again, the computer model analyses conducted in the process of developing the preliminary design of the thermal test are described in this report.) The staff proposes the following tasks for the fire test protocol:

- Subject a full-scale rail cask to a fully engulfing, optically dense fire for a duration of more than one-half hour.
- Subject a full-scale truck cask to a fully engulfing, optically dense fire for a duration of more than one-half hour.

Public Comments

NRC is publishing and distributing this report to solicit public comments regarding the proposed SNF cask performance test protocols, while they are still at a conceptual level as reflected in this report. In addition to continuing the interactions in developing the scope of the PPS, this review at the conceptual level is being conducted because detailed planning and procurement for a specific series of tests will be resource-intensive. NRC anticipates that the public comments could result in worthwhile changes to the underlying test approaches and plans. The Agency is particularly interested in stakeholders' views on the following eleven issues:

- How many casks and what types of cask designs should be used in the tests?
- At what scale should the cask impact tests be conducted (*e.g.*, full-scale or partial-scale)?
- Should the impact tests be conducted as drops from a tower, as proposed in this report, or along a horizontal track, using a rocket sled?
- What should the impact speed and orientation be for the rail cask impact test?
- Are 26.8 to 40.2 m/s (60 to 90 mph) a reasonable speed range for the rail cask impact test, given that the frequency for a rail cask impacting a hard rock surface within this speed range is 10^{-6} to 10^{-8} per year?
- Is the 33.5-m/s (75-mph) rail cask impact speed proposed by the NRC staff appropriate?
- What should the impact speed be for the back breaker truck cask impact test?
- What should be the duration and size of the cask fire tests?
- What should be the cask position relative to the fire?
- How many and what types [real or surrogate, pressurized-water reactor or boiling-water reactor] of fuel assemblies should be in the casks during the tests?
- Will the proposed tests be able to yield risk insights consistent with NRC's risk-informed regulatory initiatives?

After receiving and considering all stakeholder comments on the test protocols, the NRC staff will direct the development of detailed test plans and procedures for each of the PPS testing programs. NRC will make these detailed plans, procedures, and tests available to the public before finalizing and conducting the planned tests. Thus, the finalized detailed plans will reflect public comments on these test protocols, constraints imposed by NRC's programmatic priorities, and the available funding to support these tests.

Conclusion

PPS development of this new cask impact, cask fire, and spent fuel response data will substantially improve the technical basis that underlies the estimation of the risks posed by extra-regulatory accidents that might occur during the shipment of spent fuel in Type B packages.

Dated at Rockville, Maryland, this 13th day of February, 2003.

For the U.S. Nuclear Regulatory Commission.

Charles L. Miller,

Deputy Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4106 Filed 2–20–03; 8:45 am]

BILLING CODE 7590–01–P

[2] A back-breaker impact is one in which the cask strikes the target between the impact limiters in a sideways orientation. The impact target is similar to a bridge column or abutment.

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment or new or revised data collection, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application and Claim for Unemployment Benefits and Employment Service, OMB 3220–0022.

Section 2 of the Railroad Unemployment Insurance Act (RUIA), provides unemployment benefits for qualified railroad employees. These benefits are generally payable for each day of unemployment in excess of four during a registration period (normally a period of 14 days).

Section 12 of the RUIA provides that the RRB establish, maintain and operate free employment facilities directed toward the reemployment of railroad employees. The procedures for applying for the unemployment benefits and employment service and for registering and claiming the benefits are prescribed in 20 CFR part 325.

RRB Form UI–1, *Application for Unemployment Benefits and Employment Service,* is completed by a claimant for unemployment benefits once in a benefit year, at the time of first registration. Completion of Form UI–1 also registers an unemployment claimant for the RRB's employment service. Minor non-burden impacting editorial changes are being proposed to Form UI–1.

The RRB also utilizes Form UI–3, *Claim for Unemployment Benefits,* for use in claiming unemployment benefits for days of unemployment in a particular registration period, normally a period of 14 days. The RRB proposes a minor editorial change to UI–3.

Also, in accordance with the Government Paperwork Elimination Act (GPEA) of 1998, which directed Federal agencies to develop electronic service delivery instruments as an alternative to traditional paper-based processes, the RRB is proposing the implementation of an Internet equivalent of manual Form UI–1, Application for Unemployment Benefits and Employment Service as an additional to the information collection.

Completion of Forms UI–1 and UI–3 is required to obtain or retain benefits. The number of responses required of each claimant varies, depending on their period of unemployment. The RRB estimates that approximately 11,200 Form UI–1's (9700 paper and 1,500 Internet) are filed annually. Completion time for the paper UI–1 is estimated at 10 minutes. Completion time for the Internet equivalent version UI–1 is estimated at 14 minutes. The RRB estimates that approximately 67,500 Form UI–3's are filed annually. Completion time is estimated at 6 minutes.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of the notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–4159 Filed 2–20–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47361; File No. SR–Amex–2003–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the Suspension of Exchange Transaction Charges for Certain Exchange-Traded Funds

February 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2003, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until February 28, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

Amex Equity Fee Schedule

I. Transaction Charges

No change.

II. Regulatory Fee

No Change.
Notes:
1. and 2. No change.
3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

DIA—DIAMONDS®
QQQ—Nasdaq–100® Index Tracking Stock
SPY—SPDRs®
IVV—iShares S&P 500
MDY—MidCap SPDRs
XLY—Select Sector SPDR—Consumer Discretionary
XLP—Select Sector SPDR—Consumer Staples
XLE—Select Sector SPDR—Energy
XLF—Select Sector SPDR—Financial
XLV—Select Sector SPDR—Health Care
XLI—Select Sector SPDR—Industrial
XLB—Select Sector SPDR—Materials
XLK—Select Sector SPDR—Technology
XLU—Select Sector SPDR—Utilities
BHH—B2B Internet HOLDRs™
BBH—Biotech HOLDRs
BDH—Broadband HOLDRs
EKH—Europe 2001 HOLDRs
IAH—Internet Architecture HOLDRs
HHH—Internet HOLDRs
IIH—Internet Infrastructure HOLDRs
MKH—Market 2000+ HOLDRs
OIH—Oil Service HOLDRs
PPH—Pharmaceutical HOLDRs
RKH—Regional Bank HOLDRs
RTH—Retail HOLDRs
SMH—Semiconductor HOLDRs
SWH—Software HOLDRr
TTH—Telecom HOLDRs
UTH—Utilities HOLDRs
WMH—Wireless HOLDRs
SHY—iShares Lehman 1–3 Year Treasury Bond Fund
IEF—iShares Lehman 7–10 Year Treasury Bond Fund
TLT—iShares Lehman 20+ Year Treasury Bond Fund
LQD—iShares GS $ InvesTop Corporate Bond Fund
TFT—Treasury 1 FITR ETF
TOU—Treasury 2 FITR ETF
TFI—Treasury 5 FITR ETF
TTE—Treasury 10 FITR ETF

Until [January 31) *February 28,* 2003, transaction charges also have been suspended in SHY, IEF, TFT, TOU, TFI and TTE for specialist, Registered Trader and broker dealer orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is extending until February 28, 2003 the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension in such charges until November 30, 2002,[3] December 13, 2002,[4] and January 31, 2003.[5]

The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to Section 19(b)(3)(A) of the 1934 Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4)[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-trade funds that are the subject of this filing have been previously filed with the Commission.[10] Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–04 and should be submitted by March 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4094 Filed 2–20–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] See Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR–Amex–2002–91).
[4] See Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR–Amex–2002–98).
[5] See Securities Exchange Act Release No. 47141 (January 8, 2003), 68 FR 2090 (January 15, 2003) (SR–Amex–2002–115).
[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(4).
[8] 15 U.S.C. 78s(b)(3)(A).
[9] 17 CFR 240.19b–4(f)(6).
[10] See *supra* notes 3, 4, and 5.
[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47365; File No. SR–DTC–2003–02]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Concerning Requests for Withdrawal of Certificates by Issuers

February 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 3, 2003, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 11, 2003, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to clarify that DTC will only honor requests for withdrawal of certificates submitted by its participants and not by the issuer of the securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Recently a number of issuers of securities have requested that DTC exit from the depository all securities of their issues ("Issuer Withdrawal Request" or "Issuer Withdrawal Requests"). The issuers have also advised DTC that they will refuse to reregister any securities into the name of DTC or its nominee, Cede & Co. These issuers have no legal or beneficial interest in the securities they are requesting to be exited from DTC. The securities at issue generally became eligible for DTC services at the request, or for the convenience, of DTC's participants who wish to utilize DTC's book-entry transfer system. The subject securities are held by DTC for the benefit of its participants.

DTC's current rules and procedures permit participants to submit withdrawal requests if they wish to withdraw their securities from DTC. However, DTC's current rules and procedures do not provide for DTC to comply with an Issuer Withdrawal Request without participants' instructions. Through the proposed rule filing, DTC is seeking to clarify the procedures that it will follow upon receiving an Issuer Withdrawal Request. Upon receipt of an Issuer Withdrawal Request, DTC will, among other things:

- Issue an "Important Notice" notifying participants of the receipt of the Issuer Withdrawal Request and reminding participants that they can utilize DTC withdrawal procedures if they wish to withdraw their securities from DTC.
- Notify the transfer agent for the issuer that failure to reregister certificates pursuant to DTC's instructions is a violation of the transfer agent's obligations under, among other things, DTC's rule and procedures, such as DTC's Operational Arrangements.
- Process in the ordinary course of business withdrawal requests submitted by participants and refuse to effectuate withdrawals based upon the Issuer Withdrawal Request.

Since this is a clarification of DTC's rules and procedures, DTC will

[1] 15 U.S.C. 78s(b)(1).
[2] The Commission has modified the text of the summaries prepared by the DTC.

continue to not honor Issuer Withdrawal Requests regardless of any purported approval of the Issuer Withdrawal Request by the shareholders or board of directors of the issuer.[3]

DTC believes that the proposed rule filing is consistent with Section 17A of the Act and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has discussed the substance of this proposed rule change with various DTC participants and industry groups and has received favorable reaction.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–DTC–2003–03. This file number should be included on the subject line if e-mail is used. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549 Copies of such filing also will be available for inspection and copying at the principal office of the DTC. All submissions should refer to File No. SR–DTC–2003–03 and should be submitted by March 14, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4200 Filed 2–20–03; 8:45 am]

BILLING CODE 8010–01–P

[3] The proposed rule filing is not applicable to securities that may not legally be held at DTC (*e.g.*, securities restricted pursuant to Rule 144 or Rule 145 under the Securities Act of 1933).

[4] 17 CFR 200.30–3(a)(12).

STATE JUSTICE INSTITUTE

Notice of Public Meeting; Board of Directors Meeting

DATES: Friday, February 28, 2003, 9 a.m.–5 p.m.

PLACE: State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA.

MATTERS TO BE CONSIDERED: Consideration of proposals submitted for Institute funding and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: All portions other than personnel matters and Board committee meetings.

PORTIONS CLOSED TO THE PUBLIC: Discussion of internal personnel matters and Board committee meetings.

FOR FURTHER INFORMATION CONTACT: David Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100 x214.

David I. Tevelin,

Executive Director.

[FR Doc. 03–4298 Filed 2–19–03; 12:52 pm]

BILLING CODE 6820–SC–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 13, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 24, 2003, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0067.

Form Number: FMS 5902 and 5903.

Type of Review: Extension.

Title: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement (FMS 5902); and, Depositary, Financial Agency, and Collateral Agreement (FMS 5903).

Description: Financial institutions are required to complete an agreement and resolution to become a depositary of the government. The approved applications designate the depositary as an authorized recipient of deposits of public money and to perform other services.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 15.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (one-time application).

Estimated Total Reporting Burden: 7 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–4196 Filed 2–20–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 13, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before March 24, 2003, to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0140.

Form Number: None.

Type of Review: Extension.

Title: Textiles and Textile Products.

Description: This information is needed for Customs to be able to identify the country of origin of textiles. The requirement prevents circumvention of bilateral agreements and ensures the proper assessment of duties. The declaration will be executed by the foreign manufacturer, exporter, or U.S. importer to be filed with the entry.

Respondents: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 58,865.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 171,591 hours.

Clearance Officer: Tracey Denning, (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–4197 Filed 2–20–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 12, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before March 24, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1428.

Form Number: IRS Form 8023.

Type of Review: Extension.

Title: Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

Description: Form 8023 is used by corporations that acquire the stock of another corporation to elect to treat the purchase of stock as a purchase of the other corporation's assets. The IRS uses Form 8023 to determine if the purchasing corporation reports the sale of its assets on its income tax return and to determine if the purchasing corporation has properly made the election.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 201.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—9 hr., 19 min.

Learning about the law or the form—1 hr., 39 min.

Preparing and sending the form to the IRS—1 hr., 46 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,559 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–4198 Filed 2–20–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for revision approval by the Office of Management and Budget. The Office of Program Services within the Department of the Treasury is soliciting comments concerning the Annual Report of U.S. Ownership of Foreign Securities, including Selected Money Market Instruments. The next such report is to be conducted as of December 31, 2003.

DATES: Written comments should be received on or before April 22, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 4410–1440NYA, 1500 Pennsylvania Avenue, NW., Washington DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by email (*dwight.wolkow@do.treas.gov*), FAX (202–622–1207) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Webpage, *http://www.treas.gov/tic/forms.htm*. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury Department Forms SHC and SHCA, U.S. Ownership of Foreign Securities, including Selected Money Market Instruments.

OMB Number: 1505–0146.

Abstract: These forms are used to conduct annual surveys of holdings by U.S. residents of foreign securities for portfolio investment purposes. Data derived from these surveys are used by the U.S. government in the formulation of international and financial policies and for the computation of the U.S.

balance of payments accounts and of the U.S. international investment position. These data will also be used to provide information to the public and to meet international reporting commitments.

This survey is also part on an internationally coordinated effort under the auspices of the International Monetary Fund to improve data on securities worldwide. Most of the major industrial and financial countries will be conducting similar surveys.

Current Actions: The largest U.S.-resident custodians and U.S.-resident end-investors in foreign securities will report annually rather than every three or four years, as they have done in the past. The reason for this increased reporting frequency is to gather more timely information on U.S. foreign portfolio investment abroad, information which will be used in the development of U.S. economic policies, improvement of the U.S. international accounts, and United States participation in international efforts to gather better data on cross-border securities activity.

In order to collect more timely data with a minimum increase in total reporting burden and cost to both reporters and the government, (1) the frequency of the current large benchmark surveys (using Form SHC) will be decreased to once every five years, from once every three or four years, and (2) new inter-benchmark annual surveys (using Form SHCA) collecting data from only the largest reporters in the years when there are no full benchmark surveys will be instituted.

The benchmark surveys (using Form SHC) require reporting by all significant U.S.-resident custodians of foreign securities and U.S.-resident end-investors in foreign securities. Both custodians of foreign securities and large end-investors who directly manage the safekeeping of foreign securities abroad must report on a security-by-security basis. All survey reporters employing U.S. custodians to safekeep their foreign securities need only to identify their custodians and the aggregate amounts entrusted to each custodian by broad type of security.

The inter-benchmark annual surveys (using Form SHCA) require reporting by a selected group of the largest US-resident custodians and end-investors as determined on the basis of data submitted during the previous benchmark survey. All custodians and some of the end-investors will report on a security-by-security basis, as they do on the benchmark surveys. The remaining end-investors will need to identify only the aggregate amounts, by broad security type, not entrusted to U.S. custodians (on the benchmark surveys these same end-investors must report such holdings security by security). All survey reporters will report their holdings of foreign securities entrusted to U.S. custodians exactly as they do on the benchmark surveys. The data collected under the annual surveys will be used in conjunction with the results of the previous benchmark survey to make economy-wide estimates for the non-benchmark years.

Type of Review: Revision of a currently approved data collection.

Affected Public: Business/financial institutions.

Forms: TDF SHC, Schedules 1, 2 and 3 (1505–0146); TDF SHCA, Schedules 1, 2 and 3 (1505–0146).

Estimated Number of Respondents: An annual average (over five years) of 541, but this varies widely from about 1,745 in benchmark years (once every five years) to about 240 in all other years (four out of every five years).

Estimated Average Time per Respondent: An annual average (over five years) of about 82 hours, but this will vary widely from respondent to respondent. (a) In the year of a benchmark survey (using Form SHC), which is conducted once every five years, it is estimated that exempt respondents will require an average of 16 hours; custodians of securities providing security-by-security information will require 360 hours on average, but this figure will vary widely for individual custodians; end-investors providing security-by-security information will require 120 hours on average; and end-investors and custodians employing U.S. custodians will require 40 hours, on average. (b) In a non-benchmark year (using Form SHCA), which occurs four years out of every five years, custodians of securities providing security-by-security information will require 700 hours on average (because only the largest U.S.-resident custodians will report), but this figure will vary widely for individual custodians; end-investors providing security-by-security information will require 145 hours on average; and reporters entrusting their foreign securities to U.S. custodians will require 48 hours, on average.

The exemption level in benchmark years for custodians is the holding of less than $100 million in foreign long-term securities and for end-investors the owning of less than $100 million held with a single custodian.

Estimated Total Annual Burden Hours: An annual average (over five years) of 44,360 hours.

Frequency of Response: Annual.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the survey is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 03–4199 Filed 2–20–03; 8:45 am]

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H.R. 16/P.L. 108–6

To authorize salary adjustments for Justices and judges of the United States for fiscal year 2003. (Feb. 13, 2003; 117 Stat. 10)

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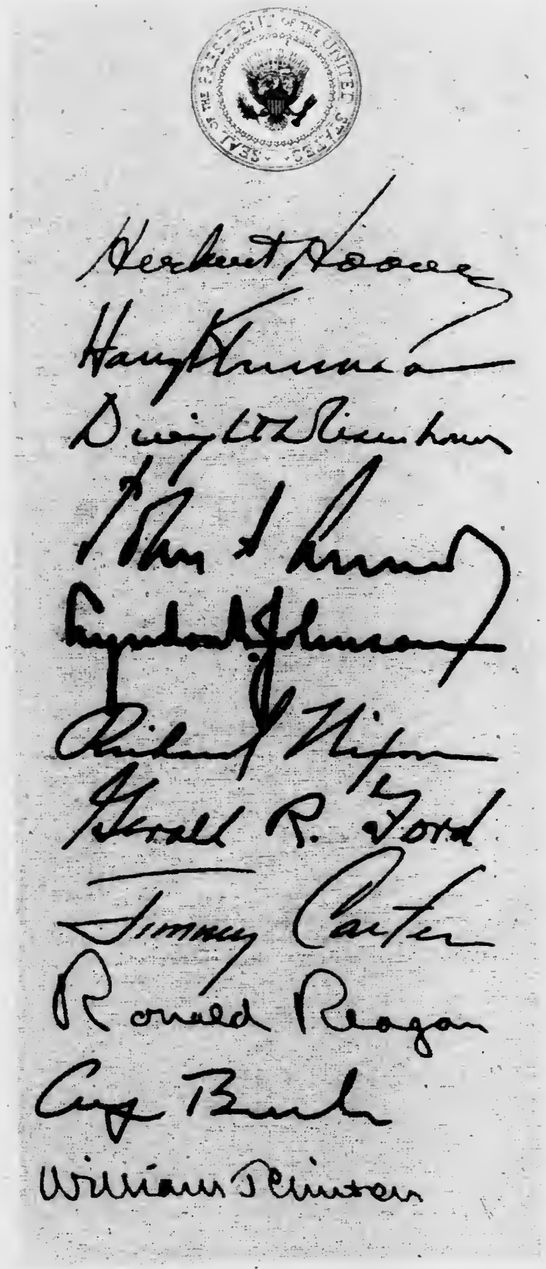
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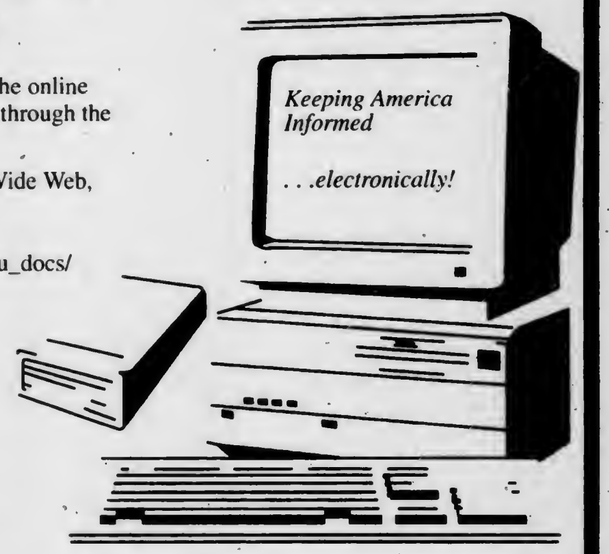
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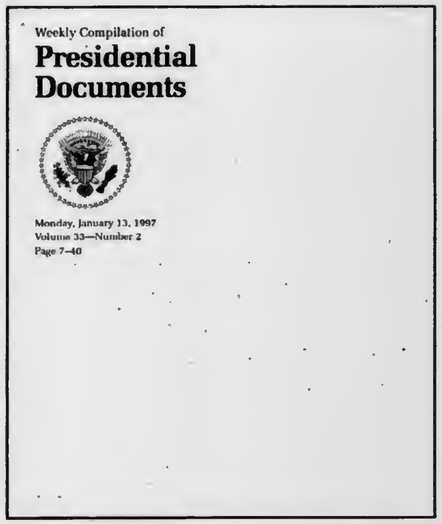
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–41–AD; Amendment 39–13054; AD 2003–04–06]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Honeywell Primus II RNZ–850/–851 Integrated Navigation Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to various aircraft equipped with a certain Honeywell Primus II RNZ–850/–851 Integrated Navigation Unit. As one alternative for compliance, this action provides for a one-time inspection to determine whether a certain modification has been installed on the Honeywell Primus II NV850 Navigation Receiver Module, which is part of the Integrated Navigation Unit. In lieu of accomplishing this inspection, and for aircraft found to have an affected navigation receiver module, this action provides for revising the aircraft flight manual to include new limitations for instrument landing system (ILS) approaches. This action is necessary to ensure that the flightcrew has an accurate glideslope deviation indication. An erroneous glideslope deviation indication could lead to the aircraft making an approach off the glideslope, which could result in impact with an obstacle or terrain. This action is intended to address the identified unsafe condition.

DATES: Effective March 11, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–41–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–41–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The information referenced in this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that erroneous glideslope indications have occurred on certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 series airplanes. In these incidents, the glideslope deviation indicator unexpectedly changed from a centered position to a hard-fly-down or hard-fly-up indication during an instrument landing system (ILS) approach. These incidents have been attributed to discrepancies of certain Honeywell Primus II NV–850 Navigation Receiver Modules that are part of the Honeywell Primus II RNZ–850/–851 Integrated Navigation Units installed on the affected airplanes. An affected navigation receiver module may produce an erroneous glideslope deviation indication when operating in a narrow range of cold temperatures with the glideslope receiver tuned to certain frequencies. An erroneous glideslope deviation indication could lead to the aircraft making an approach off the glideslope, which could result in impact with an obstacle or terrain.

Affected Honeywell Primus II RNZ–850/–851 Integrated Navigation Units are installed on numerous aircraft models. Affected aircraft models include, but are not limited to, BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes; Bombardier BD–700–1A10 series airplanes; Bombardier CL–215–6B11 (CL415 variant) series airplanes; Cessna Model 560, 560XL, and 650 airplanes; Dassault Model Mystere-Falcon 50 series airplanes; Dornier Model 328–100 and –300 series airplanes; EMBRAER Model EMB–135 series airplanes; Learjet Model 45 airplanes; Raytheon Model Hawker 800XP and Hawker 1000 airplanes; and Sikorsky Model S–76A, S–76B, and S–76C aircraft. All aircraft models equipped with affected integrated navigation units may be subject to the same unsafe condition revealed on the EMBRAER Model EMB–145 series airplanes.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to ensure that the flightcrew has an accurate glideslope deviation indication. An erroneous glideslope deviation indication could lead to the aircraft making an approach off the glideslope, which could result in impact with an obstacle or terrain. As one alternative for compliance, this AD provides for a one-time inspection to determine whether an affected navigation receiver module is installed. In lieu of this inspection, and for aircraft with an affected navigation receiver module, the AD also requires revising the Limitations section of the aircraft flight manual to include new limitations for ILS approaches.

Relevant Technical Discussions

During the development of this AD, the FAA received information demonstrating that the planned AD would present significant operational difficulties for affected operators. First, we learned that accomplishing the inspection specified in paragraph (b) of

this AD within the specified compliance time could result in service delays and out-of-service time for affected aircraft. We also received information that the revision to the Limitations section that we were considering was too restrictive for certain airplanes and would have an adverse impact on operations. Further, because a majority of the fleet of affected aircraft is expected to be equipped with an affected navigation receiver module, we found that the adverse impact of this AD would be widespread.

In light of this information, we held further discussions with the manufacturer of the subject parts and representatives of industry. Data presented during these discussions led us to reconsider the degree of urgency of the identified unsafe condition and the requirements of this AD.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–41–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–06 Various Aircraft: Amendment 39–13054. Docket 2003–NM–41–AD.

Applicability: Aircraft, certificated in any category, equipped with a Honeywell Primus II RNZ–850/–851 Integrated Navigation Unit having a part number identified in Table 1 of this AD; including, but not limited to BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes; Bombardier BD–700–1A10 series airplanes; Bombardier CL–215–6B11 (CL415 variant) series airplanes; Cessna Model 560, 560XL, and 650 airplanes; Dassault Model Mystere-Falcon 50 series airplanes; Dornier Model 328–100 and –300 series airplanes; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 series airplanes; Learjet Model 45 airplanes; Raytheon Model Hawker 800XP and Hawker 1000 airplanes; and Sikorsky Model S–76A, S–76B, and S–76C aircraft. Table 1 of this AD follows:

TABLE 1.—INTEGRATED NAVIGATION UNIT PART NUMBERS

Part numbers
7510100–811 through 7510100–814 inclusive
7510100–831 through 7510100–834 inclusive
7510100–901 through 7510100–904 inclusive
7510100–911 through 7510100–914 inclusive
7510100–921 through 7510100–924 inclusive
7510100–931 through 7510100–934 inclusive

Note 1: This AD applies to Honeywell Primus II RNZ–850/–851 Integrated Navigation Units installed on any aircraft, regardless of whether the aircraft has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew has an accurate glideslope deviation indication, accomplish the following:

Compliance Time for Action

(a) Within 5 days after the effective date of this AD, accomplish the requirements of either paragraph (b) or (c) of this AD.

Inspection To Determine Part Number

(b) Perform a one-time general visual inspection of the modification plate for the Honeywell Primus II NV–850 Navigation Receiver Module; part number 7510134–811, –831, –901, or –931; which is part of the Honeywell Primus II RNZ–850/–851 Integrated Navigation Unit; to determine if Mod "L" has been installed. The modification plate is located on the bottom of the Honeywell Primus II RNZ–850/–851 Integrated Navigation Unit, is labeled NV–850, and contains the part number and serial number for the Honeywell Primus II NV–850 Navigation Receiver Module. If Mod "L" is installed, the letter "L" will be blacked out.

(1) If Mod "L" is installed, before further flight, do paragraph (c) of this AD.

(2) If Mod "L" is not installed, no further action is required by this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: For more information on the inspection specified in paragraph (b) of this AD, refer to Honeywell Technical Newsletter A23–3850–001, Revision 1, dated January 21, 2003.

Aircraft Flight Manual Revision

(c) Revise the Limitations section of the aircraft flight manual (AFM) to include the following statements (which may be accomplished by inserting a copy of the AD into the AFM):

Flight Limitations

When crossing the Outer Marker on glideslope, the altitude must be verified with the value on the published procedure.

For aircraft with a single operating glideslope receiver, the approach may be flown using normal procedures no lower than Localizer Only Minimum Descent Altitude (MDA).

For aircraft with two operating glideslope receivers, the aircraft may be flown to the published minimums for the approach using normal procedures if both glideslope receivers are tuned to the approach and both crew members are monitoring the approach using independent data and displays.

Parts Installation

(d) As of the effective date of this AD, no person may install a Honeywell Primus II NV–850 Navigation Receiver Module on which Mod "L" has been installed, on the Honeywell Primus II RNZ–850/–851 Integrated Navigation Unit of any airplane, unless paragraph (c) of this AD is accomplished.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance or Operations Inspector, as applicable, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(g) This amendment becomes effective on March 11, 2003.

Issued in Renton, Washington, on February 14, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4238 Filed 2–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AI93

Recognition of Organizations and Accreditation of Representatives, Attorneys, and Agents

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document revises the Department of Veterans Affairs' (VA) existing procedures and requirements regarding recognition of service organizations and accreditation of their representatives and of agents, attorneys, and individuals seeking to represent claimants for benefits administered by VA. These amendments are necessary to improve clarity and to enhance VA's ability to assure high quality representation of claimants.

DATES: *Effective Date:* February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Sendek or Y. Ken Lee, Staff Attorneys, Office of the General Counsel (022), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–6315.

SUPPLEMENTARY INFORMATION: On November 4, 1998, VA published a notice of proposed rulemaking in the **Federal Register**. 63 FR 59495. We proposed to make numerous minor changes in the provisions governing recognition of organizations and accreditation of representatives, agents, attorneys, and individuals for purposes of updating, clarification, and conformity to governing statutes and to enhance VA's ability to protect the interests of claimants.

The public comment period ended on January 4, 1999. VA received sixteen comments: six from veterans service organizations, six from State departments of veterans affairs, and four from private attorneys. These comments are discussed below.

Based on the rationale set forth in the proposed rule and in this document, we adopt the provisions of the proposed rule as a final rule with changes explained below.

Section 14.627 Definitions

One commenter stated that the language "intends to file" in the definition of "claimant" in proposed § 14.627(g) is confusing and should be modified because there is no way for the organization to ascertain an individual's future intentions. We believe that the definition appropriately includes individuals who intend to file an application for benefits because representation necessarily includes preliminary development and preparation of the application. However, in order to alleviate concern that a representative may not be able to identify claimants based on their intention, we have amended § 14.627(g) to provide that a claimant is one who has filed or has expressed to a representative, agent, or attorney his or her intention to file an application for benefits.

One commenter requested clarification of the definition of "facilities" under proposed § 14.627(j), but provided no explanation of what may be unclear about the proposed definition. We find the definition clear in encompassing office equipment and furniture that promote efficient office operations, and adjacent accommodations, such as parking space,

needed to facilitate access to office space.

Section 14.628 Recognition of Organizations

One commenter recommended clarification of the term "region" in proposed § 14.628(a)(2)(v), for purposes of determining whether an organization is sufficiently diversified geographically to qualify as a national organization. To clarify this provision and to provide objective standards, we changed the "Geographic diversification" requirement to require either one or more posts, chapters, or offices in at least ten states, or one or more members in at least twenty states.

Three commenters expressed concerns regarding the phrase "funded by a State government" for purposes of determining whether an organization qualifies as a State organization as described in proposed § 14.628(b). Two commenters asked about the extent to which an organization must be funded by a State in order to meet this requirement and one also asked whether a local group that receives some State funding could qualify. Another commenter suggested that a State agency should not be disqualified under this section if it shares facilities with a private organization that shares the cost of the facilities. To address the stated concerns, we have amended § 14.628(b) to specify that an organization must be "primarily" funded by a State in order to qualify under that section.

In proposed § 14.628(d)(1)(i), we are maintaining the existing requirement that an organization requesting recognition demonstrate that recognition would benefit veterans. This requirement was inadvertently omitted in the proposed amendment to § 14.628.

One commenter suggested that proposed § 14.628(d)(1)(iv)(A) state that State organizations not be required to provide representation before the Board of Veterans' Appeals in Washington, DC, if claimants are properly notified in writing of this limitation in service. We believe that this situation is adequately covered in § 14.628(d)(1)(iv) as proposed and therefore make no change based on this comment.

One commenter expressed concern that proposed §§ 14.627(h) and 14.628(d)(1)(iv)(B) could be interpreted as precluding a service organization from declining representation in a frivolous claim, a claim where a proper representative-client relationship cannot be maintained, or a claim where a conflict of interest exists on the part of the organization, unless the organization had previously submitted a statement of policy pursuant to proposed § 14.628(d)(1)(iv)(B) stating its intention with respect to such claims. The commenter stated that service organizations should be given the same discretion to decline representation as private attorneys have in such instances.

Another commenter requested clarification of whether, under the definition of "complete claims service" in proposed § 14.627(h), a representative can elect not to join in an administrative appeal. A third commenter requested clarification of whether an organization or an individual representative may determine whether to provide representation in a particular case.

Pursuant to proposed § 14.628(d)(1)(iv), in order to be recognized, an organization must provide complete claims service or give written notice of any limitation in its claims service. "Complete claims service" is defined in § 14.627(h) as including representation through completion of an administrative appeal.

These provisions are intended to ensure that a recognized organization maintains a policy and capability of providing each claimant with representation throughout the course of a claim and administrative appeal or provide written notice of limitations in service and advice concerning alternative service. They are not intended to limit the organization's discretion to determine whether an appeal is appropriate in a particular claim or to decline representation in an individual case where the circumstances of the case made representation by the organization impracticable or inappropriate. So long as an organization has a policy and capability of providing complete claims service, the requirement for recognition will be met regardless of whether the organization or an individual representative of the organization determines that an administrative appeal is not appropriate based on the facts and law in an individual case and chooses not to participate in the appeal or that based on the circumstances of a particular case representation is rendered impracticable or inappropriate due to the frivolous nature of the claim, the inability to maintain an appropriate representative-claimant relationship, or the potential for a conflict of interest on the part of the organization if representation is provided. A note has been added following § 14.628(d)(1)(iv)(B) to clarify this point.

One commenter suggested that it may be impossible to adequately monitor individual representatives to "ensure proper handling of claims" as required by proposed § 14.628(d)(1)(v) if claimants are permitted under proposed § 14.631(c) to designate a specific individual service organization representative as their sole representative. The commenter expressed concern that in such a case the organization would lack access to records needed to properly monitor the claim. Regardless of whether a claimant designates an individual or a service organization in a power of attorney, it is a fundamental responsibility of an organization to ensure that its representative provides appropriate assistance to claimants. Although the option for a claimant to designate an individual representative as his or her sole representative may present some difficulty to an organization in monitoring its representatives, this difficulty could be addressed by the organization requiring specific reports from its representatives regarding their activities or by the organization requiring its representatives to decline individual appointments.

One commenter asserted that proposed § 14.628(e) creates an inequitable if not unlawful situation by providing that only the Secretary is authorized to recognize service organizations but that the General Counsel is authorized to deny recognition to service organizations. The commenter suggested that both powers should reside with either the Secretary or the General Counsel. In light of this comment, we have determined that the authority to grant or deny recognition to an organization should reside with the Secretary and have amended § 14.628(e) accordingly.

We also note that electronic filing, via electronic mail or facsimile, of information provided to VA under § 14.628 is acceptable.

Section 14.629 Requirements for Accreditation of Service Organization Representatives; Agents; and Attorneys

One commenter argued that the current introductory text of § 14.629 permitting an "appropriate" VA official to appeal a regional counsel's determination regarding the qualifications of a service organization representative should not be revised by substitution of reference to a "concerned" VA official, as proposed. The commenter suggested that a "concerned" official could include one motivated by purely personal interests. This change was intended to provide greater specificity in the regulation. Further, it cannot be presumed that VA officials will take official actions based on improper motives. However, to further enhance the specificity of the provision, we have revised the introductory text of § 14.629 to refer to an appeal by an Adjudication Officer or Service Center Manager.

Several commenters addressed aspects of the testing requirements in proposed §§ 14.629(a)(2)(ii) and 14.629(b)(2). These comments evidenced a misconception that the examination requirements would apply to all service organization representatives. In fact, these requirements, which already exist in current regulations, apply respectively only to county veterans service officers recommended for accreditation by State organizations and to applicants for accreditation as claims agents. In light of this misunderstanding, we make no change based on these comments.

One commenter expressed the view that the claims-agent testing requirement should be applied to all applicants for accreditation. Veterans service organizations generally conduct their own training and testing programs or contract for training and testing of the representatives in order to assure proper handling of claims. VA is aware of no evidence that this system is not working adequately. Accordingly, we see no need for imposition of a requirement that all applicants for accreditation be tested by VA.

To promote consistency with regulations and practices governing access to Veterans Benefits Administration automated claims records, we are adding a note at the end of § 14.629 to clarify that persons working under the supervision of a claimant's designated representative may qualify for read-only access to the claimant's Veterans Benefits Administration automated claims records.

Section 14.631 Powers of Attorney

One commenter questioned the proposal in proposed § 14.631(a)(2) to require the submission of a power of attorney to the VA "regional office that has jurisdiction over the claim." That section currently requires that the power of attorney be submitted to the "appropriate" VA office. The commenter argued that the change is inconsistent with VA's practice of accepting claims at facilities other than regional offices and would require claimants, in certain instances, to submit powers of attorney and claims to different offices. Based on this comment, we have determined to retain the current wording of § 14.631(a)(2).

The same commenter stated that an additional provision should be added to § 14.631(c) permitting a service organization to file with VA a notice that it will not allow the appointment of an individual accredited representative of the organization as the sole representative of a claimant. The commenter stated that the appointment of specific representatives would impair the ability of the organization to exercise management control over its operations. Two other commenters expressed the belief that a claimant should not be permitted to appoint an individual representative in a power of attorney, as would be permitted under proposed § 14.631(c). Proposed § 14.631(c) is intended to reflect the amendment to 38 U.S.C. 5902(c) made by Public Law 104–275. That statute clearly reflects Congress' judgment that a claimant may under certain circumstances choose to appoint an individual accredited service organization representative as his or her sole representative. We note, however, that, notwithstanding the referenced statute, service organizations retain management authority over their representatives, may direct them not to accept individual appointments, and may request cancellation of their accreditation if they fail to follow organization policy in this regard. Such matters involve issues of internal service organization operations that need not be addressed in the regulations.

One commenter suggested that, in light of proposed § 14.631(d), which permits a service organization or individual named in a claimant's power of attorney to decline appointment as a claimant's representative, the power-of-attorney form should incorporate an acceptance space that must be signed by the accredited representative to make the appointment operative. Because recognized service organizations are generally expected to provide representation to each claimant requesting assistance, we believe it is not unreasonable to require service organizations and their representatives to decline an appointment by written notification to the claimant and VA. Written notification to VA may be submitted via hand delivery, mail, electronic mail, or facsimile. Accordingly, we have adopted proposed § 14.631(d) without change, but have added a note to that provision clarifying the acceptable means of submission of notification to VA.

Section 14.633 Termination of Accreditation of Agents, Attorneys, and Representatives

We received numerous comments on various aspects of our proposed amendments to § 14.633, governing termination of accreditation. In light of these comments, we are undertaking a full reevaluation of that section of the regulation and plan to publish a revised proposal concerning that provision in the future. Accordingly, we are not adopting any changes to § 14.633 at this time.

Section 14.635 Office Space and Facilities

One commenter stated the belief that an appeal process is needed to prevent arbitrary and capricious decisions from being made by VA facility directors, who have discretion under proposed § 14.635 to withdraw office space and facilities previously granted to an organization and to reassign the space to another organization. As stated in proposed § 14.635(b), final decisions regarding allocation of office space and facilities will be made by the Under Secretary for Benefits in the case of a facility under the control of the Veterans Benefits Administration. Thus, if any organization feels that space has been withdrawn by a facility director in an arbitrary manner, the organization may appeal the matter to the Under Secretary. This should provide a sufficient safeguard against arbitrary decisionmaking. We have added a reference to the regulation to provide for final decision by the Under Secretary for Health in the case of a facility under the control of the Veterans Health Administration.

Another commenter suggested that office space currently assigned to accredited representatives should not be subject to withdrawal. Under 38 U.S.C. 5902(a)(2), VA may, on a discretionary basis, furnish space and facilities, if available, to organizations engaged in claim representation. Guaranteeing space to representatives currently occupying such space would interfere with VA's ability to accomplish its mission by using its facilities in the most efficient manner. Accordingly, we have not adopted this suggestion.

Applicability of Regulations

Three commenters asked whether the proposed amendments would apply to organizations and representatives already recognized or accredited. As to organizations, current regulations at 38 CFR 14.628(a)(1) and (f), which would not be changed by these amendments, reflect VA's understanding that organizations must continue to meet regulatory requirements for recognition in order to retain that recognition. Existing organizations would be expected to meet the amended requirements subsequent to their effective date. However, VA has no plans to conduct a review of already-recognized organizations to assure compliance with the revised

requirements. As to individual representatives, those already accredited need not reapply for accreditation under the amended regulations, nor must new powers of attorney be submitted to replace powers of attorney currently in force.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains provisions constituting a collection of information at 38 CFR 14.629(b) under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Accordingly, the Office of Management and Budget (OMB) has approved the information collection requirements for § 14.629(b) and has assigned an OMB control number 2900–0605.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that adoption of these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Because this action merely clarifies VA's procedures concerning the accreditation and recognition of claimant representatives, it will not require significant changes in operations for those affected by the rule. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: November 18, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 14 is amended as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL

1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905, 28 CFR part 14, appendix to part 14, unless otherwise noted.

2. Section 14.626 is revised to read as follows:

§ 14.626 Purpose.

The purpose of the regulation of representatives is to ensure that claimants for Department of Veterans Affairs benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

3. Section 14.627 is amended by:

A. Redesignating paragraphs (h), (i), (j), and (k) as paragraphs (k), (l), (m), and (n), respectively.

B. Revising paragraph (g).

C. Adding new paragraphs (h), (i), and (j).

D. Adding an authority citation at the end of the section.

The revision and additions read as follows:

§ 14.627 Definitions.

* * * * *

(g) *Claimant* means a person who has filed or has expressed to a representative, agent, or attorney an intention to file a written application for determination of entitlement to benefits provided under title 38, United States Code, and implementing directives.

(h) *Complete claims service* means representation of each claimant requesting assistance, from the initiation of a claim until the completion of any potential administrative appeal.

(i) *Cross-accreditation* means an accreditation based on the status of a representative as an accredited and functioning representative of another organization.

(j) *Facilities* means equipment and furnishings that promote the efficient operation of an office, and adjacent accommodations, which are needed to facilitate access to office space.

* * * * *

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

4. Section 14.628 is amended by:

A. Revising the paragraph heading in paragraph (c).

B. Removing paragraph (e).

C. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.

D. Revising paragraphs (a)(2), (b), (d), and newly redesignated paragraph (e).

E. Revising the information collection parenthetical at the end of the section.

The revisions read as follows:

§ 14.628 Recognition of organizations.

* * * * *

(a) * * *

(2) It satisfies the following requirements:

(i) Requirements set forth in paragraph (d) of this section, including information required to be submitted under that paragraph;

(ii) In the case of a membership organization, membership of 2,000 or more persons, as certified by the head of the organization;

(iii) Capability and resources to provide representation to a sizable number of claimants;

(iv) Capability to represent claimants before the Board of Veterans' Appeals in Washington, D.C.; and

(v) Geographic diversification, i.e., either one or more posts, chapters, or offices in at least ten states, or one or more members in at least twenty states.

(b) *State organization.* An organization created and primarily funded by a State government for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) *Regional or local organization.*

* * *

(d) *Requirements for recognition.* (1) In order to be recognized under this section, an organization shall meet the following requirements:

(i) Have as a primary purpose serving veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit a statement establishing the purpose of the organization and that veterans would benefit by recognition of the organization.

(ii) Demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) The number of members and number of posts, chapters, or offices and their addresses;

(B) A copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate;

(C) A description of the services performed or to be performed in connection with programs administered by the Department of Veterans Affairs, with an approximation of the number of veterans, survivors, and dependents served or to be served by the organization in each type of service designated; and

(D) A description of the type of services, if any, performed in connection with other Federal and State programs which are designed to assist former Armed Forces personnel and their dependents, with an approximation of the number of veterans, survivors, and dependents served by the organization under each program designated.

(iii) Commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting particular veterans' services (VA may, in cases where it deems necessary, require an audited financial statement); and

(B) A statement indicating that use of the organization's funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before the Department of Veterans Affairs.

(iv) Maintain a policy and capability of providing complete claims service to each claimant requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service. Except as provided in paragraphs (d)(1)(iv)(A) and (B) of this section, in establishing that it meets this requirement, an organization requesting recognition shall submit evidence of its capability to represent claimants before Department of Veterans Affairs regional offices and before the Board of Veterans' Appeals.

(A) If an organization does not intend to represent claimants before the Board of Veterans' Appeals, the organization shall submit evidence of an association or agreement with a recognized service organization for the purpose of representation before the Board of Veterans' Appeals, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning the availability of alternative sources of claims service.

(B) If an organization does not intend to represent each claimant requesting assistance, the organization shall submit a statement of its policy concerning the selection of claimants and the proposed method of informing claimants of this policy, with advice concerning the availability of alternative sources of claims service.

Note to Paragraph (d)(1)(iv): An organization may be considered to provide complete claims service notwithstanding the exercise of discretion to determine that provision of representation in a particular case is impracticable or inappropriate because, under the circumstances, the facts or law do not support the filing of a claim or appeal, an appropriate representative-claimant relationship cannot be maintained, or representation would give rise to a conflict of interest on the part of the organization.

(v) Take affirmative action, including training and monitoring of accredited representatives, to ensure proper handling of claims. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) A statement of the skills, training, and other qualifications of current paid or volunteer staff personnel for handling veterans' claims; and

(B) A plan for recruiting and training qualified claim representatives, including the number of hours of formal classroom instruction, the subjects to be taught, the period of on-the-job training, a schedule or timetable for training, the projected number of trainees for the first year, and the name(s) and qualifications of the individual(s) primarily responsible for the training.

(2) In addition, the organization requesting recognition shall supply:

(i) A statement that neither the organization nor its accredited representatives will charge or accept a fee or gratuity for service to a claimant and that the organization will not represent to the public that Department of Veterans Affairs recognition of the organization is for any purpose other than claimant representation; and

(ii) The names, titles, and addresses of officers and the official(s) authorized to certify representatives.

(e) *Recognition or denial.* Only the Secretary is authorized to recognize organizations. Notice of the Secretary's determination on a request for recognition will be sent to an organization within 90 days of receipt of all information to be supplied.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0439.)

5. Section 14.629 is amended by:

A. Revising the section heading and introductory text.

B. Removing paragraphs (a)(1)(i) through (a)(1)(iii).

C. Revising paragraph (a) introductory text, paragraph (a)(1), paragraph (a)(2)(ii), and the authority citation at the end of paragraph (a).

D. Revising paragraphs (b) and (c).

E. Revising the information collection parenthetical at the end of the section.

The revisions read as follows:

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

The Regional Counsel of jurisdiction will resolve any question of current qualifications of a service organization representative, agent, or attorney. The claimant, the service organization representative, agent, or attorney, or an official of the organization for which such person acts, or a Department of Veterans Affairs Adjudication Officer or Service Center Manager may appeal such determination to the General Counsel.

(a) *Service Organization Representatives.* A recognized organization shall file with the Office of the General Counsel VA Form 21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation and has demonstrated an ability to represent claimants before the Department of Veterans Affairs;

(2) * * *

(ii) Has successfully completed a course of training and an examination which have been approved by a Regional Counsel with jurisdiction for the State; and

* * * * *

(Authority: 38 U.S.C. 501(a), 5902)

(b) *Agents.* (1) An individual desiring accreditation as an agent must establish that he or she is of good character and reputation and is qualified to render assistance to claimants in the presentation of their claim(s). An individual desiring accreditation as an agent must file a completed application with the Office of the General Counsel on VA Form 21a on which the applicant submits the following:

(i) His or her full name and business address;

(ii) Information concerning the applicant's military and civilian employment history (including character of military discharge, if applicable);

(iii) Information concerning representation provided by the applicant before any department, agency, or bureau of the Federal government;

(iv) Information concerning any criminal background of the applicant;

(v) Information concerning whether the applicant has ever been determined mentally incompetent or hospitalized as a result of a mental disease or disability, or is currently under treatment for a mental disease or disability;

(vi) Information concerning whether the applicant was previously accredited as a representative of a veterans service organization and, if so, whether that accreditation was terminated or suspended by or at the request of that organization;

(vii) The names, addresses, and phone numbers of three character references; and

(viii) Information relevant to whether or not the applicant has any physical limitations which would interfere with the completion of a comprehensive written examination administered under the supervision of a VA Regional Counsel.

(2) Applicants must achieve a score of 75 percent or more on a written examination administered by VA as a prerequisite to accreditation. No applicant shall be allowed to sit for the examination more than twice in any 6-month period.

(Authority: 38 U.S.C. 501(a), 5904)

(c) *Attorneys.* (1) An attorney may represent a claimant upon submission of authorization as described in § 14.631(a) or (b).

(2) If the claimant consents in writing, an attorney associated or affiliated with the claimant's attorney of record or employed by the same legal services office as the attorney of record may assist in the representation of the claimant.

(3) A legal intern, law student, or paralegal may not be independently accredited to represent claimants under this paragraph. A legal intern, law student, or certified paralegal may assist in the preparation, presentation, or prosecution of a claim, under the direct supervision of an attorney of record designated under § 14.631(a) or (b), if the claimant's written consent is furnished to the Department of Veterans Affairs. Such consent must specifically state that participation in all aspects of the claim by a legal intern, law student, or paralegal furnishing written authorization from the attorney of record is authorized. In addition, suitable authorization for access to the claimant's records must be provided in order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. (*See* § 20.606).

(4) Unless revoked by the claimant, consent provided under paragraph (c)(2) or paragraph (c)(3) of this section shall remain effective in the event the claimant's original attorney is replaced as attorney of record by another member of the same law firm or an attorney employed by the same legal services office.

Note to § 14.629: A legal intern, law student, paralegal, or veterans service organization support-staff person, working under the supervision of an individual designated under § 14.631(a) as the claimant's representative, attorney, or agent, may qualify for read-only access to pertinent Veterans Benefits Administration automated claims records.

(Authority: 38 U.S.C. 501(a), 5904)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0018 and 2900–0605.)

6. Section 14.630 is revised to read as follows:

§ 14.630 Authorization for a particular claim.

(a) Any person may be authorized to prepare, present, and prosecute one claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A signed writing, which may be in letter form, identifying the claimant and the type of benefit or relief sought, specifically authorizing a named individual to act as the claimant's representative, and further authorizing direct access to records pertinent to the claim, will be accepted as a power of attorney.

(b) Representation may be provided by an individual pursuant to this section one time only. An exception to this limitation may be granted by the General Counsel in unusual circumstances. Among the factors which may be considered in determining whether an exception will be granted are:

(1) The number of accredited representatives and claims agents operating in the claimant's geographic region;

(2) Whether the claimant has unsuccessfully sought representation from other sources;

(3) The nature and status of the claim; and

(4) Whether there exists unique circumstances which would render alternative representation inadequate.

(Authority: 38 U.S.C. 501(a), 5903)

7. Sections 14.631 is amended by:

A. Revising paragraph (a) introductory text.

B. Removing paragraphs (c)(3) and (e).

C. Redesignating paragraphs (b), (c), and (d) as paragraphs (e), (f), and (g), respectively.

D. Revising newly redesignated paragraphs (e), (f)(1), and (g).

E. Adding paragraphs (b), (c), and (d).

F. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either Department of Veterans Affairs Form 21–22 (Appointment of Veterans Service Organization as Claimant's Representative) or Department of Veterans Affairs Form 22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with paragraph (b) of this section or when representation by an individual is authorized under § 14.630. The power of attorney shall meet the following requirements:

* * * * *

(b) An attorney engaged by a client may state in a signed writing on his or her letterhead that the attorney is authorized to represent the claimant. This evidence of authorization shall be equivalent to an executed power of attorney and shall be presented to the Department of Veterans Affairs regional office that has jurisdiction over the claim for filing the claimant's claims folder.

(c) The Secretary may, for any purpose, treat a power of attorney naming as a claimant's representative an organization recognized under § 14.628, a particular office of such an organization, or an individual representative of such an organization as an appointment of the entire organization as the claimant's representative, unless the claimant specifically indicates in the power of attorney a desire to appoint only the individual representative. Such specific indication must be made in the space on the power-of-attorney form for designation of the representative and must use the word "only" with reference to the individual representative.

(d) An organization, representative, agent, or attorney named in a power of attorney executed pursuant to paragraph (a) of this section may decline to accept appointment as a claimant's representative by so notifying the claimant and the agency of original jurisdiction in writing prior to taking any action on the claimant's behalf before the Department of Veterans Affairs after execution of the power of attorney by the claimant.

Note to § 14.631(d): Written notification to VA may be submitted via hand delivery, mail, electronic mail, or facsimile.

(e) Questions concerning the validity or effect of powers of attorney shall be referred to the Regional Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(f)(1) Only one organization, representative, agent, or attorney will be recognized at one time in the prosecution of a particular claim. Except as provided in § 14.629(c) and paragraph (f)(2) of this section, all transactions concerning the claim will be conducted exclusively with the recognized organization, representative, agent, or attorney of record until notice of a change, if any, is received by the appropriate office of the Department of Veterans Affairs.

* * * * *

(g)(1) A power of attorney may be revoked at any time, and an attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney shall constitute a revocation of an existing power of attorney.

(2) If an attorney submits a letter concerning representation under paragraph (b) of this section regarding a particular claim, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

8. Section 14.632 is revised to read as follows:

§ 14.632 Determination of qualifications.

If challenged, the qualifications of prospective representatives or agents shall be verified by the Regional Counsel of jurisdiction. The report of the Regional Counsel, if any, including any recommendation of the Department of Veterans Affairs facility director, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, notification of accreditation will be issued by the General Counsel or the General Counsel's designee and will constitute authority to prepare, present, and prosecute claims in all Department of Veterans Affairs installations.

(Authority: 38 U.S.C. 501(a), 5902, 5904)

§ 14.634 [Amended]

9. Section 14.634 is amended by removing the Cross References paragraph at the end of the section.

10. Section § 14.635 is amended by:

A. Revising the introductory text.

B. Revising paragraph (b), and the authority citation at the end of the section.

C. Removing the Cross References paragraph at the end of the section.

The revisions read as follows:

§ 14.635 Office space and facilities.

The Secretary may furnish office space and facilities, if available, in buildings owned or occupied by the Department of Veterans Affairs, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting claimants in the preparation, presentation, and prosecution of claims for Department of Veterans Affairs benefits.

* * * * *

(b) When in the judgment of the Director office space and facilities previously granted could be better used by the Department of Veterans Affairs, or would receive more effective use or serve more claimants if allocated to another recognized national organization, the Director may withdraw such space or reassign such space to another organization. In the case of a facility under the control of the Veterans Benefits Administration or the Veterans Health Administration, the final decision on such matters will be made by the Under Secretary for Benefits or the Under Secretary for Health, respectively.

(Authority: 38 U.S.C. 501(a), 5902)

[FR Doc. 03–4203 Filed 2–21–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 60

RIN 2900–AL13

Fisher Houses and Other Temporary Lodging

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or Compensation and Pension (C&P) examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. This is necessary to implement provisions of the Veterans Benefits and Health Care Improvement Act of 2000.

DATES: *Effective Date:* March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Jill E. Manske, Social Work Services (110B), Veterans Health Administration, 202–273–8549 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document sets forth requirements regarding the use of temporary lodging by veterans receiving VA medical care or C&P examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. VA is mandated to establish a program for providing such temporary lodging under section 221(a) of the Veterans Benefits and Health Care Improvement Act of 2000 (Public Law 106–419). These statutory provisions regarding temporary lodging have been codified at 38 U.S.C. 1708 and are administered by the Veterans Health Administration (VHA) of VA.

In a document published in the **Federal Register** on April 30, 2002 (67 FR 21191), VA proposed to provide for temporary lodging at Fisher Houses, VA health care facilities (generally referred to as "hoptels"), and at temporary non-VA lodging facilities, such as hotels or motels, provided by a VA health care facility. These are the facilities that may be used for temporary lodging under 38 U.S.C. 1708.

The public comment period ended on July 1, 2002. We received one comment asking VA to change the text in paragraph 60.2 (1) to add the words "or Fisher House Foundation" after "Zachary and Elizabeth M. Fisher Armed Services Foundation." We agree. This change will accurately reflect the name of this organization.

Based on the rationale set forth in the proposed rule and this document, we

are adopting the provisions of the proposed rule as a final rule with the change mentioned above.

Under 38 U.S.C. 1708(c), a Fisher House is a housing facility that is located at or near a VA health care facility, that is available for residential use on a temporary basis by eligible persons, and that was constructed by and donated to VA by the Zachary and Elizabeth M. Fisher Armed Services Foundation or Fisher House Foundation.

Consistent with the limits of statutory authority in 38 U.S.C. 1708(b) and subject to the conditions discussed in this document, this final rule provides that the following are eligible to stay in temporary lodging:

(a) A veteran with an appointment at a VA health care facility for the purpose of receiving health care or a C&P examination; and

(b) A member of the family of such veteran or another person who accompanies such veteran to provide the equivalent of familial support.

This final rule provides that to obtain temporary lodging, a veteran must make an application to the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. This may be done by letter, electronic means (including telephone, e-mail, or facsimile), or in person at the VA health care facility of jurisdiction. Under the final rule, the veteran must provide the following information:

(a) Veteran's name;

(b) Beginning date and time and duration of scheduled care;

(c) Type of scheduled care;

(d) Name, gender, and relationship to the veteran of person accompanying veteran;

(e) Requested dates for temporary lodging;

(f) Distance, time, and means of travel from the veteran's home to VA health care facility;

(g) Circumstances that may affect the time of travel from the veteran's home to VA health care facility; and

(h) A statement that the veteran is medically stable and capable of self-care or will be accompanied by a caregiver able to provide the necessary care. This will allow for ease of application and provide VA with information necessary to determine whether the veteran is eligible for temporary lodging.

This final rule provides that, as a condition for receiving temporary lodging, a veteran must be required to travel either 50 or more miles, or at least two hours from their home to the VA health care facility, except that the facility Director at the VA health care facility of jurisdiction may make an exception to distance or time provisions based on exceptional circumstances, such as condition of the veteran, inclement weather, road conditions, or the mode of transportation used by the veteran. We believe this a reasonable interpretation of the requirement at 38 U.S.C. 1708(b)(1) which provides that a veteran must travel a "significant distance" for the veteran and other person to be eligible for temporary housing.

The final rule also provides that, as a condition for receiving temporary lodging, the veteran must be medically stable and must be capable of self-care or be accompanied by a caregiver able to provide the necessary care. This is necessary because VA does not provide nursing or other medical care for temporary lodging beds.

This final rule establishes criteria for determining when temporary lodging will be made available. Consistent with VHA's health care mission, the rule provides that temporary lodging may be furnished in connection with care or C&P examinations provided at a VA health care facility. The rule provides that if the veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care. The rule also provides that temporary lodging may be available the night before the day of the scheduled care, if the veteran leaving home by 8 a.m., would be unable to arrive at the health care facility by the time of the scheduled care. Further, the rule provides that temporary lodging may be available the night of the scheduled care if, after the completion of the care, the veteran would be unable to return home by 7 p.m. These provisions are designed to allow temporary lodging during the times it would be reasonably needed.

Fisher Houses are available solely for temporary lodging. The final rule provides that non-utilized beds and rooms at a VA health care facility will be made available if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. The rule also provides that temporary lodging facilities, such as hotels or motels, will be utilized based on availability of local funding as determined by the Director of the health care facility. In addition, temporary lodging will be provided on a first-come first-serve basis. We believe that these provisions constitute an appropriate use of VA facilities and establish a reasonable method for determining priority.

Except for certain medically-related decisions that are left to health care personnel, the final rule provides that decisions concerning temporary lodging are to be made by the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. We believe these are appropriate delegations of authority.

VA has authority under 38 U.S.C. 1708 to establish charges for temporary lodging. We believe that if we were to charge, we would need to establish exemptions for those who lack the means to pay for lodging accommodations. Further, based on our experience, we believe that the vast majority of veterans who seek temporary lodging fall into this category. Moreover, we believe that administrative costs for determining need and the additional billing costs would exceed amounts we could reasonably expect to collect based on any reasonable charge amount. Accordingly, the final rule provides that costs for temporary lodging shall be borne by VA.

Paperwork Reduction Act

This document contains provisions constituting collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) approved by the Office of Management and Budget under control number 2900–0630.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The adoption of the final rule will not have an effect on small entities other than possibly the lodging industry. However, any effect would be minuscule. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: November 27, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR chapter I is amended by adding a new part 60 to read as follows:

PART 60—FISHER HOUSES AND OTHER TEMPORARY LODGING

Sec.

60.1 Purpose.
60.2 Definitions.
60.3 Eligible persons.
60.4 Application.
60.5 Travel.
60.6 Condition of veteran.
60.7 Duration of temporary lodging.
60.8 Lodging availability.
60.9 Decisionmaker.
60.10 Costs.

Authority: 38 U.S.C. 501, 1708.

§ 60.1 Purpose.

This part sets forth requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or C&P examinations and a family member or other person accompanying the veteran to provide the equivalent of familial support.

(Authority: 38 U.S.C. 501, 1708)

§ 60.2 Definitions.

For the purposes of this part:

C&P examination means an examination requested by VA's Compensation and Pension Service to be conducted at a VA health care facility for the purpose of evaluating claims by veterans.

Temporary lodging means:

(1) Lodging at a Fisher House which is a housing facility that is located at or near a VA health care facility, that is available for residential use on a temporary basis by eligible persons, and that was constructed by and donated to VA by the Zachary and Elizabeth M. Fisher Armed Services Foundation or Fisher House Foundation; or

(2) Lodging at a temporary lodging facility located at a VA health care facility (generally referred to as a "hoptel"), or a temporary non-VA lodging facility, such as a hotel or motel, provided by a VA health care facility.

VA means the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 1708)

§ 60.3 Eligible persons.

The following are eligible to stay in temporary lodging subject to the conditions of this part:

(a) A veteran with an appointment at a VA health care facility for the purpose of receiving health care or a C&P examination; and

(b) A member of the family of such veteran or another person who accompanies such veteran to provide the equivalent of familial support.

(Authority: 38 U.S.C. 501, 1708)

§ 60.4 Application.

To obtain temporary lodging under this part, a veteran must make an application to the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. This may be done by letter, electronic means (including telephone, e-mail, or facsimile), or in person at the VA health care facility of jurisdiction. The veteran shall provide the following information:

(a) Veteran's name;

(b) Beginning date and time and duration of scheduled care;

(c) Type of scheduled care;

(d) Name, gender, and relationship to the veteran of person accompanying veteran;

(e) Requested dates for temporary lodging;

(f) Distance, time, and means of travel from the veteran's home to VA health care facility;

(g) Circumstances that may affect the time of travel from the veteran's home to VA health care facility; and

(h) A statement that the veteran is medically stable and capable of self-care or will be accompanied by a caregiver able to provide the necessary care.

(Authority: 38 U.S.C. 501, 1708)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0630.)

§ 60.5 Travel.

As a condition for receiving temporary lodging under this part, a veteran must be required to travel either 50 or more miles, or at least two hours from his or her home to the VA health care facility, except that the facility Director at the VA health care facility of jurisdiction may make an exception to distance or time provisions based on exceptional circumstances, such as condition of the veteran, inclement weather, road conditions, or the mode of transportation used by the veteran.

(Authority: 38 U.S.C. 501, 1708)

§ 60.6 Condition of veteran.

As a condition for receiving temporary lodging under this part, the veteran must be medically stable and must be capable of self-care or be accompanied by a caregiver able to provide the necessary care. Questions regarding these issues will be resolved by an appropriate health care provider at the VA health care facility of jurisdiction.

(Authority: 38 U.S.C. 501, 1708)

§ 60.7 Duration of temporary lodging.

Temporary lodging may be furnished to eligible persons in connection with care or C&P examinations provided at a VA health care facility. When a veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care subject to limitations described in this section. Temporary lodging may be available the night before the day of the scheduled care, if the veteran leaving home by 8 a.m., would be unable to arrive at the health care facility by the time of the scheduled care. Temporary lodging may be available the night of the scheduled care if, after the completion of the care, the veteran would be unable to return home by 7 p.m.

(Authority: 38 U.S.C. 501, 1708)

§ 60.8 Lodging availability.

Fisher Houses are available solely for temporary lodging under this part. Non-utilized beds and rooms at a VA health care facility will be made available if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. Temporary lodging facilities, such as hotels or motels, will be utilized based on availability of local funding as determined by the Director of the health care facility of jurisdiction. Temporary lodging will be provided on a first-come first-serve basis.

(Authority: 38 U.S.C. 501, 1708)

§ 60.9 Decisionmaker.

Except as otherwise provided in this part, the person responsible for

coordinating the temporary lodging program at the VA health care facility of jurisdiction is responsible for making decisions under this part.

(Authority: 38 U.S.C. 501, 1708)

§ 60.10 Costs.

Costs for temporary lodging under this part shall be borne by VA.

(Authority: 38 U.S.C. 501, 1708)

[FR Doc. 03–4204 Filed 2–21–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI80–01–7289a, FRL–7442–9]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Excess Emissions During Startup, Shutdown or Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving several rule revisions for incorporation into Michigan's State Implementation Plan (SIP). The Michigan Department of Environmental Quality (MDEQ) submitted these revisions to EPA on September 23, 2002. They include rules to address excess emissions occurring during startup, shutdown or malfunction, as well as revisions to related definitions.

DATES: This rule is effective on April 25, 2003, unless EPA receives adverse written comments by March 26, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

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I. What Did Michigan Submit?
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VI. Statutory and Executive Order Reviews.

I. What Did Michigan Submit?

On September 23, 2002, the MDEQ submitted a revision to its SIP containing rules to address excess emissions occurring during startup, shutdown or malfunction, as well as revisions to related definitions. MDEQ submitted the following rules:

R 336.1102 Definitions; B
R 336.1104 Definitions; D
R 336.1105 Definitions; E
R 336.1107 Definitions; G
R 336.1108 Definitions; H
R 336.1113 Definitions; M
R 336.1118 Definitions; R
R 336.1120 Definitions; T
R 336.1915 Enforcement discretion in instances of excess emissions resulting from malfunction, start-up or shutdown.
R 336.1916 Affirmative defense for excess emissions during start-up or shutdown.

II. What Action Is EPA Taking?

EPA is approving all of these rules for incorporation into Michigan's SIP.

III. What Criteria Is EPA Using in Reviewing the State's Submission?

In determining the approvability of a rule for incorporation into a state SIP, EPA must evaluate the rule for consistency with the requirements of the Clean Air Act (Act), EPA regulations and the EPA's interpretation of these requirements as expressed in EPA policy documents. The EPA's policy on excess emissions occurring during startup, shutdown or malfunction is set forth in the following documents: a memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions;" EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation; EPA's policy memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown;" and EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977).

The policy documents referenced above note that, because excess emissions might aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation. Nevertheless, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. With respect to startup and shutdown of process equipment, EPA also recognizes that this is part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will, in most cases, eliminate violations of emission limitations during such periods. However, EPA acknowledges that for a few sources there may exist infrequent short periods of excess emissions during startup and shutdown which cannot be avoided.

One way of addressing these situations is through an "enforcement discretion" approach. In this type of approach, a state or EPA can refrain from taking an enforcement action if appropriate criteria are met. A second way of addressing excess emissions occurring during startup and shutdown periods is through an "affirmative defense" approach. Under this approach, a SIP provision would, in the context of an enforcement action for excess emissions, excuse a source from penalties if the source can demonstrate that it meets certain objective criteria (an "affirmative defense"). See EPA's September 20, 1999 policy memorandum. Michigan's rules contain both enforcement discretion and affirmative defense provisions.

IV. Are Michigan's Rules Consistent With the Clean Air Act?

We have reviewed Michigan's submittal. For the reasons discussed below, we have found it to be consistent with the requirements of the Act, as set forth in the applicable EPA policy documents and rules. Therefore, we are approving Michigan's rule revisions for incorporation into the State's SIP.

Definitions

R 336.1102(a), R 336.1104(e), R 336.1107(g), R 336.1108(c), R 336.1118(f) and R 336.1120(i) contain minor administrative revisions, *e.g.* replacing commission with department. All of these revisions are acceptable.

R 336.1105(f) was revised to define "excess emissions" as "emissions of an air contaminant in excess of any applicable emission limitation." R 336.1113(d) was revised to read as follows:

> "Malfunction" means any sudden, infrequent and not reasonably preventable failure of a source, process, process equipment, or air pollution control equipment to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

These definitions are consistent with the EPA policy documents listed above which pertain to excess emissions occurring during startup, shutdown and malfunctions.

Rules R 336.1915 and R 336.1916 address excess emissions occurring during startup, shutdown or malfunction. Rule R 336.1915 contains Michigan's procedure for utilizing enforcement discretion for excess emissions resulting from malfunction, startup or shutdown.

Enforcement Discretion Approach

EPA's February 15, 1983, policy sets forth the criteria that should be considered in determining whether enforcement discretion should be exercised in cases of malfunction. The criteria are listed below, as are the sections of Michigan's rule which address the criteria:

1. To the maximum extent practicable the air pollution control equipment, process equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions. (336.1915(3)(b))
2. Repairs were made in an expeditious fashion when the operator knew or should have know that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable. (336.1915(3)(d))
3. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions. (336.1915(3)(e))
4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality. (336.1915(3)(f))
5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance. (336.1915(3)(g))

In addition, Michigan's rule requires the following:

1. The excess emissions must be the result of a sudden and unavoidable breakdown of process or control equipment, beyond the reasonable control of the person operating the facility;
2. The excess emissions caused by a bypass of control equipment were unavoidable to prevent loss of life, personal injury, or severe property damage;
3. The malfunction was an infrequent event and was not reasonably preventable;
4. All emission monitoring systems were kept in operation if at all possible;
5. The source has a malfunction abatement plan as set forth in Michigan's rules;
6. The excess emissions were reported to MDEQ as specified in their rules and, if requested by the MDEQ, the source must submit a written report that includes known causes, corrective actions taken, and preventive measures to be taken to minimize or eliminate the chance of recurrence;
7. The actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence; and
8. Any information submitted to MDEQ under the rule must be properly certified.

All of these provisions are appropriate and consistent with the EPA policy documents listed above.

For excess emissions occurring during startup or shutdown of process equipment, EPA's February 15, 1983, policy requires that the excess emissions occur infrequently, over a short period; that the excess could not have been prevented through careful planning and design; and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage. Michigan includes these requirements under section 336.1915(4). In addition, sources must meet requirements comparable to those detailed above for malfunctions. All of these provisions are appropriate and consistent with the EPA policy documents listed above.

It should be noted that Michigan's rule clearly states that emission units subject to section 111 or 112 of the Act are subject to the startup, shutdown, or malfunction provisions contained in section 111 or 112. The rule also emphasizes that nothing in the rule limits the authority of MDEQ to seek injunctive relief.

Affirmative Defense Approach

Rule R 336.1916 contains Michigan's affirmative defense provisions for excess emissions resulting from startup or shutdown. As stated in EPA's September 20, 1999, policy memorandum, an acceptable affirmative defense provision may only apply to actions for penalties, but not to actions for injunctive relief. This restriction insures that State and Federal authorities remain able to protect air quality standards and PSD increments. Michigan's rule contains these restrictions in R 336.1916(1) and (4). Furthermore, the affirmative defense approach is appropriate only when the respective contributions of individual sources to pollutant concentrations in ambient air are such that no single source or small group of sources has the potential to cause an exceedance of the NAAQS or PSD increments. Michigan addresses this requirement in R 336.1916(2).

In addition, for periods of excess emissions arising during startup and shutdown, EPA's September 20, 1999, policy sets forth criteria which are part of the defendant's burden of proof. The criteria are listed below as are the sections of Michigan's rule which address the criteria:

1. The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design. (336.1916(1)(a))
2. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance. (336.1916(1)(b))
3. If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. (336.1916(1)(c))
4. At all times, the facility was operated in a manner consistent with good practice for minimizing emissions. (336.1916(1)(d))
5. The frequency and duration of operation in startup or shutdown mode

was minimized to the maximum extent practicable. (336.1916(1)(e))

6. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality. (336.1916(1)(f))

7. All emission monitoring systems were kept in operation if at all possible. (336.1916(1)(g))

8. The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence. (336.1916(1)(h) and (j))

9. The Owner or operator properly and promptly notified the appropriate regulatory authority. (336.1916(1)(i))

Both EPA policy and Michigan's rule note that if excess emissions occur during routine startup or shutdown periods due to a malfunction, then those instances should be treated as other malfunctions.

V. Is This Action Final, or May I Still Submit Comments?

EPA is publishing this action without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision. Should EPA receive adverse written comments by March 26, 2003, we will withdraw this direct final and respond to any comments in a final action. If EPA does not receive adverse comments, this action will be effective without further notice. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on April 25, 2003.

VI. What Statutory and Executive Order Reviews Did EPA Conduct?

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 9, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(118) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(118) The Michigan Department of Environmental Quality submitted revisions to Michigan's State Implementation Plan (SIP) on September 23, 2002. They include rules to address excess emissions occurring during startup, shutdown or malfunction as well as revisions to definitions.

(i) Incorporation by reference. The following sections of the Michigan Administrative Code are incorporated by reference.

(A) R 336.1102 Definitions; B, effective May 27, 2002.

(B) R 336.1104 Definitions; D, effective May 27, 2002.

(C) R 336.1105 Definitions; E, effective May 27, 2002.

(D) R 336.1107 Definitions; G, effective May 27, 2002.

(E) R 336.1108 Definitions; H, effective May 27, 2002.

(F) R 336.1113 Definitions; M, effective May 27, 2002.

(G) R 336.1118 Definitions; R, effective May 27, 2002.

(H) R 336.1120 Definitions; T, effective May 27, 2002.

(I) R 336.1915 Enforcement discretion in instances of excess emissions resulting from malfunction, start-up, or shutdown, effective May 27, 2002.

(J) R 336.1916 Affirmative defense for excess emissions during start-up or shutdown, effective May 27, 2002.

[FR Doc. 03–4260 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7454–5]

RIN 2003–AA00

Regulatory Innovations: Pilot-Specific Rule for Electronic Materials in EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes (CRT); Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for Regulatory Innovations: Pilot-Specific Rule for Electronic Materials in EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes (CRT). We published the direct final rule on December 26, 2002 date (67 FR 78718–78731), to exclude used CRTs and glass removed from CRTs from the definition of "solid waste" in the EPA Region III Mid-Atlantic States (which include the States of Delaware, Maryland, and West Virginia and the Commonwealths of Pennsylvania and Virginia, and the District of Columbia). We stated in the direct final rule that if we received adverse comment by January 27, 2003, we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on the direct final rule. We will address those comments in a subsequent final action on the parallel proposal also published on December 26, 2002, 67 FR 78761–78763. As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of February 24, 2003, EPA withdraws the direct final rule published at 67 FR 78718–78731, on December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Marie Holman (3EI00), U.S. EPA Region III, Office of Environmental Innovation, 1650 Arch Street, Philadelphia, PA 19103–2029 or *holman.marie@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a direct final rule on December 26, 2002, to exclude (in specified circumstances) used CRTs and glass removed from CRTs from the definition of "solid waste" in the EPA Region III Mid-Atlantic States (which include the States of Delaware, Maryland, and West Virginia and the Commonwealths of Pennsylvania and Virginia, and the District of Columbia). EPA published a companion proposed rule (67 FR 78761–78763) on the same date as the direct final rule.

The companion proposed rule invited comment on the substance of the direct final rule and stated that if adverse comment was received by January 27, 2003, the direct final rule would not become effective and a document would be published in the **Federal Register** to withdraw the direct final rule before the February 24, 2003, effective date. The EPA subsequently received adverse comments on the final rule. EPA plans to address those comments in a subsequent action. Today's action withdraws the direct final rule; the Regulatory Innovations: Pilot-Specific Rule for Electronic Materials in the EPA Region III Mid-Atlantic States; Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes (conditional exclusion for CRTs is not approved under 40 CFR part 261).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: February 13, 2003.

Donald S. Welsh, Regional Administrator, Region III.

[FR Doc. 03–4371 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 02–269]

Telecommunications Relay Services and the Americans With Disabilities Act of 1990; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On February 7, 2003 (68 FR 6352), the Commission published final rules in the **Federal Register**, which amended the rules for coin sent-paid. This document contains a correction to the **DATES** section which was published inadvertently.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418–1362 (voice), (202) 418–1398 (TTY), or e-mail *jsievert@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending part 64 in the **Federal Register** of February 7, 2003, (68 FR 6352). This document corrects the **DATES** section of the **Federal Register** summary as it appeared.

In rule FR Doc. 03–3069 published on February 7, 2003 (68 FR 6352) make the following correction:

On page 6352, in the third column, it incorrectly reads: **DATES:** Effective [INSERT 30 DAYS AFTER PUBLICATION IN THE **Federal Register**] except § 64.604(c)(3) of the Commission's rules which contain information collection(s) requirement shall become effective following approval by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date." Correct to read as follows: **DATES:** Effective March 10, 2003."

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4174 Filed 2–21–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 36
Monday, February 24, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–306–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, –320, and –500 Series Airplanes; and Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and all Model ATR72 series airplanes; that currently requires revising the Airplane Flight Manual (AFM) to modify procedures for calculating takeoff performance when Type II or IV de-icing or anti-icing fluids have been used. This action would require revising the existing AFM revision to correct the performance values for Model ATR–72 series airplanes and to provide an additional method of compliance for all airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions specified by the proposed AD are intended to ensure that the flightcrew is advised of the potential effects of Type II or IV de-icing or anti-icing fluids on the airplane's performance during takeoff, and to ensure that the flightcrew is advised of the revised performance calculations for takeoff to address these effects.

DATES: Comments must be received by March 26, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–306–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–306–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–306–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–306–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 15, 2001, the FAA issued AD 2001–16–10, amendment 39–12379 (66 FR 44032, August 22, 2001), applicable to all Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and all Model ATR72 series airplanes; to require revising the Airplane Flight Manual (AFM) to modify procedures for calculating takeoff performance when Type II or IV de-icing or anti-icing fluids have been used. That action was prompted by reports that use of these fluids may result in an increase in the pitch forces necessary to rotate the airplane during takeoff. This condition could result in a delayed takeoff or late aborted takeoff. The requirements of that AD are intended to ensure that the flightcrew is advised of the potential effects of Type II or IV de-icing or anti-icing fluids on the airplane's performance during takeoff, and to ensure that the flightcrew is advised of the revised performance calculations for takeoff to address these effects.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–16–10, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that the existing AFM revision includes incorrect percentages for increasing takeoff run (TOR), takeoff distance (TOD), and accelerate-stop distance (ASD) on Model ATR72 series airplanes. The DGAC had required an increase in TOR, TOD, and ASD in French airworthiness directives 2000–449–082(B) and 2000–448–053(B), both

dated October 31, 2000. (The identical requirements to revise the AFM were also specified in the FAA's AD 2001–16–10.)

Subsequently, the DGAC has reviewed flight simulations performed by the manufacturer of Model ATR42–200, –300, –320, and –500 series airplanes, and Model ATR72 series airplanes, and consequently approved an additional compliance method. The additional compliance method allows an "assisted rotation at takeoff." This is a procedure executed by the captain and the non-flying pilot when the flightcrew encounters increased pitch control forces, leading to difficulties in rotating. However, this method can only be applied if the flightcrew has been properly trained. The DGAC has determined that the procedure for assisted rotation at takeoff provides a level of safety equivalent to the requirements to revise the AFM specified in previously issued French airworthiness directives 2000–449–082(B) and 2000–448–053(B).

The DGAC has issued airworthiness directives 2000–448–053(B) R2 and 2000–449–082(B) R2, both dated September 19, 2001, in order to assure the continued airworthiness of these airplanes in France. These French airworthiness directives correct the incorrect percentages for TOR, TOD, and ASD, and specify the additional compliance method described previously.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–16–10 to continue to require revising the AFM to modify procedures for calculating takeoff performance when Type II or IV de-icing or anti-icing fluids have been used. The proposed AD also would require revising the existing AFM revision to correct the performance values (for Model ATR–72 series airplanes) and to provide an optional method of compliance (for all affected models).

Cost Impact

There are approximately 159 airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision currently required by AD 2001–16–10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required revision of the AFM on U.S. operators is estimated to be $9,540, or $60 per airplane.

The new AFM revision that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new proposed requirements of this AD on U.S. operators is estimated to be $9,540, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12379 (66 FR 44032, August 22, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Aerospatiale: Docket 2001–NM–306–AD. Supersedes AD 2001–16–10, Amendment 39–12379.

Applicability: All Model ATR42–200, –300, –320, and –500 series airplanes; and all Model ATR72 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the potential effects of Type II or IV de-icing or anti-icing fluids on the airplane's performance during takeoff, and to ensure that the flightcrew is advised of the revised performance calculations for takeoff to address these effects, accomplish the following:

Restatement of Requirements of AD 2001–16–10

Revision of the Airplane Flight Manual (AFM)

(a) Within 15 days after September 26, 2001 (the effective date of AD 2001–16–10, amendment 39–12379), revise the Appendices and Supplements chapter of the FAA-approved AFM by including either the following manufacturer's Appendix "Takeoff after use of Fluid Type II or IV" or a copy of this AD in the AFM.

"Takeoff After Use of Fluid Type II or IV

This appendix applies only to aircraft de-iced or anti-iced before takeoff, using fluid Type II or IV.

These types of fluid may lead to an increase in control forces necessary to rotate, and then to a modification of takeoff performance.

Therefore, this flight manual must be modified as follows:

1. General

The general information in Section 1 is applicable.

2. Limitations

The limitations in Section 2 are applicable.

3. Normal Procedures

The normal procedures in Section 3 are applicable.

4. Emergency Procedures

The emergency procedures in Section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in Section 5 are applicable.

6. Performances

The performances in Section 6 for dry runways and in Section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

- Determine VR for the lowest available V2,
- Assume V1=VR,
- Increase TOR, TOD, ASD by 20%.

7. Appendices and Supplements

Data of Section 7 are applicable by adding what follows:

For the dispatch cases:

- Apply takeoff penalties due to the system failure,
- Then apply takeoff penalties due to the use of fluids Type II or IV.

Dispatch is not authorized in the following cases:

- Ferry flight with pitch elevators disconnected,
- Takeoff with flaps retracted."

New Requirements of This AD

AFM Revision: Model ATR 42–200, –300, –320, and –500 Series Airplanes

(b) For Model ATR42–200, –300, –320, and –500 series airplanes: Within 15 days after the effective date of this AD, revise the Appendices and Supplements chapter of the AFM by removing the AFM revision required by paragraph (a) of this AD and inserting the following procedures in the AFM (this may be accomplished by inserting a copy of this AD into the AFM):

"Takeoff After Use of Fluid Type II or IV

This appendix applies only to aircraft de-iced or anti-iced before takeoff, using fluid Type II or IV.

These types of fluid may lead to an increase in control forces necessary to rotate, and then to a modification of takeoff performance.

Therefore, this flight manual must be modified as follows:

Compliance Method Number 1

1. General

The general information in Section 1 is applicable.

2. Limitations

The limitations in Section 2 are applicable.

3. Normal Procedures

The normal procedures in Section 3 are applicable.

4. Emergency Procedures

The emergency procedures in Section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in Section 5 are applicable with the addition of the following:

TAKEOFF SEQUENCE

In case of difficulties to rotate, the Captain (CPT) should request the non-flying pilot's (NFP's) assistance. In that case, on CPT order, NFP pulls the control column until 5 pitch attitude is reached, then NFP releases the controls.

PERFORMANCES

The performances in Section 6 for dry runways and in Section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

Increase TOD by 70 m for ATR 42–300

Increase TOD by 80 m for ATR–42–400/–500

6. Appendices and Supplements

Data of Section 7 are applicable with the addition of the following:

For the dispatch cases:

- Apply takeoff penalties due to the system failure,
- Then apply takeoff penalties due to the use of fluid Type II or IV.

Dispatch is not authorized in the following cases:

- Ferry flight with pitch elevators disconnected,
- Take-off with flaps retracted.

Compliance Method Number 2

Crew Training Required

1. General

The general information in Section 1 is applicable.

2. Limitations

The limitations in Section 2 are applicable.

3. Normal Procedures

The normal procedures in Section 3 are applicable with the addition of the following:

The Captain must be the pilot flying and the pre-takeoff briefing must include the following takeoff procedure (refer to point 5).

4. Emergency Procedures

The emergency procedures in Section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in Section 5 are applicable with the addition of the following:

TAKEOFF SEQUENCE

In case of difficulties to rotate, the Captain (CPT) should request the non-flying pilot's (NFP's) assistance. In that case, on CPT order, NFP pulls the control column until 5 pitch attitude is reached, then NFP releases the controls.

PERFORMANCES

The performances in Section 6 for dry runways and in Section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

Increase TOD by 70 m for ATR 42–300

Increase TOD by 80 m for ATR–42–400/–500

6. Appendices and Supplements

Data of Section 7 are applicable with the addition of the following:

For the dispatch cases:

- Apply takeoff penalties due to the system failure,
- Then apply takeoff penalties due to the use of fluid Type II or IV.

Dispatch is not authorized in the following cases:

- Ferry flight with pitch elevators disconnected,
- Take-off with flaps retracted."

AFM Revision: Model ATR 72 Series Airplanes

(c) For Model ATR72 series airplanes: Within 15 days after the effective date of this AD, revise the Appendices and Supplements chapter of the AFM by removing the AFM revision required by paragraph (a) of this AD and inserting the following procedures in the AFM (this may be accomplished by inserting a copy of this AD into the AFM):

"Takeoff After Use of Fluid Type II or IV

This appendix applies only to aircraft de-iced or anti-iced before takeoff, using fluid Type II or IV.

These types of fluid may lead to an increase in control forces necessary to rotate, and then to a modification of takeoff performance.

Therefore, this flight manual must be modified as follows:

Compliance Method Number 1

1. General

The general information in Section 1 is applicable.

2. Limitations

The limitations in Section 2 are applicable.

3. Normal Procedures

The normal procedures in Section 3 are applicable.

4. Emergency Procedures

The emergency procedures in Section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in Section 5 are applicable.

6. Performances

The performances in Section 6 for dry runways and in Section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

- Determine VR for the lowest available V2.
- Assume V1=VR.
- Increase TOR, TOD, ASD by 25%.

7. Appendices and Supplements

Data of Section 7 are applicable by adding what follows:

For the dispatch cases:

- Apply takeoff penalties due to the system failure.
- Then apply takeoff penalties due to the use of fluid Type II or IV.

Dispatch is not authorized in the following cases:

• Ferry flight with pitch elevators disconnected,
• Take-off with flaps retracted.

Compliance Method Number 2

Crew Training Required

1. General

The general information in Section 1 is applicable.

2. Limitations

The limitations in Section 2 are applicable.

3. Normal Procedures

The normal procedures in Section 3 are applicable with the addition of the following:

The Captain must be the pilot flying and the pre-takeoff briefing must include the following takeoff procedure (refer to point 5).

4. Emergency Procedures

The emergency procedures in Section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in Section 5 are applicable with the addition of the following:

TAKEOFF SEQUENCE

In case of difficulties to rotate, the Captain (CPT) should request the non-flying pilot's (NFP's) assistance. In that case, on CPT order, NFP pulls the control column until 5° pitch attitude is reached, then NFP releases the controls.

PERFORMANCES

The performances in Section 6 for dry runways and in Section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

Increase TOD by 70 m.

6. Appendices and Supplements

Data of Section 7 are applicable with the addition of the following:

For the dispatch cases:

• Apply takeoff penalties due to the system failure,
• Then apply takeoff penalties due to the use of fluid Type II or IV.

Dispatch is not authorized in the following cases:

• Ferry flight with pitch elevators disconnected,
• Take-off with flaps retracted."

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 2000–448–053(B) R2 and 2000–449–082(B) R2, both dated September 19, 2001.

Issued in Renton, Washington, on February 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4243 Filed 2–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–245–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes. This proposal would require modification of the longeron-to-frame installation of the upper center fuselage. This action is necessary to prevent fatigue cracking of the longerons of the upper center fuselage, which could result in reduced structural integrity of the fuselage. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–245–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
• For each issue, state what specific change to the proposed AD is being requested.
• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–245–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that Boeing Stress Engineering has found that the material thickness for longerons L–5L to L–5R, located in the upper center fuselage of Boeing Model 717–200 airplanes, is undersized. Investigation revealed that this could cause fatigue cracking of the longerons of the upper center fuselage after the accumulation of 30,000 total flight cycles on the airplane. Such fatigue cracking could result in reduced structural integrity of the fuselage.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 717–53–0001, including Evaluation Form, dated March 20, 2001, which describes procedures for modification of the longeron-to-frame installation of the main frame of the upper center fuselage between stations Y=655.000 and Y=813.000, at longerons L–5L to L–5R. The modification includes fabricating the angles and installing support angles and doublers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends accomplishing the modification "at a scheduled heavy maintenance period when manpower, materials, and facilities are available," the FAA has determined that such an imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, the FAA finds a compliance time of "Before the accumulation of 30,000 total flight cycles or within 10 years after the effective date of the AD, whichever is first," for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 56 airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 108 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts cost would be minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $246,240, or $6,480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–245–AD.

Applicability: Model 717–200 airplanes, manufacturer's fuselage numbers 5001 through 5056 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the longerons of the upper center fuselage, which

could result in reduced structural integrity of the fuselage, accomplish the following:

(a) Before the accumulation of 30,000 total flight cycles or within 10 years after the effective date of this AD, whichever is first: Modify the longeron-to-frame installation of the upper center fuselage between stations Y=655.000 and Y=813.000, at longerons L–5L to L–5R (includes fabrication of the angles and installation of support angles and doublers), per Boeing Service Bulletin 717–53–0001, excluding Evaluation Form, dated March 20, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4242 Filed 2–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–282–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, 737–700, 737–700C, 737–800, 737–900, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–600, 737–700, 737–700C, 737–800, 737–900, 757, and 767 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to advise the flightcrew to don oxygen masks as a first and immediate step when a cabin altitude warning occurs. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–282–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–282–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Donald Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–282–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–282–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 25, 1999, a Learjet Model 35 airplane operating under part 135 of the Federal Aviation Regulations (14 CFR part 135) departed Orlando International Airport en route to Dallas, Texas. Air traffic control lost communication with the airplane near Gainesville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes indicated that the windows of the Model 35 airplane were apparently frosted over, which prevented the flightcrews of the chase airplanes from observing the interior of the Model 35 airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane flightcrews did not don their oxygen masks when the cabin altitude aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35 and 36 airplanes does not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated. Additional review has found that the AFMs of Learjet Model 35A and 36A airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFMs do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude aural warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks as a first and immediate action upon the activation of the cabin altitude warning could lead to incapacitation of the flightcrew and loss of control of the airplane.

Explanation of Applicability of Proposed AD

We have previously issued AD 2003–03–15, amendment 13039 (68 FR 4892, January 31, 2003). That AD revises the AFM for various Boeing and McDonnell Douglas transport category airplanes to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude aural warning sounds. Boeing Model 737–600, 737–700, 737–700C, 737–800, 737–900, 757, and 767 series airplanes were not included in the applicability of that AD because we determined that appropriate instructions for donning oxygen masks were included in the Airplane Operations Manual for those airplanes.

After the issuance of the NPRM for AD 2003–03–15, we repeated the review of the AFMs for Boeing Model 737–600, 737–700, 737–700C, 737–800, 737–900, 757, and 767 series airplanes. Based on the results of this second review, we have determined that further rulemaking is necessary to ensure that the AFMs for those airplanes contain appropriate instructions for the flightcrew to immediately don emergency oxygen masks when a cabin altitude aural warning occurs. This proposed AD follows from that determination.

Other Related Rulemaking

We have previously issued AD 2000–23–10, amendment 39–11980 (65 FR 70294, November 22, 2000), which applies to all Lockheed Model 188A and 188C series airplanes. That AD requires a revision of the AFM to add procedures for donning the flightcrew oxygen masks when the cabin altitude aural warning sounds. The requirements of that AD are intended to prevent incapacitation of the flightcrew as a result of lack of oxygen and consequent loss of control of the airplane.

We have also previously issued AD 2001–22–10, amendment 39–12489 (66 FR 54425, October 29, 2001), which applies to all Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes. That AD requires revising the Emergency Procedures and Abnormal Procedures sections of the AFM to advise the flightcrew to immediately don oxygen masks in the event of significant pressurization or oxygen level changes. The requirements of that AD are intended to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in their inability to continue to control the airplane.

We are continuing to review emergency procedures in the AFMs for other airplane models to ensure that the AFMs contain appropriate instructions for donning the flightcrew oxygen masks. We may consider further rulemaking based on the results of these reviews.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Emergency Procedures or Non-Normal Procedures section of the AFM, as applicable, to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude aural warning sounds.

Cost Impact

There are approximately 3,107 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,599 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $95,940, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–282–AD.

Applicability: All Model 737–600, 737–700, 737–700C, 737–800, 737–900, 757, and 767 series airplanes; certificated in any category.

Note 1: The requirements of this AD are similar to those in AD 2003–03–15, amendment 39–13039, which applies to various Boeing and McDonnell Douglas transport category airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane, accomplish the following:

Revision to the Airplane Flight Manual

(a) Within 90 days after the effective date of this AD: For the applicable airplane models listed in the "For—" column of Table 1 of this AD, revise the procedures regarding donning oxygen masks in the event of rapid depressurization, as contained in the Emergency Procedures or Non-Normal Procedures section of the Airplane Flight Manual (AFM), as applicable, by replacing the text in the "Replace—" column of Table 1 of this AD with the information in the applicable figure referenced in the "With the Information In—" column of Table 1 of this AD. This may be accomplished by recording the AD number of this AD on the applicable figure and inserting it into the AFM. Table 1 and Figures 1 through 3 follow:

TABLE 1.—AFM REVISIONS

For—	Replace—	With the information in—
Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes.	"Rapid Depressurization (With airplane altitude above 14,000 feet M.S.L.) Oxygen Masks & Regulators—ON, 100%".	Figure 1 of this AD.
Boeing Model 757–200, –200PF, –200CB; and Boeing Model 767–200, –300, and –300F series airplanes.	"Rapid Depressurization Recall Oxygen Masks and Regulators—ON".	Figure 2 of this AD.
Boeing Model 757–300 series airplanes	"Rapid Depressurization Put on oxygen masks, and establish crew communications.".	Figure 3 of this AD.
Boeing Model 767–400ER series airplanes	"Rapid Depressurization Turn on oxygen masks, and establish crew communications.".	Figure 3 of this AD.

Figure 1

For Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes:

Insert the information in this figure into the "Non-Normal Procedures" section of the FAA-approved Airplane Flight Manual.

Cabin Altitude Warning or Rapid Depressurization

Condition: The CABIN ALT or CABIN ALTITUDE light illuminated indicates cabin altitude is excessive:

Oxygen Masks & Regulators ON, 100%

The rest of the steps under this heading in the AFM are unchanged.

Figure 2

For Boeing Model 757–200, –200PF, and –200CB; and Model 767–200, –300, and –300F Series Airplanes:

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

Cabin Altitude Warning or Rapid Depressurization

Condition: The CABIN ALT or CABIN ALTITUDE light illuminated indicates cabin altitude is excessive:

RECALL

Oxygen Masks & Regulators ON, 100%

The rest of the steps under this heading in the AFM are unchanged.

Figure 3

For Boeing Model 757–300 and 767–400ER Series Airplanes:

Insert the information in this figure into the "Non-Normal Procedures" section of the FAA-approved Airplane Flight Manual.

Cabin Altitude Warning or Rapid Depressurization

Condition: The CABIN ALT or CABIN ALTITUDE light illuminated indicates cabin altitude is excessive:

Put on oxygen masks and establish crew communications."

The rest of the steps under this heading in the AFM are unchanged.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 13, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4236 Filed 2–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–335–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Beech 400A and 400T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Beech 400A and 400T series airplanes. This proposal would require replacement of the low-pressure oxygen tubing located in the forward fuselage (nose avionics bay), lower forward flight deck, and lower forward cabin areas, as applicable, with new low-pressure oxygen tubing. This action is necessary to prevent leakage of oxygen from scored low-pressure oxygen tubing, which could result in lack of available oxygen for the flightcrew, or possible explosion or fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–335–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, Systems and Propulsion Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–335–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during production, damaged low-pressure oxygen tubing was found on eight Raytheon Model Beech 400A airplanes. The damage was created during tubing installation when a knife used to remove portions of the heat shrink protective sleeving scored the tubing. The sleeving was removed to provide adequate electrical bonding/grounding surfaces for the electrical bonding/grounding jumper assemblies. Leakage of oxygen from scored low-pressure oxygen tubing could result in lack of available oxygen for the flightcrew, or possible explosion or fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB 35–3406, dated March 2001, which describes procedures for replacing low-pressure oxygen tubing with new low-pressure oxygen tubing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

The proposed AD would differ from the Raytheon service bulletin in that, for Raytheon Model Beech 400T series airplanes, the proposed AD would specify a compliance time of within 200 flight hours or 1 year from the effective date of the AD, whichever occurs first. The Raytheon service bulletin states that compliance time information for Model Beech 400T airplanes should be obtained from "the appropriate headquarters." The FAA conducted a durability evaluation of the tubing material and concluded that, although the calculated stress remained below the endurance limit of the material, the vibratory nature of the installation was unknown. The conclusion was that a compliance time of within 200 flight hours or 1 year from the effective date of this AD would be a conservative estimate for the proposed replacement. The compliance time coincided with the next scheduled inspection for the majority of affected operators, providing minimal impact to the operators.

Operators should note that this compliance time for Model Beech 400T series airplanes is equivalent to the compliance time specified in the Raytheon service bulletin for the affected Raytheon Model Beech 400A series airplanes.

Cost Impact

There are approximately 34 airplanes of the affected design in the worldwide fleet. The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 25 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,052 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $68,904, or $2,552 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (formerly **Beech**): Docket 2001–NM–335–AD.

Applicability: Model Beech 400A series airplanes, serial numbers RK–232 through RK–265 inclusive; and Model Beech 400T series airplane, serial number TX–10; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of oxygen from scored low-pressure oxygen tubing, which could result in lack of available oxygen for the flightcrew, possible explosion, or fire, accomplish the following:

Replacement of Oxygen Tubing

(a) For Model 400A series airplanes: Within 200 flight hours or 1 year from the effective date of this AD, whichever occurs first, replace the low-pressure oxygen tubing located in the forward fuselage (nose avionics bay), lower forward flight deck, and lower forward cabin areas, as applicable, with new low-pressure oxygen tubing, per Part I of the Accomplishment Instructions specified in Raytheon Service Bulletin SB 35–3406, dated March 2001.

(b) For Model 400T airplanes: Within 200 flight hours or 1 year from the effective date of this AD, whichever occurs first, replace the low-pressure oxygen tubing located in the forward fuselage (nose avionics bay), lower forward flight deck, and lower forward cabin areas, as applicable, with new low-pressure oxygen tubing, per Part II of the Accomplishment Instructions specified in Raytheon Service Bulletin SB 35–3406, dated March 2001.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4234 Filed 2–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–309–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes. This proposal would require modification of certain attachment holes in the rear spar of the left and right wings. This action is necessary to prevent fatigue cracking of the rear spar of the wings, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–309–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–309–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report from the manufacturer indicating the detection of 22 holes in the rear spar of the left and right wings of a Boeing Model 717–200 airplane with bolts installed in uncoined, clearance fit holes. This installation was not in accordance with the manufacturer's design, which specified stress-coining of all 22 holes. The design was intended to eliminate the possibility of fatigue cracking such as that previously detected on a McDonnell Douglas DC–9 airplane, which is the predecessor to the Model 717–200 airplane. The manufacturer also has determined that 9 out of the 22 holes in the rear spar must be cold-worked, followed by the installation of Hi-Lok fasteners in all 22 holes. Such conditions, if not corrected, may be a potential source of fatigue cracking of the rear spar of the wings, which could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 717–57–0001, Revision 01, including Evaluation Form, dated January 6, 2003, which describes procedures for modification of certain attachment holes in the rear spar of the left and right wings. The modification includes cold working 9 uncoined attachment holes and replacing 22 bolts with Hi-Lok fasteners. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends accomplishing the modification "Within 30,000 landings after the issue date of this service bulletin," the FAA has determined that such a compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, the FAA finds a compliance time of "Before the accumulation of 30,000 total flight cycles or within 10 years after the effective date of the AD, whichever is first," for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 57 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $955 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $48,945, or $1,255 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would

accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–309–AD.

Applicability: Model 717–200 airplanes, manufacturer's fuselage numbers 5002 through 5058 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the rear spar of the wings, which could result in reduced structural integrity of the airplane, accomplish the following:

Modification

(a) Before the accumulation of 30,000 total flight cycles or within 10 years after the effective date of this AD, whichever is first: Modify the attachment holes in the rear spar of the left and right wings (includes cold working 9 uncoined attachment holes and replacing 22 bolts with Hi-Lok fasteners), per Boeing Service Bulletin 717–57–0001, Revision 01, excluding Evaluation Form, dated January 6, 2003.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4233 Filed 2–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that would have required replacement of the aileron control override quadrant with a modified unit. This new action revises the applicability of the proposed rule. The actions specified by this new proposed AD are intended to prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–34–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 23, 2002 (67 FR 54591). That NPRM would have required replacement of the aileron control override quadrant with a modified unit. That NPRM was prompted by a report of the seizing of the input override mechanism bearings of the lateral central control actuator on affected airplanes. The seizing was discovered during an inspection and has been attributed to corrosion on the steel bearings in the override mechanism. A failed override system is a latent failure and does not affect normal operation. However, if the pilot's control system were to subsequently jam, the seizing of the override bearings could have prevented the aileron control override system from operating properly. That condition, if not corrected, could result in reduced lateral control of the airplane.

Comments

Certain comments received in response to the original NPRM have resulted in changes that expanded its scope and gave rise to this supplemental NPRM.

Request To Revise Applicability

The manufacturer advises that the applicability was incorrectly identified in the original NPRM as Boeing Model 767 series airplanes, line numbers 1 through 811. The manufacturer reports that line numbers 812 through 836 are also subject to the identified unsafe condition; therefore, the affected inclusive line numbers should be 1 through 836. In addition, the manufacturer requests exclusion of Model 767–400ER series airplanes from the applicability because the installation of corrosion-resistant steel bearings during production on those airplanes adequately addresses the identified unsafe condition.

The FAA agrees and has revised the applicability accordingly in this supplemental NPRM. In addition, the Cost Impact section has been revised in this supplemental NPRM to reflect the increased number of affected airplanes.

Request To Revise Cost Estimate

One commenter, an operator, requests that the Cost Impact section of the original NPRM be revised to reflect additional work hours necessary to accomplish the proposed requirements. According to the commenter, it would also be necessary to replace the bearings and perform corrective rigging of certain control cables. The commenter notes the service bulletin's failure to consider these tasks in the total work hour estimate.

The FAA partially concurs with the request. Although the proposed AD would require that operators "replace the aileron control override quadrant with a modified unit," the FAA recognizes that, to accomplish that task, operators must also incur the direct cost of replacing the bearings in the aileron override quadrant. Therefore, the Cost Impact section has been further revised in this supplemental NPRM to reflect an estimated 6 work hours necessary to replace the bearings and 4 work hours to replace the quadrant, for a total of approximately 10 work hours to accomplish the proposed requirements.

However, as stated in the original NPRM, the cost impact information is intended to provide only the "direct" costs of the proposed requirements; the total work hour figure represents the time necessary to perform only the AD's required actions. The cost analysis in AD rulemaking actions typically does not include incidental costs such as the time required for cable rigging and testing of the system, which would be necessary to ensure the functionality of the system after the required actions have been accomplished.

Additional Change to Original NPRM

The heading for paragraph (b) ("Spare Parts" in the original NPRM) has been changed to "Part Installation" in this supplemental NPRM.

Conclusion

Since these changes expand the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 836 airplanes of the affected design in the worldwide fleet. The FAA estimates that 443 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $146 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $330,478, or $746 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–34–AD.

Applicability: Model 767–200, –300, and –300F series airplanes; certificated in any category; line numbers 1 through 836 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral controllability of the airplane, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace the aileron control override quadrant with a modified unit, in accordance with Boeing Alert Service Bulletin 767–27A0175, dated October 25, 2001.

Note 2: This AD does not require accomplishment of the actions specified by Boeing Service Bulletin 767–27–0142.

Part Installation

(b) As of the effective date of this AD, no person may install, on any airplane, an aileron control override quadrant that has not been modified in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4232 Filed 2–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RINs 1506–AA28; and 1506–AA41

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Businesses Engaged in Vehicle Sales

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: FinCEN is in the process of implementing the requirements delegated to it under the USA PATRIOT Act of 2001, in particular the requirements of the Act that require financial institutions to establish anti-money laundering compliance and customer identification programs. The term "financial institution" is defined to include a "business engaged in vehicle sales, including automobile, airplane, and boat sales." FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comments on a wide range of questions pertaining to these requirements, including the money laundering risks that are posed by these businesses, whether these businesses should be subject to these requirements, and if so, how the requirements should be structured.

DATES: Written comments may be submitted on or before April 10, 2003.

ADDRESSES: Because paper mail in the Washington, DC, area may be subject to delay, commenters are encouraged to e-mail comments. Comments may be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, "ATTN: ANPRM—Sections 352 and 326—Vehicle Seller Regulations." Comments may be mailed to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: ANPRM—Sections 352 and 326—Vehicle Seller Regulations. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905–3590; the Office of the General Counsel, (202) 622–1927; or the Office of the Assistant General Counsel (Banking and Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. When prescribing minimum standards for anti-money laundering programs, section 352 directs the Treasury to consider the extent to which such standards are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.

As a "business engaged in vehicle sales" (vehicle seller) is defined as a financial institution under the BSA, 31 U.S.C. 5312(a)(2)(T), it is subject to the anti-money laundering program requirement. On April 29, 2002, and again on November 6, 2002, FinCEN temporarily exempted certain financial institutions, including vehicle sellers, from the requirement to establish an anti-money laundering compliance program. The purpose of the deferral was to enable FinCEN to study the affected industries and consider the extent to which anti-money laundering program requirements should be applied to them, taking into account the specific characteristics of the various entities defined as financial institutions by the BSA.[1]

In addition, section 326 of the Act added new subsection (l) to 31 U.S.C. 5318, which requires Treasury to prescribe regulations setting forth minimum standards for financial institutions to identify customers applying to open accounts. Section 326 applies to all BSA financial institutions that open accounts for their customers.

The business of vehicle sellers encompasses various segments, including sellers of: (1) New land-based vehicles, such as automobiles, trucks, RVs, and motorcycles; (2) new aircraft, including fixed wing airplanes and helicopters; (3) new boats and ships; and (4) used vehicles (as well as those who broker the sale of used vehicles).[2]

Businesses engaged in the selling of vehicles comprise a significant percentage of the total gross domestic product of the United States, and the vehicles that they collectively sell account for a major portion of U.S. consumption, exports, and other important economic indicia.[3] As such, because of both the economic significance of this industry, and the important and pervasive role that vehicles, and therefore vehicles sales, play in the United States, this ANPRM is intended to assist FinCEN in striking a balance between the important statutory requirements of the Act, and the important benefits that vehicle sellers provide to our country.

Some vehicle sellers are tied to the manufacturing of the vehicles, while others may not be. While some vehicle sellers are publicly traded companies, most are privately held or family owned. Some may be characterized as wholesale sellers of vehicles, while others are engaged in retail sales of the vehicles. In each segment, there is often substantial variety in function and practice.

Vehicle sellers range in size from very large entities that sell vehicles with a total value that is measured in billions of dollars annually, to very small entities (such as a neighborhood used car dealer) that may only sell a few vehicles each year. Vehicle sellers may sell either new or used vehicles, and may sell to customers domestic or foreign, or both. Moreover, the characteristics of vehicle sellers often vary based on the type of vehicles sold. For example, retail sellers of large, multi-engine commercial aircraft are generally much larger businesses than sellers of small, general aviation aircraft, reflecting the capital and business risks needed to maintain inventory. In a like manner, sales of large marine ships in excess of 100,000 deadweight tons are conducted very differently than sales of pleasure watercraft, such as sail boats. Similarly, sellers of used vehicles often have different characteristics than sellers of new vehicles, reflecting the different relationships with vehicle manufacturers and the differences in these markets.

II. Issues for Comment

1. What Is the Potential Money Laundering Risk Posed by Vehicle Sellers? Do Money Laundering Risks Vary by (1) Vehicle Type (e.g., Boat, Airplane, Automobile); (2) Market (Wholesale vs. Retail); or (3) Business Line (International Sales, Sales to Governments)?

The threshold issue being addressed by this ANPRM is the extent to which vehicle sellers pose a significant risk of money laundering.[4] For example, a money laundering risk is presented where a vehicle is purchased with cash.[5] This is particularly true for the placement stage of money laundering; that is, where the money launderer seeks to cleanse illegal proceeds by introducing them into the financial system. A large cash purchase of an expensive vehicle could form the placement stage for a money laundering scheme.[6] While the risk of money laundering is minimized, to some

[1] *See* 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002), as amended at 67 FR 67547 (November 6, 2002) (as corrected at 67 FR 68935 (November 14, 2002)).

[2] FinCEN does not intend to impose anti-money laundering program obligations on individuals in connection with the sale of their own personal vehicle to others, whether as a "trade-in" with a retail vehicle dealer or by private sale with another party, unless an individual is engaged in the business of selling vehicles.

[3] According to the Department of Transportation, in the year 2000 there were 8,847,000 new automobiles, 578,700 boats, and 3,285 civilian aircraft sold at retail. U.S. Dept. of Transportation Bureau of Transportation Statistics, National Transportation Statistics 2002 (GPO July 2002).

[4] For the purpose of this ANPRM, FinCEN is focusing on the money laundering risks associated with the sale of the vehicles themselves, and not with the financing of such sales. Although some vehicle sellers that provide financing for their products (generally through a finance subsidiary) perform a function similar to that of traditional financial institutions such as banks and loan companies, that function will be addressed separately by a proposed rule to be issued that will require loan and finance companies to have anti-money laundering programs.

[5] Recently, in Operation Lightning Strike, manufacturers of illegal liquor were convicted of laundering the illegal proceeds of untaxed liquor sales by using cash transactions and purchasing a number of vehicles in the names of other family members.

[6] *See, e.g.*, U.S. v. Cruz, 993 F.2d 164 (8th Cir. 1993) (narcotics dealer laundered proceeds by purchasing three automobiles for cash in amount that greatly exceeded his stated income).

extent, by the existing obligation on all vehicle sellers to report, pursuant to 26 U.S.C. 6050I, 31 U.S.C. 5331, and 31 CFR 103.30, the receipt of cash or monetary instruments in excess of $10,000,[7] a rule that requires an anti-money laundering compliance or customer identification program may alleviate further the money laundering risk associated with large cash purchases. In response to documented instances of abuse, industry associations representing new car dealers have already taken steps to guard against the laundering of illicit proceeds through the purchase of automobiles with cash, providing their members with educational materials concerning their legal obligations and cash-related money laundering red flags.

The next stage of money laundering, the layering stage, involves the distancing of illegal funds from their criminal source through the creation of complex layers of financial transactions. Examples of layering through the vehicle sellers industry might include trading in vehicles for other vehicles and engaging in successive transactions of buying and selling both new and used vehicles.

Vehicle sales businesses also could be used for integrating illicit income into assets that appear legitimate. Integration occurs when illegal funds appear to have been derived from a legitimate source. This could occur, for instance, when the funds or vehicles received from the vehicle seller in the aftermath of the layering transactions are held out as coming from a legitimate source.

Vehicle sellers may need to have an understanding of the identity of customers who participate in transactions with money laundering risk. For purchases of vehicles involving large sums of cash, knowing the customer's identity may be an essential part of an effective anti-money laundering program. Customers may request complex invoicing arrangements or payment arrangements or may structure their cash payments to avoid BSA reports. While vehicle sellers may scrutinize non-cash transactions to manage fraud risk, they are undoubtedly less aware of possible money laundering risk with both cash and non-cash transactions.

FinCEN has received reports indicating that some vehicle sellers have engaged in structuring[8] sequential deposits of cash near the reporting threshold of $10,000. FinCEN also has received reports of the purchase of automobiles with structured checks and money orders. Other instances of suspicious activity reported to FinCEN concerning this industry include consumer loan fraud and check fraud. These instances all involve the placement stage of money laundering.

Accordingly, FinCEN solicits comments on the existence of the above, and other, types of risks in the vehicle sellers business. Specifically, FinCEN is interested in identifying risks in the products that vehicle sellers provide that make them uniquely susceptible to money laundering, as opposed to the risks inherent in all businesses that sell products or services to the public that may be purchased with tainted funds. Such heightened risks include, for example, the payment of funds to the seller by third parties on behalf of customers, particularly from jurisdictions with lax money laundering controls, and the ability to pay funds to the vehicle seller and, in return, receive funds from the seller that have the appearance of legitimacy. FinCEN further seeks comment on whether differentiation should be made for lines of business that appear to have minimal money laundering risks, such as the sale of vehicles to federal, state, and local governments. Are there other functional distinctions that should be made?

2. Should Vehicle Sellers Be Exempt from Coverage Under Sections 352 and 326 of the Patriot Act?

Based on the determination of the extent of the risk of money laundering posed by vehicle sellers, the question arises as to whether the industry should be exempt under sections 352 and 326 of the Act. If the risk of money laundering in the vehicle sellers industry is determined to be minimal such that it does not justify the imposition of a regulatory burden, it might be reasonable to exempt the industry from coverage of these provisions. This judgment will be based on the existing risks of money laundering, the potential risks of money laundering, as well as the volume of possible illicit funds that may flow through vehicle sellers.

In light of these issues, FinCEN would like to solicit comments with regard to the issue of whether there should be an exemption from these provisions for vehicle sellers, or any category thereof. These comments should be designed to enable FinCEN to decide whether or not to propose an appropriate regulation designed to provide protection for the vehicle seller industry from the risks of money laundering.

3. If Vehicle Sellers, or Some Subset of the Industry, Should Be Subject to the Anti-Money Laundering Program Requirements, How Should the Program Be Structured?

In applying section 352 of the Act to vehicle sellers, FinCEN must take into account which requirements are "commensurate with the size, location, and activities" of this industry. In undertaking this review, FinCEN recognizes that vehicle sellers likely have some programs already in place to meet existing legal obligations. For example, as a nonfinancial trade or business, vehicle sellers are required to report on Form 8300 the receipt of over $10,000 in currency and certain monetary instruments. Vehicle sellers also may have procedures in place to protect themselves against fraud. Such procedures may be sufficient in themselves, given the money laundering risk in the industry, or they may serve as a foundation on which additional anti-money laundering program requirements could be based. FinCEN therefore seeks comment on the particular elements that should be included in any required anti-money laundering program, should it be determined that such a requirement should be imposed on this industry. In this regard, comment is requested regarding the types of programs vehicle sellers currently have in place to prevent fraud and illegal activities, and the applicability of such programs to the prevention of money laundering.

4. How Should a Vehicle Seller Be Defined? Should There Be a Minimum Threshold Value in the Definition? Should it Include Wholesale and Retail Sellers? Should Sellers of Used Vehicles Be Included?

In the event FinCEN determines to propose requirements on vehicle sellers under sections 352 and 326 of the Act, it will be necessary to define the term vehicle seller. Although the BSA identifies a vehicle seller as a financial institution, the statute contains no definition of the term, other than to state that it includes sellers of automobiles, airplanes, and boats. The legislative history of the BSA provides no insight into how Congress intended the term to be defined, nor has FinCEN had an occasion to define the term in a regulation.

[7] Sellers of vehicles for personal consumption (as opposed to commercial sales) fall within the type of retail business required to report receipts of monetary instruments (cashier's checks, traveler's checks, money orders) that have face amounts of less than $10,000 and which are used to make a purchase of greater than $10,000. *See* 31 CFR 103.30.

[8] Structuring refers to the breaking up of a transaction into multiple smaller transactions to evade recordkeeping or reporting requirements.

As discussed above, vehicle sellers form an extremely large and diverse industry, accounting for a major portion of American consumption as well as exports. Given this diversity in the vehicle sellers industry, the risks of money laundering and the costs of preventive programs can vary widely. Thus, FinCEN solicits comment on whether any proposed rule should limit the definition to sellers of particular types of vehicles, to retail or wholesale vehicle sellers, or sellers of new or used vehicles. In addition, FinCEN's regulations in the past have recognized that businesses that do not transact in sufficient dollar amounts or volume, or in cash or monetary instruments, may not present sufficient money laundering risk to require the imposition of federally mandated programs. For example, under the BSA, money services businesses other than money transmitters (currency exchangers, check cashers, and issuers, sellers, and redeemers of traveler's checks and money orders) are defined as financial institutions only if they transact over $1,000 in covered transactions for any one person in any one day.[9] This threshold reflects the judgment that businesses that never engage in transactions above that level fail to present a money laundering risk sufficient to justify the regulatory burden. FinCEN solicits comment on whether, if vehicle sellers are required to implement anti-money laundering programs, there should be a monetary threshold of some kind in defining a vehicle seller for purposes of the BSA. Commenters should address whether any such threshold should be transaction based, as with the money services business rules, or on an annual gross income, or some other basis.

5. Do Vehicle Sellers Maintain "Accounts" for Their Customers?

Section 326 requires the setting of minimum standards for identification of customers "in connection with the opening of an account at a financial institution." Section 311 of the Patriot Act provides a definition of "account" for banks, but requires the Secretary to promulgate a regulation defining "account" for non-bank financial institutions. Although such a regulation has yet to be issued, the definition for banks ("a formal banking or business relationship established to provide regular services, dealings, and other financial transactions") is a useful starting point. This definition incorporates two key concepts: (1) Formality of the business relationship, and (2) regularity of dealings. In light of these concepts, FinCEN solicits comments as to whether (and to what extent) vehicle sellers maintain accounts for their customers, in addition to fleet accounts. What kinds of services do vehicle sellers provide to any such account holders (including fleet accountholders)? Are these account relationships ongoing? Are accounts established to receive recurring payments from a customer, or are additional services provided to the accountholder?

[9] 31 CFR 103.11(uu).

III. Conclusion

With this ANPRM, FinCEN is seeking input to assist it in determining how to implement the requirements of sections 352 and 326 of the Act with respect to vehicle sellers. FinCEN welcomes comments on all aspects of this potential regulation and encourages all interested parties to provide their views.

IV. Executive Order 12866

Because this is an ANPRM, FinCEN does not know whether or in what form it may issue a regulation pursuant to sections 352 and 326 of the Act affecting vehicle sellers. Accordingly, FinCEN does not know whether potential regulations will constitute a significant regulatory action under the Executive Order. This ANPRM neither establishes nor proposes any regulatory requirements. FinCEN has submitted a notice of planned regulatory action to OMB for review. Because this ANPRM does not contain a specific proposal, information is not available with which to prepare an economic analysis. FinCEN will prepare a preliminary analysis if it proceeds with a proposed rule that constitutes a significant regulatory action.

Accordingly, FinCEN solicits comments, information, and data on the potential effects of any potential regulation. FinCEN will carefully consider the costs and benefits associated with this rulemaking.

Dated: February 12, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–4173 Filed 2–21–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RINs 1506–AA28 and 1506–AA38

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Travel Agencies

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: FinCEN is in the process of implementing the requirements delegated to it under the USA PATRIOT Act of 2001, in particular the requirements of the Act that require financial institutions to establish anti-money laundering compliance and customer identification programs. The term "financial institution" is defined to include a "travel agency." FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comments on a wide range of questions pertaining to this requirement, including how to define the term travel agency.

DATES: Written comments may be submitted on or before April 10, 2003.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments may be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, "ATTN: ANPRM—Section 352—Travel Agency Regulations." Comments may be mailed to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: ANPRM—Section 352—Travel Agency Regulations. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905–3590; the Office of the General Counsel, (202) 622–1927; or the Office of the Assistant General Counsel (Banking and Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Public Law 107–56)

(the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. When prescribing minimum standards for anti-money laundering programs, section 352 directs the Treasury to consider the extent to which such standards are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.

As a "travel agency" is defined as a financial institution under the BSA, 31 U.S.C. 5312(a)(2)(Q), it is subject to the anti-money laundering program requirement. On April 29, 2002, FinCEN temporarily exempted certain financial institutions, including travel agencies, from the requirement to establish an anti-money laundering compliance program. The purpose of the deferral was to enable FinCEN to study the affected industries and consider to what extent anti-money laundering program requirements could best be applied, taking into account the specific characteristics of the various entities defined as financial institutions by the BSA.[1]

In addition, section 326 of the Act added new subsection (l) to 31 U.S.C. 5318, which requires Treasury to prescribe regulations setting forth minimum standards for financial institutions to identify customers applying to open accounts. Section 326 applies to all BSA financial institutions that open accounts for their customers.

FinCEN is proceeding with this ANPRM because of questions about travel agencies and money laundering that make it difficult to assess the benefits and burdens associated with imposition of anti-money laundering regulations on this industry. Through this process, FinCEN hopes to solicit sufficient information to enable it to determine whether to go forward with a Notice of Proposed Rulemaking, as well as the scope of entities and procedures that any such Notice should encompass.

II. Issues for Comment

1. How Should a Travel Agency Be Defined? Should There Be a Minimum Threshold Value in the Definition?

Although the BSA identifies a travel agency as a financial institution, the statute contains no definition of the term, nor has FinCEN had an occasion to define the term in a regulation. Thus, the first step in addressing the appropriateness of issuing anti-money laundering regulations is determining a functional definition of a travel agency. The legislative history of the BSA provides no insight into how Congress intended the term to be defined.

As the name implies, a travel agency offers its services in the capacity of an agent, and not as a principal. A travel agency offers travel and tourism related services to the public as a result of agency agreements with airlines, cruise lines, hotels, and other suppliers of travel-related services. It may contract directly with suppliers such as hotels, car rental companies, and tour operators, or may contract with a coordinating body such as the Airlines Reporting Corporation (ARC)[2] and the International Airlines Travel Agency Network (IATAN). Travel agencies also may provide financial services such as traveler's checks to their customers, and may offer travel-related insurance. Travel agencies that offer such financial services in conjunction with travel services are considered financial institutions for the purpose of consumer privacy regulations.[3]

For purposes of this ANPRM, FinCEN is using the following functional definition of travel agency: "Any person who sells, as an agent and not as a principal, the following travel services: airline tickets, rail tickets, hotel and motel reservations, and cruise reservations, or some combination of those services." This definition excludes direct sales by service providers such as hotels and tour buses. These principals are excluded because their inclusion appears to be at odds with the use of the term "agency" in the BSA definition (such entities are providers of travel-related services, rather than travel agents).

According to the Small Business Administration (SBA), most travel agencies are small businesses.[4] Of the 22,687 travel agencies identified by the SBA operating out of 29,332 establishments, only 450 fall outside the SBA definition of a small business in this industry. These larger businesses generate 47% of all industry revenue.[5] FinCEN's regulations in the past have recognized that businesses that do not transact in sufficient dollar amounts or volume may not present sufficient money laundering risk to require the imposition of federally mandated programs. For example, under the BSA, money services businesses other than money transmitters (currency exchangers and check cashers, as well as issuers, sellers, and redeemers of traveler's checks and money orders) are defined as financial institutions only if they transact over $1,000 in covered transactions for any one person in any one day.[6] This threshold reflects the judgment that businesses that never engage in transactions above that level fail to present a money laundering risk sufficient to justify the regulatory burden. FinCEN solicits comment on whether, if travel agencies are required to implement anti-money laundering programs, there should be a monetary threshold of some kind in defining a travel agency for purposes of the BSA. Commenters should address whether any such threshold should be transaction based, as with the money services business rules, or on an annual gross income, or some other basis.

2. What Is the Potential Money Laundering Risk Posed By Travel Agencies? Are There Different Kinds of Travel Agencies or Different Services Offered That Pose Different Money Laundering Risks?

Although some travel agencies perform some of the functions of traditional financial institutions, such as selling traveler's checks, such agencies, to the extent they meet the regulatory threshold, would be considered money services businesses under 31 CFR part 103.11(uu)(4). The focus of this ANPRM is on the risks unique to travel agencies' provision of travel-related services. Within this focus, the industry does present some potential money laundering risks. For example, some travel agencies have a significant portion of their clients pay for the agencies' products and services in cash. While the risk of money laundering is minimized, to some extent, by the existing obligation on all travel agencies to report, pursuant to 26 U.S.C. 6050I, 31 U.S.C. 5331, and 31 CFR 103.30, the receipt of cash or monetary instruments in excess of $10,000,[7] a rule that requires an anti-money laundering compliance or customer identification program may alleviate further the money laundering risk associated with the cash intensive nature of some travel agencies. Moreover, some travel agencies are associated with ancillary businesses, including money services businesses offering money transfer and check cashing, that pose additional money laundering risk. To the extent customers wish to avoid the recordkeeping and reporting requirements applicable to the money services side of the business, they may try to route their transactions through the unregulated travel agency side of the business. Instead of obtaining a money order or traveler's check to make an illicit payment (which would be subject to FinCEN's recordkeeping rules if over $3,000), a money launderer could buy an expensive airline ticket for another person, who could then exchange it for a legitimate-seeming refund.

FinCEN has received reports indicating that some travel agencies (or their customers) have engaged in structuring sequential deposits and withdrawals of cash near the reporting threshold of $10,000. There have also been reports of some travel agencies structuring outgoing wire transfers in small amounts to avoid BSA recordkeeping requirements. Some travel agents have been observed receiving unusual wire transfers from foreign countries or wire transfers of unusually large amounts.

In addition, travel agencies reportedly have been used to transfer value through the provision of in-kind services. A travel agent sending groups to a foreign country, for example, can make an offsetting payment in a foreign entity's U.S. or other account and instruct that entity to cover the costs of the group during their trip. This method is one way that businesses involved in informal value transfer systems, such as hawala,[8] can transfer funds between entities in various countries.

Travel agencies may need to have an understanding of the identity of customers who participate in transactions with money laundering risk. For purchases of travel services involving large sums of cash, knowing the customer's identity may be an essential part of an effective anti-money laundering program. Customers may request complex invoicing arrangements or payment arrangements or may structure their cash payments to avoid BSA reports. While travel agencies may scrutinize non-cash transactions to manage fraud risk, they are undoubtedly less aware of possible money laundering risk with both cash and non-cash transactions.

Accordingly, FinCEN solicits comments on the existence of the above, and other, types of risks in the travel agency business. Specifically, FinCEN is interested in identifying risks in the products and services that travel agencies provide that make them uniquely susceptible to money laundering, as opposed to the risks inherent in all businesses that sell products or services to the public that may be purchased with tainted funds. Such heightened risks include, for example, the ability to transfer funds, even with a sizable penalty or cost, from one person to another; the ability to pay in funds and, in return, receive funds from the travel agency or related business that have the appearance of legitimacy and no ties to incoming funds. Furthermore, should regulatory distinctions based on money laundering risk be made between travel agencies that restrict their sales to domestic travel and those that handle international travel? Are there other functional distinctions that should be made?

3. Should Travel Agencies Be Exempt From Coverage Under Sections 352 and 326 of the Patriot Act?

Based on the determination of the extent of the risk of money laundering within the travel agency industry, the question arises as to whether the industry should be exempt under sections 352 and 326 of the Act. If the risk of money laundering in the travel agency industry is determined to be minimal such that it does not justify the imposition of a regulatory burden, it might be reasonable to exempt the industry from coverage of these provisions. This judgment will be based on the existing risks of money laundering, the potential risks of money laundering, as well as the volume of possible illicit funds that may flow through travel agencies.

In light of these issues, FinCEN would like to solicit comments with regard to the issue of whether there should be an exemption from these provisions for travel agencies. These comments should be designed to enable FinCEN to decide whether or not to propose the promulgation of an appropriate regulation designed to provide protection for the travel agency industry with regard to the risk of money laundering.

4. If Travel Agencies, or Some Subset of the Industry, Should Be Subject to the Anti-Money Laundering Program Requirements, How Should the Program Be Structured?

In applying section 352 to travel agencies, FinCEN must take into account which requirements are "commensurate with the size, location, and activities" of this industry. In undertaking this review, FinCEN recognizes that travel agencies likely have some programs already in place to meet existing legal obligations. For example, as a nonfinancial trade or business, travel agencies are required to report on Form 8300 the receipt of over $10,000 in currency and certain monetary instruments. Travel agencies also may have procedures in place to protect themselves against fraud. Such procedures may be sufficient in themselves given the money laundering risk in the industry, or they may serve as a foundation on which additional anti-money laundering program requirements could be built. FinCEN therefore seeks comment on what types of programs travel agencies have in place to prevent fraud and illegal activities, and the applicability of such programs to the prevention of money laundering.

5. Do Travel Agencies Maintain "Accounts" for Their Customers?

Section 326 requires the setting of minimum standards for identification of customers "in connection with the opening of an account at a financial institution." Section 311 of the Patriot Act provides a definition of "account" for banks, but requires the Secretary to promulgate a regulation defining "account" for non-bank financial institutions. Although such a regulation has yet to be issued, the definition for banks ("a formal banking or business relationship established to provide regular services, dealings, and other

[1] *See* 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002), as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

[2] ARC provides a mechanism that carriers may use to appoint travel agents, and such agents are then entitled to use ARC standard ticket stock for participating carriers, which comprise the vast majority of domestic and international carriers. ARC requires travel agents to obtain and maintain an irrevocable letter of credit as bond.

[3] *See* 16 CFR 313.3 (k)(2)(ix) (Federal Trade Commission regulations governing privacy of consumer information).

[4] *See* 67 FR 38184 (May 31, 2002) (raising ceiling for defining a travel agency as a small business to $3 million in total revenue, a definition encompassing 98% of travel agencies).

[5] *Id.*

[6] 31 CFR 103.11(uu)(1)–(4).

[7] Sellers of travel fall within the type of retail business required to report receipts of monetary instruments (cashier's checks, traveler's checks, money orders) that have face amounts of less than $10,000 and which are used to make a purchase of greater than $10,000. *See* 31 CFR 103.30.

[8] *See* Report to Congress in Accordance with Section 359 of the USA Patriot Act (November 22, 2002), available on FinCEN's Web site at *http://www.fincen.gov* under Publications, Reports.

financial transactions") is a useful starting point. This definition incorporates two key concepts: (1) Formality of the business relationship, and (2) regularity of dealings. In light of these concepts, FinCEN solicits comments as to whether (and to what extent) travel agencies maintain accounts for their customers. If so, what kinds of services do travel agencies provide to account holders? Are these account relationships ongoing? Are accounts established to receive recurring payments from a customer, or are additional services provided to the accountholder?

III. Conclusion

With this ANPRM, FinCEN is seeking input to assist it in determining how to implement the requirements of sections 352 and 326 of the Act with respect to travel agencies. FinCEN welcomes comments on all aspects of potential regulation and encourages all interested parties to provide their views.

IV. Executive Order 12866

Because this is an ANPRM, FinCEN does not know whether or in what form it may issue a regulation pursuant to sections 352 and 326 of the Act affecting travel agencies. Accordingly, FinCEN does not know whether potential regulations will constitute a significant regulatory action under the Executive Order. This ANPRM neither establishes nor proposes any regulatory requirements. FinCEN has submitted a notice of planned regulatory action to OMB for review. Because this ANPRM does not contain a specific proposal, information is not available with which to prepare an economic analysis. FinCEN will prepare a preliminary analysis if it proceeds with a proposed rule that constitutes a significant regulatory action.

Accordingly, FinCEN solicits comments, information, and data on the potential effects of any potential regulation. FinCEN will carefully consider the costs and benefits associated with this rulemaking.

Dated: February 12, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–4172 Filed 2–21–03; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI80–01–7289b, FRL–7443–1]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Excess Emissions During Startup, Shutdown or Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve several rule revisions for incorporation into Michigan's State Implementation Plan (SIP). The Michigan Department of Environmental Quality (MDEQ) submitted these revisions to EPA on September 23, 2002. They include rules to address excess emissions occurring during startup, shutdown or malfunction, as well as revisions to related definitions. In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule, we plan to take no further action in relation to this proposed rule. If we receive significant adverse comments, in writing, which we have not addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments on or before March 26, 2003.

ADDRESSES: Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: January 9, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–4261 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–7453–1; Docket ID No. OAR–2002–0046]

RIN 2060–AJ53

Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On March 27, 2000, the EPA issued a memorandum which stated that process tanks are "storage vessels" under the definition in the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. On May 26, 2000, the American Forest and Paper Association (AF&PA) filed a petition for judicial review of the March 27, 2000 memorandum. The EPA is proposing to amend the standards to address the issues raised by AF&PA in its petition for review. The EPA is also proposing to amend the standards to exempt storage vessels that are subject to the National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.

DATES: The EPA will accept comments regarding this proposal on or before March 26, 2003.

ADDRESSES: *Mail.* Send your comments to: Air Docket, U.S. EPA, Mailcode: 6102T, Room B108, 1200 Pennsylvania Ave, NW., Washington, DC, 20460, Attention Docket ID No. OAR–2002–0046.

Hand Delivery or Courier. Deliver your comments to: Air Docket, U.S. EPA, 1301 Constitution Avenue, NW., Room B108, Mail Code: 6102T, Washington, DC 20004, Attention Docket ID No. OAR–2002–0046.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Morris, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5416, electronic mail address *morris.mark@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS code	Examples of regulated entities
Industrial	325	Chemical manufacturing facilities.
	324	Petroleum and coal products manufacturing facilities
	424710	Petroleum bulk stations and terminals.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, *etc.*, is regulated by this action, you should carefully examine all of the applicability criteria in § 60.110b of the standards, as well as in the proposed amendments to the applicability sections contained in this proposal. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in the EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in the EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in the EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility. The EPA intends to work toward providing electronic access to all of the publicly available docket materials through the EPA's electronic public docket.

For public commenters, it is important to note that the EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in the EPA's electronic public docket as the EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When the EPA identifies a comment containing copyrighted material, the EPA will provide a reference to that material in the version of the comment that is placed in the EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in the EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about the EPA's electronic public docket, visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by the EPA, include Docket ID No. OAR–2002–0046 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, the EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows the EPA to contact you in case the EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that the EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in the EPA's electronic public docket. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment.

EPA Dockets. Your use of the EPA's electronic public docket to submit comments to the EPA electronically is the EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for

submitting comments. To access the EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2002–0046. The system is an "anonymous access" system, which means the EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

E-mail. Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2002–0046. In contrast to the EPA's electronic public docket, the EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through the EPA's electronic public docket, the EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by the EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in the EPA's electronic public docket.

Disk or CD ROM. You may submit comments on a disk or CD ROM to the mailing address in the **ADDRESSES** section. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

Facsimile. Fax your comments to: (202) 566–1741, Attention Docket ID No. OAR–2002–0046.

Confidential Business Information. Do not submit information that you consider to be CBI electronically through the EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Attention: Mr. Mark Morris, c/o OAQPS Document Control Officer (Mailcode C404–02), U.S. EPA, Research Triangle Park, NC, 27711, Attention Docket ID No. OAR–2002–0046. You may claim information that you submit to the EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and the EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. What standards are we proposing to amend and how does this action relate to the overall scope of the subpart Kb rule?
II. Why are we proposing amendments to the standards and what amendments are we proposing?
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks.
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. What Standards Are We Proposing to Amend and How Does This Action Relate to the Overall Scope of the Subpart Kb Rule?

We are proposing to amend various provisions in 40 CFR part 60, subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. In doing so, we are indicating by necessary implication that subpart Kb applies to all industries where volatile organic liquid (VOL) (as defined in § 60.111b(k)) is stored, and thus applies to industries in addition to the petroleum and synthetic organic chemical manufacturing industries.

The EPA proposed the subpart Kb rules on July 23, 1984 (49 FR 29698) and promulgated them on April 8, 1987 (52 FR 11420). The standards implement section 111 of the Clean Air Act (CAA) and are based on the Administrator's determination that VOL storage vessels cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 111 of the CAA requires that the EPA publish a list of major stationary sources of air pollution (priority list) and to establish standards reflecting the performance of the best system of emissions reductions (taking cost and non-air environmental impacts into account) which is adequately demonstrated for the new sources in that listed source category.

Subpart Kb indicates on its face that it applies to all industries where VOL storage vessels are located and is not limited to the petroleum industry and the synthetic organic chemical manufacturing industry (SOCMI). Thus, the applicability to affected sources is comprehensive (§ 60.110b(a)), except for enumerated exceptions, some of which are to non-SOCMI, non-petroleum sources (such as coke oven by-product plants). If the rule only applied to SOCMI and petroleum sources, of course, it would have been unnecessary for the EPA to have crafted the enumerated exceptions.

The history of the section 111 priority list with respect to VOL storage vessels likewise demonstrates that the scope of subpart Kb includes non-SOCMI, non-petroleum industries. The EPA listed the synthetic organic chemical manufacturing industry on August 21, 1979 (44 FR 49222), including a subcategory for SOCMI storage vessels and handling equipment. The EPA, however, formally amended the section 111 priority list at the same time (April 8, 1987) it promulgated subpart Kb to include storage vessels that are not in SOCMI service, renaming the subcategory Volatile Organic Liquid (VOL) Storage Vessels and Handling Equipment.

Regulatory history likewise confirms what is facially apparent: the subpart Kb rules apply to all storage vessels (subject to enumerated exceptions) storing VOL. For example, the preamble to the proposed subpart Kb stated that there are storage vessels emitting volatile organic compounds located at plants not in SOCMI, such as liquid bulk storage terminals, that store the same or similar liquids as those at SOCMI plants and that can be controlled with the same effectiveness, costs, and control technology as storage vessels located at SOCMI plants (49 FR 29700).

The EPA intended to achieve emissions reductions beyond those available from controlling emissions from SOCMI vessels by extending regulation to these non-SOCMI storage vessels (49 FR 29700). The EPA estimated that in 1977, volatile organic compound emissions from storage vessels not located at SOCMI plants were 13,230 megagrams per year (Mg/yr), compared to 24,570 Mg/yr from SOCMI storage vessels.

In sum, based on the text of the regulation, the history of the regulation, and the EPA's contemporaneous action to expand the priority list, the EPA interprets subpart Kb to apply to all storage vessels (subject to enumerated exceptions) including but not limited to those located at SOCMI plants and those not located at SOCMI plants.

II. Why Are We Proposing Amendments to the Standards and What Amendments Are We Proposing?

Background. In subpart Kb, "storage vessel" is defined as "each tank, reservoir, or container used for the storage of volatile organic liquids," excluding subsurface caverns and porous rock reservoirs, and components not directly involved in the containment of liquids or vapors, such as frames and auxiliary supports (40 CFR 60.111b). A specific issue presented for purposes of this proposal is whether the definition applies to process tanks, which are intermediate tanks within a process that are not used for the storage of raw materials or the product(s) of the process.

The EPA has issued two formal interpretations addressing this question. In an October 29, 1998 letter from the EPA's Office of Enforcement and Compliance Assurance (OECA) to the AF&PA, the EPA stated that the definition of "storage vessel" in subpart Kb does not include "flow-through process tanks," defined in the Underground Storage Tank Program (40 CFR 280.12) as tanks that form an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process, and that are not used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

After further evaluation, however, the EPA determined (post-issuance) that the interpretation given in the letter to AF&PA was not the best reading of the rule and that the definition of "storage vessel" in subpart Kb does not exclude process tanks. This interpretation appears in a March 27, 2000 memorandum (2000 Memorandum) from OECA to EPA Region IV.

The EPA continues to believe, as a purely interpretive issue, that the 2000 Memorandum is the better reading of the current rule. For example, there is no mention of intermediate or process tanks in the regulatory text of subpart Kb. The definition of "storage vessel" in subpart Kb is broad and does not specify that only raw material and product tanks are included. Aside from the exclusions specifically mentioned in the definition of "storage vessel," the only language that limits the applicability of subpart Kb is in § 60.110b(d), which lists vessels to which subpart Kb does not apply (for example, vessels at coke oven by-product plants and vessels located at gasoline service stations). The regulatory history also tends to support the 2000 Memorandum.

On May 26, 2000, the AF&PA filed a petition for judicial review of the 2000 Memorandum in the U.S. District Court of Appeals for the District of Columbia (*AF&PA* v. *EPA*, No. 00–1218). The petitioner felt that the EPA had inappropriately expanded the scope of "storage vessels" with the interpretation in the 2000 Memorandum.

On August 23, 2001 (66 FR 44342), AF&PA and the EPA signed a settlement agreement which provides that the EPA will propose to amend subpart Kb to exclude from its applicability storage vessels that have a capacity less than 75 cubic meters (m^3) or that contain a liquid with a maximum true vapor pressure below 3.5 kilopascals (kPa), and take final action on that proposal within a reasonable time. Today's proposed amendments fulfill the agreement to propose these amendments to subpart Kb.

Today's proposed amendments also address concerns raised by parties other than the petitioner. One party commented that in addition to the proposed amendments required by the settlement agreement, the EPA should exempt process tanks from subpart Kb. Another party commented that the regulatory overlap between subpart Kb and the National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (40 CFR part 63, subpart GGGG) should be addressed.

Proposal to Exempt Certain Storage Vessels by Capacity and Vapor Pressure. The EPA believes that limiting the rule's applicability by vessel size and vapor pressure is reasonable and does not undermine the rule's fundamental basis as reflecting the best system of emissions reductions for volatile organics in storage vessels, taking cost, non-air impacts, and energy into consideration. Presently, subpart Kb does not apply to storage vessels with a capacity less than 40 m^3. However, the only requirements that apply to storage vessels with a capacity less than 75 m^3, to storage vessels with a capacity between 75 and 151 m^3 storing liquid with vapor pressure less than 15 kPa, and to storage vessels with a capacity equal to or greater than 151 m^3 storing liquid with vapor pressure less than 3.5 kPa, is minimal recordkeeping (40 CFR 60.110b(b) and (c)). The EPA in essence is proposing to eliminate these recordkeeping requirements in today's proposal. Put another way, the EPA is proposing to exempt from subpart Kb those storage vessels presently subject to recordkeeping requirements only.

Today's proposed amendments to increase the vessel capacity applicability cutoff and to include vapor pressure applicability cutoffs, thus, reduce the burden on sources without sacrificing emissions reductions. As explained above, increasing the vessel capacity applicability cutoff from 40 m^3 to 75 m^3 would decrease the number of sources affected by subpart Kb, but no emissions reductions would be lost because emission control is required only on vessels larger than 75 m^3. The proposed vapor pressure applicability cutoffs of 3.5 kPa and 15.0 kPa would also decrease the number of affected sources, but, again, no emissions reductions would be lost because emission control is required only for liquids with vapor pressures of at least 5.2 kPa and 27.6 kPa, respectively (40 CFR 60.112b(a)).

Proposal to Exempt Process Tanks. The EPA is also proposing to exempt process tanks from subpart Kb. If the EPA were writing on a blank slate, the EPA would take the view that the better reading of subpart Kb is that process tanks are within the scope of the regulation, as explained earlier. However, the EPA is not writing on a blank slate. The 1998 interpretation of the rule was definitive (in the sense that it was intended to set out the EPA's view and was written by an entity within the EPA with authority to do so), and as such, can only be changed after notice-and-comment rulemaking (*see Paralyzed Veterans of America* v. *D.C. Arena L.P.*, 117 F. 3d 579, 586–87 (D.C. Cir. 1997)). That interpretation thus sets out the current scope of the rule with respect to process tanks, the 2000 Memorandum notwithstanding. The question, therefore, becomes whether it is justified to amend subpart Kb to include process tanks within its scope. Moreover, such a rule would apply only to new sources, that is, only to those process tanks for which construction, reconstruction, or modification commenced after the date of proposal of the action (see CAA sections 111(a)(2) and (b)(1)(B)).

The data used in the initial development of subpart Kb indicate that if process tanks were exempted, then about 4 percent of new tanks may go uncontrolled that would otherwise have to be controlled. However, there are several reasons why the actual amount

of potentially foregone emissions reductions is less and possibly even zero. First, because process tanks are small, and tank emissions generally are proportional to tank size, emissions from these tanks will be correspondingly small. Further, process tanks are, in many cases, required to be controlled under the national emission standards for hazardous air pollutants that affect the industries with most of the VOL tanks.

Considering all these factors, the EPA believes that it would not be worthwhile to now propose to include process tanks under subpart Kb. Although one would come to this same result based on the 1998 interpretation, in light of confusion due to the conflicting interpretations in the 1998 and 2000 Memoranda, the EPA is today proposing to amend subpart Kb to exempt process tanks to codify the 1998 position.

Proposal to Exempt Storage Vessels Subject to the Vegetable Oil National Emission Standards for Hazardous Air Pollutants (NESHAP). The EPA is also proposing to exempt from subpart Kb all storage vessels that are subject to the Vegetable Oil Production NESHAP. In most NESHAP, where there are existing standards that apply to the same emission points, the NESHAP usually include provisions which exempt the emission points from the existing standards and make the emission points subject only to the NESHAP. The Vegetable Oil Production NESHAP do not include any of these "overlap" provisions, and we are proposing here to rectify that omission.

The Vegetable Oil Production NESHAP contain a sourcewide emission limit in the form of the amount of hazardous air pollutant emissions per ton of oilseed processed. Since the limit is sourcewide, there are no requirements to control specific emission points. Consequently, a storage vessel that must be controlled under subpart Kb is not required to be controlled under the Vegetable Oil Production NESHAP.

According to information used in the development of the Vegetable Oil Production NESHAP, there are approximately 300 storage vessels in the source category. Sixty-four percent of these vessels have a capacity less than 75 m^3 and, therefore, would not be subject to subpart Kb because of today's proposed amendment to exempt such vessels.

Thirty percent of the vessels in the Vegetable Oil Production source category have a capacity between 40 and 75 m^3. The vapor pressure at which control is required for vessels in this size range under subpart Kb is 27.6 kPa. The main solvent used in vegetable oil production is n-hexane, which has a vapor pressure significantly below 27.6 kPa. Therefore, the EPA expects that no vessels in this size range would be subject to the control requirements of subpart Kb because the vessels do not store a liquid with a vapor pressure which exceeds 27.6 kPa. Moreover, many of these vessels are controlled by routing the emissions to a solvent recovery system.

The remaining 6 percent of vessels in the Vegetable Oil Production source category have a capacity larger than 75 m^3 and would be required to be controlled under subpart Kb (assuming they are new sources for purposes of subpart Kb) because the vapor pressure of n-hexane exceeds the vapor pressure at which control is required for large vessels. Since these vessels are large, they are even more likely to be routed to a solvent recovery system, and the EPA has information indicating that all large tanks are either currently controlled in this manner or will be controlled in the near future to comply with the Vegetable Oil Production NESHAP.

The EPA, thus, contends that the overall emissions to the environment would not increase by exempting vessels from subpart Kb that are subject to the Vegetable Oil Production NESHAP, and that such exemption essentially amounts to avoiding duplicative regulation. The EPA is, therefore, proposing to exempt from subpart Kb all storage vessels that are subject to the Vegetable Oil Production NESHAP.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action exempts certain sources from 40 CFR part 60, subpart Kb. Therefore, it is likely that this action could only reduce the information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0074 (EPA ICR No. 1132.06).

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 324 or 325 that has up to 500 employees; (2) a small business in NAICS code 424710 that has up to 100 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the proposed amendments impose no additional regulatory requirements on owners or operators of affected sources. In fact, the proposed amendments should decrease the impacts on small businesses because the proposed amendments exempt some sources from regulation.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The proposed rule amendments exempt certain sources from regulation. Thus, today's proposed rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule amendments exempt certain sources from regulation. The proposed rule amendments impose no additional burden on sources, and the emissions reductions lost because of the proposed exemptions are not significant. Thus, Executive Order 13132 does not apply to the proposed rule amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicits comment on these proposed amendments from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The proposed rule amendments do not have tribal implications, as specified in Executive Order 13175. The proposed rule amendments exempt certain sources from regulation. The proposed rule amendments impose no additional burden on sources, and the emissions reductions lost because of the proposed exemptions are not significant. Thus, Executive Order 13175 does not apply to the proposed rule amendments.

The EPA specifically solicits additional comment on the proposed rule amendments from tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's proposed amendments are not subject to Executive Order 13045 because they are

based on technology performance, not health or safety risks. Furthermore, the proposed rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

The proposed rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: Februry 14, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, part 60 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984

2. Section 60.110b is amended by:

a. Revising paragraphs (a) and (b);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d); and

d. Adding paragraph (d)(8).

The revisions and addition read as follows:

§ 60.110b Applicability and designation of affected facility.

(a) Except as provided in paragraphs (b) and (c) of this section, the affected facility to which this subpart applies is each storage vessel with a capacity greater than or equal to 75 cubic meters (m^3) that is used to store volatile organic liquids (VOL) for which construction, reconstruction, or modification is commenced after July 23, 1984.

(b) This subpart does not apply to storage vessels with a capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure less than 3.5 kilopascals (kPa) or with a capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a liquid with a maximum true vapor pressure less than 15.0 kPa.

* * * * *

(d) * * *

(8) Vessels subject to subpart GGGG of 40 CFR part 63.

* * * * *

3. Section 60.111b is amended by:

a. Removing the paragraph designations and placing the definitions in alphabetical order;

b. Revising the definition of "Storage vessel;"

c. Revising the definition of "Volatile organic liquid (VOL);" and

d. Adding, in alphabetical order, a definition of "Process tank."

The revisions and addition read as follows:

§ 60.111 Definitions.

* * * * *

Process tank means a tank that is used within a process to collect material discharged from a feedstock storage vessel or equipment within the process before the material is transferred to other equipment within the process or a product storage vessel. In many process tanks, unit operations such as reactions and blending are conducted. Other process tanks, such as surge control vessels and bottoms receivers, however, may not involve unit operations.

* * * * *

Storage vessel means each tank, reservoir, or container used for the storage of volatile organic liquids but does not include:

(1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors;

(2) Subsurface caverns or porous rock reservoirs; or

(3) Process tanks.

* * * * *

Volatile organic liquid (VOL) means any organic liquid which can emit volatile organic compounds into the atmosphere.

* * * * *

4. Section 60.116b is amended by removing the last sentence of paragraph (b).

[FR Doc. 03–4245 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 396

[Docket No. FMCSA–98–3656]

RIN 2126–AA38

General Requirements; Inspection, Repair, and Maintenance; Intermodal Container Chassis and Trailers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of extension of comment period.

SUMMARY: The FMCSA is extending the comment period while it continues to explore the feasibility of conducting a negotiated rulemaking (Reg Neg) concerning maintenance of intermodal container chassis and trailers. The FMCSA has hired a convenor to speak to interested parties about the idea of a Reg Neg. The American Association of Railroads (AAR) has requested an extension of time to give a working group additional time to determine if a private-sector solution can be developed. The FMCSA is granting the AAR's request.

DATES: Please submit your comments by April 10, 2003.

ADDRESSES: Please mail or hand deliver comments about this notice to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; fax to the Docket Management Facility at 202–493–2251; or submit electronically at *http://dms.dot.gov*. Please include the docket number that appears in the heading of this document in your comments. You can copy or examine all comments received at the above street address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays and on-line at *http://dms.dot.gov*. If you want notification of receipt of comments please include a self-addressed, stamped postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). This statement is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division (MC–PSV), Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On November 29, 2002, the FMCSA published a notice that it is studying the feasibility of using the Reg Neg process to develop a rulemaking action concerning the maintenance of intermodal container chassis and trailers.

On January 13, 2003, counsel for the AAR filed a request for an extension of the comment period to allow additional time for filing comments after a planned January 22 meeting of the Intermodal Association of North America (IANA) and the Ocean Carrier Equipment Management Association (OCEMA).

The IANA/OCEMA working group has been engaged in developing a private-sector solution to the assignment of responsibility for maintaining intermodal chassis and trailers. The outcome of the IANA/OCEMA discussions could well influence the FMCSA's decision to proceed with a negotiated rulemaking activity. Although IANA and OCEMA do not invite the FMCSA to its meetings, the agency believes that its working group is making important progress, and that additional meetings taking place in early 2003 may produce a private-sector solution acceptable to IANA, OCEMA, AAR, and other parties involved in the provision and maintenance of intermodal equipment.

On January 30, 2003, the AAR requested the agency refrain from instituting a negotiated rulemaking proceeding until after April 1, 2003, to provide the working group additional time to determine if a private-sector solution can be developed.

Based on this information, the FMCSA grants the AAR's request to extend the comment period. The FMCSA is extending the comment period an additional 45 days, until April 10, 2003. This extension will also allow the agency's contracted convenor to gather additional information and provide a more comprehensive report to assist the agency in deciding whether it should institute a negotiated rulemaking proceeding.

The FMCSA will continue to provide any comments it receives in reaction to the November 29, 2002, notice to the convenor and will file the comments in docket FMCSA–98–3656. If you want to submit comments to this notice directly to the docket, use the addresses above under the heading **ADDRESSES.**

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination in the FMCSA Docket at the above address. Comments received after the comment closing date will be filed in the FMCSA Docket identified above and will be considered to the extent practicable, but the FMCSA may issue a convenor's report anytime after the close of the comment period. In addition to late comments, the FMCSA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

If you would like to file a request for an additional extension of time to comment in accordance with 49 CFR 389.19, please submit it to the address in § 389.31.

Issued on: February 13, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 03–4228 Filed 2–21–03; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 68, No. 36
Monday, February 24, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST–03–01]

Plant Variety Protection Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Board.

DATES: March 5 and 6, 2003, 8:30 a.m. to 5 p.m., open to the public.

ADDRESSES: The meeting will be held in the United States Department of Agriculture George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, Maryland.

FOR FURTHER INFORMATION CONTACT: Commissioner Paul M. Zankowski, Plant Variety Protection Office, Science and Technology Program, United States Department of Agriculture, 10301 Baltimore Blvd., Room 400, National Agricultural Library Building, Beltsville, Maryland 20705–2351, Telephone number (301) 504–5518 or fax (301) 504–5291.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), this notice is given regarding a Plant Variety Protection Advisory Board meeting. The board is constituted under section 7 of the Plant Variety Protection Act (7 U.S.C. 2327).

The proposed agenda for the meeting will include discussions of: (1) The process improvement (Six Sigma) plan, (2) the financial status of the Plant Variety Protection Office, (3) implementation of a quality assurance program, (4) potential relocation of the Plant Variety Protection Office, (5) plans for the migration of the existing database, (6) E-business plans and (7) other related topics. Written comments may be submitted to the contact person listed above before or after the meeting.

Upon entering the George Washington Carver Center, visitors should inform security personnel that they are attending the PVP Advisory Board Meeting. Identification will be required to be admitted to the building. Security personnel will direct visitors to the registration table located outside of Room 4–2223. Registration upon arrival is necessary for all participants.

If you require accommodations, such as sign language interpreter, please contact the person listed under "For Further Information Contact". The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

Dated: February 20, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Agenda

Plant Variety Protection (PVP) Board Meeting, March 5 and 6, 2003, USDA, George Washington Carver Center 5601 Sunnyside Avenue, Beltsville, Maryland

March 5, 2003

Call to Order
Introductions
Opening Remarks
Adoption of Agenda
Adoption of November 2001 Board Meeting Minutes
Overview of the PVP Act and briefing on the PVP Office
Appeals to the Secretary of Agriculture
FY 2002 Accomplishment Report
Update on Business Process Improvement (Six Sigma) Plan

March 6, 2003

PVPO Financial Update
Discussion on the PVP Quality Assurance Program
PVP Office Relocation Discussion
Database Migration Plans
E-business Plans
Topics brought forward by Board members
Future Program Activities
Meeting Summary
Adjourn

[FR Doc. 03–4394 Filed 2–20–03; 1:33 pm]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Crooked River National Grassland Vegetation and Livestock Grazing Management, Ochoco National Forest, Jefferson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) on a Proposed Action to return the Crooked River National Grassland (CRNG or Grassland) vegetation to its historical range of variability and to graze domestic livestock where suitable. This will include control of western juniper on 40,000 acres using prescribed fire and chainsaw cutting, rehabilitate 10,000 acres of non-native crested wheatgrass seedings, continue grazing domestic livestock on approximately 82,000 acres, close domestic livestock grazing on approximately 9,000 acres, and to create a forage reserve on approximately 27,000 acres. This project is located in Jefferson County within the Mud Springs Creek, Willow Creek, Lower Crooked River, Crooked River, Steelhead, Whychus, Lake Billy Chinook, Lower Metolius, and Deschutes South watersheds.

DATES: Comments concerning the scope of the analysis must be received by March 21, 2003.

ADDRESSES: Send written comments to Robin Vora, Acting District Manager, Crooked River National Grassland, 813 SW Highway 97, Madras, Oregon 97741.

FOR FURTHER INFORMATION CONTACT: Glenn Adams, ID Team Leader, CRNG. Phone: (541) 416–6440 E-mail *gradams@fs.fed.us*

SUPPLEMENTARY INFORMATION: The Grassland was created after the homesteading era failed in the 1930's. Between 1935 and 1965 the Soil Conservation Service rehabilitated and developed the Grassland by seeding approximately 60,000 acres of abandoned farmland to crested wheatgrass and beardless bluebunch wheatgrass, developing livestock drinking water, fencing and implementing grazing allotment management plans (AMPs). During the 1960's the USDA Forest Service assumed the management of the CRNG.

Sagebrush steppe and western juniper woodland plant associations primarily characterized the historical vegetation of the Grassland. Historically wildfire maintained the balance of these plant associations. It is believed that approximately twenty to forty percent of the land area of the Grassland would have had a major component of western juniper. Today western juniper exists on approximately ninety percent of the land area of the Grassland. The Forest Service proposes to thin/remove western juniper on approximately 40,000 acres over a ten-year period using prescribed fire and mechanical treatments. These projects would be located in various locations across the entire Grassland. The objective for these activities will be to manage the vegetation in such a way to maintain sagebrush/bunchgrass associations and western juniper woodlands as near their historical ranges.

There is a need to assist in the restoration of native species on portions of the landscape that were farmed at the turn of the last century and later seeded to introduced plant species during the period from 1935 through 1965. Some of these sites are stagnated in early serial stages of succession due soil compaction and topsoil loss incurred during the homesteading era. The Forest Service proposes to rehabilitate approximately 10,000 acres of stagnant "old" crested and tall wheatgrass seeding to a mixture of shrubs, grasses, and forbs (native species, cultivars of native species, and non-native species). Methods used: Site preparation methods used would include brush beaters, disking, and ripping where appropriate. Seeding will be done using a rangeland drill and/or broadcast seeding. Prescribed fire will be used. Both hot summer and cool winter/spring fire will be used where appropriate.

There is a social/economic need to continue livestock grazing on the Grassland, but there is a need to modify grazing practices because some of the current practices discourage native grass and forb species establishment and maintenance. The Forest Service proposes to permit livestock grazing on approximately 84,646 acres of the Grassland for the next ten-year planning period. Grazing will occur on eighteen allotments. This action is to continue livestock grazing while continuing improving trends in vegetation, watershed conditions, and ecological stability. General grazing management changes proposed from the present allotment management plans include the following: eliminate the re-graze option on all but one allotment (Haystack Butte Allotment that practices short-duration grazing successfully), add a rest pasture to the grazing rotation on eleven allotments, and continue to graze five allotments with versions of deferred grazing. In addition, although this action proposes to retain existing permitted livestock number as the upper limit, actual use will be a function of meeting or exceeding standards. No guarantees are made as to length of season of livestock use. Animal Units harvested is a function of maintaining standards, non pre-planned calendar dates of use or permitted numbers.

There is a need to close livestock grazing on three allotments (the Peninsula, Clevenger and Goldmine/Falls Allotments) for the following reasons, among others: downward ecological trends, these allotments have been vacant for the past two to ten years, would require extensive fencing and water developments to be used, and are small in size and would support small numbers of livestock for only a short period of time. The Allotments have been vacant for approximately ten years.

There is a need to create grazing management flexibility by making additional forage available to encourage and/or facilitate vegetation rehabilitation elsewhere. A Forage Reserve created from the Canadian Bench and the Lower Desert Allotments would provide temporary relief for permittees as rehab projects take place on their permitted allotment. It is proposed to create two Forage Reserve Allotments on approximately 27,742 acres of the Canadian Bench and Lower Desert Allotments during the next ten-year planning period.

The preliminary issues that have been identified include: watershed restoration, grazing allotment management, noxious weed treatments, wildlife habitat, and reintroduction of prescribed fire. Alternatives to the Proposed Action will be developed to address significant issues, and will include, at a minimum, a no-action alternative.

Initial scoping began in February 2003. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Indian Tribes, and individuals who may be interested in or affected by the Proposed Action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 2003. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment. The EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in this project participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yonkee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (F.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service

at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by February 2004. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Responsible Official is Ochoco National Forest Supervisor, Larry Timchak. He will decide which, if any, of the alternatives will be implemented. His decision and rationale for the decision regarding vegetation management & livestock grazing actions will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: February 11, 2003.

Larry Timchak,

Forest Supervisor.

[FR Doc. 03–4240 Filed 2–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee

AGENCY: Forest Services, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on March 13, 2003, in Lake County, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan while taking a field visit to the proposed Pillsbury Homesite Hazardous Fuels Reduction demonstration project.

DATES: The meeting will be held from 8:30 a.m. to 4 p.m. on March 13, 2003, convening at the Upper Lake Ranger District Office in Upper Lake, CA.

ADDRESSES: The meeting will be held in the field, convening at the Upper Lake Ranger District office, 10025 Elk Mountain Road, Upper Lake, CA.

FOR FURTHER INFORMATION CONTACT: Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–1137; EMAIL *pybrown@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Field visit to the proposed Pillsbury Homesite Hazardous Fuels Reduction/Healthy Forests Initiative/Model Environmental Analysis demonstration project; (2) Regional Ecosystem Office (REO) update; (3) Presentation on current major Forest Service issues; (4) Update on planning for a Province fire ecology/fuels treatment workshop; (5) Aquatic Conservation Subcommittee report; (6) Work on the Ground Subcommittee discussion of proposed timber harvest issue; (7) Update on Northwest Forest Plan socio-economic monitoring; and (8) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 14, 2003.

James Fenwood,

Forest Supervisor.

[FR Doc. 03–4310 Filed 2–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Catron County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Catron County Resource Advisory Committee will meet in Reserve New Mexico, on April 1, 2003, from 10 a.m. MST to 4 p.m. MST. The purpose of the meeting is to initiate the resource advisory committee process, earn the roles and the responsibilities of the committee, discuss elements of Pub. L. 106–393 (the Secure Rural Schools and Community Self-Determination Act), and formulate operating guidelines including the next meeting date.

DATES: The meeting will be held April 1, 2003.

ADDRESSES: The meeting will be held at the Catron County Courtroom of the Catron County Court House, 101 Main Street, Reserve, New Mexico, 87830. Send written comments to Michael Gardner, Catron County Resource Advisory Committee, c/o Forest Serivce, USDA, 3005 E. Camino del Bosque, Silver City, New Mexico, 88061–7863, or electronically to *mgardner01@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Michael Gardner, Rural Community Assistant Staff, Gila National Forest, (505)388–8212.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee may file written statements with the Committee Staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 25, 2003, will have the opportunity to address the Committee at this session.

Dated: February 14, 2003.

Delbert J. Griego,

Acting Forest Supervisor.

[FR Doc. 03–4235 Filed 2–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meeting on March 3, April 7, and May 5, 2003 at 6:30 p.m., in Libby, Montana for business meetings. The meetings are open to the public.

DATES: March 3, April 7, and May 5, 2003.

ADDRESSES: The meetings will be held at the Kootenai National Forest Supervisor's Office, located at 1101 U.S. Highway 2 West, Libby, MT.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or email *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include informational presentations, status of approved projects, accepting project proposals for consideration and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: February 14, 2003.

Frank Votapka,

Acting Forest Supervisor.

[FR Doc. 03–4239 Filed 2–21–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by the nonprofit agency employing persons who are blind or have other severe disabilities, and to delete a product previously furnished by such agency.

Comments Must Be Received On or Before: March 26, 2003.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entity of the Federal Government identified in this notice for each service will be required to procure the service listed below from the nonprofit agency employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Laundry Service, Walter Reed Army Medical Center, Washington, DC.

NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.

Contract Activity: MEDCOM Contracting Center–NA, Washington, DC.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

The following product is proposed for deletion from the Procurement List:

Product

Product/NSN: Index Sheet Set, Looseleaf Binder 7530–00–160–8474.

NPA: Louisiana Association for the Blind, Shreveport, Louisiana.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–4301 Filed 2–21–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Deletions from Procurement List.

SUMMARY: This action deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: March 26, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Marker, Tube Type, Fine Tip:

7520–00–051–5031
7520–00–051–5033
7520–00–051–5035
7520–00–051–5036
7520–00–116–2886
7520–00–116–2887
7520–00–116–2888
7520–00–116–2889
7520–00–935–0979
7520–00–935–0980
7520–00–935–0981
7520–00–935–0982

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: Pen, Essential LVX Translucent and refills:

7510–01–454–1174
7510–01–454–1178
7510–01–454–1185
7510–01–454–1188

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: Pen, Executive Fountain and refills:

7520–01–451–2277 (Burgundy Barrel with 2 refills)

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: Pen, Metal Barrel & Refills:

7510–01–446–4835
7510–01–446–4845
7510–01–446–4846
7510–01–446–4850

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: Refill, Ballpoint Pen:

7510–00–754–2688

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–4302 Filed 2–21–03; 8:45 am]

BILLING CODE 6353–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of a fire at the Third Coast Industries' Friendswood facility, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9 am local time on March 6, at Crowne Plaza Medical Center, 6701 South Main, Houston, TX 77030, Telephone: (713) 797–1110.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes and draft recommendations. In addition, the Chair may present the Board's Strategic Plan, and action needed on selected recommendations from past CSB investigations.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

In the early morning hours of May 1, 2002, a fire erupted at the Third Coast Industries Friendswood facility, located in an unincorporated area of Brazoria County, Texas. The facility blended and packaged motor oils, hydraulic oils, and engine and other lubricants. The fire quickly spread due to the facility's design and lack of fire control equipment. The nearest water for firefighters was more than a mile away. The fire consumed more than 1.2 million gallons of combustible and flammable liquids and destroyed the site. More than 180 firefighters and support personnel responded, and it took 23 hours to bring the fire under control. Several neighboring buildings were destroyed, one hundred residents were evacuated and a local school was closed for a day. No employees or firefighters were injured during the incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 03–4427 Filed 2–20–03; 3:01 pm]

BILLING CODE 6350–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Guidance Conference Calls for Organizations Interested In Applying for a Learn and Serve America Program Grant

AGENCY: Corporation for National and Community Service.

ACTION: Notice of conference calls.

SUMMARY: The Corporation for National and Community Service is offering a series of teleconference calls for nonprofit organizations and institutions of higher education interested in applying for a Learn and Serve America program grant. These training teleconferences will familiarize organizations with the requirements of the Learn and Serve America programs and the steps in submitting an application via the eGrants system. The toll free number for these calls is (888) 552–5348 and the pass code is #76068. There will be 20 lines per call and they will be on a first come, first served basis.

DATES: The teleconference calls will take place on:

February 26, 2003—Wednesday—School/Community-Based
February 27, 2003—Thursday—Higher Education
March 4, 2003—Tuesday—School/Community-Based
March 5, 2003—Wednesday—Higher Education
March 12, 2003—Wednesday School/Community-Based & Higher Education

All teleconference calls will begin at 2 p.m. EST.

ADDRESSES: Our address is the Corporation for National and Community Service, Learn and Serve America, 9th Floor, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: For further information regarding these conference calls, please contact Ms. Juanita Peoples (202–606–5000, Ext. 117) e-mail *jpeoples@cns.gov.*

Dated: February 19, 2003.

Amiko Matsumoto,

Acting Director, Learn and Serve America.

[FR Doc. 03–4309 Filed 2–21–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–409–001,CP01–410–001, CP01–411–001 and CP01–444–001]

Calypso Pipeline, LLC, Tractebel Calypso Pipeline, LLC; Notice of Filing

September 9, 2002.

Take notice that on August 30, 2002, Calypso Pipeline, LLC (Calypso) and Tractebel Calypso Pipeline, LLC (Tractebel Calypso) jointly filed an amendment in the above-referenced dockets to reflect a change in ownership associated with the applications filed on July 20, 2001, and September 19, 2001, by Calypso (Calypso Application) in the same docketed proceedings. The August 30, 2002 filing requests that the Commission accept a substitution of Tractebel Calypso as the applicant in the pending Calypso Application to reflect the change in ownership and the filed revisions to certain exhibits in the Calypso Application. These revisions reflect only a change in ownership. The application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

By the Calypso Application, Calypso requests authorization to construct, own, and operate a new pipeline system consisting of approximately a 36 mile, 24-inch offshore segment and approximately a 5.8 mile, 24-inch onshore segment (Calypso Pipeline Project). The offshore pipeline will extend from the boundary of the U.S. Exclusive Economic Zone (EEZ) and the Bahama EEZ, off the southeast Florida coastline to shore at Port Everglades in Fort Lauderdale, Florida. The proposed onshore pipeline segment will be located in Broward County, Florida. The onshore pipeline segment will connect the offshore pipeline with Florida Gas Transmission Company's ("FGT") existing 24-inch Lauderdale Lateral at Mile Post 1.6 in Broward County, Florida. Calypso's proposed pipeline was designed to transport up to 832,000 MMBtu per day.

Calypso and Tractebel Calypso have executed a Purchase and Sale Agreement (PSA) for the Calypso Pipeline Project. Per the PSA, Tractebel Calypso will acquire the assets related to the Calypso Pipeline Project. Those assets consist principally of the Calypso Application; the Enron LNG Marketing, LLC Precedent Agreement; and various other surveys, permits, easements, and rights-of-way applications and engineering work product. The sale of the Calypso Pipeline Project to Tractebel Calypso ultimately is subject to the approval of the Bankruptcy Court. Tractebel Calypso will then notify the Commission of the closing of the transaction, and will thereafter be considered the applicant of record under the Calypso Application, with all the rights and responsibilities attached to such status.

Any questions regarding the application are to be directed to Michael J. Zimmer, Esq., Baker & McKenzie, 815 Connecticut Avenue, NW., Washington, DC, 20006.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before September 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a

final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4205 Filed 2–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03-292-000]

D.E. Shaw Plasma Power L.L.C.; Notice of Issuance of Order

February 14, 2003.

D.E. Shaw Plasma Power L.L.C. (Plasma Power) filed an application requesting authority to transact at market-based rates along with the accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity, energy, and ancillary services at market-based rates. Plasma Power also requested waiver of various Commission regulations. In particular, Plasma Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Plasma Power.

On February 13, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development - South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Plasma Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 17, 2003.

Absent a request to be heard in opposition by the deadline above, Plasma Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Plasma Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Plasma Power's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ≥FERRIS≥ link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4209 Filed 2–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01-438-001]

Northwest Pipeline Corporation; Notice of Amendment

February 14, 2003.

Take notice that on January 8, 2003, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158, filed in Docket No. CP01–438–001, an application, pursuant to Section 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations to amend the certificate of public convenience and necessity issued September 23, 2002, in Docket No. CP01–438–000, for Northwest's Rockies Expansion project, as more fully described in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Specifically, Northwest requests the Commission to approve revised design modifications for Northwest's Green River, Muddy Creek, Lava, and Burley Compressor Stations, located in Sweetwater and Lincoln Counties, Wyoming and Bannock and Cassia Counties, Idaho, respectively, resulting in a total addition of 1,133 horsepower to the originally certificated 24,924 horsepower. Northwest also proposes to forgo originally certificated modifications, to install unloader pockets, at its Pocatello Compressor Station in Power County, Idaho. Northwest states that the proposed compression modifications will still provide the originally certificated capacity additions. The revised cost is estimated to be $139.9 million instead of the original $154.3 million.

Northwest requests that the Commission issue the amended certificate order by May 1, 2003, in order allow Northwest to meet the required November 1, 2003 in-service date.

Any questions regarding this application should be directed to Mr. Gary Kotter, Manager, Certificates and Tariffs, Northwest Pipeline Corporation, PO Box 58900, Salt Lake City, Utah 84158–0900 or call (801) 584–7117 or Fax (801) 584–7764.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ≥e-Filing≥ link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4206 Filed 2–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–37–000]

Williston Basin Interstate Pipeline Company; Notice of Route and Site Review

February 14, 2003.

On March 4, 2003, the staff of the Office of Energy Projects (OEP) will conduct a site review of the proposed Grasslands Project pipeline route through the Little Missouri National Grasslands. The Grasslands Project facilities are proposed for construction by Williston Basin Interstate Pipeline Company. The proposed facilities, crossing portions of the Little Missouri National Grasslands in Golden Valley and Billings Counties, North Dakota, will be inspected by automobile.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Anyone interested in participating should meet at the U.S. Forest Service's Medora Ranger District Parking Lot, located at 161 21st Street West, Dickinson, North Dakota, at 8:30 a.m. on March 4, 2003. For further information, contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4207 Filed 2–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–56–000, et al.]

American Transmission Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

February 13, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Transmission Company LLC, ATC Management Inc., Wisconsin Public Service Corporation, WPS Investments, LLC

[Docket No. EC03–56–000]

Take notice that on February 10, 2003, Wisconsin Public Service Corporation, WPS Investments, LLC, American Transmission Company LLC (ATCLLC), and ATC Management Inc., which is ATCLLC's Corporate Manager (collectively, Applicants), tendered for filing with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act and part 33 of the Commission's regulations requesting authorization for the acquisition of securities and the transfer of an ownership interest in a transmission line that is under construction. Applicants requested an effective date of March 12, 2003.

Applicants state that copies of the filing were served on the Public Service Commission of Wisconsin, the Michigan Public Service Commission and the Illinois Commerce Commission.

Comment Date: March 3, 2003.

2. PSEG Power Connecticut LLC

[Docket No. EG03–25–000]

Take notice that on February 11, 2003, PSEG Power Connecticut LLC (Applicant), having its principal place of business at 80 Park Plaza, T–16, Newark, NJ 07102, filed with the Federal Energy Regulatory Commission (Commission) a second amendment to its December 4, 2002, application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. The amendment requests Commission authority to engage in certain additional activities incidental to the generation of electricity for sale at wholesale.

The Applicant is a limited liability company formed under the laws of the State of Delaware. The Applicant states that it is engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), exclusively in owning or owning and operating eligible electric facilities and participating in certain other activities incidental to such eligible electric facilities as authorized under PUHCA. The Applicant further states that it owns and operates eligible facilities located in Connecticut.

Comment Date: March 6, 2003.

3. Occidental Power Services, Inc.

[Docket No. ER02–1947–003]

Take notice that on February 11, 2003, Occidental Power Services, Inc.,

tendered for filing consistent with the Commission's January 17, 2003, request for a revised FERC Electric Rate Schedule No. 1. The rate schedule has been revised to conform to the requirements of Order No. 614.

Comment Date: March 4, 2003.

4. San Diego Gas & Electric Company

[Docket No. ER03–217–001]

Take notice that on February 11, 2003, pursuant to FERC's Order issued January 24, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing Service Agreements Nos. 17 and 18 to its FERC Electric Tariff, First Revised Volume No. 6. These agreements were accepted for filing on January 24, 2003, conditioned upon SDG&E's filing of designations for both interconnection agreements in compliance with Order No. 614 and section 35.9(a) of the Commission's Regulations.

SDG&E states that copies of the filing have been served on Termoelectrica de Mexicali S. de R.L. de C.V., Termoelectrica U.S., LLC, and on the California Public Utilities Commission.

Comment Date: March 4, 2003.

5. Southern California Edison Company

[Docket No. ER03–516–000]

Take notice that on February 11, 2003, Southern California Edison Company (SCE) tendered for filing a letter agreement between SCE and Whitewater Hill Wind Partners, LLC (Whitewater).

The purpose of the letter agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, and procurement of material and equipment associated with the Devers-Banning-Garnet-Windpark-Zanja 115 kV line reconfiguration.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Whitewater.

Comment Date: March 4, 2003.

6. Southern California Edison Company

[Docket No. ER03–517–000]

Take notice that on February 11, 2003, Southern California Edison Company (SCE) tendered for filing a letter agreement between SCE and Whitewater Hill Partners, LLC (Whitewater).

The purpose of the letter agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, and procurement of material and equipment for, and construction of, a Temporary Monitoring System.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Whitewater.

Comment Date: March 4, 2003.

7. Southern California Edison Company

[Docket No. ER03–518–000]

Take notice that on February 11, 2003, Southern California Edison Company (SCE) tendered for filing a letter agreement between SCE and Industry Urban Development Agency.

The purpose of the letter agreement is to provide an interim arrangement pursuant to which SCE will commence performance of the engineering, design, and preparation of specifications necessary for SCE to install interconnection facilities capable of serving 80 MW of load and to commence Distribution Service to the City of Industry for 10 MW of Wholesale Distribution Load.

SCE respectfully requests that the Letter Agreement become effective on January 22, 2003. SEC also states that copies of this filing were served upon the Public Utilities Commission of the State of California and Industry Urban Development Agency.

Comment Date: March 4, 2003.

8. Virginia Electric and Power Company

[Docket No. ER03–519–000]

Take notice that on February 11, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power (DVP), tendered for filing a revised Generator Interconnection and Operating Agreement (Interconnection Agreement) between DVP and Old Dominion Electric Cooperative, Inc. (ODEC) to interconnect ODEC's Louisa CT Project with DVP's transmission system and a revised Interconnection Agreement between DVP and ODEC to interconnect ODEC's Marsh Run CT Project with DVP's transmission system.

DVP respectfully requests waiver of the Commission's regulations to allow the Interconnection Agreements to become effective as of February 12, 2003, the day after filing. DVP also states that copies of the filing were served upon Old Dominion Electric Cooperative and the Virginia State Corporation Commission.

Comment Date: March 4, 2003.

9. Southern California Edison Company

[Docket No. ER03–520–000]

Take notice that on February 11, 2003, Southern California Edison Company (SCEC), tendered for filing a notice of cancellation of a letter agreement between SCE, Pure Power Energy Company, LLC, and Wintec Energy Ltd., FERC Electric Tariff, Substitute First Revised Original Volume No. 6 Service Agreement No. 15, to be effective January 1, 2003.

SCEC states that the proposed cancellation has been served upon the Public Utilities Commission of the State of California, Pure Power Energy Company, LLC and Wintec Energy, Ltd.

Comment Date: March 4, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4208 Filed 2–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

February 14, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to license.

b. *Project No:* 3033–019.

c. *Date Filed:* December 17, 2002.

d. *Applicant:* Arkansas Electric Cooperative Corporation.

e. *Name of Project:* Dam No. 2 Hydropower Project.

f. *Location:* Desha and Arkansas Counties, Arkansas.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* S. Maurice Robinson, Vice President, Engineering, Construction, and Operations Division, Arkansas Electric Cooperative Corporation, One Cooperative Way P.O. Box 194208 Little Rock, Arkansas, 72219–4208, (501) 570–2497.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Shaffer at (202) 502–8944, or e-mail address: *robert.shaffer@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 14, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–3033–019) on any comments or motions filed.

k. *Description of Request:* The licensee proposes to change the route of the project's transmission line, as well as its length and voltage. The license authorized an 11.5 mile-long, 230-kV line extending from the powerhouse in a southwesterly direction to the Arkansas Power and Light Company (now Entergy Arkansas, Inc. (EAI)) grid at Dumas, Arkansas. Instead, a 15.5 mile-long, 115-kV line was constructed along a different route, wandering in a southwesterly direction from the powerhouse to EAI's grid at Dumas, Arkansas. Some points along the constructed transmission line route are approximately 3 miles apart from the authorized route.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4210 Filed 2–21–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OH156–1; FRL–7453–5]

Response To Petition To Withdraw Approval, Delegation, and Authorization To Administer Federal Environmental Programs; OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: In 1997, the Ohio Citizen Action, the Ohio Environmental Council, Rivers Unlimited, and the Ohio Sierra Club submitted a petition requesting EPA to withdraw approval, delegation, or authorization from the State of Ohio to administer certain air, water, and waste Federal environmental programs based on the Ohio Environmental Audit Privilege and Immunity Law. The petitioners supplemented and amended the petition in 1998, 1999, and 2000 requesting EPA to review Ohio's implementation of certain air, water, and waste programs. EPA is denying the petition because EPA did not find sufficient evidence to justify withdrawal or revocation of the programs covered by the petition.

DATES: Under section 307(b) of the Clean Air Act, petitions for judicial review of today's action denying the petition to withdraw or revoke Clean Air Act programs may be filed in the United States Court of Appeals for the appropriate circuit on or before April 25, 2003.

FOR FURTHER INFORMATION CONTACT: Maria Gonzalez, Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (C14–J), Chicago, Illinois 60604, phone number (312) 886–6630.

SUPPLEMENTARY INFORMATION: In 1997, the Ohio Citizen Action, the Ohio Environmental Council (which was later replaced by the Ohio Public Interest Research Group), Rivers Unlimited, and the Ohio Sierra Club, submitted a petition requesting EPA to withdraw approval, delegation, or authorization from the State of Ohio to administer certain federal environmental programs. The petition initially requested EPA to withdraw or revoke certain air, water, and waste environmental programs based on the Ohio Environmental Audit Privilege and Immunity Law (the Audit Law). Petitioners supplemented and amended the petition on September 18, 1998, August 4, 1999, and January 27, 2000, to add allegations about how the Ohio Environmental Protection Agency (Ohio EPA) was implementing the Resource Conservation and Recovery Act hazardous waste program and solid waste permit program; the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program; and the Clean Air Act Standards of Performance for New Stationary Sources (NSPS), New Source Review (NSR), Prevention of Significant Deterioration (PSD), non-compliance penalties, and Title V programs.

On December 21, 2000, EPA denied the Audit Law component of the petition, but continued its review of Ohio EPA's implementation of the programs covered by the amended and supplemented petition.

Because the petition seeks withdrawal or revocation of programs, the focus of our review was whether it is appropriate to initiate withdrawal or revocation proceedings based on the withdrawal criteria for each of the affected programs. The Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act and their implementing regulations set forth the withdrawal or revocation criteria for programs authorized, delegated or approved pursuant to these acts. EPA reviewed Ohio EPA's implementation of each program based on the criteria for that program.

Beginning in January of 2000, EPA Region 5 staff conducted reviews of Ohio's environmental programs covered by the petition. EPA staff visited Ohio EPA district and central offices, the Ohio Attorney General's Office and local air agencies; interviewed employees; and reviewed files. EPA staff also reviewed the affidavits submitted by the petitioners in July and August of 2000. EPA reviewed how Ohio EPA implemented the affected programs during the period from 1995 to 2000.

On September 4, 2001, EPA Region 5 made public a preliminary report, dated August 30, 2001, entitled "Draft Report on U.S. EPA Review of Ohio Environmental Programs" (Draft Report) summarizing the petitioners' allegations and setting forth its preliminary findings with respect to the requests to withdraw or revoke the eight environmental programs. EPA held two public meetings in Columbus, Ohio on November 13, 2001, to answer questions and take comments on the report. EPA accepted comments from the public until January 14, 2002.

The Draft Report also made recommendations that, if implemented, would alleviate concerns related to the withdrawal criteria and obviate the need for further review. EPA followed up with Ohio EPA on the recommendations made in the Draft Report. Ohio EPA has taken steps in each program that should benefit its implementation of those programs.

A final report and background documents which detail EPA's findings with respect to each allegation in the petition for each program, along with a responsiveness summary that responds to the comments made at the public meeting and during the comment period are at the following EPA Web site: *http://www.epa.gov/region5/ohioreview*. You may also access this information at the following repositories located in Ohio: Public Library of Cincinnati & Hamilton County, 800 Vine Street, Cincinnati; Public Library of Youngstown & Mahoning County, 305 Wick Avenue, Youngstown; Columbus Metropolitan Library, 96 South Grant Avenue, Columbus; Toledo-Lucas County Public Library, 325 Michigan Street, Toledo; Briggs Lawrence County Public Library, 321 South Fourth Street, Ironton; Cleveland Public Library, 325 Superior Avenue, Cleveland; State of Ohio Senate, Senate Building, Energy, Natural Resources & Environment, Room 143, First Floor, Columbus; Dayton & Montgomery County Public Library, 215 East Third Street, Dayton; Washington County Public Library, 615 Fifth Street, Marietta; Dover Public Library, 525 North Walnut Street, Dover; State of Ohio House of Representatives, Environmental Committee, 77 South High Street, 13th Floor, Columbus.

As discussed in detail in the final report and background documents, EPA did not find sufficient evidence to justify withdrawal or revocation of the programs covered by the petition. Therefore, EPA denied the petition to withdraw or revoke its approval, delegation, or authorization from the State of Ohio to administer certain Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act environmental programs by letter dated February 7, 2003.

Dated: February 7, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 03–4259 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7453–2]

Annual Conference on Analysis of Pollutants in the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of conference.

SUMMARY: The Office of Water's Office of Science and Technology, and Battelle will co-sponsor the "26th Annual Conference on Analysis of Pollutants in the Environment" to discuss all aspects of environmental measurement. The conference is open to the public.

DATES: The annual conference will be held on April 29–30, 2003. On April 29, 2003, the conference will begin at 8:45 a.m. and adjourn at 5:30 p.m. A workshop on "Whole Effluent Toxicity (WET) Testing to Support EPA's Final Rule" will be presented from 3 to 5:30 p.m. On April 30, 2003, the conference will begin at 8:45 a.m. and adjourn at 5 p.m. On May 1, 2003, a public meeting on "Detection and Quantitation" will be held from 10 a.m. to 3 p.m., with a one-hour break from 12 p.m. to 1 p.m.

ADDRESSES: The conference will be held at the Holiday Inn Chicago Mart Plaza Hotel, 350 North Orleans Street, Chicago, Illinois, U.S.A. 60654.

FOR FURTHER INFORMATION CONTACT: Conference and workshop arrangements are being conducted by DynCorp Systems & Solutions LLC. For information on registration, conference fees, hotel rates, reservations, and transportation, please contact Jennifer Maglinao, by e-mail at *jennifer.maglinoo@DynCorp.com* or by telephone at (703) 461–2137. If you have technical questions regarding the conference, workshop, or public meeting, please contact Marion Kelly by e-mail at *kelly.marion@epa.gov* or by facsimile at (202) 566–1053.

SUPPLEMENTARY INFORMATION: The 26th Annual Conference on Analysis of Pollutants in the Environment is designed to bring together representatives of regulated industries, commercial environmental laboratories, State and Federal regulators, municipal water and wastewater laboratories, and environmental consultants and contractors to discuss all aspects of environmental measurement focusing on environmental water regulations, compliance monitoring, and related issues.

The tentative program topics for the conference follow:

Tuesday, April 29, 2003

Welcome and Opening Remarks.

Update on Analytical Methods in EPA's Wastewater Programs.

Pollutants to be Tested for in EPA's 2004 National Sewage Sludge Survey.

E-Chem, AOAC–International's Methods Database.

Automated Discrete Sample Analyses Applied to Standard Environmental Methods.

Validation of Improved Methods for Fecal Coliforms and *Salmonella* in Biosolids.

Determination of *Cryptosporidium* in Water Using Molecular Methods.

Uncertainty in Microbiological Measurements.

Workshop on "Whole Effluent Toxicity (WET) Testing to Support EPA's Final Rule".

Wednesday, April 30, 2003

Application of the 1600-series Methods to Monitor Trace Metal Levels in South Texas Estuaries.

Determination of Mercury in Ice Cores to Track Earth's Activities.

Application of EPA Method 1631, Revision E, to Routine Low-level Mercury Analyses.

Determination of Arsenic and Selenium Species in Water with a Dynamic Reaction Cell and ICP/MS.

Evaluation of Techniques for Reducing the Reporting Limit for Perchlorate to Sub-ppb Levels.

Establishment of Total Maximum Daily Loads (TMDLs) for PCBs and Other Pollutants in Lakes and Estuaries.

Effect of Various Means of Calculating Dioxin Toxic Equivalents for Non-detected PCB Congeners on Risk Assessment.

A History of Nutrient Excursions Above Ambient Water Quality Criteria in the Great Lakes and Mitigation Strategies, including Total Maximum Daily Loads (TMDLs) and Waste Load Allocations (WLAs).

Determination of Alkylphenol Ethoxylates in Various Matrices.

Determination of Pharmaceuticals Pollutants and Sterols in Water and Biosolids by HPLC/MS/MS.

Determination of Brominated Organics, including PBDDs/PBDFs, PBDEs, and PBBs, in Multi-media Samples by GC/HRMS.

Thursday, May 1, 2003

Public Meeting on EPA's Assessment of Detection and Quantitation Procedures Applied under the Clean Water Act.

EPA's Office of Water recently completed an in-depth assessment of detection and quantitation limit concepts and their application under Clean Water Act programs. The Agency intends to make the results of this assessment available through a public notice to be published in the **Federal Register** in March 2003. EPA is sponsoring a public meeting to describe this assessment, present the findings, and discuss recommendations. Following presentations by EPA, the public is invited to present comments on the assessment.

Time will be made available to interested parties who send in a formal request to comment by April 5, 2003. Requests must include the commenter's name, organization, address, telephone number, fax number (if applicable), and e-mail address (if applicable). Requests must be sent to: Jennifer Maglinao, DynCorp, 6101 Stevenson Ave., Alexandria, VA 22304–3540. Requests received by April 5, 2003, will be acknowledged and assigned a time slot. Commenters are requested to provide copies of any presentation materials for the public record, and for meeting participants. There is no registration fee to attend the public meeting. For questions, please call Jennifer Maglinao at (703) 461–2137.

This meeting/event will be held in a building which is accessible to persons using wheel chairs and scooters. If you wish to request that other arrangements be made because of your disability in order to enable you to participate or if you have questions about accessibility, please contact Jennifer Maglinao at (703) 461–2137 as soon as possible, but preferably no less than 5 business days before the event is scheduled.

Dated: February 13, 2003.

Pamela Barr,

Acting Director, Office of Science and Technology.

[FR Doc. 03–4247 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0024; FRL–7291–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the effect of atrazine on amphibians.

DATES: *Pre-meeting teleconference*: May 21, 2003, from 1 p.m. to 3 p.m, eastern standard time.

Face-to-face meetings: June 3–5, 2003, from 8:30 a.m. to 5 p.m, eastern standard time.

Comments: Deadlines for submission of requests to present oral comments and submission of written comments, see Unit I.F. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Nominations of persons to serve as an ad hoc member of the FIFRA SAP for the pre-meeting teleconference and face-to-face meetings should be provided on or before *March 6, 2003*.

Special seating: Requests for special seating arrangements or other special accomodations should be made at least 5 business days prior to the meeting.

ADDRESSES: *Pre-meeting teleconference*: This meeting will be held at the Environmental Protection Agency, 1201 Pennsylvania Ave., NW., EPA East Bldg, Conference Room 4225, Washington, DC. For additional information about the pre-meeting teleconference, including how to receive the teleconference telephone number, contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.**

Face-to-face meetings: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. 22202. The telephone number for the Sheraton Crystal City Hotel is (703).486–1111.

Comments: Written comments may be submitted electronically, by mail, or through hand delivery/conrier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, requests to present oral comments, and special seating: To submit nominations to serve as an ad hoc member of the FIFRA SAP for the pre-meeting teleconference and face-to-face meetings, or requests for special seating arrangements, or requests to present oral comments, notify the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Paul Lewis, DFO, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0024. The official public

docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is 703– 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

Meeting agendas relevant to these meetings are now available. EPA's position paper, charge/questions to FIFRA SAP, and FIFRA SAP composition (i.e., permanent members and ad hoc members for this meeting) will be available as soon as possible, but no later than early May 2003. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be accessible through EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, also will not be available for public viewing in EPA's electronic public docket. In addition, EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/couriers. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0024. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0024. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0024.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0024. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. For submission of CBI, see Unit I.D. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0024 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Each individual or group wishing to make brief oral comments to the FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, May 28, 2003, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before the FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

2. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern standard time, May 28, 2003, to provide the FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by the FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of persons to serve as ad hoc members of the FIFRA SAP for this meeting.* The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Individuals nominated should have expertise in one or more of the following areas:

i. Amphibian toxicology and ecology.

ii. Xenopus and/or xenopus husbandry.

iii. Developmental biology, gonadal development, and/or endocrinology.

iv. Ecotoxicology and risk assessment.

Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** by March 6, 2003.

The criteria for selecting scientists to serve on the FIFRA SAP are that these persons be recognized scientists-experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA SAP nominee is considered to assist in a review by the FIFRA SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP nominee is required to submit a

Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflict of interests before the nominee is considered to serve on the FIFRA SAP. Selected FIFRA SAP members will be hired as a Special Government Employee. The Agency will review all nominations; nominees who are selected for the meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticides pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Pre-meeting Teleconference

This pre-meeting teleconference is open to the public and seating will be on a first-come basis. The public may also attend via telephone. For further information concerning the meeting or how to obtain the telephone number, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

The purpose of this public pre-meeting teleconference is to:

1. Discuss the charge and the adequacy of the review materials provided to the FIFRA SAP.
2. Clarify any questions and issues relating to the charge and the review materials.
3. Discuss specific charge assignments to the Panelists.
4. Clarify specific points of interest raised by the Panelists in preparation for the face-to-face meetings to be held from June 3–5, 2003.

C. Face-to-Face Public Meeting

The FIFRA SAP will meet to consider and review the effects of atrazine on amphibians. Recent research has generated conflicting results on the effects of atrazine on gonadal developmental (e.g., male hermaphroditism) in amphibians and how these effects influence secondary sexual characteristics (e.g., laryngeal muscle mass). The FIFRA SAP will be asked to consider the range of effects associated with exposure of amphibians to atrazine and to determine the significance of these effects for risk assessment and the likely threshold exposure value for eliciting these effects. The Agency requests the Panel to identify what additional, specific information, if any, would significantly reduce uncertainties in determining a causal relationship between atrazine exposure and development in amphibians and the extent to which any changes in development can be related to effects on survival, growth and reproductive performance. To the extent that significant knowledge gaps or areas of variability in the existing knowledge base are identified, the FIFRA SAP will be asked to prioritize what additional types of data would lead to the greatest incremental reductions in risk assessment uncertainties.

D. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 11, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–4248 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7453–3]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantitation; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA's Office of Water recently completed an assessment of detection and quantitation concepts and their application under Clean Water Act programs. The Agency intends to make the results of this assessment available through a public notice to be published in the **Federal Register** in March 2003. EPA is sponsoring a public meeting to describe this assessment, present the findings, and discuss recommendations. Following presentations by EPA, the public is invited to present comments on the assessment. Time will be made available to interested parties who send in a formal request to comment by April 5, 2003. Commenters are requested to provide copies of any presentation materials for the public record and for meeting participants.

DATES: The public meeting on Detection and Quantitation will be held on May 1, 2003, from 10 a.m. to 3 p.m., with a one-hour break from 12 p.m. to 1 p.m. Parties interested in presenting comments at the meeting must send in a formal request to comment by April 5, 2003.

ADDRESSES: The meeting will be held at the Holiday Inn Chicago Mart Plaza Hotel, 350 North Orleans Street, Chicago, Illinois, U.S.A. 60654. Formal requests to present comments at the meeting must be submitted by April 5, 2003, to Jennifer Maglinao, DynCorp, 6101 Stevenson Ave., Alexandria, VA 22304–3540, or by e-mail to *jennifer.maglinao@dyncorp.com.*

FOR FURTHER INFORMATION CONTACT: The public meeting is being coordinated by DynCorp System & Solutions LLC. Questions regarding public meeting logistics or requests to present comments should be addressed to: Jennifer Maglinao, DynCorp, 6101 Stevenson Ave., Alexandria, VA 22304–3540, by e-mail: *jennifer.maglinao@dyncorp.com*, by telephone: (703) 461–2137, or by facsimile at (703) 461–2020. Technical questions regarding the public meeting must be addressed to Marion Kelly by e-mail: *kelly.marion@epa.gov* or by facsimile at (202) 566–1053.

SUPPLEMENTARY INFORMATION: Requests to comment must be submitted by April 5, 2003, and must include the commenter's name, organization, address, telephone number, fax number (if applicable), and e-mail address (if applicable). All requests to present comments will be acknowledged and assigned a time slot. The amount of time allotted each commenter will depend upon the number of participants. Commenters are requested to provide copies of any presentation materials for the public record and for meeting participants. Although the public meeting is being held following the 26th Annual Conference on Analysis of Pollutants in the Environment, there is no registration fee to attend the public meeting.

This meeting/event will be held in a building which is accessible to persons using wheel chairs and scooters. If you wish to request that other arrangements be made because of your disability in order to enable you to participate or if you have questions about accessibility, please contact Jennifer Maglinao at (703) 461–2137 as soon as possible, but preferably no less than 5 business days before the event is scheduled.

Dated: February 13, 2003.

Pamela Barr,

Acting Director, Office of Science and Technology.

[FR Doc. 03–4246 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0033; FRL–7290–7]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period October 1, 2002 to December 31, 2002 to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0033. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A "specific exemption" authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.
2. "Quarantine" and "public health" exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.
3. A "crisis exemption" is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in "a reasonable certainty of no harm" to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the "reasonable certainty of no harm standard" of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

ARIZONA

Department of Agriculture

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

CALIFORNIA

Environmental Protection Agency, Department of Pesticide Regulation

Crisis: On November 5, 2002, for the use of pyriproxyfen on strawberry to control whiteflies. This program is expected to end on October 2, 2003. Contact: (Andrea Conrath)

Quarantine: EPA authorized the use of spinosad on minor crop host sites to control non-indigenous and quarantined fruit flies; December 5, 2002 to December 5, 2005. Contact: (Dan Rosenblatt)

Specific: EPA authorized the use of avermectin on spinach to control leafminers; November 1, 2002 to October 31, 2003. Contact: (Barbara Madden)

EPA authorized the use of a baited trap containing lambda-cyhalothrin (toxicant), ammonium bicarbonate (food lure), and spiroketalamine (pheromone) on olive trees to control the olive fruit fly; November 14, 2002 to August 31, 2003. Contact: (Dan Rosenblatt)

EPA authorized the use of pyriproxyfen on strawberry to control whiteflies; November 15, 2002 to November 15, 2003. Contact: (Andrea Conrath)

EPA authorized the use of imidacloprid on strawberries to control whiteflies; December 24, 2002 to December 23, 2003. Contact: (Andrew Ertman)

EPA authorized the use of avermectin on avocado to control thrips; February 1, 2003 to December 1, 2003. Contact: (Barbara Madden)

EPA authorized the use of tebufenozide on wine grapes to control grape leaffolder and Omnivorous leafroller; April 1, 2003 to September 1, 2003. Contact: (Barbara Madden)

DELAWARE

Department of Agriculture

Specific: EPA authorized the use of s-metolachlor on spinach to control weeds; October 25, 2002 to September 1, 2003. Contact: (Andrew Ertman)

EPA authorized the use of thiophanate methyl on mushroom spawn to control green mold; December 5, 2002 to December 5, 2003. Contact: (Andrea Conrath)

FLORIDA

Department of Agriculture and Consumer Services

Quarantine: EPA authorized the use of naled on telephone poles and inanimate objects to control the Oriental fruit fly and related quarantined fruit fly species that respond to methyl eugenol bait; November 13, 2002 to November 13, 2005. Contact: (Dan Rosenblatt)

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; January 19, 2003 to January 18, 2004. Contact: (Barbara Madden)

EPA authorized the use of thiophanate methyl on citrus to control post-bloom fruit drop disease; February 22, 2003 to February 22, 2004. Contact: (Andrea Conrath)

GEORGIA

Department of Agriculture

Specific: EPA authorized the use of flufenacet on wheat to control ryegrass; October 10, 2002 to December 31, 2002. Contact: (Barbara Madden)

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; January 19, 2003 to January 18, 2004. Contact: (Barbara Madden)

IDAHO

Department of Agriculture

Specific: EPA authorized the use of flufenacet on wheat and triticale to control ryegrass; October 10, 2002 to June 30, 2003. Contact: (Barbara Madden)

EPA authorized the use of difenoconazole on sweet corn grown for seed to control fungal pathogens involved in die-back syndrom; November 20, 2002 to November 20, 2003. Contact: (Andrea Conrath)

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

MARYLAND

Department of Agriculture

Specific: EPA authorized the use of thiophanate methyl on mushroom spawn to control green mold; December 5, 2002 to December 5, 2003. Contact: (Andrea Conrath)

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

MICHIGAN

Michigan Department of Agriculture

Specific: EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; October 21, 2002 to December 15, 2002. Contact: (Andrew Ertman)

MISSISSIPPI

Department of Agriculture and Commerce

Specific: EPA authorized the use of niclosamide in commercially operated, man-made levee containment ponds for catfish production to control ram's horn snail, an intermediate host to the yellow grub trematode; December 13, 2003 to December 12, 2004. Contact: (Barbara Madden)

MISSOURI

Department of Agriculture

Specific: EPA authorized the use of clethodim on tall fescue to suppress stem and seedhead formation in tall fescue pasture or hay to reduce toxin producing endophyte-fungus; November 1, 2002 to April 15, 2003. Contact: (Barbara Madden)

NEBRASKA

Department of Agriculture

Specific: EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; October 6, 2002 to May 31, 2003. Contact: (Andrew Ertman)

NEW MEXICO

Department of Agriculture

Specific: EPA authorized the use of propiconazole on grain sorghum and sorghum planted for seed production to control sorghum ergot (*Claviceps africana*); November 7, 2002 to September 30, 2003. Contact: (Libby Pemberton)

NEW YORK

Department of Environmental Conservation

Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

NORTH CAROLINA

Department of Agriculture

Specific: EPA authorized the use of flufenacet on wheat to control ryegrass; October 10, 2002 to December 31, 2002. Contact: (Barbara Madden)

NORTH DAKOTA

Department of Agriculture

Specific: EPA authorized the use of chlorine dioxide on stored potatoes to control late blight; October 21, 2002 to August 31, 2003. Contact: (Andrew Ertman)

OREGON

Department of Agriculture

Specific: EPA authorized the use of flufenacet on wheat and triticale to control ryegrass; October 10, 2002 to June 30, 2003. Contact: (Barbara Madden)

PENNSYLVANIA

Department of Agriculture

Specific: EPA authorized the use of thiophanate methyl on mushroom spawn to control green mold; December 5, 2002 to December 5, 2003. Contact: (Andrea Conrath)

SOUTH CAROLINA

Clemson University

Specific: EPA authorized the use of flufenacet on wheat to control annual ryegrass; November 20, 2002 to December 31, 2002. Contact: (Barbara Madden)

TEXAS

Department of Agriculture

Crisis: On October 10, 2002, for the use of azoxystrobin on broccoli, cabbage, cauliflower, and kohlrabi to control Alternaria Leafspot and Cercospera Leafspot. This program is expected to end on October 10, 2003. Contact: (Libby Pemberton)

Specific: EPA authorized the use of bifenthrin on citrus to control weevils; November 22, 2002 to November 22, 2003. Contact: (Andrea Conrath)

EPA authorized the use of azoxystrobin on broccoli, cabbage, cauliflower, and kohlrabi to control Alternaria Leafspot and Cercospera Leafspot; December 12, 2002 to October 10, 2003. Contact: (Libby Pemberton)

EPA authorized the use of propiconazole on grain sorghum to control sorghum ergot (Claviceps africana); December 14, 2002 to December 14, 2003. Contact: (Libby Pemberton)

VIRGINIA

Department of Agriculture and Consumer Services

Specific: EPA authorized the use of bifenazate on greenhouse grown tomatoes to control spider mites; October 4, 2002 to October 3, 2003. Contact: (Barbara Madden)

EPA authorized the use of flufenacet on wheat to control ryegrass; October 10, 2002 to December 31, 2002. Contact: (Barbara Madden)

WASHINGTON

Department of Agriculture

Specific: EPA authorized the use of flufenacet on wheat and triticale to control ryegrass; October 10, 2002 to June 30, 2003. Contact: (Barbara Madden)

EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; February 2, 2003 to February 1, 2004. Contact: (Barbara Madden)

B. Federal Departments and Agencies

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspector Service

Quarantine: EPA authorized the use of diazinon around the drip line of infested trees in Florida to control quarantined fruit fly species, such as the Mediterranean fruit fly; October 21, 2002 to October 21, 2005. Contact: (Dan Rosenblatt)

ENVIRONMENTAL PROTECTION AGENCY

Crisis: On October 3, 2002, for the use of ethylene oxide to decontaminate interior spaces and personal and office items from the National Broadcasting Company on which *Bacillus anthracis* may be present at low bioburden levels. This program ended on/is expected to end on October 18, 2002. Contact: (Barbara Madden)

On October 3, 2002, for the use of hydrogen peroxide to decontaminate interior spaces and personal and office items from the National Broadcasting Company on which *Bacillus anthracis* may be present at low bioburden levels. This program ended on/is expected to end on October 18, 2002. Contact: (Barbara Madden)

On October 3, 2002, for the use of hydrogen peroxide and peroxyacetic acid to decontaminate interior spaces and personal and office items from the National Broadcasting Company on which *Bacillus anthracis* may be present at low bioburden levels. This program ended on/is expected to end on October 18, 2002. Contact: (Barbara Madden)

On October 3, 2002, for the use of sodium hypochlorite to decontaminate interior spaces and personal and office items from the National Broadcasting Company on which *Bacillus anthracis* may be present at low bioburden levels. This program ended on/is expected to end on October 18, 2002. Contact: (Barbara Madden)

On October 16, 2002, for the use of ethylene oxide to fumigate items retrieved from the U.S. Department of Justice that were contaminated or potentially contaminated by *Bacillus anthracis*. This program ended on/is expected to end on November 1, 2002. Contact: (Barbara Madden)

On December 9, 2002, for the use of sodium chlorite to fumigate the Joseph Curseen, Jr. and Thomas Morris, Jr. Processing and Distribution Center in Washington, D.C. that was contaminated by *Bacillus anthracis*. This program ended on/is expected to end on December 24, 2002. Contact: (Barbara Madden)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 10, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–4252 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0008; FRL–7295–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 29, 2003 to February 3, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0008 and the specific PMN number or TME number, must be received on or before March 26, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0008. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number— OPPT–2003–0008. The system is an" anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2003–0008 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0008 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 29, 2003 to February 3, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 10 PREMANUFACTURE NOTICES RECEIVED FROM: 01/29/03 TO 02/03/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0308	01/29/03	04/29/03	Polyone Corp.	(S) Hardcoat sealant for low density substrates.	(S) Isocyanic acid, polymethylene polyphenylene ester, polymer with methyloxirane and oxirane.
P–03–0309	01/29/03	04/29/03	CBI	(G) Coatings	(G) Acrylate ester
P–03–0310	01/29/03	04/29/03	BASF Corporation	(S) Gasoline additive	(G) Alkoxylated aliphatic alcohol
P–03–0311	01/30/03	04/30/03	BASF Corporation	(G) Industrial solvent	(G) Alkoxylated monobutyl ether
P–03–0312	01/30/03	04/30/03	CBI	(G) Open, non-dispersive (resin)	(G) Blocked aliphatic polyisocyanate
P–03–0313	01/30/03	04/30/03	Purezza Group	(S) A binding agent for removing anionic contaminants from natural waters; a binding agent for removing anionic contaminants from industrial effluent streams	(S) Lanthanian bentonite
P–03–0314	02/03/03	05/04/03	Matsushita-ultra Technology Battery Corporation	(S) Alkaline battery additive	(G) Metal substituted oxide

I. 10 PREMANUFACTURE NOTICES RECEIVED FROM: 01/29/03 TO 02/03/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0315	02/03/03	05/04/03	CBI	(G) Oil-field chemical	(G) Substituted polymethacrylic esters, hydrolyzed, sodium salt
P–03–0316	02/03/03	05/04/03	CBI	(G) Oil-field chemical	(G) Substituted methacrylic esters, polymer with methacrylic acid, sodium salt
P–03–0317	02/03/03	05/04/03	International Specialty Products	(S) Component of coatings for digital printing paper	(S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with n-[3-dimethylamino)propyl]- 2-methyl-2-propenamide

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 10 NOTICES OF COMMENCEMENT FROM: 01/29/03 TO 02/03/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0196	01/30/03	01/20/03	(G) Hydrocarbon resin
P–01–0302	01/29/03	01/16/03	(G) Polyureapolyurethane polyol
P–01–0461	01/29/03	01/10/03	(G) Carbobicycle alcohol
P–01–0656	01/31/03	01/26/03	(G) Polyurethane based thickening agent
P–02–0386	01/29/03	01/24/03	(G) Acrylic polymer
P–02–0854	02/03/03	01/31/03	(G) Poly (phosphate and carboxylate) ester
P–02–0877	02/03/03	01/20/03	(G) Substituted pyridone
P–02–0940	01/30/03	01/20/03	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine and polyoxyalkyleneamines.
P–02–0955	01/29/03	12/30/02	(G) Barium alcoholate
P–02–1090	01/29/03	01/21/03	(G) Glycol ether sulfuric acid ester, ammonium salt

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: February 12, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–4253 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0007; FRL–7295–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 11, 2003 to January 28, 2003, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0007 and the specific PMN number or TME number, must be received on or before March 26, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0007. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number OPPT–2003–0007. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2003–0007 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0007

and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from January 11, 2003 to January 28, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 48 PREMANUFACTURE NOTICES RECEIVED FROM: 01/11/03 TO 01/28/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0261	01/13/03	04/13/03	CBI	(G) Resin coating	(G) Acrylated uretahane
P–03–0262	01/13/03	04/13/03	CBI	(G) Adhesive component	(G) Polymeric mdi polyester prepolymer
P–03–0263	01/13/03	04/13/03	CBI	(G) Industrial coating binder component	(G) Urethane acrylate polymer
P–03–0264	01/13/03	04/13/03	CBI	(S) Epoxy crosslinking agent for industrial coating applications over metal and concrete substrates.	(G) Polymer of diethylenetriamine with polyepoxy functional polymers
P–03–0265	01/13/03	04/13/03	CBI	(S) Epoxy crosslinking agent for industrial coating applications over metal and concrete substrates.	(G) Polymer of diethylenetriamine with polyepoxy functional polymers
P–03–0266	01/13/03	04/13/03	CBI	(G) Component of a coating with an open use	(G) Rhodamine b ester with polymers of epichlorohydrin, phenol, formaldehyde novolac
P–03–0267	01/13/03	04/13/03	CBI	(G) Component of a coating with an open use	(G) Rhodamine b ester with polymers of epichlorohydrin, phenol, formaldehyde novolac
P–03–0268	01/13/03	04/13/03	CBI	(G) Component of a coating with an open use	(G) Rhodamine b ester with polymers of epichlorohydrin, phenol, formaldehyde novolac
P–03–0269	01/13/03	04/13/03	CBI	(G) Component of a coating with an open use	(G) Rhodamine b ester with polymers of epichlorohydrin, phenol, formaldehyde novolac

I. 48 PREMANUFACTURE NOTICES RECEIVED FROM: 01/11/03 TO 01/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0270	01/13/03	04/13/03	CBI	(G) Component of a coating with an open use	(G) Rhodamine b ester with polymers of epichlorohydrin, phenol, formaldehyde novolac
P–03–0271	01/13/03	04/13/03	CBI	(G) Component of a coating with an open use	(G) Rhodamine b ester with polymers of epichlorohydrin, phenol, formaldehyde novolac
P–03–0272	01/14/03	04/14/03	CBI	(G) Destructive use.	(G) Olefins
P–03–0273	01/14/03	04/14/03	CBI	(G) Open non-dispersive use.	(G) Acrylic polymer
P–03–0274	01/14/03	04/14/03	CBI	(G) Open non-dispersive use.	(G) Polyester
P–03–0275	01/14/03	04/14/03	CBI	(G) Concrete additive	(G) Substituted hydroxyethylcellulose ethers
P–03–0276	01/14/03	04/14/03	CBI	(S) Intermediates for polyurethane for artificial/synthetic leathers; intermediates for polyurethane for paint, adhesive, coating materials, etc.; tpu(thermoplastic elastomer urethane) intermediate	(G) Polyalkylenecarbonate diol
P–03–0277	01/14/03	04/14/03	CBI	(S) Intermediates for polyurethane for artificial/synthetic leathers; intermediates for polyurethane for paint, adhesives, coating materials, etc.; tpu (thermoplastic elastomer urethane) intermediate	(G) Polyalkylenecarbonate diol
P–03–0278	01/15/03	04/15/03	Southern Diversified Products, LLC	(S) Monomer for polymer manufacture	(S) Linseed oil, maleated, 2-[(1-oxo-2-propenyl)oxy]ethyl ester
P–03–0279	01/15/03	04/15/03	Southern Diversified Products, llC	(S) Monomer for polymer manufacture	(S) Soybean oil, maleated, 2-[(1-oxo-2-propenyl)oxy]ethyl ester
P–03–0280	01/13/03	04/13/03	Hi-tech Color, Inc.	(S) Thermal transfer sheet (back coating agent)	(G) Polyyurethane-silicone
P–03–0281	01/16/03	04/16/03	Solutia Inc	(S) Degassing agent for industrial coatings	(G) Acrylic copolymer
P–03–0282	01/16/03	04/16/03	CBI	(G) Raw material	(G) Amino-substituted carbopolycycle
P–03–0283	01/16/03	04/16/03	Mitsui Chemicals America, Inc.	(S) Reagents for nucleic acid testing (on farm animals, crops, plants, foods, living entities other than humans)	(G) Adenosine,N-benzoyl-5-0-[bis(4-methoxyphenyl)
P–03–0284	01/17/03	04/17/03	Eastman Kodak Company	(S) Chemical intermediate used in the manufacture of a dye in imaging media/products	(S) 1h-benz[e]indole, 1,1,2-trimethyl-, hydrochloride
P–03–0285	01/17/03	04/17/03	Eastman Kodak Company	(S) Chemical intermediate used in the manufacture of a dye in imaging media/products	(S) 1h-benz(e)indolium, 1,1,2,3-tetramethyl-, salt with 4-methylbenzenesulfonic acid (1:1)
P–03–0286	01/17/03	04/17/03	CBI	(G) Intermediate in aroma chemical produiction.	(G) Methoxycyclodiene
P–03–0287	01/17/03	04/17/03	CBI	(G) Textile colorant	(G) Substituted pyridinemethanesulfonic acid, [[[(sulfooxy)ethyl]sulfonyl]phenyl] [sulfophenyl], sodium salt
P–03–0288	01/21/03	04/21/03	CBI	(G) Open, non-dispersive use	(G) Substituted benzophenone
P–03–0289	01/21/03	04/21/03	CBI	(G) Coating component	(G) Modified polyolefin polyacrylate copolymer
P–03–0290	01/22/03	04/22/03	CBI	(G) Fragrance	(G) Propanoic acid, substituted ester
P–03–0291	01/22/03	04/22/03	Grain Processing Corporation	(G) Feedstock for processing	(G) Corn by product
P–03–0292	01/22/03	04/22/03	Grain Processing Corporation	(G) Animal feed, well drilling fluid, ore processing	(G) Thermochemical mechanical processed maize fiber
P–03–0293	01/23/03	04/23/03	CBI	(G) Open, non dispersive use	(G) Modified polyester polymer
P–03–0294	01/23/03	04/23/03	Solutia Inc.	(S) Hardener for industrial flooring compounds	(G) Cycloaliphatic polyamine
P–03–0295	01/23/03	04/23/03	Solutia Inc	(S) Binder for industrial coatings	(G) Modified hydroxyfunctional acrylic copolymer
P–03–0296	01/23/03	04/23/03	Mitsui Chemicals America, Inc.	(S) Reagents for nucleic acid testing (on farm animals, crops, plants, foods, living entities other than humans)	(S) Cytidene, n-benzoyl-5 - o-[bis(4-methoxyphenyl)phenylmethyl]-2'-deoxy-
P–03–0297	01/23/03	04/23/03	CBI	(G) Coupling agent/compatibilizer	(G) Modified polyolefin

I. 48 PREMANUFACTURE NOTICES RECEIVED FROM: 01/11/03 TO 01/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0298	01/23/03	04/23/03	Mitsui Chemicals America, Inc.	(S) Reagents for nucleic acid testing (on farm animals, crops, plants, foods, living entities other than humans)	(S) Guanosine, 5′-o-[bis(4-methoxyphenyl)phenylmethyl]-2′-deoxy-n-(2-methyl-1-oxopropyl)-
P–03–0299	01/23/03	04/23/03	CBI	(G) A chemical for making electronic devices	(G) Urethane dimethacrylate
P–03–0300	01/23/03	04/23/03	CBI	(G) Additive for plastics	(G) Halogenated phosphate
P–03–0301	01/24/03	04/24/03	CBI	(G) Binder, colloid	(G) Vinyl acrylic emulsion polymer
P–03–0302	01/24/03	04/24/03	CBI	(S) Polymeric stabilizer for the production of acrylic homopolymer or copolymer dispersions which will eventually be used in textile printing applications	(G) Acrylic copolymer
P–03–0303	01/27/03	04/27/03	Kuraray America, Inc.	(S) Polyurethane resins	(S) 2-propenoic acid, 2-methyl-1,8-octanediyl ester
P–03–0304	01/27/03	04/27/03	Kuraray America, Inc.	(S) Polyurethane resins	(S) 2-propenoic acid, 1,9-nonanediykl ester
P–03–0305	01/24/03	04/24/03	Sensient Colors Inc.	(S) Technical dye intermediate	(G) 2-naphthalesulfonic acid, acetylamino phenyl azo, sulfo-1-naphthalenyl azo, diamino-5-sulfopheny azo, acid
P–03–0306	01/27/03	04/27/03	CBI	(G) Sanitation aid	(G) Polyalkyl-triethoxysilyl-alkyl-substituted heteromonocycle
P–03–0307	01/28/03	04/28/03	CBI	(G) Colourant	(G) Azo nickel complex
P–03–0308	01/24/03	04/24/03	Polyone Corporation	(S) Hardcoat sealant for low density substrates.	(S) Isocyanic acid, polymethylene polyphenylene ester, polymer with methyloxirane and oxirane.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 30 NOTICES OF COMMENCEMENT FROM: 01/11/03 TO 01/28/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0356	01/22/03	12/26/02	(G) N,N′ substituted aniline sulfonic acid, potassium salt
P–01–0616	01/15/03	12/22/02	(G) Aliphatic polycarbonate polyester
P–02–0280	01/15/03	01/06/03	(G) Dialkylphenoxyalkyl carboxylate, metal salt
P–02–0451	01/14/03	12/20/02	(G) Amphoteric cellulose ether
P–02–0482	01/13/03	12/27/02	(S) 2-propenoic acid, 2-methyl-, polymers with chlorinated maleic anhydride-polypropylene reaction products, cyclohexyl methacrylate and me methacrylate
P–02–0502	01/21/03	01/09/03	(G) Ipdi prepolymer
P–02–0596	01/27/03	01/13/03	(G) Epoxy-amine adduct salt
P–02–0601	01/27/03	12/17/02	(G) Acrylic copolymer
P–02–0672	01/17/03	12/19/02	(G) Modified polyvinyl butyral
P–02–0673	01/17/03	12/19/02	(G) Modified polyvinyl butyral
P–02–0676	01/17/03	12/19/02	(G) Modified polyvinyl butyral
P–02–0813	01/13/03	12/09/02	(G) Maleic anhydride and acryls modified polyolefine
P–02–0826	01/22/03	12/16/02	(S) Octadecanoic acid, compound with guanidine (1:1)
P–02–0881	01/14/03	12/10/02	(G) Silated acrylic resin
P–02–0893	01/23/03	01/14/03	(G) Ammonium sodium salt of substituted copper phthalocyanine derivative
P–02–0912	01/23/03	12/20/02	(G) Di-substituted cyclic alkane
P–02–0954	01/16/03	01/09/03	(G) Metallic diethylglycol ethylether complex
P–02–0964	01/27/03	12/30/02	(G) Modified alkyd resin
P–02–0966	01/24/03	12/18/02	(G) Modified polyacrylate
P–02–0967	01/24/03	12/18/02	(G) Modified polyacrylate
P–02–0968	01/24/03	12/18/02	(G) Modified polyacrylate
P–02–0980	01/28/03	01/16/03	(G) Brominated epoxy resin
P–02–0984	01/14/03	12/26/02	(S) 1,3-benzenedimethanamine, .nu.-(2-phenylethyl) derivs.
P–02–0996	01/28/03	01/24/03	(G) Aliphatic triamine
P–02–1014	01/13/03	01/03/03	(G) Cationic polyether
P–02–1057	01/23/03	01/08/03	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–03–0004	01/22/03	01/14/03	(S) Titanium, acetylacetone et alc. iso-pr alc. complexes
P–03–0021	01/25/03	01/24/03	(S) 2-propenenitrile, polymer with diethenylbenzene, hydrolyzed, reaction products with diethylenetriamine

II. 30 NOTICES OF COMMENCEMENT FROM: 01/11/03 TO 01/28/03—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–03–0043	01/27/03	01/17/03	(G) Substituted phenolic polymer
P–98–1138	01/17/03	11/20/02	(S) Hexanoic acid, 6-[[(4-methylphenyl)sulfonyl]amino]-, compound with 2,2′,2″-nitrilotris[ethanol](1:1)

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: February 6, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–4254 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–S

COUNCIL ON ENVIRONMENTAL QUALITY

White House Task Force on Energy Project Streamlining

AGENCY: Council on Environmental Quality.

ACTION: Notice and request for comments.

SUMMARY: On May 18, 2001, the President signed Executive Order 13212, recognizing the importance of environmentally sound production and transmission of energy to all American people. The Order established a Federal interagency task force (Task Force), chaired by the Chairman of the Council on Environmental Quality (CEQ), to work with and monitor Federal Agencies' efforts to expedite their review of permits or take other actions necessary to accelerate and make more efficient the Federal decision making process for energy related projects, while maintaining safety, public health, and environmental protections. This Task Force was also charged with helping Agencies create mechanisms to coordinate Federal, State, tribal and local permitting in geographic areas where increased permitting activity is expected.

CEQ announces: (1) The availability of a proceedings report of the first year of effort by the Task Force; (2) invites suggestions for newly proposed or upcoming energy-related projects or issues that may benefit from facilitation by the Task Force in the decision making process; (3) extends an invitation to any interested party to request a meeting with the Task Force to discuss newly proposed or upcoming renewable or conventional energy-related projects, environmental mitigation measures, best practices, or other topics that would help establish a more effective and efficient decision making process to allow the Nation's energy resources to be available to the American public in an environmentally responsible and safe manner.

DATES: Written comments should be submitted on or before October 1, 2003.

ADDRESSES: Electronic copies of the proceedings report can be obtained at: *http://www.etf.energy.gov*. If you would like a printed copy, please mail a request to Records Manager, White House Task Force on Energy Project Streamlining, WH–1, 1000 Independence Ave. SW., Washington, DC 20585. Printed copies will be available by March 1, 2003.

Written suggestions for newly proposed or upcoming energy-related projects or issues that may benefit from facilitation of the decision making process by the Task Force, may be submitting by using the downloadable word processing forms found at *http://www.etf.energy.gov*. You may submit your comments or completed form, as an attachment, to an e-mail addressed to *whtf.projects@hq.doe.gov*. You may fax a copy of your comments to 202–586–2999, Attn: Director or mail your comments to Director, White House Task Force on Energy Project Streamlining, WH–1, 1000 Independence Ave. SW., Washington, DC 20585.

Requests for meetings with the Task Force may be made by calling (202) 586–3464 or by utilizing the downloadable form and e-mailing it to *whtf.meetings@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: White House Task Force on Energy Project Streamlining at (202) 586–3464.

SUPPLEMENTARY INFORMATION:

Abstract

Executive Order 13212, signed by the President in Washington, DC, on May 18, 2001, Actions to Expedite Energy-Related Projects, established a Federal interagency task force, chaired by the Chairman, CEQ, to work with and monitor Federal Agencies in their efforts to expedite their review of permits or similar actions, as necessary, to accelerate the completion of energy related projects, increase energy production and conservation, and improve transmission of energy. In addition, the Task Force would monitor and assist Agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected.

The Task Force worked during the first year to address ongoing permit application issues for a wide variety of energy projects that were submitted in response to the **Federal Register** notice published on August 20, 2001 (66 FR 43586), requesting comments from the public. By working through an operational approach that facilitated interagency coordination and addressed impediments to Federal Agencies' finalization of decisions on energy-related projects, the Task Force helped manage the Federal Agency decision making process by setting priorities, scheduling activities in accordance with those priorities, identifying staffing and resource needs, facilitating issue resolution, and measuring the achievements of federal agencies in implementing Executive Order 13212.

The experience gained by the Task Force-while helping to streamline decisions about energy-related projects and working to resolve coordination issues—made it apparent that to identify and implement processes that address systemic improvements and, where appropriate, regulatory or legislative changes, the Task Force needed to be involved as early in the permit process as possible. This would allow the Task Force to identify impediments, to resolve interagency priority conflicts, to help incorporate and resolve environmental issues, and to develop more streamlined processes at an earlier stage in the permit application decision process.

To that end, the Council on Environmental Quality requests suggestions of energy-related projects that have either recently been submitted for permit approvals or will be submitted within nine (9) months of this notice and which meet the Administration's goal of providing for the environmentally sound production and transmission of energy to all

American people. The Council on Environmental Quality also requests submission of environmental mitigation measures, best practices, alternative dispute resolution, or other topics that would help establish a more effective and efficient decision making process.

The Council on Environmental Quality expects to receive information from many interested persons (e.g., public interest groups, government, academia, industry) about particular energy projects and opportunities to improve agency decision-making on energy projects.

Dated: February 19, 2003.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 03–4308 Filed 2–21–03; 8:45 am]

BILLING CODE 3125–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

Dates and Place: March 3, 2003, Washington, DC. The meeting will be held in the Indian Treaty Room of the Eisenhower Executive Office Building at 17th Street and Pennsylvania Avenue, NW. Guests must use the entrance on Pennsylvania Avenue.

Pre-Clearance: Guests must be pre-cleared to enter the Eisenhower Executive Office Building. U.S. citizens must provide their name, date of birth and Social Security Number to be pre-cleared into the building and on arrival must present a government-issued ID (e.g., drivers license) at the registration desk. Foreign nationals should provide their name, date of birth and their passport number to be pre-cleared. On arrival, they must present their passport at the registration desk. Guests should provide this pre-clearance information to Cynthia Chase at (202) 456–6010. Pre-clearance registration will also be available on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Type of Meeting: Open. A portion of the meeting will be closed, however, because it will be administrative in nature. For details on the agenda please see the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology is tentatively scheduled to meet in open session on Monday, March 3, 2003, at approximately 9 a.m., to discuss possible topics for PCAST study in 2003, as well as the status of the ongoing work being conducted by two PCAST subcommittees: (1) The science and technology of combating terrorism; and (2) the federal investment in science and technology research and development. This session will end at approximately 4 p.m. Additional information on the agenda can be found at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Public Comments: There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are welcome at any time prior to or following the meeting. Please notify Stan Sokul, PCAST Executive Director, at (202) 456–6070, or fax your request/comments to (202) 456–6021.

FOR FURTHER INFORMATION: For information regarding time, place and agenda, please call Cynthia Chase at (202) 456–6010, prior to 3 p.m. on Friday, February 28, 2003. Information will also be available at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Stanley S. Sokul,

Executive Director, PCAST, and Counsel, Office of Science and Technology Policy.

[FR Doc. 03–4315 Filed 2–21–03; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, February 25, 2003, at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: *Wednesday, February 26, 2003, at 9:30 a.m.*

PLACE: 999 E Street, NW., Washington, DC. (ninth floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Leadership PACs.

DATE AND TIME: *Thursday, February 27, 2003, at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes. Administrative Fines—Final Rules and Explanation and Justification. Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–4370 Filed 2–20–03; 11:59 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 5, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Reuben S. Rhea, Sr., Reuben S. Rhea, Jr., and the Whitney Burnette Rhea Trust, all of Somerville, Tennessee; as a group, to acquire shares of Moscow Bancshares, Inc., Moscow, Tennessee, and thereby indirectly acquire shares of The Bank of Moscow, Moscow, Tennessee.

Board of Governors of the Federal Reserve System, February 14, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–4227 Filed 2–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Bancorp, Inc., Lebanon, Virginia; to acquire 100 percent of the voting shares of First Commonwealth Bank, Wise, Virginia.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Main Street Banks, Inc., Kennesaw, Georgia; to merge with First Colony Bancshares, Inc., Alpharetta, Georgia, and thereby indirectly acquire voting shares of First Colony Bank, Alpharetta, Georgia.

Board of Governors of the Federal Reserve System, February 14, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–4226 Filed 2–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to the **Federal Register** on Tuesday, February 11, 2003, and posted on Friday, February 14, 2003, 68 FR 7563.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, February 18, 2003, Open Board Meeting and approximately 10:45 a.m. following a recess after the conclusion of the Open meeting a Closed Board Meeting was scheduled.

CHANGES IN THE MEETING: Due to the closure of the Federal Government the open and closed meetings were cancelled.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of these meetings; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about these meetings.)

Dated: February 19, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–4387 Filed 2–20–03; 12:34 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 9 a.m., Wednesday, February 19, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may *register on-line.* You may pre-register until close of business February 17, 2003. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Final amendments to Regulation B (Equal Credit Opportunity) that would conclude the Board's review of the regulation. (Proposed earlier for public comment; Docket No. 1008)

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: February 18, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–4388 Filed 2–20–03; 12:34 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03036]

Grants for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2003 funds for a grant program for Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities published in the **Federal Register** on February 7, 2003, Volume 68, Number 26, pages 6475–6479. The notice is amended as follows: On page 6476, first column, Section D. Funds, sub-section Use of Funds, at the end of the paragraph, add the following sentence: Indirect costs for these trainee-related activities are limited to eight percent.

On page 6477, second column, Section G. Submission, Date, Time and Address, the first sentence should read: The application must be received by 4 p.m. Eastern Time April 8, 2003.

Dated: February 13, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4230 Filed 2–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; NCCAM Customer Service Data Collection

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Center for Complementary and Alternative Medicine (NCCAM), at the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: NCCAM Customer Service Data Collection.

Type of Information Collection Request: New.

Need and Use of Information Collection: NCCAM provides the public, patients, families, health care providers, CAM practitioners, and others with the latest scientifically based information on CAM and information about NCCAM's programs through a variety of channels including its toll-free telephone information service and its quarterly newsletter. To ensure that NCCAM is effectively serving all audiences, NCCAM needs to measure customer satisfaction with NCCAM telephone interactions and the NCCAM newsletter and to assess which audiences are being reached through these channels. This effort involves a telephone survey consisting of 9 questions, which will be asked of 50% of all callers, for an annual total of approximately 4,059 respondents; and a newsletter survey consisting of 10 questions, which will be sent as a print survey to be completed and mailed back by newsletter subscribers, for a total of approximately 6,098 respondents. NCCAM will use the data collected from the surveys to characterize NCCAM users and help program staff measure the impact of their communication efforts, tailor services to the public and health care providers, measure service use among special populations, and assess the most effective media and messages to reach these audiences.

Frequency of Response: Once for the telephone survey, and twice for the newsletter survey (once at outset and again after 2.5 years to measure any changes in customer satisfaction and/or audience profile).

Affected Public: Individuals and households.

Type of Respondents: For the telephone survey, patient, spouse/family/friend of patient, health care providers, physicians, CAM practitioners, or other individuals contacting the NCCAM Clearinghouse; for the newsletter survey, subscribers to the NCCAM newsletter.

The annual reporting burden is as follows.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estiamted total annual burden hours requested
Telephone survey: Individuals or households	4,059	1	0.075	304.425
Newsletter survey: Individuals or households	6,098	2	0.050	609.800
Annualized totals	10,157			914.225

The annualized cost to respondents is estimated at $5,561.84 for the telephone survey and $9,756.80 for the newsletter survey. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Christy Thomsen, Director, Office of Communications and Public Liaison, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, or fax your request to 301–480–3519, or e-mail *thomsenc@mail.nih.gov*. Ms. Thomsen can be contacted by telephone at 301–451–8876.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 31, 2003.

Christy Thomsen,

Director, Office of Communications and Public Liaison, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. 03–4211 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, Clinical/Epidemiology/Genetics R01s.

Date: March 19, 2003.

Time: 6 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 451–2020.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Clinical Applications (U10 Clinical Trials, R03, R01, R21, R24, K08, K23).

Date: March 20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 12, 2003

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4217 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Stem Cell Biology and Cell-Based Therapies of Heart, Blood and Sleep Disorders.

Date: March 10–11, 2003.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert B Moore, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7178, MSC 7924, Bethesda, MD 20892, 301/435–0725.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838; Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4215 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Asthma Clinical Research Network.

Date: February 19–20, 2003.

Time: February 19, 2003, 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd, Bethesda, MD 20817.

Time: February 20, 2003; 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd, Bethesda, MD 20817.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

This notice is being published less than15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4216 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Resource-Related Research Projects (R–24).

Date: March 5, 2003.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4219 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, March 3, 2003, 3 p.m. to March 3, 2003, 4 p.m., which was published in the **Federal Register** on January 24, 2003, 68 FR 3542.

The starting time of this meeting has changed from 3 p.m., which was previously advertised, to 2:30 p.m. The meeting is closed to the public

Dated: February 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4212 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: March 13–14, 2003.

Open: March 13, 2003 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: Crystal City Court Yard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: March 13, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Court Yard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: March 14, 2003 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Court Yard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Carolyn Miles, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791, *miles@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4213 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse; Emphasis Panel "Virtual Reality for Treatment of Pain or Drug Addiction" (Topic 048).

Date: February 20, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1437.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4214 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Collaborative Clinical Studies in Drug Abuse.

Date: March 6, 2003.

Time: 11:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Mark R. Green, Ph.D., Chief, CEASRB, Office of Extramural Affairs, National Institutes on Drug Abuse, National Institute of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 13, 2003

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4218 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: March 10–12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washington Boulevard, Gaithersburg, MD 20878.

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ar15o@nih.gob.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4220 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Cooperative Research for Vaccines, Therapeutics, and Diagnostics—Meeting 2.

Date: March 17–19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–496–2550. *ar15o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4221 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee.

Date: March 13–14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Roberta Binder, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616. 301–496–2550. *rb169n@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transportation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4222 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Inflammatory Bowel Disease.

Date: April 8, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone conference call.)

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 747, 6706 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892. (301) 594–8895. *rushingp@extra.niddk,nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4223 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Melanoma.

Date: February 28, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892. (301) 435–1716. *strudlep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: March 2–4, 2003.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892. (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Software Maintenance 02–141.

Date: March 3, 2003.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892. 301–435–1220. *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (10): Small Business Applications on Imaging Technologies.

Date: March 3, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Montgomery Room, Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892. (301) 435–1175. *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gastrointestinal Hepatobiliary and Pancreatic Physiology and Pathobiology.

Date: March 3–4, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda MD 20892. 301–435–1778. *khanm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Experimental Cardiovascular Sciences Study Section.

Date: March 3–4, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, General Medicine A Subcommittee 2.

Date: March 3–4, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. 301–435–1778. *khanm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 4.

Date: March 3–4, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, 285 North Palm Canyon Drive, Palm Springs, CA 92262.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892. (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience SBIR SSS–S 10.

Date: March 3–4, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Versailles II, Bethesda, MD 20814.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. (301) 435–1246. *etcheber@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REN (01) Male Reproduction.

Date: March 3, 2003.

Time: 9 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892. (301) 435–1042 *Shaikha@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Applications: Developmental Disabilities, Communication and Science Education.

Date: March 3–4, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Thomas A Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892. (301) 594–6836. *tathamt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Review on Language, Brain and Behavior—1.

Date: March 3, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call.)

Contact Person: Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. 301–435–1856. *pluded@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REN (02) Human Development.

Date: March 3, 2003.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telepone conference call.)

Contact Person: Abubaker A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892. (301) 435–1042. *shaikha@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X 11B Electromagnetics.

Date: March 3, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call.)

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171. *rosenl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (51): Small Business Applications on Imaging Technologies.

Date: March 3, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Montgomery Room, Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892. (301) 435–1175. *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Review on Language, Brain and Behavior—2.

Date: March 3, 2003.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call.)

Contact Person: Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. 301–435–1856. *pluded@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA for NIMH Collaborative Center.

Date: March 3–4, 2003.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892. (301) 435–1037. *dayc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4224 Filed 2–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4805–C–02]

Notice of Funding Availability (NOFA) for the Collaborative Initiative To Help End Chronic Homelessness; Correction

AGENCIES: Substance Abuse and Mental Health Services Administration, and Health Resources and Services Administration, HHS; Office of Community Planning and Development, HUD; Substance Abuse, Mental Health and Provider Care Services, VA.

ACTION: Notice of funding availability (NOFA) for the Collaborative Initiative to Help End Chronic Homelessness; correction.

SUMMARY: On January 27, 2003, HUD, HHS, and VA published the Notice of Funding Availability (NOFA) for the Collaborative Initiative to Help End Chronic Homelessness. This document makes three technical corrections to the NOFA.

FOR FURTHER INFORMATION CONTACT: U.S. Interagency Council on the Homeless at 1–866–450–2273 (this number may also be dialed as 1–866–450–CARE) (these are toll-free telephone numbers). Persons with hearing and/or speech challenges may access the above telephone number by TTY (text telephone) by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: On January 27, 2003, HUD, HHS, and VA published the Notice of Funding Availability (NOFA) for the Collaborative Initiative to Help End Chronic Homelessness (68 FR 4018). Subsequent to publication, an error was discovered with the definition of "family" in the introductory section of the NOFA. This notice corrects that error by publishing the correct definition. In addition, it was determined that the description of grant terms for the HUD awards, as described in the introductory section, was unclear and this notice provides clarification on the term of the awards. Finally, it was determined that HUD section III.E., titled "Special Provisions Applicable to this NOFA," should clarify that supportive service activities are not eligible activities under the Supportive Housing Program (SHP), and that clarification is also made by this notice.

Accordingly, the Notice of Funding Availability (NOFA) for the Collaborative Initiative to Help End Chronic Homelessness, published in the **Federal Register** on January 27, 2003, (68 FR 4018) is corrected as follows:

1. On page 4019, in the first column, in the second paragraph under the heading "Target Population", the definition of "family" is corrected to read as follows: "For the purposes of this NOFA, a family is defined as an adult person with a disabling condition as defined below, who is accompanied by at least one dependent child."

2. On page 4019, in the middle column, the first bulleted paragraph is corrected to read as follows: "Approximately $20 million is expected to be awarded by HUD for terms of three or five years to fund permanent housing activities. HUD's funds may be used under specified components of the Supportive Housing Program, which funds acquisition, minor rehabilitation, leasing, and operating costs for permanent housing for three (3) years, or specified components of the Shelter Plus Care Program, which provides rental assistance to tenants for five (5) years."

3. On page 4030, in the middle column, the first sentence numbered paragraph 6 is corrected to read as follows: "New construction, substantial rehabilitation activities, and supportive service activities will not be eligible SHP activities under this notice."

Dated: February 19, 2003.

Patricia Carlile,

Deputy Assistant Secretary for Special Needs Assistance.

[FR Doc. 03–4341 Filed 2–20–03; 9:32 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Request for Comments on Revised Departmental Strategic Plan for FY 2003–2008

AGENCY: Office of the Secretary, Interior.

ACTION: Request for comments on a revised Departmental Strategic Plan for FY 2003–2008.

SUMMARY: The Department of the Interior (DOI) is seeking public comment on its draft strategic plan for fiscal years 2003–2008.

DATES: Comments should be provided no later than April 25, 2003.

ADDRESSES: Written comments can be provided by: *E-mail: strategic_plan@ios.doi.gov.*

Fax: (202) 208–2619.

Mail: U.S. Department of the Interior, Office of the Secretary, Office of Planning and Performance Management, Attention: Strategic Plan Coordinator, 1849 C Street NW., Mail Stop 5258, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: LeRon Bielak (202) 208–1818.

SUPPLEMENTARY INFORMATION: The Government Performance and Results Act of 1993 (GPRA) requires periodic updating of agency strategic plans. The first DOI GPRA strategic plan was published in 1997. A subsequent revision was produced in 2000. The next revision must be published no later than September 30, 2003.

DOI began its revision process in the fall of 2001 to position the strategic process and development of goals and measures ahead of the FY 2004 budget formulation cycle. Instead of requesting public comment for the first time after a new draft plan had been created, DOI chose to begin the process with internal and external focus group sessions in a "clean slate" approach. These sessions were held in Washington, D.C.; Denver, Colorado; and Albuquerque, New Mexico between December 2001 and February 2002. We integrated the information to produce the first plan drafts. Subsequently the plan has been subjected to additional critical review and evaluation through all levels of the Department. At this point, DOI wants to return our product to our external stakeholders and customers for review.

DOI has taken a major departure from its past approaches to strategic planning. Previously, Interior produced a set of ten GPRA strategic plans—an overview document and nine bureau or office plans. While the overview attempted to draw attention to areas of commonality among bureaus, Interior was still perceived as a "holding company" and concern lingered about the effectiveness of an agency functioning in a holding company fashion.

The DOI draft strategic plan will stand as the GPRA document for the entire agency. Commonality of mission function and desired results is given much greater weight than in previous plans. The Department has subscribed to the "logic model" approach of strategic planning in which results (end outcomes) are clearly identified and represent the first step in the plan development process. Measures are applied to end outcomes to provide a means of gauging success in achieving the desired results. Results are measured both long term and on an annualized basis. Supporting strategic (or intermediate outcomes) have also been established and are accompanied by specific performance measures. Bureau operating plans must be tied to both the intermediate and end outcome levels of the Departmental Plan.

This overall approach is aimed at greater integration of purpose and function across the Department and at achieving superior performance results. The Departmental strategic plan cannot include goals and measures for every discrete aspect of every program, but outcomes are written to encompass all of the programs identified in the Department's budget accounts. Greater specificity for discrete elements will be found in bureau level annual or long-term operating plans or in specific field planning documents, as appropriate.

Interior looks forward to your comments regarding our planning approach and draft strategic plan. We are asking that comments be submitted within 60 days of publication of this notice. The text of the draft plan is available in a "pdf" downloadable format through the DOI Internet Web site: *http://www.doi.gov/about.html.* For those who may not have internet access, a hard copy can be requested from the contact points listed in the **ADDRESSES** section.

Dated: February 14, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 03–4225 Filed 2–21–03; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Reopening the Comment Period for an Application for a Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Reopening of the Comment Period for Endangered Species Permit Application PRT–052166.

SUMMARY: The Fish and Wildlife Service is reopening the comment period for the application cited below. The applicant has submitted new information in support of the application and the reopening of the comment period will allow all interested parties another 15 days to review the application and provide us with any additional comments.

DATES: Written data, comments or requests must be received by March 11, 2003.

ADDRESSES: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 15 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service is re-opening the comment period for an application submitted by the Memphis Zoo, Memphis, Tennessee, PRT–052166, to conduct certain activities with endangered species. Specifically, the applicant requests a permit to import one male and one female captive born giant panda *(Ailuropoda melanoleuca)* from the Chinese Association of Zoological Gardens, Shanghai Zoo and Beijing Zoo, China, for the purpose of scientific research and enhancement of the survival of the species. The application was submitted to satisfy the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). A notice of receipt of this application for a permit was published in the **Federal Register** on November, 21, 2002 (67 FR 70236). The comment period closed on December 23, 2002. On January 28, 2003, the applicant submitted additional information in support of the application. While the Service does not consider the new information significant, we are reopening the comment period to allow all interested parties to review the new information and provide us with any additional comments regarding the application. Written data, comments, or requests for copies of this complete application should be submitted to the Director (address above).

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: February 10, 2003.

Timothy J. Van Norman,

Chief, Branch of Permits—(International), Division of Management Authority.

[FR Doc. 03–4304 Filed 2–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Dakotas Advisory Council Meeting

AGENCY: Bureau of Land Management, North Dakota Field Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas Resource Advisory Council will be held May 19 & 20, 2003, at the Clarion Inn, Gillette, Wyoming. The session will include a Coal Bed Methane field tour beginning at 8 a.m. on May 19. The meeting will reconvene on Tuesday at the Clarion Inn. Agenda items will include: Coal Bed Methane.

The meeting is open to the public and a public comment period is set for 8 a.m. on May 20, 2003. The public may

make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, Field Office Manager, North Dakota Field Office, 2933 3rd Ave. W, Dickinson, North Dakota. Telephone 701–227–7700.

Dated: February 14, 2003.

Douglas Burger,

Field Manager.

[FR Doc. 03–4237 Filed 2–21–03; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plan, Final Supplemental Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway, Wyoming and Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Final Supplemental Environmental Impact Statement for the Winter Use Plan for the Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway.

SUMMARY: Pursuant to section 102(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of Final Supplemental Environmental Impact Statement for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway, Wyoming and Montana. The purpose for preparing the Plan/SEIS is to further the purposes of NEPA by soliciting more public comment and to consider additional information on new snowmobile technology not available at the time of the earlier decision. It analyzes 5 winter use management alternatives for the parks and evaluates the environmental consequences of the alternatives on wildlife, air quality, natural quiet, socioeconomics, and visitor experience.

Under alternative 1a-No Action, use and management practices in the parks and Parkway as decided by the November 22, 2000 record of decision for the Winter Use Plan, Final Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway would continue. The decision eliminated recreational snowmobile and snowplane use from the parks and Parkway by the winter of 2003–2004. Oversnow motorized access would be provided by means of mass transit snowcoaches. Alternative 1b is essentially the same as alternative 1a with the exception that an additional year would be allowed for the phasing in of snowcoach only travel. Alternative 2 allows for the use of snowmobiles provided that EPA's proposed 2010 emission standards are met and sound levels do not exceed 78 decibels for publicly owned machines. It calls for a daily cap on numbers of snowmobiles and for increased NPS management of winter use. Alternative 3 provides for guided use of snowmobiles provided that best available technology standards for both emissions and noise levels are met for all machines. Alternative 4, the preferred alternative, allows for the use of guided snowmobiles and snowcoaches that meet best available technology standards for noise and air emissions. All alternatives emphasize an adaptive management strategy under which the number of snowmobiles allowed in the parks may be adjusted based on the results of monitoring and carrying capacity studies.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the Final Environmental Impact Statement.

ADDRESSES: The FSEIS Winter Use Plans will be available on February 19, 2003 in the offices of the Yellowstone and Grand Teton Superintendents and on the Internet at *http://www.nps.gov/grte/winteruse/winteruse.htm*. Persons wishing to receive a copy of the document may contact the Yellowstone NP Planning Office: PO Box 168, Yellowstone, WY 82190.

FOR FURTHER INFORMATION CONTACT: Suzanne Lewis, Superintendent, Yellowstone National Park, (307) 344–2005.

Dated: January 14, 2003.

Karen P. Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–4148 Filed 2–21–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 11, 2001.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employee Benefits Security Administration (EBSA).

Title: ERISA Procedure 76–1; Advisory Opinion Procedure.

OMB Number: 1210–0066.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Number of Respondents: 115.

Number of Annual Responses: 115.

Estimated Time Per Response: 14 hours.

Total Burden Hours: 161.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $107,606.

Description: The information collection provisions of ERISA Procedure 76–1 are used by persons supplying information needed for the Department to respond to their request for an interpretation as to the applicability of ERISA to a specific set of facts and circumstances. The Department's responses to such requests are called "information letters" and "advisory opinions."

Ira L. Mills,

Departmental Clearance Office.

[FR Doc. 03–4265 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January and February, 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,091; Disa Industries, Holly, MI

TA–W–42,245; La Grange Foundry, Inc., La Grange, MO

TA–W–41,579; Delphi Energy and Chassis, Dayton, OH

TA–W–42,100; Savane International, Fabric Cutting Facility, El Paso, TX

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,369; Saint-Gobain Abrasives, Inc. (formerly Norton Co.), Bonded Abrasives Div., Worcester, MA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.B.) (No Sales or Production declines) and (a) (2)(B) (II,B) (No shift in production to a foreign country) have not been met.

TA–W–50,300; Nexfor/Fraser Papers, Levesque Operations, Ashland, ME

TA–W–50,371; Nestle USA, Confections and Snacks, Fulton, NY

The investigation revealed that criterion (a)(2) (I.A.) (No employment declines) and (a)(2)(B) (No shift in Production to a foreign country) have been met.

TA–W–50,559; Mercury Marine, Capitol Engineering Div., Brookfield, WI

TA–W–50,559; Mercury Marine, Capitol Engineering Div., Brookfield, WI

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–50,177; Talley Metals Technology, Inc., McBee, SC

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,314; Electroglas, Inc., San Jose, CA

TA–W–50,439; Tresco Tool, Inc., Guys Mills, PA

TA–W–50,421; Alpine Molding, Inc., an Affiliate of May and Scofield, Inc., Gaylord, MI

TA–W–50,453; Atlas Copco Wagner, Inc., Portland, OR

TA–W–50,366; Agere Systems, Inc., Optoelectronics Div., formerly Lucent Technologies, Inc., Microelectronics Business, Breinigsville, PA

TA–W–50,225; Unitek Electronics, Inc., Portland, OR

TA–W–50,288; Lancaster Malleable Castings Co., Lancaster, PA

TA–W–50,247; Holland USA, The Denmark Facility, Denmark, SC

TA–W–50,233; Bombardier Mass Transit Corp., a wholly owned subsidiary of Bombardier Corp., Barre, VT

TA–W–50,079; ITT Industries, Searcy, AR

TA–W–50,452; Spectrum Field Services, In., Valma Gas Plant, Tulsa, OK

TA–W–50,683; Decibel Products, Dallas, TX

YA–W–50,016; Laid Technologies, Delaware Watergap, PA

TA–W–50,074; Summit Manufacturing, LLC, West Hazleton, PA

TA–W–50,148; Newark Atlantic Paperboard Co., Mill Div., Lawrence, MA

TA–W–50,209 & A; Facemate Corp., Greenwood, SC and Greenville, SC

TA–W–50,234; BiPhase Technologies, LLC, Lake Lillian, MN

TA–W–50,354; Red Wing Shoe Co., Inc., Including Temporary Workers of Workforce Employment Solution and Manpower, Inc., Potosi, MO

TA–W–50,468; Textron, Cushman, Inc., Lincoln, NE

TA–W–50,291; Intelicoat Technologies Image Products, a subsidiary of Intelicoat Technologies Image Products Holco LLC, Spartanburg, SC

TA–W–50,342; Pechiney Plastic Packaging, Graphics Center, Neenah, WI

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–50,547; Byrd Motor Line, Inc., Lexington, NC

TA–W–50,523; Computer Sciences Corp., Global Infrastructure Services (/GIS), Newark Data Center, Newark, DE

TA–W–50.534; Corning Coble Systems, LLC, Research, Development, and Engineering (RD&E), Hickory, NC

TA–W–50,508; Nortel Networks, Qtera/Operations, Richardson, TX

TA–W–50,432; Angus Consulting Management, Inc., a wholly owned subsidiary of Angus Consulting Management Ltd, Alpharetta, GA

TA–W–50,302; Union Tank Car Co., a subsidiary of The Marmon Group, Inc., East Chicago, IN
TA–W–50,595; Consolidated Freightways, Akron, Ohio
TA–W–50,477; Fleming Companies, Inc., Altoona, PA
TA–W–42,155; The Franklin Mint, Franklin Center, PA
TA–W–50,529; Enterasys Networks, Inc., Salt Lake City, UT
TA–W–50,563; Plexus Corp., Security Department, Neenah, WI
TA–W–50,588; Murray Engineering, Inc., Complete Design Service, Flint, MI

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not an upstream supplier of components for trade-affected companies.

TA–W–50,535; North American Container Corp., Fond du Lac, WI
TA–W–50,222 &A; Great Northern Tool and Die, Plant #1, Chesterfield, MI and Plant #2, Chesterfield, MI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,289; Interlake Material Handling, Inc., Pontiac Manufacturing Plant, Pontiac, IL: February 10, 2001.
TA–W–41,912; ADC Telecommunications, 5655 Eleventh Avenue East, Shakopee, MN: August 5, 2001.
TA–W–42,284; Custom Forest Products, Inc., Grayling, MI: October 8, 2001.
TA–W–42,265; Charles Navasky and Co., Philipsburg, PA: October 2, 2001.
TA–W–42,265A, B; Streamline Fashions, Philipsburg, PA and Northside Manufacturing, Philipsburg, PA: November 3, 2002.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,661; Swank, Inc., Norwalk, CT: January 17, 2002.
TA–W–50,373; Chautauqua Hardware Corp., Jamestown, NJ: December 12, 2001.
TA–W–50,347 & A; Rayovac Corp., Manufacturing and Distribution Div., Madison, WI and Middleton, WI: December 9, 2001.
TA–W–50,412; Hayes Lemmerz International, Inc., Bowling Green Plant, a Div. of North American Wheel Group, Bowling Green, KY: December 20, 2001.
TA–W–50,408; Best Manufacturing, a Division of Tillotson Corp., Johnson City, TN: November 22, 2001.
TA–W–50,583; Ingersoll-Rand, Gerwin/Ives Plant, Michigan City, IN: January 8, 2002.
TA–W–50,384; National Forge Co., Irvine, PA: December 14, 2001.
TA–W–50,326; Jordan Fashions, New York, NY: December 12, 2001.
TA–W–50,092; KUS, Inc., a/k/a Karl Schmidt Unisia, Inc., Building Number One, Fort Wayne, IN: November 14, 2001.
TA–W–50,336; Rhodes Collections, Inc., Garland, TX: December 6, 2001.
TA–W–50,493; Moltech Power Systems, a Subsidiary of Moltech Holding Corp., Gainesville, FL: December 12, 2002.
TA–W–50,218; United Sewing Apparel, Inc., Skillstaff, Inc., Etowah, TN: November 27, 2001.
TA–W–50,266; Parker Hannifin, Hydraulic Valve Div., a Div. of Parker Hannifin Co., formerly Dana Corp., Minneapolis, MN: December 4, 2001.
TA–W–50,479; Eastman Kodak Co., One Time Use Camera Plant, Including Leased Workers of Adecco Temporary Services, Rochester, NY: December 20, 2001.
TA–W–50,483; CNH Global, N.V., Construction Equipment Div., Burlington, IA: January 2, 2002.
TA–W–50,474; Store Kraft Manufacturing, Greenwood Fixture Div., Including Leased Workers of TEC, Greenwood, AR: January 2, 2002.
TA–W–50,419; Armstrong World Industries, Inc., Lancaster Floor Plant, Lancaster, PA: December 20, 2001.
TA–W–50,576; Great Northern Paper Co., Inc., East Millinocket, ME: January 14, 2002.
TA–W–50,125; Ovalstrappong, Inc., Hoquiam, WA: November 13, 2001.
TA–W–50,495; Massillon Stainless, Inc., Massillon, OH: January 3, 2002.
TA–W–50,249; Alpha Mills Corp., Annville, PA: December 2, 2001.
TA–W–50,500; Creative Die Mold, Glendale Heights, IL: January 3, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,568; SMTC Manufacturing Corp. of North Carolina, Including Leased Workers of Chase Staffing and Adecco, Charlotte, NC: January 15, 2002.
TA–W–50,374; SPX Valves and Controls, Div. of SPX Corp., Lake City, PA: December 11, 2001.
TA–W–50,390; The Goodyear Tire and Rubber Corp., Engineered Products Div., Lincoln, NE: December 18, 2001.
TA–W–50,433; Fun-Tees, Inc., Andrews, SC: December 20, 2001.
TA–W–50,388; Pasminco Zinc, Inc., Gordonsville, TN: December 18, 2001.
TA–W–50,172; Applied Films Corp., Longmont, CO: November 19, 2001.
TA–W–50,548; Gilster Mary Lee Corp., Wilson, AR: January 10, 2002.
TA–W–50,536; Lacers Sport, Inc., a/k/a Diport USA, Miami, FL: December 31, 2001.
TA–W–50,528; Celestica Corp., Midwest Campus, Rochester, MN: January 7, 2002.
TA–W–50,510; Goodrich Corp., Aircraft Interior Products, Spencer, WV: December 30, 2001.
TA–W–50,501; H.G. Winter and Sons, Inc., Kingfield, ME: January 3, 2002.
TA–W–50,286; Indiana Glass Co., Dunkirk, IN: December 6, 2001.
TA–W–50,315; Capital City Press, Inc., Barre, VT: December 10, 2001.
TA–W–50,409; International Comfort Products Corp. (USA), a wholly owned subsidiary of United Technologies Corp., and an affiliate of Carrier Corp., Lewisburg, TN: December 5, 2001.
TA–W–50,653; Tsuda Surface Technologies, Inc., Henderson, NE: January 14, 2002.
TA–W–50,612; O. Mustad and Son, Inc., Auburn, NY: January 6, 2002.
TA–W–50,123; Garden State Tanning, Inc., Fleetwood, PA: November 4, 2001.
TA–W–50,613; Foamex, L.P., Milan, TN: January 1, 2002.
TA–W–50,539; Arden Companies, Kendallville Facility, Kendallville, IN: January 9, 2002
TA–W–50,570; All U Can Handle, A Div. of Perlora, Inc., Pittsburgh, PA: January 10, 2002.
TA–W–50,446; Ericson, Inc., Messaging Group, Woodbury, NY: December 18, 2001.
TA–W–50,164; Sunbeam Corp., Inc., Outdoor Cooking Div., Neosho, MO: November 18, 2001.
TA–W–50,219; Maytag Corp., Maytag Appliances, Newton, IA: November 27, 2001.
TA–W–50,327; JO LA Foundation, Sewing and Cutting Operations, Brooklyn, NY: December 9, 2001.
TA–W–50,376; Medtronic Perfusion Systems, Anaheim Hills, CA: December 15, 2001.

The following certification has been issued. The requirement of upstream supplier to trade certified primary firm has been met.

TA–W–50,131; Lear Corp., Interior Systems Div., Carlisle, PA: November 11, 2001.
TA–W–50543; Prime Manufacturing Co., Lynn, MA: January 13, 2002.
TA–W–50,587; Moll Industries, Davie, FL: November 22, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January and February 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–07587; Groupe Carbone Lorraine, Astro Cosmos Metallurgical, Inc., Wooster, OH
NAFTA–TAA–06481; Savane International, Fabric Cutting Facility, El Paso, TX

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06447; ADC Telecommunications, 5655 Eleventh Avenue East, Shakopee, MN: August 5, 2001.
NAFTA–TAA–6072; Germantown (USA) Co., West Chester, PA: March 12, 2001.

I hereby certify that the aforementioned determinations were issued during the months of January and February 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 12, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4270 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,497 and NAFTA–06126]

Furnimex Products USA Inc., Charm House Manufacturing, Sumter, South Carolina; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 11, 2002, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA–W–41,497 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under petition NAFTA–06126. The TAA denial notice applicable to workers of Furnimex Products USA Inc., Charm House Manufacturing, Sumter, South Carolina was signed on August 6, 2002 and published in the **Federal Register** on August 20, 2002 (67 FR 53971). The NAFTA–TAA denial notice was signed on June 21, 2002 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Furnimex Products USA Inc., Charm House Manufacturing, Sumter, South Carolina, was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The major customer of the subject firm went out of business and the loss of that customer was the major contributing factor leading to the closure of the plant. The workers produced bed linens and blankets.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. Imports from Canada or Mexico did not contribute importantly to worker separations. The investigation also revealed that a major customer of the subject firm went out of business and the loss of this customer was the major contributing factor to the closure of the Sumter plant.

The petitioner appears to be indicating that plant production was shifted to Mexico after the plant closed down.

An examination of the initial decision and further contact with the company show that the closure of the subject plant is due to a major customer going out of business. That customer accounted for a major portion of the subject plant's sales and thus impacted the subject plant.

Further contact with the company also shows that the company was a Limited Liability Partnership (LLC) between the owner of Charm House Manufacturing and Furnimex Products USA Incorporated. The company indicated that no plant production was shifted to Mexico. Furnimex Products USA Incorporated indicated that an extremely small portion of subject plant production was outsourced to an unaffiliated plant located in Mexico, after the subject plant closed down, only as a customer courtesy. The amount outsourced and imported back from Mexico was not significant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no misinterpretation of the law or of the facts which would justify reconsideration of the Department of labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 3rd day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4280 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,053; Prime Manufacturing, a Div. of Dayton-Phoenix Group, Inc., Oak Creek, WI

TA–W–42,359A & B; Allegheny Ludlum Flat Roll Div., a subsidiary of Allegheny Technologies, Washington, PA and Melt Shop and Rolling Mill Div., Houston, PA

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,478; Radio Frequency Systems, Inc. (RFS), a wholly owned subsidiary of Alcatel North American Cable Systems, Inc., Marlboro, NJ

TA–W–42,173; ADC Telecommunications, Inc., U.A. Photonics Engineering and Manufacturing, Vadnais Heights, MN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.B.) (No Sales or Production declines) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,239; Nestle Purina Petcare, St. Joseph, MO

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,170; Erasteel, Inc., McKeesport, PA

TA–W–50,048 & A; Cooper Industries, Cooper Power Systems Div., Waukesha, WI and South Milwaukee, WI

TA–W–50,030; F/V Kiavak, Kodiak, AK

TA–W–50,555; Jaurice, Inc., Bangor, PA

TA–W–50,401; FPL Nerngy, Yarmouth, ME

TA–W–50,139; Lau Industries, Inc., Fridley, MN

TA–W–50,303; Profuse Services, Inc., Merkel, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–42,314 & A, B; Pearson Education Technologies, a Div. of NCS Pearson, Mesa, AZ, east Lansing, MI and Sunnyvale, CA

TA–W–50,121; VMV Enterprises, Inc., Paducah, KY

The investigation revealed that criteria (2) has not been met. The workers' firm (or subdivision) is not an upstream supplier of components for trade-affected companies.

TA–W–50,343; Fashion Technologies, Inc., Gaffney, SC

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,352; Pacific Electricord, a subsidiary of Leviton Manufacturing Co., Gardena, CA: October 10, 2001.

TA–W–42,316; Augusta Mills, a Div. of ATD American Co., Elkton, VA: October 15, 2001.

TA–W–42,359; Allegheny Ludlum, Washington Plate Div., a subsidiary of Allegheny Technologies, Washington, PA: November 1, 2001.

TA–W–42,209; Duro Industries, Inc./a/k/a Duro Textiles, LLC, Fall River, MA: April 14, 2002.

TA–W–42,203; Motorola, Semiconductor Products Sector, BAT–1, Austin, TX: September 30, 2001

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,241; A,B,C,D,E,F, G; National Spinning Co., Inc., Washington, NC, Lafayette, GA, Warsaw, NC, Whiteville, NC, Beulaville, NC, New York, NY, Burlington, NC and Kinston, NC: February 17, 2003.

TA–W–50,127; Orgreen Corp., Burns, OR: November 15, 2001.

TA–W–50,362; Rosal Sportswear, Lehighton, PA: December 10, 2001.

TA–W–50,393; Tredegar Corp., Tredegar Film Products Div., Carbondale, PA: November 7, 2001.

TA–W–50,317; FMC Corp., Hydrogen Peroxide Div., Spring Hill, WV: December 5, 2001.

TA–W–50,329; United States Forgecraft Corp., Fort Smith, AR: December 12, 2001.

TA–W–50,169; Smart Modular Technologies, Fremont, CA: November 21, 2001.

TA–W–50,268; American Tool Companies, Inc., Lexa, AR: December 4, 2001.

TA–W–50,161; Magruder Color Co., Inc., including leased workers of Algany Staffing Services and Stratus Services Group, Elizabeth, NJ: November 6, 2001.

TA–W–50,640; Pechiney Rolled Products LLC, Ravenswood, WV: December 23, 2001.

TA–W–50,378; NACCO Materials Handling Group, Inc., Lenoir, NC: December 12, 2001.

TA–W–50,365; Amital Spinning Corp., Wallace Plant, Wallace, NC: December 12, 2001.

TA–W–50,243; Worthington Steel, Jackson, MI: November 26, 2001.

TA–W–50,263; OMG Fidelity, Inc., a wholly owned subsidiary of The OM Group, Inc., Newark, NJ: December 4, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,107; Optek Technology, Inc., Carrollton, TX: November 13, 2001.

TA–W–50,465; J.B. Tool and Machine, Inc., Wapakoneta, OH: December 31, 2001.

TA–W–50,207; Dana Corp., Commercial Vehicle Systems Div., Morganton, NC: November 19, 2001.

TA–W–50,104; Thermodisc, Inc., London, KY: November 14, 2001.

TA–W–50,063; Valeo Electrical Systems, Inc., Rochester, NY: November 6, 2001.

TA–W–50,574; Snap-On Diagnostics, Ekhorn, WI: January 15, 2002.

TA–W–50,573; Friwo-EMC, Inc., Colorado Springs, CO: November 18, 2001.

TA–W–50,397; Clorox Products Manufacturing Co., a wholly owned subsidiary of The Clorox Co., including leased workers of Kelly Services, Londonderry, NH: December 17, 2001.

TA–W–50,369; Akzo Nobel Polymer Chemicals LLC, a wholly owned subsidiary of Akzo Nobel, Burt, NY: December 10, 2001.

TA–W–50,339; Tower Automotive, Inc., Milwaukee, WI: December 9, 2001.

The following certification has been issued. The requirement of upstream supplier to trade certified primary firm has been met.

TA–W–50,395; Delafoil Ohio, Inc., Perrysburg, OH: December 18, 2001.

TA–W–50,395A; Delafoil Ohio, Inc., Pottstown, PA: January 7, 2002.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06312; Delphi Energy and Chassis, Dayton, OH.

NAFTA–TAA–07596; La Grange Foundry, Inc., La Grange, MO

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–07614; Interlake Material Handling, Inc., Pontiac Manufacturing Plant, Pontiac, IL: February 10, 2001.

I hereby certify that the aforementioned determinations were issued during the months of January, 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 31, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4269 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,880]

Affiliated Building Services, Biscoe, North Carolina; Notice of Negative Determination Regarding Application for Reconsideration

By application dated October 2, 2002, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Affiliated Building Services, Biscoe, North Carolina was signed on September 9, 2002, and published in the **Federal Register** on September 27, 2002 (67 FR 61160).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Affiliated Building Services, Biscoe, North Carolina engaged in activities related to the maintenance of building systems (heating, cooling, air compressors). The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222(3) of the Act.

To support its request for reconsideration, the petitioners provided a more detailed description of the functions performed at the subject facility.

A review of the job duties and their relationship to production of products revealed that the expanded description did not vary from the functions described in the initial investigation: maintenance of building systems, including heating, cooling and air compressors.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers

produce an article and who are currently under certification for TAA.

In conclusion, the petitioning workers at the subject firm did not produce an article within the meaning of Section 222(3) of the Trade Act of 1974, nor were separations caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produced an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4286 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,987]

Alcoa Wenatchee Works, A Division of Alcoa, Inc., Malaga, WA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated November 18, 2002, the Wenatchee Aluminum Trade Council requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The Notice of Termination of Investigation was signed on October 18, 2002 and published in the **Federal Register** on November 5, 2002 (67 FR 67423).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Alcoa Wenatchee Works, a division of Alcoa, Inc., Malaga, Washington engaged in the production of aluminum was terminated based on the plant ceasing production of aluminum in July 2001, more than one year prior to the August 1, 2002, date of the petition.

The petitioner on reconsideration questions the exact findings that the facility ceased production in July 2001.

The Department of Labor's Notice of Negative Determination Regarding Application for Reconsideration pertains to the impacted worker group producing aluminum cited in the petition. It was determined that the company ceased production of aluminum on July 1, 2001, more than one year prior to the date of the petition, August 1, 2002. Contact with the company confirmed that production of aluminum ceased on July 1, 2001. As such, layoffs occurring after August 1, 2001 cannot be attributable to the cessation of aluminum production as it had already occurred at least one month earlier.

The petitioners also infer that we erred in our use of Section 223(b)(1) referencing it to the ceased production date.

We do not agree that there was an error made in our use of Section 223(b)(1). The termination notice states "Section 223(b)(1) of the Trade Act of 1974 provides that a TAA certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed on behalf of affected workers." As noted above, since production ceased more than a year prior to the petition date, workers separated subsequent to July 2001 would not have been engaged in the production of aluminum when separated.

The petitioner on reconsideration further indicates that they are asking for reconsideration of laid-off workers after August 1, 2001.

The initial investigation addressed the group of workers as stated in the petition and thus the investigation was conducted for the workers engaged in the production of aluminum. In conducting the initial investigation the Department was aware that the plant remained open due to a contract agreement that required that Alcoa maintain at least 400 employees. The Department was also aware that a portion of the workforce began producing carbon anode blocks for another Alcoa Aluminum plant, while that plant rebuilds their anode baking facility. The carbon blocks act as a sacrificial anode in the aluminum production process, so most of the aluminum smelters, including Wenatchee Works, have such a production facility. The major contributing factor leading to the layoffs at the subject firm was the curtailment of aluminum production. Neither of the activities as described above led to the aluminum worker layoffs for which the investigation was conducted. In any event, if employment declines or threat of layoffs occurred relating to the worker groups engaged in the production of carbon blocks and/or electricity, a petition for Trade Adjustment Assistance may be filed on their behalf.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of February 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4287 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,872]

Breed Technologies Incorporated, Knoxville, TN; Notice of Negative Determination Regarding Application for Reconsideration

By application of October 30, 2002, the Union of Needletrades, Industrial & Textile Employees, Tennessee/Kentucky District, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on September 24, 2002, and published in the **Federal Register** on October 10, 2002 (67 FR 63159).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Breed Technologies Incorporated, Knoxville, Tennessee was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported automobile seat belt components.

The petitioner states that the production of automobile seat belt components made at the subject firm was relocated to a foreign facility. They further assert that these currently foreign-produced components "will become part of seat belt assemblies that are now being imported from Mexico to the United States". They conclude that if the subject firm had not decided to shift component production, there would be no job loss.

Seat belt assemblies are not "like or directly competitive" with the products produced (automobile seat belt components) by the subject firm. Therefore, the imports of seat belt assemblies is not relevant in meeting the eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of February 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4285 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 6, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 6, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 27th day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 01/22/2003 and 01/24/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,604	Cessna Aircraft Company (Wkrs)	Wichita, KS	01/22/2003	01/14/2003
50,605	Jackson Sewing Center (Wkrs)	Madisonville, TN	01/22/2003	01/10/2003
50,606	Emerson Tool Company (Comp)	Paris, TN	01/22/2003	01/10/2003
50,607	Nortel Networks (Wkrs)	RTP, NC	01/22/2003	12/16/2002
50,508	A.O. Smith Electrical Products Co. (Comp)	McMinnville, TN	01/22/2003	01/09/2003
50,609	Cendant Corporation (Wkrs)	Elizabethton, TN	01/22/2003	01/13/2003
50,610	Warnaco, Inc. (Wkrs)	Thomasville, GA	01/22/2003	01/13/2003
50,611	Acme Electronics, LLC (Comp)	Cuba, NY	01/22/2003	11/26/2002
50,612	O. Mustad and Son, Inc. (Wkrs)	Auburn, NY	01/22/2003	01/06/2003
50,613	Foamex, L.P. (Comp)	Milan, TN	01/22/2003	01/01/2003
50,614	Auto Sound/Entronix (MN)	Eveleth, MN	01/22/2003	01/16/2003
50,615	BP Solar, LLC (Comp)	Toano, VA	01/22/2003	01/18/2003
50,616	Connector Service Corporation (Wkrs)	Mentor, OH	01/22/2003	01/10/2003
50,617	BP Solar, LLC (Comp)	Fairfield, CA	01/22/2003	01/18/2003
50,618	F/V Lila-L (Comp)	Nanek, AK	01/22/2003	01/16/2003
50,619	Neenah Paper Co. (PACE)	Neenah, WI	01/22/2003	01/17/2003
50,620	Youngstown Forge (Wkrs)	Youngstown, OH	01/22/2003	01/21/2003
50,621	F/V Frances A. (Comp)	Naknek, AK	01/22/2003	01/18/2003
50,622	Dallas Semiconductor/Maxim (Wkrs)	Dallas, TX	01/22/2003	01/09/2003
50,623	Arimon Technologies, Inc. (Comp)	Montello, WI	01/22/2003	01/17/2003
50,624	Agilent Technologies (Wkrs)	Loveland, CO	01/22/2003	01/16/2003
50,625	F/V Thunderbird/Seahunter Fisheries (Comp)	Anchorage, AK	01/22/2003	01/21/2003
50,626	Crowe Logging, Inc. (Wkrs)	Encampment, WY	01/22/2003	01/15/2003
50,627	F/V Blue Angel (Comp)	Naknek, AK	01/22/2003	01/20/2003
50,628	Xerox Corporation (Wkrs)	Irving, TX	01/22/2003	01/18/2003

APPENDIX—Continued

[Petitions Instituted Between 01/22/2003 and 01/24/2003]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,629	Truth Hardware (GMP)	W. Hazleton, PA	01/22/2003	01/20/2003
50,630	F/V Alica Dawn (Comp)	Tagiak, AK	01/22/2003	01/17/2003
50,631	Garden State Tanning (Comp)	Williamsport, MD	01/22/2003	01/21/2003
50,632	Trans Air Manufacturing (Comp)	Mt. Pleasant, IA	01/22/2003	01/14/2003
50,633	R.G. Barry Corporation (Comp)	Goldsboro, NC	01/22/2003	12/20/2002
50,634	International Paper (Comp)	Hopkinsville, KY	01/22/2003	01/20/2003
50,635	Science Application International (AK)	Anchorage, AK	01/22/2003	01/21/2003
50,636	F/V Indiana (Comp)	Ketchikan, AK	01/22/2003	01/21/2003
50,637	Sitka Sound Seafoods (AK)	Yakutat, AK	01/22/2003	01/21/2003
50,638	Golden View Fisheries, Inc. (Comp)	Anchorage, AK	01/22/2003	01/16/2003
50,639	Maya Kanulie (Comp)	Togiak, AK	01/22/2003	01/17/2003
50,640	Pechiney Rolled Products, LLC (Comp)	Ravenswood, WV	01/23/2003	12/23/2002
50,641	Shipley (MA)	Marlboro, MA	01/23/2003	01/22/2003
50,642	Motorola, Inc. (Comp)	Ft. Worth, TX	01/23/2003	11/27/2002
50,643	Aran Mold and Die Co., Inc. (Comp)	Elmwood Park, NJ	01/23/2003	01/14/2003
50,644	Levolor Kirsch Window Fashions (Comp)	High Point, NC	01/23/2003	01/20/2003
50,645	Sisiutl Fisheries (Comp)	Kodiak, AK	01/23/2003	01/15/2003
50,646	Levolor Kirsch Window Fashions (Comp)	Athens, GA	01/23/2003	01/20/2003
50,647	General Electric (IUE)	Euclid, OH	01/23/2003	01/22/2003
50,648	Isaac Hazan Group (Wkrs)	Secaucus, NJ	01/23/2003	01/10/2003
50,649	Ultra Tool Company (Comp)	Baxter, MN	01/23/2003	01/18/2003
50,650	Davol, Inc. (Comp)	Lawrence, KS	01/23/2003	01/22/2003
50,651	Vishay BLH, Inc. (Wkrs)	Canton, MA	01/23/2003	01/22/2003
50,652	Carbide (The)/Graphite Group, Inc. (Comp)	Pittsburgh, PA	01/23/2003	01/08/2003
50,653	Tsuda Surface Technologies, Inc (Comp)	Henderson, NV	01/23/2003	01/14/2003
50,654	International Paper (ICWU)	Dover, OH	01/23/2003	01/21/2003
50,655	Evenflo Company, Inc. (Comp)	Ballground, GA	01/23/2003	01/22/2003
50,656	Evenflo Company, Inc. (Comp)	Suring, WI	01/23/2003	01/22/2003
50,657	Hewlett Packard (Wkrs)	Swedesboro, NJ	01/23/2003	01/09/2003
50,658	Woodstock Lamp and Shade Company (UFCW)	Woodstock, IL	01/23/2003	01/09/2003
50,659	Ametek (Comp)	Sellersville, PA	01/23/2003	01/13/2003
50,660	Abitibi Consolidated (Wkrs)	Steilacoom, WA	01/23/2003	01/22/2003
50,661	Swank, Inc. (Comp)	Norwalk, CT	01/23/2003	01/17/2003
50,662	OBG Distribution Company, LLC (Wkrs)	Celina, TN	01/23/2003	01/10/2003
50,663	Synalloy Corporation (Comp)	Spartanburg, SC	01/23/2003	01/15/2003
50,664	Tyco Healthcare Retail Group, Inc. (Comp)	Harmony, PA	01/23/2003	01/21/2003
50,665	Deepwell Tribular Services, Inc. (Comp)	Midland, TX	01/23/2003	01/23/2003
50,666	John Crowley, Inc. (Comp)	Jackson, MI	01/23/2003	01/22/2003
50,667	JDS Uniphase Corp. (Wkrs)	Manteca, CA	01/23/2003	01/09/2003
50,668	JDS Uniphase (Wkrs)	San Jose, CA	01/23/2003	12/09/2002
50,669	Shinei International (Wkrs)	Hillsboro, OR	01/24/2003	01/23/2003
50,670	Abitibi Consolidated Corporation (PACE)	Houston, TX	01/24/2003	01/23/2003
50,671	Motorola Computer Group (Wkrs)	Tempe, AZ	01/24/2003	01/20/2003
50,672	North American Marine Jet (AR)	Benton, AR	01/24/2003	01/23/2003
50,673	Monterey, Inc. (Wkrs)	Cowan, TN	01/24/2003	01/16/2003
50,674	Ametek (Comp)	Bartow, FL	01/24/2003	01/21/2003
50,675	Springfield Wire, Inc. (Comp)	Springfield, MA	01/24/2003	01/20/2003
50,676	Matrox Electronic Systems Ltd. (FL)	Boca Raton, FL	01/24/2003	01/21/2003
50,677	JD Phillips Corporation (MI)	Alpena, MI	01/24/2003	12/05/2002
50,678	Keller Manufacturing (Wkrs)	Culpeper, VA	01/24/2003	01/22/2003
50,679	TRS Ceramics, Inc. (Wkrs)	State College, PA	01/24/2003	01/17/2003
50,680	Avery Dennison (Comp)	Milford, MA	01/24/2003	01/16/2003
50,681	West Mill Clothes, Inc. (Comp)	Woodside, NY	01/24/2003	01/23/2003
50,682	Sanborn (CO)	Colorado Spring, CO	01/24/2003	01/23/2003
50,683	Decibel Products (TX)	Dallas, TX	01/24/2003	01/22/2003

[FR Doc. 03–4267 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,665]

Deepwell Tubular Services, Inc., Midland, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 23, 2003 in response to a worker petition filed by a worker on behalf of the workers at Deepwell Tubular Services, Inc., Midland, Texas.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 31st day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4278 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,453]

Fun Tees, Inc., Distribution Center, Concord, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application received on August 20, 2002, a petitioning worker requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Fun Tees, Inc., Distribution Center, Concord, North Carolina was signed on July 31, 2002, and published in the **Federal Register** on August 9, 2002 (67 FR 51870).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

Workers at the subject facility were engaged in the shipping and distribution of tee shirts. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner requesting reconsideration stated that she produced neck labels and hang tags at the subject facility and that this production was shipped abroad during the relevant period. Further contact with the company confirmed that the petitioner did produce neck labels and hang tags at the Concord facility and that this production did shift overseas within the relevant period. The worker did not affix labels or tags to the tee shirts.

Communication with the company revealed that the petitioning worker's layoff was the direct result of a shift in subject plant production of neck labels and hang tags to offshore facilities. However, the neck labels and hang tags are not imported back to the United States, but affixed to tee shirts as a finished product. The tee shirts are then imported back to the United States. Increased imports of finished articles cannot be used as the basis for certification of workers producing a component for the finished article. Imports of tee shirts and not neck labels and hang tags must be considered to meet criterion (3) of the worker group's eligibility requirements of section 222 of the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of February 2003.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4279 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41, 640]

Halmode Apparel, Inc., Roanoke, VA; Notice of Negative Determination Regarding Application for Reconsideration

By application received on September 5, 2002, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Halmode Apparel Inc., Roanoke, Virginia was signed on August 26, 2002, and published in the **Federal Register** on September 10, 2002 (67 FR 57456).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Halmode Apparel Inc., Roanoke, Virginia engaged in activities related to the distribution of apparel. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges that layoffs at Halmode Apparel Inc., Roanoke, Virginia were "directly related to the impact of imports". The petitioner stated that the subject facility had once served as a production facility and that that production had been shifted abroad.

Since that production ceased in 1998, it falls outside the time frame of this investigation.

The petitioner also alleges that the loss of jobs at the subject facility was impacted by imports due to the company shifting its distribution services to a location that was more cost effective to receive import shipments.

As the worker activity that was shifted did not involve production, the shift in subject firm activities is irrelevant.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

In conclusion, the workers at the subject firm did not produce an article within the meaning of section 222(3) of the Trade Act 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 3rd day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4281 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,605]

Jacksonville Sewing Center, Madisonville, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2003 in response to a worker petition filed on behalf of the workers of Jackson Sewing Center, Madisonville, Tennessee.

The Department issued a negative determination applicable to the petitioning group of workers on December 4, 2002 (TA–W–42,256). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4276 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,234]

Joy Mining Machinery, a Division of Joy Global, Inc., Co., Mt. Vernon, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application received on December 4, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Joy Mining Machinery, a Division of Joy Global, Inc., Co., Mt. Vernon, Illinois, was signed on August 26, 2002, and published in the **Federal Register** on September 10, 2002 (67 FR 57456).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Joy Mining Machinery, a Division of Joy Global, Inc., Co., Mt. Vernon, Illinois engaged in activities related to the repair and rebuilding of underground coal mining equipment for unrelated producers. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222(3) of the Act.

The petitioner appears to claim that layoffs at Joy Mining Machinery, a Division of Joy Global, Inc., Co., Mt. Vernon, Illinois, were the result of mining machine parts arriving from Mexico.

As the subject firm does not produce original parts, but repairs existing ones, the function of subject firm workers is not considered production; thus, the workers do not produce an article with the meaning of Section 222(3) of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4288 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,837]

Kurt Manufacturing Company, Minneapolis, MN; Notice of Negative Determination Regarding Application for Reconsideration

By application received on October 2, 2002, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Kurt Manufacturing Company, Minneapolis, Minnesota was signed on September 10, 2002, and published in the **Federal Register** on September 27, 2002 (67 FR 61160).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Kurt Manufacturing Company, Minneapolis, Minnesota, engaged in activities related to screw and precision machine parts, was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act was not met. The contributed importantly test is generally demonstrated through a survey of customers of the workers' firm. Results of the survey revealed that customers did not increase their imports of competitive products during the relevant period. The subject firm did not import screw and precision machine parts during the relevant period. A domestic shift in production was cited as the cause of layoffs.

In requesting reconsideration, the petitioner(s) alleged that a company official had cited overseas competition as a factor in causing the layoffs at the Kurt Manufacturing Company, Minneapolis, Minnesota, plant.

On further review, including contact with a company official, it was confirmed that the preponderance in sales and employment declines during the relevant period were the direct result of a domestic shift in production to other company facilities possessing excess capacity. The facilities did not produce products like or directly competitive with what the subject plant produced prior to the shift in production. Further, it was confirmed that the company's customer base did not decline during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 6th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4284 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,695]

P.C.C. Airfoils, Inc., Minerva, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application received on September 18, 2002, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of P.C.C. Airfoils, Inc., Minerva, Ohio, was signed on August 26, 2002, and published in the **Federal Register** on September 10, 2002 (67 FR 57455).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at P.C.C. Airfoils, Inc., Minerva, Ohio, engaged in activities related to blades and vanes for aerospace and land based turbo engines, was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act was not met. The contributed importantly test is generally demonstrated through a survey of customers of the workers' firm. Results of the survey revealed that customers did not increase their imports of competitive products during the relevant period. The subject firm did not import blades and vanes for aerospace and land based turbo engines during the relevant period. A domestic shift in production was cited as the cause of layoffs.

In requesting reconsideration, the petitioner(s) alleged that production equipment had been moved from the subject facility to an offshore facility. The petitioners further allege that company officials told them that their production work was shifting to this facility.

Upon contact with a company official, it was confirmed that the production equipment that was moved was shipped to the domestic facility cited in the original investigation. Further, it was confirmed that all production work that was shifted from the subject facility was transferred to this same domestic facility.

The petitioners also appear to claim that the company has purchased duplicate tooling for a foreign facility for the purpose of producing products like or directly competitive with those produced at the subject firm.

Upon further review, it was revealed that the foreign facility mentioned does not produce products like or directly competitive with those produced by the subject firm.

Finally, the petitioners state that employees had been told by company officials that the "finishing department will never return to Minerva".

Although the petitioners' claim in this instance may be correct, it is irrelevant, as it has already been established that production of like or directly competitive products shifted to a domestic facility. No plant production shifted to a foreign facility.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 10th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4282 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,602]

Porcelain Products Company, Macomb, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 17, 2003 in response to a worker petition filed by the United Steel Workers of America, Local 86G on behalf of workers of Porcelain Products Company, Macomb, Illinois.

The petitioning group of workers is already covered by an earlier petition filed on January 7, 2003 (TA–W–50,515) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4275 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,723]

Snorkel International, Omniquip Textron, Inc., Elwood, KS; Notice of Negative Determination Regarding Application for Reconsideration

By application received on October 4, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Snorkel International, Omniquip Textron Inc., Elwood, Kansas was signed on September 9, 2002, and published in the **Federal Register** on September 27, 2002 (67 FR 61160).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Snorkel International, Omniquip Textron Inc., Elwood, Kansas, engaged in activities related to production of aerial work platforms, was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act was not met. The contributed importantly test is generally demonstrated through a survey of the customers of the workers' firm. Results of the survey revealed that customers did not increase their imports of competitive products during the relevant period.

In requesting reconsideration, the petitioner attached a copy of an article taken from the company Web site referring to a significant shift in production from the Kansas facility to New Zealand.

As the same article was attached to the petition, a company official was contacted during the initial investigation to clarify the facts in the Web site article. The official revealed that, there is a company facility in New Zealand, but it does not service domestic customers and the company does not import aerial work platforms from this facility to the United States.

The company official further indicated that the article in question had been put on the Web site without official authorization from the company and was purely speculative.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 3rd day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4283 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,332]

Tetley USA, Inc., Williamsport, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 12, 2003 in response to a worker petition filed by a company official on behalf of workers at Tetley USA, Inc., Williamsport, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4271 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,380]

Tristar Refractories, Inc., Cincinnati, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 3, 2003 in response to a worker petition filed by the United Steelworkers of America, District 1/Sub-District 3 on behalf of workers at Tristar Refractories, Inc., Cincinnati, Ohio. Workers at the subject firm produced isostatically pressed ceramics.

The Department of Labor issued negative determinations applicable to the petitioning group of workers on July 2, 2002 (TA–W–41,130). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4272 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,664 and TA–W–50,664A]

Tyco Healthcare Retail Group, Harmony, PA; Tyco Healthcare Retail Group, East Butler, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 23, 2003, in response to a petition filed by a company official on behalf of workers at Tyco Healthcare Retail Group, Harmony, Pennsylvania, and East Butler, Pennsylvania.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 31st day of January 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4277 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,519]

Tyson Foods, Inc., Jacksonville, FL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 8, 2003 in response to a worker petition filed by a company official on behalf of workers at Tyson Foods, Inc., Jacksonville, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of January, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4274 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Workers Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Ace of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 6, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 6, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of January 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 01/13/2003 and 01/17/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,542	Wards Cove Packing Company (Comp)	Kodiak, AK	01/13/2003	01/10/2003
50,543	Prime Manufacturing Company (Comp)	Lynn, MA	01/13/2003	01/13/2003
50,544	Firestone Tube Company (USWA)	Russellville, AR	01/13/2003	01/07/2003
50,545	Weavexx, Inc. (Comp)	Wake Forest, NC	01/13/2003	01/07/2003
50,546	Emerson Tool Company (Comp)	Paris, TN	01/13/2003	01/10/2003
50,547	Byrd Motor Line, Inc. (Wkrs)	Lexington, NC	01/13/2003	01/10/2003
50,548	Gilster Mary Lee Corporation (AR)	Wilson, AR	01/13/2003	01/10/2003
50,549	Sweetheart Cup (Wkrs)	Conyers, GA	01/14/2003	01/10/2003
50,550	Maine Brand Manufacturing, Inc. (Comp)	Littleton, ME	01/14/2003	01/09/2003
50,551	Hayes Co., Inc. (The) (KS)	Valley Center, KS	01/14/2003	01/13/2003
50,552	TMD Friction, Inc. (Wkrs)	Dublin, VA	01/14/2003	01/10/2003
50,553	Goodyear Tire and Rubber Co. (USWA)	Union City, TN	01/14/2003	01/09/2003
50,554	Scotty's Fashions (UNITE)	Palmerton, PA	01/14/2003	01/06/2003
50,555	Jaurice, Inc. (UNITE)	Bangor, PA	01/14/2003	01/06/2003
50,556	Stora Enso North America (Comp)	Wisc. Rapids, WI	01/14/2003	01/13/2003
50,557	Crane Company (Wkrs)	Long Beach, CA	01/14/2003	11/04/2002
50,558	Olofsson, PCC (UAW)	Lansing, MI	01/14/2003	01/09/2003
50,559	Capitol Engineering (IAMAW)	Brookfield, WI	01/15/2003	11/19/2002
50,560	Crown Pacific and Express (OR)	Gilchrist, OR	01/15/2003	01/14/2003
50,561	Douglas Furniture of California, LLC (Comp)	Redondo Beach, CA	01/15/2003	01/09/2003
50,562	Hubbell Lighting, Inc. (IBEW)	Martin, TN	01/15/2003	01/14/2003
50,563	Plexus Corporation (Wkrs)	Neenah, WI	01/15/2003	01/14/2003
50,564	Dana Corporation (Comp)	Crenshaw, MS	01/15/2003	01/09/2002
50,565	ABM Janitorial Services (Comp)	Greenville, SC	01/15/2003	12/09/2002
50,566	Barrett Business Services, Inc. (USWIB)	Easton, MD	01/15/2003	11/19/2002
50,567	Firmenich, Inc. (Comp)	Patillas, PR	01/15/2003	01/07/2003
50,568	SMTC Mfg Corporation of North Carolina (Comp)	Charlotte, NC	01/15/2003	01/15/2003
50,569	Datex-Ohmeda, Inc. (CO)	Louisville, CO	01/15/2003	01/14/2003
50,570	All U Can Handle (Wkrs)	Pittsburgh, PA	01/15/2003	01/10/2003
50,571	Computer Sciences Corporation (Wkrs)	Falls Church, VA	01/16/2003	01/02/2003
50,572	Scott Mills (Comp)	Gastonia, NC	01/16/2003	01/08/2003
50,573	Friwo-EMC, Inc. (Wkrs)	Colorado Spring, CO	01/16/2003	12/24/2002
50,574	Snap On Diagnostic (Wkrs)	Elkhorn, WI	01/16/2003	01/15/2003
50,575	ITT Industries (Comp)	Rochester, NY	01/16/2003	01/07/2003
50,576	Great Northern Paper Co. (PACE)	E. Millinocket, ME	01/16/2003	01/14/2003
50,577	Trade Wind Apparel, Inc. (Comp)	Commerce, GA	01/16/2003	01/06/2003
50,578	Cleveland Chair (Wkrs)	Madisonville, TN	01/16/2003	01/06/2003

APPENDIX—Continued

[Petitions Instituted Between 01/13/2003 and 01/17/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,579	Thomson 60 Case, LLC (Comp)	Lancaster, PA	01/16/2003	01/03/2003
50,580	All Steel (USWA)	W. Hazleton, PA	01/16/2003	01/16/2003
50,581	Chapin Mfg., Inc. (Comp)	Botavia, NY	01/16/2003	01/02/2003
50,582	Wright Products/Truth Hardware (Wkrs)	Rice Lake, WI	01/16/2003	01/15/2003
50,583	Ingersoll—Rand (Wkrs)	Michigan City, IN	01/16/2003	01/08/2003
50,584	Lockheed Martin (Wkrs)	Tulsa, OK	01/16/2003	01/06/2003
50,585	Skillers—C and S Apparel, Inc. (Wkrs)	Butler, PA	01/16/2003	12/10/2002
50,586	F/V Renaissance (Comp)	Kodiak, AK	01/16/2003	01/15/2003
50,587	Moll Industries (Comp)	Davie, FL	01/16/2003	11/22/2002
50,588	Murray Engineering, Inc. (MI)	Flint, MI	01/16/2003	01/15/2003
50,589	VF Playwear (Wkrs)	Danville, VA	01/16/2003	01/15/2003
50,590	MSX International (MI)	Auburn Hills, MI	01/16/2003	01/15/2003
50,591	Minnotte Machining (IWA)	Fairmont, WV	01/16/2003	01/13/2003
50,592	Specialty Minerals, Inc. (MN)	Cloquet, MN	01/16/2003	01/15/2003
50,593	Exemplar Manufacturing Co. (Wkrs)	Ypsilanti, MI	01/16/2003	01/09/2003
50,594	Maxcess Technologies, Inc. (Comp)	Summerville, SC	01/16/2003	01/16/2003
50,595	Consolidated Freightways (IAM)	Richfield, OH	01/17/2003	01/16/2003
50,596	Reptron Manufacturing (MN)	Hibbing, MN	01/17/2003	01/15/2003
50,597	Harriet and Henderson Yarns (Wkrs)	Henderson, NC	01/17/2003	01/16/2003
50,598	Blandin Paper Company (MN)	Grand Rapids, MN	01/17/2003	01/15/2003
50,599	Pacifica Mountain Smith, LLC (Comp)	Golden, CO	01/17/2003	01/10/2003
50,600	Nautilus (Comp)	Sitka, AK	01/17/2003	01/16/2003
50,601	Valeo (Comp)	Ft. Worth, TX	01/17/2003	01/16/2003
50,602	Porcelain Products Company (USWA)	Macomb, IL	01/17/2003	01/15/2003
50,603	Matthew J. Pancratz (Comp)	Homes, AK	01/17/2003	01/15/2003

[FR Doc. 03–4266 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,398]

West Coast Automation Corporation, Goldendale, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 19, 2002 in response to a petition filed on December 18, 2002 on behalf of workers at West Coast Automation Corporation, Goldendale, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 31st day of January, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4273 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6537]

State of Alaska Commercial Fisheries Entry Commission Permit #65097J, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65097J, Aleknagik, Alaska.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4290 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6611]

State of Alaska Commercial Fisheries Entry Commission Permit #575460, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #575460, Dillingham, Alaska.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4291 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6901]

State of Alaska Commercial Fisheries Entry Commission Permit #57588P, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57588P, Naknek, Alaska.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4292 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7136]

State of Alaska Commercial Fisheries Entries Commission Permit #56230M, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56230M, Dillingham, Alaska.

The workers stopped fishing in July 10 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 24th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4293 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7225]

State of Alaska Commercial Fisheries Entry Commission Permit #60833F, Egegik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60833F, Egegik, Alaska.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4294 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7373]

State of Alaska Commercial Fisheries Entry Commission Permit #57646A, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57646A, Naknek, Alaska.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4295 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7387]

State of Alaska Commercial Fisheries Entry Commission Permit #66424I, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66424I, Naknek, Alaska.

The Department has been unable to locate company officials of the subject firm or to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4296 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6018]

Johnson Controls International, Fullerton, CA; Notice of Revised Determination on Reconsideration

By letter of August 20, 2002, the International Union, United Automobile, Aerospace & Agriculture Implement Workers of America (UAW), requested administrative reconsideration of the Department's denial of North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers of Johnson Controls International, Fullerton, California. The denial notice was published in the **Federal Register** on July 22, 2002 (67 FR 47862).

The initial investigation resulted in a negative determination issued on July 9, 2002, based on the finding that there was no shift in production to Canada or Mexico and imports of automotive batteries from Canada and Mexico did not contribute importantly to worker separations at the Fullerton plant.

To support the request for reconsideration, the union provided additional information, which was not provided during the initial investigation. The union official indicated that the company had entered into a joint venture with another company that had production capacity in Mexico. As a result of this partnership, Johnson Controls had replaced batteries produced at the subject firm with Mexican production.

Upon further review and contact with a company official, it was revealed that the company replaced their domestic production of dry automotive batteries with dry automotive batteries from the affiliated Mexican plant, leading to layoffs at the subject firm.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports from Mexico of dry automotive batteries contributed importantly to the decline in production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

"All workers of Johnson Controls International, Fullerton, California, who became totally or partially separated from employment on or after March 27, 2001, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC this 10th day of February 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–4289 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7655]

NSI Communications, U.S. Broadband Division, San Diego, CA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 23, 2002 in response to a petition filed on behalf of workers at NSI Communications, U.S. Broadband Division, San Diego, California.

The Department has been unable to locate an official of the NSI Communications to obtain the information necessary to render a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of January, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–4297 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Emergency Evacuations and Mine Emergency Evaluation and Fire-Fighting Program of Instruction

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 75.1501—Emergency Evacuations and 75.1502—Mine Emergency Evacuation and Fire-Fighting Program of Instruction.

DATES: Submit comments on or before April 25, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

In response to the recent accidents of September 2001 at the Jim Walter Resources No. 5 Mine and of July 2000 at the Willow Creek Mine; MSHA has determined that new safety standards are necessary to further protect miners when a mine emergency presenting an imminent danger to miners due to fire, explosion, or gas or water inundation occurs which requires an evacuation of miners. Miners and mine operators must be able to rapidly and safely respond to emergency situations created by fire, explosion, or gas or water inundation hazards, and initiate an immediate mine evacuation when necessary to protect miners from the grave dangers of remaining underground or re-entering affected areas when hazards and conditions arise that endanger safety. A rapid and planned evacuation of all miners, who are knowledgeable about the mine's plan for mine emergencies, is essential to survival, and is one of the last safeguards that would allow miners to exit from the mine under extremely adverse conditions. The current lack of such knowledge, and demonstrated inability to quickly initiate and properly conduct a mine evacuation, presents a grave danger to miners who work in underground coal mines when a mine fire, explosion, or gas or water inundation emergency occurs.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

Section 75.1501(c), required the mine operator to train all miners about the requirements of this section and the identity of the responsible person(s) designated by the operator for the work-shift. The operator also is required to instruct miners of any change in the identity of the responsible person before the start of their work-shift. Section 75.1502 broadens existing section 75.1101–23 by including all mine emergencies created as a result of a fire, an explosion, or gas or water inundation. It requires revisions to existing fire-fighting and evacuation plans to address these emergencies, require training of miners regarding the mine emergency evacuation fire-fighting plan, and require that mine operators train miners in any revisions to the plan after its submission to MSHA for approval.

Section 75.1502(a) requires the operator to adopt a mine emergency evacuation and fire-fighting program. The operator is required to train all miners in the proper evacuation procedures to be followed in the event of a mine emergency, the location and use of fire-fighting equipment, location of escape-ways, exits, and routes of travel to the surface. All miners would be trained on any revisions made to the program of instruction after it has been approved by MSHA to ensure that miners are kept aware of any changes made to the mine emergency evacuation and fire-fighting plan after they have received initial training.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Emergency Evacuations and Mine Emergency Evaluation and Fire-Fighting Program of Instruction.

OMB Number: 1219–0137.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 664.

Estimated Time Per Respondent: 7.55 minutes.

Total Burden Hours: 5,010 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 14th day of February, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–4268 Filed 2–21–03; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 70–734]

Environmental Assessment and Finding of No Significant Impact for General Atomics' Request To Amend Special Nuclear Material License SNM–696

I. Introduction

The NRC is considering an amendment to General Atomics' (GA's) NRC Special Nuclear Material License SNM–696. The proposed amendment will revise the material possession limits in its license to reflect the actual amount of inventory currently on its site. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of GA's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

II. Supplementary Information

Background

GA was formerly authorized by the NRC and its predecessor, the Atomic Energy Commission, to use special

nuclear material in nuclear fuel fabrication and research and development pursuant to its license SNM–696. However, following submittal by GA of applications dated September 26, 1995, and June 14 and July 19, 1996, on September 26, 1996, the NRC amended GA's license to authorize only activities incident to decommissioning. On April 29, 1998, the NRC further amended GA's license to incorporate the Decommissioning Plan. 63 FR 20671.

Since issuance of these license amendments, GA has decommissioned a number of areas of its site and has removed a significant amount of licensed material. GA has removed this material by either transferring the material to licensed recipients or shipping the material to a licensed disposal facility.

By license application dated October 31, 2002 (ADAMS Accession No. ML023160041), GA requested that its license SNM–696 be amended to reduce the limits in its license to reflect the reduction in its inventory of special nuclear material that has resulted from its ongoing decommissioning activities. The initial application indicated that the license authorized GA to acquire, deliver, receive, possess, use and transfer SNM. GA submitted a corrected application dated November 7, 2002 (ADAMS Accession No. ML023220032), deleting the words "acquire," "receive," and "use," from the initial application, to correctly reflect that GA is authorized only to possess, transfer, and ship special nuclear material.

Identification of the Proposed Action

The proposed action would be to amend GA's license to reflect the reduced amount of special nuclear material remaining on its site. The previous and revised possession limits are listed in the following table:

SNM	Chemical or physical form	Previous possession limit	Revised possession limit
A. Uranium	Enriched up to 19.99% U–235	[1] 200	Less than 10 kilograms U–235.
B. Uranium	Enriched 20–100% U–235	[2] 5000	Less than 1,000 gm.[3]
C. U–233	Any	[2] 2000	Less than 100 gm U–233.[3]
D. Plutonium	Encapsulated and/or sealed sources	[2] 2000	Less than 100 gm total Pu.[3]
E. Plutonium	Bred but unseparated	[2] 1000	Less than 50 gm total Pu.[3]
F. Plutonium	Plated calibration sources	[2] 5	Less than 5 grams total Pu.[3]
G. Plutonium	Solutions, precipitates, solids	[2] 5	Less than 5 grams total Pu.[3]

[1] Gram.
[2] Kilogram.
[3] The sum total quantity of strategic special nuclear material possessed at any one time must be less than 1,000 grams computed by the formula: Grams = grams U–235 in uranium enriched to 20% or more plus 2 x (grams U–233 + grams plutonium).

Purpose and Need for the Proposed Action

The proposed action would bring the possession limits section of GA's license into conformance with the amounts of special nuclear material actually remaining on site.

Cumulative Impacts

NRC has found no other current or planned activities in the area that would result in cumulative impacts.

Alternatives to the Proposed Action

An alternative to the proposed action would be for the NRC staff to deny the licensee's request. The licensee would then continue to be authorized to possess larger quantities of special nuclear material on the site; however, it would also continue to be prohibited from acquiring, receiving, or using special nuclear material, in accordance with its current license.

Affected Environment

The affected environment is the GA site in La Jolla, California. It is described in the Site Decommissioning Plan, dated October 11, 1996. Since the Site Decommissioning Plan was approved, GA has decontaminated and decommissioned several areas of the site, and these areas have been released for unrestricted use and have been deleted from GA's license.

Environmental Impacts of the Proposed Action

There are no environmental impacts of the proposed action. The license amendment revises the license to reflect the current condition of the site, and does not authorize any change in activities.

State Consultation

NRC staff discussed this proposed action with Ms. Sudana Kwok, Project Manager of GA's byproduct material license with the California Department of Health Services, Radiologic Health Branch. The DHS/RHB is in agreement with the proposed action and has no comments.

III. Finding of No Significant Impact

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The following documents are related to the proposed action.

References

Code of Federal Regulations (CFR) title 10, chapter I—Nuclear Regulatory Commission, part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.

Code of Federal Regulations (CFR) title 10, chapter I—Nuclear Regulatory Commission, part 70, Domestic Licensing of Special Nuclear Material.

General Atomics, Docket No. 70–734; SNM–696; Submittal of Corrected Revised Section 1 (Material License Limits) of Part II "Specifications Volume" of SNM–696, November 7, 2002 (ADAMS Accession No. 023220032).

Nuclear Regulatory Commission; General Atomics Amendment 75; December 9, 2002; NRC Form 374 Sections 6., 7., and 8 (ADAMS Accession No. ML023250261).

These references may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The references with ADAMS accession numbers may also be viewed in the NRC's Electronic Public Document Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. Any questions with respect to his action should be referred to Ms. Mary Adams, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8 A33, Washington, DC 20555–0001. Telephone (301) 415–7249.

Dated at Rockville, Maryland, this 14th day of February, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4262 Filed 2–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement Regarding Scram Discharge Volume Vent and Drain Valves Actions for Boiling Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to a change in the technical specification (TS) required actions for inoperable vent and drain valves for the scram discharge volume (S.V.) for boiling water reactors (BWRs). This proposed change was proposed for incorporation into the standard technical specifications (STS) by the BWR Owners Group (BWROG) participants in the Technical Specification Task Force (TSTF) and is designated TSTF–404, Revision 0. The proposed change to TS would allow isolation of one or more S.V. vent or drain lines within 7 days if a single vent or drain valve in the line is determined to be inoperable. The TS for most BWRs do not currently include the option of isolating a vent or drain line but instead require restoring a single inoperable S.V. vent or drain valve to operable status within 7 days. Requirements are maintained to isolate a line within 8 hours if both vent or drain valves in a line are inoperable. This notice also includes a model no significant hazards consideration (NSHC) determination relating to this matter.

The purpose of these models is to permit the NRC to efficiently process proposed amendments to incorporate this change into plant-specific TS for BWRs. Licensees of nuclear power reactors to which the models apply could request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the SE and NSHC determination to its reactor. The NRC staff is requesting comments on the model SE and model NSHC determination before announcing their availability for referencing in license amendment applications.

DATES: The comment period expires March 26, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specifications Changes for Power Reactors," was issued on March 20, 2000. The Consolidated Line Item Improvement Process (CLIIP) is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that revises requirements for the S.V. vent and drain valves for BWRs. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves changes to required actions for inoperable S.V. vent and drain valves for BWRs. This proposed change was proposed for incorporation into the STS by the BWROG as TSTF–404, Revision 0. The changes, provided in terms of Limiting Condition for Operation (LCO) 3.1.8 in the STS for BWRs are provided below:

Current Requirements

LCO 3.1.8 Each S.V. Vent and Drain Valve Shall be Operable

Applicability: Modes 1 and 2.

Actions:

Note: Separate Condition Entry is allowed for each S.V. vent and drain line.

Condition	Required action	Completion time
A. One or more S.V. vent or drain lines with one valve inoperable.	A.1 Restore Valve to Operable status	7 days.
B. One or more S.V. vent or drain lines with both valves inoperable.	B.1 Isolate the associated line *Note:* An isolated line may be unisolated under administrative control to allow draining and venting of the S.V.	8 hours.
C. Required Action and associated Completion Time not met	C.1 Be in Mode 3	12 hours.

Revised Requirements

LCO 3.1.8 Each S.V. Vent and Drain Valve Shall be Operable

Applicability: Modes 1 and 2.

Actions:

Notes: 1. Separate Condition Entry is allowed for each S.V. vent and drain line.

2. An isolated line may be unisolated under administrative control to allow draining and venting of the S.V.

Condition	Required action	Completion time
A. One or more S.V. vent or drain lines with one valve inoperable.	A.1 Isolate the associated line	7 days.
B. One or more S.V. vent or drain lines with both valves inoperable.	B.1 Isolate the associated line	8 hours.
C. Required Action and associated Completion Time not met	C.1 Be in Mode 3	12 hours.

Applicability

This proposed change to required actions for inoperable S.V. vent and drain valves is applicable to BWRs.

The CLIIP does not prevent licensees from requesting an alternative approach or proposing changes other than those proposed in TSTF–404. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the staff's evaluation of comments received as a result of this notice, the staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the SE or proposed NSHC determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revised requirements for each plant that applies for and receives the requested change.

Proposed Safety Evaluation

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Technical Specification Task Force (TSTF) Change TSTF–404, Scram Discharge Volume Vent and Drain Valves

1.0 Introduction

By application dated [ ], [Licensee] (the licensee) requested changes to the Technical Specifications (TSs) for [facility]. The proposed changes would revise the required action within TS [3.1.8, "Scram Discharge Volume (S.V.) Vent and Drain Valves"] for the condition of having one or more S.V. vent or drain lines with one valve inoperable. These changes are based on Technical Specification Task Force (TSTF) change traveler TSTF–404 (Revision 0) that has been approved generically for the BWR [boiling water reactor]/4[6] Standard Technical Specifications (STS), NUREG–1433 [1434], Revision 2. A notice announcing the availability of this proposed TS change using the consolidated line item improvement process (CLIIP) was published in the **Federal Register** on [ ] (xx FR yyyyy).

2.0 Regulatory Evaluation

NRC regulations and review standards such as Appendix A, "General Design Criteria for Nuclear Power Plants," to 10 CFR Part 50 of Title 10 of the Code of Federal Regulations (10 CFR), include specific requirements for reactor protection and reactivity control systems. The reactor protection systems for BWRs use a hydraulic system to insert control rods into the reactor core. During an actuation of the reactor protection system (a scram), water is exhausted from the control rod drive mechanisms to the SDVs. Proper maintenance and operation of the SDVs in terms of instrumentation and limiting water volumes are essential for assuring the reliability of the reactor protection system (*see* NRC Bulletin 80–17, "Failure of Control Rods to Insert During A Scram at a BWR," related Orders to specific facilities, and information provided in plant final safety analysis reports and TS Bases). Maintaining the SDVs to ensure that accumulated water does not hamper or slow the insertion of control rods requires vent and drain valves. The vent and drain valves isolate during a scram to limit the amount of coolant discharged so that adequate core cooling is maintained and offsite doses remain within regulatory limits.

Specific regulatory requirements for S.V. vent and drain valves are defined in TS [3.1.8, "Scram Discharge Volume (S.V.) Vent and Drain Valves."] The existing LCO [limiting condition for operation] [3.1.8], requires that each S.V. vent and drain valve be operable. The operability of all S.V. vent and drain valves ensures that the S.V. vent and drain valves will close during a scram to contain reactor water discharged to the S.V. piping. Since the vent and drain lines are provided with two valves in series, the single failure of one valve in the open position will not impair the isolation function of the system. Additionally, the valves are required to open on scram reset and during plant operation to control the amount of water accumulating in the S.V.

If one or more S.V. vent and drain lines have a single valve that is inoperable, the existing required action is to restore the valve(s) to operable status within 7 days. If an inoperable valve is not restored to operable status, a plant shutdown to MODE 3 is required within 12 hours. If one or more S.V. vent or drain lines have both valves inoperable, the associated line must be isolated within 8 hours. In this condition, the plant is allowed to operate indefinitely. A note associated with the required action clarifies that the valves may be opened under administrative controls to allow draining of the S.V. The S.V. vent and drain valve actions are inconsistent in that, although the operational and safety concerns are similar for having one or both valves in a line being inoperable, the actions for a single inoperable valve do not allow for the isolation of the line and administrative controls to support the draining of the S.V.

The proposed change would revise the required actions to be more consistent with the safety significance of one inoperable valve in a S.V. line versus two inoperable valves in an S.V. line.

3.0 Technical Evaluation

The proposed changes to TS 3.1.8 are:

1. Required Action A.1 is revised from restoring the single inoperable S.V. vent and drain valve in one or more S.V. vent and drain lines to operable status to isolating the associated line.

2. The Note to Required Action B.1 which allows an isolated line to be unisolated under administrative controls for the purpose of draining and venting the S.V. is moved to a note that applies to both Conditions A (single inoperable valve) and B (both valves inoperable).

With one S.V. vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the S.V. The current ACTION statement allows 7 days to repair the inoperable valve; the proposed change is to allow for the isolation of the affected line and continue operation. If the affected line is not isolated within the 7 day time period (or the required action is not required because the valve is repaired), the licensee would then be required to proceed to MODE 3 in the next 12 hours. Maintaining the 7 day Completion Time is acceptable because of the low probability of the concurrent events of a scram within the 7days of the Completion Time and a failure of the redundant valve(s). Alternately, if the inoperable valve was initially closed, there would generally be ample time and warning available to drain the S.V. before an automatic scram due to S.V. high level would occur.

The allowance to administratively open a line that is isolated to comply with the actions (to permit draining and venting the S.V.) is allowed by existing Required Action B.1. This allowance is being moved to apply to all ACTIONS based on the change proposed to Action A. This would allow any accumulated water in the line to be drained, to preclude a reactor scram on S.V. high level. A reactor scram is initiated if the S.V. water level in the instrument volume exceeds a specified setpoint. The setpoint is chosen so that all control rods are inserted before the S.V. has insufficient volume to accept a full scram. Regarding the isolation of the S.V., the remaining operable S.V. vent and drain valve(s) would close automatically on a scram signal to isolate the lines. Or, if both valves in a line were inoperable (and opened under this provision), the reactor coolant release could be terminated by resetting the scram from the control room, or by manually closing the valves locally. Resetting the scram automatically closes the scram outlet valves, isolating the control rod drive discharge path to the S.V.

Based on the low probability of an event occurring during defined Completion Time associated with this condition, the subsequent isolation of the affected lines, and the ability to open and drain the lines before an automatic scram due to S.V. high water level, the proposed change maintains the necessary safety features and is therefore acceptable. [Note-optional section if licensee provides markup of affected Bases pages: The change to TS [3.1.8] requires that the licensee revise the discussion in the associated Bases section. Although the licensee's application included possible wording for the revised Bases discussion for TS [3.1.8], the licensee will formally address the change to the Bases in accordance with [the Bases Control Program or its administrative procedure for revising Bases]. The staff does not believe that the Bases change will require prior NRC approval when evaluated against the criteria in 10 CFR 50.59, "Changes, tests, and experiments," and, therefore, agrees that the revision of the Bases to TS [3.1.8] should be addressed separately from this amendment and should be included in a future update of the TS Bases in accordance with [the Bases Control Program or the licensee's administrative controls].

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendments. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding (FR). Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment revises TS [3.1.8, "Scram Discharge Volume (S.V.) Vent and Drain Valves,"] to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to Operable status within 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1.—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change is proposed to allow the affected S.V. vent and drain line to be isolated when there are one or more S.V. vent or drain lines with one valve inoperable instead or requiring the valve to be restored to operable status within 7 days. With one S.V. vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the S.V. Following the completion of the required action, the isolation function is fulfilled since the associated line is

isolated. The ability to vent and drain the SDVs is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2.—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3.—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change ensures that the safety functions of the S.V. vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system will prevent filling of an S.V. to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the S.V. and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Dated at Rockville, Maryland, this 14th day of February 2003.

For the Nuclear Regulatory Commission.

William H. Ruland,

Director, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4263 Filed 2–21–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice 4285]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: ACCESS Program: Indonesia, Philippines, Serbia, and Southeast Europe

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for four projects under the new ACCESS (Access to Community and Civic Enrichment for Students) Program in Indonesia, Philippines, Serbia, and Southeast Europe. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select youth and adult participants in the specified countries and to provide the participants with a U.S.-based exchange project focused on civic education, leadership, conflict resolution, tolerance and respect for diversity, and community activism.

Program Information

Overview: The ACCESS (Access to Community and Civic Enrichment for Students) Program is an exchange program model that enables teenagers (ages 15–17) and adult educators to participate in intensive, thematic, month-long projects in the United States that complement a more formal education in the principles of a civil society. Participants will be engaged in a variety of activities such as workshops, community and/or school-based programs, cultural activities, seminars and other activities designed to achieve the projects' stated goals and objectives. Opportunities for participants to interact with American youth and adult educators will be included whenever appropriate.

The goals of the programs are:

(1) To develop a sense of civic responsibility and commitment to community development among youth;

(2) To foster relationships among youth from different ethnic, religious, and national groups;

(3) To promote mutual understanding between the United States and the people of other countries.

Applicants should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

Should organizations wish to apply for more than one project, they must submit a separate proposal for each. Each of the four projects will be judged independently and proposals for a particular country or region will be compared only to proposals for the same country or region.

Project A: Indonesia. Total funding: $500,000. 45–70 participants total. Applicants should propose a U.S. program in summer 2004. ECA may award one or two grants. Therefore, an organization may apply to conduct the entire project, or it may apply to work with a fraction of the participant numbers specified and request a commensurate grant amount using this per capita range: $7,140-$11,100. Requests for less than the full amount should not exceed 60% of the total funding available. The Bureau reserves the right to adjust grant amounts should it choose to fund more than one proposal under each project.

Project B: Philippines. Total funding: $200,000. 30–40 participants. Applicants should propose a U.S. program between January and June 2004. ECA intends to award only one grant.

Project C: Serbia. Total funding: $198,000. 30–40 participants. Applicants should propose a U.S. program in spring 2004. ECA intends to award only one grant.

Project D: Southeast Europe. Total funding: $595,000. 96–120 participants. Applicants should propose a U.S. program in summer 2004. ECA may award one or two grants. Therefore, an organization may apply to conduct the entire project, or it may apply to work with a fraction of the participant numbers specified and request a commensurate grant amount using this per capita range: $4,960-$6,200. Requests for less than the full amount should not exceed 60% of the total funding available. The Bureau reserves the right to adjust grant amounts should it choose to fund more than one proposal under each project.

Although all countries or entities in Southeast Europe are potentially eligible for this regional project, ECA anticipates the following will be included: Macedonia, Romania, Albania, Bulgaria, Kosovo, Serbia and Montenegro.

Note: The Bureau's ability to carry out these programs is dependent upon the availability of funds and the fulfillment of certification requirements contained in pending legislation.

For all four projects, applicants must demonstrate their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of programs aimed at achieving the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) work in Indonesia, the Philippines, Serbia or Southeast Europe. Applicants need to have the necessary capacity in the geographic areas from which participants will be recruited or a partnered institution with the requisite capacity to recruit and select participants for the program and to provide follow-on activities.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. The Bureau also reserves the right to renew this grant in future years contingent upon the successful performance of the grant recipient and the availability of funding.

Guidelines

Grants should begin on or about July 1, 2003, subject to the availability of funds. The grant period will be 12–16 months in duration, as appropriate.

In pursuit of the goals outlined above, the programs will include the following:

- Recruitment and selection of youth and adult educators from the appropriate geographic regions.
- A pre-departure orientation program
- Designing and planning of activities that provide a substantive program on leadership development, civic education, community service, and conflict resolution. Some activities should be school and/or community-based, as feasible, and the projects will involve as much interaction with American peers as possible.
- Logistical arrangements, home-stay arrangements (as appropriate) and/or other accommodation, provisions for religious observance, disbursement of stipends/per diem, local travel, and travel between sites.
- Follow-on activities in the participants' geographic areas designed to reinforce the ideas, values and skills imparted during the U.S. program.

Recruitment and Selection: The grant recipients will manage the recruitment and merit-based selection of participants in cooperation with the Public Affairs offices at the U.S. Embassies or other USG representative offices overseas. Organizers must strive for the broadest regional and ethnic diversity. The Department of State and/or its overseas representatives reserve final approval of all selected delegations.

Participants: The participants will be teenagers aged 15 to 17, who have demonstrated leadership aptitude and an interest in community service, and adults who are teachers, school administrators, and/or community leaders who work with youth. The ratio of students to adults will be approximately 5:1.

Criteria for selection of participants will be leadership skills, an interest in service to the community, strong academic and social skills, overall composure, openness and flexibility and English proficiency (for Philippines, Serbia, and Southeast Europe only).

Groups: Applicants should present ideas on dividing the participants in each project into smaller groups of about 12–15 individuals for both logistical and pedagogical reasons. Groups will be as mixed as is feasible (adults/youth, geographic, ethnicity, religious background, etc.).

U.S. Program: The projects may take place in one or two communities and should offer the participants exposure to the variety of American life. The program should focus primarily on interactive activities, practical experiences, and other hands-on opportunities to learn about the fundamentals of a civil society, community service, conflict resolution, tolerance and respect for diversity, and building leadership skills. Suggestions include simulations, a volunteer service project, and leadership training exercises. All programming should include American participants wherever possible. Cultural and recreational activities will balance the schedule. Please see the POGI for more details.

Follow-on Activities and In-Country Programming: Follow-on programming for U.S. program alumni is essential, and additional in-country programming is strongly recommended. Applicants may present creative and effective ways to address the project themes, for both program participants and their peers, as a means to amplify the program impact.

Applicants are invited to submit proposals for one or more of the four projects announced here (a separate proposal for each project). Each project differs in a number of respects. Attributes specific to each project are as follows:

A: Indonesia

Objective: To introduce students and educators from Indonesian pesantren (Islamic boarding schools) to the principles of civic education, civil society, and youth leadership as they are practiced in the United States.

Participants: 38–58 students and 7–12 educators who have demonstrated an interest in playing a role in their communities. Given the religious and cultural conventions of pesantren students, the adult participants will also need to serve as chaperones and advisors.

B: Philippines

Objective: To advance a dialogue and a degree of mutual understanding between Muslim and non-Muslim youth from the Autonomous Region of Muslim Mindanao and surrounding provinces, leading to a strategy to implement cooperatively after re-entry.

Participants: 25–30 teenagers and 5–10 educators. Educators should have demonstrated conflict resolution experience and expect to remain in positions where they can continue working with youth on matters related to conflict resolution and inter-ethnic understanding. The group should be evenly divided between Muslim and non-Muslim participants (both youth and adults). It is desirable that 2–3 participants attend or teach at the same school or live in the same community so that they can support each other upon return.

C: Serbia

Objective: To present opportunities to youth and educators to learn about citizen activism and leadership through substantive program sessions, school-based activities, and exposure to models of leadership.

Participants: 23–33 students and 5–10 educators selected from seven to ten geographically and ethnically diverse cities in the Republic of Serbia. (Note: Individuals from the Republic of Montenegro or from Kosovo are not eligible, as funding for those entities is handled separately.) For this project, the ratio of students to teachers may be 3:1, 4:1, or 5:1. Between three and five participants, at least one of whom is a teacher, should be chosen from each city or town, as those who attend/teach at the same school or live in the same community will be able to support each other upon their return.

D: Southeast Europe

Objective: To bring together participants from across the Balkans to study youth activism, civic participation, and the rights and responsibilities of citizens in a democracy, and to develop leadership skills.

Participants: 80–100 students and 16–20 educators/community leaders who have a demonstrated interest in leadership and who represent the geographic, ethnic, and religious diversity of the Balkans.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major

program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

Budget Guidelines

The funding available for these projects is $500,000 for Indonesia, $200,000 for the Philippines, $198,000 for Serbia, and $595,000 for Southeast Europe. ECA intends to award between four and six grants for the four projects under the ACCESS Program announced in this RFGP. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

The Bureau anticipates awarding four or more grants exceeding $60,000 each under this competition. Bureau grant guidelines require that organizations with less than four years of experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations with less than four years of experience in conducting international exchange programs are not eligible to apply under this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting program, administrative, and cost-sharing budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please be sure to refer to the complete Solicitation Package. The POGI outlines allowable costs; the PSI offers complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–03–31.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, (202) 619–6299, fax (202) 619–5311, E-mail: *npleasan@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify the Bureau program officers on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on *Friday, April 11, 2003*. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal, one fully-tabbed copy, and six copies of the application with Tabs A–E should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–03–31, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the executive summary, proposal narrative, budget section, resumes, and any important appendices as e-mail attachments in Microsoft Word and Excel to the following e-mail address: *npleasan@pd.state.gov*. In the e-mail message subject line, include the reference number (ECA/PE/C/PY–03–31) and the country/region for which you are applying. The Bureau will transmit these files electronically to the public affairs sections of the relevant U.S. embassies for review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges, Youth Programs Division of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.* The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If the applicant has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et. seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges, Youth Programs Division of ECA will be responsible for issuing DS–2019 forms to participants in this program for obtaining J–1 visas.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: The proposed program should be well developed, respond to design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning: A detailed agenda and work plan should clearly demonstrate how project objectives will be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops; seminars, presentations, school-based activities, and/or site visits should be described in detail.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Support of diversity: The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

5. Institutional capacity and track record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

6. Cross-cultural sensitivity and area expertise: Applicants must demonstrate their understanding of the area in which they propose to work and should demonstrate sensitivity to participants' values, customs, and life experiences in the programming.

7. Follow-on activities: Proposals should provide a plan for a Bureau-supported follow-on visit by project staff to the relevant country or region, plus a plan for continued follow-on activity, not necessarily with Bureau support, that insures that this program is not an isolated event.

8. Project evaluation: The proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. The grant recipient will be expected to submit intermediate reports after each project component is concluded.

9: Cost-effectiveness and cost sharing: The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

10. Value to U.S.-Partner Country Relations: The proposed project should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation. The funding authority for the Serbia and Southeast Europe projects is provided through Support for East European Democracy (SEED) legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 14, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–4305 Filed 2–21–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4284]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Partners in Education Program

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Partners in Education (PiE) Program. The goal of PiE is for Eurasian educators to learn about secondary-level citizenship education, curriculum development, and teaching methodologies in the U.S., and to establish professional partnerships with U.S. teachers and teacher-trainers in schools, universities, and communities.

Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to administer this citizenship education project, which includes the following four components: A U.S.-based six-week professional internship program for approximately 56 English-language proficient, secondary school teachers, administrators, and teacher trainers from Armenia, Azerbaijan, Georgia, Kyrgyzstan, Ukraine and Uzbekistan; a two-week in-country workshop in each region, taught by Eurasian participants from the initial U.S.-based component for approximately 160 non-English-speaking social science educators; a two-week exchange for approximately 16 U.S. educators who hosted the Eurasians during their stay in the United States to travel to the Eurasian visitors' schools; and a three-week program for approximately 27 non-English-speaking Eurasian school directors. Please refer to the accompanying POGI for an exact breakdown of participant numbers. Proposals relating to the teaching of English or English as a foreign language (EFL) are not eligible.

Recruitment for the U.S.-based cycles should begin in fall 2003. The grantee organization will be expected to recruit in the Eurasian countries listed above in consultation with the Bureau of Educational and Cultural Affairs and the Public Affairs Sections within U.S. embassies in these Eurasian countries. Selection of Eurasian participants for all components will be merit-based with a fair representation of large and small "oblasts."

The program should encourage participants to establish contacts in the U.S. that will foster ongoing school and community partnerships upon their return to Eurasia. It is intended to promote democratic relations in Eurasian schools, including parental involvement, and build upon the Bureau's existing linkages with Eurasian secondary schools. (Specific school information is not needed for purposes of the proposal.) Proposals should address benefits and impact of the various program components on the participants as well as the U.S. and Eurasian schools.

Program Information

U.S.-Based Educator Internship

The grantee organization should coordinate a six-week U.S.-based program for English-speaking teachers of social studies, American studies or civic education, and administrators of secondary schools, professors or instructors at teacher training institutes, or other education professionals actively involved in citizenship education. After an academically-focused orientation in Washington, DC, Eurasian participants will be placed in small groups in school districts in the U.S. and provided with internships at local high schools to experience U.S. educational communities and related democratic institutions. Internships must include individual partnering with mentor teachers to observe social science classrooms, as well as confer and teach collaboratively with mentors. In addition, activities should include participation in at least five days of professional development (especially Training of Trainer seminars) designed by the host schools or by local/regional schools of education; working with a civic education consultant to develop an in-country workshop (detailed below) for non-English speaking colleagues; learning about citizenship education curriculum development, and computer-based and other teaching methods; delivering presentations to students and faculty at host schools and communities on Eurasian educational systems and cultures; gathering teaching materials for use in their home schools.

Participants should gain an understanding of the U.S. educational system and local control of education, as well as the relationship between the community and the educational system. The participants should visit various types of schools whenever possible (private, rural, inner city, Native American, charter, etc.), deliver presentations at those schools as well as to local civic and community groups, and attend Parent Teacher Association, school board, city council or other local governance meetings.

During the internship component, the Eurasian educators should practice their knowledge of curriculum development by creating a citizenship education lesson plan or curriculum plan applicable to their home country context. They should be given an opportunity to present their plan to their colleagues at a debriefing workshop in Washington, DC at the end of the U.S. program.

The grantee organization should solicit U.S. host proposals from schools, school-university partnerships, or private-sector institutions that are academically oriented and foster long-term linkages between U.S. high schools and comparable schools in the Eurasian countries involved. Where possible, U.S. host proposals should include institutions that have successfully participated in other secondary-level Eurasia programs.

Eurasia Workshops

The proposal should describe the implementation of a Eurasia-based component in which each regional group of educators who comes to the U.S.: (1) Develops, tests, and evaluates their new lesson plans and other citizenship education materials in their home schools; and (2) assisted by the civic education consultant, prepares an intensive workshop (one session lasting two weeks or two sessions lasting one week each) for up to 20 non-English speaking history/social studies/civics teachers in their home region. The proposal should include a plan for recruitment of participants for these workshops. Candidates for the workshops must agree to implement the citizenship education lessons or other projects resulting from the workshops.

U.S. Educator Exchange

The grantee organization will also be responsible for facilitating the reciprocal exchange of secondary-level U.S. teachers, preferably two mentor teachers from each U.S. host site in the Eurasian educator internship. The U.S. educators will travel to the community(ies) of the Eurasian teachers, and will take part in a substantive two-week program to be designed by the Eurasian participants in collaboration with the grantee organization, to strengthen the partnerships established during the U.S.-based program and implement linkage activities between the U.S. and Eurasian educational communities. This component should not conflict with the in-country workshops.

School Directors Program

The school directors program should include non-English-speaking directors from Armenia, Azerbaijan, Georgia, Kyrgyzstan, Ukraine and Uzbekistan who will participate in a U.S.-based intensive three-week program that integrates the core citizenship education and social science curriculum presented to the PiE teachers, as well as specific seminars and workshops on participatory learning and community-based school governance. The school directors' program may begin at the same time as the U.S.-based educator internship program, or may be conducted separately, but in any case should include a Washington-based orientation. To maximize impact, the school directors should be recruited from Eurasian schools that have participated or are about to participate in the PiE teacher/administrator program. The grantee organization will be provided that information.

The grantee should develop a comprehensive, academically oriented program that will engage the Eurasian school directors in democratic school reform issues and community-school relations, as well as exposing them to teaching methodologies for citizenship education and the social sciences. The school directors should travel in one or more groups and should be provided with appropriate interpretation; the grantee organization must show sensitivity to linguistic and ethnic issues involved. The Bureau will consider a school director component that exposes the participants to up to two U.S. communities or school districts during the three-week program. There is no Eurasia-based program for U.S. hosts of the Eurasian school directors component of the PiE program.

Guidelines

The grant should begin on or around July 1, 2003, and the grantee should complete all exchange activities by December, 2005. The grantee organization will be responsible for activities related to recruitment, screening, orientation coordination, monitoring in the U.S., program evaluation, and alumni activities. The grantee organization will also be responsible for the competitive recruitment of U.S. host school districts for participation in the PiE teacher/administrator program, as well as sites for the school director program. The grantee organization will maintain general oversight for the program, under the direction of ECA. Please refer to additional program specific guidelines in the Project Objectives, Goals, and Implementation (POGI) document.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

The Bureau anticipates awarding one grant in the amount of $1,450,000 under this grant competition. Bureau grant guidelines require that organizations with less than four years of experience in conducting international exchange programs be limited to $60,000 in Bureau funding. Therefore, organizations that cannot demonstrate at least four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification, but should include an overall per participant program and administrative cost. The Bureau will look favorably upon proposals with modest administrative costs.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X–03–03,

FOR FURTHER INFORMATION CONTACT: The Office of Global Educational Programs, Fulbright Teacher Exchange Branch, ECA/A/S/X, Room 349, U.S. Department of State, S.A. 44, 301 4th Street, SW., Washington, DC 20547, tel. 202–619–4556 and fax 202–401–1433, *rwaldste@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Rachel Waldstein on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, April 14, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–03–03, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the

governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee organization will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards or cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, innovation, substance, precision, and relevance to the Bureau's mission of promoting civic education, leadership and democratic development of schools in Eurasia.

2. Program planning/Ability to achieve program objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

6. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. Cost-effectiveness and cost/sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

8. Institutional Capacity and Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs in general and in the Eurasia region, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation. The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (FREEDOM Support Act).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 14, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–4306 Filed 2–21–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records; Statement of General Routine Uses; Notice of Interim Establishment

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Establishment of interim Privacy Act routine use.

SUMMARY: The Department of Transportation (DOT) establishes an interim new General Routine Use that allows DOT to continue providing information from DOT systems of records to the Coast Guard and to the Transportation Security Administration, as it now does under 5 U.S.C. 552a(b)(1), when Coast Guard and Transportation Security Administration transfer on March 1 from DOT to the Department of Homeland Security. Public comment is invited.

DATES: Comments are due March 26, 2003. This interim General Routine Use will take effect on March 1, 2003.

ADDRESSES: Comments should be mailed to Stephen A. Metoyer, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Stephen A. Metoyer, (202) 366–9154.

SUPPLEMENTARY INFORMATION: The Homeland Security Act of 2002 (Pub. L. 107–296) requires that the Coast Guard and the Transportation Security Administration (TSA) transfer from DOT to the newly created Department of Homeland Security (DHS). In performing their statutory duties, Coast Guard and TSA have shared information in Privacy Act systems of records with other components within DOT pursuant to subsection (b)(1) of the Privacy Act (5 U.S.C. 552a(b)(1)). Subsection (b)(1) permits components within DOT to share information, contained in Privacy Act systems of records, with employees who have a need to know in performance of their duties.

However, once Coast Guard and TSA transfer to DHS, information from DOT systems of records cannot be shared with them under subsection (b)(1) because these two components will no longer be part of DOT. Nonetheless, the corresponding needs of Coast Guard, TSA and the remaining DOT components to share information will continue because each agency's statutory requirements continue. Therefore, DOT proposes a new General Routine Use, which will permit DOT to continue providing information from its systems of records to Coast Guard and TSA as it has done prior to the transfer of these DOT components to DHS. DOT proposes to adopt the following language:

"8. Routine Use for Disclosure to Coast Guard and to Transportation Security Administration. A record from this system of records may be disclosed, as a routine use, to the Coast Guard and to the Transportation Security Administration if information from this system was shared with either agency when that agency was a component of the Department of Transportation before its transfer to the Department of Homeland Security and such disclosure is necessary to accomplish a DOT, TSA or Coast Guard function related to this system of records."

Under the Privacy Act, a routine use is a use to which information subject to the Act is put that is compatible with the original purpose for collecting the information. The continued providing of information to Coast Guard and Transportation Security Administration is compatible with the original purpose for collecting the information.

Because the Coast Guard and TSA are transferring to DHS on March 1, 2003, it is necessary to immediately establish this new general routine use under the Privacy Act. It would be contrary to the public interest to have a gap in the interaction of Coast Guard and TSA with DOT systems of records at a time of heightened security. Accordingly, this routine use will take effect on March 1, 2003, but may be changed thereafter in light of comments received.

Issued in Washington, DC, on February 14, 2003.

Eugene K. Taylor, Jr.,

Acting Chief Information Officer.

[FR Doc. 03–4229 Filed 2–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting is scheduled for March 6, 2003, at 10 a.m.

ADDRESS: The meeting will be held at Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 10591, 10th floor, McCracken Room.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinson@faa.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee to be held on March 6, 2003, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agenda includes:

- Update on Airworthiness Rulemaking Prioritization Activities
- Issue Area Status Reports from Assistant Chairs
- Remarks from other EXCOM members

Attendance is open to the interested public but is limited to the space available. The FAA will arrange teleconference capability for individuals wishing to join in by teleconference if we receive notification by February 28. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by February 28 to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 20, 2003.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 03–4399 Filed 2–20–03; 2:18 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20998]

Laidlaw Inc.—Intra-Corporate Family Transaction Exemption

Laidlaw Inc. (Laidlaw), a noncarrier Canadian company and the parent of the Laidlaw group of companies, has filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1182.9[1] to undertake a corporate restructuring. Laidlaw proposes to effect the restructuring in two steps. Under the first restructuring, Laidlaw will separate its directly or indirectly controlled U.S.-based motor carriers that perform predominantly regular-route intercity, charter and tour bus operations, from those that control school bus operations, and from its two noncarrier companies that provide emergency care and patient transportation services. Laidlaw will continue to indirectly control the U.S. companies but their stock will be held as follows: (1) The stock of Greyhound Lines, Inc., and Hotard Coaches, Inc., motor passenger carriers that provide regular-route intercity, charter and tour bus operations, will be held by Laidlaw Transportation Holdings, Inc.; (2) the stock of Laidlaw Transit Services, Inc., and Laidlaw Transit, Inc., motor passenger carriers that perform school bus operations, will be held by Laidlaw Transit Holdings, Inc.; and (3) the stock of Emcare Holdings, Inc., and American Medical Response, Inc., noncarriers that provide emergency care and patient transportation services, will be held by Laidlaw Transportation Holdings One, Inc.[2]

Under the second restructuring, Laidlaw will revise the organization of the noncarrier holding companies that are in direct control of the operating companies once the noncarrier holding companies emerge from voluntary bankruptcy proceedings under Chapter 11 of the U.S. Bankruptcy Code and the Canadian Companies' Creditors Arrangement Act (CCAA). Under the reorganization, Laidlaw will transfer to its subsidiary, Laidlaw Investment, Ltd. (LIL), now an Ontario company, all of its assets, including the shares of capital stock of subsidiaries other than LIL, with the intention that LIL will become the parent company of the Laidlaw group of companies. According to Laidlaw, LIL will be continued as a State of Delaware corporation and its shares currently held by Laidlaw will be redeemed through a payment of cash to Laidlaw. After Laidlaw and its affiliates, including LIL (collectively referred to as Debtors), emerge from the Chapter 11 and CCAA proceedings, Laidlaw will distribute the cash it received and the new common stock of LIL to its creditors, severing the ownership relationship between Laidlaw, on the one hand, and, on the other, LIL and the Laidlaw group of companies. At that point, the shares of Laidlaw will be cancelled and LIL will become the parent company of the Laidlaw group of companies.[3]

The transaction for the first restructuring was scheduled to be consummated on or after the effective date of the exemption (7 days after the notice was filed). The transaction for the second restructuring will be consummated after Laidlaw and Debtors emerge from the Chapter 11 and CCAA proceedings.

According to Laidlaw, the purpose of the transaction is to simplify Laidlaw's corporate structure to eliminate overlapping management and accounting functions and reduce duplicating overhead and fixed costs. The regrouping of Laidlaw's indirectly controlled subsidiaries will bring together, under the umbrella of the appropriate holding company, those operating companies performing similar tasks. Laidlaw states that this will reduce costs and improve the efficiency and economy of the operating companies' performance. Laidlaw also states that the transaction will facilitate the move of LIL, which will become a State of Delaware corporation, to the United States, where most of the revenues of the Laidlaw group of companies are derived. According to Laidlaw, the second restructuring will affect none of the motor passenger carriers and other operating companies or their parent noncarrier holding companies.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1182.9. Laidlaw stats that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Laidlaw also states that, because it directly or indirectly holds all of the stock of the affected companies, no contract or agreement will be entered into, except for the corporate documentation and filings required to effect the reorganization. Laidlaw further states that there will be no effect upon employees of the motor passenger carriers within the Laidlaw group of companies because the proposed transaction involves only changes in the corporate structure of the noncarrier holding companies.

If the verified notice contains false or misleading information, the Board shall summarily revoke the exemption and require divestiture. Petitions to revoke the exemption under 49 U.S.C. 13541(d) may be filed at any time. *See* 49 CFR 1182.9(c).

An original and 10 copies of all pleadings, referring to STB Docket No. MC–F–20998, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, 1920 N Street (8th Floor), NW., Washington, DC 20036–1601.

Board decisions and notices are available on our Web site at, *http://www.stb.dot.gov.*

Decided: February 13, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–4096 Filed 2–21–03; 8:45 am]

BILLING CODE 4915–00–M

[1] The Board exempted intra-corporate family transactions of motor carriers of passengers that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family in *Class Exemption for Motor Passenger Intra-Corporate Family Transactions*, STB Finance Docket No. 33685 (STB served Feb. 18, 2000).

[2] Laidlaw states that its Canadian-based motor passenger carriers, Laidlaw Transit Ltd., and Greyhound Canada Transportation Corp., and its subsidiaries, Voyageur Corp., Gray Line of Vancouver Holdings Ltd., Pentang-Midland Coach Lines Limited, C. Seeley's Bus Lines, Ltd., and The Gray Line of Victoria Ltd., and its subsidiary, Victoria Tours Limited, will not be affected by the proposed reorganization.

[3] Laidlaw states that LIL will change its name during the process, but its new name has not yet been determined.

Federal Register

Monday,
February 24, 2003

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–08]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–600; (703) 692–9223; DOT: Mr. Rugene Spruill, DOT Headquarters Project Team, Department of Transportation, 400 7th Street, SW., Room 10314, Washington, DC 20590; (202) 366–4246; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; VA: Ms. Amelia E. McLellan, Director, Real Property Service (183C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 419, Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: February 13, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 2/21/03

Suitable/Available Properties

Buildings (by State)

California

Fed. Bldg./Post Office
1125 I Street
Modesto Co: CA 95354–
Landholding Agency: GSA
Property Number: 54200310010
Status: Excess
Comment: 23,770 sq. ft., presence of asbestos/lead paint, controlled access, Federal tenants occupy portion of bldg., National Register of Historic Places
GSA Number: 9–G–CA–1576

Bldg. 371
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020080
Status: Unutilized
Comment: 29,800 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 402
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020081
Status: Unutilized
Comment: presence of lead paint, most recent use—storage, off-site use only

Bldg. 417
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020082
Status: Unutilized

Comment: 110 TR, needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 418
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020083
Status: Unutilized
Comment: 288 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. 426
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020084
Status: Unutilized
Comment: presence of asbestos/lead paint, off-site use only

Bldg. 434
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020085
Status: Unutilized
Comment: 11,440 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only

Bldg. 210
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020086
Status: Unutilized
Comment: 17,708 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—police station, off-site use only

Bldg. 541
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020087
Status: Unutilized
Comment: 3857 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 804
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020088
Status: Unutilized
Comment: 3119 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 805
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020089
Status: Unutilized
Comment: 3732 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 806
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020090
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 807
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020091
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldgs. 23027, 23025
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Landholding Agency: Navy
Property Number: 77200040023
Status: Unutilized
Comment: 400 sq. ft., metal siding, most recent use—loading facility, off-site use only

Bldg. 01290
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120090
Status: Excess
Comment: 460 sq. ft., most recent use—garage, off-site use only

Bldg. 02453
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120110
Status: Excess
Comment: 48 sq. ft., most recent use—storage locker, off-site use only

Bldg. 32027
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120111
Status: Excess
Comment: 331 sq. ft., off-site use only

Bldg. 32534
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120112
Status: Excess
Comment: 2252 sq. ft., most recent use—repair shop, off-site use only

Bldg. 32537
Naval Air Weapons Station
China Lake Co: CA 93444–6001
Landholding Agency: Navy
Property Number: 77200120113
Status: Excess
Comment: most recent use—instrument bldg., off-site use only

Playgrounds
Marine Corps Logistics Base
Desert View
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230018
Status: Underutilized
Comment: 2 playgrounds with personnel shelter, off-site use only

Garages
Marine Corps Logistics Base
Desert View
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230019
Status: Underutilized
Comment: sq. ft. varies, needs rehab, possible asbestos/lead paint, off-site use only

76 Structures
Marine Corps Logistics Base
Desert View
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230020
Status: Underutilized
Comment: sq. ft. varies, needs rehab, possible asbestos/lead paint, most recent use—housing, off-site use only

Connecticut

Bldgs. 2, 108, 440
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200210095
Status: Unutilized
Comment: various sq. ft., need rehab, presence of asbestos/lead paint, most recent use—office/store/club, off-site use only

Bldg. 516
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200230037
Status: Excess
Comment: 1450 sq. ft., needs rehab, possible asbestos, off-site use only

Hawaii

Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 220
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Indiana

Federal Building
610 Connecticut Street
Gary Co: IN 46402–
Landholding Agency: GSA
Property Number: 54200310011
Status: Excess
Comment: 30,478 sq. ft., needs repair, presence of asbestos, most recent use—office
GSA Number: 1–G–IN–591

Bldg. 1
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310001
Status: Unutilized
Comment: 20,287 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 3
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310002
Status: Unutilized
Comment: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 4
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310003
Status: Unutilized
Comment: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 13
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310004
Status: Unutilized
Comment: 8971 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 19
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310005
Status: Unutilized
Comment: 12,237 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 20
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310006
Status: Unutilized
Comment: 14,039 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office/storage

Bldg. 42
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310007
Status: Unutilized
Comment: 5025 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 60
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310008
Status: Unutilized
Comment: 18,126 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 122
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310009
Status: Unutilized
Comment: 37,135 sq. ft., needs extensive repairs, presence of asbestos, most recent use—dining hall/kitchen

Maryland

Bldg. 139
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010032
Status: Unutilized
Comment: 4950 sq. ft., possible asbestos/lead paint, most recent use—wind tunnel, off-site use only

Bldg. 104
Naval Surface Warfare
Carderock Division
West Bethesda Co: Montgomery MD 20817-5700
Landholding Agency: Navy
Property Number: 77200120079
Status: Unutilized
Comment: 8050 sq. ft.,most recent use—garage, off-site use only

Bldg. 109
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5000
Landholding Agency: Navy
Property Number: 77200120080
Status: Unutilized
Comment: 9650 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 110
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120081
Status: Unutilized
Comment: 10,750 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 111
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120082
Status: Unutilized
Comment: 4220 sq. ft., most recent use—office, off-site use only

Bldg. 112
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120083
Status: Unutilized
Comment: 2440 sq. ft., most recent use—printing bldg., off-site use only

Bldg. 113
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120084
Status: Unutilized
Comment: 2440 sq. ft., most recent use—lab, off-site use only

Bldg. 143
Naval Surface Warfare
West Bethesda Co: Montgomery, MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120085
Status: Unutilized
Comment: 16,950 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 152
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120086
Status: Unutilized
Comment: 1400 sq. ft., most recent use—fire house annex, off-site use only

Bldg. 159
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120087
Status: Unutilized
Comment: 605 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—hazardous waste storage, off-site use only

Bldg. 187
Naval Surface Warfare
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120088
Status: Unutilized
Comment: 768 sq. ft., most recent use—pump house, off-site use only

Bldg. 117
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120102
Status: Unutilized
Comment: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 196
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120106
Status: Unutilized
Comment: 456 sq. ft., needs rehab, most recent use—destructor bldg., off-site use only

9 Housing Units
U.S. Naval Station

Annapolis Co: Anne Arundel MD 21402–
Landholding Agency: Navy
Property Number: 77200240005
Status: Excess
Comment: size varies, brick veneer wood frame on slab, off-site use only

New Hampshire

Bldg. 239
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200030019
Status: Excess
Comment: 897 sq. ft., presence of asbestos/lead paint, off-site use only

New York

5 Bldgs.
Orangeburg USARC
#206, 207, 208, 218, 223
Orangeburg Co: Rockland NY 10962–2209
Landholding Agency: Army
Property Number: 21200310061
Status: Unutilized
Comment: various sq. ft., need major repairs, presence of lead paint, most recent use—admin/storage, off-site use only

Hancock Army Complex
Track 4
Stewart Drive West
Cicero Co: Onondaga NY 13039–
Landholding Agency: GSA
Property Number: 54200310013
Status: Excess
Comment: 3 bunker-style structures and several small outbuildings, presence of asbestos, possible lead paint, most recent use—admin/training/storage
GSA Number : 1–D–NY–803

Pennsylvania

Bldg. 216
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220008
Status: Excess
Comment: 121,604 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 504B
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220009
Status: Excess
Comment: 4824 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 608D
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220010
Status: Excess
Comment: 8400 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 609B
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055-0788
Landholding Agency: Navy
Property Number: 77200220011
Status: Excess
Comment: 2100 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 611
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220012
Status: Excess
Comment: 425 sq. ft. concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 616
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220013
Status: Excess
Comment: 216 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Rhode Island

Bldg. 8
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220017
Status: Unutilized
Comment: 2800 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, meets Nat. Register criterion, off-site use only

Bldg. 30
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220018
Status: Unutilized
Comment: 150 sq. ft., poor condition, most recent use—switch house, off-site use only

Bldg. 46
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220019
Status: Unutilized
Comment: 3690 sq. ft., poor condition, possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. 53
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220020
Status: Unutilized
Comment: 2691 sq. ft., poor condition, possible asbestos/lead paint, most recent use—garage/office, off-site use only

Bldg. 55
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220021
Status: Unutilized
Comment: 135 sq. ft., poor condition, most recent use—storage, off-site use only

Virginia

Structure SP–129
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110136
Status: Excess
Comment: 3564 sq. ft., presence of asbestos/lead, most recent use—office, off-site use only

Bldg. 106 (G)
Naval Station
Lafayette River Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200220046
Status: Excess
Comment: 2767 sq. ft. garage, most recent use—storage, off-site use only

Bldg. CEP–184
Naval Station
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200220047
Status: Excess
Comment: 200 sq. ft., most recent use—gate/sentry house, off-site use only

Land (by State)

California

Portion of Land
Naval Base, Point Loma
Murphy Canyon
San Diego Co: CA 92124–
Landholding Agency: Navy
Property Number: 77200140012
Status: Unutilized
Comment: 24,350 sq. ft. of parking lot, adjacent to environmentally sensitive area

Virginia

Land
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200040034
Status: Unutilized
Comment: 4900 sq. ft. open space

Suitable/Unavailable Properties

Buildings (by State)

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 77199010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use—laundry.

Land (by State)

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 77199010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

2.6 acres
Naval Station
Norfolk Co: VA 23508–1273
Landholding Agency: Navy

Property Number: 77200120131
Status: Underutilized
Comment: most recent use—brush/debris storage
1.15 acres
Naval Amphibious Base Little Creek
Norfolk Co: VA 23508–
Landholding Agency: Navy
Property Number: 77200120132
Status: Unutilized
Comment: most recent use—open space

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 87199310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only

Nauset Beach Light
Nauset Beach Co: Barnstable MA
Landholding Agency: DOT
Property Number: 87199420001
Status: Unutilized
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430005
Status: Excess
Comment: 66 ft. tower, 14'9" diameter, brick structure, scheduled to be vacated 9/94

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430006
Status: Excess
Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94

Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430007
Status: Excess
Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94

Nahant Towers
Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 87199530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower

Unsuitable Properties

Buildings (by State)

Alabama

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120001
Status: Excess
Reason: Floodway

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120002
Status: Excess
Reason: Floodway

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120003
Status: Excess
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120004
Status: Excess
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120005
Status: Excess
Reason: Floodway

Alaska

Bldg. B001
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140003
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B002
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140004
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B003
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140005
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B004
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140006
Status: Excess
Reason: Secured Area

Bldg. B006
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140007
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B008
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140008
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B009
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140009
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B011
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140010
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B012
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140011
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B000
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140012
Status: Excess
Reason: Extensive deterioration

Arizona

Bldg. 958
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200040001
Status: Excess
Reason: Extensive deterioration

Bldg. 1216
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200040002
Status: Excess
Reason: Extensive deterioration

Bldg. 676
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200040003
Status: Excess
Reason: Extensive deterioration

Bldg. 321
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200110001
Status: Excess
Reason: Extensive deterioration

Bldg. 322
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200110002
Status: Excess
Reason: Extensive deterioration

Bldg. 331
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200110003
Status: Excess
Reason: Extensive deterioration

Bldg. 332
Marine Corps Air Station
Yuma Co: AZ 85369–
Landholding Agency: Navy
Property Number: 77200110004
Status: Excess
Reason: Extensive deterioration

California

Bldgs. 20106, 20195
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77199930001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 40, 62
Naval Air Station, North Island
Imperial Beach Co: CA 91932–
Landholding Agency: Navy
Property Number: 77199930024
Status: Excess
Reason: Extensive deterioration

Bldg. 5UT4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930081
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5US4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930082
Status: Unutilized
Reason: Extensive deterioration

Bldg. 127
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930083
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930084
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930085
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930086
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930087
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930088
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930089
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930090
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930091
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930092
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930093
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930094
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930095
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D1
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930096
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D2
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930097
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D3
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930098
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930099
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D5
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930100
Status: Unutilized
Reason: Extensive deterioration

Bldg. 432
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930106
Status: Unutilized
Reason: Extensive deterioration

Bldg. 433
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930107
Status: Unutilized
Reason: Extensive deterioration

Bldg. 435
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930108
Status: Unutilized
Reason: Extensive deterioration

Bldg. 456
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930109
Status: Unutilized
Reason: Extensive deterioration

Bldg. 921
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930110
Status: Unutilized
Reason: Extensive deterioration

Bldg. 201
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 205
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy

Property Number: 77199940003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 227
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 230
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 232
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 337
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 338
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 339
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 349
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 362
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 363
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 410
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 438
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 17A
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200020001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3314
Marine Corps Air Station
Miramar Co: CA 92145–
Landholding Agency: Navy
Property Number: 77200020035
Status: Excess
Reason: Extensive deterioration

Bldgs. 5157, 5158
Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200020045
Status: Unutilized
Reason: Secured Area

Facility 13181
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020046
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Facility 14220
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020047
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 23025
Marine Corps Air Station
Miramar Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200030001
Status: Unutilized
Reason: Secured Area

Bldg. 23027
Marine Corps Air Station
Miramar Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200030002
Status: Unutilized
Reason: Secured Area

Bldg. 731
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030003
Status: Excess
Reason: Extensive deterioration

Bldg. 731A
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030004
Status: Excess
Reason: Extensive deterioration

Bldg. 865
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030005
Status: Excess
Reason: Extensive deterioration

Bldg. 868
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030006
Status: Excess
Reason: Extensive deterioration

Bldg. 474
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030007
Status: Excess
Reason: Extensive deterioration

Bldg. 5021
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030008
Status: Excess
Reason: Extensive deterioration

Bldg. 5022
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030009
Status: Excess
Reason: Extensive deterioration

Bldg. 5025
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030010
Status: Excess
Reason: Extensive deterioration

Bldg. 5113
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77200030011
Status: Excess
Reason: Extensive deterioration

Bldg. 5114
Naval Const. Battalion Ctr
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030012
Status: Excess
Reason: Extensive deterioration

Bldgs. 82 & 84
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030013
Status: Excess
Reason: Extensive deterioration

Bldg. 6–1
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030014
Status: Excess
Reason: Extensive deterioration

Bldg. 479
Naval Construction Battalion Ctr.
Port Hueneme
Oxnard Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030015
Status: Excess
Reason: Extensive deterioration

Bldg. 1362
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200030030
Status: Excess
Reason: Extensive deterioration

Bldg. 801
Naval Air Station
Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200030043
Status: Unutilized
Reason: Extensive deterioration

Bldg. 41
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030044
Status: Unutilized
Reason: Extensive deterioration

Bldg. 103
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030045
Status: Unutilized
Reason: Extensive deterioration

Bldg. 259
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030046
Status: Unutilized
Reason: Extensive deterioration

Bldg. 260
Naval Const. Battalion Ctr
Port Hueneme Co: CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030047
Status: Unutilized
Reason: Extensive deterioration

Bldg. 274
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 462
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030049
Status: Unutilized
Reason: Extensive deterioration

Bldg. 488
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030050
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1150
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1156
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030052
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1275
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030053
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1321
Naval Const. Battalion Ctr
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200030054
Status: Unutilized
Reason: Extensive deterioration

Bldg. 21091
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Landholding Agency: Navy
Property Number: 77200030058
Status: Unutilized
Reason: Extensive deterioration

Bldg. 21127
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Landholding Agency: Navy
Property Number: 77200030059
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9919
Marine Corps Air Station
Miramar Co: San Diego CA 92132–
Landholding Agency: Navy
Property Number: 77200030060
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1468
Naval Base Ventura on Parcel 1
Port Hueneme Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200110013
Status: Unutilized
Reason: Secured Area

Bldg. 1469
Naval Base Ventura on Parcel 1
Port Hueneme Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200110014
Status: Unutilized
Reason: Secured Area

Bldg. 12041
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110065
Status: Excess
Reason: Extensive deterioration

Bldg. 12052
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110066
Status: Excess
Reason: Extensive deterioration

Bldg. 16066
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110067
Status: Excess
Reason: Extensive deterioration

Bldg. 16074
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110068
Status: Excess
Reason: Extensive deterioration

Bldg. 16085
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110069
Status: Excess
Reason: Extensive deterioration

Bldg. 16086
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110070
Status: Excess
Reason: Extensive deterioration

Bldg. 16100
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110071
Status: Excess
Reason: Extensive deterioration

Bldg. 16115
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110072
Status: Excess
Reason: Extensive deterioration

Bldg. 16117
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200110073
Status: Excess
Reason: Extensive deterioration

Bldg. 467
Marine Corps Recruit Depot
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200110100
Status: Unutilized
Reason: Secured Area

Bldg. 121 SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120001
Status: Excess
Reason: Extensive deterioration

Bldg. 121A SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy

Property Number: 77200120002
Status: Excess
Reason: Extensive deterioration

Bldg. 121B SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120003
Status: Excess
Reason: Extensive deterioration

Bldg. 137 SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120004
Status: Excess
Reason: Extensive deterioration

Bldg. 223 SNI
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120005
Status: Excess
Reason: Extensive deterioration

Bldg. 01289
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120089
Status: Excess
Reason: Extensive deterioration

Bldg. PM1529
Point Mugu, Naval Base
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200120094
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM1606
Point Mugu, Naval Base
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200120095
Status: Unutilized
Reason: Extensive deterioration

Bldg. 70140
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120107
Status: Excess
Reason: Extensive deterioration

Bldg. 70141
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120108
Status: Excess
Reason: Extensive deterioration

Bldg. 70143
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120109
Status: Excess
Reason: Extensive deterioration

Bldg. 25062
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120114
Status: Excess
Reason: Extensive deterioration

Bldg. 33023
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120115
Status: Excess
Reason: Extensive deterioration

Bldg. 33054
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120116
Status: Excess
Reason: Extensive deterioration

Bldg. 36
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130001
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 60, 61, 64, 65
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 171
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 278
Marine Corps Logistics Base
Barstow Co: San Benardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 351
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200130005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 130
Naval Station
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200130006
Status: Excess
Reason: Extensive deterioration

Bldg. 415
Naval Station
San Diego Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200130007
Status: Excess
Reason: Extensive deterioration

Structure 20104
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130008
Status: Excess
Reason: Extensive deterioration

Structure 31424
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130009
Status: Excess
Reason: Extensive deterioration

Structure 31592
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130010
Status: Excess
Reason: Extensive deterioration

Facility 26
Naval Weapons Station
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77200130011
Status: Unutilized
Reason: Secured Area

Bldg. 114
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77200130016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 375
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77200130017
Status: Unutilized
Reason: Extensive deterioration

Bldg. 376
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77200130018
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 11070, 11080
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130025
Status: Excess
Reason: Extensive deterioration

Bldg. PM7002
Point Mugu Site Naval Base
Oxnard Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200140001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1244
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200140002
Status: Excess
Reason: Extensive deterioration

Bldg. 1331
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200140003
Status: Excess
Reason: Extensive deterioration

Bldg. 1364
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200140004
Status: Excess
Reason: Extensive deterioration

Bldg. 1674
Marine Corps Base

Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200140005
Status: Excess
Reason: Extensive deterioration

Bldg. 1229
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200140006
Status: Excess
Reason: Extensive deterioration

Bldg. 1242
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200140007
Status: Excess
Reason: Extensive deterioration

Bldg. 1243
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200140008
Status: Excess
Reason: Extensive deterioration

Bldg. 1253
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200140009
Status: Excess
Reason: Extensive deterioration

Bldg. PM388
Naval Air Station, Point Mugu
Oxnard Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200140010
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM54
Naval Air Station
Point Mugu Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200210001
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM56
Naval Air Station
Point Mugu Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200210002
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM754
Naval Air Station
Point Mugu Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200210003
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM777
Naval Air Station
Point Mugu Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200210004
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM7007
Naval Air Station
Point Mugu Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200210005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 303
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77200210006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1233
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210007
Status: Excess
Reason: Extensive deterioration

Bldg. 1345
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210008
Status: Excess
Reason: Extensive deterioration

Bldg. 1643
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210009
Status: Excess
Reason: Extensive deterioration

Bldg. 1644
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210010
Status: Excess
Reason: Extensive deterioration

Bldg. 1672
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210011
Status: Excess
Reason: Extensive deterioration

Bldg. 1673
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210012
Status: Excess
Reason: Extensive deterioration

Bldg. 2669
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210013
Status: Excess
Reason: Extensive deterioration

Bldg. 13116
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210014
Status: Excess
Reason: Extensive deterioration

Bldg. 6
Navy Marine Corps Rsv Ctr
Sacramento Co: CA 95828–
Landholding Agency: Navy
Property Number: 77200210017
Status: Unutilized
Reason: Secured Area

Bldg. 799
Naval Air Station
North Island Co: CA
Landholding Agency: Navy
Property Number: 77200210064
Status: Excess
Reason: Extensive deterioration

Bldg. 1255
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210087
Status: Excess
Reason: Extensive deterioration

Bldg. 1508
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210088
Status: Excess
Reason: Extensive deterioration

Bldg. 18417
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210089
Status: Excess
Reason: Extensive deterioration

Blg. 22159
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210090
Status: Excess
Reason: Extensive deterioration

Bldg. 41302
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210091
Status: Excess
Reason: Extensive deterioration

Bldg. 52830
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210092
Status: Excess
Reason: Extensive deterioration

Bldg. 62551
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210093
Status: Excess
Reason: Extensive deterioration

Bldg. 210548
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210094
Status: Excess
Reason: Extensive deterioration

Bldg. 799
Naval Air Station
North Island Co: CA
Landholding Agency: Navy
Property Number: 77200210124
Status: Excess
Reason: Extensive deterioration

Bldg. 2616
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220001
Status: Excess
Reason: Extensive deterioration

Bldg. 2634
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220002
Status: Excess
Reason: Extensive deterioration

Bldg. 2643
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220003
Status: Excess
Reason: Extensive deterioration

Bldg. 2644
Marine Corps Base
Camp Pendleton Co: CA 90255–
Landholding Agency: Navy
Property Number: 77200220004
Status: Excess
Reason: Extensive deterioration

Bldg. 2645
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220005
Status: Excess
Reason: Extensive deterioration

Bldg. 2646
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220006
Status: Excess
Reason: Extensive deterioration

Bldg. 2659
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220007
Status: Excess
Reason: Extensive deterioration

Bldg. 2254
Marine Corps Air Station
Miramar Co: CA
Landholding Agency: Navy
Property Number: 77200220027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 24002
Marine Corps Air Station
Miramar Co: CA
Landholding Agency: Navy
Property Number: 77200220028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9496
Marine Corps Air Station
Miramar Co: CA
Landholding Agency: Navy
Property Number: 77200220029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 41308
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220031
Status: Excess
Reason: Extensive deterioration

Eniwetok Carports
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200220032
Status: Unutilized
Reason: Extensive deterioration

Eniwetok Public Quarters
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200220033
Status: Unutilized
Reason: Extensive deterioration

Bldg. 229
Naval Weapons Station
Seal Beach
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77200220048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 331
Naval Weapons Station
Seal Beach
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77200220049
Status: Unutilized
Reason: Extensive deterioration

Bldg. 434
Naval Weapons Station
Seal Beach
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77200220050
Status: Unutilized
Reason: Extensive deterioration

Bldg. 437
Naval Weapons Station
Seal Beach
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77200220051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 440
Naval Weapons Station
Seal Beach
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77200220052
Status: Unutilized
Reason: Extensive deterioration

Bldg. 906
Naval Weapons Station
Seal Beach
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77200220053
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 154, 157
Navy Region South West
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200220072
Status: Excess
Reason: Extensive deterioration

Bldg. P–1019
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220073
Status: Excess
Reason: Extensive deterioration

Bldg. P–4039
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220074
Status: Excess
Reason: Extensive deterioration

Bldg. P–5011
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220075
Status: Excess
Reason: Extensive deterioration

Bldg. P7058
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220076
Status: Excess
Reason: Extensive deterioration

Bldg. 354
Naval Weapons Station
Seal Beach Co: CA
Landholding Agency: Navy
Property Number: 77200220077
Status: Unutilized
Reason: Extensive deterioration

Bldg. 356
Naval Weapons Station
Seal Beach Co: CA
Landholding Agency: Navy
Property Number: 77200220078
Status: Unutilized
Reason: Extensive deterioration

Bldg. 357
Naval Weapons Station
Seal Beach Co: CA
Landholding Agency: Navy
Property Number: 77200220079
Status: Unutilized
Reason: Extensive deterioration

Bldg. 358
Naval Weapons Station
Seal Beach Co: CA
Landholding Agency: Navy
Property Number: 77200220080
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3273
Naval Base
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230002
Status: Excess
Reason: Extensive deterioration

Bldg. 25
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230003
Status: Excess
Reason: Extensive deterioration

Bldg. 338
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230004
Status: Excess
Reason: Extensive deterioration

Bldg. 607
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230005
Status: Excess

Reason: Extensive deterioration

Bldg. 609
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230006
Status: Excess
Reason: Extensive deterioration

Bldg. 691
Naval Base Coronado
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200230007
Status: Excess
Reason: Extensive deterioration

Bldg. 660
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230021
Status: Excess
Reason: Extensive deterioration

Bldg. 661
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230022
Status: Excess
Reason: Extensive deterioration

Bldg. 1291
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230023
Status: Excess
Reason: Extensive deterioration

Bldg. 16026
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230031
Status: Excess
Reason: Secured Area

Bldg. 30147
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230033
Status: Excess
Reason: Secured Area

Bldg. 30220
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230034
Status: Excess
Reason: Secured Area

Bldg. 30891
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230035
Status: Excess
Reason: Secured Area

Bldg. 30932
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200230036
Status: Excess
Reason: Secured Area

Bldgs. 18412, 18413, 18414
Marine Warfare Training Ctr
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200230040
Status: Excess
Reason: Extensive deterioration

Bldg. PH5125
Naval Construction Battalion
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200230043
Status: Unutilized
Reason: Extensive deterioration

Bldg. PH11
Naval Base
Port Hueneme Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200230045
Status: Unutilized
Reason: Extensive deterioration

Bldg. 37
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230046
Status: Unutilized
Reason: Extensive deterioration

Bldg. 115
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230047
Status: Unutilized
Reason: Extensive deterioration

Bldg. 117
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 557
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200230049
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02606
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200240001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 394
Space & Naval Warfare Systems Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200240041
Status: Unutilized
Reason: Extensive deterioration

Bldg. 428
Space & Naval Warfare Systems Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200240042
Status: Unutilized
Reason: Extensive deterioration

Bldg. 34
Coast Guard Integrated Support Command
Alameda Co: CA
Landholding Agency: DOT
Property Number: 87200240006
Status: Unutilized
Reason: Secured Area

Colorado

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 87199010014
Status: Unutilized
Reason: Other environmental
Comment: contamination

Connecticut

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 87199240031
Status: Unutilized
Reason: Floodway

District of Columbia

Bldg. A–092
Naval Station Anacostia
Washington Co: DC 20374–
Landholding Agency: Navy
Property Number: 77200110046
Status: Underutilized
Reason: Secured Area

Bldg. A–150
Naval District
Anacostia Annex
Washington Co: DC 20374–
Landholding Agency: Navy
Property Number: 77200140016
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–057
Naval District
Anacostia Annex
Washington Co: DC 20374–
Landholding Agency: Navy
Property Number: 77200140017
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–087/002
Naval District
Anacostia Annex
Washington Co: DC 20374–
Landholding Agency: Navy
Property Number: 77200140018
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. 1558
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 7L
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 7H
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020064

Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 7J
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020065
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 7K
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020066
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 135
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020068
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 211
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200020077
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 62
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020111
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 94
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020112
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 114
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040006
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

Bldg. 133
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040007
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

Bldg. 141
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040008
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

16 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 142, 151, 153, 156, 164, 170, 171, 176, 178, 180, 182–187
Landholding Agency: Navy
Property Number: 77200040009
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

11 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 103, 105, 112, 113, 115–119, 121, 122
Landholding Agency: Navy
Property Number: 77200040010
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

23 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 143–150, 152, 154, 155, 157, 158, 160–163, 165, 166, 168, 169, 179, 181
Landholding Agency: Navy
Property Number: 77200040011
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 173, 174, 175, 177, 188
Landholding Agency: Navy
Property Number: 77200040012
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

6 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 130–132, 134–136
Landholding Agency: Navy
Property Number: 77200040013
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

Bldgs. 159, 167, 172
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Landholding Agency: Navy
Property Number: 77200040014
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 124, 127, 138–140
Landholding Agency: Navy
Property Number: 77200040015
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 107, 109, 111, 120, 123
Landholding Agency: Navy
Property Number: 77200040016
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

5 Bldgs.
Naval Air Station
Whiting Field
Milton Co: Santa Rosa FL 32570–
Location: 102, 104, 106, 108, 110
Landholding Agency: Navy
Property Number: 77200040017
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

Bldg. 172
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200130012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 146
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130070
Status: Underutilized
Reason: Secured Area

Bldg. 679
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130071
Status: Underutilized
Reason: Secured Area

Bldg. 680
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130072
Status: Unutilized
Reason: Secured Area

Bldg. 743
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130073
Status: Unutilized
Reason: Secured Area

Bldg. 782
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130074
Status: Underutilized
Reason: Secured Area

Bldg. 782A
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130075
Status: Unutilized
Reason: Secured Area

Bldg. 1082
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130076
Status: Underutilized
Reason: Secured Area

Bldg. 1536
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130077
Status: Unutilized
Reason: Secured Area

Bldg. 1567
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130078
Status: Unutilized
Reason: Secured Area

Bldg. 1735
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130079
Status: Underutilized
Reason: Secured Area

Bldg. 1813
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130080
Status: Unutilized
Reason: Secured Area

Bldg. 2666
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130081
Status: Unutilized
Reason: Secured Area

Bldg. 3278
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130082
Status: Unutilized
Reason: Secured Area

Bldg. 3378
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130083
Status: Unutilized
Reason: Secured Area

Bldg. 3589
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200130084
Status: Underutilized
Reason: Secured Area

Bldg. 13
NAS Jacksonville
Pinescastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230024
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 45
NAS Jacksonville
Pinescastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230025
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 67
NAS Jacksonville
Pinescastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230026
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 73
NAS Jacksonville
Pinescastle Bombing Range
Salt Springs Co: FL
Landholding Agency: Navy
Property Number: 77200230027
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 75
NAS Jacksonville
Pinescastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230028
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 76
NAS Jacksonville
Pinescastle Bombing Range
Salt Springs Co: Volusia FL
Landholding Agency: Navy
Property Number: 77200230029
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 148
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200240002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 161
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200240003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 944
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200240004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. C–26
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200240043
Status: Unutilized
Reason: Extensive deterioration

Bldg. F–44
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200240044
Status: Unutilized
Reason: Extensive deterioration

Bldg. 68
Coastal Systems Station
Panama City Co: Bay FL 32407–
Landholding Agency: Navy
Property Number: 77200310025
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 6A
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200310026
Status: Unutilized
Reason: Secured Area

Bldg. 6B
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200310027
Status: Unutilized
Reason: Secured Area

Bldg. 6C
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200310028
Status: Unutilized
Reason: Secured Area

Bldg. 6D
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200310029
Status: Unutilized
Reason: Secured Area

Bldg. 6E
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200310030
Status: Unutilized
Reason: Secured Area

Bldg. 6F
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200310031
Status: Unutilized
Reason: Secured Area

Bldg. 6G
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200310032
Status: Unutilized
Reason: Secured Area

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 87199210008
Status: Unutilized
Reasons: Floodway; Secured Area

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 87199230001
Status: Unutilized
Reasons: Floodway; Secured Area

Exchange Building
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87199410004
Status: Unutilized
Reason: Floodway

9988 Keepers Quarters A
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440009
Status: Underutilized
Reasons: Floodway; Secured Area

9989 Keepers Quarters B
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440010
Status: Underutilized
Reasons: Floodway; Secured Area

9990 Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440011
Status: Underutilized
Reasons: Floodway; Secured Area

9991 Plant Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440012
Status: Underutilized
Reasons: Floodway; Secured Area

9992 Shop Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440013
Status: Underutllized
Reasons: Floodway; Secured Area

9993 Admin. Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440014
Status: Underutilized
Reasons: Floodway; Secured Area

9994 Water Pump Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440015
Status: Underutilized
Reasons: Floodway; Secured Area

Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440016
Status: Underutilized
Reasons: Floodway; Secured Area

9999 Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440017
Status: Underutilized
Reasons: Floodway; Secured Area

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 87199510009
Status: Unutilized
Reasons: Floodway; Secured Area

Cape St. George Lighthouse
Co: Franklin FL 32328–
Landholding Agency: DOT
Property Number: 87199640002
Status: Unutilized
Reason: Extensive deterioration

Maint/Carpentry Shop
USCG Station
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87200120001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Georgia

Coast Guard Station
St. Simons Island
Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 87199540002
Status: Unutilized
Reason: Extensive deterioration

Guam

Bldg. 138
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210100
Status: Unutilized
Reason: Secured Area

Bldg. 460
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210101
Status: Unutilized
Reason: Secured Area

Bldg. 1741
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210102
Status: Unutilized
Reason: Secured Area

Bldg. 1742
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210103
Status: Underutilized
Reason: Secured Area

Bldg. 1743
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210104
Status: Underutilized
Reason: Secured Area

Bldg. 6012
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210105
Status: Unutilized
Reason: Secured Area

Bldg. 6011
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200220024
Status: Unutilized
Reason: Secured Area

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Extensive Deterioration; Secured Area

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230013
Status: Unutilized
Reasons: Extensive Deterioration; Secured Area

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230014
Status: Unutilized
Reasons: Extensive Deterioration; Secured Area

Bldg. 9
Navy Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. X5
Nanumea Road
Pearl Harbor Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530010
Status: Excess
Reason: Secured Area

Bldg. SX30
Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199530011
Status: Excess
Reason: Secured Area

Bldg. 98
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199620032
Status: Excess
Reason: Extensive deterioration

Bldg. Q13
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640035
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q14
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 40
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 50
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830029
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q76
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830030
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q334
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830031
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q410
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830034
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q422
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830035
Status: Unutilized
Reason: Extensive deterioration

Bldg. 429
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 431
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830037
Status: Unutilized
Reason: Extensive deterioration

Bldg. 447
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830038
Status: Unutilized
Reason: Extensive deterioration

Facility 19
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840045
Status: Excess
Reason: Secured Area

Facility SX30
Navy Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920027
Status: Excess
Reasons: Secured Area; Extensive deterioration

Facility 9
Fleet Industrial Supply
Ewa Junction
Waipahu Co: HI 96797–
Landholding Agency: Navy
Property Number: 77200230008
Status: Excess
Reasons: Secured Area; Extensive deterioration

Facility 88
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77200230010
Status: Excess
Reason: Secured Area

Facility 295
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77200230011
Status: Excess
Reason: Secured Area

Bldg. T47
Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–5350
Landholding Agency: Navy
Property Number: 77200240045
Status: Unutilized
Reason: Extensive deterioration

Bldg. 329
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77200240058
Status: Excess
Reason: Secured Area

Illinois

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840023
Status: Unutilized
Reason: Secured Area

Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number; 77199840024
Status: Unutilized
Reason: Secured Area

Bldg. 1016
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840025
Status: Unutilized
Reason: Secured Area

Bldg. 910
Naval Training Center
Great Lakes Co; IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920055
Status: Unutilized
Reason: Secured Area

Bldg. 800
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920056
Status: Unutilized
Reason: Secured Area

Bldg. 1000
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920057
Status: Unutilized
Reason: Secured Area

Bldg. 1200
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920058
Status: Unutilized
Reason: Secured Area

Bldg. 1400
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920059
Status: Unutilized
Reason: Secured Area

Bldg. 1600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920060
Status: Unutilized
Reason: Secured Area

Bldg. 2600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920061
Status: Unutilized
Reason: Secured Area

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 87199310005
Status: Excess
Reason: Secured Area

Kentucky

Dwelling
USCG Shoreside Detachment
Owensboro Co: Daviess KY
Landholding Agency: DOT
Property Number: 87200230010
Status: Unutilized
Reason: Extensive deterioration

Maine

Bldg. M–4
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240012
Status: Excess
Reason: Secured Area

Bldg. M–6
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240013
Status: Excess
Reason: Secured Area

Bldg. M–9
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy

Property Number: 77200240014
Status: Excess
Reason: Secured Area

Bldg. M–10
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240015
Status: Excess
Reason: Secured Area

Bldg. M–11
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240016
Status: Excess
Reason: Secured Area

Bldg. M–18
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240017
Status: Excess
Reason: Secured Area

Bldg. H–29
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 33
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240019
Status: Excess
Reason: Secured Area

Bldg. 34
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240020
Status: Excess
Reason: Secured Area

Bldg. 41
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240021
Status: Excess
Reason: Secured Area

Bldg. 55
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240022
Status: Excess
Reason: Secured Area

Bldg. 62/62A
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240023
Status: Excess
Reason: Secured Area

Bldg. 63
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240024
Status: Excess
Reason: Secured Area

Bldg. 65
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240025
Status: Excess
Reason: Secured Area

Bldg. 158
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240026
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 188
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240027
Status: Excess
Reason: Secured Area

Bldg. 189
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240028
Status: Excess
Reason: Secured Area

Bldg. 237
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240029
Status: Excess
Reason: Secured Area

Bldg. 322
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240030
Status: Excess
Reason: Secured Area

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240005
Status: Unutilized
Reason: Floodway

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240006
Status: Unutilized
Reason: Floodway

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240007
Status: Unutilized
Reason: Floodway

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240008
Status: Unutilized
Reason: Floodway

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 87199240032
Status: Unutilized
Reason: Floodway

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 87199240035
Status: Unutilized
Reason: Extensive deterioration

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 87199320024
Status: Unutilized
Reason: Extensive deterioration

Nash Island Light
U.S. Coast Guard
Addison Co: Washington ME 04606–
Landholding Agency: DOT
Property Number: 87199420005
Status: Unutilized
Reason: Inaccessible

Bldg.—South Portland Base
U.S. Coast Guard
S. Portland Co: Cumberland ME 04106–
Landholding Agency: DOT
Property Number: 87199420006
Status: Unutilized
Reason: Secured Area

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: Lincoln ME 04538–
Landholding Agency: DOT
Property Number: 87199430001
Status: Unutilized
Reason: Secured Area

Maryland

15 Bldgs.
Naval Air Warfare Center
Patuxent River Co: St. Mary's MD 20670–5304
Landholding Agency: Navy
Property Number: 77199730062
Status: Unutilized
Reason: Extensive deterioration

Bldg. 867
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200120010
Status: Excess
Reason: Extensive deterioration

Bldg. 868
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200120011
Status: Excess
Reason: Extensive deterioration

Bldg. 1044
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77200120012
Status: Excess
Reason: Extensive deterioration

Bldg. S–038
Naval District
Solomons Complex
Solomons Co: MD 20688–0147
Landholding Agency: Navy
Property Number: 77200140013
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–046
Naval District
Solomons Complex
Solomons Co: MD 20688–0147
Landholding Agency: Navy
Property Number: 77200140014
Status: Unutilized
Reason: Extensive deterioration

Bldg. F–1676
Naval Air Facility
Andrews AFB Co: MD 20762–5518
Landholding Agency: Navy
Property Number: 77200140015
Status: Unutilized
Reason: Extensive deterioration

Bldg. 585
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200220030
Status: Excess
Reason: Extensive deterioration

Structure 145
Naval Surface Warfare Center
W. Bethesda Co: MD 20817–
Landholding Agency: Navy
Property Number: 77200230013
Status: Underutilized
Reason: Secured Area

Bldg. 149
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200230038
Status: Excess
Reason: Extensive deterioration

Bldg. 425
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200230039
Status: Excess
Reason: Extensive deterioration

Bldgs. 38–39, 41, 43–46, 56
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 53
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 6
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 59
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

5 Bldgs.
USCG Yard
#9, 21, 23, 52, 57
Baltimore Co: MD 21226–
Landholding Agency: DOT
Property Number: 87200120002
Status: Unutilized
Reason: Extensive deterioration

Bldg. #81
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210001
Status: Underutilized
Reason: Secured Area

Bldg. #85
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210002
Status: Underutilized
Reason: Secured Area

Bldg. #86
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210003
Status: Underutilized
Reason: Secured Area

Bldg. #86D
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210004
Status: Underutilized
Reason: Secured Area

Bldg. #149
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210005
Status: Underutilized
Reason: Secured Area

Massachusetts

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 87199240001
Status: Underutilized
Reason: Secured Area

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 87199240029
Status: Unutilized
Reasons: Floodway; Secured Area

Storage Shed
Highland Light
N. Truro Co: Barnstable MA 02652–
Location: DeSoto Johnson KS 66018–
Landholding Agency: DOT
Property Number: 87199430004
Status: Unutilized
Reason: Extensive deterioration

Michigan

Station Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120003
Status: Unutilized
Reasons: Floodway; Secured Area

Garage Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120004
Status: Unutilized
Reasons: Floodway; Secured Area

Shed/Pump Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120005
Status: Unutilized
Reasons: Floodway; Secured Area

Storage Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120006
Status: Unutilized
Reasons: Floodway; Secured Area

Station/boathouse Bldg.
USCG Harbor Beach Station
Harbor Beach Co: Huron MI 48441–
Landholding Agency: DOT
Property Number: 87200130001
Status: Unutilized
Reasons: Floodway; Extensive deterioration

Mississippi

Bldg. 12
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130029
Status: Unutilized
Reason: Secured Area

Bldg. 23
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130030
Status: Unutilized
Reason: Secured Area

Bldg. 36
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130031
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 141
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130032
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 172
Naval Construction Battalion Center

Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130033
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 185
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130034
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 220
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130035
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 236
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130036
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Structure 427
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130037
Status: Unutilized
Reason: Secured Area

Bldg. QQ
Naval Station
Pascagoula Co: Jackson MS 39595–
Landholding Agency: Navy
Property Number: 77200230050
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 239, 240
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200240060
Status: Unutilized
Reason: Secured Area

Bldg. 248
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200240061
Status: Unutilized
Reason: Secured Area

Bldg. 412
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200240062
Status: Unutilized
Reason: Secured Area

Bldgs. 239, 240
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200310033
Status: Unutilized
Reason: Secured Area

Bldg. 248
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200310034
Status: Unutilized
Reason: Secured Area

Bldg. 412
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200310035
Status: Unutilized
Reason: Secured Area

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121–
Landholding Agency: DOT
Property Number: 87199340002
Status: Unutilized
Reason: Extensive deterioration

New Hampshire

Bldg. 40
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200240031
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

New Jersey

Former NIKE Missile Battery
Site PH–58
Woolwich Co: Gloucester NJ
Landholding Agency: GSA
Property Number: 54200310012
Status: Excess
Reason: Extensive deterioration
GSA Number : 1–GR–NJ–0538

Bldg. 188
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199830065
Status: Unutilized
Reason: Extensive deterioration

Bldg. 473
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920024
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Naval Air Engineering Station
26, 75, 126, 303
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77200240059
Status: Unutilized
Reason: Extensive deterioration

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 87199240009
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Chapel Hill Front Range Light Tower
Middletown Co: Monmouth NJ 07748–
Landholding Agency: DOT
Property Number: 87199440002
Status: Unutilized
Reason: Skeletal tower

Bldg. 103
U.S. Coast Guard Station Sandy Hook
Middleton Co: Monmouth NJ 07737–
Landholding Agency: DOT
Property Number: 87199610002
Status: Unutilized
Reason: Secured Area

Ship Stg. Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110018
Status: Excess
Reason: Secured Area

Exchange Whse
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110019
Status: Excess
Reason: Secured Area

Patrol Boat Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110020
Status: Excess
Reason: Secured Area

Station Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110021
Status: Excess
Reason: Secured Area

ANT Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110022
Status: Excess
Reason: Secured Area

Quarters C
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120012
Status: Excess
Reason: Secured Area

Central Heating Plant
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120013
Status: Excess
Reason: Secured Area

Hangar/Shop
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120014
Status: Excess
Reason: Secured Area

Bldg. 195
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220001
Status: Excess
Reason: Secured Area

Bldg. 204
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220002
Status: Excess
Reason: Secured Area

Bldg. 208
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220003
Status: Excess
Reason: Secured Area

Bldg. 209
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220004
Status: Excess
Reason: Secured Area

Sheds OV1, OV2, OV3
U.S. Coast Guard
Shark River
Avon by the Sea Co: Monmouth NJ 13640–
Landholding Agency: DOT
Property Number: 87200240001
Status: Unutilized
Reason: Secured Area

Unit 13
USCG Station Barnegat Light
Station Barnegat Co: Ocean NJ
Landholding Agency: DOT
Property Number: 87200240002
Status: Unutilized
Reason: Secured Area

Units 9–12
USCG Station Barnegat Light
Station Barnegat Co: Ocean NJ
Landholding Agency: DOT
Property Number: 87200240003
Status: Unutilized
Reason: Secured Area

Bldg. 019
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310003
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 022
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310004
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 192
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310005
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 193
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310006
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 207
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310007
Status: Excess
Reasons: Secured Area; Extensive deterioration

New Mexico

Bldg. N149
Naval Air Warfare
White Sands Co: NM 88002–
Landholding Agency: Navy
Property Number: 77200110104
Status: Excess
Reason: Extensive deterioration

New York

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 87199230005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240020
Status: Unutilized
Reason: Secured Area

Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240021
Status: Unutilized
Reasons: Extensive deterioration; Secured Area;

Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240022
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 87199310003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199320025
Status: Unutilized
Reason: Secured Area

Bldg. 138
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199410003
Status: Unutilized
Reason: Secured Area

Bldg. 830
U.S. Coast Guard
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199420004
Status: Unutilized
Reason: Secured Area

Bldg. 8
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530009
Status: Unutilized
Reason: Secured Area

Bldg. 7
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 222
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620003
Status: Unutilized
Reason: Secured Area

Bldg. 223
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620004
Status: Unutilized
Reason: Secured Area

Bldg. 205
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620005
Status: Unutilized
Reason: Secured Area

Bldg. 9
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630027
Status: Excess
Reason: Secured Area

Bldg. 10
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630028
Status: Excess
Reason: Secured Area

Bldg. 206; Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630029
Status: Excess
Reason: Secured Area

Bldg. OG2
Coast Guard Station
Alexandria Bay Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210021
Status: Unutilized
Reason: Secured Area

North Carolina

Bldg. AS–4040
Marine Corps Air Station
New River Co: NC
Landholding Agency: Navy
Property Number: 77200210039
Status: Underutilized
Reason: Secured Area

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT

Property Number: 87199240018
Status: Unutilized
Reason: Secured Area
Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240019
Status: Unutilized
Reason: Secured Area
Bldg. 54
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340004
Status: Unutilized
Reason: Secured Area
Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340005
Status: Unutilized
Reason: Secured Area
Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340006
Status: Unutilized
Reason: Secured Area
USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 87199420007
Status: Excess
Reason: Secured Area
Unit #71
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530011
Status: Unutilized
Reason: Floodway
Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530012
Status: Unutilized
Reason: Floodway
Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530013
Status: Unutilized
Reason: Floodway
Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530014
Status: Unutilized
Reason: Floodway
Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530015
Status: Unutilized
Reason: Floodway
Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530016
Status: Unutilized
Reason: Floodway
Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530017
Status: Unutilized
Reason: Floodway
Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530018
Status: Unutilized
Reason; Floodway
Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530019
Status: Unutilized
Reason: Floodway
Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530020
Status: Unutilized
Reason: Floodway
Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530021
Status: Unutilized
Reason: Floodway
Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530022
Status: Unutilized
Reason: Floodway
Unit #78
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530023
Status: Unutilized
Reason: Floodway
Bldg. 53
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630022
Status: Unutilized
Reason: Secured Area
Bldg. OV1 (033)
USCG Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87200210012
Status: Underutilized
Reason: Secured Area
Storage Bldg.
USCG Loran Station
Carolina Beach Co: New Hanover NC
Landholding Agency: DOT
Property Number: 87200210013
Status: Underutilized
Reason: Secured Area
Frying Pan Schoals Light
USCG
Cape Fear Co: NC
Landholding Agency: DOT
Property Number: 87200240004
Status: Unutilized
Reason: Secured Area
Diamond Shoals Light
USCG
Cape Hatteras Co: NC
Landholding Agency: DOT
Property Number: 87200240005
Status: Unutilized
Reason: Secured Area

Ohio

Modular Ofc. Bldg.
RMI
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41200310008
Status: Excess
Reason: Contamination
Modular Lab Bldg.
RMI
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41200310009
Status: Excess
Reason: Contamination
Soil Storage Bldg.
RMI
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41200310010
Status: Excess
Reason: Contamination
Soil Washing Bldg.
RMI
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41200310011
Status: Excess
Reason: Contamination
Bldg. 16B
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310012
Status: Excess
Reasons: Contamination; Secured Area
Bldg. 24C
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310013
Status: Excess
Reasons: Contamination; Secured Area
Bldg. 25K
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310014
Status: Excess
Reasons: Contamination; Secured Area
Bldg. 50
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310015
Status: Excess
Reasons: Contamination; Secured Area
Bldg. 52A
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310016
Status: Excess
Reasons: Contamination; Secured Area
Bldg. 52B
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310017
Status: Excess
Reasons: Contamination; Secured Area

Oregon

Bldg. 30
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210070
Status: Unutilized
Reason: Secured Area
Bldg. 31
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210071
Status: Unutilized
Reason: Secured Area
Bldg. 32
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210072
Status: Unutilized
Reason: Secured Area
Bldg. 33
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210073
Status: Unutilized
Reason: Secured Area
Bldg. 35
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210074
Status: Unutilized
Reason: Secured Area
Bldg. 37
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210075
Status: Unutilized
Reason: Secured Area

Pennsylvania

Bldg. 43
Naval Foundry & Propeller Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200210015
Status: Excess
Reason: Extensive deterioration
Bldg. 53
Naval Foundry & Propeller Center
Philadelphia Co: PA 19112-
Landholding Agency: Navy
Property Number: 77200210016
Status: Excess
Reason: Extensive deterioration
Bldg. 483
Naval Surface Warfare Center
Philadelphia Co: PA 19111–2
Landholding Agency: Navy
Property Number: 77200210082
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
Bldg. 530
Naval Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200210083
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
Bldg. 615
Naval Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200210084
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
Bldg. 618
Naval Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200210085
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
Bldg. 743
Naval Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200210086
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
Bldg. 13
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220014
Status: Excess
Reason: Extensive deterioration
Bldg. 311
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220015
Status: Excess
Reason: Extensive deterioration
Bldg. 608–C
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220016
Status: Excess
Reason: Extensive deterioration
Bldg. 220009
Naval Support Activity
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77200240046
Status: Excess
Reasons: Secured Area
Extensive deterioration

Puerto Rico

Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830075
Status: Unutilized
Reason: Extensive deterioration
NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199310011
Status: Unutilized
Reason: Secured Area
Storage Equipment Bldg.
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199330001
Status: Unutilized
Reason: Secured Area
Bldg. 115
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510001
Status: Unutilized
Reason: Secured Area
Bldg. 117
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510002
Status: Unutilized
Reason: Secured Area
Bldg. 118
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510003
Status: Unutilized
Reason: Secured Area
Bldg. 119
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510004
Status: Unutilized
Reason: Secured Area
Bldg. 120
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510005
Status: Unutilized
Reason: Secured Area
Bldg. 122
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510006
Status: Unutilized
Reason: Secured Area
Bldg. 128
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510007
Status: Unutilized
Reason: Secured Area
Bldg. 129
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510008

Status: Unutilized
Reason: Secured Area

Rhode Island

Bldg. 52
Gould Island, Naval Station
Newport Co: RI 00000–
Landholding Agency: Navy
Property Number: 77199930020
Status: Excess
Reasons: Not accessible by road; Extensive deterioration

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 87199310002
Status: Unutilized
Reason: Extensive deterioration

South Carolina

Bldg. 49
Naval Public Works Center
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020062
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 7
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy.
Property Number: 77200040030
Status: Unutilized
Reason: Secured Area

Bldg. 314
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200040031
Status: Unutilized
Reason: Secured Area

16 Bldgs.
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Location: 294, 297, 316, 319, 710, 991, 3510, 3534, 3542, 3550, 3590, 3580, 3582, 3584, 3588, 3592
Landholding Agency: Navy
Property Number: 77200210106
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Tennessee

20 Bldgs.
Naval Support Activity
Millington Co: Shelby TN 38054–
Location: 766, 1597–1598, 5238, 435–446, S239, S75, 1211, 1379
Landholding Agency: Navy
Property Number: 77199940027
Status: Excess
Reasons: Secured Area; Extensive deterioration

6 Bldgs.
Naval Support Activity
#2003, 2016, 2024, 2025, 2076, 2077
Millington Co: TN 38054–
Landholding Agency: Navy
Property Number: 77200120013
Status: Excess
Reason: Secured Area

Bldg. R23–99
Naval Support Activity
Millington Co: TN 38054–
Landholding Agency: Navy
Property Number: 77200130104
Status: Excess
Reason: Secured Area

5 Bldgs.
Naval Support Activity
Millington Co: TN 38054–
Landholding Agency: Navy
Property Number: 77200130105
Status: Excess
Reason: Secured Area

23 Bldgs.
Naval Support Activity
Wherry Housing
Millington Co: TN 38054–
Location: 2004, 2019, 2021, 2023, 2026–2028, 2030, 2036, 2038, 2040, 2042, 2058, 2062, 2073, 2075, 2078, 2084, 2087, 2095, 2100, 2102, 2104
Landholding Agency: Navy
Property Number: 77200230042
Status: Excess
Reason: Secured Area

Bldg. 5
Navy Surface Warfare
Memphis Co: Shelby TN 38113–
Landholding Agency: Navy
Property Number: 77200230056
Status: Unutilized
Reason: Secured Area

Bldg. 11
Navy Surface Warfare
Memphis Co: Shelby TN 38113–
Landholding Agency: Navy
Property Number: 77200230057
Status: Unutilized
Reason: Secured Area

Texas

Bldgs. 1561, 1562, 1563
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820050
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1190
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820053
Status: Unutilized
Reason: Secured Area

Bldg. 1820
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820054
Status: Unutilized
Reasons: Secured AreaExtensive deterioration;

Bldg. 1504
Naval Air Station
Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200110018
Status: Unutilized
Reason: Extensive deterioration

Facility 119
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200110047
Status: Excess
Reasons: Within airport runway clear zone; Secured Area; Extensive deterioration

Bldg. 1149
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4200
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120015
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1173
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1268
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120017
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1837
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200120018
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1346
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200120156
Status: Excess
Reasons: Secured Area; Extensive deterioration

Facility 16
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130085
Status: Excess
Reason: Extensive deterioration

Facility 23
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130086
Status: Excess
Reason: Extensive deterioration

Facility 32
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130087
Status: Excess
Reason: Extensive deterioration

Facility 52A
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130088
Status: Excess
Reason: Extensive deterioration

Facility 52B
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130089
Status: Excess
Reason: Extensive deterioration

Facility 52C
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130090
Status: Excess
Reason: Extensive deterioration

Facility 52D
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130091
Status: Excess
Reason: Extensive deterioration

Facility 52E
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130092
Status: Excess
Reason: Extensive deterioration

Facility 168
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130093
Status: Excess
Reason: Extensive deterioration

Facility 306
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130094
Status: Excess.
Reason: Extensive deterioration

Facility 330
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130095
Status: Excess
Reason: Extensive deterioration

Facility 372
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130096
Status: Excess
Reason: Extensive deterioration

Facility 383
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130097
Status: Excess
Reason: Extensive deterioration

Facility 1233
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130098
Status: Excess
Reason: Extensive deterioration

Facility 3589
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130099
Status: Excess
Reason: Extensive deterioration

Bldg. 1298
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200130100
Status: Excess
Reason: Extensive deterioration

Bldg. 1825
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200220025
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 262 & 263
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200220026
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1082
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240047
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1078
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1080
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240049
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1241
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240050
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1828
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3340
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200240052
Status: Unutilized
Reason: Extensive deterioration

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 87199310012
Status: Unutilized
Reason: Secured Area

WPB Building
Station Port Isabel Coast Guard Station
South Padre Island Co: Cameron TX 78597–6497
Landholding Agency: DOT
Property Number: 87199530002
Status: Unutilized
Reason: Floodway

Aton Shops Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

WPB Storage Shed
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Flammable Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Battery Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Boat House
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Small Boat Pier
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 108
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 87199630008
Status: Unutilized
Reason: Extensive deterioration

Vermont

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 87199220003
Status: Excess
Reason: Floodway

Virginia
Big Bethel Military Resv
Hampton Co: VA 23666–1432
Landholding Agency: GSA
Property Number: 54200310014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 4–D–VA–0733
Bldg. O2
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 77199810073
Status: Excess
Reason: Extensive deterioration
Bldgs. 358, 359
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820023
Status: Excess
Reason: Extensive deterioration
Bldg. CAD–102
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820025
Status: Excess
Reason: Extensive deterioration
Bldg. CAD–102A
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820026
Status: Excess
Reason: Extensive deterioration
CAD–40
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199830084
Status: Unutilized
Reasons: Secured Area; Extensive deterioration
Bldg. 449
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920068
Status: Excess
Reason: Extensive deterioration
Bldg. 450
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920069
Status: Excess
Reason: Extensive deterioration
Bldg. 451
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920070
Status: Excess
Reason: Extensive deterioration
Bldg. 453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920071
Status: Excess
Reason: Extensive deterioration
Bldg. 454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920072
Status: Excess
Reason: Extensive deterioration
Bldg. 708
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920073
Status: Excess
Reason: Extensive deterioration
Bldg. 709
Norfolk Naval Shipyard
Portsmouth Co: VA 23709
Landholding Agency: Navy
Property Number: 77199920074
Status: Excess
Reason: Extensive deterioration
Bldg. 710
Norfolk Naval Shipyard
Portsmouth Co: VA 23709
Landholding Agency: Navy
Property Number: 77199920075
Status: Excess
Reason: Extensive deterioration
Bldg. 711
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920076
Status: Excess
Reason: Extensive deterioration
Bldg. 712
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920077
Status: Excess
Reason: Extensive deterioration
Bldg. 713
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920078
Status: Excess
Reason: Extensive deterioration
Bldg. 714
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920079
Status: Excess
Reason: Extensive deterioration
Bldg. 715
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920080
Status: Excess
Reason: Extensive deterioration
Bldg. 716
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920081
Status: Excess
Reason: Extensive deterioration
Bldg. 717
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920082
Status: Excess
Reason: Extensive deterioration
Bldg. 718
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920083
Status: Excess
Reason: Extensive deterioration
Bldg. 1454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920084
Status: Excess
Reason: Extensive deterioration
Bldg. 7
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 12
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 24
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 34
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 108
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 299
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 400
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020015
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 436
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldgs. 442, 443
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 530
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 532
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldgs. 646–651
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldgs. 758, 759
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 764
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 784
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 786
Naval Weapons Station Yorktown
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 788
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 790
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 814
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020027
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldgs. 1955–1957
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020028
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldgs. 1960, 1961, 1964
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020029
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldgs. 1980, 1981
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020030
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 160
Cheatham Annex
Williamsburg Co: VA 23185–5830
Landholding Agency: Navy
Property Number: 77200020031
Status: Unutilized
Reasons: Secured Area; Extensive deterioration
Bldg. 1453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–5000
Landholding Agency: Navy
Property Number: 77200020063
Status: Unutilized
Reasons: Secured Area; Extensive deterioration
Bldg. 13
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120024
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 14
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120025
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 22
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120026
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 23
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120027
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 70
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120028
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 87
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120029
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 88
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120030
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 118
Naval Weapons Station
Yorktown Co: VA 23691–

Landholding Agency: Navy
Property Number: 77200120031
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 385
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120032
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 396A
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120033
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 492
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120034
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 507
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120035
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 612
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120036
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1224
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120037
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1225
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120038
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1226
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120039
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1227
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120040
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1228
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120041
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1587
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120042
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1588
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120043
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1589
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120044
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1590
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120045
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1591
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120046
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1612
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120047
Status: Excess
Reasons: Secured Area; Extensive deterioration

Structure 1743
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120048
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 103B
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120049
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. B109
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120050
Status: Unutilized
Reason: Extensive deterioration

Bldg. B112
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 123
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120052
Status: Unutilized
Reason: Extensive deterioration

Bldg. B132
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120053
Status: Unutilized
Reason: Extensive deterioration

Bldg. B157
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120054
Status: Unutilized
Reason: Extensive deterioration

Bldg. 170A
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120055
Status: Unutilized
Reason: Extensive deterioration

Bldg. B239
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120056
Status: Unutilized
Reason: Extensive deterioration

Bldg. B362
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120057
Status: Unutilized
Reason: Extensive deterioration

Bldg. B396
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120058
Status: Unutilized
Reason: Extensive deterioration

Bldg. B402
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120059
Status: Unutilized
Reason: Extensive deterioration

Bldg. B425
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120060
Status: Unutilized
Reason: Extensive deterioration

Bldg. B428
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120061
Status: Unutilized
Reason: Extensive deterioration

Bldg. B451
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120062
Status: Unutilized
Reason: Extensive deterioration

Bldg. B465
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120063
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1100
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120064
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1124
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120065
Status: Unutilized
Reason: Extensive deterioration

Bldg. B9411
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120066
Status: Unutilized
Reason: Extensive deterioration

Bldg. B9429
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120067
Status: Unutilized
Reason: Extensive deterioration

Tracks
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120088
Status: Unutilized
Reason: Extensive deterioration

Bldg. B107
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–5100
Landholding Agency: Navy
Property Number: 77200130045
Status: Unutilized
Reason: Extensive deterioration

Bldg. B153
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130046
Status: Unutilized
Reason: Extensive deterioration

Bldg. B166
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130047
Status: Unutilized
Reason: Extensive deterioration

Bldg. B167
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130048
Status: Unutilized
Reason: Extensive deterioration

Bldg. B185T
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130049
Status: Unutilized
Reason: Extensive deterioration

Bldg. B196
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130050
Status: Unutilized
Reason: Extensive deterioration

Bldg. B244
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130051
Status: Unutilized
Reason: Extensive deterioration

Bldg. B284
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130052
Status: Unutilized
Reason: Extensive deterioration

Bldg. B299
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130053
Status: Unutilized
Reason: Extensive deterioration

Bldg. B313
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130054
Status: Unutilized
Reason: Extensive deterioration

Bldg. B347
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130055
Status: Unutilized
Reason: Extensive deterioration

Bldg. B360
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130056
Status: Unutilized
Reason: Extensive deterioration

Bldg. B410
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130057
Status: Unutilized
Reason: Extensive deterioration

Bldg. B416
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130058
Status: Unutilized
Reason: Extensive deterioration

Bldg. B430
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130059
Status: Unutilized
Reason: Extensive deterioration

Bldg. B993
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130060
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1119
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130061
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1299
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130062
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1350
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130063
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1355
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130064
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1376
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130065
Status: Unutilized

Reason: Extensive deterioration
Bldg. B1379
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130066
Status: Unutilized
Reason: Extensive deterioration
Bldg. B1383
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130067
Status: Unutilized
Reason: Extensive deterioration
Bldg. B1386
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130068
Status: Unutilized
Reason: Extensive deterioration
Bldg. B9406
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130069
Status: Unutilized
Reason: Extensive deterioration
Bldg. 116
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200130101
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 55, 3233
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200130115
Status: Excess
Reason: Extensive deterioration
Bldg. B260
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–5100
Landholding Agency: Navy
Property Number: 77200130116
Status: Unutilized
Reason: Extensive deterioration
Bldg. B452
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130117
Status: Unutilized
Reason: Extensive deterioration
Bldg. B1361
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130118
Status: Unutilized
Reason: Extensive deterioration
Bldg. B1360
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130119
Status: Unutilized
Reason: Extensive deterioration
Bldg. B1362
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130120
Status: Unutilized
Reason: Extensive deterioration
Bldg. B9409
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130121
Status: Unutilized
Reason: Extensive deterioration
Bldg. B9412
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130122
Status: Unutilized
Reason: Extensive deterioration
Bldg. B9436
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–5100
Landholding Agency: Navy
Property Number: 77200130123
Status: Unutilized
Reason: Extensive deterioration
Bldg. B9445
Naval Surface Warfare Ceneter
Dahlgren Co: King George VA 22448–5100
Landholding Agency: Navy
Property Number: 77200130124
Status: Unutilized
Reason: Extensive deterioration
Bldg. B9446
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130125
Status: Unutilized
Reason: Extensive deterioration
Bldg. B9461
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130126
Status: Unutilized
Reason: Extensive deterioration
Bldg. B9462
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130127
Status: Unutilized
Reason: Extensive deterioration
58 Housing Units
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200210040
Status: Unutilized
Reason: Extensive deterioration
18 Housing Units
Marine Corps Base
Quantico Co: VA
Landholding Agency: Navy
Property Number: 77200210041
Status: Unutilized
Reason: Extensive deterioration
8 Bldgs.
Marine Corps Base
#3220–3227
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200210062
Status: Excess
Reason: Extensive deterioration
6 Bldgs.
Marine Corps Base
2600A, 2604, 2631, 2664, 26123, 261512
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200210063
Status: Excess
Reason: Extensive deterioration
Bldg. SP–93
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200220037
Status: Excess
Reason: Extensive deterioration
Bldg. U–40/Portion
Naval Station
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200220040
Status: Excess
Reason: Extensive deterioration
Bldg. SP–63
Naval Station
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200220041
Status: Excess
Reason: Extensive deterioration
Bldg. SP–63A
Naval Station
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200220042
Status: Excess
Reason: Extensive deterioration
Bldg. A–67
Naval Station
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200220043
Status: Excess
Reason: Extensive deterioration
Bldg. U–124
Naval Station
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200220044
Status: Excess
Reason: Extensive deterioration
Bldg. CEP–213
Naval Station
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200220045
Status: Excess
Reason: Extensive deterioration
Bldg. 51
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220054
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 79
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220055
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 89
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220056
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
5 Bldgs.
Naval Weapons Station #90, 91, 95, 96, 101
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220057
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 119A
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220058
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 378
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220059
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 398
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220060
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 415
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220061
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldgs. 440, 441
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220062
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 508
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220063
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 510
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220064
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 605
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220065
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 624
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220066
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 688
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220067
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldgs. 1271, 1272, 1273
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220068
Status: Excess
Reason: Secured Area
Bldgs. 1465, 1466
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220069
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldgs. 1467, 1468, 1469
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220070
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 1799
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220071
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. CAD40
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220084
Status: Excess
Reason: Secured Area
Bldg. CAD41
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220085
Status: Excess
Reason: Secured Area
Bldg. CAD479
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220086
Status: Excess
Reason: Secured Area
Bldg. 2250
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200230014
Status: Excess
Reason: Extensive deterioration
Bldg. 819
Marine Corps Base
Geiger Ridge
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200230015
Status: Excess
Reason: Extensive deterioration
Bldg. B–2108
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200230016
Status: Excess
Reason: Extensive deterioration
6 Bldgs.
Marine Corps Base
Quantico Co: VA
Location: #2902, 2906, 2923, 2928, 2930, 2950
Landholding Agency: Navy
Property Number: 77200230030
Status: Excess
Reason: Extensive deterioration
30 Housing Units
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200240006
Status: Excess
Reason: Extensive deterioration
Bldgs. 3028, 3037
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200240007
Status: Excess
Reason: Extensive deterioration
Bldgs. 3035, 3040, 3205
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200240008
Status: Excess
Reason: Extensive deterioration
Bldg. 60
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200240009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration
Bldg. 1216
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200240010
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1354
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200240011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Pier R–1
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200240053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 709
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200240054
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. M–15
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200240055
Status: Excess
Reason: Extensive deterioration

Bldg. NM–79
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200240056
Status: Excess
Reason: Extensive deterioration

Bldg. Z–216
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200240057
Status: Excess
Reason: Extensive deterioration

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 87199230004
Status: Excess
Reason: Secured Area

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 87199240014
Status: Unutilized
Reason: Secured Area

Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 87199310004
Status: Unutilized
Reason: Secured Area

Operations Bldg.
U.S. Coast Guard Group Hampton Roads
Portsmouth VA 23703–
Landholding Agency: DOT
Property Number: 87199710003
Status: Unutilized
Reason: Secured Area

Bldgs. 63, 115
USCG Training Center
Yorktown Co: York VA 23690–5000
Landholding Agency: DOT
Property Number: 87200110037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 156
USCG Training Center Yorktown
Yorktown Co: York VA 23690–5000
Landholding Agency: DOT
Property Number: 87200120015
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 002
USCG Eastern Shore
Chincoteague Co: Accomak VA 23336–
Landholding Agency: DOT
Property Number: 87200220007
Status: Excess
Reason: Secured Area

Washington

Bldg. 6661
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730039
Status: Unutilized
Reason: Secured Area

Bldg. 604
Manchester Fuel Department
Port Orchard WA 98366–
Landholding Agency: Navy
Property Number: 77199810170
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 288
Fleet Industrial Supply Center
Bremerton WA 98314–5100
Landholding Agency: Navy
Property Number: 77199810171
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 47
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820056
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 48
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820057
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Coal Handling Facilities
Puget Sound Naval Shipyard
#908, 919, 926–929
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199820142
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 193
Puget Sound Naval Shipyard
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820143
Status: Unutilized
Reason: contamination

Bldg. 202
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 2649
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Extensive deterioration

Bldgs. 35, 36
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199830076
Status: Unutilized
Reason: Extensive deterioration

Bldg. 918
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199840020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 894
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199920085
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 73
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199920152
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 210A
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 511
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 527
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 97
Naval Air Station
Whidbey Island
Oak Harbor Co: WA 98278–
Landholding Agency: Navy
Property Number: 77199930040
Status: Unutilized
Reason: Extensive deterioration

Bldg. 331
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930041
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 786
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930042
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 15
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930071
Status: Unutilized
Reason: Extensive deterioration

Bldg. 119
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930072
Status: Unutilized
Reason: Extensive deterioration

Bldg. 853
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 854
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930074
Status: Unutilized
Reason: Extensive deterioration

Bldg. 166
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930101
Status: Excess
Reason: Secured Area

Bldg. 287
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930102
Status: Excess
Reason: Secured Area

Bldg. 418
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930103
Status: Excess
Reason: Secured Area

Bldg. 858
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930104
Status: Excess
Reason: Secured Area

Bldg. 17
Naval Radio Station
Jim Creek
Arlington Co: WA 98223–8599
Landholding Agency: Navy
Property Number: 77200010073
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 47
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200010074
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Whitney Point Complex
Brinnon Co: Jefferson WA 98320–9899
Landholding Agency: Navy
Property Number: 77200010102
Status: Excess
Reason: Extensive deterioration

Bldg. 398
Naval Station
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200020038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 976
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Extensive deterioration

8 Bldgs.
Naval Station 902, 903, 905, 907, 909–911, 915
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 109
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 157
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 161
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 170
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 262
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 482
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200040019
Status: Excess
Reason: Secured Area

Bldg. 529
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200040020
Status: Excess
Reason: Secured Area

Bldg. 133
Naval Undersea Warfare Station
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200120133
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 2511
NAS Whidbey Island
Oak Harbor Co: Island WA 98278–3500
Landholding Agency: Navy
Property Number: 77200120157
Status: Excess
Reason: Secured Area

Bldg. 98
Naval Air Station
Oak Harbor Co: Whidbey Island WA 98278–
Landholding Agency: Navy
Property Number: 77200220022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Bldg. 2667

Naval Air Station
Oak Harbor Co: Whidbey Island WA 98278–
Landholding Agency: Navy
Property Number: 77200220023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Bldg. 899
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200230032
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 935, 936, 956, 957
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200230041
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1990
Naval Station
Everett Co: Snohomish WA 98207–5001
Landholding Agency: Navy
Property Number: 77200230044
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 530
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200230058
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 878
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200230059
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 904
Naval Station
Fort Lawton
Everett Co: Snohomish WA 98207–5001
Landholding Agency: Navy
Property Number: 77200230060
Status: Excess
Reason: Extensive deterioration

Bldg. 66
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240032
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 67
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240033
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 180
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240034
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 182
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240035
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 214
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240036
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 273
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 937
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200240038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 2801A
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200240039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 7634
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200240040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Wisconsin

Rawley Point Light
Two Rivers Co: Manitowoc WI
Landholding Agency: DOT
Property Number: 87199540004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Land (by State)

California

Space Surv. Field Station
Portion/Off Heritage Road
San Diego CA 90012–1408
Landholding Agency: Navy
Property Number: 77199820049
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Land
Naval Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77199940001
Status: Underutilized
Reason: Secured Area

PCL–4 (11.60 acres)
Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200020095
Status: Underutilized
Reason: Secured Area

Parcel 8
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110040
Status: Underutilized
Reason: Secured Area

Parcel 10
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110041
Status: Underutilized
Reason: Secured Area

Parcel 12
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110043
Status: Underutilized
Reason: Secured Area

Parcel 13
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110044
Status: Underutilized
Reason: Secured Area

Parcel 14
Naval Base
Port Hueneme Co: Ventura CA 93043–4300
Landholding Agency: Navy
Property Number: 77200110045
Status: Underutilized
Reason: Secured Area

Eniwetok Playgrounds
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200220034
Status: Underutilized
Reason: Secured Area

CB Rifle Range
Point Mugu Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200230001
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

District of Columbia

1600 sq. ft./T–88
Naval Research Lab
Washington Co: DC 20375–5320
Landholding Agency: Navy
Property Number: 77200110118
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Florida

Land—approx. 220 acres
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440018
Status: Underutilized
Reasons: Floodway; Secured Area

Maine

Parcel 2
Naval Air Station
Canam Drive
Topsham Co: Cumberland ME 04086–
Landholding Agency: Navy
Property Number: 77200130026
Status: Unutilized
Reason: Secured Area

Parcel 3
Naval Air Station
Canam Drive
Topsham Co: Cumberland ME 04086–
Landholding Agency: Navy
Property Number: 77200130027
Status: Unutilized
Reason: Secured Area

Parcel 5
Naval Air Station
Canam Drive
Topsham Co: Cumberland ME 04086–
Landholding Agency: Navy
Property Number: 77200130028
Status: Unutilized
Reason: Secured Area

Maryland

6 Acres
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77199940023
Status: Unutilized
Reason: Secured Area

Land—5000 sq. ft.
Naval Air Station
Patuxent River Co: MD 20670–1603
Landholding Agency: Navy
Property Number: 77200010023
Status: Unutilized
Reason: Secured Area

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 87199120006
Status: Unutilized
Reason: Within airport runway clear zone

North Carolina

0.85 parcel of land
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199740074
Status: Unutilized
Reason: Secured Area

5 (0.91) Parcels
Marine Corps Base
Camp Lejeune Co: NC
Landholding Agency: Navy
Property Number: 77200210080
Status: Underutilized
Reason: Secured Area

3 (0.91) Parcels
Marine Corps Base
Greater Sandy Run
Camp Lejeune Co: NC
Landholding Agency: Navy
Property Number: 77200210081
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

Virginia

1.6 acres
Naval Amphibious Base
Norfolk Co: VA 23521–2616
Landholding Agency: Navy
Property Number: 77200240063
Status: Unutilized
Reason: Secured Area

Washington

Land-Port Hadlock Detachment
Naval Ordnance Center Pacific Division
Port Hadlock Co: Jefferson WA 98339–
Landholding Agency: Navy
Property Number: 77199640019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

[FR Doc. 03–4160 Filed 2–21–03; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Part 240
Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–47364; File No. S7–41–02]

RIN 3235–AI19

Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its rule granting an exemption to banks from dealer registration for a *de minimis* number of riskless principal transactions, and to its rule that defines terms used in the bank exception to dealer registration for asset-backed transactions. The Commission also is adopting a new exemption for banks the definition of broker and dealer under the Securities Exchange Act of 1934 for certain securities lending transactions. In addition, the Commission is extending the exemption from rescission liability under Exchange Act Section 29 to contracts entered into by banks acting in a dealer capacity before March 31, 2005. These rules address certain of the exceptions for banks from the definitions of "broker" and "dealer" that were added to the Securities Exchange Act of 1934 by the Gramm-Leach-Bliley Act.

DATES: *Effective Date:* March 26, 2003.

Compliance Date: September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel; Lourdes Gonzalez, Assistant Chief Counsel; or Linda Stamp Sundberg, Attorney Fellow; (202) 942–0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting amendments to Rules 3a5–1 [17 CFR 240.3a5–1], 3b–18 [17 CFR 240.3b–18], and 15a–8 [17 CFR 240.15a–8] under the Securities Exchange Act of 1934 ("Exchange Act"). The Commission also is adopting an exemption from the definitions of "broker" and "dealer" for banks engaging in securities lending transactions pursuant to new Exchange Act Rule 15a–11 [17 CFR 240.15a–11].

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I. Introduction

On October 30, 2002, the Commission proposed amendments to the Interim Final Rules [1] ("the Rules") under the Exchange Act concerning the definition of "dealer." [2] Today, the Commission adopts these "dealer" rules substantially as proposed with some technical amendments to the exemptions in response to comments received. In addition, the Commission is, by separate order, extending the banks' temporary exemption from the definition of dealer until September 30, 2003. Finally, the Commission is amending Rule 15a–8 to give practical effect to the exemption from rescission liability under Exchange Act Section 29 on contracts entered into by banks in a dealer capacity for a finite transition period until March 31, 2005. This exemption was previously adopted, subject to comment.

The Commission previously adopted Exchange Act Rules 3a5–1, 3b–18, and 15a–8 on May 11, 2001 as part of the Rules, which were designed to implement the specific transactional exceptions for banks from the definitions of "broker" and "dealer." The definitions of "broker" and "dealer," in Exchange Act Sections 3(a)(4) and 3(a)(5), respectively, were amended by the Gramm-Leach-Bliley Act ("GLBA"). [3]

[1] Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Release No. 34–44291, 66 FR 27760 (May 18, 2001).

[2] Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Release No. 34–46745, 67 FR 67495 (November 5, 2002) ("the Proposing Release").

[3] Pub. L. No. 106–102, 113 Stat. 1338 (1999). On November 12, 1999, the President signed the GLBA into law. The GLBA changed federal statutes governing the scope of permissible activities and the supervision of banks, bank holding companies, and their affiliates. The GLBA lowered barriers between the banking and securities industries erected by the Banking Act of 1933 (popularly known as the "Glass-Steagall Act") Pub. L. No. 73–66, ch. 89, 48 Stat. 162 (1933) (as codified in various sections of 12 U.S.C.). Section 101 of the GLBA repealed Sections 20 (12 U.S.C. 377) and 32 (12 U.S.C. 78) of the Banking Act of 1933. The GLBA did not repeal Sections 16 (12 U.S.C. 24 (Seventh)) and 21 (12 U.S.C. 377) of the Banking Act of 1933, which were retained as continuing safeguards. Section 16 prohibits national banks from underwriting, selling, or dealing in securities, except for certain bank-eligible securities such as U.S. government securities, and section 5(c) of the Glass-Steagall Act applies those same Section 16 restrictions to state-chartered banks that are members of the Federal Reserve System. *See* 12 U.S.C. 24 (Seventh) and 12 U.S.C. 335. Section 16 excludes from its prohibitions securities transactions in which the bank acts as agent for its customers, which is considered agency activity under banking law. Under state banking law, insured state banks also generally may act as agent for their customers. Under federal law, insured state banks are prohibited from engaging as principal in any activities that are not permissible for national banks, unless the state banks comply with applicable capital standards and the Federal Deposit Insurance Corporation ("FDIC") has determined that the activity will not pose a significant risk to the appropriate insurance fund. Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, Title III, Section 303, 12 U.S.C. 1831a. Glass-Steagall Act Section 21, which is also still in effect, prohibits investment banks from offering checking or savings accounts. *See* 12 U.S.C. 378a.

Among other things, the GLBA provided for functional regulation of securities activities by eliminating the complete exception for banks from the definitions of "broker" and "dealer" and replacing them with specific transaction-based exceptions. Before the GLBA amendments, Sections 3(a)(4) and 3(a)(5) of the Exchange Act provided that the terms "broker" and "dealer" did not include a "bank." [4] Accordingly, banks [5] that engaged in securities activities were excepted from the requirement to register as broker-dealers under the Exchange Act. [6] The amended statutory definitions create eleven "broker" and four "dealer" exceptions for banks.

In response to interpretive questions as well as industry-specific concerns, the Commission adopted the Rules on May 11, 2001 to give the banking industry guidance on the parameters of these new bank exceptions. Although the GLBA became law in November 1999, these amended statutory definitions had a delayed effective date of May 12, 2001. Because the exceptions from the definition of "broker" and "dealer" are exceptions to the Exchange Act, the Commission is statutorily charged with interpreting them. The Rules were designed to provide guidance by defining certain key terms used in the new statutory exceptions and provided additional exemptions from the definition of "broker" and "dealer" for banks that were engaged in certain types of securities transactions. Although the Rules were adopted as interim final rules, the Commission specifically solicited public comment on them.

The amendments we are adopting today generally are limited to certain of the "dealer" exceptions under GLBA. While there are four statutory dealer exceptions, these amendments only define terms used in one of them—the exception for asset-backed transactions. These amendments also make the counting of riskless principal transactions more flexible under the *de minimis* exemption and create a new exemption for securities lending transactions, which will be an exception to the definitions of both broker and dealer for qualifying transactions.

Congress believed that, given the expansion of the activities and affiliations in the financial marketplace, functional regulation was important in building a coherent financial regulatory scheme. [7] The Commission supported modernizing the legal framework governing financial services consistent with a system of functional regulation to ensure that investors purchasing securities through banks received the same protections as when they purchased securities through registered broker-dealers. [8]

II. Temporary Exemption From the Definition of "Dealer"

In order to give banks time to ensure that their securities transactions conform to the requirements of the GLBA, the Rules included a temporary exemption that effectively extended the general bank exception from broker-dealer registration. [9] To further accommodate the industry's continuing compliance concerns, the Commission delayed the effective date of the bank "dealer" rules through a series of orders that ultimately extended the temporary exemption to February 10, 2003. [10] Concurrently with issuing this Release, the Commission is issuing an additional Order extending the temporary exemption from the effective date of the bank "dealer" rules through September 30, 2003. [11]

III. General Comments on the Proposed Amendments

We received 12 comments on the proposed amendments to the Rules, relating to the definition of "dealer" for banks and the proposed exemption for securities lending. [12] These comments

[4] Before the GLBA, Exchange Act Section 3(a)(4) defined the term "broker" as "any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank." Before the GLBA, Exchange Act Section 3(a)(5) defined the term "dealer" as "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank * * *."

[5] Exchange Act Section 3(a)(6) [15 U.S.C. 78c(a)(6)] defines the term "bank" as:

(A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency * * * and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

[6] Exchange Act Section 15(a) [15 U.S.C. 78o(a)] generally provides that:

[i]t shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with [the provisions] of this section.

[7] H.R. Rep. No. 106–74, pt. 3, at 113 (1999).

[8] *See, e.g.*, letter from Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, to Senator Phil Gramm, Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate (Oct. 14, 1999) (stating that "the Securities and Exchange Commission has long supported financial modernization legislation that provides the protections of the securities laws to all investors.").

[9] 17 CFR 240.15a–7.

[10] Through an earlier order, the Commission delayed the effective date of the bank "broker" exceptions through orders that extended the temporary exemption to May 12, 2003.

[11] Rule 15a–9 continues to exempt savings associations and savings banks from the definitions of "broker" and "dealer" under Exchange Act Sections 3(a)(4) and 3(a)(5) on the same terms and conditions that apply to banks. This exemption is limited to savings associations and savings banks that have deposits insured by the FDIC under the Federal Deposit Insurance Act ("FDIA"). 12 U.S.C. 1811 *et. seq.*

[12] *See* letter dated November 19, 2002, signed by Jackie G. Prester of Baker, Donelson, Bearman & Caldwell, on behalf of First Tennessee Bank, N.A. ("the First Tennessee Letter"); letter dated December 2, 2002, received incomplete and unsigned ("the Anonymous letter"); letter dated December 9, 2002, signed by Edward Roseo of Cleary, Gottlieb, Steen & Hamilton on behalf of an ad hoc coalition of banks consisting of The Bank of New York, Barclays Global Investors, N.A., Citibank, Credit Suisse First Boston, Deutsche Bank, HSBC, and JP Morgan Chase Bank ("the Coalition of Banks" Letter"); letter dated December 10, 2002, signed by J. Virgil Mattingly, Board of Governors of the Federal Reserve System ("Federal Reserve"), William F. Kroener, FDIC, and Julie L. Williams, Office of the Comptroller of the Currency ("OCC") ("the General Counsels" Letter"); letter dated December 5, 2002, signed by Lawrence R. Uhlick of the Institute of International Bankers ("the IIB Letter"); letter dated December 5, 2002, signed by Sarah A. Miller of the American Bankers Association and ABA Securities Association ("the ABA/ABASA Letter"); letter dated December 6, 2002, signed by Jeffrey P. Neubert of the New York Clearinghouse Association, whose members are: Bank of America, National Association; The Bank of New York; Bank One, National Association; Citibank, N.A.; Deutsche Bank Trust Company Americas; Fleet National Bank; HSBC Bank USA; JPMorgan Chase Bank; LaSalle Bank National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association ("the NYCH Letter"); letter dated December 5, 2002, signed by Jeffrey S. Missman of the Compliance Department of Commerce Bancshares ("the Commerce Banc Letter"); letter dated December 5, 2002, signed by Joanne F. Shephard of the Independent Community Bankers of America ("the ICBA Letter"); letter dated December 12, 2002, signed Christine A. Bruenn of the North American Securities Administrators Association ("the NASAA Letter"); letter dated December 13, 2002, signed by Jose Arau of CalPERS ("the CalPERS Letter"); and letter dated December 24, 2002, signed by Richard Whiting of the Financial Services Roundtable ("the Roundtable Letter").

were from two banks, five bank associations, a coalition of banks, the general counsels of the Federal banking agencies, the state securities administrators' association, a pension fund, and one unknown person.[13]

Generally, the commenters supported the efforts of the Commission and its staff in listening to the concerns of the banking industry, making the dealer rules more flexible, and making banks' compliance with the dealer rules easier.[14] Several commenters also generally praised the Commission and its staff for proposing the securities lending exemption to provide banks with greater legal certainty in connection with their activities as custodians, clearing agents, and noncustodial agents or intermediaries, and in facilitating securities lending and borrowing transactions.[15]

The General Counsels of the Federal Reserve, the OCC, and the FDIC ("the General Counsels") stated that they appreciate the efforts of the SEC reflected in the proposed rules as well as the opportunity provided to discuss how the Interim Final Rules would affect the activities and customer relationships of banks.[16]

Finally, one commenter noted that the proposing Release included a discussion of the background of the GLBA.[17] This commenter acknowledged that the primary purpose of the federal securities laws is to protect investors and that the primary purpose of the federal banking laws is to protect the solvency of banks. The Commenter, however, stated that federal banking laws, "implement the banking laws" purpose of protecting investors."[18]

We note, however, that the federal securities laws are unique in providing a comprehensive, uniform, and coordinated system of regulation of securities activities under the oversight of a single expert regulator with the protection of investors as its overarching purpose.[19]

The remainder of the comments dealt with specific issues related to the proposal and will be discussed in connection with the final rules, below.

IV. Dealer Activities and the Dealer/Trader Distinction

Exchange Act Section 3(a)(5) defines a "dealer" generally as a person that is "engaged in the business of buying and selling securities" for its own account through a broker or otherwise, and excepts persons, whether banks or non-banks, who do not buy or sell securities "as part of a regular business."[20] Therefore, banks, like other active participants in the securities markets need not register unless they satisfy these criteria.

As developed over the years, the dealer definition has been interpreted to exclude "traders." The dealer/trader distinction recognizes that dealers normally have a regular clientele, hold themselves out as buying or selling securities at a regular place of business, have a regular turnover of inventory (or participate in the sale or distribution of new issues, such as by acting as an underwriter[21]), and generally provide liquidity services in transactions with investors (or, in the case of dealers who are market makers, for other professionals).[22]

The question of whether a bank acts as a "dealer" that must register with the Commission therefore turns upon a two-stage analysis. The first stage of the analysis, which is the general "dealer/trader" distinction,[23] focuses on two factual questions: (1) Whether the bank is "buying and selling securities" for its own account; and (2) whether the bank is "engaged in the business" of that activity "as part of a regular business." A bank would not be a dealer unless both of those factual tests are met. The second stage of the analysis focuses on whether the bank can take advantage of bank-specific transactional exceptions or exemptions from the definition of dealer. If all of the bank's securities activities fall within one or more of those bank-specific exceptions or exemptions, the bank does not have to register as a broker-dealer.

We received two comments on the dealer/trader analysis that we set forth in the proposing Release.[24] One commenter stated: "The Release also recognized the customary distinction under the securities laws between a "dealer" and a "trader," observing that "banks may have a legitimate need to, on occasion, lend or borrow securities on their own behalf for hedging or for other reasons' and that, in such circumstances, "they should be subject to the same dealer/trader distinction that applies to all other market participants." We agree wholeheartedly with all of these statements."[25]

[13] One comment letter was received in an unsigned and incomplete form.

[14] *See* the First Tennessee Letter, the Coalition of Banks' Letter, the Commerce Banc Letter, the ICBA Letter, the IIB Letter, the ABA/ABASA Letter, the NYCH Letter, the NASAA Letter, and the CalPERS Letter.

[15] *See* the Coalition of Banks' Letter, the NYCH Letter, the CalPERS Letter, the ICBA Letter, the NASAA Letter, the IIB Letter, and the ABA/ABASA Letter.

[16] *See* the General Counsels' Letter.

[17] *See* the NYCH Letter.

[18] *Id.*

[19] Among the unique investor protections provided by the federal securities laws are:

(1) Uniform qualifications and testing requirements, including continuing education, of the registered representative sales force.

(2) Explicit supervision of sales personnel through liability that is imposed on a registered broker-dealer and its supervisory personnel under statutory provisions addressing responsibility for "failure to supervise" and "controlling person liability." *See* Exchange Act Sections 15(b)(4)(E) and 20 [15 U.S.C. 78o(b)(4)(E) and 78t(a)]. These provisions hold broker-dealers and broker-dealer supervisory personnel responsible for the conduct of line personnel.

(3) Membership in the Securities Investor Protection Corporation (SIPC), which provides insurance in the event of broker-dealer insolvency. Missing securities and cash of investors are guaranteed up to $500,000, including a maximum of $100,000 for cash claims. Transactions with affiliates of SIPC insured broker-dealers, such as banks, are not covered by SIPC.

(4) Self-Regulatory Organization rules governing broker-dealer sales practices aimed at protecting investors, as well as other market-oriented rules aimed at fostering fair and competitive securities markets.

See generally Statement of the U.S. Securities and Exchange Commission Concerning Bank Securities Issues to the Subcommittee on Oversight and Investigations, Committee on Commerce, U.S. House of Representatives Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning Financial Modernization Legislation, Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate (February 24, 1999).

[20] Exchange Act Section 3(a)(5) [15 U.S.C. 78c(a)(5)]. *See also* Proposing Release at 67 FR 67498.

[21] The term "underwriter" is defined in Section 2(a)(11) of the Securities Act of 1933 [15 U.S.C. 77b(a)(11)]. In determining whether a bank is acting as an underwriter when it undertakes particular securities activities, the Commission is not expressing any views on whether those activities would constitute "underwriting" for purposes of Section 16 of the Glass-Steagall Act. The Commission wishes to emphasize that the determination of dealer status with respect to securities transactions, including those that do not involve a public offering, must be made by reference to the federal securities laws. It is the Commission's view, however, that the fact that an offering is exempt from registration under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a, *et seq.*] does not necessarily affect the status of a participant in that offering as an "underwriter", as defined in Securities Act Section 2(a)(11). Furthermore, in general the determination of broker or dealer status under the Exchange Act primarily depends on the broader definitions of "purchase" and "sale." *See* Exchange Act Section 3(a)(13) and 3(a)(14) [15 U.S.C. 78c(a)(13) and78c(a)(14)].

[22] *See, e.g.*, Rel. No. 34–11742 (October 5, 1975) (noting that a bank might be subject to registration as a municipal securities dealer if it engaged in underwriting, maintained a trading account or carried a dealer inventory, advertised itself as a dealer or otherwise held itself out as a dealer).

[23] A person that is buying securities for its own account may still not be a "dealer" because it is not "engaged in the business" of buying and selling securities for its own account as part of a regular business. *See generally* L. Loss & J. Seligman, Securities Regulation, §§ 8–A–2 and 8–A–3 nn.115 and 143 (3d ed. 2001).

[24] *See* the NYCH letter and the Coalition of Banks' letter.

[25] *See* the NYCH Letter.

Our dealer/trader discussion was meant to give guidance on the underlying principles that should be applied to any factual situation.[26] The question of whether a bank acts as a dealer under the securities laws is entirely separate from the question of whether it acts as a dealer under the banking laws, and it is possible for a bank to be a "dealer" under the securities laws but not under the banking laws. A bank therefore should look to the securities laws and the Commission's rules and interpretations in conducting its analysis under the Exchange Act.[27]

The other commenter asked whether the failure to meet a condition of a statutory exception or Commission exemption was sufficient reason to presume dealer activity.[28] A bank has flexibility when it analyzes whether its securities activities would require it to register with the Commission as a dealer. As we stated in the proposing Release, as an analytical matter, a bank may opt first to consider whether its proprietary securities purchases and sales cause it to be "engaged in the business" of buying and selling securities for its own account "as part of a regular business." If the bank meets that part of the test, then the bank would have to consider whether those securities activities fall within one of the bank-specific transaction exceptions or exemptions from the dealer definition in Exchange Act Section 3(a)(5). Alternatively, a bank may simply analyze whether its proprietary securities purchases and sales fall within an exception or exemption from Section 3(a)(5). If all of the bank's securities activities fall within one or more exceptions or exemptions from the dealer definition, then the bank could avoid having to determine separately whether it satisfies the "engaged in the business" component of the definition. A bank that relies on a transaction exception or an exemption must meet all of the terms of that exception or exemption in order to claim it.

Finally, we note that our analysis of what constitutes "dealer" activity has not changed for persons that are not banks merely because banks have specific transactional exceptions and exemptions. These bank exceptions and exemptions provide banks with legal certainty for transactions conducted in accordance with the terms of these exceptions and exemptions. The bank-specific exceptions and exemptions from the definition of "dealer" for specific products or transactions are independent of the question of whether a person would satisfy the general definition of "dealer" in the first instance.

In general, the bank dealer exceptions apply to transactions in specified products and contain limiting conditions. Some of these bank exceptions and exemptions are more restrictive than others. For example, while some bank dealer exceptions permit a bank to buy and sell securities, the asset-backed transactions exception only permits a bank to issue and sell securities through a grantor trust or other separate entity to qualified investors.[29] In addition, the investment transactions exception only permits the bank to buy or sell securities "for investment purposes" for its own account or in the accounts for which it acts as a trustee or fiduciary.[30]

In sum, as a bank considers its securities activities, it must evaluate the totality of these activities to determine if they are permissible under banking law, meet the definition of dealer (or broker) activities under the securities laws, and are excepted or exempted from the dealer (or broker) registration requirements under the Exchange Act.[31]

V. Discussion of Comments and Adoption of "Dealer" Rules

The GLBA provides four exceptions to banks from the definition of "dealer." Each of these exceptions permits a bank to act as a dealer with respect to specified securities products if the bank complies with the enumerated statutory conditions. The GLBA bank "dealer" exceptions are outlined briefly below.[32]

- *Investment transactions:* permits banks to buy and sell securities for investment purposes for the bank and in its customers' trustee and fiduciary accounts.
- *Permissible securities transactions:* permits banks to buy and sell exempted securities, certain Canadian government obligations, and Brady bonds.
- *Identified banking products:* permits banks to buy and sell certain "identified banking products," as defined in Section 206 of the GLBA.
- *Asset-backed transactions:* permits banks through a grantor trust or other separate entity to issue and sell to qualified investors certain asset-backed securities representing obligations predominantly originated by a bank, an affiliate of the bank other than a broker-

[26] We have given recent guidance on what constitutes "dealer" activity. *See* OTC Derivatives Dealers, Release No. 34–40594, Section II.A.1., n. 61, 63 FR 59362 at 59370 (November 3, 1998). As we explained with respect to a group of derivative dealers that engage in limited activities:

[E]xcept to the extent expressly permitted under the rules and rule amendments, an OTC derivatives dealer may not engage directly or indirectly in any activity that may otherwise cause it to be a "'dealer'" as defined in Section 3(a)(5) of the Exchange Act (15 U.S.C. § 78c(a)(5)). This includes, but is not limited to, without regard to the security, (1) purchasing or selling securities as principal from or to customers; (2) carrying a dealer inventory in securities (or any portion of an affiliated broker-dealer's inventory); (3) quoting a market in or publishing quotes for securities (other than quotes on one side of the market on a quotations system generally available to non-broker-dealers, such as a retail screen broker for government securities) in connection with the purchase or sale of securities permitted under Rule 15a–1; (4) holding itself out as a dealer or market-maker or as being otherwise willing to buy or sell one or more securities on a continuous basis; (5) engaging in trading in securities for the benefit of others (including any affiliate), rather than solely for the purpose of the OTC derivatives dealer's investment, liquidity, or other permissible trading objective; (6) providing incidental investment advice with respect to securities; (7) participating in a selling group or underwriting with respect to securities; or (8) engaging in purchases or sales of securities from or to an affiliated broker-dealer except at prevailing market prices.

[27] Of course, a bank also should continue to determine whether any proposed securities activity is permitted under banking law, and should consult its appropriate Federal banking agency, if necessary, to assist it in that analysis.

[28] *See* the Coalition of Banks' letter. This commenter also urged the Commission to confirm that in analyzing whether a particular activity undertaken by a non-bank person, the existence or non-existence of a GLBA bank exception or exemption for that activity is not relevant to the analysis of whether that activity would constitute "broker" activity. Although we believe that this statement is generally true, we will address "broker" activity later when we propose amendments to the Rules pertaining to banks' exceptions from the definition of broker. In addition, this commenter noted that because so much of the dealer/trader distinction is set forth in the context of the Commission staff's no-action and interpretive letters, it would be helpful for the Commission to note the existence of these letters, clarify that these letters are still valid, and confirm that the proposing Release was intended to summarize, but not to modify, the traditional "dealer/trader" distinction. Because the Commission staff's letters have been written over the seven decades of the Commission's existence and are based on specific factual situations, we do not believe that it is appropriate to re-visit these letters in the context of adopting these amendments to the Rules.

[29] *See* Exchange Act Section 3(a)(5)(C)(iii). [15 U.S.C. 78c(a)(5)(C)(iii).]

[30] *See* Exchange Act Section 3(a)(5)(C)(ii). [15 U.S.C. 78c(a)(5)(C)(ii).]

[31] A bank that contemplates a new securities activity may also seek an exemption or no-action relief from the Commission. Exchange Act Section 36 [15 U.S.C. 78mm] authorizes us to exempt any person, security, or transaction from the provisions of the Exchange Act, to the extent that such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors. We authorized the Director of the Division of Market Regulation to consider, on a case-by-case basis, individual requests for exemptive relief from banks, savings associations, and savings banks. Exchange Act Rule Rule 30–3 [17 CFR 200.30–3(a)(72)]. In appropriate circumstances, the staff also may provide guidance in the form of no-action letters. *See* Release No. 33–5127 (January 25, 1971). *See also* Release No. 33–6279 (December 5, 1980).

[32] This outline is a summary. It does not describe the exceptions in full. *See* Exchange Act Section 3(a)(5). [15 U.S.C. 78c(a)(5).]

dealer, or a syndicate in which the bank is a member for some types of products.

With respect to the "dealer" exceptions, the Rules defined terms found in the asset-backed transactions exception and provided an exemption for a *de minimis* number of riskless principal transactions. In the proposing Release, we proposed amendments to those definitions as well as to the exemption for a *de minimis* number of riskless principal transactions. We also proposed a new exemption for securities lending transactions. The changes we have made in response to comments are discussed below.

A. Rule 3a5–1—the De Minimis Exemption for Riskless Principal Transactions

In the Rules, the Commission provided an exemption that permits riskless principal transactions[33] as well as brokerage transactions to be counted under the 500-transaction limit.[34] The proposed amendment would permit a riskless principal transaction, even if it involves two separate counterparties, to count as only one transaction against the annual 500-transaction limit.

1. Discussion of Comments Received on the Amendment to Rule 3a5–1—the De Minimis Exemption

Only two commenters addressed this exemption.[35] Both commenters commended the Commission for proposing to count the buy and sell components of a "riskless principal" transaction as one transaction for purposes of the *de minimis* exemption.[36]

2. Amendment to Rule 3a5–1—the De Minimis Exemption

After considering the comments, we are adopting this amendment without substantive change.[37] We believe that this amendment will simplify the rule and make it easier for banks to understand and apply its terms to a small annual number of riskless principal securities transactions. Thus, under Rule 3a5–1, a riskless principal transaction, even if it involves two separate counterparties, would count as only one transaction against the annual 500-transaction limit.[38]

B. Rule 3b–18—Definition of Terms Used in Asset-Backed Transaction Exception to Dealer Registration

The GLBA asset-backed exception provides that a bank may engage in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any of these obligations predominantly originated by the bank, an affiliate of the bank other than a broker-dealer, or a syndicate in which the bank is a member.[39] As we explained when we adopted the Rules, this statutory exception only allows banks to *issue and sell* asset-backed securities to qualified investors through a grantor trust or other separate entity. It does not allow banks to *deal in* asset-backed securities. In other words, this exception is not broad enough to permit banks to regularly purchase and sell these securities in the secondary market.[40]

Exchange Act Rule 3b–18 defines terms used in the asset-backed transactions exception to clarify the parameters of this exception. In particular, Rule 3b–18 defines the terms: "affiliate," "consumer-related receivable," "member of a syndicate of banks," "obligation," "originated," "pool," "predominantly originated," and "syndicate of banks." After consulting the banks that engage in this business and considering their business practices, we proposed amendments to some of the definitions of terms used in the asset-backed transactions exception.

In particular, we proposed expanding the definition of "originated" in Rule 3b–18(e) by considering obligations that a bank initially approves and underwrites, or agrees to purchase, to be "originated" by the bank as long as the bank meets two conditions. First, the obligation must conform to the bank's underwriting standards or be evidenced on the bank's documents. This requirement is intended to ensure that the bank and the entity from which it obtains the loan have an established arrangement prior to the time the loan is made to either use the bank's underwriting standards or documentation prepared by the bank. Second, the bank must fund the obligation in a timely manner, not to exceed six months after the obligation is created.

As we explained in the proposing Release, a bank should be able to use loan origination channels such as automobile dealers, mortgage companies, and other banks, even though the bank does not "make and fund" the obligation at the exact time that the obligation is created. Conversely, a bank that purchases an obligation that does not meet the conditions of this exemption would not have "originated" the particular obligation for the purpose of meeting the test that the obligations in the pool backing an issuance of securities were predominately originated by the bank and its affiliates.

Rule 3b–18(g) defines "predominantly originated" so that a bank may engage in the issuance or sale of asset-backed securities without registration as a dealer if at least 85% of the obligations underlying the securities were originated by the bank or its affiliates, other than its broker-dealer affiliates, or any permitted syndicate of which the bank is more than an insignificant member. Specifically, the bank, its affiliates, or any such syndicate must

[33] "Riskless principal" transactions are generally described as trades in which, after receiving an order to buy (or sell) from a customer, the broker-dealer purchases (or sells) the security from (or to) another person in a contemporaneous offsetting transaction. *See* Exchange Act Rule 10b–10(a)(2)(ii)(A) [17 CFR 240.10b–10(a)(2)(ii)(A)]; Release No. 34–33743 (Mar. 9, 1994) at n.11.

Under the securities laws, riskless principal transactions are dealer activity. One commenter urged the Commission to adopt the position that riskless principal transactions are agency transactions and suggested that the Commission bring its views into accord with long-held banking practice. *See* the ICBA Letter. Because the securities laws' interpretations of riskless principal transactions are also long-standing and specifically designed for the protection of investors, we decline to adopt the banking law view. We note that the statutory bank exceptions from the definitions of broker and dealer are limited by their terms to the statutory language, and do not extend to transactions that are the legal or economic equivalent of the statutory exceptions.

[34] Exchange Act Section 3(a)(4)(B)(xi) [15 U.S.C. 78c(a)(4)(B)(xi)] excepts a bank from the definition of broker if it effects no more than 500 securities transactions per calendar year, other than transactions that qualify for one of the other statutory exceptions. A transaction in which a bank is acting as an agent for a customer would count as one transaction toward the 500-transaction limit. The GLBA provisions did not extend this *de minimis* exception to dealer transactions.

[35] *See* the ICBA Letter and the IIB Letter.

[36] *Id.*

[37] We are, however, making a technical amendment to the rule to conform to a technical comment we received on the securities lending exemption. Because of that comment, we are changing the language of this rule. Instead of a bank being exempt, "solely for engaging in," it will be exempt from the definition of the term dealer "to the extent that it engages in or effects," riskless principal transactions. We are persuaded that this language more clearly sets forth the limited conduct permitted under the exemption. Although the comment was directed only to the securities lending exemption, we believe that the language of the exemptions should be consistent and are adopting this rule with this amendment.

[38] If, however, a bank acts as an intermediary between one counterparty and multiple counterparties by arranging multiple transactions, the bank must count each of the transactions on the side of the intermediation that involves the largest number of transactions as a separate transaction against the annual 500 transaction-limit.

[39] Exchange Act Section 3(a)(5)(C)(iii) [15 U.S.C. 78c(a)(5)(C)(iii)].

[40] 66 FR 27760 at 27785 (May 18, 2001).

have originated 85% of the obligations in any pool as measured by the value of the obligations. We did not change the 85% requirement for the purpose of the asset-backed transaction exception. To enhance clarity, however, we proposed a change to the definition of "predominantly originated" in Rule 3b–18(g) to expressly set forth the meaning of the term in the context of a syndicate of banks. Thus, the banks, and their affiliates other than broker-dealer affiliates, participating in any such syndicate must have originated 85% of the obligations in any pool as measured by the value of the obligations. We received no comments on this change.

To enhance clarity, we also proposed to substitute two separate definitions for the definition of "member of a syndicate of banks" found Rule 3b–18(c). In particular, we first proposed to define "member" as it relates to the term "syndicate of banks" in proposed Rule 3b–18(c) to make clear that the individual banks and their affiliates other than their broker or dealer affiliates, originate the obligations, rather than the syndicate. This change recognizes that the syndicate of banks only comes together to issue and sell the obligations. Second, we proposed to modify the definition of "syndicate of banks" in Rule 3b–18(h) to mean a group of banks that acts jointly, on a temporary basis, to issue securities backed by obligations originated by each of the individual banks and their affiliates other than their broker or dealer affiliates.

We proposed to keep the requirement found in Rule 3b–18(c) that when a syndicate of banks issues asset-backed securities through a grantor trust or other separate entity, each bank and its affiliates other than its broker or dealer affiliates selling the securities, and thus acting as a dealer in the transaction, must have originated at least 10% of the value of the pool of obligations backing the securities. This 10% requirement is applicable only to the bank or banks that actively sell the securities backed by the pool because these are the only banks that need to use an exception from the definition of dealer.[41] We believe that it is reasonable as well as in accordance with the legislative history to retain this requirement for the bank or banks that need the exception because they sell the securities secured by the pool of obligations originated by banks that are members of a syndicate of banks. We did, however, propose a change to the rule to clarify that the affiliates of the banks other than broker or dealer affiliates also may originate the obligations.

1. Discussion of Comments Received on the Amendment to Rule 3b–18—Definition of Terms Used in Asset-Backed Exception to Dealer Registration

We received four comments regarding the proposed amendments to Rule 3b–18.[42] One commenter supported the proposed amendments and specifically agreed with our clarification of when a bank "predominantly originates" obligations.[43] One commenter stated that requiring a bank to originate at least 85% of the loans under an asset-backed transaction is likely to be a barrier to community banks' ability to sell loans on the secondary market and recommended that we adopt a definition that would allow a bank to originate only a simple majority (*i.e.* 51%) of the underlying loans.[44]

Two commenters stated that the use of the term "initially" in the definition of "originate" could be interpreted to require a correspondent bank to enter into a firm contractual commitment to sell a loan prior to funding for the loan to be considered "originated" by the bank utilizing the asset-backed transactions exception.[45] These commenters suggested eliminating the word "initially" or changing the term "provided that" to "as evidenced by" to indicate that the test would be met by fulfilling the conditions. Alternatively, they suggested that the Commission provide guidance as to the meaning of "initially approving and underwriting" and "initially agreeing to purchase" to clarify when the approval or agreement must be in place and whether a contractual commitment must be in place to fund a loan for the loan to be considered originated by the purchasing bank.

2. Amendments to Rule 3b–18—Definition of Terms Used in Asset-Backed Exception to Dealer Registration

In the proposing Release, we noted we had been informed that very few banks issue and sell asset-backed securities without employing a registered broker-dealer. Indeed, we had identified only two banks that conduct this business without a broker-dealer. Although we requested comment on whether any additional banks engage in issuing and selling asset-backed securities without utilizing a broker-dealer, we received no comments on this question.

Based on the comments received, we expect that the amendments we are adopting will permit the banks that currently issue and sell asset-backed securities directly to continue to do so under the terms of the exception without having to employ a broker-dealer. Thus, while not necessarily covering all hypothetical business practices, the proposed amendments appear to accommodate current business practice. We are, therefore, adopting the definitions as proposed.

Although we are sensitive to the concerns expressed by the two commenters regarding the definition of "originated," we continue to believe that to meet the test of having "originated" a loan, a bank must have some established relationship to the entity making the loan at the time the loan is initially made. The proposed definition does not require the bank to have a binding contractual relationship with the person making the loan at the time the loan is made. Rather, the rule requires the bank to have some established relationship to the entity making the loan. In addition, the loan must be made using the underwriting standards of the bank. We believe the proposed definition of the term "originated" permits a bank to have some flexibility in the way that it structures its relationship to the borrower and to the person who deals directly with the borrower. We believe that the proposed definition of the term "originated" appropriately balances the needs of banks for flexibility while also giving effect to the statutory requirement that the bank and its affiliates predominantly originate the loans backing the securities.

With respect to the 85% test, as we explained in the proposing Release, we included this requirement to define "predominantly originated" because the test closely tracks the language of the statute.[46] We did not propose changing

[41] We proposed to retain this requirement because the legislative history indicates that each bank selling the securities should be more than an insignificant member of the syndicate. The legislative history suggests that threshold is met when a bank together with its affiliates other than broker or dealer affiliates provided at least 10% of the obligations in the pool. The legislative history states that, "[t]he Committee expects this provision shall be interpreted so that the bank will [have] not less than ten percent of the assets in the syndicate or pool of obligations." H.R. Rep. No. 106–74, pt. 3, at 171 (1999).

[42] *See* the ICBA Letter, the First Tennessee Letter, the General Counsels' Letter, and the NASAA Letter.

[43] *See* the NASAA Letter.

[44] *See* the ICBA Letter.

[45] *See* the First Tennessee Letter and the General Counsels' Letter.

[46] In defining the term "predominantly," which modifies the term "originated," we looked to other sections of the GLBA in which the term is used. Section 103(n) of the GLBA uses the term "predominately" to modify "financial" and to allow analysis of whether nonfinancial activities and affiliations may be retained. Bank Holding Company Act Section 4(n)(2) [12 U.S.C. 1843(n)(2)].

Continued

this test, and only one trade group urged us to relax this requirement. Because the definition closely tracks the statutory provision, we are retaining the current test.

We received no comments on the technical, clarifying changes that we proposed. First, we revised the definition of "predominantly originated" in Rule 3b–18(g) to expressly set forth the meaning of the term in the context of a syndicate of banks. Second, we substituted the definitions of "member" as it relates to the term "syndicate of banks" for the definition of "member of a syndicate of banks" found in Rule 3b–18(c). Third, we proposed a change to Rule 3b–18(c) to clarify that the affiliates of banks other than broker-dealer affiliates, also may originate the obligations in a pool of obligations issued by a syndicate of banks. We are adopting each of these amendments without substantive change.[47]

C. Rule 15a–11—Exemption From the Definitions of "Broker" and "Dealer" for Banks Engaging in Securities Lending Transactions

Institutional investors often place securities in custody with banks. These custodian banks effect and administer securities loans in return for an agreed fee. Banks also may engage in securities lending transactions when they do not have custody of the securities. A non-custodial securities lending arrangement permits a customer to divide custody and securities lending management between two expert entities. For example, a custodian may be selected for efficiency and low cost, while a lending agent may be selected for its ability to maximize the profitability of the portfolio.

Although banks play a role in both custodial and non-custodial securities lending transactions, the GLBA bank exceptions to the definitions of broker and dealer provide only one exception for securities lending and borrowing transactions. Exchange Act Section 3(a)(4)(B)(viii) addresses securities lending by custodian banks as an exception to the definition of broker.[48] Under paragraph (cc) of this section, a bank is permitted, without being considered a broker, to effect securities lending or borrowing transactions by custodian banks with or on behalf of customers in two situations: (1) As part of the services provided to safekeeping and custody customers; and (2) when facilitating the transfer of funds or securities as a custodian or a clearing agency in connection with the settlement of customers' transactions in securities.

We proposed the exemption in Rule 15a–11 in part because we had been advised that the existence of this limited statutory bank exception from the definition of broker creates uncertainty for banks that may engage in securities lending, or borrowing transactions without having custody of the underlying securities or in situations where a bank might meet the definition of dealer under the securities laws. To provide legal certainty to banks engaging in securities lending transactions, we proposed to add an exemption from the definition of broker for banks engaging in non-custodial securities lending activities as well as an exemption from the definition of dealer for banks engaging in certain custodial and non-custodial securities lending activities. This exemption was also intended to enhance legal certainty for banks that have custody of collateral or that have custody of the securities subject to a lending arrangement for less than the entire period of the stock loan.

Industry representatives advised our staff that banks' primary role in securities lending transactions, whether operating with or without custody of the securities, is to act in an agency capacity.[49] Less frequently, banks may engage in securities lending as principal while acting as a conduit between the parties.[50] We did not propose extending the securities lending exemption to a bank borrowing securities for, or lending from, its own accounts, except as a conduit lender. For the purposes of this exemption, we proposed to define the term conduit lender as a bank that borrows (or loans) securities, as principal, for its own account, and contemporaneously loans (or borrows) the same securities, as principal, for its own account.[51] When banks conduct conduit transactions, they are conducting principal transactions that involve principal risk, including reliance by the counterparty on the creditworthiness of the bank.[52] We proposed that a bank that qualifies under our definition of a conduit lender at the commencement of a transaction would continue to qualify as long as the original securities lending transaction remains outstanding, even though substitutions of collateral may occur on the securities borrowing side of the transaction.

The proposed exemption required a written securities lending agreement, which would be any contract to conduct securities lending transactions on behalf of a qualified investor. In connection with a securities lending transaction, a bank may select and negotiate with a borrower and execute, or direct the execution of, the loan with the borrower; receive, deliver, or take custody of loaned securities; receive, deliver, or take custody of collateral; provide mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending transaction; reinvest, or direct the reinvestment of, cash collateral; or indemnify the lender of securities with respect to various matters.

We proposed to limit the exemption to transactions with "qualified investors," as defined in Exchange Act Section 3(a)(54).[53] We proposed a requirement that a bank deal with a qualified investor on both sides of the transaction as a condition of this exemption because we are making this exemption available for banks' current securities lending business. Broker-dealers are currently the most frequent borrowers of securities. We understand that borrowers of securities that are not qualified investors do not directly borrow securities from noncustodial banks. Any borrowers of securities that do not meet the qualified investor test generally borrow securities through

Section 103(n)(2) of the GLBA expressly provides that a firm is predominantly engaged in financial activities when at least 85% of the annual gross revenues of the consolidated company derive from financial activities, excluding any revenue from banks. To be consistent, we applied the same numerical test found in Section 103(n)(2) of GLBA for loan product originations for the purpose of the asset-backed securities exception from the definition of dealer.

[47] We are, however, making a technical amendment to paragraph (e) of the rule to conform the language in the definition of "originate" to include obligations of an affiliate of a bank, other than a broker-dealer affiliate within the broader reading of the term.

[48] 15 U.S.C. 78c(a)(4)(B)(viii).

[49] Under banking law, with some limited exceptions, banks are not permitted to own equity securities.

[50] *See* the Coalition of Banks' Letter, which stated that by confirming that banks may continue to engage in securities lending as riskless principals, the proposed exemption will help ensure that institutional lenders can still achieve the benefits of credit intermediation and anonymity when lending through banks.

[51] This conduit role is similar to a riskless principal transaction, but does not involve activities that could be characterized as running a matched book. Running a matched book of repurchase agreements or other stock loans is a dealer activity because the "book running dealer" holds itself out as willing to buy and sell and thus as engaged in the business of buying and selling securities.

[52] This is not meant to indicate that an agent for an undisclosed principal would not also have direct personal liability to the parties with whom it dealt because the counterparty would be relying on the credit of the agent, rather than the principal. *See* Restatement (Second) of Agency § 322 (1958).

[53] *See* discussion at Section D, *infra*.

intermediaries that would be qualified investors.

In the proposing Release, we specifically acknowledged that engaging in securities lending transactions involves taking risks that require effective internal controls, and highlighted the fact that we were not proposing a requirement that banks meet the conditions that are applicable to broker-dealers engaging in stock lending. We proposed an exemption for banks because we believe that it will assist institutional investors in obtaining stock loan services from banks that do not act as their custodians and because it would cause less disruption to the market if banks were permitted to continue to engage in these transactions.

1. Discussion of Comments Received on the Amendment to Rule 15a–11—Exemption From the Definitions of "Broker" and "Dealer" for Banks Engaging in Securities Lending Transactions

Several commenters strongly supported the Commission for proposing the adoption of the exemption for securities lending to allow banks to continue engaging in custodial and non-custodial securities lending activities.[54]

One of these commenters specifically urged the Commission to adopt the securities lending exemption to provide banks with greater legal certainty in connection with their activities as custodians, clearing agents, and noncustodial agents or intermediaries, and in facilitating securities lending and borrowing transactions.[55] The same commenter also stated that by confirming that banks may engage in securities lending transactions regardless of whether they are also custodians or clearing agents, the proposed exemption will help ensure that institutional investors can continue to "unbundle" securities lending services from other bank services and obtain such services in the manner that best addresses their needs.[56]

The General Counsels, however, expressed the view that an SEC-granted exemption for non-custodial agency activities is unnecessary because the custody exception in Exchange Act Section 3(a)(4) is sufficiently broad to encompass situations where a bank acts as a non-custodial agent in securities lending transactions.[57] They stated that the statute "protects securities lending services that a bank provides as agent and 'as part of' the bank's custodial and safekeeping activities. They also stated that both the custodial and non-custodial securities lending services offered by banks have grown out of, and remain integrally related to, the custody business of banks and, thus, are offered 'as part of' customary custody services."[58]

We disagree with the interpretation of the Exchange Act bank exceptions advanced in this comment letter. The exceptions found in the GLBA and the additional exemptions granted by the Commission apply to specific, qualifying transactions that permit banks to engage in these transactions without having to register as broker-dealers under the securities laws. The exceptions found in the GLBA and the additional exemptions granted by the Commission are limited by their terms to the transactions listed and do not extend to transactions that are related, incidental, or the economic equivalent of the transactions listed in an exception or exemption. They are also not activity-based exceptions and exemptions that should be read to include any related transactions that might be performed by the same employees that engage in transactions that are covered within the terms of the exceptions or exemptions.

Specifically, paragraph (cc) of Exchange Act Section 3(a)(4)(B)(viii) limits securities lending to two situations.[59] A bank is permitted, without being considered a broker, to effect securities lending or borrowing transactions: (1) As part of customary banking activities provided to safekeeping and custody customers; and (2) when facilitating the transfer of funds or securities as a custodian or a clearing agency in connection with the settlement of customers' transactions in securities as part of customary banking activities.

In response to the exemption we proposed, General Counsels advanced a general argument that no securities lending exemption was necessary, except with respect to conduit transactions. This argument fails to address the limits that Congress imposed on securities lending transactions within the custody exception, or to give effect to all of the terms found in the statutory provisions. Thus, we believe that this argument disregards the plain meaning of the statute.

Moreover, the argument advanced by the General Counsels, even if we were to accept it, would not give banks legal certainty for engaging in securities lending transactions because the argument fails to address all of the uncertainty that banks have identified. For example, their interpretation would only permit a bank to be excepted from the definition of broker without having custody of the underlying securities when it invests cash collateral pledged in connection with a securities lending transaction. Their interpretation would not address any other actions the bank might take in connection with the securities lending transaction, and also would not address any transactions that would not be excepted from the bank definition of dealer. In contrast, we believe that our interpretation gives effect to all of the statutory provisions, and that the exemption we are adopting will permit banks to continue to engage in securities lending transactions with the legal certainty they requested.

Two commenters agreed with limiting the exemption to transactions with qualified investors.[60] In particular, a pension fund in support of the exemption stated that: "[a]s a supplier of securities for lending, CalPERS believes that a leveling of the playing field for non-custodial banks should lead to increased competition between custodial and non-custodial banks, expanded liquidity, greater trading efficiencies, and lower borrowing and execution costs. As a major institutional investor, CalPERS believes the limitation of the exemption to "qualified investors" ensures that the regulatory gap between banking law (concerned about bank solvency) and securities law (concerned about investor protection) has been successfully narrowed."[61] The state securities administrators also specifically agreed with limiting the securities lending exemption to "qualified investors."[62]

The General Counsels, however, stated that they believed that an exemption for conduit lending activities is appropriate but should not be limited to qualified investors.[63]

Although they conceded that the securities lending market is institutional in nature, they stated that the proposed "qualified investor" restriction is inconsistent with the statutory framework and should be deleted

[54] *See* the Coalition of Banks' Letter, the NYCH Letter, the CalPERS Letter, the ICBA Letter, the NASAA Letter, the IIB Letter, and the ABA/ABASA Letter.

[55] *See* the Coalition of Banks' Letter.

[56] *See* the Coalition of Banks' Letter.

[57] *See* the General Counsels' Letter.

[58] *Id.*

[59] Exchange Act Section 3(a)(4)(B)(viii)(cc) [15 U.S.C. 78c(a)(4)(B)(viii)(cc)] provides that a bank may effect "securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb)" or invest "cash collateral pledged in connection with such transactions."

[60] *See* the CalPERS Letter and the NASAA Letter.

[61] *See* the CalPERS Letter.

[62] *See* the NASAA Letter.

[63] *See* the General Counsels' Letter.

because Congress did not place any such restriction on the statutory exception for securities lending.[64] Another commenter noted that the "qualified investor" requirement may limit the scope of securities lending activities that banks might otherwise engage in, but also indicated that it does not believe that there is a substantial amount of securities lending transactions conducted by banks in a non-custodial or non-clearing capacity with persons other than qualified investors.[65] In adopting this exemption, we plan to retain the requirement that securities lending transactions be conducted only with qualified investors.

We specifically asked banking regulators to advise us if the securities lending exemption would pose any risks that the Commission should address. Neither the banking regulators, nor any other commenter identified any risks that we should address. The General Counsels specifically stated that: "we do not believe there are any risks related to the securities lending activities of banks that the Commission needs to address in this rulemaking."[66]

We also requested comment on whether our choice not to impose conditions to the exemption that would require that banks conform to the standards applicable to registered broker-dealers that engage in securities lending transactions was appropriate.[67] Three commenters stated that no additional conditions were necessary and that the conditions applicable to broker-dealers should not be imposed on banks' securities lending transactions.[68] One of these commenters stated that any such conditions would create an unfair burden on banks and would be unnecessary due to the exemption's limit to transactions with qualified investors.[69] The General Counsels' Letter stated, "it would be unnecessary and inappropriate for the Commission to impose any additional restrictions on the securities lending activities of banks."[70] No commenters suggested that those conditions should be imposed on banks under this exemption.

One commenter agreed that securities lending should be conducted under a written agreement.[71] Some commenters suggested technical and other clarifications, or changes.[72] These specific suggestions will be discussed and responded to in the next section.

2. Amendment to Rule 15a–11—Exemption From the Definitions of "Broker" and "Dealer" for Banks Engaging in Securities Lending Transactions

We received a number of comments that requested technical changes to the language in the securities lending exemption. We agree that many of these changes will enhance the clarity of the securities lending exemption as well as the legal certainty afforded to banks. In addition, some of the comments requested that we expand the exemption in certain respects to give banks greater flexibility in conducting securities lending transactions. We also agree with many of these changes and are adopting a more flexible rule.

One commenter asked the Commission to confirm that term loans of securities are as "agreed by the parties" in Rule 15a-11(b).[73] We agree that term loans of securities would be considered as "agreed by the parties" under the exemption.

Two commenters urged the Commission to change the required form of the documentation in Rule 15a–11(a) as long as the bank is dealing with a "qualified investor."[74] These commenters argued that the availability of the exemption should not turn on the form of documentation used by the parties.[75] In their view, where a bank is acting as a conduit lender, it may not enter into a separate "agreement to provide securities lending services" with the lender. Instead, it may have two "securities lending agreements': one with the lender and one with the borrower. The terms of the agreement with the lender would normally include those items listed in the proposed exception that the parties deemed relevant. These commenters suggested that the bank would still, in effect, be providing securities lending services to the lender by borrowing securities in accordance with the securities lending agreement between the parties and in turn lending those securities to a third party.[76] We agree. We believe that it is unnecessary for a bank taking advantage of this exemption to develop a form of agreement solely to meet the terms of the wording of our exemption. Thus, we are eliminating the requirement that there be a securities lending agreement. We believe that in many instances, banks will have a securities lending agreement, especially for agency lending transactions, but we do not believe that it is necessary for us to make the existence of a securities lending agreement a condition of this exemption. We are, however, retaining the list of securities lending services that may be conducted in connection with a securities lending transaction within a definition of "securities lending services."

Two commenters urge that replacement transactions for a conduit lender should be permitted under this exemption.[77] One of these commenters states that "[p]ermitting a replacement transaction would maintain the bank's matched loan and borrow of securities."[78] We proposed an exemption that did not permit conduit lenders to replace transactions, because we believed that these bank conduit transactions should be riskless principal transactions as evidenced by being entered into contemporaneously. We considered limiting the number of substitutions of parties that could occur. Although we continue to have some reservations about the risk that we may be permitting banks to have a book of matched securities loans, we have become convinced that limiting the number of substitutions of parties that could occur would require banks to prepare additional documentation without necessarily limiting their dealer transactions. We continue to believe, however, that any substitution of parties to securities lending transactions should occur within one business day of the termination of the securities lending contract by the other party. We are, therefore, adopting this change to the rule.

We also proposed amendments providing only for substitutions of collateral on the securities borrowing side of the transaction. In re-evaluating the language of Rule 15a-11(d), however, we are deleting the words, "on the securities borrowing side of the transaction" to permit substitutions of collateral to occur on both sides of the securities lending transaction as suggested by one of the commenters.[79] We have been persuaded that we should permit a conduit lender to replace collateral on either side of a conduit transaction under this rule.

This same commenter stated that the position of the word "solely" in the context of the exemption may be confusing because it might be interpreted as attempting to narrow in certain respects the statutory custodial lending exception by imposing a restriction to "qualified investors."[80] This commenter asks that we replace "solely to engage in or effect" with "to the extent that it engages in or effects." We agree that the language suggested by the commenter avoids this ambiguity and have incorporated this suggestion into the final rule we are adopting today.[81]

Another commenter stated that the use of the word "solely" in the securities lending exemption could be read to mean that a bank may not provide any other services in connection with non-custodial securities lending transactions.[82] That commenter asked that we clarify that the securities lending exemption and fiduciary exception could both be used for the same client. Although both the exemption and the exception could be used for the same client, each transaction would have to meet all of the elements of one of them.[83]

Two commenters recommended adding the words "or on behalf of" prior to the words "qualified investor" in two instances in paragraph (a) with conforming language in paragraph (c) to more closely track the statutory language found in the custody exception.[84] We agree that the language suggested by these commenters avoids this ambiguity and have incorporated this suggestion in the final rule.

Two commenters recommended deleting the words "[e]xcept as otherwise provided in paragraph (d) of this section * * *" as an unnecessary reference to the definition of "conduit lender."[85] We agree that this technical suggestion would improve the clarity of the rule and have incorporated this suggestion in the final rule.

These same two commenters also made two other technical suggestions with which we agree. First, they recommended that we clarify that a bank may *direct* the receipt and delivery of loaned securities and collateral by third parties in Rule 15a–11(c)(2) and (3). Second, they suggested that we revise the rule language to refer to a bank *investing or directing* the investment of cash collateral, rather than to the reinvesting of such collateral in Rule 15a–11(c)(5).

In sum, we are adopting the exemption for securities lending, Rule 15a–11, with the technical changes described above. We continue to believe that, because it is limited to qualified investors,[86] the exemption is appropriate in the public interest and is consistent with the protection of investors.

D. Definition of "Qualified Investor"

Exchange Act Section 3(a)(54) expressly defines the term "qualified investor," and provides authority to the Commission by rule or order to expand the definition to include any other person, taking into consideration such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters.[87]

The definition of "qualified investor" was added to the Exchange Act by the GLBA and has application to several of the bank exceptions from broker-dealer registration, including:[88] (1) The broker exception for identified banking products when the product is an equity swap agreement;[89] (2) the dealer exception for identified banking products when the product is an equity swap agreement;[90] and (3) the dealer exception for asset-backed securities.[91] Under these exceptions, banks may sell certain securities to qualified investors.

Exchange Act Section 3(a)(54)(A) enumerates an extensive list of persons that are "qualified investors."[92] Some of these entities meet the definition by merely being certain types of entities, while other entities must both be a certain type of entity and meet an ownership and investment test. For example, Subsection (xi) of Section 3(a)(54)(A) provides that "any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $25,000,000 in investments" is a qualified investor.

In considering this definition, we first looked to Exchange Act Section 3(a)(9), which defines the term "person" to mean "a natural person, company, government, or political subdivision, agency, or instrumentality of a government."[93] We also looked to Investment Company Act Section 2(a)(8), which provides that the term "company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code or similar official or any liquidating agent for any of the foregoing, in his capacity as such."[94]

In light of these other definitions, for the purposes of the GLBA provisions in the Exchange Act, we interpreted the term "company" as used in the definition of "qualified investor" in subsection (xi) of Section 3(a)(54)(A) to have a broad meaning that encompasses types of entities other than those specifically listed in Section 3(a)(54)(A).

We asked for comment on our interpretation of this term. One

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[64] *Id.*

[65] *See* the Coalition of Banks' Letter.

[66] *See* the General Counsels' Letter.

[67] *See e.g.*, Rule 15c3–3(b)(3) [17 CFR 240.15c3–3(b)(3)].

[68] *See* the General Counsels' Letter, the NYCH Letter, and the Coalition of Banks' Letter.

[69] *See* the NYCH Letter.

[70] *See* the General Counsels' Letter.

[71] *See* the ICBA Letter.

[72] *See e.g.*, the Coalition of Banks' Letter and the NYCH Letter.

[73] *See* the Coalition of Banks' Letter.

[74] *See* the Coalition of Banks' Letter and the NYCH Letter.

[75] *Id.*

[76] *Id.*

[77] *See* the Coalition of Banks' Letter and the NYCH Letter.

[78] *See* the NYCH Letter.

[79] *See* the NYCH Letter.

[80] *Id.*

[81] For consistency, we made a similar change in the language of Rule 3a5–1.

[82] *See* the ABA/ABASA Letter.

[83] This issue arises only in the context of the "broker" exception for trust and fiduciary activities. The issue does not arise in the context of the "dealer" exception for fiduciary transactions because the "dealer" exception for trustee and fiduciary transactions only applies when the bank buys or sells securities for investment purposes for the bank, or in accounts for which the bank acts as a trustee or fiduciary. We note, however, that in giving meaning to the term "fiduciary" in Section 3(a)(5)(C)(ii), we look to the legislative history. The legislative history states that [Exchange Act Section 3(a)(5)] "excepts a bank from the definition of 'dealer' when it buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as trustee or fiduciary. This mirrors existing law distinguishing between investors and dealers, and is limited to the portfolio trading of the bank and accounts for which it makes investment decisions." H.R. Rep. No. 106–74, pt. 3, at 170–171 (1999).

[84] *See* the Coalition of Banks' Letter and the NYCH Letter.

[85] *See* the Coalition of Banks' Letter and the NYCH Letter.

[86] *See* additional discussion of "qualified investors" at Section D, *infra*.

[87] 15 U.S.C. 78c(a)(54)(A). Under this definition qualified investors include persons such as investment companies, banks, small business investment companies, any State sponsored employee benefit plan, institutional trusts, market intermediaries, and natural persons, corporations or partnerships that own and invest on a discretionary basis more than $25,000,000. 15 U.S.C. 78c(a)(54)(C) gives the Commission additional authority to define a "qualified investor."

[88] In addition to these three provisions, a participation in a loan, to be an "identified banking product," also must either be sold to: (1) A qualified investor; or (2) to other persons that have an opportunity to review and assess any material information regarding the borrower's creditworthiness and based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines. Thus, a bank utilizing the exceptions to broker and dealer registration to sell a participation interest would either have to sell such an interest to a qualified investor or undertake a more extensive factual assessment of the purchaser. *See* Section 206(a)(5) of Public Law 106–102 [15 U.S.C. 78c note] as incorporated into Exchange Act Section 3(a)(4)(B)(ix) [15 U.S.C. 78c(a)(4)(B)(ix)] and Section 3(a)(5)(C)(iv) [15 U.S.C. 78c(a)(5)(C)(iv)].

[89] Section 206(a)(6) of Public Law 106–102 [15 U.S.C. 78c note] as incorporated into Exchange Act Section 3(a)(4)(B)(ix) [15 U.S.C. 78c(a)(4)(B)(ix)].

[90] Section 206(a)(6) of Public Law 106–102 [15 U.S.C. 78c note] as incorporated into Exchange Act Section 3(a)(5)(C)(iv) [15 U.S.C. 78c(a)(5)(C)(iv)].

[91] Exchange Act Section 3(a)(5)(C)(iii) [15 U.S.C. 78c(a)(5)(C)(iii)].

[92] Subsections (i) through (xiv) of Section 3(a)(54)(A) list entities that are qualified investors.

[93] Exchange Act Section 3(a)(9) [15 U.S.C. 78c(a)(9)].

[94] Investment Company Act Section 2(a)(8) [15 U.S.C. 80a–2(a)(8)].

commenter urged caution in applying the expanded definition of "qualified investor" in all circumstances.[95] This commenter stated that while it may be appropriate to utilize a single definition of a "qualified investor" as a means to simplify compliance, the application should be limited to securities lending activities pending more careful and thorough analysis.[96] In contrast, three other commenters advocated using one interpretation of the definition of qualified investor.[97]

We believe that the simplicity of having one interpretation of the statutory definition of "qualified investor" outweighs any risk that it could be overbroad in other circumstances. Thus, we believe that it is appropriate to utilize this interpretation in all circumstances where the term is used in the GLBA exceptions. We continue, however, to apply the statutory requirements to the entities expressly listed in Exchange Act Section 3(a)(54)(A). For example, a government or political subdivision, agency, or instrumentality of a government is required to invest on a discretionary basis at least $50 million in investments in order to be considered a qualified investor.[98] The statutory requirement for these governmental entities would not be changed by this interpretation.

Similarly, any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, qualifies only if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser.[99] GLBA expressly limited the definition of "qualified investor" to these types of employee benefit plans, and this interpretation does not cover other types of employee benefit plans.

In the interest of clarity and legal certainty, two commenters also recommended that the Commission adopt a rule to implement its interpretation of the definition of a qualified investor.[100] We believe the Commission's interpretation suffices to enhance legal certainty for entities that are not as precisely described as others in the list of entities expressly listed as "qualified investors." It, therefore, is not necessary to adopt a general rule at this time.

In the context of the securities lending exemption, we are, however, revising the regulation so that the exemption encompasses not only securities lending transactions with or on behalf of any "qualified investor" (as that term is defined in Exchange Act Section 3(a)(54)(A) and interpreted above), but also securities lending transactions with or on behalf of any employee benefit plan that owns and invests on a discretionary basis not less than $25,000,000 in investments. Thus, we are amending Rule 15a-11 to add certain employee benefit plans that do not meet the terms of Exchange Act Section 3(a)(54)(A)(v).[101] We are making this change in response to a request by one of the commenters.[102] We believe that this addition to the exemption is appropriate. This addition will permit banks to engage in or effect securities lending transactions, and any securities lending services in connection with such transactions, with or on behalf of a person the bank reasonably believes to be a pension plan that, although it would not meet the qualitative standard set forth in paragraph (v),[103] may own and invest on a discretionary basis, not less than $25,000,000 in investments.[104]

Two commenters suggested that it would be helpful if the Commission would confirm that banks may enter into securities lending transactions with parties that they reasonably believe are "qualified investors." These commenters suggested that one non-exclusive means by which a bank should be able to reasonably conclude that a party is a "qualified investor" could be to obtain a representation to that effect by a party, unless reliance on that representation would not be reasonable under the circumstances.[105] After considering this suggestion, we have modified the definition of "qualified investor" within the context of the securities lending exemption to provide a reasonable belief standard.[106]

With regard to the places where the statutory provisions require that banks deal only with "qualified investors," we have reviewed the legislative history in this area, as well as the statutory language, and find no indication that it was Congress' intent to provide a reasonable belief standard with regard to transactions that are limited to qualified investors.[107] Although our exemptive authority would permit us to add a reasonable belief standard if we found that it is necessary or appropriate in the public interest, and consistent with the protection of investors,[108] we believe that this kind of a change should properly be made in a rule that has been subject to public notice and comment. Further, we believe that there are competing interests in this area that should be considered and that banks may be in a position to ascertain whether their customers meet the criteria of qualified investors so that they may engage in transactions that are restricted by statute to qualified investors. We also believe that we should consider whether banks should conduct the transactions that are limited by statute to qualified investors only with persons with which they have a sufficient relationship to know whether those persons are indeed "qualified investors." For all of these reasons, we will consider this question further to determine whether to propose a

[95] See the ICBA Letter.

[96] *Id.*

[97] See the NYCH Letter, the ABA/ABASA Letter, and the Coalition of Banks' Letter.

[98] Section 3(a)(54)(A)(xiii) of the Exchange Act [15 U.S.C. 78c(a)(54)(C)(xiii)].

[99] Section 3(a)(54)(A)(v) of the Exchange Act [15 U.S.C. 78c(a)(54)(C)(v)].

[100] See the NYCH Letter and the Coalition of Banks' Letter.

[101] 15 U.S.C. 78c(a)(54)(A)(v).

[102] See the Coalition of Banks' Letter, which asked for clarification of the status of foreign pension plans.

[103] This provision relates to pension plans that are "any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser." 15 U.S.C. 78c(a)(54)(A)(v).

[104] Rule 15a-11(e). [17 CFR 240.15a-11.] When the individual plan participants or beneficiaries of a pension plan make their own investment decisions, the plan itself would not meet the requirement that it invests the plan assets on a discretionary basis. See Section 3(a)(35) of the Exchange Act [15 U.S.C. 78c(a)(35)].

[105] See the Coalition of Banks' Letter and the NYCH Letter.

[106] For guidance on how to ascertain whether a person is a qualified investor, see Rule 144A(d)(1) under the Securities Act of 1933 [17 CFR 230.144A(d)(1)]. We note that the determination of whether a person is a qualified investor may involve both a qualitative analysis and a quantitative analysis. The source materials listed in Rule 144A would provide information that could be used in both types of determinations.

[107] See H.R. Rep. No. 106–74, pt. 3, at 175 (1999).

[108] Under Exchange Act Section 36(a), "the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a). The Commission also has authority to issue exemptive orders that grant relief from specific provisions of the Exchange Act as well as from specific Commission rules promulgated thereunder. For example, either by rule or by order, the Commission may, pursuant to Section 15(a)(2) of the Exchange Act, conditionally or unconditionally exempt any broker or dealer from the registration provisions of Section 15(a)(1). 15 U.S.C. 78o(a)(1).

reasonable belief standard applicable to transactions other than securities lending.

E. Temporary Exemption

1. Discussion of Comments on the Temporary Exemption

Several commenters stated that the final implementation of the rules pertaining to the bank exceptions from the definition of dealer should be coordinated with the upcoming revisions to the rules pertaining to the bank exceptions from the definition of broker. These commenters expressed concern that banks would have to contend with multiple implementation dates.[109] None of the comments we received were supported by specific examples or references to any specific costs that would be incurred by any bank. We received only one comment from a bank stating that the dealer rules should be delayed until the broker rules were finalized.[110] Moreover, the bank commenter offered no indication that it engages in significant dealer activities.

We have carefully considered this view in light of the few banks that actually conduct dealer activities other than as riskless principal. We note that the provisions of Section 16 of the Glass-Steagall Act continue to prohibit national banks from underwriting, selling, or dealing in most securities.[111] After extensive discussions with the banks that conduct significant dealer activities, and our efforts to accommodate existing practices, we continue to believe that this rule will not require banks to make significant changes to their existing dealer activities, except in connection with riskless principal transactions, and that a longer phase-in period will not be necessary. Moreover, based on our discussions with banks engaged in limited dealer activities, other than riskless principal transactions, we believe that there is insignificant overlap in the broker and dealer activities conducted by banks, and that most riskless principal transactions can be restructured as agency transactions, which remain exempt under the blanket broker exception. In addition, because the broker and dealer activities are sufficiently distinct, we believe that there would not be a significant compliance benefit to banks in coordinating the effective dates of the broker and dealer rules.

Implementing the dealer rule first will permit banks to use the entire 500-transaction limit set forth in the *de minimis* exception to broker for riskless principal transactions under the dealer exemption. We believe that having this much room available to banks to conduct riskless principal transactions will give banks an opportunity to realistically assess their use of the *de minimis* exemption in an environment that provides them with the maximum flexibility to do so. Later, when the broker rules also are effective, banks will have to consider their use of the *de minimis* exception for broker transactions as well as any riskless principal transactions they may conduct while utilizing the same 500-transaction limit. We believe that this transition period when only the dealer requirements, exceptions, and exemptions are effective will permit banks to gain experience in identifying securities transactions in the most forgiving environment, not only because of the full availability of the 500 transactions for riskless principal transactions but also because the temporal exemption for broker transactions remains in place. Thus, transactions that may previously have been done on a principal basis in the bank may instead be carried out by the bank on an agency basis, until the blanket broker exemption ends.

This experience may lead some banks to conclude that other arrangements, such as affiliating with a broker-dealer or shifting transactions to a broker-dealer, may be necessary when all of the broker-dealer exceptions and exemptions become effective. In those instances, we believe that the banks will benefit from having this knowledge sooner and may be able to use this knowledge to take steps that will make their transition smoother.

In addition, we believe that implementing the dealer exceptions and exemptions will permit banks to gain experience in identifying securities transactions before they are required to implement compliance with the broker exceptions and exemptions. Thus, we believe that staggering the implementation dates may actually enhance compliance and permit banks to achieve a more orderly transition to conducting their securities activities in accordance with the mandates of the GLBA.

We are, however, sympathetic to individual banks that may have specific transactions in progress for which they may need an extension of the implementation date of these rules. We urge those banks to contact our staff to determine if specific relief may be available to any such bank on a case-by-case basis for specified transactions for which a demonstrated burden could be avoided or alleviated through a reasonable short extension of the compliance date, or during any period when additional specific exemption requests are being considered.[112]

2. Adoption of Temporary Exemption and Effective Date of Dealer Rules

Concurrent with this release, the Commission, through separate order, is further extending the temporary exemption from the definition of "dealer" for banks until September 30, 2003. On that date, the rules we are adopting today will apply to dealer transactions of banks, savings associations, and savings banks.

F. Extension of Rule 15a–8—Section 29 Liability Exemption

Two commenters asked the Commission to extend the exemption from liability under Exchange Act Section 29, since it applied only to contracts made before January 1, 2003.[113] Other commenters asked for some type of regulatory "safe harbor," or cure period.[114] Exchange Act Section 29(b)[115] provides that any contract made in violation of the Exchange Act or rules adopted under the Exchange Act shall be void as regards the rights of any person who made or engaged in the performance of any such contract.[116] Private parties have invoked this equitable remedy rarely[117] in instances involving broker-dealer registration violations by the opposite party.[118]

[109] See the ABA/ABASA Letter, the General Counsels' Letter, the IIB Letter, the Commerce Banc Letter, and the Roundtable Letter.

[110] See the Commerce Banc Letter.

[111] This section excepted certain bank-eligible securities such as U.S. government securities. Section 5(c) of the Glass-Steagall Act also applied the same Section 16 restrictions to state-chartered banks that are members of the Federal Reserve System. Savings Associations and savings banks did not have the exemption from broker-dealer registration until we adopted the Rule 15a–9 as part of the Interim Final Rules.

[112] See *supra* note 109.

[113] See the ABA/ABASA Letter and the NYCH Letter.

[114] See the General Counsels' Letter, the ABA/ABASA Letter, the NYCH Letter, the Coalition of Banks' Letter, and the Roundtable Letter.

[115] 15 U.S.C. 78cc(b).

[116] Exchange Act Section 29(b) does not make the contract automatically a nullity. Rather, the contract is voidable at the option of the innocent party. *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 387 (1970). In this manner, "the interests of the victim are sufficiently protected by giving him the right to rescind; to regard the contract as void where he has not invoked the right would only create the possibility of hardships to him or others without necessarily advancing the statutory policy of disclosure." *Id.* at 388.

[117] *Id.* at 388; see also *Occidental Life Ins. Co. v. Pot Ryon and Assoc.*, 496 F.2d 1255, 1267 (4th Cir.), *cert. denied*, 419 U.S. 1023 (1974) (principles of equity; like estoppel and waiver, apply to actions brought under Exchange Act Section 29(b)).

[118] See *Boguslavsky v. Kaplan*, 159 F.3d 715, 722 (2nd Cir. 1998) (under the liberal pleading standard

Continued

Rule 15a–8 [119] was included in the Rules because we recognized that the amended Exchange Act contains numerous broker-dealer definitional provisions that apply only to banks, which were previously excepted from broker-dealer regulation.[120] We understand that banks may need to adjust their procedures to shift their securities activities to registered broker-dealers or to comply with the conditions of the specific functional exceptions or exemptions to the definitions of broker and dealer. We also are aware that there may be instances where, despite having reasonable procedures in place, a bank may inadvertently fail to meet the terms and conditions of the specific functional exceptions or exemptions upon which it is relying. This could result in the bank engaging in securities activities in violation of the registration requirements of Exchange Act Section 15 and the rules promulgated under that section. We, therefore, adopted Rule 15a–8.

Now that we are adopting an effective date for the bank dealer rules, banks may need time to adjust to these definitional provisions and exemptions. Thus, we continue to believe that it is appropriate to provide a transitional period before these provisions fully apply.

To provide certainty to banks while they become fully familiar with the operation of the exceptions, we are, therefore, adopting an amended Rule 15a–8.[121] This amendment provides an exemption for contracts entered into by banks before March 31, 2005 from being considered void or voidable by reason of Exchange Act Section 29 because a bank that is a party to the contract violated the registration requirements of Section 15(a) of the Exchange Act or any applicable provision of this Act and the rules and regulations thereunder based solely on a bank's status as a dealer when the contract was created. Banks may have inadvertent, technical violations as they become accustomed to the new regulatory requirements. This exemption is designed to recognize the unique compliance problems that banks may have by preventing any inadvertent failures by banks to meet the conditions of the functional exceptions from triggering potential rescission under Exchange Act Section 29 during this transitional period.

We note that this provision does not relieve a bank of the obligation to register as a dealer if their securities activities do not fit within a specific functional exception or exemption. We also note that a bank's securities activities continue to be subject to the antifraud provisions of the federal securities laws, irrespective of the bank's lack of registration or failure to comply with the provisions of the Exchange Act and the rules thereunder that otherwise apply to banks based on their status as broker-dealers. We, therefore, find that this exemption for dealer contracts entered into by banks before March 31, 2005 from being considered void or voidable by reason of Exchange Act Section 29 is appropriate in the public interest and consistent with the protection of investors.[122]

VI. Procedural Matters

A. Paperwork Reduction Act

These rule amendments and new exemption do not impose recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the Paperwork Reduction Act does not apply.[123] We received no comments on this issue.

B. Consideration of Comments on Benefits and Costs

We believe that these rule amendments and the new exemption are consistent with Congress's intent in enacting the GLBA and are responsive to the comments we received. These rule amendments and the new exemption are very limited in scope. The amendments adopt four changes. In particular, we are adopting rules that: (1) Modify the way in which transactions are counted under the exemption from the definition of "dealer" for a bank engaged in riskless principal transactions, which would permit the bank to engage in more transactions under the *de minimis* exception to broker and dealer registration; (2) modify certain definitions under the dealer exception that permits banks to issue and sell asset-backed securities to qualified investors to permit banks to possibly issue and sell more such securities; (3) add a new exemption from the definitions of both "broker" and "dealer" to provide banks with enhanced legal certainty when they engage in securities lending transactions; and (4) extend the exemption from liability under Section 29(b) to contracts entered into before March 31, 2005 based solely on a bank's status as dealer when the contract was created. The amendments to the first two rules are being adopted as proposed. The new exemption is being adopted with minor, technical changes from the proposal. We received no comments on the costs and benefits of the proposed amendments or new exemptions.

1. Benefits

Both of the rule amendments modify the exceptions and the interpretations found in Rules 3a5–1 and 3b–18 in a way that expands the scope of activity in which banks may engage without registering as dealers. The new exemption for banks to engage in securities lending transactions, new Rule 15a–11, also provides increased legal certainty to banks. All of these rule amendments make it easier for banks to conduct these activities in light of the changes to the Federal securities laws. We received no comments directed to this issue.

The amendment to Rule 3a5–1, the *de minimis* exemption, changes the way riskless principal transactions are counted to allow banks to engage in more such transactions before triggering the dealer registration requirement.

Directly engaging in asset-backed transactions without employing a broker-dealer is very unusual for banks. We found only two banks that regularly issue and sell asset-backed securities. Based on staff discussions with these two banks, we believe that the amendments to Rule 3b–18 will permit these two banks to continue to utilize their existing business models with little or no change in their procedures. These amendments modify the definition of "originate" to permit banks to use loan origination channels that would not be permitted under the Rules. We believe that the amendments to the definitions under the asset-backed transactions exception will accommodate these banks' business without sacrificing the statutory limits Congress imposed on banks' dealer activities. In response to the comments on these proposed amendments, we have clarified certain matters in this adopting release.

Lending securities is a highly specialized business for which Congress provided partial relief under the custody exception to broker registration. As discussed above, some banks were concerned about legal certainty for securities lending transactions that may not meet the terms of the custody exception to broker registration and to the extent that some securities lending transactions might be considered to be subject to dealer registration. We believe that banks provide an important function in this market and that it is in the public interest that they continue to do so. The exemption will provide banks that lend securities with enhanced legal certainty that will permit them to continue to engage in this activity without broker-dealer registration. In the final rule, we are making the securities lending exemption more flexible by eliminating the requirement that these transactions be conducted pursuant to a securities lending agreement.

In addition, we are adopting an amended Rule 15a–8 that will provide an exemption for contracts entered into by banks before March 31, 2005 from being considered void or voidable by reason of Exchange Act Section 29 because a bank that is a party to the contract violated the registration requirements of Section 15(a) of the Exchange Act or any applicable provision of this Act and the rules and regulations thereunder based solely on a bank's status as a dealer when the contract was created. This temporary exemption provides banks with relief from being subject to rescission rights while they become accustomed to the new bank exceptions and exemptions from the definition of dealer under the Exchange Act. This relief should provide banks with savings from being spared potential liability under this statutory section.

2. Costs

Although banks may incur certain costs to comply with the GLBA, these costs will be necessary because of the statutory change. Congress determined that all securities activities should be functionally regulated by the expert securities regulator to ensure investor protection, regardless of the entity in which the activities occur. Thus, any regulatory costs arise from Congress's determination that amendment of the Exchange Act was necessary. There are no out-of-pocket costs as a result of these rules and rule amendments. Because all of these amendments make it easier for banks to conduct these activities in light of the changes to the federal securities laws, any costs would be those associated with moving the supervision of these limited securities transactions or products from the regulatory oversight of the Commission and placing them under the banking agencies. We do not believe any such cost to be significant.

In addition, because the types of dealer activities that are the subject of these rules are not the types of activities in which small banks or small broker-dealers participate, there should be no competitive costs to small broker-dealers due to the way in which these rules modify the terms of the bank exceptions and exemptions. We did not receive any comments on this issue, nor did we receive any comments that identified specific costs related to complying with these rules.

C. Consideration of Burden on Competition, and on Promotion of Efficiency, Competition, and Capital Formation

In accordance with our responsibilities under Section 3(f) of the Exchange Act, we have considered both the protection of investors and whether these rule amendments would promote efficiency, competition, and capital formation in determining whether they are consistent with the public interest.[124] In addition, Section 23(a)(2) of the Exchange Act [125] requires us, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to refrain from adopting a rule that will impose a burden on competition not necessary or appropriate in furthering the purpose of the Exchange Act. We received no comments on these issues.

We do not believe that the interpretations, definitions, and exemptions contained in these amendments, the interpretation of the term "qualified investor," or the new exemption will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Rules define terms in the statutory exceptions to the definitions of broker and dealer added to the Exchange Act by Congress in the GLBA, and provide guidance to banks regarding the scope of those exceptions. The rule amendments and exemption also do not impose any additional competitive burdens on banks engaging in a securities business, other than those imposed by Congress through functional regulation in the GLBA.

Because the types of dealer activities that are the subject of these rules are not the types of activities in which small banks or small broker-dealers directly participate, there should be no competitive costs to small banks or small broker-dealers due to the way in which these rules modify the terms of the bank exceptions and exemptions.

The new conditional exemption from broker-dealer registration in Rule 15a–11 would provide banks increased legal certainty when they engage in securities lending transactions without any new

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accorded pro se litigants, an investor properly presented an identifiable claim for rescission under Exchange Act Section 29(b) in asserting that the firm operated without director of compliance and thus was not properly registered as securities broker-dealer); *Regional Properties, Inc.* v. *Financial and Real Estate Consulting Co.*, 752 F.2d 178, 182 (5th Cir. 1985) (subject to equitable defenses, real estate developers were entitled to rescind agreement with broker to structure and market limited partnership interest where broker had failed to register as required by the Exchange Act); *Regional Properties* v. *Financial and Real Estate Consulting Co.*, 678 F.2d 552, 557, 566–67 (5th Cir. 1982), aff'd on other grounds, 752 F.2d 178 (5th Cir. 1985) (later appeal) (recognizing that Exchange Act Section 29(b) provides for a private, equitable cause of action for the rescission of a contract where the securities broker was unlicensed); *Eastside Church of Christ* v. *National Plan, Inc.*, 391 F.2d 357, 362 (5th Cir.), *cert. denied*, 393 U.S. 913 (1968) (churches could void a transaction with broker under Exchange Act Section 29(b) because the broker was unregistered); *Couldock and Bohan, Inc.* v. *Societe Generale Securities, Corp.*, 93 F. Supp. 2d 220, 233 (D. Conn. 2000) (a contract violating broker registration requirements of the Exchange Act is voidable at the option of the innocent party under Exchange Act Section 29(b)).

[119] 17 CFR 240.15a–8.

[120] In the past, the Commission has been asked for this type of relief and has declined to grant it. *See* Registration Requirements for Foreign Broker-Dealers, Release No. 34–27017, 54 FR 30013 at 30021 (July 18, 1989). Our research indicates that there was not an increase in suits against foreign broker-dealers under Section 29 of the Exchange Act.

[121] 17 CFR 240.15a–8. On May 11, 2001, we adopted Rule 15a–8 as part of the Rules and sought comment on it. See Release No. 34–44291, 66 FR 27760 (May 18, 2001). At that time, we provided and anticipated that the general exemption for banks from the definition of dealer would end on October 1, 2001, and that an additional conditional exemption from the definition would end on January 1, 2002. Accordingly, to provide for sufficient transition time, we adopted Rule 15a–8 to provide for exemption from Section 29 rescission liability until January 1, 2003. During the comment period on the Rules, we received no comments suggesting that such an exemption was inappropriate.

Ultimately, however, to allow sufficient time to address concerns raised about the Rules, we further extended the exemption from the definition of dealer until September 30, 2003 (with today's extension). Accordingly, the transition period that we proposed and adopted in Rule 15a–8 has not yet commenced, because the existing Rule includes a specific termination date of January 1, 2003. Thus, the Rule as currently written would provide no adjustment period for banks. Accordingly, the recommended amendment to 15a–8 does nothing more than amend the Rule to establish a transition period commencing on the date that the general exemption from the definition actually expires, exactly as was contemplated when the existing Rule was adopted on an interim basis and published for public comment. Under these circumstances, we find good cause to conclude that this amendment to Rule 15a–8 may be accomplished without our separately and specifically providing notice of and an opportunity to comment on the amendment. We also believe that such notice is "unnecessary" within the meaning of 5 U.S.C. 553(b)(3)(B). Moreover, the proposing Release did include questions seeking input about any necessary accommodations for an orderly transition, and two commenters specifically suggested the accommodation that this amendment to Rule 15a–8 provides.

[122] Exchange Act Section 36(a)(1) [15 U.S.C., 78mm(a)(1)].

[123] We would expect banks, as a matter of good business practice, to be able to demonstrate that they meet the terms of a particular exemption. We also note that Section 204 of the GLBA specifically requires the bank agencies to promulgate recordkeeping requirements.

[124] 15 U.S.C. 78c(f).

[125] 15 U.S.C. 78w(a)(2).

burdens on banks seeking to use this limited exemption. Nothing in the rule amendments, in the new exemption, or in the Commission's interpretation of the term qualified investor will adversely affect capital formation. Banks that alter their securities-related activities in accordance with the GLBA will continue to be able to provide securities services to their customers. In enacting the GLBA, Congress determined that functional regulation was appropriate—that is, when a bank was conducting a securities business outside of the enumerated exceptions, that bank should be registered as a broker-dealer or shift its securities activities to a registered broker-dealer. In the interest of protecting the public and ensuring orderly markets, Congress determined that banks conducting a broad securities business should be subject to the same regulatory oversight as broker-dealers conducting the same types of activities. These rule amendments and the new exemption promote Congress' intent and make it easier for banks to comply with the requirements of the GLBA.

Since certain of these rule amendments define statutory exceptions mandated by Congress, we do not believe that those rules impose any extra-statutory adverse effects on efficiency, competition, or capital formation. We also are making three exemptive amendments to the Rules. We are adding a rule that provides banks with exemptive relief for certain securities lending transactions, amending the *de minimis* exemption for banks to make the counting of riskless principal transactions more flexible, and extending the exemption from liability under section 29(b) to contracts entered into before March 31, 2005 based solely on a bank's status as dealer when the contract was created. Each of these exemptive rules would make it easier for banks to comply with the GLBA in light of the changes to the federal securities laws and will give banks enhanced legal certainty for their securities activities. We also do not believe that those rules impose any extra-statutory adverse effects on efficiency, competition, or capital formation. When Congress passed the GLBA, it effectively determined that regulation of banks conducting a securities operation outside of certain exceptions was necessary, appropriate, and in the public interest.

D. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act,[126] the Commission certified that the amendment to the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the Proposing Release.[127] We received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

Statutory Authority

The Commission is adopting amendments Rules 3a5–1, 3b–18 and 15a–8, and a new exemption for securities lending transactions in Rule 15a–11 under the Exchange Act, pursuant to authority set forth in Sections 3(b), 15, 23(a), and 36 of the Exchange Act (15 U.S.C. 78c(b), 78o, 78w(a), and 78mm, respectively).

Text of Rules and Rule Amendments

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a5–1 is revised to read as follows:

§ 240.3a5–1 Exemption from the definition of "dealer" for a bank engaged in riskless principal transactions.

(a) A bank is exempt from the definition of the term "dealer" to the extent that it engages in or effects riskless principal transactions if the number of such riskless principal transactions during a calendar year combined with transactions in which the bank is acting as an agent for a customer pursuant to section 3(a)(4)(B)(xi) of the Act (15 U.S.C. 78c(a)(4)(B)(xi)) during that same year does not exceed 500.

(b) For purposes of this section, the term riskless principal transaction means a transaction in which, after having received an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.

3. Section 240.3b–18 is revised to read as follows:

§ 240.3b–18 Definitions of terms used in Section 3(a)(5) of the Act.

For the purposes of section 3(a)(5)(C) of the Act (15 U.S.C. 78c(a)(5)(C):

(a) The term *affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) The term *consumer-related receivable* means any obligation incurred by any natural person to pay money arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes.

(c) The term *member* as it relates to the term "syndicate of banks" means a bank that is a participant in a syndicate of banks and together with its affiliates, other than its broker or dealer affiliates, originates no less than 10% of the value of the obligations in a pool of obligations used to back the securities issued through a grantor trust or other separate entity.

(d) The term *obligation* means any note, draft, acceptance, loan, lease, receivable, or other evidence of indebtedness that is not a security issued by a person other than the bank.

(e) The term *originated* means:

(1) Funding an obligation at the time that the obligation is created; or

(2) Initially approving and underwriting the obligation, or initially agreeing to purchase the obligation, provided that:

(i) The obligation conforms to the underwriting standards or is evidenced by the loan documents of the bank or its affiliates, other than its broker or dealer affiliates; and

(ii) The bank or its affiliates, other than its broker or dealer affiliates, fund the obligation in a timely manner, not to exceed six months after the obligation is created.

(f) The term *pool* means more than one obligation or type of obligation grouped together to provide collateral for a securities offering.

(g) The term *predominantly originated* means that no less than 85% of the value of the obligations in any pool were originated by:

(1) The bank or its affiliates, other than its broker or dealer affiliates; or

(2) Banks that are members of a syndicate of banks and affiliates of such banks, other than their broker or dealer affiliates, if the obligations or pool of obligations consist of mortgage obligations or consumer-related receivables.

(3) For this purpose, the bank and its affiliates include any financial institution with which the bank or its affiliates have merged but does not include the purchase of a pool of obligations or the purchase of a line of business.

(h) The term *syndicate of banks* means a group of banks that acts jointly, on a temporary basis, to issue through a grantor trust or other separate entity, securities backed by obligations originated by each of the individual banks or their affiliates, other than their broker or dealer affiliates.

4. Section 240.15a–8 is revised to read as follows:

§ 240.15a–8 Exemption for banks from Section 29 liability.

(a) No contract entered into before January 1, 2003 shall be void or considered voidable by reason of section 29 of the Act (15 U.S.C. 78cc) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)) or any applicable provision of the Act (15 U.S.C. 78a *et seq.*) and the rules and regulations thereunder based solely on the bank's status as a broker or dealer when the contract was created.

(b) No contract entered into before March 31, 2005, shall be void or considered voidable by reason of section 29 of the Act (15 U.S.C. 78cc) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)) or any applicable provision of the Act (15 U.S.C. 78a *et seq.*) and the rules and regulations thereunder based solely on the bank's status as a dealer when the contract was created.

5. Section 240.15a–11 is added to read as follows:

§ 240.15a–11 Exemption from the definitions of "broker" and "dealer" for banks engaging in securities lending transactions.

(a) A bank is exempt from the definitions of the terms "broker" and "dealer" under sections 3(a)(4) and 3(a)(5) of the Act (15 U.S.C. 78c(a)(4) and (a)(5)), to the extent that, as a conduit lender, or as an agent, it engages in or effects securities lending transactions, and any securities lending services in connection with such transactions, with or on behalf of a person the bank reasonably believes to be:

(1) A qualified investor as defined in section 3(a)(54)(A) of the Act (15 U.S.C. 78c(a)(54)(A)); or

(2) Any employee benefit plan that owns and invests on a discretionary basis, not less than $25,000,000 in investments.

(b) *Securities lending transaction* means a transaction in which the owner of a security lends the security temporarily to another party pursuant to a written securities lending agreement under which the lender retains the economic interests of an owner of such securities, and has the right to terminate the transaction and to recall the loaned securities on terms agreed by the parties.

(c) *Securities lending services* means:

(1) Selecting and negotiating with a borrower and executing, or directing the execution of the loan with the borrower;

(2) Receiving, delivering, or directing the receipt or delivery of loaned securities;

(3) Receiving, delivering, or directing the receipt or delivery of collateral;

(4) Providing mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending transaction;

(5) Investing, or directing the investment of, cash collateral; or

(6) Indemnifying the lender of securities with respect to various matters.

(d) For the purposes of this section, the term *conduit lender* means a bank that borrows or loans securities, as principal, for its own account, and contemporaneously loans or borrows the same securities, as principal, for its own account. A bank that qualifies under this definition as a conduit lender at the commencement of a transaction will continue to qualify, notwithstanding whether:

(1) The lending or borrowing transaction terminates and so long as the transaction is replaced within one business day by another lending or borrowing transaction involving the same securities; and

(2) Any substitutions of collateral occur.

Dated: February 13, 2003.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

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[126] 5 U.S.C. 605(b).

[127] *See* Proposing Release, *supra* note 2.

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LIST OF PUBLIC LAWS

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H.R. 16/P.L. 108–6

To authorize salary adjustments for Justices and judges of the United States for fiscal year 2003. (Feb. 13, 2003; 117 Stat. 10)

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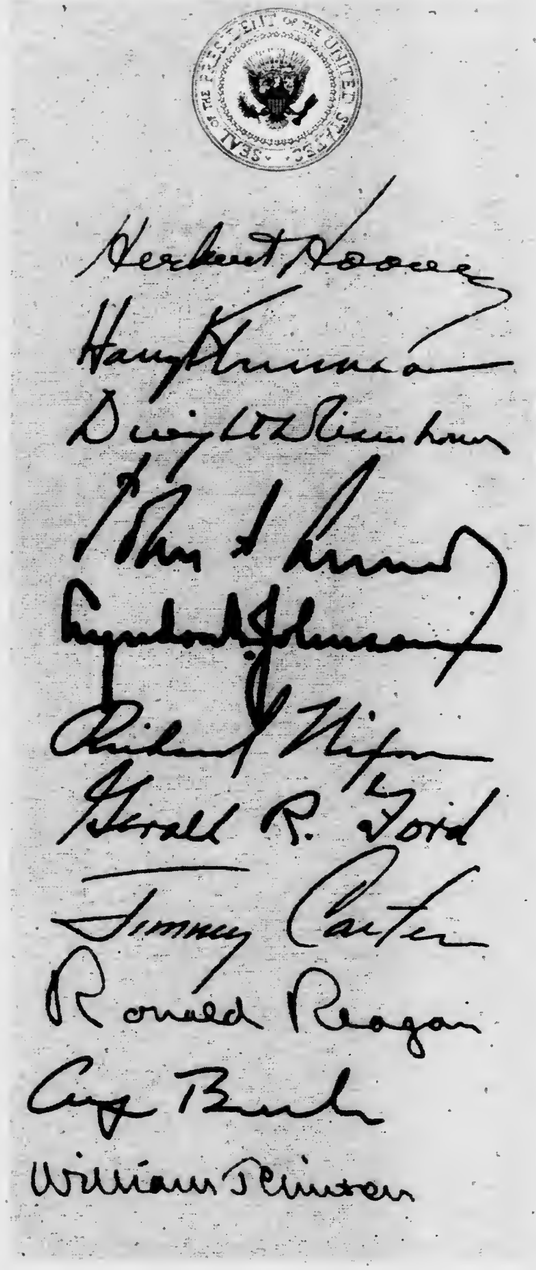
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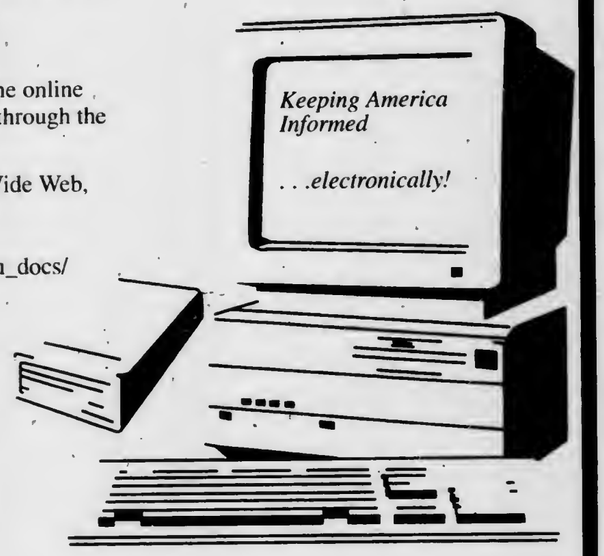
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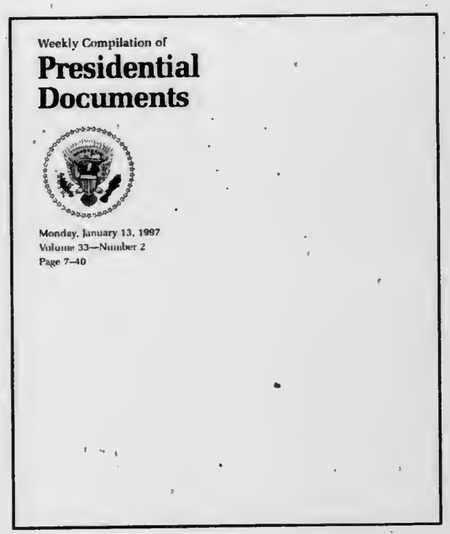
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14458; Airspace Docket No. 03–ACE–11]

Modification of Class E Airspace; Larned, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Larned, KS revealed a discrepancy in the Larned-Pawnee County Airport, KS airport reference point used in the legal description for the Larned, KS Class E airspace. This action corrects the discrepancy by modifying the Larned, KS Class E airspace and by incorporating the current Larned-Pawnee County Airport, KS airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14458/ Airspace Docket No. 03–ACE–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Larned, KS. It incorporates the current airport reference point for Larned—Pawnee County Airport, KS and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comments is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamp postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14458/Airspace Docket No. 03–ACE–11" The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

ACE KS E5 Larned, KS

Larned-Pawnee County Airport, KS
(Lat. 38°12'31" N., long. 99°05'10" W.)
Larned NDB
(Lat. 38°12'16" N., long. 99°05'15" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Larned-Pawnee County Airport and within 2.6 miles each side of the 003° bearing from the Larned NDB extending from the 6-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO on February 10, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–4321 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14457; Airspace Docket No. 03–ACE–10]

Modification of Class E Airspace; Herington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Herington, KS revealed a discrepancy in the Herington Regional Airport, KS airport reference point used in the legal description for the Herington, KS Class E airspace. This action corrects the discrepancy by modifying the Herington, KS Class E airspace and by incorporating the current Herington Regional Airport, KS airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 205900–0001. You must identify the docket number FAA–2003–14457/ Airspace Docket No. 03–ACE–10, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, and comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Herington, KS. It incorporates the current airport reference point Herington Regional Airports, KS and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis support the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14457/Airspace Docket No. 03–ACE –10" The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Herington, KS

Herington Regional Airport, KS
(Lat. 39°41'41" N., long. 96°48'29" W.)
Herington NDB
(Lat. 38°41'34" N., long. 96°48'40" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Herington Regional Airport, and within 2.6 miles each side of the 010° bearing from the Herington NDB extending from the 6.6-mile radius to 7.4 miles north of the airport and within 2.6 miles each side of the 168° bearing from the Herington NDB extending from 6.6-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on February 10, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–4322 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR 71

[Docket No. FAA–2003–14429; Airspace docket No. 03–ACE–9]

Modification of Class E Airspace; Cherokee, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Cherokee, IA revealed a discrepancy in the Cherokee Municipal Airport, IA airport reference point used in the legal description for the Cherokee, IA Class E airspace. This action corrects the discrepancy by modifying the Cherokee, IA Class E airspace and by incorporating the current Cherokee Municipal Airport, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14429/ Airspace Docket No. 03–ACT–9, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal aviation Administration, 901 Locust, Kansas city, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Cherokee, IA. It incorporates the current airport reference point for Cherokee Municipal airport, IA and brings the legal description of this airspace area in compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14429/Airspace Docket No. 03–ACE–9." The postcard

will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on an substantial number of small entities under the criteria of the regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Cherokee, IA

Cherokee Municipal Airport, IA
(Lat. 42°43′53″ N., long. 95°33′22″ W.)
Pilot Rock NDB
(Lat. 42°43′56″ N., long. 95°33′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Cherokee Municipal Airport, and within 2.6 miles each side of the 185° bearing from the Pilot Rock NDB extending from the 6-mile radius to 7.4 miles south of the airport.

* * * * *

Dated: Issued in Kansas City, MO on February 10, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–4323 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2003–14459; Airspace Docket No. 03–ACE–12]

Modification of Class E Airspace; Clarinda, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Clarinda, IA revealed a discrepancy in the Clarinda, Schenck Field, IA airport reference point used in the legal description for the Clarinda, IA Class E airspace. This action corrects the discrepancy by modifying the Clarinda, IA Class E airspace and by incorporating the current Clarinda, Schenck Field, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14459/Airspace Docket No. 03–ACE–12, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Clarinda, IA. It incorporates the current airport reference point for Clarinda, Schenck Field, IA and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14459/Airspace Docket No. 03–ACE–12" The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71-

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113., 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Clarinda, IA

Clarinda, Schenck Field, IA
(Lat. 40°43′18″ N., long. 95°01′35″ W.)
Clarinda NDB
(Lat. 40°43′36″ N., long. 95°01′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Schenck Field and within 2.6 miles each side of the 170° bearing from the Clarinda NDB extending from the 6.5-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on February 10, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–4324 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30356; Amdt. No. 3046]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: This rule is effective February 25, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials.

Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, were applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on February 14, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

. . . Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
01/27/03	MI	Bay City	James Clements Muni	3/0688	RNAV (GPS) Rwy 18, Orig.
01/30/03	PA	Harrisburg	Capital City	3/0748	ILS Rwy 8, Amdt 10E.
01/30/03	CA	Chico	Chico Muni	3/0761	VOR/DME Rwy 31R, Orig-C.
01/30/03	CA	San Francisco	San Francisco Intl	3/0770	VOR Rwy 19L, Amdt 8B.
01/30/03	KY	Prestonburg	Sandy Regional	3/0779	RNAV (GPS) Rwy 21, Orig.
01/30/03	AL	Albertville	The Albertville Muni-Thomas J. Brumlik Field.	3/0781	RNAV (GPS) Rwy 23, Orig.
01/30/03	AL	Albertville	The Albertville Muni-Thomas J. Brumlik Field.	3/0782	NDB–A, Amdt 4.
01/30/03	SC	Anderson	Anderson Regional	3/0785	ILS Rwy 5, Orig–A.
01/30/03	SC	Anderson	Anderson Regional	3/0786	VOR Rwy 5, Amdt 9B.
01/31/03	NC	Morganton	Morganton-Lenoir	3/0821	LOC Rwy 3, Orig–B.
01/31/03	OH	Cleveland	Cleveland-Hopkins Intl	3/0838	ILS Rwy 6L, Orig–A.
01/31/03	OH	Cleveland	Cleveland-Hopkins Intl	3/0839	ILS Rwy 24R, Orig.
02/05/03	NY	White Plains	Westchester County	3/0927	ILS Rwy 16, Amdt 22E.
02/05/03	NM	Silver City	Grant County	3/1008	LOC/DME Rwy 26, Amdt 4C.
02/06/03	AR	Jonesboro	Jonesboro Muni	3/1044	ILS Rwy 23, Orig.
02/07/03	IL	Moline	Quad City Intl	3/1157	ILS Rwy 27, Orig–C.
02/07/03	IL	Moline	Quad City Intl	3/1159	ILS Rwy 9, Amdt 29D.
02/07/03	IL	Moline	Quad City Intl	3/1161	NDB OR GPS Rwy 9, Amdt 27D.
02/10/03	MI	Pontiac	Pontiac/Oakland Intl	3/1148	ILS Rwy 9R, Amdt 11A.
02/10/03	MI	Pontiac	Pontiac/Oakland Intl	3/1149	LOC BC Rwy 27L, Orig–A.
02/11/03	WA	Bellingham	Bellingham Intl	3/1174	NDB Rwy 16, Amdt 1.
02/11/03	WA	Bellingham	Bellingham Intl	3/1175	ILS Rwy 16, Amdt 4.

FDC date	State	City	Airport	FDC No.	Subject
02/12/03	ND	Rugby	Rugby Muni	3/1196	NDB Rwy 30, Amdt 6.
02/12/03	PA	Somerset	Somerset County	3/1211	GPS Rwy 6, Orig.
02/12/03	PA	Somerset	Somerset County	3/1213	LOC Rwy 24, Amdt 3.
02/12/03	PA	Somerset	Somerset County	3/1214	LOC Rwy 24, Amdt 5.
02/12/03	PA	Somerset	Somerset County	3/1214	NDB Rwy 24, Amdt 5.

[FR Doc. 03–4320 Filed 2–24–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30355; Amdt. No. 3045]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 25, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on February 14, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 4103, 4106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective March 20, 2003*

Ontario, CA, Ontario Intl, VOR/DME RWY 8L, Amdt 1
Ontario, CA, Ontario Intl, VOR/DME RWY 8R, Orig
Wray, CO, Wray Muni, RNAV (GPS) RWY 17, Orig
Wray, CO, Wray Muni, RNAV (GPS) RWY 34, Orig
Wray, CO, Wray Muni, GPS RWY 14, ORIG, CANCELLED
Wray, CO, Wray Muni, RNAV (GPS) RWY 35, Orig
Sault Ste Marie, MI, Chippewa County Intl, VOR OR TACAN–A, Amdt 6
Sault Ste Marie, MI, Chippewa County Intl, NDB RWY 16, Amdt 6
Sault Ste Marie, MI, Chippewa County Intl, NDB RWY 34, Amdt 5
Sault Ste Marie, MI, Chippewa County, ILS RWY 16, Amdt 8
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 16, Orig
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 34, Orig
Crete, NE, Crete Municipal; VOR/DME RWY 17, Amdt 3C
Crete, NE, Crete Municipal, RNAV (GPS) RWY 17, Orig
Beaufort, NC, Michael J. Smith Field, NDB RWY 14, Orig–B
Beaufort, NC, Michael J. Smith Field, NDB RWY 21, Orig–B
Beaufort, NC, Michael J. Smith Field, RADAR–1, Amdt 2, CANCELLED
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 3, Orig
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 8, Orig
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 14, Orig–B
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 21, Orig
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 26, Orig
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 32, Orig
Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Regional, RNAV (GPS) RWY 1, Orig
Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Regional, RNAV (GPS) RWY 19, Orig
Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Regional, RNAV (GPS) RWY 28, Orig
Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Regional, VOR/DME RWY 28, Amdt 1
Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Regional, VOR/DME RWY 1, Amdt 11C
Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Regional, VOR/DME RWY 10, Orig–C
Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Regional, VOR/DME RWY 19, Amdt 10C
Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Regional, NDB RWY 10, Orig–D
Oak Island, NC, Brunswick County, NDB–A, Orig
Oak Island, NC, Brunswick County, NDB RWY 23, Orig
Oak Island, NC, Brunswick County, RNAV (GPS) RWY 5, Orig
Oak Island, NC, Brunswick County, RNAV (GPS) RWY 23, Orig
Southport, NC, Brunswick County, NDB RWY 23, Orig, CANCELLED
Southport, NC, Brunswick County, NDB–A, Orig, CANCELLED
Southport, NC, Brunswick County, GPS RWY 23, Amdt 1, CANCELLED
Wilson, NC, Wilson Industrial Air Center, NDB RWY 3, Amdt 6A
Wilson, NC, Wilson Industrial Air Center, NDB RWY 21, Amdt 1C
Wilson, NC, Wilson Industrial Air Center, RNAV (GPS) RWY 3, Orig
Wilson, NC, Wilson Industrial Air Center, RNAV (GPS) RWY 9, Orig
Wilson, NC, Wilson Industrial Air Center, RNAV (GPS) RWY 15, Orig
Wilson, NC, Wilson Industrial Air Center, RNAV (GPS) RWY 21, Orig
Wilson, NC, Wilson Industrial Air Center, RNAV (GPS) RWY 33, Orig
Knoxville, TN, McGhee Tyson, RNAV (GPS) RWY 5R, Orig
Knoxville, TN, McGhee Tyson, RNAV (GPS) RWY 23L, Orig
Oak Harbor, WA, Wes Lupien, RADAR–2, Orig, CANCELLED

** * * Effective April 17, 2003*

Houston, TX, Clover Field, VOR–B, Orig
Houston, TX, Clover Field, VOR–A, Amdt 1, CANCELLED

** * * Effective May 15, 2003*

New Smyrna Beach, FL, Massey Ranch Airpark, NDB OR GPS RWY 18, Amdt 1
Orlando, FL, Orlando Intl, VOR/DME RWY 36L, Amdt 5
Sulphur Springs, TX, Sulphur Springs Muni, NDB RWY 18, Amdt 5, CANCELLED

The FAA published an Amendment in Docket No. 30350, Amdt No. 3041 to Part 97 of the Federal Aviation Regulations (Vol_68 FR No. 17 Page 3811 dated January 27, 2003) under section 97._33 effective 20 March 2003, which is hereby amended as follows:

The following procedure published in TL 03–4 is hereby RESCINDED:

Isla De Vieques, PR, Antonio Rivera Rodriguez, RNAV (GPS) RWY 9, Amdt 1

[FR Doc. 03–4319 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

January 30, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.308(x)(1), the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Michael J. McGehee, Division of Pipeline Certificates, (202) 502–8962.

Order of the Director, OEP

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 2003, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural Gas, Reporting and recordkeeping requirements.

J. Mark Robinson,

Director, Office of Energy Projects.

Accordingly, 18 CFR part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. Table I in § 157.208(d) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

TABLE I

Year	Limit: Auto. proj. cost limit (Col. 1)	Limit: Prior notice proj. cost limit (Col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000
2000	7,300,000	20,200,000
2001	7,400,000	20,600,000
2002	7,500,000	21,000,000
2003	7,600,000	21,200,000

* * * * *

3. Table II in § 157.215(a) is revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *

(5) * * *

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000
1999	4,550,000
2000	4,650,000
2001	4,750,000
2002	4,850,000
2003	4,900,000

* * * * *

[FR Doc. 03–4336 Filed 2–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 102

[T.D. 03–08]

RIN 1515–AC80

Rules of Origin for Textile and Apparel Products

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with a clarification, the interim rule amending the Customs Regulations to align the existing country of origin rules for certain textile and apparel products with the statutory amendments to section 334 of the Uruguay Round Agreements Act, as set forth in section 405 within title IV of the Trade and Development Act of 2000. The document also adopts as final the interim rule making technical corrections to the rules of origin for textile and apparel products.

EFFECTIVE DATE: February 25, 2003.

FURTHER INFORMATION CONTACT: Cynthia Reese, Textile Branch, Office of Regulations and Rulings, U.S. Customs Service, Tel. (202) 572–8790.

SUPPLEMENTARY INFORMATION:

Background

Section 334 of the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (19 U.S.C. 3592), directs the Secretary of the Treasury to prescribe rules implementing certain principles for determining the origin of textiles and apparel products. Section 102.21 of the Customs Regulations (19 CFR 102.21) implements section 334 of the URAA.

Section 405 of title IV of the Trade and Development Act of 2000 (the Act), Public Law 106–200, 114 Stat. 251, amended section 334 of the URAA. Specifically, section 405(a) amended section 334(b)(2) of the URAA by redesignating paragraphs (b)(2)(A) and (B) as paragraphs (b)(2)(A)(i) and (ii), and by adding two special rules at new paragraphs (b)(2)(B) and (C) that change the rules of origin for certain fabrics and made-up textile products.

Under section 334, certain fabrics, silk handkerchiefs and scarves were considered to originate where the base fabric was knit or woven, notwithstanding any further processing. As a result of the statutory amendment to section 334 effected by section 405 of the Act, the processing operations which may confer origin on certain textile fabrics and made-up articles were changed to include dyeing, printing and two or more finishing operations. In particular, the amendment to section 334 affected the processing operations which may confer origin on fabrics classified under the Harmonized Tariff Schedule of the United States (HTSUS) as of silk, cotton, man-made fibers or vegetable fibers.

On May 1, 2001, Customs published in the **Federal Register** (66 FR 21660), as T.D. 01–36, an interim rule amending

§ 102.21 to implement the rules of origin for the textile products specified in section 405(a) of the Act. On May 10, 2001, a correction to T.D. 01–36 was published in the **Federal Register** (66 FR 23981). On August 9, 2002, Customs published in the **Federal Register** (67 FR 51751), as T.D. 02–47, another interim rule which made technical corrections to § 102.21 to reflect the terms of the 2002 Harmonized Tariff Schedule of the United States within the country of origin rules for certain textile and apparel products, as well as a correction regarding the scope of the definition of the term "textile or apparel product". Because T.D. 02–47 was a technical correction document, no comments were requested. Comments were requested in T.D. 01–36.

Discussion of Comments

Two commenters responded to the solicitation of public comment published in T.D. 01–36. A description of the comments received, together with Customs analyses, is set forth below.

Comment: One commenter suggested that the interim amendments to § 102.21 of the Customs Regulations be changed in regard to certain textile fabrics and made-up articles by removing the requirement that dyeing, printing and finishing of fabric need to occur in order to confer origin. The commenter proposed that, instead, the rule should require that either dyeing and finishing of fabric or printing and finishing of fabric should confer origin. The commenter noted that the recommended change reflects a more common industry practice.

The commenter also requested that Customs amend the interim § 102.21 to change how origin is determined for embroideries. The commenter deemed it unfair in the case of embroideries to adhere to the principle that only the fabric-making process confers origin when the principle has been abandoned for fabrics. The commenter asserts that as the origin rules for fabric that existed prior to the implementation of section 334 have been reintroduced, the same treatment should be accorded to embroideries.

Customs Response: Section 405(a)(3) of the Act states that dyeing and printing, when accompanied by two or more of specified finishing operations, will confer origin to fabric classified under the HTSUS as of silk, cotton, man-made fiber, or vegetable fiber. The same standard is used to determine origin for specified made-up textile articles. Section 405 contains no reference to embroideries, and Customs is following the language and requirements specified by Congress.

Comments: One commenter requested that Customs clarify the application of interim rule § 102.21(e) for purposes of determining the origin of down comforters and featherbeds, with outer shells of cotton, respectively classifiable under HTSUS subheadings 9404.90.8505 and 9404.90.9505. The commenter interpreted the interim rule as requiring that origin determinations for these goods be based on where the fabric comprising the outer shell is formed and seeks confirmation of that interpretation.

Customs response: Customs agrees with the commenter's interpretation. Section 102.21(e)(2)(i), Customs Regulations, provides, in pertinent part, that the country of origin of goods of HTSUS subheadings 9404.90.85 and 9404.90.95 is the country, territory or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of specified finishing operations, except for goods classified under those subheadings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton.

Down comforters with outer shells of cotton are classifiable in subheading 9404.90.85, HTSUS, based on a determination that the down component imparts the essential character to the comforter and is therefore the component that determines classification at the eight-digit subheading level. Similarly, down featherbeds with outer shells of cotton are classified in subheading 9404.90.95, HTSUS. *See PillowTex Corp.* v. *United States*, 983 F. Supp. 188 (CIT 1997), *aff'd*, 171 F.3d 1370 (CAFC 1999).

Goods classified under HTSUS subheadings 9404.90.85 (quilts, eiderdowns, comforters and similar articles) and 9404.90.95 (other) are classified at the ultimate statistical level based on the fiber composition of the outer shell fabric. It is for this reason that down comforters and featherbeds with outer shells of cotton are subject to the exclusion set forth in § 102.21(e)(2). Accordingly, origin for these goods is determined pursuant to the rule set forth in § 102.21(e)(1); *i.e.*, origin is conferred in the country in which the fabric comprising the good is formed by a fabric-making process.

It is noted that prior to enactment of section 405, the origin of all goods of HTSUS subheading 9404.90 was the country in which the fabric comprising the good was formed by a fabric-making process. As a result of the statutory amendment to section 334 effected by section 405, the processing operations that confer origin on certain textile fabrics and made-up articles were changed to include dyeing, printing and two or more finishing operations. Customs is of the view that the exclusion of certain goods classified under HTSUS subheadings 9404.90.85 and 9404.90.95, which include down comforters and featherbeds with outer shells of cotton, of wool, or consisting of fiber blends containing 16 percent or more by weight of cotton, from the dyeing, printing and finishing origin rule, is indicative of Congress' focus on the fiber content of the fabric comprising these goods. In this regard, the Conference Report to the Act states:

> In particular, this dyeing and printing rule would apply to fabrics classified under the Harmonized Tariff Schedule (HTS) as silk, cotton, man-made and vegetable fibers. The rule would also apply to the various products classified in 18 specific subheadings of the HTS listed in the bill, except for goods made from cotton, wool, or fiber blends containing 16 percent or more of cotton.

As the fabric comprising the good in a down comforter with an outer shell of cotton is the cotton fabric of the outer shell, Customs agrees with the commenter that down comforters and down featherbeds with outer shells of cotton are precluded from application of § 102.21(e)(2) and are to have their origin determined based upon the tariff shift rule set forth in § 102.21(e)(1). The fact that the ultimate classification of down comforters and featherbeds with outer shells of cotton is dependent on the fiber content of the fabric of the outer shell offers support for this conclusion.

Further Customs Analysis

Customs has determined that no changes are necessary to the interim rules, published as T.D. 01–36 and T.D. 02–47, based on these comments. However, it has come to Customs attention, upon further review of T.D. 01–36, that clarification is needed regarding the application of § 102.21(e)(2)(i), (ii) and (iii) in determining the origin of goods of HTSUS subheading 6117.10. The rules set forth in § 102.21(e)(2) are to be applied hierarchically. The rule set forth in § 102.21(e)(2)(i) clearly applies to goods of HTSUS subheading 6117.10, and it is only if the origin of the good cannot be ascertained by application of the rule that the subsequent rules set forth in § 102.21(e)(2)(ii) and (iii) become relevant. The rule set forth in § 102.21(e)(ii) contains an exception for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, so that the rule does not apply to such goods of that subheading. Accordingly, the origin of these goods, if not determinable under § 102.21(e)(i), must be determined by application of § 102.21(e)(2)(iii).

For example, if a man-made fiber scarf of HTSUS subheading 6117.10 consisted of two or more component parts and all of the fabric from which the component parts were formed was dyed and printed and finished as specified in § 102.21(e)(2)(i), the origin of the scarf would be ascertained under § 102.21(e)(2)(i); that is, it would be the country in which the fabric was dyed and printed and finished. However, if the fabric of the scarf was only dyed and finished, then § 102.21(e)(2)(i) would not apply and origin would be determined pursuant to § 102.21(e)(2)(iii).

In order to clarify the application of the rules set forth in § 102.21(e)(2), Customs is amending § 102.21(e)(2)(iii) as set forth in T.D. 01–36 to provide that § 102.21(e)(2)(iii) should be applied if the country of origin cannot be determined under § 102.21(e)(2)(i).

Non-substantive editorial changes are also made to paragraph (e)(2)(ii), and the introductory text to paragraph (e)(2)(iii) of the interim rule, whereby the references to "(i) above" in both paragraphs are replaced by the more specific cite to "paragraph (e)(2)(i) of this section."

It has also come to Customs attention that there may be some confusion as to whether certain finishing operations qualify under § 102.21(e)(2)(i) for purposes of determining the country of origin of certain goods. The finishing operations listed in § 102.21(e)(2)(i) are listed in section 405(a)(3) of the Act and Customs has no authority to deviate from this list to allow other processes to effect an origin determination. However, Customs does recognize that different terms may be used in the textile industry to refer to the same process. Accordingly, Customs will entertain arguments through the rulings procedure as to whether finishing processes referred to by different terms are identical to the named processes.

Conclusion

In accordance with the discussion set forth above, Customs has determined to adopt as a final rule the interim rule published in the **Federal Register** (66 FR 21660) on May 1, 2001, as T.D. 01–36, with the correction published in the **Federal Register** (66 FR 23981) on May 10, 2001, and the interim rule published in the **Federal Register** (67 FR 51751) on August 9, 2002, as T.D. 02–47.

Inapplicability of Delayed Effective Date

These regulations serve to align the Customs Regulations with the statutory amendments to section 334 of the URAA, as set forth in section 405 within title IV of the Act, which went into effect May 18, 2000, and with the 2002 Harmonized Tariff Schedule of the United States. The regulatory amendments inform the public of changes to the processing operations deemed necessary to confer country of origin status to certain textile fabrics or made-up articles by way of amendment to the tariff shift rules applicable to select textile goods. For these reasons, Customs has determined, pursuant to the provisions of 5 U.S.C. 553(d)(3), that there is good cause for dispensing with a delayed effective date.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments serve to conform the Customs Regulations to reflect statutory amendments, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that these amendments will not have a significant impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 102

Customs duties and inspection, Imports, Rules of Origin, Trade agreements.

Amendment to the Regulations

For the reasons stated above, the interim rule amending § 102.21 of the Customs Regulations (19 CFR 102.21) which was published at 66 FR 21660—21664 on May 1, 2001, and corrected at 66 FR 23981 on May 10, 2001, and the interim rule which was published at 67 FR 51751—51752 on August 9, 2002, are adopted as a final rule with the changes set forth below.

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

2. In § 102.21, paragraph (e)(2)(ii) and the introductory text to paragraph (e)(2)(iii) are revised to read as follows:

§ 102.21 Textile and apparel products.

* * * * *

(e) *Specific rules by tariff classification.* * * *

(2) * * *

(ii) If the country of origin cannot be determined under paragraph (e)(2)(i) of this section, except for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process; or

(iii) For goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, if the country of origin cannot be determined under paragraph (e)(2)(i) of this section:

* * * * *

Robert C. Bonner,
Commissioner of Customs.

Approved: February 19, 2003.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–4317 Filed 2–24–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 142

[T.D. 03–09]

RIN 1515–AC91

Single Entry for Split Shipments

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover a single shipment which was split by the carrier into multiple portions which arrive in the United States separately. These amendments implement statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: *For operational or policy matters:* Robert Watt, Office of Field Operations, (202) 927–0279.

For legal matters: Gina Grier, Office of Regulations and Rulings, (202) 572–8730.

SUPPLEMENTARY INFORMATION:

Background

Section 1460 of Public Law 106–476, popularly known as the Tariff Suspension and Trade Act of 2000, amended section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) by adding a new paragraph (j) in order to provide for the treatment of certain multiple shipments of merchandise as a single entry.

The new paragraph (j) involves two scenarios. First, section 1484(j)(1) addresses a problem long encountered by the importing community in entering merchandise whose size or nature necessitates that the merchandise be shipped in an unassembled or disassembled condition on more than one conveyance. Second, section 1484(j)(2) offers relief to importers whose shipments which they intended to be carried on a single conveyance are divided at the initiative of the carrier. As to both these matters, the legislation is silent as to the affected modes of transportation, thus indicating that the new law is to apply to merchandise shipped by air, land or sea.

By a document published in the **Federal Register** (66 FR 57688) on November 16, 2001, Customs proposed regulations to implement 19 U.S.C. 1484(j)(2) relating to shipments which are divided by carriers; these shipments are referred to as "split shipments". These final regulations today concern such split shipments.

It is noted that by a separate document published in the **Federal Register** (67 FR 16664) on April 8, 2002, Customs proposed regulations to implement 19 U.S.C. 1484(j)(1) concerning the entry of shipments of unassembled or disassembled entities that arrive on more than one conveyance. This latter proposed rule will be the subject of a final rule document that should be published in the **Federal Register** in the near future.

Split Shipment Defined

Generally speaking, a split shipment consists of merchandise that is capable of being transported on a single conveyance, and that is delivered to and accepted by a carrier in the exporting country as one shipment under one bill of lading or waybill, and is thus intended by the importer to arrive as a single shipment. However, the shipment is thereafter divided by the carrier into different parts which arrive in the United States at different times, often days apart.

In practice, shipments often become split after being delivered intact to a carrier. The movement of cargo as a split shipment on multiple conveyances appears to be a regular and routine industry practice when shipped by air. There are various reasons for a shipment to be split by a carrier, such as limited space, the need to balance weight distribution on a conveyance, and offloading for safety concerns.

The Customs Regulations ordinarily require, with certain exceptions not here relevant, that all merchandise arriving on one conveyance and consigned to one consignee be included on one entry (see § 141.51, Customs Regulations (19 CFR 141.51)). While today's final regulations permit the acceptance of a single entry in the case of such a split shipment, importers may, of course, continue to file a separate entry for each portion of a split shipment as it arrives, if they so choose.

Filing of Single Entry for Split Shipment Under Proposed Rule

In principal part, the November 16, 2001, **Federal Register** document proposed to permit the filing of a single entry to cover a split shipment provided that: (1) The subject shipment was capable of being transported on a single conveyance, and was delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill and was thus intended by the importer to be a single shipment; (2) the shipment was thereafter split or deconsolidated by the carrier, acting on its own; (3) the split-portions of the shipment remain consigned to the same party in the United States to whom they were destined in the original bill of lading or waybill; and (4) those portions of the split shipment that could be covered under the entry arrived directly from abroad at the same port of importation in the United States within 10 calendar days of the date of the portion that arrived first.

Specifically, to implement 19 U.S.C. 1484(j)(2) under which an importer could make a single entry for a split shipment, it was proposed to add a new § 141.57 to the Customs Regulations (19 CFR 141.57), in addition to making certain amendments to § 142.21 of the Customs Regulations (19 CFR 142.21). Also, a minor conforming change was to be made as well to § 141.51 of the Customs Regulations (19 CFR 141.51).

By a document published in the **Federal Register** (67 FR 3135) on January 23, 2002, the period of time within which public comments could be submitted in response to the proposed rule was re-opened until February 14, 2002.

Discussion of Comments

A total of twenty-two commenters responded to the notice of proposed rulemaking. A description of the issues raised by these commenters, together with Customs response to these issues is set forth below.

General Comments on the Proposed Rule

Comment: It is improper for Customs to propose regulations for split shipments and for unassembled and disassembled entities in two separate regulation packages.

Customs Response: Although 19 U.S.C. 1484(j)(1) and (j)(2) allow for the filing of a single entry for shipments which arrive at different times, sections 1484(j)(1) and 1484(j)(2) ultimately address two very different situations. As a result, and to minimize confusion between the two provisions, Customs decided to address each provision in separate rulemakings.

Comment: The proposed regulations providing for a single entry for shipments split by the carrier do not reflect an agreement that Customs reached prior to the enactment of 19 U.S.C. 1484(j)(2) on the manner in which such split shipments would be regulated.

Customs Response: The legislation supersedes any informal agreements that Customs and the trade may have made prior to its enactment. In the proposed rule, Customs endeavored to reflect the intent of Congress in enacting 19 U.S.C. 1484(j)(2). Customs thoroughly reviewed the comments that were received in response to the proposed rule and, in this final rule, has made a number of changes to the regulations as initially proposed for split shipments.

Comment: The split shipment procedures followed by Customs at Los Angeles International Airport and at John F. Kennedy Airport in New York are preferable to those reflected in the proposed rule.

Customs Response: Customs reviewed the split shipment procedures at these airports. In developing the proposed regulations, Customs included the most operationally feasible features of the procedures for handling split shipments at those locations.

Comment: It was asked whether entries of split shipments may be processed through the Pre-Arrival Processing System (PAPS). The PAPS system allows electronic entries to be submitted prior to the time a truck arrives at the United States border.

Customs Response: Customs plans to issue a Federal Register notice on PAPS shortly and will address this comment then.

Comment: It is contended that, by allowing for a single entry for merchandise arriving on separate conveyances at different times, 19 U.S.C. 1484(j) will enable the circumvention of laws restricting the importation of softwood lumber.

Customs Response: Customs does not believe that 19 U.S.C. 1484(j)(2) will have an adverse impact on United States lumber interests; section 1484(j)(2) merely allows an importer to file one entry to cover a single shipment which is split by the carrier and which arrives in the United States separately.

Comment: The proposed rule will interfere with the Government's collection of waterborne commerce statistics, because the ability to match arriving commodities with the actual transporting vessel will be compromised. For this reason, it is recommended that vessel shipments be eliminated from the proposed rule.

Customs Response: This comment appears to address the fact that statistical information is collected on the CF 7501 entry summary, which currently can accommodate data pertaining to only one conveyance. Customs will endeavor to design future information collection systems which capture more comprehensive data. As 19 U.S.C. 1484(j)(2) is silent as to the modes of transportation involved, Customs concluded that the legislation implicitly intended to include within its scope all modes of transportation. Thus, vessel shipments may not be excluded from the split shipment rulemaking. However, Customs anticipates that split shipments should occur infrequently in the vessel environment, because it is unlikely that oceangoing carriers, most of which have large cargo capacities, will need to split shipments due to space, weight or other logistical concerns.

Comment: The proposed split shipments program may compromise the quality of statistics, particularly with respect to freight charges, which will be obtained from Customs Form (CF) 7501. As such, Customs should develop a means of collecting multiple carrier information under ACE (Automated Commercial Environment). Furthermore, in this same vein, it is remarked that numerous, albeit unidentified, issues relating to automation exist in connection with split shipments that warrant further discussion prior to implementation of final regulations concerning such shipments.

Customs Response: Customs is aware of the concerns relating to the collection of statistics under the ACE and will address these issues in developing and refining the ACE system. In this regard, however, the collection of statistics under the ACE system as well as any issues related to automation fall outside the scope of this rulemaking.

Comment: Customs should utilize a new type of entry for handling split shipments. It is recommended in this context that the importer enter the entire value of the shipment when the first portion arrives, and then flag the entry for reconciliation following the arrival of all portions of the shipment that are covered under the entry.

Customs Response: Customs disagrees. The introduction of a new type of entry to handle split shipments is unnecessary for the successful implementation of the split shipment program. Resort to the reconciliation method for processing split shipments would defeat the purpose of the legislation, which is to allow the filing of a single entry for a shipment whose portions arrive separately. Under the suggested reconciliation approach, a minimum of two entries would have to be filed—a consumption entry and a reconciliation entry. Of course, importers who file single entries for shipments which have been split may flag those entries for reconciliation if the entries have unresolved issues of the kind which are entitled to be resolved under the established entry reconciliation program.

Comment: Customs should adopt an alternative procedure under which it would grant blanket permission to importers to file the entry summary for an air split shipment in its entirety at the time of the arrival of the first portion; then allow incremental release for that portion and all portions that thereafter arrive; followed by the submission of a final accounting or report by the importer. Any total quantity variances would be reported through standard reconciliation procedures.

Customs Response: Customs lacks the operational ability at the present time to implement the type of procedure described. Also, as indicated in the response to the previous comment, Customs disagrees with the general use of the reconciliation procedure as a method for processing split shipments.

Comment: Customs should eliminate the three-year restriction on the reuse of air waybill numbers and should allow the unique identifier for the bill of lading to be composed of six elements rather than two. Also, Customs should allow the air waybill number to be used as the in-bond control record for each arrival of a shipment.

Customs Response: These suggestions are outside the scope of this rulemaking. However, it is noted that Customs in a recently published rulemaking amended its regulations to allow air waybill numbers to be reused after one year.

Comment: It is asked whether Customs will post the release of each part of a split shipment in the Air Automated Manifest System (AMS).

Customs Response: To enable Customs to post release information for each part of a split shipment, the entry filer will need to inform the appropriate Customs personnel where the entry is filed in order for such personnel to make the necessary corrections and manually enter the relevant information for each arrival in the Air AMS. Customs Office of Information and Technology (OIT) intends to implement programming changes so that release information may be posted in the AMS system automatically.

Comment: A question is posed as to how split shipments would be processed if they require inspection by the U.S. Department of Agriculture (USDA).

Customs Response: Split shipments requiring inspection by other Government agencies will be processed in the same manner as regular (non-split) shipments that require such inspection.

Comment: The proposed split shipment regulations should provide for the amendment of certificates of origin that are used in preferential trade programs so as to eliminate the need to obtain revised certificates from the importer or producer covering each portion of a split shipment that arrives.

Customs Response: Customs does not believe this is necessary. Most certificates of origin are blanket certificates, designed to cover merchandise appearing on many entries. When a certificate of origin covering a single entry pertains to merchandise in a shipment which is split, and separate entries covering different portions of the shipment are filed (either by choice or because a portion of the shipment arrives too late to be covered under the split-shipment entry), copies of the certificate may be made to apply to any additional entries.

General Rule—Amendment of § 141.51

Comment: Given that importers prefer filing a single entry when a split shipment occurs, § 141.51 should be revised to treat separate entries in such circumstances as the exception rather than the rule.

Customs Response: Customs disagrees. Allowing an importer to file one entry for shipments which arrive at different times is an exception to the longstanding general rule that all merchandise consigned to one consignee which arrives on one vessel,

aircraft or vehicle must be included in one entry. The exception carved out for split shipments is simply one of several exceptions to this general rule, and applies only to a limited number of entries. The general rule itself has not been changed as the result of the enactment of 19 U.S.C. 1484(j).

Definition of Split Shipment—Proposed § 141.57(b)

Comment: Customs should broaden the types of split shipments which are eligible for single entry treatment. It is advocated, for example, that the proposed rule cover shipments that are split at the port of arrival for transportation separately to the port where entry is to be made. It is stated that this situation can result when merchandise which arrives in the United States on a single conveyance is split at the port of arrival into separate portions because an insufficient number of vehicles are available at the time of arrival to simultaneously transport the entire shipment to the port where entry is made.

Customs Response: Customs disagrees. The purpose of 19 U.S.C. 1484(j)(2) is to furnish a mechanism by which one entry may be filed for a shipment that is split by the original carrier to which the shipment was delivered at the foreign port for transportation to the United States. To expand coverage under the law to shipments that are split after importation into the United States would exceed the purview of the statute.

Comment: It is a distortion of the intent of the statute to define a split shipment as being a shipment which is delivered to and accepted by the carrier as a single shipment under one bill of lading. It is contended that the definition of a split shipment to this effect fails to take into account situations in which the importer delivers goods to the carrier as a single shipment, but the carrier then informs the importer that the shipment must be carried on several conveyances due to insufficient cargo space remaining on currently available ships. Under the proposed rule, such a shipment would not qualify as a split shipment because it would not have been accepted by the carrier as a single shipment.

Customs Response: Customs does not believe that the definition of a split shipment under § 141.57(b) distorts the intent of the statute. Rather, it is Customs' view that the purpose of 19 U.S.C. 1484(j)(2) is to offer relief to importers whose shipments have been split by the carrier after the carrier has accepted the shipment with the importer's understanding that the shipment would be transported on a single conveyance. Under those circumstances, the importer would have a realistic expectation that the shipment would arrive at one time and that the importer would thus be able to file one entry. However, as described in the comment, the importer would already know prior to concluding shipping arrangements with the carrier that the shipment would be transported on different conveyances and would arrive in the United States at different times.

Comment: The proposed requirement that all portions of a split shipment arrive within 10 calendar days of the date of arrival of the first portion does not square with modern shipping realities. The 10 calendar day arrival time should be extended to 30 or 90 days, in order to more accurately reflect the Congressional intent that split shipments can occur over a period of time. In the alternative, if the portions of a split shipment are to be limited to arriving within 10 calendar days of one another, Customs should change 10 calendar days to 10 business days.

Customs Response: Customs believes that the overwhelming majority of split shipment transactions which may occur may be easily accommodated within the 10 calendar day period as originally proposed. Furthermore, the use of a 10 calendar day arrival window affords an importer sufficient time to file an entry summary within 10 working days from the time the first portion of the split shipment is released, given that a 10 working day period will always be longer than a 10 calendar day period.

Comment: A question is raised as to whether there is a limit to the number of portions into which a carrier may split a master shipment.

Customs Response: There is no limit to the number of portions into which a carrier may split a shipment.

Comment: The proposed requirement that all conveyances carrying a split shipment initially arrive at the same port of importation in the United States should be eliminated because routing merchandise from one United States port to another is a standard business practice exercised by carriers.

Customs Response: Customs agrees. Accordingly, proposed § 141.57(b)(3) is revised in this final rule by eliminating the requirement that all portions of a split shipment arrive at the same port of importation in the United States. Instead, all portions of the split shipment must timely arrive at the same port of entry in the United States, as listed on the original bill of lading. Any portion of a split shipment that arrives at a different port must be transported in-bond to the port of destination where entry will be made; and such in-bond transportation to the port of destination must occur before the transported merchandise may be released by Customs. In conformance with this requirement, proposed §§ 141.57(d)(1), (d)(2), (e), (i), (j)(1), and 142.21(g) are appropriately changed in this final rule.

Notice to Customs That Shipment Has Been Split—Proposed § 141.57(c)

Comment: It is asked how the importer would know whether the carrier has informed Customs of a split shipment.

Customs Response: Under § 141.57(c), it is expressly the responsibility of the importer, not the carrier, to notify Customs that the importer's shipment has been split by the carrier. To this end, the adequacy of communication between the importer and the carrier is a private matter between those parties.

Comment: Proposed § 141.57(c) should be revised to simply require that the importer notify Customs of a split shipment prior to the filing of the entry summary, in recognition that the importer's knowledge of the circumstances may be limited or nonexistent.

Customs Response: Customs disagrees. Section 141.57(c) requires that notification be given as soon as the importer becomes aware that the shipment has been split, but that in all cases such notification must be made before the entry summary is filed. This requirement is specifically designed to give an importer maximum flexibility in informing Customs of the intention to file a single entry for a split shipment, in recognition of the fact that an importer may learn of a split shipment at different times.

Comment: Further details are requested concerning the form of the notification. It is asked whether an electronic message (e-mail) would be sufficient.

Customs Response: Section 141.57(c) requires that such notification be given to Customs in writing. To this end, Customs would prefer that the notice be written on the front of Customs Form (CF) 3461 or that notice be submitted in the form of a letter if an electronic CF 3461 is filed. The letter could also be faxed to the applicable port.

Customs is currently incapable of accepting e-mail at all ports. Provision for electronic notification will be made in the Automated Commercial Environment (ACE) system.

Comment: Under the current systems for handling split shipments employed at Los Angeles International Airport and at John F. Kennedy Airport in New York, the carrier is required to include each split portion on the manifest. Hence, it is asserted that the manifest should constitute the advance notification to Customs that the shipment has been split. If the importer does not file a separate entry for each arriving portion, it should be understood that the importer intends to file a single entry for the entire split shipment.

Customs Response: Customs disagrees. The advance notice is a statutory requirement which lets Customs know that the importer has elected to file a single entry for all portions of the split shipment. Mere notification that the shipment has been split is not notification by the importer that a single entry will be filed for the shipment.

Entry or Permit for Immediate Delivery—Proposed § 141.57(d)

Comment: It appears that the immediate delivery procedures for a split shipment require that the merchandise in the shipment be delivered to the carrier in the foreign country under one invoice. However, it is a common business practice for a shipment to contain merchandise covered by multiple invoices. As long as the merchandise is tendered to the carrier at the same time, there should be no limitation on the number of invoices involved.

Customs Response: Customs agrees. Provided the merchandise is delivered to the carrier as set forth in proposed § 141.57(b)(1), there should be no limitation on the number of invoices involved. Paragraphs (d)(1) and (d)(2) of proposed § 141.57 are amended accordingly in this final rule; and a conforming change to proposed § 142.21(g) is made as well in this final rule.

Comment: The release procedures in proposed § 141.57(d)(1) and (d)(2) should allow for one Customs Form (CF) 3461 to be filed and applied against all portions of the shipment. Then, if any portion of the shipment still has not arrived within the prescribed 10 day period, such portion would be deducted from the invoice(s) used on the entry summary for the shipment, and that portion would then be entered separately. In the alternative, should Customs determine that adjusted CF 3461 copies are necessary, it is suggested that Customs allow the electronic filing of the adjusted CF 3461s.

Customs Response: It is initially noted that under the release procedure in § 141.57(d)(1), only one CF 3461 will need to be filed. By contrast, under the procedure in § 141.57(d)(2) which provides for the separate release of each portion of a split shipment as it arrives, Customs finds that requiring an adjusted copy of the CF 3461 to be submitted for each portion of the shipment is necessary in order to afford a mechanism by which the importer and Customs may easily and effectively keep track of the specific merchandise contained in any given portion of the shipment. However, Customs agrees that multiple CF 3461 copies are unnecessary when both the carrier and the importer are automated. In the case of such automation, adjustments may be made electronically to show the quantity of merchandise contained in each portion of the shipment as it arrives. Proposed § 141.57(d)(2) is thus amended in this final rule to reflect that if both the carrier and the importer are automated, such adjustments may be made electronically through the Customs ACS (Automated Commercial System).

Comment: Under the incremental release procedure in proposed § 141.57(d)(2), clarification is needed as to what is meant by the quantity of merchandise that must be reflected on the adjusted Customs Form (CF) 3461 that is submitted to Customs upon the arrival of each portion of a split shipment.

Customs Response: The quantity means the number of pieces, boxes, cartons, and the like, which are contained in the particular portion of the split shipment as it arrives, relative to the total number delivered by the shipper to the foreign carrier. To minimize confusion in this regard, proposed § 141.57(d)(2) is revised in this final rule to make clear that the adjusted quantity will reflect the quantity in that particular portion relative to the quantity contained in the entire shipment as delivered to and accepted by the carrier in the exporting country.

Comment: It is contended that 19 U.S.C. 1484(j)(2) represents a statutory exception to the well established principle that entry may only be made after merchandise has been imported. As such, instead of the procedure in proposed § 141.57(d)(2), which requires a special permit for immediate delivery for portions of a split shipment that are released incrementally following their arrival, Customs should allow the entire shipment to be entered at the time that the first portion of the shipment is imported.

Customs Response: Customs disagrees. Section 1484(j)(2) is not an exception to the general rule that importation must precede entry. Rather, the law simply allows one shipment which is split by the carrier and which arrives in the United States at different times to be covered under one entry. Previously, each portion would have required a separate entry. Under section 1484(j)(2), however, importers of merchandise whose shipments have been split by the carrier may either continue to file a separate entry for each portion, or they may file a single entry for all of the portions which arrive within a prescribed period of time.

Nevertheless, resort to the immediate delivery procedure of § 141.57(d)(2) is only necessary when the importer wishes to file one entry, but wants each portion to be released as it arrives. Under this immediate delivery procedure, since the time of entry occurs, not upon release, but upon the filing of the entry summary, § 141.57(d)(2) ensures that all portions of the split shipment are imported prior to the entry being filed. Importers who want to file one entry but who object to using the immediate delivery procedure in § 141.57(d)(2) may instead opt to use the procedure in § 141.57(d)(1), under which one entry may be filed but release of the merchandise is delayed until all portions of the shipment have arrived.

Necessary Manifest Data to Secure Release of Shipment—Proposed § 141.57(e)

Comment: Further elaboration is requested concerning the process by which a carrier would make adjustments to the quantity set forth in the manifest as necessary to secure the incremental release of the shipment under proposed § 141.57(d)(2). It is specifically asked how such adjustments would be administered.

Customs Response: Carriers are required under § 141.57(e) to present manifest information to Customs which reflects exact information for each portion of a split shipment in order to qualify the split shipment for incremental release, pursuant to § 141.57(d)(2), as each portion of the shipment arrives. Carriers may accomplish the presentation of this adjusted manifest information either on a paper manifest or electronically if both the carrier and the importer are operational on the Customs Automated Commercial System (ACS), as noted above.

Filing of Entry Summary for Split Shipment—Proposed § 141.57(g)

Comment: Proposed § 141.57(g)(2)(ii) contains a technical contradiction in requiring the entry summary to be filed no later than 10 working days after the first cargo release, while in effect not

allowing summary filing before the arrival of the last portion of the split shipment which is to be included on the entry.

Customs Response: There is no contradiction. Since all portions of the shipment must arrive within 10 calendar days of the portion that arrives first, and the entry summary must be filed under § 141.57(g)(2)(ii) within 10 working days from the date of first release of a portion of the shipment, there should be sufficient time for all portions of the split shipment to arrive before the entry summary is required to be filed. However, should any portions not arrive within 10 calendar days of the portion that arrived first, such late-arriving portions would need to be separately entered, as prescribed in § 141.57(i).

Separate Entries Required—Proposed § 141.57(i)

Comment: Regarding portions of a shipment that do not arrive within the required 10 calendar day period, it was asked whether the consignee or agent would be responsible for paying full duty on the entire shipment before it is complete.

Customs Response: The importer of record will only be responsible for paying duty based on the value and/or quantity of merchandise contained in those portions of the split shipment that arrive within the required 10 calendar day time frame and are thus included in the split-shipment entry. As such, when a portion of a split shipment does not arrive within the prescribed 10 calendar day period, that portion will not be included on the entry, and thus no duty will yet be due on that portion. Duty on any delayed portion will become due when the portion does arrive and a separate entry for that portion is filed.

Comment: Merchandise classifiable under the same subheading of the Harmonized Tariff Schedule of the United States (HTSUS) may nevertheless be subject to different rates of duty if the applicable rate already applied against one portion of a split shipment changes and the changed rate is thereafter assessed against a second portion. It is stated in particular that this problem could arise where a change in the duty rate occurs after any portion of the split shipment is accepted for transportation in-bond to the port of destination.

Customs Response: Customs agrees. Under 19 CFR 141.69(b), the duty rate applied to merchandise in any portion of a split shipment that is transported in-bond to the port of destination would be the duty rate in effect for such merchandise when Customs accepts the in-bond transportation entry; merchandise in any other portion of the shipment, however, would thereafter generally be subject to the rate of duty in effect at the time of entry pursuant to 19 CFR 141.68(a)(1) or (c), as applicable. As a result, if merchandise classifiable under the same subheading of the HTSUS arrives in the United States at different times as part of a split shipment, a change in the rate of duty that occurs during this time with respect to such merchandise could result in two different rates of duty being assessed against the merchandise on the same split shipment entry.

This would present an administrative/operational problem for Customs because current Customs systems are incapable of accepting different duty rates on one entry for merchandise that is classifiable under the same HTSUS subheading. Hence, a separate entry will be required for any portion of a split shipment in those rare instances where necessary to preclude the application of different rates of duty on a split shipment entry for merchandise that is identically classifiable under the HTSUS. Proposed § 141.57(i) is changed in this final rule to add a provision to this effect.

Importer Review of Entry; Evidence of Split Shipment—Proposed § 141.57(j)

Comment: Under proposed § 141.57(j)(1), Customs should rely primarily upon carriers, rather than importers, to obtain timely and accurate split shipment information because it is the carriers' decision to split the shipments in the first place.

Customs Response: Customs disagrees. While it is the case that shipments are split at the initiative of the carrier, it is the importer, not the carrier, who elects to file a single entry for all portions of a split shipment. Since the importer files the entry, it is properly the responsibility of the importer to ensure that the entry is correct and that it accurately reflects the actual amount, value, correct classification and rate of duty of the merchandise covered under the entry, as required in § 141.57(j)(1).

Comment: It is unnecessary to require in proposed § 141.57(j)(2) that the importer maintain sufficient documentary evidence to substantiate that the splitting of a shipment was done by the carrier acting on its own. Importers do not want their shipments to be split because this causes their shipments to be delayed.

Customs Response: Customs disagrees. Under 19 U.S.C. 1484(j)(2), the use of the single entry procedure for separate portions of a split shipment is contingent upon the shipment having been split at the instruction of the carrier. The importer must therefore maintain suitable documentary evidence to substantiate that the shipment was split by the carrier on its own initiative.

Comment: In proposed § 141.57(j)(2), the requirement that an importer maintain a copy of the originating bill of lading or air waybill is essentially impossible as carriers by law do not make documents of this nature available to the importer due to the fact that such documents contain confidential freight rate information. An importer should not even be required to obtain a letter from the carrier as proof that the carrier split the shipment on its own initiative because carriers would generally not be timely in providing such letters. It is contended that the carrier should be the party responsible for keeping records of the shipments which they have chosen to split.

Customs Response: It is again emphasized that since the importer is the party who elects to file a single entry covering multiple portions of a split shipment, it is properly the responsibility of the importer to substantiate its right to do so. However, Customs agrees that an importer who elects to file a single entry for a split shipment but who never receives a copy of the originating bill of lading or air waybill cannot be required to maintain or produce what he does not receive. However, Customs does need evidence that the splitting of the shipment was done at the carrier's initiative. Accordingly, proposed § 141.57(j)(2) is amended in this final rule to provide that the importer must keep a copy of the originating bill of lading or air waybill or, in the absence of such document, any other supporting documentary evidence, such as a letter, from the carrier confirming that the splitting of the shipment was done by the carrier on its own initiative. An importer will have to insist that a carrier provide the necessary documentary evidence.

Denial of Incremental Release; Quota; Other Goods—Proposed § 141.57(k)

Comment: Proposed § 141.57(k)(1) wrongly excludes merchandise subject to quota and/or visa requirements from the incremental release procedure in proposed § 141.57(d)(2).

Customs Response: Customs finds that quota and/or visa merchandise is of such a sensitive nature as to warrant its exclusion from the incremental release procedure of § 141.57(d)(2). Nevertheless, by precluding the use of the incremental release procedure in § 141.57(d)(2), Customs is not preventing importers of merchandise subject to quota or visa requirements from availing themselves of the benefits of the law. Under the procedure in § 141.57(d)(1), importers may still file a single entry under 19 U.S.C. 1484(j)(2) for a shipment of quota/visa merchandise which has been split by the incoming carrier. The procedure in § 141.57(d)(1) provides for the filing of a single entry after all portions of a split shipment have arrived. Under this procedure, the portions of the split shipment are not released incrementally, as each portion arrives, but are held until all portions have arrived and the single entry covering those portions has been filed.

Comment: With respect to proposed § 141.57(k)(2), a port director should not have the unfettered discretion to deny incremental release under proposed § 141.57(d)(2) as circumstances warrant. Also, the port director should not have the discretion to deny incremental release for purposes of examination, as provided in proposed § 141.57(f). In the alternative, an importer whose shipment is denied incremental release should be able to appeal such a denial.

Customs Response: Customs believes that there may be circumstances under which the incremental release procedure is inappropriate and should not be allowed. In such circumstances, Customs has the authority to examine all of the merchandise included on an entry before allowing the release of any portion of the shipment.

In addition, Customs does not believe that an appeals process for a denial of incremental release is practicable, for two reasons. First, most of the portions of a split shipment will have arrived before an appeals process could be completed. Second, importers who are denied the use of incremental release under § 141.57(d)(2) for a particular split shipment are not deprived of the benefit conferred by the statute, that is, they may still file one entry for portions of a shipment which arrive separately in accordance with the release procedure set forth in § 141.57(d)(1).

Additional Change

In addition, proposed § 141.57(e) is clarified in this final rule to provide that the carrier responsible for splitting a shipment must notify any other obligated entities (such as another carrier or a freight forwarder) that have submitted electronic manifest information to Customs about the shipment that was split so that these parties can update their manifest information to Customs.

Conclusion

After careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments should be adopted with the modifications discussed above.

Regulatory Flexibility Act and Executive Order 12886

This final rule implements the statutory law and engenders cost savings by reducing paperwork for importers, and by reducing the number of entries required for split shipments. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do these final regulations result in a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collections of information encompassed within this final rule have already been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Requirement to make entry unless specifically exempt; Requirement to file entry summary form); 1515–0167 (Statement processing and Automated Clearinghouse); 1515–0214 (General recordkeeping and record production requirements); and 1515–0001 (Transportation manifest; cargo declaration). This rule does not make any material change to the existing approved information collections. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

List of Subjects

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Computer technology, Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 141 and 142, Customs Regulations (19 CFR parts 141 and 142), are amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

2. Section 141.51 is revised to read as follows:

§ 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one conveyance and consigned to one consignee must be included on one entry, except as provided in § 141.52. In addition, a shipment of merchandise that arrives by separate conveyances at the same port of entry in multiple portions, as a split shipment, may be processed under a single entry, as prescribed in § 141.57.

3. Subpart D of part 141 is amended by adding a new § 141.57 to read as follows:

§ 141.57 Single entry for split shipments.

(a) *At election of importer of record.* At the election of the importer of record, Customs may process a split shipment, pursuant to section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), under a single entry, as prescribed under the procedures set forth in this section.

(b) *Split shipment defined.* A "split shipment", for purposes of this section, means a shipment:

(1) Which may be accommodated on a single conveyance, and which is delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill, and is thus intended by the importer of record to arrive in the United States as a single shipment;

(2) Which is thereafter divided by the carrier, acting on its own, into different portions which are transported and consigned to the same party in the United States; and

(3) Of which the first portion and all succeeding portions arrive at the same port of entry in the United States, as listed in the original bill of lading or waybill; and all the succeeding portions arrive at the port of entry within 10 calendar days of the date of the first portion. If any portion of the shipment arrives at a different port, such portion must be transported in-bond to the port of destination where entry of the shipment is made.

(c) *Notification by importer of record.* The importer of record must notify Customs, in writing, that the shipment

has been split at the carrier's initiative, that the remainder of the shipment will arrive by subsequent conveyance(s), and that an election is being made to file a single entry for all portions. The required notification must be given as soon as the importer of record becomes aware that the shipment has been split, but in all cases notification must be made before the entry summary is filed.

(d) *Entry or special permit for immediate delivery.* In order to make a single entry for a split shipment or obtain a special permit for the release of a split shipment under immediate delivery, an importer of record may follow the procedure prescribed in paragraph (d)(1) or (d)(2) of this section, as applicable.

(1) *Entry or special permit after arrival of entire shipment.* An importer of record may file an entry at such time as all portions of the split shipment have arrived at the port of entry (see paragraph (b)(3) of this section). In the alternative, again after the arrival of all portions of a split shipment at the port of entry, the importer of record may instead file a special permit for immediate delivery provided that the merchandise is eligible for such a permit under § 142.21(a)—(f) and (h) of this chapter. In either case, the importer of record must file Customs Form (CF) 3461 or CF 3461 alternate (CF 3461 ALT) as appropriate, or electronic equivalent, with Customs. The entry or special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment.

(2) *Special permit prior to arrival of entire shipment.* As provided in § 142.21(g) of this chapter, an importer of record may also file a special permit for immediate delivery after the arrival of the first portion of a split shipment at the port of entry (see paragraph (b)(3) of this section), but before the arrival of the entire shipment at such port, thus qualifying the split shipment for incremental release, under paragraph (e) of this section, as each portion of the shipment arrives at the port of entry (see paragraph (g)(2)(ii) of this section). In such case, a CF 3461 or CF 3461 ALT as appropriate, or electronic equivalent, must be filed with Customs. As each portion arrives at the port of entry, the importer of record must submit a copy of the CF 3461/CF 3461 ALT, adjusted to reflect the quantity of that particular portion relative to the quantity contained in the entire split shipment (see paragraph (b)(1) of this section); however, if both the carrier and the importer of record are automated, such adjustments may instead be made electronically through the Customs ACS (Automated Commercial System). In the event that an entry has been pre-filed with Customs (see § 142.2(b) of this chapter), notification to Customs by the importer of record that a single entry will be filed for shipments released incrementally will serve as a request that the pre-filed entry be converted to an application for a special permit for immediate delivery (see § 142.21(g) of this chapter). The special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment. Customs may limit the release of each portion of the split shipment upon arrival at the port of entry, as permitted under this paragraph, due to the need to examine the merchandise in accordance with paragraph (f) of this section.

(e) *Release.* To secure the separate release upon arrival of each portion of a split shipment at the port of destination under paragraph (d)(2) of this section, the carrier responsible for initially splitting the shipment must present to Customs, either on a paper manifest or through an authorized electronic data interchange system, manifest information relating to the shipment that reflects exact information for each portion of the split shipment. The carrier responsible for splitting the shipment must notify other obligated entities (such as another carrier or freight forwarder) that have submitted electronic manifest information to Customs about the shipment that was split so that these parties can update their manifest information to Customs.

(f) *Examination.* Customs may require examination of any or all parts of the split shipment. For split shipments subject to the immediate delivery procedure of paragraph (d)(2) of this section, Customs reserves the right to deny incremental release should such an examination of the merchandise be necessary. The denial of incremental release does not preclude the use of the procedures specified in paragraph (d)(1) of this section.

(g) *Entry summary.*— (1) *Entry.* For merchandise entered under paragraph (d)(1) of this section, the importer of record must file an entry summary within 10 working days from the time of entry.

(2) *Release for immediate delivery.*— (i) *Release under paragraph (d)(1) of this section.* For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(1) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days after the merchandise or any part of the merchandise is authorized for release under the special permit or, for quota class merchandise, within the quota period, whichever expires first (see § 142.23 of this chapter).

(ii) *Release under paragraph (d)(2) of this section.* For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(2) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days from the date of the first release of a portion of the split shipment. The filed entry summary must reflect all portions of the split shipment which have been released, to include quantity, value, correct classification and rate of duty. The entry summary cannot include any portions of the split shipment which have not been released.

(3) *Duty payment.* With the entry summary filed under paragraphs (g)(1) and (g)(2)(i) and (g)(2)(ii) of this section, the importer of record must attach estimated duties, taxes and fees applicable to the released merchandise. If the entry summary is filed electronically, the estimated duties, taxes and fees must be scheduled for payment at such time pursuant to the Automated Clearinghouse (see § 24.25 of this chapter).

(h) *Classification.* For purposes of section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), the merchandise comprising the separate portions of a split shipment included on one entry will be classified as though imported together.

(i) *Separate entry required.*— (1) *Untimely arrival.* The importer of record must enter separately those portions of a split shipment that do not arrive at the port of entry within 10 calendar days of the portion that arrived there first (see paragraph (b)(3) of this section).

(2) *Different rates of duty for identically classified merchandise.* An importer of record will be required to file a separate entry for any portion of a split shipment if necessary to preclude the application of different rates of duty on a split shipment entry for merchandise that is classifiable under the same subheading of the Harmonized Tariff Schedule of the United States (HTSUS).

(j) *Requirement of importer of record to review entry and maintain evidence substantiating splitting of shipment.*— (1) *Review of entry.* The importer of record will be responsible for reviewing the total manifested quantity shown on the CF 3461/CF 3461 ALT, or electronic equivalent, in relation to all portions of the split shipment that arrived at the port of entry under paragraph (b)(3) of this section within the specified 10 calendar day period. At the conclusion of the specified 10 calendar day period, the importer of record must make any adjustments necessary to reflect the actual amount, value, correct classification and rate of duty of the merchandise that was released incrementally under the split shipment procedures. If all portions of the split shipment do not arrive within the required 10 calendar day period, the importer of record must file an additional entry or entries as appropriate to cover any remaining portions of the split shipment that subsequently arrive (see paragraph (i)(1) of this section).

(2) *Evidence for splitting of shipment; recordkeeping.* The importer of record must maintain sufficient documentary evidence to substantiate that the splitting of the shipment was done by the carrier acting on its own, and not at the request of the foreign shipper and/or the importer of record. This documentation should include a copy of the originating bill of lading or waybill under which the shipment was delivered to the carrier in the country of exportation or other supporting documentary evidence, such as a letter from the carrier confirming that the splitting of the shipment was done by the carrier on its own initiative. This documentary evidence as well as all other necessary records received or generated by or on behalf of the importer of record under this section must be maintained and produced, if requested, in accordance with part 163 of this chapter.

(k) *Single entry limited; exclusions from single entry under incremental release procedure.*

(1) *Quota/visa merchandise.* Merchandise subject to quota and/or visa requirements is excluded from incremental release under the immediate delivery procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter. Additionally, if by splitting a shipment any portion of it is subject to quota, no portion of the split shipment may be released incrementally.

(2) *Other merchandise.* In addition, the port director may deny the use of the incremental release procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter, as circumstances warrant.

(3) *Limited single entry available.* For merchandise described in paragraphs (k)(1) and (k)(2) of this section, that is excluded from the immediate delivery procedure of paragraph (d)(2) of this section and § 142.21(g) of this chapter, the importer of record may still file a single entry or special permit for immediate delivery under paragraph (d)(1) of this section covering the entire split shipment of such merchandise following, and to the extent of, its arrival within the required 10 calendar day period.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.21 is amended as follows:

a. By removing the second sentence in paragraph (e)(1) and adding in its place two new sentences;

b. By removing the second sentence in paragraph (e)(2) and adding in its place two new sentences;

c. By redesignating paragraph (g) as paragraph (h) and adding a new paragraph (g); and

d. By revising newly redesignated paragraph (h).

The additions and revision read as follows:

§ 142. 21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(e) *Quota-class merchandise.* (1) *Tariff rate.* * * * However, merchandise subject to a tariff-rate quota may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, an entry summary will be properly presented pursuant to § 132.1 of this chapter within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

(2) *Absolute.* * * * However, merchandise subject to an absolute quota under this paragraph may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, a proper entry summary must be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

* * * * *

(g) *Incremental release of split shipments.* Merchandise subject to § 141.57(d)(2) of this chapter, which is purchased and delivered to the carrier as a single shipment, but which is shipped by the carrier in separate portions to the same port of entry as provided in § 141.57(b)(3), may be released incrementally under a special permit. Incremental release means releasing each portion of such shipments separately as they arrive.

(h) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in paragraphs (a), (b), (c), (d), (e), (f) and (g) of this section provided a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter is on file.

3. Section 142.22 is amended by removing the first sentence of paragraph (a) and adding in its place two sentences to read as follows:

§ 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery will be made on Customs Form 3461, Form 3461 ALT, or its electronic equivalent, supported by the documentation provided for in § 142.3. A commercial invoice will not be required, except for merchandise released under the provisions of 19 U.S.C. 1484(j). * * *

* * * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: February 19, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–4318 Filed 2–24–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is exempting two systems of records in its inventory of systems of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: No comments were received during the public comment period, therefore, the rules are being adopted as published below.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense

are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended to read as follows:

PART 311—OSD PRIVACY PROGRAM

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 311.8 is amended by adding paragraphs (c)(12) and (c)(13) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(12) *System identifier and name:* DFOISR 05, Freedom of Information Act Case Files.

(i) *Exemption:* During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Office of the Secretary of Defense claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(13) *System identifier and name:* DFOISR 10, Privacy Act Case Files.

(i) *Exemption:* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Office of the Secretary of Defense hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: February 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–4064 Filed 2–24–03; 8:45 am]

BILLING CODE 5001–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA159–4201a; FRL–7448–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions to the Air Resource Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The revision changes portions of Pennsylvania's air resource regulations. Specifically, today's action approves revised definitions related to "major modification," "modification," "potential to emit," "responsible official" and "secondary emissions" as conforming to the Federal definitions of these terms. The changes will make Pennsylvania's regulations consistent with Federal requirements. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse written comment by March 27, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Air Protection Division, Mail Code 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Michael I. Ioff, P.E., (215) 814–2166, or by e-mail at *ioff.mike@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On March 6, 2000, PADEP submitted a formal revision to the Pennsylvania State Implementation Plan (SIP). The SIP revision consists of changes to Pennsylvania's air resource regulations.

II. Summary of SIP Revision

The changes to Chapter 121, section 121.1, relating to definitions, modify the definitions of "major modification," "modification," "potential to emit," "responsible official" and "secondary emissions" to conform with the Federal definitions of these terms. In addition, the revised definition of "major modification" continues to remain more stringent than the corresponding Federal definition because it does not recognize the exclusion for combustion of municipal solid waste at steam generating units included in the Federal definition of "major modification." Notwithstanding this particular minor deviation from the corresponding Federal definition, the changes approved by today's action make the definitions consistent with Federal definitions of these terms promulgated under the CAA.

III. Final Action

EPA is approving the revisions to the Commonwealth of Pennsylvania's air resource regulations submitted by PADEP on March 6, 2000. The revisions amend portions of Chapter 121, General Provisions, Section 121.1, Definitions. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 28, 2003 without further notice unless EPA receives adverse comment by March 27, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the revisions to Pennsylvania's air resource regulations may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: January 30, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(197) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(197) Revisions to the Commonwealth of Pennsylvania Regulations pertaining to the Pennsylvania's air resource regulations submitted on March 6, 2000 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of March 6, 2000 from the Pennsylvania Department of Environmental Protection transmitting revisions to the Commonwealth's Regulations pertaining to the Pennsylvania's air resource regulations.

(B) Revisions to 25 PA Code, Part I, Subpart C, Article III, effective December 27, 1997. Revisions to Chapter 121, General Provisions, Section 121.1, definitions for major modification, modification, potential to emit, responsible official and secondary emissions.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(197)(i) of this section.

[FR Doc. 03–4256 Filed 2–24–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–190; MM Docket No. 01–295; RM–10305; RM–10381]

Radio Broadcasting Services; Jayton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a petition for rule making filed at the request of Linda Crawford, proposing the allotment of FM Channel 231A to Jayton, Texas (RM–10305). *See* 66 FR 53755, October 24, 2001. In response to a counterproposal filed by Robert Fabian (RM–10381), this document allots Channel 231C2 to Jayton, Texas, as that community's first local aural transmission service. Our determination was premised on Commission policy which is to allot the highest class channel requested to a community that complies with the technical requirements of the Rules. Coordinates used for Channel 231C2 at Jayton, Texas, are 33–15–35 NL and 100–40–08 WL. With this action, this docketed proceeding is terminated.

DATES: Effective March 24, 2003. A filing window for Channel 231C2 at Jayton, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–295, adopted February 5, 2003, and released February 7, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Jayton, Channel 231C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–4366 Filed 2–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–191; MM Docket No. 01–21; RM–10050]

Radio Broadcasting Services; Genoa, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Genoa Broadcasting, allots Channel 288C3 at Genoa, Colorado, as the community's first local aural transmission service. See 66 FR 10659, February 16, 2001. Channel 288C3 can be allotted to Genoa in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.3 kilometers (13.3 miles) northeast to avoid a short-spacing to the licensed site of Station KVAY(FM), Channel 289C1, Lamar, Colorado. The coordinates for Channel at Genoa are 39–23–06 North Latitude and 103–17–38 West Longitude.

DATES: Effective March 24, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–21, adopted February 5, 2003, and released February 7, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Genoa, Channel 288C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–4367 Filed 2–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1011

[STB Ex Parte No. 642]

Revision of Delegation of Authority Regulations

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board) is revising its delegations of authority to authorize the Chairman to take necessary actions in emergency situations when the Chairman is the only Board member reasonably available, and, if no Board Member is available, delegates authority to take such actions to the Director of the Board's Office of Compliance and Enforcement (OCE).

EFFECTIVE DATE: These rules are effective on February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr., (202) 565–1573. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board is revising its delegations of authority at 49 CFR 1011.4 to authorize the Chairman to take necessary actions in emergency situations when the Chairman is the only Board member reasonably available. The delegations of authority, which were most recently revised in *Revision of Delegation of Authority Regulations*, STB Ex Parte No. 588 (STB served Sept. 25, 2002), set out the organization of the Board and procedures in processing cases, certain litigation, and informal opinions. Among other things, they authorize the Chairman, Vice Chairman, and designated staff to perform certain functions that would otherwise be performed by the entire Board.

The Board has broad economic regulatory responsibility over the railroad industry. Railroads play a vital role in the Nation's security and economic health. But the operations of rail carriers could be threatened or disrupted by terrorist activities or other public health or safety emergencies. Therefore, it is crucial that the Board develop procedures to ensure that the agency will be able to take necessary actions, within the scope of its authority, to address problems in the railroad industry in the event of emergencies.

Among the statutory responsibilities vested with the Board is the ability to direct preference or priority to certain traffic during time of war or threatened war (49 U.S.C. 11124) and, more generally, to direct the handling, routing, and movement of rail traffic in emergency situations (49 U.S.C. 11123). In the event of a terrorist attack or other emergency, however, it is possible that only one agency member would be available to act on a matter at any given time. To address this contingency, the Board is amending its delegations of authority by adding two new provisions. Under the new regulations, the Board is delegating to the Chairman the authority to take necessary actions if the other members are unavailable in the event of an emergency. Pursuant to the existing regulation at 49 CFR 1011.3(a)(3), that authority passes to the Vice Chairman if the Chairman is unavailable, and to the remaining Member if both the Chairman and the Vice Chairman are unavailable. The Board is also revising its delegations of authority at 49 CFR 1011.7, so that the Director of OCE would have the authority to issue orders under 49 U.S.C. 11123 and 11124 if no Board Member is available.

Because these changes relate primarily to rules of agency organization, procedure, or practice, and because advance notice and opportunity for public comment on the matter would be impracticable given the circumstances prevailing today, we find good cause to dispense with such notice and comment. *See* 5 U.S.C. 553(b)(B). Moreover, we find good cause for making these rules effective on less than 30 days' notice under 5 U.S.C. 553(d), so that these changes will become effective on February 14, 2003.

Copies of the Board's decision may be purchased from Da-2-Da Legal Copy Service by calling 202–293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Act Certification

In accordance with Board procedures adopted in *Implementation of the Regulatory Flexibility Act*, STB Administrative Matter No. 3, STB Issuance No. 52 (STB served Nov. 8, 2002), the Board certifies that the amended rule adopted in this case will not have a significant economic impact on a substantial number of small entities. The amended delegations of authority relate primarily to rules of agency organization, procedure, or practice, and are designed simply to ensure continuity in carrying out necessary functions in the event of an emergency.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

Decided: February 14, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1011 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 11123, 11124, 11144, 14122, and 15722.

2. Amend § 1011.4 by adding a new paragraph (a)(9) to read as follows:

§ 1011.4 Delegations to individual Board Members.

(a) * * *

(9) Authority to act alone to take necessary actions in emergency situations when the Chairman is the only Board member reasonably available.

* * * * *

3. Amend § 1011.7 by adding a new paragraph (c)(5) to read as follows:

§ 1011.7 Delegations of authority by the Board to specific offices of the Board.

* * * * *

(c) * * *

(5) Issue orders by the Director in an emergency under 49 U.S.C. 11123 and 11124 if no Board Member is reasonably available.

[FR Doc. 03–4300 Filed 2–24–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 021903A]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock sole/Flathead sole/"Other flatfish" Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the interim 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 18, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The interim 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI is 195 metric tons as established by the interim 2003 harvest specifications for Groundfish of the BSAI (67 FR 78739, December 26, 2002).

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the interim 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI will be caught. Consequently, NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim 2003 halibut bycatch allowance, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4330 Filed 2–19–03; 4:34 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 37
Tuesday, February 25, 2003

This section of the FEDERAL REGISTER contains notices to the pubiic of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215–AB34

Labor Organization Annual Financial Reports; Extension of Comment Period

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for comments on the proposed rule published on December 27, 2002 (67 FR 79280). That proposed rule would revise the annual financial reports labor organizations are required to file under the Labor-Management Reporting and Disclosure Act of 1959, as amended. The comment period, which was to expire on February 25, 2003, is extended 30 days to March 27, 2003. In addition, further information on the proposed revision of the reporting forms will be added to the rulemaking record and made available to the public.

DATES: Comments on the proposed rule published on December 27, 2002 (67 FR 79280) must be received on or before March 27, 2003.

ADDRESSES: Comments should be sent to Victoria A. Lipnic, Assistant Secretary for Employment Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210.

All commenters are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the ongoing concerns involving anthrax contamination. All commenters must take this into consideration when preparing to meet the deadline for submitting comments. As a convenience to commenters, comments may be transmitted by e-mail to *FormLM2-comments@dol-esa.gov* or by facsimile (FAX) machine to (202) 693–1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for fax receipt by OLMS.

It is recommended that you confirm receipt of your comment by contacting (202) 693–0122 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Victoria A. Lipnic, Assistant Secretary for Employment Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5605, Washington, DC 20210, *olms-mail@dol-esa.gov*, (202) 693–0122 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 27, 2002, (67 FR 79280) the Department published a notice of proposed rulemaking that would revise the annual financial reporting forms that labor organizations are required to file under the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). Interested persons were invited to submit comments on or before February 25, 2003, 60 days after the publication of the notice.

Because of continuing interest in the proposal, the Department has decided to extend the comment period for 30 days. This extension will also give the public time to review additional information regarding the proposed revision of the reporting forms that the Office of Labor-Management Standards has made available on its Web site at *http://www.olms.dol.gov*. (Anyone who is unable to access this information on the Internet can obtain the information by contacting the Employment Standards Administration at 200 Constitution Avenue, NW, Room N–5605, Washington, DC 20210, at *olms-mail@dol-esa.gov*, or at (202) 693–0122 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Signed at Washington, DC, this 20th day of February, 2003.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

[FR Doc. 03–4400 Filed 2–24–03; 8:45 am]

BILLING CODE 4510–CP–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA159–4201b; FRL–7448–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions to the Air Resource Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Pennsylvania for the purpose of modifying definitions related to "major modification,"."modification," "potential to emit," "responsible official" and "secondary emissions." In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 27, 2003.

ADDRESSES: Written comments should be addressed to Makeba A. Morris, Chief, Permits and Technical Assessment Branch], Air protection Division, Mail Code 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this

action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Michael I. Ioff, P.E., (215) 814–2166, or by e-mail at *ioff.mike@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: January 30, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–4255 Filed 2–24–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–370; MB Docket No. 03–36; RM–10431]

Radio Broadcasting Services; Norfolk, NE and Woodbine, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Harrison County Radio, requesting the allotment of Channel 293A to Woodbine, Iowa, as that community's first local aural transmission service. The proposal also requires the reclassification of Station KEXL, Channel 294C, Norfolk, Nebraska, to specify operation on Channel 294C0, pursuant to reclassification procedures adopted by the Commission. *See Second Report and Order* in MM Docket 98–93 (*1998 Biennial Regulatory Review—Streamlining of RadioTechnical Rules in Parts 73 and 74 of the Commission's Rules*), 65 FR 79773 (2000). An *Order to Show* Cause was issued to WJAG, Inc., licensee of Station KEXL (RM–10431). The Wodbine, Iowa, proposal requires a site restriction 4.3 kilometers (2.7 miles) west of the community at coordinates 41–44–03 NL and 95–45–14 WL.

DATES: Comments must be filed on or before March 31, 2003, and reply comments on or before April 15, 2003. Any counterproposal filed in this proceeding need only protect Station KEXL, Norfolk, Nebraska as a Class C0 allotment.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner and Station KEXL, as follows: Russell G. Johnson, Harrison County Radio, 1240 Loomis Ave., Des Moines, IA 50315; WJAG, Inc., Radio Station KEXL, 309 Braasch Avenue, P.O. Box 789, Norfolk, NE 68701.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–36, adopted February 5, 2003, and released February 7, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Woodbine, Channel 293A.

3. Section 73.202(b), the Table of FM allotments under Nebraska, is amended by removing Channel 294C and by adding Channel 294C0 at Norfolk.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–4363 Filed 2–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–369, MB Docket No. 03–35, RM–10646]

Radio Broadcasting Services; Florence, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by SSR Communications Incorporated proposing the allotment of Channel 237A at Florence, South Carolina, as that community's second FM commercial aural transmission service. The coordinates for Channel 237A at Florence are 34–12–00 North Latitude and 79–40–45 West Longitude. There is a site restriction 7.7 kilometers (4.8 miles) east of the community.

DATES: Comments must be filed on or before March 31, 2003, and reply comments on or before April 15, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: SSR Communications Incorporated, 5270 West Jones Bridge Road, Norcross, GA 30092–1628.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–35, adopted February 5, 2003, and released February 7, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Channel 237A at Florence.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–4364 Filed 2–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–366; MB Docket No. 02–158, RM 10383; MB Docket No. 02–159, RM–10471; MB Docket No. 02–160, RM–10472; MB Docket No. 02–161, RM–10473; MB Docket No. 02–162, RM–10474; MB Docket No. 02–163, RM–10475; MB Docket No. 02–165, RM–10477]

Radio Broadcasting Services; Austin; NV; Baker, NV; Battle Mountain; NV; Elkhart, KS; Eureka, NV; Fallon, NV; Moab, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses seven proposals. Sierra Grande Broadcasting filed petitions for rule making proposing the allotment of (1) Channel 263C1 at Elkhart, Kansas; (2) Channel 227C at Austin, Nevada; (3) Channel 296C at Baker, Nevada; (4) Channel 231C at Battle Mountain, Nevada; (5) Channel 300C at Eureka, Nevada; (6) Channel 297C at Fallon, Nevada; and (7) Channel 234C at Moab, Utah. *See* 67 FR 47502, July 19, 2002. Petitioner failed to file comments reaffirming its intention to apply for the specified channel, if allotted, or a motion was filed by petitioner withdrawing its proposal. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, we dismiss the above-mentioned petitions.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–158; MB Docket No. 02–159; MB Docket No. 02–160; MB Docket No. 02–161; MB Docket No. 02–162; MB Docket No. 02–163; and MB Docket No. 02–165, adopted February 5, 2003, and released February 7, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–4365 Filed 2–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–368, MM Docket No. 01–225, RM–10253]

Radio Broadcasting Services; Hartshorne, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Hartshorne, Oklahoma. The Commission had requested comment on a petition filed by Maurice Salsa, proposing the allotment of Channel 252A at Hartshorne, Oklahoma. *See* 66 FR 48108, September 18, 2001. The petitioner filed comments in support of the proposal. No other comments were received. On January 14, 2003, petitioner filed a request for dismissal of its pending petition. This document grants that request, dismissing the petition and terminating the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. The address of the petitioner is as follows: Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, Texas 75345.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–225, adopted February 5, 2002, and released February 7, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–4368 Filed 2–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–367, Docket No. 02–125, RM–10447]

Radio Broadcasting Services; Sutton, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Sutton, Nebraska. The Commission had requested comment on a petition filed by Sutton Radio Company, proposing the allotment of Channel 278C2 at Sutton, Nebraska. *See* 67 FR 41364, June 18, 2002. The petitioner filed comments in support of the proposal. No other comments were received. On November 5, 2002, petitioner filed a request for dismissal of its pending petition. This document grants that request, dismissing the petition and terminating the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–125, adopted February 5, 2002, and released February 7, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–4369 Filed 2–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI48

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl (Glaucidium brasilianum cactorum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the extension of the public comment period for the proposal to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Arizona distinct population segment of the cactus ferruginous pygmy-owl (Glaucidium brasilianum cactorum), and for the draft economic analysis for the proposed designation. We are extending the comment period for the proposal and for the draft economic analysis to allow all interested parties additional time to provide comments. Comments previously submitted need not be resubmitted, because they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: We will accept comments on both the proposed critical habitat designation and the draft economic analysis until April 25, 2003.

ADDRESSES: Send comments and information concerning the proposed critical habitat designation and draft economic analysis to the Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021. You also may send written comments by facsimile to 602/242–2513. For instructions on submitting comments by electronic mail (e-mail), see Public Comments Solicited in the **SUPPLEMENTARY INFORMATION** section of this notice.

You may obtain a copy of the draft economic analysis on the Internet at *http://arizonaes.fws.gov/cactus.htm*, or you may write the Field Supervisor at the above address, or call 602/242–0210 to have a copy mailed to you or made available for you to pick up at the address above. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor (see **ADDRESSES**), at telephone 602/242–0210; or by facsimile at 602/242–2513.

SUPPLEMENTARY INFORMATION: Our proposal to designate critical habitat for the Arizona distinct population segment of the cactus ferruginous pygmy-owl (Glaucidium brasilianum cactorum) (pygmy-owl) was published on November 27, 2002 (67 FR 71032). In the November proposal we also announced the availability of the draft economic analysis for the proposed designation of critical habitat. The current comment period on these two documents is scheduled to close on February 25, 2003.

A court order issued on September 21, 2001, vacated the critical habitat established previously for the pygmy-owl and remanded the previous designation to us for preparation of a new analysis of the economic and other effects of the designation (*National Association of Home Builders et al.* v. *Norton*, Civ. No. 00–903–PHX–SRB). The proposed designation that we published in November of 2002 totals approximately 488,863 hectares (ha) (1,208,000 acres (ac)) in portions of Pima and Pinal Counties, Arizona, and includes approximately 9 percent of the recognized historical range of the pygmy-owl in Arizona.

On February 3, 2003, the United States District Court for the District of Arizona ordered us to extend the comment period to allow the Plaintiffs and Intervenors in *National Home Builders Association* v. *Norton*, Civ. No. 00–0903–PHX–SRB (D. Az.), 60 additional days to review and comment on materials used by us to develop our critical habitat determination for the pygmy-owl. Therefore, we are extending the public comment period for 60 days, until April 25, 2003.

Public Comments Solicited

We are extending the comment period in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat designation for the pygmy-owl and the draft economic analysis of the proposal. The Public Comments Solicited section of the preamble to our proposed rule includes a list of topics for which we are particularly seeking comments. Previously submitted comments need not be resubmitted. You may submit written comments by any of several methods:

You may mail or hand-deliver written comments to the Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES** section). Hand deliveries must be made during normal business hours.

You may send comments by e-mail to *cfpo_habitat@fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message.

You may send written comments by facsimile to 602/242–2513.

Prior to making a final determination on this proposed rule, we will take into consideration all relevant comments and additional information received during the comment period. You may inspect comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, by appointment during normal business hours at our office listed in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 20, 2003.

Julie A. MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–4539 Filed 2–24–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030210027–3027–01; I.D. 012103E]

RIN 0648–AQ35

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 37 to the Northeast Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement measures contained in Framework Adjustment 37 (Framework 37) to the Northeast Multispecies Fishery Management Plan (FMP) to eliminate the Year–4 default measure for whiting in both stock areas; reinstate the Cultivator Shoal whiting fishery (CSWF) season through October 31; eliminate the 10–percent restriction on red hake incidental catch in the CSWF; adjust the incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with those in the Cape Cod Bay raised footrope trawl fishery; clarify the transfer-at-sea provisions for small-mesh multispecies for use as bait; and slightly modify the Cape Cod Bay raised footrope trawl fishery area.

DATES: Comments on this proposed rule must be received on or before March 27, 2003.

ADDRESSES: Copies of the Framework 37 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA) and supplement to the IRFA prepared by NMFS , the Environmental Assessment, and other supporting documents for the framework adjustment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

This action is also based upon analyses conducted in support of Amendment 12 to the FMP. Copies of the Amendment 12 document, its RIR, IRFA and the July 1, 1999, supplement to the IRFA prepared by NMFS, the Final Supplemental Environmental Impact Statement (FSEIS), and other supporting documents for Amendment 12 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The Final Regulatory Flexibility Analysis for Amendment 12 consisted of the IRFA, public comments and responses contained in the final rule implementing Amendment 12 (65 FR 16766, March 29, 2000), and the summary of impacts and alternatives in that final rule.

Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Framework 37." Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION: Amendment 12 was developed to address the overfished condition of red hake and the southern stock of whiting, to reduce fishing mortality on northern whiting, which was approaching an overfished condition, and to establish management measures for offshore hake. The final rule implementing Amendment 12, which was partially approved by NMFS on behalf of the Secretary of Commerce on September 1, 1999, was published on March 29, 2000 (61 FR 16766), and became effective on April 28, 2000. The New England Fishery Management Council (Council) intended for the measures in Amendment 12 to achieve the target fishing mortality rates (F) for whiting within 4 years of implementation and to rebuild whiting and red hake stocks within 10 years.

Under Amendment 12, fishing with small mesh is regulated in the North Atlantic region through the establishment of three large "Regulated Mesh Areas." In the Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area, vessels may fish for whiting with nets that have less than the minimum mesh size of 6–inch (15.24–cm) diamond mesh or 6.5–inch (16.51–cm) square mesh when participating in certain exempted fisheries. The GOM/GB exempted fisheries for whiting include: The Small Mesh Northern Shrimp Fishery, the CSWF, the Small Mesh Area 1/Small Mesh Area 2 Exemptions, and the Raised Footrope Trawl Whiting Fishery. The CSWF has a 3–inch (7.62–cm) minimum mesh size, and the Raised Footrope Trawl Whiting Fishery has a 2.5–inch (6.35–cm) minimum mesh size. In the Southern New England Regulated Mesh Area, vessels are exempt from the minimum mesh size requirement throughout the area when fishing for exempted species, which include whiting and offshore hake. Finally, in the Mid-Atlantic Regulated Mesh Area, vessels may fish for whiting and offshore hake with nets of mesh less than the minimum size when not fishing under a multispecies day-at-sea (DAS), provided that the vessel does not possess or land regulated multispecies.

Amendment 12 includes three possession limits, depending upon the minimum mesh size used. Vessels may possess and land up to a combined total of 3,500 lb (1,588 kg) of whiting and offshore hake when fishing with mesh less than 2.5 inches (6.35 cm). Vessels may possess and land up to a combined total of 7,500 lb (3,402 kg) of whiting and offshore hake when fishing with mesh equal to or greater than 2.5 inches (6.35 cm) and less than 3.0 inches (7.62

cm). Vessels may possess and land up to a combined total of 30,000 lb (13,608 kg) of whiting and offshore hake when fishing with mesh equal to or greater than 3.0 inches (7.62 cm). These possession limits were intended to provide an incentive for vessels to utilize the larger 3–inch (7.62–cm) mesh when fishing for whiting to minimize the catch of small whiting. Because red hake is primarily an incidental species caught in whiting and other small-mesh fisheries, the measures to protect whiting are expected to simultaneously protect red hake. Offshore hake, a species similar to whiting, was included in the management measures to provide basic protection for the species and to ensure that misidentification of offshore hake is accounted for.

Amendment 12 established the Whiting Monitoring Committee (WMC) to review the effectiveness of management measures and to recommend adjustments. Such reviews occur annually, beginning in 2001. The Council expected that the measures in Years 1, 2, and 3 would reduce exploitation by at least 50 percent of the required amount and that annual adjustments would indicate whether further management measures were needed. To ensure attainment of the FMP's mortality objectives, the default measures were developed for Year 4. The Council expected, and Amendment 12 specified, that the WMC would meet during the third year to determine whether the Year 4 default measures would be necessary. Furthermore, during the third year, and based upon the effectiveness of the first three years of management, the WMC was charged with considering and recommending, if appropriate, small-mesh multispecies measures for Year 4, other than the default measures, to achieve the F targets.

The Year 4 default measures would prohibit vessels from using nets with mesh size less than 3 inches (7.62 cm) (square or diamond) in most fisheries operating within the three Regulated Mesh Areas in New England and Mid-Atlantic waters and impose a 10,000–lb (4,536–kg) combined possession limit in most fisheries on whiting and offshore hake. In addition, the existing possession limit for whiting and offshore hake in the Small Mesh Northern Shrimp Fishery would be reduced from an amount equal to the total weight of shrimp on board (not to exceed 3,500 lb (1,588 kg)) to 100 lb (45.3 kg). Under the regulations that implement Amendment 12, these measures would become effective May 1, 2003, unless superseded by revised measures.

The analyses in Amendment 12 indicated that substantial negative economic and social impacts would be likely to result from implementing the Year–4 default measure. The default measure would be expected to generate large losses of not only small-mesh multispecies, but also other small mesh species, such as squid. Shinnecock, NY, would be projected to experience the largest reductions in landings of all species combined from the Year 4 default measure (39.4 percent), followed by Greenport, NY (36.7 percent), Point Judith, RI (32.8 percent), Montauk, NY (25.9 percent), Gloucester, MA (16.4 percent), Portland, ME (14.8 percent), Provincetown, MA (11.5 percent), Cape May, NJ (9.7 percent), Point Pleasant, NJ (8.0 percent), and Belford, NJ (7.2 percent). Although Connecticut ports could not be analyzed due to data limitations, it is likely that the default measure would produce similar impacts in the ports of Stonington and New London.

In September 2002, the WMC released the 2002 Stock Assessment and Fishery Evaluation (SAFE) Report for small-mesh multispecies, which represents the WMC's third year review and includes recommendations regarding the Year 4 default measure (see Appendix I to Framework 37). The WMC determined that the fishing mortality objectives of Amendment 12 appear to have been achieved, based on the evaluation of relative exploitation indices as a proxy for fishing mortality.

The northern stock of whiting (as well as the northern stock of red hake) is considered to be "rebuilt," or above its target biomass level according to the Amendment 12 overfishing definition. The relative exploitation of northern whiting is far below the target value that the WMC set as a proxy for FMSY, so overfishing is not thought to be occurring (see Table 19, p.31 of the SAFE Report). The current relative exploitation index is only 11 percent of the WMC's FMSY proxy. With respect to management thresholds, targets, and biological objectives, exploitation of the northern stock of whiting could be increased. The WMC concluded, therefore, that the Year 4 default measure is not necessary to further reduce effort on the northern stock of whiting.

The southern stock of whiting is not considered to be in an overfished condition, according to the Amendment 12 overfishing definition based on a 3–year moving average of the trawl survey index. The 3–year moving average of the trawl survey index increased from 0.63 in 1998 to 1.27 in 2001. Currently, the stock is at 71 percent of its biomass target. The relative exploitation of southern whiting is below the target value that the WMC set as a proxy for a target fishing mortality rate (see Table 19, p.31 of the SAFE Report), so overfishing is not thought to be occurring on the southern stock. The current relative exploitation index is 47 percent of the WMC's target for this stock. While the information that the WMC evaluated suggests that exploitation could increase in the southern area, this stock has not yet rebuilt to its target level, so increases in exploitation are not recommended. Perceptions about the current biomass status of the southern stock hinge on a very high autumn 2001 survey value, which increased the 3–year moving average above the overfishing definition biomass threshold. It is too early to conclude whether the high survey value in autumn 2001 is a product of survey variability or a true indication of increasing biomass in the southern area. Several additional survey points will be necessary to make such a determination. Although the WMC does not support increasing whiting exploitation in the southern area, it agrees that the Year 4 default measure is not necessary to further reduce effort.

Northeast multispecies regulations, including those for small-mesh multispecies, are such that Council action (through a framework adjustment or amendment) is required to prevent the Year 4 default measure from becoming effective on May 1, 2003, in both the northern and southern stock areas. In preparation for the third year review by the WMC and in anticipation of an action to address the default measure, the Council approved the following motion at its March 19–20, 2002, meeting:

That the Council initiate a framework adjustment process to develop a management strategy that responds to the Year 4 management measures contained in the whiting plan and allows for potential development of new whiting fishing areas.

The WMC presented its findings and recommendations to the Council at the September 10–12, 2002, meeting, which was the first meeting for Framework 37. (The WMC's findings and recommendations can be found in their entirety in Appendix I to the Framework 37 document.)

The purpose of this framework adjustment is to eliminate the Year 4 default measure in both whiting stock areas and to implement FMP adjustments to allow for moderate increases in effort on small-mesh multispecies in the northern stock area. This adjustment is necessary because current regulations specify that the Year 4 default measure will become effective in both stock areas on May 1, 2003, unless a Council action modifies or eliminates it.

This proposed rule would also reinstate the CSWF season through October 31; eliminate the 10–percent restriction on red hake incidental catch in the CSWF; adjust the incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with those in the Cape Cod Bay raised footrope trawl fishery; clarify the transfer-at-sea provisions for small-mesh multispecies for use as bait; and slightly modify the Cape Cod Bay raised footrope trawl fishery area.

Prior to Amendment 12, the season for the CSWF was June 15–October 31. Amendment 12 shortened the season to September 30 as an effort reduction measure. This action would reinstate the month of October to the CSWF, which would provide increased economic opportunity for participating vessels. Further discussion occurs in the Classification section, below.

Currently, participants in the CSWF are limited in terms of their red hake landings to 10 percent by weight of all other fish on board. According to the WMC, there is no biological reason to restrict the catch of red hake at this time. The current restriction on red hake landings may cause discards in the CSWF. Because of market limitations, it is unlikely that the proposed action would encourage directed fishing on red hake. This action also would simplify and improve the consistency of regulations for exempted fisheries in the northern stock area since no other exempted small mesh fishery in the northern area includes such a restriction on red hake landings.

Three of the four exempted whiting fisheries in the northern area currently require the use of a raised footrope trawl to minimize bycatch of groundfish. However, the incidental catch allowances for these three fisheries are not consistent with each other. The incidental catch allowances for the Cape Cod Bay raised footrope trawl fishery were established to discourage vessels from rigging their gear improperly and allowing it to fish on the ocean bottom. As a result, bottom-dwelling species, such as lobster and monkfish, are prohibited in the Cape Cod Bay raised footrope trawl fishery. Because Small Mesh Areas 1 and 2 require the raised footrope trawl, the Council felt it appropriate to allow the same incidental catch species for Small Mesh Areas 1 and 2 and to provide the same incentives for fishing the required gear properly. Specifically, monkfish, lobster, ocean pout, and sculpin would no longer be allowed to be taken as incidental catch in Small Mesh Areas 1 and 2. The following species would be the only allowable incidentally caught species in these areas: Red hake, squid, butterfish, mackerel, dogfish, herring, and scup.

Clarification of the transfer at sea provisions for small-mesh multispecies represents the status quo for vessels that are currently engaged in this activity. Vessels would be allowed to transfer 500 lb (226.8 kg) of whiting and unlimited amounts of red hake at sea for use as bait.

The slight area modification to the Cape Cod Bay raised footrope trawl fishery would provide Provincetown fishermen with improved access to this fishery in times of inclement and unpredictable weather, thereby promoting the safety of the Provincetown vessels, which tend to be smaller and older than vessels from other ports. Specifically, the southern boundary of the area would move from the Loran 44100 line to the 42° N. latitude line, creating a "lee" by opening a triangle-shaped area totaling 5.5 square miles.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. In addition, NMFS, in consultation with the Council, prepared a supplement to the IRFA, which includes further information considered by the Council related to the decision on whether or not to propose a change to the CSWF possession limit. A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. There are no new recordkeeping or reporting requirements proposed in this rule. There are no relevant Federal rules that duplicate, overlap, or conflict with this rule. All vessels impacted by this rulemaking are considered to be small entities; therefore, there are no impacts resulting from the effects of disproportionality between large and small entities. A summary of the analysis follows:

NMFS and the Council prepared an economic analysis for Amendment 12, which indicated that implementation of the amendment, including the restrictive Year 4 default measures, would have a significant economic impact on a substantial number of small entities. Since costs of individual vessel operations were not available, gross revenues were used as a proxy for profitability The analysis indicated that 1,156 participating small entities reported landings of one or more combined pounds of whiting, red hake, and offshore hake during the calendar years 1995 to 1997. The management measures proposed for Years 1–3 were estimated to "substantially" reduce gross revenues from all species for 81 vessels. If the default measures were to be implemented, 222 vessels would be likely to experience a substantial reduction in annual gross revenues.

Framework adjustment 37 proposes to eliminate the Year 4 default measures for small-mesh multispecies in both the northern and southern whiting stock areas, and to adjust measures to allow increased opportunities to fish for small-mesh multispecies in the northern area. A summary of the economic impacts of the measures to be substituted for the Year 4 default measures follow.

Impacts of Reinstating the CSWF Season

Adjustments to measures in the CSWF increase economic opportunities for affected entities. An average of 16 vessels participated in the CSWF from 1995–2001; 25 vessels participated in the fishery during 2001. Reinstating October to the CSWF season would have beneficial economic effects for vessels that had traditionally prosecuted the fishery during October and would increase economic opportunity for other vessels that are able to participate. Maintaining the current CSWF season (through September 30) would result in fewer opportunities to harvest whiting and lost economic opportunities for fishermen who otherwise would participate in the CSWF.

Impacts of Eliminating the Restriction on Red Hake Incidental Catch Allowance in the CSWF

Landings data for red hake do not indicate that the current incidental catch allowance is a constraint to increased retention of red hake. Elimination of the red hake incidental catch allowance in the CSWF would permit vessels to increase trip profits on the occasions where the current incidental catch allowance would be exceeded. For this reason, removal of the incidental catch allowance would not be likely to result in any market effects but would permit vessels to increase trip income on the occasions where the current allowance would be exceeded.

Impacts of Modifying Incidental Catch Allowances for Small Mesh Areas 1 and 2

The proposed modifications to the incidental catch allowances in Small Mesh Areas 1 and 2 may have some negative economic impacts since monkfish and lobster would be prohibited (78 vessels fished in Small Mesh Areas 1 and 2 during 2000). For the period 1998–2001, the landed value of lobster and monkfish from these fisheries has averaged about $30,000 annually, based on an average of 1,800 trips per year. Given the low level of revenues from these species in Small Mesh Areas 1 and 2, it is expected that this action will have only a minimal impact on vessel profitablity. It is unlikely that the proposed change in catch allowances would have any substantial impact on gross revenues from all sources of fishing income for vessels participating in this fishery. However, at a trip-level, there may be some occasions where revenues from monkfish or lobster could affect vessel profitability for a given trip. In these cases, eliminating the incidental catch allowance would have a negative economic impact, as the trip may be abandoned. This outcome is difficult to predict.

Impacts of Clarifying the Transfer at Sea Provisions for Small-Mesh Multispecies

Clarification of the transfer at sea provisions for small-mesh multispecies would allow vessels to transfer 500 lb (226.8 kg) of whiting and unlimited amounts of red hake at sea for use as bait and would represent the status quo for vessels that are currently engaged in this activity. Minimal impacts would be expected.

Impacts of Area Modification to the Cape Cod Bay Raised Footrope Trawl Fishery

The southern boundary of the Cape Cod Bay Raised Footrope Trawl Fishery area would move from the Loran 44100 line to the 42° N. latitude line, creating a "lee" by opening a triangle-shaped area totaling 5.5 square miles. This slight area modification would likely produce small but positive economic impacts to vessels prosecuting this fishery.

Impacts of Retention of the 30,000 Possession Limit for the CSWF

The Council concluded that the proposed retention of the status quo 30,000–lb (13.6 mt) possession limit for the CSWF would have no economic impact to present participants in the fishery since gross revenues are not expected to change under this trip limit. The Council also considered but rejected four alternatives to the proposed possession limit including a default possession limit of 10,000 lb (4.5 mt) and three higher possession limits, ranging from 50,000 to 90,000 lb (22.7 to 40.8 mt). The Council determined that the 10,000 lb (4.5 mt) default possession limit, which was previously analyzed in Amendment 12 to the FMP, would have substantially negative impacts resulting from an estimated 20,000 lb (9 mt) or 67 percent reduction in the possession limit. Some fishing vessel owners believe that retention of the current 30,000 lb (13.6 mt) possession limit would continue to serve as a disincentive for them to participate in the CSWF by restricting their potential profitability. However, the Council concluded that under higher possession limits, the majority of present participants in the fishery could suffer substantial decreases in gross revenues and resulting profitability due to disproportionate decreases in whiting prices when large amounts of product are introduced simultaneously into the market. This was the case prior to the introduction of the possession limit in 2000.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: February 14, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.13, paragraph (b)(2) introductory text is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(b) * * *

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer from one vessel to another, for use as bait, up to 500 lb (226.8 kg) of silver hake and unlimited amounts of red hake, per trip, provided:

* * * * *

§ 648.14 [Amended]

3. In § 648.14, paragraph (z)(2) is removed and reserved.

4. In § 648.80,

a. Revise paragraphs (a)(5)(i), (a)(6)(i), (a)(8)(i) and (a)(8)(ii), (a)(9)(i) and (a)(9)(ii) introductory text, (a)(10)(i)(D), and (a)(15) introductory text and (a)(15)(i)(B). Paragraph (a)(15)(i)(C) is removed and reserved.

b. Revise paragraph (b)(3)(i) to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(5) * * *

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(6) * * *

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3–inch (7.6–cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length applied to and the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (a)(2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (a)(4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in this paragraph (a)(6)(i) for the entire trip.

* * * * *

(8) * * *

(i) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species.

* * * * *

(9) * * *

(i) *Description.* (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (a)(4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii), or (a)(9)(ii) of this section and of § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1, and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake--up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; scup; squid; and red hake.

(B) Small-mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

Small Mesh Area I

Point	N. Lat.	W. Long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

Small Mesh Area II

Point	N. Lat.	W. Long.
SM13	43°05.6′	69°55′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°36.6′	69°55′
SM13	43°05.6′	69°55′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

* * * * *

(10) * * *

(i) * * *

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

* * * * *

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (a)(4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh sze smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(h) and (i). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(September 1 through November 20)

Point N. Lat. W. Long.

RF1 42°14.05′ 70°08.8′
RF2 42°09.2′ 69°47.8′
RF3 41°54.85′ 69°35.2′
RF4 41°41.5′ 69°32.85′
RF5 41°39′ 69°44.3′
RF6 41°45.6′ 69°51.8′
RF7 41°52.3′ 69°52.55′
RF8 41°55.5′ 69°53.45′

RF9 42°08.35′ 70°04.05′
RF10 42°04.75′ 70°16.95′
RF11 42°00′ 70°13.2′
RF12 42°00′ 70°24.1′
RF13 42°07.85′ 70°30.1′
RF1 42°14.05′ 70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(November 21 through December 31)

Point N. Lat. W. Long.

RF1 42°14.05′ 70°08.8′
RF2 42°09.2′ 69°47.8′
RF3 41°54.85′ 69°35.2′
RF4 41°41.5′ 69°32.85′
RF5 41°39′ 6°44.3′
RF6 41°45.6′ 69°51.8′
R7F 41°52.3′ 69°52.55′
RF8 41°55.5′ 69°53.45′
RF9 42°08.35′ 70°04.05′
RF1 42°14.05′ 70°08.8′

(i) * * *

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(b) * * *

(3) *Exemptions*—(i) *Species exemptions.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

* * * * * * *

[FR Doc. 03–4332 Filed 2–24–03; 8:45 am]
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Notices

Federal Register
Vol. 68, No. 37
Tuesday, February 25, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–005N]

Listeria Risk Assessment Technical Meeting—Notice of Availability and Public Meeting; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Food Safety and Inspection Service (FSIS) published a document in the **Federal Register** of February 6, 2003 concerning a *Listeria* risk assessment technical meeting and availability of, and request for public comment on, its draft risk assessment for *Listeria*.

The document contained the incorrect comment due date for comments on the draft risk assessment.

FOR FURTHER INFORMATION CONTACT: Moshe Dreyfuss at (202) 205–0260.

Correction

In the **Federal Register** of February 6, 2003, (68 FR 6109), in the second column, in the **DATES** paragraph, the comment due date is incorrect and should read "Submit written comments on the draft risk assessment on or before Friday, March 14, 2003."

Done at Washington, DC, on: February 21, 2003.

Linda M. Swacina,

Associate Administrator.

[FR Doc. 03–4540 Filed 2–21–03; 2:14 pm]
BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet in Redmond, Oregon. The purpose of the meeting is to discuss the Committee's process for reviewing and recommending projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held March 18, 2003 from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the office of the Central Oregon Intergovernmental Council, 2363 SW Glacier Place, Redmond, Oregon 97756. Send written comments to Leslie Weldon, Designated Federal Official for the Deschutes and Ochoco National Forests Resource Advisory Committee, c/o Forest Service, USDA, Deschutes National Forest, 1645 Highway 20 East, Bend, OR 97701 or electronically to *lweldon@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Leslie Weldon, Designated Federal Official, Deschutes National Forest, 541–383–5512.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Title II matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by March 11 will have the opportunity to address the Committee at the session.

Dated: February 14, 2003.

Leslie A.C. Weldon,

Forest Supervisor, Deschutes National Forest.

[FR Doc. 03–4343 Filed 2–24–03; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–877]

Correction: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Lawn and Garden Steel Fence Posts from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 4, 2002.

SUMMARY: The Department is correcting the scope of the investigation as published in the notice of preliminary determination of sales at less than fair value in Lawn and Garden Steel Fence Posts from the People's Republic of China.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala or Christopher Smith, at (202) 482–1784 or (202) 482–0421, respectively; AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2002, the Department of Commerce (the Department) issued the preliminary determination for the antidumping duty investigation of Lawn and Garden Steel Fence Posts from the People's Republic of China (PRC) for the period of October 1, 2001, through March 31, 2002. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Lawn and Garden Steel Fence Posts from the People's Republic of China (Preliminary Determination)*, 67 FR 72141 (December 4, 2002). The notice failed to reflect the fact that on June 24, 2002, the U.S. International Trade Commission (ITC) found that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of U-shaped or hat-shaped lawn and garden fence posts made of steel and/or any other metal, weighing one pound or less per foot. However, the ITC also ruled that there was not a reasonable indication that an industry in the

United States was materially injured or threatened with material injury by reason of imports from the PRC of other fence posts made of steel and/or other metal including "tee", farm, and sign posts weighing one pound or less per foot. *See Lawn and Garden Steel Fence Posts from China*, 67 FR 42581 (June 24, 2002). Therefore, the correct scope should exclude *all* "tee" posts, farm posts, and sign posts, *regardless of weight*. No other changes have been made to the Preliminary Determination.

The correct scope reads as follows:

Scope of Investigation

For purposes of this investigation, the products covered consist of all "U" shaped or "hat" shaped lawn and garden fence posts made of steel and/or any other metal, weighing 1 pound or less per foot, and produced in the PRC. The fence posts included within the scope of this investigation weigh up to 1 pound per foot and are made of steel and/or any other metal. Imports of these products are classified under the following categories: fence posts, studded with corrugations, knobs, studs, notches or similar protrusions with or without anchor posts and exclude round or square tubing or pipes.

These posts are normally made in two different classes, light and heavy duty. Light duty lawn and garden fence posts are normally made of 14 gauge steel (0.068 inches - 0.082 inches thick), 1.75 inches wide, in 3, 4, 5, or 6 foot lengths. These posts normally weigh approximately 0.45 pounds per foot and are packaged in mini-bundles of 10 posts and master bundles of 400 posts. Heavy duty lawn and garden steel fence posts are normally made of 13 gauge steel (0.082 inches - 0.095 inches thick), 3 inches wide, in 5, 6, 7, and 8 foot lengths. Heavy duty posts normally weigh approximately 0.90 pounds per foot and are packaged in mini-bundles of 5 and master bundles of 200. Both light duty and heavy duty posts are included within the scope of the investigation.

Imports of these products are classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7326.90.85.35. Fence posts classified under subheading 7308.90 are also included within the scope of the investigation if the fence posts are made of steel and/or metal.

Specifically excluded from the scope are other posts made of steel and/or other metal including "tee" posts, farm posts, and sign posts, regardless of weight.[1] Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the written description of the merchandise under investigation is dispositive.

Dated: February 14, 2003.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–4422 Filed 2–24–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] Tee posts are made by rolling red hot steel into a "T" shape. These posts do not have tabs or holes to help secure fencing to them and have primarily farm and industrial uses.

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 03–00002." A summary of the application follows.

Summary of the Application

Applicant: EXIM Services of North America, Inc., 530 Bellwood Park Road, Asbury, New Jersey 08802.

Contact: Robert J. Loftin, President.

Telephone: (908) 479–6670.

Application No.: 03–00002.

Date Deemed Submitted: February 7, 2003.

Members (in addition to applicant): None.

EXIM Services of North America, Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, EXIM Services of North America, Inc. may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Market and distribute such information to clients;

3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;

4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

6. Allocate export orders among Suppliers;

7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;

8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

9. Enter into contracts for shipping; and

10. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of products for export and coordinating export with distributors.

Definitions

1. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

Dated: February 19, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–4334 Filed 2–24–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 97–6A003.

SUMMARY: The U.S. Department of Commerce has issued an amended Export Trade Certificate of Review to the Association for the Administration of Rice Quotas, Inc. ("AARQ") on February 19, 2003. Notice of issuance of the original Certificate was published in the **Federal Register** on January 28, 1998 (63 FR 4220).

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2003).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 97–00003 was issued to AARQ on January 21, 1998 (63 FR 4220, January 28, 1998) and previously amended on June 4, 1998 (63 FR 31738, June 10, 1998); September 25, 1998 (63 FR 53013, October 2, 1998); June 1, 2000 (65 FR 36410, June 8, 2000); April 5, 2001 (66 FR 21368; April 30, 2001); and February 5, 2002 (67 FR 7357, February 19, 2002).

AARQ's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l) (2003)): JIT Products, Inc., Davis, California; Nidera, Inc., Stamford, Connecticut (a subsidiary of Nidera Handelscompagnie BV (Netherlands)); and Sunshine Rice, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprises, Inc.).

2. Delete the following companies as Members of the Certificate: Glencore Ltd., Stamford, Connecticut (a subsidiary of Glencore International AG), for the activities of Glencore Grain Division; and Liberty Rice Mill, Inc., Kaplan, Louisiana.

3. Change the listing of the following Members: "CAL PAC Investments, LLC dba California Pacific Rice Milling, Woodland, California" to read "Gold River Mills, LLC dba California Pacific Rice Milling, Woodland, California;" "Incomar Texas Ltd., and its subsidiary, Gulf Rice Arkansas, LLC, Houston, Texas" to read "Gulf Rice Arkansas, LLC (subsidiary of Ansera Marketing, Inc.), Houston, Texas;" "PS International, Ltd., Durham, North Carolina" to read "PS International, Ltd., Chapel Hill, North Carolina;" "Texana Rice, Inc., Houston, Texas" to read "Texana Rice Inc., Louise, Texas;" "The Connell Company, Berkeley Heights, New Jersey" to read "The Connell Company for the activities of itself and its two divisions, Connell Rice & Sugar Co. and Connell International Company, Berkeley Heights, New Jersey;" and "Uncle Ben's, Inc., Houston, Texas" to read "Uncle Ben's Inc., Greenville, Missisippi."

The effective date of the amended certificate is November 19, 2002. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: February 19, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–4423 Filed 2–24–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021903D]

Pacific Fishery Management Council; March 9–14, 2003, Council Meeting

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings and hearing.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings and a hearing on management issues regarding its fisheries.

DATES: The Council and its advisory entities will meet March 9 to 14, 2003, see **SUPPLEMENTARY INFORMATION** under Schedule of Ancillary Meetings. The Council will meet on March 11 to 14, from 8 a.m. till the scheduled business is completed. All meetings are open to the public, except that a closed session will be held from 8 a.m. until 10:30 a.m. on March 11.

ADDRESSES: The meetings and the hearing will be held at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, California 95815; telephone: (916) 922–8041.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A.Call to Order
1.Opening Remarks, Introductions,
2.Roll Call
3. Executive Director's Report
4.Approve Agenda
5.Approve June, September and November 2002 Meeting Minutes
B.Salmon Management
1.National Marine Fisheries Service Report
2.Final Scientific and Statistical Committee Methodology Review Recommendations on the Chinook and Coho Fishery Regulation and Assessment Models (FRAM) for 2003 Salmon Management
3.Review of 2002 Fisheries and Summary of 2003 Stock Abundance Estimates
4.Inseason Management Recommendations for Openings Prior to May 1 North of Cape Falcon
5.Identification of Management Objectives and Preliminary Definition of 2003 Salmon Management Options
6.Status of Model Evaluation Workgroup
7.Status of Marking Programs for Selective Fisheries
8.Conservation Objectives for Central Valley Winter and Spring Chinook
9.Council Recommendations for 2003 Management Option Analysis
10.Council Direction for 2003 Management Options (if Necessary)
11.Salmon Hearings Officers
12.Adoption of 2003 Management Options for Public Review
C.Habitat Issues: Essential Fish Habitat Issues
D.Marine Reserves
1.Considerations for Integrating Marine Reserves with Effective Fishery Management
2.Update on Marine Reserves Activities
3.Planning for Federal Waters Portion of the Channel Islands National Marine Sanctuary
E.Groundfish Management: National Marine Fisheries Service Report
F.Pacific Halibut Management
1.National Marine Fisheries Service Report
2.Report on International Pacific Halibut Commission Annual Meeting
3.Public Review Options for the 2003 Incidental Catch Regulations in the Salmon Troll and Fixed Gear Sablefish Fisheries
G.Highly Migratory Species Management
1:National Marine Fisheries Service Report
2.Status of the Pacific Council Highly Migratory Species Fishery Management Plan
H.Administrative and Other Matters
1.Improvements in Meeting National Environmental Policy Act Requirements for Council Action
2.Planning Session on Improving Council Meeting Efficiency
3.Legislative Matters
4.Appointments to Advisory Bodies, Standing Committees, and Other Forums
5.Financial Matters
6.Council Staff Work Load Priorities and Results of Strategic Goals Workshop
7.April 2003 Council Meeting Agenda
I.Coastal Pelagic Species Management
1.National Marine Fisheries Service Report
2.Draft Regulatory Amendment and Analysis for Changes to Sardine Allocation
3.Update on Sardine Stock Assessment Review Process

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, MARCH 9, 2003

Scientific and Statistical Committee Groundfish and Economic Subcommittees
1 p.m.
Sierra B Room

Klamath Fishery Management Council
2 p.m.
Sierra A Room

MONDAY, MARCH 10, 2003

Council Secretariat
8 a.m.
California Room

Scientific and Statistical Committee
8 a.m.
Sierra B Room

Salmon Advisory Subpanel
8 a.m.
Comstock 2 Room

Salmon Technical Team
8 a.m.
Comstock 3 Room

Habitat Committee
10 a.m.
Klamath Room

Legislative Committee
10 a.m.
Tahoe Room 514

Budget Committee
1 p.m.
Tahoe Room 514

Washington State Delegation
As necessary
Comstock 1 Room

Klamath Fishery Management Council
As necessary
Sierra A Room

Tribal Policy Group
As necessary
Almanor Room 303

Tribal Washington Technical Groups
As necessary
Shasta Room 305

TUESDAY, MARCH 11, 2003

Council Secretariat
7 a.m.
California Room

California State Delegation
7 a.m.
Tahoe Room 514

Oregon State Delegation
7 a.m.

Comstock 2 Room

Scientific and Statistical Committee
8 a.m.
Sierra B Room

Salmon Advisory Subpanel
8 a.m.
Comstock 2 Room

Salmon Technical Team
8 a.m.
Comstock 3 Room

Enforcement Consultants
Immediately after Council session
Tahoe Room 514

Washington State Delegation
As necessary Needed
Comstock 1 Room

Tribal Policy Group
As necessary
Almanor Room 303

Tribal Washington Technical Groups
As necessary
Shasta Room 305

Klamath Fishery Management Council
As necessary
Sierra A Room

WEDNESDAY, MARCH 12, 2003

Council Secretariat
7 a.m.
California Room

California State Delegation
7 a.m.
Tahoe Room 514

Oregon State Delegation
7 a.m.
Comstock 2 Room

Coastal Pelagic Species Advisory Subpanel
8 a.m.
Klamath Room 513

Salmon Advisory Subpanel
8 a.m.
Comstock 2 Room

Salmon Technical Team
8 a.m.
Comstock 3 Room

Enforcement Consultants
As necessary
Tahoe Room 514

Washington State Delegation
As necessary
Comstock 1 Room

Tribal Policy Group
As necessary
Almanor Room 303

Tribal Washington Technical Groups
As necessary
Shasta Room 305

Klamath Fishery Management Council
As necessary
Sierra A Room

THURSDAY, MARCH 13, 2003

Council Secretariat
7 a.m.
California Room

California State Delegation
7 a.m.
Tahoe Room 514

Oregon State Delegation
7 a.m.
Comstock 2 Room

Coastal Pelagic Species Advisory Subpanel
8 a.m.
Klamath Room 513

Salmon Advisory Subpanel
8 a.m.
Comstock 2 Room

Salmon Technical Team
8 a.m.
Comstock 3 Room

Enforcement Consultants
As necessary
Tahoe Room 514

Washington State Delegation
As necessary Needed
Comstock 1 Room

Tribal Policy Group
As necessary
Almanor Room 303

Tribal Washington Technical Groups
As necessary
Shasta Room 305

Klamath Fishery Management Council
As necessary
Sierra A Room

FRIDAY, MARCH 14, 2003

Council Secretariat
7 a.m.
California Room

California State Delegation
7 a.m.
Tahoe Room 514

Oregon State Delegation
7 a.m.
Comstock 2 Room

Salmon Advisory Subpanel
8 a.m.
Comstock 2 Room

Salmon Technical Team
8 a.m.
Comstock 3 Room

Enforcement Consultants
As necessary
Comstock 1 Room

Washington State Delegation
As necessary
Comstock 1 Room

Tribal Policy Group
As necessary
Almanor Room 303

Tribal Washington Technical Groups
As necessary
Shasta Room 305

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least five days prior to the meeting date.

Dated: February 19, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4329 Filed 2–19–03; 4:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021003A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for an Exempted Fishing Permit (EFP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to issue an EFP to use modified traps to capture Royal

Red Shrimp (*Pleoticus robustus*); request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of Federal management of the American lobster resource. However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator intends to issue an EFP that would allow one federally permitted lobster vessel to fish a maximum of six modified lobster traps to obtain live specimens of royal red shrimp for the purposes of study and cultivation. The request for the EFP was submitted by the Department of Molecular and Cell Biology, University of Connecticut in conjunction with a grant received by the U.S. Department of Agriculture to carry out aquaculture trials and maturation experiments on royal red shrimp and determine the suitability of this species for aquaculture. Approximately 300 to 600 live adult royal red shrimp are needed to carry out the aquaculture trials. Collection of the specimens will be conducted aboard the identified vessel during the course of routine commercial trap fishing operations for American lobster and red crab in lobster conservation management area 3, in the vicinity of Munson Canyon east to the Hague line. The EFP would authorize the experimental fishing to occur for a 1–year period beginning on the date of issuance of the EFP.

DATES: Comments on this action and application for an EFP for use of modified lobster traps for capture of royal red shrimp must be received on or before March 12, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NOAA Fisheries, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Royal Red Shrimp EFP Proposal". Comments may also be sent via facsimile (fax) to (978) 281–9117. Comments will not be accepted if submitted via email or the internet.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Management Specialist, (978) 281–9144.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22, allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided that adequate opportunity is given for the public to comment on the EFP application; the conservation goals and objectives of Federal management of the American lobster resource are not compromised; and the issuance of the EFP is beneficial to the management of the species.

Royal red shrimp can be found in the deep water habitats along the continental shelf and have been commercially harvested in a relatively limited capacity. Royal red shrimp are not a federally managed species. Therefore, no regulatory exemptions pertaining to their capture or retention are necessary.

The American lobster fishery is the most valuable fishery in the northeastern United States. In 2001, approximately 74 million pounds (33,439 metric tons) of American lobster were landed with an ex-vessel value of approximately 255 million dollars. The American lobster resource is managed by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for American Lobster. Regulations pertaining to the management of the resource in the Federal waters of the Exclusive Economic Zone (EEZ) are codified at 50 CFR part 697.

Regulations Pertinent to this EFP

The EFP for this activity relates to the experimental trap gear (no more than six experimental traps) and would waive the vessel from the trap limits as codified in 50 CFR 697.19(b)(2) and trap tagging requirements in 50 CFR 697.19(c) of the Federal lobster regulations. In addition, exemptions to the trap identification and trap tagging requirements in 50 CFR 697.21(a)(2), the escape vent requirement in 50 CFR 697.21(c), the ghost panel requirement in 50 CFR 697.21(d), and the maximum trap size restriction in 50 CFR 697.21(e)(2)(i) and (ii) are also necessary to allow the applicant to carry out the proposed experimental fishing. These exemptions are required because the vessel may exceed the current trap limit by fishing up to an additional six traps; the size of the experimental traps is slightly larger than currently allowed under the Federal regulations (33,800 cu. (553,883 cu. cm.) vs. 30,100 cu. in.(493,251 cu. cm.)); the experimental trap design does not provide for either an escape vent or a ghost panel; and no practical mechanism exists by which additional trap tags may be obtained by the vessel owner to affix to the experimental traps. The waiver of these requirements would apply to the experimental trap gear only. The vessel's commercial trap gear would still be held to all the requirements of the Federal regulations.

Proposed EFP

The EFP request was submitted by the University of Connecticut. Researchers from this institution will collaborate with the owner/operator of an identified vessel to obtain 300 to 600 live adult royal red shrimp. The vessel, when conducting routine commercial trap fishing for American lobster and red crab, would deploy up to six modified traps in addition to the vessel's maximum trap allocation of 1,800 lobster traps. The modified traps will be added to the multi-trap trawls fished by the vessel and will not result in additional vertical lines in the water column. The operator of the vessel will be responsible for transporting, deploying, and hauling back the modified gear over the requested period until such time that a suitable number (300–600 individual live adult royal red shrimp) are successfully acquired or until the EFP expires (not to extend beyond one year in duration). Any bycatch will be discarded, and any live adult royal red shrimp will be retained, kept alive, and transported to researchers at the University of Connecticut.

The proposed experimental traps will be of a modified lobster or red crab design, with approximate dimensions as follows: 50" X 26" X 26" (approximately 33,800 cu. in.; 553,883 cu. cm.). Mesh size throughout the body of the trap will be 1/4 in. (0.635 cm.) and each trap will be wrapped entirely in burlap cloth in such a manner to allow entry of the shrimp but prevent escapement. Fishing depth of the traps is expected to be between 190 and 300 fathoms, and the experimental fishing is proposed for lobster conservation management area 3 in the vicinity of Munson Canyon east to the Hague Line. The University of Connecticut's proposal estimates approximately 100–150 lb (45.5 - 68.2 kg.) of bycatch in the experimental traps during the course of the project, including small monkfish, other finfish and shrimp species, small crabs, and lobsters. These bycatch estimates were provided by the applicant and are based on the results of otter trawl experiments conducted by NOAA funded research projects that targeted royal red shrimp at similar depths and provided detailed data on observed bycatch.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 14, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4331 Filed 2–24–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: United States Patent and Trademark Office (USPTO).

Title: Fastener Quality Act Insignia Recordal Process.

Form Number(s): PTO–1611.

Agency Approval Number: 0651–0028.

Type of Request: Extension of a currently approved collection.

Burden: 26 hours annually.

Number of Respondents: 150 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to gather the necessary information, prepare the form, and submit the request for recordal or renewal of a fastener insignia.

Needs and Uses: Under Section 5 of the Fastener Quality Act of 1999, 15 U.S.C. 5401 *et seq.*, as implemented in 15 CFR 280.300 *et seq.*, certain industrial fasteners must bear an insignia identifying the manufacturer. Manufacturers use this collection to record and renew fastener insignias with the USPTO so that these fasteners can be traced to their manufacturers. After the manufacturer submits a complete application for recordal of a fastener insignia, the USPTO will issue a Certificate of Recordal, which remains active for five years. The USPTO uses this information to maintain the Fastener Insignia Register, which is open to public inspection.

Affected Public: Businesses or other for-profits.

Frequency: On occasion and renewal every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by phone at (703) 308–7400, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before March 27, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW, Washington, DC 20503.

Dated: February 14, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–4338 Filed 2–24–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

February 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that House of Perfection, d.b.a. Stepping Stones (House of Perfection) has violated the requirements for participation in the Special Access Program and has suspended House of Perfection from participation in the Program for the period from March 1, 2003 until December 31, 2004.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by, or on behalf of, House of Perfection during the period from March 1, 2003 until December 31, 2004.

Requirements for participation in the Special Access Program are available in Federal Register notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 20, 2003.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended House of Perfection, d.b.a. Stepping Stones (House of Perfection) from participation in the Special Access Program for the period from March 1, 2003 until December 31, 2004. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of House of Perfection during the period March 1, 2003 until December 31, 2004.

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–4402 Filed 2–24–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of Novel Composite Material Technologies for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to novel composite material based technologies as described in U.S. Patent application "Method for Producing Nano-Textured Solid Surfaces" (U.S. Patent Application No. 10/318667). Any license shall comply with 35 U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and

Technology Applications, ATTN: AMSRL–DP–T/Bldg. 459, Aberdeen Proving Ground, MD 21005–5425, telephone: (410) 278–5038.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–4404 Filed 2–24–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project

AGENCY: Department of the Army, Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District intends to prepare a Draft Environmental Impact Statement (DEIS) for the Palm Beach Harbor Lake Worth Access Channel Expansion, Section 107 Small Navigation Project. The study is a cooperative effort between the Corps and the Florida Inland Navigation District (FIND), with the support of Palm Beach County (PBC) and the Port of Palm Beach Harbor (PBH).

FOR FURTHER INFORMATION CONTACT: James McAdams, 904–232–2117, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville, FL 32232–0019.

SUPPLEMENTARY INFORMATION: The DEIS for the PBH Lake Worth Access Channel Expansion, Section 107 Small Navigation Project was authorized by the Flood Control Act of 1968.

The purpose of the study is to consider modifying the Federal navigation project of PBH to provide navigation access for larger and deeper-draft vessels to interior berthing, testing, and repair facilities located adjacent to PBH in Lake Worth. Existing depths in the proposed Lake Worth main access channel area are presently limited to the 10-foot deep Federal IWW channel that runs north and south from the Port. The need for this deepening project comes from the recent growth in larger/deeper-draft vessels requiring deeper water depths to safely navigate the interior area.

The study involves an analysis of available information from sources within the project area and records at the Jacksonville District. The without project deepening condition is for continuing maintenance of the existing 10-foot depth (Intracoastal Waterway) IWW channel, with maintenance to maintain the channels for both projects. A deepened access channel was analyzed from the existing ten-foot depth, in one-foot increments to a 16-foot depth. Each alternative depth considered includes a one-foot required and one-foot allowable over-depth. All alternative depth main access channels have a bottom width of 125 feet for about 0.7 miles[2] north and 4.5 miles south of the PBH project limit. Adding an appropriate depth access channel would enable larger vessels access to commercial repair and berthing facilities in the vicinity of PBH and improve operational efficiencies at other commercial and educational training facilities along Lake Worth.

The existing 1.6-mile Federal PBH navigation channel provides a 35 foot deep project through the ocean inlet, 33 feet through the inner channel and within the main turning basin, and 25 feet in a second turning basin, to berthing slips and wharves at PPBH, in West Palm Beach, Florida. PBH serves a variety of dry bulk, liquid bulk, and general cargo vessels calling at the Harbor in addition to smaller commercial and recreational boating interests. The present Section 107 study addresses and is focused on an extension of the harbor footprint to the north and south via the addition of main and interior access channels and berthing areas. The Jacksonville to Miami IWW, part of which is co-located with the Harbor and continues north and south from the Port, traverses the study area. This report's primary study area is a 5.2 mile reach of Lake Worth in Palm Beach County in the vicinity of PBH.

Several Federal navigation, beach erosion control, environmental restoration, and food control projects exist in the study area. The first navigation project is the PBH project. The second navigation project is the IWW from Jacksonville to Miami. Two beach erosion control projects exist along the Atlantic Ocean shoreline adjacent to PBH. Also, a section 1135 study was initiated during 1996 to examine environmental restoration of a portion of Peanut Island, the upland dredged material disposal site used in the PBH and IWW projects. The final project is the West Palm Beach Canal (C–51) that currently serves as a flood control structure, although initially constructed for navigation purposes.

Alternatives: Two basic sets of alternatives were considered for providing an access channel for navigation in the Lake Worth study area. One is to do no further improvements to the project (no action plan). The second set of alternatives involve structural changes to (extension of) the existing PBH project. The alternative evaluations involved an assessment of the optimum channel depth to provide the greatest return on the investment (net benefits), the dredging equipment for performing the construction and maintenance work, and dredged material disposal options. The identification of these alternatives and options are discussed in the subsequent sections.

Issues: The Environmental Impact Statement (EIS) will consider impacts on seagrasses, protected species, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, energy conservation, socio-economic resources, and other impacts identified through scoping, public involvement, and interagency coordination.

Scoping: A scoping letter was sent to interested parties on September 13, 2000 for the original Environmental Assessment of the project. Due to comments received, an EIS was judged needed and a new scoping letter will be sent out the first week of February 2003. In addition, all parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. At this time, there are no plans for a public scoping meeting.

Public Involvement: We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; Essential Fish Habitat with National Marine Fisheries Service; and determination of Coastal Zone Management Act consistency.

Agency Role: As cooperating agency, non-Federal sponsor, and leading local expert; Palm Beach County Department of Environmental Resources will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

DEIS Preparation: It is estimated that the DEIS will be available to the public on or about August 15, 2003.

Dated: February 4, 2003.

George M. Strain,

Acting Chief, Planning Division.

[FR Doc. 03–4406 Filed 2–24–03; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Meeting Cancellation

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; cancellation.

SUMMARY: The public meeting of the Estuary Habitat Restoration Council scheduled for Wednesday, February 26, 2003 from 10 a.m. to 12 p.m. published in the **Federal Register** on Monday, February 10, 2003 (68 FR 6725) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC, (703) 695–6791.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–4405 Filed 2–24–03; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Navy Air-To-Ground Training at Avon Park Air Force Range and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of utilizing Avon Park Air Force Range (APAFR) as a location for high explosive air-to-ground ordnance training for East Coast Carrier-based strike/fighter aviation squadrons. Squadrons would use APAFR in combination with other available air-to-ground range assets to meet the operational requirements of its structured aircrew-training program called the Inter-Deployment Training Cycle (IDTC). IDTC air-to-ground training will encompass operations associated with Navy intermediate and advanced level training exercises and combat certification. The EIS will focus on air-to-ground training alternatives within APAFR. These alternatives will encompass varying mixtures of ordnance types among three different ranges within APAFR.

DATES AND ADDRESSES: Three public scoping meetings will be held in Avon Park, Florida; Sebring, Florida; and in Frostproof, Florida to receive oral and written comments on environmental concerns that should be addressed in the EIS. Public scoping open houses will be held at the following dates, times, and locations:

—Tuesday, March 18, 2003, from 7 p.m. to 9 p.m., Frostproof High School Cafeteria, Frostproof, FL.

—Wednesday, March 19, 2003, from 7 p.m. to 9 p.m., Sebring Civic Center, Sebring, FL.

—March 20, 2003, from 7 p.m. to 9 p.m., The City of Avon Park Community Center, Avon Park, FL.

FOR FURTHER INFORMATION CONTACT: Mr. Will Sloger, Southern Div., Naval Facilities Engineering Command, PO Box 190010, North Charleston, SC 29419–9010; telephone (843) 820–5797; facsimile (843) 820–7472.

SUPPLEMENTARY INFORMATION: The Commander, U.S. Atlantic Fleet prepares Carrier Battlegroups (CVBGs) for deployment using a training process known as the "Inter-deployment Training Cycle (IDTC)." The IDTC prepares Navy personnel to function as a part of a coordinated fleet or joint fighting force with the capacity to accomplish multiple missions in a hostile environment. The IDTC is highly structured and features a three-phased building-block approach including basic, intermediate, and advanced phases. Mission activities conducted during the IDTC include integrated strike, close air support, combat search-and-rescue, unit level bombing, helicopter unit level terrain flight, and helicopter unit level air-to-ground training.

The Navy must deploy combat ready forces and considers training with live ordnance to be indispensable to achieving and maintaining combat readiness. The handling of live ordnance and the decision-making in the use of this ordnance provides Fleet sailors and airmen the greatest degree of combat training realism. Exposure to live ordnance is known to rivet the attention of those who manage, handle, and employ it with a combination of fear and respect that non-explosive ordnance cannot impart. Moreover, employment of explosive ordnance onboard an aircraft carrier involves the hazardous end-to-end weapons regime; to include breakout, build-up, and loading; to weapons release, impact, aircraft return and recovery, both day and night. On the ground, redundancy in the availability of disparate explosive targets helps reduce the likelihood of fratricide and collateral damage by ensuring a rigorous, combat-like training regimen prior to overseas deployment. In the end, tactical pilots and flight officers must have full confidence in their support personnel, their equipment and weapons systems, and in their ability to safely and effectively prosecute difficult target sets.

Explosive ordnance-capable ranges are limited to the Navy's Pinecastle Range and the Air Force's Eglin Air Force Base (Air Armament Center) on the East Coast of the United States. At these ranges, limitations exist with regard to range dimensions, run-in lines, the number of explosive ordnance target sets, fire index restrictions, and scheduling lead times, changes, and priorities. Consequently, explosive ordnance range capabilities must be expanded to a location proximate to planned Carrier Battlegroup Training in the Southeastern U.S. (Jacksonville and Gulf of Mexico Operational Areas) to reduce the potential for a single point of failure should the existing ranges be unavailable or unsuitable for a particular exercise. This location must have sufficient range area and suitably sized special use airspace to accommodate safe aircraft operations and ordnance delivery across the full spectrum of IDTC training.

The purpose of the proposed action, therefore, is to provide flexibility across the full spectrum of the IDTC for U.S. Atlantic Fleet aircrews. Navy use of APAFR as a location for explosive air-to-ground training would provide redundancy for explosive ordnance capabilities; increase combat realism, scheduling flexibility, and aimpoint variety; reduce undue operational impacts at any one location; and promote the benefits of multiple DOD,

Navy, and community partnerships. Navy will consider possible alternatives using a combination of ordinance target locations within the APAFR.

The EIS will evaluate the environmental effects associated with: Airspace; noise; range safety; earth resources; water resources; air quality; biological resources, including threatened and endangered species; land use; socioeconomic resources; infrastructure; and cultural resources. The analysis will include an evaluation of the direct, indirect, and cumulative impacts. No decision will be made to implement any alternative until the NEPA process is completed.

The Navy is initiating the scoping process to identify community concerns and local issues that will be addressed in the EIS. Federal, state, and local agencies, and interested persons are encouraged to provide oral and/or written comments to the Navy to identify specific issues or topics of environmental concern that should be addressed in the EIS. Written comments must be postmarked by April 15, 2003, and should be mailed to: Avon Park Air-to-Ground Training EIS, c/o Commanding Officer, Southern Div., Naval Facilities Engineering Command, PO Box 190010, North Charleston, SC 29419–9010, Attn: Code ES12/WS (Will Sloger), telephone (843) 820–5797, facsimile (843) 820–7472.

Dated: February 20, 2003.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–4411 Filed 2–24–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 27, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically. mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 19, 2003.

John D. Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision of a currently approved collection.

Title: Program for International Student Assessment (PISA) (KI).

Frequency: Other: one time.

Affected Public: Individuals or household (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 10800; Burden Hours: 28125.

Abstract: The Program for International Student Assessment (PISA) is a new system of international assessments that focus on 15-year-olds' capabilities in reading literacy, mathematics literacy, and science literacy. PISA 2000 was the first cycle of PISA, which will be conducted every three years, with a primary focus on one area for each cycle. PISA 2000 focused on reading literacy; mathematics literacy will be the focus in 2003, and science literacy in 2006. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–4316 Filed 2–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of implementation of electronic delivery of school cohort default rate data for institutions located in the United States.

SUMMARY: The Secretary gives notice of the implementation of electronic delivery of cohort default rate notification packages to institutions located in the United States (domestic institutions) that participate in the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended. This notice concerns electronic processes related to cohort default rates calculated for institutions participating in the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, or both. It does not apply to cohort default rates calculated for the Federal Perkins Loan Program.

Domestic schools must participate in this new electronic process by June 1, 2003. After that date, and except in the case of a technical problem caused by the U.S. Department of Education (Department) as described below, the electronic process will be the sole means by which the Secretary provides notice to domestic schools of their draft and official cohort default rates and underlying data. While participation in the electronic process by domestic schools is mandatory as of June 1, 2003, we will begin electronic distribution of cohort default rate notifications with the fiscal year (FY) 2001 draft rates in February 2003, for schools that by then have registered for the new service, as described below.

FOR FURTHER INFORMATION CONTACT: Kriste Jordan, Default Management, Schools Channel, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 084B4, 830 First Street, Washington, DC 20002. Telephone: (202) 377–3191, FAX (202) 275–4511.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Beginning with the release of fiscal year (FY) 2001 draft cohort default rates in February 2003, we will electronically transmit draft and official cohort default rate notification packages to domestic institutions using our Student Aid Internet Gateway (SAIG). The electronic delivery of cohort default rate information to domestic institutions will replace the current process, which involves delivery of hardcopy documents. Foreign schools (*i.e.*, schools eligible to participate in the Federal Family Education Loan Program under section 102(a)(1)(C) of the Higher Education Act of 1965, as amended) are not subject to participation in this electronic process. Foreign schools will continue to receive their cohort default rate notification documents in hardcopy rather than electronically. Foreign schools' rights to appeal, make challenges and seek adjustments will continue to run from the date of receipt of the hardcopy, as they have in the past.

For each electronic distribution of default rate notifications (draft and official) to domestic institutions, we will announce on our Information for Financial Aid Professionals (IFAP) Web site (*http://www.ifap.ed.gov*) the date of the electronic transmission of cohort default rate information to the destination points designated by each domestic institution. Except as described in the following paragraph, the time periods for making appeals and challenges and seeking adjustments under 34 CFR part 668, subpart M will begin with the sixth business day after the date the default rate notification packages were transmitted to the SAIG destination points, as noted in the IFAP announcement.

If an institution believes that a technical problem that was caused by the U.S. Department of Education (Department) resulted in the institution not being able to access its electronic cohort default rate information, it must notify us no later than five business days after the transmission date announced on IFAP. By doing so and if we agree that the problem was caused by the Department, we will extend the challenge, appeal, and adjustment deadlines and timeframes to account for a re-transmission of the information after the technical problem is resolved. Reports of technical problems must be made via e-mail and addressed to our Default Management sharepost at: *fsa.schools.default.management@ed.gov.*

Each institution is responsible for updating its SAIG enrollment whenever a change is needed to its cohort default rate notification package destination point. Failure of an institution to enroll in or update SAIG for the eCDR process does not constitute a valid, timely technical problem that would extend timeframes or deadlines for appeals, challenges, and adjustments.

To implement the electronic process, every domestic school must, no later than June 1, 2003, designate an SAIG destination point that will receive the institution's electronic cohort default rate (eCDR) notification packages. The designation of the eCDR destination point must be conducted through the SAIG enrollment process at: *http://www.sfawebenroll.ed.gov.*

In addition, before eCDR functionality can be provided to the designated SAIG destination point each institution must submit, by June 1, 2003, a hardcopy SAIG signature page signed by the institution's Chief Executive Officer (CEO) (*e.g.*, President, Chancellor, Owner) or the person previously designated by the CEO as the institution's SAIG signature authority.

Once SAIG enrollment is completed, the institution's designee will receive electronic school cohort default rate notification packages unless the school changes the designee by submitting a revision to its SAIG enrollment.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use the PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO); toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

You may also view this document in PDF at the following site: *ifap.ed.gov.*

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1085, 1094, 1099c.

Dated: February 20, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–4392 Filed 2–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–38–000]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Cargill Power Markets, LLC, Complainant, v. Midwest Independent Transmission System Operator, Inc., Respondent; Order on Complaint Establishing Hearing and Settlement Procedures

February 14, 2003.

1. In this order, the Commission sets for hearing the complaint (complaint) filed on December 31, 2002 by Cargill Power Markets, LLC (Cargill) against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), regarding a request by Cargill for long-term firm transmission service. Moreover, to aid the parties in settling their dispute, we will hold the hearing in abeyance pending the outcome of settlement judge procedures.

Background

2. Cargill complains that the Midwest ISO wrongfully recalled Cargill's confirmed reservation with the Midwest ISO for 52 MW of long-term firm point-to-point transmission service (service reservation) from the Pennsylvania-New Jersey-Maryland (PJM) source Control Area to the Michigan-Ontario Independent Electricity Market Operator border (MI–IMO), for the period January 1, 2003 through January 1, 2004. Cargill states that the Midwest ISO confirmed the service reservation on November 21, 2002. Cargill further contends that on

November 27, 2002, the Midwest ISO informed Cargill that the Midwest ISO might annul the service reservation due to its re-evaluation of certain business practices. However, Cargill claims that after Cargill refused to agree to an annulment, the Midwest ISO stated that it would review the situation.

3. Cargill further alleges that on December 23, 2002, the Midwest ISO informed Cargill that the service reservation was inadvertently processed out of order and was being recalled due to the MI–IMO interface being oversubscribed by non-competing requests, based on the condition, Midwest ISO's Business Practices Manual Section 6.8.1, that competing requests must have the same source and sink Control Areas. Cargill states that the Midwest ISO claimed authority to recall the service reservation under Section 4.2.13.10 of the Open Access Same Time Information System (OASIS) Standards and Communication Protocols Document (S&CP Document).

4. Cargill contends that the Midwest ISO's recall of the service reservation violates the Midwest ISO's Open Access Transmission Tariff (OATT) and Business Practices, as well as prior Commission orders and the Commission's OASIS standards. Cargill states that the S&CP Document [1] and Commission precedent [2] require that the acceptable reasons for a recall of transmission capacity be clearly articulated in the Midwest ISO's OATT or in a transmission service agreement. Cargill maintains that neither the Midwest ISO's OATT nor a transmission service agreement allow the recall of confirmed long-term firm transmission capacity due to a re-evaluation of, or disputes regarding, the Midwest ISO's Business Practices.

5. Furthermore, Cargill contends that the Commission has stated that transmission providers are liable for errors, even if made in good faith or in accordance with its published procedures.[3] Cargill argues that if a transmission provider oversubscribes a transmission system, the onus is on it to either curtail transmission service or build transmission facilities. Cargill relies upon *Exelon*,[4] where the Commission stated:

> If the transmission system becomes constrained such that the transmission provider cannot satisfy existing customers, then the obligation is on the transmission provider to either curtail service pursuant to the provisions of its OATT or to build more capacity to relieve the constraint.

6. Moreover, Cargill argues that the recall of its service reservation was prohibited, because the Midwest ISO failed to give Cargill timely notice of the action. Cargill notes that the Commission has allowed the annulment of other service reservations where the transmission customer received timely notice of the annulment.[5] However, Cargill states that the Midwest ISO did not send Cargill notice of the recall until December 23, 2002, over one month after the service reservation was confirmed and a little more than one week before service was to commence. Moreover, Cargill alleges that the Midwest ISO erred in posting the relevant recall on its OASIS, since the relevant notice, posted on November 29, 2002 (OASIS notice), referenced 1 MW of service, while Cargill had reserved 52 MWs. Cargill states that it did not have reasonable notice of the recall, since the notice referenced a different MW of service. Cargill alleges that on December 30, 2002, after Cargill had alerted the Midwest ISO of the inadequate notice, the Midwest ISO amended the posted recall to reference the 52 MWs at issue.

7. Finally, Cargill distinguishes its complaint from another complaint filed against the Midwest ISO by Tenaska Power Services Co.[6] (Tenaska complaint). Cargill states that this proceeding must be resolved separately from the Tenaska complaint. Cargill contends that the Tenaska complaint involves the proper interpretation of the Midwest ISO's Business Practices and hinges on whether Section 6.8.1 of that document applies to long-term firm requests and whether competing requests must have the same points of receipt and delivery. On the other hand, Cargill alleges that it has a confirmed reservation for long-term firm transmission service that, by reference to a provision in the S&CP document, which is not provided for anywhere in the Midwest ISO's OATT, the Midwest ISO has attempted to recall a week before service is to commence. Cargill states that the only relationship between its complaint and the Tenaska complaint is that the Midwest ISO has oversold service to the MI–IMO interface and now seeks to resolve that situation by invoking an undefined and vague recall procedure not specified in its OATT.

Notice of the Filing and Responsive Pleadings

8. Notice of Cargill's filing was published in the **Federal Register**,[7] with the answer, interventions, comments, and protests due on or before January 15, 2003. The Midwest ISO filed a timely answer. Tenaska Power Services Co. (Tenaska) filed a timely motion to intervene and comments, and Dynegy Power Marketing, Inc., Reliant Resources, Inc. and MidAmerican Energy Company filed timely motions to intervene. Duke Energy Trading and Marketing, L.L.C. (Duke Energy) filed an untimely motion to intervene.

9. In its answer, the Midwest ISO states that under the Midwest ISO's longstanding preemption methodology, which has been in effect since the Midwest ISO became operational (February 1, 2002), Cargill's request for service could not preempt any requests for short-term transmission service, because no short-term requests shared the same source and sink Control Areas as Cargill's requested service. The Midwest ISO contends that, at the urging of FERC Hotline Staff, it began employing an expanded preemption methodology that would not require competing requests to have the same source and sink Control Areas. The Midwest ISO states that, using the expanded preemption methodology, it approved Cargill's transmission service request on November 19, 2002. The Midwest ISO maintains that Cargill confirmed that approval on November 21, 2002.

10. On the morning of November 27, 2002, the Midwest ISO alleges that Cargill contacted the Midwest ISO and expressed concern that the expanded preemption methodology (which, the Midwest ISO contends, led to the approval of Cargill's service request) violated the Midwest ISO's preemption methodology, set forth in Section 6.8.1 of the Midwest ISO's Business Practices Manual. The Midwest ISO states that, after internal discussions, it agreed with Cargill that the expanded preemption methodology violated the Business Practices Manual.

[1] Cargill cites Sections 4.2.13.10 of the S&CP Document, which states, in relevant part: "There are cases in implementing provisions of the Primary Provider's Tariff that the capacity reserved by a Transmission Customer may be reduced in whole or in part. The particular reasons for these reductions are Tariff specific. * * *" Cargill Complaint at 7.

[2] Cargill cites Duke Energy Corp., 88 FERC ¶ 61,184 (1999); Southern Company Services, Inc., 100 FERC ¶ 61,314 (2002); Public Serv. Co. of New Mexico, 85 FERC 61,240 (1998); *Public Serv. Co. of New Mexico* v. *Arizona Pub. Serv. Co.*, 99 FERC ¶ 61,162 (2002); and *Exelon Generation Co., LLC* v. *Southwest Power Pool, Inc.*, 99 FERC ¶ 61,235, *reh'g denied*, 101 FERC ¶ 61,226 (2002) (*Exelon*).

[3] Cargill cites Open Access Same-Time Information System and Standards of Conduct, Order No. 889–A, 62 FR 2484 (1997), FERC Stats. and Regs. ¶ 31,049 at 30,572.

[4] 101 FERC at 61,980.

[5] Cargill cites *Williams Energy Marketing & Trading Co.* v. *Southern Company Services, Inc.*, 101 FERC ¶ 61,144 (2002) (*reh'g pending*) (*Williams Energy*); *Powerex Corp.* v. *Department of Energy*, 95 FERC ¶ 61,241 (2001) (*Powerex*).

[6] Docket No. EL03–30–000.

[7] 68 FR 1448 (2003).

11. Consequently, the Midwest ISO states that it determined that the transmission service queue at issue should be reprocessed consistent with the preemption methodology set forth in Section 6.8.1 of its Business Practices Manual. The Midwest ISO alleges that during a follow-up conversation with Cargill during the early afternoon of November 27, 2002, the Midwest ISO informed Cargill that the Midwest ISO was reprocessing the queue to ensure that requests were approved on a first-come, first-serve basis, in compliance with the source/sink Control Area limitations set forth in Section 6.8.1 of the Business Practices Manual. The Midwest ISO states that this was the first indication it provided to Cargill that Cargill's service request could be recalled.

12. On November 29, 2002, the Midwest ISO maintains that it completed its reevaluation of all incorrectly processed transmission service requests, including Cargill's request, and took immediate action to recall the service reservation. On that same day, the Midwest ISO states that it posted the OASIS notice recalling Cargill's service reservation. The Midwest ISO explains that the OASIS requires that a non-zero value be placed in the Capacity Requested and Capacity Granted fields, which required the Midwest ISO to set those fields at 1 MW in the OASIS notice. However, the Midwest ISO states that, in order to avoid confusion, it inserted in the Provider Comments field the following language: "Request Recalled for the full 52 MWs. OASIS does not support full amount to be recalled." Moreover, the Midwest ISO states that on November 29, 2002, shortly after posting the OASIS notice, the Midwest ISO left a detailed telephone message with Cargill, explaining that Cargill's 52 MW request was being recalled in its entirety. The Midwest ISO further maintains that it followed the telephone message with an email to Cargill, again explaining the recall.

13. Based upon the foregoing, the Midwest ISO contends that it properly recalled Cargill's service reservation. The Midwest ISO argues that it has inherent authority to correct errors made during administration of its OATT. The Midwest ISO contends that at the time it had approved Cargill's 52 MW request, the Midwest ISO had failed to subject Cargill's request to the source and sink Control Area preemption methodology that is specified in Section 6.8.1 of its Business Practices. As a result, the Midwest ISO contends that it accepted several long-term firm requests, including Cargill's, which the Midwest ISO should have rejected and which instead caused the interface to be oversold. The Midwest ISO argues that, because they were processed in violation of the Midwest ISO's OATT and Business Practices, those reservations were void from the outset and subject to recall when the error was exposed.

14. Indeed, the Midwest ISO states that it had a basic duty as a regional transmission organization (RTO) to remedy the processing errors and resume compliance with its OATT and Business Practices by recalling the invalid reservations. The Midwest ISO states that, contrary to Cargill's assertion, the Commission has never required that such fundamental obligations be specified in a tariff or service agreement.

15. Likewise, the Midwest ISO argues that the S&CP Document does not require that the particular reasons for the recall of transmission capacity be set forth in its OATT, as Cargill contends. The Midwest ISO notes that section 4.2.13.10 of the S&CP Document states that "[t]he particular reasons for these reductions are Tariff specific." The Midwest ISO maintains that it recalled Cargill's service reservation in order to resume application of the preemption methodology set forth in its Business Practices Manual, which, according to the Midwest ISO, complements and enhances the understanding of its OATT provisions and principles. Therefore, the Midwest ISO states that its reason for recalling the service reservation is tariff specific within the meaning of the S&CP Document.

16. Moreover, the Midwest ISO contends that Commission precedent authorizes transmission providers such as the Midwest ISO to recall capacity granted in error.[8] The Midwest ISO states that in *Williams Energy* the Commission denied the customer's request to reinstate a mistakenly-accepted request for service, based upon the Commission's finding that the transmission provider was authorized to correct the mistake within a reasonable period of time after discovering the error. The Midwest ISO states that, contrary to Cargill's contention, it gave Cargill timely notice of its processing error, over one month before the service reservation was to commence.

17. Finally, contrary to Cargill's assertion, the Midwest ISO argues that this proceeding relates to the Tenaska complaint. The Midwest ISO contends that Cargill's and Tenaska's complaints raise the identical issue regarding the Midwest ISO's application of its same source and sink Control Area preemption methodology. The Midwest ISO requests that, if the Commission does not deny Cargill's complaint, the Commission hold this proceeding in abeyance pending resolution of the Tenaska complaint.

18. In its comments, Tenaska states that it appreciates Cargill's concerns and is intervening in this proceeding to protect its own interests. Tenaska notifies the Commission that it sought transmission service from the Midwest ISO before Cargill made its requests with the Midwest ISO and asserts that it is rightfully ahead of Cargill in the queue. It asks that the Midwest ISO be directed to sort out and remedy the problems with its transmission queue and properly process requests for long-term firm transmission service.

Cargill's Response to the Midwest ISO's Answer

19. On January 24, 2003, Cargill filed a response disputing the facts set forth in the Midwest ISO's answer. Cargill states that, contrary to the Midwest ISO's contention, the Midwest ISO confirmed Cargill's service request using the source-sink methodology set forth in the Midwest ISO's Business Practices. To that end, Cargill proffers evidence of an OASIS posting and a phone conversation between a Midwest ISO employee and a Cargill employee, which according to Cargill reveal that the Midwest ISO relied upon its Business Practices in confirming Cargill's service reservation.

20. In addition, Cargill contends that the OASIS notice was not properly posted as a recall, but instead was posted as a new transmission service request created by the Midwest ISO, with the Midwest ISO listed as the customer for a fictional transaction for 1 MW of service. Further, Cargill states that less than three minutes after the Midwest ISO posted the language referring to the 52 MW service reservation, it removed that language from the OASIS notice. Cargill contends that the remaining language did not expressly refer to Cargill's service reservation. Moreover, Cargill contends that it has no evidence of receiving a voicemail or email from the Midwest ISO, regarding the recall.

21. Contrary to the assertions Tenaska sets forth in its comments, Cargill states that its confirmed service reservation should be acknowledged as having priority over Tenaska's unconfirmed requests in the Midwest ISO transmission queue. Cargill contends that Tenaska requested transmission service from AEP (source) to the MI-

[8] The Midwest ISO cites *Williams Energy* and *Powerex*.

IMO interface (sink) on September 25, 2002, while Cargill had confirmed service from PJM (source) to the IMO (sink) on November 21, 2002. Therefore, Cargill states that under the Midwest ISO's source-sink methodology, Tenaska's and Cargill's reservations do not compete.

Discussion

Procedural Matters

22. Pursuant to Rule 214 of the Commission's regulations, 18 CFR § 385.214 (2002), each timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. In addition, we will grant Duke Energy's untimely intervention, given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay. While Rule 213(a)(2) of the Commission's regulations, 18 CFR 385.213(a)(2) (2002), allows replies to answers only at the discretion of the decisional authority, we will allow Cargill's reply to the Midwest ISO's answer, as it has aided us in understanding the matters at issue in this proceeding.

Analysis

23. We find that the parties have raised material issues of fact upon which Cargill's complaint is based. More specifically, the parties dispute the circumstances under which Cargill's service reservation was accepted and recalled, and when Cargill received notice of the recall. Accordingly, pursuant to section 206 of the Federal Power Act[9] (FPA), we will set Cargill's complaint for hearing.

24. That being said, we strongly encourage the parties to settle this complaint. Accordingly, we will hold the hearing in abeyance and direct settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[10] The Chief Judge shall appoint a settlement judge in this proceeding within 15 days of the date of issuance of this order. The settlement judge shall report to the Chief Judge and the Commission within 45 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

25. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after the filing of the complaint, but no later than five months subsequent to the expiration of the 60-day period. Consistent with our general policy of providing maximum protection to customers,[11] we will set the refund effective date as of the date 60 days after the date of the filing of Cargill's complaint, or March 2, 2003.

26. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Ordinarily, to implement that requirement, we would direct the presiding judge to provide a report to the Commission in advance of the refund effective date. Here, given that the refund effective date for the complaint is March 2, 2003, the Commission cannot follow its normal procedure.

27. Although we do not have the benefit of the presiding judge's report, based on our review of record, we expect that, assuming this case does not settle, the presiding judge should be able to render a decision within four months of the commencement of hearing procedures. After the presiding judge renders an initial decision, assuming the case does not settle, we estimate that we will be able to issue our decision within approximately two months of the filing of briefs on and opposing exceptions.

The Commission Orders

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held in Docket No. EL03–38–000, concerning the issues raised in Cargill's complaint against the Midwest ISO, as discussed in the body of this order. Also as discussed in the body of this order, we will hold the hearing in abeyance pending further Commission action and the settlement judge negotiations, as discussed in Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 CFR 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(C) Within 30 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If the settlement procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in these proceedings to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date established pursuant to section 206(b) of the Federal Power Act is March 2, 2003.

(F) The Secretary shall promptly publish a notice of the Commission's initiation of the proceeding in EL03–38–000 in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4337 Filed 2–24–03; 8:45 am]

BILLING CODE 6717–01–P

[9] 16 U.S.C. 824e (2002).

[10] 18 CFR 385.603 (2002).

[11] *See, e.g., Seminole Electric Cooperative, Inc.* v. *Florida Power & Light Company*, 65 FERC ¶ 61,413 at 63,319 (1993); Canal Electric Company, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

February 19, 2003.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–696–010,—013.

c. *Date Filed:* February 13, 2003.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* American Fork Hydroelectric Project.

f. *Location:* On American Fork Creek, near the City of American Fork, Utah County, Utah, about 3 miles east of Highland, Utah. The project affects about 28.8 acres of federal lands within the Uinta National Forest. Also, approximately 2,000 feet of flowline passes through the Timpanogos Cave National Monument, administered by the U.S. Department of the Interior, National Park Service.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 19 CFR 385.602.

h. *Applicant Contact:* Monte Garrett, Licensing Manager, PacifiCorp, 825 N.E. Multnomah, Suite 1500, Portland, OR 97232, phone: (503) 813–6629.

i. *FERC Contact:* Kenneth Hogan at (202) 502–8434, e-mail at *kenneth.hogan@ferc.gov*.

j. *Deadline for filing comments:* 20 days from the filing date. Reply comments due 30 days from the filing date.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. PacifiCorp filed the Settlement Agreement on behalf of itself and the U.S. Department of Agriculture Forest Service, U.S. Fish and Wildlife Service, National Park Service, Utah Division of Wildlife Resource, Utah Department of Transportation, Utah State Historic Preservation Office, Utah Council of Trout Unlimited, and American Whitewater. The purpose of the Settlement Agreement is to resolve among the signatories all issues associated with PacifiCorp's pending license application for a new Agreement, the parties support the decommissioning of the American Fork Hydroelectric Project. The parties agree that the Settlement Agreement is fair and reasonable and in the public's interest. The parties recommend that the Commission approve without modification the decommissioning and the interim measures set forth in the Settlement Agreement and Appendix A of that agreement, the Removal Plan.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4426 Filed 2–24–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0012; FRL–7453–8]

Agency Information Collection Activities: Submission of EPA ICR No. 1541.07 (OMB No. 2060–0183) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP: Benzene Waste Operations (40 CFR part 61, subpart FF), OMB Control Number 2060–0183, EPA ICR Number 1541.07, expiration date 2/28/2003. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost:

DATES: Additional comments must be submitted on or before March 27, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Rafael Sanchez, Compliance Assurance and Media Programs Division, Office of Compliance, Mail Code 2223A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number (202) 564–7028; fax number: (202) 564–0050; e-mail address: *sanchez.rafael@epa.gov*. Refer to EPA ICR Number 1541.07.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0012, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T,

1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP: Benzene Waste Operations (40 CFR part 61, subpart FF) (OMB Control Number 2060–0183, EPA ICR Number 1541.07). This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Any facility which manages a waste containing benzene must maintain records and submit reports to the Agency. There is a tiered threshold for burden. Facilities managing waste containing less than 1 megagram per year (Mg/yr) of benzene must certify to that effect and maintain documentation to support their finding. Facilities managing more than 1 Mg/yr and less than 10 Mg/yr of benzene-containing waste must prepare an initial certification, test annually to verify that their waste stream still falls within this range, and maintain documentation to support these findings. Facilities managing more than 10 Mg/yr of waste must submit quarterly and annual reports documenting the results of continuous monitoring. The Agency uses this information to determine compliance and to select plants or processes for inspection.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. The monitoring and excess emissions reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. The information collected from record keeping and reporting requirements is used for targeting inspections, and for other uses in compliance and enforcement programs.

Responses to this information collection are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 71 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Benzene Waste Operations subject to Subpart FF.

Estimated Number of Respondents: 234.

Frequency of Response: Quarterly, Semi-annually.

Estimated Total Annual Hour Burden: 16,626.

Estimated Total Non-labor Annual Cost: $0.

There is a decrease of 402 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens due to a decrease in the number of regulated sources.

Dated: February 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4372 Filed 2–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2003–0003; FRL–7453–9]

Agency Information Collection Activities; Submission of EPA ICR No. 0275.08 (OMB No. 2090–0014) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Preaward Compliance Review Report for All Applicants Requesting Federal Financial Assistance. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 27, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Yasmin Yorker, Title VI Team Leader, Office of Civil Rights, (MC 1201A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–7272; fax number: 202–501–1836; e-mail address: *Yorker.Yasmin@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 27, 2002 (67 FR 61087), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OA–2003–0003, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Preaward Compliance Review Report for All Applicants Requesting Federal Financial Assistance (OMB Control No. 2090–0014, EPA ICR Number 0275.08). This is a request to renew an existing approved collection that is scheduled to expire on 02/28/2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The information request and gathering is a part of the requirement of 40 CFR Part 7, "Nondiscrimination in Programs Receiving Federal Assistance from the Environmental Protection Agency," at 40 CFR 7.80. The Regulation implements statutes which prohibit discrimination on the basis of race, color, national origin, sex and handicap. This information is also required, in part, by the Department of Justice regulation, 28 CFR 42.406 and 28 CFR 42.407. The information is collected on a short form for grant and loan applicants as part of the application process. The EPA Director of Civil Rights manages the data collection through a regional component whom also carries out the data analysis and makes the recommendation on the respondent's ability to meet the requirements of the regulation, as well as the respondent's current compliance with the regulation. The information and analysis is of sufficient value for the Director to determine whether the application is in compliance with the regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average ½ hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, local, and tribal governments; universities, associations; and non-profit organizations.

Estimated Number of Respondents: 13,100.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 6,550.

Estimated Total Annual Cost: $94,451, includes $0 annualized capital or O&M costs.

Dated: February 11, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4373 Filed 2–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0004; FRL–7454–1]

Agency Information Collection Activities; Submission of EPA ICR No. 1569.05 (OMB No. 2040–0153) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Approval of State Coastal Nonpoint Pollution Control Programs (CZARA Section 6217). The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 27, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Stacie Craddock, Assessment and Watershed Protection Division, Office of Wetlands, Oceans, and Watersheds (4503–T), Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1204; fax number: 202–566–1545; e-mail address: *craddock.stacie@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 25, 2002 (67 FR 65563), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). On November 20, 2002 (67 FR 70070), EPA extended the comment period 30 days. EPA received one comment and has addressed the comment received.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0004, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to http://www.epa.gov/edocket.

Title: Approval of State Coastal Nonpoint Pollution Control Programs (OMB Control No. 2040–0153, EPA ICR No. 1569.05). This is a request to renew an existing approved collection that is scheduled to expire on April 30, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Under the provisions of national Program Development and Approval Guidance implementing section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) which was jointly developed and published by EPA and the National Oceanic and Atmospheric Administration (NOAA), 29 coastal States and 5 coastal Territories with Federally approved Coastal Zone Management Programs have developed and submitted to EPA and NOAA Coastal Nonpoint Pollution Programs. EPA and NOAA have approved 9 States and 3 Territories, conditionally approved 19 States and 2 Territories, and one State's initial program submission (Indiana) is currently under review. The conditional approvals will require States and Territories to submit additional information in order to obtain final program approval. Indiana will also need to submit information in order to obtain approval of its coastal nonpoint program. Administrative changes issued on October 16, 1998, and mutually agreed to by States, Territories, EPA and NOAA are expected to expedite the final approval process. CZARA section 6217 requires States and Territories to obtain final approval of their Coastal Nonpoint Pollution Programs in order to retain their full share of funding available to them under section 319 of the Clean Water Act and section 306 of the Coastal Zone Management Act. The information collected under section 6217 and this ICR will not require States and Territories to collect any confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 148 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 20 States and 2 Territories with approved coastal zone management programs.

Estimated Number of Respondents: 22.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 3,250 hours.

Estimated Total Annual Cost: $113,738, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 375 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is the result of EPA and NOAA having fully approved 12 of the 34 programs.

Dated: February 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4374 Filed 2–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0012, OEI–2002–0013, OEI–2002–0014; FRL–7454–2]

Agency Information Collection Activities; Submission of EPA ICR No. 1039.10 OMB Control No. 2030–0005, EPA ICR No. 1037.07, OMB Control No. 2030–0007, and EPA ICR No. 0246.08, OMB Control No. 2030–0016 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following three continuing Information Collection Requests (ICRs) have been forwarded to the Office of Management and Budget (OMB) for review and approval: (1) Monthly Progress Reports, OMB Control No. 2030–0005, EPA ICR No. 1039.10, (2) Oral and Written Purchase Orders, OMB Control No. 2030–0007, EPA ICR No. 1037.07; and (3) Contractor Cumulative Claim and Reconciliation, OMB Control No. 2030–0016, EPA ICR No. 0246.08. The ICRs, which are abstracted below, describe the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 27, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Brian K. Long, Policy, Training and Oversight Division, Office of Acquisition Management, Mail Code: 3802–R, 202–564–4737, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–4737; fax number: 202–565–2552; e-mail address: *long.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following individual continuing ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On 07/26/02 (67 FR 48891), EPA sought comments on the ICRs pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for these ICRs under Docket ID Nos. OEI–2002–0012 (Monthly Progress Reports), OEI–2002–0013 (Oral and Written Purchase Orders, and OEI–2002–0014 (Contractor Cumulative Claim and Reconciliation, which are available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket.@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Monthly Progress Reports (OMB Control No. 2030–0005, EPA ICR No. 1039.10). This is a request to renew an existing approved collection that is scheduled to expire on 02/28/03. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor the contractor's progress under the contract. Responses to the information collection are mandatory for contractors performing under a cost reimbursement contract, and are required to receive monthly reimbursement. Information submitted is protected from public release in accordance with the Agency's confidentiality regulations, 40 CFR 2.201.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 36 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Contractors holding cost reimbursable contracts with EPA.

Estimated Number of Respondents: 324.

Frequency of Response: Monthly.

Estimated Total Annual Hour Burden: 140,940 hours.

Estimated Total Annual Cost: $10,403,160, of which $39,000 is Operational and Maintenance.

Changes in the Estimates: There is a decrease of 36,105 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to a reduction in the total number of active contracts and corresponding responses than previously reported.

Title: Oral and Written Purchase Orders, (OMB Control No. 2030–0007, EPA ICR No. 1037.07). This is a request to renew an existing approved collection that is scheduled to expire on 02/28/03. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: When EPA has a requirement for supplies or services and the value of same is under the simplified acquisition threshold, the Agency solicits verbal or written quotes from potential vendors. Vendor responses are voluntary and generally consist of item name, unit cost, delivery terms, company name, small business status, address, phone number, and point of contact. The Agency uses the collected information to make award decisions and obtain needed supplies and services.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Contractors who seek to provide supplies and services to the EPA under simplified acquisition procedures.

Estimated Number of Respondents: 28,462.

Frequency of Response: 1 per year.

Estimated Total Annual Hour Burden: 7,116 hours.

Estimated Total Annual Cost: $136,618.

Changes in the Estimates: There is a decrease of 2,257 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is solely due to the drop in the number of purchase orders awarded over $25,000. In addition, the number of purchase orders awarded with a value less than $2,500 have decreased slightly due to the use of the Government-wide commercial purchase cards.

Title: Contractor Cumulative Claim and Reconciliation, (OMB Control No. 2030–0016, EPA ICR No. 0246.08). This is a request to renew an existing approved collection that is scheduled to expire on 02/28/03. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: At the completion of a cost reimbursement contract, contractors will report final costs, incurred, including direct labor, materials, supplies, equipment, and other direct charges, subcontracting, consultant fees, indirect costs, and fixed fee. Contractors will report this information on EPA Form 1900–10. This form will be used to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary to close-out the contract, and is required to receive final payment. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Contractors holding cost reimbursable contracts with the Agency.

Estimated Number of Respondents: 247.

Frequency of Response: Completion of contract.

Estimated Total Annual Hour Burden: 163 hours.

Estimated Total Annual Cost: $6,819 of which $2,470 is Operational and Maintenance.

Changes in the Estimates: There is an increase of 98 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The increase is solely due to the estimated number of information collected based on a large quantity of contracts closed out during FY 2002. EPA expects to continue to close out contracts at a high volume.

Dated: February 4, 2003.

Doreen Sterling,

Acting Director,

Collection Strategies Division.

[FR Doc. 03–4375 Filed 2–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7454–6]

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Management Committee (MC).

DATES: The meeting will be held on Wednesday, March 12, 2003, from 10 a.m. to 5:30 p.m., and on Thursday, March 13, 2003, from 8:30 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Double Tree Hotel, 300 Canal Street, New Orleans, Louisiana. (1–888–874–9074)

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items include: Update on Progress of Executive Order, FY 2005 State Project Meetings, Report on Mercury Project Team Meeting, Report on Nutrient Pilot Study in Northern Gulf, Report on Pilot Nitrogen Farming Project, Gulf of Mexico Governor's Accord Workgroup Coordination, Harte Institute Proposal for Joint Symposium, The Nature Conservancy Migratory Birds Proposal.

The meeting is open to the public.

Dated: February 14, 2003.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 03–4379 Filed 2–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7454–7]

Final Guidance on Completion of Corrective Action Activities at RCRA Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide the newly issued "Guidance on Completion of Corrective Action Activities at RCRA Facilities" memorandum to regulators and to the regulated community. The memorandum provides the EPA Regions, the States, Tribes, the regulated community, members of the public, and other stakeholders with guidance on significant issues related to completion of corrective action activities at RCRA facilities. It provides guidance on when each type of completion determination is appropriate. It also discusses completion determinations for less than an entire facility. Finally, it provides guidance on procedures for EPA and the authorized States when making completion determinations.

DATES: This guidance was issued February 13, 2003.

ADDRESSES: For more detailed information on specific aspects of the guidance document, contact Barbara Foster, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (703–308–7057), (*foster.barbara@epa.gov*), or Peter Neves, Office of Site Remediation Enforcement 2273A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460 (202–564–6072) (*neves.peter@epa.gov*).

SUPPLEMENTARY INFORMATION: EPA has established an official public docket for this action under Docket ID No. RCRA–2001–0004. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket is (202) 566–0270.

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

The guidance document, which is published below, was issued as a memorandum from EPA headquarters to the Regional offices. If you would like to receive a hard copy, please call the RCRA Call Center at 800–424–0346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. Additional information about RCRA corrective action is available on the Internet at: *http://www.epa.gov/correctiveaction.*

Background

On October 2, 2001, EPA published a notice in the **Federal Register** requesting comment on a draft guidance document entitled "Recognizing Completion of Corrective Action Activities at RCRA Facilities" (*see* 66 FR 50195). Comments received by the Agency on that draft guidance largely supported the content, but expressed concern that the Agency needed to expand the scope of the guidance, for example, to address when and under what circumstances decisions that corrective action is complete should be made.

On February 27, 2002, the Agency published a second draft guidance in the **Federal Register** (*see* 67 FR 9174), which included most elements of the first draft, but was expanded to discuss two types of corrective action completion determinations. The Agency again solicited comment on the guidance.

Generally, commenters on the February 27 draft guidance supported the Agency's effort (and some supported all or part of the Agency's approach) to develop guidance related to completion of corrective action. However, some commenters raised concerns about aspects of the guidance, with many commenters offering suggestions for revising the guidance. The Agency modified the draft guidance in response to comments received, and the resulting final "Guidance on Completion of Corrective Action Activities at RCRA Facilities" memorandum is published below in this **Federal Register** notice.

Discussion of Public Comment

Comments Related to the Definition of Completion

In the February 27, 2002 **Federal Register** notice, the Agency described two types of completion of corrective action. For both types, all of the following have been satisfied: (1) A full set of corrective measures is defined; (2) the facility has completed construction and installation of all required remedial actions; (3) site-specific media cleanup objectives, which were selected based on current and reasonably expected future land use, and maximum beneficial groundwater use, have been met.

A Corrective Action Complete without Controls [1] means that these objectives have been met, and the areas subject to the determination do not require any additional action or measures to ensure the remedy remains protective of human health and the environment. For Corrective Action Complete with Controls, all that remains is performance of required operation and maintenance and monitoring actions, and/or compliance with and

[1] In the February 27, 2002 **Federal Register** notice, this form of completion was referred to as Corrective Action Complete. The Agency added "without controls" in this final guidance to more clearly reflect that this is a form of completion (see discussion of comments below).

maintenance of any institutional controls.

The Agency received many comments on those two types of completion.

While commenters generally agreed with the two types of completion, there was widespread concern among the commenters that they would not be useful for many facilities. Commenters believed that Corrective Action Complete (without controls), as described, may never be achieved by some facilities, and that Corrective Action Complete with Controls, because of the third criterion (that final remedy cleanup objectives have been met) would not be attainable by many facilities within a reasonable timeframe, particularly in the case of restoration of contaminated groundwater. Commenters expressed the need for a formal and public recognition of progress that could be achieved within a reasonable timeframe. Some requested that the Agency modify the definition of Corrective Action Complete with Controls to remove the criteria that cleanup objectives be met to provide a measure that can be achieved within a timeframe that is reasonable. Others suggested that the Agency establish a provisional type of corrective action complete designation.

The Agency recognizes that in carrying out an extensive and complex corrective action a facility can achieve several significant milestones, and recently described in detail a strategy for RCRA corrective action that includes short-term protection goals, intermediate performance goals, and final cleanup goals (*see Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action,* September, 2001, Sections 1.2–1.3, (*http://www.epa.gov/epaoswer/hazwaste/ca*), and Environmental Indicator Guidance, February, 1999, (*http://www.epa.gov/epaoswer/hazwaste/ca/eis*)).

This final guidance was not designed to guide regulators in recognizing progress at facilities where short-term protection goals or intermediate performance goals have been achieved. Rather, it was designed to recommend steps that regulators might take where the site-specific media cleanup objectives, identified based on the current and reasonably anticipated use of the site, have been met.

The Agency continues to believe that it is important to distinguish between situations where significant progress has been made toward final cleanup, and situations where corrective action is actually complete. The Agency believes that a "completion" determination signals to all parties involved that corrective action activities no longer are necessary (though controls to ensure the remedy remains protective may be necessary), and thus are preferably reserved for situations where there is no further cleanup activity to conduct—regardless of how long it might take to achieve site-specific media cleanup objectives. The Agency is concerned that making "completion" determinations at facilities that have not yet achieved final cleanup goals would jeopardize the integrity of that distinction, potentially be misleading, and minimize the accomplishment of facilities that truly have completed corrective action.

At the same time, the Agency recognizes that the commenters raised a valid concern—that owners and operators often need a formal recognition of progress at a landmark that can be achieved within a reasonable timeframe. Rather than encourage regulators to recognize completion prematurely, however, the Agency would prefer to address commenters' concern by formally recognizing progress at an earlier step in the corrective action process—where remedial measures are in place and operating, but cleanup objectives have not yet been met—in addition to recognizing completion of corrective action. The Superfund program makes "Construction Complete" designations at this point in its cleanups; EPA believes it is appropriate to recognize the analogous stage in RCRA corrective action as well. At that point in the cleanup process, while remedial measures continue to be implemented, final remedial decisions have been made and, at some facilities, environmental and human health risks may have been controlled such that the facility is ready for reuse. In recognition of the valid concerns raised by commenters, the Agency plans to investigate, in another forum, how it might formally and publicly recognize an earlier milestone in the corrective action process, analogous to Superfund's "construction complete."[2]

Some commenters were concerned that, because the criteria discussed in the draft guidance for "Corrective Action Complete with Controls" determinations included achievement of site-specific media cleanup objectives, which were selected based on current and reasonably expected future land use and maximum beneficial groundwater use, the guidance would be interpreted to mean that groundwater would be restored to drinking water standards in all cases. The Agency disagrees with that interpretation of the draft guidance, and believes that interpretation is inconsistent with the September, 2001 *Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action,* which is the Agency's most current guidance on groundwater issues related to RCRA corrective action. However, the Agency removed references to "maximum beneficial use of groundwater" from this final guidance for two other reasons. First, the draft guidance did not discuss cleanup standards for all media—in fact, the discussion was limited to groundwater. The Agency did not intend this guidance to address the issue of cleanup standards for the various media addressed through corrective action, and saw no reason to single out groundwater for discussion. Second, the Agency was concerned that provisions of the *Groundwater Handbook* when discussed in this guidance might be interpreted differently than they would within the context of the handbook itself. The September, 2001 *Groundwater Handbook* represents current Agency guidance on groundwater issues for the corrective action program, and EPA does not intend for this final Completion Guidance to address, or modify its guidance on, groundwater issues. The Agency is exploring a cross-program "Ground Water Working Group,"[3] as a forum to identify and discuss groundwater issues of importance to multiple EPA programs, and to develop options for addressing those issues.[4]

Finally, some commenters were concerned that Corrective Action Complete with Controls would be considered a stepping stone toward Corrective Action Complete without Controls, rather than a form of completion in and of itself. Commenters requested that the Agency clarify that Corrective Action Complete with Controls is a form of completion. The Agency agrees with commenters that Corrective Action Complete with Controls is a form of completion, and not a stepping stone toward Corrective Action Complete without Controls. For example, EPA recognizes that a final remedy that involves the use of institutional controls to maintain protection of human health and the environment is, nonetheless, a final remedy. EPA believes that owners and operators should be able to implement a final remedy, including one that involves institutional controls, with assurance that the Agency generally will not require additional corrective action at a later date so long as the controls, which help assure protection of human health and the environment, are effective.

It should be noted, however, that in the case of a Corrective Action Complete with Controls determination, protection of human health and the environment is dependent upon the maintenance of the controls. Should the controls fail, a risk to human health and/or the environment might require additional action. That action might include different or additional controls, or it might involve additional cleanup. This does not mean that the Agency intends to revisit Corrective Action Complete with Controls determinations for the purpose of achieving Corrective Action Complete without Controls determinations. Rather, the Agency expects final remedies to be effective not just at the moment that the completion determination is made, but in the long-term as well.

In addition, the Agency anticipates that there may be circumstances where an owner or operator of a facility that has received a Corrective Action Complete with Controls determination may choose in the future to conduct additional cleanup and obtain a Corrective Action Complete without Controls determination. For example, if a remedy included a restriction that the property be used only for industrial purposes, and the owner or operator were to decide to convert the property to residential use, additional cleanup would likely be necessary. Or, an owner or operator might choose to conduct additional cleanup and return the property to unrestricted use in order to end the responsibility for maintaining controls at the facility. However, under these examples, the decision to conduct additional corrective action would be that of the owner or operator.

In response to commenters' concerns described above, the Agency made two modifications to the guidance. In the February 27, 2002 **Federal Register** notice, the two types of completion were designated "Corrective Action Complete" and "Corrective Action Complete with Controls." The Agency modified the terms used to refer to the two types of completion by adding "without Controls" to "Corrective Action Complete." The Agency believes that the resulting two designations—Corrective Action Complete without Controls and Corrective Action Complete with Controls—more clearly reflect that both are forms of completion. The Agency also added language to the guidance to clarify that Corrective Action Complete with Controls is, in and of itself, a form of completion, and not a stepping stone toward Corrective Action Complete without Controls.

One additional modification to the definition of Corrective Action Complete with Controls should be noted. In the February 27, 2002 **Federal Register** notice, the fourth factor for a Corrective Action Complete with Controls determination stated "all that remains is * * * compliance with and implementation of any institutional controls." In this final guidance, the Agency changed "implementation" to "maintenance" in this phrase. The Agency made this change to avoid an interpretation that "implementation" includes actions related to getting institutional controls in place, such as selection or securing institutional controls. "Maintenance," more clearly conveys that the phrase "Corrective Action Complete with Controls" means that the appropriate controls are in place.

Comments Related to Procedures for Completion Determinations

The draft guidance published in both the October 2, 2001 and the February 27, 2002 **Federal Register** notices suggested procedures for making completion determinations at permitted and non-permitted facilities. Generally commenters agreed with those procedures, and they are included in this guidance. However, commenters expressed concerns about language in the guidance related to permit modifications. The draft guidance suggested that at permitted facilities, Class 3 permit modification procedures generally would be appropriate for modifying a permit to recognize a completion determination. Commenters on the October 2, 2001 **Federal Register** notice suggested that, in many cases, a Class 1 procedure would be appropriate. The Agency added language (in a footnote) to the draft guidance in the February 27, 2002 notice to recognize that, in some cases, Class 3 procedures might not be necessary (see 67 FR 9174 at 9177). However, commenters on the February 27, 2002 notice repeated the same concerns that the guidance suggested that Class 3 procedures were appropriate for recognizing completion and that those procedures would be unduly burdensome.

The Agency believes that when it recognizes completion of corrective action at a facility, it is taking a step that is significant not only to the facility, but to the local community as well. Thus, the Agency believes it is important that the community have an opportunity to be involved in the Agency's decision. The Agency agreed with commenters that there may be circumstances where Class 3 procedures might be burdensome and reap little benefit, and recognized those situations in the February 27, 2002 draft completion guidance. However, the Agency continues to believe that Class 3 procedures will be appropriate procedures for recognizing completion determinations at most facilities.

To address commenters concerns, the Agency has emphasized in this guidance that Class 3 procedures might not be appropriate in all situations by strengthening that discussion and moving it to the text of the guidance from the footnote.

Completion Determinations for Portions of a Facility

In the February 27, 2002 draft guidance, the Agency discussed making completion determinations for a portion of a facility. There was widespread support among commenters for recognizing completion determinations for a portion of a facility, and this final guidance retains that discussion. At the same time, the Agency recognizes that the discussion in this guidance addresses only a few of the issues related to parceling of RCRA facilities. The Agency agrees with the commenter who accurately pointed out that by supporting completion determinations for portions of a facility under the circumstances described in this guidance, the Agency has taken the first step toward addressing related issues.

Methods To Implement Institutional Controls

The February 27, 2002 draft guidance discussed and requested comment on the issue of implementation of institutional controls at facilities that receive Corrective Action Complete with Controls determinations. The draft guidance suggested that, in most cases, a permit or order should be maintained following a Corrective Action Complete with Controls determination, but noted that regulators might find alternative methods for ensuring continued effectiveness of the institutional controls at a facility.

[2] One likely forum is the "One Cleanup Program" initiative currently under development by the Agency. As part of that initiative, the Agency is examining ways to promote consistency, where appropriate, among all of its cleanup programs.

[3] *See* memorandum dated September 18, 2002 from Michael B. Cook to EPA Addressees entitled "Cross-Program Ground Water Working Group."

[4] It should be noted that the Agency also removed language regarding land use from the description of corrective action complete with controls. Again, EPA simply removed the language because the Agency is not discussing media cleanup standards in this guidance. For a discussion of reasonably foreseeable land use, *see Reuse Assessments: A Tool to Implement the Superfund Land Use Directive,* June 4, 2001, OSWER Directive 9355.7–06p.

The Agency received many comments related to implementation of institutional controls. Commenters were not in agreement on the issue of whether permits and/or orders should be maintained at facilities where Corrective Action Complete with Controls determinations are made, or, more broadly, on more effective methods for implementing institutional controls.

After reviewing comments, the Agency generally believes that the approach it took in the draft guidance is appropriate, although the Agency is also interested in exploring and evaluating alternative methods for the continued effectiveness of institutional controls at a facility. The Agency recognizes that effective implementation of institutional controls is vital to continued protection of human health and the environment following a Corrective Action Complete with Controls determination at RCRA facilities (and at facilities where cleanup is conducted under other programs, such as Superfund) where the remedy depends upon institutional controls, and continues to explore the complex issues related to institutional controls. However, the Agency did not attempt to address those complex issues in this guidance.

The Agency continues to focus attention on the evolving and complex issues associated with institutional controls. In the near future EPA will finalize a cross-program guidance entitled, "Institutional Controls: A Guide to Implementing, Monitoring, and Enforcing Institutional Controls at Superfund and RCRA Corrective Action Cleanups" that will serve as a companion to guidance issued in 2000 entitled "Institutional Controls: A Site Manager's Guide to Identifying, Evaluating, and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," September 2000, OSWER Directive 9355.0–74FS–P. Additionally, the Agency is currently at work developing a national institutional control tracking system; supporting the development of a model state institutional control law; and evaluating the need for guidance on estimating institutional control costs, institutional control implementation plans, and ensuring compliance with institutional controls.

Comments Not Addressed in This Federal Register Notice

The final guidance published in this Federal Register notice describes two types of completion of corrective action, and suggests processes for recognizing completion. The comments discussed above were directly related to the issues discussed in the guidance. The Agency recognizes that completion of corrective action raises many issues for regulators and for owners and operators, including issues related to transfer of RCRA facilities (or portions of facilities), sometimes referred to as "parceling," financial assurance, and institutional controls. In addition, completion of corrective action at some facilities, such as Federal Facilities, may present unique issues. EPA received comments on these related issues as part of the comment it received on the October 2, 2001 and February 27, 2002 draft guidances. The Agency reviewed all of those comments, but those that were not directly related to issues discussed in the draft guidance documents are not addressed in this notice.

EPA believes that, because of the multitude and complexity of the issues related to completion of corrective action, the best approach to these issues is to make continuous incremental progress in addressing them. Using this approach, the Agency has limited the scope of the discussion in this final guidance, but hopes that it has opened dialogue on, and will establish a foundation for, some of the broader issues related to completion of corrective action, to be addressed at a later time. The Agency encourages commenters to continue to provide input on these important issues as they are addressed.

Dated: February 13, 2003.

Robert Springer,

Director, Office of Solid Waste.

Dated: February 12, 2003.

Susan E. Bromm,

Director, Office of Site Remediation Enforcement.

Memorandum

Subject: Guidance on Completion of Corrective Action Activities at RCRA Facilities.

From: Robert Springer, Director, Office of Solid Waste; Susan E. Bromm, Director, Office of Site Remediation Enforcement.

To: RCRA Division Directors, Regions I–X, Enforcement Division Directors, Regions I–X, Regional Counsel.

Introduction

This memorandum provides guidance to the Regions and authorized States on acknowledging completion of corrective action activities at RCRA treatment, storage, and disposal facilities. It describes two types of completion determinations—"Corrective Action Complete without Controls" and "Corrective Action Complete with Controls." It provides guidance on when each type of completion determination is appropriate. It also discusses completion determinations for less than an entire facility. Finally, it provides guidance on procedures for EPA and the authorized States when making completion determinations.

This document provides guidance to EPA Regional and State corrective action authorities, as well as to facility owner or operators and the general public on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions that concern RCRA corrective action. The RCRA statutory provisions and EPA regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decisionmakers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Any decisions regarding a particular facility will be made based on the applicable statutes and regulations. Therefore, interested parties are free to raise questions and objections about the substance of this guidance, and the appropriateness of the application of this guidance to a particular situation. EPA will consider whether or not the recommendations or interpretations in the guidance are appropriate in that situation. The Agency welcomes public comment on this document at any time, and will consider those comments in any future revision of this guidance document.

Background

EPA recognizes the importance of an official acknowledgment that corrective action activities have been completed. An official completion determination, made through appropriate procedures, benefits the owner or operator of a facility, the regulatory agency implementing the corrective action program, and the public. Official recognition that corrective action activities are complete can, among other things, promote transfer of ownership of the property and, in some cases, can help return previously used commercial and industrial properties, such as "brownfields," to productive use. Further, once the regulatory agency implementing corrective action makes a determination that corrective action activities are complete, it can focus agency resources on other facilities. Finally, if completion determinations

are made through a process that provides adequate public involvement, the process of making a formal completion determination will assure the public an opportunity to review and comment on the cleanup activities, and to pursue available administrative and/or judicial challenges to the agency's decision.[5]

Under 40 CFR section 264.101, owners and operators seeking a permit for the treatment, storage or disposal of hazardous waste must conduct corrective action "as necessary to protect human health and the environment."[6] The ultimate goal of corrective action is to satisfy the "protection of human health and the environment" standard. Thus, a determination by EPA (or a State authorized by EPA to implement the Corrective Action Program) that corrective action activities are complete is, in effect, an announcement that the "protection of human health and the environment" standard has been achieved.[7]

With experience, the Agency has discovered that the universe of facilities subject to corrective action requirements includes facilities that vary widely in complexity, extent of contamination, and level of risk presented at the facility. To address this wide variation among corrective action facilities, the Agency has developed multiple approaches to achieving "protection of human health and the environment."

When conducting corrective action, however, one of the key distinctions among remedies is the extent to which they rely upon controls (engineering and/or institutional)[8] to ensure that they remain protective. In some cases, the Agency selects a remedy that requires treatment and/or removal of waste and all contaminated media to levels that allow the facility to be used in an unrestricted manner.[9] At these facilities, no additional oversight or activity is required following cleanup. When implementation of the remedy is completed successfully, protection of human health and the environment is achieved.

In other cases, the Agency selects a remedy that allows contamination to remain on site, but imposes ongoing obligations concerning, for example, operation and maintenance of engineered controls (*e.g.*, a landfill cap), and compliance with institutional controls (*e.g.*, a restriction that land be used for industrial purposes only). Thus, in these situations, the goal of "protection of human health and the environment" often is achieved through use of a remedy (*e.g.*, containment) that allows some contamination to remain in place, but requires controls (engineering and/or institutional) at the facility to prevent or to limit the risk of exposure through release of contamination that remains following cleanup. Following remedy implementation, maintenance of controls and continued corrective action related activities (such as monitoring) at such facilities are fundamental elements of meeting the standard of "protection of human health and the environment."[10]

An example of a situation where the Agency typically chooses a remedy that relies on controls is a facility for which the reasonably foreseeable use is industrial.[11] At those facilities, the Agency may offer the facility the option to achieve long-term protection of human health and the environment by selecting a remedy that allows higher levels of contamination to remain at the facility, but requires the use of controls to limit the risk of unacceptable exposure. This remedy is considered the final remedy; however, protection of human health and the environment at the facility typically is dependent on maintenance of controls.

Types of Completion Determinations

As was discussed above, a determination by EPA that corrective action activities are complete is a statement by the Agency that protection of human health and the environment has been achieved at a facility. As was also discussed above, the Agency takes different approaches to achieving protection of human health and the environment at facilities, depending on the site-specific circumstances. Completion determinations benefit the owner or operator, the community, and the regulatory agency. Therefore, EPA recommends that regulators implementing the corrective action program make completion determinations where corrective action activities have assured long-term protection of human health and the environment at a facility. EPA anticipates two types of completion determinations—Corrective Action Complete without Controls, and Corrective Action Complete with Controls. These two types of completion determinations, and recommended procedures for making them, are described below.

1. Corrective Action Complete Without Controls Determination

EPA believes that it is appropriate for it, or for an authorized State, to make a determination that Corrective Action is Complete without Controls where the facility owner or operator has satisfied all obligations under sections 3004(u) and (v).[12] The Agency recommends this terminology be used to indicate that either there was no need for corrective action at the facility or, where corrective action was necessary, the remedy has

[5] The Agency anticipates that at facilities where meaningful public involvement begins early in the corrective action process, challenges are less likely at the end of the process.

[6] Likewise, section 3008(h) establishes a standard of "protection of human health and the environment" for corrective action imposed through orders. This guidance is equally applicable at facilities where EPA addresses facility-wide corrective action through an enforcement authority, rather than a permit.

[7] Note that for facilities that continue to require a permit for the treatment, storage, or disposal of hazardous waste, a completion determination in no way affects the ongoing requirement to conduct corrective action for any future releases at the facility, and the Agency recommends that any completion determinations at such facilities be structured to make this clear.

[8] EPA has defined institutional controls as "non-engineered instruments such as administrative and/or legal controls that minimize the potential for human exposure to contamination by limiting land or resource use." They are almost always used in conjunction with, or as a supplement to, other measures such as waste treatment or containment. There are four general categories of institutional controls: Government controls; proprietary controls; enforcement tools; and information devices. (*See* Fact Sheet entitled "Institutional Controls: A Site Managers Guide to Identifying, Evaluating, and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," September 2000, OSWER Directive 9355.0–74FS–P).

[9] "Unrestricted use" refers to a walk-away situation, where no further activity or controls are necessary to protect human health and the environment at the facility. Generally, a cleanup of soil to residential standards and of groundwater to drinking water standards would be an example of an unrestricted use scenario. By comparison, a cleanup of soil to industrial soil levels, and/or containment or cleanup of groundwater to levels in excess of drinking water standards usually would not be an unrestricted use scenario. Under both scenarios, the Agency does not generally anticipate having to impose additional corrective action requirements because the remedy is protective of human health and the environment. The difference is that, under the second scenario, protection of human health and the environment is dependent on the maintenance of the remedy, including institutional controls.

[10] It should be noted that, at these facilities, cleanup to unrestricted use levels and a Corrective Action Complete without Controls determinations (*see* discussion below in section 2) ultimately could be achieved under a variety of scenarios—for example, the plan for land use at a facility might change; the owner or operator might decide to return the site to unrestricted use, or the facility might otherwise reach that state (e.g., through natural attenuation). At that time, the Agency could discontinue the requirement for controls.

[11] *See Reuse Assessments: A Tool to Implement the Superfund Land Use Directive*, June 4, 2001, OSWER Directive 9355.7–06p, for a discussion of reasonably foreseeable land use.

[12] Or the owner or operator has completed facility-wide corrective action, as necessary to protect human health and the environment, imposed through a section 3008(h) order.

been implemented successfully,[13] and no further activity or controls are necessary to protect human health and the environment.

Under the approach described in this guidance, a determination that Corrective Action is Complete without Controls means that no additional remedial activity would be required on the part of the regulatory agency or the owner or operator to maintain protection of human health and the environment. No controls are necessary at the facility to maintain protection of human health and the environment. Thus, the corrective action requirements can be eliminated. It is likely that the facility will be eligible for release from financial assurance for corrective action, as no funds should be needed in the future for corrective action-related activities. In addition, when there no longer are RCRA-regulated activities at the facility, the regulatory agency will likely have no concerns associated with transfer of the property, nor any reason to want to be informed of, or take an action regarding, that transfer.

2. Corrective Action Complete With Controls Determination

EPA generally believes it is appropriate to make a Corrective Action Complete with Controls determination at a facility where: (1) A full set of corrective measures has been defined; (2) the facility has completed construction and installation of all required remedial actions; (3) site-specific media cleanup objectives have been met; and (4) all that remains is performance of required operation and maintenance and monitoring actions, and/or compliance with and maintenance of any institutional controls. A Corrective Action Complete with Controls determination provides the owner or operator with recognition that protection of human health and the environment has been achieved, and will continue as long as the necessary operation and maintenance actions are performed, and any institutional controls are maintained and complied with.

It is important to ensure that an enforceable mechanism is in place so that there is compliance with and maintenance of the controls. Regions and States have often ensured that controls are maintained through a RCRA permit or order at the facility in that continuation of the permit or order assures periodic review by the regulatory agency, compliance with any operation and maintenance requirements and institutional controls, and notification to the regulatory agency of transfers of the facility (which allows an opportunity for the agency to assure that compliance with corrective action requirements will continue).[14] Permits and orders will continue to be used as enforceable mechanisms to assure compliance. However, the Agency believes that other enforceable mechanisms also may be appropriate for implementing institutional controls. For example, several States have passed legislation that creates mechanisms to enforce institutional controls, a development that EPA encourages. For facilities where long-term institutional controls are necessary to ensure continued protection of human health and the environment, the regulator may explore a variety of options including permits, orders, and other enforceable mechanisms to maintain the institutional controls. In addition, where necessary, financial assurance for corrective action should be maintained at facilities following a Corrective Action Complete with Controls determination.

It should be noted that, at some point, many facilities that obtain a Corrective Action Complete with Controls determination might later obtain a Corrective Action Complete without Controls determination if circumstances were to change. For example, the owner or operator at a facility cleaned up to industrial levels could decide to conduct additional cleanup because there was a desire to change land use to unrestricted use levels, and/or because they no longer wished to maintain controls. Should a facility later seek a Corrective Action Complete without Controls determination, the regulatory agency should process that determination through appropriate procedures, such as those described below. If the Corrective Action Complete without Controls determination were made, it would be appropriate to remove whatever enforceable mechanism is in place, and release the facility from financial assurance for corrective action, so long as there are no additional RCRA activities at the facility subject to permit requirements.

Completion Determinations for a Portion of a Facility

Regulators implementing the corrective action program often develop a number of distinct and separate remedies to address different areas of a facility or different media. This approach may be necessary because a facility may include areas and media that present a range of environmental risks. For example, an industrial facility may include areas that may never have been used for industrial purposes or have never been otherwise contaminated. Alternatively, a facility may have contaminated groundwater undergoing corrective action years after the source of contamination has been removed, and the soil cleaned up to unrestricted use levels.

To ensure that a range of appropriate cleanup and land use options are available to the facility owner or operator, EPA believes that the agency should consider, when appropriate, subdividing a particular facility for purposes of corrective action. In these situations, the Agency might, for example, select a cleanup approach based on unrestricted use at parts of the facility, while cleanup at other parts of the facility may be based on the restricted use assumptions and rely on institutional and/or engineering controls to maintain the protectiveness of the corrective action. Alternatively, the Agency may select a cleanup approach based on unrestricted use for the entire facility, with some parcels requiring a longer time period to achieve the same cleanup goals.

Under this approach, a Corrective Action Complete without Controls determination could be made for a portion of a facility when it is returned to unrestricted use. A Corrective Action Complete without Controls or a Corrective Action Complete with Controls determination, as appropriate, could be made for remaining portions of the facility when the cleanup goals are achieved, and any necessary controls then would be implemented under an appropriate mechanism.

In some situations, following a Corrective Action Complete without Controls determination for a portion of a facility, the owner will sell the portion that no longer is subject to corrective action. In these situations, the regulator making the determination should consider the long-term plan for the facility, and the effect of the Corrective Action Complete without Controls determination and sale on financial assurance for corrective action. The regulator should take steps to ensure adequate financial assurance is available to address corrective action obligations at the remainder of the facility.

Procedures for Processing Completion Determinations

Completion determinations should be made by the appropriate authority (EPA or the authorized State implementing the corrective action program), and made through appropriate procedures. By following appropriate procedures, the authorized agency can make a sound, well informed completion determination. The appropriate procedures for processing a completion determination will depend on various factors, including the status of the facility (permitted or non-permitted), and on whether the determination applies to part of the facility or to the entire facility. The following section suggests procedures that the Agency believes generally are appropriate for completion determinations.[15]

1. Corrective Action Complete Without Controls Determinations for Entire Facility

The regulations in 40 CFR that govern the RCRA program do not provide explicit procedures for recognizing completion of corrective action activities, so regulators have considerable flexibility in developing procedures for making completion determinations. The regulatory agency implementing the corrective action program in that State (*i.e.*, the authorized State program or, in unauthorized States, EPA) should ensure that a completion determination has been made through appropriate procedures. It is important to provide meaningful opportunities for public participation as part of a completion determination procedure. The Agency believes that the following, generally, are appropriate procedures for making Completion of Corrective Action determinations.[16]

EPA believes that permit modification is an appropriate procedure to reflect the agency's determination that corrective action is complete. In cases where no other permit conditions remain, the permit could be modified not only to reflect the completion determination, but also to change the expiration date of the permit to allow earlier permit expiration (*see* 40 CFR 270.42 (Appendix I(A)(6)).

The current regulations in 40 CFR 270.42 provide procedural requirements for facility requested permit modifications. In most cases, completion of corrective action is likely to be a Class 3 permit modification, and the regulatory agency should follow those procedures (or authorized State equivalent), including the procedures for public involvement. It should be noted that the Agency suggests Class 3 permit modification procedures are generally appropriate for completion determinations. However, Class 3 procedures may not be appropriate in all circumstances, and the regulatory agency should evaluate each situation to determine whether a less extensive procedure would be adequate. For example, where the regulatory agency has made extensive efforts throughout the corrective action process to involve the public and has received little or no interest, and the environmental problems at the facility were limited, more tailored public participation may be appropriate.

At non-permitted facilities where facility-wide corrective action is complete, and all other RCRA obligations at the facility have been satisfied, EPA or the authorized State may acknowledge completion of corrective action by terminating interim status through final administrative disposition of the facility's permit application (*see* 40 CFR 270.73(a)). To do so, the permitting authority at the facility (EPA or the authorized State or both, depending on the authorization status of the State) should process a final decision following the procedures for permit denial in 40 CFR Part 124, or authorized equivalent.[17]

EPA recognizes that referring to this decision as a "permit denial" may be confusing to the public and problematic to the facility when the facility is in compliance, is not seeking a permit, and does not have an active permit "application." Therefore, regulatory agencies may choose to use alternate terminology (*e.g.*, a "no permit necessary determination" or "cleanup obligations satisfied") to refer to this decision, though it is issued through the permit denial process or authorized equivalent. Regardless of the terminology used, the basis for the decision should be stated clearly, generally that: (1) There are no ongoing treatment, storage, or disposal activities that require a permit; (2) all closure and post-closure requirements applicable at the regulated units have been fulfilled; and (3) all corrective action obligations, including implementation of long-term monitoring procedures, have been met.

EPA or the authorized States may develop procedures for recognizing completion of corrective action at non-permitted facilities other than the permit decision process described above. For example, a regulatory agency may have procedures for issuing a notice informing the facility and the public that the facility has met its corrective action obligations, rather than issuing a final permit decision. Although these procedures would not have the effect of terminating interim status, unlike the Part 124 permit denial procedures, EPA believes they can be appropriate for making a completion determination. In general, EPA believes the alternative procedures should provide procedural protections equivalent to, although not necessarily identical to, those required by EPA's 40 CFR Part 124 requirements (or the authorized State equivalent). Owners and operators should be aware that informal communications regarding the current status of cleanup activities at the facility are not the same as the completion determinations described in this guidance.[18]

[13] *See* (61 FR 19432, at 19432, at 19453, May 1, 19960, and (55 FR 30798, at 30837, July 27, 1990) for guidance regrading selection, implementation, and completion of remedy.

[14] The September, 2000 Fact Sheet on institutional controls discusses that, under RCRA, institutional controls typically are imposed through permit conditions, or through orders issued under section 3008(h) or 7003. The Fact Sheet cautions the regulator that those mechanisms might have shortcomings, and suggests that the regulator conduct a thorough evaluation to ensure its ability to enforce the institutional control through the permit or order mechanism over the entire duration that the institutional control must remain in place. (*See Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups, EPA 540–F–00–005, OSWER 9355.0–74FS–P, September 2000.*)

[15] EPA notes that, whether at a permitted or non-permitted facility and regardless of the completion determination procedure used, if EPA or the authorized State discovers unreported or misrepresented releases subsequent to the completion determination, this would likely be a basis to conclude that additional cleanup is needed. And, of course, if EPA subsequently discovers a situation that may present an imminent and substantial endangerment to human health or the environment, EPA may elect to use its RCRA section 7003 imminent and substantial endangerment authority, or other applicable authorities, to require additional work at the facility.

[16] Of course, if a facility's permit or order provides otherwise, these procedures would not be appropriate at that facility.

[17] Under EPA permit denial procedures in 40 CFR Part 124, EPA must issue, based on the administrative record, a notice of intent to deny the facility permit (*see* 40 CFR 124.6(b) and 124.9). The notice must be publicly distributed, accompanied by a statement of basis or fact sheet, and there must be an opportunity for public comment, including an opportunity for a public hearing, on EPA's proposed permit denial (*see* 40 CFR 124.7, 124.8, 124.10, 124.11, and 124.12). In making a final permit determination, EPA must respond to any public comments (*see* section 124.17). Under 40 CFR 124.19, final decisions are subject to appeal.

[18] An alternative approach would likely be appropriate to process Completion of Corrective Action determinations that apply to less than an entire facility (*see* discussion below). An alternative approach could also be used to process a completion of corrective action determination at a facility with ongoing RCRA activities. For example, a facility may be conducting post-closure care at a regulated unit under an alternate non-permit authority, as allowed under the October 22, 1998 Post-Closure rule (*see* 63 FR 56710), yet may have completed corrective action at its solid waste management units. In this case, interim status generally should not be terminated because all

Continued

2. Corrective Action Complete With Controls Determinations

To process a Corrective Action Complete with Controls determination, regulatory agencies should consider the regulatory status of the facility, among other factors, in determining what procedures are appropriate. For permitted facilities, following the permit modification procedures in 40 CFR 270.42 would be appropriate. For non-permitted facilities, the regulatory agency should generally follow alternate procedures (e.g., issue a notice with an opportunity to comment) that provide procedural protections equivalent to, although not necessarily identical to, those required by Part 124 requirements (or the authorized State equivalent). However, following procedures other than the Part 124 procedures does not terminate interim status even though they may result in a Complete with Controls determination. Interim status should not be terminated at a RCRA facility where corrective action requirements remain. If corrective action was implemented through an order, the regulator should not eliminate the order until the facility meets all corrective action obligations required under the order.

As was discussed above, at facilities (permitted or non-permitted) where a Corrective Action Complete with Controls determination is made, and long-term institutional controls are necessary to continued protection of human health and the environment, the regulator may explore a variety of options including permits, orders, and other enforceable mechanisms to maintain the institutional control where appropriate.

3. Corrective Action Complete Without Controls Determinations for Less Than the Entire Facility

As was discussed above, EPA or the authorized State could make a Corrective Action Complete without Controls determination for a portion of a facility where corrective action obligations remain at the remaining portion. Where the regulatory agency determines that a Corrective Action Complete without Controls decision is appropriate for a portion of the facility, it should process that decision using procedures that will not affect portions of the facility where corrective action requirements remain.

For example, at a permitted facility, the agency might process a Corrective Action Completion determination for a portion of the facility by modifying the permit following the procedures in 40 CFR 270.42. The agency should not eliminate the permit, however, if corrective action responsibilities (and possibly other RCRA responsibilities) remain at the facility.

At non-permitted facilities, the Agency or authorized State might utilize alternate procedures as described above (*e.g.*, issue a notice) to process the Corrective Action Completion determination for a portion of the facility. Those procedures should generally provide procedural protections equivalent to, although not necessarily identical to, those required by Part 124 requirements (or the authorized State equivalent). However, interim status is not terminated by such procedures and generally should not be terminated at a facility where RCRA obligations remain. If the corrective action was implemented through an order, it is important to maintain the order until the facility satisfies all corrective action obligations and ensures that institutional controls will be maintained.

FOR FURTHER INFORMATION CONTACT: For further information on completion of corrective action, please contact Barbara Foster at 703–308–7057 or Peter Neves at 202–564–6072. For information regarding the application of this guidance to a particular facility, please contact your local Regional or State office.

[FR Doc. 03–4380 Filed 2–24–03; 8:45 am]

BILLING CODE 6560–50–P

RCRA obligations have not been met, but it may be appropriate to issue a notice (as described above) recognizing completion of the corrective action obligations to bring finality to that process.

FARM CREDIT ADMINISTRATION

RIN 3052–AC13

Loan Policies and Operations; Loan Syndication Transactions

AGENCY: Farm Credit Administration (FCA).

ACTION: Notice; reopening of comment period.

SUMMARY: We are reopening the comment period on our notice concerning loan syndication transactions by Farm Credit System (System) institutions so all interested parties have more time to respond to our questions.

DATES: Please send your comments to the FCA by April 21, 2003.

ADDRESSES: We encourage you to send comments by electronic mail to *reg–comm@fca.gov* or through the Pending Regulations section of FCA's Web site, *http://www.fca.gov*. You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION: On January 17, 2003, we published a notice in the **Federal Register** seeking public comment on the treatment of loan syndication transactions by System banks and associations. The comment period expired on February 18, 2003. *See* 68 FR 2540, January 17, 2003. The Farm Credit Council requested that the FCA provide interested parties an additional 60 days to comment on this issue. In response to this request, we are reopening the comment period until April 21, 2003, so all interested parties have more time to respond to our questions. The FCA supports public involvement and participation in its regulatory and policy process and invites all interested parties to review and provide comments on our notice.

Dated: February 20, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–4412 Filed 2–24–03; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the March 13, 2003 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Friday, March 28, 2003. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: February 20, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–4489 Filed 2–21–03; 10:54 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Revised Sunshine Notice* and Schedule Change: Open Commission Meeting, Thursday, February 20, 2003

Please note that the time for the Federal Communications Commission Open Meeting has been rescheduled from 9:30 a.m. to 11 a.m.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, February 20, 2003 which is scheduled to commence at 11 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireline Competition	*Revised Title:* Review of the section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 9698), and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). *Summary:* The Commission will consider a Report and Order concerning incumbent local exchange carriers' obligations to make elements of their networks available on an unbundled basis.

Additional information concerning this meeting may be obtained from David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *www.fcc.gov/realaudio*. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Notice: Due to the elevated homeland security alert announced February 7, 2003, the FCC has taken additional security precautions that will limit visitor access to the FCC headquarters building in Washington, DC. Until further notice, the Maine Avenue lobby is closed. All visitors must enter the building through the 12th Street lobby, and will require an escort at all times in the building.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4461 Filed 2–21–03; 9:25 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

Type of Review: Renewal of a currently approved collection.

Title: Certification of Compliance With Mandatory Bars to Employment.

OMB Number: 3064–0121.

Form Number: 2120/16.

Annual Burden:

Estimated annual number of respondents: 248.

Estimated time per response: 10 minutes.

Estimated total annual burden hours: 41.34 hours.

Expiration Date of OMB Clearance: June 30, 2005.

SUPPLEMENTARY INFORMATION: Prior to an offer of employment, job applicants to the FDIC must sign a certification that they have not been convicted of a felony or been in other circumstances that prohibit persons from becoming employed by or providing services to the FDIC.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB–3109, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before March 27, 2003, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: February 20, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–4413 Filed 2–24–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors.

Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 12, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. C & J Bennett Family Limited Partnership, Hardinsburg, Kentucky; David and Marie Bennett, Leitchfield, Kentucky; Mitchell, Pam and Mason Bennett, Hardinsburg, Kentucky; Rebecca Bennett, Scottsville, Kentucky; Sarah Bennett, Gardner, Colorado; Annette Martin, Hardinsburg, Kentucky; Farmers Bancshares Employees Stock Option Plan, Hardinsburg, Kentucky; and Charles D. and Jeanette Bennett, Hardinsburg, Kentucky; to acquire and/or retain shares of Farmers Bancshares, Inc., Hardinsburg, Kentucky, and thereby control shares of The Farmers Bank, Hardinsburg, Kentucky and Leitchfield Deposit Bank & Trust Company, Leitchfield, Kentucky.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Stanton Boyce Brown, Waco, Texas; to acquire voting shares of Extraco Corporation, Waco, Texas, and thereby indirectly acquire Extraco Bank, National Association, Temple, Texas.

Board of Governors of the Federal Reserve System, February 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–4419 Filed 2–24–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 21, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Old Florida Bankshares, Inc., Fort Myers, Florida; to merge with Marine Bancshares, Inc., Naples, Florida, and thereby indirectly acquire Marine National Bank, Naples, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Scott County Bancorp, Inc., Winchester, Illinois; to acquire 42.19 percent of the voting shares of JW Bancorp, Inc., Winchester, Illinois, and thereby indirectly acquire John Warner Financial Corporation, and The John Warner Bank, both of Clinton, Illinois.

Board of Governors of the Federal Reserve System, February 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–4420 Filed 2–24–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 2003.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Bay View Capital Corporation, San Mateo, California, to acquire 100 percent of Bay View Acceptance Corporation, San Mateo, California, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 19, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–4389 Filed 2–24–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC is seeking Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act (PRA) for a consumer survey to gather information on the incidence of consumer fraud in the population and enable it to better serve people who experience it. The FTC seeks public comment regarding this notice, which is the second of two notices required by the PRA for information collection requests of this nature.

DATES: Comments on the proposed information requests must be submitted on or before March 27, 2003.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission (comments in electronic form should be sent to *oira_docket@omb.eop.gov*), and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 (comments in electronic form should be sent to *consumersurvey@ftc.gov*, as prescribed below). The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned "Consumer Fraud Survey—FTC File No. P014412."

FOR FURTHER INFORMATION CONTACT: Requests for additional information, such as requests for the Supporting Statement, related attachments, or copies of the proposed collection of information, should be addressed to Nat Wood, Assistant Director, Office of Consumer and Business Education, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3407, e-mail: *consumersurvey@ftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On December 4, 2002, the FTC published a **Federal Register** notice with a 60-day comment period seeking comments from the public concerning the collection of information from consumers. See 67 FR 72186. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to conduct the collection of information presented by the proposed survey.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consumersurvey@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii).

Description of the Collection of Information and Proposed Use

The FTC proposes to survey approximately 3,000 consumers in order to gather specific information on the incidence of consumer fraud in the general population. This information will be collected on a voluntary basis, and the identities of the consumers will remain confidential. The FTC has contracted with a consumer research firm to identify consumers and conduct the survey. The results will: (1) Assist the FTC in determining whether the type and frequency of consumer fraud complaints collected in its Consumer Sentinel database representatively reflect the incidence of consumer fraud in the general population; and (2) inform the FTC about how best to combat consumer fraud.

Estimated Hours Burden

The FTC will pretest the survey on approximately 100 respondents to ensure that all questions are easily understood. This pretest will take approximately 15 minutes per person and 25 hours as a whole (100 respondents × 15 minutes each). Answering the consumer survey will require approximately 15 minutes pre respondent and 750 hours as a whole (3,000 respondents × 15 minutes each). Thus, cumulative total hours attributable to the consumer research will approximate 775 hours.

Estimated Cost Burden

The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–4397 Filed 2–24–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0100]

Dainippon Ink and Chemicals, Incorporated; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 3, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Katherine Havely, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2093.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 31, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/01/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with

§ 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Dainippon Ink and Chemicals, Incorporated ("Dainippon"), which is designed to remedy the anticompetitive effects resulting from Dainippon's acquisition of Bayer Corporation's ("Bayer") high performance pigments business. Under the terms of the Consent Agreement, Dainippon will be required to divest its perylene business to Ciba Specialty Chemicals Inc. and Ciba Specialty Chemicals Corporation (collectively, "Ciba").

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an asset purchase agreement dated February 15, 2002, Dainippon, through its wholly-owned U.S. subsidiary, Sun Chemical Corporation ("Sun Chemical"), agreed to acquire Bayer's high performance pigments business for approximately $57.8 million (the "Proposed Acquisition"). The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the worldwide market for the research, development, manufacture, and sale of perylenes.

The Parties

Dainippon is a diversified global chemicals company based in Tokyo, Japan. Primarily through Sun Chemical, Dainippon manufactures and sells a full range of organic pigments, including perylenes. Sun Chemical is the third largest supplier of perylenes in the world. Sun Chemical's perylenes are produced through two third-party, "toll" manufacturers, Lobeco Products and Forth Technologies, which are located in South Carolina and Kentucky, respectively. Sun Chemical provides these toll manufacturers the intellectual property, manufacturing know-how, and raw materials, as well as some of the equipment, to produce perylenes.

Bayer is a subsidiary of Bayer AG, a diversified, international healthcare and chemicals group based in Leverkusen, Germany. Headquartered in Pittsburgh, Pennsylvania, Bayer engages in the healthcare, life sciences, polymers, and chemicals industries. Bayer manufactures organic pigments at its facilities located in Bushy Park, South Carolina, and Lerma, Mexico. Bayer primarily participates in the high performance pigments segment and is considered a leader in the production of perylenes, which it manufactures at the Bushy Park plant. Bayer is currently the second largest supplier of perylenes in the world.

The Perylene Market

Pigments are small particles that are used to impart color to a wide variety of products, including inks, coatings (such as automotive coatings and housepaints), plastics, and fibers. Broadly speaking, there are two main categories of pigments: organic and inorganic. Organic pigments are chemically synthesized, carbon-based compounds that generate a broad spectral range of brilliant, transparent, or opaque color shades. Inorganic pigments, on the other hand, are generally based on metal oxides and tend to impart a narrower range of dull, opaque earth tones. Because of these differences, organic and inorganic pigments often are blended together to achieve a particular color shade and effect, and thus are used as complements rather than substitutes.

Organic pigments can be further categorized into two main groups: Commodity (or classical) organic pigments and "high performance" pigments. High performance pigments offer far superior durability and light-fastness compared to commodity organic pigments. Accordingly, high performance pigments are necessary to prevent color fading in products that endure prolonged exposure to sunlight and weather, such as automotive coatings. Commodity organic pigments, because of their lower quality, cannot substitute for high performance pigments in such demanding applications. High performance pigments are significantly more expensive than commodity organic pigments.

Perylenes are a class of high performance pigments that impart unique shades of red, such as maroon and violet, and offer a particularly high degree of transparency. Perylenes are primarily used to impart color to automotive coatings, and are used to a lesser degree in plastics and carpet fibers. Because no other pigment or colorant offers the same combination of unique color shades and high performance characteristics that perylenes provide, perylene customers could not achieve the same colors and performance levels in their products without perylenes. Thus, there are no substitute products that perylene customers could turn to, even if faced with a significant price increase for perylenes.

As Sun Chemical and Bayer are two of only four viable suppliers of perylenes in the world, the perylene market is already highly concentrated, as measured by the Herfindahl-Hirschman Index ("HHI"). The Proposed Acquisition would significantly increase concentration in the market to an HHI level of 4,856, an increase of 680 points. The Proposed Acquisition would also eliminate the vigorous head-to-head competition between Sun Chemical and Bayer that has benefitted perylene customers in the past. By eliminating competition between Sun Chemical and Bayer in the market for perylenes, the Proposed Acquisition would allow the combined firm to unilaterally exercise market power, as well as increase the likelihood of coordinated interaction among the remaining perylene suppliers. As a result, the Proposed Acquisition would increase the likelihood that purchasers of perylenes would be forced to pay higher prices for perylenes and that innovation and service in this market would decrease.

Entry into the perylene market is not likely and would not be timely to deter or counteract the anticompetitive effects that would result from the Proposed Acquisition. It would take a new entrant well over two years to complete all of the requisite steps for entry, including: Researching and developing perylene technology; building a perylene manufacturing facility; perfecting the art of manufacturing perylenes; and passing the rigorous battery of tests required for customer approval. Additionally, new entry into the perylene market is unlikely to occur because the capital investment required to become a viable perylene supplier is high relative to the limited sales opportunities available to new entrants.

The Consent Agreement

The Consent Agreement requires Dainippon to divest Sun Chemical's perylene business to Ciba, a diversified specialty chemicals company that is a leading supplier of pigments (but does not manufacture or sell perylenes). This divestiture would fully remedy the Proposed Acquisition's anticompetitive effects in the perylene market for several reasons. First, Ciba is the best-positioned acquirer of Sun Chemical's perylene business. Second, under the terms of the Consent Agreement, Ciba will receive everything it needs to step into the shoes of Sun Chemical in the perylene market. Finally, the Consent Agreement includes certain measures that will help ensure an effective transition of the Sun Chemical perylene assets to Ciba.

Ciba is the best-positioned acquirer of Sun Chemical's perylene business for several reasons. First, Ciba is committed to the high performance pigments market. Ciba is already a leading supplier of other high performance pigments, such as quinacridones and diketo pyrollo pyrrols. As a result, Ciba has the ability and incentive to take over and further develop Sun Chemical's perylene business, because the divestiture will enable Ciba to offer a wide range of high performance pigments. Second, because Ciba already has a reputation for quality and consistency with the customers of high performance pigments (such as automotive coatings manufacturers), it will be relatively easy for Ciba to convince these customers that it can be a viable supplier of perylenes. Finally, customers that have expressed concern about the Proposed Acquisition's likely harmful effects on the perylene market feel that a divestiture of Sun Chemical's perylene business to Ciba would resolve their concern.

Ciba will receive all of the assets it needs to replace the competition offered by Sun Chemical in the perylene market before the Proposed Acquisition. Under the Consent Agreement, Sun Chemical will divest its entire perylene business to Ciba. The divestiture includes: All of Sun Chemical's current perylene products; all perylene research and development; manufacturing technology; scientific know-how; technical assistance and expertise; customer lists; raw material, intermediate, and finished product inventory; and perylene product names, codes, and trade dress. Because Sun Chemical manufactures perylenes through toll manufacturers, no manufacturing equipment or facilities are included in the divestiture. Instead, as required by the Consent Agreement, Ciba has entered into contracts with Sun Chemical's perylene toll manufacturers—Lobeco Products and Forth Technologies—that will become effective upon closing the divestiture.

Additionally, the Consent Agreement includes several measures to ensure an effective transition of the tangible and intangible assets related to the perylene business from Sun Chemical to Ciba. First, Ciba will have the opportunity to hire one or more Sun Chemical employees who have key responsibilities in connection with the company's perylene business. These former Sun Chemical employees will help Ciba not only to understand Sun Chemical's perylene manufacturing, research, and development process, but also to identify any missing or incomplete assets in the divestiture. Second, the Consent Agreement requires Sun Chemical to provide technical assistance to Ciba for a period of one year following the divestiture to help Ciba successfully take over Sun Chemical's perylene product line. Third, under the Consent Agreement, the Commission may appoint an interim monitor to supervise the transfer of assets and assure that Sun Chemical provides adequate technical assistance to Ciba.

Finally, in the event that the divestiture of Sun Chemical's perylene business to Ciba fails, the Consent Agreement includes certain contingent provisions to remedy the Proposed Acquisition's anticompetitive effects. If, before the Commission finalizes the Consent Order in this matter, the Commission notifies Dainippon that Ciba is not an acceptable acquirer of Sun Chemical's perylene business or that the manner in which the divestiture to Ciba was accomplished was not acceptable, the Consent Agreement requires Dainippon to rescind the transaction with Ciba and divest Sun Chemical's perylene business to an acquirer that receives the prior approval of the Commission within ninety (90) days of the rescission. Additionally, if Dainippon does not divest Sun Chemical's perylene business to either Ciba or a Commission-approved acquirer within the time required by the Consent Agreement, the Commission may appoint a trustee to divest Sun Chemical's perylene business in a manner that satisfies the requirements of the Consent Agreement.

The purpose of this analysis is to facilitate public comment on the Consent Order, and it is not intended to constitute an official interpretation of the Consent Order or to modify its terms in any way.

Quinacridones

Sun Chemical and Bayer also manufacture quinacridones, another class of red-shade high performance organic pigments. Unlike for perylenes, however, the Proposed Acquisition would not increase the likelihood that customers would pay higher prices for quinacridones, or that service and innovation for these products would decrease. Two companies—Ciba and Clariant—are by far the largest manufacturers of quinacridones in the world, and they are the top two choices for many customers. With respect to quinacridones, Sun Chemical and Bayer are each less than half the size of Ciba or Clariant. Unlike for perylenes, where Sun Chemical and Bayer often vigorously compete head-to-head for business, the parties are less likely to face each other in head-to-head competition for quinacridone business. Many customers believe that, after the Proposed Acquisition, the combined Sun Chemical/Bayer will become a stronger quinacridone competitor, able to compete more effectively against Ciba and Clariant. In addition, several new quinacridone suppliers recently have entered the market, and those suppliers will provide increasing competition.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–4396 Filed 2–24–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on March 6–7, 2003

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its 10th meeting, at which it will discuss the regulation of biotechnology, with presentations on professional self-regulation of the assisted reproduction industry by: Dr. Sandra A. Carson, president of the American Society for Reproductive Medicine (ASRM) and Dr. George J. Annas, Boston University School of Public Health. The Council will also hear from Dr. Steven Pinker, Massachusetts Institute of Technology (MIT), on human nature, and Dr. Steven E. Hyman, Harvard University, on pediatric psychopharmacology. Subjects discussed at past Council meetings (and potentially touched on at this meeting) include: Human cloning; embryonic stem cell research; the patentability of human organisms; preimplantation genetic diagnosis and screening (PGD); sex selection techniques; inheritable genetic modification (IGM); international models of biotech regulation; organ procurement for

transplantation; extra-therapeutic powers to enhance or improve human mood, memory, and muscles; and research to extend the human lifespan.

DATES: The meeting will take place Thursday, March 6, 2003, from 9 a.m. to 5:15 p.m. e.t.; and Friday, March 7, 2003, from 8:30 a.m. to 1 p.m. e.t.

ADDRESSES: Sheraton National Hotel, 900 S. Orme Street, Arlington, VA 22204.

Public Comments: The meeting agenda will be posted at *http://www.bioethics.gov.* Members of the public may comment, either in person or in writing. A period of time will be set aside during the meeting to receive comments from the public. It begins at noon on Friday, March 7, 2003. Comments will be limited to no more than five minutes per speaker or organization. Please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, giving her your name, affiliation, and a brief description of the topic or nature of your comments. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 600, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov.* Web site: *http://www.bioethics.gov.*

Dated: February 13, 2003.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 03–4355 Filed 2–24–03; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force: Meeting

Name: Task Force on Community Preventive Services.

Times and Dates: 8:30 a.m.–5:15 p.m., February 26, 2003. 8 a.m.–1:45 p.m., February 27, 2003.

Place: The Sheraton Colony Square, 188 14th Street, NE., Atlanta, Georgia 30361, telephone (404) 892–6000.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health and what works in the delivery of those services.

Matters to be Discussed: Agenda items include: Briefings on administrative information, methods and intervention reviews; a strategic planning session and sessions to approve recommendations for the following interventions:

Client Reminders for Colorectal Cancer Screening—Small Media Education for Cancer Screening—Collaborative Care for Improving Treatment for Depression—Treating Juveniles as Adults in the Criminal Justice System.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Stephanie Zaza, M.D., Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on February 24, 2003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 19, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4345 Filed 2–24–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–43]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Health Insurance Benefits Under Medicare for Individuals with Chronic Renal Disease and Supporting Regulations in 42 CFR 406.7 and .13; *Form No.:* 0938–0080; *Use:* The CMS–43 is used to establish entitlement to Medicare by individuals with End Stage Renal Disease; *Frequency:* One-time only; *Affected Public:* Individuals or households, Federal Government, State, Local, or Tribal Gov.; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 26,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 13, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–4339 Filed 2–24–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–822, CMS–209 and CMS–R–305]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Federal Health Care Programs Provider/Supplier Enrollment Application; *Form No.:* CMS–855 (OMB# 0938–0685); *Use:* This information is needed to enroll providers and suppliers into the Medicare program by identifying them, pricing and paying their claims, and verifying their qualifications and eligibility to participate in Medicare; *Frequency:* Initial enrollment/recertification and Every three years; *Affected Public:* Business or other for-profit, individuals or households, and not-for-profit institutions; *Number of Respondents:* 274,000; *Total Annual Responses:* 274,000; *Total Annual Hours:* 642,000.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Laboratory Personnel Report Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1—493.2001; *Form No.:* HCFA–0209 (OMB# 0938–0151); *Use:* CLIA requires the Department of Health and Human Services (DHHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by DHHS. The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. Information on personnel qualifications of all technical personnel is needed to ensure the sample is representative of all laboratories; *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 22,500; *Total Annual Responses:* 11,250; *Total Annual Hours:* 5,625.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* External Quality Review of Medicaid MCOs and Supporting Regulations in 42 CFR 438.352,438.360, 438.362, and 438.36; *Form No.:* CMS–R–305 (OMB# 0938–0786); *Use:* The results of Medicare reviews, Medicare accreditation surveys, and Medicaid external quality reviews will be used by States in assessing the quality of care provided to Medicaid beneficiaries provided by managed care organizations or to provide information on the quality of the care provided to the general public upon request. Three of the protocol activities are mandatory and six are optional; *Frequency:* Annually; *Affected Public:* Business or other for-profit, State, local or tribal govt.; *Number of Respondents:* 500; *Total Annual Responses:* 14,226; *Total Annual Hours:* 648,877.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 13, 2003.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–4340 Filed 2–24–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 4, 2003, from 9 a.m. to 4 p.m. and on March 5, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Kathleen Reedy or LaNise Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, fax: 301–827–6776, e-mail: *reedyk@cder.fda.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 4, 2003, the committee will hear a safety update on tnf alpha inhibitors; Humira (adalimumab), Abbott Laboratories; REMICADE (infliximad), Centocor; and ENBREL (etanercept), Immunex. On March 5, 2003, the committee will discuss the approved product new drug application (NDA) 20–905, ARAVA, (leflunomide), Aventis Pharmaceuticals, Inc., clinical data regarding efficacy for improvement in physical function in rheumatoid arthritis, as well as a safety update. The background material for this meeting will be posted on the Internet when available or 1-working

day before the meeting at: *www.fda.gov/ohrms/dockets/ac/acmenu.htm.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 25, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on March 4, 2003, and between approximately 8:30 a.m. and 9 a.m. and 11:30 a.m. and 12 noon on March 5, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 25, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact LaNise Giles at 301–827–7001 at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the March 4, 2003, Arthritis Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Arthritis Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 13, 2003.

Linda Arey Skladany,

Associate Commissioner for External Affairs.

[FR Doc. 03–4350 Filed 2–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0061]

Draft Guidance for Industry on Comparability Protocols—Chemistry, Manufacturing, and Controls Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Comparability Protocols—Chemistry, Manufacturing, and Controls Information." This draft document provides recommendations to applicants on preparing and using comparability protocols for postapproval changes in chemistry, manufacturing, and controls (CMC) information.

DATES: Submit written or electronic comments on the draft guidance by June 25, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Training and Communications, Division of Communications Management, Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857; or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448 or to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit phone requests to 800–835–4709 or 301–827–1800. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Stephen Moore, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6430, or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 8800 Rockville Pike, Rockville, MD 20892, 301–435–5681, or Dennis Bensley, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Comparability Protocols—Chemistry, Manufacturing, and Controls Information." This draft guidance applies to comparability protocols that would be submitted in new drug applications (NDAs), abbreviated new drug applications (ANDAs), new animal drug applications (NADAs), abbreviated new animal drug applications (ANADAs), or supplements to these applications, except for applications for protein products. Well-characterized synthetic peptides submitted in these applications are included within the scope of this guidance. This draft guidance also applies to comparability protocols submitted in drug master files (DMFs) and veterinary master files (VMFs) that are referenced in these applications. A separate guidance will address comparability protocols for proteins as well as for peptide products outside the scope of this guidance that are submitted in these applications. This separate guidance will also address comparability protocols for products submitted in biologics license applications (BLAs).

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control numbers 0910–0001 and 0910–0032.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on "Comparability Protocols; Chemistry, Manufacturing, and Controls Information". It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations..

II. Comments

Interested persons may submit to the Dockets Management Branch (see

ADDRESSES) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/cber/guidelines.htm, or http://www.fda.gov/cvm/guidance/published.htm.

Dated: February 19, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4311 Filed 2–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drugs Administration

Medical Device User Fee Payment Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the payment procedures for medical device user fees for fiscal year (FY) 2003. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), authorizes FDA to collect user fees for certain medical device applications. The FY 2003 fee rates were published in the **Federal Register** of November 21, 2002 (67 FR 70228 at 70229, as amended by the **Federal Registers** of January 10, 2003, and January 22, 2003 (68 FR 1469 and 68 FR 3033)); however, FDA could not begin to collect these fees until enabling appropriations were enacted. Those enabling appropriations were enacted on February 20, 2003, so FDA is now able to collect Medical Device User Fees for FY 2003. Accordingly, FDA will issue invoices for all fees payable for applications submitted between October 1, 2002, and March 31, 2003. Those invoices will be due and payable within 30 days of issuance. For all applications submitted on or after April 1, 2003, fees must be paid at the time that applications are submitted to FDA. This notice provides payment procedures for those submitting medical device applications that may be subject to user fees.

FOR FURTHER INFORMATION CONTACT: For further information on MDUFMA visit the FDA Web site *http://www.fda.gov/oc/mdufmo* or contact James G. Norman, Office of Systems and Management (HFZ–2), Food and Drug Administration, Center for Devices and Radiological Health (CDRH), 9200 Corporate Blvd., Rockville, MD 20850, 301–827–6829.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 737 and 738 of the act (21 U.S.C. 379i and j) establish fees for certain medical device applications and supplements. When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379j(d) and (e)).

MDUFMA establishes aggregate revenue amounts for application fee revenues each year for FY 2003 through FY 2007. Revenue amounts established for years after FY 2003 are subject to adjustment for inflation, workload, and revenue shortfalls from previous years. FDA will set and publish fees each year so that total revenues will approximate the levels established in the statute, after those amounts have been adjusted for inflation, workload, and, if required, revenue shortfalls from previous years.

II. What Are the Fees for Applications Submitted in FY 2003?

Table 1 of this document provides fee rates for applications submitted on October 1, 2002, and remaining in effect through September 30, 2003, as previously published (67 FR 70228 at 70229, as amended by 68 FR 1469 and 68 FR 3033).

TABLE 1—FEE TYPES, PERCENT OF PMA FEE, AND FY 2003 FEE RATES

Application Fee Type	Full Fee Amount as a Percent of PMA Fee	FY 2003 Full Fee	FY 2003 Small Business Fee
Premarket Approval (PMA), Product Development Protocol (PDP), Biologic License Application (BLA) (submitted under section 515(c) or (f) of the act (21 U.S.C. 360e(c) or (f)) or section 351 of the Public Health Service Act (the PHS Act) , respectively)	100	$154,000	$58,520
Premarket Report (PMR)(submitted under section 515(c)(2) of the act)	100	$154,000	$58,520
Panel Track Supplement (submitted under section 515 of the act to an approved PMA, PDP, or PMR that requests a significant change in design or performance of the device, or a new indication for use of the device, and for which clinical data are generally necessary to provide reasonable assurance of safety and effectiveness)	100	$154,000	$58,520
Efficacy Supplement (submitted under section 351 of the PHS Act to an approved BLA)	100	$154,000	$58,520
180-Day Supplement (submitted under section 515 of the act to an approved PMA, PDP or PMR that is not a panel track supplement and requests a significant change in components, materials, design, specification, software, color additives, or labeling)	21.5	$33,110	$12,582

TABLE 1—FEE TYPES, PERCENT OF PMA FEE, AND FY 2003 FEE RATES—Continued

Application Fee Type	Full Fee Amount as a Percent of PMA Fee	FY 2003 Full Fee	FY 2003 Small Business Fee
Real Time Supplement (submitted under section 515 of the act to an approved PMA or PMR that is not a panel track supplement and requests a minor change to the device, such as a minor change to the device design, software, manufacturing, sterilization, or labeling, and for which the applicant has requested and the agency has granted a meeting or similar forum to jointly review and determine the status of the supplement or an approved PDP)	7.2	$11,088	$4,213
Premarket Notification (submitted under section 510(k) of the act)	1.42	$2,187	$2,187[1]

[1] A small business will pay the full (standard) fee of $2,187 for a premarket notification submitted to FDA during FY 2003. A small business fee, set at 80 percent of the standard 510K fee, will be available beginning FY 2004.

III. Are All Device Applications and Submissions Subject to Fees?

Premarket applications and submissions not listed in table I are not subject to a MDUFMA user fee. The following are examples of submissions that do not require a MDUFMA fee:

- Any type of investigational device exemption submission made under section 520(g) of the act (21 U.S.C. 360j(g)).
- A request made under section 513(f)(2) of the act (21 U.S.C. 360c(f)(2)) for an evaluation of automatic class III designation (also known as a de novo or risk-based classification).
- A modification to the manufacturing procedures or method of manufacturing submitted as a 30-day notice or as a 135-day supplement if notified by FDA that such a supplement is needed.
- An "express PMA supplement" for a manufacturing facility site change.
- Annual (or other periodic) reports required for an approved PMA.

In addition to the types of submissions described above that are not subject to MDUFMA fees, certain applications are exempt from fees. Exempted applications include:

- Applications submitted under section 520(m) of the act that qualify for a humanitarian device exemption (21 U.S.C. 379j(a)(1)(B)(i)).
- Applications submitted under section 351 of the Public Health Service Act for a product licensed for further manufacturing use only (21 U.S.C. 379j(a)(1)(B)(ii)).
- Applications submitted by a State or U.S. Federal Government entity for a device that is not to be distributed commercially (21 U.S.C. 379j(a)(1)(B)(iii)).
- Premarket notification submissions reviewed by an accredited third party (21 U.S.C. 379j(a)(1)(B)(iv)).
- Applications or supplements whose sole purpose is to support conditions of use in a pediatric population (21 U.S.C. 379j(a)(1)(B)(v)).
- First time PMA/PDP/BLA submissions from small businesses as discussed in section V of this document.

If you are unsure of whether a planned submission will be subject to a MDUFMA user fee, please contact CDRH's Division of Small Manufacturers, International and Consumer Assistance, on 1–800–638–2041 or 301–443–6597, for assistance.

IV. Where May I Find Guidance on the Type of Fees Applicable to My Application?

For guidance on which type of fee applies to your application, please see the document entitled "Assessing User Fees: PMA Supplement Definitions, Modular PMA Fees, BLA and Efficacy Supplement Definitions, Bundling Multiple Devices in a Single Application, and Fees for Combination Products: Guidance for Industry and FDA." You may find a link to this document on FDA's Web site at: http://www.fda.gov/oc/mdufma. At that Web site, under the heading "Guidance Documents" click on the link "Assessing User Fees—PMA Supplements, Modular PMAs, BLAs and Efficacy Supplements, Bundling, and Combination Products." This guidance will help you determine fees for PMA supplements (panel-track, 180-day, and real-time), modular PMAs, as well as combination products. It also provides information on when bundling multiple devices in a single application would be appropriate.

V. How Does a Firm Qualify as a Small Business for Purposes of MDUFMA Fees?

Firms with annual gross sales and revenues of $30 million or less, including gross sales and revenues of all affiliates, partners, and parent firms, may qualify for a fee waiver for their first PMA, and for lower rates for subsequent PMAs, premarket reports, and supplements. Such firms may also qualify for lower rates for premarket notification submissions in FY 2004 and subsequent years.

To qualify, you are required to submit the following:

(1) Certified copies of your Federal Income Tax Return for the most recent taxable year, including certified copies of the income tax returns of your affiliates, partners, and parent firms.

(2) A certified list of all parents, partners, and affiliate firms since October 1, 2002.

You can find information for determining if an applicant qualifies for a small business first-time PMA waiver and lower rates for subsequent applications on the FDA Web site at http://www.fda.gov/oc/mdufma. At that Web site, under the heading "Guidance Documents," click on the link "Qualifying as a Small Business." This Web site provides detailed instructions and the address for mailing documentation to support qualification as a small business under MDUFMA.

VI. When Do I Submit a Fee for an Application Submitted On or After October 1, 2002, and On or Before the Date of Publication of This Notice?

You must pay a fee for any medical device application subject to a fee that you submitted on or after October 1, 2002 (21 U.S.C. 379j(a)(1)(A)). (Section III of this document addresses applications exempted from fees and procedures related to them.) FDA will issue invoices to all applicants who submitted medical device applications on or after October 1, 2002, and through the date of this notice. FDA will issue those invoices during March and April 2003, and payment will be due within 30 days of issuance date. FDA will include detailed payment instructions with the invoices. Please include the invoice numbers on all payments submitted in response to these invoices.

VII. When Do I Submit the Fee for Applications Submitted On or After the Date of Publication of This Notice?

A. Payment Options for Firms Submitting Medical Device Applications between Today and March 31, 2003.

If you submit a medical device application subject to fees on or after the date of publication of this notice, and before April 1, 2003, you may either:

(1) Submit the application without first submitting payment, and pay the fee when an invoice is received; or

(2) Pay the fee at the time the application is submitted.

B. Payment Requirement for Firms Submitting Medical Device Applications On or After April 1, 2003.

If you submit a medical device application subject to fees on or after April 1, 2003, you must pay the fee for the application at or before the time the application is submitted. If you have not paid all fees owed, FDA will consider the application incomplete and will not accept it for filing (21 U.S.C. 379j(f)).

VIII. What Are the Procedures for Paying Application Fees?

FDA requests that you adhere to the following steps before submitting a medical device application subject to a fee. Please pay close attention to these procedures to ensure that FDA associates the fee with the correct application. (Note: In no case should the check for the fee be submitted to FDA with the application.)

A. Step One—Secure a Payment Identification Number and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment.

Log onto the MDUFMA Web site at http://www.fda.gov/oc/mdufma, and under the "Forms" heading, click on the link "User Fee Cover Sheet." Complete the Medical Device User Fee Cover Sheet and print a copy. Note the unique Payment Identification Number located in the upper right-hand corner of the printed cover sheet.

B. Step Two—Fax a Copy of the Printed Cover Sheet With the Payment Identification Number to FDA's Office of Financial Management.

The FDA facsimile machine phone number to receive this completed Medical Device User Fee Cover Sheet is 301–827–9213. FDA will then enter the information into its accounting system, in order to associate payments with submitters. (Note: Later this year, after the Web site is upgraded, you will be able to transmit the completed form electronically and you will not need to fax a copy to FDA.)

C. Step Three—Mail a Copy of the Completed Medical Device User Fee Cover Sheet and the Payment for Your Application to the St. Louis Address Specified in Item 3 as Follows:

1. Make the payment in U.S. currency by check, bank draft, or U.S. postal money order payable to FDA. (The tax identification number of FDA is 53–0196965, should your accounting department need this information.)

2. Please note on your payment your application's unique Payment Identification Number from the upper right-hand corner of your printed Medical Device User Fee Cover Sheet.

3. Mail the payment and a copy of the completed Medical Device User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO 63195–6733.

If you prefer to send a check by a courier, the courier may deliver the checks to: US Bank, Attn: Government Lockbox, SL–MOC1GL, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. Contact the US Bank at 314–418–4821 if you have any questions concerning courier delivery.)

It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA. FDA records as the application receipt date the latter of the following:

a. The date the application was received by FDA; or

b. The date US Bank notifies FDA that payment has been received. US Bank is required to notify FDA within 1-working day, using the Payment Identification Number described in section VIII, C.2 of this document.

D. Step Four—Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet.

Please submit your application and a copy of the completed Medical Device User Fee Cover Sheet to one of the following addresses.

1. Medical device applications should be submitted to: Document Mail Center (HFZ–401), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

2. Biologic applications should be sent to: Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1428.

Dated: February 13, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4490 Filed 2–21–03; 11:22 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 03D–0060, 99D–1458, 00D–1538, 00D–1543, 00D–1542, and 00D–1539]

Draft Guidance for Industry on "Part 11, Electronic Records, Electronic Signatures—Scope and Application;" Availability of Draft Guidance and Withdrawal of Draft Part 11 Guidance Documents and a Compliance Policy Guide

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; availability; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Part 11, Electronic Records; Electronic Signatures—Scope and Application." This draft guidance explains FDA's current thinking regarding the requirements and application of part 11 (21 CFR part 11). As an outgrowth of its current good manufacturing practice (CGMP) initiative for human and animal drugs and biologics, FDA is embarking on a re-examination of part 11 as it applies to all FDA regulated products. We may revise provisions of part 11 as a result of that reexamination. The draft guidance explains that while this re-examination is under way, we intend to exercise enforcement discretion with respect to certain part 11 requirements. We are also announcing the withdrawal of Compliance Policy Guide (CPG) 7153.17 and previously published part 11 draft guidance documents on validation, glossary of terms, time stamps, and maintenance of electronic records.

DATES: Submit written or electronic comments on the draft guidance by April 28, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Division of Compliance Policy (HFC–230), Office

of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Joseph C. Famulare, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–8940, part11@cder.fda.gov; or David Doleski, Center for Biologics Evaluation and Research (HFM–676), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3031, doleski@cber.fda.gov; or John Murray, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4659, jfm@cdrh.fda.gov; or Vernon D. Toelle, Center for Veterinary Medicine (HFV–234), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0312, vtoelle@cvm.fda.gov; or JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3116, jziyad@cfsan.fda.gov; or Scott MacIntire, Office of Regulatory Affairs (HFC–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857–1706, 301–827–0386, smacinti@ora.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In March 1997, FDA issued final regulations (part 11) that provided criteria for acceptance by FDA, under certain circumstances, of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records and handwritten signatures executed on paper (62 FR 13430, March 20, 1997). These regulations, which apply to all FDA program areas, were intended to permit the widest possible use of electronic technology, consistent with FDA's responsibility to protect the public health.

Since part 11 became effective in August 1997, significant discussions have ensued between industry, contractors, and the agency concerning the interpretation and implementation of the rule. Concerns have been raised that some interpretations of the part 11 requirements would: (1) Unnecessarily restrict the use of electronic technology in a manner that is inconsistent with FDA's stated intent in issuing the rule, (2) significantly increase the costs of compliance to an extent that was not contemplated at the time the rule was drafted, and (3) discourage innovation and technological advances without providing a significant public health benefit. These concerns have been raised particularly in the areas of part 11 requirements for validation, audit trails, record retention, record copying, and legacy systems.

This document provides guidance to persons who, in fulfillment of a requirement in a statute or another part of FDA's regulations to maintain records or submit information to FDA, have chosen to maintain the records or submit designated information electronically and, as a result, have become subject to part 11.

This draft guidance announces that we intend to exercise enforcement discretion with respect to the validation, audit trail, record retention, and record copying requirements of part 11. However, records must still be maintained or submitted in accordance with the underlying predicate rules. We also intend to exercise enforcement discretion and will not normally take regulatory action to enforce part 11 with regard to systems that were operational before August 20, 1997, the effective date of part 11 (commonly known as existing or legacy systems) while we are reexamining part 11.

It is important to note that FDA's exercise of enforcement discretion as described in this guidance is limited to the specified part 11 requirements. We intend to enforce all other provisions of part 11 including, but not limited to, certain controls for closed systems in § 11.10, the corresponding controls for open systems (§ 11.30), and requirements related to electronic signatures (e.g., §§ 11.50, 11.70, 11.100, 11.200, and 11.300). We expect continued compliance with these provisions, and we will continue to enforce them.

In the **Federal Register** of February 4, 2003 (68 FR 5645), we announced the withdrawal of the draft guidance entitled "Guidance for Industry, 21 CFR Part 11; Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records" because we wished to limit the time spent by industry reviewing and commenting on the guidance, which might not have been representative of FDA's approach under the CGMP initiative.

At this time, we are also announcing the withdrawal of CPG 7153.17 and previously published part 11 draft guidance documents on validation, glossary of terms, time stamps, and maintenance of electronic records. FDA has determined that it might cause confusion to leave standing these other draft guidances on part 11 and CPG 7153.17. FDA received valuable public comment on the draft guidances and plans to use that information to inform the agency's future decisionmaking with respect to part 11.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, if finalized, will represent the agency's current thinking on "Part 11, Electronic Records, Electronic Signatures—Scope and Application." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/ora under "Compliance References," or http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: February 19, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4312 Filed 2–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Impact of Accreditation on BPHC-Supported Community Health Centers—NEW

The Bureau of Primary Health Care (BPHC) has contracted with the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for a period of three years from 2002 to 2005 to conduct comprehensive evaluations for selected BPHC-supported health centers that will encompass both a full Joint Commission accreditation survey and a review of specified governmental requirements relative to the Primary Care Effectiveness Review. Incorporated into this contract, is a research study that will examine the impact of JCAHO accreditation on BPHC-supported health centers. The reasons for conducting this study are twofold. First, in a March 2000 report, the GAO recommended to HRSA that they determine the cost effectiveness of Joint Commission accreditation and its ability to improve quality and competitiveness in community health centers (GAO/HEHS–00–39 community health centers). HRSA believes that this study will build on a 2002 report by Lewin and Associates that examined the effectiveness of accreditation on a small number of health centers. Second, although considerable anecdotal information is available regarding changes that health centers have made to prepare for or maintain accreditation, this study is designed to provide a detailed examination of the number and type of activities that health centers are engaged in relative to quality of care and patient safety subsequent to becoming accredited.

This study is a descriptive assessment of the impact of accreditation on health centers relative to changes in their approach to quality of care and patient safety. It will assess the impact in a sample of Joint Commission accredited community health centers that include migrant health centers, school based health centers, health centers for the homeless and public housing health centers. This study aims to address two key questions: (a) What do health centers do differently as a result of preparing for and maintaining accreditation? and (b) How has accreditation strengthened health centers' approach to quality, patient safety and performance improvement? The assessment will be conducted by administering two mailed questionnaires to a sample of community health centers.

ESTIMATED BURDEN HOURS

Survey	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Accreditation: Changes in approach to quality and safety	100	1	100	.33	33
Accreditation: Perception of Value	100	4	400	.25	100
Total	100		500		133

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 14, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–4313 Filed 2–24–03; 8:45 am]

BILLING CODE 4165–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines (ACCV); Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following advisory committee meeting. The meeting will be open to the public.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: March 5, 2003; 9 a.m.–2:45 p.m.

Place: Audio conference call, and Ramada Inn, 1775 Rockville Pike, Georgetown Conference Room, Rockville, Maryland 20852.

The full ACCV will meet on Wednesday, March 5, from 9 a.m. to 2:45 p.m. The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–888–928–9122 on March 5 and providing the following information:

Leader's Name: Thomas E. Balbier, Jr.

Password: ACCV.

Agenda: The agenda items for March 5 will include, but are not limited to: A presentation on the Institute of Medicine's report "Potential Role of Vaccination in Sudden Unexplained Death in Infancy"; an overview of the *Stevens* v. *HHS* Decision; a discussion and application of a proposed alternative standard for the adjudication of off-Table claims; and updates from the Division of Vaccine Injury Compensation, the Department of Justice, and the National Vaccine Program Office. Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857 or by e-mail at *clee@hrsa.gov*. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of his/her assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period on the audio conference call. These persons will be allocated time as time permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2124 or e-mail: *clee@hrsa.gov*.

Dated: February 19, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–4351 Filed 2–24–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–06]

Notice of Submission of Proposed Information Collection to OMB: Request for Termination of Multifamily Mortgage Insurance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0416) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Request for Termination of Multifamily Mortgage Insurance.

OMB Approval Number: 2502–0416.

Form Numbers: HUD–9807.

Description of the Need for the Information and Its Proposed Use: Notification from mortgagor and mortgagee to HUD of mutual agreement of termination of HUD multifamily mortgage insurance.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,400		1		0.125		175

Total Estimated Burden Hours: 175.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 13, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–4342 Filed 2–24–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–03–1220–PA]

California Desert District Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Call for nominations for the Bureau of Land Management's California Desert District Advisory Council.

SUMMARY: The Bureau of Land Management's California Desert District is soliciting nominations from the public for five members of its District Advisory Council to serve the 2004–2006 three-year term. Council members provide advice and recommendations to BLM on the management of public lands in southern California. Public notice begins with the publication date of this notice. Nominations will be accepted through Saturday, August 30, 2003. The three-year term would begin January 1, 2004.

The five positions to be filled include:

—One renewable resources representative (cattle/grazing interests)
—One environmental protection representative
—One public-at-large representative
—Two elected official representatives (local/county government)

The California Desert District Advisory Council is comprised of 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 11.5 million acres of public land in southern California. The Council meets in formal session three to four times each year in various locations throughout the California Desert District. Council members serve without compensation except for reimbursement of travel expenditures incurred in the course of their duties. Members serve three-year terms and may be nominated for reappointment for an additional three-year term.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM administered lands. The Secretary also selects council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and BLM will try to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes 10.4 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Any group or individual may nominate a qualified person, based upon their education, training, and knowledge of BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

Nominations must include the name of the nominee; work and home addresses and telephone numbers; a biographical sketch that includes the nominee's work and public service record; any applicable outside interests or other information that demonstrates the nominees qualifications for the position; and the specific category of interest in which the nominee is best qualified to offer advice and council. Nominees may contact the BLM California Desert District External Affairs staff at (909) 697–5220 or write to the address below and request a copy of the nomination form.

All nominations must be accompanied by letters of reference from represented interests, organizations, or elected officials supporting the nomination. Individuals nominating themselves must provide at least one letter of recommendation. Advisory Council members are appointed by the Secretary of the Interior, generally in late January or early February.

Nominations should be sent to the District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District External Affairs (909) 697–5220.

Dated: February 19, 2003.

Linda Hansen,

District Manager.

[FR Doc. 03–4344 Filed 2–24–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–912–6320–AA; GP3–0094]

Resource Advisory Committees; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a call for nominations for alternate positions to the Bureau of Land Management (BLM) Resource Advisory Committees (Committees) provided for in Section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393 (the Act).

SUMMARY: This purpose of this notice is to solicit nominations for vacant alternate positions to the BLM's Coos Bay, Eugene, Medford and Roseburg Resource Advisory Committees. In accordance with the Committee Charters, the role of an alternate is to fill vacancies that occur when a primary member leaves the Committee. Public nominations will be considered for 30 days after the publication date of this notice.

The BLM Resource Advisory Committee vacancies are as follows:

Coos Bay Resource Advisory Committee

Category One—2 alternates
Category Three—2 alternates

Eugene Resource Advisory Committee

Category One—1 alternate
Category Two—1 alternate

Medford Resource Advisory Committee

Category One—1 alternate

Roseburg Resource Advisory Committee

Category One—1 alternate
Category Two—1 alternate
Category Three—1 alternate

DATES: Nomination applications for alternate positions to the BLM Resource Advisory Committees can be obtained from the Coos Bay, Eugene, Medford, Salem and Roseburg District Office, or on the web at *www.or.blm.gov/planning/advisory*. All applications must be received by the appropriate BLM District office listed below no later than 30 days after publication of this notice. All nominations must include letters of reference from represented interests of organizations and a completed application that includes background information, as well as any other information that speaks to the nominee's qualifications.

BLM Resource Advisory Committee Contacts

Coos Bay Resource Advisory Committee
Sue Richardson, District Manager, 1300 Airport Lane, North Bend, Oregon 97459, (541) 756–0100
Eugene Resource Advisory Committee
Wayne Elliot, Resource Management Advisor, 2890 Chad Drive, Eugene, Oregon 97408–7336, (541) 683–6600
Medford Resource Advisory Committee
Mary Smelcer, Acting District Manager, 3040 Biddle Road, Medford, Oregon 97504, (541) 618–2200
Roseburg District Resource Advisory Committee
Cary Osterhaus, District Manager, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470, (541) 440–4913

FOR FURTHER INFORMATION CONTACT: Maya Fuller, Oregon/Washington Bureau of Land Management, Oregon State Office, PO Box 2965, Portland, Oregon 97208, (503) 808–6437.

SUPPLEMENTARY INFORMATION: The Secure Rural Schools and Community Self-Determination Act of 2000 establishes a five-year payment schedule to local counties in lieu of funds formerly derived from the harvest of timber on federal lands. Pursuant to the Act, BLM established five

Communities for western Oregon BLM districts that contain O&C grant lands and Coos Bay Wagon Road grant lands. Committees' consists of 15 local citizens, plus 6 alternates, representing a wide array of interests.

The Act creates a mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. Committee members review proposed projects and transmit their recommendations on these projects to the agency.

Committee membership must be balanced in terms of the categories of interest represented. Members serve without monetary compensation, but will be reimbursed for travel and per diem when on Committee business, as authorized by 5 U.S.C. 5703. Prospective members and alternates are advised that serving on a Resource Advisory Committee calls for a substantial commitment of time and energy.

Any individual or organization may nominate one or more persons to serve on the Committees. Individuals may also nominate themselves or others. Nominees must reside within one of the counties that are (in whole or part) within the BLM District boundaries of the Committee(s) on which membership is sought. A person may apply for and serve on more than one Committee. Nominees will be evaluated based on their education, training, and experience relating to land use issues and knowledge of the geographical area of the Committee. Nominees must also demonstrate a commitment to collaborative resource decision-making.

You may make nominations for the following categories of interest:

Category One—representatives of organized labor; developed outdoor recreation; off-highway vehicle use; energy and/or mining development; timber industry; or holders of federal grazing permits.

Category Two—representatives of nationally, regionally or locally recognized environmental organizations; dispersed recreation, archaeological and historic interests; or wild horse and burro groups.

Category Three—State, county or local elected officials; representatives of Native American Tribes; school officials or teachers, or the public-at-large.

The BLM Resource Advisory Committees are based on western Oregon BLM District boundaries. Specifically, the BLM Committees are as follows:

Salem District Resource Advisory Committee advises officials on projects associated with federal lands within the Salem District boundary which includes Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

Eugene District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Eugene District boundary. The area covers Benton, Douglas, Lane, and Linn Counties.

Roseburg District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Roseburg District boundary which includes Douglas, Lane, and Jackson Counties.

Medford District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Medford District and Klamath Falls Resource Area in the Lakeview District. The area covers Coos, Curry, Douglas, Jackson, and Josephine Counties, and small portions of west Klamath County.

Coos Bay District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Coos Bay District which includes Coos, Curry, Douglas, and Lane Counties.

Dated: February 19, 2003.

Cathy Harris,

Public Affairs Chief, Oregon/Washington Bureau of Land Management.

[FR Doc. 03–4346 Filed 2–24–03; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–5882–AF; HAG03–0074]

Notice of Public Meeting, Roseburg Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notices for the Roseburg District Bureau of Land Management (BLM) Resource Advisory Committee under section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Roseburg District BLM Resource Advisory Committee pursuant to section 205 of the Secure Rural School and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Roseburg District BLM Resource Advisory Committee include operating procedures, processes used for decision making, facilitation needs, future meeting dates, and a field trip to discuss density management practices.

DATES: The Roseburg Resource Advisory Committee will meet at the BLM Roseburg District Office, 777 NW. Garden Valley Boulevard, Roseburg, Oregon 97470, 9 a.m. to 2 p.m. on March 31, 2003, and 9 a.m. to 2 a.m. for the field trip May 19, 2003.

Committees have been formed for western Oregon BLM district that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a mechanism for local community collaboration in the selection of federal land management projects that will be funded under Title II of the Act. The Roseburg District BLM Resource Advisory Committee consists of 15 local citizens (plus 6 alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Roseburg District BLM Resource Advisory Committee may be obtained from E. Lynn Burkett, Public Affairs Officer, Roseburg District Office, 777 NW. Garden Valley Blvd., Roseburg, Oregon 97470 or *elynn_burkett@blm.gov*, or on the web at *http://www.or.blm.gov*.

Dated: February 4, 2003.

Mark A. Buckbee,

Roseburg District Manager.

[FR Doc. 03–4195 Filed 2–24–03; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1310–XG]

Notice of Temporary Closure of Eastern States; Office/Remodeling

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: The Bureau of Land Management, Eastern States State Office is in the process of a remodeling and refurbishing project. The Public Room, Dockets, Accounts, Bindery, the Vaults and Central Records will not be available to the public. There will be no over-the-counter transactions or research of patent records not contained within the GLO records system. The official records (*i.e.*, case files, field notes, maps, plats, patents, etc.) located in the vaults and dockets will not be available for public inspection. Incoming phone calls will be answered and routed accordingly. All accounting transactions, deposits and GLO system requests will continue without interruption.

DATES: The dates that the Bureau of Land Management, Eastern States Office will be closed for remodeling and refurbishing are February 24, 2003 through March 17, 2003. We will resume all services and access to case files and patents on March 18, 2003. Full access to all other records previously mentioned will commence on March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Douglas, Deputy State Director, Cadastral Survey and GLO Records, (703) 440–1688.

Dated: February 13, 2003.

Michael D. Nedd,

State Director, Eastern States.

[FR Doc. 03–4494 Filed 2–21–03; 12:08 pm]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0113).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR Part 206, Subpart B, Indian Oil. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled: "30 CFR Part 206, Subpart B, Indian Oil (Form MMS–4416, Indian Crude Oil Valuation Report)."

DATES: Submit written comments on or before March 27, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 206, subpart B, Indian Oil (Form MMS–4416, Indian Crude Oil Valuation Report).

OMB Control Number: 1010–0113.

Bureau Form Number: Form MMS–4416.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, requires the Secretary to "establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner." To accomplish these tasks more effectively, MMS published a proposed rule in the **Federal Register** on February 12, 1998 (63 FR 7089) and a supplementary proposed rule on January 5, 2000 (65 FR 403). The proposed rules add more certainty to the valuation of oil produced from Indian lands and eliminate any direct reliance on posted prices by, among other provisions, requiring Indian lessees and purchasers to submit certain contract information to MMS.

MMS has announced in the **Federal Register** on February 12, 2003 (68 FR 7086), the dates, places, and times for workshops on issues related to the existing rules adopted in March 2000 governing the valuation for royalty purposes of crude oil produced from Federal leases. The workshops will address, among other things, issues related to calculation of transportation allowances (including the rate of return allowed for calculating actual costs under non-arm's-length transportation arrangements), timing and application of published index prices, and calculation of location and quality differentials under certain circumstances.

Because of the substantive overlap between these issues and issues involved in the proposed rule on Indian oil valuation, and to give persons interested in Indian lease issues an opportunity to participate in the workshops, MMS is reopening the comment period for 60 days on the proposed rule on Indian oil valuation so it can include in the record any relevant comments received. MMS can then consider those comments as they might apply to the Indian oil valuation rule.

Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments to the Indian lessor due to royalties not being collected on prices received under higher priced long-term sales contracts. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this ICR.

We have also changed the title of this ICR from "Indian Crude Oil Valuation Report (Form MMS–4416)" to "30 CFR part 206, subpart B, Indian Oil (Form MMS–4416, Indian Crude Oil Valuation Report)" to clarify the regulatory language we are covering under 30 CFR part 206.

Frequency: Annually; as Agreements/Contracts Change.

Estimated Number and Description of Respondents: 337 (225 oil royalty payors/112 nonpayor—purchasers).

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 2,363 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

Proposed 30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
§ 206.81	You must submit information on Form MMS–4416 related to all of your crude oil production from Indian leases. You must initially submit Form MMS–4416 no later than [insert the date 2 months after the effective date of this rule] and then by October 31 [insert the year this regulation takes effect], and by October 31 of each succeeding year.	.1667	2,025 [1]	338
	In addition to the annual requirement to file this form, you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement to file does not apply.	.5.	4,050 [2]	2,025
Total			6,075	2,363

[1] 1,350 payor-purchaser agreements or contracts plus 675 non-payor-purchaser agreements or contracts.
[2] 225 payor-purchasers x 6 agreements or contracts per payor x ½ hour per submission x 2 submissions per year plus 675 agreements or contracts submitted by non-payor-purchasers x ½ hour per submission x 2 submissions per year.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a **Federal Register** Notice on October 9, 2002 (67 FR 62985), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by March 27, 2003.

Public Comment Policy: We will post all comments in response to this notice on our web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 14, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–4398 Filed 2–24–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Backcountry Management Plan, General Management Plan Amendment and Environmental Impact Statement, Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Draft Backcountry Management Plan, General Management Plan Amendment and Environmental Impact Statement.

SUMMARY: The National Park Service (NPS) announces the availability of the Draft Backcountry Management Plan, General Management Plan Amendment and Environmental Impact Statement (EIS) for Denali National Park and Preserve. The document describes and analyzes the environmental impacts of a preferred alternative and three action alternatives for managing the park and preserve's backcountry. A no action alternative also is evaluated. This notice announces the 75-day public comment period, the locations of public hearings, and solicits comments on the draft plan and EIS.

DATES: Comments on the draft plan and EIS must be received no later than May 7, 2003.

ADDRESSES: Comments on the draft plan and EIS should be submitted to the Superintendent, Denali National Park and Preserve, Post Office Box 9, Denali Park, Alaska 99755. Submit electronic comments to *dena_public_comment@nps.gov.* The draft EIS may be viewed online at *http://www.nps.gov/dena* through the "in Depth" link on our homepage under "Planning and Management." Hard copies or CDs of the Draft Backcountry Management Plan and General Management Plan Amendment and EIS are available by request from the aforementioned address. See **SUPPLEMENTARY INFORMATION** for the locations of informational meetings and public hearings.

FOR FURTHER INFORMATION CONTACT: Mike Tranel, Chief of Planning, Denali National Park and Preserve. Telephone: (907) 257–2562.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) is preparing a backcountry management plan and accompanying EIS that amends the 1986 General Management Plan for Denali National Park and Preserve. The purpose of the plan and EIS is to formulate a comprehensive plan for the backcountry, including designated wilderness, of Denali National Park and Preserve that will provide management direction over the next 15–20 years. The backcountry of Denali National Park and Preserve is defined to include the entire park except for those areas designated specifically for development in the entrance area and along the road corridor. Many issues to be addressed in the backcountry management plan, however, would affect the entire park, including developed areas. The NPS has initiated this management plan and EIS to address the rapidly growing level and diversity of uses, resource management needs, and the anticipated demand for future uses not foreseen or addressed in the 1986 General Management Plan. The NPS developed a range of alternatives based on planning objectives, park resources, and public input. Each alternative represents a distinct vision for the park's backcountry. These alternatives describe actions related to management area designation, recreational activities, and administrative activities. Four alternatives in addition to a no-action alternative were developed.

Alternative A (No Action): Current and projected conditions under this alternative provide a baseline for evaluating the changes and impacts of the other action alternatives. The NPS would continue the present management direction, guided by the 1986 General Management Plan, the 1997 Entrance Area and Road Corridor Development Concept Plan, the 1997 South Side Denali Development Concept Plan, the 1997 Strategic Plan, and backcountry management plans from 1976 and 1982. Recreational use and access patterns would continue to develop, and the NPS would respond as necessary on a case-by-case basis. No new services or facilities would be developed to meet increased levels of use in the backcountry, except for those identified in the Entrance Area or South Side plans. This alternative represents "no action" for this plan. For all activities, the NPS would respond to changing use patterns as necessary to protect park resources, visitor safety, and visitor experience.

Alternative B: This alternative would emphasize wilderness resource values (including solitude and natural sounds) and opportunities for self-reliant, non-motorized recreation that depend on the wilderness character of the resource. Denali would have a high degree of resource protection, especially in the original Old Park area. Under this alternative, some uses would be reduced or managed for greater dispersal to enhance resource protection. While some new approved uses could occur, services would be minimized to provide self-reliant experiences.

Alternative C: This alternative would emphasize highly dispersed recreational uses that are consistent with wilderness values and opportunities for solitude. It would allow for both motorized and non-motorized recreation activities, but would limit growth or otherwise manage use levels to provide a quality visitor experience and protect park resources.

Alternative D (NPS Preferred Alternative): The NPS would provide for expanded recreational opportunities in many areas of the park and preserve for activities that are particularly well suited to the unique character of Denali. Use levels would not exceed those that maintain the management vision for a particular unit. Patterns and types of use would be somewhat similar to current conditions, but increases in levels of use would be noticeable at several locations.

Alternative E: This alternative would emphasize expanded visitor services, additional facilities, and increased motorized access for backcountry users. A variety of uses would be accommodated throughout the park, and new forms and levels of recreational uses would be allowed in the park additions and preserve, while protecting resources. New facilities would be added in the entrance area and on the south side. There would be some expansion of existing uses in the original Old Park area, with modest expansion of uses in the park additions and preserve. There would be minimal reductions of or redistribution of existing uses even in congested areas. This alternative would allow additional types of use not presently occurring but consistent with laws, regulations, and management policies. As types and levels of use increase, so too would administrative presence.

Informational meetings and public hearings are scheduled in Alaska at the following locations: Anchorage, Wasilla, Fairbanks, Healy, Susitna Valley, Minchumina, and Cantwell. The specific dates and times of the meetings and public hearings will be announced in local media.

Dated: February 12, 2003.

Marcia Blaszak,

Acting Regional Director, Alaska.

[FR Doc. 03–4352 Filed 2–24–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1013 (Final)]

Saccharin From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: February 13, 2003.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective December 27, 2002, the Commission established a schedule for the conduct of the final phase of the subject investigation (68 FR 1860, January 14, 2003). Subsequently, the Department of Commerce extended the date for its final determination in the investigation to

May 12 (68 FR 6885, February 11, 2003). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than May 8; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 12, 2003; the prehearing staff report will be placed in the nonpublic record on May 1, 2003; the deadline for filing prehearing briefs is May 8, 2003; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 15, 2003; the deadline for filing posthearing briefs is May 22, 2003; the Commission will make its final release of information on June 6, 2003; and final party comments are due on June 10, 2003.

For further information concerning this investigation see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: February 14, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–4314 Filed 2–24–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Application for authorization to Issue Health Care Certificates; form I–905.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 17, 2002 at 67 FR 58634, allowing for a 30-day public review and comment period on the proposed revised form. No comments were received on this information collection. However, the proposed form was withdrawn and continued by OMB until submission of final regulation.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Suite 10102, Washington, DC 20530; Attention: Department of Justice Desk Officer, Room 10235.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Authorization to Issue Health Care Certificates.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–905, Business and Trade Services, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Not-for-profit institutions. The data collected on this form is used by the Service to determine eligibility of an organization to issue certificates to foreign health care workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 4 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 19, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–4353 Filed 2–24–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application for asylum and withholding of removal; form I–589.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 28, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other form of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for asylum and for withholding of removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–589. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection will be used to determine whether an alien applying for asylum and/or withholding of deportation in the United States is classifiable as a refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 936,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 421 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B.Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: February 19, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–4354 Filed 2–24–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Notice of Open Meeting and Agenda

The fifth meeting of the Federal Economic Statistics Advisory Committee will be held on March 21, 2003 in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Federal Economic Statistics Advisory Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members are called upon to analyze issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census.

The meeting will be held in Meeting Rooms 1, 2, and 3 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

9:15 a.m. Opening Session

9:30 a.m.

1. Comparison of expenditure estimates, Consumer Expenditure Survey (CE) and Personal Consumption Expenditures (PCE).
2. Comparison of movements in the CPI and PCE price indexes.

11:30 a.m. Progress Report: Research into the use of hedonics in the CPI.

1:15 p.m. Agency edit procedures.

3:15 p.m. Benefit usage data in the Employment Cost Index (ECI).

4:15 p.m. Priorities for future meetings.

5:00 p.m. Conclude (approximate time).

The meeting is open to the public. Any questions concerning the meeting should be directed to Margaret Johnson, Federal Economic Statistics Advisory Committee, on Area Code (202) 691–5600. Individuals with disabilities, who need special accommodations, should contact Ms. Johnson at least two days prior to the meeting date.

Signed at Washington, DC the 19th day of February 2003.

Kathleen P. Utgoff,

Commissioner of Labor Statistics.

[FR Doc. 03–4401 Filed 2–24–03; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 24, March 3, 10, 17, 24, 31, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 24, 2003

There are no meetings scheduled for the Week of February 24, 2003.

Week of March 3, 2003—Tentative

Monday, March 3, 2003.

10 a.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs—Waste Safety (Public Meeting) (Contact: Claudia Seeling, 301–415–7243).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of March 10, 2003—Tentative

There are no meetings scheduled for the Week of March 10, 2003.

Week of March 17, 2003—Tentative

Thursday, March 20, 2003.

10 a.m.—Briefing on Status of Office of Nuclear Security and Incident

Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1).

2 p.m.—Discussion of Management Issues (Closed—Ex. 2).

Week of March 24, 2003—Tentative

Thursday, March 27, 2003

10 a.m.—Briefing on Status of Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans.

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 31, 2003—Tentative

There are no meetings scheduled for the Week of March 31, 2003.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1615.

* * * * *

Additional Information: By a vote of 5–0 on February 13, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Docket Nos. 50–275–LT, 50–323–LT," be held on February 14, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in received this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 20, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–4532 Filed 2–21–03; 12:55 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Cabot Industrial Properties, L.P., 7.125% Redeemable Notes (due 2003)) File No. 1–14979

February 19, 2003.

Cabot Industrial Properties, L.P., a limited partnership under the laws of the State of Delaware ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 7.125% Redeemable Notes (due 2004) ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

Cabot Industrial Trust, the sole General Partner of the Issuer ("Sole Partner") approved resolutions on February 12, 2003 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Issuer's Security from the Exchange, the Sole Partner states that pursuant to an Offer to Purchase and Consent Solicitation Statement dated January 15, 2003, the Issuer has offered to repurchase all of the outstanding Security and has solicited the consent of the holders of the Security to certain amendments to the indenture under which the Security was issued. As of January 29, 2003, the Issuer had received consents sufficient to amend the indenture and had received valid tenders for 98.13% of the aggregate outstanding principal amount of the Security. The Issuer states that once the offer is successfully consummated, the Issuer expects there to be few or no remaining holders of the Security.

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before March 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–4358 Filed 2–24–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on The Boston Stock Exchange, Inc. (Chiquita Brands International, Inc., Common Stock, $.01 par value, (the "Old Common Stock" in existence through March 19, 2002)) File No. 1–10550

February 19, 2003.

Chiquita Brands International, Inc., a New Jersey corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its $.01 par value, (the "Old Common Stock" in existence through March 19, 2002) ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

On February 13, 2002, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Security from listing on the Exchange. The Board states that the following reasons factored into its decision to withdraw the Security from the BSE: (i) The Security has not traded on the BSE since March 19, 2002, on which date the Issuer emerged from a reorganization under Chapter 11 of the United States bankruptcy laws, and in connection with the reorganization, canceled all of its securities outstanding prior to the effectiveness of the reorganization and issued new common stock (the "New Common Stock") and other securities to certain investors; (ii) the New Common Stock has been listed on the New York Stock Exchange, Inc. ("NYSE") since March 19, 2002; and (iii) the Issuer sought to simplify its operations, and determined to maintain listing of the New Common Stock only on the NYSE. The Issuer notes that the New Common Stock is not listed on the BSE and only trades on the Exchange on an unlisted trading privileges basis.

The Issuer stated in its application that it has met the requirements of the BSE rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before March 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–4359 Filed 2–24–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47374; File No. SR–Amex–2002–102]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC to Create a New Percentage Order Type to be Called "Immediate Execution or Cancel Election"

February 19, 2003.

I. Introduction

On December 10, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 131 to create a new percentage order type to be called Immediate Execution or Cancel Election. The proposed rule change was published for public comment in the **Federal Register** on January 17, 2003.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, Amex Rule 131 provides for three types of percentage orders: straight limit, last sale, and "buy minus/sell plus." The Exchange believes that the application of the election provisions does not meet the interests of some investors placing percentage orders, particularly last sale percentage orders. The Exchange believes that investors rely on last sale percentage orders as a way to trade along with the trend of the market without initiating price changes or otherwise influencing the equilibrium or buying and selling interest. However, executions may not always be able to be effected, as the market trend may continue to move away from the price at which the order may be executed. In addition, elected portions of the last sale percentage order may lag behind movement of the market, which defeats the investor's purpose in entering the order.

In response, the Exchange proposes to amend Amex Rule 131(k) to adopt a percentage order type called Immediate Execution or Cancel Election. Under the terms of the proposal, the elected portion of a percentage order marked Immediate Execution or Cancel Election would be required to be executed immediately, in whole or in part, at the price of the electing transaction, or better. If the elected portion cannot be executed at that price or better, the election would be deemed canceled, and the unexecuted elected portion would revert back to a percentage order, subject to subsequent election or conversion.

For example, where an Immediate Execution or Cancel Election buy percentage order for 1,000 shares at 30.50 is placed with the specialist and the next transaction consists of 500 shares at 30.25, the specialist would elect 500 shares and must immediately execute the order at the price of the electing transaction, 30.25, or better. If there is liquidity sufficient to execute only 300 shares at the price of the electing transaction, 30.25, or better, the specialist would execute 300 shares at that price, the election of the remaining 200 shares would be canceled, and the 200 shares would revert back to an unelected percentage order. If, instead, there is no further market interest to sell at 30.25, and the market moves away from the price of the electing transaction to, for instance, 30.30, the entire election would be canceled,[4] and the unexecuted elected portion would revert back to a percentage order.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's procedures be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[7]

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market by providing additional flexibility to investors entering percentage orders. Specifically, the proposed Immediate Execution or Cancel Election percentage order should allow investors to achieve their investment goals while continuing to limit the specialist's discretion in representing such orders. The Commission believes that requiring the specialist to treat an election as canceled, unless the elected portion can be executed immediately at the price of the electing transaction or better, should ensure that the investor will not be trading ahead of, nor lagging behind, the market when there is insufficient interest to execute the elected portion of

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] *See* Securities Exchange Act Release No. 47177 (January 13, 2003), 68 FR 2592.

[4] The specialist would not execute the order at 30.30, even though such an execution is within the maximum limit of the percentage order (30.50). In this regard, an Immediate Execution or Cancel Election percentage order is treated similar to a last sale percentage order. Telephone conversation between David Fisch, Managing Director, Amex., and Sapna Patel, Attorney, Division of Market Regulation, Commission, on January 10, 2003.
[5] 15 U.S.C. 78f(b).
[6] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[7] 15 U.S.C. 78f(b)(5).

the order at the price of the electing transaction.

The Commission also believes that the proposed approach sets forth adequate objective criteria to guide the specialist's representation of the order. Although the execution of certain percentage orders, particularly percentage orders that have been converted by a specialist, may present issues relating to the proper amount of discretion allowed to the specialist executing such orders, Immediate Execution or Cancel Election percentage orders do not raise such concerns. Specifically, a specialist must execute an Immediate Execution or Cancel Election percentage order at the instructed election price immediately upon the occurrence of a trade at the electing price or better, or treat the transaction as canceled.

In addition, the Commission notes that Amex's proposed Immediate Execution or Cancel Election percentage order is similar to the Immediate Execution or Cancel Election percentage order adopted by the New York Stock Exchange, Inc. ("NYSE").[8]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex-2002–102) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4356 Filed 2–24–03; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* NYSE Rule 13; *see also* Securities Exchange Act Release No. 39837 (April 8, 1998), 63 FR 18244 (April 14, 1998) (order approving NYSE–97–38).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47369; File No. SR–CHX–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

February 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II and III below, which Items have been prepared by the Exchange. The CHX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the "Schedule"), effective February 1, 2003, to modify various technology charges and establish a new connectivity fee. The proposed fee schedule is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Schedule by revising the charges assessed to on-floor member firms for the computer equipment and other technology that the Exchange provides. In some cases, these costs have decreased; in other cases, these costs have increased.[4] The Schedule also contains updated references to the equipment provided by the Exchange and combines, in one list, the previously separated charges for equipment provided to floor brokers and to specialists trading listed and OTC securities.

In addition to the changes to existing charges, the Exchange also proposes to begin charging a fee for the connectivity it provides its on-floor members to three separate networks. In the past, these charges had been partially included in other fees, such as those for monitors and computers. By charging separately for the connectivity provided to member firms, the Exchange can more appropriately pass on connectivity costs directly to the firms that receive specific services.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] For example, the fees for monitors would be substantially decreased, while the Exchange would charge a higher fee for soon-to-be-acquired laser printers.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2003–01 and should be submitted by March 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4360 Filed 2–24–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47370; File No. SR–OC–2003–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Block Trading

February 14, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–7 under the Act,[2] notice is hereby given that on February 6, 2003, OneChicago, LLC ("OneChicago") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in items I, II, and III below, which items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. OneChicago also filed a written certification with the Commodity Futures Trading Commission ("CFTC") under section 5c(c) of the Commodity Exchange Act[3] on February 5, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to reduce the minimum number of contracts that may be negotiated in a block trade from 10,000 contracts to 500 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago is proposing to amend its Block Trade Policy to reduce the minimum number of contracts that may be negotiated in a block trade to 500 contracts. OneChicago rule 417 permits block trade transactions that are "for at least the minimum number of Contracts as will from time to time be specified by the Exchange." OneChicago's Block Trade Policy establishes a minimum number of 10,000 contracts for block trade transactions. The proposed rule change would amend OneChicago's Block Trade Policy to permit a minimum number of 500 contracts for block trade transactions.

OneChicago believes that this change is appropriate for competitive purposes.

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with section 6(b)(5) of the Act[4] in that it promotes competition, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest. The proposed rule change will permit OneChicago to better compete with other security futures markets. OneChicago also believes that the proposed rule change will also promote just and equitable principles of trade and protect investors by providing a prudent level of minimum contracts for block trade transactions for those sophisticated persons and professionals that are permitted to enter into these transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will have a negative impact on competition. In fact, OneChicago believes that the proposed rule change will promote competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and no comments have been received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's Web site

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(1).

(*http://www.sec.gov*). All submissions should refer to File No. SR–OC–2003–02 and should be submitted by March 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4361 Filed 2–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47373; File No. SR–Phlx–2002–76]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Certain Rules Governing Participation in Crossing Transactions Effected on the Exchange

February 19, 2003.

On November 21, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain Phlx Rules governing participation in crossing transactions effected on the Exchange. Specifically, the Phlx proposes to amend Phlx Rule 126, adding Supplementary Material (h) instituting an alternative procedure for crossing certain orders of 10,000 shares or greater (the "Alternative Procedure"). In addition, the Phlx proposes to amend Phlx Rule 229B, to allow specialists and floor brokers on the Exchange's equity floor to take advantage of the Alternative Procedures electronically. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on January 15, 2003.[3] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange is concerned that in a decimal pricing environment a portion of the crossing business and corresponding Exchange volume could evaporate unless members and their customers receive the protection offered by the Alternative Procedures. The Commission believes that the Alternative Procedures strike a balance of interests of those members who are impacted by crossing transactions. Members attempting to execute crosses for their customers may be interested, on behalf of their customers, in obtaining a rapid execution of their order at a single price. Members submitting Updated Quotations may be interested in executing against with a portion of one side or the other of the cross because they see this as a favorable trade. The Commission finds that the proposal appears to be reasonably designed to allow both interests to be fulfilled by streamlining the crossing procedures while retaining the right of members to represent their best bid or offer through their response to the request for an Updated Quotation. The Commission also finds that the proposal protects the priority of agency orders by requiring that in no event shall an agency order in the book, having time priority, remain unexecuted after any other order at its price has been effected.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[8], that the proposed rule change, as amended (SR–Amex–2002–76), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4357 Filed 2–24–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 47140 (January 8, 2003), 68 FR 2098.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Notice No. 4263]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, March 4, 2003, in Room 6319, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. The purpose of this meeting is to prepare for the 46th session of the Subcommittee on Ship Design and Equipment (DE 46) of the International Maritime Organization (IMO) scheduled for March 10–19, 2003, at IMO Headquarters in London, England.

Items of particular interest on the DE 46 agenda are: Revision of resolutions MEPC.60(33) and A.586(14) regarding pollution prevention equipment; interpretations to the 2000 High Speed Craft Code; safety aspects of ballast water management; amendments to SOLAS requirements on electrical installations; amendments to resolution A.744(18) regarding guidelines on the enhanced program of inspections during surveys of bulk carriers and oil tankers; large passenger ship safety; review of fast rescue boat and means of rescue requirements; performance testing and approval standards for SOLAS personal life-saving appliances; protection of pump-rooms of tankers and access to shore-based computer programs for salvage operations; guidelines under MARPOL Annex VI on prevention of air pollution from ships to specifically address on-board NO_x monitoring and recording devices; and numerous matters related to bulk carriers.

IMO works to develop international agreements, guidelines, and standards for the marine industry. In most cases, these form the basis for class society rules and national standards/regulations. Open meetings of the SHC support the U.S. Representatives to the IMO in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. This open meeting serves as an excellent forum for the public. Persons are encouraged to attend to participate in the development of the U.S. positions on issues affecting your maritime industry at DE 46 and to remain abreast of all activities ongoing within the IMO. Members of the public may attend this meeting up to the seating capacity of the room. For further information, please contact Mr. Wayne Lundy, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *wlundy@comdt.uscg.mil*, telephone (202) 267–0024.

Dated: February 11, 2003.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–4362 Filed 2–24–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 4283]

Extension of the Restriction on the Use of United States Passports for Travel To, In or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed on the grounds that (1) armed hostilities then were taking place in Iraq and Kuwait and (2) there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restriction on the grounds that such exemptions were in the national interest. The restriction has been extended for additional one-year periods since then, and was last extended through February 25, 2003.

Conditions in Iraq remain hazardous for Americans. In an effort to compel Iraq to fulfill its obligations under UN Security Council resolutions, the United Nation has initiated an intensive inspections program. Mounting tensions between the Iraqi regime and the international community create an increasingly hazardous atmosphere for Americans in Iraq. If hostilities were to break out, the risk to Americans would be grave. The Iraqi regime has in the past demonstrated a willingness to use violence and intimidation against foreigners to pursue its foreign policy goals, and we believe it remains prepared to do so in the future.

At the outbreak of the Gulf War, the Iraqi regime took private citizens, including Americans, hostage and forced them to serve as "human shields" at strategic sites throughout Iraq. The Iraqi government has long asserted that it cannot ensure the safety of U.S. citizen United Nations humanitarian workers in Iraq, prompting the United Nations to remove them. Iraq regularly fires anti-aircraft artillery and surface-to-air missiles at U.S. and coalition aircraft patrolling the no-fly ones over northern and southern Iraq, and regularly illuminates U.S. and coalition aircraft with target-acquisition radar.

The tactics Iraq uses in the repression of its own civilian population creates a high risk to innocent bystanders. In addition, U.S. citizens and other foreigners working inside Kuwait near the Iraqi borders have been detained by Iraqi authorities in the past and sentenced to lengthy jail terms for alleged illegal entry into the country. Although our interests are represented by the Embassy of Poland in Baghdad, its ability to obtain consular access to detained U.S. citizens and to perform emergency services is constrained. In light of these circumstances, and pursuant to the authorities set forth in 22 U.S.C. 211a, Executive Order 11295, and 22 CFR 51.73, I have determined that Iraq continues to be a country where "there is imminent danger to the public health or physical safety of United States travellers".

Accordingly, United States passports shall continue to be invalid for travel to, in or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. This restriction on the validity of U.S. passports for travel to, in or through Iraq shall not apply to and journalists on assignment there.

The Public Notice shall be effective from the date it is published in the Federal Register and shall expire at midnight on February 25, 2004, unless sooner extended or revoked by Public Notice.

Dated: February 12, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–4105 Filed 2–24–03; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Request for Public Comment Regarding Andean Trade Promotion and Drug Eradication Act (ATPDEA) Beneficiary Countries

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: In compliance with section 203(f) of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201), as amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA), the Office of the United States Trade Representative (USTR) is requesting the views of interested parties on whether the countries designated as ATPDEA beneficiary countries in Presidential Proclamation 7616 of October 31, 2002, are meeting the eligibility criteria provided for in section 204(b)(6)(B) of the ATPA, as amended by the ATPDEA.

DATES: Public comments are due at USTR no later than 5 p.m., March 27, 2002.

ADDRESSES: Submissions by mail or express delivery: Public Reading Room, ATTN: ATPDEA Beneficiary Countries, Office of the United States Trade Representative, 1724 F Street, Room F12P1, NW., Washington, DC 20508. Submissions by electronic mail: *FR0030@ustr.gov*. See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Office of the Americas, Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20508. The telephone number is (202) 395–5190.

SUPPLEMENTARY INFORMATION: Signed into law on August 6, 2002, the Trade Act of 2002 contains, in title XXXI, provisions for enhanced trade benefits for eligible Andean countries. Titled the "Andean Trade Promotion and Drug Eradication Act" (ATPDEA), the ATPDEA renews the Andean Trade Preference Act (ATPA), and amends the ATPA to provide preferential treatment for certain products previously excluded from such treatment. In Presidential Proclamation 7616 of October 31, 2002, the President designated Bolivia, Colombia, Ecuador and Peru as ATPDEA beneficiary countries. Section 203(f) of the ATPA, as amended by the ATPDEA, requires the USTR, not later than April 30, 2003, to submit to Congress a report on the operation of the ATPA. Section 203(f)(2) requires USTR, before submitting such report, to request comments on whether beneficiary countries are meeting the criteria listed in section 204(6)(B). USTR refers interested parties to the **Federal Register** notice published on August 15, 2002 (67 FR 53379), for a full list of section 204(6)(B)'s eligibility criteria.

Submitting Comments: Comments, in English, may be submitted by mail, express delivery service, or e-mail (to *FR0030@ustr.gov*). It is strongly recommended that comments submitted by mail or express delivery service also be sent by e-mail. Persons making submissions by e-mail should use the following subject line: "ATPDEA Beneficiary Countries". Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation

submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Persons submitting written comments by mail or express delivery service should provide 20 copies.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Regina Vargo,

Assistant United States Trade Representative for the Americas.

[FR Doc. 03–4391 Filed 2–24–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14494]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety and security. The meeting will be open to the public.

DATES: NOSAC will meet on Thursday, April 3, 2003, from 9 a.m. to 3 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before March 20, 2003. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before March 20, 2003.

ADDRESSES: NOSAC will meet in room 2415, of the Coast Guard Headquarters Bldg, 2100 Second Street, SW., Washington, DC. Send written material and requests to make oral presentations to Captain M. W. Brown, Executive Director of NOSAC, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Captain M. W. Brown, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–0214, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

National Offshore Safety Advisory Committee. The agenda includes the following:

(1) Report on issues concerning the International Maritime Organization and the International Organization for Standardization.

(2) Report by the Coast Guard on meetings held and plans to develop maritime and offshore security rules.

(3) Report from Offshore Security Subcommittee and discussion of any recommendations to the Coast Guard regarding security regulations.

(4) Report from Liftboat Subcommittee.

(5) Report from Task Force on development and implementation of the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Convention for offshore supply vessels (OSVs).

(6) Progress report from the Subcommittee on Pipeline-Free Anchorages.

(7) MMS presentation on the use of their pipeline database for the Gulf of Mexico.

(8) Revision of 33 CFR subchapter N, Outer Continental Shelf activities.

(9) Status report on Coast Guard/Minerals Management Service Inspection of Fixed Facilities.

(10) Update on Coast Guard Initiatives on Crew Fatigue.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than March 20, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than March 20, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director (*see* **ADDRESSES**) no later than March 20, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, telephone the Executive Director at 202–267–0214 as soon as possible.

Dated: February 13, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environment Protection.

[FR Doc. 03–4409 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (03–06–C–00–SLC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 27, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager, Denver Airports District Office, DEN–ADO, Federal Aviation Administration, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy L. Campbell, Executive Director, at the following address: Salt Lake City Department of Airports, 776 N. Terminal Dr., TUI, Suite 250, Salt Lake City, Utah 84122.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Salt Lake City International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03–06–C–00–SLC to impose and use PFC revenue at Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 12, 2003, the FAA determined that the application, to impose and use the revenue from a PFC, submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 13, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: October 31, 2003.

Proposed charge expiration date: May 31, 2004.

Total requested for use approval: $22,231,100.

Brief description of proposed project: Taxiway H Pavement Reconstruction (H2–H4); Runway 16L/34R Overlay; North Support Tunnel Road Rehabilitation; Taxiway P Extension; Security Improvement Projects; Terminal Unit 1 Bag Carousel Modifications; Terminal Access Road Reconfiguration; Maintenance/Airfield Equipment.

Class or classes of air carrier that the public agency has requested not be required to collect PFC's: all air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Salt Lake City International Airport.

Issued in Renton, Washington on February 12, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–4328 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–04–C–00–ILM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Wilmington International Airport, Wilmington, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Wilmington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 27, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jon W. Rosborough, Airport Director, of the New Hanover County Airport Authority at the following address: 1740 Airport Boulevard, Wilmington, NC 28405.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the New Hanover County Airport Authority under section 158.13 of part 158.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337 (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Wilmington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 12, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by New Hanover Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 21, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–04–C–00–ILM.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2007.

Proposed charge expiration date: April 1, 2018.

Total estimated net PFC revenue: $12,985,648.

Brief description of proposed project(s):

Impose Only:

Install Instrument Landing System.

Impose and Use:

Rehabilitate Terminal; Construct New Customs Facility; Update Master Plan; Runway 35 Approach Clearing; PFC Administrative Costs; Rehabilitate Runway and Taxiway (Runway 6–24, Runway 17–35, Taxiway A, and Taxiway B); Land Acquisition; Construct Airfield Retention Pond; Construct De-icing Retention System.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled/on-demand air taxi operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice

and other documents germane to the application in person at the New Hanover County Airport Authority.

Issued in College Park, Georgia on February 12, 2003.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 03–4326 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Proposed Policy Statement No. ANE–2000–33.87–R3]

Policy for 14 CFR 33.87, Endurance Test

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy for 14 CFR 33.87, endurance test. This proposed policy would revise the current policy to provide guidance for demonstrating a 2-minute gas temperature limit within the 5-minute time limit associated with the takeoff power or thrust rating.

DATES: Comments must be received by April 30, 2003.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Karen Grant, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *karen.m.grant@faa.gov;* telephone; (781) 238–7119; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy statement is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you may request a copy by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.** The FAA invites interested parties to comment on the proposed policy. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT.** The FAA will consider all comments received by the closing date before issuing the final policy.

Background

The proposed policy statement would supersede FAA policy number 2000–33.87–R2, issued April 21, 2000. The intent of this proposed policy is to establish a uniform approach for Aircraft Certification Offices (ACOs) to evaluate and approve a 2-minute gas temperature limit caused by thermal mismatch of engine hardware or flight conditions during acceleration to takeoff power. The FAA has revised this policy to provide guidance for demonstrating a 2-minute gas temperature limit within the 5-minute time limit associated with the takeoff power or thrust rating. The proposed policy would not establish new requirements.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on February 12, 2003.

Francis A. Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–4325 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–117–09]

Guidance for Demonstration of System, Hardware, and Software Development Assurance Levels on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on guidance for demonstration of software, hardware, and software development assurance levels on transport category airplanes.

DATES: Send your comments on or before March 27, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Linh Le, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Safety Management Branch, ANM–117, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1105; fax (425) 227–1100; e-mail: *linh.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, "Comments to Policy Statement No. ANM–03–117–09."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy clarifies FAA certification policy on determination of system development assurance levels, hardware design assurance levels, and software levels for transport category airplanes.

Issued in Renton, Washington, on February 13, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4327 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–12423]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt Mr. Jerry W. Parker from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The FMCSA is deferring its decision regarding Mr. Parker's qualification under the Federal alternative physical qualification standards for loss of limbs until he obtains a prosthetic device, becomes proficient in using the device, and completes the Skill Performance Evaluation (SPE) certification process. Although Mr. Parker is exempted from the vision requirements, he may not operate a commercial vehicle in interstate commerce until he meets the physical qualification standard for the loss of limbs, and this agency issues a SPE certificate.

DATES: February 25, 2003.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemption in this notice, you may contact Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On August 22, 2002, the FMCSA published a notice of applications (67 FR 54525) requesting comments on Mr. Parker's request for an exemption from the Federal standards for vision at 49 CFR 391.41(b)(10) and for the loss of limbs at 49 CFR 391.41(b)(1). Mr. Parker does not meet the vision requirements because of severe vision loss in his right eye. He does not meet the physical qualification requirements for the loss of limbs as he is missing his left arm and is unable to demonstrate power grasp prehension and precision prehension with each upper limb separately. To operate in interstate commerce, Mr. Parker must be granted an exemption from the vision requirements and must be granted a skill performance evaluation (SPE) certificate.

Mr. Parker applied for a waiver from the vision requirements in 1996 under criteria established under the agency's former Vision Waiver Program. The criteria included a provision that vision waiver applicants must be otherwise medically qualified under all other physical qualification requirements at 49 CFR 391.41. When the agency discovered that Mr. Parker's left arm had been amputated at the shoulder, it denied his application for a vision waiver because the agency determined that there was insufficient evidence to determine if someone with both a vision impairment and amputation could safely operate a CMV.

Mr. Parker filed a petition for review with the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit reversed the agency's denial, and remanded the case to the agency with instructions to create a functional capacity test consistent with FMCSA's findings that an individual's driving record is indicative of future performance which will evaluate Mr. Parker's driving skills based upon his individual capabilities (*Jerry W. Parker v. United States Department of Transportation,* 207 F. 3d 359 (6th Cir. 2000)). Mr. Parker's request for regulatory relief is discussed in detail in the August 22, 2002, notice (67 FR 54525).

In response to the Court's decision, the FMCSA has determined that Mr. Parker's request for a vision exemption will be considered on its own merits as outlined within the vision exemption program and the regulations found in 49 CFR part 381. Additionally, the FMCSA will evaluate Mr. Parker's amputation under the alternative physical qualification standards for the loss of limbs found in 49 CFR 391.41(b)(1) and 391.49. In other words, each impairment that would preclude Mr. Parker from complying with the physical qualification standards would be considered and evaluated separately under the agency's process for granting or denying the vision exemption application or SPE certificate.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated Mr. Parker's application for a vision exemption on its merits and made a determination to grant the exemption. The comment period closed on September 23, 2002. Seven comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the exemption.

Although FMCSA is granting Mr. Parker a vision exemption, this does not allow Mr. Parker to drive in interstate commerce until he meets the alternative physical qualification standards for the loss of limbs and the use of a prosthetic device as outlined within 49 CFR 391.41(b)(1) and 391.49 (SPE certificate).

Deferring Decision on Mr. Parker Qualifying Under §§ 391.41(b)(1) and 391.49

With today's decision to grant a vision exemption, Mr. Parker is "otherwise" qualified to drive a commercial motor vehicle, when he meets the alternate physical qualification procedures under the SPE certification program. FMCSA is deferring making a decision regarding Mr. Parker's qualification under the Federal standards for loss of limbs until he obtains a prosthetic device, becomes proficient in using the device, and completes the SPE.

FMCSA has a SPE certification process that allows limb-amputee and limb-impairment CMV drivers to demonstrate, on an individual basis, their ability to operate safely the specific vehicle they intend to drive. Drivers must be able to demonstrate power grasp prehension (the ability to hold, clutch, clasp, or seize the steering wheel firmly) and precision prehension (the ability to effectively turn switches on and off and control other vehicle equipment while performing routine and emergency driver operations) with each upper limb separately (§ 391.49(d)(3)(i)(B)). Over the years, FMCSA has granted more than 2,000 SPE certificates to CMV drivers certifying their capability to operate legally and safely over the nation's highways.

Based on the information provided by Mr. Parker, he does not use a prosthetic device. Mr. Parker is missing his left arm and is unable to demonstrate power grasp prehension and precision prehension with each arm as required under the FMCSRs. Mr. Parker will need to obtain and wear a prosthetic or orthotic device, which enables him to demonstrate power grasp and precision prehension, and become proficient in using the device before we are able to proceed with the SPE certification process. Once Mr. Parker obtains a prosthetic device and can demonstrate power grasp prehension and precision prehension, FMCSA will provide him the opportunity to demonstrate, on an individual basis, his ability to operate safely the specific vehicle he intends to drive. This evaluation will include driving and non-driving safety related activities conducted by an Agency qualified SPE examiner.

Mr. Parker submitted to a road test conducted by a retired State Trooper. This individual is not certified under FMCSA's SPE program to administer an SPE evaluation, and that road test was not administered in accordance with the regulations found at 49 CFR 391.49.

Consequently, the FMCSA cannot accept the results of that test.

The FMCSRs provide a standard set of requirements for all CMV drivers who wish to, or who do operate in interstate commerce. The medical standard in 49 CFR 391.41(b)(1), or the alternative physical qualification standards for the loss of limbs found in 49 CFR 391.49, are based upon identified critical driving tasks associated with specific types of amputation or limb-impairments as outlined by the Krusen Center for Research and Engineering of the Moss Rehabilitation Hospital in Philadelphia, Pennsylvania. These standards were incorporated into the agency's regulations in 1985, and require a properly fitted and appropriate prosthesis, the demonstration of proficient use of the prosthesis, and the requirement of the use of the device while driving. Under existing Federal regulations, States may enforce safety regulations governing intrastate operations that vary from the Federal Motor Carrier Safety Regulations. The Motor Carrier Safety Assistance Program (49 CFR part 350) includes tolerance guidelines governing State oversight of intrastate commerce. Consistent with these requirements, the State of Ohio has adopted intrastate regulations governing commercial driver vision qualifications. Here, the FMCSA must assure all other States, in which Mr. Parker might operate, that he is fully qualified under the Federal regulations. We are unable to reach that conclusion at this time, but we stand ready to immediately proceed with the SPE evaluation process when Mr. Parker obtains a prosthesis and can demonstrate the adequate use of that device in accordance with the alternative physical qualification standards.

Vision and Driving Experience of the Applicant

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Beginning in 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our most recent vision medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (*See* Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supported the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

Mr. Parker falls into this category. He is unable to meet the vision standard in his right eye because of a congenital eye condition known as Coats disease. However, he has corrected vision of 20/20 in his left eye and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. The doctor's opinion is supported by the applicant's possession of valid commercial driver's license (CDL) to operate CMVs in intrastate commerce. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. Mr. Parker satisfied the testing standards for his State of residence. By meeting State licensing requirements, Mr. Parker demonstrated his ability to operate a commercial vehicle in intrastate, with his limited vision, to the satisfaction of his home State.

Possessing a valid CDL, Mr. Parker has been authorized to drive a CMV in intrastate commerce, even though his vision disqualifies him from driving in interstate commerce. He has driven CMVs with his limited vision for 17 years. In the past 3 years, he has had no accidents or convictions for traffic violations in a CMV.

Mr. Parker's qualifications, experience, and medical condition were stated and discussed in detail in the August 22, 2002, notice (67 FR 54525).

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if, by granting the exemption, it is likely that the level of safety will be equivalent to, or greater than, the level that would be achieved absent the issuance of such exemption. Although the FMCSA is granting Mr. Parker a vision exemption, this does not allow Mr. Parker to drive in interstate commerce. This is because he does not meet the medical standard in 49 CFR 391.41(b)(1), or the alternative physical qualification standards for the loss of limbs at 49 CFR 391.49.

To evaluate the effect of the exemption on safety, the FMCSA considered not only the medical report about the applicant's vision, but also his driving record and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA–98–3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (*See* 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors: "such as age, sex, geographic location, mileage driven and conviction history" are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual

experiencing future accidents. (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to Mr. Parker's past 3-year record, we note that he has had no accidents or traffic violations in the last 3 years. He achieved this record of safety while driving with his vision impairment, demonstrating the likelihood that he has adapted his driving skills to accommodate his condition. As his ample driving history with his vision deficiency is a good predictor of future performance, the FMCSA concludes his ability to drive safely can be projected into the future.

We believe Mr. Parker's intrastate driving experience and history provide an adequate basis for predicting his ability to drive safely in interstate commerce with his vision impairment. While not providing the variety of driving conditions and varying climate and geographic conditions of interstate driving, intrastate driving does involve operating on the interstate system and other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

Mr. Parker has operated CMVs safely under those conditions for much longer than 3 years. The FMCSA finds that exempting Mr. Parker from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemption for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to Mr. Parker.

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on Mr. Parker consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That Mr. Parker be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that he is otherwise physically qualified under 49 CFR 391.41; (2) that Mr. Parker provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that Mr. Parker provide a copy of the annual medical certification to his employer for retention in his driver's qualification file, or keep a copy in his driver's qualification file if he is self-employed. He must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received seven comments in this proceeding. The comments were considered and are discussed below.

Of the seven comments, three were in favor of Mr. Parker receiving both exemptions. All three supporting commenters knew Mr. Parker on a personal level and expressed their feelings that Mr. Parker had worked hard and was a good and safe driver.

The other four comments were opposed to Mr. Parker receiving exemptions. One individual wrote that it is not responsible to consider each disability separately without considering them in total to determine an individual driver's ability to safely operate a CMV and that physical qualifications are necessary since the creation of a commercial driving simulator that would evaluate both normal and emergency driving of all types is not realistic.

The FMCSA has determined that Mr. Parker's request for exemptions to the qualification standards will be handled as separate applications for exemptions under existing procedures at 49 CFR part 381, or the SPE program (49 CFR 391.49), as appropriate.

A Driver Trainer/Accident Investigator for a school district wrote in favor of a denial of the exemption request based on the need to strictly enforce regulations for safety on the roads.

The FMCSA's first obligation is to keep our roadways safe. Our safety regulations have a single goal—to reduce the number of CMV crashes and fatalities on the Nation's highways. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from a regulation, however, only if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption."

A medical examiner wrote that more information about the extent of the impairment of the right arm and why Mr. Parker does not wear prosthetics, and a skills performance examination are necessary to make a determination.

The FMCSA has since received information from a psychiatrist regarding the impairment of Mr. Parker's right arm. In a letter dated November 8, 2002, the psychiatrist notes: "that based on my examination today, Jerry has no impairment of the right upper extremity."

Advocates for Highway and Auto Safety (AHAS) expresses opposition to granting an exemption to Mr. Parker because: (1) There is no research on which to base a determination that an applicant with multiple impairments meets the statutory requirement for an exemption; (2) the FMCSA has no basis for granting an exemption for loss of limb to an individual who does not wear a prosthesis and (3) there is no basis for separately considering the two impairments.

AHAS opposes the granting of exemptions to a single applicant from multiple medical and physical requirements in the FMCSRs because there is no foundation in fact or medical research on which a safety determination can be made. AHAS also states that the FMCSA has presented no analysis and has not cited any research to support the granting of exemptions in this circumstance. They point out that in denying the applicant's earlier request for an exemption in 1996, the FMCSA's predecessor agency stated that it lacked evidence to determine if an individual with these impairments could safely operate a CMV. AHAS stated that FMCSA has presented no evidence to contradict the 1996 analysis.

AHAS further states that the requirement for a driver to be capable of demonstrating precision prehension and power grasp prehension in each upper limb is based on medical information. They claim that, in line with this requirement, a driver with an upper limb amputation or impairment must wear a properly fitted and appropriate prosthesis to safely operate a CMV. AHAS then states that there is no record in this notice presenting evidence to refute the prosthesis requirement.

AHAS avers that FMCSA has presented no information or evidence that addresses the potential interaction of the two impairments and its effect while driving a CMV. They claim that the lack of a prosthesis alone is a sufficient basis on which to deny the exemption request. The addition of poor vision is a factor that presents a more complex medical and safety condition.

The agency has no data to refute the requirement that a prosthesis must be used to properly and safely operate a CMV. Therefore, in today's decision the FMCSA has deferred Mr. Parker's request for a SPE certificate until he obtains a properly fitted prosthesis and demonstrates full use of that device in accordance with the alternative physical qualification standards for the loss of limbs. If Mr. Parker fails to obtain a properly fitted prosthesis the FMCSA will not issue the SPE certificate. While the FMCSA has no specific data to address the level of safety that can be achieved when an applicant has two impairments, the agency does have data that identifies the requirements needed to safely operate a CMV in interstate commerce with the vision deficiency in question, and with a properly fitted prosthesis. The FMCSA has determined that it is reasonable to use this known data to grant the vision exemption and defer a decision on the physical qualification issue (loss of limb).

Our response today is also guided by the Sixth Circuit's prior ruling in this matter. We believe that today's decision is consistent with the Court's remand and that the FMCSA is using a functional capacity test that is consistent with our prior findings that an individual's driving record is indicative of future performance and considers Mr. Parker's driving skills based upon his individual capabilities.

The FMCSA believes that its SPE certification process provides the agency with a functional capacity type test to evaluate Mr. Parker's individual capabilities. The SPE certification process allows limb-amputee and limb-impaired CMV drivers with good driving records to demonstrate, on an individual basis, their ability to operate safely the specific vehicle they intend to drive. This process is an assessment of the functional capabilities of the driver as they relate to the driver's ability to perform normal tasks associated with operating a CMV, and is based on the Amputee Driver Functional Matrix Chart (Krusen Study, 1977). The Matrix, formulated on the assumption that a prosthetic device is being worn by the amputee, identifies critical driving tasks associated with specific types of amputation or limb impairment and rates their difficulty given the specific handicap type. The SPE certification specialist reviews the functional capacities of the SPE applicant within the Matrix to focus on potential areas of difficulty, before administering an on-the-road test. Prior to the on-the-road evaluation, the process includes a review of the applicant's driving record for the last 3 years. Nonetheless, the FMCSA will continue to review this process and will examine ways to obtain funding to undertake a more extensive review of individuals with multiple impairments.

Conclusion

After considering the comments to the docket and based upon its evaluation of the vision exemption application, the FMCSA exempts Mr. Parker from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That Mr. Parker be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that he is otherwise physically qualified under 49 CFR 391.41; (2) that Mr. Parker provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that Mr. Parker provide a copy of the annual medical certification to his employer for retention in his driver's qualification file, or keep a copy in his driver's qualification file if he is self-employed. He must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

Although the FMCSA has granted Mr. Parker a vision exemption, this action does not allow Mr. Parker to drive in interstate commerce because he has not met the physical qualification requirements for the loss of limbs. Action on Mr. Parker's SPE certification is deferred.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) Mr. Parker fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, Mr. Parker may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: February 23, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 03–4425 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–12334]

Inquiries Regarding Graduated Commercial Driver's Licensing; Qualifications, Testing and Licensing Standards

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Inquiry and request for comments.

SUMMARY: The FMCSA invites comments responding to a series of questions concerning the need for and potential benefits and costs of implementing a graduated commercial driver's license (GCDL) for commercial motor vehicle (CMV) drivers. This action is required by section 4019 of the Transportation Equity Act for the 21st Century (TEA–21). A graduated driver's license is a system designed to ease beginning drivers into the traffic environment under controlled exposure to progressively more difficult driving experiences. A graduated or provisional licensing system helps novice drivers improve their driving skills and helps them acquire on-the-road experience under less risky conditions by progressing, or graduating, through driver licensing stages before unrestricted licensure. FMCSA wants to determine if this concept can be successfully adapted to novice CMV drivers.

DATES: Send your comments on or before May 27, 2003.

ADDRESSES: You may mail or hand-deliver your comments to the Dockets Management System (DMS), U.S. Department of Transportation, Room Plaza–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Make sure you include the docket number FMCSA–2002–12334 at the beginning of your comments. If you wish to receive confirmation that your comments were received, include a self-addressed, stamped envelope.

You may send your comments electronically to the DMS Web site at: *http://dms.dot.gov;* or you may fax them to (202) 493–2251. All comments are available for public viewing at the Dockets Management facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Management facility is located on the Plaza Level of the Nassif Building at the above address. You may also view comments electronically at the DMS Web site, *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions on-line.

You may download a copy of this notice by using a computer, modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. You can also get it through the **Federal Register** Web page at: *http://www.access.gpo.gov/nara.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, (202) 366–5014, State Programs Division (MC–ESS), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; or e-mail *Robert.Redmond@fmcsa.dot.gov.* Office hours are from 8:15 a.m. to 4:45 p.m. e.t., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, requires that the agency review the adequacy of the current commercial driver's license (CDL) testing process, make improvements and assess the merits of implementing a graduated commercial driver's license (GCDL).

What Is a Graduated Commercial Driver's License

The National Highway Traffic Safety Administration (NHTSA) describes the concept of a graduated driver's licensing as "a system designed to ease beginning drivers into the traffic environment under controlled exposure to progressively more difficult driving experiences. This system helps improve their driving skills and helps them acquire on-the-road experience under less risky conditions by progressing, or graduating, through driver licensing stages before unrestricted licensure." FMCSA wants to determine if this concept can be successfully adapted to novice commercial motor vehicle (CMV) drivers.

Questionnaire Format

The following questions were designed to gauge how commercial vehicle drivers, industry groups, and government agencies involved in vehicle operation, regulation, and enforcement feel about a GCDL.

The FMCSA originally intended to distribute the questionnaire to a limited number of persons representing the affected commercial motor vehicle industry. However, it now has decided to expand participation in this study process to anyone with an interest in this important issue by publishing this notice of inquiry. In addition, the answers to these questions will help determine the best way to implement a GCDL, if the FMCSA finds it beneficial to motor carrier safety and industry efficiency.

This notice incorporates information obtained through a series of focus groups with truck and bus drivers, industry representatives, and enforcement and regulatory agency representatives. The focus groups indicated support for a GCDL as a means for improving commercial vehicle safety. These groups were divided, however, over whether drivers between 18 and 21 years of age should be eligible for a GCDL as a means for attracting new entrants into the field and increasing the pool of qualified drivers. Additional information, including the March 1, 1999 report, "Designing a Graduated Commercial Driver's License, A Report on Focus Group Findings," Final Report, by the Science Applications International Corporation (SAIC), is available in the public docket for viewing and copying through the Docket Management System at: *http://dms.dot.gov.*

The 16 questions address issues considered important to the commercial vehicle community. Commenters may add narrative comments about the need for, benefits of, potential acceptance of, institutional barriers to, and practicality of a graduated commercial driver licensing system and the likely improvements in highway safety, employment opportunities, and transportation efficiency.

After data from the questions are compiled and evaluated, the FMCSA will present its results and conclusions in a final report on the potential benefits, costs and feasibility of implementing a graduated or provisional CDL program. The results will be used to evaluate the potential for pilot testing the graduated commercial driver's license (GCDL) concept.

The Questions

Please organize and identify your comments by question number. General comments on the GCDL concept and areas that you believe were not addressed in the questionnaire are also welcome.

Information About You

1. Please indicate your primary occupation(s) from the following list:
- Truck driver
- Owner-operator
- Motor coach/bus driver
- Fleet manager/owner
- Company safety director
- Transit system administrator
- Commercial driver trainer
- Motor carrier insurance provider
- Risk assessment specialist
- Labor union representative
- Public interest group
- Enforcement officer (motor carrier safety)
- Motor vehicle administrator (State driver's licenses
- Other

2. Do you think a graduated commercial driver's license (GCDL) is needed?

Regardless of your response to question number 2, please complete the rest of the questions so that we will know your preferences if a GCDL were to be pilot tested or implemented nationally.

Training

3. Should issuance of a GCDL be linked to enrollment in a commercial driving training program?

4. Should the curricula of a commercial driver training program meet widely-endorsed standards for a student to be eligible to receive a GCDL while in training?

5. Approximately how many months/years of entry level training and experience should new drivers receive before "graduating" to an unrestricted CDL?

Driving Record

6. Should an applicant's past driving record be considered in issuing a GCDL?

7. How many of each of the following types of motor vehicle accidents and convictions within the past 12 months should cause an applicant to be denied a GCDL?
- Passenger car or light truck motor vehicle accidents
- Traffic violations and citations
- DUI/DWI convictions
- Controlled substances convictions
- Reckless driving convictions
- Other convictions for motor vehicle traffic control violations

8. Should penalties for drivers holding a GCDL, who have at-fault accidents or moving violations, be more severe than those for drivers with an unrestricted CDL?

Driving Experience

9. How many months/years of passenger car or light truck driving

experience should an applicant have before being issued a GCDL?

Restrictions

10. Which of the following restrictions should apply to entry level drivers operating under a GCDL?

- Reduced hours of service
- Limitations on equipment type (*e.g.*, doubles/triples, tank vehicles, motor coaches, etc.)
- Limitations on types of cargo (*e.g.*, hazardous materials, livestock, liquids, etc.)
- Limitations on weather and visibility conditions (*e.g.*, ice, snow, fog, night driving)
- *Limitations on geography or terrain* features (*e.g.*, mountains)
- Limitations on distance or types of highways (*e.g.*, miles per day, interstate highways, etc.)
- Other

11. Should a fully licensed CDL driver be required to accompany and observe a driver with a GCDL? If yes, for how many weeks/months/years?

Age

12. What is the minimum age at which an applicant should be eligible to receive a Graduated CDL?

13. Assuming that training requirements are met, what is the minimum age at which the holder of a graduated CDL should be eligible to graduate to an unrestricted CDL?

Testing

14. How much testing (knowledge and road test) should be given to GCDL holders prior to issuing an unrestricted CDL?

- Single test to "graduate" to an unrestricted CDL
- Periodically while holding a GCDL until training is complete
- Initial test plus re-test at 1 year after receiving initial GCDL
- Other

Other Factors

15. What other factors do you feel must be addressed in the implementation of a graduated CDL program?

Costs

16. What costs would you or your organization anticipate incurring if a GCDL program is implemented?

Issued on: February 19, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–4410 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Voluntary Intermodal Sealift Agreement (VISA).

SUMMARY: The Maritime Administration (MARAD) announces the extension of the Voluntary Intermodal Sealift Agreement (VISA) for another two-year period until February 13, 2005, pursuant to provision of the Defense Production Act of 1950, as amended. The purpose of the VISA is to make intermodal shipping services/systems, including ships, ships' space, intermodal equipment and related management services, available to the Department of Defense as required to support the emergency deployment and sustainment of U.S. military forces. This is to be accomplished through cooperation among the maritime industry, the Department of Transportation and the Department of Defense.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Director, Office of Sealift Support, Room 7304, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–3423, Fax (202) 366–3128.

SUPPLEMENTARY INFORMATION: Section 708 of the Defense Production Act of 1950, as amended, (50 U.S.C. App. 2158), as implemented by regulations of the Federal Emergency Management Agency (44 CFR part 332), "Voluntary agreements for preparedness programs and expansion of production capacity and supply", authorizes the President, upon a finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, "* * * to consult with representatives of industry, business, financing, agriculture, labor and other interests * * *" in order to provide the making of such voluntary agreements. It further authorizes the President to delegate that authority to individuals who are appointed by and with the advice and consent of the Senate, upon the condition that such individuals obtain the prior approval of the Attorney General after the Attorney General's consultation with the Federal Trade Commission. Section 501 of Executive Order 12919, as amended, delegated this authority of the President to the Secretary of Transportation (Secretary), among others. By DOT Order 1900.8, the Secretary delegated to the Maritime Administrator the authority under which the VISA is sponsored. Through advance arrangements in joint planning, it is intended that participants in VISA will provide capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces during war or other national emergency.

The text of the VISA was first published in the **Federal Register** on February 13, 1997, to be effective for a two-year term until February 13, 1999. The VISA document has been extended and subsequently published in the **Federal Register** every two years. The last extension was published on February 20, 2001. The text of the VISA herein is identical to the text previously published in the **Federal Register**.

The text published herein will now be implemented. Copies will be made available to the public upon request.

Text of the Voluntary Intermodal Sealift Agreement

Voluntary Intermodal Sealift Agreement (VISA)

9 December 1996

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Figure 1—VISA Activation Process Diagram

Abbreviations

"AMC"—Air Mobility Command.
"CCA"—Carrier Coordination Agreements.
"CDS"—Construction Differential Subsidy.
"CFR"—Code of Federal Regulations.
"CONOPS"—Concept of Operations.
"DoD"—Department of Defense.
"DOJ"—Department of Justice.
"DOT"—Department of Transportation.
"DPA"—Defense Production Act.
"EUSC"—Effective United States Control.
"FAR"—Federal Acquisition Regulations.
"FEMA"—Federal Emergency Management Agency.
"FTC"—Federal Trade Commission.
"JCS"—Joint Chiefs of Staff.
"JPAG"—Joint Planning Advisory Group.
"MARAD"—Maritime Administration, DOT.
"MSP"—Maritime Security Program.
"MSC"—Military Sealift Command.
"MTMC"—Military Transportation Management Command.
"NCA"—National Command Authorities.
"NDRF"—National Defense Reserve Fleet maintained by MARAD.
"ODS"—Operating Differential Subsidy.
"RRF"—Ready Reserve Force component of the NDRF.
"SecDef"—Secretary of Defense.
"SecTrans"—Secretary of Transportation.
"USCINCTRANS"—Commander in Chief, United States Transportation Command.
"USTRANSCOM"—United States Transportation Command (including its sealift transportation component, Military Sealift Command).
"VISA"—Voluntary Intermodal Sealift Agreement.
"VSA"—Vessel Sharing Agreement.

Definitions

For purposes of this agreement, the following definitions apply:

Administrator—Maritime Administrator.

Agreement—Agreement (proper noun) refers to the Voluntary Intermodal Sealift Agreement (VISA).

Attorney General—Attorney General of the United States.

Broker—A person who arranges for transportation of cargo for a fee.

Carrier Coordination Agreement (CCA)—An agreement between two or more Participants or between Participant and non-Participant carriers to coordinate their services in a Contingency, including agreements to: (i) Charter vessels or portions of the cargo-carrying capacity of vessels; (ii) share cargo handling equipment, chassis, containers and ancillary transportation equipment; (iii) share wharves, warehouse, marshaling yards and other marine terminal facilities; and (iv) coordinate the movement of vessels.

Chairman—FTC—Chairman of the Federal Trade Commission (FTC).

Charter—Any agreement or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel.

Commercial—Transportation service provided for profit by privately owned (not government owned) vessels to a private or government shipper. The type of service may be either common carrier or contract carriage.

Contingency—Includes, but is not limited to a "contingency operation" as defined at 10 App. U.S.C. 101(a)(13), and a JCS-directed, NCA-approved action undertaken with military forces in response to: (i) Natural disasters; (ii) terrorists or subversive activities; or (iii) required military operations, whether or not there is a declaration of war or national emergency.

Contingency contracts—DoD contracts in which Participants implement advance commitments of capacity and services to be provided in the event of a Contingency.

Contract carrier—A for-hire carrier who does not hold out regular service to the general public, but instead contracts, for agreed compensation, with a particular shipper for the carriage of cargo in all or a particular part of a ship for a specified period of time or on a specified voyage or voyages.

Controlling interest—More than a 50-percent interest by stock ownership.

Director—FEMA—Director of Federal Emergency Management Agency (FEMA).

Effective U.S. Control (EUSC)—U.S. citizen-owned ships which are registered in certain open registry countries and which the United States can rely upon for defense in national security emergencies. The term has no legal or other formal significance. U.S. citizen-owned ships registered in Liberia, Panama, Honduras, the Bahamas and the Republic of the Marshall Islands are considered under effective U.S. control. EUSC registries are recognized by the Maritime Administration after consultation with the Department of Defense. (MARAD OPLAN 001A, 17 July 1990)

Enrollment Contract—The document, executed and signed by MSC, and the individual carrier enrolling that carrier into VISA Stage III.

Foreign flag vessel—A vessel registered or documented under the law of a country other than the United States of America.

Intermodal equipment—Containers (including specialized equipment), chassis, trailers, tractors, cranes and other materiel handling equipment, as well as other ancillary items.

Liner—Type of service offered on a definite, advertised schedule and giving relatively frequent sailings at regular intervals between specific ports or ranges.

Liner throughput capacity—The system/intermodal capacity available and committed, used or unused, depending on the system cycle time necessary to move the designated capacity through to destination. Liner throughput capacity shall be calculated as: static capacity (outbound from CONUS) X voyage frequency X.5.

Management services—Management expertise and experience, intermodal terminal management, information resources, and control and tracking systems.

Ocean Common carrier—An entity holding itself out to the general public to provide transportation by water of passengers or cargo for compensation; which assumes responsibility for transportation from port or point of receipt to port or point of destination; and which operates and utilizes a vessel operating on the high seas for all or part of that transportation. (As defined in 46 App. U.S.C. 1702, 801, and 842 regarding international, interstate, and intercoastal commerce respectively.)

Operator—An ocean common carrier or contract carrier that owns or controls or manages vessels by which ocean transportation is provided.

Organic sealift—Ships considered to be under government control or long-term charter—Fast Sealift Ships, Ready Reserve Force and commercial ships under long-term charter to DoD.

Participant—A signatory party to VISA, and otherwise as defined within Section VI of this document.

Person—Includes individuals and corporations, partnerships, and associations existing under or authorized by the laws of the United States or any state, territory, district, or possession thereof, or of a foreign country.

SecTrans—Secretary of Transportation.

Service contract—A contract between a shipper (or a shipper's association) and an ocean common carrier (or

conference) in which the shipper makes a commitment to provide a certain minimum quantity of cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule, as well as a defined service level (such as assured space, transit time, port rotation, or similar service features), as defined in the Shipping Act of 1984. The contract may also specify provisions in the event of nonperformance on the part of either party.

Standby period—The interval between the effective date of a Participant's acceptance into the Agreement and the activation of any stage, and the periods between deactivation of all stages and any later activation of any stage.

U.S. Flag Vessel—A vessel registered or documented under the laws of the United States of America.

USTRANSCOM—The United States Transportation Command and its component commands (AMC, MSC and MTMC).

Vessel Sharing Agreement (VSA) Capacity—Space chartered to a Participant for carriage of cargo, under its commercial contracts, service contracts or in common carriage, aboard vessels shared with another carrier or carriers pursuant to a commercial vessel sharing agreement under which the carriers may compete with each other for the carriage of cargo. In U.S. foreign trades the agreement is filed with the Federal Maritime Commission (FMC) in conformity with the Shipping Act of 1984 and implementing regulations.

Volunteers—Any vessel owner/operator who is an ocean carrier and who offers to make capacity, resources or systems available to support contingency requirements.

Preface

The Administrator, pursuant to the authority contained in section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158)(section 708)(DPA), in cooperation with the Department of Defense (DoD), has developed this Agreement [hereafter called the Voluntary Intermodal Sealift Agreement (VISA)] to provide DoD the commercial sealift and intermodal shipping services/systems necessary to meet national defense Contingency requirements.

USTRANSCOM procures commercial shipping capacity to meet requirements for ships and intermodal shipping services/systems through arrangements with common carriers, with contract carriers and by charter. DoD (through USTRANSCOM) and Department of Transportation (DOT) (through MARAD) maintain and operate a fleet of ships owned by or under charter to the Federal Government to meet the logistic needs of the military services which cannot be met by existing commercial service. Ships of the Ready Reserve Force (RRF) are selectively activated for peacetime military tests and exercises, and to satisfy military operational requirements which cannot be met by commercial shipping in time of war, national emergency, or military Contingency. Foreign-flag shipping is used in accordance with applicable laws, regulations and policies.

The objective of VISA is to provide DoD a coordinated, seamless transition from peacetime to wartime for the acquisition of commercial sealift and intermodal capability to augment DoD's organic sealift capabilities. This Agreement establishes the terms, conditions and general procedures by which persons or parties may become VISA Participants. Through advance joint planning among USTRANSCOM, MARAD and the Participants, Participants may provide predetermined capacity in designated stages to support DoD Contingency requirements.

VISA is designed to create close working relationships among MARAD, USTRANSCOM and Participants through which Contingency needs and the needs of the civil economy can be met by cooperative action. During Contingencies, Participants are afforded maximum flexibility to adjust commercial operations by Carrier Coordination Agreements (CCA), in accordance with applicable law.

Participants will be afforded the first opportunity to meet DoD peacetime and Contingency sealift requirements within applicable law and regulations, to the extent that operational requirements are met. In the event VISA Participants are unable to fully meet Contingency requirements, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants in accordance with applicable law and by ships requisitioned under section 902 of the Merchant Marine Act, 1936 (as amended) (46 App. U.S.C. 1242). In addition, containers and chassis made available under VISA may be supplemented by services and equipment acquired by USTRANSCOM or accessed by the Administrator through the provisions of 46 CFR part 340.

The Secretary of Defense (SecDef) has approved VISA as a sealift readiness program for the purpose of section 909 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1248).

I. Purpose

A. The Administrator has made a determination, in accordance with section 708(c)(1) of the Defense Production Act (DPA) of 1950, that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and, under the provisions of section 708, has certified to the Attorney General that a standby agreement for utilization of intermodal shipping services/systems is necessary for the national defense. The Attorney General, in consultation with the Chairman of the Federal Trade Commission, has issued a finding that dry cargo shipping capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having less anticompetitive effects or without a voluntary agreement.

B. The purpose of VISA is to provide a responsive transition from peace to Contingency operations through pre-coordinated agreements for sealift capacity to support DoD Contingency requirements. VISA establishes procedures for the commitment of intermodal shipping services/systems to satisfy such requirements. VISA will change from standby to active status upon activation by appropriate authority of any of the Stages, as described in Section V.

C. It is intended that VISA promote and facilitate DoD's use of existing commercial transportation resources and integrated intermodal transportation systems, in a manner which minimizes disruption to commercial operations, whenever possible.

D. Participants' capacity which may be committed pursuant to this Agreement may include all intermodal shipping services/systems and all ship types, including container, partial container, container/bulk, container/roll-on/roll-off, roll-on/roll-off (of all varieties), breakbulk ships, tug and barge combinations, and barge carrier (LASH, SeaBee).

II. Authorities

A. MARAD

1. Sections 101 and 708 of the DPA, as amended (50 App. U.S.C. 2158); Executive Order 12919, 59 FR 29525, June 7, 1994; Executive Order 12148, 3 CFR 1979 Comp., p. 412, as amended; 44 CFR part 332; DOT Order 1900.8; 46 CFR part 340.

2. Section 501 of Executive Order 12919, as amended, delegated the authority of the President under section 708 to SecTrans, among others. By DOT Order 1900.8, SecTrans delegated to the Administrator the authority under which VISA is sponsored.

B. USTRANSCOM

1. Section 113 and Chapter 6 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating USCINCTRANS to provide air, land, and sea transportation for the DoD.

III. General

A. Concept

1. VISA provides for the staged, time-phased availability of Participants' shipping services/systems to meet NCA-directed DoD Contingency requirements in the most demanding defense oriented sealift emergencies and for less demanding defense oriented situations through prenegotiated Contingency contracts between the government and Participants (see Figure 1). Such arrangements will be jointly planned with MARAD, USTRANSCOM, and Participants in peacetime to allow effective, and efficient and best valued use of commercial sealift capacity, provide DoD assured Contingency access, and minimize commercial disruption, whenever possible.

a. Stages I and II provide for prenegotiated contracts between the DoD and Participants to provide sealift capacity against all projected DoD Contingency requirements. These agreements will be executed in accordance with approved DoD contracting methodologies.

b. Stage III will provide for additional capacity to the DoD when Stages I and II commitments or volunteered capacity are insufficient to meet Contingency requirements, and adequate shipping services from non-Participants are not available through established DoD contracting practices or U.S. Government treaty agreements.

2. Activation will be in accordance with procedures outlined in Section V of this Agreement.

3. Following is the prioritized order for utilization of commercial sealift capacity to meet DoD peacetime and Contingency requirements:

a. U.S. Flag vessel capacity operated by a Participant and U.S. Flag Vessel Sharing Agreement (VSA) capacity of a Participant.

b. U.S. Flag vessel capacity operated by a non-Participant.

c. Combination U.S./foreign flag vessel capacity operated by a Participant and combination U.S./foreign flag VSA capacity of a Participant.

d. Combination U.S./foreign flag vessel capacity operated by a non-Participant.

e. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a Participant.

f. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a non-Participant.

g. Foreign-owned or operated foreign flag vessel capacity of a non-Participant.

4. Under Section VI.F. of this Agreement, Participants may implement CCAs to fulfill their contractual commitments to meet VISA requirements.

B. Responsibilities

1. The SecDef, through USTRANSCOM, shall:

a. Define time-phased requirements for Contingency sealift capacity and resources required in Stages I, II and III to augment DoD sealift resources.

b. Keep MARAD and Participants apprised of Contingency sealift capacity required and resources committed to Stages I and II.

c. Obtain Contingency sealift capacity through the implementation of specific prenegotiated DoD Contingency contracts with Participants.

d. Notify the Administrator upon activation of any stage of VISA.

e. Co-chair (with MARAD) the Joint Planning Advisory Group (JPAG).

f. Establish procedures, in accordance with applicable law and regulation, providing Participants with necessary determinations for use of foreign flag vessels to replace an equivalent U.S. Flag capacity to transport a Participant's normal peacetime DoD cargo, when Participant's U.S. Flag assets are removed from regular service to meet VISA Contingency requirements.

g. Provide a reasonable time to permit an orderly return of a Participant's vessel(s) to its regular schedule and termination of its foreign flag capacity arrangements as determined through coordination between DoD and the Participants.

h. Review and endorse Participants' requests to MARAD for use of foreign flag replacement capacity for non-DoD government cargo, when U.S. Flag capacity is required to meet Contingency requirements.

2. The SecTrans, through MARAD, shall:

a. Review the amount of sealift resources committed in DoD contracts to Stages I and II and notify USTRANSCOM if a particular level of VISA commitment will have serious adverse impact on the commercial sealift industry's ability to provide essential services. MARAD's analysis shall be based on the consideration that all VISA Stage I and II capacity committed will be activated. This notification will occur on an annual basis upon USCINCTRANS' acceptance of VISA commitments from the Participants. If so advised by MARAD, USTRANSCOM will adjust the size of the stages or provide MARAD with justification for maintaining the size of those stages. USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse, national economic impact.

b. Coordinate with DOJ for the expedited approval of CCAs.

c. Upon request by USCINCTRANS and approval by SecDef to activate Stage III, allocate sealift capacity and intermodal assets to meet DoD Contingency requirements. DoD shall have priority consideration in any allocation situation.

d. Establish procedures, pursuant to section 653(d) of the Maritime Security Act (MSA), for determinations regarding the equivalency and duration of the use of foreign flag vessels to replace U.S. Flag vessel capacity to transport the cargo of a Participant which has entered into an operating agreement under section 652 of the MSA and whose U.S. Flag vessel capacity has been removed from regular service to meet VISA contingency requirements. Such foreign flag vessels shall be eligible to transport cargo subject to the Cargo Preference Act of 1904 (10 U.S.C. 2631), P.R. 17 (46 App. U.S.C. 1241–1), and Pub. L. 664 (46 App. U.S.C. 1241(b)). However, any procedures regarding the use of such foreign flag vessels to transport cargo subject to the Cargo Preference Act of 1904 must have the concurrence of USTRANSCOM before it becomes effective.

e. Co-chair (with USTRANSCOM) the JPAG.

f. Seek necessary Jones Act waivers as required. To the extent feasible, participants with Jones Act vessels or vessel capacity will use CCAs or other arrangements to protect their ability to maintain services for their commercial customers and to fulfill their commercial peacetime commitments with U.S. Flag vessels. In situations where the activation of this Agreement deprives a Participant of all or a portion of its Jones Act vessels or vessel capacity and, at the same time, creates a general shortage of Jones Act vessel(s) or vessel capacity on the market, the Administrator may request that the Secretary of the Treasury grant a temporary waiver of the provisions of the Jones Act to permit a Participant to charter or otherwise utilize non-Jones Act vessel(s) or vessel capacity, with priority consideration recommended for U.S. crewed vessel(s) or vessel capacity.

The vessel(s) or vessel capacity for which such waivers are requested will be approximately equal to the Jones Act vessel(s) or vessel capacity chartered or under contract to the DoD, and any waiver that may be granted will be effective for the period that the Jones Act vessel(s) or vessel capacity is on charter or under contract to the DoD plus a reasonable time for termination of the replacement charters as determined by the Administrator.

C. Termination of Charters, Leases and Other Contractual Arrangements

1. USTRANSCOM will notify the Administrator as soon as possible of the prospective termination of charters, leases, management service contracts or other contractual arrangements made by the DoD under this Agreement.

2. In the event of general requisitioning of ships under 46 App. U.S.C. 1242, the Administrator shall consider commitments made with the DoD under this Agreement.

D. Modification/Amendment of This Agreement

1. The Attorney General may modify this Agreement, in writing, after consultation with the Chairman-FTC, SecTrans, through his representative MARAD, and SecDef, through his representative USCINCTRANS. Although Participants may withdraw from this Agreement pursuant to Section VI.D, they remain subject to VISA as amended or modified until such withdrawal.

2. The Administrator, USCINCTRANS and Participants may modify this Agreement at any time by mutual agreement, but only in writing with the approval of the Attorney General and the Chairman-FTC.

3. Participants may propose amendments to this Agreement at any time.

E. Administrative Expenses—Administrative and Out-of-Pocket Expenses Incurred by a Participant Shall Be Borne Solely by the Participant

F. Record Keeping

1. MARAD has primary responsibility for maintaining carrier VISA application records in connection with this Agreement. Records will be maintained in accordance with MARAD Regulations. Once a carrier is selected as a VISA Participant, a copy of the VISA application form will be forwarded to USTRANSCOM.

2. In accordance with 44 CFR 332.2(c), MARAD is responsible for the making and record maintenance of a full and verbatim transcript of each JPAG meeting. MARAD shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman—FTC, the Director—FEMA, any other party or repository required by law and to Participants upon their request.

3. USTRANSCOM shall be the official custodian of records related to the contracts to be used under this Agreement, to include specific information on enrollment of a Participant's capacity in VISA.

4. In accordance with 44 CFR 332.3(d), a Participant shall maintain for five (5) years all minutes of meetings, transcripts, records, documents and other data, including any communications with other Participants or with any other member of the industry or their representatives, related to the administration, including planning related to and implementation of Stage activations of this Agreement. Each Participant agrees to make such records available to the Administrator, USCINCTRANS, the Attorney General, and the Chairman—FTC for inspection and copying at reasonable times and upon reasonable notice. Any record maintained by MARAD or USTRANSCOM pursuant to paragraphs 1, 2, or 3 of this subsection shall be available for public inspection and copying unless exempted on the grounds specified in 5 U.S.C 552(b) or identified as privileged and confidential information in accordance with section 708(e).

G. MARAD Reporting Requirements—MARAD Shall Report to the Director-FEMA, as Required, on the Status and Use of This Agreement

IV. Joint Planning Advisory Group

A. The JPAG provides USTRANSCOM, MARAD and VISA Participants a planning forum to:

1. Analyze DoD Contingency sealift/intermodal service and resource requirements.

2. Identify commercial sealift capacity that may be used to meet DoD requirements, related to Contingencies and, as requested by USTRANSCOM, exercises and special movements.

3. Develop and recommend Concepts of Operations (CONOPS) to meet DoD-approved Contingency requirements and, as requested by USTRANSCOM, exercises and special movements.

B. The JPAG will be co-chaired by MARAD and USTRANSCOM, and will convene as jointly determined by the co-chairs.

C. The JPAG will consist of designated representatives from MARAD, USTRANSCOM, each Participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs as necessary to meet JPAG requirements. Representatives will provide technical advice and support to ensure maximum coordination, efficiency and effectiveness in the use of Participants' resources. All Participants will be invited to all open JPAG meetings. For selected JPAG meetings, attendance may be limited to designated Participants to meet specific operational requirements.

1. The co-chairs may establish working groups within JPAG. Participants may be assigned to working groups as necessary to develop specific CONOPS.

2. Each working group will be co-chaired by representatives designated by MARAD and USTRANSCOM.

D. The JPAG will not be used for contract negotiations and/or contract discussions between carriers and the DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures.

E. The JPAG co-chairs shall:

1. Notify the Attorney General, the Chairman—FTC, Participants and the maritime labor representative of the time, place and nature of each JPAG meeting.

2. Provide for publication in the **Federal Register** of a notice of the time, place and nature of each JPAG meeting. If the meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. If a meeting is closed, a **Federal Register** notice will be published within ten (10) days after the meeting and will include the reasons for closing the meeting.

3. Establish the agenda for each JPAG meeting and be responsible for adherence to the agenda.

4. Provide for a full and complete transcript or other record of each meeting and provide one copy each of transcript or other record to the Attorney General, the Chairman-FTC, and to Participants, upon request.

F. Security Measures—The co-chairs will develop and coordinate appropriate security measures so that Contingency planning information can be shared with Participants to enable them to plan their commitments.

V. Activation of VISA Contingency Provisions

A. General

VISA may be activated at the request of USCINCTRANS, with approval of SecDef, as needed to support Contingency operations. Activating voluntary commitments of capacity to support such operations will be in accordance with prenegotiated Contingency contracts between DoD and Participants.

B. Notification of Activation

1. USCINCTRANS will notify the Administrator of the activation of Stages I, II, and III.

2. The Administrator shall notify the Attorney General and the Chairman-FTC when it has been determined by DoD that activation of any Stage of VISA is necessary to meet DoD Contingency requirements.

C. Voluntary Capacity

1. Throughout the activation of any Stages of this Agreement, DoD may utilize voluntary commitment of sealift capacity or systems.

2. Requests for volunteer capacity will be extended simultaneously to both Participants and other carriers. First priority for utilization will be given to Participants who have signed Stage I and/or II contracts and are capable of meeting the operational requirements. Participants providing voluntary capacity may request USTRANSCOM to activate their prenegotiated Contingency contracts; to the maximum extent possible, USTRANSCOM, where appropriate, shall support such requests. Volunteered capacity will be credited against Participants' staged commitments, in the event such stages are subsequently activated.

3. In the event Participants are unable to fully meet Contingency requirements, or do not voluntarily offer to provide the required capacity, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants.

4. When voluntary capacity does not meet DoD Contingency requirements, DoD will activate the VISA stages as necessary.

D. Stage I

1. Stage I will be activated in whole or in part by USCINCTRANS, with approval of SecDef, when voluntary capacity commitments are insufficient to meet DoD Contingency requirements. USCINCTRANS will notify the Administrator upon activation.

2. USTRANSCOM will implement Stage I Contingency contracts as needed to meet operational requirements.

E. Stage II

1. Stage II will be activated, in whole or in part, when Contingency requirements exceed the capability of Stage I and/or voluntarily committed resources.

2. Stage II will be activated by USCINCTRANS, with approval of SecDef, following the same procedures discussed in paragraph D above.

F. Stage III

1. Stage III will be activated, in whole or in part, when Contingency requirements exceed the capability of Stages I and II, and other shipping services are not available. This stage involves DoD use of capacity and vessels operated by Participants which will be furnished to DoD when required in accordance with this Agreement. The capacity and vessels are allocated by MARAD on behalf of SecTrans to USCINCTRANS.

2. Stage III will be activated by USCINCTRANS upon approval by SecDef. Upon activation, DoD SecDef will request SecTrans to allocate sealift capacity based on DoD requirements, in accordance with Title 1 of DPA, to meet the Contingency requirement. All Participants' capacity committed to VISA is subject to use during Stage III.

3. Upon allocation of sealift assets by SecTrans, through its designated representative MARAD, USTRANSCOM will negotiate and execute Contingency contracts with Participants, using pre-approved rate methodologies as established jointly by SecTrans and SecDef in fulfillment of section 653 of the Maritime Security Act of 1996. Until execution of such contract, the Participant agrees that the assets remain subject to the provisions of section 902 of the Merchant Marine Act of 1936, Title 46 App. U.S.C. 1242.

4. Simultaneously with activation of Stage III, the DoD Sealift Readiness Program (SRP) will be activated for those carriers still under obligation to that program.

G. Partial Activation

As used in this Section V, activation "in part" of any Stage under this Agreement shall mean one of the following:

1. Activation of only a portion of the committed capacity of some, but not all, of the Participants in any Stage that is activated; or

2. Activation of the entire committed capacity of some, but not all, of the Participants in any Stage that is activated; or

3. Activation of only a portion of the entire committed capacity of all of the Participants in any Stage that is activated.

VI. Terms and Conditions

A. Participation

1. Any U.S. Flag vessel operator organized under the laws of a State of the United States, or the District of Columbia, may become a "Participant" in this Agreement by submitting an executed copy of the form referenced in Section VII, and by entering into a VISA Enrollment Contract with DoD which establishes a legal obligation to perform and which specifies payment or payment methodology for all services rendered.

2. The term "Participant" includes the entity described in VI.A.1 above, and all United States subsidiaries and affiliates of the entity which own, operate, charter or lease ships and intermodal equipment in the regular course of their business and in which the entity holds a controlling interest.

3. Upon request of the entity executing the form referenced in Section VII, the term "Participant" may include the controlled non-domestic subsidiaries and affiliates of such entity signing this Agreement, provided that the Administrator, in coordination with USCINCTRANS, grants specific approval for their inclusion.

4. Any entity receiving payments under the Maritime Security Program (MSP), pursuant to the Maritime Security Act of 1996 (MSA) (Pub. L. 104–239), shall become a "Participant" with respect to all vessels enrolled in MSP at all times until the date the MSP operating agreement would have terminated according to its original terms. The MSP operator shall be enrolled in VISA as a Stage III Participant, at a minimum. Such participation will satisfy the requirement for an MSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in section 653 of the MSA.

5. A Participant shall be subject only to the provisions of this Agreement and not to the provisions of the SRP.

6. MARAD shall publish periodically in the **Federal Register** a list of Participants.

B. Agreement of Participant

1. Each Participant agrees to provide commercial sealift and/or intermodal shipping services/systems in accordance with DoD Contingency contracts. USTRANSCOM will review and approve each Participant's commitment to ensure it meets DoD Contingency requirements. A Participant's capacity commitment to Stages I and II will be one of the considerations in determining the level of DoD peacetime contracts awarded with the exception of Jones Act capacity (as discussed in paragraph 4 below).

2. DoD may also enter into Contingency contracts, not linked to peacetime contract commitments, with

Participants, as required to meet Stage I and II requirements.

3. Commitment of Participants' resources to VISA is as follows:

a. *Stage III:* A carrier desiring to participate in DoD peacetime contracts/traffic must commit no less than 50% of its total U.S. Flag capacity into Stage III. Carriers receiving DOT payments under the MSP, or carriers subject to section 909 of Merchant Marine Act of 1936, as amended, that are not enrolled in the SRP will have vessels receiving such assistance enrolled in Stage III. Participants' capacity under charter to DoD will be considered "organic" to DoD, and does not count towards the Participant's Contingency commitment during the period of the charter. Participants utilized under Stage III activation will be compensated based upon a DoD pre-approved rate methodology.

b. *Stages I and II:* DoD will annually develop and publish minimum commitment requirements for Stages I and II. Normally, the awarding of a long-term (*i.e.*, one year or longer) DoD contract, exclusive of charters, will include the annual predesignated minimum commitment to Stages I and/or II. Participants desiring to bid on DoD peacetime contracts will be required to provide commitment levels to meet DoD-established Stage I and/or II minimums on an annual basis. Participants may gain additional consideration for peacetime contract cargo allocation awards by committing capacity to Stages I and II beyond the specified minimums. If the Participant is awarded a contract reflecting such a commitment, that commitment shall become the actual amount of a Participant's U.S. Flag capacity commitment to Stages I and II. A Participant's Stage III U.S. Flag capacity commitment shall represent its total minimum VISA commitment. That Participant's Stage I and II capacity commitments as well as any volunteer capacity contribution by Participant are portions of Participant's total VISA commitment. Participants activated during Stages I and II will be compensated in accordance with prenegotiated Contingency contracts.

4. Participants exclusively operating vessels engaged in domestic trades will be required to commit 50% of that capacity to Stage III. Such Participants will not be required to commit capacity to Stages I and II as a consideration of domestic peacetime traffic and/or contract award. However, such Participants may voluntarily agree to commit capacity to Stages I and/or II.

5. The Participant owning, operating, or controlling an activated ship or ship capacity will provide intermodal equipment and management services needed to utilize the ship and equipment at not less than the Participant's normal efficiency, in accordance with the prenegotiated Contingency contracts implementing this Agreement.

C. Effective Date and Duration of Participation

1. Participation in this Agreement is effective upon execution by MARAD of the submitted form referenced in section VII, and approval by USTRANSCOM by execution of an Enrollment Contract, for Stage III, at a minimum.

2. VISA participation remains in effect until the Participant terminates the Agreement in accordance with paragraph D below, or termination of the Agreement in accordance with 44 CFR 332.4. Notwithstanding termination of VISA or participation in VISA, obligations pursuant to executed DoD peacetime contracts shall remain in effect for the term of such contracts and are subject to all terms and conditions thereof.

D. Participant Termination of VISA

1. Except as provided in paragraph 2 below, a Participant may terminate its participation in VISA upon written notice to the Administrator. Such termination shall become effective 30 days after written notice is received, unless obligations incurred under VISA by virtue of activation of any Contingency contract cannot be fulfilled prior to the termination date, in which case the Participant shall be required to complete the performance of such obligations. Voluntary termination by a carrier of its VISA participation shall not act to terminate or otherwise mitigate any separate contractual commitment entered into with DoD.

2. A Participant having an MSP operating agreement with SecTrans shall not withdraw from this Agreement at any time during the original term of the MSP operating agreement.

3. A Participant's withdrawal, or termination of this Agreement, will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA section 708 for the fulfillment of obligations incurred prior to withdrawal or termination.

4. A Participant otherwise subject to the DoD SRP that voluntarily withdraws from this Agreement will become subject again to the DoD SRP.

E. Rules and Regulations

Each Participant acknowledges and agrees to abide by all provisions of DPA section 708, and regulations related thereto which are promulgated by the Secretary, the Attorney General, and the Chairman-FTC. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR part 332. 46 CFR part 340 establishes procedures for assigning the priority for use and the allocation of shipping services, containers and chassis. The JPAG will inform Participants of new and amended rules and regulations as they are issued in accordance with law and administrative due process. Although Participants may withdraw from VISA, they remain subject to all authorized rules and regulations while in Participant status.

F. Carrier Coordination Agreements (CCA)

1. When any Stage of VISA is activated or when DoD has requested volunteer capacity pursuant to Section V.B. of VISA, Participants may implement approved CCAs to meet the needs of the DoD and to minimize the disruption of their services to the civil economy.

2. A CCA for which the parties seek the benefit of section 708(j) of the DPA shall be identified as such and shall be submitted to the Administrator for approval and certification in accordance with section 708(f)(1)(A) of the DPA. Upon approval and certification, the Administrator shall transmit the Agreement to the Attorney General for a finding in accordance with section 708(f)(1)(B) of the DPA. Parties to approved CCAs may avail themselves of the antitrust defenses set forth in section 708(j) of the DPA. Nothing in VISA precludes Participants from engaging in lawful conduct (including carrier coordination activities) that lies outside the scope of an approved Carrier Coordination Agreement; but antitrust defenses will not be available pursuant to section 708(j) of the DPA for such conduct.

3. Participants may seek approval for CCAs at any time.

G. Enrollment of Capacity (Ships and Equipment)

1. A list identifying the ships/capacity and intermodal equipment committed by a Participant to each Stage of VISA will be prepared by the Participant and submitted to USTRANSCOM within seven days after a carrier has become a Participant. USTRANSCOM will maintain a record of all such commitments. Participants will notify USTRANSCOM of any changes not later than seven days prior to the change.

2. USTRANSCOM will provide a copy of each Participant's VISA commitment data and all changes to MARAD.

3. Information which a Participant identifies as privileged or business confidential/proprietary data shall be withheld from public disclosure in accordance with section 708(h)(3) and section 705(e) of the DPA, 5 App. U.S.C. 552(b), and 44 CFR part 332.

4. Enrolled ships are required to comply with 46 CFR part 307, Establishment of Mandatory Position Reporting System for Vessels.

H. War Risk Insurance

1. Where commercial war risk insurance is not available on reasonable terms and conditions, DOT shall provide non-premium government war risk insurance, subject to the provisions of section 1205 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1285(a)).

2. Pursuant to 46 CFR 308.1(c), the Administrator (or DOT) will find each ship enrolled or utilized under this agreement eligible for U.S. Government war risk insurance.

I. Antitrust Defense

1. Under the provisions of DPA section 708, each carrier shall have available as a defense to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out this Agreement, that such act was taken in the course of developing or carrying out this Agreement and that the Participant complied with the provisions of DPA section 708 and any regulation thereunder, and acted in accordance with the terms of this Agreement.

2. This defense shall not be available to the Participant for any action occurring after termination of this Agreement. This defense shall not be available upon the modification of this Agreement with respect to any subsequent action that is beyond the scope of the modified text of this Agreement, except that no such modification shall be accomplished in a way that will deprive the Participant of antitrust defense for the fulfillment of obligations incurred.

3. This defense shall be available only if and to the extent that the Participant asserting it demonstrates that the action, which includes a discussion or agreement, was within the scope of this Agreement.

4. The person asserting the defense bears the burden of proof.

5. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws.

6. As appropriate, the Administrator, on behalf of SecTrans, and DoD will support agreements filed by Participants with the Federal Maritime Commission that are related to the standby or Contingency implementation of VISA.

J. Breach of Contract Defense

Under the provisions of DPA section 708, in any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken by a Participant during an emergency (including action taken in imminent anticipation of an emergency) to carry out this Agreement. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

K. Vessel Sharing Agreements (VSA)

1. VISA allows Participants the use of a VSA to utilize non-Participant U.S. Flag or foreign-owned and operated foreign flag vessel capacity as a substitute for VISA Contingency capability provided:

a. The foreign flag capacity is utilized in accordance with cargo preference laws and regulations.

b. The use of a VSA, either currently in use or a new proposal, as a substitution to meet DoD Contingency requirements is agreed upon by USTRANSCOM and MARAD.

c. The Participant carrier demonstrates adequate control over the offered VSA capacity during the period of utilization.

d. Service requirements are satisfied.

e. Participant is responsible to DoD for the carriage or services contracted for. Though VSA capacity may be utilized to fulfill a Contingency commitment, a Participant's U.S. Flag VSA capacity in another Participant's vessel shall not act in a manner to increase a Participant's capacity commitment to VISA.

2. Participants will apprise MARAD and USTRANSCOM in advance of any change in a VSA of which it is a member, if such changes reduce the availability of Participant capacity provided for in any approved and accepted Contingency Concept of Operations.

3. Participants will not act as a broker for DoD cargo unless requested by USTRANSCOM.

VII. Application and Agreement

The Administrator, in coordination with USCINCTRANS has adopted the form on page 31 ("Application to Participate in the Voluntary Intermodal Sealift Agreement") on which intermodal ship operators may apply to become a Participant in this Agreement. The form incorporates, by reference, the terms of this Agreement.

United States of America, Department of Transportation, Maritime Administration

Application To Participate in the Voluntary Intermodal Sealift Agreement

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled "Voluntary Intermodal Sealift Agreement." The text of said Agreement is published in _____**Federal Register** _____, _____, 19_____. This Agreement is authorized under section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158). Regulations governing this Agreement appear at 44 CFR part 332 and are reflected at 49 CFR subtitle A.

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Intermodal Sealift Agreement published in _____**Federal Register** _____, _____, 19_____, as though said text were physically recited herein.

The Applicant, as a Participant, agrees to comply with the provisions of section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR part 332 and as reflected at 49 CFR subtitle A, and the terms of the Voluntary Intermodal Sealift Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make specifically enrolled vessels or capacity, intermodal equipment and management of intermodal transportation systems available for use by the Department of Defense and to other Participants as discussed in this Agreement and the subsequent Department of Defense Voluntary Intermodal Sealift Agreement Enrollment Contract for the purpose of meeting national defense requirement.

Attest:

_____

(Corporate Secretary)

(CORPORATE SEAL)

Effective Date: _____

(Secretary)

(SEAL)

_____

(Applicant-Corporate Name)

_____

(Signature)

_____

(Position Title)

United States of America, Department of Transportation, Maritime Administration

By:
Maritime Administrator

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 03–4039 Filed 2–24–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 14, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 27, 2003 to be assured of consideration.

Alcohol, Tobacco, Tax and Trade Bureau (ATTTB)

OMB Number: 1513–0087 (formerly 1512–0482).

Reporting Requirement Number: ATF Reporting Requirement 5100/1.

Type of Review: Extension.

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

Description: Bottlers and importers of alcohol beverages must adhere to numerous performance standards for statements made on labels and in advertisements of alcohol beverages. These performance standards include minimum mandatory labeling and advertising statements.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 6,060.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Jacqueline White, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–4424 Filed 2–24–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[TTB Notice No. 3; TTB O 1130.2]

Delegation Order—Delegation of the Administrator's Authorities in 27 CFR Parts 19, 40, 71, 72 and 194

To: All Bureau Employees and All Interested Parties

1. *Purpose.* This order delegates certain authorities of the Administrator, Tax and Trade Bureau (TTB) in 27 CFR parts 19, 40, 71, 72 and 194 to subordinate TTB officers and prescribes the subordinate TTB officers with whom persons file documents.

2. *Background:*

a. On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002). The Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in the Department of Justice, and the Tax and Trade Bureau (TTB) in the Department of the Treasury. This division of the former agency and division of its responsibilities into two new agencies took place 60 days after enactment of the Act on January 24, 2003.

b. The Homeland Security Act of 2002 provides that the newly established Tax and Trade Bureau be headed by an Administrator. It also provides that the authorities, functions, personnel and assets of the Bureau of Alcohol, Tobacco and Firearms that are not transferred to the Department of Justice shall be retained within the Department of the Treasury and administered by the Tax and Trade Bureau.

c. Pursuant to the duties and powers established by the Homeland Security Act of 2002, the Administrator TTB is authorized to administer and enforce Chapters 51 (relating to distilled spirits, wine and beer) and 52 (relating to tobacco products and cigarette papers and tubes) of title 26, U.S.C., the Internal Revenue Code of 1986, as amended, sections 4181 and 4182 (relating to the excise tax on firearms and ammunition) of the Internal Revenue Code of 1986, and title 27, United States Code (relating to alcohol).

d. In addition, Treasury Order No. 120–1 (Revised) dated January 24, 2003 established the Tax and Trade Bureau within the Department of the Treasury and designated it as the Alcohol and Tobacco Tax and Trade Bureau (TTB). It directed that the head of TTB is the Administrator who shall exercise the authorities, perform the functions, and carry out the duties of the Secretary in the administration and enforcement of the laws cited in paragraph 2c above.

e. Treasury Order No. 120–1 also grants the Administrator of TTB all authorities delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms in effect on January 23, 2003, that are related to the administration and enforcement of the laws specified in paragraph 2c. In addition, it grants the Administrator full authority, powers, and duties to administer the affairs of and to perform the functions of TTB, including, without limitation, all management and administrative authorities and responsibilities similarly granted and assigned to Bureau Heads or Heads of Bureaus in Treasury Orders and Treasury Directives.

f. Treasury Order No. 120–1 provides that all regulations adopted on or before January 23, 2003 for the administration and enforcement of the laws cited in paragraph 2c above shall continue in effect until superseded or revised.

g. 27 CFR parts 19, 40, 71, 72 and 194 contain numerous references to ATF titles that are no longer valid since the transfer of responsibility for administration and enforcement of these parts of 27 CFR from the Bureau of Alcohol, Tobacco and Firearms (ATF) to the Alcohol and Tobacco Tax and Trade Bureau (TTB). Therefore, this delegation order identifies those officers within TTB that have replaced the ATF officers named in the current 27 CFR parts 19, 40, 71, 72 and 194. This order also delegates certain authorities to subordinate TTB officers. TTB will publish a final rule in the near future to reflect these changes.

3. *Effective Date.* This order is effective January 24, 2003.

4. *Ratification.* In addition to section 1512(a) of the Homeland Security Act of 2002, this order affirms and ratifies any action taken that is consistent with this order.

5. *Delegations:* a. Under the authority vested in the Administrator, Alcohol and Tobacco Tax and Trade Bureau, by the Homeland Security Act of 2002, Treasury Department Order No. 120–01 (Revised) dated January 24, 2003, and by 26 CFR 301.7701–9, this TTB order delegates certain authorities prescribed in 27 CFR parts 19, 40, 71, 72 and 194 to TTB officers as follows:

Any reference in 27 CFR parts 19, 40, 72 or 194 to authorities of the following officials:	Now refers to the following officials:
Director, Bureau of Alcohol, Tobacco and Firearms	Administrator, Alcohol and Tobacco Tax and Trade Bureau.
Delegate of the Director	Delegate of the Administrator.
ATF Officer	Specialist, National Revenue Center or Investigator * or Auditor. *
ATF Officer or Agent	Specialist, National Revenue Center or Investigator * or Auditor. *
Regional Director (Compliance)	Chief, National Revenue Center or Chief, Trade Investigations Division or Chief, Tax Audit Division.
Director of Industry Operations	Chief, National Revenue Center.
Area Supervisor	Unit Supervisor, National Revenue Center or Supervisor Trade Investigations Group * or Supervisor Tax Audit Group. *
Any employee of the Bureau of Alcohol, Tobacco & Firearms	Any employee of the Alcohol and Tobacco Tax and Trade Bureau.
Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms	Chief Counsel of the Alcohol and Tobacco Tax and Trade Bureau.
Associate Director (Compliance Operations)	Chief, National Revenue Center.

* Field officials are not able to receive materials by mail—all mail should be sent to the National Revenue Center official until further notice.

Any reference in 27 CFR part 71 to authorities of the following officials:	Now refers to the following officials:
Director, Bureau of Alcohol, Tobacco and Firearms	Administrator, Alcohol and Tobacco Tax and Trade Bureau.
Director of Industry Operations	Deputy Assistant Administrator, Field Operations.
Regional Director (Compliance)	Deputy Assistant Administrator, Field Operations.
District Director	Deputy Assistant Administrator, Field Operations.
Employee of the Bureau of Alcohol, Tobacco & Firearms	Employee of the Alcohol and Tobacco Tax and Trade Bureau.
Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms	Chief Counsel of the Alcohol and Tobacco Tax and Trade Bureau.

b. Certain authorities of the Administrator are further redelegated to the following officials:

The authority in part 19 to:	Is redelegated to:
Prescribe forms	Assistant Chief, Regulations and Procedures Division.
Approve alternate methods and procedures	Chief, Regulations and Procedures Division sets precedents, Chief, National Revenue Center acts on similar requests.
Approve emergency variations	Chief, National Revenue Center or Supervisor, Trade Investigations Group * or Supervisor, Tax Audit Group. *
Approve pilot operations	Chief, Regulations and Procedures Division.
Approve experimental operations	Chief, National Revenue Center.
Approve other businesses on distilled spirits plant premises	Chief, National Revenue Center.
Approve withdrawal of spirits by the United States and disposition of excess spirits.	Chief, National Revenue Center.
Approve distinctive liquor bottles	Chief, Advertising, Labeling and Formulation Division.
Approve experimental or research operations	Chief, National Revenue Center or Chief, Regulations and Procedures Division.
Approve other gauging device or method	Chief, Regulations and Procedures Division.
Approve securing devices	Chief, National Revenue Center or Chief, Regulations and Procedures Division.
Approve continuity of premises	Chief, National Revenue Center or Chief, Regulations and Procedures Division.
Approve adoption of formulas	Unit Supervisor, National Revenue Center.
Approve alternate lock specifications	Chief, Regulations and Procedures Division.
Approve spirits content of chemicals removed	Chief, Regulations and Procedures Division.
Waive information on labels for export	Chief, Regulations and Procedures Division.
Approve conversion of SDA to other formulas	Chief, Regulations and Procedures Division.
Approve alternate containers	Chief, Regulations and Procedures Division.
Disapprove bottles not constituting approved containers	Specialist, Advertising, Labeling and Formulation Division.
Require statements on labels	Specialist, Advertising, Labeling and Formulation Division.
Approve modified forms	Chief, Regulations and Procedures Division.
Approve materials to render spirits unfit for beverage use	Chief, Nonbeverage Products Section.
To take final action on TTB matters within the Commonwealth of Puerto Rico.	Chief, Puerto Rico Operations.

* Field officials are not able to receive materials by mail—all mail should be sent to the National Revenue Center official until further notice.

The authority in part 40 to:	Is redelegated to:
Prescribe forms	Assistant Chief, Regulations and Procedures Division.

The authority in part 40 to:	Is redelegated to:
Approve alternate methods and procedures	Chief, Regulations and Procedures Division sets precedents, Chief, National Revenue Center acts on similar requests.
Approve emergency variations	Chief, National Revenue Center or Supervisor, Trade Investigations Group* or Supervisor, Tax Audit Group.*
Approve other businesses within factory	Chief, National Revenue Center
Approve alternative package markings	Chief, Regulations and Procedures Division.

* Field officials are not able to receive materials by mail—all mail should be sent to the National Revenue Center official until further notice.

This authority in parts 71, 72 and 194:	Is redelegated to:
Prescribe forms	Assistant Chief, Regulations and Procedures Division.
Delegate of the Administrator in part 72	Chief, National Revenue Center.
Administrator in 194.229	Chief, Regulations and Procedures Division.

6. *Redelegation.* The authorities delegated in this order may not be redelegated.

7. *Questions.* If you have a question about this order, contact the Regulations and Procedures Division (202–927–8210).

Dated: February 13, 2003.

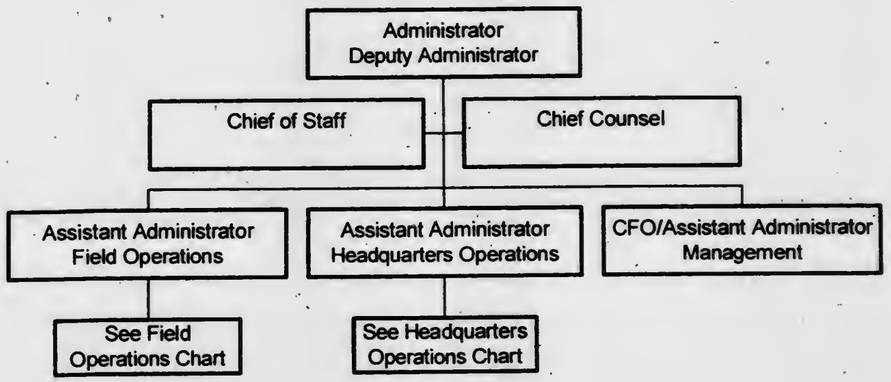
Arthur J. Libertucci,

Administrator.

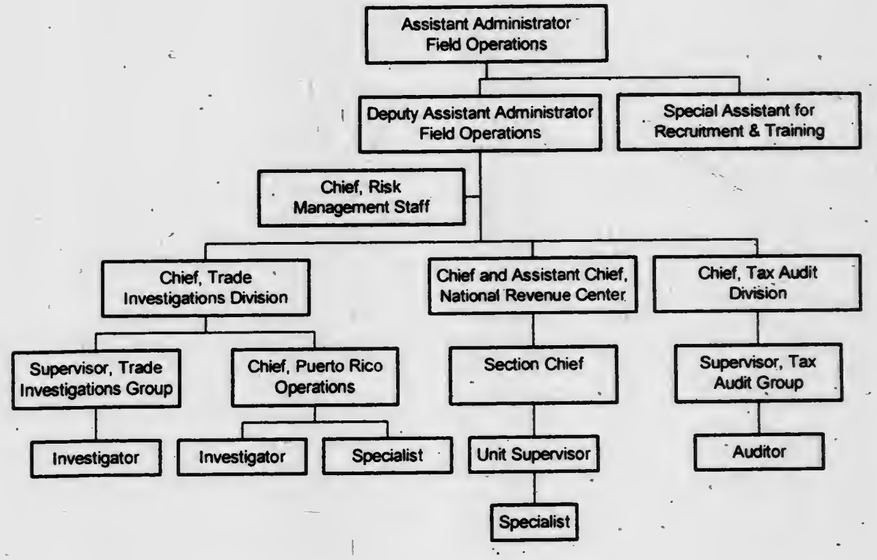
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Department of the Treasury

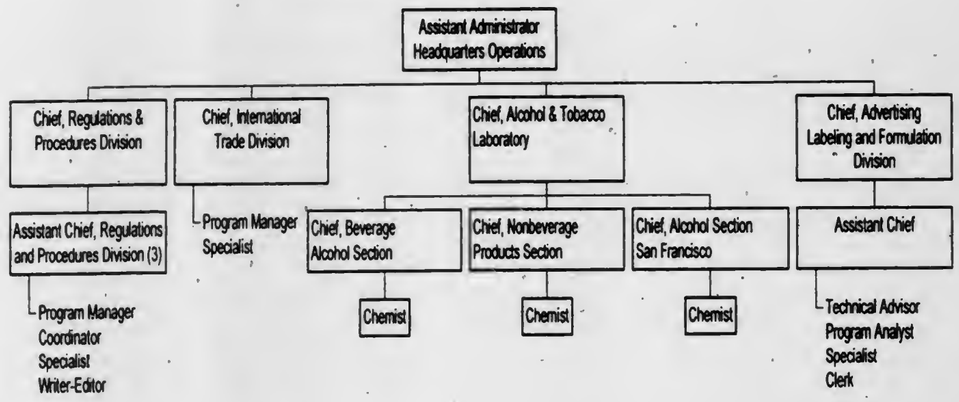
Alcohol and Tobacco Tax and Trade Bureau



Field Operations



Headquarters Operations



Organizational charts as of 1/24/2003.

Charts are subject to change.

[FR Doc. 03–4421 Filed 2–24–03; 8:45 am]
BILLING CODE 4810–31–C

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of Changes to the Eligibility Requirements and Application Process for Participation in Remote Location Filing Prototype Two

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces two changes to Remote Location Filing Prototype Two. One change provides that line release entries are no longer permitted under this prototype. The other change simplifies the application process for participation in the prototype to a one-stop procedure that will consolidate information collection and expedite application processing at Customs Headquarters. Current RLF filers do not need to re-apply to Customs Headquarters to continue participation in RLF Prototype Two, nor will they be required to submit additional port applications.

DATES: The changes to Customs second prototype of the Remote Location Filing program will go into effect February 25, 2003. Comments concerning these changes, or any other aspect of RLF, may be submitted to Customs at any time. Applications for participation in RLF Prototype Two will be accepted throughout the duration of the test program.

ADDRESSES: Written comments and applications to participate in the prototype should be addressed to the Remote Filing Team, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.2–B, Washington, DC 20229. Comments may also be submitted via e-mail to *Lisa.k.santana@customs.treas.gov.*

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Eloisa Calafell (305) 869–2780 or Jackie Jegels (301) 893–6717. For operational or policy issues: Lisa K. Santana at (202) 927–4342 or via e-mail at *Lisa.k.santana@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

RLF Authorized by the National Customs Automation Program (NCAP)

Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of Title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial imports. Within subpart B, section 631 of the Act added section 414 (19 U.S.C. 1414), which provides for Remote Location Filing (RLF), to the Tariff Act of 1930, as amended. RLF permits an eligible NCAP participant to elect to file electronically a formal or informal consumption entry with Customs from a remote location within the Customs territory of the United States other than the port of arrival, or from within the port of arrival with a requested designated examination site outside the port of arrival.

RLF Prototype Two

In accordance with § 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), Customs has developed and tested two RLF prototypes.

RLF Prototype Two commenced on January 1, 1997. *See* document published in the **Federal Register** (61 FR 60749) on November 29, 1996. On December 7, 1998, Customs announced in the **Federal Register** (63 FR 67511) that Prototype Two would remain in effect until Customs concluded the prototype by notice in the **Federal Register**. On July 6, 2001, Customs announced in the **Federal Register** (66 FR 35693) changes to the eligibility requirements for participation in RLF Prototype Two which mandated that customs brokers hold a national permit. That notice also announced that the provisions of part 111 of the Customs Regulations (which set forth the regulations providing for the licensing of and granting of permits to customs brokers) were applicable to customs brokers participating in the RLF prototype. The July 6, 2001, document noted that all of the other RLF Prototype Two terms and conditions set forth in the December 7, 1998 document remained in effect.

Changes to RLF Prototype Two

Since the inception of RLF Prototype Two, there have been significant changes made to the RLF application process, as well as to the prototype's eligibility requirements. As a result, much of the information contained in previous **Federal Register** notices regarding the application process, participant selection, and eligibility requirements needs to be updated or is now obsolete. For these reasons, this notice contains a comprehensive and updated list of current RLF eligibility requirements and a description of the new one-step application process. Therefore, information contained in this notice regarding these subject areas supercedes the information set forth in the sections entitled "Eligibility Criteria," "Prototype Two Applications," and "Basis for Participant Selection" in the above-referenced **Federal Register** notices. All of the other RLF Prototype Two terms and conditions set forth in the above-referenced **Federal Register** notices remain in effect, except those explicitly changed by this document and described below.

I. No Line Release Entries Permitted Under RLF Prototype Two

RLF participants may not file using paper invoices or line release for RLF transactions. This prohibition is necessary to reflect the fact that RLF participants must possess a national permit and line release programs require a local permit.

II. RLF Prototype Two Eligibility Criteria

To be eligible to participate in RLF Prototype Two, a filer must have proven capability to provide electronically, on an entry-by-entry basis, the following: entry; entry summary; invoice information using the Electronic Invoice Program (EIP); and the payment of duties, fees, and taxes through the Automated Clearinghouse (ACH). *See* 19 U.S.C. 1414(a)(2). EIP includes modules of the Automated Broker Interface (ABI) that allow entry filers to electronically transmit detailed entry data and includes Automated Invoice Interface (AII) and Electronic Data Interchange for Administration, Commerce and Transportation (EDIFACT). In addition, the following requirements and conditions apply:

1. RLF participants must be operational on the ABI (*see* 19 CFR part 143, subpart A);
2. RLF participants must be operational on the ACH 30 days before applying for RLF (*see* 19 CFR 24.25);
3. RLF participants must be operational on the EIP prior to applying for RLF;
4. RLF participants must possess a National Permit (*see* 19 CFR 111.19(f));
5. The remote Customs location(s) to which a prospective RLF participant wishes to transmit RLF information must have received EIP/RLF training.

A current listing of RLF-trained locations, as well as other RLF information and updates, is available on the Customs Electronic Bulletin Board (CEBB), the Customs Administrative Message System (CAMS), and on the Customs Internet Web site at *http://www.customs.gov;*

6. RLF participants must maintain a continuous bond which meets or exceeds the national guidelines for bond sufficiency;
7. Only entry type 01 (consumption) and entry type 11 (informal) will be accepted for RLF;
8. Cargo release must be certified from the entry summary transaction data (EI);
9. RLF participants may not file using paper invoices or line release for RLF transactions;

(**Note:** EIP participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border using paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS), in accordance with 19 CFR 142.21(a).)

10. Cargo that has been moved in-bond is not eligible for RLF but may be eligible for clearance under EIP; and
11. RLF participants must use other government agency (OGA) interfaces where available. It is the filer's responsibility to ensure that all OGA requirements are met for each entry filed under RLF. If an electronic interface is not available, contact your local RLF coordinator for possible alternative filing options.

In addition to the eligibility requirements described above, all RLF participants are reminded of their responsibility to provide accurate information to Customs, and of their responsibility to adhere to all laws, regulations, rules, restrictions and eligibility criteria that pertain to this program. Any RLF participant who violates any of the above conditions will be subject to all penalties available under the law including possible suspension from the prototype.

Participants are further reminded that participation in RLF Prototype Two is not confidential. Lists of approved participants will be made available to the public.

RLF Prototype Two Application Process

Applications for participation in RLF Prototype Two will be accepted on an ongoing basis and should be submitted to the Remote Filing Team, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.2B, Washington, DC 20229. Applications must contain the following information:

1. Filer name, point of contact, address, filer code and IRS #;
2. Site(s) from which RLF transmission originates (include port code);
3. Name of port(s) (including port code) to which RLF electronic filings will be transmitted; and
4. A sample of 5 entries filed using the Automated Invoice Interface (AII)/EIP, of varying complexity, that include: multiple lines, multiple invoices and an adjustment to the entered value (Delivered Duty Paid (DDP) and Cost, Insurance and Freight (CIF)).

After an application has been reviewed and evaluated, the applicant will receive an approval or denial letter from the Remote Filing Team, Customs Headquarters. An applicant will be permitted to begin filing entries to a remote location upon receipt of a letter from Customs granting approval to participate in RLF. If an approved RLF participant seeks to add additional ports or importers, they must notify their ABI client representative or the Headquarters coordinator for profile updates.

Dated: February 13, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–4407 Filed 2–24–03; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center (FLETC)

Meeting Cancellation

AGENCY: Federal Law Enforcement Training Center, Department of the Treasury.

ACTION: Cancellation of notice.

SUMMARY: This cancels previously announced **Federal Register** Notice published on February 4, 2003 (Volume 68, Number 23) [Notices][Page 5701]. The Advisory Committee to the National

Center for State and Local Law Enforcement Training (National Center) at the Federal Law Enforcement Training Center has cancelled its meeting previously scheduled for February 26, 2003.

ADDRESSES: Federal Law Enforcement Training Center, Building 67, Glynco, GA 31524.

FOR FURTHER INFORMATION CONTACT: Bruce P. Brown, Director, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524, 912–267–2322.

Dated: February 19, 2003.

Bruce P. Brown,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 03–4481 Filed 2–21–03; 11:22 am]

BILLING CODE 4810–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Restaurant and Bar Tip Reporting Open Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This is an open meeting to discuss tip reporting and tax responsibilities of employees and employers in restaurants and drinking establishments.

DATES: This meeting will be held on Wednesday, April 2, 2003. Notification of intent to attend the meeting or make a presentation at the meeting should be made with Christine Williams or Sandy Cyze at 630–493–5812 by March 14, 2003. Notification of intent should include your name, phone number, e-mail address and organization represented. If you leave this information for Ms. Williams or Ms. Cyze in a voice-mail message, please spell out all names.

ADDRESSES: This meeting will be held at the Treasury Executive Institute, 801 9th St., NW., Washington, DC. The meeting will be open to the public and will be in a room that accommodates approximately 50 people. Limited seating space and building security requirements necessitate reservations, so please call as early as possible.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, or have a copy of the agenda faxed to you, call Christine Williams or Sandy Cyze at 630–493–5812. A draft of the agenda will be e-mailed to registered participants during the week prior to the meeting.

SUPPLEMENTARY INFORMATION: The IRS welcomes suggestions that will simplify the taxpayer burden associated with tip reporting by restaurants and their employees. The IRS is also interested in current tip practice and the electronic collection of data. Written comments can be mailed to the IRS, Taxpayer Education and Communications Area Director, 2001 Butterfield Rd., Suite 1301, Downers Grove, IL 60515 or via e-mail to *leonard.n.hall@irs.gov*. Comments are due by March 14, 2003.

Background: In 1994, the IRS met with industry representatives and developed several voluntary programs to encourage accurate tip reporting. Despite these existing programs, a significant amount of tip income remains unreported. In June 2002, the Supreme Court affirmed in the case of United States vs. Fior D'Italia that the IRS can impose employer-only assessments of unpaid employment taxes on tips. While the Court sustained the IRS' authority to perform these audits, the IRS is interested in continuing its long-held successful dialogue with the food and beverage industry. The IRS is seeking taxpayer input to help increase participation and compliance in existing tip programs.

Summarized Agenda for Meeting Wednesday, April 2, 2003

9 Meeting Opens
11:30 Break for Lunch
1 Meeting Resumes
5 Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Tip Rates-Industry Experience
(2) Industry Experience with Existing Programs
(3) Suggestions for Improving Process/Reducing Burden
(4) Incentives for Participation
(5) Electronic Recordkeeping Processes

Note: Last minute changes to these topics are possible and could prevent advance notice.

Dated: February 13, 2003.

Robert L. Hunt,

Director, Small Business/Self-Employed Division, Taxpayer Education and Communications.

[FR Doc. 03–4417 Filed 2–24–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, March 21, 2003, from 11:00 am EST to 12:30 pm EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 19, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–4415 Filed 2–24–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, March 26, 2003, from 12 noon EST to 1 pm EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: IRS Notices.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 19, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–4416 Filed 2–24–03; 8:45 am]

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–129–2]

Mexican Fruit Fly; Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations to allow the use of irradiation as a treatment for fruits listed as regulated articles. This action will provide an additional option for qualifying those regulated articles for movement from regulated areas.

DATES: This interim rule was effective February 20, 2003. We will consider all comments that we receive on or before April 28, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–129–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–129–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–129–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION: The Mexican fruit fly *(Anastrepha ludens)* is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas.

We are amending the Mexican fruit fly regulations to include irradiation as a treatment for those fruits that are listed as regulated articles in § 301.64–2(a) of the regulations. Without irradiation, the only treatments for fruit made available by the regulations have been cold treatment, fumigation, or high-temperature forced air, and those treatments have been made available for only some of the fruits listed as regulated articles. The addition of irradiation provides a treatment option for use on those regulated articles for which treatments have been available, as well as for those regulated articles for which no treatments have been listed in the regulations.

To accommodate the inclusion of irradiation as an authorized treatment under the Mexican fruit fly regulations, we are amending § 301.64–10, "Treatments," by adding the irradiation provisions as a new paragraph (g).

The provisions we are adding to the Mexican fruit fly regulations for the use of irradiation as a treatment are, for all practical purposes, the same as those provided in § 301.78–10(c) of "Subpart-Mediterranean Fruit Fly" (7 CFR 301.78 through 318.78–10), which provides for the use of irradiation as a treatment for nuts, berries, fruits, and vegetables grown in areas quarantined because of the Mediterranean fruit fly *(Ceratitis capitata)*. The irradiation provisions we have added to the Mexican fruit fly regulations differ from those of § 301.78–10(c) in only two substantive respects: (1) The pest (*A. ludens* rather than *C. capitata*) and commodities for which irradiation is an approved treatment and (2) the prescribed irradiation dose rate. These two differences are discussed below.

With respect to the first difference cited above-the commodities for which irradiation is an authorized treatment-the irradiation provisions we are adding to the Mexican fruit fly regulations will provide for the use of irradiation to treat several commodities that are listed as regulated articles in the Mexican fruit fly regulations that are not also listed as regulated articles under the Mediterranean fruit fly regulations. Those additional commodities are as follows:

Cherimoya (*Annona cherimola*)
Custard apple (*Annona reticulata*)
Mamey (*Mammea americana*)
Sapota, Sapodilla (*Sapotaceae*)
Sargentia, yellow chapote (*Sargentia greggii*)
Spanish plum, purple mombin or Ciruela (*Spondias spp.*)

As noted in APHIS' policy statement regarding the application of irradiation to phytosanitary problems (published in the **Federal Register** on May 15, 1996, 61 FR 24433–24439, Docket No. 95–088–1), the U.S. Department of Agriculture's (USDA's) Agricultural Research Service (ARS) conducted exhaustive research to determine commodity-generic irradiation dose rates that will provide an acceptable level of quarantine security with regard to certain pests. Given that a commodity-generic dose rate has been established for Mexican fruit fly, we believe that it is appropriate to provide the prescribed irradiation treatment as an option for growers of any of the fruits listed as regulated articles in § 301.64–2(a) who wish to obtain certification for the interstate movement of their commodities on the basis of treatment.

The second difference cited above pertains to the prescribed irradiation dose rate. The commodity-generic dose rate established by ARS for Mexican fruit fly is 150 Gray (15 krad), so we have established 150 Gray as the prescribed dose rate in the Mexican fruit fly regulations, rather than the 225 Gray (22.5 krad) prescribed in § 301.78–10(c) of the Mediterranean fruit fly regulations.

The remaining provisions of § 301.78–10(c) of the Mediterranean fruit fly regulations—*i.e.*, those provisions regarding approved facilities, treatment monitoring, packaging, dosimetry systems, certification based on treatment, recordkeeping, requests for approval and inspection of facilities, denial and withdrawal of approval, and the USDA's non-responsibility for loss or damage resulting from treatment—have been carried over to § 301.64–10(g) of the Mexican fruit fly regulations and serve the same purpose as in § 301.78–10(c).

Emergency Action

This rulemaking is necessary on an emergency basis to provide an additional option for qualifying regulated articles for movement from regulated areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Mexican fruit fly regulations by allowing the use of irradiation as a treatment for fruits listed as regulated articles. This action will provide an additional option for qualifying those regulated articles for movement from regulated areas.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0215 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 02–129–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 02–129–2 and send your comments within 60 days of publication of this rule.

This interim rule allows for the use of irradiation as a treatment for those fruits that are listed as regulated articles in § 301.64–2(a) of the regulations. This action provides an additional option for qualifying regulated articles for movement from regulated areas. Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under § 301.64–6. The compliance agreement is a written agreement between a person engaged in those previously mentioned activities and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions set forth in § 301.64–6. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .6399 hours per response.

Respondents: Growers and State plant regulatory officials.

Estimated annual number of respondents: 722.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 722.

Estimated total annual burden on respondents: 462 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.64–10, a new paragraph (g) is added to read as follows:

§ 301.64–10 Treatments.

* * * * *

(g) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this paragraph, is approved as a treatment for any fruit listed as a regulated article in § 301.64–2(a).

(1) *Approved facility.* The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must:

(i) Be capable of administering a minimum absorbed ionizing radiation dose of 150 Gray (15 krad) to the fruit;[8]

(ii) Be constructed so as to provide physically separate locations for treated and untreated fruit, except that fruit traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons;

(iii) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 301.64–6; and

(iv) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

(2) *Treatment monitoring.* Treatment must be carried out under the monitoring of an inspector. This monitoring must include inspection of treatment records and unannounced inspection visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.[9]

(3) *Packaging.* Fruits and vegetables that are treated within a quarantined area must be packaged in the following manner:

(i) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.[10]

(ii) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(A) With polyethylene sheet wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(4) *Dosage.* The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 150 Gray (15 krad).[11]

(5) *Dosimetry systems.* (i) Dosimetry mapping must indicate the dose needed to ensure the fruit will receive the minimum dose prescribed.

(ii) Absorbed dose must be measured using an accurate dosimetry system that ensures that the absorbed dose meets or exceeds 150 Gray (15 krad).

(iii) When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from American Society for Testing and Materials (ASTM) standards.[12]

(6) *Records.* Records or invoices for each treated lot must be made available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). An irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(7) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (g)(1) of this section.

(8) *Denial and withdrawal of approval.* (i) The Administrator will withdraw the approval of any irradiation treatment facility when the irradiation processor requests in writing the withdrawal of approval.

(ii) The Administrator will deny or withdraw approval of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral

[8] The maximum absorbed ionizing radiation dose and the irradiation of food are regulated by the Food and Drug Administration under 21 CFR part 179.

[9] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

[10] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565.

[11] See footnote 8.

[12] Designation ISO/ASTM 51261–2002(E), "Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing," American Society for Testing and Materials, *Annual Book of ASTM Standards.*

or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(9) *Department not responsible for damage.* This treatment is approved to assure quarantine security against Mediterranean fruit fly. From the literature available, the fruits authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control number 0579–0215.)

Done in Washington, DC, this 20th day of February 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–4526 Filed 2–25–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

28 CFR Part 65

[INS No. 2241–02; AG Order No. 2659–2003]

RIN 1115–AG84

Abbreviation or Waiver of Training for State or Local Law Enforcement Officers Authorized To Enforce Immigration Law During a Mass Influx of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends Department of Justice regulations to authorize the Attorney General to waive normally required training requirements in the event that the number of State or local law enforcement officers available to respond in an expeditious manner to urgent and quickly developing events during a declared mass influx of aliens is insufficient to protect public safety, public health, or national security. This action is necessary to provide the Attorney General with the tools and flexibility to address any unanticipated situations that might occur during a mass influx of aliens.

DATES: *Effective date:* This interim rule is effective February 26, 2003.

Comment date. Written comments must be submitted on or before April 28, 2003.

ADDRESSES: Please submit written comments to the Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2241–02 on your correspondence. You may also submit comments electronically at *insregs@usdoj.gov*. When submitting comments electronically you must include "INS No. 2241–02" in the subject box to ensure that the comments are properly routed to the appropriate office for review. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ronald W. Dodson, Supervisory Special Agent, Director, Evaluation and Support Branch, Headquarters Office of Investigations, Immigration and Naturalization Service, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone (202) 514–2998.

SUPPLEMENTARY INFORMATION: Section 372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, Div. C., 110 Stat. 3009–646, amended section 103(a) of the Immigration and Nationality Act ("Act"), 8 U.S.C. 1103(a), to permit the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by the Act or implementing regulations upon officers or employees of the Immigration and Naturalization Service ("Service") during a period of a mass influx of aliens. Under section 103(a)(8) of the Act, the Attorney General may authorize State or local law enforcement officers to perform such powers, privileges, or duties only if the Attorney General determines that "an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response." 8 U.S.C. 1103(a)(8).

The Department of Justice has published a final rule implementing this authority. See 67 FR 48354 (July 24, 2002). The rule detailed the procedures the Attorney General must follow when seeking assistance from a State or local government during a declared mass influx of aliens. In accordance with the rule, the Attorney General is required to execute written agreements with appropriate State or local officials that set forth the terms and conditions of the assistance before the State or local law enforcement officer may exercise immigration law enforcement authorities pursuant to section 103(a)(8) of the Act. The regulations also permit the Attorney General to enter into written contingency agreements prior to the declaration of a mass influx of aliens. All of the written agreements must include a requirement that State or local law enforcement officers cannot exercise any authorized functions of Service officers or employees under 8 U.S.C. 1103(a)(8) until they have successfully completed and been certified in a Service-prescribed course of instruction in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues. See 28 CFR 65.84(a)(3)(iv). Because of the need to respond quickly in the event of a mass influx of aliens, most of these State and local law enforcement officers likely will be trained pursuant to contingency agreements in place prior to any declared mass influx of aliens.

The Department recognizes the desirability for all State or local law enforcement officers to receive training prior to being authorized to exercise immigration law enforcement authority pursuant to section 103(a)(8) of the Act during a mass influx of aliens. Indeed, the Department fully anticipates that all State or local law enforcement officers authorized to exercise immigration law enforcement authority under the Act will have been certified in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues. While drafting the final rule, however, the Department realized that unanticipated situations might arise during a declared mass influx of aliens in which the number of State or local law enforcement officers trained pursuant to a written agreement would be insufficient to respond in an expeditious manner in order to protect public safety, public health, or national security. As a result of this concern, the Attorney General has determined that, in exceptional circumstances, it would be prudent to allow the Attorney General to abbreviate or waive the normally required training for State and local law enforcement officers.

The Department believes that it will rarely be necessary for the Attorney General to declare a mass influx of aliens. As discussed below in the Regulatory Procedures Section, however, the Department believes that the country currently is facing an increased risk of a mass influx of aliens. In the event that a mass influx of aliens does occur, the need to abbreviate or waive the normally required training may be necessary if the Service does not receive enough advance knowledge of the mass influx of aliens or the influx occurs at an unanticipated location. The Department believes that it is necessary to provide the Attorney General with the tools and flexibility to address any unanticipated situations that might occur during a mass influx of aliens. Therefore, the Department is amending the applicable regulations to allow the Attorney General to abbreviate or waive the otherwise normally required training requirement when such an action is necessary to protect public safety, public health, or national security. Such officers, however, still would be required to adhere to applicable Service policies and standards.

This interim rule is intended to solicit comments from the public on the very limited issue of whether the regulations should allow for the abbreviation or waiver of the normal training requirement. The Department welcomes comments on steps that can be taken to minimize the need for the Attorney General to exercise his authority to abbreviate or waive training requirements in the event of a declared mass influx of aliens. In particular, the Department welcomes comments on how the written contingency agreements with the appropriate State or local officials could be formulated to help ensure that this authority would be exercised only under extraordinary circumstances. The Department does not intend to reconsider any of the other issues addressed by the final rulemaking.

It is important to note that even if State and local law enforcement officers have not completed the training devised by the Service, these individuals still are trained law enforcement officers and can be expected to respond in an appropriate manner. In addition, most, if not all, of the functions such State and local law enforcement officers would be asked to perform during a declared mass influx of aliens would not require detailed training in immigration matters. Rather, these individuals are likely to be asked only to apprehend, transport, or temporarily guard aliens who are part of the mass influx. As a result, the abbreviation or waiver of the normally required training requirement is not likely to affect the public in an adverse manner.

Regulatory Procedures

Good Cause

This interim rule is effective immediately upon the date of publication. The Department finds that good cause exists for adopting this rule without the prior notice ordinarily required by 5 U.S.C. 553(b) because a delay in the implementation of the rule would pose a substantial risk to public safety and national security.

The Department believes that the country currently is at risk for a mass influx of aliens. Present conditions in Haiti are prime for creating a mass migration to the United States. Not only have rising prices and the collapse of the informal banking sector worsened an already reeling economy, but a prolonged drought has afflicted the northwest portion of the country and severe floods have hit southern Haiti. Internal security in Haiti also has deteriorated.

Indeed, on October 29, 2002, a Haitian vessel beached off Biscayne Bay, Florida, with 214 predominantly Haitian aliens jumping off and wading ashore. Another 21 migrants were detained offshore by an United States Coast Guard ("USCG") cutter. On November 8, 2002, the USCG interdicted 25 Haitians who were using a small wooden vessel to attempt a voyage to the United States. The interdiction took place off the coast of Haiti. Finally, on November 11, 2002, the USCG interdicted two wooden vessels carrying a total of 237 Haitians and one Bahamian, 30 miles south of Great Inagua, in the Bahamas.

At the present time, an insufficient number of State and local law enforcement officers who have completed the otherwise required immigration training are available to exercise immigration law enforcement authority pursuant to section 103(a)(8) of the Act in an expeditious manner in the event the Attorney General declares a mass influx of aliens. This lack of State and local officers who have completed training presents an immediate risk to public safety and national security. Therefore, the publication of this interim rule is necessary to provide the Attorney General with the tools and flexibility to address any unanticipated situations that might occur during a mass influx of aliens.

For the same reasons, the Department also finds that it has good cause to issue this interim rule with an immediate effective date, in accordance with 5 U.S.C. 553(d). Because additional delay is contrary to the public interest, there is good cause under 5 U.S.C. 553(d) to make this rule effective as of February 26, 2003.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule allows the Attorney General to waive normally required training requirements in the event that the State or local law enforcement officers available to respond to a mass influx of aliens is insufficient to protect public safety, public health, or national security. Because this rule involves only the waiver of training requirements, it should impose little or no economic impact on small entities. Indeed, the exercise of this waiver may confer a small economic benefit on affected entities because they will not have to devote personnel and time for any training that is waived. Moreover, this rule does not affect a substantial number of small entities as that term is defined in 5 U.S.C. 601(6). Because of the remote chance of a mass influx of aliens occurring in most States, only a very few local law enforcement agencies are ever expected to enter into agreements with the Attorney General to exercise immigration law enforcement authorities pursuant to section 103(a)(8) of the Act. In addition, the decision of a small entity to participate in the event of a mass influx of aliens is purely voluntary on the part of the entity.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in the Small Business Regulatory Enforcement Fairness Act of

1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Participation by state or local law enforcement agencies is voluntary. Therefore, in accordance with section six of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

List of Subjects in 28 CFR Part 65

Grant programs—law, Law enforcement, Reporting and recordkeeping requirements.

Accordingly, part 65 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

1. The authority citation for part 65 continues to read as follows:

Authority: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98–473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 *et seq.*); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102–140, 105 Stat. 832.

2. Section 65.84 is amended by adding paragraph (a)(4), to read as follows:

§ 65.84 Procedures for the Attorney General when seeking State or local assistance.

(a) * * *

(4) The Attorney General may abbreviate or waive any of the training required pursuant to a written agreement regarding assistance under § 65.83(d) of this chapter, including contingency agreements, in the event that the number of State or local law enforcement officers available to respond in an expeditious manner to urgent and quickly developing events during a declared mass influx of aliens is insufficient to protect public safety, public health, or national security. Such officers still would be required to adhere to applicable policies and standards of the Immigration and Naturalization Service. The decision to abbreviate or waive these training requirements is at the sole discretion of the Attorney General.

* * * * *

Dated: February 20, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–4441 Filed 2–25–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 171

RIN 0790–AG95

Implementation of Wildfire Suppression Aircraft Transfer Act of 1996

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule adds regulations on the Implementation of Wildfire Suppression Aircraft Transfer Act of 1996 back into the Code of Federal Regulations. This rule was published as an Interim Final Rule on June 1, 1999 (64 FR 29227) and was inadvertently removed on October 25, 2001 (66 FR 53957). The Wildfire Suppression Aircraft Transfer Act of 1996 authorized the Department of Defense (DOD), during the period 1 October 1996 through 30 September 2000, to sell aircraft and aircraft parts to entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. Public Law 106–398 (114 STAT. 1654A–89) extended the expiration date from 30 September 2000 to 30 September 2005.

EFFECTIVE DATE: This rule is effective August 1, 2002.

FOR FURTHER INFORMATION CONTACT: Debra Bennett, 703–604–0098.

SUPPLEMENTARY INFORMATION: Public comment was taken on the Interim Final Rule. No comments were received.

I. Background

Subsection 2(a) of the Wildfire Suppression Aircraft Transfer Act of 1996, as amended, states that, notwithstanding subchapter II of chapter 5 of title 40, United States Code and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning on October 1, 1996, and ending on September 30, 2005, sell certain aircraft and aircraft parts to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. The Act states that, as soon as practicable after the date of the enactment of the Act, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. This rule prescribes such regulations.

II. Administrative Requirements

A. Executive Order 12866

It has been determined that 32 CFR part 171 is not a significant regulatory action. The rule does not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

B. Unfunded Mandates Reform Act

It has been certified that 32 CFR part 171 does not contain a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

C. Regulatory Flexibility Act

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule applies only to the sale of certain aircraft and aircraft parts to those entities that contract for the delivery of fire retardant by air in order to suppress wildfire. The U.S. Department of Agriculture provides the list of eligible entities that may bid on aircraft and aircraft parts.

D. Paperwork Reduction Act

It has been certified that 32 CFR part 171 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 44).

E. Executive Order 13132

It has been certified that 32 CFR part 171 does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 171

Aircraft, Fire prevention.

According, 32 CFR Part 171 is added to read as follows:

PART 171—IMPLEMENTATION OF WILDFIRE SUPPRESSION AIRCRAFT TRANSFER ACT OF 1996

Sec.

171.1 Background and purpose.
171.2 Applicability.
171.3 Restrictions.
171.4 Qualifications.
171.5 Sale procedures.
171.6 Reutilization and transfer procedures.
171.7 Reporting requirements.
171.8 Expiration.

Authority: 10 U.S.C. 2576 note.

§ 171.1 Background and purpose.

The Wildfire Suppression Aircraft Transfer Act of 1996 (the "Act"), as amended, allows the Department of Defense (DOD), during the period 1 October 1996 through 30 September 2005, to sell aircraft and aircraft parts to entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. This part implements the Act.

§ 171.2 Applicability.

The regulations in this part apply to aircraft and aircraft parts determined to be DOD excess under the definition of the Federal Property Management Regulations (FPMR) and listed in Attachment 1 of Chapter 4 of DOD 4160.21–M as Category A aircraft authorized for commercial use.

§ 171.3 Restrictions.

Aircraft and aircraft parts sold under the Act shall be used only for wildfire suppression purposes and shall not be flown or removed from the U.S. unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression, or for other purposes jointly approved in advance, in writing, by the Secretary of Defense and the Secretary of Agriculture.

§ 171.4 Qualifications.

The Secretary of Agriculture must certify in writing to the Secretary of Defense prior to sale that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air.

(a) Prior to sales offerings of aircraft or aircraft parts, the U.S. Department of Agriculture (USDA) must provide to the Defense Reutilization and Marketing Service (DRMS), in writing, a list of persons or entities eligible to bid under this Act, including expiration date of each USDA contract, and locations covered by the USDA contract.

(b) This requirement may not be delegated to the U.S. Forest Service (USFS).

§ 171.5 Sale procedures.

Disposal of aircraft and aircraft parts must be in accordance with the provisions of Chapter 4 of DOD 4160.21–M, paragraph B2, and with other pertinent parts of this manual, with the following changes and additions:

(a) Sales shall be limited to the aircraft types listed in Attachment 1 of Chapter 4 of DOD 4160.21–M, and parts thereto (*i.e.*, no aircraft or aircraft parts listed as Munitions List Items on the State Department's U.S. Munitions List).

(b) Sales shall be made at fair market value (FMV), as determined by the Secretary of Defense and, to the extent practicable, on a competitive basis.

(1) DRMS must conduct sales utilizing FMVs that are either provided by the Military Services on the Disposal Turn-In Documents (DTIDs) or based on DRMS' professional expertise and knowledge of the market. Advice regarding FMV shall be provided to DRMS by USDA, as appropriate.

(2) If the high bid for a sale item does not equal or exceed the FMV, DRMS is vested with the discretion to reject all bids and reoffer the item:

(i) On another wildfire suppression sale if there is indication that reoffer may be successful, or,

(ii) With DLA concurrence, as normal surplus under the FPMR if there is no such indication.

(3) Disposition of proceeds from sale of aircraft under the Act will be as prescribed in guidance from the Under Secretary of Defense (Comptroller).

(c) Purchases shall certify that aircraft and aircraft parts will be used only in accordance with conditions stated in § 171.3.

(1) Sales solicitations will require bidders to submit end-use certificates with their bids, stating the intended use and proposed areas of operations.

(2) The completed end-use certificates shall be used in the bid evaluation process.

(d) Sales contracts shall include terms and conditions for verifying and enforcing the use of the aircraft and aircraft parts in accordance with provisions of this guidance.

(1) The DRMS Sales Contracting Officer (SCO) is responsible for verifying and enforcing the use of aircraft and aircraft parts in accordance with the terms and conditions of the sales contract.

(i) Sales contracts include provisions for on-site visits to the purchaser's place(s) of business and/or worksite(s).

(ii) Sales contracts require the purchaser to make available to the SCO, upon his or her request, all records concerning the use of aircraft and aircraft parts.

(2) USDA shall nominate in writing, and the SCO shall appoint, qualified Government employees (not contract employees) to serve as Contracting Officer's Representatives (CORs) for the purpose of conducting on-site verification and enforcement of the use of aircraft and aircraft parts for those purposes permitted by the sales contract.

(i) COR appointments must be in writing and must state the COR's duties, the limitations of the appointment, and the reporting requirements.

(ii) USDA bears all COR costs.

(iii) The SCO may reject any COR nominee for cause, or terminate any COR appointment for cause.

(3) Sales contracts require purchasers to comply with the Federal Aviation Agency (FAA) requirements in Chapter 4 of DOD 4160.21–M, paragraphs B 2 b (4)(d)2 through (40)(d)5.

(4) Sales contracts require purchasers to comply with the Flight Safety Critical Aircraft Parts regime in Chapter 4 of DOD 4160.21–M, paragraph B 26 c and d, and in Attachment 3 of Chapter 4 of DOD 4160.21–M.

(5) Sales contracts require purchasers to obtain the prior written consent of the SCO for resale of aircraft or aircraft parts purchased from DRMS under this Act. Resales are only permitted to other entities which, at time of resale, meet the qualifications required of initial purchasers. The SCO must seek, and USDA must provide, written assurance as to the acceptability of a prospective

repurchaser before approving resale. Resales will normally be approved for airtanker contracts which have completed their contracts, or which have had their contracts terminated, or which can provide other valid reasons for seeking resale which are acceptable to the SCO.

(i) If it is determined by the SCO that there is no interest in the aircraft or aircraft parts being offered for resale among entities deemed qualified repurchasers by USDA, the SCO may permit resale to entities outside the airtanker industry.

(ii) When an aircraft or aircraft parts are determined to be uneconomically repairable and suitable only for cannibalization and/or scrapping, the purchaser shall advise the SCO in writing and provide evidence in the form of a technical inspection document from a qualified FAA airframe and powerplant mechanic, or equivalent.

(iii) The policy outlined in paragraph (d)(5) of this section also applies to resales by repurchasers, and to all other manner of proposed title transfer (including, but no limited to, exchange and barters).

(iv) Sales of aircraft and aircraft parts under the Act are intended for principals only. Sales offerings will caution prospective purchasers not to buy with the expectation of acting as brokers, dealers, agents, or middlemen for other interested parties.

(6) The failure of a purchaser to comply with the sales contract terms and conditions may be cause for suspension and/or debarment, in addition to other administrative, contractual, civil, and criminal (including, but not limited to, 18 U.S.C. 1001) remedies which may be available to DOD.

(7) Aircraft parts will be made available in two ways:

(i) DRMS may, based on availability and demand, offer for sale under the Act whole unflyable aircraft, aircraft carcasses for cannibalization, or aircraft parts, utilizing substantially the same provisions outlined in paragraphs (a) through (d)(6) of this section for flyable aircraft.

(A) If USDA directs that DRMS set aside parts for sale under the Act, USDA must provide listings of parts required, by National Stock Number and Condition Code.

(B) Only qualified airtanker operators which fly the end-term aircraft will be allowed to purchase unflyable aircraft, aircraft carcasses, or aircraft parts applicable to that end-item.

(C) FMVs are not required for aircraft parts. DRMS must utilize historic prices received for similar parts in making sale determinations.

(ii) As an agency of the Federal Government, USDA remains eligible to receive no-cost transfers of excess DOD aircraft parts under the FPMR.

§ 171.6 Reutilization and transfer procedures.

Prior to any sales effort, the Secretary of Defense shall, to the maximum extent practicable, consult with the Administrator of GSA, and with the heads of other Federal departments and agencies as appropriate, regarding reutilization and transfer requirements for aircraft and aircraft parts under this Act (see Chapter 4 of DOD 4160.21–M, paragraphs B 2 b (1) through B 2 b (3)).

(a) DOD reutilization:

(1) USDA shall notify Army, Navy, and/or Air Force, in writing, of their aircraft requirements as they arise, by aircraft type listed in Attachment 1 of Chapter 4 of DOD 4160.21–M.

(2) If a DOD requirement exists, the owning Military Service shall advise USDA, in writing, that it will be issuing the aircraft to satisfy the DOD reutilization requirement. If USDA disputes the validity of the DOD requirement, it shall send a written notice of dispute to the owning Military Service and ADUSD(L&MR/SCI) within thirty (30) days of its notice from the Military Service. ADUSD(L&MR/SCI) shall then resolve the dispute, in writing. The aircraft may not be issued until the dispute has been resolved.

(f) Federal agency transfer:

(1) The Military Service must report aircraft which survive reutilization screening to GSA Region 9 on a Standard Form 120. GSA shall screen for Federal agency transfer requirements in accordance with the FPMR.

(2) If a Federal agency requirement exists, GSA shall advise USDA, in writing, that it will be issuing the aircraft to satisfy the Federal agency requirement. If USDA disputes the validity of the Federal requirement, it shall send a written notice of dispute to the owning Military Service and ADUSD(L&MR/SCI) within thirty (30) days of its notice from the Military Service. ADUSD(L&MR/SCI) shall then resolve the dispute, in writing. The aircraft cannot be issued until the dispute has been resolved.

(c) The Military Services shall:

(1) Report aircraft which survive transfer screening and are ready for sale to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan 49017–3092. The Military Services must use a DD Form 1348–1A, DTID, for this purpose.

(2) Transfer excess DOD aircraft to the Aerospace Maintenance and Regeneration Center (AMARC), Davis-Monthan AFB, AZ, and place the aircraft in an "excess" storage category while aircraft are undergoing screening and/or wildfire suppression aircraft sale. Aircraft shall not be available nor offered to airtanker operators from the Military Service's airfield. The Military Service shall be responsible for the AMARC aircraft induction charges. The gaining customer will be liable for all AMARC withdrawal charges, to include any aircraft preparation required from AMARC. Sale of parts required for aircraft preparation is limited to those not required for the operational mission forces, and only if authorized by specific authority of the respective Military Service's weapon system program manager.

§ 171.7 Reporting requirements.

Not later than 31 March 2000, the Secretary of Defense must submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report setting forth the following:

(a) The number and type of aircraft sold under this authority, and the terms and conditions under which the aircraft were sold.

(b) The persons or entities to which the aircraft were sold.

(c) An accounting of the current use of the aircraft sold.

(d) USDA must submit to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan, 49017–3092, not later than 1 February 2000, a report setting forth an accounting of the current disposition of all aircraft sold under the authority of the Act.

(e) DRMS must compile the report, based on sales contract files and (for the third report element) input from the USDA. The report must be provided to HQ DLA not later than 1 March 2000. HQ DLA shall forward the report to DOD not later than 15 March 2000.

§ 171.8 Expiration.

This part expires on 30 September 2005.

Dated: February 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4443 Filed 2–25–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 285

[DOD Directive 5400.7]

RIN 0790–AG98

DOD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule reflects administrative changes as a result of DOD reorganization. The rule also provides guidance to DOD on implementation of the amended law.

EFFECTIVE DATE: June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. D. Maier, 703–697–1160.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 285 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legacy or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that 32 CFR part 285 does not contain a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 285 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 44)

Federalism (Executive Order 13132)

It has been certified that 32 CFR part 285 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 285

Freedom of information.

Accordingly, 32 CFR part 285 is amended to read as follows:

PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

1. The authority citation for 32 CFR part 285 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 285.1 is revised to read as follows:

§ 285.1 Reissuance and purpose.

This part:

(a) Reissues 32 CFR part 285 to update policies and responsibilities for the implementation of the DOD FOIA Program under 5 U.S.C. 552.

(b) Continues to authorize, consistent with 5 U.S.C. 552, the publication of 32 CFR part 286, the single DOD Regulation on the FOIA Program.

(c) Continues to delegate authorities and responsibilities for the effective administration of the FOIA Program.

3. Section 285.3 is amended by revising paragraph (e) to read as follows:

§ 285.3 Policy.

* * * * *

(e) Release Agency records to the public unless those records are exempt from mandatory disclosure as outlined in 5 U.S.C. 552.

* * * * *

4. Section 285.4 is amended by revising paragraph (a), removing paragraph (a)(4), redesignating paragraphs (b) and (c) as paragraphs (c) and (d), adding a new paragraph (b), and revising newly redesignated (d)(1) as follows:

§ 285.4 Responsibilities.

(a) The Director, Washington Headquarters Service shall:

(1) * * *

(2) * * *

(3) * * *

(b) The Director, Administration and Management shall, as the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities within OSD, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, and the DOD Field Activities.

* * * * *

(d) The Heads of the DOD Components shall:

(1) Publish in the **Federal Register** any instructions necessary for the internal administration of this part within a DOD Component that are not prescribed by this part or by other issuances of the Director, Washington Headquarters Services. For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) shall be published in accordance with DOD Directive 5025.1.

* * * * *

5. Section 285.5 is revised to read as follows:

§ 285.5 Information requirements.

The reporting requirements in subpart G of 32 CFR part 286 have been assigned Report Control Symbol DD–DA&M(a) 1365.

Dated: February 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4442 Filed 2–25–03; 8:45 am]

BILLING CODE 5001–08–M

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 404

Revision of the Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: American Battle Monuments Commission.

ACTION: Final rule.

SUMMARY: The American Battle Monuments Commission is revising its regulations for responding to public requests for access to records or information under the Freedom of

Information Act (FOIA). These regulations update and amplify the Commission's current regulations.

DATES: Effective February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas R. Sole, Freedom of Information Officer, American Battle Monuments Commission or Ms. Martha Sell, Freedom of Information Act Representative, Courthouse Plaza II, Suite 500, 2300 Clarendon Blvd., Arlington, VA 22202 or by telephone at 703–696–6897.

SUPPLEMENTARY INFORMATION: This rule replaces 36 CFR Parts 404 and 405. It updates Commission addresses, organizational information, and fee schedule and explicitly incorporates electronic format information as within the scope of covered information consistent with the Electronic Freedom of Information Act of 1996 (Pub. L. 104–231).

List of Subjects in 36 CFR Part 404

Freedom of information.

For the reasons stated in the preamble, the American Battle Monuments Commission amends Chapter IV of title 36 of the Code of Federal Regulations as follows:

1. Part 404 is revised to read as follows:

PART 404—PROCEDURES AND GUIDELINES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Sec.

404.1 General.
404.2 Authority and functions.
404.3 Organization.
404.4 Access to information.
404.5 Inspection and copying.
404.6 Definitions.
404.7 Fees to be charged—general.
404.8 Fees to be charged—categories of requesters.
404.9 Miscellaneous fee provisions.
404.10 Waiver or reduction of charges.

Authority: 5 U.S.C. 552.

§ 404.1 General.

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of Title 5, United States Code, as amended.

§ 404.2 Authority and functions.

The general functions of the American Battle Monuments Commission, as provided by statute, 36 U.S.C. Section 2101, *et seq.*, are to build and maintain suitable memorials commemorating the service of American Armed Forces and to maintain permanent American military cemeteries in foreign countries.

§ 404.3 Organization.

(a) The brief description of the central organization of the American Battle Monuments Commission follows:

(1) The Commission is composed of not more than 11 members appointed by the President.

(2) The day to day operation of the Commission is under the direction of a Secretary appointed by the President.

(3) Principal Officials include the Executive Director, Director of Finance, Director of Procurement and Contracting, Director of Engineering, Maintenance, and Operations and Director of Personnel and Administration.

(4) The Commission also creates temporary offices when tasked with major additional responsibilities not of a permanent nature.

(b) Locations. (1)The principal offices of the American Battle Monuments Commission are located at Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, VA 22201. Persons desiring to visit offices or employees of the American Battle Monuments Commission should write or telephone ahead (703–696–6897 or 703–696–6895) to make an appointment.

(2) Field offices are located in Paris, France; Rome, Italy; Manila, Republic of the Philippines; the Republic of Panama; and Mexico City, Mexico.

§ 404.4 Access to information.

(a) The American Battle Monuments Commission makes available information pertaining to Commission matters within the scope of 5 U.S.C. 552(a)(2) by publishing them electronically at the ABMC home page at *http://www.abmc.gov*.

(b) The ABMC FOIA Officer is responsible for acting on all initial requests. Individuals wishing to file a request under the Freedom of Information Act (FOIA) should address their request in writing to the FOIA Officer, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, VA 22201 (telephone 703–696–6897 or 703–696–6895). Requests for information shall be as specific as possible.

(c) Upon receipt of any request for information or records, the FOIA Officer will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such request whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification to the person making the request shall include the names of the individuals who participated in the determination, the reasons for the denial, and a notice that an appeal may be lodged within the American Battle Monuments Commission. (Receipt of a request as used herein means the date the request is received in the office of the FOIA Officer.)

(d) Expedited processing. (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which effect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within 10 days of its receipt of a request for expedited processing, ABMC will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(e) Appeals shall be set forth in writing within 30 days of receipt of a denial and addressed to the FOIA Officer at the address specified in paragraph (b) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Executive Director, or his designee, within 20 days (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(f) In unusual circumstances, the time limits prescribed in paragraphs (c) and (e) of this section may be extended for not more than 10 days (excepting Saturdays, Sundays, or legal public holidays). Extensions may be granted by the FOIA Officer. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected.

(g) With respect to a request for which a written notice under paragraph (f) of this section extends the time limits prescribed under paragraph (c) of this section, the agency shall notify the person making the request if the request cannot be processed within the time limit specified in paragraph (f) of this section and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of 5 U.S.C. 552(a)(6)(C). When ABMC reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, ABMC may aggregate those requests for purposes of this paragraph. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(h) As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term unusual circumstances means:

(1) The need to search for and collect the requested records from establishments that are separated from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

§ 404.5 Inspection and copying.

When a request for information has been approved pursuant to § 404.4, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the FOIA Officer at the address or telephone number listed in § 404.4(b). Such materials may be copied and reasonable facilities will be made available for that purpose. Copies of individual pages of such materials will be made available at the price per page specified in § 404.7(d); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

§ 404.6 Definitions.

For the purpose of these regulations:

(a) All the terms defined in the Freedom of Information Act apply.

(b) A *statute specifically providing for setting the level of fees for particular types of records* (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information. Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term *direct costs* means those expenditures that ABMC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(d) The term *search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. ABMC employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section).

(e) The term *duplication* means the making of a copy of a document, or of the information contained in it, necessary to respond to a FOIA request. Such copies can take the form of paper, microform, audio-visual materials, or electronic records (*e.g.*, magnetic tape or disk), among others. The requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible in that format.

(f) The term *review* refers to the process of examining documents located in response to a request that is for a commercial use (*see* paragraph (g) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does

not include time spent resolving general legal or policy issues regarding the application of exemptions.

(g) The term *commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, ABMC must determine the use to which a requester will put the documents requested. Moreover, where an ABMC employee has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the employee should seek additional clarification before assigning the request to a specific category.

(h) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(i) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial basis (as that term is referenced in paragraph (g) of this section), and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(j) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but ABMC may also look to the past publication record of a requester in making this determination.

§ 404.7 Fees to be charged—general.

ABMC shall charge fees that recoup the full allowable direct costs it incurs. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in § 404.6(b)), such as the NTIS, ABMC should inform requesters of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* ABMC will charge at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search.

(b) *Computer searches for records.* ABMC will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(c) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; *i.e.*, the review undertaken the first time ABMC analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(d) *Duplication of records.* Records will be duplicated at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, ABMC shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, ABMC will charge the actual direct costs of producing the document(s). If ABMC estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* When it elects to charge them, ABMC will recover the full costs of providing services such as:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(3) Eight by ten inch black and white photographs—$3.75

(4) Eight by ten inch color photographs—$5.00

(5) $1.50 per publication

(6) Video Purchase: The Price of Freedom—$13.00

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the FOIA Officer, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Blvd., Arlington, Virginia 22201

(g) *A receipt for fees paid will be given upon request.* Refund of fees paid for services actually rendered will not be made.

(h) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, ABMC will provide the first 100 pages of duplication and the first 2 hours of search time without charge. Moreover, ABMC will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) The elements to be considered in determining the cost of collecting a fee are the administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of these restrictions on assessment of fees, the word *pages* refers to paper copies of 8½ × 11 or 11 x 14. Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, does meet the terms of the restriction.

(3) Similarly, the term *search time* in this context has as its basis, manual search. To apply this term to searches made by computer, ABMC will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, ABMC will begin assessing charges for computer search.

§ 404.8 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The specific levels of fees for each of these categories:

(a) *Commercial use requesters.* When ABMC receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. ABMC may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (*see* paragraph (b) of this section).

(b) *Educational and noncommercial scientific institution requesters.* ABMC shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* ABMC shall provide documents to requesters in this category when serving the news dissemination function for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 404.4(j), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(d) *All other requesters.* ABMC shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Moreover, requests for records about the requesters filed in ABMC's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

§ 404.9 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* ABMC may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by ABMC within the 30-day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* ABMC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If ABMC estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, ABMC may aggregate those requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* ABMC may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) ABMC estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, ABMC will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). Then, ABMC may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When ABMC acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (*i.e.*, 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits), will begin only after ABMC has received fee payments described in paragraphs (d)(1) and (2) of this section. Effect of the Debt Collection Act of 1982 (Pub. L. 97–365). ABMC should comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

§ 404.10 Waiver or reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

PART 405—[REMOVED]

2. Under authority of U.S.C. 552, part 405 is removed.

Dated: February 12, 2003.

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 03–4080 Filed 2–25–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA255–0385; FRL–7448–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing both a conditional approval and a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 1, 2002, and concerns fugitive dust and particulate matter less than 10 microns in diameter (PM–10). The conditional approval is with respect to enforceability and reasonably available control measures (RACM), and the limited approval and limited disapproval is with respect to best available control measures (BACM). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emissions and directs California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on March 28, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, EPA Region IX, (415) 947–4116.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On April 1, 2002 (67 FR 15345), EPA proposed a limited approval and limited disapproval of the following SJVUAPCD rules that were adopted on November 15, 2001 and submitted for incorporation into the California SIP on December 6, 2001.

Rule #	Rule title
8011	General Requirements.
8021	Construction, Demolition, Excavation, Extraction and Other Earthmoving Activities.
8031	Bulk Materials.
8041	Carryout and Trackout.
8051	Open Areas.
8061	Paved and Unpaved Roads.
8071	Unpaved Vehicle/Equipment Traffic Areas.
8081	Agricultural Sources.

These rules are part of SJVUAPCD's Regulation VIII. We proposed a limited approval of these rules because we determined that they improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because we found that the submittal does not adequately fulfill the CAA section 189(b) requirement for a BACM demonstration, nor include any upgrades or revisions to the control measures that are required as a result of the BACM demonstration. Specifically, the State has not demonstrated that thresholds of source coverage within the rules (*e.g.*, minimum size of sources subject to rule requirements) fulfill BACM. Such thresholds include: (1) Rule 8061 and 8081 unpaved road trip count thresholds; (2) Rule 8071 and 8081 unpaved vehicle/equipment traffic area trip count thresholds; (3) Rule 8071 and 8081 unpaved vehicle/equipment traffic area size threshold; (4) Rule 8081 unpaved road and unpaved vehicle/equipment traffic area exclusion of implements of husbandry in the trip count; (5) Rule 8051 disturbed open areas threshold; (6) Rule 8041 threshold for when trackout control devices must be employed; (7) Rule 8041 trackout cleanup requirements as they apply to rural areas; (8) Rule 8031 and 8081 bulk materials thresholds; (9) Rule 8021 Dust Control Plan requirement thresholds; and (10) other control measures for paved road PM–10 emissions including preventing/mitigating trackout attributed to agricultural sources, stabilizing unpaved shoulders, frequent street sweeping and use of PM–10 efficient street sweepers.

We also proposed a conditional approval of all the submitted rules listed above except for Rule 8051. We proposed the conditional approval because we believe that the submittal resolves the prior enforceability and RACM deficiencies identified in the March 8, 2000 final action, subject to one condition. The condition is for SJVUAPCD to adequately demonstrate that it has applied RACM to the significant source categories that are subject to Regulation VIII. By letter dated March 5, 2002, SJVUAPCD committed to adopt and submit this demonstration within one year of EPA's publication of this final rule. This demonstration includes the following: (1) A complete list of candidate RACM for the following Regulation VIII significant sources: unpaved roads, unpaved vehicle/equipment traffic areas, paved roads and earthmoving sources, including bulk materials storage/handling; (2) a reasoned justification for any candidate measures that the District did not adopt for these sources, including descriptions of measures for these source categories that the District is implementing outside the context of Regulation VIII; and (3) information that supports the reasonableness of the Regulation VIII coverage.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 60-day public comment period. During this period, we received comments from the following parties.

1. Brent J. Newell, Center on Race, Poverty & Environment, on behalf of the Association of Irritated Residents and El Comite para el Bienestar de Earlimart, letters dated May 30, 2002.
2. Anne C. Harper, Earthjustice, on behalf of the Sierra Club, letter dated May 31, 2002.

The comments and EPA responses are summarized below.

Comment 1: The version of Regulation VIII adopted by SJVUAPCD was inappropriately negotiated between EPA and the regulated industry weeks after the local public comment period expired. It does not fulfill the relevant public process requirements as significant changes were made at the last minute. These changes include exempting implements of husbandry from vehicle trip counts in Rule 8011, increasing the size of exempted open areas by 300 percent in Rule 8051, and rendering the 20% VE standard useless by allowing the U.S. Department of Agriculture (USDA) to approve Fugitive PM–10 Management Plans (FPMPs) in Rules 8061, 8071 and 8081. Even SJVUAPCD's own staff did not have an opportunity to review the version presented to SJVUAPCD's Governing Board on November 15.

Response 1: 40 CFR part 51 Appendix V and 40 CFR 50.102 describe the public participation procedural requirements for adoption and submittal of SIP revisions. Paragraph (a)(1) of Section 50.102 requires that a State must conduct one or more public hearings prior to adoption and submission to EPA of any SIP revision such as Regulation VIII. Paragraphs 2(e) and (g) of part 51 Appendix V direct states to follow all relevant state requirements for public notice, hearing and adoption. California's Health and Safety Code (HSC) §§ 40725–30 outlines the procedures to be followed by local air districts, such as SJVUAPCD, in adopting, amending, or repealing any rule or regulation, including SIP revisions. EPA believes that these State rules are consistent with Administrative Procedures Act (APA) requirements for public participation, 5 U.S.C.A. 553.

In regard to changes made to a SIP revision after the end of the public comment period, HSC § 40726 allows for such changes without further public notice or comment as long as those changes are not "so substantial as to significantly effect the meaning of the proposed rule or regulation." SJVUAPCD held a public hearing on Regulation VIII on October 31, 2001, received comments on the proposed rules, and responded to those comments. Both SJVUAPCD and CARB have determined that the public participation process followed by SJVUAPCD in adopting and submitting Regulation VIII fulfilled State and federal public participation requirements. EPA routinely relies upon determinations by State and local agencies as to compliance with their own public participation processes. Additionally, the final Regulation VIII (including the three provisions specifically noted in the comment) as adopted and submitted was not "substantially" different from the proposed regulation and was a logical outgrowth of the earlier proposed regulation. SJVUAPCD had received comments earlier in the public comment process that logically lead to the final version adopted. The District included in its submittal extensive comments received from many parties, including the regulated community, that related to the later revised Regulation VIII provisions.

The commenters also appear concerned that the District considered comments provided by EPA in adopting the final Regulation VIII. However, state and local agencies are allowed and encouraged to consider EPA comments in adopting final SIP rules or revisions as long as all other public participation requirements are met.

Comment 2: Rule revisions proposed to Rule 8081 on the day of the hearing but not adopted were not subject to the relevant public process requirements. These include a small farm exemption and an exemption for unpaved haul roads on days when no truck trips will occur.

Response 2: Revisions not adopted are not the subject of EPA's proposed action.

Comment 3: The exemption for "implements of husbandry" from vehicle trip counts violates CAA § 189(a) RACM requirements because it effectively excludes an unknown but large number of agricultural road segments from Regulation VIII without any analysis of the number of exempted road segments or the efficacy of the measure. EPA's proposed conditional approval is not supported by a factual basis.

Response 3: We agree that the State has not submitted detailed analysis of the impacts of the exemption for implements of husbandry. This does not mean that the exemption necessarily violates CAA § 189(a). Rather, it means that the State needs to perform and submit such analysis in order to determine whether the exemption and the rules fulfill § 189(a). We concur with the comment's implication that this analysis is important and, as a result, have required it as part of our final conditional approval.

Comment 4: The FPMP provisions in Rule 8081 allow exceedence of the general 20% opacity standard and violate § 189(a) because they are not federally enforceable. Responsibility for enforcement of the FPMP requirements is given to the USDA instead of to EPA and SJVUAPCD, in conflict with CAA § 110 enforceability requirements.

Response 4: Paragraph 7.0 of Rule 8081 states that FPMPs must be approved by the USDA *and* must be designed to achieve 50% control efficiency. We believe Rule 8081 is adequately enforceable because it establishes criteria for evaluation of FPMPs (*i.e.*, 50% control). This would allow SJVUAPCD and EPA to invalidate FPMPs that are not meeting 50% control, regardless of USDA's action. Also, as made clear by paragraph 7.4, the terms of the final FPMP approved by USDA are subject to enforcement by SJVUAPCD, EPA and citizens.

Comment 5: The exemption of all on-field sources, including smaller farms less than 320 acres and animal feed handling, which effectively exempts concentrated animal feeding operations, violates § 189(a). Farming operations account for nearly 25% of all PM–10 emissions in the Valley. The exemption does not constitute an appropriate interpretation of a "more likely than not" finding that the RACM requirement has been met.

Response 5: As discussed in our April 1, 2002 proposed action (67 FR 15345), EPA only evaluated these rules with respect to those sources that the rules purport to regulate. This is documented in the August 31, 1999 TSD associated with EPA's original proposed action (pg. 10). For example, Rule 8060, dated April 25, 1996, proposed to regulate unpaved roads for RACM purposes, so we evaluated whether the rule is sufficient for unpaved roads, including agricultural unpaved roads. Since Regulation VIII submittals have never purported to cover on-field agricultural activity, however, we have not attempted to evaluate whether Regulation VIII fulfills RACM/BACM for this activity. Therefore, we disagree with the commenters' statement that on-field agricultural source activity has been exempted from RACM through Regulation VIII; rather, it is just not a regulated activity under Regulation VIII.

We agree with the commenters that it is important for the District to evaluate the impact and appropriate controls for on-field agricultural activity. The evaluation of whether and what controls are necessary for on-field agricultural activities to fulfill RACM/BACM should be performed in context of a rule that regulates such activity or of an overall PM–10 plan for the area. In 1991, CARB submitted an overall PM–10 plan for the area which purported to address RACM generally as well as on-field agricultural activity. We have not acted on this plan, and are not doing so now, as we are only acting on Regulation VIII. As a result of EPA's finding that the San Joaquin Valley failed to attain the PM–10 standards by the statutory deadline of December 31, 2001, the State must submit a new plan for the area to EPA by December 31, 2002. 67 FR 48039 (July 23, 2002). EPA also published a finding of nonsubmittal of a PM–10 plan for the San Joaquin Valley on March 18, 2002 (67 FR 11925), which could result

in the imposition of sanctions. We expect that these EPA actions will lead to development in the near term of a thorough RACM/BACM analysis and an overall PM–10 plan which include on-field agriculture activity.

Comment 6: Other areas have adopted RACM or BACM measures that apply to farming operations that EPA has approved. For example, South Coast Air Quality Management District Rule 403(h)(1)(B) applies fugitive dust requirements to agricultural sources greater than 10 acres, and Maricopa County Rule 310 requires RACM at cattle feedlots and livestock areas. Regulation VIII, in contrast, fully exempts on-field agricultural activities in violation of CAA § 189(a).

Response 6: See Response 5.

Comment 7: EPA recently issued a Notice of Deficiency (NOD) that found California's statutory agricultural permit exemption inconsistent with CAA Title V. CAA Title I also provides no such exemption for agricultural sources, and any rulemaking which generally exempts agriculture from § 189(a) RACM requirements is inconsistent with the CAA under the same rationale articulated in the Notice of Deficiency.

Response 7: The commenter is correct that Title I and Title V do not exempt major agricultural sources of air pollution from CAA permitting requirements. CAA § 189(a), however, relies on a separate analysis to determine whether agricultural sources should be regulated for RACM purposes. Under § 189(a), a permitting agency need not regulate or can limit regulation of certain activities or source categories from RACM requirements if one of the following two criteria are met: (a) emissions from the activity or source category are not significant; or (b) the level of imposed control fulfills RACM in light of cost-effectiveness, technical feasibility and attainment needs. However, as stated in Response 5, since Regulation VIII never purported to cover on-field agricultural activity, such an analysis is not necessary in the context of Regulation VIII. This analysis will be necessary in a rule that regulates such activity or in an overall PM–10 plan for the area.

Comment 8: EPA's finding that "it is more likely than not" that Regulation VIII fulfills the CAA 189(a) requirement is contradicted by the substantial agriculture-related deficiencies summarized in comments 3 through 7 that exempt in total nearly half of all sources.

Response 8: See Response 5 regarding on-field agricultural sources. The comment also concerns the exemption for implements of husbandry and the enforceability of FPMPs regarding agriculturally-owned unpaved roads. See Response 4 regarding FPMP enforceability. Our "more likely than not" RACM finding for Regulation VIII Rule 8081 coverage of agriculturally-owned unpaved roads relies on the expectation that a reasonable percentage of these roads are subject to control at the 75 vehicle trips per day threshold during harvest season. We expect most of this traffic will be haul trucks carrying product to and from farms as opposed to implements of husbandry such as tractors. We agree with the commenter, however, that the actual impact of this exemption has not been thoroughly quantified, which is partly the basis for our action to approve this regulation only conditionally.

Comment 9: EPA's 2002 proposed conditional approval of Regulation VIII for RACM is illegal in light of EPA's own finding that SJVUAPCD has not completely fulfilled the requirement described in 57 FR 13498 and 13540 (April 16, 1992) to apply RACM to the significant source categories subject to Regulation VIII.

Response 9: As discussed in our 2002 proposed action, we believe that Regulation VIII fulfills the substantive RACM requirements for the activities it covers and it is inappropriate to immediately initiate sanctions throughout the San Joaquin Valley solely because SJVUAPCD failed to complete a detailed RACM justification. SJVUAPCD did provide substantial cost-effectiveness data and other information that suggests that Regulation VIII fulfills RACM for the activities it covers. While a more complete RACM justification is required under the Act, we do not believe, in this case, that it is likely to lead to additional emission reductions. We have proposed, therefore, to temporarily stay the sanctions clock to allow a relatively short time for SJVUAPCD to provide the necessary analysis.

Comment 10: SJVUAPCD is long overdue to require RACM and BACM pursuant to CAA § 189(a) and § 189(b), and has failed to adopt RACM and BACM as soon as practicable as required by the CAA. There is no basis for further postponing final action on RACM. EPA's proposed actions allowing SJVUAPCD to justify, revise, and resubmit Regulation VIII, extends the mandatory RACM and BACM deadlines and violates the CAA.

Response 10: We concur that RACM and BACM were not applied in the San Joaquin Valley according to Clean Air Act deadlines. We believe, however, that RACM is now applied in the area for the activities covered by Regulation VIII. We do not view our conditional approval of these rules as RACM as postponing RACM implementation given our "more likely than not" finding that the requirements now meet RACM. See Response 11 regarding BACM.

Comment 11: In this proposed limited approval/disapproval, EPA claims that it had not previously started a sanction clock for § 189(b) deficiencies because SJVUAPCD explicitly adopted the April 25, 1996 Regulation VIII rules for purposes of maintaining RACM, rather than BACM. However, the February 8, 1997 statutory deadline for implementing BACM was long past even at the time of EPA's first disapproval of Regulation VIII, proposed on September 23, 1999 and finalized on March 8, 2000. Thus, EPA's disapproval at that time applied to the requirements of both RACM and BACM, and EPA's proposed action and responses to comments at that time clearly showed that it was evaluating the regulation for both standards.

EPA cannot now propose limited approval/limited disapproval for the SIP revision's failure to demonstrate BACM when, two years ago, EPA took the same final agency action. It is an abuse of discretion to reinterpret the March 8, 2000 final rulemaking in such a fashion so that EPA may inappropriately toll the sanctions clock. EPA has a mandatory duty to impose sanctions under § 179(a) unless all previously identified deficiencies have been corrected. It is clear that SJVUAPCD has not corrected the BACM deficiencies, which EPA concedes in this proposed rulemaking. EPA's proposal to grant limited approval/disapproval is thus inconsistent with the plain language of CAA § 179(a).

Response 11: We agree that the BACM implementation deadline had passed before EPA proposed a limited approval/disapproval of Regulation VIII in 1999. This does not determine, however, that our March 8, 2000 final action validly established a BACM sanctions clock. Our March 2000 action addressed rules that were submitted to fulfill RACM, not BACM. As a result and as discussed in our April 2002 proposed action, we do not believe that a sanctions clock could be started for BACM deficiencies under such circumstances. *See* Response 5 (where we similarly conclude that we cannot disapprove Regulation VIII for its exemption of on-field agricultural sources because the regulation does not purport to cover those sources for RACM purposes). However, the latest version of Regulation VIII submitted on December 6, 2001, does purport to meet BACM requirements. Therefore, by this final rule, we are disapproving the 2001 version of Regulation VIII for failure to adequately demonstrate BACM and have started a valid BACM sanctions clock for SJVUAPCD to correct the deficiencies. In accordance with section 179 of the Clean Air Act, the State has 18 months to correct the deficiencies identified in EPA's action prior to the imposition of sanctions.

Comment 12: EPA's April 1, 2002 interim final determination must be withdrawn because EPA cannot approve any individual rule without first approving an attainment demonstration. The judgement that EPA must make in approving a SIP revision, is "to measure the existing level of pollution, compare it with national standards, and determine the effect on this comparison of specified emission modifications." Without an attainment demonstration, it is impossible to determine whether any revision is "adequate to the task." *Hall* v. *EPA*, 263 F.3d 937 (9th Cir. 2001).

Response 12: EPA regularly takes action on individual rules independent of action on overarching plans. As with the thousands of other rules we have acted on independent of attainment demonstrations, we believe we can effectively evaluate compliance with § 110 and other CAA requirements and approve or disapprove these rules consistent with § 110(k). In fact, the Court of Appeals for the Ninth Circuit specifically endorsed this practice in *Hall*. The Court held that "[t]he Act explicitly contemplates that * * * attainment demonstrations may be submitted for EPA review at different times than other elements of the States' SIP revisions (for example, revisions to control measures) are submitted for review." *Id.* at 937.

The Commenter reasoned that language it quoted from *Hall* requires a rigorous comparison by EPA of emission reductions resulting from a proposed SIP revision to overall reductions necessary for attainment, and such an analysis cannot be done outside the context of an attainment demonstration. However, other language in the Court's *Hall* ruling softened this requirement in circumstances where an attainment demonstration is not yet in place. In the absence of an attainment plan, the Court held that EPA need only show that "the particular plan revision before it is consistent with the development of an overall plan capable of meeting the Act's attainment requirements." *Id.* at 938. In accordance with *Hall*, we have determined that Regulation VIII is consistent with development of an overall plan and we intend to evaluate Regulation VIII in the context of a PM–10 plan when the plan is submitted to us for review.

Comment 13: For reasons given above, EPA must fully disapprove the Regulation VIII submittal, withdraw the interim final determination that SJVUAPCD has corrected the deficiencies, reinstate the associated sanctions clock, and promulgate a FIP.

Response 13: For reasons discussed in the other responses, nothing in the comments has caused us to change our position as described in the proposal.

Following the close of the comment period, we received two additional inquiries from Earthjustice. While EPA is not obligated to summarize or respond to these inquiries, we have done so below.

Comment 14: Did EPA consider fugitive dust control measures adopted in other PM–10 nonattainment areas when evaluating SJVUAPCD's Regulation VIII for RACM and/or BACM? If so, is the review of other rules part of the record for EPA's action on Regulation VIII?

Response 14: EPA considered control measures adopted in Maricopa County, Clark County and other areas as background information during our evaluation of Regulation VIII. Where EPA's approval of control measures for these other areas has been published in the **Federal Register**, they are incorporated by reference into the administrative record for EPA's decision on Regulation VIII.

Comment 15: What is the origin of the "more likely than not" criteria used by EPA in its decision to conditionally approve Regulation VIII for RACM purposes.

Response 15: In the preamble to the federal regulations implementing the sanctions provision of CAA Section 179, EPA stated that it can conditionally approve a SIP revision when "it believes it is more likely than not that the State is complying with the relevant requirements of the Act." 59 FR 39832, 39838 (August 4, 1994). EPA clarified that this finding can also serve as a basis for an interim final determination that a State has corrected previously identified deficiencies.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in CAA section 110(k)(4), EPA is finalizing a conditional approval of Rules 8011, 8021, 8031, 8041, 8061, 8071 and 8081 with respect to CAA section 172(c)(1) and 189(a)(1)(C) RACM requirements. We have concluded that the December 6, 2001 submittal corrects the prior enforceability and RACM deficiencies identified in our March 8, 2000 final action, subject to one condition. That condition is for SJVUAPCD to provide a comprehensive and adequate demonstration that these rules fulfill RACM requirements for the source categories covered by Regulation VIII. SJVUAPCD has committed to provide this RACM demonstration within one year after the date of publication of this final action. This conditional approval action terminates the CAA section 189(a) sanction implications of our March 8, 2000 final action. However, the conditional approval will be treated as a disapproval, with section 189(a) sanctions immediately reinstated, if SJVUAPCD fails to fulfill this commitment within the statutory one year period or upon EPA's final disapproval of a submitted RACM demonstration.

In addition, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of submitted Rules 8011, 8021, 8031, 8041, 8051, 8061, 8071 and 8081 with respect to CAA section 189(b)(1)(B) BACM requirements. Specifically, the state has failed to demonstrate that thresholds of source coverage fulfill BACM requirements. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule with respect to BACM requirements. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under CAA section 179 according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the deficiencies within 24 months. Note that the submitted rules have been adopted by SJVUAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 22, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(304) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(304) New and amended regulations for the following APCD were submitted on December 6, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rules 8011, 8021, 8031, 8041, 8051, 8061, 8071, and 8081, adopted on November 15, 2001.

* * * * *

[FR Doc. 03–4383 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA262–0369a; FRL–7451–4]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic liquid storage and VOC and nitrogen dioxide (NO_X) emissions from flare operations at industrial sites such as oil refineries, chemical manufacturers, and oil wells. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse comments by March 28, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MBUAPCD	417	Storage of Organic Liquids	12/19/01	3/15/02
SJVUAPCD	4311	Flares	6/20/02	8/06/02

On May 7, 2002 and August 30, 2002 respectively, EPA found that the submittals for MBUAPCD Rule 417 and SJVUAPCD Rule 4311 met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

We approved a version of MBUAPCD Rule 417 into the SIP on February 15, 1995 (60 FR 8565); there have been no intervening submittals of the rule. SJVUAPCD Rule 4311 is a new rule and there are no previous versions of it in the SIP.

C. What Is the Purpose of the Submitted Rule or Rule Revisions?

MBUAPCD Rule 417 is designed to reduce VOC emissions at industrial sites engaged in storing any organic liquids with a vapor pressure greater than 0.5 pounds per square inch atmospheric. VOCs are emitted from containment vessels such as tanks and transfer lines due to the high vapor pressure of the processed crude oil and organic liquids. MBUAPCD Rule 417 was amended to require that the true vapor pressure of petroleum products with a API gravity of less than 20 degrees be determined by the "Test Method for Vapor Pressure of Reactive Organic Compounds in Heavy Crude Oil Using Gas Chromatography" as developed by Lawrence Berkeley National Laboratory.

SJVUAPCD Rule 4311 is a new rule designed to decrease VOC and NO_x emissions from industries such as refineries, unrecoverable gases from oil wells, vented gases from blast furnaces, unused gases from coke ovens, and gaseous wastes from chemical industries by requiring that flares be operated in a prescribed manner. Rule 4311 includes the following general provisions:

—Purpose and applicability;
—Definitions of terms used within the rule;
—Exemptions from the rule;
—Requirements mandating particular flare operation protocols, equipment, and operations including VOC and NO_x limits for ground-level enclosed flares;
—Record keeping to demonstrate compliance with the rule; and,
—Test methods for determining compliance with the rule.

The EPA's subject TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The MBUAPCD regulates an area attaining the federal ozone standard and must have RACT rules needed to maintain this status. The SJVUAPCD regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rule 4311 must fulfill RACT.

Guidance and policy documents that we used to help evaluate consistently specific enforceability and RACT requirements include the following:

—Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987;
—"Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook);
—"Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook);
—"Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA–450/2–78–047, USEPA, December 1978; and
—"Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks," EPA–450/2–77–036, USEPA, December 1977.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The subject TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

There are no additional rule revisions recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by March 28, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 28, 2003. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Nitrogen dioxide, Volatile organic compounds.

Dated: December 6, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(297)(i)(D)(2) and (c)(303)(i)(C)(1) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(297) * * *

(i) * * *

(D) * * *

(2) Rule 417 adopted on September 1, 1974, and amended on December 19, 2001.

* * * * *

(c) * * *

(303) * * *

(i) * * *

(C) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4311 adopted on June 20, 2002.

* * * * *

[FR Doc. 03–4381 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA273–0381c; FRL–7452–5]

Interim Final Determination To Stay and/or Defer Sanctions, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register.** The revisions concern ICAPCD Rule 420, Livestock Feed Yards.

DATES: This interim final determination is effective on February 26, 2003. However, comments will be accepted until March 28, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On July 11, 2001 (66 FR 36170), we published a limited approval and limited disapproval of ICAPCD Rule 420 as adopted locally on September 14, 1999 and submitted by the State on May 26, 2000. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 10, 2001 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On August 13, 2002, ICAPCD adopted revisions to Rule 420 that were intended to correct the deficiencies identified in our disapproval action. On October 16, 2002, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register,** we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our July 11, 2001 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our July 11, 2001 disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed approval of revised ICAPCD Rule 420, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with ICAPCD Rule 420 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 26, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 3, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–4378 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA273–0381a; FRL–7452–3]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). The revision concerns a rule controlling particulate matter (PM) emissions from livestock feed yard operations. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse comments by March 28, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460; California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and, Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	420	Livestock Feed Yards	08/13/02	10/16/02

EPA found this rule submittal met the completeness criteria in 40 CFR part 51, appendix V on December 3, 2002. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

There is a version of ICAPCD Rule 420 in the SIP. On July 11, 2001, EPA gave a limited approval of Rule 420 and adopted it into the SIP. Simultaneously, EPA gave a limited disapproval to Rule 420 (66 FR 36170). There have been no other submittals of Rule 420 prior to the one we are acting on today.

C. What Is the Purpose of the Submitted Rule Revisions?

ICAPCD Rule 420 is a rule designed to limit particulate matter (PM) emissions at livestock feedyard operations. The rule requires that feed yards limit their dust emissions using procedures to maintain soil moisture and remove manure. The TSD has more information about this rule. The following is EPA's evaluation and final action for this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must meet Reasonably Available Control Measure (RACM) requirements for nonattainment areas (see section 189), and must not relax existing requirements (see sections 110(l) and 193). The ICAPCD regulates an PM nonattainment area (see 40 CFR part 81), so Rule 420 must fulfill RACM.

We used the following guidance and policy documents to define our specific enforceability and RACT requirements:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register.**

B. Does the Rule Meet the Evaluation Criteria?

EPA's July 2001 limited approval and disapproval identified the following deficiencies that must be remedied before we may grant full approval:

—The rule contains inappropriate Executive Officer discretion allowing for exceptions to compliance with rule's moisture content standard;
—the rule does not have a definition of "rainy period"; and,
—the rule lacks a test method to determine compliance with the moisture content standard.

Consequently, ICAPCD's August 2002 amendments revised the exceptions and test methods portions of the rule. An annual limited exception is provided at D.1. for up to 60 days providing an alternative dust control plan complies with Rule 401—Opacity and Rule 407—Nuisance. At D.2. an exception to the maximum 40% soil moisture requirement is allowed during rainy period as defined in Rule 101—Definitions. The test methods for compliance were detailed and expanded to prescribe how manure moisture content should be determined.

As a result of these revisions, we believe Rule 420 is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. We are not reviewing the rule as a RACM measure, because Imperial County has yet to submit its moderate area PM plan for our review. Once we have received this PM plan and its supporting emissions inventory information, we will evaluate Rule 420 as a RACM in the context of this information. The TSD has more information on our rule evaluation.

C. EPA Recommendations to Further Improve the Rules

EPA has no suggested recommendations.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by March 28, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 28, 2003. This action will incorporate Rule 420 into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

Imperial County is an area designated nonattainment for PM–10 and is classified as a moderate nonattainment area. Section 189(a) of the CAA requires moderate PM–10 nonattainment areas to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Table 2 lists some of the national milestones leading to the submittal of this local agency rule.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA), (43 FR 8964; 40 CFR 81).
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10). (52 FR 24672).

TABLE 2.—PM–10 NONATTAINMENT MILESTONES—Continued

Date	Event
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified pursuant to section 188(a).
December 10, 1993	Section 189(a)(1)(C) requires that PM–10 nonattainment areas implement all reasonably available control measures (RACM) by this date.

IV. Stationary and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 3, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(302)(i)(A)(*3*), to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(302) * * *

(i) * * *

(A) * * *

(*3*) Rule 420 adopted on November 11, 1985, and amended on August 13, 2002.

* * * * *

[FR Doc. 03–4376 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA085/086/089/102/103–5046a; FRL–7455–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reorganization of and Revisions to Administrative and General Conformity Provisions; Documents Incorporated by Reference; Recodification of Existing SIP Provisions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendment.

SUMMARY: This document corrects errors in the amendatory instructions of a final rule pertaining to the chart listing Virginia regulations which EPA has incorporated by reference into the Virginia SIP.

EFFECTIVE DATE: March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," or "our" are used we mean EPA. On January 7, 2003 (68 FR 663), we published a final rulemaking action announcing corrections to the chart in 40 CFR 52.2020(c) summarizing the approved SIP rules. As stated 68 FR 663 at page 666, the intent of these amendatory instructions was to correct typographical errors by renumbering these entries with the correct regulatory citations. After reviewing the chart published on page 666, we have determined that this action provided an incomplete list of entries which EPA had intended to correct. In addition to those entries listed in 68 FR 663 at 666, EPA had intended to correct the following entries originally published on April 21, 2000 (65 FR 21315), as described below:

Federal Register page (65 FR)	Entry	Column title	Description of correction
21322	5–20–305	State Effective Date	Replace "2/1/97" with "7/1/97"
21323	5–40–311	Title/Subject	Replace "Dioxide" with "Oxides"
21342	5–91–20	State Effective Date	Replace "1/1/98" with "1/24/97"
	5–91–20	Explanation [Former SIP Citation]	Revise the existing note regarding the term "Northern Virginia program area"

In this document on page 667, an amendatory instruction (2.d.) inadvertently removed entries 5–9–150, 4–91–450 and 4–91–460 from this chart. Another amendatory instruction (2.f.) contained a typographical error to the citation identifying entry 4–40–450. As stated in 68 FR 663 at page 666, the intent of these amendatory instructions was not to remove these entries from the chart, but merely to correct typographical errors by renumbering these entries with the correct regulatory citations, as described below:

1. Replace entry "4–40–450" with "5–40–450."
2. Replace entry "5–9–150" with "5–91–150."
3. Replace entry "4–91–450" with "5–91–450."
4. Replace entry "4–91–460" with "5–91–460."

However, the rule chart published in the January 7, 2003 action omitted these new entries which were meant to replace these incorrect entries. This action corrects the chart in 40 CFR 52.2420(c) by removing the incorrect chart entries and adding the correct chart entries in their place.

Also, on page 667 amendatory instructions 2.e. and 2.g. were incorrect. As a result, the corrections as described on page 666 to entry 5–80–10 and the title for "Chapter 160 General Conformity Rules" were not made to the rule chart at page 668. This action provides the correct amendatory instructions.

Finally, this action corrects typographical errors published in the rule chart for 68 FR 663 at page 668 to the headings "Chapter 10" and "Chapter 20" and to the notes found in the respective "Explanation [Former SIP Citation]" columns for entries 5–10–10 and 5–10–20.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of March 10, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** This correction to 40 CFR 52.2420(c) for Virginia is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 14, 2003.

Donald S. Welsh,

Regional Administrator, EPA Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (c) is amended:

a. Under Chapter 10 by revising the "Chapter 10" heading and entries 5–10–10 and 5–10–20.

b. Under Chapter 20 by revising the "Chapter 20" heading and entry 5–20–205.

c. Under Chapter 40 by removing entry 4–40–450, adding entry 5–40–450, and revising entry 5–40–311.

d. Under Chapter 80 by removing entry 5–80–10/Article 6 and adding entry 5–80–10.

e. Under Chapter 91 by removing entries 5–9–150, 4–91–450, and 4–91–460; adding entries 5–91–150, 5–91–450, and 5–91–460; and revising entry 5–91–20.

f. Under chapter 160 by revising the "Chapter 160" heading.

The revisions read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS

State citation (9 VAC 5)	Title/Subject	State effective date	EPA approval date	Explanation [former SIP citation]
	Chapter 10—General Definitions—[Part I]			
5–10–10	General	1/1/98	1/7/03, 68 FR	120–01–01 Sections 5–10–10A, B and C are revised.
5–10–20	Terms Defined—	1/1/98	2/26/03 and FR page citation	Terms Added—Public hearing; Regulations for the Control and Abatement of Air Pollution, Regulation of the Board, These regulations: Terms Revised—Good Engineering Practice, Person, Volatile organic compound: Terms Deleted (moved to 9 VAC 5–170–20)—Administrative Process Act, Air quality maintenance area, Confidential information, Consent agreement, Consent order, Emergency special order, Order, Special order, Variance.
	Chapter 20—General Provisions—[Part II]			
5–20–205	Prevention of Significant Deterioration Areas.	7/1/97	3/23/98, 63 FR 13795	Former Appendix L—Effective 2/1/92.

EPA-APPROVED VIRGINIA REGULATIONS—Continued

State citation (9 VAC 5)	Title/Subject	State effective date	EPA approval date	Explanation [former SIP citation]
	Chapter 40—Existing Stationary Sources—[Part IV]			
	Part II—Emission Standards			
	Article 4—General Process Operations—[Rule 4–4]			
5–40–311	Reasonably available control technology guidelines for stationary sources of nitrogen oxides.	7/1/97	4/28/99, 64 FR 22792	52.2420(c)(132) Exceptions: 311C.3.a, C.3.c,D.
	Article 5—Synthesized Pharmaceutical Products Manufacturing Operations—[Rule 4–5]			
5–40–450	Standard for Volatile Organic Compounds.	4/17/95	4/21/00, 65 FR 21320	120–04–0503
	Chapter 80—Permits for Stationary Sources			
5–80–10	New and Modified Stationary Sources.	4/17/95	4/21/00, 65 FR 21320	120–08–01
	Chapter 91—Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area			
	Part I—Definitions			
5–91–20	Terms Defined	1/24/97	9/1/99, 64 FR 47670	Note: The term "Northern Virginia program area" is revised, effective 1/1/98, to exclude Fauquier County.
	Part II—General Provisions			
5–91–150	Availability of Information	1/24/97	9/1/99, 64 FR 47670	
	Part VI—Inspection Procedures			
5–91–450	Fuel test evaporative pressure test and gas cap pressure and test procedure.	1/24/97	9/1/99, 64 FR 47670	
5–91–460	Fuel system evaporative purge test procedure.	1/24/97	9/1/99, 64 FR 47670	
	Chapter 160—General Conformity Rules			

[FR Doc. 03–4520 Filed 2–25–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 173–1173a; FRL–7455–9]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA),

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the state of Kansas. This revision is a new regulation entitled "Prevention of Significant Deterioration of Air Quality" (PSD) and will replace the existing state PSD regulation. This rule was last adopted as a state rule in 1990; therefore, this revision adopts by reference Federal PSD regulations, as in effect on July 1, 2000. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

DATES: This direct final rule will be effective April 28, 2003, unless EPA receives adverse comments by March 28, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913).551–7039.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the Federally-enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a State-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All State regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

This action approves the adoption of State rule K.A.R. 28–19–350, Prevention of Significant Deterioration of Air Quality, and approves the recission of the existing rule sections K.A.R. 28–19–17a through 28–19–17q which comprised the prior body of Kansas' Prevention of Significant Deterioration of Air Quality regulations. K.A.R. 28–19–17 is being revised in order to provide a cross-reference to the new regulations. This revision adopts by reference 40 CFR 52.21, as in effect on July 1, 2000, with the exceptions of 52.21(a); 52.21(f) through (h); 52.21(m)(l)(v); 52.21(q); 52.21(s) through (u); and 52.21(w).

The proposed changes to the State Prevention of Significant Deterioration (PSD) program clarify that the following Federal changes have been adopted by the Kansas PSD Program: (1) Adoption of the PM10 (particulate matter with a nominal aerodynamic diameter of 10 micrometers or less) increment; (2) adoption of provisions regarding calculating actual emissions for electric utility steam generating units; (3) adoption of provisions relating to clean coal technology; (4) adoption of provisions relating to pollution control projects at existing electric utility steam generating units; (5) adoption of the significance level for non-methane organic compounds at municipal solid waste landfills; and (6) adoption of the significance levels for organics, metals and acid gases from municipal waste combustors. This action also allows the opportunity to renumber the PSD rules to further the ongoing renumbering of the Kansas Air Quality Regulations.

This regulation was adopted by the Kansas Department of Health and Environment on October 30, 2002, and became effective on November 22, 2002.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the

completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is approving as a revision to the Kansas SIP rule K.A.R. 28–19–350, Prevention of Significant Deterioration of Air Quality; the recission of existing K.A.R. 28–19–17a through 28–19–17q which comprised the prior body of Kansas' Prevention of Significant Deterioration of Air Quality regulations, and the revision to K.A.R. 28–19–17 which provides a cross-reference to the new regulations. These revisions were adopted by the State on October 30, 2002, and became effective on November 22, 2002. These revisions were submitted on December 10, 2002.

We are processing this action as a final action because it adds noncontroversial regulations to the SIP. We do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section *307(b)(2).*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 20, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

2. In § 52.870 the table in paragraph (c) is amended:

a. Under the heading for "Attainment Area Requirements" by revising K.A.R. 28–19–17;

b. Under the heading for "Attainment Area Requirements" by removing the entries for K.A.R. 28–19–17a through K.A.R. 28–19–17q;

c. Under the heading for "Construction Permits and Approvals" by adding in numerical order an entry for K.A.R. 28–19–350.

The revision and addition read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Comments
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
Attainment Area Requirements				
K.A.R. 28–19–17	Prevention of Significant Deterioration of Air Quality.	11/22/02	2/26/03 and FR page citation.	K.A.R. 28–19–17a through 28–19–17q revoked. Provision moved to K.A.R. 28–19–350.
Construction Permits and Approvals				
K.A.R. 28–19–350	Prevention of Significant Deterioration of Air Quality.	11/22/02	2/26/03 and FR page citation.	

* * * * *

[FR Doc. 03–4626 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0039; FRL–7291–7]

Pesticides; Tolerance Exemptions for Polymers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final rule action to shift certain polymeric substances from one section of the Code of Federal Regulations (CFR) to the section of CFR which lists the pesticide chemicals that are exempt from the requirement of a tolerance because they have been determined to meet the criteria identifying polymers that are of low risk.

DATES: This direct final rule is effective on May 27, 2003, without further notice, unless EPA receives a relevant adverse comment by March 28, 2003. If EPA receives a relevant adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–6304; fax number: 703–305–0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)
- Antimicrobial Pesticide (NAICS code 32561)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies Of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0039. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/

to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OPP–2003–0039. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to opp-docket@epa.gov, Attention Docket ID No. OPP–2003–0039. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: 7502C, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. OPP–2003–0039.

3. *By Hand Delivery or Courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA., Attention Docket ID No. OPP–2003–0039. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Authority

A. What is the Agency's Authority for Taking this Action?

This direct final rule is issued pursuant to section 408(e) of FFDCA, as amended by the FQPA (21 U.S.C. 346a(e)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)).

B. Why is EPA Issuing this as a Direct Final Rule?

EPA is issuing this action as a direct final rule without prior proposal because the Agency believes that this action is not controversial and is not likely to result in any adverse comments, inasmuch as this action simply shifts existing tolerance exemptions to a new section in 40 CFR part 180. It will not alter the quantity or nature of residues that might lawfully be present in food or feed.

This rule is effective on May 27, 2003 without further notice, unless EPA receives adverse comment by March 28, 2003. If, however, EPA receives a relevant adverse comment during the comment period, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will also publish a notice of proposed rulemaking in a future edition of the **Federal Register**. EPA will address the comments on the direct final rule as part of that proposed rulemaking.

III. What Action is the Agency Taking?

In the **Federal Register** of May 24, 2002, (67 FR 36525) (FRL–6834–2) the Agency published a direct final rule establishing a new section 40 CFR 180.960 to contain exemptions from the requirement of a tolerance for polymers that under reasonably foreseeable circumstances will pose no appreciable risks to human health.

The Agency is now shifting to 40 CFR 180.960 those existing tolerance exemptions for certain polymers that have previously been determined to meet the criteria of a low risk polymer. All of these polymers can be used as an inert ingredient in any pesticide product including antimicrobial pesticide products providing that such use is in accordance with good agricultural or manufacturing practices. As part of this shifting of tolerance exemptions from one part of the CFR to another, the Agency has combined as appropriate two or more chemical names under a single name and has eliminated duplicative entries.

IV. Statutory and Executive Order Reviews

This direct final rule merely reorganizes existing exemptions in 40 CFR part 180, shifting them from one section to another within the same part. The Agency is acting on its own initiative under FFDCA section 408(e) in shifting these existing tolerance exemptions to a new section of part 180. This direct final rule has no substantive effect, and is not expected to have any adverse impact, or otherwise impose any new requirements. As such, this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

This direct final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq.

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et.seq.), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As noted above, this action will have no substantive or procedural effect on the tolerance exemptions affected, and therefore, will not adversely impact small entities. However, by grouping tolerance exemptions for polymers that have been determined to be low risk in one location in the CFR, this action will make it easier for small entities to efficiently use EPA's tolerance regulations.

Since this direct final rule simply shifts existing tolerance exemptions within part 180 without imposing any requirements, it does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

In addition, this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). This direct final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, this direct final rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Since this direct final rule is not a "significant regulatory action" as defined by Executive Order 12866, it does not require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Nor does it require any special considerations under Executive Order 12898 entitled *Federal Actions to Address Environmentol Justice in*

Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

In issuing this direct final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 13, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticides Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346 (a) and 374.

§ 180.960 [Amended]

2. Section 180.960 is amended by adding alphabetically the following entries to the table.

Polymer	CAS No.
Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly (oxy-1,2-ethanediyl) minimum number average molecular weight (in amu), 15,000	137091–12–4
Acrylic acid, polymerized, and its ethyl and methyl esters	None
Acrylic acid-sodium acrylate-sodium-2-methylpropanesulfonate copolymer, minimum average molecular weight (in amu), 4,500	97953–25–8
Acrylic acid-stearyl methacrylate copolymer, minimum number average molecular weight (in amu), 2,500	27756–15–6
. . .	. .
Acrylonitrile-butadiene copolymer conforming to 21 CFR 180.22, minimum average molecular weight (in amu), 1,000.	9003–18–3
Acrylonitrile-styrene-hydroxypropyl methacrylate copolymer, minimum number average molecular weight (in amu), 447,000	None
. . .	. .
Alkyl (C_{12}–C_{20}) methacrylate-methacrylic acid copolymer, minimum molecular weight (in amu), 11,900	None
3,5-Bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine, minimum number average molecular weight (in amu), 1,000,000	87823–33–4
Butadiene-styrene copolymer	None
1,4-Butanediol-methylenebis(4-phenylisocyanate)-poly(tetramethylene glycol) copolymer, minimum molecular weight (in amu) 158,000	9018– 04–6
2-Butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt, minimum number average molecular weight (in amu), 75,000	139871–83–3
α-Butyl-ω-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene); molecular weight (in amu), 2,400–3,500	None
Castor oil, polyoxyethylated; the poly(oxyethylene) content averages 5–54 moles	None
Chlorinated polyethylene	64754–90–1
Cross-linked nylon-type polymer formed by the reaction of a mixture of sebacoyl chloride and polymethylene polyphenylisocyanate with a mixture of ethylenediamine and diethylenetriamine	None
Cross-linked polyurea-type encapsulating polymer	None
. . .	. .
Docosyl methacrylate-acrylic acid copolymer, or docosyl methacrylate-octadecyl methacrylate-acrylic acid copolymer, minimum number average molecular weight (in amu), 3,000	None
1,12-Dodecanediol dimethacrylate polymer, minimum molecular weight (in amu), 100,000	None
. . .	. .
Ethylene glycol dimethyacrylate-lauryl methacrylate copolymer, minimum molecular weight (in amu), 100,000	None
Ethylene glycol dimethacrylate polymer, minimum molecular weight (in amu), 100,000	None

Polymer	CAS No.
Fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer, minimum average molecular weight (in amu), 1 x 10^{18}	None
Hexadecyl acrylate-acrylic acid copolymer, hexadecyl acrylate-butyl acrylate-acrylic acid copolymer, or hexadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, minimum number average molecular weight (in amu), 3,000	None
1,6-Hexanediol dimethyacrylate polymer, minimum molecular weight (in amu), 100,000	None
. . .	. .
α-Hydro-ω-hydroxypoly(oxyethylene), minimum molecular weight (in amu), 100,000	None
α-Hydro-ω-hydroxypoly(oxyethylene)poly (oxypropylene) poly(oxyethylene) block copolymer; the minimum poly(oxypropylene) content is 27 moles and the minimum molecular weight (in amu) is 1,900	None
α-Hydro-ω-hydroxypoly(oxypropylene); minimum molecular weight (in amu) 2,000	None
Lauryl methacrylate-1,6-hexanediol dimethacrylate copolymer, minimum molecular weight (in amu), 100,000	None
. . .	. .
Maleic anhydride-methyl vinyl ether, copolymer, average molecular weight (in amu), 250,000	None
Maleic acid-butadiene copolymer	None
Maleic acid monobutyl ester-vinyl methyl ether copolymer, minimum average molecular weight (in amu), 52,000	25119–68–0
Maleic acid monoethyl ester-vinyl methyl ether copolymer, minimum average molecular weight (in amu), 46,000	25087–06–3
Maleic acid monoisopropyl ester-vinyl methyl ether copolymer, minimum average molecular weight (in amu), 49,000	31307–95–6
. . .	. .
Methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethylmethacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer, minimum average molecular weight (in amu), 9,600	None
Methyl vinyl ether-maleic acid copolymer), minimum number average molecular weight (in amu), 75,000	25153–40–6
Methyl vinyl ether-maleic acid copolymer, calcium sodium salt, minimum number average molecular weight (in amu), 900,000	62386–95–2
Monophosphate ester of the block copolymer α-hydro-ω-hydroxypoly(oxyethylene) poly(oxypropylene) poly(oxyethylene); the poly(oxypropylene) content averages 37–41 moles, average molecular weight (in amu), 8,000	None
α-(*p*-Nonylphenyl-ω-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene); polyoxypropylene content of 10–60 moles; polyoxyethylene content of 10–80 moles; molecular weight (in amu), 1,200–7,100.	None
α-(*p*-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene); poly oxyethylene content 30 to 90 moles; molecular weight (in amu) averages 3,000	None
Octadecanoic acid, 12-hydroxy-, homopolymer, octadecanoate minimum number average molecular weight (in amu), 1,370	58128–22–6),
α-cis-9-Octadecenyl-ω-hydroxypoly(oxyethylene); the octadecenyl group is derived from oleyl alcohol and the poly(oxyethylene) content averages 20 moles	None
Octadecyl acrylate-acrylic acid copolymer, octadecyl acrylate-dodecyl acrylate-acrylic acid copolymer, octadecyl methacrylate-hexyl acrylate-acrylic acid copolymer, octadecyl methacrylate-dodecyl acrylate-acrylic acid copolymer, or octadecyl methacrylate-dodecyl methacrylate-acrylic acid copolymer, minimum number average molecular weight (in amu) 3,000	None
Oleic acid diester of α-hydro-ω-hydroxypoly(oxyethylene); the poly(oxyethylene), average molecular weight (in amu), 2,300	None
Polyamide polymer derived from sebacic acid, vegetable oil acids with or without dimerization, terephthalic acid and/or ethylenediamine	None
. . .	. .
Polyethylene, oxidized, minimum number average molecular weight (in amu), 1,200	None

Polymer	CAS No.
. . .	. .
Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked; minimum number average molecular weight (in amu), 100,000	None
Polyoxyethylated primary amine (C_{14}–C_{18}); the fatty amine is derived from an animal source and contains 3% water; the poly(oxyethylene) content averages 20 moles	None
Polyoxyethylated sorbitol fatty acid esters; the polyoxyethylated sorbitol solution containing 15% water is reacted with fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18}, containing minor amounts of associated fatty acids; the poly(oxyethylene) content averages 30 moles.	None
Poly(oxyethylene/ oxypropylene) monoalkyl (C_6–C_{10}) ether sodium fumarate adduct, minimum number average molecular weight (in amu), 1,900	102900–02–7
Polyoxymethylene copolymer, minimum number average molecular weight (in amu), 15,000	None
Poly(oxypropylene) block polymer with poly(oxyethylene), molecular weight (in amu), 1,800–16,000	None
Poly(phenylhexylurea), cross-linked, minimum average molecular weight (in amu), 36,000	None
Polypropylene	9003–07–0
Polystyrene, minimum number average molecular weight (in amu), 50,000	9003–53–6
Polytetrafluoroethylene	9002–84–0
Polyvinyl acetate, minimum molecular weight (in amu), 2,000	None
Polyvinyl acetate--polyvinyl alcohol copolymer, minimum number average molecular weight (in amu), 50,000	25213–24–5
Polyvinyl alcohol	9002–89–5
Polyvinyl chloride	None
. . .	. .
Poly(vinylpyrrolidone), minimum number average molecular weight (in amu), 4,000	9003–39–8
Poly(vinylpyrrolidone-1-eicosene), minimum average molecular weight (in amu), 3,000	28211–18–9
Poly(vinylpyrrolidone-1-hexadecene), minimum average molecular weight (in amu), 4,700	63231–81–2
. . .	. .
Sodium polyflavinoidsulfonate, consisting chiefly of the copolymer of catechin and leucocyanidin	None
Stearyl methacrylate-1,6-hexanediol dimethacrylate copolymer, minimum molecular weight (in amu), 100,000	None
Styrene-2-ethylhexyl acrylate-glycidyl methacrylate-2-acrylamido-2-methylpropanesulfonic acid graft copolymer, minimum number average molecular weight (in amu), 12,500	None
. . .	. .
Styrene-maleic anhydride copolymer	None
Styrene-maleic anhydride copolymer, ester derivative	None
Tetradecyl acrylate-acrylic acid copolymer, minimum number average molecular weight (in amu), 3,000	None
. . .	. .
α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl] poly(oxypropylene) block polymer with poly(oxyethylene); the poly(oxypropylene) content averages 25 moles, the poly(oxyethylene) content averages 40 moles, the molecular weight (in amu) averages 3,400	None
α-[2,4,6-Tris[1-(phenyl)ethyl]phenyl]-ω-hydroxy poly(oxyethylene) poly(oxypropylene) copolymer, the poly(oxypropylene) content averages 2–8 moles, the poly(oxyethylene) content averages 16–30moles, average molecular weight (in amu), 1,500	None
Urea-formaldehyde copolymer, minimum average molecular weight (in amu), 30,000	9011–05–6
Vinyl acetate-allyl acetate-monomethyl maleate copolymer, minimum average molecular weight (in amu), 20,000	None
Vinyl acetate-ethylene copolymer, minimum number average molecular weight (in amu), 69,000	24937–78–8
. . .	. .
Vinyl acetate-vinyl alcohol-alkyl lactone copolymer, minimum number average molecular weight (in amu), 40,000; minimum viscosity of 18 centipoise	None
Vinyl alcohol-disodium itaconate copolymer, minimum average molecular weight (in amu), 50,290	None

Polymer	CAS No.
Vinyl alcohol-vinyl acetate-monomethyl maleate, sodium salt-maleic acid, disodium salt-γ-butyrolactone acetic acid, sodium salt copolymer, minimum number average molecular weight (in amu), 20,000	None
Vinyl chloride-vinyl acetate copolymers	None
Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer, minimum number average molecular weight (in amu), 20,000	30581–59–0
Vinyl pyrrolidone-styrene copolymer	25086–29–7

§ 180.1001 [Amended]

3. Section 180.1001 is amended as follows:

i. The table in paragraph (c) is amended by removing the entries listed below:

Inert ingredients	Limits	Uses
Acrylamide potassium acrylate--acrylic acid copolymer, cross-linked (CAS Reg. No. 31212–13–2), minimum number average molecular weight (in atomic mass units (amu)) 1,000,000.	.....	Carrier
Acrylic acid--stearyl methacrylate copolymer (CAS Reg. No. 27756–15–6), minimum number average molecular weight (in amu) 2,500.	.....	Emulsifier, suspending agent, or rheology modifier
α-Butyl-ω-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene); molecular weight (in amu) 2,400–3,500.	.....	Surfactants, related adjuvants of surfactants
Castor oil, polyoxyethylated; the poly(oxyethylene) content averages 5–54 moles.	.....	Surfactants, related adjuvants of surfactants
1,12-Dodecanediol dimethacrylate polymer.	Minimum molecular weight (in amu) 100,000..	Release rate regulator in pheromone formulation
Ethylene glycol dimethyacrylate--lauryl methacrylate copolymer.	Minimum molecular weight (in amu) 100,000..	Release rate regulator in pheromone formulation
Ethylene glycol dimethacrylate polymer.	Minimum molecular weight (in amu) 100,000..	Release rate regulator in pheromone formulation
1,6-Hexanediol dimethyacrylate polymer.	Minimum molecular weight (in amu) 100,000..	Release rate regulator in pheromone formulation
α-Hydro-ω-hydroxypoly(oxypropylene); molecular weight (in amu) 4,000.	.....	Do.
Lauryl methacrylate--1,6-hexanediol dimethacrylate copolymer.	Minimum molecular weight (in amu) 100,000..	Release rate regulator in pheromone formulation
Maleic acid monobutyl ester--vinyl methyl ether copolymer, CAS No. 25119–68–0, minimum average molecular weight (in amu) 52,000.	.....	Seed-coating adhesive, gel, and antitranspirant
Maleic acid monoethyl ester--vinyl methyl ether copolymer, CAS No. 25087–06–3, minimum average molecular weight (in amu) 46,000.	.....	Seed-coating adhesive, gel, and antitranspirant
Maleic acid monoisopropyl ester-vinyl methyl ether copolymer, CAS No. 31307–95–6, minimum average molecular weight (in amu) 49,000.	.....	Seed-coating adhesive, gel, and antitranspirant
Methyl vinyl ether--maleic acid copolymer (CAS Reg. No. 25153–40–6), minimum number average molecular weight (in amu) 75,000.	.....	Dispersant, seed-coating adhesive
Methyl vinyl ether--maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386–95–2), minimum number average molecular weight (in amu) 900,000.	.....	Dispersant, seed-coating adhesive
α-(*p*-Nonylphenyl) poly(oxypropylene) block polymer with poly(oxyethylene); polyoxyethylene content 30 to 90 moles; molecular weight (in amu) averages 3,000.	.....	Do.
α-(*p*-Nonylphenyl-ω-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene); polyoxypropylene content of 10-60 moles; polyoxyethylene content of 10–80 moles; molecular weight (in amu) 1,200–7,100.	.....	Do.
Octadecanoic acid, 12-hydroxy-, homopolymer, octadecanoate (CAS Reg. No. 58128–22–6), minimum number-average molecular weight 1,370.	.....	dispersing agent, related adjuvant of surfactants, surfactant, suspending agent
α-cis-9-Octadecenyl-ω-hydroxypoly(oxyethylene); the octadecenyl group is derived from oleyl alcohol and the poly(oxyethylene) content averages 20 moles.	.....	Surfactants, related adjuvants of surfactants
Polyethylene, oxidized, conforming to 21 CFR 172.260.	.....	Coating agent
Polymers derived from the following monomers: acrylic acid, sodium form; butyl acrylate; ethyl acrylate; methacrylic acid and its ammonium and potassium salts; and methyl methacrylate	.....	Surfactants, related adjuvants of surfactants
Polymerized sodium methacrylate.	.....	pH control
Poly(oxyethylene/ oxypropylene) monoalkyl(C_6– C_{10}) ether sodium fumarate adduct (CAS Reg. No. 102900–02–7), minimum number average molecular weight (in amu) 1,900.	.....	Surfactant
Poly(oxypropylene) block polymer with poly(oxyethylene); molecular weight (in amu) 1,800–16,000.	.....	Do.
Polystyrene (CAS Reg. No. 9003–53–6), minimum number average molecular weight (in amu) 50,000).	.....	Suspending agent, thickener

Inert ingredients	Limits	Uses
Poly(vinylpyrrolidone) (CAS Reg. No. 9003–39–8), minimum number average molecular weight (in amu) 4,000.	....	Surfactant, related adjuvants of surfactant
Poly(vinylpyrrolidone-1-eicosene) (CAS Reg. No. 28211–18–9).	Minimum average molecular weight 3,000..	Dispersing agent
Poly(vinylpyrrolidone-1-hexadecene) (CAS Reg. No. 63231–81–2).	Minimum average molecular weight (in amu) 4,700.	Dispersing agent
Stearyl methacrylate--1,6-hexanediol dimethacrylate copolymer.	Minimum molecular weight (in amu) 100,000..	Release rate regulator in pheromone formulation
Styrene-2-ethylhexyl acrylate-glycidyl methacrylate-2-acrylamido-2-methylpropanesulfonic acid graft copolymer, minimum number average molecular weight 12,500.	....	Dispersing agent/solvent
Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer (CAS Reg. No. 30581–59–0), minimum number average molecular weight (in amu) 20,000.	....	Leaching inhibitor, binder for water-dispersible aggregates, sticker and suspension stabilizer

ii. Section 180.1001 is further amended by removing from the table in paragraph (d) the entries listed below:

Inert ingredients	Limits	Uses
Acetic acid ethenyl ester, polymer with ethenol and (α)-2-propenyl-(ω)-hydroxypoly (oxy-1,2-ethanediyl) (CAS Reg. No.137091–12–4); minimum number average molecular weight 15,000.	....	Component of water-soluble film
Acrylamide--acrylic acid resins	....	Thickeners
Acrylamide--sodium acrylate resins	....	Do.
Acrylic acid, polymerized, and its ethyl and methyl esters	....	Surfactants, related adjuvants of surfactants
Acrylic acid--sodium acrylate--sodium-2-methylpropanesulfonate copolymer (minimum average molecular weight (in amu) 4,500); CAS No. 97953–25–8.	....	Dispersing agent
Acrylonitrile--styrene-hydroxypropyl methacrylatecopolymer; minimum number average molecular weight (in amu) 447,000.	....	Pigment carrier
Alkyl (C_{12}–C_{20}) methacrylate-methacrylic acid copolymer; minimum molecular weight (in amu) 11,900.	....	Stabilizer; component of spray drift retardant
3,5-Bis(6-isocyanatohexyl)-2H-1,3,5-oxadiazine-2,4,6-(3H,5H)-trione, polymer with diethylenetriamine (CAS Reg. No. 87823–33–4); minimum number average molecular weight (in amu) 1,000,000.	....	Encapsulating agent
Butadiene-styrene copolymer	....	Adhesive, component of adhesive
2-Butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt (minimum number averagemolecular weight (in amu) 75,000; CAS No. 139871–83–3).	....	Component of water-soluble film
Cross-linked polyurea-type encapsulating polymer formed by the reduction of a mixture of toluene diisocyanate and polymethylene polyphenylisocyanate	....	Encapsulating agent
Fumaric acid--isophthalic acid--styrene--ethylene/propylene glycol copolymer (minimum average molecular weight (in amu) 1 x 10^{18}).	....	Encapsulating agent
α-Hydro-ω-hydroxypoly(oxyethylene); molecular weight (in amu) 100,000 minimum.	....	Carrier
α-Hydro-ω-hydroxypoly(oxypropylene) (mol. wt. 2,000).	....	Component of defoamers
Maleic acid--butadiene copolymer.	3% of pesticide formulation.	Surfactants, related adjuvants surfactants
Maleic anhydride--methyl vinyl ether, copolymer; average molecular weight (in amu) 250,000.	....	Do.
Methyl methacrylate-2-sulfoethyl methacrylate-dimethylaminoethyl methacrylate-glycidyl methacrylate-styrene-2-ethylhexyl acrylate graft copolymer (minimum average molecular weight (in amu) 9,600).	....	Carrier
Monophosphate ester of the block copolymer α-hydro-ω-hydroxypoly(oxyethylene)poly(oxypropylene)poly(oxyethylene); the poly(oxypropylene) content averages 37–41 moles, and the molecular weight (in amu) averages 8,000.	....	Do.
Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked; minimum number average molecular weight 100,000.	....	Encapsulating agent
Poly(phenylhexylurea), cross-linked; minimum average molecular weight 36,000.	....	Encapsulating agent
Polyvinyl acetate (as defined in 21 CFR 172.615).	....	Adhesive
Polyvinyl acetate--polyvinyl alcohol copolymer (CAS Reg. No. 25213–24–5).	Minimum number average molecular weight (in amu) 50,000..	Component of water-soluble film
Polyvinyl alcohol	....	Binder; water soluble bag-container or film-tape for encapsulating seeds

Inert ingredients	Limits	Uses
α-[*p*-(1,1,3,3-Tetramethylbutyl)phenyl] poly(oxypropylene) block polymer with poly(oxyethylene); the poly(oxypropylene) content averages 25 moles, the poly(oxyethylene) content averages 40 moles, the molecular weight (in amu) averages 3,400.	....	Do.
Vinyl acetate--allyl acetate--monomethyl maleate copolymer (minimum average molecular weight (in amu) 20,000).	....	Component on water-soluble film
Vinyl acetate--ethylene copolymer (CAS Reg. No. 24937–78–8); minimum number average molecular weight (in amu) 69,000.	....	Component of water-soluble film
Vinyl acetate--vinyl alcohol--alkyl lactone copolymer.	Minimum estimated number average molecular weight (in amu) 40,000; minimum viscosity of 18 centipoise..	Component of water-soluble film
Vinyl alcohol--disodium itaconate copolymer (minimum average molecular weight (in amu) 50,290).	....	Component of water-soluble film
Vinyl alcohol--vinyl acetate--monomethyl maleate, sodium salt--maleic acid, disodium salt-γ-butyrolactone acetic acid, sodium salt copolymer, minimum number average molecular weight (in amu) 20,000.	....	Carrier
Oleic acid diester of α-hydro-ω-hydroxypoly(oxyethylene); the poly(oxyethylene) molecular weight (in amu) averages 2,300.	....	Surfactant
Polyethylene, oxidized (as defined in 21 CFR 172.260(a)).	....	Surfactants, related adjuvants of surfactants
Polyoxyethylated primary amine (C_{14}–C_{18}); the fatty amine is derived from an animal source and contains 3% water; the poly(oxyethylene) content averages 20 moles.	Applied prior to planting of any crop, or as directed spray around the base of any crop..	Surfactant
Polyvinylpyrrolidone, butylated.	....	Surfactants, related adjuvants of surfactants
Sodium polyflavinoidsulfonate, consisting chiefly of the copolymer of catechin and leucocyanidin.	....	Sunscreen agent for viral insecticides for use on cotton
Styrene--maleic anhydride copolymer	For preemergence use only..	Suspending or dispersing agent
Styrene--maleic anhydride copolymer, ester derivative.	Limited to 3% of the formulation..	Suspending or dispersing agent. For pre-emergence use and use prior to formation of edible parts of plant
α-[2,4,6-Tris[1-(phenyl)ethyl]phenyl]-ω-hydroxy poly(oxyethylene) poly(oxypropylene) copolymer, the poly(oxypropylene) content averages 2–8 moles, the poly(oxyethylene) content averages 16–30 moles, and the average molecular weight (in amu) is 1,500.	Not more than 15% in the pesticide formulation..	Do.
Urea--formaldehyde copolymer (minimum average molecular weight (in amu) 30,000); CAS No. 9011–05–6.	....	Encapsulating agent
Vinyl chloride--vinyl acetate copolymers.	Not more than 2% of pesticide formulation.	Inert binding agent for formulation applied only to soil.
Vinylpyrrolidone--styrene copolymer (CAS Reg. No. 25086–29–7).	Not to exceed 2% of the formulation..	Opacifier

iii. Section 180.1001 is further amended by removing the following entries from the table in paragraph (e):

Inert ingredients	Limits	Uses
Acrylic acid--stearyl methacrylate copolymer (CAS Reg. No. 27756–15–6), minimum number average molecular weight (in amu) 2,500.	....	Emulsifier, suspending agent, or rheology modifier
Acrylonitrile--butadiene copolymer (CAS Reg. No. 9003–18–3) conforming to 21 CFR 180.22, minimum average molecular weight (in amu) 1,000.	....	Carrier in animal tag and similar slow-release devices
α-Butyl-ω-hydroxypoly (oxypropylene) block polymer with poly(oxyethylene); molecular weight (in amu) 2,400–3,500.	....	Surfactants,emulsifier, related adjuvants of surfactants.
1,4-Butanediol-methylenebis(4-phenylisocyanate)-poly(tetramethylene glycol) copolymer (CAS Reg. No. 9018–04–6); minimum molecular weight (in amu) 158,000.	....	Solid diluent; carrier
Castor oil, polyoxyethylated; the poly(oxyethylene) content averages 5–54 moles.	....	Surfactants, related adjuvants of surfactants
Castor oil, polyoxyethylated; the poly(oxyethylene) content averages 40 moles.	....	Surfactants, related adjuvants of surfactants
Chlorinated polyethylene (CAS Reg. No. 64754–90–1).	....	Resin, component animal tag
Cross-linked polyurea-type encapsulating polymer.	....	Encapsulating agent
1,2 Ethanediamine, polymer with oxirane and methyloxirane (CAS Reg. No. 26316–40–5) minimum number average molecular weight 2,800 and the range of number average molecular weight is 2,800 to 10,000 daltons.	....	Surfactant, dispersing agent
α-Hydro-ω-hydroxypoly (oxypropylene); molecular weight (in amu) 2,000.	....	Surfactants, related adjuvants of surfactants

Inert ingredients	Limits	Uses
α-Hydro-ω-hydroxypoly (oxyethylene)poly (oxypropylene) poly(oxyethylene) block copolymer; the minimum poly(oxypropylene) content is 27 moles and the minimum molecular weight (in amu) is 1,900.		Surfactant, wetting agent
Maleic acid monobutyl ester--vinyl methyl ether copolymer, CAS No. 25119–68–0, minimum average molecular weight (in amu) 52,000.		Seed-coating adhesive, gel, and antitranspirant
Maleic acid monoethyl ester--vinyl methyl ether and copolymer, CAS No. 25087–06–3, minimum average molecular weight (in amu) 46,000.		Seed-coating adhesive gel, antitranspirant.
Maleic acid monoisopropyl ester--vinyl methyl ether copolymer, CAS No. 31307–95–6, minimum average molecular weight (in amu) 49,000.		Seed-coating adhesive gel, antitranspirant.
Methyl vinyl ether--maleic acid copolymer (CAS Reg. No. 25153–40–6), minimum number average molecular weight (in amu) 75,000.		Dispersant
Methyl vinyl ether--maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386–95–2), minimum number average molecular weight (in amu) 900,000.		Dispersant
α-(*p*-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene); polyoxyethylene content 30 to 90 moles; molecular weight (in amu) averages 3,000.		Do.
α-(*p*-Nonylphenyl)-ω-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene); polyoxypropylene content of 20–60 moles; polyoxyethylene content of 30–80 moles; molecular weight (in amu) 2,100–7,100.		Surfactants, related adjuvants of surfactants
α-cis-9-Octadecenyl-ω-hydroxypoly (oxyethylene); the octadecenyl group is derived from oleyl alcohol and the poly(oxyethylene) content average 20 moles.		Do.
Polyacrylic acid		Surfactants, related adjuvants of surfactants
Polyoxyethylated sorbitol fatty acid esters; the polyoxyethylated sorbitol solution containing 15% water is reacted with fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18} containing minor amounts of associated fatty acids; the poly(oxyethylene) content averages 30 moles.		Do.
Poly(oxypropylene) block polymer with poly(oxyethylene); molecular weight (in amu) 1,800–9,000.		Do.
Polypropylene (CAS Reg. No. 9003–07–0).		Carrier, component of plastic slow-release tag
Polystyrene (CAS Reg. No. 9003–53–6), minimum number average molecular weight (in amu) 50,000).		Suspending agent, thickener
Polytetrafluoroethylene (CAS Reg. No. 9002–84–0).		Component of plastic slow release tag
Polyvinyl alcohol (CAS Reg. No. 9002–89–5).		Surfactant
Polyvinyl chloride		Solid diluent, carrier
Vinyl pyrrolidone--dimethylaminoethylmethacrylate copolymer (CAS Reg. No. 30581–590), minimum number average molecular weight (in amu) 20,000.		Leaching inhibitor, binder for water-dispersible aggregates, sticker and suspension stabilizer

§§ 180.1028, 180.1038, 180.1053, 180.1060, and 180.1112 [Removed]

4. Sections 180.1028, 180.1038, 180.1053, 180.1060, and 180.1112 are removed.

[FR Doc. 03–4384 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–S

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule—Correction.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. The 2003 updates to the specified income levels reflecting the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services were published on February 18, 2003. It has come to our attention that the guideline amounts for a family of 5 was inadvertantly omitted from the Income Guidelines Table as published. A corrected table is set forth below.

EFFECTIVE DATE: This rule is effective as of February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; (202) 336–8817; *mcondray@lsc.gov*.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Poverty Guidelines. The revised figures for 2003 set out below are equivalent to 125% of the current Poverty Guidelines as published on February 7, 2003 (68 FR 6457).

List of Subjects in 45 CFR Part 1611

Grant Programs—Law, Legal Services.

For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

Appendix A of Part 1611

LEGAL SERVICES CORPORATION 2003 POVERTY GUIDELINES*

Size of family unit	48 Contiguous States and the District of Columbia[i]	Alaska[ii]	Hawaii[iii]
1	$11,225	$14,013	$12,913
2	15,150	18,925	17,425
3	19,075	23,838	21,938
4	23,000	28,750	26,450
5	26,925	33,663	30,963
6	30,850	38,575	35,475
7	34,775	43,488	39,988
8	38,700	48,400	44,500

* The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[i] For family units with more than eight members, add $3,925 for each additional member in a family.

[ii] For family units with more than eight members, add $4,913 for each additional member in a family.

[iii] For family units with more than eight members, add $4,513 for each additional member in a family.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–4429 Filed 2–25–03; 8:45 am]

BILLING CODE 7050–01–P

Proposed Rules

Federal Register
Vol. 68, No. 38
Wednesday, February 26, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391, 590, and 592

[Docket No. 02–034P]

RIN 0583–AC94

Changes in Fees for Meat, Poultry, and Egg Products Inspection Services—Calendar Year (CY) 2003

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to change the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. The Agency is proposing to raise the fees for voluntary base time and holiday and overtime inspection services. These increases in fees reflect, among other factors, the national and locality pay raise for Federal employees (proposed 4.1 percent increase effective January 2003) and inflation. FSIS is also proposing to decrease the fee for laboratory services because of greater efficiencies realized. The Agency is also proposing to decrease the annual fee for the Accredited Laboratory Program from $1,500.00 to $1,000.00.

DATES: The Agency must receive comments by March 28, 2003.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #02–034P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, (202) 720–5627, fax number (202) 690–0486.

For information concerning fees, contact Raymond M. Saunders, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, 2158 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700, (202) 720–3367, fax (202)690–4155.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA)(21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA)(21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughter at official establishments, and meat and poultry processing at official establishments and of egg products processing at official plants. FSIS bears the cost of mandatory inspection. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

In addition, under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*)(AMA), FSIS provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

Under the AMA, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover these costs.

Non-Federal analytical laboratories are qualified under the Accredited Laboratory Program to conduct analyses of official meat and poultry samples. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, mandates laboratory accreditation fees that cover the costs of the Accredited Laboratory Program. The same Act mandates annual payment on the anniversary date of each accreditation.

Every year, FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification, and certification services; and laboratory services. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the Agency's analysis of projected costs for January 12, 2003 to January 10, 2004, the Agency has identified increases in the costs of voluntary base time inspection services and overtime and holiday inspection services. FSIS has also identified decreases in the costs of laboratory services because of greater efficiencies. The Agency is also proposing to decrease the annual fee for participants in the Accredited Laboratory Program from $1,500.00 to $1,000.00 because of a surplus of accumulated funds.

FSIS calculated the proposed fees by adding the projected increase in salaries and inflation for 2003 to the actual cost of the services in 2002. The national and locality pay raise for Federal employees is proposed to be a 4.1 percent increase effective January 2003. The Agency calculated inflation to be 2.1% for 2003. Section 10703 of the 2002 Farm bill authorizes the Secretary of Agriculture to set the hourly rate of compensation for FSIS employees exempt from Fair Labor Standards Act (*i.e.*, veterinarians) working in establishments subject to the FMIA and PPIA at one and one-half times the employee's hourly rate of base pay. FSIS has adjusted the overtime fees to cover true time-and-a-half for all in-plant employees doing overtime work. Previously, veterinarians were limited to the time-and-a-half rate paid to employees at grade level GS–10, step 1. Finally, because of improvements in accessing data from the accounting

system, the Agency has been able to estimate the employee benefits ascribable to overtime work and included these in the fee calculation. These costs were formerly included in the base rate.

The current and proposed fees are listed by type of service in Table 1.

TABLE 1.—CURRENT AND PROPOSED FEES—PER HOUR PER EMPLOYEE—BY TYPE OF SERVICE

Service	Previous rate	Proposed rate
Base time	$42.64	$43.64
Overtime & holiday	44.40	50.04
Laboratory	68.32	61.80

The differing proposed fee increase for each type of service is the result of the different amount that it costs FSIS to provide these three types of services. The differences in costs stem from various factors, including different salary levels of the program employees who perform the services. *See* Table 2.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES

Base Time:	
Actual CY 2002 cost	$22.54
Pay raise (4.1%)	0.92
Benefits	6.10
Travel, operating & lab costs, & inflation	2.26
Program overhead	4.27
Agency overhead	7.03
Allowance for bad debt	0.52
Total	$43.64
Overtime and Holiday Inspection Services:	
Actual CY 2002 cost	30.10
Time & a half for veterinarians	2.73
Pay raise (4.1%)	1.35
Benefits	1.71
Travel, operating & lab costs, & inflation	2.26
Program overhead	4.27
Agency overhead	7.03
Allowance for bad debt	0.60
Adjustment for divisibility into quarter hours	(0.01)
Total	50.04
Laboratory Services:	
FY 2001 hourly salaries & benefits	32.05
Pay raises in 2002 & 2003	2.85
Travel & operating costs for 2002 & 2003	5.72
Program overhead	14.13
Agency overhead	6.32
Allowance for bad debt	0.74
Adjustment for divisibility by quarter hours	(0.01)
Total	61.80

The Agency must recover the actual cost of voluntary inspection services covered by this proposed rule. These fee increases are essential for the continued sound financial management of the Agency's costs. FSIS plans to make the final rule effective as soon as possible. To expeditiously make this rulemaking effective so that the increased costs can be recovered in a timely fashion, and because the Agency has previously announced (65 FR 60093) that it would be reviewing these fees on an annual basis, the Administrator has determined that 30 days for public comment is sufficient.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this proposed rule would not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Establishments and plants that seek FSIS services are likely to have calculated that the incremental costs of overtime and holiday inspection services would be less than the incremental expected benefits of additional revenues that they would realize from additional production.

Economic Effects

As a result of the proposed fees, the Agency expects to collect an estimated $119 million in revenues for 2003, compared to $101 million under the current fee structure. The costs that industry would experience by the raise in fees are similar to other increases that the industry faces because of inflation and wage increases..

The total volume of meat and poultry slaughtered under Federal inspection in 2001 was about 83 billion pounds (Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA, August 15, 2002). The total volume of U.S. egg product production in 2001 was about 2.319 billion pounds (2002 Agriculture Statistics, USDA). The increase in cost per pound of product associated with the proposed fees increases is, in general, $.0002. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

The industry is likely to pass through a significant portion of the proposed fee increases to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to reduce demand significantly for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Huang, Kao S., *A Complete System of U.S. Demand for Food.* USDA/ERS Technical Bulletin No 1821, 1993, p.24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share in response to an increase in inspection fees.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv

consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience than would otherwise be possible.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

9 CFR Part 592

Eggs and egg products, Exports, Food labeling, Imports.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4, are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is $43.64 per hour per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is $50.04 per hour per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is $61.80 per hour per program employee.

3. In § 391.5, paragraph (a) is revised to read as follows:

§ 391.5 Laboratory accreditation fees.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be $1,000 per accreditation.

* * * * *

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

4. The authority citation for Part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

5. Section 590.126 is revised to read as follows:

§ 590.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $50.04.

6. In § 590.128, paragraph (a) is revised to read as follows:

§ 590.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $50.04.

* * * * *

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

7. The authority citation for Part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

8. Sections 592.2, 592.3, and 592.4 are revised to read as follows:

§ 592.2 Base time rate.

The base time rate for voluntary inspection services of egg products is $43.64 per hour per program employee.

§ 592.3 Overtime rate.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $50.04.

§ 592.4 Holiday rate.

When an official plant requires voluntary inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $50.04.

Done at Washington, DC, on: February 20, 2003.

Linda M. Swacina,

Associate Administrator.

[FR Doc. 03–4393 Filed 2–25–03; 8:45 am]

BILLING CODE 3410–DM–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 709

Treatment of Swap Agreements in Liquidation or Conservatorship

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) is proposing to amend its involuntary liquidation regulation to designate swap agreements (swaps) as qualified financial contracts (QFCs). Treatment of swaps as QFCs will limit swap counterparty exposure when a Federally-insured credit union is placed into involuntary liquidation or a conservatorship and thereby encourage entities to engage in swaps with Federally-insured credit unions. Treatment of swaps as QFCs will also help preserve market stability.

DATES: Comments must be received on or before March 28, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

Swaps are financial derivative transactions. NCUA's corporate rule permits corporate credit unions to engage in derivative transactions, including swaps, if specifically approved for such activity by the Board. 12 CFR part 704, Appendix B, part IV. NCUA's investment regulation generally prohibits natural person Federal credit unions from engaging in financial derivatives activities, but NCUA may approve a credit union for participation in an investment pilot program involving swaps and other derivatives. 12 CFR 703.110(a), 703.140. State chartered natural person credit unions that are Federally-insured may engage in swaps if permitted under their chartering statutes.

In 1989, Congress amended both the Federal Deposit Insurance Act (FDIA) and the Federal Credit Union Act (FCU Act) to add provisions concerning the treatment of QFCs in liquidation, receivership, or conservatorship. 12 U.S.C. 1821(e)(3), (8); 1787(c)(3), (8). Generally, these QFC provisions enable a QFC counterparty to exercise its contractual rights to terminate and net QFCs and protect itself against the selective assumption of QFCs by a liquidating agent, receiver, or conservator. QFC treatment limits counterparty exposure and preserves market stability when a bank or credit union with QFCs enters liquidation, receivership, or conservatorship.

The FDIA provides that "the term 'qualified financial contract' means any securities contract, commodities contract, forward contract, repurchase agreement, *swap agreement*, and any similar agreement that the [Federal Deposit Insurance] Corporation (FDIC) determines by regulation to be a qualified financial contract for purposes of this paragraph." 12 U.S.C. 1821(e)(8)(D)(i)(emphasis added). The FCU Act's QFC definition is very similar to the FDIA's definition and includes securities contracts, forward contracts, and repurchase agreements but omits swaps and commodities contracts. The FCU Act authorizes the NCUA Board, like the FDIA authorizes the FDIC, to add similar agreements to the definition of QFC by regulation. 12 U.S.C. 1787(c)(8)(D)(i).

The Board believes swaps are similar to those agreements enumerated in the FCU Act's definition and should be recognized as QFCs. *See* H.R. Rep. No. 101–484 at 1 (recognizing that swaps are "similar" to forward contracts, securities contracts, and repurchase agreements), to accompany Pub. L. 101–311 (Bankruptcy: Swap Agreements and Forward Contracts), *reprinted in* 1990 U.S.C.C.A.N. 223. A Board determination that swaps receive QFC treatment will provide greater certainty about the treatment of swaps if a Federally-insured credit union is placed into involuntary liquidation or a conservatorship, will encourage counterparties to engage in swaps with credit unions, and will parallel the FDIA treatment of swaps involving banks.

Generally, NCUA provides a 60-day comment period on proposed rules. NCUA Interpretative Ruling and Policy Statement 87–2, Developing and Reviewing Government Regulations, III. The Board has determined that a 30-day comment period, rather than a 60-day comment period, is appropriate for this proposed rule. The proposed rule should not be controversial. Few credit unions are currently authorized to engage in swaps, and the treatment of swaps as QFCs would be beneficial to both credit unions and counterparties, including banks, that engage in swaps with credit unions.

Until a final rule is effective, the Board has determined that it will exercise its discretion as liquidating agent or conservator and provide swaps with QFC treatment if there is a liquidation or conservatorship involving swaps.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under one million dollars in assets). The Board believes it unlikely that any small Federally-insured credit unions engage in swaps. Accordingly, the Board believes that the proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 709

Credit unions, Liquidations.

By the National Credit Union Administration Board on February 20, 2003.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 709 as follows:

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

1. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1757, 12 U.S.C. 1766, 12 U.S.C. 1767, 12 U.S.C. 1786(h), 12 U.S.C. 1787, 12 U.S.C. 1788, 12 U.S.C. 1789, 12 U.S.C. 1789a.

2. Add § 709.13 to read as follows:

§ 709.13 Treatment of swap agreements in liquidation or conservatorship.

The Board has determined that a swap agreement, as defined in the Federal Deposit Insurance Act at 12 U.S.C. 1821(e)(8)(D)(vi), is a qualified financial contract for purposes of the special

treatment for qualified financial contracts provided in 12 U.S.C. 1787(c).

[FR Doc. 03–4444 Filed 2–25–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–31–AD]

RIN 2120–AA64

Airworthiness Directives; Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 Helicopters, Manufactured by Bell Helicopter Textron, Inc. (BHTI) for the Armed Forces of the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD) that applies to specified type-certificated military surplus helicopters. That AD currently requires visual and radiographic inspections of the Boom Station (BS) 194 skin joint area and the vertical fin spar caps for cracks or fretting. This action would require those same actions, but would update the type certificate holder names and add additional model helicopters to the applicability. This proposal is prompted by the need to update the current type certificate holders and to expand the applicability to additional military surplus helicopters, and expand the inspection to include corrosion and loose or working rivets. The actions specified by the proposed AD are intended to detect a crack in the skin of a tailboom assembly, tail rotor gearbox support fitting, or vertical fin spar, which could cause failure of the tailboom and loss of control of the helicopter.

DATES: Comments must be received on or before April 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–31–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–31–AD." The postcard will be date stamped and returned to the commenter.

Discussion

On January 20, 1983, the FAA issued AD 83–03–03, Amendment 39–4556 (48 FR 6097, February 10, 1983), to require visually inspecting the tailboom skin and vertical fin front spar cap, radiographically inspecting the tailboom skin for cracks, and replacing cracked parts, if necessary. That action was prompted by an accident in January 1982 involving a Model UH–1B helicopter. An investigation revealed tailboom skin cracks, and a subsequent metallurgical examination revealed that the cracks were caused by structural fatigue. The requirements of that AD are intended to detect cracks and to prevent possible failure of the tailboom and fin.

Since issuing that AD, the FAA has determined that there is a need to expand the inspection to include corrosion and loose or working rivets, update the type certificate holder names, and add additional model helicopters to the applicability, specifically, the HH–1K, TH–1F, TH–1L, and the Southwest Florida Aviation Model SW204 and SW205 series helicopters.

The unsafe condition identified in this proposal is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would supersede AD 83–03–03 to require:

- Within 30 hours time-in-service (TIS), and thereafter at intervals not to exceed 100 hours TIS, visually inspecting the BS 194 skin splice for fretting, corrosion, loose or working rivets, or a crack and visually inspecting the vertical fin forward spar caps for a crack where it intersects with the tail rotor gearbox support fitting.
- Before further flight and thereafter at intervals not to exceed 500 hours TIS, for a tailboom assembly found to have any fretting, corrosion, loose or working rivets, or a crack, or for a tailboom assembly with 1,000 or more hours TIS, radiographically inspecting the tailboom at the BS 194 splice joint. The radiographic inspection must be accomplished by an appropriately-rated person or facility authorized to perform this type of inspection. The radiographic inspection must be performed in accordance with the requirements of ASTM E 1742–00, MIL–STD–453C, or another FAA-accepted equivalent. MIL–STD–453C has been cancelled by the issuing agency, however, at this time, the FAA continues to accept its usage.
- Before further flight, replacing any part in which a crack is found, or repairing any corrosion or other damage that exceeds the limitations in the maintenance and overhaul manuals.

The FAA estimates that 75 helicopters of U.S. registry would be affected by this proposed AD, and that it would take approximately 4 work hours per helicopter to accomplish the visual inspections, and that the average labor rate is $60 per work hour. It is estimated that the cost of the radiographic inspection would be $850 per inspection for labor and materials. The total cost impact of this proposed AD is estimated to be $171,750 ($2,290 per helicopter each year), assuming 6 visual inspections and 1 radiographic inspection per year for each helicopter and no parts will need to be replaced.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4556 (48 FR 6097, February 10, 1983), and by adding a new airworthiness directive (AD), to read as follows:

Arrow Falcon Exporters, Inc. (previously Utah State University); Firefly Aviation Helicopter Services (previously Erickson Air-Crane Co.); Garlick Helicopters, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (previously Western International Aviation, Inc.); Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Robinson Air Crane, Inc.; San Joaquin Helicopters (previously Hawkins and Powers Aviation, Inc.); S.M.&T. Aircraft (previously U.S. Helicopters, Inc.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); U.S. Helicopter, Inc.; and Williams Helicopter Corporation (previously Scott Paper Co.): Docket No. 2002–SW–31–AD. Supersedes AD 83–03–03, Amendment 39–4556, Docket No. 82–ASW–54.

Applicability: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 helicopters, manufactured by Bell Helicopter Textron, Inc. (BHTI) for the Armed Forces of the United States, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect a crack in the skin of a tailboom assembly, tail rotor gearbox support fitting, or vertical fin spar, which could cause failure of the tailboom and loss of control of the helicopter, accomplish the following:

(a) Within 30 hours time-in-service (TIS), and thereafter at intervals not to exceed 100 hours TIS:

(1) Visually inspect the tailboom assembly skin joint at Boom Station (BS) 194 for fretting, corrosion, loose or working rivets, or a crack. Inspect 10 inches forward and 10 inches aft of BS 194 (BS 194 skin joint area) as shown in the following Figure 1:

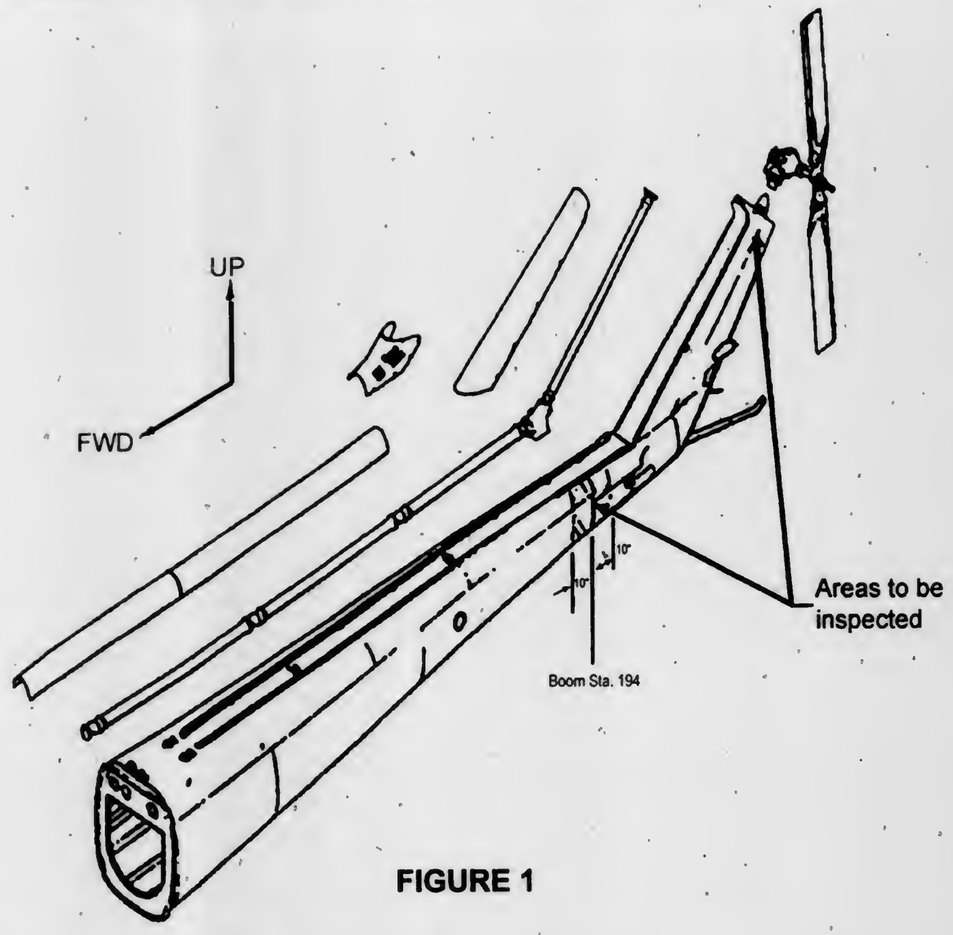


FIGURE 1

Note 2: The tailboom skin joint at BS 194 is located at the bulkhead just forward of the attachment area for the 42-degree tail rotor gearbox assembly (42-degree gearbox) and the intersection between the vertical fin forward canted bulkhead and the lower tailboom skin.

(2) Visually inspect the vertical fin forward spar caps (2) for a crack at the intersection with the tail rotor gearbox support fitting. Refer to Figure 1 of this AD.

(b) Before further flight, and thereafter at intervals not to exceed 500 hours TIS, radiographically inspect the BS 194 skin joint area in accordance with the requirements of ASTM E 1742–00, MIL–STD–453C, or another FAA-accepted equivalent, for any tailboom assembly with:

(1) Any fretting, corrosion, loose or working rivets, or a crack in the BS 194 skin joint area; or

(2) 1,000 or more hours TIS.

(c) If a crack is found in any part, replace it with an airworthy part before further flight. Repair any corrosion or other damage that exceeds the limitations in the maintenance or overhaul manuals before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on February 6, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4480 Filed 2–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–25–AD]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A–1, 269B, 269C, and TH–55A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD) that applies to Schweizer Aircraft Corporation (Schweizer) Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters. That AD currently requires inspecting the lugs on certain aft cluster fittings, and each aluminum end fitting on certain tailboom struts. Modifying or replacing each strut assembly within a specified time period and serializing certain strut assemblies are also required by the existing AD. This proposed AD would require the same actions as the existing AD, would require a one-time inspection and repair, if necessary, of certain additional cluster fittings, and would require replacement and modification of certain cluster fittings within 150 hours time-in-service (TIS) or 6 months, whichever occurs first. This proposal is prompted by the need to expand the applicability to include certain Hughes-manufactured cluster fittings and to provide a terminating action for the repetitive-dye-penetrant inspections of the cluster fittings. The actions specified by the proposed AD are intended to prevent failure of a tailboom support strut or a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–25–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw–adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aviation Safety Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, 10 Fifth Street, 3rd Floor, Valley Stream, New York, telephone (516) 256–7525, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–25–AD." The postcard will be date stamped and returned to the commenter.

Discussion

On April 12, 2002, the FAA issued AD 2001–25–52, Amendment 39–12726 (67 FR 19646, April 23, 2002), to require the following:

- Within 10 hours TIS and thereafter at intervals not to exceed 50 hours TIS, dye-penetrant inspect and replace, if necessary, each cluster fitting, part number (P/N) 269A2234 and P/N 269A2235;
- At intervals not to exceed 50 hours TIS, visually inspect the strut aluminum end fittings for deformation or damage, dye-penetrant inspect the strut aluminum end fittings for a crack, and replace deformed, damaged, or cracked parts.
- Within 500 hours TIS or one year, whichever occurs first, modify or replace the strut assemblies.
- Within 100 hours TIS, for Model 269C helicopters, serialize each strut assembly, P/N 269A2015–5 and 269A2015–11.

That action was prompted by an accident in the United Kingdom involving the in-flight structural failure of a Model 269C helicopter. The requirements of that AD are intended to prevent failure of a lug on a cluster fitting, which could result in rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter. The existing AD, which superseded AD 76–18–01 (41 FR 37093, September 2, 1976), includes a reference to inspecting the center attachment fitting. However, AD 93–21–03 (58 FR 59944, November 12, 1993), Docket 91–ASW–11, addressed the unsafe conditions of the center attachment fitting and it is unnecessary to further address those issues in this proposed AD.

Since the issuance of the existing AD, the FAA has determined that the pool of cluster fittings that needs inspecting should be expanded to include certain Hughes-manufactured cluster fittings that were inadvertently omitted from the applicability of the existing AD because of the failure to include Hughes-manufactured P/N's, 269A2234–3 and 269A2235–3, in the applicability. Also, the manufacturer has completed the development of a modification kit for the cluster fitting that can serve as a terminating action for the repetitive 50-hour TIS dye-penetrant inspection.

The unsafe condition described previously is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would supersede AD 2001–25–52 to require the following:

- Within 10 hours TIS and thereafter at intervals not to exceed 50 hours TIS, dye-penetrant inspect the lugs and replace any cracked cluster fitting.
- Within 150 hours TIS or 6 months, whichever occurs first, replace or modify, using kit, P/N SA–269K–106–1, each cluster fitting, P/N 269A2234 and P/N 269A2235.
- For strut assemblies, P/N 269A2015 or P/N 269A2015–5, at intervals not to exceed 50 hours TIS, visually inspect the strut aluminum end fittings for deformation or damage, dye-penetrant inspect the strut aluminum end fittings for a crack, and replace deformed, damaged, or cracked parts. Within 500 hours TIS or one year, whichever occurs first, modify or replace certain part-numbered strut assemblies.
- Within 100 hours TIS, for Model 269C helicopters, serialize each strut

assembly, P/N 269A2015–5 and 269A2015–11.

• Within 25 hours TIS or 60 days, whichever occurs first, inspect and repair cluster fittings, P/N 269A2234–3 and P/N 269A2235–3.

• Before further flight, replace any cluster fitting that is cracked or has a surface defect beyond rework limits.

The FAA estimates that 1,000 helicopters of U.S. registry would be affected by this proposed AD. It would take approximately 2.5 work hours for each dye-penetrant inspection, 12 work hours to replace one cluster fitting, 4 work hours to modify or replace the strut assembly, 0.25 work hours to serialize the strut assembly, and 16 work hours to modify a cluster fitting. The average labor rate is $60 per work hour. Required parts would cost approximately $5 for each fitting inspection, $1,635 to replace a cluster fitting, $1,500 to modify or replace the strut assembly, and $1,688 for each cluster fitting modification kit (2 fittings). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,260,320 (assuming 2,000 cluster fittings are inspected, 50 cluster fittings are replaced, 6 strut assemblies are modified or replaced, 6 strut assemblies are serialized, and 1,010 cluster fittings are modified).

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12726 (67 FR 19646, April 23, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Schweizer Aircraft Corporation: Docket No. 2002–SW–25–AD. Supersedes AD 2001–25–52, Amendment 39–12726, Docket No. 2001–SW–58–AD.

Applicability: Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters, certificated in any category, with a tailboom support strut (strut) assembly, part number (P/N) 269A2015 or 269A2015–5; or with a center frame aft cluster fitting, P/N 269A2234 or 269A2235, and an aft cluster fitting listed in the following table:

Helicopter model number	Helicopter serial number	With aft cluster fitting, P/N
Model 269C	0570 through 1165	269A2234–3
Model 269C	0500 through 1165	269A2235–3
Model 269A, A–1, B, or C, or TH–55A	All	269A2234–3 or 269A2235–3.

Exception: For the Model 269A, A–1, B, or C or TH–55A helicopters with Hughes-manufactured cluster fittings, P/N 269A2234–3 or P/N 269A2235–3, installed, if there is written documentation in the aircraft or manufacturer's records that shows the cluster fitting was originally sold by Hughes after June 1, 1988, the requirements of this AD are not applicable.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a tailboom support strut or lug on a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 50 hours TIS, for helicopters with cluster fittings, P/N 269A2234 or P/N 269A2235:

(1) Using paint remover, remove paint from the lugs on each cluster fitting. Wash with water and dry. The tailboom support strut must be removed prior to the paint stripping.

(2) Dye-penetrant inspect the lugs on each cluster fitting. See the following Figure 1:

BILLING CODE 4910–13–P

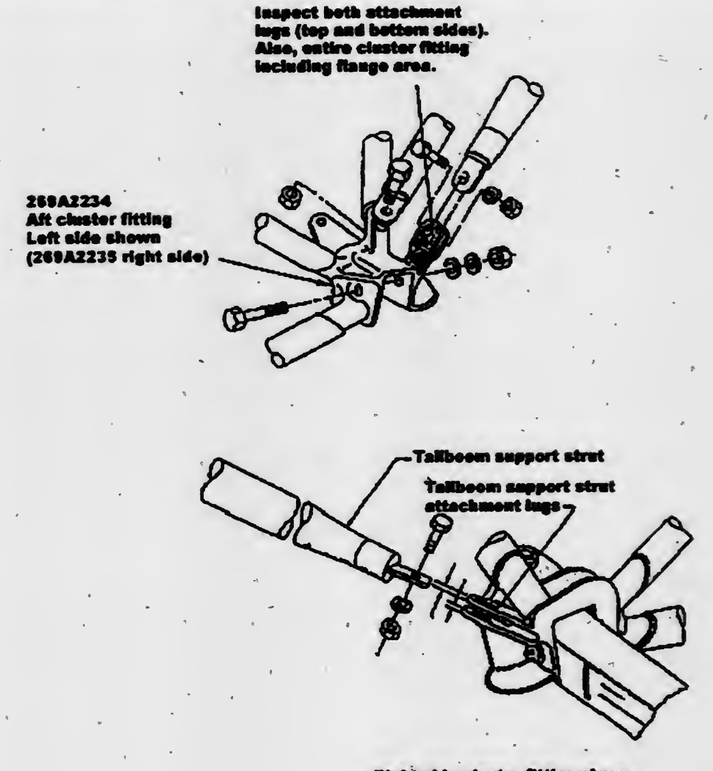


Figure 1

BILLING CODE 4910–13–C

(3) If a crack is found, before further flight, replace the cracked cluster fitting with an airworthy cluster fitting.

(b) Cluster fittings, P/N 269A2234 and P/N 269A2235, that have NOT been modified with Kit P/N SA–269K–106–1, are NOT eligible replacement parts.

(c) Within 150 hours TIS or 6 months, whichever occurs first, replace each cluster fitting, P/N 269A2234 and P/N 269A2235, with an airworthy cluster fitting or modify each cluster fitting, P/N 269A2234 and P/N 269A2235, with Kit, P/N SA–269K–106–1. Installing the kit is terminating action for the 50-hour TIS repetitive dye-penetrant inspection for these cluster fittings. Broken or cracked cluster fittings are not eligible for the kit modification.

(d) For helicopters with strut assemblies, P/N 269A2015 or 269A2015–5, accomplish the following:

(1) At intervals not to exceed 50 hours TIS:

(i) Remove the strut assemblies, P/N 269A2015 or P/N 269A2015–5.

(ii) Visually inspect the strut aluminum end fittings for deformation or damage and dye-penetrant inspect the strut aluminum end fittings for a crack in accordance with Step II of Schweizer Service Information Notice No. N–109.2, dated September 1, 1976 (SIN N–109.2).

(iii) If deformation, damage, or a crack is found, before further flight, modify the strut assemblies by replacing the aluminum end fittings with stainless steel end fittings, P/N 269A2017–3 and –5, and attach bolts in accordance with Step III of SIN N–109.2; or replace each strut assembly P/N 269A2015 with P/N 269A2015–9, and replace each strut assembly P/N 269A2015–5 with P/N 269A2015–11.

(2) Within 500 hours TIS or one year, whichever occurs first, modify or replace the strut assemblies in accordance with paragraph (d)(1)(iii) of this AD.

(e) For the Model 269C helicopters, within 100 hours TIS, serialize each strut assembly, P/N 269A2015–5 and P/N 269A2015–11, in accordance with Schweizer Service Information Notice No. N–108, dated May 21, 1973.

(f) Within 25 hours TIS or 60 days, whichever occurs first, for cluster fittings, P/N 269A2234–3 and P/N 269A2235–3, perform a one-time inspection and repair, if required, in accordance with Procedures, Part II of Schweizer Service Bulletin No. B–277, dated January 25, 2002.

(g) Before further flight, replace any cluster fitting that is cracked or has surface defects

beyond rework limits with an airworthy cluster fitting.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (NYACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, NYACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the NYACO.

(i) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on February 18, 2003.

Eric D. Bries,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4479 Filed 2–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124069–02]

RIN 1545–BA77

Section 6038—Returns Required With Respect to Controlled Foreign Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations relating to controlled foreign partnerships.

DATES: The public hearing originally scheduled for Wednesday, March 12, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Procedure and Administration), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, December 23, 2002 (67 FR 78202), announced that a public hearing was scheduled for Wednesday, March 12, 2003, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 6038 of the Internal Revenue Code. The outlines of topics to be addressed at the hearing were due on Wednesday, February 20, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, February 21, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, March 12, 2003, is cancelled.

Cynthia Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–4545 Filed 2–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–127380–02]

RIN 1545–BA79

Outbound Liquidations to Foreign Corporations; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to outbound liquidations to foreign corporations under section 367 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Tuesday, March 4, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor of the Regulations Unit, Associate Chief Counsel, Procedure & Administration, at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, November 20, 2002 (67 FR 70031), announced that a public hearing was scheduled for March 3, 2003 at 10 a.m., in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 367 of the Internal Revenue Code. The public comment period for these proposed regulations expired on February 11, 2003.

The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of February 21, 2003, no one has requested to speak. Therefore, the public hearing scheduled for March 3, 2003 is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–4544 Filed 2–25–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA262–0369b; FRL–7451–5]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic liquid storage and VOC and nitrogen dioxide (Nox) from flare operations at industrial sites such as oil refineries, chemical manufacturers, and oil wells. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 28, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: MBUAPCD 417–Storage of Organic Liquids and SJVUAPCD 4311–Flares. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 6, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–4382 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0388; FRL–7455–1]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from stationary gas turbines. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 28, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814. Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415)972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local Agency	Rule #	Rule Title	Adopted	Submitted
VCAPCD	74.23	Stationary Gas Turbines	01/08/02	03/15/02

On May 7, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

VCAPCD adopted an earlier version of this rule on October 10, 1995, and CARB submitted it to us on March 26, 1996. We published approval of this previous version of rule 74.23 into the SIP on January 22, 1997 (14 FR 3220). VCAPCD adopted revisions to the SIP-approved version on June 12, 2001 and CARB submitted to us on October 30, 2001. While we can only act on the most recently submitted version, we have reviewed material associated with previous submittals.

C. What Is the Purpose of the Submitted Rule Revisions?

Rule 74.23 applies to all stationary gas turbines with a rating equal to or greater than 0.3 megawatts (MW) output and operated on gaseous and/or liquid fuel. Stationary gas turbines in Ventura County are used as cogeneration units to generate electricity and supply heat for industrial processes, or as electric generators, and/or as primemovers of equipment used in the oil production industry. The primary purpose of the rule revisions is to slightly modify two emission limits.

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A), 182(f) and 189(a)), and must not relax existing requirements (*see* sections 110(l) and 193). The VCAPCD regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rule 74.23 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. Issue Relating to VOC Regulation, Cut points, Deficiencies, and Deviations (the Blue Book), U.S. EPA, May 25, 1988.
2. "Guidance Document for Correcting VOC Rule Deficiencies", U.S. EPA Region 9, August 21, 2001 (the little bluebook).
3. State Implementation Plans: Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendment of 1990 (the "NO_X Supplement to the General Preamble"), U.S. EPA, 57 FR 55620, November 25, 1992.
4. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, U.S. EPA, 40 CFR part 51.
5. State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards, Section 110 of the Clean Air Act, and Plan Requirements for Nonattainment Areas, Title I Part D of the Clean Air Act.
6. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of Oxides of Nitrogen From Stationary Gas Turbines, State of California Air Resources Board, May 18, 1992.
7. Alternative Control Techniques (ACT) Document, NO_X Emissions from Stationary Gas Turbines, U.S. EPA, January 1993, EPA–453/R–93–007.
8. Cost Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT), U.S. EPA Office of Air Quality Planning and Standards, March 16, 1994.

B. Does This Rule Meet the Evaluation Criteria?

The substantive revisions to the rule were relaxation of the NO_X emission limit in section B.5 from 20 ppmv to 24 ppmv for LM–2500 turbines, and the strengthening of the limit in section B.6 from 9 ppmv to 6.8 ppmv for LM–5000 turbines. We believe these changes result in a net decrease and that this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rule fulfill all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_X rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 7, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–4514 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA273–0381b; FRL–7452–4]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). This revision concerns particulate matter (PM) emissions livestock feed yard operations. We are proposing to approve this local rule regulating these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 28, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal addresses ICAPCD Rule 420—Livestock Feedyards. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 3, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–4377 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 173–1173; FRL–7456–1]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the state of Kansas. This revision is a new regulation entitled "Prevention of Significant Deterioration of Air Quality" and will replace the existing regulation which comprised the prior body of Prevention of Significant Deterioration of Air Quality. This revision adopts by reference 40 CFR 52.21, as in effect on July 1, 2000.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by March 28, 2003.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 20, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–4627 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D 020303A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), the Mid-Atlantic Fishery Council Research Set-Aside Program, and the Atlantic Coastal Fisheries Cooperative Management Act American lobster regulations. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The vessel would be exempt from the black sea bass Centropristis striata, commercial fishing closure and size limit requirements (size limit exemption is for retaining research samples only), and from Federal lobster/black sea bass pot restrictions in Lobster Management Area 4, lobster trap limits, lobster escape vent requirements, tag requirements in Lobster Management Areas 4 and 5, and any black sea bass area restrictions. The exemptions will allow for experimentation with three different black sea bass escape vent sizes, and for compensation fishing to fund the research.

DATES: Comments on this document must be received on or before 5:00 p.m. EST March 13, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on BSB Escape Vent EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, 978–281–9153.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted to NMFS by Wizard Enterprises on September 9, 2002. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The EFP is being requested to facilitate a research project by one vessel that would compare the effects of three different black sea bass pot escape vents on the structure of black sea bass populations. To provide the greatest potential for fishing success, it would be necessary to allow the vessel to fish for, and possess, black sea bass during closures that may be implemented due to the attainment of the commercial quota and frame work adjustments at 50 CFR, 648 subpart I, and minimum size limits at 50 CFR 648 subpart I (size limit exemption is for retaining research samples only); and to exempt the vessel from the 800 lobster pot limit at 50 CFR 697.19(a)(2), tag restrictions at 50 CFR part 697.19(c), and escape vent requirements at 50 CFR 697.21(c). These exemptions would be necessary for the vessel to fish 144 experimental black sea bass/lobster pots. However, in order to maintain the conservation goals of the regulations for American lobster and to protect marine mammals, no lobster harvest would be allowed from any experimental black sea bass/lobster pots fished in Lobster Area Management 4, and all experimental black sea bass/lobster pots would be required to be fished in conformance with the gear requirements under the Atlantic Large Whale Take Reduction Plan, Marine Mammal Protection Act, and Endangered Species Act. In order to make it economically efficient to provide the funding for the research, the vessel participating in the research project also would be authorized to make additional compensation fishing trips during closed seasons, to land up to a total of 25,000 lb (11,340 kg) of black sea bass. However, no black sea bass smaller than the minimum size of 11 inches (27.9 cm) could be sold, traded, bartered, or processed for sale. Landings from such trips would be sold to generate funds that would defray the costs associated with the research projects.

Traps with either a 2–inch (5.08–cm) square, a 2 3/8–inch (6.03–cm) circular, or a 5 3/4–inch (14.61–cm) rectangular escape vent would be tested. The experiment would use 144 traps set in 12 trap strings. The 12 trap strings would be connected by rope at regular intervals and deployed with one float on each end. Two strings of traps each would be deployed next to six different wrecks off the New Jersey coast. Traps would be pulled once a week from mid-May to mid-November. Approximately 26 day-long research fishing trips are proposed for the project during 2003. The fishing activity would occur primarily off the coast from Manasquan to Cape May, NJ. A NMFS-supervised technician would be onboard the participating vessel during all research trips. Any landings that would occur from research or compensation fishing would be reported in the Vessel Trip Report, as required, because the participating vessel possesses a commercial black sea bass moratorium permit. All landings would be landed in compliance with applicable state landing laws.

Based on the results of the EFPs, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4440 Filed 2–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 020403A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that an EFP application from the Maine Department of Marine Resources (Maine DMR) contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP), and does not detrimentally affect the well being of any stock of fish likely to be taken during the experiment. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the NE United States. The EFP would allow for an exemption from the NE multispecies small mesh northern shrimp fishery exemption area time restrictions. The exempted fishing activity would support research to test a dual panel single Nordmore grate system for commercial northern shrimp, Pandalus borealis, in the Gulf of Maine. The system is intended to separate small shrimp and fish from market-sized shrimp in trawl nets by separating the catch using a Nordmore grate with two sets of bar spacings. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before March 13, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Maine Department of Marine Resources Northern Shrimp dual panel single Nordmore grate EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: The application for an EFP was submitted by the Maine DMR for research being funded by the Northeast Consortium. The applicant is requesting an exemption for one commercial vessel from the NE multispecies small mesh northern shrimp fishery exemption area time restrictions at 50 CFR 648.80(a)(5)(iii) for 26 days of at-sea gear testing.The objective of the research is to test a dual panel single Nordmore grate system for the purposes of separating small shrimp and most fish from market-sized shrimp in trawl nets by separating the catch using a Nordmore grate with two sets of bar spacings. The experimental design consists of a trouser trawl net utilizing a Nordmore grate with two panels. The upper panel, which the catch in the net will encounter first, has small bar spacing that will let small shrimp and small fish pass through and escape the net, as the codend is tied to the grate below this panel. Anything larger will slide down the bars to the next panel, where the bar spacing is the normal 1–inch. The market sized shrimp and like sized bycatch will pass through these bars and flow back into the codend. Anything larger will slide down the bars and escape through the exit hole in the bottom of the net.

The sea trials would be conducted off the coast of Maine, in the Gulf of Maine Small Mesh Northern Shrimp Exemption Area, during April and May 2003, outside of the fishing season for northern shrimp (January 15 to February 27, 2003). This is the time of year when the various size classes of shrimp are located in the same areas of the Gulf of Maine.

No shrimp or fish will be landed during this study. It is estimated that the total catch of northern shrimp will be 21,632 lb (9,812 kg), with an estimated bycatch of 1,730 lb (785 kg) of whiting, 108 lb (49 kg) of herring, 108 lb (49 kg) of alewife, and a minimal amount of other species. A scientist would be aboard the vessel during all experimental sea trials.

This experimental work is important because it could lead to the development of gear that could improve the size selection of the shrimp nets for northern shrimp and reduce the inadvertent bycatch of fish species. The successful development of a dual panel single Nordmore grate device could provide the fishing industry with a highly selective device that functions similarly to a double Nordmore grate system, while being less cumbersome to rig and handle on deck.

Based on the results of this EFP, this action could lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 19, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4439 Filed 2–25–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 38

Wednesday, February 26, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Idaho; Middle Little Salmon Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Comment Period Extension for Draft Environmental Impact Statement.

SUMMARY: The comment period has been extended for the proposed Middle Little Salmon Vegetation Management Project Draft Environmental Impact Statement (DEIS). The Notice of Availability of the DEIS as published in the **Federal Register** on January 3, 2003, (Volume 68, Number 2).

DATES: Comments concerning the analysis must be received in writing and postmarked by March 9, 2003.

ADDRESSES: Send written comments and suggestions to Forest Supervisor, c/o Middle Little Salmon Vegetation Management Project, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638, fax (208) 634–0744.

FOR FURTHER INFORMATION CONTACT: Sue Dixon, Interdisciplinary Team Leader; or Kimberly Brandel, New Meadows District Ranger at (208) 347–0300.

SUPPLEMENTARY INFORMATION: The comment period ending February 24, 2003, has been extended to March 9, 2003, to provide time for public comment. This DEIS is available on the Internet at: *http://www.fs.fed.us/r4/Payette/main.html*. Substantive comments received during the comment period will receive agency response in the final environmental impact statement.

Dated: February 19, 2003.

Mark Madrid,

Payette Forest Supervisor.

[FR Doc. 03–4482 Filed 2–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

EastBridge Allotment Range Analysis; Caribou-Targhee National Forest, Caribou and Bonneville Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Soda Springs Ranger District, Caribou-Targhee National Forest, will be preparing an Environmental Impact State (EIS) to analyze the effects of authorizing grazing on several cattle allotments. Allotment Management Plans for the: Bridge Creek, Jacknife, Tincup, Stump Creek, and Salt Lick Cattle Allotments will be updated based on the analysis. The project area is located within Caribou and Bonneville counties in Idaho and in Lincoln County, Wyoming.

The Jacknife, Tincup, Stump Creek, and Salt Lick Cattle Allotments are located approximately 35 miles northeast of Soda Springs. They are in Townships 4, 5, and 6 South, Ranges 45 and 46 East. A small part of the Tincup and Stump Creek Allotments are in Wyoming (Townships 33 and 34 North, Range 118 West). The Bridge Creek Allotment is located approximately ten miles west of the Jacknife Allotment in Townships 4 and 5 South, Ranges 43 and 44 East.

The EIS will display the effects of authorizing cattle grazing on these allotments. Public comments will be used to identify issues and possible alternative management options. The purpose and need for this action is to utilize the opportunity to manage existing cattle grazing under updated management direction to move existing resource conditions to desired states within the project area. The EIS will outline standards and guidelines for livestock management, which will be used to revise Allotment Management Plans for each allotment. The EIS and subsequent revision of the Allotment Management Plans will bring these allotments into compliance with Public Law 104 of the Rescissions Act, and other applicable laws and regulations. Based on the environmental analysis in the EIS, the District Ranger will decide whether to authorize domestic livestock grazing under proposed management direction on the project area's suitable rangelands, and if so, what changes need to be made to the representative Allotment Management Plans in accordance with Forest Plan goals, objectives, and desired future conditions.

DATES: Written comments concerning the analysis should be received within 30 days of the date of publication of this notice in the **Federal Register.**

ADDRESSES: Send written comments to Soda Springs Ranger District, Attn: David Whittekiend, 421 West 2nd South, Soda Springs, Idaho 83276. The responsible official for this decision is David Whittekiend, District Ranger.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Victor Bradfield, Range Management Specialist, at (208) 547–4356.

SUPPLEMENTARY INFORMATION: The EIS and subsequent revision of the Allotment Management Plans will bring these allotments into compliance with Public Law 104, and other applicable laws and regulations.

The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register.**

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific times periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The Forest Service estimates the Draft EIS will be filed within 6 months of this Notice of Intent, approximately May 2003. The Final EIS will be filed within 6 months of that date, approximately October 2003.

The comment period on the draft environmental impact statement will be 45 days from the date the environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and intentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered: however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27 (d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Dated: February 20, 2003.

David C. Whittekiend,

Soda Springs Ranger District.

[FR Doc. 03–4486 Filed 2–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, March 17, 2003. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. Tentative agenda items include information sharing on the following topics.

Update on SRA Management Plan appeal;
Process for recruitment and appointment of replacement Council members;
Review of draft Information Strategy Plan for implementing new use rules;
Finalize the monitoring plan;
Information on new trail proposals for the Transportation Plan;
Presentation of draft evacuation plan.

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the March 17 meeting by sending them to Designated Federal Official Gina Owens at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Gina Owens; Williamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: February 20, 2003.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 03–4488 Filed 3–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glen/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glen/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Colusa Historical Society, (5) Revised Tracking Form/Possible Action, (6) Election of Officers, (7) Update on Absent Members, (8) How to Solicit Projects, (9) General Discussion, (10) Next Agenda.

DATES: The meeting will be held on March 31, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited Forest Service staff and Committee members.

However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 27, 2003 will have the opportunity to address the committee at those sessions.

Dated: February 20, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–4462 Filed 2–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Michigan

AGENCY: Natural Resources Conservation Service (NRCS) in Michigan, Department of Agriculture.

ACTION: Notice of availability of proposed changes in Michigan NRCS FOTG, section IV for review and comment.

SUMMARY: It is the intention of NRCS in Michigan to issue revised conservation practice standards in section IV of the FOTG. The revised standards include:

Animal Trails and Walkways—575
Channel Stabilization—584
Drainage Water Management (Ac.)—554
Irrigation Regulating Reservoir (No.)—552
Land Reconstruction, Abandoned Mined Land (Ac.)—543
Land Reconstruction, Currently Mined Land (Ac.)—544
Lined Waterway or Outlet (Ft.)—468
Terrace—600

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Kevin Wickey, Assistant State Conservationist for Technology, Natural Resources Conservation Service, 3001 Coolidge Road, Suite 250, E. Lansing, MI 48823. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *Kevin.Wickey@mi.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Wickey 517–324–5279.

SUPPLEMENTARY INFORMATION: Section 393 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Michigan will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Michigan regarding disposition of those comments and a final determination of change will be made.

Dated: February 13, 2003.

Ronald C. Williams,

State Conservationist, E. Lansing, Michigan.

[FR Doc. 03–4451 Filed 2–25–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Tennessee Field Office Technical Guide (FOTG)

AGENCY: Natural Resources Conservation Service (NRCS) in Tennessee, Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Tennessee NRCS Field Office Technical Guide, section IV, for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Tennessee that changes must be made in the NRCS Field Office Technical Guide, specifically in practice standards Contour Buffer Strip (Code 332); Residue Management, No Till/Strip Till (Code 329A); and Residue Management, Mulch Till (Code 329B) to account for improved technology. These practice standards can be used in systems that treat highly erodible cropland.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee, 37203, telephone number (615) 277–2531. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made to the subject practice standards.

Dated: February 13, 2003.

James W. Ford,

State Conservationist.

[FR Doc. 03–4450 Filed 2–24–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Survey of Companies Having Employees Present at WTC Buildings 1, 2, and 7 as Part of the NIST WTC Investigation.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency.

Burden Hours: 862.

Number of Respondents: 606.

Average Hours per Response: 2 hours per response for companies; 15 minutes per response for family members.

Needs and Uses: NIST will be conducting the Investigation as requested under the WTC Report issued by Congress on February 8, 2002. The objectives of the NIST World Trade Center Investigation are to: (1) Determine technically, why and how buildings WTC 1, 2, and 7 collapsed following the initial impact of the aircraft; (2) Determine why the injuries and fatalities were so high or low depending on location, including all technical aspects of fire protection, response, evacuation, and occupant behavior and emergency response; (3) Determine the procedures and practices that were used in the design, construction, operation, and maintenance of the World Trade Center Buildings; and (4) Identify, as specifically as possible, building and fire codes, standards, and practices that warrant revision and are still in use. The proposed information collection will consist of a written request to company representatives asking for a list of contact information for employees present in World Trade Center Building 1, 2, or 7 on the morning of September 11, 2001 at the time of the first aircraft impact. Additionally, a web site will be set up in order to collect names and contact information of family members of victims of the collapse of WTC 1 and 2 who spoke to decedents after the building was struck by the first airplane. This information will be used to form a database of occupant contact information. The occupants may be contacted at a later date pursuant to a separate OMB request to voluntarily participate in interviews and/or focus groups to be conducted by the NIST Investigation. These interviews and focus groups will develop or refute investigatory hypotheses, support modeling results, and record events inside the buildings which cannot otherwise be determined. This information must be conducted in a timely manner in order to facilitate dissemination to other aspects of the Investigation, including structural analysis, emergency personnel response, thermal environment and interior tenability, and egress and human behavior analysis.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: One-time.

Respondent Obligation: Voluntary.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by March 31, 2003, to Jacqueline Zeiher, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 21, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–4559 Filed 2–25–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket Nos. 020816196–2196–01; 020816197–2197–01; 010222048–2217–03; 010222048–2229–04; 010222048–2243–05; 010222048–2293–06; 010222048–2215–02; 010222048–2313–07; and 010222048–3014–08.

Closing Comment Period on Review of Exceptions to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice

SUMMARY: In a series of nine (9) Notices published in the **Federal Register**, the National Telecommunications and Information Administration (NTIA) invited the public to submit comments on the exceptions to the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, *codified at* 15 U.S.C. §§ 7001 *et seq.* ("ESIGN" or "the Act") set out in section 103 of the Act.[1] Comments filed on or before the deadlines listed in the Notices were posted on NTIA's website and comments received after the deadline were posted as late-filed comments. The comment period for the ninth Notice will expire on March 31, 2003.[2] As of March 31, 2003, the comment periods in each of the dockets listed herein are closed. NTIA will not accept or place in the record documents filed in the listed dockets after this date.

DATES: The comment periods in the dockets referenced in this Notice will be closed on March 31, 2003.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone (202) 482–1816 or electronic mail: jscarlett@ntia.doc.gov. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background

NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy. NTIA is the principal adviser to the President on telecommunications policies pertaining to the Nation's economic and technological advancement in the telecommunications industry. The evaluation of the exceptions to the ESIGN Act is a part of NTIA's statutory responsibility to Congress as required in section 103(c)(1) of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, 114 Stat. 464 (2000). The ESIGN Act facilitates the use of electronic records and signatures in interstate and foreign commerce and removes uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provide that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: court documents, probate and domestic law matters; state commercial law; consumer law covering utility services, residential property foreclosure and eviction notices; insurance benefits notices; product recall notices; and hazardous materials papers. Section 103(c)(1) requires NTIA's principal, the Assistant Secretary for Communications and Information, to submit a report to Congress on the results of the evaluation of the exceptions to the ESIGN Act within three years after the date of enactment of the Act, or no later than June 30, 2003.

Due to the complexity of the issues in this evaluation and to facilitate a fully developed record, NTIA allowed interested parties to submit late-filed comments. NTIA has received a number of comments after the deadlines set in the Notices. Effective March 31, 2003, however, NTIA will no longer accept or place in the public record comments for consideration in this evaluation.

Dated: February 20, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 03–4501 Filed 2–25–03; 8:45 am]

BILLING CODE 3510–60–S

[1] Notices have been published on the following exceptions to ESIGN: court, family law, and hazardous materials documents; wills; product recall, housing default, insurance cancellation, and utility termination notices; and contracts governed by state uniform commercial law. *See* 67 Fed.Reg. 56277; 56279, 59828, 61599, 63379, 69201, 75849, 78421; 68 Fed.Reg. 4179.

[2] *See* 68 Fed.Reg. 4179.

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: Consumer Product Safety Commission.

TIME AND DATE: Friday, March 7, 2003, 10 a.m.

LOCATION: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Commission Decision on Product Registration Cards (Petition CP 01–1)

The Commission will consider Petition CP 01–1 submitted by the Consumer Federation of America (CFA) requesting that the Commission issue a rule requiring product registration cards with every product intended for children.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–7923.

Dated: February 24, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–4658 Filed 2–24–03; 2:24 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128G]

Migrant and Seasonal Farmworkers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To provide grants for vocational rehabilitation services to individuals with disabilities who are migrant or seasonal farmworkers, (individuals who have been determined in accordance with rules prescribed by the Secretary of Labor); and to the family members who are residing with those individuals (whether or not those family members are individuals with disabilities).

Eligible Applicants: State designated agencies; nonprofit agencies working in collaboration with a State agency; and local agencies working in collaboration with a State agency.

Applications Available: February 27, 2003.

Deadline for Transmittal of Applications: April 15, 2003.

Deadline for Intergovernmental Review: June 14, 2003.

Estimated Available Funds: The Administration's budget request for FY 2003 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average size of Awards: $127,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Invitational Priority

We are particularly interested in applications that meet the following priority:

Projects that provide vocational rehabilitation services including, but not limited to, vocational skills development, job placement, job training, occupational skills training programs, cultural awareness, language skills development, life skills (*e.g.*, health, education, socialization), English as a Second Language, dissemination of employment information, and training workshops.

Under 34 CFR 75.105(c)(1), we do not give an application that meets the priority a competitive or absolute preference over other applications.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Migrant and Seasonal Farmworkers Program—CFDA: 84.128G is one of the programs included in the pilot project. If you are an applicant under the Migrant and Seasonal Farmworkers Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within 3 working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Migrant and Seasonal Farmworkers Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of 1 business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336–8930.

You may access the electronic grant application for the Migrant and Seasonal Farmworkers Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128G.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Mary E. Chambers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2647. *Telephone:* (202) 205–8435. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 774.

Dated: February 20, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–4548 Filed 2–25–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Wednesday, March 12, 2003, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or E-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- The meeting presentation will feature Steve Liedle, President of Bechtel Jacobs Company LLC, who will give an update on environmental cleanup activities from the company's perspective as the DOE management and integration contractor. Accelerated closure plans for DOE-Oak Ridge Environmental Management Program sites will be the principal focus of the presentation.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and

copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on February 21, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–4530 Filed 2–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

Orders Granting and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

In the matter of: FE Docket Nos. 92–142–NG, 94–15–NG, 02–95–NG, 02–92–NG, and 02–143–NG, 92–94–NG, 92–140–NG, 02–98–NG, 03–01–NG, 02–100–NG, 02–101–LNG, 02–102–LNG, 03–02–NG, 03–03–NG; The Berkshire Gas Company, Phillips Gas Marketing Company, El Paso Merchant Energy, L.P., EnergyNorth Natural Gas, Inc., Essex Gas Company, Essex County Gas Company, AllEnergy Gas & Electric Marketing Company, L.L.C., Abitibi-Consolidated Company of Canada, NorthWestern Energy, a Division of Northwestern Corporation, Western International Holdings Ltd., Oleum Energy Corporation, Selkirk Cogen Partners, L.P., AIG Energy Trading Inc.; Orders Granting and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during January 2003, it issued Orders granting and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 11, 2003.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

APPENDIX.—ORDERS GRANTING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE AUTHORITY]

Order no.	Date issued	Importer/exporter FE docket no.	Import volume	Export volume	Comments
713–A	1–6–03	The Berkshire Gas Company 92–142–NG			Vacate blanket import authority.
926–A	1–6–03	Phillips Gas Marketing Company. 94–15–NG			Vacate blanket export authority.
1840	1–6–03	El Paso Merchant Energy, L.P. 02–95–NG	400 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on January 6, 2003, and extending through January 5, 2005.
1840	1–6–03	El Paso Merchant Energy, L.P. 02–95–NG			Vacate blanket import authority. Order Nos. 1509 and 1509–A.
1840	1–6–03	El Paso Merchant Energy, L.P. 02–95–NG			Vacate blanket export authority. Order Nos. 1510 and 1510–A.
1841	1–6–03	EnergyNorth Natural Gas, Inc. 02–92–NG	3 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 15, 2003, and extending through January 14, 2005.
714–A	1–6–03	EnergyNorth Natural Gas, Inc. 02–143–NG			Vacate blanket import authority.
1842	1–6–03	Essex Gas Company 02–94–NG	2 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 15, 2003, and extending through January 14, 2005.
711–A	1–6–03	Essex County Gas Company 92–140–NG			Vacate blanket import authority.
1844	1–7–03	AllEnergy Gas & Electric Marketing Company, L.L.C. 02–98–NG	3.6 Bcf		Import natural gas from Canada, beginning on February 1, 2003, and extending through January 31, 2005.

APPENDIX.—ORDERS GRANTING AND VACATING IMPORT/EXPORT AUTHORIZATIONS—Continued

[DOE/FE AUTHORITY]

Order no.	Date issued	Importer/exporter FE docket no.	Import volume	Export volume	Comments
1845	1–7–03	Abitibi-Consolidated Company of Canada: 03–01–NG	2.5 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on February 1, 2003, and extending through January 31, 2005.
1846	1–10–03	NorthWestern Energy, A Division of Northwestern Corporation. 02–100–NG	20 Bcf		Import natural gas from Canada, beginning on February 7, 2003, and extending through February 6, 2005.
1847	1–15–03	Western International Holdings Ltd. 02–101–LNG	37 Bcf		Import LNG from various international sources beginning on January 20, 2003, and extending through January 19, 2005.
1848	1–15–03	Oleum Energy Corporation 02–102–LNG	20 Bcf		Import LNG from various international sources beginning on April 15, 2003, and extending through April 14, 2005.
1849	1–21–03	Selkirk Cogen Partners, L.P. 03–02–NG	57 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 29, 2003, and extending through January 28, 2005.
1845	1–23–03	Abitibi-Consolidated Company of Canada. 03–01–NG			Errata notice. Ordering Paragraph (A) incorrectly stated the volumes of natural gas to be imported and exported.
1850	1–28–03	AIG Energy Trading Inc. 03–03–NG	500 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on April 1, 2003, and extending through March 31, 2005.

[FR Doc. 03–4529 Filed 2–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–097]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

February 20, 2003.

Take notice that on February 12, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing a compliance filing as directed by the Commission's order dated January 30, 2003 in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ≥FERRIS≥ link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ≥e-Filing≥ link.

Protest Date: February 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4472 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–254–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

February 20, 2003.

Take notice that on February 13, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective April 1, 2003:

Thirteenth Revised Sheet No. 1
First Revised Sheet No. 38

Great Lakes states that the proposed revised tariff sheets are being filed to remove Section 14 of the General Terms and Conditions, "Firm Capacity Assignment

Under 18 CFR 284.242", from its tariff, in compliance with the Commission's Order No. 892. This

Order amends the Commission's regulations by removing subpart H of part 284 (18 CFR 284.241 and 284.242), which had required interstate natural gas pipelines to assign capacity they held on other interstate pipelines to their firm shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4467 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–256–000]

Honeoye Storage Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 20, 2003.

Take notice that on February 14, 2003 Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, the revised tariff sheets listed on Appendix A to the filing, to be effective April 1, 2003.

Honeoye states that this filing is being made for four reasons: (1) To update its tariff to comply with the most recently approved North American Energy Standards Board (NAESB) standards; (2) to permit Honeoye to offer its customers the flexibility of revising nominations on a retroactive basis when operating conditions permit; (3) to modify certain billing and payment, creditworthiness and remedies provisions of Honeoye's tariff to enable Honeoye to obtain better credit information and protect itself against possible shipper defaults; and (4) to modify its procedures for allocating firm storage capacity to provide Honeoye with greater flexibility to determine winning bidders on a non-discriminatory basis.

Honeoye states that it is making this filing at this time so that prospective customers will have the opportunity to evaluate these changes prior to entering into gas storage agreements to become effective as of April 1, 2003. Honeoye states that there will be no change in rates and revenues under the proposed revisions.

Honeoye further states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4469 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–258–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

February 20, 2003.

Take notice that on February 14, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, proposed to become effective March 14, 2003:

Tenth Revised Sheet No. 4A.
Eighth Revised Sheet No. 58.
Eighth Revised Sheet No. 59.
First Revised Sheet No. 60E.
Fifth Revised Sheet No. 67.
Original Sheet No. 4B.
First Revised Sheet No. 58A.
Original Sheet No. 60D.01.
Third Revised Sheet No. 66A.

Iroquois states that the purpose of the tariff changes is to implement a new Extended Receipt and Extended Delivery Point Service, which would extend, on a secondary basis, a shipper's existing firm transportation path to downstream or upstream zones.

Iroquois further states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4469 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–226–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

February 20, 2003.

Take notice that on February 11, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Third Revised Sheet No. 490, to be effective February 1, 2003.

Kern River states that the purpose of this filing is to comply with the Commission's order in this proceeding by removing a non-conforming provision from two seasonal firm transportation service agreements between Kern River and Duke Energy Trading & Marketing, L.L.C. and from one seasonal firm transportation service agreement between Kern River and National Fuel Marketing Company, LLC, thereby eliminating the need to list such agreements as non-conforming agreements in Kern River's tariff.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4471 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–255–000]

MIGC, Inc.; Notice of Tariff Filing

February 20, 2003.

Take notice that on February 14, 2003, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, Seventh Revised Sheet No. 90; First Revised Sheet No. 95; and Second Revised Sheet No. 115, to become effective March 18, 2003.

MIGC states that the purpose of this tariff filing is to revise MIGC's tariff to replace the physical address references with a reference to MIGC's Internet Web Site where MIGC's physical address, phone numbers and e-mail addresses are listed. MIGC states that the revisions to MIGC's tariff are necessitated by the upcoming address change of MIGC's corporate office.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4466 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–257–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 20, 2003.

Take notice that on February 14, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 1A and Twenty-First Revised Sheet No. 22, to be effective March 1, 2003.

Natural states that the purpose of this filing is to eliminate the surcharge under Section 21 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to its customers and state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference

Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4470 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–618–014]

PG&E Gas Transmission, Northwest Corporation, Notice of Annual Report

February 20, 2003.

Take notice that on February 13, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing certain revised schedules to its Medford Lateral "Annual Report on Deferred Revenue Recovery Mechanism and Revenue Reconciliation for the Year Ending October 31, 2002."

GTN asserts that the purpose of this filing is to include revenue from an additional transportation contract as an offset to Avista's deferred account balance.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies, as well as the Official Service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4463 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–455–002]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

February 20, 2003.

Take notice that on February 14, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Second Revised Sheet No. 147, First Revised Sheet No. 148, and First Revised Sheet No. 149, with an effective date of October 1, 2002.

GTN states that the filing is being made to comply with requirements of the Commission's January 31, 2003 Letter Order accepting GTN's October 15, 2002 compliance filing in this docket subject to conditions. GTN proposes that these tariff sheets be made effective October 1, 2002, consistent with the effective date approved by the Commission for the tariff sheets included in GTN's previous filings in this docket.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4465 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–488–002 and RP03–179–001]

Portland Natural Gas Transmission System; Notice of Compliance Filing

February 20, 2003.

Take notice that on February 14, 2003, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets contained in Appendix A of the filing.

PNGTS states that the purpose of this filing is to comply with the Commission's January 30, 2003 Order on PNGTS's Order No. 637 compliance filings.

PNGTS further states that copies of this filing are being served on all jurisdictional customers, applicable state commissions, and to parties on the official service list compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4464 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–006]

Texas Eastern Transmission, LP; Notice of Compliance Filing

February 20, 2003.

Take notice that on February 14, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A of the filing, to be effective on the date of the Commission's order approving the tariff sheets.

Texas Eastern states that the purpose of this filing is to comply with the Letter Order issued by the Commission in Docket No. RP99–480–003 on January 15, 2003 [102 FERC ¶ 61,028 (2003)].

Texas Eastern further states that it is hereby submitting tariff revisions that comply with such order and, in particular, clarify that the tariff provides for differing levels of maximum daily quantities for Rate Schedule FT–1, as well as Rate Schedules CDS, SCT, LLFT and VKFT in Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern indicates that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as to all parties listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP99–480–003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: February 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4473 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–15–002, et al.]

Consumers Energy Company, et al.; Electric Rate and Corporate Filings

February 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Consumers Energy Company

[Docket No. ER03–15–002]

Take notice that on February 12, 2003, Consumers Energy Company (Consumers) tendered for filing changes to its First Revised Rate Schedule No. 116, pursuant to the Commission's February 6, 2003 Order in this docket. (Consumers notes that substantially the same filing was also made earlier and docketed in Docket No. ER03–388–000.) The revised pages being filed are:

Second Revised Sheet Nos. 11 and 23

Consumers states that copies of the filing were served upon those on the official service lists in this docket and in Docket No. ER03–388–000.

Comment Date: March 5, 2003.

2. American Electric Power Company

[Docket No. ER03–95–002]

Take notice that on February 12, 2003, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively AEP) filed amendments to service agreements under AEP's Open Access Transmission Tariff (OATT) for long-term firm point-to-point transmission service to Duke Energy Trading and Marketing, Inc. The filing was made in compliance with the Commission's Order Conditionally Accepting Filing and Denying Waiver of Notice Requirements issued in Docket No. ER03–95–001 on December 27, 2002.

Comment Date: March 5, 2003.

3. Boston Edison Company

[Docket No. ER03–529–000]

Take notice that on February 11, 2003, Boston Edison Company (Boston Edison) tendered for filing an executed Related Facilities Agreement between Boston Edison and Entergy Nuclear Generation Company (Entergy). Boston Edison requests an effective date of the Agreement of April 11, 2003.

Boston Edison states that it has served a copy of the filing on Entergy and the Massachusetts Department of Telecommunications and Energy.

Comment Date: March 4, 2003.

4. Texas-New Mexico Power Company

[Docket No. ES03–25–000]

Take notice that on February 11, 2003, Texas-New Mexico Power Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term, unsecured debt in an amount not to exceed $150 million.

Comment Date: March 7, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the

Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4562 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–833–001, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Filings

February 19, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacific Gas and Electric Company

[Docket No. ER01–833–001]

Take notice that on February 14, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing copies of a revised Wholesale Distribution Tariff (WDT) Service Agreement (Service Agreement) between PG&E and Modesto Irrigation District (MID) and a Letter Agreement (Letter Agreement) between PG&E and MID.

PG&E states that the Service Agreement is submitted pursuant to the PG&E WDT and permits PG&E to recover the ongoing costs for service required over PG&E's distribution facilities. The Letter Agreement memorializes the understanding between PG&E and MID regarding the revised Service Agreement under PG&E's WDT for service to MID's Mountain House retail load.

PG&E has requested an effective date of January 1, 2001. PG&E also states that copies of this filing have been served upon MID, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: March 7, 2003.

2. U.S. Power and Gas Pennsylvania LLC

[Docket No. ER03–261–001]

Take notice that on February 11, 2003, U.S. Power and Gas Pennsylvania LLC filed amendments to its market-base rate authority proposal.

Comment Date: March 4, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–401–001]

Take notice that on February 13, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing its errata revisions to Second Revised Sheet No. 339 of Attachment M of the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. Applicant requests the originally requested effective date of February 1, 2003 for the substitute sheet.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading Filings to FERC" for other interested parties in this matter.

Comment Date: March 6, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–422–001]

Take notice that on February 13, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing its errata revisions to Original Sheet No. 213A of Schedule 10 of the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. Applicant requests the originally requested effective date of January 17, 2003 for the substitute sheet.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading Filings to FERC" for other interested parties in this matter.

Comment Date: March 6, 2003.

5. PacifiCorp

[Docket No. ER03–530–000]

Take notice that PacifiCorp on February 13, 2003, tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Notices of Cancellation of: (1) Service Agreements No. 14 and No. 15 under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 12 between Public Utility District No. 1 of Clark County, Washington ; (2) PacifiCorp, and Service Agreement No. 43 under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 12 between Electrical District No. 2 of Pinal County, Arizona and PacifiCorp and (3) Service Agreement No. 49 under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 12 between City of Mesa, Arizona and PacifiCorp.

PacifiCorp states that copies of this filing were served on the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment Date: March 6, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER03–531–000]

Take notice that on February 13, 2003, PJM Interconnection, L.L.C. (PJM) on behalf of three of its members—Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (the FirstEnergy Companies) submitted for filing amendments to Attachments M GPU and N GPU to the PJM Open Access Transmission Tariff. Attachments M GPU and N GPU are procedure manuals under which the FirstEnergy Companies (formerly d/b/a as GPU Energy) calculate retail suppliers' total hourly energy obligations and peak load shares. The attachments are amended to reflect that FirstEnergy Companies no longer do business as GPU Energy and no longer use Dynamic Load Profiling.

PJM, on behalf of FirstEnergy Companies, requested an effective date of February 14, 2003.

PJM states that copies of this filing were served upon all PJM members, including FirstEnergy Companies, and each state electric utility regulatory commission in the PJM region.

Comment Date: March 6, 2003.

7. Consumers Energy Company, on behalf of Michigan Electric Transmission Co.

[Docket No. ER03–532–000]

Take notice that on February 12, 2003, Consumers Energy Company (Consumers) tendered for filing the following tariff sheets as part of Michigan Electric Transmission Company (Michigan Transco) FERC Electric Tariff, Original Volume No. 1.

First Revised Sheet Nos. 36, 56, 73 through 79, 82 through 88 and 114

All of the Sheets are to become effective April 1, 2001. Consumers states that the Original version of these sheets was accepted in Docket No. ER01–414–000, subject to the outcome of Docket Nos. OA96–77–000, *et al.* Consumers indicates that the instant filing is to reflect the final outcome of Docket Nos. OA96–77–000, *et al.*

Consumers states that copies of the filing were served upon those on the official service list in Docket No. ER01–414–000.

Comment Date: March 5, 2003.

8. Alliant Energy Neenah, LLC

[Docket No. ER03–533–000]

Take notice that on February 13, 2003, Alliant Energy Neenah, LLC (Alliant Energy Neenah) submitted to the Federal Energy Regulatory Commission (Commission) a Notice of Succession notifying the Commission that it has succeeded to the market-based rate wholesale power sales rate schedule (the Rate Schedule) of Mirant Neenah, LLC, First Revised Rate Schedule FERC No. 1. In addition, Alliant Energy Neenah files the Rate Schedule, updated as appropriate and in conformance with Order Nos. 614 and 2001, as Alliant Energy Neenah, LLC, Original Rate Schedule FERC No. 1.

Comment Date: March 6, 2003.

9. Ingenco Wholesale Power, L.L.C.

[Docket No. ER03–534–000]

Take notice that on February 13, 2003, Ingenco Wholesale Power, L.L.C. (Ingenco Wholesale) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Ingenco Wholesale Power, L.L.C. Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Ingenco Wholesale states that it was formed for the purpose of owning Ingenco—Mountain View, a 12 MW electric generating facility located in Mountain View, Pennsylvania. Ingenco Wholesale will also hold an interest in other electric generation facilities currently under development and sell the output of those facilities, as well as a number of facilities that are current qualifying facilities, as is detailed in its application.

Comment Date: March 6, 2003.

10. Florida Power & Light Company

[Docket No. ER03–535–000]

Take notice that on February 14, 2003, Florida Power & Light Company (FPL) tendered for filing an executed, revised Interconnection & Operation Agreement between FPL and CPV Gulfcoast, Ltd. FPL requests that this agreement be made effective upon execution by the parties, February 13, 2003, as mutually agreed by the parties.

Comment Date: March 7, 2003.

11. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–536–000]

Take notice that on February 14, 2003, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered certain amendments to First Revised Service Agreement Nos. 1 through 6 to its FERC Electric Tariff, Original Volume No. 1, under which Deseret provides cost-based wholesale electric service to each of its six Member cooperatives.

Deseret states that a copy of this filing has been served upon all of Deseret's members. Deseret requests an effective date of February 15, 2003.

Comment Date: March 7, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4561 Filed 2–25–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0004; FRL–7291–8]

Application for Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only (EPA ICR No. 0276.12, OMB Control No. 2070–0040). This is a request to renew an existing ICR that is currently approved and due to expire September 30, 2003. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2003–0004, must be received on or before April 28, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone

number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a potential pesticide registrant, an independent researcher or testing laboratory, or any similar agent or consultant of a pesticide manufacturer wishing to generate information necessary to register a product under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in accordance with the regulations found in 40 CFR 172.2(a). Potentially affected entities may include, but are not limited to:

- Pesticide and other agricultural manufacturing (NAICS 325320), e.g., Pesticide registrants who wish to obtain an EUP to ship and use a pesticide for experimental purposes only.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in FIFRA, the Food Quality Protection Act (FQPA) of 1996, and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0004. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0004. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0004.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0004. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only.

ICR numbers: EPA ICR No. 0276.12, OMB Control No. 2070–0040.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire September 30, 2003.

Abstract: This information collection program provides the EPA with the data necessary to determine whether to issue an EUP under section 5 of FIFRA, as amended. FIFRA requires that before a pesticide product may be distributed or sold in the United States it must be registered by EPA. Section 5 of FIFRA authorizes EPA to issue EUPs which allow pesticide companies to temporarily ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for registration of a pesticide product. In general, EUPs are either issued for a pesticide not registered with the Agency or for a registered pesticide for a use not registered with the Agency. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 757.50 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants who wish to obtain an EUP to ship and use a pesticide for experimental purposes only.

Estimated total number of potential respondents: 75.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 757.50.

Estimated total annual burden costs: $64,950.

VI. Are There Changes in the Estimates from the Last Approval?

Total respondent costs associated with this program rose from $61,297.50 to $64,950. Total Agency costs rose from $67,950 to $77,925. Changes to total costs associated with this program are due to the increase in labor rates, reflecting the most current estimates.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 11, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–4523 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0005; FRL–7292–4]

Supplemental Distribution of a Registered Pesticide Product; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Supplemental Distribution of a Registered Pesticide Product (EPA ICR No. 0278.08, OMB Control No. 2070–0044). This is a request to renew an existing ICR that is currently approved and due to expire October 31, 2003. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2003–0005, must be received on or before April 28, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant who has entered into an agreement with a second company to distribute your pesticide product under the second company's name and product name. Potentially affected categories and entities may include, but are not limited to:

- Pesticide and other agricultural chemical manufacturing (NAICS 325320), e.g., Pesticide registrants who enter into agreements with other companies to distribute their pesticide product under the second company's name and product name.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Food Quality Protection Act (FQPA) of 1996. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0005. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0005. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0005.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0005. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's

electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Supplemental Registration of a Pesticide Product.

ICR numbers: EPA ICR No. 0278.08, OMB Control No. 2070–0044.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire October 31, 2003.

Abstract: This information collection activity provides the Agency with notification of supplemental registration of distributors of pesticide products. Section 3(e) of FIFRA allows pesticide registrants to distribute or sell a registered pesticide product under a different name instead of or in addition to their own. Such distribution and sale is termed "supplemental distribution" and the product is termed a "distributor product." EPA requires the pesticide registrant to submit a supplemental statement (EPA Form 8570–5) when the registrant has entered into an agreement with a second company that will distribute the registrant's product under the second company's name and product name. Since the last approval, EPA has not changed the substance or the method of collection for this activity.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is estimated to be 1,250 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 5,000 .

Frequency of response: As needed per event.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,250.

Estimated total annual burden costs: $120,000.

VI. Are There Changes in the Estimates from the Last Approval?

There are no changes in the estimated respondent burden hours from the last renewal. The annual respondent cost estimate rose from $118,500 to $120,000 as a result of the estimated increase in hourly rates.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 11, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–4524 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–2002–0057; FRL–7293–2]

Access to Confidential Business Information by the U.S. Consumer Product Safety Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the U.S. Consumer Product Safety Commission (CPSC) access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA under all sections of TSCA occurred as a result of an on-going Memorandum of Understanding between CPSC and the U.S. EPA dated September 23, 1986, which granted CPSC immediate access to all sections of TSCA CBI.

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8940; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to "those persons who are or may be required to conduct testing of chemical substances under TSCA." Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document or Other Related Information?

1. *Docket.* EPA has established an official docket for this action under docket identification (ID) number OPPT–2002–0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday thrugh Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **"Federal Register"** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://ww.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under a Memorandum of Understanding (MOU) dated September 23, 1986, the CPSC agreed to EPA procedures governing access to CBI submitted to EPA under TSCA.

In accordance with 40 CFR 2.306(h), EPA has determined that CPSC requires access to CBI submitted to EPA under all sections of TSCA, to perform successfully their responsibilities under the Consumer Product Safety Act and TSCA.

CPSC's personnel are given access to information submitted to EPA under all sections of TSCA. Some of the information is claimed or determined to be CBI. Under the terms of the MOU, CPSC is not required to renew its access to TSCA CBI. EPA publishes this notice to the public from time to time to reiterate and confirm that access to TSCA CBI has been granted to this other federal agency. In a previous notice published in the **Federal Register** of December 9, 1997 (62 FR 64829) (FRL–5757–8), EPA confirmed that CPSC continues to have access to CBI under all sections of TSCA. EPA is issuing this notice to once again confirm that CPSC maintains access under the existing MOU.

EPA issues this notice to inform all submitters of information under all sections of TSCA, that the Agency provides the CPSC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this MOU will take place at EPA Headquarters and CPSC's 4330 East West Highway, Bethesda, Maryland site.

CPSC is required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

CPSC personnel are required to sign nondisclosure agreements and are briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: February 10, 2003.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–4249 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0049; FRL–7293–1]

Access to Confidential Business Information by Geologics Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Geologics Corporation, of Alexandria, VA, access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data submitted to EPA under sections 4, 5, 6, and 8 of TSCA occurred as a result of an approved waiver dated July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0049. The official public docket consists of the documents specifically referenced in this action,

any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under Contract Number GS–00K97AFD2140, Delivery Order Number 2W–0947–YBSW, Geologics Corporation, of 5285 Shawnee Road, Suite 210, Alexandria, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing technical and administrative support for meetings related to investigation of chemicals and biotechnology products for possible regulatory or other control actions. They will also provide computer data base support related to providing information on chemical regulatory actions and related policy decisions.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number GS–00K97AFD2140, Delivery Order Number 2W–0947–YBSW, Geologics Coporation will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA, to perform successfully the duties specified under the contract.

Geologics personnel was given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

Geologics was granted a waiver July 31, 2002. This waiver was necessary to allow Geologics to assist the Office of Pollution Prevention and Toxics (OPPT) in the activities listed above.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA, that the Agency may provide Geologics access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Geologics will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until July 31, 2004.

Geologics personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: February 10, 2003.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–4250 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7293–3]

Access to Confidential Business Information by Dyncorp Systems and Solutions, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its prime contractor Dyncorp Systems and Solutions, LLC (Dyncorp) of Chantilly, VA and 10 of its subcontractors access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data submitted to EPA under all sections of TSCA occurred as a result of an approved waiver dated January 13, 2003, which requested granting Dyncorp and its subcontractors immediate access to all sections of TSCA CBI.

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents

of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under GSA Contract Number GS00T99ALD0204, Task Order Number T0002AJMZ39, contractor Dyncorp, of 15000 Conference Center Drive, Chantilly, VA and its subcontractors Excel Management Systems, of 691 N. High Street, 2nd Floor, Columbus, OH; IBM, 700 Park Dr., Building 662, Research Triangle Park, NC; Institute for Disabilities Research and Training of 11323 Amherst Avenue, Silver Spring, MD; Kenrob, Inc. of 44084 Riverside Parkway, Suite 125, Leesburg, VA; Madision Research of 401 Wynn Drive, Huntsville, AL; OAO, 2222 East NC Highway 54, Beta Building, Suite 220, Durham, NC; Paloma Systems of 7002 Evergreen Court, Annandale, VA; PlanetGov of 14155 Newbrook Drive, Chantilly, VA; Superlative Technologies, Inc. of 8300 Greensboro Drive, Suite 425, McLean, VA; and Veridian of 1200 South Hayes Street, Suite 1000, Arlington, VA, will assist the Office of Pollution Prevention and Toxics (OPPTS) in computer operations and maintenance of TSCA CBI Computer Systems and Communications Network, linking CBI sites, located in Washington, DC. Dyncorp and its subcontractors will also assist in maintaining and operating the EPA CBI computer facilities located in Research Triangle Park, NC.

In accordance with 40 CFR 2.306(j), EPA has determined that under GSA Contract Number GS00T99ALD0204, Task Order Number T0002AJMZ39, Dyncorp and its subcontractors will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract.

Dyncorp and its subcontractor personnel were given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

Dyncorp was granted a waiver on January 13, 2003. This waiver was necessary to allow Dyncorp and its subcontractors to assist EPA in the activities listed above.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Dyncorp and its subcontractors access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at Research Triangle Park, NC facilities. No access will occur at the Research Triangle Park, NC facility until after it has been approved for the storage of TSCA CBI.

Dyncorp and its subcontractors will be authorized access to TSCA CBI at EPA Headquarters and Research Triangle Park, NC, in accordance with EPA *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until September 30, 2007.

Dyncorp and its subcontractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: February 10, 2003.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–4251 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7455–6]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2003 Annual Meeting of the Ozone Transport Commission (OTC). This meeting is for the OTC to deal with appropriate matters within the Ozone Transport Region in the Northeast and Mid-Atlantic States, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on March 4, 2003 starting at 10 a.m. (EST).

ADDRESSES: The Marriott Hotel at Metro Center, 775 Twelfth (12th) Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Judith M. Katz, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100.

For Documents and Press Inquiries Contact: Ozone Transport Commission, 444 North Capitol Street NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@sso.org*; Web site: *http://www.sso.org/otc.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an "Ozone Transport Region" (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Ozone Transport Commission is to deal with ground level ozone formation, transport, and control within the OTR.

The purpose of this notice is to announce that this Commission will meet on March 4, 2003. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the Ozone Transport Commission are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

AGENDA: Copies of the final agenda will be available from the OTC office (202) 508–3840 (by e-mail: *ozone@sso.org* or via our Web site at *http://www.sso.org/otc*) by close of business, Tuesday, February 25, 2003. The purpose of this meeting is to discuss ways in which OTC states can meet their statutory and regulatory responsibilities under the Clean Air Act. Special emphasis will be given to stationary and mobile source control measures to reduce precursors of ground-level ozone and next steps to reduce ground-level ozone in the context of a multi-pollutant emission reduction program. The OTC is also expected to address issues related to the transport of ozone into its region, and to discuss potential regional emission control measures.

Dated: Feburary 14, 2003.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. 03–4519 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0035; FRL–7293–9]

Butafenacil; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0035, must be received on or before March 28, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0035. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket.

Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed, or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties, or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying, or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0035. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0035. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0035.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0035. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Syngenta Crop and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

Syngenta Crop Protection, Inc.

PP 1F6309

EPA has received a pesticide petition (PP 1F6309) from Syngenta Crop Protection, Inc., Greensboro, NC 27419 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of butafenacil in or on the raw agricultural commodity cotton, undelinted seed at 0.5 parts per million (ppm) and cotton, gin byproducts at 13 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the

submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolic pathway of butafenacil in cotton after defoliation applications is understood. The data support the selection of the residue of concern for tolerance setting.

2. *Analytical method.* Syngenta Crop Protection, Inc. has submitted practical analytical methodology for detecting and measuring levels of butafenacil in or on raw agricultural commodities. This method is based on crop-specific cleanup procedures and determination by liquid chromatography with a liquid chromatography/mass spectroscopy (LC/MS) detector. The limit of quantitation is 0.01 ppm for butafenacil for all crops tested, including cotton. The limit of quantitation for metabolites is also 0.01 ppm except for cotton gin trash where the limit of quantitation is 0.05 ppm. The analytical method was validated by determination of recoveries for fortified samples.

3. *Magnitude of residues.* A residue program was performed with butafenacil on the full geography required to support use on cotton.

B. Toxicological Profile

1. *Acute toxicity.* Butafenacil technical and the 100 EC formulation (0.83 lb active ingredient/gallon (ai/gal) have very low order of acute toxicity by oral, dermal, and inhalation exposure routes. Butafenacil technical is mildly irritating to the eye and non-irritating to the skin. The 100 EC formulation is moderately irritating to the eye and skin. Neither the technical nor the formulation are skin sensitizers. The rat dermal LD_{50} is >5,000 milligram/kilogram (mg/kg). The rat dermal LD_{50} is >4,000 mg/kg and the rat inhalation LD_{50} is >5.1 milligrams per liter (mg/L) air. The end-use formulation of butafenacil has a similar low acute toxicity profile.

2. *Genotoxicity.* Butafenacil has been tested for its potential to induce gene mutation and chromosomal changes in five different test systems. Butafenacil technical did not induce point mutations in bacteria (ames assay in *salmonella typhimurium* or *escherichia coli*), and was not genotoxic in an *in vitro* unscheduled DNA synthesis assay in rat hepatocytes. Chromosome aberrations were not observed in an *in vitro* test using Chinese hamster ovary cells and there were no clastogenic or aneugenic effects on mouse bone marrow cell *in vivo* in a mouse micronucleus test. There was a borderline positive response in the gene mutation test in V79 cells *in vitro* at the highest concentration in the presence of metabolic activation, which proved to be cytotoxic. This effect was considered to be an isolated finding and not to be of relevance when assessing the overall mutagenic potential of butafenacil. To substantiate this finding, a corresponding *in vivo in-vitro* DNA repair study on rat hepatocytes was performed. The results of this test show no mutagenic potential of butafenacil. Consequently, it can be concluded that butafenacil is not genotoxic.

3. *Reproductive and developmental toxicity.* In rat and rabbit teratology studies there was no evidence of teratogenicity. Delayed fetal development was apparent only at maternally toxic doses of butafenacil technical in rabbits. In the rabbit study (with doses of 0, 10, 100, 1,000 mg/kg), 1,000 mg/kg/day caused a mean body weight loss from days 12 to 16, decreased food consumption during the dosing period and an increase in the incidence of post-implantation loss, almost exclusively in the form of early resorptions. This increase in post-implantation loss, which was restricted to the top dose, was considered to be secondary to the maternal toxicity occurring at this dose level, and not a direct effect by butafenacil. Slightly reduced fetal body weights at 1,000 mg/kg/day were considered secondary to maternal effects. The incidence and type of external, visceral and skeletal findings were not affected by treatment. There was no indication of developmental toxicity in rabbit offspring at 100 mg/kg/day. The no observed adverse effect level (NOAEL) for both maternal and developmental toxicity was established at 100 mg/kg/day in rabbits.

In the rat teratogenicity study 0, 10, 100, 1,000 mg/kg, there was no observation of maternal toxicity. Body weight and food consumption were comparable in all groups. Reproduction and fetal parameters were not impaired. The incidence and type of external, visceral and skeletal findings were comparable in all dose groups. No treatment-related findings were noted. In conclusion, butafenacil was not teratogenic and not toxic to the progeny. Maternal parameters were not affected. The NOAEL for both maternal and developmental toxicity was >1,000 mg/kg/day, the highest dose level tested.

In a rat multi-generation study, butafenacil technical was administered in feed at concentrations of 0, 30, 300, or 1,000 ppm. The dose in mg/kg/day spans a wide range over the duration of the study as animals gain weight and go through gestation and lactation. The ranges are 1.5–3.3, 15.5–31.9, and 50.9–101.6 for males and 1.7–6.3, 16.8–65.4, and 49.8–215.8 mg/kg/day for females at the 30, 300, or 1,000 ppm dietary levels, respectively. Butafenacil had no effect on reproductive parameters for either the F0 or F1 generation of parent animals. Parental body weight gain and food consumption were reduced at 300 and 1,000 ppm in both the F0 and F1 males and in F1 females. Increased incidence of liver pathology was observed in males and females in the F0 and F1 generations, including bile duct hyperplasia in both sexes at 300 and 1,000 ppm, hepatocellular hypertrophy in males at 1,000 ppm, and foci of necrosis in both sexes at 1,000 ppm and males at 300 ppm. Body weight gain was reduced during the lactation period at 300 and 1,000 ppm in offspring of the F0 generation and at 1,000 ppm in offspring of the F1 generation.

In conclusion, the NOAEL for systemic toxicity in both sexes and both generations of rats was 30 ppm (range = 1.5–3.3 mg/kg/day in males and 1.7–6.3 mg/kg/day in females). The grand mean test item intake (mean of all weekly means for both sexes, both generations, all time points) at this dose level was 2.48 mg/kg/day. There were no effects on the reproductive parameters and the NOAEL for reproductive toxicity was >1,000 ppm. Offspring effects were observed only at dose levels that also produced parental toxicity. There is no evidence that developing offspring are more sensitive than adults to the effects of butafenacil.

4. *Subchronic toxicity.* In a 90–day subchronic neurotoxicity study in rats, butafenacil was not neurotoxic when administered in the diet for 13 weeks at concentrations resulting in average daily test substance intakes of 0, 7.8, 23.5, or 74.4 mg/kg/day for males or at 0, 8.7, 26.0, or 78.9 mg/kg/day for females. There were no treatment-related neurobehavioral or motor activity effects, no macroscopic findings and no microscopic findings in central or peripheral nervous tissue. All animals survived until scheduled sacrifice and there were no treatment-related clinical observations. Histopathology of the liver revealed effects in animals of both sexes from the top dose group. In addition, one male at 23.5 mg/kg/day showed single cell necrosis of hepatocytes. In conclusion, subchronic dietary administration of butafenacil to rats did not produce neurotoxic effects at any dose level. The NOAEL for liver toxicity was 7.8 mg/kg/day for males and 26.0 mg/kg/day for females.

5. *Chronic toxicity.* Butafenacil technical was not oncogenic in rats or mice. A summary of results of chronic toxicity studies in rats, mice, and dogs indicates that the primary target organ from chronic exposure is liver, with effects on hematology parameters and body weight.

In a 12–month chronic oral toxicity study, dogs were fed capsules containing butafenacil that resulted in daily test substance intakes of 0, 20, 100, 500, or 1,000 mg/kg/day. The administration of butafenacil caused findings only at 500 and 1,000 mg/kg/day. These effects consisted of loss in the body weight of male animals at 1,000 mg/kg/day. Hematology parameters were slightly affected at 500 and 1,000 mg/kg/day. Based on body weight loss at 1,000 mg/kg/day, the increase in relative liver weight at 1,000 mg/kg/day and the hematological effects at 500 and 1,000 mg/kg/day, the maximum tolerance dose (MTD) was achieved at 1,000 mg/kg/day and the NOAEL for chronic toxicity in dogs is 100 mg/kg/day.

In an 18–month oncogenicity study, mice were fed diets containing butafenacil that resulted in average daily test substance intakes of 0, 0.12, 0.36, 1.18, 6.78 mg/kg/day. The treatment of mice with butafenacil for 18 months revealed effects on hematology parameters in males at 1.18 and 6.78 mg/kg/day, increased liver weights at 6.78 mg/kg/day in both sexes and histopathological findings indicating that the liver was the target organ of toxicity. The MTD was achieved at 6.78 mg/kg/day. Dose responsive non-neoplastic changes in the liver occurred at 1.18 mg/kg/day in males and at 6.78 mg/kg/day in both sexes. Butafenacil was not carcinogenic in this study. Based on the hematology and liver effects, the NOAEL for chronic toxicity in mice was established at 0.36 mg/kg/day in males and 1.20 mg/kg/day in females.

In a 2–year chronic toxicity and carcinogenicity study, rats were fed diets containing butafenacil that resulted in average (sexes combined) daily test substance intakes of 0, 0.42, 1.22, 4.10, or 12.2 mg/kg/day. Treatment had no effect on survival and there were no treatment-related clinical signs. There were no effects on food consumption and body weight. Hematology and clinical chemistry data were comparable in all groups. Necropsy revealed no changes in organ weights.

The treatment of rats with butafenacil for 24 months indicated the liver as the target organ, with non-neoplastic histopathological findings in the liver in both sexes at 4.10 and 12.2 mg/kg/day. Based on the liver effects, the MTD was achieved at 12.2 mg/kg/day. No increased incidence of tumor formation was noted, indicating that butafenacil was not carcinogenic in this study. Based on the liver effects at 4.10 and 12.2 mg/kg/day, the NOAEL was established at 1.14 mg/kg/day (1.14 mg/kg/day in males and 1.30 mg/kg/day in females).

6. *Animal metabolism.* The major initial metabolic processes in rat involve the hydrolysis of the allyl ester to form the free carboxylic acid compounds. Parent compound was of significant abundance only in the feces from the high dose group. Subsequent metabolic routes involve reduction, hydroxylation, and opening of the uracil ring. The phenyl and uracil rings remain connected and all major metabolites have the unchanged phenyl structure.

7. *Metabolite toxicology.* Toxicity studies, including acute oral, mutagenicity, and 28–day feeding studies were conducted with major metabolites found in environmental studies. An acute oral and a mutagenicity test were conducted. The acute oral LD_{50} was at least >2,000 mg/kg and all mutagenicity studies were negative. The 28–day feeding study was conducted with major metabolites at 0, 300, 2,000, and 10,000 ppm. The target organ was confirmed as the liver for all test materials. Based on the data from the studies and reasons cited, none of these metabolites is considered to be of toxicological concern.

8. *Endocrine disruption.* Butafenacil does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that butafenacil has any effect on endocrine function in development or reproductive studies. Furthermore, histological investigation of endocrine organs in chronic dog, mouse, and rat studies did not indicate that the endocrine system is targeted by butafenacil.

9. *Neurotoxicity.* In an acute neurotoxicity study in rats, butafenacil was administered orally by gavage at 0 or 2,000 mg/kg. All animals survived and body weight development and food consumption were not affected by treatment. There were no toxicologically relevant clinical signs nor changes in observations and functional tests conducted as part of the functional observational battery. No treatment-related effects on any of the different motor activity parameters were seen. Macroscopical and microscopical examination of the multiple areas of the central and peripheral nervous system, the eyes, optic nerves, and skeletal muscle of the male and female, control and treated animals did not reveal any treatment-related neuropathic changes. In conclusion, butafenacil was devoid of any acute neurotoxicity when administered to rats at a single oral dose of 2,000 mg/kg. The NOAEL was greater than 2,000 mg/kg body weight.

C. Aggregate Exposure

1. *Dietary exposure.* Dietary exposure from butafenacil potentially exists through both food commodities and drinking water. Each exposure pathway is addressed below.

i. *Food.* Chronic and acute dietary exposure evaluations for butafenacil were performed using average field trial residues and assuming 100% crop treated. Cotton is the only raw agricultural commodity included in the assessment. All dietary exposure evaluations were made using the Dietary Exposure Evaluation Model (DEEM) and the USDA's Continuing Survey of Food Intake By Individuals (1994–96). Chronic exposure was compared to a chronic NOAEL of 100.0 mg/kg body weight/day (bwt/day) from a 1–year dog study. The acute NOAEL is 100 mg/kg in a rabbit teratology study based on maternal body weight loss and increased post-implantation loss. A 100X-uncertainty factor was assumed for both chronic and acute values. Both chronic and acute exposures were expressed as a percent of a reference dose of 1.0 mg/kg/day.

Secondary residues in animal commodities were calculated by constructing diets for beef and dairy cattle, poultry and swine in order to calculate anticipated residues in meat, fat, milk and pork. The beef cattle diet was used to calculate meat, fat and organ meats. The dairy cattle diet was used to estimate residues in milk. The swine diet was used for secondary residues in pork commodities and the poultry diet was used for residues in poultry commodities. Each diet was calculated using averaged field trial residues. Beef (cattle and dairy), and swine transfer factors were derived from a lactating goat 14C-metabolism study.

The results were favorable in both acute and chronic assessment scenarios. Acute and chronic exposure values were negligible (less than 0.01% of the acute and chronic reference dose of 1 mg/kg bwt/day.

The major contributors to chronic exposure (children 1–6 years old) were milk, accounting for 48% of the total exposure, cottonseed oil accounting for 28%, and meat (beef) products accounting for 25% of the total. In the U.S. population, the percentage contribution to the chronic exposure from meat (beef) products and milk were each 34% and cottonseed oil

accounted for 31% of the total. Major sources of acute exposures for the U.S. population and children 1–6 years old included cottonseed oil and meat (beef) commodities. The %RfD for all populations was less than 0.01% of the reference dose (RfD) of 1.0 mg/kg bwt/day.

ii. *Drinking water—a. Acute drinking water exposure.* The estimated tier 1 maximum concentrations of butafenacil in surface water and ground water are 1.98 ppb and 0.000038 ppb, respectively. The acute RfD for butafenacil is 1.0 mg/kg bwt/day. From the acute dietary exposure analysis, acute food exposure from the uses of butafenacil were neglegible for all populations. Using this information, acute drinking water levels of comparison (DWLOC) were calculated for butafenacil. The lowest DWLOC was 10,000 ppb. Based on this analysis, butafenacil estimated environmental concentrations (EECs) do not exceed the calculated acute DWLOCs.

b. *Chronic drinking water exposure.* The estimated maximum concentrations of butafenacil in surface water and ground water are 0.033 ppb Day 56 EEC/3 from Generic Expected Environmental Concentration (GENEEC) and 0.000025 parts per billion (ppb) (SCI-GROW, maximum at 0.16 lb active ingredient/acre/year, respectively. The chronic RfD for butafenacil is 1.0 mg/kg bwt/day. From the chronic dietary exposure analysis, an exposure to butafenacil is negligible for all populations. Based on EPA's "Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments" document (December 2, 1997), chronic drinking water levels of comparison were calculated for butafenacil. The lowest DWLOC was 10,000 ppb. Based on this analysis, butafenacil EECs do not exceed the calculated chronic DWLOCs.

2. *Non-dietary exposure.* There are no residential uses and therefore, no need for non-dietary exposure assessment for this use.

D. Cumulative Effects

The potential for cumulative effects of butafenacil and other substances that have a common mechanism of toxicity has been considered. Butafenacil is a member of the class of herbicides designated as uracil-derivatives. There is no reliable information to indicate that toxic effects produced by butafenacil would be cumulative with those of any other chemical including another pesticide. Therefore, Syngenta believes it is appropriate to consider only the potential risks of butafenacil in an aggregate risk assessment.

E. Safety Determination

1. *U.S. population.* Using the acute and chronic exposure assumptions and the proposed RfDs described above, the aggregate exposure, including drinking water to butafenacil to the U.S. population (48 contiguous states, all seasons) was calculated to be less than 0.01% of the RfD of 1.0 mg/kg bwt/day. Therefore, Syngenta concludes that there is reasonable certainty that no harm will result from the aggregate acute or chronic exposure to butafenacil residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of butafenacil, data from developmental toxicity studies in the rat and rabbit and a multi-generation reproduction study in the rat have been considered. In the rat and rabbit teratology studies there was no evidence of teratogenicity. Delayed fetal development was apparent only at maternally toxic doses of butafenacil technical in rabbits. In the rabbit study 1,000 mg/kg/day caused effects indicative of maternal toxicity. There was no indication of developmental toxicity in rabbit offspring at 100 mg/kg/day. The NOAEL for both maternal and developmental toxicity was established at 100 mg/kg/day in rabbits.

In the rat teratogenicity study there was no observation of maternal toxicity. Body weight and food consumption were comparable in all groups. Reproduction and fetal parameters were not impaired. Butafenacil was not teratogenic and not toxic to the progeny. Maternal parameters were not affected. The NOAEL for both maternal and developmental toxicity was ≥1,000 mg/kg/day, the highest dose level tested.

In a rat multi-generation study the NOAEL for systemic toxicity in both sexes and both generations of rats was 2.48 mg/kg/day. There were no effects on the reproductive parameters and the NOAEL for reproductive toxicity was ≥1,000 ppm. Offspring effects were observed only at dose levels that also produced parental toxicity. There is no evidence that developing offsprings are more sensitive than adults to the effects of butafenacil.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological requirements, the data base for butafenacil relative to prenatal and postnatal effects for children is complete. Further, for butafenacil, the developmental studies showed no increased sensitivity in fetuses as compared to maternal animals following in-utero exposures in rats and rabbits, and no increased sensitivity in pups as compared to the adults in the multi-generation reproductive toxicity study. Therefore, it is concluded, that an additional uncertainty factor is not warranted to protect the health of infants and children and that a RfD of 1.0 mg/kg bwt/day is appropriated for assessing aggregate risk to infants and children from butafenacil.

F. International Tolerances

There are no codex established for residues of butafenacil on cotton, undelinted seed or cotton, gin byproducts.

[FR Doc. 03–4386 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0042; FRL–7293–4]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0042. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. EUP

EPA has issued the following EUP: *73049–EUP–2.* Issuance. Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. This EUP allows the use of 3,924 pounds of the biochemical plant regulator 6-benzyladenine on 9,680 acres of apple and on 300 acres of pistachio to evaluate its efficacy for fruit thinning and sizing for apple and its mitigation of alternate-year bearing for pistachio. The program is authorized only in the States of California, Idaho, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. The EUP is effective from January 22, 2003 to January 31, 2005. A temporary tolerance exemption to expire on January 31, 2005 has been established for residues of the active ingredient in or on apple and pistachio.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: February 13, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–4525 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0066; FRL–7293–5]

Endocrine Disruptor Screening Program, Proposed Chemical Selection Approach for Initial Round of Screening; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: In a **Federal Register** Notice that published on December 30, 2002, EPA sets forth for public comment the approach EPA plans to use for selecting the first group of chemicals to be screened in the Agency's Endocrine Disruptor Screening Program (EDSP). EPA requested that comments be submitted on or before March 1, 2003. In response to several requests to extend the deadline for submitting comments, EPA is hereby extending the comment period to April 1, 2003.

DATES: Comments, identified by docket ID number OPPT–2002–0066, must be received on or before April 1, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the December 30, 2002 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Greg Schweer, Exposure Assessment Coordination and Policy Division (7203M), Office of Science Coordination and Policy, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8469; e-mail address: *schweer.greg@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), the Safe Drinking Water Act (SDWA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0066. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet

under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the December 30, 2002 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA taking?

This document extends the public comment period established in the **Federal Register** issued on December 30, 2002 (67 FR 79611). In that document, EPA sought public comment on the approach EPA plans to use for selecting the first group of chemicals to be screened in the Agency's Endocrine Disruptor Screening Program (EDSP). EPA is hereby extending the comment period, which was set to end on March 1, 2003, to April 1, 2003.

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides and pests.

Dated: February 10, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–4385 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7455–5]

Public Notice of Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Federal Facility Small Municipal Separate Storm Sewer Systems (MS4s) in Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of proposed NPDES general permit.

SUMMARY: Region VIII of EPA is hereby giving notice of its tentative determination to issue an NPDES general permit for regulated storm water discharges from small municipal separate storm sewer systems (MS4s). The general permit is applicable to Federal Facilities within the State of Colorado. Only Federal Facilities located in urbanized areas (as defined by the 2000 U.S. Census) within the State of Colorado must apply. Federal facilities that are currently known to be located within Colorado urbanized areas, and will need to apply for coverage under the general permit include: Fort Carson; the General Services Administration's Denver Federal Center; Peterson Air Force Base; the U.S. Air Force Academy; the U.S. Department of Commerce—National Institute of Standards and Technology, Boulder Campus; the U.S. Bureau of Prisons Federal Correctional Institution, Englewood; and the Veterans Affairs Medical Center Denver. Additional Federal Facilities may need to apply for permit coverage at a later date based on subsequent Census data. This notice announces the availability of the proposed general permit and fact sheet for public comment.

NPDES permit coverage is required for small MS4s in accordance with final EPA regulations for Phase II storm water discharges (64 FR 68722, December 8, 1999). Operators of Phase II-designated small MS4s (regulated small MS4s) are required to submit a Notice of Intent (NOI) to EPA Region VIII to be covered under the general permit.

In accordance with the general permit, regulated small MS4 operators must develop, implement, and enforce a program designed to reduce the discharge of pollutants from their MS4s to the maximum extent practicable (MEP) to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. The small MS4 program must include the following six minimum control measures: public education and outreach; public involvement and participation; illicit discharge detection and elimination; construction site runoff control; post-construction runoff control; and pollution prevention/ good housekeeping. The rule assumes the use of narrative, rather than numeric, effluent limitations achieved through the implementation of best management practices (BMPs). Operators must establish BMPs and measurable goals for each minimum measure in the permit application. However, applicants will have up to five years to fully develop and implement their storm water management program.

State	*Permit No.*	*Areas covered by the general permit*
Colorado	COR042000 ..	Federal Facilities in the State of Colorado, except those located in Indian Country.

DATES: Public comments on this proposal must be received or postmarked no later than March 28, 2003. A public hearing may be requested within the comment period concerning the proposed permit.

ADDRESSES: Public comments or requests for a public hearing should be sent to: Greg Davis (8EPR–EP); Attention: NPDES Permits; U.S. EPA, Region VIII; 999 18th Street, Suite 300; Denver, CO 80202–2466. Public comments will also be accepted via electronic mail (E-mail) at *r8npdes@epa.gov*.

Public Comment Period

Public comments are invited. Comments must be received or postmarked no later than March 28, 2003. Each comment should cite the page number and, where possible, the section(s) and/or paragraph(s) in the draft permit or Fact Sheet to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Comments must be sent to the address given above in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT: For a copy of the draft permit and Fact Sheet or for further information on the draft permit, contact either Greg Davis (303) 312–6082 (*davis.gregory@epa.gov*) or Vern Berry, (303) 312–6234 (*berry.vern@epa.gov*), or at the address above in the **ADDRESSES** section. Copies of the draft permit and Fact Sheet may be downloaded from the EPA Region VIII Web site at *http://www.epa.gov/region8/water/stormwater/downloads.html*.

SUPPLEMENTARY INFORMATION: When the general permit is issued, it will be published by reference in the **Federal Register**. The general permit will be effective on the date specified in the **Federal Register** with an expiration five years from such date. Region VIII is not issuing NPDES General Permits for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) located in Indian country. No MS4s in Indian country have been determined to require small MS4 permit coverage at this time.

Administrative Record: The proposed general permit and other related documents in the administrative record are on file in the EPA Region VIII NPDES file room and may be inspected upon request any time between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays, at the address provided in the **ADDRESSES** section above. Requests to view these files in the Region VIII NPDES file room should be sent to Greg Davis by phone at 303–312–6082, or by e-mail at *davis.gregory@epa.gov*.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has waived review of NPDES general permits under the terms of Executive Order 12866.

Regulatory Flexibility Act

Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirement to prepare an IRFA.

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *" APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rule making but including licensing." APA section 551(6) (emphasis added). The APA defines "license" to "include * * * an agency permit * * *" APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rule making" requirements. The APA defines "rule making" as "the agency process for formulating, amending, or repealing a rule." APA section 551(5). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (*See*, e.g., UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: February 14, 2003.

Stephen S. Tuber,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. 03–4521 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 200866–002.

Title: Broward-King Ocean Marine Terminal Agreement.

Parties: Broward County, Board of County Commissioners, King Ocean Service de Venezuela, S.A.

Synopsis: The proposed amendment revises the minimum use standards and the charges covered by the agreement. It also adapts the language of the agreement to comply with current state and county law and regulations.

By Order of the Federal Maritime Commission.

Dated: February 21, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–4558 Filed 2–25–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Charter One Financial, Inc., Cleveland, Ohio; to acquire 100 percent of the voting shares of Advance Bancorp, Inc., Homewood, Illinois, and thereby indirectly acquire Advance Bank, Lansing, Illinois.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Virginia Financial Group, Inc., Culpeper, Virginia; to acquire 9.9 percent of the voting shares of Albemarle First Bank, Charlottesville, Virginia.

C. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Mountain Bancshares, Inc., Dawsonville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Mountain State Bank, Dawsonville, Georgia.

D. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Iroquois Bancorp, Inc., Gilman, Illinois; to acquire 42.19 percent of the voting shares of JW Bancorp, Inc., Winchester, Illinois, and thereby indirectly acquire John Warner Financial Corporation, and The John Warner Bank, both of Clinton, Illinois.

2. JW Bancorp, Inc., Winchester, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of John Warner Financial Corporation, and thereby indirectly acquire The John Warner Bank, both of Clinton, Illinois.

E. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Bank Capital Corporation, Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of The Biltmore Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, February 19, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–4390 Filed 2–26–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Public Workshops: Workshop 1: Technologies for Protecting Personal Information: The Consumer Experience; Workshop 2: Technologies for Protecting Personal Information: The Business Experience

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice announcing two public workshops and requesting public comment and participation.

SUMMARY: The FTC is planning to host two public workshops to explore the role of technology in helping consumers and businesses protect the privacy of their personal information, including the steps taken to keep their information secure. Workshop 1 will focus on technological tools available to consumers and whether and how consumers are using them. Workshop 2 will focus on how businesses use technology to manage their information practices and provide security.

DATES: Workshop 1, The Consumer Experience, will be held on Wednesday, May 14, 2003, from 8:30 a.m. to 5 p.m., in the Federal Trade Commission's Satellite Building now located at 601 New Jersey Avenue, NW., Washington, DC. Workshop 2, The Business Experience, will occur on Wednesday, June 4, 2003, also in the Satellite Building. The events are open to the public and attendance is free of charge. Pre-registration is not required.

Requests to Participate as a Panelist: As discussed below, written requests to participate as a panelist in either or both of the workshops must be filed on or before Wednesday, March 26, 2003. Persons filing requests to participate as a panelist will be notified on or before Wednesday, April 9, 2003, if they have been selected to participate.

Written Comments: Whether or not selected to participate, persons may submit written comments on the Questions to be Addressed at the workshop. Such comments must be filed on or before Wednesday, April 23, 2003. For further instructions on submitting comments and requests to participate, please see the "Form and Availability of Comments" and "Requests to Participate as a Panelist in the Workshop" sections below. To read our policy on how we handle the information you may submit, please visit *http://www.ftc.gov/techworkshop*.

ADDRESSES: Written comments and requests to participate as a panelist in the workshop should be submitted to: Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Alternatively, they may be e-mailed to *techworkshop@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Toby Milgrom Levin, Division of Financial Practices, 202–326–3713, or James A. Silver, Division of Financial Practices, 202–326–3708. The above staff can be reached by mail at: Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Background and Proposed Agenda

Since 1995, the FTC has sought to understand the many consumer issues raised by the collection and use of consumers' personal information in our fast-changing information economy. Commission workshops have examined the privacy issues raised by the use of this information and, more recently, the important and complementary role that security plays in providing meaningful protections for it. The Commission has also undertaken a wide variety of education and enforcement initiatives to reduce the harms caused by the disclosure of personal information, such as identity theft, unwarranted intrusions, violations of privacy promises, and breaches of customer databases. As part of this ongoing examination, the Commission is announcing two workshops designed to explore the role of technology in protecting personal information.

Technology has been widely heralded as a promising solution to challenges that the collection and use of information present. A number of products promise to help consumers control their sensitive information and guard against internal and external threats. Similarly, there are an increasing number of products designed to help businesses manage the consumer information they maintain and ensure that it is secure. Despite the widespread availability of these products, however, it is unclear just how much consumers and businesses are using them and whether they are meeting consumer and business needs in this area. Therefore, as more and more consumers share personal information online and use "always on" Internet connections, it is useful to examine the current role that technology plays in protecting consumers' personal information.

The workshops being announced will examine, first, the role technology plays for consumers seeking to protect their own information and, second, the role it plays for businesses seeking to protect the consumer information that they maintain. Both workshops will also examine the changes that have been made in the security area since the Federal Trade Commission's May 2002 workshop on consumer information security.

Questions to be addressed at the workshops may include:

A. Workshop 1

Technologies for Protecting Personal Information: The Consumer Experience

1. Are consumers using technology to help manage the collection and use of their personal information? Why or why not?

- What types of technologies are available or under development to help consumers manage the collection and use of their personal information?
- Which of these technologies are consumers using, which are not being used, and why?
- What factors influence consumers' willingness to use these technologies?
- Is there empirical data showing which technologies consumers are using and why?
- Is consumer education needed to make consumers aware of these technologies and to help them use them?
- What types of technologies do consumers want that do not yet exist?

2. What role can automated privacy notices, such as P3P, play to help consumers manage the collection and use of their personal information?

- What technologies are available or under development that automatically match consumer preferences to businesses' information practices? What is their current status of development and/or implementation?
- What are the strengths and limitations of these technologies?
- Are there obstacles to widespread adoption of these technologies, and if so, how could they be addressed?
- How do automated privacy notices interface with the various types of privacy notices—*e.g.*, short, layered, full accountability—currently in use? Do automated notices raise any special liability concerns?

3. Are consumers using technology to help protect their information security? Why or why not?

- What types of technologies are available or under development to help consumers protect their information security?
- Which information security-enhancing technologies are consumers using, which are not being used, and why?
- What factors influence consumers' willingness to use information security-enhancing technologies?
- Is there any empirical data showing which technologies consumers are using and why? For example, are consumers downloading patches, updating virus protection, and using firewalls?
- What information security-enhancing technologies do consumers want that do not yet exist?
- Are the available technologies adequate to address known vulnerabilities?
- Is there a need for more "built-in" technology solutions and features that are easy for consumers to access and use? Should business make it easier for consumers with high-speed access to install effective firewalls?
- What are business, government agencies, and others doing to raise consumer awareness of security issues and help create a "culture of security"?

B. Workshop 2

Technologies for Protecting Personal Information: The Business Experience

1. How are businesses using technology to manage their information practices?

- What types of technologies are available or under development to help businesses manage their information practices and verify their website's privacy policy compliance?
- Which technologies are businesses using, which are not being used, and why?
- Is there any empirical data showing which technologies businesses are using and why?
- How have businesses incorporated information management technologies into their business operations? Do such technologies affect businesses' efforts to engage in targeted marketing? Have they affected businesses' profits?
- What are the costs and benefits, including any costs and benefits to competition, of implementing their technologies?
- Are there limits to technology's ability to manage consumer information? What role do people, policies, and organizational structure play in implementing effective information management programs?

2. How are businesses using technology to provide security for consumer information that they maintain? What progress has been made in this area since the FTC's May 2002 Consumer Information Security Workshop?

- What types of technologies are available or under development to help businesses provide security for customer information?
- Which of these technologies are businesses using, which are not being use, and why?
- Is there any empirical data showing which technologies businesses are using and why?
- What are the costs and benefits of implementing these technologies?
- Do different types of information and information practices warrant different types of security protection?
- Are their security tools that are low in cost and easy-to-use, particularly for small businesses? How can we raise awareness of security issues among small businesses?
- Do security tools work out-of-the-box? What can businesses that do not have dedicated security personnel do to protect consumer information?
- Are their limits to technology's ability to protect consumer information? What role do people, policies, and organizational structure play in implementing effective safeguards programs?
- How are U.S. agencies working with international organizations like OECD and APEC to provide security guidance for businesses?
- What additional steps can businesses take to help create a "culture of security?"

Requests to Participate as a Panelist in the Workshop

Parties seeking to participate as panelists in the workshop must notify the FTC in writing of their interest in participating on or before Wednesday, March 26, 2003, either by mail to the Security of the FTC or by e-mail to *techworkshop@ftc.gov*. Requests to participate as a panelist should be captioned "Technology Workshop—Request to Participate, PO34808."

Parties are asked to include in their requests a statement setting forth their expertise in or knowledge of the issues on which the workshop will focus and their contact information, including a telephone number, facsimile number, and e-mail address (if available), to enable the FTC to notify them if they are selected. An original and two copies of each document should be submitted. Panelists will be notified on or before Wednesday, April 9. 2003, whether they have been selected.

Using the following criteria, FTC staff will select a limited number of panelists to participate in the workshop. The number of parties selected will not be so large as to inhibit effective discussion among them.

1. The party has expertise in or knowledge of the issues that are the focus of the workshop.
2. The party's participation would promote a balance of interests being represented at the workshop.
3. The party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares group interests with the designator(s).

In addition, there will be time during the workshop for those not serving as panelists to ask questions.

Form and Availability of Comments

The FTC requests that interested parties submit written comments on the above questions to foster greater understanding of the issues. Especially useful are any studies, surveys, research, and empirical data. Comments should be captioned "Technology Workshop—Comment, P034808," and must be filed on or before Wednesday, April 23, 2003.

Parties sending written comments should submit an original and two copies of each document. To enable prompt review and public access, paper submissions should include a version on diskette in PDF, ASCII, WordPerfect, or Microsoft Word format. Diskettes should be labeled with the name of the party, and the name and version of the word processing program used to create the document. Alternatively, comments may be emailed to *techworkshop@ftc.gov*.

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and FTC regulations, 16 CFR part 4.9, Monday through Friday between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. This notice and, to the extent technologically possible, all comments will also be posted on the FTC Web site at *http://www.ftc.gov/techworkshop*.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–4502 Filed 2–25–03; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

[Document No. JFMIP–SR–03–01]

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document finalization and posting.

SUMMARY: The JFMIP is seeking announcement of document finalization and posting for the "JFMIP Revenue System Requirements Document" dated January 2003. The document is the first Federal Financial Management System Requirements (FFMSR) document to address standard financial requirements for Federal revenue systems. The document is intended to assist agencies when developing, improving or evaluating revenue systems. It provides the baseline functionality that agency systems must have to support agency missions and comply with laws and regulations. This document augments the existing body of FFMSR that define financial system functional requirements that are used in evaluating compliance with the Federal Financial Management Improvement Act (FFMIA) of 1996.

DATES: For release as soon as possible.

ADDRESSES: The document is available on the JFMIP Web site: *www.jfmip.gov*.

FOR FURTHER INFORMATION CONTACT: Daniel Costello at *daniel.costello@gsa.gov*.

SUPPLEMENTARY INFORMATION: The FFMIA of 1996 mandated that agencies implement and maintain systems that comply substantially with FFMSR, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial system requirements documents as a key benchmark that agency systems must meet to substantially comply with systems requirements provisions under FFMIA. To support the provisions outlined in the FFMIA, the JFMIP is updating obsolete requirements documents and publishing additional requirements documents.

An open house is scheduled for February 27, 2003, from 1 to 3 pm in room 5141A of the main GSA building, to provide additional information on the document. The name, organization, telephone number, and e-mail address for attendees should be e-mailed to *daniel.costello@gsa.gov* to register.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 03–4528 Filed 2–25–03; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for AHRQ National Research Service Award Individual Research Training Grant (F32) Awards are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: AHRQ National Research Service Award Individual Research Training Grant (F32) Awards.

Date: March 26, 2003 (Open on March 26 from 1 p.m. to 1:10 p.m. and closed for remainder of the teleconference meeting).

Place: Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, 4W5, Division of Scientific Review, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 19, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–4531 Filed 2–25–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0038]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device User Fee Cover Sheet; Form FDA 3601

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments concerning Form FDA 3601 entitled "Medical Device User Fee Cover Sheet," which must be submitted along with certain medical device product applications, supplements, and fee payment of those applications.

DATES: Submit written or electronic comments on the collection of information by April 28, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments concerning the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Medical Device User Fee Cover Sheet; Form FDA 3601

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250), authorizes FDA to collect user fees for certain medical device applications. Under this authority, companies pay a fee for certain new medical device applications or supplements submitted to the agency for review. Because the submission of user fees concurrently with applications and supplements is required, the review of an application cannot begin until the fee is submitted. Form FDA 3601, the "Medical Device User Fee Cover Sheet," is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fees submitted for an application with the actual application by using a unique number tracking system. The information collected is used by FDA's Center for Devices and Radiological Health (CDRH) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new medical device applications and supplemental applications.

Respondents to this collection of information are device manufacturers. Based on FDA's database system, there are an estimated 5,000 manufacturers of products subject to MDUFMA. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the number of submissions received by FDA in fiscal year 2002. CDRH estimates 5,000 annual responses that include the following: 50 premarket approval applications, 4,400 premarket notifications, 30 modular premarket applications, 1 product development protocol, 1 premarket report, 20 panel track supplements, 150 real-time supplements, and 348 180-day supplements. CBER estimates 50 annual responses that include the following: 2 premarket approval applications, 3 biologics license applications, 30 premarket notifications, 10 modular premarket applications, and 5 180-day supplements. The estimated hours per response are based on past FDA experience with the various submissions, and range from 5 to 30 minutes. The hours per response are based on the average of these estimates.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3601	5,000	1	5,000	.30	1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 14, 2003.
William K. Hubbard,
Associate Commissioner for Policy and Planning.
[FR Doc. 03–4493 Filed 2–25–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1219]

Delmont Laboratories, Inc.; Opportunity for Hearing on a Proposal to Revoke U.S. License No. 299

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for hearing on a proposal to revoke the biologics license (U.S. License No. 299) issued to Delmont Laboratories, Inc. (Delmont), for Polyvalent Bacterial Antigens with "no U.S. Standard of Potency" (Staphage Lysate). The proposed revocation is based on FDA's proposed reclassification of this product in Category II (unsafe, ineffective, or misbranded), based on the recommendations of the Vaccines and Related Biological Products Advisory Committee (VRBPAC).

DATES: Delmont Laboratories, Inc., may submit written or electronic requests for a hearing by March 28, 2003, and any data and information justifying a hearing by April 28, 2003. Other interested persons may submit written or electronic comments on the proposed revocation by April 28, 2003.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocation to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests or comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 15, 2000 (65 FR 31003), FDA issued a proposed order to reclassify certain Category IIIA (remaining on the market pending further studies in support of effectiveness) bacterial vaccines and related biological products into Category I (safe, effective, and not misbranded) or Category II (unsafe, ineffective, or misbranded). This action was taken under the reclassification review procedures in § 601.26 (21 CFR 601.26), and was based on the findings and recommendations of the VRBPAC and the Panel on Review of Allergenic Extracts (the Allergenics Panel). The proposed order also announced our intent to revoke the biologics licenses for those bacterial vaccines and related products proposed for reclassification in Category II.

Based on VRBPAC's recommendations, FDA proposed that bacterial vaccines and toxoids with standards of potency be classified into two separate categories based upon their use as either a primary immunogen or as a booster. FDA further proposed that bacterial vaccines and related biological products with "no U.S. standards of potency" be classified into Category II for their labeled indications based on either the VRBPAC's or the Allergenics Panel's recommendations. Five manufacturers of Category IIIA products were subject to the proposed order, as listed in the following table:

TABLE 1—CATEGORY IIIA PRODUCTS PROPOSED BY FDA FOR RECLASSIFICATION INTO CATEGORY II AS A PRIMARY IMMUNOGEN OR FOR ALL LABELED INDICATIONS

Manufacturer/License Number	Product(s)	Proposed Category II Indication
Aventis Pasteur, Inc., No. 1277	Tetanus Toxoid (fluid)	Primary Immunogen
BioPort Corporation, No. 1260	Diphtheria and Tetanus Toxoids Adsorbed	Primary Immunogen
Wyeth Laboratories, Inc., No. 3	Tetanus and Diphtheria Toxoids Adsorbed (Adult Use)	Primary Immunogen
Delmont Laboratories, Inc., No. 299	Polyvalent Bacterial Antigens with "No U.S. Standard of Potency" (Staphage Lysate)	All Labeled Indications
Hollister-Stier Laboratories LLC, No. 1272 (1)	Polyvalent Bacterial Vaccines with "No U.S. Standard of Potency" (Bacterial Vaccines Mixed Respiratory (MRV or MRVI, Bacterial Vaccines for Treatment, Special Mixtures)	All Labeled Indications

[1] As described in the proposed order, this product was reviewed by the Allergenics Panel. The remaining products in this table were reviewed by the VRBPAC.

FDA also proposed that the bacterial vaccines with U.S. standards of potency recommended for classification into Category II as a primary immunogen be placed into Category I for use as a booster immunogen. Manufacturers who intended to market their products for use as a booster immunogen needed to submit supplements for changes to the container and package labels and the package insert, to include the statement, "For Booster Use Only".

Three of the five manufacturers submitted requests to voluntarily revoke their licenses. Accordingly, FDA revoked the licenses for: (1) Polyvalent Bacterial Vaccines with "no U.S. Standard of Potency" (Bacterial Vaccines Mixed Respiratory), Hollister-Stier Laboratories, U.S. license No. 1272, effective August 3, 2000 (66 FR 29148, May 29, 2001); (2) Diphtheria and Tetanus Toxoids Adsorbed and Tetanus Toxoids Adsorbed, BioPort Corporation, U.S. license No. 1260, effective November 20, 2000 (66 FR 29148, May 29, 2001); and (3) Tetanus and Diphtheria Toxoids Adsorbed (for Adult Use), Wyeth Laboratories, Inc., U.S. license No. 3, effective May 30, 2002.

On January 18, 2002, we approved a license supplement for Aventis Pasteur, Inc.'s, Tetanus Toxoid fluid. In this supplement, Aventis Pasteur, Inc., requested that their license for Tetanus Toxoid fluid be amended to revoke the primary immunization indication and maintain the booster use only indication. In addition, the supplement included updated labeling for the Tetanus Toxoid fluid product stating that the product was for "Booster Use Only", as specified in the proposed order.

Comments on Proposed Reclassification

Polyvalent Bacterial Antigens with "No U.S. Standard of Potency" [Staphage Lysate (SPL)], Delmont Laboratories, Inc., U.S. License No. 299

On August 9, 2000, Delmont submitted a written comment on the proposed order opposing the proposed Category II reclassification of its product. Delmont proposed, instead, reclassification into Category I and submitted information in support of its proposal, including an SPL clinical trial summary dated February 28, 1994, an English translation of a clinical study report for a study performed in the Czech Republic, and an abstract of a 1994 in vitro study performed by Delmont. We have carefully considered the information provided by Delmont, and find that it does not support a reclassification of SPL into Category I. A discussion of the studies included in Delmont's submission follows.

The February 28, 1994, clinical trial summary contained data from two human clinical studies. The first study in the submission was a prospective, double blind, placebo controlled study of the efficacy of SPL for the treatment of Hidradenitis Suppurativa (HS). The clinical trial summary stated that, "under the conditions of the study, SPL was not demonstrated to be effective in the treatment of HS," and that no significant differences between treatment groups (SPL, placebo) or between clinical centers "were found in any of the efficacy analyses for any of the parameters analyzed." Delmont stated in its written comment on the proposed order that a data reanalysis provided by an independent third party engaged by Delmont demonstrated "approximately two times greater reductions from baseline in total score for SPL treated patients than for placebo treated patients" and that SPL showed a "trend among the more severely affected patients for the change from baseline to last visit." However, the reanalysis of the data was performed after the patient data were unblinded. In addition, the method of efficacy assessment was changed from the initial blinded and controlled study, and a subset analysis of a selected subgroup of patients was performed in order to reach these conclusions. There was no statistically significant difference between the SPL and placebo treatment groups after the reanalysis was performed. The data are inadequate to support a reclassification of SPL from Category II to Category I.

The second study included in the 1994 clinical trial summary was an open label (unblinded) comparative study between SPL and 2 similar products, STAVA and POLYSTAFANA, not licensed in the United States. The study was performed in the Czech Republic and included patients with staphylococcal diseases of various types. An English translation of the study report was included in Delmont's submission. The study report contained several deficiencies, such as: No patient recruitment details with respect to the diagnoses of various staphylococcal infections, no detailed explanations of patient inclusion or exclusion criteria, no adequate control group, no description of patient randomization procedures (if performed), no explanation of how patients were reassigned to treatment groups after clinics refused to continue administering the POLYSTAFANA, no information on treatment compliance or individual dose regimens, no clinical descriptions or associated clinical measurements for the endpoints of "cured," "lasting stabilization," "improved," or "no effect," no statistical analysis performed (only observed cure rates were reported), and no reporting of individual adverse events. These deficiencies are inconsistent with generally accepted standards of clinical trial design and performance. Therefore, this clinical study is also inadequate to support reclassification of SPL from Category II to Category I.

Delmont also included an abstract of an in vitro study performed in two human cell lines. The study authors found that human cell cultures secreted gamma interferon, interleukin 1, interleukin 2, and tumor necrosis factor when exposed to SPL. Delmont interprets the study to suggest that SPL "may stimulate the production of immunocompetent cells, triggering immune responses that might have clinical significance in certain diseases." However, the data provided in the abstract are limited, and deficiencies in the data exist (e.g., lack of information on some positive and negative control results). While in vitro studies are frequently used to study the biological mechanisms of a product, they are not supportive of human efficacy in the absence of adequate and well-controlled clinical trials. Therefore, the limited data contained in Delmont's abstract are not adequate to support a reclassification of SPL from Category II to Category I.

Delmont submitted no other data or information to support a reclassification of SPL to Category I or to preclude FDA's reclassification of this product to Category II.

Notice of Opportunity for Hearing

In accordance with 21 CFR 601.5(b) and 21 CFR 12.21(b), FDA is offering an opportunity for hearing on its proposal to revoke the biologics license, U.S. License No. 299, issued to Delmont Laboratories, Inc., for Polyvalent Bacterial Antigens with "no U.S. Standard of Potency" (Staphage Lysate). A copy of the August 9, 2000, written comment is on file with the Dockets Management Branch (see **ADDRESSES**) under the docket number found in brackets in the heading of this notice. The document is available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Delmont may submit a written or electronic request for a hearing to the Dockets Management Branch by March 28, 2003, and any data and information justifying a hearing must be submitted by April 28, 2003 (21 CFR 12.22(b)(1)). Other interested persons may submit comments on the proposed revocation by April 28, 2003.

FDA procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for hearing, grant or denial of hearing, and submission of data and information to justify a hearing on a proposed revocation of a license are contained in part 12 (21 CFR part 12) and 21 CFR part 601. In requesting a hearing, a person must submit to FDA's Dockets Management Branch objections and a request for a hearing on each objection, along with a detailed description and analysis of the factual information to be presented in support of each objection, as provided in § 12.22. A deficient request or objection

will be returned; however, the deficient submission may be supplemented and subsequently filed if submitted within the 30-day time period (§ 12.22(c)). The objections should identify the specific fact or facts that are genuine, substantial, and in dispute (§ 12.24(b)(1)). Mere allegations or denials are not enough to obtain a hearing (§ 12.24(b)(2)). The Commissioner of Food and Drugs (the Commissioner) will deny the hearing request if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate (§ 12.24(b)(3)).

Two copies of any submissions are to be provided to FDA except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Submissions, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be examined in the Dockets Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under authority delegated to the Commissioner (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.202).

Dated: February 4, 2003.

Mark Elengold,

Deputy Director for Operations, Center for Biologics Evaluation and Research.

[FR Doc. 03–4491 Filed 2–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee); Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Department of Health and Human Services. At least one portion of the meeting will be closed to the public.

Name of Committee: Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).

General Function of the Committee: The committee advises the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand Study by the U.S. Air Force and provides scientific oversight of the Department of Veterans Affairs (VA) Army Chemical Corps Vietnam Veterans Health Study, and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the committee is desirable.

Date and Time: The meeting will be held on March 13, 2003, 8 a.m. to 5:30 p.m.

Location: San Diego Marriott La Jolla, 4240 La Jolla Village Dr., Newport-Irvine Room, La Jolla, CA 92037.

Contact Person: Leonard M. Schechtman, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, rm. 16–85, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12560. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Air Force will present information on the following: Personnel changes and contract actions; cancer incidence; mortality, review of latest findings; diabetes, summarize the latest analysis of the insulin sensitivity study; hypertension, summarize the latest analysis, including the skin exposure index results; thyroid, review latest results; statistics on study compliance to cycle 6; data release—the latest results on consent for future use of data; and study shutdown and transfer of data.

Procedure: On March 13, 2003, from 8 a.m. to 12 noon, and from 3 p.m. to 5:30 p.m. the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 5, 2003. Oral presentations from the public will be scheduled between approximately 11 a.m. to 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 5, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 13, 2003, from approximately 1 p.m. to 3 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The closed portion of the meeting will allow for discussion between the committee members and study participants currently undergoing health assessments, pertaining to their participation in the Ranch Hand Study.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leonard M. Schechtman at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 14, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–4492 Filed 2–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–07]

Notice of Submission of Proposed Information Collection to OMB: Community Outreach Partnership Center Program (COPC)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: March 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0180) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Community Outreach Partnership Center Program (COPC).

OMB Approval Number: 2528–0180.

Form Numbers: HUD–30001, HUD–30002, HUD–30003, HUD–30011, HUD–30012, Grant Forms.

Description of the Need for the Information and its Proposed Use: Grants are made to colleges and universities to establish and operate Community Outreach Partnership Centers to conduct research and outreach activities that address the problems of urban areas.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Frequency of Submission: On occasion, semi-annually,

	Number of respondents	x	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	160		1.625		55		14,400

Total Estimated Burden Hours: 14,400.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 20, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–4447 Filed 2–25–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–01]

Notice of Proposed Information Collection for Public Comments for the Family Self-Sufficiency Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Family Self-Sufficiency Program (FSS).

OMB Control Number: 2577–0178.

Description of the need for the information and proposed use: The Family Self-Sufficiency Program, which was established in the National Affordable Housing Act of 1990, promotes the development of local strategies that coordinate the use of public housing assistance and assistance under the Section 8 rental certificate and voucher programs (now known as the Housing Choice Voucher Program) with public and private resources to enable eligible families to achieve economic independence and self-sufficiency. Housing agencies enter into a Contract of Participation with each eligible family that opts to participate in the program; consult with local officials to develop an Action Plan; and report annually to HUD on implementation of the FSS program.

Agency form numbers, if applicable: Form HUD–52650 and HUD–52652.

Members of affected public: Individuals or households, public housing agencies, State or local government.

Estimation of the total number of hours needed to prepare the information collection including number of

respondents, frequency of response, and hours of response: Plan—50 respondents annually, Forms HUD–52650 (10 times a year) and HUD–52652 (50 times a year), 39,000 hours total reporting burden.

Status of the proposed information collection: Extension.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: February 19, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Family Self-Sufficiency (FSS) Program Contract of Participation

Section 8, Public Housing and Indian Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0178 (exp. 05/31/2003)

This Contract of Participation for the Family Self-Sufficiency (FSS) Program is between _____, Housing Agency (HA), and _____, head of the FSS family.

The FSS family includes everyone in the household, and is referred to in this contract as "family".

Type of FSS Program.

The family is a participant in the:(Check only one)

☐ Section 8 Rental Certificate or Rental Voucher FSS Program

☐ Public Housing FSS Program

☐ Indian Housing FSS Program

Purpose of Contract

The purpose of this contract is to state the rights and responsibilities of the family and the HA, the resources and supportive services to be provided to the family, and the activities to be completed by the family.

Term of Contract

This contract will be effective on _____.

This contract will expire on _____.

The HA can extend the term of the contract up to 2 years if the family gives the HA a written request for an extension and the HA finds that good cause exists for the extension.

Resources and Supportive Services

During the term of the contract, the HA will try to provide the resources and services listed in the individual training and services plans. If the resources and services are not available, the HA will try to substitute other resources and services. However, the HA has no liability to the family if the resources and services are not provided.

FSS Escrow Account

The HA will establish an FSS escrow account for the family. A portion of the increases in the family's rent because of increases in earned income will be credited to the FSS escrow account in accordance with HUD requirements.

Listed below are the family's annual income, earned income, and family rent when the family begins the FSS program. These amounts will be used to determine the amount credited to the family's FSS escrow account because of future increases in earned income.

Annual Income $ _____

Earned Income $ _____

Family Rent (Total Tenant Payment or, for rental vouchers, 30% of monthly Adjusted Income)$ _____

The HA will invest the FSS escrow account funds in HUD-approved investments.

The HA will give the family a report on the amount in the family's FSS escrow account at least once a year.

If the family is participating in the Section 8 program and moves outside the HA's jurisdiction under Section 8 portability procedures, the HA may transfer the balance of the family's FSS escrow account to another HA.

Withdrawal of Funds from FSS Escrow Account

The HA may permit the family to withdraw funds from the FSS escrow account before completion of the contract if the family has completed specific interim goals, designated by the HA, and needs some of the FSS escrow account funds to complete the contract (example: to pay for school costs).

The HA will pay the head of the family the amount in the family's FSS escrow account, less any amount owed to the HA, when:

(1) the HA determines that the family has completed this contract, and,

(2) at the time of contract completion, the head of the family provides written certification to the HA that no member of the family is receiving welfare assistance. Welfare assistance means income assistance from Federal or state welfare programs including AFDC, SSI that is subject to an income eligibility test, Medicaid, food stamps, and general assistance. Welfare assistance does not include transitional Medicaid or child care for JOBs participants or SSI payments to guardians of disabled children.

If the head of the family leaves the assisted unit, the remaining family members may, after consulting the HA, name another family member to receive the FSS escrow account funds.

Loss of FSS Escrow Account

The family will not receive the funds in its FSS escrow account if:

(1) the contract of participation is terminated,

(2) the contract of participation is declared null and void; or

(3) the family has not met its family responsibilities within the times specified as stated in this contract.

Family Responsibilities

The head of the family must:

- Seek and maintain suitable employment after completion of the job training programs listed in the individual training and services plan. The HA, after consulting with the head of the family, will determine what employment is suitable based on the skills, education, and job training of that individual and available job opportunities in the area.

The head of the family and those family members who have decided, with HA agreement, to execute an individual training and services plan, must:

- Complete the activities within the dates listed in each individual training and services plan.

- Provide the HA and HUD with information about the family's participation in the FSS program in order to help the HA and HUD evaluate the FSS program. This could include information regarding employment, job interviews, training, educational attendance, and other FSS services and activities.

All family members must:

- Comply with the terms of the lease.
- If receiving welfare assistance, become independent of welfare assistance and remain independent of welfare assistance for at least 12 consecutive months before the contract expires.
- If participating in the Section 8 program, live in the jurisdiction of the HA that enrolled the family in the FSS program at least 12 months from the effective date of this contract and comply with the family obligations under the Section 8 rental certificate or rental voucher program.

Corrective Actions for Failure to meet Family Responsibilities

If any member of the family does not meet his or her responsibilities under this contract, the family will not receive the money in its FSS escrow account and the HA may:

(1) stop supportive services for the family,

(2) terminate the family's participation in the FSS program, and

(3) if the family is participating in the rental certificate or rental voucher program, terminate the Section 8 assistance, when allowed by HUD requirements.

HA Responsibilities

- Attempt to obtain commitments from public and private sources for supportive services for families.
- Establish an FSS escrow account for the family, invest the escrow account funds, and give the family a report on the amount in the FSS escrow account at least once a year.
- Determine which, if any, interim goals must be completed before any FSS escrow funds may be paid to the family; and pay a portion of the FSS escrow account to the family if the HA determines that the family has met these specific interim goals and needs the funds from the FSS escrow account to complete the contract.
- Determine if the family has completed this contract.
- Pay the family the amount in its FSS escrow account, if the family has completed the contract and the head of the family has provided written certification that no member of the family is receiving welfare assistance.

Completion of the Contract of Participation

Completion of the contract occurs when the HA determines that:

(1) the family has fulfilled all of its responsibilities under the contract; or

(2) 30 percent of the family's monthly adjusted income equals or is greater than the Fair Market Rent amount for the unit size for which the family qualifies.

Termination of the Contract of Participation

The HA may terminate this contract if:

(1) the family and the HA agree to terminate the contract;

(2) the HA determines that the family has not fulfilled its responsibilities under this contract;

(3) the family withdraws from the FSS program;

(4) an act occurs that is inconsistent with the purpose of the FSS program; or

(5) the HA is permitted in accordance with HUD requirements.

The HA may declare this contract null and void if the resources and services necessary to complete the contract are not available.

The HA must give a notice of termination or nullification to the head of the family. The notice must state the reasons for the HA decision to terminate or nullify the contract.

If the contract is terminated or declared null and void, the family has no right to receive funds from the family's FSS escrow account. The HA must close the family's FSS escrow account and may use the funds for purposes in accordance with HUD requirements.

If the family is participating in the Section 8 program, the HA will terminate the contract if the family moves outside the HA's jurisdiction under Section 8 portability procedures and enters the FSS program of another HA.

If the family is participating in the Section 8 program, this contract is automatically terminated if the family's section 8 assistance is terminated in accordance with HUD requirements.

Conflict with the Public or Indian Housing Lease

If part of this contract conflicts with the public or Indian housing lease, the lease will prevail.

Compliance with HUD Regulations and Requirements

The contract of participation must be interpreted and administered in accordance with HUD regulations and requirements. Terms and figures, such as the income and rent amount on page 1, are subject to correction by the HA for compliance with HUD regulations and requirements. The HA must notify the family in writing of any adjustments made to the contract.

Signatures:

Family	Housing Agency
_____ (Signature of head of family)	_____ (Name of HA)
_____ (Date Signed)	_____ (Signature of HA Official)
	_____ (Official Title)
	_____ (Date Signed)

Each Housing Agency (HA) must enter into a contract of participation with each eligible family that opts to participate in the FSS program. Each HA must consult with local officials to develop and action plan containing descriptions of the size, characteristics, and needs of the population to be served by its proposed FSS program; the services and activities it will provide; how the program will implemented; the public and private resources through which services and activities will be provided; a time-table for implementation; and other data necessary for HUD to ensure coordinated implementation of program services and activities.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Response to this collection of information is mandatory by law (Section 23 (c) & (g) of the U.S. Housing Act of 1937, as added by Section 554 of the Cranston-Gonzalez National Affordable Housing Act (PL 101-625) for participation in the FSS program.

The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained.

HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

HA Instructions for Executing the FSS Contract of Participation

Parties to the Contract/Signatures

The head of the participating family must be the adult member of the family who is the head of the household for income eligibility and rent purposes.

Term of Contract

The effective date is the first day of the month following the date the contract was signed by the family and the HA's representative.

The expiration date is five years from the effective date of the contract.

If the HA decides to extend the term of the contract, the original expiration date listed on page one of the contract must be crossed out and the new expiration date added.

If a family moves under Section 8 portability procedures and is going to participate in the receiving HA's FSS program, the effective date of the contract between the family and the receiving HA is the first day of the month following the date the contract was signed by the family and the HA's representative. The expiration date of the contract between the receiving HA and the family must be the same as the expiration date of the contract between the initial HA and the family.

FSS Escrow Account

The income and rent numbers to be inserted on page one may be taken from the amounts on the last reexamination or interim determination before the family's initial participation in the FSS program, unless more than 120 days will pass between the effective date of the reexamination and the effective date of the contract of participation. If it has been more than 120 days, the HA must conduct a new reexamination or interim redetermination.

If a family moves under Section 8 portability procedures and is going to participate in the receiving HA's FSS program, the receiving HA must use the amounts listed for annual income, earned income, and family rent on page one of the contract between the initial HA and the family.

Changes to the Contract

This contract of participation can only be changed to modify the contract term, the head of the family, or the individual training and services plans.

Any change of the head of the family under the contract must be included as an attachment to the contract. The attachment must contain the name of the new designated head of the family, the signatures of the new head of the family and an HA representative, and the date signed.

Any change/s to an individual training and services plan must be included as a revision to the individual training and services plan (attachment) to which the change applies. The revision must include the item changed, signatures of the participant and an HA representative, and the date signed.

For extensions to the contract term, see the "Term of Contract" section.

If, twelve months after the effective date of the contract, a family in the Section 8 FSS program moves outside of the HA's jurisdiction under Section 8 portability procedures, an HA may take one of the following actions:

(1) The initial HA may permit the family to continue to participate in its FSS program, if the family demonstrates to the initial HA's satisfaction that it can meet the family responsibilities of the contract in the new location. In this case, the existing contract remains in effect with no change. The initial HA must transfer the family's FSS escrow account balance when the family is absorbed by the receiving HA.

(2) The receiving HA may permit the family to participate in its FSS program. If so, the initial HA must terminate its contract with the family. The initial HA must also transfer the family's FSS escrow account balance when the family is absorbed by the receiving HA. The receiving HA will execute a new contract with the family.

(3) In cases where the family cannot fulfill its family obligations in the new location, and the receiving HA does not permit the family to participate in its FSS program, the contract between the initial HA and the family shall terminate and the family will lose the funds in its FSS escrow account.

Individual Training and Services Plans

The contract must include an individual training and services plan for the head of the family. Other family members age eighteen and older may choose to execute an individual training and services plan if agreed to by the HA.

The resources and supportive services to be provided to each family member must be listed in the individual training and services plans which are attachments to the contract of participation.

Page one of each participant's individual training and services plan includes space for the final goal and the first interim goal needed to achieve the final goal. The additional pages provide a format for recording each interim goal and specific information related to its achievement. The first page of each participant's plan must be signed by the participant and an HA representative.

Interim goals must be specified along with the activities and services needed to achieve them. For example, a single mother with two children who has an interim goal of completing her secondary education might require several different activities and services to achieve that goal. These could include transportation, tutoring, and child care.

All completion dates included in the individual training and services plan/s must be on or before the contract of participation expires.

One of the interim goals for families receiving welfare assistance is to become independent of welfare assistance for at least twelve consecutive months before the end of the contract. Any family that is receiving welfare assistance **must** have this included as an interim goal in the head of the family's individual training and services plan.

The final goal listed on the individual training and services plan of the head of the family **must** include getting and maintaining suitable employment specific to that individual's skills, education, job training, and the available job opportunities in the area.

Incentives

If the HA has chosen to offer other incentives in connection with the FSS program, these incentives may be included in the individual training and services plans or as an attachment to this contract.

Family Self-Sufficiency Program
Individual Training and Services Plan

Attachment _____

Name of Participant	Social Security Number

Final Goal

Interim Goal Number _____

Date Accomplished _____

Activities/Services	Responsible Parties	Date/s

Comments

Signatures:

Family	Housing Agency
(Participant)	(Signature of HA Representative)
(Date Signed)	(Date Signed)

Family Self-Sufficiency Program
Individual Training and Services Plan

Attachment _____

Name of Participant	Social Security Number

Interim Goal Number _____

Date Accomplished _____

Activities/Services	Responsible Parties	Date/s

Comments

Family Self-Sufficiency Program
FSS Escrow Account Credit Worksheet

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0178
(exp. 05/31/2003)

Escrow credit must be determined at each reexamination and interim determination occurring after the effective date of the FSS Contract of Participation while the family is participating in the FSS program.

Head of the FSS family	Date
1. Current Annual Income (Enter amount on line 5 of form HUD-50058.)	1.
2. Applicable Lower-Income Limit (Enter the current lower-income limit for the jurisdiction in which the FSS family is living.)	2.
3. Current Adjusted Income (Enter amount on line 10b of form HUD-50058.) **If line 3 is greater than line 2, this family does not qualify for an FSS credit.**	3.
4. Earned income included in line 1 (Add up the income items coded B, M, F, and W in column 3a of form HUD-50058.)	4.
5. Earned income included in Annual Income on effective date of the FSS Contract of Participation. (Enter amount from contract of participation.)	5.
6. Increase in earned income since the effective date of the FSS Contract of Participation. (Subtract line 5 from line 4. If negative, enter 0.)	6.
7. Current Annual Income less increase in earned income since the effective date of the FSS Contract of Participation. (Subtract line 6 from line 1.)	7.
8. Thirty percent of current monthly Adjusted Income (Line 3 divided by 40. The calculated amount should equal the amount on line 11 of form HUD-50058.)	8.
9. Current Adjusted Income less increase in earned income since the effective date of the FSS Contract of Participation. (Subtract line 6 from line 3.)	9.
10. 30% of current monthly Adjusted Income less increase in earned income since the effective date of the FSS Contract of Participation. (Line 9 divided by 40)	10.
11. 10% of current monthly Annual Income less increase in earned income since the effective date of the FSS Contract of Participation. (Line 7 divided by 120)	11.
12. If applicable, welfare rent (enter amount on line 13 of form HUD-50058) or public housing ceiling rent (enter amount on line 16a of form HUD-50058)	12.
13. TTP based on current Annual Income less increase in earned income since effective date of the FSS Contract of Participation. (If rental vouchers, enter the amount on line 10, otherwise, enter the greater of line 10, 11, or 12.)	13.
14. Difference between 30% of current monthly Adjusted Income and TTP adjusted for increases in earned income. (Subtract line 13 from line 8. Enter 0 if negative.)	14.
15. Current TTP (Enter the amount on line 16b of form HUD-50058 or, in the case of rental vouchers, enter the amount on line 8 of this form.)	15.
16. TTP on effective date of the FSS Contract of Participation or, in the case of rental vouchers, 30% of monthly Adjusted Income on effective date of the FSS Contract of Participation. (Enter amount from contract of participation.)	16.
17. Difference between current TTP and TTP on effective date of the FSS Contract of Participation. (Subtract line 16 from line 15. Enter 0 if negative.)	17.
18. Enter the lesser of line 14 or line 17.	18.
19. Applicable Very Low-Income Limit (Enter the current very low-income limit for the jurisdiction in which the FSS family is living.)	19.
20. Amount by which Adjusted Income exceeds the Very Low-Income Limit (Subtract line 19 from line 3.)	20.
21. 30% of the amount by which Adjusted Income exceeds the Very Low-Income Limit (Line 20 divided by 40)	21.
22. Escrow credit (Subtract line 21 from line 18.)	22.

This HUD form is optional and is used here to illustrate the process. PHAs may develop their own FSS Worksheet.

Previous Editions are Obsolete

form HUD-52652 (12/93)
ref. Handbook 7420.8

Each Housing Agency (HA) must enter into a contract of participation with each eligible family that opts to participate in the FSS program. Each HA must consult with local officials to develop and action plan containing descriptions of the size, characteristics, and needs of the population to be served by its proposed FSS program; the services and activities it will provide; how the program will implemented; the public and private resources through which services and activities will be provided; a time-table for implementation; and other data necessary for HUD to ensure coordinated implementation of program services and activities.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0178), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 .

Do not send this form to the above address.

Response to this collection of information is mandatory by law (Section 23 (c) & (g) of the U.S. Housing Act of 1937, as added by Section 554 of the Cranston-Gonzalez National Affordable Housing Act (PL 101-625) for participation in the FSS program.

The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats to ,their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained.

HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Instructions for Completing the FSS Escrow Account Credit Worksheet

1. An escrow credit must be determined at each reexamination and interim determination occurring after the effective date of the FSS contract of participation while the family is participating in the FSS program.

2. The amount of the escrow credit can be calculated using Form HUD-52652, or another document which incorporates the procedures in Form HUD-52652.

3. The amount of the escrow credit will vary depending on the income level of each FSS family and is based on increases of earned income since the effective date of the contract of participation. If the family's adjusted income exceeds the lower-income limit in the jurisdiction in which the FSS family is living (the amount on line 3 is greater than the amount on line 2), the family does not qualify for an escrow credit. In such cases, line 4 - line 22 of Form HUD-52652 will not be completed.

Previous Editions are Obsolete

form HUD-52652 (12/93)
ref. Handbook 7420.8

[FR Doc. 03–4448 Filed 2–25–03; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–24]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, (HUD).

ACTION: Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the Department of Education.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)). and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," HUD is issuing a public notice of its intent to conduct a recurring computer matching program with the Department of Education to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with the Department of Education's debtor files. This match will allow prescreening of applicants for loans issued by or guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government for HUD or the Department of Education for direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains delinquent debt information from the Departments of Agriculture, Education, Veteran Affairs, the Small Business administration and judgment lien data from the Department of Justice, and verify that the applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal agencies. This match will allow prescreening of applicants for loans issued by or guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government.

Authorized users do a prescreening of CAIVRS to determine a loan applicant's credit status with the Federal government. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin on March 28, 2003, unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: March 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th St., SW., Room P8001, Washington, DC 20410, telephone number (202) 708–2374. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service). (This is a toll-free number).

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Kathryn Griffin, Management Analyst, Collections, Federal Student Aid, Department of Education, Union Center Plaza, 830 First Street, NE., Room 41D2, Washington, DC 20202–5320, telephone number (202) 377–3252. (This is not a toll-free number.)

Reporting: In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," copies of this notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: HUD has authority to collect and review mortgage data pursuant to the National Housing Act, as amended, 12 U.S.C 1701 *et seq.*, and related laws. The Department of Education oversees and manages Federal student aid programs pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. 1001 *et seq.* This computer matching will be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); and the Deficit Reduction Act of 1984, as amended.

Objectives to be Met by the Matching Program: The matching program will allow the Department of Education access to a system that permits prescreening of applicants for loans issued by or guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the government. In addition, HUD will be provided access to the Department of Education's debtor data for prescreening purposes.

Records to be Matched: HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on insured or guaranteed home mortgage loans under title II of the National Housing Act; or individuals who have had a claim paid in the last three years on a loan under title I of the National Housing Act. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The Department of Education will provide HUD with debtor files contained in its system of records (Higher Education Act, Title IV Program File, 18–40–0024). HUD is maintaining the Department of Education's records only as a ministerial action on behalf of the Department of Education, not as part of HUD's HUD/DEPT–2 system of records. The Department of Education's data contain information on individuals who have defaulted on their guaranteed loans. The Department of Education will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for the Department of Education's data.

Notice Procedures: HUD and the Department of Education have separate notification procedures. When the Federal credit being sought is a HUD/FHA mortgage, HUD will notify individuals at the time of application (ensuring that routine use appears on the application form). The Department of Education will notify individuals at the time of application for Federal student loan programs that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the Department of Education will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal government.

Categories of Records/Individuals Involved: The debtor records include these data elements: SSN, claim number, the Department of Education's Regional Office Code, Collection Agency Code, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match: Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination.

Dated: February 11, 2003.

Gloria R. Parker,

Chief Technology Officer.

[FR Doc. 03–4445 Filed 2–25–03; 8:45 am]
BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–25]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, (HUD).

ACTION: Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the Department of Veterans Affairs (VA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," HUD is issuing a public notice of its intent to conduct a recurring computer matching program with the Department of Veterans Affairs (VA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with VA's debtor files. This match will allow prescreening of applicants for loans issued by or guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government for HUD or VA direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal agencies. The CAIVRS database contains delinquent debt information from the Departments of Agriculture, Education, Veteran Affairs, the Small Business Administration and judgment lien data from the Department of Justice.

Authorized users do a prescreening of CAIVRS to determine a loan applicant's credit status with the Federal government. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin on March 28, 2003, unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: March 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th St., SW., Room P8001, Washington, DC 20410, telephone number (202) 708–2374. (This is not a toll-free number.) A telecommunication device for hearing and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service). (This is not a toll-free number.)

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Don Toivola, Chief, Computer Specialist, Debt Management Center, U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, Room 156, 1 Federal Drive, Ft. Snelling, MN 55111–4050, telephone number (612) 970–5705. (This is not a toll-free number.)

Reporting: In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," copies of this notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: HUD has authority to collect and review mortgage data pursuant to the National Housing Act, as amended, 12 U.S.C. 1701 *et seq.*, and related laws. The VA is authorized

pursuant to 38 U.S.C. 3710, to determine that any veteran who obtains a VA-guaranteed home loan poses a satisfactory credit risk. This computer matching will be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982 (Public Law 97–365), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104–134, section 31001); and the Deficit Reduction Act of 1984, as amended.

Objectives to be Met by the Matching Program: The matching program will allow VA access to a system that permits prescreening of applicants for loans or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the government. In addition, HUD will be provided access to VA's debtor data for prescreening purposes.

Records to be Matched: HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on insured or guaranteed home mortgage loans under title II of the National Housing Act, or individuals who have defaulted on rehabilitation loans under section 312 of the Housing Act of 1964, or individuals who have had a claim paid in the last three years on a loan under title I of the National Housing Act. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans—Delinquent/Default.

The VA will provide HUD with debtor files contained in its system of records entitled SS–VA26, Loan Guaranty Systems of Records. Central Accounts Receivable On Line System is a subsidiary of SS–VA26. HUD is maintaining VA's records only as a ministerial action on behalf of VA, not as a part of HUD's HUD/DEPT–2 system of records. VA's data contain information on individuals who have defaulted on their guaranteed loans. The VA will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for VA's data.

Notice Procedures: HUD and the VA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the VA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal government.

Categories of Records/Individuals Involved: The debtor records include these data elements from HUD's systems of records, HUD/Dept–2: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match: Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 30 days from the date this notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: February 11, 2003.

Gloria R. Parker,

Chief Technology Officer.

[FR Doc. 03–4446 Filed 2–25–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Minor Adjustment of Kodiak National Wildlife Refuge Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of boundary adjustment.

SUMMARY: The Secretary of the Interior, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has made a minor modification to the boundary of the Kodiak National Wildlife Refuge in the State of Alaska. This boundary adjustment was made to incorporate a parcel of land which is adjacent to the former Refuge boundary. This parcel is a portion of a large, phased acquisition by the State of Alaska using *Exxon Valdez* oil spill settlement funds. This action added 2,699.75 acres to the Refuge.

DATES: Title to the land in question vested in the United States of America on December 5, 2000. Notification to Congress of the proposed boundary change was provided April 3, 2002.

ADDRESSES: Division of Realty, Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199.

FOR FURTHER INFORMATION CONTACT: Sharon N. Janis, 907–786–3490

SUPPLEMENTARY INFORMATION: In 2000, 2,699.75 acres of land were acquired from Afognak Joint Venture by the United States, for administration by the Fish and Wildlife Service. These lands lie outside, but adjacent to, the boundary of the Kodiak National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act. These lands are identified as Tract B of the Subdivision of Tract B Waterfall Addition, according to the plat thereof filed as Plat No. 2000–20 on November 8, 2000, in the Kodiak Recording District, Third Judicial District, State of Alaska, which is located in Sections 4, 9, 15, 16, 17, 19, 20, and 21, Township 21 South, Range 20 West, Seward Meridian, Alaska.

Section 103(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3103(b)) establishes authority for the Secretary of the Interior to make minor boundary adjustments to the Wildlife Refuges created by the Act. Under this authority, and following due notice to Congress, the Secretary, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has used this authority to adjust the boundaries of the Kodiak Refuge to include the 2,699.75 acres of land referenced above. This adjustment modifies the boundary previously described in the **Federal Register** (48 FR 7966, Feb. 24, 1983).

David B. Allen,

Regional Director.

[FR Doc. 03–4527 Filed 2–25–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–120–5101 ER–H019, GP2–0332]

Record of Decision; Coos County Natural Gas Pipeline, Coos County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Record of Decision.

SUMMARY: Pursuant to Section 102 of the National Environmental Policy Act of 1969, an Environmental Impact Statement (EIS) was prepared, by a third party contract, for the Bureau of Land Management (BLM), Coos Bay District Office. The EIS was prepared to analyze impacts and alternatives for the Coos County Board of Commissioners proposed natural gas transmission pipeline from near Roseburg in Douglas County, Oregon, to Coos Bay in Coos County, Oregon. The proposed project would result in granting Coos County a right-of-way for the construction, operation and maintenance of a 12 inch natural gas pipeline across approximately three miles of BLM-administered lands located in Coos and Douglas Counties, Oregon. The Final EIS was released for public review December 13, 2002. The Record of Decision (ROD) was signed by the Coos Bay District Manager on February 18, 2003, approving the proposed action and incorporating project design criteria and best management practices analyzed under the proposed action.

Copies of the ROD can be obtained from the Coos Bay District Office at Coos Bay District, BLM, 1300 Airport Lane, North Bend, OR 97459. The ROD may be examined at the Coos Bay District Office in North Bend, Oregon and local libraries. The ROD will also be available electronically at the BLM Coos Bay District Web site *(http://www.or.blm.gov/coosbay)* and the Coos County Web site *(http://www.co.coos.or.us).* Additionally, a copy of the ROD will be mailed to individuals, agencies or companies that commented during the scoping process, or on the Draft and Final EIS.

EFFECTIVE DATES: Parties adversely affected by the Record of Decision have 30 days, from the date of publication of this notice, to file a Notice of Appeal in the office which issued this decision (43 CFR 4.413). The decision to grant the right-of-way is in full force and effect, effective on the date of signing of the Record of Decision. A petition for a stay of the decision must be filed in accordance with the above cited regulations.

ADDRESSES: A copy of the Record of Decision can be obtained from: Bureau of Land Management, Coos Bay District Office at Coos Bay District, BLM, 1300 Airport Lane, North Bend, OR 97459.

A notice of Appeal should be addressed to: Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459, with a copy to: Office of the Regional Solicitor, Kaiser Permanente Bldg. Suite 607, 500 Multnomah Street NE, Portland, OR 97232. A copy must also be sent to: Department of the Interior Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Bob Gunther, Project Coordinator, at address above or telephone (541–751–4295), fax: 541–751–4303, or e-mail comments to the attention of *Bob_Gunther@or.blm.gov.*

Dated: July 31, 2002.

Mark E. Johnson,

Coos Bay Associate District Manager.

Note: This document was received at the Office of the Federal Register on February 21, 2003.

[FR Doc. 03–4496 Filed 2–25–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–03–1420–BJ]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of amended protraction diagram plats.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of the amended protraction diagrams in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: The amended protraction diagrams were prepared at the request of the U.S. Forest Service, and were necessary to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center. The lands for the prepared amended protraction diagrams are:

Principal Meridian, Montana

Tps. 15, 16, and 17 S., Rs. 10 and 12 W.

The plat, representing the Amended Protraction Diagram 56 Index of unsurveyed Townships 15, 16, and 17 South, Ranges 10 and 12 West, Principal Meridian, Montana, was accepted February 13, 2003.

T. 15 S., R. 12 W.

The plat, representing Amended Protraction Diagram 56 of unsurveyed Township 15 South, Range 12 West, Principal Meridian, Montana, was accepted February 13, 2003.

T. 16 S., R. 10 W.

The plat, representing Amended Protraction Diagram 56 of unsurveyed Township 16 South, Range 10 West, Principal Meridian, Montana, was accepted February 13, 2003.

T. 17 S., R. 10 W.

The plat, representing Amended Protraction Diagram 56 of unsurveyed Township 17 South, Range 10 West, Principal Meridian, Montana, was accepted February 13, 2003.

T. 7 S., R. 13 W.

The plat, representing Amended Protraction Diagram 57 (no index) of unsurveyed Township 7 South, Range 13 West, Principal Meridian, Montana, was accepted February 13, 2003.

We will place a copy of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives protests against these amended protraction diagrams, as shown on these plats, prior to the date of the official filings, we will stay the filings pending our consideration of the protests.

We will not officially file these plats of the amended protraction diagrams until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: February 19, 2003.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 03–4485 Filed 2–25–03; 8:45 am]

BILLING CODE 4310–44–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Humboldt Project Conveyance, Pershing and Lander Counties, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: Pursuant to section 102(2) (c) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) proposes to prepare an Environmental Impact Statement (EIS) for the Humboldt Project Conveyance. Reclamation will be conducting public scoping meetings to elicit comments on the scope and issues to be addressed in the draft EIS. Reclamation is also seeking written comments, as noted below. The draft EIS is expected to be issued in early 2004. Public notification will occur for all scoping meetings to be held for this draft EIS.

DATES: Written comments on the scope of alternatives and impacts to be considered should be sent to Reclamation at the address below by June 15, 2003.

ADDRESSES: Written comments should be sent to Caryn Huntt DeCarlo, Bureau of Reclamation, Lahontan Basin Area Office, 705 N. Plaza, Room 320, Carson City, NV 89701; or by telephone at 775–884–8352; or faxed to 775–882–7592 (TDD 775–487–5933).

FOR FURTHER INFORMATION CONTACT: Caryn Huntt DeCarlo, Bureau of Reclamation, at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The Humboldt Project (Project) is located along the Humboldt River in northwestern Nevada. Reclamation began the Project construction in 1935, and in 1941 the first water was delivered to the agricultural lands from storage in Rye Patch Reservoir. The Pershing County Water Conservation District (PCWCD) assumed operation of the Project in 1941. PCWCD has had several Project repayment contracts with Reclamation that have all been repaid. Project features include Battle Mountain Community Pasture, Rye Patch Dam and Reservoir, and the Humboldt Sink. Battle Mountain Community Pasture, located near Battle Mountain, is approximately 30,000 acres and is managed for grazing by the PCWCD under a lease agreement with Reclamation. Rye Patch Reservoir is located 26 miles upstream from Lovelock, is 21 miles in length, and has a capacity of 190,000 acre-feet. The State of Nevada manages the recreation at the reservoir under a management agreement with Reclamation and the PCWCD. The Humboldt Sink is also part of the Project and is managed by the State of Nevada under a management agreement with Reclamation.

Reclamation is preparing an EIS to analyze the action of conveying title of the Humboldt Project and associated lands to several entities. The conveyance is authorized under title VIII of Public Law 107–282. The preliminary estimate of acres of conveyance is as follows: PCWCD 48,700 acres (portions of Rye Patch Reservoir and the Battle Mountain Community Pasture); Pershing County 960 acres (portion of the Humboldt Sink area); Lander County 1,100 acres (portion of the Battle Mountain Community Pasture); and the State of Nevada 19,700 acres (portions of Rye Patch Reservoir, Humboldt Sink, and in the Battle Mountain Community Pasture).

The environmental impacts of the Project conveyance and associated alternatives will be assessed in the EIS. The environmental review in the EIS will focus on the potential for Project conveyance to cause adverse environmental impacts to natural and cultural resources such as recreation, endangered species and other fish and wildlife, and historic resources.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: January 31, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–4456 Filed 2–25–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–488]

In the Matter of Certain Screen Printing Machines, Vision Alignment Devices Used Therein, and Component Parts Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 17, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Speedline Technologies, Inc. of Franklin, Massachusetts. A letter supplementing the complaint was filed on February 7, 2003. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain screen printing machines, vision alignment devices used therein, and component parts thereof by reason of infringement of claims 1, 2, 3, 4, and 18 of U.S. Patent No. 5,060,063. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2221.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 19, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain screen printing machines, vision alignment devices used therein, or component parts thereof by reason of infringement of claim 1, 2, 3, 4, or 18 of U.S. Patent No. 5,060,063, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Speedline Technologies, Inc., 16 Forge Park, Franklin, Massachusetts 02038.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

EKRA America, Inc., 34 Saint Martin Drive, Marlborough, Massachusetts 01752.

EKRA Germany GmbH, Zeppelinstrasse 16, D–74357, Bonnigheim, Germany.

(c) James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: February 20, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–4458 Filed 2–25–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. 701–TA–376, 377 and 379 and 731–TA–788–793 (Final)(Remand)]

Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan; Notice of Final Court Decision Affirming Remand Determinations

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission gives notice of a final court decision affirming its final affirmative material injury determinations, made pursuant to court remand, in the countervailing duty and antidumping duty investigations of certain stainless steel plate (SSP) from Belgium, Canada, Italy, Korea, South Africa, and Taiwan.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3095. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: In May of 1999, the Commission made original final determinations in *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, Invs. Nos. 701–TA–376, 377 and 379 and 731–TA–788–793 (Final), USITC Pub. 3188. A majority of the Commissioners found two domestic like products: hot-rolled SSP and cold-rolled SSP. The Commission reached affirmative material injury determinations with respect to subject imports of hot-rolled SSP from each of the six named countries. As to cold-rolled SSP, the Commission reached negative material injury and threat determinations with respect to subject imports from Belgium and Canada, and found the volume of subject imports from Italy, Korea, South Africa and Taiwan to be negligible. The remaining Commissioners found one like product, and reached affirmative material injury determinations encompassing subject imports of both hot-rolled SSP and cold-rolled SSP.

The affirmative determinations as to hot-rolled SSP were appealed to the U.S. Court of International Trade (CIT). The CIT affirmed the challenged aspect of the Commission's determination in *Acciai Speciali Terni* v. *United States*, 118 F. Supp. 2d 1298 (CIT 2000) .

The Commission's cold-rolled SSP determinations were the subject of a separate appeal. The CIT upheld the Commission's determinations. *Allegheny Ludlum Corp.* v. *United States*, 116 F. Supp. 2d 1276 (CIT 2000). On subsequent appeal to the Court of Appeals for the Federal Circuit, that Court found the Commission's analysis to be flawed. *Allegheny Ludlum Corp.* v. *United States*, 287 F.3d 1365 (Fed. Cir. 2002). The Federal Circuit vacated the decision of the CIT, and remanded for proceedings not inconsistent with its decision.

On remand, the Commission determined that an industry in the United States is materially injured by reason of imports of certain stainless steel plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan that the U.S. Department of Commerce determined were sold in the United States at less than fair value, and the subject imports from Belgium, Italy, and South Africa that the U.S. Department of Commerce determined were subsidized. *Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, Inv. Nos. 701–TA–376, 377 and 379 (Final) and 731–TA–

788–793 (Final) (Remand), USITC Pub. 3541 (Sept. 2002).

On December 12, 2002, the CIT affirmed the Remand Determination as being in accordance with the Court's remand order. There was no timely appeal of the order to the Federal Circuit.

The judicial proceedings having ended and the final court decision having been issued, the Commission, pursuant to 19 U.S.C. 1516(e), publishes notice of the final court decision affirming its remand determinations.

By order of the Commission.

Issued: February 20, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–4459 Filed 2–25–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–2]

Certain Steel Wire Garment Hangers From China

Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,[1] that certain steel wire garment hangers[2] from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.

[1] 19 U.S.C. 2451(b)(1).

[2] For purposes of this investigation, certain steel wire garment hangers consist of garment hangers, fabricated from steel wire in gauges from 9 to 17, inclusive (3.77 to 1.37 millimeters, inclusive), whether or not galvanized or painted, whether or not coated with latex or epoxy or other similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles, tubes, or struts. After fabrication, such hangers are in lengths from 7 to 20 inches, inclusive (177.8 to 508 millimeters, inclusive), and the hanger's length or bottom bar is composed of steel wire and/or saddles, tubes or struts. The product may also be identified by its commercial designation, referring to the shape and/or style of the hanger or the garment for which it is intended, including but not limited to shirt, suit, strut, and caped hangers. Specifically excluded are wooden, plastic, aluminum, and other garment hangers that are covered under separate subheadings of the HTS. The products subject to this investigation are classified in subheading 7326.20.00 of the HTS and reported under statistical reporting number 7326.20.0020. Although the HTS subheading is provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Recommendations on Proposed Remedies

Chairman Deanna Tanner Okun, Vice Chairman Jennifer A. Hillman, and Commissioner Marcia E. Miller propose that the President impose a duty, in addition to the current rate of duty, for a three-year period, on imports of the subject steel wire garment hangers from China as follows: 25 percent ad valorem in the first year, 20 percent ad valorem in the second year, and 15 percent ad valorem in the third year of relief. They further recommend that, if applications are filed, the President direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports.

Commissioner Lynn M. Bragg proposes that the President impose a duty, in addition to the current rate of duty, for a two-year period, on imports of the subject steel wire garment hangers from China as follows: 20 percent ad valorem in the first year, and 15 percent ad valorem in the second year of relief.

Commissioner Stephen Koplan proposes that the President impose a duty of 30 percent ad valorem, in addition to the current rate of duty, for a three-year period, on imports of the subject steel wire garment hangers from China. He further recommends that, if applications are filed, the President direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports.

The Commissioners each find that the respective actions that they propose are necessary to remedy the market disruption found to exist.

Background

Following receipt of a petition filed on November 27, 2002, on behalf of CHC Industries, Inc.; M&B Metal Products Co., Inc.; and United Wire Hanger Corp., the Commission instituted investigation No. TA–421–2, Certain Steel Wire Garment Hangers From China, under section 421 of the Trade Act of 1974 to determine whether certain steel wire garment hangers from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's website (*www.usitc.gov*) and by publishing the notice in the **Federal Register** of December 6, 2002 (67 FR 72700). The hearing was held on January 9, 2003, in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The views of the Commission are contained in USITC Publication 3575 (February 2003), entitled Certain Steel Wire Garment Hangers from China: Investigation No. TA–421–2.

By order of the Commission.

Issued: February 20, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–4460 Filed 2–25–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2002 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability of the finding of no significant impact and the environmental assessment.

SUMMARY: The Environmental Assessment, which is available to the public, concludes that the methamphetamine investigation and clandestine laboratory closure activities of the Methamphetamine/Drug Hot Spots Program will not have significant impact on the quality of the human environment.

ADDRESSES: For copies of the Environmental Assessment and the Finding of No Significant Impact, please contact: COPS Grants Administration Division, 1100 Vermont Avenue, NW., Washington, DC 20530; Phone: (202) 616–3031 or 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, 1–800–421–6770 and ask to speak with your Grant Program Specialist.

SUPPLEMENTARY INFORMATION: In Fiscal Year 2000, the COPS Office collaborated with the Bureau of Justice Assistance and the Drug Enforcement Administration, Department of Justice, to prepare an Environmental Assessment for methamphetamine law enforcement programs, and with specific application for the Methamphetamine/Drug Hot Spots Program. This Environmental Assessment was prepared as required by the Council on Environmental Quality's regulations (40 CFR Parts 1500 through 1508), implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et al.*). The Methamphetamine/Drug Hot Spots Program addresses a broad array of law enforcement initiatives pertaining to the investigation of methamphetamine trafficking in many heavily impacted areas of the country. For the purposes of this program, law enforcement may include training of law enforcement officers in methamphetamine-related issues; collection and maintenance of intelligence and information relative to methamphetamine trafficking and traffickers; investigation, arrest and prosecution of producers, traffickers and users of methamphetamine; interdiction and removal of laboratories, finished products, and precursor chemicals and other elements necessary to produce methamphetamine; and preventive efforts to reduce the spread and use of methamphetamine. Individual projects will reflect a concentration on program areas consistent with Congressional appropriations.

Among the many challenges faced by law enforcement agencies in the Methamphetamine/Drug Hot Spots Program will be discovery, interdiction, and dismantling of clandestine drug laboratories. These lab sites, as well as other methamphetamine crime venues must be comprehensively dealt with in compliance with a variety of health, safety and environmental laws and regulations. The COPS Office requires that recipients, when encountering illegal drug laboratories, use grant funds to effect the proper removal and disposal of hazardous materials located at those laboratories and directly associated sites in accordance with all applicable laws and regulations.

Overview

Environmental Assessment

The COPS Office will award grants to State and local criminal justice agencies for the FY 2002 COPS Methamphetamine/Drug Hot Spots Program. The Environmental Assessment concludes that the funding of this program will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be prepared for the funding of this program.

Dated: February 9, 2003.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 03–4543 Filed 2–25–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act

Notice is hereby given that on February 19, 2003, a proposed Consent Decree in *United States* v. *Certus, Inc.*, Civil Action No. 1:02CV00095, was lodged with the United States District Court for the Western District of Virginia.

In this action the United States sought recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, and Section 311(f) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. 1321(f), of natural resource damages resulting from the release of hazardous substances from a tanker truck into the Clinch River in Tazewell County, Virginia. The Consent Decree requires Settling Defendant Certus, Inc. to pay $3,707,432.84 to the United States and the Commonwealth of Virginia, as co-Trustees for natural resources, for use in restoring the natural resources injured by the release. In addition, Certus will pay $92,567.16 to the United States in reimbursement of outstanding natural resource damages assessment costs. Certus previously reimbursed the United States $481,967.40 for additional assessment costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Certus, Inc.*, D.J. Ref. No. 90–11–2–07004.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Virginia, 105 Franklin Road, SW., Roanoke, VA 24011, and at U.S. Fish & Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, VA 23061. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–4541 Filed 2–25–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Environment and Natural Resources Division; Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Hammond*, No. 01 C 5559, was lodged with the United States District Court for the Northern District of Illinois on February 12, 2003, This proposed Consent Decree concerns a complaint filed by the United States against Danny Hammond, pursuant to the Clean Water Act, to obtain injunctive relief from and impose civil penalties against Hammond for violations of Sections 301(a) and 404 of the Act, 33 U.S.C. 1311(a), 1344.

The proposed Consent Decree requires Hammond to remove the fill material, restore the affected wetland, place a deed restriction on the property, and pay a civil penalty of $10,000.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Jonathan C. Haile, Assistant United States Attorney, 219 S. Dearborn St., Chicago, Illinois 60604, and refer to *United States* v. *Hammond*, No. 01 C 5559.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/enrd-home.html*.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 03–4542 Filed 2–25–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Chile and its Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for public comments.

SUMMARY: This notice is a request for public comments to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in Chile and describing the extent to which Chile has in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. On December 11, 2002, negotiators for the United States and Chile announced that they had reached substantive agreement on a Free Trade Agreement. On January 31, 2003, President Bush notified the Congress of his intent to enter into an FTA with Chile. This agreement will be subject to trade promotion authority procedures. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. March 28, 2003.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTACHILE@dol.gov*. Submissions by facsimile may be sent to: Betsy White at the Office of International Economic Affairs, Bureau of International Labor Affairs (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Bureau of International Labor Affairs, Office of International Economic Affairs, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on Chile's laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Act of 2002 (Pub. L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in the Act. Division B of the Trade Act, entitled the Bipartisan Trade Promotion Authority Act of 2002, includes negotiating objectives and a listing of priorities for the President to promote in order to "address and maintain United States competitiveness in the global economy" in pursuing future trade agreements. 19 U.S.C. 3802(a)–(c). The President delegated several of the functions in section 3802(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President "in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating" and the function in section 2102(c)(9), which requires that the President "with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor."

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Chile's labor laws, including laws governing exploitative child labor, and Chile's implementation and enforcement of such laws and regulations;
2. The situation in Chile with respect to core labor standards;
3. Steps taken by Chile to comply with International Labor Organization Convention 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in Chile.

Section 2113(6) of the Trade Act defines "core labor standards" as:

(A) The right of association;

(B) The right to organize and bargain collectively;

(C) A prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children; and

(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTACHILE@dol.gov*. Persons making submissions by e-mail should use the following subject line: "Chile: Labor Rights and Child Labor Reports." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington DC and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC this 20th day of February, 2003.

Thomas B. Moorhead,

Deputy Under Secretary for International Affairs.

[FR Doc. 03–4499 Filed 2–25–03; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 2003 Adverse Effect Wage Rates, Allowable Charges for Agricultural and Logging Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs), allowable charges for meals, and maximum travel subsistence reimbursement for 2003.

SUMMARY: The Employment and Training Administration (ETA), announces 2003 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services, the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day, and the maximum travel subsistence reimbursement which a worker with receipts may claim in 2003.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Department of Labor also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

Under specified conditions, workers are entitled to reimbursement for travel subsistence expense. The minimum reimbursement is the charge for three daily meals as discussed above. The Department of Labor here announces the current maximum reimbursement for workers with receipts.

EFFECTIVE DATE: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Dale M. Ziegler, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–2942 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification. The labor certification must show that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 2003

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Assistant Secretary, Employment and Training Administration, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 2003 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE—2003 ADVERSE EFFECT WAGE RATES (AEWRS)

State	2003 AEWR
Alabama	$7.49
Arizona	7.61
Arkansas	7.13
California	8.44
Colorado	8.07
Connecticut	8.53
Delaware	7.97
Florida	7.78
Georgia	7.49
Hawaii	9.29
Idaho	7.70
Illinois	8.65
Indiana	8.65
Iowa	8.91
Kansas	8.53
Kentucky	7.20
Louisiana	7.13
Maine	8.53
Maryland	7.97
Massachusetts	8.53
Michigan	8.70
Minnesota	8.70
Mississippi	7.13
Missouri	8.91
Montana	7.70
Nebraska	8.53
Nevada	8.07
New Hampshire	8.53
New Jersey	7.97
New Mexico	7.61
New York	8.53
North Carolina	7.75
North Dakota	8.53
Ohio	8.65
Oklahoma	7.29
Oregon	8.71
Pennsylvania	7.97
Rhode Island	8.53
South Carolina	7.49
South Dakota	8.53
Tennessee	7.20
Texas	7.29
Utah	8.07
Vermont	8.53
Virginia	7.75
Washington	8.71
West Virginia	7.20
Wisconsin	8.70
Wyoming	7.70

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state

the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that. The regulations require the Department of Labor to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 2002 rates were published in a notice on May 17, 2002 at 67 FR 35150.

DOL has determined the percentage change between December of 2001 and December of 2002 for the CPI–U for Food was 1.8 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 2003 are as follows: (1) For 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $8.59 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $10.64 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitled to reimbursement, is the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42–94, established that the maximum is the meals component of the standard CONUS (continental United States) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Ch. 301. The CONUS meal component is now $30.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of $15.00. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed at Washington, DC, this 21st day of February, 2003.

Emily Stover De Rocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 03–4500 Filed 2–25–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–017]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104, fax (650) 604–2767.

NASA Case No. ARC–14650–1: Diffraction-Based Optical Correlator;

NASA Case No. ARC–14661–1: A Plasma Apparatus And Process For Functionalization Of Carbon Nanotubes.

Dated: February 19, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–4430 Filed 2–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–018]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–16901–1: A Real-Time Signal-To-Noise Ratio Estimation Technique For BPSK And QPSK Modulation Using The Active Communications Channel;

NASA Case No. LEW–17176–1: Endwall Treatment And Method For Gas Turbines;

NASA Case No. LEW–17235–1: Resistance Temperature Detector (RTD) Bridge Flow Sensor;

NASA Case No. LEW–17236–1: Computer Mouse Cleaning Apparatus;

NASA Case No. LEW–17237–1: Lateral Movement Of Screw Dislocations During Homoepitaxial Growth And Device Yielded Therefrom Free Of The Detrimental Effects Of Screw Dislocation;

NASA Case No. LEW–17256–1: MEMS Direct Chip Attach (MEMS–DCA) Packaging Methodologies For Harsh Environments;

NASA Case No. LEW–17318–1: A High Temperature, High Versatility Nickel-Base Disk Alloy.

Dated: February 19, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–4431 Filed 2–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–019]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Diana Cox, Patent Counsel, Goddard Space Flight Center, Mail Code 503, Greenbelt, MD 20771; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–14601–1: Method For Manufacturing High Quality Carbon Nanotubes.

Dated: February 19, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–4432 Filed 2–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–020]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696, telephone (281) 483–4871; fax (281) 244–8452.

NASA Case No. MSC–23029–2: Simulator for a Pseudo Noise Geological Radar;

NASA Case No. MSC–23029–3: Method for Controlling a Producing Zone of a Well in a Geological Formation;

NASA Case No. MSC–23349–1: Ad Hoc Selection of Voice Over Internet Streams;

NASA Case No. MSC–23427–1: Microwave Ablation Of Prostatic Cells Using A Separated Antenna Array.

Dated: February 19, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–4433 Filed 2–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–021]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Flight Center, FL 32899; telephone (321) 867–7214, fax (321) 867–1817.

NASA Case No. KSC–12374: Real-Time Calibration Method For Signal-Conditioning Amplifiers;

NASA Case No. KSC–12390: Thermal Insulation Test Apparatus For Flat Specimens.

Dated: February 19, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–4434 Filed 2–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–022]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: February 25, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone (757) 864–9260, fax (757) 864–9190.

NASA Case No. LAR–16383–1–NP: Electrically Conductive, Optically Transparent Polymer/Carbon Nanotube Composites And Process For Preparation Thereof.

Dated: February 19, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–4435 Filed 2–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–023]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–31584–1–CIP: Hypergolic Ignitor;

NASA Case No. MFS–31636–1: Meteoroid Damage Detection And Location System For Manned Spacecraft;

NASA Case No. MFS–31751–1: Solar Powered Automobile Interior Climate Control System.

Dated: February 19, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–4436 Filed 2–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–024]

NASA Advisory Council, Space Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC).

DATES: Monday, March 3, 2003, 8:30 a.m. to 5:30 p.m., Tuesday, March 4, 2003, 8:30 a.m. to 5:30 p.m., and Wednesday, March 5, 2003, 8:30 a.m. to Noon.

ADDRESSES: Jet Propulsion Laboratory, Building 180, Room 101, 4800 Oak Grove Drive, Pasadena, California 91109.

FOR FURTHER INFORMATION CONTACT: Ms. Marian R. Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Associate Administrator's Report
—Division and Program Directors' Reports
—Launch Services Outlook
—Subcommittee Chairs' Reports
—Space Science Enterprise Strategy 2003
—Education and Public Outreach Task Force Report
—Mars Program Office Report

Due to increased security measures at the NASA Jet Propulsion Laboratory (JPL), interested members of the public including the news media must contact Joe Aguirre, (818) 354–0890, or Cecil Brower, (818) 354–6974, no later than Friday, February 24, 2003, by 4 p.m. PDT to make arrangements for badging, parking, and being escorted while at JPL. Access to JPL will be limited to those who show proper photo identification and who have made prior arrangements to attend.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Any member of the public may file a written statement with the Committee; such statements should be provided to the contact above no later than five working days before the meeting. Visitors to the meeting will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–4437 Filed 2–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–025]

NASA Advisory Council, Space Science Advisory Committee; Solar System Exploration Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee (SSES).

DATES: Thursday, March 6, 2003, 8:30 a.m. to 5:30 p.m., and Friday, March 7, 2003, 8:30 a.m. to Noon.

ADDRESSES: University of Arizona, Space Sciences Building 92, Room 309, 1629 East University, Tucson, Arizona 85719.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Briefing on FY 2004 Budget;
—Status of Solar System Exploration;
—Status of Mars Exploration Program;
—Status of Project Prometheus;
—Discussion of Draft 2003 Space Science Strategic Plan;

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–4438 Filed 2–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 71595 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Earned Doctorates.

OMB Approval Number: 3145–0019.

Type of Request: Intent to seek approval to extend an information collection for three years.

1. *Abstract:* The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The Survey of Earned Doctorates is part of an integrated survey system that meets the human resources part of this mission.

The Survey of Earned Doctorates has been conducted continuously since 1958 and is jointly sponsored by six Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly educated individuals. Data are obtained via paper questionnaire or Web option from each person earning a research doctorate at the time they receive the degree. Data are collected on their field of specialty, educational background, sources of support in graduate school, debt level, postgraduation plans for employment, and demographic characteristics. The Federal government, universities, researchers, and others use the information extensively.

The National Science Foundation, as the lead agency, publishes statistics from the survey in many reports, but primarily in the annual publication series, "Science and Engineering Doctorates". The National Opinion Research Corporation at the University of Chicago prepares and disseminates a free interagency report entitled "Doctorate Recipients from U.S. Universities: Summary Report." These reports are available in print and electronically on the World Wide Web.

The survey will be collected in conformance with the Privacy Act of 1974/Confidential Information Protection and Statistical Efficiency Act of 2002. The Federal government considers and NSF states that responses from individuals are voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* A total response rate of 92% of the total 40,744 persons who earned a research doctorate was obtained in academic year 2000/2001. This level of response rate has been consistent for several years. The respondents will be individuals and the estimated number of respondents annually is 37,485 (based on 2001 data).

3. *Estimate of Burden:* The Foundation estimates that, on average, 19 minutes per respondent will be required to complete the survey, for a total of 11,870 hours for all respondents (37,485 based on the Academic 2000/2001 number). This is reduced by 2,358 hours from the last annual estimate approved by OMB; this reduction is due to a revised, more efficient section on educational history and a declining number of research doctorate recipients since 1998.

Dated: February 20, 2003.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–4452 Filed 2–25–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 16454 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register.**

ADDRESSES: Written comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

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SUPPLEMENTARY INFORMATION:

Title of Collection: Quantitative Evaluation for the National Science Foundation's Centers for Learning and Teaching.

OMB Control No.: 3145–(new).

1. *Abstract:* This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the National Science Foundations's (NSF) Centers for Learning and Teaching (CLT). The CLT program calls for a systematic approach to the development and enhancement of the instructional workforce (kindergarten through graduate school) where professionals are educated in an environment of research and practice. For science, technology, engineering and mathematics (STEM) educators, a Center will provide opportunities to enhance content knowledge, develop teaching strategies that lead to improved

student learning, facilitate the implementation of high quality instructional materials and information technology, and develop skills in using various strategies for assessing student learning. For graduate students, post-doctoral students, and interns, a Center will provide study and research opportunities with the goal of improving learning, teaching, and assessment across the educational continuum.

CLT centers are funded as Elementary, Secondary, and Informal Education (ESIE) Centers, or Higher Education Centers. The goals of the ESIE Centers include (1) Increasing the numbers of K–12 STEM educators in both formal and informal settings who have current content knowledge, implement standards-based instruction, and use information technology as an aid to learning; (2) rebuilding and diversifying the human resource base that forms the national infrastructure for STEM, including basic and advanced education for graduate and post-doctoral students who will specialize in STEM education; and (3) providing substantive opportunities for research into the nature of learning, teaching, and educational reform. The goals of the Higher Education Centers address (1) Increasing the numbers of STEM faculty who implement effective teaching practice and assessment; (2) providing professional development for graduate and post-doctoral student in STEM disciplines to develop their skills as educators and to develop graduate programs in STEM education in disciplinary departments; and (3) providing substantive opportunities for research into the nature of learning, teaching, and educational reform in higher education.

This study addresses the following research questions: In what ways and to what extent are CLTs reflecting the models proposed? To what extent are the CLT centers meeting the goals of the CLT program? What is the value-added of creating CLTs for the achievement of the desired educational outcomes? To what extent does the portfolio of CLT activities appropriately meet national STEM ecuation needs?

The data to address these questions will be gathered via surveys of the following groups: CLT faculty; CLT graduate students; CLT postdoctoral participants: CLT project directors; representatives of IHE partners; and participating K–12 teachers. All the surveys will be sample surveys with the exception of the project director survey, which will be the population. The evaluation surveys will build on the annual data collected from projects for the purpose of GPRA.

In addition to the surveys, a number of small site-specific studies will be conducted to examine the outcomes of various Center activities (*e.g.*, new teacher preparation programs, new courses and curricula, professional development for faculty and K–12 teachers). Meta analysis techniques will be employed to calculate effect sizes across similar studies.

2. *Expected Respondents:* The expected respondents are: CLT faculty; CLT graduate students; CLT postdoctoral participants: CLT project directors; representatives of IHE partners; and participating K–12 teachers.

3. *Burden on the Public:* The total estimate for this collection is 237.5 burden hours for a maximum of 360 participants assuming a 100% response rate. The burden on the public is negligible; the study is limited to project participants that have received funding from the NSF CLT program.

Dated: February 20, 2003.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–4453 Filed 2–25–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 72981 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register.**

ADDRESSES: Written comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (b) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2003 and 2005 Survey of Scientific and Engineering Research Facilities.

Type of Request: Intent to seek approval to reinstate, with revisions, an information collection for three years.

Proposed Project: The National Science Foundation Survey of Scientific and Engineering Research Facilities is a Congressionally mandated (Pub. L. 99–159), biennial survey that has been conducted since 1986. The survey collects data on the amount, condition, and costs of the physical facilities used to conduct science and engineering research. It was expected by Congress that this survey would provide the data necessary to describe the status and needs of science and engineering research facilities and to formulate appropriate solutions to documented needs. During the 1999 and 2001 survey cycles, data were collected from a population of approximately 600 research-performing colleges and universities. This survey population was supplemented with approximately 250 nonprofit biomedical research institutions receiving research support from the National Institutes of Health. During the 2001 cycle, a very limited survey consisting of two questions was fielded in order to allow the National Science Foundation to focus on updating and redesigning the survey. Through this extensive redesign effort, a new section has been added to the survey requesting information on the computing and networking capacity at the surveyed institutions, an increasingly important part of the infrastructure for science and engineering research. Other important changes include the deletion of a question on the adequacy of research space, the deletion of the Large Facilities Follow-up Survey, the additional collection of data on individual construction projects and the addition of a more detailed question on how research space is divided among laboratories, laboratory support space, and office space.

Use of the Information: Analysis of the Facilities Survey data will provide updated information on the status of scientific and engineering research facilities. The information can be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by academic officials, the scientific/engineering establishment, and state agencies that fund universities.

Burden on the Public: Approximately 21,983 hours.

Dated: February 20, 2003.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–4454 Filed 2–25–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27; License No. SNM–42]

BWX Technologies, Inc., Lynchburg, VA; Order Modifying License (Effective Immediately)

I

BWX Technologies, Inc. (BWXT) is the holder of Special Nuclear Material License No. SNM–42 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 70. BWXT is authorized by their license to receive, possess, and transfer byproduct, source material, and special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Part 70. The BWXT license, originally issued on August 22, 1956, was renewed on October 1, 1995. The license is due to expire on September 30, 2005.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by BWXT as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1 [1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some of the requirements set forth in Attachment 1 [2] to this Order may already have been initiated by BWXT in response to previously-issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at BWXT's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although BWXT's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that BWXT is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Materials License SNM–42 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 70, *it is hereby ordered, effective immediately, that material license SNM–42 is modified as follows:*

A. BWXT shall, notwithstanding the provisions of any Commission regulation to the contrary, comply with the requirements described in Attachment 1 to this Order. BWXT shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, *no later than August 15, 2003.*

B. 1. BWXT shall, within *twenty (20) days* of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause BWXT to be in violation of the provisions of any Commission regulation or its license. The notification shall provide BWXT's justification for seeking relief from or variation of any specific requirement.

[1] Attachment 1 contains safeguards information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to BWXT's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

2. If BWXT considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, BWXT must notify the Commission, within *twenty (20) days* of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, BWXT must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. BWXT shall, within *twenty (20) days* of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. BWXT shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

BWXT's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 70.5. In addition, BWXT's submittals that contain safeguards information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by BWXT of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center, Suite 23 T85, 61 Forsyth Street, SW. Atlanta, GA 30303–3415, and to BWXT if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[3]

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

[3] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 6th day of February 2003.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4535 Filed 2–25–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1201; License No. SNM–1168]

In the Matter of: Framatome Advanced Nuclear Power, Inc., Lynchburg, VA; Order Modifying License (Effective Immediately)

I

Framatome Advanced Nuclear Power, Inc. Lynchburg (Framatome ANP Lynchburg) is the holder of Special Nuclear Material License No. SNM 1168 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to 10 CFR part 70. Framatome ANP Lynchburg is authorized by their license to receive, possess, and transfer byproduct, source material, and special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 70. The Framatome ANP Lynchburg license, originally issued in December 1969, was renewed in September 1990. The license is currently being reviewed for renewal until 2012.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Framatome ANP Lynchburg as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1[1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some of the requirements set forth in Attachment 1[2] to this Order may already have been initiated by Framatome ANP Lynchburg in response to previously-issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at Framatome ANP Lynchburg's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although Framatome ANP Lynchburg's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that Framatome ANP Lynchburg is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Materials License SNM–1168 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

[1] Attachment 1 contains safeguards information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to Framatome ANP Lynchburg's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

III

Accordingly, pursuant to sections 53, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 70, *It is hereby ordered, effective immediately,* that Material License SNM–1168 is modified as follows:

A. Framatome ANP Lynchburg shall, notwithstanding the provisions of any Commission regulation to the contrary, comply with the requirements described in Attachment 1 to this Order. Framatome ANP Lynchburg shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, no later than August 15, 2003.

B. 1. Framatome ANP Lynchburg shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause Framatome ANP Lynchburg to be in violation of the provisions of any Commission regulation or its license. The notification shall provide Framatome ANP Lynchburg's justification for seeking relief from or variation of any specific requirement.

2. If Framatome ANP Lynchburg considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, Framatome ANP Lynchburg must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, Framatome ANP Lynchburg must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. Framatome ANP Lynchburg shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. Framatome ANP Lynchburg shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Framatome ANP Lynchburg's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 70.5. In addition, Framatome ANP Lynchburg's submittals that contain safeguards information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by Framatome ANP Lynchburg of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory

Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center , Suite 23 T85, 61 Forsyth Street, SW. Atlanta, GA 30303–3415, and to Framatome ANP Lynchburg if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[3]

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing *shall not stay* the immediate effectiveness of this order.

Dated this 6th day of February, 2003.

For the Nuclear Regulatory Commission:

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4533 Filed 2–25–03; 8:45 am]

BILLING CODE 7590–01–P

[3] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884, April 29, 2002.

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1257; License No. SNM–1227]

In the Matter of Framatome Advanced Nuclear Power, Inc., Richland, Washington; Order Modifying License (Effective Immediately)

I

Framatome Advanced Nuclear Power, Inc. (Framatome ANP) Richland is the holder of Special Nuclear Material License No. SNM 1227 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to 10 CFR part 70. Framatome ANP Richland is authorized by their license to receive, possess, and transfer special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 70. The Framatome ANP Richland license, originally issued on December 14, 1970, was last renewed on November 15, 1996, and is due to expire on November 30, 2006.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Framatome ANP Richland as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1[1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some of the requirements set forth in Attachment 1[2] to this Order may already have been initiated by Framatome ANP Richland in response to previously-issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at Framatome ANP Richland's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although Framatome ANP Richland's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that Framatome ANP Richland is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Materials License SNM–1227 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

[1] Attachment 1 contains safeguards information and will not be released to the public.

[2] To the extent that specific meesures identified in Attachment 1 to this Order require actions pertaining to Framatome ANP Richland's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

III

Accordingly, pursuant to sections 53, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 70, *it is hereby ordered*, effective immediately, that Material License SNM–1227 is modified as follows:

A. Framatome ANP Richland shall, notwithstanding the provisions of any Commission regulation to the contrary, comply with the requirements described in Attachment 1 to this Order. Framatome ANP Richland shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, no later than August 15, 2003.

B. 1. Framatome ANP Richland shall, within 20 days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause Framatome ANP Richland to be in violation of the provisions of any Commission regulation or its license. The notification shall provide Framatome ANP Richland's justification for seeking relief from or variation of any specific requirement.

2. If Framatome ANP Richland considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, Framatome ANP Richland must notify the Commission, within 20 days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, Framatome ANP Richland must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. Framatome ANP Richland shall, within 20 days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. Framatome ANP Richland shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Framatome ANP Richland's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 70.5. In addition, Framatome ANP Richland's submittals that contain safeguards information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by Framatome ANP Richland of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–8064, and to Framatome ANP Richland if the answer or hearing request is by a person other than Framatome ANP Richland. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[3]

If a hearing is requested by Framatome ANP Richland or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Framatome ANP Richland may, in addition to demanding a hearing, at the time the answer is filed or sooner, move to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay* the immediate effectiveness of this Order.

Dated this 6th day of February, 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio.

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4534 Filed 2–25–03; 8:45 am]

BILLING CODE 7590–01–P

[3] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1113; License No. SNM–1097]

Global Nuclear Fuel—Americas, LLC, Wilmington, NC; Order Modifying License (Effective Immediately)

I

Global Nuclear Fuel—Americas, LLC (Global Nuclear) is the holder of Special Nuclear Material License No. SNM 1097 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to 10 CFR Part 70. Global Nuclear is authorized by their license to receive, possess, and transfer special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Part 70. The Global Nuclear license, originally issued in January 1969, was last renewed in June 1997, and due to expire in June 2007.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Global Nuclear as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1 [1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some of the requirements set forth in Attachment 1 [2] to this Order may already have been initiated by Global Nuclear in response to previously-issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at Global Nuclear's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although Global Nuclear's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that Global Nuclear is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Materials License SNM–1097 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 70, *it is hereby ordered, effective immediately, that material license SNM–1097 is modified as follows:*

A. Global Nuclear shall, notwithstanding the provisions of any Commission regulation to the contrary, comply with the requirements described in Attachment 1 to this Order. Global Nuclear shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, *no later than August 15, 2003.*

B. 1. Global Nuclear shall, *within twenty (20) days* of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause Global Nuclear to be in violation of the provisions of any Commission regulation or its license. The notification shall provide Global Nuclear's justification for seeking relief from or variation of any specific requirement.

2. If Global Nuclear considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, Global Nuclear must notify the Commission, within *twenty (20) days* of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, Global Nuclear must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. Global Nuclear shall, within *twenty (20) days* of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. Global Nuclear shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Global Nuclear's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR § 70.5. In addition, Global Nuclear's submittals that contain safeguards information shall be properly marked and handled in accordance with 10 CFR § 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by Global Nuclear of good cause.

[1] Attachment 1 contains safeguards information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to Global Nuclear's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center, Suite 23 T85, 61 Forsyth Street, SW., Atlanta, GA 30303–3415, and to Global Nuclear if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[3]

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this Order.*

Dated this 6th day of February, 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4536 Filed 2–25–03; 8:45 am]

BILLING CODE 7590–01–P

[3] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884, April 29, 2002.

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8857]

Notice of Amendment Request for Proposed Operation of the Gas Hills Project *in situ* Leach Uranium Recovery Facility, Freemont and Natrona Counties, WY, and Opportunity To Provide Comments and To Request a Hearing

I. Introduction

The U. S. Nuclear Regulatory Commission (NRC) has received, by letter dated June 24, 1998, a license amendment application from Power Resources, Inc. (PRI), requesting an amendment to Source Materials License SUA–1511 for the Highland Uranium Project to allow the operation of an *in situ* leach (ISL) uranium recovery facility at the Gas Hills Project site. In order to support the staff's detailed technical review of the license amendment application, the staff requested additional information from PRI in letters dated May 21, 1999, and July 15, 1999. In response to staff requests for additional information, PRI supplemented and revised the license amendment application in letters dated September 24, 1999, November 11, 1999, and May 3, 2002.

The Highland Uranium Project is an existing licensed (Source Materials License SUA–1511) ISL uranium recovery facility located in central Converse County, Wyoming, approximately 24 miles northeast of Glenrock. Source Materials License SUA–1511 for the commercial operation of the Highland Uranium Project was issued on July 1, 1987. The planned Gas Hills Project covers approximately 8500 acres where PRI proposes to operate the Gas Hills Project as a satellite uranium recovery facility to the Highland Uranium Project facility. As a satellite facility, only well-field, ion exchange, and water treatment facilities would be constructed and operated at the Gas Hills Project to support uranium recovery activities. During process operations, uranium will be leached from identified subsurface ore bodies by circulating local groundwater fortified with chemicals through the mineralized zones. The dissolved uranium will be extracted from the uranium-bearing solution at a surface ion exchange facility at the Gas Hills Project. Then, the uranium-laden ion exchange resin will be transported by truck from the Gas Hills Project site to the Highland Uranium Project site for final processing of the uranium into "yellowcake" (U_3O_8). The travel distance by road between the Gas Hills Project and the Highland Uranium Project is approximately 140 miles. Water treatment facilities, including evaporation ponds, will be provided at the Gas Hills Project for treatment of wastes from process operations and subsequent well-field groundwater restoration activities.

PRI intends to extract sufficient uranium from the Gas Hills Project to yield as much as 2.5 million pounds of yellowcake per year over a production period of twenty years or longer. When the recovery of uranium from the Gas Hills Project well-fields reaches its economic limit, ISL operations will cease and groundwater restoration in the affected well-fields will begin. In this regard, it is PRI's intent to return the affected groundwater to baseline (pre-mining) conditions or acceptable

water quality based on class of use. When groundwater restoration is complete in all the affected well-fields, all of the surface equipment, buildings, and structures will be decommissioned and all disturbed areas will be reclaimed. PRI's goal in this process will be to return the disturbed areas of the Gas Hills Project to their original or baseline conditions to the extent practical. Radioactive solid wastes and contaminated materials generated during process operations and resulting from decommissioning and reclamation activities will be disposed of at an NRC licensed disposal facility.

II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this license amendment request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

III. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Power Resources, Inc., Highland Uranium Project, P.O. Box 1210, Glenrock, Wyoming 82637, Attention: William F. Kearney; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Further Information

The application for the license amendment, and the supporting supplements and revisions to the application, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* [ADAMS Accession Numbers ML030310553, ML023640347, ML993300211, and ML021340187]. Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Rick Weller, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–7287; Fax: (301) 415–5390.

Dated at Rockville, Maryland, this 20th day of February, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4538 Filed 2–25–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1151; License No. SNM–1107]

Westinghouse Electric Company LLC, Columbia, SC; Order Modifying License (Effective Immediately)

I

Westinghouse Electric Company, L.L.C. (Westinghouse-Columbia) is the holder of Special Nuclear Material License No. SNM–1107 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to 10 CFR Part 70. Westinghouse-Columbia is authorized by their license to receive, possess, and transfer special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Part 70. The original license was issued September 3, 1969. The present license was issued in November 1995 and expires in November 2005.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Westinghouse-Columbia as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1[1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some of the requirements set forth in Attachment 1[2] to this Order may already have been initiated by Westinghouse-Columbia in response to previously-issued advisories, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at Westinghouse-Columbia's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

Although Westinghouse-Columbia's response to the Safeguards and Threat Advisories has been adequate to provide reasonable assurance of adequate protection of public health and safety, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that Westinghouse-Columbia is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Materials License SNM–1107 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

[1] Attachment 1 contains safeguards information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to Westinghouse-Columbia's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

III

Accordingly, pursuant to Sections 53, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 76, *it is hereby ordered, effective immediately, that material license SNM–1107 is modified as follows:*

A. Westinghouse-Columbia shall, notwithstanding the provisions of any Commission regulation to the contrary, comply with the requirements described in Attachment 1 to this Order. Westinghouse-Columbia shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation, unless otherwise specified in Attachment 1 to this order, no later than August 15, 2003.

B. 1. Westinghouse-Columbia shall, within *twenty (20) days* of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause Westinghouse-Columbia to be in violation of the provisions of any Commission regulation or its license. The notification shall provide Westinghouse-Columbia's justification for seeking relief from or variation of any specific requirement.

2. If Westinghouse-Columbia considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of its facility, Westinghouse-Columbia must notify the Commission, within *twenty (20) days* of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, Westinghouse-Columbia must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. Westinghouse-Columbia shall, within *twenty (20) days* of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. Westinghouse-Columbia shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Westinghouse-Columbia's responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 70.5. In addition, Westinghouse-Columbia's submittals that contain safeguards information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by Westinghouse-Columbia of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center, Suite 23 T85, 61 Forsyth Street, SW. Atlanta, GA 30303–3415, and to Westinghouse-

Columbia if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[3]

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 6th day of February 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4537 Filed 2–25–03; 8:45 am]

BILLING CODE 7590–01–P

[3] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884, April 29, 2002.

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Monday, March 3, 2003; 8:30 a.m., Tuesday, March 4, 2003.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: March 3—1 p.m. (Closed); March 4—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, March 3—1 p.m. (Closed)

1. Financial Performance.
2. Postal Rate Commission Filing for Customized Marketmail.
3. Rate Case Planning.
4. Strategic Planning.
5. Personnel Matters and Compensation Issues.

Tuesday, March 4—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 3–4, 2003.
2. Remarks of the Postmaster General and CEO.
3. Consumer Protection.
4. Update on usps.com Website.
5. Price of Domestic Violence Semipostal Stamp.
6. Overview of 2003 Stamp Program.
7. Tentative Agenda for the March 31–April 1, 2003, meeting in Washington, DC.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–4692 Filed 2–24–03; 3:16 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25940; File No. 812–12844]

Eaton Vance Variable Trust, et al.; Notice of Application

February 20, 2003.

AGENCY: The Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), for an exemption from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and rules 6e–2(b)(15) and 6e–3(T)(b)(15), thereunder.

APPLICANTS: Eaton Vance Variable Trust (the "Trust") and Eaton Vance Management (together with any successor, "EVM"), OrbiMed Advisors, LLC, and Lloyd George Investment Management (Bermuda) Limited.

SUMMARY: Applicants and certain life insurance companies and their separate accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trust and shares of any other investment company or portfolio that is designed to fund insurance products and for which EVM, OrbiMed, Lloyd George or any of their affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator ("Future Trusts") (the Trust, together with Future Trusts, are the "Trusts") to be sold to and held by: (i) Separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as "Variable Contracts") issued by both affiliated and unaffiliated life insurance companies; (ii) qualified pension and retirement plans ("Qualified Plans") outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (iv) EVM or certain related corporations (collectively "EVM"); and (v) any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 ("General Accounts"), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

FILING DATES: The application was filed on June 28, 2002, and amended and restated on December 18, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 17, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Kirkpatrick & Lockhart, LLP, 1800 Massachusetts Ave., NW., Washington, DC, 20036, Attention: Diane E. Ambler, Esq.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at Tel: (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust is registered with the Commission as an open-end management investment company and is organized as a Massachusetts Business Trust. EVM, OrbiMed and Lloyd George are registered with the Commission as investment advisers under the Investment Advisers Act of 1940, as amended, and serve as the investment advisers to the Trust. The Trust currently consists of, and offers shares of beneficial interest ("shares") representing interests in four separate investment portfolios: Eaton Vance VT Floating-Rate Income Fund, Eaton Vance VT Income Fund of Boston, Eaton Vance VT Information Age Fund, and Eaton Vance VT Worldwide Health Sciences Fund (each, a "Portfolio," and collectively, the "Portfolios"). EVM serves as investment adviser to Eaton Vance VT Floating-Rate Income Fund, Eaton Vance VT Income Fund of Boston, Eaton Vance VT Information Age Fund. OrbiMed serves as investment adviser to Eaton Vance VT Worldwide Health Sciences Fund. Lloyd George serves as co-investment adviser, along with EVM, to Eaton Vance VT Information Age Fund. The Trust or any Future Trusts may offer one or more additional investment portfolios in the future (also referred to as "Portfolios").

2. Shares of the Portfolios will be offered to separate accounts of affiliated and unaffiliated insurance companies (each, a "Participating Insurance Company") to serve as investment vehicles to fund Variable Contracts (as hereinafter defined). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration pursuant to exemptions from registration under section 3(c) of the 1940 Act (individually, a "Separate Account" and collectively, the "Separate Accounts"). Shares of the Portfolios may also be offered to Qualified Plans, EVM or certain related corporations (collectively "EVM"), and any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 ("General Accounts"), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

3. The Participating Insurance Companies at the time of their investment in the Trusts either have or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both State and Federal law. Each Participating Insurance Company, on behalf of its Separate Accounts, has or will enter into an agreement with the Trusts concerning such Participating Insurance Company's participation in the Portfolios. The role of the Trusts under this agreement, insofar as the Federal securities laws are applicable, will consist of, among other things, offering shares of the Portfolios to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

1. Applicants and certain life insurance companies and their Separate Accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Portfolios and shares of any Future Trusts to be sold to and held by: (i) Separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies; (ii) Qualified Plans outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (iv) EVM or certain related corporations (collectively "EVM"); and (v) any General Accounts, including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust ("UIT") under the 1940 Act, rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require "pass-through" voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of management investment companies "which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company." Therefore, the relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

3. The relief granted by rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to herein as "shared funding."

4. The relief under rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any

affiliated life insurance company, additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares, as described above. Applicants note that if shares of the Portfolios are sold only to Qualified Plans, exemptive relief under rule 6e–2 would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as "extended mixed and shared funding."

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies that offer to sell their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account." Therefore, rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

6. The relief under rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, and additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares as described above. Applicants note that if shares of the Portfolios were sold only to Qualified Plans, exemptive relief under rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans.

7. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Portfolios' shares to Qualified Plans, to EVM, to OrbiMed, Lloyd George or General Accounts to result in a prohibition against, or otherwise limit, a Participating Insurance Company from relying on the relief provided by rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Portfolios are also to be sold to Qualified Plans, EVM, OrbiMed, Lloyd George, or General Accounts. Applicants therefore request relief in order to have the Participating Insurance Companies enjoy the benefits of the relief granted in rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants note that if the Portfolios' shares were to be sold only to Qualified Plans, EVM, OrbiMed, Lloyd George, or General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under rule 6e–2 and rule 6e–3(T) would be unnecessary. The relief provided for under rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, EVM, OrbiMed, Lloyd George, or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

8. Applicants also note that the promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations that made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Consistent with the Commission's authority under section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, this application requests relief for the class consisting of insurers and Separate Accounts that will invest in the Portfolios, and to the extent necessary, investment advisers, principal underwriters and depositors of such accounts.

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying management company.

11. The partial relief granted in rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans invests in the Trusts. Applying the monitoring requirements of section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners.

12. Moreover, since the Qualified Plans, EVM, OrbiMed, Lloyd George and General Accounts are not themselves investment companies, and therefore are not subject to section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

13. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of rules 6e–2 and 6e–3(T) under the 1940 Act).

14. Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

15. The sale of Portfolio shares to Qualified Plans, EVM, OrbiMed, Lloyd George and General Accounts will not have any impact on the relief requested herein. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons. Under section 403(a) of ERISA, shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (i) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (ii) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

16. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Similarly, EVM, OrbiMed, Lloyd George and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, EVM, OrbiMed, Lloyd George or General Accounts.

17. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if EVM, OrbiMed, Lloyd George or an affiliate of EVM, OrbiMed or Lloyd George were to serve in the capacity of trustee or named fiduciary with voting responsibilities, EVM, OrbiMed, Lloyd George or their affiliates would have a fiduciary duty to vote those shares in the best interest of the Qualified Plan participants.

18. In addition, even if a Qualified Plan were to hold a controlling interest in a Portfolio, Applicants do not believe that such control would disadvantage other investors in such Portfolio to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Portfolio by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

19. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. The purchase of shares of Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

20. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When rule 6e–2 under the 1940 Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

21. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for Variable Contracts (including variable life contracts). Section 817(h) of the Code in effect requires that the investments made by variable annuity

and variable life insurance separate accounts be "adequately diversified." If a separate account is organized as a UIT that invests in a single fund or series, the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts. * * *" Accordingly, a UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Portfolio, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to the public. Consequently, there will be no public shareholders of any Portfolio.

22. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

23. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Trust. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

24. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

25. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Trust's election, to withdraw its Separate Account's investment in such Portfolio. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Portfolio.

26. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

27. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those which would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

28. Applicants considered whether there are any issues raised under the Code, Regulations, or Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

29. Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts. (Treas. Reg. 1.817–5(f)(3)(iii)) Thus, the Regulations specifically permit "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Portfolio.

30. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan.

31. In connection with any meeting of shareholders, the soliciting Trust will inform each shareholder, including each Separate Account, Qualified Plan, EVM, OrbiMed, Lloyd George and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Trusts concerning participation in the relevant Portfolio. Shares of a Portfolio that are held by EVM, OrbiMed, Lloyd George and any General Account will be voted in the same proportion as all variable contract owners having voting rights with respect to that Portfolio. However, EVM, OrbiMed, Lloyd George and any General Account will vote their shares in such other manner as the Commission may require. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Portfolio would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the affected Trust, to withdraw its investment in such Portfolio, and no charge or penalty will be imposed as a result of such withdrawal.

32. Applicants reviewed whether a "senior security," as such term is defined under section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, EVM, OrbiMed, Lloyd George or a General Account. Applicants concluded that the ability of the Trusts to sell shares of their Portfolios directly to Qualified Plans, EVM, OrbiMed, Lloyd George or a General Account does not create a senior security. "Senior security" is defined under section 18(g) of the 1940 Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans, EVM, OrbiMed, Lloyd George, General Accounts and the Separate Accounts only have rights with respect to their respective shares of the Portfolio. They only can redeem such shares at net asset value. No shareholder of a Portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions which shall apply to the Trust as well as any Future Trust that relies on the order:

1. A majority of the Board of Trustees (the "Board") of the Trust will consist of persons who are not "interested persons" of the Trust, as defined by section 2(a)(l 9) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or *bona-fide* resignation of any trustee or trustees, then the operation of this condition will be suspended: (i) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of such Trust are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in a Portfolio), EVM, OrbiMed, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, "Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested trustees of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i)

Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment vehicle including another Portfolio, or in the case of Participating Insurance Company Participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (ii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Trust, to withdraw such insurer's Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Trust, to withdraw its investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trust, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Trust, EVM, OrbiMed or Lloyd George or an affiliate of EVM, OrbiMed or Lloyd George, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (i) a majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (ii) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Portfolio held in their, Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges as provided in this Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares it owns through its Separate Accounts, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, EVM, OrbiMed, Lloyd George or any of their affiliates, and any General Account will vote its shares of any Portfolio in the same proportion of all variable contract owners having voting rights with respect to that Portfolio; provided, however, that EVM, OrbiMed, Lloyd George or any of their affiliates or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Portfolio, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the funds of the type described in the section 16(c) of the 1940 Act), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (i) shares of the Trust may be offered to Separate Accounts of both variable annuity and variable life insurance contracts and, if applicable, to Qualified Plans; (ii) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict; and (iii) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that rule 6e–2 and rule 6e–3(T) under the 1940 Act are amended, or proposed rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with rules 6e–2 and 6e–3(T), or rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

12. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Qualified Plan executes an agreement with the Trust governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

Conclusion

Applicants submit, based on the grounds summarized above, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4503 Filed 2–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25939; File No. 812–12370]

The Lincoln National Life Insurance Company, *et al.*; Notice of Application

February 20, 2003.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for an order pursuant to Section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of an offering of an enhancement offer.

Applicants: The Lincoln National Life Insurance Company ("Lincoln Life"), Lincoln National Variable Annuity Account E ("Account E"), Lincoln National Variable Annuity Account H ("Account H") (Account E and Account H collectively, "Annuity Accounts") and American Funds Distributors, Inc. ("AFD").

Summary of Application. Applicants seek an order approving the terms of a proposed offering of an enhancement offer for certain contracts issued and outstanding whereby an enhancement benefit would be added to the contracts.

Filing Date. The application was filed on December 19, 2000 and amended and restated on December 31, 2001 and on February 10, 2003.

Hearing or Notification of Hearing. An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 17, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Mary Jo Ardington, Esq., The Lincoln National Life Insurance Company, 1300 S. Clinton Street, PO Box 1110, Fort Wayne, IN 46801–1110.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Branch Chief, or Rebecca Marquigny, Senior Attorney, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102, (202) 942–8090.

Applicants' Representations

1. Lincoln Life was founded in 1905 under Indiana Law, and is a wholly-owned subsidiary of Lincoln National Corp., which is organized under Indiana law. Lincoln National Corp.'s primary businesses are insurance and financial services. Lincoln Life is the Annuity Accounts' depositor within the meaning of the Act.

2. Account E was established on September 26, 1986 and Account H was established on February 7, 1989 as insurance company separate accounts under Indiana law. They are registered with the Commission as unit investment trusts under the provisions of the Act. The Annuity Accounts are segregated investment accounts and as such their assets may not be charged with liabilities resulting from any other business that Lincoln Life may conduct. Income, gains and losses, whether realized or not, from assets allocated to the Annuity Accounts are, in accordance with the applicable annuity contracts, credited to or charged against the Annuity Accounts, and without regard to any other income, gains or losses of Lincoln Life. The Annuity Accounts satisfy the definition of a separate account under the federal securities law. The Annuity Accounts are registered on Form N–4 under the Act as unit investment trusts.

3. The Annuity Accounts fund the American Legacy Series of Variable Annuity Contracts ("Legacy Contracts") that Lincoln Life and AFD have offered and sold for a number of years including the American Legacy Contract ("Legacy I") and the American Legacy II Contract ("Legacy II"). The contracts are flexible premium deferred variable and fixed annuity contracts under which contract owners may pay one or more purchase payments over a period of time.

4. The subaccounts are invested in funds of the American Funds Insurance Series. To the extent that an owner selects one or more subaccounts, his or her investment in the contract will vary with the investment performance of the selected subaccount. To the extent that an owner selects the general account, Lincoln Life guarantees that the amount allocated to the general account will be credited with a minimum interest rate and Lincoln Life may credit additional interest which it may declare from time to time.

5. AFD is the distributor and primary underwriter of the contracts issued by Lincoln Life through the Annuity Accounts. AFD is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers.

6. The Application relates to two Legacy Contracts. The Legacy I contracts issued through Account E have been registered under the Securities Act of 1933 pursuant to a registration statement on Form N–4. The Legacy II contracts issued through Account H have been registered under the Securities Act of 1933 pursuant to a registration statement on Form N–4.

7. During the accumulation period under the Legacy Contracts, based upon the contract owner's instructions, purchase payments are allocated to the selected subaccounts of the Annuity Accounts and/or Lincoln Life's general account. To the extent that an owner selects one or more subaccounts, his or her investment in the contract will vary with the investment performance of the selected subaccount(s).

8. A contract owner can elect to receive annuity payments under his or her contract. Under a contract, annuity payments are based upon the life of an annuitant and in some cases the lives of two (or joint) annuitants. Annuity options are available on a variable basis (*i.e.*, funded by the Annuity Accounts) and/or on a fixed basis (*i.e.*, funded through Lincoln Life's general account).

9. The Legacy I contract has been offered and sold for a number of years. The minimum purchase payment for Legacy I is $1500 for nonqualified contracts and $300 for qualified contracts. Legacy I contracts impose a surrender charge of up to 6% of any amount by which purchase payments withdrawn in any year exceed 10% of purchase payments (however, this 10% withdrawal exception does not apply to a surrender of a contract). The surrender charge associated with each purchase payment after year 2 declines 1% each year until it is 0% at the end of the seventh year after the payment was made.

10. The Legacy I contracts also impose the following charges: (a) a daily mortality and expense risk charge at an annual rate of 1.25% of the daily net asset value of Account E; (b) for contracts that include the Enhanced Guaranteed Minimum Death Benefit ("EGMDB"), an additional daily charge at an annual rate of 0.15% of the net asset value of Account E; (c) an annual contract maintenance charge of $35; and (d) a charge corresponding to any applicable state premium tax or other tax levied by any governmental entity.

11. The Legacy II contracts impose a minimum purchase payment of $1500 for nonqualified contracts and $300 for qualified contracts. The Legacy II contracts also impose a surrender charge of up to 6% of any amount by which purchase payments withdrawn in any year exceed 10% of purchase payments (however, this 10% withdrawal exception does not apply to a surrender of a contract). The surrender charge associated with each purchase payment after year 2 declines 1% each year until it is 0% at the end of the seventh year after the payment was made.

12. The Legacy II contracts also impose the following charges: (a) a daily mortality and expense risk charge at an annual rate of 1.25% of the daily net asset value of Account H; (b) a daily administrative charge at an annual rate of 0.10% of the daily net asset value of Account H; (c) for those contracts that include the EGMDB, a daily charge at an annual rate of 0.15% of the net asset value of Account H; (d) an annual contract maintenance charge of $35; and (e) a charge corresponding to any applicable state premium tax or other tax levied by any governmental entity.

13. Under both the Legacy I and Legacy II contracts, the death benefit equals the greater of: (a) the Guaranteed Minimum Death Benefit ("GMDB"), or if elected, the EGMDB, or (b) the current value of the contract as of the day Lincoln Life approves the claim for payment. For these contracts, the GMDB is equal to

a. The sum of all purchase payments, plus
b. any gain attributable to those purchase payments as of the seventh anniversary date of each payment, minus
c. any withdrawals.

The attributable gain consists of the earnings on each contract years' net purchase payments (purchase payments minus any withdrawals) as of the valuation date just before the seventh anniversary of the purchase payment (*i.e.* once the surrender charge period for the purchase payment has expired). For the GMDB to apply, the annuitant, as of the seventh anniversary of each eligible contract year, must still be living and must be less than 81 years of age.

14. For Legacy I and Legacy II, the EGMDB is an alternative to the GMDB for nonqualified contracts or contracts used under an IRA plan. Under the EGMDB, the death benefit payable is the amount equal to the greatest of:

a. Contract value as of the day on which Lincoln Life approves the payment of the claim; or
b. the sum of all purchase payments less the sum of all withdrawals, partial annuitizations and premium taxes incurred; or
c. the highest contract value determined as follows:
(i) When the first of the annuitant, sole contract owner or, in the event the contract is owned by more than one person, the named contract owner or pre-designated joint owner dies, we determine the highest contract value;
(ii) this highest contract value is as of any contract anniversary from the time the EGMDB takes effect up to and including the decedent's age 80;
(iii) this highest contract value is then increased by purchase payments and decreased by partial withdrawals, partial annuitizations and premium taxes made, effected or incurred subsequent to the anniversary date on which the highest contract value is attained.

15. If the Legacy I or Legacy II contract has more than one joint owner, the GMDB or EGMDB death benefit will only be paid on the death of the named contract owner or pre-designated joint owner. If the contract owner does not make this pre-designation, the youngest joint owner will be the pre-designated joint owner. Only the cash surrender values will be paid upon the death of a non-pre-designated joint owner. If there are two or more joint owners, the surrender charge is waived only on the death of the named contract owner or pre-designated joint owner.

16. Lincoln Life now proposes to offer an enhancement option ("Enhancement Offer") to Legacy I and Legacy II contract owners whose contracts have surrender charges equal to 2% or less of their contract value. The Enhancement Offer consists of two options (collectively the "Offers"): (a) an immediate bonus credit equal to 2% of contract value ("Bonus Offer); or (b) an EGMDB at no additional cost ("EGMDB Offer"). An owner can elect only one of the options.

17. The existing contract will remain in place. However, in exchange for the selected enhancement option the entire contract value (excluding any bonus credit, if that option was selected) will be subject to new surrender charges as of the date the option is accepted. For purposes of calculating surrender charges, the contract value (excluding the bonus credit) will be treated as a new purchase payment. Any remaining surrender charges existing prior to the time of the election of the option will be waived.

18. The offer is only available for contracts sold in the nonqualified and IRA markets (excluding SEP or SARSEP markets), and this offer is not available for those contracts in which the primary owner, pre-designated joint owner, or annuitant is over age 76.

19. For contract owners who elect the Bonus Offer or the EGMDB Offer, there will be no additional charges or any increase in existing charges other than the imposition of the new surrender charge.

20. Contract owners who elect the EGMDB Offer receive the EGMDB at no additional cost on the date the Offer is accepted. If the contract owner had previously elected the EGMDB when he or she purchased the contract (or when the EGMDB became available in his or her state) and is thus paying for the EGMDB, under the EGMDB Offer, if elected, the 0.15% charge for the EGMDB will be discontinued as of the date the Offer is accepted, and the death benefit at all times after the enhancement will in no event be less than the death benefit that would have been payable if the Enhancement Offer had not been accepted.

21. Contract owners may cancel the elected option for any reason within ten days (in some states longer) of the date the rider adding the option was received. Upon cancellation, Lincoln Life will waive the new surrender charge and re-establish the prior existing surrender charges, if any, as of the date of the receipt of the cancellation. The contract owner assumes the investment risk on the contract value during this period. If the Bonus Offer is cancelled according to the Right to Examine provision, the bonus credits will be revoked; however, Lincoln Life will assume the risk of investment loss on the bonus credits. Lincoln Life will also re-credit the mortality and expense risk and administrative charges proportionately attributable to the bonus credits. The contract owner will be put back into the same position as if he or she had never elected the Bonus Offer. Lincoln Life will recapture the bonus credit only upon the exercise of the free look privilege.

22. Regarding the implementation of the Offers, Lincoln proposes to make the offers directly, by providing eligible contract owners with information about the offers through an "Offering Document" sent from the Home Office. Contract owners will be directed to Lincoln Life or their registered representatives for further information. Contract owners who express an interest in the Offers will be given a prospectus.

23. Registered representatives who are responsible for a contract owner accepting the Bonus Offer or the EGMDB Offer will be paid a commission. The commission is less than what the registered representative would receive on the sale of a new Legacy contract.

24. The Offering Document will advise such contract owners that the Offers have been designed for those contract owners who intend to continue to hold their contracts as long-term investments. An explanation of the terms of each offer will be provided. The Offering Document will state that the offers are not intended for all contract owners, and that they are especially not appropriate for any contract owner who anticipates surrendering more than a portion of his or her contract in excess of the free withdrawal amount (greater of 10% of the contract value or 10% of purchase payments) within the surrender charge period. In this regard, the Offering Document will encourage contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the Offers. In addition, the Offering Document will explain how a contract owner who elects to participate in one of the offers may avoid the applicable surrender charge if no more than the annual free withdrawal amount (10% of purchase payments) is surrendered and any subsequent purchase payments are maintained until the expiration of the applicable surrender charge period. In this regard, the Offering Document will state in clear plain English that if the amended contract is surrendered during the new surrender charge period: (a) The contract owner will pay surrender charges which may be substantial, that he or she would not have paid if the offer had not been accepted; and (b) a contract owner may be worse off than if he or she had rejected the offer. The Offering Document also will state that if the contract is owned by three or more persons and an owner who is not the named contract owner or a pre-designated joint owner dies during the new surrender period, the remaining contract owners could be worse off having accepted the Enhancement Offer because a new surrender charge will apply.

Applicants' Legal Analysis

1. The purpose of Section 11 is to prevent the practice of inducing exchanges solely for the purpose of exacting additional selling charges. While the sales representatives will receive a commission and there will be imposed a surrender charge, Applicants argue that based on the foregoing, one should readily conclude that the sole purpose of the Offer is not to exact selling charges but to offer significant benefits to the contact owners as inducement for them to remain contract owners of Lincoln Life.

2. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under Section 11.

3. Section 11(c) of the Act, in pertinent part, requires, in effect, that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission or satisfy applicable rules adopted under Section 11, regardless of the basis of the exchange.

4. The Annuity Accounts are registered under the Act as unit investment trusts. Thus, the exchange offer constitutes an offer of exchange of two securities, each of which is offered by a registered unit investment trust. While Applicants would argue that the enhancement offer on its face is not subject to Section 11 because it does not involve the offer of exchange of two securities, nonetheless, it would appear that it is the Commission's current position that offers such as the Enhancement Offer do fall within the ambit of Section 11.

5. According to the Commission, Congress enacted Section 11 to prevent "switching," *i.e.*, "the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges." According to the Commission, "[I]nvestors in 'fixed trusts,' now known as unit investment trusts ("UIT"), were found to be particularly vulnerable to switching operations. In order to earn another sales commission, a UIT sponsor would often pressure unit holders into exchanging their units for those of another of the sponsor's trusts."

6. Section 11(c) of the Act requires Commission approval (by order or by rule) of any exchange, regardless of its basis, involving securities issued by a unit investment trust because investors in unit investment trusts were found by Congress to be particularly vulnerable to switching transactions. Applicants believe that the potential for harm to investors perceived in switching by

Congress was its use to extract additional sales charges from those investors.

7. As opposed to providing a means of extracting additional sales charges, as contemplated by the prohibitions of Section 11, Applicants argue that the proposed Offers provide enduring benefits to the contract owners. To the extent that a contract owner ultimately did not benefit from accepting the offer, it would be as a result of his or her own subsequent decision to surrender the enhanced contract in circumstances that would have been the subject of very explicit disclosure. If the contract is owned by three or more persons an an owner who is not the named contract owner or a pre-designated joint owner dies during the new surrender charge period, the remaining contract owners also could be worse off having accepted the Enhancement Offer because the new CDSC will apply. This disclosure provided in the offering materials will give contract owners sufficient information to determine what is best for them.

8. Rule 11a–2, by its express terms, provides for Commission approval of certain types of offers of exchange of one variable annuity contract for another. Other than the relative net asset value requirement for the Bonus Offer, the only part of Rule 11a–2 that would not be satisfied by the proposed Offers is the requirement that payments under the existing Legacy contracts be treated as if they had been made under the enhanced contracts on the dates actually made. This provision of Rule 11a–2 is often referred to as a "tacking" requirement because it has the effecting of "tacking together" the CDSC expiration periods of the exchanged and acquired contracts.

9. Applicants believe that tacking should be viewed as a useful way to avoid the need to scrutinize the terms of an offer of exchange to make sure that there is no abuse. Tacking is not a requirement of Section 11. Rather, it is a creation of a rule designed to approve the terms of offers of exchange "sight unseen." Tacking focuses on the closest thing to multiple deduction of sales loads that is possible in a CDSC contract—multiple exposure to sales loads upon surrender or redemption. If tacking and other safeguards of Rule 11a–2 are present, there is no need for the Commission or its staff to evaluate the terms of the offer. The absence of tacking in this fully scrutinized Section 11 application will have no import in offers made pursuant to the rule on a "sight unseen" basis.

10. In addition to providing extensive disclosure, the Offers will only be made to contract owners who are at or close to the expiration of their surrender charge period.

11. No tacking is required when Lincoln Life's competitors offer their variable annuity contracts to owners of the Legacy I and Legacy II contracts or indeed when Lincoln makes such an offer to competitors' contract owners. In those exchanges, unlike the Offers proposed here, the exchanging contract owner actually must pay any remaining CDSC on the exchanged contract at the time of the exchange. The broker/dealers that will be making recommendations to their customers regarding these offers are required to satisfy the suitability requirements. Therefore, while tacking is not present, the investor protection afforded by the suitability requirements imposed upon the broker/dealer and the additional disclosure will be. The contract owner who is fully informed of the advantages and disadvantages of the proposed offers is the person who knows best whether the benefits of the offer are appropriate for him or her.

12. By this Application, Applicants are seeking a "level playing field" to permit Lincoln to compete with offers of competitors to its longstanding contract owners. Absent the requested relief, there can be no such offers, as imposition of the Rule 11a–2 tacking requirement would make it unfeasible for the offers to be made. Applicants assert that approval of the terms of the Offers is warranted, among other reasons, because it will promote competition in the variable annuity marketplace. Such approval will foster competition by allowing Lincoln Life to make an offer to its own contract owners which would provide an attractive additional option for contract owners' consideration. Applicants argue that the Offers do not remove choices available; rather competition is increased if Lincoln Life is able to compete on a "level playing field" with its competitors.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions, which are intended to support the understanding that the Offers are being made to contract owners who expect to persist:

1. The Offering Document will contain, as relevant, concise, plain English statements that:

(a) The Enhancement Offer is suitable only for contract owners who expect to hold their contracts as long term investments; and

(b)(i) if a contract owner surrenders contract value over and above the free withdrawal amount before the expiration of the new surrender charge period that applies to the contract value as of the date the Enhancement Offer is accepted, the contract owner will pay surrender charges, which may be substantial, that he or she would not have paid had the offer not been accepted;

(ii) if the contract is owned by three or more persons and an owner who is not the named contract owner or a pre-designated joint owner dies during the new surrender charge period, the remaining contract owners could be worse off having accepted the Enhancement Offer because a new surrender charge will apply; and

(iii) the contract owner may be worse off than if he or she had rejected the Enhancement Offer.

2. Lincoln Life will send the Offering Document directly to eligible contract owners. A contract owner choosing either the Bonus Offer or the EGMDB Offer will then complete and sign an election form which will prominently restate in concise, plain English the statements required in Condition No. 1, and will return it to Lincoln Life. If the election form or the internal exchange form is more than two pages long, Lincoln Life will use a separate document to obtain the contract owner's acknowledgment of the statements referred to in Condition No. 1.

3. Lincoln Life will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this Condition 3 for review by the Commission upon request:

(a) Records showing the level of acceptances of the Enhancement Offer and how these acceptances relate to the total number of contract owners eligible to participate in the offer (quarterly as a percentage of the number eligible);

(b) copies of any form of Offering Document, and any other written materials or scripts for presentations by representatives regarding the Enhancement Offer that Lincoln Life either prepares or approves, including the dates that such Offering Document and materials were used;

(c) records containing information about each Enhancement Offer election that occurs, including the name of the contract owner; the old and new contract numbers; the amount of CDSC waived on the transaction; bonus credit paid; if the EGMDB is elected or the EGMDB fee is waived; the name and CRD number of the registered representative soliciting the Enhancement Offer, firm affiliation, branch office address and telephone number of the registered representative soliciting the Enhancement Offer; the name and CRD number of the registered representative's broker-dealer; commission paid; the election form (and separate document, if any, used to obtain the contract owner's acknowledgment of the statements required in Condition No. 1) showing the name, date of birth, address and telephone number of the contract owner and the date the election form (or separate document) was signed; amount of contract value at the time of election of the Enhancement Offer; and persistency information relating to the enhanced contract, including the date of any subsequent surrender and the amount of CDSC paid on the surrender; and

(d) logs showing a record of any contract owner complaint about the Enhancement Offer; state insurance department inquiries about the Enhancement Offer; or litigation, arbitration or other proceedings regarding any enhanced contract. The logs will include the date of the complaint or commencement of the proceeding, name and address of the person making the complaint or commencing the proceeding, nature of the complaint or proceeding, and the persons named or involved in the complaint or proceeding.

Applicants will retain records specified in (a) and (d) for a period of six years after the date the records are created; records specified in (b) for a period of six years after the date of last use; and records specified in (c) for a period of two years after the date that the CDSC period of the Enhanced Contract ends with respect to contract value as of the date the Enhancement Offer is accepted.

4. The Offering Document will disclose in concise plain English each aspect of the enhanced contracts that will be less favorable than the old contracts.

Conclusion

For all the reasons discussed above, Applicants submit (1) that the Offers provide additional benefits to contract owners, may be advantageous for the owners to whom they will be offered, and do not contravene any policy or purpose of Section 11, and (2) that approval of Applicants' Offers as described, and subject to the conditions set forth in this Application, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Therefore, Applicants submit that the Commission should grant the approval sought by this Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4506 Filed 2–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47372; File No. SR–CHX–2003–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Reinstate and Extend a Pilot Rule Interpretation Relating to Trading of Nasdaq/NM Securities in Subpenny Increments

February 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through May 31, 2003, the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is to extend the pilot's expiration date through May 31, 2003. The text of the proposal is available at the Commission and at the CHX.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Commission waived the 5-day pre-filing notice requirement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments")[5] that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot has been extended five times and is set to expire on January 31, 2003.[6] The CHX now proposes to extend the pilot through May 31, 2003. The CHX proposes no other changes to the pilot, other than extending it through May 31, 2003.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, the CHX believes the proposal is consistent with

[5] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001) (SR–CHX–2001–07).

[6] *See* Securities Exchange Act Release Nos. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending the pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58758 (November 23, 2001) (extending the pilot through January 14, 2002); 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); and 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending the pilot through January 31, 2003).

[7] 15 U.S.C. 78f(b).

Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,

it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through May 31, 2003, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2003–02 and should be submitted by March 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4505 Filed 2–25–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47383; File No. SR–Phlx–2002–79]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Application Fee and the ETP Application Fee

February 20, 2003.

On December 17, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] a proposed rule change relating to its Application and ETP Application Fees. Notice of the proposed rule change was published for comment in the **Federal Register** on January 17, 2003.[3] No comments were received on the proposed rule change.

In order to generate additional revenue, the Exchange has proposed to amend its schedule of dues, fees and charges to increase its current Application Fee from $200 to $350. The Exchange also proposes to delete a separate reference to the ETP Application Fee in order to prevent confusion.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission believes that the proposal is consistent with section 6(b)(4) of the Act,[5] in that it equitably allocates reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities, and that it fairly allocates costs associated with application processing to those individuals and firms making such applications.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–Phlx–2002–79) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4504 Filed 2–25–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47148 (January 9, 2003), 68 FR 2614.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 13, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 20, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
10232–M		Sexton Can Company, Inc., Cambridge, MA[1]	10232
11670–M		Schlumberger-Oilphase, Dyce, Aberdeen Scotland, UK[2]	11670
11691–M		Cott Concentrates, Columbus, GA[3]	11691
11970–M	RSPA–97–2993	ExxonMobil Chemical Company, Houston, TX[4]	11970
13143–M	RSPA–02–13568.	GS Battery USA, Inc., City of Industry, CA[5]	13143
13187–M		Syncor Radiation Mgmt, Cleveland, OH[6]	13187

[1] To modify the exemption to authorize a capacity increase to 40 cubic inches of the non-refillable, non-DOT specification container for the transportation of Division 2.2 materials.

[2] To modify the exemption to authorize the use of two newly designed non-DOT specification oil well sampling cylinders with an increased service pressure to 25,000 psig for the transportation of Division 2.1 materials.

[3] To modify the exemption to authorize the transportation of an additional Class 8 material via cargo vessel.

[4] To modify the exemption to authorize the transportation of a hazardous material using an alternative shipping description of Division 4.2, 4.3 transported in non-DOT specification steel portable tanks.

[5] To reissue the exemption originally issued on an emergency basis for the transportation of a Class 8 material in non-DOT specification packaging.

[6] To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification packaging for the transportation of Division 2.2 materials.

[FR Doc. 03–4556 Filed 2–25–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 28, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipts of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the application (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 20, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
13167–N	.....	Eastman Kodak Company, Rochester, NY.	49 CFR 173.301(f), 173.304	To authorize the transportation in commerce of anhydrous ammonia in a DOT–E 11725 cylinder which is removed from its original outer packaging and installed in a device as part of an environmental conditioning system. (Mode 1.)
13199–N	.....	HVAC Portable Systems, Inc., Houston, TX.	49 CFR 173.302(c), 173.306(e)(1).	To authorize the transportation in commerce of reconditioned refrigeration units containing Division 2.2 hazardous materials. (Mode 1.)
13200–N	.....	Southern Air Inc., Columbus, OH.	49 CFR 172.101 Col. 9B, 172.204(c)(3), 173.27(b)(2)(3), 175.30(a)(1).	To authorize the transportation in commerce of Class 1 explosives which are forbidden or exceed quantities as presently authorized. (Mode 4.)
13201–N	.....	Powsus Inc., Fort Pierce, FL.	49 CFR 173.309	To authorize the transportation in commerce of fire extinguishers of plastic construction equipped with steel or aluminum fittings. (Modes 1, 2, 3, 4, 5.)
13202–N	.....	CyPlus Corporation, Parsippany, NJ.	49 CFR 173.242	To authorize the transportation in commerce of dry sodium cyanide, Division 6.1 in alternative bulk packaging inside trailers or freight containers. (Modes 1, 3.)

[FR Doc. 03–4557 Filed 2–25–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Part 249 Preservation of Records

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS requiring certificated air carriers to preserve accounting, records, consumer complaint letters, reservation reports and records, system reports of aircraft movements, etc.

DATES: Written comments should be submitted by April 28, 2003.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. 366–3383 or e-mail *bernard.stankus@bts.gov*.

Comments: Comments should identify the associated OMB approval # 2138–0006. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0006. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0006.

Title: Preservation of Air Carrier Records—14 CFR part 249.

Form No.: None.

Type Of Review: Extension of a currently approved recordkeeping requirement.

Respondents: Certificated air carriers and public charter operators.

Number of Respondents: 120 certificated air carriers. 300 public charter operators.

Estimated Time per Response: 3 hours per certificated air carrier. 1 hour per public charter operator.

Total Annual Burden: 660 hours.

Needs and Uses: Part 249 requires the retention of records such as: general and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and ledgers, subsidy records documenting underlying financial and statistical reports to DOT, funds reports, consumer records, sales reports, auditors' and flight coupons, air waybills, etc. Depending on the nature of the document, the carrier may be required to retain the document for a period of 30 days to 3 years. Public charter operators and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour or charter. These records are retained for 6 months after completion of the charter program.

Not only is it imperative that carriers and charter operators retain source documentation, but it is critical that we ensure that DOT has access to these records. Given DOT's established information needs for such reports, the underlying support documentation must be retained for a reasonable period of time. Absent the retention requirements, the support for such reports may or may not exist for audit/validation purposes and the relevance and usefulness of the carrier submissions would be impaired, since the data could not be verified to the source on a test basis.

Under the Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), a statistical agency must clearly distinguish any information it collects for non-statistical purposes. Respondents and the public are hereby notified that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on February 14, 2003.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 03–4554 Filed 2–25–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Extension of Credit to Political Candidates—Form 183

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting reports from air carriers on the aggregated indebtedness balance of a political candidate or party for Federal office. The reports are required when the aggregated indebtedness is over $5,000 on the last day of a month.

DATES: Written comments should be submitted by April 28, 2003.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. 366–3383 or e-mail *bernard.stankus@bts.gov*.

Comments: Comments should identify the associated OMB approval # 2138–0016. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0016. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0016.

Title: Report of Extension of Credit to Political Candidates—Form 183 14 CFR part 374a.

Form No.: 183.

Type Of Review: Extension of a currently approved collection.

Respondents: Certificated air carriers.

Number of Respondents: 2 (Monthly Average).

Number of Responses: 24.

Estimated Time per Response: 1 hour.

Total Annual Burden: 24 hours.

Needs and Uses: The Department uses this form as the means to fulfill its obligation under the Federal Election Campaign Act of 1971 (the Act). The Act's legislative history indicates that one of its statutory goals is to prevent candidates for Federal political office from incurring large amounts of unsecured debt with regulated transportation companies (*e.g.* airlines). This information collection allows the Department to monitor and disclose the amount of unsecured credit extended by airlines to candidates for Federal office. All certificated air carriers are required to submit this information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on February 14, 2003.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 03–4555 Filed 2–25–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 03–04]

Notice of Request for Preemption Determination or Order

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing for comment a request by National City Bank, N.A., National City Bank of Indiana, N.A., and their operating subsidiaries, National City Mortgage Company and First Franklin Financial Company (referred to collectively in this notice as National City) for a determination or order under 12 U.S.C. 24(Seventh), 12 U.S.C. 371 and the OCC's implementing regulations, that the Georgia Fair Lending Act does not apply to National City. The purpose of this notice is to afford interested persons and affected parties an opportunity to submit comments before the OCC issues any determination or order responding to this request.

DATES: Comments must be received on or before March 28, 2003.

ADDRESSES: Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Attention: Docket No. 03–04, Washington, DC 20219, fax number (202) 874–4448, or Internet address: *regs.comments@occ.treas.gov*. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit their comments by fax or e-mail. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect or photocopy the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION: The Georgia Fair Lending Act (GFLA) [1] became effective October 1, 2002. The GFLA restricts the ability of creditors or servicers to charge certain fees and engage in certain practices for three categories of loans defined by the GFLA: "home loans," "covered home loans," and "high-cost home loans." The characterization of a loan within each of these categories depends on the annual percentage rate and the amount of points and fees charged.[2] All "home loans" are subject to certain restrictions on the terms of credit and loan-related fees, including prohibitions on the financing of credit insurance, debt cancellation coverage or suspension coverage, and limitations on late fees and payoff statement fees.

In addition to the restrictions on "home loans," "covered home loans" are subject to restrictions on the number of times a loan may be refinanced and the circumstances in which a refinancing may occur. For example, the GFLA prohibits a creditor from refinancing an existing home loan that is less than five years old with a "covered home loan" that does not provide a reasonable "tangible net benefit" to the borrower considering all the circumstances.

"High-cost home loans" are subject to the restrictions on "home loans" and "covered home loans," as well as numerous disclosure requirements and restrictions on the terms of credit and

[1] The GFLA is to be codified as GA Code. Ann. §§ 7–6A–1 *et seq.*

[2] *See* GFLA § 7–6A–2.

loan-related fees. Creditors must disclose to borrowers that the loan is high-cost, and borrowers must attend loan counseling before the creditor may make the loan. In addition, the GFLA prohibits pre-payment penalties, balloon payments, negative amortization, increases in the interest rates after default, advance payments from loan proceeds, fees to modify, renew, extend, amend or defer a payment, and accelerating payments at the creditor's or servicer's sole discretion.

National City requests the OCC to issue a determination or order that 12 U.S.C. 24(Seventh), 12 U.S.C. 371 and their implementing regulations preempt the GFLA. A copy of the request appears as an Appendix to this notice. We will publish any final determination or order responding to National City's request in the **Federal Register**.

Regardless of the ultimate conclusion reached regarding preemption of the GFLA or any other similar state or local law, abusive and predatory lending practices that take unfair advantage of borrowers, or have a detrimental effect on communities, may violate a number of *federal* laws, and do conflict with the high standards by which the OCC expects national banks to conduct their operations. Accordingly, concurrent with issuance of this Notice of Request for Preemption Determination or Order, the OCC is issuing two Advisory Letters. Advisory Letter 2003–2, "Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices," February 21, 2003, and Advisory Letter 2003–3, "Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans," February 21, 2003. Together these two Advisory Letters set forth standards that should assure that national banks are not directly involved, or indirectly associated with, predatory or abusive lending practices.

Issues Presented by National City's Request

National City has the asked the OCC to determine that 12 U.S.C. 24(Seventh) and 371 preempt the GFLA. This request requires determining whether "Congress, in enacting the Federal Statute, intend[ed] to exercise its constitutionally delegated authority to set aside the laws of a State." *Barnett Bank of Marion County, N.A.* v. *Nelson, et al.*[3]

Central to the issues raised by National City is 12 U.S.C. 371, which vests in the OCC comprehensive authority to regulate and restrict the real estate lending activities of national banks. Section 371 provides:

> [a]ny national banking association may make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate, subject to section 1828(o) of this title and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.

The exercise of the powers granted by section 371 is not conditioned on compliance with any state requirement.[4] Notably, the exercise of powers under that section is subject only to such rules and regulations as the Comptroller may prescribe.

In *Barnett*, the Supreme Court analyzed a similarly structured statute, 12 U.S.C. 92 and the extent to which section 92 leaves room for state regulation of the activities the statute authorizes. There, the Supreme Court stated that:

> [section 92's] language suggests a broad, not a limited, permission. That language says, without relevant qualification, that national banks "may * * * act as the agent" for insurance sales. 12 U.S.C. 92. It specifically refers to "rules and regulations" that will govern such sales, while citing as their source not state law, but the federal Comptroller of the Currency.[5]

The Court concluded that "where Congress has not expressly conditioned the grant of "power" upon a grant of state permission, the Court has ordinarily found that no such condition applies."[6]

The Congressional delegation to the Comptroller of authority under section 371 mentions only conditions imposed by the OCC for national banks pursuant to section 1828(o) and "such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order." It makes no mention of conditions imposed by state law. Citing the judicial maxim of statutory interpretation *expressio unius est exclusio alterius* ("mention of one thing implies exclusion of another"), National City contends that this plain language evidences a Congressional intent to permit only the OCC to impose conditions on national bank real estate lending regulation, leaving no room for state involvement.

The legislative history of section 371 lends support to this construction. National banks' real estate lending activities have consistently been subject to comprehensive Federal regulation ever since the authority to lend on the security of real estate was first granted to them in the Federal Reserve Act of 1913. For many years, national banks' real estate lending authority was governed by the express terms of section 371. As originally enacted in 1913, section 371 contained a limited grant of authority to national banks to lend on the security of "improved and unencumbered farm land, situated within its Federal reserve district."[7] In addition to the geographic limits inherent in this authorization, the Federal Reserve Act also imposed limits on the term and amount of each loan as well as an aggregate lending limit. Over the years, section 371 was repeatedly amended to broaden the types of real estate loans national banks were permitted to make, to expand geographic limits, and to modify loan term limits and per-loan and aggregate lending limits. In 1982, Congress removed these "rigid statutory limitations"[8] in favor of a broad provision authorizing national banks to "make, arrange, purchase, or sell loans or extensions of credit secured by liens on interest in real estate, subject to such terms, conditions, and limitations as may be prescribed by the Comptroller of the Currency by order, rule, or regulation."[9] The purpose of the 1982 amendment was "to provide national banks with the ability to engage in more creative and flexible financing, and to become stronger participants in the home financing market."[10] In 1991, Congress removed the term "rule" from this phrase[11] and enacted an additional requirement, codified at 12 U.S.C. 1828(o), that national banks (and other insured depository institutions) conduct real estate lending pursuant to "uniform standards" adopted at the Federal level by regulation of the OCC and the other Federal banking agencies.[12] Thus, the history of national banks' real estate lending activities under section 371 is one of extensive Congressional involvement gradually giving way to a streamlined approach in which Congress has delegated broad authority to the Comptroller.[13] It may therefore be argued that section 371 evidences an intent for the OCC to occupy the field of regulation of national banks' real estate lending except, of course, where Congress in other legislation has made them subject to additional requirements, *e.g.* the Truth in Lending Act.[14]

The OCC has implemented section 371 in regulations set forth at 12 CFR part 34. Subpart A of part 34, by its terms, applies to both national banks and their operating subsidiaries.[15] Twelve CFR 34.3 establishes the general rule that a national bank and its operating subsidiaries may engage in real estate lending subject only to the "terms, conditions, and limitations prescribed by the Comptroller of the Currency by regulation or order." Twelve CFR 34.4(a) expressly provides that five types of state law limitations are not applicable to real estate loans made by national banks and their operating subsidiaries:

(a) *Specific preemption.* A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3 without regard to State law limitations concerning:

(1) The amount of a loan in relation to the appraised value of the real estate;

(2) The schedule for the repayment of principal and interest;

(3) The term to maturity of the loan;

(4) The aggregate amount of funds that may be loaned upon the security of real estate; and

(5) The covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

It would appear that a number of GFLA provisions fall within the scope of § 34.4(a). For example, National City argues that a number of GFLA prohibitions, including those on balloon payments, negative amortization, advance payments from the loan proceeds and acceleration at the creditor's or servicer's discretion, are state law limitations concerning the "schedule for the repayment of principal and interest" and are therefore preempted by § 34.4(a)(2).

Twelve CFR 34.4(b) states:

The OCC will apply recognized principles of Federal preemption in considering whether State laws apply to other aspects of real estate lending by national banks.[16]

It may be argued that the structure of § 371 and § 34.3, together with the express preemption delineated in § 34.4(a), evidence a presumption that state law does not apply to the real estate lending activities of national banks and their operating subsidiaries unless the OCC determines under § 34.4(b) that a particular state law is not preempted. In other words, in "considering whether state laws apply" for purposes of issuing an order under section 371, the OCC could either issue an order confirming that the law is not applicable or providing that it will be applicable after applying the "recognized principles of preemption" referred to in § 34.4(b). Thus, in effect, National City argues that section 371 authorizes the OCC to "occupy the field" of real estate lending regulation for national banks, and that, through its regulations, including § 34.4(a) and (b), the OCC has done so.

Thus, in order to implement § 34.4(b) to determine whether any of the GFLA provisions not otherwise preempted under § 34.4(a) apply to National City, the OCC examines whether the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[17] In the present context, the OCC must examine the effect that the state law provisions have on a national bank's exercise of the federally authorized power to engage in real estate lending granted by Federal statutes, including 12 U.S.C. 371.[18] As set out in detail in its request, National City asserts that various GFLA provisions place impermissible limits on the exercise of national banks' real estate lending powers under 12 U.S.C. 371 and place impermissible limits on the exercise of national banks' authority to lend money generally under 12 U.S.C. 24(Seventh) and to charge fees for lending products or services.[19]

National City accordingly requests the OCC to issue a determination or an order under 12 U.S.C. 24(Seventh) and 12 U.S.C. 371 that the identified provisions of the GFLA do not apply to National City.

Request for Comments

The OCC solicits comment on the issues raised by the National City request.

Dated: February 13, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

Appendix—National City's Request

February 11, 2003.

Julie L. Williams, *First Senior Deputy Comptroller of the Currency and Chief Counsel, Office of the Comptroller of the Currency, 250 E. Street, SW., Washington, DC 20219.*

Re: Request for Preemption Determination or Order.

Dear Ms. Williams: On behalf of National City Bank, National City Bank of Indiana and its operating subsidiaries First Franklin Financial Corporation and National City Mortgage Co. we hereby request the Office of the Comptroller of the Currency ("OCC") to issue a preemption determination or Order under 12 U.S.C. 371 that the Georgia Fair Lending Act ("GFLA") is preempted by federal law and regulations, specifically 12 U.S.C. 24 (Seventh), 371 and 484 and 12 CFR 34.1(b), 34.3, 34.4, 7.4002 and 7.4006 as it relates to a national bank and its operating subsidiaries in the exercise of their federally granted real estate lending powers.

I. Background

A. The Requesting Parties

National City Bank and National City Bank of Indiana both are national banks, chartered, regulated, and supervised by the OCC. National City Mortgage Co. and First Franklin Financial Corporation are wholly owned operating subsidiaries of National City Bank of Indiana and are similarly regulated and supervised by the OCC.

National City Bank originates in its own name and funds home equity loans and lines of credit on a nationwide basis. National City Mortgage Co. originates in its own name and funds first and second mortgage loans throughout the United States for the purpose of financing and refinancing the acquisition and construction of real property consisting of one to four family residential dwellings. First Franklin Financial Corporation originates in its own name and funds first and second mortgage loans that enable borrowers to acquire and refinance one to four family residential real property. In this request, National City Bank, National City Mortgage Co. and First Franklin Financial Corporation are collectively referred to as "National City." National City receives loan applications from third party mortgage brokers, and those mortgage brokers perform many services resulting in the origination of the loans and lines of credit by National City in its own name.

B. The Georgia Fair Lending Act

The GFLA became effective on October 1, 2002. In the enactment of GFLA the Georgia Legislature was attempting to address abuses

[3] 517 U.S. 25, 30 (1996).

[4] Subsequent *Federal* legislation may provide, however, that national banks shall conduct certain activities subject to state law standards. For example, national banks conduct insurance sales, solicitation, and cross-marketing activities subject to certain types of state restrictions expressly set out in the Gramm-Leach-Bliley Act. *See* 15 U.S.C. 6701(d)(2)(B). There is no similar Federal legislation subjecting national banks' real estate lending activities to state law standards.

[5] *Barnett*, 517 U.S. at 32.

[6] *Id.* at 34.

[7] Federal Reserve Act, ch. 6, § 24, 38 Stat. 251, 273 (1913).

[8] S. Rep. No. 97–536, at 27 (1982).

[9] Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, § 403, 96 Stat. 1469, 1510–11 (1982).

[10] S. Rep. No. 97–536, at 27 (1982).

[11] This language was changed without explanation.

[12] Section 304 of the Federal Deposit Insurance Corporation Improvement Act, 12 U.S.C. 1828(o). These standards governing national banks' real estate lending are set forth in subpart D of part 34.

[13] We note that in *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218 (1946), the Supreme Court considered a statute that had been similarly revised to delegate exclusive authority under it to the Secretary of Agriculture. Even though the statutory revision in question in *Rice* authorized the Secretary "to cooperate with State officials," the Supreme Court found the revision evidence that Congress acted "so unequivocally as to make clear that it intends no regulation except its own." *Id.* at 236.

[14] 15 U.S.C. 1601 *et seq.*

[15] *See* 12 CFR 34.1(b).

[16] *See* 12 CFR 24.4(b).

[17] *Barnett*, 517 U.S. at 31, *quoting Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941).

[18] As explained below, National City also argues that a number of GFLA provisions impair the bank's ability to exercise its general lending authority under 12 U.S.C. 24 (Seventh).

[19] The OCC's regulation at 12 CFR 7.4002 reaffirms that ability to charge a fee for a bank's services.

it perceived in the marketplace that disadvantaged persons who may have impaired credit or were unfamiliar with real estate lending procedures and terms. There may be a legitimate state purpose for regulation of lending practices which are otherwise unsupervised. However, that purpose has no applicability to national banks and their operating subsidiaries, which are subject to comprehensive regulation and supervision by the OCC as required by federal law.

GFLA restricts national banks and their operating subsidiaries' ability to originate mortgage loans in the state of Georgia, set interest rates, fees and credit terms, establish disclosures and utilize the services of third party mortgage brokers in the origination process. GFLA applies to all consumer-purpose loans and lines of credit secured by borrower-occupied one to four family residential property within the conforming loan limit set by FNMA for a single-family dwelling except reverse mortgages, bridge loans and loans which are also secured by personal property ("Home Loan"). Certain of GFLA's restrictions apply to all Home Loans. Other limitations apply to one or both of the two sub-categories of Home Loans created by GFLA as it was originally enacted: Covered Home Loans and High Cost Home Loans. Whether a Home Loan fits into these categories depends on the loan's interest rate and fees and charges. The fees and charges which cause a Home Loan to be categorized as a Covered Home Loan or High Cost Home Loan include the fees paid to a third party mortgage broker.

GFLA establishes specific and burdensome limitations on mortgage-secured loans and lines of credit that significantly interfere with National City's ability to make these loans. All Home Loans are subject to restrictions on the terms of credit and certain loan related fees, including the prohibition of financing of credit insurance, debt cancellation and suspension coverage, and limiting late charges and prohibiting payoff and release fees. If the loan or line of credit is a Covered Home Loan which refinances a Home Loan which was closed within the previous five years, National City is restricted from originating it unless the refinanced transaction meets standards established by GFLA. If the loan or line of credit is a High Cost Home Loan, GFLA does not permit National City to originate it unless the borrower has received advance counseling with respect to the advisability of the transaction from a third party nonprofit organization. GFLA regulates National City's ability to determine the borrower's ability to repay the High Cost Home Loan. GFLA restricts, and in some cases prohibits, the imposition by National City of certain credit terms or servicing fees on High Cost Home Loans, including: prepayment penalties, balloon payments, advance loan payments, acceleration in the lender's discretion, negative amortization, post-default interest and fees to modify, renew, amend or extend the loan or defer a payment. Any High Cost Home Loan must contain a specific disclosure that it is subject to special rules, including purchaser and assignee liability, under GFLA. Finally, GFLA imposes pre-foreclosure requirements.

GFLA currently creates strict assignee liability for all subsequent holders of a home loan. GFLA provides a private right of action for borrowers against lenders, mortgage brokers, assignees and servicers for injunctive and declaratory relief as well as actual damages, including incidental and consequential damages, statutory damages equal to forfeiture of all interest or twice the interest paid, punitive damages, attorneys' fees and costs. In addition, the Georgia Attorney General, district attorneys, the Commissioner of Banking and Finance and, with respect to the insurance provisions, the Commissioner of Insurance has the jurisdiction to enforce GFLA through their general state regulatory powers and civil process. Criminal penalties are also available.

The uncapped investor liability caused Standard & Poors, Moody's Investor Services and Fitch Ratings to cease rating any security that includes GFLA-governed loans. As of February 4, 2003 Fitch Ratings declined to rate Georgia Home Loans in RMBS pools. Fitch ratings also announced that it was considering the impact of further state and local predatory lending legislation on its ability to rate transactions. As a result, the GFLA impairs National City's ability to securitize or sell their loans on the secondary market.

In light of the recent pronouncements by the securities rating agencies, the Georgia Legislature is considering amendments to GFLA which could limit or eliminate liability for assignees and purchasers, remove the category of Covered Loans and make other substantive changes to the law. These proposed changes, if enacted, will reduce the number of loans categorized as High Cost Home Loans and might provide limited safe harbors for refinancings. However, the proposed amendments would not affect the restrictions on loan fees and terms for Home Loans and High Cost Home Loans and the preconditions for originating a High Cost Home Loan. One proposal would also restrict the refinancing of any Home Loan originated in the previous five years unless the refinancing meets GFLA's standards. Therefore, the proposed amendments do not obviate National City or any other national banking organization's need for a preemption determination.

C. Impact of GFLA on National City's Real Estate Lending in Georgia

The effect of GFLA is to limit National City's ability to originate and to establish the terms of credit on residential real estate loans and lines of credit, including loans or lines of credit submitted by a third party mortgage broker. GFLA has significantly impaired National City's ability to originate residential real estate loans in Georgia.

In addition to preventing National City from exercising its fundamental powers to engage in residential real estate transactions and to incorporate credit terms that National City feels may be necessary to lend in a safe and sound manner, GFLA has also adversely affected the investor market for Georgia loans. The restrictions imposed by GFLA have lead the Government Sponsored Enterprises ("GSE's") to limit the loans they will purchase from National City and other originators, and Standard and Poors, Fitch Ratings and Moody's Investor Service have publicly stated they will not allow a GFLA governed loan in a rated structured financial transaction. This is another example of how the GFLA adversely affects National City's ability to sell or securitize loans.[20]

II. Reasons Supporting the Requested Preemption of GFLA

A. GFLA Is Preempted by Paramount Federal Law

National banks and their operating subsidiaries have broad authority to originate and establish the terms and conditions of mortgage loans, subject only to the paramount regulations and orders established by the Office of the Comptroller of the Currency ("OCC").

Federal law may preempt state law (1) where Congress has expressly preempted state law, (2) where Congress has occupied the field the state seeks to regulate, and (3) where state law actually conflicts with federal law. *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 299–300 (1988). In applying the test put forth by the United States Supreme Court in *Barnett Bank, N.A. v. Nelson*, 517 U.S. 25 (1996). 134 L. Ed.2d 237 to the facts here it is clear that Congress provided national banks with a broad grant of powers under 12 U.S.C. 24 (Seventh) and a specifically broad grant of powers for real estate lending pursuant to 12 U.S.C. 371. This grant of power to permit real estate lending is the exact activity which GFLA restricts. The State's prohibitions under GFLA "stand as an obstacle to the accomplishment" of one of the federal statute's purposes. *Hines v. Davidowitz*, 312 U.S. 52, 67, 85 L. Ed. 581, 61 S. Ct. 399 (1941).

Twelve U.S.C. § 371 occupies the field of mortgage lending subject only to such regulations and orders as are adopted by the OCC. The Supreme Court has recognized that state law generally should not limit powers granted by Congress—

In using the word "powers," the statute chooses a legal concept that, in the context of national bank legislation, has a history. That history is one of interpreting grants of both enumerated and incidental "powers" to national banks as grants of authority not normally limited by, but rather ordinarily preempting, contrary state law. Barnet Bank v. Nelson, 517 U.S. 25 at 32 (1996). See also Bank One v. Guttau, 190 F.3d 844, 847 (8th Cir. 1999).

The Supreme Court has held that federal law preempts not only state laws that purport to prohibit a national bank from engaging in an activity permissible under federal law but also state laws that condition the exercise by a national bank of a federally authorized activity.

[W]here Congress has not expressly conditioned the grant of "power" upon a grant of state permission, the Court has ordinarily found that no such condition applies. In Franklin Nat. Bank, the Court

[20] We note that other states and localities have passed similar restrictions that also adversely affect National City's real estate lending.

made this point explicit. It held that Congress did not intend to subject national banks' power to local restrictions because the federal power-granting statute there in question contained 'no indication that Congress [so] intended* * * as it has done by express language in several other instances.' Barnett, 517 U.S. at 34 (citations omitted; emphasis in original).

As was the case in *Barnett*, Congress placed no restrictions in 12 U.S.C. 371 on the ability to conduct real estate lending activities other than by rules and/or regulations as may be promulgated by the OCC. The OCC has done so by promulgating 12 CFR 34, which by its terms reserves no right to the states to regulate in the area of real estate lending by a national bank or its operating subsidiary. National City is of the opinion as supported by the Supreme Court's decision in *Barnett* that the federal statute governing the power of a national bank to lend creates a scheme of federal law and regulation so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.

Therefore, a conflict between GFLA and federal law need not be complete in order for federal law to have preemptive effect. If, as here, the state law (GFLA) places limits on an unrestricted grant of authority under federal law, the state law (GFLA) is preempted.

B. The Preemption Analysis Applicable to National Banks Applies With Equal Force to National Bank Operating Subsidiaries

In section 121 of the Gramm Leach Bliley Act ("GLBA"), Congress expressly acknowledged that national banks may own subsidiaries that engage "solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks." 12 U.S.C. 24 a(g)(3).

Consistent with section 121, the OCC regulations state that "[a]n operating subsidiary conducts activities authorized under [12 CFR 5.34] pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank. 12 CFR 5.34(e)(3); See also 12 CFR 7.4006.

National City's operating subsidiaries are conducting mortgage lending and servicing activities as permitted for a national bank pursuant to 12 U.S.C. 24(Seventh), 12 U.S.C. 371, and 12 CFR 5.34(e)(5)(v). As such, they are subject to federal law and States do not have the right to limit the powers over a national bank or its operating subsidiaries in the conduct of these real estate lending activities, except where such authority is specifically granted by federal law, which is not the case here. Like the Bank, the operating subsidiaries are examined on a continuous basis by OCC examiners specifically assigned to, and in most cases physically present at, the facilities of the Banks and their operating subsidiaries.

C. National Bank Real Estate Powers and Part 34 of the Comptroller's Regulations

The National Bank Act's underlying objective is to create a uniformly regulated national banking system. The National Bank Act is a comprehensive statute which governs not only the internal workings of national banks, but also their powers, and virtually all aspects of their regulation is the exclusive responsibility of the OCC. See OCC Unpublished Interpretive Letter dated September 5, 1989 (holding that a Wisconsin statute imposing notification filing and fee requirements on lenders making certain consumer loans was preempted for national banks); OCC Advisory Letter 2002–9. In section 24 (Seventh) of the National Bank Act, 12 U.S.C. 24(Seventh) Congress granted national banks the power to exercise, "by its board of directors or duly authorized officers or agents, * * * all such incidental powers as shall be necessary to carry out the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; * * * [and] by loaning money on personal security;* * *", Congress further specifically authorized national banks to engage in real estate lending beginning with the Act of September 7, 1916. From 1916 to 1982, in the statutory predecessors to the present 12 U.S.C. 371, Congress gradually broadened the scope of national bank authority to make real estate loans, culminating in the enactment of the Garn-St. Germain Depository Institutions Act of 1982 (Garn-St. Germain"). Prior to Garn-St. Germain, 12 U.S.C. 371 contained specific provisions establishing maximum loan to value ratios, amortization requirements, maximum loan maturity and aggregate limits on the amount of real estate loans a national bank could make or purchase. In Garn-St. Germain, Congress removed these limitations entirely, and gave national banks unlimited power to engage in real estate lending subject only to the regulations and orders established by the OCC. Thus, the history of national bank power to engage in real estate lending demonstrates Congressional intent to occupy the field, and to replace Congressional control over the terms of national banks' real estate lending with a complete delegation of control to the OCC as the ultimate arbiter of the national bank's exercise of those powers. Further, section 371 is an illustration of the familiar maxim of statutory construction: *expressio unius est exclusio alterius;* in that the specificity of the grant of authority to engage in real estate lending leaves no room for state law or regulation.

Currently, section 371 provides as follows:

Authorization to make real estate loans; orders, rules and regulations of Comptroller of the Currency. Any national banking association may make, arrange, purchase or sell loans or extension of credit secured by liens on interests in real estate, subject to section 18(o) of the Federal Deposit Insurance Act [12 USCS 1828(o)] and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.[21]

[21] 12 U.S.C. § 1828(o) authorized the OCC to establish uniform regulations for real estate secured extensions of credit. In adopting such regulations, the OCC is required to consider: the risk posed to the deposit insurance funds by real estate lending; the need for safe and sound operation of the insured institutions; and the availability of credit. The OCC is authorized to permit differing standards among the types of real estate-secured loans, as warranted by federal law, the risk to the federal deposit insurance fund, and based on considerations of institutional safety and soundness. Thus, Congress has instructed the OCC to exercise its supervisory authority over real estate lending in support of mandates found in federal law alone.

The OCC fully implemented the authority granted by Garn-St. Germain in 1983 by amending or removing the interpretive rulings regarding real estate lending that had their origins in earlier versions of 12 U.S.C. 371 and promulgated Part 34, which comprehensively defines real estate lending by national banks. Part 34 recognizes that the forms and terms of national bank lending must be determined by the management of national banks themselves, to enable the banks to have the necessary flexibility to respond to market conditions. OCC regulatory authority insures that national banks do so prudently and in a safe and sound manner. Part 34 also clarifies the scope of federal preemption of state laws that could impact real estate lending activities by national banks.

The pertinent regulations provide:

§ 34.3 General rule

A national bank may make, arrange, purchase or sell loans or extensions of credit, or interests therein, that are secured by liens on, or interests in, real estate, subject to terms, conditions, and limitations prescribed by the Comptroller of the Currency by regulation or order.

§ 34.4 Applicability of State law

(a) Specific preemption. National banks may make real estate loans under 12 U.S.C. 371 and § 34.3 without regard to state law limitations concerning:

(1) The amount of a loan in relation to the appraisal value of the real estate;

(2) The schedule for the repayment of principal and interest;

(3) The term to maturity of the loan;

(4) The aggregate amount of funds that may be loaned upon the security of real estate; and

(5) The covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

(b) General standards. The OCC will apply recognized principles of Federal preemption in considering whether State laws apply to other real estate lending activities of national banks.

The provisions of GFLA which fall within the scope of 12 CFR 34.4(a)'s specific state law preemptions fall without need for further analysis. Other provisions of GFLA can be analyzed under 12 CFR 34.4(b). OCC regulations specifically provide that the provisions of 12 CFR 34.4 are applicable to both national banks and their operating subsidiaries. See 12 CFR 34.1(b).

1. Provisions of GFLA Which Are Preempted Under 12 CFR 34.4(a)

Taken together, the provisions of 12 CFR 34.4(a)(1)–(4) which remove any limits on loan to value ratios, amortization requirements, maturity requirements and aggregate loan limits preempt state laws

which impair a national bank or its operating subsidiary's ability to make *any* real estate-secured loan. Three aspects of GFLA run afoul of this preemption; the restrictions on a national bank's ability to refinance certain Home Loans made in the previous five years; the prohibition on making a High Cost Home Loan unless the borrower has first received counseling from a third party regarding the advisability of the transaction; and the prohibition on making a High Cost Home Loan unless the borrower meets GFLA's standards as to his or her ability to repay the loan. These restrictions not only impair National City's ability to determine the aggregate amount of loans it will originate in Georgia, they also impact loan to value ratios, amortization requirements and determination of loan maturity.

GFLA's prohibition of balloon payments, negative amortization and advance payments from the loan proceeds are specifically preempted under 12 CFR 34.4(a)(2), and 12 CFR 34.4(a)(3) preempts GFLA's prohibition of a loan term that prevents the lender from accelerating a High Cost Home Loan in the exercise of its discretion. See OCC Unpublished Interpretive Letter dated December 8, 1983 (preempting a Massachusetts law restricting balloon and demand payment terms) and OCC Unpublished Interpretive Letter dated May 9, 1988 (national banks are not required to amortize real estate loans and contrary state laws are preempted). The OCC has also held that all state law disclosure requirements for real estate secured loans are preempted. See OCC Unpublished Interpretive Letter dated March 30, 1988.

2. Provisions of GFLA Which Are Preempted Under 12 CFR 34.4(b)

The five areas delineated in 12 CFR 34.4(a) are not the exclusive areas where federal law preempts state laws affecting national bank real estate lending activities. 61 FR 11294 (March 20, 1996). Those provisions of the GFLA that are not already preempted under 12 CFR 34.4(a) are preempted under 12 CFR 34.4(b) *either* because they are inconsistent with the comprehensive authority granted to the OCC under section 371 to regulate the real estate lending activities of national banks or applying the conflict analysis in *Barnett*. With regard to the latter analysis, the provisions of GFLA which prohibit the financing of credit insurance, debt cancellation or suspension coverage, limit late payment charges and prohibit payoff and release fees for Home Loans and restrict or prohibit prepayment penalties, post-default interest and fees for modification, extension or deferral of payments for High Cost Home Loans would seem to "stand as an obstacle to the accomplishment" of one of the federal statute's purpose—that being the authorization to make real estate loans subject only to such restrictions and regulations as the OCC may prescribe. See *Barnett* 517 U.S. 25, at 31; and 12 U.S.C. § 1828(o). These provisions are an impermissible attempt by the state of Georgia to condition the exercise of national bank lending powers which are authorized by federal law. *Bank of America, National Trust & Sav. Asso.* v. *Lima*, 103 F. Supp. 916 (D. Mass. 1952). GFLA's compliance provisions include the potential threat of litigation including uncapped damages and the application of the foreclosure provisions. These aspects of GFLA not only have more than an incidental chilling affect on the operations of national banks and their operating subsidiaries, but the compliance scheme, which includes enforcement by state regulators, directly conflicts with the exclusive grant of visitorial power to the OCC in 12 U.S.C. 484. See OCC Advisory Letter 2002–9.

D. Preemption of GFLA's Restrictions on the Use of Mortgage Brokers in the Loan Origination Process

12 U.S.C. 24 (Seventh) and 12 CFR 7.1004 permit a national bank to use third party services in the organization process; this is restricted by the limitations contained in GFLA as a whole and through its impact on broker compensation.

Section 24(Seventh) specifically authorizes national banks to make loans. Section 24(Seventh) also authorizes national banks to engage in the more general "business of banking" and activities incidental thereto. The Supreme Court has expressly held that the "business of banking" is not limited to the enumerated powers in section 24(Seventh) and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated. See *NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Corp.*, 513 U.S. 251, 258, n.2 (1995). An activity will be deemed "incidental" to the business of banking if it is "convenient or useful in connection with the performance of" a power authorized under federal law. *Arnold Tours, Inc.* v. *Camp*, 472 F.2d 427, 432 (1st Cir. 1972).

The authority of national banks under section 24(Seventh) permits a national bank to use the services of agents and other third parties in connection with a bank's lending business. Federal banking regulations specifically provide that a national bank may "use the services of, and compensate persons not employed by, the bank for originating loans". 12 CFR 7.1004(a). Likewise, the regulations permit national banks to utilize the services of third parties to disburse loan proceeds. 12 CFR 7.1003(b). These agents may undertake these activities at sites that are neither the main office nor a branch office of the bank provided the requirements of those regulations are satisfied. 12 CFR 7.1003(b), 7.1004(b). This authority applies equally to an operating subsidiary of a national bank. 12 CFR 7.1004(b).

Therefore, the provisions of GFLA which have the effect of denying national banks and their operating subsidiaries from being able to use third party mortgage brokers and compensating them for the services they provide as permitted by federal law must be preempted.

For the foregoing reasons, National City requests that the OCC issue a determination, and/or an order pursuant to 12 U.S.C. 371, that GFLA is preempted as it applies to a national bank and its operating subsidiaries, and further restate the long held position of the OCC with respect to the permitted use of third parties to facilitate the making of real estate loans in Georgia and elsewhere.

Very truly yours,

Thomas A. Plant.

TAP/gs

[FR Doc. 03–4507 Filed 2–25–03; 8:45 am]

BILLING CODE 4813–33–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alterations to three Department of the Treasury, Financial Management Service (FMS), Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Department of the Treasury, Financial Management Service (FMS), gives notice of proposed alterations to three of its existing systems of records, as follows: "Treasury/FMS .002—Payment Issue Records for Regular Recurring Benefit Payments," "Treasury/FMS .014—Debt Collection Operations System," and Treasury/FMS .016—Payment Records for Other Than Regular Recurring Benefit Payments."

DATES: Comments must be received no later than March 28, 2003. The proposed systems of records will be effective April 7, 2003 unless FMS receives comments which would result in a contrary determination.

ADDRESSES: Comments must be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW., Room 448B, Washington, DC 20227, or by electronic mail to *gerald.isenberg@fms.treas.gov*. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Management Service, Debt Management Services, (202) 874–7131.

SUPPLEMENTARY INFORMATION: The Financial Management Service (FMS) is the money manager for the Federal Government. As such, FMS disburses over 900 million payments totaling more than $1.2 trillion in social security and veterans' benefits, income tax refunds, and other federal payments. In addition, FMS operates several programs to facilitate collection or resolution of delinquent debts owed to the Federal Government and states, including past due support being enforced by states. In the operation of its payment and debt collection programs, FMS maintains records on individuals who receive payments from the Federal Government, as well as individuals who owe delinquent debts to the Federal Government and states. Records on individuals who receive Federal payments are maintained in FMS's "Payment Issue Records for Regular Recurring Benefit Payments," and "Payment Records for Other Than Regular Recurring Benefit Payments." Records on individuals who owe delinquent debts are maintained in its "Debt Collection Operations System" system of records. The systems of records were last published in the **Federal Register** in their entirety on August 22, 2001, beginning in 66 FR 44204.

In keeping with the Government's policy to rely on commercial sources to supply the products and services the Government needs, FMS sometimes retains the services of contractors to perform certain routine functions related to payment and debt collection processing. Disclosures of information maintained in FMS" systems of records may be required in order for the contractor to perform the services for which it has been hired. If disclosure is necessary, the contractor to which disclosure is made will be subject to the same limitations applicable to FMS officers and employees under the Privacy Act. This means that the contractor is required to safeguard Privacy Act information to prevent unauthorized use or disclosure of any Privacy Act records. FMS is altering the referenced systems of records to allow disclosure of information from such systems to a private contractor to the extent necessary for the contractor to accomplish an FMS function related to payment processing and/or debt collection.

The report required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated November 30, 2000.

For the reasons set forth above, FMS proposes to alter its systems of records as follows:

TREASURY/FMS .002

SYSTEM NAME:

Payment Issue Records for Regular Recurring Benefit Payments—Treasury/Financial Management Service.

Description of change: Remove current entry and add the following to read as follows:

SYSTEM LOCATION:

"The Financial Management Service, U.S. Department of the Treasury, Washington, DC 20227 and Hyattsville, MD 20782. Records maintained at Financial Centers in five regions: Austin, TX; Birmingham, AL; Kansas City, MO; Philadelphia, PA; and San Francisco, CA."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

Description of change: The period "." at the end of routine use (13) is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(14) Disclose information to a contractor of the Financial Management Service for the purpose of performing routine payment processing services, subject to the same limitations applicable to FMS officers and employees under the Privacy Act."

* * * * *

TREASURY/FMS .014

SYSTEM NAME:

Debt Collection Operations System-Treasury/Financial Management Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

Description of change: The period "." at the end of routine use (8) paragraph c is replaced with a semicolon ";", and the following language is added before the period ".":

(8) c. * * *

"including for the provision of routine debt collection services by an FMS contractor subject to the same limitations applicable to FMS officers and employees under the Privacy Act."

* * * * *

TREASURY/FMS .015

SYSTEM NAME:

Payment Records for Other Than Regular Recurring Benefit Payments—Treasury/Financial Management Service.

Description of change: Remove current entry and add the following to read as follows:

SYSTEM LOCATION:

"The Financial Management Service, U.S. Department of the Treasury, Washington, DC 20227 and Hyattsville, MD 20782. Records maintained at Financial Centers in five regions: Austin, TX; Birmingham, AL; Kansas City, MO; Philadelphia, PA; and San Francisco, CA."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

Description of change: The period "." at the end of routine use (13) is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(14) Disclose information to a contractor of the Financial Management Service for the purpose of performing routine payment processing services, subject to the same limitations applicable to FMS officers and employees under the Privacy Act."

* * * * *

Dated: February 11, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Program Officer.

[FR Doc. 03–4457 Filed 2–25–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4255

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4255, Recapture of Investment Credit.

DATES: Written comments should be received on or before April 28, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue

Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Recapture of Investment Credit.

OMB Number: 1545–0166.

Form Number: 4255.

Abstract: Internal Revenue Code section 50(a) requires that a taxpayer's income tax be increased by the investment credit recapture tax if the taxpayer disposes of investment credit property before the close of the recapture period used in figuring the original investment credit. Form 4255 provides for the computation of the recapture tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 9 hrs. 49 min.

Estimated Total Annual Burden Hours: 196,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–4547 Filed 2–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, March 17, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, March 17, 2003 from 2 p.m. PST to 4 p.m. PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 19, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–4414 Filed 2–25–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 38

Wednesday, February 26, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Flagtail Fire Recovery Project, Malheur National Forest, Grant County, OR

Correction

In notice document 03–2836 beginning on page 6110 in the issue of Thursday, February 6, 2003, make the following correction:

On page 6110, in the second column, under the heading **Proposed Action**, in the first full paragraph, in the sixth line, after "construction", add the following text:

"of approximately 4 miles of temporary road, reconstruction of approximately 1/2 mile of existing road, and maitenance".

[FR Doc. C3–2836 Filed 2–25–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2248–02]

Notice Designating Additional Ports-of-Entry for Departure of Aliens Who Are Subject to Special Registration

Correction

In notice document 03–4130 beginning on page 8047 in the issue of Wednesday, February 19, 2003, make the following correction:

On page 8047, in the third column, under the heading **Ports-of-Entry Designated for Final Registration and Departure by Nonimmigrant Aliens Subject to Special Registration**, in the last two lines, the list is corrected to read as set forth below.

Amistad Dam POE, Texas;
*Alcan POE, Alaska;
Anchorage International Airport, Alaska;
Atlanta Hartsfield International Airport, Georgia;
*Baltimore Washington International Airport, Maryland;
Bell Street Pier 66 (Seattle) Cruise Ship Terminal, Washington;
Bridge of the Americas POE, Texas;
Brownsville/Matamoros POE, Texas;
Buffalo Peace Bridge POE, New York;
Cape Vincent POE, New York;
Calexico POE, California;
*Calais POE, Maine;
* Cape Canaveral Seaport, Florida;
*Chicago Midway Airport, Illinois;
Chicago O'Hare International Airport, Illinois;
Champlain POE, New York;
*Charlotte International Airport, North Carolina;
Chateaugay POE, New York;
*Cleveland International Airport, Ohio;
Columbus POE, New Mexico;
Dallas/Fort Worth International Airport, Texas;
Del Rio International Bridge POE, Texas;
Denver International Airport, Colorado;
*Derby Line POE, Vermont;
*Detroit International (Ambassador) Bridge POE, Michigan;
Detroit Canada Tunnel, Michigan;
Detroit Metro Airport, Michigan;
Douglas POE, Arizona;
Eagle Pass POE, Texas;
*Eastport POE, Idaho;
Fort Covington POE, New York;
*Fort Duncan Bridge POE, Texas;
Galveston POE, Texas;
*Grand Portage POE, Minnesota;
Guam International Airport;
Heart Island POE, New York;
Hidalgo POE, Texas;
Highgate Springs POE, Vermont;
Honolulu International Airport, Hawaii;
Honolulu Seaport, Hawaii;
*Houlton POE, Maine;
Houston George Bush Intercontinental Airport, Texas;
Houston Seaport, Texas;
International Falls POE, Minnesota;
John F. Kennedy International Airport, New York;
*Ketchikan Seaport, Alaska;
*Kona International Airport and Seaport, Hawaii;
Gateway to the Americas Bridge POE, Laredo, Texas;
*Las Vegas (McCarran) International Airport, Nevada;
Lewiston Bridge POE, New York;
Logan International Airport, Massachusetts;
Long Beach Seaport, California;
Los Angeles International Airport, California;
*Madawaska POE, Maine;
Miami International Airport, Florida;
Miami Marine Unit, Florida;
Minneapolis/St. Paul International Airport, Minnesota;
Mooers POE, New York;
Niagara Falls, Rainbow Bridge, New York;
Newark International Airport, New Jersey;
Nogales POE, Arizona;
Ogdensburg POE, New York;
Orlando, Florida;
Oroville POE, Washington;
Otay Mesa POE, California;
Pacific Highway POE, Washington;
Pembina POE, North Dakota;
*Philadelphia International Airport, Pennsylvania;
*Phoenix (Sky Harbor) International Airport, Arizona;
Piegan POE, Montana;
*Pittsburgh International Airport, Pennsylvania;
*Point Roberts POE, Washington;
*Port Everglades Seaport, Florida;
Port Arthur POE, Texas;
*Port Huron POE, Michigan;
Portal POE, North Dakota;
*Portland International Airport, Oregon;
Progreso Bridge POE, Texas;
Raymond POE, Montana;
Roosville POE, Montana;
Rouses Point POE, New York;
San Antonio International Airport, Texas;
*San Diego (Lindbergh Field) International Airport, California;
San Diego Seaport, California;
San Francisco International Airport, California;
*San Juan International Airport and Seaport, Puerto Rico;
*Sanford International Airport, Florida;
*Sault St. Marie POE, Michigan;
Seattle Seaport, Washington;
Seaway International Bridge/Massena POE, New York;
Seattle Tacoma International Airport, Washington;
*St. Louis International Airport (Lambert Field), Missouri;
*St. Thomas Seaport, U.S. Virgin Islands;
Sweetgrass POE, Montana;
*Tampa International Airport and Seaport, Florida;

Thousand Islands POE, New York; Trout River POE, New York

Washington Dulles International Airport, Virginia; and

Ysleta POE, Texas.

[FR Doc. C3–4130 Filed 2–25–03; 8:45 am]
BILLING CODE 1505–01–D



Federal Register

Wednesday,
February 26, 2003

Part II

Department of Education

Experimental and Innovative Training and Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notices

DEPARTMENT OF EDUCATION

Experimental and Innovative Training

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces a priority under the Experimental and Innovative Training program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and in later years.

We intend for the grantee to develop and disseminate rehabilitation training curriculum modules that can be incorporated into rehabilitation training programs. The purpose of the curriculum modules is to increase student contact with individuals with disabilities and to enhance student understanding of disability culture and counselor skills that support the empowerment of vocational rehabilitation (VR) customers with disabilities.

EFFECTIVE DATE: This priority is effective March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Edward R. Smith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2649. *Telephone:* (202) 205–0136 or via Internet: *Edward.Smith@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The Experimental and Innovative Training program provides financial assistance—

(1) To develop new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of those new types of training programs for rehabilitation personnel in providing rehabilitation services to individuals with disabilities; and

(2) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services by State and other rehabilitation agencies.

This priority will increase the knowledge and skills of rehabilitation personnel in disability culture and customer empowerment.

We published a notice of proposed priority for this program in the **Federal Register** on October 4, 2002 (67 FR 62308). The notice of proposed priority included a discussion of the significant issues and analysis used in the determination of this priority.

There are no differences between the notice of proposed priority and this notice of final priority.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, six parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comment: One commenter recommended that applicants with experience in regional cooperative relationships with other agencies be given a preference when we award grants.

Discussion: We agree that experience in regional cooperation with other agencies is important, but we do not believe it should be required of all projects or be given greater emphasis than other models. The peer review process will determine the merits of each proposal.

Change: None.

Comment: One commenter recommended that the priority address people with disabilities from minority communities.

Discussion: Section 21(c) of the Rehabilitation Act of 1973, as amended, requires all projects funded under this priority to address the needs of ethnic and racial minorities with disabilities.

Change: None.

Comment: One commenter recommended that the priority allow for the training of both students and VR counselors.

Discussion: VR counselors as well as other students may enroll in rehabilitation training programs. This priority does not preclude the commenter's recommendation.

Change: None.

Comments: Two commenters recommended that the priority be amended to include the training of non-degree personnel and consumers with disabilities.

Discussion: The training of consumers is inconsistent with the statutory and regulatory authority of the Experimental and Innovative Training program. While this suggestion has merit for non-degree personnel, the focus of this priority is on the training of students who will become qualified rehabilitation counselors in the vocational rehabilitation system.

Change: None.

Comment: One commenter recommended that the curricula modules include an introduction to advocacy skills.

Discussion: This priority does not preclude the commenter's recommendation. The peer review process will determine the merits of such a proposal.

Change: None.

Comment: One commenter recommended that the priority require experiential activities that focus on the counseling needs of particular disability groups and specific areas within rehabilitation counseling, such as multicultural competency.

Discussion: While the comment has merit, we do not believe it should be required for all applicants. The peer review process will determine the merits of such a proposal.

Change: None.

Comment: One commenter recommended that applicants be restricted to entities that have demonstrated long-term successful collaborations with disability advocates and self-help groups.

Discussion: The program authority establishes eligible applicants for this program. We have no authority to further restrict applicant eligibility.

Change: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.** When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Curriculum Modules: Experiential Activities To Enhance Rehabilitation Empowerment

For the purposes of this priority, empowerment is defined as individuals having the information, education, training, confidence, and high expectations needed to make effective employment and life-related decisions.

This priority supports projects that provide experiential activities that increase the amount of personal contact and experience of VR students with individuals with disabilities in non-counseling settings. This priority is intended to support the design, piloting, evaluation, and dissemination of course modules to be incorporated into rehabilitation training program curricula that enhance student understanding of the culture of individuals with disabilities and of the behaviors that enhance empowerment from the perspective of individuals with disabilities.

Projects funded under this priority must incorporate experiential activities in which students interact directly with persons with disabilities in situations other than traditional and hierarchical student counselor to consumer relationships.

Projects must include an evaluation of the impact of the course module or modules and a dissemination plan to be carried out in the last year of the project period.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 385 and 387.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.263A Experimental and Innovative Training)

Program Authority: 29 U.S.C. 772.

Dated: February 20, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–4549 Filed 2–25–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.263A]

Experimental and Innovative Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The Experimental and Innovative Training program provides financial assistance for projects designed—

(1) To develop new types of training programs for rehabilitation personnel and demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to individuals with disabilities; and

(2) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services by State and other rehabilitation agencies.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under this program.

Applications Available: February 27, 2003.

Deadline for Transmittal of Applications: April 15, 2003.

Deadline for Intergovernmental Review: June 14, 2003.

Estimated Available Funds: The Administration has requested $42,629,000 for the Rehabilitation Training program for FY 2003, of which an estimated $400,000 would be allocated for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $75,000 to $100,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5" × 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet, Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 387.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this competition, we use the selection criteria in 34 CFR 385.31 and 387.30. The selection criteria to be used for this competition will be provided in the application package for this competition.

Priority: This competition focuses on projects designed to meet the priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet the priority.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Experimental and Innovative Training program, CFDA No. 84.263A, is one of the programs included in the pilot project. If you are an applicant under the Experimental and Innovative Training program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within 3 working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later late.
- Closing Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Experimental and Innovative Training program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of 1 business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336–8930.

You may access the electronic grant application for the Experimental and Innovative Training program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.263A.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Edward R. Smith, U.S. Department of Education, 400 Maryland Avenue, SW., (room 3318, Switzer Building), Washington, DC 20202–2649. Telephone: (202) 205–0136 or via Internet: *Edward.Smith@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 772.

Dated: February 20, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–4550 Filed 2–25–03; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Wednesday,
February 26, 2003

Part III

Environmental Protection Agency

Fifty-First Report of the TSCA Interagency Testing Committee to the Administrator, Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0075; FRL–7285–7]

Fifty-First Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its 51st ITC Report to the Administrator of the United States Environmental Protection Agency on November 26, 2002. In the 51st ITC Report, which is included in this notice, the ITC is adding 43 vanadium compounds to its *Priority Testing List* and removing 39 chemicals from the *Priority Testing List*.

The ITC is asking EPA to add 43 vanadium compounds to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule and rescinding its requests to add 2 chemicals to the TSCA section 8(a) PAIR rule and 36 chemicals to the TSCA section 8(d) Health and Safety Data Reporting rule.

The ITC continues to request voluntary information submissions directly from trade organizations, producers, and importers, while working to improve the utility of the Voluntary Information Submissions Innovative Online Network (VISION) and Voluntary Information Submissions Policy (VISP).

DATES: Comments, identified by docket ID number OPPT–2002–0075, must be received on or before March 28, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John D. Walker, ITC Executive Director (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7526; fax: (202) 564–7528; e-mail address: walker.johnd@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified under the North American Industrial Classification System (NAICS) codes 325 (Chemical Manufacturing) and 32411(Petroleum Refineries). Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0075. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2002–0075. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0075. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0075. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 260l *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) of TSCA requiring testing of chemicals and chemical mixtures in order to develop data relevant to determining the risks that such chemicals and chemical mixtures may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical mixtures to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

A. The 51th ITC Report

The 51th ITC Report was transmitted to the EPA's Administrator on November 26, 2002, and is included in this notice. In the 51st ITC Report, the ITC:

1. Adds 43 vanadium compounds to its *Priority Testing List* and removes

thiophenol, 7 alkylphenols and alkylphenol ethoxylates, 3 Degradation Effects Bioconcentration Information Testing Strategies (DEBITS) chemicals, and 28 indium chemicals from the *Priority Testing List*.

2. Asks EPA to add 43 vanadium compounds to the TSCA section 8(a) PAIR rule and rescinds its request to add 3H-pyrazol-3-one, 5-((2-chloro-5-nitrophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)- (CAS No. 30707–68–7) and phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis- (CAS No. 1478–61–1) to the TSCA section 8(a) PAIR rule.

3. Rescinds its request to EPA to add 8 nonylphenol polyethoxylate degradation products and 28 indium compounds to the TSCA section 8(d) Health and Safety Data Reporting rule.

4. Continues to request voluntary information submissions directly from trade organizations, producers, and importers, while working to improve the utility of VISION and VISP.

B. Status of the Priority Testing List

The current TSCA 4(e) *Priority Testing List* as of November 2002 can be found in Table 1 of the 51st ITC Report, which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: February 19, 2003.

Wardner G. Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Fifty-First Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

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Summary

In this 51st Report, the ITC is adding 43 vanadium compounds to the *Priority Testing List*. The ITC is removing thiophenol, 7 alkylphenols and alkylphenol ethoxylates, 3 Degradation Effects Bioconcentration Information Testing Strategies (DEBITS) chemicals, and 28 indium chemicals from the *Priority Testing List*.

The ITC is asking the United States Environmental Protection Agency (USEPA) to add 43 vanadium compounds to the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Reporting (PAIR) rule and rescinding its request to add 3H-pyrazol-3-one, 5-((2-chloro-5-nitrophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)- (CAS No. 30707–68–7) and phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis- (CAS No. 1478–61–1) to the TSCA section 8(a) PAIR rule. The ITC is rescinding its request to USEPA to add 8 nonylphenol polyethoxylate degradation products, and 28 indium compounds to the TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rule.

The ITC will continue to request voluntary information submissions directly from trade organizations, producers, and importers, while working to improve the utility of the Voluntary Information Submissions Innovative Online Network (VISION) and Voluntary Information Submissions Policy (VISP).

The revised TSCA section 4(e) *Priority Testing List* follows as Table 1.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (NOVEMBER 2002)

ITC Report	Date	Chemical name/Group	Action
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	2 Alkylphenols	Recommended
41	November 1997	1 Alkylphenol	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole	Recommended
42	May 1998	Glycoluril	Recommended
47	November 2000	9 Indium compounds	Recommended
48	May 2001	Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-	Recommended

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (NOVEMBER 2002)—Continued

ITC Report	Date	Chemical name/Group	Action
49	November 2001	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	Recommended
50	May 2002	Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-	Recommended
50	May 2002	1-Triazene, 1,3-diphenyl-	Recommended
51	November 2002	43 Vanadium compounds	Recommended

I. Background

The ITC was established by section 4(e) of TSCA "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions" (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). Since its creation in 1976, the ITC has submitted 50 semi-annual (May and November) Reports to the USEPA Administrator transmitting the *Priority Testing List* and its revisions. ITC Reports are available from the ITC's web site (http://www.epa.gov/opptintr/itc) within a few days of submission to the Administrator and from http://www.epa.gov/fedrgstr after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC Staff and ITC Members and their U.S. Government organizations and contract support provided by USEPA. ITC Members and Staff are listed at the end of this report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's Report (and the revised *Priority Testing List*) by the USEPA Administrator, the USEPA's Office of Pollution Prevention and Toxics (OPPT) appends the chemicals added to the *Priority Testing List* to TSCA section 8(a) PAIR and TSCA section 8(d) HaSDR rules. The PAIR rule requires producers and importers of Chemical Abstract Service (CAS)-numbered chemicals added to the *Priority Testing List* to submit production and exposure reports (http://www.epa.gov/opptintr/chemtest/pairform.pdf). The HaSDR rule requires producers, importers, and processors of all chemicals (including those with no CAS numbers) added to the *Priority Testing List* to submit unpublished health and safety studies under TSCA section 8(d) that must be in compliance with the revised HaSDR rule (Ref. 1). All submissions must be received by USEPA within 90 days of the reporting rules **Federal Register** publication date. The reporting rules are automatically promulgated by OPPT unless otherwise requested by the ITC.

B. ITC's Use of TSCA Section 8 and Other Information

The ITC reviews the TSCA section 8(a) PAIR rule reports, TSCA section 8(d) HaSDR rule studies, and other information that becomes available after the ITC adds chemicals to the *Priority Testing List*. Other information includes TSCA section 4(a) and 4(d) studies, TSCA section 8(c) submissions, TSCA section 8(e) "substantial risk" notices, "For Your Information" (FYI) submissions, unpublished data submitted to and from U.S. Government organizations represented on the ITC, published papers, as well as use, exposure, effects, and persistence data that are voluntarily submitted to the ITC by manufacturers, importers, processors, and users of chemicals recommended by the ITC. The ITC reviews this information and determines if data needs should be revised, if chemicals should be removed from the *Priority Testing List* or if recommendations should be changed to designations. To avoid duplicate reporting, the ITC carefully coordinates its information solicitations and reporting requirements with other national and international testing programs, e.g., the National Toxicology Program (NTP) (http://ntp-server.niehs.nih.gov/), the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) Program (http://www.oecd.org), and the USEPA's High Production Volume (HPV) Challenge Program (http://www.epa.gov/opptintr/chemrtk/volchall.htm).

C. Previous and New Requests to Add Chemicals to TSCA Section 8(a) PAIR Rules

The ITC has requested in previous reports that USEPA add the following chemicals to the TSCA section 8(a) PAIR rules: Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- (CAS No. 29091–20–1) (48th Report, Ref. 2); stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7) (49th Report, Ref. 3); and benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl- (CAS No.136–35–6) (50th Report, Ref. 4).

The ITC requests that USEPA add the 43 vanadium compounds described in this 51st Report to the TSCA section 8(a) PAIR rule.

D. Rescinding Requests to Add Chemicals to TSCA Section 8(a) PAIR Rules

The ITC is rescinding its 48th Report (Ref. 2) request to add 3H-pyrazol-3-one, 5-[(2-chloro-5-nitrophenyl)amino]-2,4-dihydro-2-(2,4,6-trichlorophenyl)- (CAS No. 30707–68–7) to the TSCA section 8(a) PAIR rule because of decreasing production volume trends from 1990 to the present. The ITC is also rescinding its 48th Report (Ref. 2) request to add phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis- (CAS No. 1478–61–1) to the TSCA section 8(a) PAIR rule because the ITC has learned that the predicted bioconcentration factor (BCF) of 500 is below the BCF threshold currently considered for action by USEPA under its Persistent, Bioaccumulative and Toxic (PBT) Chemical Program (http://www.epa.gov/opptintr/pbt).

E. Previous Requests to Add Chemicals to TSCA Section 8(d) HaSDR Rules

The ITC has requested in previous reports to the USEPA Adminstrator that the following chemicals be added to TSCA section 8(d) HaSDR rules: 3H-1,2,4-triazole-3-thione, 5-amino-1,2-dihydro- (3-amino-5-mercapto-1,2,4-triazole) (CAS No. 16691–43–3) and imidazo[4,5-d]imidazole-2,5(1H,3H)-dione, tetrahydro- (glycoluril) (CAS No.

496–46–8) (42nd Report, Ref. 5); 9 indium compounds (47th Report, Ref. 6); benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4- (trifluoromethyl)- (CAS No. 29091–20–1) (48th Report, Ref. 2); stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7) (49th Report, Ref. 3); and benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl- (CAS No.136–35–6) (50th Report, Ref. 4). At this time, the ITC is requesting that USEPA not add vanadium compounds to the TSCA section 8(d) HaSDR rule to allow producers and importers of vanadium compounds an opportunity to voluntarily provide the information requested in section IV.A.3. of this report.

For 3H-1,2,4-triazole-3-thione, 5-amino-1,2-dihydro- (3-amino-5-mercapto-1,2,4-triazole) and imidazo[4,5-d]imidazole-2,5-(1H,3H)-dione, tetrahydro- (glycoluril), the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of pharmacokinetics, subchronic toxicity, immunotoxicity, genotoxicity, carcinogenicity, reproductive effects and developmental toxicity, and ecological effects studies. Only studies for which 3-amino-5-mercapto-1,2,4-triazole or glycoluril is ≥ 90% of the test substance by weight should be submitted.

For the 9 indium compounds remaining on the *Priority Testing List*, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of pharmacokinetics, genotoxicity, subchronic and chronic toxicity, and reproductive effects and developmental toxicity studies. Only studies where indium compounds are ≥ 90% of the test substance by weight should be submitted.

For benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of biodegradation, bioconcentration, pharmacokinetics, subchronic toxicity, mutagenicity, reproductive effects and developmental toxicity, carcinogenicity, and ecological effects studies. Only studies where benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- is ≥ 90% of the test substance by weight should be submitted.

For stannane, dimethylbis[(1-oxoneodecyl)oxy]-, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of hydrolysis, biodegradation, bioconcentration, pharmacokinetics, subchronic toxicity, mutagenicity, neurotoxicity, reproductive effects and developmental toxicity, carcinogenicity, and ecological effects studies. Only studies where stannane, dimethylbis[(1-oxoneodecyl)oxy]- is ≥ 90% of the test substance by weight should be submitted.

For benzene, 1,3,5-tribromo-2-(2-propenyloxy)-, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of biodegradation, bioconcentration, pharmacokinetics, subchronic toxicity, neurotoxicity, reproductive effects and developmental toxicity, carcinogenicity, and ecological effects studies. Only studies where benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is ≥ 90% of the test substance by weight should be submitted.

For 1-triazene, 1,3-diphenyl-, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of pharmacokinetics, genotoxicity, subchronic and chronic toxicity, reproductive effects and developmental toxicity studies. Only studies where 1-triazene, 1,3-diphenyl- is ≥ 90% of the test substance by weight should be submitted.

F. Rescinding Requests to Add Chemicals to TSCA Section 8(d) HaSDR Rules

The ITC is rescinding its request to USEPA to add 8 nonylphenol polyethoxylate degradation products and 28 indium compounds to the TSCA section 8(d) HaSDR rule. The request to add 8 nonylphenol polyethoxylate degradation products to the TSCA section 8(d) HaSDR rule is being rescinded because the ITC learned that they are not commercially produced (Table 2 of this unit). Data on the 8 nonylphenol polyethoxylate degradation products were summarized in the 46th Report (Ref. 7). The ITC is rescinding its request to add 28 indium compounds to the TSCA section 8(d) HaSDR rule because no PAIR reports were submitted for these chemicals in response to the July 26, 2001, PAIR rule (1,000 pound reporting threshold) (Ref. 8). Data on the indium compounds were summarized in the 47th Report (Ref. 6).

TABLE 2.—NONYLPHENOL POLYETHOXYLATE (NPE) DEGRADATION PRODUCTS BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Nonylphenol polyethoxylate degradation product
104–35–8	4-nonylphenol ethoxylate (NP1EO)
20427–84–3	4-nonylphenol diethoxylate (NP2EO)
51437–95–7	4-nonylphenol triethoxylate (NP3EO)
7311–27–5	4-nonylphenol tetraethoxylate (NP4EO)
3115–49–9	4-nonylphenoxy acetic acid (NP1EC)
106807–78–7	4-nonylphenoxy ethoxy acetic acid (NP2EC)
108149–59–3	4-nonylphenoxy diethoxy acetic acid (NP3EC)
184007–22–5	4-nonylphenoxy triethoxy acetic acid (NP4EC)

III. ITC's Activities During this Reporting Period (May to November 2002)

A. Voluntary Information Submissions

To promote more efficient use of information submission resources, the ITC developed the VISP and the VISION. The VISP is described in the ITC's 41st Report (Ref. 9), while the VISION is described in the ITC's 42nd Report (Ref. 5). The ITC developed the VISP and VISION as tools to provide a more cost-effective method for chemical producers, importers, processors, and users of ITC-recommended chemicals to provide voluntary information. Except for a few industries, the ITC received voluntary information submissions through the VISION on < 15% of the chemicals for which voluntary information was solicited. The ITC has not yet determined the reasons for the apparent low utilization of the VISION. In its 50th Report (Ref. 4), the ITC requested comments on procedures that could be implemented to make the VISION or other procedures for submitting voluntary information more effective.

The American Chemistry Council (ACC) provided an explanation of the chemical industry's limited participation in the VISION (Ref. 10). The ACC expressed concerns about the need to protect Confidential Business Information (CBI), the problems associated with soliciting voluntary submissions on non-HPV chemicals, the potential non-existence of specific data being requested by the ITC, and the resources required to submit studies in portable document format (PDF).

To supplement the efforts to obtain studies in PDF through the VISION, the ITC Staff has been contacting the producers and importers of ITC-recommended chemicals to obtain voluntary information submissions. These efforts were highly successful for the chemicals identified through DEBITS. The ITC Staff will continue to contact the producers and importers of ITC-recommended chemicals to obtain voluntary information submissions as it continues its efforts to improve the utility of the VISP and VISION.

During this reporting period, the ITC acknowledges the voluntary information submissions from the following organizations: 3M Corporation; Albemarle Corporation; Amfine Chemical Corporation; Alkylphenol & Ethoxylates Research Council; Akzo Nobel Chemicals, Inc.; BASF Corporation; Bayer Corporation; Biddle Sawyer Corporation; Canon USA, Inc.; Ciba Specialty Chemicals Corporation; Cognis Corporation; Crompton Corporation; E.I. duPont de Nemours and Company; Eastman Chemical Company; ExxonMobil Corporation; Great Lakes Chemical Company; Hercules, Inc.; Lonza, Inc.; Lubrizol Corporation; Magruder Color Company; Noveon, Inc.; Schenectady International, Inc.; Society of Plastics Industry; and Strucktol Company.

Following the transmittal of this 51st Report to the USEPA Administrator, the ITC Staff will contact the producers and importers of the 9 indium compounds remaining on the *Priority Testing List* to obtain the following information to adequately access the extent and degree of exposure and potential hazard associated with indium compounds:

1. Recent non-CBI estimates of annual production or importation volume trends.

2. Use information, including percentages of production or importation that are associated with different uses.

3. Estimates of the number of workers and concentrations of indium compounds to which workers may be exposed during manufacture or processing including smelting processes, leaching processes, recovery of scrap material, deposition of film coatings, soldering, and production of electrical components including, but not limited to semiconductors.

B. DEBITS

In its 45th through 50th Reports (Refs. 2–4, 6, 7, and 11), the ITC described its strategies to screen and evaluate chemicals with persistence and bioconcentration potential. These activities are referred to as DEBITS. DEBITS provides a means to prioritize chemicals for information reporting and testing based on degradation and bioconcentration potential and availability of effects data. For DEBITS 1, the ITC used criteria to screen 12,685 chemicals and ultimately review 458, the disposition of which was described in the 45th through 50th Reports (Refs. 2–4, 6, 7, and 11). As a result of implementing DEBITS 1, the *Priority Testing List* contains three chemicals with persistence and bioconcentration potential that the USEPA may consider for its PBT Program: Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-; stannane, dimethylbis[(1-oxoneodecyl)oxy]-; and benzene, 1,3,5-tribromo-2-(2-propenyloxy)-.

DEBITS 2 started with 8,511 chemicals with production volumes > 10,000 lbs reported to USEPA in response to the 1998 Inventory Update Rule (IUR). From these 8,511 chemicals, 30 non-HPV chemicals were identified that had 1998 production volumes > 50,000 lbs, predicted biodegradation half-lives > 2 months and predicted bioconcentration factors > 1,000. The ITC contacted manufacturers and importers of these 30 DEBITS 2 chemicals to solicit voluntary information on production and uses, and unpublished toxicity data. The ITC received production and use information for 22 DEBITS 2 chemicals and unpublished toxicity studies for 13 DEBITS 2 chemicals. After reviewing this and other available information the ITC deferred the 30 DEBITS 2 chemicals for information reporting rules. A brief rationale for deferring each DEBITS 2 chemical is given in Table 3 of this unit.

TABLE 3.—RATIONALES FOR DEFERRING 30 DEBITS 2 CHEMICALS

CAS No.	Chemical name	Rationale
118–74–1	Benzene, hexachloro-	Not domestically produced or imported
128–69–8	Perylo[3,4-cd:9,10-c'd']dipyran-1,3,8,10-tetrone	Potential low bioavailability
133–14–2	Peroxide, bis(2,4-dichlorobenzoyl)	Low exposure potential from use
423–50–7	1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-	Perfluorinated chemical referred to USEPA
509–34–2	Spiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-one, 3',6'-bis(diethylamino)-	Not domestically produced or imported

TABLE 3.—RATIONALES FOR DEFERRING 30 DEBITS 2 CHEMICALS—Continued

CAS No.	Chemical name	Rationale
678–39–7	1-Decanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluoro-	Perfluorinated chemical referred to USEPA
3006–86–8	Peroxide, cyclohexylidenebis[(1,1-dimethylethyl)	Low exposure potential from use
3864–99–1	Phenol, 2-(5-chloro-2H-benzotriazol-2-yl)-4,6-bis(1,1-dimethylethyl)-	Adequate toxicity studies available
4051–63–2	[1,1'-Bianthracene]-9,9',10,10'-tetrone, 4,4'-diamino-	Potential low bioavailability
4162–45–2	Ethanol, 2,2'-[(1-methylethylidene)bis[(2,6-dibromo-4,1-phenylene)oxy]]bis-	Not domestically produced or imported
13417–01–1	1-Octanesulfonamide, N-[3-(dimethylamino)propyl]-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-	Perfluorinated chemical referred to USEPA
15667–10–4	Peroxide, cyclohexylidenebis[(1,1-dimethylpropyl)	Low exposure potential from use
16090–14–5	Ethanesulfonyl fluoride, 2-[1-[difluoro[(trifluoroethenyl)oxy]methyl]-1,2,2,2-tetrafluoroethoxy]-1,1,2,2-tetrafluoro-	Perfluorinated chemical referred to USEPA
25637–99–4	Cyclododecane, hexabromo- (HBCD)	Included in OECD Risk Assessment of brominated flame retardants and specific isomer of HBCD previously designated in ITC's 25th Report (Ref. 12)
29512–49–0	Spiro[isobenzofuran-1(3H),9'-[9H]xanthen]-3-one, 6'-(diethylamino)-3'-methyl-2'-(phenylamino)-	Not domestically produced or imported
31148–95–5	1-Phenanthrenecarbonitrile, 1,2,3,4,4a,9,10,10a-octahydro-1,4a-dimethyl-7-(1-methylethyl)-, (1R,4aS,10aR)-	Low exposure potential from use
40567–16–6	Butanoyl chloride, 2-[2,4-bis(1,1-dimethylpropyl)phenoxy]-	Low exposure potential from use
41556–26–7	Decanedioic acid, bis(1,2,2,6,6-pentamethyl-4-piperidinyl) ester	Low measured BCF
50598–28–2	1-Hexanesulfonamide, N-[3-(dimethylamino)propyl]-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-	Perfluorinated chemical referred to USEPA
51461–11–1	Butanamide, N-(3-amino-4-chlorophenyl)-4-[2,4-bis(1,1-dimethylpropyl)phenoxy]-	Not domestically produced or imported
51772–35–1	1-Naphthalenamine, N-[(1,1,3,3-tetramethylbutyl)phenyl]-	Low exposure potential from use
58798–47–3	3H-Indolium, 2-[[(4-methoxyphenyl)methylhydrazono]methyl]-1,3,3-trimethyl-, acetate	Not domestically produced or imported
64022–61–3	1,2,3,4-Butanetetracarboxylic acid, tetrakis(2,2,6,6-tetramethyl-4-piperidinyl) ester	Low exposure potential from use
67584–57–0	2-Propenoic acid, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl ester	Perfluorinated chemical referred to USEPA
68259–36–9	1-Naphthalenamine, N-phenyl-ar-(1,1,3,3-tetramethylbutyl)-	Low measured BCF
68555–73–7	1-Heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-	Perfluorinated chemical referred to USEPA
68555–76–0	1-Heptanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-N-methyl-	Perfluorinated chemical referred to USEPA
72869–85–3	Chromate(1-), bis[3,5-bis(1,1-dimethylethyl)-2-(hydroxy-.kappa.O)benzoato(2-)-.kappa.O]-, hydrogen, (T-4)-	Low exposure potential from use

TABLE 3.—RATIONALES FOR DEFERRING 30 DEBITS 2 CHEMICALS—Continued

CAS No.	Chemical name	Rationale
75627–12–2	Xanthylium, 3,6-bis(ethylamino)-9-[2-(methoxycarbonyl)phenyl]-2,7-dimethyl-, molybdatesilicate	Potential low bioavailability
106246–33–7	Benzenamine, 4,4'-methylenebis[3-chloro-2,6-diethyl-	Low exposure potential from use

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Added to the Priority Testing List: Vanadium Compounds

1. *Recommendation.* Forty-three vanadium compounds are being added to the *Priority Testing List* to obtain importation, production, use, exposure, and health effects information to meet U.S. Government data needs (Table 4 of this unit). These compounds were identified by searching reference sources and chemical databases maintained by agencies in the United States and Canada. The ITC believes the list of vanadium compounds in Table 4 of this unit includes those most likely to be in current use. Toxicological effects of vanadium compounds were recently summarized by the International Program on Chemical Safety under the auspices of the World Health Organization (WHO) (Ref. 13).

TABLE 4.—VANADIUM COMPOUNDS BEING ADDED TO THE PRIORITY TESTING LIST

CAS No.	Vanadium compounds
1314–34–7	Vanadium oxide (V2O3) [Vanadium trioxide]
1314–62–1	Vanadium oxide (V2O5) [Vanadium pentoxide]
1686–22–2	Vanadium, triethoxyoxo-, (T-4)- [Triethyl orthovanadate]
3153–26–2	Vanadium, oxobis (2,4-pentanedionato-.kappa.O,.kappa.O')-, (SP-5-21)-
5588–84–1	Vanadium, oxotris(2-propanolato)-, (T-4)- [Vanadium triisopropoxide oxide]
7440–62–2	Vanadium
7632–51–1	Vanadium chloride (VCl4), (T-4)- [Vanadium tetrachloride]
7718–98–1	Vanadium chloride (VCl3) [Vanadium trichloride]
7727–18–6	Vanadium, trichlorooxo-, (T-4)- [Vanadium oxytrichloride]
7803–55–6	Vanadate (VO31-), ammonium [Ammonium metavanadate]
10049–16–8	Vanadium fluoride (VF4) [Vanadium tetrafluoride]
10213–09–9	Vanadium, dichlorooxo- [Vanadyl dichloride]
10580–52–6	Vanadium chloride (VCl2) [Vanadium dichloride]
11099–11–9	Vanadium oxide [Polyvanadic acid]
11115–67–6	Ammonium vanadium oxide
11130–21–5	Vanadium carbide
12007–37–3	Vanadium boride (VB2)
12035–98–2	Vanadium oxide (VO)
12036–21–4	Vanadium oxide (VO2)
12070–10–9	Vanadium carbide (VC)
12083–48–6	Vanadium, dichlorobis (.eta.5-2,4-cyclopentadien-1-yl)-
12166–27–7	Vanadium sulfide (VS)
12439–96–2	Vanadium, oxo[sulfato(2-)-kappa.O]-, pentahydrate [Vanadyl sulfate (VOSO4), pentahydrate]
12604–58–9	Vanadium alloy, base, V,C,Fe (Ferrovanadium)
13470–26–3	Vanadium bromide (VBr3)
13476–99–8	Vanadium, tris(2,4-pentanedionato-.kappa.O,.kappa.O')-, (OC-6-11)- [Vanadium tris(acetylacetonate)]

TABLE 4.—VANADIUM COMPOUNDS BEING ADDED TO THE PRIORITY TESTING LIST—Continued

CAS No.	Vanadium compounds
13497–94–4	Silver vanadium oxide (AgVO3)
13517–26–5	Sodium vanadium oxide (Na4V2O7) [Sodium pyrovanadate]
13718–26–8	Vanadate (VO31-), sodium [Sodium metavanadate]
13721–39–6	Sodium vanadium oxide (Na3VO4) [Sodium orthovanadate]
13769–43–2	Vanadate (VO31-), potassium [Potassium metavanadate]
13930–88–6	Vanadium, oxo[29H,31H-phthalocyaninato(2-)-.kappa.N29,.kappa.N30,.kappa.N31,.kappa.N32]-, (SP-5-12)-
14059–33–7	Bismuth vanadium oxide (BiVO4)
19120–62–8	Vanadium, tris(2-methyl-1-propanolato)oxo-, (T-4)- [Isobutyl orthovanadate]
24646–85–3	Vanadium nitride (VN)
27774–13–6	Vanadium, oxo[sulfato(2-)-.kappa.O]- [Vanadyl sulfate]
30486–37–4	Vanadium hydroxide oxide (V(OH)2O)
39455–80–6	Ammonium sodium vanadium oxide
53801–77–7	Bismuth vanadium oxide
65232–89–5	Vanadium hydroxide oxide phosphate
68130–18–7	Vanadium hydroxide oxide phosphate (V6(OH)3O3(PO4)7)
68815–09–8	Naphthenic acids, vanadium salts
68990–29–4	Balsams, copaiba, sulfurized, vanadium salts

2. *Rationale for recommendation.* Long-term inhalation exposure to vanadium pentoxide increased the incidence of lung tumors in male and female mice. As a result, vanadium pentoxide and other vanadium compounds may be potentially carcinogenic to humans. Existing occupational exposure limits for vanadium dusts were primarily developed to protect workers from irritation and acute pulmonary effects and may not be sufficiently protective against an increased risk of lung cancer.

3. *Information needs.* The ITC needs:

i. Recent non-CBI estimates of annual production or importation volume data and trends, and use information, including percentages of production or importation that are associated with different uses.

ii. Estimates of the number of humans and concentrations of vanadium chemicals to which humans may be exposed in each relevant manufacturing or processing scenario.

iii. Health effects data including pharmacokinetics, genotoxicity, subchronic toxicity, reproductive and developmental toxicity, and any human data from occupationally exposed workers. The ITC seeks this information in order to adequately assess the extent and degree of exposure and potential hazard associated with the various forms of vanadium.

4. *Supporting information.* Vanadium is widely distributed in low amounts as a constituent of mineral ores and crude petroleum deposits. The U.S. consumption of vanadium compounds was reported to be 3,210 metric tons in 2001 (Ref. 14). The majority of vanadium was utilized as an alloying agent in the steel industry or in the production of ferrovanadium and other metal alloys. A smaller portion of vanadium was used as industrial catalysts and in the production of pesticides, dyes, inks, and pigments. More recent applications of vanadium compounds are thought to include manufacture of semiconductors, vanadate glasses, and electro-optical switches. There were over 5,000 potentially exposed workers reported in the National Occupational Exposure Survey conducted between 1980 and 1983. Vanadium exposure has been found in over 300 personal air samples reported in OSHA's Integrated Management Information System since 1995. Worker exposures are known to occur during manufacture and handling of vanadium containing materials, such as welding operations or during cleaning of oil-fired furnaces and boilers. General population exposure to vanadium most likely occurs through ingestion of food-bearing soil residue and inhaled air in areas with high levels of residual fuel oil consumption (Ref. 15).

For vanadium pentoxide and most vanadium dusts and fumes, NIOSH's Recommended Exposure Limit (REL) is a ceiling value of 0.05 milligram/meter cubed (mg/m^3). The American Council of Government Industrial Hygienists (ACGIH) threshold limit value (TLV) for vanadium pentoxide is 0.05 mg/m^3 as an 8–hour time weighted average. OSHA's Permissible Exposure Limit (PEL) is a 0.1 mg/m^3 ceiling for vanadium pentoxide fumes and a 0.5 mg/m^3 ceiling for respirable dust. These occupational exposure limits were developed to protect against respiratory tract irritation and acute pulmonary effects and may not be adequate against an increased risk of lung cancer.

In a 2-year inhalation study, NTP found clear evidence of carcinogenic activity of vanadium pentoxide (CAS No. 1314–62–1) in male and female B6C3F1 mice (http://ntp-server.niehs.nih.gov/htdocs/LT-studies/tr507.html). The incidence of benign and malignant neoplasms was increased in the lungs of the experimental animals at doses of 1, 2, and 4 mg/m^3. There was also some lesser evidence of increased lung tumor incidence in male and female rats at similar exposure levels. Exposures to vanadium pentoxide caused a spectrum of nonneoplastic lesions in the respiratory tracts of rats and mice, including epithelial hyperplasia, inflammation and fibrosis. The NTP report raises concerns for other vanadium chemicals and their potential health effects.

B. Chemicals Removed From the Priority Testing List

1. *Thiophenol.* Thiophenol (CAS No. 108–98–5) was designated in the ITC's 28th Report (Ref. 16) because there was a low confidence in the Reference Dose (RfD) and no Reference Concentration (RfC). The USEPA's RfC/RfD Workgroup requested that the ITC review health effects data for thiophenol and recommend health effects testing that would increase the confidence in the RfD and provide a RfC. Since thiophenol was designated, the ITC has learned that it is not currently produced in the United States, that the NTP has conducted developmental toxicity (Refs. 17 and 18) and reproductive effects (Ref. 19) studies, and that Japan is developing a SIDS dossier. Thiophenol is being removed from the *Priority Testing List* because it is no longer produced and the ITC anticipates the SIDS dossier will address the testing data needs recommended by the ITC.

2. *Seven alkylphenols and alkylphenol ethoxylates.* The ITC is continuing to review data on the alkylphenols and alkylphenol ethoxylates that were recommended in ITC Reports 37 (Ref. 20), 39 (Ref. 21), and 41 (Ref. 9). For these chemicals the ITC has reviewed the PAIR reports submitted by producers and voluntary information provided by the Alkylphenol & Ethoxylates Research Council (APERC). At this time the ITC is removing from the *Priority Testing List* 4 alkylphenols from the 37th Report (Ref. 20) 1 nonylphenol ethoxylate from the 39th Report (Ref. 21) and 2 alkylphenols from the 41st Report (Ref. 9) (Table 5 of this unit).

TABLE 5.—ALKYLPHENOLS AND ALKYLPHENOL ETHOXYLATES BEING REMOVED FROM THE PRIORITY TESTING LIST

ITC Report	CAS No.	Chemical name	Rationale for removal.
37	80–46–6	Phenol, 4-(1,1-dimethylpropyl)-	Sponsored in HPV Challenge Program
37	88–18–6	Phenol, 2-(1,1-dimethylethyl)-	Sponsored in HPV Challenge Program
37	1806–26–4	Phenol, 4-octyl-	No longer used by APERC Members
37	25154–52–3	Phenol, nonyl-	Not commercially available
39	27986–36–3	Ethanol, 2-(nonylphenoxy)-	[1]
41	1987–50–4	Phenol, 4-heptyl-	[2]
41	72624–02–3	Phenol, heptyl derivs.	Sponsored in HPV Challenge Program

[1] Ethanol, 2-(nonylphenoxy)- (CAS No. 27986–36–3) is likely to be degraded in the environment to branched 4-nonylphenol (CAS No. 84852–15–3); data developed from testing branched 4-nonylphenol (CAS No. 84852–15–3) in response to the HPV Challenge Program may be used to predict toxicity of 2-(nonylphenoxy)ethanol.

[2] The ITC learned that there is only a single product being sold and purchased as heptylphenol (phenol, heptyl derivs., CAS No. 72624–02–3). CAS No. 1987–50–4 for Phenol, 4-heptyl- denotes a linear structure of the C7 chain and was previously used and reported on the IUR though it is not the most appropriate CAS number for the commercial heptylphenol product.

There are 2 alkylphenols from the 37th Report (Ref. 20) and 1 alkylphenol from the 41st Report (Ref. 9) remaining on the *Priority Testing List* (Table 6 of this unit).

TABLE 6.—ALKYLPHENOLS REMAINING ON THE PRIORITY TESTING LIST

ITC Report	CAS No.	Chemical name
37	98–54–4	Phenol, 4-(1,1-dimethylethyl)-
37	84852–15–3	Phenol, 4-nonyl-, branched
41	140–66–9	Phenol, 4-(1,1,3,3-tetramethylbutyl)-

For phenol, 4-(1,1-dimethylethyl)- (CAS No. 98–54–4), the ITC anticipates reviewing the SIDS dossier and the ongoing reproductive effects study. For phenol, 4-(1,1,3,3-tetramethylbutyl)- (CAS No. 140–66–9) and phenol, 4-nonyl-, branched (CAS No. 84852–15–3), the ITC anticipates receiving amphibian toxicity data, avian reproductive effects data, and fish reproductive effects data.

3. *DEBITS 1 chemical.* 3H-Pyrazol-3-one, 5-[(2-chloro-5- nitrophenyl)amino)-2,4-dihydro-2-(2,4,6-trichlorophenyl)- is being removed from the *Priority Testing List* because of decreasing production volume trends from 1990 to the present. Phenol, 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis- is being removed from the *Priority Testing List* because the ITC has learned that the predicted BCF of approximately 500 is not sufficient to be considered by USEPA's PBT Program. Pentachlorothiophenol (CAS No. 133–49–3) is being removed from the *Priority Testing List* because of low exposure potential from current use.

4. *Indium compounds.* Twenty-eight indium compounds are being removed from the *Priority Testing List* because no production or importation data were submitted to USEPA in response to the July 26, 2001, PAIR rule (Ref. 8) (Table 7 of this unit).

TABLE 7.—INDIUM COMPOUNDS BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Chemical name
923–34–2	Indium, triethyl-
1303–11–3	Indium arsenide (InAs)
1312–41–0	Antimony, compd. with indium (1:1)
1312–45–4	Indium telluride (In2Te3)
4194–69–8	1,2,3-Propanetricarboxylic acid, 2-hydroxy-, indium(3+) salt
7783–52–0	Indium fluoride (InF3)
12018–95–0	Copper indium selenide (CuInSe2)
12030–14–7	Indium sulfide (InS)
12030–24–9	Indium sulfide (In2S3)
12056–07–4	Indium selenide (In2Se3)
12672–70–7	Indium chloride
12672–71–8	Indium oxide
13510–35–5	Indium iodide (InI3)
13770–61–1	Nitric acid, indium(3+) salt
13966–94–4	Indium iodide (InI)
14166–78–0	Indium fluoride (InF3), trihydrate
14280–53–6	Indium bromide (InBr)
14405–45–9	Indium, tris(2,4-pentanedionato-.kappa.O,.kappa.O')-, (OC-6-11)-
25617–98–5	Indium nitride (InN)
55326–87–9	Indium hydroxide
71243–84–0	Indium tin oxide (In1.69Sn0.15O2.85)
13465–09–3	Indium bromide (InBr3)
13465–10–6	Indium chloride (InCl)
13709–93–8	Boric acid (H3BO3), indium(3+) salt (1:1)
27765–48–6	Borate(1-), tetrafluoro-, indium(3+) (3:1)
66027–94–9	Indium, hydroxybis(trifluoroacetato-.kappa.O)-
67816–06–2	Hexanoic acid, 2-ethyl-, indium(3+) salt
68310–35–0	Neodecanoic acid, indium(3+) salt

With these actions, there are nine indium compounds remaining on the *Priority Testing List* (Table 8 of this unit). Indium phosphide remains on the *Priority Testing List* due to carcinogenicity concerns based on experimental animal studies (Ref. 22). The other eight indium compounds remain on the *Priority Testing List* because PAIR reports were submitted for these chemicals and the ITC needs health effects data (see section II.E. of this report).

TABLE 8.—INDIUM COMPOUNDS REMAINING ON THE PRIORITY TESTING LIST

CAS No.	Chemical name
1312–43–2	Indium oxide (In2O3)

TABLE 8.—INDIUM COMPOUNDS REMAINING ON THE PRIORITY TESTING LIST—Continued

CAS No.	Chemical name
7440–74–6	Indium
10025–82–8	Indium chloride (InCl3)
13464–82–9	Sulfuric acid, indium(3+) salt (3:2)
20661–21–6	Indium hydroxide (In(OH)3)
25114–58–3	Acetic acid, indium(3+) salt
22398–80–7	Indium phosphide (InP)
17906–67–7	Indium tin oxide
66027–93–8	Sulfamic acid, indium(3+) salt

V. References

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VI. TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
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ITC Staff
John D. Walker, Director
Norma S. L. Williams, Executive Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7527; fax number: (202) 564–7528; e-mail address: williams.norma@epa.gov; url: http://www.epa.gov/opptintr/itc.

[FR Doc. 03–4522 Filed 2–25–03; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1738

Rural Broadband Access Loans and Loan Guarantees

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule; technical correction.

SUMMARY: The Rural Utilities Service (RUS) published in the **Federal Register** on Thursday, January 30, 2003, at 68 FR 4684, a rule amending its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantee Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101–171) (2002 Act). Section 6103 of the Farm Security and Rural Investment Act of 2002 amended the Rural Electrification Act of 1936, as amended (RE Act), to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. This document makes a technical correction to the final rule.

DATES: Effective January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250–1590. Telephone number (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–2199, published on January 30, 2003, at 68 FR 4684, make the following correction:

§ 1738.10 [Corrected]

1. On page 4688, in column one, in the fourth line of § 1738.10(b), in the fourth line, remove "telecommunications loan made under", and add, "telecommunications loan made or guaranteed under" in its place.

Dated: February 14, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Services.

[FR Doc. 03–4563 Filed 2–26–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 2260–03]

RIN 1115–AH00

Readjustment of Immigration Benefit Application Fees

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: On January 24, 2003, the Immigration and Naturalization Service (Service) published an interim rule in the **Federal Register** adjusting the immigration benefit application fee schedule by subtracting the applicable amount of surcharges used for asylum and refugee services, fee exemptions and fee waivers. The Service was required to take that action under provisions of section 457 of the Homeland Security Act of 2002, Public Law 107–296. However, Congress has now repealed that section in the Homeland Security Act Amendments of 2003. Accordingly, this rule readjusts the immigration benefit application fee schedule to the levels that existed prior to January 24, 2003. Fees collected from persons filing immigration benefit applications are deposited into the Immigration Examinations Fee Account and recover the cost of processing immigration benefit applications and associated administrative costs and the costs of asylum applications pursuant to law. Federal guidelines require the Service to establish and collect fees to recover the full costs of processing immigration benefit applications.

DATES: *Effective date:* This rule is effective February 27, 2003.

Comment date: Written comments must be submitted on or before April 28, 2003. Comments on the interim rule published on January 24, 2003, and comments on this interim rule will be addressed jointly in the final rule.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington DC 20536. To ensure proper handling, please reference INS Number 2260–03 on your correspondence. You may also submit comments electronically at *insregs@usdoj.gov*. When submitting comments electronically, you must include INS No. 2257–03 in the subject box so that your comments can be properly routed to the appropriate office. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Immigration Services Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, telephone (202) 514–3410.

SUPPLEMENTARY INFORMATION:

Legal Authority To Charge Fees

A. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991

As a federal agency, the Immigration and Naturalization Service (Service) long has had statutory authority to charge fees for services provided. *e.g.*, 31 U.S.C. 9701. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Pub. L. No. 100–459, sec. 209, 102 Stat. 2186, 2203 (October 1, 1988), authorized the establishment of the Immigration Examinations Fee Account (IEFA) in the Treasury of the United States. All revenue from fees collected for immigration and naturalization benefits are deposited in the IEFA and remain available to provide immigration and naturalization services. 8 U.S.C. 1356(n).

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. No. 101–515, sec. 210(d), 104

Stat. 2101, 2121 (November 5, 1990), Congress further provided that "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected." 8 U.S.C. 1356(m).

The House Conference Report to the bill, entitled "Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1996, and For Other Purposes" H.R. Conf. Rep. No. 104–378, at 82 (1995), directs the Service to fund the cost of the Cuban-Haitian Entrant Program from the IEFA. The Report states "(t)he conferees have also agreed that the activities related to the resettlement of Cubans and Haitians should be transferred to the * * * Service and that the costs of these activities should be supported by the [IEFA]." *Id.*

In a final rule effective October 13, 1998, (except for the Form N–400, which took effect on January 15, 1999) the Service raised the majority of fees to recover the full costs of processing immigration benefit applications, and added a "surcharge" setting the fees at a level sufficient to fund the processing of asylum and refugee applications as well as those immigration benefit applications processed at no charge to applicants/petitioners. The Service subsequently adjusted the levels of fees in the IEFA, after notice and comment, effective February 19, 2002.

The Impact of Section 457 of the Homeland Security Act on the Fee Structure

In section 457 of the Homeland Security Act of 2002, Congress amended section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants." and inserting "services.". This amendment effectively repealed the statutory basis for surcharges. Accordingly, the Service reduced the immigration benefit application fees by an average of $50, or 25 percent, for the surcharges applied to the majority of immigration benefit applications (see 68 FR 3798, dated January 24, 2003).

The Impact of the Homeland Security Act Amendments of 2003

In section 107 of Homeland Security Act Amendments of 2003, Congress amended the Homeland Security Act by striking section 457, including the amendment made by such section. As a result, the Service is once again authorized to add a surcharge to immigration benefit applications in order to fund the processing of asylum and refugee applications as well as those immigration benefit applications processed at no charge to applicants/petitioners. Accordingly, the Service is readjusting the immigration benefit application fee schedule by adding in the surcharges that were removed on January 24, 2003, thus restoring the fees to the pre-January 24, 2003, levels. The submission of the reinstated fees reflected in the table below is required for applications submitted on or after February 27, 2003. The Service will accept applications or petitions submitted with the fee that was in effect before the publication of this interim rule, if the application or petition is postmarked on or before February 27, 2003. The following table displays the new immigration benefit application fees.

TABLE 1.—CURRENT VERSUS NEW IMMIGRATION BENEFIT APPLICATION FEES

Form No.	Description	Fee prior to 1/23/03	Current fee	Fee under this rule
I–17	Petition for Approval of School Attendance by Nonimmigrant Student	$580	$517	$580
I–90	Application to Replace Permanent Resident Card	130	95	130
I–102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record.	100	73	100
I–129	Petition for A Nonimmigrant Worker	130	96	130
I–129F	Petition for Alien Fiancé(e)	110	81	110
I–130	Petition for Alien Relative	130	96	130
I–131	Application for Travel Document	110	80	110
I–140	Immigrant Petition for Alien Worker	135	99	135
I–191	Application for Permission to Return to an Unrelinquished Domicile	195	142	195
I–192	Application for Advance Permission to Enter as a Nonimmigrant	195	142	195
I–193	Application for Waiver of Passport and/or Visa	195	142	195
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	195	142	195
I–485	Application to Register Permanent Residence or to Adjust Status	255	186	255
I–526	Immigrant Petition by Alien Entrepreneur	400	290	400
I–539	Application to Extend/Change Nonimmigrant Status	140	102	140
I–600/600 A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	460	332	460
I–601	Application for Waiver of Grounds of Excludability	195	142	195
I–612	Application for Waiver of the Foreign Residence Requirement	195	142	195
I–751	Petition to Remove the Conditions on Residence	145	105	145
I–765	Application for Employment Authorization	120	88	120
I–817	Application for Family Unity Benefits	140	102	140
I–824	Application for Action on an Approved Application or Petition	140	103	140
I–829	Petition by Entrepreneur to Remove Conditions	395	286	395
N–400	Application for Naturalization	260	188	260
N–565	Application for Replacement Naturalization Citizenship Document	155	113	155
N–600	Application for Certification of Citizenship	185	134	185
N–643	Application for Certificate of Citizenship in Behalf of an Adopted Child	145	105	145

The Impact of the Homeland Security Act Amendments of 2003 on Current Programs

The statutory amendment restores the funding for the asylum and refugee programs and assures the continued ability of the Service to adjudicate applications for these programs. This amendment also restores funding for the adjudication of other applications for which the Service grants a fee waiver or exemption under the relevant standards, and allows the Service to once again process those applications at no charge to designated applicants and petitioners.

Good Cause Exception

This interim rule is effective on February 27, 2003, although the Service invites post promulgation comments and will address any such comments in a final rule. The Service finds that good cause exists to adopt this rule without the prior notice and comment period and delayed effective date ordinarily required by 5 U.S.C. 553(b) and (d). The Service had set the pre-January 24, 2003, fee levels through a notice and comment rulemaking and this rule simply restores that same fee schedule now that Congress has reinstated the legal authority for the Service to collect fees at these levels.

Since section 107 of the Homeland Security Act Amendments of 2003 is effective upon enactment, and the past hiatus in funding the asylum and fee waiver programs has the potential for causing disruption of those programs, this rule is made effective upon publication. This rule merely restores the preexisting fee structure after a short lapse in statutory authority, and the surcharges set by this rule are needed in order to be able to fund asylum and refugee, fee waiver and exemption, and other humanitarian programs. It would be impracticable and contrary to the public interest to make this interim final rule effective 30 days after publication in the **Federal Register**.

Regulatory Flexibility Act

The Acting Commissioner, Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it has determined that this rule will not have a significant economic impact on a substantial number of small entities. The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

The Service acknowledges that a number of small entities, particularly those filing business-related applications and petitions, such as Form I–140, Immigrant Petition for Alien Worker; Form I–526, Immigrant Petition by Alien Entrepreneur; and Form I–829, Petition by Entrepreneur to Remove Conditions, may be affected by this rule. For FY 2003, the INS projects approximately 110,000 Forms I–140, 300 Forms I–526, and 200 Forms I–829 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multi-national corporations to small domestic businesses. The Service does not collect data on the size of the businesses filing petitions, and therefore does not know the number of small businesses that may be affected by this rule. However, even if all of the employers applying for benefits met the definition of small businesses, the resulting degree of economic impact would not require a Regulatory Flexibility Analysis to be performed.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

The Service has assessed both the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a determination that although restoring the surcharge will increase the costs to individual applicants and petitioners who submitted applications or petitions to the Service for adjudication, the benefit to other applicants and the public interest of the Service being able to continue to provide asylum, refugee, and other humanitarian programs at the funding levels intended by Congress through its repeal of section 457 substantially exceeds the costs.

The determination of the economic impact of the restoration of the immigration benefit application fee schedule to the levels that existed prior to January 24, 2003 depends on the baseline used for comparison. Although the difference in the fees collected would exceed $100 million a year if compared to the fees contained in the schedule made effective on January 24, 2003, that fee schedule is not the appropriate baseline for purposes of determining whether this rule has a economically significant regulatory impact under Executive Order 12866. By striking section 457 of the Homeland Security Act of 2002, Congress has indicated that the Service should return to the fee schedule in place prior to January 24, 2003. This interim rule merely restores the previous fee schedule. Using the pre-January 24th fee schedule as a baseline, this interim rule will not have a significant economic impact.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires that the fees for application and petition forms identified in this interim rule be increased in light of section 107 of Homeland Security Act Amendments of 2003. Since this is merely a reinstatement of fees prior to Section 457 of Public Law 107–296, the net effect of the cost burden on the public is negligible, the Service has submitted

the required Paperwork Reduction Change Worksheet (OMB–83C) to the OMB reflecting the new fees and cost burdens on the public, and the OMB has approved the changes.

To ensure that the public is fully aware of these changes the new fees will be highlighted on the Service's Web site at: *www.ins.usdoj.gov.*

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7(b)(1) is amended by revising the entries for the following forms, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–17. For filing a petition for school approval or recertification—$580 plus $350 per additional campus listed on Form I–17B.

* * * * *

Form I–90. For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—$130.

* * * * *

Form I–102. For filing a petition for an application (Form I–102) for Arrival/Departure Record (Form I–94) or Crewman's Landing (Form I–95), in lieu of one lost, mutilated, or destroyed—$100.

Form I–129. For filing a petition for a nonimmigrant worker, a base fee of $130. For filing an H–1B petition a base fee of $130 plus an additional $1,000 fee in a single remittance of $1,130. The remittance may be in the form of one or two checks (one in the amount of $1,000 and the other in the amount of $130). Payment of this additional $1,000 fee is not waivable under § 103.7(c)(1). Payment of this additional $1,000 fee is not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter, and this additional $1,000 fee also does not apply to certain filings by any employer as provided in § 214.2(h)(19)(v) of this chapter.

Form I–129F. For filing a petition to classify nonimmigrant as fiancée or fiancé under section 214(d) of the Act—$110.

Form I–130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$130.

Form I–131. For filing an application for travel documents—$110.

Form I–140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—$135.

* * * * *

Form I–191. For filing applications for discretionary relief under section 212(c) of the Act—$195.

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—$195.

Form I–193. For filing an application for waiver of passport and/or visa—$195.

Form I–212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—$195.

* * * * *

Form I–485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—$255 for an applicant 14 years of age or older—$160 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act.

* * * * *

Form I–526. For filing a petition for an alien entrepreneur—$400.

Form I–539. For filing an application to extend or change nonimmigrant status—$140.

* * * * *

Form I–600. For filing a petition to classify an orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$460.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$460.

Form I–601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—$195.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$195.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence, based on marriage—$145.

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$120.

* * * * *

Form I–817. For filing an application for voluntary departure under the Family Unity Program—$140.

* * * * *

Form I–824. For filing for action on an approved application or petition—$140.

Form I–829. For filing a petition by entrepreneur to remove conditions—$395.

* * * * *

Form N–400. For filing an application for naturalization—$260.

* * * * *

Form N–565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—$155.

Form N–600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—$185.

Form N–643. For filing an application for a certificate of citizenship on behalf of an adopted child—$145.

* * * * *

Dated: February 25, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–4747 Filed 2–25–03; 11:36 am]

BILLING CODE 4410–10–P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T]

Credit by Brokers and Dealers; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Foreign Margin Stocks (Foreign List) is composed of certain foreign equity securities that qualify as *margin securities* under Regulation T. The Foreign List is published twice a year by the Board.

EFFECTIVE DATE: March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–2837, or Scott Holz, Senior Counsel, Legal Division, (202) 452–2966, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Listed below is a complete edition of the Board's Foreign List. The Foreign List was last published on August 20, 2002 (67 FR 53875), and became effective September 1, 2002.

The Foreign List is composed of foreign equity securities that qualify as margin securities under Regulation T by meeting the requirements of § 220.11(c) and (d). Additional foreign securities qualify as margin securities if they are deemed by the Securities and Exchange Commission (SEC) to have a "ready market" under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a "no-action" position issued thereunder. This includes all foreign stocks in the FTSE World Index Series.

It is unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the Foreign List is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the Foreign List or the stocks thereon shall be an unlawful representation.

There are no additions to the Foreign List. The following six stocks are being removed because they no longer substantially meet the provisions of § 220.11(d) of Regulation T:

Bandai Co., Ltd.
¥50 par common

Clarion Co., Ltd.
¥50 par common

Kyowa Exeo Corp.
¥50 par common

Matsushita Seiko Co., Ltd.
¥50 par common

Nippon Comsys Corp.
¥50 par common

Takuma Co., Ltd.
¥50 par common

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Foreign List specified in § 220.11(c) and (d). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of the Foreign List as soon as possible. The Board has responded to a request by the public and allowed approximately a one-week delay before the Foreign List is effective.

List of Subjects in 12 CFR Part 220

Brokers, Credit, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 220.2 and 220.11, there is set forth below a complete edition of the Foreign List.

Japan

Akita Bank, Ltd.
¥50 par common

Aomori Bank, Ltd.
¥50 par common

Asatsu-DK Inc.
¥50 par common

Bank of Nagoya, Ltd.
¥50 par common

Chudenko Corp.
¥50 par common

Chugoku Bank, Ltd.
¥50 par common

Daihatsu Motor Co., Ltd.
¥50 par common

Dainippon Screen Mfg. Co., Ltd.
¥50 par common

Denki Kagaku Kogyo
¥50 par common

Eighteenth Bank, Ltd.
¥50 par common

Futaba Corp.
¥50 par common

Futaba Industrial Co., Ltd.
¥50 par common

Higo Bank, Ltd.
¥50 par common

Hitachi Software Engneering Co., Ltd.
¥50 par common

Hokkoku Bank, Ltd.
¥50 par common

Hokuetsu Paper Mills, Ltd.
¥50 par common

Iyo Bank, Ltd.
¥50 par common

Japan Airport Terminal Co., Ltd.
¥50 par common

Juroku Bank, Ltd.
¥50 par common

Kagoshima Bank, Ltd.
¥50 par common

Kamigumi Co., Ltd.
¥50 par common

Katokichi Co., Ltd.
¥50 par common

Keisei Electric Railway Co., Ltd.
¥50 par common

Keiyo Bank, Ltd.
¥50 par common

Komori Corp.
¥50 par common

Konami Co., Ltd.
¥50 par common

Michinoku Bank, Ltd.
¥50 par common

Musashino Bank, Ltd.
¥500 par common

Namco, Ltd.
¥50 par common

Nichicon Corp.
¥50 par common

Nihon Unisys, Ltd.
¥50 par common

Nishi-Nippon Bank, Ltd.
¥50 par common

Nishi-Nippon Railroad Co., Ltd.
¥50 par common

Nissan Chemical Industries, Ltd.
¥50 par common

Ogaki Kyoritsu Bank, Ltd.
¥50 par common

Q.P. Corp.
¥50 par common

Rinnai Corp.
¥50 par common

Sagami Railway Co., Ltd.
¥50 par common

Sakata Seed Corp.
¥50 par common

Santen Pharmaceutical Co., Ltd.
¥50 par common

Shimadzu Corp.
¥50 par common

Shimamura Co., Ltd.
¥50 par common

Sumitomo RubbeR Industries, Ltd.
¥50 par common

Taiyo Yuden Co., Ltd.

¥50 par common
Takara Standard Co., Ltd.
¥50 par common
Toho Bank, Ltd.
¥50 par common
Toho Gas Co., Ltd.
¥50 par common
Tokyo Ohka Kogyo Co., Ltd.
¥50 par common
Uni-Charm Corp.
¥50 par common
Ushio, Inc.
¥50 par common
Yamaha Motor Co., Ltd.
¥50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), February 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–4619 Filed 2–26–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–06–AD; Amendment 39–13064; AD 2003–04–15]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Sikorsky Aircraft Corporation (Sikorsky) model helicopters. This action requires determining the manufacturer of a certain part-numbered rotor brake disc (RBD) and if the manufacturer is Parker Hannifin Corporation (PHC), re-identifying the RBD as appropriate. This action also requires before the first flight of the next day following any day in which a certain RBD was used, visually inspecting the RBD for a crack. If a crack is found, this AD also requires replacing the RBD with an airworthy RBD or deactivating it as applicable depending on the nature of the crack. This amendment is prompted by the discovery that certain RBDs manufactured by PHC were improperly heat treated resulting in "soft" RBDs that have an increased wear rate compared to those heat treated in accordance with the type design requirement. Further investigation reveals that "soft" RBDs develop cracks more frequently than previously manufactured RBDs. The actions specified in this AD are intended to prevent failure of the RBD, damage to the rotor blades and nearby hydraulic and fuel lines, and subsequent loss of control of the helicopter.

DATES: Effective February 27, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified Sikorsky model helicopters. This amendment is prompted by the discovery that a certain part-numbered RBD manufactured by PHC was improperly heat treated resulting in "soft" RBDs that have an increased wear rate compared to those heat treated in accordance with the type design requirement. Further investigation reveals that "soft" RBDs develop cracks more frequently than previously manufactured RBDs. The actions specified in this AD are intended to prevent failure of the RBD, damage to the rotor blades and nearby hydraulic and fuel lines, and subsequent loss of control of the helicopter.

The FAA has reviewed Sikorsky Alert Service Bulletin (ASB) Nos. 76–66–36, dated November 12, 2002, and 76–66–37, dated January 31, 2003. ASB No. 76–66–36 describes a one-time visual inspection of the RBD to determine the manufacturer and to reidentify the RBD if necessary. ASB No. 76–66–36 also specifies an initial and recurring inspection for certain reidentified RBDs. ASB No. 76–66–37 specifies removing certain RBDs from service and provides interim instructions for operating the helicopter until a replacement RBD is installed.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD is being issued to prevent failure of the RBD, damage to the rotor blades and nearby hydraulic and fuel lines, and subsequent loss of control of the helicopter. This AD requires the following:

- Before further flight, determine the manufacturer of each RBD by examining the part number (P/N) markings. This AD requires no further action if the manufacturer is BF Goodrich or Goodyear.
- If the RBD is manufactured by PHC, reidentify it with a P/N 76363–09103–104 or –105, as applicable, depending on the serial number of the RBD. If you cannot determine the PHC RBD serial number or the manufacturer, reidentify the RBD with P/N 76363–09103–104.
- Before the first flight of the next day following any day in which the RBD was used, visually inspect each RBD, P/N 76363–09103–104, for a crack.
- If you find a crack through the entire RBD thickness or two or more surface cracks between adjacent boltholes, replace the RBD with an airworthy RBD before further flight. If you find a surface crack or surface cracks separated by the boltholes, replace the RBD with an airworthy RBD or deactivate it before further flight.
- Replace PHC RBD, P/N 76363–09103–104, with an airworthy RBD on or before May 31, 2003, or within 60 days after the effective date of this AD, whichever occurs later.
- Replacement RBD, P/N 76363–09103–104, is not airworthy.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore determining the manufacturer, reidentifying the RBD as specified, inspecting the RBD for a crack, and either replacing the RBD or deactivating it is required before further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 165 helicopters will be affected by this AD, that it will take approximately 2 work hours to determine the manufacturer of the RBD, 1 hour to reidentify the RBD, 2 hours to inspect the RBD, and 6 hours to replace the RBD. The average labor rate is $60 per work hour. Required parts will cost approximately $1,250 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $315,150 per helicopter, assuming all RBDs were manufactured by PHC, are with the affected S/N range, must be remarked, do not have sufficient cracking to warrant immediate replacement, and the rotor brake is not used until the day prior to the day that all RBDs are replaced.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–06–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–15 Sikorsky Aircraft Corporation: Amendment 39–13064. Docket No. 2003–SW–06–AD.

Applicability: Model S–76A, B, and C helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rotor brake disc (RBD), damage to the rotor blades and nearby hydraulic and fuel lines, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, determine the manufacturer of each RBD by examining the part number (P/N) markings, and perform the required actions as follows:

(1) If the P/N is 76363–09101–102, the manufacturer is Goodyear. No further action is required by this AD.

(2) If the P/N 76363–09103–102 is pressure stamped on the RBD, the manufacturer is BF Goodrich. No further action is required by this AD.

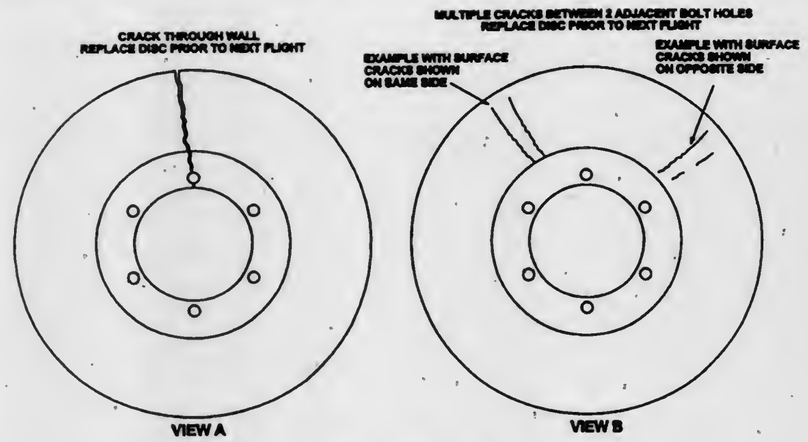
(3) If the P/N 76363–09103–102 is electrolytically etched on the RBD, the manufacturer is Parker Hannifin Corporation (PHC). For each PHC RBD with a P/N 76363–09103–102 and serial number (S/N) other than 38 through 379, remark the P/N as P/N 76363–09103–105 using the vibropeen method. No further action is required by this AD.

(4) If the RBD serial number or the manufacturer cannot be determined and for PHC RBDs with P/N 76363–09103–102 and S/N's 38 through 379, reidentify or mark the P/N as 76363–09103–104 or replace the RBD in accordance with paragraph (c) of this AD.

Note 2: Sikorsky Aircraft Corporation Alert Service Bulletin (ASB) Nos. 76–66–36, dated November 12, 2002, and ASB 76–66–37, dated January 31, 2003, pertain to the subject of this AD.

(b) Before the first flight of the next day following any day in which the RBD was used, visually inspect each RBD, P/N 76363–09103–104, for a crack, and perform the following actions. *See* Figure 1.

BILLING CODE 4910–13–P



RBD INSPECTION LIMITS
FIGURE 1.

(1) If you find a crack through the entire RBD thickness as shown in Figure 1, View A, replace the RBD with an airworthy RBD, other than P/N 76363–09103–104, before further flight.

(2) If you find two or more surface cracks between adjacent boltholes as shown in Figure 1, View B, replace the RBD with an airworthy RBD, other than P/N 76363–09103–104, before further flight.

(3) If you find a surface crack or surface cracks separated by the boltholes as shown in Figure 1, View C, replace the RBD with an airworthy RBD, other than P/N 76363–09103–104, or deactivate the RBD before further flight.

Note 3: Short "glazing" cracks are not a cause for rejection.

Note 4: PHC Component Maintenance Manual with Illustrated Parts List PH030–21300MM, Rotor Brake Assembly, P/N 030–21300, Revision C, dated November 1, 2002, pertains to the subject of this AD.

(c) Replace PHC RBD, P/N 76363–09103–104, with an airworthy RBD on or before May 31, 2003, or within 60 days after the effective date of this AD, whichever occurs later. Any replacement RBD, P/N 76363–09103–104, is not airworthy.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(e) Special flight permits will not be issued.

(f) This amendment becomes effective on February 27, 2003.

Issued in Fort Worth, Texas, on February 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4474 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14347; Airspace Docket No. 03–ACE–4]

Modification of Class D Airspace; and Modification of Class E Airspace; Topeka, Philip Billard Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Monday, February 10, 2003, (68 FR 6606). It corrects an error in the heading of the legal description of Class E2 airspace at Topeka, Philip Billard Municipal Airport, KS.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 03–3266 published on Monday, February 10, 2003, (68 FR 6606) modified Class D and Class E2 airspace at Topeka, Philip Billard Municipal Airport, KS. These airspace areas are defined, in part, with reference to Topeka, Forbes Field, KS. The modifications were to correct the Topeka, Forbes Field, KS airport reference point used in the legal description of Topeka, Philip Billard Municipal Airport, KS airspace areas. The Topeka, Philip Billard Municipal Airport, KS Class E2 airspace area was incorrectly titled Topeka, Forbes Field, KS.

Accordingly, pursuant to the authority delegated to me, the Class E2 airspace at Topeka, Philip Billard Municipal Airport, KS, as published in the **Federal Register** on Monday, February 10, 2003, (68 FR 6606), (FR Doc. 03–3266), is corrected as follows:

§ 71.1 [Corrected]

On page 6607, Column 1, third paragraph, change "ACE KS E2 Topeka, Forbes Field, KS" to read "ACE KS E2 Topeka, Philip Billard Municipal Airport, KS."

Issued in Kansas City, MO, on February 11, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–4640 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13936; Airspace Docket No. 02–AEA–22]

Establishment of Class E Airspace; Ridgely, MD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Ridgely, MD. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Ridgely Airpark, Ridgely, MD under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On January 3, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of Ridgely Airpark, Ridgely, MD was published in the **Federal Register** (68 FR 328–329). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before February 3, 2003. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6-mile radius of Ridgely Airpark, Ridgely, MD.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5 Ridgely, MD [NEW]

Ridgely Airpark, MD

(Lat. 38°58′12″ N., long. 75°51′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Ridgely Airpark, excluding that portion that coincides with the Centerville, MD Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on February 4, 2003.

Richard J. Ducharme,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–4639 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14461; Airspace Docket No. 03–ACE–14]

Modification of Class E Airspace; Davenport, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Davenport, IA revealed a discrepancy in the Davenport Municipal Airport, IA airport reference point used in the legal description for the Davenport, IA Class E airspace. This action corrects the discrepancy by modifying the Davenport, IA Class E airspace and by incorporating the current Davenport Municipal Airport, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14461/Airspace Docket No. 03–ACE–14, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace designated as a surface area at Davenport, IA. It incorporates the current airport reference point for Davenport Municipal Airport, IA and brings the legal description of this airspace area in compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace area designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written date, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14461/Airspace Docket No. 03–ACE–14." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ACE IA E2 Davenport, IA

Davenport Municipal Airport, IA
(Lat. 41°36′37″ N., long. 90°35′18″ W.)

Within a 4.1-mile radius of Davenport Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on February 13, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–4641 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14460; Airspace Docket No. 03–ACE–13]

Modification of Class E Airspace; Clinton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Clinton, IA. An examination of controlled airspace for Clinton, IA, initiated by National Geodetic Surveys (NGS), of Clinton Municipal Airport, IA and associated navigational aids, revealed discrepancies in the location of these navigational aids. This action corrects the discrepancies by modifying the Clinton, IA Class E2 and Class E5 airspace areas. It also incorporates the revised locations of the Davenport collocated very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) and the Clinton nondirectional radio beacon (NDB) in the Class E2 and E5 airspace legal descriptions.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14460/Airspace Docket No. 03–ACE–13, at the beginning of your comments. You may alse submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace designated as a surface area and the Class E airspace area extending upward from 700 feet or more above the surface at Clinton, IA. It incorporates the revised locations of Davenport VORTAC and Clinton NDB and brings the legal descriptions of these airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the same FAA Order. The Class E designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objection. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14460/Airspace Docket No. 03–ACE–13." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 889.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ACE IA E2 Clinton, IA

Clinton Municipal Airport, IA
(Lat. 41°49′52″ N., long. 90°19′45″ W.)
Davenport VORTAC
(Lat. 41°42′31″ N., long. 90°29′00″ W.)
Clinton NDB
(Lat. 41°49′44″ N., long. 90°19′39″ W.)

Within a 4.1-mile radius of Clinton Municipal Airport and within 2.6 miles each side of the 044° radial of the Davenport VORTAC extending from the 4.1-mile radius to the VORTAC and within 2.6 miles each side of the 316° bearing from the Clinton NDB extending from the 4.1-mile radius to 7.4 miles northwest of the airport and within 2.2 miles each side of the 030° bearing from the Clinton NDB extending from the 4.1-mile radius to 5.3 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Clinton, IA

Clinton Municipal Airport, IA
(Lat. 41°49′52″ N., long. 90°19′45″ W.)
Davenport VORTAC
(Lat. 41°42′31″ N., long. 90°29′00″ W.)
Clinton NDB
(Lat. 41°49′44″ N., long. 90°19′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Clinton Municipal Airport and within 1.8 miles each side of the 044° radial of the Davenport VORTAC extending from the 6.6-mile radius to the VORTAC and within 4.5 miles each side of the 316° bearing from the Clinton NDB extending to 10.5 miles northwest of the NDB and within 1 mile each side of the 146° bearing from the airport extending from the 6.6-mile radius to 9.5 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on February 13, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–4642 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 02F–0160]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Vitamin D_3

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of vitamin D_3 as a nutrient supplement in calcium-fortified fruit juices and juice drinks, excluding fruit juices and juice drinks specially formulated or processed for infants, at levels not to exceed 100 International Units (IU) per reference amount customarily consumed (RACC). This action is in response to a petition filed by The Minute Maid Co.

DATES: This rule is effective February 27, 2003. Submit written objections and requests for a hearing by March 31, 2003. The Director of the Office of the **Federal Register** approves the incorporation by reference of certain publications in § 172.380 (21 CFR 172.380) as of February 27, 2003.

ADDRESSES: Submit written objections and requests for a hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic objections to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Judith L. Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3354.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In a notice published in the **Federal Register** of April 25, 2002 (67 FR 20533), FDA announced that a food additive petition (FAP 2A4734) had been filed by The Minute Maid Co., c/o King and Spalding, 1700 Pennsylvania Ave. NW., Washington, DC 20006. The petition proposed that the food additive regulations be amended in 21 CFR part 172 to provide for the safe use of vitamin D_3 in calcium-fortified fruit juices and juice drinks at levels not to exceed 100 IU per RACC[1].

Vitamin D[2] is affirmed as generally recognized as safe (GRAS) in § 184.1950(c)(1) (21 CFR 184.1950(c)(1)), in accordance with 21 CFR 184.1(b)(2), for use as a nutrient supplement, as defined in 21 CFR 170.3(o)(20), as the sole source of added Vitamin D in foods within the limitations specified in the following table:

[1]RACC values represent the amount of food typically consumed per eating occasion. The RACC for fruit juices and juice drinks intended for the general population is 240 milliliters (mL) (21 CFR 101.12).

[2]Vitamin D comprises a group of fat soluble secosterols and comes in many forms. The two major physiologically relevant forms are vitamin D_2 and vitamin D_3. Vitamin D without a subscript represents either D_2 or D_3. As used in § 184.1950, the meaning of the term vitamin D includes crystalline vitamin D_2, crystalline vitamin D_3 and vitamin D_2 resin, and vitamin D_3 resin.

TABLE 1.

Category of Food	Maximum Levels in Food (As Served)
Breakfast cereals	350 IU/100 grams (g)
Grain products and pastas	90 IU/100 g
Milk	42 IU/100 g
Milk products	89 IU/100 g

Additionally, vitamin D is affirmed as GRAS for use in infant formula (§ 184.1950(c)(2)) and as an optional ingredient in margarine (§ 184.1950(c)(3)).

Vitamin D is essential for human health. Humans can synthesize significant amounts of vitamin D_3 in skin from its precursor, 7-dehydrocholesterol, under exposure to ultraviolet B radiation in sunlight. Other sources of naturally occurring vitamin D are foods such as butter, buttermilk, cheese, cream, eggs, fish, goat milk, meat fats and organ meats, mushrooms, and sour cream.

The major function of vitamin D is the maintenance of blood serum concentrations of calcium and phosphorus by enhancing the absorption of these minerals in the small intestine. Vitamin D deficiency can lead to abnormalities in calcium and bone metabolism such as rickets in children or osteomalacia in adults. The elderly, who have significantly decreased capacity for the production of vitamin D_3 in skin, and patients with intestinal malabsorption syndromes are especially prone to vitamin D deficiency. At high levels, vitamin D may be toxic. Because it is metabolized to inactive forms in the skin, vitamin D does not accumulate significantly in the body as a result of sun exposure. Excessive dietary intake of vitamin D elevates blood plasma calcium levels by increased intestinal absorption and/or mobilization from the bone.

Vitamin D_3, also known as cholecalciferol, is the chemical 9,10-seco(5Z,7E)-5,7,10(19)-cholestatrien-3-ol. Vitamin D_3 occurs in, and is isolated from fish liver oils. It also is manufactured by ultraviolet irradiation of 7-dehydrocholesterol that is derived synthetically from natural cholesterol. In both methods, vitamin D_3 is purified by crystallization.

To support the safety of the proposed use of vitamin D_3, The Minute Maid Co. submitted a summary of the metabolism of vitamin D, a number of publications pertaining to human clinical studies, bioavailability studies, and dietary intake estimates. Based on these data, the petitioner concludes that the proposed use of vitamin D_3 in calcium-fortified fruit juices and juice drinks is safe.

II. Evaluation of Safety

In order to establish, with reasonable certainty, that a new food additive is not harmful under its intended conditions of use, FDA considers the projected human dietary exposure to the additive, the additive's toxicological data, and other relevant information (such as published literature) available to the agency.

In determining whether the proposed use of an additive is safe, FDA compares an individual's estimated daily intake (EDI) of the additive to an acceptable intake level established by toxicological data. The EDI is determined by projections based on the amount of the additive proposed for use in particular foods and on data regarding the consumption levels of these particular foods. The agency commonly uses the EDI for the 90th percentile consumer of a food additive as a measure of high chronic dietary exposure.

A. Acceptable Daily Intake for Vitamin D for Adults, Children, and Infants

In 1997, the Standing Committee on the Scientific Evaluation of Dietary Reference Intakes of the Food and Nutrition Board at the National Academy of Sciences Institute of Medicine (IOM) conducted an extensive review of toxicology and metabolism studies on vitamin D published through 1996. The IOM published a detailed report that included a tolerable upper intake level (UL) for vitamin D (both D_2 and D_3) for infants, children and adults (Ref. 1). The IOM UL for vitamin D for children 1 to 18 years of age and adults is 2,000 IU/day and for infants is 1,000 IU/day.

The IOM considers the UL as the highest usual intake level of a nutrient that poses no risk of adverse effects when the nutrient is consumed over long periods of time. The UL is determined using a risk assessment model developed specifically for nutrients and considers intake from all sources: Food, water, nutrient supplements, and pharmacological agents. The dose-response assessment, which concludes with an estimate of the UL, is built upon three toxicological concepts commonly used in assessing the risk of exposures to chemical substances: No observed adverse effect level, lowest observed effect level and an uncertainty factor.

B. Estimated Daily Intake for Vitamin D

The petitioner provided average and 90th percentile vitamin D intake estimates for consumers of fruit juices and juice drinks from: (1) The proposed use in calcium-fortified fruit juices and juice drinks, (2) current uses in conventional foods (including naturally occurring sources of vitamin D), (3) current and proposed uses in conventional foods, and (4) current and proposed uses in both conventional foods and dietary supplements. The petitioner presented intake estimates for the general population, 2 years of age and older, and for 15 population subgroups (including estimates for infants less than 1 year old; children 1 year to 3 years old; and adults). The agency has determined that the methodology used to calculate these estimates is appropriate (Ref. 2).

For the proposed food use, dietary intake of vitamin D_3 for 90th percentile consumers of fruit juices and juice drinks, 2 years of age and older, was estimated to be 211 IU per person per day (IU/p/d). The corresponding mean intake was estimated to be 110 IU/p/d.

For currently regulated uses in conventional foods (including naturally occurring sources), mean dietary exposure to vitamin D for consumers of fruit juices and juice drinks was estimated to be 197 IU/p/d for consumers 2 years of age and older. Intake at the 90th percentile was estimated to be 368 IU/p/day. For consumers of fruit juices and juice drinks 2 years of age and older, average and 90th percentile dietary intakes from current (including naturally occurring sources) and proposed food uses of vitamin D were estimated to be 306 IU/p/d and 519 IU/p/d, respectively.

The petitioner also considered the intake of vitamin D from dietary supplements. The National Health and Nutrition Examination Survey III (NHANES III) data indicate that approximately 40 percent of the U.S. population 2 months of age and older take dietary supplements. The NHANES

III data also show that, when vitamin D is taken as a dietary supplement, the most frequent level is 400 IU/day. The petitioner provided results from two Gallup polls that concluded that consumers of vitamin D_3-fortified fruit juices and fruit drinks also are likely to take supplemental sources of vitamin D. As a conservative estimate of intake of vitamin D from dietary supplements and food uses, the petitioner assumed that all consumers of fruit juices and juice drinks would take dietary supplements containing 400 IU of vitamin D. They then added this value to the mean and 90th percentile intake estimates from current and proposed food uses. For consumers of fruit juices and juice drinks 2 years of age and older, mean and 90th percentile dietary intake estimates from current and proposed food uses and dietary supplements were 706 IU/p/d and 919 IU/p/d, respectively.

Although the petitioner has notified FDA that it does not intend to fortify fruit juices and juice drinks specially formulated or processed for infants with vitamin D_3, the petitioner provided intake estimates for breastfed and non-breastfed infants, 0 to 6 months of age and 7 to 12 months of age. These estimates assumed that all fruit juices and juice drinks, including those specially formulated or processed for infants, would be fortified with vitamin D_3. Of these four infant population groups, intake estimates were the highest for non-breastfed infants, 0 to 6 months of age. For non-breastfed infants, 0 to 6 months of age, mean and 90th percentile dietary intake from current and proposed food uses were 443 IU/p/d and 663 IU/p/d, respectively. When dietary supplements were considered in the estimates for these consumers, mean and 90th percentile intakes were 843 IU/p/d and 1,063 IU/p/d, respectively. Intake estimates for the other infant population groups were below the UL for infants of 1,000 IU/day.

Due to the relatively small sample size of infants consuming fruit juices and juice drinks, the agency does not consider the intake estimates presented by the petitioner to be statistically robust enough to make a quantitative safety assessment. For example, for infants 0 to 6 months of age, non-breastfed, intake estimates were based on data from 49 consumers of fruit juice or juice drinks; for infants, 0 to 6 months, breastfed, 16 consumers; infants, 7 to 12 months, non-breastfed, 75 consumers; and infants, 7 to 12 months, breastfed, 9 consumers. Intake estimates from these populations are not considered to be statistically robust when compared, for example, to the numbers of consumers in the sample populations for children 4 to 8 years of age (1,194 consumers) and 9 to 13 years of age (717 consumers).

Because a quantitative safety assessment cannot be made with the available data, we consider it appropriate to exclude fruit juices and juice drinks specially formulated or processed for infants (ages 0 to 12 months) from the proposed use of vitamin D_3. The agency recognizes that some infants may consume fruit juices and juice drinks that are not specially formulated or processed for infants (Ref. 3); however, fruit juices and juice drinks are not major components of the diets of infants. Further, in a May 2001 policy statement, the American Academy of Pediatrics recommended that fruit juice should not be given to infants before 6 months of age (Ref. 4).

C. Safety Assessment

The petitioner submitted over 80 published articles to support the safety of the proposed use of vitamin D_3 in calcium-fortified fruit juices and juice drinks. These articles included most of the references considered by IOM in its evaluation and all of the critical references that were the basis for the UL. The petitioner also submitted publications on vitamin D that appeared in the literature subsequent to the 1997 IOM report. New information since 1997 supports that vitamin D intake is without adverse effects at the IOM UL for adults (Ref. 5). No new studies in children on the effects of vitamin D intake have been published since 1997.

We considered the UL established by IOM for children (ages 1 year and older) and adults relative to the intake estimates provided by the petitioner as the primary basis for assessing the safety of the proposed use of vitamin D_3 in calcium-fortified fruit juices and juice drinks. For all population groups of children and adults evaluated, mean and 90th percentile intake estimates from current and proposed food uses of vitamin D are well below the IOM UL of 2,000 IU/p/day. Additionally, when dietary supplements are included in the calculations, intake estimates remain below the UL. Because the EDI of vitamin D from all sources is less than the UL, the agency believes that dietary exposure of vitamin D_3 from its use as a nutrient supplement in calcium-fortified fruit juices and juice drinks, excluding juices and juice drinks specially formulated or processed for infants, will not pose a safety concern (Ref. 5)

III. Conclusion

Based on all data relevant to vitamin D reviewed by the agency, FDA concludes that there is a reasonable certainty that no harm will result from the use of vitamin D_3 as a nutrient supplement at the levels specified in calcium-fortified fruit juices and juice drinks, excluding fruit juices and juice drinks specially formulated or processed for infants. Thus, vitamin D_3 is safe for its proposed use and the agency concludes that the food additive regulations should be amended as set forth in this document. To ensure that only food grade vitamin D_3 is used in food, the additive must meet the specifications of the *Food Chemicals Codex*, 4th ed.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed previously. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Effects

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 2A4734 (67 FR 20533). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, Food and Nutrition Board, Institute of Medicine, "Dietary Reference Intakes for Calcium, Phosphorus, Magnesium, Vitamin D, and Fluoride," National Academy Press, Washington, DC, 1997.

2. Memorandum from Folmer, Division of Petition Review, Chemistry Review Group, to Kidwell, Division of Petition Review, May 21, 2002.

3. Meeting minutes from August 2 and August 28, 2002, Internal meetings, Division of Petition Review.

4. American Academy of Pediatrics Policy Statement "The Use and Misuse of Fruit Juice in Pediatrics (RE0047)," *Pediatrics*, 107(5): 1210–1213, 2001.

5. Memorandum from Park, Division of Petition Review, Toxicology Review Group, to Kidwell, Division of Petition Review, September 17, 2002.

VII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.380 is added to subpart D to read as follows:

§ 172.380 Vitamin D_3.

The food additive may be used safely in foods as a nutrient supplement defined under § 170.3(o)(20) of this chapter in accordance with the following prescribed conditions:

(a) Vitamin D_3, also known as cholecalciferol, is the chemical 9,10-seco(5Z,7E)-5,7,10(19)-cholestatrien-3-ol. Vitamin D_3 occurs in and is isolated from fish liver oils. It also is manufactured by ultraviolet irradiation of 7-dehydrocholesterol produced from cholesterol and is purified by crystallization.

(b) Vitamin D_3 meets the specifications of the *Food Chemicals Codex*, 4th ed. (1996), p. 434, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418 (Internet address *http://www.nap.edu*. Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) Vitamin D_3 may be added, at levels not to exceed 100 International Units (IU) per serving, to 100 percent fruit juices, as defined under § 170.3(n)(35) of this chapter, excluding fruit juices that are specially formulated or processed for infants, that are fortified with greater than 33 percent of the Recommended Daily Intake (RDI) of calcium per Reference Amount Customarily Consumed (RACC).

(d) Vitamin D_3 may be added, at levels not to exceed 100 IU per serving, to fruit drinks, as defined under § 170.3(n)(35) of this chapter, excluding fruit drinks that are specially formulated or processed for infants, that are fortified with greater than 10 percent of the RDI of calcium per RACC.

Dated: February 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4604 Filed 2–24–03; 11:58 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–002]

RIN 2115–AA97

Security Zones; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones extending 100 yards around and under all High Interest Vessels (HIVs) that enter, are moored in, anchored in or depart from the San Francisco Bay and Delta ports, California. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

DATES: This regulation is effective from 11:59 p.m. PST on February 10, 2003 to 11:59 p.m. PST on May 31, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–002] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diana Cranston, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In addition to this temporary final rule (TFR), we plan to publish a notice of proposed rulemaking (NPRM) for a permanent HIV security zone rule [COTP San Francisco Bay 03–003], in which we will propose to amend 33 CFR 165.1183, which was added by the Final rule [COTP San Francisco Bay 02–019] published in the **Federal Register** (67 FR 79854) on December 31, 2002. 33 CFR § 165.1183, "Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California", establishes security zones around cruise ships and tank vessels, but does not address HIVs. The forthcoming NPRM will clarify the classes of vessels sought to be encompassed in the section and

will allow for a public comment period and for a final rule to be put into effect without an interruption in the protection provided by this temporary rule establishing HIV security zones. Section 165.1183 will remain in effect until amended by a future rule. Under 5 U.S.C. 553(b)(B), for reasons discussed below, the Coast Guard finds that good cause exists for not publishing an NPRM before issuing this temporary rule. Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the current threat of attack, MARAD 02–07 (October 10, 2002). As a result, a heightened level of security has been established around all HIVs in San Francisco Bay and Delta ports. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to HIVs. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent to U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against an HIV would have on the public interest, the Coast Guard is establishing security zones around and under HIVs entering, departing, moored or anchored within the San Francisco Bay and Delta ports. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against HIVs. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on an HIV would have on the crew and passengers on board, and surrounding area and communities, security zones are prudent for these types of vessels.

Discussion of Rule

On December 31, 2002, we published the final rule [COTP San Francisco Bay 02–019] adding § 165.1183, "Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California" in the **Federal Register** (67 FR 79854). That section set forth security zones for cruise ships and tank vessels. A forthcoming NPRM (COTP San Francisco Bay 03–003) will propose to amend § 165.1183 to include HIVs as protected vessels in that section, along with cruise ships and tank vessels. The Coast Guard will utilize the extended effective period of the NPRM to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Francisco Bay.

In this temporary rule, the Coast Guard is establishing moving and fixed security zones around all HIVs that are anchored, moored or underway within the San Francisco Bay and Delta ports. These security zones are activated when any HIV passes shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′N, 122°35.4′W & 37°46.5′N, 122°35.2′W, respectively) and remains in effect while the vessel is underway, anchored or moored within the San Francisco Bay and Delta ports. When activated, this security zone will encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any HIV in the San Francisco Bay and Delta ports. This security zone is automatically deactivated when the HIV passes seaward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′N, 122°35.4′W & 37°46.5′N, 122°35.2′W, respectively) on its departure from port. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although this regulation restricts access to the zones, the effect of this regulation will not be significant because: (i) The zones will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative; and (iv) vessels are able to safely transit around the zones while a vessel is moored or at anchor in the San Francisco Bay and Delta ports.

The sizes of the zones are the minimum necessary to provide adequate protection for HIVs, their crews and passengers, other vessels operating in the vicinity of HIVs, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking an HIV in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during HIV transits, which will last for approximately 30 minutes.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. When a HIV is at anchor, vessel traffic will have ample room to maneuver around the security zones. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection

or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.T11–077 to read as follows:

§ 165.T11–077 Security Zones; High Interest Vessels, San Francisco Bay and Delta ports, California.

(a) *Definition.* "High Interest Vessel" or "HIV" as used in this section, means any vessel deemed by the Captain of the Port or higher authority as a vessel requiring protection based upon risk assessment analysis of the vessel and is therefore escorted by a Coast Guard or other law enforcement vessel with an embarked Coast Guard commissioned, warrant, or petty officer.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any HIV that is anchored at a designated anchorage within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively);

(2) The shore area and all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any HIV that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively); and

(3) All waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any HIV that is underway shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively).

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 510–437–3073 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When an HIV approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the HIV's security zone unless it is either ordered by, or given permission from, the COTP San Francisco Bay to do otherwise.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement as necessary.

(f) *Effective Dates.* This section becomes effective at 11:59 p.m. PST on February 10, 2003, and will terminate at 11:59 p.m. PST on May 31, 2003.

Dated: February 10, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–4634 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Label Standards for Combined or Copalletized Periodicals Mailings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule clarifies when it is permissible to use the designation "NEWS" rather than the designation "PER" on Line 2 (the content line) of labels that identify sacks, trays, and pallets containing copies of Periodicals publications prepared in combined mailings or in copalletized mailings.

Combined mailings and copalletized mailings often consist of copies that would be eligible for the designation "NEWS" on the container label and other copies that would be eligible only for the designation "PER" on the container label. This final rule allows mailers to prepare and consolidate more than one Periodicals publication or edition of a publication into a single production mailstream.

This final rule also clarifies mailing standards for identifying the two different methods under which a Periodicals combined mailing may be prepared and to note the requirements for submitting postage statements under each method.

EFFECTIVE DATE: March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645, Jane Stefaniak at (703) 292–3548, or Marc McCrery at (202) 268–2704.

SUPPLEMENTARY INFORMATION: In this rulemaking, the Postal Service announces the adoption of standards initially proposed on October 30, 2002 in the **Federal Register** (67 FR 66094–66096) for determining when to use "NEWS"—a designation for "newspaper"—and "PER"—a designation for the class name "Periodicals"—as part of the information on Line 2 (the content line) of sack, tray, and pallet labels used for combined mailings and copalletized mailings.

This final rule allows mailers to prepare and consolidate more than one Periodicals publication or edition of a publication into a single production mailstream by providing the following standards for the application of the "NEWS" and "PER" designations in such cases:

(1) If at least 51% of the total number of copies (not number of addressed pieces) in the combined mailing or in the copalletized mailing can qualify for "NEWS" treatment, then all containers or pallets in such a mailing are labeled "NEWS" on Line 2, unless the mailer chooses to use "PER."

(2) If less than 51% of the total number of copies in the combined mailing or in the copalletized mailing can qualify for "NEWS" treatment, then all containers or pallets in such a mailing are labeled "PER" on Line 2.

"NEWS" and "PER" Designations

Domestic Mail Manual (DMM) D210 states that the Postal Service does not guarantee the delivery of Periodicals publications within a specified time. Where practicable, Periodicals publications, whether designated "NEWS" or "PER," receive expeditious handling in distribution, dispatch, transportation, and delivery.

Publications labeled "NEWS" receive newspaper treatment if published weekly or more often or if authorized such treatment as of March 1, 1984. In general, such publications include daily or weekly newspapers and newsmagazines published and distributed locally or nationally.

The "NEWS" designation helps the Postal Service ensure consistent service and handling for such Periodicals publications from entry into the mailstream, through successive operations in mail processing, to delivery to the intended recipient.

Current label standards for containers, as specified in DMM M031.1.7, M031.4.11, and M032.1.3 stipulate that the "NEWS" designation may be used on labels for sacks, trays, and pallets for a Periodicals publication only if either one of the following two conditions is met:

(1) The Periodicals publication is published weekly or more frequently.

(2) The Periodicals publication has been continuously authorized such newspaper treatment since March 1, 1984, or earlier, regardless of publication frequency.

All other publications use "PER"—designation for the class name "Periodicals"—as part of the information on Line 2 (the content line) of mail processing labels. These labels are affixed by the mailer to pallets or inserted into label holders attached to sacks and trays to identify Periodicals publications that do not meet either of the conditions required for the "NEWS" designation.

The use of these two distinct designations is carried forward for all container labeling, with two separate but parallel series of three-digit content identifier numbers (CINs). One CIN series is for those publications that are eligible to use "NEWS," and the second series is for those publications that are not eligible to use "NEWS" and must use "PER." Each series contains nearly 50 different CINs to meet all possible rate combinations available and all permitted containers.

It should be pointed out, however, that the use of "NEWS" is optional for those publications eligible to use that designation. A publisher, for example, who issues and distributes publications eligible for the "NEWS" designation and other publications not eligible for "NEWS" has the flexibility to label all containers as "PER" in order to achieve greater production efficiencies (and greater postage savings) if combined mailings or copalletized mailings are prepared.

On the other hand, the same publisher following mailing standards before this final rule did not have the flexibility of using the "NEWS" designation for all containers in a combined mailing or copalletized mailing under any condition. This final rule provides limited conditions that permit the use of "NEWS" for combined mailings and copalletized mailings consisting of publications eligible for "NEWS" and those not eligible for that designation.

Combined and Copalletized Mailings

Mailing standards have been introduced over the years to promote the consolidation of different Periodicals publications or different editions of the same publication into larger volume mailings. These standards, however, have not prevented customers from combining copies in containers labeled as "PER" with copies labeled as "NEWS" as a way to improve the depth of sort and to reduce the overall number of containers prepared.

These consolidations represent an effective means for Periodicals mailers and the Postal Service to improve customer service, promote greater production efficiencies, reduce the number of containers used to prepare mailings, and stabilize rates by eliminating additional mail processing steps. For Periodicals mailers, the primary benefit is greater postage savings.

Comments

The Postal Service requested in its proposed rule published on October 30, 2002, in the **Federal Register** (67 FR 66094–66096) that comments on the proposed labeling standards for Periodicals combined mailings and copalletized mailings be submitted by November 29, 2002. Comments were received from only one interested party: a publisher of a biweekly publication.

The publisher, whose publication is issued every two weeks, expressed concern about the extension of newspaper or "NEWS" treatment to publications that are not eligible for such treatment under the long-standing standards presented in the DMM if those publications were mailed separately and not included as part of a combined mailing or a copalletized mailing. The commenter also inquired about the number of publications permitted to use "NEWS" on container labels. Furthermore, the publisher wanted to know how many publications that enjoyed "NEWS" treatment were published less frequently than once a week and received such treatment as a result of an authorization issued on March 1, 1984, or earlier, as provided in the DMM.

Postal Service records show, as of December 13, 2002, that 35,695 publications were authorized Periodicals mailing privileges. Of this total, 10,259 or nearly 29 percent are published weekly or more frequently. The Postal Service maintains no centralized records, however, that indicate whether a publication that is eligible to use "NEWS" actually uses that designation or "PER." Moreover, there is no national system of records that indicates which publications are eligible to use "NEWS" based on authorizations permitted on or before March 1, 1984. Postmasters of the various authorized original offices would have access to that specific information, which is outside the scope of this rulemaking.

Most of the weekly or more frequently published publications fall into two categories: small and large local newspapers and large national newsmagazines and similar news publications. In both categories, the use of combined mailings or copalletized mailings is limited in potential scope. For example, local newspapers often have sufficient volumes and densities to achieve lower postage rates and destination discounts without being combined or copalletized with other publications. As a consequence, only a small percentage of those publications authorized "NEWS" treatment are likely to be combined with those publications not authorized such treatment.

This final rule, however, affords publishers the additional flexibility of combining and copalletizing Periodicals mailings whenever warranted by production efficiencies, postage savings, and improved service. Publishers of Periodicals publications that are generally not eligible for "NEWS" treatment can now determine whether it is advantageous to be combined or copalletized with other publications eligible for such treatment. This is an option for which publications such as the one issued by the commenter previously could not be considered.

The publisher commenting on the proposed rule also believed that the reasoning behind the use of the "NEWS" designation was to ensure that time-sensitive publications were processed and delivered in a consistent and timely manner. He believed that factors other than the frequency of publication should be considered when determining whether a publication is time-sensitive and eligible for the "NEWS" designation for mail processing and delivery. The publisher noted that the adoption of the proposed standards would extend that privilege to publications that were perhaps not time-sensitive whereas publications such as his publication, which he stated was issued 26 times a year and which he

maintained was time-sensitive in content, would not benefit from the proposed standard.

Although the Postal Service does not guarantee the delivery of Periodicals publications within a specified time, it handles all such publications, whether designated "NEWS" or "PER," as expeditiously as possible in distribution, dispatch, transportation, and delivery. There are few differences between the ways in which the Postal Service handles publications designated "NEWS" and "PER." In general, those designated "NEWS" are handled first to ensure timely processing and dispatch. Despite that difference, the Postal Service fully supports the invaluable role Periodicals publications play in keeping the American public informed and enlightened. As a consequence, the Postal Service makes every possible attempt to provide similar handling for publications designated "PER" to ensure timely and consistent delivery. The final rule does provide publishers of publications not authorized newspaper treatment, including the publication issued by the commenter, the option of being combined or copalletized with those publications that are authorized "NEWS" treatment.

As a clarification about what constitutes time-sensitive publications, the proposed rule did not address that issue or attempt to discuss or consider criteria other than frequency of publication that would need to be applied for determining the use of "NEWS" and "PER." Since this issue is outside the scope of this rulemaking, the changes discussed in the proposed rule were based on practical operational reasons stemming from mail production that combines publications eligible for "NEWS" with those eligible only for "PER." In view of that situation, mailers and publishers requested standards that specified the criteria under which those two designations could be used.

After full consideration of the comments received and for the reasons cited above, the Postal Service believes it appropriate to adopt the proposed rule for the use of the "NEWS" and "PER" designations for combined mailings and copalletized mailings.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

E Eligibility

* * * * *

E200 Periodicals

* * * * *

E230 Carrier Route Rates

[Remove 4.0.]

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M030 Containers

M031 Labels

* * * * *

1.0 SACK AND TRAY LABELS

* * * * *

[Revise 1.7 to read as follows:]

1.7 Periodicals Publications

Except as provided in M230.2.0 for combined mailings, Periodicals publications must use one of the following for Line 2 class information:

a. "PER."

b. "NEWS" if published weekly or more often or if authorized newspaper treatment as of March 1, 1984.

* * * * *

4.0 PALLET LABELS

* * * * *

[Revise 4.11 to read as follows:]

4.11 Periodicals Publications

Except as provided in M045.8.0 for copalletized mailings, Periodicals publications must use one of the following for Line 2 class information:

a. "PER."

b. "NEWS" if published weekly or more often or if authorized newspaper treatment as of March 1, 1984.

* * * * *

M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

* * * * *

[Revise 1.3b to read as follows:]

1.3 Content Line (Line 2)

The content line must meet these standards:

* * * * *

b. *Periodicals.* Except as provided in M045.8.0 for copalletized mailings and in M230.2.0 for combined mailings, Periodicals publications must use one of the following for Line 2 class information:

(1) "PER."

(2) "NEWS" if published weekly or more often or if authorized newspaper treatment as of March 1, 1984.

* * * * *

M040 Pallets

* * * * *

M045 Palletized Mailings

* * * * *

[Revise heading of 8.0 to read as follows:]

8.0 COPALLETIZED FLAT-SIZE PIECES—PERIODICALS OR STANDARD MAIL

* * * * *

[Amend 8.2 by revising 8.2a, adding new 8.2b, and redesignating current 8.2b as 8.2c to read as follows:]

8.2 Periodicals

Additional standards are as follows:

a. Periodicals eligible for preferred rates (In-County, Nonprofit, Classroom, and Science-of-Agriculture) may be combined with Periodicals eligible for Outside-County rates.

b. All pallets in a copalletized mailing are identified on the content line (Line 2) of the label with only "NEWS" (see M031) or "PER" as the class designation under these conditions:

(1) If at least 51% of the total number of copies in the copalletized mailing can qualify for "NEWS" treatment, then all pallets in such a mailing are labeled "NEWS," unless the mailer chooses to use "PER."

(2) If less than 51% of the total number of copies in a copalletized mailing can qualify for "NEWS" treatment, then all pallets in such a mailing are labeled "PER."

* * * * *

[Revise M230 by amending heading of M230; by amending 1.0; and by redesignating and amending current 2.0 as 2.2, current 3.0 as 2.1, current 4.0 as 2.4, and current 5.0 as 2.5 to read as follows:]

M230 Combining Multiple Editions or Publications

1.0 DESCRIPTION

1.1 Purpose

Periodicals publications may be prepared as a combined mailing by merging copies either during production or after finished copies are produced to achieve the finest presort level possible or to reduce the per piece charge.

1.2 Methods

A Periodicals combined mailing may be prepared using either one of these methods:

a. Individually addressed copies of different editions of a Periodicals publication (one title) or individually addressed copies of different Periodicals publications (more than one title) are merged and sorted together to obtain a finer presort level.

b. Two or more copies of different Periodicals publications (two or more titles) are placed within the same mailing wrapper and presented as one addressed piece to a single recipient to reduce the per piece charge.

2.0 BASIC STANDARDS

2.1 Eligibility and Mail Preparation

Each publication in a combined mailing must meet the basic eligibility standards in E211 and the specific standards for the rate claimed. In addition, the combined mailing must meet the eligibility and mail preparation standards for the rate claimed.

2.2 Minimum Volume

For combined mailings prepared under 1.2a, more than one Periodicals publication, or edition of a publication, may be combined to meet the required minimum volume per package, sack, or tray for the rate claimed. For combined mailings prepared under 1.2b, the appropriate minimum volume requirements in M210, M220, M810, or M820 apply for the rate claimed.

2.3 Labeling

All sacks or trays in a combined mailing are labeled the same, as either "NEWS" (see M031) or as "PER," depending on which of the following conditions is met:

a. If at least 51% of the total number of copies in the combined mailing can qualify for "NEWS" treatment, then all sacks or trays in such a mailing are labeled "NEWS," unless the mailer chooses to use "PER."

b. If less than 51% of the total number of copies in a combined mailing can qualify for "NEWS" treatment, then all sacks or trays in such a mailing are labeled "PER."

2.4 Documentation

Presort documentation required under P012 must show the total number of addressed pieces and total number of copies for each publication and each edition, if applicable, in the combined mailing claimed at the carrier route, 5-digit, 3-digit, and basic rates. The publisher must also provide a list, by 3-digit ZIP Code prefix, of the number of addressed pieces for each publication and each edition, if applicable, claimed at any destination entry and pallet discounts.

2.5 Postage Statements

Postage statements for a combined mailing must be prepared as follows:

a. Copy weight and advertising percentage determine whether separate postage statements are required for editions of the same publication:

(1) If the copy weight and advertising percentage for all editions of a publication are the same, all the editions may be reported on the same postage statement or each edition may be reported on a separate postage statement.

(2) If either the copy weight or the advertising percentage is different for each edition of a publication, each edition must be reported on a separate postage statement.

b. For a combined mailing prepared under 1.2a, a separate postage statement that claims all applicable per piece and per pound charges must be prepared for each publication or edition except as provided in 2.5a. The mailer must annotate on, or attach to, each postage statement, the title and issue date of each publication or edition included in the combined mailing and indicate that the pieces were prepared as part of a combined mailing under 1.2a.

c. For mailings prepared under 1.2b, a separate postage statement claiming the applicable per pound charges must be prepared for each publication or edition in the combined mailing except as provided in 2.5a. The mailer must annotate on, or attach to, each postage statement, the title and issue date of each publication or edition included in the combined mailing and indicate that the copies were prepared as part of a combined mailing under 1.2b. The per piece charges must be claimed as follows:

(1) If all copies in a combined mailing prepared under 1.2b are eligible for the Classroom or Nonprofit discount, the per piece charges must be claimed only on the postage statement for the publication that contains the highest amount of advertising.

(2) If all copies in a combined mailing prepared under 1.2b are not eligible for the Classroom or Nonprofit discount, the per piece charges must be claimed only on the postage statement for the publication that contains the highest amount of advertising.

(3) If a portion of the copies in a combined mailing prepared under 1.2b are eligible for the Classroom or Nonprofit discount and a portion are not eligible for those discounts, the per piece charges must be claimed only on the postage statement for the publication that contains the highest amount of advertising and is not eligible for the Classroom or Nonprofit discount. The Classroom or Nonprofit per piece discount must not be claimed.

* * * * *

An appropriate amendment to 39 CFR 111 to reflect the changes will be published.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 03–4418 Filed 2–26–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–068–7225a; A–1–FRL–7445–9]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; New Source Review/ Prevention of Significant Deterioration Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revisions submitted by the Connecticut Department of Environmental Protection (DEP). The revisions include new provisions that implement the core requirements of 1990 Clean Air Act Amendments (CAAA) regarding nonattainment New Source Review (NSR) in areas that have not attained the National Ambient Air Quality Standards (NAAQS). In addition, the changes amend the applicability requirements and certain other requirements of the Prevention of Significant Protection (PSD) program and NSR rules. Finally, the changes provide a definition for "Practicably Enforceable" that would allow sources a streamlined approach to limit potential to emit for PSD/NSR applicability purposes. In aggregate, these revisions will substantially strengthen the DEP's air permitting rules.

This action is to approve the revisions to section 22a–174–1, "Definitions," section 22a–174–2a, "Procedural Requirements for New Source Review and Title V Permitting," and section 22a–174–3a, "Permit to Construct and Operate Stationary Sources." This action is being taken in accordance with the Clean Air Act (CAA or Act).

DATES: This rule will become effective on March 31, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business

hours at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 West, 1301 Constitution Avenue, NW., Washington DC; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, (617) 918–1652; e-mail at *McCahill.Brendan@EPA.GOV*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 2003 (68 FR 2722), EPA published a notice of proposed rulemaking (NPR) for the state of Connecticut. The NPR proposes approval of the revisions to section 22a–174–1, "Definitions," section 22a–174–2a, "Procedural Requirements for New Source Review and Title V Permitting," and section 22a–174–3a, "Permit to Construct and Operate Stationary Sources." The formal SIP revision was submitted on June 14, 2002.

Provisions in these rules that only affect programs other that PSD and NSR have not been incorporated into the SIP by today's action. For details, please contact the EPA regional office at the address given above. Furthermore, EPA is not taking action on portions of DEP's submittal that address NO_X increments. This aspect of the PSD Federal implementation plan remains in effect (see 40 CFR 52.382). The DEP has submitted other changes to the increment provisions of its SIP. EPA anticipates taking action on the NO_X increments and these other changes in a future action.

EPA has recently promulgated revisions to certain portions of the Federal PSD and nonattainment NSR regulations (67 FR 80244 (Dec. 31, 2002). These rules have an effective date of March 3, 2003. With respect to Connecticut's rules relating to new source review, EPA has determined that Connecticut's rules meet the requirements of 40 CFR part 51, subpart I, as currently in effect, and is taking no position on whether Connecticut will need to make changes to its new source review rules to meet requirements that EPA has promulgated, but are not yet effective, as part of new source review reform.

In addition, while EPA is approving Connecticut's PSD SIP, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of Connecticut's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Connecticut are consistent with the requirements of the CAA, EPA regulations, and the SIP. EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

The specific requirements of Connecticut's SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

II. Response to Comments

EPA did not receive any comments during the comment period.

III. Final Action

EPA is approving the SIP revision submitted by Connecticut on June 14, 2002 as a revision to the SIP.

IV. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Dated: February 19, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(91) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(91) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on June 14, 2002.

(i) Incorporation by reference.

(A) Connecticut's amendments to Section 22a–174–1, *Definitions* except for the following sections: (4), (18), (20), (29), (44), (45), (60), (111), (112) and, (117). These regulations are effective in the state of Connecticut on March 15, 2002.

(B) Connecticut's new Section 22a–174–2a, *Procedural Requirements for New Source Review and Title V Permitting* except for the following sections: (a)(1) through (6); (b)(1) through (4); introduction to (b)(5); (b)(5)(D), (F) and, the last sentence of (G); (b)(9); (c)(2); clause after first comma " * * * or order pursuant to section 22a–174–33(d) of regulations of Connecticut State Agency * * * " in the introduction to (c)(6); (c)(6)(B) and (C); clause after first comma " * * * or order pursuant to section 22a–174–33(d) of Regulations of Connecticut State Agencies * * * " in (c)(9); reference to "Title V" in title of (d); (d)(4)(A) through (D); (d)(7)(A) through (D); (d)(8)(A) and (B); reference to "Title V" in title of (e); (e)(2)(A) and (B); (e)(3)(D); (e)(5)(A) through (F); reference to "Title V permit" in (e)(6); reference to "22a–174–33" in first clause of introduction to (f)(2); (f)(2)(F); (f)(5); (f)(6); (g)(1) and (2); (h)(1) through (3) and; (i)(1) through (3). These regulations are effective in the state of Connecticut on March 15, 2002.

(C) Connecticut's new Section 22a–174–3a, *Permit to Construct and Operate Stationary Sources* except for the following sections: (a)(1)(C); (c)(1)(H); (d)(3)(J) and (M); references to "Dioxin," "PCDDs" and, "PCDFs" in Table 3a(i)–1 of (i)(1) and; (m)(1) through (8). These regulations are effective in the state of Connecticut on March 15, 2002.

(ii) Additional materials.

(A) Letter from the Connecticut Department of Environmental Protection dated June 14, 2002 submitting a revision to the Connecticut State Implementation Plan.

For the State of Connecticut:

3. In § 52.385, Table 52.385 is amended by revising existing entry in state citations for 22a–174–1, Definitions, and adding new entries in state citation for 22a–174–2a, Procedural Requirements for New Source Review and Title V Permitting and, 22a–174–3a, Permit to Construct and Operate Stationary Sources, to read as follows:

§ 52.385 EPA-approved Connecticut Regulations.

* * * * *

TABLE 52.385.—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	52.370	Explanations/ description
		Date adopted by State	Date approved by EPA			
22a–174–1	Definitions	03/15/02	February 27, 2003.	[Insert *FR* citation from published date].		Adopting definitions applicable to PSD/ NSR program.
22a–174–2a	Procedural Requirements for New Source Review and Title V Permitting.	03/15/02	February 27, 2003.	[Insert *FR* citation from published date].		Provisions applicable to PSD/NSR in consolidated permit procedural requirements.
22a–174–3a	Permit to Construct and Operate Stationary Sources.	03/15/02	February 27, 2003.	[Insert *FR* citation from published date].		PSD/NSR program requirements as revised by the CAAA.

[FR Doc. 03–4508 Filed 2–26–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 128–3097a; FRL–7450–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Regulations for Permits, Approvals and Registration and Related Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions amend provisions to Maryland's regulations for Permits, Approvals, and Registration and related changes to its regulations for General Emission Standards, Prohibitions, and Restrictions, and Volatile Organic Compounds from Specific Processes. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse written comment by March 31, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments should be mailed to Harold A. Frankford, Office of Air Programs, Air Protection Division, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2001, the Maryland Department of the Environment (MDE) submitted formal revisions to its State Implementation Plan (SIP). The SIP revision consists of amendments to the Code of Maryland (COMAR) Regulations 26.11.02, Permits, Approvals, and Registration that were adopted from 1995 thorough 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes.

The MDE has submitted all regulations under COMAR 26.11.02 for SIP approval except those relating to part 70 permits and those relating to fees. The MDE's November 1, 2001 submittal includes a table (Table 1of the submittal) which clearly indicates those regulations under COMAR 26.11.02 that are not to be considered as part of the SIP revision request. COMAR 26.11.02 was amended in its entirety in 1995 to include part 70 requirements. The non-part 70 requirements of COMAR 26.11.02 are substantially the same as those already approved by EPA as SIP revisions. This rulemaking action approving the November 1, 2001 SIP revision request by MDE does not make substantial amendments to the SIP's provisions of COMAR 26.11.02 already approved by EPA. Similarly, the related amendments made to COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes that are the subject of this rulemaking action do not change the substantive SIP requirements of those regulations previously approved by EPA. The specific amendments being approved by this rulemaking action are discussed in the next section of this document.

II. Summary of the SIP Revisions

EPA is approving the SIP revisions submitted by the MDE on November 1, 2001. A description of each revision is provided in A–E of this section.

A. The May 1995 Amendments

On April 11, 1995, the MDE adopted several amendments to its Code including the repeal of Regulations .01–.21 and the adoption of new Regulations .01–.19 under COMAR 26.11.02 Permits, Approvals, and Registration, an amendment to Regulation .06, Volatile Organic Compounds under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and an amendment to Regulation .02 Applicability, Determining Compliance, Reporting and General Requirements under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes. All of these amendments were effective on May 8, 1995.

The repeal of Regulations .01–.21 and the adoption of new Regulations .01–.19 under COMAR 26.11.02 Permits, Approvals, and Registration did not substantially change the requirements of COMAR 26.11.02. Rather, when it re-codified and reformatted these regulations, the MDE made several simple wording changes to clarify the text, correct typographical errors, and make wording changes to the text of these SIP regulations to clarify their requirements in light of the adoption of non-SIP permitting regulations to satisfy the requirements of 40 CFR part 70. The MDE's November 1, 2001 submittal specifically indicates that Regulations .01B., .02D., .04C.(2), .11C., and .15 regarding definitions and requirements related to part 70 Permits are not being requested for approval and incorporation into the SIP.

The amendment to Regulation .06, Volatile Organic Compounds under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions clarifies that the hearing required by 26.11.06.06 E(4)e satisfies the requirement for public comment or hearing under COMAR 26.11.02.09–.14.

The amendment to Regulation .02 Applicability, Determining Compliance, Reporting and General Requirements under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes clarifies that upon approval of a reasonably available control technology (RACT) standard for a major stationary source of volatile organic compounds (VOCs) that does not have a permit to operate, the MDE will require the source to apply for a permit under COMAR 26.11.02.13 and will issue a permit to operate that includes the RACT requirements.

B. The June 1997 Amendments

On May 20, 1997, the MDE adopted revisions to Regulations .01, .06, .10, .11, .12, .14, .16 and .19 under COMAR 26.11.02 Permits, Approvals, and Registration. These amendments were effective June 16, 1997. The MDE's November 1, 2001 submittal specifically states that the amendments to Regulations .16 and .19 of COMAR 26.11.02 are not being requested for approval and incorporation into the SIP. The MDE's November 1, 2001 submittal also specifically states that the definition of the term "acid rain source" found at COMAR 26.11.02.01B(1) is not being requested for SIP approval.

The amendment to .01, Definitions clarifies the definition of the term "complete application" at paragraph .01B(13). The amendment to Regulation .06, Denial of Applications for State Permits and Approvals corrects typographical errors and omissions that occurred when COMAR 26.11.02 was reorganized.

The amendments to Regulation .10, Sources Exempt for Permits to Construct and Approvals provide that the following sources may construct or modify without first obtaining, and having in current effect, a permit to construct:

(1) Commercial bakery ovens with a rated heat input capacity of less than 2 MMBtu/hour;

(2) Breweries with an annual beer production less than 60,000 barrels;

(3) Municipal solid waste landfills that have a design capacity of less than 500,000 tons of municipal solid waste and that are not major sources;

(4) Gasoline storage tanks with a capacity of 2000 gallons or less; and

(5) Sheet-fed letter or lithographic printers with a cylinder width less than 18 inches.

The amendments to Regulation .11, Procedures for Obtaining Permits to Construct Certain Significant Sources clarify application procedures for sources subject to COMAR 26.11.02. The amendments to Regulation .12, Procedures for Obtaining Approvals of PSD Sources and NSR Sources and Permits to Certain 100-Ton Sources clarify those provisions of COMAR 26.11.02 that apply to these sources and state that a permit to construct a lead source is required for sources that will discharge 5 tons per year or more of lead or lead compounds measured in elemental lead. The amendments to Regulation .14, Procedures for Obtaining State Permit to Operate and Permits to Construct Certain Sources and Permits to Construct Control Equipment on Existing Sources clarify the applicability of COMAR 26.11.02 for any source or activity not listed in Regulations .11A. or .12.

C. The September 1997 Amendments

On August 18, 1997, the MDE adopted amendments to Regulation .10, Sources Exempt for Permits to Construct and Approvals under COMAR 26.11.02 Permits, Approvals, and Registration. These amendments were effective September 22, 1997. The amendments to Regulation .10, Sources Exempt for Permits to Construct and Approvals lowers the size of the stationary internal combustion engine (ICE) exempted from permit to construct requirements for sources that operate more than 2000 hours/year. The old version of the regulation exempted a stationary ICE of less than 1000 brake horsepower (HP) from the permit to construct requirements. Under the revised regulation, a stationary ICE of less than 500 HP and those between 500 and 1000 HP that operate less than 2,000 hours/year are exempted from the permit to construct requirements. For sources that install more than one ICE over a five-year period, the exemptions do not apply if the total potential to emit emissions from the engines installed over the five-year period meets or exceeds the major source threshold as defined in COMAR 26.11.02.01.C.

D. The May 4, 1998 Amendments

On April 9, 1998, the MDE adopted amendments to Regulation .09 Sources Subject to Permits to Construct and Operate under COMAR 26.11.02, Permits, Approvals, and Registration; and to Regulations .02, Applicability, Determining Compliance, Reporting and General Requirements and Regulation .15 Paint, Resin and Adhesive Manufacturing and Adhesive Application under COMAR 26.11.19, Volatile Organic Compounds from Specific Processes. These amendments were effective May 4, 1998.

The amendments to Regulation .09, Sources Subject to Permits to Construct and Operate under COMAR 26.11.02, Permits, Approvals, and Registration corrects a mis-reference that occurred when COMAR 26.11.02 was restructured. The amendment clarifies that obtaining a Prevention of Significant Deterioration (PSD) permit or New Source Review (NSR) permit is separate from obtaining a general construction permit. Obtaining approval of a PSD or NSR permit does not relieve a person from also obtaining all permits to construct required under COMAR 26.11.02.

Although they were included in Maryland's November 1, 2001 SIP revision submittal, the MDE had also formally submitted the very same amendments to COMAR 26.11.19, Volatile Organic Compounds from Specific Processes, Regulations .02, Applicability, Determining Compliance, Reporting and General Requirements and .15, Paint, Resin and Adhesive Manufacturing and Adhesive Application, as separate formal SIP revision requests. EPA has already approved the revision to Regulation .02 on February 3, 2003 (68 FR 5228) and the revision to Regulation .15 on October 28, 1999 (64 FR 57989).

E. The March 22, 1999 Amendments

On March 2, 1999, the MDE adopted amendments to Regulation .10, Sources Exempt for Permits to Construct and Approvals under COMAR 26.11.02, Permits, Approvals, and Registration. These amendments were effective March 22, 1999. The amendments establish a de minimus level for construction permits so that sources which emit very small amounts of air pollution do not have to obtain air quality permits to construct. In addition, the amendments clarify the exemption list of Regulation .10, Sources Exempt for Permits to Construct and Approvals under COMAR 26.11.02 to exempt space heaters below a certain size from the requirement to obtain a permit to construct.

The amended version of Regulation .10C exempts space heaters using gaseous fuels or No. 1 or No. 2 fuel oil with a heat input less than 1,000,000 Btu (1.06 gigajoules) per hour from first obtaining, and having in current effect, a permit to construct prior to construction or modification. The amended version of Regulation .10 includes a new paragraph .10X., Other Installations, which allows an installation to construct or modify or cause to be constructed or modified without first having to obtain, and having in current effect, a permit to construct if :

(1) The installation is not subject to any source-specific State or Federal emission standard;

(2) The expected uncontrolled emissions are less than 1 ton per calendar year of each pollutant for which there is a Federal ambient air quality standard or which is a Class II toxic air pollutant, as defined in COMAR 26.11.15.01B(5); and

(3) The emissions contain not more than 1 pound per day of a Class I toxic air pollutant, as defined in COMAR 26.11.15.01B(4).

III. Final Action

EPA is approving the amendments to COMAR 26.11.02, Permits, Approvals, and Registration that were adopted from 1995 thorough 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes as submitted by MDE on November 1, 2001 as formal revisions to the Maryland SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment given that these revisions

became effective in Maryland from 1995 through 1999 and do not substantially revise the already SIP-approved provisions of these regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the amendments to COMAR 26.11.02, Permits, Approvals, and Registration that were adopted from 1995 through 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes submitted by MDE on November 1, 2001, if adverse comments are filed. This rule will be effective on April 28, 2003 without further notice unless EPA receives adverse comment by March 31, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving amendments to COMAR 26.11.02, Permits, Approvals, and Registration that were adopted from 1995 thorough 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes as submitted by Maryland on November 1, 2001 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 4, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(182) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(182) Revisions to the Code of Maryland Administrative Regulations (COMAR) under COMAR 26.11.02, Permits, Approvals, and Registration that were adopted from 1995 thorough 1999 and related amendments under COMAR 26.11.06, General Emission Standards, Prohibitions, and Restrictions, and COMAR 26.11.19, Volatile Organic Compounds from Specific Processes on November 1, 2001 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of November 1, 2002 from the Maryland Department of the Environment (MDE) transmitting revisions to COMAR 26.11.02, 26.11.06 and 26.11.19.

(B) The following new provisions of COMAR 26.11.02 (Permits, Approvals and Registration), effective May 8, 1995, replacing COMAR 26.11.02.01 through 26.11.02.16, as amended effective through April 26, 1993:

(*1*) COMAR 26.11.02.01A; 26.11.02.01B(2), (3), (7) through (9), (11) through (14), (17) through (21), (23) through (28), (34) through (36), (38), (40), (41), (43) through (45), (47), (48), (51) through (53), and (55); and 26.11.02.01C.

(*2*) COMAR 26.11.02.02 (except .02D), .03, .04 (except .04C(2)), .05 through .10, .11 (except .11C), and .12 through 14.

(C) Revision to COMAR 26.11.06.06E(4)(g), effective May 8, 1995.

(D) Revision to COMAR 26.11.19.02G(3)(b), effective May 8, 1995.

(E) Revisions to COMAR 26.11.02.01B(13), .06B (introductory paragraph) and .06B(5), .10O(2), .10Q(7), .10U, .10V, .11A(1), .12A(1) and (2), .14A(1); addition of 26.11.02.10O(13) and (14), .10W, .11A(2)and .12A(3); removal of 26.11.02.14A(2)—existing .14A(3) is renumbered as .14A(2), effective June 16, 1997.

(F) Revision to COMAR 26.11.02.10E, effective September 22, 1997.

(G) Revision to COMAR 26.11.02.09C, effective May 4, 1998.

(H) Revisions to COMAR 26.11.02.10C, .10V and .10W; addition of COMAR 26.11.02.10X, effective March 22, 1999.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(182)(i) of this section.

§ 52.1113 [Reserved]

3. Section 52.1113 is reserved.

[FR Doc. 03–4510 Filed 2–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 269–0382a; FRL–7451–6]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from Portland cement kilns. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse comments by March 31, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, California 92392.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MDAQMD	1161	Portland Cement Kilns	3/25/02	6/18/02

On July 23, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

MDAQMD adopted an earlier version of this rule on October 22, 2001, and CARB submitted it to us on November 8, 2001. We published approval of this previous version of Rule 1161 into the SIP on January 2, 2002 (67 FR 19).

C. What Is the Purpose of the Submitted Rule Revisions?

Rule 1161 applies to cement manufacturing operations within the Federal ozone non-attainment area

regulated by the MDAQMD. This rule controls emission of NO_X from Portland cement kilns. On January 2, 2002, the EPA finalized approval of a previous version of this rule. CARB submitted comments on the previous version of proposed rule 1161 a few days prior to its scheduled adoption in October 2001. Because delaying adoption could have resulted in offset and highway sanctions for the region, MDAQMD committed to CARB that it would address CARB's comments no later than May 2002.

On March 25, 2002, MDAQMD adopted the amended rule 1161. On June 18, 2002, CARB submitted the revised version of rule 1161 for approval into the SIP. Rule 1161, as revised, addresses CARB's comments.

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The MDAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1161 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. Issue Relating to VOC Regulation, Cut points, Deficiencies, and Deviations (the Blue Book), U.S. EPA, May 25, 1988.

2. "Guidance Document for Correcting VOC Rule Deficiencies", U.S. EPA Region 9, August 21, 2001 (the little bluebook).

3. State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendment of 1990 (the "NO_X Supplement to the General Preamble"), U.S. EPA, 57 FR 55620, November 25, 1992.

4. Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT) for the Repowering of Utility Boilers, U.S. EPA Office of Air Quality Planning and Standards, March 9, 1994.

5. Alternative Control Techniques (ACT) Document, NO_X Emission from Cement Manufacturing, U.S. EPA, March 1994, EPA 453/R–94–004.

6. State Implementation Plans (SIPS): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, dated September 20, 1999.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations.

The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by March 31, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 28, 2003. This will incorporate this rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_X rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 31, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(300) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(300) Amended regulations for the following APCDs were submitted on June 18, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Mojave Desert Air Quality Management District.

(*1*) Rule 1161 amended on March 25, 2002.

* * * * *

[FR Doc. 03–4513 Filed 2–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD141/142–3095a; FRL–7450–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). One revision removes from the SIP the state ambient air quality standard for hydrocarbons. The other revision removes an outdated citation of a current SIP provision regarding the granting of visible emissions exceptions by control officers. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse written comment by March 31, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 18, 2002 and November 26, 2002, the State of Maryland submitted formal revisions to its State Implementation Plan (SIP). These revisions consists of the removal of outdated and redundant provisions from the Maryland SIP. The November 18, 2002 revision (#85–03) removes the ambient air quality standard for hydrocarbons. The November 26, 2002 revision (#84–06) removes a provision from Maryland's regulations governing control of fuel burning equipment and internal stationary sources.

II. Summary of SIP Revisions

The fuel burning equipment provision being reviewed in this action allows control officers to grant visible emissions exceptions for small residential units and small heating

equipment in State Air Quality Regions I, II, V, and VI, which comprises the following counties: Allegany, Calvert, Cecil, Charles, Dorchester, Frederick, Garrett, Kent, Queen Anne's, Saint Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester. Before December 3, 1984, this rule had been cited in the Code of Maryland Administrative Regulations (COMAR) at COMAR 10.18.09.05A(3)(b) (i) and (ii). In a State action which became effective on December 3, 1984, Maryland removed these provisions from COMAR 10.18.09.05A and merged them with its general visible emissions exceptions regulation, currently cited in the Maryland SIP as COMAR 26.11.06.02B. In a letter dated January 9, 2003 to EPA, Maryland reiterated that the intent of Revision 84–06 was to move the provisions which allows control officers to grant visible emissions exceptions from COMAR 10.18.09.05 A(3)(b) (i) and (ii) to COMAR 26.11.06.02B(5) (a) and (b). On February 12, 2001(66 FR 9764), EPA had approved the provisions to COMAR 26.11.06.02B(5) (a) and (b) as revisions of the Maryland SIP, but had not indicated in this action that these provisions represented a merger with an existing SIP-approved rule. *See*, 40 CFR 52.1070(c)(153)(i)(E)(1). In this action, EPA is formally removing COMAR 10.18.09.05A(3)(b)(i) and (ii) from the Maryland SIP, in accordance with the intent of Maryland's 1984 rulemaking action.

With regard to the ambient air quality standard for hydrocarbons, EPA had removed this pollutant from the list of national ambient air quality standards (NAAQS) cited in 40 CFR part 50 on January 5, 1983 (48 FR 629). In response to EPA's action, Maryland removed the state hydrocarbons standard from COMAR 10.18.03, effective October 14, 1985. After EPA reviewed the history of Maryland's formal SIP actions taken since 1985, it was not clear whether EPA had received a formal request from Maryland to remove the State's ambient hydrocarbons standard from the SIP. Therefore, on November 18, 2002, Maryland submitted a formal SIP revision request reaffirming its intent to remove this provision from the SIP.

Given the history of the State and EPA rulemaking actions associated with these two provisions, EPA regards these revisions as "housekeeping" actions with no impact on Agency policy, ambient air quality, or enforceability.

III. Final Action

EPA is approving the removal of the visible emissions exceptions provision cited at COMAR 10.18.09.05A(3)(b)(i) and (ii). As explained earlier in this action, the actual provision remains in the SIP, but in a different location within Maryland's air pollution control regulations. EPA is also approving the removal of Maryland's ambient air quality standard for hydrocarbons from the Maryland SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 28, 2003 without further notice unless EPA receives adverse comment by March 31, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve miscellaneous Maryland SIP revisions may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter.

Dated: February 4, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(180) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(180) Revisions to the Code of Maryland Administrative Regulations (COMAR) submitted on November 18, 2002 and November 26, 2002 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of November 18, 2002 from the Maryland Department of the Environment transmitting the removal of Code of Maryland Administrative Regulation (COMAR) 10.18.03.08—the State ambient air quality standard for hydrocarbons.

(B) Removal of COMAR 10.18.03.08, effective October 14, 1985.

(C) Letter of November 26, 2002 from the Maryland Department of the Environment transmitting revisions to COMAR 10.18.09.05 regarding the removal of provisions granting visible emissions exceptions by control officers in Maryland Areas I, II, V, and VI.

(D) Removal of COMAR 10.18.09.05A(3)(b)(i) and .05A(3)(b)(ii), effective December 3, 1984.

(ii) Additional Material.

(A) Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(180)(i) of this section.

(B) Letter dated January 9, 2003 from the Maryland Air and Radiation Management Administration to the Environmental Protection Agency, Region III, clarifying the reasons for removing the provisions of COMAR 10.18.09.05B(3)(i) and (ii).

[FR Doc. 03–4516 Filed 2–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. VI4–249a, FRL–7455–3]

Approval and Promulgation of State Plans for Designated Facilities; Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Government of the United States (US) Virgin Islands. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing commercial and industrial solid waste incineration (CISWI) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing CISWI units in the state and if it submits a negative declaration letter in place of the State Plan.

DATES: This direct final rule is effective on April 28, 2003 without further notice, unless EPA receives adverse comment by March 30, 2003.

If an adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Demian P. Ellis at *ellis.demian@epa.gov*. The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is also available for inspection at the following locations:

Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Cyril E. King Airport, Terminal Building, 2nd Floor, St. Thomas, USVI, 00802.

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, Telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

Table of Contents

A. What action is EPA taking today?
B. Why is EPA approving the Virgin Islands' negative declaration?
C. What if an existing CISWI unit is discovered in the Virgin Islands after today's action becomes effective?
D. What is the background for Emission Guidelines and State Plans?
E. Where can you find the EG requirements for CISWI units?
F. Who must comply with the EG requirements?
G. What are EPA's conclusions?
H. Statutory and Executive Order Reviews

A. What Action Is EPA Taking Today?

The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Government of the United States Virgin Islands (Virgin Islands) dated October 25, 2002. This negative declaration finds that there are no existing commercial and industrial solid waste incineration (CISWI) units throughout the Territory of the Virgin Islands. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Emission Guidelines for Existing Commercial and Industrial Solid Waste Incineration Units" (65 FR 75338, December 1, 2000). The negative declaration officially certifies to EPA that, to the best of the Virgin Islands' knowledge, there are no CISWI units in operation within the Territory.

B. Why Is EPA Approving the Virgin Islands' Negative Declaration?

EPA has evaluated the negative declaration submitted by the Virgin Islands for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that the Virgin Islands' negative declaration meets all applicable requirements and, therefore, EPA is approving the Virgin Islands' certification that there are no existing CISWI units in operation throughout the Territory. The Virgin Islands has certified in its negative declaration that there are no CISWI units that meet the EG criteria based on file review, inspections, and a territory-wide search.

EPA's approval of the Virgin Islands' negative declaration is based on the following:

(1) The Virgin Islands has met the requirements of § 60.23(b) in Title 40, part 60, subpart B of the Code of Federal Regulations (40 CFR part 60) for submittal of a letter of negative declaration that certifies there are no existing facilities within the Territory. Such certification exempts the Virgin Islands from the requirements to submit a plan.

(2) EPA's own source inventory files indicate there are no existing CISWI units operating within the Territory of the Virgin Islands.

C. What if an Existing CISWI Unit Is Discovered in the Virgin Islands After Today's Action Becomes Effective?

Section 60.2530 of 40 CFR part 60, subpart DDDD (65 FR 75364, December 1, 2000) requires that if, after the effective date of today's action, an existing CISWI unit is found within the Virgin Islands, the Federal Plan implementing the EG would automatically apply to that CISWI unit until a State Plan is approved by EPA.

The Federal Plan was proposed on November 25, 2002 (67 FR 70640) and is expected to be promulgated in the near future. The Federal Plan will apply to CISWI units in states, commonwealths, and territories (1) where the EPA inventory identifies CISWI units and a plan is required and has not been submitted and approved by EPA and (2) where the EPA inventory did not identify any CISWI unit and a negative declaration has been received and approved by EPA (such as the Virgin Islands) and a CISWI unit is subsequently identified in the State or territory. If and when a State Plan, or in this case a Territorial Plan, for CISWI units is submitted and approved, the Federal Plan would no longer apply.

D. What Is the Background for Emission Guidelines and State Plans?

Section 111(d) of the Act requires that pollutants controlled under New Source Performance Standards (NSPS) must also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations.

Under section 129 of the Act, the EG is not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become Federally enforceable upon EPA approval. The procedures for adopting and submitting State Plans, as well as state requirements for a negative declaration, are in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules (60 FR 65414).

E. Where Can You Find the EG Requirements for CISWI Units?

On December 1, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new CISWI units and the EG applicable to existing CISWI units. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC (65 FR 75350 December 1, 2000) and DDDD (65 FR 75362 December 1, 2000), respectively.

F. Who Must Comply With the EG Requirements?

If you own or operate a combustion device that combusts commercial and industrial waste and you (1) began the construction of your CISWI unit on or before November 30, 1999 or (2) began reconstruction or modification of your CISWI unit prior to June 1, 2001, you must comply with these requirements. See § 60.2555 of 40 CFR part 60, subpart DDDD for a list of CISWI units exempt from the Federal requirements.

G. What Are EPA's Conclusions?

EPA has determined that the Virgin Islands' negative declaration meets all federal requirements and, therefore, EPA is approving the Virgin Islands' certification that no applicable CISWI units are in operation within the Territory of the U.S. Virgin Islands. If any existing CISWI units are discovered in the future, the Federal Plan implementing the EG would automatically apply to that CISWI unit until the State Plan is approved by EPA.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the Territory's submittal should adverse comments be filed. This rule will be effective April 28, 2003 without further notice unless the Agency receives adverse comments by March 31, 2003.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

H. Statutory and Executive Order Reviews

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

Executive Order 13045

Executive Order 13045 entitled, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule may have federalism implications. The only reason why this rule may have federalism implications is if in the future a CISWI unit is found within the Territory of the U.S. Virgin Islands the unit will become subject to the Federal Plan until a State Plan is approved by EPA. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because as a negative declaration it is not subject to the CISWI EG requirements. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, commonwealth, territorial, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, commonwealth, territorial, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective April 28, 2003 unless EPA receives material adverse written comments by March 31, 2003.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Commercial and industrial solid waste incineration units, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: February 11, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart CCC—Virgin Islands

2. Part 62 is amended by adding new § 62.13356 and an undesignated heading to subpart CCC to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units Constructed on or Before November 30, 1999 or Reconstructed or Modified prior to June 1, 2001.

§ 62.13356 Identification of plan—negative declaration.

Letter from the Virgin Islands Department of Planning and Natural Resources, submitted October 25, 2002, certifying that there are no existing commercial and industrial solid waste incineration units in the Territory of the United States Virgin Islands subject to part 60, subpart DDDD of this chapter.

[FR Doc. 03–4518 Filed 2–26–03; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 68, No. 39
Thursday, February 27, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

[Docket No. PRM–63–1]

State of Nevada; Denial of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the State of Nevada. The petitioner requests that the NRC amend its regulations governing the disposal of high-level radioactive waste in a proposed geologic repository at Yucca Mountain, Nevada. The petitioner believes that the present regulations are deficient because, in petitioner's view, they do not provide the regulatory framework to ensure that the repository isolates high-level radioactive waste over the long term primarily by geologic means and they do not demand that the applicant provide an "affirmative safety case" for the repository. These deficiencies, in petitioner's view, indicate that the regulations are not in full compliance with the Nuclear Waste Policy Act of 1982, as amended (NWPA), and/or the Atomic Energy Act of 1954, as amended (AEA). The NRC is denying the petition because: petitioner's assertion that Part 63 is not in full compliance with NWPA or AEA is without substance; the petition does not appear to present significant new factual information or policy recommendations that the Commission did not consider in the rulemaking which established Part 63, and it would be an unwise expenditure of resources to reconsider issues resolved in that rulemaking.

ADDRESSES: Copies of the petition for rulemaking and the NRC's letter to the petitioner are available on NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking Web site, contact Carol Gallagher (301) 415–5905 or Toll Free: 1–800–368–5642; e-mail: *cag@nrc.gov*. The documents may also be examined at the NRC Public Document Room (PDR), Room O–1F23, 11555 Rockville Pike, Rockville, MD.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737; or by e-mail to: *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7285 or Toll Free: 1–800–368–5642, e-mail: *tjm3@nrc.gov;* or Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203 or Toll Free: 1–800–368–5642, e-mail: *cwp@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On July 12, 2002, the State of Nevada submitted a "Petition to Institute Rulemaking: Part 63" (petition) which was docketed as a petition for rulemaking under 10 CFR 2.802 of the Commission's regulations (PRM–63–1). The petition requests amendments to 10 CFR Part 63, NRC's regulations governing the disposal of high-level radioactive waste (HLW) in a proposed geologic repository at Yucca Mountain, Nevada (YM). Petitioner believes that its proposed amendments are needed to bring Part 63 into full compliance with the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10101 *et seq.* (NWPA), and to ensure that the Part 63 regulations, if met by the Department of Energy (DOE or Applicant), will provide reasonable assurance of the safety of the repository. Petition at 3.

Specifically, the petition requests amendments to Part 63 as discussed below.

1. Section 63.15 Site Characterization

At present, § 63.15(a) provides:

(a) DOE shall conduct a program of site characterization with respect to the Yucca Mountain site before it submits an application for a license to be issued under this part.

Petitioner requests that the following two sentences be added:

DOE's site characterization shall include criteria, developed pursuant to section 112(a) of the NWPA, to be used to determine the suitability of the Yucca Mountain site for the location of a geologic repository. Such criteria shall ensure that the geologic setting of the Yucca Mountain site is the primary barrier against the release of radionuclides to the biosphere from the multi-barrier repository system.

Petition at 40.

2. Section 63.21 Content of Application

Petitioner requests that the first sentence of paragraph (a) be modified, and new paragraphs (c) and (d) be added, as follows:

(a) An application consists of general information, a Safety Analysis Report, documentation propounding an affirmative safety case for the Yucca Mountain repository, and documentation that the site does not have any material disqualifying conditions. * * *

* * * * *

(c) The affirmative safety case must include:

(1) A realistic assessment of system evolution and radionuclide migration, drawing on natural and historical analogs.

(2) Documentation evidencing an overall understanding by the applicant of the key safety-relevant factors in the repository system, communicated in a manner that aids in public understanding.

(3) Disaggregated dose projections with documentation of which particular factors or sub-scenarios can lead to large potential doses, explaining as well the likelihood of occurrence of such scenarios.

(4) Use of multiple performance measures showing, at a minimum, the effects of each isolation barrier and the spatial and temporal distribution of radionuclides within each component of the repository system.

(5) A simplified interpretative or insight model containing only the key processes affecting safety, for use by the Commission and the public to assess the safety of the repository.

(6) Documentation of the major conservatisms and optimisms in the total system performance analysis, and quantification of their impacts with respect to realistic post-closure assumptions.

(7) Documentation of extreme conditions which might give rise to doses above

prescribed regulatory criteria, and a description of the factors that make these situations unlikely.

(8) A description and prioritization of the isolation features that are considered important to keep releases and doses within regulatory limits and as low as is reasonably achievable.

(9) Documentation of where the major uncertainties lie in the total system performance assessment and how the applicant will mitigate such uncertainties.

(10) Documentation of a sensitivity case where engineered barriers are rendered ineffective, individually and collectively.

(11) Presentation of the key features and results for each material subscenario in the repository system.

(12) A comparison of and rebuttal to results of any scientific peer review of the applicant's total system performance assessment and/or its underlying science performed by the Nuclear Waste Technical Review Board, the International Atomic Energy Agency, or other peer reviewer designated by the applicant or the Commission.

(d) *Potentially disqualifying conditions.* The following conditions are to be considered adverse and potentially disqualifying if they are characteristic of the post-closure controlled area at Yucca Mountain or may materially affect isolation within the controlled area. The application shall demonstrate that these disqualifying conditions do not exist or, if they do exist, that they are not materially adverse to the long-term safety of the repository.

(1) Potential for flooding of the underground facility.

(2) Potential for natural phenomena such as subsidence or volcanic activity of such a magnitude that large-scale surface water impoundments could be created that could change the regional groundwater flow system and thereby adversely affect the performance of the repository.

(3) Structural deformation, such as uplift, subsidence, folding, or faulting that may adversely affect the regional groundwater flow system.

(4) Potential for changes in hydrogeologic conditions that would affect the migration of radionuclides to the accessible environment, such as changes in hydraulic gradient, average interstitial velocity, storage coefficient, hydraulic conductivity, natural recharge, potentiometric levels, and discharge points.

(5) Potential for changes in hydrologic conditions resulting from reasonably foreseeable climatic changes.

(6) Groundwater conditions in the host rock, including chemical composition, high ionic strength or ranges of Eh-pH, that could increase the solubility or chemical reactivity of the engineered barrier system.

(7) Geochemical processes that would reduce sorption of radionuclides, result in degradation of the rock strength, or adversely affect the performance of the engineered barrier system.

(8) Groundwater conditions in the host rock that are not reducing.

(9) Evidence of dissolutioning such as breccia pipes, dissolution cavities, or brine pockets.

(10) Structural deformation such as uplift, subsidence, folding, and faulting during the Quaternary Period.

(11) Earthquakes that have occurred historically that if they were to be repeated could affect the site significantly.

(12) Indications, based on correlations of earthquakes with tectonic processes and features, that either the frequency of occurrence or magnitude of earthquakes may increase.

(13) More frequent occurrence of earthquakes or earthquakes of higher magnitude than is typical of the area in which the geologic setting is located.

(14) Evidence of igneous activity since the start of the Quaternary Period.

(15) Evidence of extreme erosion during the Quaternary Period.

(16) The presence of naturally occurring materials, whether identified or undiscovered, within the site, in such form that:

(i) Economic extraction is currently feasible or potentially feasible during the foreseeable future; or

(ii) Such materials have greater gross value or net value than the average for other areas or similar size that are representative of and located within the geologic setting.

(17) Rock or groundwater conditions that would require complex engineering measures in the design and construction of the underground facility or in the sealing of boreholes and shafts.

(18) Geomechanical properties that do not permit design of underground opening that will remain stable through permanent closure.

(19) Potential for the water table to rise sufficiently so as to cause saturation of an underground facility located in the unsaturated zone.

(20) Potential for existing or future perched water bodies that may saturate portions of the underground facility or provide a faster flow path from an underground facility located in the unsaturated zone to the accessible environment.

(21) Potential for the movement of radionuclides in a gaseous state through air-filled pore spaces of an unsaturated geologic medium to the accessible environment.

Petition at 40–43.

3. Section 63.113 Performance Objectives for the Geologic Repository After Permanent Closure

Petitioner requests that new paragraphs (e) and (f) be added to this section, as follows:

(e) *Geologic Setting.* The geologic setting for the Yucca Mountain repository shall evidence a pre-waste-emplacement groundwater travel time along the fastest path of likely radionuclide travel from the disturbed zone to the accessible environment of at least 1,000 years.

(f) *Peak Dose.* The geologic setting for the Yucca Mountain repository shall evidence sufficient geologic suitability to provide reasonable assurance that peak radiation doses to the accessible environment will not occur subsequent to the regulatory monitoring period established by the Environmental Protection Agency in 40 CFR Part 197.

Petition at 43.

4. Section 63.115 Requirements for Multiple Barriers

Petitioner requests that a new paragraph (d) be added to this section, as follows:

(d) The natural features of the geologic setting shall constitute the primary barrier for assuring the long-term isolation of high-level radioactive waste and spent nuclear fuel at the proposed geologic repository at Yucca Mountain.

Petition at 44.

5. Section 63.311 Individual Protection Standard After Permanent Closure

Petitioner requests that the words "a reasonable expectation" in this section be replaced with the words "reasonable assurance" so that it reads as follows:

DOE must demonstrate, using performance assessment, that there is reasonable assurance that, for 10,000 years following disposal, the reasonably maximally exposed individual receives no more than an annual dose of 0.15 mSv (15 mrem) from releases from the undisturbed Yucca Mountain disposal system. DOE's analysis must include all potential pathways of radionuclide transport and exposure.

In addition, petitioner requests that § 63.304, providing a definition of "reasonable expectation," be deleted in its entirety.

Supporting Information

Petitioner believes that the present Part 63 rule is "materially deficient" for two reasons: (1) it "does not now provide the regulatory framework to assure that the repository isolates [HLW] over the long term primarily by geologic means;" and (2) it "does not demand of the applicant that it provide an affirmative safety case for the repository." Petition at 4. Lacking these two "fundamental prerequisites," Part 63, in petitioner's view, "fails to assure the long-term safety of the repository or its compliance with the statutory requirements of the NWPA." *Id.* Petitioner identifies five basic elements to be added to Part 63: (1) Provisions ensuring that geologic isolation is the primary barrier against the release of radiological contamination to the environment, (2) provisions requiring the submission of an affirmative safety case, (3) provisions requiring the verification of the lack of materially adverse or potentially disqualifying conditions for Yucca Mountain following closure of the repository, and (4) provisions relating to the provision of "reasonable assurance" of the safety of the repository. Petition at 39.

The Primacy of Geologic Criteria for HLW Isolation

Petitioner asserts that 10 CFR Part 63 must be revised such that it assures that the repository will isolate HLW primarily by geologic means both as a matter of law and as a matter of sound science. To support its "law" position, petitioner argues that the plain language of sections 112(a) and 113(b)(1) of NWPA, together with the legislative history of these sections, requires that geologic isolation be the primary form of containment for waste at the YM repository. Petition at 11–18. Section 112(a) requires DOE to issue guidelines for the recommendation of sites for repositories which, *inter alia,* must "specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media" and which "shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to * * * hydrology, geophysics [and] seismic activity * * *" Petitioner claims that this section obligates the NRC to set the same requirements for the YM repository. Petition at 11—12.

To support its "sound science" position, petitioner provides a detailed history of scientific studies that petitioner says underlie "the requirement of Section 112(a) of the NWPA that any repository in this nation must isolate radioactive waste primarily by geologic means." Petition at 6; *see* Petition at 6–11. Petitioner also points to the Affidavit of Dr. John W. Bartlett, a former Director of DOE's HLW program at YM. Petition, Attachment 1. Dr. Bartlett questions DOE's finding that YM is a site suitable for a repository. He does not comment on NRC's regulations except to observe the different functions of the two agencies in Congress' scheme for a repository: "Congress made it clear that DOE was to determine the *suitability* of the *site,* while the NRC was to determine the *licenseability* of the *repository system* (*i.e.,* the site plus its engineered features)." *Id.* at 9 (emphasis in original).

Petitioner states that, initially, NRC, DOE and EPA each published rules which "individually and collectively conformed generally to the requirements of NWPA Section 112," *i.e.,* 10 CFR Part 60, 10 CFR Part 960 and 40 CFR Part 191, respectively. Petition at 18. Petitioner notes that, with respect to Part 60, the Commission decided to set subsystem performance requirements that serve the function of qualifying and disqualifying criteria for site variables, such as groundwater travel time, radionuclide travel times and margin of safety (assuming failure of the engineered barriers) but that the Commission "abandoned" these requirements in Part 63. Petition at 21–22. Petitioner believes that this abandonment not only violates NWPA but also violates "NRC's legal obligation [under section 161b. of the Atomic Energy Act] to apply these basic scientific prerequisites in providing for reasonable assurance of the safety of the repository * * *." *Id.*

The Need for an Affirmative Safety Case

Petitioner also contends that 10 CFR Part 63 must be revised so that it requires DOE, as the applicant for a license, to present "an affirmative safety case" for the repository. Petitioner admits that "[a]s written, Part 63 arguably provides the regulatory framework to establish whether the Yucca Mountain repository will satisfy the radiological release criteria set by [EPA]," Petition at 4, but believes that this is insufficient to demonstrate that the repository is safe. According to petitioner, to demonstrate that the repository is safe, NRC must require demonstration of an understanding of repository performance, including that the geologic setting of the repository will, in fact, protect the public from the danger of radioactive releases whenever such releases might occur. Petition at 33–34. At present, petitioner asserts, the repository will become most dangerous to humans and the environment after the 10,000 year regulatory time period, a "blatantly unsafe condition" which should prevent the licensing of the repository. Petition at 33; see Attachment 2. Petitioner supports its view that an affirmative safety case is needed by incorporating criticisms of DOE's Total System Performance Assessment for the site recommendation process (TSPA–SR) made in a report by an international peer review, *An International Peer Review of the Yucca Mountain Project TSPA–SR,* March 2002 (*Peer Review*).[1] Petition at 34–38. Petitioner also cites criticisms of DOE's scientific work in preparation for a site recommendation made by the Nuclear Waste Technical Review Board and NRC's Advisory Committee on Nuclear Waste. Petition, Attachment 3.

Reasons for Denial

NRC is denying the petition because:

(1) Petitioner's assertion that 10 CFR part 63 is not in full compliance with NWPA or AEA is without substance.

(2) The Commission promulgated 10 CFR part 63 little over a year ago after an extensive rulemaking process that provided an enhanced level of stakeholder participation. The petition does not appear to present any significant new factual information or policy recommendations that the Commission has not already considered and it would be an unwise expenditure of resources to reconsider issues already resolved in the part 63 rulemaking.

1. 10 CFR part 63 Is in Full Compliance With Statutory Requirements

Petitioner asserts that current part 63 regulations are not in full compliance with NWPA. Petition at 3. This is because, in petitioner's view, the current rule does not "provide the regulatory framework to assure that the repository isolates high-level radioactive waste over the long term primarily by geologic means." Petition at 4. Petitioner further asserts that the rule is deficient, under section 161b. of the Atomic Energy Act of 1954, as amended (AEA), 42 U.S.C. 2201(b), because the rule does not require the applicant to provide "an affirmative safety case" for the repository. Petition at 4, 22. Petitioner misreads the Commission's duty under both of these statutes. As explained below, the Commission finds no legal infirmity in the current Part 63 regulations and thus there is no reason to amend Part 63 to cure any supposed lack of conformity with NWPA or AEA.

a. 10 CFR Part 63 Is in Cccord With NWPA Requirements

Congress first spelled out directions for rulemakings to be undertaken to set requirements for a repository in section 121 of NWPA as enacted in 1982, 42 U.S.C. 10141. The Environmental Protection Agency (EPA) was to "promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories" (sec. 121(a)), and NRC, "pursuant to authority under other provisions of law," was "by rule, [to] promulgate technical requirements and criteria that it will apply * * * in approving or disapproving * * * applications for authorization to construct repositories [and] applications for licenses to receive and possess spent nuclear fuel and [HLW] in such repositories * * *" (sec. 121(b)(1)(A)). Congress placed only three restrictions on the substance of the regulations NRC was to promulgate:

(1) NRC's criteria "shall provide for the use of a system of multiple barriers

[1] DOE issued its TSPA–SR in December 2000. DOE subsequently requested a peer review which was carried out by a review team selected by the Nuclear Energy Agency of the Organization for Economic Co-Operation and Development and the International Atomic Energy Agency.

in the design of the repository" (sec. 121(b)(1)(B));

(2) NRC's criteria "shall include such restrictions on the retrievability of the solidified [HLW] and spent fuel emplaced in the repository as the Commission deems appropriate" (sec. 121(b)(1)(B)); and

(3) NRC's criteria "shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a)" (sec. 121(b)(1)(C)).

The first of these restrictions shows that although Congress did require NRC to provide for "multiple barriers" for waste isolation, it did not specify that geologic barriers must be primary or qualify the "multiple barriers" requirement in any other way.

Congress amended NWPA in 1987 to focus the national waste program exclusively on the characterization of the YM site as a potential geologic repository, but did not alter section 121 or otherwise place a requirement on NRC to make geologic barriers the primary means of waste isolation in its rules. Pub. L. 100–203 (101 Stat. 1330). Congress again revised the national waste program in the Energy Policy Act of 1992 (EnPA), Pub. L. 102–486, October 24, 1992. In the EnPA, Congress directed EPA to promulgate standards applicable solely to the Yucca Mountain site and directed NRC to modify its technical requirements and criteria under section 121(b) of NWPA, as necessary, to be consistent with EPA's standards. Section 801 of EnPA. EnPA did not direct either EPA or NRC to require that geologic barriers be the primary form of waste isolation.[2]

NRC initially established its procedural rules for a repository in 1981 in a new 10 CFR Part 60. (46 FR 13971; February 25, 1981). In 1983, NRC incorporated technical requirements into Part 60, as directed by NWPA. (48 FR 28194; June 21, 1983). The Commission explained that the purpose of the technical criteria was "to define more clearly the bases upon which licensing determinations will be made * * .*" (48 FR 28195). The Commission acknowledged that licensing decisions would be complicated by the uncertainties that are associated with predicting the behavior of a geologic repository over thousands of years and stated that it intended to address this difficulty by requiring that a DOE proposal be based upon a multiple barrier approach:

> An engineered barrier system is required to compensate for uncertainties in predicting the performance of the geologic setting, especially during the period of high radioactivity. Similarly, because the performance of the engineered barrier system is also subject to considerable uncertainty, the geologic setting must be able to contribute significantly to isolation.

Id. The Commission did not specify that either the engineered or the geologic barriers be primary. However, the Commission did elect to implement this approach by establishing a number of performance objectives and detailed siting and design criteria that it "deemed appropriate" for a multi-barrier system. *Id.*, fn 2. The Commission identified "two potentially viable approaches" to achieving the goal of waste isolation: (a) An approach "that would prescribe minimum performance standards for each of the major elements of the geologic repository, in addition to prescribing the EPA standard as a single overall performance standard;" and (b) an approach "that would specify the EPA standard as the sole measure of isolation performance." (48 FR 28196). In short, the Commission believed it was legally free to adopt either approach. The Commission adopted the first approach in order to convey "in [a] meaningful way the degree of confidence which it expects must be achieved in order for it to be able to make the required licensing decisions." *Id.* It, therefore, adopted a regulation setting sub-system performance standards, although with a provision allowing modifications on a case-by-case basis.[3] *See* 10 CFR 60.113.

As explained above, EnPA required NRC to modify its technical requirements to assure consistency with EPA's standards for a repository at YM. In response to this mandate, NRC published a proposed rule to establish a new, separate part of its regulations at 10 CFR Part 63. (64 FR 8640; February 22, 1999). The proposed rule was designed to do more than simply conform NRC's technical requirements to an EPA standard. The Commission recognized that in the 15 years since the Part 60 technical criteria had been put in place, there had been "considerable evolution in the capability of technical methods for assessing the performance of a geologic repository at Yucca Mountain [and that] * * * their implementation for Yucca Mountain [would] avoid the imposition of unnecessary, ambiguous, or potentially conflicting criteria that could result from the application of some of the Commission's generic requirements at 10 CFR Part 60." (64 FR 8641). In addition, the Commission recognized an opportunity to establish criteria compatible with the Commission's overall philosophy of risk-informed and performance-based regulation:

> [T]he creation of a new part of its regulations to [achieve risk-informed, performance-based regulations] is preferable to modifying its generic requirements, given the fundamentally different approach laid out for Yucca Mountain by EnPA and NAS than was contemplated when the generic criteria were promulgated. More specifically, EnPA and NAS have specified an approach that would require the performance of a Yucca Mountain repository to comply with a health-based standard established in consideration of risk to a hypothetical critical group, and, further, that this would be the only quantitative standard for the post-closure performance of the repository. This approach is incompatible with the approach taken in the existing generic criteria which relies on quantitative, subsystem performance standards.

(64 FR 8643). The Commission decided to reexamine its implementation of a multiple barrier approach and propose a regulation which required a system of multiple barriers, but which did set numerical goals for the performance of individual barriers. *See* 64 FR 8647–50. Instead, DOE was required to demonstrate that the natural barriers and the engineered barrier system would work in combination to enhance overall performance of the geologic repository.[4]

[2] Section 801(b)(2) of EnPA did place a further restriction on NRC's rules for a repository by requiring NRC to incorporate into its rules assumptions, consistent with the findings and recommendations of the National Academy of Sciences (NAS), pertaining to the sufficiency of engineered barriers and DOE's post-closure oversight to prevent human activity causing a breach of the repository and to prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits. However, NAS concluded that these assumptions were not scientifically justified and Part 63 is not based on these assumptions.

[3] Contrary to petitioner's assertions, the Commission did not view the sub-system requirements as the "essential prerequisites to establishing a safe repository." Petition at 22, but rather as a means of increasing confidence in its licensing decisions, given the uncertainties and technical methods for evaluating repository performance available in 1983.

[4] In this reexamination, the Commission noted that the § 60.113 subsystem criteria "[had] not gained broad acceptance in the technical community" and had been "criticized as overly prescriptive, lacking in both a strong technical basis and a clear technical nexus to the overall performance objective * * *." (64 FR 8649). Further, the Commission noted that NAS had found, in 1995, that "the physical and geologic processes relevant to a Yucca Mountain repository * * * are sufficiently quantifiable and the related uncertainties sufficiently boundable that the performance of a repository can be assessed over timeframes during which the geological system is relatively stable or varies in a boundable manner." *Id.* (quotations omitted). Moreover, "experience and improvements in the technology of performance assessment, acquired over more than 15 years, now provide significantly greater confidence in the technical ability to assess comprehensively overall repository performance, and to address and quantify the corresponding uncertainty." *Id.*

In the final rule (66 FR 55732; November 2, 2001), the Commission clarified the intent of NWPA's multi-barrier provision:

> Section 63.113(a) requires that the geologic repository include multiple barriers, both natural and engineered. Geologic disposal of HLW is predicated on the expectation that one or more aspects of the geologic setting will be capable of contributing to the isolation of radioactive waste and thus be a barrier important to waste isolation. * * * The performance assessment provides an evaluation of the repository performance based on credible methods and parameters including the consideration of uncertainty in the behavior of the repository system. Thus the performance assessment results reflect the capability of each of the barriers to cope with a variety of challenges. * * * A description of each barrier's capability * * * as reflected in the performance assessment, provides an understanding of how the natural barriers and the engineered barrier system work in combination to enhance the resiliency of the geologic repository. The Commission believes that this understanding can increase confidence that the postclosure performance objectives specified at § 63.113(b) and (c) will be achieved and that DOE's design includes a system of multiple barriers.

10 CFR 63.102(h); *see* 66 FR 55758. The Commission placed the requirements for multiple barriers in § 63.115.

In sum, the NWPA as enacted in 1982 requires that NRC's regulations for a repository must specify the use of a system of multiple barriers. Neither Congress' amendment of NWPA in 1987 nor its enactment of EnPA in 1992 altered that direction. None of this legislation required that geologic considerations were to be the primary criteria for licensing a repository. NRC's technical criteria in Part 60, issued in 1983 in response to NWPA's direction, did not make geologic barriers the primary criteria but did, in implementing the multi-barrier requirement, set separate numerical criteria for both the engineered and the geologic barriers to meet. NRC reconsidered this approach in 2001 when it issued regulations governing DOE's license application for a repository at YM and decided not to include subsystem requirements. NRC provided a detailed explanation of its reasons for altering its approach for implementing NWPA's multi-barrier requirement. We have no doubt that Part 63 fully complies with Congress' statutory directions to NRC.

Petitioner ignores section 121 of NWPA—which speaks directly to NRC's duty with respect to issuing regulations for the repository—and, instead, locates the asserted duty of the Commission to establish regulations requiring that geologic isolation be the primary form of containment for HLW in sections 112(a) and 113(b)(1) of the NWPA, 42 U.S.C. 10132(a) and 10133(b)(1).[5] Petition at 11–18. Because these provisions of NWPA place obligations on DOE, rather than NRC, they do not govern NRC's rulemakings for a geologic repository.

As relevant here, section 112(a) provides:

> SEC. 112. (a) GUIDELINES.—Not later than 180 days after the date of enactment of this Act, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository. * * * Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b). The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

42 U.S.C. 10132(a). Under section 112(b), the Secretary is to nominate at least 5 sites determined to be suitable for site characterization and, subsequent to such nomination, to recommend to the President 3 of the nominated sites for characterization as candidate sites. Each nomination of a site is to be accompanied by an environmental assessment which includes, *inter alia*, "an evaluation by the Secretary as to whether such site is suitable for site characterization under the guidelines established under subsection (a)." Section 112(b)(1)(D)(i).

The most obvious reason why these provisions of NWPA do not demand that NRC issue regulations requiring that geologic barriers be primary is that these provisions give direction to the Secretary of DOE, not to NRC. Petitioner assumes that the mandate given to DOE to formulate guidelines for the nomination, and then selection, of sites for characterization applies equally to NRC in promulgating its regulations. But there is no statutory language to support this. Petitioner may believe that although the statute itself is silent on any NRC duty to make geologic barriers primary, this result must necessarily follow from the duty placed on DOE to issue guidelines specifying "detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media." Section 112(a). It may be readily acknowledged that it would make little sense for Congress to establish a system for selecting a repository where DOE guidelines for selection of sites and NRC regulations for licensing a repository would contradict each other.[6] But there is no such contradiction. DOE's guidelines are for the purpose of comparing a multitude of alternate site possibilities, an inquiry for which it makes obvious good sense for geologic considerations to be paramount.[7] NRC's licensing regulations are for the purpose of examining DOE's application for a repository at an already-chosen site—*i.e.*, one that has gone through the section 112 screening process. Such a site would have already passed the section 112 tests for geologic considerations in the DOE guidelines. Congress thus had no need to require, and did not require, NRC to issue regulations making geologic considerations the "primary" criteria for approval of DOE's license application for the repository.

Petitioner seeks to bootstrap the section 112(a) site selection guidelines into the requirement in section 113 that DOE prepare a site characterization plan which shall include "criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 112(a)." Section 113(b)(1)(A)(iv). *See* Petition at 11–12. If the criteria for site characterization for determination of suitability for a repository required by section 113 are the same as the guidelines required by section 112, then, petitioner assumes, DOE may not recommend a site to the President for approval under section 114 unless the site has been shown to meet the guidelines, including the guideline that geologic considerations be the primary criteria for selection. On the same theory, petitioner also claims the NRC

[5] The 1987 amendments to NWPA did not revise section 112(a) but did revise section 113(b) to make its provisions applicable solely to the characterization of the YM site, rather than any candidate site.

[6] In fact, DOE's need to seek NRC's concurrence on its guidelines assures that there will be no such conflict.

[7] As enacted in 1982, the section 112(a) guidelines were intended for use in the nomination and selection of candidate sites for a second repository as well as for the identification and study of further sites after the approval of candidate sites for characterization for two repositories. *See* sections 112(b)(1)(C) and 112(d) of the 1982 NWPA.

must promulgate regulations requiring that geologic considerations be the primary criteria for approval of a license application.

Petitioner makes several unwarranted leaps in arriving at these conclusions. The first is that Congress intended that the criteria required under section 113 be the same as the guidelines required under section 112. DOE considered this question at considerable length when it issued its criteria for consideration of the YM site. (66 FR 57298, 57311–12; November 14, 2001). DOE concluded that Congress' directive in section 113(b)(1)(A)(iv) that the criteria to be used to determine the suitability of a candidate site for the location of a repository be "developed pursuant to section 112(a)" is best understood as "mandating observance of the special procedural requirements of section 112(a) in formulating or altering the section 113(b) 'criteria,'" *i.e.*, the requirements to consult with specific agencies and to get concurrence from NRC, and not as requiring that the "criteria" be the guidelines themselves. (66 FR 57312). Second, even assuming, *arguendo*, that the criteria were intended to be the guidelines—and we have no reason to quarrel with DOE's interpretation of its own statutory mandate—that still would not oblige NRC to craft its regulations under DOE's criteria. There would be no contradiction between DOE's recommending a site as suitable for a repository, based primarily on geologic considerations, and NRC's issuing regulations under which a repository would be approved, based upon the existence of multiple barriers, but not necessarily on geologic "primacy."

In sum, because sections 112 and 113 of NWPA place no obligations on NRC with respect to rulemakings for a geologic repository, and because part 63 is in full conformance with section 121 of NWPA which does spell out NRC's rulemaking obligations, we reject petitioner's claim that part 63 is not in full conformance with NWPA and deny the petition.

b. 10 CFR Part 63 is in Accord With AEA Requirements

Petitioner asserts that because part 63 does not demand that the applicant provide "an affirmative safety case" for the repository, "the rule is materially deficient." Petition at 4. In petitioner's view, a requirement that DOE conduct a total system performance assessment "to determine whether a primary radiological standard set by the EPA can be met by the overall repository system, and not by any particular subsystem or any particular isolation barrier" is not adequate. Petition at 22. Rather, "under NRC's plenary safety jurisdiction (Atomic Energy Act Section 161b) * * * it would remain NRC's legal obligation to apply these basic scientific prerequisites [found in section 112(a) of NWPA] in providing for reasonable assurance of the safety of the repository. * * *"[8] *Id.*; *see also* petition at 32.

Section 161b. of the AEA provides, in relevant part:

> Sec. 161. General Provisions.
> In the performance of its functions the Commission is authorized to—
> * * *
> b. establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life and property. * * *.

We agree with petitioner that "[t]his is clearly an extremely broad grant of authority." Petition at 6 n.2. The Commission is granted wide discretion to determine what standards are necessary or desirable to protect health and minimize danger to life and property. Through an extensive and open public process, the Commission set forth its post-closure public health and environmental standards in subpart L of part 63. Petitioner, however, is dissatisfied with these standards and would require inclusion of the DOE guidelines listed in section 112(a) of NWPA and/or the requirements preferred by the *Peer Review*. However, there is no statute requiring the Commission to make these choices rather than the standards the Commission, in fact, deemed sufficient for a determination that the repository will not pose an unreasonable risk to the health and safety of the public. *See* 10 CFR 63.31(a)(2); 63.41(c). Petitioner has not presented any new information that causes the Commission to reconsider choices already made in an extensive and recent rulemaking proceeding. *See infra*. Thus, we remain satisfied that the part 63 rules fully comply with the Commission's duty, under section 161b. of the AEA to establish standards to protect health and minimize danger to life and property.

2. Reopening the Final 10 CFR Part 63 Rule Would Be an Unwise Expenditure of Resources Because the Petition Does Not Appear To Present Any Significant New Factual Information Not Previously Considered During the Rulemaking Proceeding

On February 22, 1999 (64 FR 8640), the Commission published its proposed rule to establish licensing criteria for the disposal of HLW in the proposed geologic repository at YM. The public comment period, originally ending on May 10, 1999, was extended to June 30, 1999, in response to many requests for extension. During the public comment period, the NRC staff held a series of public meetings in Nevada to discuss the proposed rule and solicit public comment. The final rule was published on November 2, 2001 (66 FR 55732). Petitioner had multiple opportunities to file, and did file, extensive comments on the proposed rule, all of which were carefully considered by the Commission before issuing the final rule. We do not find in the petition significant new factual or policy information not already considered in the rulemaking that established part 63. Given this, and our recent consideration (in the part 63 rulemaking) of essentially the same questions petitioner now raises, it would not be a wise expenditure of resources to reopen these issues.

We briefly recount below the concerns that petitioner now raises as "material deficiencies," but were in actuality resolved in the part 63 rulemaking.

Reasonable Expectation

Petitioner objects to the Commission's use of "reasonable expectation," rather than "reasonable assurance," to describe the degree of certainty to be obtained for the compliance of the repository with the post-closure performance standards. Petition at 3, n.1. The Commission has fully explained why it incorporated "reasonable expectation," rather than "reasonable assurance," into its implementing regulations for YM. *See*

[8] Petitioner erroneously believes that DOE was exempt from regulation by NRC under section 161b. of the AEA until passage of NWPA in 1982. In fact, NRC's authority over DOE, with respect to an application for a license for a geologic repository, stems from section 202[3] of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5842(3), which provides that NRC shall have licensing and related regulatory authority pursuant to chapters 6, 7, 8, and 10 of the AEA with respect to DOE "facilities used primarily for the receipt and storage of [HLW] resulting from activities licensed under [the AEA]." Thus, in 1981, when NRC issued its original rule governing a DOE license application for a repository at 10 CFR Part 60, the Commission cited section 202 as the authority for the rule, noting that it interpreted "storage" as used in this section to include disposal. (46 FR 13971 n.1; February 25, 1981). Neither NWPA nor EnPA provided NRC with rulemaking authority; rather NWPA directed NRC, "pursuant to authority under other provisions of law," to promulgate the technical requirements and criteria it would employ to consider a DOE license application for a repository (sec. 121(b) of NWPA) and EnPA required NRC to modify its technical requirements to be consistent with standards to be promulgated by EPA. Section 801(b)(1) of EnPA. For these reasons, we agree with petitioner that part 63 must be consistent with section 161b. of the AEA.

66 FR 55739—40. The Commission stated that "irrespective of the term used, the Commission will consider the full record before it [and] [t]hat record will include many factors in addition to whether the site and design comply with the performance objectives (both preclosure and postclosure performance standards) contained in Subparts E, K and L."[9] (66 FR 55740). Petitioner has not raised any objection to this standard that was not already fully considered. Thus, we decline to amend part 63 to reverse the decision made in the rulemaking for part 63.

Primacy of the Geologic Barrier

Petitioner requests that part 63 be revised to require that the geologic setting of the YM site be the primary barrier against release of radionuclides to the biosphere and a separate criterion be specified for the geologic setting (pre-waste-emplacement groundwater travel time along the fastest path of likely radionuclide travel from the disturbed zone to the accessible environment of at least 1,000 years). The role of the geologic setting, including the imposition of separate criteria for individual barriers (or sub-system requirements) was an important consideration during the development of part 63. NRC's generic regulations for HLW disposal at 10 CFR part 60 prescribe criteria for individual barriers. Petitioner's request would serve to continue the part 60 sub-system approach. *See* 10 CFR 60. 113(a)(2).

The Commission carefully considered the merits of including these types of barrier criteria when it proposed part 63, but decided against doing so:

> Upon review * * * the Commission is persuaded that much of the basis for NRC's initial development of the specific numerical values for the subsystem criteria was generic judgment with regard to what was (and was not) feasible with regard to the quantitative assessment of long-term repository performance. Because the stated goal was to compensate for uncertainty, there was never any attempt to derive the subsystem performance criteria from a specified dose or risk level or from some projected dose or risk reduction expected to be achieved by their application. Furthermore, after 15 years of experience in working with the requirements of part 60, the Commission is concerned that, for the Yucca Mountain site, the application of the subsystem performance criteria at § 60.113 may impose significant additional expenditure of resources on the nation's HLW program, without producing any commensurate increase in the protection of public health and safety.
>
> (64 FR 8649; February 22, 1999).

Nevertheless, the Commission acknowledged the importance of the geologic setting:

> [D]espite its reconsideration of the merits of establishing quantitative criteria for the performance of repository subsystems, the Commission continues to believe that multiple barriers, as required by NWPA, must each make a definite contribution to the isolation of waste at Yucca Mountain, so that the Commission may find, with reasonable assurance, that the repository system will be able to achieve the overall safety objective over timeframes of thousands of years. Geologic disposal of HLW is predicated on the expectation that a portion of the geologic setting will act as a barrier, both to water reaching the waste, and to dissolved radionuclides migrating away from the repository, and thus, contribute to the isolation of radioactive waste.

Id. The proposed rule required DOE to provide an analysis that (1) identifies those design features of the engineered barrier system, and natural features of the geologic setting, that are considered barriers important to waste isolation; (2) describes the capability of these barriers to isolate waste, taking into account uncertainties in characterizing and modeling the barriers; and (3) provides the technical basis for the description of the capability of these barriers. The Commission stated that this approach would "provide for a system of multiple barriers and an understanding of the resiliency of the geologic repository provided by the barriers important to waste isolation to ensure defense in depth and increase confidence that the postclosure performance objective will be achieved."

(64 FR 8650; February 22, 1999).

NRC received comments both supporting and opposing its proposed approach for evaluating individual barriers, including a comment from petitioner requesting that the part 60 approach be retained. After careful consideration of these comments, the Commission decided to retain the proposed approach because:

1. It provides the Commission with information to be considered in its decisions without constraining its considerations to a specific limit for a particular barrier, which could result in less favorable overall system performance.

2. It gives the Commission the flexibility to consider the nature and extent of conservatism in the evaluations used for compliance demonstration, and to decide whether there is a need to require DOE to reduce uncertainties in its assessment (e.g., collecting more site data) or to include further mitigative measures.

3. Quantitative evidence of the capability of individual barriers to contribute to waste isolation is an integral part of the performance assessment. Therefore, an additional quantitative limit is not necessary to show that overall performance reflects a system of multiple barriers.

The Commission understands that establishment of explicit, quantitative limits for individual barriers might be considered a desirable and more easily explained approach. That being said, however, the Commission knows of no scientific basis for setting such limits for particular barriers at Yucca Mountain, or at any other site, independent of the complex repository system in which they must perform. The Commission is confident that evidence for the resilience, or lack of resilience; of a multiple-barrier system will be found by examining a comprehensive and properly documented performance assessment of the behavior of the overall repository system. Such an assessment must consider credible and supportable ranges of individual parameters and modeling assumptions, and must include multiple evaluations of a wide range of combinations of resulting barrier performance.

(66 FR 55759; November 2, 2001).

In sum, the Commission devoted considerable attention in its rulemaking proceeding to the question whether it should retain the subsystem requirements of part 60 which would establish quantitative performance criteria for the geologic barriers but decided against this approach. Petitioner is dissatisfied with this outcome and essentially seeks reconsideration of this decision. However, petitioner has presented no significant new information to support this request and it would be an unwise expenditure of resources to cover this same ground again in a new rulemaking.[10]

Potentially Disqualifying Conditions

NRC's generic Part 60 regulations contain siting criteria which include "potentially adverse conditions" which must be shown not to compromise the ability of the repository to meet the performance objectives for isolation of the wastes. *See* 10 CFR 60.122. Petitioner seeks to amend part 63 to include many of these potentially adverse conditions as "potentially disqualifying conditions" and to require the applicant to show that they do not exist or, if they do exist, "that they are

[9] The Commission noted that it "could consider the QA program, personnel training program, emergency plan and operating procedures, among others, in order to determine whether it has confidence that there is no unreasonable risk to the health and safety of the public." (66 FR 55740; November 2, 2001).

[10] Petitioner cites a 1999 DOE analysis of the independent capabilities of the multiple waste isolation barriers which indicated that the engineered barriers contribute over 99.7 percent of the waste isolation capabilities of the repository system, implying that NRC will not really apply a "multiple barrier" approach because the geologic contributions of YM are minuscule. Petition at 27, n.16. But our rules on their face unequivocally require "multiple barriers," as called for by NWPA. *See* discussion, *supra*. Our consideration of the nature of DOE's proposed facility must await a DOE license application.

not materially adverse to the long-term safety of the repository." Petition at 41–43.

In proposing part 63, the Commission specified overall performance objectives for the preclosure and postclosure phases of the repository and requirements that compliance with these overall performance objectives be demonstrated through an integrated safety analysis of preclosure operations, and through a performance assessment for long-term, post-closure performance. The proposal did not specify potentially adverse conditions to be considered but did require that the performance assessment consider unfavorable, as well as favorable, information:

> A defensible performance assessment should contain a technical rationale for those features, events, and processes that have been included in the performance calculation, as well as those that have been considered but were excluded. The features, events, and processes (*i.e.*, specific conditions or attributes of the geologic setting; degradation, deterioration, or alteration of the engineered barriers; and interactions between the natural and engineered barriers) conducted for inclusion in the assessment should represent a wide range of beneficial and detrimental effects on performance.

(64 FR 8650; February 22, 1999). Public comments on the proposed rule raised concerns about the impacts of certain features, events, and processes (*e.g.*, that YM lies in an area that is seismically and tectonically active, that there may be potential for fast ground-water pathways to the water table) that prompted many commenters to recommend that YM be disqualified from further consideration. The Commission considered these objections but reaffirmed the approach it had decided to take in the proposed rule:

> Consideration of all FEPs, especially those with the potential to have an adverse effect on performance, is an important part of the evaluation of repository performance. Commenters have correctly identified a number of conditions that have been or are being considered by DOE in performance assessments for Yucca Mountain, such as seismic activity, thermal effects, volcanic activity, microbial-induced corrosion of the waste package, and the potential for a significant rise of the water table. Section 63.114 requires DOE to consider all FEPs pertinent to a repository at Yucca Mountain and fully justify how they are treated in the performance assessment. In reviewing DOE's performance assessment, the NRC will evaluate how well DOE has accounted for those FEPs that could have an adverse effect on the repository.

(66 FR 55748; November 2, 2001). Thus, the Commission considered in the part 63 rulemaking whether it should specify disqualifying conditions for the repository site, but decided that its approach of having the performance assessment present and consider all information relevant to negative conditions was preferable. The Commission finds no reason presented by petitioner to reopen that issue.

Peak Radiation Doses Subsequent to the Regulatory Monitoring Period

Petitioner requests that § 63.113 be amended to add the following provision:

> *Peak Dose.* The geologic setting for the Yucca Mountain repository shall evidence sufficient geologic suitability to provide reasonable assurance that peak radiation doses to the accessible environment will not occur subsequent to the regulatory monitoring period established by the Environmental Protection Agency in 40 CFR part 197.

Petition at 43. This requirement is purportedly needed because, in petitioner's view, "the repository will become most dangerous to humans and the environment after the EPA's prescribed regulatory time period." Petition at 33 (emphasis in original). Petitioner supports this view with a graphic produced in the July 2002 *National Geographic* using data provided in DOE's *Final Environmental Impact Statement*, DOE/EIS–0250 (February 2002). Petition, Attachment 2. According to petitioner, this graphic illustrates that "DOE's own models predict that radiation doses from Yucca Mountain releases to the accessible environment will not begin to peak until after the 10,000-year regulatory time period that forms the basis for part 63 licensing." Petition at 33.

Petitioner believes that NRC must have reasonable assurance that the peak radiation doses to the accessible environment will occur within the regulatory compliance period.[11] This amounts to a challenge to the 10,000 year compliance period adopted by the Commission in Part 63. The Commission proposed a 10,000 year compliance period for evaluating a YM repository because it:

> (1) includes the period when the waste is inherently most hazardous; (2) is sufficiently long, such that a wide range of conditions will occur which will challenge the natural and the engineered barriers, providing a reasonable evaluation of the robustness of the geologic repository; and (3) is consistent with other regulations involving geologic disposal of long-lived hazardous materials, including radionuclides.

[11] We interpret petitioner's reference to "the regulatory monitoring period established by the Environmental Protection Agency in 40 CFR 197" to be a reference to the 10,000 year compliance period established in EPA's regulations. Those regulations do not include a monitoring period.

(64 FR 8647; February 22, 1999). The Commission acknowledged that, on this matter, it was not following the recommendation made by NAS that the compliance period should include the time when greatest risk occurs, within the limits imposed by the stability of the geologic system. However, the Commission explained:

> In selecting the length of time over which the individual dose limit should be applied, a regulatory agency must take into account technical, policy, and legal considerations. In fact, NAS noted that EPA might elect to establish consistent policies for managing comparable risks from disposal of long-lived hazardous materials. From a technical perspective, for example, the time-dependent variation of the hazard, along with the time required to evaluate adequately the waste isolation capability of both engineered and natural barriers, are of significance. From a policy perspective, on the other hand, the practical utility and relative uncertainty of extremely long projections of health consequences, along with the need to maintain a consistent regulatory approach for like hazards, need to be weighed. Having considered both technical and policy concerns, the Commission is proposing the use of 10,000 years for evaluating compliance with the system performance objective at § 63.113.

Id. The Commission received comments objecting to this proposal, but decided to reaffirm use of a 10,000 year compliance period in the final rule:

> The fact that it is feasible to calculate performance of the engineered and geologic barriers making up the repository system for periods much longer than 10,000 years does not mean that it is possible to make realistic or meaningful projections of human exposure and risk, attributable to releases from the repository, over comparable time frames. NAS acknowledged that projecting the behavior of human society over long periods is beyond the limits of scientific analysis and recommended that "cautious, but reasonable" assumptions, based upon current knowledge, be made with regard to the selection of biosphere and critical group parameters for Yucca Mountain. Determining just how far into the future current knowledge can no longer support "reasonable" assumptions about pathways affecting human exposure is clearly a subjective, policy judgment. NRC believes that, for periods approaching 1,000,000 years, as suggested by NAS, during which significant climatic and even human evolution would almost certainly occur, it is all but impossible to make useful and informed assumptions about human behaviors and exposure pathways.

(66 FR 55760; November 2, 2001).

Thus, the Commission has considered the appropriate length of the compliance period and has determined that 10,000 years is an acceptable period for assessing compliance with performance standards. The Commission also adopted an EPA standard requiring DOE to calculate the peak dose of the reasonably maximally exposed individual that would occur after 10,000 years following disposal, but did not apply a regulatory standard to the results of this analysis. Instead, DOE is to include the results of the analyses and their bases in the environmental impact statement for YM as an indicator of long-term disposal system performance. *See* 10 CFR 63.341; *see also* 40 CFR 197.35. The Commission continues to believe, as articulated in the both the proposed and final regulations, that potential radiation exposures estimated at very long times into the future (*e.g.*, 100,000 years and longer), such as those shown in the *National Geographic* graphic, are too speculative to provide meaningful information to make licensing decisions.

Need for Presentation of an Affirmative Safety Case

Petitioner believes that DOE must be required to present "an affirmative safety case" which demonstrates an understanding of repository performance. To ensure demonstration of an affirmative safety case, petitioner has proposed a new regulation (proposed § 63.21(c), *supra*) which is based on, but not identical to, recommendations made by the *Peer Review* with respect to DOE's TSPA–SR.[12] Although the *Peer Review* focused on DOE's TSPA–SR, it did make a few observations on NRC's proposed part 63:

> The regulations require that a risk-informed approach should be adopted in demonstrating compliance with the dose limit, in recognition of the uncertainties inherent in making assessments over long time frames in the future. It is also required that the assessment should reveal an understanding of the relationship between the performance of the repository sub-systems and the total system performance. Nevertheless despite the prescriptive nature of the regulations, the I[nternational] R[eview] T[eam] notes that the proposed licensing regulation 10 CFR 63 states that *"consistent with a performance based philosophy, the Commission proposes to permit DOE the flexibility to select the approach for demonstrating this relationship that is most appropriate to its analysis."*
>
> The TSPA–SR methodology embodies a comprehensive computational framework for estimating possible doses to future generations using a complex systems-level model accounting for hundreds of features, events and processes and related parameter ranges. A key issue with this approach is the difficulty in understanding the meaning of the numerical results. In particular, it is often difficult to understand how the system is likely to evolve and which process and parameters are the most important.
>
> Peer Review at 41.
>
> In its review of the TSPA–SR, the IRT has observed a tendency for more focus to be given to the demonstration of numerical compliance with the proposed regulatory requirements than on developing and presenting an understanding of repository performance. Whilst it is completely understandable that the TSPA–SR should give due attention to demonstrating compliance with the prescribed dose limit, an in-depth understanding of the performance of the repository system is necessary to develop confidence in the overall design and safety of the repository and in the results of the assessment. In this regard, there is an emerging international consensus that building confidence in repository performance is of comparable importance to demonstrating compliance with criteria. *Thus it is recommended that in the future equal attention should be given to system understanding as to numerical compliance with regulatory criteria if the project proceeds to the licensing stage.*

Peer Review at 23–24 (emphasis in original).

Thus, the Peer Review acknowledged the importance of DOE presenting, in its TSPA, an in-depth understanding of the performance of the repository system and recognized that demonstration of safety is more than numerical compliance with the proposed regulatory requirements. As a matter of record, a similar concern was raised during the public comment period on the proposed regulation (*i.e.*, can performance assessment be relied on as the sole quantitative technique for evaluating compliance with the postclosure safety requirements). The Commission, in response to this concern, explained that the regulations contained a number of requirements directed at DOE's demonstrating an in-depth understanding of the repository system:

> Although repository postclosure performance is evaluated with respect to a single performance measure for individual protection, the NRC considers a broad range of information in arriving at a licensing decision. In the case of the proposed repository at Yucca Mountain, Part 63 contains a number of requirements (*e.g.*, qualitative requirements for data and other information, the consideration and treatment of uncertainties, the demonstration of multiple barriers, performance confirmation program, and QA program) designed to increase confidence that the postclosure performance objective is satisfied. The Commission will rely on the performance assessment as well as DOE's compliance with these other requirements in making a decision, if DOE submits a license application for disposal of HLW at Yucca Mountain.

(66 FR 55746; November 2, 2001).

The current regulations require that DOE provide an adequate and appropriate understanding of the repository system as part of its compliance demonstration. For example, the requirements for the performance assessment, at 10 CFR 63.114, specify that DOE must account for uncertainty in representing the repository system (both in parameters and models); provide a technical basis for either inclusion or exclusion of specific features, events, and processes in the performance assessment including the degradation, deterioration, or alteration processes of engineered and geologic barriers; and provide a technical basis for the models used in the performance assessment such as comparisons made with outputs of detailed process-level models and/or empirical observations (*e.g.*, laboratory testing, field investigations, and natural analogs). Additionally, the requirements for multiple barriers, at 10 CFR 63.115, specify that DOE must identify those design features of the engineered barrier system, and natural features of the geologic setting, that are considered barriers important to waste isolation; describe the capability of barriers identified as important to waste isolation actually to isolate waste, taking into account uncertainties in characterizing and modeling the behavior of the barriers; and provide the technical basis for the description of the capability of barriers.

In summary, the current regulations require that DOE: demonstrate an adequate and appropriate understanding of the repository system, supported by technical and scientific information that includes a range of important technical concerns, such as the features, events, and processes that could affect the performance of the repository; provide an evaluation of how uncertainty in parameters and models affects the estimates of repository performance; and show the capabilities of the engineered and geologic barriers to isolate waste.

Petitioner had full opportunity during the extensive Part 63 rulemaking to suggest additional requirements for DOE's application to provide greater understanding of the repository system, and did so in its comments questioning the appropriateness of the Commission's proposal to establish risk-informed and performance based regulations which would not include the existing sub-system performance requirements of Part 60. The *Peer Review*, although published after NRC's issuance of the final rule, is based on information widely available during NRC's rulemaking proceeding (*e.g.*, U.S. NRC

[12] The *Peer Review* expressed the view that the TSPA–SR could be improved with respect to developing a better understanding of the repository system:

Advisory Committee on Nuclear Waste Letter to Chairman Jackson, dated April 8, 1999, "SR 95 Template for Safety Reports with Descriptive Example," Swedish Nuclear Power Inspectorate, Technical Report 96–05). Thus, the *Peer Review* did not present new information with respect to Part 63; it presented a critique of DOE's TSPA–SR. Consequently, we do not believe that the *Peer Review*, or other critiques of DOE's activities at YM, justifies expending the resources that would be needed to reopen the issues considered in the recent part 63 rulemaking.

For all the reasons stated above, the NRC denies the petition in its entirety.

Dated at Rockville, Maryland, this 21st day of February, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–4625 Filed 2–26–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–285–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model ATP airplanes. This proposal would require a one-time inspection of the fuel pipes within the fuel "float switch" test pipelines in the left and right inner wings for evidence of damage, cracks, misalignment, or fuel leakage; follow-on corrective actions, if necessary; and repetitive replacement of the fuel pipes at regular intervals. This action is necessary to prevent fuel vapors from collecting in the dry bay of the wing torsion box and consequent risk of an explosion due to fuel leakage. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–285–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–285–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited Model ATP airplanes. The CAA advises that it has received a report of failures of the fuel pipes within the "fuel float" test pipelines in the left and right inner wings due to fatigue. Leakage from these pipes allows fuel vapors to collect within the dry bay of the wing torsion box, which contains electrical equipment. This condition, if not corrected, could result in ignition of fuel vapors within the dry bay of the wing torsion box and consequent risk of an explosion.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin ATP–28–019, dated March 16, 2001, which describes procedures for inspection of the fuel pipes within the fuel "float switch" test pipelines in the left and right inner wings for evidence of damage, cracks, misalignment, or fuel leakage; and replacement of any discrepant fuel pipe with a new or serviceable pipe.

BAE Systems (Operations) Limited has also issued Service Bulletin ATP–28–020, dated January 25, 2002, which describes procedures for a records check to determine the accumulation of time on the fuel pipes within the fuel "float switch" test pipelines, and replacement of those pipes upon reaching their maximum safe-life limit. This service bulletin also recommends that operators submit findings of damaged pipes to BAE Systems (Operations) Limited following replacement of those damaged pipes.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

The CAA classified these service bulletins as mandatory and issued British airworthiness directives 003–03–2001 and 008–01–2002 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed AD, British AD, and Service Bulletin

Operators should note that, although this proposed AD would require that the actions be accomplished within 90 days after the effective date of this AD, the British AD and BAE Systems (Operations) Limited Service Bulletin ATP–28–020 do not recommend a compliance time for the proposed records check. In developing an appropriate compliance time for this proposed action, we considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the check (less than one hour). In light of all of these factors, we find a 90-day compliance time for completing the proposed records check to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Although BAE Systems (Operations) Limited Service Bulletin ATP–28–020 recommends operators report findings to the manufacturer after replacement of damaged pipes, this AD does not include such a reporting requirement.

Cost Impact

The FAA estimates that 3 Model ATP airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 6 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $1,080, or $360 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed records check, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed records check on U.S. operators is estimated to be $180, or $60 per airplane.

It would take approximately 5 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $900, or $300 per airplane, per replacement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–285–AD.

Applicability: All Model ATP airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel vapors from collecting in the dry bay of the wing torsion box and consequent risk of an explosion due to fuel leakage, accomplish the following:

Inspection and Records Check

(a) Within 90 days after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Do a general visual inspection of the fuel pipes within the fuel "float switch" test pipelines in the left and right inner wings for evidence of damage, cracks, misalignment, or fuel leakage; per BAE Systems (Operations) Limited Service Bulletin ATP–28–019, dated March 16, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Perform a check of the airplane records to determine the actual time on the fuel pipes within the "float switch" test pipelines, per BAE Systems (Operations) Limited Service Bulletin ATP–28–020, dated January 25, 2002. This records check may be performed either by the cockpit flight crew or by certificated maintenance personnel.

Repetitive Replacement

(b) If no damage, crack, misalignment, or fuel leakage is found during the inspection required by paragraph (a)(1) of this AD, prior to further flight, reinstall the fuel pipes within the "float switch" test pipelines per BAE Systems (Operations) Limited Service Bulletin ATP–28–020, dated January 25, 2002. Thereafter, replace those pipes with new pipes at the applicable times specified in paragraph (b)(1) or (b)(2) of this AD per the service bulletin.

(1) For fuel pipes that, as of the effective date of this AD, have accumulated less than 10,000 total flight hours or 12,000 total landings since the date of installation on the airplane: Do the replacement prior to the accumulation of 10,000 total flight hours or 12,000 total landings on the pipes since the date of installation, or within 10 months after the effective date of this AD, whichever occurs latest. Thereafter, replace the fuel pipes with new pipes at intervals not to exceed 10,000 total flight hours or 12,000 total landings on the pipes, whichever occurs first. Replacement of the fuel pipes with serviceable pipes instead of new pipes is acceptable for compliance with the requirements of this paragraph, provided that: The total number of flight hours or total number of landings on those pipes can be verified, they have not accumulated 10,000 or more total flight hours or 12,000 or more total landings at the time of installation, and they are replaced prior to the accumulation of 10,000 total flight hours or 12,000 total landings (on the pipes).

(2) For fuel pipes that, as of the effective date of this AD, have accumulated 10,000 or more total flight hours or 12,000 or more total landings since the date of installation on the airplane: Do the replacement within 10 months after the effective date of this AD. Thereafter, replace the fuel pipes at intervals not to exceed 10,000 total flight hours or 12,000 total landings on the pipes, whichever occurs first. Replacement of the fuel pipes with serviceable pipes instead of new pipes is acceptable for compliance with the requirements of this paragraph, provided that: The total number of flight hours or total number of landings on those pipes can be verified, they have not accumulated 10,000 or more total flight hours or 12,000 or more total landings at the time of installation, and they are replaced prior to the accumulation of 10,000 total flight hours or 12,000 total landings (on the pipes).

(c) If any damage, crack, misalignment, or fuel leakage is found during the inspection required by paragraph (a)(1) of this AD, prior to further flight, replace the fuel pipes with new pipes, per BAE Systems (Operations) Limited Service Bulletin ATP–28–020, dated January 25, 2002. Before or upon the accumulation of 10,000 total flight hours or 12,000 total landings on the pipes, whichever occurs first, after the replacement required by this paragraph, replace the fuel pipes with new pipes. Thereafter, replace the fuel pipes at intervals not to exceed the accumulation of 10,000 total flight hours or 12,000 total landings on the pipes, whichever occurs first. Replacement of the fuel pipes with serviceable pipes instead of new pipes is acceptable for compliance with the requirements of this paragraph, provided that: The total number of flight hours or total number of landings on those pipes can be verified, they have not accumulated 10,000 or more total flight hours or 12,000 or more total landings at the time of installation, and they are replaced prior to the accumulation of 10,000 total flight hours or 12,000 total landings (on the pipes).

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in British airworthiness directives 003–03–2001 and 008–01–2002.

Issued in Renton, Washington, on February 20, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4588 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–90–30 airplanes. This proposal would require replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications. This action is necessary to ensure that the lanyards on the pressure relief door have adequate strength. Lanyards of inadequate strength could allow the pressure relief door to detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the detached door striking and damaging the horizontal stabilizer, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–125–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must

be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024); and BF Goodrich, 850 Lagoon Drive, Chula Vista, California 91910–2098. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–125–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, on all McDonnell Douglas Model MD–90–30 airplanes, the lanyards on the pressure relief door for the thrust reversers do not meet the certification requirements for strength. Lanyards of inadequate strength could allow the pressure relief door to detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the detached door striking and damaging the horizontal stabilizer.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin MD90–78–048, including Evaluation Form, dated February 15, 2001, which describes procedures for replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications.

Boeing Service Bulletin MD90–78–048 refers to International Aero Engines Service Bulletin V2500–NAC–78–0184, dated February 16, 2001, as the appropriate source of service information for replacing the door lanyards and doing the associated modifications. The procedures in that service bulletin include removing the pressure relief door, replacing the door lanyard assemblies with new, improved assemblies, modifying the pressure relief door (including replacing existing brackets with new brackets and reidentifying the door with a new part number), modifying the lower track beam (including removing terminals, replacing the aft quick-release pin with a new pin, and reidentifying the beam with a new part number), modifying the heat shield on the lanyard assembly attach lugs, and re-installing the pressure relief door.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Clarification of Applicability

Boeing Service Bulletin MD90–78–048 specifies an effectivity of Model MD–90–30 airplanes "equipped with V2500–D5 thrust reversers prior to serial number 0701001." All Model MD–90–30 airplanes are equipped with the subject thrust reversers; thus, all Model MD–90–30 airplanes are subject to this proposed AD.

Differences Between Proposed AD and Service Information

The service bulletins recommend replacing the door lanyards and doing associated modifications at the next scheduled maintenance visit when manpower, materials, and facilities are available. The FAA has determined that such a non-specific compliance time would not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to perform the proposed actions. In light of all of these factors, the FAA finds that a compliance time of 18 months after the effective date of the AD for completing the proposed actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,080, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD

action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–125–AD.

Applicability: All Model MD–90–30 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the lanyards on the pressure relief door for the thrust reverser have adequate strength so that the door will not detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the door striking and damaging the horizontal stabilizer, accomplish the following:

Replacement of Lanyards on the Thrust Reverser Pressure Relief Door

(a) Within 18 months after the effective date of the AD, replace the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and accomplish associated modifications, per the Accomplishment Instructions of Boeing Service Bulletin MD90–78–048, excluding Evaluation Form, dated February 15, 2001. The associated modifications include removing the pressure relief door, modifying the pressure relief door (including replacing existing brackets with new brackets and reidentifying the door with a new part number), modifying the lower track beam (including removing terminals, replacing the aft quick-release pin with a new pin, and reidentifying the beam with a new part number), modifying the heat shield on the lanyard assembly attach lugs, and re-installing the pressure relief door.

Note 2: Boeing Service Bulletin MD90–78–048, excluding Evaluation Form, dated February 15, 2001, refers to International Aero Engines Service Bulletin V2500–NAC–78–0184, dated February 16, 2001, for instructions on replacing the lanyards on the pressure relief door for the thrust reverser.

Spares

(b) After the effective date of this AD, no person may install a lanyard having part number (01–250) or (01–255) on the pressure relief door for the thrust reverser on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 20, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4587 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–030]

RIN 1218–AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed Negotiated Rulemaking Committee membership; request for comments.

SUMMARY: The Occupational Safety and Health Administration is planning to establish a Crane and Derrick Negotiated Rulemaking Advisory Committee (C–DAC) under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (FACA). The Committee will negotiate issues associated with the development of a proposed revision of the existing construction safety standards for the cranes and derricks portion. The Committee will include representatives of parties who would be significantly affected by the final rule. The public may submit comments on the proposed list of members.

DATES: Comments submitted by mail must be postmarked not later than March 31, 2003. Emailed or faxed comments must be received by March 31, 2003.

ADDRESSES: Written comments may be submitted in any of three ways: by mail, by fax, or by email. Please include "Docket No. S–030" on all submissions.

By mail, the address is: OSHA Docket Office, Docket No. S–030, U.S. Department of Labor, 200 Constitution Avenue, NW.; Room N–2625, Washington, DC 20210, telephone (202) 693–2350. Note that receipt of comments submitted by mail may be delayed by several weeks.

By fax, written comments that are 10 pages or fewer, may be transmitted to the OSHA Docket Office at telephone number (202) 693–1648.

By email, comments may be submitted through OSHA's Homepage at *ecomments.osha.gov*. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, clearly identify your electronic comments by name, date, subject, and Docket Number, so that we can attach the materials to your electronic comments.

FOR FURTHER INFORMATION CONTACT: Mark Hagemann, Office of Construction Standards and Compliance Assistance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2345.

SUPPLEMENTARY INFORMATION: On July 16, 2002, OSHA published a **Federal Register** notice of intent to establish a negotiated rulemaking committee (67 FR 46612). The notice requested nominations for membership on the Committee and comments on the appropriateness of using negotiated rulemaking to develop a crane and derrick proposed rule. In addition, the notice described the negotiated rulemaking process and identified some key issues for negotiation.

Fifty-five nominations for membership on the Committee and several comments were received during the comment period. There was broad support for using negotiated rulemaking to update the standard. OSHA has decided to go forward with the negotiated rulemaking process. The Agency has developed the following proposed list of Committee members:

Manufacturers and Suppliers

Michael Brunet, Manitowoc Cranes, Inc., 2401 S. 30th Street, Manitowoc, WI 54220.

Peter Juhren, Morrow Equipment Company, L.L.C., 3218 Pringle Road, SE., Salem, OR 97302.

Larry Means, Wire Rope Technical Board, 801 North Fairfax Street, Suite 211, Alexandria, VA 22314.

Lessors/Maintenance

William Smith, Maxim Crane Works, 508–C DiGiulian Blvd., Glen Burnie, MD 21061.

Users—Employers

Joseph Collins, Zachry Construction Corporation, P.O. Box 240130, San Antonio, TX 78224.

Brian Murphy, Sundt Corporation, 4101 E Irvington Road, Tucson, AZ 85726.

George R. "Chip" Pocock, C.P. Buckner Steel Erection, P.O. Box 598, Graham, NC 27253.

Craig Steele, Schuck & Sons Construction Company, Inc., 8205 North 67th Avenue, Glendale, AZ 85302.

Darlaine Taylor, Century Steel Erectors, Inc., 210 Washington Avenue, Dravosburg, Pennsylvania 15034.

William J. "Doc" Weaver, 8065 S. Overhill Circle, Salt Lake City, UT 84121.

Robert Weiss, Cranes Inc. and A.J. McNulty & Company, Inc., 53–20 44th Street, Maspeth NY 11378.

Stephen Wiltshire, Shirley Contracting Corporation, 6108 Waterman Drive, Fredericksburg, VA 22407.

Users—Labor Organizations

Frank Migliaccio, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, 1750 New York Ave., NW., Suite 400, Washington, DC 20006.

Dale Shoemaker, Carpenters International Training Center, 6801 Placid Street, Las Vegas, NV 89119.

Operators—Labor Organizations

Stephen Brown, International Union of Operating Engineers, 1125 17th Street, NW., Washington, DC 20036.

Emmett Russell, International Union of Operating Engineers, 1125 17th Street, NW., Washington, DC 20036.

Government/Public Entities

Noah Connell, U.S. Department of Labor/OSHA, 200 Constitution Ave., NW., Room N–3467, Washington, DC 20210.

Training and Operator Testing

David Ritchie, The St. Paul Companies, P.O. Box 1419, Bastrop, TX 78602.

Power line Owners

Michael Hyland, American Public Power Association, 2301 m Street, NW., Washington, DC 20037.

Insurance

Charles Yorio, Acordia, Two Gateway Center, 603 Stanwix Street, Suite 1900, Pittsburgh, PA 15222.

After evaluating the comments on the proposed list of Committee members, OSHA will publish a notice of establishment of the Cranes and Derricks Negotiated Rulemaking Advisory Committee followed by a notice of the first Committee meeting and appointment of members.

Authority: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, (5 U.S.C. 561 *et seq.*), FACA (5 U.S.C. Appendix 2), the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), and Secretary of Labor's Order No. 3–2000 (65 FR 50017, Aug. 16, 2000).

Signed in Washington, DC, this 19th day of February, 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–4560 Filed 2–26–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–03–013]

RIN 2115–AE46

Special Local Regulations for Marine Events; Delaware River, Pea Patch Island to Delaware City, DE

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for marine events held on the waters of the Delaware River between Pea Patch Island and Delaware City, Delaware. These special local regulations are necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in a portion of the Delaware River between Pea Patch Island and Delaware City during the events.

DATES: Comments and related material must reach the Coast Guard on or before April 28, 2003.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Section,

Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–03–013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Each year during the months of June and September, marine events are conducted on a portion of the Delaware River between Pea Patch Island and Delaware City, Delaware. The events consist of 175 to 800 athletes swimming from Fort Delaware on Pea Patch Island to Battery Park in Delaware City. A fleet of spectator vessels gathers nearby to view the swimming events. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the events.

Discussion of Proposed Rule

The Coast Guard proposes to establish permanent special local regulations on specified waters of the Delaware River between Pea Patch Island and Delaware City, Delaware. The special local regulations will be enforced only during the swimming events; a 2-hour period in June and a 2-hour period in September. The effect will be to restrict general navigation in the regulated area during the events. Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of the Delaware River during the event, the effect of this proposed regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Delaware River on the third Saturday of June or September.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only 2 hours on 2 days each year. Vessel traffic could pass safely around the regulated area. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit for an event not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, state, or local government, are specifically excluded from further analysis and documentation under those sections. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. A new § 100.529 is added to read as follows:

§ 100.529 Delaware River, Pea Patch Island to Delaware City, Delaware.

(a) *Definitions.*—(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Philadelphia.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Philadelphia with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated area.* All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points:

Latitude	*Longitude*
39°36′35.7″ North	075°35′25.6″ West, to
39°34′57.3″ North	075°33′23.1″ West, to
39°34′11.9″ North	075°34′28.6″ West, to
39°35′52.4″ North	075°36′33.9″ West.

All coordinates reference Datum NAD 1983.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Enforcement period.* This section will be enforced annually for a 2-hour period on the third Saturday in June and for a 2-hour period on the third Saturday in September. Notice of the enforcement period will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

Dated: February 18, 2003.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–4636 Filed 2–19–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–03–001]

RIN 2115–AA97

Security Zones; Passenger Vessels, Portland, ME, Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones around high capacity passenger vessels, including international ferries, located in the Portland, Maine, Captain of the Port zone. These proposed security zones are necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. When

activated, persons and vessels will be prohibited from entering these security zones without the permission of the Captain of the Port, Portland, Maine.

DATES: Comments and related materials much reach the U.S. Coast Guard on or before March 31, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Portland, 103 Commercial Street, Portland, ME 04101. Marine Safety Office Portland maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Portland between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780–3092.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Portland at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing operation in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to these concerns, security zones around passenger vessels are prudent to ensure the safety and protection of the passengers aboard. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the "Magnuson Act"), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

On October 7, 2002, a temporary final rule (TFR) entitled "Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone" was published in the **Federal Register** (67 FR 62373). That TFR, effective from September 25, 2002, until December 1, 2002, addressed concerns that vessels operating near passenger vessels present possible platforms from which individuals may gain unauthorized access to these vessels or launch terrorist attacks upon these vessels. The TFR was issued to safeguard human life, vessels, and waterfront facilities from sabotage or terrorist acts.

To address the aforementioned concerns, the Coast Guard proposes to establish permanent security zones to prevent vessels or persons from accessing the navigable waters around and under passenger vessels in the Portland, Maine, Captain of the Port zone. Due to the continued heightened security concerns, this proposed rule is necessary to provide for the safety of the port, the vessels, passengers and crew on the vessels, as well as to ensure passenger vessels are not used as possible platforms for terrorist attacks.

Discussion of Proposed Rule

This proposed rule would establish security zones that will be in effect in the navigable waters within a 100-yard radius around any passenger vessel that is moored, or in the process of mooring, at any berth or anchored within the Portland, Maine, Captain of the Port zone. While underway, the security zones will be 100 yards aside and astern of the passenger vessel and 200 yards ahead which is needed due to the passenger vessel's speed of advance through the water. To clarify the types of passenger vessels this rule applies to, we have adopted a modified version of the definition in 33 CFR 120.100 for this rule by removing the requirement "lasting more than 24 hours" from the phrase "making voyages lasting more than 24 hours, any part of which is on the high seas; and by increasing the requirement for number of passengers from "authorized to carry more than 12 passengers for hire" to "authorized to carry more than 500 passengers for hire". This definition will include high capacity cruise ships and international ferries while excluding smaller vessels.

This proposed rule is needed to protect passenger vessels, persons aboard passenger vessels, the public, waterways, ports and adjacent facilities from sabotage or other subversive acts, accidents, or other events of a similar nature taken upon passenger vessels in the Portland, Maine, Captain of the Port zone. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

These security zones will not preclude the routine loading and unloading of passengers, vehicles or cargo; or movement of authorized employees and support personnel at any facility or aboard any passenger vessel.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation. To the extent that each is applicable, this regulation is issued under the authority contained in 33 U.S.C. 1226 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; and 49 CFR 1.46.

Any violation of the security zones described herein is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel and license sanctions.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary for the following reasons: (a) The proposed security zones will encompass only relatively small portions of the Captain of the Port, Portland, Maine zone around the transiting passenger vessels, allowing vessels to safely navigate around the zones without delay; (b) Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons enumerated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. There is no indication the previous rule was burdensome on the maritime public. No letters commenting on the previous rule were received from the public.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how, and to what degree, this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant R. F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780–3092.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A proposed rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the order. We invite your comments on how this proposed rule might impact tribal governments, even if the impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.105 to read as follows:

§ 165.105 Security Zone: Passenger Vessels, Portland, Maine Captain of the Port Zone.

(a) *Definition.* "Passenger vessel" as used in this section means a passenger vessel over 100 gross tons authorized to carry more than 500 passengers for hire making voyages, any part of which is on the high seas, and for which passengers are embarked or disembarked in the Portland, Maine, Captain of the Port zone as delineated in 33 CFR 3.05–15.

(b) *Location.* The following areas are security zones:

(1) All navigable waters within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, within a 100-yard radius of any passenger vessel that is anchored, moored, or in the process of mooring.

(2) All navigable waters, within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, extending 200 yards ahead, and 100 yards aside and astern of any passenger vessel that is underway.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port, Portland, Maine (COTP) or his designated representative.

(2) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State and Federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(3) No person may swim upon or below the surface of the water within the boundaries of these security zones unless previously authorized by the COTP or his designated representative.

(d) *Enforcement.* The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: February 3, 2003.

Mark P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 03–4635 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 128–3097b; FRL–7450–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Regulations for Permits, Approvals and Registration and Related Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. The revisions amend provisions to Maryland's regulations for Permits, Approvals, and Registration and related changes to its regulations for General Emission Standards, Prohibitions, and Restrictions, and Volatile Organic Compounds from Specific Processes. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 31, 2003.

ADDRESSES: Comments should be addressed to Harold A. Frankford, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: February 4, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–4511 Filed 2–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 269–0382b; FRL–7451–7]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from Portland cement kilns. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 31, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, California 92392.

A copy of the rule may also be available via the Internet at http://www.arb.ca.gov/drdb/drdbltxt.htm. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses the MDAQMD rule 1161. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 31, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–4512 Filed 2–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD141/142–3095b; FRL–7450–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve two State Implementation Plan (SIP) revisions submitted by the State of Maryland. One revision removes from the SIP the state ambient air quality standard for hydrocarbons. The other revision removes an outdated citation of a current SIP provision regarding the granting of visible emissions exceptions by control officers. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 31, 2003.

ADDRESSES: Written comments should be addressed to Harold A. Frankford, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: February 4, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–4515 Filed 2–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. VI4–249B; FRL–7455–4]

Approval and Promulgation of State Plans for Designated Facilities; Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Government of the United States Virgin Islands. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing commercial and industrial solid waste incineration (CISWI) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing CISWI units in the state and it submits a negative declaration letter in place of the State Plan. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the Virgin Islands submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule.

If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties

interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before March 31, 2003.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Demian P. Ellis at *Ellis.Demian@epa.gov*. The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is also available for inspection at the following location:Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Cyril E. King Airport, Terminal Building, 2nd Floor, St. Thomas, USVI, 00802.

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, Telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Government of the United States Virgin Islands (Virgin Islands) on October 25, 2002. The negative declaration officially certifies to EPA that, to the best of the Virgin Islands' knowledge, there are no commercial and industrial solid waste incineration (CISWI) units in operation within the Territory. This negative declaration concerns existing CISWI units throughout the Territory of the U.S. Virgin Islands. The negative declaration satisfies the Federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Emission Guidelines for Existing Commercial and Industrial Solid Waste Incineration Units' (65 FR 75338, December 1, 2000).

Dated: February 11, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–4517 Filed 2–26–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 021303A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all of the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP are consistent with the goals and objectives of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); the Atlantic Mackerel, Squid, and Butterfish FMP; and the Bluefish FMP. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow up to two vessels to conduct a supplemental finfish survey, and up to 15 additional vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. In order to fund the survey, the 15 additional vessels would be fishing for specific amounts of named species under the Research Set-Aside (RSA) Program. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before 5 p.m. EST March 14, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on NFI Supplemental Survey EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, 978–281–9153.

SUPPLEMENTARY INFORMATION: The application process for an EFP was completed by the National Fisheries Institute (NFI) on January 30, 2003. The experiment, coordinated by NFI in cooperation with Rutgers University and NMFS' Northeast Fisheries Science Center, requested EFPs for up to two vessels to conduct a supplemental finfish survey targeting Mid-Atlantic migratory species, and for up to 15 additional vessels to harvest RSA allocations. The two vessels participating in the research project, and up to 15 additional vessels, would make additional compensation fishing trips, during closed seasons, to land up to the total RSA quota allocation of 67,163 lb (30,465 kg) of summer flounder, 21,325 lb (9,673 kg) of scup, 21,338 lb (9,679 kg) of black sea bass, 140,543 lb (63,749 kg) of *Loligo* squid, 194,413 lb (88,185 kg) of *Illex* squid, 702,712 lb (318,745 kg) of Atlantic mackerel, and 141,900 lb (64,365 kg) of bluefish. However, no fish caught during these compensation fishing trips smaller than the legal minimum size could be sold, traded, bartered, or processed for sale. Landings from such trips would be sold to generate funds that would defray the costs associated with the research projects.

Under the research project, the research vessels would make two trips of several days each, along two transects, and conduct 10 research tows during each trip. One transect would be east of Hudson Canyon and one south of Baltimore Canyon. Sampling would be conducted in March and May of 2003 along each transect at 50 fm (91 m), 60 fm (110 m), 80 fm (146 m), 125 fm (229 m), 150 fm (247 m), 200 fm (366 m), and 225 fm (411 m), with two additional trawl sites added along each of the transects based on the catches of the target species. Primary target species would be summer flounder, scup, black sea bass, monkfish, and spiny dogfish; secondary target species would be skates, yellowtail flounder, winter flounder, lobster, and *Loligo* squid. One tow would be conducted at each station over a fixed distance of 2 nautical miles, with tow speeds of 3 to 3.2 knots. A four-seam box net would be used with a 2.4–inch (6–cm) mesh codend. Careful records would be kept of all gear descriptions so that subsequent surveys can use consistent gear. Scientific research personnel would be on board the vessels at all times when the survey is conducted.

To facilitate the collection of data during periods with the greatest potential for fishing success, the research vessels would be exempt from the summer flounder closures at 50 CFR 648.101(a) and (b); summer flounder gear restrictions at § 648.104; scup trimester quota closures at § 648.121(a); scup gear restricted area provisions at § 648.122(a) and (b); scup trawl gear restrictions at § 648.123; black sea bass trip limits at § 648.140(b)(2); black sea bass quarterly quota closures at § 648.141; black sea bass gear restrictions at § 648.144(1),(2),(3), and (4); Loligo squid, Illex squid, and mackerel closures at § 648.22(a) and (c); and bluefish closures at § 648.161(a) and (b). In order to collect individual fish sizes and other data, the research vessels would also be exempt from: Minimum size requirements for summer flounder at § 648.103(a),(b), and (c); for scup at § 648.124(a); for black sea bass at § 648.143; for monkfish at § 648.93; for spiny dogfish at § 648.233; for yellowtail flounder and winter flounder at § 648.83; and for lobster at § 697.20(b); from spiny dogfish closures at § 648.231; and from Northeast multispecies regulated mesh requirements, and restrictions on gear and methods of fishing at § 648.80.

The 1 to 15 vessels that would be used to harvest the RSA allocations would be exempt only from the summer flounder closures at § 648.101(a) and (b); summer flounder gear restrictions at § 648.104; scup trimester quota closures at § 648.121(a); black sea bass trip limits at § 648.140(b)(2); black sea bass closures at § 648.140 and § 648.141; *Loligo* squid, *Illex* squid, and Atlantic mackerel closures at § 648.22(a) and (c); and bluefish closures at § 648.161(a) and (b).

Any landings that would occur from research or compensation fishing would be reported in the Vessel Trip Reports, as required. All landings would be landed in compliance with applicable state landing laws.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 20, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4566 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 39
Thursday, February 27, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Wednesday, Marcy 19, 2003 in Boise, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on March 19, begins at 10:30 a.m. at the Idaho Counties Risk Management Program Building (ICRMP), 3100 Vista Avenue, Boise, Idaho. Agenda topics will include review and approval of project proposals, and an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401.

Dated: February 21, 2003.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 03–4594 Filed 2–26–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section 1 of the Iowa State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Iowa NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in Section 4 Practice Standards and Specifications, Conservation Cover (327) and Critical Area Planting (342) to account for improved technology. These practice standards can be used in systems that treat highly erodible land.

DATES: Comments will be received on or before March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, Iowa 50309; at 515/284–4260; fax 515/284–4394.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: February 7, 2003.

Leroy Brown,

State Conservationist.

[FR Doc. 03–4620 Filed 2–26–03; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Rural Rental and Cooperative Housing Loan Policies, Procedures, and Authorizations.

DATES: Comments on this notice must be received by April 28, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Douglas H. MacDowell, Senior Loan Specialist, Rural Housing Service, U.S. Department of Agriculture, Stop 0781, Washington, DC 20250–0781, Telephone (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Title: Rural Rental and Cooperative Housing Loan Policies, Procedures, and Authorizations.

OMB Number: 0575–0047.

Expiration Date of Approval: June 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, is authorized to make loans to finance rural rental housing (RRH) and rural cooperative housing (RCH) complexes and related facilities under Sections 515 and 521 of Title V of the Housing Act of 1949, as amended. The RRH and RCH programs provide affordable rental and cooperative housing for elderly or disabled persons and families, and other persons and families of low or moderate income in rural areas.

RHS is responsible for ensuring that these Federally funded loans are made to eligible applicants for authorized purposes. The information collected is necessary to determine the eligibility of the applicant and the feasibility of the proposed housing. If not collected, the Agency would be providing unauthorized Federal assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6.9 hours per response.

Respondents: Individuals, trusts, associations, partnerships, limited partnerships, State or local public agencies, consumer cooperatives, and profit or nonprofit corporations.

Estimated Number of Respondents: 623.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 35,088.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 22, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–4622 Filed 2–26–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1267]

Expansion of Foreign-Trade Zone 219, Yuma, AZ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Yuma County Airport Authority, Inc., grantee of Foreign-Trade Zone 219, submitted an application to the Board for authority to expand FTZ 219 to include a site at the Yuma Commerce Center (95 acres) in Yuma, Arizona, within the San Luis Customs port of entry (FTZ Docket 32–2002; filed 8/14/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 54168. 8/21/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 219 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 7th day of February 2003.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–4584 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 9–2003]

Foreign-Trade Zone 148—Knoxville, Tennessee, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Industrial Development Board of Blount County, grantee of Foreign-Trade Zone 148, requesting authority to expand FTZ 148, in the Knoxville, Tennessee, area, adjacent to the Knoxville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 6, 2003.

FTZ 148 was approved on June 28, 1988 (Board Order 384, 53 FR 26095, 7/11/88). The zone project currently consists of the following sites: *Site 1* (45.6 acres)—within the Bill Mullins Warehouse Park, Prosser Road, Knoxville; *Site 2* (4.5 acres)—Blount County Industrial Park, some five miles south of McGhee Tyson Airport, Maryville; *Site 2A* (27,000 sq. ft)—McGhee Tyson Airport, some 3 miles north of Site 2, Alcoa; and, *Site 3* (6.5 acres)—Valley Industrial Park, State Route 62, Oak Ridge.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (54 acres) in Crossville: *Proposed Site 4* (54 acres)—within the CoLinx warehousing facilities, 1536 Genesis Road, Crossville. The site is owned by the Industrial Development Board of Cumberland County and the City of Crossville. It will be operated by CoLinx LLC, a logistics services provider. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is April 28, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 13, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the U.S. Customs Service, Duncan Federal Building, 710 Locust Street, Room 435, Knoxville, Tennessee 37902.

Dated: February 6, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–4580 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1268]

Approval for Expanded Manufacturing Authority (Industrial Automation Products), Within Foreign-Trade Subzone 204A, Siemens Energy & Automation, Inc.; Carter County, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Tri-Cities Airport Commission, grantee of Foreign-Trade Zone 204, has applied to expand the scope of manufacturing authority for FTZ Subzone 204A (Siemens Energy & Automation, Inc. facilities in Carter County, Tennessee) to include production of additional finished products (*e.g.*, automotive, media, and traffic technologies) and components under FTZ procedures (FTZ Doc. 16–2002; filed 3–4–2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 11097, 3–12–2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction that carrying cases of textile materials (HTS 4202.12) be admitted to the subzone in privileged-foreign status.

Signed at Washington, DC, this 7th day of February 2003.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–4581 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 2004.

	Period to be reviewed
Antidumping Duty Proceedings	
France:	
Anhydrous Sodium Metasilicate (ASM), A–427–098	1/1/02–12/31/02
Rhone-Poulenc, S.A.	
The People's Republic of China:	
Folding Gift Boxes [1] A–570–866	8/6/01–12/31/02
Red Point Paper Products Co., Ltd.	
Yun Choy, Ltd.	
Potassium Permanganate [2] A–570–001	1/1/02–12/31/02
Groupstars Chemicals, LLC	
The Republic of Korea:	
Top-of-the-Stove Stainless Steel Cooking Ware, A–580–601	1/1/02–12/31/02
Dong Won Metal Co., Ltd.	
Countervailing Duty Proceedings: None.	
Suspension Agreements: None.	

[1] If one of the above-named companies does not qualify for a separate rate, all other exporters of folding gift boxes from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above-named companies does not qualify for a separate rate, all other exporters of potassium permanganate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 21, 2003.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 03–4650 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Drew Jackson of John Conniff at (202) 482–4406 or (202) 482–1009, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on barium chorloride from the People's Republic of China (PRC) (67 FR 61849). Pursuant to a request made by Chemical Products Corporation (the petitioner), the Department initiated an administrative review of the antidumpimg duty order on barium chloride from the PRC for the period October 1, 2001, through September 30, 2002, on November 18, 2002 (67 FR 70402); (November 22, 2002). On January 7, 2003, the petitioner withdrew its request for the administrative review of barium chloride from the PRC.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department is rescinding the administrative review of the order on barium chloride from the PRC for the period October 1, 2001, through September 30, 2002, because the requesting party has withdrawn its request for this administrative review within the 90-day time limit and no other interested parties have requested a review of barium chloride from the PRC for this time period.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: February 20, 2003.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–4582 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489–805]

Notice of Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On August 19, 2002, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain pasta (pasta) from Turkey, covering the period July 1, 2001 through June 30, 2002, and one manufacturer/exporter of the subject merchandise, Filiz Gida Sanayi ve Ticaret (Filiz). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). This review has now been rescinded due to Filiz's withdrawal of its request for an administrative review.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Jim Neel, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3601 or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2002, the Department received a letter from Filiz requesting an administrative review of the antidumping order on pasta from Turkey. On August 19, 2002, the Department initiated an administrative review of the antidumping order on pasta from Turkey for the period July 1, 2001 to June 30, 2002. On August 29, 2002, Filiz submitted a letter requesting to withdraw from the above referenced administrative review.

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Rescission of Administrative Review

Within 90 days of the August 27, 2002 notice of initiation, Filiz requested to withdraw from the above referenced administrative review. *See* Letter from Filiz to the Department dated August 29, 2002 on file in the Central Records unit, Room B-099, Main Building of the Department of Commerce.

In accordance with the Department's regulations, and consistent with its practice, the Department hereby rescinds the administrative review of pasta from Turkey for the period July 1, 2001 to June 30, 2002. *See* 19 CFR section 351.213(d)(1), which states in pertinent part: "The Secretary will

rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review."

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: February 13, 2003.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–4579 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates from the People's Republic of China: Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Strollo at (202) 482–0629, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

SUPPLEMENTARY INFORMATION: On August 27, 2002, the Department published in the Federal Register a notice of initiation of administrative review of the antidumping duty order on persulfates from the People's Republic of China. *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 67 FR 55000 (Aug. 27, 2002). The period of review is July 1, 2001 through June 30, 2002. The review covers one exporter of the subject merchandise to the United States.

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245–day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. Due to the respondent's request for a partial revocation of the antidumping duty order, and the fact that the Department needs sufficient time to conduct a verification in this proceeding, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with section 751(a)(3)(A) of the Act, we have fully extended the deadline until July 31, 2003.

Dated: February 21, 2003.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–4653 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–837, A–533–828, A–580–852, A–201–831, A–549–820]

Notice of Initiation of antidumping duty investigations: Prestressed Concrete Steel Wire Strand From Brazil, India, the Republic of Korea, Mexico, and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Magd Zalok (Brazil and Republic of Korea) at (202) 482–4162, Victoria Schepker (India and Thailand) at (202) 482–1756, and David Layton (Mexico) at (202) 482–0371, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Petitions

On January 31, 2003, the Department received petitions filed in proper form by American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp. (collectively, the petitioners). The Department received supplemental information to the petitions from February 4 through February 14, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of prestressed concrete steel wire strand (PC strand) from Brazil, India, the Republic of Korea (Korea), Mexico, and Thailand are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from Brazil, India, Korea, Mexico, and Thailand are materially injuring, or are threatening to materially injure an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petitions."

Period of Investigation

The anticipated period of investigation (POI) for Brazil, India, Korea, Mexico, and Thailand is January 1, 2002, through December 31, 2002.

Scope of Investigations

For purposes of these investigations, prestressed concrete steel wire (PC strand) is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under these investigations is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

[1] *See Algoma Steel Corp. Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petitions cover PC strand as defined in the *Scope of Investigations* section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Finally, the Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support and, therefore, polling is unnecessary. See Import Administration Antidumping Investigations Initiation Checklist: Prestressed Concrete Steel Wire Strand from Brazil, India, Korea, Mexico, and Thailand, Industry Support section, February 20, 2003 (the Initiation Checklist), on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

For each country, we determined, based on information provided in the petition, that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petitions, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the Injury Allegation section in the Initiation Checklist.

Initiation Standard for Cost Investigations

Pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of India, Korea, Mexico, and Thailand were made at prices below the cost of production (COP) and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with these investigations. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act (URAA), states that an allegation of sales below COP need not be specific to individual exporters or producers. The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." SAA, H.R. Doc. No. 103–316 at 833 (1994).

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. We have analyzed the country-specific allegations as described below for India, Korea, Mexico, and Thailand. Based on our analysis, we found reasonable grounds to believe or suspect that sales of PC strand in the above-referenced countries were made at prices below cost. *See* the Normal Value sections below.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and home market prices, and constructed value (CV) are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Brazil

Constructed Export Price

The petitioners based constructed export price (CEP) on prices for sales of low-relaxation PC strand from a Brazilian producer, through its U.S. affiliate, to an unaffiliated U.S. purchaser. The petitioners calculated a single average U.S. gross unit price and deducted from it estimated costs for international freight and insurance charges, U.S. inland freight charges, harbor maintenance and merchandise processing fees, and imputed credit expenses to arrive at an average net U.S. price. Information regarding U.S. warehousing expenses, indirect selling expenses, inventory carrying expenses, and CEP profit was not reasonably available to petitioners; therefore, the petitioners did not deduct these items from the average gross unit price. Instead, as a conservative estimate of these expenses, the petitioners subtracted from the U.S. price an amount for the prevailing commission rate for PC strand sold in the United States via unaffiliated agents to foreign producers' unaffiliated U.S. customers.

Normal Value

With respect to the normal value (NV), the petitioners provided a home market price for low-relaxation PC strand that was obtained from a foreign market researcher familiar with Brazilian sales. *See* Memorandum to the File from Magd Zalok, Case Analyst, concerning Telephone Conversation with Market Researcher Regarding the Petitions for Imposition of Antidumping: Prestressed Concrete Steel Wire Strand from Brazil (February 12, 2003). To calculate the NV, the petitioners adjusted the gross unit price for home market credit expenses and inland freight.

The estimated dumping margin for Brazil, based on a comparison of CEP and home market price, is 118.75 percent.

India

Constructed Export Price

The petitioners based CEP on prices for low-relaxation PC strand from an Indian producer, through its U.S. affiliate, to unaffiliated U.S. purchasers. The petitioners calculated a single average gross unit price and deducted estimated costs for international freight and insurance charges, U.S. inland freight charges, harbor maintenance and merchandise processing fees, and imputed credit expenses to calculate an average net U.S. price. Information regarding U.S. warehousing expenses, indirect selling expenses, inventory carrying expenses, and CEP profit were not reasonably available to the petitioners; therefore, the petitioners did not deduct these items from the average gross unit price. Instead, as a conservative estimate of these expenses, the petitioners subtracted from the U.S. price an amount for the prevailing commission rate for PC strand sold in the United States via unaffiliated agents to foreign producers' unaffiliated U.S. customers.

Normal Value

With respect to NV, the petitioners provided home market prices for low-relaxation PC strand produced that was obtained from a foreign market researcher familiar with Indian sales. *See* Memorandum to the File from Victoria Schepker, Case Analyst, concerning Telephone Conversation with Market Researcher Regarding the Petitions for Imposition of Antidumping: Prestressed Concrete Steel Wire Strand from India (February 7, 2003). The petitioners calculated an average gross unit price and adjusted the average price for home market credit expenses and inland freight.

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of PC strand in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacture (COM); selling, general and administrative (SG&A) expenses; financial expenses; and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce PC strand in the United States and in India using publicly available data. For initiation purposes, we have recalculated the labor and electricity costs by first indexing the costs in the foreign denominated currency and then converting the costs to U.S. Dollars based on the prevailing exchange rate for the comparison period. To calculate SG&A, the petitioners relied on amounts reported in the financial statements, for the fiscal year ending March 31, 2002, of Tata SSL Ltd., an Indian PC strand producer. To calculate financial expenses, the petitioners relied on amounts reported in the consolidated financial statements, for the fiscal year ending March 31, 2002, of Tata Iron & Steel Company Ltd., an Indian PC strand producer. Based upon a comparison of the price of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in India on CV. The petitioners calculated CV using the same COM, SG&A, and interest expense figures used to compute the Indian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit based upon amounts reported by an Indian PC strand producer's financial statements for the year ended March 31, 2002.

The estimated dumping margin for India, based on a comparison of CEP and home market price, is 65.23 percent. The estimated dumping margin based on a comparison between CEP and CV is 102.07 percent.

Korea

Export Price

The petitioners based export price (EP) on prices within the POI for sales of low-relaxation PC strand produced by two Korean companies and offered for sale to an unaffiliated U.S. customer. The petitioners averaged the gross prices, by company, and deducted from the average prices international freight and insurance expenses, U.S. customs duties, U.S. harbor maintenance and merchandise processing fees, and the U.S. inland freight expenses.

Normal Value

With respect to NV, the petitioners provided home market prices based on prices within the POI for sales of PC strand produced by two Korean companies and offered for sale to an unaffiliated customer. The price quotes are based on information gathered by a market researcher familiar with the Korean sales. *See* Memorandum to the File from Magd Zalok, Case Analyst, concerning Telephone Conversation with Market Researcher Regarding the Petitions for Imposition of Antidumping: Prestressed Concrete Steel Wire Strand from Korea (February 11, 2003). To calculate the NV, the petitioners deducted inland freight from the home market prices, and, consistent with our statutory EP circumstances-of-sale calculation methodology, adjusted the home market prices for imputed credit and commissions by deducting home market credit expenses from the home market prices and adding the U.S. imputed credit and U.S. commission expenses to these prices.

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of PC strand in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, financial expenses, and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce PC strand products in the United States and Korea using publicly available data. For initiation purposes, we have recalculated the labor and electricity costs by first indexing the costs in the foreign denominated currency and then converting the costs to U.S. Dollars based on the prevailing exchange rate for the comparison period. To calculate SG&A and interest expenses, the petitioners relied upon amounts reported in the 2001 financial statements of Kiswire—Koryo Steel Company (Kiswire) and Dong il—Dong-il Steel Manufacturing Co. Inc., two Korean producers of PC strand. Based upon a comparison of the price of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Korea on CV. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute the Korean home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Kiswire's 2001 financial statements.

The estimated dumping margin for Korea, based on a comparison of EP and home market prices, ranges from 18.67 to 27.06 percent. The estimated dumping margin, based on a comparison between EP and CV, ranges from 42.62 to 54.19 percent.

Mexico

Export Price

The petitioners based EP on prices within the POI for sales of low-relaxation PC strand manufactured by a Mexican producer and offered for sale directly to an unaffiliated U.S. customer. The petitioners averaged the gross prices for the individual prices and deducted U.S. import duties, freight and insurance to the U.S. port of entry, and U.S. inland freight from the average price. The petitioners did not deduct U.S. harbor maintenance and merchandise processing fees, based on the conservative assumption that the Mexican products were shipped over land.

Normal Value

With respect to NV, the petitioners provided a home market price that was obtained from an invoice for an actual sale in Mexico to an unaffiliated customer. The petitioners state that the invoice price reported was a delivered price. To calculate the NV, the petitioners deducted inland freight from the home market price, and, consistent with our statutory EP circumstances-of-sale calculation methodology, adjusted the home market price for imputed credit and commissions by deducting home market credit expenses from the home market prices and adding the U.S. imputed credit and U.S. commission expenses to this price.

The petitioners have provided information demonstrating reasonable grounds to believe or suspect that sales of PC strand in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, financial expenses, and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce PC Strand in the United States and in Mexico using publicly available data. For initiation purposes, we have recalculated the labor, electricity and natural gas costs by first indexing the costs in the foreign-denominated currency and then converting the costs to U.S. Dollars based on the prevailing exchange rate for the comparison period. To calculate SG&A and financial expenses, the petitioners relied upon amounts reported in the 2001 financial statements of Aceros Camesa, S.A. de C.V. (Camesa), a Mexican producer of PC strand. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Mexico on CV. The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Camesa's 2001 financial statements.

The estimated dumping margin in the petition for Mexico based on a comparison of EP and home market price is 50.16 percent. The estimated dumping margin based on a comparison between EP and CV is 77.20 percent.

Thailand

Export Price

The petitioners based EP on a price for sales of low-relaxation PC strand produced by a Thai company and offered for sale to an unaffiliated U.S. purchaser. The petitioners calculated a net U.S. price by deducting estimated costs for international freight, insurance charges, and harbor maintenance and merchandise processing fees.

Normal Value

With respect to NV, the petitioners provided a home market price for low-relaxation PC strand produced by a Thai company and offered for sale to an unaffiliated Thai purchaser. The price quotes are based on information gathered by a market researcher familiar with the Thai sales. *See* Memorandum to the File from Victoria Schepker, Case Analyst, concerning Telephone Conversation with Market Researcher Regarding the Petitions for Imposition of Antidumping: Prestressed Concrete Steel Wire Strand from Thailand (February 10, 2003). To calculate the NV, the petitioners deducted inland freight from the home market price, and, consistent with our statutory EP circumstances-of-sale calculation methodology, added the U.S. imputed credit and U.S. commission expenses to this price.

The petitioners have provided information demonstrating reasonable grounds to believe or suspect that sales of PC strand in the home market were

made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, financial expenses, and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce PC Strand in the United States and in Thailand using publicly available data. For initiation purposes, we have recalculated the labor and electricity costs by first indexing the costs in the foreign-denominated currency and then converting the costs to U.S. Dollars based on the prevailing exchange rate for the comparison period. To calculate SG&A and financial expenses, the petitioners relied upon amounts reported in the 2001 financial statements of Siam Wire. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Thailand on CV. The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute the Thai home market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the Siam Wire's 2001 financial statements.

The estimated dumping margin for Thailand, based on a comparison of EP and home market price is 13.53 percent. The estimated dumping margin based on a comparison between EP and CV is 29.68 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of PC strand from Brazil, India, Korea, Mexico, and Thailand are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the cumulated imports from Brazil, India, Korea, Mexico, and Thailand of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See the Initiation Checklist.

Initiation of Antidumping Investigations

Based upon our examination of the petitions on PC strand, we have found that they meet the requirements of section 732 of the Act. See the Initiation Checklist. Therefore, we are initiating antidumping duty investigations to determine whether imports of PC strand from Brazil, India, Korea, Mexico, and Thailand are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Brazil, India, Korea, Mexico, and Thailand. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than March 17, 2003, whether there is a reasonable indication that imports of PC strand from Brazil, India, Korea, Mexico, and Thailand are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: February 20, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4652 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Certain Softwood Lumber Products From Canada: Notice of Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty new shipper review.

EFFECTIVE DATE: February 27, 2003.

SUMMARY: On January 8, 2003, the Department of Commerce (the Department) published in the **Federal Register** (68 FR 1030) a notice announcing the initiation of a new shipper review of the antidumping duty order on certain softwood lumber products from Canada, covering the period May 22, 2002, through October 31, 2002. The review covers Sciere La Pointe & Roy Ltee (La Pointe & Roy). We are now rescinding this review as a result of La Pointe & Roy's withdrawal of its request for a new shipper review.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Keith Nickerson, at (202) 482–1756 or (202) 482–3813, respectively, AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 CFR 351.214(c) (April 2002), on November 26, 2002, La Pointe & Roy requested a new shipper review of the antidumping duty order on certain softwood lumber products from Canada. On December 31, 2002, in accordance with section 751(a)(2)(B)(ii) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d)(1), we initiated a new shipper review of this order for the period May 22, 2002, through October 31, 2002 (68 FR 1030). La Pointe & Roy withdrew its request for a new shipper review on January 31, 2003.

Rescission of New Shipper Review

The Department's regulations at 19 CFR 351.214(f)(1) provide that the Department will rescind a new shipper review if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. La Pointe & Roy withdrew its request within the 60-day period. Accordingly, we are rescinding this review.

Notification

Bonding is no longer permitted to fulfill security requirements for shipments of certain softwood lumber products from Canada produced and exported by La Pointe & Roy, entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This notice is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: February 19, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4583 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–822–805]

Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Belarus

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Tom Martin or Tom Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3936, and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that urea ammonium nitrate solutions (UANS) from Belarus are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the *Final Determination of Investigation* section of this notice.

Case History

On October 3, 2002, the Department of Commerce (the Department) published the preliminary determination of sales at LTFV in the antidumping duty investigation of UANS from Belarus. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From Belarus*, 67 FR 62015 (October 3, 2002) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

On November 7, 2002, the Department published a postponement of the final determination of sales at LTFV in the antidumping duty investigation of UANS from Belarus. *See Postponement of the Final Determinations in the Less-Than-Fair-Value Investigations of Urea Ammonium Nitrate Solutions From Belarus, the Russian Federation, and Ukraine*, 67 FR 67823 (November 7, 2002).

During November 2002, the Department conducted a verification of Grodno Production Republican Enterprise's (Grodno) sales and factors of production (FOP) information. *See* Memorandum from Tom Martin, Import Compliance Specialist, through Tom Futtner, Program Manager, to The File, "Verification of Sales and Factors of Production Information Reported by Grodno Production Republican Enterprise," dated December 20, 2002 (Verification Report). Both the petitioner and Grodno filed surrogate value information and data on November 26, 2002.[1]

On November 1, 2002, the petitioner requested a hearing pursuant to 19 CFR 351.301(e). However, no hearing was held in this investigation because the petitioner withdrew its request for a hearing.

In a memorandum filed on December 23, 2002, we altered the time limit for submitting case briefs pursuant to 351.309(c)(1)(i) of the Department's regulations. We received a case brief from the petitioner on January 7, 2003. On January 14, 2003, the respondent, through the Embassy of the Republic of Belarus, requested, and the Department granted, an extension for Grodno to submit comments. The respondent provided comments on January 17, 2003.

Scope of the Investigation

For purposes of this investigation, the product covered is all mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, regardless of nitrogen content by weight, and regardless of the presence of additives, such as corrosion inhibitors. The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3102.80.00.00. Although the HTSUS item number is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 2001, through March 31, 2002.

Analysis of Comments Received

All issues raised in the comments by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Memorandum from Bernard T. Carreau, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from Belarus C October 1, 2001, through March 31, 2002," dated concurrently with this notice (*Decision Memorandum*), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and

[1] The petitioner in this investigation is the Nitrogen Solutions Fair Trade Committee. Its members consist of CF Industries, Inc., Mississippi Chemical Corporation, and Terra Industries, Inc.

electronic version of the *Decision Memorandum* are identical in content.

Non-Market Economy

The Department has treated Belarus as a nonmarket economy (NME) country in all previous antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus*, 66 FR 33528 (June 22, 2001). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. Therefore, pursuant to section 771(18)(C)(i) of the Act, the Department has continued to treat Belarus as an NME country for the purposes of this investigation.

Separate Rates

In our Preliminary Determination, we found that the only responding company, Grodno, met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the preliminary determination which would warrant reconsideration of our separates rates determination with respect to this company. For a complete discussion of the Department's determination that the respondent is entitled to a separate rate, see the *Preliminary Determination*. We have also addressed an allegation made by the petitioner in the *Decision Memorandum* at Comment 4.

The Belarus-Wide Rate

In all NME cases, the Department makes a rebuttable presumption that all exporters or producers located in the NME country comprise a single exporter under common government control, "the NME entity." The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

In the *Preliminary Determination*, Grodno qualified for a separate rate. Furthermore, information on the record of this investigation indicates that Grodno accounted for all imports of subject merchandise during the POI. Since Grodno is the only known Belarusian exporter of UANS to the United States during the POI, we have calculated a Belarus-wide rate for this investigation based on the weighted-average margin determined for Grodno.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's FOP, valued in a comparable market economy that is a significant producer of comparable merchandise. For purposes of the final determination, we continue to find that South Africa remains the appropriate surrogate country for Belarus. We received comments from the respondent pertaining to our selection of South Africa, which are discussed in the accompanying *Decision Memorandum* at Comment 1.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the Preliminary Determination as a result of verification, see the *Changes Since the Preliminary Determination* section below.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies. We are valuing the river water FOP and the steam FOPs separately from surrogate overhead value, and we are applying truck freight rather than rail freight to three FOPs. These adjustments are discussed in detail in the (1) Decision Memorandum, (2) Memorandum from the Team to the File, "Additional Surrogate Country Values Used for the Final Determination of the Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from Belarus," dated February 18, 2003, and (3) Memorandum from the Team to the File, "Calculation Memorandum for the Final Determination," dated February 18, 2003.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the U.S. Customs Service (Customs) to continue suspension of liquidation of entries of subject merchandise from Belarus that are entered, or withdrawn from warehouse, for consumption on or after October 3, 2002 (the date of publication of the *Preliminary Determination* in the **Federal Register**). We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

Final Determination of Investigation

We determine that the following weighted-average percentage margins exist for the period October 1, 2001, through March 31, 2002:

Manufacturer/exporter	Weighted-Average Margin (percent)
Grodno Production Republican Enterprise	226.82
Belarus-Wide Rate	226.82

The Belarus-wide rate applies to all entries of the subject merchandise except for entries from Grodno.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 19, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix--Issues in Decision Memorandum

1. Whether Lithuania Should Be Used as a Surrogate Country
2. Whether Catalysts Should Be Valued Separately
3. Whether Water and Water-based Inputs (Steam and Raw Condensate) Should Be Valued Separately
4. Whether Grodno Should Be Issued a Separate Rate

[FR Doc. 03–4648 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-823–814]

Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Crystal Scherr Crittenden at (202) 482–0989, or Tom Futtner at (202) 482–3814, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that urea ammonium nitrate solutions (UANS) from Ukraine are being, or are likely to be, sold in the United States at less than fair value (LFTV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 3, 2002, the Department published its preliminary determination in the above-captioned antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Ukraine*, 67 FR 62013 (October 3, 2002) (*Preliminary Determination*). *See also Notice of Initiation of Antidumping Duty Investigations: Urea Ammonium Nitrate Solutions from Belarus, Lithuania, the Russian Federation, and Ukraine*, 67 FR 35492 (May 20, 2002) (*Initiation Notice*).

Since the preliminary determination, the following events have occurred. On November 1, 2002, the petitioner[1] requested a hearing pursuant to 19 CFR 351.301(e). However, no hearing was held in this investigation because the petitioner withdrew its request for a hearing. On November 27, 2002, the Department postponed the final determination for this investigation in accordance with 19 CFR 351.210(b). *See Postponement of the Final Determinations in the Less-Than-Fair-Value Investigations of Urea Ammonium Nitrate Solutions From Belarus, the Russian Federation, and Ukraine*, 67 FR 67823 (November 7, 2002). On December 23, 2002, the Department issued the schedule for interested parties to comment on the preliminary determination. *See* Memo to the File from Paige Rivas, Thomas Martin and Crystal Crittenden dated December 23, 2002. No case or rebuttal briefs were submitted.

Scope of Investigation

For purposes of these investigations, the product covered is all mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, regardless of nitrogen content by weight, and regardless of the presence of additives, such as corrosion inhibitors. The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3102.80.00.00. Although the HTSUS item number is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 2001, through March 31, 2002.

[1] The petitioner is the Nitrogen Solutions Fair Trade Committee (the petitioner). Its members consist of CF Industries, Inc., Mississippi Chemical Corporation, and Terra Industries, Inc.

Nonmarket Economy Country Status

The Department has treated Ukraine as an nonmarket economy (NME) country in all previous antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Ammonium Nitrate from Ukraine*, 66 FR 38632 (July 25, 2001). This NME designation remains in effect until it is revoked by the Department. *See* section 771(1)(C) of the Act. No party has sought revocation of the NME status in this investigation.[2] Therefore, in accordance with section 771(1)(C) of the Act, we will continue to treat Ukraine as an NME country.

Ukraine-Wide Rate

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control, and assigns separate rates only if the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over export activities. *See Notice of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). In the *Preliminary Determination*, we found that the mandatory respondents, JSC Stirol (Stirol) and JSC Azot Cherkassy (Cherkassy), did not demonstrate eligibility for a separate rate. Accordingly, we preliminarily determined that Stirol and Cherkassy, in addition to all other exporters, are part of the NME-entity and subject to the Ukraine-wide rate.

We received no comments on this issue. Therefore, in our final results we continue to find that Stirol and Cherkassy, in addition to all other exporters, are part of the NME entity and therefore subject to the Ukraine-wide rate.

Use of Facts Available

In the *Preliminary Determination*, the Department found that the respondents did not cooperate to the best of their ability and applied the total adverse facts available rate of 193.58 percent, the corroborated initiation rate, as the "Ukraine-wide" rate. *See Preliminary Determination. See also Initiation Notice.* No interested party objected to the use of adverse facts available, nor to

[2] We note that the Department received a request for revocation of Ukraine's NME status but determined to defer its decision on this issue. *See Notice to Defer a Decision Regarding Ukraine's Non-Market Economy Status: Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 51536 (August 8, 2002). Information on this separate proceeding can also be found at Import Administration's website, at http://ia.ita.doc.gov/

the Department's choice of facts available. For this final determination, we are continuing to apply total adverse facts available for the "Ukraine-wide" rate.

Changes Since the Preliminary Determination

The Department updated the 2000 income data for expected wages of selected NME countries initially revised in September 2002. In the *Preliminary Determination*, the Department calculated the "Ukraine-wide" rate using $0.78 per hour, the 2000 expected wage for Ukraine revised in September 2002, as the surrogate value for Ukrainian labor. *See* Total Facts Available Corroboration Memorandum, dated September 26, 2002. For the final determination, we applied $0.76 per hour, the 2000 expected wage for Ukraine corrected in February 2003, as the surrogate value for Ukrainian labor. *See* Memorandum from Crystal Crittenden, Import Compliance Specialist, Through Tom Futtner, Senior Program Manager, to The File, "Changes Since the Preliminary Determination Calculation Memorandum," dated February 18, 2003.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to continue to suspend liquidation of all entries of UANS from Ukraine that are entered, or withdrawn from warehouse, for consumption on or after October 3, 2003 (the date of publication of the *Preliminary Determination* in the **Federal Register**). Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following percentage margin exists for the period October 1, 2001, through March 31, 2002:

Manufacturer/Exporter	Margin (percent)
Ukraine-wide	193.57

U.S. International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 19, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4649 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–829]

Notice of Initiation of Countervailing Duty Investigation: Prestressed Concrete Steel Wire Strand From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of countervailing duty investigation.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Alicia Kinsey, or Jim Neel, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482–2209, (202) 482–4793, or (202) 482–4161, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR part 351 (2002).

The Petition

On January 31, 2003, the Department received a petition filed in proper form by the following parties: American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp. (collectively, the petitioners). The Department received from the petitioners information supplementing the petition on February 12, 2003.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of prestressed concrete steel wire strand ("PC strand") in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (d) of the Act. The petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate (see the Determination of Industry Support for the Petition section below).

Scope of Investigation

For purposes of this investigation, prestressed concrete steel wire (PC strand) is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

In accordance with Article 13.1 of the Agreement on Subsidies and Countervailing Measures and section 702(b)(4)(A)(ii) of the Act, on February 13, 2003, we invited the Government of India ("GOI") to hold consultations with us regarding this petition. Representatives of the GOI accepted our offer for consultations, but ultimately were unable to meet prior to this initiation. *See* the February 20, 2003, memorandum to the file titled "Invitation for Consultations with the Government of India Regarding the Countervailing Duty Petition on Prestressed Concrete Steel Wire Strand from India." We continue to extend the opportunity to meet for consultations to the GOI.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authorities. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petition covers PC strand as defined in the *Scope of Investigation* section, above, a single class or kind of merchandise. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

We determined, based on information provided in the petition, that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 702(c)(4)(A)(ii) are also met. Because the Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petition contains adequate evidence of industry support, polling is unnecessary. 702(c)(4)(D) of the Act; *see* Import Administration Countervailing Duty Investigation Initiation Checklist *("Initiation Checklist")*, Industry Support Section, February 20, 2003, on file in the Central Records Unit (CRU) of the main Department of Commerce building. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* the Injury Allegation section in the *Initiation Checklist*.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of subsidized imports of the subject merchandise.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, domestic prices, revenue, profit-to-sales ratios, production employment, capacity utilization, and domestic market share. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Injury Allegation section of the *Initiation Checklist*.

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Panel Displays and Display Glass from Japan: Final Determination; Recission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Period of Investigation (POI)

The petitioners contend that the POI is April 1, 2001 through March 31, 2002, which is the last completed fiscal year for each of the alleged producers/exporters of the subject merchandise. If these companies do not have the same fiscal year then the POI would be calendar year 2001.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *Initiation Checklist*):

A. Government of India Programs

1. Duty Entitlement Passbook Scheme (DEPBS)
2. Pre-Shipment and Post-Shipment Export Financing
3. Export Promotion of Capital Goods Scheme (EPCGS)
4. Loans from the Steel Development Fund (SDF)
5. Exemption of Export Credit from Interest Taxes
6. Advance Licenses
7. Income Tax Exemption Scheme (ITES) (Sections 10A, 10B and 80 HHC)
8. Government of India Loan Guarantees

B. Programs in the State of Maharashtra

1. Sales Tax Incentives
2. Capital Incentive Scheme
3. Octroi Refund Scheme
4. Electricity Duty Exemption Scheme
5. Exemption of Sales and Purchase Taxes for Certain Investments Related to Automobiles or Automobile Components

C. Program in the State of Bihar

1. Sales Tax Incentives

D. Programs in the State of Jharkhand

1. Sales Tax Incentives
2. Captive Electricity Generative Plant Subsidy
3. Interest Subsidy
4. Stamp Duty and Registration
5. Pollution Control Equipment Subsidy
6. Mega Units
7. Captive Electricity Tax Exemptions

E. Program in the State of Gujarat

1. Sales Tax Incentives

We are not initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *Initiation Checklist*):

D. Government of India Program

1. Special Import Licenses (SILs)

E. Program in the State of Bihar

1. Power Incentives

C. Programs in the State of Gujarat

1. Incentives to Premier and Prestigious Units
2. Incentives for Private Sector Investments in Infrastructure Projects
3. Government Infrastructure Assistance to Medium and Large Industries
4. Promotion of Specific Industrial Sectors

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on PC strand from India, and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of PC strand from India receive countervailable subsidies.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the representatives of the GOI. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

International Trade Commission Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation.

Preliminary Determination by the ITC

The ITC will determine by March 17, 2003, whether there is a reasonable indication that imports of PC strand from India are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: February 20, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4651 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475–821]

Notice of Rescission of Countervailing Duty Administrative Review: Stainless Steel Wire Rod from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: On October 18, 2002, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on stainless steel wire rod (SSWR) from Italy, covering the period January 1, 2001 through December 31, 2001, and one manufacturer/exporter of the subject merchandise, Acciaierie Valbruna S.p.A. (Valbruna). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 65336 (October 24, 2002). This review has now been rescinded due to Valbruna's withdrawal of its request for an administrative review.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Jim Neel, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2002, the Department received a letter from Valbruna requesting an administrative review of the countervailing order on SSWR from Italy. On October 18, 2002, the Department initiated an administrative review of this order for the period January 1, 2001 through December 31, 2001. On January 6, 2003, Valbruna submitted a letter requesting to withdraw from the above referenced administrative review.

Scope of the Review

For purposes of this administrative review, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

The products covered by this administrative review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this review is dispositive.

Rescission of Review

Within 90 days of the October 24, 2002 notice of initiation, Valbruna requested to withdraw its request for an administrative review. *See* Letter from Valbruna to the Department dated January 6, 2003 on file in the Central Records unit, Room B-099, Main Building of the Department of Commerce.

In accordance with the Department's regulations, and consistent with its practice, the Department hereby rescinds the administrative review of SSWR from Italy for the period January 1, 2001 to December 31, 2001. *See* 19 CFR section 351.213(d)(1), which states in pertinent part: "The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review."

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: February 13. 2003.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–4578 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 021220324–3029–02]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of extension of funding availability for grants under the Special American Business Internship Training Program (SABIT).

SUMMARY: The International Trade Administration publishes this notice to extend the closing date for the Special American Business Internship Training Program (SABIT) from March 1, 2003, to April 7, 2003.

DATES: To be considered, applications must be received in the SABIT office by April 7, 2002. Processing of complete applications takes approximately three to four months. All awards are expected to be made by July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: This notice amends the **Federal Register** notice of December 27, 2002 (67 FR 79056–79059), announcing the availability of funds for the Special American Business Internship Training program (SABIT), for training business executives and scientists (also referred to as "interns") from Eurasia (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). This notice extends the closing date of the referenced **Federal Register** notice for five weeks to April 7, 2003. All applications must be received by SABIT by April 7, 2003. All information in the previous announcement remains current, except for the change of the closing date.

Dated: February 21, 2003.

Tracy M. Rollins,

Deputy Director, SABIT Program.

[FR Doc. 03–4497 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC)

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of meeting.

SUMMARY: The APAC will have a closed meeting on March 13, 2003 at the U.S. Department of Commerce to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

DATES: March 13, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Pub. L. 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation.

At the meeting, committee members will discuss specific trade and sales expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on February 12, 2003, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the March 13th meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying Room 5317, Main Commerce.

Dated: February 12, 2003.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 03–4610 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Administration, in the matter of Pure and Alloy Magnesium from Canada, Secretariat File No. USA-CDA–2000–1904–07.

SUMMARY: Pursuant to the Order of the Binational Panel dated January 10, 2003, affirming the final remand determination described above was completed on January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On January 10, 2003, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration ("ITA") concerning Pure and Alloy Magnesium from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective February 21, 2003.

Dated: February 21, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–4606 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021203B]

Environmental Impact Statement (EIS) for Scientific Research on Longline Fishing—National Marine Fisheries Service, Honolulu Laboratory

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an EIS; notice of scoping meetings; request for comments.

SUMMARY: NMFS announces its intention to prepare an EIS, pursuant to NOAA policy as described in NOAA Administrative Order 216–6, to identify and analyze a range of alternatives for fishing experiments to test methods of reducing the incidental take and mortality of threatened and endangered sea turtles by Pacific longline fisheries, as well as the issuance of any permits necessary for the conduct of this activity.

NMFS will hold scoping meetings to inform interested parties of the fishing experiments and solicit input from Federal, State and local agencies, other interested parties, and the general public on the range of actions, alternatives, and impacts that the EIS should consider, including a no-action alternative.

DATES: The meeting dates are:

1. March 27, 2003, 6 - 8 p.m., Hilo, HI.
2. April 3, 2003, 3 - 5 p.m., Silver Spring, MD.
3. April 9, 2003, 6 - 8 p.m., Honolulu, HI.
4. April 16, 2003, 3 - 5 p.m., Long Beach, CA.

Comments should be received by April 16, 2003.

ADDRESSES: The scoping meeting locations are:

1. Paki Hale, main floor, 3840 Paki Avenue, Honolulu, HI 96815.
2. NOAA Silver Spring Metro Center Complex, NOAA Science Center, 1301 East West Highway, Silver Spring, MD 20910.
3. Naniloa Hotel, Kilohana Room, 93 Banyan Drive, Hilo, HI 96720.
4. Glenn M. Anderson Federal Building, Room 3470, 501 W. Ocean Blvd., Long Beach, CA 90802.

Written comments and requests to be included on a mailing list of persons interested in the EIS should be sent to Dr. Christofer Boggs, NMFS Honolulu Laboratory, 2570 Dole Street, Honolulu, HI 96822.

FOR FURTHER INFORMATION CONTACT: Wende Goo, Management Analyst, Honolulu Laboratory, 808–983–5303

SUPPLEMENTARY INFORMATION:

Background

Given that sea turtles are known to interact with the Pacific longline fishery, NMFS believes that research is needed to investigate ways to reduce these interactions. Consequently, NMFS proposes that the Honolulu Laboratory conduct experiments to test gear modifications designed to reduce sea turtle bycatch in longline fisheries.

The objective of the proposed research is to develop gear and fishing methods that will reduce the number of endangered and threatened sea turtles incidentally caught in longline fisheries in the Pacific Ocean. Regulations closing large segments of the North Pacific fishing area to the Hawaii-based U.S. longline fleet have proven to be effective in reducing the incidental catch of sea turtles by that fleet. However, foreign fisheries in the Pacific are responsible for the vast majority of longline bycatch of sea turtles. Development and export of commercially viable gear modifications are viewed as the best means to reduce foreign bycatch of sea turtles.

The research effort is intended to meet the priority one recovery goal identified in the Final Recovery Plans for the U.S. Pacific Populations of the Loggerhead, Leatherback, Olive Ridley, and Green Turtles adopted by NMFS and the U.S. Fish and Wildlife Service (FWS). In these plans, NMFS and FWS identified monitoring and reduction of sea turtle mortality in commercial fisheries as a recovery action needed for all four species (green, leatherback, loggerhead, and olive ridley). The four species of sea turtles are listed as either endangered or threatened under the ESA, which requires that actions taken by Federal agencies must not jeopardize these species and directs these agencies to take affirmative steps to enhance their prospects for recovery.

In 2001, NMFS proposed to conduct a specific set of experiments for reducing sea turtle bycatch, and applied for a scientific research permit under the ESA in order to proceed. A permit was required because the research involved the take of listed sea turtles. That research proposal/permit application was evaluated in the Final Environmental Assessment on Issuance of Scientific Research Permit No. 1303 to the National Marine Fisheries Service, Honolulu Laboratory, dated January 2002 (Jan. 2002 EA) and in the Endangered Species Act Section 7 Consultation Biological Opinion signed January 25, 2002 (Jan. 25 BiOp). On January 25, 2002, Permit No. 1303 authorizing that research was issued under Section 10 of the ESA.

As a result of litigation challenging the permit, NMFS was ordered by the U.S. District Court of Hawaii to prepare an EIS. The Court determined that Plaintiffs demonstrated a substantial likelihood that the taking of threatened and endangered species during the course of the research may adversely affect these species, a level of effect in this particular case that could be considered significant under the National Environmental Policy Act (NEPA). The Court also noted that an EIS would have a number of benefits, including a more thorough exploration of alternatives, greater opportunity for public involvement, and the preparation of a Record of Decision that clearly lays out the decision and rationale.

NMFS subsequently withdrew Permit No. 1303 on January 8, 2003, to allow consideration of any information obtained or developed during preparation of an EIS, as well as the analysis of that information, in a reconsideration of those experiments.

Scoping for Proposed Action

Scoping for the EIS commences with publication of this Notice, which is intended to meet the NEPA scoping guidelines at 40 CFR 1501.7 and 1508.22. In addition to holding the scoping meetings announced in this Notice, NMFS is accepting written comments on the range of actions, alternatives, and impacts it should consider in the EIS.

Public involvement in the scoping of issues and alternatives is an important part of the EIS process. The action now under consideration and the subject of this EIS is the conduct of fishing experiments to test methods for reducing sea turtle bycatch by Pacific longline fisheries, including the issuance of any permits which may be necessary for the conduct of the research activity. A no-action alternative and its environmental consequences will also be considered and evaluated.

The research activities proposed are similar to those previously authorized under Permit No. 1303. Modifications or alternatives could alter the specific gear to be tested, but would not increase the number of sea turtles affected. No alternative will be considered that requires a greater take of sea turtles than the research proposed and evaluated for Permit No. 1303. Some alternatives may reduce the number of gear modifications to be tested or reduce the number of turtles affected.

NMFS anticipates that the conduct of the fishing experiments proposed will require the Office of Protected Resources to make a decision on whether or not a research permit should be issued.

Issues

As a result of preparation of the Jan. 2002 EA, the Jan. 25 BiOp, and the litigation discussed above, a number of issues associated with the research have been identified. These issues include: (1) number of sea turtle hookings and mortalities expected to result from the research; (2) effects of those hookings and mortality levels on sea turtle populations; (3) the cumulative effect on sea turtle populations resulting from the research and the numbers and species of turtles already affected by ongoing fishing and other activities; (4) how each of the four sea turtle populations would be affected if the research is not conducted; (5) effects of the research on endangered short-tailed albatross and other species of interest; (6) whether the research could meet its goals while being conducted in ways that would reduce impacts to sea turtles; (7) the likelihood that any successful fishing methods detected could successfully be transferred to and adopted by foreign longliners; (8) whether the experiment could be conducted using active vessels in current fisheries so the research would not add to the number of sea turtles already being affected by ongoing fishing activity; (9) what options exist for different experimental designs that would meet the research goals; (10) whether the results of other research conducted in the North Atlantic, Azores, and elsewhere already answer the questions to be addressed by the research; and (11) whether the methods of longline fishing to be tested would likely be commercially viable. NMFS solicits and invites public comment on these as well as other relevant issues.

Additional Information Available

The Endangered Species Act (ESA) requires a research permit for activities involving directed taking of a species listed as threatened or endangered that may include injury and potential mortality. The fishing experiments could also involve the importation of living, deeply hooked sea turtles for treatment and rehabilitation which would also require an ESA permit. The fishing experiments are anticipated to take place on the high seas as well as within the U.S. Exclusive Economic Zone (EEZ).

The Office of Protected Resources issued a Final Environmental Assessment and Biological Opinion that evaluated the effects of the proposed fishing experiments and four alternatives. These documents (Jan. 2002 EA and Jan. 25 BiOp) provide descriptions and discussions of the initial research proposal and issuance of Permit No. 1303 (now withdrawn). In addition, the FWS issued its Biological Opinion on the Effects on the Short-tailed Albatross of National Marine Fisheries Service Research on Sea Turtles in December 2001, concluding that the estimated level of take resulting from the research would not result in jeopardy to that species nor impact any critical habitat.

Alternatives considered in the Jan. 2002 EA included not issuing a permit and variations in the design of the experiments. The total takes of turtles requested to be authorized over the 3–year life of the research permit was 15 green, 44 leatherback, 233 loggerhead, and 24 olive ridley, and the requested lethal take was 117 turtles (6 green, 15 leatherback, 87 loggerhead, and 9 olive ridley). These were determined to be the number of turtles necessary for the fishing experiments to have sufficient statistical validity (that is, to be able to detect significant differences between gear types and fishing methods in their ability to reduce bycatch of sea turtles).

The Jan. 2002 EA and both Biological Opinions are available from the NMFS Honolulu Laboratory (see ADDRESSES).

The Responsible Program Manager for this EIS is Sam Pooley, Acting Director, Honolulu Laboratory, NMFS.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Wende Goo, 808–983–5303 (voice) or 808–983–2901 (fax), at least five days before the scheduled meeting date.

Authority: 16 U.S.C. 1531 *et seq.*, 42 U.S.C. 4371 *et seq.*

Dated: February 20, 2003.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4565 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022103A]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings on management issues regarding Gulf fisheries.

DATES: The meetings will be held on March 11–14, 2003. For specific dates and times see SUPPLEMENTARY INFORMATION.

ADDRESSES: These meetings will be held at the Adam's Mark Hotel, 64 South Water Street, Mobile, AL 36602; telephone: 251–438–4000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

The Council will meet to discuss the following items:

March 11:

8:30–10 a.m.—(Closed Session) Convene the Advisory Panel (AP) Selection Committee to appoint members of the APs. The committee will make recommendations for full Council review in closed session on Thursday afternoon and be presented to the public on Friday morning.

10–11:30 a.m.—(Closed Session) Convene the Scientific and Statistical Committee (SSC) Selection Committee to appoint members of the SSCs, stock assessment panels, and socioeconomic panel. The committee will make recommendations for full Council review in closed session on Thursday afternoon and be presented to the public on Friday morning.

1–2 p.m.—Convene the Data Collection Committee to hear a presentation of a proposed Florida State University economic study.

2–3:30 p.m.—Convene the Administrative Policy Committee to discuss revisions to guidelines for National Standard 1.

3:30–5:30 p.m.—Convene the Reef Fish Management Committee to discuss the Reef Fish Amendment 21 Public Hearing Document and hear a presentation by NMFS Enforcement on grouper fishery violations.

March 12:

8:30–10 a.m.—Convene the Mackerel Management Committee to review a draft regulatory amendment/ environmental assessment which addresses maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT) for the coastal migratory pelagic species, and a scoping document for draft Amendment 15 to include size and bag limit alternatives for cobia, and commercial landings for blue runner.

10–11:30 a.m.—Convene the Shrimp Management

Committee to discuss the Shrimp Amendment 13 Options Paper addressing MSY, OY, MSST, and MFMT for shrimp stocks; vessel monitoring systems; and bycatch reduction.

1–2 p.m.—Convene a joint meeting of the Reef Fish, Mackerel, and Red Drum Management Committees to discuss the proposed scoping document and meetings on an aquaculture generic amendment.

2–5 p.m. -Convene the Habitat Protection Committee to review and comment on the alternatives for specifying essential fish habitat (EFH), habitat areas of particular concern, and impacts of fishing on EFH in the Draft Environmental Impact Statement for the EFH Generic Amendment.

March 13:

8:30 a.m.—Convene.

8:45–9:30 a.m.—Hear a presentation by the Gulf States Marine Fisheries Commission on accessing the Fisheries Information Network.

9:30–9:45 a.m.—Hear a request for fishing vessel designation from the Worldwide Water Foundation.

9:45–12 noon—Receive public testimony on the Draft Coastal Pelagics (CMP) Regulatory Amendment. The draft CMP Regulatory Amendment sets standards for MSY, OY, overfished and overfishing for king and Spanish mackerel, and cobia. Final action to approve the regulatory amendment will be taken at a subsequent meeting.

1:30–2 p.m.—Receive the Habitat Protection Committee report.

2–2:30 p.m.—Receive the Shrimp Management Committee report.

2:30–2:45 p.m.—Receive the Mackerel Management Committee report.

2:45–3 p.m.—Receive the Reef Fish Management Committee report.

3–3:30 p.m.—Receive the Administrative Policy Committee report.

3:30–4:15 p.m.—(Closed Session) Receive the report of the AP Selection Committee.

4:15–5:30 p.m.—(Closed Session) Receive the report of the SSC Selection Committee.

March 14:

8:30–8:45 a.m.—Receive the Data Collection Committee Report.

8:45–9 a.m.—Receive the Joint Reef Fish/Mackerel/Red Drum Management Committee report.

9–9:15 a.m.—Receive a report from the Logo Selection Committee.

9:15–9:30 a.m.—Receive the AP Selection Committee Report.

9:30–9:45 a.m.—Receive the SSC Selection Committee Report.

9:45–10 a.m.—Receive a report of the NMFS Billfish AP.

10–10:15 a.m.—Receive a report of the NMFS Highly Migratory Species AP.

10:15–10:30 p.m.—Receive the South Atlantic Fishery Management Council liaison report.

10:30–10:45 a.m.—Receive a report of the Summit for Gulf of Mexico Shrimp Industry.

10:45–11 a.m.—Receive a report of the Gulf Safety Committee.

11–11:15 a.m.—Receive Enforcement Reports.

11:15–11:30 a.m.—Receive the NMFS Regional Administrator's Report.

11:30–11:45 a.m.—Receive Director's Reports.

11:45–12 noon—Other Business

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling 813–228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 4, 2003.

Dated: February 21, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4564 Filed 2–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: To amend the notice printed in the **Federal Register**/Vol. 68, No. 31/ Friday, February 14, 2003.

SUMMARY: This notice sets forth a change in date of a forthcoming teleconference meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans.

DATES: Originally scheduled for Monday, February 24, 2003, this teleconference meeting has been rescheduled for Tuesday, March 4, 2003, the hour and location to be determined.

FOR FURTHER INFORMATION CONTACT: Leslie Sanchez, Executive Director, or Adam Chavarria, Associate Director, White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Ave., SW., Washington, DC 20202, (202) 401–1411.

SUPPLEMENTARY INFORMATION: Individuals who will need accommodations for a disability in order to observe the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Adam Chavarria at (202) 401–1411 by no later than February 26, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Dated: February 20, 2003.

William Hansen,

Deputy Secretary, Department of Educotion.

[FR Doc. 03–4573 Filed 2–26–03; 8:45 am]

BILLING CODE 400–01–M

DEPARTMENT OF ENERGY

Los Alamos Site Office; National Nuclear Security Administration; Notice of Floodplain Involvement for the Fire Road Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, Los Alamos Site Office, DOE.

ACTION: Notice of floodplain involvement.

SUMMARY: The National Nuclear Security Administration (NNSA), Los Alamos Site Office of the Department of Energy (DOE) plans to improve existing firebreaks and access roads into remote forested areas at Los Alamos National Laboratory (LANL) for the purpose of providing reliable access for fire fighting crews. Improvements will focus on changes to drainage crossings and improved roadbeds within floodplain areas. Improvements would be minor and would mostly consist of installing culverts and stabilizing roadbeds. These roads are limited use roads that are restricted to official access only. In accordance with 10 CFR part 1022, NNSA has prepared a floodplain/ wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

DATES: Comments are due to the address below no later than March 14, 2003.

ADDRESSES: Written comments should be addressed to: Elizabeth Withers, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544, or submit them to the Mail Room at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Written comments may also be sent electronically to: ewithers@doeal.gov or by facsimile to (505) 667–9998.

FOR FURTHER INFORMATION CONTACT: Everett Trollinger, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667–0281, facsimile (505) 667–9998.

For Further Information on General DOE Floodplain Environmental Review Requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0119. Telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: After the May 2000 Cerro Grande Fire event, NNSA developed a Wildfire Hazard Reduction Program for LANL. This program includes the improvement of firebreaks and the improvement of access to remote portions of LANL through the upgrade and maintenance of the existing fire road network. There are about 12 firebreaks and 40 fire roads at LANL that will be improved as part of this project. These improvements will require: clearing each road of hazard trees (mostly these are dead or dying trees); grading of the roads and realignment of sharp curves; cut and fill of road areas where needed to accommodate heavy fire fighting equipment.

Culverts will be installed where necessary based on road substrate, and rock gabions and other erosion control features may also be installed. Disturbed soil will be revegetated after work is completed. Firebreak and road improvements will commence in fiscal year 2003 and be completed over the next 9 months.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), NNSA has prepared a floodplain/wetland assessment for this action, which is available by contacting Elizabeth Withers at the previously identified addresses, phone and facsimile numbers. The floodplain/wetland assessment is available for review at the DOE Reading Room at the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, NM 878544; and the DOE Reading Room at the Zimmerman Library, University of New Mexico, Albuquerque, NM 87131. The NNSA will publish a floodplain statement of findings for this project in the **Federal Register** no sooner than March 14, 2003.

Issued in Los Alamos on February 14, 2003.

Ralph E. Erickson,

Manager, U. S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.

[FR Doc. 03–4607 Filed 2–26–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–492–003]

Algonquin Gas Transmission Company; Notice of Compliance Filing

February 21, 2003.

Take notice that on February 19, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of

its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2002:

2nd Sub 1st Rev Fourth Revised Sheet No. 640
Original Sheet No. 640A

Algonquin states that it is filing the revised tariff sheets, which address the determination of partial day release quantities, pursuant to an order issued by the Commission in the captioned docket on February 6, 2003 (February 6 Order).

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4716 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–493–003]

East Tennessee Natural Gas Company; Notice of Compliance Filing

February 21, 2003.

Take notice that on February 19, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2002:

2nd Sub 1st Rev Third Rev Sheet No. 147
Original Sheet No. 147.01

East Tennessee states that it is filing these revised tariff sheets, which address the determination of partial day release quantities, pursuant to an order issued by the Commission in the captioned docket on February 5, 2003 (February 5 Order).

East Tennessee states that copies of its filing have been mailed to all affected customers of East Tennessee and interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4717 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–411–007 and RP01–44–009]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

February 21, 2003.

Take notice that on February 19, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub. Second Revised Sheet No. 50B, proposed to become effective November 1, 2002.

Iroquois asserts that the purpose of this filing is to comply with the Commission's order issued February 6, 2003 (February 6 Order), in Docket No. RP00–411–003 and RP01–44–005.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4713 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–489–003]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

February 21, 2003.

Take notice that on February 19, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2002:

Original Sheet No. 249A
Original Sheet No. 249B
Second Sub Third Revised Sheet No. 250

Maritimes states that it is filing these tariff sheets, which address the determination of partial day release quantities, pursuant to an order issued by the Commission in the captioned docket on February 6, 2003 (February 6 Order).

Maritimes states that copies of its filing have been mailed to all affected customers of Maritimes and interested state commissions, and all parties on the Commission's Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4715 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–467–002 and RP01–19–002]

Midwestern Gas Transmission Company; Notice of Compliance Filing

February 21, 2003.

Take notice that on February 18, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets identified at Appendix A to the filing.

Midwestern states that the revised tariff sheets are being filed in order to comply with the Commission's December 19, 2002 Order in the referenced proceedings, which relates to Midwestern's previous filings to comply with Order Nos. 637, 637–A, and 637–B.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted Shippers, interested state regulatory commissions, and all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4714 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–68–002]

Midwestern Gas Transmission Company; Notice of Compliance Filing

February 21, 2003.

Take notice that on February 14, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing a report of activities during the first year of service under Rate Schedule PAL, Park and Loan Service.

Midwestern states that the filing is being made in compliance with Commission's December 28, 2001 order (97 FERC ¶ 61,386 (2001)), requiring Midwestern to file a report of its activities during the first year of service under Rate Schedule PAL.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: February 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4719 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–50–000]

Powerex Corp., Complainant, v. California Power Exchange Corporation, Respondent; Notice of Complaint

February 21, 2003.

Take notice that on February 20, 2003, Powerex Corp. (Powerex) filed a complaint in which it requests that the Commission find that the California Power Exchange Corporation (CalPX) should release Powerex's letter of credit provided as a condition for participating in the CalPX's now-defunct markets, consistent with the Commission's September 30, 2002, order on rehearing in *Constellation Power Source, Inc.* v. *California Power Exchange Corporation*, 100 FERC ¶ 61,380 (2002) and return Powerex's chargeback amounts. Powerex requests that the Commission invoke its Fast-Track Proceeding procedures.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 12, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–4701 Filed 2–26–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–539–000]

Quark Power L.L.C.; Notice of Filing

February 21, 2003.

Take notice that on February 14, 2003, Quark Power L.L.C. (Quark) filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, its revised FERC Electric Rate Schedule No. 1 for the resale of Firm Transmission Rights (FTRs), or their equivalent, to become effective as of February 18, 2003.

This filing was sent to PJM Interconnection, L.L.C., the New York Independent System Operator, Inc., and the New England Power Pool/ISO New England, Inc.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 3, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–4702 Filed 2–26–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–494–003]

Texas Eastern Transmission, LP; Notice of Compliance Filing

February 21, 2003.

Take notice that on February 19, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2002:

2nd Sub 1st Rev Original Sheet No. 533A
Original Sheet No. 533B

Texas Eastern states that it is filing these revised tariff sheets, which address the determination of partial day release quantities, pursuant to an order issued by the Commission in the captioned docket on February 6, 2003 (February 6 Order).

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, and all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 3, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–4718 Filed 2–26–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11509–009]

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments

February 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for extension of time.

b. *Project No:* 11509–009.

c. *Date Filed:* January 13, 2003.

d. *Applicant:* City of Albany, Oregon.

e. *Name of Project:* City of Albany Hydroelectric Project.

f. *Location:* The project is located on the Albany-Santiam Canal system in Linn County, Oregon.

g. *Pursuant to:* Public Law 107–376, H.R. 5436.

h. *Applicant Contact:* Peter Harr, P.E., City of Albany, City Hall, 333 Broadalbin, SW., P.O. Box 490, Albany, OR 97321–0144, (541) 917–7500.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing comments and or motions:* March 21, 2003.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The licensee requests a two-year extension of time from the existing deadline of October 23, 2002, to October 23, 2004, to commence project construction of the City of Albany Hydroelectric Project. If granted, this would be the licensee's first 2-year extension of the three authorized by Public Law No. 107–376, H.R. 5436.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.
[FR Doc. 03–4703 Filed 2–26–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

February 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12208–000.

c. *Date filed:* June 6, 2002.

d. *Applicant:* Wanawish Hydro, LLC.

e. *Name and Location of Project:* The Wanawish Dam Project would be located on the Yakima River in Benton County, Washington. The proposed project would be located on an existing diversion dam owned by the Columbia Basin Irrigation District (CBID).

f. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) CBID's existing concrete diversion dam which is 20 feet high and 523 feet long, (2) a proposed 500-foot-long, 8-foot-diameter penstock, (2) a proposed powerhouse

containing one generating unit with an installed capacity of 1.4 megawatts, (3) a proposed one-quarter-mile-long, 15-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 7.2 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at Wanawish Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4704 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

February 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12389–000.

c. *Date filed:* October 3, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The H.K. Thatcher L&D Hydroelectric Project would be located on the Ouachita River in Union County, Arkansas. The proposed project would utilize the existing H.K. Thatcher Lock and Dam administered by the U.S. Army Corps of Engineers.

f. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing H.K. Thatcher Lock and Dam and Reservoir, would consist of: (1) two proposed 240-foot-long, 8-foot-diameter steel penstocks, (2) a proposed powerhouse containing two generating units with a combined installed capacity of 3 megawatts, (3) a proposed 500-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 18 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4705 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

February 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12390–000.

c. *Date filed:* October 16, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Paint Creek Dam Hydroelectric Project would be located on Paint Creek near the town of Bainbridge in Highland County, Ohio. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Paint

Creek Dam and Reservoir, would consist of: (1) two proposed 80-foot-long, 8-foot-diameter steel penstocks, (2) a proposed powerhouse containing two generating units with a combined installed capacity of 2.14 megawatts, (3) a proposed 500-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 13.1 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4706 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

February 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12404–000.

c. *Date filed:* October 30, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Beltzville Lake Dam Hydroelectric Project would be located on Pohopoco Creek near the town of Lehighton in Carbon County, Pennsylvania. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Beltzville Lake Dam and Reservoir, would consist of: (1) One proposed 100-foot-long, 7-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with a combined installed capacity of 1.77 megawatts, (3) a proposed one-mile-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 11 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4707 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

February 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12412–000.

c. *Date filed:* November 12, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Kentucky L&D #8 Hydroelectric Project would be located on the Kentucky River in Jessamine County, Kentucky. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they

must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Kentucky Lock and Dam No. 8 and Reservoir, would consist of: (1) Five proposed 50-foot-long, 8-foot-diameter steel penstocks, (2) a proposed powerhouse containing five generating units with a combined installed capacity of 7 megawatts, (3) a proposed 400-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 42 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4708 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

February 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12421–000.

c. *Date filed:* November 25, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Kanopolis Dam Hydroelectric Project would be located on the Smokey Hill River in Ellsworth County, Kansas. The proposed project would utilize the existing Kanopolis Dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

The Commission's rules of practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities

of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Kanopolis Dam and Reservoir, would consist of: (1) Two proposed 80-foot-long, 8-foot-diameter steel penstocks, (2) a proposed powerhouse containing two generating units with a combined installed capacity of 1.3 megawatts, (3) a proposed 2-mile-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 8 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4709 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11887–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12429–000.

c. *Date Filed:* January 2, 2003.

d. *Applicant:* Clark Canyon Hydro, LLC.

e. *Name of Project:* Clark Canyon Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Bureau of Reclamation (BOR), on the Beaverhead River in Beaverhead County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener

files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the BOR's existing Clark Canyon Dam would consist of: (1) One 8-foot-diameter, 300-foot-long steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 3 MW, (3) a 15-kv transmission line approximately 4 miles long, and (4) appurtenant facilities. The project would have an annual generation of 12 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4710 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1957–020]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 21, 2003.

a. *Type of Filing:* Amendment of license to decrease project installed capacity from 700 kW to 450 kW by deleting Unit #3.

b. *Project No:* 1957–020.

c. *Date Filed:* January 17, 2003.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Otter Rapids Project.

f. *Location:* The project is located on the Wisconsin River in Vilas and Oneida Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r), Section 4.201 of the Commission's regulations.

h. *Applicant Contact:* Wisconsin Public Service Corporation, 700 No. Adams St., PO Box 19002, Green Bay, WI 54307–9002.

i. *FERC Contact:* William Guey-Lee, (202) 502–6064, or *william.gueylee@ferc.gov*.

j. Deadline for filing comments, motions to intervene or protests: March 21, 2003.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The applicant requests that the license for the Otter Rapids Project No. 1957 be amended to delete the 250-kW Unit #3 from the license and decrease the licensed install capacity from 700 kW to 450 kW. Unit #3 is not operational and is in need of numerous repairs. The licensee states that repairing Unit #3 is not economically justified.

l. *Location of the Filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371 and may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the project number excluding the last three digits in the project number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4711 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

February 21, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No.:* P–696–013.

c. *Date Filed:* December 31, 2002.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* American Fork Hydroelectric Project.

f. *Location:* On American Fork Creek, near the City of American Fork, Utah County, Utah, about 3 miles east of Highland, Utah. The project affects about 28.8 acres of federal lands within the Uinta National Forest. Also, approximately 2,000 feet of flowline passes through the Timpanogos Cave National Monument, administered by the U.S. Department of the Interior, National Park Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Monte Garrett, Licensing Manager, PacifiCorp 825 NE Multnomah, suite 1500, Portland, Oregon, 97232 (503) 813–6629.

i. *FERC Contact:* Kenneth Hogan (202)502–8434, e-mail at *kenneth.hogan@ferc.gov*.

j. *Cooperating agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing documents described in item k below.

k. *Deadline for filing comments, motions to intervene, protests, and requests for cooperating agency status:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. PacifiCorp filed an application to surrender its minor license for the American Fork Hydroelectric Project. PacifiCorp proposes to continue operation of the project through August 2006, at which time they will begin the project's decommissioning, with completion by December 31, 2007. PacifiCorp proposes to do the following: (1) Demolish, remove, and dispose of the existing concrete diversion dam, Tainter gates, hoists and steel structures, trash racks, and control building; (2) repair the powerhouse structure and retaining wall for the protection of the powerhouse for conveyance to the U.S. Government; (3) remove the spillway, transformer pad, tender's house, garage; (4) reconstruct the stream channel as necessary; (5) remove exposed sections of the penstock and support structures; (6) re-vegetate and/or re-habilitate disturbed areas.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link—select "Docket #" and follow the

instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item h above. To facilitate the subject surrender, the Commission will incorporate into the record for this proceeding, all documents filed with or issued by the Commission as part of the earlier relicensing proceeding (P–696–010).

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4712 Filed 2–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed base charge and rates adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing an adjustment to the Boulder Canyon Project (BCP) firm power base charge and rates. The current base charge and rates expire September 30, 2003. The current base charge is not sufficient to pay all annual costs including operation, maintenance, replacement, and interest expenses, and to repay investment obligations within the required period. The proposed base charge will provide sufficient revenue to pay all annual costs, including operation, maintenance, replacement, and interest expenses, and to repay investment obligations within the allowable period. A detailed rate package that identifies the reasons for the base charge and rates adjustment will be available in April 2003. The proposed base charge and rates are scheduled to become effective on October 1, 2003, the beginning of Federal fiscal year (FY) 2004, and will remain in effect through September 30, 2004. This **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period will begin today and will end May 28, 2003. Western representatives will explain the proposed base charge and rates at a public information forum on April 1, 2003, beginning at 10:30 a.m. MST, in Phoenix, AZ. Interested parties can provide oral and written comments at a public comment forum on April 23, 2003, beginning at 10:30 a.m. MST, at the same location.

ADDRESSES: The meetings will be held at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona. Please send comments to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *carlson@wapa.gov*. Western must receive comments by the end of the consultation and comment period to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2442, e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Base Charge and Rates for BCP Firm Power

The proposed base charge and rates for BCP firm power service are designed to recover an annual revenue requirement that includes the investment repayment, interest, operation and maintenance, replacements, payment to states, visitor services, and uprating payments. These annual costs are reduced by the projected revenue from water sales, visitor services, water pump energy sales, facility use charges, regulation services, miscellaneous leases, and late fees. The projected annual revenue requirement is the base charge for firm power service and is divided equally between capacity dollars and energy dollars. Annual energy dollars are divided by annual energy sales, and annual capacity dollars are divided by annual capacity sales to determine the proposed energy rate and the proposed capacity rate.

The Deputy Secretary of the Department of Energy (DOE) approved the existing rate formula for calculating the base charge and rates in Rate Schedule BCP–F6 for BCP firm power service on September 18, 2000, (Rate Order No. WAPA–94, October 13, 2000). The Federal Energy Regulatory Commission (FERC) confirmed and approved the rate formula on a final basis in Docket No. EF00–5092–000 issued July 31, 2001. Rate Schedule BCP–F6 became effective on October 1, 2000, for the period ending September 30, 2005. Under Rate Schedule BCP–F6, for FY 2003, the base charge is $50,761,729, the forecasted energy rate is 5.58 mills per kilowatt-hour (mills/kWh) and the forecasted capacity rate is $1.08 per kilowatt month (kWmonth). The composite rate is 11.16 mills/kWh.

The FY 2004 proposed base charge is $53,284,854, the forecasted energy rate is 5.92 mills/kWh, and the forecasted capacity rate is $1.14/kWmonth. The proposed composite rate is 11.84 mills/kWh. This is approximately a 6-percent increase from the current composite rate. The proposed base charge and rates are based on the FY 2003 operating plan for Western and the Bureau of Reclamation (Reclamation), and also account for the lower revenue level due to restriction of public tours at Hoover Dam following the September 11, 2001 terrorist attack in the United States. The following table compares the current and proposed base charge and rates.

COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES

	Current October 1, 2002 through September 30, 2003	Proposed October 1, 2003 through September 30, 2004	Percent change increase
Total Composite (mills/kWh)	11.16	11.84	6
Base Charge ($)	50,761,729	53,284,854	5
Energy Rate (mills/kWh)	5.58	5.92	6
Capacity Rate ($/kWmonth)	1.08	1.14	5

The increase in the base charge and rates results from higher annual costs in operation and maintenance and lower revenue projections for the visitor center.

Procedural Requirements

Western will hold both a public information forum and a public comment forum. After considering comments, Western will recommend the proposed base charge and rates for final approval by the DOE Deputy Secretary.

The proposed firm power service base charge and rates for BCP are being established pursuant to the DOE Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the project involved.

Availability of Information

Interested parties may review and copy all brochures, studies, comments, letters, memorandums, or other documents made or kept by Western for developing the proposed base charge and rates. These documents are at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities, and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council On Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; therefore, this notice requires no clearance by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: February 4, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–4608 Filed 2–26–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRI–7455–8]

Clean Air Act Advisory Committee; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2, section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Friday, March 21, 2003, from approximately 8:30 a.m. to 2:30 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Ave., NW., Washington, DC. Seating will be available on a first come, first served basis. Two of the CAAAC's four subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold meetings on Thursday, March 20, 2003 from approximately 12:30 p.m. to 4:30 a.m. at the Renaissance Mayflower Hotel, the same location as the full Committee. The Permits/NSR/Toxics Subcommittee and the Energy, Clean Air and Climate Change Subcommittee will not meet at this time. The schedule for the three Subcommittees meetings is: Linking Energy, Land Use, Transportation, and Air Quality—12:30 p.m. to 2:30 p.m.; and Economics Incentives and Regulatory Innovations—2:30 p.m. to 4:30 p.m.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564–1306, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington DC 20004. For information on the Subcommittee

meetings, please contact the following individuals: (1) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; and (2) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–564–1667. Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web Site: *http://www.epa.gov/oar/caac/.*

Dated: February 21, 2003.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 03–4632 Filed 2–26–03; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–83–A (Auction No. 83); DA 03–359]

FM Translator Auction Filing Window and Application Freeze

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces an auction filing window for certain FM translator station construction permit applications and a freeze on the acceptance of FM translator and FM booster minor change and FM booster new construction permit applications from February 8 to March 14, 2003.

DATES: The filing window will open on March 10, 2003, and close on March 14, 2003.

FOR FURTHER INFORMATION CONTACT: James Bradshaw or Lisa Scanlan, Audio Division, Media Bureau at (202) 418–2700; Auction Technical Support at (202) 414–1250.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released February 6, 2003. The complete text of the Public Notice, including four attachments providing guidelines for electronic application filing, is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2898. It is also available on the Commission's Web site at *http://www.fcc.gov.*

General Information

The Media Bureau ("MB") and the Wireless Telecommunications Bureau ("WTB") announce an auction filing window for certain FM translator station construction permit applications. The filing window will open on March 10, 2003, and close on March 14, 2003. In connection with this window, MB also announces that it will not accept FM translator and FM booster minor change construction permit applications and FM booster new construction permit applications between February 8, 2003, and March 14, 2003.

The window is available for non-reserved band (channels 221 to 300) proposals for new FM translator stations and major modifications to authorized FM translator facilities. (See "Implementation of section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses," First Report and Order, 63 FR 48615, September 11, 1998. A window open for proposals in the non-reserved band provides a filing opportunity for both noncommercial educational ("NCE") and commercial FM translator applicants. See 47 CFR 74.1202(b)).

The Commission also will consider those FM translator station new and major modification applications that were received on or before November 26, 1997, but for which no "A" cut-off list had been released by that date ("Frozen FM Translator Applications"). Also on file are a number of FM translator station new and major modification applications filed after November 26, 1997, with "freeze waiver" requests ("Freeze Waiver Applications"). These applicants also may participate in the filing window. Freeze Waiver Applications must protect all minor change applications filed on or before February 7, 2003, in order to be considered in the upcoming window, the same requirement that will apply generally to new FM translator station and major change proposals submitted for the first time in the filing window.

MB will institute a temporary freeze on the acceptance of minor change FM translator applications on all channels (channels 201–300) at 12:01 a.m. Eastern Time ("ET"), February 8, 2003. The freeze shall remain in effect until the close of the window. Minor change applications filed during this freeze will be dismissed.

Participation. All applicants for new FM translator stations and major modifications to authorized FM translator facilities *must:*

- If Form 349 IS NOT on file: File electronically FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, between 12:01 a.m. ET, March 8, 2003 and 6 p.m. ET, March 14, 2003.
- If an FCC Form 349 Frozen FM Translator Application or Freeze Waiver Application IS currently on file: The applicant should confirm that the information on file is accurate and complete.
- If no changes in the previously filed Form 349 applications are necessary, the applicant must only file Form 175. The Form 175 must include the file number of all previously filed Form 349 applications.
- If any information in a Frozen FM Translator Application or Freeze Waiver Application is no longer accurate and complete, the applicant must file a new Form 349 application electronically, completing Section I, the Tech Box of Section III–A, and the Section VI Certification.
- File electronically an FCC Form 175 by 6 p.m. ET March 14, 2003.
- Comply with all provisions outlined in the Public Notice and applicable rules of the Commission.

An applicant's failure to reference a pending Form 349 application on its Form 175 will result in the dismissal of that Form 349 application. No consideration will be given any proposal for which the required engineering information is not on file by the close of the window. No application filing fee is required at this time.

Application Processing. After the close of the window, the Commission will make mutual exclusivity determinations with regard to all timely and complete filings. Applications received during the filing window that are not mutually exclusive with any other applications submitted in the filing window will be identified by subsequent public notice. No amendments to the FM translator filing window Form 349 application, technical or otherwise, will be accepted between the close of the application filing window, March 14, 2003, and the public notice listing the non-mutually exclusive FM translator applications. Complete FCC Form 349 non-mutually exclusive applications will be processed and the staff will release public notices listing those applications determined acceptable for filing. Petitions to deny must be filed within 15 days of the public notice announcing acceptance of the application at issue.

MB and WTB will issue a public notice identifying mutually exclusive applications received during the window. This public notice will also specify a settlement period for resolving application mutual exclusivity. Technical amendments submitted by applicants to resolve conflicts must be minor, as defined by the applicable rules of the FM translator service, and must not create any new mutual exclusivity or other application conflict. No amendments to the FM translator filing window Form 349 application, technical or otherwise, will be accepted between the close of the application filing window, March 14, 2003, and the public notice listing the mutually exclusive FM translator applications.

Federal Communications Commission.

Lisa Scanlan,

Assistant Division Chief, Audio Division, Media Bureau.

[FR Doc. 03–4605 Filed 2–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, March 4, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 6, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–01—NORPAC by Mitchell J. Eichen, Treasurer.

Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–4826 Filed 2–25–03; 3:31 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan and First California Southern Bancorp, San Diego, California; to acquire 51 percent of the voting shares of First International Bank, Chula Vista, California.

In connection with this application, First California Southern Bancorp, San Diego, California; has applied to become a bank holding company by acquiring 51 percent of the voting shares of First International Bank, Chula Vista, California.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Bethlehem Financial Corporation, Belen, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Belen, Belen, New Mexico.

Board of Governors of the Federal Reserve System, February 21, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–4571 Filed 2–26–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Royal Bancshares of Pennsylvania, Inc., Narberth, Pennsylvania; to engage through its subsidiary Royal Equity Partners, Narberth, Pennsylvania, in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 21, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–4572 Filed 2–26–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 021 0140]

Quest Diagnostics Incorporated, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 24, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Michael Cowie or Jackie Mendel, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2214 or 326–2603.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 21, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/02/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Quest Diagnostics Incorporated ("Quest") and Unilab Corporation ("Unilab") (collectively "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects resulting from Quest's proposed acquisition of Unilab. The Consent Agreement includes a proposed Decision and Order (the "Order"), which would require the Respondents to divest to Laboratory Corporation of America ("LabCorp") assets used to provide clinical laboratory testing services to physician groups in Northern California.

The Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated April 2, 2002 ("Merger Agreement"), Quest proposes to acquire all of the issued and outstanding voting securities of Unilab in exchange for cash, stock of Quest, or a combination of cash and stock of Quest. The value of the transaction was approximately $877 million at the time the Merger Agreement was announced. On January 4, 2003, Quest and Unilab agreed to amend the Merger Agreement to extend the termination date and to reduce the purchase price for the overall transaction by approximately $60 million. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the market for providing clinical laboratory testing services to physician groups in Northern California.

The Merging Parties

Headquartered in Teterboro, New Jersey, Quest is the largest supplier of clinical laboratory testing services in the United States, with a nationwide network of 30 full-service laboratories located in major metropolitan areas throughout the United States, approximately 100 smaller "stat," or rapid response, laboratories, and approximately 1,350 patient service centers ("PSCs"). Quest had sales of approximately $4.1 billion in 2002. Quest's operations in Northern California consist of a full-service testing laboratory located in Dublin, California, 5 stat labs, and approximately 76 PSCs.

Unilab, headquartered in Tarzana, California, is the largest supplier of clinical laboratory testing services in California. Unilab had sales of approximately $390 million in 2001. It operates 3 full-service laboratories, located in Los Angeles, San Jose, and Sacramento; 39 stat laboratories; and approximately 386 PSCs. About 23 of the stat labs and 230 of the PSCs are located in Northern California.

The Clinical Laboratory Testing Services Market

Clinical laboratory testing services ("Laboratory Services") are a critical element in the delivery of quality health care in the United States. Clinical laboratory tests are used to detect and analyze the presence, concentrations or composition of chemical, biological or cellular components in human body fluids and tissue in order to help physicians diagnose, monitor, and treat their patients' health conditions. They include thousands of individual test procedures in the areas of hematology, blood chemistry, urine chemistry, endocrinology, and microbiology, among others. Examples of commonly ordered tests include red and white blood cell counts, blood chemistry panels, urinalyses, microbiology cultures, HIV screening tests, and pregnancy tests. Most of these high-volume, "routine" tests are performed by automated equipment and the results are generally reported electronically to the physician within a 24-hour period. Other tests, including most immunological and genetic tests, are performed less frequently and require more sophisticated and specialized knowledge or equipment. Two examples of such "esoteric" tests are immunoelectrophoresis (used for the diagnosis of autoimmune disorders and myelomas) and polymerase chain reaction tests for hepatitis C.

Delivery of health care in California is distinguished by high penetration by managed health care. Under the managed care model prevalent in the state, health plans often delegate the financial risk for providing primary, specialty, and ancillary medical services to physician groups, such as independent practice associations and medical groups, under a capitated arrangement, pursuant to which the physician group receives a prospective payment to care for the enrollees of the health plan. That is, rather than receive payments for each service provided by the physician group, the physician group receives a per member per month ("PMPM") payment designed to cover the expected costs of care by the physicians. The physicians then bear the risk of whether the capitation payments will cover the actual costs of care—including, in many cases, the cost of providing Laboratory Services.

Physician groups in Northern California that assume the financial risk for Laboratory Services under this California delegated model constitute a significant category of purchasers of Laboratory Services. Generally, these physician groups pursue exclusive or semi-exclusive contracts with laboratories to purchase such services, most often under a capitated arrangement in which the physician group pays a set amount (PMPM) to the laboratory to perform Laboratory Services for the physician group's patients who are affiliated with pre-paid health plans.

In general, three types of providers may perform clinical laboratory testing: independent clinical laboratories, such as Quest and Unilab; hospital-affiliated laboratories; and physician office laboratories. While individual physicians can perform a limited number of relatively simple diagnostic tests in their own offices, this testing is not a substitute for the clinical testing performed in a laboratory. Physician groups require that a clinical laboratory offer, among other things, a comprehensive menu of routine and esoteric tests; stat testing capabilities; and an extensive field collection and distribution system that includes conveniently located patient service centers and courier networks.

Hospital laboratories that supply physician groups in Northern California are treated as market participants in the proposed complaint. Most acute-care hospitals maintain on-site laboratories to provide quick-response testing for patients in the hospital. In addition, many hospital laboratories have established outreach programs to obtain additional business by providing outpatient Laboratory Services to physicians in the communities surrounding the hospitals. In some instances, hospital laboratory outreach programs in Northern California supply Laboratory Services under capitated arrangements to physician groups. Hospital laboratories have been most successful when competing to supply physician groups that are affiliated with the hospital and whose physicians are located in medical buildings on or near the hospital campus.

The proposed complaint alleges that the relevant market does not include physician office laboratories. Some medical groups operate laboratories that perform many stat and routine tests exclusively for doctors in the medical group. Physician groups do not view these physician office laboratories as viable substitute suppliers of Laboratory Services, because these laboratories do not offer the array of tests, capabilities, and services that are offered by independent clinical laboratories, including convenient patient access through PSCs. Furthermore, physician groups that do not have their own clinical laboratories are unlikely to develop such capabilities, even in the event of a significant increase in the price of Laboratory Services.

The draft complaint alleges that the relevant section of the country (*i.e.*, the geographic market) within which to analyze the effects of the proposed acquisition is Northern California. The relevant geographic market is local in nature because physician groups prefer to have specimens collected at PSCs located where they are convenient and accessible to all plan enrollees. Physicians also require prompt reporting of routine test results, generally within 24 hours. In addition, physicians require even more rapid reporting of results for stat testing, generally within a few hours. For these reasons, a clinical laboratory must have stat testing facilities and PSCs proximate to the physicians' offices. Physician groups in California have service areas that vary from a single town to multiple counties; however, none has a service area that spans both northern and southern California.

Quest and Unilab are the two leading providers of Laboratory Services to physician groups in Northern California, based on the total patient lives covered under physician group capitated contracts. If the proposed merger were to be consummated, Quest would have a market share of more than 70 percent. Quest's next largest competitor in the relevant market is a hospital laboratory that would have a market share of about 4 percent. The proposed acquisition would increase concentration in the relevant market by more than 1,500 points to a Herfindahl-Hirschman Index level above 5,300.

Quest and Unilab compete vigorously against each other for contracts to supply Laboratory Services to physician groups, and this competition has benefitted customers in Northern California. Many physician groups in Northern California regard Quest and Unilab to be the closest competitors bidding for their Laboratory Services business in terms of both price and service offerings. The proposed acquisition would thus allow the combined firm to exercise market power unilaterally by eliminating competition between the two largest, and frequently lowest-cost, providers of Laboratory Services to physician groups in Northern California. As a result, the proposed acquisition would increase the likelihood that physician groups in Northern California would be forced to pay higher prices for Laboratory Services.

Substantial and effective expansion by smaller competitors, as well as new entry, sufficient to deter or counteract the anticompetitive effects of the proposed acquisition in the market for providing Laboratory Services to physician groups in Northern California, is unlikely. Expansion by hospital laboratories or small independent clinical laboratories located in Northern California is unlikely to be sufficient to avert the anticompetitive effects from the merger. In general, large regional and national independent clinical laboratory companies like Unilab and Quest enjoy significant cost advantages over hospital laboratories and small independent clinical laboratories. As a result, the large independent laboratories are able more effectively to compete for and service price-sensitive customers such as physician groups seeking services under capitated arrangements.

It is also unlikely that new independent clinical laboratories will enter the relevant market. There are

significant costs associated with establishing the staffed PSCs, courier routes, and sales force and other infrastructure necessary to serve the needs of a physician group. New entry is unlikely to occur because a new entrant would have significantly higher incremental costs of serving a particular physician group than an independent clinical laboratory that has an existing infrastructure in or near the area served by the physician group. Also, it is difficult to recoup the required incremental investments through a single physician group contract without charging higher than current rates, and opportunities to bid on multiple physician group contracts in the same area do not occur frequently. Thus, bidding at current rates in the hopes of winning future business would be risky for a new entrant.

The risk for an entrant would be further increased because "pull-through" business is an important determinant of the profitability of capitated contracts. Physician groups that participate in capitated plans for some of their customers also frequently participate in fee-for-service plans for other customers. Under fee-for-service plans, physicians are paid for each procedure. When Laboratory Services are needed for a patient with a fee-for-service plan, the health plan pays the laboratory directly but the physician chooses which laboratory covered by the plan will be used. The Laboratory Services provider for the capitated business of a physician group frequently has a significant advantage in winning a substantial amount of the "pull-through" fee-for-service business of the group, because physicians are familiar with the laboratory and it is easier to deal with one laboratory for all patients. Laboratory Services providers take into account the potential for pull-through business when determining their bids for capitated contracts. A new entrant to an area would not have a reputation or relationships with the physicians in the group and thus may have difficulty achieving similar pull-through rates as incumbent firms. As a result, because a new entrant would be cost-disadvantaged in competing against independent clinical labs that already have an existing infrastructure, it would be unlikely to secure capitated contracts with physician groups at pre-merger price levels.

The Proposed Order

The proposed Order effectively remedies the Commission's competitive concerns about the proposed acquisition by requiring the companies to divest Laboratory Services assets in Northern California to LabCorp, including 46 PSCs; 5 stat laboratories; all of Quest's, and one of Unilab's, capitated contracts with physician groups; and all related assets necessary for the provision of Laboratory Services to physician groups, including customer lists and information. With these assets and LabCorp's experience as a provider of Laboratory Services in Southern California and elsewhere in the United States, LabCorp will be able to replicate Quest's operations, thus replacing the competition that would be lost as a result of the proposed acquisition. The Commission required that the Respondents make all of Quest's Northern California outpatient Laboratory Services business available to prospective buyers but has approved LabCorp's proposed acquisition of a smaller package of assets because LabCorp will be able to replicate the competition that Quest represents today with the smaller package of assets. As a result, after the divestiture, competition in the market for providing Laboratory Services to physician groups in Northern California will remain virtually unchanged by the proposed acquisition. Furthermore, the proposed Order includes measures designed to help ensure an effective transition of the divested assets to LabCorp.

LabCorp is a well-positioned acquirer of the divested assets for several reasons. As the second largest provider of Laboratory Services in the United States, LabCorp offers an extensive range of more than 4,000 routine and esoteric clinical tests, as well as other services that physician groups require, such as patient encounter data and test result reporting information technology. LabCorp currently provides Laboratory Services throughout most areas of the country, but has a limited presence in Northern California, where its business consists primarily of providing clinical reference testing to hospitals and esoteric HIV-related testing. Due to its operations in Southern California, however, LabCorp has substantial experience satisfying the requirements of physician groups in California's managed care environment. Furthermore, LabCorp has the financial resources to purchase the assets and operate the business in a competitive manner.

Pursuant to the proposed Order, Quest is required to consummate its transaction with LabCorp within ten days of the date that Quest and Unilab consummate the Merger Agreement ("Acquisition Date") and to complete the transfer of the assets to LabCorp within six months of the Acquisition Date. If Quest fails to comply with either of these obligations, the Commission may appoint a trustee to divest Quest's outpatient Laboratory Services business in Northern California or its entire Laboratory Services business in Northern California. In the event that Quest transfers some of the assets to LabCorp, but LabCorp abandons its efforts to complete the transfer of the remaining assets and the interim monitor so notifies the Commission, the Commission may require Quest to rescind the transaction with LabCorp and order Quest to divest its Northern California outpatient Laboratory Services business to a Commission-approved acquirer within six months. Should Quest fail to do so, the Commission may appoint a trustee to divest either Quest's outpatient Laboratory Services business in Northern California or its entire Laboratory Services business in Northern California. The purpose of these provisions is to assure the Commission's ability to secure an acceptable buyer—able to maintain and restore competition in the relevant market—in the event that LabCorp does not acquire the divested assets. The provisions require divestiture of a more extensive package of assets consisting of either Quest's outpatient Laboratory Services business or its entire Laboratory Services business in Northern California because a prospective buyer other than LabCorp may require additional assets to fully restore competition in the relevant market.

The proposed Order contains several provisions designed to ensure that the divestiture is successful. The proposed Order requires Quest to maintain the viability, marketability, and competitiveness of its Laboratory Services business assets in Northern California pending transfer of the divested assets. It also requires Quest to provide transitional services that the acquirer of the divested assets may need until the assets are completely divested and transferred. The proposed Order also prohibits Quest from interfering with the employment of any employees relating to the divested assets by the acquirer and requires Quest to provide incentives to certain employees to continue in their positions until the divestiture and to accept employment with the acquirer. For a period of one year following the date that the transfer of the divested assets is accomplished, Quest is prohibited from soliciting any employees of Quest or Unilab that accept offers of employment from the acquirer of the divested assets. Additionally, the proposed Order requires Quest to take steps to maintain the confidentiality of certain confidential information relating to the divested assets.

Pursuant to the terms of the proposed Order, the Commission has approved the appointment of Bruce K. Farley as an interim monitor trustee to ensure that Quest expeditiously transfers the divested assets and complies with its obligations under the proposed Order. Mr. Farley has over 13 years of experience in the Laboratory Services industry. In addition, he has significant experience supervising the integration of business operations subsequent to mergers and acquisitions.

Finally, in order to ensure that the Commission remains informed about the status of Quest's clinical laboratory testing business in Northern California pending divestiture, and about efforts being made to accomplish the transfer of the divested assets, the proposed Order requires Quest to report to the Commission within 30 days, and every 30 days thereafter until the divestiture is fully accomplished. In addition, Quest is required to report to the Commission every six months regarding its confidentiality obligations, as well as its obligations regarding non-solicitation of employees of the acquirer of the divested assets.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or proposed Order or to modify the terms of the Consent Agreement or proposed Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–4609 Filed 2–26–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–43]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Work Organization, Cardiovascular Disease, and Depression Study—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Cardiovascular disease (CVD) and depression represent health problems of staggering proportion for the United States. An estimated 60 million Americans, over half of whom are younger than 65 years of age, currently have some form of CVD and nearly 20% of all Americans will experience at least one episode of major depression during their lifetimes. In economic terms, the total yearly costs of CVD and depression in the United States have been estimated at $327 billion and $43 billion, respectively.

In addition to being common and costly health problems, CVD and depression co-morbidity is frequent and recent studies have shown increased cardiovascular morbidity and mortality in depressed patients, implicating depression as a potential independent risk factor for CVD. Understanding the causes and etiologic relationships between these two illnesses represents a major challenge for public health researchers.

In addition to traditionally recognized risk factors, occupational factors appear to play a role in the etiology of both CVD and depression. For example, studies of occupational groups have shown markedly different rates of CVD and depression that are too large to be explained by known risk factors alone, and it is generally inferred that chemical, physical and/or work organizational exposures must be involved. While of relatively recent origins, the term "work organization" has evolved to serve as a rubric that encompasses diverse workplace exposures (often called job stressors) such as psychological demands, limited job control, work role demands and shift-work. There is considerable evidence that such factors play a role in the etiology of both CVD and depression, but design and sample size limitations of existing studies make it difficult to establish a causal association and make specific public health recommendations.

This proposed study will examine the relationships between specific job stressors, CVD and depression. To overcome the limitations of previous studies, we are proposing a five-year prospective study with a population of 20,000 workers, half of them women. Workers will be identified through 20 large businesses sampled from the four geographic Census regions of the U.S. Different types of businesses will be sampled in order to incorporate diverse types of jobs and work. Specific job stressors, perceived non-work stressors and general risk factors for CVD and depression will be assessed. To ascertain exposures and outcomes, the study will rely on employee medical records, blood samples, and both self-reports and work-site assessments of job conditions. Several instruments to evaluate the work environment will be used, including the NIOSH Generic Job Stress Questionnaire, which assess a variety of job stressors, as well as other relevant aspects of the work environment.

This request is for three years of the five-year proposed data collection with a total of 57,646 burden hours, and an estimated annualized burden of 19,215 hours. There is no cost to respondents.

Data	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Baseline Interview/Blood Collection Biometrics	21,993	1	75/60	27,491
Medical Records for Baseline	4,398	1	30/60	2,199

Data	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Follow-up Interview 1	17,594	1	30/60	8,797
Refusal Questionnaire	4,399	1	5/60	367
Medical Records for Follow-up 1	3,519	1	30/60	1,760
Follow-up Interview 2	14,995	1	30/60	7,498
Refusal Questionnaire	2,639	1	5/60	220
Medical Records for Follow-up 2	2,999	1	30/60	1,500
Follow-up Interview 3	12,712	1	30/60	6,356
Refusal Questionnaire	2,243	1	5/60	187
Medical Records for Follow-up 3	2,542	1	30/60	1,271
Total				57,646

Dated: February 18, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–4598 Filed 2–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–45]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Congenital Syphilis (CS) Case Investigation and Report Form (CDC73.126) OMB No. 0920–0128—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC proposes to continue data collection for congenital syphilis case investigations under the "Congenital Syphilis Case Investigation and Report Form" (CDC73.126 REV 11–98); this form is currently approved under OMB No. 0920–0128. This request is for a 3-year extension of clearance. Reducing congenital syphilis is a national objective in the DHHS Report entitled *Healthy People 2010 (Vol I and II).* Objective 25–9 of this document states the goal: "Reduce congenital syphilis to 1 new case per 100,000 live births". In order to meet this national objective, an effective surveillance system for congenital syphilis must be continued to monitor current levels of disease and progress towards the year 2010 objective. This data will also be used to develop intervention strategies and to evaluate ongoing control efforts.

Respondent burden is approximately 15 minutes per reported case. The estimated annual number of cases expected to be reported using the current case definition is 500 or less. Therefore, the total number of hours for congenital syphilis reporting required will be approximately 130 hours per year. There is no cost to respondents except their time.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
State/local health departments	65	8	15/60	130
Total				130

Dated: February 21, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–4600 Filed 2–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–44]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The Role of Housing in HIV/AIDS Prevention—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention (CDC) and the Department of Housing and Urban Development (HUD) propose to study the effects of housing for homeless or unstably housed persons on the transmission of HIV and the health of persons living with HIV. Results from the study will be used by policy makers to better understand the types of housing and other affiliated services most likely to reduce HIV transmission and disease progression in the homeless population.

The population to be studied will be drawn from persons living with HIV/AIDS who are seeking housing services from three communities with unmet housing needs as evidenced by a waiting list for services, or other evidence of unmet housing need, through the Housing Opportunities for Persons with AIDS (HOPWA) program. The project will be a longitudinal cohort study, following participants for 18 months. Participants will be randomized into two groups. One group will receive vouchers for housing subsidies plus a 2-session behavioral intervention; the other group will receive referral to housing resources through participating and other agencies plus the 2-session behavioral intervention. No study participants will be denied access to other housing services that are available through participating agencies or other community resources. Since all participants receive the behavioral intervention, the study technically assesses the effects of housing over and above the behavioral intervention.

A cost study will also be conducted to determine the resources needed for this approach and the cost benefits of providing housing for homeless and unstable housed people living with HIV. The purpose of the cost study is to evaluate the effects of housing affordability and the cost-effectiveness (*i.e.* cost-utility ratio) of this strategy relative to other interventions in other public health and other HIV prevention interventions.

The burden for this collection is estimated to be approximately 90 minutes for the survey at baseline and at 6, 12, and 18 months after baseline and 120 minutes for the interview with HUD site service providers. Blood samples for CD4 and viral load counts will also be collected for all participants. These estimates include the time needed to determine if the respondent is eligible to be interviewed, obtain informed consent, and administer the interview.

There are no costs to respondents for participation in the survey other than their time.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
HOPWA Program Participants	1000	4	90/60	6000
HUD Site Service Provider	15	1	2	30
Total				6030

Dated: February 21, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–4601 Filed 2–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–46]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Restriction on Travel of Persons, (0920–0488)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

In 2000, the Food and Drug Administration (FDA) and CDC consolidated regulations related to controlling the spread of communicable diseases. FDA formerly administered the regulations contained in part 1240 of Title 21, Code of Federal Regulations, which pertained to interstate control of communicable diseases. These regulations may now be found in part 70 of Title 42, Code of Federal Regulations.

Among the regulations in 21 CFR part 1240, FDA transferred to CDC certain sections that relate to restrictions on interstate travel of any person who is in the communicable period of cholera, plague, smallpox, typhus, or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof. One of the sections—formerly 21 CFR 1240.50 and now 42 CFR 70.5 (Certain communicable diseases; special requirements)—contains a requirement for reporting certain information to the Federal government. Specifically, this regulation requires any person who is in the communicable period of cholera, plague, smallpox, typhus or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof, to apply for and receive a permit from the Surgeon General or his authorized representative in order to travel from one State or possession to another.

Control of disease transmission within the States is considered to be the province of state and local health authorities, with federal assistance being sought by those authorities on a cooperative basis, without application of federal regulations. The regulations formerly administered by FDA and assumed by CDC were developed to facilitate Federal action in the event of large outbreaks requiring a coordinated effort involving several states, or in the event of inadequate local control. While it is not known whether, or to what extent, situations may arise in which these regulations would be invoked, contingency planning for domestic emergency preparedness is now commonplace. Should this occur, CDC will use the reporting and record-keeping requirements contained in the regulations to carry out quarantine responsibilities as required by law.

Because of the uncertainty about whether a situation will ever arise precipitating CDC's enforcement of this rule, the following data collection burden estimate was prepared using the article *Smallpox: An Attack Scenario*, Tara O'Toole; Emerging Infectious Diseases, Vol. 5, No. 4, Jul–Aug 1999. This article describes the aftermath of a hypothetical domestic public health emergency situation involving smallpox virus. Of the potentially 15,000 persons infected with smallpox, the data collection assumes that one-fourth of these would apply for a permit to move from one state to another while in the communicable period of or having been exposed to smallpox. Should the event be different and/or involve a different number of people, the burden will vary accordingly.

Respondent	Number of responses	Number of responses/ respondents	Average burden/response (in hrs.)	Total burden (in hrs.)
Applicants (per application for a permit to move from state to state while in the communicable period of or having been exposed to smallpox	3,750	1	15/60	938
Total				938

Dated: February 21, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–4602 Filed 2–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) National Immunization Program (NIP) is seeking a Cooperative Research and Development Agreement (CRADA) partner for collaboration in the development of a Vaccine Management Software (VACMAN) dynamic link library (DLL) component to interface with immunization information systems. The current DLL is compatible to VACMAN version 2.6x and will not be compatible when VACMAN is upgraded to version 3.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. CDC *may not provide funds* to the other participants in a CRADA. This opportunity is available until 30 days after publication of this notice in the **Federal Register**. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Terry Boyd, Data Management Division, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE., Mailstop E–62, Atlanta, GA 30333, telephone (404) 639–8584.

Business: Janet Kelly, Data Management Division, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE., Mailstop E–62, Atlanta, GA 30333, telephone (404) 639–8735.

SUPPLEMENTARY INFORMATION: The VACMAN application was developed by the CDC NIP and is used by CDC Immunization Grant programs to purchase vaccines through a Vaccine Ordering and Distribution System. The VACMAN DLL interface component allows immunization information systems to interface with VACMAN.

The CDC/NIP Development Team will work with respondent to develop and promote a product that will support VACMAN connectivity with immunization information systems and other applications that might exist on different operating systems. Respondent will be given access to VACMAN 3 database specifications and business rules. Respondent will maintain the code such that it is constantly kept updated accordingly as changes in the VACMAN product occurs. CDC/NIP requires the use of the source code and free distribution rights for the object code, which may include vendors, to ensure all available products can interact with VACMAN consistently and that all Grant programs have the opportunity to integrate VACMAN with their other processes for properly managing their vaccines.

Applicant submissions will be judged according to the following criteria:

1. Evidence of expertise in software development and supporting data (*e.g.*, resumes) of qualifications for the principle investigator who would be involved in the CRADA.

2. Specific operating systems and development languages proposed for development of the DLL.

3. Evidence of commitment for development to release to Grant programs, including vendors, the compiled components along with all appropriate documentation such as Application Program Interface documentation.

With respect to Government Intellectual Property (IP) rights to any invention not made solely by a CRADA partner's employees for which a patent or other IP application is filed, CDC has the authority to grant to the CRADA partner an exclusive option to elect an exclusive or nonexclusive commercialization license. This option does not apply to inventions conceived prior to the effective date of a CRADA that are reduced to practice under the CRADA, if prior to that reduction to practice, CDC has filed a patent application on the invention and has licensed it or offered to license it to a third party. The terms of the license will fairly reflect the nature of the invention, the relative contributions of the Parties to the invention and the CRADA, the risks incurred by the CRADA partner and the costs of subsequent research and development needed to bring the invention to the marketplace. The field of use of the license will be commensurate with the scope of the Research Plan.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502, as amended.

The responses must be made to: Lisa Blake-DiSpigna, Technology Development Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd. NE., Mailstop C–19, Atlanta, GA 30333.

Dated: February 21, 2003.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–4599 Filed 2–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Time and Date: 1 p.m.–4 p.m., March 14, 2003.

Place: Teleconference call will originate at the Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH), Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by ports available.

Background: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a Final Rule, advice on methods of dose reconstruction which have also been promulgated as a Final Rule; evaluation of the scientific validity and quality of dose reconstructions conducted by NIOSH for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001 and in November, 2001, the President completed the appointment of members to the Board to ensure a balanced representation on the Board. The initial tasks of the Board have been to review and provide advice on the proposed, interim, and final rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for this meeting will focus on the Special Exposure Cohort Notice of Proposed Rule Making finalization of recommendations.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled for 1 p.m. Eastern Time. To access the teleconference you must dial 1–800–311–3437. To be automatically connected to the call, you will need to provide the operator with the participant code "528890" and you will be connected to the call.

CONTACT PERSON FOR MORE INFORMATION: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the

Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 21, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4603 Filed 2–26–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Design and field testing of Head Start National Reporting System on Child Outcomes.

OMB No.: New Request.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to conduct the Design and Field Testing of the Head Start National Reporting System on Child Outcomes. This study is being conducted under contract with Westat and Xtria (#282–98–0015) to collect child outcomes information that will be used for program improvement in Head Start.

The purpose of this field test is to create the framework and procedures for a national outcomes report of children's ability and progress on the Presidentially and congressionally-mandated standards of learning. This effort will involve a subsample of 36 Head Start programs. In these programs, we will collect direct assessment data on approximately 1,440 sample children as well as their demographic information, the backgrounds of their respective classroom teachers, and the characteristics of their respective programs. This data will be used to develop and evaluate a system to report this outcome information.

After designing the framework and procedures for the National Reporting System, Westat/Xtria will then evaluate how well such a system would work, based on analysis of direct assessment data from a national sample of programs, classes, and children. Westat will then recommend any modifications to the design for the full national implementation year of the National Reporting System (NRS), based on the results of the field test. This could include recommendations on the training procedures of field staff or modifications of the assessment battery.

In the implementation of the NRS, staff training in collecting and submitting data will be critical. In order to ensure high quality data for the NRS, two different approaches to staff training will be evaluated in two study conditions:

Standard Training

The NRS will use a "training the trainers" training program. This effort will involve a subsample of 26 programs drawn from around the country. Selected staff from each program will travel to Rockville, Maryland to be trained in the procedures to teach other Head Start staff members how to administer the assessment battery and how to use the computer reporting system (Condition Two). Once trained, these "trained trainers" will return to their respective Head Start programs and train their local teachers how to administer the assessment battery and how to use the computer reporting system.

Extended Training

This training condition will involve a subsample of 10 Head Start programs drawn from around the country. These programs will receive the standard 3-day training workshop plus one extra day of extended training on how to conduct training sessions for their local Head Start staff (Condition One).

The field test will also evaluate any differences between the types of assessors administering the assessment. Head Start classroom teachers, the first type of assessor, will be responsible for administering the assessment to children from their own classroom. The second type of assessor is any other Head Start staff, or "non-classroom teachers," including program coordinators, education coordinators, education specialists, or even teachers from other classrooms (*e.g.*, teacher from classroom A assesses children from classroom B). The purpose of examining these types of assessors is to determine if there are any differences in the administration of the assessment and/or the scores collected by these different types of assessors. Any possible bias or unreliability in the assessment scores collected by the different types of assessors, and the ease of administration and fidelity to standard administration procedures will be evaluated.

Respondents: Head Start Children and Head Start Staff.

Annual Burden Estimates: Estimated Annual Response Burden to Respondents for the Design and field testing of Head Start National Reporting System on Child Outcomes.

ESTIMATED RESPONSE BURDEN FOR RESPONDENTS IN THE HEAD START NATIONAL REPORTING SYSTEM FIELD TEST—SPRING 2003

Activities	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Children: Complete Direct Assessments	1440	1	1/3	480
Head Start Staff: Administer Direct Assessment	144	10	1/3	480
Head Start Staff: Enter Child Demographic Information	1440	1	1/12	120
Head Start Staff: Enter Teacher Background Information	144	1	1/30	4.8
Head Start Children: Parallel Child Assessments administered by Field Staff	480	1	1/3	160
Program Directors Technology Survey	400	1	1/4	100
Condition One Head Start Staff: Training as Trainers for the Direct Child Assessments	10	1	28	280
Condition Two head Start Staff: Training as Trainers for the Direct Child Assessments	26	1	20	520
Head Start Staff: Training Local Staff for the Direct Child Assessments	36	1	8	288
Head Start Staff: Receiving Training for the Direct Child Assessments	144	1	8	1152
Totals for Spring 2003				3,584.8

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by March 15, 2003. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275. In addition, a request may be made by sending an e-mail request to: *rsargis@acf.dhhs.gov.*

Comments and questions about the information collection described above should be directed to the following address by March 15, 2003: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paper Reduction Project, 725 17th Street, NW., Washington, DC 20503.

Dated: February 21, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–4585 Filed 3–26–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0367]

Determination of Regulatory Review Period for Purposes of Patent Extension; Starlix

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Starlix and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Starlix (nateglinide). Starlix is indicated as monotherapy to lower blood glucose in patients with Type 2 diabetes (non-insulin dependent diabetes mellitus, NIDDM) whose hyperglycemia cannot be adequately controlled by diet and physical exercise and who have not been chronically treated with other anti-diabetic agents. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Starlix (U.S. Patent No. 34,878) from Novartis, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Starlix represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Starlix is 2,147 days. Of this time, 1,775 days occurred during the testing phase of the regulatory review period, while 372 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* March 9, 1995. The applicant claims February 7, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND became effective on March 9, 1995, which is 30 days after FDA's receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* December 17, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for Starlix (NDA 21–204) was initially submitted on December 17, 1999.

3. *The date the application was approved:* December 22, 2000. FDA has verified the applicant's claim that NDA 21–204 was approved on December 22, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,259 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management (*see* **ADDRESSES**) written comments and ask for a redetermination by April 28, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 26, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit a single copy. Copies are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the

Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–4567 Filed 2–26–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0059]

Pharmaceutical Current Good Manufacturing Practices for the 21st Century: A Risk-Based Approach; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is establishing a public docket for information relevant to the agency's current good manufacturing practice (CGMP) initiative concerning the regulation of pharmaceutical manufacturing and product quality. This action is intended to ensure that all information submitted to FDA on the CGMP initiative regarding a risk-based approach to the regulation of pharmaceutical manufacturing and product quality is available to all interested persons in a timely fashion.

ADDRESSES: The public dockets are located in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The public dockets can be accessed directly under the docket number provided and on the agency's site at *http://www.fda.gov/ohrms/dockets.*

FOR FURTHER INFORMATION CONTACT: Maureen A. Hess, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5461.

SUPPLEMENTARY INFORMATION:

I. Background

On August 21, 2002, FDA announced that it is undertaking a significant new initiative to enhance the regulation of pharmaceutical manufacturing and product quality. The initiative entitled "Pharmaceutical CGMPs for the 21st Century: A Risk-Based Approach," applies to veterinary drugs and human drugs, including biological drug products. Additional detailed information describing the scope and purpose of the initiative can be found on the Internet at www.fda.gov/bbs/topics/NEWS/2002/NEW00829.html. FDA has received recommendations on how the agency should implement various aspects of, as well as, the overall CGMP initiative and encourages further recommendations. To provide timely public access to these recommendations, FDA is establishing a public docket through which interested persons can have access to these recommendations and other information submitted to FDA. FDA expects to place submissions it receives on this initiative in the public docket.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding the CGMP initiative. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any mailed comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4568 Filed 2–26–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Comprehensive Conservation Plan for Crescent Lake National Wildlife Refuge, Ellsworth, NE

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Crescent Lake National Wildlife Refuge Comprehensive Conservation Plan and Summary. This Plan describes how the FWS intends to manage the Crescent Lake NWR for the next 10 to 15 years.

ADDRESSES: A copy of the Plan or Summary may be obtained by writing to U.S. Fish and Wildlife Service, Crescent Lake National Wildlife Refuge Complex, 115 Railway Street, Suite C109, Scottsbluff, NE 69363–1346; or download from *http://mountain-prairie.fws.gov/planning/*

FOR FURTHER INFORMATION CONTACT: Steve Knode, Complex Manager, U.S. Fish and Wildlife Service, Crescent Lake NWR, 115 Railway Street, Suite C109, Scottsbluff, NE 69363–1346, phone 308/635–7851; fax 308/635–7841; e-mail: *steve_knode@fws.gov*

SUPPLEMENTARY INFORMATION: The 45,849-acre Crescent Lake National Wildlife Refuge, established in 1931, is located 28 miles north of Oshkosh, Nebraska in Garden County at the southwestern end of the Nebraska Sandhills. It is administered by the U.S. Fish and Wildlife Service as part of the Crescent Lake National Wildlife Refuge Complex and is within the Central Flyway. The Complex headquarters is 100 miles to the west in the City of Scottsbluff, NE.

The initial Refuge was 36,920 acres, acquired primarily from one large ranch. Additional lands were acquired between 1932 and 1937. Most lands were acquired or exchanged under the authority of the Migratory Bird Conservation Act (45 Stat. 1222). About 2,566 acres were acquired under the Resettlement Administration (Executive Order 7027, April 30, 1935), a drought and depression relief program.

The Nebraska Sandhills were settled largely as a result of the Kincaid Act of 1904, a modification of the Homestead Act to allow settlers 640 acres in "less productive" areas. As a result, a homestead existed in almost every meadow. However, 640 acres was not a viable farm/ranch unit in the Sandhills, and land was soon consolidated into larger units. Today, the Sandhills are home to some of the largest ranches in the country. Because of the large acreage required to support economically viable units, Garden County is among the least densely populated areas in the continental United States. Most of the Refuge location names originated from the early homesteaders.

The availability of the Draft CCP/Environmental Assessment (EA) for 30-day public review and comment was noticed in the **Federal Register** on Wednesday, May 1, 2002, in Volume 67, Number 84, page 21711. The Draft CCP/EA identified and evaluated four management alternatives for the Crescent Lake National Wildlife Refuge as to their effectiveness in achieving the Refuge's purposes and their impact on the human environment for the next 15 years. Alternative 1—No Action Alternative which would continue the current management for the Refuge and not include extensive restoration of wetland and grassland habitats; Alternative 2—historical management of refuge habitats and wildlife to replicate pre-settlement conditions; Alternative 3—the intensive management of refuge habitats and refuge program to increase outputs in certain areas; and the preferred Alternative 4—modified historical management of habitats for native birds and wild animals and to pursue a more natural historic management regime. The alternatives were assessed in the Draft CCP management plan and Environmental Assessment. Based on this assessment and comments received, the preferred Alternative 4 was selected for implementation.

The preferred alternative was selected because it best meets the purposes of the Refuge to reserve and set apart as a refuge and breeding ground for birds and wild animals. The preferred alternative will also provide for public access for wildlife-dependent recreation, and provides environmental education opportunities related to fish and wildlife resources.

Dated: October 2, 2002.

Elliott Sutta,

Acting Regional Director, Denver, Colorado.

[FR Doc. 03–4590 Filed 2–26–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Statement, Draft Environmental Impact Report, and Receipt of an Application for an Incidental Take Permit for the Western Riverside County Multiple Species Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; reopening of comment period.

SUMMARY: The Fish and Wildlife Service is reopening the comment period on the draft Multiple Species Habitat Conservation Plan, draft Implementing Agreement, and Draft Environmental Impact Statement for an incidental take permit for 146 species in western Riverside County, California.

DATES: To ensure consideration, we must receive written comments on or before March 14, 2003.

ADDRESSES: Send comments to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008. You also may submit comments by facsimile to (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Evans, Assistant Field Supervisor, at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION: The County of Riverside (County), Riverside County Flood Control and Water Conservation District, Riverside County Transportation Commission, Riverside County Parks and Open Space District, Riverside County Waste Department, California Department of Transportation, California Department of Parks and Recreation, and 14 western Riverside County cities (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants seek a permit to authorize incidental take of 146 species, including unlisted species that may become listed during the term of the permit. An incidental take permit is required to authorize take of listed species during urban and rural development in the approximately 5,095-square-kilometer (1.26-million-acre (1,967-square-mile)) Plan Area in western Riverside County. The proposed term of the permit is 75 years.

On November 15, 2002, we published "Notice of Availability of a Draft Environmental Impact Statement/Environmental Impact Report and Receipt of an Application for an Incidental Take Permit for the Western Riverside County Multiple Species Habitat Conservation Plan" (67 FR 69236). In that notice, we requested public comment on the draft Multiple Species Habitat Conservation Plan (MSHCP) and draft Implementing Agreement. We also made available for public review a Draft Environmental Impact Statement, which is the Federal portion of the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR), to analyze the impacts of the MSHCP. The analyses provided in the Draft EIS/EIR are intended to inform the public of our proposed action, alternatives, and associated impacts; address public comments received during the scoping period for the Draft EIS/EIR; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

The comment period for the November 15, 2002, notice closed on January 14, 2003. We are now reopening the comment period for 15 days on the draft MSHCP, draft Implementing Agreement, and Draft EIS. The County of Riverside has decided not to reopen the comment period on the Draft EIR. Comments already submitted on the Draft EIS/EIR, draft Implementing Agreement, and draft MSHCP need not be resubmitted, as they will be fully considered in the final documents.

Authority: This notice is provided pursuant to section 10(a) of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and Service regulations (40 CFR 1506.6) for implementing the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: February 13, 2003.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 03–4591 Filed 2–24–03; 4:31 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Tindall) for Incidental Take of the Houston Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Lewis Tindall (Applicant) has applied for an incidental take permit (TE–0666141–0) pursuant to Section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and operation of a retail store on a 1.01-acre property on Highway 71, Bastrop County, Texas.

DATES: Written comments on the application should be received on or before April 28, 2003.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the

Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–066641–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Clayton Napier at 10711 Burnet Road, Suite 200, Austin, Texas 78758.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan for the incidental take application. A determination of jeopardy to the species and a decision pursuant to the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Applicant: Lewis Tindall plans to construct a retail store, within 5 years, on a 1.01 acre property on Highway 71, Bastrop County, Texas. This action will eliminate 1.01 acres or less of Houston toad habitat and result in indirect impacts within the lot. The Applicant proposes to compensate for this incidental take of the Houston toad by providing $4,000.00 to the Houston Toad Conservation Fund at the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat.

Susan MacMullin,

Acting Regional Director, Region 2.

[FR Doc. 03–4592 Filed 2–26–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Endangered Karst Invertebrate Survey Guidance, Draft Karst Feature Survey Guidance, Draft Preserve Design To Conserve Endangered Karst Invertebrates Guidance, and Draft Recommendations for Protection of Water Quality of the Edwards Aquifer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides an update on its intentions to revise and make available for public comment the following documents: (1) Draft karst feature survey guidance; (2) draft endangered karst invertebrate survey guidance; (3) draft preserve design to conserve endangered karst invertebrates guidance; and (4) draft recommendations for protection of water quality of the Edwards Aquifer. The first two documents are survey guidance for use in determining: (1) The presence of karst features that may contain potential habitat for karst invertebrates listed under the Endangered Species Act of 1973 (as amended) as endangered in central Texas; and (2) the presence/absence of endangered karst invertebrates within karst features determined to contain potential habitat. The first three documents have commonly been known as the "Karst Protocols" and the document that addressed water quality was often called "water quality criteria."

DATES: We will accept public comments on the approach proposed in this Notice until April 28, 2003.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 telephone (512) 490–0057; facsimile (512) 490–0974.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Austin Ecological Services Field Office (*see* **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Sixteen species of invertebrates known to occur in Bexar, Travis, Williamson and parts of Burnet counties, Texas, are currently listed as endangered under the Endangered Species Act. These invertebrates are only capable of surviving in caves or karstic rock. Karst ecosystems receive moisture and nutrients from the surface community in the form of leaf litter and other organic debris that are washed in or fall into the cave, from tree and other vascular plant roots, and/or through the feces, eggs or dead bodies of animals. In addition to providing nutrients to the karst ecosystem, the plant community also filters contaminants and buffers against changes in temperature and humidity. The major threats to karst invertebrates include the loss of habitat due to urbanization; contamination; predation by and competition with non-native fire ants; and vandalism.

The Edwards Aquifer and associated springs, which includes the Southern, Barton Springs, and Northern segments, provide habitat for 9 federally listed aquatic species, including three salamanders, two fish, three aquatic invertebrates and one plant. In addition, 3 candidate species and many other unique aquatic species are also dependent upon water from the Edwards Aquifer. These species may be vulnerable to water quality degradation, particularly through pollutants entering the aquifer by storm water runoff from urban areas.

The Service has reviewed the Karst Protocols and the Water Quality Recommendations, and decided that an alternative course of action is preferred because we need to ensure that a wider partnership is involved when providing guidance to the interested public. To the extent possible, the Service will use the recovery planning process to gain the public's review and comment on guidance meant to aid in the recovery of threatened and endangered species. Through this notice, the Service announces its intentions to do the following:

(1) With respect to survey guidance for use in determining the presence of karst features that may contain potential habitat for endangered karst invertebrates in central Texas, the Service will work with the Texas Commission on Environmental Quality (TCEQ) and other partners to update as needed the existing TCEQ guidance on Karst Feature Surveys. The Service will recognize TCEQ's guidance as suitable guidance when surveying for karst features.

(2) With respect to survey guidance for endangered karst invertebrates, the Service will request a panel of experts to review all new information regarding how to survey for karst invertebrates. The Service will use the panel's recommendations to modify the section 10(a)(1)(A) permitting requirements and to develop karst invertebrate survey guidance on when to survey caves and how to survey for endangered karst invertebrates found in the caves. This guidance will be made available for review and comment though a Notice of Availability that will be published in the **Federal Register** by December 30, 2003.

(3) With respect to guidance for preserve design to conserve endangered karst invertebrates, the Service intends to incorporate the guidance as a component of the Service's Bexar County Invertebrate Recovery Plan. The draft recovery plan will be made available for review and comment. The Service no longer intends to issue separate guidance on the establishment of karst preserves. Additionally, the Texas Parks and Wildlife Department, with the Service as a partner, will include "no take" guidance for these listed invertebrates as part of the species accounts that will be developed as a priority update to the revision of the 1995 Endangered and Threatened Animals of Texas document published by the Texas Parks and Wildlife Department. The Service will incorporate the "no take" guidance into the draft recovery plan for the species, which will be available for public review and comment.

(4) With regard to recommendations for protection of water quality of the Edwards Aquifer, the Service does not intend to issue separate guidance. Instead, the draft Barton Springs Salamander Recovery Plan, which is scheduled to be completed in 2003, will include recommendations for protection of water quality in the Barton Springs Zone.

The Service states that prior versions of the Karst Protocols and Water Quality Recommendations are not rules, regulations, requirements, or project evaluation criteria of the Service and will not be used as such by the Service. The documents that have been used in the past as guidance do not create any legal obligations and have no binding legal effect, nor do they establish minimum standards or criteria required to be adopted by state or local governments. Should at any future time the Service decide that guidance on these subjects, other than as outlined above, is needed, the Service will make the draft guidance available for public review and comment for a period of not less than 60 days. At the conclusion of this period, the Service will determine whether to publish any final guidance documents on these topics and, if so, in what form.

Authority: The authority for this action is the Endangered Species Act, as amended (16 U.S.C.1532 *et seq.*).

H. Dale Hall,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 03–4612 Filed 2–26–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to a Tribal-State compact.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Class III gaming compact between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: February 12, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–4656 Filed 2–26–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to a Tribal-State compact.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts of the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Class III gaming compact between the Confederated Tribes of the Warm Springs Reservation and the State of Oregon.

EFFECTIVE DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: February 12, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–4655 Filed 2–26–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to a Tribal-State compact.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Class III gaming compact between the Crow Tribe and the State of Montana.

EFFECTIVE DATE: February 26, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: February 12, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–4657 Filed 2–26–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–DP]

Draft Northwest National Petroleum Reserve—Alaska Integrated Activity Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In response to a request from the interested public the Bureau of Land Management is adding to its schedule one meeting for accepting public comments on the Draft Northwest National Petroleum Reserve—Alaska Integrated Activity Plan/Environmental Impact Statement (IAP/EIS). The meeting location and time will be provided to the public through appropriate media outlets in the Washington, DC area.

DATES: March 13, 2003, 2 p.m. till 5 p.m.

ADDRESSES: Courtyard Marriott, 1600 Rhode Island Avenue, Northwest, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Curtis J. Wilson (907–271–5546;

c1wilson@ak.blm.gov) or Mike Kleven (907–474–2317; *mkleven@ak.blm.gov*).

SUPPLEMENTARY INFORMATION: The Bureau of Land Management originally published a Notice of Availability for the IAP/EIS that listed public meetings only in Alaska, however, in response to a request from several organizations one meeting has been added to seek public comment in the Washington, DC area.

Dated: February 21, 2003.

Henri R. Bisson,

State Director.

[FR Doc. 03–4818 Filed 2–25–03; 2:55 pm]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–03–1220–AA]

Notice of Public Meetings of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meetings of the California Desert District Advisory Council.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, has scheduled three meetings during 2003 at the following dates and locations:

March 27–29; Ramada Inn (workshop and formal session), 1511 E. Main Street, Barstow, California.
- 27: Half day field tour; gather 12 noon, parking lot, Ramada Inn.
- 28: Council workshop 8 a.m. to noon; formal session, 1 p.m. to 5 p.m.
- 29: Formal session, 8 a.m. to 5 p.m.

June 27–28; Marriott (workshop and formal session, 3400 Market Street, Riverside, California.
- 27: Council workshop.
- 28: Formal session 8 a.m. to 5 p.m.

Sept. 19–20; Kerr McGee Center, 100 West California Avenue, Ridgecrest, California 93555.
- Field tour: gather 7:15 a.m., parking lot, China Lake Best Western Inn, 400 South China Lake Boulevard, Ridgecrest, CA.
- Formal session, Kerr McGee Center, 8 a.m. to 5 p.m.

The Council and interested members of the public will assemble for the field tours at the designated parking lot locations. The public is welcome to participate in the tours, but should plan on providing their own transportation, drinks, and lunch.

All Desert District Advisory Council meetings are open to the public. Time for public comment is scheduled at the beginning of the meeting for topics not on the agenda, and will be made available by the Council Chairman during the presentation of various agenda items. Time for public comment is also scheduled at the end of the meeting.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: For additional information regarding meeting and tour agendas contact Doran Sanchez, BLM California Desert District Public Affairs Specialist, (909) 697–5220.

Dated: February 22, 2003.

Linda Hansen,

District Manager.

[FR Doc. 03–4597 Filed 2–26–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–00–1430–EU; AZA–31774FD]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona, Correction

AGENCY: Bureau of Land Management, Interior.

Correction

In notice issued in Volume 68 Number 30 beginning on page 7387 in the issue dated February 13, 2003, make the following correction: On page 7387 under the heading, in the third column, "(AZ–020–00–1430–EU; AZA–31744FD)" should read "(AZ–020–00–1430–EU; AZA–31774FD)".

Dated: February 19, 2003.

MarLynn Spears,

Acting Field Manager, Phoenix Field Office.

[FR Doc. 03–4593 Filed 2–26–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: Request for fee waiver; Form I–912.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 20, 2002 at 67 FR 35593. allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 3, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestion from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Request for Fee Waiver.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–912, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The data collected on this form will be used by the INS to determine eligibility for a fee waiver associated with the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 16,000 responses at 1 hour and 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: February 24, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–4654 Filed 2–26–03; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–027)]

NASA Advisory Council, Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee (SSUAS).

DATES: Tuesday, March 11 , 2003, 8 a.m. to 5:30 p.m., and Wednesday, March 12, 2003, 8 a.m. to 5:30 p.m.

ADDRESSES: South Shore Harbour Resort, 2500 South Shore Blvd., League, Texas 77573.

FOR FURTHER INFORMATION CONTACT: Dr. Neal Pellis, Code U, National Aeronautics and Space Administration, Houston, TX 77058, (281) 483–2357.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested.

The agenda for the meeting will include the following topics:

—International Space Station Program Status/Plans.
—New Research Plans for Increment 7.
—Research Report on Increment 5 and 6.
—Telecon with Investigators.
—OBPR Report.
—ISS Payloads Office Report.
—Science Operations Report.
—Centrifuge Accommodation/Science Module.
—Orbital Space Plan Overview.
—Cross-Enterprise Prioritization.
—Re-Invention Team.
—Coordination of International Requirements.
—ISS Institute/NGO.
—Crew Time Optimization.
—Middeck Optimization.
—Payloads Process Improvement.
—ISS Research Prioritization and Metrics.
—Discussion and Development of Recommendations.
—Summary of Recommendations to NASA.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–4570 Filed 2–26–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–026)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Circuit Avenue Netrepreneurs, LLC, of Camden, New Jersey, has applied for a partially exclusive license to practice the invention described and in NASA Case No. ARC–14480–1, entitled "An Approach to Automating the Manipulation of Information," for which a Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The fields of use will include medical devices; monitoring and controlling; chemical, research and manufacturing; pharmaceutical, research and manufacturing; and biotechnology, research and manufacturing. Written objections to the prospective grant of a license should be sent to the Ames Research Center.

DATES: Responses to this notice must be received by March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–4, Moffett Field, CA 94035, telephone (650) 604–5104; fax (650) 604–2767.

Dated: February 20, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–4569 Filed 2–26–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

Notice of Intent To Publish a Rule Permitting the Privatization of Noncriminal Justice Criminal History Record Check Functions

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Notice of intent to publish a rule that will permit the privatization of administrative functions requiring access to criminal history record information for noncriminal justice purposes.

SUMMARY: Pursuant to Title 28, Code of Federal Regulations (CFR), Chapter IX, the Compact Council (Council), established by the National Crime Prevention and Privacy Compact Act of 1998 (Compact), is issuing notice of its intent to promulgate a rule enabling third parties to act as agents for governmental and nongovernmental agencies while performing administrative functions requiring access to criminal history record information (CHRI) for authorized noncriminal justice purposes.

Authority: Title 42, United States Code, Section 14616.

Additionally, a limited number of third parties will be preapproved by the FBI to serve as conduits to send electronic noncriminal justice fingerprint requests to, and receive CHRI from, the FBI's Criminal Justice Information Services (CJIS) Division for dissemination to authorized recipients as provided by federal statute or federal executive order.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy L. Morrison, interim FBI Compact Officer, FBI CJIS Division, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Telephone (304) 625–2736; E-mail *cmorriso@leo.gov;* Fax number (304) 625–5388.

SUPPLEMENTARY INFORMATION: The Council is comprised of federal, state and local representatives of criminal and noncriminal justice agencies. The Compact authorizes the Council to establish rules, procedures, and standards for fingerprint-based noncriminal justice criminal history record checks. The Council, in cooperation with the FBI's CJIS Division and its Advisory Policy Board, is announcing its intent to promulgate a rule that will enable authorized local, state, and federal governmental agencies and nongovernmental entities to contract with the private sector to perform administrative duties relating to the noncriminal justice use of CHRI for employment, licensing, and other authorized purposes.

The reason for the proposed rule is that, over the last several years, the volume of authorized fingerprint-based noncriminal justice criminal history record checks has escalated. In many states, the number of fingerprint submissions for noncriminal justice purposes outnumber those submitted for criminal justice purposes. The escalating number of noncriminal justice fingerprint submissions has resulted in increased workloads for local, state, and federal governmental agencies and for nongovernmental entities. Implementation of the Aviation and Transportation Security Act, the USA PATRIOT Act and other federal and state statutes since the terrorist attacks of September 11, 2001, has contributed to the recent increase of authorized criminal history record checks. Efforts are underway to modify the CFR to permit authorized recipients of CHRI to contract with the private sector to accomplish such fingerprint-based criminal history record checks for noncriminal justice purposes and to do so in an efficient, effective, and secure fashion.

Dated: February 19, 2003.

Monte C. Strait,

Section Chief, Programs Development Section, Federal Bureau of Investigation.

[FR Doc. 03–4611 Filed 2–26–03; 8:45 am]

BILLING CODE 4410–02–P

NUCLEAR REGULATORY COMMISSION

Handbook of Parameter Estimation for Probabilistic Risk Assessment (PRA)

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Announcement of issuance for public comment, availability, and public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a document entitled "Handbook of Parameter Estimation for Probabilistic Risk Assessment." This handbook provides guidance on sources of information and methods of estimating distributions of parameters used in probabilistic risk assessment. This includes determination of both plant-specific and generic estimates for initiating event frequencies, component failure rates and unavailability, and equipment non-recovery probabilities. Interested individuals may obtain a copy of this document from the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

DATES: Please submit comments by May 23, 2003. Comments received after this date will be considered if is practical to do so, but the NRC Staff is able to ensure consideration only for comments received on or before this date.

A public meeting will be held on April 2, 2003, from 8:30 a.m. until 4:30 p.m. The purpose of this meeting is to discuss the document and give guidance for its review and to address external stakeholder comments received before the public meeting. The primary authors will be available at the public meeting to answer questions and discuss items of interest to the public.

The NRC is interested in receiving comments on specific topics reviewers wish to discuss at the public meeting. Reviewers are requested to contact Mr. Arthur Salomon at 301–415–6552 or e-mail *ads@nrc.gov* by March 21, 2003, with comments or issues they wish to have addressed at the public meeting.

ADDRESSES: Please submit comments to Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Or, you may deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:30 p.m. Federal workdays.

The public meeting will be held at Two White Flint North, Room T10 A1, 11545 Rockville Pike, Rockville, Maryland.

The draft document and certain other documents related to this action may be examined in the NRC Public Document Room, 11555 Rockville Pike, Public File Area O1 F21, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Arthur D. Salomon, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–6552, e-mail: *ads@nrc.gov.*

SUPPLEMENTARY INFORMATION: During the last several years the NRC and the nuclear industry have recognized that PRA has evolved to the point where it can be used as a tool in the regulatory decision-making process. The increased use of PRA has led to the conclusion that the PRA scope and model must be commensurate with the applications. Several procedural guides and standards (such as the "Standard For Probabilistic Risk Assessment For Nuclear Power Plant Applications" published by The American Society of Mechanical Engineers in 2002) have been and are being developed that identify requirements for the PRA models. This handbook was prepared to supplement these documents. It provides a compendium of good practices that a PRA analyst can use to develop parameter distributions required for quantifying PRA models. It complements the ASME PRA Standard by providing guidance for estimation of parameters related to initiating events; by describing statistical techniques for estimating parameters used in analysis of basic events such as equipment failures; and by addressing methods for estimating equipment unavailability. Furthermore, the handbook includes appendices describing the basics of probability and statistics used in performing the more detailed analyses discussed in the main portion of the document.

The handbook provides the basic information needed to generate estimates of the parameters commonly used in PRA analysis. It begins by describing the probability models and plant data used to evaluate each of the parameters. Possible sources for the plant data are identified and guidance on the collection, screening, and interpretation is provided. The statistical techniques (both Bayesian and classical methods) required to analyze the collected data and test the validity of statistical models are described. Examples are provided to help the PRA analyst utilize the different techniques. The handbook also provides advanced techniques that address modeling of time trends. Methods for combining data from a number of similar, but not identical sources are also provided. This includes empirical and hierarchical Bayesian approaches. Examples are provided to guide the analyst. The handbook does not provide guidance on parameter estimation for all of the events included in a PRA. Specifically, common cause failure and human error probabilities are not addressed. In addition, guidance is not provided regarding the use of expert elicitation. However, suggested references regarding these technical areas are provided in the handbook introduction.

Dated at Rockville, Maryland, this 21st day of February, 2003.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 03–4624 Filed 2–26–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47386; File No. SR–NASD–2003–20]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Strategic Return Notes Linked to the Select Ten Index

February 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On February 20, 2003, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Strategic Return Notes® Linked to the Select Ten Index ("Notes") issued by Merrill Lynch & Co., Inc. ("Merrill Lynch").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated February 20, 2003.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to list and trade notes, the return on which is based upon an approximately equal-dollar weighted portfolio of securities representing the ten highest dividend yielding stocks in the Dow Jones Industrial Average ("DJIA") from year to year ("Select Ten Index" or "Index").[4]

Under Rule 4420(f), Nasdaq may approve for listing and trading innovative securities which cannot be readily categorized under traditional listing guidelines.[5] Nasdaq proposes to list for trading notes based on the Select Ten Index under Rule 4420(f). The Select Ten Index is expected to be determined, calculated and maintained solely by the American Stock Exchange ("Amex").[6]

The Notes will initially be subject to Nasdaq's listing criteria for other securities under Rule 4420(f). Specifically, under Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least $4 million.

[4] The portfolio of securities comprising the Select Ten Index currently consists of the ten common stocks in the DJIA having the highest dividend yield on May 24, 2002, and are as follows: Caterpillar Inc.; Eastman Kodak Company; E.I. du Pont de Nemours and Company; Exxon Mobil Corporation; General Motors Corporation; International Paper Company; J.P. Morgan Chase & Co.; Merck & Co., Inc.; Philip Morris Companies Inc.; and SBC Communications Inc.

[5] *See* Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993).

[6] Subject to the criteria in the prospectus supplement regarding the construction of the Index, the Amex has sole discretion regarding changes to the Index due to annual reconstitutions and adjustments to the Index and the multipliers of the individual components.

In addition, Merrill Lynch satisfies the listed marketplace requirement set forth in Rule 4420(f)(2).[7] Lastly, pursuant to Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by Rule 4450(a)(6). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

The Notes are a series of senior non-convertible debt securities of Merrill Lynch that provide for a single payment at maturity. The Notes will have a term of not less than one, nor more than ten, years. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the "Starting Index Value" and the "Ending Index Value" (the "Redemption Amount"). The "Starting Index Value" is the value of the Select Ten Index on the date on which Merrill Lynch prices the Notes for the initial sale to the public. The "Ending Index Value" is the value of the Select Ten Index over a period shortly prior to the expiration of the Notes. The "Ending Index Value" will be used in calculating the amount owners will receive upon maturity. The Notes may not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to or at maturity may be less than the original issue price of the Notes. During the designated month each year, investors will have the right to require Merrill Lynch to repurchase the Notes at a redemption amount based on the value of the Select Ten Index at such repurchase date. The Notes are not callable by Merrill Lynch.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Select Ten Index securities.

The Select Ten Index will consist of the ten stocks with the highest dividend yields among the thirty stocks that comprise the DJIA, adjusted as described below. The Commission has previously approved the listing of options on, and securities the performance of which have been linked to or based on, an index of the top ten dividend yielding stocks of the DJIA.[8] The Commission has also previously approved the listing of securities with a structure identical to that of the Notes.[9]

Components of the Select Ten Index approved pursuant to this filing will meet the following criteria: (1) A minimum market value of at least $75 million, except that up to 10% of the component securities in the Select Ten Index may have a minimum market value of $50 million; (2) average monthly trading volume in the last six months of not less than 1 million shares, except that up to 10% of the component securities in the Select Ten Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Select Ten Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Amex Rule 915; and (4) all component stocks will either be listed on the Amex, the NYSE, or traded through the facilities of Nasdaq and reported National Market System securities.

As of January 22, 2003, the market capitalization of the portfolio of securities representing the Select Ten Index ranged from a high of $124.9 billion to a low of $9.7 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 288 million shares to a low of 45.2 million shares. Moreover, as of January 22, 2003, all of the components comprising the portfolio of securities representing the Select Ten Index were eligible for standardized options trading pursuant to Amex Rule 915.

The value of the Select Ten Index at any time will equal: (1) The sum of the products of the current market price for each stock underlying the Select Ten Index and the applicable share multiplier,[10] plus (2) an amount reflecting current calendar quarter dividends, and less (3) a pro rata portion of the annual index adjustment factor.[11] Current quarter dividends for any day will be determined by the Amex and will equal the sum of each dividend paid by the issuer on one share of stock during the current calendar quarter multiplied by the share multiplier applicable to such stock on the ex-dividend date.

As of the first day of the start of each calendar quarter, the Amex will allocate the current quarter dividends as of the end of the immediately preceding calendar quarter to each then outstanding components of the Select Ten Index. The amount of the current quarter dividends allocated to each stock will equal the percentage of the value of such stock contained in the portfolio of securities comprising the Select Ten Index relative to the value of the entire portfolio based on the closing market price of such stock on the last day in the immediately preceding calendar quarter. The share multiplier of each stock will be increased to reflect the number of shares, or portion of a share, that the amount of the current quarter dividends allocated to each stock can purchase of each stock based on the closing market price on the last day in the immediate preceding calendar quarter.

As of the close of business on each anniversary date (May 29th of each year, which is the anniversary of the date the Select Ten Index was originally calculated and disseminated) through the applicable anniversary date in the year preceding the maturity of the Notes, Nasdaq states that the portfolio of securities comprising the Select Ten Index will be reconstituted by the Amex so as to include the ten common stocks in the DJIA having the highest dividend yield on the second scheduled index business day prior to such anniversary date. Nasdaq represents that the Amex will announce such changes to investors at least one day prior to the anniversary date.[12]

The portfolio will be reconstituted and rebalanced on the anniversary date so that each stock in the Select Ten Index will represent 10% of the value of the Index. To effectuate this, Nasdaq states that the share multiplier for each new stock will be determined by the Amex and will indicate the number of shares or fractional portion thereof of each new stock, given the closing market price of such new stock on the anniversary date, so that each new stock represents an equal percentage of the Select Ten Index value at the close of business on such anniversary date. For example, if the Select Ten Index value at the close of business on an anniversary date was 200, then each of the ten new stocks comprising the Select Ten Index would be allocated a portion of the value of the Index equal to 20, and if the closing market price of one such new stock on the anniversary date was 40, the applicable share multiplier would be 0.5. Conversely, if the Select Ten Index value was 80, then each of the ten new stocks comprising the Select Ten Index would be allocated a portion of the value of the Select Ten Index equal to 8, and if the closing market price of one such new stock on the anniversary was 40, the applicable share multiplier would be 0.2. The last anniversary date on which such reconstitution will occur will be the anniversary date in the year preceding the maturity of the Notes. As noted above, investors will receive information on the new portfolio of securities comprising the Select Ten Index at least one day prior to each anniversary date.

The multiplier of each component stock in the Select Ten Index will remain fixed unless adjusted for quarterly dividend adjustments, annual reconstitutions or certain corporate events, such as payment of a dividend other than an ordinary cash dividend, a distribution of stock of another issuer to its shareholders,[13] stock split, reverse stock split, and reorganization.

The multiplier of each component stock may be adjusted, if necessary, in the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders. If the issuer of a stock included in the Select Ten Index were to no longer exist, whether by reason of a merger, acquisition or similar type of corporate transaction, a value equal to the stock's final value will be assigned to the stock for the purpose of calculating the Select Ten Index value prior to the subsequent anniversary date. For example, if a company included in the Select Ten Index were acquired by another company, a value will be assigned to the company's stock equal to the value per share at the time the acquisition occurred. If the issuer of stock included in the Select Ten Index is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Select Ten Index so long as a market price for such security is available or until the subsequent anniversary date. If a market price is no longer available for an Index stock due to circumstances including, but not limited to, liquidations, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Select Ten Index for so long as no market price exists for that security or until the subsequent anniversary date. If the stock remains in the Select Ten Index, the multiplier of that security in the Select Ten Index may be adjusted to maintain the component's relative weight in the Select Ten Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Select Ten Index continuity.

Nasdaq states that the Amex will calculate the Select Ten Index and, similar to other stock index values published by the Amex, the value of the Index will be calculated continuously and disseminated every fifteen seconds over the Consolidated Tape Association's Network B. The Index value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the component securities. In the event that Amex discontinues the publication of the Select Ten Index, Nasdaq will facilitate the calculation and dissemination every 15 seconds of a value of a successor index either through the facilities of Nasdaq or those of an outside provider that is an independent calculation agent, unless otherwise approved by the Commission.[14] Amex could discontinue publication of the Select Ten Index, and Amex or another entity could publish a successor or substitute index that the calculation agent, in its sole discretion, could deem a comparable successor index. Also, Amex could discontinue publication of the Select Ten Index and the calculation agent could not select a successor index. In such case, the calculation agent will compute a substitute value for the Select Ten Index in accordance with the procedures last used to calculate the Select Ten Index before any discontinuance. If Amex discontinues publication of the Select Ten Index before the period during which the Redemption Amount is to be determined and the calculation agent determines that no successor index is available at that time, then on each business day until the earlier to occur of (1) the determination of the Ending Value or (2) a determination by the calculation agent that a successor index is available, the calculation agent will determine the value that would be used in computing the Redemption Amount as if that day were a calculation day.[15]

Since the Notes will be deemed equity securities for the purpose of Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[16] In addition, Nasdaq will distribute a circular to advise members recommending a transaction in the Notes to, among other things, have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the

[7] Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange ("NYSE") or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

[8] *See* Securities Exchange Act Release No. 39453 (December 16, 1997), 62 FR 67101 (December 23, 1997) (approving the listing and trading of options on the Dow Jones High Yield Select 10 Index); Securities Exchange Act Release No. 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (approving the listing and trading of Top Ten Yield Market Index Target-Term Securities).

[9] Securities Exchange Act Release No. 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of Select Ten Notes).

[10] The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or Nasdaq, to be included in the calculation of the portfolio.

[11] At the end of each day, the Index will be reduced by a pro rata portion of the annual index adjustment factor, 1.5% (*i.e.*, 1.5%/365 days = 0.0041% daily). This reduction to the value of the Index will reduce the total return to investors upon redeeming the Notes at maturity. An explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

[12] Nasdaq states that the Amex will publish a notice to advise investors of changes to the securities underlying the Index if any such changes are made following an annual reconstitution.

[13] If the issuer of a component security in the Select Ten Index issues to all of its shareholders publicly traded stock of another issuer, such new securities will be added to the portfolio comprising the Select Ten Index until the subsequent anniversary date. The multiplier for the new component will equal the product of the original issuer's multiplier and the number of shares of the new component issued with respect to one share of the original issuer.

[14] *See* Amendment No. 1, *supra* n. 3.

[15] Telephone conference between John Nachmann, Senior Attorney, Nasdaq, and Geoff Pemble, Special Counsel, Commission, dated February 20, 2003.

[16] Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

financial risks of, such transaction. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 am to 4 pm will apply to transactions in the Notes.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with section 15A of the Act,[17] in general, and furthers the objectives of section 15A(b)(6) of the Act,[18] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed rule change, as amended, will provide investors with another investment vehicle based on an index of the top ten dividend yielding stocks of the DJIA.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–2003–20 and should be submitted by March 20, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change, as amended, is consistent with the requirements of section 15A of the Act [19] and the rules and regulations thereunder applicable to a national securities association.[20] Specifically, the Commission believes that the proposal is consistent with section 15A(b)(6) of the Act.[21] The Commission believes that the availability of the Notes will provide an instrument for investors to achieve desired investment objectives through the purchase of a publicly-traded debt product linked to the Select Ten Index. These objectives include participating in or gaining exposure to the Index while limiting somewhat downside risk. However, the Commission notes that the Notes are index-linked debt securities whose value in whole or in part will be based upon the performance of the Select Ten Index. In addition, the Notes are non-principal protected: they do not have a minimum prineipal amount that will be repaid, and payments on the Notes at maturity may be less than their original issue price. For the reasons discussed below, the Commission has concluded that the Nasdaq listing standards applicable to the Notes are consistent with the Act.

The Notes are non-convertible and will conform initially to the Nasdaq listing criteria for other securities under Rule 4420(f), and continued listing criterion for other securities pursuant to Rule 4450(c). The specific maturity date will not be established until the time of the offering, but will be not less than one, nor more than ten years from the date of issue. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the Starting Index Value (the value of the Index on the date the issuer prices the Notes for the initial sale to the public) and the Ending Index Value (the value of the Index over a period shortly prior to the expiration of the Notes). The Ending Index Value will be used in calculating the amount investors will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to, or at maturity, may be less than the original issue price of the Notes. During the designated month each year, investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Index at such repurchase date. The Notes are cash-settled in U.S. dollars and may not be called by the issuer.

The Notes are non-leveraged, non-principal protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Select Ten Index. The Notes do not have a minimum principal amount that will be repaid at maturity and the payments on the Notes prior to or at maturity may be less than the original issue price of the Notes.[22] Thus, if the Select Ten Index has declined at maturity, the holder of the Note may receive significantly less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced, based on the performance of the Underlying Index, and because the Notes are instruments that do not guarantee a return of principal, there are several issues regarding the trading of this type of product.

The Commission notes that Nasdaq's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Moreover, the Commission notes that Nasdaq will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The circular should include, among other things, a discussion of the risks that may be associated with the Notes in addition to details on the composition of the Index and how the rates of return will be computed. In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such a transaction. Based on these factors, the Commission finds that the proposal to trade the Notes is consistent with section 15(b)(6) of the Act.[23] The Commission also notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Commission notes that the Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by Nasdaq's listing standards in Rule 4420(f), which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, Nasdaq's "other securities" listing standards further require that the Notes have at least $4 million in market value.[24] In any event, financial information regarding Merrill Lynch, in addition to the information on the Underlying Index, will be publicly available.[25]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[26] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

The Commission also believes that the listing and trading of the Notes should not unduly impact the market for the component securities of the Underlying Index or raise manipulative concerns. The Commission notes that Amex maintains the Select Ten Index and states that it has sole discretion in determining, calculating, and maintaining the Index. The Commission notes that Nasdaq is relying on Amex to calculate continuously and disseminate the Index value every fifteen seconds over the Consolidated Tape Association's Network B. The Commission considers the dissemination of this Index value important to this product's approval and expects Nasdaq to be ultimately responsible for such dissemination.[27] The Commission also notes that Amex could discontinue publication of the Select Ten Index and Amex or another entity could publish a successor or substitute index that the calculation agent,[28] in its sole discretion, could deem a comparable successor index. Also, Amex could discontinue publication of the Select Ten Index and the calculation agent could not select a successor index. In such a case, the calculation agent will compute a substitute value for the Select Ten Index in accordance with the procedures last used to calculate the Select Ten Index before any discontinuance. If Amex discontinues publication of the Select Ten Index before the period during which the Redemption Amount is to be determined and the calculation agent determines that no successor index is available at that time, then on each business day until the earlier to occur of (1) the determination of the Ending Value or (2) a determination by the calculation agent that a successor index is available, the calculation agent will determine the value that would be used in computing the Redemption Amount as if that day were a calculation day. The Commission notes that these risks should be disclosed in the circular that Nasdaq provides to its members.

The Commission also notes that, at the outset, securities in the Select Ten Index will represent approximately an equal percentage of the starting value of the Index, but the Index will only be rebalanced on an annual basis. The Commission notes that the Select Ten Index is composed of stocks with significant market capitalization and average daily trading volume. The portfolio of securities underlying the Index will be rebalanced annually so as to include the ten highest dividend yielding stocks in the DJIA.

In addition, Nasdaq's equity margin rules and debt trading rules will apply to the Notes. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that Nasdaq has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential for manipulation of the Notes is minimal, thereby protecting investors and the public interest. The Commission further notes that the underlying measure on which the Select Ten Index is based (the DJIA), is broad-based and independent of both Nasdaq and the Issuer, factors that the Commission believes should act to minimize the possibility of manipulation.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Nasdaq has requested accelerated approval because this product is similar to several other instruments currently traded on Nasdaq. In determining to grant the accelerated approval for good cause, the Commission notes that it has previously approved the listing of securities and options on securities the performance of which has been linked to or based on an index of the top dividend yielding stocks of the DJIA. Additionally, the Notes will be listed pursuant to existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[29] that the proposed rule change, as amended (SR–NASD–2003–20) is hereby approved on an accelerated basis.

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[17] 15 U.S.C. 78o–3.

[18] 15 U.S.C. 78o–3(b)(6).

[19] 15 U.S.C. 78o–3.

[20] 15 U.S.C. 78o–3(b)(6). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *Id.*

[22] The Commission recognizes that during a designated month each year investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Select Ten Index at such repurchase date.

[23] 15 U.S.C. 78o–3(b)(6).

[24] *See* NASD Rule 4420(f)(1).

[25] The companies that comprise the Select Ten Index are reporting companies under the Act, and the Notes will be registered under section 12 of the Act.

[26] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[27] Nasdaq represents that, in the event that Amex discontinues the publication of the Select Ten Index, Nasdaq will facilitate the calculation and dissemination every 15 seconds of a value of a successor index either through the facilities of Nasdaq or those of an outside provider that is an independent calculation agent (e.g., not Merrill Lynch), unless otherwise approved by the Commission. *See* Amendment No. 1, *supra* n. 3.

[28] The Commission notes that in approving this product any such calculation agent that calculates and disseminates the value of a comparable successor index should be independent of the issuer of the Notes.

[29] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4577 Filed 2–26–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47388; File No. SR–PCX–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Determination of Top 120 and 250 Issues

February 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend PCX Rule 6.37(b)(5), PCX Rule 6.87(b), the PCX Schedule of fees, and RBO 02–08 in order to change the calculation period for determining the top 120 and top 250 issues. The text of the proposed rule change is available for inspection and copying in the Commission's Public Reference Room and at the principal office of the PCX.

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 2 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The PCX requests that the Commission waive the 30-day operative delay. The PCX provided the Commission with notice of its intention to file this proposal on January 9, 2003.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In evaluating the type and quality of issues traded on the Exchange, the Exchange ranks issues based upon the total national volume. A common benchmark that the Exchange uses is called "top 120" and "top 250," indicating that equity option issues falling within these groups would qualify as being among the top 120 or top 250, respectively, of the most actively-traded equity option issues. Because the Exchange relies on the top 120 and top 250 rankings with respect to many of its processes, it believes it needs to define them in such a way as to provide greater accuracy and meaning to the point of reference. Currently, the Exchange defines "top 120" as:

for each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the one month of trading activity that occurred two months prior to the current month.

The Exchange determines the top 250 rankings in the same manner. Accordingly, the current approach would use September's national equity option volumes to determine November's rankings.

The Exchange represents that it has observed that volumes fluctuate from month to month and as a result, an issue may fall out of, or into, the top 120 or top 250 ranking somewhat sporadically. Moreover, the Exchange believes that evaluating the option volumes over a one-month period does not provide great accuracy in determining the long-term performance of an issue and its rank. Accordingly, the Exchange proposes to adopt a trailing three-month average, starting with the most currently completed calendar month, in order to determine the rankings of issues. For example, under the proposed rule change, the Exchange would determine its November ranking in October and base the ranking on the national volumes of the September, August and July trade months. Consistently, it would determine its December ranking in November and base it on the October, September and August national volumes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[5] in general, and furthers the objective of section 6(b)(5),[6] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX represents that it submitted a draft of this filing, including the proposed new rule text, to the Commission on January 9, 2003 in fulfillment of the five-day draft notice period of Rule 19b–4(f)(6).[7] The PCX has further designated that the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designated if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective immediately upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 240.19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6)[10] does not become operative until 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission accelerate the implementation of this proposed rule change so that it may take effect before the 30-day period specified in Rule 19b–4(f)(6)(iii).[11] The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day period and to designate that the proposed rule change has become operative as of January 27, 2003, the date the PCX filed the proposal with the Commission.[12]

At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–01 and should be submitted by March 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4617 Filed 2–26–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *Id.*

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] The Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation for the sole purpose of accelerating the operative date of the proposed rule change. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47378; File No. SR–PCX–2002–20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to a Stay of a Committee Action

February 19, 2003.

I. Introduction

On April 9, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt an interim stay provision in connection with its rules regarding review of committee actions. On December 31, 2002, PCX filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on January 15, 2003.[4] No comment letters were received on the proposal, as amended. This order approves the proposed rule change and Amendment No. 1.

II. Description of the Proposal

The Exchange's Board of Governors delegates certain powers and duties to committees that administer the provisions of the Constitution and the Rules of the Exchange.[5] The rules of the Exchange provide that persons aggrieved by committee decisions (other than disciplinary matters) may seek review of the decisions subject to the procedural prerequisite of PCX Rule 11.7 (Hearing and Review of Committee Action). PCX represents that, while the rule does not expressly provide a right to interim relief from committee decisions, applicants seeking such relief routinely request that the Exchange stay further action pending review. In the absence of an express policy or procedures relating to interim relief, the Exchange has evaluated the merits of stay applications on a case-by-case basis relying upon the guidelines that are used by the Commission in reviewing stay applications of self-regulatory organization actions.[6] As a consequence of the Exchange's *ad hoc* review, the Exchange believes that applicants are either not aware that they have a right to interim relief or they are not familiar with the criteria that they must satisfy to obtain a stay.

The Exchange proposed to set forth the criteria and procedures necessary to request a stay of committee action. The proposed new Exchange rule will set forth four factors that the Exchange will consider when evaluating the merits of a stay application: (1) Whether there is a likelihood that the applicant will prevail on the merits of the appeal; (2) that without a stay, the applicant is likely to suffer irreparable injury; (3) that it is likely there will not be substantial harm to other parties if the stay is granted; and (4) that the issuance of a stay is likely to serve the interests of the Exchange or an identified public interest.[7] The Exchange represents that the applicant must prove each of these factors based solely on the evidence and information presented in the application for a stay.

The proposed new Exchange rule will also clarify the procedures that an applicant must satisfy in seeking a stay. The proposed rule specifies that an applicant must pay a $500 fee in order to request a stay. The fee will be used to cover a portion of Exchange expenses including the allocation of staff time in processing a request for a stay. The proposal also provides that applicants must request a stay by the earlier of ten business days after a committee renders its decision or forty-eight hours before the committee implements action. From time to time, the Exchange represents that it may be required to implement a particular committee decision immediately without leaving sufficient time for an aggrieved party to request a stay of action. According to the Exchange, this situation occurs, for example, when the Exchange must identify a particular Lead Market Maker to trade a new option on the following

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the PCX's original 19b–4 filing in its entirety.

[4] Securities Exchange Act Release No. 47143 (January 8, 2003), 68 FR 2096.

[5] *See* PCX Rule 11.4.

[6] *See* 17 CFR 201.401(d); *see also* Order Preliminarily Considering Whether to Issue Stay *Sua Sponte* and Establishing Guidelines for Seeking Stay Applications, Securities Exchange Act Release No. 33870 (April 7, 1994) ("Commission Order").

[7] The Exchange represents that it relies on the Commission's guidelines in proposing these factors.

business day, or when the Options Floor Trading Committee makes *ad hoc* trading decisions on the trading floor regarding Auto-Ex decisions pursuant to PCX Rule 6.87. In those unique situations, the Exchange notes that the aggrieved party will not have an opportunity to stay the action, but will be able to appeal the committee decision pursuant to PCX Rule 11.7. The Exchange also represents that it will not be required to consider a request for a stay made within the forty-eight hours before a committee implements action.

The proposed new Exchange rule will also provide that the Exchange's Board Appeals Committee may render a decision summarily based solely on the documents submitted in support of, and opposition to, the request for stay. In the event that the Board Appeals Committee denies the request for a stay, the Board Appeals Committee will state the reasons for its denial and state facts that support its decision.[8] The Exchange believes that these procedures will guide applicants through the stay process and will provide the Exchange's Board Appeals Committee with a uniform standard by which to judge the merits of an application for interim relief. The proposed new Exchange rule will not apply to disciplinary matters and will not affect an aggrieved person's underlying right to appeal a committee decision.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[9] Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(5)[10] of the Act in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest. In addition, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act[11] because it provides for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons.

The Exchange proposes to amend Exchange Rule 11.7 to explicitly codify criteria and procedures necessary to request a stay of committee action so that applicants are aware that they have a right to interim relief from committee decisions and to provide applicants with clear guidelines on how to request a stay. The Commission believes that the criteria proposed by the Exchange for evaluating the merits of a stay application, as described above, are similar to criteria that the Commission uses to access requests for stays in connection with petitions seeking review of a Commission order.[12]

The Exchange proposes that applicants must request a stay by the earlier of ten business days after a committee renders its decision or forty-eight hours before the committee implements action. The Commission notes that the Exchange has represented that, at the time of the committee's decision, the applicant will be notified of the date when the committee will implement its action and will therefore be able to assess when he or she would need to file an application to request a stay.[13] In addition, the Exchange represents that it will not be required to consider a request for a stay made within the forty-eight hours before a committee implements action. The Commission recognizes that, under certain circumstances, such as when the Exchange's Options Floor Trading Committee need to make *ad hoc* trading decisions on the trading floor regarding the Exchange's Auto-Ex system, it would be necessary for the committee to take immediate action following a committee decision. In such cases, a request for interim relief from the committee's decision would be impractical. The Exchange has represented, however, that the applicant would have a right to appeal the decision pursuant to Exchange Rule 11.7.

The Exchange's proposal further permits its Board Appeals Committee to render its decision summarily based solely on the documents submitted in support of, and opposition to, the request for stay, and not on the underlying complaint. The Commission notes that the Exchange has represented that its Board Appeals Committee will notify the applicant if his or her request for a stay is denied and will provide the applicant with the grounds for such denial.

Consequently, the Commission believes that the Exchange's proposed criteria to request a stay of a committee action are clear and that they provide objective and uniform guidelines for applicants. The Commission finds that proposed guidelines for requesting a stay are consistent with the Act.

In addition, the Commission believes that requiring all applicants to pay a $500 fee to request a stay of committee action is appropriate because it covers the expense for the Exchange to process the applicant's application, and because it applies to all applicants uniformly regardless of whether the request for a stay is accepted or denied.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with sections 6(b)(5)[14] and 6(b)(4).[15]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PCX–2002–20) and Amendment No. 1 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4618 Filed 2–26–03; 8:45 am]

BILLING CODE 8010–01–P

[8] The Exchange represents that the Board Appeals Committee will notify the applicant of its denial of a request for a stay, as well as the reasons for its denial. Telephone conversation between Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, and Sapna C. Patel, Attorney, Division of Market Regulation ("Division"), Commission, on January 8, 2003.

[9] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

[12] See Section 25(c)(2) of the Act, 15 U.S.C. 78y(c)(2), and the Commission's Rules of Practice Rule 401, 17 CFR 201.401(d); *see also* Commission Order, *supra* note 6.

[13] Telephone conversation between Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, and Sapna C. Patel, Attorney, Division, Commission, on February 19, 2003.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47389; File No. SR–PHLX–2002–34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a Seat Transaction Policy and Add Supplementary Material to PHLX Rule 708

February 21, 2003.

On June 21, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a Seat Transaction Policy for Governors, Committee Members and Associated Members Organizations ("Seat Transaction Policy" or the "Policy") and in addition, the Exchange proposes to amend Phlx Rule 708: *Acts Detrimental to the Interest and Welfare of the Exchange.* On December 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On December 27, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4]

The proposed rule change was published for comment in the **Federal Register** on January 10, 2003.[5] The Commission received no comments on the proposed rule change.

The Commission has carefully reviewed the Phlx's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[6] and with the provisions of Section 6(b) of the Act.[7] In particular, the Commission finds the proposal is consistent with Sections 6(b)(5),[8] in that it is designed to prevent fraudulent and manipulative acts and practices and with Section 6(b)(6),[9] in that it is designed to appropriately discipline members for violation of the rules of the Exchange.

The Commission notes that the Exchange adopted the Policy to establish procedures to govern the purchase or sale of a Phlx membership, foreign currency option ("FCO") participation, or Philadelphia Board of Trade ("PBOT) membership, (each an "Exchange Seat" or a Seat") by a Governance Member or Member Organization ("Covered Person").[10] The Policy generally restricts a Covered Person who is in possession of Material Confidential Information [11] of the Exchange to engage in purchases or sales of Exchange Seats, except in accordance with the procedures set forth in the Policy.[12] At the time the Policy was adopted, the Phlx recognized that Covered Persons may be subject to conflicting duties whenever they engage in a transactions to purchase or sell an Exchange Seat. The Phlx was concerned that, as a result of a Covered Person's position on the Board or on an Exchange Committee, that Person may learn Material Confidential Information regarding the Exchange that may affect the value of all Exchange Seats, or the value of particular Exchange Seats. The Commission believes that adopting the Exchange's Policy will enable the Exchange to resolve the tension between a Covered Person's legitimate business needs to purchase or sell Exchange Seats from time to time and the Exchange's legitimate business interest in preventing disclosure of Material Confidential Information to anyone involved in a Seat Transaction.

In addition, the Phlx has adopted an amendment to Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange*, which provides notice and makes clear to Covered Persons that any violation of the Policy constitutes an act detrimental to the Exchange, and therefore is a violation of Phlx Rule 708.

The Commission believes that adopting the proposed amendments would accommodate both of these interests by allowing a Special Committee to review the facts surrounding a seat transaction and, if necessary, to impose conditions on the seat transaction in order to prevent or limit disclosure of Material Confidential Information of the Exchange to third parties.

The Commission believes that the Policy as specified in the Governance Members Code of Conduct, and Phlx Rule 708, as amended, should discourage fraudulent and manipulative acts and practices in connection with the purchase and sale of Exchange Seats by Covered Persons, who owe a fiduciary duty to the Exchange and its Members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[13] that the proposed rule change (SR–Phlx–2002–34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret McFarland,

Deputy Secretary.

[FR Doc. 03–4616 Filed 2–26–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 13, 2002 ("Amendment No. 1").

[4] See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division, Commission, dated December 27, 2002 ("Amendment No. 2").

[5] See Securities Exchange Act Release No. 47118 (January 2, 2003), 68 FR 1500 (January 10, 2003).

[6] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition and capital formation, 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(6).

[10] A Covered Person includes: Exchange Governors, Committee Members and Member Firms for which such Governor is an officer or director, who own or lease an Exchange Seat to conduct business on the Exchange.

[11] Material Confidential Information is confidential and proprietary to the Exchange and may not, under the Governance Members Code of Conduct, Exchange policy, and applicable law, be disclosed or used for person gain when purchasing or selling a seat.

[12] Neither the Policy nor the proposed amendment to Phlx Rule 708 would apply to Exchange members other than Governors, Committee Members and their associated Member Organizations.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4266]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, March 12, 2003 in Room 6103 of the U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the Eighth Session of International Maritime Organization (IMO) the Sub-Committee on Bulk Liquids and Gases to be held at the IMO Headquarters in London, England from March 24, 2003 to March 28, 2003.

The primary matters to be considered include:

—Matters related to the probabilistic methodology for oil outflow analysis
—Review of Annex I of International Convention for the Prevention of Pollution From Ships (MARPOL 73/78)
—Review of Annex II of MARPOL 73/78
—Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments
—Amendments to requirements on electrical installations in the

International Bulk Chemical (IBC) and the International Gas Carrier (IGC) Codes
—Application of MARPOL requirements to Floating Production, Storage and Offloading/Floating Storage Units (FPSOs and FSUs)
—Requirements for personnel protection involved in the transportation of cargoes containing toxic substances in all types of tankers
—Oil tagging systems
—Revision of the fire protection requirements of the IBC and IGC Codes
—Ship recycling-related matters

Members of the public may attend this meeting up to the seating capacity of the room. For further information, please contact Commander J. M. Michalowski, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1217.

Dated: February 20, 2003.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–4613 Filed 2–26–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4265]

Shipping Coordinating Committee Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 2 p.m. on Monday, March 31, 2003, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC, 20593–0001. The primary purpose of the meeting is to prepare for the 11th Session of the International Maritime Organization (IMO) Sub-Committee on Flag State Implementation to be held at IMO Headquarters in London, England from April 7th to 11th.

The primary matters to be considered include:

—Responsibilities of Governments and measures to encourage flag State compliance;
—Self-assessment of flag State performance;
—Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;
—Regional cooperation on port State control;
—Reporting procedures on port State control detentions and analysis and evaluation of reports;
—Mandatory reports under MARPOL 73/78;
—Casualty statistics and investigations;
—Development of provisions on transfer of class;
—Review of resolution A.746(18);
—Illegal, unregulated and unreported (IUU) fishing and implementation of resolution A.925(22);
—Development of guidelines under the 2001 AFS Convention;
—Ship recycling-related matters;
—Introduction of the HSSC into MARPOL Annex VI on prevention of air pollution.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Commander Linda Fagan, Commandant (G–MOC), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1116, Washington, DC 20593–0001 or by calling (202) 267–2978.

Dated: February 20, 2003.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–4614 Filed 2–26–03; 8:45 am]

BILLING CODE 4710–01–P

DEPARTMENT OF STATE

[Public Notice 4226]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Wednesday, April 23, 2003 in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to prepare for the eighty-sixth session of the International Maritime Organization's (IMO) Legal Committee (LEG 86) scheduled from April 28 to May 2, 2003.

The provisional LEG 86 agenda calls for the Legal Committee to review proposed amendments to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol). The Committee will also examine the draft Wreck Removal Convention with the objective of having the draft ready for a Diplomatic Conference in the 2004–5 biennium. In addition, the Legal Committee will monitor the implementation of the International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances by Sea. The provisional LEG 86 agenda also indicates that documents relating to the topic of places of refuge, treatment of persons rescued at sea, and the code of practice for the investigation of crimes of piracy and armed robbery at sea may be submitted for the Legal Committee's consideration. Additionally, the provisional LEG 86 agenda allots time to address any other issues that may arise on the Legal Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an option. For further information please contact Captain Joseph F. Ahern or Lieutenant Vasilios Tasikas, at U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *vtasikas@comdt.uscg.mil*, telephone (202) 267–1527; fax (202) 267–4496.

Dated: January 31, 2003.

Frederick J. Kenney,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–4615 Filed 2–26–03; 8:45 am]

BILLING CODE 4710–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Piedmont Triad International Airport, Greensboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Piedmont Triad Airport Authority to waive the requirement that a 169.20-acre parcel of surplus property, located at the Piedmont Triad International Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before March 31, 2003.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Tracie D. Kleine, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mickie L. Elmore, Director of Development of the Piedmont Triad Airport Authority at the following address: Post Office Box 35445, Greensboro, NC 27425.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Piedmont Triad Airport Authority to release 169.20 acres of surplus property at the Piedmont Triad International Airport. This fee simple title transfer of land to the North Carolina Department of Transportation (NCDOT) is for the purpose of providing Right-of-Way (ROW) for the relocation of a portion of Bryan Boulevard. Bryan Boulevard will be a multi-lane, limited access highway that will provide improved access to and from the airport and is required as part of the overall GSO master plan development. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Piedmont Triad Airport Authority.

Issued in Atlanta, Georgia, on December 26, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 03–4646 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Traffic Airports; Notice of Slot Usage Waiver

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of temporary slot usage waiver at high density traffic airports.

SUMMARY: This notice announces a five-day waiver of the minimum slot usage requirement at New York's John F. Kennedy and LaGuardia Airports and Washington's Reagan National Airport for the period February 15, 2003 through February 19, 2003, due to extended airport closures and the operational recovery from a major snow storm impacting much of the northeastern United States.

DATE: February 27, 2003.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3073.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2003, a major winter storm including snow and freezing rain began to impact operations at many airports in the eastern part of the United States, including the three high density traffic airports. This storm moved up the East Coast bringing significant snowfalls and resulted in airport closures or reduced airport capacity through Monday, February 17, 2003. On Tuesday, February 18, 2003, the airport authorities reopened all three high density airports and regular operations were resumed and on Wednesday, February 19, 2003, air traffic activity approached normal levels. However, on these two days, some airlines were unable to operate scheduled flights since aircraft or crews were not in position to operate the flights as scheduled.

Statement of Policy

The regulations governing slots and slot allocation provide that any slot not utilized at least 80 percent of the time over a 2-month period shall be recalled by the Federal Aviation Administration (FAA) (14 CFR 93.277(a)). Additionally, paragraph (j) of that section provides that the Chief Counsel may waive the slot usage requirement in the event of a highly unusual and unpredictable conditions that is beyond the control of the slot holder and exits for nine days or more (14 CFR 93.227(j)). These two provisions are also applicable to slot exemptions.

The FAA has determined the conditions described above warrant a temporary waiver of the minimum slot usage requirement for the period of February 15, 2003, through February 19, 2003, even though the conditions did not exceed eight days. Therefore, the FAA will treat as used any slot that was scheduled to operate during the period of the waiver regardless of whether the flight actually was operated. In the bi-monthly slot usage reports required by 14 CFR 93.227(i), slot holders/operators should indicate whether a flight was scheduled to operate in an allocated slot and whether the flight actually operated. Canceled flights should not be listed as operated unless they did in fact operate. Carrier may indicate that a flight was scheduled to operate in a particular slot, but was subsequently canceled during this period, by using the "Z" code that is normally applied to flights canceled due to airport deicing programs.

Alternatively, carriers may list impacted slots/flights in a separate report. The FAA will then apply the usage waiver as appropriate to slots meeting the conditions.

Issued on February 20, 2003, in Washington, DC.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 03–4644 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In January 2003, there were 15 applications approved. Additionally, 15 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Joplin, Missouri.

Application Number: 02–01–C–00–JLN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $889,663.

Earliest Charge Effective Date: April 1, 2003.

Estimated Charge Expiration Date: July 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Purchase new aircraft rescue and firefighting vehicle.

Purchase and install new runway and taxiway signage.

Site preparation of runway 18/36 extension and parallel taxiway (phase 1).
Site preparation of runway 18/36 extension and parallel taxiway (phase 2).
Pave, mark, and light runway 18 extension.
Partial parallel taxiway and connecting taxiways to runway 18.
Install deer fence.
Purchase medium intensity approach lighting system with runway alignment indicator lights.
Purchase handicap lift.
Install runway 18 navigational aids.
Construct taxiway K.
Construct apron extension.
Construct airport access roadway.
Runway 13/31 safety area improvements.
Airport signage/lighting enhancements.
New passenger terminal building: Environmental assessment.
New passenger terminal building: Phase 1 (design).

Decision Date: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: Monroe County Board of County Commissioners, Key West, Florida.

Application Number: 02–06–C–00–EYW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $263,000.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: January 1, 2004.

Class of Air Carriers Not Required to Collect PFC's:

Commuters or small certificated air carriers filing Department of Transportation Form 298–C T1 or E1.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Key West International Airport.

Brief Description of Projects Approved for Collection and Use:

PFC application and administration.
Master utility plan.
Noise insulation program construction.
Noise insulation program (phase 3) architecture and engineering.
Security.
Runway safety area/runway 9/27 extension feasibility study.
West general aviation apron lighting.
Airfield guidance signs.
Runway 9/27 drainage design and construction.
Part 150 update.

Decision Date: January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331, extension 20.

Public Agency: Savannah Airport Commission, Savannah, Georgia.

Application Number: 02–05–C–00–SAV.

Application Type: Impose and use of PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $3,015,790.

Earliest Charge Effective Date: July 1, 2012.

Estimated Charge Expiration Date: May 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Savannah International Airport.

Brief Description of Projects Approved for Collection and Use:

Precision approach path indicators runways 9 and 36.
Interactive training system.
Fingerprint machine.
(Construct taxiway) new ammunition bunker.
Baggage lifts.
PFC administration and implementation.
Purchase and renovate loading bridges.
Flight information display system.
South bag carousel #1.
Design and construct general aviation taxiways.

Decision Date: January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Philip Cannon, Atlanta Airports District Office, (404) 305–7152.

Public Agency: City of Pensacola, Florida.

Application Number: 03–06–U–00–PNS.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to be Used in this Decision: $12,300,000.

Charge Effective Date: June 1, 1999.

Estimated Charge Expiration Date: June 1, 2009.

Class of Air Carriers Not Required to Collect PFC's: No change from previous approval.

Brief Description of Project Approved for Use: Runway 8/26 extension.

Decision Date: January 15, 2003.

FOR FURTHER INFORMATION CONTACT: Bill Farris, Orlando Airports District Office, (407) 812–6331, extension 25.

Public Agency: Port of Bellingham, Bellingham, Washington.

Application Number: 02–06–U–00–BLI.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to be Used in this Decision: $1,200,000.

Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: January 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: No change from previous approval.

Brief Description of Project Approved for Use: Terminal rehabilitation and expansion.

Decision Date: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: St. Joseph County Airport Authority, South Bend, Indiana.

Application Number: 03–03–C–00–SBN.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $23,898,229.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: January 1, 2023.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi operators operating with less than 15 seats.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at South Bend Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Land acquisition.
Lincolnway West Relocation.

Decision Date: January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Gregory N. Sweeny, Chicago Airports District Office, (847) 294–7526.

Public Agency: Raleigh-Durham Airport Authority, Raleigh-Durham, North Carolina.

Application Number: 03–01–C–00–RDU

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $69,903,473.

Earliest Charge Effective Date: April 1, 2003.

Estimated Charge Expiration Date: September 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled/on-demand air carriers.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Raleigh-Durham Airport.

Brief Description of Projects Approved for Collection and Use:

Surface movement guidance and control system plan and improvements.
Taxiway J and International Drive bridge.
Runway 5R/23L safety areas extension.
Preparation of PFC application.
Relocate taxiway D/expand terminal C apron.

Brief Description of Project Approved for Collection: Runway 5R/23L safety area extension.

Decision Date: January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Atlanta Airports District Office, (404) 305–7148.

Public Agency: Melbourne Airport Authority, Melbourne, Florida.

Application Number: 03–06–C–00–MLB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $8,563,500.

Earliest Charge Effective Date: October 1, 2003.

Estimated Charge Expiration Date: June 1, 2018.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operator.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Melbourne International Airport.

Brief Description of Project Approved for Collection and Use: Terminal development.

Decision Date: January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Armando L. Rovira, Orlando Airports District Office, (407) 812–6331, extension 31.

Public Agency: City of Monroe, Louisiana.

Application Number: 03–01–C–00–MLU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,134,672.

Earliest Charge Effective Date: April 1, 2003.

Estimated Charge Expiration Date: February 1, 2006.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial carriers operating under Part 135 and filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Monroe Regional Airport.

Brief Description of Projects Approved for Collection and Use: Aircraft loading equipment improvements. Rehabilitate airfield lighting. PFC application professional fees.

Decision Date: January 23, 2003.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Imperial County, Imperial, California.

Application Number: 03–01–C–00–IPL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $892,781.

Earliest Charge Effective Date: April 1, 2003.

Estimated Charge Expiration Date: April 1, 2012.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate runway 14/31.
Rehabilitate runway 8/26.
Rehabilitate and construct aprons.
Rehabilitate access road and public parking areas.
Update airport master plan.
Rehabilitate passenger terminal building.
Rehabilitate aircraft rescue and firefighting vehicle.
Acquire airport sweeper.
Acquire Americans with Disabilities Act passenger lift device.
Install gate actuators.
Airport maintenance building.
Airport drainage and erosion protection.

Decision Date: January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Eric Vermeeren, Western Pacific Region Airports Division, (310) 725–3631.

Public Agency: Metropolitan Airports Commission, Minneapolis, Minnesota.

Application Number: 02–06–C–00–MSP.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,161,478,610.

Earliest Charge Effective Date: April 1, 2003.

Estimated Charge Expiration Date: January 1, 2017.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Minneapolis-St. Paul International Airport.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Airside bituminous construction—2001.
Taxiways A/H reconstruction.
Green/Gold connector bag belt.
Green/Gold connector ticket counter/bag check.

Brief Description of Projects Partially Approved for Collection and Use at a $3.00 PFC Level: Runway 4/22 property acquisition.

Determination: The public agency revised its cost estimate for the project downward after the airline consultation meeting and submission of the PFC application.

Pavement rehabilitation—aprons/taxiways.

Determination: The public agency discovered, after submitting the application, that one element of the proposed project had been included in a previous PFC application and, so, deleted that element.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Runway 12L deicing pad.
Runway 12R deicing pad.
Buildings demolition.
Taxiway B construction.
Runway 17/35 site preparation and utility installation.
Runway 17/35 site demolition on and off airport.
Runway 17/35 runways, taxiways, taxilanes, and connectors.
Runway 17/35 airfield service roads.
Runways 17/35 and 4/22 tunnels.
Taxiways W–Y/Y–3 tunnels.
Tenant lease extinguishment.
Deicing agent processing facility.
Airfield material and equipment storage facilities.
Property acquisition.
Program planning/management costs.
Residential noise insulation.
Green concourse (concourse C) expansion—phase 1.
Green concourse (concourse C) expansion—phase 2.
Green concourse apron expansion.
Green/gold connector.
Green concourse automated people mover.

Humphrey Terminal hydrant fueling system.

Brief Description of Project Approved for Collection at a $4.50 PFC Level: Fire/rescue replacement facility.

Brief Description of Disapproved Projects: Runway 12R/30L temporary extension.

Determination: This project does not meet Airport Improvement Program (AIP) eligibility criteria for temporary construction, paragraph 310(e)(2) of FAA Order 5100.38B, AIP Handbook, (May 31, 2002), because it is not required to maintain uninterrupted operation of the airport.

Miscellaneous airfield construction.

Determination: The project description identifies unspecified small incidental airside projects of a maintenance nature. Maintenance work at primary airports is specifically identified as being not AIP eligible per paragraph 501 of FAA Order 5100.38B, AIP Handbook, (May 31, 2002).

Maintenance facility addition—2000.

Determination: This project does not meet AIP eligibility criteria because it does not involve the storage of eligible equipment or abrasives and chemicals used in the treatment of eligible paved areas per paragraph 547(c) of FAA Order 5100.38B, AIP Handbook (May 31, 2002).

Brief Description of Withdrawn Projects:

Concourse F expansion.

Date of Withdrawal: December 20, 2002. Security fence/gate replacements.

Date of Withdrawal: January 16, 2003.

Decision Date: January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 713–4358.

Public Agency: Missoula County Airport Authority, Missoula, Montana.

Application Number: 03–04–C–00–MSO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $832,464.

Earliest Charge Effective Date: February 1, 2004.

Estimated Charge Expiration Date: April 1, 2006.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Missoula International Airport.

Brief Description of Project Approved for Collection and Use: Rehabilitate air carrier apron (phase 2).

Decision Date: January 24, 2003.

FOR FURTHER INFORMATION CONTACT: David S. Stelling, Helena Airports District Office, (406) 449–5271.

Public Agency: Port of Pasco, Pasco, Washington.

Application Number: 02–05–C–00–PSC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,409,000.

Earliest Charge Effective Date: April 1, 2004.

Estimated Charge Expiration Date: February 1, 2006.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Security enhancement plan.
Terminal building passenger boarding area upgrades.
Security enhancements.
Interactive training systems.
Security fencing.

Decision Date: January 24, 2003.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Central West Virginia Regional Airport Authority, Charleston, West Virginia.

Application Number: 03–08–C–00–CRW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,834,117.

Earliest Charge Effective Date: April 1, 2003.

Estimated Charge Expiration Date: February 1, 2006.

Classes of Air Carriers Not Required to Collect PFC's:

(1) Part 135 charter operators for hire to the general public; (2) Part 121 charter operators for hire to the general public; (3) non-signatory and non-scheduled air carriers.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Yeager Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 5/23 engineering study.
Obstruction removal.
Taxiway B drain repair.
Strengthen taxiways B and B1 and apron.
Acquire snow equipment (rdio/friction meter).
Acquire snow removal equipment (end loader).
Acquire security vehicle.
Rehabilitate airport lighting.
Rehabilitate runway 5/23.
Acquire snow removal equipment (grader).
Construct snow equipment storage building.
Acquire airline baggage lift system.
Conduct wildlife study.
Install apron signs.
Rehabilitate runway 15/33.
Replace lighting regulators.
Repair runway 5/23.
Upgrade runway scan system.

Brief Description of Project Approved for Use: Paging system.

Brief Description of Project Disapproved for Collection: Safety area improvement runway 5 approach.

Determination: In accordance with § 158.25(b)(14)(ii), an application for authority to impose a PFC shall include a description of any alternative uses of the PFC revenue to ensure such revenue will be used only on eligible projects in the event the primary project is not approved for use authority or implemented. No alternative projects were provided in this application.

Decision Date: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Larry F. Clark, Beckley Airports Field Office, (304) 252–6212.

Public Agency: Gulfport-Biloxi Regional Airport Authority, Gulfport, Mississippi.

Application Number: 03–06–C–00–GPT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $14,251,901.

Earliest Charge Effective Date: June 1, 2005.

Estimated Charge Expiration Date: September 1, 2012.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Terminal expansion—baggage claim area.
Terminal expansion—baggage screening area.
Terminal expansion—security screening checkpoint.
Terminal expansion—flight information display/baggage information display systems.
Terminal expansion baggage claim phase II and second floor.

Brief Description of Disapproved Project: Airline security reimbursement.

Determination: The project was for costs incurred by the airlines, not the public agency, and, thus, was not AIP or PFC eligible.

Decision Date: January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick D. Vaught, Jackson Airports District Office, (601) 664–9885.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–01–C–01–BHM, Birmingham, AL	12/18/02	$7,657,558	$7,438,100	02/01/00	02/01/00
99–02–C–01–BHM, Birmingham, AL	12/23/02	10,736,857	9,539,381	02/01/01	10/01/00
01–14–C–01–CHO, Charlottesville, VA	01/03/03	4,480,518	4,609,392	01/01/05	03/01/06
93–01–C–13–ORD, Chicago, IL	01/23/03	1,228,917,970	1,148,517,970	02/01/17	07/01/16
96–05–C–07–ORD, Chicago, IL	01/23/03	467,714,130	467,714,130	02/01/17	07/01/16
01–12–C–04–ORD, Chicago, IL	01/23/03	972,627,790	1,072,879,304	07/01/16	04/01/17
92–01–C–05–HPN, White Plains, NY	01/23/03	17,932,607	17,252,918	05/01/04	05/01/04
*00–04–C–01–BUR, Burbank, CA	01/24/03	73,699,087	73,699,087	08/01/13	01/01/08
96–02–C–03–JAX, Jacksonville, FL	01/24/03	18,503,092	19,042,209	06/01/99	06/01/99
97–03–U–01–JAX, Jacksonville, FL	01/24/03	NA	NA	06/01/99	06/01/99
99–04–C–01–JAX, Jacksonville, FL	01/24/03	5,010,000	5,140,741	01/01/00	01/01/00
00–05–C–01–JAX, Jacksonville, FL	01/24/03	13,081,065	3,814,930	02/01/02	02/01/02
98–07–I–05–PHL, Philadelphia, PA	01/24/03	986,693,869	999,267,790	12/01/12	02/01/13
99–08–U–04–PHL, Philadelphia, PA	01/24/03	NA	NA	12/01/12	02/01/13
99–02–C–01–UNV, State College, PA	01/24/03	1,448,605	1,597,102	10/01/04	10/01/04

(**Note:** The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Burbank, CA, this change is effective on April 1, 2003.

Issued in Washington, DC on February 21, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–4643] Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–115–04]

Exit Bands

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on colored exit bands required by § 25.811(f)(1) and (2).

DATES: Send your comments on or before March 31, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1149; e-mail: *michael.t.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT,** Mark your comments, "Comments to Policy Statement No. ANM–03–115–04."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy will further simplify the certification process pertaining to installation of the required 2-inch colored band outlining the exits on transport category airplanes. These bands are necessary so that rescue personnel can readily recognize exits in the side of the fuselage.

Issued in Renton, Washington, on February 13, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4645 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–14467; Notice 1]

Michelin North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (MNA) has determined that approximately 504 size P225/55R17 BFGoodrich Comp T/A VR4 tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), MNA has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 109 (S4.3(e)) requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different.

The noncompliance with S4.3(e) relates to the sidewall markings. MNA's Ardmore, Oklahoma plant produced approximately 504 tires with incorrect markings during the period from October 3, 2002, through October 5, 2002. The noncompliant tires were marked: "Tread Plies: 1 Polyester + 2 Steel + 1 Nylon, Sidewall Plies: 1 Polyester." The correct marking required by FMVSS No. 109 is as follows: "Tread Plies: 2 Polyester + 2 Steel + 1 Nylon, Sidewall Plies: 2 Polyester."

MNA stated that the noncompliant tires were actually constructed with more polyester sidewall plies than indicated on the sidewall marking (2 polyester plies rather than the 1 indicated). Therefore, this noncompliance is particularly unlikely to have an adverse affect on motor vehicle safety and is clearly inconsequential in that regard. The noncompliant tires meet or exceed all performance requirements of FMVSS No. 109 and will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. *Comment closing date:* March 31, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 20, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–4637 Filed 2–26–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Termination of Two Collections

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of termination of reporting requirements; instructions.

SUMMARY: By this notice, the Department of the Treasury is informing the public that it will eliminate the following two forms: (1) Treasury International Capital Form BL–3 (OMB control number 1505–0088), Intermediary's Notification of Foreign Borrowing Denominated in Dollars, after respondents submit their final BL–3 reports as of end-January 2003; and (2) Treasury International Capital Form CM (OMB control number 1505–0023), Dollar Deposit and Certificate of Deposit Claims on Banks Abroad, after respondents submit their final CM reports as of end-January 2003. Upcoming revisions to other Treasury International Capital forms obviate the need to continue these two forms. This notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements for the two forms.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 4410–1440NYA, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by email (*dwight.wolkow@do.treas.gov*), FAX (202–622–1207) or telephone (202–622–1276).

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a state, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

What to Do: Respondents should (a) cease filing new BL–3 and CM reports after submitting their BL–3 and CM reports as of end-January 2003; and (b) maintain their records of BL–3 and CM reports until March 31, 2006. Those requirements are based on respondents' obligations: (i) To respond to inquiries from Federal Reserve Bank staffs about submitted reports (*see* Instructions for TIC Banking Forms, general instructions section, part L; and Instructions for TIC Nonbanking Forms, general instructions section, part R); and (ii) to maintain records of their BL–3 and CM reports for three years after submitting them to the appropriate Federal Reserve Banks (31 CFR part 128.5).

Questions: Direct any questions to the TIC reports staff of the Federal Reserve Bank(s) to which your BL–3 and CM reports are sent; or to Mr. Wolkow.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 03–4575 Filed 2–26–03; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Thursday,
February 27, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation or Nondesignation of Critical Habitat for 95 Plant Species From the Islands of Kauai and Niihau, HI; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG71

Endangered and Threatened Wildlife and Plants; Final Designation or Nondesignation of Critical Habitat for 95 Plant Species From the Islands of Kauai and Niihau, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for 83 of the 95 species known historically from the Hawaiian islands of Kauai and Niihau. A total of approximately 21,266 hectares (ha) (52,549 acres (ac)) of land on the island of Kauai and 144 ha (357 ac) of land on the island of Niihau fall within the boundaries of the 217 critical habitat units designated for the 83 species. This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. This rule also determines that designating critical habitat would not be prudent for seven species. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on March 31, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12); there are 95 plant species that, at the time of listing, were reported from the islands of Kauai and/or Niihau (Table 1). Fifty-seven of these species are endemic to the islands of Kauai and Niihau, while 38 species are reported from one or more other islands, as well as Kauai and/or Niihau. Each of these species is described in more detail below in the section, "Discussion of Plant Taxa." Although we considered designating critical habitat on Kauai for each of the 95 plant species, for the reasons described below, the final designation includes critical habitat for 83 of 95 plant species. Species that also occur on other islands may have critical habitat designated on other islands in subsequent rulemakings.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe, Niihau
Acaena exigua (liliwai)	H				H		
Achyranthes mutica (NCN*)	H					C	
Adenophorus periens (pendent kihi fern)	C	H	C	R	R	C	
Alectryon macrococcus (mahoe)	C	C	C		C		
Alsinidendron lychnoides (kuawawaenohu)	C						
Alsinidendron viscosum (NCN)	C						
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia insignis (olulu)	C						Ni (C)
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Chamaesyce halemanui (NCN)	C						
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea asarifolia (haha)	C						
Cyanea recta (haha)	C						
Cyanea remyi (haha)	C						
Cyanea undulata (NCN)	C						
Cyperus trachysanthos (puukaa)	C	C	H	H			Ni (C)
Cyrtandra cyaneoides (mapele)	C						
Cyrtandra limahuliensis (haiwale)	C						
Delissea rhytidosperma (NCN)	C						
Delissea rivularis (oha)	C						
Delissea undulatra (NCN)	C				H	C	Ni (H)
Diellia erecta (NCN)	C	C	C	H	C	C	
Diellia pallida (NCN)	C						
Diplazium molokaiense (NCN)	H	H	H	H	C		
Dubautia latifolia (koholapehu)	C						
Dubautia pauciflorula (naenae)	C						
Euphorbia haeleeleana (akoko)	C	C					
Exocarpos luteolus (heau)	C						
Flueggea neowawraea (mehamehame)	C	C	H		C	C	
Gouania meyenii (NCN)	C	C					
Hedyotis cookiana (awiwi)	C	H	H			H	
Hedyotis st.-johnii (Na Pali beach hedyotis)	C						
Hesperomannia lydgatei (NCN)	C						
Hibiscadelphus woodii (hau kuahiwi)	C						
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R)

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 95 SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe, Niihau
Hibiscus clayi (Clay's hibiscus)	C						
Hibiscus waimeae ssp. *hannerae* (kokio keokeo)	C						
Ischaemum byrone (Hilo ischaemum)	C	H	C		C	C	
Isodendrion laurifolium (aupaka)	C	C					
Isodendrion longifolium (aupaka)	C	C					
Isodendrion pyrifolium (wahine noho kula)		H	H	H	H	C	Ni (H)
Kokia kauaiensis (kokio)	C						
Labordia lydgatei (kamakahala)	C						
Labordia tinifolia var. *wahiawaensis* (kamakahala)	C						
Lipochaeta fauriei (nehe)	C						
Lipochaeta micrantha (nehe)	C						
Lipochaeta waimeaensis (nehe)	C						
Lobelia niihauensis	C	C					Ni (H)
Lysimachia filifolia (NCN)	C	C					
Mariscus pennatiformis (NCN)	H	H			C	H	NW (C)
Melicope haupuensis (alani)	C						
Melicope knudsenii (alani)	C				C		
Melicope pallida (alani)	C	C					
Melicope quadrangularis (alani)	H						
Munroidendron racemosum (NCN)	C						
Myrsine linearifolia (kolea)	C						
Nothocestrum peltatum (aiea)	C						
Panicum niihauense (lau ehu)	C						Ni (H)
Peucedanum sandwicense (makou)	C	C	C		C		
Phlegmariurus mannii (wawaeiole)	H				C	C	
Phlegmariurus nutans (wawaeiole)	H	C					
Phyllostegia knudsenii (NCN)	C						
Phyllostegia waimeae (NCN)	C						
Phyllostegia wawrana (NCN)	C						
Plantago princeps (laukahi kuaj)	C	C	C		C	H	
Platanthera holochila (NCN)	C	H	C		C		
Poa mannii (Mann's bluegrass)	C						
Poa sandvicensis (Hawaiian bluegrass)	C						
Poa siphonoglossa (NCN)	C						
Pritchardia aylmer-robinsonii (wahane)							Ni (C)
Pritchardia napaliensis (loulu)	C						
Pritchardia viscosa loulu	C						
Pteralyxia kauaiensis (kaulu)	C						
Remya kauaiensis (NCN)	C						
Remya montgomeryi (NCN)	C						
Schiedea apokremnos (maolioli)	C						
Schiedea helleri (NCN)	C						
Schiedea kauaiensis (NCN)	C						
Schiedea membranacea (NCN)	C						
Schiedea nuttallii (NCN)	C	C	C		R		
Schiedea spergulina var. *leiopoda* (NCN)	C						
Schiedea spergulina var. *spergulina* (NCN)	C						
Schiedea stellarioides (NCN)	C						
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C)
Silene lanceolata (NCN)	H	C	C	H		C	
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Solanum sandwicense (aiakeakua, popolo)	C	H					
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Stenogyne campanulata (NCN)	C						
Vigna o-wahuensis (NCN)		H	C	C	C	C	Ni (H), Ka, (C)
Viola helenae (NCN)	C						
Viola kauaiensis var. *wahiawaensis* (nani waialeale)	C						
Wilkesia hobdyi (dwarf iliau)	C						
Xylosma crenatum (NCN)	C						
Zanthoxylum hawaiiense (ae)	C		C	H	C	C	

KEY
C (Current)—population last observed within the past 30 years
H (Historical)—population not seen for more than 30 years
R (Reported)—reported from undocumented observations
*NCN—No Common Name

The Islands of Kauai and Niihau

Because of its age and relative isolation, Kauai has levels of floristic diversity and endemism that are higher than on any other island in the Hawaiian archipelago. However, the vegetation on Kauai has undergone extreme alterations because of past and present land use. Land with rich soils was altered by the early Hawaiians and, more recently, converted to agricultural use or pasture. Intentional or inadvertent introduction of nonnative plant and animal species has also contributed to the reduction of native vegetation on the island of Kauai. Native forests are now limited to the upper elevation mesic (moist) and wet regions within Kauai's Conservation District. The land that supports the habitat essential to the conservation of the 83 plant taxa is owned by various private parties, the State of Hawaii (including State parks, forest reserves, natural area reserves, and a wilderness area), and the Federal government. Most of the taxa included in this final rule persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented agricultural development, or where inaccessibility has limited encroachment by nonnative plant and animal species (Gagne and Cuddihy 1999).

Niihau's relative isolation and severe environmental conditions have produced a few endemic species. Unfortunately, human disturbance, primarily ungulate ranching, has drastically changed the vegetation and hydrological parameters of the island, leaving few of the native vegetation communities. Niihau has been privately owned since 1864 and access has been, and continues to be, restricted (Department of Geography 1998). Therefore, current information on plant locations and population status is extremely limited.

Discussion of Plant Taxa

Species Endemic to Kauai and Niihau

Alsinidendron lychnoides (kuawawaenohu)

Alsinidendron lychnoides, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling subshrub, woody at the base, with a dense covering of fine glandular hairs throughout. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals (modified leaves), number of flowers per cluster, and size of the leaves. It is closely related to *A. viscosum*, which differs primarily by having narrower leaves, fewer capsule valves (fruit chambers), and fewer flowers per cluster (Wagner *et al.* 1999).

This species has been observed with fruits during February. No additional life history information for this species is currently known (Service 1998a).

Historically, *Alsinidendron lychnoides* was found on the island of Kauai on the east rim of Kalalau Valley near Keanapuka, the western and southeastern margins of the Alakai Swamp, and southwest of the Swamp near Kaholuamano. Currently, there are four occurrences with a total of eight individual plants. This species is extant on State-owned land in the Alakai Swamp, the MohihiWaialae Trail, Keanapuka and Pihea in the Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (Geographic Decision Systems International (GDSI) 2000; Hawaii Natural Heritage Program (HINHP) Database 2000).

Alsinidendron lychnoides typically grows on steep riparian clay or silty soil banks in montane wet forests dominated by *Metrosideros polymorpha* (ohia) and *Cheirodendron* spp. (olapa), or by *M. polymorpha* and *Dicranopteris linearis* (uluhe), at elevations between 828 and 1,344 meters (m) (2,715 and 4,408 feet (ft)). Associated native plant species include *Asplenium* spp. (no common name (NCN)), *Astelia* spp. (painiu), *Broussaisia arguta* (kanawao), *Carex* spp. (NCN), *Cyrtandra* spp. (haiwale), *Diplazium sandwichianum* (NCN), *Elaphoglossum* spp. (ekaha), *Hedyotis terminalis* (manono), *Machaerina* spp. (uki), *Peperomia* spp. (ala ala wai nui), or *Vaccinium* spp. (ohelo) (61 FR 53070; Ken Wood, National Tropical Botanical Garden (NTBG), pers. comm., 2001).

The major threats to this species are competition from the aggressive nonnative plant species *Rubus argutus* (prickly Florida blackberry); habitat degradation by feral pigs (*Sus scrofa*); trampling by humans; risk of extinction from naturally occurring events, such as landslides or hurricanes; and reduced reproductive vigor due to the small number of extant individuals (61 FR 53070).

Alsinidendron viscosum (no common name (NCN))

Alsinidendron viscosum, a member of the pink family (Caryophyllaceae), is a weakly climbing or sprawling subshrub densely covered with fine glandular hairs. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by the weakly climbing or sprawling habit, color of the sepals, number of flowers per cluster, and size of the leaves. It is closely related to *A. lychnoides*, which differs primarily in having wider leaves and more capsule valves and flowers per cluster (Wagner *et al.* 1999).

Alsinidendron viscosum has been observed in flower during January, February, and April. No additional life history information for this species is currently known (Service 1998a).

Historically, *Alsinidendron viscosum* was found at Kaholuamano, Kokee, Halemanu, Nawaimaka, and Waialae areas of northwestern Kauai. Currently, there are a total of seven occurrences containing about 319 individuals on the island of Kauai. These occurrences are on State-owned land at the Halemanu-Kokee Trail, Mohihi-Waialae Trail, Kawaiiki Valley, Waialae Falls, and Nawaimaka Valley in the Alakai Wilderness Preserve, Kokee State Park, and the Na Pali-Kona Forest Reserve (GDSI 2000; HINHP Database 2000; 61 FR 53070).

Alsinidendron viscosum is typically found at elevations between 754 and 1,224 m (2,474 and 4,016 ft), on steep slopes in *Acacia koa* (koa)-*Metrosideros polymorpha* lowland and montane mesic forest. Associated native plant species include *Alyxia oliviformis* (maile), *Asplenium polyodon* (punana manu), *Bidens cosmoides* (poola nui), *Bobea* spp. (ahakea), *Carex meyenii* (NCN), *Carex wahuensis* (NCN), *Coprosma* spp. (pilo), *Dianella sandwicensis* (ukiuki), *Dodonaea viscosa* (aalii), *Doodia kunthiana* (ohupuku pulauii), *Dryopteris glabra* (kilau), *Dryopteris unidentata* (akole), *Dryopteris wallichiana* (ionui), *Dubautia laevigata* (naenae), *Gahnia* spp. (NCN), *Ilex anomala* (aiea), *Melicope* spp. (alani), *Panicum nephelophilum* (konakona), *Pleomele aurea* (hala pepe), *Psychotria* spp. (kopiko), *Pteridium aquilinum* var. *decompositum* (bracken fern), *Schiedea stellarioides* (laulihilihi), or *Vaccinium dentatum* (ohelo) (K. Wood, pers. comm., 2001).

The major threats to this species are destruction of habitat by feral pigs and goats (*Capra hircus*); competition with the nonnative plant species *Lantana camara* (lantana), and *Melinis minutiflora* (molasses grass), *Rubus argutus*; a risk of extinction from naturally occurring events, such as landslides or hurricanes; and reduced reproductive vigor due to the small number of extant populations and individuals (61 FR 53070).

Brighamia insignis (olulu)

Brighamia insignis, a member of the bellflower family (Campanulaceae), is an unbranched plant with a succulent stem that is bulbous at the bottom and tapers toward the top, ending in a compact rosette of fleshy leaves. This short-lived perennial species is a member of a unique endemic Hawaiian genus with only one other species, *B. rockii* (pua ala), presently known only on Molokai, from which it differs by the color of its petals, its shorter calyx (sepals) lobes, and its longer flower stalks (Lammers 1999; 59 FR 9304).

Current reproduction is not thought to be sufficient to sustain populations of this species, with poor seedling establishment due to competition with nonnative grasses as the limiting factor. Pollination by native sphingid moths (Sphingidae family) is likely; however, pollination failure is common, due to either a lack of pollinators or a reduction in genetic variability. The flower structure appears to favor outcrossing (pollination between different parent plants). Some vegetative cloning has been observed and flower and leaf size appear to be dependent on moisture availability. Seeds of this species are undoubtedly dispersed by gravity. Although they may be blown for short distances, they are not adapted for wind dispersal, being ovoid to ellipsoid, smooth, and lacking any sort of wing or outgrowth (Service 1995; 59 FR 9304).

Historically, *Brighamia insignis* was known from the headland between Hoolulu and Waiahuakua Valleys along the Na Pali Coast on the island of Kauai, and from Kaali Spring on the island of Niihau. Currently, there are a total of four occurrences containing a total of about 42 to 62 individuals on the islands of Kauai and Niihau. It is reported on State land (Hono O Na Pali Natural Area Reserve (NAR)) and privately owned lands at Hoolulua and Waiahuakua Valleys, Haupu, and Keopaweo, and on the privately owned island of Niihau (GDSI 2000; HINHP Database 2000; Service 1995; Steve Perlman, NTBG, pers. comm., 2000).

Brighamia insignis is found at elevations between 0 and 748 m (0 and 2,453 ft) on rocky ledges with little soil or on steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 165 centimeters (cm) (65 inches (in)). Associated native plant species include *Artemisia australis* (ahinahina), *Chamaesyce celastroides* (akoko), *Eragrostis variabilis* (kawelu), *Heteropogon contortus* (pili grass), *Hibiscus kokio* (kokio), *Hibiscus kokio* ssp. *saintjohnianus* (kokio), *Lepidium serra* (anaunau), *Lipochaeta succulenta* (nehe), *Munroidendron racemosum* (NCN), or *Sida fallax* (ilima) (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this plant are browsing and habitat degradation by feral goats; human disturbance; fire; the introduced carmine spider mite (*Tetranychus cinnabarinus*); a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of individuals; restricted distribution; reduced reproductive vigor; and competition from nonnative plant species such as *Ageratum conyzoides* (maile hohono), *Kalanchoe pinnata* (air plant), *Lantana camara*, *Melinis minutiflora*, *Psidium cattleianum* (strawberry guava), *Psidium guajava* (guava), *Setaria parviflora* (yellow foxtail), *Sporobolus africanus* (smutgrass), or *Stachytarpheta dichotoma* (owi) (59 FR 9304).

Chamaesyce halemanui (NCN)

Chamaesyce halemanui, a short-lived perennial member of the spurge family (Euphorbiaceae), is a scandent (climbing) shrub. It is distinguished from closely related species by its decussate leaves (arranged in pairs at right angles to the next pair above or below), persistent stipules (bract- or leaf-like structures), more compact flower clusters, shorter stems on cyathia (flower cluster), and smaller capsules (Koutnik 1987; Koutnik and Huft 1999; 57 FR 20580).

Little is known about the life history of *Chamaesyce halemanui*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Chamaesyce halemanui* was found in Kauhao and Makaha Valleys in the Na Pali-Kona Forest Reserve, Mahanaloa Valley in Kuia NAR, the Halemanu drainage in Kokee State Park, and Olokele Canyon on the island of Kauai. Currently, there are a total of nine occurrences, containing about 85 to 135 individuals, in Kuia Valley, Poopooiki Valley, Kauhao Valley, Kaha Ridge, Awaawapuhi Valley, Waipio Falls, Halemanu, and Kaluahaulu in the Kokee State Park, Kuia NAR, and Na Pali-Kona Forest Reserve on State-owned land (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999; K. Wood, pers. comm., 2001).

Chamaesyce halemanui is typically found on the steep slopes of gulches in mesic *Acacia koa* forests at elevations between 556 and 1,249 m (1,825 and 4,097 ft). Associated native plant species include *Alphitonia ponderosa* (kauila), *Antidesma platyphyllum* (hame), *Asplenium* spp., *Bobea brevipes* (ahakea lau lii), *Carex meyenii*, *Carex wahuensis*, *Cheirodendron trigynum* (olapa), *Coprosma* spp., *Diospyros sandwicensis* (lama), *Dodonaea viscosa*, *Elaeocarpus bifidus* (kalia), *Hedyotis terminalis*, *Kokia kauaiensis* (kokio), *Leptecophylla tameiameiae* (pukiawe), *Melicope haupuensis* (alani), *Metrosideros polymorpha*, *Microlepia strigosa* (palapalai), *Panicum nephelophilum*, *Pisonia* spp. (papala kepau), *Pittosporum* spp. (hoawa), *Pleomele aurea*, *Pouteria sandwicensis* (alaa), *Psychotria greenwelliae* (kopiko), *Psychotria mariniana* (kopiko), or *Santalum freycinetianum* (iliahi) (57 FR 20580; K. Wood, pers. comm., 2001).

The major threats to this species are competition from nonnative plants, such as *Lantana camara*, *Psidium cattleianum*, and *Stenotaphrum secundatum* (St. Augustine grass); habitat degradation by feral pigs; restricted distribution; small population size; increased potential for extinction resulting from naturally occurring events, such as landslides or hurricanes; and depressed reproductive vigor (57 FR 20580).

Cyanea asarifolia (haha)

Cyanea asarifolia, a member of the bellflower family (Campanulaceae), is a sparingly branched shrub. This short-lived perennial species is distinguished from others of the genus that grow on Kauai by the shape of the leaf base, the leaf width in proportion to the length, and the presence of a leaf stalk (Lammers 1999; 59 FR 9304).

Little is known about the life history of *Cyanea asarifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Cyanea asarifolia* was known only from along the bank of Anahola Stream on Kauai. Currently, two occurrences with approximately four or five individuals are reported from the headwaters of the Wailua River in central Kauai on State-owned land in the Lihue-Koloa Forest Reserve (GDSI 2000; HINHP Database 2000).

This species typically grows in pockets of soil on sheer wet rock cliffs and waterfalls in lowland wet forests at elevations between 182 and 1,212 m (597 and 3,976 ft). Associated native plant species include ferns, *Bidens* spp. (kookoolau), *Dubautia plantaginea* (naenae), *Hedyotis centranthoides* (NCN), *Hedyotis elatior* (awiwi), *Lysimachia filifolia* (kolokolo kuahiwi), *Machaerina angustifolia* (uki), *Metrosideros polymorpha*, or *Panicum lineale* (NCN) (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are a risk of extinction from naturally occurring events, such as hurricanes

and rock slides, and/or reduced reproductive vigor due to the small number of existing individuals; predation by introduced slugs and rodents (roof rats (*Rattus rattus*) and mice (*Mus musculus*)); and habitat degradation by feral pigs (59 FR 9304).

Cyanea recta (haha)

Cyanea recta, a member of the bellflower family (Campanulaceae), is an unbranched shrub with densely hairy flowers. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by the following characteristics: horizontal or ascending inflorescence; narrowly elliptic leaves 12 to 28 cm (4.7 to 11 in) long; flat leaf margins; and purple berries (Lammers 1990).

Little is known about the life history of *Cyanea recta*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Cyanea recta* was found in upper Hanalei Valley, Waioli Valley, Hanapepe Valley, Kalalau cliffs, Wainiha Valley, Makaleha Mountains, Limahuli Valley, Powerline Trail, and the Lehua Makanoe-Alakai area on the island of Kauai. Currently, there is a total of eight occurrences, with approximately 198 to 208 individuals, on State and private lands in the following areas: Waioli Valley, the left and right branches of Wainiha Valley, Makaleha Mountains, and Puu Eu, including areas in Halelea Forest Reserve, Kealia Forest Reserve, and the Lihue-Koloa Forest Reserve (GDSI 2000; HINHP Database 2000).

Cyanea recta grows in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland, usually in gulches or on slopes, and typically at elevations between 234 and 1,406 m (768 and 4,613 ft). Associated native plant species include *Antidesma platyphyllum*, *Cheirodendron platyphyllum* (lapalapa), *Cibotium* spp. (hapuu), *Dicranopteris linearis*, *Diplazium* spp. (NCN), or *Psychotria* spp. (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are bark removal and other damage by rats; habitat degradation by feral pigs; browsing by goats; unidentified slugs that feed on the stems; and competition with the nonnative plant species *Blechnum occidentale* (blechnum fern), *Clidemia hirta* (Koster's curse), *Crassocephalum crepidioides* (NCN), *Deparia petersenii* (NCN), *Erechtites valerianifolia* (fireweed), *Lantana camara*, *Melastoma candidum* (NCN), *Paspalum conjugatum* (Hilo grass), *Rubus rosifolius* (thimbleberry), *Sacciolepis indica* (Glenwood grass), or *Youngia japonica* (Oriental hawksbeard) (61 FR 53070).

Cyanea remyi (haha)

Cyanea remyi, a member of the bellflower family (Campanulaceae), is a shrub with generally unbranched, unarmed (lacking prickles) stems which are hairy toward the base. This short-lived perennial species is distinguished from others in the genus that grow on Kauai by its shrubby habit; relatively slender, unarmed stems; smooth or minutely toothed leaves; densely hairy flowers; the shape of the calyx lobes; length of the calyx and corolla; and length of the corolla lobe relative to the floral tube (Lammers 1999).

Little is known about the life history of *Cyanea remyi*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Currently, there are seven known occurrences with approximately 394 to 484 individuals among them on the island of Kauai. *Cyanea remyi* is reported from Pali Eleele, Waioli Valley, Makaleha, Blue Hole, Kawaikini, and Kapalaoa on privately and State-owned lands, including the Halelea and Lihue-Koloa Forest Reserves (GDSI 2000; HINHP Database 2000; Lammers and Lorence 1993; K. Wood, *in litt*, 1999).

Cyanea remyi is usually found in narrow drainages and wet streambanks in lowland wet forest or shrubland at elevations between 215 and 1,167 m (704 and 3,829 ft). Associated native plant species include various "finger ferns" (in the Grammitidaceae family) and "filmy ferns" (in the Hymenophyllaceae family), *Adenophorus* spp. (NCN), *Antidesma platyphyllum*, *Bidens* spp., *Broussaisia arguta*, *Cheirodendron* spp., *Cyrtandra* spp., *Diplazium sandwichianum*, *Eragrostis grandis* (kawelu), *Freycinetia arborea* (ieie), *Hedyotis terminalis*, *Machaerina angustifolia*, *Metrosideros polymorpha*, *Perrottetia sandwicensis* (olomea), *Pipturus* spp. (mamaki), *Psychotria hexandra* (kopiko), *Syzygium sandwicensis* (ohia ha), *Thelypteris* spp. (palapalaia), *Touchardia latifolia* (olona), or *Urera glabra* (opuhe) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are competition with the nonnative plant species *Erechtites valerianifolia*, *Melastoma candidum*, *Paspalum conjugatum*, *Psidium cattleianum*, or *Rubus rosifolius*; habitat degradation by feral pigs; browsing by feral goats; predation by rats; unidentified slugs that feed on the stems; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining populations (61 FR 53070).

Cyanea undulata (haha)

Cyanea undulata, a member of the bellflower family (Campanulaceae), is an unbranched (or the stem is occasionally forked) shrub or subshrub with fine rust-colored hairs covering the lower surface of the leaves. Its undulating leaf margins distinguish the species from other Kauai members of the genus (Lammers 1990, 1999).

Native members of the Campanulaceae (bellflower) family, including the genus *Cyanea*, are generally believed to be adapted to pollination by native nectar-eating passerine birds, such as the Hawaiian "honeycreepers." The long, tubular, slightly curved flowers of *C. undulata* fit this model, but field observations are lacking. The fleshy orange fruits of this species are adapted for bird dispersal like other species of *Cyanea*. Although recognized as a short-lived perennial species, specific details of the life history of this species, such as growth rates, age plants begin to flower, and longevity of plants, are unknown (Lorence and Flynn 1991; Service 1994).

Historically, *Cyanea undulata* was known only from the Wahiawa Bog area on Kauai. Currently, one occurrence with a total of 28 individuals is reported on privately owned land along the bank of a tributary of the Wahiawa Stream in the Wahiawa drainage (GDSI 2000; HINHP Database 2000).

Cyanea undulata typically grows in narrow drainages and wet streambanks in *Metrosideros polymorpha* dry to montane wet forest or shrubland at elevations between 145 and 1,066 m (476 and 3,497 ft). Associated native species include various grammitid and filmy ferns, *Adenophorus* spp., *Antidesma platyphyllum*, *Broussaisia arguta*, *Cheirodendron* spp., *Diplazium sandwichianum*, *Dryopteris glabra*, *Eragrostis grandis* (kawelu), *Bidens* spp., *Freycinetia arborea*, *Machaerina angustifolia*, *Mariscus* spp. (NCN), *Melicope feddei* (alani), *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria mariniana*, *Psychotria hexandra*, *Sadleria pallida* (amau); *Sadleria squarrosa* (apuu), *Smilax melastomifolia* (pioi), *Sphenomeris chinensis* (palaa), *Syzygium sandwicensis*, or *Thelypteris* spp. (Service 1994; K. Wood, pers. comm., 2001).

The primary threats to this species include competition with the nonnative plant species *Clidemia hirta*, *Cyathea cooperi* (Australian tree fern), *Deparia petersenii*, *Elephantopus mollis* (NCN), *Erechtites valerianifolia*, *Melaleuca quinquenervia* (paperbark tree), *Melastoma candidum*, *Oplismenus hirtellus* (basketgrass), *Paspalum conjugatum*, *Paspalum urvillei* (Vasey grass), *Pluchea carolinensis* (sourbush), *Psidium cattleianum*, *Rhodomyrtus tomentosa* (rose myrtle), *Rubus rosifolius*, *Sacciolepis indica*, *Setaria parviflora*, *Stachytarpheta australis*, or *Youngia japonica*; trampling by feral pigs; landslides; seed predation by rats; herbivory by introduced slugs; loss of pollinators; hurricanes; and decreased reproductive vigor, restricted distribution, and extinction due to unforseen circumstances because of small population size (Service 1994; 56 FR 47695).

Cyrtandra cyaneoides (mapele)

Cyrtandra cyaneoides, a member of the African violet family (Gesneriaceae), is an erect or ascending, fleshy, usually unbranched shrub with opposite toothed leaves which have impressed veins on the lower surface that are sparsely covered with long hairs. This short-lived perennial species differs from others of the genus that grow on Kauai by being a succulent, erect or ascending shrub; a bilaterally symmetrical calyx that is spindle-shaped in bud and falls off after flowering; leaves that are 41 to 56 cm (16 to 22 in) long and 23 to 35 cm (9 to 14 in) wide and have a wrinkled surface; and berries with shaggy hairs (Wagner *et al.* 1999).

Little is known about the life history of *Cyrtandra cyaneoides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Cyrtandra cyaneoides* was known to occur only along the trail to Waialae Valley on Kauai until recently discovered in other areas. It is currently known from five occurrences, containing about 354 to 454 individuals, on private and State lands (including Halelea Forest Reserve and Alakai Wilderness Preserve) at Pihea, Waioli Valley, Lumahai, the left branch of Wainiha Valley, and Makaleha (GDSI 2000; HINHP Database 2000; 61 FR 53070).

Cyrtandra cyaneoides typically grows on talus rubble on steep slopes or cliffs with water seeps running below, near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *M. polymorpha*, *Cheirodendron* spp., and *Dicranopteris linearis* at elevations between 157 and 1,406 m (514 and 4,614 ft). Associated native species include *Bidens* spp., *Boehmeria grandis* (akolea), *Coprosma* spp., *Cyanea spp.* (haha), *Cyrtandra longifolia* (haiwale), *Cyrtandra kauaiensis* (ulunahele), *Cyrtandra limahuliensis* (haiwale), *Diplazium sandwichianum*, *Freycinetia arborea*, *Gunnera kauaiensis* (ape ape), *Hedyotis terminalis*, *Hedyotis tryblium* (NCN), *Machaerina* spp., *Melicope clusiifolia* (kukaemoa), *Melicope puberula* (alani), *Perrottetia sandwicensis*, *Pipturus* spp., *Psychotria* spp., *Pritchardia* spp. (loulu), or *Stenogyne purpurea* (NCN) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are competition with nonnative plant species such as *Deparia petersenii*, *Drymaria cordata* (pipili), *Paspalum conjugatum*, and *Rubus rosifolius*; predation of seeds by rats; reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides and hurricanes, due to the small number of populations; and habitat degradation by feral pigs (61 FR 53070).

Cyrtandra limahuliensis (haiwale)

Cyrtandra limahuliensis, a member of the African violet family (Gesneriaceae), is an unbranched or few-branched shrub with moderately or densely hairy leaves. The following combination of characteristics distinguishes this short-lived perennial species from others of the genus: the leaves are usually hairy (especially on lower surfaces), the usually symmetrical calyx is tubular or funnel-shaped and encloses the fruit at maturity, and the flowers are borne singly (Wagner *et al.* 1990).

Little is known about the life history of *Cyrtandra limahuliensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Cyrtandra limahuliensis* was known from three locations on Kauai: Wainiha Valley, Lumahai Valley, and near Kilauea River, until it was recently discovered in additional areas. Currently, a total of 13 occurrences, containing approximately 2,746 to 3,024 individuals, are reported on private and State lands (including the Halelea, Kealia, and Lihue-Koloa Forest Reserves) at Limahuli Falls, Lumahai Valley, Waipa Valley, Waioli Valley, Kekoiki, Makaleha, the right fork of Wainiha Valley, Kualapa, Blue Hole, Kepalaoa, and Puu Kolo (GDSI 2000; HINHP Database 2000).

This species typically grows along streambanks in lowland wet forests at elevations between 208 and 1,594 m (681 and 5,228 ft). Associated native plant species include *Antidesma platyphyllum*, *Bidens* spp., *Boehmeria grandis*, *Charpentiera* spp. (papala), *Cibotium glaucum* (hapuu), *Cyanea* spp., *Cyrtandra kealiae* (haiwale), *Dicranopteris linearis*, *Diplazium sandwichianum*, *Dubautia* spp. (naenae), *Eugenia reinwardtiana* (nioi), *Gunnera kauaiensis*, *Hedyotis terminalis*, *Hibiscus waimeae* (kokio keokeo), *Metrosideros polymorpha*, *Perrottetia sandwicensis*, *Pipturus* spp., *Pisonia* spp., *Pritchardia* spp., *Psychotria* spp., *Touchardia latifolia*, or *Urera glabra* (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are competition from nonnative plant species (*Blechnum occidentale*, *Clidemia hirta*, *Erechtites valerianifolia*, *Hedychium flavescens* (yellow ginger), *Melastoma candidum*, *Paspalum conjugatum*, *Psidium cattleianum*, *Psidium guajava*, *Rubus rosifolius*, or *Youngia japonica*); habitat degradation by feral pigs; natural landslides; and hurricanes (59 FR 9304).

Delissea rhytidosperma (NCN)

Delissea rhytidosperma, a member of the bellflower family (Campanulaceae), is a branched shrub with lance-shaped or elliptic toothed leaves. This short-lived perennial species differs from other species of the genus by the shape, length, and margins of the leaves and by having hairs at the base of the anthers (part of stamen that produces pollen) (Lammers 1999).

Little is known about the life history of *Delissea rhytidosperma*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Delissea rhytidosperma* was known from as far north as Wainiha and Limahuli Valleys, as far east as Kapaa and Kealia, and as far south as the Haupu Range, between the elevations of 122 and 915 m (400 and 3,000 ft) on the island of Kauai. Currently, three occurrences on private and State lands (including Kuia NAR), with a total of 11 individuals, are reported from Kuia Valley, Puhakukane, and the Haupu Range (GDSI 2000; HINHP Database 2000).

This species generally grows in well-drained soils with medium or fine-textured subsoil in *Diospyros* (lama) diverse lowland mesic forests or diverse *Metrosideros polymorpha-Acacia koa* forests at elevations between 167 and 895 m (547 and 2,935 ft). Associated native plant species include gramnitid

ferns, *Adenophorus* spp., *Cyanea* spp., *Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Doodia kunthiana, Euphorbia haeleeleana* (akoko), *Hedyotis* spp. (NCN), *Leptecophylla tameiameiae, Microlepia strigosa, Nestegis sandwicensis* (olopua), *Pisonia* spp., *Psychotria hobdyi* (kopiko), or *Pteralyxia kauaiensis* (kaulu) (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are predation and/or habitat degradation by mule deer (*Odocoileus hemionus columbianus*), feral pigs, and goats; herbivory by rats and introduced slugs; fire; and competition with the nonnative plants *Cordyline fruticosa* (ti), *Lantana camara, Passiflora ligularis* (sweet granadilla), and Passiflora tarminiana (banana poka); and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (Service 1995; 59 FR 9304).

Delissea rivularis (oha)

Delissea rivularis, a member of the bellflower family (Campanulaceae), is a shrub, unbranched or branched near the base, with hairy stems and leaves arranged in a rosette at the tips of the stems. This short-lived perennial species is distinguished from others of the genus by the color, length, and curvature of the corolla, shape of the leaves, and presence of hairs on the stems, leaves, flower clusters, and corolla (Lammers 1999).

Little is known about the life history of *Delissea rivularis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Delissea rivularis* was found at Waiakealoha Waterfall, Waialae Valley, Hanakoa Valley, and Kaholuamanu on the island of Kauai (61 FR 53070). Currently, this species is known from two occurrences with a total of 40 individuals. The occurrences are reported from Moaalele and Hanakapiai on State land within the Hono o Na Pali NAR (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Delissea rivularis is found on steep slopes near streams in *Metrosideros polymorpha-Cheirodendron trigynum* montane wet or mesic forest at elevations between 722 and 1,306 m (2,370 and 4,286 ft). Associated native plant species include *Boehmeria grandis, Broussaisia arguta, Carex* spp., *Coprosma* spp., *Dubautia knudsenii* (naenae), *Diplazium sandwichianum, Hedyotis foggiana* (NCN), *Ilex anomala, Machaerina angustifolia, Melicope anisata* (mokihana), *Melicope clusiifolia, Pipturus* spp., *Psychotria hexandra*, or *Sadleria* spp. (amau) (61 FR 53070; K. Wood, pers. comm., 2001).

The major threats to this species are competition with the encroaching nonnative plant *Rubus argutus;* habitat destruction by feral pigs; predation by rats; and reduced reproductive vigor and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of remaining individuals (Service 1998a; 61 FR 53070).

Diellia pallida (NCN)

Diellia pallida, a member of the spleenwort family (Aspleniaceae), is a fern that grows in tufts of three to four light green, lance-shaped fronds along with a few persistent dead ones, and reproduces by spores, the minute, reproductive dispersal unit of ferns and fern allies. This short-lived perennial species differs from others of this endemic Hawaiian genus by the color and sheen of the midrib, the presence and color of scales on the midrib, and the frequent fusion of sori (a group or cluster of spore cases) (Wagner 1952, 1987).

Little is known about the life history of *Diellia pallida*. Its reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Diellia pallida was known historically from Halemanu on the island of Kauai. More recently additional occurrences have been found and currently, there is a total of six occurrences with 43 to 48 individuals in Mahanaloa and Kuia Valleys, Makaha Valley, Waimea Canyon, and Koaie Canyon, all on State-owned land including Kuia NAR, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (GDSI 2000; HINHP Database 2000; 59 FR 9304; K. Wood, *in litt.* 1999).

This species grows on bare granular soil with dry to mesophytic leaf litter with a pH of 6.9 to 7.9 on steep talus slopes in lowland mesic forests at elevations between 445 and 1,027 m (1,460 and 3,371 ft). Associated native plant species include *Acacia koa, Alectryon macrococcus, Alphitonia ponderosa, Alyxia oliviformis, Antidesma platyphyllum, Asplenium* spp., *Carex meyenii, Diospyros hillebrandii* (lama), *Diospyros sandwicensis, Doodia kunthiana, Hedyotis knudsenii* (NCN), *Leptecophylla tameiameiae, Metrosideros polymorpha, Microlepia strigosa, Myrsine lanaiensis* (kolea), *Nestegis sandwicensis, Psychotria mariniana, Psydrax odorata* (alahee), *Pteralyxia kauaiensis, Rauvolfia sandwicensis* (hao), *Tetraplasandra kavaiensis* (ohe ohe), *Wilkesia gymnoxiphium* (iliau), or *Zanthoxylum dipetalum* (ae) (59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species include competition with the nonnative plants *Aleurites moluccana* (kukui), *Cordyline fruticosa, Lantana camara, Melia azedarach* (Chinaberry), *Oplismenus hirtellus*, or *Stenotaphrum secundatum;* predation and habitat degradation by feral goats, pigs, and deer; fire; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Dubautia latifolia (koholapehu)

Dubautia latifolia, a member of the aster family (Asteraceae), is a diffusely branched, woody perennial vine with leaves that are conspicuously net-veined, with the smaller veins outlining nearly square areas. A vining habit, distinct petioles (leaf stalks), and broad leaves with conspicuous net veins outlining squarish areas separate this from closely related species (Carr 1982b, 1985, 1999a).

Individual plants of this species do not appear to be able to fertilize themselves. Since at least some individuals of *Dubautia latifolia* require cross-pollination, the wide spacing of individual plants (*e.g.*, each 0.5 kilometer (km) (0.3 mile (mi)) apart) may pose a threat to the reproductive potential of the species. The very low seed set noted in plants in the wild indicates a reproductive problem, possibly asynchronous flowering or lack of pollinators. Seedling establishment and survival to juvenile stage is also rare. *Dubautia latifolia* experiences seasonal vegetative decline during the spring and summer, often losing most of its leaves. New growth and flowering occur in the fall, with fruits developing in November. Pollinators and seed dispersal agents are unknown (Carr 1982b; Service 1995).

Historically, *Dubautia latifolia* was found in the Makaha, Awaawapuhi, Waialae, Kawaiula, and Kauhao Valleys of the Na Pali-Kona Forest Reserve, Nualolo Trail and Valley in Kuia NAR; Halemanu in Kokee State Park; along Mohihi Road in both Kokee State Park and Na Pali-Kona Forest Reserve, along the Mohihi-Waialae Trail on Mohihi and Kohua Ridges in both Na Pali-Kona Forest Reserve and Alakai Wilderness Preserve; and at Kaholuamanu on the island of Kauai. Currently, there are a total of 26 occurrences containing approximately 65 to 84 individuals on State-owned land in Kauhao Valley, Makaha Valley headwaters, Kuia Valley, Kawaiula Valley, Kumuwela Ridge, Awaawapuhi Valley, Waiakoali picnic area, Alakai picnic area, Honopu Trail, Nualolo Trail, Waineke Swamp, Noe Stream, Kumuwela Ridge, Mohihi Ditch, Mohihi-Waialae Trail, and Kaluahaulu Ridge in the Alakai Wilderness Preserve, Kokee State Park, Kuia NAR, Na Pali-Kona Forest Reserve, and Waimea Canyon State Park (Carr 1982b; GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

This species typically grows on gentle to steep slopes in well drained soil in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*, at elevations between 544 and 1,277 m (1,786 and 4,189 ft). Commonly associated native plant species are *Alphitonia ponderosa, Antidesma platyphyllum, Bobea* spp., *Claoxylon sandwicense* (poola), *Coprosma waimeae* (olena), *Cyrtandra* spp., *Dicranopteris linearis, Diplazium sandwichianum, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Ilex anomala, Melicope anisata, Nestegis sandwicensis, Pleomele aurea, Pouteria sandwicensis, Psychotria mariniana, Scaevola* spp. (naupaka), or *Xylosma* spp. (maua) (59 FR 9304; K. Wood, pers. comm., 2001).

The threats to this species include competition from the nonnative plants *Acacia mearnsii* (black wattle), *Erigeron karvinskianus* (daisy fleabane), *Hedychium* spp. (ginger), *Lonicera japonica* (Japanese honeysuckle), *Passiflora tarminiana, Psidium cattleianum*, or *Rubus argutus;* damage from trampling and grazing by feral pigs and deer; vehicle traffic and road maintenance; seasonal dieback; the small number of extant individuals; and restricted distribution (59 FR 9304).

Dubautia pauciflorula (naenae)

Dubautia pauciflorula, a member of the aster family (Asteraceae), is a somewhat sprawling shrub or erect small tree with narrowly lance-shaped or elliptic leaves clustered toward the ends of the stems. The tiny, two- to four-flowered heads distinguish this short-lived perennial species from its relatives (Carr 1985, 1999a).

Few details are known about the life history of any *Dubautia* species under natural conditions. Certain species produce viable seed when self-pollinated (self-fertile), although others fail to do so (self-infertile). Low pollinator numbers resulting in reduced cross-pollination and consequently low numbers of viable seeds could explain the small population sizes. Because of their structure and small size, flowers of *D. pauciflorula* are presumably pollinated by small generalist insects, although field observations are lacking. The bristle-like pappus (tuft of appendages that crowns the ovary or fruit) probably represents an adaptation for wind dispersal. Very little is known about the life cycle of this species, including growth rates, longevity of the plants, and number of years the plants remain reproductive (Carr 1985; Service 1994; 56 FR 47695).

Historically and currently, this species is found only on State (including the Lihue-Koloa Forest Reserve) and privately owned lands in the Wahiawa drainage on Kauai. There are four occurrences containing 42 individual plants (GDSI 2000; HINHP Database 2000).

These populations are found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest within stream drainages at elevations between 564 and 1,093 m (1,849 and 3,587 ft). Associated native plant species include *Antidesma platyphyllum, Broussaisia arguta, Cheirodendron* spp., *Dubautia laxa* (naenae pua melemele), *Embelia pacifica* (kilioe), *Hesperomannia lydgatei, Labordia waialealae* (kamakahala lau lii), *Melicope* spp., *Nothoperanema rubiginosa* (NCN), *Pritchardia* spp., *Psychotria* spp., *Sadleria* spp., *Scaevola mollis* (naupaka kuahiwi), *Syzygium sandwicensis*, or *Tetraplasandra* spp. (ohe ohe) (K. Wood, pers. comm., 2001).

The threats to this plant include direct competition with nonnative plant species such as *Melastoma candidum* or *Psidium cattleianum*, and potential threats from *Clidemia hirta, Cyathea cooperi, Deparia petersenii, Elephantopus mollis, Erechtites valerianifolia, Melaleuca quinquenervia, Oplismenus hirtellus, Paspalum conjugatum, Paspalum urvillei, Pluchea carolinensis, Rhodomyrtus tomentosa, Rubus rosifolius, Sacciolepis indica, Setaria parviflora, Stachytarpheta australis*, or *Youngia japonica;* trampling by feral pigs; landslides and erosion; restricted distribution; and hurricanes (Service 1994; 56 FR 47695).

Exocarpos luteolus (heau)

Exocarpos luteolus, a member of the sandalwood family (Santalaceae), is a moderately to densely branched shrub with knobby branches and leaves that are either minute scales or typical leaves. This short-lived perennial species is distinguished from others of the genus by its generally larger fruit with four indentations and by the color of the receptacle and fruit (Wagner *et al.* 1999).

Little is known about the life history of *Exocarpos luteolus*. This species tends to grow at habitat edges where there is adequate light and is likely to be semi-parasitic. Flowering cycles, pollination vectors, seed dispersal agents, longevity, other specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Exocarpos luteolus* was known from three general locations on Kauai: Wahiawa Bog, Kaholuamanu, and Kumuwela Ridge. Currently, there is a total of nine occurrences containing approximately 75 individual plants. This species has a scattered distribution on State (Kuia NAR, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve) and privately owned lands and is reported from Pohakuao, the right fork and left fork of Kalalau Valley, Hipalau Valley, Koaie Canyon, Mahanaloa Valley, Kuia Valley, Poopooiki Valley, Nualolo Trail, Makaha Valley, and Haeleele Valley (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

This species is found at elevations between 361 and 1,465 m (1,183 and 4,808 ft) in wet places bordering swamps or open bogs and on open, dry ridges in lowland or montane mesic *Acacia koa-Metrosideros polymorpha*-dominated forest communities with *Dicranopteris linearis*. Associated native plant species include *Bobea brevipes, Cheirodendron trigynum, Claoxylon sandwicense, Dianella sandwicensis, Dodonaea viscosa, Dubautia laevigata, Elaeocarpus bifidus, Hedyotis terminalis, Leptecophylla tameiameiae, Melicope haupuensis, Peperomia* spp., *Pleomele aurea, Poa sandvicensis* (Hawaiian bluegrass), *Pouteria sandwicensis, Psychotria greenwelliae, Psychotria mariniana, Santalum freycinetianum*, or *Schiedea stellarioides* (Service 1995; 59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are feral goats and pigs; competition with the nonnative plants *Acacia mearnsii, Corynocarpus laevigata* (karakanut), *Erigeron karvinskianus, Morella faya* (firetree), or *Rubus argutus;* seed predation by rats; fire; and erosion (Service 1995; 59 FR 9304).

Hedyotis st.-johnii (Na Pali beach hedyotis)

Hedyotis st.-johnii, a member of the coffee family (Rubiaceae), is a succulent perennial herb with slightly woody, trailing, quadrangular stems and fleshy leaves clustered towards the base of the

stem. This species is distinguished from related species by its succulence, basally clustered fleshy leaves, shorter floral tube, and large leafy calyx lobes when in fruit (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis st.-johnii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Currently, there are a total of eleven occurrences, containing approximately 227 to 292 individuals, on State-owned land in Nualolo Valley, Nualolo Kai, Kaahole Valley, Keawanui, Kawaiula Valley, Milolii Spring, Makaha Point, Polihale Spring, Kalepa Valley, and Nakeikionaiwi Caves within the Na Pali Coast State Park and Puu Ka Pele Forest Reserve (GDSI 2000; HINHP Database 2000).

This plant grows in the crevices of north-facing, near-vertical coastal cliff faces within the spray zone in sparse dry coastal shrubland at elevations between 0 and 187 m (0 and 613 ft). Associated native plant species include *Artemisia australis, Bidens* spp., *Capparis sandwichiana* (maiapilo), *Chamaesyce celastroides, Eragrostis variabilis, Heteropogon contortus, Lipochaeta connata* (nehe), *Lycium sandwicense* (ohelo kai), *Myoporum sandwicense* (naio), *Nototrichium sandwicense* (kului), or *Schiedea apokremnos* (maolioli) (56 FR 49639; K. Wood, pers. comm., 2001).

The major threats to this species are herbivory and habitat degradation by feral goats; competition from nonnative plant species, especially *Pluchea carolinensis;* landslides; fire; trampling and grazing by cattle (*Bos taurus*); and a risk of extinction due to naturally occurring events, such as landslides or hurricanes, as well as decreased reproductive vigor because of the small population sizes and restricted distribution (Service 1995; 56 FR 49639).

Hesperomannia lydgatei (NCN)

Hesperomannia lydgatei, a member of the aster family (Asteraceae) is a sparsely branched, small, long-lived perennial tree 2 to 4 m (6.5 to 13 ft) tall with lance-shaped or elliptic leaves. The flower heads are clustered at the ends of branches and pendant (hanging) when mature. The species is distinguished from other members of this endemic Hawaiian genus by its pendant flower heads, longer and narrower hairless flower stalks, and shorter involucral (floral) bracts (Wagner *et al.* 1999).

Almost no mature fruits develop, and it is possible that *Hesperomannia lydgatei* is self-infertile and fails to set seed unless cross-pollinated with other individuals. The flower heads with long, tubular yellow florets suggest pollination by long-tongued insects such as moths or butterflies, although field observation is required to confirm this. Absence of the appropriate pollinator(s) could be responsible for the observed lack of viable seeds. The plume-like hairs crowning the fruit strongly suggests dispersal by wind, as in many members of the aster family. This species grows almost exclusively along streams, however, so dispersal by water currents is also likely. Specific details regarding growth rates, age trees begin flowering in the wild, length of time they remain reproductive, and longevity of the plants are unknown (Service 1994).

Historically, *Hesperomannia lydgatei* was found in the Wahiawa Mountains of Kauai. Currently, this species is known from State (Halelea Forest Reserve) and privately owned lands in the Pali Eleele, Waiole Valley, Wahiawa and Kapalaoa areas. There are four occurrences containing a total of 304 individual plants (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Hesperomannia lydgatei is found at elevations between 207 and 1,570 m (680 and 5,151 ft) along streambanks and forested slopes in rich brown soil and silty clay in *Metrosideros polymorpha* or *M. polymorpha-Dicranopteris linearis* lowland wet forest. Associated native plant species include *Adenophorus periens* (pendent kihi fern), *Antidesma platyphyllum, Broussaisia arguta, Cheirodendron* spp., *Cyanea* spp., *Dubautia knudsenii, Dubautia laxa, Dubautia pauciflorula, Dubautia raillardioides* (naenae), *Elaphoglossum* spp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei* (kamakahala), *Machaerina angustifolia, Peperomia* spp., *Pritchardia* spp., *Psychotria hexandra,* or *Syzygium sandwicensis* (HINHP Database 2000; Service 1994; K. Wood, pers. comm., 2001).

Threats to the species include nonnative plants, feral goats, rats, landslides, and erosion (Service 1994).

Hibiscadelphus woodii (hau kuahiwi)

Hibiscadelphus woodii, a member of the mallow family (Malvaceae), is a small branched, long-lived perennial tree with a rounded crown. *Hibiscadelphus woodii* differs from the other Kauai species in the genus by characteristics of the leaf surface and whorled leaves and by bract and flower color (Bates 1999; Lorence and Wagner 1995).

Flowering material has been collected in March, April, and September, but no fruit set has been observed in spite of efforts to manually outcross the flowers. A museum specimen of a flower contains three adult Nitidulidae (sap) beetles, probably an endemic species. The damage by these larvae may be responsible for the observed lack of fruit set in *Hibiscadelphus woodii* (Lorence and Wagner 1995; Service 1998a). No additional life history information for this species is currently known.

Hibiscadelphus woodii has been found only at the site of its original discovery on State-owned land in the left branch of Kalalau Valley, within the Na Pali Coast State Park on Kauai. Only two trees of this species are currently known (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 2001).

Hibiscadelphus woodii is found at elevations between 219 and 1,197 m (717 and 3,926 ft) on basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest. These forests contain one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis* (kookoolau), *Carex meyenii, Chamaesyce celastroides* var. *hanapepensis* (akoko), *Dubautia* spp., *Hedyotis* spp., *Lepidium serra, Lipochaeta* spp. (nehe), *Lobelia niihauensis* (NCN), *Lysimachia glutinosa* (kolokolo kuahiwi), *Melicope pallida* (alani), *Myrsine* spp. (kolea), *Nototrichium* spp. (kului), *Panicum lineale, Poa mannii* (NCN), or *Stenogyne campanulata* (NCN) (HINHP Database 2000; Lorence and Wagner 1995; 61 FR 53070; K. Wood, pers. comm., 2001).

Major threats to *Hibiscadelphus woodii* are habitat degradation by feral goats and pigs; competition from the nonnative plant species *Erigeron karvinskianus*; nectar robbing by the Japanese white-eye (*Zosterops japonicus*), an introduced bird; and a risk of extinction from naturally occurring events (*e.g.*, rock slides), and reduced reproductive vigor due to the small number of existing individuals at the only known site (Lorence and Wagner 1995; 61 FR 53070).

Hibiscus clayi (Clay's hibiscus)

Hibiscus clayi, a member of the mallow family (Malvaceae), is a long-lived perennial shrub or small tree. This species is distinguished from other native Hawaiian members of the genus by the lengths of the calyx, calyx lobes, and capsule and by the margins of the leaves (Bates 1999).

Little is known about the life history of *Hibiscus clayi*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Hibiscus clayi* was known from scattered locations on Kauai: the Kokee region on the western side of the island, Moloaa Valley to the north, Nounou Mountain in Wailua to the east, and as far south as Haiku near Halii Stream. At this time, only one occurrence on State land in the Nounou Mountains, with a total of four individuals, is known to be extant (GDSI 2000; HINHP Database 2000).

Hibiscus clayi generally grows on slopes at elevations between 9 and 765 m (29 and 2,509 ft) in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest with *Artemisia australis, Bidens* spp., *Cyanea hardyi* (haha), *Gahnia* spp., *Hedyotis acuminata* (au), *Munroidendron racemosum* (NCN), *Pandanus tectorius* (hala), *Panicum tenuifolium* (mountain pili), *Pipturus* spp., *Pleomele aurea, Psychotria* spp., or *Psydrax odorata* (HINHP Database 2000; 59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to this species are herbivory and habitat degradation by feral pigs; competition from the nonnative plant species *Araucaria columnaris* (Norfolk Island pine) and *Psidium cattleianum;* trampling by humans; and a risk of extinction due to naturally occurring events, such as landslides or hurricanes, as well as decreased reproductive vigor because of the small population size and restricted distribution (HINHP Database 2000; 59 FR 9304).

Hibiscus waimeae ssp. *hannerae* (kokio keokeo)

Hibiscus waimeae ssp. *hannerae,* a member of the mallow family (Malvaceae), is a gray-barked tree with star-shaped hairs densely covering its leaf and flower stalks and branchlets. The long-lived perennial species is distinguished from others of the genus by the position of the anthers along the staminal column, length of the staminal column relative to the petals, color of the petals, and length of the calyx. Two subspecies, ssp. *hannerae* and ssp. *waimeae,* both endemic to Kauai, are recognized. Subspecies *hannerae* is distinguishable from ssp. *waimeae* by its larger leaves and smaller flowers (Bates 1999).

Little is known about the life history of *Hibiscus waimeae* ssp. *hannerae.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Hibiscus waimeae* ssp. *hannerae* was known from Kalihiwai and adjacent valleys, Limahuli Valley, and Hanakapiai Valley. This subspecies is no longer extant at Kalihiwai. Currently, there are two occurrences containing 27 individuals on State (Na Pali Coast State Park) and privately owned lands in Hanakapiai Valley, Limahuli Valley, and Pohakuao (Bates 1999; GDSI 2000; HINHP Database 2000).

Hibiscus waimeae ssp. *hannerae* grows at elevations between 174 and 1,154 m (570 and 3,787 ft). It is found in *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* spp.-*Charpentiera elliptica* (papala) lowland wet or mesic forest with *Antidesma* spp., *Bidens* spp., *Bobea* spp., *Cibotium* spp., *Cyanea* spp., *Cyrtandra* spp., *Perrottetia sandwicensis, Pipturus* spp., *Psychotria* spp., *Sadleria* spp., or *Syzygium sandwicensis* (Bates 1999; HINHP Database 2000; Service 1998a; K. Wood, pers. comm., 2001).

Major threats to *Hibiscus waimeae* ssp. *hannerae* are habitat degradation by feral pigs, competition with nonnative plant species, and a risk of extinction from naturally occurring events (*e.g.*, landslides and hurricanes) and/or reduced reproductive vigor due to the small number of remaining populations (HINHP Database 2000; 61 FR 53070).

Kokia kauaiensis (kokio)

Kokia kauaiensis, a member of the mallow family (Malvaceae), is a small tree. This long-lived perennial species is distinguished from others of this endemic Hawaiian genus by the length of the bracts surrounding the flower head, number of lobes and the width of the leaves, the length of the petals, and the length of the hairs on the seeds (Bates 1999).

Little is known about the life history of *Kokia kauaiensis.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Kokia kauaiensis* was found as seven scattered occurrences on northwestern Kauai. Currently, there are a total of 21 occurrences with 166 to 171 individuals, found in Pohakuao, the left branch of Kalalau Valley, Paaiki Valley, Kuia Valley, Koaie Canyon, Kipalau Valley, and Kawaiiki Valley, all on State-owned land within Kuia NAR, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Kokia kauaiensis typically grows in diverse mesic forest at elevations between 215 and 1,049 m (707 and 3,441 ft). Associated native plant species include *Acacia koa, Alyxia oliviformis, Antidesma* spp., *Bobea* spp., *Chamaesyce celastroides, Claoxylon sandwicense, Dicranopteris linearis, Diellia pallida, Diospyros hillebrandii, Diospyros sandwicensis, Dodonaea viscosa, Flueggea neowawraea* (mehamehame), *Hedyotis* spp., *Hibiscus* spp. (aloalo), *Isodendrion laurifolium* (aupaka), *Lipochaeta fauriei* (nehe), *Melicope* spp., *Metrosideros polymorpha, Nestegis sandwicensis, Nototrichium* spp., *Pisonia* spp., *Pleomele aurea, Pouteria sandwicensis, Psydrax odorata, Pteralyxia kauaiensis, Rauvolfia sandwicensis, Santalum freycinetianum* var. *pyrularium* (iliahi), *Streblus pendulinus* (aiai), *Syzygium sandwicensis, Tetraplasandra* spp., or *Xylosma* spp. (Bates 1999; HINHP Database 2000; Service 1998a; K. Wood, pers. comm., 2001).

Competition with and habitat degradation by invasive nonnative plant species, substrate loss from erosion, habitat degradation and browsing by feral goats and deer, and seed predation by rats are the major threats affecting the survival of *Kokia kauaiensis* (HINHP Database 2000; Service 1998a; Wood and Perlman 1993).

Labordia lydgatei (kamakahala)

Labordia lydgatei, a member of the logania family (Loganiaceae), is a much-branched perennial shrub or small tree with sparsely hairy, square stems. The small size of the flowers and capsules borne on sessile (attached to the base) inflorescences (a flower cluster) distinguish it from other members of the genus growing in the same area (Wagner *et al.* 1999).

Immature fruits were seen on two plants during surveys in 1991 and 1992 by botanists from NTBG, and remnants of old fruiting bodies were seen on another, suggesting that the plants are able to self-fertilize. It is also suspected that the fruits of this species are adapted for bird dispersal. Due to a lack of bird or other native pollinators, pollination may be inhibited. Microhabitat requirements for seed germination and growth may also be extremely specific. Virtually nothing is known about the life history or ecology of this species (Service 1994).

This species was originally known from the Wahiawa drainage, Waioli Stream Valley, and Makaleha Mountains on Kauai. *Labordia lydgatei* is currently known from six occurrences, consisting of 37 individual plants, located on State (Lihue-Koloa and Halelea Forest Reserves) and privately owned lands at Pali Eleele, Waioli Valley, Leleiwi, Lumahai Valley, and Kapalaoa (GDSI

2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Labordia lydgatei is found on streambanks in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest at elevations between 182 and 1,048 m (597 and 3,437 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii* (hame), *Cyanea* spp., *Cyrtandra* spp., *Dubautia knudsenii, Hedyotis terminalis, Ilex anomala, Labordia hirtella* , (kamakahala), *Psychotria* spp., or *Syzygium sandwicensis* (HINHP Database 2000; Service 1994; K. Wood, pers. comm., 2001).

Competition from nonnative plants poses the greatest threat to the survival of *Labordia lydgatei* (56 FR 47695). Additional threats include habitat degradation from feral pigs; rats, a potential seed predator; landslides and erosion; reduced germination; and a lack of dispersal or pollination agents (Service 1994).

Labordia tinifolia var. *wahiawaensis* (kamakahala)

Labordia tinifolia var. *wahiawaensis*, a member of the logania family (Loganiaceae), is a shrub or small tree with hairless, cylindrical young branches. This long-lived perennial species differs from others of the genus by having a long common flower cluster stalk, hairless young stems and leaf surfaces, transversely wrinkled capsule valves, and length of the corolla lobes. Three varieties of *Labordia tinifolia* are recognized: var. *lanaiensis* on Lanai and Molokai; var. *tinifolia* on Kauai, Oahu, Molokai, Maui, and Hawaii; and var. *wahiawaensis*, endemic to Kauai. The variety *wahiawaensis* is distinguished from the other two by its larger corolla (Wagner *et al.* 1999).

Little is known about the life history of *Labordia tinifolia* var. *wahiawaensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Labordia tinifolia var. *wahiawaensis* has only been known from one occurrence with a current total of approximately 20 to 30 individual plants on private land in the Wahiawa drainage in the Wahiawa Mountains (GDSI 2000; HINHP Database 2000).

Labordia tinifolia var. *wahiawaensis* grows along streambanks in lowland wet forests dominated by *Metrosideros polymorpha* at elevations between 458 and 1,006 m (1,502 and 3,301 ft), with *Antidesma platyphyllum, Athyrium microphyllum* (akolea), *Cheirodendron* spp., *Cyrtandra* spp., *Dicranopteris linearis, Hedyotis terminalis,* or *Psychotria* spp. (HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to the remaining individuals of *Labordia tinifolia* var. *wahiawaensis* are competition with nonnative plants, habitat degradation by feral pigs, trampling by humans, and a risk of extinction from catastrophic random events or reduced reproductive vigor due to the small number of individuals in a single population (61 FR 53070).

Lipochaeta fauriei (nehe)

Lipochaeta fauriei, a member of the aster family (Asteraceae), is a perennial herb with somewhat woody, erect or climbing stems. This short-lived perennial species differs from other species on Kauai by having a greater number of disk and ray flowers per flower head, longer ray flowers, and longer leaves and leaf stalks (Gardner 1976, 1979; Service 1995; Wagner *et al.* 1985, 1990).

Little is known about the life history of *Lipochaeta fauriei*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Lipochaeta fauriei* is known from Olokele Canyon on Kauai. This species is now found on State-owned land in Poopooiki Valley, Kuia Valley, Haeleele Valley, and Kawaiiki Valley within Kuia NAR, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve. Currently there is a total of five occurrences with 82 individuals. An occurrence in Koaie Canyon previously thought to be *L. fauriei* was later identified as *Melanthera subcordata* (nehe) (Gardner 1979; GDSI 2000; HINHP Database 2000; Service 1995; K. Wood, *in litt.* 1999).

This species grows most often in moderate shade to full sun and is usually found on the sides of steep gulches in diverse lowland mesic forests at elevations between 436 and 947 m (1,432 and 3,108 ft). Associated native plant species include *Acacia koa, Carex meyenii, Carex wahuensis, Dicranopteris linearis, Diospyros* spp., *Dodonaea viscosa, Euphorbia haeleeleana, Hibiscus waimeae, Kokia kauaiensis, Myrsine lanaiensis, Nestegis sandwicensis, Pleomele aurea, Psychotria greenwelliae, Psychotria mariniana,* or *Sapindus oahuensis* (lonomea) (HINHP Database 2000; K. Wood, pers. comm., 2001).

Major threats to *Lipochaeta fauriei* are predation and habitat degradation by feral goats and pigs and competition with invasive nonnative plants. Fire is also a significant threat to *L. fauriei* due to the invasion of *Melinis minutiflora*, a fire-adapted grass that creates unnaturally high fuel loads. The small total number of individuals makes the species susceptible to extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor (HINHP Database 2000; Service 1995; 59 FR 9304).

Lipochaeta micrantha (nehe)

Lipochaeta micrantha, a member of the aster family (Asteraceae), is a somewhat woody short-lived perennial herb. The small number of disk flowers separates this species from the other members of the genus on the island of Kauai. The two recognized varieties of this species, var. *exigua* and var. *micrantha*, are distinguished by differences in leaf length and width, degree of leaf dissection, and the length of the ray florets (Gardner 1976, 1979; Wagner *et al.* 1990).

Little is known about the life histories of *Lipochaeta micrantha* var. *exigua* and *L. m.* var. *micrantha*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Lipochaeta micrantha* var. *exigua* was only known from the Haupu Range on Kauai. Currently, five occurrences of *L. micrantha* var. *exigua*, with a total of 110 individuals, are known from privately owned land in the vicinity of Haupu Range and southwest of Hokunui summit. Historically, *L. micrantha* var. *micrantha* was known from Olokele Canyon, Hanapepe Valley, and the Koloa District on Kauai. Currently, this variety is only known from five occurrences totaling 121 individuals on State land within the Na Pali-Kona Forest Reserve in Koaie Canyon and Kawaiiki Valley (GDSI 2000; HINHP Database 2000).

Lipochaeta micrantha grows on cliffs, ridges, streambanks, or slopes in mesic to wet mixed communities at elevations between 35 and 1,362 m (115 and 4,468 ft). Associated species include *Acacia koa, Antidesma* spp., *Artemisia australis, Bidens sandvicensis, Bobea* spp., *Chamaesyce celastroides* var. *hanapepensis, Diospyros* spp., *Dodonaea viscosa, Eragrostis grandis, Eragrostis variabilis, Hibiscus kokio, Lepidium bidentatum* (anaunau), *Lobelia niihauensis, Melicope* spp., *Metrosideros polymorpha, Neraudia kauaiensis* (NCN), *Nototrichium* spp., *Pipturus* spp., *Plectranthus parviflorus* (ala ala wai nui), *Pleomele aurea, Psydrax odorata, Rumex albescens* (huahuako), *Sida fallax,* or *Xylosma hawaiiense* (maua) (HINHP Database 2000; Service 1995; K. Wood, pers. comm., 2001).

The major threats to both varieties of *Lipochaeta micrantha* are habitat degradation by feral pigs and goats and competition with nonnative plant species such as *Erigeron karvinskianus, Lantana camara, Pluchea carolinensis,* or *Stachytarpheta australis*. The species is also threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations (HINHP Database 2000; Lorence and Flynn 1991; Service 1995).

Lipochaeta waimeaensis (nehe)

Lipochaeta waimeaensis, a member of the aster family (Asteraceae), is a low growing, somewhat woody, short-lived perennial herb. This species is distinguished from other *Lipochaeta* species on Kauai by leaf shape and the presence of shorter leaf stalks and ray florets (Gardner 1976, 1979; Wagner *et al.* 1990).

Little is known about the life history of *Lipochaeta waimeaensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Lipochaeta waimeaensis has been known only from the original site of discovery along the rim of Kauai's Waimea Canyon on State-owned land. There are no more than 100 individuals (GDSI 2000; HINHP Database 2000).

This species grows on eroded soil on a precipitous, shrub-covered gulch in a diverse lowland forest at elevations between 44 and 460 m (145 and 1,509 ft) with *Artemisia australis, Chamaesyce celastroides, Dodonaea viscosa, Lipochaeta connata, Panicum* spp. (NCN), *Santalum freycinetianum,* or *Schiedea spergulina* (NCN) (HINHP Database 2000; Wagner *et al.* 1999; K. Wood, pers. comm., 2001).

The major threats to *Lipochaeta waimeaensis* are competition from nonnative plants and habitat destruction by feral goats, whose presence exacerbates the existing soil erosion problem at the site. The single occurrence, and thus the entire species, is threatened by extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (59 FR 9304).

Melicope haupuensis (alani)

Melicope haupuensis, a member of the rue family (Rutaceae), is a small long-lived perennial tree. Unlike other species of this genus on Kauai, the exocarp (outermost layer of a fruit) and endocarp (innermost layer of a fruit) are hairless and the sepals are covered with dense hairs (Stone *et al.* 1999).

Little is known about the life history of *Melicope haupuensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

For 62 years, *Melicope haupuensis* was known only from the site of its original discovery on the north side of Haupu Ridge on Kauai. This occurrence is now gone. The species is now known from four occurrences with a total of 13 individuals on State-owned land within the Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve in Kalahu, Awaawapuhi Valley, and Koaie Canyon (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Melicope haupuensis grows on moist talus slopes in *Metrosideros polymorpha*-dominated lowland mesic forests or *M. polymorpha-Acacia koa* montane mesic forest at elevations between 111 and 1,249 m (364 and 4,097 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii, Bobea brevipes, Cheirodendron trigynum, Claoxylon sandwicense, Cryptocarya mannii* (holio), *Dianella sandwicensis* (ukiuki), *Diospyros hillebrandii, Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Melicope anisata, M. barbigera* (uahiapele), *M. ovata* (alani), *Pleomele aurea, Pouteria sandwicensis, Pritchardia minor* (loulu), *Psychotria greenwelliae, Psychotria mariniana, Tetraplasandra waimeae* (ohekikoola), or *Zanthoxylum dipetalum* (HINHP Database 2000; K. Wood, pers. comm., 2001).

Habitat degradation by feral goats and competition with invasive nonnative plant species are the major threats to *Melicope haupuensis*. In addition, this species may be susceptible to the black twig borer (*Xylosandrus compactus*). The existence of only 13 known trees constitutes an extreme threat of extinction from naturally occurring events, such as landslides or hurricanes, or reduced reproductive vigor (Hara and Beardsley 1979; HINHP Database 2000; Medeiros *et al.* 1986; 59 FR 9304).

Melicope quadrangularis (alani)

Melicope quadrangularis, a member of the rue family (Rutaceae), is a shrub or small tree. Young branches are generally covered with fine yellow fuzz but become hairless with age. This species differs from others in the genus in having the following combination of characters: oppositely arranged leaves, only one or two flowers per cluster, cube-shaped capsules with fused lobes, and a deep central depression at the top of the fruit (Stone *et al.* 1999).

Little is known about the life history of *Melicope quadrangularis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Melicope quadrangularis is known from the type locality in the Wahiawa Bog region of Kauai. One adult plant and two seedlings were discovered in 1991 by Ken Wood of NTBG on an east-facing slope of Wahiawa Ridge at 853 m (2,800 ft) on privately owned land. Subsequent exploration resulted in the location of a total of 13 individuals of this species. Although a survey after hurricane Iniki in 1992 did not relocate any individuals, it is hoped that there is a seed bank or that undiscovered individuals remain to be found (Stone *et al.* 1999).

Melicope quadrangularis grows in *Metrosideros polymorpha* diverse lowland wet forest that ranges from mesic to wet conditions at elevations between 608 and 1,593 m (1,995 and 5,228 ft). Associated native plant species include *Antidesma platyphyllum, Broussaisia arguta, Cheirodendron fauriei* (olapa), *Cibotium nealiae* (hapuu), *Cyrtandra pickeringii* (haiwale), *Dicranopteris linearis, Machaerina angustifolia, Machaerina mariscoides* (ahaniu), other *Melicope* spp., *Metrosideros waialealae* (NCN), *Psychotria hexandra, P. mariniana, P. wawrae* (kopiko), *Sadleria pallida, Scaevola gaudichaudiana* (naupaka kuahiwi), or *Syzygium sandwicensis* (K. Wood, pers. comm., 2001).

This species is threatened by nonnative plants and habitat disturbance by feral pigs; over-collecting for scientific purposes; extinction from naturally occurring events, such as landslides or hurricanes; and/or reduced reproductive vigor due to the dearth of individuals (Service 1994).

Munroidendron racemosum (NCN)

Munroidendron racemosum, a member of the ginseng family (Araliaceae), is a small tree with a straight gray trunk crowned with spreading branches. This long-lived perennial species is the only member of a genus endemic to Hawaii. The genus is distinguished from other closely related Hawaiian genera of the family by

its distinct flower clusters and corolla (Constance and Affolter 1999).

Reproduction occurs year-round, with flowers and fruits found throughout the year. Self-pollination is assumed to occur since viable seeds have been produced by isolated individuals. Pollinators have not been observed, but insect pollination is likely. Dispersal mechanisms are unknown (Service 1995).

Historically, *Munroidendron racemosum* was known from scattered locations throughout the island of Kauai. Occurrences are now known from Waiahuakua, Pohakuao, the left and right branches of Kalalau Valley, Nakeikionaiwi Valley, Awaawapuhi Valley spring, Honopu Valley, Nualolo Valley, Poomau Valley, Kawaiiki Valley, Koaie Canyon, Nonou, Haupu, and Keopaweo. There are currently 17 known occurrences with approximately 59 to 99 individuals on State (Hono o Na Pali NAR, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, Nonou Forest Reserve, and Puu Ka Pele Forest Reserve) and privately owned lands (GDSI 2000; HINHP Database 2000).

Munroidendron racemosum is typically found on steep exposed cliffs or on ridge slopes in coastal to lowland mesic forests at elevations between 6 and 979 m (19 and 3,213 ft). Associated plant species include *Bobea brevipes, Brighamia insignis, Canavalia napaliensis* (awikiwiki), *Diospyros hillebrandii, Diospyros sandwicensis, Nestegis sandwicensis, Pisonia sandwicensis* (aulu), *Pisonia umbellifera* (papala kepau), *Pleomele aurea, Pouteria sandwicensis, Psychotria* spp., *Psydrax odorata, Rauvolfia sandwicensis, Schiedea* spp. (NCN), *Sida fallax*, or *Tetraplasandra* spp. (Gagne and Cuddihy 1999; HINHP Database 2000; 59 FR 9304; K. Wood, pers. comm., 2001).

The threats to *Munroidendron racemosum* are competition with nonnative plant species, such as *Aleurites moluccana, Lantana camara, Leucaena leucocephala* (koa haole), or *Psidium guajava;* habitat degradation by feral goats and fruit predation by rats; introduced insects of the long-horned beetle family (Cerambycidae); fire; extinction from naturally occurring events, such as landslides or hurricanes; and reduced reproductive vigor (HINHP Database 2000; Service 1995; 59 FR 9304).

Myrsine linearifolia (kolea)

Myrsine linearifolia, a member of the myrsine family (Myrsinaceae), is a branched shrub. This long-lived perennial species is distinguished from others of the genus by the shape, length, and width of the leaves, length of the petals, and number of flowers per cluster (Wagner *et al.* 1999).

Little is known about the life history of *Myrsine linearifolia*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Historically, *Myrsine linearifolia* was found at scattered locations on Kauai: Olokele Valley, Kalualea, Kalalau Valley, Kahuamaa Flat, Limahuli-Hanakapiai Ridge, Koaie Stream, Pohakuao, Namolokama summit plateau, and Haupu. There are currently 12 occurrences with approximately 490 to 564 individuals on State (Alakai Wilderness Preserve and Na Pali Coast State Park) and privately owned lands. The populations are found in Limahuli Valley, Alealau, the left branch of Kalalau Valley, Puu O Kila, Koaie Canyon, Namolokama, and Kapalaoa (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Myrsine linearifolia typically grows at elevations between 105 and 1,380 m (346 and 4,526 ft) in diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominant species. Plants growing in association with this species include *Bobea brevipes, Cryptocarya mannii, Dubautia* spp., *Eurya sandwicensis* (anini), *Freycinetia arborea, Hedyotis terminalis, Lysimachia glutinosa, Machaerina angustifolia, Melicope* spp., *Myrsine* spp., *Nothocestrum spp. (aiea), Psychotria spp., Sadleria pallida*, or *Syzygium sandwicensis* (HINHP Database 2000; 61 FR 53070; K. Wood, pers. comm., 2001).

Competition with nonnative plants, such as *Erigeron karvinskianus, Kalanchoe pinnata* (air plant), *Lantana camara, Psidium cattleianum, Rubus argutus*, and *Rubus rosifolius* and habitat degradation by feral pigs and goats are the major threats to *Myrsine linearifolia* (61 FR 53070).

Nothocestrum peltatum (aiea)

Nothocestrum peltatum, a member of the nightshade family (Solanaceae), is a small tree with ash-brown bark and woolly stems. The usually peltate (leaf stem attached to the center) leaves and shorter leaf stalks separate this species from others in the genus (Symon 1999).

Although plants of this long-lived perennial species have been observed flowering, they rarely set fruit. This could be the result of a loss of pollinators, reduced genetic variability, or an inability to fertilize itself. Little else is known about the life history of *Nothocestrum peltatum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 9304).

Historically, *Nothocestrum peltatum* was known from Kauai at Kumuwela, Kaholuamanu, and the region of Nualolo. This species is now known from a total of 10 occurrences with 20 individuals, located at Kahuamaa Flats, Awaawapuhi Trail, Awaawapuhi Valley, Kawaiula Valley, and Makaha Valley on State-owned land within the Kokee State Park, Kuia NAR, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

This species generally grows in rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *A. koa* and *Metrosideros polymorpha*, at elevations between 581 and 1,290 m (1,906 and 4,232 ft). Associated native plants include *Alphitonia ponderosa, Antidesma* spp., *Bobea brevipes, Broussaisia arguta, Cheirodendron trigynum, Claoxylon sandwicense, Coprosma* spp., *Cryptocarya mannii, Dianella sandwicensis, Dicranopteris linearis, Diplazium sandwichianum, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Ilex anomala, Melicope anisata, M. barbigera, M. haupuensis, Perrottetia sandwicensis, Pleomele aurea, Pouteria sandwicensis, Psychotria greenwelliae, Psychotria mariniana, Tetraplasandra kavaiensis*, or *Xylosma* spp. (HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition with nonnative plants (such as *Erigeron karvinskianus, Lantana camara, Passiflora tarminiana*, or *Rubus argutus*), and habitat degradation by feral pigs, deer, and red jungle fowl (*Gallus gallus*) constitute the major threats to *Nothocestrum peltatum*. This species is also threatened by fire, risk of extinction from naturally occurring events (*e.g.*, landslides or hurricanes), and reduced reproductive vigor due to the small number of existing individuals (HINHP Database 2000; 59 FR 9304).

Panicum niihauense (lau ehu)

Panicum niihauense, a member of the grass family (Poaceae), is a perennial bunchgrass with unbranched culms (aerial stems). This short-lived perennial species is distinguished from others in the genus by the erect inflorescence branches and the densely clustered spikelets (Davidse 1999).

Little is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Panicum niihauense was known historically from Niihau and one location on Kauai. Currently, this species is only known from one occurrence of 23 individuals at the Polihale State Park area of Kauai on State-owned land (GDSI 2000; HINHP Database 2000).

Panicum niihauense is found scattered in sand dunes in coastal shrubland at elevations between 0 and 103 m (0 and 337 ft). Associated native plant species include *Cassytha filiformis* (kaunaoa pehu), *Chamaesyce celastroides, Dodonaea viscosa, Nama sandwicensis* (hinahina kahakai), *Ophioglossum pendulum* ssp. *falcatum* (puapua moa), *Scaevola sericea* (naupaka kahakai), *Sida fallax, Sporobolus virginicus* (akiaki), or *Vitex rotundifolia* (kolokolo kahakai) (HINHP Database 2000; K. Wood, pers. comm., 2001).

Primary threats to *Panicum niihauense* are destruction by off-road vehicles, competition with nonnative plant species, and a risk of extinction from naturally occurring events (*e.g.*, landslides or hurricanes) and reduced reproductive vigor due to the small number of individuals in the one remaining population (HINHP Database 2000; 61 FR 53108).

Phyllostegia knudsenii (NCN)

Phyllostegia knudsenii, a nonaromatic member of the mint family (Lamiaceae), is an erect herb or vine. This short-lived perennial species is distinguished from others in the genus by its specialized flower stalk; it differs from the closely related *P. floribunda* by often having four flowers per group (Wagner *et al.* 1999).

Little is known about the life history of *Phyllostegia knudsenii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Until 1993, *Phyllostegia knudsenii* was only known from the site of its original discovery made in the 1800s from the woods of Waimea on Kauai. There is currently one known occurrence with a total of 4 to13 individuals on State-owned land in Koaie Canyon within the Alakai Wilderness Preserve (GDSI 2000; HINHP Database 2000; Wagner *et al.* 1999; K. Wood, *in litt.* 1999).

Phyllostegia knudsenii is found in *Metrosideros polymorpha* lowland mesic or wet forest at elevations between 399 and 1,059 m (1,309 and 3,475 ft). Associated native plant species include *Bobea timonioides* (ahakea), *Claoxylon sandwicense, Cryptocarya mannii, Cyrtandra kauaiensis, Cyrtandra paludosa* (moa), *Diospyros sandwicensis, Elaeocarpus bifidus, Ilex anomala, Myrsine linearifolia, Perrottetia sandwicensis, Pittosporum kauaiense* (hoawa), *Pouteria sandwicensis, Pritchardia minor, Selaginella arbuscula* (lepelepeamoa), *Tetraplasandra oahuensis* (ohe mauka), or *Zanthoxylum dipetalum* (61 FR 53070; K. Wood, pers. comm., 2001).

Major threats to *Phyllostegia knudsenii* include habitat degradation by feral pigs and goats, competition with nonnative plants, and a risk of extinction from naturally occurring events (*e.g.*, landslides and hurricanes) and reduced reproductive vigor due to the small number of individuals in the only known population (61 FR 53070; Service 1998a).

Phyllostegia waimeae (NCN)

Phyllostegia waimeae, a nonaromatic member of the mint family (Lamiaceae), is a climbing perennial plant. Characteristics that distinguish this species from others in the genus are the nearly stalkless bracts that partially overlap and cover the flowers, and relatively fewer oil glands on the leaves (Wagner *et al.* 1999).

Little is known about the life history of *Phyllostegia waimeae*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown Service 1995).

Historically, *Phyllostegia waimeae* was known from Kaholuamanu and Kaaha on Kauai. Currently, one occurrence with six individuals persists on State land in Kawaiiki Valley within the Na Pali-Kona Forest Reserve (K. Wood, *in litt.* 2001).

This species typically grows in *Acacia koa-Metrosideros polymorpha* dominated wet or mixed mesic forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominants at elevations between 655 and 1,224 m (2,149 and 4,016 ft). Associated native plant species include *Broussaisia arguta, Claoxylon sandwicense, Diplazium sandwichianum, Dubautia knudsenii, Elaphoglossum* spp., *Gunnera kauaiensis, Hedyotis* spp., *Myrsine lanaiensis, Pleomele aurea, Psychotria* spp., *Sadleria* spp., *Scaevola procera* (naupaka kuahiwi), *Syzygium sandwicensis*, or *Vaccinium* spp. (K. Wood, pers. comm., 2001).

Habitat destruction by feral goats, erosion, and competition with introduced grasses are the major threats to *Phyllostegia waimeae*. The species is also threatened by over-collecting for scientific purposes; extinction from naturally occurring events, such as hurricanes; and/or reduced reproductive vigor due to the small number of existing individuals (Service 1995).

Phyllostegia wawrana (NCN)

Phyllostegia wawrana, a nonaromatic member of the mint family (Lamiaceae), is a perennial vine that is woody toward the base and has long, crinkly hairs along the stem. This short-lived perennial species can be distinguished from the related *P. floribunda* and *P. knudsenii* by its less specialized flower stalk (Wagner *et al.* 1999).

Seeds were observed in the wild in August 1993. No additional life history information for this species is currently known (Service 1998a).

Phyllostegia wawrana was reported to be found at Hanalei on Kauai in the 1800s and along Kokee Stream in 1926. Currently, four occurrences with approximately 34 to 54 individuals are reported from Koaie Canyon, Moaalele, Awaawapuhi Valley, and Makaleha on State-owned land within the Alakai Wilderness Preserve, Hono o Na Pali NAR, and Kokee State Park (GDSI 2000; HINHP Database 2000).

This species grows at elevations between 398 and 1,284 m (1,306 and 4,212 ft) in *Acacia koa-Metrosideros polymorpha-Cheirodendron* mixed mesic forest. Associated native plant species include *Alectryon macrococcus, Asplenium polyodon , Athyrium microphyllum, Carex* spp., *Claoxylon sandwicense, Cyanea fissa* (haha), *Delissea rivularis, Dianella sandwicensis, Diplazium sandwichianum, Dodonaea viscosa, Doodia kunthiana, Dryopteris wallichiana, Dubautia knudsenii, Dubautia laevigata, Hedyotis tryblium, Machaerina angustifolia, Panicum nephelophilum, Peperomia* spp., *Perrottetia sandwicensis, Pleomele aurea, Poa sandvicensis, Pteridium aquilinum* var. *decompositum, Sadleria pallida, Scaevola procera, Schiedea stellarioides, Syzygium sandwicensis, Touchardia latifolia*, or *Vaccinium dentatum* (HINHP Database 2000; 61 FR 53070; K. Wood, pers. comm., 2001).

Major threats to *Phyllostegia wawrana* include habitat degradation by feral pigs and competition with nonnative plant species, such as *Erechtites valerianifolia, Erigeron karvinskianus, Melastoma candidum, Passiflora tarminiana, Rubus argutus*, and *Rubus rosifolius* (61 FR 53070; Service 1998a).

Poa mannii (Mann's bluegrass)

Poa mannii, a member of the grass family (Poaceae), is a perennial grass with short rhizomes (underground stems) and erect, tufted culms. All three native species of *Poa* in the Hawaiian Islands are endemic to the island of Kauai. *Poa mannii* is distinguished from both *P. siphonoglossa* and *P. sandvicensis* by its fringed ligule (an appendage on the leaf sheath) and from *P. sandvicensis* by its shorter panicle (a flower cluster) branches (O'Connor 1999).

Little is known about the life history of *Poa mannii*. Flowering cycles, pollination vectors, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, this species was found in Olokele Gulch on Kauai. Currently, there is a total of six occurrences with approximately 268 individuals on State-owned land in the right and left branches of Kalalau Valley, Awaawapuhi Valley, Kuia Valley, and Kauhao Valley within the Kuia NAR, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Waimea Canyon State Park (GDSI 2000; HINHP Database 2000; O'Connor 1999; K. Wood, *in litt.* 1999).

This species typically grows on cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa-M. polymorpha* forest at elevations between 327 and 1,222 m (1,072 and 4,009 ft). Associated native plant species include *Antidesma platyphyllum, Artemisia australis, Bidens cosmoides, Bidens sandvicensis, Carex meyenii, Carex wahuensis, Chamaesyce celastroides* var. *hanapepensis, Cyperus phleoides* (NCN), *Diospyros sandwicensis, Dodonaea viscosa, Eragrostis variabilis, Hedyotis terminalis, Lobelia niihauensis, Lobelia yuccoides* (panaunau), *Luzula hawaiiensis* (wood rush), *Melicope anisata, M. barbigera, M. pallida, Nototrichium* spp., *Panicum lineale, Pleomele aurea, Pouteria sandwicensis, Psychotria greenwelliae, Psychotria mariniana, Schiedea* spp., or *Wilkesia gymnoxiphium* (HINHP Database 2000; 59 FR 56330; K. Wood, pers. comm., 2001).

Poa mannii survives only in very steep areas that are inaccessible to goats, suggesting that goat herbivory may have eliminated this species from more accessible locations, as is the case for other rare plants from northwestern Kauai. Threats to *P. mannii* include habitat damage, trampling, and browsing by feral goats, and competition with invasive nonnative plants. *Erigeron karvinskianus* has invaded Kalalau, Koaie, and Waialae Valleys, three of the areas where *P. mannii* occurs. *Lantana camara* threatens all known populations, and *Rubus argutus* threatens the populations in Kalalau and Waialae Valleys. *Poa mannii* is also threatened by fire and reduced reproductive vigor and/or extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of existing populations and individuals (59 FR 56330).

Poa sandvicensis (Hawaiian bluegrass)

Poa sandvicensis is a perennial grass (Poaceae) with densely tufted, mostly erect culms. It is distinguished from closely related species by its shorter rhizomes and culms which do not become rush-like with age, closed and fused sheaths, relatively even-edged ligules, and longer panicle branches (O'Connor 1999).

Little is known about the life history of *Poa sandvicensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, this species was known from the following areas on the island of Kauai: the rim of Kalalau Valley; Halemanu Ridge, Kumuwela Ridge, and Kauaikanana drainage; Awaawapuhi Trail; Kohua Ridge/Mohihi drainage; and Kaholuamanu. Hillebrand's (1888) reference to a Maui locality is most likely an error. Currently, there is a total of nine occurrences with 1,321 individuals on State-owned land. *Poa sandvicensis* is known to be extant at Alealau, Keanapuka, Awaawapuhi Trail, Kumuwela Ridge, Maile Flat Trail, Mohihi Stream, Mohihi-Waialae Trail, Kawaiiki Valley, and Waialae Valley in the Alakai Wilderness Preserve, Hono o Na Pali NAR, Kokee State Park, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (GDSI 2000; HINHP Database 2000; 57 FR 20580; K. Wood, *in litt.* 1999).

Poa sandvicensis grows on wet, shaded, gentle to steep slopes, ridges, and rock ledges of streambanks in semi-open to closed, wet, diverse *Acacia koa-Metrosideros polymorpha* montane forest, at elevations between 473 and 1,290 m (1,553 and 4,232 ft). Associated native plant species include *Alyxia oliviformis, Bidens sandvicensis, Cheirodendron* spp., *Claoxylon sandwicense, Coprosma* spp., *Dianella sandwicensis, Dicranopteris linearis, Dodonaea viscosa, Dubautia* spp., *Hedyotis* spp., *Melicope* spp., *Peperomia* spp., *Psychotria* spp., *Scaevola procera, Schiedea stellarioides*, or *Syzygium sandwicensis* (HINHP Database 2000; 57 FR 20580; K. Wood, pers. comm., 2001).

The greatest immediate threats to the survival of *Poa sandvicensis* are competition from nonnative plants, such as *Erigeron karvinskianus, Hedychium* spp., *Passiflora tarminiana*, or *Rubus argutus;* erosion caused by feral pigs and goats; and State Forest Reserve trail maintenance activities and human recreation. In addition, naturally occurring events, such as landslides and hurricanes, constitute a threat of extinction or reduced reproductive vigor due to the species' small population size (Service 1995; 57 FR 20580).

Poa siphonoglossa (NCN)

Poa siphonoglossa is a perennial grass (Poaceae) with extensive tufted and flattened culms that cascade from banks in masses. It differs from related species by its longer culms and lack of a prominent tooth on the ligule. In addition, its shorter panicle branches distinguish it from *P. sandvicensis*, and its short rhizomes and closed and fused sheaths separate it from *P. mannii* (O'Connor 1999).

Little is known about the life history of *Poa siphonoglossa*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Poa siphonoglossa* was known from five sites on the island of Kauai: Kohua Ridge, near Kaholuamanu, Kaulaula Valley, Kuia Valley, and Kalalau. Currently, there are a total of five occurrences with a total of 50 individuals on State-owned land at Kahuamaa Flats, Mohihi-Waialae Trail, Kuia Valley, Makaha Ridge, and Kaulaula Valley in the Alakai Wilderness Preserve, Kuia NAR, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Poa siphonoglossa typically grows on shady banks on steep slopes in mesic *Metrosideros polymorpha-Acacia koa* forests at elevations between about 480 and 1,296 m (1,573 and 4,251 ft). Associated native plant species include *Alphitonia ponderosa, Alyxia oliviformis, Bobea brevipes, Carex meyenii, Carex wahuensis, Coprosma waimeae, Dianella sandwicensis, Dodonaea viscosa, Dubautia* spp., *Hedyotis* spp., *Leptecophylla tameiameiae, Lobelia yuccoides, Melicope* spp., *Microlepia strigosa, Myrsine* spp., *Panicum nephelophilum, Poa sandvicensis, Psychotria* spp., *Scaevola procera, Tetraplasandra kavaiensis, Vaccinium* spp., *Wilkesia gymnoxiphium, Xylosma* spp., or *Zanthoxylum dipetalum* (57 FR 20580; K. Wood, pers. comm., 2001).

The primary threat to the survival of *Poa siphonoglossa* is habitat degradation and/or herbivory by feral pigs and deer. The nonnative plant *Rubus argutus* invading Kohua Ridge constitutes a probable threat to that population. Small population size and the potential for one disturbance event to destroy the majority of known individuals are also serious threats to this species (HINHP Database 2000; Service 1995; 57 FR 20580).

Pritchardia aylmer-robinsonii (wahane)

Pritchardia aylmer-robinsonii, a member of the palm family (Arecaceae) is a fan-leaved tree about 7 to 15 m (23 to 50 ft) tall. This species is distinguished from others of the genus by the thin leaf texture and drooping leaf segments, tan woolly hairs on the underside of the petiole and the leaf blade base, stout hairless flower clusters that do not extend beyond the fan-shaped leaves, and the smaller spherical fruit (Read and Hodel 1999).

Little is known about the life history of *Pritchardia aylmer-robinsonii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (61 FR 41020).

Historically, *Pritchardia aylmer-robinsonii* was found at three sites in the eastern and central portions of the island of Niihau. Trees were found on Kaali Cliff and in Mokouia and Haao Valleys at elevations between 70 and 270 m (230 and 885 ft) on privately owned land. The most recent observations indicate that two plants still remain on Kaali Cliff (GDSI 2000; HINHP Database 2000; Read and Hodel 1999).

Pritchardia aylmer-robinsonii typically grows on rocky talus in seepage areas within coastal dry forest at elevations between 91 to 259 m (300 to 850 ft). Associated native plant species include *Brighamia insignis, Cyperus trachysanthos, Lipochaeta lobata* var. *lobata* (nehe), or *Lobelia niihauensis*. Originally a component of the coastal dry forest, this species now occurs only in a rugged and steep area where it receives some protection from grazing ungulates (HINHP Database 2000; 61 FR 41020).

The species is threatened by habitat degradation and/or herbivory by cattle, feral pigs, and feral goats and seed predation by rats. Small population size, limited distribution, and reduced reproductive vigor makes this species particularly vulnerable to extinction (61 FR 41020).

Pritchardia napaliensis (loulu)

Pritchardia napaliensis, a member of the palm family (Arecaceae), is a small tree with about 20 leaves and an open crown. This species is distinguished from others of the genus that grow on Kauai by having about 20 flat leaves with pale scales on the lower surface that fall off with age, inflorescences with hairless main axes, and globose round fruits less than 3 cm (1.2 in) long (Read and Hodel 1999).

Little is known about the life history of *Pritchardia napaliensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Pritchardia napaliensis has only been known from five occurrences with 155 individuals on State-owned land in Pohakuao, Alealau, Waiahuakua, and Hoolulu Valley within the Hono o Na Pali NAR and Na Pali Coast State Park (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Pritchardia napaliensis typically grows in areas between elevations of 152 and 1,158 m (500 and 3,800 ft) in a wide variety of habitats ranging from lowland dry to diverse mesic forests dominated by *Diospyros* spp. or montane wet forests dominated by *Metrosideros polymorpha* and *Dicranopteris linearis*. Associated native plant species include *Alsinidendron lychnoides, Alyxia oliviformis, Boehmeria grandis, Cheirodendron trigynum, Cibotium* spp., *Dubautia knudsenii, Elaeocarpus bifidus, Hibiscus kokio* ssp. *saintjohnianus* (kokio), *Lipochaeta connata* var. *acris* (nehe), *Melicope peduncularis* (alani), *Nesoluma polynesicum* (keahi), *Ochrosia kauaiensis* (holei), *Phyllostegia electra* (NCN), *Pleomele aurea, Poa sandvicensis, Pouteria sandwicensis, Psychotria* spp., *Psydrax odorata, Pteralyxia kauaiensis, Rauvolfia sandwicensis, Santalum freycinetianum* var. *pyrularium, Stenogyne purpurea* (NCN), *Syzygium sandwicensis, Vaccinium dentatum, Wilkesia gymnoxiphium*, or *Xylosma hawaiiense* (HINHP Database 2000; Service 1998a; 61 FR 53070).

Major threats to *Pritchardia napaliensis* include habitat degradation and grazing by feral goats and pigs; seed predation by rats; and competition with nonnative plants such as *Erigeron karvinskianus, Kalanchoe pinnata, Lantana camara, Psidium guajava*, or possibly *Cordyline fruticosa*. The species is also threatened by vandalism and over-collection. In 1993, near the Wailua River, the State Division of Forestry and Wildlife (DOFAW) constructed a fenced enclosure around 39 recently planted *P. napaliensis* individuals. Shortly after planting, the fence was vandalized and the 39 plants were removed. Also, because of the small number of remaining populations and individuals, this species is susceptible to a risk of extinction from naturally occurring events, such as landslides or hurricanes, and from reduced reproductive vigor (61 FR 53070; Craig Koga, DOFAW, in litt. 1999; A. Kyono, pers. comm., 2000).

Pritchardia viscosa (loulu)

Pritchardia viscosa, a member of the palm family (Arecaceae), is a small tree 3 to 8 m (10 to 26 ft) tall. This species differs from others of the genus that grow on Kauai by the degree of hairiness of the lower surface of the leaves and main axis of the flower cluster, and length of the flower cluster (Read and Hodel 1999).

Historically, *Pritchardia viscosa* was known only from a 1920 collection from Kalihiwai Valley. It was not seen again until 1987, when Robert Read observed it in the same general area as the type locality, off the Powerline Road at 512 m (1,680 ft) elevation (HINHP Database 2000). Currently, there is one occurrence with three individuals on State-owned land within the Halelea Forest Reserve (GDSI 2000; HINHP Database 2000; 61 FR 53070).

This species is found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest at elevations between 488 and 518 m (1,600 and 1,700 ft). Associated native species include *Antidesma* spp., *Bobea* spp., *Cibotium* spp., *Cyanea fissa, Cyrtandra kauaiensis, Cyrtandra longiflora, Dubautia knudsenii, Nothocestrum* spp., *Perrottetia sandwicensis, Psychotria* spp., *Sadleria pallida*, or *Syzygium sandwicensis* (Service 1998a; 61 FR 53070).

Pritchardia viscosa is threatened by *Psidium cattleianum*, nonnative grasses such as *Paspalum conjugatum*, and seed predation by rats. At least one of the remaining mature trees has been damaged by spiked boots used either by a botanist or seed collector to scale the tree. In mid-1996, a young plant and seeds from mature *Pritchardia viscosa* plants were removed from the only known location of this species. Because of this past activity, it is reasonable to assume that these plants are threatened by over-collection and vandalism. Also, because of the small numbers of individuals in the only known population, this species is susceptible to

extinction since a single naturally occurring event (e.g., a hurricane) could destroy all remaining plants (61 FR 53070; C. Koga, in litt. 1999; A. Kyono, pers. comm., 2000).

Pteralyxia kauaiensis (kaulu)

Pteralyxia kauaiensis, a member of the dogbane family (Apocynaceae), is a long-lived perennial tree 3 to 8 m (10 to 26 ft) tall. The leaves are dark green and shiny on the upper surfaces, but pale and dull on the lower surfaces. This species differs from the only other species of this endemic Hawaiian genus in having reduced lateral wings on the seed (Wagner *et al.* 1999).

Little is known about the life history of *Pteralyxia kauaiensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Pteralyxia kauaiensis* was known from the Wahiawa Mountains in the southern portion of Kauai. This species is now known from 39 occurrences, with a total of 1,124 to 1,161 individuals in the following scattered locations on State land: Limahuli Valley, the left and right branches of Kalalau Valley, Pohakuao, Makaha Valley, Kuia Valley, Haeleele Valley, Koaie Canyon, Kawaiiki Valley, Hipalau, Haupu, Blue Hole, Poomau Valley, and Kapalikea within the Lihue-Koloa Forest Reserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve. There is also an undocumented sighting of one individual at Makaleha, above the town of Kapaa (HINHP Database 2000; Wagner *et al.* 1999; 59 FR 9304; K. Wood, in litt. 1999).

This species is typically found in diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. between elevations of 127 and 1,563 m (418 and 5,128 ft). Associated native plant species include *Acacia koa, Alectryon macrococcus, Alphitonia ponderosa, Antidesma platyphyllum* var. *hillebrandii, Bobea brevipes, Carex* spp., *Charpentiera elliptica, Claoxylon sandwicense, Cyanea* spp., *Dianella sandwicensis, Diospyros* spp. (lama), *Diplazium sandwichianum, Dodonaea viscosa, Euphorbia haeleeleana, Freycinetia arborea, Gahnia* spp., *Gardenia remyi* (nanu), *Hedyotis terminalis, Hibiscus kokio, Kokia kauaiensis, Leptecophylla tameiameiae, Metrosideros polymorpha, Myrsine lanaiensis, Neraudia* spp. (NCN), *Nesoluma polynesicum, Nestegis sandwicensis, Peperomia* spp., *Pipturus* spp., *Pisonia sandwicensis, Pleomele aurea, Poa sandwicensis, Pouteria sandwicensis, Pritchardia* spp., *Psychotria* spp., *Psydrax odorata, Rauvolfia sandwicensis, Santalum freycinetianum* var. *pyrularium, Schiedea* spp., *Syzygium sandwicensis, Tetraplasandra* spp., *Xylosma hawaiiense*, or *Zanthoxylum dipetalum* (HINHP Database 2000; 59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to *Pteralyxia kauaiensis* are habitat destruction by feral animals and competition with introduced plants. Animals affecting the survival of this species include feral goats and pigs, and possibly rats, which may eat the fruit. Fire could threaten some populations. Introduced plants competing with this species include *Aleurites moluccona, Cordyline fruticosa, Erigeron karvinskianus, Lantana camara, Psidium cattleianum*, or *Psidium guajava* (HINHP Database 2000; Service 1995; 59 FR 9304).

Remya kauaiensis (NCN)

Remya kauaiensis, one of three species of a genus endemic to the Hawaiian Islands, is in the aster family (Asteraceae). *Remya kauaiensis* is a small short-lived perennial shrub, about 1 m (3 ft) tall, with many sprawling branches covered with a fine tan fuzz near their tips. The lower surface of the leaves is covered with fine white hairs. This species is distinguished from the other Kauai species in the genus by being hairy, having shorter flower head stalks, and having narrower tips on the floral bracts (Wagner *et al.* 1999).

Seedlings of this species have not been observed. Flowers have been observed in April, May, June; and August, and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya kauaiensis* may be self-incompatible (Herbst 1988; Service 1995; 56 FR 1450).

Historically, this species was found at Koaie, Mohihi, Kalalau, Makaha, Nualolo, Kawaiula, Kuia, Honopu, Awaawapuhi, Kopakaka, and Kauhao on Kauai. There are currently 17 known occurrences with a total of 106 to 114 individuals on State-owned land. They occur in Hipalau Valley, Awini Valley, Koaie Canyon, Mohihi Stream, the left branch of Kalalau Valley, Awaawapuhi and Nualolo Valleys, Kuia and Kawaiula Valleys, Makaha Valley, Kauhao Valley, and Kaulaula Valley within the Alakai Wilderness Preserve, Kuia NAR, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, Puu Ka Pele Forest Reserve, and Waimea Canyon State Park (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Remya kauaiensis grows chiefly on steep, north or northeast-facing slopes at elevations between 560 and 1,247 m (1,836 and 4,090 ft). It is found primarily in *Acacia koa-Metrosideros polymorpha* lowland mesic forest with *Chamaesyce* spp. (akoko), *Claoxylon sandwicense, Dianella sandwicensis, Diospyros* spp., *Dodonaea viscosa, Hedyotis terminalis, Melicope* spp., *Nestegis sandwicensis, Pouteria sandwicensis, Psychotria* spp., *Schiedea* spp., or *Tetraplasandra* spp. (HINHP Database 2000; Herbst 1988; 56 FR 1450; K. Wood, pers. comm., 2001).

The primary threats to *Remya kauaiensis* include herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from nonnative plant species. Other threats include erosion, fire, and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of remaining populations and individuals (Service 1995; 56 FR 1450).

Remya montgomeryi (NCN)

Remya montgomeryi in the aster family (Asteraceae) was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai. It is a small short-lived perennial shrub, about 1 m (3 ft) tall, with many sprawling to weakly erect, smooth branches. The species is distinguished from *R. kauaiensis* by being hairless, with longer flower head stalks and broader floral bract tips (Wagner *et al.* 1999).

Seedlings of this species have not been observed. Flowers have been observed in April through August and are probably insect-pollinated. Seeds are probably wind or water-dispersed. *Remya montgomeryi* may be self-incompatible (Herbst 1988; 56 FR 1450).

Remya montgomeryi is known only from Kauai. Six occurrences with 143 individuals are reported on State-owned land in the left and right branches of Kalalau Valley, Koaie Canyon, and Kuia Valley within the Alakai Wilderness Preserve and Na Pali Coast State Park (GDSI 2000; HINHP Database 2000; Herbst 1988; K. Wood, *in litt.* 1999).

Remya montgomeryi grows at elevations between 336 and 1,344 m (1,102 and 4,411 ft), primarily on steep, north or northeast-facing slopes or cliffs in transitional wet or *Metrosideros polymorpha*-dominated mixed mesic forest. Associated native plant species include *Artemisia australis, Bobea* spp., *Boehmeria grandis, Cheirodendron* spp., *Claoxylon sandwicense, Cyrtandra* spp., *Dubautia* spp., *Ilex anomala, Lepidium serra, Lysimachia* spp. (kolokolo kuahiwi), *Myrsine linearifolia, Nototrichium* spp., *Pleomele aurea, Poa mannii, Sadleria* spp., *Scaevola* spp., *Stenogyne campanulata, Tetraplasandra* spp., or *Zanthoxylum dipetalum* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Remya montgomeryi* are herbivory and habitat degradation by feral goats, pigs, cattle, and deer, and competition from nonnative plant species. Other threats include erosion, fire, and an increased risk of extinction from naturally occurring events (e.g., landslides or hurricanes) because of the small size of the populations and their limited distribution (Service 1995; 56 FR 1450).

Schiedea apokremnos (maolioli)

Schiedea apokremnos, a member of the pink family (Caryophyllaceae), is a low, branching short-lived perennial shrub 20 to 51 cm (8 to 20 in) tall with leaves that are somewhat fleshy. *Schiedea apokremnos* is distinguished from related species by shorter sepals, nectaries, and capsules (Wagner *et al.* 1999).

Some individuals of *Schiedea apokremnos* are functionally female and must be cross-pollinated to set seed. This reproductive strategy may be ineffective in populations with few individuals. Little is known about the life history of *Schiedea apokremnos*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Schiedea apokremnos has been collected from Nualolo Kai, Kaaweiki Ridge, and along a 10.5 km (6.5 mi) long section of the Na Pali coast including Milolii Valley, Kalalau Beach, Kaalahina and Manono Ridges, Haeleele Ridge, and as far north as Pohakuao Valley, all on the island of Kauai. There is currently a total of five occurrences containing 201 individuals on State-owned lands. The species is extant at Nakeikionaiwi, Pohakuao, Nualolo Valley, Haeleele Valley, and Kawaiiki Valley within the Na Pali Coast State Park and Puu Ka Pele Forest Reserve (GDSI 2000; HINHP Database 2000; 56 FR 49639).

Schiedea apokremnos grows in the crevices of near-vertical basalt coastal cliff faces, at elevations between 11 and 538 m (35 and 1,765 ft). The species grows in sparse dry coastal cliff shrub vegetation along with *Artemisia australis, Bidens* spp., *Carex meyenii, Chamaesyce celastroides, Eragrostis variabilis, Lepidium serra, Lipochaeta connata, Lobelia niihauensis, Myoporum sandwicense, Peperomia* spp., *Pleomele aurea, Psydrax odorata*, or *Wilkesia* spp. (HINHP Database 2000; 56 FR 49639; K. Wood, pers. comm., 2001).

The restriction of this species to inaccessible cliffs suggests that goat herbivory may have eliminated it from more accessible locations. The greatest current threat to the survival of *Schiedea apokremnos* is still herbivory and habitat degradation by feral goats, as well as competition from the nonnative plants *Leucaena leucocephala* and *Hyptis pectinata* (comb hyptis), and trampling by humans. Given the small size of most populations and restricted distribution, depressed reproductive vigor may be a serious threat to the species. In addition, a single environmental disturbance (such as a landslide or fire) could destroy a significant percentage of the extant individuals (Service 1995; 56 FR 49639).

Schiedea helleri (NCN)

Schiedea helleri, a member of the pink family (Caryophyllaceae), is a short-lived perennial vine. The stems are usually prostrate and at least 15 cm (6 in) long. This species is the only member of the genus on Kauai that grows as a vine (Wagner *et al.* 1999).

Three plants have been observed flowering in February. No additional life history information for this species is currently known (Service 1998a).

Schiedea helleri was originally found only at a single location at Kaholuamano over 100 years ago. There is currently a total of three occurrences with 50 to 60 individuals on State-owned land at Mohihi Stream, Nawaimaka Valley, and Mohihi-Waialae Trail within the Alakai Wilderness Preserve and Na Pali-Kona Forest Reserve (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Schiedea helleri is found on ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* spp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest at elevations between 664 and 1,361 m (2,178 and 4,464 ft). Other native plants growing in association with this species include *Broussaisia arguta, Cheirodendron* spp., *Cibotium* spp., *Cyanea* spp., *Dianella sandwicensis, Dubautia* spp., *Elaeocarpus bifidus, Hedyotis terminalis, Melicope* spp., *Myrsine* spp., *Poa sandvicensis, Scaevola procera, Syzygium sandwicensis*, or *Viola wailenalenae* (pamakani) (HINHP Database 2000; K. Wood, pers. comm., 2001).

Competition with the nonnative plant *Rubus argutus*, a risk of extinction from naturally occurring events (e.g., landslides or hurricanes), and reduced reproductive vigor due to the small number of extant individuals are serious threats to *Schiedea helleri* (61 FR 53070).

Schiedea kauaiensis (NCN)

Schiedea kauaiensis, a member of the pink family (Caryophyllaceae), is an erect subshrub. This short-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, larger leaves, the hairiness of the inflorescence, the number of flowers in each inflorescence, larger flowers, and larger seeds (Wagner *et al.* 1999).

Little is known about the life history of this taxon. Fruit and flowers have been observed in July through September. There is no evidence of regeneration from seed under field conditions. Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown (Service 1998a).

Historically, *Schiedea kauaiensis* was known from the northwestern side of Kauai, from Papaa to Mahanaloa. It was thought to be extinct until the five currently known occurrences in Mahanaloa and Kalalau Valleys, with a total of 22 individuals, were found. All occurrences are on State land within the Kuia NAR and Na Pali Coast State Park (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Schiedea kauaiensis typically grows in diverse mesic to wet *Acacia koa-Metrosideros polymorpha* forest on steep slopes at elevations between 117 and 1,290 m (385 and 4,232 ft). Associated native plant species include *Alphitonia ponderosa, Cryptocarya mannii, Diospyros* spp., *Dodonaea viscosa, Euphorbia haeleeleana, Exocarpos luteolus, Leptocophylla tameiameiae, Microlepia strigosa, Nestegis sandwicensis, Pisonia* spp., *Peucedanum sandwicense* (makou), *Psychotria* spp., or *Psydrax odorata* (HINHP Database 2000; 61 FR 53108; K. Wood, pers. comm., 2001).

Threats to *Schiedea kauaiensis* include habitat degradation and/or destruction by feral goats, pigs, and cattle; competition from several nonnative plant species; predation by introduced slugs and snails; and a risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the low number of individuals in only two known populations. *Schiedea kauaiensis* is also potentially threatened by fire (HINHP Database 2000; Service 1998a; 61 FR 53108).

Schiedea membranacea (NCN)

Schiedea membranacea, a member of the pink family (Caryophyllaceae), is a short-lived perennial herb. This species differs from other *Schiedea* species on Kauai by having five-to seven-veined leaves and an herbaceous habit (Wagner *et al.* 1999).

Research suggests that this species largely requires outcrossing for successful germination and survival to adulthood. Pollinators for *Schiedea membranacea* are unknown, since none have been seen during the daytime, and none were observed during one set of night observations. Little else is known about the life history of *S. membranacea*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Schiedea membranacea is currently known from the western side of the island of Kauai, on State and privately owned lands at Poopooiki Valley, Milolii Ridge, Kuia Valley, Awaawapuhi Valley, Nualolo Valley, Kahuamaa Flats, Waialae Falls, Koaie Canyon, and the right branch of Wainiha Valley. On State lands it occurs within the Alakai Wilderness Preserve, Halelea Forest Reserve, Kuia NAR, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve. There are currently 10 occurrences containing 344 to 348 individuals (GDSI 2000; HINHP Database 2000; Wood and Perlman 1993; 61 FR 53070; K. Wood, *in litt.* 1999;).

This species is typically found on cliffs and cliff bases in mesic or wet habitats in lowland or montane shrubland or forest communities dominated by *Acacia koa, Pipturus* spp. and *Metrosideros polymorpha* or Urticaceae shrubland on talus slopes at elevations between 422 and 1,259 m (1,386 and 4,131 ft). Associated native plant species include *Alphitonia ponderosa, Alyxia oliviformis, Asplenium* spp., *Athyrium sandwicensis* (akolea), *Bobea brevipes, Boehmeria grandis, Cyrtandra* spp., *Diplazium sandwichianum, Dodonaea viscosa, Eragrostis variabilis, Hedyotis terminalis, Hibiscus waimeae, Joinvillea ascendens* ssp. *ascendens* (ohe), *Labordia helleri* (kamakahala), *Lepidium serra, Lysimachia kalalauensis* (NCN), *Machaerina angustifolia, Mariscus pennatiformis, Melicope* spp., *Myrsine* spp., *Perrottetia sandwicensis, Pisonia* spp., *Pleomele aurea, Poa mannii, Poa sandvicensis, Pouteria sandwicensis, Psychotria* spp., *Psydrax odorata, Remya kauaiensis, Sadleria cyatheoides* (amau), *Scaevola procera, Thelypteris cyatheoides* (kikawaio), *Thelypteris sandwicensis* (palapalaia), or *Touchardia latifolia* (HINHP Database 2000; 61 FR 53070; K. Wood, pers. comm., 2001).

Habitat degradation by feral goats, pigs, and deer; competition with the nonnative plant species *Ageratina riparia* (Hamakua pamakani), *Erigeron karvinskianus, Lantana camara, Passiflora tarminiana, Psidium cattleianum, Rubus argutus*, or *R. rosifolius;* loss of pollinators; and landslides are the primary threats to *Schiedea membranacea*. Based on observations indicating that snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (Service 1998a; Wood and Perlman 1993; 61 FR 53070).

Schiedea spergulina var. *leiopoda* and *Schiedea spergulina* var. *spergulina* (NCN)

Schiedea spergulina, a member of the pink family (Caryophyllaceae), is a short-lived perennial subshrub. Of the 22 species in this endemic genus, only two other species have smooth seeds. *Schiedea spergulina* differs from those two in having very compact flower clusters. The two weakly defined varieties differ primarily in the degree of hairiness of the inflorescences, with *S. spergulina* var. *leiopoda* being the less hairy of the two (Wagner *et al.* 1999).

Little is known about the life histories of either *Schiedea spergulina* var. *leiopoda* or *S. spergulina* var. spergulina. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Schiedea spergulina* var. *leiopoda* was found on a ridge on the east side of Hanapepe on Kauai. One occurrence with approximately 135 to 150 individuals is now known to grow in Lawai Valley on Kauai on privately owned land (GDSI 2000; HINHP Database 2000).

Schiedea spergulina var. *spergulina* was historically found in Olokele Canyon, but is now known only from the right branch of Kalalau Valley, Koaie Canyon, and Waimea Canyon. A total of three occurrences numbering approximately 208 individuals is reported on State-owned land within the Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and the Puu Ka Pele Forest Reserve. However, it has been estimated that this species may number in the thousands on Kauai (GDSI 2000; HINHP Database 2000; Service 1995).

Both varieties of *Schiedea spergulina* are usually found on bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests at elevations between 21 and 90 m (69 and 294 ft) for *S. spergulina* var. *leiopoda* and elevations between 144 and 828 m (474 and 2,718 ft) for *S. spergulina* var. *spergulina*. Associated native plant species include *Acacia koa, Artemisia australis, Bidens sandvicensis, Carex meyenii, Chamaesyce celastroides, Dianella sandwicensis, Doryopteris* spp. (kumuniu), *Eragrostis variabilis, Erythrina sandwicensis* (wiliwili), *Gahnia* spp., *Heliotropium* spp. (ahinahina), *Lepidium serra, Lipochaeta connata, Microlepia strigosa, Nestegis sandwicensis, Nototrichium sandwicense, Panicum lineale, Peucedanum sandwicense*, or *Wilkesia gymnoxiphium* (HINHP Database 2000; Lorence and Flynn 1991; Service 1995; 59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to *Schiedea spergulina* var. *leiopoda* are habitat destruction by feral goats and competition with nonnative plants such as *Furcraea foetida* (Mauritius hemp), *Lantana camara*, or *Leucaena leucocephala*. Individuals have also been damaged and destroyed by rock slides. This variety is potentially threatened by pesticide use in nearby sugarcane fields, as well as being at risk of extinction from naturally occurring events (*e.g.*, hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (Lorence and Flynn 1991; Service 1995; 59 FR 9304).

Schiedea spergulina var. *spergulina* is threatened by competition with nonnative plant species, including *Erigeron karvinskianus, Lantana camara, Melia azedarach, or Triumfetta semitriloba* (Sacramento bur). The area in which this variety grows is used heavily by feral goats, and there is evidence that plants are being browsed and trampled (HINHP Database 2000; Lorence and Flynn 1991; 59 FR 9304).

Schiedea stellarioides (laulihilihi)

Schiedea stellarioides, a member of the pink family (Caryophyllaceae), is a slightly erect to prostrate subshrub with branched stems. The opposite leaves are very slender to oblong-elliptic, and one-veined. This short-lived perennial species is distinguished from other Schiedea species on Kauai by the number of veins in the leaves, shape of the leaves, presence of a leaf stalk, length of the flower cluster, and shape of the seeds (Wagner *et al.* 1999).

Plants have been observed flowering in February. Little else is known about the life history of *Schiedea stellarioides*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Schiedea stellarioides* was found at the sea cliffs of Hanakapiai Beach, Kaholuamano-Opaewela region, the ridge between Waialae and Nawaimaka Valleys, and Haupu Range on the island of Kauai. Currently it is found in Kawaiiki Valley and Waialae Falls within the Na Pali-Kona Forest Reserve. There is a total of three occurrences with 1,500 individuals on State-owned land (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999).

Schiedea stellarioides is found on steep slopes in closed *Acacia koa-Metrosideros polymorpha* lowland to montane mesic forest or shrubland at elevations between 376 and 1,251 m (1,135 and 4,102 ft). Associated native plant species include *Alsinidendron viscosum, Artemisia australis, Bidens cosmoides, Chenopodium* spp. (aheahea), *Dianella sandwicensis, Dodonaea viscosa, Leptecophylla tameiameiae, Mariscus* spp., *Melicope* spp., *Nototrichium sandwicense, Pipturus* spp., *Syzygium sandwicensis*, or *Zanthoxylum dipetalum* (HINHP Database 2000; 61 FR 53070; K. Wood, pers. comm., 2001).

The primary threats to this species include habitat degradation and herbivory by feral pigs and goats, competition with the nonnative plants *Melinis minutiflora* and *Rubus argutus*, and a risk of extinction of the two remaining populations from naturally occurring events, such as landslides or hurricanes (61 FR 53070).

Stenogyne campanulata (NCN)

Stenogyne campanulata, a member of the mint family (Lamiaceae), is a vine with four-angled, hairy stems. A short-lived perennial species, *Stenogyne campanulata* is distinguished from closely related species by its large and very broadly bell-shaped calyces that nearly enclose the relatively small, straight corollas, and by small calyx teeth that are half as long as wide (Weller and Sakai 1999).

Little is known about the life history of *Stenogyne campanulata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Stenogyne campanulata is known from three occurrences with 66 individuals which were originally discovered in the left branch of Kalalau Valley on State-owned land in the Na Pali Coast State Park (GDSI 2000; HINHP Database 2000).

Stenogyne campanulata grows on the rock face of a nearly vertical, north-facing cliff in diverse lowland or montane mesic forest at elevations between 335 and 1,290 m (1,100 and 4,232 ft). The associated native plant species include *Lepidium serra, Lobelia niihauensis, Lysimachia* spp., *Melicope pallida, Metrosideros polymorpha, Neraudia kauaiensis, Nototrichium divaricatum* (kului), *Poa mannii, Remya montgomeryi*, or *Wilkesia gymnoxiphium* (Weller and Sakai 1999; 57 FR 20580; K. Wood, pers. comm., 2001).

The restriction of this species to virtually inaccessible cliffs suggests that herbivory by feral goats may have eliminated it from more accessible locations. Goat herbivory and habitat degradation remain the primary threat. Feral pigs have disturbed vegetation in the vicinity of these plants. Erosion caused by feral goats or pigs exacerbates the potential threat of landslides. *Erigeron karvinskianus* and *Rubus argutus* are the primary nonnative plants threatening *Stenogyne campanulata*. The small number of individuals and its restricted distribution are serious potential threats to the species. The limited population size may depress reproductive vigor, or a single environmental disturbance, such as a landslide, could destroy all known extant individuals (57 FR 20580).

Viola helenae (NCN)

Viola helenae is a small, unbranched perennial subshrub with an erect stem in the violet family (Violaceae). It is distinguished from other Kauai species of *Viola* by the leaf shape and width, woody stems, and strictly chasmogamous (open at maturity for access by pollinators) flowers (Wagner *et al.* 1999).

Little is known about the life history of *Viola helenae*. Wagner *et al.* (1999) state that the flowers are all chasmogamous and not cleistogamous (remain closed and self-fertilize in the bud) as in certain other violet species. Therefore, it is likely that its flowers require pollination by insects for seed set. Mature flowering plants do produce seed; however, seed viability may be low and microhabitat requirements for germination and growth may be very specific. Seeds planted at NTBG on Kauai failed to germinate, although they may not have been sufficiently mature when collected and violet seeds are often very slow to germinate. The seeds are jettisoned when the capsule splits open, as in most species of the genus (Service 1994).

Historically, *Viola helenae* was known from four populations, two along either branch of Wahiawa Stream on Kauai. Currently, there is one known occurrence with a total of 137 plants, on privately owned land within the Wahiawa drainage (GDSI 2000; HINHP Database 2000; Service 1994; 56 FR 47695).

This species is found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or *M. polymorpha-Cheirodendron* wet forest growing on stream drainage banks or adjacent valley bottoms in light to moderate shade at elevations between 522 and 1,006 m (1,712 and 3,301 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii, Broussaisia arguta, Dicranopteris linearis, Diplazium sandwichianum, Dubautia* spp., *Freycinetia arborea, Hesperomannia lydgatei, Melicope* spp., or *Pritchardia* spp. (HINHP Database 2000; Service 1994; K. Wood, pers. comm., 2001).

Threats to *Viola helenae* include competition from nonnative plant species, including *Elephantopus mollis, Erechtites valerianifolia, Melastoma candidum, Psidium cattleianum, Rubus rosifolius, Stachytarpheta australis,* various nonnative grasses, or potentially *Melaleuca quinquenervia;* trampling and browsing damage by feral pigs; landslides and erosion; and hurricanes (Service 1994; 56 FR 47695).

Viola kauaiensis var. *wahiawaensis* (nani waialeale)

Viola kauaiensis, a member of the violet family (Violaceae), is a short-lived perennial herb with upward curving or weakly rising, hairless, lateral stems. The species is distinguished from others of the genus by its non-woody habit, widely spaced kidney-shaped leaves, and by having two types of flowers: conspicuous, open flowers and smaller, unopened flowers. Two varieties of the species are recognized, both occurring on Kauai: var. *kauaiensis* and var. *wahiawaensis*. *Viola kauaiensis* var. *wahiawaensis* is distinguished by having broadly wedge-shaped leaf bases (Service 1998a; Wagner *et al.* 1999).

Viola kauaiensis var. *wahiawaensis* has been observed in flower in December. Little else is known about the life history of *V. kauaiensis* var. *wahiawaensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a).

Viola kauaiensis var. *wahiawaensis* is known only from two occurrences in the Wahiawa Mountains of Kauai with a total of 13 individual plants, on privately owned land. This taxon is not known to have occurred beyond its current range (GDSI 2000; HINHP Database 2000).

Viola kauaiensis var. *wahiawaensis* is found in *Machaerina angustifolia-Rhynchospora rugosa* (kuolohia) lowland bog or mixed wet shrubland and adjacent *Metrosideros polymorpha* wet forest at elevations between 393 and 1,006 m (1,291 and 3,301 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii*, *Bidens forbesii* (kookoolau), *Chamaesyce remyi* (akoko), *Chamaesyce sparsiflora* (akoko), *Coprosma* spp., *Cyanea fissa*, *Dicranopteris linearis*, *Diplopterygium pinnatum* (uluhe lau nui), *Dubautia imbricata* (naenae), *Dubautia raillardioides*, *Gahnia vitiensis* (NCN), *Leptechophylla tameiameiae*, *Lobelia kauaensis* (NCN), *Machaerina angustifolia*, *Machaerina mariscoides*, *Melicope* spp., *Psychotria wawrae*, *Sadleria pallida*, *Scaevola gaudichaudii*, *Sphenomeris chinensis*, *Syzygium sandwicensis*, *Tetraplasandra oahuensis*, or *Vaccinium dentatum* (HINHP Database 2000; Lorence and Flynn 1991; Service 1998a; 61 FR 53070; K. Wood, pers. comm., 2001).

The primary threats to *Viola kauaiensis* var. *wahiawaensis* are a risk of extinction from naturally occurring events, such as landslides or hurricanes, and reduced reproductive vigor due to the small number of existing populations and individuals; habitat degradation through the rooting activities of feral pigs; and competition with nonnative plants, such as *Juncus planifolius* (NCN) or *Pterolepis glomerata* (NCN) (HINHP Database 2000; Lorence and Flynn 1991; Service 1994; 61 FR 53070).

Wilkesia hobdyi (dwarf iliau)

Wilkesia hobdyi, a member of an endemic Hawaiian genus in the aster family (Asteraceae), is a short-lived perennial shrub which branches from the base. The tip of each branch bears a tuft of narrow leaves growing in whorls joined together into a short sheathing section at their bases. The cream-colored flower heads grow in clusters. It is distinguished from the other species of *Wilkesia* by having shorter branched stems and fewer shorter leaves per whorl (Carr 1982a, 1999b).

This species is probably pollinated through outcrossing and is probably self-incompatible. Insects are the most likely pollinators. In 1982, Carr reported that reproduction and seedling establishment were occurring and appeared sufficient to sustain the populations. Flowering has been observed most often in the winter months, but also during June. Fruits may be dispersed when they stick to the feathers of birds. Densities reach one plant per sq m (approximately one sq yard) in localized areas, and hybridization with *Wilkesia gymnoxiphium* may be occurring (Carr 1982a).

First collected in 1968 on Polihale Ridge, Kauai, this species was not formally described until 1971 (St. John 1971). Currently, there are nine occurrences with a total of 406 to 471 individuals. This species occurs on State-owned lands within the Hono o Na Pali NAR, Na Pali Coast State Park, and Puu Ka Pele Forest Reserve and on land under Federal jurisdiction within the Pacific Missile Range Facility (PMRF) at Makaha Ridge. The plants occur in Milolii Valley, Makaha Ridge, Haeleele Ridge, Kaaweiki Ridge, Polihale Spring, Pohakumano, and Pohakuao (GDSI 2000; HINHP Database 2000).

Wilkesia hobdyi grows on coastal dry cliffs or very dry ridges at elevations between 12 and 685 m (40 and 2,246 ft). The associated native plant species include *Artemisia australis*, *Dodonaea viscosa*, *Eragrostis variabilis*, *Hibiscus kokio* ssp. *saint johnianus*, *Lipochaeta connata*, *Lobelia niihauensis*, *Myoporum sandwicense*, *Peperomia blanda* (ala ala wai nui), *Peperomia tetraphylla* (ala ala wai nui), *Peperomia* spp., *Peucedanum sandwicense*, *Psydrax odorata*, *Sida fallax*, *Waltheria indica* (uhaloa), or *Wilkesia gymnoxiphium* (Service 1995; Wagner *et al.* 1999; 57 FR 27859; K. Wood, pers. comm., 2001).

The greatest immediate threats to the survival of this species are habitat disturbance and browsing by feral goats. Although the low number of individuals and their restricted habitat could be considered a potential threat to the survival to the species, the plant appears to have vigorous reproduction and may survive indefinitely if goats were eliminated from its habitat. Fire and extinction through naturally occurring events, such as landslides or hurricanes, could also be threats to the survival of the species (Service 1995; 57 FR 27859).

Xylosma crenatum (NCN)

Xylosma crenatum is a dioecious (plant bears only male or female flowers, and must cross-pollinate with another plant to produce viable seed) long-lived perennial tree in the flacourtia family (Flacourtiaceae). The tree grows up to 14 m (45 ft) tall and has dark gray bark. More coarsely toothed leaf edges and hairy undersides of the leaves distinguish *X. crenatum* from the other Hawaiian member of this genus (Wagner *et al.* 1999).

Little is known about the life history of *Xylosma crenatum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Xylosma crenatum* was known from three occurrences on Kauai: along upper Nualolo Trail and along Mohihi Road between Waiakoali and Mohihi drainages. Currently, this species is extant on State-owned land in Kainamanu, Nualolo Trail, and Mohihi Valley within Kokee State Park, Kuia NAR, and Na Pali-Kona Forest Reserve. There are three occurrences with a total of 16 individual plants (GDSI 2000; HINHP Database 2000; Service 1995; 57 FR 20580).

Xylosma crenatum is known from diverse *Acacia koa-Metrosideros polymorpha* montane mesic or wet forest, or *M. polymorpha-Dicranopteris linearis* montane wet forest, at elevations between 936 and 1,284 m (3,070 and 4,212 ft). Associated native plant species include *Athyrium sandwicensis*, *Cheirodendron* spp., *Claoxylon sandwicense*, *Coprosma* spp., *Cyanea* spp. (haha), *Diplazium sandwichianum*, *Dubautia knudsenii*, *Hedyotis* spp., *Ilex anomala*, *Lobelia yuccoides*, *Myrsine* spp., *Nestegis sandwicensis*, *Perrottetia sandwicensis*, *Pleomele aurea*, *Poa sandvicensis*, *Pouteria sandwicensis*, *Psychotria* spp., *Scaevola procera*, *Streblus pendulinus*, *Tetraplasandra* spp., *Touchardia latifolia*, or *Zanthoxylum dipetalum* (HINHP Database 2000; Service 1995; 57 FR 20580; K. Wood, pers. comm., 2001).

The small number of individuals and scattered distribution make this species vulnerable to human or natural environmental disturbance. *Xylosma crenatum* is also threatened by competition from nonnative plants, particularly *Psidium guajava*. In addition, feral pigs may threaten this species (HINHP Database 2000; Service 1995; 57 FR 20580).

Multi-Island Species

Acaena exigua (liliwai)

Acaena exigua is a small perennial rosette herb in the rose family (Rosaceae) with narrow, fern-like, divided leaves. It is distinguished from the other Hawaiian rose family members by its lack of petals and by its urn-shaped, constricted receptacle (top of flower stem where floral parts are attached) that encloses the carpels (ovule-bearing floral part) (Wagner *et al.* 1999).

Little is known about the life history of Acaena exigua. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997).

Historically, *Acaena exigua* was known from Puu Kukui on West Maui and from Mount Waialeale on Kauai. On Kauai, *A. exigua* was last collected between 1869 and 1870, and has not been seen in the wild since (Wagner *et al.* 1999).

Acaena exigua is known only from sites with extensive cloud cover and moderate to strong winds in wet montane shrub bog or bog margins characterized by a thick peat substrate overlying an impervious clay substrate, with hummocks of sedges and grasses, stunted trees, and shrubs and elevations between 666 and 1,598 m (2,185 and 5,244 ft). Associated native plant species include *Deschampsia nubigena* (hair grass), *Dichanthelium cynodon* (NCN), *Dichanthelium hillebrandianum* (NCN), *Dichanthelium isachnoides* (NCN), *Dubautia* spp., *Melicope* spp., *Metrosideros polymorpha*, *Oreobolus furcatus* (NCN), or *Vaccinium* spp. (K. Wood, pers. comm., 2001).

The reason for the disappearance of this species is not known. Although impacts from herbivory and rooting by pigs are assumed and often cited, feral pigs have become established at Waialeale (Kauai) only within the past two decades. The main current threats to *Acaena exigua*, if it exists, are believed to include small population size; human impacts (collecting and site degradation); potentially consumption of vegetative or floral parts of this species by nonnative slugs and/or rats; predation and habitat disturbance by feral pigs; and nonnative plant species, especially *Juncus planifolius* (57 FR 20772).

Achyranthes mutica (NCN)

Achyranthes mutica, a member of the amaranth family (Amaranthaceae) and a short-lived perennial, is a many-branched shrub with egg-shaped leaves and stalkless flowers. This species is distinguished from others in the genus by the shape and size of the sepals and by characteristics of the spike, which is short and congested (Wagner *et al.* 1999).

Historically, *Achyranthes mutica* was known from three collections from opposite ends of the main archipelago: Kauai and Hawaii. Currently, this species is known only from Hawaii Island, from Kilohana Gulch on private land. It was last observed on Kauai in the 1850s (GDSI 2000; HINHP Database 2000; 61 FR 53108).

Nothing is known of the preferred habitat of or native plant species associated with *Achyranthes mutica* on the island of Kauai.

Nothing is known of the threats to *Achyranthes mutica* on the island of Kauai.

Adenophorus periens (pendent kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae), is a small, pendent, epiphytic (not rooted on the ground) fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (a leaflet) margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori on the pinnae, and the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989).

Historically, *Adenophorus periens* was reported from Kauai, Oahu, Lanai, Maui, and the island of Hawaii. Currently, it is known from several locations on Kauai, Molokai, and Hawaii (HINHP Database 2000). On Kauai, there is a total of seven occurrences on private and State-owned lands (Halelea Forest Reserve, Hono o Na Pali NAR, and Kealia Forest Reserve), with approximately 59 individuals, that occur at Pihea, Pali Eleele, Waioli Valley, Mount Namahana, Lumahai Valley, Wainiha Valley, and Kapalaoa (GDSI 2000; HINHP Database 2000; 59 FR 56333;).

This epiphytic species usually growing on *Metrosideros polymorpha* trunks, is found in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *M. polymorpha-Cibotium glaucum* lowland wet forests, open *M. polymorpha* montane wet forest, or *M. polymorpha-Dicranopteris linearis* lowland wet forest at elevations between 107 and 1,593 m (351 and 5,228 ft). Associated native plant species include *Antidesma platyphyllum*, *Athyrium sandwichianum*, *Broussaisia arguta*, *Cheirodendron trigynum*, *Cyanea* spp., *Cyrtandra* spp., *Dicranopteris linearis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia hirtella*, *Machaerina angustifolia*, *Psychotria hexandra*, *Psychotria* spp., *Syzygium sandwicensis*, or *Tetraplasandra oahuensis* (Linney 1989; 59 FR 56333; K. Wood, pers. comm., 2001).

The threats to this species on Kauai include habitat degradation by feral pigs and goats and competition with the nonnative plant *Psidium cattleianum* (HINHP Database 2000; 59 FR 56333).

Alectryon macrococcus var. *macrococcus* (mahoe)

Alectryon macrococcus, a member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both trees with reddish-brown branches and leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, persistent in *A. macrococcus* var. *auwahiensis*, but only on leaves of young *A. macrococcus* var. *macrococcus* plants. The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.3 cm (0.9 in) or more in diameter (Wagner *et al.* 1999).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *Alectryon macrococcus*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Service 1997).

Alectryon macrococcus var. *macrococcus* historically and currently occurs on Kauai, Oahu, Molokai and Maui. On Kauai, *A. macrococcus* var. *macrococcus* occurs on State-owned land in the Alakai Wilderness Preserve, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve. A total of 18 occurrences of 159 to 174 individuals is known from Kalalau Valley, Kipalau Valley, Haeleele Valley, Waimea Canyon, Hipalau Valley, and Kawaiiki Falls (GDSI 2000; K. Wood, *in litt.* 1999). *Alectryon macrococcus* var. *auwahiensis* is found

only on leeward east Maui (HINHP Database 2000; Medeiros *et al.* 1986).

The habitat of *Alectryon macrococcus* var. *macrococcus* on Kauai is *Diospyros* spp.-*Metrosideros polymorpha* lowland mesic forest, *M. polymorpha* mixed mesic forest, or *Diospyros* spp. mixed mesic forest on dry slopes or in gulches, at elevations between 341 and 954 m (1,120 and 3,129 ft). Associated native plant species include *Acacia koa, Alyxia oliviformis, Antidesma* spp., *Bobea timonioides, Caesalpinia kavaiense* (uhiuhi), *Canavalia* spp. (awikiwiki), *Carex meyenii, Carex wahuensis, Doodia kunthiana, Hibiscus waimeae, Kokia kauaiensis, Melicope knudsenii* (alani), *Microlepia strigosa, Munroidendron racemosum, Myrsine lanaiensis, Nesoluma polynesicum, Nestegis sandwicensis, Pisonia* spp., *Pleomele aurea, Pouteria sandwicensis, Psychotria* spp., *Psydrax odorata, Pteralyxia kauaiensis, Rauvolfia sandwicensis, Streblus pendulinus, Tetraplasandra* spp., *Xylosma* spp., or *Zanthoxylum* spp. (HINHP Database 2000; 57 FR 20772; K. Wood, pers. comm., 2001).

Alectryon macrococcus var. *macrococcus* on Kauai is threatened by feral goats and pigs; the nonnative plant species *Melinis minutiflora, Psidium cattleianum,* or *Schinus terebinthifolius* (Christmasberry); damage from the black twig borer; seed predation by rats and mice; fire; depressed reproductive vigor; seed predation by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; and, due to the small remaining number of individuals and their limited distribution, natural or human-caused environmental disturbances that could easily be catastrophic (57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Bonamia menziesii* was known from the following general areas: scattered locations on Kauai, the Waianae Mountains of Oahu, scattered locations on Molokai, one location on West Maui, and eastern Hawaii. Currently, it is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Kauai, there are nine occurrences with 36 individuals on State (Alakai Wilderness Preserve, Hono o Na Pali NAR, Lihue-Koloa Forest Reserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands in Waiahuakua, Kalalau Valley, Awaawapuhi Valley, Paaiki Valley, Kipalau Valley, Hulua, Wahiawa Falls, and Laauhihaihai (GDSI 2000; HINHP Database 2000; Service 1999; K. Wood, *in litt.* 1999).

Bonomia menziesii is found in dry, mesic, or wet *Metrosideros polymorpha-Cheirodendron-Dicranopteris* forest at elevations between 351 and 1,415 m (1,151 and 4,644 ft). Associated native plant species include *Acacia koa, Alphitonia ponderosa, Antidesma platyphyllum, Cyanea* spp., *Cyrtandra limahuliensis, Cyrtandra pickeringii, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Dubautia knudsenii, Hedyotis terminalis, Isodendrion longifolium, Labordia hirtella, Melicope anisata, Melicope barbigera* (uahiapele), *Myoporum sandwicense, Nestegis sandwicensis, Pisonia* spp., *Pittosporum* spp., *Pouteria sandwicensis, Psychotria hexandra, Psychotria mariniana, Psydrax odorata, Sapindus oahuensis, Scaevola procera,* or *Syzygium sandwicensis* (HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The primary threats to this species on Kauai include habitat degradation and possible predation by feral pigs and goats, deer, and cattle; competition with a variety of nonnative plants; and fire (59 FR 56333).

Centaurium sebaeoides (awiwi)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea* (bitter herb), which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. It is possible that heavy rainfall induces flowering. Populations are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about the life history of *C. sebaeoides.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically and currently, *Centaurium sebaeoides* is known from scattered localities on the islands of Kauai, Oahu, Molokai, Lanai, and Maui. Currently on Kauai, there are a total of three occurrences with approximately 22 to 52 individuals on State-owned land. This species is found at Puanaiea Point, the caves at Nakeikionaiwi, and Pohakuao within the Na Pali Coast State Park (GDSI 2000; HINHP Database 2000).

Centaurium sebaeoides typically grows in volcanic or clay soils or on cliffs in arid coastal areas at elevations between 0 and 147 m (0 and 483 ft). Associated native plant species include *Artemisia* spp. (hinahina), *Bidens* spp., *Chamaesyce celastroides, Cyperus phleoides, Dodonaea viscosa, Fimbristylis cymosa* (mauu akiaki), *Heteropogon contortus, Jacquemontia ovalifolia* (pauohiiaka), *Lipochaeta* spp., *Lycium sandwicense, Lysimachia mauritiana* (kolokolo kuahiwi), *Melanthera integrifolia* (nehe), *Panicum fauriei* (NCN), *P. torridum* (kakonakona), *Scaevola sericea, Sida fallax,* or *Wikstroemia uva-ursi* (akia) (56 FR 55770; K. Wood, pers. comm., 2001).

The major threats to this species on Kauai include habitat degradation by feral goats and cattle; competition from the nonnative plant species *Casuarina equisetifolia* (ironwood), *Casuarina glauca* (saltmarsh), *Leucaena leucocephala, Prosopis pallida* (kiawe), *Schinus terebinthifolius, Syzygium cumini* (Java plum), and *Tournefortia argentea* (tree heliotrope); trampling by humans on or near trails; and fire (Medeiros *et al.* 1999; Service 1999; 56 FR 55770).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial fern of the spleenwort family (Aspleniaceae). *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Degener and Degener 1957; Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera.* Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998c).

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found on Oahu, Lanai, Molokai, and Maui. It was last seen on Kauai in 1896 (HINHP Database 2000).

This species is found on rock faces in gulches in the forest understory at elevations between 538 and 1,069 m (1,765 and 3,507 ft), in *Metrosideros polymorpha-Diospyros* spp. mesic forest and diverse mesic forest. Associated native plant species include *Myrsine* spp., *Psychotria* spp., and *Xylosma* spp. (HINHP Database 2000; Service 1998a; K. Wood, pers. comm., 2001).

The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs and goats; competition with nonnative plant species, especially *Psidium cattleianum* or *Schinus terebinthifolius;* fire; and extinction from naturally occurring events due to the small number of existing populations and individuals (Service 1998a).

Cyperus trachysanthos (puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a perennial grass-like plant with a short rhizome. The culms are densely tufted, obtusely triangular in cross section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the shape of the glumes (bract below each flower), and the length of the culms (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Cyperus trachysanthos* was known on Niihau, Kauai, and scattered locations on Oahu, Molokai, and Lanai. It was last observed on Molokai in 1912 and on Lanai in 1919. Currently, this species is reported from Nualolo Valley on Kauai on State-owned land and west of Mokouia Valley on the privately owned island of Niihau. There is one known occurrence with about 300 individuals on the island of Kauai and an unknown number of individuals on Niihau (GDSI 2000; HINHP Database 2000).

Cyperus trachysanthos is usually found in wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes at elevations between 0 and 235 m (0 and 771 ft). *Taliparitiliaceum* (hau) is often found in association with this species (Koyama 1999; 61 FR 53108; K. Wood, pers. comm., 2001).

On Kauai, the threats to this species are the loss of wetlands and a risk of extinction from naturally occurring events, such as landslides or hurricanes, due to the small number of populations. The threats on Niihau are unknown (Service 1999; 61 FR 53108).

Delissea undulata (NCN)

Delissea undulata, a member of the bellflower family (Campanulaceae), is an unbranched, palm-like, woody-stemmed perennial tree, with a dense cluster of leaves at the tip of the stem. One or two knob-like structures often occur on the back of the flower tube. The three recognized subspecies are distinguishable on the basis of leaf shape and margin characters: in *D. undulata* ssp. *kauaiensis,* the leaf blades are oval and have a flat margin with sharp teeth; in *D. undulata* ssp. *niihauensis,* the leaf blades are heart-shaped and have a flat margin with shallow, rounded teeth; and in *D. undulata* ssp. *undulata,* the leaf blades are elliptic to lance-shaped and have a wavy margin with small, sharply pointed teeth. This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases (Lammers 1990).

On the island of Hawaii, *Delissea undulata* ssp. *undulata* has been observed in flower and fruit (immature) in August and outplanted individuals have been observed in flower in July. Little else is known about the life history of *Delissea undulata.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996; 61 FR 53124).

Historically and currently, *Delissea undulata* ssp. *kauaiensis* is known only from Kauai. Currently, there is one known occurrence of three individuals on State-owned land in Kuia Valley within the Kuia NAR. *Delissea undulata* ssp. *niihauensis* was known only from Niihau, but has not been seen since 1865. *Delissea undulata* ssp. *undulata* was known from southwestern Maui and western Hawaii. Currently, this variety occurs only on the island of Hawaii (GDSI 2000; HINHP Database 2000; Lammers 1999; 61 FR 53124; K. Wood, *in litt.* 1999).

Delissea undulata ssp. *kauaiensis* occurs in dry or open *Acacia koa-Metrosideros polymorpha* mesic forests or *Alphitonia ponderosa* montane forest at elevations between 139 and 1,006 m (456 and 3,299 ft). Associated native species include *Diospyros sandwicensis, Dodonaea viscosa, Doodia kunthiana, Eragrostis variabilis, Euphorbia haeleeleana, Kokia kauaiensis, Microlepia strigosa, Panicum* spp., *Pleomele aurea, Psychotria greenwelliae, Psychotria mariniana,* and *Santalum freycinetianum* (K. Wood, pers. comm., 2001).

The threats to this subspecies on Kauai are feral goats, pigs, and cattle; small population size; competition with the nonnative plants *Delairea odorata* (German ivy) and *Passiflora tarminiana;* fire; introduced slugs; seed predation by rats and introduced game birds; and a risk of extinction due to random naturally occurring events, such as landslides or hurricanes (Service 1996).

Diellia erecta (asplenium-leaved diellia)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having large brown or dark gray scales, fused or separate sori along both margins of the pinna, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Wagner 1952).

Little is known about the life history of *Diellia erecta.* Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, scattered locations on Maui, and various locations on the island of Hawaii. Currently, it is known from Molokai, Maui, and Hawaii and has recently been rediscovered on Kauai. On Kauai there is one known occurrence with 30 individuals in Kawaiiki Valley on State-owned land within the Na Pali-Kona Forest Reserve (Service 1999; HINHP Database 2000).

This species is found in brown granular soil with leaf litter and occasional terrestrial moss on north-facing slopes in deep shade on steep slopes or gulch bottoms in *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *M. polymorpha* mixed mesic forest with *Acacia koa* and *Acacia koaia* as co-dominants, at elevations between 655 and 1,224 m (2,149 and 4,016 ft). Associated native plant species include *Asplenium aethiopicum* (NCN), *Asplenium contiguum* (NCN), *Asplenium macraei* (NCN), *Coprosma* spp., *Dodonaea viscosa, Dryopteris fusco-atra* (ii), *Dryopteris unidentata, Hedyotis terminalis, Leptecophylla tameiameiae, Melicope* spp., *Microlepia strigosa, Myrsine* spp., *Nestegis sandwicensis, Psychotria* spp., *Syzygium sandwicensis,* or *Wikstroemia* spp. (HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The major threats to *Diellia erecta* on Kauai are habitat degradation by pigs and goats; competition with nonnative

plant species, including *Blechnum occidentale*, *Cyperus meyenianus* (NCN), *Grevillea robusta* (silk oak), *Lantana camara*, *Morella faya*, *Passiflora tarminiana*, *Rubus argutus*, or *Setaria palmifolia* (palm grass); and random naturally occurring events that could cause extinction and/or reduced reproductive vigor due to the small number of existing individuals (Service 1996; 59 FR 56333).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense*. Its reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998c).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Maui. Currently, this species is only known from Maui. It was last seen on Kauai in 1909 (HINHP Database 2000).

This species occurs in brown soil with basalt outcrops near waterfalls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 476 and 1,284 m (1,562 and 4,212 ft) (HINHP Database 2000; Service 1998a; K. Wood, pers. comm., 2001).

The primary threats on Kauai are habitat degradation by feral goats and pigs and competition with nonnative plant species (HINHP Database 2000; Service 1998a; 59 FR 49025).

Euphorbia haeleeleana (akoko)

Euphorbia haeleeleana, a member of the spurge family (Euphorbiaceae), is a dioecious tree with alternate papery leaves. This short-lived perennial species is distinguished from others in the genus in that it is a tree and by the large leaves with prominent veins (Wagner *et al.* 1999).

Individual trees of *Euphorbia haeleeleana* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. *Euphorbia haeleeleana* sets fruit between August and October. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; Wagner *et al.* 1999).

Euphorbia haeleeleana is known historically and currently from northwestern Kauai and the Waianae Mountains of Oahu. On Kauai, there is a total of 23 occurrences with 597 individuals occurring on State-owned land. It is found at Pohakuao, Kalalau Valley, Hipalau Valley, Koaie Canyon, Mahanaloa Valley, Kuia Valley, Poopooiki Valley, Nualolo Trail, Makaha Valley, and Haeleele Valley within the Kuia NAR, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve (HINHP Database 2000; Service 1999; 61 FR 53108; K. Wood, *in litt.* 1999;).

Euphorbia haeleeleana is usually found in lowland mixed mesic or dry *Diospyros* forest that is often codominated by *Metrosideros polymorpha* and *Alphitonia ponderosa*. This plant is typically found at elevations between 284 and 1,178 m (931 and 3,866 ft). Associated native plant species include *Acacia koaia*, *Antidesma platyphyllum*, *Carex meyenii*, *Carex wahuensis*, *Claoxylon sandwicense*, *Diplazium sandwichianum*, *Dodonaea viscosa*, *Erythrina sandwicensis*, *Kokia kauaiensis*, *Pisonia sandwicensis*, *Pleomele aurea*, *Pouteria sandwicensis*, *Psychotria greenwelliae*, *Psychotria mariniana*, *Pteralyxia kauaiensis*, *Rauvolfia sandwicensis*, *Sapindus oahuensis*, *Tetraplasandra kavaiensis*, or *Xylosma* spp. (61 FR 53108; K. Wood, pers. comm., 2001).

Threats to this species on Kauai include habitat degradation and destruction by deer, feral goats, and pigs; seed predation by rats; fire; and competition with nonnative plants (Service 1999; 61 FR 53108).

Flueggea neowawraea (mehamehame)

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae), is a large dioecious tree with white oblong pores covering its scaly, pale brown bark. This long-lived perennial species is the only member of the genus found in Hawaii and can be distinguished from similar Hawaiian species in the family by its hairless whitish lower leaf surfaces and round fruits (Hayden 1999; Linney 1982; Neal 1965; Service 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Hayden 1999).

Historically, *Flueggea neowawraea* was known from Kauai, Oahu, Maui, Molokai, and the island of Hawaii. Currently, it is known from Kauai, Oahu, east Maui, and Hawaii. On Kauai, this species is reported from Limahuli Valley, Pohakuao, the left branch of Kalalau Valley, Kuia and Paaiki Valleys, Kipalau Valley, Koaie Falls, Kawaiiki Valley, and Waimea Canyon. There are 10 occurrences with 62 known individuals occurring on State (Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands. However, it has been estimated that the total number of individuals may be slightly over 100 (GDSI 2000; HINHP Database 2000; Hayden 1999; Service 1999; K. Wood, *in litt.* 1999).

Flueggea neowawraea occurs in dry or mesic forests at elevations between 210 and 1,178 m (689 and 3,865 ft). Associated native plant species include *Alectryon macrococcus*, *Antidesma platyphyllum*, *Bidens sandvicensis*, *Bobea timonioides*, *Caesalpinia kavaiensis*, *Charpentiera* spp., *Diospyros* spp., *Diplazium sandwichianum*, *Freycinetia arborea*, *Hibiscus* spp., *Isodendrion laurifolium*, *Kokia kauaiensis*, *Melicope* spp., *Metrosideros polymorpha*, *Munroidendron racemosum*, *Myrsine lanaiensis*, *Nesoluma polynesicum*, *Nestegis sandwicensis*, *Tetraplasandra* spp., *Pittosporum* spp., *Pouteria sandwicensis*, *Pritchardia minor*, *Psychotria* spp., *Psydrax odorata*, *Pteralyxia kauaiensis*, *Rauvolfia sandwicensis*, *Streblus pendulinus*, *Xylosma crenatum*, or *Xylosma hawaiiense* (HINHP Database 2000; Service 1999; 59 FR 56333; K. Wood, pers. comm., 2001).

The threats to this species on Kauai include the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with nonnative plant species; fire; small population size; depressed reproductive vigor; and a potential threat of fruit predation by rats (HINHP Database 2000; Service 1999; 59 FR 56333).

Gouania meyenii (NCN)

Gouania meyenii, a member of the buckthorn family (Rhamnaceae), is a shrub with papery leaves with smooth margins. This short-lived perennial species is distinguished from the two other Hawaiian species of *Gouania* by its lack of tendrils on the flowering branches, the absence of teeth on the leaves, and the lack or small amount of hair on the fruit (Wagner *et al.* 1999).

Gouania meyenii flowers from March to May. Seed capsules develop in about 6 to 8 weeks. Plants appear to live about 10 to 18 years in the wild. Little else is known about the life history of *Gouania meyenii*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Gouania meyenii* was known only from Oahu. It was discovered on Kauai in 1993. Currently, this species is found on Oahu and on Kauai on State-owned land within the Na Pali Coast State Park and the Na Pali-Kona Forest Reserve. There is a total of three occurrences on Kauai with nine individuals found in Kalalau and Hipalau valleys (GDSI 2000; HINHP Database 2000; Wagner *et al.* 1999; 56 FR 55770).

This species typically grows on rocky ledges, cliff faces, and ridge tops in dry shrubland or *Metrosideros polymorpha* lowland diverse mesic forest at elevations between 375 and 1,179 m (1,231 and 3,867 ft). Associated native plant species include *Bidens* spp., *Carex meyenii*, *Chamaesyce* spp., *Diospyros* spp., *Dodonaea viscosa*, *Eragrostis variabilis*, *Euphorbia haeleeleana*, *Hedyotis* spp., *Hibiscadelphus* spp., *Lysimachia* spp., *Melicope pallida*, *Neraudia kauaiensis*, *Nestegis sandwicensis*, *Nototrichium divaricatum*, *Panicum lineale*, *Poa mannii*, *Psychotria* spp., *Senna gaudichaudii* (kolomona), or *Wilkesia gymnoxiphium* (HINHP Database 2000; 56 FR 55770; K. Wood, pers. comm., 2001).

Threats to *Gouania meyenii* on Kauai include competition from the nonnative plants *Melinis minutiflora*, *Psidium cattleianum*, or *Schinus terebinthifolius*; fire; habitat degradation by feral pigs and goats; and the small number of extant populations and individuals (Service 1998b; 56 FR 55770).

Hedyotis cookiana (awiwi)

Hedyotis cookiana, a member of the coffee family (Rubiaceae), is a small shrub with many branches and papery-textured leaves which are fused at the base to form a sheath around the stem. This short-lived perennial species is distinguished from other species in the genus that grow on Kauai by being entirely hairless (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis cookiana*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Hedyotis cookiana* was known from the islands of Hawaii, Kauai, Molokai, and Oahu. Currently, it is only known from one occurrence of 60 to 80 individuals on State-owned land within Hono O Na Pali NAR in Waiahuakua Valley on Kauai (GDSI 2000; HINHP Database 2000).

This species generally grows in streambeds or on steep cliffs close to water sources in relict *Metrosideros polymorpha* lowland mesic and lowland wet forest communities at elevations between 119 and 553 m (392 and 1,814 ft). Associated native plant species include *Boehmeria grandis*, *Chamaesyce celastroides* var. *hanapepensis*, *Hibiscus kokio* ssp. *saintjohnianus*, *Machaerina angustifolia*, *Nototrichium sandwicense*, *Pipturus kauaiensis* (mamaki), *Pleomele aurea*, *Pouteria sandwicensis*, *Psydrax odorata*, or *Rauvolfia sandwicensis* (Wagner *et al.* 1999; K. Wood, pers. comm., 2001).

The threats to this species on Kauai are risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of individuals in the only known population; flooding; competition with nonnative plants; and habitat modification by feral pigs and goats (HINHP Database 2000; Service 1995; 59 FR 9304).

Hibiscus brackenridgei (mao hau hele)

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptical scar. Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1990).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, Hawaii, and possibly Kahoolawe. Currently, *Hibiscus brackenridgei* ssp. *mokuleianus* is only known from Oahu. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and the island of Hawaii (Bates 1990; HINHP Database 2000; Service 1999).

Nothing is known of the preferred habitat of or native plant species associated with *Hibiscus brackenridgei* on the island of Kauai.

Nothing is known of the threats to *Hibiscus brackenridgei* on the island of Kauai.

Ischaemum byrone (Hilo ischaemum)

Ischaemum byrone, a short-lived perennial member of the grass family (Poaceae), has creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned and two-flowered, and a two-or three-tiered inflorescence (O'Connor 1999).

Additional information on the life history of this plant, its reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1996).

Historically, *Ischaemum byrone* was reported from Oahu, Molokai, East Maui, Kauai and the island of Hawaii. Currently, this species is found on Molokai, Hawaii, Maui, and recently rediscovered on the north shore of Kauai. On Kauai, there are two occurrences with at least two individuals at Kaweonui Point and Kauapea Beach on privately owned land (HINHP Database 2000; 59 FR 10305).

The habitat of *Ischaemum byrone* is coastal shrubland, near the ocean among rocks and seepy cliffs at elevations between 0 and 297 m (0 and 975 ft). Associated native plant species include *Bidens* spp., *Chamaesyce celastroides*, *Fimbristylis cymosa*, *Lipochaeta succulenta*, *Lysimachia mauritiana*, or *Scaevola sericea* (HINHP Database 2000; K. Wood, pers. comm., 2001).

Threats to *Ischaemum byrone* include the invasion of nonnative plants, fire, grazing and browsing by feral goats and pigs. Disturbance incurred from these ungulates further promotes the introduction and establishment of nonnative weeds. Some populations are also threatened from residential development (HINHP Database 2000; Service 1996; 59 FR 10305).

Isodendrion laurifolium (aupaka)

Isodendrion laurifolium, a member of the violet family (Violaceae), is a slender, erect shrub with few branches. The short-lived perennial species is distinguished from others in the genus

by its leathery, oblong-elliptic or narrowly elliptic, lance-shaped leaves (Wagner *et al.* 1999).

Little is known about the life history of *Isodendrion laurifolium*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Isodendrion laurifolium* is known from scattered locations on Kauai and Oahu. Currently, on Kauai, this species is found on State-owned land within the Alakai Wilderness Preserve, Kuia NAR, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve in the following locations: Paaiki, Poopooiki, Kawaiula Valley, Mahanaloa Valley, Makaha Valley, Haeleele Valley, Kipalau Valley, Kawaiiki Valley and Kaluahaulu Ridge. There are a total of 13 occurrences with 142 to 154 individuals (GDSI 2000; HINHP Database 2000; Service 1999).

Isodendrion laurifolium is usually found at elevations between 376 and 1,163 m (1,233 and 3,817 ft) in diverse mesic forest dominated by *Metrosideros polymorpha, Acacia koa* or *Diospyros* spp. Associated native species include *Alphitonia ponderosa, Antidesma* spp., *Claoxylon sandwicense, Dodonaea viscosa, Dubautia* spp., *Elaeocarpus bifidus, Euphorbia haeleeleana, Hedyotis terminalis, Kokia kauaiensis, Melicope anisata, Melicope barbigera, Melicope ovata* (alani), *Melicope peduncularis, Myrsine lanaiensis, Nestegis sandwicensis, Pisonia* spp., *Pittosporum glabrum* (hoawa), *Pleomele aurea, Pouteria sandwicensis, Psydrax odorata, Streblus pendulinus,* or *Xylosma hawaiiense* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The primary threats to *Isodendrion laurifolium* on Kauai are habitat degradation by feral goats, pigs and deer and competition with nonnative plants (HINHP Database 2000; Service 1999; 61 FR 53108).

Isodendrion longifolium (aupaka)

Isodendrion longifolium, a member of the violet family (Violaceae), is a slender, erect shrub. Hairless, leathery, lance-shaped leaves distinguish this species from others in the genus (Wagner *et al.* 1999).

Little is known about the life history of *Isodendrion longifolium*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically and currently, *Isodendrion longifolium* is known from scattered locations on Kauai and Oahu. On Kauai, this species is reported from Limahuli Valley, Hanakapiai, Pohakea, Waioli Valley, the left branch of Kalalau Valley, Honopu Valley, Kawaiula Valley, and Haupu. There is a total of 15 occurrences on Kauai containing approximately 804 to 854 individual plants on State (Halelea Forest Reserve, Hono o Na Pali NAR, Kokee State Park, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands (GDSI 2000; HINHP Database 2000; Lorence and Flynn 1991, 1993; Service 1999; 61 FR 53108).

Isodendrion longifolium is found on steep slopes, gulches, or streambanks and some flats in certain undisturbed areas in mesic or wet *Metrosideros polymorpha-Acacia koa* forests, usually at elevations between 38 and 1,541 m (125 and 5,057 ft). Associated native plant species include *Antidesma* spp., *Bidens* spp., *Bobea brevipes, Cheirodendron* spp., *Cibotium* spp., *Cyanea hardyi, Cyrtandra* spp., *Dicranopteris linearis, Diospyros* spp., *Eugenia reinwardtiana, Hedyotis* spp., *Ilex anomala, Melicope* spp., *Nestegis sandwicensis, Peperomia* spp., *Perrottetia sandwicensis, Pipturus* spp., *Pittosporum* spp., *Pritchardia* spp., *Psychotria* spp., *Psydrax odorata,* or *Syzygium sandwicensis* (HINHP Database 2000; Service 1999; 61 FR 53108; K. Wood, pers. comm., 2001).

The major threats to *Isodendrion longifolium* on Kauai are habitat degradation or destruction by feral goats and pigs, and competition with various nonnative plants (HINHP Database 2000; Lorence and Flynn 1993; Service 1999; 61 FR 53108).

Isodendrion pyrifolium (wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub. It is distinguished from other species in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species drops all but the newest leaves. After sufficient rain, the plants produce flowers with seeds ripening one to two months later. No other life history information is currently known for this species (Service 1996).

Isodendrion pyrifolium is known historically from Niihau, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found only on the island of Hawaii. It was last seen on Niihau in the 1850s (GDSI 2000; HINHP Database 2000; Service 1996; 59 FR 10305; Marie Bruegmann, U.S. Fish and Wildlife Service, pers. comm., 2000).

Information on the physical and biological features that are essential to the conservation of *Isodendrion pyrifolium* on the island of Niihau is not known.

Information on the threats of *Isodendrion pyrifolium* on the island of Niihau is not known.

Lobelia niihauensis (NCN)

Lobelia niihauensis, a member of the bellflower family (Campanulaceae), is a small, branched shrub. This short-lived perennial species is distinguished from others in the genus by lacking or nearly lacking leaf stalks, the width of the leaf, and length of the magenta-colored flowers (Lammers 1999).

Lobelia niihauensis flowers in late summer and early fall. Fruits mature four to six weeks later. Plants are known to live as long as 20 years. Little else is known about the life history of *Lobelia niihauensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Lobelia niihauensis* was known from Oahu, Niihau, and Kauai. It is now known to be extant only on Kauai and Oahu. On Kauai, 13 occurrences containing 284 to 2,134 individuals are found on State (Hono o Na Pali NAR, Na Pali Coast State Park, Na Pali-Kona Forest Reserve, and Puu Ka Pele Forest Reserve) and privately owned lands in Limahuli Valley, Hoolulu Valley, Hanakoa Valley, Pohakuao, the left and right branches of Kalalau Valley, Koaie Canyon, Kipalau Valley, Polihale Spring, Kaaweiki Valley, and Keopaweo (GDSI 2000; HINHP Database 2000; Service 1998b).

Lobelia niihauensis typically grows on exposed, mesic mixed shrubland or coastal dry cliffs at elevations between 11 and 887 m (37 and 2,911 ft). Associated native plant species include *Artemisia australis, Bidens sandvicensis, Chamaesyce celastroides, Charpentiera* spp., *Eragrostis variabilis, Hibiscus kokio* ssp. *saint-johnianus, Lipochaeta connata* var. *acris, Lythrum* spp. (pukamole), *Nototrichium* spp., *Plectranthus parviflorus, Schiedea apokremnos,* or *Wilkesia hobdyi* (HINHP Database 2000; Lammers 1999; Service 1998b; K. Wood, pers. comm., 2001).

On Kauai, the major threats to this species are habitat degradation and browsing by feral goats and competition from nonnative plants (56 FR 55770).

Lysimachia filifolia (NCN)

Lysimachia filifolia, a member of the primrose family (Primulaceae), is a small shrub. This short-lived perennial species is distinguished from other species of the genus by its leaf shape and width, calyx lobe shape, and corolla length (Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia filifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Lysimachia filifolia* was known only from the upper portion of Olokele Valley on Kauai. This species is now also known from Oahu, and the "Blue Hole" area of Waialeale, Kauai. There is currently one occurrence containing a total of 20 to 75 individuals on State-owned land on Kauai within the Lihue-Koloa Forest Reserve (GDSI 2000; HINHP Database 2000; Service 1995).

This species typically grows on mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests at elevations between 177 and 1,308 m (581 and 4,290 ft). Associated native plant species include *Antidesma platyphyllum, Bidens valida* (kookoolau), *Bobea elatior* (ahakea lau nui), *Chamaesyce remyi* var *kauaiensis* (akoko), *Cyanea asarifolia, Dubautia plantaginea* ssp. *magnifolia* (naenae), *Eragrostis variabilis, Machaerina angustifolia, Melicope* spp., *Metrosideros polymorpha,* or *Panicum lineale* (HINHP Database 2000; Service 1995; Wagner *et al.* 1999; 59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to *Lysimachia filifolia* on Kauai include competition with nonnative plant species; habitat degradation by feral pigs; and the risk of extinction on Kauai from naturally occurring events (*e.g.*, landslides and hurricanes), due to the small number of individuals in the only known population (HINHP Database 2000; 59 FR 9304).

Mariscus pennatiformis (NCN)

Mariscus pennatiformis, a short-lived member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. *Mariscus pennatiformis* is divided into two subspecies, ssp. *bryanii* and ssp. *pennatiformis*, which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the fruit. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1990).

Mariscus pennatiformis is known to flower from November to December after heavy rainfall. Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1999).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East Maui, the island of Hawaii, and from Laysan Island in the Northwestern Hawaiian Islands). *Mariscus pennatiformis* ssp. *bryanii* is only known from Laysan Island. *Mariscus pennatiformis* ssp. *pennatiformis* is currently found only on East Maui. It was last seen on Kauai in 1927 (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 1999;).

Mariscus pennatiformis is found at elevations between 544 and 1,104 m (1,785 and 3,621 ft) in open sites in *Metrosideros polymorpha-Acacia koa* mixed mesic forest. Associated native plant species include *Alsinidendron viscosum, Antidesma platyphyllum* var. *hillebrandii, Carex alligata* (NCN), *Cyperus laevigatus* (makaloa), *Dianella sandwicensis, Diospyros hillebrandii, Diospyros sandwicensis, Dodonaea viscosa, Leptecophylla tameiameiae, Myrsine linearifolia, Nestegis sandwicensis, Panicum nephelophilum, Poa sandvicensis, Psydrax odorata, Schiedea stellarioides,* or endemic ferns (HINHP Database 2000; Koyama 1990; K. Wood, pers. comm., 2001).

Threats to *Mariscus pennatiformis* on Kauai include grazing and habitat destruction caused by ungulates; competition from nonnative plant species; and extinction from random naturally occurring events (*e.g.*, landslides or hurricanes) (Service 1999; 59 FR 56333).

Melicope knudsenii (alani)

Melicope knudsenii, a member of the rue family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. This long-lived perennial species is distinguished from *M. haupuensis* and other members of the genus by the distinct carpels present in the fruit, a hairless endocarp, a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (Stone *et al.* 1999).

Little is known about the life history of *Melicope knudsenii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Melicope knudsenii* is known from Maui and Kauai. On Kauai, this species is known from 10 occurrences on State-owned land, with a total of 10 individuals, in Poopooiki Valley, Kuia Valley, Mahanaloa Valley, Makaha Ridge, Koaie Canyon, Koaie Falls, and Kawaiiki Valley within Kuia NAR and Na Pali-Kona Forest Reserve (GDSI 2000; HINHP Database 2000; Service 1995; 59 FR 9304; K. Wood, pers. comm., 2001).

Melicope knudsenii grows on forested flats with brown granular soil in lowland dry to montane mesic forests at elevations between 111 and 1,141 m (364 and 3,745 ft) with *Alectryon macrococcus, Antidesma platyphylla, Bobea brevipes, Carex meyenii, Cryptocarya mannii, Diospyros sandwicensis, Diplazium sandwichianum, Dodonaea viscosa, Euphorbia haeleeleana, Gahnia beecheyi* (NCN), *Hedyotis* spp., *Hibiscus waimeae, Isodendrion laurifolium, Leptecophylla tameiameiae, Melicope* spp., *Metrosideros polymorpha, Myrsine lanaiensis, Nestegis sandwicensis, Panicum nephelophilum, Peucedanum sandwicense, Pisonia sandwicensis, Pittosporum kauaiensis, Pleomele aurea, Pouteria sandwicensis, Pritchardia minor, Psychotria hobdyi, Psydrax odorata, Rauvolfia sandwicensis, Remya kauaiensis, Scaevola procera,* or *Xylosma hawaiiense* (HINHP Database 2000; Service 1995; K. Wood, pers. comm., 2001).

The major threats to *Melicope knudsenii* on Kauai include competition with the nonnative plant *Lantana camara;* habitat degradation by feral goats and pigs; fire; black twig borer; and the risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals and populations (Service 1995; 59 FR 9304).

Melicope pallida (alani)

Melicope pallida, a member of the rue family (Rutaceae), is a tree with grayish white hairs and black, resinous new growth. The long-lived perennial species differs from *M. haupuensis, M. knudsenii*, and other members of the genus by the presence of resinous new growth, leaves folded in clusters of three, and fruits with separate carpels (Stone *et al.* 1999).

Little is known about the life history of *Melicope pallida*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Melicope pallida* is known from Oahu and Kauai. On Kauai, the species is currently known from the following locations: Pohakuao, the left branch of Kalalau Valley, Honopu Trail, Awaawapuhi Valley, and Koaie Canyon. There is a total of six occurrences with 181 individuals on State-owned land within the Alakai Wilderness Preserve, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve (GDSI 2000; HINHP Database 2000; D.W. Mathias, U.S. Navy (Navy), *in litt.* 1999; K. Wood, *in litt.* 1999).

Melicope pallida usually grows on steep rock faces in lowland to montane mesic to wet forests or shrubland at elevations between 359 and 1,081 m (1,179 and 3,546 ft). Associated native plant species include *Alyxia oliviformis, Artemisia australis, Boehmeria grandis, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Coprosma kauensis* (koi), *Coprosma waimeae, Dodonaea viscosa, Dryopteris* spp., *Hedyotis terminalis, Lepidium serra, Melicope* spp., *Metrosideros polymorpha, Nototrichium* spp., *Pipturus albidus* (mamaki), *Pleomele aurea, Poa mannii, Pritchardia minor, Psychotria mariniana, Sapindus oahuensis, Schiedea membranacea, Tetraplasandra waialealae*, or *Xylosma hawaiiense* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The major threats to *Melicope pallida* are habitat destruction by feral goats and pigs; the black twig borer; fire; susceptibility to extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing populations; and competition with nonnative plant species (Hara and Beardsley 1979; HINHP Database 2000; Medeiros *et al.* 1986; Service 1995; 59 FR 9304).

Peucedanum sandwicense (makou)

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical stem with several fleshy roots. This short-lived perennial species is the only member of the genus in the Hawaiian Islands, one of three genera of the family with species endemic to the island of Kauai. This species differs from the other Kauai members of the parsley family in having larger fruit and pinnately compound leaves with broad leaflets (Constance and Affolter 1999).

Little is known about the life history of *Peucedanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. In 1990, it was discovered on Oahu. On Kauai, there are 15 occurrences on State (Haena State Park, Hono o Na Pali and Kuia NARs, Na Pali Coast State Park, and Na Pali-Kona Forest Reserve) and privately owned lands, containing approximately 156 to 256 individuals, in Maunahou Valley, Limahuli Valley, Hoolulu, Hanakoa, Pohakuao, Kanakou, the left branch of Kalalau Valley, Nualolo Valley, Kuia Valley, Mahanaloa Valley, Koaie Canyon, and Haupu (GDSI 2000; HINHP Database 2000; Service 1995; 59 FR 9304; K. Wood, *in litt.* 1999).

This species grows on cliff habitats in mixed shrub coastal dry cliff communities or diverse mesic forest at elevations between 0 and 1,232 m (0 and 4,041 ft). Associated native plant species include *Acacia koa, Artemisia australis, Bidens* spp., *Brighamia insignis, Carex meyenii, Chamaesyce celastroides, Diospyros* spp., *Dodonaea viscosa, Eragrostis variabilis, Hibiscus kokio, Lobelia niihauensis, Metrosideros polymorpha, Panicum lineale, Psychotria* spp., *Psydrax odorata*, or *Wilkesia* spp. (Constance and Affolter 1999; HINHP Database 2000; 59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to *Peucedanum sandwicense* on Kauai include competition with introduced plants; habitat degradation and browsing by feral goats and deer; and trampling and trail clearing (Hanakapiai population) (HINHP Database 2000; Service 1995; 59 FR 9304).

Phlegmariurus mannii (wawaeiole)

Phlegmariurus mannii, a member of the clubmoss family (Lycopodiaceae) and a short-lived perennial, is a pendent epiphyte with clustered, delicate red stems and forked reproductive spikes. These traits distinguish it from others in the genus in Hawaii (Holub 1991).

Little is known about the life history of *Phlegmariurus mannii*. Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui, and Hawaii island. Currently, this species is extant on Maui and Hawaii island. It was last observed on Kauai in 1900 (HINHP Database 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Phlegmariurus mannii* on the island of Kauai.

Nothing is known of the threats to *Phlegmariurus mannii* on the island of Kauai.

Phlegmariurus nutans (waewaeiole)

Phlegmariurus nutans is an erect or pendulous herbaceous epiphyte in the clubmoss family (Lycopodiaceae). This species can be distinguished from others of the genus in Hawaii by its epiphytic habit, simple or forking fruiting spikes, and larger and stiffer leaves (Wagner and Wagner 1987).

Phlegmariurus nutans has been observed fertile, with spores, in May and December. Little else is known about the life history of *Phlegmariurus nutans*. Its reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b).

Historically, *Phlegmariurus nutans* was known from the island of Kauai and from scattered locations in the Koolau Mountains of Oahu. It is currently only known from Oahu. It was last observed on Kauai in 1900 (HINHP Database 2000; Service 1998b).

Phlegmariurus nutans grows on tree trunks, usually on open ridges and slopes in *Metrosideros polymorpha-Dicranopteris linearis* wet forests and occasionally mesic forests at elevations between 601 and 1,594 m (1,971 and 5,228 ft). The vegetation in those areas typically includes *Antidesma platyphyllum, Broussaisia arguta, Cheirodendron fauriei, Cibotium* spp., *Diplopterygium pinnatum, Hedyotis terminalis, Hibiscus kokio* ssp. *kokio, Melicope waialealae* (alani wai), *Scaevola gaudichaudii, Syzygium sandwicensis, Perrottetia sandwicensis, Psychotria hexandra, Psychotria mariniana*, or *Psychotria wawrae* (K. Wood, pers. comm., 2001).

The primary threat to *Phlegmariurus nutans* is extinction due to naturally occurring events and/or reduced reproductive vigor because of the small number of remaining individuals and limited distribution. Additional threats to this species are feral pigs and the nonnative plants *Clidemia hirta* or *Psidium cattleianum* (Service 1998b).

Plantago princeps (laukahi kuahiwi)

Plantago princeps, a member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This short-lived perennial species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, vars. *anomala, laxiflora, longibracteata*, and *princeps*, are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (Service 1999).

Historically, *Plantago princeps* was found on the islands of Hawaii, Kauai, Maui, Molokai, and Oahu. It no longer occurs on the island of Hawaii. Two varieties of the species, totaling seven occurrences, with 542 to 670 individuals, are extant on the island of Kauai, on both State (Halelea Forest Reserve, Lihue-Koloa Forest Reserve, and Na Pali Coast State Park) and privately owned lands. Historically on Kauai, *Plantago princeps* var. *anomala* was reported from a ridge west of Hanapepe River. Currently, this variety is found in the left branch of Kalalau Valley and Puu Ki. *Plantago princeps* var. *longibracteata* was historically known from Hanalei, the Wahiawa Mountains, and Hanapepe Falls. Currently, five occurrences are known from Waioli Valley, Alakai Swamp, the left branch of Wainiha Valley, and Blue Hole (GDSI 2000; HINHP Database 2000; Service 1999; 59 FR 56333).

Plantago princeps var. *longibracteata* is found in windswept areas near waterfalls in *Metrosideros polymorpha-Cheirodendron* montane wet forest with riparian vegetation at elevations between 347 and 1,598 m (1,139 and 5,244 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii, Bidens forbesii, Bobea elatior, Boehmeria grandis, Cyrtandra* spp., *Diplazium sandwichianum, Freycinetia arborea, Gunnera kauaiensis, Hedyotis centranthoides, Hedyotis elatior, Huperzia* spp., *Isachne pallens* (NCN), *Machaerina angustifolia, Perrottetia sandwicensis, Pilea peploides* (NCN), *Pipturus* spp., *Sadleria cyatheoides* (amau), or *Tetraplasandra* spp. (K. Wood, pers. comm., 2001).

Plantago princeps var. *anomala* is found in *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on basalt rocky outcrops. Associated native plant species include *Bidens sandvicensis, Carex meyenii, Carex wahuensis, Charpentiera elliptica, Hedyotis* spp., *Lipochaeta connata, Lysimachia glutinosa, Lysimachia kalalauensis, Melicope* spp., *Myrsine linearifolia, Poa mannii*, or *Wilkesia gymnoxiphium* (K. Wood, pers. comm., 2001).

The primary threats to both species of *Plantago princeps* on Kauai are herbivory and habitat degradation by feral pigs and goats and competition with various nonnative plant species. Ungulate herbivory is especially severe, with numerous observations of *P. princeps* individuals exhibiting browse damage (Service 1999; 61 FR 53108).

Platanthera holochila (NCN)

Platanthera holochila, a member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance- to egg-shaped, and the greenish-yellow flowers occur in open spikes. This short-lived perennial is the only species of this genus that occurs in the Hawaiian Islands. It is distinguished from other Hawaiian orchids by its underground tubers that lack roots at the nodes or pseudobulbs, and the shape and length of its dorsal sepal (Wagner *et al.* 1999).

Little is known about the life history of *Platanthera holochila*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Platanthera holochila* was known from the Alakai Swamp, Kaholuamano area, and the Wahiawa Mountains on Kauai, and scattered locations on Oahu, Molokai, and Maui. Currently, *P. holochila* is extant on Kauai, Molokai, and Maui. On Kauai, there are two occurrences with 24 to 34 individuals reported on State-owned lands (Alakai Wilderness Preserve) at Kilohana and the Alakai Swamp (GDSI 2000; HINHP Database 2000).

Platanthera holochila is found in montane *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *M. polymorpha* mixed bog at elevations between 803 and 1,563 m (2,635 and 5,128 ft). Associated native plant species include grammitid ferns, *Carex montis-eeka* (NCN), *Cibotium* spp., *Clermontia fauriei* (oha wai), *Coprosma elliptica* (pilo), *Dichanthelium* spp., *Leptecophylla tameiameiae, Lobelia kauaensis, Machaerina angustifolia, Myrsine denticulata* (kolea), *Oreobolus furcatus, Rhynchospora* spp. (kuolohia), *Vaccinium* spp., or *Viola kauaensis* (Service 1999; 61 FR 53108; K. Wood, pers. comm., 2001).

The primary threats to *Platanthera holochila* on Kauai are habitat degradation and destruction by pigs; competition with nonnative plants; and a risk of extinction on Kauai from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor, due to the small number of remaining populations and individuals. Predation by introduced slugs may also be a potential threat to this species (Service 1999; 61 FR 53108).

Schiedea nuttallii (NCN)

Schiedea nuttallii, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This long-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii*. Based on field and greenhouse observations, it is hermaphroditic (flowers contain both male and female sexual parts). Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless hand-pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet season but can be found throughout the year (Service 1999).

Historically, *Schiedea nuttallii* was known from Kauai and Oahu and was reported from Maui. Currently, it is found on Kauai, Oahu, and Molokai. On Kauai, one occurrence with 10 to 50 individuals is found on Haupu Peak on privately owned land. The status of individuals previously found in Limahuli Valley is currently unknown (GDSI 2000; HINHP Database 2000; Service 1999; 1 FR 53108).

Schiedea nuttallii typically grows on cliffs in lowland diverse mesic forest dominated by *Metrosideros polymorpha* at elevations between 37 and 702 m (120 and 2,303 ft). Associated native plant species include *Antidesma platyphyllum* var. *hillebrandii, Bidens valida, Chamaesyce celastroides, Eragrostis variabilis, Hedyotis acuminata, Hedyotis fluviatilis* (kamapuaa), *Heteropogon contortus, Lepidium* spp. (anaunau), *Lobelia niihauensis, Perrottetia sandwicensis, Pisonia* spp., or *Psychotria* spp. (Service 1999; K. Wood, pers. comm., 2001).

Schiedea nuttallii is threatened on Kauai by habitat degradation and/or destruction by feral pigs, goats, and possibly deer; competition with several nonnative plants; landslides; predation by the black twig borer; and a risk of extinction from naturally occurring

events (*e.g.*, landslides or hurricanes) and/or reduced reproductive vigor, due to the small number of individuals in the only known population. Based on observations that indicate that introduced snails and slugs may consume seeds and seedlings, it is likely that introduced molluscs also represent a major threat to this species (Service 1999; 61 FR 53108).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling short-lived perennial shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon colored, tinged with yellow, orange-red, scarlet or, rarely, pure yellow coloration. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* has been studied by David Hopper, University of Hawaii. His findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus*, and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker islands). Although once found on Niihau and Lanai, it is no longer extant on those islands. On Kauai, *S. tomentosa* is known from one occurrence, with 11 individuals, on State-owned land at Polihale State Park (GDSI 2000; HINHP Database 2000; 59 FR 56333).

Sesbania tomentosa is found on sandy beaches, dunes, or pond margins at elevations between 0 and 212 m (0 and 694 ft). It commonly occurs in coastal dry shrublands or mixed coastal dry cliffs with the associated native plant species *Chamaesyce celastroides, Cuscuta sandwichiana* (kaunaoa), *Dodonaea viscosa, Heteropogon contortus, Myoporum sandwicense, Nama sandwicensis, Scaevola sericea, Sida fallax, Sporobolus virginicus, Vitex rotundifolia*, or *Waltheria indica* (HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Kauai are habitat degradation caused by competition with various nonnative plant species; lack of adequate pollination; seed predation by rats, mice, and, potentially, nonnative insects; fire; and destruction by off-road vehicles and other human disturbances (Service 1999; 59 FR 56333).

Silene lanceolata (NCN)

Silene lanceolata, a member of the pink family (Caryophyllaceae), is an upright, short-lived perennial plant with stems 15 to 51 cm (6 to 20 in) long, which are woody at the base. The flowers are white with deeply-lobed, clawed petals. This species is distinguished from other Hawaiian *Silene* species by its erect stem, terminal inflorescence, and the length of the calyx, clawed petals, and carpophore (ovary structure) (Wagner *et al.* 1999).

Little is known about the life history of *Silene lanceolata*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996; 57 FR 46325).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and Hawaii. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and Hawaii. It was last observed on Kauai in the 1850s (GDSI 2000; Service 1996; 57 FR 46325).

Nothing is known of the preferred habitat of or native plant species associated with *Silene lanceolata* on the island of Kauai.

Nothing is known of the threats to *Silene lanceolata* on the island of Kauai.

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 56333).

Historically, *Solanum incompletum* was known from Lanai, Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *S. incompletum* also extended to the islands of Kauai and Molokai. Currently, the species is only known from the island of Hawaii. The reported presence on Kauai may be erroneous (HINHP Database 2000; Christopher Puttock, Bernice P. Bishop Museum, pers comm., 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Solanum incompletum* on the island of Kauai.

Nothing is known of the threats to *Solanum incompletum* on the island of Kauai.

Solanum sandwicense (aiakeakua, popolo)

Solanum sandwicense, a member of the nightshade family (Solanaceae), is a large sprawling shrub. The younger branches are more densely hairy than older branches and the oval leaves usually have up to 4 lobes along the margins. This short-lived perennial species differs from others of the genus in having dense hairs on young plant parts, a greater height, and lacking prickles (Symon 1999).

Little is known about the life history of *Solanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995).

Historically, *Solanum sandwicense* was known from both Oahu and Kauai. Currently, this species is only known from Kauai. On Kauai, this species was historically reported from locations in the Kokee region bounded by Kalalau Valley, Milolii Ridge, and extending to the Hanapepe River. Currently, *S. sandwicense* is only known from eight occurrences of 14 individual plants on private and State lands (Kokee State Park, Kuia NAR, and Na Pali-Kona Forest Reserve) at Kahuamaa Flats, Awaawapuhi Valley, Kumuwela Ridge, Waialae Valley, and Mokuone Stream (GDSI 2000; HINHP Database 2000; Service 1995; 59 FR 9304; K. Wood, *in litt.* 1999; Joan Yoshioka, The Nature Conservancy of Hawaii (TNCH), pers. comm., 2000).

This species is typically found under forest canopies at elevations between 445 and 1,290 m (1,460 and 4,232 ft) in diverse lowland or montane *Acacia koa* or *A. koa-Metrosideros polymorpha* mesic forests or occasionally in wet forests. Associated native plant species include *Alphitonia ponderosa, Athyrium sandwicensis, Bidens* spp., *Carex meyenii, Coprosma* spp., *Cryptocarya mannii, Dianella sandwicensis, Dicranopteris linearis, Dubautia* spp., *Hedyotis* spp., *Ilex anomala, Melicope* spp., *Poa* spp., *Pouteria sandwicensis, Psychotria* spp., *Syzygium sandwicensis*, or *Xylosma hawaiiense* (HINHP Database 2000; Service 1995; 59 FR 9304; K. Wood, pers. comm., 2001).

The major threats to populations of *Solanum sandwicense* on Kauai are habitat degradation by feral pigs, and competition with nonnative plant species (*Hedychium gardnerianum* (kahili ginger), *Lonicera japonica Passiflora tarminiana, Psidium cattleianum*, or *Rubus argutus*); fire; human disturbance and development; and a risk of extinction from naturally occurring events (*e.g.*, landslides or hurricanes) and/or reduced reproductive vigor due to the small number of existing individuals (HINHP Database 2000; Service 1995; 59 FR 9304).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves are dissected into narrow, lance-shaped divisions. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai, and the island of Hawaii. Currently, it is found on Kauai, Oahu, Molokai, Lanai, West Maui, and Hawaii. On Kauai, this species is known from State-owned land at Koaie Canyon, the rim of Waimea Canyon, and Kapahili Gulch within the Na Pali-Kona Forest Reserve. There are two known occurrences with five individuals total on Kauai (GDSI 2000; HINHP Database 2000; Service 1999; 59 FR 56333).

Spermolepis hawaiiensis is known from *Metrosideros polymorpha forest* and *Dodonaea viscosa* lowland dry shrubland, at elevations between 56 and 725 m (184 and 2,377 ft). Associated native plant species include *Bidens sandvicensis, Doryopteris* spp., *Eragrostis variabilis, Erythrina sandwicensis, Lipochaeta* spp., *Schiedea spergulina*, or *Sida fallax* (HINHP Database 2000; Service 1999; K. Wood, pers. comm., 2001).

The primary threats to *Spermolepis hawaiiensis* on Kauai are habitat degradation by feral goats; competition with various nonnative plants; and erosion, landslides, and rock slides due to natural weathering, which result in the death of individual plants as well as habitat destruction (Service 1999; 59 FR 56333).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the pea family (Fabaceae), is a slender twining short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods, which may or may not be slightly inflated (Geesink *et al.* 1999).

Little is known about the life history of *Vigna o-wahuensis*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, Molokai, Lanai, Kahoolawe, Maui, and the island of Hawaii. Currently, *Vigna o-wahuensis* is known from Molokai, Lanai, Kahoolawe, Maui, and the island of Hawaii. It was last observed on Niihau in 1912 (GDSI 2000; HINHP Database 2000; 59 FR 56333).

Nothing is known of the preferred habitat of or native plant species associated with *Vigna o-wahuensis* on the island of Niihau.

Nothing is known of the threats to *Vigna o-wahuensis* on the island of Niihau.

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense is a medium-sized tree with pale to dark gray bark and lemon-scented leaves in the rue family (Rutaceae). A long-lived perennial tree, *Z. hawaiiense* is distinguished from other Hawaiian members of the genus by several characteristics: three leaflets all of similar size, one joint on the lateral leaf stalk, and sickle-shaped fruits with a rounded tip (Stone *et al.* 1999).

Little is known about the life history of *Zanthoxylum hawaiiense*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996).

Historically, *Zanthoxylum hawaiiense* was known from five islands: Kauai, Molokai, Lanai, Maui, and Hawaii. Currently, *Zanthoxylum hawaiiense* is found on Kauai, Molokai, Maui, and Hawaii. On Kauai, this species is only known from three occurrences with three individuals on State-owned land in Kawaiiki and Kipalau Valleys within the Alakai Wilderness Preserve and Na Pali-Kona Forest Reserve (GDSI 2000; HINHP Database 2000).

Zanthoxylum hawaiiense is reported from lowland dry or mesic forests, at elevations between 332 and 1,151 m (1,089 and 3,774 ft). This species is typically found in forests dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* with associated native plant species including *Alectryon macrococcus, Antidesma platyphyllum, Charpentiera elliptica, Dodonaea viscosa, Melicope* spp., *Myrsine lanaiensis, Pisonia* spp., *Pleomele aurea, Streblus pendulinus*, or *Zanthoxylum dipetalum* (HINHP Database 2000; K. Wood, pers. comm., 2001).

The threats to *Zanthoxylum hawaiiense* on Kauai include competition with the nonnative plant species *Lantana camara* and *Melia azedarach*; fire; human disturbance; and risk of extinction from naturally occurring events, such as landslides or hurricanes, and/or reduced reproductive vigor due to the small number of existing individuals (Service 1996; 59 FR 10305).

A summary of occurrences and landownership for the 95 plant species reported from the islands of Kauai and Niihau is given in Table 2.

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES ON KAUAI AND NIIHAU, AND LANDOWNERSHIP FOR 95 SPECIES REPORTED FROM KAUAI

Species	Number of current occurrences	Landownership		
		Federal	State	Private
Acaena exigua	0			

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES ON KAUAI AND NIIHAU, AND LANDOWNERSHIP FOR 95 SPECIES REPORTED FROM KAUAI—Continued

Species	Number of current occurrences	Landownership		
		Federal	State	Private
Achyranthes mutica	0			
Adenophorus periens	7		X	X
Alectryon macrococcus	18		X	
Alsinidendron lychnoides	4		X	
Alsinidendron viscosum	7		X	
Bonamia menziesii	9		X	X
Brighamia insignis	4		X	X
Centaurium sebaeoides	3		X	
Chamaesyce halemanui	9		X	
Ctenitis squamigera	0			
Cyanea asarifolia	2		X	
Cyanea recta	8		X	X
Cyanea remyi	7		X	X
Cyanea undulata	1			X
Cyperus trachysanthos	1			X
Cyrtandra cyaneoides	5		X	X
Cyrtandra limahuliensis	13		X	X
Delissea rhytidosperma	3		X	X
Delissea rivularis	2		X	
Delissea undulata	1		X	
Diellia erecta	1		X	
Diellia pallida	6		X	
Diplazium molokaiense	0			
Dubautia latifolia	26		X	
Dubautia pauciflorula	4		X	X
Euphorbia haeleeleana	23		X	
Exocarpos luteolus	9		X	X
Flueggea neowawraea	10		X	X
Gouania meyenii	3		X	
Hedyotis cookiana	1		X	
Hedyotis st.-johnii	11		X	
Hesperomannia lydgatei	4		X	X
Hibiscadelphus woodii	2		X	
Hibiscus brackenridgei	0			
Hibiscus clayi	1		X	
Hibiscus waimeae ssp. *hannerae*	2		X	X
Ischaemum byrone	2			X
Isodendrion laurifolium	13		X	
Isodendrion longifolium	15		X	X
Isodendrion pyrifolium	0			
Kokia kauaiensis	21		X	
Labordia lydgatei	6		X	X
Labordia tinifolia var. *wahiawaensis*	1			X
Lipochaeta fauriei	5		X	
Lipochaeta micrantha	5		X	X
Lipochaeta waimeaensis	1		X	
Lobelia niihauensis	13		X	X
Lysimachia filifolia	1		X	
Mariscus pennatiformis	0			
Melicope haupuensis	4		X	
Melicope knudsenii	10		X	
Melicope pallida	6		X	
Melicope quadrangularis	0			
Munroidendron racemosum	17		X	X
Myrsine linearifolia	12		X	X
Nothocestrum peltatum	10		X	
Panicum niihauense	1		X	
Peucedanum sandwicense	15		X	X
Phlegmariurus mannii	0			
Phlegmariurus nutans	0			
Phyllostegia knudsenii	3		X	
Phyllostegia waimeae	1		X	
Phyllostegia wawrana	4		X	X
Plantago princeps	7		X	X
Platanthera holochila	2		X	
Poa mannii	6		X	
Poa sandvicensis	9		X	
Poa siphonoglossa	5		X	
Pritchardia aylmer-robinsonii	1			X

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES ON KAUAI AND NIIHAU, AND LANDOWNERSHIP FOR 95 SPECIES REPORTED FROM KAUAI—Continued

Species	Number of current occurrences	Landownership		
		Federal	State	Private
Pritchardia napaliensis	5		X	
Pritchardia viscosa	1		X	
Pteralyxia kauaiensis	39		X	
Remya kauaiensis	17		X	
Remya montgomeryi	6		X	
Schiedea apokremnos	5		X	
Schiedea helleri	3		X	
Schiedea kauaiensis	5		X	
Schiedea membranacea	10		X	X
Schiedea nuttallii	1			X
Schiedea spergulina var. *leiopoda*	1			X
Schiedea spergulina var. *spergulina*	3		X	
Schiedea stellarioides	3		X	
Sesbania tomentosa	1		X	
Silene lanceolata	0			
Solanum incompletum	0			
Solanum sandwicense	8		X	X
Spermolepis hawaiiensis	2		X	
Stenogyne campanulata	3		X	
Vigna o-wahuensis	0			
Viola helenae	1			X
Viola kauaiensis var. *wahiawaensis*	2			X
Wilkesia hobdyi	9	X*	X	
Xylosma crenatum	3		X	
Zanthoxylum hawaiiense	3		X	

* Pacific Missile Range Facility at Makaha Ridge.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens, Alectryon macrococcus* (as *A. macrococcum* var. *macrococcum* and *A. mahoe*), *Bonamia menziesii, Brighamia insignis* (as *B. citrina* var. *napaliensis* and *B. insignis*), *Chamaesyce halemanui* (as *Euphorbia halemanui*), *Delissea rhytidosperma, Dubautia latifolia* (as *D. latifolia* var. *latifolia*), *Exocarpos luteolus, Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscus clayi* (as *H. clayi* and *H. newhousei*), *H. waimeae* ssp. *hannerae* (as *H. waimeae*), *Kokia kauaiensis, Lipochaeta fauriei, L. micrantha* (as *L. exigua*), *Lobelia niihauensis, Melicope haupuensis* (as *Pelea haupuensis*), *M. knudsenii* (as *P. multiflora*), *M. pallida* (as *P. leveillei* and *P. pallida*), *Melicope quadrangularis* (*Pelea quadrangularis*), *Myrsine linearifolia* (as *M. linearifolia* var. *linearifolia*), *Nothocestrum peltatum, Peucedanum sandwicense* (as *P. kauaiense*), *Phyllostegia knudsenii, Plantago princeps* (as *P. princeps* var. *elata, P.* var. *laxifolia*, and *P.* var. *princeps*), *Poa sandvicensis, Pritchardia aylmer-robinsonii, Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*), *Solanum sandwicense* (as *S. hillebrandii* and *S. kauaiense*), *Viola helenae, V. kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum* (as *Antidesma crenatum*), and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *citiodora*), were considered to be endangered; *Delissea rivularis, Diellia pallida* (as *Diellia laciniata*), Labordia lydgatei, Lipochaeta micrantha, L. waimeaensis, Lysimachia filifolia, Schiedea membranacea, and *Zanthoxylum hawaiiense* (as *Z. hawaiiense* var. *hawaiiense* and *Z. hawaiiense* var. *velutinosum*) were considered to be threatened; and *Delissea undulata* (as *D. undulata* var. *argutidenta* and *D. undulata* var. *undulata*), *Gouania meyenii, Hedyotis cookiana, Melicope knudsenii* (as *Pelea knudsenii* and *P. tomentosa*), Munroidendron racemosum (as *M. racemosum* var. *macdanielsii*), *Plantago princeps* (as *P. princeps* var. *acaulis, P. princeps* var. *denticulata*, and *P. princeps* var. *queleniana*), and *Remya kauaiensis* were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except for *Diellia pallida*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication (40 FR 27823).

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of

Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), and September 30, 1993 (58 FR 51144). We listed the 95 species as endangered or threatened between 1991 and 1996. A summary of the listing actions can be found in Table 3(a). A summary of the critical habitat actions can be found in Table 3(b).

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU

Species	Federal status	Proposed listing rule		Final listing rule	
		Date	Federal Register	Date	Federal Register
Acaena exigua	E	5/24/1991	56 FR 23842	5/15/1992	57 FR 20772
Achyranthes mutica	E	10/2/1995	60 FR 51417	10/10/1996	61 FR 53108
Adenophorus periens	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Alectryon macrococcus	E	5/24/1991	56 FR 23842	5/15/1992	57 FR 20772
Alsinidendron lychnoides	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Alsinidendron viscosum	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Bonamia menziesii	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Brighamia insignis	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Centaurium sebaeoides	E	9/28/1990	55 FR 39664	10/29/1991	56 FR 55770
Chamaesyce halemanui	E	9/21/1990	55 FR 39301	5/13/1992	57 FR 20580
Ctenitis squamigera	E	6/24/1993	58 FR 34231	9/9/1994	59 FR 49025
Cyanea asarifolia	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Cyanea recta	T	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Cyanea remyi	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Cyanea undulata	E	9/17/1990	55 FR 38242	9/20/1991	56 FR 47695
Cyperus trachysanthos	E	10/2/1995	60 FR 51417	10/10/1996	61 FR 53108
Cyrtandra cyaneoides	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Cyrtandra limahuliensis	T	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Delissea rhytidosperma	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Delissea rivularis	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Delissea undulata	E	6/27/1994	59 FR 32946	10/10/1996	61 FR 53124
Diellia erecta	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Diellia pallida	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Diplazium molokaiense	E	6/24/1993	58 FR 34231	9/9/1994	59 FR 49025
Dubautia latifolia	E	9/21/1990	55 FR 39301	5/13/1992	57 FR 20580
Dubautia pauciflorula	E	9/17/1990	55 FR 38242	9/20/1991	56 FR 47695
Euphorbia haeleeleana	E	10/2/1995	60 FR 51417	10/10/1996	61 FR 53108
Exocarpos luteolus	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Flueggea neowawraea	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Gouania meyenii	E	9/28/1990	55 FR 39664	10/29/1991	56 FR 55770
Hedyotis cookiana	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Hedyotis st.-johnii	E	8/3/1990	55 FR 31612	9/30/1991	56 FR 49639
Hesperomannia lydgatei	E	9/17/1990	55 FR 38242	9/20/1991	56 FR 47695
Hibiscadelphus woodii	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Hibiscus brackenridgei	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Hibiscus clayi	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Hibiscus waimeae ssp.	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Ischaemum byrone	E	12/17/1992	57 FR 59951	3/4/1994	59 FR 10305
Isodendrion laurifolium	E	10/2/1995	60 FR 51417	10/10/1996	61 FR 53108
Isodendrion longifolium	T	10/2/1995	60 FR 51417	10/10/1996	61 FR 53108
Isodendrion pyrifolium	E	12/17/1992	57 FR 59941	3/4/1994	59 FR 10305
Kokia kauaiensis	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Labordia lydgatei	E	9/17/1990	55 FR 38242	9/20/1991	56 FR 47695
Labordia tinifolia var.	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Lipochaeta fauriei	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Lipochaeta micrantha	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Lipochaeta waimeaensis	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Lobelia niihauensis	E	9/28/1990	55 FR 39664	10/29/1991	56 FR 55770
Lysimachia filifolia	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Mariscus pennatiformis	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Melicope haupuensis	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Melicope knudsenii	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Melicope pallida	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Melicope quadrangularis	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Munroidendron racemosum	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Myrsine linearifolia	T	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Nothocestrum peltatum	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Panicum niihauense	E	10/2/1995	60 FR 51417	10/10/1996	61 FR 53108
Peucedanum sandwicense	T	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Phlegmariurus mannii	E	5/24/1991	56 FR 23842	5/15/1992	57 FR 20772
Phlegmariurus nutans	E	9/28/1990	55 FR 39664	10/29/1991	56 FR 55770
Phyllostegia knudsenii	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Phyllostegia waimeae	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Phyllostegia wawrana	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Federal status	Proposed listing rule		Final listing rule	
		Date	Federal Register	Date	Federal Register
Plantago princeps	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Platanthera holochila	E	10/2/1995	60 FR 51417	10/10/1996	61 FR 53108
Poa mannii	E	4/7/1993	58 FR 18073	11/10/1994	59 FR 56330
Poa sandvicensis	E	9/21/1990	55 FR 39301	5/13/1992	57 FR 20580
Poa siphonoglossa	E	9/21/1990	55 FR 39301	5/13/1992	57 FR 20580
Pritchardia aylmer-robinsonii	E	12/17/1992	57 FR 59970	8/7/1996	61 FR 41020
Pritchardia napaliensis	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Pritchardia viscosa	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Pteralyxia kauaiensis	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Remya kauaiensis	E	10/2/1989	54 FR 40447	1/14/1991	56 FR 1450
Remya montgomeryi	E	10/2/1989	54 FR 40447	1/14/1991	56 FR 1450
Schiedea apokremnos	E	8/3/1990	55 FR 31612	9/30/1991	56 FR 49639
Schiedea helleri	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Schiedea kauaiensis	E	10/2/1995	60 FR 51417	10/10/1996	61 FR 53108
Schiedea membranacea	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Schiedea nuttallii	E	10/2/1995	60 FR 51417	10/10/1996	61 FR 53108
Schiedea spergulina var. *leiopoda*	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Schiedea spergulina var. *spergulina*	T	10/30/1991	56 FR 55862	2/25/1994	59 FR 9304
Schiedea stellarioides	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Sesbania tomentosa	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Silene lanceolata	E	9/20/1991	56 FR 47718	10/8/1992	57 FR 46325
Solanum incompletum	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Solanum sandwicense	E	10/30/1991	56 FR 55862	2/25/1994	59 FR 09304
Spermolepis hawaiiensis	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Stenogyne campanulata	E	9/21/1990	55 FR 39301	5/13/1992	57 FR 20580
Vigna o-wahuensis	E	9/14/1993	58 FR 48012	11/10/1994	59 FR 56333
Viola helenae	E	9/17/1990	55 FR 38242	9/20/1991	56 FR 47695
Viola kauaiensis var.	E	9/25/1995	60 FR 49359	10/10/1996	61 FR 53070
Wilkesia hobdyi	E	10/2/1989	54 FR 40444	6/22/1992	57 FR 27859
Xylosma crenatum	E	9/21/1990	55 FR 39301	5/13/1992	57 FR 20580
Zanthoxylum hawaiiense	E	12/17/1992	57 FR 59951	3/4/1994	59 FR 10305

Key: E = Endangered T = Threatened

TABLE 3(b).—SUMMARY OF CRITICAL HABITAT ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU

Species	Proposed critical habitat designation or nondesignation		Final critical habitat	
	Date(s)	Federal Register	Date(s)	Federal Register
Acaena exigua	12/18/2000	65 FR 79192	NA	NA
Achyranthes mutica	5/28/2002	67 FR 36968	NA	NA
Adenophorus periens	11/7/2000	65 FR 66808	NA	NA
	12/29/2000	65 FR 83157		
	1/28/2002	67 FR 3940		
	3/4/2002	67 FR 9806		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
	5/28/2002	67 FR 37108		
Alectryon macrococcus	11/7/2000	65 FR 66808	NA	NA
	12/18/2000	65 FR 79192		
	12/29/2000	65 FR 83157		
	1/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 37108		
Alsinidendron lychnoides	11/7/2000	65 FR 66808	NA	NA
Alsinidendron viscosum	11/7/2000	65 FR 66808	NA	NA
Bonamia menziesii	11/7/2000	65 FR 66808	NA	NA
	12/18/2000	65 FR 79192		
	12/27/2000	65 FR 82086		
	1/28/2002	67 FR 3940		
	3/4/2002	67 FR 36968		
	4/3/2002	67 FR 15856		
	5/28/2002	67 FR 9806		
	5/28/2002	67 FR 37108		
Brighamia insignis	11/7/2000	65 FR 66808	NA	NA
Centaurium sebaeoides	11/7/2000	65 FR 66808	NA	NA

TABLE 3(b).—SUMMARY OF CRITICAL HABITAT ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Proposed critical habitat designation or nondesignation		Final critical habitat	
	Date(s)	Federal Register	Date(s)	Federal Register
	12/18/2000	65 FR 79192		
	12/27/2000	65 FR 82086		
	12/29/2000	65 FR 83157		
	1/28/2002	67 FR 3940		
	3/4/2002	67 FR 9806		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 37108		
Chamaesyce halemanui	11/7/2000	65 FR 66808	NA	NA
Ctenitis squamigera	12/18/2000	65 FR 79192	NA	NA
	12/27/2000	65 FR 79192		
	12/29/2000	65 FR 83157		
	1/28/2002	67 FR 3940		
	3/4/2002	67 FR 9806		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
Cyanea asarifolia	11/07/2000	65 FR 66808	NA	NA
Cyanea recta	11/07/2000	65 FR 66808	NA	NA
Cyanea remyi	11/7/2000	65 FR 66808	NA	NA
Cyanea undulata	11/7/2000	65 FR 66808	NA	NA
Cyperus trachysanthos	11/7/2000	65 FR 66808	NA	NA
	1/28/2002	67 FR 3940		
	3/4/2002	67 FR 9806		
	5/28/2002	67 FR 37108		
Cyrtandra cyaneoides	11/7/2000	65 FR 66808	NA	NA
Cyrtandra limahuliensis	11/7/2000	65 FR 66808	NA	NA
Delissea rhytidosperma	11/7/2000	65 FR 66808	NA	NA
Delissea rivularis	11/7/2000	65 FR 66808	NA	NA
Delissea undulata	11/7/2000	65 FR 66808	NA	NA
Diellia erecta	12/18/2000	65 FR 79192	NA	NA
	12/29/2000	65 FR 83158		
	1/28/2002	67 FR 3940		
	3/4/2002	67 FR 9806		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
	5/28/2002	67 FR 37108		
Diellia pallida	11/7/2000	65 FR 66808	NA	NA
Diplazium molokaiense	12/18/2000	65 FR 79192	NA	NA
	01/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
	3/4/2002	67 FR 9806		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 37108		
Dubautia latifolia	11/07/2000	65 FR 66808	NA	NA
Dubautia pauciflorula	11/07/2000	65 FR 66808	NA	NA
Euphorbia haeleeleana	11/07/2000	65 FR 66808	NA	NA
	01/28/2002	67 FR 3940		
	05/28/2002			
Exocarpos luteolus	11/07/2000	65 FR 66808	NA	NA
Flueggea neowawraea	11/07/2000	65 FR 66808	NA	NA
	12/18/2000	65 FR 79192		
	1/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
	04/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
	5/28/2002	67 FR 37108		
Gouania meyenii	11/07/2000	65 FR 66808	NA	NA
	1/28/2002	67 FR 3940		
Hedyotis cookiana	11/07/2000	65 FR 66808	NA	NA
Hedyotis st.-johnii	11/7/2000	65 FR 66808	NA	NA
Hesperomannia lydgatei	11/07/2000	65 FR 66808	NA	NA
Hibiscadelphus woodii	11/7/2000	65 FR 66808	NA	NA
Hibiscus brackenridgei	12/18/2000	65 FR 79192	NA	NA
	12/27/2000	65 FR 82086		
	3/4/2002	67 FR 9806		
	4/3/2002	67 FR 15856		

TABLE 3(b).—SUMMARY OF CRITICAL HABITAT ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Proposed critical habitat designation or nondesignation		Final critical habitat	
	Date(s)	Federal Register	Date(s)	Federal Register
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
	5/28/2002	67 FR 37108		
Hibiscus clayi	11/07/2000	65 FR 66808	NA	NA
Hibiscus waimeae ssp. *hannerae*	11/07/2000	65 FR 66808	NA	NA
Ischaemum byrone	12/18/2000	65 FR 79192	NA	NA
	12/29/2000	65 FR 83158		
	1/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
Isodendrion laurifolium	11/07/2000	65 FR 66808	NA	NA
	1/28/2002	67 FR 3940		
	5/28/2002	67 FR 37108		
Isodendrion longifolium	11/07/2000	65 FR 66808	NA	NA
	1/28/2002	67 FR 3940		
	5/28/2002	67 FR 37108		
Isodendrion pyrifolium	3/4/2002	67 FR 9806	NA	NA
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
	5/28/2002	67 FR 37108		
Kokia kauaiensis	11/07/2000	65 FR 66808	NA	NA
Labordia lydgatei	11/07/2000	65 FR 66808	NA	NA
Labordia tinifolia var. *wahiawaensis*	11/07/2000	65 FR 66808	NA	NA
Lipochaeta fauriei	11/07/2000	65 FR 66808	NA	NA
Lipochaeta micrantha	11/07/2000	65 FR 66808	NA	NA
Lipochaeta waimeaensis	11/07/2000	65 FR 66808	NA	NA
Lobelia niihauensis	11/07/2000	65 FR 66808	NA	NA
	1/28/2002	67 FR 3940		
	5/28/2002	67 FR 37108		
Lysimachia filifolia	11/07/2000	65 FR 66808	NA	NA
	1/28/2002	67 FR 3940		
	5/28/2002	67 FR 37108		
Mariscus pennatiformis	12/18/2000	65 FR 79192	NA	NA
	1/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
	5/14/2002	67 FR 34522		
	5/28/2002	67 FR 37108		
Melicope haupuensis	11/07/2000	65 FR 66808	NA	NA
Melicope knudsenii	11/07/2000	65 FR 66808	NA	NA
	12/18/2000	65 FR 79192		
	1/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
Melicope pallida	11/07/2000	65 FR 66808	NA	NA
	1/28/2002	67 FR 3940		
	5/28/2002	67 FR 37108		
Melicope quadrangularis	11/07/2000	65 FR 66808	NA	NA
Munroidendron racemosum	11/07/2000	65 FR 66808	NA	NA
Myrsine linearifolia	11/07/2000	65 FR 66808	NA	NA
Nothocestrum peltatum	11/7/2000	65 FR 66808	NA	NA
Panicum niihauense	11/7/2000	65 FR 66808	NA	NA
Peucedanum sandwicense	11/7/2000	65 FR 66808	NA	NA
	12/18/2000	65 FR 79192		
	12/29/2000	65 FR 83157		
	1/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 37108		
Phlegmariurus mannii	12/18/2000	65 FR 79192	NA	NA
	4/3/2002	67 FR 15856		
Phlegmariurus nutans	1/28/2002	67 FR 3940	NA	NA
	5/28/2002	67 FR 37108		
Phyllostegia knudsenii	11/7/2000	65 FR 66808	NA	NA
Phyllostegia waimeae	11/7/2000	65 FR 66808	NA	NA
Phyllostegia wawrana	11/7/2000	65 FR 66808	NA	NA
Plantago princeps	11/7/2000	65 FR 66808	NA	NA
	12/18/2000	65 FR 79192		

TABLE 3(b).—SUMMARY OF CRITICAL HABITAT ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Proposed critical habitat designation or nondesignation		Final critical habitat	
	Date(s)	Federal Register	Date(s)	Federal Register
	12/29/2000	65 FR 83158		
	1/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
Platanthera holochila	11/07/2000	65 FR 66808	NA	NA
	12/18/2000	65 FR 79192		
	12/29/2000	65 FR 83158		
	1/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 37108		
Poa mannii	11/7/2000	65 FR 66808	NA	NA
Poa sandvicensis	11/7/2000	65 FR 66808	NA	NA
Poa siphonoglossa	11/7/2000	65 FR 66808	NA	NA
Pritchardia aylmer-robinsonii	11/7/2000	65 FR 66808	NA	NA
Pritchardia napaliensis	11/7/2000	65 FR 66808	NA	NA
Pritchardia viscosa	11/7/2000	65 FR 66808	NA	NA
Pteralyxia kauaiensis	11/7/2000	65 FR 66808	NA	NA
Remya kauaiensis	11/7/2000	65 FR 66808	NA	NA
Remya montgomeryi	11/7/2000	65 FR 66808	NA	NA
Schiedea apokremnos	11/7/2000	65 FR 66808	NA	NA
Schiedea helleri	11/7/2000	65 FR 66808	NA	NA
Schiedea kauaiensis	11/7/2000	65 FR 66808	NA	NA
Schiedea membranacea	11/7/2000	65 FR 66808	NA	NA
Schiedea nuttallii	11/7/2000	65 FR 66808	NA	NA
	12/29/2000	65 FR 83158		
	1/28/2002	67 FR 3940		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 37108		
Schiedea spergulina var. leiopoda	11/7/2000	65 FR 66808	NA	NA
Schiedea spergulina var. spergulina	11/7/2000	65 FR 66808	NA	NA
Schiedea stellarioides	11/7/2000	65 FR 66808	NA	NA
Sesbania tomentosa	11/7/2000	65 FR 66808	NA	NA
	12/18/2000	65 FR 79192		
	12/29/2000	65 FR 83158		
	1/28/2002	67 FR 3940		
	3/4/2002	67 FR 9806		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/14/2002	67 FR 34522		
	5/28/2002	67 FR 36968		
	5/28/2002	67 FR 37108		
Silene lanceolata	12/29/2000	65 FR 83158	NA	NA
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
	5/28/2002	67 FR 37108		
Solanum incompletum	4/4/2002	67 FR 9806	NA	NA
	5/28/2002	67 FR 36968		
Solanum sandwicense	11/7/2000	65 FR 66808	NA	NA
	1/28/2002	67 FR 3940		
	5/28/2002	67 FR 37108		
Spermolepis hawaiiensis	11/7/2000	65 FR 66808	NA	NA
	12/29/2000	65 FR 83158		
	1/28/2002	67 FR 3940		
	3/4/2002	67 FR 9806		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
	5/28/2002	67 FR 37108		
Stenogyne campanulata	11/7/2000	65 FR 66808	NA	NA
Vigna o-wahuensis	12/18/2000	65 FR 79192	NA	NA
	12/27/2000	65 FR 82086		
	12/29/2000	65 FR 83158		
	3/4/2002	67 FR 9806		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		
	5/28/2002	67 FR 37108		

TABLE 3(b).—SUMMARY OF CRITICAL HABITAT ACTIONS FOR 95 PLANT SPECIES FROM KAUAI AND NIIHAU—Continued

Species	Proposed critical habitat designation or nondesignation		Final critical habitat	
	Date(s)	Federal Register	Date(s)	Federal Register
Viola helenae	11/7/2000	65 FR 66808	NA	NA
Viola kauaiensis var. *wahiawaenis*	11/7/2000	65 FR 66808	NA	NA
Wilkesia hobdyi	11/7/2000	65 FR 66808	NA	NA
Xylosma crenatum	11/7/2000	65 FR 66808	NA	NA
Zanthoxylum hawaiiense	11/7/2000	65 FR 66808	NA	NA
	12/18/2000	65 FR 79192		
	12/29/2000	65 FR 83158		
	1/28/2002	67 FR 3940		
	4/3/2002	67 FR 15856		
	4/5/2002	67 FR 16492		
	5/28/2002	67 FR 36968		

At the time each of the 95 plants was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant or would increase the degree of threat to the species. The "not prudent" determinations for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii, including the 95 species reported from Kauai. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or nondesignations for at least 100 species by November 30, 2000, and to publish proposed designations or nondesignations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii* v. *Babbitt*, 24 F. Supp. 2d 1074 (D. Haw. 1998)).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the DOFAW, county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands, promote funding for management of these plants, educate the public and State government, and protect partnerships with landowners and build trust.

On October 5, 1999, we contacted landowners on the islands of Kauai and Niihau, notifying them of our requirement to designate critical habitat for 95 plant species. We included a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We held three open houses on the island of Kauai, at the Waimea Community Center, the Kauai War Memorial Convention Hall in Lihue, and the Kilauea Neighborhood Center, on October 19, 20, and 21, 1999, respectively, to meet one-on-one with local landowners and other interested members of the public. In addition, we met with Kauai County DOFAW staff and Kauai State Parks staff to discuss their management activities on Kauai.

On November 7, 2000, we published the first of the court-ordered proposed critical habitat designations or nondesignations for 76 Kauai and Niihau plants (65 FR 66808). The proposed critical habitat designations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court's order. In those proposals, we proposed that critical habitat was prudent for 85 species (*Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Ctenitis squamigera, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia erecta, Diellia pallida, Diplazium molokaiense, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus brackenridgei, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Ischaemum byrone, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope*

haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia knudsenii, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Silene lanceolata, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Vigna o-wahuensis, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense*) that are reported from Kauai and/or Niihau as well as on Maui, Kahoolawe, Lanai, and Molokai. We proposed that critical habitat was not prudent for two species, *Phyllostegia waimeae* and *Melicope quadrangularis*, because they had not been seen recently in the wild, and no genetic material of these species was known to exist. We also proposed that critical habitat was not prudent for three species, *Pritchardia aylmer-robinsonii, Pritchardia napaliensis*, and *Pritchardia viscosa*, because it would increase the threat of vandalism to these species.

In the November 7, 2000 proposed rule, we proposed designation of critical habitat on approximately 24,539 ha (60,636 ac) of land on the islands of Kauai and Niihau. The publication of the proposed rule opened a 60-day public comment period, which closed on January 7, 2001. On January 18, 2001, we published a notice (66 FR 4782) announcing the reopening of the comment period until February 19, 2001, on the proposed rule and a notice of a public hearing. On February 6, 2001, we held a public hearing at the Radisson Kauai Beach Resort in Lihue, Kauai. On March 7, 2001, we published a notice (66 FR 13691) announcing the reopening of the comment period and the availability of the draft economic analysis for the proposed rule. This third public comment period was open until April 6, 2001.

On October 3, 2001, we submitted a joint stipulation with Earthjustice to the U.S. District Court requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001.

On January 28, 2002, in the revised proposed rule, we published proposed prudency determinations for 95 plant species from Kauai and Niihau (67 FR 3940). Many of these proposed prudency determinations were incorporated from previous proposals. We also proposed that critical habitat is prudent for four species (*Achyranthes mutica, Isodendrion pyrifolium, Phlegmariurus nutans,* and *Solanum incompletum)* for which a prudency determination had not been made previously and that no longer occur on Kauai or Niihau but are reported from one or more of the other islands.

In addition, critical habitat for 83 (*Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Ctenitis squamigera, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia erecta, Diellia pallida, Diplazium molokaiense, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Ischaemum byrone, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia knudsenii, Phyllostegia waimeae, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense*) of the 95 plant species was proposed on approximately 40,147 ha (99,206 ac) of land on Kauai and 282 ha (697ac) of land on Niihau (67 FR 3940). Critical habitat was not proposed for *Achyranthes mutica, Hibiscus brackenridgei, Phlegmariurus mannii, Silene lanceolata,* and *Solanum incompletum* on the island of Kauai and for *Isodendrion pyrifolium* and *Vigna o-wahuensis* on the island of Niihau because these plants no longer occur on Kauai or Niihau, and we were unable to identify habitat essential to their conservation on these two islands.

Because *Phyllostegia waimeae* had been rediscovered, we revised an earlier proposal to suggest that critical habitat would be prudent and propose critical habitat for this species in the revised proposed rule.

The publication of the revised proposed rule opened a 60-day public comment period, which closed on March 29, 2002. On February 11, 2002, we published a correction notice (67 FR 6214) correcting information contained in the January 28, 2002, revised proposal pertaining to the notice of a public hearing. On February 13, 2002, we held a public hearing at the Radisson Kauai Beach Resort in Lihue, Kauai. On May 28, 2002, we published a notice (67 FR 36851) announcing the availability of the draft economic analysis for the designation of critical habitat for 83 Kauai plants and reopening the public comment period until June 27, 2002. On August 26, 2002, we published a notice (67 FR 54766) reopening the public comment period until September 30, 2002. On July 11, 2002, we submitted joint stipulations with Earthjustice to the U.S. District Court requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), Oahu (April 30, 2003), the Northwestern Hawaiian Islands (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional review of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002. On September 3 and 4, 2002, we held public meetings at the Waimea Community Center, Waimea, Kauai, and the War Memorial Convention Center, Lihue, Kauai, respectively.

On January 9, 2003, we determined that critical habitat was prudent for the following 15 species: *Adenophorus periens, Bonamia menziesii, Centaurium sebaeoides, Ctenitis squamigera, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hibiscus brackenridgei, Isodendrion pyrifolium, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Vigna o-wahuensis* and *Zanthoxylum hawaiiense* (68 FR 1220), which also occur on Kauai or Niihau.

Summary of Comments and Recommendations

We received a total of 20 oral and 2,740 written comments during the three comment periods. These included responses from 7 State offices, 5 public officials, and 70 private organizations or individuals. Of the written comments, we received approximately 680 letters by facsimile and 1,998 electronic letters by e-mail, which stated general support for the proposed critical habitat designations, but that did not provide substantive comments. Of the other 82 comments, nine supported the designation, 60 were opposed to it, and 13 provided information but did not state a position on the designation. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Kauai and Niihau plants. Similar comments were grouped into nine general issues relating specifically to the proposed critical habitat designations and the draft economic analysis on the proposed determinations. These are addressed in the following summary.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 23 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, the geographic region, or the principles of conservation biology. We received comments from eight. All eight generally supported our methodology and conclusion, but none expressed a position for or against the designation of critical habitat. Comments received from the peer reviewers are summarized in the following section and incorporated into the final rule.

Issue 1: Biological Justification and Methodology

(1) *Comment:* One peer reviewer commented that there is no easy way to assess the match between the Service's proposed boundaries and the summation of habitat requirements of the individual taxa in each unit. Specifically, the intermediate step of indicating the species models for each of the listed taxa that is combined into the aggregate polygons that form the basis for the unit boundaries is not well documented. This leaves the reviewer with little basis to assess the match between habitat of the listed taxa and inclusion of such habitat in the critical habitat units. Species should be addressed individually, but the designation of conservation areas (or critical habitat) can and should consider the use of common areas to provide for multiple species. Another commenter stated that the Service's analysis has not demonstrated that inclusion of controversial areas has been minimized. There is no way to tell whether all of a given unit is necessary for that subset of taxa, which absolutely require the habitat found in that unit. The discussion of how each critical habitat unit provides for individual species helps one understand the reason for proposing the unit. However, additional information is needed in some instances (*e.g.*, units J and N). The Service must justify every acre of land proposed for critical habitat designation, identify the specific species scheduled for recovery on that land, and explain why specific acreages are needed to do so.

Our Response: In response to these concerns, we have included the critical habitat maps and unit justifications for each species in the final rule, as well as descriptions of primary constituent elements and a composite map showing the overlap of the areas for all of the species combined.

(2) *Comment:* The majority of our peer reviewers agreed that the methodology is appropriate, scientifically well-grounded and conceptually sound. The approach of mapping the elevation, moisture, and habitat type for the listed taxa to the landscape is a sound approach to designating critical habitat. It seems that there is a good match of habitat identified long-term conservation of multiple populations of the listed species. The methodology uses information on species elevation range, vegetation type, associated species, physical location, and community type. It will allow the Service to revise or update habitat units as new information becomes available. This is more likely to provide habitat for the recovery of these species. The proposed rulemaking represents the best scientific information available and is a scientifically appropriate technique for determining critical habitat on Kauai. On the other hand, some commenters felt that the proposed rule was an overly broad approach to designating critical habitat not based on scientific principles and knowledge of the needs of these plant species unique to the island State of Hawaii, but on litigation and the threat of future litigation. Additional consultation with academic and professional experts was recommended. Some reviewers stated that no assessment of the quality of any of the data sources is provided, and no information is given as to how data sources of varying qualities were weighted in making delineations of critical habitat or how decisions were made as to what to rely on in the absence of rigorous assessments of relative quality. These commenters agreed with the Service's statement that "lack of detailed scientific data makes it impossible for us to develop a quantitative model." Lack of knowledge means that the proposed critical habitat designation is based only on the general habitat features of the areas in which the plants currently occur. While this approach may be expedient, it has resulted in designations based on best guess estimations, rather than on science or the realities of plant recovery. The Service needs to give greater weight to scientific or commercial data that is empirical and has been field tested or verified, and needs to allow peer review by a panel of unbiased scientists. Other commenters felt the data on which the proposed critical habitat is based is 30 years-old and may need updating. The proposed critical habitat covers too much acreage and was put together too quickly, using obsolete data, sloppy science, and lots of guess work.

Our Response: In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our designation methodology of critical habitat of Kauai plants was based on scientifically sound data, assumptions, and analysis. The comments of the peer reviewers were taken into consideration in the development of this final designation. The majority of the peer reviewers support our methodology. All data and information on species status received in preparation of this rule was equally weighted and considered to come from reliable sources. Where

discrepancies existed between different data sources, the most current data were used. Changes in this final rule that decrease the boundaries of many units are based on additional information received during the public comment period and in meetings with additional species experts and land managers who were not available for comment during the preparation of the proposals. The changes in boundaries reflected in this final rule are based on additional information about areas lacking primary constituent elements or those that are too degraded to be restored. While we agree that additional time would be beneficial for the preparation of these final rules, we are required under the court-approved stipulation to finalize this designation by January 31, 2003. If provided with new information, we may revise the critical habitat designation in the future.

(3) *Comment:* One peer reviewer asked if the Service considered modeling the potential distribution based on known habitat correlates, as in Elith and Burgman (2002). Another peer reviewer stated that the Service should use spatial modeling of estimated values of selected habitat parameters for each species (such as elevation, median annual rainfall, vegetation units) as a first step in the process, rather than screen-digitizing. Some of the data on primary constituent elements (*e.g.*, breeding system, dispersal mechanisms) can be inferred from similar species, but other pieces of critical information may not be currently available and should be the subject of further research. After the preliminary habitat polygons are identified, historic range can be determined either objectively or subjectively based on the known location points for a particular species. The steps going from narrative descriptions of habitat elements to geographical units are not well documented. The Service should elaborate on its methodology for defining the primary constituent elements for each species and the subsequent critical habitat.

Our Response: We agree that modeling of potential distribution within historic range is important, and have used this type of modeling, based on the limited available information. We did not feel that valid habitat parameters for each species could be developed without first digitizing known current and historic range and using that information, along with available digitized information on elevation, rainfall, and vegetation units, to determine potential habitat. Using the information from existing and historically known plant locations, we used available digitized information on elevation, rainfall, and vegetation units, as well as advice from species experts, to model the potentially suitable habitat for each species. The critical habitat designated is the subset of suitable habitat that was determined to be essential to the conservation of each species (see the "Methods" section for more detail).

(4) *Comment:* Some reviewers commented that deletion of significant portions of any of the proposed critical units is likely to prevent the recovery of, and lead to the extinction of, listed species. Smaller units present real management challenges and may be so small that their ecological integrity and the viability of listed plants can't be maintained. The new proposal indicates that a wide range of habitats are covered in the areas proposed by the Service as critical habitat units. Units have been expanded to provide contiguous blocks of habitat that will reduce fragmentation and edge effects and are large enough to offer a variety of microsites. This will also improve the ability of listed species to maintain gene flow, reestablish populations following population declines or catastrophes, and to colonize new areas. However, the amount of dry and mesic forest included in proposed critical habitat is still very limited. Protecting critical habitat is essential not only for the recovery of threatened and endangered plant species, but also to protect the ecosystems on which these species rely for their long-term survival and recovery. Management actions for critical habitat need to allow for the expansion of populations and include the ecological matrix in which critical habitat is embedded. It is important that the adjacent noncritical habitat areas be managed for control or elimination of nonnative species, if recovery is to be achieved for the areas of less than 1,000 acres. On the other hand, some commenters felt that the increase in acreage from the first to the second proposal was the Service's attempt to get the community to be willing to go back to the original proposal. One commenter asked what the Service would do if newly obtained, good quality, scientific information proves the current best scientific knowledge is totally inaccurate.

Our Response: The Act requires us to use the best available scientific and commercial information in undertaking species listing and recovery actions, including the designation of critical habitat as set forth in this rule. In this final rule, we concluded that many areas were not essential for the conservation of the Kauai plant species, based on newly available information concerning status of the species in specific areas and level of habitat degradation. Several units or portions of units proposed as critical habitat have been excluded because they are not essential for the conservation of the species. We determined them to be non-essential due to their lacking primary constituent elements, or having primary constituent elements but there are other places for these species that have more primary constituent elements and/or are less degraded. See the "Summary of Changes from the Revised Proposed Rule" section for the justification for each unit's changes.

We realize that smaller areas will most likely require more management to maintain the plant populations and their habitat, but in many cases they are the only areas with the primary constituent elements needed for each species. We concur on the importance of protecting the ecosystems on which these species depend, as stated in purpose of the Act (section 2(b)), and of managing areas large enough to maintain and expand populations. We considered the importance of this, as well as the location of primary constituent elements, when delineating the boundaries of critical habitat for these final designations of critical habitat. We included areas that provide the biological and other processes that are essential for the conservation of the species. We acknowledge the potential negative impacts of edge effects on small habitat fragments. However, these species' primary constituent elements are found only within the areas that were designated critical habitat, and making them larger would add areas that lack the primary constituent elements. All of the changes in critical habitat from the first proposal, through the second, to this final, are based on the best available information received during comment periods, and are based on biological issues, not political or social issues. If new information becomes available indicating the existing critical habitat designations are not essential for the conservation of the species and/or that other areas are, we may propose revised designations for those species at that time.

(5) *Comment:* Critical habitat designation should be primarily directed toward areas that are currently being intensively managed or may be the subject of conservation agreements in the future for those species that are known to naturally occur in these habitats. A suggested method is that once realistic management units have been identified based on the management factors to address limiting factors (*e.g.* fence lines, fire control), the next step is to see how many distinct populations of each plant species exists or can be established within those units to meet the species overall habitat needs to support eight to ten populations. Only after this analysis has been made and found to be lacking, would you start looking outside these management units for other lands needed. The commenter believes that this approach not only meets the legal requirements for critical habitat designation, but provides the best approach for recovery of the species.

Our Response: We agree that managed areas containing current or historic populations are vitally important to the conservation of the species, and have included managed areas on Kauai with appropriate primary constituent elements in critical habitat. Managed lands are not included only if management is sufficient to demonstrate that special management considerations or protection are not required, pursuant to 16 U.S.C. 1532(5)(A)(i). See "Managed Lands." However, these areas alone or in conjunction with other areas that may be managed in the future do not include all of the habitat essential for the Kauai and Niihau species. Therefore, we have designated these managed areas along with additional areas outside of managed units as critical habitat. In our final analysis, for each species, we ranked areas of the proposed critical habitat by the quality of the primary constituent elements, potential as a recovery area, and current or expected management of known threats. Areas that contain high quality primary constituent elements, are zoned for conservation, and have on-going or expected threat abatement actions were given high ranks. Of these highly-ranked areas, we selected adequate area for 8 to 10 populations distributed among the islands of each species' historical range. Of the proposed critical habitat for a species, areas that were not highly ranked and that may provide habitat for populations above the recovery goal of 8 to 10, were determined not essential for the conservation of the species and were excluded from the final designation (see "Criteria Used to Identify Critical Habitat").

(6) *Comment:* Designate critical habitat for Federal lands only.

Our Response: Federal lands on the island of Kauai include the Navy's Pacific Missile Range Facility (PMRF) at Barking Sands and Makaha Ridge and the Service's Kilauea Point National Wildlife Refuge, Hanalei National Wildlife Refuge, and Huleia National Wildlife Refuge. In this final rule, we are designating critical habitat for *Panicum niihauense* at Barking Sands, as this dune habitat is essential for the conservation of this species. This dune habitat is not essential for the conservation of the other 82 species at issue on Kauai. In this final rule, we are not designating critical habitat for *Wilkesia hobdyi* at Makaha Ridge, as this habitat is not essential for the conservation of this species. This habitat is not essential for the conservation of the other 82 species at issue on Kauai. None of the 83 species at issue on Kauai are known currently or historically from the Service's refuges at Kilauea Point, Hanalei, or Huleia, and these Federal lands are not essential for the conservation of the 83 species at issue on Kauai.

(7) *Comment:* The Service cannot lawfully exclude areas from critical habitat based on a finding that they currently are adequately managed or protected. To do so would violate the mandatory duty to designate critical habitat to the maximum extent prudent and determinable. The commenter urges the Service not to exclude any areas from designation on this basis (already managed or protected), since doing so would violate the mandatory duty to designate critical habitat "to the maximum extent prudent and determinable."

Our Response: We disagree as "special management considerations or protection" is part of the definition of critical habitat and must be given meaning when designating critical habitat. Specifically, we believe that adequate special management consideration or protection could be provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. However, for this designation we did not identify essential habitat features that already have adequate management and would not be included on that basis.

(8) *Comment:* Several commenters supported the Hawaii Division of Forestry and Wildlife proposal for designating critical habitat on existing managed areas as these areas are where the limiting factors for species conservation can be addressed. Furthermore, one landowner noted that a large portion of his/her lands are managed by the Hawaii Division of Forestry and Wildlife.

Our Response: We agree that the State DOFAW staff have valuable on the ground experience and scientific information that has been essential to our critical habitat decision making process. However, we did not adopt DOFAW's first proposal (January 11, 2001) as it did not adequately address all of the conservation needs of the species in accordance with the Act. After publication of the January 28, 2002, revised proposed critical habitat rule, we met several times with Kauai DOFAW staff and conducted several site assessment surveys. As a result of the assessment surveys and information provided to us by Kauai DOFAW staff, we were able to better identify areas that did not contain primary constituent elements. In addition, we received important information from Kauai DOFAW staff that enabled us to refine the final critical habitat designations to better meet the conservation needs of the species.

(9) *Comment:* One commenter stated that it is extremely difficult to come up with a biologically sound definition of a population that can be realistically applied to the distribution and abundance of a rare species in the wild. However, the commenter noted that defining separate populations as being more than 1,000 meters apart is both biologically meaningful and operationally useful and serves as the focus of the Army's species stabilization efforts in the Waianae Mountains of Oahu. A commenter noted that the separation distance of 1,000 meters is probably adequate for most small-scale disturbance events, but will be inadequate for large-scale disturbances. The problem of defining populations requires knowledge of gene-flow patterns. The commentor recognizes that the proposed targets for population recovery are initial and not derived from any detailed understanding of genetic architecture. The commentor recommends altering these objectives, but would suggest that the Service state the need for more studies on population genetics. In addition, the targets present a demographic challenge to achieve a population of 100 mature individuals and will require massive plantings to counteract mortality. These practical challenges should be made clear.

Our Response: We agree that the operational definition of 1,000 meters between separate populations is adequate in the absence of information on the specific biological requirements of a population for each species. The need for genetic and demographic studies and the understanding of challenges to reintroduction are addressed in the species' recovery plans.

(10) *Comment:* Many commenters stated that a multi-population approach is essential for the conservation of many of the rare Hawaiian plant species, since the purpose of critical habitat and

recovery in general is to eventually have wild populations that are self-sustaining and no longer in need of protection under the Act. The strongest argument for this strategy is the fact that these populations are subject to many types of catastrophic events, ranging from widespread phenomena such as hurricanes, wildfire, or ungulates, to localized events like landslides, predators, or even disease outbreaks. The multi-population approach offers the opportunity to protect wider latitude of genetic variability for the species as a whole, rather than concentrating on a single or small number of areas with genetically more similar individuals. The Service's use of Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) guidelines for population size and numbers of populations needed to maintain Hawaiian plant taxa are probably the best general guide, since the general tenets of minimum viable population size and numbers are not defined for Hawaiian taxa. The targets (8 to 10 from 100 to 500) used in the critical habitat designations are generally lower than those used by the HPPRCC to identify essential habitat for listed plants and should be considered as the "low end" of what is likely needed for recovery.

Our Response: We agree that the multi-population approach to conservation is necessary for the recovery of Hawaii's endangered plants. We have used the lower end of the HPPRCC guidelines, as that is what the Service believes is essential to the conservation of the species, based on the current conservation literature (see "Criteria Used to Identify Critical Habitat" section).

(11) *Comment:* Two peer reviewers stated that just because a species is found in a certain habitat now does not mean that this habitat is the best place for it to thrive and reproduce. For example, repeated references to steep slopes as being primary constituent elements of critical habitat should not be construed as representing optimum habitat; they are likely remnant populations. The current distribution of a species today may not be a good indication of its optimal habitat, for example dry and mesic forest plants that are historically known only from lowland areas and not high elevation areas (where relatively more complete data are found); areas that were extremely degraded before good records were kept on species distribution and habitat needs.

Our Response: Our regulations state that the Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. In our designation, we used the best scientific and commercial data available, both historic and current, from a variety of sources (see "Methods" section) to specify any particular area as critical habitat (section 4(b)(2) of the Act) and to determine the physical or biological features essential to the conservation of the species (section 3(5)(A) of the Act). As pointed out by reviewers, biological information is extremely limited for many species, and therefore the only information available may indicate the species is restricted to a particular topography, soil or forest type. No critical habitat was designated for a species outside of its known historic range or known suitable habitat.

(12) *Comment:* Several comments were received in support of the designation of unoccupied habitat. Unoccupied habitat within critical habitat is important for natural dispersal of plant populations beyond their current distribution as well as providing sites for reintroduction of new populations if needed. The biological needs of the species are well enough known to warrant the protection of unoccupied habitat. These unoccupied areas will be especially important to dry and mesic forest species. Protecting unoccupied habitat is essential since currently occupied areas are inadequate for recovery. On the other hand, several comments were also received against the designation of unoccupied habitat. Some felt that at least 70 percent of the proposed critical habitat is not really habitat at all, in that it is not inhabited by any of the species but is unoccupied. Because there is no data to show that excluding these areas will result in the extinction of the species, the Service should omit them from consideration. Several areas do not contain listed species or do not contain records of historic sightings and so do not appear to be warranted as essential for the conservation of any species. The lands that could be excluded from critical habitat without causing the species to go extinct include Unit D1, D2, N, L, and private lands. Other commenters were concerned that is difficult for the Service to justify its expanded proposed designation if it does not know what physical and biological features are essential to the species' growth, germination or methods of seed dispersal as required by its own rules. The vast majority of the proposed areas are presently unoccupied by the species in question and their successful introduction to and survival in these areas is speculative. These commenters believe that the first proposed designation was correct.

Our Response: Our recovery plans for these species (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999) identify the need to expand existing populations and reestablish wild populations within historic range. We have revised the designated critical habitat in the final rule to incorporate new information and/or address comments and new information received during the comment periods, including information on areas of potentially suitable unoccupied habitat for some of these species. Many of the units have been reduced based on this newly available information. However, for most of the species, there are not enough existing populations and most of them are not currently viable. While they may continue to exist at their current low numbers until a catastrophic event causes their extinction, the Service's goal, as stated in section 2(b) of the Act, is to recover the species. Therefore, the protection of additional unoccupied critical habitat is essential to ensure the recovery of these species through reintroduction. We also realize that, although propagation and reintroduction are difficult for some species, both are vitally important to their recovery. Many recovery plans therefore include research into best methods of propagation and reintroduction as important tasks prior to attempting reintroduction.

(13) *Comment:* Some commenters stated that good quality habitat should be designated in lieu of more degraded habitat. However, degraded areas should only be excluded from proposed critical habitat if they lack the ability to become habitat in the future. On the other hand, some commenters said that they see little on-the-ground logic to defend designations of unoccupied habitat and believe the Service must have other strategies rather than just carving out land areas, especially in highly degraded or altered habitats. In some instances, all potential habitats for a species have been degraded to the point that alien species dominate the site. Recovery efforts in these situations need to include both species management, coupled with habitat restoration efforts.

Our Response: We agree that recovery of a species is more likely in higher quality habitat containing the physical or biological features essential to the conservation of the species. To this end, several units have been excluded for some species, as sufficient area is available in less degraded areas. However, for some species, particularly those only known from low elevation areas, only degraded habitat remains. Therefore, some units still contain degraded habitat, but only if experts agreed that the areas could be restored. Management for the restoration of these habitats is addressed in the species' recovery plans.

(14) *Comment:* The recovery effort in Hawaii will not be effective without a well-developed and implemented management strategy. The designation of critical habitat without adequate management does not necessarily ensure benefit or recovery to a plant species. Some of the critical habitat units cannot sustain the projected recovered populations at current levels of habitat management and investment. Control of key threats such as feral ungulates, alien weeds, and wild fires is crucial to the recovery of listed plants. Alien species are significant problem that need to be addressed in order to be effective in the conservation of Hawaiian plants and animals. However, the land managers have not been able to control some invasive weeds, such as banana poka and lantana. There are workable methodologies for dealing with some of the factors that affect listed species and critical habitat (*e.g.*, fencing and removal of ungulates). For other factors, such as lost pollinators, dispersers, or climate change, effective and appropriate techniques are still being sought. However, from a practical standpoint, if efforts to save threatened and endangered species were dependent on full knowledge of all factors relating to their survival, few if any would have a chance. This lack of knowledge or control tools should not be a reason to give up on recovery efforts for the native species that are affected. Waiting for all factors to be identified and validated would perpetuate current levels of habitat loss and/or management inaction.

Our Response: Critical habitat designation is one of a number of conservation tools established in the Act that can play an important role in the recovery of the species, and the Service is directed to designate critical habitat based on the best available scientific and commercial information. The management of alien species is an important conservation issue that is addressed in the recovery plans for these species. Other, less understood issues are identified in the recovery plans as requiring research to determine appropriate actions. The Service's role in the recovery of these species is to work with other agencies, organizations, and individuals to coordinate the implementation of the recovery plans in a strategic manner.

(15) *Comment:* "Reduced reproductive vigor due to small numbers of extant individuals" or inbreeding depression should not be cited as potential problems unless species-specific information is available. Hawaii's endangered species are biologically incompetent, and totally unable to repopulate the vast areas you are proposing as critical habitat. They should just be grown in a garden setting, since that is the only way they will survive. Extinction is a natural part of evolution.

Our Response: We are required under section 4 of the Act to designate critical habitat based on the best available information we have at the time of designation. In addition, we are directed by the Act to recover the species and the ecosystems on which they depend, not just preserve them in a horticulture facility. We realize that designation of critical habitat alone will not achieve recovery. Many of the species have been reduced to such low numbers that the recovery plans identify propagation and reintroduction as a key step. While we do not have direct evidence for most species to indicate that reduced reproductive vigor or inbreeding are problems, we believe they should be considered, based on current conservation biology theory and practice. This is particularly important to consider when developing a propagation and reintroduction program, to ensure that recovery efforts do not cause or exacerbate genetic issues. We also realize that management of the habitat is essential to the species' recovery. All of these issues are addressed in the species' recovery plans. And, while extinction is a natural part of evolution, there are numerous references in the conservation literature that the rate of extinction today is unprecedented.

(16) *Comment:* It should be noted that in many cases disturbance has been shown to contribute to the survival of species when it occurs at an appropriate level and at appropriate intervals.

Our Response: For some species it may be true that disturbance was a natural process that may have benefitted the species in the past. Today, however, many listed species are greatly reduced in numbers and occur in fragmented habitats that have been highly altered by alien species, to the point that the natural disturbance process is no longer present. When disturbances, such as hurricanes, do occur now, the most likely result is an increase in alien species, rather than native habitat. In addition, the small numbers of remaining individuals in greatly reduced ranges are far more vulnerable to extinction from one disturbance event, whether natural or human-caused.

(17) *Comment:* The proposal failed to contain the total of historically known listed plants, and therefore failed to propose critical habitat for all listed plants statewide. About 10 percent of the historically known listed endangered plant species from the Hawaiian islands are missing from the proposal. The following endangered plant species lack critical habitat on Kauai and/or Niihau: *Caesalpinia kavaiensis, Haplostachys haplostachya, Hibiscadelphus distans, Marsilea villosa,* and *Scaevola coriacea.*

Our Response: These species were not part of the lawsuit and subsequent stipulations, and therefore were not included in this rulemaking. Critical habitat for these species may be considered in the future if warranted and funding and resources are available.

(18) *Comment:* One peer reviewer stated that the Service did consider the entire range of plants found on multiple islands, particularly since they are going through the same process of designation of critical habitat on all of the Hawaiian Islands. On the other hand, some commenters stated that the revised proposal's treatment of "multi-island" plants historically, but not currently, found on Kauai or Niihau makes it impossible to determine whether the Service is complying with its statutory duty to identify adequate habitat for these species' recovery. By proposing critical habitat island-by-island, rather than species-by-species, there is no way for reviewers to know what areas statewide ultimately will be proposed for the multi-island species. The revised proposal's treatment of "multi-island" plants historically, but not currently, found on Kauai or Niihau makes it impossible to determine whether the Service is complying with its statutory duty to identify adequate habitat for these species' recovery.

Our Response: In response to this concern, the Service reopened the comment periods for the proposed designations and nondesignations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, northwestern Hawaiian Islands, Hawaii, and Oahu after these proposals were published. This comment period, which was open from August 26, 2002 to September 30, 2002, allowed all interested parties to submit written comments on these proposals simultaneously and address issues associated with multi-island species.

(19) *Comment:* The boundaries of critical habitat should follow elevation contours, ridge lines, and other natural

features that naturally delineate the units, rather than long, straight-line segments.

Our Response: The boundaries of the proposed critical habitat designations were generalized for ease of mapping. With this final rule, the new units are separately mapped for each species and are more true to the elevation contours, the distribution of habitat, and other natural features.

(20) *Comment:* The agricultural and grazing lands proposed for designation will never contribute to the conservation of these species, they are certainly not essential, and it is doubtful that listed species still occur on these lands.

Our Response: When delineating critical habitat units, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands with similar features that do not contain the primary constituent elements. Less than one percent of the critical habitat designated in this final rule is within lands districted as agricultural lands, with most of the designated critical habitat in lands districted as conservation lands. However, some species, such as *Ischaemum byrone* and *Sesbania tomentosa*, only occur in low elevation areas where agriculture is most common, and enough habitat necessary for the conservation of the species that contains some of the primary constituent elements and can be restored to have all of the primary constituent elements is not available outside of agriculturally zoned lands.

(21) *Comment:* One commenter asked if "historical" equals post-Polynesian, or post-European, or is it defined by the prevailing climate. The dates of population extirpations should be provided (*e.g., Delissea rhytidosperma*). These dates are important in defining "historical" sightings.

Our Response: The Service's definition of the term "historical" is any plant location information gathered prior to the 1970s. The term does not refer to post-Polynesian or post-European time periods, and is not defined by the prevailing climate. Documented botanical collections in the Hawaiian Islands began in the late 1700s and continued intermittently through the early half of the 20th century. In the early 1970's there was a renaissance in Hawaiian botanical surveys that continues today. This included the establishment of several botanical gardens (*e.g.* National Tropical Botanical Garden in 1970; Lyon Arboretum in the early 1970s), which have served as an important source of information on native plant species status and locations. The passage of the National Environmental Policy Act in 1969 also encouraged increased surveys of areas as part of the EA/EIS process and thus provided support for private contract botanists whose work entered the public arena as addenda to EAs and EISs. This invigorated effort to document the occurrences of Hawaiian plants was also accompanied by observations on the loss of plant populations from previously known locations due to habitat loss and impacts of free ranging ungulates. These observations lead to a more regular documentation of the causes of decline of Hawaiian plants. Prior to the 1970s, such impacts were rarely recorded even though declines in Hawaiian plant populations were noted. Also at this time there was a growing national recognition that species of plants and animals were being threatened by extinction due to human activities. This concern lead to the passage of the U.S. Endangered Species Act in 1973.

(22) *Comment: Phlegmariurus nutans* has survived for at least a century without having any habitat on Kauai. If these plants could grow or be cultivated anywhere else, the designated area is not essential. Designating more such areas as critical habitat would not improve that species' chances of survival. Much of the area that would be restricted from human use by the critical habitat designation may be useless to the species that the Service is trying to protect. Four of the plants have not been seen in more than 30 years, and two others were reported as having been seen within the past 30 years on Kauai. Critical habitat should only be designated for areas that host existing populations of the designated species. If a species is gone from an area, it could mean that the designated area is no longer ideally suited to support that species for one reason or another (water table may have changed, ground may have become more saline, animal or insect encroachment, etc.) so no matter what actions are prescribed, the species will most likely not return and successfully thrive in that environment. A critical habitat area should not be designated for a species that does not already live in it if there is no reasonable way for the species to get to that area under its own power. If it has to be artificially transported, then that area should not be designated. On the other hand, two of the planitiffs supported the Service's inclusion of critical habitat designation for seven species not currently known from Kauai: *Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Ischaemum byrone, Mariscus, pennatiformis, Phlegmariurus nutans, and Phyllostegia waimeae.*

Our Response: We designated critical habitat for those species not recently seen on Kauai only if historic information was available on the primary constituent elements for those species on Kauai and if such areas still exist with those primary constituent elements or in which the primary constituent elements can be restored. We agree that the species will most likely not disperse to these sites under natural circumstances, because the intervening areas are often not suitable habitat for the species or have become too degraded, or because the pollinator may be lacking in those areas. Therefore, recovery plans include propagation and reintroduction into currently unoccupied but historical habitat. While not all designated critical habitat may contain all the primary constituent elements in their present condition, we believe that they can be restored with management actions.

(23) *Comment:* The Service has undertaken a detailed evaluation of the proposed critical habitat areas on State lands on Kauai to assess how much of the unoccupied habitat is really essential and which lands can be effectively managed for the benefit of the species. The Service should extend its evaluation to private land and land on other islands.

Our Response: We agree, and have met with any landowner who has requested to discuss and visit their lands. Many of those discussions have resulted in changes to some of the critical habitat units, as described in the "Summary of Changes from the Revised Proposed Rule" section.

(24) *Comment:* The hunters, hikers, and local people are the first line resources in protecting these plants, and at no cost to the government. Spend Federal monies to educate and teach the local people, rather than on critical habitat designation.

Our Response: We agree that the local people are an excellent resource to aid in the management of endangered species. For example, the Service has funded for several years a weed control project in the Kokee area of Kauai which operates largely on local volunteer efforts. While these management efforts are extremely beneficial for endangered species protection, section 4 of the Act still requires the Service to designate critical habitat.

(25) *Comment:* The statement that designating critical habitat would not provide significant benefits to the *Pritchardia* species is flawed because critical habitat designation would help them to recover to a non-imperiled status. The Service did not base its original "not prudent" finding on the likelihood that designation would increase threats, as it now attempts to do. Nor does it explain why designating critical habitat on the privately owned island of Niihau would increase collecting beyond current levels.

Our Response: Since the listings of the three *Pritchardia* species on Kauai and Niihau as endangered, and prior to our proposed rules for the designation of critical habitat, we received information verifying vandalism and collection threats to *Pritchardia* throughout the Hawaiian Islands. This information is included in the proposed rules. We have revised critical habitat designations based on additional information received during comment periods. However, no additional information was provided during the comment periods demonstrating that the threats to the *Pritchardia* species on any Hawaiian Island from vandalism or collection would not be increased if critical habitat was designated. We still believe that the benefits of designating critical habitat do not outweigh the potential threats from vandalism and collection of these three species of *Pritchardia.*

(26) *Comment:* The revised proposal identifies as critical habitat only the habitat that *Hibiscus clayi* currently occupies, despite the Service biologist's concession that this area alone is inadequate to support the recovery of the species.

Our Response: We agree that the area proposed as critical habitat for *Hibiscus clayi* is inadequate for the recovery of the species. During the public comment period, we received additional information, and have designated five other units of critical habitat for this species within the previously proposed unit M (now Unit 4), based on the presence of primary constituent elements. Habitat has been designated for six populations, however we do not have information on other locations or additional areas that are suitable or essential for this species.

(27) *Comment:* The expansion of the area in the revised proposal raises concerns about the limited data used in the mapping process.

Our Response: When developing the proposal to designate critical habitat for 83 plants from Kauai and Niihau, we used the best scientific and commercial data available, including but not limited to, information from the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; the final listing rules for these species; information received at the three informational open houses held on Kauai at the Waimea Community Center, the Kauai War Memorial Convention Hall in Lihue, and the Kilauea Neighborhood Center, on October 19 to 21, 1999, respectively; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the islands of Kauai and Niihau; discussions with botanical experts; recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; HPPRCC 1998; HINHP Database 2000; CPC *in litt.* 1999); Geographic Information System (GIS) coverages (*e.g.* vegetation, soils, annual rainfall, elevation contours, land ownership); new information; completed recovery plans; and information received during the public comment periods and public hearings.

(28) *Comment:* What would make sense is for the Service to develop a plan for human intervention, including the required funding, and then designate selected areas as critical habitat.

Our Response: Recovery plans, in which human intervention actions are recommended for the conservation of all of the 83 plants that are the subject of this critical habitat rulemaking, have already been developed (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). In the recovery plans we identified habitat areas deemed essential to the recovery of these plant species and referred to these areas during our development of the critical habitat designations.

(29) *Comment:* The designation of critical habitat in unoccupied habitat is particularly important, since this may be the only mechanism available to ensure that Federal actions do not eliminate the habitat needed for the survival and recovery of extremely endangered species.

Our Response: We agree. Our recovery plans for these species (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999) identify the need to expand existing populations and reestablish wild populations within historic range.

(30) *Comment:* There cannot be adequate assessment of possible impacts by a proposed Federal action to a species that is not there any more. Such an assessment is impossible without a total analysis of why a plant species no longer occurs in a region.

Our Response: In cases where a proposed Federal action takes place in unoccupied critical habitat, we will assess whether the proposed action is likely to destroy or adversely modify the primary constituent elements that are needed for the future conservation of the species in question. If we find that the proposed action will appreciably diminish the habitat's value for both survival and recovery of the species, we will recommend reasonable and prudent alternatives.

Issue 2: Site-Specific Biological Comments

(31) *Comment:* The proposed rule could and should have included a more detailed discussion of why the revision included an expansion of critical habitat units in northwestern Kauai (*i.e.*, units O and I).

Our Response: We agree that a more detailed discussion of why areas are included and excluded from each unit would be helpful. Therefore, in "Summary of Changes from the Revised Proposed Rule" section, we have given detailed descriptions for each species of why the units have changed.

(32) *Comment:* Unit D does not contain any listed species and so does not appear to be warranted as essential for the conservation of the species. Areas in units D1, D2, and E that do not contain the primary constituent elements should be remapped in the final rule. The critical habitat area on the beach was proposed to be limited to the dunes on the southern portion of the parcel, to what is commonly known as "Long Beach." The lower slopes of the Haupu range and the Kipu/Kipukai/Hoary Head range in Unit E are covered by *Eucalypts robusta, Melaleuca, Grevillea, Casuarina,* mango, Java plum, catclaw vine, *Rhodomyrtus, Ficus benjamina,* and other introduced plants and animals, especially below 1,500 feet elevation. These areas do not contain suitable habitat for listed species and should not be critical habitat.

Our Response: We agree that proposed unit D1 is not essential for the conservation of *Sesbania tomentosa,* and have excluded it from critical habitat designation. We agree that parts of proposed units D2 and E do not contain the physical and biological features essential to the conservation of *Brighamia insignis, Delissea rhytidosperma, Isodendrion longifolium, Lipochaeta micrantha, Melicope haupuensis, Munroidendron racemosum, Myrsine linearifolia, Peucedanum sandwicense, Pteralyxia*

kauaiensis and *Schiedea nuttallii* and have modified these proposed units to exclude areas which are not essential to the conservation of these species.

(33) *Comment:* From the large scale map of the proposed area on Niihau provided in the Department of the Interior correspondence it is impossible to determine the exact boundaries of the proposed critical habitat. The commenter felt that creating this entity on Niihau is somewhat arbitrary.

Our Response: More detailed maps are available on request (see **ADDRESSES** section). We used the best available information to determine these boundaries, and based on new information made available during the comment period, *Cyperus trachysanthos* was removed from the low, wetland area of Niihau. More appropriate habitat to reach our recovery goals was available on other islands in areas that are less degraded and already being managed for conservation. However, *Brighamia insignis* needed more critical habitat than was available on Kauai, the only other island on which it is currently or historically known.

(34) *Comment:* It is unclear why the areas between Wahiawa Bog and Waialeale (unit N) or the central portion of unit J are necessary for either connectivity purposes or as needed unoccupied habitat. While these areas may be in a relatively good condition and may benefit other listed species (such as forest birds), it is not clear what additional value they contribute to listed plants. It is unclear why some critical habitat units (L, J, and N) need to be so large. The portion of this unit between Wahiawa Bog and Waialeale should be re-evaluated to clarify its value to target plant species. Portions of the wet forest in Unit J may potentially be deleted without compromising the recovery of target plant species. The landowner questioned the new information available for designating the entire Wainiha Valley as critical habitat. At minimum, the proposed critical habitat in Wainiha Valley should be restricted to the upper portion of the valley where occupied endangered plant habitat has been identified. This area is not an inconsiderable amount and may be sufficient to provide for any additional unoccupied habitat necessary for the conservation of the affected species.

Our Response: We agree, and have modified the units L, J, and N to exclude areas without primary constituent elements, including the lower reaches of Wainiha Valley. Other more intact areas are being designated on Kauai or proposed on other islands for those species as identified in the "Summary of Changes from the Revised Proposed Rule" section.

(35) *Comment:* If Wainiha is excluded from critical habitat designation, the entire ecosystem would receive protection. The Nature Conservancy of Hawaii (TNCH) would work with partners from the National Tropical Botanical Garden and the Service concerning the area, including specific endangered species habitat protection. In addition, the landowner may enter into a perpetual conservation easement with TNCH and support species management on a long term basis. On the other hand, designating Wainiha as critical habitat will likely bring about actions detrimental to the preservation of the area and its endangered species. The landowner may react to critical habitat designation by closing up all access to the valleys for survey and data collection, conservation efforts, and management of endangered species.

Our response: We have evaluated the proposed critical habitat for the species in Wainiha Valley and have reduced the area based on the biological needs of the species and their recovery goals (see "*Summary of Changes from the Revised Proposed Rule:* Kauai J").

(36) *Comment:* No information is available, currently or historically, for the designation of critical habitat in the lower elevation areas of unit M. Because none of these species currently exist on the land, based on a survey by a botanical consultant in 1998, there is seemingly no reason to believe that excluding the area would lead to their extinction. The landowner is unaware of any other reliable scientific data on this area and is unaware of any attempts by the Service to enter the property to gather such data.

Our Response: We have revised the units for the species in unit M to eliminate much of the area in the lower elevations of unit M to exclude areas without primary constituent elements, based on new information received during the public comment period. In addition, other more intact areas are being designated or proposed on Kauai or on other islands for those species as identified in the "Summary of Changes from the Revised Proposed Rule" section.

(37) *Comment:* Some areas of Unit O are overgrown with Java plum, monkeypod or kukui and have no endangered plant species and should not be designated as critical habitat.

Our Response: We agree, and have modified the units to exclude areas without primary constituent elements. Other more intact areas are being designated or proposed on Kauai or on other islands for those species as identified in the "Summary of Changes from the Revised Proposed Rule" section.

(38) *Comment:* There is no indication that the Navy parcels are, in fact, critical to the survival of these species. The military has numerous structures and activities that are within proposed critical habitat but are unsuitable for listed species. Without confirmation of an actual link between these specific areas and the survival of *Panicum niihauense* or *Wilkesia hobdyi*, designation of these areas as critical habitat would be imprudent. The following should be removed from the critical habitat designation: a 750 buffer area from the center of the runway; which is continually mowed, restrooms, pavilion, and unpaved parking area at Majors Bay Recreation Area; the antennae fields and associated ground radial systems, which are continually mowed; Amphibious Assault Training/ RIMPAC Staging Area that disturb the vegetation and substrate; other structures such as buildings, roads, aqueducts, telecommunications equipment, telemetry antennae, radars, missile launch sites, and other manmade features; ground hazard areas established as safety zones around each missile launch site and launch pads; northernmost property line where "Smokey SAMs" are launched; other planned launch sites; Boresighting Tower, which is continually mowed; Borrow Pit site, which is mined; Composting Facility; and the Small Arms Firing Range and Construction Debris Stockpile, which will require the removal of vegetation and sand.

Our Response: We have had numerous discussions with the Navy regarding these areas, and as a result, have removed some sections of the units for these species, based on the lack of primary constituent elements. However, other areas could not be excluded because they do contain the primary constituent elements for these species, as described for each in the "Hawaiian plants—Constituent elements" section. These areas are necessary for the recovery of the species, and not enough other areas are available containing these primary constituent elements outside of the PMRF.

(39) *Comment:* The Navy has recently completed and begun implementing their Integrated Natural Resources Management Plan (INRMP) for the Pacific Missile Range Facility (PMRF). The Service has indicated an apparent willingness to reassess the critical habitat boundaries in light of this INRMP.

Our Response: We have reviewed the existing INRMP for PMRF. It is currently not adequate to find that the designated areas in PMRF are no longer in need of special management considerations or protection and thus do not meet the definition of critical habitat because it does not include enough specific information on the conservation of *Panicum niihauese*. As far as the Service is aware, this INRMP has not yet been updated to address management needs of this species.

(40) *Comment:* Additional dry and mesic areas should be considered for critical habitat designations, including Olokeke Canyon.

Our Response: Olokele Canyon was not included in any critical habitat designations because no data was available on the historic or current primary constituent elements or current species locations within those lands.

(41) *Comment:* One commenter would like to see Haena State Park removed from the critical habitat designation, because it is a high use visitor area, wall to wall historic and cultural landscape, and very degraded habitat with very few native plants. The cultural sites are currently being restored by the Hawaiian community.

Our Response: Information received during the public comment period informed us of the lack of primary constituent elements for the species in this area. Therefore, we revised the lines for the final designation to start around the 200-foot elevation line where a higher density of primary constituent elements exist for the species at issue.

Issue 3: Legal Issues

(42) *Comment:* Critical habitat designation and the underlying decision to list as endangered the species that are the subject of the designation, exceed the constitutional limits of the Service's delegated authority. Congress enacted the ESA as an exercise of its Commerce Clause power and delegated exercise of that Commerce Clause power to the Service to apply the ESA by regulation. The listed species are not interstate. They exist only in Hawaii and do not cross State lines. Nor are they in commerce as the subject of any economic endeavor. They lack any commercial value. Therefore, the Service's regulations listing these species and designating critical habitat for them within Hawaii exceed the federal power to regulate interstate commerce under the governing precedents interpreting the Commerce Clause.

Our Response: The Federal government has the authority under the Commerce Clause of the U.S. Constitution to protect this species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Homebuilders* v. *Babbitt*, 130 F. 3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S.Ct, 2340 (1998). *See also Gibbs* v. *Babbitt*, No. 99–1218 (4th Cir. 2000). The *Home Builders* case involved a challenge to application of ESA prohibitions to protect the listed Delhi Sands flower-loving fly. As with the species at issue here, the Delhi Sands flower-loving fly is endemic to only one state. Judge Wald held that application of the ESA to this fly was a proper exercise of Commerce Clause power because it prevented loss of biodiversity and destructive interstate competition.

(43) *Comment:* Since concerns were raised from the hunting community and local government officials, a fair approach to resolving this issue may be through mediation, using the State's Judiciary Center for Alternative Dispute Resolution. To date, this will be the second recommendation made on this issue that still has not been taken under advisement.

Our Response: We have held several meetings with the hunting community and local government officials to promote information exchange and open dialogue. These meetings have served to alleviate some of the controversy and contention that have surrounded the issue of critical habitat designation on Kauai and other Hawaiian Islands. However, this is a rulemaking process governed by the ESA and the Administrative Procedures Act and not easily resolved thru mediation. We have tried our best to have an open process with an opportunity for all interested parties to participate, while complying with our statutory responsibilities and court-ordered deadlines.

(44) *Comment:* Any activity that may degrade critical habitat, including activities that are not subject to section 7 consultation, could be seen as an "injury" to (and therefore, under State law, a "taking" of) an endangered plant species under the State of Hawaii's endangered species law (Hawaii Revised Statutes (HRS) Chapter 195D). It is important that this receive due consideration in evaluating the proposed critical habitat designations (for example, in completing the economic analysis), and that the Service explain to what extent it has considered the potential interplay between the Federal Endangered Species Act and Hawaii endangered species laws.

Our Response: Possible costs resulting from interplay of the Federal Endangered Species Act and Hawaii State law were discussed in the economic analysis under indirect costs (*e.g.*, possible conservation management mandate for the private landowner and reduction in game mammal populations). The economic analysis considers the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, the economic analysis examines any indirect costs of critical habitat designation, such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not co-extensively occur because of critical habitat designations. There are no take prohibitions associated with critical habitat.

(45) *Comment:* One commenter stated that the Service should do a better job of communicating what critical habitat does and does not do, including a review of recent "Federal monies and Federal approvals," and which of those programs might even remotely be affected by designations of critical habitat.

Our Response: We have made a concerted effort to provide the public with information on what critical habitat does and does not do, through a series of public workshops and meetings, correspondence, news releases, and publications. A detailed review of Federal activities that may be affected by the critical habitat designations on Kauai and Niihau may be found in the economic analysis section of this rule. The public could also refer to the Service's National website *http://www.fws.gov.*

Issue 4: Section 7 Consultation

(46) *Comment:* The draft economic analysis states that if a landowner needs a Federal permit or receives Federal funding for a specific activity, the Federal agency issuing the permit or dispersing the funds would consult with the Service to determine how the action may affect the designated critical habitat. The commenter questioned what is meant by the term "consult." The nature of the consultation could result in control of whether the Federal government conducts its proposed action on those lands or not, thereby controlling the land to the extent that the private landowner could or could not do business with the Federal government. What would consultation result in when a proposed Federal action is being compared to the activities not affected by critical habitat

designation, such as, grazing, farming, hunting or recreational use?

Our Response: The term "consult" refers to consultation between the Service and other Federal agencies under the provisions of section 7 of the Act. Under this provision of the Act all Federal agencies must consult with the Service to insure that any action that they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. If the Service finds that the proposed actions are likely to jeopardize the continued existence of an endangered or threatened species or result in destruction or adverse modification of critical habitat, we suggest reasonable and prudent alternatives that would allow the Federal agency to implement their proposed action without such adverse consequences. Every consultation is unique and it is impossible to comment on what the results of a future consultation will be without details on the proposed activity and the status of the species and its critical habitat at the time of the consultation.

Issue 5: Mapping and PCEs

(47) *Comment:* Although the text in the proposed rule appears to indicate that unit F in Lawai Valley is restricted to land owned by the National Tropical Botanical Garden, a map provided by the Service shows some overlap between this unit and McBryde land above Lawai Stream, near Luawai Reservoir. The Service should clarify whether unit F is intended to include portions of the McBryde land, as suggested by the map, or if any overlap is purely due to mapping inaccuracies. If the proposal is intended to include McBryde land in this area, the Service should consider conducting a biological survey of the area to confirm whether the area in question actually contain any individuals of *Schiedea spergulina* var. *leipoda* and/or whether this area is essential.

Our Response: The majority of the unit is within the lands owned by the National Tropical Botanical Garden. However, some of the McBryde land does fall within the unit. Efforts were made to exclude lands currently used for cultivation. This unit is important to the conservation of *Schiedea spergulina* var. *leipoda* because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are important for this species include, but are not limited to, bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests. Although we do not feel that there is enough habitat designated to reach the recovery goal of 8 to 10 populations, this species is a very narrow endemic and probably never naturally occurred in more than a single or a few populations.

(48) *Comment:* The draft economic analysis dismisses concerns about impacts on the use of structures and features already placed in areas to be designated as critical habitat. Although manmade features and structures are excluded from critical habitat because they lack the primary constituent elements, greater precision in pinning down these "unmapped holes" is needed to avoid a chilling effect on legitimate uses that necessarily approach a fuzzy boundary line.

Our Response: Existing features and structures within critical habitat areas, buildings; roads; aqueducts and other water system features—including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; telecommunications equipment towers and associated structures and equipment; electrical power transmission lines and distribution, and communication facilities and regularly maintained associated rights-of-way and access ways; radars, telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; and lawns and other rural residential landscaped areas and other manmade features do not contain, and are not likely to develop, primary constituent elements, and are specifically excluded from designation under this rule. Therefore, unless a Federal action related to such features or structures indirectly affects nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures generally would not be impacted by the designation of critical habitat. We have attempted to exclude manmade structures using aerial photos, our own field experience on Kauai and that of other expert field botanists from DOFAW and the University of Hawaii at Manoa. However, we were not always able to successfully exclude these structures from the critical habitat maps because the resolution of our imagery does not allow us to locate small structures. Higher resolution imagery is currently unavailable on a State-wide basis.

Issue 6: Effects of Designation

(49) *Comment:* One commenter stated that the designation of critical habitat would almost certainly make its private endangered species reserve the target of a government takeover attempt.

Our Response: Section 3(5) of the Act defines critical habitat as those specific areas which contain physical or biological features essential to the conservation of the species and which may require special management considerations or protection (16 U.S.C. 1532(5)). Designations of critical habitat are to be made on the basis of the best scientific and commercial data available, after taking into account the economic and other relevant impacts of specifying any area as critical habitat (16 U.S.C. 1533(b)(2)). An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species).

To a property owner, the designation of critical habitat becomes important when viewed in the context of section 7 of the Act, which requires all Federal agencies to ensure, in consultation with the Service, that any action authorized, funded, or carried out by the agency does not result in the destruction or adverse modification of designated critical habitat. If, after consultation, our biological opinion concludes that a proposed action is likely to result in the destruction or adverse modification of critical habitat, we are required to suggest reasonable and prudent alternatives to the action which would avoid the destruction or adverse modification of the critical habitat (16 U.S.C. 1536(b)(3)(A)). If we cannot suggest acceptable reasonable and prudent alternatives, the agency (or the applicant) may apply for an exemption from the Endangered Species Committee under section 7(e)–(p) of the Act.

The mere promulgation of a regulation, like the enactment of a statute, does not take private property unless the regulation on its face denies the property owners all economically beneficial or productive use of their land (*Agins* v. *City of Tiburon*, 447 U.S. 255, 260–263 (1980); *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264, 195 (1981); *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992)). The designation of critical habitat alone does not deny anyone economically viable use of their property. The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. Furthermore, as discussed above, if a biological opinion concludes that a proposed action is likely to result in destruction or modification of critical habitat, we are required to suggest reasonable and prudent alternatives.

We are aware of relatively few activities in the proposed critical habitat areas for these 83 plants that have Federal involvement, and thus, would require consultation or reinitiation of already completed consultations for on-going projects. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations.

(50) *Comment:* If endangered species are dying through no fault of the landowner, then the landowner should not be penalized with onerous and costly regulations. What incentives are being provided private landowners to act on behalf of listed plants?

Our Response: Critical habitat designation does not impose additional regulatory requirements upon non-Federal landowners unless they are receiving funding or authorization from a Federal agency for a proposed action that is likely to destroy or adversely modify critical habitat. Many threatened and endangered species occur on private lands and the Service recognizes the importance of conservation actions by private landowners. Cooperation from private landowners is an important element of our conservation efforts, and we have had considerable success in developing partnerships with large and small landowners, government agencies, and non-governmental organizations for conservation activities on Kauai, in the State of Hawaii, and throughout the nation.

The Service administers several programs aimed at providing incentives for landowners to conserve endangered and threatened species on their lands, one of which is the Endangered Species Landowner Incentive Program, which was first funded by Congress in fiscal year 1999. Under this program, the Service provides technical assistance and funding to landowners for carrying out conservation actions on their lands. In the first year alone, 145 proposals totaling $21.1 million competed for $5 million in grant money. Additional information on landowner incentive programs administered by the Service may be found on our website *http://endangered.fws.gov/landowner/index.html*.

(51) *Comment:* The Service has tried to reassure the public that the wholesale dedication of land as critical habitat will not result in restrictions of public access and that most land use proposals will be approved. One commenter said that this is probably not true, based on what has happened in other parts of the country.

Our Response: Undoubtedly, human activities have had a negative impact to many species in Hawaii. However, numerous threatened and endangered species are currently on the road to recovery through the direct intervention of humans. These include marine and terrestrial vertebrates, plants, and invertebrates. The designation of an area as critical habitat does not in itself restrict public access. The regulatory effect of critical habitat designation is limited to requiring consultation under section 7 of the Act for Federal actions. Since few, if any, Federal actions affect public access to the State and private lands designated as critical habitat for these plants, it is unlikely that public access to these areas will be altered.

(52) *Comment:* By setting aside so many acres of land with no guarantee that the plan will work it will rob the Hawaiian people of their culture and lifestyle. Critical habitat designation should accommodate the traditional cultural gathering rights of Native Hawaiians as reflected in Article XII of the State Constitution and upheld by the Hawaii Supreme Court in PASH and Ka Paakai o Ka Aina decisions. Native Hawaiian issues should be handled by the native Hawaiian people. The Service should make a plan to save plants where the Hawaiian people would have a say.

Our Response: Critical habitat designation does not affect activities, including human access, on State or private lands unless some sort of Federal permit, license, or funding is involved and the activities may affect endangered or threatened species. It imposes no regulatory prohibitions on State or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies.

Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in such destruction or adverse modification, we will suggest reasonable or prudent alternatives.

Activities of the State or private landowner or individual, such as farming, grazing, logging, and gathering, generally are not affected by a critical habitat designation, even if the property is within the geographical boundaries of the critical habitat. A critical habitat designation has no regulatory effect on access to State or private lands. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated by this critical habitat designation, and may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat.

The Service actively seeks input and participation from the public in development and implementation of recovery plans for endangered and threatened species and believes that it is only through such active participation by the public that we will be able to recover these plants.

(53) *Comment:* The critical habitat initiative is generating an unwelcome degree of rift between the State Department of Land and Natural Resources (DLNR) and the Service, and may erode public support for needed recovery efforts. The Service should withdraw their plans for critical habitat designation on Kauai, and instead, work with existing agencies on their current efforts at conservation and preservation. The testimony presented by DLNR at the February 2001 hearing recommends suggestions for working together and cites specific methods for its implementation. They deserve the Service's utmost attention.

Our Response: We agree that the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) comments and suggestions should be given the utmost attention. During the public comment periods for the November 7, 2000, proposal for plants from Kauai and Niihau, we received written comments and a map showing the DOFAW's vegetation classes and recommended critical habitat units. We evaluated DOFAW's comments on a species by species basis and incorporated their information into the revised proposal published on January 28, 2002. DOFAW recommended deletion of some of the proposed critical habitat units as they do not believe these areas are suitable for the recovery of some species because they would not be able to manage these areas with their limited staff and funding. Because the basis for identifying areas by DOFAW was made on the manageability of the area, their mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act.

Following publication of the revised proposal in January 2002, we met with DOFAW on numerous occasions and conducted several site assessment surveys to evaluate habitat that meets the legal requirements of the Act and takes into account the on-the-ground knowledge of DOFAW's biologists and land managers. As a result of the assessment surveys and information provided to us by Kauai DOFAW staff we excluded non-essential areas that did not contain primary constituent elements. In addition, we received important information from Kauai DOFAW staff that enabled us to refine the final critical habitat designations to meet the conservation needs of the species.

Issue 7: Policy and Regulations

(54) *Comment:* Prudency cannot be determined without an analysis of the economic impacts of critical habitat.

Our Response: The Service makes an initial determination on the prudency of designating critical habitat according to regulations found at 50 CFR 424.12(a). In accordance with these regulations, critical habitat designation is not prudent only when one or both of the following two situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or, (2) such designation would not be beneficial to the species. The economic analysis is conducted after critical habitat has been proposed in a given area, as set forth in regulations found at 50 CFR 424.19. If the Service finds that economic and other impacts outweigh the benefit of designating critical habitat in a given area, that area will be excluded from critical habitat designation unless such exclusion will result in the extinction of the species concerned.

(55) *Comment:* The prudency of critical habitat designation is a final conclusion based on weighing all relevant factors, including economic factors. While the Service promised to complete its economic impact analysis before it promulgates its final determination of critical habitat, it risks putting the decision before the analysis. The prior determination that critical habitat is prudent and therefore required, is treated as a given, even though it ignored economic factors.

Our Response: An economic analysis of the impact of critical habitat cannot be done without knowing the location of the critical habitat. This fact is easily realized by considering the difference of proposed critical habitat on land zoned for protective conservation versus land zoned for urban development. These types of zoning issues as well as other issues will greatly affect any economic analysis of critical habitat and cannot be taken into consideration until a proposal of critical habitat is put forth. The proposed prudency finding is not a final prudency finding since it has not considered the economic issues. The fact that the proposed critical habitat is published in a proposed rule emphasizes that no final decision has been made on location or extent of critical habitat. The final designation of critical habitat occurs after public comments have been received *and* the economic analysis on the proposed critical habitat has been completed. The effects of the public comments and the economic analysis are then reflected in the final rulemaking.

(56) *Comment:* The proposed rule unfairly transfers the Service's obligations to determine "prudent and determinable" areas for designation as critical habitat from itself to the owners of the designated lands. This action could potentially violate Section 3(5)(c) of the ESA, which specifically provides that "except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species."

Our Response: All areas designated as critical habitat are determined by the Service, after taking into account the economic analyses and public comments. As established by the Congress of the United States, the Secretary of the Interior or the Secretary of Commerce has the responsibility for designation of critical habitat areas. This responsibility has been delegated to the U.S. Fish and Wildlife Service for listed fish, wildlife and plants and cannot be transferred to any other party. Proposing areas for designation as critical habitat does not transfer any of the designation responsibilities of the Service. As part of the Service's designation process, the entire geographic area that could be occupied by the threatened or endangered species is *never* put forth as proposed or final critical habitat, unless circumstances unique to the species require such a designation and only after approval by the Secretary of the Interior (or the Secretary of Commerce).

Issue 8: Economic Issues

(57) *Comment:* Some reviewers commented that the DEA did not address or did not adequately consider a variety of costs and benefits that they believe could occur due to the implementation of section 7 for the plants.

Our Response: Many of these possible costs were, in fact, considered and some were addressed in the DEA. In many cases, however, potential costs were purposely not addressed in the DEA because they are not expected to occur. In other cases, it is impossible for them to occur. In still other cases, the concerns no longer have substance given the Service's modifications to the proposed critical habitat.

(58) *Comment:* Several commenters stated the following: The Service did not adequately address the takings of private property as a result of designating critical habitat for endangered plants on Kauai. If the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property.

Our Response: The possible costs associated with redistricting land proposed for critical habitat designation were discussed in the DEA under indirect costs. The final rule removes most of the land in the Agricultural and Urban Districts from the critical habitat designation. Redistricting the remaining privately owned parcels to the Conservation District could result in a small probability of: (1) Approximately $178,500 in lost property values; (2) $3,570 in an annual loss of economic activity associated with ranching; and (3) $500 in increased property taxes.

(59) *Comment:* One commenter said that estimated management costs needed to recover a species should be part of an economic analysis associated with critical habitat designation. Another commenter said that management costs for the recovery of listed species are not appropriate costs to assign to critical habitat designation.

Our Response: The Act does not obligate landowners to manage their land to protect critical habitat, nor would landowners and managers be obligated under the Act to participate in projects to recover a species for which critical habitat has been established. However, Chapter VI, section 4.d. of the DEA and section 4.c. of the Addendum does discuss landowners' concerns that the interplay between the state's prohibition on take and critical habitat could result in a potential mandate for conservation management pursuant to litigation and the resulting costs for the proposed designation on Kauai. As noted in Section 4.c. of the Addendum, the costs of conservation management for critical habitat as modified could reach $1.8 million per year. However, the likelihood of this result is estimated to be low and such costs would not necessarily be assigned to critical habitat.

(60) *Comment:* Several commenters stated the following: The Service fails to adequately analyze the economic impact to small entities under the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act: Given Kaua'i's small population, a large proportion of firms in the agricultural sector may well be affected and could suffer severe impact. In addition, the prospect of indirect costs mounting into the tens of millions of dollars on a small island requires the Service to reconsider its blithe assumption that there will be no significant impact on small businesses. Having mentioned huge potential losses to landowners and the county economy, the DEA fails to carefully consider the sum of the many "indirect" effects of critical habitat designation, ignoring all but direct costs of consultation.

Our Response: Section 5 of the addendum presents a regulatory flexibility analysis that is consistent with the RFA/SBREFA. Federal courts and Congress have indicated that an RFA/SBREFA analysis should be limited to the impacts to entities subject to the requirements of the regulation (Service, 2002). As such, entities not directly regulated by the listing or critical habitat designation are not considered in the RFA/SBREFA analysis. Based on the analysis, there are no small entities that may be impacted by the implementation of the Act's section 7 provisions for the plants on Kauai. Therefore, the plants' critical habitat designation, as modified, will not have a significant economic impact on a substantial number of small entities.

(61) *Comment:* Several commenters stated the following: While the Service has stated that critical habitat affects only activities that require Federal permits or funding, and does not require landowners to carry out special management or restrict use of their land, this fails to address the breadth of Federal activities that affect private property in Hawaii and the extent to which private landowners are required to obtain Federal approval before they can use their property. These requirements also extend to State agencies requiring Federal funds or approvals.

Our Response: The analysis in the DEA, as revised by the Addendum, is based on a review of all projects, activities, and land uses that may be directly affected by the implementation of section 7 for the listed plants. The DEA and the Addendum present any reasonably foreseeable Federal involvement (Federal permit, license, or other authorization, or Federal funding) for these projects, activities, and land uses. These results of this analysis are presented in Table ES–1 in the DEA and Table Add-2 in the Addendum.

(62) *Comment:* Several commenters stated the following: The impact of the proposed designations under State law is potentially more extensive than under Federal law since the Act contains at least general criteria for determining when alteration of critical habitat constitutes "destruction or adverse modification." The lack of analogous provisions under State law lends itself to a much broader interpretation of what activities might be considered injurious to the species (and therefore prohibited). One commenter asked if, to the extent that the Service has considered the potential interplay between the Act and State statutes, whether the Service is aware of any circumstances where similar issues have been raised under other State conservation statutes when critical habitat was designated. Another commenter noted, however, that because Hawaii's land use laws are uniquely onerous, precedent from other states is of little value. The current wave of proposals to designate critical habitat are the first time that the Act has been applied to significant areas of private land in Hawaii. Consequently, even prior experience in Hawaii is of little relevance.

Our Response: Possible costs resulting from interplay of Federal Endangered Species Act and Hawaii State law are already discussed in the DEA and Addendum under indirect costs (*e.g.*, possible conservation management mandate for the private landowner and reduction in game mammals population). The lack of experience with critical habitat on private land in Hawaii is reflected in the uncertainty regarding the probabilities that certain indirect costs will occur.

(63) *Comment:* Several commenters stated the following: The DEA fails to consider economic impacts of listing and critical habitat that result through interaction with State law, specifically Hawaii's Endangered Species Act. *New Mexico Cattlegrowers Association* v. *U.S. Fish and Wildlife Service* requires consideration of the impact of listing as well as the impact of designating an area as critical habitat. Instead, the analysis is expressly limited to the impact of Federal agency consultation under the jeopardy standard. However, since listing triggers listing under State law, the Service must consider the impact of take prohibitions under State law (and consequently Federal law which prohibits destruction of plants in knowing violation of State law).

Our Response: The DEA and Addendum consider the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, they examine any indirect costs of critical habitat designation such as where critical habitat triggers the applicability of a State or local statute. However, where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not co-extensively occur because of critical habitat designations. There are no take prohibitions associated with critical habitat.

(64) *Comment:* Several commenters stated the following: The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Land Use Law. Critical habitat could result in downzoning under State law. HRS § 205–2(e) states that conservation districts shall include areas necessary for conserving endangered species. HRS 195D–5.1 states that DLNR shall initiate amendments in order to include the habitat of rare species. Even if DLNR does not act, the Land Use Commission may initiate such changes, or they may be forced by citizen suits. Areas for endangered species are placed in the protected subzone with the most severe restrictions. While existing uses can be grandfathered in, downzoning will prevent landowners from being able to shift uses in the future, reduce market value, and make the land unmortgageable. Although the Service acknowledges that there could be substantial indirect costs relating to redistricting of land to the Conservation District, several commentators disagreed with the characterization of these costs as "minor" and with the statement that the probabilities of redistricting as "slight to small."

Our Response: About 370 acres of privately owned agricultural lands and 12 acres of privately owned urban lands are included in the final designation. Most of the agricultural land is on Niihau and all of the urban land is on steep ocean cliffs. The potential economic costs discussed in the DEA of over $10 million associated with urban Land in Unit D1 are no longer anticipated because Unit D1 has been removed from the final critical habitat designation for biological reasons. Reduction in land values due to redistricting land from Agricultural or

Urban District to Conservation District could result in a loss of $178,500 in property values on Niihau. The loss of the economic activity from ranching and the increase in property taxes is estimated at $4,070 per year. Under this scenario, even if a landowner has no plans to sell the land, the loss in land value could reduce potential mortgage financing.

(65) *Comment:* One commenter stated the following: The State currently leases some of its lands for agriculture or ranching uses. There is uncertainty whether any endangered plant species exists on these lands, which have historically been used for agricultural and ranching purposes, and have been subject to grazing and cultivation activities. If such species do exist, State law would completely prohibit or substantially restrict the continued use of these lands for agriculture or ranching purposes and would clearly have an adverse impact on the operations of the lessees and lease revenues. The DEA fails to establish that the benefits of including specific leased parcels outweigh the costs.

Our Response: Approximately 37 acres of State owned land are included in critical habitat Units H1 and M, as modified in the final rule. The 33 acres in Unit H1 comprise a sliver of land that is makai (toward the ocean) of the existing road in the northern portion of the unit and does not include any fields or grazing land. The State does not have any agricultural leases for the four acres of Agricultural land in Unit M. As such, the designation of critical habitat is not anticipated to have adverse effects on agricultural activities on State land.

(66) *Comment:* Several commenters stated the following: The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii's Environmental Impact Statement Law. HRS 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR 11–200–12 apply. One of these criteria is that an action is significant if it "substantially affects a rare, threatened or endangered species or its habitat." This will result in costly procedural requirements and delays. However, the DEA does not acknowledge that any impact on endangered species habitat will be deemed to be "significant." In addition, multiple commenters stated that the DEA fails to evaluate the practical effect critical habitat designation will have on development. Special Management Area permits administered by Kauai County as required by Hawaii's Coastal Zone Management Act will be harder to get, will result in delays, will cause a decline in property values and may make it impossible to develop. This economic impact disappears because the DEA's bottom line erroneously counts only so-called "direct" costs of consultation.

Several commenters also stated the following: The Service has taken the position in other states that it has a right to intervene in local land use proceedings if they affect endangered species on private property, as evidenced by the Service's petition to the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property even though no Federal approval was being sought. That the Service does not address these activities in the DEA is a fundamental error of the analysis.

Our Response: Chapter VI, Section 4.f.(2) of the DEA discusses State and county environmental review, with and emphasis on Hawaii's Environmental Impact Statement Law. This section indicates that if a project is required to do an Environmental Assessment (EA) and is located in critical habitat, a more expensive EIS may have to be prepared. The estimated increase in costs to prepare an EIS is $25,000 to $75,000 per project. There is one project that may require an EA and is located in critical habitat, as modified. As such, the additional environmental review cost potentially attributable to critical habitat is $25,000 to $75,000.

However, there are no planned development projects that will require State and county development approvals and are located in critical habitat, as modified in this final rule. The following factors make future development projects in the proposed critical habitat highly unlikely: (1) As modified, 99 percent of the proposed critical habitat is in Conservation District where development is severely limited; (2) almost all of the remaining agricultural land is on Niihau in an area not subject to development pressure; and (3) all of the land in the Urban District is on steep ocean cliffs that cannot support development. Thus, the probability that the Service will intervene in State and county development approvals is regarded as negligible because there is no development planned and almost no development potential in critical habitat.

(67) *Comment:* Several commenters stated the following: The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS 174C–2 states that "adequate provision shall be made for protection of fish and wildlife. HRS 174C–71 instructs the Commission of Water Resource Management to establish an instream use protection program to protect fish and wildlife. Since landowners may depend on water pumped from other watersheds, these effects can be far-reaching. It is impossible to tell from the descriptions in the proposal whether any water diversions will have to be reduced as a result of listing and critical habitat designation. It is unfair to dismiss costly but vital sources of energy and inexpensive irrigation water while maintaining the highest level of effort to protect primary constituent element for species that do not physically reside in the area but may somehow be transported. If the critical habitat proposal would require reducing water diversions from any stream, the Service should investigate whether that would take anyone's vested water rights. The Service has an obligation to thoroughly investigate this issue and refrain from designating critical habitat until it has determined whether its actions will affect water use. Water sources and irrigation ditches that are part of the former Kekaha irrigation system for the former Kekaha Sugar Plantation should be removed from designation. At minimum, portions of specific parcels that include water sources or water systems should be removed.

Our Response: No costs are expected to occur from such impacts to water systems, because none of the listed plants are aquatic and therefore would not cause a reduction in water diversion. In addition, water infrastructure, including the Kekaha irrigation system, is considered a manmade feature and therefore would not be included in critical habitat pursuant to the rule, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements. Thus, unless its operation and maintenance would indirectly affect critical habitat, which is not anticipated, it should not be affected by section 7 of the Act. (See comment 7.m. of the Economic Analysis for a discussion of the impacts of the proposed designation on potential new water diversions.)

(68) *Comment:* Several commenters stated the following: The irrigation system stemming from the North Fork diversion of the Wailua River and the hydropower plant located in Wainiha Valley are necessary for the continued viability and possible expansion of agricultural activities on Kauai.

Continued operation of the systems require registration permits from the State and, depending on the nature of the maintenance, may require Army Corps of Engineers (COE) permits. These uses should not be burdened with the threat of potential Federal or civil action prohibiting or delaying their continued or expanded use. Furthermore, any additional requirement brought about by a critical habitat designation would be borne by the system's end users. Similarly, restoration of the taro fields in Haena State Park would require a COE permit. The designation of this area as critical habitat would make it unlikely that this permit would be approved, thus frustrating the efforts and development of the park. Additional analysis of costs associated with hydropower development is warranted. Such analysis would indicate that agricultural lands and hydropower development should be excluded from designation of critical habitat because benefits of exclusion would far outweigh the benefits of designation and the exclusion would not result in the extinction of the species.

Our Response: The irrigation system stemming from the North Fork diversion of the Wailua River, the diversion and hydropower plant located in Wainiha Valley, the taro fields in Haena State Park, and all areas downstream from these water systems/improvements have been removed from the critical habitat as modified in this final rule. In addition, as noted in responses to other comments, none of the listed plants are aquatic and therefore would not cause a reduction in water diversion. Thus, no costs are expected from continued operation of these water systems.

Chapter VI, section 3.i. of the DEA discusses the potential for additional hydropower development in the areas proposed as critical habitat. Since the publication of the DEA, information regarding a hydropower diversion and powerhouse in the upper Wainiha Valley was made available. This hydropower plant was proposed in the 1980's, but due to the landowner's capital limitations at the time, it was not constructed. There are no current plans to continue to investigate the feasibility of the project, but the potential for future development adds to the land value of the Upper Wainiha Valley. However, the area planned for the diversion, powerhouse, and other project elements are no longer included in critical habitat as modified. As such, no costs associated with future hydropower development potential are anticipated.

(69) *Comment:* One commenter stated the following: In discussing possible future hydropower facilities, the DEA appears to contradict itself by saying that in May 2001 a company filed an application with the Federal Energy Regulation Commission for a preliminary permit and then saying it is "highly unlikely" that any additional hydro plants will be built. If critical habitat designations make it all but impossible to build a new hydropower facility, which seems to be the implication of the DEA, then the designations contradict the State and national policies of promoting energy independence.

Our Response: Chapter VI, Section 3.i. of the DEA does mention that in May 2001, a company filed an application with the Federal Energy Regulatory Commission (FERC) to build a dam on the lower Wailua River and that the area affected by this project is outside of critical habitat. The DEA also states that "it is highly unlikely that additional plants will be built in the next 10 years in areas that could impact the proposed critical habitat." This statement is supported by studies performed by the State Department of Business, Economic Development, and Tourism (DBEDT) of the areas in critical habitat, and current plans of those who own land in critical habitat. In addition, the planned generating capacity on Kauai is sufficient to supply projected demand over the 10-year period of the analysis. Since the proposed critical habitat does not cover the entire island of Kauai, these two statements are not contradictory.

Furthermore, development of a new hydropower plant would still be possible even if the hydropower plant was located upstream or within critical habitat. If the project had Federal involvement, and the Federal action agency determined the project may affect critical habitat or listed species, the Federal action agency would enter into section 7 consultation with the Service. The section 7 consultation process is described in detail in Chapter III of the DEA.

(70) *Comment:* One commenter stated the following: On Maui, there is an administrative contested case proceeding pending before the Board of Land and Natural Resources that involves the diversion of millions of gallons of water. Any diversion in or upstream of critical habitat will be challenged by people who oppose all diversions on principle. They will contend that diverting water from endangered plants risk driving them to extinction. Opponents of diversions could use the critical habitat designations to invent a colorable argument sufficient to delay and confuse water use decisions.

Our Response: Chapter VI, section 3.j.(2). of the DEA states that it is highly unlikely that a new ditch system or major expansion to an existing one (including new diversions) would be proposed or approved in the proposed critical habitat. This assessment is made due to the existing protections provided by the baseline environmental regulations (described in Chapter IV of the DEA), the projected demand for additional diversions for irrigation above and beyond the existing supply, and current environmental concerns, as well as likely public opposition to stream diversions.

None of the plants for which critical habitat is designated on Kauai or Niihau in this final rule are aquatic. These plants rely on rainwater that percolates down through the substratum and is absorbed by the plant's roots. Thus, local rainfall and localized surface runoff are the critical factors that affect the habitat of the listed plants. In addition, water infrastructure, including irrigation systems, are considered manmade features and therefore would not be included in critical habitat pursuant to the rule, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements. Thus, unless its operation and maintenance would indirectly affect critical habitat, which is not anticipated, it should not be affected by section 7 of the Act. (See comment 7.m. of the Economic Analysis for a discussion of the impacts of the proposed designation on potential new water diversions.)

We are unable to find documentation of extinction of Hawaiian plants due to water diversions and are unable to comment on the speculation that people who oppose all water diversions on principle will challenge any future or current diversions by contending that diverting water from endangered plants risks driving them to extinction.

(71) *Comment:* Two commenters stated the following: The estimated total costs of designating critical habitat are deceptively low because they exclude costs that "are difficult to estimate." However, the costs of conservation management are quantifiable and examples of cost per acre are available from watershed management projects around the State. There is no reason why these costs should be ignored in the DEA. If included, these costs will certainly outweigh the benefits of designation. The DEA also underestimates the economic costs because they are limited to what is

likely to occur within 10 years even though critical habitat designation is permanent and not automatically revised if there is new evidence of the benefits of non-designation, or if the species is delisted.

Our Response: As noted above, the illustrative cost of conservation management of the entire critical habitat as modified is $1.8 million per year. In addition, as discussed in the economic analysis, while there is no existing obligation to proactively manage lands in critical habitat to control threats, there is a undetermined probability that a State or Federal court could mandate conservation management.

A listed species is delisted when it is recovered or has gone extinct. Recovery is defined as no longer needing the protections provided by the Endangered Species Act, including critical habitat. As such, when a species is delisted, its critical habitat would also be "undesignated." Furthermore, as indicated by the DEA, many landowners and managers do not have specific plans for projects beyond 10 years, and forecasts of future economic activity are based on current socio-economic trends and the current level of technology, both of which are likely to change over the long term. However, information available in documents with planning horizons that are longer than 10 years such as the Kauai Planning Department's Kauai General Plan (2002), and the State Department of Transportation Kauai Long Range Land Transportation Plan (1997) are considered in the preparation of the DEA and the Addendum.

(72) *Comment:* One commenter stated the following: The conclusion under E.O. 12866 that the rule will not have an annual economic effect of $100 million or more, or adversely affect in a material way any sector of the economy or State or local governments or communities, is flawed because it does not consider the major adverse impacts from secondary effects.

Our Response: For the reasons explained in the economic analysis, the rule is not expected to have an annual economic effect of $100 million or more. As indicated in Table Add-2, the annualized direct costs of the implementation of section 7 for the listed plants ranges from approximately $17,800 to $112,500. While the probability that many of the indirect effects will occur is low or unknown, the total worst case scenario for the indirect costs of critical habitat, as modified, includes (1) $513,000 in direct and indirect annual sales from the loss of economic activity associated with hunting (however, the decrease in expenditures by the displaced hunters would probably be spent on other recreational activities, goods and services, so this figure is likely to overstate the economic costs); (2) $149,000 per year in the loss of hunter benefits (however, as above, some of this loss will be offset by benefits derived from alternative recreational activity); (3) $1.8 million in annual conservation management costs (some of which may be in the form of new Federal funds to Hawaii and thus represent an increase the regional economy instead of a loss); (4) approximately $178,500 in lost property values; (5) $3,570 in an annual loss of economic activity associated with ranching; (6) $500 in increased property taxes; (7) $25,000 to $75,000 in the additional cost to prepare an EIS; and (8) $53,000 to $169,000 in the costs to investigate the implications of critical habitat. Annualized, these indirect costs amount to $2.49 million to $2.51 million per year. The sum of the direct and indirect costs, annually, ranges from $2.51 million to $2.62 million, significantly less than the $100 million level of significance.

(73) *Comment:* Several commenters stated the following: Critical habitat designation could indirectly result in limitations or special management requirements, such as fencing or control of invasive species, being established on private lands. These requirements could result in considerable cost to both the State and private landowners. The DEA estimates that the Palila case may be interpreted to mandate private conservation and could cost Kauai landowners $3 million or more per year. These costs should be considered. Where such costs are likely to outweigh the benefits, the Service should determine that critical habitat designation is not prudent. At minimum, areas proposed for designation should be significantly reduced so that any special management measures that may eventually be mandated through litigation are of a scale that is reasonable and cost effective to implement.

Our Response: Section 4(a)(3)(A) of the Act directs the Secretary to designate critical habitat to the "maximum extent prudent and determinable." Critical habitat is not prudent when one or both the following situations exist: (i) A species is threatened by taking or other human activity and identification of critical habitat would increase the degree of threat; or (ii) designation would not be beneficial to the species. 50 CFR 424.12(a)(1). Thus the costs of designation are not considered in analyzing whether critical habitat is prudent. However, such costs are considered under section 4(b)(2) of the Act, which directs the Secretary to take into consideration the economic and other impacts of designation and authorizes the Secretary to exclude any area if she determines that the benefits of exclusion outweigh the benefits of designating it as critical habitat, unless it will result in extinction of the species.

The Act does not obligate landowners to manage their land to protect critical habitat, nor would landowners and managers be obligated under the Act to participate in projects to recover a species for which critical habitat has been established. However, the DEA and the Addendum discuss the potential mandate for conservation management pursuant to litigation and the resulting costs for the proposed designation on Kauai. The cost of conservation management for the critical habitat as modified could be approximately $1.8 million per year. However, there is an undetermined probability that this impact will occur.

(74) *Comment:* Several commenters stated the following: The cost of potential citizen suits preventing certain activities or requiring some sort of management in critical habitat was not discussed in the DEA. Litigation regarding land management requirements is not only foreseeable, but likely. The proposals will give the government and the environmental groups a legal excuse to attack and severely damage anyone who grows endangered Hawaiian plants, and also anyone whose land is listed as critical habitat. Human freedom and constitutional principles are far more important than biologically incompetent plants. Critical habitat designation will bring unnecessary and costly litigation, thus creating an economic disaster that would severely challenge one private landowner's economic viability. These official listings will also give the government and the environmental groups a legal excuse to meddle destructively in the affairs of Niihau.

Our Response: As discussed in the DEA and in the Addendum, an undetermined probability exists that a Federal or State court could mandate certain indirect impacts as a result of critical habitat. However, it is beyond the scope of the economic analysis to assess the legal merits of the arguments for or against the various indirect impacts, the probability that a lawsuit will be filled, and, if filed, to identify possible outcomes of a court decision and the associated probabilities. However, whenever possible, the DEA and the Addendum present the worst-case scenario of the costs associated with the potential outcomes of third party lawsuits.

(75) *Comment:* Several commenters stated the following: A strip of Grove Farm-owned land along the coastline from the Poipu Bay Golf Course to Kawelikoa Point is being proposed for critical habitat. Although much of this land is within the Conservation District and development, if any, is expected to be minimal, critical habitat designations may affect current activities that exist in this area, as well as possible future activities, such as, hiking, kayaking or horseback riding. The Poipu Mahaulepu property also has future potential as a quality resort development, with potential construction valued in the hundreds of millions of dollars and employment and housing for over a thousand residents. The U.S. Navy currently has 14 beach cottages and an officers beach facility within its Pacific Missile Range Facility (PMRF). Funding has been appropriated to add six cottages and future plans provide for additional cottages to follow. Completed documents also identify construction plans for other new facilities and structures on PMRF. The economic analysis does not adequately consider such future costs.

Our Response: Activities such as hiking, kayaking, and horseback riding are not identified as threats to critical habitat in the proposed rule. As such, any additional environmental review or modification to these activities directly or indirectly attributable to critical habitat is anticipated to be negligible. The planned site for the Poipu Mahaulepu resort and the 14 beach cottages at PMRF are not included in critical habitat as modified. The potential costs associated with other planned construction at PMRF are discussed in Chapter VI, section 3.m. of the DEA and in section 3.b. of the Addendum.

(76) *Comment:* Several commenters stated the following: Portions of the proposed critical habitat designations are within the Conservation District. Although there are no intense activities occurring on these lands, roadway and water systems traverse some of these lands. Critical habitat designations may affect operations and maintenance of these systems as well as any future change in use of the lands.

Our Response: As mentioned in the proposed rule and in Chapter I of the DEA, existing manmade features and structures do not contain, and are not likely to develop, primary constituent elements essential for the conservation of the listed species. These features and structures are considered "unmapped holes" that are found within the boundaries of critical habitat units but are not considered by the Service to be part of critical habitat. As such, there are unlikely to be any direct section 7 related costs to the operation and maintenance (O&M) of existing features and structures.

The inclusion of these features and structures in the critical habitat boundaries could indirectly affect the activities associated with the existing features due to an increase in State and county environmental review. However, any additional delays or modifications as a result of the increased State and county review are anticipated to be negligible because manmade features and structures do not contain the primary constituent elements for the listed plants.

The DEA and the Addendum present all of the reasonably forseeable projects, land uses, and activities that could occur within critical habitat over the next ten years. While there may be some unknown future change in the use of the land in the Conservation District in critical habitat, there is insufficient information to assess the potential indirect or direct effects critical habitat will have on the land use. However, any impact attributable to critical habitat is anticipated to be minor due to the existing protections provided by Conservation District and other baseline regulations discussed in Chapter IV of the DEA.

(77) *Comment:* Several commenters stated the following: Kauai's economy is far from robust and serious consideration must be given to the economic consequences of designating critical habitat. The total designation of 99,206 acres on Kauai and 697 acres on Niihau encompass approximately one-fourth of the total land area of Kauai County and is of grave concern.

Our Response: Critical habitat, as modified, includes roughly 15 percent of the island of Kauai and less than one percent of the island of Niihau. The economic costs to the economy of Kauai County (which includes both Kauai and Niihau) are expected to be minimal because (1) as modified, 99 percent of the proposed critical habitat is in Conservation District where development and other economic activity is severely limited; (2) almost all of the remaining agricultural land is on Niihau in an area not subject to development pressure; and (3) all of the land in the Urban District is on steep ocean cliffs that cannot support development.

(78) *Comment:* Several commenters stated the following: All Hawaiian plant recovery plans call for fencing to keep feral animals away from the plants. Yet the Service has stated that the 99,000 acres being designated as critical habitat on Kauai will have no impact on the hunters. Clarification of this statement is needed. Critical habitat designation will greatly impact the public hunting program and deprive hunters access to lands they have used for generations for recreation as well as food supplement for their families. This loss is of further significance, given Kauai's hard-pressed economy and the recent closures of Amfac and Kekaha Sugar plantations. The State could also lose much needed revenues to continue its game and area management services as sales of hunting licenses would decrease. This, in turn, would result in the overgrowth of non-endangered plant species that will eventually overrun the protected endangered species population. Also, limitations on game hunting in areas of critical habitat may lead to an increase in the numbers of wild pigs and goats, which would feed on the endangered plant species.

Our Response: Chapter VI, sections 3.a. and 4.b. of the DEA and section 4.a. of the Addendum discuss the potential effects the implementation of section 7 for the listed plants will likely have on hunting, as well as the potential indirect effect critical habitat could have on hunting. The direct effects include costs ranging from $9,000 to $17,600 for two section 7 consultation between the Service and DLNR and costs ranging from $50,000 to $100,000 for project modifications associated with State game management activities. The indirect effects include a slight probability of a change in State game management policy and an undetermined probability of a successful third party lawsuit to mandate conservation management of State and private lands, which could include fencing to exclude feral ungulates. The potential drop in hunting activity translates into a decrease in annual economic activity related to hunting on Kauai of about $297,000 in direct sales (a figure that includes expenditures on hunting licenses); $513,000 in total direct and indirect sales; nine jobs; and $176,000 in income, as well as a loss of $149,000 in hunter benefits. However, the decrease in expenditures and hunter benefits would probably be off-set by expenditures and benefits associated with other recreational activities, so these figures are likely to overstate the economic costs. If the critical habitat, as modified, is fenced to exclude ungulates, the annual cost of conservation management for the listed

plants would be approximately $1.8 million.

A critical habitat designation does not in any way create a wilderness area, preserve or wildlife refuge, nor does it close an area to human access or use. It applies only to activities sponsored at least in part by Federal agencies. Land uses such as logging, grazing and recreation that may require Federal permits may take place if they do not adversely modify critical habitat. Critical habitat designations do not constitute land management plans. A designation of critical habitat does not require a private or State landowner to fence the designated area and/or remove game mammals. However, feral ungulates have been extremely important causes of vegetation decline in Hawaii (Cuddihy and Stone 1990) and have been identified as a primary threat to many of the listed plant species on Kauai. The Service recognizes that populations of many game mammal species affect the distribution and abundance of many listed endangered plant and animal species to varying degrees, either directly or indirectly. We also recognize that game mammal hunting is a highly valued activity to a portion of the present-day Hawaiian culture. We recognize hunting as an important tool to manage wild populations of game and support hunting as a recreational activity and the maintenance of game mammal hunting programs within the State of Hawaii. However, Federal and State law dictate that hunting programs should be designed and executed in a way that is compatible with endangered species conservation. Game mammal hunting programs should not only prevent extinction, but allow for the recovery of federally listed endangered and threatened species. The Service also recognizes that under certain circumstances, removal of ungulates can result in an increase in weedy growth and associated fire risk, and we recommend that ungulate management programs assess and address this issue.

(79) *Comment:* The Navy commented that: There is no indication that the specific Navy parcels are, in fact, critical to the survival of these species; the vast majority of the proposed areas to be designated are presently unoccupied by the species in question and their successful introduction to and survival in these areas is speculative; and the proposed areas are presently utilized for national defense operations that may present incompatibilities with the objective of species preservation. Therefore, the benefits of excluding the areas outweigh the benefits of specifying these areas as part of the critical habitat.

Our Response: We have had numerous discussions with the Navy regarding these areas, and as a result, have removed some sections of the units for these species, based on either the lack of primary constituent elements or the presence of structures and areas used for Navy training operations. The remaining areas are not excluded because they contain at least one of the primary constituent elements for *Panicum niihauense* as described in the "Hawaiian plants—Constituent elements" section. These areas are essential to the recovery of *Panicum niihauense* because not enough other areas that contain these primary constituent elements outside of the PMRF are known to exist in order to meet our goals of 8 to 10 populations.

(80) *Comment:* One commenter stated the following: It is not prudent to designate critical habitat on Niihau as it may serve to restrict Federal actions that promote the readiness of our nation's fighting forces. The operations most likely to be impacted would be the Special Warfare and the downed pilot recovery training exercised by the U.S. Marine Corps and U.S. Navy. Disruption of these activities may also result in negative economic impact to Niihau residents.

Our Response: The potential project modifications as a result of the implementation of section 7 for the plants on military activities on Niihau are discussed in Chapter VI, section 3.m. of the DEA. These project modifications include placing stakes in the ground to mark the boundaries of the areas which should be avoided. The Navy may also give maps to military personnel before they are deployed to the area to delineate these areas. The total cost of these project modifications is estimated at $6,000. Given that the proposed critical habitat as modified covers less than one percent of Niihau, and the military uses much of the island for Special Warfare and the downed pilot recovery training, the avoidance of the areas in critical habitat is not anticipated to have an effect on the readiness of our nation's fighting forces or Niihau residents.

(81) *Comment:* One commenter stated the DEA lacks a thorough benefits analysis. Multiple commenters stated that the DEA ignored the benefit of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. Another commenter noted that additional benefits of critical habitat include combating global warming, providing recreational opportunities, attracting ecotourism, and preserving Hawaii's natural heritage. Although the DEA makes general observations of the benefits associated with designating critical habitat, it makes no attempt to quantify these acknowledged benefits. The Service must use the tools available such as a University of Hawaii Secretariat for Conservation Biology study that estimated the value of ecosystem services, to determine the benefits of critical habitat. On the other hand, one commenter stated that the DEA overestimates economic benefits and many of the alleged benefits are entirely speculative, unquantifiable or lack any commercial value. In addition, treating "better siting of projects by developers so as to avoid costly project delays," as an economic benefit is circular. The costly project delays result from regulations. They could be avoided by not imposing the regulations in the first place.

Our Response: Chapter VI, Sections 6 and 7 of the DEA discusses the potential benefits addressed in the above comments. However, the DEA also indicates that these benefits are not quantified due to lack of information on the value of the environmental benefits that would be attributable specifically to the critical habitat designations (*i.e.*, the benefits over and above those which will occur due to other existing protections, and over and above the benefits from other conservation projects). In addition, there is a lack of (1) scientific studies regarding ecosystem changes due to critical habitat, and (2) economic studies on the per-unit value of the changes.

The 1999 analysis by University of Hawaii (UH) economists on the total value of environmental services provided by Oahu's Koolau Mountains was used in the DEA as a resource document for concepts, and for identifying documents that report the original research on certain subjects.

However, the UH study has limited applicability for valuing the benefits of plants critical habitat designation for a number of reasons. First, the UH study had a different purpose which was to estimate the total value of environmental benefits provided by the entire Koolau Mountains on the island of Oahu versus the value of the more limited benefits provided by the proposed plants critical habitat on the island of Kauai. Consistent with its purpose, the UH study provides no estimates of the changes in environmental conditions resulting from changes in land management due to critical habitat designations.

Furthermore, many of the assumptions and much of the analysis in the UH study are not transferable to the economic analysis for the plants critical habitat. For example, the value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu—an island which is nine percent larger than Kauai but has a population of more than 12 times that of Kauai. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the manmade Ala Wai Canal. Since this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin so must be dredged periodically. In addition, the recreational and ecotourism values provided in the UH study apply to areas that are accessible to most hikers, which is not the case with most of the plants critical habitat. As mentioned in the DEA, most of the plants critical habitat units are located in the mountainous interior of Kauai. Much of the proposed critical habitat has steep slopes, remote locations, and difficult access; some of the units are accessible only by helicopter and are rarely visited.

Chapter VI, section 6.c. of the DEA discusses a potential benefit of critical habitat to developers. By knowing the critical habitat boundaries, developers can site projects outside the boundaries, thereby avoiding certain issues related to threatened and endangered species. As such, the benefit is not circular, because, as a result of critical habitat, developers can avoid take issues associated with section 9 of the Act and the other baseline regulations protecting listed species discussed in Chapter IV of the DEA.

(82) *Comment:* Several commenters stated the following: Existence values should be quantified. Studies referenced in the analysis contain information about how much people would be willing to pay to save various species. Even assuming plants are non-charismatic and therefore would justify lower values, there would still be a value of $6 per household per year. If the study is able to take values for a day of hunting from the State of Idaho and apply them to Hawaii, it should be equally able to take values from studies which have looked at other species to get some sense of what people would pay to make sure these species recover and do not go extinct.

Our Response: When primary research on benefits is not feasible, economists frequently rely on the method of benefits transfer. Benefits transfer involves application of results of existing valuation studies to a new policy question. Two core principals of defensible benefits transfer are (1) the use of studies that apply acceptable techniques to generate welfare values, and (2) similarity between the good being valued in the literature and the good being valued in the policy context to which the transfer is being made (*i.e.*, the protection afforded the plants by critical habitat). No known studies exist on quantified data on the value of plants. Therefore, applying results of existing valuation studies on non-plants to the Kauai plants is not feasible.

(83) *Comment:* Several commenters stated the following: Active management by private landowners would be more beneficial than critical habitat designations because private landowners can carry out conservation actions that might otherwise not happen. The proposal fails to properly consider the importance of cooperation and goodwill between the Service and private landowners, and the impact critical habitat designations will have in discouraging voluntary partnerships on private lands.

Our Response: Chapter VI, section 4.j. of the DEA discusses the potential for reduced cooperation on conservation projects as a result of critical habitat. The DEA determines that a modest but undetermined reduction in cooperation may occur, along with a corresponding but undetermined environmental loss to society.

Summary of Changes From the Revised Proposed Rule

Based on a review of public comments received on the proposed determinations of critical habitat, we have reevaluated our proposed designations and included several changes to the final designations of critical habitat. These changes include the following:

(1) The scientific names changed for the following associated species with the listed species found in the "*Supplementary Information: Discussion of the Plant Taxa*" section: *Lipochaeta integrifolia* changed to *Melanthera integrifolia* for *Centaurium sebaeoides*; *L. subcordata* changed to *Melanthera subcordata* for *Lipochaeta fauriei*; *Styphelia tameiameiae* changed to *Leptecophylla tameiameiae* for *Chamaesyce halemanui*, *Delissea rhytidosperma*, *Diellia erecta*, *Diellia pallida*, *Exocarpos luteolus*, *Mariscus pennatiformis*, *Melicope knudsenii*, *Platanthera holochila*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Schiedea kauaiensis*, *Schiedea stellarioides*, *Viola kauaiensis* var. *wahiawaensis*, and *Xylosma hawaiiense*; *Hibiscus tiliaceus* changed to *Taliparti tiliaceum* for *Cyperus trachysanthos*; *Myrica faya* changed to *Morella faya* for *Diellia erecta* and *Exocarpos luteolus*; *Stachytarpheta dichotoma* changed to *S. australis* for *Brighamia insignis*, *Cyanea undulata*, *Dubautia pauciflorula*, *Lipochaeta micrantha*, and *Viola helenae*; *Mariscus meyenianus* changed to *Cyperus meyenianus* for *Diellia erecta* and *Poa mannii*; *Mariscus phleoides* changed to *Cyperus phleoides* for *Centaurium sebaeoides*; *Pluchea symphytifolia* changed to *P. carolinensis* for *Cyanea undulata*, *Dubautia pauciflorula*, *Hedyotis st.-johnii*, and *Lipochaeta micrantha*; *Athyrium sandwichianum* changed to *Diplazium sandwichianum* for *Plantago princeps*, *Melicope knudsenii*, *Flueggea neowawraea*, *Euphorbia haeleeleana*, *Xylosma crenatum*, *Viola helenae*, *Schiedea membranacea*, *Pteralyxia kauaiensis*, *Phyllostegia wawrana*, *Phyllostegia waimeae*, *Nothocestrum peltatum*, *Dubautia latifolia*, *Delissea rivularis*, *Cyrtandra limahuliensis*, *Cyrtandra cyaneoides*, *Cyanea undulata*, *Cyanea remyi*, and *Alsinidendron lychnoides*; and *Setaria gracilis* changed to *Setaria parviflora* for *Brighamia insignis*, *Cyanea undulata*, and *Dubautia pauciflorula*.

(2) We corrected the misidentification of *Passiflora mollissima* to *P. tarminiana* which is an associated species found with the following listed species: *Delissea rhytidosperma*, *Dubautia latifolia*, *Nothocestrum peltatum*, *Phyllostegia wawrana*, *Poa sandvicensis*, *Schiedea membranacea*, *Delissea undulata*, *Diellia erecta*, and *Solanum sandwicense* in the threat section of the species descriptions in the "*Supplementary Information: Discussion of the Plant Taxa*".

(3) We changed "spp." to the specific species which are associated with the following listed species found on Kauai in the "*Supplementary Information: Discussion of the Plant Taxa*" and section 17.99: *Touchardia* spp. changed to *Touchardia latifolia* for *Cyanea remyi*; *Syzygium* spp. changed to *Syzygium sandwicensis* for *Isodendrion longifolium*; *Gunnera* spp. changed to *Gunnera kauaiensis* for *Cyrtandra cyaneoides*, *Plantago princeps*, and *Phyllostegia waimeae*; *Eugenia* spp. changed to *Eugenia reinwardtiana* for *Cyrtandra limahuliensis* and *Isodendrion longifolium*; *Pteralyxia* spp. changed to *Pteralyxia kauaiensis* for *Alectryon macrococcus*, *Delissea rhytidosperma*, and *Euphorbia haeleeleana*; *Alectryon* spp. changed to *Alectryon macrococcus* for *Phyllostegia wawrana*; *Broussaisia* spp. changed to

Broussaisia arguta for *Adenophorus periens; Pleomele* spp. changed to *Pleomele aurea* for *Alsinidendron viscosum, Dubautia latifolia, Pritchardia napaliensis*, and *Alectryon macrococcus*; and *Antidesma* spp. changed to *Antidesma platyphyllum* for *Cyanea remyi, Cyanea undulata, Cyrtandra limahuliensis, Dubautia latifolia, Hesperomannia lydgatei, Hibiscus waimeae* ssp. *hannerae, Kokia kauaiensis, Lipochaeta micrantha, Nothocestrum peltatum, Pritchardia viscosa, Alectryon macrococcus, Fleuggia neowawraea, Isodendrion laurifolium*, and *Isodendrion longifolium*.

(4) For species associated with listed species, we replaced specific species names for those that do not exist on Kauai with "spp." for genera with multiple species on Kauai in the *"Supplementary Information: Discussion of the Plant Taxa"* and section 17.99 as follows: *Cibotium chamissoi* changed to *Cibotium* spp. for *Phlegmariurus nutans; Peperomia leptostachya* changed to *Peperomia* spp. for *Wilkesia hobdyi; Lipochaeta succulenta* and *Lipochaeta heterophylla* changed to *Lipochaeta* spp. for *Centaurium sebaeoides; Coprosma grayana* changed to *Coprosma* spp. for *Viola kauaiensis* var. *wahiawaensis; Peperomia macraeana* changed to *Peperomia* spp. for *Exocarpos luteolus* and *Phyllostegia wawrana; Schiedea lydgatei* var. *attenuata* changed to *Schiedea* spp. for *Poa mannii; Adenophorus oligadenus* changed to *Adenophorus* spp. for *Delissea rhytidosperma;* and *Cyanea hirta* changed to *Cyanea* spp. for *Xylosma crenatum*.

(5) We corrected the species name to the species that occurs on Kauai for species associated with listed species in the *"Supplementary Information: Discussion of the Plant Taxa"* and section 17.99 as follows: *Santalum ellipticum* changed to *Santalum freycinetianum* for *Lipochaeta waimeaensis* and *Delissea undulata;* and *Pteralyxia sandwicensis* changed to *Pteralyxia kauaiensis* for *Delissea rhytidosperma* and *Euphorbia haeleeleana*.

(6) We removed the following species from the list of associated species from the *"Supplementary Information: Discussion of the Plant Taxa"* and section 17.99 as they do not occur on Kauai: *Abutilon sandwicense* was removed from *Melicope pallida; Reynoldsia sandwicensis* was removed from *Euphorbia haeleeleana; Rhynchospora laxa* was removed from *Platanthera holochila;* and *Antidesma pulvinatum* was removed from *Flueggea neowawraea*.

(7) In order to avoid confusion regarding the number of location occurrences for each species (that does not necessary represent a viable population) and the number of recovery populations (8 to 10 with 100, 300, or 500 reproducing individuals) we changed the word "population" to "occurrence" and updated the number of occurrences and/or individuals for the following species found in the *"Supplementary Information: Discussion of the Plant Taxa"* section and "Table 2.—Summary of existing occurrences on Kauai and Niihau, and landownership for 95 species reported from Kauai and Niihau": *Adenophorus periens* changed from 80 individuals to 59; *Alectryon macrococcus* changed from six populations to 18 occurrences and from 204 individuals to 159–174; *Alsinidendron lychnoides* changed from two populations to four occurrences and from 10 individuals to eight; *Alsinidendron viscosum* changed from five populations to seven occurrences and from 263 individuals to 319; *Bonamia menziesii* changed from eight populations to nine occurrences and from 62 individuals to 36; *Brighamia insignis* changed from 65 individuals to 42–62; *Centaurium sebaeoides* changed from 52 individuals to 22–52; *Chamaesyce halemanui* changed from six populations to nine occurrences and from 143 individuals to 85–135; *Cyanea asarifolia* changed from one population to two occurrences and from five individuals to 4–5; *Cyanea recta* changed from seven populations to eight occurrences and from 609 individuals to 198–208; *Cyanea remyi* changed from 374 individuals to 394–484; *Cyperus trachysanthos* changed from two populations to one occurrence; *Cyrtandra cyaneoides* changed from 404 individuals to 354–454; *Cyrtandra limahuliensis* changed from 11 populations to 13 occurrences and from 822 individuals to 2,746–3,024; *Delissea rhytidosperma* changed from 19 individuals to 11; *Diellia pallida* changed from four populations to six occurrences and from 20–25 individuals to 43–48; *Dubautia latifolia* changed from nine populations to 26 occurrences and from 80 individuals to 65–84; *Dubautia pauciflorula* changed from two populations to four occurrences; *Euphorbia haeleeleana* changed from seven populations to 23 occurrences; *Exocarpos luteolus* changed from eight populations to nine occurrences; *Flueggea neowawraea* changed from eight populations to 10 occurrences and from 85 individuals to 62; *Hedyotis st.-johnii* changed from four populations to 11 occurrences and from 296 individuals to 227–292; *Hesperomannia lydgatei* changed from three populations to four occurrences and from 295 individuals to 298; *Hibiscadelphus woodii* changed from one population to two occurrences; *Hibiscus clayi* changed from six individuals to four; *Hibiscus waimeae* ssp. *hannerae* changed from three populations to two occurrences; Isodendrion laurifolium changed from five populations to 13 occurrences and from 151 individuals to 142–154; *Isodendrion longifolium* changed from nine populations to 15 occurrences and from 521 individuals to 804–854; *Kokia kauaiensis* changed from five populations to 21 occurrences and from 166 individuals to 166–171; *Labordia tinifolia* var. *wahiawaensis* changed from 100 individuals to 20–30; *Lipochaeta fauriei* changed from four populations to five occurrences and from 183 individuals to 82; *Lipochaeta micrantha* changed from 231 individuals to 171; *Lobelia niihauensis* changed from 11 populations to 13 occurrences and from 1,106 individuals to 284–2,134; *Lysimachia filifolia* changed from 75 individuals to 20–75; *Melicope haupuensis* changed from five individuals to 13; *Melicope knudsenii* changed from seven populations to 10 occurrences; *Melicope pallida* changed from five populations to six occurrences; *Munroidendron racemosum* changed from 14 populations to 17 occurrences and from 101 individuals to 59–99; *Myrsine linearifolia* changed from eight populations to 12 occurrences and from 522 individuals to 490–564; *Nothocestrum peltatum* changed from six populations to 10 occurrences and from 19 individuals to 20; *Peucedanum sandwicense* changed from 14 populations to 15 occurrences and from 340 individuals to 156–256; *Phyllostegia knudsenii* changed from one population to three occurrences and from 17 individuals to 4–13; *Phyllostegia wawrana* changed from 49 individuals to 34–54; *Plantago princeps* changed from six populations to seven occurrences and from 471 individuals to 542–670; *Platanthera holochila* changed from 28 individuals to 24–34; Poa sandvicensis changed from 1,740 individuals to 1,321; *Pritchardia napaliensis* changed from three populations to five occurrences; *Pteralyxia kauaiensis* changed from 15 populations to 39 occurrences and from 807 individuals to 1,124–1,161; *Remya kauaiensis* changed from 12 populations to 17 occurrences and from 124 individuals to 106–114; *Remya montgomeryi* changed from three populations to six occurrences and from 113 individuals to 143; *Schiedea apokremnos* changed from 751 individuals to 819–1,751; *Schiedea helleri* changed from 63 individuals to 50–60; *Schiedea kauaiensis* changed from two populations to five occurrences; *Schiedea membranacea* changed from seven populations to 10 occurrences and from 195 individuals to 344–348; *Schiedea nuttallii* changed from 50 individuals to 10–50; *Schiedea spergulina* var. *leiopoda* changed from 50 individuals to 135–150; *Schiedea spergulina* var. *spergulina* changed from 206 individuals to 208; *Schiedea stellarioides* changed from two populations to three occurrences and from 400 individuals to 1,500; *Sesbania tomentosa* changed from 18 individuals to 11; *Solanum sandwicense* changed from six populations to eight occurrences; *Spermolepis hawaiiensis* changed from three populations to two occurrences; Stenogyne campanulata changed from two populations to three occurrences; *Wilkesia hobdyi* changed from six populations to nine occurrences and from 491 individuals to 406–471; *Xylosma crenatum* changed from 8 individuals to 16; and *Zanthoxylum hawaiiense* changed from two populations to three occurrences.

(8) We changed "flowering cycles, pollination vectors, seed dispersal agents" to "reproduction cycles, dispersal agents" in the life history portion of the *"Supplementary Information: Discussion of the Plant Taxa"* section for the fern species *Adenophorus periens, Ctenitis squamigera, Diellia erecta, Diellia pallida, Diplazium molokaiense,* and *Phlegmariurus nutans*.

(9) We revised the list of excluded, manmade features in the *"Criteria Used to Identify Critical Habitat"* and section 17.99 to include additional features based on information received during the public comment periods.

(10) We updated the elevation ranges in section 17.99 for *Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Bonamia menziesii, Chamaesyce halemanui, Ctenitis squamigera, Cyanea recta, Cyanea remyi, Cyanea undulata. Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rivularis, Diellia pallida, Diplazium molokaiense, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Gouania meyenii, Hesperomannia lydgatei, Hibiscus clayi, Ischaemum byrone, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia knudsenii, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Xylosma crenatum*, and *Zanthoxylum hawaiiense*.

(11) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of the proposed unit, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question.

A brief summary of the modifications made to each unit is given below (*see also* Figure 1).

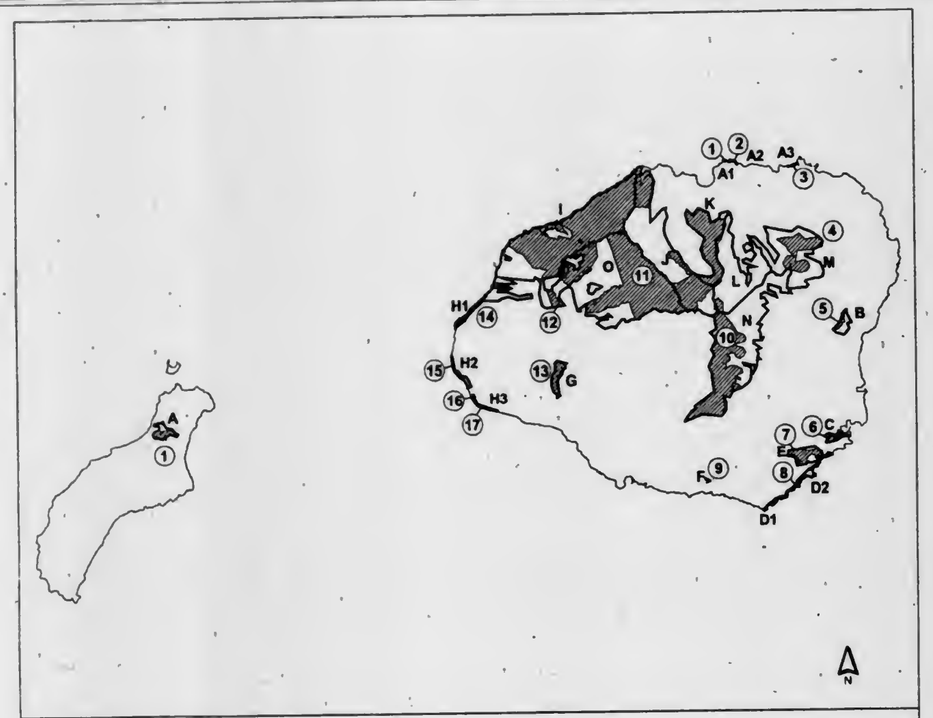


Figure 1
Summary of Changes from Proposed Rule to Final Rule

Kauai A

This unit was proposed as critical habitat for two multi-island species: *Centaurium sebaeoides* and *Ischaemum byrone*. We excluded the proposed critical habitat for *Centaurium sebaeoides*. This area is not essential for the conservation of *Centaurium sebaeoides* because it lacks one or more of the primary constituent elements, has a lower proportion of associated native species than other areas we consider to be essential to the conservation of *Centaurium sebaeoides*, is not currently managed for the conservation of this species; and there are at least 10 other locations in its historical range on Kauai and other islands which provide habitat for this species and which are either designated as critical habitat in this rule or have been proposed for designation in other rules.

Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for *Ischaemum byrone*. The area designated as critical habitat for this species provides habitat within its historical range for two populations.

This modification resulted in the reduction from 15 ha (38 ac) to 13 ha (32 ac). This unit was renamed Kauai 1—*Ischaemum byrone*—a, Kauai 2—*Ischaemum byrone*—b, and Kauai 3—*Ischaemum byrone*—c.

Kauai B

This unit was proposed as critical habitat for two species: *Hibiscus clayi* and *Munroidendron racemosum*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements essential to the conservation of *Hibiscus clayi* and *Munroidendron racemosum*. The area designated as critical habitat for these two Kauai endemic species provides habitat within their historical ranges for one population of each species.

This modification resulted in the reduction from 271 ha (669 ac) to 60 ha (148 ac). This unit was renamed Kauai 5—*Hibiscus clayi*—f and Kauai 5—*Munroidendron racemosum*—a.

Kauai C

This unit was proposed as critical habitat for two species: *Brighamia insignis* and *Lobelia niihauensis*. We excluded the proposed critical habitat for *Lobelia niihauensis*. This area is not essential for the conservation of *Lobelia niihauensis* because it has a lower proportion of associated native species than other areas we consider to be essential for the conservation of *Lobelia niihauensis*, and there are 10 other locations within its historical range on Kauai and Oahu which provide habitat for two species and which are either designated as critical habitat in this rule or have been proposed for designation in other rules.

Modifications were made to this unit to exclude degraded areas not essential to the conservation of *Brighamia insignis*. The remaining area designated as critical habitat for this endemic species provides habitat within its historical range for one population.

This modification resulted in the reduction from 97 ha (239 ac) to 63 ha (156 ac). This unit was renamed Kauai 6—*Brighamia insignis*—a.

Kauai D

This unit was proposed as critical habitat for the multi-island species *Sesbania tomentosa*. Modifications were made to this unit to exclude degraded areas not essential to the conservation of *Sesbania tomentosa*, including the removal of subunit D1. The remaining area designated as critical habitat for this species provides habitat within its historical range for one population.

This modification resulted in the reduction from 255 ha (629 ac) to 47 ha (117 ac). This unit was renamed Kauai 8—*Sesbania tomentosa*—a.

Kauai E

This unit was proposed as critical habitat for 10 species: *Brighamia insignis*, *Delissea rhytidosperma*, *Isodendrion longifolium*, *Lipochaeta micrantha*, *Melicope haupuensis*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Peucedanum sandwicense*, *Pteralyxia kauaiensis* and *Schiedea nuttallii*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements essential to the conservation of these 10 species.

The area designated as critical habitat for the Kauai and Niihau endemic species *Brighamia insignis* provides habitat within its historical range for one population. The area designated as critical habitat provides habitat within the historical ranges for two populations each of *Delissea rhytidosperma*, *Lipochaeta micrantha*, and *Melicope haupuensis*, and one population each of *Munroidendron racemosum*, *Myrsine linearifolia*, and *Pteralyxia kauaiensis*, all Kauai endemic species.

The area designated as critical habitat for the multi-island species *Isodendrion longifolium* and *Peucedanum sandwicense* provides habitat within their historical ranges for one population each and for two populations of *Schiedea nuttallii*.

This modification resulted in the reduction from 563 ha (1,390 ac) to 349 ha (862 ac). This unit was renamed Kauai 7—*Brighamia insignis*—b, Kauai 7—*Delissea rhytidosperma*—a, Kauai 7— *Isodendrion longifolium*—a, Kauai 7— *Lipochaeta micrantha*—a, Kauai 7—*Melicope haupuensis*—a, Kauai 7—*Munroidendron racemosum*—b, Kauai 7— *Myrsine linearifolia*—a, Kauai 7—*Peucedanum sandwicense*—a, Kauai 7— *Pteralyxia kauaiensis*—a; and Kauai 7—*Schiedea nuttallii*—a.

Kauai F

No changes were made to Kauai F. However, due to revising the polygon to more closely follow geographical and topographical features, a correction has been made to the total acreage. The reduction in area does not affect the ability of this unit to provide habitat for one population of *Schiedea spergulina* var. *leiopoda* in this unit.

The area designated as critical habitat for the Kauai endemic species *Schiedea spergulina* var. *leiopoda* provides habitat within its historical range for one population. The correction resulted in a total of 5 ha (11 ac). This unit was renamed Kauai 9—*Schiedea spergulina* var. *leiopoda*—a.

Kauai G

This unit was proposed as critical habitat for three species: *Lipochaeta waimeaensis*, *Schiedea spergulina* var. *spergulina*, and *Spermolepis hawaiiensis*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements essential to the conservation of these three species. The reduction in area does not affect the ability of this unit to provide for one to two populations of these three species.

The area designated as critical habitat provides habitat for one population of *Lipochaeta waimeaensis* and two populations of *Schiedea spergulina* var. *spergulina* within the historical ranges of these Kauai endemic species. The area designated as critical habitat for the multi-island species *Spermolepis hawaiiensis* provides habitat within its historical range for one population.

This modification resulted in the reduction from 317 ha (784 ac) to 289 ha (713 ac). This unit was renamed Kauai 13—*Lipochaeta waimeaensis*—a, Kauai 13—*Schiedea spergulina* var. *spergulina*—c, Kauai 13—*Spermolepis hawaiiensis*—b, and Kauai 13—*Spermolepis hawaiiensis*—c.

Kauai H

This unit was proposed as critical habitat for two species, *Panicum niihauense* (a Kauai and Niihau endemic) and *Sesbania tomentosa*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements essential to the conservation of *Panicum niihauense* based on a site visit conducted during the public comment period. This reduction in area did not affect the ability of this unit to provide habitat for seven populations of this species in this unit. The remaining area designated as critical habitat for *Panicum niihauense* provides habitat within its historical range for seven populations.

Modifications were made to this unit to exclude degraded areas not essential to the conservation of the multi-island species *Sesbania tomentosa*. The area designated as critical habitat for this species provides habitat within its historical range for one population.

These modifications resulted in the reduction from 329 ha (812 ac) to 175 ha (431 ac). This unit was renamed Kauai 14—*Panicum niihauense*—a, Kauai 14—*Sesbania tomentosa*—b, Kauai 15—*Panicum niihauense*—b, Kauai 16—*Panicum niihauense*—c, and Kauai 17—*Panicum niihauense*—d.

Kauai I

This unit was proposed as critical habitat for 60 species: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea recta*, *Cyanea remyi*, *Cyperus trachysanthos*, *Cyrtandra limahuliensis*, *Delissea rhytidosperma*, *Delissea rivularis*, *Delissea undulata*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendrion laurifolium*, *Isodendrion longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Lipochaeta fauriei*, *Lobelia niihauensis*, *Melicope haupuensis*, *Melicope*

knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea kauaiensis, Schiedea membranacea, Schiedea spergulina var. *spergulina, Sesbania tomentosa, Solanum sandwicense, Stenogyne campanulata, Wilkesia hobdyi,* and *Xylosma crenatum.*

We excluded the proposed critical habitat for *Bonamia menziesii.* This area is not essential for the conservation of *Bonamia menziesii* because it has a lower proportion of associated native species than other areas we consider to be essential for the conservation of *Bonamia menziesii,* and there are at least 10 other locations within its historical range on Kauai and on other islands that provides habitat for this species and that are either designated as critical habitat in this rule or have been proposed for designation in other rules.

Modifications were made to this unit to exclude degraded areas not essential to the conservation of *Brighamia insignis, Cyperus trachysanthos, Hedyotis st.-johnii, Ischaemum byrone, Lobelia niihauensis, Melicope knudsenii, Munroidendron racemosum, Nothocestrum peltatum, Peucedanum sandwicense, Poa mannii, Pteralyxia kauaiensis, Remya kauaiensis, Schiedea apokremnos, Schiedea membranacea,* and *Wilkesia hobdyi* and not managed for the conservation of these 15 species. There are other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout their historical ranges on Kauai *(Brighamia insignis, Hedyotis st.-johnii, Munroidendron racemosum, Nothocestrum peltatum, Poa mannii, Pteralyxia kauaiensis, Remya kauaiensis, Schiedea apokremnos, Schiedea membranacea,* and *Wilkesia hobdyi)* and on other islands (*Cyperus trachysanthos, Ischaemum byrone, Lobelia niihauensis, Melicope knudsenii,* and *Peucedanum sandwicense*).

The area designated as critical habitat for the Kauai and Niihau endemic species *Brighamia insignis* provides habitat within its historical range for seven populations. The remaining area designated as critical habitat provides habitat within the historical ranges for six populations of *Alsinidendron lychnoides,* eight populations of *Chamaesyce halemanui,* three populations each of *Cyanea recta* and *Cyanea remyi,* two populations of *Cyrtandra limahuliensis,* four populations of *Delissea rhytidosperma,* three populations of *Delissea rivularis,* two populations of *Diellia pallida,* one population of *Dubautia latifolia,* eight populations of *Exocarpos luteolus,* seven populations of *Hedyotis st.-johnii,* one population of *Hesperomannia lydgatei,* five populations of *Hibiscadelphus woodii,* eight populations of *Hibiscus waimeae* ssp. *hannerae,* five populations of *Kokia kauaiensis,* one population of *Labordia lydgatei,* four populations of *Lipochaeta fauriei,* three populations of *Melicope haupuensis,* six populations of *Munroidendron racemosum,* three populations of *Myrsine linearifolia,* five populations of *Nothocestrum peltatum,* four populations of *Phyllostegia wawrana,* seven populations of *Poa mannii,* one population of *Poa sandvicensis,* five populations each of *Poa siphonoglossa* and *Pteralyxia kauaiensis,* six populations of *Remya kauaiensis,* three populations of *Remya montgomeryi,* nine populations of *Schiedea apokremnos,* six populations of *Schiedea kauaiensis,* five populations of *Schiedea membranacea,* two populations of *Schiedea spergulina* var. *spergulina,* three populations of *Stenogyne campanulata,* nine populations of *Wilkesia hobdyi,* and four populations of *Xylosma crenatum.* All of these are Kauai endemic species.

The area designated as critical habitat for the following multi-island species provides habitat within their historical ranges for one population each of *Adenophorus periens* and *Alectryon macrococcus,* four populations of *Centaurium sebaeoides,* one population of *Ctenitis squamigera,* six populations of *Cyperus trachysanthos,* three populations of *Delissea undulata,* one population of *Diplazium molokaiense,* four populations of *Euphorbia haeleeleana,* three populations each of *Flueggea neowawraea* and *Gouania meyenii,* seven populations of *Hedyotis cookiana,* one population of *Ischaemum byrone,* two populations of *Isodendrion laurifolium,* three populations of *Isodendrion longifolium,* four populations of *Lobelia niihauensis,* three populations each of *Mariscus pennatiformis* and *Melicope knudsenii,* two populations of *Melicope pallida,* three populations of *Peucedanum sandwicense,* two populations of *Plantago princeps,* four populations of *Platanthera holochila,* and five populations of *Solanum sandwicense.*

These modifications resulted in the reduction from 8,238 ha (20,355 ac) to 6,102 ha (15,078 ac). This unit was renamed Kauai 11—*Adenophorus periens*—d, Kauai 11—*Alectryon macroccus*—b, Kauai 11—*Alsinidendron lychnoides*—a, Kauai 11—*Brighamia insignis*—c, Kauai 11—*Centaurium sebaeoides*—a, Kauai 11—*Chamaesyce halemanui*—c, Kauai 11—*Ctenitis squamigera*—a, Kauai 11—*Cyanea recta*—d, Kauai 11—*Cyanea remyi*—d, Kauai 11—*Cyperus trachysanthos*—a, Kauai 11—*Cyrtandra limahuliensis*—e, Kauai 11—*Delissea rhytidosperma*—b, Kauai 11—*Delissea rhytidosperma*—c, Kauai 11—*Delissea rivularis*—a, Kauai 11—*Delissea undulata*—a, Kauai 11—*Delissea undulata*—b, Kauai 11—*Diellia pallida*—a, Kauai 11—*Diplazium molokaiense*—a, Kauai 11—*Dubautia latifolia*—b, Kauai 11—*Euphorbia haeleeleana*—a, Kauai 11—*Euphorbia haeleeleana*—b, Kauai 11—*Exocarpos. luteolus*—b, Kauai 11—*Exocarpos luteolus*—c, Kauai 11—*Exocarpos luteolus*—e, Kauai 11—*Flueggea neowawraea*—a, Kauai 11—*Flueggea neowawraea*—b, Kauai 11—*Flueggea neowawraea*—d, Kauai 11—*Flueggea neowawraea*—e, Kauai 11—*Flueggea neowawraea*—f, Kauai 11—*Gouania meyenii*—a, Kauai 11—*Gougnia meyenii*—b, Kauai 11—*Hedyotis cookiana*—a, Kauai 11—*Hedyotis st.-johnii*—a, Kauai 11—*Hesperomannia lydgatei*—c, Kauai 11—*Hibiscadelphus woodii*—a, Kauai 11—*Hibiscadelphus woodii*—b, Kauai 11—*Hibiscus waimeae* ssp. *hannerae*—a, Kauai 11—*Ischaemum byrone*—d, Kauai 11—*Isodendrion laurifolium*—a, Kauai 11—*Isodendrion longifolium*—c, Kauai 11—*Isodendrion longifolium*—e, Kauai 11—*Kokia kauaiensis*—b, Kauai 11—*Kokia kauaiensis*—c, Kauai 11—*Kokia kauaiensis*—d, Kauai 11—*Labordia lydgatei*—e, Kauai 11—*Lipochaeta fauriei*—b, Kauai 11—*Lobelia niihauensis*—b, Kauai 11—*Mariscus pennatiformis*—a, Kauai 11—*Melicope haupuensis*—b, Kauai 11—*Melicope knudsenii*—a, Kauai 11—*Melicope pallida*—b, Kauai 11—*Munroidendron racemosum*—c, Kauai 11—*Myrsine linearifolia*—d, Kauai 11—*Myrsine linearifolia*—e, Kauai 11—*Nothocestrum peltatum*—b, Kauai 11—*Nothocestrum peltatum*—c, Kauai 11—*Peucedanum sandwicense*—b, Kauai 11—*Peucedanum sandwicense*—c, Kauai 11—*Phyllostegia wawrana*—b, Kauai 11—*Phyllostegia wawrana*—d, Kauai 11—*Plantago princeps*—b, Kauai 11—*Plantago princeps*—d, Kauai 11—*Platanthera holochila*—a, Kauai 11—*Poa mannii*—a, Kauai 11—*Poa mannii*—c, Kauai 11—*Poa mannii*—d, Kauai 11—*Poa sandvicensis*—b, Kauai 11—*Poa siphonoglossa*—a, Kauai 11—*Pteralyxia kauaiensis*—c, Kauai 11—*Pteralyxia kauaiensis*—d, Kauai 11—*Pteralyxia kauaiensis*—e, Kauai 11—*Pteralyxia kauaiensis*—g, Kauai 11—*Remya kauaiensis*—b, Kauai 11—*Remya kauaiensis*—c, Kauai 11—*Remya montgomeryi*—a, Kauai 11—*Remya montgomeryi*—c, Kauai 11—*Schiedea apokremnos*—a, Kauai 11—*Schiedea apokremnos*—b, Kauai 11—*Schiedea apokremnos*—c, Kauai 11—*Schiedea kauaiensis*—b, Kauai 11—*Schiedea kauaiensis*—c, Kauai 11—*Schiedea kauaiensis*—d, Kauai 11—*Schiedea membranacea*—b, Kauai 11—*Schiedea membranacea*—c, Kauai 11—*Schiedea membranacea*—d, Kauai 11—*Schiedea spergulina var. spergulina*—a, Kauai 11—*Solanum sandwicense*—a, Kauai 11—*Stenogyne campanulata*—a, Kauai 11—*Wilkesia hobdyi*—a, Kauai 11—*Xylosma crenatum*—a, Kauai 14—*Panicum niihauense*—a, and Kauai 14—*Sesbania tomentosa*—b.

Kauai J

This unit was proposed as critical habitat for 26 species: *Adenophorus periens, Alsinidendron lychnoides, Bonamia menziesii, Brighamia insignis, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rivularis, Delissea undulata, Euphorbia haeleeleana, Exocarpos luteolus, Hesperomannia lydgatei, Hibiscus waimeae* ssp. *hannerae, Isodendrion longifolium, Labordia lydgatei, Lobelia niihauensis, Munroidendron racemosum, Myrsine linearifolia, Peucedanum sandwicense, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Remya montgomeryi, Schiedea kauaiensis* and *Schiedea membranacea.*

We excluded the proposed critical habitat for the Kauai endemic species *Schiedea membranacea.* This area is not essential for the conservation of this species because there are at least 10 other locations throughout its historical range on Kauai that contain a higher quality habitat or are on lands with a management mandate.

We excluded the proposed critical habitat for the Kauai and Niihau endemic species *Brighamia insignis.* This area is not essential for the conservation of this species because there are at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations throughout its historical range on Kauai and Niihau that contain a higher quality habitat and/or are on lands with a management mandate.

We excluded the proposed critical habitat for the multi-island species *Bonamia menziesii, Euphorbia haeleeleana,* and *Peucedanum sandwicense.* These areas are not essential for the conservation of these three species because there are at least 10 other locations that have been identified to meet the recovery goal of 8 to 10 populations of each species throughout their historical ranges on Kauai and other islands that contain a higher quality habitat and/or are on lands with a management mandate.

Modifications were made to this unit to exclude degraded areas not essential to the conservation of *Adenophorus periens, Alsinidendron lychnoides, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rivularis, Delissea undulata, Exocarpos luteolus, Hesperomannia lydgatei, Hibiscus waimeae* ssp. *hannerae, Isodendrion longifolium, Labordia lydgatei, Lobelia niihauensis, Myrsine linearifolia, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Remya montgomeryi,* and *Schiedea kauaiensis.*

The area designated as critical habitat provides habitat for six populations of *Alsinidendron lychnoides,* three populations each of *Cyanea recta* and *Cyanea remyi,* four populations of *Cyrtandra cyaneoides,* six populations of *Cyrtandra limahuliensis,* three populations of *Delissea rivularis,* four populations of *Exocarpos luteolus,* one population of *Hesperomannia lydgatei,* eight populations of *Hibiscus waimeae* ssp. *hannerae,* one population of *Labordia lydgatei,* four populations of *Remya montgomeryi,* and one population of *Schiedea kauaiensis* within the historical ranges of these Kauai endemic species.

The area designated as critical habitat provides habitat for one population each of *Adenophorus periens* and *Delissea undulata,* two populations of *Isodendrion longifolium,* five populations of *Lobelia niihauensis,* six populations of *Munroidendron racemosum,* one population of *Myrsine linearifolia,* three populations of *Phyllostegia wawrana,* one population of *Plantago princeps,* and four populations of *Platanthera holochila* within the historical ranges of these multi-island species.

These modifications resulted in the reduction from 5,536 ha (13,681 ac) to 2,026 ha (5,006 ac). This unit was renamed Kauai 11—*Adenophorus periens*—d, Kauai 11—*Alsinidendron lychnoides*—a, Kauai 11—*Cyanea recta*—d, Kauai 11—*Cyanea remyi*—d, Kauai 11—*Cyrtandra cyaneoides*—c, Kauai 10—*Cyrtandra limahuliensis*—c, Kauai 11—*Cyrtandra limahuliensis*—e, Kauai 11—*Delissea rivularis*—a, Kauai 11—*Delissea undulata*—a, Kauai 11—*Exocarpos luteolus*—b, Kauai 11—*Hesperomannia lydgatei*—c, Kauai 11—*Hibiscus waimeae* ssp. *hannerae*—a, Kauai 11—*Isodendrion longifolium*—e, Kauai 11—*Labordia lydgatei*—e, Kauai 11—*Lobelia niihauensis*—b, Kauai 11—*Munroidendron racemosum*—c, Kauai 11—*Myrsine linearifolia*—d, Kauai 11—*Phyllostegia wawrana*—b, Kauai 10—*Plantago princeps*—a, Kauai 11—*Platanthera holochila*—a, Kauai 10—*Pteralyxia kauaiensis*—b, Kauai 11—*Remya montgomeryi*—b, and Kauai 11—*Schiedea kauaiensis*—a.

Kauai K

This unit was proposed as critical habitat for 13 species: *Adenophorus periens, Alsinidendron lychnoides, Bonamia menziesii, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Myrsine linearifolia; Plantago princeps,* and *Schiedea membranacea.*

We excluded the proposed critical habitat for *Alsinidendron lychnoides,* and *Schiedea membranacea,* two Kauai endemic species, and for *Bonamia menziesii,* a multi-island species. These areas are not essential for the conservation of these three species because they are more degraded than other areas that have been designated to provide habitat for 8 to 10 populations throughout their historical ranges on Kauai (*Alsinidendron lychnoides* and *Schiedea membranacea*) or proposed on other islands (*Bonamia menziesii.*)

Modifications were made to this unit to exclude degraded areas not essential to the conservation of *Adenophorus periens, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Isodendrion longifolium,* or *Plantago princeps.* There are other areas that have been identified to meet the recovery goals of 8 to 10 populations of each species throughout their historical ranges on Kauai *(Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides,* and *Cyrtandra limahuliensis)* and other islands *(Adenophorus periens, Isodendrion longifolium* and *Plantago princeps).*

The area designated as critical habitat provides habitat for three populations of *Cyanea recta,* one population of *Cyanea remyi,* eight populations of *Cyrtandra cyaneoides,* two populations of *Cyrtandra limahuliensis,* four populations of *Hesperomannia lydgatei,* and one population each of *Labordia lydgatei* and *Myrsine linearifolia* within the historical ranges of these Kauai endemic species.

The area designated as critical habitat provides habitat for one population each of *Adenophorus periens, Isodendrion*

longifolium, and *Plantago princeps* within the historical ranges for these multi-island species.

These modifications resulted in the reduction from 1,752 ha (4,330 ac) to 1,667 ha (4,119 ac). This unit was renamed Kauai 11—*Adenophorus periens*—c, Kauai 11—*Cyanea recta*—c, Kauai 11—*Cyanea remyi*—c, Kauai 11—*Cyrtandra cyaneoides*—b, Kauai 11—*Cyrtandra cyaneoides*—c, Kauai 11—*Cyrtandra limahuliensis*—d, Kauai 11—*Hesperomannia lydgatei*—b, Kauai 11—*Isodendrion longifolium*—d, Kauai 11—*Labordia lydgatei*—c, Kauai 11—*Labordia lydgatei*—d, Kauai 11—*Myrsine linearifolia*—f, and Kauai 11—*Plantago princeps*—c.

Kauai L

This unit was proposed as critical habitat for 13 species: *Adenophorus periens, Bonamia menziesii, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Lysimachia filifolia, Myrsine linearifolia, Plantago princeps* and *Platanthera holochila*.

We excluded the proposed critical habitat for the Kauai endemic species *Hesperomannia lydgatei* and for the multi-island species *Bonamia menziesii, Lysimachia filifolia*, and *Platanthera holochila*. These areas are not essential for the conservation of these four species because they are highly degraded and are unlikely to be restored by the State or private landowners (Buck 2002). There are other locations that have been identified to meet the recovery goals of 8 to 10 populations throughout their historical ranges on Kauai *(Hesperomannia lydgatei)* or on other islands *(Bonamia menziesii, Lysimachia filifolia*, and *Platanthera holochila)*.

Modifications were made to this unit to exclude highly degraded areas not essential to the conservation of *Adenophorus periens, Cyanea recta, Cyanea remyi, Cyrtandra limahuliensis, Labordia lydgatei, Myrsine linearifolia*, or *Plantago princeps*. In addition, it is unlikely that the State or private landowners will restore these areas (Buck 2002). Other locations are being designated that will provide habitat for 8 to 10 populations of each species throughout their historical ranges on Kauai *(Cyanea recta, Cyanea remyi, Cyrtandra limahuliensis, Labordia lydgatei, Myrsine linearifolia)* and on other islands *(Adenophorus periens* and *Plantago princeps)*.

The area designated as critical habitat provides habitat for three populations of *Cyanea recta*, one population of *Cyanea remyi*, eight populations of *Cyrtandra cyaneoides*, six populations of *Cyrtandra limahuliensis*, one population of *Labordia lydgatei*, and one population each of *Myrsine linearifolia* and *Pteralyxia kauaiensis* within the historical ranges for these Kauai and Niihau endemic species.

The area designated as critical habitat provides habitat for one population each of *Adenophorus periens, Isodendrion longifolium*, and *Plantago princeps* within the historical ranges for these multi-island species.

These modifications resulted in the reduction from 3,407 ha (8,418 ac) to 240 ha (592 ac). This unit was renamed Kauai 11—*Adenophorus periens*—c, Kauai 11—*Cyanea recta*—c, Kauai 11—*Cyanea remyi*—c, Kauai 11—*Cyrtandra cyaneoides*—b, Kauai 11—*Cyrtandra cyaneoides*—c, Kauai 10—*Cyrtandra limahuliensis*—c, Kauai 11—*Cyrtandra limahuliensis*—d, Kauai 11—*Isodendrion longifolium*—d, Kauai 11—*Labordia lydgatei*—d, Kauai 11—*Myrsine linearifolia*—f, Kauai 10—*Plantago princeps*—a, Kauai 11—*Plantago princeps*—c, and Kauai 10—*Pteralyxia kauaiensis*—b.

Kauai M

This unit was proposed as critical habitat for nine species: *Adenophorus periens, Bonamia menziesii, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Labordia lydgatei*, and *Phyllostegia wawrana*.

We excluded the proposed critical habitat for the multi-island species *Bonamia menziesii*. This area is not essential for the conservation of this species because it is highly degraded and is unlikely to be restored by the State or private landowners (Buck 2002). There are at least 10 other locations that have been designated or proposed for *Bonamia menziesii* throughout its historical range on Kauai and on other islands.

Modifications were made to this unit to exclude highly degraded areas not essential to the conservation of *Adenophorus periens, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyrtandra limahuliensis, Labordia lydgatei*, and *Phyllostegia wawrana*. In addition, it is unlikely that the State or private landowners will restore these areas (Buck 2002). There are other locations that have been designated to meet the recovery goals of 8 to 10 populations of each species throughout their historical ranges on Kauai *(Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyrtandra limahuliensis, Labordia lydgatei*, and *Phyllostegia wawrana)* and proposed on other islands *(Adenophorus periens)*.

The area designated as critical habitat provides habitat for two populations of *Cyanea asarifolia*, four populations of *Cyanea recta*, two populations of *Cyanea remyi*, two populations each of *Cyrtandra cyaneoides* and *Cyrtandra limahuliensis*, five populations of *Hibiscus clayi*, and two populations each of *Labordia lydgatei* and *Phyllostegia wawrana* within the historical ranges for these Kauai endemic species.

The area designated as critical habitat for the multi-island species *Adenophorus periens* provides habitat within its historical range for one population.

These modifications resulted in the reduction from 3,302 ha (8,160 ac) to 1,040 ha (2,570 ac). This unit was renamed Kauai 4—*Adenophorus periens*—a, Kauai 4—*Cyanea asarifolia*—a, Kauai 4—*Cyanea recta*—a, Kauai 4—*Cyanea recta*—b, Kauai 4—*Cyanea remyi*—a, Kauai 4—*Cyrtandra cyaneoides*—a, Kauai 4—*Cyrtandra limahuliensis*—a, Kauai 4—*Cyrtandra limahuliensis*—b, Kauai 4—*Hibiscus clayi*—a, Kauai 4—*Hibiscus clayi*—b, Kauai 4—*Hibiscus clayi*—c, Kauai 4—*Hibiscus clayi*—d, Kauai 4—*Hibiscus clayi*—e, Kauai 4—*Labordia lydgatei*—a, and Kauai 4—*Phyllostegia wawrana*—a.

Kauai N

This unit was proposed as critical habitat for 23 species: *Adenophorus periens, Bonamia menziesii, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rivularis, Dubautia pauciflorula, Exocarpos luteolus, Hesperomannia lydgatei, Isodendrion longifolium, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lysimachia filifolia, Myrsine linearifolia, Phlegmariurus nutans, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Viola helenae*, and *Viola kauaiensis* var. *wahiawaensis*.

We excluded the proposed critical habitat for the Kauai endemic species *Cyanea recta, Cyrtandra cyaneoides, Delissea rivularis*, and *Phyllostegia wawrana*, and for the multi-island species *Platanthera holochila*. These areas are not essential to the conservation of these five species because they are highly degraded and are unlikely to be restored by the State or private landowners (Buck 2002). There are other locations that have been designated to meet the recovery goals of 8 to 10 populations of each species throughout their historical ranges on Kauai *(Cyanea recta, Cyrtandra cyaneoides, Delissea rivularis*, and *Phyllostegia wawrana)* or proposed on other islands *(Platanthera holochila)*.

Modifications were made to this unit to exclude highly degraded areas not essential to the conservation of *Adenophorus periens, Bonamia menziesii, Cyanea remyi, Cyrtandra limahuliensis, Isodendrion longifolium, Labordia lydgatei, Lysimachia filifolia*, and *Plantago princeps*. In addition, it is unlikely that the State or private landowners will restore these areas (Buck 2002). There are other locations that have been designated to meet the recovery goals of 8 to 10 populations of each species throughout their historical ranges on Kauai (*Cyanea remyi, Cyrtandra limahuliensis*, and *Labordia lydgatei*) or proposed on other islands (*Adenophorus periens, Bonamia menziesii, Isodendrion longifolium, Lysimachia filifolia*, and *Plantago princeps*).

The area designated as critical habitat provides for seven populations of *Cyanea asarifolia;* four populations of *Cyanea remyi;* six populations of *Cyanea undulata;* four populations each of *Cyrtandra limahuliensis* and *Dubautia pauciflorula;* one population of *Exocarpos luteolus;* four populations of *Hesperomannia lydgatei;* three populations of *Labordia lydgatei;* four populations of *Labordia tinifolia* var. *wahiawaensis;* one population each of *Myrsine linearifolia* and *Pteralyxia kauaiensis;* and five populations each of *Viola helenae* and *Viola kauaiensis* var. *wahiawaensis* within the historical ranges for these Kauai endemic species.

The area designated as critical habitat provides for one population each of *Adenophorus periens, Bonamia menziesii*, and *Isodendrion longifolium*, four populations of *Lysimachia filifolia*, three populations of *Phlegmariurus nutans*, and one population of *Plantago princeps* within the historical ranges for these multi-island species.

These modifications resulted in the reduction from 6,599 ha (16,307 ac) to 3,274 ha (8,090 ac). This unit was renamed Kauai 10—*Adenophorus periens*—b, Kauai 10—*Bonamia menziesii*—a, Kauai 10—*Cyanea asarifolia*—b, Kauai 10—*Cyanea remyi*—b, Kauai 10—*Cyanea undulata*—a, Kauai 10—*Cyrtandra limahuliensis*—c, Kauai 10—*Dubautia pauciflorula*—a, Kauai 10—*Exocarpos luteolus*—a, Kauai 10—*Hesperomannia lydgatei*—a, Kauai 10—*Isodendrion longifolium*—b, Kauai 10—*Labordia lydgatei*—b, Kauai 10—*Labordia tinifolia* var. *wahiawaensis*—a, Kauai 10—*Lysimachia filifolia*—a, Kauai 10—*Myrsine linearifolia*—b, Kauai 10—*Phlegmariurus nutans*—a, Kauai 10—*Plantago princeps*—a, Kauai 10—*Pteralyxia kauaiensis*—b, Kauai 10—*Viola helenae*—a, and Kauai 10—*Viola kauaiensis*—a.

Kauai O

This unit was proposed as critical habitat for 51 species: *Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Chamaesyce halemanui, Cyanea recta, Delissea rivularis, Diellia erecta, Diellia pallida, Diplazium molokaiensis, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Lipochaeta fauriei, Lipochaeta micrantha, Lobelia niihauensis, Mariscus pennatiformis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia waimeae, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Xylosma crenatum*, and *Zanthoxylum hawaiiense*.

We excluded the proposed critical habitat for the Kauai endemic species *Cyanea recta* and for the multi-island species *Adenophorus periens, Diplazium molokaiensis, Isodendrion longifolium, Mariscus pennatiformis, Peucedanum sandwicense*, and *Plantago princeps*. These areas are not essential for the conservation of these seven species because there are other locations that have been designated to meet the recovery goals of 8 to 10 populations of each species on Kauai *(Cyanea recta)* and proposed on other islands *(Adenophorus periens, Diplazium molokaiensis, Isodendrion longifolium, Mariscus pennatiformis, Peucedanum sandwicense*, and *Plantago princeps)* that either contain higher quality habitat or have a management mandate.

Modifications were made to this unit to exclude degraded areas not essential to the conservation of *Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Chamaesyce halemanui, Delissea rivularis, Diellia erecta, Diellia pallida, Dubautia latifolia, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Isodendrion laurifolium, Kokia kauaiensis, Lipochaeta fauriei, Lipochaeta micrantha, Lobelia niihauensis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Phyllostegia knudsenii, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea helleri, Schiedea membranacea, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Solanum sandwicense, Spermolepis hawaiiensis, Xylosma crenatum, Zanthoxylum hawaiiense*.

The area designated as critical habitat provides for ten populations of *Alsinidendron lychnoides*, nine populations of *Alsinidendron viscosum*, two populations of *Chamaesyce halemanui*, three populations of *Delissea rivularis*, one population of *Diellia pallida*, seven populations of *Dubautia latifolia*, eight populations of *Exocarpos luteolus*, three populations of *Kokia kauaiensis*, two populations each of *Lipochaeta fauriei, Lipochaeta micrantha, Melicope haupuensis*, and *Munroidendron racemosum*, five populations of *Myrsine linearifolia*, nine populations of *Nothocestrum peltatum*, three populations of *Phyllostegia waimeae*, two populations of *Phyllostegia wawrana*, three populations of *Poa mannii*, six populations of *Poa sandvicensis*, ten populations of *Poa siphonoglossa*, two populations of *Pteralyxia kauaiensis*, four populations of *Remya kauaiensis*, six populations of *Remya montgomeryi*, seven populations of *Schiedea helleri*, two populations each of *Schiedea kauaiense, Schiedea membranacea*, and *Schiedea spergulina* var. *spergulina*, six populations of *Schiedea stellarioides*, three populations of *Stenogyne campanulata*, and five populations of *Xylosma crenatum* within the historical ranges for these Kauai endemic species.

The area designated as critical habitat provides for one population each of *Alectryon macrococcus, Bonamia menziesii*, and *Diellia erecta*, two populations of *Euphorbia haeleeleana*, one population of *Flueggea neowawraea*, two populations each of *Gouania meyenii, Isodendrion laurifolium, Lobelia niihauensis*, and *Melicope knudsenii*, one population of *Melicope pallida*, four populations of *Platanthera holochila*, six populations of *Solanum sandwicense*, one population of *Spermolepis hawaiiensis*, and two populations of *Zanthoxylum*

hawaiiense within the historical range for these multi-island species.

These modifications resulted in the reduction from 9,462 ha (23,382 ac) to 5,933 ha (14,661 ac). This unit was renamed Kauai 11—*Alectryon macroccus*—a, Kauai 11—*Alsinidendron lychnoides*—a, Kauai 11—*Alsinidendron lychnoides*—b, Kauai 11—*Alsinidendron lychnoides*—c, Kauai 11—*Alsinidendron viscosum*—a, Kauai 11—*Alsinidendron viscosum*—b, Kauai 11—*Alsinidendron viscosum*—c, Kauai 11—*Alsinidendron viscosum*—d, Kauai 11—*Bonamia menziesii*—b, Kauai 11—*Chamaesyce halemanui*—a, Kauai 11—*Chamaesyce halemanui*—b, Kauai 11—*Delissea rivularis*—a, Kauai 11—*Diellia erecta*—a, Kauai 11—*Diellia pallida*—b, Kauai 11—*Dubautia latifolia*—a, Kauai 11—*Dubautia latifolia*—b, Kauai 11—*Dubautia latifolia*—c, Kauai 11—*Euphorbia haeleeleana*—c, Kauai 11—*Exocarpos luteolus*—b, Kauai 11—*Exocarpos luteolus*—d, Kauai 11—*Exocarpos luteolus*—e, Kauai 11—*Flueggea neowawraea*—c, Kauai 11—*Gouania meyenii*—c, Kauai 11—*Isodendrion laurifolium*—b, Kauai 11—*Kokia kauaiensis*—a, Kauai 11—*Lipochaeta fauriei*—a, Kauai 11—*Lipochaeta micrantha*—b, Kauai 11—*Lobelia niihauensis*—a, Kauai 11—*Melicope haupuensis*—c, Kauai 11—*Melicope knudsenii*—b, Kauai 11—*Melicope pallida*—a, Kauai 11—*Munroidendron racemosum*—d, Kauai 11—*Myrsine linearifolia*—c, Kauai 11—*Myrsine linearifolia*—e, Kauai 11—*Nothocestrum peltatum*—a, Kauai 11—*Nothocestrum peltatum*—b, Kauai 11—*Nothocestrum peltatum*—c, Kauai 12—*Nothocestrum peltatum*—d, Kauai 11—*Phyllostegia knudsenii*—a, Kauai 11—*Phyllostegia waimeae*—a, Kauai 11—*Phyllostegia waimeae*—b, Kauai 11—*Phyllostegia wawrana*—c, Kauai 11—*Platanthera holochila*—a, Kauai 11—*Poa mannii*—b, Kauai 11—*Poa sandvicensis*—a, Kauai 11—*Poa siphonoglossa*—a, Kauai 11—*Poa siphonoglossa*—b, Kauai 11—*Pteralyxia kauaiensis*—f, Kauai 11—*Remya kauaiensis*—a, Kauai 11—*Remya kauaiensis*—d, Kauai 11—*Remya kauaiensis*—e, Kauai 12—*Remya kauaiensis*—f, Kauai 11—*Remya montgomeryi*—b, Kauai 11—*Remya montgomeryi*—c, Kauai 11—*Schiedea helleri*—a, Kauai 11—*Schiedea helleri*—b, Kauai 11—*Schiedea helleri*—c, Kauai 11—*Schiedea kauaiensis*—b, Kauai 11—*Schiedea membranacea*—a, Kauai 11—*Schiedea spergulina* var. *spergulina*—b, Kauai 11—*Schiedea stellarioides*—a, Kauai 11—*Schiedea stellarioides*—b, Kauai 11—*Solanum sandwicense*—a, Kauai 11—*Solanum sandwicense*—b, Kauai 11—*Spermolepis hawaiiensis*—a, Kauai 11—*Stenogyne campanulata*—a, Kauai 11—*Xylosma crenatum*—a, Kauai 12—*Xylosma crenatum*—b, and Kauai 11—*Zanthoxylum hawaiiense*—a.

Niihau A

This unit was proposed as critical habitat for two species, *Brighamia insignis* and *Cyperus trachysanthos*. We excluded the proposed critical habitat for the multi-island species *Cyperus trachysanthos*. This area is not essential for the conservation of *Cyperus trachysanthos* because it is more degraded than other areas and is not managed for the conservation of this species, and there are at least 10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on Kauai and proposed on other islands.

The area designated as critical habitat for the Kauai and Niihau endemic species *Brighamia insignis* provides habitat within its historical range for one population.

This modification resulted in the reduction from 282 ha (697 ac) to 144 ha (357 ac). This unit was renamed Niihau 1—*Brighamia insignis*—a.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." The relationship between a species survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding a not prudent finding the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic areas occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have some of the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be

included in the critical habitat designation.

Our regulations State that "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species.

A. Prudency

Designation of critical habitat is not prudent when one or both of the following situations exist: (i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species in accordance with the court's order. Two species, *Acaena exigua*, a multi-island species, and *Melicope quadrangularis*, a Kauai endemic species, are no longer extant in the wild. *Acaena exigua* was last seen in 2000 and no individuals were seen in a subsequent visit in 2001 to the last known location (Oppenhiemer, pers. comm. 2002). *Melicope quadrangularis* was last observed in the Wahiawa drainage area in 1991. This species has not been seen in surveys of this area subsequent to Hurricane Iniki in 1992 (S. Perlman and K. Wood, pers. comm. 2000). In addition, neither species is known to be in storage or under propagation. Under these circumstances, designation of critical habitat for *Acaena exigua* and *Melicope quadrangularis* is not prudent because such designation would be of no benefit to these species. If either species is relocated we may revise this final determination to incorporate or address new information as new data becomes available (*See* 16 U.S.C. 1532 (5)(B); 50 CFR 424.13(f)).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 93 plants may be vulnerable to unrestricted collection, vandalism, or disturbance. We examined the evidence currently available for each of these taxa and found specific evidence of vandalism, disturbance, and/or the threat of unrestricted collection for three species of *Pritchardia*, the native palm, on Kauai and Niihau. At the time of listing we determined that designation of critical habitat was not prudent for *Pritchardia napaliensis*, *P. aylmer-robinsonii*, and *P. viscosa* because it would increase the degree of threat from vandalism or collecting, and would provide no benefits (60 FR 53070). At that time, we had information that at least one of the remaining adult plants has been damaged by spiked boots used either by a botanist or seed collector to scale these trees (61 FR 53070). Since publication of the listing rule, we learned of additional instances of vandalism, collection, and commercial trade involving these three species of *Pritchardia*. In 1993, the State's DOFAW planted 39 young *Pritchardia napaliensis* plants within a fenced exclosure near the Wailua River. A short time after this, the fence was vandalized and all 39 plants were removed (A. Kyono, pers. comm. 2000; Craig Koga, DOFAW, *in litt.* 1999). In mid-1996, a young plant and seeds of *Pritchardia viscosa* were removed from the only known location of this species (A. Kyono, pers. comm. 2000; C. Koga, *in litt.* 1999). Recently we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, USFWS, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia*. Seven of these species are federally protected, including *Pritchardia aylmer-robinsonii* and *P. napaliensis*.

In light of this information, we believe that designation of critical habitat would likely increase the threat to these three species of *Pritchardia* on Kauai and Niihau from vandalism or collection. These plants are easy to identify, and they are attractive to collectors of rare palms either for their personal use or to trade or sell for personal gain (Johnson 1996). The final listing rules for these three species contained only general information on their distribution, but the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these species more vulnerable to incidents of vandalism or collection, and, therefore, contribute to the decline of these species and make recovery more difficult (61 FR 53070).

In addition, we believe that designation would not provide significant benefits that would outweigh these increased risks. First, *Pritchardia napaliensis* and *P. viscosa* do not occur on Federal land, and the State lands where they are found are zoned for conservation. Some of the plants are on lands set aside in perpetuity to conserve their natural flora and fauna, or as geological sites (State of Hawaii natural area reserves) (HRS 195–1). In addition, these species are found in areas that are remote and accessible only by four-wheel drive (*Pritchardia viscosa* only), foot, boat, or helicopter. It is, therefore, unlikely that the lands on which these

species are found will be developed. Since there do not appear to be any actions in the future that would involve a Federal agency, designation of critical habitat would not provide any additional protection to the species than they do not already have through listing alone. If, however, in the future any Federal involvement did occur, such as through the permitting process or funding by the U.S. Department of Agriculture, the U.S. Department of Interior, the Corps through section 404 of the Clean Water Act, the U.S. Federal Department of Housing and Urban Development or the Federal Highway Administration, the actions would be subject to consultation under section 7 of the Act.

Pritchardia aylmer-robinsonii is only found on Niihau, which is presently zoned for agriculture. There are no hotels, resorts, or other commercial development on the island. Public access to the island is not generally authorized by the landowner. Most of the people living on this island (fewer than 300) are employed in ranching activities (Department of Geography 1998). While future activities on the island are unknown, it is unlikely that the land on which this species is found will be developed. Future projects that would require Federal permitting or funding such as those mentioned above are particularly unlikely on this privately owned island. Although access to the island has been and continues to be restricted, *P. aylmer-robinsonii* is endemic only to Niihau, so any commercial availability indicates that collection, either with or without the land owner's permission, has occurred in the past and may still be occurring.

We acknowledge that critical habitat designation, in some situations, may provide some value to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. However, for these three species, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection. Given all of the above considerations, we determine that designation of critical habitat for *Pritchardia aylmer-robinsonii*, *P. napaliensis*, and *P. viscosa* is not prudent.

On January 9, 2003, we found that critical habitat was prudent for the following 15 multi-island species: *Adenophorus periens, Bonamia menziesii, Centaurium sebaeoides, Ctenitis squamigera, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Hibiscus brackenridgei, Isodendrion pyrifolium, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Vigna o-wahuensis* and *Zanthoxylum hawaiiense* (68 FR 1220), which also occur on Kauai or Niihau.

Four species no longer occur on Kauai or Niihau but are reported from one or more other islands. To find whether critical habitat would be prudent for these four species we analyzed the potential threats and benefits for each species in accordance with the court's orders. These four plants were listed as endangered species under the Act between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We examined the evidence available for these four species and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Achyranthes mutica, Mariscus pennatiformis, Phlegmariurus manni,* and *Phlegmariurus nutans* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i) and the court's discussion of these regulations, we do not find that these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include (1) triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of *Achyranthes mutica, Mariscus pennatiformis, Phlegmariurus manni,* and *Phlegmariurus nutans* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. None of these four species are reported from Federal lands on Kauai (the entire island of Niihau is privately owned) where actions are subject to section 7 consultation. However, two of these species, *Phlegmariurus manni,* and *Phlegmariurus nutans* are reported from Federal lands or lands that are administered by a Federal agency on other islands (*Phlegmariurus nutans* is reported from the United States Army's Schofield Barracks Military Reservation and Kawailoa Training Area, and the Service's Oahu Forest National Wildlife Refuge on Oahu, and *Phlegmariurus manni* is reported from Haleakala National Park on Maui). Although *Achyranthes mutica* and *Mariscus pennatiformis* are located exclusively on non-Federal lands with limited Federal activities on Oahu and Maui, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by *Achyranthes mutica, Mariscus pennatiformis, Phlegmariurus manni,* and *Phlegmariurus nutans* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements. Therefore, we find that critical habitat is prudent for these four species (*Achyranthes mutica, Mariscus pennatiformis, Phlegmariurus manni,* and *Phlegmariurus nutans*).

We examined the evidence available for the other 71 taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten these 71 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied; (2) focusing conservation activities; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of these 71 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. One of these species is reported on or near Federal lands (see Table 2), where actions are subject to section 7 consultation. Although a majority of the species considered in this rule are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There would also be some educational or informational benefits to the designation of critical habitat. Benefits of designation would include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, designation of critical habitat is prudent for these 71 plant species: *Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Brighamia insignis, Chamaesyce halemanui, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia pallida, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Ischaemum byrone, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia waimeae, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Solanum sandwicense, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense.*

B. Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Ctenitis squamigera, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia erecta, Diellia pallida, Diplazium molokaiense, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Ischaemum byrone, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia knudsenii, Phyllostegia waimeae, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense.* This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC's) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, landownership); the final listing rules for these 83 species; the November 7, 2000, proposal; the January 28, 2002, revised proposal; information received during the public comment periods and the public hearings; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information that we sent to all landowners, land managers, and interested parties on the islands of Kauai and Niihau; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; 65 FR 66808; 67 FR 3940; CPC *in litt.* 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects that there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated

species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the 83 listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of Adenophorus periens, *Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Ctenitis squamigera, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia erecta, Diellia pallida, Diplazium molokaiense, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Ischaemum byrone, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia knudsenii, Phyllostegia waimeae, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense* is described in the "Background" section of this final rule.

We are unable to identify these features for *Achyranthes mutica, Hibiscus brackenridgei, Isodendrion pyrifolium, Phlegmariurus mannii, Silene lanceolata, Solanum incompletum,* and *Vigna o-wahuensis,* which no longer occur on the islands of Kauai or Niihau, because information on the physical and biological features (*i.e.*, the primary constituent elements) that are considered essential to the conservation of these seven species is not known.

All areas designated as critical habitat are within the historical range of the 83 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

As described in the discussions for each of the 83 species for which we are designating critical habitat, we are defining the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community (*e.g.*, mesic *Metrosideros polymorpha forest*), associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, gulches, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicate specific microclimate (localized climatic) conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the *"Supplementary Information: Discussion of Plant Taxa"* section above, constitute the primary constituent elements for these species on the islands of Kauai and Niihau.

D. Criteria Used To Identify Critical Habitat

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis (National Research Council 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion, to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 83 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes: (1) Stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species biology and ecology (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing individuals per population for annuals. There are some specific exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed on a single island and the proposed critical habitat designations reflect this exception for these species. For example, the recovery goals for *Cyanea undulata, Dubautia pauciflorula, Hesperomannia lydgatei, Labordia lydgatei,* and *Viola helenae* are five populations for each species with 250 individuals in each population. The numbers of individuals and populations for these five species are based on our current understanding of these species and our current understanding of the unique biological characteristics of Wahiawa Bog. These numbers should provide for the maintenance of the majority of the genetic diversity of each species, and assurances that a single catastrophic event will not destroy all members of a species (Service 1994). To be considered recovered, the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by same small-scale events (such as landslides), and which contains a minimum of 100, 300, or 500 mature, reproducing individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes, or tsunamis, that could destroy a large percentage of a species at any one time may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Menges 1990; Murphy *et al.* 1990; Podolsky 2001; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life-history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

Many aspects of species life history are typically considered to determine guidelines for species' interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed longevity, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.*, long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature, reproducing individuals per population for long-lived perennial species, 300 mature, reproducing individuals per population for short-lived perennial species, and 500 mature, reproducing individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of population variability analysis models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species—(1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in several critical habitat units, the threats represented by a fluctuating environment are alleviated, and the species has a greater likelihood of achieving long-term survival and recovery. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of nonnative plants and animals. Establishing and conserving 8 to 10 viable populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes that occurred in 1982 and 1992 on Kauai, fires, and nonnative plant invasions (HPPRCC 1994; Luijten

et al. 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery of Hawaiian plant species requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes, fire, and nonnative species introductions) (Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992).

In this rule, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of the 83 plant species.

Our approach to delineating critical habitat units was applied in the following manner:

1. Critical habitat was proposed and will be designated on an island by island basis for ease of understanding for landowners and the public, for ease of conducting the public hearing process, and for ease of conducting public outreach. In Hawaii, landowners and the public are most interested and affected by issues centered on the island on which they reside.

2. We focused on designating units representative of the known current and historical geographic and elevational range of each species; and

3. We designated critical habitat units to allow for expansion of existing wild populations and reestablishment of wild populations within the historic range, as recommended by the recovery plans for each species.

The proposed critical habitat units were delineated by creating rough units for each species by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. We created polygons by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

We then evaluated the resulting shape files (delineating historic elevational range and potential, suitable habitat). We refined elevation ranges, and we avoided land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements). We then considered the resulting shape files for each species to define all suitable habitat on the island, including occupied and unoccupied habitat.

We further evaluated these shape files of suitable habitat. We used several factors to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the suitable habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were designated as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,280 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; Schierup and Christiansen 1996). We further refined the resulting critical habitat units by using satellite imagery and parcel data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of one or more of the 83 plant species for which critical habitat was proposed on January 28, 2002. We used geographic features (ridge lines, valleys, streams, coastlines, etc.) or manmade features (roads or obvious land use) that created an obvious boundary for a unit as unit area boundaries.

Following publication of the proposed critical habitat rules, some of which were revised, for 255 Hawaiian plants (67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108), we re-evaluated proposed critical habitat, State-wide, for each species using the recovery guidelines (8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing individuals per population for annuals) to determine if we had inadvertently proposed for designation too much or too little habitat to meet the essential recovery goals of 8 to 10 populations per species distributed among the islands of the species' known historic range (HINHP Database 2000, 2001; Wagner *et al.* 1990, 1999). Based on comments and information we received during the comment periods, we assessed the proposed critical habitat in order to ascertain which areas contained the highest quality habitat and had the highest likelihood of conserving the species. We ranked areas of the proposed critical habitat by the quality of the primary constituent elements (*i.e.*, intact native plant communities, predominance of associated native plants versus nonnative plants), potential as a conservation area (*i.e.*, whether the land is zoned conservation and; whether the landowner is already participating in plant conservation or recovery actions), and current or expected management of known threats (*e.g.*, ungulate control; weed control; nonnative insect, slug, and snail control). We ranked as most essential areas that contain high quality primary constituent elements, are zoned for conservation, and have on-going or expected threat abatement actions. This ranking process also included determining which habitats were representative of the historic geographical and ecological distributions of the species (see "Primary Constituent Elements"). Areas that are zoned for conservation or have been identified as a State Forest Reserve, NAR, Wildlife Preserve, State Park, or are managed for conservation by a private landowner have a high likelihood of providing conservation benefit to the species and are therefore more essential than other comparable habitat outside of those types of areas. Of these most essential areas, we selected adequate area for our recovery goals of 8 to 10 populations distributed among the islands of each species' historical range. Of the proposed critical habitat for a species, areas that were not ranked most essential and that may provide habitat for populations above the recovery goal of 8 to 10 were determined not essential for the conservation of the species and were excluded from the final designation. An area that is covered by a plan that meets the criteria as outlined in "Managed Lands" (provides a conservation benefit to the species and assurances that it will be implemented and effective), does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management considerations or protection (section 3(5)(a) of the Act).

Within the critical habitat boundaries, section 7 consultation is generally necessary and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In selecting areas of designated critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the 83 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas from the maps. In addition, existing manmade features and structures within the boundaries of the mapped unit, such as buildings; roads; aqueducts and other water system features—including, but not limited to, pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; telecommunications towers and associated structures and equipment; electrical power transmission lines and distribution, and communication facilities and regularly maintained associated rights-of-way and access ways; radars; telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; lawns and other rural residential landscaped areas do not contain one or more of the primary constituent elements and are therefore excluded under the terms of this regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, for these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing essential occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the habitat necessary on Kauai and Niihau to provide for the recovery of these 83 species.

Managed Lands

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 83 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, we contacted the major private landowners on Kauai and Niihau by mail, and we met with several landowners between the publication of the revised proposal on January 28, 2002, and the end of the comment period on September 30, 2002, to discuss their current management for the plants on their lands. We also met with Kauai District DOFAW and State Parks office staff to discuss management activities they are conducting on Kauai. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearings.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections." Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and have adequate funding for the management plan); and, (3) provides assurances that the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining whether a management plan or agreement provides a conservation benefit to the species, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive nonnative plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Cuddihy and Stone 1990; Howarth 1985; Loope 1998; Scott *et al.* 1986; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; Smith 1985; Stone 1985; Vitousek 1992; Wagner *et al.* 1985).

Current threats to these species include nonnative grass- and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including deer, goats, cattle, and pigs); direct and indirect effects of nonnative plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and nonnative insect pollinators for food, and predation of native insect pollinators by nonnative hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be negatively affected by fruit- and flower-eating pests such as nonnative arthropods, molluscs, and rats, and photosynthesis and water transport are affected by nonnative insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include nonnative plant invasions altering wildfire regimes, feral ungulates carrying weeds and disturbing vegetation and soils, thereby facilitating dispersal and establishment of nonnative plants, and numerous nonnative insect species feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease

(Bruegmann *et al.* 2001; Cuddihy and Stone 1990; D'Antonio and Vitousek 1992; Howarth 1985; Mack 1992; Scott *et al.* 1986; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; Smith 1985; Tunison *et al.* 1992);

(2) The recommendations from the HPPRCC in their 1998 report to us ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of nonnative species threats, wildfire, and land use changes; and

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 83 species (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999), in the 1998 HPPRCC report to us, and in various other documents and publications relating to plant conservation in Hawaii (Cuddihy and Stone 1990; Mueller-Dombois 1985; Smith 1985; Stone 1985; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plant species; (7) propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are important: Feral ungulate control; wildfire management; nonnative plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access (Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999). On a case-by-case basis, these actions may rise to different levels of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants.

As shown in Table 2, the 83 species of plants are found on Federal, State, and private lands on the islands of Kauai and Niihau. Information received in response to our public notices; meetings with landowners of Kauai County and Kauai District DOFAW staff; the November 7, 2000, and January 28, 2002, proposals; public comment periods; and the February 6, 2001, and February 13, 2002, public hearings; as well as information in our files, indicated that there is limited on-going conservation management action for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the land in question does not require special management or protection.

Federal Lands

The Pacific Missile Range Facility (PMRF) at Barking Sands on Kauai's west side is on federally owned or State-leased lands administered by the Navy for instrumented and multi-environment weapon testing and tracking. *Sesbania tomentosa* and *Panicum niihauense* are reported from the dunes on State lands adjacent to the Barking Sands Facility at Polihale State Park. The dune system extends from Polihale State Park through the PMRF to State-owned lands at Kekaha, and may be one of the best intact coastal dune systems remaining on the main Hawaiian Islands. We evaluated the dune habitat at the Barking Sands Facility for *Sesbania tomentosa* and *Panicum niihauense*, (proposed Unit H), as well as the habitat on Navy lands at Makaha Ridge for *Wilkesia hobdyi* (proposed Unit I), and determined that these lands are not essential for the conservation of *Sesbania tomentosa* or *Wilkesia hobdyi*, although they are essential for *Panicum niihauense*. The Navy completed an Integrated Natural Resources Management Plan (INRMP 2001) that addressed some of the issues concerning maintenance and improvement of the essential elements for listed threatened and endangered species on their lands at PMRF and Makaha Ridge. In 2001, we sent a letter pursuant to section 7 of the Act concurring that the actions in the plan would not have an adverse impact on listed threatened or endangered species, but that the plan did not address the specific needs of *Panicum niihauense*.

Management at the Barking Sands Facility lands currently consists of restricting human access and off-road vehicles from the dune ecosystems and mowing landscaped areas. These actions alone are not sufficient to address the factors inhibiting the long-term conservation of *Panicum niihauense*. Therefore, we cannot at this time find that management on these lands under Federal jurisdiction as sufficient to find that they no longer meet the definition of critical habitat. If the Navy revises and implements an INRMP or other endangered species management plans that address the maintenance and improvement of the essential elements for this plant species and provides for its long-term conservation, we will reassess the critical habitat boundaries in light of these management plans.

State of Hawaii Lands

The State lands on the island of Kauai include ceded and leased lands, and those that are administered by the Department of Land and Natural Resources (DLNR). DLNR lands include State Parks, administered by the State Division of State Parks; and Forest Reserves, NARs, and the Alakai Wilderness Preserve, administered by the DOFAW. The DLNR also manages DHHL lands on the island of Kauai. We determined that habitat that is essential to the conservation of the following 78 of the 83 federally threatened or endangered plant species is found on State lands: *Adenophorus periens*, *Alectryon macrococcus*, *Alsinidendron lychnoides*, *Alsinidendron viscosum*, *Bonamia menziesii*, *Brighamia insignis*, *Centaurium sebaeoides*, *Chamaesyce halemanui*, *Ctenitis squamigera*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyperus trachysanthos*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperma*, *Delissea rivularis*, *Delissea undulata*, *Diellia erecta*, *Diellia pallida*, *Diplazium molokaiense*, *Dubautia latifolia*, *Dubautia pauciflorula*, *Euphorbia haeleeleana*, *Exocarpos luteolus*, *Flueggea neowawraea*, *Gouania meyenii*, *Hedyotis cookiana*, *Hedyotis st.-johnii*, *Hesperomannia lydgatei*, *Hibiscadelphus woodii*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendrion laurifolium*, *Isodendrion longifolium*, *Kokia kauaiensis*, *Labordia lydgatei*, *Lipochaeta fauriei*, *Lipochaeta micrantha*, *Lipochaeta waimeaensis*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Mariscus pennatiformis*, *Melicope haupuensis*, *Melicope knudsenii*, *Melicope pallida*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Nothocestrum peltatum*, *Panicum niihauense*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia waimeae*, *Plantago princeps*, *Platanthera holochila*, *Poa mannii*, *Poa sandvicensis*, *Poa siphonoglossa*, *Pteralyxia kauaiensis*, *Remya kauaiensis*, *Remya montgomeryi*, *Schiedea apokremnos*, *Schiedea helleri*, *Schiedea kauaiensis*, *Schiedea membranacea*, *Schiedea spergulina* var. *spergulina*, *Schiedea stellarioides*, *Sesbania tomentosa*, *Solanum sandwicense*, *Spermolepis hawaiiensis*, *Stenogyne campanulata*, *Viola helenae*, *Viola kauaiensis* var. *wahiawaensis*, *Wilkesia hobdyi*, *Xylosma crenatum*, and *Zanthoxylum hawaiiense*.

Although the State conducts some conservation management actions on these lands and provides access to others who are conducting such activities, these programs do not adequately address the threats to these listed plant species on their lands. In addition, there are no comprehensive management plans for the long-term conservation of endangered and threatened plants on these lands, no updated detailed reports on management actions conducted, and no assurances that management actions will be implemented. Therefore, we cannot at this time find that management on these State lands is sufficient to find that they do not meet the definition of critical habitat. However, we will work with the State in developing conservation planning efforts.

Private Lands

We determined that habitat that is essential to the conservation of 38 of the 83 federally listed plant species is found on privately owned lands on Kauai and Niihau: *Adenophorus periens*, *Alsinidendron lychnoides*, *Bonamia menziesii*, *Brighamia insignis*, *Cyanea asarifolia*, *Cyanea recta*, *Cyanea remyi*, *Cyanea undulata*, *Cyrtandra cyaneoides*, *Cyrtandra limahuliensis*, *Delissea rhytidosperma*, *Delissea undulata*, *Dubautia pauciflorula*, *Exocarpos luteolus*, *Hesperomannia lydgatei*, *Hibiscus clayi*, *Hibiscus waimeae* ssp. *hannerae*, *Ischaemum byrone*, *Isodendrion longifolium*, *Labordia lydgatei*, *Labordia tinifolia* var. *wahiawaensis*, *Lipochaeta micrantha*, *Lobelia niihauensis*, *Lysimachia filifolia*, *Melicope haupuensis*, *Munroidendron racemosum*, *Myrsine linearifolia*, *Peucedanum sandwicense*, *Phlegmariurus nutans*, *Phyllostegia wawrana*, *Plantago princeps*, *Platanthera holochila*, *Pteralyxia kauaiensis*, *Schiedea nuttallii*, *Schiedea spergulina* var. *leiopoda*, *Sesbania tomentosa*, *Viola helenae*, and *Viola kauaiensis* var. *wahiawaensis*.

Based on current information, the main activities being conducted by several of these landowners are weeding, control of human access, and planting of native species. In addition, responses and comments we received during the three comment periods and the public hearings, and new information used in preparing this final rule, did not adequately address the threats to these listed plant species on private lands on Kauai and Niihau. In addition, none of the private landowners are implementing management actions which would exclude them from critical habitat under 3(5)(A). If the private landowner is managing their lands that address the maintenance and improvement of the essential elements for these plant species and provide for their long-term conservation, we will reassess the critical habitat boundaries in light of this new information.

The critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the 83 plant species and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We publish this final rule acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

The approximate areas of the designated critical habitat by landownership or jurisdiction are shown in Table 4.

Critical habitat includes habitat for these 83 species primarily in the upland portions of Kauai, and for one species in the northern portion of Niihau. Lands designated as critical habitat have been divided into a total of 217 units. A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Kauai 4—*Adenophorus periens*—a

This unit is critical habitat for *Adenophorus periens* and is 237 ha (585 ac) on State (Alakai Wilderness Preserve and Kealia, and Moloaa Forest Reserves) and private land. The unit contains a portion of Waioli and Limahuli Valleys, Ke Ana Kolea and Kahili, Kekoiki, Leleiwi, Mount Namahana, and Puu Eu Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Adenophorus periens* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* trunks, in riparian banks of stream systems in well-developed, closed, shady canopy. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations on the island from being destroyed by one naturally occurring catastrophic event.

Kauai 10—*Adenophorus periens*—b

This unit is critical habitat for *Adenophorus periens* and is 492 ha (1,215 ac) on State (Lihue-Koloa Forest Reserve) and private land. The unit contains a portion of Kalalau Valley, Limahuli Valley, Kanaele Swamp, and Hulua, Kahili, and Kapalaoa Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Adenophorus periens* and is currently occupied with 50 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* trunks, in riparian banks of stream systems in well-developed, closed, shady canopy. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations on the island from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Adenophorus periens*—c

This unit is critical habitat for *Adenophorus periens* and is 469 ha (1,160 ac) on State (Halelea Forest Reserve) and private land. The unit contains a portion of Kalalau and

Limahuli Valleys, Waiopa, and Kaliko, Namolokama Mountain, and Puu Manu Summits, and. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Adenophorus periens* and is currently occupied with two plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* trunks, in riparian banks of stream systems in well-developed, closed, shady canopy. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations on the island from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Adenophorus periens*—d

This unit is critical habitat for *Adenophorus periens* and is 1,007 ha (2,487 ac) on State (Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park) and private land. The unit contains a portion of Kalalau and Limahuli Valleys, and Hono o Na Pali, Keanapuka, Moaalele, Pali Eleele, and Pihea Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Adenophorus periens* and is currently occupied with six plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* trunks, in riparian banks of stream systems in well-developed, closed, shady canopy. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations on the island from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Alectryon macrococcus*—a

This unit is critical habitat for *Alectryon macrococcus* and is 382 ha (943 ac) on State land (Alakai Wilderness Preserve). This unit contains portions of Kawaiiki and Kipalau Valleys. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Alectryon macrococcus* and is currently occupied with between 123 and 133 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry slopes or gulches in *Diospyros* spp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* spp. mixed mesic forest. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations on the island from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Alectryon macrococcus*—b

This unit is critical habitat for *Alectryon macrococcus* and is 90 ha (222 ac) on State land (Na Pali Coast State Park) and is completely within the back of Kalalau Valley. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry slopes or gulches in *Diospyros* spp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* spp. mixed mesic forest. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Alectryon macrococcus* and is currently occupied with between 35 and 40 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. Critical habitat on this island provides for a recovery population within the historical range of this multi-island species.

Kauai 11—*Alsinidendron lychnoides*—a

This unit is critical habitat for *Alsinidendron lychnoides* and is 994 ha (2,457 ac) on State (Alakai Wilderness Preserve, Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park) and private land. This unit contains portions of the Alakai Trail and Alealau, Hono o Na Pali, Keanapuka, Moaalele, Pihea, Pohakea, and Waiahuakua Summits. This unit provides habitat for six populations of 100 mature, reproducing individuals of the long-lived perennial *Alsinidendron lychnoides* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep riparian clay or silty soil banks in montane wet forests, and is the area most likely to contain a viable seed bank on this side of the island. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Alsinidendron lychnoides*—b

This unit is critical habitat for *Alsinidendron lychnoides* and is 138 ha (340 ac) on State land (Alakai Wilderness Preserve) and contains a portion of the Mohihi-Waialae Trail and the Alakai Swamp. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Alsinidendron lychnoides* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep riparian clay or silty soil banks in montane wet forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Alsinidendron lychnoides*—c

This unit is critical habitat for *Alsinidendron lychnoides* and is 55 ha (136 ac) on State land (Alakai Wilderness Preserve) and contains a portion of the Mohihi Waialai Trail, Mohihi Stream and the Alakai Swamp. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Alsinidendron lychnoides* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep riparian clay or silty soil banks in montane wet forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Alsinidendron viscosum*—a

This unit is critical habitat for *Alsinidendron viscosum* and is 736 ha (1,820 ac) on State land (Alakai Wilderness Preserve). This unit contains portions of Kaluahaulu and Kawaiiki Ridge. This unit provides habitat for seven populations of 300 mature, reproducing individuals of the short-lived perennial *Alsinidendron viscosum* and is currently occupied with 26 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Alsinidendron viscosum*—b

This unit is critical habitat for *Alsinidendron viscosum* and is 17 ha (42 ac) on State land (Kokee State Park) and contains a portion of Kumuela Ridge. This unit, in combination with *Alsinidendron viscosum*—c, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Alsinidendron viscosum* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Alsinidendron viscosum*—c

This unit is critical habitat for *Alsinidendron viscosum* and is 22 ha (55 ac) on State land (Kokee State Park) and contains a portion of Kauaikinana Stream and Kumuela Trail and Ridge. This unit, in combination with *Alsinidendron viscosum*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Alsinidendron viscosum* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Alsinidendron viscosum*—d

This unit is critical habitat for *Alsinidendron viscosum* and is 61 ha (150 ac) on State land (Alakai Wilderness Preserve) and contains a portion of Mohihi Waialae Trail and Kohua Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Alsinidendron viscosum* and is currently occupied with 26 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. The 267 other plants on Kauai are not included in critical habitat because the habitat they occupy is not considered essential to the conservation of this species. The more appropriate habitat on Kauai, within its historical range, are being designated as critical habitat.

Kauai 10—*Bonamia menziesii*—a

This unit is critical habitat for *Bonamia menziesii* and is 420 ha (1,038 ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains Kahili Summit and portions of Kanaele Swamp. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Bonamia menziesii* and is currently occupied with 25 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species and wet habitat that is unique to the Kauai populations. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry, mesic, or wet *Metrosideros polymorpha-Cheirodendron-Dicranopteris* forest. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Bonamia menziesii*—b

This unit is critical habitat for *Bonamia menziesii* and is 93 ha (229 ac) on State land (Alakai Wilderness Preserve) and contains a portion of Koaie Stream and Kipalau Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Bonamia menziesii* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species and wet habitat that is unique to the Kauai populations. The habitat features contained in this unit that are essential for this species include, but are

not limited to, dry, mesic, or wet *Metrosideros polymorpha-Cheirodendron-Dicranopteris* forest. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 6—*Brighamia insignis*—a

This unit is critical habitat for *Brighamia insignis* and is 63 ha (156 ac) on private land and contains a portion of Keopaweo Summit on the north side of Mount Haupu. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Brighamia insignis* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky ledges with little soil or steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in). This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 7—*Brighamia insignis*—b

This unit is critical habitat for *Brighamia insignis* and is 340 ha (843 ac) on private land. This unit contains the Haupu and Naluakeina Summits and Queen Victoria's Profile. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Brighamia insignis* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky ledges with little soil or steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in). This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Niihau 1—*Brighamia insignis*—a

This unit is critical habitat for *Brighamia insignis* and is 144 ha (357 ac) on private land. This unit contains Puu Alala and Mokouia Valley. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky ledges with little soil or steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Brighamia insignis* and is currently occupied with at least one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Brighamia insignis*—c

This unit is critical habitat for *Brighamia insignis* and is 1,639 ha (4,051 ac) on State land (Hono o Na Pali NAR, Puu Ka Pele Forest Reserve, and Milolii, Nualolo Kai, and Na Pali Coast State Parks). This unit contains Alapii, Mukuaiki, and Puanaiea Points; Awaawapuhi, Honopu, Kalalau, Kawaiula, Makaha, Milolii, Nualolo, Paaiki, and Poopooiki Valleys; Hanakoa, Hoolulu, Kalalau, and Waiahuakua Streams; Kalalau Beach and Trail; Kanakou Summit and Nakeikionaiwi Pillar. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky ledges with little soil or steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in). This unit provides habitat for seven populations of 300 mature, reproducing individuals of the short-lived perennial *Brighamia insignis* and is currently occupied with between 40 and 60 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. This unit provides for seven populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Centaurium sebaeoides*—a

This unit is critical habitat for *Centaurium sebaeoides* and is 155 ha (385 ac) on State land (Hono o Na Pali NAR, Puu Ka Pele Forest Reserve, and Milolii, Nualolo, and Na Pali Coast State Parks). This unit contains Awaawapuhi, Honopu, Kalalau, Milolii, and Nualolo Valleys; Hanakoa, Hoolulu, Kalalau, and Waiahuakua Streams; Mukuaiki and Puanaiea Points; and Kalalau Beach. This unit provides habitat for four populations of 500 mature, reproducing individuals of the annual *Centaurium sebaeoides* and is currently occupied with between 22 and 52 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, volcanic or clay soils or cliffs in arid coastal areas. This unit provides for four populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Chamaesyce halemanui*—a

This unit is critical habitat for *Chamaesyce halemanui* and is 108 ha (267 ac) on State land containing Kawaiiki Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce halemanui* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes of gulches in mesic *Acacia koa* forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Chamaesyce halemanui*—b

This unit is critical habitat for *Chamaesyce halemanui* and is 17 ha (43 ac) on State land (Kokee State Park) and contains a portion of the east-facing side of Halemanu Valley below the National Aeronautics and Space Administration (NASA) Tracking Station. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce halemanui* and is currently occupied with 30 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes of gulches in mesic *Acacia koa* forests. This unit is geographically separated from the other two units designated as critical habitat for this island endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Chamaesyce halemanui*—c

This unit is critical habitat for *Chamaesyce halemanui* and is 1,283 ha (3,172 ac) on State land (Kuia NAR, and Kokee and Na Pali Coast State Parks). This unit contains Mahanaloa Valley, Kainamanu Summit, and Nualolo, Awaawapuhi, and Honopu Trails. This unit provides habitat for eight populations of 300 mature, reproducing individuals of the short-lived perennial *Chamaesyce halemanui* and is currently occupied with between 50 and 100 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes of gulches in mesic *Acacia koa* colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes of gulches in mesic *Acacia koa* forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Ctenitis squamigera*—a

This unit is critical habitat for *Ctenitis squamigera* and is 735 ha (1,817 ac) on State land (Kuia NAR). This unit contains Mahanaloa Valley and Milolii Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Ctenitis squamigera* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock faces in gulches in the understory of *Metrosideros polymorpha-Diospyros* spp. mesic forest and diverse mesic forest. It provides habitat for the westernmost range of the species and the rock face habitat requirement that is unique to Kauai. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 4—*Cyanea asarifolia*—a

This unit is critical habitat for *Cyanea asarifolia* and is 656 ha (1,619 ac) on State (Kealia and Moloaa Forest Reserves) and private land. This unit contains Ke Ana Kolea, Mount Namahana, and Anahola, Kekoiki, Leleiwi, and Puu Awa Summits. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea asarifolia* and is currently unoccupied. This unit provides habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, pockets of soil on sheer, wet rock cliffs and waterfalls in lowland wet forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Cyanea asarifolia*—b

This unit is critical habitat for *Cyanea asarifolia* and is 903 ha (2,232 ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains Iole, Kalalea, Kamanu, and Palikea Summits. This unit provides habitat for seven populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea asarifolia* and is currently occupied with 4 or 5 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, pockets of soil on sheer wet rock cliffs and waterfalls in lowland wet forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 4—*Cyanea recta*—a

This unit is critical habitat for *Cyanea recta* and is 252 ha (623 ac) on State (Kealia and Moloaa Forest Reserves) and private land. This unit contains Kahili, Kekoiki, Leleiwi, Namahana, and Puu Eu Summits. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea recta* and is currently occupied with 43 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulches or slopes in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 4—*Cyanea recta*—b

This unit is critical habitat for *Cyanea recta* and is 352 ha (868 ac) on State (Kealia Forest Reserve) and private land. This unit contains Makaleha and Leleiwi Summits. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea recta* and is currently occupied with 80 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this

species include, but are not limited to, gulches or slopes in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Cyanea recta*—c

This unit is critical habitat for *Cyanea recta* and is 553 ha (1,367 ac) on State (Halelea Forest Reserve) and private land. This unit contains Puu Manu and Kaliko Summits, and Mount Namolokama. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea recta* and is currently occupied with between 75 and 85 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulches or slopes in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Cyanea recta*—d

This unit is critical habitat for *Cyanea recta* and is 398 ha (982 ac) on State (Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park) and private land. This unit contains Pali Eleele Summit and Limahuli Falls. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea recta* and is currently unoccupied. This unit provides habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulches or slopes in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 4—*Cyanea remyi*—a

This unit is critical habitat for *Cyanea remyi* and is 354 ha (874 ac) on State (Kealia Forest Reserve) and private land. This unit contains Leleiwi Summit and portions of the Makaleha Mountains. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea remyi* and is currently occupied with between 11 and 51 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, narrow drainages and seepy stream banks in lowland wet forest or shrubland. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Cyanea remyi*—b

This unit is critical habitat for *Cyanea remyi* and is 1,904 ha (4,706 ac) on private land. This unit contains Ioloe, Kalalea, Kamanu, Kapalaoa and Palikea Summits. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea remyi* and is currently occupied with between 70 and 120 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, narrow drainages and seepy stream banks in lowland wet forest or shrubland. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Cyanea remyi*—c

This unit is critical habitat for *Cyanea remyi* and is 365 ha (902 ac) on State land (Halelea Forest Reserve), containing Puu Manu Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyanea remyi* and is currently occupied with 12 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, narrow drainages and seepy stream banks in lowland wet forest or shrubland. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Cyanea remyi*—d

This unit is critical habitat for *Cyanea remyi* and is 664 ha (1,642 ac) on State (Halelea Forest Reserve, Hono o Na Pali NAR, and Haena and Na Pali Coast State Parks) and private land. This unit contains Pohakea and Maunapuluo Summits, Hanakapiai and Limahuli Valleys, and Manoa Stream. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Cyanea remyi* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, narrow drainages and seepy stream banks in lowland wet forest or shrubland. This unit is geographically separated from other units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Cyanea undulata*—a

This unit is critical habitat for *Cyanea undulata* and is 1,006 ha (2,483 ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains Kanaele Swamp, Kahili, Kapalaoa, and Puu a Uuka Summits. This unit provides habitat for five populations of 250 mature, reproducing individuals of the short-lived perennial *Cyanea undulata* and is currently occupied with 28 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are

essential for this species include, but are not limited to, narrow drainages and seepy stream banks in *Metrosideros polymorpha* dry to wet montane forest or shrubland. This unit is of an appropriate size so that each potential recovery population on Kauai within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Cyperus trachysanthos*—a

This unit is critical habitat for *Cyperus trachysanthos* and is 272 ha (672 ac) on State land (Na Pali Coast State Park and Puu Ka Pele Forest Reserve) and extends along the coast from Makaha point to Hanakoa Valley. This unit provides habitat for six populations of 300 mature, reproducing individuals of the short-lived perennial *Cyperus trachysanthos* and is currently occupied with over 300 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes. This unit provides for six populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 4—*Cyrtandra cyaneoides*—a

This unit is critical habitat for *Cyrtandra cyaneoides* and is 376 ha (929 ac) on State (Kealia and Lihue-Koloa Forest Reserves) and private land. This unit contains Leleiwi, Makaleha, Puu Eu, and Wekiu Summits. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra cyaneoides* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, talus rubble on steep slopes or cliffs with water seeps running below, near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha, Cheirodendron* spp., and *Dicranopteris linearis*. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Cyrtandra cyaneoides*—b

This unit is critical habitat for *Cyrtandra cyaneoides* and is 849 ha (2,098 ac) on State (Halelea Forest Reserve) and private land. This unit contains Mount Namolokama and Kaliko and Puu Manu Summits. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra cyaneoides* and is currently occupied with between 51 and 101 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, talus rubble on steep slopes or cliffs with water seeps running below, near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha, Cheirodendron* spp., and *Dicranopteris linearis*. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Cyrtandra cyaneoides*—c

This unit is critical habitat for *Cyrtandra cyaneoides* and is 1,117 ha (2,761 ac) on State (Halelea Forest Reserve) and private land. This unit contains Hinalele Falls and portions of Mahinakehau Ridge. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra cyaneoides* and is currently occupied with over 300 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, talus rubble on steep slopes or cliffs with water seeps running below, near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha, Cheirodendron* spp., and *Dicranopteris linearis*. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 4—*Cyrtandra limahuliensis*—a

This unit is critical habitat for *Cyrtandra limahuliensis* and is 501 ha (1,238 ac) on State (Kealia and Moloaa Forest Reserves) and private land. This unit contains portions of Mount Namahana, Leileiwi, Keana Kolea, Puuawa, and Anahola Stream. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra limahuliensis* and is currently occupied with between 51 and 101 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in lowland wet forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. The six to seven other plants on Kauai are not included in critical habitat because the habitat they occupy is not considered essential to the conservation of this species. The more intact and appropriate habitat within its historical range on Kauai, is being designated as critical habitat.

Kauai 4—*Cyrtandra limahuliensis*—b

This unit is critical habitat for *Cyrtandra limahuliensis* and is 354 ha (874 ac) on State (Kealia Forest Reserve) and private land. This unit contains Leleiwi Summit and portions of the Makaleha Mountains. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra limahuliensis* and is currently occupied with 109 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat

features contained in this unit that are essential for this species include, but are not limited to, stream banks in lowland wet forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Cyrtandra limahuliensis*—c

This unit is critical habitat for *Cyrtandra limahuliensis* and is 2,014 ha (4,975 ac) on State (Halelea and Lihue-Koloa Forest Reserves) and private land. This unit contains Iole, Kalalea, Kamanu, Kapalaoa, and Kawaikini Summits, all within the Waialeale area. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra limahuliensis* and is currently occupied with between 530 and 707 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in lowland wet forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Cyrtandra limahuliensis*—d

This unit is critical habitat for *Cyrtandra limahuliensis* and is 816 ha (2,018 ac) on State (Halelea Forest Reserve) and private land. This unit contains Kapailu, Mamalahoa, and Puu Manu Summits. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra limahuliensis* and is currently occupied with over 2,000 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in lowland wet forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Cyrtandra limahuliensis*—e

This unit is critical habitat for *Cyrtandra limahuliensis* and is 693 ha (1,715 ac) on State (Halelea Forest Reserve, Hono o Na Pali NAR, and Haena and Na Pali Coast State Parks) and private land. This unit contains Hono o Na Pali, Kulanaililia, Maunapuluo, Pali Eleele, Pohakea, Summits, Limahuli Falls, and Pohakukane Cliff. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Cyrtandra limahuliensis* and is currently occupied with between 50 and 100 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in lowland wet forests. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 7—*Delissea rhytidosperma*—a

This unit is critical habitat for *Delissea rhytidosperma* and is 221 ha (545 ac) on private land. This unit contains Haupu and Naluakeina Summits and Queen Victoria's Profile. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Delissea rhytidosperma* and is currently occupied with four plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, well-drained soils with medium or fine-textured subsoil in *Diospyros* diverse lowland mesic or diverse *Metrosideros polymorpha-Acacia koa* forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Delissea rhytidosperma*—b

This unit is critical habitat for *Delissea rhytidosperma* and is 258 ha (638 ac) on State land (Kuia NAR and Puu Ka Pele Forest Reserve). This unit contains portions of Kuia Valley and Milolii Ridge. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Delissea rhytidosperma* and is currently occupied with six plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, well-drained soils with medium or fine-textured subsoil in *Diospyros* diverse lowland mesic or diverse *Metrosideros polymorpha-Acacia koa* forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, the units are of an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Delissea rhytidosperma*—c

This unit is critical habitat for *Delissea rhytidosperma* and is 103 ha (254 ac) on State land (Haena and Na Pali Coast State Parks) within Hanakapiai Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Delissea rhytidosperma* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, well-drained soils with medium or fine-textured subsoil in *Diospyros* diverse lowland mesic or diverse *Metrosideros polymorpha-Acacia koa* forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Delissea rivularis*—a

This unit is critical habitat for *Delissea rivularis* and is 851 ha (2,102 ac) on State land (Alakai Wilderness Preserve, Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park). This unit contains Keanapuka, Moaalele, Pihea, and Waiahuakua Summits. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Delissea rivularis* and is currently occupied with 40 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes near streams in *Metrosideros polymorpha-Cheirodendron trigynum* montane wet or mesic forest. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of an appropriate size so that each potential recovery population on Kauai within the unit is geographically separated enough to avoid destruction by one naturally occurring catastrophic event.

Kauai 11—*Delissea undulata*—a

This unit is critical habitat for *Delissea undulata* and is 256 ha (636 ac) on State (Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park) and private land. This unit contains Pali Eleele Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Delissea undulata* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or open *Metrosideros polymorpha-Acacia koa* forest or *Alphitonia ponderosa* forest. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Delissea undulata*—b

This unit is critical habitat for *Delissea undulata* and is 532 ha (1,314 ac) on State land (Kuia NAR). This unit contains portions of Mahanaloa Valley and Milolii Ridge. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Delissea undulata* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or open *Metrosideros polymorpha-Acacia koa* forest or *Alphitonia ponderosa* forest. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Diellia erecta*—a

This unit is critical habitat for *Diellia erecta* and is 365 ha (901 ac) on State land (Alakai Wilderness Preserve) containing portions of Kawaiiki Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Diellia erecta* and is currently occupied with 30 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, brown granular soil with leaf litter and occasional terrestrial moss on north-facing slopes in deep shade, or on steep slopes or gulch bottoms in *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *Metrosideros polymorpha* mixed mesic forest with *Acacia koa* and *Acacia koaia* as codominants. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. This fern species has wind-blown spores with limited opportunity for germination and growth. Therefore, this species requires large intact areas of land to support a viable population.

Kauai 11—*Diellia pallida*—a

This unit is critical habitat for *Diellia pallida* and is 602 ha (1,487 ac) on State land (Kuia NAR). This unit contains portions of Kuia and Mahanaloa Valleys, and Milolii Ridge. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Diellia pallida* and is currently occupied with between 38 and 43 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, bare granular soil with dry to mesophytic leaf litter with a pH of 6.9 to 7.9 on steep slopes in lowland mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. This fern species has wind-blown spores with limited opportunity for germination and growth. Therefore, this species requires large intact areas of land to support a viable population.

Kauai 11—*Diellia pallida*—b

This unit is critical habitat for *Diellia pallida* and is 55 ha (136 ac) on State land within Koaie Canyon. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Diellia pallida* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, bare granular soil with dry to mesophytic leaf litter with a pH of 6.9 to 7.9 on steep slopes in lowland mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. This fern species has wind-blown spores with limited opportunity for germination and growth. Therefore, this species requires large intact areas of land to support a viable population.

Kauai 11—*Diplazium molokaiense*—a

This unit is critical habitat for *Diplazium molokaiense* and is 430 ha (1,062 ac) on State land (Kuia NAR and Kokee State Park). This unit contains portions of Awaawapuhi, Honopu, and Nualolo Trails. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Diplazium molokaiense* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, brown soil with basalt outcrops near waterfalls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. This fern species has wind-blown spores with limited opportunity for germination and growth. Therefore, this species requires large intact areas of land to support a viable population.

Kauai 11—*Dubautia latifolia*—a

This unit is critical habitat for *Dubautia latifolia* and is 31 ha (76 ac) on State land (Kokee State Park). This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Dubautia latifolia* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle or steep slopes on well drained soil in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Dubautia latifolia*—b

This unit is critical habitat for *Dubautia latifolia* and is 1,522 ha (3,764 ac) on State land (Kuia Natural Area Reserve and Kokee State Park). This unit contains portions of Kawaiiki Ridge and Kipalau Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Dubautia latifolia* and is currently occupied with between 50 and 69 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle or steep slopes on well drained soil in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Dubautia latifolia*—c

This unit is critical habitat for *Dubautia latifolia* and is 809 ha (1,999 ac) on State land (Alakai Wilderness Preserve). This unit contains Iole and Kahili Summits. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Dubautia latifolia* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle or steep slopes on well drained soil in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Dubautia pauciflorula*—a

This unit is critical habitat for *Dubautia pauciflorula* and is 814 ha (2,012 ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains portions of Iole and Kahili Summits. This unit provides habitat for four populations of 250 mature, reproducing individuals of the short-lived perennial *Dubautia pauciflorula* and is currently occupied with 42 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream drainages containing *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is an appropriate size so that each potential recovery population on Kauai within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Euphorbia haeleeleana*—a

This unit is critical habitat for *Euphorbia haeleeleana* and is 262 ha (649 ac) on State land (Kuia NAR). This unit contains portions of Milolii Ridge and Mahanaloa Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Euphorbia haeleeleana* and is currently occupied with between 355 and 405 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland mixed mesic or dry *Diospyros* forest that is often co-dominated by *Metrosideros polymorpha* and *Alphitonia ponderosa*. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Euphorbia haeleeleana*—b

This unit is critical habitat for *Euphorbia haeleeleana* and is 193 ha (476 ac) on State land (Na Pali Coast State Park) within Kalalau Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Euphorbia haeleeleana* and is currently occupied with over 120 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland mixed mesic or dry *Diospyros* forest that is often co-dominated by *Metrosideros polymorpha* and *Alphitonia ponderosa*. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Euphorbia haeleeleana*—c

This unit is critical habitat for *Euphorbia haeleeleana* and is 204 ha (505 ac) on State land, containing portions of Kawaiiki Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Euphorbia haeleeleana* and is currently occupied with two plants. This unit is important to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland mixed mesic or dry *Diospyros* forest that is often co-dominated by *Metrosideros polymorpha* and *Alphitonia ponderosa*. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 10—*Exocarpos luteolus*—a

This unit is critical habitat for *Exocarpos luteolus* and is 401 ha (990 ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains Kahili Summit and Kanaele Swamp. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Exocarpos luteolus* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet places bordering swamps or bogs; open or dry ridges in lowland or montane mesic *Acacia koa-Metrosideros polymorpha*-dominated forest communities with *Dicranopteris*. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Exocarpos luteolus*—b

This unit is critical habitat for *Exocarpos luteolus* and is 3,800 ha (9,389 ac) on State (Alakai Wilderness Preserve, Halelea Forest Reserve, and Hono o Na Pali NAR) and private land. This unit contains the Alakai Swamp and Trail, Halehaha and Halepaakai Streams, Kaluahaula Ridge, and Kapoki, Kilohana, Koali, and Pihea Summits. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Exocarpos luteolus* and is currently occupied with 19 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet places bordering swamps or bogs; open or dry ridges in lowland or montane mesic *Acacia koa-Metrosideros polymorpha*-dominated forest communities with *Dicranopteris*. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Exocarpos luteolus*—c

This unit is critical habitat for *Exocarpos luteolus* and is 176 ha (438 ac) on State land (Kokee and Na Pali Coast State Parks) within Kalalau Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Exocarpos luteolus* and is currently occupied with over 40 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet places bordering swamps or bogs; open or dry ridges in lowland or montane mesic *Acacia koa-Metrosideros polymorpha*-dominated forest communities with *Dicranopteris*. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Exocarpos luteolus*—d

This unit is critical habitat for *Exocarpos luteolus* and is 83 ha (206 ac) on State land (Kokee State Park) on Kamuela Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Exocarpos luteolus* and is currently occupied with between five and seven plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet places bordering swamps or bogs; open or dry ridges in lowland or montane mesic *Acacia koa-Metrosideros polymorpha*-dominated forest communities with *Dicranopteris*. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Exocarpos luteolus*—e

This unit is critical habitat for *Exocarpos luteolus* and is 522 ha (1,290 ac) on State land (Kuia NAR, Kokee and Na Pali Coast State Parks). This unit contains Awaawapuhi, Honopu, and Nualolo Trails, and Kainamanu and Kalahu Summits. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Exocarpos luteolus* and is currently occupied with six plants. This unit is essential to the conservation of the taxon because it

supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet places bordering swamps or bogs; open or dry ridges in lowland or montane mesic *Acacia koa-Metrosideros polymorpha*-dominated forest communities with *Dicranopteris*. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Flueggea neowawraea*—a

This unit is critical habitat for *Flueggea neowawraea* and is 51 ha (126 ac) on State land (Na Pali Coast State Park) within Kalalau Valley. This unit, in combination with units 11—*Flueggea neowawraea*—b and 11—*Flueggea neowawraea*—e, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Flueggea neowawraea* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forests. This unit together with the two other units, provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Flueggea neowawraea*—b

This unit is critical habitat for *Flueggea neowawraea* and is 48 ha (117 ac) on State land (Na Pali Coast State Park) within Kalalau Valley. This unit, in combination with units 11—*Flueggea neowawraea*—a and 11—*Flueggea neowawraea*—e, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Flueggea neowawraea* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forests. This unit together with the two other units, provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Flueggea neowawraea*—c

This unit is critical habitat for *Flueggea neowawraea* and is 152 ha (376 ac) on State land (Alakai Wilderness Preserve), containing portions of Kawaiiki Valley. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Flueggea neowawraea* and is currently occupied with 30 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forests. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Flueggea neowawraea*—d

This unit is critical habitat for *Flueggea neowawraea* and is 77 ha (191 ac) on State land (Hono o Na Pali NAR and Na Pali Coast State Park). This unit contains Puu Ki Summit and Kaalahina Ridge. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Flueggea neowawraea* and is currently occupied with nine plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forests. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Flueggea neowawraea*—e

This unit is critical habitat for *Flueggea neowawraea* and is 27 ha (67 ac) on State land (Na Pali Coast State Park) within Kalalau Valley. This unit, in combination with units 11—*Flueggea neowawraea*—a and 11—*Flueggea neowawraea*—b, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Flueggea neowawraea* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forests. This unit together with the two other units, provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Flueggea neowawraea*—f

This unit is critical habitat for *Flueggea neowawraea* and is 240 ha (594 ac) on State land (Kuia NAR). This unit contains portions of Milolii Ridge, and Kuia and Mahanaloa Valleys. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Flueggea neowawraea* and is currently occupied with four plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forests. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Gouania meyenii*—a

This unit is critical habitat for *Gouania meyenii* and is 442 ha (1,094 ac) on State land (Kuia NAR), and containing portions of Mahanaloa Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Gouania meyenii* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky ledges, cliff faces, and ridge-tops in dry shrubland or *Metrosideros polymorpha* lowland diverse mesic forest. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Gouania meyenii*—b

This unit is critical habitat for *Gouania meyenii* and is 128 ha (316 ac) on State land (Na Pali Coast State Park) within Kalalau Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Gouania meyenii* and is currently occupied with eight plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky ledges, cliff faces, and ridge-tops in dry shrubland or *Metrosideros polymorpha* lowland diverse mesic forest. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Gouania meyenii*—c

This unit is critical habitat for *Gouania meyenii* and is 215 ha (532 ac) on State land, and containing portions of Kawaiiki Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Gouania meyenii* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky ledges, cliff faces, and ridge-tops in dry shrubland or *Metrosideros polymorpha* lowland diverse mesic forest. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Hedyotis cookiana*—a

This unit is critical habitat for *Hedyotis cookiana* and is 772 ha (1,907 ac) on State land (Hono o Na Pali NAR and Na Pali Coast State Park). This unit contains Kanakau Summit. This unit provides habitat for seven populations of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis cookiana* and is currently occupied with between 60 and 80 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, streambeds or steep cliffs close to water sources in relict *Metrosideros polymorpha* low mesic and low wet forest communities. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of appropriate size so that each potential recovery population on Kauai within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Hedyotis st.-johnii*—a

This unit is critical habitat for *Hedyotis st.-johnii* and is 238 ha (589 ac) on State land (Hono o Na Pali NAR, Na Pali Coast State Park, and Puu Ka Pele Forest Reserve) Makaha point to Waiahuakua Valley. This unit provides habitat for seven populations of 300 mature, reproducing individuals of the short-lived perennial *Hedyotis st.-johnii* and is currently occupied with between 227 and 292 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, crevices of north-facing, near-vertical coastal cliff faces within the spray zone in sparse dry coastal shrubland.

Kauai 10—*Hesperomannia lydgatei*—a

This unit is critical habitat for *Hesperomannia lydgatei* and is 646 ha (1,596 ac) on private land, containing Hulua Summit. This unit provides habitat for two populations of 250 mature, reproducing individuals of the long-lived perennial *Hesperomannia lydgatei* and is currently occupied with 296 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks and forested slopes with rich brown soil and silty clay in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Hesperomannia lydgatei*—b

This unit is critical habitat for *Hesperomannia lydgatei* and is 914 ha (2,258 ac) on State (Halelea Forest Reserve) and private land. This unit contains portions of the Namolokama Mountains and Kaliko Summit. This unit provides habitat for two populations of 250 mature, reproducing individuals of the long-lived perennial *Hesperomannia lydgatei* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this

species include, but are not limited to, stream banks and forested slopes with rich brown soil and silty clay in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Hesperomannia lydgatei*—c

This unit is critical habitat for *Hesperomannia lydgatei* and is 180 ha (445 ac) on State and private land, containing Hono o Na Pali Summit. This unit provides habitat for one population of 250 mature, reproducing individuals of the long-lived perennial *Hesperomannia lydgatei* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks and forested slopes with rich brown soil and silty clay in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Hibiscadelphus woodii*—a

This unit is critical habitat for *Hibiscadelphus woodii* and is 278 ha (687 ac) on State land (Hono o Na Pali NAR and Na Pali Coast State Park). This unit contains portions of Kaaalahina and Manono Ridges and Puu Ki Summit. This unit provides habitat for three populations of 100 mature, reproducing individuals of the long-lived perennial *Hibiscadelphus woodii* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of appropriate size and distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Hibiscadelphus woodii*—b

This unit is critical habitat for *Hibiscadelphus woodii* and is 72 ha (177 ac) on State land (Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park). This unit contains Kalahu Summit. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Hibiscadelphus woodii* and is currently occupied with six plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of appropriate size and distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 4—*Hibiscus clayi*—a

This unit is critical habitat for *Hibiscus clayi* and is 4 ha (9 ac) on private land near Puu Eu. This unit, in combination with unit 4—*Hibiscus clayi*—d, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus clayi* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is essential to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest. This unit is geographically separated from other critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of an appropriate distance from the other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 4—*Hibiscus clayi*—b

This unit is critical habitat for *Hibiscus clayi* and is 85 ha (210 ac) on private land on the northeast side of Makaleha Mountain. This unit, in combination with 4—*Hibiscus clayi*—e, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus clayi* and is currently unoccupied. This unit is important to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest. This unit is geographically separated from other critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of an appropriate distance from the other units so that each potential recovery population on Kauai within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Kauai 4—*Hibiscus clayi*—c

This unit is critical habitat for *Hibiscus clayi* and is 590 ha (1,455 ac) on State (Kealia and Moloaa Forest Reserves) and private land. This unit contains Leleiwi and Puu Awa Summits. This unit provides habitat for three populations of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus clayi* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest. This unit is geographically separated from other critical habitat for this island-endemic species to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of an appropriate distance from the other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 4—*Hibiscus clayi*—d

This unit is critical habitat for *Hibiscus clayi* and is 48 ha (119 ac) on private land. This unit contains Leleiwi and a portion of the northwest side of Makaleha Mountain. This unit, in combination with unit 4—*Hibiscus clayi*—a, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus clayi* and is currently unoccupied. This unit is important to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest. This unit is geographically separated from other critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of an appropriate distance from the other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 4—*Hibiscus clayi*—e

This unit is critical habitat for *Hibiscus clayi* and is 19 ha (47 ac) on State land (Kealia Forest Reserve) at the headwaters of Makaleha Stream. This unit, in combination with unit 4—*Hibiscus clayi*—b, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus clayi* and is currently unoccupied. This unit is important to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest. This unit is geographically separated from other critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of an appropriate distance from other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 5—*Hibiscus clayi*—f

This unit is critical habitat for *Hibiscus clayi* and is 60 ha (148 ac) on State land (Nonou Forest Reserve), containing portions of the Nonou Mountains. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus clayi* and is currently occupied with four plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, slopes in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of an appropriate distance from the other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Hibiscus waimeae* ssp. *hannerae*—a

This unit is critical habitat for *Hibiscus waimeae* ssp. *hannerae* and is 1,120 ha (2,769 ac) on State (Halelea Forest Reserve, Hono o Na Pali NAR, Haena and Na Pali Coast State Parks) and private land. This unit contains Limahuli Falls and Kulanaililia, Manapuluo, and Pali Eleele Summits. This unit provides habitat for eight populations of 100 mature, reproducing individuals of the long-lived perennial *Hibiscus waimeae* ssp. *hannerae* and is currently occupied with 25 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* spp.-*Charpentiera elliptica* lowland wet or mesic forest.

Kauai 1—*Ischaemum byrone*—a

This unit is critical habitat for *Ischaemum byrone* and is 0.4 ha (1 ac) on private land at Hanalei Point. This unit, in combination with unit 1—*Ischaemum byrone*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Ischaemum byrone* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, coastal shrubland near the ocean among rocks and seepy cliffs. This unit, together with the other unit, provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 2—*Ischaemum byrone*—b

This unit is critical habitat for *Ischaemum byrone* and is 6 ha (15 ac) on private land, containing Kaweonui Point. This unit, in combination with unit 1—*Ischaemum byrone*—a, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Ischaemum byrone* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, coastal shrubland near the ocean among rocks and seepy cliffs. This unit, together with the other unit, provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by

one naturally occurring catastrophic event.

Kauai 3—*Ischaemum byrone*—c

This unit is critical habitat for *Ischaemum byrone* and is 6 ha (16 ac) on private land along the cliffs of Kauapea Beach. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Ischaemum byrone* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, coastal shrubland near the ocean among rocks and seepy cliffs. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Ischaemum byrone*—d

This unit is critical habitat for *Ischaemum byrone* and is 45 ha (111 ac) on State land (Hono o Na Pali NAR and Na Pali Coast State Park). This unit contains portions of Hanakapiai Beach, Hoolulu and Hanakapiai Streams. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Ischaemum byrone* and is currently unoccupied. This unit is important to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, coastal shrubland near the ocean among rocks and seepy cliffs. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Isodendrion laurifolium*—a

This unit is critical habitat for *Isodendrion laurifolium* and is 401 ha (991 ac) on State land (Kuia NAR). This unit contains portions of Mahanaloa Valley and Milolii Ridge. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion laurifolium* and is currently occupied with between 86 and 96 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic forest dominated by *Metrosideros polymorpha*, *Acacia koa* or *Diospyros* spp. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Isodendrion laurifolium*—b

This unit is critical habitat for *Isodendrion laurifolium* and is 400 ha (988 ac) on State land (Alakai Wilderness Preserve) containing portions of Kawaiiki Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion laurifolium* and is currently occupied with between six and eight plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic forest dominated by *Metrosideros polymorpha*, *Acacia koa* or *Diospyros* spp. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 7—*Isodendrion longifolium*—a

This unit is critical habitat for *Isodendrion longifolium* and is 338 ha (833 ac) on private land. This unit contains Hokulei Peak, Haupu and Naluakeina Summits, and Queen Victoria's Profile. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion longifolium* and is currently occupied with two plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes, gulches, or stream banks and flats in undisturbed areas, in mesic or wet *Metrosideros polymorpha-Acacia koa* forests. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 10—*Isodendrion longifolium*—b

This unit is critical habitat for *Isodendrion longifolium* and is 142 ha (350 ac) on private land containing Hulua Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion longifolium* and is currently occupied with between 83 and 103 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes, gulches, or stream banks and flats in undisturbed areas, in mesic or wet *Metrosideros polymorpha-Acacia koa* forests. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Isodendrion longifolium*—c

This unit is critical habitat for *Isodendrion longifolium* and is 59 ha (145 ac) on State land (Kokee and Na Pali Coast State Parks), containing Kainamanu Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion longifolium* and is currently occupied with 20 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes, gulches, or stream banks and flats in undisturbed areas, in mesic or wet *Metrosideros polymorpha-Acacia koa* forests. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Isodendrion longifolium*—d

This unit is critical habitat for *Isodendrion longifolium* and is 494 ha (1,219 ac) on State land (Halelea Forest Reserve). This unit contains Kaliko and Puu Manu Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion longifolium* and is currently occupied with between 80 and 90 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes, gulches, or stream banks and flats in undisturbed areas, in mesic or wet *Metrosideros polymorpha-Acacia koa* forests. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Isodendrion longifolium*—e

This unit is critical habitat for *Isodendrion longifolium* and is 381 ha (941 ac) on State (Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park) and private land. This unit contains Pohahea Summit. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Isodendrion longifolium* and is currently occupied with 424 plants. This unit is essential to the conservation of the taxon because it supports extant colonies of this species and includes habitat that is important for the expansion of the present populations, which are currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes and some flats in certain undisturbed areas, gulches, or stream banks in mesic or wet *Metrosideros polymorpha-Acacia koa* forests. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Kokia kauaiensis*—a

This unit is critical habitat for *Kokia kauaiensis* and is 155 ha (384 ac) on State land (Alakai Wilderness Preserve). This unit contains portions of Kawaiiki and Kipalau Valleys. This unit provides habitat for three populations of 100 mature, reproducing individuals of the long-lived perennial *Kokia kauaiensis* and is currently occupied with 70 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Kokia kauaiensis*—b

This unit is critical habitat for *Kokia kauaiensis* and is 30 ha (74 ac) on State land (Na Pali Coast State Park) within Pohakuau Valley. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Kokia kauaiensis* and is currently occupied with two plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Kokia kauaiensis*—c

This unit is critical habitat for *Kokia kauaiensis* and is 666 ha (1,648 ac) on State land (Kuia NAR). This unit contains portions of Milolii Ridge, Kuia and Mahanaloa Valleys. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Kokia kauaiensis* and is currently occupied with between 78 and 83 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Kokia kauaiensis*—d

This unit is critical habitat for *Kokia kauaiensis* and is 127 ha (313 ac) on State land (Na Pali Coast State Park) within Kalalau Valley. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Kokia kauaiensis* and is currently occupied with 16 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 4—*Labordia lydgatei*—a

This unit is critical habitat for *Labordia lydgatei* and is 587 ha (1,455 ac) on State (Kealia and Moloaa Forest

Reserves) and private land. This unit contains Kekoiki, Leleiwi, Namahana, and Puu Awa Summits. This unit provides habitat for one population of 250 mature, reproducing individuals of the short-lived perennial *Labordia lydgatei* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Labordia lydgatei*—b

This unit is critical habitat for *Labordia lydgatei* and is 1,035 ha (2,558 ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains Hulua, Iole, Kahile, and Pilikea Summits. This unit provides habitat for two populations of 250 mature, reproducing individuals of the short-lived perennial *Labordia lydgatei* and is currently occupied with five plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Labordia lydgatei*—c

This unit is critical habitat for *Labordia lydgatei* and is 325 ha (804 ac) on private land within Lumahai Valley. This unit provides habitat for one population of 250 mature, reproducing individuals of the short-lived perennial *Labordia lydgatei* and is currently occupied with seven plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Labordia lydgatei*—d

This unit is critical habitat for *Labordia lydgatei* and is 82 ha (204 ac) on State land (Halelea Forest Reserve). This unit contains portions of Waioli Valley and Waiopa Summit. This unit provides habitat for one population of 250 mature, reproducing individuals of the short-lived perennial *Labordia lydgatei* and is currently occupied with two plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Labordia lydgatei*—e

This unit is critical habitat for *Labordia lydgatei* and is 119 ha (291 ac) on State (Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park) and private land. This unit contains Hono O Na Pali and Pali Eleele Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Labordia lydgatei* and is currently occupied with two plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in *Metrosideros polymorpha-Dicranopteris linearis* forest. This unit is geographically separated from the other four units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Labordia tinifolia* var. *wahiawaensis*—a

This unit is critical habitat for *Labordia tinifolia* var. *wahiawaensis* and is 912 ha (2,255 ac) on private land. This unit contains Hulua, Iole, Kahili, Kapalaoa, and Palikea Summits. This unit provides habitat for four populations of 100 mature, reproducing individuals of the long-lived perennial *Labordia tinifolia* var. *wahiawaensis* and is currently occupied with 20 to 30 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks in lowland wet forest. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of appropriate size so that each potential recovery population on Kauai within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Lipochaeta fauriei*—a

This unit is critical habitat for *Lipochaeta fauriei* and is 106 ha (262 ac) on State land (Alakai Wilderness Preserve), containing portions of Kipalau Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Lipochaeta fauriei* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep gulches in diverse mesic forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Lipochaeta fauriei*—b

This unit is critical habitat for *Lipochaeta fauriei* and is 545 ha (1,347 ac) on State land (Kuia NAR). This unit contains portions of Mahanaloa and Kuia Valleys. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Lipochaeta fauriei* and is currently occupied with 70 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep gulches in diverse mesic forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 7—*Lipochaeta micrantha*—a

This unit is critical habitat for *Lipochaeta micrantha* and is 340 ha (843 ac) on private land. This unit contains Hokulei Peak, Haupu and Naluakeina Summits, and Queen Victoria's Profile. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Lipochaeta micrantha* and is currently occupied with 50 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs, ridges, stream banks, or slopes in mesic to wet mixed communities. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Lipochaeta micrantha*—b

This unit is critical habitat for *Lipochaeta micrantha* and is 212 ha (523 ac) on State land, containing portions of Kaluahaulu Ridge. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Lipochaeta micrantha* and is currently occupied with at least one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs, ridges, stream banks, or slopes in mesic to wet mixed communities. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 13—*Lipochaeta waimeaensis*—a

This unit is critical habitat for *Lipochaeta waimeaensis* and is 56 ha (139 ac) on State land, containing portions of Waimea Canyon. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Lipochaeta waimeaensis* and is currently occupied with at least 100 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, precipitous, shrub-covered gulches in diverse lowland forest. Although there may not be sufficient habitat designated to reach the recovery goal of 8 to 10 populations, this species is a very narrow endemic and may never naturally occurred in more than a single or a few populations.

Kauai 11—*Lobelia niihauensis*—a

This unit is critical habitat for *Lobelia niihauensis* and is 89 ha (220 ac) on State land (Alakai Wilderness Preserve), containing portions of Kipalau Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Lobelia niihauensis* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, exposed mesic mixed shrubland or coastal dry cliffs. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Lobelia niihauensis*—b

This unit is critical habitat for *Lobelia niihauensis* and is 2,003 ha (4,950 ac) on State (Haena State Park and Hono o Na Pali NAR) and private land. This unit contains Hanakapiai , Hanakoa, Kalalau, and Limahuli Valleys, Kaaalahina and Manono Ridges, Kanakou and Makana Summits, Hoolau and Waiahuakua Streams. This unit provides habitat for five populations of 300 mature, reproducing individuals of the short-lived perennial *Lobelia niihauensis* and is currently occupied with 168 to 1,108 plants. This unit is important to the conservation of the taxon because it supports an extant colony of this species. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, exposed mesic mixed shrubland or coastal dry cliffs. This unit provides for five populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 10—*Lysimachia filifolia*—a

This unit is critical habitat for *Lysimachia filifolia* and is 995 ha (2,458

ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains Iole, Kalalea, Kamanu, and Palikea Summits. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Lysimachia filifolia* and is currently occupied with 20 to 75 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests. This unit provides for four populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Mariscus pennatiformis*—a

This unit is critical habitat for *Mariscus pennatiformis* and is 1,003 ha (2,479 ac) on State land (Kuia NAR, Kokee and Waimea Canyon State Parks). This unit contains portions of Mololii Ridge and Nualolo Trail. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Mariscus pennatiformis* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, open sites in *Metrosideros polymorpha-Acacia koa* mixed mesic forest. This unit provides for three populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 7—*Melicope haupuensis*—a

This unit is critical habitat for *Melicope haupuensis* and is 330 ha (816 ac) on private land. This unit contains Hokulei Peak, Haupu and Naluakeina Summits, and Queen Victoria's Profile. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope haupuensis* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist talus slopes in *Metrosideros polymorpha* dominated lowland mesic forest or *Metrosideros polymorpha-Acacia koa* montane mesic forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Melicope haupuensis*—b

This unit is critical habitat for *Melicope haupuensis* and is 575 ha (1,418 ac) on State land (Kuia NAR, Kokee and Na Pali Coast State Parks). This unit contains portions of Awaawapuhi , Honopu, and Nualolo Trails, Kainamanu and Kalahu , Summits. This unit provides habitat for three populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope haupuensis* and is currently occupied with 11 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist talus slopes in *Metrosideros polymorpha* dominated lowland mesic forest or *Metrosideros polymorpha-Acacia koa* montane mesic forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Melicope haupuensis*—c

This unit is critical habitat for *Melicope haupuensis* and is 290 ha (716 ac) on State land (Alakai Wilderness Preserve), containing portions of Kipalau Valley. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope haupuensis* and is currently occupied with two plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist talus slopes in *Metrosideros polymorpha* dominated lowland mesic forest or *Metrosideros polymorpha-Acacia koa* montane mesic forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Melicope knudsenii*—a

This unit is critical habitat for *Melicope knudsenii* and is 967 ha (2,389 ac) on State land (Kuia NAR). This unit contains portions of Awaawapuhi and Nualolo Trails, and Mililii Ridge. This unit provides habitat for three populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope knudsenii* and is currently occupied with four plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, forested flats with brown granular soil in lowland dry to montane mesic forests. This unit provides for three populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Melicope knudsenii*—b

This unit is critical habitat for *Melicope knudsenii* and is 373 ha (922 ac) on State land (Alakai Wilderness Preserve). This unit contains portions of Kawaiiki and Kipalau Valleys. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope knudsenii* and is currently occupied with six plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, forested flats with brown granular soil in lowland dry to montane mesic forests. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Melicope pallida*—a

This unit is critical habitat for *Melicope pallida* and is 143 ha (353 ac) on State land (Alakai Wilderness Preserve), containing portions of Kipalau Valley. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Melicope pallida* and is currently occupied with 10 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep rock faces in lowland to montane mesic to wet forests or shrubland. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Melicope pallida*—b

This unit is critical habitat for *Melicope pallida* and is 310 ha (766 ac) on State land (Na Pali Coast State Park). This unit contains portions of Kaaalahina Ridge and Puu Ki Summit. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Melicope pallida* and is currently occupied with 50 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep rock faces in lowland to montane mesic to wet forests or shrubland. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 5—*Munroidendron racemosum*—a

This unit is critical habitat for *Munroidendron racemosum* and is 60 ha (148 ac) on State land (Nonou Forest Reserve). This unit contains Nonou Summit and the Sleeping Giant. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Munroidendron racemosum* and is currently occupied with six plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep exposed cliffs or ridge slopes in coastal or lowland mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 7—*Munroidendron racemosum*—b

This unit is critical habitat for *Munroidendron racemosum* and is 50 ha (123 ac) on private land, containing Naluakeina Summit and Queen Victoria's Profile. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Munroidendron racemosum* and is currently occupied with two plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep exposed cliffs or ridge slopes in coastal or lowland mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Munroidendron racemosum*—c

This unit is critical habitat for *Munroidendron racemosum* and is 1,952 ha (4,824 ac) on State (Hono o Na Pali NAR, Haena and Na Pali Coast State Parks) and private land. This unit contains Hanakapiai, Hanakoa, and Kalalau Valleys, Kanakou Summit, Kaaalahina and Kalepa Ridges, Nualolo Kai, and Pohakuao. This unit provides habitat for six populations of 100 mature, reproducing individuals of the long-lived perennial *Munroidendron racemosum* and is currently occupied with 46 to 86 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep exposed cliffs or ridge slopes in coastal or lowland mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Munroidendron racemosum*—d

This unit is critical habitat for *Munroidendron racemosum* and is 153 ha (379 ac) on State land (Alakai Wilderness Preserve). This unit contains portions of Kawaiiki and Kipalau Valleys. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-

lived perennial *Munroidendron racemosum* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep exposed cliffs or ridge slopes in coastal or lowland mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 7—*Myrsine linearifolia*—a

This unit is critical habitat for *Myrsine linearifolia* and is 334 ha (825 ac) on private land. This unit contains Hokulei Peak, Haupu and Naluakeina Summits, and Queen Victoria's Profile. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Myrsine linearifolia* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominant species. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Myrsine linearifolia*—b

This unit is critical habitat for *Myrsine linearifolia* and is 167 ha (412 ac) on private and State land (Lihue-Koloa Forest Reserve). This unit contains Hulua, Kahili, and Kapalaoa Summits. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Myrsine linearifolia* and is currently occupied with 47 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominant species. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Myrsine linearifolia*—c

This unit is critical habitat for *Myrsine linearifolia* and is 685 ha (1,692 ac) on State land (Alakai Wilderness Preserve), containing portions of Kipalau Valley. This unit provides habitat for three populations of 100 mature, reproducing individuals of the long-lived perennial *Myrsine linearifolia* and is currently occupied with 34 to 44 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominant species. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Myrsine linearifolia*—d

This unit is critical habitat for *Myrsine linearifolia* and is 286 ha (707 ac) on State (Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park) and private land. This unit contains Hono o Na Pali and Pali Eleele Summits, and Limahuli Falls. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Myrsine linearifolia* and is currently occupied with 23 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominant species. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Myrsine linearifolia*—e

This unit is critical habitat for *Myrsine linearifolia* and is 345 ha (854 ac) on State land (Hono o Na Pali NAR, Kokee and Na Pali Coast State Parks). This unit contains Alealau, Pihea, and Puu o Kila Summits. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Myrsine linearifolia* and is currently occupied with 366 to 420 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominant species. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Myrsine linearifolia*—f

This unit is critical habitat for *Myrsine linearifolia* and is 135 ha (334 ac) on State (Halelea Forest Reserve) and private land, containing Kaliko Summit. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Myrsine linearifolia* and is currently occupied with 20 to 30 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominant species. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Nothocestrum peltatum*—a

This unit is critical habitat for *Nothocestrum peltatum* and is 427 ha (1,056 ac) on State land (Kokee State Park). This unit contains portions of Kumuwela Ridge and Trail. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Nothocestrum peltatum* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha*. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Nothocestrum peltatum*—b

This unit is critical habitat for *Nothocestrum peltatum* and is 1,465 ha (3,619 ac) on State land (Kuia NAR, Kokee, Waimea Canyon, and Na Pali Coast State Parks). This unit contains portions of Awaawapuhi, Honopu, and Nualolo Trails, Kainamanu and Kalahu Summits, and Mahanaloa Valley. This unit provides habitat for four populations of 100 mature, reproducing individuals of the long-lived perennial, *Nothocestrum peltatum* and is currently occupied with 12 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha*. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Nothocestrum peltatum*—c

This unit is critical habitat for *Nothocestrum peltatum* and is 80 ha (198 ac) on State land (Kokee and Na Pali Coast State Parks). This unit contains Kahuamaa Flat and Puu o Kila Summit. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Nothocestrum peltatum* and is currently occupied with five plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha*. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 12—*Nothocestrum peltatum*—d

This unit is critical habitat for *Nothocestrum peltatum* and is 161 ha (400 ac) on State land (Waimea Canyon State Park and Puu Ka Pele Forest Reserve). This unit contains Puu Lua Summit. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Nothocestrum peltatum* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha*. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 14—*Panicum niihauense*—a

This unit is critical habitat for *Panicum niihauense* and is 118 ha (296 ac) on State (Polihale State Park and Puu Ka Pele Forest Reserve) and Federal land (Pacific Missile Range Facility). This unit contains Nohili Point. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Panicum niihauense* and is currently occupied with 23 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, sand dunes in coastal shrubland. This unit is geographically separated from the other three units designated as critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 15—*Panicum niihauense*—b

This unit is critical habitat for *Panicum niihauense* and is 15 ha (38 ac) on federal land (Pacific Missile Range Facility). This unit contains Mana Point and Waieli Draw. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Panicum niihauense* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, sand dunes in coastal shrubland. This unit is geographically separated from the other three units designated as critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 16—*Panicum niihauense*—c

This unit is critical habitat for *Panicum niihauense* and is 11 ha (28 ac) on Federal land (Pacific Missile Range Facility) along the western coastline near the radio facility. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Panicum niihauense* and is currently unoccupied.

This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, sand dunes in coastal shrubland. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 17—*Panicum niihauense*—d

This unit is critical habitat for *Panicum niihauense* and is 27 ha (67 ac) on Federal and State land. This unit contains Kokole Point. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Panicum niihauense* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the easternmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, sand dunes in coastal shrubland. This unit is geographically separated from the other three units designated as critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 7—*Peucedanum sandwicense*—a

This unit is critical habitat for *Peucedanum sandwicense* and is 21 ha (53 ac) on private land. This unit contains Haupu Summit and Queen Victoria's Profile. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Peucedanum sandwicense* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff habitats in mixed shrub coastal dry cliff communities or diverse mesic forest. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Peucedanum sandwicense*—b

This unit is critical habitat for *Peucedanum sandwicense* and is 579 ha (1,431 ac) on State land (Kuia NAR and Na Pali Coast State Park). This unit contains portions of Kuia and Mahanaloa Valleys, and Milolii Ridge. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Peucedanum sandwicense* and is currently occupied with 55 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff habitats in mixed shrub coastal dry cliff communities or diverse mesic forest. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Peucedanum sandwicense*—c

This unit is critical habitat for *Peucedanum sandwicense* and is 181 ha (447 ac) on State land (Hono o Na Pali NAR and Na Pali Coast State Park). This unit contains portions of Kaaalahina Ridge, and Alealau, Kanakou, Keanapuka, and Puu Ki Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Peucedanum sandwicense* and is currently occupied with 100 to 200 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliff habitats in mixed shrub coastal dry cliff communities or diverse mesic forest. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 10—*Phlegmariurus nutans*—a

This unit is critical habitat for *Phlegmariurus nutans* and is 621 ha (1,532 ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains Kahili, Kalalea, Kamanu, Kapalaoa, and Kawaikini Summits. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Phlegmariurus nutans* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, tree trunks on open ridges and slopes in *Metrosideros polymorpha-Dicranopteris linearis* wet forest. This unit provides for three populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event. This species has wind-blown spores with limited opportunity for germination and growth. Therefore, this species requires large intact areas of land to support a viable population.

Kauai 11—*Phyllostegia knudsenii*—a

This unit is critical habitat for *Phyllostegia knudsenii* and is 297 ha (735 ac) on State land (Alakai Wilderness Preserve). This unit contains portions of Kawaiiki and Kipalau Valleys. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia knudsenii* and is currently occupied with 4 to 13 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* lowland mesic or wet forest. Although we do not feel that there is enough habitat designated to reach the recovery goal of 8 to 10 populations, this species is a very narrow endemic and probably never naturally occurred in more than a single or a few populations.

Kauai 11—*Phyllostegia waimeae*—a

This unit is critical habitat for *Phyllostegia waimeae* and is 365 ha (901 ac) on State land (Alakai Wilderness Preserve), containing portions of Kawaiiki Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia waimeae* and is currently occupied with six plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa-Metrosideros polymorpha* dominated wet or mixed mesic forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominants. Although we do not feel that there is enough habitat designated to reach the recovery goal of 8 to 10 populations, this species is a very narrow endemic and probably never naturally occurred in more than a single or a few populations.

Kauai 4—*Phyllostegia wawrana*—a

This unit is critical habitat for *Phyllostegia wawrana* and is 351 ha (871 ac) on State (Koalia Forest Reserve) and private land. This unit contains Leleiwi, Makaleha, Uluawaa, and Wekiu Summits. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia wawrana* and is currently occupied with 25 to 35 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa-Metrosideros polymorpha-Cheirodendron* mixed mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Phyllostegia wawrana*—b

This unit is critical habitat for *Phyllostegia wawrana* and is 1,038 ha (2,565 ac) on State (Alakai Wilderness Preserve, Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park) and private land. This unit contains Hanakoa Valley, and Alealau Summit, Hono O Napali, Keanapuka, Moaalele, Pali eleele, Pohakea, Puu Ki, and Waiahuakua Summits. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia wawrana* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa-Metrosideros polymorpha-Cheirodendron* mixed mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Phyllostegia wawrana*—c

This unit is critical habitat for *Phyllostegia wawrana* and is 108 ha (268 ac) on State land (Alakai Wilderness Preserve), containing portions of Kipalau Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia wawrana* and is currently occupied with 1 to 10 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa-Metrosideros polymorpha-Cheirodendron* mixed mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Phyllostegia wawrana*—d

This unit is critical habitat for *Phyllostegia wawrana* and is 251 ha (620 ac) on State land (Kokee and Na Pali Coast State Parks). This unit contains portions of Honopu Trail, Kainamanu and Kalahu Summits, and Kalalau Lookout. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Phyllostegia wawrana* and is currently occupied with 5 to 6 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable.

The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa-Metrosideros polymorpha-Cheirodendron* mixed mesic forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Plantago princeps*—a

This unit is critical habitat for *Plantago princeps* and is 277 ha (682 ac) on State (Halelea and Lihue-Koloa Forest Reserves) and private land. This unit contains Kuaohukini Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* and is currently occupied with 350 to 400 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population,. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, windswept areas near waterfalls in *Metrosideros polymorpha-Cheirodendron* montane wet forest with riparian vegetation or *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on rocky basalt outcrops. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other

critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Plantago princeps*—b

This unit is critical habitat for *Plantago princeps* and is 126 ha (312 ac) on State land (Kokee and Na Pali Coast State Park), containing Kalalau Lookout. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* and is currently occupied with 18 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, windswept areas near waterfalls in *Metrosideros polymorpha-Cheirodendron* montane wet forest with riparian vegetation or *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on rocky basalt outcrops. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Plantago princeps*—c

This unit is critical habitat for *Plantago princeps* and is 244 ha (603 ac) on State land (Halelea Forest Reserve). This unit contains Kaliko and Puu Manu Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, windswept areas near waterfalls in *Metrosideros polymorpha-Cheirodendron* montane wet forest with riparian vegetation or *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on rocky basalt outcrops.

Kauai 11—*Plantogo princeps*—d

This unit is critical habitat for *Plantago princeps* and is 77 ha (189 ac) on State land (Hono o Na Pali NAR and Na Pali Coast State Park). This unit contains Alealau and Puu Ki Summits, and Kaaalahina Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Plantago princeps* and is currently occupied with 20 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, windswept areas near waterfalls in *Metrosideros polymorpha-Cheirodendron* montane wet forest with riparian vegetation or *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on rocky basalt outcrops. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Platanthera holochila*—a

This unit is critical habitat for *Platanthera holochila* and is 4,148 ha (10,251 ac) on State (Alakai Wilderness Preserve, Halelea Forest Reserve, Hono o Na Pali NAR, and Na Pali Coast State Park) and private land. This unit contains the Alakai Swamp and Trail, Halehaha and Halepaakai Streams, and Kapoki, Kilohana, Kaali, and Pihea Summits. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Platanthera holochila* and is currently occupied with 24 to 34 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, montane *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *M. polymorpha* mixed bog. This unit provides for four populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Poa mannii*—a

This unit is critical habitat for *Poa mannii* and is 1,872 ha (4,624 ac) on State land (Kuia NAR, Kokee, Na Pali Coast, and Waimea Canyon State Parks, and Puu Ka Pele Forest Reserve). This unit contains portions of Anakai, and Awaawapuhi, Honopu, and Nualolo Trails, and Haahole, Kuia, and Mahanaloa Valleys, and Milolii Ridge. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Poa mannii* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Poa mannii*—b

This unit is critical habitat for *Poa mannii* and is 677 ha (1,673 ac) on State land (Alakai Wilderness Preserve), containing portions of Kipalau Valley. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Poa mannii* and is currently occupied with 50 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Poa mannii*—c

This unit is critical habitat for *Poa mannii* 155 ha (383 ac) on State land (Hono o Na Pali NAR and Na Pali Coast State Park). This unit contains portions of Kaaalahina Ridge, and Alealau, Kanakou, and Puu Ki Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Poa mannii* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Poa mannii*—d

This unit is critical habitat for *Poa mannii* and is 307 ha (759 ac) on State land (Na Pali-Kona Forest Reserve, Kokee and Na Pali Coast State Parks). This unit contains Kalahu, Nianiau, and Puu o Kila Summits, Kalepa Ridge, and Nakeikionaiwa Pillar. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Poa mannii* and is currently occupied with 205 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Poa sandvicensis*—a

This unit is critical habitat for *Poa sandvicensis* and is 1,111 ha (2,746 ac) on State land (Alakai Wilderness Preserve). This unit contains portions of Kawaiiki Ridge and Kipalau Valley. This unit provides habitat for six populations of 300 mature, reproducing individuals of the short-lived perennial *Poa sandvicensis* and is currently occupied with 1,000 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, shaded, gentle to steep slopes, ridges, and rock ledges of stream banks in semi-open to closed, wet, diverse *Acacia koa-Metrosideros polymorpha* montane forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Poa sandvicensis*—b

This unit is critical habitat for *Poa sandvicensis* and is 52 ha (129 ac) on State land (Alakai Wilderness Preserve, Hono o Na Pali NAR, and Na Pali Coast State Park). This unit contains Alealau and Keanapuka Summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Poa sandvicensis* and is currently occupied with four plants: This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, shaded, gentle to steep slopes, ridges, and rock ledges of stream banks in semi-open to closed, wet, diverse *Acacia koa-Metrosideros polymorpha* montane forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Poa siphonoglossa*—a

This unit is critical habitat for *Poa siphonoglossa* and is 1,620 ha (4,008 ac) on State land (Kuia NAR, Kokee and Na Pali Coast State Parks). This unit contains portions of Kahuamaa Flat, Kaunuahaa and Milolii Ridges, Kuia and Mahanaloa Valleys, Nualolo Trail, and Kainamanu and Puu O Kila Summits. This unit provides habitat for five populations of 300 mature, reproducing individuals of the short-lived perennial *Poa siphonoglossa* and is currently occupied with 13 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, shady banks on steep slopes in mesic *Metrosideros polymorpha-Acacia koa* forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Poa siphonoglossa*—b

This unit is critical habitat for *Poa siphonoglossa* and is 2,189 ha (5,410 ac) on State land (Alakai Wilderness Preserve). This unit contains portions of Kawaiiki Ridge and Kipalau Valley. This unit provides habitat for five populations of 300 mature, reproducing individuals of the short-lived perennial *Poa siphonoglossa* and is currently occupied with 30 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, shady banks on steep slopes in mesic *Metrosideros polymorpha-Acacia koa* forests. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 7—*Pteralyxia kauaiensis*—a

This unit is critical habitat for *Pteralyxia kauaiensis* and is 345 ha (854 ac) on private land. This unit contains Hokulei Peak, Haupu and Naluakeina Summits, and Queen Victoria's Profile. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Pteralyxia kauaiensis* and is currently occupied with 10 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population,

which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. This unit is geographically separated from the other six units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 10—*Pteralyxia kauaiensis*—b

This unit is critical habitat for *Pteralyxia kauaiensis* and is 304 ha (752 ac) on State (Halelea and Lihue-Koloa Forest Reserves) and private land, containing Kuaohukini Summit. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Pteralyxia kauaiensis* and is currently occupied with two plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. This unit is geographically separated from the other six units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Pteralyxia kauaiensis*—c

This unit is critical habitat for *Pteralyxia kauaiensis* and is 209 ha (516 ac) on State land (Hono o Na Pali NAR and Na Pali Coast State Park). This unit contains Alealau, Kanakou, and Puu Ki Summits and Kaaalahina Ridge. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Pteralyxia kauaiensis* and is currently occupied with 24 to 33 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. This unit is geographically separated from the other six units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Pteralyxia kauaiensis*—d

This unit is critical habitat for *Pteralyxia kauaiensis* and is 57 ha (141 ac) on State land within Makaha Valley. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Pteralyxia kauaiensis* and is currently occupied with 300 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population,. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. This unit is geographically separated from the other six units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Pteralyxia kauaiensis*—e

This unit is critical habitat for *Pteralyxia kauaiensis* and is 353 ha (873 ac) on State land (Na Pali Coast State Park) within Kalalau Valley. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Pteralyxia kauaiensis* and is currently occupied with 332 to 337 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. This unit is geographically separated from the other six units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Pteralyxia kauaiensis*—f

This unit is critical habitat for *Pteralyxia kauaiensis* and is 588 ha (1,445 ac) on State (Alakai Wilderness Preserve and Puu Ka Pele Forest Reserve) and private land. This unit contains Hipalau, Kawaiiki, Kipalau, and Oneopaewa Valleys and portions of Kaluahaulu Ridge. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Pteralyxia kauaiensis* and is currently occupied with 70 to 82 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. This unit is geographically separated from the other six units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Pteralyxia kauaiensis*—g

This unit is critical habitat for *Pteralyxia kauaiensis* and is 445 ha (1,100 ac) on State land (Kuia NAR, Na Pali Coast State Park, and Puu Ka Pele Forest Reserve). This unit contains Kawaiula, Kuia, Mahanaloa, Paaiki, and Poopooiki Valleys and Milolii Ridge. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Pteralyxia kauaiensis* and is currently occupied with 335 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. This unit is geographically separated from the other six units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Remya kauaiensis*—a

This unit is critical habitat for *Remya kauaiensis* and is 172 ha (426 ac) on State land (Alakai Wilderness Preserve), containing portions of Kipalau Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Remya kauaiensis* and is currently occupied with five to 10 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north- or northeast-facing slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Remya kauaiensis*—b

This unit is critical habitat for *Remya kauaiensis* and is 66 ha (163 ac) on State land (Na Pali Coast State Park) within Kalalau Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Remya kauaiensis* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north- or northeast-facing slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Remya kauaiensis*—c

This unit is critical habitat for *Remya kauaiensis* and is 886 ha (2,190 ac) on State land (Kuia NAR and Kokee State Park). This unit contains portions of Awaawapuhi, Honopu, and Nualolo Trails and Kainamanu Summit. This unit provides habitat for five populations of 300 mature, reproducing individuals of the short-lived perennial *Remya kauaiensis* and is currently occupied with 73 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north- or northeast-facing slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Remya kauaiensis*—d

This unit is critical habitat for *Remya kauaiensis* and is 47 ha (115 ac) on State land, containing portions of Kaluahaulu Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Remya kauaiensis* and is currently occupied with 10 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north- or northeast-facing slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Remya kauaiensis*—e

This unit is critical habitat for *Remya kauaiensis* and is 66 ha (163 ac) on State land (Alakai Wilderness Preserve) and contains portions of Kohua Ridge and the Mohihi Waialai Trail. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Remya kauaiensis* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north- or northeast-facing slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 12—*Remya kauaiensis*—f

This unit is critical habitat for *Remya kauaiensis* and is 52 ha (128 ac) on State land (Waimea Canyon State Park) near Lapa Picnic Area and Lua Reservoir. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Remya kauaiensis* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north- or northeast-facing slopes in *Acacia koa-Metrosideros polymorpha* lowland mesic forest. This unit is geographically separated from the other five units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Remya montgomeryi*—a

This unit is critical habitat for *Remya montgomeryi* and is 69 ha (171 ac) on State land (Kuia NAR) within portions of the Kuia and Mahanaloa Valleys. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Remya montgomeryi* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north- or northeast-facing slopes or cliffs in transitional wet or *Metrosideros polymorpha*-dominated mixed mesic forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Remya montgomeryi*—b

This unit is critical habitat for *Remya montgomeryi* and is 1,010 ha (2,496 ac) on State land (Alakai Wilderness Preserve and Halelea Forest Reserve), containing portions of the Alakai Swamp. This unit provides habitat for four populations of 300 mature, reproducing individuals of the short-lived perennial *Remya montgomeryi* and is currently occupied with nine plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important

for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north- or northeast-facing slopes or cliffs in transitional wet or *Metrosideros polymorpha*-dominated mixed mesic forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event..

Kauai 11—*Remya montgomeryi*—c

This unit is critical habitat for *Remya montgomeryi* and is 436 ha (1,077 ac) on State land (Kokee and Na Pali Coast State Parks). This unit contains Kahuamaa Flat, and Kalahu, Pihea, and Puu o Kila Summits, and Kalalau Lookout. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Remya montgomeryi* and is currently occupied with 134 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north- or northeast-facing slopes or cliffs in transitional wet or *Metrosideros polymorpha*-dominated mixed mesic forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Schiedea apokremnos*—a

This unit is critical habitat for *Schiedea apokremnos* and is 170 ha (421 ac) on State land (Na Pali Coast State Park), containing Nakeikionaiwi Pillar. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea apokremnos* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, crevices of near-vertical basalt coastal cliff faces in sparse dry coastal cliff shrub vegetation. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Schiedea apokremnos*—b

This unit is critical habitat for *Schiedea apokremnos* and is 187 ha (463 ac) on State land (Na Pali Coast State Park), containing Kanakou Summit. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea apokremnos* and is currently occupied with 100 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, crevices of near-vertical basalt coastal cliff faces in sparse dry coastal cliff shrub vegetation. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Schiedea apokremnos*—c

This unit is critical habitat for *Schiedea apokremnos* and is 295 ha (730 ac) on State land (Na Pali Coast State Park and Puu Ka Pele Forest Reserve). This unit contains portions of Kawaiula, Milolii, Paaiki, and Poopooiki Valleys. This unit provides habitat for five populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea apokremnos* and is currently occupied with 100 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, crevices of near-vertical basalt coastal cliff faces in sparse dry coastal cliff shrub vegetation. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Schiedea helleri*—a

This unit is critical habitat for *Schiedea helleri* and is 483 ha (1,194 ac) on State land (Alakai Wilderness Preserve), containing portions of Halehaha and Halepaakai Streams. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea helleri* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* spp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Schiedea helleri*—b

This unit is critical habitat for *Schiedea helleri* and is 154 ha (381 ac) on State land (Alakai Wilderness Preserve) on portions of Kohua Ridge and the Mohihi-Waialae Trail. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea helleri* and is currently occupied with 50 to 60 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* spp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Schiedea helleri*—c

This unit is critical habitat for *Schiedea helleri* and is 172 ha (426 ac) on State land (Alakai Wilderness Preserve), containing portions of Kipalau Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea helleri* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* spp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Schiedea kauaiensis*—a

This unit is critical habitat for *Schiedea kauaiensis* and is 12 ha (29 ac) on private land, containing Pohakukane Cliffs. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kauaiensis* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in diverse mesic to wet *Acacia koa-Metrosideros polymorpha* forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Schiedea kauaiensis*—b

This unit is critical habitat for *Schiedea kauaiensis* and is 395 ha (975 ac) on State land (Kokee and Na Pali Coast State Parks). This unit contains Kahuamaa Flat, and Kalahu, Pihea, and Puu o Kila Summits, and Kalalau Lookout. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kauaiensis* and is currently occupied with five plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in diverse mesic to wet *Acacia koa-Metrosideros polymorpha* forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Schiedea kauaiensis*—c

This unit is critical habitat for *Schiedea kauaiensis* and is 510 ha (1,260 ac) on State land (Kuia NAR). This unit contains portions of Kuia and Mahanaloa Valleys and Milolii Ridge. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kauaiensis* and is currently occupied with 17 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in diverse mesic to wet *Acacia koa-Metrosideros polymorpha* forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Schiedea kauaiensis*—d

This unit is critical habitat for *Schiedea kauaiensis* and is 11 ha (28 ac) on State land (Hono o Na Pali NAR), containing portions of Kalalau Trail. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea kauaiensis* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in diverse mesic to wet *Acacia koa-Metrosideros polymorpha* forest. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Schiedea membranacea*—a

This unit is critical habitat for *Schiedea membranacea* and is 251 ha (620 ac) on State land (Alakai Wilderness Preserve) within the Koaie Canyon. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea membranacea* and is currently occupied with 6 to 10 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs or cliff bases of mesic or wet habitats, in lowland or montane shrubland, or forest communities dominated by *Acacia koa*, *Pipturus* spp. and *Metrosideros polymorpha* or Urticaceae shrubland on talus slopes. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from

being destroyed by one naturally occurring catastrophe.

Kauai 11—*Schiedea membranacea*—b

This unit is critical habitat for *Schiedea membranacea* and is 234 ha (580 ac) on State land (Kokee and Na Pali Coast State Parks). This unit contains Kalahu and Puu o Kila Summits and Kalalu Lookout. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea membranacea* and is currently occupied with 24 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs or cliff bases of mesic or wet habitats, in lowland or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* spp. and *Metrosideros polymorpha* or Urticaceae shrubland on talus slopes. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11—*Schiedea membranacea*—c

This unit is critical habitat for *Schiedea membranacea* and is 528 ha (1,303 ac) on State land (Kuia NAR and Puu Ka Pele Forest Reserve). This unit contains portions of Kuia and Mahanaloa Valleys and Milolii Ridge. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea membranacea* and is currently occupied with 266 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs or cliff bases of mesic or wet habitats, in lowland or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* spp. and *Metrosideros polymorpha* or Urticaceae shrubland on talus slopes. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 11–*Schiedea membranacea*—d

This unit is critical habitat for *Schiedea membranacea* and is 327 ha (810 ac) on State land (Kuia NAR and Kokee State Park). This unit contains portions of Awaawapuhi and Honopu Trails and Kainamau Summit. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea membranacea* and is currently occupied with eight plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs or cliff bases of mesic or wet habitats, in lowland or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* spp. and *Metrosideros polymorpha* or Urticaceae shrubland on talus slopes. This unit is geographically separated from the other three units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe.

Kauai 7—*Schiedea nuttallii*—a

This unit is critical habitat for *Schiedea* nuttallii and is 282 ha (698 ac) on private land. This unit contains Haupu and Naluakeina Summits and Queen Victoria's Profile. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Schiedea nuttallii* and is currently occupied with ten to 50 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs in lowland diverse mesic forest dominated by *Metrosideros polymorpha*. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 9—*Schiedea spergulina* var. *leiopoda*—a

This unit is critical habitat for *Schiedea spergulina* var. *leiopoda* and is 5 ha (11 ac) on private land within Lawai Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea spergulina* var. *leiopoda* and is currently occupied with 135 to 150 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests. Although we do not feel that there is enough habitat designated to reach the recovery goal of 8 to 10 populations, this species is a very narrow endemic and probably never naturally occurred in more than a single or a few populations.

Kauai 11—*Schiedea spergulina* var. *spergulina*—a

This unit is critical habitat for *Schiedea spergulina* var. *spergulina* and is 131 ha (324 ac) on State land (Na Pali Coast State Park) within Kalalau Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea spergulina* var. *spergulina* and is currently occupied with one plant. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order ro avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is of an appropriate distance from the other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Schiedea spergulina* var. *spergulina*—b

This unit is critical habitat for *Schiedea spergulina* var. *spergulina* and is 77 ha (191 ac) on State land within Kawaiiki Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea spergulina* var. *spergulina* and is currently occupied with five plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other units to avoid their destruction by one naturally occurring catastrophic event.

Kauai 13—*Schiedea spergulina* var. *spergulina*—c

This unit is critical habitat for *Schiedea spergulina* var. *spergulina* and is 221 ha (545 ac) on State land within Waimea Canyon. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea spergulina* var. *spergulina* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests. This unit is geographically separated from the other two units designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Schiedea stellarioides*—a

This unit is critical habitat for *Schiedea stellarioides* and is 1,259 ha (3,113 ac) on State land (Alakai Wilderness Preserve and Puu Ka Pele Forest Reserve). This unit contains portions of Kaluahaulu and Kawaiiki Ridges, and Kawaiiki and Kipalau Valleys. This unit provides habitat for five populations of 300 mature, reproducing individuals of the short-lived perennial *Schiedea stellarioides* and is currently occupied with 200 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate size and distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Schiedea stellarioides*—b

This unit is critical habitat for *Schiedea stellarioides* and is 129 ha (320 ac) on State land (Alakai Wilderness Preserve) within upper Waialae Valley. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Schiedea stellarioides* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 8—*Sesbania tomentosa*—a

This unit is critical habitat for *Sesbania tomentosa* and is 46 ha (115 ac) on private land, containing Paoo Point and Naake Cape. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, sandy beaches, dunes, or pond margins in coastal dry shrublands or mixed coastal dry cliffs. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 14—*Sesbania tomentosa*—b

This unit is critical habitat for *Sesbania tomentosa* and is 44 ha (109 ac) on State land (Polihale State Park). This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is currently occupied with 11 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species. The habitat features contained in this unit that are essential for this species include, but are not limited to, sandy beaches, dunes, or pond margins in coastal dry shrublands or mixed coastal dry cliffs. This unit provides for one population within this multi-island species' historical range on Kauai that is

some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Solanum sandwicense*—a

This unit is critical habitat for *Solanum sandwicense* and is 2,442 ha (6,039 ac) on State land (Kuia NAR, Kokee and Na Pali Coast State Parks). This unit contains portions of the Awaawapuhi, Berry Flat, Nualolo and Honopu Trails, Kahuamaa Flat, Kainamanu and Kalahu Summits, and Kaunuohua and Kumuwela Ridges. This unit provides habitat for five populations of 300 mature, reproducing individuals of the short-lived perennial *Solanum sandwicense* and is currently occupied with eight to nine plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest canopies in diverse lowland or montane *Acacia koa* or *Acacia koa-Metrosideros polymorpha* mesic or wet forests. This unit provides for five populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Solanum sandwicense*—b

This unit is critical habitat for *Solanum sandwicense* and is 249 ha (614 ac) on State land, containing portions of Kawaiiki Ridge. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Solanum sandwicense* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is importnat to the establishment of additional populations on Kauai in order to reach recovery goals. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest canopies in diverse lowland or montane *Acacia koa* or *Acacia koa-Metrosideros polymorpha* mesic or wet forests. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Spermolepis hawaiiensis*—a

This unit is critical habitat for *Spermolepis hawaiiensis* and is 95 ha (237 ac) on State land (Puu Ka Pele Forest Reserve), containing portions of Kawaiiki Valley. This unit provides habitat for one population of 500 mature, reproducing individuals of the annual *Spermolepis hawaiiensis* and is currently occupied with two plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 13—*Spermolepis hawaiiensis*—b

This unit is critical habitat for *Spermolepis hawaiiensis* and is 87 ha (215 ac) on State land, containing portions of Waimea Canyon. This unit provides habitat for one population of 500 mature, reproducing individuals of the annual *Spermolepis hawaiiensis* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. It provides habitat for the westernmost range of the species that is unique to Kauai. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland. This unit provides for one population within this multi-island species' historical range on Kauai that is some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Kauai 11—*Stenogyne campanulata*—a

This unit is critical habitat for *Stenogyne campanulata* and is 424 ha (1,050 ac) on State land (Kokee and Na Pali Coast State Parks). This unit contains the Kahuamaa Flats. This unit provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *Stenogyne campanulata* and is currently occupied with 51 to 66 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock faces of nearly vertical, north-facing cliffs in diverse lowland or montane mesic forest. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate size to avoid their destruction by one naturally occurring catastrophic event.

Kauai 10—*Viola helenae*—a

This unit is critical habitat for *Viola helenae* and is 610 ha (1,510 ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains portions of Kanaele Swamp and Kahili Summit. This unit provides habitat for five populations of 250 mature, reproducing individuals of the short-lived perennial *Viola helenae* and is currently occupied with 137 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream drainage banks or adjacent valley bottoms in light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or *Metrosideros polymorpha-Cheirodendron* wet forest. This unit is at an appropriate size to avoid the destruction of all recovery populations by one naturally occurring catastrophic event.

Kauai 10—Viola *kauaiensis* var. *wahiawaensis*—a

This unit is critical habitat for *Viola kauaiensis* var. *wahiawaensis* and is 657 ha (1,623 ac) on State (Lihue-Koloa Forest Reserve) and private land. This unit contains portions of Kanaele Swamp and Kahili Summit. This unit provides habitat for five populations of 300 mature, reproducing individuals of the short-lived perennial *Viola kauaiensis* var. *wahiawaensis* and is currently occupied with 13 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Machaerina angustifolia-Rhynchospora rugosa* lowland bog or mixed wet shrubland and adjacent *Metrosideros polymorpha* wet forest. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate size to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Wilkesia hobdyi*—a

This unit is critical habitat for *Wilkesia hobdyi* and is 775 ha (1,916 ac) on State land (Hono o Na Pali NAR, Na Pali Coast State Park, and Puu Ka Pele Forest Reserve). This unit contains Anaki, and Kawaiula, Kaaholi, Paaiki, Pohakuao, and Poopooiki Valleys, Kanakou Summit, Manono Ridge, and Nakeikionaiwi Pillar. This unit provides habitat for nine populations of 300 mature, reproducing individuals of the short-lived perennial *Wilkesia hobdyi* and is currently occupied with 81 plants. This unit is important to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, coastal dry cliffs or very dry ridges. The 325–390 other plants on Kauai are not included in critical habitat because the habitat they occupy is not considered essential to the conservation of this species. The more appropriate habitat on Kauai, within its historical range, are being designated as critical habitat.

Kauai 11—*Xylosma crenatum*—a

This unit is critical habitat for *Xylosma crenatum* and is 840 ha (2,077 ac) on State land (Kokee and Na Pali Coast State Parks). This unit contains poritons of the Awaawapuhi, Honopu, and Nualolo Trails, and Kainamanu and Kalahu Summits. This unit provides habitat for four populations of 100 mature, reproducing individuals of the long-lived perennial *Xylosma crenatum* and is currently occupied with 14 plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse *Acacia koa-Metrosideros polymorpha* montane mesic or wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate size and distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 12—*Xylosma crenatum*—b

This unit is critical habitat for *Xylosma crenatum* and is 52 ha (128 ac) on State land (Kuia NAR and Waimea Canyon State Park) near Lapa Picnic Area and Lua Reservoir. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Xylosma crenatum* and is currently unoccupied. This unit is essential to the conservation of the taxon because it supports habitat that is important to the establishment of additional populations on Kauai in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, diverse *Acacia koa-Metrosideros polymorpha* montane mesic or wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest. This unit is geographically separated from the other unit designated as critical habitat for this island-endemic species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophe. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this species, this unit is at an appropriate distance from the other unit to avoid their destruction by one naturally occurring catastrophic event.

Kauai 11—*Zanthoxylum hawaiiense*—a

This unit is critical habitat for *Zanthoxylum hawaiiense* and is 523 ha (1,292 ac) on State land (Alakai Wilderness Preserve and Puu Ka Pele Forest Reserve), containing portions of Kawaiiki Valley. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *Zanthoxylum hawaiiense* and is currently occupied with three plants. This unit is essential to the conservation of the taxon because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population, which is currently considered non-viable. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry or mesic forests dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*. This unit provides for two populations within this multi-island species' historical range on Kauai that are some distance away from the other critical habitat for this species, in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands; require a Federal permit, license, or other authorization; or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in the destruction or adverse modification of proposed critical habitat.

TABLE 4.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT AND LANDOWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII

Unit name	State/local	Private	Federal	Total
Kauai 1—*Ischaemum byrone*—a		<1 ha (1 ac)		<1 ha (1 ac)
Kauai 2—*Ischaemum byrone*—b		5 ha (13 ac)		5 ha (13 ac)
Kauai 3—*Ischaemum byrone*—c		6 ha (15 ac)		6 ha (15 ac)
Kauai 4—*Adenophorus periens*—a	237 ha (585 ac)	<1 ha (<1 ac)		237 ha (585 ac)
Kauai 4—*Cyanea asarifolia*—a	607 ha (1,499 ac)	47 ha (117 ac)		654 ha (1,616 ac)
Kauai 4—*Cyanea recta*—a	252 ha (622 ac)	<1 ha (<1 ac)		252 ha (622 ac)
Kauai 4—*Cyanea recta*—b	79 ha (195 ac)	274 ha (678 ac)		353 ha (873 ac)
Kauai 4—*Cyanea remyi*—a	80 ha (198 ac)	295 ha (730 ac)		376 ha (928 ac)
Kauai 4—*Cyrtandra cyaneoides*—a	80 ha (198 ac)	295 ha (730 ac)		376 ha (928 ac)
Kauai 4—*Cyrtandra limahuliensis*—a	498 ha (1,231 ac)	2 ha (6 ac)		501 ha (1,237 ac)
Kauai 4—*Cyrtandra limahuliensis*—b	79 ha (195 ac)	274 ha (678 ac)		353 ha (873 ac)
Kauai 4—*Hibiscus clayi*—a		4 ha (9 ac)		4 ha (9 ac)
Kauai 4—*Hibiscus clayi*—b		85 ha (210 ac)		85 ha (210 ac)
Kauai 4—*Hibiscus clayi*—c	586 ha (1,448 ac)	2 ha (6 ac)		588 ha (1,454 ac)
Kauai 4—*Hibiscus clayi*—d		48 ha (119 ac)		48 ha (119 ac)
Kauai 4—*Hibiscus clayi*—e	19 ha (47 ac)			19 ha (47 ac)
Kauai 4—*Labordia lydgatei*—a	585 ha (1,447 ac)	2 ha (6 ac)		588 ha (1,453 ac)
Kauai 4—*Phyllostegia wawrana*—a	78 ha (194 ac)	273 ha (675 ac)		352 ha (869 ac)
Kauai 5—*Hibiscus clayi*—f	60 ha (148 ac)			60 ha (148 ac)
Kauai 5—*Munroidendron racemosum*—a	60 ha (148 ac)			60 ha 148 ac)
Kauai 6—*Brighamia insignis*—a		63 ha (156 ac)		63 ha (156 ac)
Kauai 7—*Brighamia insignis*—b		341 ha (842 ac)		341 ha (842 ac)
Kauai 7—*Delissea rhytidosperma*—a		221 ha (545 ac)		221 ha (545 ac)
Kauai 7—*Isodendrion longifolium*—a		337 ha (833 ac)		337 ha (833 ac)
Kauai 7—*Lipochaeta micrantha*—a		341 ha (842 ac)		341 ha (842 ac)
Kauai 7—*Melicope haupuensis*—a		330 ha (816 ac)		330 ha (816 ac)
Kauai 7—*Munroidendron racemosum*—b		50 ha (123 ac)		50 ha (123 ac)
Kauai 7—*Myrsine linearifolia*—a		334 ha (826 ac)		334 ha (826 ac)
Kauai 7—*Peucedanum sandwicense*—a		21 ha (52 ac)		21 ha (52 ac)
Kauai 7—*Pteralyxia kauaiensis*—a		346 ha (854 ac)		346 ha (854 ac)
Kauai 7—*Schiedea nuttallii*—a		282 ha (697 ac)		282 ha (697 ac)
Kauai 8—*Sesbania tomentosa*—a		47 ha (115 ac)		47 ha (115 ac)
Kauai 9—*Schiedea spergulina* var. *leiopoda*—a		5 ha (11 ac)		5 ha (11 ac)
Kauai 10—*Adenophorus periens*—b	12 ha (29 ac)	480 ha (1,185 ac)		491 ha (1,215 ac)
Kauai 10—*Bonamia menziesii*—a	11 ha (28 ac)	409 ha (1,011 ac)		421 ha (1,039 ac)
Kauai 10—*Cyanea asarifolia*—b	161 ha (398 ac)	742 ha (1,834 ac)		903 ha (2,232 ac)
Kauai 10—*Cyanea remyi*—b		1,904 ha (4,705 ac)		1,904 ha (4,705 ac)
Kauai 10—*Cyanea undulata*—a	53 ha (130 ac)	952 ha (2,353 ac)		1,005 ha (2,484 ac)
Kauai 10—*Cyrtandra limahuliensis*—c	471 ha (1,164 ac)	1,542 ha (3,811 ac)		2,013 ha (4,975 ac)
Kauai 10—*Dubautia pauciflorula*—a	38 ha (93 ac)	776 ha (1,919 ac)		814 ha (2,012 ac)
Kauai 10—*Exocarpos luteolus*—a	2 ha (5 ac)	399 ha (986 ac)		401 ha (991 ac)
Kauai 10—*Hesperonmannia lydgatei*—a		646 ha (1,596 ac)		646 ha (1,596 ac)
Kauai 10—*Isodendrion longifolium*—b		142 ha (350 ac)		142 ha (350 ac)
Kauai 10—*Labordia lydgatei*—b	135 ha (333 ac)	900 ha (2,225 ac)		1,035 ha (2,558 ac)
Kauai 10—*Labordia tinifolia* var. *wahiawaensis*—a		913 ha (2,255 ac)		913 ha (2,255 ac)
Kauai 10—*Lysimachia filifolia*—a	171 ha (421 ac)	824 ha (2,037 ac)		995 ha (2,458 ac)
Kauai 10—*Myrsine linearifolia*—b	<1 ha (<1 ac)	167 ha (413 ac)		167 ha (413 ac)
Kauai 10—*Phlegmariurus nutans*—a	44 ha (108 ac)	577 ha (1,425 ac)		620 ha (1,533 ac)
Kauai 10—*Plantago princeps*—a	276 ha (683 ac)	<1 ha (<1 ac)		277 ha (683 ac)
Kauai 10—*Pteralyxia kauaiensis*—b	304 ha (751 ac)	<1 ha (<1 ac)		304 ha (751 ac)
Kauai 10—*Viola helenae*—a	13 ha (33 ac)	598 ha (1,477 ac)		611 ha (1,510 ac)
Kauai 10—*Viola kauaiensis* var. *wahiawaensis*—a	54 ha (134 ac)	603 ha (1,489 ac)		657 ha (1,623 ac)
Kauai 11—*Adenophorus periens*—c	301 ha (743 ac)	168 ha (415 ac)		469 ha (1,158 ac)
Kauai 11—*Adenophorus periens*—d	914 ha (2,259 ac)	92 ha (227 ac)		1,006 ha (2,485 ac)
Kauai 11—*Alectryon macrococcus*—a	382 ha (943 ac)			382 ha (943 ac)
Kauai 11—*Alectryon macrococcus*—b	90 ha (222 ac)			90 ha (222 ac)
Kauai 11—*Alsinidendron lychnoides*—a	992 ha (2,452 ac)	1 ha (3 ac)		994 ha (2,445 ac)
Kauai 11—*Alsinidendron lychnoides*—b	138 ha (340 ac)			138 ha (340 ac)
Kauai 11—*Alsinidendron lychnoides*—c	55 ha (136 ac)			55 ha (136 ac)
Kauai 11—*Alsinidendron viscosum*—a	736 ha (1,819 ac)			736 ha (1,819 ac)
Kauai 11—*Alsinidendron viscosum*—b	17 ha (42 ac)			17 ha (42 ac)
Kauai 11—*Alsinidendron viscosum*—c	22 ha (55 ac)			22 ha (55 ac)
Kauai 11—*Alsinidendron viscosum*—d	61 ha (160 ac)			61 ha (150 ac)
Kauai 11—*Bonamia menziesii*—b	93 ha (229 ac)			93 ha (229 ac)
Kauai 11—*Brighamia insignis*—c	1,639 ha (4,049 ac)			1,639 ha (4,049 ac)
Kauai 11—*Centaurium sebaeoides*—a	156 ha (385 ac)			156 ha (385 ac)
Kauai 11—*Chamaesyce halemanui*—a	108 ha (267 ac)			108 ha (267 ac)
Kauai 11—*Chamaesyce halemanui*—b	17 ha (43 ac)			17 ha (43 ac)
Kauai 11—*Chamaesyce halemanui*—c	1,283 ha (3,171 ac)			1,283 ha (3,171 ac)
Kauai 11—*Ctenitis squamigera*—a	735 ha (1,817 ac)			735 ha (1,817 ac)
Kauai 11—*Cyanea recta*—c	385 ha (951 ac)	168 ha (416 ac)		553 ha (1,367 ac)

TABLE 4.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT AND LANDOWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII—Continued

Unit name	State/local	Private	Federal	Total
Kauai 11—*Cyanea recta*—d	143 ha (352 ac)	255 ha (629 ac)		397 ha (981 ac)
Kauai 11—*Cyanea remyi*—c	365 ha (901 ac)			365 ha (901 ac)
Kauai 11—*Cyanea remyi*—d	342 ha (845 ac)	321 ha (794 ac)		663 ha (1,638 ac)
Kauai 11—*Cyperus trachysanthos*—a	432 ha (1,068 ac)			432 ha (1,068 ac)
Kauai 11—*Cyrtandra cyaneoides*—b	553 ha (1,366 ac)	295 ha (730 ac)		848 ha (2,095 ac)
Kauai 11—*Cyrtandra cyaneoides*—c	31 ha (78 ac)	1,085 ha (2,682 ac)		1,117 ha (2,759 ac)
Kauai 11—*Cyrtandra limahuliensis*—d	523 ha (1,292 ac)	293 ha (724 ac)		816 ha (2,016 ac)
Kauai 11—*Cyrtandra limahuliensis*—e	366 ha (905 ac)	327 ha (807 ac)		693 ha (1,712 ac)
Kauai 11—*Delissea rhytidosperma*—b	258 ha (638 ac)			258 ha (638 ac)
Kauai 11—*Delissea rhytidosperma*—c	103 ha (254 ac)			103 ha (254 ac)
Kauai 11—*Delissea rivularis*—a	850 ha (2,100 ac)			850 ha (2,100 ac)
Kauai 11—*Delissea undulata*—a	139 ha (344 ac)	118 ha (291 ac)		257 ha (635 ac)
Kauai 11—*Delissea undulata*—b	532 ha (1,314 ac)			532 ha (1,314 ac)
Kauai 11—*Diellia erecta*—a	364 ha (901 ac)			364 ha (901 ac)
Kauai 11—*Diellia pallida*—a	601 ha (1,485 ac)			601 ha (1,485 ac)
Kauai 11—*Diellia pallida*—b	55 ha (136 ac)			55 ha (136 ac)
Kauai 11—*Diplazium molokaiense*—a	430 ha (1,062 ac)			430 ha (1,062 ac)
Kauai 11—*Dubautia latifolia*—a	31 ha (76 ac)			31 ha (76 ac)
Kauai 11—*Dubautia latifolia*—b	1,522 ha (3,761 ac)			1,522 ha (3,761 ac)
Kauai 11—*Dubautia latifolia*—c	809 ha (1999 ac)			809 ha (1999 ac)
Kauai 11—*Euphorbia haeleeleana*—a	263 ha (649 ac)			263 ha (649 ac)
Kauai 11—*Euphorbia haeleeleana*—b	192 ha (476 ac)			192 ha (476 ac)
Kauai 11—*Euphorbia haeleeleana*—c	204 ha (505 ac)			204 ha (505 ac)
Kauai 11—*Exocarpos luteolus*—b	3,705 ha (9,155 ac)	94 ha (232 ac)		3,799 ha (9,387 ac)
Kauai 11—*Exocarpos luteolus*—c	177 ha (438 ac)			177 ha (438 ac)
Kauai 11—*Exocarpos luteolus*—d	83 ha (206 ac)			83 ha (206 ac)
Kauai 11—*Exocarpos luteolus*—e	522 ha (1,290 ac)			522 ha (1,290 ac)
Kauai 11—*Flueggea neowawraea*—a	51 ha (126 ac)			51 ha (126 ac)
Kauai 11—*Flueggea neowawraea*—b	47 ha (117 ac)			47 ha (117 ac)
Kauai 11—*Flueggea neowawraea*—c	152 ha (376 ac)			152 ha (376 ac)
Kauai 11—*Flueggea neowawraea*—d	77 ha (191 ac)			77 ha (191 ac)
Kauai 11—*Flueggea neowawraea*—e	27 ha (67 ac)			27 ha (67 ac)
Kauai 11—*Flueggea neowawraea*—f	240 ha (594 ac)			240 ha (594 ac)
Kauai 11—*Gouania meyenii*—a	443 ha (1,094 ac)			443 ha (1,094 ac)
Kauai 11—*Gouania meyenii*—b	128 ha (316 ac)			128 ha (316 ac)
Kauai 11—*Gouania meyenii*—c	215 ha (532 ac)			215 ha (532 ac)
Kauai 11—*Hedyotis cookiana*—a	771 ha (1,905 ac)			771 ha (1,905 ac)
Kauai 11—*Hedyotis st.-johnii*—a	238 ha (589 ac)			238 ha (589 ac)
Kauai 11—*Hesperomannia lydgatei*—b	314 ha (776 ac)	599 ha (1,480 ac)		913 ha (2,257 ac)
Kauai 11—*Hesperomannia lydgatei*—c	79 ha (196 ac)	101 ha (249 ac)		180 ha (444 ac)
Kauai 11—*Hibiscadelphus woodii*—a	278 ha (686 ac)			278 ha (686 ac)
Kauai 11—*Hibiscadelphus woodii*—b	72 ha (177 ac)			72 ha (177 ac)
Kauai 11—*Hibiscus waimeae* ssp. *hannerae*—a	565 ha (1,396 ac)	554 ha (1,370 ac)		1,119 ha (2,765 ac)
Kauai 11—*Ischaemum byrone*—d	45 ha (111 ac)			45 ha (111 ac)
Kauai 11—*Isodendrion laurifolium*—a	401 ha (991 ac)			401 ha (991 ac)
Kauai 11—*Isodendrion laurifolium*—b	400 ha (988 ac)			400 ha (988 ac)
Kauai 11—*Isodendrion longifolium*—c	59 ha (146 ac)			59 ha (146 ac)
Kauai 11—*Isodendrion longifolium*—d	493 ha (1,218 ac)			493 ha (1,218 ac)
Kauai 11—*Isodendrion longifolium*—e	279 ha (690 ac)	101 ha (251 ac)		381 ha (941 ac)
Kauai 11—*Kokia kauaiensis*—a	155 ha (384 ac)			155 ha (384 ac)
Kauai 11—*Kokia kauaiensis*—b	30 ha (74 ac)			30 ha (74 ac)
Kauai 11—*Kokia kauaiensis*—c	667 ha (1,647 ac)			667 ha (1,647 ac)
Kauai 11—*Kokia kauaiensis*—d	126 ha (312 ac)			126 ha (312 ac)
Kauai 11—*Labordia lydgatei*—c	325 ha (803 ac)			325 ha (803 ac)
Kauai 11—*Labordia lydgatei*—d	82 ha (203 ac)			82 ha (203 ac)
Kauai 11—*Labordia lydgatei*—e	6 ha (16 ac)	111 ha (275 ac)		117 ha (290 ac)
Kauai 11—*Lipochaeta fauriei*—a	106 ha (262 ac)			106 ha (262 ac)
Kauai 11—*Lipochaeta fauriei*—b	545 ha (1,347 ac)			545 ha (1,347 ac)
Kauai 11—*Lipochaeta micrantha*—b	212 ha (523 ac)			212 ha (523 ac)
Kauai 11—*Lobelia niihauensis*—a	89 ha (220 ac)			89 ha (220 ac)
Kauai 11—*Lobelia niihauensis*—b	1,854 ha (4,582 ac)	147 ha (362 ac)		2,001 ha (4,944 ac)
Kauai 11—*Mariscus pennatiformis*—a	1,003 ha (2,479 ac)			1,003 ha (2,479 ac)
Kauai 11—*Melicope haupuensis*—b	574 ha (1,418 ac)			574 ha (1,418 ac)
Kauai 11—*Melicope haupuensis*—c	290 ha (716 ac)			290 ha (716 ac)
Kauai 11—*Melicope knudsenii*—a	966 ha (2,388 ac)			966 ha (2,388 ac)
Kauai 11—*Melicope knudsenii*—b	373 ha (922 ac)			373 ha (922 ac)
Kauai 11—*Melicope pallida*—a	143 ha (353 ac)			143 ha (353 ac)
Kauai 11—*Melicope pallida*—b	310 ha (765 ac)			310 ha (765 ac)
Kauai 11—*Munroidendron racemosum*—c	1,921 ha (4,747 ac)	29 ha (72 ac)		1,950 ha (4,819 ac)
Kauai 11—*Munroidendron racemosum*—d	153 ha (379 ac)			153 ha (379 ac)
Kauai 11—*Myrsine linearifolia*—c	684 ha (1,691 ac)			684 ha (1,691 ac)

TABLE 4.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT AND LANDOWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII—Continued

Unit name	State/local	Private	Federal	Total
Kauai 11—*Myrsine linearifolia*—d	125 ha (309 ac)	161 ha (397 ac)		286 ha (707 ac)
Kauai 11—*Myrsine linearifolia*—e	346 ha (854 ac)			346 ha (854 ac)
Kauai 11—*Myrsine linearifolia*—f	56 ha (139 ac)	79 ha (195 ac)		135 ha (334 ac)
Kauai 11—*Nothocestrum peltatum*—a	427 ha (1,056 ac)			427 ha (1,056 ac)
Kauai 11—*Nothocestrum peltatum*—b	1,464 ha (3,617 ac)			1,464 ha (3,617 ac)
Kauai 11—*Nothocestrum peltatum*—c	80 ha (198 ac)			80 ha (198 ac)
Kauai 11—*Peucedanum sandwicense*—b	579 ha (1,430 ac)			579 ha (1,430 ac)
Kauai 11—*Peucedanum sandwicense*—c	181 ha (447 ac)			181 ha (447 ac)
Kauai 11—*Phyllostegia knudsenii*—a	297 ha (735 ac)			297 ha (735 ac)
Kauai 11—*Phyllostegia waimeae*—a	364 ha (901 ac)			364 ha (901 ac)
Kauai 11—*Phyllostegia wawrana*—b	973 ha (2,406 ac)	63 ha (156 ac)		1,037 ha (2,562 ac)
Kauai 11—*Phyllostegia wawrana*—c	108 ha (268 ac)			108 ha (268 ac)
Kauai 11—*Phyllostegia wawrana*—d	251 ha (619 ac)			251 ha (619 ac)
Kauai 11—*Plantago princeps*—b	126 ha (312 ac)			126 ha (312 ac)
Kauai 11—*Plantago princeps*—c	244 ha (603 ac)			244 ha (603 ac)
Kauai 11—*Plantago princeps*—d	77 ha (189 ac)			77 ha (189 ac)
Kauai 11—*Platanthera holochila*—a	4,053 ha (10,014 ac)	94 ha (232 ac)		4,146 ha (10,246 ac)
Kauai 11—*Poa mannii*—a	1,871 ha (4,624 ac)			1,871 ha (4,624 ac)
Kauai 11—*Poa mannii*—b	677 ha (1,673 ac)			677 ha (1,673 ac)
Kauai 11—*Poa mannii*—c	155 ha (382 ac)			155 ha (382 ac)
Kauai 11—*Poa mannii*—d	307 ha (758 ac)			307 ha (758 ac)
Kauai 11—*Poa sandvicensis*—a	1,111 ha (2,745 ac)			1,111 ha (2,745 ac)
Kauai 11—*Poa sandvicensis*—b	52 ha (129 ac)			52 ha (129 ac)
Kauai 11—*Poa siphonoglossa*—a	1,621 ha (4,006 ac)			1,621 ha (4,006 ac)
Kauai 11—*Poa siphonoglossa*—b	2,189 ha (5,408 ac)			2,189 ha (5,408 ac)
Kauai 11—*Pteralyxia kauaiensis*—c	209 ha (516 ac)			209 ha (516 ac)
Kauai 11—*Pteralyxia kauaiensis*—d	57 ha (141 ac)			57 ha (141 ac)
Kauai 11—*Pteralyxia kauaiensis*—e	353 ha (872 ac)			353 ha (872 ac)
Kauai 11—*Pteralyxia kauaiensis*—f	588 ha (1,453 ac)	<1 ha (<1 ac)		588 ha (1,453 ac)
Kauai 11—*Pteralyxia kauaiensis*—g	445 ha (1,100 ac)			445 ha (1,100 ac)
Kauai 11—*Remya kauaiensis*—a	172 ha (426 ac)			172 ha (426 ac)
Kauai 11—*Remya kauaiensis*—b	66 ha (163 ac)			66 ha (163 ac)
Kauai 11—*Remya kauaiensis*—c	886 ha (2,190 ac)			886 ha (2,190 ac)
Kauai 11—*Remya kauaiensis*—d	47 ha (115 ac)			47 ha (115 ac)
Kauai 11—*Remya kauaiensis*—e	66 ha (163 ac)			66 ha (163 ac)
Kauai 11—*Remya montgomeryi*—a	69 ha (171 ac)			69 ha (171 ac)
Kauai 11—*Remya montgomeryi*—b	1,010 ha (2,496 ac)			1,010 ha (2,496 ac)
Kauai 11—*Remya montgomeryi*—c	435 ha (1,076 ac)			435 ha (1,076 ac)
Kauai 11—*Schiedea apokremnos*—a	170 ha (420 ac)			170 ha (420 ac)
Kauai 11—*Schiedea apokremnos*—b	187 ha (463 ac)			187 ha (463 ac)
Kauai 11—*Schiedea apokremnos*—c	295 ha (730 ac)			295 ha (730 ac)
Kauai 11—*Schiedea helleri*—a	483 ha (1,194 ac)			483 ha (1,194 ac)
Kauai 11—*Schiedea helleri*—b	154 ha (381 ac)			154 ha (381 ac)
Kauai 11—*Schiedea helleri*—c	172 ha (426 ac)			172 ha (426 ac)
Kauai 11—*Schiedea kauaiensis*—a		12 ha (29 ac)		12 ha (29 ac)
Kauai 11—*Schiedea kauaiensis*—b	394 ha (974 ac)			394 ha (974 ac)
Kauai 11—*Schiedea kauaiensis*—c	510 ha (1,260 ac)			510 ha (1,260 ac)
Kauai 11—*Schiedea kauaiensis*—d	11 ha (28 ac)			11 ha (28 ac)
Kauai 11—*Schiedea membranacea*—a	251 ha (620 ac)			251 ha (620 ac)
Kauai 11—*Schiedea membranacea*—b	234 ha (579 ac)			234 ha (579 ac)
Kauai 11—*Schiedea membranacea*—c	527 ha (1,303 ac)			527 ha (1,303 ac)
Kauai 11—*Schiedea membranacea*—d	327 ha (809 ac)			327 ha (809 ac)
Kauai 11—*Schiedea spergulina* var. *spergulina*—a	131 ha (323 ac)			131 ha (323 ac)
Kauai 11—*Schiedea spergulina* var. *spergulina*—b	77 ha (191 ac)			77 ha (191 ac)
Kauai 11—*Schiedea stellarioides*—a	1,259 ha (3,112 ac)			1,259 ha (3,112 ac)
Kauai 11—*Schiedea stellarioides*—b	129 ha (320 ac)			129 ha (320 ac)
Kauai 11—*Solanum sandwicense*—a	2,443 ha (6,037 ac)			2,443 ha (6,037 ac)
Kauai 11—*Solanum sandwicense*—b	249 ha (614 ac)			249 ha (614 ac)
Kauai 11—*Spermolepis hawaiiensis*—a	96 ha (237 ac)			96 ha (237 ac)
Kauai 11—*Stenogyne campanulata*—a	425 ha (1,050 ac)			425 ha (1,050 ac)
Kauai 11—*Wilkesia hobdyi*—a	775 ha (1,914 ac)			775 ha (1,914 ac)
Kauai 11—*Xylosma crenatum*—a	840 ha (2,076 ac)			840 ha (2,076 ac)
Kauai 11—*Zanthoxylum hawaiiense*—a	523 ha (1,292 ac)			523 ha (1,292 ac)
Kauai 12—*Nothocestrum peltatum*—d	162 ha (400 ac)			162 ha (400 ac)
Kauai 12—*Remya kauaiensis*—f	52 ha (128 ac)			52 ha (128 ac)
Kauai 12—*Xylosma crenatum*—b	52 ha (128 ac)			52 ha (128 ac)
Kauai 13—*Lipochaeta waimeaensis*—a	56 ha (139 ac)			56 ha (139 ac)
Kauai 13—*Schiedea spergulina* var. *spergulina*—c	221 ha (545 ac)			221 ha (545 ac)
Kauai 13—*Spermolepis hawaiiensis*—b	87 ha (215 ac)			87 ha (215 ac)
Kauai 14—*Panicum niihauense*—a	79 ha (196 ac)		40 ha (99 ac)	119 ha (294 ac)
Kauai 14—*Sesbania tomentosa*—b	44 ha (109 ac)			44 ha (109 ac)

TABLE 4.—APPROXIMATE CRITICAL HABITAT AREA DESIGNATED BY UNIT AND LANDOWNERSHIP OR JURISDICTION, KAUAI COUNTY, HAWAII—Continued

Unit name	State/local	Private	Federal	Total
Kauai 15—*Panicum niihauense*—b			15 ha (38 ac)	15 ha (38 ac)
Kauai 16—*Panicum niihauense*—c			11 ha (28 ac)	11 ha (28 ac)
Kauai 17—*Panicum niihauense*—d	23 ha (56 ac)		5 ha (12 ac)	28 ha (68 ac)
Niihau 1—*Brighamia insignis*—a		144 ha (357 ac)		
Grand Total*	14,814 ha (36,606 ac).	6,360 ha (15,717 ac)	72 ha (177 ac)	21,266 ha (52,549 ac)

*Totals take into consideration overlapping individual species units.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect critical habitat of one or more of the 83 plant species from Kauai and Niihau will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), the Department of Housing and Urban Development, or a section 10(a)(1)(B) permit from us; or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy); regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of nonnative plant species into critical habitat units; and

(7) Importation of nonnative species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the listed species and the primary constituent elements of their habitat.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Analysis of Impacts Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the revised proposed critical habitat designation on January 28, 2002, a draft economic analysis was conducted to estimate the potential economic impact of the designation, in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on May 28, 2002 (67 FR 36851). We accepted comments on the draft analysis until the comment period closed on September 30, 2002.

Our draft economic analysis evaluated the potential future effects of section 7 of the Act associated with the listing of the 83 species (*Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Ctenitis squamigera, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia erecta, Diellia pallida, Diplazium molokaiense, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Ischaemum byrone, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia knudsenii, Phyllostegia waimeae, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum, and Zanthoxylum hawaiiense*), as well as any potential effect of the critical habitat designation above and beyond the impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) potential delays associated with reinitiating completed consultations after critical habitat is finalized; (4) uncertainty and public perceptions resulting in loss of land value from the designation of critical habitat; (5) potential effects on property values including potential indirect costs resulting from the loss of hunting opportunities and increased regulation related costs due to the interaction of State and local laws; and (6) potential offsetting benefits associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency.

Following the close of the comment period on the draft economic analysis, a final addendum was completed which incorporated public comments on the draft analysis and made other changes in the draft as necessary. Together, these constitute our final economic analysis. The addendum to the draft economic analysis estimates that, over the next 10 years, the designation may result in potential direct economic effects of between approximately $178,200 and $1,124,800, and concludes that economic impacts from the designation of critical habitat for the 83 species would not be significant. This is a reduction of between approximately $799,700 and $1,318,430 from the costs estimated in the original draft economic analysis, and is due to the exclusion of the proposed unit Kauai D1 from final designation and the significant reduction in size to proposed units Kauai A2, Kauai B, Kauai C, Kauai D2, Kauai E, Kauai G, Kauai H1, H2, and H3, Kauai I, Kauai J, Kauai K, Kauai L, Kauai M, Kauai N, Kauai O and Niihau A (designation of 21,410 ha (52,906 ac) versus the 40,429 ha (99,903 ac) proposed as critical habitat, a reduction of approximately 19,019 ha (46,997 ac)). As described in the analysis, direct costs result from section 7 consultations and project modifications at the Pacific Missile Range Facility while there is a small risk of compromising national defense as an indirect cost. Other indirect costs include: a reduction in State and County development approvals; a change in game management to reduce ungulates and as a result hunting activity; mandated conservation management; redistricting by the State of land in the Urban and Agricultural Districts to the Conservation District; and a loss in landowner participation in conservation projects. However, these indirect costs are not subject to accurate quantification and had slight to small probabilities of occurring. Therefore, we do not believe that they are significant. A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are available for inspection at the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

No critical habitat units in the proposed rule were excluded or modified due to economic impacts. However, as described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. No critical habitat units were excluded or modified due to non-economic impacts. (While units were excluded or reduced, as noted above, because they lacked primary constituent elements or were more degraded than other available proposed or designated habitat for the species.) Thus this final rule represents no increase in impacts beyond the revised proposed rule.

Taxonomic Changes

At the time we listed *Cyrtandra limahuliensis, Delissea undulata, Hibiscus brackenridgei, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, and Mariscus pennatiformis*, we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii*. Subsequent to the final listing, we became aware of new taxonomic treatments of these species. Also, the soon-to-be-published book *Hawaii's Ferns and Fern Allies* (Palmer, in press) has changed the family name for *Ctenitis squamigera* (from Aspleniaceae to Dryopteridaceae). Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on Kauai and Niihau before we can prepare and publish a notice of taxonomic changes for these eight species. We plan to publish a taxonomic change notice for these eight species after we have published the final critical habitat designations on Kauai and Niihau.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this is a significant regulatory action because it may raise novel legal or policy issues. As required by the executive order, we have provided a copy of the rule, which describes the need for this action and how designation meets that need and the economic analysis, which assesses the costs and benefits of this critical habitat designation, to OMB for review. OMB did not recommend or make any changes in this regulatory action.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Federal courts and Congress have indicated that an RFA/SBREFA analysis may be limited to all impacts to entities directly subject to the requirements of the regulation (Service 2002). As such, entities indirectly impacted by the plant listings and critical habitat and, therefore, not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis.

In today's rule, we are certifying that the designation of critical habitat for the 83 Kauai and Niihau species will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact " is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species are present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect any one of the 83 species. Federal agencies must also consult with us if their activities may affect critical habitat. However, in areas where the species are present, we do not believe that this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat likely would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these 83 plant species were listed (between 1991 and 1996), there have been no formal consultations, and we have conducted only six informal consultations, in addition to consultations on Federal grants to State wildlife programs, which would not affect small entities. On the island of Kauai the six informal consultations have concerned nine of the 83 species (*Alsinidendron lychnoides, Cyanea recta, Cyrtandra limahuliensis, Diellia erecta, Dubautia latifolia, Exocarpos luteolus, Panicum niihauense, Sesbania tomentosa, and Wilkesia hobdyi*) and were conducted with the Corps, Navy, and the U.S. Department of Agriculture. One informal consultation was conducted on behalf of the Corps for the Defense Environmental Restoration Program, who requested a list of endangered species on a site formerly used by the Department of Defense at the Wailua Impact Area. Three of the 83 species, *Cyanea recta, Cyrtandra limahuliensis,* and *Exocarpos luteolus*, were reported from the project area. Four informal consultations were conducted with the Navy: one for the construction of a missile support facility at the PMRF at Barking Sands regarding several listed

animals and *Sesbania tomentosa;* one on the PMRF's Enhanced Capability regarding several listed animals and *Panicum niihauense* and *Sesbania tomentosa;* one for the mountaintop surveillance sensor test integration center facility at PMRF at Barking Sands regarding several listed animals and *Panicum niihauense,* and *Sesbania tomentosa;* and one for the Navy's INRMP for PMRF at Barking Sands regarding several listed animals and *Wilkesia hobdyi* at Makaha Ridge. In addition, *Panicum niihauense* and *Sesbania tomentosa* were identified as occurring in Polihale State Park, adjacent to the Naval facility. The sixth informal consultation was conducted on several listed animals, *Alsinidendron lychnoides, Diellia erecta,* and *Dubautia latifolia* with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) through their Wildlife Incentive Program for noxious weed control actions on leased cabin lots within Kokee State Park. NRCS does not anticipate the need to reinitiate consultation for these on-going actions as they are not occurring within the areas of designated critical habitat (Terrell Kelly, NRCS, pers. comm., 2001).

Except for the NRCS project, none of these consultations affected or concerned small entities. However, the NRCS project is not occurring within the designated critical habitat. In all six consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. With the exception of the NRCS project, none of the other consultations affected or concerned small entities, and none of the proposed projects are ongoing. As a result, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Kauai.

There have been no consultations on any of these 83 species on the island of Niihau. Therefore, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities on Niihau.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 that would otherwise not be required. However, there will be little additional impact on State and local governments and their activities because all but one of the critical habitat areas are occupied by at least one species. Other than the federally funded PMRF and NRCS projects, we are aware of relatively few activities in the designated critical habitat areas for these 83 plants that have Federal involvement, and thus, would require consultation for on going projects. As mentioned above, we have conducted no formal consultations and only six informal consultations under section 7 on Kauai to date which involved only nine of the 83 species. As a result, we cannot easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area designated as critical habitat will be due to the critical habitat designations.

On Kauai, the designations are on Federal, State, or private land. Nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. Almost all of this land (nearly 100 percent) is within the State Conservation District where State land-use controls severely limit development and most activities. Less than one percent of this land is within the State Agricultural District, and less than one percent is within the State Rural District. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. However, activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these designations consist of improvements in communications and tracking facilities; ranching; road improvements; recreational use, such as hiking, camping, picnicking, game hunting, and fishing; botanical gardens; and crop farming. With the exception of communications and tracking facilities improvements by the FAA or the Federal Communications Commission, these activities are unlikely to have Federal involvement. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare and may affect only a small percentage of the small entities within these critical habitat designations.

Lands that are within the State Urban District are primarily located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, small farms that may receive funding or require authorizations from the Department of Agriculture, watershed management and restoration projects sponsored by NRCS, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would require Federal funds, permits, or authorizations in these coastal areas. Therefore, we conclude that the rule would not affect a substantial number of small entities. We are not aware of any commercial activities on the Federal lands included in these critical habitat designations.

The entire island of Niihau is under one private ownership and within the State Agricultural District. The current and projected land uses on Niihau are cattle and sheep ranching, commercial game hunting, and military exercises to train downed combat pilots on how to evade capture (Decision Analysts Hawaii (DAHI) 2001). The rule would not affect a substantial number of small agricultural entities on the island of Niihau. Therefore, we conclude that the rule would not affect a substantial number of small entities.

We also considered the likelihood that this rule would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect on critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures by definition must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for these 83 species from Kauai and Niihau, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of these species and the threats they face, especially as described in the final listing rules and in this critical habitat designation, as well as our experience with similar listed plants in Hawaii. In addition, all of these species are protected under the State of Hawaii's Endangered Species Act (Hawaii Revised Statutes, Chap. 195D–4). Therefore, we have also considered the kinds of actions required under the State licensing process for these species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides; management of competing nonnative species; restoration of degraded habitat; propagation; outplanting and augmentation of existing populations; construction of protective fencing; and periodic monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities because any measure included as a reasonable and prudent alternative would have to be economically feasible to an individual landowner, and because as discussed above, we do not believe there will be a substantial number of small entities affected by the Act's consultation requirements.

In summary, we have considered whether this final rule would result in a significant economic effect on a substantial number of small entities and have concluded that it would not affect a substantial number of small entities. Approximately 70 percent of the lands designated as critical habitat are State lands. The State of Hawaii is not a small entity. Less than one percent of the lands designated as critical habitat are Federal lands. The Federal Government is not a small entity. Approximately 30 percent of the lands designated as critical habitat are private lands. Many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private and State parcels within the designation are currently being used for recreational and agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area being designated. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS and the Service. These consultations would likely occur on only a subset of the total number of parcels and therefore would not be likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the designation of critical habitat for *Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Ctenitis squamigera, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Diellia erecta, Diellia pallida, Diplazium molokaiense, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Ischaemum byrone, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia knudsenii, Phyllostegia waimeae, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense* will not have a significant economic impact on a substantial number of small entities. Therefore a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the draft economic analysis and the

final addendum to the economic analysis. Based on the effects identified in these documents, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy production supply and distribution facilities because no significant energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe that designation of critical habitat for the 83 plant species will affect future energy production. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the 83 species from Kauai and Niihau in a takings implications assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. This rule imposes no regulatory requirements unless an agency is seeking Federal funding or authorization, so it does not have Federal implications. In addition, this rule will not have substantial direct compliance costs because many of the planned projects that could affect critical habitat have no Federal involvement.

The designations may have some benefit to these governments, in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interiors's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 83 plant species from Kauai and Niihau.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 83 plant species.

Therefore, designation of critical habitat for these 83 species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary authors of this final rule are staff of the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h), the List of Endangered and Threatened Plants, as follows:

a. Under the table's heading FLOWERING PLANTS, by revising the entries for *Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron viscosum, Bonamia menziesii, Brighamia insignis, Centaurium sebaeoides, Chamaesyce halemanui, Cyanea asarifolia, Cyanea recta, Cyanea remyi, Cyanea undulata, Cyperus trachysanthos, Cyrtandra cyaneoides, Cyrtandra limahuliensis, Delissea rhytidosperma, Delissea rivularis, Delissea undulata, Dubautia latifolia, Dubautia pauciflorula, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gouania meyenii, Hedyotis cookiana, Hedyotis st.-johnii, Hesperomannia lydgatei, Hibiscadelphus woodii, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Ischaemum byrone, Isodendrion laurifolium, Isodendrion longifolium, Kokia kauaiensis, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lipochaeta fauriei, Lipochaeta micrantha, Lipochaeta waimeaensis, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Melicope haupuensis, Melicope knudsenii, Melicope pallida, Munroidendron racemosum, Myrsine linearifolia, Nothocestrum peltatum, Panicum niihauense, Peucedanum sandwicense, Phyllostegia knudsenii, Phyllostegia waimeae, Phyllostegia wawrana, Plantago princeps, Platanthera holochila, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Pteralyxia kauaiensis, Remya kauaiensis, Remya montgomeryi, Schiedea apokremnos, Schiedea helleri, Schiedea kauaiensis, Schiedea membranacea, Schiedea nuttallii, Schiedea spergulina* var. *leiopoda, Schiedea spergulina* var. *spergulina, Schiedea stellarioides, Sesbania tomentosa, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne campanulata, Viola helenae, Viola kauaiensis* var. *wahiawaensis, Wilkesia hobdyi, Xylosma crenatum,* and *Zanthoxylum hawaiiense* to read as follows.

b. Under the table's heading FERNS AND ALLIES, by revising the entries for *Adenophorus periens, Ctenitis squamigera, Diellia erecta, Diellia pallida,* and *Diplazium molokaiense,* removing the entry for *Lycopodium* (=*Phlegmariurus*) *nutans,* and adding an entry for *Phlegmariurus nutans* to read as set forth below.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Alectryon macrococcus.	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	17.99(a)(1)	NA
Alsinidendron lychnoides.	Kuawawaenohu	U.S.A. (HI)	Caryophyllaceae	E	590	17.99(a)(1)	NA
Alsinidendron viscosum.	None	U.S.A. (HI)	Caryophyllaceae	E	590	17.99(a)(1)	NA
Bonamia menziesii	None	U.S.A. (HI)	Convolvulaceae	E	559	17.99(a)(1)	NA
Brighamia insignis	Olulu	U.S.A. (HI)	Campanulaceae	E	530	17.99(a)(1) and (a)(2)	NA
Centaurium sebaeoides.	Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.99(a)(1)	NA
Chamaesyce halemanui.	None	U.S.A. (HI)	Euphorbiaceae	E	464	17.99(a)(1)	NA
Cyanea asarifolia	Haha	U.S.A. (HI)	Campanulaceae	E	530	17.99(a)(1)	NA
Cyanea recta	Haha	U.S.A (HI)	Campanulaceae	T	590	17.99(a)(1)	NA
Cyanea remyi	Haha	U.S.A (HI)	Campanulaceae	E	590	17.99(a)(1)	NA
Cyanea undulata	None	U.S.A. (HI)	Campanulaceae	E	436	17.99(a)(1)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Cyperus trachysanthos.	Puukaa	U.S.A. (HI)	Cyperaceae	E	592	17.99(a)(1)	NA
Cyrtandra cyaneoides	Mapele	U.S.A. (HI)	Gesneriaceae	E	590	17.99(a)(1)	NA
Cyrtandra limahuliensis.	Haiwale	U.S.A. (HI)	Gesneriaceae	T	530	17.99(a)(1)	NA
Delissea rhytidosperma.	None	U.S.A. (HI)	Campanulaceae	E	530	17.99(a)(1)	NA
Delissea rivularis	Oha	U.S.A. (HI)	Campanulaceae	E	590	17.99(a)(1)	NA
Delissea undulata	None	U.S.A. (HI)	Campanulaceae	E	593	17.99(a)(1)	NA
Dubautia latifolia	Naenae	U.S.A. (HI)	Asteraceae	E	464	17.99(a)(1)	NA
Dubautia pauciflorula	Naenae	U.S.A. (HI)	Asteraceae	E	436	17.99(a)(1)	NA
Euphorbia haeleeleana.	Akoko	U.S.A. (HI)	Euphorbiaceae	E	592	17.99(a)(1)	NA
Exocarpos luteolus	Heau	U.S.A. (HI)	Santalaceae	E	530	17.99(a)(1)	NA
Flueggea neowawraea.	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.99(a)(1)	NA
Gouania meyenii	None	U.S.A. (HI)	Rhamnaceae	E	448	17.99(a)(1)	NA
Hedyotis cookiana	Awiwi	U.S.A. (HI)	Rubiaceae	E	530	17.99(a)(1)	NA
Hedyotis st.-johnii	Na Pali beach hedyotis.	U.S.A. (HI)	Rubiaceae	E	441	17.99(a)(1)	NA
Hesperomannia lydgatei.	None	U.S.A. (HI)	Asteraceae	E	436	17.99(a)(1)	NA
Hibiscadelphus woodii.	Hau kuahiwi	U.S.A. (HI)	Malvaceae	E	590	17.99(a)(1)	NA
Hibiscus clayi	Clay's hibiscus	U.S.A. (HI)	Malvaceae	E	530	17.99(a)(1)	NA
Hibiscus waimeae ssp. *hannerae.*	Kokio keokeo	U.S.A. (HI)	Malvaceae	E	590	17.99(a)(1)	NA
Ischaemum byrone	Hilo ischaemum	U.S.A. (HI)	Poaceae	E	532	17.99(a)(1)	NA
Isodendrion laurifolium.	Aupaka	U.S.A. (HI)	Violaceae	E	592	17.99(a)(1)	NA
Isodendrion longifolium.	Aupaka	U.S.A. (HI)	Violaceae	T	592	17.99(a)(1)	NA
Kokia kauaiensis	Kokio	U.S.A. (HI)	Malvaceae	E	590	17.99(a)(1)	NA
Labordia lydgatei	Kamakahala	U.S.A. (HI)	Loganiaceae	E	436	17.99(a)(1)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Labordia tinifolia var. *wahiawaensis.*	Kamakahala	U.S.A. (HI)	Loganiaceae	E	590	17.99(a)(1)	NA
Lipochaeta fauriei	Nehe	U.S.A. (HI)	Asteraceae	E	530	17.99(a)(1)	NA
Lipochaeta micrantha	Nehe	U.S.A. (HI)	Asteraceae	E	530	17.99(a)(1)	NA
Lipochaeta waimeaensis.	Nehe	U.S.A. (HI)	Asteraceae	E	530	17.99(a)(1)	NA
Lobelia niihauensis	None	U.S.A. (HI)	Campanulaceae	E	448	17.99(a)(1)	NA
Lysimachia filifolia	None	U.S.A. (HI)	Primulaceae	E	530	17.99(a)(1)	NA
Mariscus pennatiformis.	None	U.S.A. (HI)	Cyperaceae	E	559	17.99(a)(1)	NA
Melicope haupuensis	Alani	U.S.A. (HI)	Rutaceae	E	530	17.99(a)(1)	NA
Melicope knudsenii	Alani	U.S.A. (HI)	Rutaceae	E	530	17.99(a)(1)	NA
Melicope pallida	Alani	U.S.A. (HI)	Rutaceae	E	530	17.99(a)(1)	NA
Munroidendron racemosum.	None	U.S.A. (HI)	Araliaceae	E	530	17.99(a)(1)	NA
Myrsine linearifolia	Kolea	U.S.A. (HI)	Myrsinaceae	T	590	17.99(a)(1)	NA
Nothocestrum peltatum.	Aiea	U.S.A. (HI)	Solanaceae	E	530	17.99(a)(1)	NA
Panicum niihauense	Lau ehu	U.S.A. (HI)	Poaceae	E	592	17.99(a)(1)	NA
Peucedanum sandwicense.	Makou	U.S.A. (HI)	Apiaceae	T	530	17.99(a)(1)	NA
Phyllostegia knudsenii.	None	U.S.A. (HI)	Lamiaceae	E	590	17.99(a)(1)	NA
Phyllostegia waimeae	None	U.S.A. (HI)	Lamiaceae	E	530	17.99(a)(1)	NA
Phyllostegia wawrana	None	U.S.A. (HI)	Lamiaceae	E	590	17.99(a)(1)	NA
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	17.99(a)(1)	NA
Platanthera holochila	None	U.S.A. (HI)	Orchidaceae	E	592	17.99(a)(1)	NA
Poa mannii	Mann's bluegrass	U.S.A. (HI)	Poaceae	E	558	17.99(a)(1)	NA
Poa sandvicensis	Hawaiian bluegrass	U.S.A. (HI)	Poaceae	E	464	17.99(a)(1)	NA
Poa siphonoglossa	None	U.S.A. (HI)	Poaceae	E	464	17.99(a)(1)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Pteralyxia kauaiensis	Kaulu	U.S.A. (HI)	Apocynaceae	E	530	17.99(a)(1)	NA
Remya kauaiensis	None	U.S.A. (HI)	Asteraceae	E	413	17.99(a)(1)	NA
Remya montgomeryi	None	U.S.A. (HI)	Asteraceae	E	413	17.99(a)(1)	NA
Schiedea apokremnos	Maolioli	U.S.A. (HI)	Caryophyllaceae	E	441	17.99(a)(1)	NA
Schiedea helleri	None	U.S.A. (HI)	Caryophyllaceae	E	590	17.99(a)(1)	NA
Schiedea kauaiensis	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.99(a)(1)	NA
Schiedea membranacea	None	U.S.A. (HI)	Caryophyllaceae	E	590	17.99(a)(1)	NA
Schiedea nuttallii	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.99(a)(1)	NA
Schiedea spergulina var. *leiopoda*	None	U.S.A. (HI)	Caryophyllaceae	E	530	17.99(a)(1)	NA
Schiedea spergulina var. *spergulina*	None	U.S.A. (HI)	Caryophyllaceae	E	530	17.99(a)(1)	NA
Schiedea stellarioides	Laulihilihi (=Maolioli)	U.S.A. (HI)	Caryophyllaceae	E	590	17.99(a)(1)	NA
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.99(a)(1)	NA
Solanum sandwicense	Aiakeakua, popolo	U.S.A. (HI)	Solanaceae	E	530	17.99(a)(1)	NA
Spermolepis hawaiiensis	None	U.S.A. (HI)	Apiaceae	E	559	17.99(a)(1)	NA
Stenogyne campanulata	None	U.S.A. (HI)	Lamiaceae	E	464	17.99(a)(1)	NA
Viola helenae	None	U.S.A. (HI)	Violaceae	E	436	17.99(a)(1)	NA
Viola kauaiensis var. *wahiawaensis*	Nani waialeale	U.S.A. (HI)	Violaceae	E	590	17.99(a)(1)	NA
Wilkesia hobdyi	Dwarfiliau	U.S.A. (HI)	Asteraceae	E	473	17.99(a)(1)	NA
Xylosma crenatum	None	U.S.A. (HI)	Flacourtiaceae	E	464	17.99(a)(1)	NA
Zanthoxylum hawaiiense	Ae	U.S.A. (HI)	Rutaceae	E	532	17.99(a)(1)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FERNS AND ALLIES							
Adenophorus periens	Pendent kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.99(a)(1)	NA
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1)	NA
Diellia erecta	Asplenium-leaved diellia	U.S.A. (HI)	Aspleniaceae	E	559	17.99(a)(1)	NA
Diellia pallida	None	U.S.A. (HI)	Aspleniaceae	E	530	17.99(a)(1)	NA
Diplazium molokaiense	None	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1)	NA
Phlegmariurus nutans	Wawaeiole	U.S.A. (HI)	Lycopodiaceae	E	536	17.99(a)(1)	NA

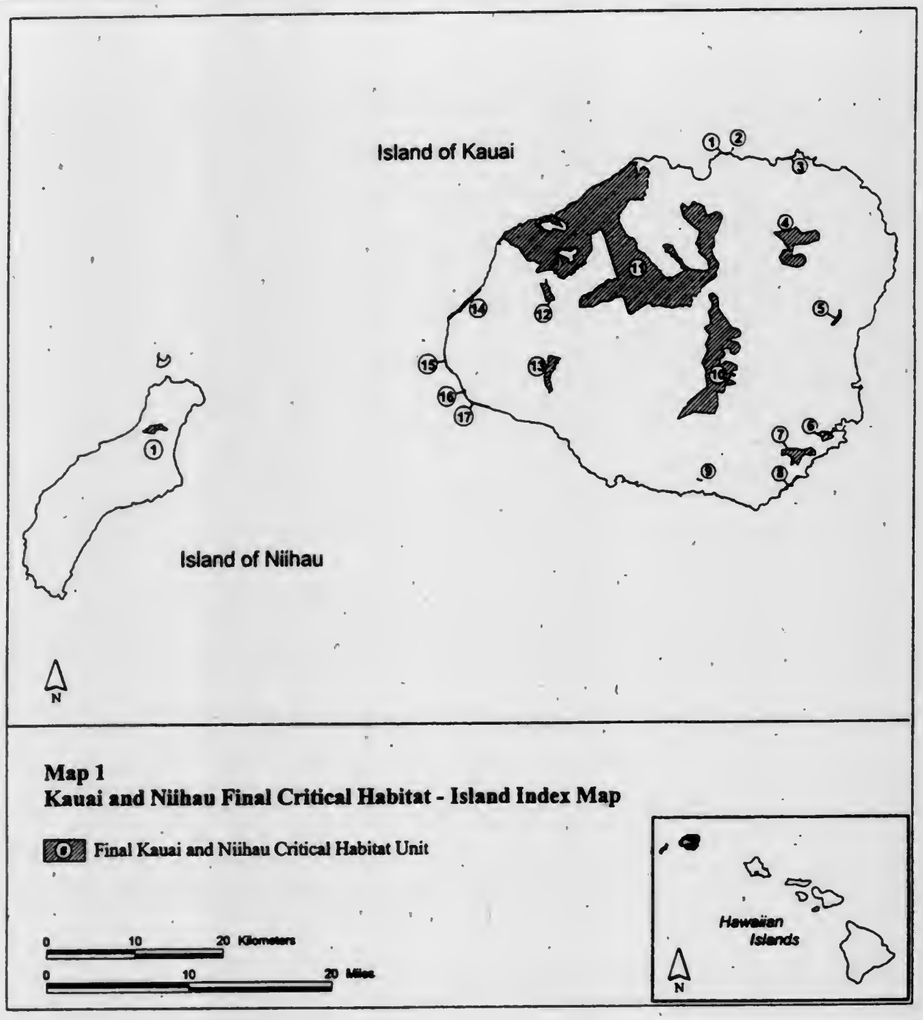
3. Add a new § 17.99 to read as follows:

§ 17.99 Critical habitat; plants on the islands of Kauai and Niihau, HI.

(a) *Maps and critical habitat unit descriptions.* The following paragraphs contain the legal descriptions of the critical habitat units designated for the Hawaiian Islands of Kauai and Niihau. Existing manmade features and structures within the boundaries of the mapped areas, such as buildings; roads; aqueducts and other water system features, including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; telecommunications equipment towers and associated structures and equipment; electrical power transmission lines and distribution, and communication facilities and regularly maintained associated rights-of-way and access ways; radars, telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines), and other archaeological sites; airports; other paved areas; and lawns and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraph (b) of this section and therefore are not included in the critical habitat designations.

(1) *Kauai.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 219 critical habitat units designated on the island of Kauai.

(i) **Note:** Map 1—Index map follows:

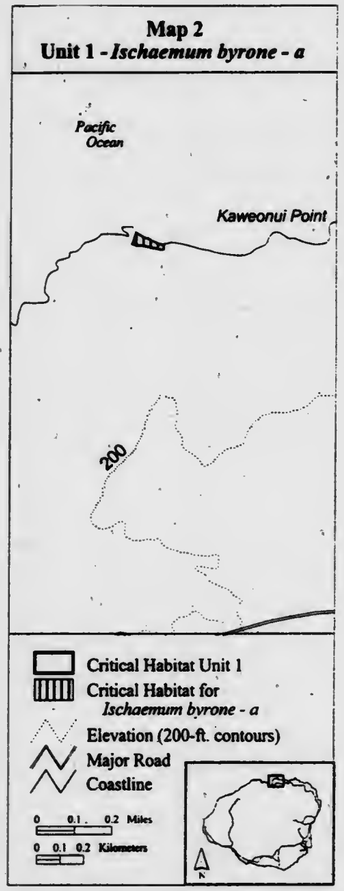


Map 1
Kauai and Niihau Final Critical Habitat - Island Index Map

(ii) Kauai 1—*Ischaemum byrone*—a (1 ha; .4 ac)

(A) Unit consists of the following 9 boundary points: coastline; 449995, 2458285; 449999, 2458293; 450118, 2458243; 450116, 2458221; 450104, 2458221; 450032, 2458238; 449997, 2458240; 449981, 2458248; 449991, 2458273; coastline.

(B) **Note:** Map 2 follows:

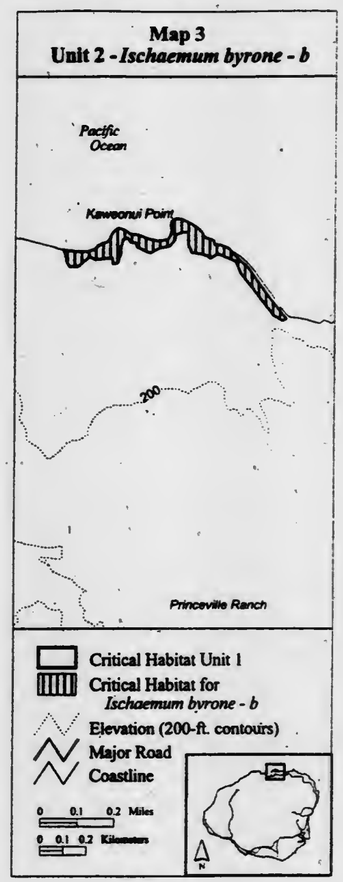


Map 2
Unit 1 - *Ischaemum byrone - a*

(iii) Kauai 2—*Ischaemum byrone*—b (6 ha; 14 ac)

(A) Unit consists of the following 59 boundary points: coastline; 451087, 2458201; 451120, 2458166; 451162, 2458127; 451246, 2458013; 451331, 2457904; 451317, 2457895; 451278, 2457919; 451277, 2457919; 451276, 2457920; 451190, 2458029; 451190, 2458032; 451175, 2458047; 451132, 2458101; 451110, 2458153; 451031, 2458185; 450999, 2458165; 450996, 2458166; 450987, 2458176; 450954, 2458185; 450916, 2458191; 450905, 2458216; 450900, 2458226; 450901, 2458242; 450902, 2458273; 450902, 2458273; 450902, 2458278; 450871, 2458277; 450848, 2458265; 450843, 2458242; 450818, 2458217; 450778, 2458211; 450737, 2458190; 450725, 2458194; 450679, 2458215; 450677, 2458215; 450673, 2458233; 450650, 2458236; 450636, 2458255; 450615, 2458247; 450612, 2458223; 450607, 2458222; 450607, 2458191; 450606, 2458185; 450592, 2458144; 450574, 2458143; 450568, 2458168; 450568, 2458168; 450568, 2458168; 450495, 2458159; 450472, 2458173; 450420, 2458129; 450420, 2458129; 450383, 2458129; 450372, 2458147; 450366, 2458173; 450361, 2458197; 450360, 2458202; 450361, 2458202; 451076, 2458209; coastline.

(B) **Note:** Map 3 follows:



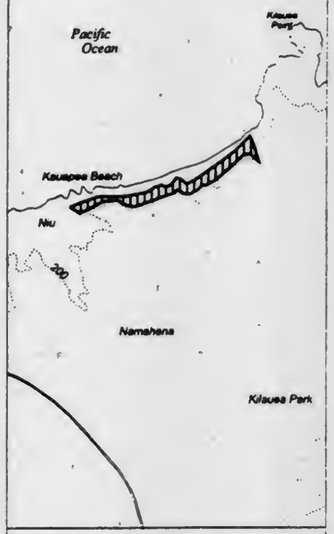
Map 3
Unit 2 - *Ischaemum byrone - b*

(iv) Kauai 3—*Ischaemum byrone*—c (7 ha; 17 ac)

(A) Unit consists of the following 51 boundary points: Start at 457168, 2457531; 457235, 2457554; 457342, 2457591; 457377, 2457591; 457421, 2457591; 457469, 2457591; 457503, 2457591; 457556, 2457600; 457625, 2457613; 457631, 2457617; 457674, 2457645; 457713, 2457657; 457739, 2457648; 457747, 2457650; 457754, 2457649; 457758, 2457653; 457769, 2457656; 457794, 2457692; 457801, 2457700; 457830, 2457691; 457865, 2457661; 457891, 2457678; 457913, 2457687; 457961, 2457722; 458074, 2457800; 458157, 2457861; 458240, 2457943; 458266, 2457887; 458291, 2457796; 458241, 2457839; 458199, 2457830; 458122, 2457761; 458032, 2457682; 457981, 2457654; 457958, 2457654; 457926, 2457624; 457883, 2457600; 457851, 2457604; 457835, 2457612; 457808, 2457629; 457794, 2457610; 457555, 2457530; 457515, 2457534; 457459, 2457567; 457441, 2457569; 457364, 2457561; 457364, 2457561; 457364, 2457561; 457329, 2457544; 457327, 2457542; 457230, 2457492; return to starting point.

(B) **Note:** Map 4 follows:

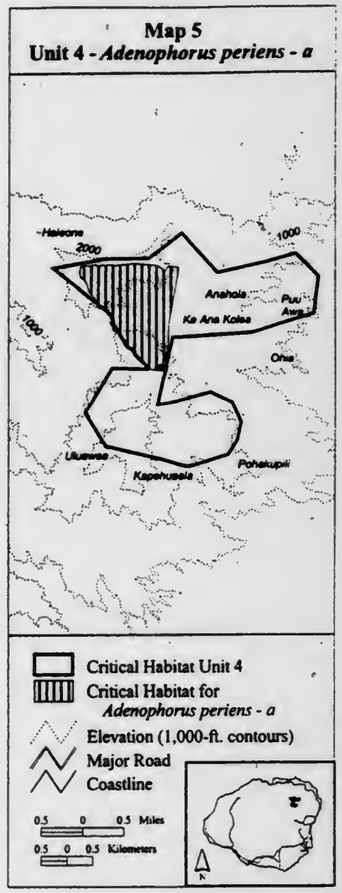
Map 4
Unit 3 - *Ischaemum byrone* - c



2447643; 457502, 2447650; 457473, 2447678; 457457, 2447706; 457446, 2447731; 457399, 2447802; 457389, 2447810; 457328, 2447832; 457310, 2447844; 457297, 2447860; 457274, 2447898; 457234, 2447967; 457193, 2448027; 457148, 2448093; 457124, 2448122; 457112, 2448143; 457089, 2448187; 457076, 2448209; 457048, 2448243; 457032, 2448261; 457029, 2448269; 457028, 2448278; 457031, 2448299; 457032, 2448323; 457031, 2448342; 457028, 2448361; 457016, 2448395; 457005, 2448416; 457002, 2448438; 456998, 2448448; 456991, 2448459; 456973, 2448474; 456957, 2448488; 456943, 2448512; 456930, 2448544; 456916, 2448568; 456896, 2448595; 456883, 2448609; 456870, 2448619; 456856, 2448627; 456832, 2448632; 456801, 2448644; 456771, 2448662; 456748, 2448682; 456733, 2448698; 456713, 2448726; 456697, 2448759; 456679, 2448787; 456671, 2448799; 456652, 2448821; 456635, 2448836; 456615, 2448849; 456596, 2448859; 456583, 2448874; 456572, 2448891; 456563, 2448911; 456551, 2448951; 456541, 2448985; 456535, 2449004; 456530, 2449029; 456526, 2449045; 456516, 2449067; 456504, 2449086; 456491, 2449106; 456476, 2449128; 456462, 2449139; 456446, 2449150; 456435, 2449153; 456419, 2449170; 456404, 2449186; 456395, 2449205; 456387, 2449236; 456386, 2449264; 456390, 2449313; 456395, 2449355; 456394, 2449367; 456394, 2449381; 456397, 2449394; 456401, 2449399; 456407, 2449399; 456420, 2449397; 456439, 2449398; 456457, 2449404; 456483, 2449414; 456501, 2449416; 456513, 2449416; 456533, 2449412; 456569, 2449406; 456586, 2449405; 456603, 2449410; 456620, 2449418; 456633, 2449423; 456647, 2449426; 456662, 2449428; 456681, 2449425; 456706, 2449417; 456733, 2449409; 456752, 2449403; 456769, 2449404; 456787, 2449409; 456807, 2449421; 456818, 2449430; 456826, 2449432; 456836, 2449428; 456852, 2449419; 456862, 2449411; 456869, 2449407; 456878, 2449407; 456889, 2449412; 456910, 2449422; 456924, 2449429; 456941, 2449429; 456969, 2449426; 456991, 2449421; 457000, 2449421; 457034, 2449425; 457042, 2449425; 457049, 2449422; 457064, 2449414; 457073, 2449409; 457083, 2449408; 457097, 2449407; 457107, 2449413; 457123, 2449423; 457132, 2449429; 457141, 2449431; 457168, 2449428; 457205, 2449431; 457229, 2449432; 457255, 2449429; 457276, 2449429; 457289, 2449431; 457300, 2449437; 457307, 2449440; 457314, 2449440; 457325, 2449437; 457352, 2449440; 457363, 2449443; 457395, 2449451; 457417, 2449451; 457451, 2449456; return to starting point.

(B) **Note:** Map 5 follows:

Map 5
Unit 4 - *Adenophorus periens* - a



(v) Kauai 4—*Adenophorus periens*—a (237 ha; 585 ac)

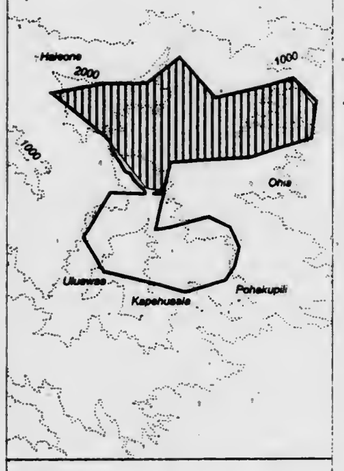
(A) Unit consists of the following 183 boundary points: Start at 457883, 2449413; 457917, 2449393; 457954, 2449369; 458004, 2449331; 458025, 2449313; 458037, 2449307; 458058, 2449301; 458098, 2449392; 458308, 2449371; 458105, 2448250; 458095, 2447849; 458085, 2447839; 458077, 2447822; 458073, 2447793; 458073, 2447739; 458057, 2447694; 458046, 2447671; 458033, 2447617; 458027, 2447575; 458026, 2447556; 458023, 2447548; 458009, 2447525; 457998, 2447517; 457979, 2447491; 457946, 2447469; 457927, 2447446; 457899, 2447424; 457864, 2447408; 457850, 2447402; 457830, 2447399; 457801, 2447389; 457689, 2447425; 457690, 2447445; 457684, 2447466; 457667, 2447490; 457653, 2447503; 457639, 2447513; 457604, 2447540; 457587, 2447559; 457545, 2447595; 457538, 2447604; 457528, 2447615; 457505,

(vi) Kauai 4—*Cyanea asarifolia*—a (654 ha; 1,616 ac)

(A) Unit consists of the following 18 boundary points: Start at 455868, 2449362; 456901, 2449549; 457715, 2449548; 458372, 2450048; 459061, 2449266; 460595, 2449609; 460596, 2449609; 461002, 2449077; 460947, 2448554; 460939, 2448483; 460904, 2448472; 460823, 2448447; 460270, 2448273; 459750, 2448109; 458184, 2448016; 458059, 2447453; 457715, 2447516; 456932, 2448517; return to starting point.

(B) **Note:** Map 6 follows:

Map 6
Unit 4 - *Cyanea asariflora* - a

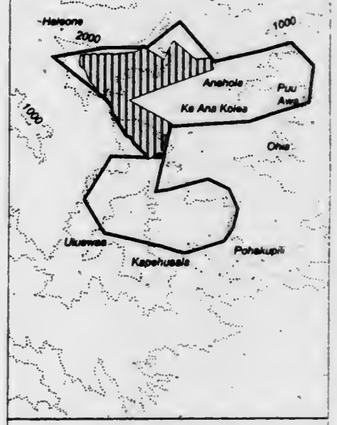


(vii) Kauai 4—*Cyanea recta*—a (252 ha; 622 ac)

(A) Unit consists of the following 217 boundary points: Start at 458254, 2449672; 458681, 2449311; 458976, 2449337; 459083, 2449224; 459041, 2449114; 458385, 2448885; 457368, 2448525; 458223, 2448067; 458204, 2448065; 458165, 2447893; 458096, 2447851; 458085, 2447839; 458077, 2447822; 458073, 2447793; 458073, 2447739; 458057, 2447694; 458046, 2447671; 458033, 2447617; 458027, 2447575; 458026, 2447556; 458023, 2447548; 458009, 2447525; 457998, 2447517; 457979, 2447491; 457946, 2447469; 457927, 2447446; 457899, 2447424; 457864, 2447408; 457850, 2447402; 457830, 2447399; 457797, 2447387; 457757, 2447362; 457741, 2447354; 457739, 2447359; 457725, 2447369; 457716, 2447375; 457694, 2447401; 457689, 2447425; 457690, 2447445; 457684, 2447466; 457667, 2447490; 457653, 2447503; 457639, 2447513; 457604, 2447540; 457587, 2447559; 457545, 2447595; 457538, 2447604; 457528, 2447615; 457505, 2447643; 457502, 2447650; 457473, 2447678; 457457, 2447706; 457446, 2447731; 457399, 2447802; 457389, 2447810; 457328, 2447832; 457310, 2447844; 457297, 2447860; 457274, 2447898; 457234, 2447967; 457193, 2448027; 457148, 2448093; 457124, 2448122; 457112, 2448143; 457089, 2448187; 457076, 2448209; 457048, 2448243; 457032, 2448261; 457029, 2448269; 457028, 2448278; 457031, 2448299; 457032, 2448323; 457031, 2448342; 457028, 2448361; 457016, 2448395; 457005, 2448416; 457002, 2448438; 456998, 2448448; 456991, 2448459; 456973, 2448474; 456957, 2448488; 456943, 2448512; 456930, 2448544; 456916, 2448568; 456896, 2448595; 456883, 2448609; 456870, 2448619; 456856, 2448627; 456832, 2448632; 456801, 2448644; 456771, 2448662; 456748, 2448682; 456733, 2448698; 456713, 2448726; 456697, 2448759; 456679, 2448787; 456671, 2448799; 456652, 2448821; 456635, 2448836; 456615, 2448849; 456596, 2448859; 456583, 2448874; 456572, 2448891; 456563, 2448911; 456551, 2448951; 456541, 2448985; 456535, 2449004; 456530, 2449029; 456526, 2449045; 456516, 2449067; 456504, 2449086; 456491, 2449106; 456476, 2449128; 456462, 2449139; 456446, 2449150; 456435, 2449153; 456419, 2449170; 456404, 2449186; 456395, 2449205; 456387, 2449236; 456386, 2449264; 456390, 2449313; 456395, 2449355; 456394, 2449367; 456394, 2449381; 456397, 2449394; 456401, 2449399; 456407, 2449399; 456420, 2449397; 456439, 2449398; 456457, 2449404; 456483, 2449414; 456501, 2449416; 456513, 2449416; 456533, 2449412; 456569, 2449406; 456586, 2449405; 456603, 2449410; 456620, 2449418; 456633, 2449423; 456647, 2449426; 456662, 2449428; 456681, 2449425; 456706, 2449417; 456733, 2449409; 456752, 2449403; 456769, 2449404; 456787, 2449409; 456807, 2449421; 456818, 2449430; 456826, 2449432; 456836, 2449428; 456852, 2449419; 456862, 2449411; 456869, 2449407; 456878, 2449407; 456889, 2449412; 456910, 2449422; 456924, 2449429; 456941, 2449429; 456969, 2449426; 456991, 2449421; 457000, 2449421; 457034, 2449425; 457042, 2449425; 457049, 2449422; 457064, 2449414; 457073, 2449409; 457083, 2449408; 457097, 2449407; 457107, 2449413; 457123, 2449423; 457132, 2449429; 457141, 2449431; 457168, 2449428; 457205, 2449431; 457229, 2449432; 457255, 2449429; 457276, 2449429; 457289, 2449431; 457300, 2449437; 457307, 2449440; 457314, 2449440; 457325, 2449437; 457352, 2449440; 457363, 2449443; 457395, 2449451; 457417, 2449451; 457492, 2449461; 457515, 2449471; 457522, 2449475; 457547, 2449505; 457592, 2449538; 457610, 2449548; 457618, 2449556; 457631, 2449564; 457646, 2449571; 457651, 2449568; 457672, 2449547; 457689, 2449529; 457699, 2449522; 457714, 2449515; 457742, 2449506; 457770, 2449483; 457776, 2449475; 457788, 2449467; 457825, 2449449; 457846, 2449433; 457856, 2449429; 457917, 2449393; 457954, 2449369; 458004, 2449331; 458025, 2449313; 458037, 2449307; 458058, 2449301; 458141, 2449491; 458199, 2449615; return to starting point.

(B) **Note:** Map 7 follows:

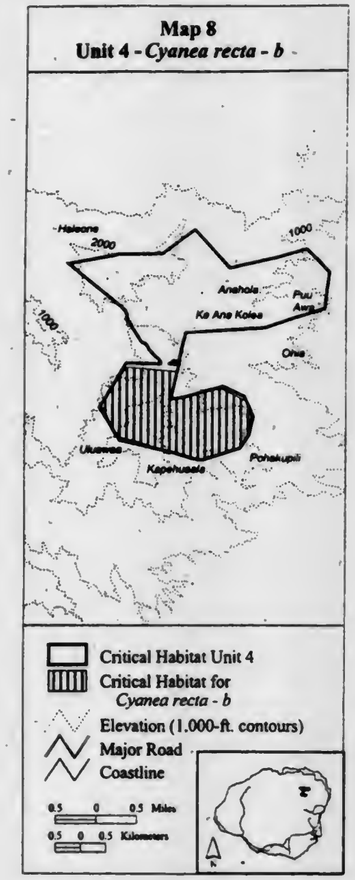
Map 7
Unit 4 - *Cyanea recta* - a



(viii) Kauai 4—*Cyanea recta*—b (351 ha; 868 ac)

(A) Unit consists of the following 15 boundary points: Start at 458861, 2446942; 459372, 2446687; 459490, 2446382; 459454, 2446075; 459242, 2445757; 458486, 2445521; 457390, 2445835; 457139, 2445925; 457088, 2445921; 456838, 2445992; 456525, 2446628; 457027, 2447344; 458020, 2447254; 457900, 2446720; 458214, 2446760; return to starting point.

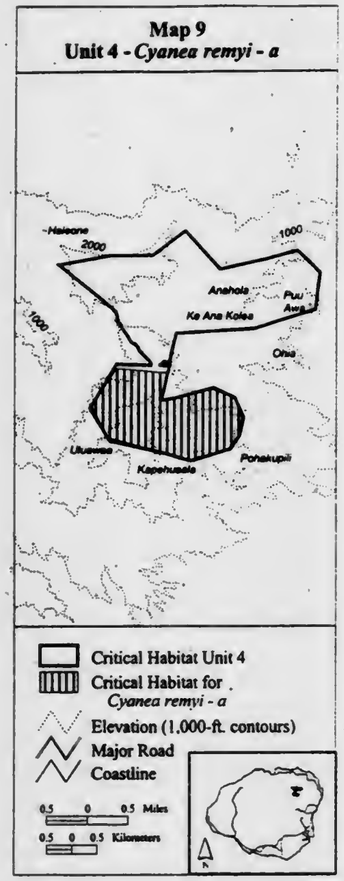
(B) **Note:** Map 8 follows:



(ix) Kauai 4—*Cyanea remyi*—a (353 ha; 873 ac)

(A) Unit consists of the following 14 boundary points: Start at 457088, 2445921; 456838, 2445992; 456525, 2446628; 457027, 2447344; 458020, 2447254; 457900, 2446720; 458214, 2446760; 458887, 2446950; 459348, 2446748; 459490, 2446382; 459454, 2446075; 459242, 2445757; 458486, 2445521; 457390, 2445835; return to starting point.

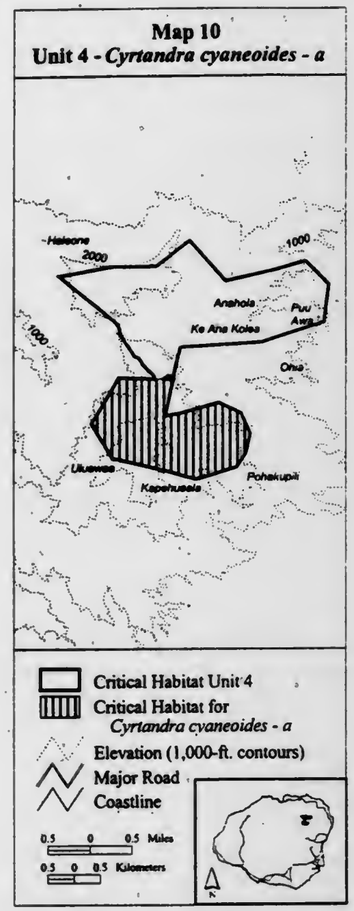
(B) **Note:** Map 9 follows:



(x) Kauai 4—*Cyrtandra cyaneoides*—a (376 ha; 928 ac)

(A) Unit consists of the following 13 boundary points: Start at 457013, 2447427; 458066, 2447394; 457852, 2446671; 458938, 2446966; 459350, 2446768; 459531, 2446374; 459449, 2446012; 459268, 2445749; 458544, 2445536; 457395, 2445800; 456955, 2445902; 456898, 2445915; 456486, 2446556; return to starting point.

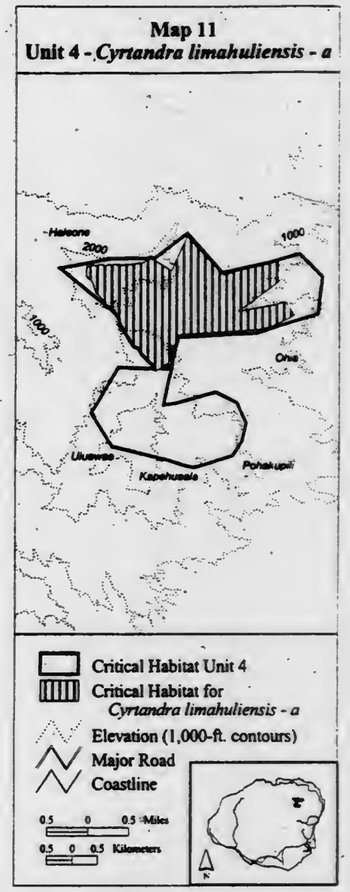
(B) **Note:** Map 10 follows:



(xi) Kauai 4—*Cyrtandra limahuliensis*—a (501 ha; 1,237 ac)

(A) Unit consists of the following 225 boundary points: Start at 460167, 2449523; 460165, 2449520; 460143, 2449148; 460121, 2449133; 460190, 2449113; 459376, 2448529; 460097, 2448660; 460288, 2448720; 460453, 2448490; 460443, 2448485; 460474, 2448455; 460038, 2448238; 459811, 2448172; 458204, 2448065; 458165, 2447893; 458096, 2447851; 458085, 2447839; 458077, 2447822; 458073, 2447793; 458073, 2447739; 458057, 2447694; 458046, 2447671; 458033, 2447617; 458027, 2447575; 458026, 2447556; 458023, 2447548; 458009, 2447525; 457998, 2447517; 457979, 2447491; 457946, 2447469; 457927, 2447446; 457899, 2447424; 457864, 2447408; 457850, 2447402; 457830, 2447399; 457797, 2447387; 457757, 2447362; 457741, 2447354; 457739, 2447359; 457725, 2447369; 457716, 2447375; 457694, 2447401; 457689, 2447425; 457690, 2447445; 457684, 2447466; 457667, 2447490; 457653, 2447503; 457639, 2447513; 457604, 2447540; 457587, 2447559; 457545, 2447595; 457538, 2447604; 457528, 2447615; 457505, 2447643; 457502, 2447650; 457473, 2447678; 457457, 2447706; 457446, 2447731; 457399, 2447802; 457389, 2447810; 457328, 2447832; 457310, 2447844; 457297, 2447860; 457274, 2447898; 457234, 2447967; 457193, 2448027; 457148, 2448093; 457124, 2448122; 457112, 2448143; 457089, 2448187; 457076, 2448209; 457048, 2448243; 457032, 2448261; 457029, 2448269; 457028, 2448278; 457031, 2448299; 457032, 2448323; 457031, 2448342; 457028, 2448361; 457016, 2448395; 457005, 2448416; 457002, 2448438; 456998, 2448448; 456991, 2448459; 456973, 2448474; 456957, 2448488; 456943, 2448512; 456930, 2448544; 456916, 2448568; 456896, 2448595; 456883, 2448609; 456870, 2448619; 456856, 2448627; 456832, 2448632; 456801, 2448644; 456771, 2448662; 456748, 2448682; 456733, 2448698; 456713, 2448726; 456697, 2448759; 456679, 2448787; 456671, 2448799; 456652, 2448821; 456635, 2448836; 456615, 2448849; 456596, 2448859; 456583, 2448874; 456572, 2448891; 456563, 2448911; 456551, 2448951; 456541, 2448985; 456535, 2449004; 456530, 2449029; 456526, 2449045; 456516, 2449067; 456504, 2449086; 456491, 2449106; 456476, 2449128; 456462, 2449139; 456446, 2449150; 456435, 2449153; 456419, 2449170; 456404, 2449186; 456395, 2449205; 456387, 2449236; 456386, 2449264; 456390, 2449313; 456395, 2449355; 456394, 2449367; 456394, 2449381; 456397, 2449394; 456401, 2449399; 456407, 2449399; 456420, 2449397; 456439, 2449398; 456457, 2449404; 456483, 2449414; 456501, 2449416; 456513, 2449416; 456533, 2449412; 456569, 2449406; 456586, 2449405; 456603, 2449410; 456620, 2449418; 456633, 2449423; 456647, 2449426; 456662, 2449428; 456681, 2449425; 456706, 2449417; 456733, 2449409; 456752, 2449403; 456769, 2449404; 456787, 2449409; 456807, 2449421; 456818, 2449430; 456826, 2449432; 456836, 2449428; 456852, 2449419; 456862, 2449411; 456869, 2449407; 456878, 2449407; 456889, 2449412; 456910, 2449422; 456924, 2449429; 456941, 2449429; 456969, 2449426; 456991, 2449421; 457000, 2449421; 457034, 2449425; 457042, 2449425; 457049, 2449422; 457064, 2449414; 457073, 2449409; 457083, 2449408; 457097, 2449407; 457107, 2449413; 457123, 2449423; 457132, 2449429; 457141, 2449431; 457168, 2449428; 457205, 2449431; 457229, 2449432; 457255, 2449429; 457276, 2449429; 457289, 2449431; 457300, 2449437; 457307, 2449440; 457314, 2449440; 457325, 2449437; 457352, 2449440; 457363, 2449443; 457395, 2449451; 457417, 2449451; 457492, 2449461; 457515, 2449471; 457522, 2449475; 457547, 2449505; 457592, 2449538; 457610, 2449548; 457618, 2449556; 457631, 2449564; 457646, 2449571; 457651, 2449568; 457672, 2449547; 457689, 2449529; 457699, 2449522; 457714, 2449515; 457742, 2449506; 457770, 2449483; 457776, 2449475; 457788, 2449467; 457825, 2449449; 457846, 2449433; 457856, 2449429; 457917, 2449393; 457954, 2449369; 458004, 2449331; 458025, 2449313; 458037, 2449307; 458058, 2449301; 458141, 2449491; 458199, 2449615; 458316, 2449881; 458363, 2449984; 459083, 2449224; return to starting point.

(B) **Note:** Map 11 follows:

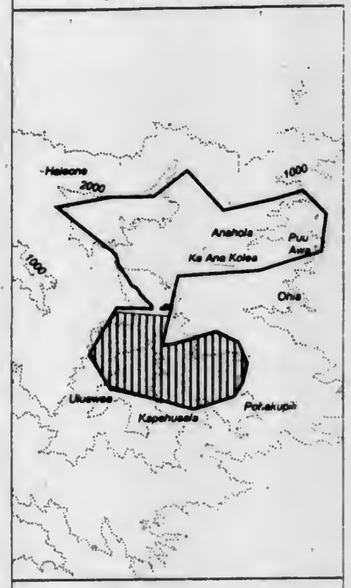


(xii) Kauai 4—*Cyrtandra limahuliensis*—b (353 ha; 873 ac)

(A) Unit consists of the following 14 boundary points: Start at 457088, 2445921; 456838, 2445992; 456525, 2446628; 457027, 2447344; 458020, 2447254; 457900, 2446720; 458214, 2446760; 458887, 2446950; 459348, 2446748; 459490, 2446382; 459454, 2446075; 459242, 2445757; 458486, 2445521; 457390, 2445835; return to starting point.

(B) **Note:** Map 12 follows:

Map 12
Unit 4 - *Cyrtandra limahuliensis - b*

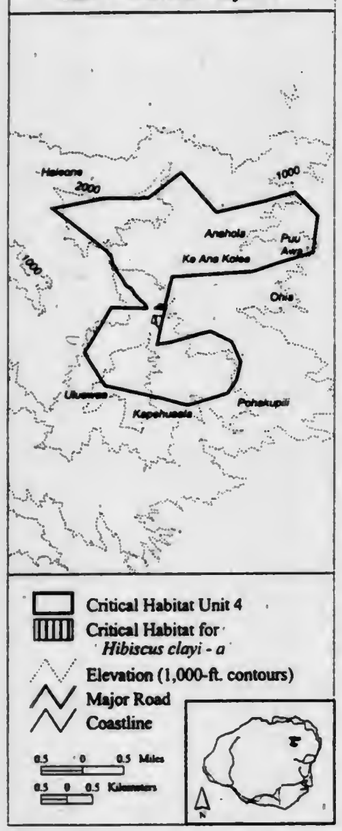


(xiii) Kauai 4—*Hibiscus clayi*—a (4 ha; 9 ac)

(A) Unit consists of the following 70 boundary points: Start at 457819, 2447272; 458020, 2447254; 457971, 2447038; 457967, 2447019; 457946, 2447009; 457942, 2447010; 457938, 2447011; 457936, 2447012; 457933, 2447015; 457932, 2447018; 457930, 2447025; 457932, 2447041; 457933, 2447055; 457933, 2447059; 457931, 2447065; 457930, 2447067; 457928, 2447067; 457921, 2447067; 457918, 2447067; 457917, 2447066; 457910, 2447062; 457908, 2447062; 457898, 2447060; 457896, 2447062; 457894, 2447065; 457893, 2447069; 457890, 2447077; 457888, 2447085; 457888, 2447086; 457887, 2447093; 457887, 2447095; 457884, 2447100; 457878, 2447105; 457871, 2447102; 457868, 2447102; 457858, 2447103; 457848, 2447108; 457844, 2447111; 457841, 2447115; 457838, 2447120; 457837, 2447123; 457835, 2447125; 457831, 2447127; 457828, 2447128; 457822, 2447128; 457818, 2447128; 457816, 2447127; 457810, 2447123; 457798, 2447118; 457794, 2447120; 457792, 2447125; 457792, 2447128; 457793, 2447135; 457795, 2447145; 457799, 2447165; 457800, 2447176; 457800, 2447183; 457800, 2447185; 457801, 2447192; 457803, 2447195; 457814, 2447209; 457818, 2447215; 457825, 2447224; 457826, 2447227; 457829, 2447234; 457829, 2447244; 457828, 2447246; 457825, 2447251; 457824, 2447254; 457823, 2447264; return to starting point.

(B) **Note:** Map 13 follows:

Map 13
Unit 4 - *Hibiscus clayi - a*



(xiv) Kauai 4—*Hibiscus clayi*—b (85 ha; 210 ac)

(A) Unit consists of the following 421 boundary points: Start at 458269, 2446775; 458887, 2446950; 459348, 2446748; 459490, 2446382; 459454, 2446075; 459242, 2445757; 459159, 2445731; 459158, 2445731; 459148, 2445734; 459138, 2445735; 459131, 2445738; 459126, 2445743; 459125, 2445745; 459127, 2445747; 459138, 2445755; 459142, 2445761; 459144, 2445765; 459142, 2445769; 459138, 2445772; 459135, 2445775; 459116, 2445793; 459112, 2445795; 459110, 2445797; 459106, 2445798; 459102, 2445799; 459095, 2445802; 459089, 2445805; 459085, 2445812; 459082, 2445815; 459087, 2445825; 459093, 2445831; 459103, 2445841; 459106, 2445845; 459111, 2445852; 459114, 2445859; 459118, 2445863; 459120, 2445863; 459128, 2445866; 459133, 2445871; 459134, 2445875; 459135, 2445882; 459135, 2445885; 459135, 2445892; 459135, 2445895; 459133, 2445900; 459131, 2445905; 459126, 2445913; 459123, 2445915; 459118, 2445921; 459117, 2445924; 459116, 2445925; 459114, 2445935; 459116, 2445938; 459118, 2445941; 459123, 2445945; 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458207, 2446684; 458203, 2446685; 458200, 2446687; 458200, 2446688; 458201, 2446695; 458206, 2446707; 458208, 2446710; 458214, 2446719; 458228, 2446739; 458230, 2446741; 458247, 2446757; 458258, 2446772; return to starting point.

(B) **Note:** Map 14 follows:

Map 14
Unit 4 - *Hibiscus clayi - b*

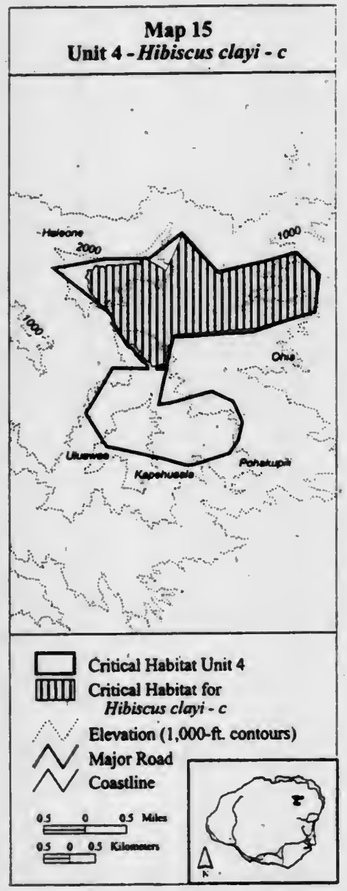


(xv) Kauai 4—*Hibiscus clayi*—c (590 ha; 1,458 ac)

(A) Unit consists of the following 192 boundary points: Start at 457668, 2449552; 457672, 2449547; 457689, 2449529; 457699, 2449522; 457714, 2449515; 457742, 2449506; 457770, 2449483; 457776, 2449475; 457788, 2449467; 457825, 2449449; 457846, 2449433; 457856, 2449429; 457917, 2449393; 457954, 2449369; 458004, 2449331; 458025, 2449313; 458037, 2449307; 458058, 2449301; 458141, 2449491; 458199, 2449615; 458316, 2449881; 458363, 2449984; 459083,

2449224; 460578, 2449637; 461026, 2449189; 460925, 2448495; 459811, 2448172; 458204, 2448065; 458165, 2447893; 458096, 2447851; 458085, 2447839; 458077, 2447822; 458073, 2447793; 458073, 2447739; 458057, 2447694; 458046, 2447671; 458033, 2447617; 458027, 2447575; 458026, 2447556; 458023, 2447548; 458009, 2447525; 457998, 2447517; 457979, 2447491; 457946, 2447469; 457927, 2447446; 457899, 2447424; 457864, 2447422; 457848, 2447449; 457822, 2447451; 457802, 2447444; 457771, 2447453; 457756, 2447462; 457757, 2447484; 457751, 2447506; 457752, 2447524; 457741, 2447534; 457689, 2447539; 457676, 2447562; 457651, 2447573; 457640, 2447603; 457586, 2447621; 457575, 2447659; 457553, 2447656; 457529, 2447667; 457502, 2447707; 457532, 2447722; 457544, 2447753; 457500, 2447771; 457492, 2447810; 457459, 2447812; 457439, 2447864; 457412, 2447879; 457371, 2447884; 457345, 2447859; 457332, 2447868; 457274, 2447898; 457234, 2447967; 457193, 2448027; 457148, 2448093; 457124, 2448122; 457112, 2448143; 457089, 2448187; 457076, 2448209; 457048, 2448243; 457032, 2448261; 457029, 2448269; 457028, 2448278; 457031, 2448299; 457032, 2448323; 457031, 2448342; 457028, 2448361; 457016, 2448395; 457005, 2448416; 457002, 2448438; 456998, 2448448; 456991, 2448459; 456973, 2448474; 456957, 2448488; 456943, 2448512; 456930, 2448544; 456916, 2448568; 456896, 2448595; 456883, 2448609; 456870, 2448619; 456856, 2448627; 456832, 2448632; 456801, 2448644; 456771, 2448662; 456748, 2448682; 456733, 2448698; 456713, 2448726; 456697, 2448759; 456679, 2448787; 456671, 2448799; 456652, 2448821; 456635, 2448836; 456615, 2448849; 456596, 2448859; 456583, 2448874; 456572, 2448891; 456563, 2448911; 456551, 2448951; 456541, 2448985; 456535, 2449004; 456530, 2449029; 456546, 2449060; 456540, 2449095; 456553, 2449134; 456490, 2449179; 456513, 2449208; 456520, 2449240; 456555, 2449262; 456524, 2449303; 456546, 2449327; 456600, 2449316; 456652, 2449333; 456652, 2449376; 456672, 2449396; 456706, 2449417; 456733, 2449409; 456778, 2449374; 456817, 2449409; 456862, 2449378; 456880, 2449352; 456895, 2449372; 456897, 2449409; 456924, 2449429; 456941, 2449429; 456969, 2449426; 456991, 2449421; 457000, 2449421; 457034, 2449425; 457042, 2449425; 457049, 2449422; 457064, 2449414; 457073, 2449409; 457083, 2449408; 457097, 2449407; 457107, 2449413; 457123, 2449423; 457132, 2449429; 457141, 2449431; 457168, 2449428; 457205, 2449431; 457229, 2449432; 457255, 2449429; 457276, 2449429; 457289, 2449431; 457300, 2449437; 457307, 2449440; 457314, 2449440; 457325, 2449437; 457352, 2449440; 457363, 2449443; 457395, 2449451; 457417, 2449451; 457492, 2449461; 457518, 2449446; 457527, 2449437; 457542, 2449435; 457550, 2449428; 457557, 2449434; 457555, 2449453; 457546, 2449470; 457543, 2449490; 457547, 2449505; 457592, 2449538; 457610, 2449548; 457619, 2449546; 457638, 2449550; 457649, 2449548; 457660, 2449547; return to starting point.

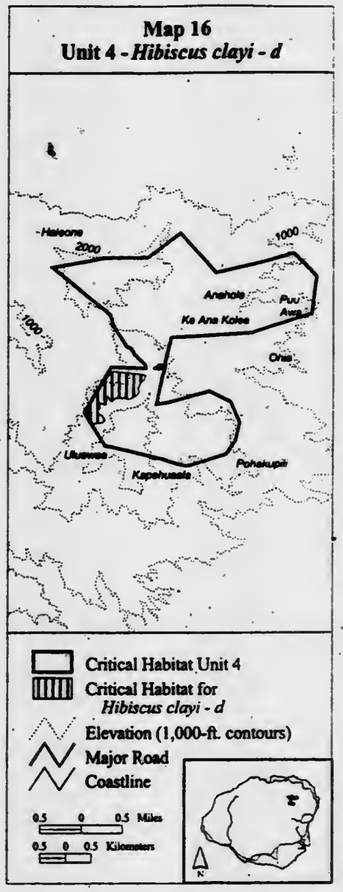
(B) **Note:** Map 15 follows:



(xvi) Kauai 4—*Hibiscus clayi*—d (48 ha; 119 ac)

(A) Unit consists of the following 283 boundary points: Start at 457027, 2447344; 457644, 2447288; 457645, 2447282; 457658, 2447272; 457670, 2447265; 457675, 2447261; 457678, 2447259; 457680, 2447257; 457682, 2447255; 457680, 2447245; 457678, 2447241; 457676, 2447237; 457674, 2447235; 457669, 2447225; 457666, 2447215; 457663, 2447205; 457662, 2447195; 457661, 2447192; 457657, 2447185; 457651, 2447175; 457650, 2447173; 457648, 2447172; 457644, 2447169; 457638, 2447166; 457637, 2447166; 457631, 2447162; 457628, 2447160; 457625, 2447158; 457621, 2447152; 457618, 2447148; 457608, 2447139; 457605, 2447138; 457602, 2447135; 457600, 2447133; 457595, 2447128; 457591, 2447122; 457586, 2447115; 457584, 2447109; 457584, 2447105; 457582, 2447095; 457577, 2447086; 457576, 2447085; 457573, 2447075; 457571, 2447072; 457568, 2447068; 457564, 2447065; 457561, 2447062; 457556, 2447057; 457555, 2447055; 457552, 2447051; 457541, 2447032; 457537, 2447025; 457536, 2447017; 457536, 2447015; 457536, 2447012; 457537, 2447005; 457541, 2446995; 457545, 2446985; 457546, 2446983; 457557, 2446955; 457560, 2446945; 457558, 2446941; 457556, 2446937; 457551, 2446932; 457545, 2446928; 457540, 2446924; 457535, 2446919; 457531, 2446913; 457527, 2446906; 457524, 2446899; 457523, 2446895; 457522, 2446892; 457518, 2446887; 457517, 2446885; 457512, 2446881; 457508, 2446880; 457504, 2446879; 457497, 2446877; 457489, 2446874; 457483, 2446871; 457478, 2446868; 457471, 2446863; 457465, 2446858; 457458, 2446852; 457452, 2446845; 457448, 2446842; 457438, 2446838; 457428, 2446838; 457418, 2446837; 457408, 2446834; 457403, 2446831; 457398, 2446828; 457391, 2446823; 457385, 2446818; 457381, 2446815; 457379, 2446814; 457378, 2446814; 457371, 2446812; 457358, 2446810; 457354, 2446809; 457347, 2446807; 457344, 2446805; 457338, 2446803; 457336, 2446803; 457328, 2446805; 457327, 2446805; 457322, 2446809; 457319, 2446815; 457318, 2446825; 457308, 2446825; 457302, 2446828; 457298, 2446830; 457268, 2446834; 457258, 2446833; 457248, 2446831; 457244, 2446829; 457236, 2446825; 457228, 2446822; 457225, 2446822; 457218, 2446821; 457216, 2446823; 457213, 2446825; 457211, 2446828; 457208, 2446831; 457206, 2446833; 457200, 2446837; 457198, 2446838; 457191, 2446838; 457188, 2446838; 457168, 2446832; 457158, 2446831; 457155, 2446832; 457148, 2446834; 457138, 2446839; 457128, 2446839; 457118, 2446836; 457108, 2446831; 457088, 2446819; 457078, 2446813; 457068, 2446807; 457057, 2446796; 457044, 2446780; 457041, 2446775; 457038, 2446772; 457035, 2446769; 457028, 2446765; 457018, 2446765; 457013, 2446770; 457008, 2446774; 457007, 2446775; 457003, 2446780; 456994, 2446791; 456990, 2446797; 456982, 2446809; 456978, 2446816; 456968, 2446830; 456958, 2446844; 456950, 2446855; 456940, 2446867; 456938, 2446868; 456928, 2446872; 456918, 2446869; 456916, 2446867; 456914, 2446865; 456912, 2446861; 456911, 2446855; 456912, 2446845; 456914, 2446835; 456917, 2446825; 456919, 2446816; 456921, 2446808; 456924, 2446795; 456923, 2446785; 456920, 2446775; 456920, 2446774; 456920, 2446765; 456921, 2446758; 456921, 2446753; 456921, 2446745; 456920, 2446743; 456917, 2446725; 456916, 2446718; 456915, 2446715; 456912, 2446712; 456908, 2446710; 456898, 2446708; 456888, 2446707; 456882, 2446709; 456878, 2446710; 456868, 2446715; 456858, 2446720; 456854, 2446721; 456839, 2446726; 456823, 2446730; 456808, 2446732; 456800, 2446734; 456789, 2446735; 456788, 2446734; 456786, 2446728; 456785, 2446719; 456785, 2446706; 456786, 2446696; 456788, 2446686; 456791, 2446678; 456793, 2446676; 456794, 2446672; 456797, 2446664; 456798, 2446656; 456797, 2446647; 456797, 2446646; 456793, 2446641; 456777, 2446627; 456775, 2446626; 456771, 2446623; 456765, 2446619; 456758, 2446616; 456748, 2446610; 456746, 2446608; 456743, 2446606; 456736, 2446596; 456742, 2446586; 456748, 2446581; 456751, 2446579; 456753, 2446576; 456756, 2446566; 456763, 2446556; 456770, 2446546; 456768, 2446536; 456769, 2446527; 456770, 2446526; 456775, 2446522; 456778, 2446521; 456788, 2446518; 456791, 2446516; 456795, 2446512; 456798, 2446509; 456801, 2446508; 456808, 2446505; 456816, 2446504; 456838, 2446501; 456842, 2446499; 456844, 2446496; 456844, 2446486; 456843, 2446476; 456845, 2446472; 456850, 2446467; 456856, 2446463; 456863, 2446460; 456869, 2446456; 456870, 2446456; 456881, 2446439; 456882, 2446436; 456883, 2446426; 456882, 2446416; 456883, 2446406; 456883, 2446401; 456882, 2446396; 456881, 2446394; 456878, 2446392; 456852, 2446372; 456848, 2446370; 456845, 2446369; 456830, 2446364; 456822, 2446362; 456808, 2446358; 456788, 2446354; 456778, 2446355; 456768, 2446358; 456758, 2446360; 456748, 2446361; 456738, 2446360; 456728, 2446357; 456727, 2446356; 456716, 2446348; 456709, 2446345; 456708, 2446345; 456700, 2446344; 456698, 2446344; 456688, 2446342; 456678, 2446340; 456675, 2446339; 456668, 2446337; 456525, 2446628; return to starting point.

(B) **Note:** Map 16 follows:



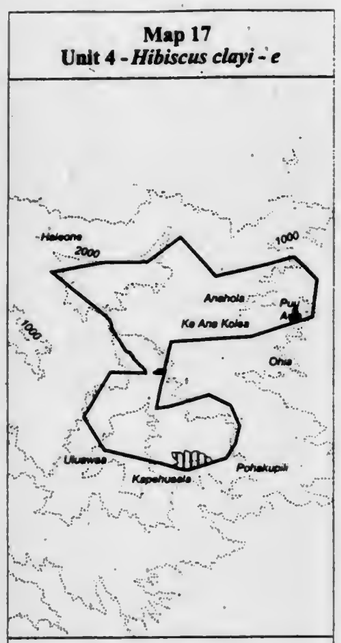
(xvii) Kauai 4—*Hibiscus clayi*—e (19 ha; 47 ac)

(A) Unit consists of the following 225 boundary points: Start at 459000, 2445681; 458500, 2445525; 458499, 2445526; 458498, 2445527; 458493, 2445530; 458488, 2445532; 458485, 2445533; 458478, 2445534; 458469, 2445547; 458468, 2445547; 458463, 2445550; 458458, 2445552; 458448, 2445549; 458440, 2445544; 458428, 2445540; 458422, 2445539; 458288, 2445578; 458285, 2445582; 458281, 2445586; 458273, 2445590; 458268, 2445593; 458266, 2445596; 458263, 2445601; 458259, 2445606; 458254, 2445611; 458248, 2445616; 458248, 2445616; 458244, 2445622; 458244, 2445626; 458248, 2445632; 458258, 2445645; 458259, 2445646; 458265, 2445649; 458268, 2445650; 458278, 2445651; 458283, 2445651; 458291, 2445653; 458306, 2445656; 458323, 2445661; 458328, 2445663; 458332, 2445666; 458333, 2445671; 458334, 2445676; 458328, 2445683; 458326, 2445686; 458318, 2445691; 458316, 2445693; 458312, 2445696; 458311, 2445698; 458307, 2445704; 458288, 2445726; 458283, 2445731; 458274, 2445736; 458271, 2445738; 458268, 2445740; 458265, 2445743; 458263, 2445746; 458261, 2445748; 458257, 2445754; 458255, 2445756; 458251, 2445758; 458248, 2445760; 458244, 2445766; 458242, 2445770; 458234, 2445782; 458230, 2445786; 458229, 2445787; 458228, 2445788; 458226, 2445793; 458225, 2445796; 458224, 2445806; 458222, 2445816; 458217, 2445836; 458212, 2445849; 458207, 2445855; 458207, 2445856; 458207, 2445857; 458211, 2445863; 458215, 2445866; 458217, 2445867; 458228, 2445872; 458232, 2445872; 458235, 2445872; 458245, 2445872; 458248, 2445872; 458253, 2445870; 458261, 2445866; 458266, 2445863; 458268, 2445862; 458278, 2445859; 458292, 2445862; 458302, 2445866; 458307, 2445867; 458311, 2445869; 458318, 2445870; 458327, 2445866; 458328, 2445865; 458332, 2445860; 458336, 2445854; 458338, 2445852; 458348, 2445850; 458351, 2445853; 458356, 2445858; 458358, 2445861; 458368, 2445866; 458375, 2445862; 458378, 2445860; 458388, 2445849; 458392, 2445846; 458398, 2445841; 458408, 2445836; 458418, 2445833; 458428, 2445833; 458431, 2445833; 458439, 2445835; 458446, 2445838; 458448, 2445841; 458450, 2445844; 458452, 2445852; 458454, 2445866; 458455, 2445876; 458457, 2445885; 458457, 2445887; 458458, 2445890; 458462, 2445892; 458468, 2445893; 458478, 2445892; 458482, 2445892; 458486, 2445893; 458488, 2445893; 458495, 2445892; 458498, 2445891; 458516, 2445883; 458523, 2445880; 458528, 2445876; 458536, 2445873; 458538, 2445872; 458548, 2445871; 458551, 2445868; 458552, 2445865; 458555, 2445862; 458558, 2445859; 458565, 2445855; 458567, 2445854; 458568, 2445854; 458578, 2445853; 458588, 2445849; 458598, 2445849; 458603, 2445851; 458608, 2445853; 458610, 2445855; 458618, 2445865; 458623, 2445871; 458625, 2445875; 458628, 2445879; 458632, 2445882; 458638, 2445885; 458647, 2445884; 458658, 2445884; 458663, 2445885; 458667,

2445886; 458688, 2445888; 458691, 2445888; 458698, 2445885; 458704, 2445881; 458708, 2445877; 458709, 2445876; 458718, 2445873; 458724, 2445871; 458728, 2445870; 458731, 2445868; 458735, 2445865; 458738, 2445863; 458743, 2445860; 458751, 2445858; 458758, 2445856; 458759, 2445855; 458768, 2445849; 458771, 2445848; 458778, 2445845; 458788, 2445844; 458798, 2445844; 458808, 2445842; 458818, 2445840; 458821, 2445838; 458825, 2445835; 458826, 2445834; 458828, 2445832; 458833, 2445830; 458840, 2445827; 458843, 2445825; 458858, 2445819; 458861, 2445818; 458864, 2445815; 458866, 2445813; 458870, 2445807; 458874, 2445801; 458878, 2445795; 458884, 2445791; 458891, 2445788; 458898, 2445786; 458900, 2445785; 458908, 2445781; 458915, 2445775; 458918, 2445773; 458928, 2445770; 458938, 2445770; 458948, 2445773; 458955, 2445772; 458958, 2445772; 458962, 2445769; 458963, 2445765; 458963, 2445755; 458964, 2445745; 458967, 2445735; 458971, 2445728; 458973, 2445725; 458975, 2445722; 458980, 2445717; 458983, 2445715; 458985, 2445712; 458988, 2445708; 458989, 2445706; 458992, 2445695; 458997, 2445685; return to starting point.

(B) **Note:** Map 17 follows:

Map 17
Unit 4 - *Hibiscus clayi - e*

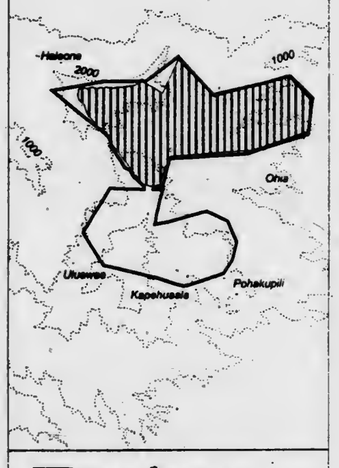


(xviii) Kauai 4—*Labordia lydgatei*—a (588 ha; 1,453 ac)

(A) Unit consists of the following 170 boundary points: Start at 457589, 2449536; 457687, 2449531; 457689, 2449529; 457699, 2449522; 457714, 2449515; 457742, 2449506; 457770, 2449483; 457776, 2449475; 457788, 2449467; 457825, 2449449; 457846, 2449433; 457856, 2449429; 457917, 2449393; 457954, 2449369; 458004, 2449331; 458025, 2449313; 458037, 2449307; 458058, 2449301; 458141, 2449491; 458199, 2449615; 458316, 2449881; 458363, 2449983; 458397, 2449949; 459083, 2449224; 460011, 2449480; 460567, 2449609; 461011, 2449133; 460921, 2448534; 459969, 2448218; 459811, 2448172; 458204, 2448065; 458165, 2447893; 458096, 2447851; 458085, 2447839; 458077, 2447822; 458073, 2447793; 458073, 2447739; 458057, 2447694; 458046, 2447671; 458033, 2447617; 458027, 2447575; 458026, 2447556; 458023, 2447548; 458009, 2447525; 457998, 2447517; 457979, 2447491; 457946, 2447469; 457930, 2447450; 457669, 2447502; 457031, 2448340; 457031, 2448342; 457028, 2448361; 457016, 2448395; 457005, 2448416; 457002, 2448438; 456998, 2448448; 456991, 2448459; 456973, 2448474; 456957, 2448488; 456943, 2448512; 456930, 2448544; 456916, 2448568; 456896, 2448595; 456883, 2448609; 456870, 2448619; 456856, 2448627; 456832, 2448632; 456801, 2448644; 456771, 2448662; 456748, 2448682; 456733, 2448698; 456713, 2448726; 456697, 2448759; 456679, 2448787; 456671, 2448799; 456652, 2448821; 456635, 2448836; 456615, 2448849; 456596, 2448859; 456583, 2448874; 456572, 2448891; 456563, 2448911; 456551, 2448951; 456541, 2448985; 456535, 2449004; 456530, 2449029; 456526, 2449045; 456516, 2449067; 456504, 2449086; 456491, 2449106; 456476, 2449128; 456462, 2449139; 456446, 2449150; 456435, 2449153; 456419, 2449170; 456404, 2449186; 456395, 2449205; 456387, 2449236; 456386, 2449264; 456390, 2449313; 456395, 2449355; 456394, 2449367; 456394, 2449381; 456397, 2449394; 456401, 2449399; 456407, 2449399; 456420, 2449397; 456439, 2449398; 456457, 2449404; 456483, 2449414; 456501, 2449416; 456513, 2449416; 456533, 2449412; 456569, 2449406; 456586, 2449405; 456603, 2449410; 456620, 2449418; 456633, 2449423; 456647, 2449426; 456662, 2449428; 456681, 2449425; 456706, 2449417; 456733, 2449409; 456752, 2449403; 456769, 2449404; 456787, 2449409; 456807, 2449421; 456818, 2449430; 456826, 2449432; 456836, 2449428; 456852, 2449419; 456862, 2449411; 456869, 2449407; 456878, 2449407; 456889, 2449412; 456910, 2449422; 456924, 2449429; 456941, 2449429; 456969, 2449426; 456991, 2449421; 457000, 2449421; 457034, 2449425; 457042, 2449425; 457049, 2449422; 457064, 2449414; 457073, 2449409; 457083, 2449408; 457097, 2449407; 457107, 2449413; 457123, 2449423; 457132, 2449429; 457141, 2449431; 457168, 2449428; 457205, 2449431; 457229, 2449432; 457255, 2449429; 457276, 2449429; 457289, 2449431; 457300, 2449437; 457307, 2449440; 457314, 2449440; 457325, 2449437; 457352, 2449440; 457363, 2449443; 457395, 2449451; 457417, 2449451; 457492, 2449461; 457515, 2449471; 457522, 2449475; 457547, 2449505; return to starting point.

(B) **Note:** Map 18 follows:

Map 18
Unit 4 - *Labordia lydgatei - a*

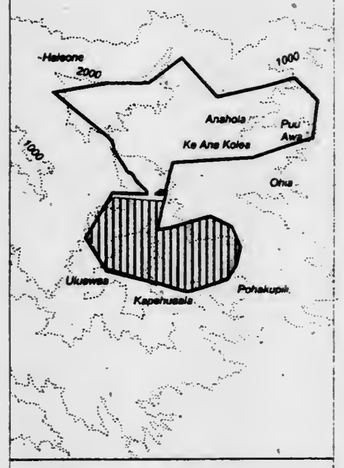


(xix) Kauai 4—*Phyllostegia wawrana*—a (352 ha; 869 ac)

(A) Unit consists of the following 25 boundary points: Start at 457390, 2445835; 457088, 2445921; 456838, 2445992; 456709, 2446255; 456732, 2446269; 456702, 2446268; 456529, 2446620; 456709, 2446891; 457027, 2447344; 458020, 2447262; 457940, 2447000; 457957, 2446974; 457900, 2446720; 458214, 2446760; 458463, 2446830; 458936, 2446928; 459341, 2446751; 459365, 2446704; 459490, 2446382; 459454, 2446075; 459260, 2445784; 458941, 2445663; 458510, 2445529; 458255, 2445590; 458262, 2445585; return to starting point.

(B) **Note:** Map 19 follows:

Map 19
Unit 4 - *Phyllostegia wawrana - a*

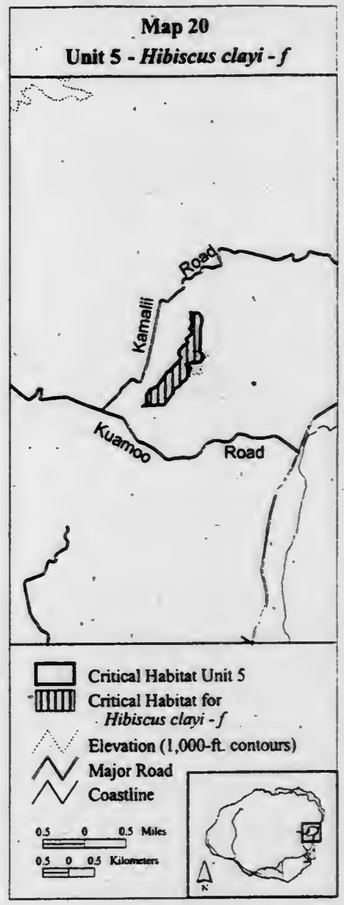


(xx) Kauai 5—*Hibiscus clayi*—f (60 ha; 148 ac)

(A) Unit consists of the following 52 boundary points: Start at 462370, 2438990; 462438, 2439048; 462412, 2439074; 462412, 2439188; 462475, 2439287; 462548, 2439318; 462631, 2439365; 462709, 2439469; 462819, 2439625; 462845, 2439625; 463011, 2439781; 463043, 2439818; 463084, 2439885; 463074, 2439911; 463037, 2439953; 463048, 2440021; 463079, 2440042; 463121, 2440109; 463162, 2440140; 463194, 2440140; 463214, 2440192; 463183, 2440245; 463313, 2440375; 463246, 2440448; 463287, 2440505; 463298, 2440609; 463256, 2440635; 463287, 2440671; 463272, 2440744; 463433, 2440739; 463496, 2440650; 463491, 2440588; 463465, 2440479; 463459, 2440333; 463465, 2440187; 463438, 2440000; 463511, 2439916; 463517, 2439870; 463449, 2439802; 463360, 2439771; 463287, 2439792; 463256, 2439766; 463183, 2439745; 463194, 2439724; 463246, 2439703; 463272, 2439677; 463183, 2439474; 463126, 2439438; 463063, 2439365; 462954, 2439297; 462938, 2439230; 462756, 2439001; return to starting point.

(B) **Note:** Map 20 follows:

Map 20
Unit 5 - *Hibiscus clayi - f*

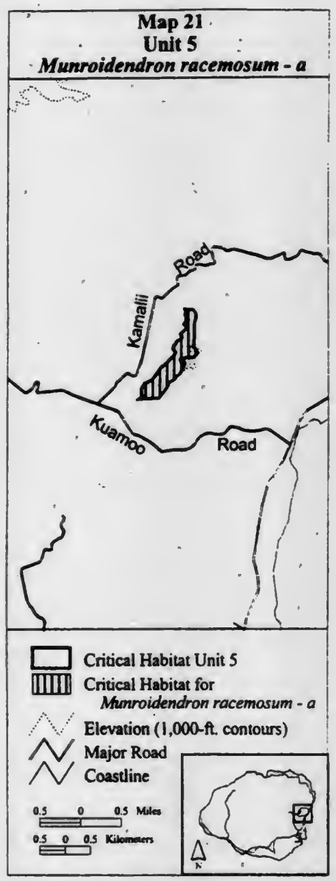


(xxi) Kauai 5—*Munroidendron racemosum*—a (60 ha; 148 ac)

(A) Unit consists of the following 52 boundary points: Start at 462370, 2438990; 462438, 2439048; 462412, 2439074; 462412, 2439188; 462475, 2439287; 462548, 2439318; 462631, 2439365; 462709, 2439469; 462819, 2439625; 462845, 2439625; 463011, 2439781; 463043, 2439818; 463084, 2439885; 463074, 2439911; 463037, 2439953; 463048, 2440021; 463079, 2440042; 463121, 2440109; 463162, 2440140; 463194, 2440140; 463214,

2440192; 463183, 2440245; 463313, 2440375; 463246, 2440448; 463287, 2440505; 463298, 2440609; 463256, 2440635; 463287, 2440671; 463272, 2440744; 463433, 2440739; 463496, 2440650; 463491, 2440588; 463465, 2440479; 463459, 2440333; 463465, 2440187; 463438, 2440000; 463511, 2439916; 463517, 2439870; 463449, 2439802; 463360, 2439771; 463287, 2439792; 463256, 2439766; 463183, 2439745; 463194, 2439724; 463246, 2439703; 463272, 2439677; 463183, 2439474; 463126, 2439438; 463063, 2439365; 462954, 2439297; 462938, 2439230; 462756, 2439001; return to starting point.

(B) **Note:** Map 21 follows:



(xxii) Kauai 6—*Brighamia insignis*—a (63 ha; 156 ac)

(A) Unit consists of the following 22 boundary points: Start at 462682, 2426559; 462657, 2426391; 462532, 2426329; 462422, 2426274; 462417, 2426272; 462234, 2426225; 462055, 2426178; 461911, 2426141; 461862, 2426197; 461719, 2426089; 461655, 2426041; 461649, 2426036; 461464, 2426045; 461448, 2426165; 461433, 2426586; 461678, 2426687; 461714, 2426795; 461907, 2426808; 462068, 2426762; 462130, 2426658; 462247, 2426612; 462487, 2426760; return to starting point.

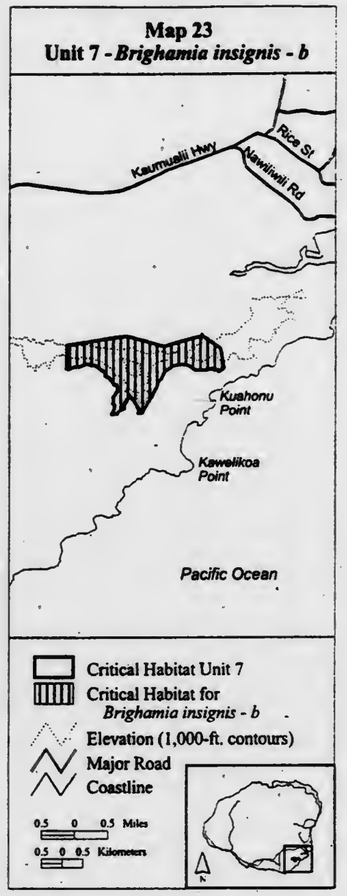
(B) **Note:** Map 22 follows:



(xxiii) Kauai 7—*Brighamia insignis*—b (341 ha; 842 ac)

(A) Unit consists of the following 118 boundary points: Start at 458142, 2423455; 458117, 2423452; 458106, 2423450; 458074, 2423446; 458031, 2423441; 458022, 2423439; 458014, 2423466; 458021, 2423472; 458036, 2423485; 458058, 2423560; 458086, 2423655; 458073, 2423681; 458043, 2423708; 458049, 2423751; 458049, 2423808; 458039, 2423854; 458066, 2423887; 458092, 2423928; 458096, 2423934; 458119, 2423970; 458122, 2423978; 458149, 2423997; 458162, 2424054; 458136, 2424097; 458136, 2424099; 458133, 2424118; 458126, 2424160; 458066, 2424167; 458043, 2424217; 458009, 2424240; 457966, 2424313; 457930, 2424340; 457853, 2424376; 457860, 2424406; 457833, 2424456; 457640, 2424596; 457594, 2424622; 457527, 2424612; 457504, 2424622; 457474, 2424636; 457421, 2424646; 457371, 2424652; 457358, 2424642; 457321, 2424612; 457298, 2424612; 457252, 2424591; 457238, 2424585; 457218, 2424576; 457204, 2424580; 457203, 2424580; 457195, 2424582; 457148, 2424589; 457099, 2424582; 457036, 2424556; 457019, 2424549; 457006, 2424540; 456924, 2424561; 456949, 2425099; 458411, 2425339; 458609, 2425269; 459268, 2425094; 459490, 2425148; 460208, 2425361; 460651, 2425063; 460662, 2424997; 460736, 2424562; 460732, 2424559; 460721, 2424548; 460705, 2424534; 460688, 2424518; 460619, 2424484; 460594, 2424517; 460594, 2424517; 460495, 2424517; 460475, 2424550; 460373, 2424536; 460281, 2424513; 460170, 2424523; 460066, 2424516; 459976, 2424546; 459929, 2424597; 459855, 2424638; 459740, 2424652; 459629, 2424638; 459499, 2424606; 459384, 2424532; 459286, 2424472; 459212, 2424315; 459157, 2424250; 459134, 2424204; 459105, 2424102; 459085, 2424072; 459037, 2423991; 458986, 2423894; 458939, 2423815; 458891, 2423732; 458854, 2423668; 458826, 2423618; 458786, 2423542; 458741, 2423531; 458744, 2423558; 458688, 2423585; 458658, 2423661; 458631, 2423661; 458551, 2423758; 458541, 2423798; 458512, 2423871; 458445, 2423921; 458405, 2423884; 458382, 2423834; 458335, 2423824; 458305, 2423771; 458295, 2423728; 458279, 2423668; 458315, 2423638; 458312, 2423581; 458199, 2423551; 458142, 2423478; return to starting point.

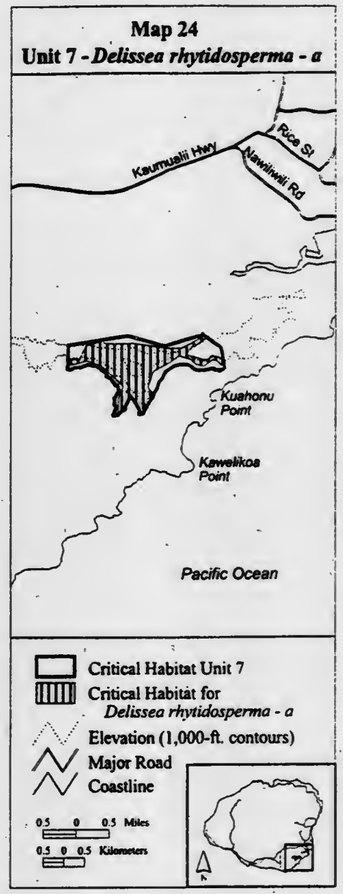
(B) **Note:** Map 23 follows:



(xxiv) Kauai 7—*Delissea rhytidosperma*—a (221 ha; 545 ac)

(A) Unit consists of the following 53 boundary points: Start at 457776, 2425183; 457996, 2425162; 458503, 2425167; 459357, 2425044; 459695, 2425039; 459982, 2425193; 460156, 2425290; 460184, 2425357; 460210, 2425363; 460315, 2425300; 460202, 2425218; 460110, 2425157; 459890, 2425029; 459823, 2424886; 460294, 2424732; 460443, 2424844; 460683, 2424773; 460693, 2424691; 460663, 2424614; 460555, 2424732; 460443, 2424757; 460228, 2424599; 460038, 2424650; 459920, 2424768; 459634, 2424845; 459393, 2424691; 459009, 2424491; 458866, 2424113; 458958, 2423990; 459032, 2423977; 458955, 2423865; 458897, 2423775; 458840, 2423683; 458785, 2423540; 458756, 2423487; 458737, 2423478; 458661, 2423469; 458671, 2423560; 458523, 2423816; 458446, 2423913; 458293, 2423606; 458134, 2423468; 458139, 2423836; 458267, 2424138; 457955, 2424420; 457735, 2424620; 457371, 2424748; 457156, 2424676; 456952, 2424640; 456931, 2424789; 457197, 2424778; 457361, 2425116; 457765, 2425229; return to starting point.

(B) **Note:** Map 24 follows:



(xxv) Kauai 7—*Isodendrion longifolium*—a (337 ha; 833 ac)

(A) Unit consists of the following 127 boundary points: Start at 456913, 2424541; 457040, 2425134; 457651, 2425234; 458371, 2425346; 459277, 2425049; 460211, 2425364; 460651, 2425063; 460662, 2424997; 460736, 2424562; 460732, 2424559; 460721, 2424548; 460705, 2424534; 460602, 2424507; 460593, 2424514; 460496, 2424516; 460475, 2424550; 460373, 2424536; 460281, 2424513; 460213, 2424515; 460213, 2424515; 460213, 2424515; 460209, 2424517; 460185, 2424518; 460184, 2424516; 460184, 2424516; 460184, 2424516; 460169, 2424516; 460068, 2424515; 459976, 2424546; 459929, 2424597; 459855, 2424638; 459740, 2424652; 459629, 2424638; 459499, 2424606; 459384, 2424532; 459286, 2424472; 459212, 2424315; 459157, 2424250; 459134, 2424204; 459105, 2424102; 459085, 2424072; 459037, 2423991; 458982, 2423888; 458939, 2423815; 458890, 2423741; 458869, 2423724; 458842, 2423663; 458811, 2423619; 458777, 2423544; 458741, 2423531; 458744, 2423558; 458688, 2423585; 458658, 2423661; 458631, 2423661; 458551, 2423758; 458541, 2423798; 458512, 2423871; 458445, 2423921; 458405, 2423884; 458382, 2423834; 458335, 2423824; 458305, 2423771; 458295, 2423728; 458279, 2423668; 458315, 2423638; 458312, 2423581; 458199, 2423551; 458142, 2423478; 458142, 2423455; 458117, 2423452; 458106, 2423450; 458058, 2423560; 458086, 2423655; 458073, 2423681; 458043, 2423708; 458049, 2423751; 458049, 2423808; 458039, 2423854; 458066, 2423887; 458092, 2423928; 458096, 2423934; 458119, 2423970; 458122, 2423978; 458149, 2423997; 458162, 2424054; 458136, 2424097; 458136, 2424099; 458133, 2424118; 458126, 2424160; 458066, 2424167; 458043, 2424217; 458009, 2424240; 457966, 2424313; 457930, 2424340; 457853, 2424376; 457860, 2424406; 457833, 2424456; 457640, 2424596; 457594, 2424622; 457527, 2424612; 457504, 2424622; 457474, 2424636; 457421, 2424646; 457371, 2424652; 457358, 2424642; 457321, 2424612; 457298, 2424612; 457252, 2424591; 457238, 2424585; 457218, 2424576; 457204, 2424580; 457203, 2424580; 457195, 2424582; 457148, 2424589; 457099, 2424582; 457036, 2424556; 457019, 2424549; 456995, 2424533; 456994, 2424532; 456986, 2424527; 456979, 2424529; 456977, 2424529; 456926, 2424539; 456919, 2424552; 456919, 2424552; 456917, 2424541; return to starting point.

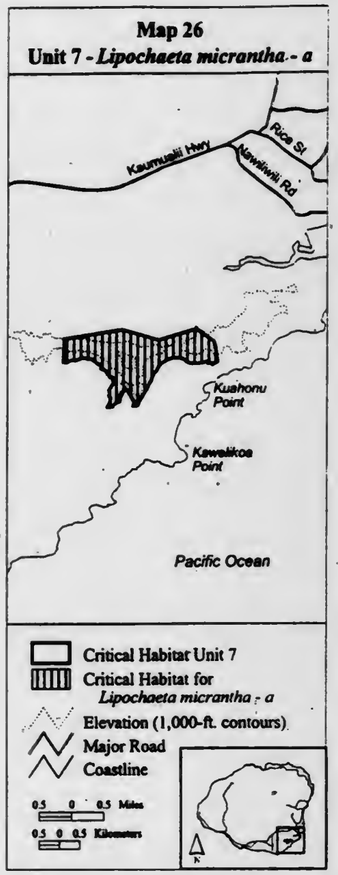
(B) **Note:** Map 25 follows:



(xxvi) Kauai 7—*Lipochaeta micrantha*—a (341 ha; 842 ac)

(A) Unit consists of the following 125 boundary points: Start at 456916, 2424553; 456952, 2425094; 458386, 2425333; 459277, 2425098; 459948, 2425284; 460206, 2425358; 460327, 2425282; 460590, 2425104; 460617, 2425086; 460649, 2425064; 460662, 2424997; 460736, 2424562; 460732, 2424559; 460721, 2424548; 460705, 2424534; 460688, 2424518; 460619, 2424484; 460594, 2424518; 460497, 2424515; 460475, 2424550; 460373, 2424536; 460281, 2424513; 460213, 2424515; 460209, 2424517; 460185, 2424518; 460184, 2424516; 460178, 2424516; 460073, 2424516; 459976, 2424546; 459929, 2424597; 459855, 2424638; 459740, 2424652; 459629, 2424638; 459499, 2424606; 459384, 2424532; 459286, 2424472; 459212, 2424315; 459157, 2424250; 459134, 2424204; 459105, 2424102; 459085, 2424072; 459037, 2423991; 458985, 2423890; 458939, 2423815; 458892, 2423732; 458852, 2423677; 458849, 2423670; 458825, 2423622; 458784, 2423557; 458741, 2423531; 458744, 2423558; 458688, 2423585; 458658, 2423661; 458631, 2423661; 458551, 2423758; 458541, 2423798; 458512, 2423871; 458445, 2423921; 458405, 2423884; 458382, 2423834; 458335, 2423824; 458305, 2423771; 458295, 2423728; 458279, 2423668; 458315, 2423638; 458312, 2423581; 458199, 2423551; 458142, 2423478; 458142, 2423455; 458117, 2423452; 458106, 2423450; 458074, 2423446; 458031, 2423441; 458021, 2423472; 458036, 2423485; 458058, 2423560; 458086, 2423655; 458073, 2423681; 458043, 2423708; 458049, 2423751; 458049, 2423808; 458039, 2423854; 458066, 2423887; 458092, 2423928; 458096, 2423934; 458119, 2423970; 458122, 2423978; 458149, 2423997; 458162, 2424054; 458136, 2424097; 458136, 2424099; 458133, 2424118; 458126, 2424160; 458066, 2424167; 458043, 2424217; 458009, 2424240; 457966, 2424313; 457930, 2424340; 457853, 2424376; 457860, 2424406; 457833, 2424456; 457640, 2424596; 457594, 2424622; 457527, 2424612; 457504, 2424622; 457474, 2424636; 457421, 2424646; 457371, 2424652; 457358, 2424642; 457321, 2424612; 457298, 2424612; 457252, 2424591; 457238, 2424585; 457218, 2424576; 457204, 2424580; 457203, 2424580; 457195, 2424582; 457148, 2424582; 457036, 2424556; 457019, 2424549; 456995, 2424533; 456919, 2424552; 456919, 2424552; return to starting point.

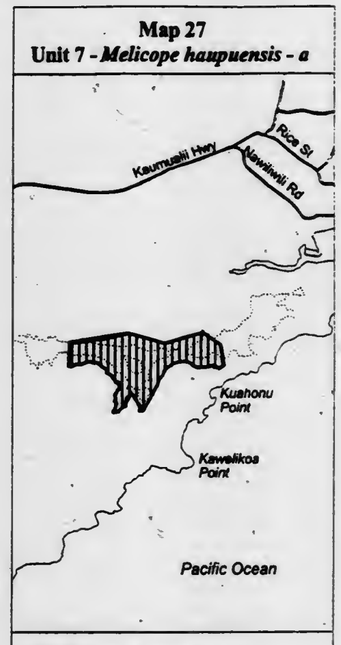
(B) **Note:** Map 26 follows:



(xxvii) Kauai 7—*Melicope haupuensis*—a (330 ha; 816 ac)

(A) Unit consists of the following 115 boundary points: Start at 456977, 2424529; 456957, 2425070; 457830, 2425189; 458432, 2425322; 458875, 2425201; 459283, 2425089; 459699, 2425210; 459897, 2425266; 460048, 2425310; 460143, 2425340; 460188, 2425357; 460207, 2425364; 460327, 2425282; 460590, 2425104; 460615, 2425036; 460721, 2424548; 460705, 2424534; 460688, 2424518; 460617, 2424483; 460594, 2424517; 460497, 2424515; 460475, 2424550; 460373, 2424536; 460284, 2424515; 460212, 2424516; 460209, 2424517; 460185, 2424518; 460184, 2424516; 460179, 2424516; 460114, 2424515; 460051, 2424519; 460009, 2424534; 459976, 2424546; 459929, 2424597; 459855, 2424638; 459740, 2424652; 459629, 2424638; 459499, 2424606; 459384, 2424532; 459286, 2424472; 459212, 2424315; 459157, 2424250; 459134, 2424204; 459105, 2424102; 459085, 2424072; 459037, 2423991; 458972, 2423889; 458939, 2423815; 458892, 2423732; 458845, 2423670; 458816, 2423623; 458792, 2423564; 458741, 2423531; 458744, 2423558; 458688, 2423585; 458658, 2423661; 458631, 2423661; 458551, 2423758; 458541, 2423798; 458512, 2423871; 458445, 2423921; 458405, 2423884; 458382, 2423834; 458335, 2423824; 458305, 2423771; 458295, 2423728; 458279, 2423668; 458315, 2423638; 458312, 2423581; 458199, 2423551; 458142, 2423478; 458142, 2423455; 458117, 2423452; 458106, 2423450; 458074, 2423446; 458042, 2423453; 458091, 2423660; 458086, 2423872; 458096, 2423934; 458119, 2423970; 458122, 2423978; 458149, 2423997; 458162, 2424054; 458136, 2424097; 458136, 2424099; 458133, 2424118; 458126, 2424160; 458066, 2424167; 458043, 2424217; 458009, 2424240; 457966, 2424313; 457930, 2424340; 457853, 2424376; 457860, 2424406; 457833, 2424456; 457640, 2424596; 457594, 2424622; 457527, 2424612; 457504, 2424622; 457474, 2424636; 457421, 2424646; 457371, 2424652; 457358, 2424642; 457321, 2424612; 457298, 2424612; 457252, 2424591; 457203, 2424580; 457195, 2424582; 457148, 2424589; 457099, 2424582; 457036, 2424556; 457019, 2424549; 456995, 2424533; 456994, 2424532; 456979, 2424529; return to starting point.

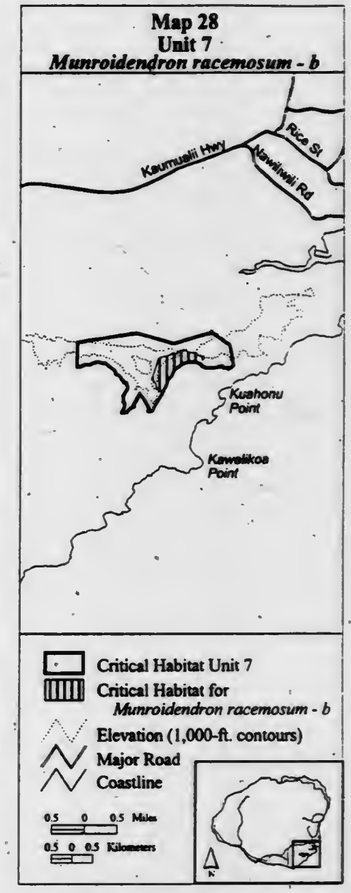
(B) **Note:** Map 27 follows:



(xxviii) Kauai 7—*Munroidendron racemosum*—b (50 ha; 123 ac)

(A) Unit consists of the following 42 boundary points: Start at 460171, 2424516; 460070, 2424515; 459976, 2424546; 459929, 2424597; 459855, 2424638; 459740, 2424652; 459629, 2424638; 459499, 2424606; 459384, 2424532; 459286, 2424472; 459212, 2424315; 459157, 2424250; 459134, 2424204; 459105, 2424102; 459085, 2424072; 459037, 2423991; 459025, 2423961; 458943, 2423966; 458866, 2424034; 458846, 2424063; 458831, 2424156; 458744, 2424248; 458909, 2424734; 459045, 2424788; 459167, 2424803; 459201, 2424827; 459259, 2424875; 459327, 2424841; 459405, 2424890; 459507, 2424919; 459585, 2424919; 459643, 2424880; 459721, 2424875; 459838, 2424870; 459882, 2424802; 459964, 2424778; 460013, 2424759; 460023, 2424725; 459959, 2424666; 459964, 2424593; 460081, 2424530; 460149, 2424530; return to starting point.

(B) **Note:** Map 28 follows:

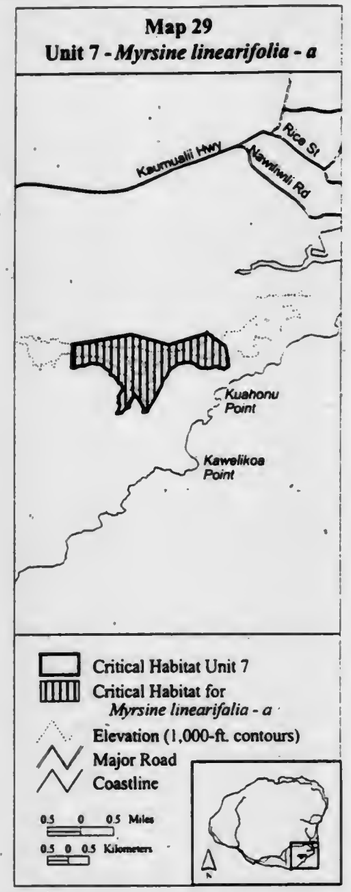


(xxix) Kauai 7—*Myrsine linearifolia*—a (334 ha; 826 ac)

(A) Unit consists of the following 109 boundary points: Start at 460009, 2424534; 459976, 2424546; 459929, 2424597; 459855, 2424638; 459740, 2424652; 459629, 2424638; 459499, 2424606; 459384, 2424532; 459286, 2424472; 459212, 2424315; 459157, 2424250; 459134, 2424204; 459105, 2424102; 459085, 2424072; 459037, 2423991; 458985, 2423890; 458939, 2423815; 458893, 2423731; 458860, 2423681; 458827, 2423624; 458787, 2423540; 458741, 2423531; 458744, 2423558; 458688, 2423585; 458658, 2423661; 458631, 2423661; 458551, 2423758; 458541, 2423798; 458512, 2423871; 458445, 2423921; 458405, 2423884; 458382, 2423834; 458335,

2423824; 458305, 2423771; 458295, 2423728; 458279, 2423668; 458315, 2423638; 458312, 2423581; 458199, 2423551; 458142, 2423478; 458142, 2423455; 458117, 2423452; 458056, 2423466; 458103, 2423665; 458082, 2423889; 458092, 2423928; 458096, 2423934; 458119, 2423970; 458122, 2423978; 458149, 2423997; 458162, 2424054; 458136, 2424097; 458136, 2424099; 458139, 2424114; 458133, 2424118; 458126, 2424160; 458066, 2424167; 458043, 2424217; 458009, 2424240; 457966, 2424313; 457930, 2424340; 457853, 2424376; 457860, 2424406; 457833, 2424456; 457640, 2424596; 457594, 2424622; 457527, 2424612; 457504, 2424622; 457474, 2424636; 457421, 2424646; 457371, 2424652; 457358, 2424642; 457321, 2424612; 457298, 2424612; 457252, 2424591; 457238, 2424585; 457204, 2424580; 457203, 2424580; 457195, 2424582; 457148, 2424582; 457099, 2424582; 457036, 2424556; 456975, 2424548; 456943, 2425070; 458384, 2425331; 459271, 2425086; 459894, 2425257; 460207, 2425364; 460327, 2425282; 460590, 2425104; 460617, 2425086; 460732, 2424559; 460721, 2424548; 460705, 2424534; 460688, 2424518; 460619, 2424484; 460594, 2424517; 460594, 2424517; 460495, 2424517; 460475, 2424550; 460373, 2424536; 460281, 2424513; 460213, 2424515; 460209, 2424517; 460185, 2424518; 460184, 2424516; 460176, 2424516; 460170, 2424523; 460118, 2424515; return to starting point.

(B) **Note:** Map 29 follows:



(xxx) Kauai 7—*Peucedanum sandwicense*—a (21 ha; 52 ac)

(A) Unit consists of the following 53 boundary points: Start at 457285, 2425044; 457378, 2425011; 457470, 2425024; 457559, 2425031; 457622, 2425008; 457671, 2425005; 457727, 2425005; 457806, 2424982; 457869, 2424952; 457961, 2424945; 458037, 2424958; 458110, 2424972; 458258, 2424958; 458301, 2424932; 458367, 2424889; 458417, 2424863; 458479, 2424866; 458568, 2424873; 458618, 2424876; 458680, 2424859; 458726, 2424853; 458789, 2424859; 458845, 2424853; 458888, 2424836; 458971, 2424836; 459043, 2424836; 459126, 2424836; 459182, 2424836; 459231, 2424853; 459304, 2424859; 459350, 2424823; 459353, 2424790; 459310, 2424764; 459251, 2424767; 459182, 2424797; 459060, 2424764; 458987, 2424764; 458888, 2424724; 458816, 2424681; 458756, 2424648; 458644, 2424671; 458499, 2424675; 458420, 2424698; 458360, 2424751; 458248, 2424803; 458050, 2424863; 457830, 2424909; 457787, 2424955; 457721, 2424949; 457691, 2424925; 457599, 2424958; 457421, 2425001; 457338, 2425005; return to starting point.

(B) **Note:** Map 30 follows:

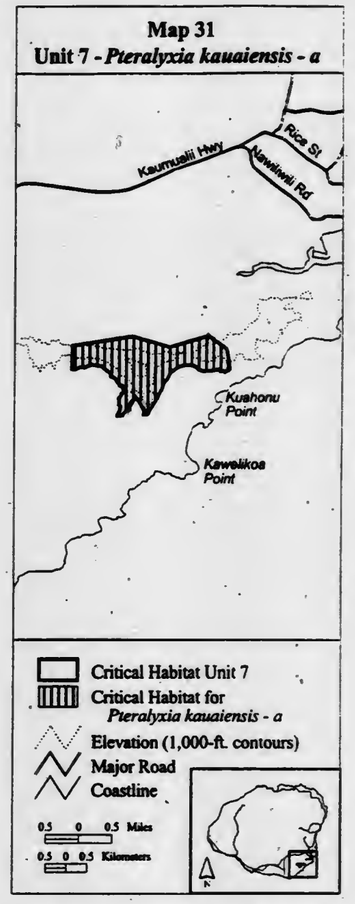


(xxxi) Kauai 7—*Pteralyxia kauaiensis*—a (346 ha; 854 ac)

(A) Unit consists of the following 149 boundary points: Start at 460212, 2424515; 460204, 2424515; 460183, 2424515; 460180, 2424516; 460074, 2424516; 460073, 2424516; 460066, 2424516; 460017, 2424532; 460009, 2424534; 459976, 2424546; 459929, 2424597; 459855, 2424638; 459740, 2424652; 459629, 2424638; 459499, 2424606; 459384, 2424532; 459286, 2424472; 459212, 2424315; 459157, 2424250; 459134, 2424204; 459105, 2424102; 459085, 2424072; 459037,

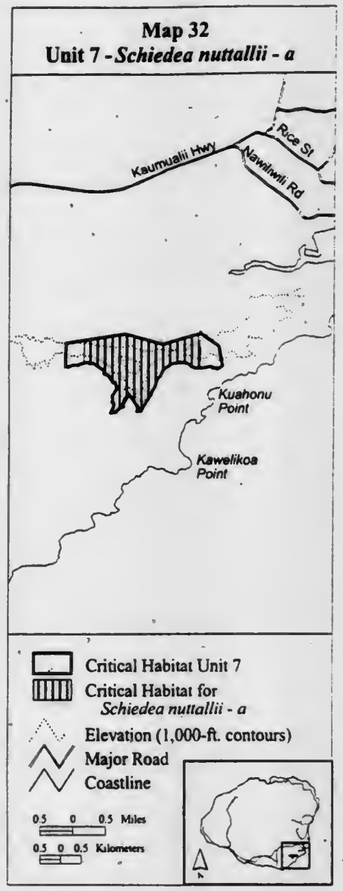
2423991; 458985, 2423890; 458939, 2423815; 458894, 2423737; 458893, 2423735; 458892, 2423732; 458890, 2423730; 458851, 2423668; 458827, 2423621; 458787, 2423543; 458741, 2423531; 458744, 2423558; 458688, 2423585; 458658, 2423661; 458631, 2423661; 458551, 2423758; 458541, 2423798; 458512, 2423871; 458445, 2423921; 458405, 2423834; 458335, 2423824; 458305, 2423771; 458295, 2423728; 458279, 2423668; 458315, 2423638; 458312, 2423581; 458199, 2423551; 458142, 2423478; 458142, 2423455; 458117, 2423452; 458106, 2423450; 458074, 2423446; 458031, 2423441; 458029, 2423440; 458011, 2423438; 458009, 2423462; 458021, 2423472; 458021, 2423472; 458036, 2423485; 458058, 2423560; 458086, 2423655; 458073, 2423681; 458043, 2423708; 458049, 2423751; 458049, 2423808; 458039, 2423854; 458066, 2423887; 458092, 2423928; 458096, 2423934; 458119, 2423970; 458122, 2423978; 458149, 2423997; 458162, 2424054; 458136, 2424097; 458136, 2424099; 458133, 2424118; 458126, 2424160; 458066, 2424167; 458043, 2424217; 458009, 2424240; 457966, 2424313; 457930, 2424340; 457853, 2424376; 457860, 2424406; 457833, 2424456; 457640, 2424596; 457594, 2424622; 457527, 2424612; 457504, 2424622; 457474, 2424636; 457421, 2424646; 457371, 2424652; 457358, 2424642; 457321, 2424612; 457298, 2424612; 457252, 2424591; 457238, 2424585; 457218, 2424576; 457204, 2424580; 457203, 2424580; 457195, 2424582; 457148, 2424589; 457099, 2424582; 457036, 2424556; 457019, 2424549; 456995, 2424533; 456994, 2424532; 456986, 2424527; 456979, 2424529; 456977, 2424529; 456926, 2424539; 456919, 2424552; 456919, 2424552; 456919, 2424552; 456917, 2424541; 456913, 2424541; 456912, 2424542; 456911, 2424542; 456922, 2424860; 456931, 2425122; 456931, 2425122; 458355, 2425346; 458360, 2425344; 458369, 2425346; 458371, 2425346; 458372, 2425346; 459274, 2425092; 460209, 2425362; 460217, 2425356; 460218, 2425356; 460651, 2425063; 460662, 2424997; 460736, 2424562; 460732, 2424559; 460721, 2424548; 460705, 2424534; 460688, 2424518; 460619, 2424484; 460596, 2424515; 460497, 2424515; 460495, 2424517; 460495, 2424517; 460475, 2424550; 460373, 2424536; 460281, 2424513; 460214, 2424515; return to starting point.

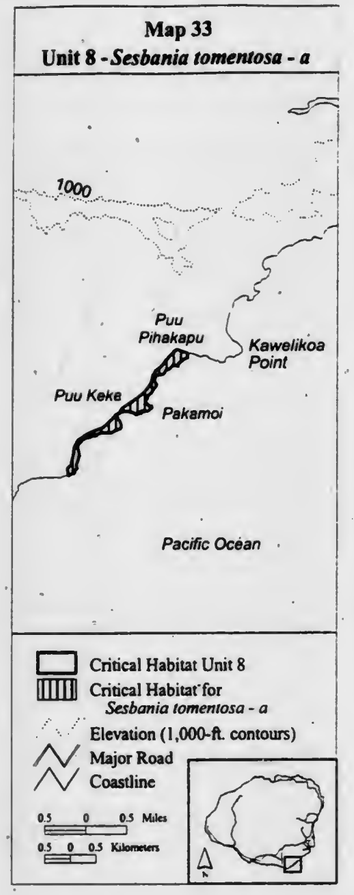
(B) **Note:** Map 31 follows:

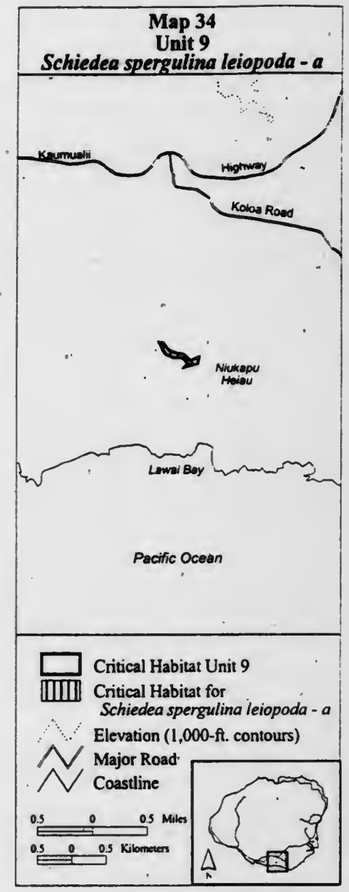


(xxxii) Kauai 7—*Schiedea nuttallii*—a (282 ha; 697 ac)

(A) Unit consists of the following 93 boundary points: Start at 460009, 2424534; 459976, 2424546; 459929, 2424597; 459855, 2424638; 459740, 2424652; 459629, 2424638; 459499, 2424606; 459384, 2424532; 459286, 2424472; 459212, 2424315; 459157, 2424250; 459134, 2424204; 459105, 2424102; 459085, 2424072; 459037, 2423991; 458985, 2423890; 458939, 2423815; 458893, 2423731; 458860, 2423681; 458827, 2423624; 458787, 2423540; 458741, 2423531; 458744, 2423558; 458688, 2423585; 458658, 2423661; 458631, 2423661; 458551, 2423758; 458541, 2423798; 458512, 2423871; 458445, 2423921; 458405, 2423884; 458382, 2423834; 458335, 2423824; 458305, 2423771; 458295, 2423728; 458279, 2423668; 458315, 2423638; 458312, 2423581; 458199,







(xxxiii) Kauai 8—*Sesbania tomentosa*—a (47 ha; 117 ac)

(A) Unit consists of the following 26 boundary points: coastline; 458938, 2422136; 456613, 2419801; 456582, 2419934; 456653, 2420011; 456705, 2420236; 456722, 2420354; 456790, 2420479; 456952, 2420581; 457154, 2420676; 457284, 2420717; 457481, 2420921; 457534, 2420977; 457598, 2421003; 457649, 2421080; 457665, 2421106; 457862, 2421239; 458083, 2421412; 458182, 2421516; 458226, 2421605; 458262, 2421722; 458324, 2421821; 458434, 2421911; 458499, 2422001; 458665, 2422178; 458720, 2422231; 458912, 2422161; coastline.

(B) **Note:** Map 33 follows:

(xxxiv) Kauai 9—*Schiedea spergulina* var. *leiopoda*—a (5 ha; 11 ac)

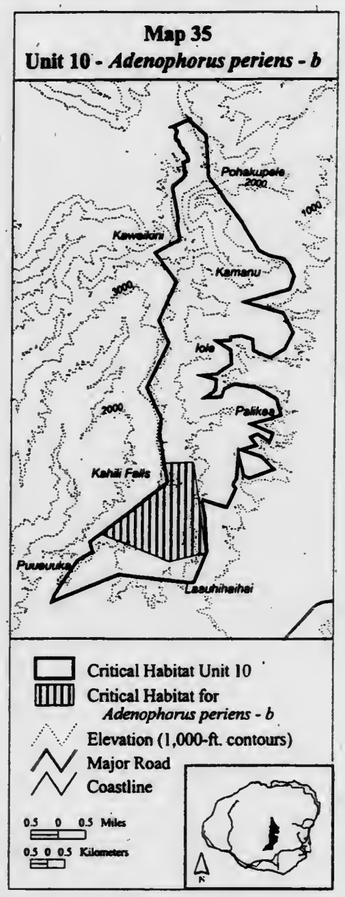
(A) Unit consists of the following 23 boundary points: Start at 447953, 2421713; 447951, 2421694; 447757, 2421647; 447804, 2421699; 447721, 2421781; 447613, 2421788; 447569, 2421791; 447544, 2421803; 447473, 2421836; 447445, 2421889; 447380, 2422014; 447420, 2422010; 447443, 2422008; 447482, 2421943; 447527, 2421894; 447574, 2421872; 447636, 2421848; 447702, 2421846; 447752, 2421830; 447806, 2421767; 447843, 2421739; 447843, 2421739; 447961, 2421793; return to starting point.

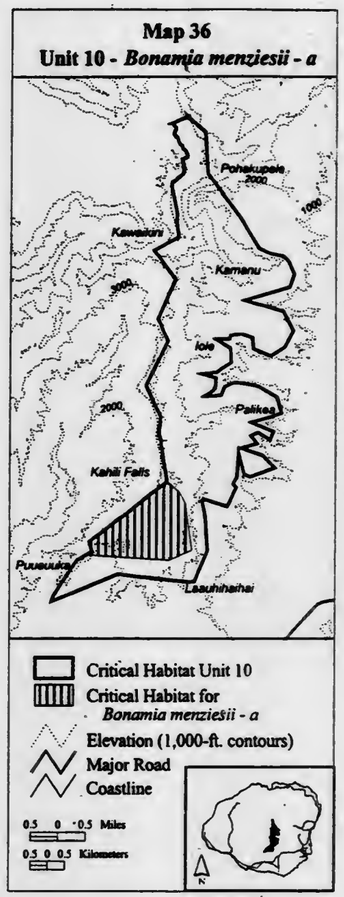
(B) **Note:** Map 34 follows:

(xxxv) Kauai 10—*Adenophorus periens*—b (491 ha; 1,215 ac)

(A) Unit consists of the following 13 boundary points: Start at 448417, 2432669; 449262, 2432700; 449291, 2432590; 449659, 2430034; 449634, 2429983; 449569, 2430034; 448593, 2429793; 446563, 2430607; 447808, 2431562; 448023, 2431693; 448011, 2431718; 448515, 2432105; 448503, 2432172; return to starting point.

(B) **Note:** Map 35 follows:





(xxxvi) Kauai 10—*Bonamia menziesii*—a (421 ha; 1,039 ac)

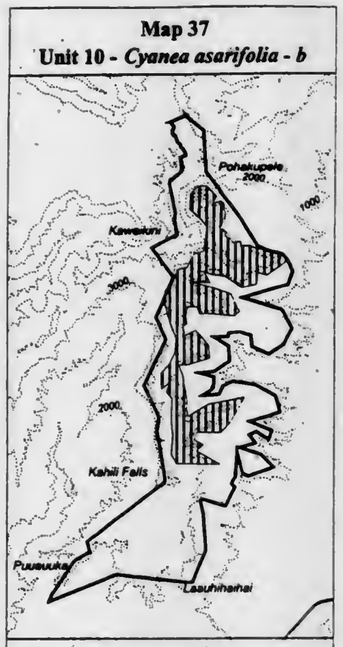
(A) Unit consists of the following 8 boundary points: Start at 448513, 2432103; 448882, 2431783; 449031, 2431495; 449240, 2430109; 448586, 2429812; 446148, 2429968; 446327, 2430072; 446237, 2430356; return to starting point.

(B) **Note:** Map 36 follows:

(xxxvii) Kauai 10—*Cyanea asarifolia*—b (903 ha; 2,232 ac)

(A) Unit consists of the following 103 boundary points: Start at 451083, 2438783; 451901, 2438605; 452064, 2438426; 451856, 2438263; 451455, 2437996; 451187, 2438070; 451143, 2437728; 450727, 2437639; 450252, 2437966; 449850, 2438026; 449613, 2438100; 449806, 2437788; 449271, 2437818; 449925, 2437625; 450415, 2437446; 450653, 2436956; 450519, 2436837; 449776, 2436897; 449494, 2436897; 449449, 2437090; 449152, 2437105; 449093, 2436808; 449122, 2436615; 449018, 2436541; 449063, 2436318; 449018, 2436229; 449390, 2436422; 449628, 2436125; 449761, 2435976; 449791, 2435605; 449167, 2435427; 448900, 2435412; 449018, 2435115; 449078, 2434773; 449137, 2434416; 449122, 2434149; 449167, 2433956; 449761, 2434298; 450816, 2434491; 450400, 2433763; 450118, 2433481; 449449, 2433495; 449345, 2433287; 449613, 2433139; 449420, 2432961; 450088, 2432589; 448840, 2432604; 448677, 2432872; 448706, 2433154; 448736, 2433421; 448692, 2433629; 448677, 2434030; 448706, 2434461; 448543, 2434654; 448662, 2434921; 448394, 2434743; 448380, 2435189; 448617, 2435427; 448781, 2435753; 448825, 2436169; 448647, 2436630; 448544, 2437006; 448458, 2437328; 448714, 2437911; 448825, 2438056; 448840, 2438160; 449137, 2438219; 449330, 2438605; 449613, 2438679; 449712, 2439392; 449522, 2439625; 449191, 2439915; 449211, 2440336; 449375, 2440536; 449671, 2440580; 449971, 2440270; 449870, 2440076; 449899, 2440063; 450011, 2440098; 450059, 2440101; 450106, 2440129; 450147, 2440093; 450162, 2440075; 450162, 2440075; 450185, 2440030; 450190, 2440016; 450203, 2439969; 450175, 2439897; 450247, 2439815; 450203, 2439630; 450115, 2439486; 450071, 2439407; 450084, 2439338; 450175, 2439294; 450238, 2439250; 450252, 2439220; 450237, 2439156; 450297, 2439075; 450379, 2439062; 450463, 2438924; 450671, 2438949; 450714, 2438836; 450940, 2438833; return to starting point.

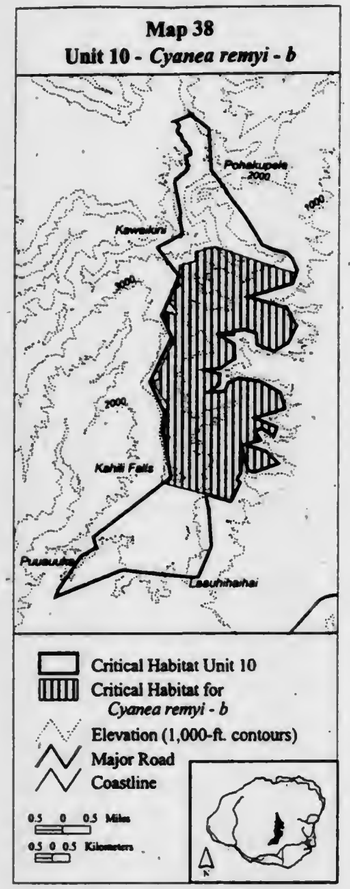
(B) **Note:** Map 37 follows:



(xxxviii) Kauai 10—*Cyanea remyi*—b (1,904 ha; 4,705 ac)

(A) Unit consists of the following 71 boundary points: Start at 449428, 2431642; 448291, 2431933; 448515, 2432105; 448503, 2432172; 448417, 2432669; 448308, 2433302; 448343, 2433782; 448405, 2434199; 447967, 2434846; 448155, 2434909; 448176, 2435180; 448551, 2435973; 448503, 2436133; 448515, 2436159; 448453, 2436296; 448343, 2436661; 448343, 2436932; 448656, 2436828; 448697, 2436870; 448489, 2437141; 448465, 2437344; 448553, 2437544; 448718, 2437621; 448739, 2438246; 449198, 2438372; 449198, 2438643; 449782, 2438789; 452161, 2437996; 452078, 2437725; 450763, 2437349; 451890, 2437015; 452182, 2436473; 451932, 2435993; 451514, 2435722; 451014, 2435931; 450993, 2436264; 450659, 2436369; 449845, 2436265; 450346, 2435952; 450367, 2435514; 449908, 2435222; 449490, 2435201; 449929, 2435075; 449908, 2434825; 449845, 2434700; 449595, 2434554; 450075, 2434575; 450179, 2434804; 450471, 2434950; 451118, 2434846; 451723, 2434533; 451848, 2434074; 451431, 2433928; 450972, 2433803; 451619, 2433532; 451514, 2433281; 451160, 2433511; 450951, 2433406; 451139, 2433177; 450680, 2433052; 451285, 2432864; 451660, 2432488; 450930, 2432238; 450763, 2432322; 450596, 2432927; 450555, 2432217; 450429, 2432050; 450533, 2431929; 450459, 2431769; 450429, 2431800; 450200, 2431445; return to starting point.

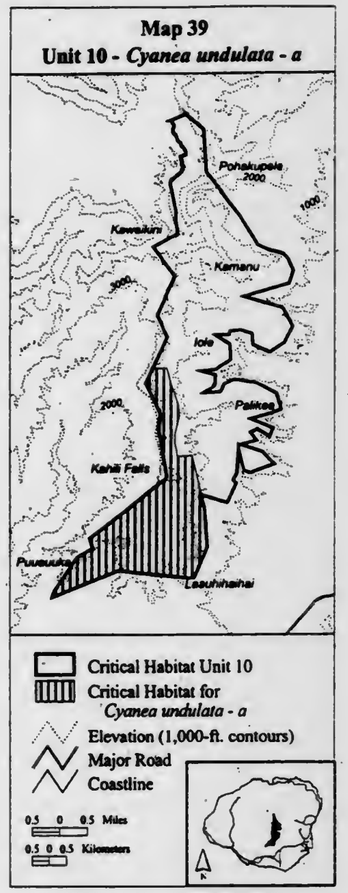
(B) **Note:** Map 38 follows:



(xxxix) Kauai 10—*Cyanea undulata*—a (1,005 ha; 2,484 ac)

(A) Unit consists of the following 28 boundary points: Start at 448088, 2435267; 448504, 2435281; 448661, 2434734; 448844, 2434201; 448877, 2433868; 448746, 2433374; 448740, 2433286; 448740, 2433060; 448779, 2432916; 448823, 2432729; 449256, 2432753; 449617, 2431161; 449696, 2430088; 449318, 2429191; 447115, 2429408; 447101, 2429410; 447100, 2429410; 447092, 2429411; 445133, 2428627; 445203, 2428817; 445869, 2429806; 446327, 2430072; 446237, 2430356; 448515, 2432105; 448503, 2432172; 448417, 2432669; 448308, 2433302; 448343, 2433782; 448405, 2434199; 448223, 2434468; 447893, 2434860; 447894, 2434861; 448013, 2434861; 448101, 2434891; 448168, 2435077; 448176, 2435180; 448299, 2435441; 448519, 2436050; 448518, 2436082; 448503, 2436133; 448515, 2436159; 448453, 2436296; 448343, 2436661; 448343, 2436932; 448488, 2436884; 448486, 2436941; 448585, 2436875; 448512, 2437111; 448489, 2437141; 448480, 2437211; 448450, 2437310; 448728, 2437943; 448662, 2438032; 448728, 2439126; 448819, 2439175; 448756, 2439586; 448770, 2439804; 448837, 2440912; 448841, 2440914; 448861, 2440927; 448877, 2440939; 448918, 2440982; 448940, 2441006; 448941, 2441024; 448943, 2441044; 448943, 2441053; 448943, 2441063; 448944, 2441075; 448948, 2441084; 448954, 2441097; 448964, 2441109; 448969, 2441116; 448971, 2441119; 448972, 2441136; 448973, 2441143; 448972, 2441150; 448967, 2441159; 448961, 2441163; 448949, 2441170; 448941, 2441177; 448933, 2441184; 448930, 2441194; 448926, 2441212; 448934, 2441230; 448940, 2441238; 448944, 2441250; 448946, 2441259; 448948, 2441264; 448948, 2441273; 448948, 2441281; 448944, 2441291; 448935, 2441302; 448928, 2441313; 448925, 2441322; 448920, 2441333; 448919, 2441341; 448917, 2441357; 448916, 2441369; 448918, 2441381; 448922, 2441392; 448930, 2441400; 448936, 2441403; 448940, 2441404; 448945, 2441411; 448948, 2441420; 448952, 2441427; 448964, 2441441; 448971, 2441443; 449003, 2441449; 449032, 2441461; 449040, 2441466; 449049, 2441471; 449053, 2441472; 449060, 2441481; 449064, 2441492; 449065, 2441502; 449066, 2441511; 449061, 2441528; 449050, 2441561; 449046, 2441569; 449043, 2441578; 449037, 2441588; 449030, 2441595; 449017, 2441611; 449012, 2441616; 449009, 2441625; 449006, 2441639; 449004, 2441650; 449000, 2441660; 448995, 2441668; 448986, 2441677; 448972, 2441689; 448957, 2441700; 448939, 2441710; 448933, 2441715; 448925, 2441722; 448915, 2441738; 448913, 2441753; 448914, 2441760; 448913, 2441774; 448915, 2441796; 448910, 2441807; 448900, 2441814; 448892, 2441817; 448898, 2441915; 448939, 2442579; 449163, 2442553; 449589, 2442203; 449662, 2441006; 449663, 2440988; 450101, 2440409; 450094, 2440396; 450653, 2439686; 451170, 2438845; 452064, 2438419; 452203, 2438108; 452189, 2438063; 452160, 2437988; 451002, 2437441; return to starting point.

(B) **Note:** Map 39 follows:

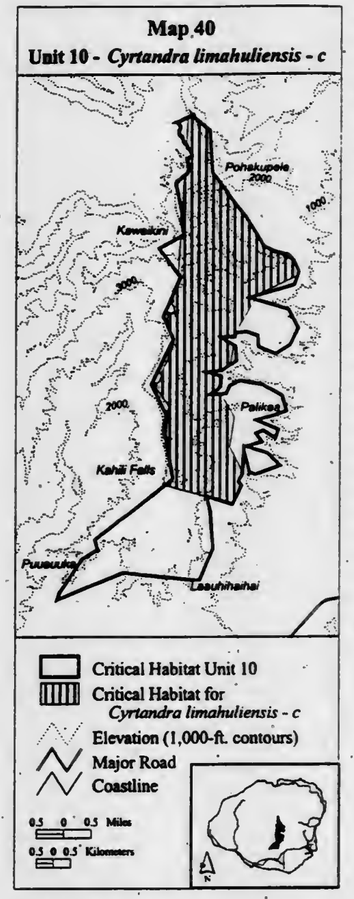


(xl) Kauai 10—*Cyrtandra limahuliensis*—c (2,013 ha; 4,975 ac)

(A) Unit consists of the following 172 boundary points: Start at 450986, 2437413; 450763, 2437349; 450920, 2437303; 450356, 2436356; 450332, 2436229; 449924, 2436215; 450288, 2435988; 450188, 2435455; 450167,

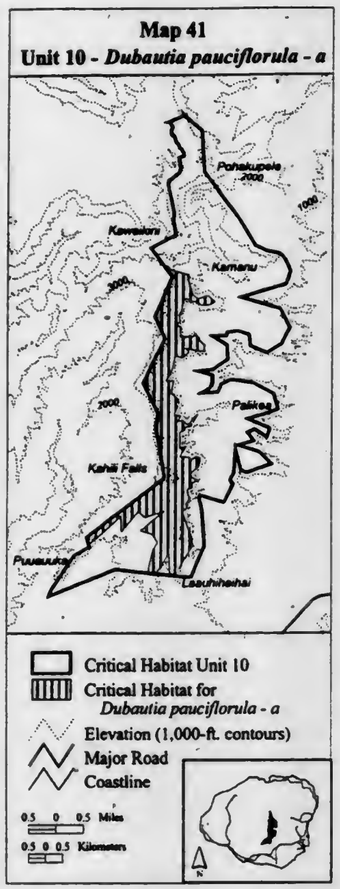
2435387; 450091, 2435338; 449939, 2435224; 449909, 2435222; 449908, 2435222; 449889, 2435221; 449520, 2435192; 449929, 2435075; 449908, 2434825; 449890, 2434790; 449906, 2434762; 449866, 2434742; 449845, 2434700; 449602, 2434558; 449641, 2434556; 449926, 2434568; 450308, 2433891; 450180, 2433045; 450561, 2432319; 450555, 2432217; 450489, 2432130; 450442, 2432036; 450533, 2431929; 450364, 2431564; 450270, 2431394; 449620, 2431593; 449428, 2431642; 448291, 2431933; 448515, 2432105; 448503, 2432172; 448417, 2432669; 448308, 2433302; 448343, 2433782; 448405, 2434199; 448223, 2434468; 447893, 2434860; 447894, 2434861; 448013, 2434861; 448101, 2434891; 448168, 2435077; 448176, 2435180; 448299, 2435441; 448519, 2436050; 448518, 2436082; 448503, 2436133; 448515, 2436159; 448453, 2436296; 448343, 2436661; 448343, 2436932; 448488, 2436884; 448486, 2436941; 448585, 2436875; 448512, 2437111; 448489, 2437141; 448480, 2437211; 448450, 2437310; 448728, 2437943; 448662, 2438032; 448728, 2439126; 448819, 2439175; 448756, 2439586; 448770, 2439804; 448837, 2440912; 448841, 2440914; 448861, 2440927; 448877, 2440939; 448918, 2440982; 448940, 2441006; 448941, 2441024; 448943, 2441044; 448943, 2441053; 448943, 2441063; 448944, 2441075; 448948, 2441084; 448954, 2441097; 448964, 2441109; 448969, 2441116; 448971, 2441119; 448972, 2441136; 448973, 2441143; 448972, 2441150; 448967, 2441159; 448961, 2441163; 448949, 2441170; 448941, 2441177; 448933, 2441184; 448930, 2441194; 448926, 2441212; 448934, 2441230; 448940, 2441238; 448944, 2441250; 448946, 2441259; 448948, 2441264; 448948, 2441273; 448948, 2441281; 448944, 2441291; 448935, 2441302; 448928, 2441313; 448925, 2441322; 448920, 2441333; 448919, 2441341; 448917, 2441357; 448916, 2441369; 448918, 2441381; 448922, 2441392; 448930, 2441400; 448936, 2441403; 448940, 2441404; 448945, 2441411; 448948, 2441420; 448952, 2441427; 448964, 2441441; 448971, 2441443; 449003, 2441449; 449032, 2441461; 449040, 2441466; 449049, 2441471; 449053, 2441472; 449060, 2441481; 449064, 2441492; 449065, 2441502; 449066, 2441511; 449061, 2441528; 449050, 2441561; 449046, 2441569; 449043, 2441578; 449037, 2441588; 449030, 2441595; 449017, 2441611; 449012, 2441616; 449009, 2441625; 449006, 2441639; 449004, 2441650; 449000, 2441660; 448995, 2441668; 448986, 2441677; 448972, 2437392; 449987, 2437214; 449808, 2437114; 449570, 2437114; 449451, 2437214; 449273, 2437214; 449174, 2437313; 449054, 2437273; 449015, 2436936; 448935, 2436857; 448975, 2436658; 448856, 2436559; 448975, 2436500; 448975, 2436202; 449372, 2436202; 449392, 2436281; 449669, 2435944; 449669, 2435766; 449550, 2435766; 449134, 2435865; 449233, 2435746; 449035, 2435567; 448816, 2435627; 448737, 2435191; 448559, 2434913; 448777, 2434913; 448697, 2434556; 448876, 2434417; 448935, 2434219; 448797, 2433921; 448995, 2433881; 448896, 2433723; 449055, 2433762; 449193, 2433643; 449511, 2433941; 449293, 2433584; 449114, 2433564; 449114, 2433485; 448955, 2433405; 448975, 2433167; 448955, 2432949; 449154, 2433009; 448975, 2432711; 449253, 2432691; 449273, 2432592; 449451, 2432711; 449570, 2432671; 449531, 2432414; 449273, 2432215; 449312, 2432116; 449511, 2432037; 449332, 2431957; 449332, 2431819; 449193, 2431779; 449213, 2431600; 449273, 2431521; 449154, 2431342; 449193, 2431223; 449035, 2431104; 449154, 2430787; 449273, 2430450; 449352, 2430093; 448856, 2429259; 448678, 2429299; 448658, 2429855; 448283, 2429271; 448109, 2429291; 448055, 2429297; 448063, 2429438; 448201, 2429974; 448320, 2430192; 448162, 2430450; 447825, 2430549; 448499, 2431104; 447944, 2430926; 447765, 2431104; 447269, 2430529; 447249, 2430966; 446310, 2430125; 446237, 2430356; 448515, 2432105; 448503, 2432172; 448267, 2433542; 448319, 2433974; 447886, 2434845; 448515, 2436159; 448226, 2436801; 448728, 2437943; 448612, 2438099; 448598, 2438245; return to starting point.

(B) **Note:** Map 40 follows:



(xli) Kauai 10—*Dubautia pauciflorula*—a (814 ha; 2,012 ac)

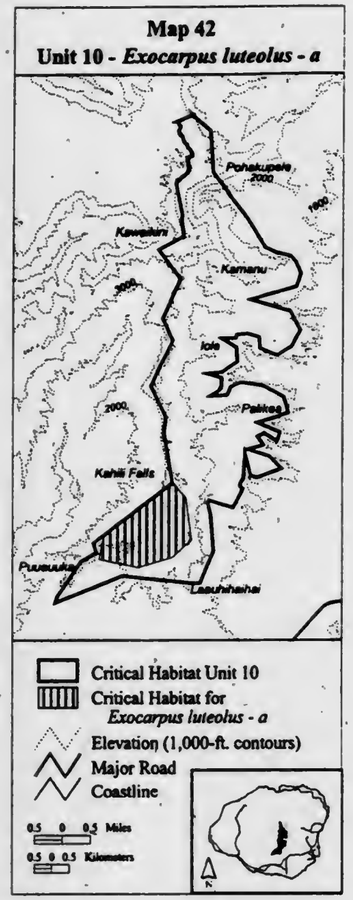
(A) Unit consists of the following 96 boundary points: Start at 448697, 2438146; 449173, 2438007; 449213, 2437809; 449273, 2437571; 449312, 2437432; 449491, 2437293; 449788,



(xlii) Kauai 10—*Exocarpos luteolus*—a (401 ha; 991 ac)

(A) Unit consists of the following 10 boundary points: Start at 448504, 2432168; 448908, 2431685; 449077, 2430445; 448532, 2429929; 447543, 2429635; 446414, 2429881; 446462, 2430141; 446530, 2430532; 446530, 2430581; 448515, 2432105; return to starting point.

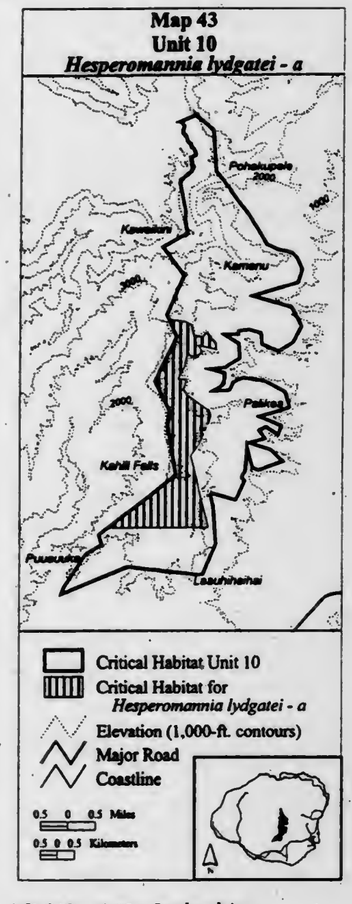
(B) **Note:** Map 42 follows:



(xliii) Kauai 10—*Hesperomannia lydgatei*—a (646 ha; 1,596 ac)

(A) Unit consists of the following 29 boundary points: Start at 448286, 2436668; 448802, 2436599; 448953, 2436524; 449029, 2436158; 449294, 2436158; 449395, 2436284; 449672, 2435981; 449672, 2435780; 449155, 2435893; 449281, 2435704; 449067, 2435527; 448840, 2435641; 448751, 2435237; 448562, 2434909; 448827, 2434897; 448713, 2434594; 448877, 2434417; 449496, 2433951; 449559, 2433825; 449193, 2433005; 448953, 2432677; 449466, 2430577; 446508, 2430564; 448515, 2432105; 448503, 2432172; 448267, 2433542; 448319, 2433974; 447886, 2434845; 448515, 2436159; return to starting point.

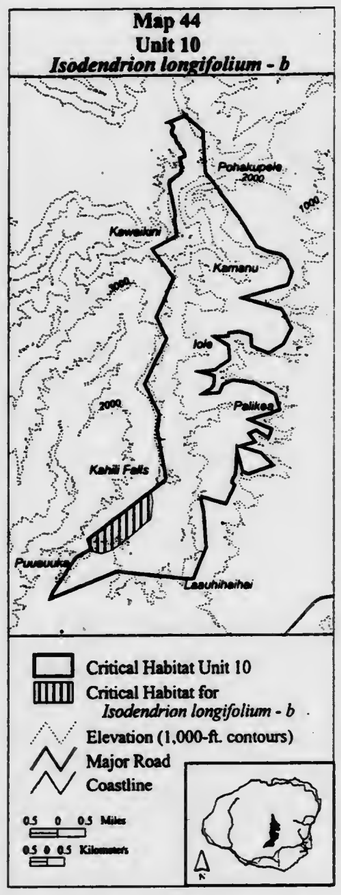
(B) **Note:** Map 43 follows:



(xliv) Kauai 10—*Isodendrion longifolium*—b (142 ha; 350 ac)

(A) Unit consists of the following 14 boundary points: Start at 448057, 2430921; 448043, 2430923; 447940, 2430853; 447794, 2430722; 447574, 2430543; 447170, 2430191; 446888, 2429999; 446635, 2429933; 446414, 2429985; 446295, 2430053; 446327, 2430072; 446237, 2430356; 448077, 2431769; 448127, 2431466; return to starting point.

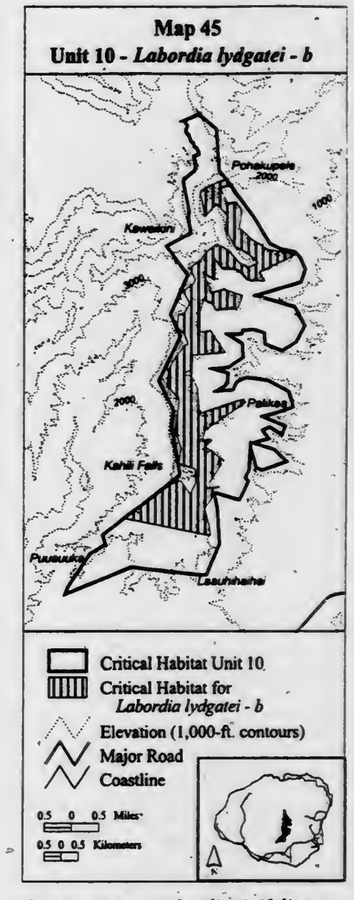
(B) **Note:** Map 44 follows:



(xlv) Kauai 10—*Labordia lydgatei*—b (1,035 ha; 2,558 ac)

(A) Unit consists of the following 97 boundary points: Start at 449391, 2431894; 449279, 2431726; 449412, 2431749; 449690, 2431798; 449457, 2431436; 449255, 2431122; 449376, 2430639; 449421, 2430343; 446873, 2430844; 448170, 2431840; 448531, 2431943; 448820, 2431557; 448989, 2431895; 448965, 2432281; 448482, 2432426; 448508, 2432672; 448531, 2432885; 448362, 2433440; 448458, 2434020; 448482, 2434310; 448120, 2434696; 448168, 2435203; 448627, 2435903; 448748, 2435927; 448627, 2436217; 448410, 2436458; 448458, 2436796; 448603, 2436796; 448724, 2436965; 448796, 2437134; 448579, 2437473; 448869, 2437666; 448965, 2437810; 448796, 2438149; 449110, 2438390; 449327, 2438655; 449593, 2438848; 449931, 2438655; 450245, 2438317; 450511, 2438148; 450801, 2438293; 450535, 2438535; 450100, 2438800; 449835, 2439259; 449907, 2439669; 449773, 2439813; 449569, 2440031; 449255, 2439645; 449122, 2440175; 449086, 2440321; 449255, 2440442; 449617, 2440635; 449861, 2440726; 449987, 2440561; 449690, 2440490; 449823, 2440174; 449883, 2440031; 449894, 2440032; 450149, 2440055; 450318, 2439814; 450245, 2439331; 450632, 2438969; 450873, 2438824; 451090, 2438679; 451911, 2438534; 450825, 2438003; 451018, 2437762; 450487, 2437810; 450221, 2438100; 449762, 2438124; 449521, 2438414; 449521, 2437810; 449183, 2438028; 449352, 2437617; 449400, 2437424; 449810, 2437521; 450342, 2437352; 450221, 2436989; 449569, 2436917; 449472, 2437110; 449207, 2437255; 449086, 2436845; 449086, 2436555; 449086, 2436289; 449400, 2436314; 449835, 2435686; 448869, 2435589; 448844, 2434961; 449014, 2434623; 449086, 2433875; 450390, 2434309; 450414, 2434165; 449255, 2433416; 449158, 2433126; 449448, 2433126; 449255, 2432933; 449810, 2432523; return to starting point.

(B) **Note:** Map 45 follows:

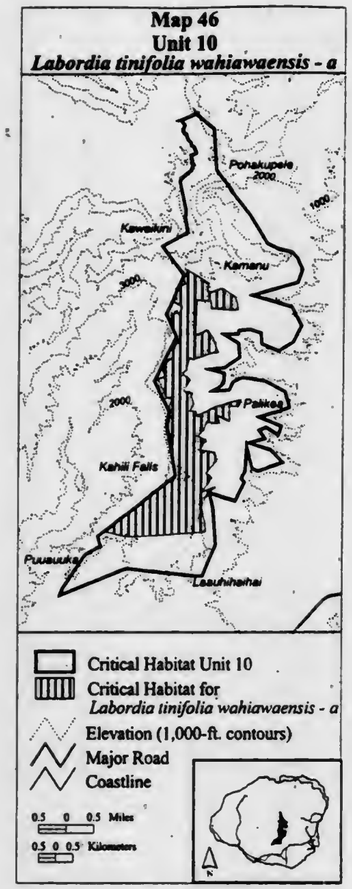


(xlvi) Kauai 10—*Labordia tinifolia* var. *wahiawaensis*—a (913 ha; 2,255 ac)

(A) Unit consists of the following 89 boundary points: Start at 448798, 2438127; 449165, 2437887; 449468, 2437696; 449420, 2437473; 449516, 2437425; 449867, 2437552; 450250, 2437297; 450329, 2436930; 450170, 2436914; 449563, 2436962; 449516, 2437201; 449117, 2437201; 449101, 2436627; 449069, 2436196; 449436, 2436356; 449579, 2436132; 449739, 2435670; 449579, 2435654; 449021, 2435463; 448893, 2435494; 448814, 2435175; 448718, 2435048; 448941, 2434888; 448750, 2434537; 448941, 2434521; 449037, 2434154; 448941, 2433963; 449101, 2433963; 449117, 2433835; 449468, 2433979; 449659, 2434090; 450425, 2434298; 450361, 2434106; 450074, 2434106; 450090, 2433676; 449739, 2433835; 449771, 2433628; 449420, 2433660; 449324, 2433436; 449165, 2433245; 449404,

2433133; 449228, 2432846; 449420, 2432830; 449659, 2432782; 449707, 2432527; 449420, 2432192; 449595, 2432048; 449340, 2431713; 449356, 2431681; 449675, 2431777; 449404, 2431506; 449276, 2431218; 449388, 2430692; 449404, 2430484; 449404, 2430484; 447362, 2430345; 447060, 2430364; 446435, 2430508; 448515, 2432105; 448503, 2432172; 448267, 2433542; 448294, 2433768; 448383, 2433787; 448415, 2433963; 448303, 2434059; 448415, 2434362; 448223, 2434362; 448111, 2434649; 447968, 2434904; 448191, 2434968; 448127, 2435159; 448207, 2435415; 448415, 2435510; 448415, 2435750; 448574, 2436037; 448494, 2436244; 448462, 2436277; 448367, 2436488; 448367, 2436771; 448526, 2436866; 448606, 2436787; 448670, 2437058; 448446, 2437186; 448510, 2437313; 448510, 2437448; 448571, 2437587; 448766, 2437696; 448718, 2437856; 448829, 2437999; return to starting point.

(B) **Note:** Map 46 follows:

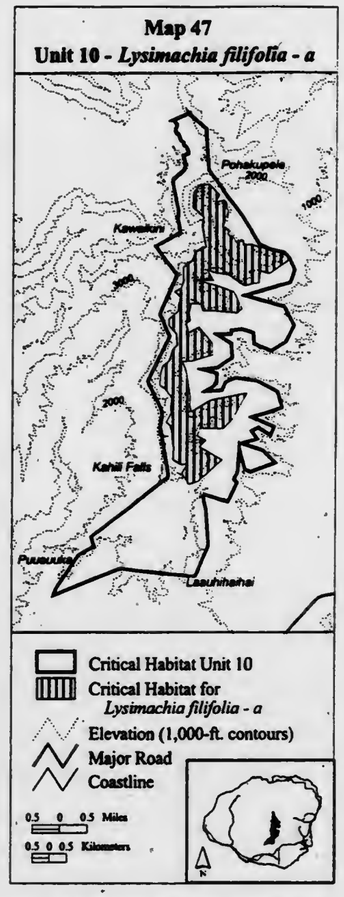


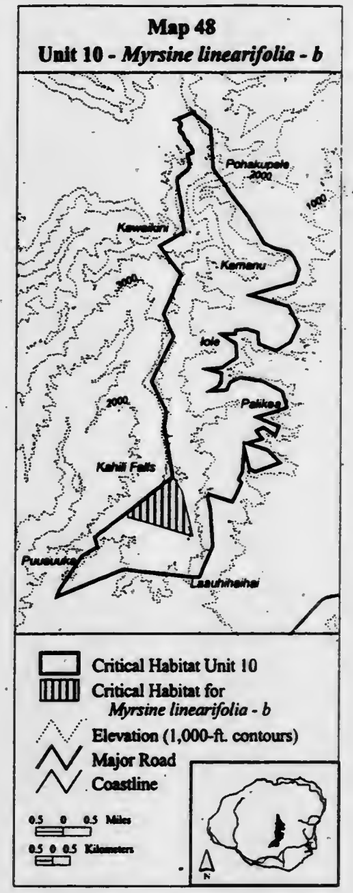
2433481; 449449, 2433495; 449345, 2433287; 449613, 2433139; 449420, 2432961; 450088, 2432589; 449381, 2431977; 449117, 2431900; 448904, 2432197; 449065, 2432473; 448889, 2432462; 448635, 2432590; 448650, 2432917; 448613, 2433130; 448599, 2433373; 448547, 2433571; 448444, 2433659; 448580, 2433916; 448573, 2434107; 448610, 2434346; 448386, 2434622; 448239, 2434732; 448261, 2435063; 448312, 2435268; 448522, 2435445; 448610, 2435753; 448749, 2435904; 448720, 2436242; 448496, 2436469; 448485, 2436660; 448753, 2436862; 448830, 2437318; 448669, 2437450; 448845, 2437549; 448922, 2437766; 448915, 2438166; 449164, 2438353; 449293, 2438629; 449580, 2438754; 449469, 2439364; 449522, 2439625; 449191, 2439915; 449211, 2440336; 449375, 2440536; 449671, 2440580; 449971, 2440270; 449870, 2440076; 449899, 2440063; 450011, 2440098; 450059, 2440101; 450106, 2440129; 450147, 2440093; 450162, 2440075; 450162, 2440075; 450185, 2440030; 450190, 2440016; 450203, 2439969; 450175, 2439897; 450247, 2439815; 450203, 2439630; 450115, 2439486; 450071, 2439407; 450084, 2439338; 450175, 2439294; 450238, 2439250; 450252, 2439220; 450237, 2439156; 450297, 2439075; 450379, 2439062; 450463, 2438924; 450671, 2438949; 450714, 2438836; 450940, 2438833; return to starting point.

(B) **Note:** Map 47 follows:

(xlvii) Kauai 10—*Lysimachia filifolia*—a (995 ha; 2,458 ac)

(A) Unit consists of the following 113 boundary points: Start at 451083, 2438783; 451901, 2438605; 452064, 2438426; 451856, 2438263; 451455, 2437996; 451187, 2438070; 451143, 2437728; 450727, 2437639; 450252, 2437966; 449850, 2438026; 449613, 2438100; 449806, 2437788; 449271, 2437818; 449925, 2437625; 450415, 2437446; 450653, 2436956; 450519, 2436837; 449776, 2436897; 449494, 2436897; 449449, 2437090; 449152, 2437105; 449093, 2436808; 449122, 2436615; 449018, 2436541; 449063, 2436318; 449018, 2436229; 449390, 2436422; 449628, 2436125; 449761, 2435976; 449791, 2435605; 449167, 2435427; 448900, 2435412; 449018, 2435115; 449078, 2434773; 449137, 2434416; 449122, 2434149; 449167, 2433956; 449761; 2434298; 450816, 2434491; 450400, 2433763; 450118,





(xlviii) Kauai 10—Myrsine linearifolia—b (167 ha; 413 ac)

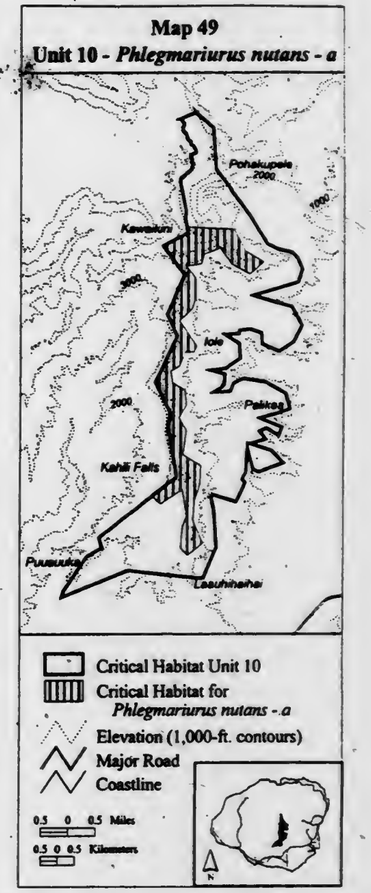
(A) Unit consists of the following 6 boundary points: Start at 448507, 2432148; 448782, 2431712; 449112, 2430394; 447193, 2430959; 447222, 2431112; 448515, 2432105; return to starting point.

(B) **Note:** Map 48 follows:

(xlix) Kauai 10—*Phlegmariurus nutans*—a (620 ha; 1,533 ac)

(A) Unit consists of the following 47 boundary points: Start at 448793, 2439345; 450186, 2439278; 450512, 2438647; 451062, 2438321; 450655, 2437974; 450105, 2438280; 449779, 2438728; 449310, 2438545; 449228, 2438280; 448780, 2438199; 449045, 2437852; 449065, 2437302; 448943, 2436956; 448576, 2436610; 449086, 2435876; 449004, 2435713; 448760, 2435713; 448576, 2435306; 448332, 2435163; 448373, 2434837; 448739, 2434613; 448780, 2434165; 448576, 2433818; 448780, 2433452; 448699, 2432739; 449229, 2432413; 449208, 2431903; 449045, 2431434; 449004, 2430864; 449290, 2430212; 448841, 2429845; 448638, 2430069; 448699, 2430681; 448821, 2430986; 448678, 2431740; 448047, 2431333; 447800, 2431556; 448515, 2432105; 448503, 2432172; 448267, 2433542; 448319, 2433974; 447886, 2434845; 448515, 2436159; 448226, 2436801; 448728, 2437943; 448103, 2438785; 448819, 2439175; return to starting point.

(B) **Note:** Map 49 follows:

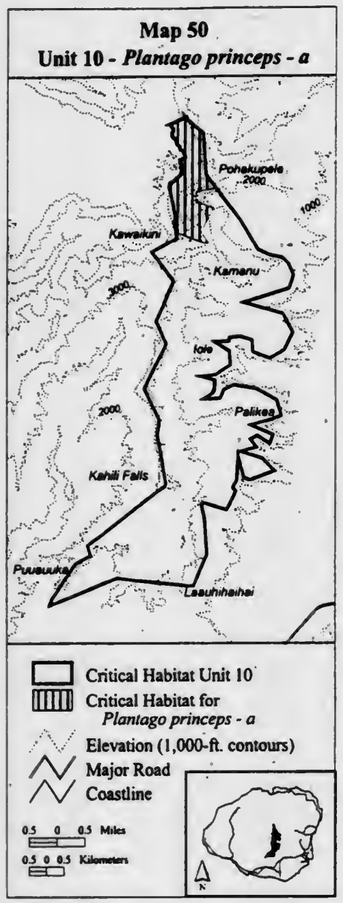


(l) Kauai 10—*Plantago princeps*—a (276 ha; 683 ac)

(A) Unit consists of the following 195 boundary points: Start at 449378, 2440492; 449378, 2440219; 449753, 2440049; 449884, 2440014; 449514, 2439343; 449731, 2439042; 449653, 2439026; 448873, 2439316; 448605, 2440582; 448605, 2440585; 448604, 2440594; 448603, 2440603; 448601, 2440616; 448600, 2440627; 448599, 2440637; 448600, 2440668; 448601, 2440679; 448606, 2440704; 448612, 2440722; 448615, 2440731; 448619, 2440740; 448622, 2440749; 448630, 2440759; 448638, 2440764; 448650, 2440769; 448663, 2440773; 448678, 2440780; 448691, 2440790; 448711,

2440806; 448720, 2440813; 448727, 2440820; 448735, 2440829; 448745, 2440841; 448764, 2440857; 448788, 2440878; 448802, 2440889; 448811, 2440896; 448841, 2440914; 448861, 2440927; 448877, 2440939; 448918, 2440982; 448940, 2441006; 448941, 2441024; 448943, 2441044; 448943, 2441053; 448943, 2441063; 448944, 2441075; 448948, 2441084; 448954, 2441097; 448964, 2441109; 448969, 2441116; 448971, 2441119; 448972, 2441136; 448973, 2441143; 448972, 2441150; 448967, 2441159; 448961, 2441163; 448949, 2441170; 448941, 2441177; 448933, 2441184; 448930, 2441194; 448926, 2441212; 448934, 2441230; 448940, 2441238; 448944, 2441250; 448946, 2441259; 448948, 2441264; 448948, 2441273; 448948, 2441281; 448944, 2441291; 448935, 2441302; 448928, 2441313; 448925, 2441322; 448920, 2441333; 448919, 2441341; 448917, 2441357; 448916, 2441369; 448918, 2441381; 448922, 2441392; 448930, 2441400; 448936, 2441403; 448940, 2441404; 448945, 2441411; 448948, 2441420; 448952, 2441427; 448964, 2441441; 448971, 2441443; 449003, 2441449; 449032, 2441461; 449040, 2441466; 449049, 2441471; 449053, 2441472; 449060, 2441481; 449064, 2441492; 449065, 2441502; 449066, 2441511; 449061, 2441528; 449050, 2441561; 449046, 2441569; 449043, 2441578; 449037, 2441588; 449030, 2441595; 449017, 2441611; 449012, 2441616; 449009, 2441625; 449006, 2441639; 449004, 2441650; 449000, 2441660; 448995, 2441668; 448986, 2441677; 448972, 2441689; 448957, 2441700; 448939, 2441710; 448933, 2441715; 448925, 2441722; 448915, 2441738; 448913, 2441753; 448914, 2441760; 448913, 2441774; 448915, 2441796; 448910, 2441807; 448900, 2441814; 448890, 2441818; 448884, 2441820; 448877, 2441825; 448850, 2441844; 448840, 2441852; 448831, 2441859; 448820, 2441871; 448817, 2441884; 448814, 2441894; 448813, 2441900; 448803, 2441914; 448789, 2441938; 448787, 2441967; 448781, 2441990; 448777, 2442002; 448773, 2442013; 448768, 2442019; 448764, 2442029; 448755, 2442041; 448746, 2442051; 448736, 2442055; 448728, 2442058; 448723, 2442061; 448718, 2442069; 448710, 2442077; 448694, 2442089; 448683, 2442101; 448677, 2442115; 448675, 2442123; 448677, 2442140; 448682, 2442148; 448684, 2442157; 448680, 2442169; 448674, 2442187; 448671, 2442202; 448673, 2442209; 448678, 2442221; 448684, 2442226; 448692, 2442233; 448699, 2442238; 448705, 2442250; 448706, 2442257; 448707, 2442267; 448712, 2442283; 448718, 2442295; 448722, 2442303; 448723, 2442309; 448724, 2442320; 448721, 2442331; 448711, 2442341; 448697, 2442342; 448682, 2442350; 448677, 2442356; 448673, 2442365; 448671, 2442369; 448665, 2442379; 448657, 2442387; 448648, 2442399; 448643, 2442410; 448642, 2442430; 448642, 2442440; 448640, 2442451; 448637, 2442455; 449104, 2442662; 449108, 2442589; 449074, 2442637; 449099, 2442572; 449576, 2442210; 449620, 2441513; 449654, 2441008; 449662, 2441006; 449663, 2440988; 449955, 2440602; return to starting point.

(B) **Note:** Map 50 follows:

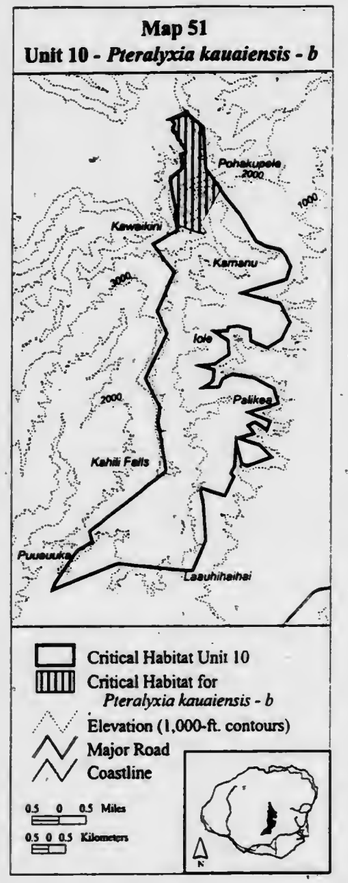


(lii) Kauai 10—*Pteralyxia kauaiensis*—b (304 ha; 751 ac)

(A) Unit consists of the following 183 boundary points: Start at 448642, 2442419; 449125, 2442584; 449589, 2442203; 449662, 2441006; 449663, 2440988; 450101, 2440409; 449514, 2439343; 449691, 2439097; 449529, 2439072; 448873, 2439316; 448605, 2440582; 448605, 2440585; 448604, 2440594; 448603, 2440603; 448601, 2440618; 448600, 2440627; 448599, 2440637; 448600, 2440668; 448601, 2440679; 448606, 2440704; 448612, 2440722; 448615, 2440731; 448619, 2440740; 448622, 2440749; 448630, 2440759; 448638, 2440764; 448650, 2440769; 448663, 2440773; 448678, 2440780; 448691, 2440790; 448711, 2440806; 448720, 2440813; 448727, 2440820; 448735, 2440829; 448745, 2440841; 448764, 2440857; 448788, 2440878; 448802, 2440889; 448811, 2440896; 448841, 2440914; 448861, 2440927; 448877, 2440939; 448918, 2440982; 448940, 2441006; 448941, 2441024; 448943, 2441044; 448943, 2441053; 448943, 2441063; 448944, 2441075; 448948, 2441084; 448954, 2441097; 448964, 2441109; 448969, 2441116; 448971, 2441119; 448972, 2441136; 448973, 2441143; 448972, 2441150; 448967, 2441159; 448961, 2441163; 448949, 2441170; 448941, 2441177; 448933, 2441184; 448930, 2441194; 448926, 2441212; 448934, 2441230; 448940, 2441238; 448944, 2441250; 448946, 2441259; 448948, 2441264; 448948, 2441273; 448948, 2441281; 448944, 2441291; 448935, 2441302; 448928, 2441313; 448925, 2441322; 448920, 2441333; 448919, 2441341; 448917, 2441357; 448916, 2441369; 448918, 2441381; 448922, 2441392; 448930, 2441400; 448936, 2441403; 448940, 2441404; 448945, 2441411; 448948, 2441420; 448952, 2441427; 448964, 2441441; 448971, 2441443; 449003, 2441449; 449032, 2441461; 449040, 2441466; 449049, 2441471; 449053, 2441472; 449060, 2441481; 449064, 2441492; 449065, 2441502; 449066, 2441511; 449061, 2441528; 449050, 2441561; 449046, 2441569; 449043, 2441578; 449037, 2441588; 449030, 2441595; 449017, 2441611; 449012, 2441616; 449009, 2441625; 449006, 2441639; 449004, 2441650; 449000, 2441660; 448995, 2441668; 448986, 2441677; 448972, 2441689; 448957, 2441700; 448939, 2441710; 448933, 2441715; 448925, 2441722; 448915, 2441738; 448913, 2441753; 448914, 2441760; 448913, 2441774; 448915, 2441796; 448910, 2441807; 448900, 2441814; 448890, 2441818; 448884, 2441820; 448877, 2441825; 448850, 2441844; 448840, 2441852; 448831, 2441859; 448820, 2441871; 448817, 2441884; 448814, 2441894; 448813, 2441900; 448803, 2441914; 448789, 2441938; 448787, 2441967; 448781, 2441990; 448777, 2442002; 448773, 2442013; 448768, 2442019; 448764, 2442029; 448755, 2442041; 448746, 2442051; 448736, 2442055; 448728, 2442058; 448723, 2442061; 448718, 2442069; 448710, 2442077; 448694, 2442089; 448683, 2442101; 448677, 2442115; 448675, 2442123; 448677, 2442140; 448682, 2442148; 448684, 2442157; 448680, 2442169; 448674, 2442187; 448671, 2442202; 448673, 2442209; 448678, 2442221; 448684, 2442226; 448692, 2442233; 448699, 2442238; 448705, 2442250; 448706, 2442257; 448707, 2442267; 448712, 2442283; 448718, 2442295; 448722, 2442303; 448723, 2442309; 448724, 2442320; 448721, 2442331; 448711, 2442341; 448697, 2442342; 448682, 2442350; 448677, 2442356; 448673, 2442365; 448671, 2442369; 448665, 2442379; 448657, 2442387; 448648, 2442399; 448643, 2442410; 448642, 2442430; 448642, 2442440; 448640, 2442451; 448637, 2442455; 449104, 2442662; 449108, 2442589; 449074, 2442637; 449099, 2442572; 449576, 2442210; 449620, 2441513; 449654, 2441008; 449662, 2441006; 449663, 2440988; 449955, 2440602; return to starting point.

2442019; 448764, 2442029; 448755, 2442041; 448746, 2442051; 448736, 2442055; 448728, 2442058; 448723, 2442061; 448718, 2442069; 448710, 2442077; 448694, 2442089; 448683, 2442101; 448677, 2442115; 448675, 2442123; 448677, 2442140; 448682, 2442148; 448684, 2442157; 448680, 2442169; 448674, 2442187; 448671, 2442202; 448673, 2442209; 448678, 2442221; 448684, 2442226; 448692, 2442233; 448699, 2442238; 448705, 2442250; 448706, 2442257; 448707, 2442267; 448712, 2442283; 448718, 2442295; 448722, 2442303; 448723, 2442309; 448724, 2442320; 448721, 2442331; 448711, 2442341; 448697, 2442342; 448682, 2442350; 448677, 2442356; 448673, 2442365; 448671, 2442369; 448665, 2442379; 448657, 2442387; 448648, 2442399; 448643, 2442410; return to starting point.

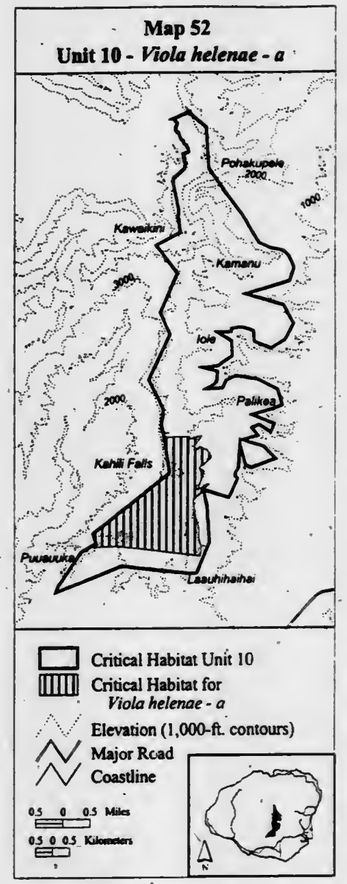
(B) **Note:** Map 51 follows:



(liii) Kauai 10—*Viola helenae*—a (611 ha; 1,510 ac)

(A) Unit consists of the following 31 boundary points: Start at 448328, 2433188; 448454, 2433140; 449088, 2433152; 449076, 2433067; 449466, 2433177; 449222, 2432836; 449320, 2432763; 449405, 2432848; 449636, 2432738; 449746, 2432531; 449527, 2432361; 449380, 2432239; 449551, 2432153; 449344, 2431617; 449685, 2431800; 449417, 2431508; 449198, 2431301; 449234, 2431142; 449271, 2430923; 449320, 2430692; 449380, 2430484; 449380, 2430229; 449441, 2429961; 449429, 2429693; 446980, 2429985; 446274, 2429948; 446193, 2429994; 446327, 2430072; 446237, 2430356; 448515, 2432105; 448503, 2432172; return to starting point.

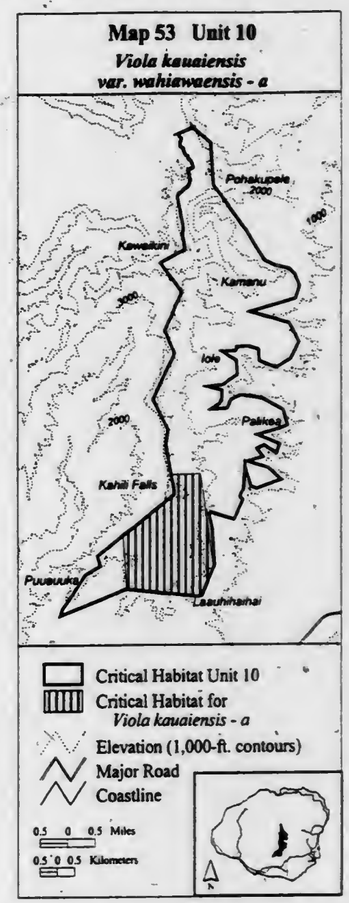
(B) **Note:** Map 52 follows:



(liii) Kauai 10—*Viola kauaiensis* var. *wahiawaensis*—a (657 ha; 1,623 ac)

(A) Unit consists of the following 10 boundary points: Start at 448417, 2432669; 449275, 2432700; 449659, 2430034; 449241, 2429178; 447613, 2429349; 447532, 2429359; 447101, 2429410; 446996, 2430939; 448515, 2432105; 448503, 2432172; return to starting point.

(B) **Note:** Map 53 follows:



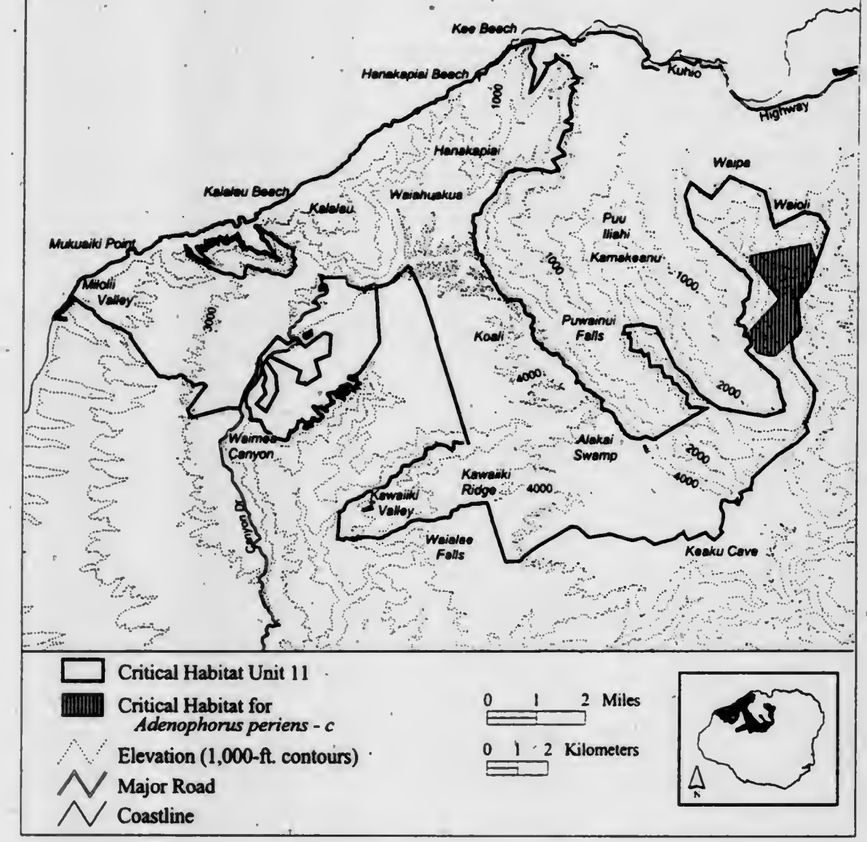
(liv) Kauai 11—*Adenophorus periens*—c (469 ha; 1,158 ac)

(A) Unit consists of the following 14 boundary points: Start at 449704, 2450172; 449432, 2449395; 449073, 2448923; 449147, 2447868; 448881, 2447609; 448393, 2447136; 448172, 2447124; 447753, 2447224; 447428, 2447829; 448470, 2448968; 447485, 2450219; 447507, 2450366; 449486,

2450747; 449649, 2450316; return to starting point.

(B) **Note:** Map 54 follows:

Map 54 Unit 11 - *Adenophorus periens - c*

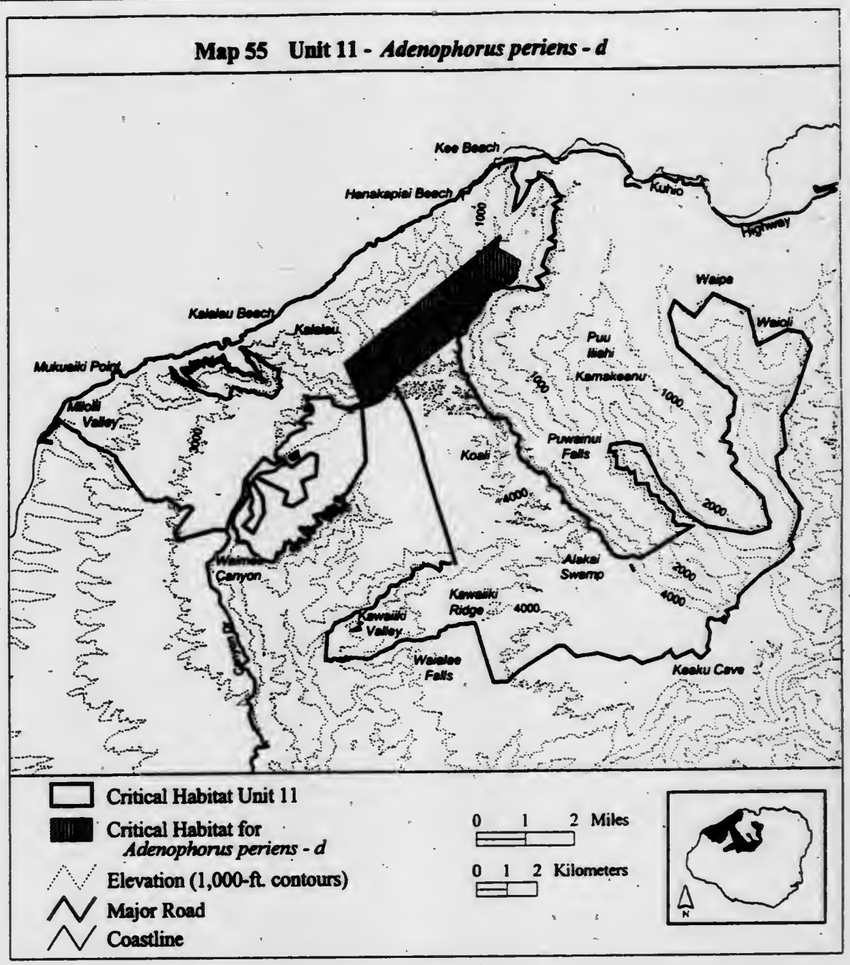


(lv) Kauai 11—*Adenophorus periens*—d (1,006 ha; 2,485 ac)

(A) Unit consists of the following 82 boundary points: Start at 439347, 2452789; 439324, 2452794; 439098, 2452402; 438924, 2452225; 438478, 2451772; 438422, 2451715; 438390, 2451682; 436328, 2450087; 436296, 2450046; 436244, 2450016; 436213, 2450009; 436203, 2450009; 436111, 2449924; 436104, 2449902; 436086, 2449869; 436075, 2449855; 436058, 2449842; 436017, 2449817; 436001, 2449805; 435988, 2449789; 435985, 2449783; 435308, 2449368; 435292, 2449379; 435269, 2449384; 435247, 2449385; 434652, 2450774; 434814, 2450917; 434829, 2450928; 435956, 2451815; 438144, 2453533; 438500, 2453813; 439711, 2454765; 439738, 2454786; 439842, 2454868; 439760, 2454456; 440303, 2454155; 440294, 2454127; 440436, 2454081; 440496, 2454047; 440485, 2453995; 440492, 2453950; 440484, 2453922; 440461, 2453865; 440450, 2453851; 440432, 2453815; 440421, 2453780; 440412, 2453745; 440410, 2453716; 440404, 2453694; 440384, 2453655; 440378, 2453623; 440380, 2453590; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350, 2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; 440244, 2453334; 440223, 2453322; 440199, 2453305; 440147, 2453289; 440119, 2453282; 440093, 2453280; 439987, 2453284; 439962, 2453283; 439924, 2453275; 439905, 2453264; 439787, 2453162; 439724, 2453135; 439639, 2453119; 439600, 2453107; 439553, 2453082; 439503, 2453046; 439481, 2453022; 439473, 2452985; 439464, 2452963; 439414, 2452909; 439390, 2452876; 439355, 2452801; return to starting point.

(B) **Note:** Map 55 follows:

Map 55 Unit 11 - *Adenophorus periens - d*



(lvi) Kauai 11—*Alectryon macrococcus*—a (382 ha; 943 ac)

(A) Unit consists of the following 292 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435596, 2442883; 435624, 2442882; 435632, 2442910; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758,

2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2443995; 436943, 2444066; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437129, 2444107; 437182, 2444088; 437303, 2444229; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437365, 2444221; 437566, 2444182; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438238, 2444515; 438251, 2444591; 438333, 2444564; 438464, 2444701; 438540, 2444598; 438837, 2444584; 438878, 2444453; 438982, 2444481; 439071, 2444639; 439712, 2444756; 439712, 2444935; 439774, 2444949; 439816, 2444749; 439747, 2444687; 439395, 2444474; 439271, 2444301; 438988, 2444026; 438609, 2444178; 438554, 2444019; 438154, 2443806; 438037, 2443916; 437368, 2443785; 437354, 2443668; 437354, 2443516; 437203, 2443323; 436548, 2443254; 436617, 2443027; 436224, 2442848; 436210, 2442751; 436637, 2442799; 436982, 2442606; 436644, 2442510; 437023, 2442303; 436989, 2442144; 437223, 2442103; 436975, 2442027; 436975, 2441958; 436803, 2441986; 436734, 2442110; 436672, 2442034; 436623, 2442034; 436389, 2442076; 436375, 2441993; 436175, 2441965; 436072, 2442041; 435879, 2441972; 435617, 2441890; 435810, 2441766; 435755, 2441683; 434852, 2441917; 434645, 2442255; 434684, 2442495; 434700, 2442502; 434713, 2442515; 434725, 2442524; 434735, 2442532; 434755, 2442542; 434775, 2442551; 434800, 2442556; 434822, 2442562; 434842, 2442574; 434862, 2442596; 434883, 2442613; 434896, 2442626; 434916, 2442647; 434934, 2442668; 434949, 2442681; 434972, 2442699; 434986, 2442705; 434997, 2442708; 435006, 2442713; 435012, 2442717; 435026, 2442719; 435039, 2442722; 435061, 2442727; 435081, 2442733; 435100, 2442739; 435119, 2442747; 435135, 2442754; 435150, 2442764; 435164, 2442771; 435184, 2442774; 435201, 2442777; 435219, 2442778; 435237, 2442782; 435251, 2442783; 435228, 2442762; 435237, 2442643; 435284, 2442631; return to starting point.

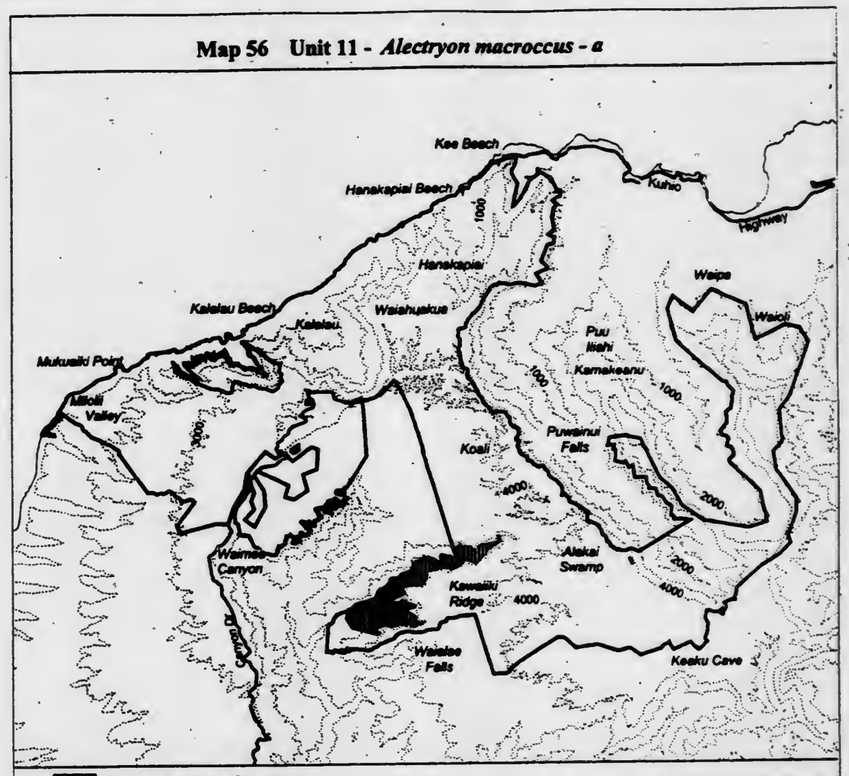
(B) Excluding 2 areas:

(*1*) Bounded by the following 3 points (1 ha; 3 ac): Start at 435132, 2442248; 435160, 2442164; 434848, 2442098; return to starting point; and

(*2*) Bounded by the following 4 points: (0 ha; 1 ac): Start at 435151, 2442425; 435215, 2442393; 435195, 2442353; 435128, 2442379; return to starting point.

(C) **Note:** Map 56 follows:

Map 56 Unit 11 - *Alectryon macroccus - a*

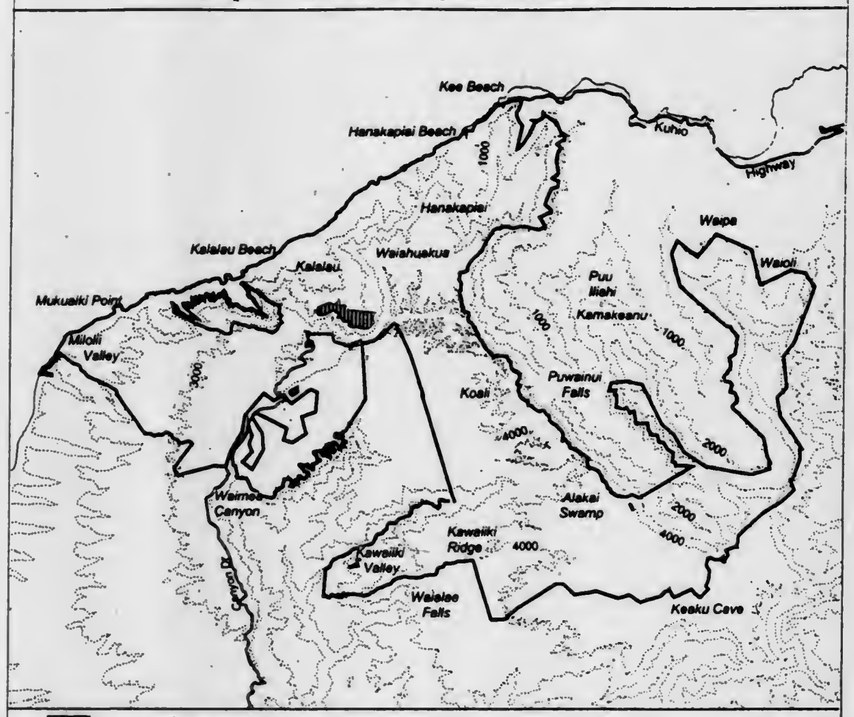


(lvii) Kauai 11—*Alectryon macrococcus*—b (90 ha; 222 ac)

(A) Unit consists of the following 42 boundary points: Start at 434114, 2450720; 434166, 2450751; 434206, 2450682; 434246, 2450687; 434293, 2450650; 434374, 2450717; 434437, 2450858; 434504, 2450749; 434475, 2450619; 434648, 2450659; 434778, 2450484; 435695, 2450389; 435608, 2450327; 435588, 2450199; 435632, 2450023; 435535, 2449928; 435447, 2449835; 435182, 2449829; 435011, 2449895; 434939, 2449841; 434894, 2449891; 434816, 2449871; 434773, 2449947; 434755, 2449958; 434787, 2450016; 434784, 2450052; 434742, 2450070; 434609, 2450052; 434578, 2450109; 434543, 2450151; 434504, 2450195; 434399, 2450200; 434430, 2450325; 434417, 2450370; 434363, 2450363; 434331, 2450386; 434320, 2450475; 434145, 2450379; 433991, 2450281; 433804, 2450277; 433704, 2450352; 433744, 2450570; return to starting point.

(B) **Note:** Map 57 follows:

Map 57 Unit 11 - *Alectryon macroccus - b*

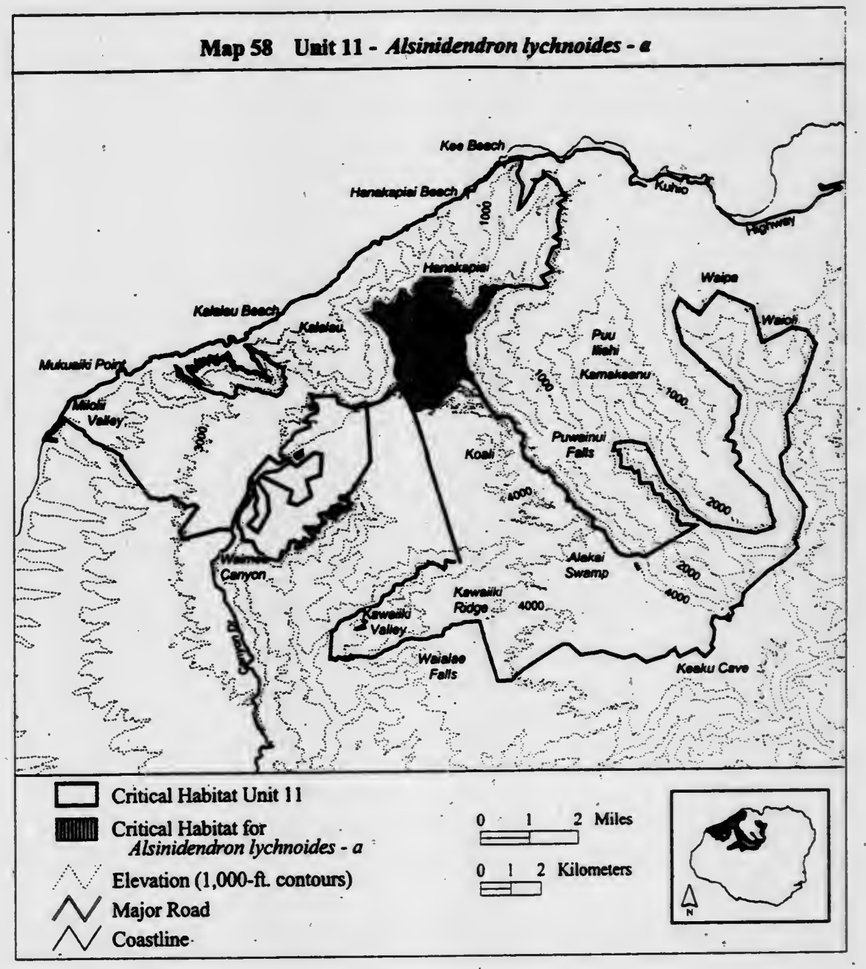


(lviii) Kauai 11—*Alsinidendron lychnoides*—a (993 ha; 2,455 ac)

(A) Unit consists of the following 192 boundary points: Start at 439360, 2452812; 439283, 2452730; 439242, 2452604; 439217, 2452559; 439144, 2452406; 439128, 2452379; 439125, 2452373; 439120, 2452368; 439061, 2452327; 439037, 2452297; 439020, 2452266; 438997, 2452241; 438936, 2452213; 438888, 2452163; 438833, 2452090; 438761, 2452013; 438715, 2451908; 438680, 2451858; 438680, 2451783; 438675, 2451766; 438670, 2451754; 438657, 2451738; 438599, 2451708; 438529, 2451692; 438484, 2451690; 438442, 2451682; 438429, 2451670; 438425, 2451652; 438440, 2451600; 438435, 2451571; 438419, 2451509; 438410, 2451464; 438422, 2451414; 438454, 2451380; 438478, 2451359; 438485, 2451346; 438481, 2451287; 438472, 2451261; 438467, 2451228; 438472, 2451209; 438481, 2451188; 438486, 2451163; 438484, 2451141; 438475, 2451113; 438455, 2451089; 438434, 2451069; 438425, 2451047; 438435, 2450985; 438427, 2450964; 438472, 2450910; 438501, 2450796; 438488, 2450686; 438554, 2450559; 438576, 2450448; 438571, 2450438; 438578, 2450438; 438581, 2450423; 438621, 2450415; 438690, 2450392; 438715, 2450373; 438731, 2450342; 438736, 2450325; 438737, 2450311; 438732, 2450286; 438717, 2450241; 438713, 2450206; 438716, 2450162; 438717, 2450158; 438658, 2450128; 438536, 2450165; 438407, 2450217; 438314, 2450210; 438311, 2450196; 438281, 2450069; 438277, 2449915; 438166, 2449844; 438107, 2449793; 437960, 2449667; 437875, 2449601; 437812, 2449579; 437668, 2449383; 437627, 2449302; 437550, 2449262; 437413, 2449247; 437247, 2449258; 437125, 2449214; 436955, 2449122; 436770, 2449170; 436737, 2449184; 436566, 2449559; 436578, 2449579; 436604, 2449675; 436575, 2449727; 436490, 2449760; 436423, 2449793; 436375, 2449838; 436375, 2449882; 436386, 2449952; 436334, 2449989; 436253, 2450044; 436310, 2450116; 436170, 2450294; 436132, 2450455; 436191, 2450690; 436218, 2450861; 436154, 2451005; 436084, 2451096; 436071, 2451235; 435999, 2451347; 436020, 2451545; 435900, 2451671; 435731, 2451919; 435437, 2452127; 435277, 2452266; 435202, 2452357; 435383, 2452379; 435442, 2452416; 435523, 2452667; 435587, 2452715; 435731, 2452662; 435859, 2452597; 435945, 2452592; 436009, 2452651; 436175, 2452641; 436293, 2452859; 436368, 2453095; 436491, 2453121; 436571, 2452971; 436699, 2452864; 436801, 2452816; 436876, 2452886; 436795, 2453040; 436902, 2453276; 437116, 2453404; 437116, 2453510; 437234, 2453580; 437239, 2453681; 437346, 2453810; 437426, 2453991; 437640, 2454012; 437710, 2453996; 437678, 2453943; 437635, 2453900; 437742, 2453809; 437849, 2453788; 437929, 2453799; 437993, 2453676; 437983, 2453510; 438004, 2453441; 438116, 2453323; 438079, 2453254; 437956, 2453184; 437844, 2453099; 437988, 2453045; 438100, 2453045; 438082, 2452951; 438047, 2452880; 438009, 2452858; 438009, 2452826; 438172, 2452798; 438248, 2452739; 438336, 2452682; 438357, 2452597; 438378, 2452559; 438453, 2452532; 438373, 2452458; 438368, 2452410; 438368, 2452361; 438512, 2452447; 438603, 2452442; 438705, 2452399; 438844, 2452644; 438928, 2452744; 439013, 2452928; 438986, 2453175; 439084, 2453179; 439154, 2453195; 439272, 2453141; 439389, 2453216; 439491, 2453221; 439576, 2453193; 439635, 2453173; 439658, 2453123; 439639, 2453119; 439600, 2453107; 439553, 2453082; 439503, 2453046; 439481, 2453022; 439473, 2452985; 439464, 2452963; 439414, 2452909; 439390, 2452876; return to starting point.

(B) **Note:** Map 58 follows:

Map 58 Unit 11 - *Alsinidendron lychnoides - a*

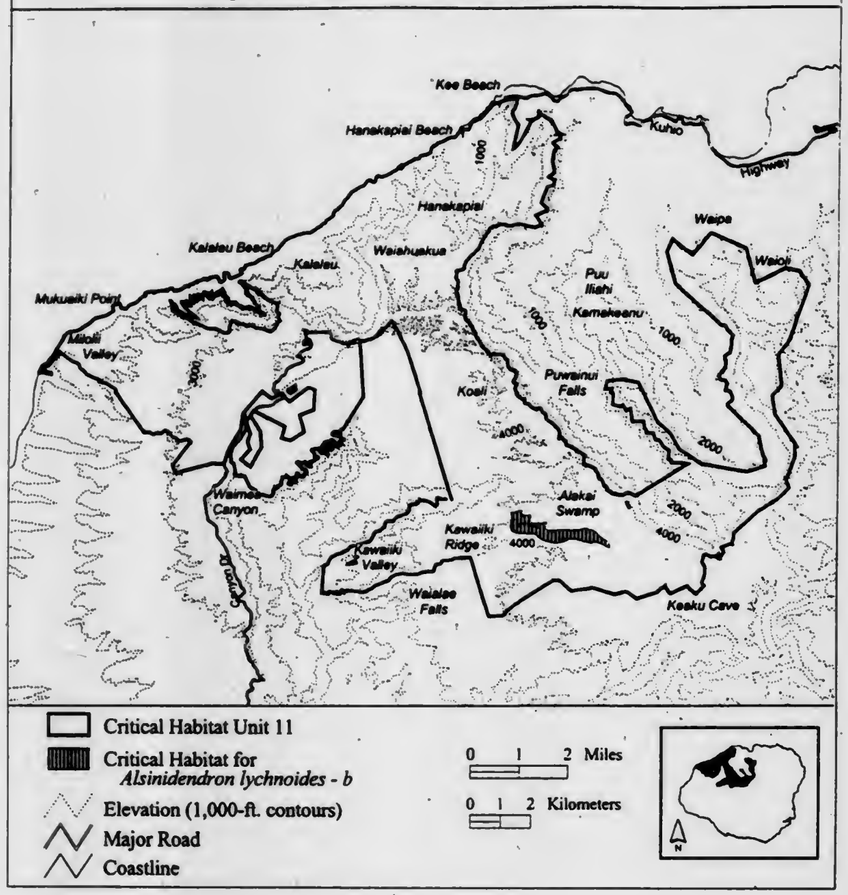


(lix) Kauai 11—*Alsinidendron lychnoides*—b (138 ha; 340 ac)

(A) Unit consists of the following 69 boundary points: Start at 442522, 2443254; 442609, 2443267; 442692, 2443312; 442829, 2443300; 442867, 2443258; 442962, 2443258; 443104, 2443163; 443187, 2443067; 443307, 2442972; 443473, 2442880; 443531, 2442768; 443548, 2442664; 443133, 2442864; 443045, 2442860; 442933, 2442822; 442746, 2442880; 442717, 2442860; 442622, 2442897; 442605, 2442901; 442522, 2442930; 442414, 2442951; 442265, 2442959; 442182, 2442935; 442099, 2442876; 441804, 2442823; 441629, 2442831; 441355, 2442906; 441177, 2443010; 441098, 2443101; 440998, 2443113; 440811, 2443118; 440487, 2443134; 440400, 2443172; 440350, 2443202; 440371, 2443201; 440305, 2443230; 440350, 2443202; 440309, 2443205; 440251, 2443371; 440271, 2443487; 440309, 2443591; 440300, 2443720; 440275, 2443832; 440346, 2443811; 440496, 2443865; 440579, 2443877; 440616, 2443852; 440633, 2443769; 440753, 2443736; 440923, 2443749; 440919, 2443678; 440919, 2443541; 440994, 2443479; 441127, 2443466; 441181, 2443487; 441280, 2443462; 441393, 2443516; 441451, 2443508; 441434, 2443437; 441417, 2443358; 441417, 2443288; 441488, 2443242; 441679, 2443229; 441775, 2443242; 441908, 2443263; 442020, 2443258; 442153, 2443263; 442298, 2443225; 442373, 2443262; return to starting point.

(B) **Note:** Map 59 follows:

Map 59 Unit 11 - *Alsinidendron lychnoides - b*



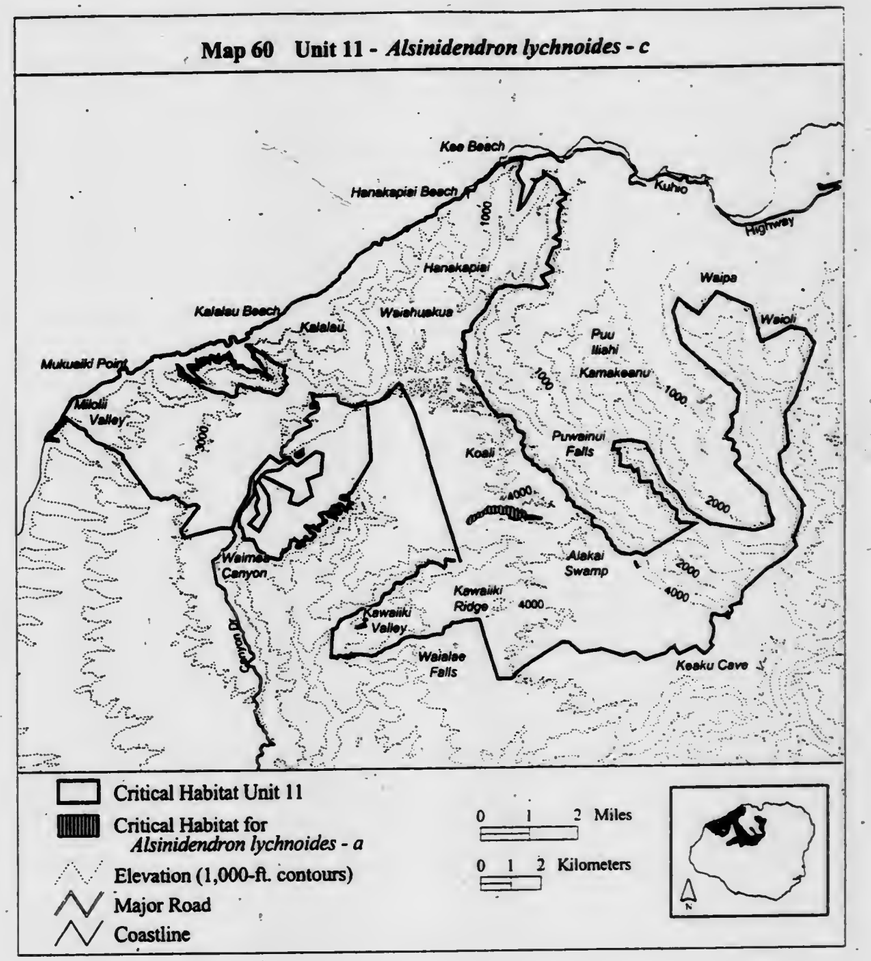
(lx) Kauai 11—*Alsinidendron lychnoides*—c (55 ha; 136 ac)

(A) Unit consists of the following 113 boundary points: Start at 438531, 2445488; 438506, 2445513; 438506, 2445542; 438552, 2445621; 438610, 2445684; 438656, 2445758; 438656, 2445742; 438677, 2445713; 438697, 2445708; 438739, 2445721; 438760, 2445758; 438805, 2445779; 438847, 2445791; 438863, 2445825; 438913, 2445854; 438959, 2445820; 439001,

2445850; 439071, 2445899; 439129, 2445953; 439175, 2446007; 439208, 2446045; 439279, 2446045; 439329, 2446007; 439374, 2446028; 439441, 2446061; 439474, 2446044; 439511, 2446020; 439540, 2446020; 439582, 2446049; 439632, 2446069; 439665, 2446044; 439694, 2446011; 439810, 2446007; 439819, 2446049; 439860, 2446065; 439881, 2446036; 439931, 2446015; 440010, 2446019; 440084, 2445994; 440084, 2445957; 440109, 2445903; 440163, 2445932; 440192, 2445978; 440226, 2445978; 440230, 2445932; 440213, 2445828; 440259, 2445808; 440284, 2445837; 440313, 2445874; 440325, 2445924; 440359, 2445936; 440359, 2445882; 440363, 2445849; 440396, 2445857; 440462, 2445870; 440479, 2445791; 440512, 2445749; 440574, 2445716; 440658, 2445716; 440728, 2445729; 440765, 2445708; 440861, 2445683; 440911, 2445683; 441011, 2445670; 441035, 2445621; 440961, 2445579; 440869, 2445571; 440807, 2445604; 440753, 2445587; 440641, 2445571; 440591, 2445588; 440579, 2445612; 440491, 2445621; 440417, 2445608; 440412, 2445646; 440375, 2445671; 440342, 2445662; 440313, 2445633; 440255, 2445583; 440093, 2445567; 440047, 2445592; 440047, 2445654; 439985, 2445625; 439906, 2445621; 439893, 2445642; 439914, 2445696; 439922, 2445762; 439914, 2445779; 439881, 2445733; 439848, 2445758; 439806, 2445791; 439765, 2445754; 439690, 2445754; 439603, 2445779; 439603, 2445824; 439574, 2445849; 439507, 2445808; 439449, 2445787; 439399, 2445791; 439370, 2445837; 439366, 2445812; 439316, 2445775; 439254, 2445800; 439212, 2445808; 439100, 2445771; 439063, 2445700; 438947, 2445663; 438888, 2445663; 438805, 2445563; 438731, 2445542; 438710, 2445538; 438664, 2445459; 438589, 2445434; return to starting point.

(B) **Note:** Map 60 follows:

Map 60 Unit 11 - *Alsinidendron lychnoides - c*

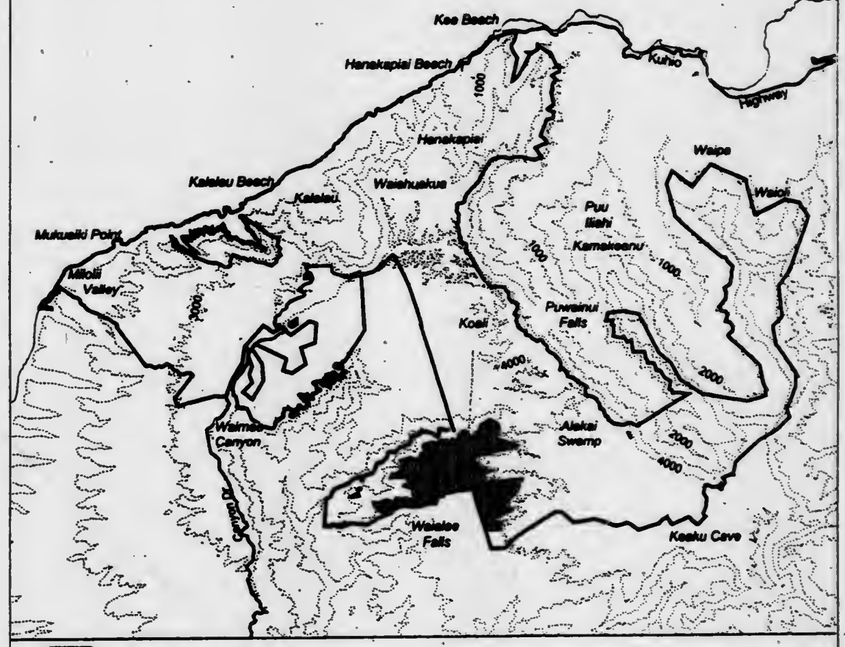


(lxi) Kauai 11—*Alsinidendron viscosum*—a (736 ha; 1,819 ac)

(A) Unit consists of the following 208 boundary points: Start at 439373, 2440983; 438934, 2442351; 438866, 2442347; 438838, 2442340; 438821, 2442339; 438757, 2442331; 438721, 2442329; 438704, 2442326; 438694, 2442327; 438679, 2442324; 438656, 2442321; 438626, 2442315; 438609, 2442314; 438561, 2442316; 438535, 2442314; 438523, 2442310; 438517, 2442310; 438496, 2442310; 438460, 2442320; 438453, 2442321; 438436, 2442321; 438433, 2442319; 438418, 2442311; 438392, 2442294; 438376, 2442278; 438355, 2442265; 438305, 2442256; 438254, 2442248; 438238, 2442248; 438219, 2442244; 438157, 2442234; 438130, 2442234; 438114, 2442232; 438098, 2442237; 438065, 2442246; 438049, 2442246; 438030, 2442243; 438012, 2442229; 438000, 2442216; 437998, 2442205; 437996, 2442188; 437984, 2442167; 437973, 2442147; 437954, 2442136; 437939, 2442128; 437926, 2442125; 437912, 2442123; 437873, 2442121; 437839, 2442110; 437826, 2442106; 437806, 2442092; 437791, 2442074; 437777, 2442052; 437766, 2442017; 437758, 2441998; 437754, 2441991; 437751, 2441981; 437745, 2441950; 437740, 2441938; 437736, 2441928; 437717, 2441899; 437711, 2441887; 437705, 2441878; 437689, 2441877; 437674, 2441875; 437647, 2441866; 437635, 2441866; 437617, 2441866; 437602, 2441867; 437566, 2441876; 437532, 2441880; 437522, 2441879; 437495, 2441869; 437460, 2441862; 437391, 2441858; 437366, 2441852; 437346, 2441845; 437332, 2441842; 437317, 2441835; 437287, 2441816; 437274, 2441809; 437240, 2441796; 437224, 2441791; 437181, 2441781; 437150, 2441777; 437111, 2441777; 437096, 2441779; 437062, 2441776; 437008, 2441775; 436960, 2441776; 436912, 2441780; 436895, 2441784; 436825, 2441795; 436799, 2441801; 436777, 2441809; 436730, 2441820; 436695, 2441811; 436666, 2441808; 436638, 2441803; 436618, 2441796; 436593, 2441792; 436583, 2441789; 436541, 2441785; 436492, 2441773; 436453, 2441759; 436419, 2441739; 436408, 2441737; 436374, 2441718; 436357, 2441708; 436342, 2441700; 436319, 2441681; 436285, 2441639; 436272, 2441618; 436247, 2441590; 436228, 2441575; 436203, 2441564; 436181, 2441558; 436167, 2441552; 436155, 2441546; 436121, 2441536; 436070, 2441515; 436039, 2441504; 436033, 2441502; 435654, 2441777; 435600, 2441959; 435782, 2441952; 436106, 2442053; 436248, 2441979; 436335, 2441979; 436369, 2442121; 436450, 2442100; 436659, 2442080; 436740, 2442121; 436915, 2442033; 437084, 2442087; 436936, 2442161; 436922, 2442363; 436625, 2442458; 436666, 2442525; 436888, 2442559; 436740, 2442647; 436720, 2442755; 436558, 2442714; 436524, 2442748; 436450, 2442707; 436403, 2442761; 436302, 2442714; 436160, 2442701; 436248, 2442883; 436410, 2442883; 436571, 2443011; 436551, 2443078; 436558, 2443159; 436504, 2443294; 436916, 2443395; 437003, 2443335; 437192, 2443314; 437152, 2443409; 437226, 2443523; 437327, 2443564; 437266, 2443705; 437320, 2443827; 437523, 2443847; 437583, 2443901; 437718, 2443833; 437921, 2443989; 437948, 2443935; 438062, 2443982; 438170, 2443867; 438251, 2444002; 438366, 2443955; 438447, 2444009; 438440, 2444117; 438575, 2444231; 438710, 2444285; 438804, 2444143; 438959, 2444042; 438986, 2444211; 439047, 2444184; 439074, 2444224; 439162, 2444325; 439155, 2444400; 439499, 2444649; 439823, 2444453; 439850, 2444238; 439735, 2444008; 440518, 2443732; 440241, 2443624; 439007, 2443361; 438993, 2443220; 439155, 2443132; 439128, 2442977; 439283, 2442970; 439405, 2443051; 439357, 2442916; 439668, 2442943; 439364, 2442849; 439283, 2442552; 440646, 2442700; 440437, 2442248; 440005, 2441810; 440281, 2441608; 439863, 2441513; 439641, 2441304; 439769, 2441257; 439964, 2441257; 439769, 2441055; 439904, 2440980; return to starting point.

(B) **Note:** Map 61 follows:

Map 61 Unit 11 - *Alsinidendron viscosum - a*

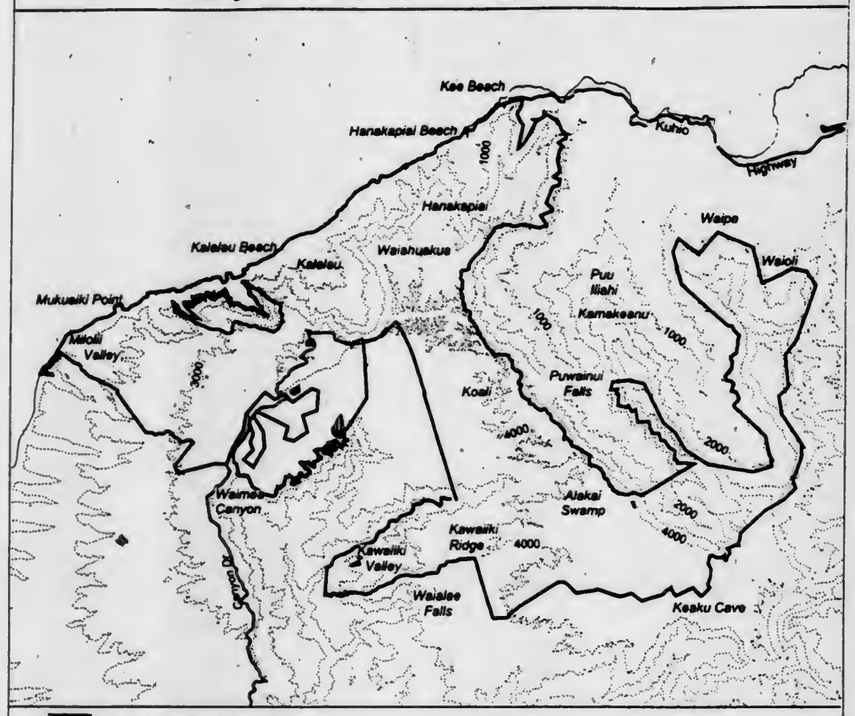


(lxii) Kauai 11—*Alsinidendron viscosum*—b (17 ha; 42 ac)

(A) Unit consists of the following 106 boundary points: Start at 434696, 2446537; 434683, 2446522; 434681, 2446520; 434675, 2446517; 434668, 2446521; 434668, 2446521; 434668, 2446522; 434668, 2446522; 434668, 2446522; 434668, 2446523; 434668, 2446523; 434668, 2446523; 434668, 2446524; 434668, 2446524; 434668, 2446525; 434668, 2446525; 434668, 2446525; 434668, 2446526; 434652, 2446530; 434615, 2446532; 434610, 2446511; 434615, 2446491; 434606, 2446463; 434569, 2446454; 434550, 2446470; 434504, 2446463; 434476, 2446440; 434460, 2446433; 434442, 2446465; 434423, 2446465; 434391, 2446428; 434366, 2446435; 434338, 2446426; 434320, 2446403; 434320, 2446371; 434336, 2446358; 434340, 2446352; 434353, 2446346; 434357, 2446343; 434387, 2446345; 434407, 2446334; 434435, 2446292; 434481, 2446285; 434479, 2446232; 434377, 2446272; 434294, 2446325; 434230, 2446392; 434193, 2446470; 434195, 2446546; 434211, 2446580; 434287, 2446652; 434320, 2446721; 434377, 2446857; 434453, 2446984; 434516, 2447023; 434534, 2447011; 434555, 2446861; 434573, 2446827; 434571, 2446746; 434587, 2446615; 434631, 2446567; 434684, 2446543; 434684, 2446543; 434684, 2446543; 434685, 2446543; 434685, 2446543; 434685, 2446543; 434686, 2446543; 434686, 2446543; 434686, 2446543; 434687, 2446543; 434687, 2446543; 434687, 2446543; 434688, 2446543; 434688, 2446543; 434689, 2446543; 434689, 2446543; 434689, 2446543; 434690, 2446543; 434690, 2446543; 434690, 2446543; 434691, 2446543; 434691, 2446543; 434691, 2446543; 434692, 2446543; 434692, 2446543; 434692, 2446543; 434693, 2446543; 434693, 2446543; 434693, 2446543; 434694, 2446543; 434694, 2446543; 434695, 2446542; 434695, 2446542; 434695, 2446542; 434696, 2446542; 434696, 2446542; 434696, 2446542; 434697, 2446542; 434697, 2446542; 434697, 2446541; 434698, 2446541; 434698, 2446541; 434698, 2446541; 434698, 2446541; 434699, 2446541; return to starting point.

(B) **Note:** Map 62 follows:

Map 62 Unit 11 - *Alsinidendron viscosum - b*



Critical Habitat Unit 11
Critical Habitat for *Alsinidendron viscosum - b*
Elevation (1,000-ft. contours)
Major Road
Coastline

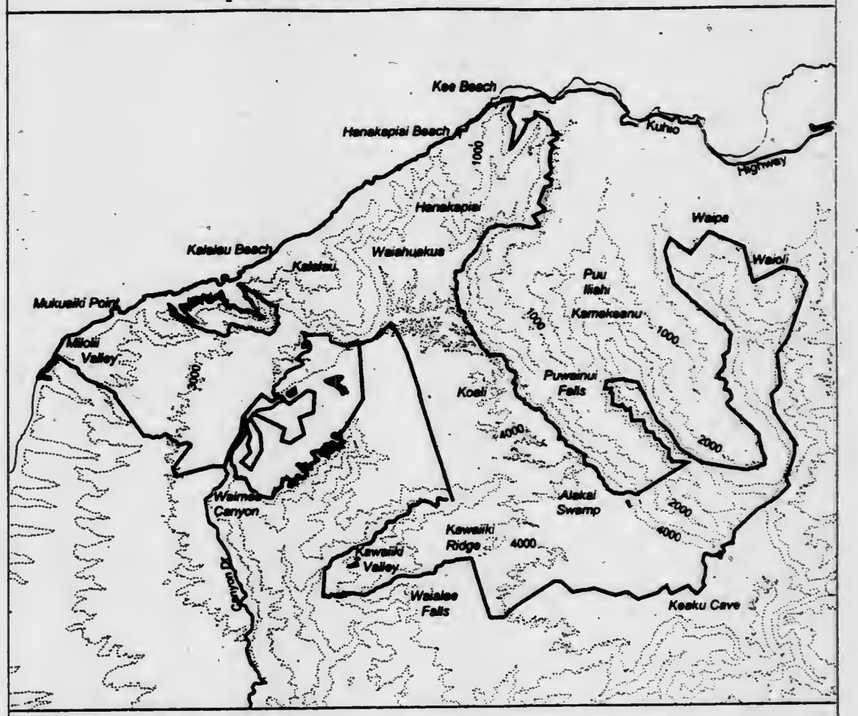
0 1 2 Miles
0 1 2 Kilometers

(lxiii) Kauai 11—*Alsinidendron viscosum*—c (22 ha; 55 ac)

(A) Unit consists of the following 27 boundary points: Start at 434055, 2448131; 434055, 2448166; 434207, 2448223; 434407, 2448288; 434564, 2448338; 434672, 2448322; 434718, 2448272; 434714, 2448223; 434679, 2448184; 434610, 2448154; 434550, 2448092; 434580, 2448043; 434656, 2447972; 434725, 2447970; 434765, 2447954; 434880, 2447767; 434825, 2447721; 434767, 2447721; 434714, 2447719; 434716, 2447684; 434672, 2447682; 434626, 2447707; 434610, 2447749; 434612, 2447797; 434400, 2447965; 434283, 2447995; 434151, 2448076; return to starting point.

(B) **Note:** Map 63 follows:

Map 63 Unit 11 - *Alsinidendron viscosum - c*



Critical Habitat Unit 11
Critical Habitat for *Alsinidendron viscosum - a*
Elevation (1,000-ft. contours)
Major Road
Coastline

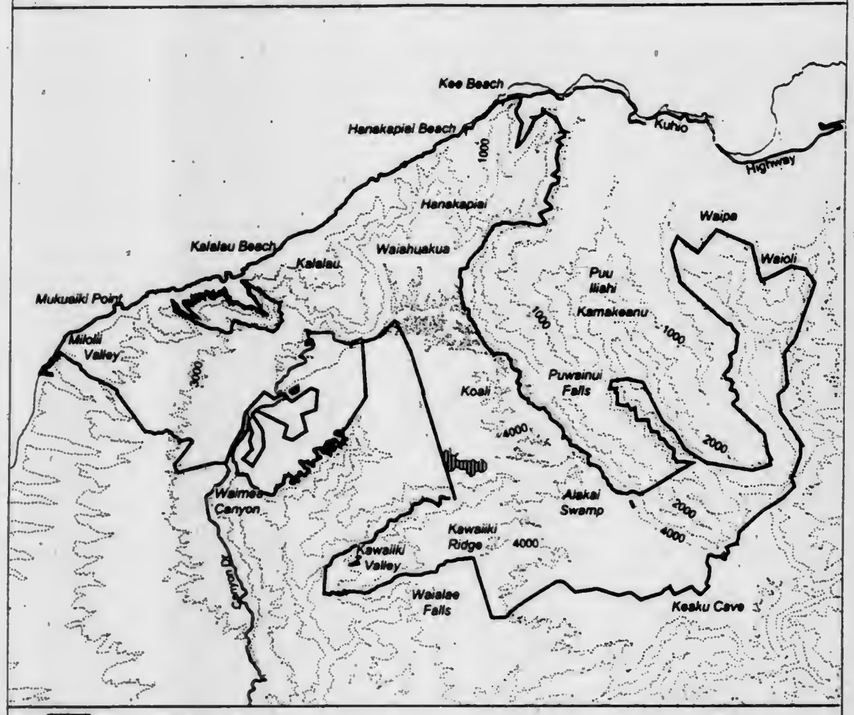
0 1 2 Miles
0 1 2 Kilometers

(lxiv) Kauai 11—*Alsinidendron viscosum*—d (61 ha; 150 ac)

(A) Unit consists of the following 63 boundary points: Start at 438024, 2445182; 437858, 2445698; 437863, 2445701; 437907, 2445735; 437930, 2445790; 437989, 2445842; 438041, 2445816; 438078, 2445809; 438112, 2445868; 438115, 2445913; 438130, 2445931; 438175, 2445835; 438156, 2445794; 438152, 2445742; 438193, 2445686; 438275, 2445657; 438297, 2445664; 438375, 2445727; 438401, 2445742; 438401, 2445709; 438368, 2445664; 438312, 2445590; 438312, 2445556; 438353, 2445523; 438464, 2445467; 438546, 2445489; 438609, 2445482; 438732, 2445482; 438814, 2445463; 438892, 2445541; 438929, 2445515; 438981, 2445441; 438999, 2445463; 439066, 2445397; 439137, 2445530; 439200, 2445534; 439330, 2445396; 439352, 2445333; 439333, 2445192; 439274, 2445133; 439192, 2445088; 439125, 2445088; 439085, 2445140; 438996, 2445126; 438970, 2445100; 438962, 2445018; 438921, 2445007; 438825, 2444947; 438784, 2444988; 438762, 2445062; 438713, 2445051; 438680, 2445055; 438680, 2445170; 438602, 2445196; 438535, 2445178; 438476, 2445204; 438431, 2445244; 438364, 2445267; 438286, 2445237; 438268, 2445185; 438219, 2445118; 438141, 2445118; 438030, 2445174; return to starting point.

(B) **Note:** Map 64 follows:

Map 64 Unit 11 - *Alsinidendron viscosum - d*

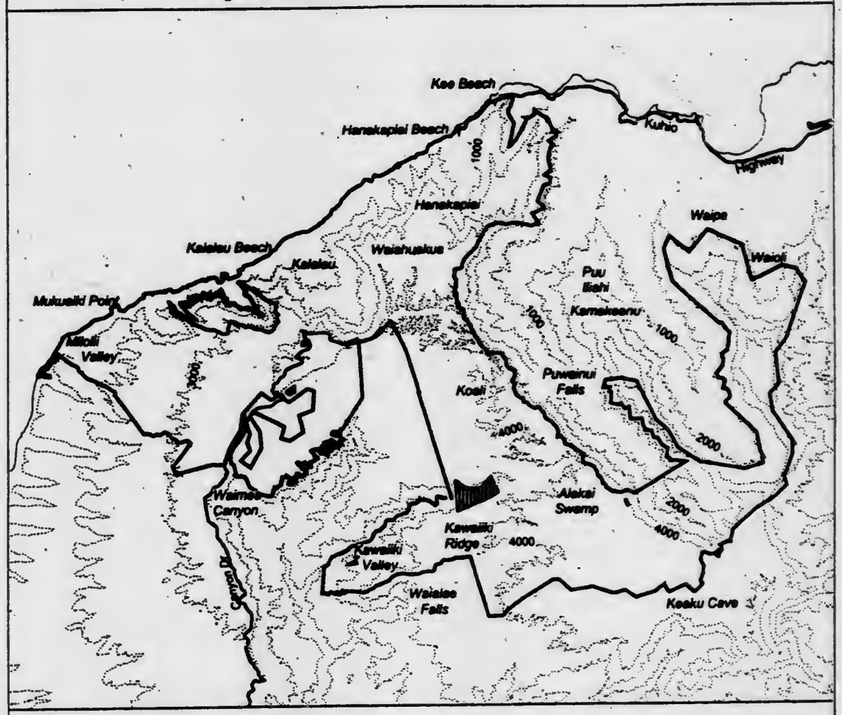


(lxv) Kauai 11—*Bonamia menziesii*—b (93 ha; 229 ac)

(A) Unit consists of the following 12 boundary points: Start at 438424, 2444853; 438550, 2444811; 438668, 2444697; 438924, 2444597; 439252, 2444612; 439616, 2444997; 439629, 2445010; 439911, 2444437; 439905, 2444434; 439701, 2444298; 438490, 2443789; 438404, 2444823; return to starting point.

(B) **Note:** Map 65 follows:

Map 65 Unit 11 - *Bonamia menziesii - b*



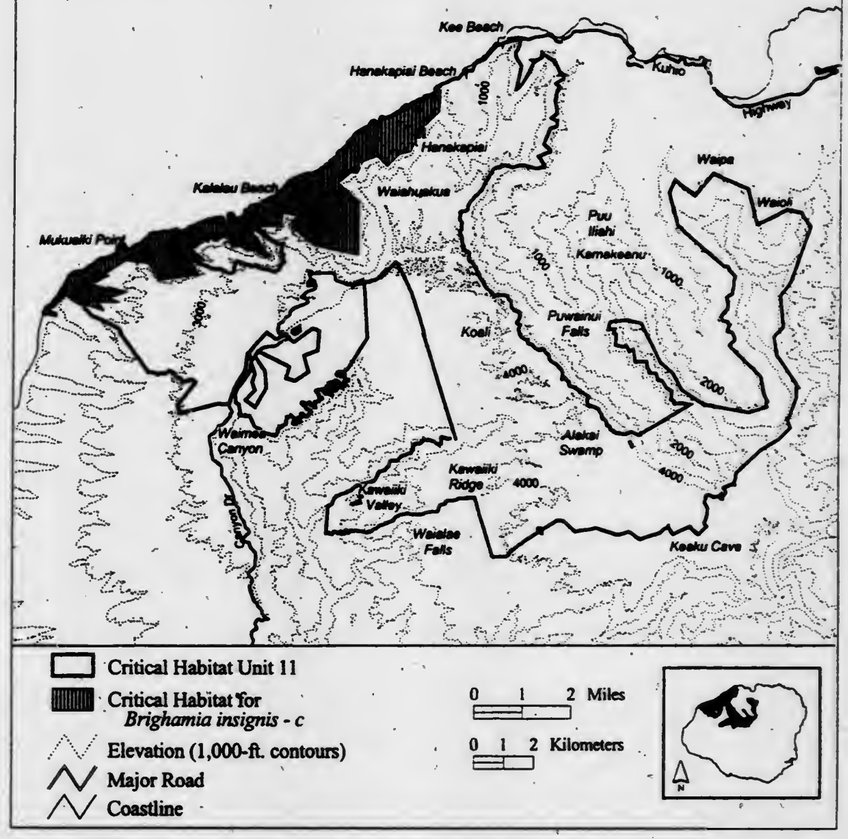
(lxvi) Kauai 11—*Brighamia insignis*—c (1,645 ha; 4,066 ac)

(A) Unit consists of the following 807 boundary points: coastline; 430380, 2450816; 430372, 2450803; 430368, 2450818; 430364, 2450833; 430362, 2450842; 430355, 2450855; 430348, 2450863; 430335, 2450873; 430331, 2450883; 430328, 2450897; 430326, 2450922; 430319, 2450953; 430305, 2450972; 430295, 2450980; 430285, 2450982; 430281, 2450979; 430276, 2450975; 430272, 2450958; 430273, 2450938; 430261, 2450933; 430250, 2450924; 430246, 2450905; 430251, 2450875; 430256, 2450842; 430268, 2450786; 430261, 2450779; 430252, 2450779; 430249, 2450795; 430246, 2450807; 430242, 2450821; 430234, 2450838; 430217, 2450857; 430209, 2450860; 430204, 2450855; 430197, 2450844; 430193, 2450832; 430172, 2450844; 430173, 2450865; 430175, 2450880; 430183, 2450896; 430192, 2450910; 430197, 2450925; 430197, 2450937; 430194, 2450949; 430187, 2450962; 430177, 2450971; 430166, 2450974; 430154, 2450976; 430132, 2450976; 430116, 2450985; 430107, 2450980; 430091, 2450975; 430078, 2450990; 430069, 2450993; 430061, 2450978; 430054, 2450938; 430051, 2450920; 430030, 2450915; 430016, 2450914; 430010, 2450909; 430009, 2450885; 430018, 2450854; 430024, 2450828; 430018, 2450825; 430011, 2450820; 430009, 2450808; 430013, 2450787; 430022, 2450756; 430002, 2450778; 429994, 2450795; 429984, 2450820; 429965, 2450849; 429939, 2450888; 429927, 2450906; 429914, 2450914; 429910, 2450911; 429907, 2450899; 429909, 2450889; 429915, 2450875; 429923, 2450865; 429926, 2450848; 429926, 2450827; 429923, 2450820; 429918, 2450819; 429909, 2450824; 429905, 2450835; 429897, 2450849; 429889, 2450860; 429879, 2450871; 429869, 2450875; 429863, 2450868; 429863, 2450852; 429861, 2450836; 429866, 2450814; 429870, 2450799; 429879, 2450785; 429885, 2450774; 429883, 2450763; 429879, 2450756; 429874, 2450750; 429875, 2450744; 429873, 2450736; 429866, 2450746; 429861, 2450753; 429854, 2450754; 429848, 2450756; 429843, 2450769; 429841, 2450785; 429827, 2450802; 429816, 2450819; 429797,

2450845; 429773, 2450868; 429738, 2450896; 429724, 2450899; 429720, 2450887; 429726, 2450875; 429733, 2450856; 429739, 2450832; 429742, 2450813; 429746, 2450791; 429752, 2450769; 429754, 2450756; 429748, 2450755; 429737, 2450753; 429731, 2450750; 429731, 2450739; 429734, 2450732; 429745, 2450721; 429750, 2450701; 429741, 2450701; 429728, 2450698; 429722, 2450692; 429718, 2450681; 429709, 2450676; 429702, 2450682; 429696, 2450693; 429691, 2450714; 429680, 2450743; 429664, 2450781; 429652, 2450802; 429639, 2450818; 429619, 2450828; 429603, 2450830; 429601, 2450825; 429604, 2450812; 429619, 2450793; 429637, 2450771; 429654, 2450750; 429664, 2450735; 429667, 2450717; 429663, 2450706; 429661, 2450673; 429666, 2450641; 429663, 2450621; 429654, 2450603; 429645, 2450601; 429634, 2450610; 429619, 2450622; 429602, 2450633; 429558, 2450656; 429505, 2450692; 429490, 2450702; 429483, 2450698; 429478, 2450692; 429480, 2450680; 429489, 2450657; 429496, 2450634; 429503, 2450613; 429524, 2450599; 429556, 2450569; 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429808, 2450151; 429791, 2450150; 429770, 2450151; 429738, 2450152; 429713, 2450155; 429686, 2450161; 429656, 2450168; 429622, 2450179; 429571, 2450198; 429538, 2450212; 429503, 2450229; 429460, 2450248; 429433, 2450259; 429404, 2450268; 429391, 2450277; 429371, 2450289; 429356, 2450303; 429342, 2450315; 429321, 2450332; 429294, 2450343; 429269, 2450357; 429244, 2450363; 429212, 2450380; 429205, 2450394; 429200, 2450405; 429193, 2450416; 429174, 2450426; 429162, 2450435; 429161, 2450444; 429158, 2450455; 429152, 2450468; 429143, 2450481; 429128, 2450496; 429115, 2450512; 429114, 2450524; 429113, 2450540; 429110, 2450557; 429103, 2450577; 429091, 2450594; 429077, 2450605; 429060, 2450608; 429041, 2450610; 429026, 2450609; 429013, 2450623; 429009, 2450638; 429000, 2450655; 428990, 2450676; 428979, 2450690; 428972, 2450701; 428962, 2450707; 428952, 2450706; 428952, 2450704; 428964, 2450654; 428990, 2450584; 429000, 2450551; 429015, 2450477; 429016, 2450451; 429013, 2450421; 429012, 2450380; 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(B) **Note**: Map 66 follows:

Map 66 Unit 11 - *Brighamia insignis* - c



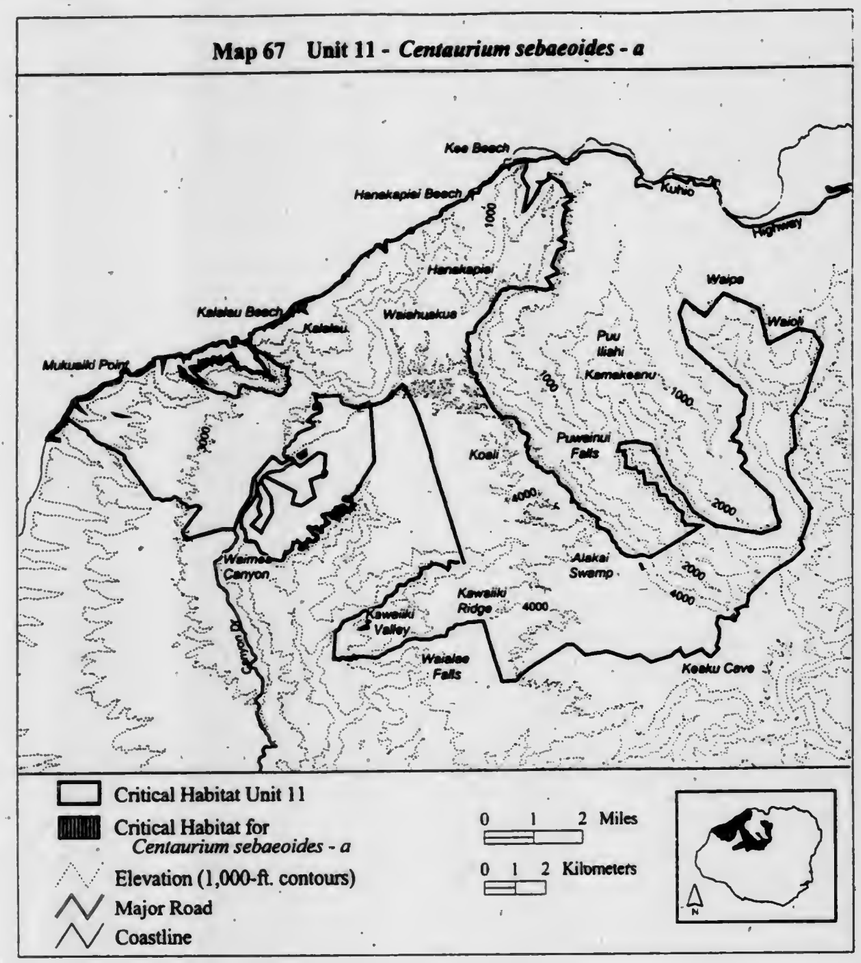
(lxvii) Kauai 11—*Centaurium sebaeoides*—a (157 ha; 389 ac)

(A) Unit consists of the following 146 boundary points: coastline; 427095, 2450498; 427122, 2450315; 427060, 2450219; 426989, 2450139; 426899, 2450102; 426842, 2450083; 426718, 2450054; 426533, 2450045; 426396, 2449902; 426196, 2449751; 426078, 2449627; 425945, 2449585; 425683, 2449570; 425603, 2449523; 425935, 2449124; 425484, 2449385; 425361, 2449167; 425290, 2449017; 425272, 2449039; 425267, 2449033; 425259, 2449024; 425156, 2449046; 438151, 2455997; 438175, 2455951; 437980, 2455838; 437781, 2455767; 437748, 2455684; 437624, 2455686; 437596, 2455530; 437415, 2455416; 437353, 2455428; 437240, 2455402; 437187, 2455293; 437121, 2455312; 436893, 2455212; 436694, 2455108; 436670, 2454975; 436518, 2455013; 436186, 2454752; 435963, 2454705; 435782, 2454719; 435815, 2454383; 435773, 2454345; 435478, 2454572; 435355, 2454397; 435189, 2454316; 435198, 2454193; 435103, 2454269; 435087, 2454279; 435049, 2454273; 434968, 2454196; 434917, 2454149; 434823, 2454030; 434759, 2453950; 434695, 2453852; 434572, 2453716; 434563, 2453601; 434440, 2453605; 434431, 2453507; 434325, 2453410; 434159, 2453307; 434061, 2453235; 433716, 2452967; 433290, 2452789; 433133, 2452729; 433175, 2452661; 433086, 2452542; 433195, 2452368; 432916, 2452476; 432886, 2452378; 432815, 2452468; 432720, 2452373; 432710, 2452264; 432639, 2452321; 432487, 2452178; 432316, 2452117; 432330, 2452036; 432264, 2452055; 432008, 2451880; 431946, 2451956; 431789, 2451885; 431789, 2451823; 431756, 2451804; 431666, 2451899; 431447, 2451795; 431371, 2451676; 431286, 2451695; 431329, 2451576; 431310, 2451429; 431134, 2451353; 430963, 2451410; 430947, 2451439; 430893, 2451445; 430807, 2451586; 430761, 2451556; 430837, 2451309; 430777, 2451319; 430643, 2451285; 430595, 2451285; 430534, 2451345; 430495, 2451419; 430434, 2451441; 430326, 2451403; 430237, 2451411; 430239, 2451337; 430191, 2451306; 430126, 2451313; 430037, 2451352; 429905, 2451309; 429887, 2451259; 429807,

2451199; 429764, 2451267; 429734, 2451147; 429623, 2451176; 429575, 2451098; 429475, 2451133; 429351, 2451050; 429310, 2450929; 429219, 2450929; 429128, 2450959; 429108, 2450786; 429041, 2450972; 428972, 2451024; 428929, 2451037; 428857, 2450999; 428824, 2450925; 428797, 2450999; 428715, 2450981; 428640, 2450994; 428546, 2450948; 428384, 2450446; 428376, 2450782; 428325, 2450973; 428231, 2450952; 428150, 2450948; 428164, 2450704; 428047, 2450665; 427934, 2450565; 427801, 2450484; 427669, 2450378; 427543, 2450370; 427401, 2450386; 427318, 2450387; 427257, 2450448; 427213, 2450548; 427171, 2450463; coastline.

(B) **Note:** Map 67 follows:

Map 67 Unit 11 - *Centaurium sebaeoides - a*



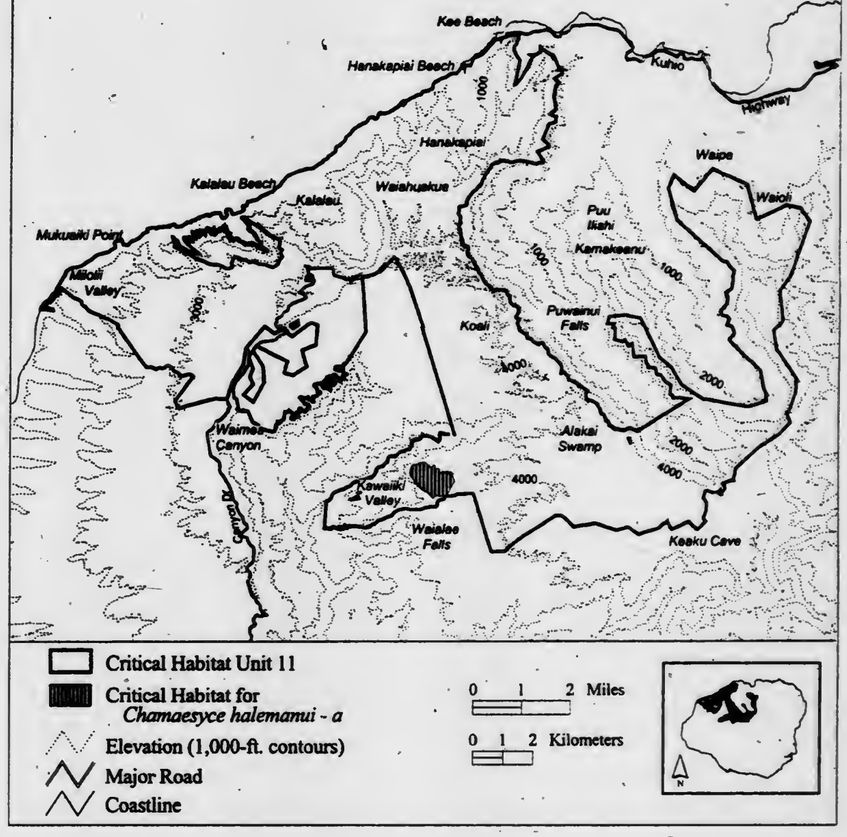
(lxviii) Kauai 11—*Chamaesyce halemanui*—a (108 ha; 267 ac)

(A) Unit consists of the following 69 boundary points: Start at 437683, 2443241; 437679, 2443194; 437679, 2443137; 437726, 2443130; 437800, 2443150; 437817, 2443127; 437817, 2443080; 437803, 2443033; 437834, 2443009; 437887, 2443019; 437907, 2443056; 437948, 2443043; 437974, 2443036; 438008, 2443046; 438042, 2443036; 438082, 2443070; 438122, 2443033; 438162, 2443003; 438196, 2443043; 438216, 2443029; 438223, 2442992; 438246, 2442986; 438280, 2442986; 438280, 2442915; 438283, 2442821; 438310, 2442764; 438307, 2442707; 438273, 2442644; 438199, 2442520; 438176, 2442479; 438139, 2442419; 438109, 2442349; 438065, 2442285; 438066, 2442260; 438008, 2442239; 437971, 2442255; 437914, 2442255; 437830, 2442245; 437776, 2442271; 437676, 2442224; 437629, 2442167; 437572, 2442198; 437505, 2442302; 437438, 2442355; 437394, 2442392; 437314, 2442416; 437203, 2442506; 437015, 2442694; 436914, 2442875; 436847, 2442946; 436844, 2442986; 436847,

2443070; 436877, 2443160; 436901, 2443231; 436991, 2443258; 437062, 2443285; 437119, 2443301; 437186, 2443335; 437287, 2443345; 437334, 2443345; 437407, 2443308; 437428, 2443274; 437478, 2443264; 437485, 2443221; 437505, 2443184; 437579, 2443197; 437615, 2443237; 437652, 2443261; return to starting point.

(B) **Note:** Map 68 follows:

Map 68 Unit 11 - *Chamaesyce halemanui - a*

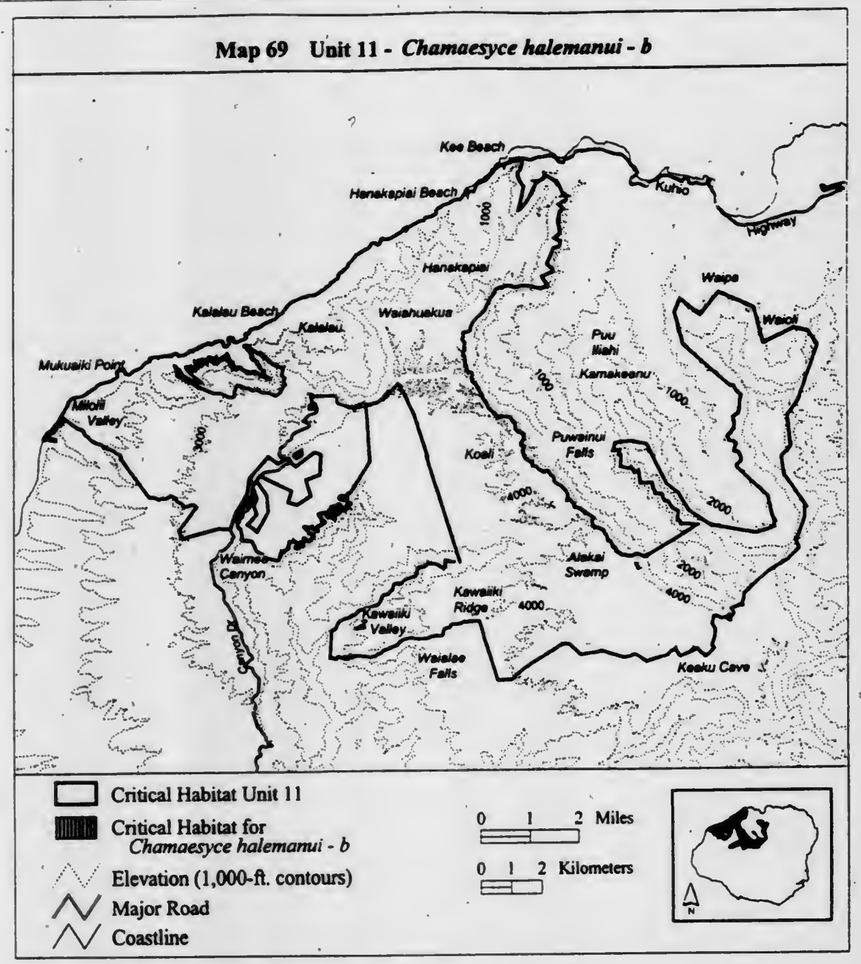


(lxix) Kauai 11—*Chamaesyce halemanui*—b (17 ha; 43 ac)

(A) Unit consists of the following 26 boundary points: Start at 431534, 2446637; 431530, 2446604; 431553, 2446538; 431557, 2446483; 431526, 2446397; 431495, 2446365; 431522, 2446303; 431518, 2446216; 431487, 2446158; 431420, 2446115; 431408, 2446048; 431322, 2445985; 431256, 2445938; 431193, 2445891; 431201, 2445817; 431177, 2445766; 431099, 2445738; 431079, 2445703; 431079, 2445652; 431040, 2445613; 430985, 2445601; 430977, 2445767; 431060, 2445963; 431278, 2446215; 431483, 2446536; 431491, 2446759; return to starting point.

(B) **Note:** Map 69 follows:

Map 69 Unit 11 - *Chamaesyce halemanui - b*



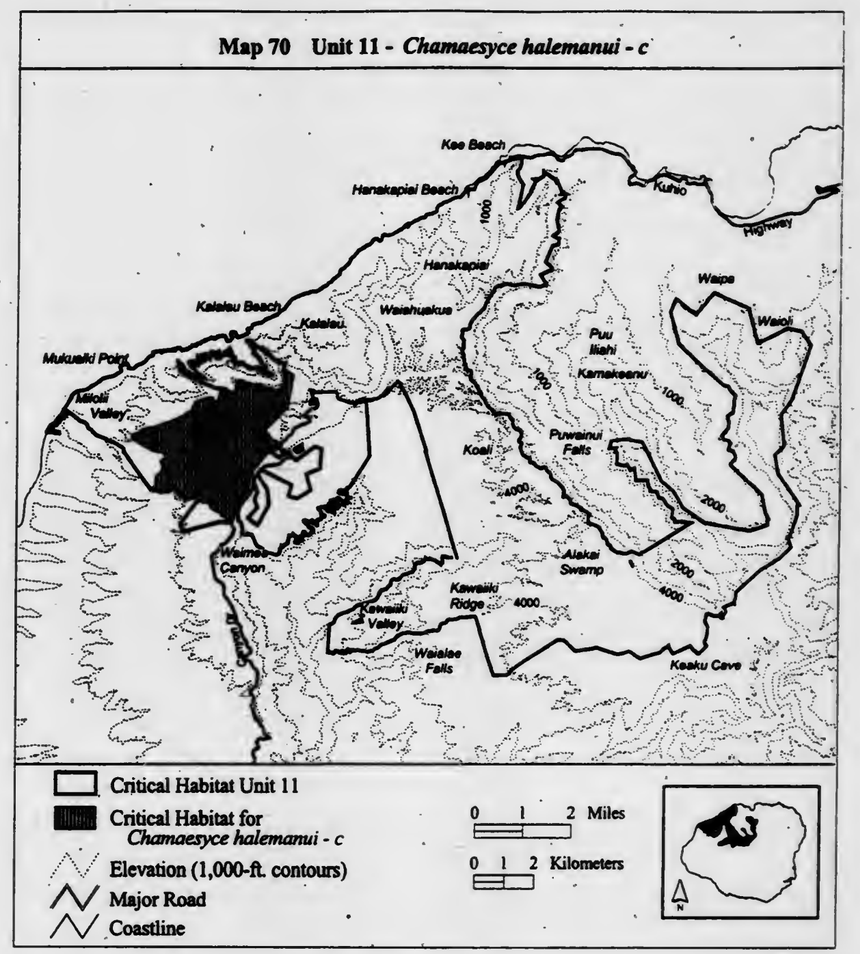
(lxx) Kauai 11—*Chamaesyce halemanui*—c (1,283 ha; 3,171 ac)

(A) Unit consists of the following 195 boundary points: Start at 430306, 2449349; 430289, 2449399; 430307, 2449482; 430312, 2449517; 430313, 2449532; 430320, 2449553; 430331, 2449565; 430346, 2449596; 430354, 2449622; 430355, 2449641; 430348, 2449666; 430376, 2449750; 430384, 2449766; 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238, 2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431657, 2449890; 431699, 2449876; 431765, 2449810; 431864, 2449801; 431981, 2449792; 432047, 2449787; 432113, 2449740; 432217, 2449712; 432259, 2449679; 432344, 2449744; 432419, 2449806; 432471, 2449904; 432504, 2449961; 432579, 2450036; 432551, 2450083; 432523, 2450130; 432523, 2450182; 432565, 2450262; 432523, 2450304; 432475, 2450313; 432452, 2450337; 432461, 2450375; 432480, 2450426; 432490, 2450478; 432501, 2450529; 432504, 2450523; 432515, 2450503; 432528, 2450468; 432550, 2450412; 432573, 2450385; 432591, 2450373; 432650, 2450343; 432692, 2450330; 432709, 2450317; 432733, 2450275; 432745, 2450272; 432752, 2450270; 432768, 2450266; 432797, 2450260; 432826, 2450224; 432630, 2449144; 431875, 2448395; 432139, 2448086; 432281, 2448051; 432381, 2447879; 432133, 2447631; 432001, 2447726; 431369, 2447027; 431298, 2446522; 430955, 2445963; 430827, 2445619; 430786, 2445492; 430766, 2445492; 430727, 2445433; 430705, 2445408; 430574, 2445414; 430574, 2445437; 430570, 2445519; 430534, 2445558; 430444, 2445594; 430409, 2445613; 430386, 2445672; 430350, 2445711; 430264, 2445727; 430174, 2445786; 430060, 2445860; 430029, 2445923; 429990, 2446009; 429904, 2446040; 429857, 2446017; 429790, 2446025; 429708, 2446076; 429602, 2446170; 429547, 2446209; 429441, 2446185; 429335,

2446142; 429226, 2446146; 429202, 2446185; 429182, 2446221; 429128, 2446264; 429026, 2446295; 428990, 2446326; 428967, 2446373; 428920, 2446424; 428842, 2446479; 428791, 2446491; 428744, 2446448; 428669, 2446393; 428622, 2446381; 428548, 2446393; 428532, 2446420; 428469, 2446389; 428414, 2446358; 428359, 2446389; 428293, 2446424; 428242, 2446424; 428164, 2446424; 428093, 2446436; 428069, 2446495; 428101, 2446534; 428144, 2446534; 428218, 2446636; 428230, 2446734; 428226, 2446804; 428234, 2446918; 428312, 2446965; 428450, 2447079; 428450, 2447153; 428450, 2447216; 428422, 2447306; 428383, 2447376; 428407, 2447404; 428528, 2447466; 428548, 2447479; 428507, 2447592; 428472, 2447639; 428405, 2447665; 428282, 2447665; 428095, 2447725; 427746, 2447921; 427530, 2448058; 427416, 2448140; 427416, 2448207; 427479, 2448257; 427571, 2448308; 427733, 2448372; 427790, 2448451; 427901, 2448451; 427977, 2448483; 428009, 2448498; 428069, 2448498; 428158, 2448508; 428240, 2448527; 428266, 2448530; 428351, 2448581; 428421, 2448590; 428564, 2448666; 428694, 2448666; 428830, 2448749; 428948, 2448780; 429037, 2448822; 429113, 2448860; 429170, 2448891; 429208, 2448873; 429198, 2448944; 429399, 2449015; 429429, 2449039; 429423, 2449098; 429476, 2449205; 429494, 2449275; 429571, 2449358; 429683, 2449388; 429801, 2449435; 429819, 2449400; 429867, 2449476; 429991, 2449500; 430109, 2449500; 430156, 2449376; 430233, 2449358; 430287, 2449352; return to starting point.

(B) **Note:** Map 70 follows:

Map 70 Unit 11 - *Chamaesyce halemanui - c*

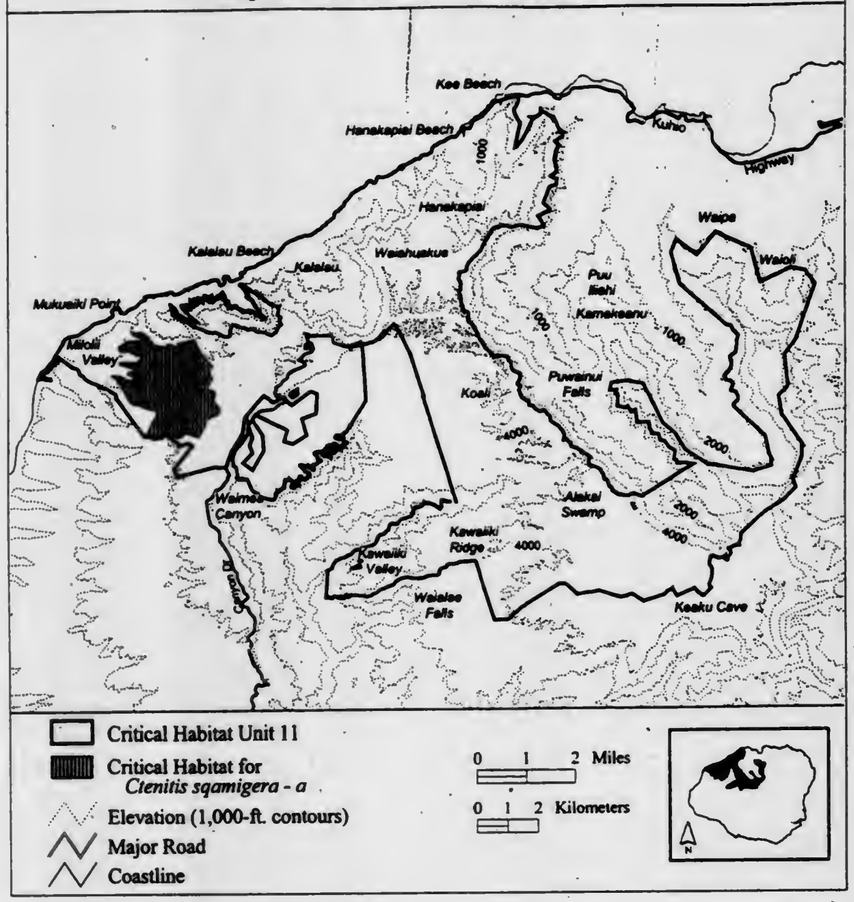


(lxxi) Kauai 11—*Ctenitis squamigera*—a (735 ha; 1,817 ac)

(A) Unit consists of the following 95 boundary points: Start at 429915, 2449188; 429965, 2449062; 430201, 2448831; 430327, 2448700; 430306, 2448648; 430232, 2448495; 430290, 2448327; 430311, 2448243; 430232, 2448128; 430180, 2448034; 430159, 2447929; 430359, 2447892; 430411, 2447803; 430380, 2447729; 430348, 2447629; 430353, 2447566; 430558, 2447320; 430527, 2447152; 430190, 2446989; 430070, 2446732; 429881, 2446390; 429644, 2446469; 429497, 2446543; 429366, 2446511; 429303, 2446427; 429257, 2446389; 429094, 2446389; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428656, 2446475; 428599, 2446448; 428476, 2446463; 428396, 2446447; 428285, 2446458; 428164, 2446469; 428132, 2446490; 428200, 2446564; 428331, 2446837; 428510, 2447146; 428442, 2447304; 428247, 2447309; 428011, 2447409; 427922, 2447451; 427738, 2447467; 427607, 2447561; 427533, 2447692; 427386, 2447950; 427387, 2447965; 427327, 2448019; 427380, 2448042; 427201, 2448195; 427217, 2448242; 427012, 2448409; 427258, 2448415; 427607, 2448226; 427862, 2448339; 427544, 2448453; 427563, 2448503; 427874, 2448588; 427289, 2448764; 427276, 2448805; 427868, 2448846; 428032, 2449016; 427928, 2449075; 427852, 2449025; 427777, 2449101; 427632, 2449142; 427604, 2449204; 427487, 2449201; 427456, 2449157; 427267, 2449217; 427242, 2449308; 427289, 2449362; 427563, 2449519; 427915, 2449547; 428063, 2449431; 427988, 2449619; 427758, 2449701; 427651, 2449852; 427830, 2449773; 427975, 2449824; 428258, 2449632; 428274, 2449547; 428356, 2449494; 428447, 2449371; 428840, 2449311; 428840, 2449396; 428957, 2449415; 428994, 2449368; 429164, 2449330; 429174, 2449437; 429740, 2449559; 429916, 2449188; return to starting point.

(B) **Note:** Map 71 follows:

Map 71 Unit 11 - *Ctenitis sqamigera - a*

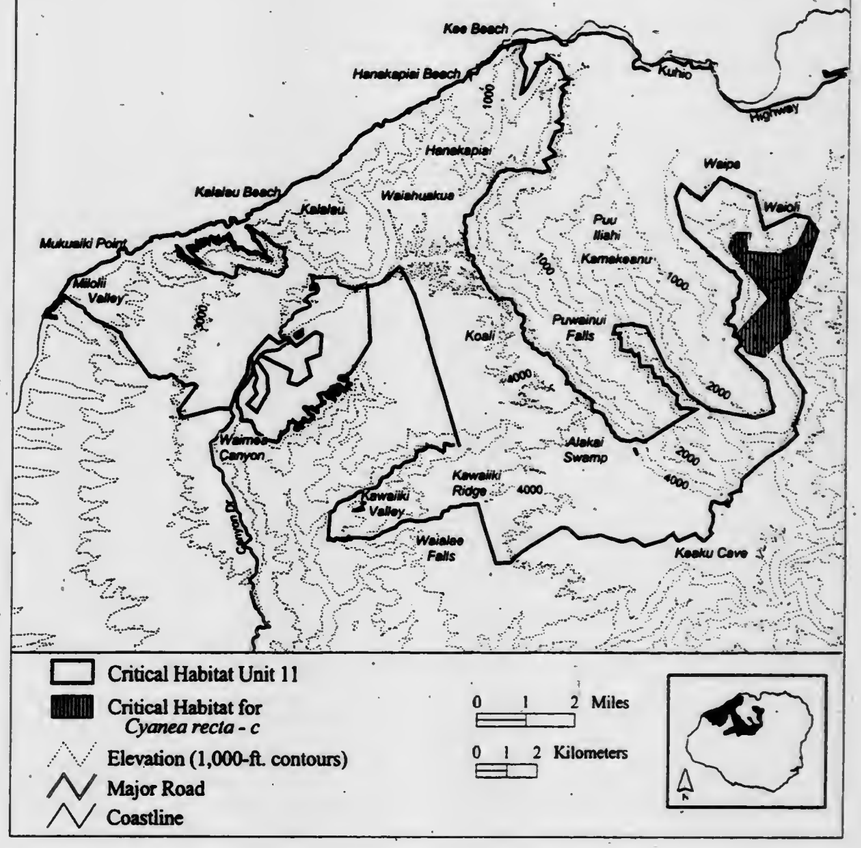


(lxxii) Kauai 11—*Cyanea recta*—c (553 ha; 1,367 ac)

(A) Unit consists of the following 21 boundary points: Start at 449858, 2451521; 450073, 2451227; 449432, 2449395; 449073; 2448923; 449139, 2447988; 449020, 2447860; 448992, 2447717; 448881, 2447609; 448339, 2447084; 447861, 2447198; 447734, 2447260; 447428, 2447829; 448470, 2448968; 447125, 2450677; 447365, 2451166; 447874, 2451166; 447753, 2450562; 448823, 2450472; 449385, 2450762; 449623, 2451217; 449789, 2451615; return to starting point.

(B) **Note:** Map 72 follows:

Map 72 Unit 11 - *Cyanea recta - c*



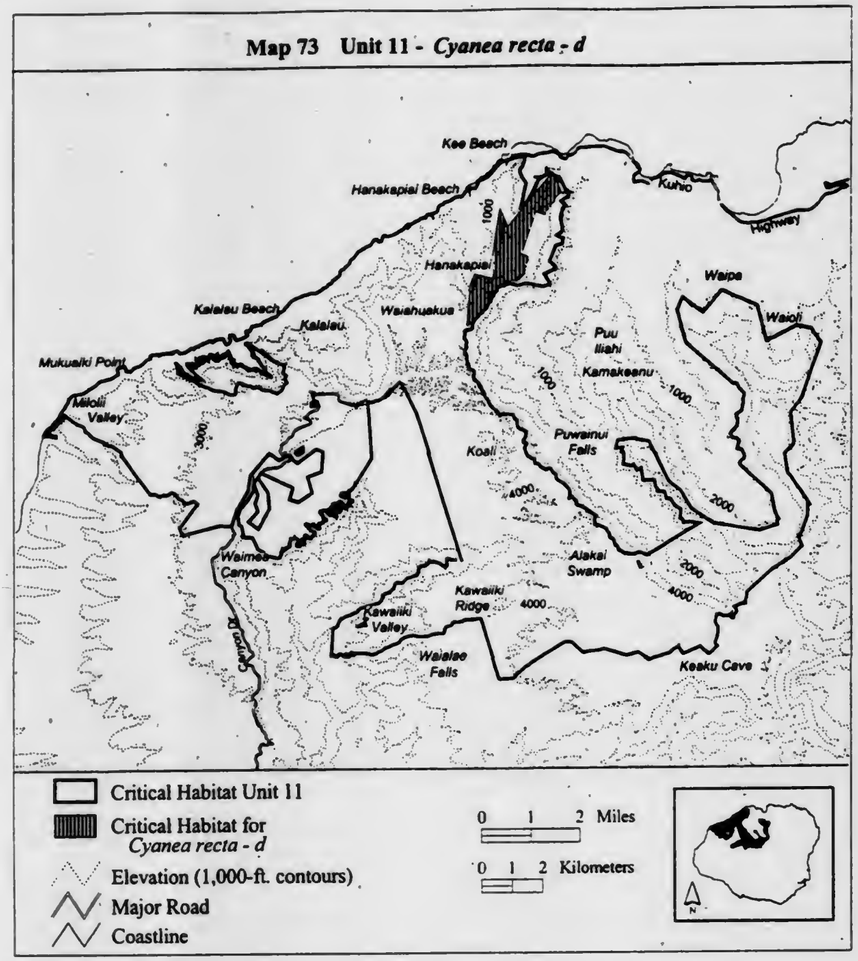
(lxxiii) Kauai 11—*Cyanea recta*—d (397 ha; 981 ac)

(A) Unit consists of the following 95 boundary points: Start at 439347, 2452789; 439324, 2452794; 439098, 2452402; 438924, 2452225; 438576, 2451872; 438558, 2451853; 438541, 2451836; 438516, 2451811; 438493, 2451829; 438494, 2451843; 438496, 2451871; 438498, 2451889; 438597, 2453123; 438761, 2453483; 439385, 2453352; 439352, 2454138; 439582, 2455646; 439652, 2455480; 439844, 2455023; 441271, 2456733; 441363, 2456677; 441568, 2456107; 441546, 2456104; 441531, 2456098; 441511, 2456077; 441498, 2456050; 441482, 2456033; 441462, 2456017; 441414, 2455967; 441393, 2455942; 441365, 2455913; 441354, 2455880; 441351, 2455829; 441342, 2455800; 441333, 2455787; 441292, 2455760; 441264, 2455739; 441233, 2455700; 441199, 2455663; 441185, 2455633; 441176, 2455603; 441164, 2455584; 441148, 2455564; 441094, 2455523; 441060, 2455488; 441059, 2455449; 441071, 2455421; 441074, 2455406; 441073, 2455402; 440747, 2455513; 440294, 2454127; 440499, 2454060; 440485, 2453995; 440492, 2453950; 440484, 2453922; 440461, 2453865; 440450, 2453851; 440432, 2453815; 440421, 2453780; 440412, 2453745; 440410, 2453716; 440404, 2453694; 440384,

2453655; 440378, 2453623; 440380, 2453590; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350, 2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; 440244, 2453334; 440223, 2453322; 440199, 2453305; 440147, 2453289; 440119, 2453282; 440093, 2453280; 439987, 2453284; 439962, 2453283; 439924, 2453275; 439905, 2453264; 439787, 2453162; 439724, 2453135; 439639, 2453119; 439600, 2453107; 439553, 2453082; 439503, 2453046; 439481, 2453022; 439473, 2452985; 439464, 2452963; 439414, 2452909; 439390, 2452876; 439355, 2452801; return to starting point.

(B) **Note:** Map 73 follows:

Map 73 Unit 11 - *Cyanea recta - d*

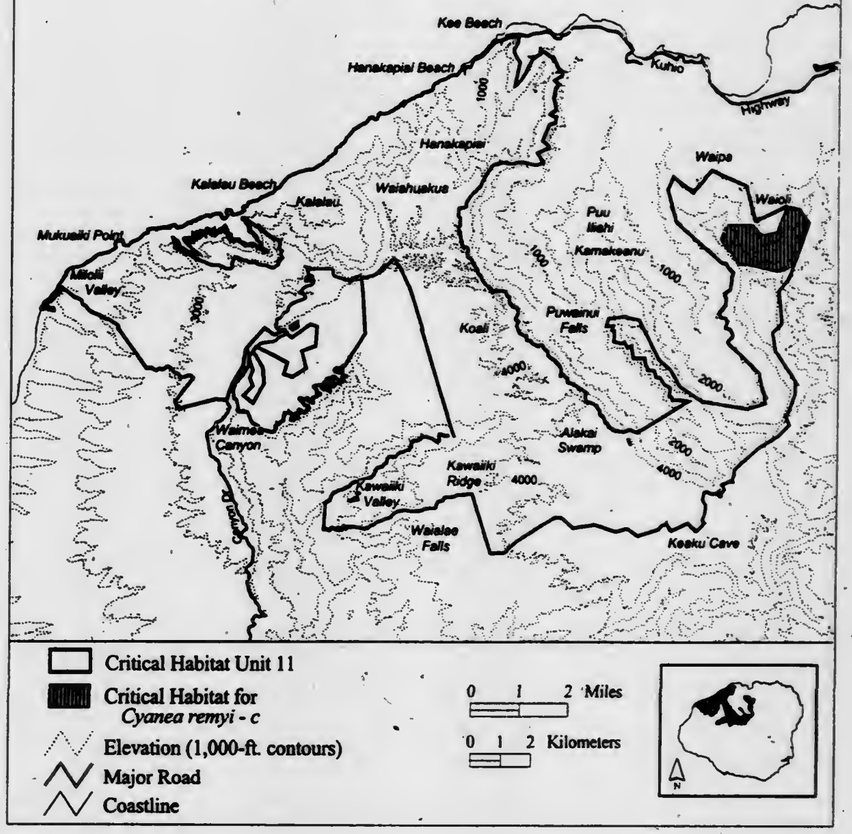


(lxxiv) Kauai 11—*Cyanea remyi*—c (365 ha; 901 ac)

(A) Unit consists of the following 15 boundary points: Start at 448511, 2450831; 449003, 2450929; 449335, 2451756; 449751, 2451666; 449858, 2451521; 450073, 2451227; 449580, 2449817; 449301, 2449658; 449293, 2449649; 449066, 2449578; 448089, 2449815; 447754, 2449877; 447125, 2450677; 447365, 2451166; 448229, 2451166; return to starting point.

(B) **Note:** Map 74 follows:

Map 74 Unit 11 - *Cyanea remyi - c*

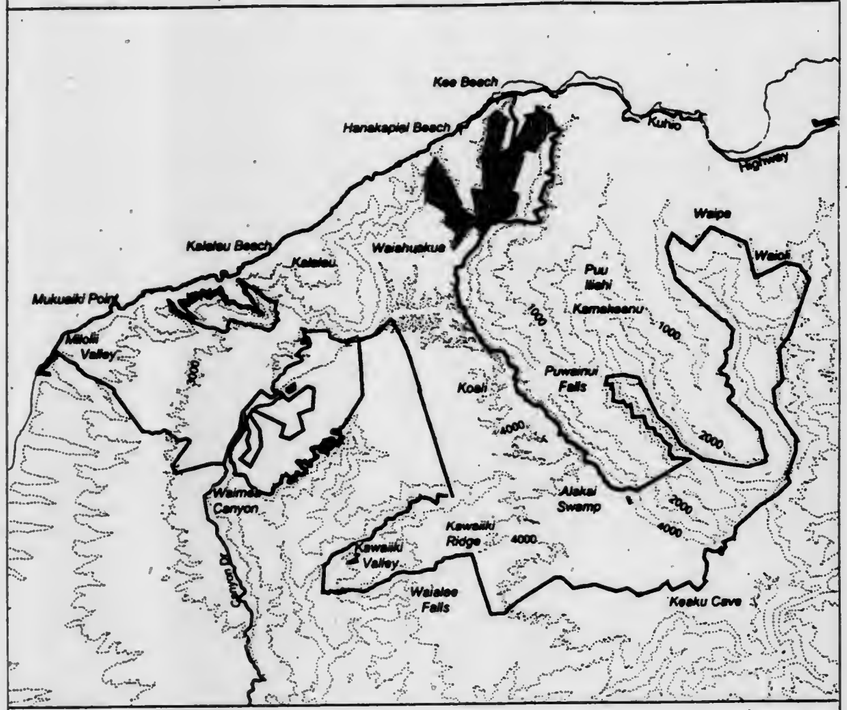


(lxxv) Kauai 11—*Cyanea remyi*—d (663 ha; 1,638 ac)

(A) Unit consists of the following 105 boundary points: Start at 439352, 2452796; 439259, 2452867; 439254, 2452860; 438991, 2453057; 438335, 2452205; 438433, 2452860; 438072, 2453090; 438138, 2453483; 437449, 2453877; 437449, 2454762; 437777, 2455286; 438302, 2454467; 438728, 2453516; 439122, 2453319; 438958, 2454237; 439352, 2454171; 439352, 2454892; 439253, 2455220; 439483, 2456007; 439516, 2456564; 439800, 2456784; 439811, 2456793; 440139, 2456498; 439844, 2455482; 440008, 2455417; 440468, 2455777; 440829, 2456531; 441205, 2456774; 441506, 2456588; 441691, 2456118; 441663, 2456114; 441635, 2456115; 441546, 2456104; 441531, 2456098; 441511, 2456077; 441498, 2456050; 441482, 2456033; 441462, 2456017; 441414, 2455967; 441393, 2455942; 441365, 2455913; 441354, 2455880; 441351, 2455829; 441342, 2455800; 441333, 2455787; 441292, 2455760; 441264, 2455739; 441233, 2455700; 441199, 2455663; 441185, 2455633; 441176, 2455603; 441164, 2455584; 441148, 2455564; 441094, 2455523; 441060, 2455488; 441059, 2455449; 441071, 2455421; 441074, 2455406; 441073, 2455402; 440747, 2455513; 440294, 2454127; 440499, 2454060; 440485, 2453995; 440492, 2453950; 440484, 2453922; 440461, 2453865; 440450, 2453851; 440432, 2453815; 440421, 2453780; 440412, 2453745; 440410, 2453716; 440404, 2453694; 440384, 2453655; 440378, 2453623; 440380, 2453590; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350, 2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; 440244, 2453334; 440223, 2453322; 440199, 2453305; 440147, 2453289; 440119, 2453282; 440093, 2453280; 439987, 2453284; 439962, 2453283; 439924, 2453275; 439905, 2453264; 439787, 2453162; 439724, 2453135; 439639, 2453119; 439600, 2453107; 439553, 2453082; 439503, 2453046; 439481, 2453022; 439473, 2452985; 439464, 2452963; 439414, 2452909; 439390, 2452876; 439355, 2452801; return to starting point.

(B) **Note:** Map 75 follows:

Map 75 Unit 11 - *Cyanea remyi - d*



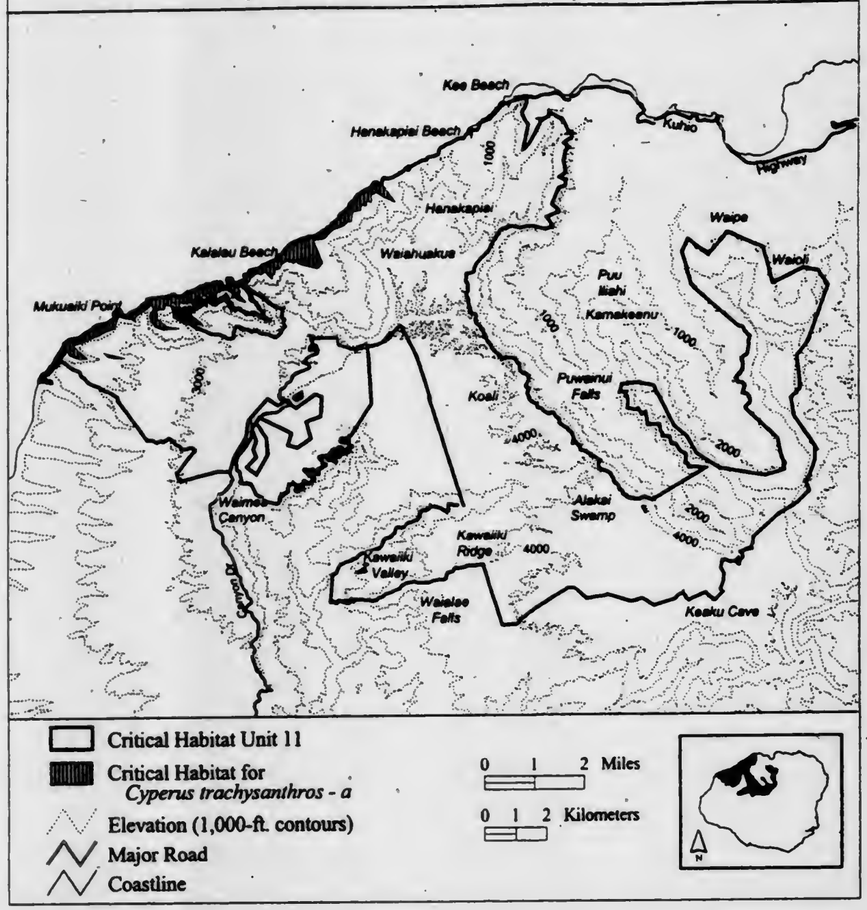
(lxxvi) Kauai 11—*Cyperus trachysanthos*—a (434 ha; 1,071 ac)

(A) Unit consists of the following 243 boundary points: coastline; 436143, 2454005; 435790, 2454155; 435524, 2454345; 435470, 2454260; 435347, 2454246; 435388, 2454013; 435219, 2454036; 435223, 2453904; 435026, 2453931; 435040, 2453758; 434757, 2453703; 434734, 2453379; 434601, 2453383; 434455, 2453232; 434121, 2453118; 433837, 2452844; 433499, 2452785; 433778, 2452049; 433636, 2451866; 433009, 2452049; 432973, 2452150; 432840, 2452050; 432813, 2452159; 432735, 2452082; 432689, 2452182; 432483, 2452063; 432424, 2451917; 432378, 2451881; 432273, 2451876; 432232, 2451707; 432173, 2451699; 432163, 2451570; 431916, 2451812; 431811, 2451702; 431683, 2451766; 431518, 2451629; 431445, 2451593; 431440, 2451515; 431326, 2451415; 431115, 2451323; 430997, 2451374; 431134, 2451200; 431102, 2451054; 431303, 2450848; 431051, 2450912; 430942, 2451017; 430859, 2450994; 430850, 2451168; 430745, 2451186; 430713, 2451255; 430544, 2451223; 430489, 2451269; 430475, 2451150; 430379, 2451209; 430352, 2451045; 430237, 2451109; 430201, 2451040; 430141, 2451068; 430068, 2451200; 429995, 2451049; 429908, 2451100; 429899, 2451013; 429862, 2450990; 429807, 2451031; 429798, 2450944; 429670, 2451086; 429647, 2450908; 429519, 2450985; 429524, 2450839; 429441, 2450876; 429428, 2450775; 429368, 2450839; 429295, 2450803; 429194, 2450889; 429176, 2450832; 429167, 2450752; 429341, 2450469; 429501, 2450314; 429277, 2450419; 429121, 2450684; 429066, 2450711; 429016, 2450803; 428947, 2450867; 428852, 2450725; 428718, 2450784; 428677, 2450629; 428494, 2450620; 428439, 2450574; 428467, 2450286; 428563, 2450254; 428577, 2450181; 428696, 2450131; 428718, 2450058; 429126, 2449985; 428627, 2449953; 428357, 2450071; 428348, 2450154; 428247, 2450209; 428256, 2450282; 428202, 2450373; 428234, 2450515; 428334, 2450643; 428229, 2450807; 428192, 2450711; 428032, 2450579; 427849, 2450474; 427735, 2450364; 427730, 2450273; 427767, 2450222; 427607, 2450314; 427424, 2450332; 427278, 2450382; 427232,

2450464; 427187, 2450350; 427044, 2450030; 426976, 2449971; 426802, 2449921; 426583, 2449806; 426111, 2449624; 426084, 2449592; 425722, 2449473; 425854, 2449326; 426171, 2449034; 425960, 2449029; 425741, 2449098; 425576, 2449176; 425548, 2449331; 425490, 2449258; 425402, 2449098; 425340, 2449032; 425322, 2448983; 425322, 2448984; 425310, 2448993; 425272, 2449039; 425267, 2449033; 425258, 2449022; 425253, 2449013; 425252, 2449003; 425253, 2448996; 425251, 2448992; 425242, 2448981; 425239, 2448972; 425231, 2448956; 425224, 2448934; 425222, 2448911; 425223, 2448900; 425224, 2448891; 425223, 2448883; 425218, 2448877; 425212, 2448878; 425208, 2448876; 425201, 2448872; 425192, 2448867; 425181, 2448859; 425172, 2448853; 425162, 2448844; 425158, 2448833; 425157, 2448818; 425153, 2448809; 425148, 2448807; 425136, 2448801; 425124, 2448795; 425120, 2448790; 425112, 2448785; 425100, 2448774; 425094, 2448768; 425081, 2448757; 425070, 2448745; 425062, 2448734; 425053, 2448723; 425044, 2448711; 425043, 2448695; 425029, 2448684; 425024, 2448675; 425017, 2448667; 425011, 2448659; 424999, 2448650; 424991, 2448642; 424980, 2448628; 424973, 2448615; 424956, 2448592; 424936, 2448587; 424929, 2448581; 424924, 2448574; 424917, 2448569; 424910, 2448561; 424906, 2448551; 424898, 2448552; 424886, 2448554; 424877, 2448554; 424871, 2448552; 424863, 2448548; 424849, 2448543; 424840, 2448538; 424824, 2448534; 424811, 2448524; 424803, 2448521; 424795, 2448511; 424785, 2448498; 424778, 2448484; 424774, 2448461; 424778, 2448445; 424791, 2448421; 424819, 2448402; 424832, 2448389; 424848, 2448376; 424871, 2448368; 424900, 2448356; 424929, 2448346; 424953, 2448337; 424973, 2448335; 424990, 2448333; 424997, 2448333; 425003, 2448327; 425006, 2448318; 425009, 2448308; 425011, 2448298; 425013, 2448289; 425015, 2448280; 425010, 2448272; 424998, 2448277; 424991, 2448284; 424983, 2448288; 424971, 2448291; 424957, 2448291; 424948, 2448290; 424933, 2448287; 424927, 2448284; 424915, 2448289; 424892, 2448299; 424874, 2448301; 424841, 2448311; 424823, 2448330; 424803, 2448337; 424777, 2448336; 424735, 2448339; 424711, 2448334; 424677, 2448333; 424664, 2448328; 424648, 2448323; 424633, 2448323; 424603, 2448328; 435703, 2454582; coastline.

(B) **Note**: Map 76 follows:

Map 76 Unit 11 - *Cyperus trachysanthros - a*

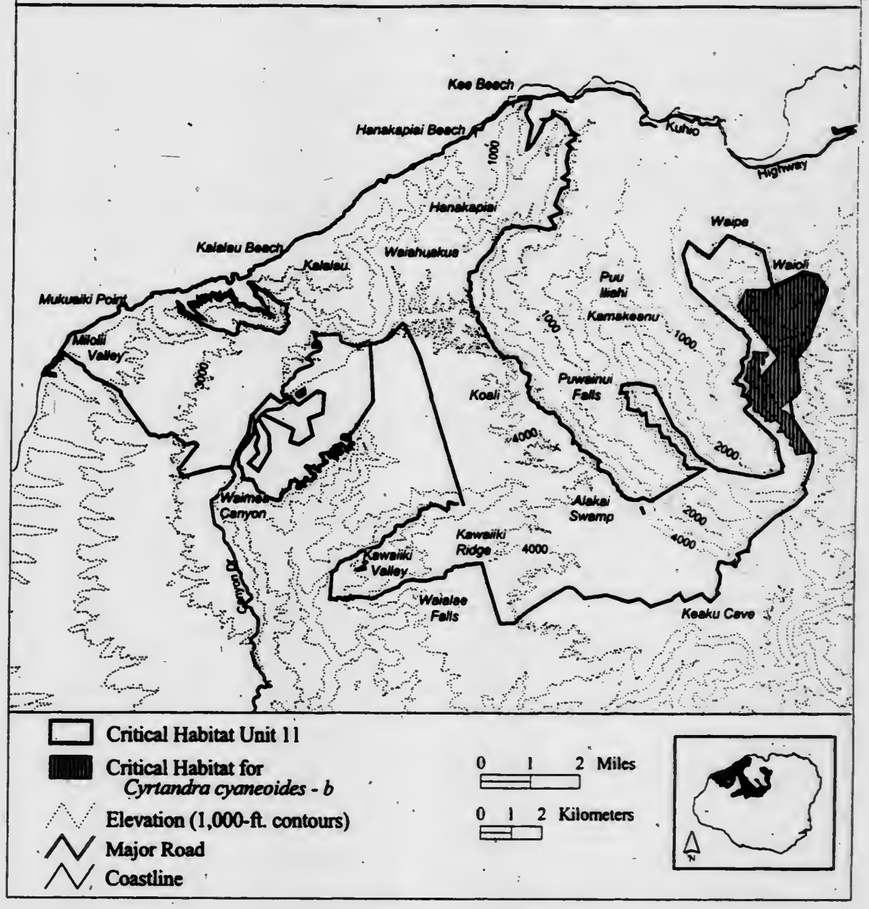


(lxxvii) Kauai 11—*Cyrtandra cyaneoides*—b (848 ha; 2,095 ac)

(A) Unit consists of the following 75 boundary points: Start at 449861, 2451529; 450084, 2451212; 449426, 2449387; 449074, 2448967; 449179, 2447924; 448876, 2447641; 448557, 2447345; 448557, 2447312; 448681, 2447286; 448798, 2447208; 448908, 2447104; 448960, 2446994; 448980, 2446982; 449012, 2446961; 449637, 2446073; 449643, 2446064; 449701, 2445980; 449643, 2445970; 449090, 2445877; 449051, 2445968; 449012, 2446098; 448993, 2446163; 448869, 2446202; 448902, 2446403; 448798, 2446409; 448720, 2446481; 448694, 2446585; 448629, 2446617; 448460, 2446578; 448603, 2446812; 448408, 2446975; 448219, 2446884; 448174, 2446975; 448076, 2446916; 448076, 2447072; 447927, 2447098; 447912, 2447199; 447715, 2447234; 447448, 2447822; 447569, 2447951; 447569, 2448073; 447563, 2448144; 447368, 2448248; 447394, 2448358; 447465, 2448443; 447459, 2448592; 447472, 2448677; 447491, 2448806; 447615, 2448891; 447680, 2449047; 447621, 2449157; 448135, 2449124; 448161, 2449040; 448102, 2449001; 448089, 2448962; 448044, 2448930; 448044, 2448891; 448037, 2448845; 448037, 2448793; 448011, 2448754; 447992, 2448715; 447946, 2448722; 447914, 2448618; 447901, 2448514; 447888, 2448371; 447903, 2448341; 448447, 2448963; 447139, 2450654; 447435, 2451197; 448110, 2451196; 448295, 2451280; 448295, 2451280; 448306, 2451285; 449344, 2451755; 449772, 2451656; return to starting point.

(B) **Note:** Map 77 follows:

Map 77 Unit 11 - *Cyrtandra cyaneoides - b*

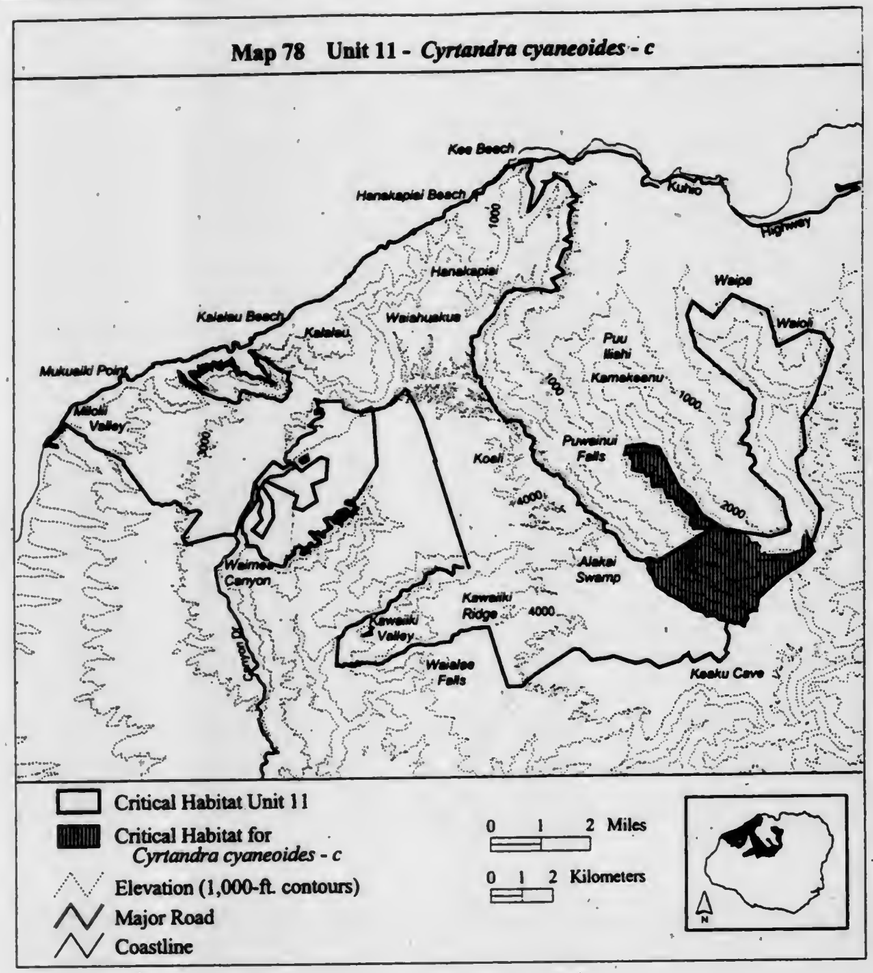


(lxxviii) Kauai 11—*Cyrtandra cyaneoides*—c (1,118 ha; 2,763 ac)

(A) Unit consists of the following 94 boundary points: Start at 449346, 2444938; 449459, 2444635; 449081, 2444273; 448798, 2444099; 448808, 2444095; 448479, 2443895; 448470, 2443888; 448470, 2443889; 448458, 2443882; 447645, 2443146; 447630, 2442948; 447577, 2442842; 447599, 2442773; 447508, 2442781; 447227, 2442660; 447295, 2442584; 447303, 2442515; 447197, 2442356; 447197, 2442303; 447151, 2442303; 447113, 2442348; 447128, 2442447; 447060, 2442386; 446885, 2442379; 446771, 2442439; 446645, 2442430; 446392, 2442475; 446233, 2442597; 445958, 2442590; 445854, 2442727; 445527, 2442820; 445264, 2443031; 445101, 2443109; 444763, 2443280; 444640, 2443388; 444336, 2443592; 444214, 2443918; 444073, 2444237; 443984, 2444419; 444071, 2444486; 444162, 2444498; 444398, 2444392; 446102, 2445409; 445791, 2445455; 445563, 2445432; 445555, 2445554; 445464, 2445569; 445495, 2445850; 445297, 2445979; 445160, 2446184; 445023, 2446199; 444955, 2446412; 444727, 2446435; 444727, 2446518; 444674, 2446572; 444636, 2446799; 444256, 2446777; 444203, 2447187; 444066, 2447118; 443960, 2447308; 443876, 2447248; 443595, 2447316; 443618, 2447460; 443610, 2447688; 443542, 2447696; 443580, 2447840; 443352, 2447817; 443420, 2448068; 444020, 2448144; 444089, 2448098; 444454, 2448029; 445092, 2446769; 445495, 2446450; 445821, 2445880; 446566, 2445401; 446809, 2445363; 446811, 2445362; 447161, 2445302; 447195, 2445249; 447262, 2445171; 447352, 2445171; 447396, 2444981; 447463, 2444948; 447564, 2444981; 447631, 2444981; 447665, 2444858; 447754, 2444858; 447676, 2444668; 447682, 2444602; 448036, 2444548; 448629, 2444567; 449056, 2444698; 449077, 2445069; 449193, 2445350; return to starting point.

(B) **Note:** Map 78 follows:

Map 78 Unit 11 - *Cyrtandra cyaneoides - c*

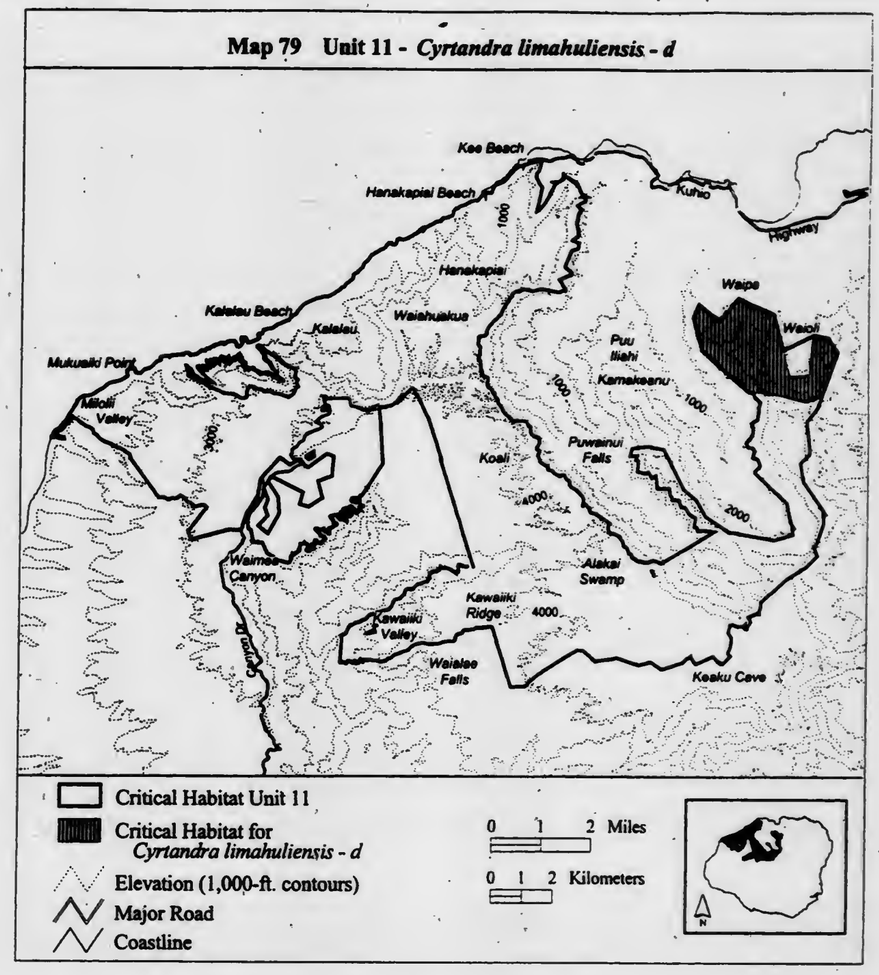


(lxxix) Kauai 11—*Cyrtandra limahuliensis*—d (816 ha; 2,016 ac)

(A) Unit consists of the following 33 boundary points: Start at 448313, 2451213; 448519, 2450440; 448878, 2450478; 449147, 2450506; 449269, 2451755; 449288, 2451766; 449751, 2451666; 449858, 2451521; 450073, 2451227; 449575, 2449805; 449289, 2449638; 449295, 2449676; 449206, 2449638; 449066, 2449578; 448845, 2449631; 448232, 2449780; 447892, 2449847; 447888, 2449814; 447596, 2449889; 447198, 2449897; 445666, 2451248; 445376, 2452300; 445547, 2452722; 446226, 2452194; 446834, 2452923; 446988, 2452850; 447991, 2452420; 448004, 2452370; 448015, 2452365; 448045, 2452217; 448294, 2451285; 448295, 2451280; 448295, 2451280; return to starting point.

(B) **Note:** Map 79 follows:

Map 79 Unit 11 - *Cyrtandra limahuliensis - d*



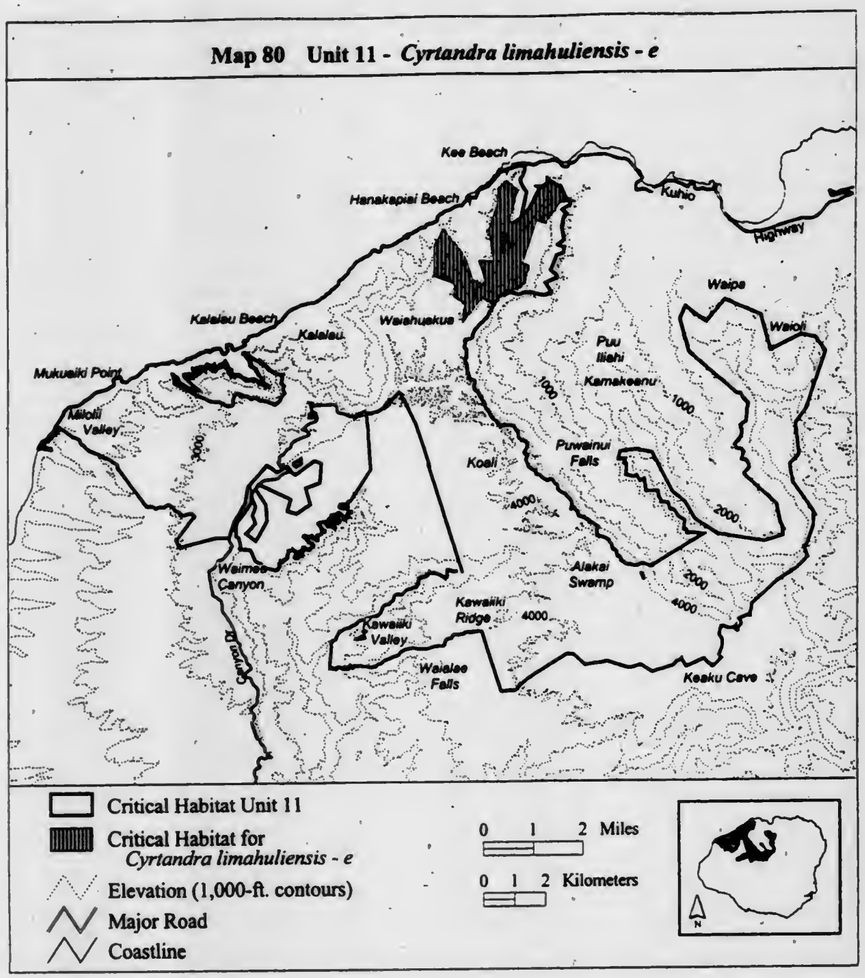
(lxxx) Kauai 11—*Cyrtandra limahuliensis*—e (693 ha; 1,712 ac)

(A) Unit consists of the following 132 boundary points: Start at 439377, 2452849; 439385, 2452892; 439375, 2452895; 439303, 2452917; 439254, 2452860; 439091, 2452982; 438975, 2453018; 438381, 2452259; 438382, 2452266; 438335, 2452205; 438433, 2452860; 438072, 2453090; 438113, 2453336; 438084, 2453513; 437456, 2453744; 437460, 2453870; 437449, 2453877; 437449, 2454762; 437600, 2455005; 437720, 2455261; 437744, 2455234; 437777, 2455286; 437998, 2454941; 438150, 2454766; 438447, 2454337; 438660, 2453669; 438688, 2453607; 439106, 2453412; 439045, 2453751; 438876, 2454238; 438959, 2454233; 438958, 2454237; 439001, 2454230; 439352, 2454206; 439352, 2454221; 439352, 2454326; 439206, 2455228; 439438, 2455920; 439489, 2456098; 439516, 2456564; 439685, 2456695; 439735, 2456777; 439762, 2456755; 439800, 2456784; 439811, 2456793; 440139, 2456498; 440126, 2456452; 440131, 2456448; 440083, 2456303; 439860, 2455537; 439966, 2455458; 440428, 2455755; 440674, 2456209; 440829, 2456531; 441205, 2456774; 441566, 2456551; 441751, 2456130; 441694, 2456118; 441663, 2456114; 441635, 2456115; 441546, 2456104; 441531, 2456098; 441511, 2456077; 441498, 2456050; 441482, 2456033; 441462, 2456017; 441414, 2455967; 441393, 2455942; 441365, 2455913; 441354, 2455880; 441351, 2455829; 441342, 2455800; 441333, 2455787; 441292, 2455760; 441264, 2455739; 441233, 2455700; 441199, 2455663; 441185, 2455633; 441176, 2455603; 441164, 2455584; 441148, 2455564; 441094, 2455523; 441060, 2455488; 441059, 2455449; 441071, 2455421; 441074, 2455406; 441073, 2455402; 440747, 2455513; 440294, 2454127; 440499, 2454060; 440485, 2453995; 440492, 2453950; 440484, 2453922; 440461, 2453865; 440450, 2453851; 440432, 2453815; 440421, 2453780; 440412, 2453745; 440410, 2453716; 440404, 2453694; 440384, 2453655; 440378, 2453623; 440380, 2453590; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350,

2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; 440244, 2453334; 440223, 2453322; 440199, 2453305; 440147, 2453289; 440119, 2453282; 440093, 2453280; 439987, 2453284; 439962, 2453283; 439924, 2453275; 439905, 2453264; 439787, 2453162; 439724, 2453135; 439639, 2453119; 439600, 2453107; 439553, 2453082; 439503, 2453046; 439481, 2453022; 439473, 2452985; 439464, 2452963; 439414, 2452909; 439390, 2452876; return to starting point.

(B) **Note:** Map 80 follows:

Map 80 Unit 11 - *Cyrtandra limahuliensis - e*

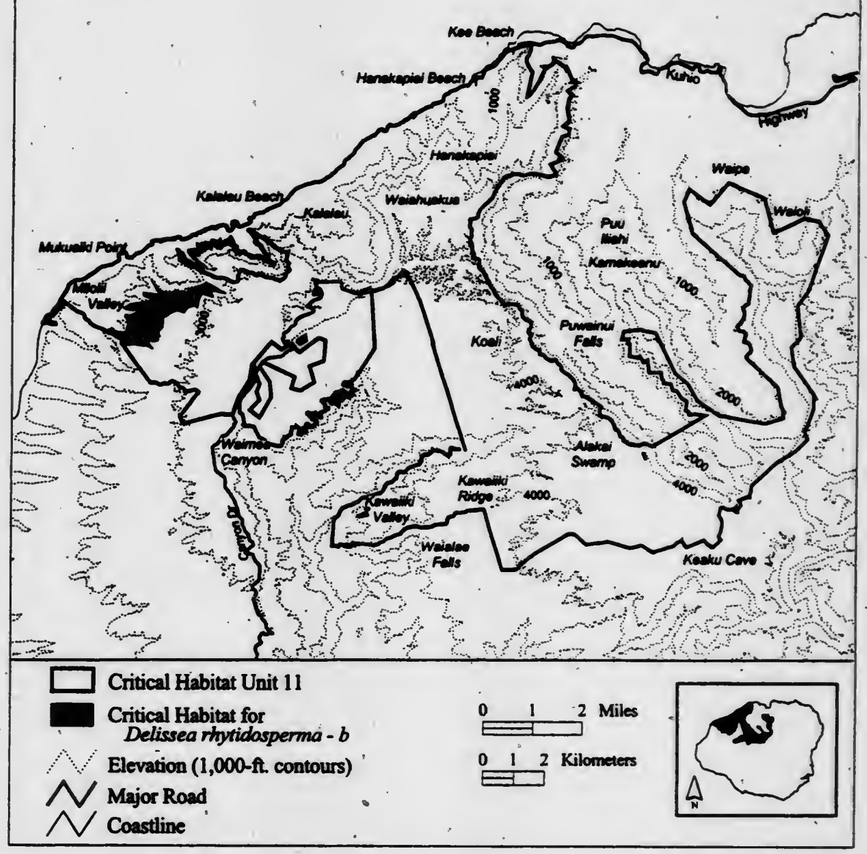


(lxxxi) Kauai 11—*Delissea rhytidosperma*—b (258 ha; 638 ac)

(A) Unit consists of the following 68 boundary points: Start at 427512, 2447661; 427401, 2447626; 427168, 2447697; 427158, 2447803; 427006, 2447889; 426818, 2448021; 426691, 2448046; 426610, 2448067; 426798, 2448132; 426899, 2448153; 426955, 2448021; 427229, 2448036; 427289, 2448036; 427386, 2448046; 427325, 2448122; 427325, 2448229; 427355, 2448249; 427355, 2448360; 427300, 2448487; 427259, 2448528; 427269, 2448599; 427446, 2448578; 427558, 2448644; 427624, 2448639; 427634, 2448766; 427502, 2448766; 427208, 2448806; 427418, 2448938; 427406, 2448942; 428005, 2449021; 428147, 2449092; 427847, 2449218; 427847, 2449312; 428375, 2449234; 428131, 2449675; 428399, 2449328; 428880, 2449265; 428888, 2449352; 429187, 2449281; 429353, 2449407; 429952, 2449596; 430487, 2449296; 429983, 2449391; 430109, 2449178; 429723, 2449281; 429636, 2449029; 429597, 2448816; 429534, 2448918; 429282, 2448824; 429179, 2448666; 428958, 2448753; 428730, 2448635; 428596, 2448556; 428509, 2448525; 428496, 2448530; 428491, 2448254; 428475, 2448168; 428338, 2448036; 428389, 2447899; 428298, 2447925; 428338, 2447788; 428237, 2447742; 428115, 2447757; 427948, 2447828; 428060, 2447646; 428161, 2447535; 427999, 2447606; 427867, 2447600; return to starting point.

(B) **Note:** Map 81 follows:

Map 81 Unit 11 - *Delissea rhytidosperma - b*

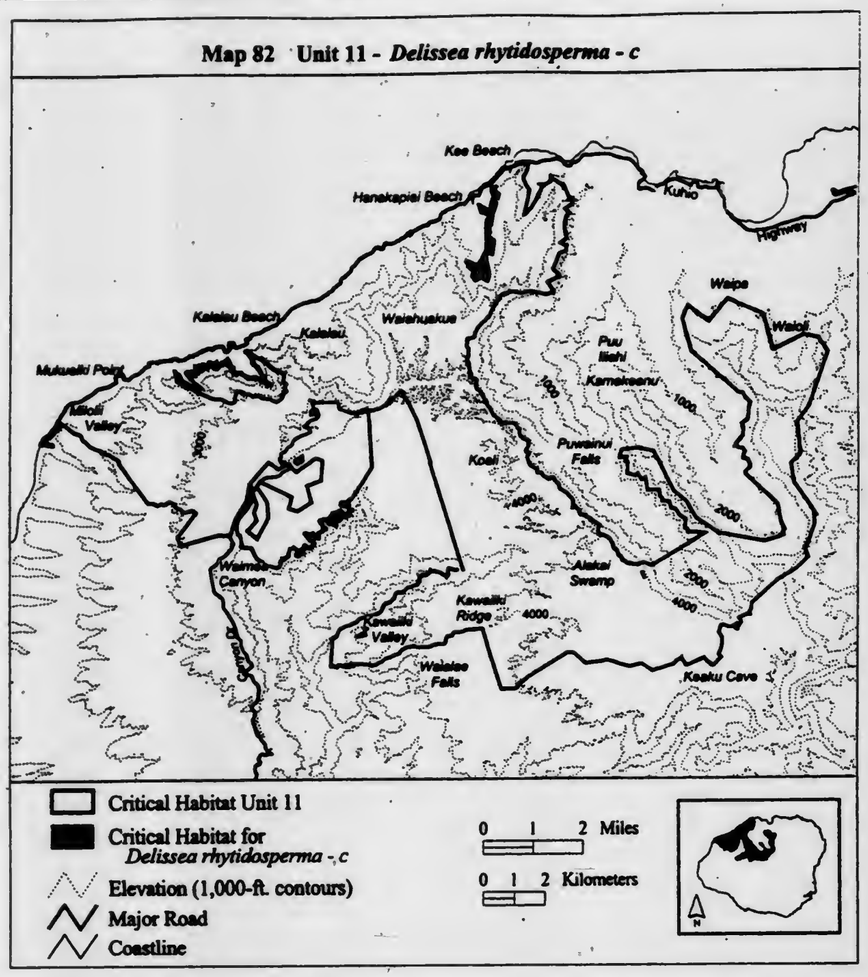


(lxxxii) Kauai 11—*Delissea rhytidosperma*—c (103 ha; 254 ac)

(A) Unit consists of the following 39 boundary points: Start at 438364, 2454097; 438437, 2454207; 438755, 2454060; 439018, 2454506; 439006, 2454940; 438994, 2455239; 439012, 2455501; 439122, 2455605; 438829, 2455709; 438743, 2456014; 438786, 2456026; 439085, 2455849; 439128, 2455935; 439177, 2456124; 439244, 2456234; 439165, 2456393; 439165, 2456515; 439361, 2456606; 439367, 2456521; 439336, 2456441; 439489, 2456325; 439275, 2455605; 439238, 2455397; 439159, 2455226; 439208, 2455062; 439153, 2454964; 439336, 2454829; 439275, 2454329; 439092, 2454390; 439067, 2454286; 439073, 2454201; 439189, 2453737; 439104, 2453474; 438878, 2453590; 438676, 2453486; 438560, 2453682; 438596, 2453822; 438413, 2453981; 438468, 2454054; return to starting point.

(B) **Note:** Map 82 follows:

Map 82 Unit 11 - *Delissea rhytidosperma - c*

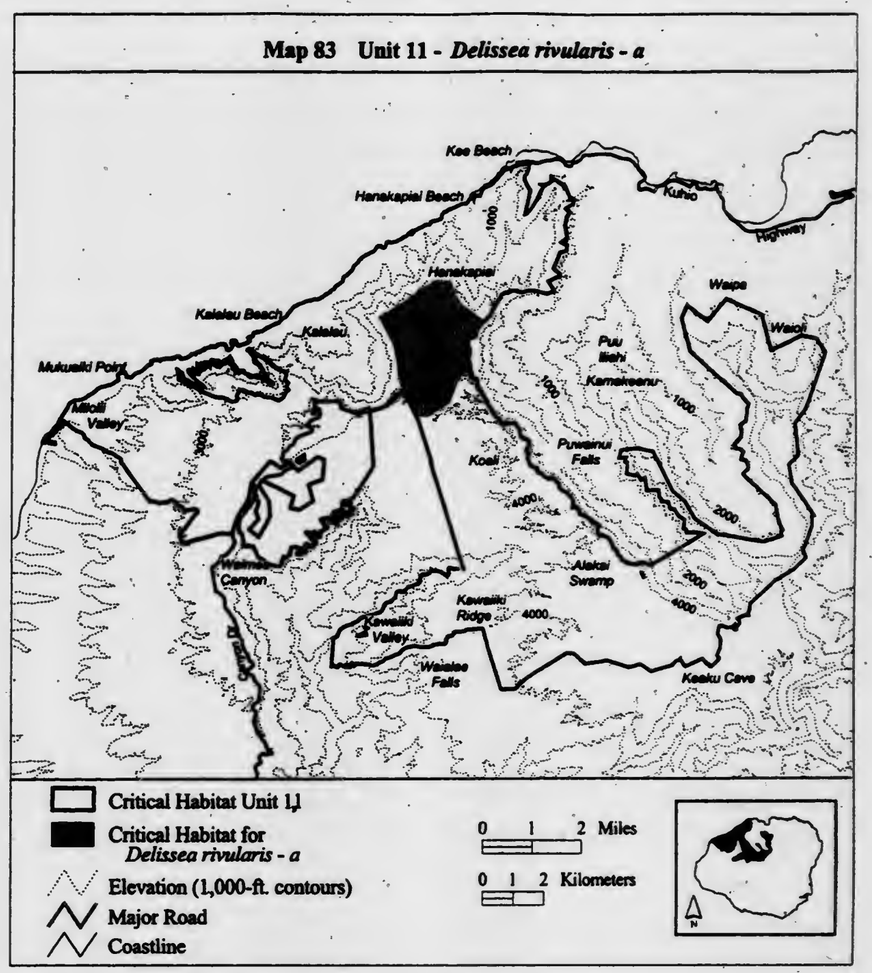


(lxxxiii) Kauai 11—*Delissea rivularis*—a (850 ha; 2,100 ac)

(A) Unit consists of the following 31 boundary points: Start at 438480, 2450624; 438190, 2450564; 438025, 2450154; 437804, 2449609; 437124, 2449170; 436726, 2449208; 436361, 2450013; 436328, 2450087; 436322, 2450079; 436197, 2450481; 436114, 2451018; 436027, 2451473; 435769, 2451955; 435533, 2452339; 435549, 2452356; 435856, 2452536; 436367, 2452827; 436965, 2453265; 437639, 2453676; 437771, 2453681; 437810, 2453604; 437963, 2453122; 438210, 2452738; 438819, 2452300; 438913, 2452214; 438478, 2451772; 438422, 2451715; 438390, 2451682; 438377, 2451065; 438401, 2450962; 438479, 2450630; return to starting point.

(B) **Note:** Map 83 follows:

Map 83 Unit 11 - *Delissea rivularis - a*

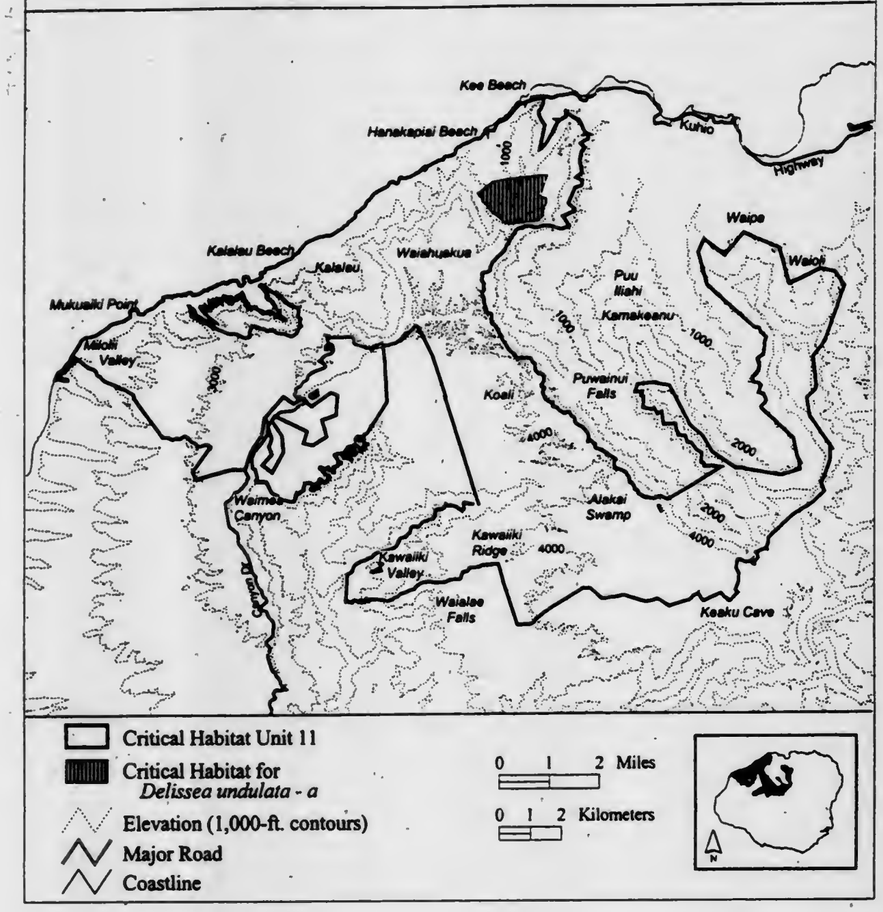


(lxxxiv) Kauai 11—*Delissea undulata*—a (257 ha; 635 ac)

(A) Unit consists of the following 35 boundary points: Start at 440245, 2453335; 439623, 2453274; 439296, 2453242; 439152, 2453286; 438673, 2453669; 438255, 2454243; 438351, 2454304; 438747, 2454599; 439309, 2454708; 439737, 2454756; 440202, 2454807; 440517, 2454810; 440294, 2454127; 440499, 2454060; 440485, 2453995; 440492, 2453950; 440484, 2453922; 440461, 2453865; 440450, 2453851; 440432, 2453815; 440421, 2453780; 440412, 2453745; 440410, 2453716; 440404, 2453694; 440384, 2453655; 440378, 2453623; 440380, 2453590; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350, 2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; return to starting point.

(B) **Note:** Map 84 follows:

Map 84 Unit 11 - *Delissea undulata - a*

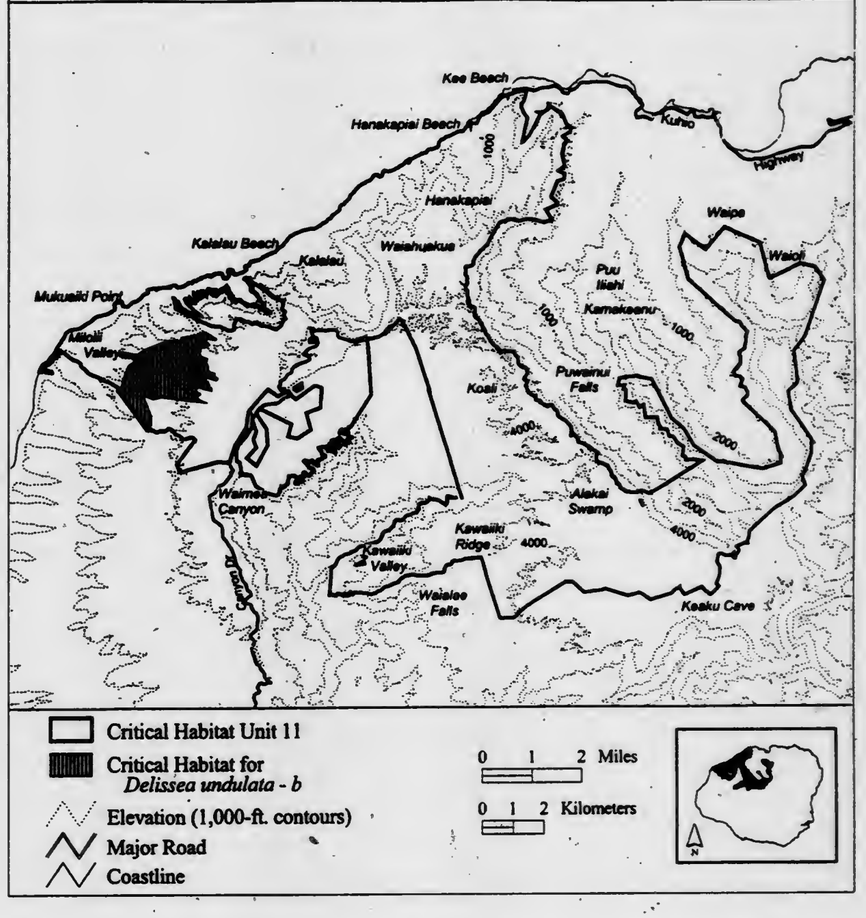


(lxxxv) Kauai 11—*Delissea undulata*—b (532 ha; 1,314 ac)

(A) Unit consists of the following 90 boundary points: Start at 428237, 2446901; 428241, 2446462; 428116, 2446474; 428047, 2446484; 427205, 2447633; 427225, 2447691; 427222, 2447694; 427270, 2447855; 427313, 2448038; 427392, 2448290; 427457, 2448429; 427496, 2448503; 427596, 2448586; 427679, 2448656; 427688, 2448708; 427671, 2448747; 427596, 2448756; 427401, 2448799; 427039, 2448843; 426991, 2448882; 426969, 2448912; 426987, 2448952; 427057, 2449030; 427122, 2449004; 427666, 2448886; 427814, 2448886; 427954, 2448999; 428083, 2449050; 428079, 2449052; 428687, 2449290; 428949, 2449350; 429218, 2449266; 429218, 2449403; 429731, 2449517; 429987, 2449618; 430333, 2449379; 430316, 2449326; 430059, 2449379; 429970, 2449362; 430029, 2449298; 430122, 2449180; 429949, 2449083; 429883, 2449088; 429820, 2449047; 429848, 2448974; 429795, 2448931; 429797, 2448840; 429892, 2448775; 429896, 2448772; 430004, 2448754; 430046, 2448712; 430016, 2448610; 430076, 2448477; 430058, 2448363; 430137, 2448297; 430251, 2448279; 430299, 2448243; 430287, 2448141; 430377, 2448105; 430383, 2448063; 430347, 2448021; 430191, 2448063; 430076, 2448105; 429998, 2448093; 429974, 2448039; 430064, 2448003; 430076, 2447949; 430203, 2447726; 430179, 2447678; 429758, 2447786; 429662, 2447744; 429692, 2447648; 429818, 2447594; 429824, 2447540; 429740, 2447522; 429722, 2447504; 429770, 2447396; 429860, 2447366; 430010, 2447294; 429000, 2447414; 428586, 2447474; 428465, 2447432; 428291, 2447414; 428039, 2447510; 427984, 2447510; 427984, 2447511; 427980, 2447502; 427934, 2447525; 427983, 2447490; 428217, 2446900; return to starting point.

(B) **Note:** Map 85 follows:

Map 85 Unit 11 - *Delissea undulata - b*

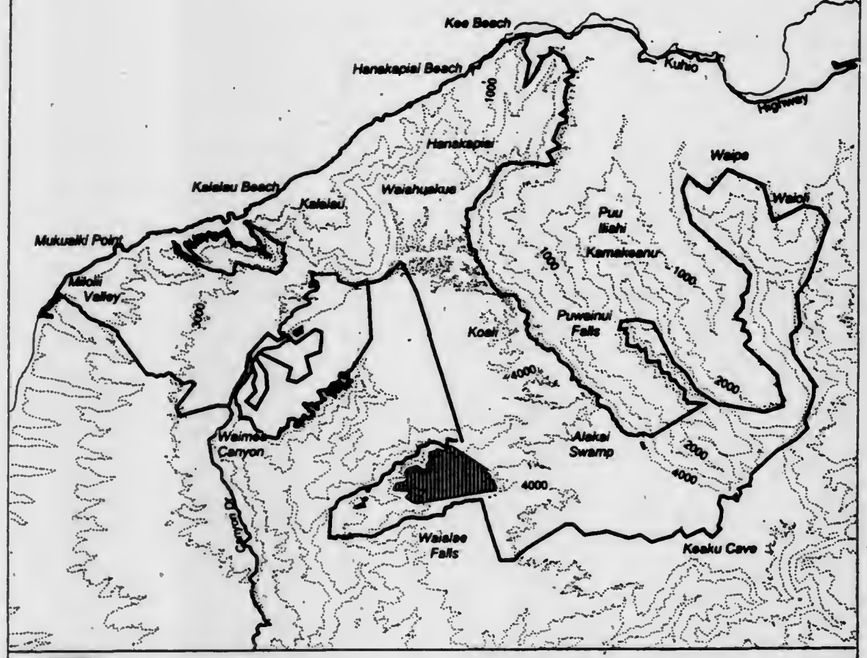


(lxxxvi) Kauai 11—*Diellia erecta*—a (364 ha; 901 ac)

(A) Unit consists of the following 30 boundary points: Start at 437962, 2444106; 439160, 2443328; 439020, 2443250; 439191, 2443203; 439238, 2443125; 439168, 2443024; 439316, 2443017; 439440, 2442729; 439378, 2442635; 436857, 2442223; 436732, 2442270; 436483, 2442441; 436654, 2442636; 436102, 2442659; 436086, 2442721; 436188, 2442916; 436452, 2442939; 436553, 2443095; 436444, 2443235; 436522, 2443367; 436857, 2443468; 437067, 2443336; 437176, 2443359; 437160, 2443499; 437246, 2443585; 437246, 2443733; 437246, 2443888; 437479, 2443943; 437487, 2444013; 437760, 2443935; return to starting point.

(B) **Note:** Map 86 follows:

Map 86 Unit 11 - *Diellia erecta - a*



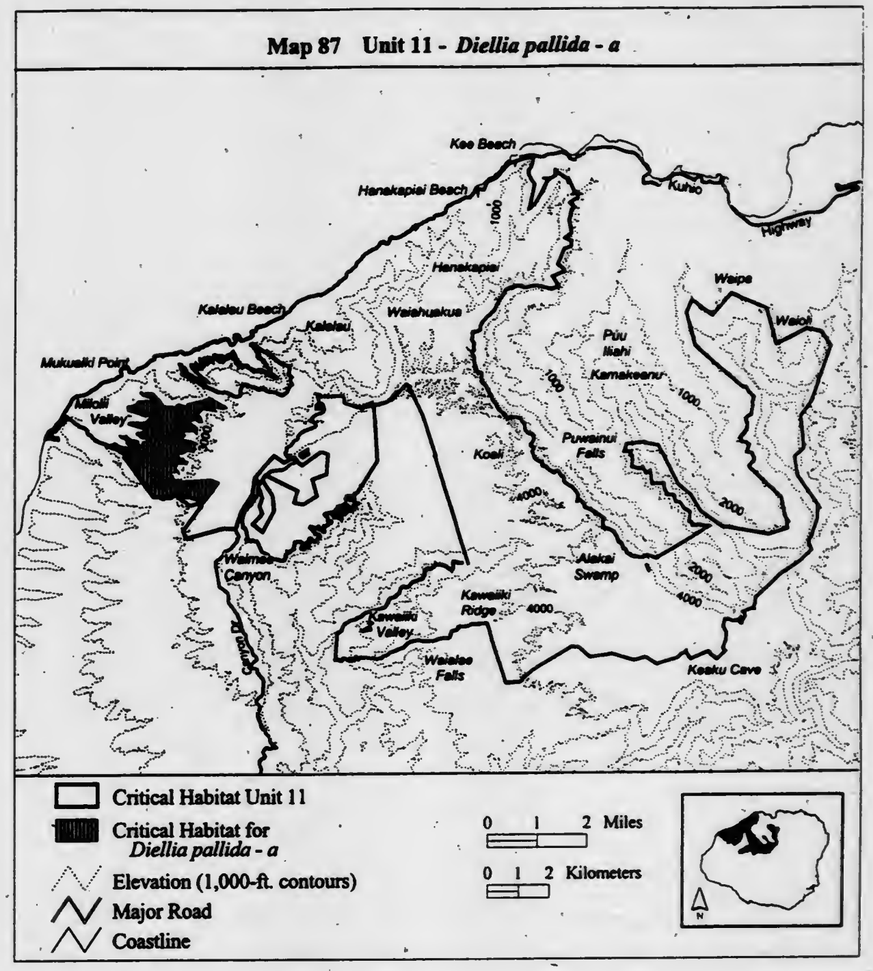
(lxxxvii) Kauai 11—*Diellia pallida*—a (601 ha; 1,485 ac)

(A) Unit consists of the following 181 boundary points: Start at 426612, 2448093; 426664, 2448093; 426740, 2448131; 426778, 2448146; 426847, 2448184; 426900, 2448169; 426968, 2448086; 427044, 2448078; 427082, 2448063; 427143, 2448040; 427196, 2448048; 427280, 2448010; 427341, 2448010; 427402, 2448025; 427402, 2448040; 427303, 2448093; 427219, 2448169; 427227, 2448222; 427196, 2448314; 427136, 2448314; 427037, 2448359; 426999, 2448420; 427067, 2448390; 427120, 2448390; 427219, 2448405; 427288, 2448352; 427348, 2448298; 427394, 2448291; 427463, 2448268; 427599, 2448238; 427615, 2448154; 427653, 2448101; 427698, 2448048; 427729, 2448040; 427744, 2448055; 427721, 2448108; 427713, 2448146; 427774, 2448222; 427827, 2448215; 427881, 2448200; 427919, 2448200; 427852, 2448318; 427706, 2448338; 427555, 2448483; 427878, 2448586; 427308, 2448763; 427308, 2448817; 427841, 2448838; 428023, 2449021; 427927, 2449075; 427846, 2449021; 427287, 2449220; 427243, 2449338; 427421, 2449381; 427604, 2449467; 427572, 2449510; 427905, 2449553; 428050, 2449424; 427970, 2449634; 427749, 2449709; 427706, 2449768; 427841, 2449784; 428077, 2449779; 428249, 2449634; 428352, 2449494; 428448, 2449360; 428868, 2449317; 428836, 2449381; 428932, 2449419; 429158, 2449338; 429196, 2449430; 429702, 2449537; 429922, 2449601; 429955, 2449612; 430471, 2449300; 430347, 2449252; 430067, 2449311; 430030, 2449397; 429955, 2449392; 430143, 2449177; 429739, 2449258; 429729, 2449301; 429508, 2449075; 429605, 2449037; 429675, 2448822; 429562, 2448817; 429465, 2448924; 429239, 2448849; 429508, 2448650; 429492, 2448446; 429406, 2448553; 429045, 2448542; 429126, 2448408; 429019, 2448317; 428868, 2448344; 428916, 2448236; 429013, 2448295; 429379, 2448214; 429675, 2448059; 429417, 2447935; 429411, 2447843; 429234, 2447908; 429226, 2447910; 429150, 2447895; 429112, 2447865; 429105, 2447827; 429014,

2447812; 428899, 2447797; 428884, 2447766; 428922, 2447721; 428945, 2447675; 428983, 2447645; 429021, 2447645; 429044, 2447683; 429067, 2447652; 429097, 2447607; 429120, 2447569; 429173, 2447538; 429242, 2447553; 429166, 2447447; 429105, 2447500; 428983, 2447470; 428960, 2447493; 428854, 2447477; 428709, 2447417; 428793, 2447417; 428869, 2447401; 428793, 2447371; 428808, 2447310; 428869, 2447295; 428915, 2447181; 428854, 2447234; 428778, 2447204; 428694, 2447204; 428641, 2447173; 428737, 2447103; 428743, 2447006; 428931, 2446939; 429484, 2446970; 429961, 2446989; 430253, 2446887; 430028, 2446579; 429664, 2446148; 429580, 2446182; 429485, 2446305; 429263, 2446389; 429094, 2446389; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428655, 2446474; 428602, 2446447; 428476, 2446463; 428396, 2446447; 428285, 2446458; 428116, 2446474; 428047, 2446484; 427185, 2447661; 427161, 2447669; 427157, 2447676; 427157, 2447711; 427175, 2447754; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427124, 2447837; 427084, 2447847; 427039, 2447867; 426997, 2447892; 426981, 2447902; 426958, 2447923; 426944, 2447941; 426907, 2447965; 426847, 2447992; 426819, 2447998; 426798, 2448010; 426758, 2448005; 426737, 2448009; 426722, 2448015; 426613, 2448093; return to starting point.

(B) **Note:** Map 87 follows:

Map 87 Unit 11 - *Diellia pallida - a*



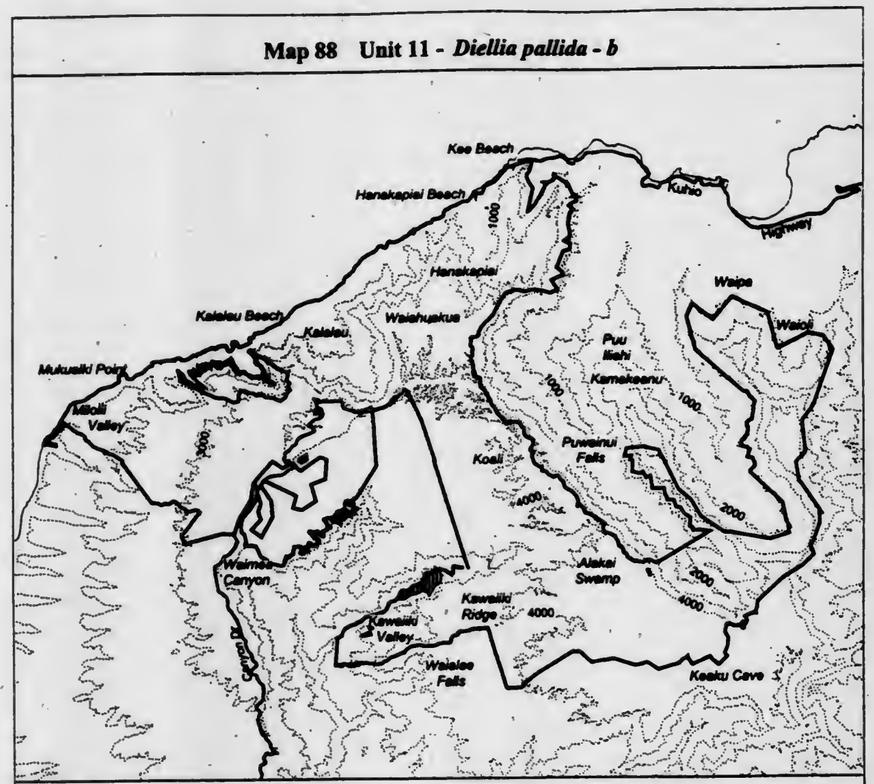
(lxxxviii) Kauai 11—*Diellia pallida*—b (55 ha; 136 ac)

(A) Unit consists of the following 120 boundary points: Start at 437314, 2444224; 437517, 2444006; 437424, 2443802; 437257, 2443672; 437121, 2443437; 437053, 2443332; 436979, 2443480; 436849, 2443518; 436688, 2443443; 436465, 2443375; 436280, 2443264; 435945, 2443237; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993,

2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436910, 2443981; 436979, 2444055; 437013, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; return to starting point.

(B) **Note:** Map 88 follows:

Map 88 Unit 11 - *Diellia pallida - b*

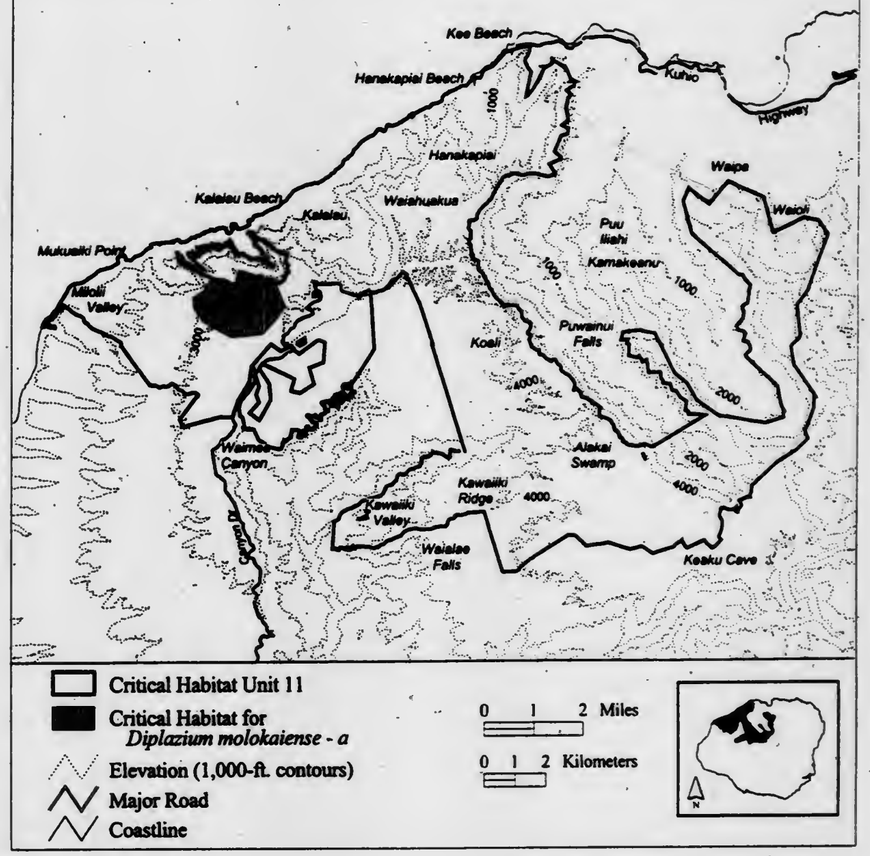


(lxxxix) Kauai 11—*Diplazium molokaiense*—a (430 ha; 1,062 ac)

(A) Unit consists of the following 48 boundary points: Start at 429805, 2448471; 429520, 2448889; 429479, 2449236; 429836, 2449450; 430021, 2449760; 430088, 2449848; 430172, 2449815; 430207, 2449804; 430261, 2449795; 430317, 2449781; 430340, 2449778; 430365, 2449787; 430392, 2449798; 430408, 2449802; 430410, 2449802; 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238, 2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431657, 2449890; 431699, 2449876; 431765, 2449810; 431864, 2449801; 431981, 2449792; 432047, 2449787; 432113, 2449740; 432456, 2448919; 432171, 2448512; 431732, 2448053; 430713, 2447962; return to starting point.

(B) **Note:** Map 89 follows:

Map 89 Unit 11 - *Diplazium molokaiense - a*

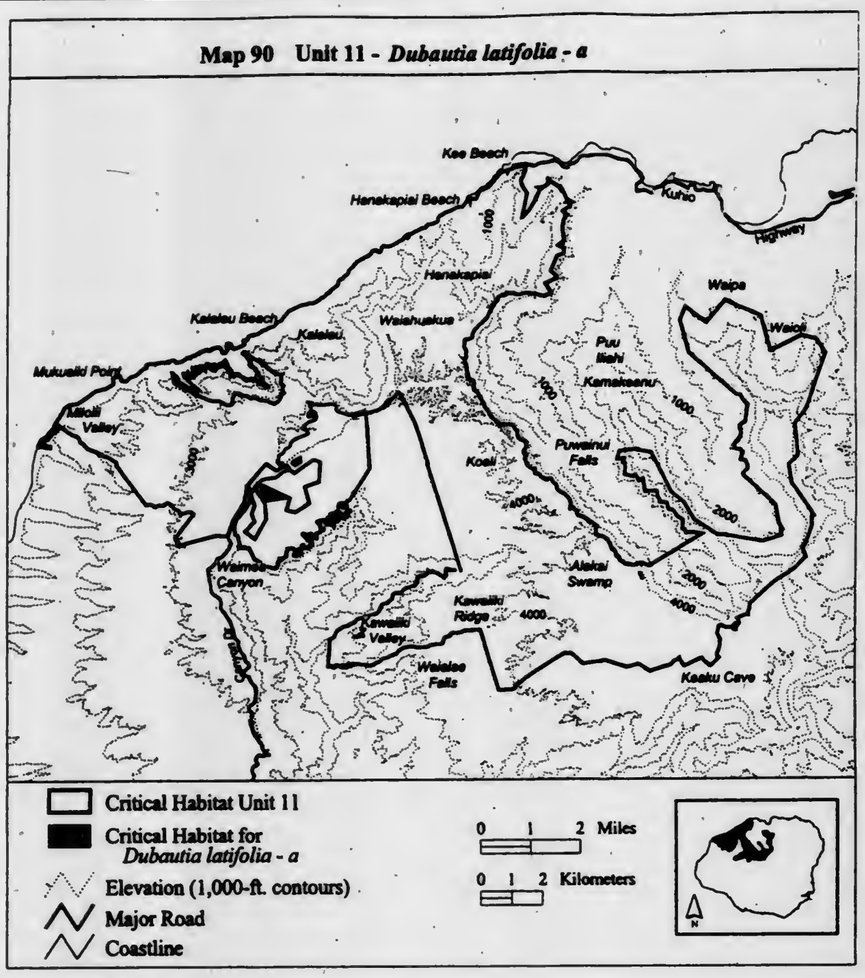


(xc) Kauai 11—*Dubautia latifolia*—a (31 ha; 76 ac)

(A) Unit consists of the following 6 boundary points: Start at 432758, 2446605; 432729, 2446601; 431947, 2446508; 431624, 2446959; 431732, 2447115; 432759, 2446609; return to starting point.

(B) **Note:** Map 90 follows:

Map 90 Unit 11 - *Dubautia latifolia - a*



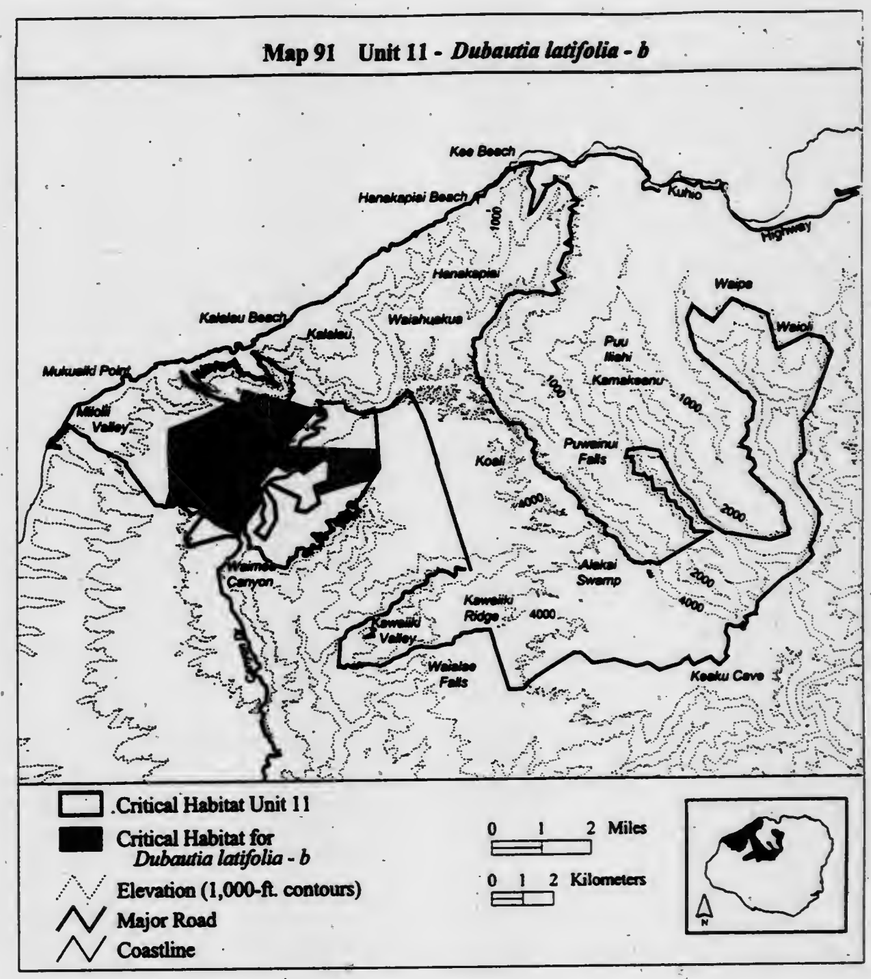
(xci) Kauai 11—*Dubautia latifolia*—b (1,522 ha; 3,761 ac)

(A) Unit consists of the following 95 boundary points: Start at 431300, 2446537; 431298, 2446522; 431294, 2446516; 430955, 2445963; 430827, 2445619; 430800, 2445534; 430575, 2445540; 430038, 2445808; 429654, 2446125; 429591, 2446167; 429485, 2446305; 429263, 2446389; 429094, 2446389; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428655, 2446474; 428602, 2446447; 428476, 2446463; 428438, 2446456; 428548, 2446851; 428540, 2447350; 428511, 2448118; 428533, 2448848; 429226, 2449093; 429778, 2449324; 430158, 2449533; 430352, 2449651; 430348, 2449666; 430376, 2449750; 430384, 2449766; 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238, 2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431657, 2449890; 431699, 2449876; 431765, 2449810; 431864, 2449801; 431981, 2449792; 432047, 2449787; 432113, 2449740; 432217, 2449712; 432259, 2449679; 432344, 2449744; 432716, 2449615; 432716, 2449616; 432975, 2449532; 433094, 2449480; 433347, 2449509; 433235, 2449316; 432751, 2448757; 432364, 2448281; 432337, 2448239; 433100, 2448204; 433370, 2448192; 434350, 2448157; 435242, 2448139; 435320, 2448130; 435360, 2447538; 435147, 2447216; 435091, 2447171; 434274, 2446962; 433872, 2446863; 433405, 2446700; 433330, 2446689; 433257, 2446958; 433706, 2447138; 433746, 2447766; 433527, 2447856; 432918, 2447407; 432609, 2447647; 432320, 2447497; 432136, 2447629; 432001, 2447726; 431369, 2447027; return to starting point.

(B) Excluding 1 area bounded by the following 4 points (3 ha, 8 ac): Start at 433109, 2447775; 432932, 2447668; 432827, 2447751; 433094, 2447922; return to starting point.

(C) **Note:** Map 91 follows:

Map 91 Unit 11 - *Dubautia latifolia - b*



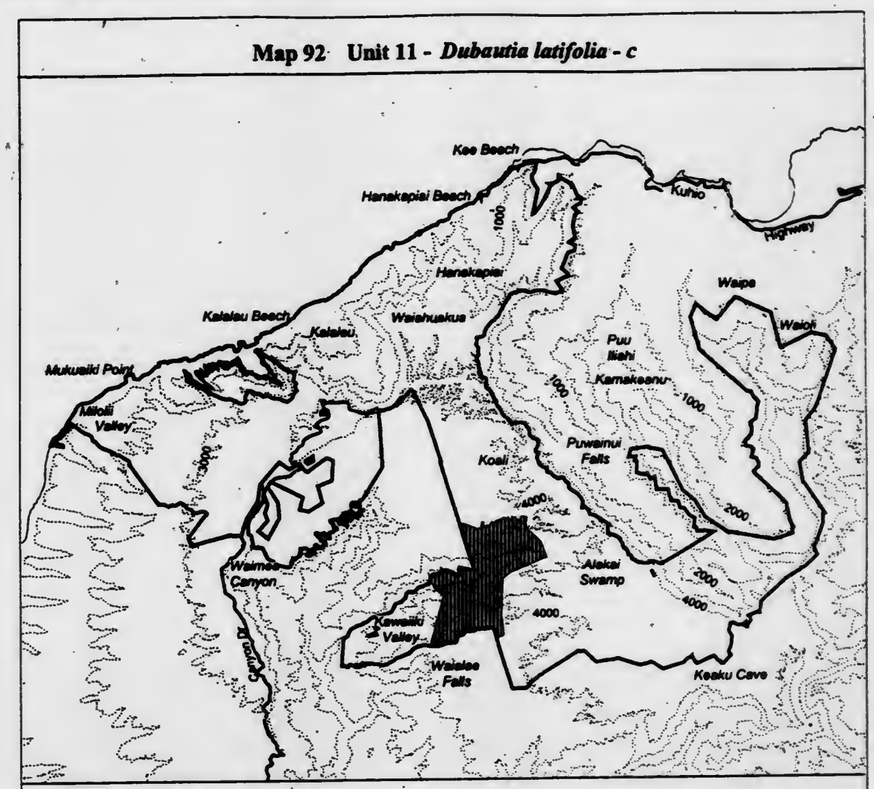
(xcii) Kauai 11—*Dubautia latifolia*—c (809 ha; 1,999 ac)

(A) Unit consists of the following 263 boundary points: Start at 436896, 2441784; 437321, 2443428; 437328, 2443431; 437033, 2443650; 436902, 2443906; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843,

2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 437851, 2445719; 438006, 2445710; 438168, 2445654; 438335, 2445593; 438342, 2445599; 438397, 2445569; 438522, 2445580; 438541, 2445610; 438552, 2445665; 438574, 2445746; 438592, 2445779; 438625, 2445761; 438633, 2445658; 438633, 2445614; 438647, 2445614; 438695, 2445639; 438721, 2445676; 438740, 2445676; 438758, 2445628; 438802, 2445647; 438839, 2445698; 438872, 2445765; 438905, 2445783; 438928, 2445776; 438931, 2445765; 438942, 2445724; 438961, 2445728; 438983, 2445765; 439020, 2445798; 439112, 2445842; 439215, 2445864; 439234, 2445879; 439274, 2445915; 439289, 2445949; 439300, 2445934; 439333, 2445879; 439363, 2445875; 439403, 2445904; 439422, 2445938; 439440, 2445934; 439436, 2445897; 439444, 2445864; 439492, 2445853; 439539, 2445871; 439539, 2445974; 439580, 2445934; 439680, 2445941; 439661, 2445860; 439694, 2445831; 439739, 2445860; 439772, 2445827; 439820, 2445842; 439838, 2445897; 439856, 2445963; 439904, 2445960; 440033, 2445941; 440026, 2445595; 440472, 2445178; 440708, 2444629; 440605, 2444611; 440155, 2444412; 439514, 2444151; 439264, 2443956; 439218, 2442724; 439294, 2442160; 439259, 2442078; 439037, 2442031; 438934, 2442351; 438866, 2442347; 438838, 2442340; 438821, 2442339; 438757, 2442331; 438721, 2442329; 438704, 2442326; 438694, 2442327; 438679, 2442324; 438656, 2442321; 438626, 2442315; 438609, 2442314; 438561, 2442316; 438535, 2442314; 438523, 2442310; 438517, 2442310; 438496, 2442310; 438460, 2442320; 438453, 2442321; 438436, 2442321; 438433, 2442319; 438418, 2442311; 438392, 2442294; 438376, 2442278; 438355, 2442265; 438305, 2442256; 438254, 2442248; 438238, 2442248; 438219, 2442244; 438157, 2442234; 438130, 2442234; 438114, 2442232; 438098, 2442237; 438065, 2442246; 438049, 2442246; 438030, 2442243; 438012, 2442229; 438000, 2442216; 437998, 2442205; 437996, 2442188; 437984, 2442167; 437973, 2442147; 437954, 2442136; 437939, 2442128; 437926, 2442125; 437912, 2442123; 437873, 2442121; 437839, 2442110; 437826, 2442106; 437806, 2442092; 437791, 2442074; 437777, 2442052; 437766, 2442017; 437758, 2441998; 437754, 2441991; 437751, 2441981; 437745, 2441950; 437740, 2441938; 437736, 2441928; 437717, 2441899; 437711, 2441887; 437705, 2441878; 437689, 2441877; 437674, 2441875; 437647, 2441866; 437635, 2441866; 437617, 2441866; 437602, 2441867; 437566, 2441876; 437532, 2441880; 437522, 2441879; 437495, 2441869; 437460, 2441862; 437391, 2441858; 437366, 2441852; 437346, 2441845; 437332, 2441842; 437317, 2441835; 437287, 2441816; 437274, 2441809; 437240, 2441796; 437224, 2441791; 437181, 2441781; 437150, 2441777; 437111, 2441777; 437096, 2441779; 437062, 2441776; 437008, 2441775; 436960, 2441776; 436912, 2441780; return to starting point.

(B) **Note:** Map 92 follows:

Map 92 Unit 11 - *Dubautia latifolia* - c

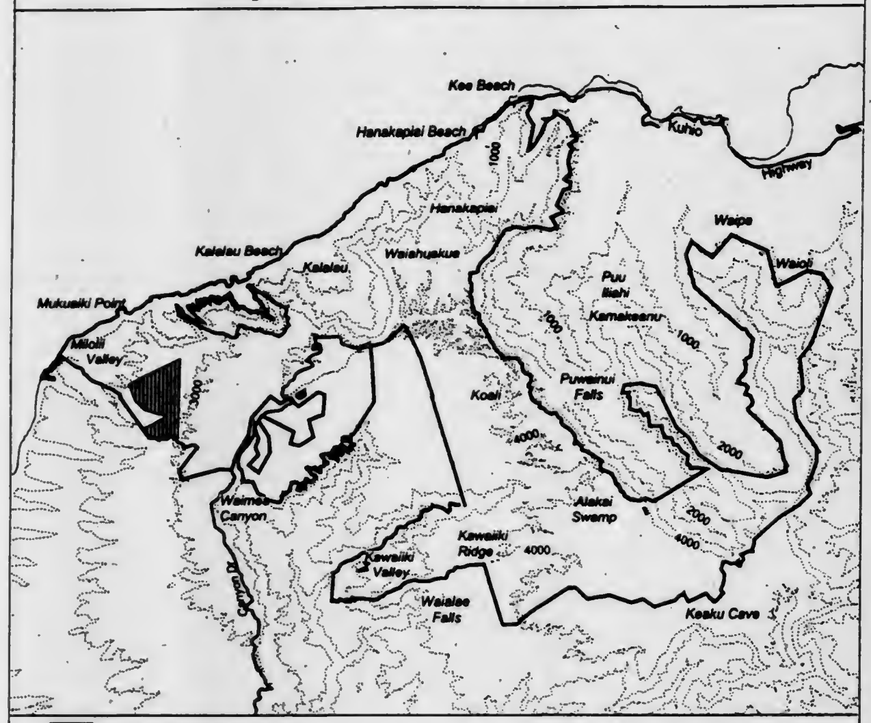


(xciii) Kauai 11—*Euphorbia haeleeleana*—a (263 ha; 649 ac)

(A) Unit consists of the following 23 boundary points: Start at 429092, 2448965; 429045, 2446580; 429011, 2446411; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428655, 2446474; 428602, 2446447; 428476, 2446463; 428396, 2446447; 428285, 2446458; 428116, 2446474; 428047, 2446484; 427870, 2446726; 428195, 2446854; 428654, 2447111; 428405, 2447158; 427917, 2447317; 427606, 2447620; 427403, 2448126; 427935, 2448397; 428502, 2448676; return to starting point.

(B) **Note:** Map 93 follows:

Map 93 Unit 11 - *Euphorbia haeleeleana - a*

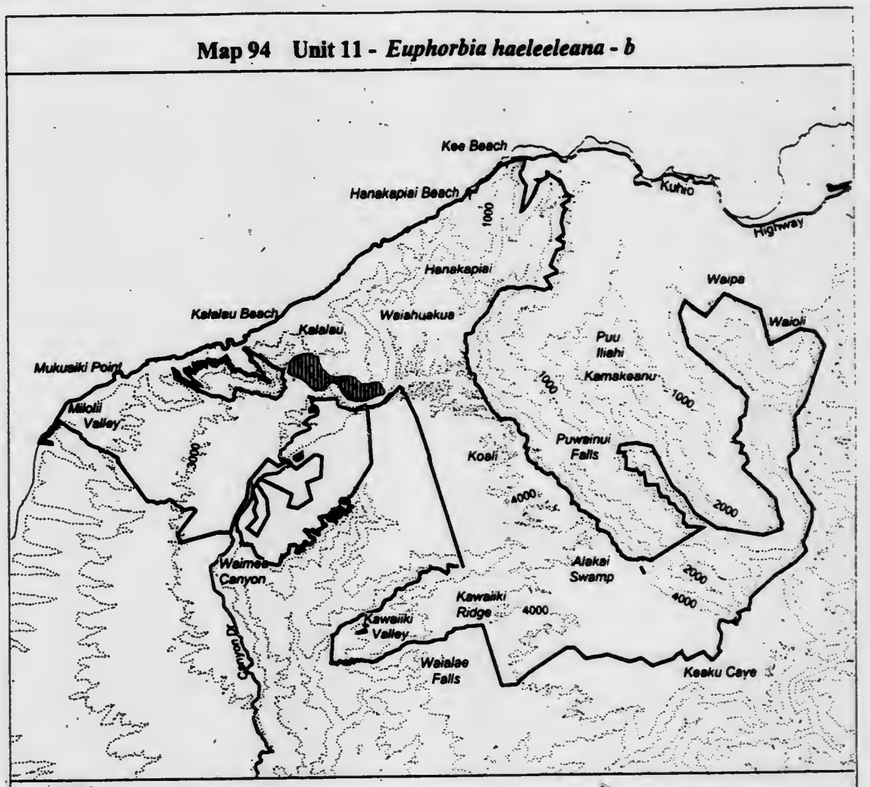


(xciv) Kauai 11—*Euphorbia haeleeleana*—b (192 ha; 476 ac)

(A) Unit consists of the following 35 boundary points: Start at 432645, 2450526; 432703, 2450873; 432886, 2451057; 433147, 2451134; 433370, 2451144; 433640, 2451018; 433737, 2450690; 434027, 2450400; 434288, 2450342; 434607, 2450400; 434801, 2450351; 434926, 2450235; 435062, 2450119; 435226, 2450119; 435458, 2450167; 435613, 2450187; 435777, 2449935; 435816, 2449848; 435748, 2449771; 435603, 2449733; 435468, 2449704; 435187, 2449569; 434888, 2449559; 434598, 2449646; 434395, 2449888; 434346, 2450061; 434279, 2450139; 434095, 2450177; 433911, 2450033; 433786, 2449917; 433505, 2449975; 433379, 2450081; 433234, 2450216; 433138, 2450294; 432770, 2450448; return to starting point.

(B) **Note:** Map 94 follows:

Map 94 Unit 11 - *Euphorbia haeleeleana - b*



(xcv) Kauai 11—*Euphorbia haeleeleana*—c (204 ha; 505 ac)

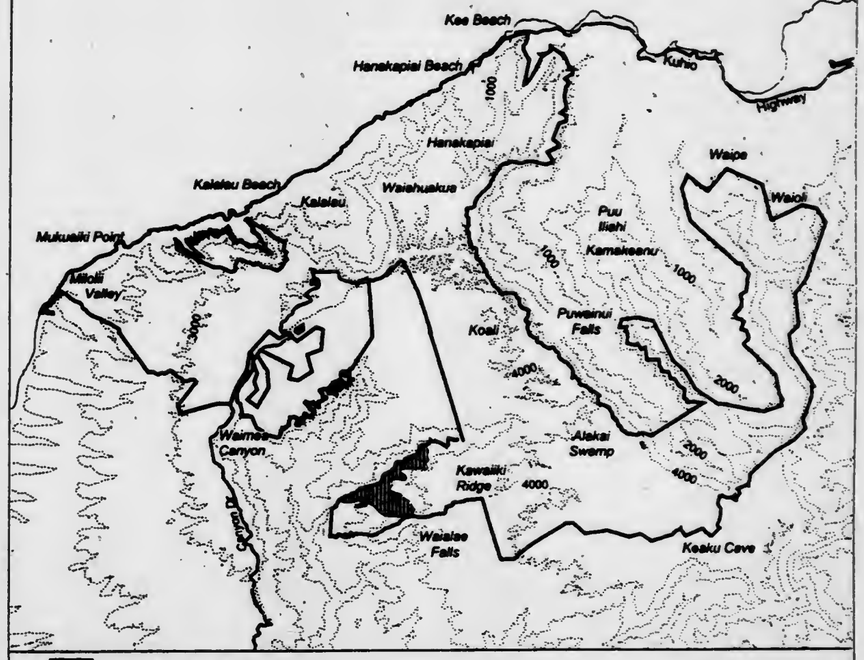
(A) Unit consists of the following 270 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655,

2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437064, 2444094; 437157, 2443993; 437206, 2443914; 437183, 2443812; 437147, 2443756; 437174, 2443690; 437210, 2443612; 437151, 2443552; 437114, 2443520; 437128, 2443441; 437177, 2443342; 437124, 2443309; 437022, 2443322; 436940, 2443353; 436940, 2443345; 436805, 2443342; 436677, 2443316; 436579, 2443332; 436440, 2443336; 436368, 2443326; 436312, 2443306; 436273, 2443227; 436447, 2443119; 436496, 2443046; 436463, 2442974; 436401, 2442954; 436289, 2442981; 436187, 2443010; 436056, 2442984; 436006, 2442968; 435980, 2442889; 436016, 2442826; 436000, 2442774; 435924, 2442695; 435964, 2442629; 436105, 2442566; 436286, 2442527; 436339, 2442465; 436408, 2442386; 436585, 2442277; 436671, 2442169; 436726, 2442037; 436746, 2441942; 436703, 2441893; 436592, 2441879; 436526, 2441902; 436467, 2441866; 436368, 2441797; 436250, 2441781; 436079, 2441817; 435970, 2441801; 435786, 2441830; 435592, 2441942; 435438, 2442126; 435398, 2442152; 435296, 2442192; 435145, 2442261; 435109, 2442300; 434964, 2442304; 434672, 2442248; 434484, 2442248; 434320, 2442284; 434307, 2442297; 434298, 2442319; 434308, 2442329; 434330, 2442350; 434344, 2442361; 434355, 2442368; 434370, 2442378; 434395, 2442387; 434416, 2442397; 434439, 2442410; 434458, 2442423; 434486, 2442437; 434504, 2442450; 434522, 2442454; 434537, 2442457; 434563, 2442460; 434590, 2442462; 434610, 2442464; 434628, 2442472; 434643, 2442483; 434664, 2442490; 434680, 2442493; 434700, 2442502; 434713, 2442515; 434725, 2442524; 434735, 2442532; 434755, 2442542; 434775, 2442551; 434800, 2442556; 434822, 2442562; 434842, 2442574; 434862, 2442596; 434883, 2442613; 434896, 2442626; 434916, 2442647; 434934, 2442668; 434949, 2442681; 434972, 2442699; 434986, 2442705; 434997, 2442708; 435006, 2442713; 435012, 2442717; 435026, 2442719; 435039, 2442722; 435061, 2442727; 435081, 2442733; 435100, 2442739; 435119, 2442747; 435135, 2442754; 435150, 2442764; 435164, 2442771; 435184, 2442774; 435201, 2442777; 435219, 2442778; 435237, 2442782; 435251, 2442783; 435228, 2442762; 435237, 2442643; 435284, 2442631; return to starting point.

(B) Excluding 1 area bounded by the following 4 points (0 ha, 1 ac): Start at 435151, 2442425; 435215, 2442393; 435195, 2442353; 435128, 2442379; return to starting point.

(C) **Note:** Map 95 follows:

Map 95 Unit 11 - *Euphorbia haeleeleana* - c

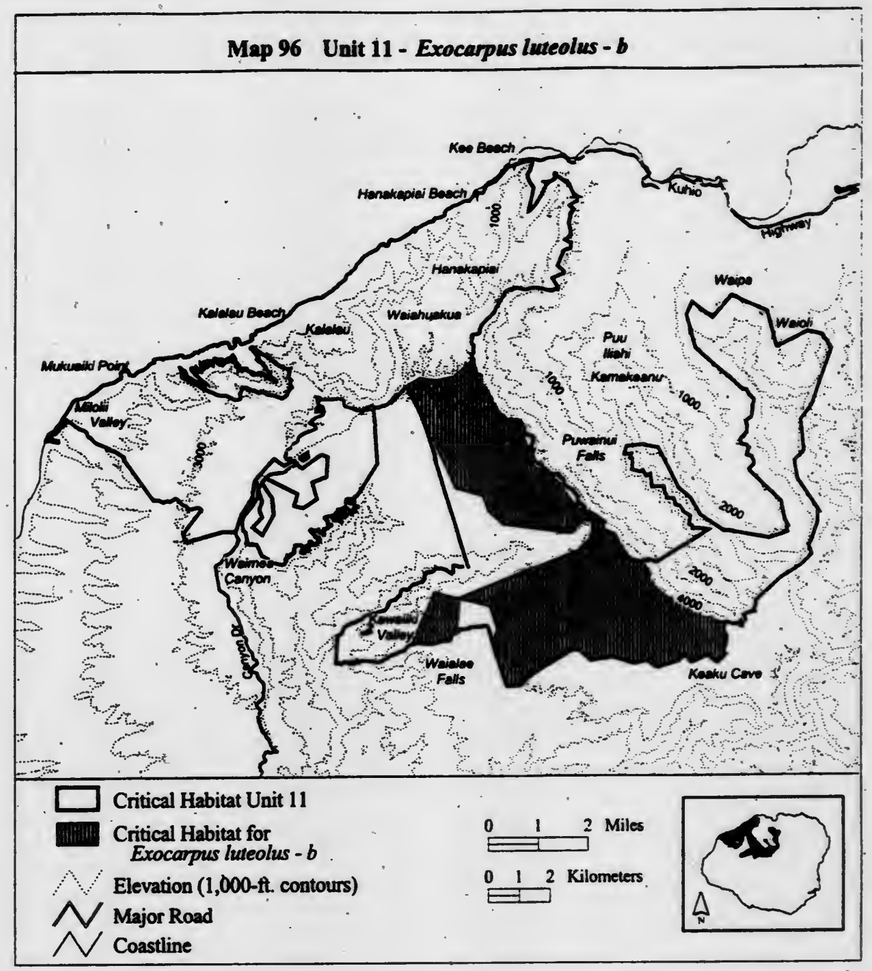


(xcvi) Kauai 11—*Exocarpos luteolus*—b (3,799 ha; 9,387 ac)

(A) Unit consists of the following 284 boundary points: Start at 443067, 2445215; 443066, 2445209; 443066, 2445190; 443083, 2445171; 443103, 2445152; 443122, 2445132; 443135, 2445115; 443140, 2445105; 443144, 2445096; 443150, 2445078; 443152, 2445059; 443153, 2445040; 443153, 2445020; 443156, 2445003; 443158, 2444995; 443163, 2444984; 443175, 2444965; 443177, 2444962; 443193, 2444946; 443196, 2444944; 443215, 2444938; 443234, 2444932; 443240, 2444927; 443252, 2444914; 443260, 2444907; 443271, 2444898; 443281, 2444890; 443290, 2444876; 443294, 2444870; 443301, 2444851; 443307, 2444833; 443309, 2444829; 443313, 2444815; 443320, 2444796; 443327, 2444778; 443333, 2444758; 443341, 2444740; 443346, 2444728; 443352, 2444721; 443366, 2444706; 443373, 2444702; 443385, 2444699; 443403, 2444695; 443423, 2444686; 443435, 2444664; 443440, 2444655; 443443, 2444647; 443444, 2444627; 443447, 2444608; 443452, 2444591; 443459, 2444579; 443464, 2444570; 443478, 2444555; 443483, 2444551; 443497, 2444548; 443516, 2444546; 443534, 2444543; 443553, 2444537; 443557, 2444532; 443571, 2444521; 443579, 2444514; 443598, 2444493; 443610, 2444483; 443617, 2444477; 443628, 2444469; 443647, 2444460; 443666, 2444456; 443677, 2444459; 443685, 2444463; 443703, 2444469; 443722, 2444464; 443732, 2444458; 443740, 2444454; 443760, 2444446; 443769, 2444440; 443987, 2444415; 444047, 2444337; 444117, 2444107; 444210, 2443933; 444299, 2443729; 444347, 2443603; 444425, 2443555; 444600, 2443428; 444759, 2443295; 445253, 2443054; 445513, 2442838; 445854, 2442734; 445951, 2442593; 446214, 2442612; 446381, 2442489; 446652, 2442437; 446591, 2442195; 446694, 2442007; 446686, 2441764; 446640, 2441627; 446587, 2441543; 446587, 2441501; 446641, 2441436; 446651, 2441424; 446673, 2441408; 446400, 2441154; 446228, 2441279; 446214, 2441291; 446122, 2441415; 445886, 2441308; 445551, 2441162; 445510,

2441194; 445395, 2441389; 445392, 2441392; 445380, 2441414; 445344, 2441376; 444480, 2440997; 444455, 2440990; 444124, 2441223; 444113, 2441221; 444109, 2441224; 444083, 2441215; 444062, 2441230; 443889, 2441172; 443707, 2441132; 443023, 2441344; 443016, 2441342; 442976, 2441356; 442843, 2441314; 442723, 2441295; 442384, 2441249; 441968, 2441515; 441900, 2441576; 441774, 2441575; 441672, 2441599; 441656, 2441573; 441650, 2441573; 441637, 2441552; 440469, 2440833; 440464, 2440832; 440457, 2440826; 440236, 2440690; 440188, 2440625; 440119, 2440532; 440075, 2440494; 440035, 2440463; 439551, 2440431; 439093, 2441857; 439236, 2442224; 439011, 2442986; 438032, 2443222; 437997, 2442203; 437913, 2442147; 437887, 2442121; 437873, 2442121; 437839, 2442110; 437826, 2442106; 437806, 2442092; 437791, 2442074; 437777, 2442052; 437766, 2442017; 437758, 2441998; 437754, 2441991; 437751, 2441981; 437747, 2441961; 437697, 2441878; 437689, 2441877; 437674, 2441875; 437647, 2441866; 437635, 2441866; 437617, 2441866; 437602, 2441867; 437566, 2441876; 437532, 2441880; 437522, 2441879; 437495, 2441869; 437460, 2441862; 437391, 2441858; 437366, 2441852; 437346, 2441845; 437332, 2441842; 437317, 2441835; 437287, 2441816; 437274, 2441809; 437240, 2441796; 437224, 2441791; 437181, 2441781; 437150, 2441777; 437111, 2441777; 437096, 2441779; 437062, 2441776; 437008, 2441775; 436960, 2441776; 436912, 2441780; 436895, 2441784; 436825, 2441795; 436799, 2441801; 436777, 2441809; 436730, 2441820; 436695, 2441811; 436666, 2441808; 436638, 2441803; 436618, 2441796; 436593, 2441792; 436583, 2441789; 436541, 2441785; 436492, 2441773; 436474, 2441767; 437185, 2443389; 437209, 2443474; 437983, 2443266; 440213, 2444149; 441921, 2444804; 442324, 2445260; 442300, 2445723; 441960, 2445633; 441686, 2445291; 439436, 2445571; 438948, 2446021; 438786, 2446508; 437886, 2446746; 436739, 2449180; 436361, 2450013; 436335, 2450071; 436340, 2450096; 436658, 2450273; 436694, 2450293; 436737, 2450317; 437249, 2450242; 437337, 2450259; 437337, 2450259; 437824, 2450354; 437835, 2450364; 437999, 2450507; 438000, 2450508; 438124, 2450616; 438399, 2450871; 438418, 2450889; 438479, 2450630; 438530, 2450411; 438960, 2449644; 438961, 2449642; 438964, 2449637; 439170, 2449270; 439197, 2449222; 439463, 2448950; 439523, 2448880; 439531, 2448880; 439559, 2448851; 439829, 2448862; 439943, 2448855; 439948, 2448855; 439955, 2448835; 440448, 2447444; 441222, 2446944; 441810, 2446157; 442167, 2445934; 442409, 2445783; 442668, 2445560; 442673, 2445515; 442668, 2445494; 442667, 2445490; 442671, 2445471; 442675, 2445453; 442682, 2445433; 442689, 2445419; 442694, 2445414; 442709, 2445399; 442727, 2445386; 442743, 2445378; 442747, 2445377; 442765, 2445370; 442785, 2445364; 442798, 2445359; 442804, 2445357; 442821, 2445353; 442842, 2445347; 442858, 2445342; 442862, 2445341; 442877, 2445336; 442898, 2445330; 442915, 2445323; 442934, 2445314; 442952, 2445303; 442956, 2445301; 442972, 2445292; 442981, 2445284; 442990, 2445276; 443006, 2445268; return to starting point.

(B) **Note:** Map 96 follows:

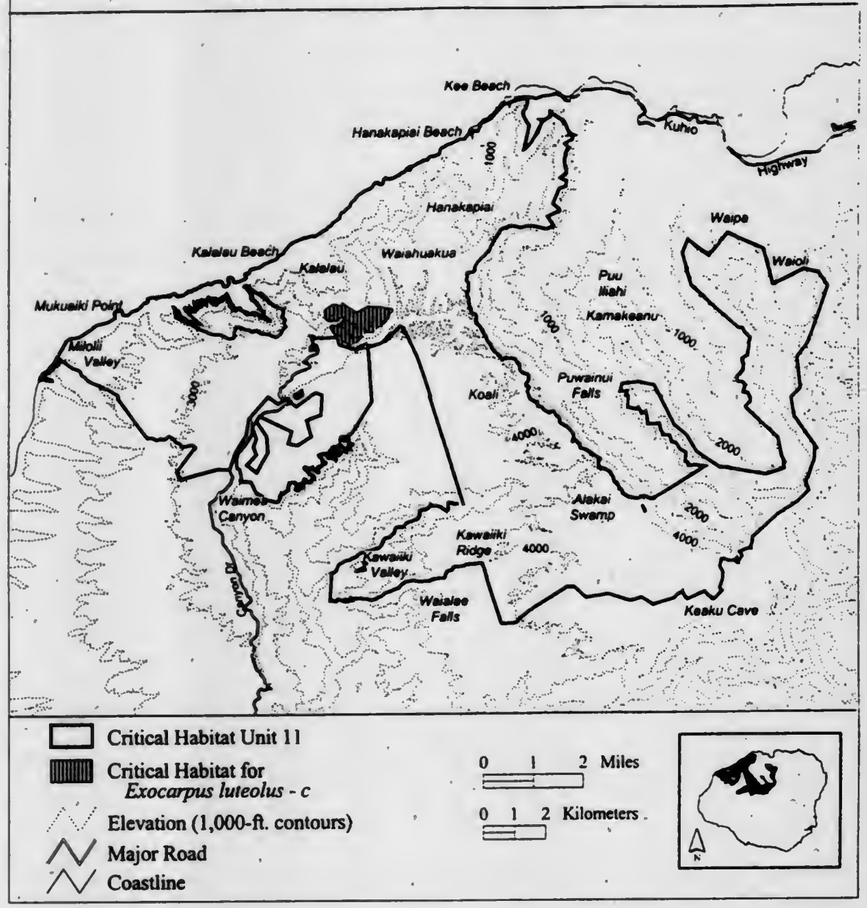


(xcvii) Kauai 11—*Exocarpos luteolus*—c (177 ha; 438 ac)

(A) Unit consists of the following 38 boundary points: Start at 435446, 2449836; 435434, 2449822; 435414, 2449822; 435150, 2449822; 435055, 2449650; 434888, 2449475; 434758, 2449469; 434652, 2449371; 434451, 2449532; 434408, 2449452; 434362, 2449581; 434342, 2449704; 434239, 2449705; 434124, 2449782; 434000, 2449989; 434081, 2450086; 434224, 2450046; 434405, 2450190; 434405, 2450226; 434486, 2450310; 434354, 2450310; 434265, 2450198; 434026, 2450187; 433839, 2450267; 433808, 2450497; 433845, 2450589; 434133, 2450756; 434359, 2450700; 434398, 2450813; 434864, 2450480; 435213, 2450674; 435667, 2450661; 436040, 2450572; 436040, 2450490; 435945, 2450427; 435907, 2450263; 435749, 2450093; 435554, 2449961; return to starting point.

(B) **Note:** Map 97 follows:

Map 97 Unit 11 - *Exocarpus luteolus - c*

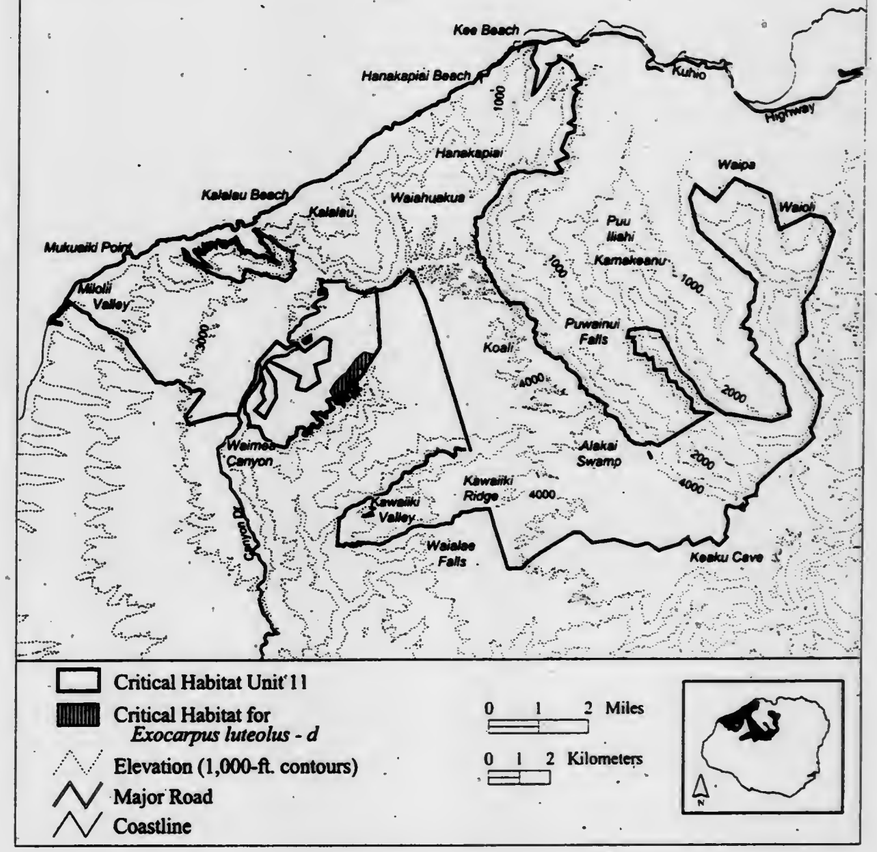


(xcviii) Kauai 11—*Exocarpos luteolus*—d (83 ha; 206 ac)

(A) Unit consists of the following 185 boundary points: Start at 434845, 2446760; 434768, 2446801; 434674, 2446862; 434650, 2446703; 434674, 2446584; 434706, 2446552; 434700, 2446542; 434681, 2446520; 434675, 2446517; 434664, 2446523; 434636, 2446529; 434623, 2446526; 434620, 2446512; 434628, 2446479; 434625, 2446467; 434618, 2446459; 434582, 2446443; 434558, 2446439; 434533, 2446441; 434514, 2446449; 434500, 2446448; 434471, 2446422; 434457, 2446416; 434447, 2446420; 434434, 2446428; 434423, 2446441; 434416, 2446441; 434403, 2446435; 434400, 2446429; 434386, 2446417; 434371, 2446414; 434363, 2446417; 434355, 2446417; 434351, 2446414; 434333, 2446375; 434335, 2446361; 434340, 2446352; 434353, 2446346; 434368, 2446352; 434403, 2446359; 434411, 2446354; 434417, 2446344; 434421, 2446327; 434434, 2446306; 434469, 2446291; 434479, 2446288; 434499, 2446297; 434514, 2446317; 434528, 2446325; 434559, 2446322; 434568, 2446320; 434585, 2446324; 434595, 2446329; 434614, 2446349; 434620, 2446349; 434621, 2446342; 434611, 2446321; 434609, 2446262; 434614, 2446240; 434625, 2446221; 434647, 2446210; 434667, 2446205; 434694, 2446206; 434717, 2446208; 434723, 2446192; 434729, 2446169; 434717, 2446164; 434599, 2446152; 434582, 2446145; 434576, 2446128; 434582, 2446114; 434603, 2446087; 434642, 2446062; 434647, 2446055; 434645, 2446046; 434604, 2446029; 434573, 2446022; 434556, 2446012; 434542, 2445989; 434482, 2445992; 434482, 2445989; 434477, 2446004; 434469, 2446036; 434437, 2446093; 434413, 2446116; 434381, 2446163; 434367, 2446175; 434336, 2446186; 434315, 2446192; 434302, 2446189; 434283, 2446179; 434270, 2446164; 434263, 2446144; 434271, 2446125; 434305, 2446079; 434308, 2446060; 434307, 2446049; 434301, 2446035; 434289, 2446026; 434273, 2446018; 434244, 2446023; 434235, 2446033; 434230, 2446049; 434232, 2446066; 434225, 2446086; 434215, 2446102; 434204, 2446112; 434185, 2446122; 434162, 2446123; 434150, 2446121; 434115, 2446106; 434097, 2446102; 434080, 2446091; 434072, 2446078; 434077, 2446064; 434091, 2446053; 434110, 2446044; 434160, 2446032; 434179, 2446026; 434195, 2446010; 434209, 2445991; 434227, 2445977; 434247, 2445969; 434271, 2445965; 434324, 2445970; 434336, 2445961; 434340, 2445952; 434341, 2445940; 434355, 2445930; 434361, 2445922; 434358, 2445902; 434337, 2445880; 434326, 2445859; 434311, 2445845; 434298, 2445842; 434283, 2445847; 434262, 2445859; 434230, 2445868; 434184, 2445859; 434167, 2445860; 434147, 2445871; 434110, 2445908; 434089, 2445947; 434074, 2445985; 434062, 2445995; 434039, 2446003; 434031, 2446004; 434014, 2445998; 434001, 2445989; 433994, 2445980; 434002, 2445963; 434016, 2445942; 434022, 2445924; 434035, 2445898; 434077, 2445846; 434186, 2445754; 434202, 2445733; 434205, 2445721; 434204, 2445697; 434190, 2445688; 434158, 2445694; 434142, 2445707; 434130, 2445726; 434108, 2445744; 434086, 2445750; 434053, 2445750; 434008, 2445764; 433994, 2445763; 433947, 2445788; 433945, 2445790; 433946, 2445837; 433944, 2445864; 433927, 2445891; 433905, 2445911; 433891, 2445905; 433882, 2445891; 433879, 2445879; 433845, 2445926; 433743, 2446143; 433882, 2446368; 434094, 2446596; 434249, 2446723; 434580, 2447160; 434858, 2447393; 435197, 2447292; return to starting point.

(B) **Note:** Map 98 follows:

Map 98 Unit 11 - *Exocarpus luteolus - d*



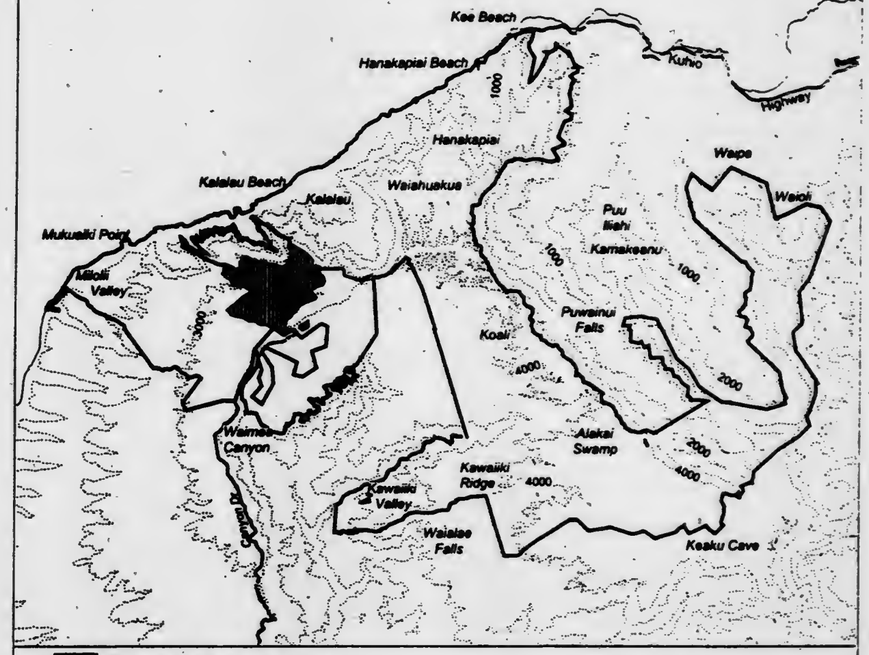
(xcix) Kauai 11—*Exocarpos luteolus*—e (523 ha; 1,290 ac)

(A) Unit consists of the following 153 boundary points: Start at 431279, 2448913; 431273, 2448922; 431027, 2449068; 431020, 2449089; 431006, 2449097; 430984, 2449094; 430970, 2449080; 430815, 2449080; 430799, 2449081; 430797, 2449080; 430686, 2449080; 430677, 2449084; 430643, 2449106; 430629, 2449119; 430619, 2449138; 430616, 2449156; 430623, 2449173; 430623, 2449194; 430616, 2449214; 430604, 2449229; 430559, 2449254; 430545, 2449277; 430533, 2449310; 430527, 2449321; 430485, 2449333; 430474, 2449342; 430463, 2449355; 430451, 2449363; 430430, 2449364; 430437, 2449371; 430418, 2449395; 430369, 2449433; 430355, 2449451; 430349, 2449466; 430335, 2449474; 430318, 2449477; 430307, 2449482; 430312, 2449517; 430313, 2449532; 430320, 2449553; 430331, 2449565; 430346, 2449596; 430354, 2449622; 430355, 2449641; 430348, 2449666; 430376, 2449750; 430384, 2449766; 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238, 2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431657, 2449890; 431699, 2449876; 431765, 2449810; 431864, 2449801; 431981, 2449792; 432047, 2449787; 432113, 2449740; 432217, 2449712; 432259, 2449679; 432344, 2449744; 432419, 2449806; 432471, 2449904; 432504, 2449961; 432579, 2450036; 432551, 2450083; 432523, 2450130; 432523, 2450182; 432565, 2450262; 432523, 2450304; 432475, 2450313; 432452, 2450337; 432461, 2450375; 432480, 2450426; 432490, 2450478; 432501, 2450529; 432504, 2450523; 432515, 2450503; 432523, 2450483; 432671, 2450388; 432937, 2450257; 433110, 2450122; 433260, 2449930; 433339, 2449809; 433405, 2449720; 433407, 2449708; 433399, 2449709; 433419, 2449599; 433426, 2449556; 433437, 2449592; 433549, 2449510; 433671, 2449267; 433615, 2449141; 433358, 2449090; 433236, 2448950; 433199, 2448903; 433176, 2448898; 433386, 2448749; 433344, 2448697; 433119, 2448609; 432890, 2448469; 432746, 2448300; 432657, 2448221; 432521, 2448030; 432395, 2447960; 432395, 2447894; 432372, 2447829; 432381, 2447775; 432386, 2447745; 432456, 2447707; 432610, 2447684; 432685, 2447670; 432661, 2447623; 432720, 2447605; 432719, 2447599; 432672, 2447598; 432609, 2447647; 432507, 2447594; 432195, 2447587; 432136, 2447629; 432001, 2447726; 431937, 2447655; 431895, 2447735; 431816, 2447810; 431535, 2447815; 431395, 2447918; 431213, 2447932; 430998, 2448049; 430820, 2448072; 430610, 2448119; 430460, 2448306; 430741, 2448535; 430998, 2448759; 431263, 2448926; 431275, 2448914; return to starting point.

(B) Excluding 1 area bounded by the following 10 points (3 ha, 8 ac): Start at 433368, 2449292; 433367, 2449352; 433448, 2449426; 433546, 2449412; 433567, 2449398; 433589, 2449323; 433612, 2449262; 433588, 2449244; 433567, 2449260; 433369, 2449255; return to starting point.

(C) **Note:** Map 99 follows:

Map 99 Unit 11 - *Exocarpus luteolus* - e

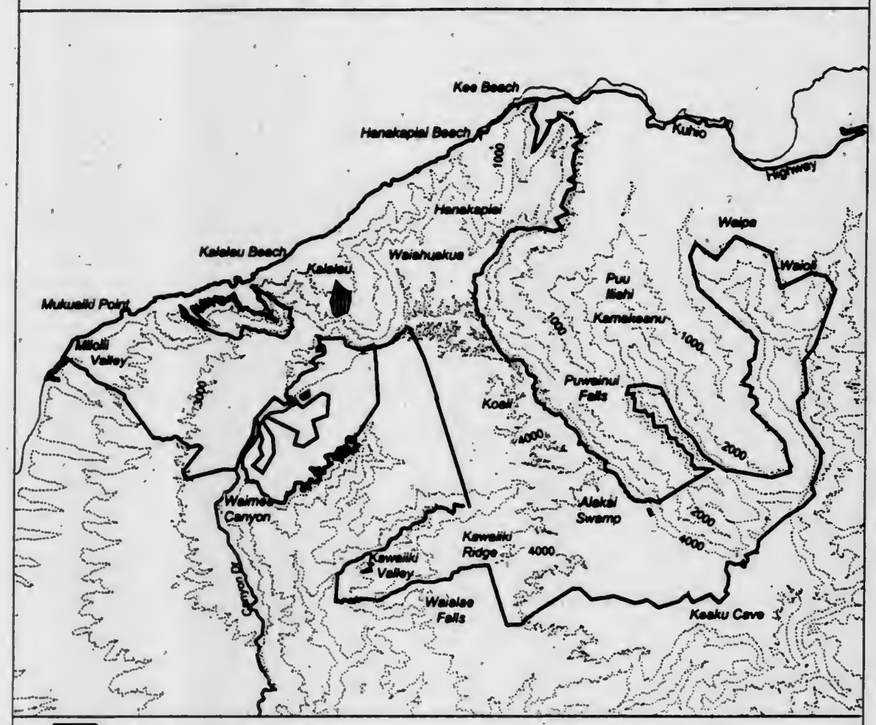


(c) Kauai 11—*Flueggea neowawraea*—a (51 ha; 126 ac)

(A) Unit consists of the following 12 boundary points: Start at 434000, 2450312; 433949, 2450368; 433864, 2450473; 433785, 2450832; 433850, 2451030; 433910, 2451245; 433941, 2451386; 433969, 2451525; 434153, 2451307; 434439, 2451106; 434442, 2450846; 434368, 2450518; return to starting point.

(B) **Note:** Map 100 follows:

Map 100 Unit 11 - *Flueggea neowawraea - a*

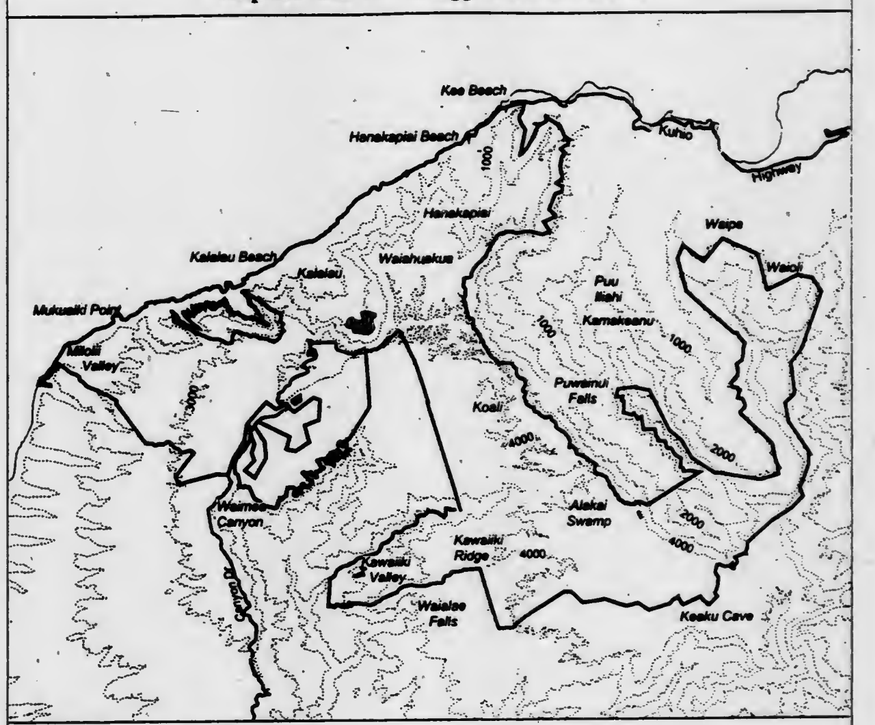


(ci) Kauai 11—*Flueggea neowawraea*—b (47 ha; 117 ac)

(A) Unit consists of the following 28 boundary points: Start at 435053, 2450333; 435166, 2450421; 435094, 2450487; 435075, 2450618; 435179, 2450654; 435308, 2450654; 435574, 2450555; 435574, 2450470; 435476, 2450413; 435470, 2450325; 435489, 2450207; 435514, 2450108; 435498, 2450032; 435434, 2449958; 435330, 2449897; 435215, 2449903; 435042, 2449944; 434910, 2449936; 434836, 2449952; 434773, 2450128; 434628, 2450122; 434573, 2450194; 434633, 2450366; 434705, 2450440; 434776, 2450462; 434839, 2450454; 434883, 2450386; 434935, 2450358; return to starting point.

(B) **Note:** Map 101 follows:

Map 101 Unit 11 - *Flueggea neowawraea - b*

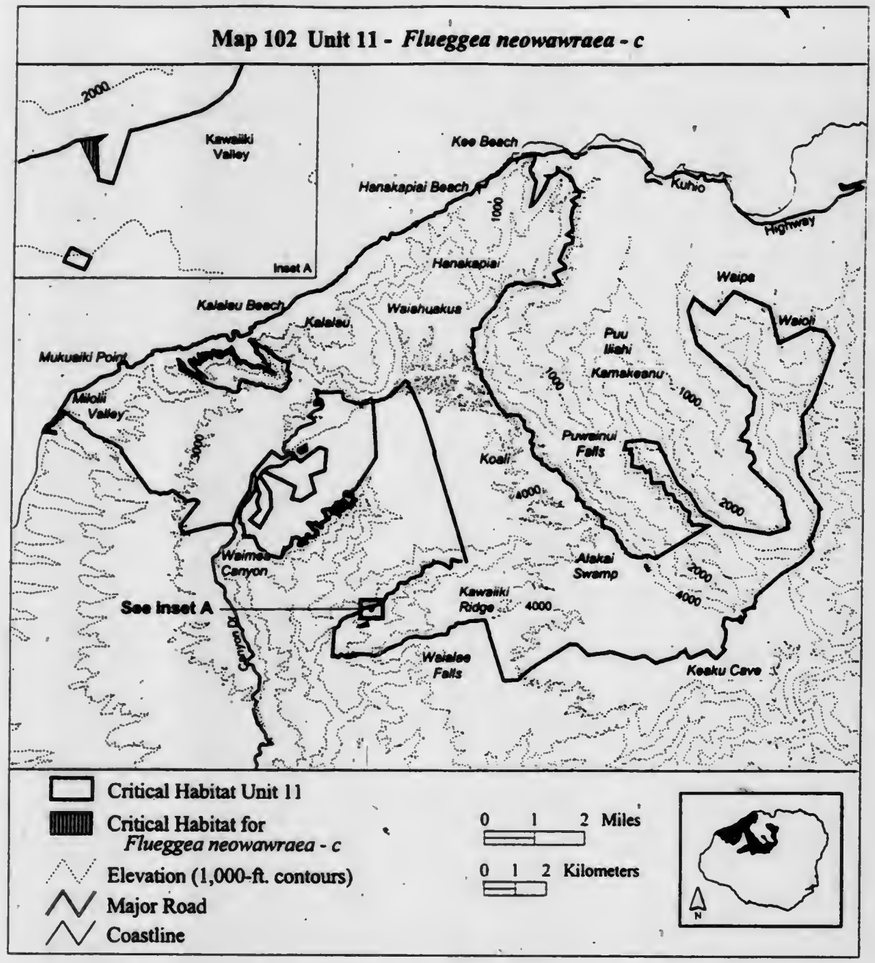


(cii) Kauai 11—*Flueggea neowawraea*—c (152 ha; 376 ac)

(A) Unit consists of the following 8 boundary points: Start at 435236, 2442644; 435172, 2442772; 435184, 2442774; 435201, 2442777; 435219, 2442778; 435237, 2442782; 435251, 2442783; 435228, 2442762; return to starting point.

(B) **Note:** Map 102 follows:

Map 102 Unit 11 - *Flueggea neowawraea* - c

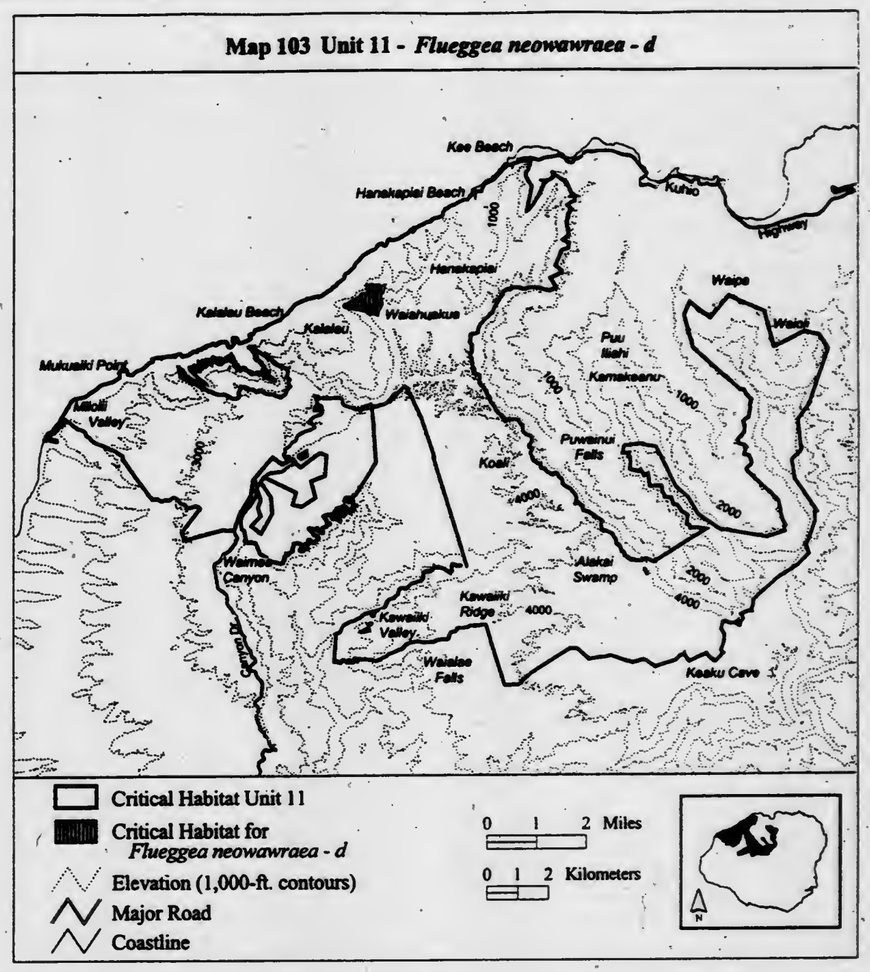


(ciii) Kauai 11—*Flueggea neowawraea*—d (77 ha; 191 ac)

(A) Unit consists of the following 51 boundary points: Start at 435601, 2453022; 435552, 2452987; 435543, 2452967; 435543, 2452858; 435585, 2452742; 435585, 2452645; 435523, 2452533; 435465, 2452417; 435436, 2452291; 435369, 2452311; 435179, 2452369; 435037, 2452423; 434866, 2452465; 434660, 2452501; 434508, 2452517; 434392, 2452562; 434308, 2452585; 434282, 2452639; 434331, 2452707; 434382, 2452717; 434437, 2452733; 434476, 2452758; 434508, 2452794; 434534, 2452807; 434647, 2452852; 434698, 2452881; 434724, 2452926; 434798, 2452942; 434853, 2453003; 434901, 2453042; 434934, 2453038; 434966, 2453025; 434995, 2453025; 435062, 2453058; 435072, 2453103; 435066, 2453164; 435043, 2453238; 435069, 2453273; 435104, 2453293; 435143, 2453296; 435156, 2453306; 435169, 2453344; 435278, 2453315; 435401, 2453280; 435417, 2453296; 435459, 2453315; 435488, 2453286; 435511, 2453247; 435556, 2453251; 435610, 2453302; 435675, 2453302; return to starting point.

(B) **Note:** Map 103 follows:

Map 103 Unit 11 - *Flueggea neowawraea* - d

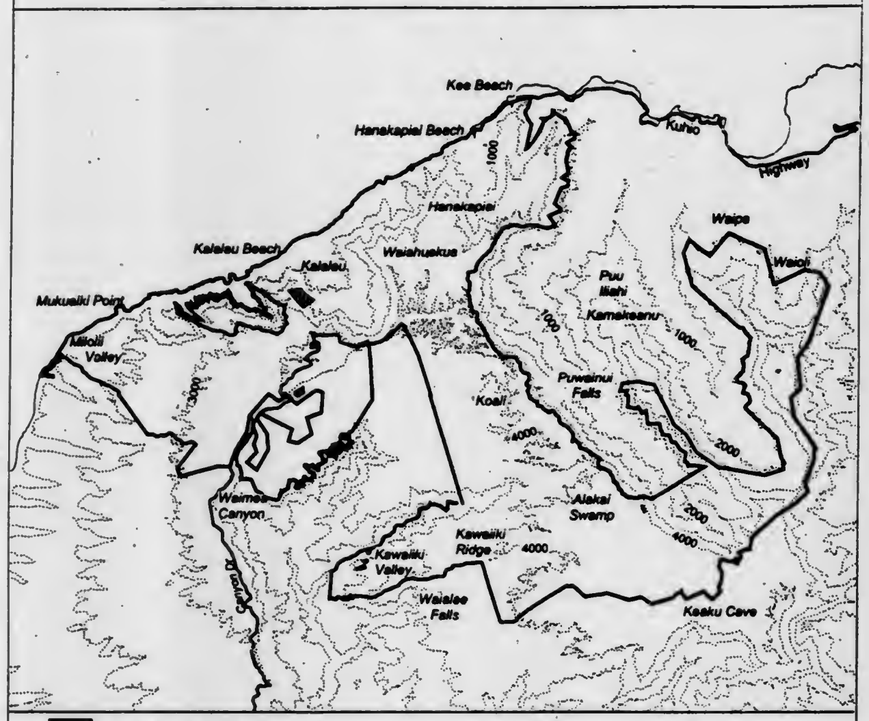


(civ) Kauai 11—*Flueggea neowawraea*—e (27 ha; 67 ac)

(A) Unit consists of the following 14 boundary points: Start at 432615, 2451107; 432699, 2451108; 433006, 2451176; 433021, 2451179; 433036, 2451174; 433144, 2451038; 433233, 2450957; 433419, 2450821; 433475, 2450808; 433290, 2450648; 433095, 2450524; 432852, 2450782; 432650, 2451016; 432594, 2451102; return to starting point.

(B) **Note:** Map 104 follows:

Map 104 Unit 11 - *Flueggea neowawraea - e*

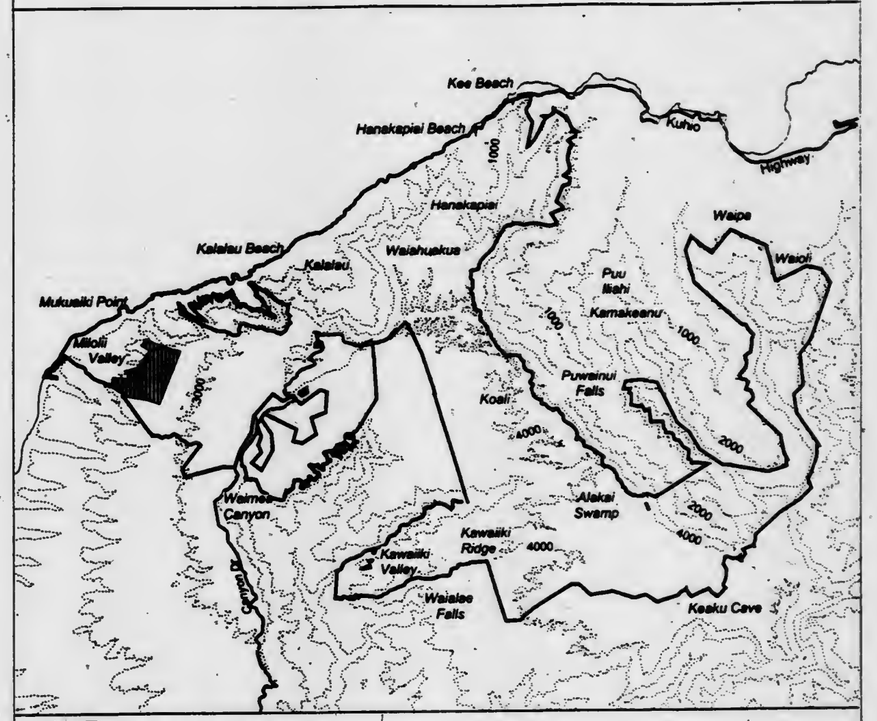


(cv) Kauai 11—*Flueggea neowawraea*—f (240 ha; 594 ac)

(A) Unit consists of the following 27 boundary points: Start at 426767, 2448021; 426831, 2448310; 427314, 2448265; 427337, 2448374; 427206, 2448518; 427613, 2448631; 428020, 2449196; 427749, 2449350; 427898, 2449558; 427966, 2449562; 428160, 2449427; 428391, 2449359; 428802, 2449205; 429028, 2449155; 428345, 2447429; 428165, 2447501; 427884, 2447569; 427464, 2447641; 427418, 2447641; 427233, 2447691; 427161, 2447827; 427130, 2447833; 427124, 2447837; 427084, 2447847; 427065, 2447855; 426993, 2447931; 426885, 2447998; return to starting point.

(B) **Note:** Map 105 follows:

Map 105 Unit 11 - *Flueggea neowawraea - f*

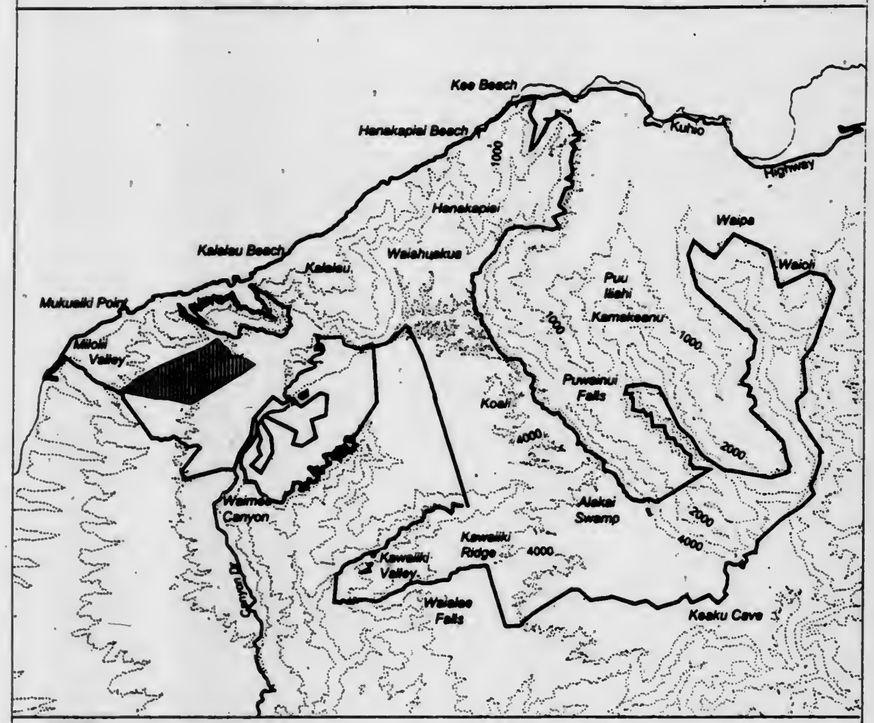


(cvi) Kauai 11—*Gouania meyenii*—a (443 ha; 1,094 ac)

(A) Unit consists of the following 61 boundary points: Start at 429367, 2447493; 428683, 2447645; 428241, 2447686; 427018, 2447921; 427281, 2448080; 427605, 2448322; 428213, 2448667; 428883, 2448977; 429740, 2449322; 430202, 2449633; 430314, 2449534; 430313, 2449532; 430312, 2449517; 430307, 2449482; 430318, 2449477; 430335, 2449474; 430349, 2449466; 430355, 2449451; 430369, 2449433; 430418, 2449395; 430437, 2449371; 430430, 2449364; 430451, 2449363; 430463, 2449355; 430474, 2449342; 430485, 2449333; 430527, 2449321; 430533, 2449310; 430545, 2449277; 430559, 2449254; 430604, 2449229; 430616, 2449214; 430623, 2449194; 430623, 2449173; 430616, 2449156; 430619, 2449138; 430629, 2449119; 430643, 2449106; 430677, 2449084; 430699, 2449074; 430717, 2449071; 430748, 2449070; 430773, 2449073; 430799, 2449081; 430825, 2449080; 430875, 2449032; 430881, 2449027; 430905, 2449022; 430921, 2449029; 430944, 2449045; 430955, 2449058; 431025, 2449016; 431024, 2449005; 431035, 2448975; 431050, 2448960; 431066, 2448956; 431086, 2448957; 431093, 2448962; 431099, 2448970; 431432, 2448770; 431052, 2448487; return to starting point.

(B) **Note:** Map 106 follows:

Map 106 Unit 11 - *Gouania meyenii - a*

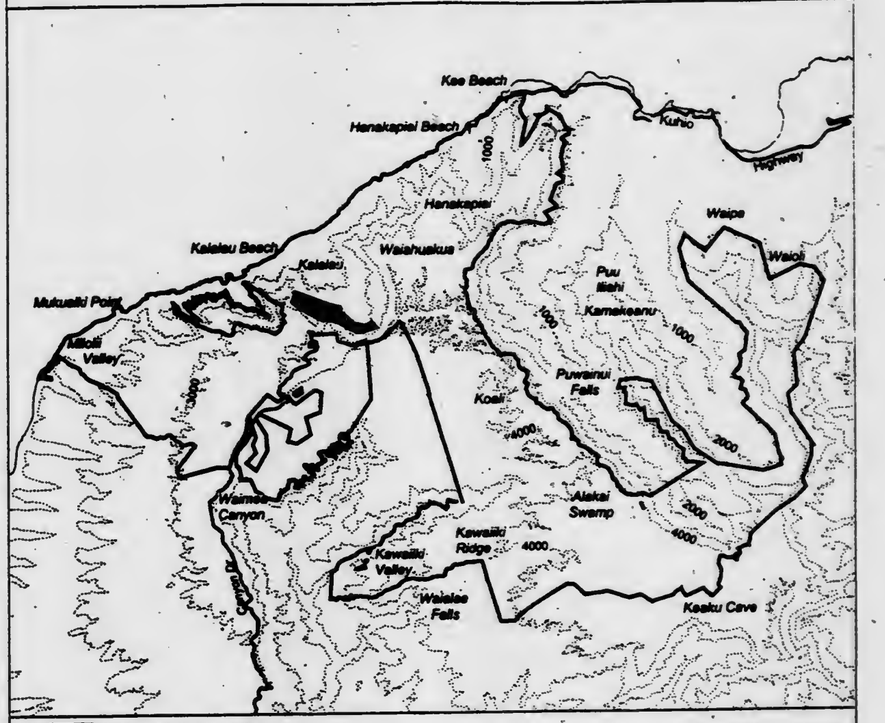


(cvii) Kauai 11—*Gouania meyenii*—b (128 ha; 316 ac)

(A) Unit consists of the following 20 boundary points: Start at 432908, 2451056; 433375, 2450880; 433953, 2450654; 434234, 2450563; 434395, 2450548; 434531, 2450292; 434832, 2450011; 435169, 2449930; 435405, 2450056; 435596, 2449830; 435124, 2449679; 434943, 2449669; 434611, 2449820; 434330, 2449971; 434234, 2450006; 433943, 2450071; 433807, 2450051; 433641, 2450127; 433053, 2450458; 432767, 2450674; return to starting point.

(B) Note: Map 107 follows:

Map 107 Unit 11 - *Gouania meyenii - b*

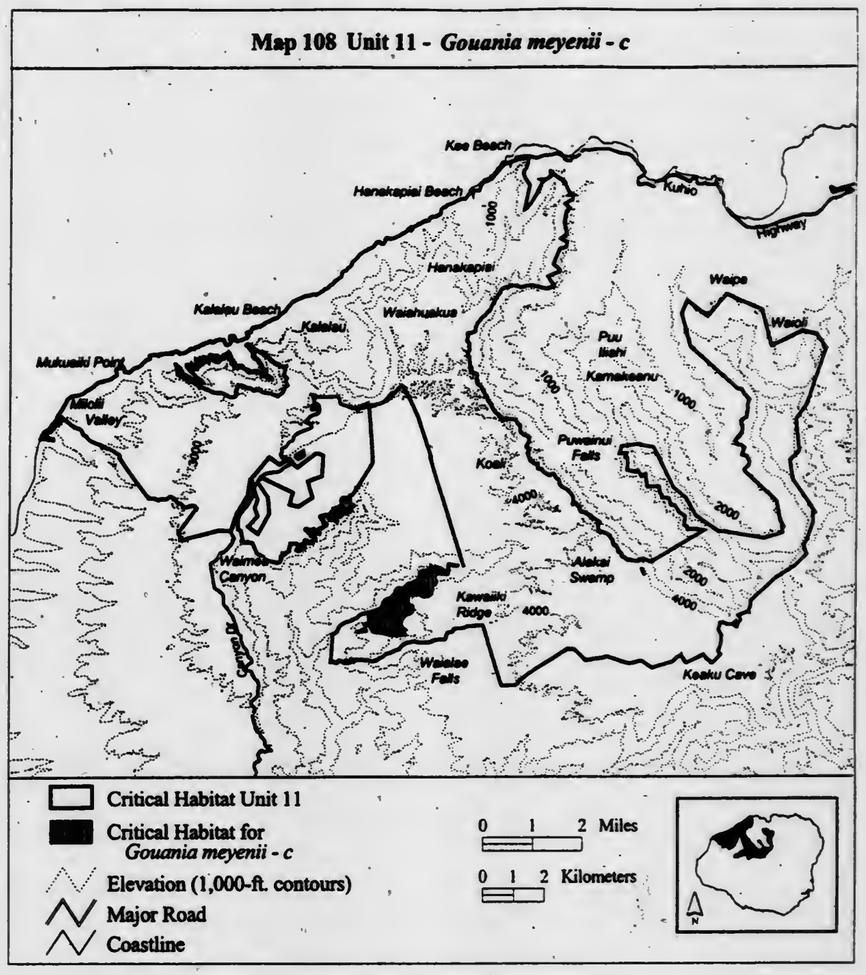


(cviii) Kauai 11—*Gouania meyenii*—c (215 ha; 532 ac)

(A) Unit consists of the following 246 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655,

2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437801, 2444076; 437842, 2444038; 437854, 2443995; 437806, 2443948; 437692, 2443963; 437605, 2443975; 437466, 2443983; 437423, 2443920; 437450, 2443829; 437474, 2443766; 437454, 2443683; 437383, 2443608; 437340, 2443533; 437320, 2443410; 437265, 2443311; 437193, 2443264; 437047, 2443248; 436838, 2443339; 436581, 2443312; 436553, 2443248; 436553, 2443153; 436557, 2443035; 436660, 2443003; 436727, 2442849; 436672, 2442719; 436470, 2442644; 436351, 2442513; 436324, 2442387; 436363, 2442276; 436462, 2442225; 436506, 2442150; 436450, 2442031; 436280, 2441980; 435996, 2441980; 435723, 2442051; 435675, 2442051; 435351, 2442106; 435304, 2442181; 435245, 2442312; 435181, 2442774; 435184, 2442774; 435201, 2442777; 435219, 2442778; 435237, 2442782; 435251, 2442783; 435228, 2442762; 435237, 2442643; 435284, 2442631; return to starting point.

(B) **Note:** Map 108 follows:

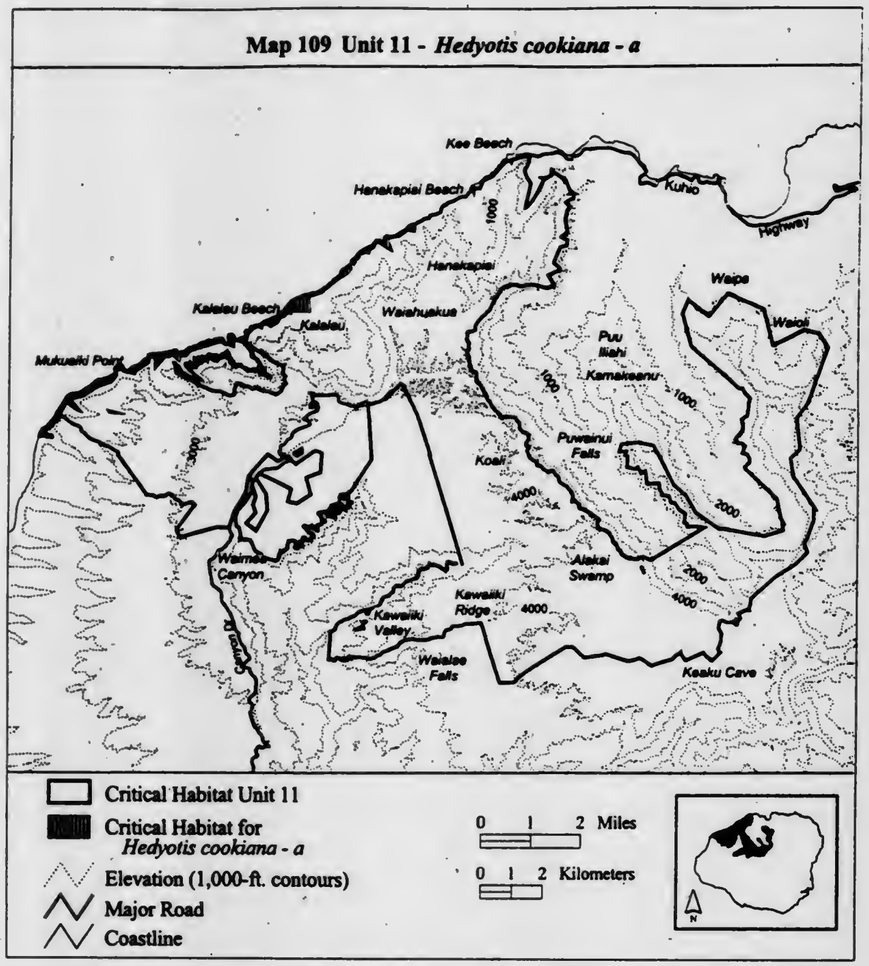


(cix) Kauai 11—*Hedyotis cookiana*—a (771 ha; 1,905 ac)

(A) Unit consists of the following 197 boundary points: Start at 439564, 2456133; 439459, 2455948; 439445, 2455829; 439379, 2455816; 439379, 2455578; 439326, 2455446; 439326, 2455300; 439234, 2455208; 439247, 2455089; 439234, 2455036; 439459, 2454944; 439459, 2454838; 439393, 2454745; 439445, 2454666; 439379, 2454560; 439393, 2454455; 439419, 2454402; 439393, 2454296; 439287, 2454177; 439088, 2454296; 439075, 2454164; 439022, 2454138; 439154, 2454006; 439115, 2453913; 439221, 2453847; 439168, 2453741; 439181, 2453517; 439207, 2453332; 439181, 2453279; 439075, 2453345; 439022, 2453451; 438810, 2453530; 438652, 2453477; 438533, 2453649; 438519, 2453808; 438506, 2453860; 438400, 2453860; 438400, 2453913; 438347, 2453953; 438387, 2454045; 438281, 2454072; 438321, 2454204; 438228, 2454217; 438374, 2454323; 438427, 2454455; 438334, 2454468; 438281, 2454482; 438268, 2454574; 438109, 2454535; 438136, 2454653; 438109, 2454772; 438017, 2454746; 437964, 2454812; 437964, 2454931; 437884, 2454931; 437884, 2455090; 437937, 2455129; 438017, 2455142; 437924, 2455195; 437858, 2455208; 437818, 2455354; 437739, 2455354; 437765, 2455169; 437752, 2455010; 437739, 2454944; 437646, 2454931; 437607, 2454878; 437527, 2454839; 437593, 2454733; 437514, 2454707; 437421, 2454733; 437421, 2454680; 437342, 2454680; 437316, 2454601; 437236, 2454707; 437197, 2454693; 437144, 2454839; 437130, 2454799; 437117, 2454614; 437144, 2454561; 437197, 2454469; 437157, 2454416; 437223, 2454284; 437091, 2454218; 437091, 2453993; 437011, 2453980; 436853, 2454112; 436800, 2454046; 436747, 2454086; 436707, 2454297; 436707, 2454363; 436562, 2454429; 436376, 2454601; 436310, 2454548; 436495, 2454350; 436482, 2454244; 436535, 2454191; 436482, 2454099; 436562, 2453954; 436694, 2453663; 436694, 2453557; 436522, 2453584; 436165, 2453637; 436138, 2453518; 435979, 2453214; 435834, 2453267; 435834,

2453425; 435808, 2453690; 435794, 2453822; 435702, 2454020; 435649, 2453861; 435636, 2453637; 435530, 2453531; 435530, 2453399; 435397, 2453412; 435080, 2453373; 435120, 2453254; 435001, 2453254; 435053, 2453108; 434908, 2453082; 434233, 2452673; 434339, 2452355; 434432, 2452250; 434604, 2452210; 434710, 2451866; 434842, 2451470; 434815, 2451020; 434802, 2450875; 434207, 2450875; 433545, 2450836; 433162, 2450968; 433029, 2451206; 433096, 2451589; 432699, 2451761; 432633, 2452197; 432778, 2452092; 432924, 2452105; 433016, 2452052; 433201, 2452052; 433532, 2451801; 433810, 2452012; 433704, 2452224; 433612, 2452514; 433519, 2452699; 433532, 2452792; 433850, 2452845; 434127, 2453135; 434432, 2453228; 434590, 2453412; 434776, 2453346; 434762, 2453637; 434802, 2453743; 435040, 2453756; 435001, 2453914; 435225, 2453928; 435186, 2454073; 435384, 2454020; 435358, 2454218; 435503, 2454324; 436019, 2454086; 436151, 2453993; 436112, 2454337; 436085, 2454482; 436032, 2454641; 436284, 2454720; 436482, 2454813; 436839, 2454627; 436853, 2454799; 436813, 2454971; 436800, 2455143; 437091, 2455235; 437263, 2455024; 437316, 2455195; 437514, 2455275; 437448, 2455354; 437660, 2455592; 437805, 2455605; 437924, 2455750; 438215, 2455895; 438281, 2455591; 438242, 2455433; 438467, 2455235; 438519, 2454944; 438705, 2454719; 438797, 2454534; 438903, 2454812; 438916, 2455076; 438837, 2455287; 438916, 2455406; 438850, 2455604; 438758, 2455671; 438731, 2455803; 438678, 2455895; 438638, 2456146; 438691, 2456199; 439022, 2456067; 439022, 2456278; return to starting point.

(B) **Note:** Map 109 follows:

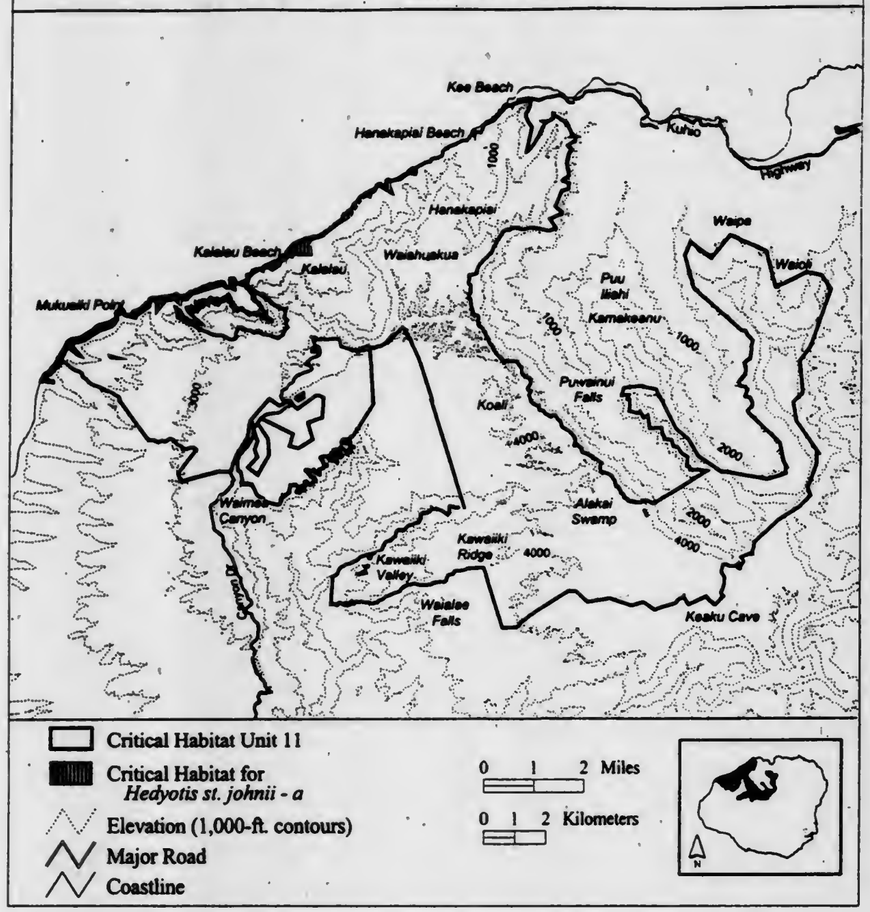


(cx) Kauai 11—*Hedyotis st. johnii*—a (240 ha; 593 ac)

(A) Unit consists of the following 183 boundary points: coastline; 436761, 2455184; 436712, 2454892; 436479, 2454944; 436221, 2454738; 435934, 2454699; 435854, 2454648; 435988, 2454247; 435497, 2454557; 435394, 2454376; 435291, 2454325; 435239, 2454170; 435110, 2454222; 434981, 2454144; 434803, 2453887; 434586, 2453544; 434231, 2453319; 433798, 2452984; 433752, 2452923; 433308, 2452782; 433353, 2452312; 432747, 2452333; 432742, 2452243; 432641, 2452288; 432573, 2452247; 432525, 2452167; 432394, 2452127; 432333, 2452001; 432061, 2451822; 431939, 2451935; 431794, 2451884; 431798, 2451784; 431661, 2451854; 431544, 2451797; 431338, 2451616; 431318, 2451426; 431183, 2451358; 430888, 2451421; 430898, 2451203; 430666, 2451294; 430535, 2451320; 430469, 2451390; 430149, 2451281; 429503, 2451074; 429338, 2450901; 429167, 2450919; 429131, 2450729; 429064, 2450790; 428883, 2450945; 428817, 2450876; 428676, 2450881; 428314, 2450455; 428314, 2450842; 428181, 2450916; 428156, 2450755; 428141, 2450689; 427991, 2450578; 427711, 2450396; 427696, 2450306; 427356, 2450395; 427289, 2450413; 427226, 2450518; 427181, 2450422; 427120, 2450518; 427099, 2450470; 427120, 2450270; 426959, 2450063; 426506, 2449913; 426060, 2449619; 425852, 2449550; 425640, 2449518; 426014, 2449089; 425788, 2449164; 425489, 2449387; 425301, 2449004; 425272, 2449039; 425267, 2449033; 425258, 2449022; 425253, 2449013; 425252, 2449003; 425253, 2448996; 425251, 2448992; 425242, 2448981; 425239, 2448972; 425231, 2448956; 425224, 2448934; 425222, 2448911; 425223, 2448900; 425224, 2448891; 425223, 2448883; 425218, 2448877; 425212, 2448878; 425208, 2448876; 425201, 2448872; 425192, 2448867; 425181, 2448859; 425172, 2448853; 425162, 2448844; 425158, 2448833; 425157, 2448818; 425153, 2448809; 425148, 2448807; 425136, 2448801; 425124, 2448795; 425120, 2448790; 425112, 2448785; 425100, 2448774; 425094, 2448768; 425081, 2448757; 425070, 2448745; 425062, 2448734; 425053, 2448723; 425044, 2448711; 425043, 2448695; 425029, 2448684; 425024, 2448675; 425017, 2448667; 425011, 2448659; 424999, 2448650; 424991, 2448642; 424980, 2448628; 424973, 2448615; 424956, 2448592; 424936, 2448587; 424929, 2448581; 424924, 2448574; 424917, 2448569; 424910, 2448561; 424906, 2448551; 424898, 2448552; 424886, 2448554; 424877, 2448554; 424871, 2448552; 424863, 2448548; 424849, 2448543; 424840, 2448538; 424824, 2448534; 424811, 2448524; 424803, 2448521; 424795, 2448511; 424785, 2448498; 424778, 2448484; 424774, 2448461; 424778, 2448445; 424791, 2448421; 424819, 2448402; 424832, 2448389; 424848, 2448376; 424871, 2448368; 424900, 2448356; 424929, 2448346; 424953, 2448337; 424973, 2448335; 424990, 2448333; 424997, 2448333; 425003, 2448327; 425006, 2448318; 425009, 2448308; 425011, 2448298; 425013, 2448289; 425015, 2448280; 425010, 2448272; 424998, 2448277; 424991, 2448284; 424983, 2448288; 424971, 2448291; 424957, 2448291; 424948, 2448290; 424933, 2448287; 424927, 2448284; 424915, 2448289; 424892, 2448299; 424874, 2448301; 424841, 2448311; 424823, 2448330; 424803, 2448337; 424777, 2448336; 424735, 2448339; 424711, 2448334; 424677, 2448333; 424664, 2448328; 424648, 2448323; 424633, 2448323; 424603, 2448328; coastline.

(B) **Note:** Map 110 follows:

Map 110 Unit 11 - *Hedyotis st. johnii - a*

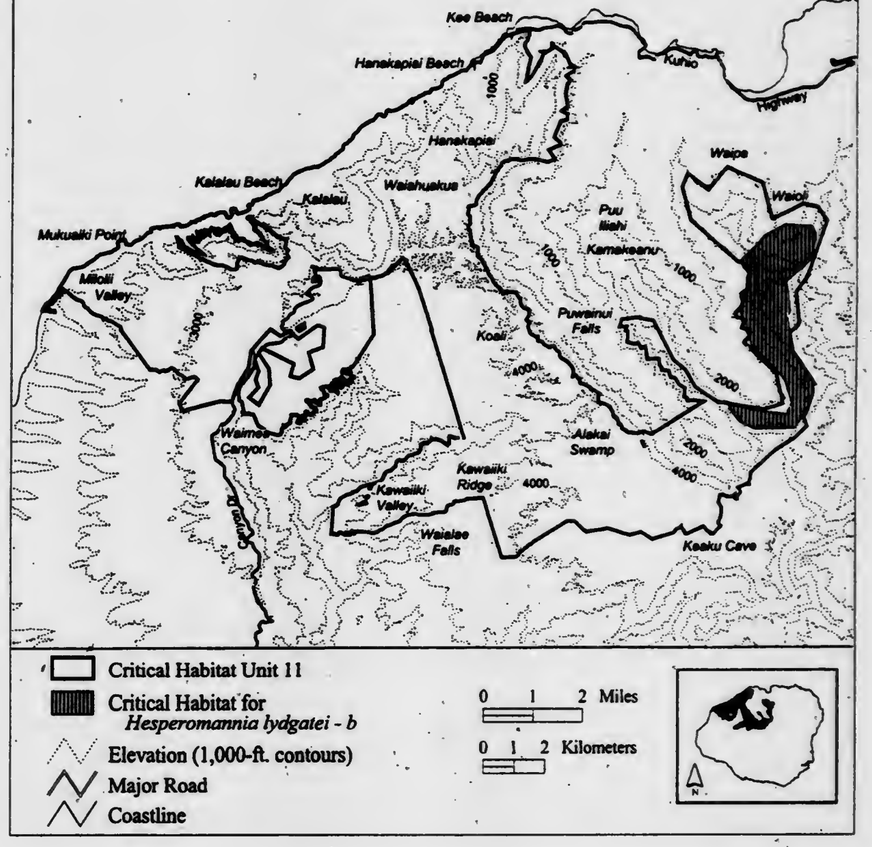


(cxi) Kauai 11—*Hesperomannia lydgatei*—b (913 ha; 2,257 ac)

(A) Unit consists of the following 40 boundary points: Start at 449025, 2444558; 449034, 2444577; 447785, 2444536; 447265, 2444785; 446918, 2445192; 446929, 2445275; 446911, 2445345; 447532, 2445239; 447640, 2445139; 448264, 2445076; 448784, 2445014; 448951, 2445367; 448722, 2446074; 448431, 2446449; 447619, 2447218; 447515, 2447780; 447265, 2448196; 447369, 2448840; 447577, 2449152; 447500, 2449383; 447568, 2449571; 447383, 2449734; 447307, 2449963; 447288, 2449973; 447777, 2450446; 448043, 2450744; 448734, 2451117; 449607, 2451049; 449711, 2450800; 449711, 2450644; 449545, 2449954; 449353, 2449767; 448773, 2449272; 448893, 2448312; 448803, 2448103; 448983, 2446963; 449643, 2446064; 449643, 2445644; 449433, 2445045; 449043, 2444565; return to starting point.

(B) **Note:** Map 111 follows:

Map 111 Unit 11 - *Hesperomannia lydgatei - b*

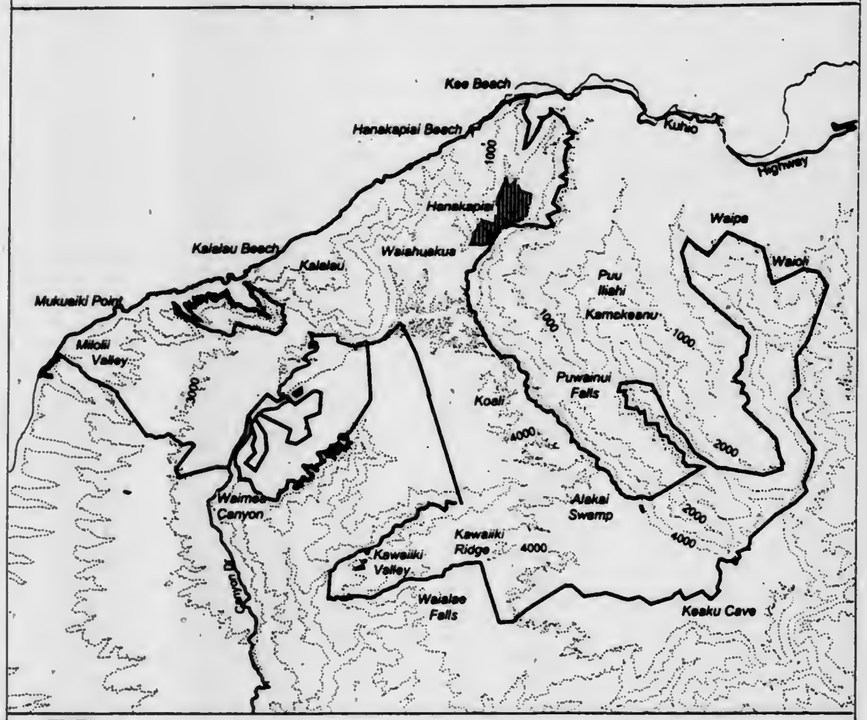


(cxii) Kauai 11—*Hesperomannia lydgatei*—c (180 ha; 444 ac)

(A) Unit consists of the following 63 boundary points: Start at 439257, 2452630; 439170, 2452590; 439025, 2452523; 438546, 2452544; 438629, 2452877; 438900, 2453355; 439316, 2453230; 439378, 2454041; 439711, 2454768; 439733, 2454651; 439774, 2454435; 440003, 2454643; 440169, 2454310; 440536, 2454173; 440533, 2454158; 440523, 2454133; 440509, 2454110; 440485, 2453995; 440492, 2453950; 440484, 2453922; 440461, 2453865; 440450, 2453851; 440432, 2453815; 440421, 2453780; 440412, 2453745; 440410, 2453716; 440404, 2453694; 440384, 2453655; 440378, 2453623; 440380, 2453590; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350, 2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; 440244, 2453334; 440223, 2453322; 440199, 2453305; 440147, 2453289; 440119, 2453282; 440093, 2453280; 439987, 2453284; 439962, 2453283; 439924, 2453275; 439905, 2453264; 439787, 2453162; 439724, 2453135; 439639, 2453119; 439600, 2453107; 439553, 2453082; 439503, 2453046; 439481, 2453022; 439473, 2452985; 439464, 2452963; 439414, 2452909; 439390, 2452876; 439355, 2452801; 439333, 2452769; 439311, 2452745; 439279, 2452669; return to starting point.

(B) **Note:** Map 112 follows:

Map 112 Unit 11 - *Hesperomannia lydgatei* - c

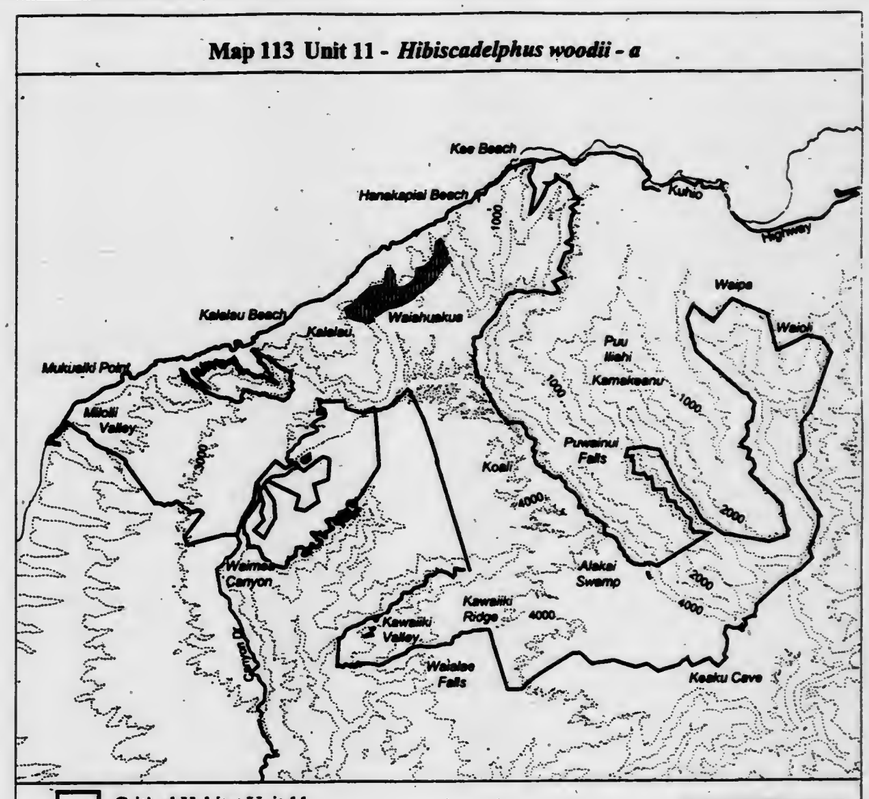


(cxiii) Kauai 11—*Hibiscadelphus woodii*—a (278 ha; 686 ac)

(A) Unit consists of the following 52 boundary points: Start at 437363, 2454888; 437482, 2454647; 437699, 2454229; 437302, 2453742; 437228, 2453583; 437134, 2453505; 437048, 2453382; 437011, 2453374; 436831, 2453251; 436638, 2453088; 436478, 2452949; 436290, 2452826; 435970, 2452683; 435913, 2452666; 435671, 2452621; 435413, 2452470; 435265, 2452364; 435195, 2452253; 435054, 2452153; 434912, 2452191; 434801, 2452221; 434628, 2452243; 434335, 2452343; 434224, 2452634; 434569, 2452839; 434769, 2453060; 434970, 2453248; 435142, 2453350; 435318, 2453395; 435486, 2453407; 435556, 2453530; 435568, 2453678; 435614, 2453870; 435741, 2453972; 435818, 2453862; 435872, 2453677; 435892, 2453485; 435900, 2453366; 435925, 2453325; 436187, 2453346; 436376, 2453473; 436503, 2453604; 436544, 2453710; 436552, 2453845; 436560, 2453947; 436650, 2453964; 436822, 2453996; 436995, 2454115; 437117, 2454254; 437167, 2454479; 437179, 2454676; 437232, 2454790; return to starting point.

(B) **Note:** Map 113 follows:

Map 113 Unit 11 - *Hibiscadelphus woodii* - a

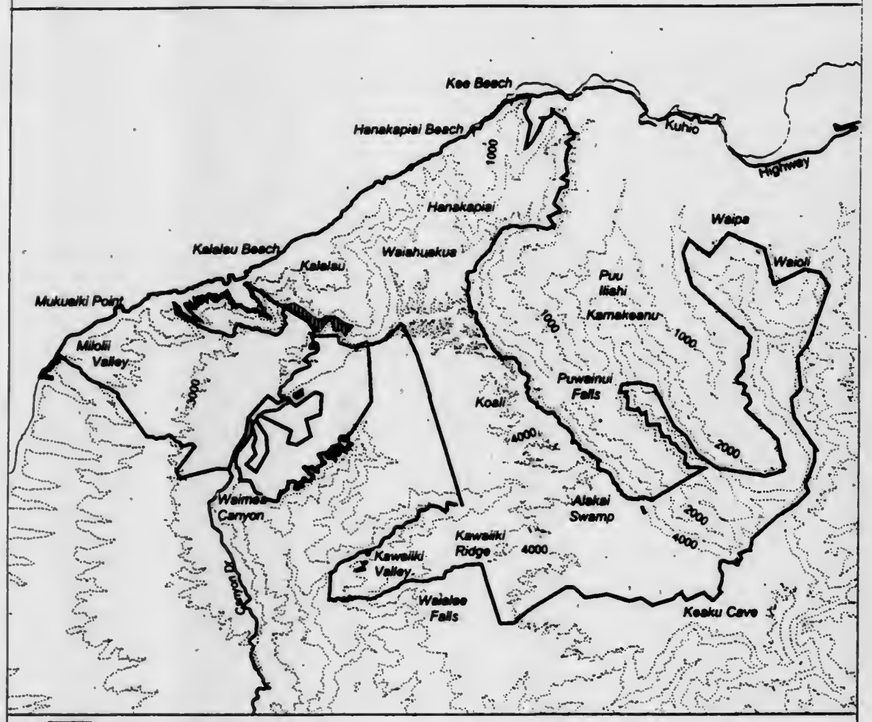


(cxiv) Kauai 11—*Hibiscadelphus woodii*—b (72 ha; 177 ac)

(A) Unit consists of the following 43 boundary points: Start at 432520, 2450579; 432692, 2450669; 432843, 2450694; 432979, 2450628; 433167, 2450501; 433306, 2450399; 433446, 2450268; 433511, 2450202; 433704, 2450174; 433839, 2450268; 434081, 2450272; 434290, 2450198; 434437, 2450087; 434577, 2450030; 434737, 2449985; 434753, 2449956; 434716, 2449895; 434642, 2449793; 434536, 2449666; 434478, 2449604; 434388, 2449772; 434360, 2449817; 434245, 2449793; 434155, 2449817; 434097, 2449952; 434069, 2450079; 434007, 2450116; 433933, 2450104; 433876, 2450039; 433806, 2449940; 433753, 2449875; 433720, 2449817; 433667, 2449777; 433573, 2449772; 433495, 2449768; 433429, 2449830; 433376, 2449928; 433323, 2449994; 433233, 2450104; 433085, 2450194; 432839, 2450334; 432704, 2450432; 432589, 2450481; return to starting point.

(B) **Note:** Map 114 follows:

Map 114 Unit 11 - *Hibiscadelphus woodii - b*



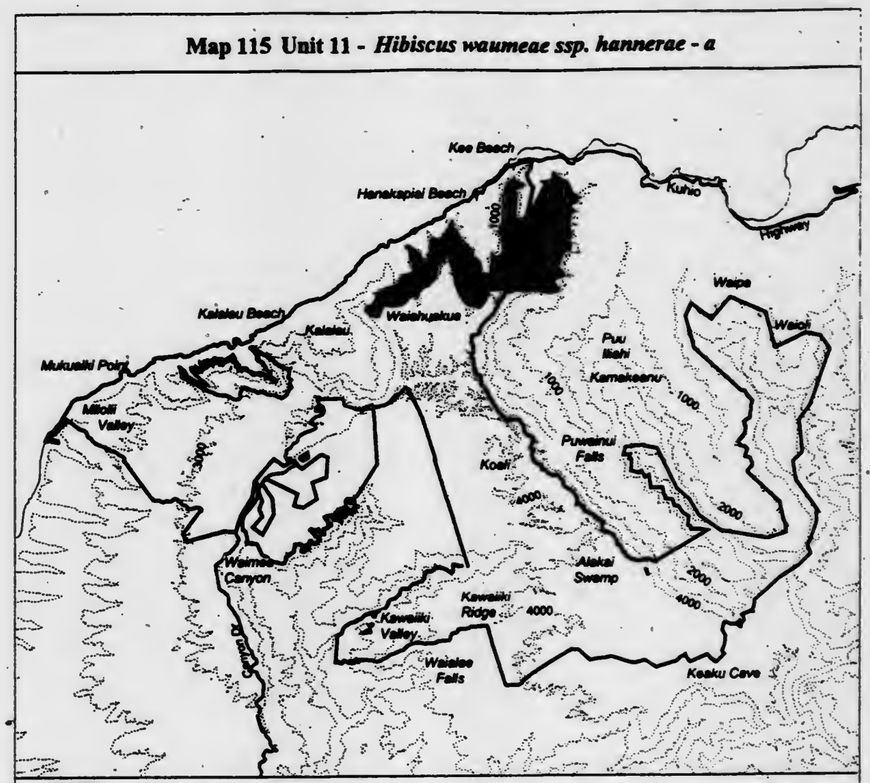
(cxv) Kauai 11—*Hibiscus waimeae ssp. hannerae*—a (1,119 ha; 2,765 ac)

(A) Unit consists of the following 180 boundary points: Start at 439800, 2453173; 439754, 2453167; 439692, 2453157; 439557, 2453163; 439532, 2453165; 439441, 2453172; 439409, 2453191; 439363, 2453165; 439230, 2453162; 439059, 2453162; 438983, 2453175; 438983, 2453064; 438942, 2452919; 438866, 2452802; 438796, 2452700; 438701, 2452574; 438505, 2452615; 438362, 2452644; 438261, 2452688; 438188, 2452770; 438014, 2453046; 437944, 2453242; 437874, 2453406; 437858, 2453641; 437801, 2453891; 437763, 2454052; 437719, 2454160; 437675, 2454356; 437584, 2454153; 437374, 2454005; 437347, 2453974; 437348, 2453973; 437291, 2453729; 437199, 2453502; 437184, 2453467; 437047, 2453328; 436790, 2453211; 436648, 2452900; 436559, 2453068; 436417, 2452923; 436281, 2452768; 436157, 2452689; 435967, 2452657; 435831, 2452635; 435770, 2452632; 435698, 2452682; 435644, 2452701; 435488, 2452477; 435444, 2452338; 435397, 2452296; 435352, 2452293; 435251, 2452328; 434963, 2452515; 434978, 2452588; 435029, 2452702; 435086, 2452679; 435131, 2452688; 435131, 2452688; 435131, 2452688; 435132, 2452688; 435132, 2452689; 435132, 2452689; 435133, 2452689; 435133, 2452689; 435134, 2452690; 435134, 2452690; 435135, 2452690; 435135, 2452690; 435135, 2452690; 435136, 2452691; 435137, 2452691; 435137, 2452691; 435138, 2452691; 435138, 2452691; 435138, 2452691; 435139, 2452691; 435139, 2452692; 435140, 2452692; 435140, 2452692; 435141, 2452692; 435141, 2452692; 435142, 2452692; 435142, 2452692; 435143, 2452692; 435143, 2452692; 435191, 2452717; 435270, 2452863; 435321, 2452945; 435403, 2453072; 435454, 2453129; 435495, 2453141; 435542, 2453151; 435609, 2453249; 435774, 2453290; 436053, 2453389; 436152, 2453608; 436563, 2453790; 436329, 2454620; 436719, 2454372; 436832, 2454059; 436960, 2454143; 436959, 2454144; 437063, 2454388; 437095, 2454691; 437123, 2454847; 437299,

2454806; 437456, 2454831; 437810, 2455391; 438080, 2454797; 438434, 2454464; 438587, 2454169; 438692, 2454087; 438723, 2453966; 438774, 2453808; 438828, 2453723; 438942, 2453681; 439028, 2453685; 439066, 2454067; 439088, 2454131; 439085, 2454138; 439096, 2454216; 439096, 2454271; 439119, 2454321; 439151, 2454295; 439187, 2454235; 439234, 2454221; 439271, 2454221; 439370, 2454258; 439422, 2454331; 439438, 2454388; 439444, 2454416; 439440, 2454421; 439391, 2454938; 439235, 2455037; 439299, 2455455; 439412, 2455858; 439540, 2456495; 439815, 2456763; 439823, 2456771; 439894, 2456601; 440128, 2456530; 439944, 2456367; 439859, 2455603; 440015, 2455348; 440865, 2456289; 440893, 2456544; 441127, 2456650; 441142, 2456810; 441443, 2456623; 441460, 2456466; 441609, 2456381; 441609, 2456254; 441799, 2456137; 441783, 2456137; 441761, 2456132; 441835, 2456125; 441835, 2456004; 441578, 2455834; 441704, 2455698; 441624, 2455592; 441558, 2455280; 441634, 2454883; 441432, 2454722; 441629, 2454611; 441614, 2454455; 441412, 2454395; 441196, 2453892; 441412, 2453696; 441402, 2453646; 441025, 2453470; 441231, 2453168; 440989, 2453082; 440546, 2453183; 440390, 2453178; 440234, 2453133; 440153, 2453118; 439932, 2453184; 439811, 2453179; 439809, 2453180; return to starting point.

(B) **Note:** Map 115 follows:

Map 115 Unit 11 - *Hibiscus waumeae ssp. hannerae - a*

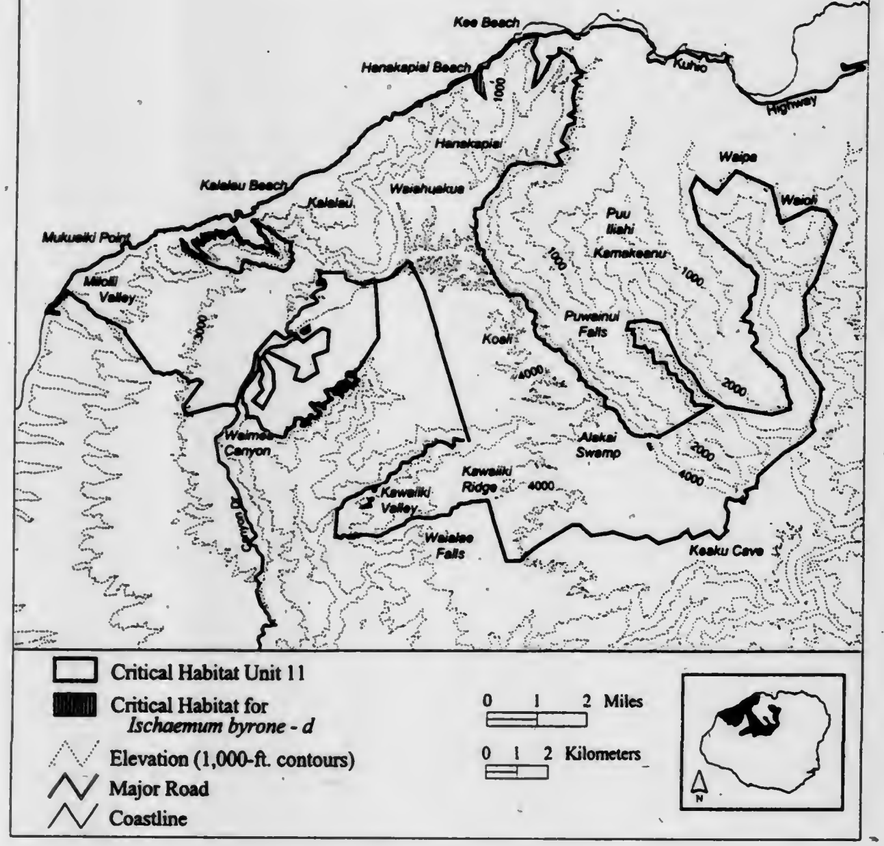


(cxvi) Kauai 11—*Ischaemum byrone*—d (45 ha; 111 ac)

(A) Unit consists of the following 16 boundary points: coastline; 438535, 2456321; 438601, 2456128; 438762, 2455202; 438425, 2455523; 438279, 2455967; 437712, 2455654; 437482, 2455417; 437305, 2455401; 437190, 2455271; 437106, 2455279; 436707, 2455118; 436684, 2454957; 436524, 2454988; 436179, 2454736; 436046, 2454695; 436030, 2454762; coastline.

(B) **Note:** Map 116 follows:

Map 116 Unit 11 - *Ischaemum byrone - d*

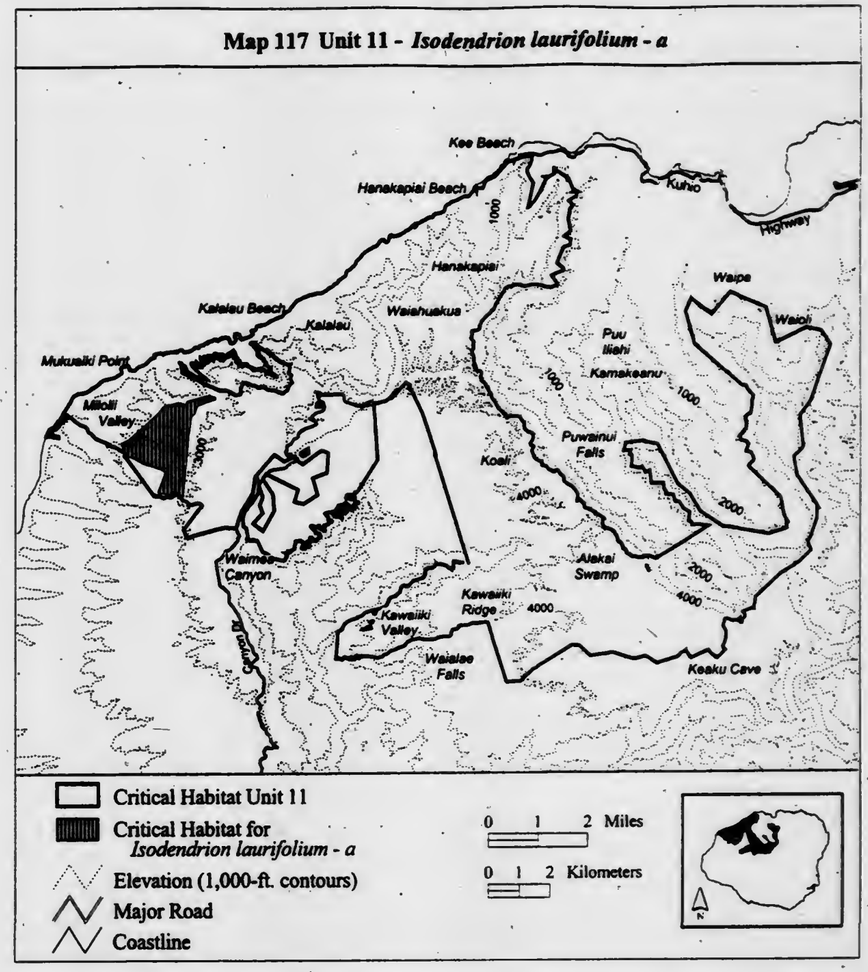


(cxvii) Kauai 11—*Isodendrion laurifolium*—a (401 ha; 991 ac)

(A) Unit consists of the following 39 boundary points: Start at 428398, 2449289; 428405, 2449288; 428911, 2449402; 429148, 2449342; 429159, 2449457; 429516, 2449545; 429785, 2449616; 429961, 2449622; 430088, 2449567; 430093, 2449517; 429829, 2449413; 429500, 2449298; 429428, 2449040; 429329, 2448974; 429323, 2448976; 429220, 2448345; 429046, 2446402; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428655, 2446474; 428632, 2446462; 428222, 2446540; 428481, 2447196; 428330, 2447269; 427752, 2447450; 427517, 2447597; 427171, 2447746; 427175, 2447754; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427131, 2447833; 427028, 2448086; 427253, 2448194; 427464, 2448370; 427811, 2448673; 428207, 2449040; return to starting point.

(B) **Note:** Map 117 follows:

Map 117 Unit 11 - *Isodendrion laurifolium - a*

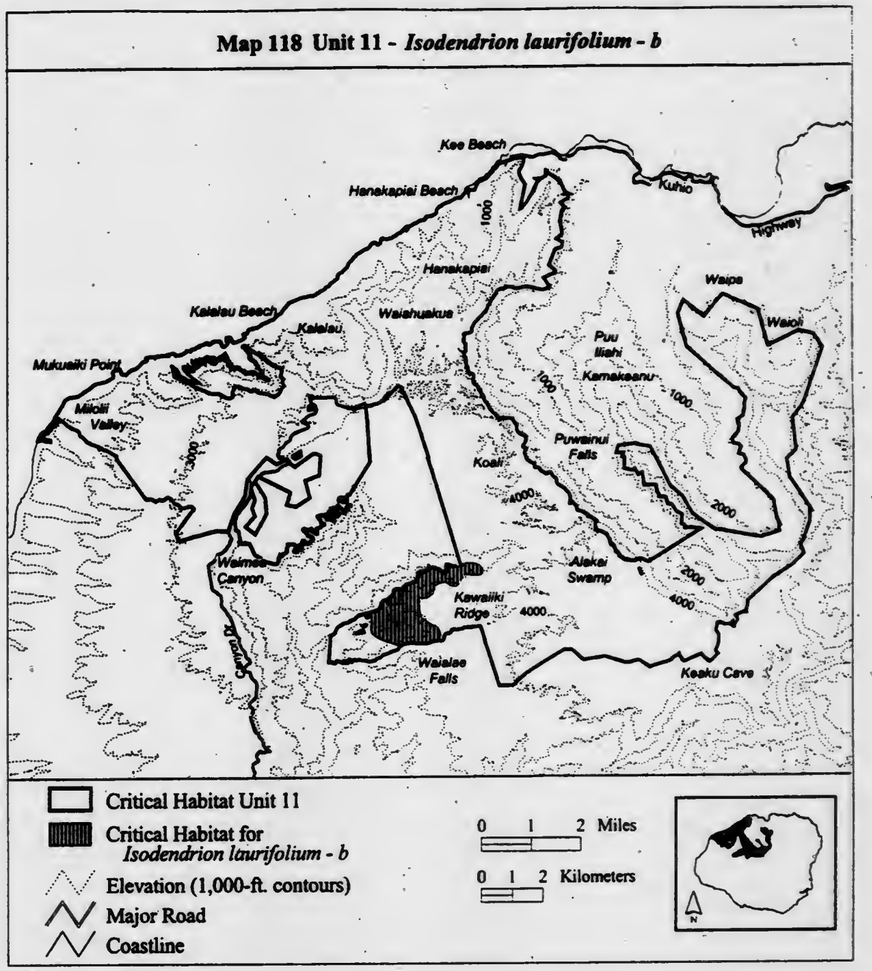


(cxviii) Kauai 11—*Isodendrion laurifolium*—b (400 ha; 988 ac)

(A) Unit consists of the following 320 boundary points: Start at 439006, 2444193; 438997, 2444039; 438903, 2443983; 438775, 2443979; 438637, 2443979; 438509, 2444013; 438402, 2443987; 438346, 2443863; 438269, 2443722; 438175, 2443641; 438098, 2443628; 437961, 2443649; 437871, 2443726; 437815, 2443769; 437772, 2443769; 437614, 2443714; 437438, 2443645; 437421, 2443559; 437412, 2443448; 437391, 2443384; 437228, 2443294; 437009, 2443230; 436941, 2443114; 436949, 2443011; 436962, 2442891; 436988, 2442758; 437031, 2442613; 437146, 2442527; 437356, 2442407; 437494, 2442356; 437569, 2442295; 437605, 2442210; 437648, 2442107; 437613, 2441906; 437601, 2441867; 437566, 2441876; 437532, 2441880; 437522, 2441879; 437495, 2441869; 437460, 2441862; 437391, 2441858; 437366, 2441852; 437346, 2441845; 437332, 2441842; 437317, 2441835; 437287, 2441816; 437274, 2441809; 437240, 2441796; 437224, 2441791; 437181, 2441781; 437150, 2441777; 437111, 2441777; 437096, 2441779; 437062, 2441776; 437008, 2441775; 436960, 2441776; 436912, 2441780; 436895, 2441784; 436825, 2441795; 436799, 2441801; 436777, 2441809; 436730, 2441820; 436695, 2441811; 436666, 2441808; 436638, 2441803; 436618, 2441796; 436593, 2441792; 436583, 2441789; 436541, 2441785; 436492, 2441773; 436453, 2441759; 436419, 2441739; 436408, 2441737; 436374, 2441718; 436362, 2441711; 436277, 2441726; 435977, 2441829; 435771, 2441906; 435621, 2441970; 435488, 2442048; 435398, 2442150; 435364, 2442279; 435368, 2442352; 435394, 2442442; 435390, 2442519; 435390, 2442630; 435386, 2442776; 435382, 2442812; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658,

2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438294, 2444342; 438355, 2444334; 438488, 2444377; 438732, 2444360; 438787, 2444347; 438895, 2444313; return to starting point.

(B) **Note:** Map 118 follows:

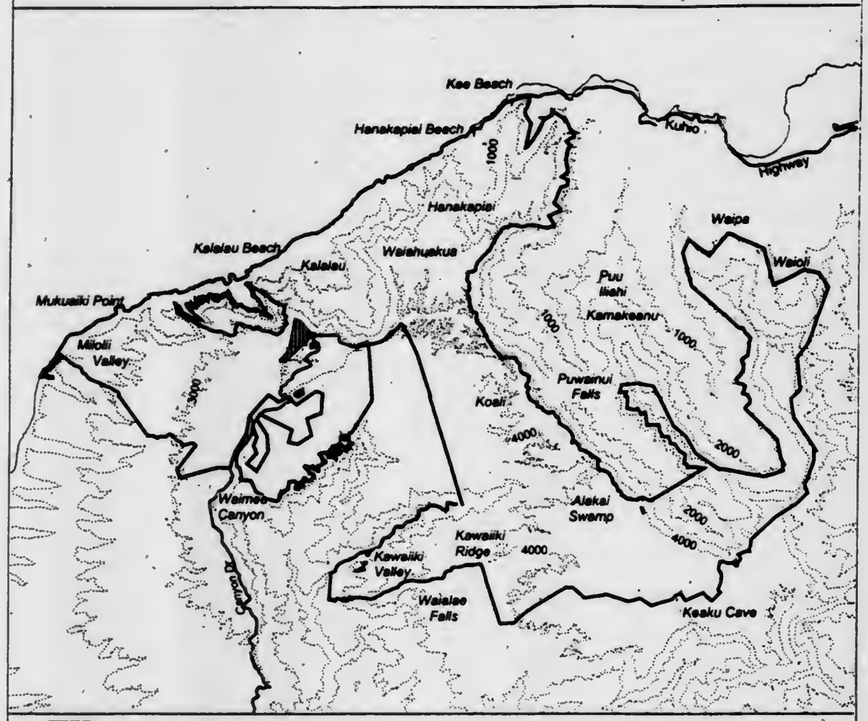


(cxix) Kauai 11—*Isodendrion longifolium*—c (59 ha; 146 ac)

(A) Unit consists of the following 12 boundary points: Start at 432793, 2450043; 432799, 2450073; 432822, 2450200; 432971, 2450144; 433043, 2450118; 433310, 2449821; 433426, 2449707; 433399, 2449709; 433414, 2449628; 432530, 2448758; 432335, 2448851; 432630, 2449144; return to starting point.

(B) **Note:** Map 119 follows:

Map 119 Unit 11 - *Isodendrion longifolium* - c



Critical Habitat Unit 11

Critical Habitat for *Isodendrion longifolium* - c

Elevation (1,000-ft. contours)

Major Road

Coastline

0 1 2 Miles

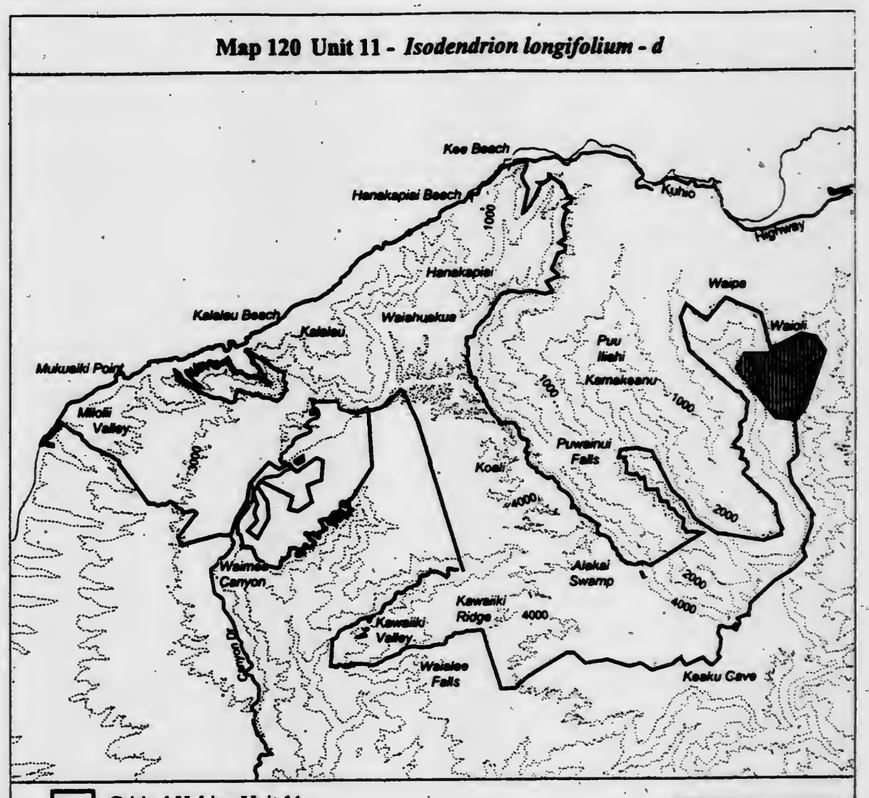
0 1 2 Kilometers

(cxx) Kauai 11—*Isodendrion longifolium*—d (493 ha; 1,218 ac)

(A) Unit consists of the following 16 boundary points: Start at 449855, 2451511; 450071, 2451219; 449928, 2450811; 449449, 2449480; 449073, 2448969; 449073, 2448966; 448431, 2449017; 447240, 2450530; 447143, 2450657; 447406, 2451160; 447518, 2451166; 448229, 2451166; 448981, 2451592; 449257, 2451734; 449665, 2451685; 449738, 2451669; return to starting point.

(B) **Note:** Map 120 follows:

Map 120 Unit 11 - *Isodendrion longifolium* - d



Critical Habitat Unit 11

Critical Habitat for *Isodendrion longifolium* - d

Elevation (1,000-ft. contours)

Major Road

Coastline

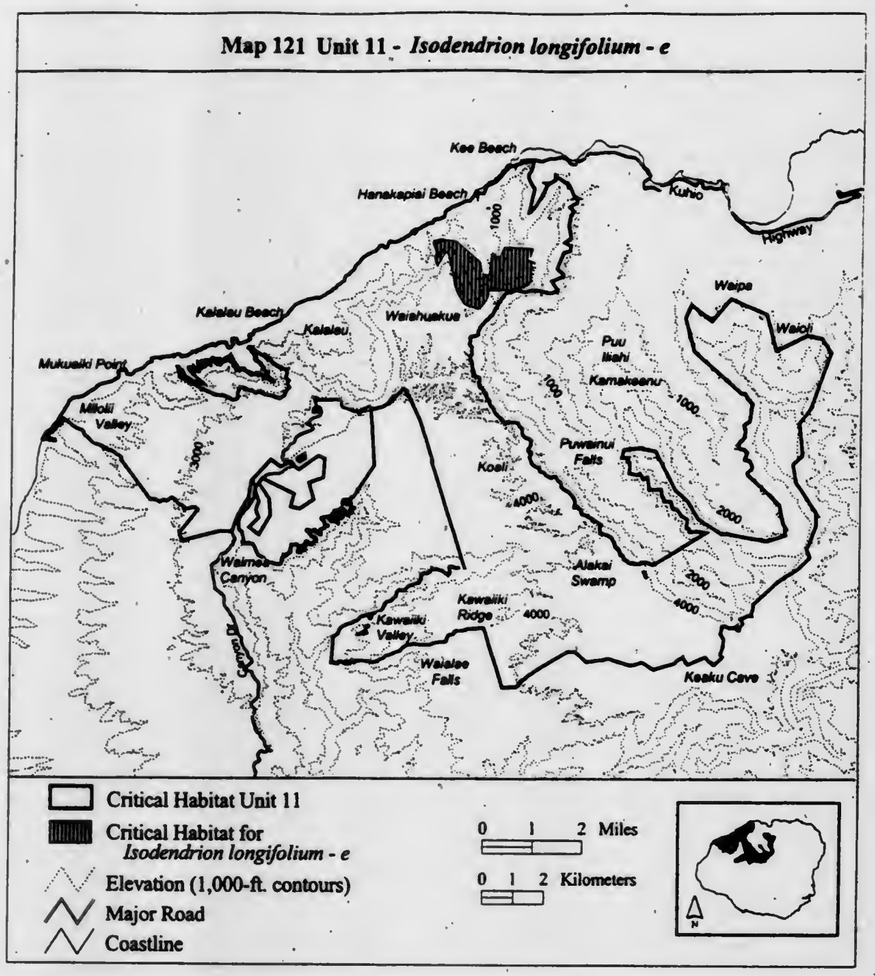
0 1 2 Miles

0 1 2 Kilometers

(cxxi) Kauai 11—*Isodendrion longifolium*—e (381 ha; 941 ac)

(A) Unit consists of the following 68 boundary points: Start at 439819, 2453189; 439579, 2453181; 439568, 2453181; 438996, 2453168; 438990, 2453040; 438932, 2452880; 438715, 2452573; 438651, 2452573; 438247, 2452701; 438151, 2452817; 438029, 2453034; 437888, 2453367; 437856, 2453610; 437760, 2454032; 437658, 2454372; 437626, 2454410; 437568, 2454359; 437427, 2454103; 437389, 2454054; 437334, 2453949; 437268, 2454075; 437222, 2454245; 437297, 2454346; 437277, 2454462; 437175, 2454700; 437209, 2454781; 437465, 2454839; 437933, 2454775; 438708, 2454103; 438727, 2453962; 438766, 2453795; 438830, 2453706; 439003, 2453693; 439035, 2453846; 439035, 2454026; 439080, 2454269; 439150, 2454345; 439208, 2454256; 439355, 2454288; 439445, 2454461; 439464, 2454563; 439730, 2454563; 440002, 2454563; 440423, 2454521; 440294, 2454127; 440493, 2454062; 440438, 2453967; 440361, 2453776; 440361, 2453571; 440372, 2453534; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350, 2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; 440244, 2453334; 440223, 2453322; 440199, 2453305; 440147, 2453289; 440119, 2453282; 440093, 2453280; 439987, 2453284; 439962, 2453283; 439924, 2453275; 439905, 2453264; return to starting point.

(B) **Note:** Map 121 follows:



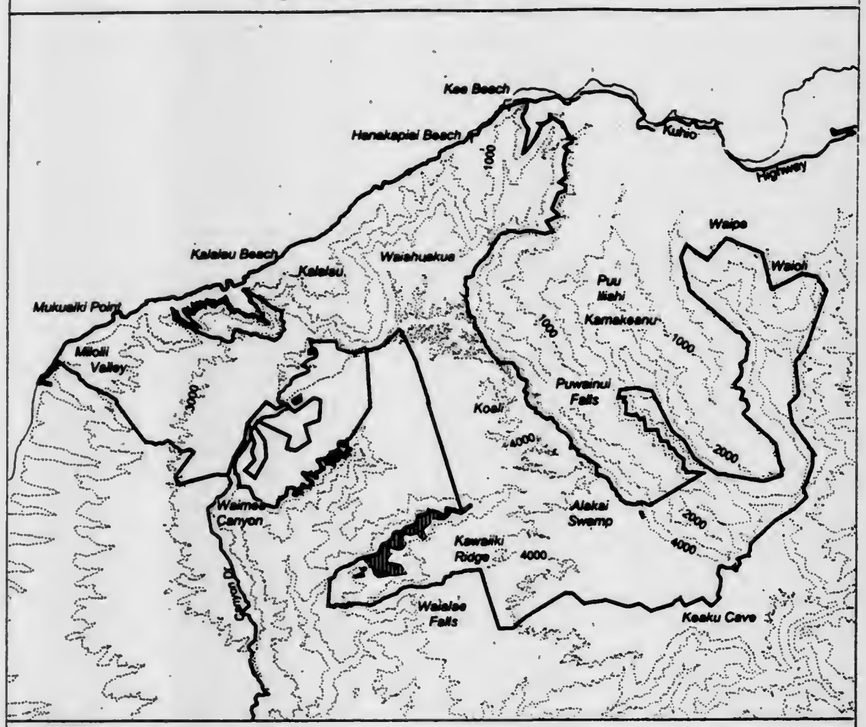
(cxxii) Kauai 11—*Kokia kauaiensis*—a (155 ha; 384 ac)

(A) Unit consists of the following 287 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678,

2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438301, 2444319; 438397, 2444313; 438592, 2444451; 438657, 2444444; 438672, 2444357; 438317, 2444096; 438078, 2444169; 437969, 2444183; 437940, 2444089; 437897, 2444038; 437759, 2443930; 437658, 2443937; 437505, 2443959; 437433, 2443973; 437310, 2443806; 437194, 2443712; 437092, 2443618; 437136, 2443502; 437179, 2443386; 437165, 2443328; 437056, 2443328; 436969, 2443401; 436933, 2443437; 436911, 2443517; 436730, 2443459; 436643, 2443452; 436513, 2443510; 436433, 2443372; 436428, 2443340; 436447, 2443339; 436521, 2443215; 436516, 2443118; 436436, 2443037; 436319, 2442983; 436198, 2443018; 436044, 2443075; 435968, 2443092; 435954, 2443025; 436027, 2442845; 435961, 2442776; 435920, 2442719; 435916, 2442648; 435965, 2442591; 436089, 2442570; 436229, 2442546; 436345, 2442534; 436417, 2442451; 436557, 2442214; 436200, 2442166; 436089, 2442159; 435837, 2442138; 435657, 2442104; 435578, 2442135; 435488, 2442216; 435441, 2442399; 435320, 2442501; 435244, 2442641; 435284, 2442631; return to starting point.

(B) **Note:** Map 122 follows:

Map 122 Unit 11 - *Kokia kauaiensis - a*

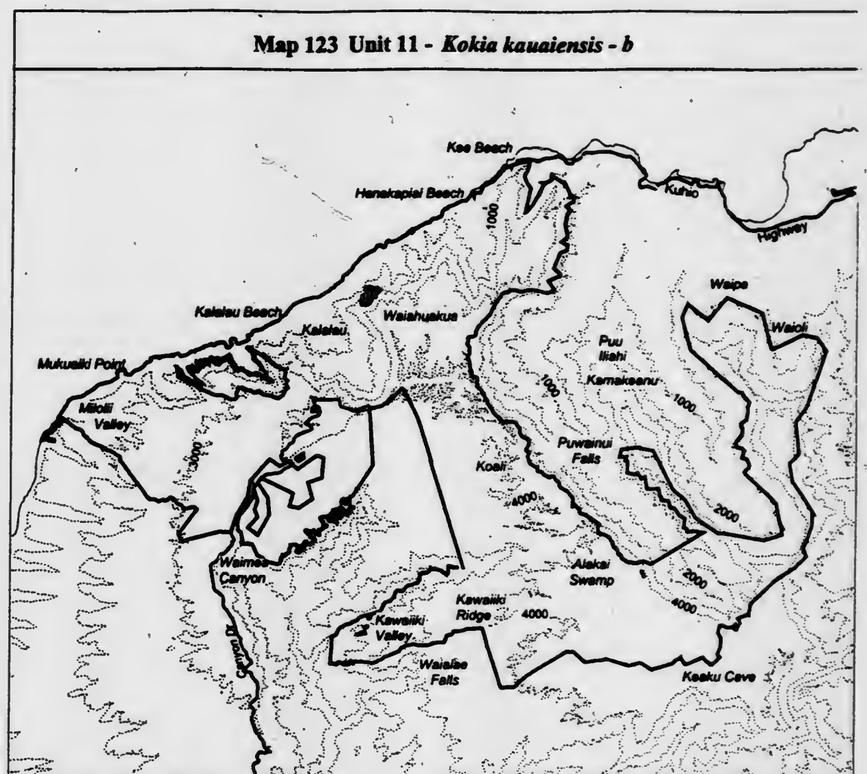


(cxxiii) Kauai 11—*Kokia kauaiensis*—b (30 ha; 74 ac)

(A) Unit consists of the following 54 boundary points: Start at 435047, 2453176; 435038, 2453207; 435043, 2453230; 435058, 2453257; 435101, 2453291; 435145, 2453300; 435165, 2453304; 435176, 2453317; 435166, 2453322; 435166, 2453344; 435180, 2453345; 435202, 2453340; 435247, 2453319; 435294, 2453296; 435330, 2453290; 435354, 2453284; 435385, 2453266; 435395, 2453260; 435412, 2453266; 435433, 2453285; 435451, 2453304; 435463, 2453300; 435533, 2453250; 435651, 2453203; 435601, 2453135; 435551, 2453094; 435476, 2453038; 435457, 2452994; 435458, 2452931; 435428, 2452886; 435384, 2452889; 435354, 2452910; 435334, 2452903; 435320, 2452860; 435308, 2452793; 435265, 2452778; 435249, 2452760; 435231, 2452714; 435212, 2452666; 435180, 2452651; 435149, 2452645; 435048, 2452639; 434944, 2452655; 434906, 2452674; 434899, 2452697; 434904, 2452924; 434927, 2453016; 434958, 2453016; 435012, 2453066; 435029, 2453085; 435052, 2453083; 435086, 2453084; 435092, 2453120; 435071, 2453148; return to starting point.

(B) **Note:** Map 123 follows:

Map 123 Unit 11 - *Kokia kauaiensis - b*

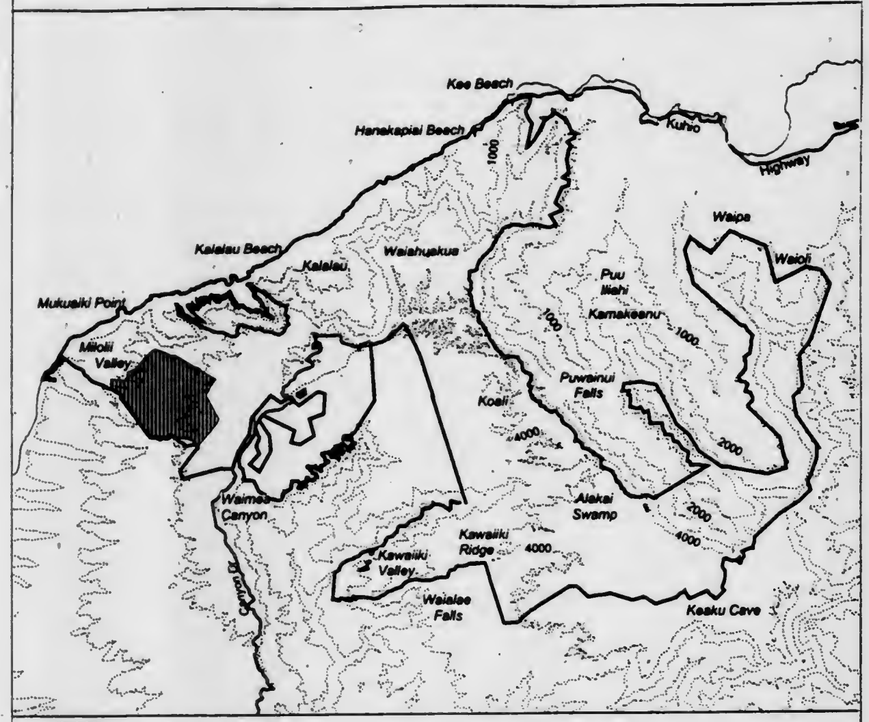


(cxxiv) Kauai 11—*Kokia kauaiensis*—c (667 ha; 1,647 ac)

(A) Unit consists of the following 43 boundary points: Start at 426834, 2447995; 426824, 2448315; 427350, 2448274; 427355, 2448413; 427360, 2448542; 427618, 2448645; 427973, 2449036; 428190, 2449221; 428282, 2449268; 428566, 2449160; 428787, 2449046; 428885, 2449062; 428912, 2449075; 430225, 2448294; 430075, 2448099; 429914, 2447762; 430322, 2447000; 430283, 2446894; 429631, 2446128; 429468, 2446319; 429267, 2446382; 429075, 2446396; 428941, 2446434; 428749, 2446569; 428619, 2446458; 428049, 2446487; 427178, 2447664; 427161, 2447669; 427157, 2447676; 427157, 2447711; 427175, 2447754; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427124, 2447837; 427084, 2447847; 427039, 2447867; 426997, 2447892; 426981, 2447902; 426958, 2447923; 426944, 2447941; 426907, 2447965; 426847, 2447992; return to starting point.

(B) **Note:** Map 124 follows:

Map 124 Unit 11 - *Kokia kauaiensis* - c

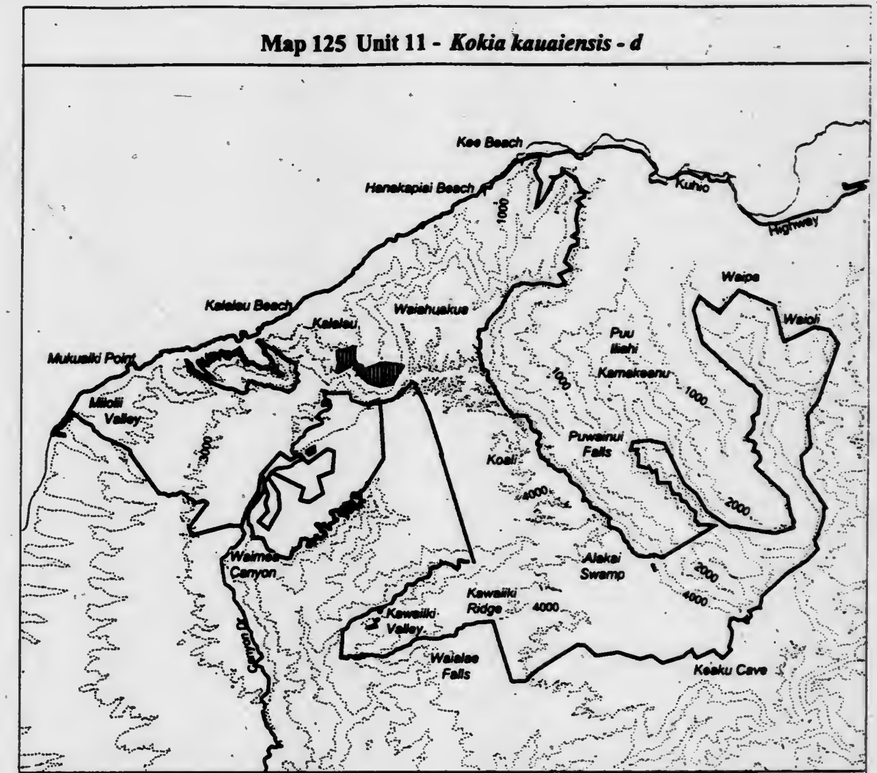


(cxxv) Kauai 11—*Kokia kauaiensis*—d (126 ha; 312 ac)

(A) Unit consists of the following 39 boundary points: Start at 433942, 2450326; 433919, 2450316; 433897, 2450291; 433798, 2450316; 433790, 2450354; 433815, 2450483; 433861, 2450632; 433808, 2450794; 433798, 2451025; 434439, 2451161; 434407, 2450754; 434451, 2450695; 434487, 2450604; 434546, 2450588; 434662, 2450569; 434676, 2450537; 434681, 2450418; 435237, 2450644; 435423, 2450648; 435669, 2450630; 435811, 2450601; 436011, 2450551; 436007, 2450518; 435652, 2449941; 435563, 2449909; 435229, 2449844; 434917, 2449931; 434795, 2450008; 434633, 2450148; 434626, 2450212; 434566, 2450245; 434481, 2450245; 434512, 2450334; 434526, 2450381; 434443, 2450405; 434392, 2450424; 434382, 2450448; 434359, 2450589; 434355, 2450584; return to starting point.

(B) **Note:** Map 125 follows:

Map 125 Unit 11 - *Kokia kauaiensis* - d

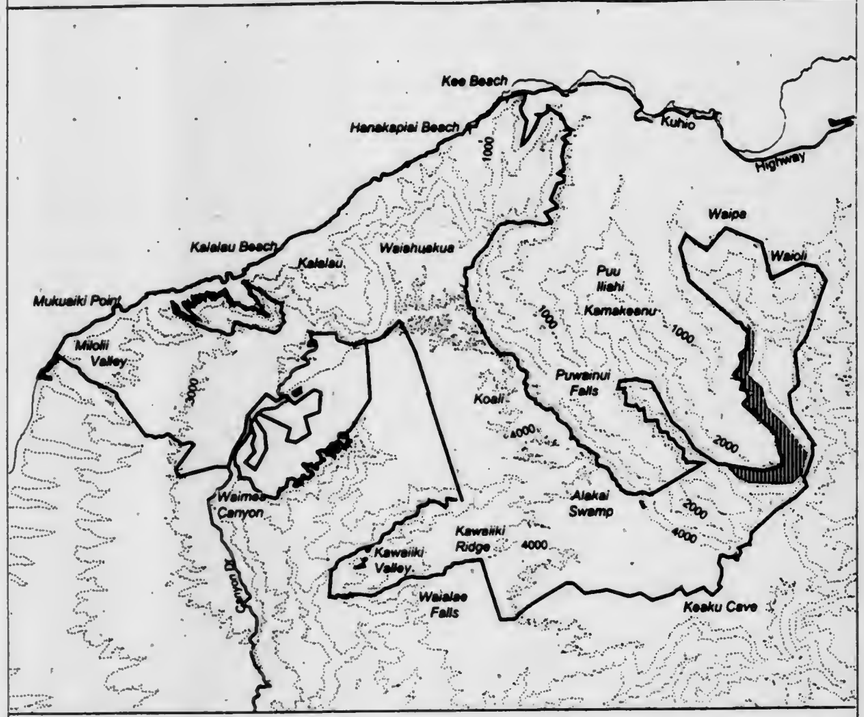


(cxxvi) Kauai 11—*Labordia lydgatei*—c (325 ha; 803 ac)

(A) Unit consists of the following 37 boundary points: Start at 447594, 2447520; 447758, 2447683; 447472, 2447746; 447323, 2447780; 447420, 2448093; 447153, 2448108; 447107, 2448255; 447371, 2448552; 447293, 2448807; 447329, 2448906; 447468, 2449010; 447589, 2449589; 447461, 2449701; 447554, 2449852; 447733, 2449589; 447709, 2448696; 447516, 2448238; 447673, 2448097; 447975, 2447828; 448168, 2447176; 448240, 2447107; 448748, 2446621; 449448, 2445704; 449279, 2445028; 448989, 2444738; 448289, 2444739; 447637, 2444763; 447202, 2444956; 446885, 2445349; 448070, 2445147; 448658, 2445334; 448629, 2445470; 448699, 2445511; 448577, 2445718; 448450, 2446319; 447413, 2447271; 447397, 2447323; return to starting point.

(B) **Note:** Map 126 follows:

Map 126 Unit 11 - *Labordia lydgatei* - c



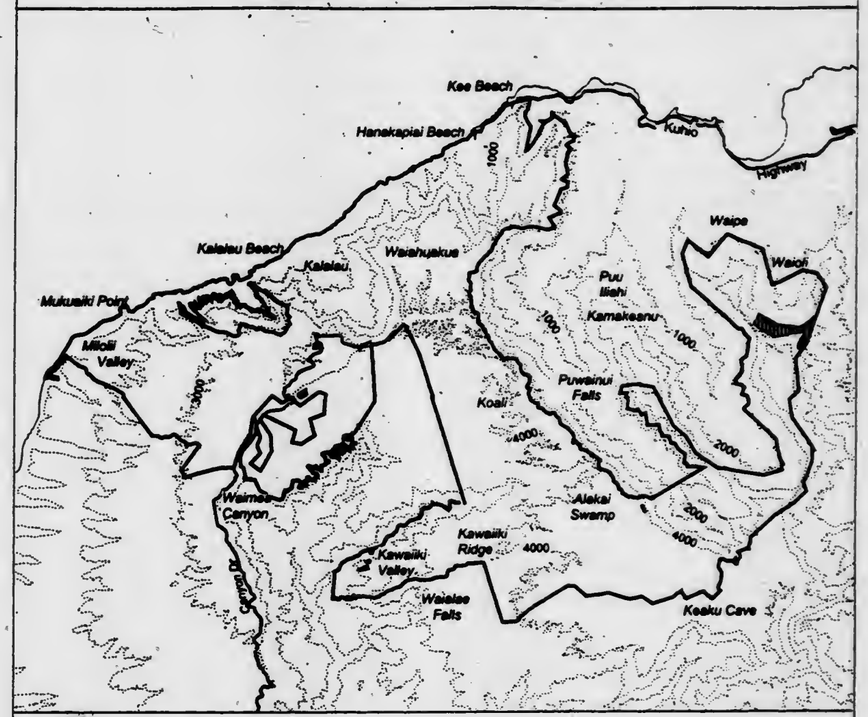
Critical Habitat Unit 11
Critical Habitat for *Labordia lydgatei* - c
Elevation (1,000-ft. contours)
Major Road
Coastline
0 1 2 Miles
0 1 2 Kilometers

(cxxvii) Kauai 11—*Labordia lydgatei*—d (82 ha; 203 ac)

(A) Unit consists of the following 18 boundary points: Start at 447872, 2450364; 448482, 2450047; 449119, 2449962; 449207, 2449950; 449624, 2450214; 449665, 2450240; 449712, 2450194; 449432, 2449395; 449310, 2449234; 449214, 2449211; 449158, 2449396; 449395, 2449797; 449400, 2449806; 449060, 2449740; 448772, 2449685; 448385, 2449589; 447902, 2449855; 447675, 2450047; return to starting point.

(B) **Note:** Map 127 follows:

Map 127 Unit 11 - *Labordia lydgatei* - d



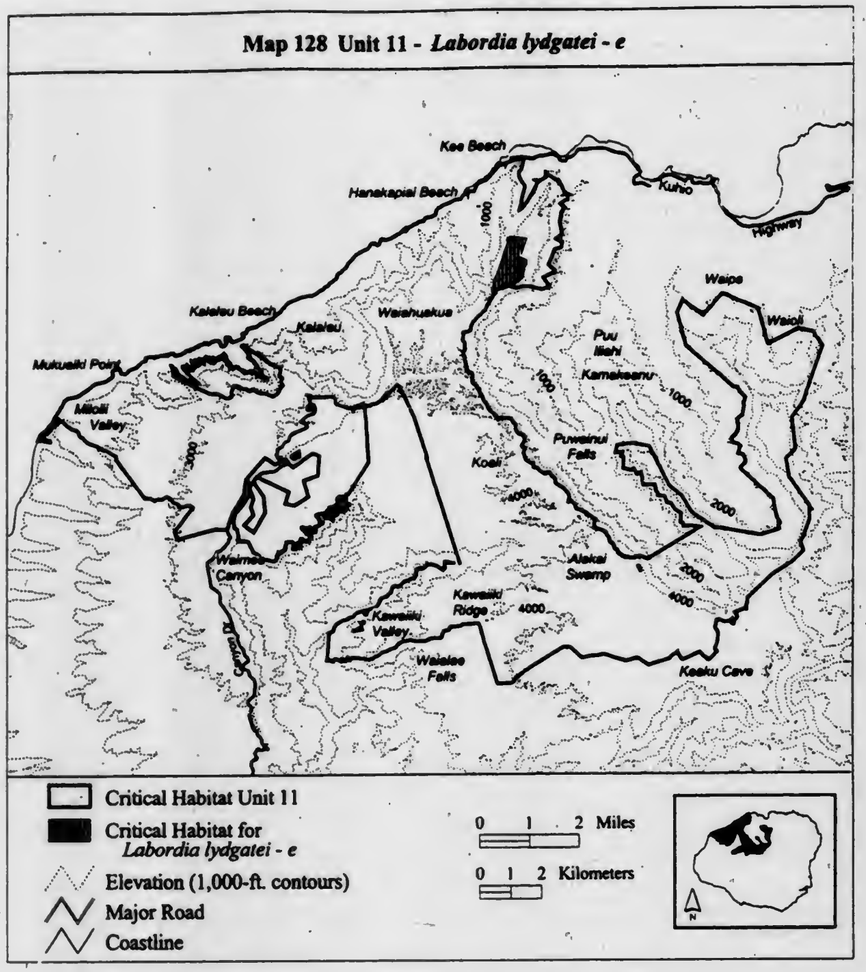
Critical Habitat Unit 11
Critical Habitat for *Labordia lydgatei* - d
Elevation (1,000-ft. contours)
Major Road
Coastline
0 1 2 Miles
0 1 2 Kilometers

(cxxviii) Kauai 11—*Labordia lydgatei*—e (117 ha; 290 ac)

(A) Unit consists of the following 54 boundary points: Start at 439373, 2452840; 439379, 2452900; 439425, 2453389; 439571, 2453718; 439601, 2453807; 439697, 2454089; 439714, 2454139; 439933, 2454779; 439960, 2454816; 440497, 2454749; 440294, 2454127; 440499, 2454060; 440485, 2453995; 440492, 2453950; 440484, 2453922; 440461, 2453865; 440450, 2453851; 440432, 2453815; 440421, 2453780; 440412, 2453745; 440410, 2453716; 440404, 2453694; 440384, 2453655; 440378, 2453623; 440380, 2453590; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350, 2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; 440244, 2453334; 440223, 2453322; 440199, 2453305; 440147, 2453289; 440119, 2453282; 440093, 2453280; 439987, 2453284; 439962, 2453283; 439924, 2453275; 439905, 2453264; 439787, 2453162; 439724, 2453135; 439639, 2453119; 439600, 2453107; 439553, 2453082; 439503, 2453046; 439481, 2453022; 439473, 2452985; 439464, 2452963; 439414, 2452909; 439390, 2452876; return to starting point.

(B) **Note:** Map 128 follows:

Map 128 Unit 11 - *Labordia lydgatei - e*



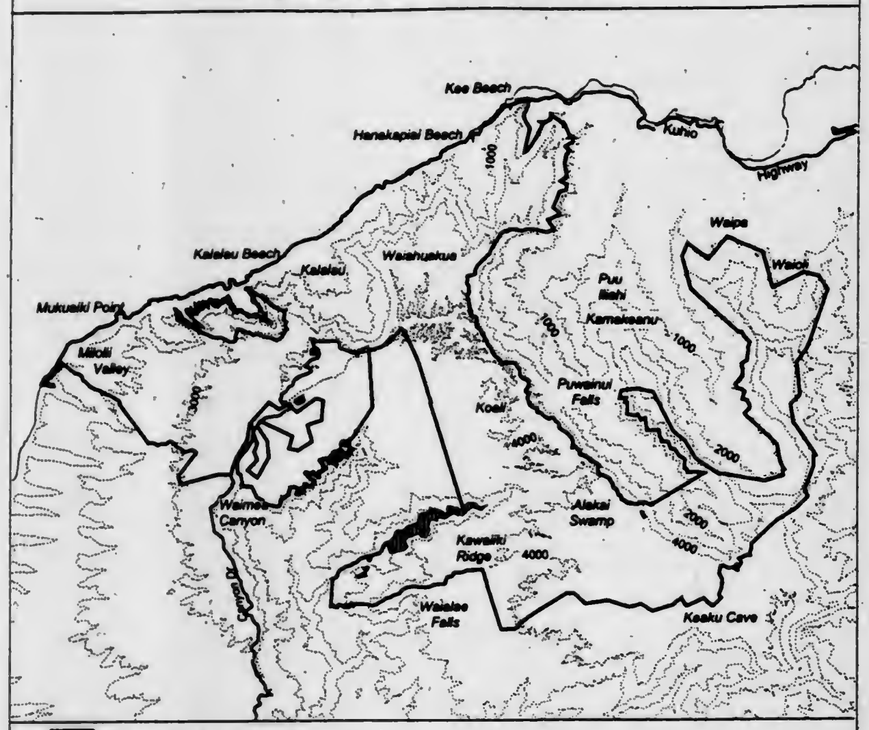
(cxxix) Kauai 11—*Lipochaeta fauriei*—a (106 ha; 262 ac)

(A) Unit consists of the following 221 boundary points: Start at 438277, 2444393; 438400, 2444405; 438465, 2444470; 438698, 2444457; 438880, 2444314; 439087, 2444392; 438906, 2444224; 438607, 2444328; 438374, 2444120; 438296, 2444042; 438205, 2444094; 438153, 2444042; 438063, 2444107; 437959, 2444094; 437738, 2443939; 437492, 2444004; 437492, 2443874; 437271, 2443926; 437206, 2443731; 437245, 2443576; 437168, 2443472; 437129, 2443355; 436973, 2443368; 436869, 2443472; 436545, 2443368; 436428, 2443265; 436532, 2443070; 436454, 2442966; 436363, 2442940; 436221, 2442927; 436182, 2442914; 435948, 2442863; 435883, 2442979; 435812, 2443191; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818,

2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436914, 2443952; 436916, 2443955; 436913, 2443964; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; return to starting point.

(B) **Note:** Map 129 follows:

Map 129 Unit 11 - *Lipochaeta fauriei - a*

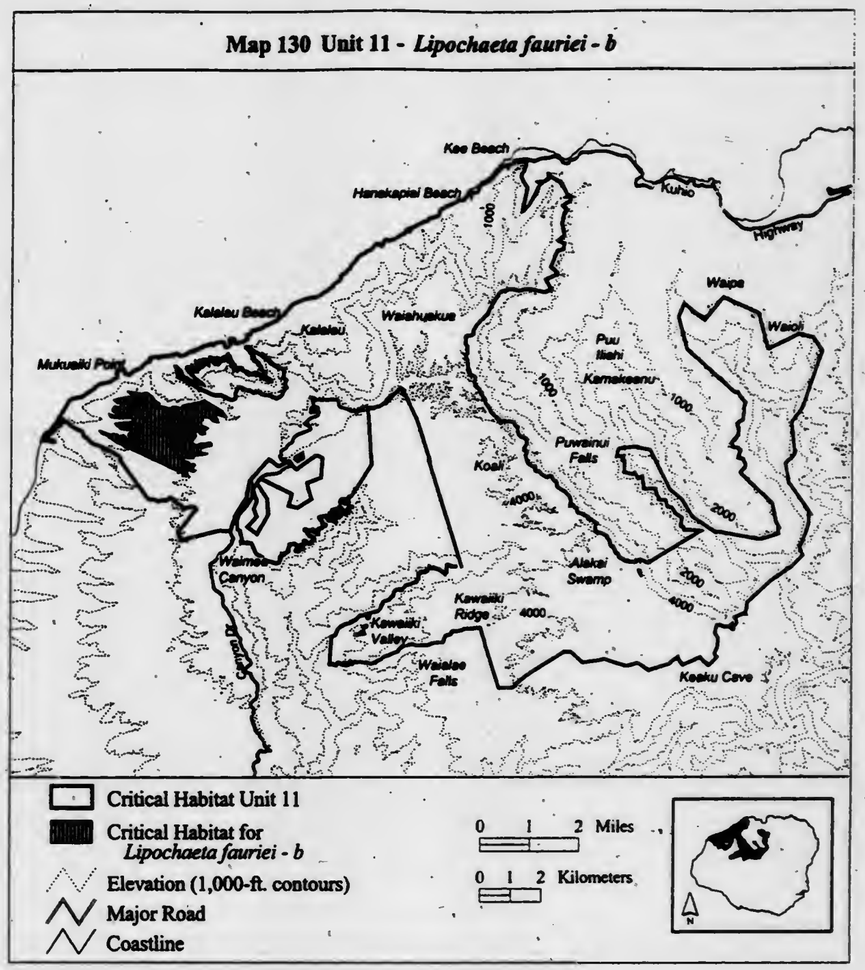


(cxxx) Kauai 11—*Lipochaeta fauriei—b* (545 ha; 1,347 ac)

(A) Unit consists of the following 125 boundary points: Start at 427560, 2448644; 427186, 2448690; 426974, 2448883; 427525, 2448944; 427595, 2449029; 427167, 2449118; 426897, 2449284; 426885, 2449330; 426974, 2449445; 427105, 2449399; 427240, 2449511; 427082, 2449526; 426943, 2449646; 427440, 2449757; 427583, 2449646; 427618, 2449680; 427398, 2449919; 427865, 2449846; 428011, 2449885; 428188, 2449777; 428304, 2449623; 428428, 2449542; 428420, 2449472; 428694, 2449411; 428790, 2449353; 428825, 2449426; 428917, 2449457; 429041, 2449399; 429145, 2449376; 429160, 2449464; 429287, 2449491; 429446, 2449526; 429623, 2449565; 429696, 2449549; 429769, 2449595; 429912, 2449630; 430487, 2449303; 430645, 2449087; 430564, 2449079; 430271, 2449172; 430271, 2449087; 430359, 2448921; 430174, 2448944; 430082, 2449056; 429816, 2449094; 429870, 2448987; 429781, 2448929; 429816, 2448813; 430016, 2448736; 429893, 2448636; 429939, 2448528; 429789, 2448524; 429634, 2448671; 429604, 2448543; 429650, 2448482; 429496, 2448297; 429634, 2448176; 429739, 2448229; 429966, 2448239; 430066, 2448292; 430130, 2448260; 430145, 2448155; 430019, 2448139; 429813, 2448076; 429761, 2447976; 430019, 2447912; 429913, 2447865; 429676, 2447849; 429565, 2447833; 429560, 2447786; 429555, 2447760; 429397, 2447754; 429323, 2447754; 429281, 2447807; 429223, 2447749; 429244, 2447681; 429307, 2447686; 429397, 2447639; 429418, 2447591; 429497, 2447581; 429544, 2447612; 429623, 2447549; 429555, 2447517; 429550, 2447459; 429550, 2447407; 429634, 2447375; 429587, 2447349; 429539, 2447328; 429486, 2447338; 429423, 2447380; 429386, 2447438; 429349, 2447422; 429355, 2447338; 429349, 2447307; 429381, 2447238; 429415, 2447204; 429378, 2447191; 427051, 2448261; 426945, 2448329; 426845, 2448398; 426782, 2448408; 426734, 2448482; 426608, 2448535; 426534, 2448566; 426465, 2448640; 426518, 2448645; 426603, 2448608; 426766, 2448550; 426866, 2448524; 426908, 2448556; 427040, 2448556; 427124, 2448471; 427277, 2448524; 427330, 2448445; 427356, 2448398; 427393, 2448376; 427441, 2448376; 427483, 2448366; 427552, 2448329; 427573, 2448329; 427536, 2448387; 427462, 2448424; 427425, 2448466; 427409, 2448508; 427409, 2448540; return to starting point.

(B) **Note:** Map 130 follows:

Map 130 Unit 11 - *Lipochaeta fauriei - b*

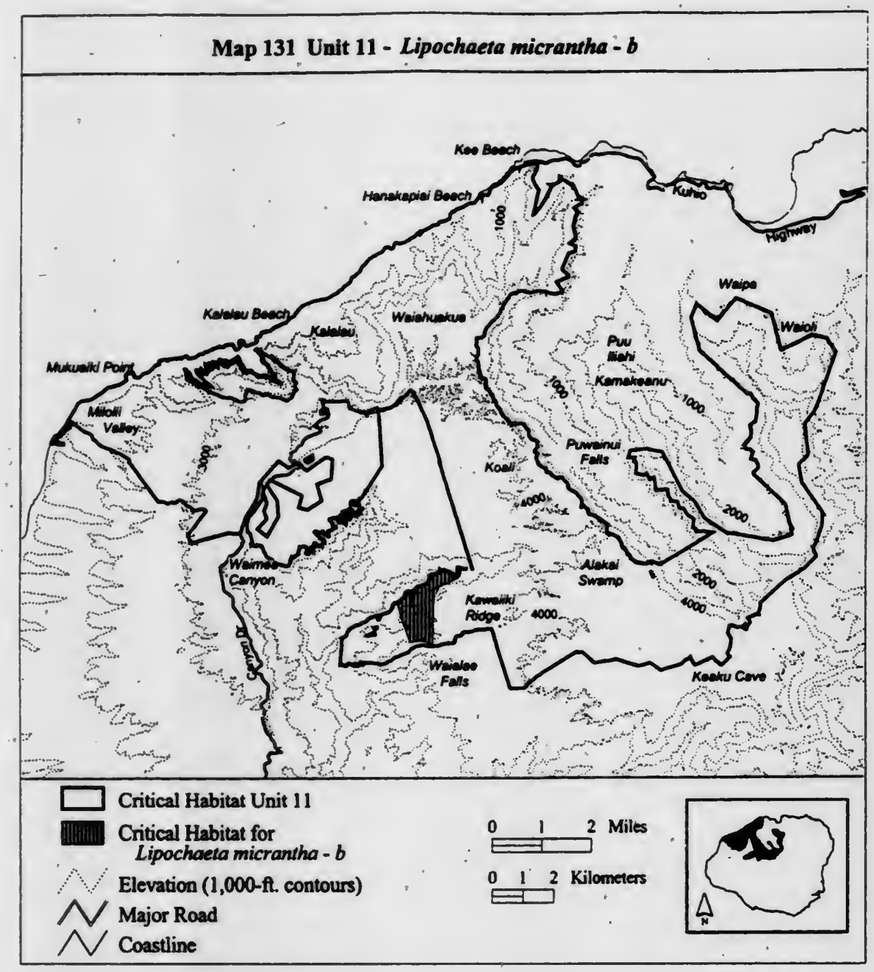


(cxxxi) Kauai 11—*Lipochaeta micrantha*—b (212 ha; 523 ac)

(A) Unit consists of the following 161 boundary points: Start at 437819, 2444222; 437929, 2444255; 437929, 2444124; 437901, 2444021; 437814, 2443944; 437514, 2443802; 437432, 2443802; 437241, 2443671; 437055, 2443306; 437028, 2441843; 436689, 2441952; 436285, 2441925; 436029, 2442618; 435914, 2442984; 435859, 2443120; 435831, 2443197; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576,

2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443863; 436890, 2443877; 436900, 2443900; 436909, 2443918; 436968, 2443955; 437037, 2444102; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; return to starting point.

(B) **Note:** Map 131 follows:

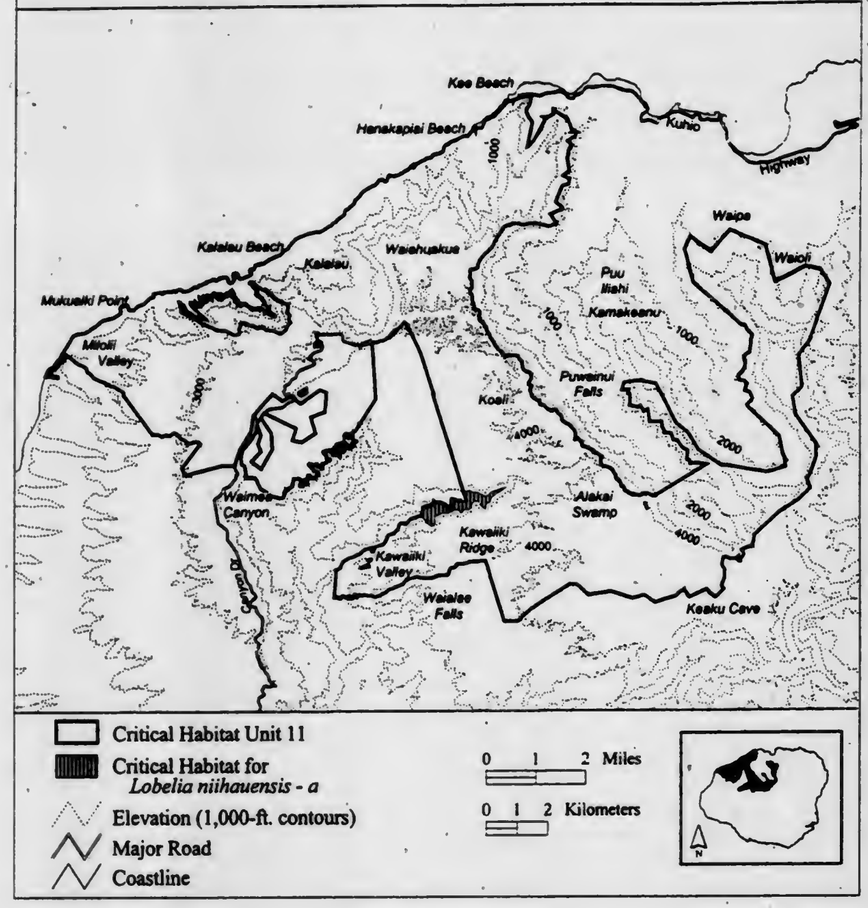


(cxxxii) Kauai 11—*Lobelia niihauensis*—a (89 ha; 220 ac)

(A) Unit consists of the following 143 boundary points: Start at 438259, 2444449; 438306, 2444552; 438419, 2444604; 438532, 2444542; 438686, 2444532; 438810, 2444470; 438933, 2444398; 439036, 2444449; 439108, 2444521; 439344, 2444614; 439611, 2444696; 439313, 2444501; 439149, 2444388; 439077, 2444223; 438974, 2444162; 438943, 2444018; 438769, 2444131; 438707, 2444254; 438584, 2444254; 438481, 2444152; 438460, 2444028; 438378, 2443977; 438255, 2443977; 438152, 2443864; 438059, 2443987; 437905, 2443957; 437782, 2443885; 437535, 2443874; 437361, 2443813; 437268, 2443741; 437299, 2443546; 437179, 2443460; 436834, 2443794; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; return to starting point.

(B) **Note:** Map 132 follows:

Map 132 Unit 11 - *Lobelia niihauensis - a*



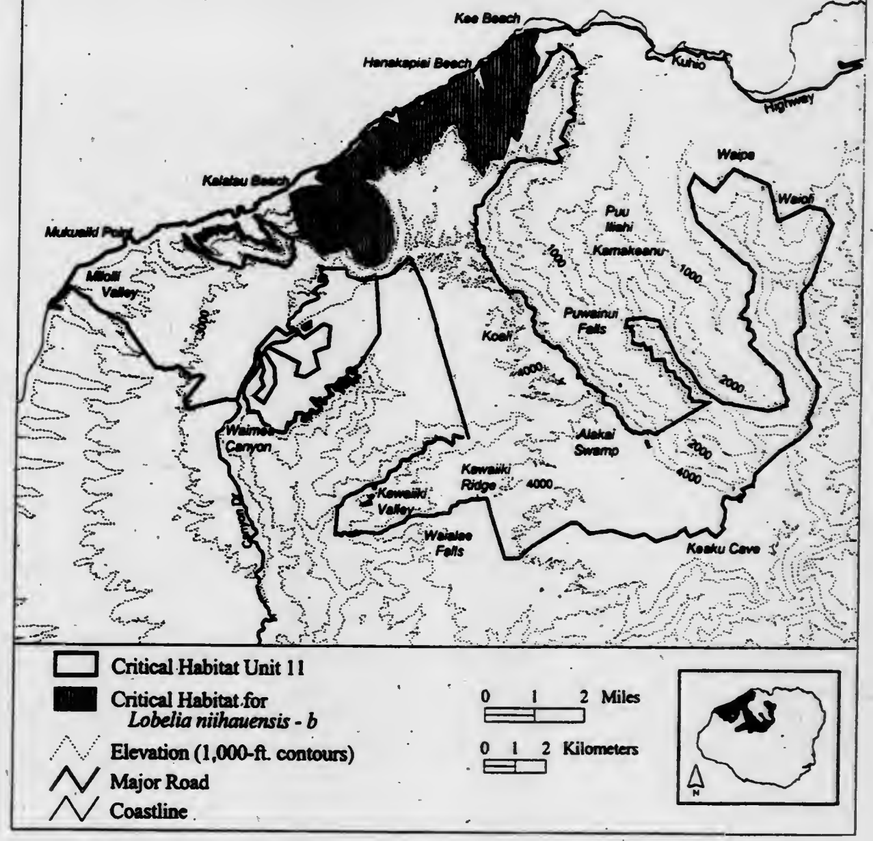
(cxxxiii) Kauai 11—*Lobelia niihauensis*—b (2,001 ha; 4,945 ac)

(A) Unit consists of the following 117 boundary points: Start at 432783, 2450812; 432645, 2451038; 432384, 2452020; 432426, 2452045; 432733, 2452216; 433075, 2452284; 433587, 2452284; 433211, 2452557; 433337, 2452799; 433777, 2452923; 433907, 2453037; 433997, 2453103; 434388, 2453374; 434591, 2453578; 434851, 2454007; 434988, 2454058; 435043, 2454198; 435247, 2454164; 435227, 2454251; 435315, 2454323; 435507, 2454503; 435959, 2454232; 435835, 2454695; 436208, 2454763; 436490, 2454954; 436731, 2454808; 436705, 2455135; 437089, 2455293; 437180, 2455248; 437507, 2455462; 437653, 2455627; 438253, 2455970; 438308, 2455956; 438616, 2455368; 438704, 2455385; 438649, 2455642; 438547, 2456015; 438604, 2456274; 438785, 2456263; 438898, 2456511; 439191, 2456650; 439587, 2457085; 439610, 2457109; 439815, 2457168; 439822, 2457153; 439835, 2457174; 439931, 2457201; 439939, 2457196; 439951, 2457207; 440098, 2457249; 440099, 2457249; 440144, 2457261; 440144, 2457262; 440197, 2457277; 440250, 2457274; 440289, 2457294; 440298, 2457298; 440390, 2457272; 440371, 2457184; 440366, 2457125; 440313, 2456964; 440227, 2456872; 440225, 2456766; 440259, 2456708; 440304, 2456601; 440437, 2456434; 439892, 2453948; 439806, 2453749; 439595, 2453953; 439565, 2453982; 439486, 2453621; 439327, 2453203; 439067, 2453192; 438952, 2453169; 438672, 2452605; 438425, 2452972; 438107, 2453238; 438208, 2453351; 438166, 2453511; 438016, 2453768; 437892, 2453870; 437851, 2454115; 437722, 2454364; 437530, 2454243; 437406, 2454051; 437236, 2453746; 437038, 2453682; 436908, 2453374; 436671, 2453283; 436628, 2452965; 436479, 2453283; 436174, 2452934; 436013, 2452829; 435877, 2452897; 435808, 2452795; 435552, 2453013; 435360, 2452572; 435224, 2452516; 435055, 2452516; 434958, 2452552; 434761, 2452505; 435236, 2452144; 435569, 2451669; 435740, 2451054; 435774,

2450474; 435501, 2449893; 435193, 2449723; 434817, 2449757; 434510, 2449996; 434373, 2450269; 434241, 2450382; 433992, 2450213; 433632, 2450160; 433584, 2450069; 433449, 2450088; 433020, 2450563; 432625, 2450654; return to starting point.

(B) **Note:** Map 133 follows:

Map 133 Unit 11 - *Lobelia niihauensis - b*

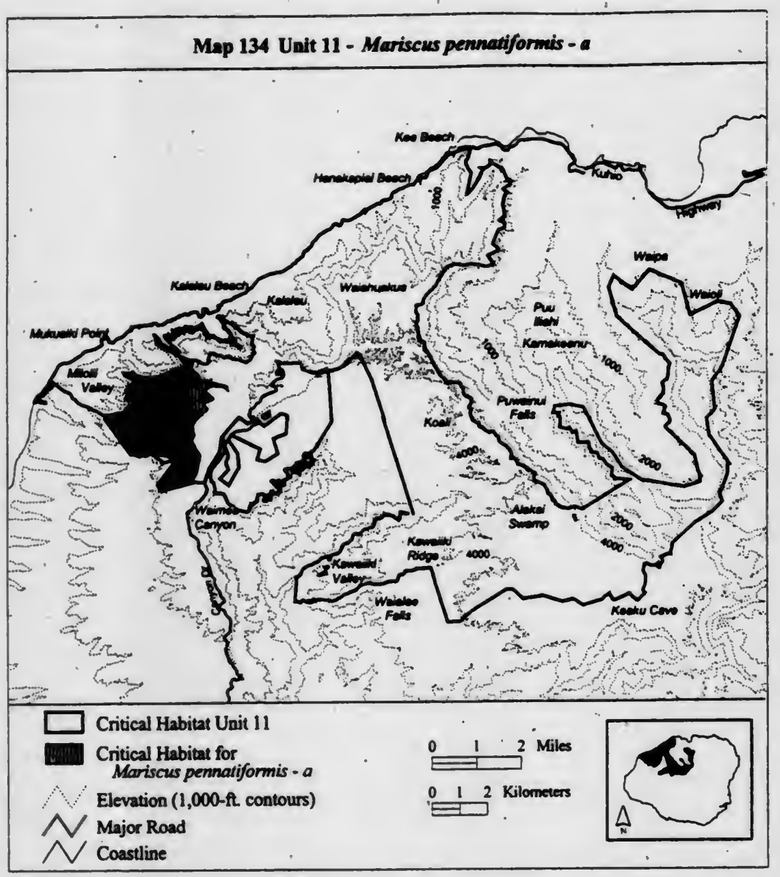


(cxxxiv) Kauai 11—*Mariscus pennatiformis*—a (1,003 ha; 2,479 ac)

(A) Unit consists of the following 166 boundary points: Start at 427069, 2447857; 427386, 2447885; 427526, 2447931; 427834, 2447978; 427862, 2448071; 428021, 2448192; 427974, 2448332; 427853, 2448416; 427937, 2448603; 427862, 2448724; 428021, 2448910; 428207, 2449050; 427853, 2449237; 427778, 2449386; 428095, 2449358; 428179, 2449442; 428300, 2449311; 428534, 2449218; 428860, 2449237; 429131, 2449246; 429532, 2449432; 429765, 2449516; 429970, 2449563; 430036, 2449609; 429812, 2449908; 430269, 2449740; 430316, 2449740; 430365, 2449716; 430348, 2449666; 430355, 2449641; 430354, 2449622; 430346, 2449596; 430331, 2449565; 430320, 2449553; 430313, 2449532; 430312, 2449517; 430307, 2449482; 430318, 2449477; 430335, 2449474; 430349, 2449466; 430355, 2449451; 430369, 2449433; 430418, 2449395; 430437, 2449371; 430430, 2449364; 430451, 2449363; 430463, 2449355; 430474, 2449342; 430485, 2449333; 430527, 2449321; 430533, 2449310; 430545, 2449277; 430559, 2449254; 430604, 2449229; 430616, 2449214; 430623, 2449194; 430623, 2449173; 430616, 2449156; 430619, 2449138; 430629, 2449119; 430643, 2449106; 430677, 2449084; 430699, 2449074; 430717, 2449071; 430748, 2449070; 430773, 2449073; 430799, 2449081; 430825, 2449080; 430875, 2449032; 430881, 2449027; 430905, 2449022; 430921, 2449029; 430944, 2449045; 430958, 2449061; 430967, 2449077; 430984, 2449094; 431006,

2449097; 431020, 2449089; 431028, 2449064; 431024, 2449005; 431035, 2448975; 431050, 2448960; 431066, 2448956; 431086, 2448957; 431093, 2448962; 431116, 2448991; 431124, 2448994; 431134, 2448988; 431138, 2448981; 431147, 2448955; 431158, 2448950; 431170, 2448954; 431195, 2448966; 431208, 2448969; 431223, 2448964; 431228, 2448960; 431275, 2448914; 431290, 2448911; 431310, 2448912; 431339, 2448927; 431358, 2448923; 431376, 2448914; 431407, 2448903; 431463, 2448902; 431473, 2448899; 431479, 2448891; 431501, 2448872; 431538, 2448867; 431545, 2448867; 431567, 2448859; 431580, 2448844; 431596, 2448824; 431611, 2448789; 431609, 2448764; 431601, 2448750; 431600, 2448733; 431627, 2448682; 431633, 2448663; 431482, 2448789; 431043, 2448845; 430810, 2448705; 431043, 2448490; 431118, 2448378; 430764, 2448220; 430903, 2448015; 430680, 2447800; 430512, 2447661; 430362, 2447493; 430353, 2447260; 430418, 2447101; 430325, 2446914; 430456, 2446653; 430624, 2446420; 430540, 2446010; 430484, 2445730; 430381, 2445543; 430396, 2445420; 429224, 2445116; 429062, 2445354; 429654, 2446125; 429591, 2446167; 429485, 2446305; 429263, 2446389; 429094, 2446389; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428655, 2446474; 428602, 2446447; 428476, 2446463; 428396, 2446447; 428285, 2446458; 428116, 2446474; 428047, 2446484; 427185, 2447661; 427161, 2447669; 427157, 2447676; 427157, 2447711; 427175, 2447754; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427124, 2447837; 427084, 2447847; 427070, 2447853; return to starting point.

(B) **Note:** Map 134 follows:



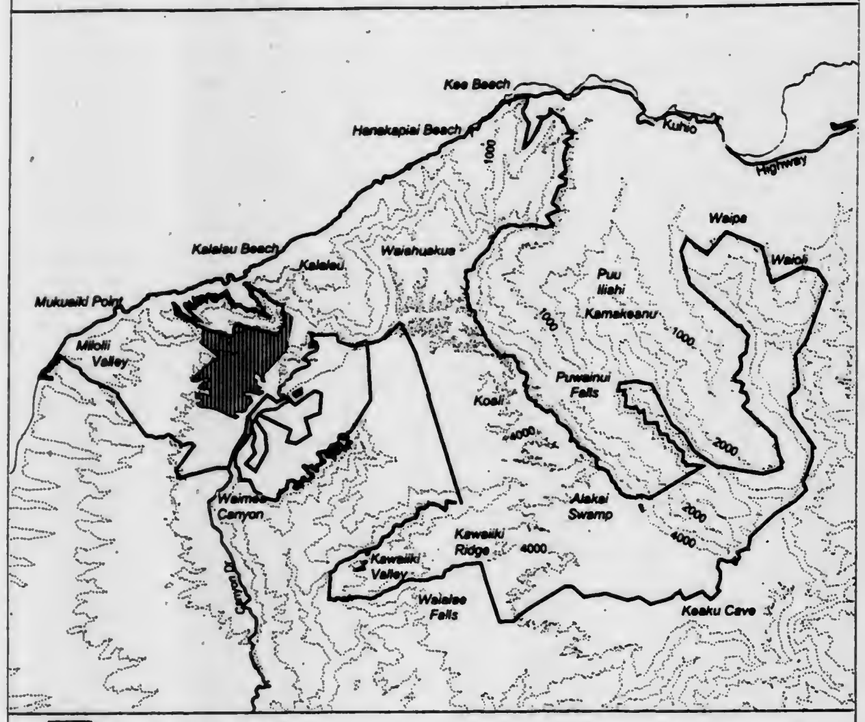
(cxxxv) Kauai 11—*Melicope haupuensis*—b (574 ha; 1,418 ac)

(A) Unit consists of the following 198 boundary points: Start at 431912, 2448420; 431913, 2448409; 431890, 2448340; 431898, 2448263; 431898, 2448254; 431900, 2448247; 431922, 2448193; 431934, 2448181; 431929, 2448176; 431931, 2448173; 431918, 2448148; 431909, 2448152; 431904, 2448146; 431867, 2448164; 431806, 2448187; 431806, 2448233; 431806, 2448249; 431788, 2448341; 431653, 2448421; 431645, 2448424; 431625, 2448424; 431570, 2448341; 431570, 2448273; 431668, 2448210; 431668, 2448205; 431682, 2448198; 431669,

2448173; 431667, 2448147; 431676, 2448133; 431662, 2448106; 431657, 2448061; 431812, 2447974; 431789, 2447963; 431806, 2447957; 431745, 2447927; 431713, 2447927; 431682, 2447912; 431713, 2447862; 431862, 2447874; 431900, 2447812; 431862, 2447756; 431800, 2447769; 431750, 2447725; 431607, 2447769; 431427, 2447825; 431371, 2447818; 431271, 2447819; 431284, 2447719; 431408, 2447694; 431452, 2447725; 431526, 2447520; 431396, 2447383; 431340, 2447315; 431327, 2447259; 431290, 2447215; 431197, 2447172; 430948, 2447197; 430948, 2447135; 431060, 2447066; 431085, 2447029; 431035, 2447023; 431016, 2446985; 430736, 2447091; 430493, 2447209; 430388, 2447253; 430325, 2447290; 430027, 2447346; 429877, 2447340; 429722, 2447421; 429697, 2447495; 429821, 2447520; 429859, 2447576; 429834, 2447620; 429772, 2447626; 429728, 2447607; 429678, 2447645; 429660, 2447676; 429691, 2447725; 429672, 2447775; 429716, 2447806; 429741, 2447788; 429797, 2447806; 429965, 2447794; 430039, 2447769; 430126, 2447725; 430176, 2447719; 430176, 2447750; 430120, 2447788; 430120, 2447931; 430008, 2447931; 429865, 2447956; 429803, 2447962; 429790, 2448012; 429853, 2448080; 429896, 2448155; 429958, 2448179; 430052, 2448148; 430139, 2448211; 430139, 2448298; 430033, 2448304; 429865, 2448242; 429778, 2448186; 429548, 2448204; 429548, 2448279; 429653, 2448385; 429716, 2448422; 429772, 2448497; 429877, 2448559; 430014, 2448702; 430108, 2448758; 430151, 2448795; 430195, 2448888; 430257, 2448913; 430338, 2448876; 430400, 2448882; 430425, 2448913; 430420, 2448957; 429806, 2449454; 429896, 2449552; 429879, 2449729; 429905, 2449923; 429915, 2449923; 429944, 2449910; 429968, 2449904; 430016, 2449884; 430068, 2449856; 430172, 2449815; 430207, 2449804; 430261, 2449795; 430317, 2449781; 430340, 2449778; 430365, 2449787; 430392, 2449798; 430408, 2449802; 430410, 2449802; 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238, 2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431657, 2449890; 431699, 2449876; 431765, 2449810; 431864, 2449801; 431981, 2449792; 432047, 2449787; 432113, 2449740; 432217, 2449712; 432259, 2449679; 432344, 2449744; 432419, 2449806; 432471, 2449904; 432504, 2449961; 432579, 2450036; 432551, 2450083; 432523, 2450130; 432523, 2450182; 432565, 2450262; 432523, 2450304; 432475, 2450313; 432452, 2450337; 432461, 2450375; 432480, 2450426; 432490, 2450478; 432501, 2450529; 432504, 2450523; 432515, 2450503; 432528, 2450468; 432550, 2450412; 432573, 2450385; 432591, 2450373; 432650, 2450343; 432692, 2450330; 432709, 2450317; 432733, 2450275; 432745, 2450272; 432752, 2450270; 432768, 2450266; 432797, 2450260; 432826, 2450224; 432830, 2449144; return to starting point.

(B) **Note:** Map 135 follows:

Map 135 Unit 11 - *Melicope haupuensis - b*



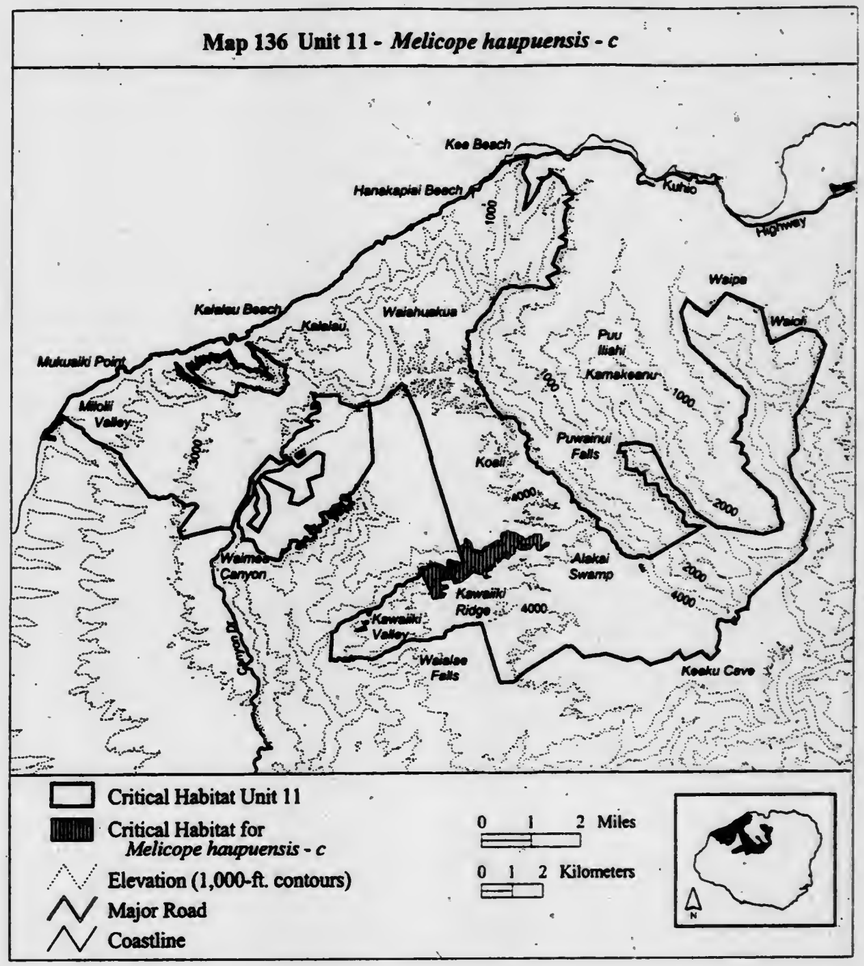
(cxxxvi) Kauai 11—*Melicope haupuensis*—c (290 ha; 716 ac)

(A) Unit consists of the following 184 boundary points: Start at 438165, 2444743; 438359, 2444869; 438336, 2444973; 438382, 2445065; 438532, 2444973; 438590, 2444869; 438634, 2444680; 438740, 2444673; 438913, 2444615; 438993, 2444767; 439086, 2444765; 439144, 2444811; 439421, 2444984; 439559, 2444972; 439524, 2445099; 439594, 2445249; 439686, 2445238; 439755, 2445318; 439836, 2445261; 439940, 2445249; 440032, 2445238; 440067, 2445203; 440101, 2445203; 440136, 2445145; 440263, 2445099; 440286, 2445007; 440344, 2445030; 440424, 2445041; 440459, 2445111; 440540, 2445099; 440586, 2445099; 440586, 2445157; 440644, 2445203; 440713, 2445180; 440840, 2445191; 440886, 2445099; 440886, 2444984; 440828, 2444891; 440840, 2444765; 440932, 2444834; 441013, 2444903; 441117, 2444903; 441105, 2444799; 440955, 2444707; 440851, 2444638; 440713, 2444649; 440655, 2444857; 440551, 2444788; 440551, 2444718; 440378, 2444661; 440147, 2444661; 440044, 2444788; 440044, 2444730; 439997, 2444696; 440032, 2444615; 439997, 2444534; 439905, 2444511; 439790, 2444361; 439663, 2444430; 439559, 2444361; 439547, 2444292; 439467, 2444280; 439386, 2444131; 439294, 2444142; 439271, 2444038; 439086, 2443981; 439074, 2443935; 439109, 2443831; 439224, 2443831; 439109, 2443762; 439040, 2443762; 438924, 2443912; 438855, 2443877; 438659, 2443969; 438486, 2443808; 438255, 2443635; 438001, 2443600; 437978, 2443727; 437863, 2443727; 437678, 2443716; 437551, 2443670; 437632, 2443531; 437805, 2443543; 437817, 2443450; 437551, 2443358; 437759, 2443266; 437701, 2443150; 437332, 2443104; 436908, 2444000; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067,

2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; return to starting point.

(B) **Note:** Map 136 follows:

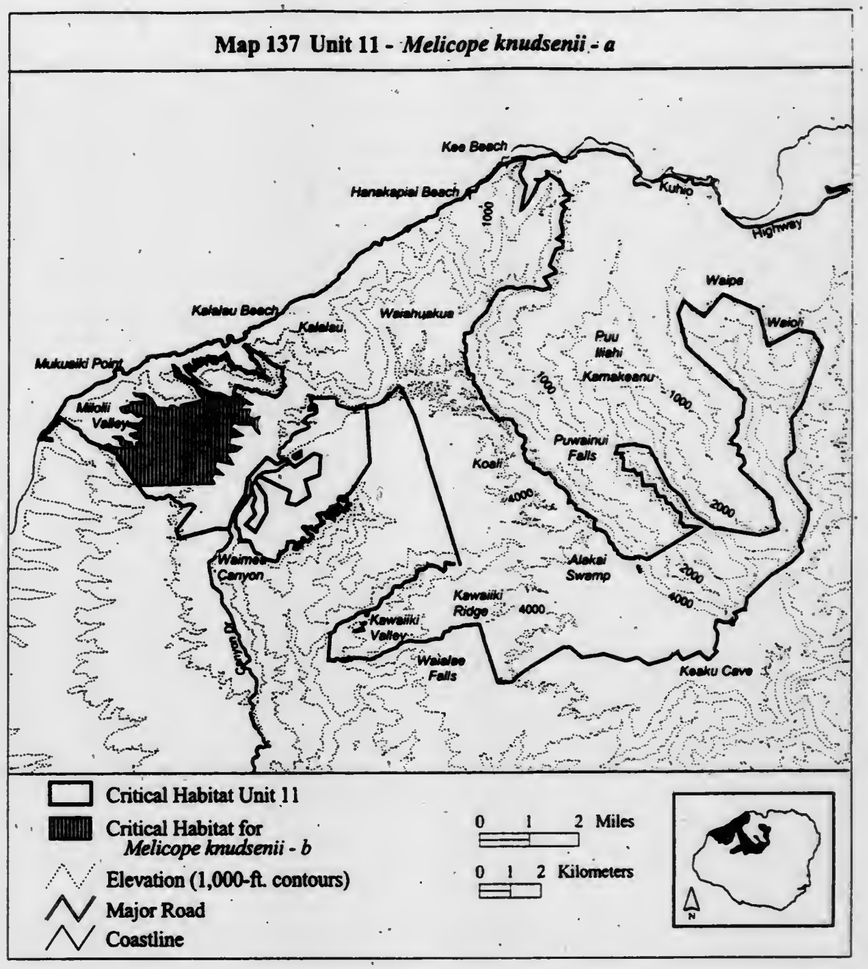
Map 136 Unit 11 - *Melicope haupuensis - c*



(cxxxvii) Kauai 11—*Melicope knudsenii*—a (966 ha; 2,388 ac)

(A) Unit consists of the following 146 boundary points: Start at 431708, 2448615; 431773, 2448514; 431767, 2448519; 431773, 2448510; 431773, 2448476; 431619, 2448589; 431507, 2448763; 431066, 2448773; 430954, 2448845; 430861, 2448773; 430913, 2448650; 431230, 2448425; 430810, 2448364; 430759, 2448149; 431199, 2448046; 431036, 2447923; 430687, 2447883; 430923, 2447483; 430339, 2447606; 430319, 2447401; 430605, 2447145; 430308, 2447176; 430237, 2447043; 430329, 2446859; 427820, 2446794; 427748, 2446893; 427778, 2446910; 427739, 2446905; 427185, 2447661; 427161, 2447669; 427157, 2447676; 427157, 2447711; 427175, 2447754; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427124, 2447837; 427084, 2447847; 427039, 2447867; 426997, 2447892; 426981, 2447902; 426958, 2447923; 426944, 2447941; 426907, 2447965; 426847, 2447992; 426819, 2447998; 426798, 2448010; 426758, 2448005; 426737, 2448009; 426722, 2448015; 426635, 2448077; 426856, 2448180; 427000, 2448088; 427461, 2448016; 427235, 2448159; 427184, 2448333; 427000, 2448395; 427287, 2448415; 427389, 2448282; 427604, 2448221; 427686, 2448036; 427778, 2448067; 427737, 2448159; 427788, 2448241; 427963, 2448180; 427829, 2448333; 427707, 2448354; 427543, 2448487; 427881, 2448569; 427748, 2448661; 427512, 2448743; 427287, 2448774; 427287, 2448815; 427870, 2448845; 428045, 2449030; 427942, 2449081; 427809, 2449019; 427604, 2449193; 427502, 2449193; 427471, 2449152; 427276, 2449183; 427215, 2449347; 427635, 2449459; 427553, 2449521; 427932, 2449552; 428065, 2449429; 427993, 2449644; 427727, 2449726; 427635, 2449838; 427819, 2449787; 428014, 2449818; 428270, 2449644; 428424, 2449357; 428823, 2449316; 428833, 2449398; 428966, 2449439; 429038, 2449357; 429171, 2449326; 429182, 2449429; 429940, 2449613; 429735, 2449817; 429642, 2450043; 429648, 2450043; 429717, 2449996; 429751, 2449978; 429791, 2449963; 429830, 2449956; 429860, 2449947; 429944, 2449910; 429968, 2449904; 430016, 2449884; 430068, 2449856; 430172, 2449815; 430207, 2449804; 430261, 2449795; 430317, 2449781; 430340, 2449778; 430365, 2449787; 430392, 2449798; 430408, 2449802; 430410, 2449802; 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430913, 2449863; 431548, 2449428; 431415, 2449428; 431292, 2449490; 431138, 2449285; 431445, 2449275; 431384, 2449039; 431589, 2448957; 431763, 2449039; 431681, 2448855; 431681, 2448656; 431678, 2448658; 431680, 2448656; 431681, 2448656; return to starting point.

(B) **Note:** Map 137 follows:



(cxxxviii) Kauai 11—*Melicope knudsenii*—b (374 ha; 922 ac)

(A) Unit consists of the following 305 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597,

2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443994; 436945, 2444067; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437118, 2444096; 437169, 2444079; 437282, 2444210; 437602, 2444165; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438237, 2444518; 438277, 2444604; 438343, 2444567; 438362, 2444642; 438465, 2444708; 438550, 2444576; 438803, 2444586; 438897, 2444426; 439001, 2444463; 439038, 2444614; 439282, 2444689; 439733, 2444745; 439696, 2444914; 439789, 2444951; 439818, 2444801; 439799, 2444707; 439423, 2444538; 439433, 2444482; 439226, 2444407; 439273, 2444294; 439104, 2444248; 439066, 2444135; 439019, 2444210; 439010, 2444003; 438878, 2443975; 438832, 2444088; 438747, 2444060; 438719, 2444201; 438597, 2444201; 438493, 2444097; 438503, 2444013; 438362, 2443929; 438277, 2443947; 438174, 2443797; 438080, 2443797; 438052, 2443929; 437695, 2443844; 437348, 2443788; 437319, 2443656; 437357, 2443572; 437263, 2443516; 437188, 2443328; 436916, 2443356; 436549, 2443281; 436634, 2442999; 436277, 2442859; 436221, 2442755; 436709, 2442793; 436991, 2442586; 436944, 2442549; 436690, 2442502; 437019, 2442304; 436981, 2442154; 437188, 2442088; 436981, 2442032; 436981, 2441966; 436812, 2441995; 436746, 2442117; 436681, 2441995; 436624, 2442051; 436390, 2442070; 436380, 2441957; 436211, 2441957; 436098, 2442042; 435864, 2441929; 435619, 2441938; 435798, 2441769; 435723, 2441685; 435178, 2441863; 435122, 2441882; 434877, 2441920; 434784, 2442061; 434661, 2442239; 434702, 2442503; 434713, 2442515; 434725, 2442524; 434735, 2442532; 434755, 2442542; 434775, 2442551; 434800, 2442556; 434822, 2442562; 434842, 2442574; 434862, 2442596; 434883, 2442613; 434896, 2442626; 434916, 2442647; 434934, 2442668; 434949, 2442681; 434972, 2442699; 434986, 2442705; 434997, 2442708; 435006, 2442713; 435012, 2442717; 435026, 2442719; 435039, 2442722; 435061, 2442727; 435081, 2442733; 435100, 2442739; 435119, 2442747; 435135, 2442754; 435150, 2442764; 435164, 2442771; 435184, 2442774; 435201, 2442777; 435219, 2442778; 435237, 2442782; 435251, 2442783; 435228, 2442762; 435237, 2442643; 435284, 2442631; return to starting point.

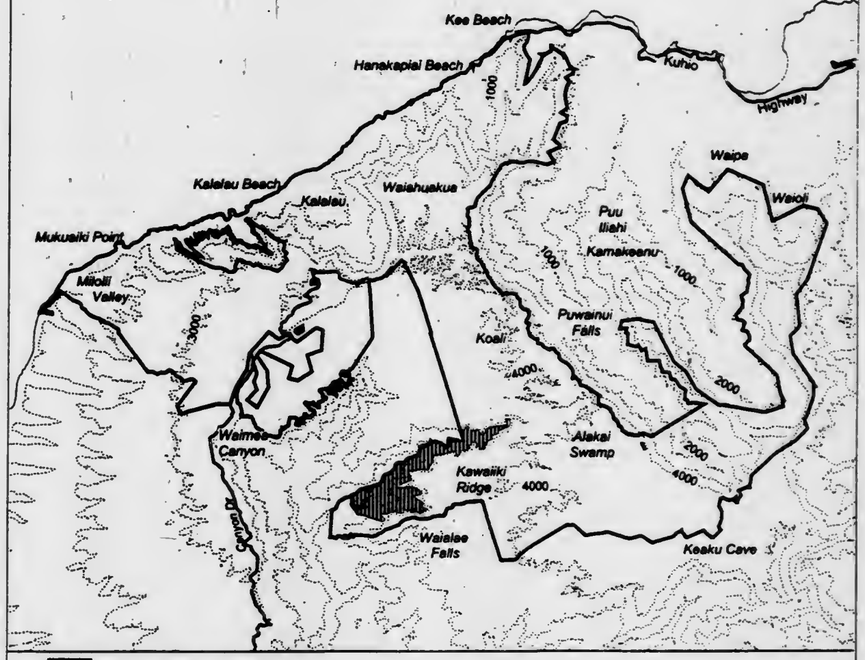
(B) Excluding 2 areas:

(*1*) Bounded by the following 3 points (1 ha, 3 ac): Start at 435132, 2442248; 435160, 2442164; 434848, 2442098; return to starting point; and

(*2*) Bounded by the following 4 points (0 ha, 1 ac): Start at 435151, 2442425; 435215, 2442393; 435195, 2442353; 435128, 2442379; return to starting point.

(C) **Note:** Map 138 follows:

Map 138 Unit 11 - *Melicope knudsenii - b*



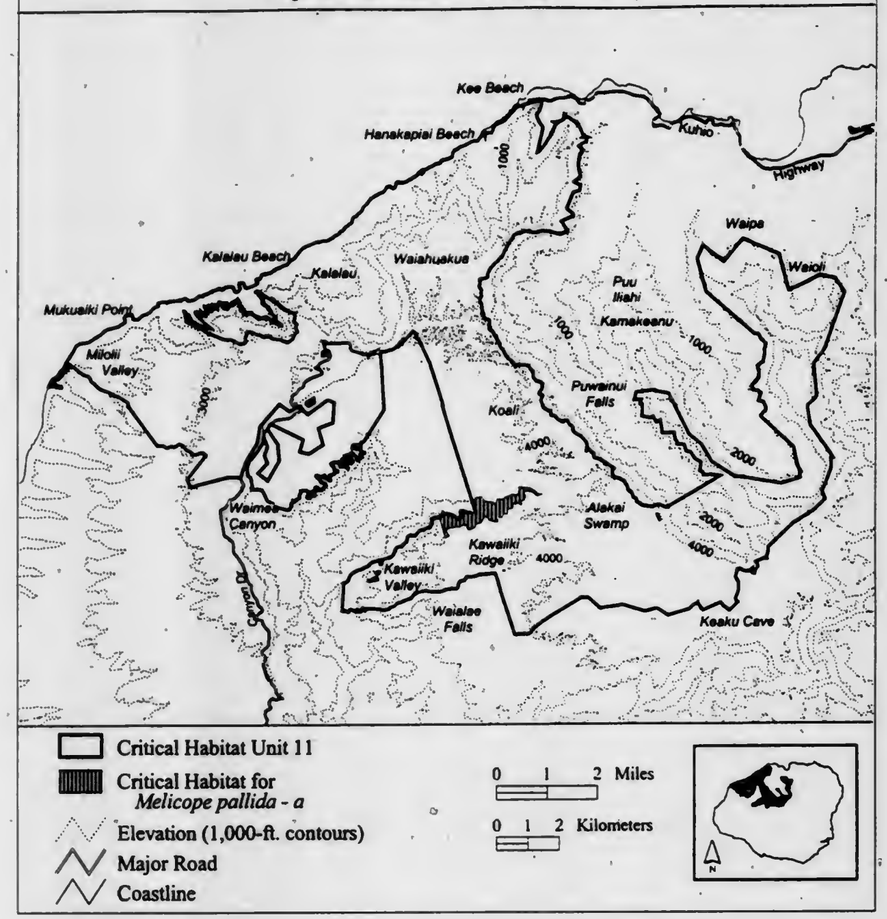
(cxxxix) Kauai 11—*Melicope pallida*—a (143 ha, 353 ac)

(A) Unit consists of the following 124 boundary points: Start at 438204, 2444622; 438280, 2444652; 438296, 2444737; 438496, 2444768; 438565, 2444637; 438888, 2444575; 438934, 2444498; 438996, 2444683; 439180, 2444675; 439288, 2444760; 439465, 2444837; 439527, 2444829; 439673, 2444821; 439696, 2445067; 440050, 2445044; 440219, 2444944; 440280, 2444844; 440419, 2444844; 440265, 2444783; 440142, 2444906; 439957, 2444952; 439834, 2444913; 439896, 2444760; 439850, 2444644; 439780, 2444637; 439773, 2444483; 439665, 2444560; 439488, 2444521; 439504, 2444445; 439457, 2444368; 439319, 2444360; 439334, 2444283; 439319, 2444199; 439211, 2444214; 439150, 2444076; 439050, 2444122; 439011, 2443953; 438765, 2444014; 438696, 2444099; 438596, 2444129; 438496, 2443945; 438296, 2443883; 438296, 2443791; 438080, 2443699; 438011, 2443868; 437404, 2443753; 437365, 2443676; 437457, 2443530; 437342, 2443476; 437133, 2444113; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843,

2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; return to starting point.

(B) **Note:** Map 139 follows:

Map 139 Unit 11 - *Melicope pallida - a*

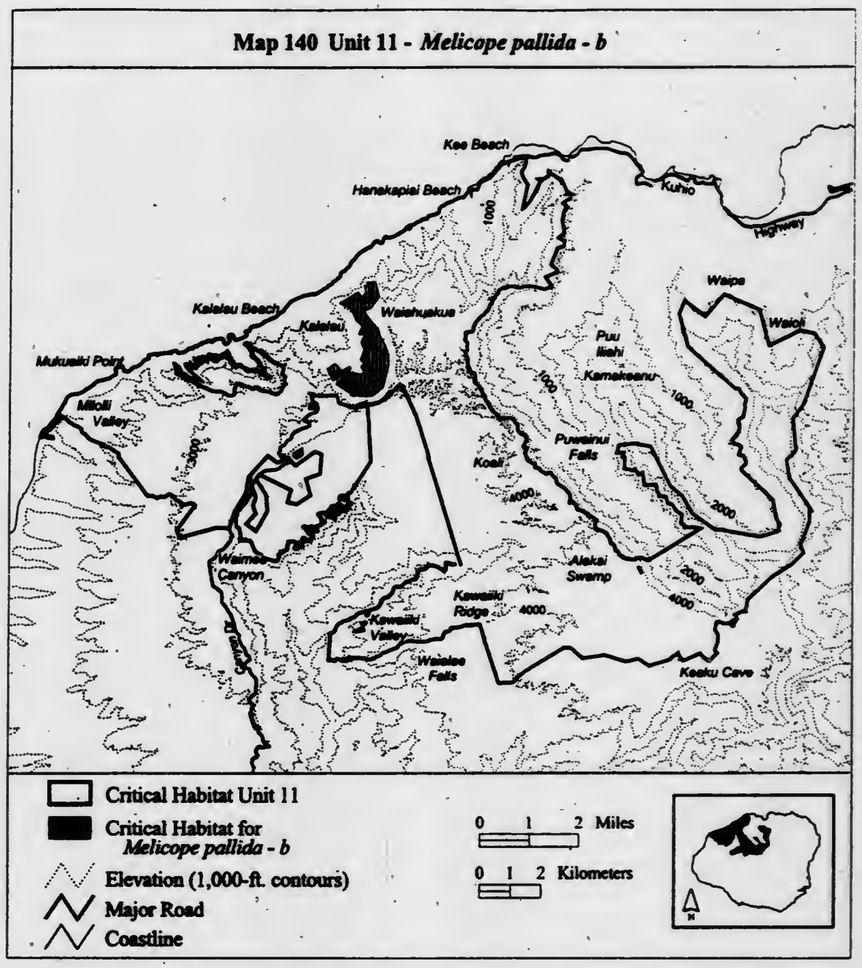


(cxl) Kauai 11—*Melicope pallida*—b (310 ha; 765 ac)

(A) Unit consists of the following 47 boundary points: Start at 433925, 2450539; 433966, 2450539; 434164, 2450698; 434310, 2450565; 434385, 2450461; 434654, 2450605; 434760, 2450393; 435051, 2450327; 435117, 2450433; 435011, 2450592; 435131, 2450697; 434998, 2450816; 435131, 2451147; 435011, 2451359; 435131, 2451610; 435063, 2451636; 434945, 2451623; 435064, 2451901; 434850, 2452083; 434786, 2452232; 434648, 2452469; 434310, 2452642; 434932, 2452999; 435038, 2452813; 435170, 2452999; 435117, 2453223; 435236, 2453223; 435183, 2453329; 435475, 2453355; 435607, 2452840; 435316, 2452470; 435104, 2452390; 435316, 2452086; 435541, 2451835; 435660, 2451544; 435806, 2451279; 435898, 2450975; 435912, 2450671; 435845, 2450287; 435740, 2449890; 435316, 2449626; 434786, 2449653; 434588, 2449785; 434217, 2450036; 434486, 2450322; 434391, 2450299; 434111, 2450143; return to starting point.

(B) **Note:** Map 140 follows:

Map 140 Unit 11 - *Melicope pallida - b*



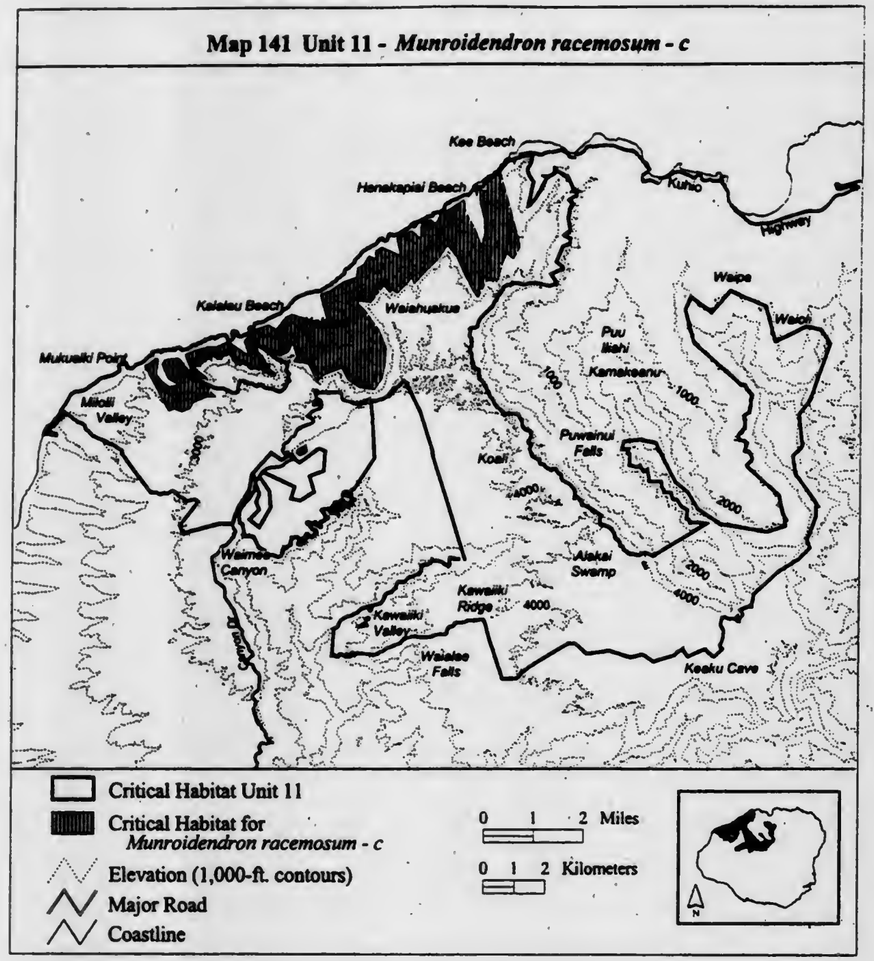
(cxli) Kauai 11—*Munroidendron racemosum*—c (1,950 ha; 4,819 ac)

(A) Unit consists of the following 761 boundary points: Start at 439647, 2455689; 440015, 2454370; 439805, 2453982; 439692, 2454086; 439594, 2454176; 439465, 2453901; 439303, 2453287; 438947, 2453255; 438672, 2452689; 438477, 2452980; 438186, 2453562; 437975, 2454047; 437668, 2454436; 437376, 2453983; 437020, 2453611; 436583, 2453158; 436535, 2453369; 436065, 2452851; 435839, 2452981; 435822, 2452868; 435612, 2453110; 435207, 2452544; 434851, 2452609; 434738, 2452561; 435013, 2452253; 435466, 2451639; 435709, 2451072; 435677, 2450587; 435580, 2450086; 435337, 2449746; 434851, 2449811; 434462, 2450070; 434268, 2450442; 433702, 2450232; 433459, 2450006; 433167, 2450588; 432698, 2450653; 432811, 2450814; 432649, 2451267; 432536, 2450960; 432277, 2450831; 431872, 2451009; 431914, 2450942; 431912, 2450944; 431844, 2451002; 431798, 2451034; 431748, 2451072; 431700, 2451088; 431641, 2451117; 431591, 2451154; 431525, 2451187; 431489, 2451219; 431446, 2451247; 431433, 2451261; 431373, 2451329; 431370, 2451323; 431360, 2451314; 431351, 2451321; 431337, 2451323; 431318, 2451324; 431304, 2451317; 431293, 2451316; 431287, 2451322; 431281, 2451336; 431277, 2451355; 431264, 2451350; 431245, 2451336; 431233, 2451323; 431242, 2451310; 431267, 2451297; 431294, 2451278; 431312, 2451246; 431348, 2451203; 431384, 2451176; 431402, 2451170; 431407, 2451149; 431415, 2451137; 431428, 2451129; 431432, 2451109; 431442, 2451094; 431457, 2451086; 431456, 2451081; 431450, 2451067; 431455, 2451053; 431467, 2451047; 431486, 2451047; 431488, 2451038; 431482, 2451029; 431481, 2451010; 431487, 2450998; 431505, 2450987; 431504, 2450980; 431486, 2450974; 431476, 2450971; 431456, 2450971; 431449, 2450963; 431452, 2450955; 431457, 2450948; 431476, 2450934; 431497, 2450922; 431502,

2450903; 431509, 2450895; 431530, 2450888; 431555, 2450880; 431580, 2450878; 431577, 2450867; 431580, 2450848; 431591, 2450839; 431606, 2450830; 431626, 2450824; 431655, 2450815; 431653, 2450800; 431650, 2450792; 431645, 2450777; 431653, 2450764; 431671, 2450767; 431665, 2450749; 431661, 2450738; 431675, 2450731; 431689, 2450726; 431698, 2450722; 431699, 2450717; 431702, 2450701; 431710, 2450693; 431720, 2450686; 431733, 2450677; 431733, 2450656; 431729, 2450645; 431735, 2450642; 431736, 2450636; 431739, 2450626; 431752, 2450619; 431763, 2450615; 431769, 2450597; 431786, 2450573; 431798, 2450561; 431822, 2450550; 431829, 2450545; 431845, 2450528; 431860, 2450521; 431873, 2450519; 431885, 2450510; 431899, 2450498; 431900, 2450492; 431891, 2450486; 431874, 2450483; 431852, 2450481; 431839, 2450475; 431835, 2450472; 431841, 2450451; 431856, 2450433; 431874, 2450409; 431900, 2450378; 431933, 2450350; 431949, 2450336; 431983, 2450316; 432009, 2450298; 432026, 2450277; 432049, 2450261; 432065, 2450255; 432065, 2450248; 432065, 2450233; 432072, 2450223; 432081, 2450211; 432076, 2450207; 432058, 2450218; 432042, 2450225; 432024, 2450234; 432006, 2450246; 431989, 2450255; 431968, 2450265; 431949, 2450270; 431917, 2450271; 431900, 2450287; 431882, 2450301; 431864, 2450315; 431840, 2450325; 431808, 2450327; 431770, 2450328; 431762, 2450341; 431752, 2450353; 431730, 2450369; 431726, 2450392; 431720, 2450403; 431709, 2450416; 431692, 2450418; 431691, 2450429; 431687, 2450439; 431677, 2450453; 431664, 2450465; 431652, 2450468; 431635, 2450468; 431615, 2450468; 431608, 2450462; 431598, 2450460; 431597, 2450472; 431596, 2450476; 431591, 2450488; 431585, 2450499; 431576, 2450494; 431566, 2450502; 431549, 2450505; 431537, 2450505; 431516, 2450496; 431511, 2450486; 431505, 2450470; 431499, 2450454; 431488, 2450449; 431479, 2450454; 431467, 2450462; 431459, 2450467; 431443, 2450470; 431425, 2450469; 431409, 2450466; 431404, 2450459; 431392, 2450462; 431381, 2450464; 431372, 2450459; 431358, 2450458; 431339, 2450460; 431334, 2450462; 431330, 2450466; 431328, 2450478; 431323, 2450490; 431313, 2450497; 431303, 2450494; 431299, 2450488; 431292, 2450476; 431283, 2450480; 431281, 2450486; 431278, 2450497; 431272, 2450502; 431263, 2450505; 431263, 2450516; 431258, 2450530; 431249, 2450545; 431236, 2450549; 431227, 2450551; 431213, 2450554; 431196, 2450558; 431191, 2450563; 431179, 2450576; 431171, 2450582; 431158, 2450585; 431136, 2450584; 431126, 2450573; 431121, 2450586; 431132, 2450596; 431132, 2450623; 431128, 2450641; 431112, 2450648; 431084, 2450652; 431076, 2450639; 431065, 2450624; 431055, 2450628; 431045, 2450645; 431044, 2450656; 431030, 2450661; 431019, 2450646; 431008, 2450631; 430998, 2450615; 430991, 2450601; 430983, 2450597; 430978, 2450604; 430969, 2450622; 430960, 2450622; 430950, 2450609; 430946, 2450604; 430939, 2450609; 430936, 2450617; 430933, 2450631; 430930, 2450644; 430926, 2450657; 430918, 2450664; 430904, 2450664; 430898, 2450659; 430896, 2450648; 430901, 2450638; 430911, 2450630; 430909, 2450620; 430897, 2450617; 430887, 2450619; 430874, 2450620; 430871, 2450614; 430867, 2450602; 430860, 2450586; 430854, 2450591; 430851, 2450600; 430852, 2450614; 430852, 2450631; 430843, 2450645; 430853, 2450656; 430857, 2450667; 430863, 2450680; 430865, 2450697; 430856, 2450711; 430838, 2450715; 430828, 2450715; 430840, 2450723; 430852, 2450728; 430864, 2450742; 430864, 2450756; 430851, 2450759; 430839, 2450752; 430832, 2450747; 430819, 2450748; 430806, 2450738; 430791, 2450737; 430800, 2450754; 430803, 2450759; 430806, 2450776; 430805, 2450791; 430807, 2450800; 430811, 2450812; 430813, 2450819; 430811, 2450834; 430803, 2450837; 430787, 2450832; 430777, 2450824; 430764, 2450815; 430744, 2450805; 430746, 2450813; 430749, 2450824; 430754, 2450841; 430757, 2450850; 430757, 2450862; 430750, 2450872; 430741, 2450873; 430718, 2450870; 430730, 2450885; 430735, 2450896; 430743, 2450916; 430747, 2450940; 430748, 2450959; 430737, 2450969; 430723, 2450972; 430712, 2450965; 430705, 2450955; 430694, 2450953; 430694, 2450967; 430697, 2450980; 430703, 2450995; 430704, 2451010; 430706, 2451037; 430692, 2451040; 430682, 2451033; 430675, 2451043; 430673, 2451050; 430677, 2451062; 430666, 2451065; 430658, 2451067; 430649, 2451073; 430636, 2451076; 430631, 2451072; 430626, 2451059; 430626, 2451041; 430622, 2451022; 430623, 2451005; 430620, 2451000; 430611, 2451001; 430605, 2451008; 430598, 2451020; 430588, 2451025; 430581, 2451020; 430574, 2451012; 430572, 2451002; 430569, 2450983; 430570, 2450961; 430550, 2450974; 430535, 2450983; 430523, 2450988; 430518, 2450991; 430503, 2450993; 430491, 2450990; 430485, 2450984; 430482, 2450977; 430485, 2450962; 430490, 2450949; 430500, 2450934; 430502, 2450920; 430503, 2450902; 430495, 2450892; 430483, 2450890; 430474, 2450882; 430466, 2450887; 430449, 2450901; 430433, 2450901; 430426, 2450896; 430422, 2450890; 430416, 2450880; 430407, 2450876; 430398, 2450872; 430393, 2450868; 430390, 2450853; 430391, 2450836; 430385, 2450826; 430380, 2450816; 430372, 2450803; 430368, 2450818; 430364, 2450833; 430362, 2450842; 430355, 2450855; 430348, 2450863; 430335, 2450873; 430331, 2450883; 430328, 2450897; 430326, 2450922; 430319, 2450953; 430305, 2450972; 430295, 2450980; 430285, 2450982; 430281, 2450979; 430276, 2450975; 430272, 2450958; 430273, 2450938; 430261, 2450933; 430250, 2450924; 430246, 2450905; 430251, 2450875; 430256, 2450842; 430268, 2450786; 430261, 2450779; 430252, 2450779; 430249, 2450795; 430246, 2450807; 430242, 2450821; 430234, 2450838; 430217, 2450857; 430209, 2450860; 430204, 2450855; 430197, 2450844; 430193, 2450832; 430172, 2450844; 430173, 2450865; 430175, 2450880; 430183, 2450896; 430192, 2450910; 430197, 2450925; 430197, 2450937; 430194, 2450949; 430187, 2450962; 430177, 2450971; 430166, 2450974; 430154, 2450976; 430132, 2450976; 430116, 2450985; 430107, 2450980; 430091, 2450975; 430078, 2450990; 430069, 2450993; 430061, 2450978; 430054, 2450938; 430051, 2450920; 430030, 2450915; 430016, 2450914; 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2450896; 429724, 2450899; 429720, 2450887; 429726, 2450875; 429733, 2450856; 429739, 2450832; 429742, 2450813; 429746, 2450791; 429752, 2450769; 429754, 2450756; 429748, 2450755; 429737, 2450753; 429731, 2450750; 429731, 2450739; 429734, 2450732; 429745, 2450721; 429750, 2450701; 429741, 2450701; 429728, 2450698; 429722, 2450692; 429718, 2450681; 429709, 2450676; 429702, 2450682; 429696, 2450693; 429691, 2450714; 429680, 2450743; 429664, 2450781; 429652, 2450802; 429639, 2450818; 429619, 2450828; 429603, 2450830; 429601, 2450825; 429604, 2450812; 429619, 2450793; 429637, 2450771; 429654, 2450750; 429664, 2450735; 429667, 2450717; 429663, 2450706; 429661, 2450673; 429666, 2450641; 429663, 2450621; 429654, 2450603; 429645, 2450601; 429634, 2450610; 429619, 2450622; 429602, 2450633; 429558, 2450656; 429505, 2450692; 429490, 2450702; 429483, 2450698; 429478, 2450692; 429480, 2450680; 429489, 2450657; 429496, 2450634; 429503, 2450613; 429524, 2450599; 429556, 2450569; 429569, 2450555; 429569, 2450546; 429560, 2450541; 429535, 2450540; 429510, 2450541; 429489, 2450546; 429478, 2450553; 429468, 2450566; 429461, 2450574; 429450, 2450580; 429440, 2450580; 429434, 2450588; 429432, 2450595; 429422, 2450604; 429410, 2450609; 429389, 2450622; 429387, 2450629; 429384, 2450638; 429377, 2450656; 429371, 2450661; 429365, 2450670; 429363, 2450681; 429359, 2450689; 429352, 2450687; 429345, 2450685; 429330, 2450677; 429319, 2450668; 429311, 2450657; 429310, 2450642; 429317, 2450633; 429334, 2450615; 429346, 2450600; 429359, 2450581; 429365, 2450564; 429372, 2450543; 429389, 2450532; 429400, 2450531; 429410, 2450517; 429420, 2450504; 429431, 2450485; 429450, 2450463; 429462, 2450449; 429482, 2450434; 429500, 2450421; 429523, 2450406; 429541, 2450384; 429554, 2450363; 429577, 2450344; 429599, 2450324; 429622, 2450305; 429645, 2450292; 429669, 2450271; 429686, 2450258; 429712, 2450243; 429745, 2450217; 429770, 2450202; 429788, 2450184; 429802, 2450172; 429815, 2450154; 429808, 2450151; 429791, 2450150; 429770, 2450151; 429738, 2450152; 429713, 2450155; 429686, 2450161; 429656, 2450168; 429622, 2450179; 429571, 2450198; 429538, 2450212; 429503, 2450229; 429460, 2450248; 429433, 2450259; 429404, 2450268; 429391, 2450277; 429371, 2450289; 429356, 2450303; 429342, 2450315; 429321, 2450332; 429294, 2450343; 429269, 2450357; 429244, 2450363; 429212, 2450380; 429205, 2450394; 429200, 2450405; 429193, 2450416; 429174, 2450426; 429162, 2450435; 429161, 2450444; 429158, 2450455; 429152, 2450468; 429143, 2450481; 429128, 2450496; 429115, 2450512; 429114, 2450524; 429113, 2450540; 429110, 2450557; 429103, 2450577; 429091, 2450594; 429077, 2450605; 429060, 2450608; 429041, 2450610; 429026, 2450609; 429013, 2450623; 429009, 2450638; 429000, 2450655; 428990, 2450676; 428979, 2450690; 428972, 2450701; 428962, 2450707; 428952, 2450706; 428952, 2450704; 428964, 2450654; 428990, 2450584; 429000, 2450551; 429015, 2450477; 429016, 2450451; 429013, 2450421; 429012, 2450380; 429036, 2450360; 429089, 2450331; 429147, 2450304; 429258, 2450260; 429576, 2450092; 429717, 2449996; 429751, 2449978; 429791, 2449963; 429830, 2449956; 429860, 2449947; 429888, 2449935; 430027, 2449699; 430188, 2449521; 429929, 2449537; 429476, 2449343; 429363, 2449149; 429104, 2449036; 428845, 2449149; 428683, 2449052; 427889, 2450524; 428068, 2450621; 428213, 2450767; 428310, 2450751; 428246, 2450265; 428408, 2450055; 428683, 2449845; 429007, 2449909; 428650, 2450120; 428440, 2450557; 428537, 2450718; 428958, 2450783; 429427, 2450265; 429201, 2450880; 429492, 2451025; 429946, 2451122; 430188, 2451106; 430593, 2451284; 431257, 2450831; 431095, 2451316; 431484, 2451672; 431888, 2451818; 432115, 2451640; 432244, 2451801; 432423, 2452044; 432633, 2452141; 433604, 2451866; 433766, 2452011; 433556, 2452804; 433863, 2452933; 434301, 2453208; 434721, 2453369; 434754, 2453676; 434964, 2453790; 435126, 2454064; 435353, 2453984; 435337, 2454242; 435531, 2454355; 436162, 2454064; 436017, 2454630; 436502, 2454873; 436794, 2454598; 436810, 2455115; 437117, 2455228; 437263, 2455082; 437441, 2455390; 437733, 2455567; 438186, 2455874; 438267, 2455454; 438526, 2454985; 438769, 2454354; 438882, 2454807; 438866, 2455244; 438720, 2455745; 438688, 2456181; 438931, 2456133; 438931, 2456391; 439352, 2456747; return to starting point.

(B) **Note:** Map 141 follows:



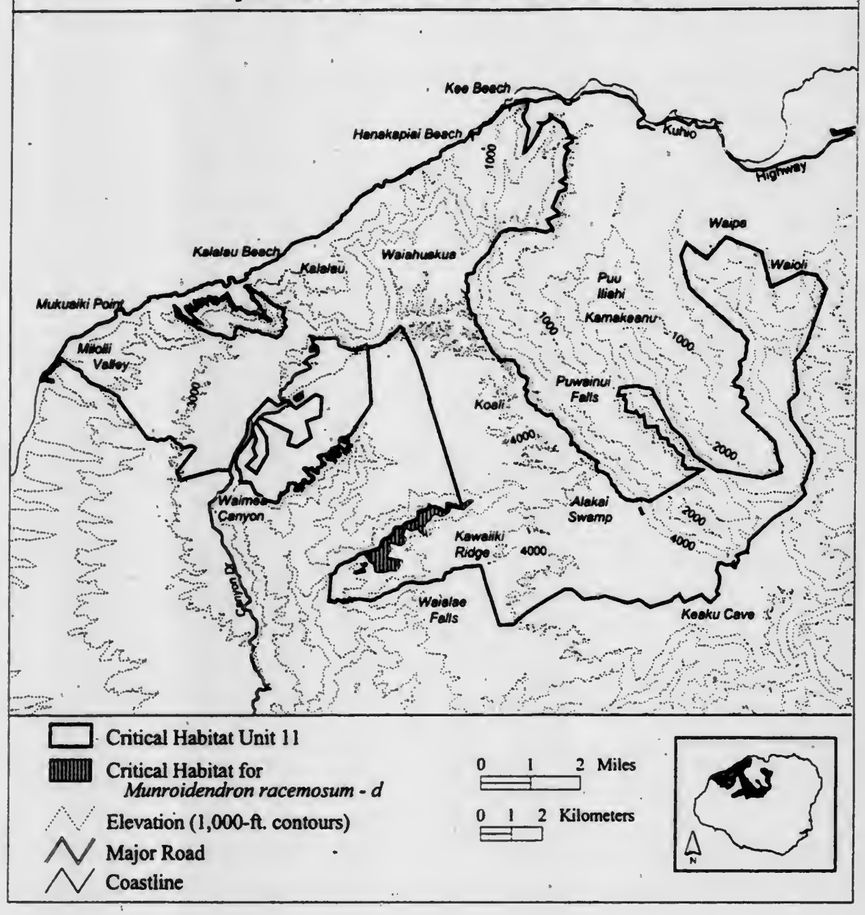
(cxlii) Kauai 11—*Munroidendron racemosum*—d (153 ha; 379 ac)

(A) Unit consists of the following 285 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597,

2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438303, 2444314; 438357, 2444311; 438545, 2444430; 438620, 2444455; 438689, 2444411; 438677, 2444367; 438369, 2444110; 438043, 2444185; 437955, 2444185; 437924, 2444047; 437774, 2443928; 437661, 2443897; 437460, 2443978; 437341, 2443897; 437303, 2443797; 437203, 2443715; 437140, 2443634; 437121, 2443571; 437184, 2443308; 437096, 2443314; 436921, 2443427; 436914, 2443515; 436801, 2443471; 436670, 2443446; 436507, 2443533; 436469, 2443421; 436431, 2443295; 436507, 2443232; 436519, 2443113; 436463, 2443038; 436312, 2442963; 435955, 2443082; 435942, 2443026; 436030, 2442844; 435904, 2442731; 435930, 2442618; 436099, 2442574; 436369, 2442530; 436413, 2442455; 436212, 2442160; 435973, 2442179; 435785, 2442110; 435641, 2442110; 435509, 2442141; 435453, 2442361; 435447, 2442399; 435309, 2442486; 435169, 2442771; 435184, 2442774; 435201, 2442777; 435219, 2442778; 435237, 2442782; 435251, 2442783; 435228, 2442762; 435237, 2442643; 435284, 2442631; return to starting point.

(B) **Note:** Map 142 follows:

Map 142 Unit 11 - *Munroidendron racemosum - d*

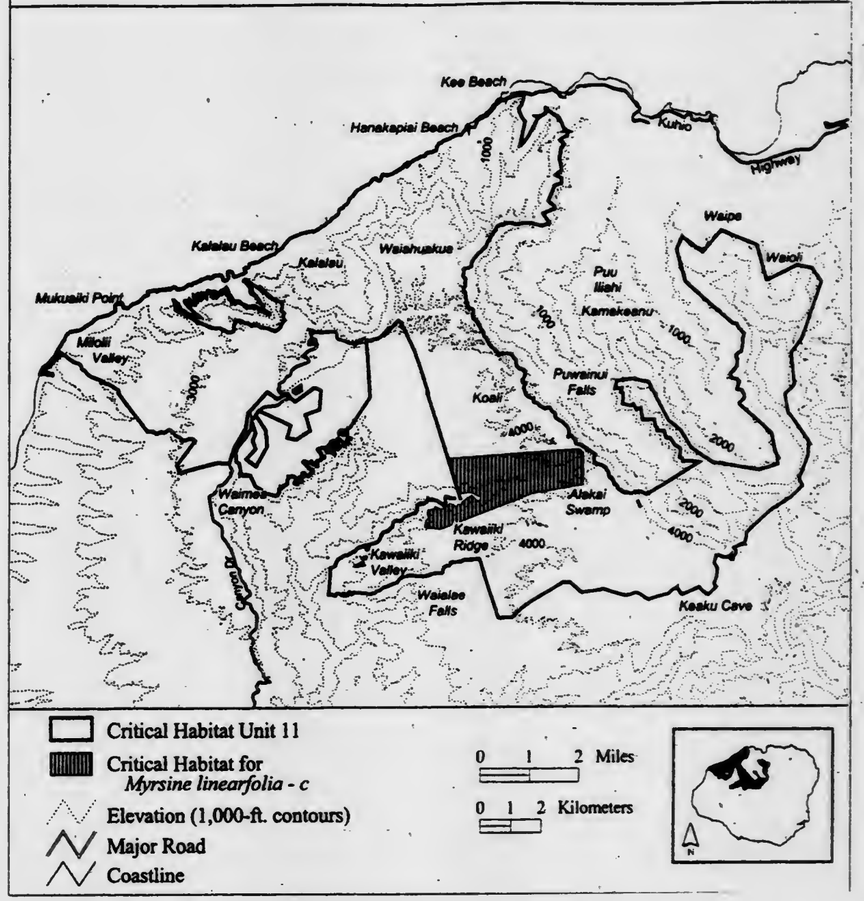


(cxliii) Kauai 11—*Myrsine linearifolia*—c (684 ha; 1,691 ac)

(A) Unit consists of the following 28 boundary points: Start at 442333, 2445731; 442333, 2444698; 440696, 2444413; 437673, 2443278; 437145, 2443341; 437172, 2443520; 437271, 2443636; 437235, 2443770; 437262, 2443895; 437467, 2443931; 437476, 2444011; 437718, 2443913; 437915, 2444047; 437977, 2444118; 438031, 2444065; 438076, 2444083; 438174, 2443957; 438237, 2444083; 438353, 2444038; 438362, 2444127; 438675, 2444351; 438907, 2444154; 438997, 2444297; 438675, 2444449; 438344, 2444431; 438272, 2444411; 437909, 2445539; 442203, 2445834; return to starting point.

(B) **Note:** Map 143 follows:

Map 143 Unit 11 - *Myrsine linearfolia - c*

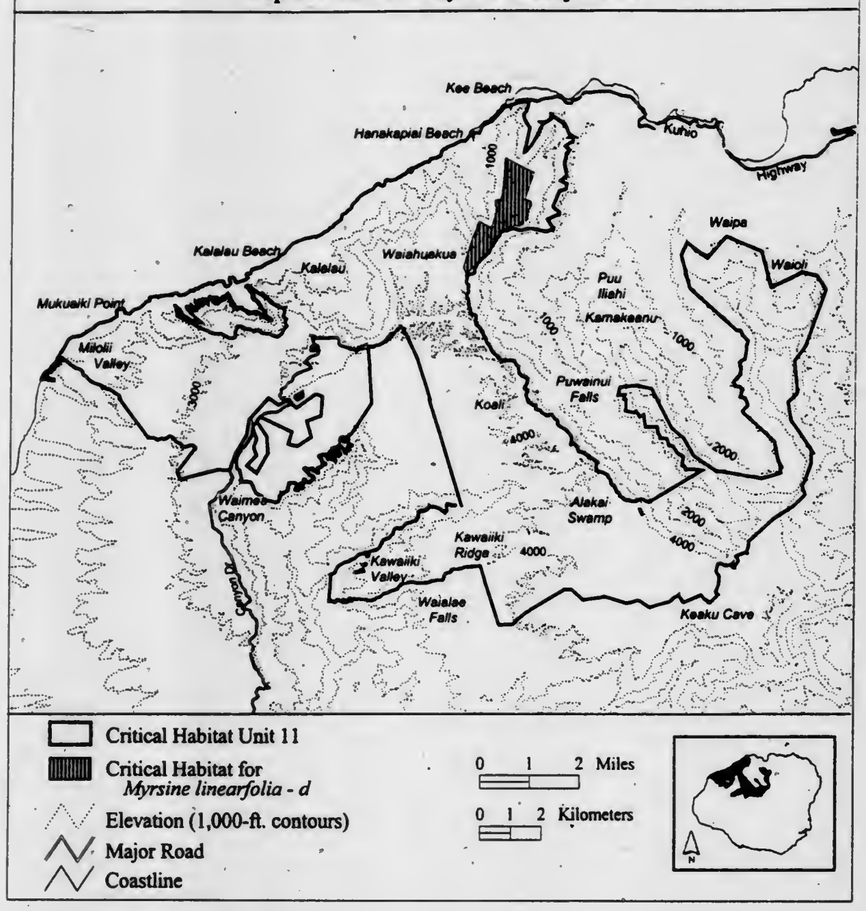


(cxliv) Kauai 11—*Myrsine linearifolia*—d (286 ha; 707 ac)

(A) Unit consists of the following 63 boundary points: Start at 439347, 2452789; 439324, 2452794; 439098, 2452402; 438924, 2452225; 438478, 2451772; 438422, 2451715; 438396, 2451689; 438313, 2451903; 438586, 2452835; 438813, 2453426; 439200, 2453198; 439382, 2453721; 439337, 2454084; 439541, 2454152; 439654, 2455463; 439655, 2455470; 440286, 2455134; 440577, 2454992; 440294, 2454127; 440499, 2454060; 440485, 2453995; 440492, 2453950; 440484, 2453922; 440461, 2453865; 440450, 2453851; 440432, 2453815; 440421, 2453780; 440412, 2453745; 440410, 2453716; 440404, 2453694; 440384, 2453655; 440378, 2453623; 440380, 2453590; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350, 2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; 440244, 2453334; 440223, 2453322; 440199, 2453305; 440147, 2453289; 440119, 2453282; 440093, 2453280; 439987, 2453284; 439962, 2453283; 439924, 2453275; 439905, 2453264; 439787, 2453162; 439724, 2453135; 439639, 2453119; 439600, 2453107; 439553, 2453082; 439503, 2453046; 439481, 2453022; 439473, 2452985; 439464, 2452963; 439414, 2452909; 439390, 2452876; 439355, 2452801; return to starting point.

(B) **Note:** Map 144 follows:

Map 144 Unit 11 - *Myrsine linearfolia - d*



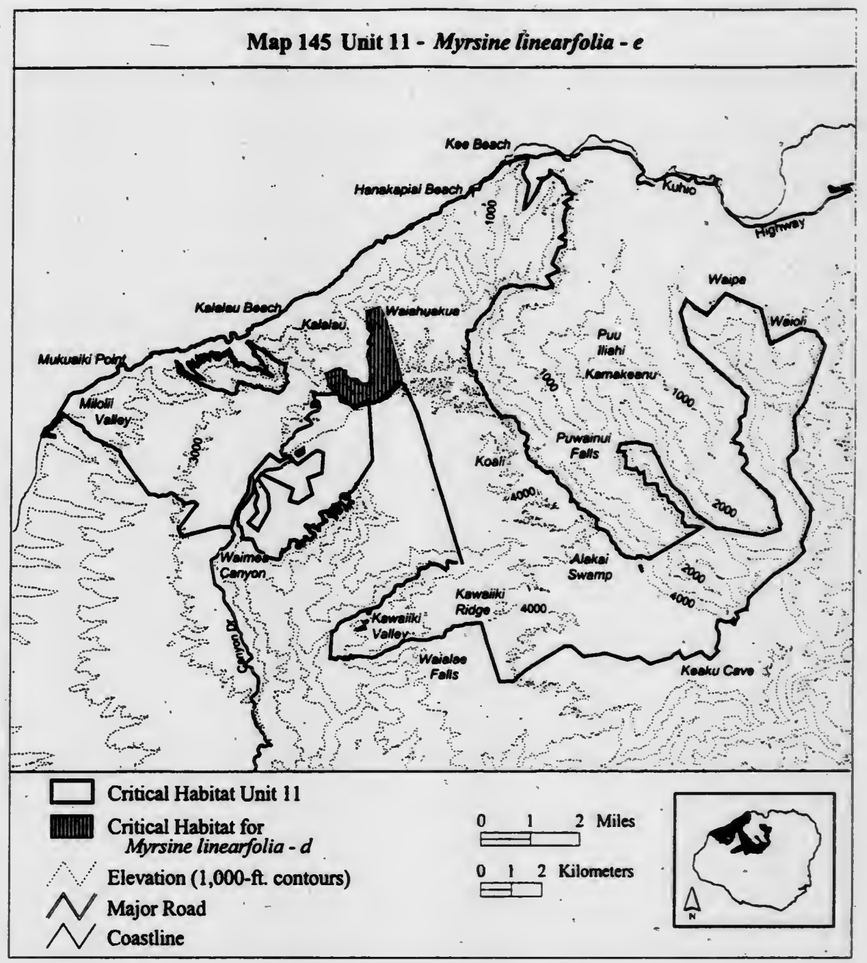
(cxlv) Kauai 11—*Myrsine linearifolia*—e (346 ha; 854 ac)

(A) Unit consists of the following 37 boundary points: Start at 435236, 2449351; 435214, 2449343; 434747, 2449168; 434654, 2449245; 433915, 2449865; 433804, 2450325; 434145, 2450488; 434338, 2450503; 434390, 2450429; 434502, 2450436; 434502, 2450273; 434628, 2450169; 434865, 2450147; 435006, 2450006; 435214, 2450013; 435244, 2450221; 435251, 2450473; 435185, 2450740; 435133, 2450859; 435177, 2451044; 435274, 2451237; 435162, 2451259; 435162, 2451370; 435244, 2451497; 435296, 2451623; 435140, 2451756; 435140, 2451934; 435128, 2452353; 435588, 2452504; 435771, 2452090; 436320, 2450124; 435496, 2449449; 435298, 2449375; 435292, 2449379; 435269, 2449384; 435247, 2449385; 435234, 2449384; return to starting point.

(B) Excluding 1 area bounded by the following 11 points (<1 ha, 1 ac): Start at 434908, 2449290; 434890, 2449251; 434848, 2449239; 434839, 2449258; 434834, 2449277; 434833, 2449281; 434881, 2449297; 435011, 2449352; 435005, 2449310; 434948, 2449300; 434908, 2449290; return to starting point.

(C) **Note:** Map 145 follows:

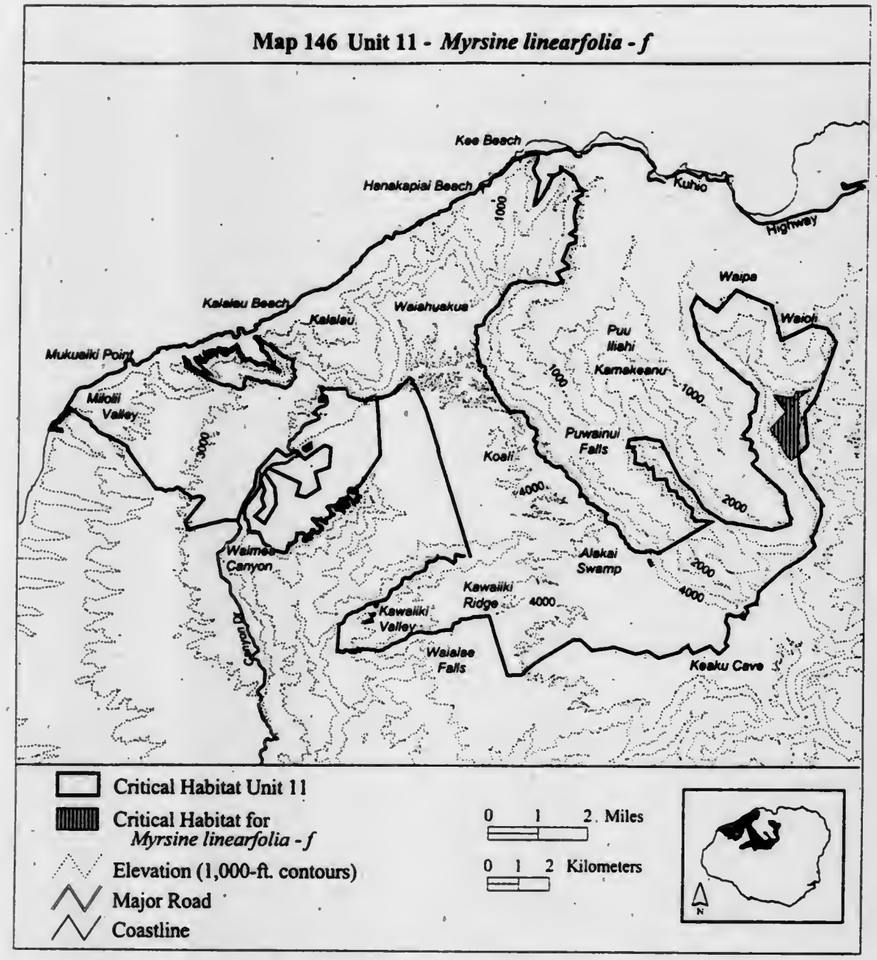
Map 145 Unit 11 - *Myrsine linearfolia - e*



(cxlvi) Kauai 11—*Myrsine linearifolia*—f (135 ha; 334 ac)

(A) Unit consists of the following 30 boundary points: Start at 448856, 2449342; 448879, 2449102; 448899, 2448999; 449002, 2448742; 448894, 2448428; 448894, 2448078; 448920, 2447996; 448961, 2447831; 448961, 2447718; 448964, 2447690; 448881, 2447609; 448665, 2447400; 448662, 2447404; 448498, 2447589; 448384, 2447738; 448322, 2447877; 448286, 2448006; 448147, 2448186; 447988, 2448356; 447981, 2448434; 448470, 2448968; 448049, 2449503; 448160, 2449510; 448320, 2449476; 448515, 2449449; 448732, 2449449; 448783, 2449616; 448980, 2449613; 449250, 2449685; 448853, 2449375; return to starting point.

(B) **Note:** Map 146 follows:



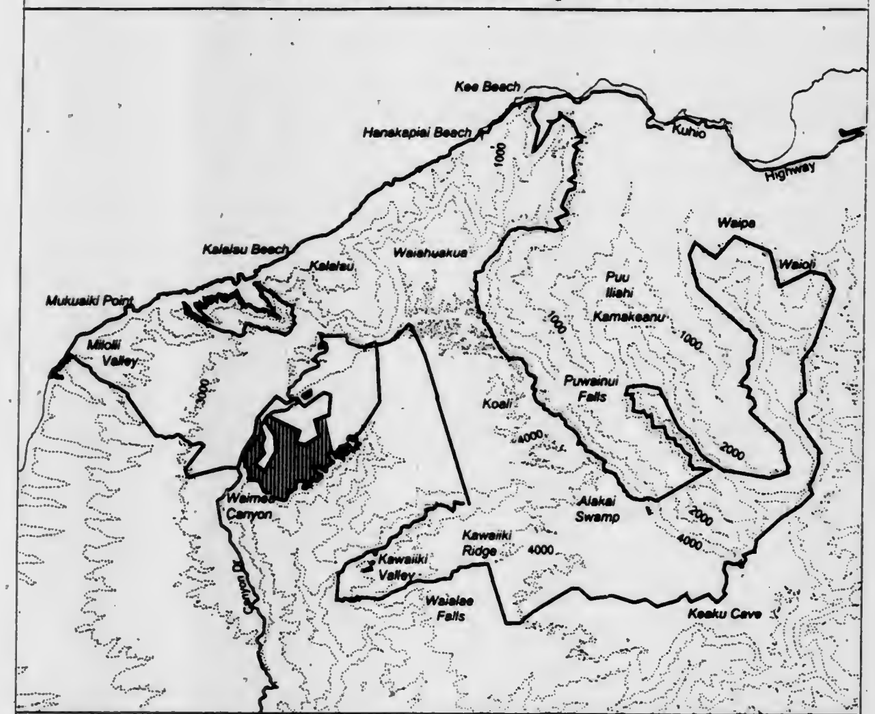
(cxlvii) Kauai 11—*Nothocestrum peltatum*—a (427 ha; 1,056 ac)

(A) Unit consists of the following 418 boundary points: Start at 433577, 2447086; 433840, 2445888; 433837, 2445891; 433826, 2445896; 433791, 2445897; 433775, 2445901; 433758, 2445896; 433730, 2445871; 433708, 2445866; 433689, 2445873; 433675, 2445873; 433653, 2445857; 433650, 2445838; 433656, 2445820; 433690, 2445778; 433718, 2445762; 433735, 2445756; 433750, 2445748; 433756, 2445723; 433755, 2445706; 433759, 2445665; 433764, 2445656; 433781, 2445647; 433824, 2445642; 433851, 2445636; 433868, 2445628; 433879, 2445615; 433881, 2445595; 433867, 2445582; 433854, 2445582; 433827, 2445587; 433805, 2445594; 433787, 2445596; 433772, 2445590; 433763, 2445575; 433770, 2445538; 433773, 2445524; 433772, 2445519; 433762, 2445509; 433749, 2445500; 433732, 2445496; 433717, 2445497; 433708, 2445498; 433696, 2445499; 433686, 2445494; 433668, 2445480; 433655, 2445475; 433647, 2445474; 433635, 2445470; 433628, 2445467; 433621, 2445463; 433616, 2445456; 433609, 2445448; 433604, 2445445; 433598, 2445437; 433595, 2445433; 433595, 2445428; 433599, 2445420; 433611, 2445391; 433614, 2445376; 433620, 2445365; 433629, 2445356; 433637, 2445346; 433639, 2445336; 433641, 2445327; 433641, 2445319; 433637, 2445311; 433625, 2445307; 433619, 2445305; 433611, 2445307; 433604, 2445309; 433600, 2445313; 433591, 2445329; 433586, 2445341; 433582, 2445346; 433577, 2445353; 433573, 2445358; 433568, 2445366; 433567, 2445374; 433565, 2445381; 433564, 2445388; 433563, 2445395; 433562, 2445398; 433561, 2445399; 433556, 2445403; 433548, 2445403; 433527, 2445398; 433494, 2445388; 433477, 2445386; 433469, 2445388; 433463, 2445394; 433459, 2445402; 433456, 2445410; 433455, 2445416; 433452, 2445424; 433452, 2445436; 433451, 2445445; 433450, 2445450; 433449, 2445457; 433448, 2445461; 433446,

2445465; 433442, 2445467; 433438, 2445470; 433431, 2445468; 433426, 2445464; 433420, 2445459; 433413, 2445452; 433405, 2445444; 433396, 2445440; 433373, 2445432; 433344, 2445421; 433332, 2445422; 433317, 2445424; 433307, 2445428; 433288, 2445435; 433272, 2445440; 433260, 2445444; 433247, 2445450; 433242, 2445455; 433237, 2445459; 433233, 2445462; 433226, 2445466; 433221, 2445464; 433201, 2445464; 433193, 2445466; 433187, 2445464; 433181, 2445460; 433179, 2445455; 433179, 2445445; 433180, 2445437; 433192, 2445424; 433199, 2445416; 433225, 2445390; 433249, 2445376; 433262, 2445366; 433268, 2445357; 433274, 2445351; 433279, 2445342; 433287, 2445336; 433298, 2445333; 433312, 2445324; 433316, 2445313; 433323, 2445297; 433334, 2445273; 433342, 2445263; 433353, 2445252; 433362, 2445247; 433375, 2445242; 433386, 2445238; 433401, 2445232; 433411, 2445227; 433422, 2445223; 433432, 2445221; 433450, 2445220; 433460, 2445216; 433471, 2445210; 433482, 2445197; 433506, 2445166; 433514, 2445158; 433515, 2445153; 433512, 2445142; 433510, 2445136; 433508, 2445133; 433505, 2445128; 433500, 2445122; 433495, 2445122; 433487, 2445127; 433480, 2445134; 433474, 2445142; 433469, 2445149; 433467, 2445153; 433464, 2445154; 433457, 2445154; 433455, 2445147; 433452, 2445137; 433446, 2445124; 433444, 2445112; 433441, 2445104; 433438, 2445101; 433432, 2445099; 433423, 2445093; 433413, 2445082; 433395, 2445069; 433387, 2445061; 433382, 2445052; 433380, 2445044; 433380, 2445034; 433381, 2445023; 433380, 2445014; 433379, 2445000; 433377, 2444996; 433370, 2444993; 433363, 2444994; 433357, 2444996; 433351, 2444997; 433345, 2444992; 433337, 2444989; 433330, 2444988; 433322, 2444991; 433307, 2444999; 433290, 2445012; 433274, 2445023; 433259, 2445036; 433236, 2445061; 433216, 2445082; 433207, 2445091; 433201, 2445098; 433195, 2445100; 433189, 2445105; 433182, 2445104; 433177, 2445100; 433173, 2445094; 433172, 2445090; 433168, 2445082; 433164, 2445076; 433159, 2445071; 433154, 2445066; 433147, 2445060; 433142, 2445051; 433139, 2445045; 433140, 2445035; 433142, 2445021; 433156, 2444993; 433163, 2444982; 433166, 2444972; 433166, 2444968; 433160, 2444959; 433153, 2444957; 433144, 2444955; 433138, 2444957; 433130, 2444960; 433105, 2444969; 433093, 2444973; 433082, 2444973; 433074, 2444972; 433066, 2444967; 433062, 2444959; 433058, 2444952; 433059, 2444943; 433060, 2444935; 433064, 2444920; 433069, 2444904; 433075, 2444892; 433078, 2444882; 433084, 2444873; 433092, 2444865; 433104, 2444854; 433113, 2444850; 433129, 2444843; 433138, 2444838; 433143, 2444831; 433144, 2444823; 433144, 2444816; 433143, 2444809; 433135, 2444804; 433124, 2444798; 433119, 2444799; 433108, 2444802; 433094, 2444809; 433077, 2444818; 433063, 2444822; 433054, 2444823; 433052, 2444823; 433047, 2444824; 433039, 2444823; 433028, 2444822; 433019, 2444816; 433011, 2444803; 433002, 2444794; 432993, 2444790; 432986, 2444785; 432986, 2444775; 432988, 2444765; 432993, 2444751; 432985, 2444746; 432976, 2444744; 432960, 2444745; 432951, 2444751; 432948, 2444755; 432944, 2444759; 432939, 2444764; 432936, 2444764; 432925, 2444762; 432914, 2444760; 432908, 2444760; 432899, 2444762; 432891, 2444767; 432887, 2444774; 432887, 2444783; 432892, 2444797; 432903, 2444816; 432916, 2444838; 432921, 2444848; 432923, 2444864; 432929, 2444881; 432933, 2444897; 432934, 2444908; 432933, 2444926; 432933, 2444939; 432932, 2444945; 432930, 2444950; 432927, 2444958; 432921, 2444964; 432915, 2444967; 432907, 2444971; 432897, 2444974; 432883, 2444981; 432878, 2444986; 432872, 2444994; 432865, 2444999; 432855, 2445005; 432846, 2445005; 432838, 2445004; 432830, 2445001; 432821, 2444996; 432812, 2444993; 432801, 2444987; 432788, 2444983; 432772, 2444979; 432761, 2444976; 432744, 2444977; 432730, 2444975; 432714, 2444977; 432710, 2444979; 432706, 2444980; 432698, 2444983; 432692, 2444979; 432689, 2444973; 432688, 2444963; 432681, 2444920; 432680, 2444909; 432670, 2444895; 432664, 2444887; 432659, 2444878; 432657, 2444870; 432657, 2444858; 432655, 2444834; 432653, 2444828; 432648, 2444816; 432642, 2444806; 432640, 2444794; 432644, 2444781; 432650, 2444769; 432655, 2444759; 432657, 2444744; 432652, 2444736; 432645, 2444730; 432634, 2444723; 432606, 2444708; 432584, 2444702; 432554, 2444687; 432542, 2444682; 432534, 2444675; 432528, 2444668; 432520, 2444659; 432513, 2444645; 432507, 2444636; 432500, 2444628; 432490, 2444621; 432480, 2444618; 432473, 2444616; 432465, 2444617; 432453, 2444622; 432444, 2444625; 432437, 2444621; 432427, 2444610; 432417, 2444591; 432405, 2444574; 432401, 2444563; 432401, 2444556; 432401, 2444546; 432400, 2444539; 432399, 2444527; 432393, 2444513; 432387, 2444505; 432387, 2444498; 432388, 2444489; 432389, 2444479; 432386, 2444468; 432379, 2444452; 432369, 2444432; 432357, 2444408; 432350, 2444397; 432346, 2444391; 432343, 2444389; 432340, 2444387; 432336, 2444386; 432313, 2444377; 432297, 2444371; 432275, 2444356; 431885, 2444462; 431820, 2444555; 431615, 2444657; 431445, 2445015; 431137, 2445031; 431104, 2445078; 431153, 2445133; 431083, 2445402; 430991, 2445457; 430977, 2445767; 431060, 2445963; 431278, 2446215; 431483, 2446536; 431491, 2446759; 431622, 2446390; 431522, 2446121; 431622, 2445871; 431312, 2445542; 431632, 2445303; 432001, 2445941; 431961, 2446460; 431624, 2446959; 431732, 2447115; 432759, 2446609; 432659, 2446240; 432948, 2446150; 433397, 2446440; 433257, 2446958; return to starting point.

(B) **Note:** Map 147 follows:

Map 147 Unit 11 - *Nothocestrum peltatum - a*



(cxlviii) Kauai 11—*Nothocestrum peltatum*—b (1,464 ha; 3,617 ac)

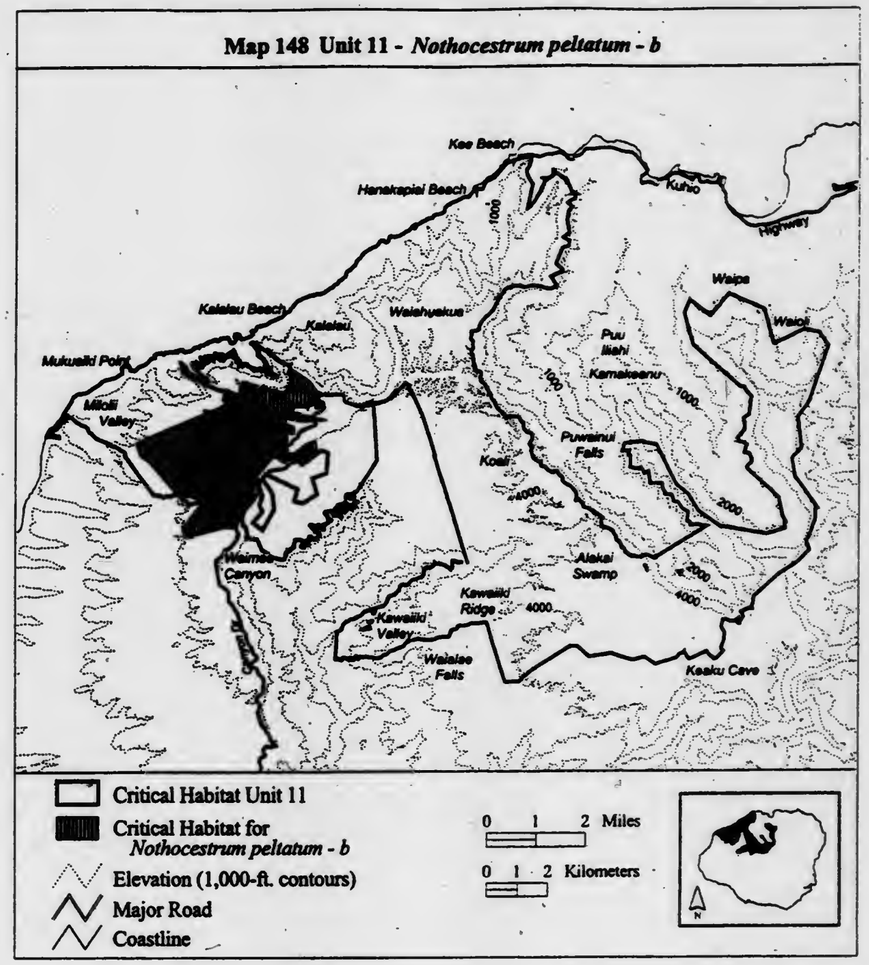
(A) Unit consists of the following 125 boundary points: Start at 433416, 2449553; 433413, 2449527; 433251, 2449306; 433081, 2449255; 432650, 2449255; 432630, 2449144; 432587, 2449098; 433711, 2448846; 432893, 2448778; 432382, 2448880; 432382, 2448693; 432638, 2448625; 432638, 2448387; 432433, 2448387; 432416, 2447995; 432432, 2447806; 432433, 2447791; 432672, 2447739; 432961, 2447978; 433336, 2448182; 433424, 2447780; 432918, 2447407; 432609, 2447647; 432320, 2447497; 432136, 2447629; 432001, 2447726; 431369, 2447027; 431298, 2446522; 430955, 2445963; 430827, 2445619; 430759, 2445406; 430405, 2445422; 429257, 2445126; 429144, 2445121; 429062, 2445354; 429654, 2446125; 429591, 2446167; 429485, 2446305; 429263, 2446389; 429094, 2446389; 428972, 2446421; 428912, 2446468; 428912, 2446468; 428911, 2446468; 428904, 2446474; 428793, 2446542; 428773, 2446550; 428747, 2446566; 427960, 2447503; 427660, 2447675; 427505, 2448103; 429733, 2449052; 429708, 2449170; 429968, 2449152; 430437, 2449352; 430418, 2449395; 430369, 2449433; 430355, 2449451; 430349, 2449466; 430335, 2449474; 430318, 2449477; 430307, 2449482; 430312, 2449517; 430313, 2449532; 430320, 2449553; 430331, 2449565; 430346, 2449596; 430354, 2449622; 430355, 2449641; 430348, 2449666; 430376, 2449750; 430384, 2449766; 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238, 2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431657, 2449890; 431699, 2449876; 431765, 2449810; 431864, 2449801; 431981, 2449792; 432047, 2449787; 432113,

2449740; 432217, 2449712; 432259, 2449679; 432344, 2449744; 432419, 2449806; 432471, 2449904; 432504, 2449961; 432579, 2450036; 432551, 2450083; 432523, 2450130; 432523, 2450182; 432565, 2450262; 432523, 2450304; 432475, 2450313; 432452, 2450337; 432461, 2450375; 432480, 2450426; 432490, 2450478; 432501, 2450529; 432504, 2450525; 432504, 2450527; 433152, 2450085; 433399, 2449754; 433399, 2449709; 433419, 2449599; return to starting point.

(B) Excluding 1 area bounded by the following 4 points (3 ha, 8 ac): Start at 433109, 2447775; 432932, 2447668; 432827, 2447751; 433094, 2447922; return to starting point.

(C) **Note:** Map 148 follows:

Map 148 Unit 11 - *Nothocestrum peltatum - b*

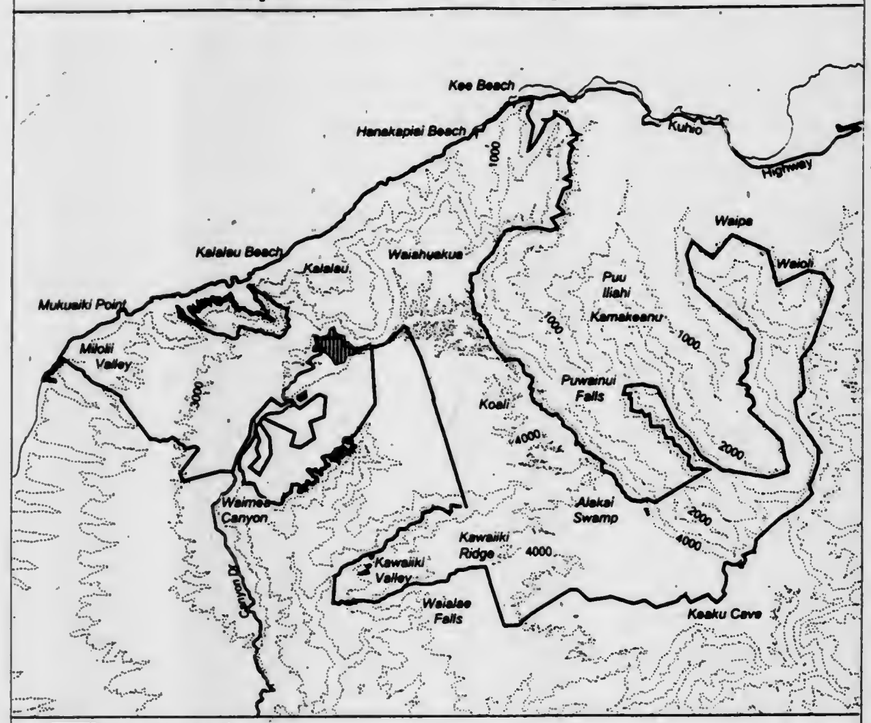


(cxlix) Kauai 11—*Nothocestrum peltatum*—c (80 ha; 198 ac)

(A) Unit consists of the following 36 boundary points: Start at 433467, 2449537; 433459, 2449601; 433480, 2449629; 433550, 2449670; 433792, 2449721; 433887, 2449924; 434015, 2449995; 434094, 2449780; 434354, 2449721; 434409, 2449470; 434457, 2449541; 434688, 2449346; 434987, 2449346; 434991, 2449346; 434991, 2449344; 434988, 2449343; 434881, 2449297; 434833, 2449281; 434834, 2449277; 434839, 2449258; 434842, 2449253; 434844, 2449248; 434839, 2449242; 434833, 2449239; 434684, 2449151; 434469, 2449071; 434362, 2448856; 434336, 2448850; 434055, 2448781; 433923, 2449012; 433812, 2449135; 433688, 2449191; 433660, 2449263; 433664, 2449351; 433588, 2449442; 433509, 2449482; return to starting point.

(B) **Note:** Map 149 follows:

Map 149 Unit 11 - *Nothocestrum peltatum* - c

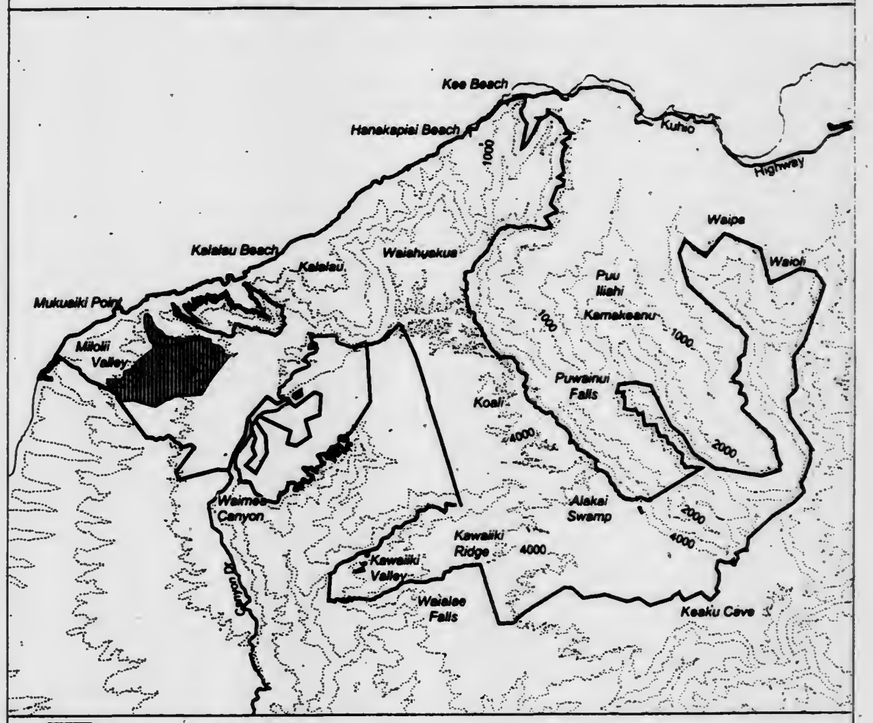


(cl) Kauai 11—*Peucedanum sandwicense*—b (579 ha; 1,430 ac)

(A) Unit consists of the following 91 boundary points: Start at 426832, 2447995; 426843, 2448011; 426810, 2448288; 427346, 2448293; 427357, 2448542; 427623, 2448630; 427799, 2448868; 428291, 2449244; 428313, 2449309; 428313, 2449411; 428205, 2449507; 428142, 2449672; 428131, 2449814; 428029, 2449922; 428017, 2449990; 428017, 2450120; 428017, 2450279; 428034, 2450399; 428142, 2450404; 428245, 2450302; 428302, 2450155; 428364, 2450024; 428409, 2449944; 428523, 2449882; 428637, 2449819; 428705, 2449689; 428847, 2449649; 429000, 2449604; 429194, 2449587; 429341, 2449592; 429501, 2449649; 429677, 2449672; 429876, 2449649; 430006, 2449598; 430009, 2449587; 430011, 2449592; 430066, 2449586; 430177, 2449564; 430182, 2449481; 430221, 2449420; 430359, 2449371; 430420, 2449392; 430437, 2449371; 430430, 2449364; 430451, 2449363; 430463, 2449355; 430474, 2449342; 430485, 2449333; 430527, 2449321; 430531, 2449315; 430531, 2449310; 430534, 2449307; 430545, 2449277; 430559, 2449254; 430604, 2449229; 430616, 2449214; 430623, 2449194; 430623, 2449173; 430616, 2449156; 430619, 2449138; 430629, 2449119; 430643, 2449106; 430666, 2449092; 430680, 2449072; 430824, 2449050; 430232, 2448299; 429895, 2447790; 429381, 2447752; 429032, 2447740; 428839, 2447641; 428767, 2447635; 428380, 2447414; 427650, 2447613; 427235, 2447592; 427185, 2447661; 427161, 2447669; 427157, 2447676; 427157, 2447711; 427175, 2447754; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427124, 2447837; 427084, 2447847; 427039, 2447867; 426997, 2447892; 426981, 2447902; 426958, 2447923; 426944, 2447941; 426907, 2447965; 426847, 2447992; return to starting point.

(B) **Note:** Map 150 follows:

Map 150 Unit 11 - *Peucedanum sandwicense* - b

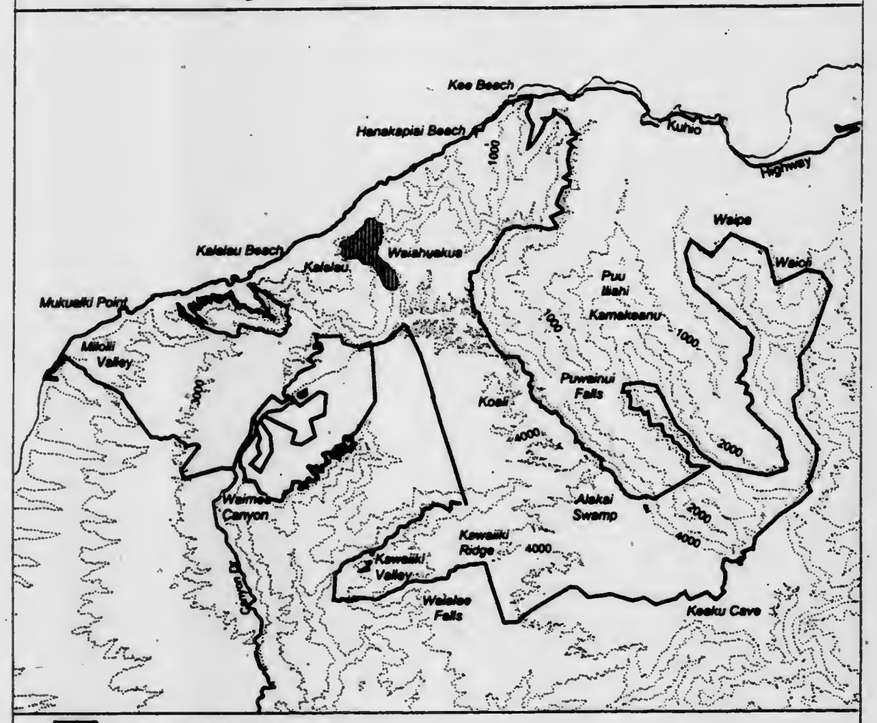


(cli) Kauai 11—*Peucedanum sandwicense*—c (181 ha; 447 ac)

(A) Unit consists of the following 48 boundary points: Start at 435634, 2452896; 435550, 2452817; 435535, 2452664; 435497, 2452553; 435413, 2452410; 435407, 2452304; 435487, 2452193; 435630, 2452061; 435773, 2451976; 435831, 2451875; 435969, 2451706; 436054, 2451547; 436080, 2451431; 436043, 2451304; 436064, 2451177; 435995, 2451108; 435757, 2451140; 435619, 2451272; 435503, 2451574; 435376, 2451759; 435270, 2451902; 435206, 2451981; 434989, 2451976; 434904, 2452029; 434851, 2452114; 434745, 2452198; 434544, 2452161; 434438, 2452167; 434295, 2452225; 434226, 2452320; 434258, 2452437; 434306, 2452516; 434216, 2452564; 434189, 2452680; 434269, 2452749; 434385, 2452775; 434512, 2452849; 434629, 2452913; 434714, 2452971; 434804, 2453108; 434909, 2453188; 434989, 2453272; 435010, 2453389; 435090, 2453452; 435301, 2453468; 435423, 2453341; 435552, 2453315; 435559, 2453209; return to starting point.

(B) **Note:** Map 151 follows:

Map 151 Unit 11 - *Peucedanum sandwicense - c*



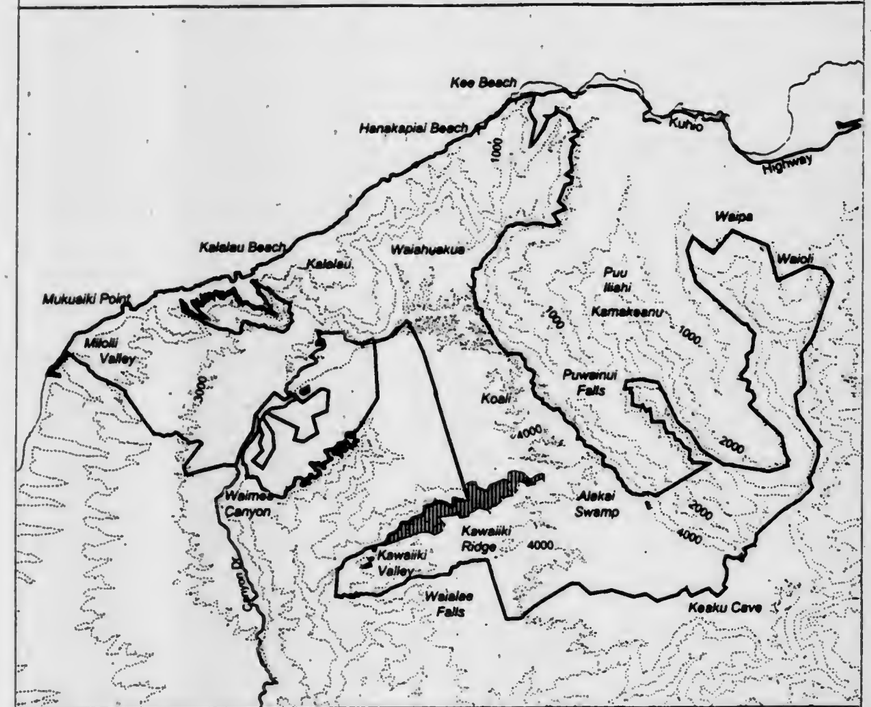
(clii) Kauai 11—*Phyllostegia knudsenii*—a (297 ha, 735 ac)

(A) Unit consists of the following 265 boundary points: Start at 438184, 2444684; 438270, 2444792; 438407, 2444861; 438555, 2444861; 438624, 2444693; 438899, 2444575; 438978, 2444733; 439185, 2444831; 439490, 2444929; 439598, 2444880; 439598, 2445136; 439795, 2445214; 440110, 2445136; 440316, 2444919; 440503, 2445047; 440661, 2445106; 440788, 2445096; 440759, 2444831; 440720, 2444949; 440474, 2444850; 440493, 2444762; 440188, 2444693; 440188, 2444791; 439933, 2444880; 439962, 2444723; 439933, 2444605; 439775, 2444418; 439490, 2444349; 439362, 2444202; 439195, 2444064; 439037, 2444054; 439027, 2443818; 438949, 2443946; 438634, 2444025; 438516, 2443897; 438358, 2443858; 438348, 2443749; 438034, 2443681; 437984, 2443808; 437384, 2443720; 437571, 2443494; 437473, 2443268; 437227, 2443140; 437069, 2443228; 436774, 2443228; 435545, 2442770; 435532, 2442855; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146,

2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; return to starting point.

(B) **Note:** Map 152 follows:

Map 152 Unit 11 - *Phyllostegia knudsenii - a*

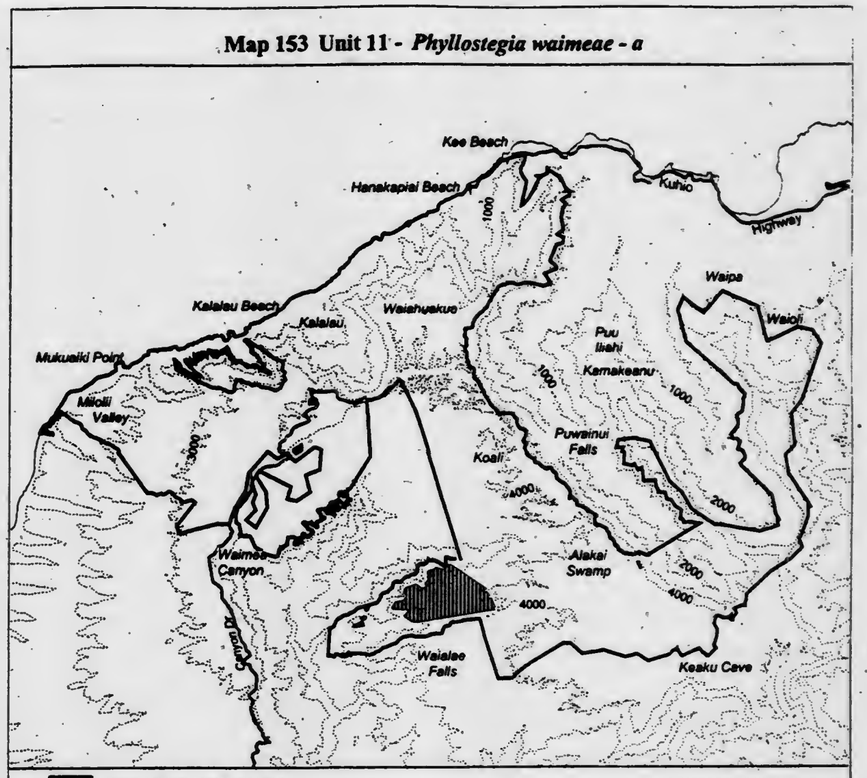


(cliii) Kauai 11—*Phyllostegia waimeae*—a (364 ha; 901 ac)

(A) Unit consists of the following 30 boundary points: Start at 437962, 2444106; 439160, 2443328; 439020, 2443250; 439191, 2443203; 439238, 2443125; 439168, 2443024; 439316, 2443017; 439440, 2442729; 439378, 2442635; 436857, 2442223; 436732, 2442270; 436483, 2442441; 436654, 2442636; 436102, 2442659; 436086, 2442721; 436188, 2442916; 436452, 2442939; 436553, 2443095; 436444, 2443235; 436522, 2443367; 436857, 2443468; 437067, 2443336; 437176, 2443359; 437160, 2443499; 437246, 2443585; 437246, 2443733; 437246, 2443888; 437479, 2443943; 437487, 2444013; 437760, 2443935; return to starting point.

(B) **Note:** Map 153 follows:

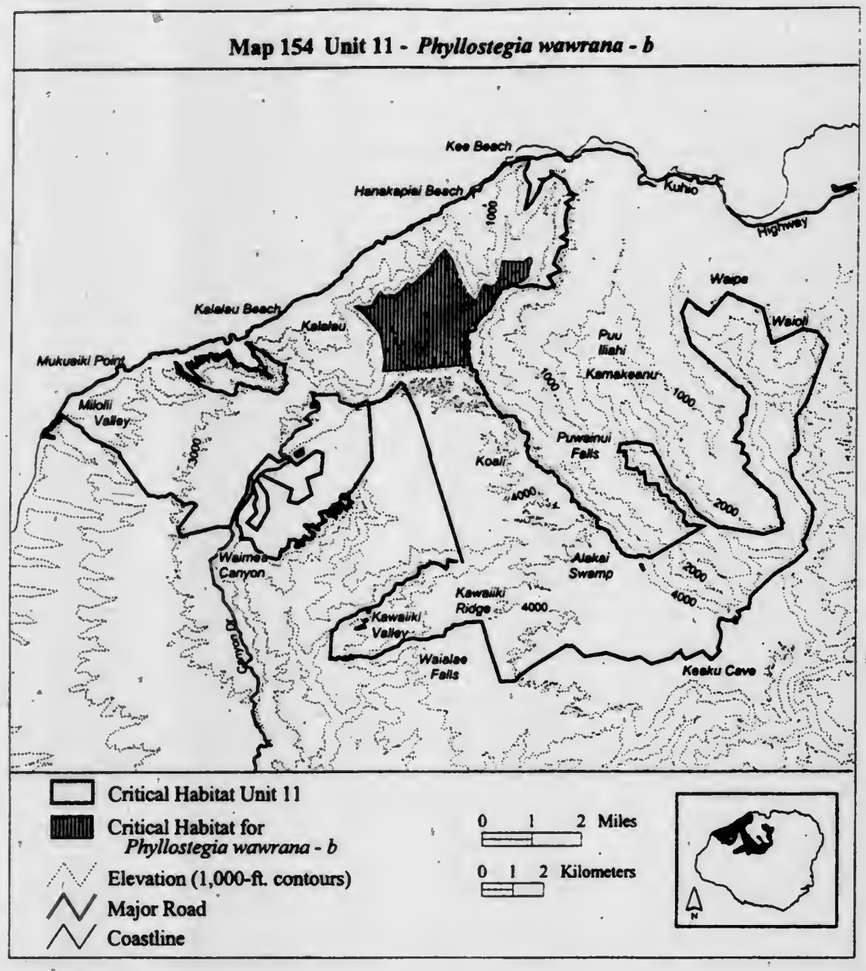
Map 153 Unit 11 - *Phyllostegia waimeae - a*



(cliv) Kauai 11—*Phyllostegia wawrana*—b (1,037 ha; 2,562 ac)

(A) Unit consists of the following 94 boundary points: Start at 439347, 2452789; 439324, 2452794; 439098, 2452402; 438924, 2452225; 438478, 2451772; 438422, 2451715; 438390, 2451682; 438377, 2451065; 438401, 2450962; 438479, 2450630; 438493, 2450567; 438089, 2450541; 438089, 2450541; 435680, 2450387; 435730, 2450798; 435638, 2451327; 435579, 2451630; 435259, 2452025; 435007, 2452319; 434729, 2452520; 434889, 2452579; 435015, 2452520; 435301, 2452562; 435394, 2452747; 435579, 2453033; 435772, 2452831; 435822, 2452915; 436041, 2452881; 436234, 2453024; 436487, 2453309; 436579, 2453217; 436697, 2453301; 436915, 2453528; 437235, 2453788; 437412, 2454065; 437681, 2454384; 437891, 2454115; 438067, 2453662; 438261, 2453250; 438446, 2452906; 438681, 2452687; 438942, 2453241; 439186, 2453157; 439387, 2453291; 439530, 2453988; 439594, 2453984; 439867, 2453963; 440228, 2453946; 440337, 2454039; 440401, 2454092; 440499, 2454060; 440485, 2453995; 440492, 2453950; 440484, 2453922; 440461, 2453865; 440450, 2453851; 440432, 2453815; 440421, 2453780; 440412, 2453745; 440410, 2453716; 440404, 2453694; 440384, 2453655; 440378, 2453623; 440380, 2453590; 440370, 2453517; 440363, 2453496; 440355, 2453461; 440350, 2453451; 440333, 2453428; 440315, 2453408; 440288, 2453388; 440275, 2453381; 440244, 2453334; 440223, 2453322; 440199, 2453305; 440147, 2453289; 440119, 2453282; 440093, 2453280; 439987, 2453284; 439962, 2453283; 439924, 2453275; 439905, 2453264; 439787, 2453162; 439724, 2453135; 439639, 2453119; 439600, 2453107; 439553, 2453082; 439503, 2453046; 439481, 2453022; 439473, 2452985; 439464, 2452963; 439414, 2452909; 439390, 2452876; 439355, 2452801; return to starting point.

(B) **Note:** Map 154 follows:



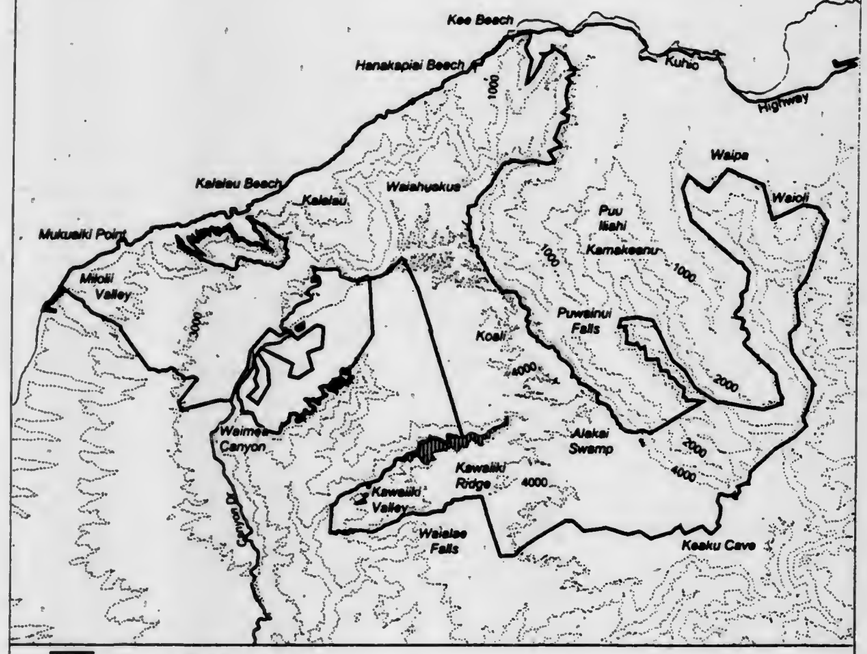
(clv) Kauai 11—*Phyllostegia wawrana*—c (108 ha; 268 ac)

(A) Unit consists of the following 254 boundary points: Start at 436283, 2443540; 436283, 2443542; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593,

2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438331, 2444225; 438331, 2444225; 438361, 2444238; 438459, 2444323; 438527, 2444400; 438642, 2444421; 438749, 2444353; 438817, 2444310; 438876, 2444310; 438957, 2444306; 439085, 2444387; 439102, 2444455; 439230, 2444515; 439302, 2444566; 439379, 2444595; 439562, 2444668; 439660, 2444766; 439694, 2444817; 439715, 2444893; 439770, 2444944; 439770, 2444872; 439787, 2444795; 439787, 2444706; 439779, 2444668; 439707, 2444651; 439447, 2444532; 439400, 2444506; 439396, 2444438; 439336, 2444455; 439285, 2444370; 439242, 2444408; 439187, 2444357; 439208, 2444306; 439217, 2444276; 439187, 2444263; 439132, 2444221; 439093, 2444246; 439072, 2444238; 439051, 2444204; 439055, 2444187; 439025, 2444191; 438995, 2444204; 438949, 2444195; 438949, 2444144; 438966, 2444093; 438974, 2443991; 438906, 2443970; 438846, 2444012; 438812, 2444072; 438757, 2444076; 438655, 2444170; 438604, 2444200; 438553, 2444178; 438519, 2444115; 438472, 2444072; 438480, 2443983; 438412, 2443927; 438370, 2443923; 438272, 2443949; 438229, 2443855; 438191, 2443851; 438174, 2443808; 438118, 2443800; 438054, 2443864; 438059, 2443932; 437991, 2443893; 437974, 2443898; 437927, 2443928; 437871, 2443910; 437782, 2443813; 437744, 2443830; 437688, 2443842; 437637, 2443825; 437586, 2443787; 437497, 2443796; 437467, 2443774; 437412, 2443770; 437343, 2443719; 437343, 2443659; 437382, 2443625; 437416, 2443523; 437373, 2443510; 437305, 2443523; 437254, 2443481; 437207, 2443366; 437143, 2443374; 437071, 2443387; 437028, 2443434; 436922, 2443549; 436871, 2443647; 436815, 2443634; 436786, 2443613; 436709, 2443621; 436692, 2443553; 436692, 2443515; 436637, 2443468; 436594, 2443485; 436547, 2443515; 436496, 2443515; 436445, 2443485; 436390, 2443485; 436309, 2443477; 436279, 2443506; return to starting point.

(B) **Note:** Map 155 follows:

Map 155 Unit 11 - *Phyllostegia wawrana - c*



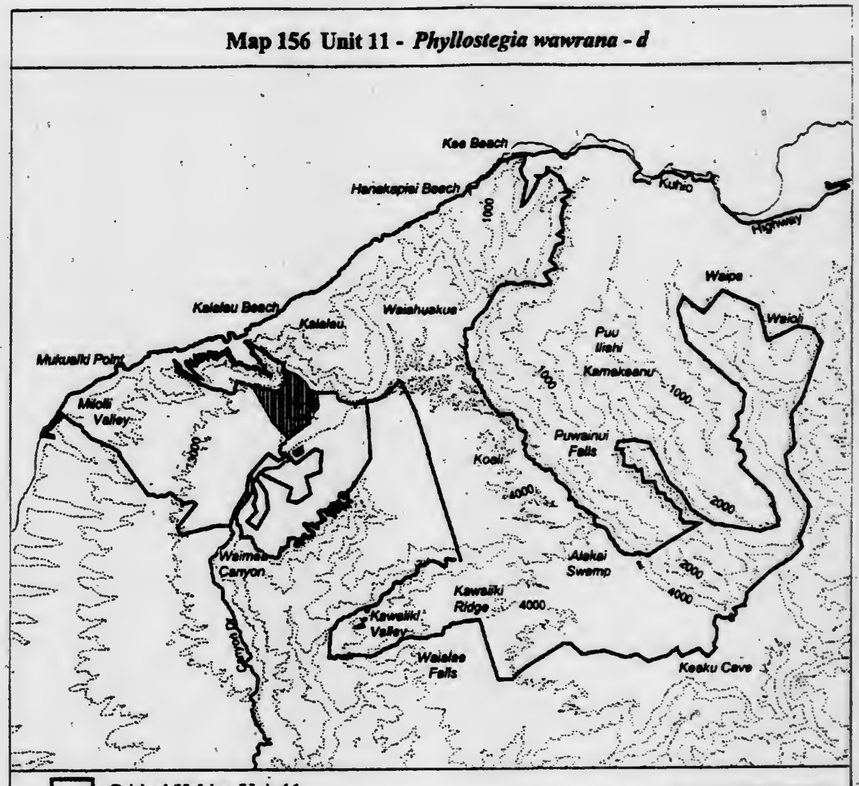
(clvi) Kauai 11—*Phyllostegia wawrana*—d (251 ha; 619 ac)

(A) Unit consists of the following 46 boundary points: Start at 433484, 2449698; 433602, 2449656; 433646, 2449236; 433339, 2448655; 432657, 2448174; 432163, 2448681; 432122, 2448722; 431444, 2449890; 431449, 2449886; 431497, 2449867; 431510, 2449870; 431519, 2449867; 431617, 2449892; 431723, 2449853; 431765, 2449810; 431860, 2449801; 432043, 2449733; 432311, 2449650; 432411, 2449775; 432545, 2449959; 432548, 2450005; 432579, 2450036; 432552, 2450080; 432553, 2450092; 432527, 2450190; 432565, 2450262; 432523, 2450304; 432495, 2450310; 432495, 2450310; 432489, 2450474; 432490, 2450478; 432500, 2450525; 432509, 2450514; 432509, 2450514; 432595, 2450402; 432946, 2450251; 433218, 2450018; 433402, 2449727; 433458, 2449707; 433436, 2449707; 433399, 2449709; 433419, 2449599; 433426, 2449556; 433440, 2449604; 433457, 2449622; 433480, 2449629; return to starting point.

(B) Excluding 1 area bounded by the following 10 points (3 ha, 8 ac): Start at 433368, 2449292; 433367, 2449352; 433448, 2449426; 433546, 2449412; 433567, 2449398; 433589, 2449323; 433612, 2449262; 433588, 2449244; 433567, 2449260; 433369, 2449255; return to starting point.

(C) **Note:** Map 156 follows:

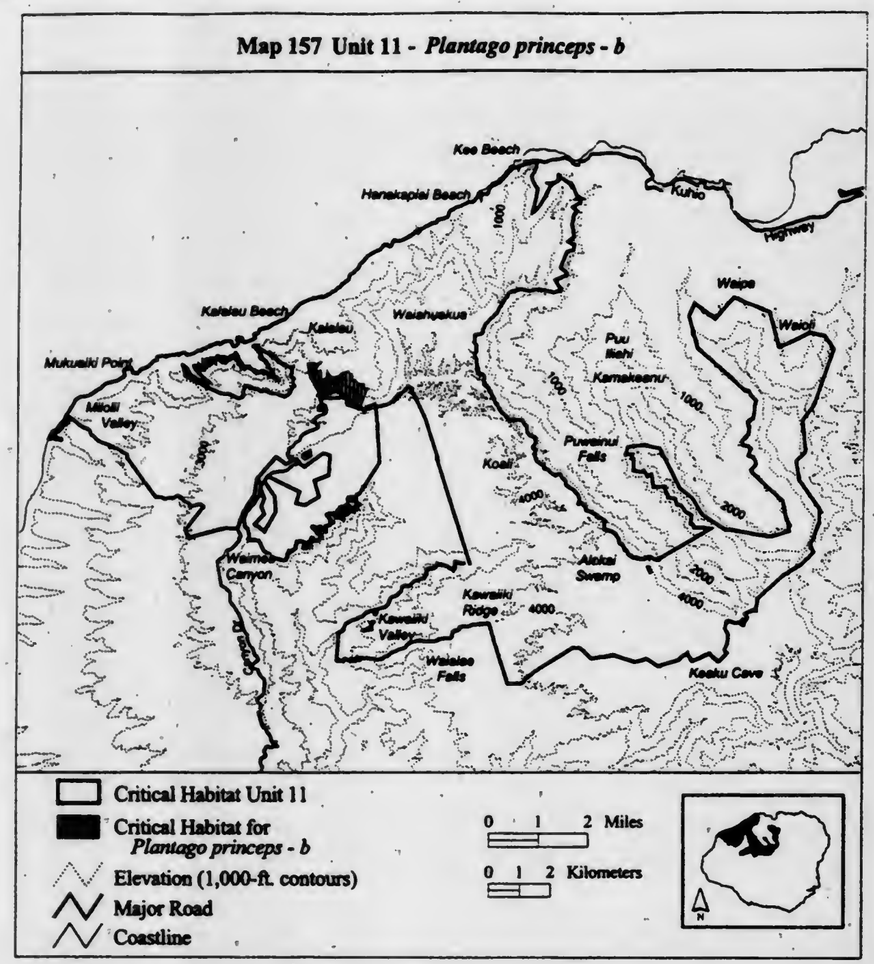
Map 156 Unit 11 - *Phyllostegia wawrana - d*



(clvii) Kauai 11—*Plantago princeps*—b (126 ha; 312 ac)

(A) Unit consists of the following 29 boundary points: Start at 433417, 2449712; 433064, 2450297; 432997, 2450736; 433229, 2450755; 433295, 2450698; 433400, 2450797; 433470, 2450783; 433314, 2450641; 433343, 2450467; 433433, 2450528; 433461, 2450230; 433598, 2450268; 433631, 2450528; 433787, 2450301; 434024, 2450348; 434104, 2450433; 434336, 2450509; 434374, 2450391; 434454, 2450424; 434502, 2450339; 434426, 2450225; 434563, 2450244; 434648, 2450102; 434847, 2450097; 434833, 2449960; 434956, 2449946; 434719, 2449299; 433953, 2449833; 433457, 2449709; return to starting point.

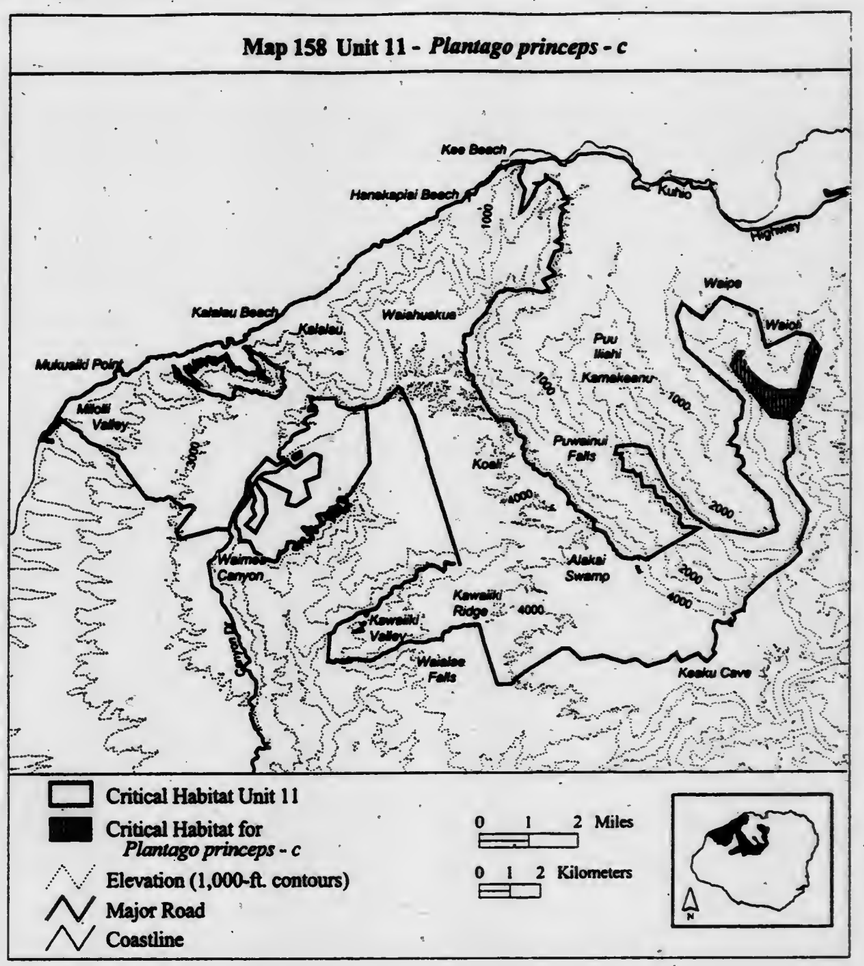
(B) **Note:** Map 157 follows:



(clviii) Kauai 11—*Plantago princeps*—c (244 ha; 603 ac)

(A) Unit consists of the following 17 boundary points: Start at 448456, 2448986; 447125, 2450677; 447365, 2451166; 447582, 2451166; 447538, 2450979; 447777, 2450536; 448254, 2450127; 448731, 2449889; 449310, 2449923; 449617, 2451148; 449833, 2451517; 450063, 2451208; 449872, 2450704; 449708, 2450232; 449423, 2449382; 449245, 2449149; 449068, 2448933; return to starting point.

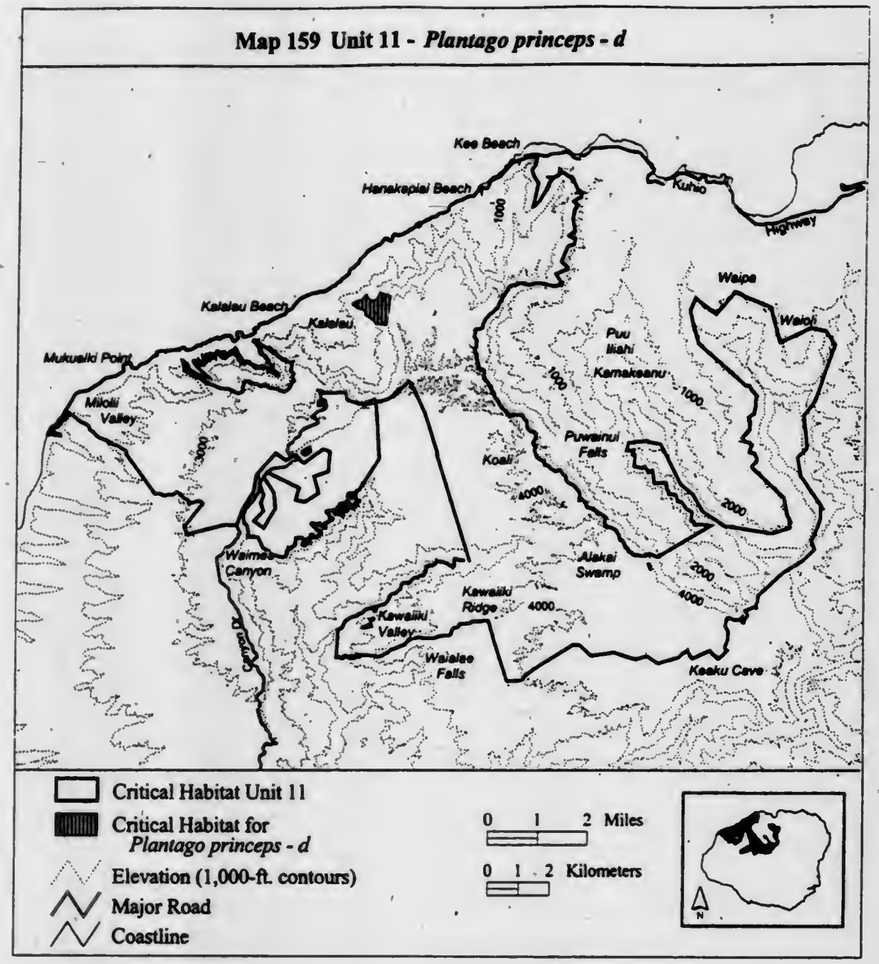
(B) **Note:** Map 158 follows:



(clix) Kauai 11—*Plantago princeps*—d (77 ha; 189 ac)

(A) Unit consists of the following 17 boundary points: Start at 434421, 2452541; 434634, 2452659; 434776, 2452663; 434894, 2452862; 434993, 2452692; 435074, 2452644; 435221, 2452678; 435334, 2452914; 435626, 2452805; 435684, 2452743; 435571, 2451808; 435202, 2451855; 435126, 2452002; 434852, 2452163; 434885, 2452271; 434757, 2452352; 434587, 2452394; return to starting point.

(B) **Note:** Map 159 follows:



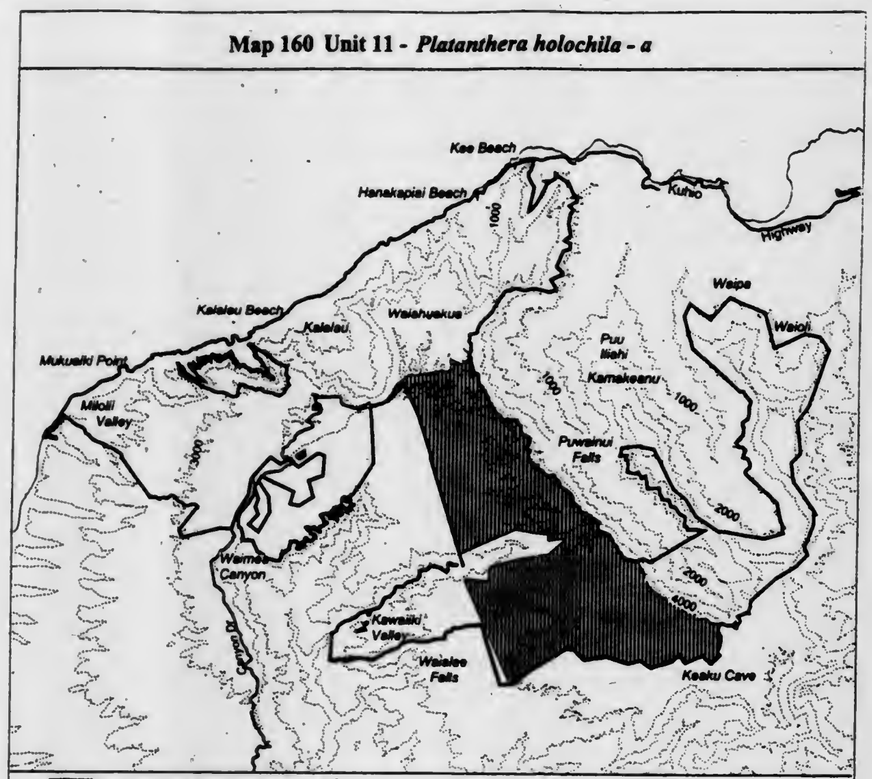
(clx) Kauai 11—*Platanthera holochila*—a (4,149 ha; 10,253 ac)

(A) Unit consists of the following 419 boundary points: Start at 443067, 2445215; 443066, 2445209; 443066, 2445190; 443083, 2445171; 443103, 2445152; 443122, 2445132; 443135, 2445115; 443140, 2445105; 443144, 2445096; 443150, 2445078; 443152, 2445059; 443153, 2445040; 443153, 2445020; 443156, 2445003; 443158, 2444995; 443163, 2444984; 443175, 2444965; 443177, 2444962; 443193, 2444946; 443196, 2444944; 443215, 2444938; 443234, 2444932; 443240, 2444927; 443252, 2444914; 443260, 2444907; 443271, 2444898; 443281, 2444890; 443290, 2444876; 443294, 2444870; 443301, 2444851; 443307, 2444833; 443309, 2444829; 443313, 2444815; 443320, 2444796; 443327, 2444778; 443333, 2444758; 443341, 2444740; 443346, 2444728; 443352, 2444721; 443366, 2444706; 443373, 2444702; 443385, 2444699; 443403, 2444695; 443423, 2444686; 443435, 2444664; 443440, 2444655; 443443, 2444647; 443444, 2444627; 443447, 2444608; 443452, 2444591; 443459, 2444579; 443464, 2444570; 443478, 2444555; 443483, 2444551; 443497, 2444548; 443516, 2444546; 443534, 2444543; 443553, 2444537; 443557, 2444532; 443571, 2444521; 443579, 2444514; 443598, 2444493; 443610, 2444483; 443617, 2444477; 443628, 2444469; 443647, 2444460; 443666, 2444456; 443677, 2444459; 443685, 2444463; 443703, 2444469; 443722, 2444464; 443732, 2444458; 443740, 2444454; 443760, 2444446; 443769, 2444440; 443987, 2444415; 444047, 2444337; 444117, 2444107; 444210, 2443933; 444299, 2443729; 444347, 2443603; 444425, 2443555; 444600, 2443428; 444759, 2443295; 445253, 2443054; 445513, 2442838; 445854, 2442734; 445951, 2442593; 446214, 2442612; 446381, 2442489; 446652, 2442437; 446591, 2442195; 446694, 2442007; 446686, 2441764; 446640, 2441627; 446587, 2441543; 446587, 2441501; 446641, 2441436; 446560, 2441376; 446348, 2441177; 446122, 2441415; 445543, 2441183; 445413, 2441371; 445395, 2441421; 445382, 2441433; 445261, 2441357; 445124,

2441205; 444465, 2441003; 444154, 2441263; 443699, 2441176; 442976, 2441356; 442310, 2441249; 441883, 2441603; 441623, 2441574; 440236, 2440690; 440188, 2440625; 439852, 2440461; 438358, 2443756; 438446, 2443829; 439134, 2443741; 439178, 2444225; 440174, 2444473; 441068, 2444619; 441639, 2445117; 441039, 2445044; 441039, 2445264; 440672, 2445293; 440013, 2445410; 438234, 2444610; 438008, 2445343; 436790, 2449091; 436517, 2449722; 436337, 2450061; 436433, 2450077; 436359, 2450114; 435843, 2449559; 435838, 2449570; 436073, 2450082; 436483, 2450345; 436849, 2450360; 437537, 2450491; 437845, 2450462; 437816, 2450886; 438167, 2450681; 438372, 2450842; 438403, 2451013; 438416, 2451091; 438463, 2451098; 438455, 2451089; 438434, 2451069; 438425, 2451047; 438435, 2450985; 438427, 2450964; 438472, 2450910; 438501, 2450796; 438488, 2450686; 438554, 2450559; 438581, 2450423; 438621, 2450415; 438690, 2450392; 438715, 2450373; 438731, 2450342; 438736, 2450325; 438737, 2450311; 438732, 2450286; 438717, 2450241; 438713, 2450206; 438716, 2450162; 438730, 2450109; 438744, 2450081; 438765, 2450051; 438791, 2450036; 438816, 2450028; 438831, 2450010; 438850, 2449982; 438884, 2449918; 438894, 2449879; 438904, 2449863; 438919, 2449853; 438944, 2449813; 438965, 2449767; 438974, 2449738; 438999, 2449702; 439016, 2449687; 439025, 2449671; 439037, 2449642; 439044, 2449631; 439065, 2449586; 439076, 2449548; 439102, 2449480; 439114, 2449463; 439146, 2449435; 439167, 2449414; 439200, 2449362; 439220, 2449318; 439230, 2449287; 439244, 2449261; 439260, 2449242; 439277, 2449220; 439307, 2449169; 439330, 2449145; 439361, 2449126; 439382, 2449107; 439399, 2449097; 439421, 2449088; 439433, 2449078; 439437, 2449066; 439437, 2449023; 439451, 2449000; 439508, 2448984; 439516, 2448971; 439526, 2448944; 439539, 2448922; 439553, 2448909; 439578, 2448906; 439611, 2448928; 439633, 2448940; 439656, 2448949; 439678, 2448950; 439697, 2448941; 439733, 2448930; 439761, 2448926; 439788, 2448929; 439830, 2448945; 439853, 2448941; 439875, 2448932; 439900, 2448928; 439922, 2448928; 439941, 2448924; 439961, 2448915; 439982, 2448899; 440000, 2448878; 440036, 2448815; 440073, 2448762; 440089, 2448747; 440112, 2448732; 440121, 2448718; 440125, 2448690; 440124, 2448663; 440120, 2448633; 440125, 2448578; 440136, 2448537; 440157, 2448511; 440179, 2448496; 440190, 2448485; 440198, 2448467; 440218, 2448446; 440237, 2448434; 440254, 2448428; 440307, 2448418; 440331, 2448411; 440350, 2448395; 440375, 2448361; 440391, 2448353; 440402, 2448352; 440411, 2448336; 440416, 2448314; 440415, 2448290; 440421, 2448239; 440413, 2448216; 440401, 2448191; 440384, 2448138; 440374, 2448123; 440341, 2448084; 440331, 2448061; 440325, 2448033; 440329, 2448016; 440343, 2448005; 440409, 2447991; 440426, 2447974; 440435, 2447959; 440436, 2447941; 440395, 2447896; 440384, 2447871; 440378, 2447845; 440377, 2447819; 440383, 2447794; 440413, 2447711; 440451, 2447620; 440468, 2447593; 440487, 2447571; 440540, 2447539; 440579, 2447511; 440599, 2447501; 440674, 2447485; 440693, 2447475; 440703, 2447461; 440703, 2447452; 440695, 2447430; 440693, 2447407; 440699, 2447389; 440710, 2447368; 440722, 2447354; 440740, 2447346; 440800, 2447339; 440842, 2447328; 440858, 2447311; 440865, 2447286; 440873, 2447265; 440888, 2447250; 440941, 2447230; 440969, 2447210; 441039, 2447168; 441058, 2447153; 441083, 2447147; 441095, 2447154; 441113, 2447170; 441133, 2447183; 441148, 2447188; 441172, 2447190; 441201, 2447195; 441219, 2447195; 441231, 2447186; 441240, 2447171; 441268, 2447104; 441283, 2447083; 441317, 2447043; 441363, 2447030; 441373, 2447026; 441398, 2446997; 441399, 2446995; 441403, 2446972; 441402, 2446899; 441405, 2446869; 441434, 2446820; 441455, 2446804; 441476, 2446797; 441521, 2446777; 441532, 2446763; 441549, 2446752; 441584, 2446741; 441620, 2446723; 441648, 2446705; 441674, 2446682; 441829, 2446505; 441829, 2446501; 441836, 2446475; 441847, 2446451; 441864, 2446424; 441868, 2446401; 441856, 2446328; 441855, 2446295; 441848, 2446265; 441834, 2446230; 441838, 2446221; 441852, 2446219; 441879, 2446263; 441897, 2446273; 441929, 2446268; 441943, 2446256; 441963, 2446219; 441982, 2446194; 442005, 2446171; 442019, 2446165; 442039, 2446165; 442059, 2446159; 442071, 2446146; 442073, 2446121; 442067, 2446082; 442072, 2446052; 442082, 2446029; 442100, 2446007; 442175, 2445995; 442202, 2445986; 442261, 2445949; 442273, 2445945; 442301, 2445924; 442317, 2445917; 442372, 2445885; 442381, 2445882; 442428, 2445851; 442430, 2445827; 442435, 2445813; 442444, 2445807; 442467, 2445799; 442492, 2445803; 442501, 2445803; 442711, 2445664; 442713, 2445661; 442710, 2445647; 442674, 2445604; 442668, 2445590; 442666, 2445576; 442668, 2445560; 442673, 2445515; 442668, 2445494; 442667, 2445490; 442671, 2445471; 442675, 2445453; 442682, 2445433; 442689, 2445419; 442694, 2445414; 442709, 2445399; 442727, 2445386; 442743, 2445378; 442747, 2445377; 442765, 2445370; 442785, 2445364; 442798, 2445359; 442804, 2445357; 442821, 2445353; 442842, 2445347; 442858, 2445342; 442862, 2445341; 442877, 2445336; 442898, 2445330; 442915, 2445323; 442934, 2445314; 442952, 2445303; 442956, 2445301; 442972, 2445292; 442981, 2445284; 442990, 2445276; 443006, 2445268; 443009, 2445266; 443029, 2445263; 443047, 2445260; 443065, 2445247; 443068, 2445227; return to starting point.

(B) **Note:** Map 160 follows:

Map 160 Unit 11 - *Platanthera holochila - a*



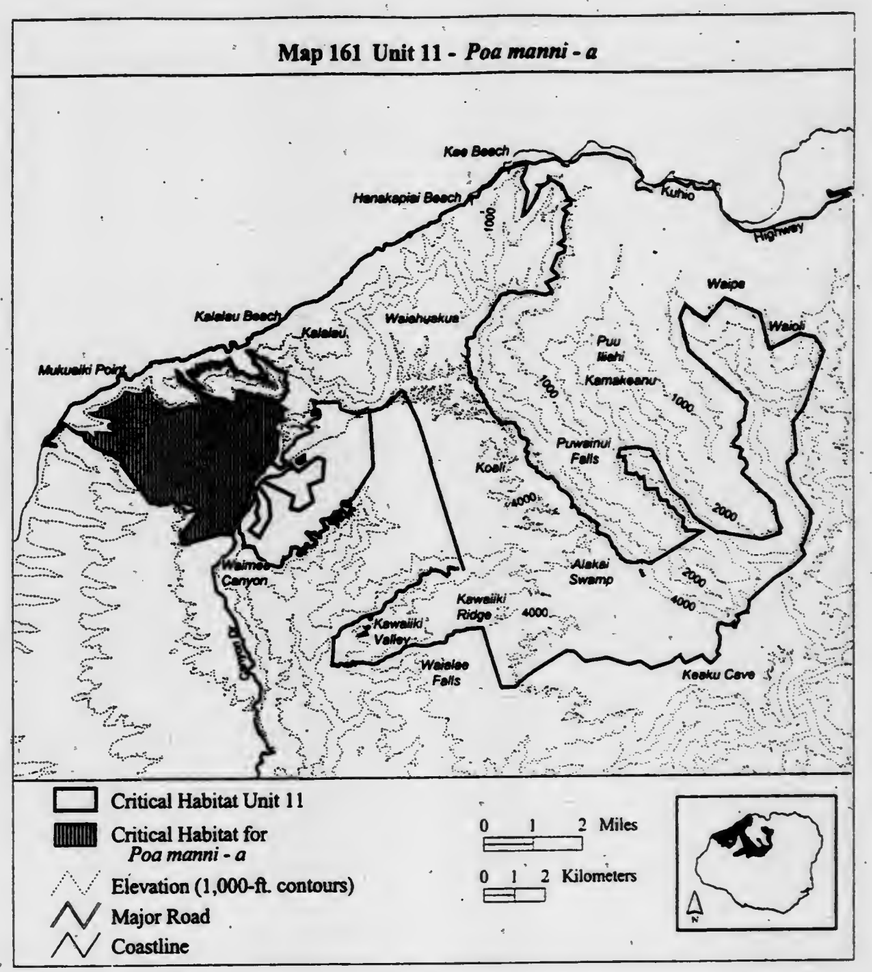
(clxi) Kauai 11—*Poa mannii*—a (1,871 ha; 4,624 ac)

(A) Unit consists of the following 174 boundary points: Start at 425642, 2448753; 426032, 2448753; 426313, 2448497; 426288, 2448753; 426735, 2448715; 427004, 2448702; 426723, 2448868; 426723, 2448996; 427068, 2449085; 426697, 2449175; 426288, 2449252; 426070, 2449379; 426428, 2449430; 426428, 2449545; 426697, 2449609; 427068, 2449801; 427196, 2449942; 427273, 2450069; 427708, 2449967; 427887, 2449993; 428040, 2450235; 428168, 2449878; 428232, 2449788; 428488, 2449673; 428488, 2449571; 428718, 2449443; 428910, 2449533; 429089, 2449443; 429115, 2449532; 429549, 2449584; 429805, 2449609; 429677, 2449941; 429283, 2450247; 429576, 2450092; 429717, 2449996; 429751, 2449978; 429791, 2449963; 429830, 2449956; 429860, 2449947; 429944, 2449910; 429968, 2449904; 430016, 2449884; 430068, 2449856; 430172, 2449815; 430207, 2449804; 430261, 2449795; 430317, 2449781; 430340, 2449778; 430365, 2449787; 430392, 2449798; 430408, 2449802; 430410, 2449802; 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238, 2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431657, 2449890; 431699, 2449876; 431765, 2449810; 431864, 2449801; 431981, 2449792; 431993, 2449791; 432594, 2449404; 432440, 2449378; 432415, 2449161; 432550, 2449064; 432514, 2449029; 432286, 2448988; 432120, 2448816; 432217, 2448734; 432331, 2448670; 432248, 2448433; 432235, 2448305; 432261, 2448075; 432248, 2447985; 432082, 2447678; 432073, 2447674; 432001, 2447726; 431869, 2447580; 431749, 2447525; 431686, 2447378; 431369, 2447027; 431298, 2446522; 430955, 2445963; 430837, 2445645; 430679, 2445410; 430405, 2445422; 429367, 2445154; 429077,

2445312; 429062, 2445354; 429654, 2446125; 429591, 2446167; 429485, 2446305; 429263, 2446389; 429094, 2446389; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428655, 2446474; 428602, 2446447; 428476, 2446463; 428396, 2446447; 428285, 2446458; 428116, 2446474; 428047, 2446484; 427185, 2447661; 427161, 2447669; 427157, 2447676; 427157, 2447711; 427175, 2447754; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427124, 2447837; 427084, 2447847; 427039, 2447867; 426997, 2447892; 426981, 2447902; 426958, 2447923; 426944, 2447941; 426907, 2447965; 426847, 2447992; 426819, 2447998; 426798, 2448010; 426758, 2448005; 426737, 2448009; 426722, 2448015; 426613, 2448093; 426561, 2448116; 426517, 2448133; 426478, 2448151; 426432, 2448166; 426398, 2448180; 426338, 2448196; 426281, 2448222; 426223, 2448260; 426138, 2448319; 426097, 2448378; 426063, 2448412; 426051, 2448421; 426007, 2448440; 425989, 2448455; 425969, 2448492; 425954, 2448543; 425949, 2448584; 425923, 2448613; 425884, 2448631; 425855, 2448652; 425837, 2448658; 425792, 2448676; 425765, 2448685; 425735, 2448700; 425706, 2448709; 425675, 2448727; 425654, 2448744; return to starting point.

(B) **Note:** Map 161 follows:

Map 161 Unit 11 - *Poa manni - a*

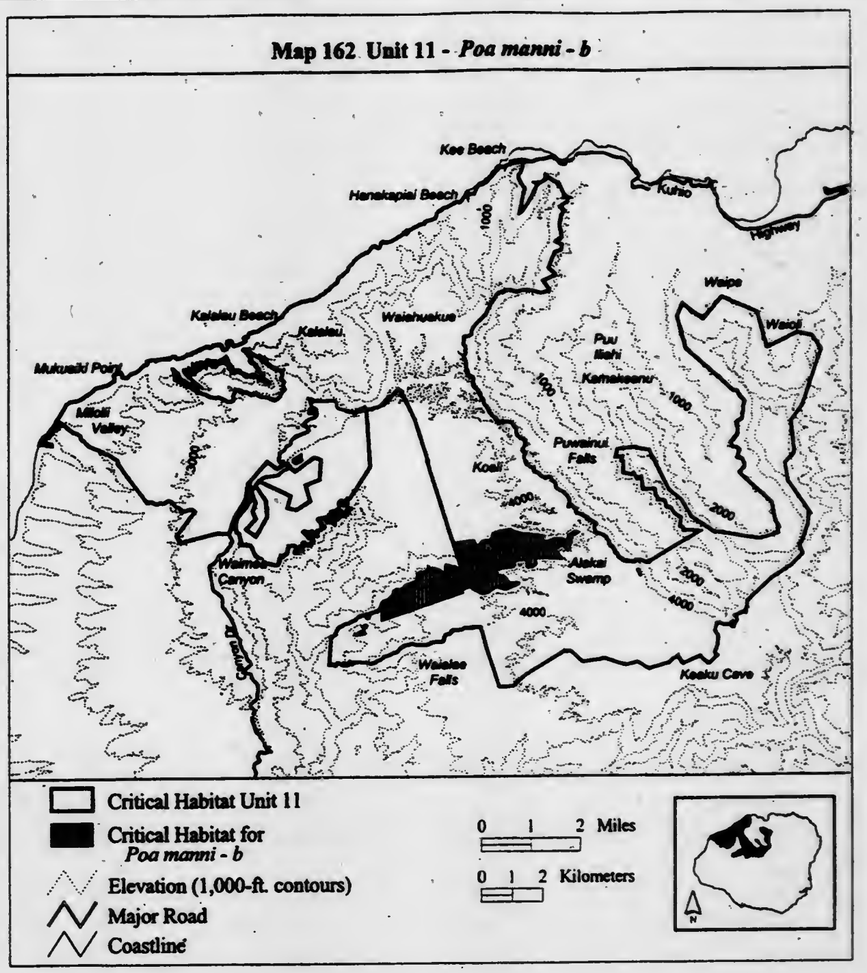


(clxii) Kauai 11—*Poa mannii*—b (677 ha; 1,673 ac)

(A) Unit consists of the following 234 boundary points: Start at 438751, 2445160; 438842, 2444944; 439024, 2445148; 439285, 2445160; 439353, 2445398; 439637, 2445466; 439933, 2445511; 440148, 2445421; 440273, 2445375; 440512, 2445375; 441091, 2445284; 441046, 2445068; 441387, 2445216; 441625, 2445204; 441750, 2445102; 441807, 2445307; 441909, 2445363; 442045, 2445454; 442204, 2445397; 441966, 2445250; 441943, 2445068; 441841, 2444784; 441784, 2444750; 441648, 2444921; 441409, 2444841; 441659, 2444489; 441148,

2444523; 440784, 2444523; 440796, 2444330; 440682, 2444240; 440444, 2444251; 440421, 2444478; 440216, 2444455; 440069, 2444455; 440092, 2444296; 439989, 2444240; 439603, 2444206; 439478, 2444047; 439808, 2443945; 439910, 2443763; 440239, 2443785; 440239, 2443695; 440035, 2443627; 439773, 2443513; 439467, 2443615; 439217, 2443422; 439012, 2443388; 438638, 2443581; 438638, 2443638; 438376, 2443536; 438399, 2443445; 435707, 2442537; 435707, 2442855; 435926, 2443221; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438062, 2445062; return to starting point.

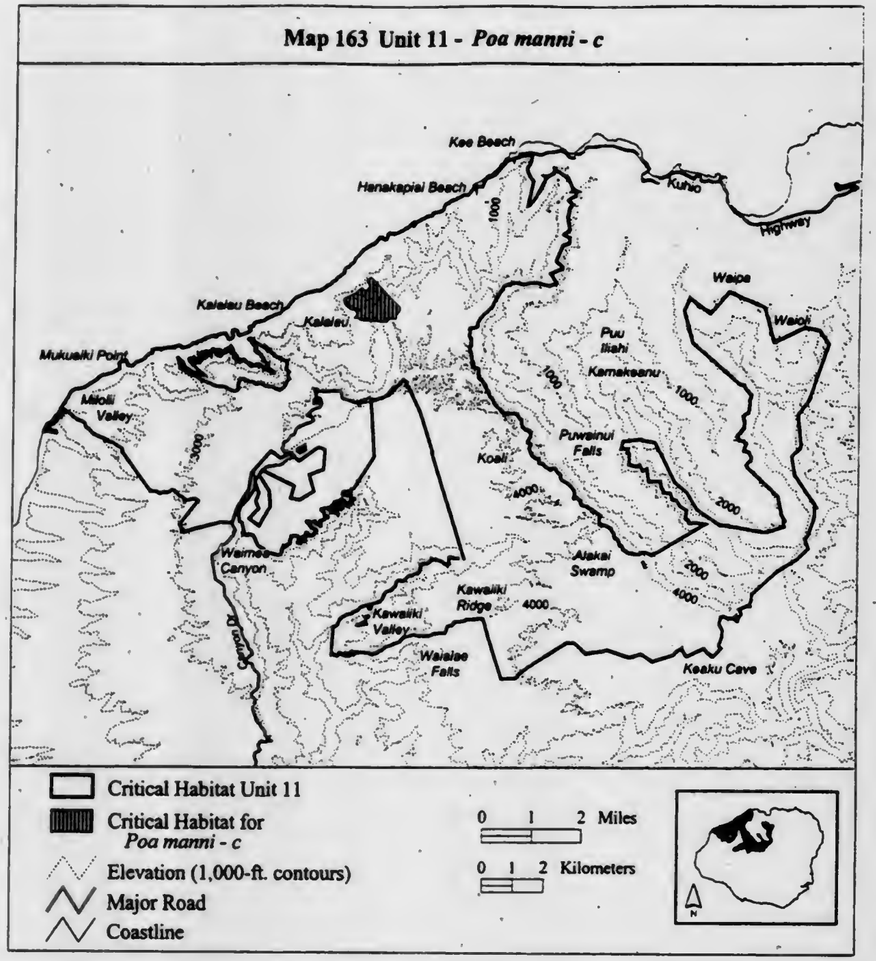
(B) **Note:** Map 162 follows:



(clxiii) Kauai 11—*Poa mannii*—c (155 ha; 382 ac)

(A) Unit consists of the following 25 boundary points: Start at 435195, 2453363; 436166, 2452375; 436126, 2452230; 436044, 2452097; 436021, 2451986; 435829, 2451986; 435788, 2451934; 435672, 2452056; 435753, 2451876; 434846, 2451952; 434765, 2452045; 434660, 2452010; 434742, 2452144; 434695, 2452271; 434556, 2452306; 434463, 2452370; 434381, 2452440; 434329, 2452515; 434317, 2452661; 434474, 2452748; 434701, 2452846; 434893, 2453015; 435044, 2452916; 435155, 2453055; 435062, 2453241; return to starting point.

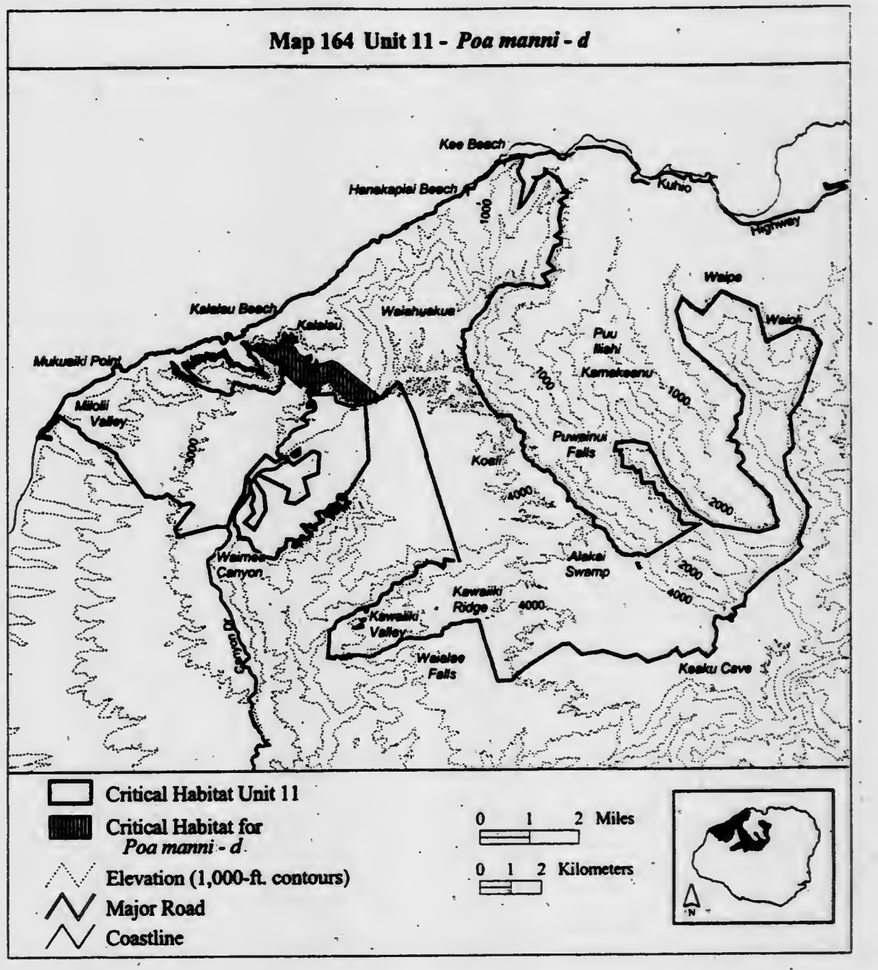
(B) **Note:** Map 163 follows:



(clxiv) Kauai 11—*Poa mannii*—d (307 ha; 758 ac)

(A) Unit consists of the following 77 boundary points: Start at 433153, 2449843; 432813, 2450152; 432485, 2450450; 432490, 2450478; 432501, 2450529; 432494, 2450543; 432477, 2450580; 432468, 2450593; 432464, 2450611; 432465, 2450623; 432450, 2450624; 432408, 2450635; 432380, 2450644; 432335, 2450666; 432281, 2450696; 432235, 2450718; 432200, 2450735; 432172, 2450746; 432145, 2450759; 431625, 2451231; 431758, 2451328; 431849, 2451245; 431911, 2451384; 431960, 2451272; 432072, 2451300; 432121, 2451098; 432191, 2451293; 432246, 2451224; 432267, 2451286; 432386, 2451112; 432365, 2451307; 432477, 2451286; 432456, 2451398; 432532, 2451384; 432553, 2451481; 432539, 2451572; 432630, 2451691; 432742, 2451495; 432825, 2451642; 432909, 2451579; 432902, 2451481; 433035, 2451523; 433000, 2451405; 433063, 2451335; 432902, 2451300; 432867, 2451237; 433000, 2451098; 433084, 2450965; 433181, 2450896; 433244, 2450833; 433481, 2450937; 433516, 2450868; 433516, 2450756; 433411, 2450624; 433509, 2450638; 433509, 2450491; 433642, 2450798; 433718, 2450603; 433893, 2450638; 434102, 2450721; 434172, 2450728; 434256, 2450679; 434339, 2450672; 435693, 2449591; 435532, 2449494; 435330, 2449466; 435107, 2449452; 434681, 2449431; 434430, 2449661; 434207, 2449836; 434046, 2450073; 433795, 2449947; 433774, 2449752; 433565, 2449738; 433404, 2449759; 433321, 2449885; 433195, 2449955; return to starting point.

(B) **Note:** Map 164 follows:

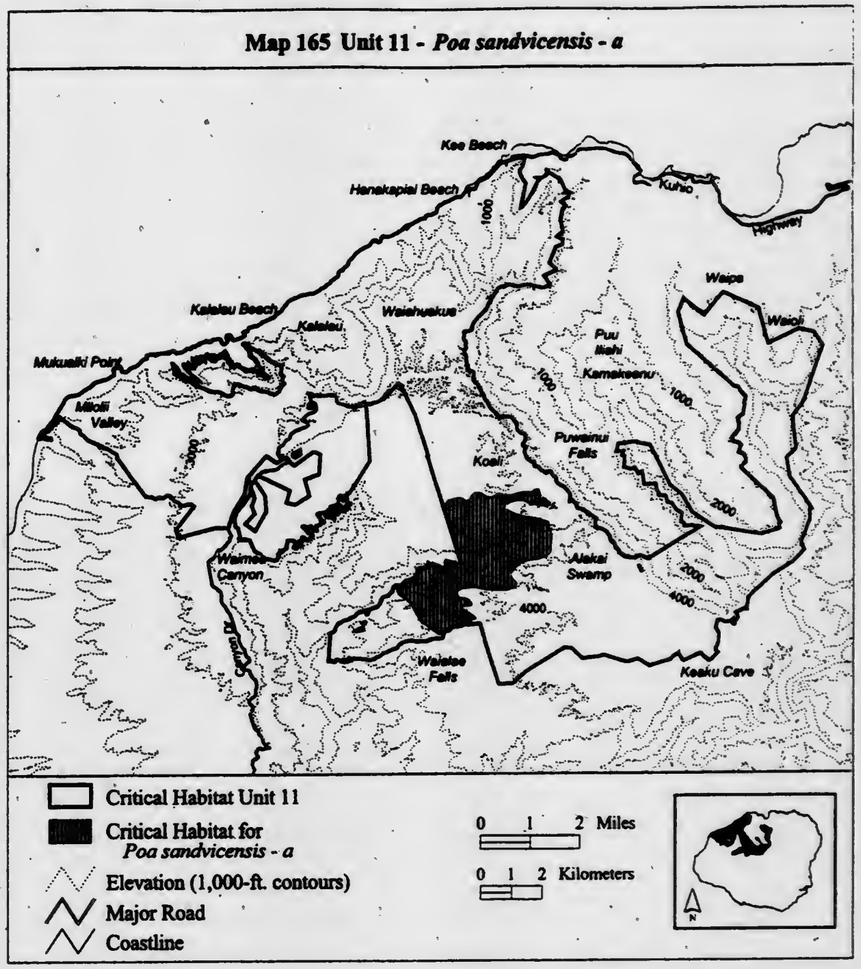


(clxv) Kauai 11—*Poa sandvicensis*—a (1,111 ha; 2,745 ac)

(A) Unit consists of the following 244 boundary points: Start at 438161, 2444755; 437857, 2445701; 437748, 2446041; 437745, 2446059; 437889, 2446251; 438216, 2446357; 438389, 2446328; 438476, 2446232; 438601, 2446290; 438649, 2446405; 438755, 2446501; 438966, 2446501; 439168, 2446386; 439294, 2446357; 439544, 2446472; 439717, 2446433; 439938, 2446424; 440169, 2446491; 440304, 2446539; 440592, 2446529; 440736, 2446616; 440823, 2446635; 440890, 2446472; 440948, 2446375; 441227, 2446173; 441179, 2446097; 441102, 2446058; 440861, 2446106; 440669, 2446145; 440438, 2446231; 440275, 2446279; 440053, 2446251; 439851, 2446174; 439774, 2446049; 439842, 2445943; 440111, 2445828; 440582, 2445702; 440890, 2445654; 441169, 2445568; 441169, 2445462; 441246, 2445185; 441265, 2445173; 441265, 2445020; 441246, 2444808; 441246, 2444654; 441188, 2444529; 440861, 2444395; 440506, 2444328; 440227, 2444251; 440034, 2444030; 439928, 2443895; 439996, 2443760; 440121, 2443607; 440073, 2443482; 439851, 2443395; 439534, 2443376; 439101, 2443414; 438774, 2443482; 438351, 2443443; 438226, 2443367; 438206, 2443261; 438264, 2443155; 438437, 2443136; 438562, 2443107; 438668, 2443001; 438659, 2442905; 438476, 2442895; 438341, 2442886; 438389, 2442780; 438697, 2442616; 438813, 2442520; 438543, 2442357; 438226, 2442261; 438088, 2442240; 438065, 2442246; 438049, 2442246; 438030, 2442243; 438012, 2442229; 438000, 2442216; 437999, 2442211; 437937, 2442174; 437860, 2442155; 437754, 2442068; 437629, 2442001; 437283, 2442222; 437004, 2442443; 436687, 2442963; 436235, 2443367; 436198, 2443561; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497,

2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; return to starting point.

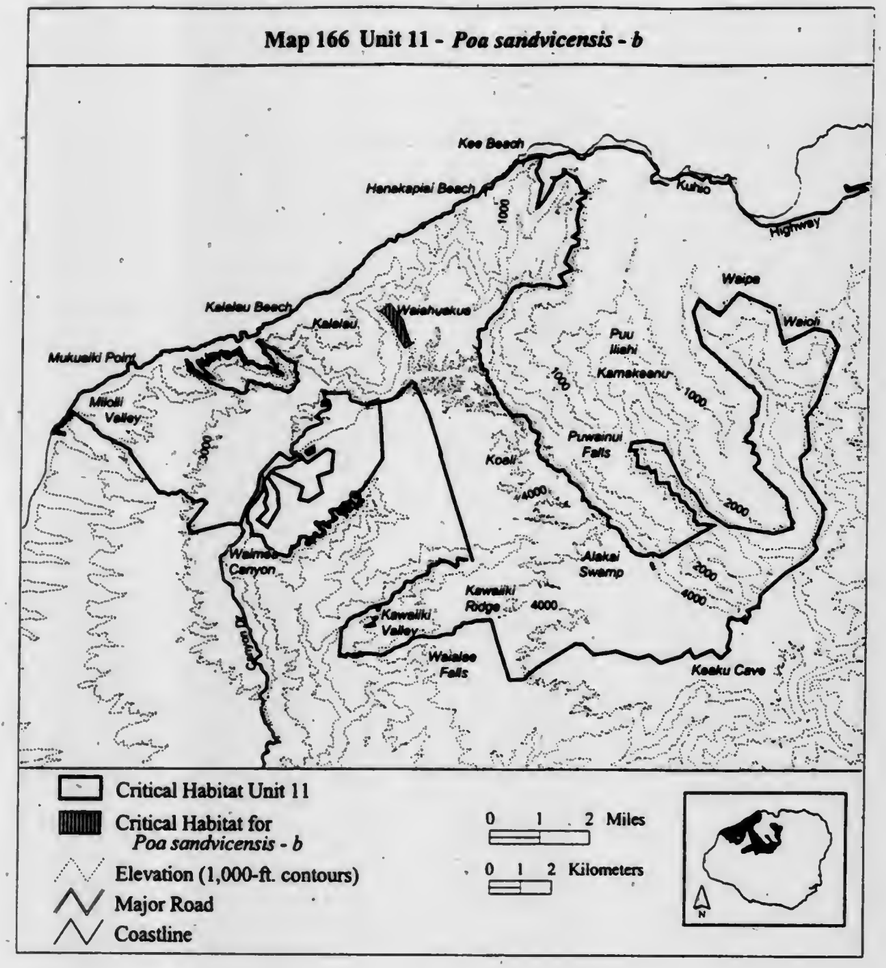
(B) **Note:** Map 165 follows:



(clxvi) Kauai 11—*Poa sandvicensis*—b (52 ha; 129 ac)

(A) Unit consists of the following 10 boundary points: Start at 436055, 2451082; 435856, 2451368; 435690, 2451778; 435398, 2452143; 435211, 2452317; 435557, 2452588; 435790, 2452218; 435961, 2452034; 436121, 2451531; 436275, 2451227; return to starting point.

(B) **Note:** Map 166 follows:



(clxvii) Kauai 11—*Poa siphonoglossa*—a (1,621 ha; 4,006 ac)

(A) Unit consists of the following 227 boundary points: Start at 435318, 2449361; 435292, 2449379; 435269, 2449384; 435247, 2449385; 435234, 2449384; 435236, 2449347; 435272, 2448835; 434926, 2448514; 433562, 2447841; 433527, 2447856; 433396, 2447759; 433345, 2447734; 433014, 2447717; 433109, 2447775; 433094, 2447922; 432827, 2447751; 432878, 2447710; 432213, 2447675; 432081, 2447668; 432001, 2447726; 431942, 2447661; 431912, 2447659; 431752, 2448070; 431709, 2447946; 431586, 2447682; 431454, 2447418; 431304, 2447145; 431119, 2446952; 430635, 2447101; 430494, 2447093; 430327, 2446996; 430019, 2446697; 429904, 2446433; 429975, 2446274; 430168, 2446168; 430432, 2446063; 430573, 2445940; 430564, 2445728; 430432, 2445675; 430115, 2445737; 429790, 2445931; 429684, 2446063; 429618, 2446078; 429654, 2446125; 429591, 2446167; 429485, 2446305; 429263, 2446389; 429094, 2446389; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428655, 2446474; 428602, 2446447; 428476, 2446463; 428396, 2446447; 428285, 2446458; 428116, 2446474; 428047, 2446484; 427185, 2447661; 427161, 2447669; 427157, 2447676; 427157, 2447711; 427175, 2447754; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427130, 2447833; 427219, 2448070; 427360, 2448281; 427360, 2448404; 427360, 2448527; 427457, 2448571; 427800, 2448633; 427967, 2448650; 427932, 2448712; 428038, 2448765; 428135, 2448800; 428126, 2448862; 428038, 2448932; 428038, 2448985; 428205, 2449073; 428363, 2449038; 428399, 2449011; 428504, 2448958; 428592, 2448967; 428601, 2448932; 428645, 2448932; 428733, 2449046; 428821, 2449073; 428989, 2449055; 429112, 2449117; 429182, 2449169; 429323, 2449161; 429350, 2449178; 429314, 2449284; 429350, 2449310; 429675, 2449345; 429790, 2449398; 429878, 2449425; 430080, 2449345; 430212, 2449328; 430354, 2449452; 430355, 2449451; 430369, 2449433; 430418, 2449395; 430437,

2449371; 430430, 2449364; 430451, 2449363; 430463, 2449355; 430474, 2449342; 430485, 2449333; 430527, 2449321; 430533, 2449310; 430545, 2449277; 430559, 2449254; 430604, 2449229; 430616, 2449214; 430623, 2449194; 430623, 2449173; 430616, 2449156; 430619, 2449138; 430629, 2449119; 430643, 2449106; 430677, 2449084; 430699, 2449074; 430717, 2449071; 430748, 2449070; 430773, 2449073; 430799, 2449081; 430825, 2449080; 430875, 2449032; 430881, 2449027; 430905, 2449022; 430921, 2449029; 430944, 2449045; 430958, 2449061; 430967, 2449077; 430984, 2449094; 431006, 2449097; 431020, 2449089; 431028, 2449064; 431024, 2449005; 431035, 2448975; 431050, 2448960; 431066, 2448956; 431086, 2448957; 431093, 2448962; 431116, 2448991; 431124, 2448994; 431134, 2448988; 431138, 2448981; 431147, 2448955; 431158, 2448950; 431170, 2448954; 431195, 2448966; 431208, 2448969; 431223, 2448964; 431228, 2448960; 431275, 2448914; 431290, 2448911; 431310, 2448912; 431339, 2448927; 431358, 2448923; 431376, 2448914; 431407, 2448903; 431463, 2448902; 431473, 2448899; 431479, 2448891; 431501, 2448872; 431538, 2448867; 431545, 2448867; 431567, 2448859; 431580, 2448844; 431596, 2448824; 431611, 2448789; 431609, 2448764; 431601, 2448750; 431600, 2448733; 431627, 2448682; 431636, 2448653; 431677, 2448576; 431702, 2448563; 431763, 2448526; 431788, 2448486; 431824, 2448430; 431830, 2448417; 431840, 2448395; 431847, 2448368; 432630, 2449144; 432749, 2449800; 433222, 2450264; 433345, 2450115; 433481, 2450031; 433526, 2449921; 433637, 2449927; 433624, 2450096; 434143, 2450303; 434279, 2450225; 434207, 2450160; 434331, 2450037; 434460, 2449992; 434590, 2449927; 434558, 2449797; 434635, 2449823; 434713, 2449765; 434707, 2449674; 434772, 2449609; 434849, 2449694; 435011, 2449713; 435148, 2449616; 435414, 2449661; 435666, 2449525; 435669, 2449472; 435664, 2449469; 435598, 2449429; 435576, 2449421; 435549, 2449426; 435517, 2449423; 435501, 2449420; 435469, 2449405; 435418, 2449387; 435390, 2449374; 435390, 2449374; 435368, 2449361; 435334, 2449356; 435319, 2449360; return to starting point.

(B) Excluding 3 areas:

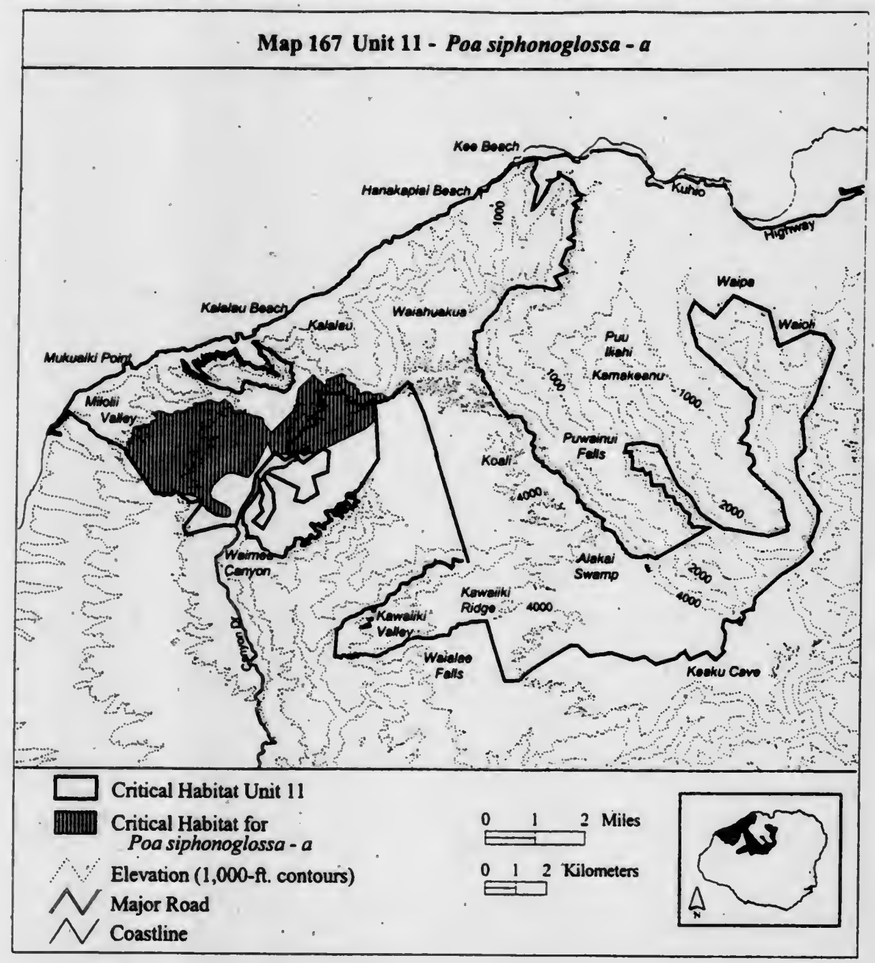
(*1*) Bounded by the following 10 points (3 ha, 8 ac): Start at 433368, 2449292; 433367, 2449352; 433448, 2449426; 433546, 2449412; 433567, 2449398; 433589, 2449323; 433612, 2449262; 433588, 2449244; 433567, 2449260; 433369, 2449255; return to starting point; and

(*2*) Bounded by the following 9 points (1 ha, 2 ac): Start at 433484, 2449703; 433480, 2449629; 433457, 2449622; 433440, 2449604; 433426, 2449556; 433419, 2449599; 433399, 2449709; 433436, 2449707; 433460, 2449707; return to starting point; and

(*3*) Bounded by the following 11 points (1 ha, 1 ac): Start at 434908, 2449290; 434890, 2449251; 434848, 2449239; 434839, 2449258; 434834, 2449277; 434833, 2449281; 434881, 2449297; 435011, 2449352; 435005, 2449310; 434948, 2449300; 434908, 2449290; return to starting point.

(C) **Note:** Map 167 follows:

Map 167 Unit 11 - *Poa siphonoglossa - a*



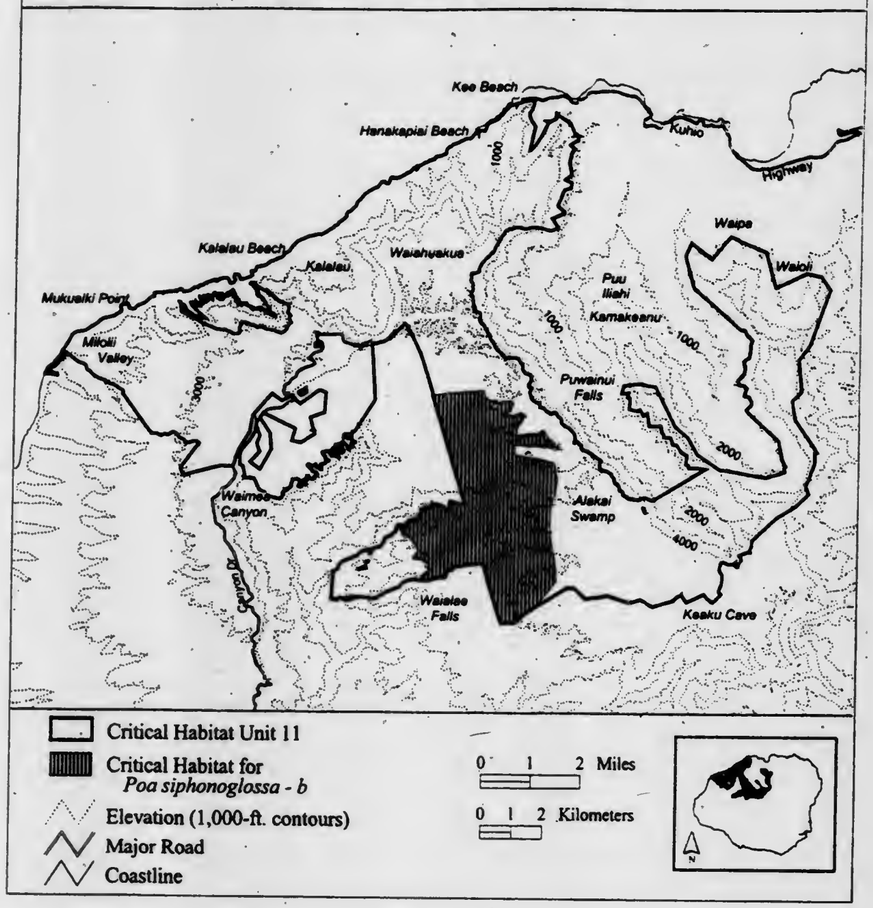
(clxviii) Kauai 11—*Poa siphonoglossa*—b (2,190 ha; 5,411 ac)

(A) Unit consists of the following 372 boundary points: Start at 439906, 2445836; 441198, 2445593; 441314, 2445048; 441237, 2444601; 441237, 2444504; 441186, 2444474; 441100, 2444115; 441081, 2443396; 441256, 2442501; 441334, 2441762; 440770, 2441101; 440528, 2440844; 440464, 2440832; 440113, 2440527; 440014, 2440441; 440002, 2440430; 439931, 2440426; 439832, 2440430; 439556, 2440414; 439491, 2440617; 439088, 2441871; 438934, 2442351; 438866, 2442347; 438838, 2442340; 438821, 2442339; 438757, 2442331; 438721, 2442329; 438704, 2442326; 438694, 2442327; 438679, 2442324; 438656, 2442321; 438626, 2442315; 438609, 2442314; 438561, 2442316; 438536, 2442314; 438535, 2442314; 438523, 2442310; 438517, 2442310; 438496, 2442310; 438460, 2442320; 438453, 2442321; 438436, 2442321; 438433, 2442319; 438418, 2442311; 438392, 2442294; 438376, 2442278; 438373, 2442277; 438355, 2442265; 438305, 2442256; 438254, 2442248; 438238, 2442248; 438219, 2442244; 438157, 2442234; 438130, 2442234; 438114, 2442232; 438098, 2442237; 438095, 2442238; 438065, 2442246; 438049, 2442246; 438030, 2442243; 438012, 2442229; 438000, 2442216; 437998, 2442205; 437998, 2442202; 437996, 2442188; 437984, 2442167; 437973, 2442147; 437954, 2442136; 437939, 2442128; 437926, 2442125; 437912, 2442123; 437873, 2442121; 437839, 2442110; 437826, 2442106; 437806, 2442092; 437799, 2442084; 437791, 2442074; 437777, 2442052; 437766, 2442017; 437758, 2441998; 437754, 2441991; 437751, 2441981; 437745, 2441950; 437740, 2441938; 437736, 2441928; 437717, 2441899; 437711, 2441887; 437705, 2441878; 437689, 2441877; 437674, 2441875; 437647, 2441866; 437635, 2441866; 437617, 2441866; 437602, 2441867; 437566, 2441876; 437532, 2441880; 437522, 2441879; 437495, 2441869; 437460, 2441862; 437432, 2441860; 437391, 2441858; 437366, 2441852; 437346, 2441845; 437332, 2441842; 437317, 2441835; 437287, 2441816; 437274, 2441809; 437240, 2441796; 437224, 2441791; 437181, 2441781; 437150, 2441777; 437111, 2441777; 437096, 2441779; 437062, 2441776; 437008, 2441775; 436960, 2441776; 436912, 2441780; 436895, 2441784; 436825, 2441795; 436815, 2441798; 436852, 2441813; 436924, 2441863; 436993, 2441942; 437047, 2442023; 437118, 2442056; 437171, 2442113; 437171, 2442160; 437157, 2442174; 437141, 2442230; 437152, 2442320; 437149, 2442340; 436951, 2442456; 436868, 2442470; 436852, 2442472; 436744, 2442467; 436670, 2442497; 436670, 2442552; 436772, 2442671; 436792, 2442676; 436802, 2442716; 436797, 2442862; 436782, 2442872; 436607, 2443105; 436238, 2443377; 436257, 2443513; 436291, 2443539; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436768, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914,

2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436943, 2444066; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437592, 2444171; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437819, 2444215; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437963, 2444287; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438318, 2444268; 438317, 2444269; 438316, 2444271; 438316, 2444271; 438316, 2444271; 437232, 2447645; 437248, 2447657; 437230, 2447713; 437833, 2447791; 438864, 2447868; 438891, 2447799; 438900, 2447794; 438924, 2447717; 438940, 2447677; 439038, 2447573; 439215, 2447563; 439278, 2447580; 439290, 2447559; 439330, 2447557; 439285, 2447522; 439249, 2447443; 439141, 2447346; 439178, 2447298; 439205, 2447282; 439258, 2447293; 439325, 2447367; 439345, 2447472; 439510, 2447528; 439527, 2447477; 439609, 2447524; 439777, 2447545; 439837, 2447502; 439853, 2447479; 439856, 2447479; 439797, 2447304; 439773, 2447296; 439791, 2447275; 439776, 2447216; 439557, 2447183; 439528, 2447125; 439795, 2447081; 439817, 2447082; 439817, 2447077; 439856, 2447071; 439910, 2447092; 439910, 2447123; 440014, 2447134; 440072, 2447154; 440108, 2447168; 440110, 2447167; 440144, 2447179; 440141, 2447143; 440146, 2447140; 440234, 2447108; 440263, 2447052; 440170, 2447045; 440174, 2446941; 440148, 2446878; 440115, 2446879; 440108, 2446857; 439975, 2446650; 439979, 2446414; 440303, 2446507; 440653, 2446507; 440848, 2446623; 441003, 2446351; 441217, 2446195; 441178, 2446059; 439894, 2446138; 439903, 2446071; 439927, 2445971; return to starting point.

(B) **Note:** Map 168 follows:

Map 168 Unit 11 - *Poa siphonoglossa - b*

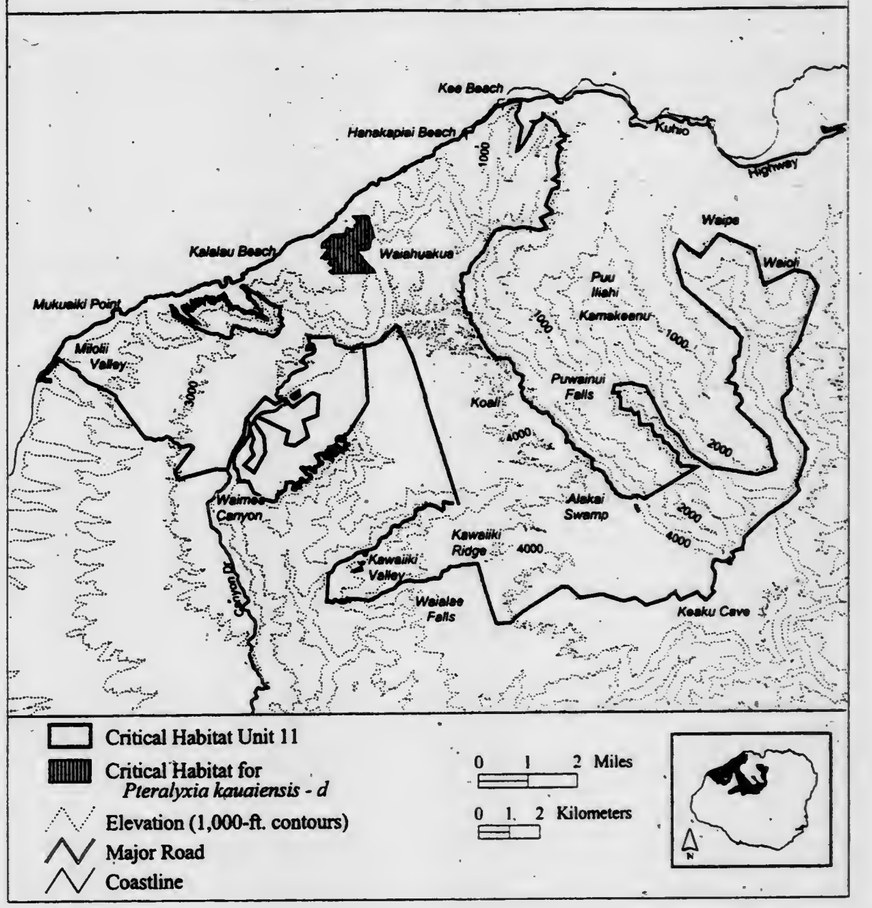


(clxix) Kauai 11—*Pteralyxia kauaiensis*—c (209 ha; 516 ac)

(A) Unit consists of the following 44 boundary points: Start at 435602, 2452865; 435551, 2452875; 435510, 2452794; 435460, 2452713; 435460, 2452612; 435409, 2452500; 435288, 2452470; 435024, 2452460; 435176, 2452288; 435217, 2452207; 435277, 2452126; 435419, 2451974; 435551, 2451852; 435592, 2451741; 434183, 2451701; 434102, 2451792; 434264, 2451873; 434213, 2451893; 434254, 2451984; 434112, 2451984; 434163, 2452065; 434051, 2452045; 434173, 2452187; 433940, 2452157; 433940, 2452248; 433828, 2452207; 433940, 2452339; 434041, 2452481; 433960, 2452582; 433838, 2452531; 433858, 2452693; 434051, 2452845; 434193, 2452966; 434517, 2452997; 434629, 2453017; 434669, 2453219; 434781, 2453169; 434933, 2453169; 434912, 2453280; 434983, 2453320; 434994, 2453452; 434872, 2453584; 435186, 2453594; 435379, 2453594; return to starting point.

(B) **Note:** Map 169 follows:

Map 169 Unit 11 - *Pteralyxia kauaiensis - c*

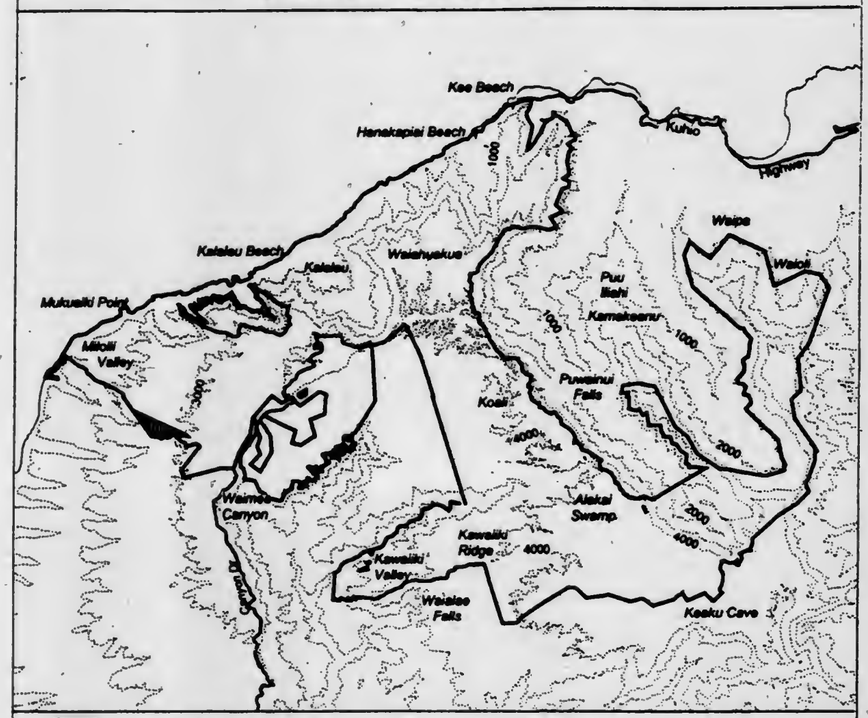


(clxx) Kauai 11—*Pteralyxia kauaiensis*—d (57 ha; 141 ac)

(A) Unit consists of the following 15 boundary points: Start at 427428, 2447329; 429224, 2446536; 429347, 2446394; 428978, 2446451; 428955, 2446435; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428655, 2446474; 428602, 2446447; 428476, 2446463; 428396, 2446447; 428285, 2446458; 428116, 2446474; 428047, 2446484; return to starting point.

(B) **Note:** Map 170 follows:

Map 170 Unit 11 - *Pteralyxia kauaiensis - d*

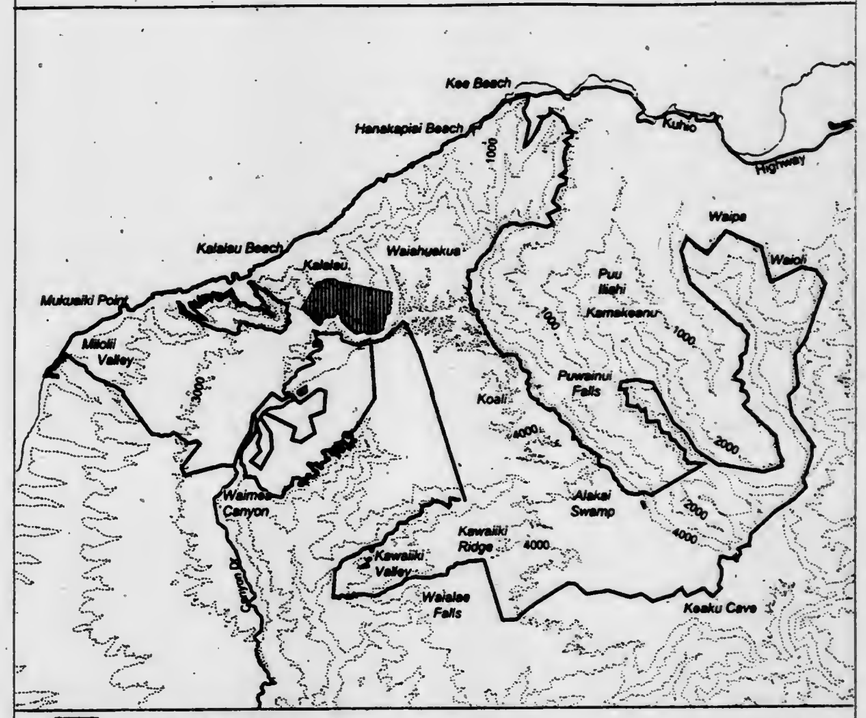


(clxxi) Kauai 11—*Pteralyxia kauaiensis*—e (353 ha; 872 ac)

(A) Unit consists of the following 42 boundary points: Start at 434264, 2451326; 435936, 2450971; 435875, 2450799; 435916, 2450657; 435835, 2450586; 435906, 2450505; 435855, 2450364; 435855, 2450293; 435733, 2450252; 435723, 2450121; 435693, 2450040; 435642, 2449908; 435642, 2449766; 435531, 2449706; 435389, 2449645; 435156, 2449635; 435105, 2449625; 435024, 2449716; 434913, 2449685; 434771, 2449635; 434659, 2449716; 434507, 2449817; 434355, 2449969; 434213, 2450182; 434274, 2450222; 434142, 2450324; 434031, 2450172; 433737, 2450162; 433676, 2450091; 433615, 2449969; 433554, 2449909; 433483, 2449970; 433362, 2450071; 433190, 2450273; 433088, 2450334; 432967, 2450466; 433473, 2451326; 433615, 2451337; 433717, 2451418; 433869, 2451428; 434061, 2451428; 434163, 2451346; return to starting point.

(B) **Note:** Map 171 follows:

Map 171 Unit 11 - *Pteralyxia kauaiensis - e*



(clxxii) Kauai 11—*Pteralyxia kauaiensis*—f (589 ha; 1,453 ac)

(A) Unit consists of the following 463 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678,

2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908, 2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 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435237, 2442643; 435284, 2442631; return to starting point.

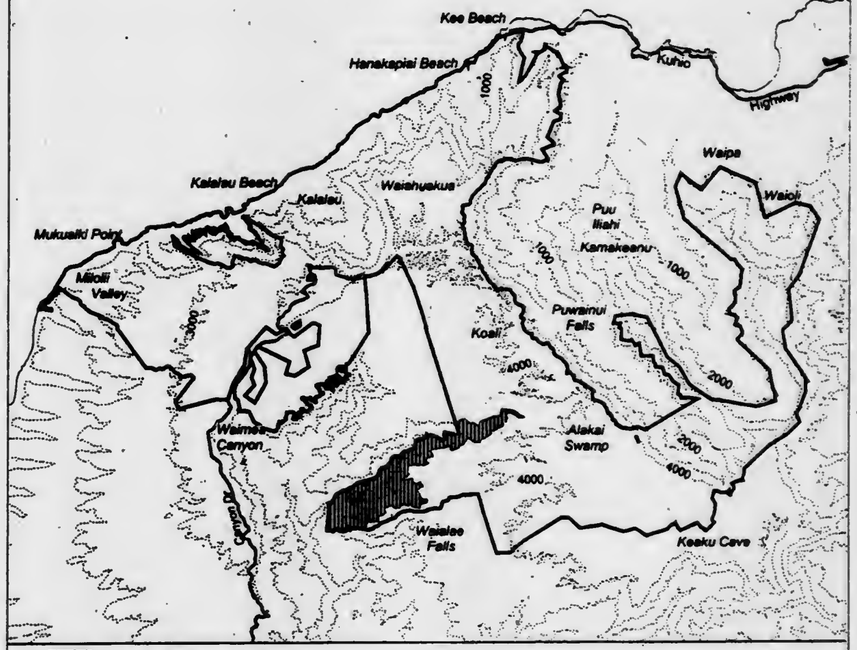
(B) Excluding 2 areas:

(*1*) Bounded by the following 3 points (1 ha; 3 ac): Start at 435132, 2442248; 435160, 2442164; 434848, 2442098; return to starting point; and

(*2*) Bounded by the following 4 points (0 ha; 1 ac): Start at 435151, 2442425; 435215, 2442393; 435195, 2442353; 435128, 2442379; return to starting point.

(C) **Note:** Map 172 follows:

Map 172 Unit 11 - *Pteralyxia kauaiensis - f*



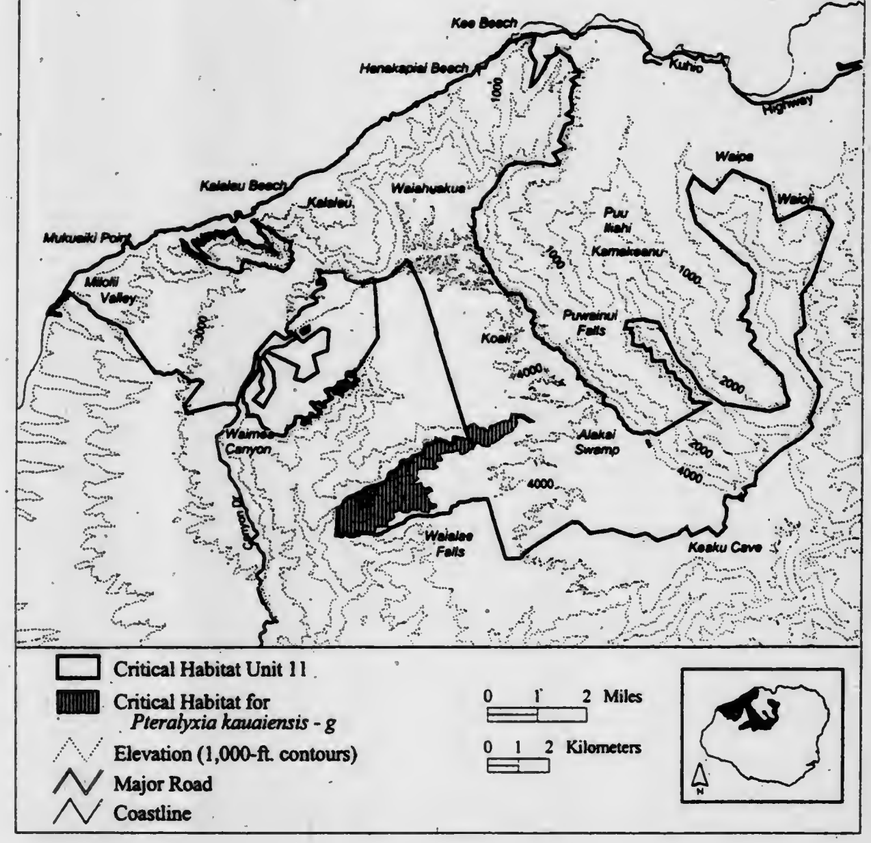
(clxxiii) Kauai 11—*Pteralyxia kauaiensis*—g (445 ha; 1,100 ac)

(A) Unit consists of the following 136 boundary points: Start at 426830, 2448935; 426830, 2448946; 426865, 2448996; 426916, 2449001; 426976, 2448996; 427021, 2449001; 427096, 2449031; 427131, 2449051; 427237, 2449021; 427372, 2449006; 427513, 2449041; 427578, 2449031; 427638, 2449051; 427679, 2449061; 427814, 2449036; 427884, 2449056; 427894, 2449132; 427844, 2449202; 427799, 2449282; 427623, 2449312; 427463, 2449317; 427307, 2449292; 427227, 2449302; 427131, 2449342; 427041, 2449398; 427081, 2449468; 427257, 2449498; 427407, 2449548; 427583, 2449668; 427679, 2449709; 427759, 2449663; 427834, 2449663; 427935, 2449678; 428040, 2449588; 428145, 2449377; 428271, 2449272; 428396, 2449237; 428452, 2449197; 428422, 2449177; 428301, 2449147; 428321, 2449086; 428376, 2449051; 428376, 2449016; 428452, 2448961; 428462, 2448896; 428442, 2448800; 428321, 2448775; 428266, 2448795; 428241, 2448785; 428216, 2448730; 428271, 2448660; 428306, 2448600; 428306, 2448582; 429490, 2448299; 429651, 2448166; 429727, 2448242; 429983, 2448223; 430125, 2448308; 430134, 2448147; 429859, 2448138; 429765, 2447986; 430030, 2447910; 429594, 2447854; 429547, 2447759; 429272, 2447797; 429224, 2447749; 429243, 2447664; 429338, 2447711; 429471, 2447598; 429565, 2447598; 429622, 2447560; 429565, 2447503; 429565, 2447427; 429651, 2447380; 429537, 2447323; 429480, 2447323; 429347, 2447446; 429347, 2447304; 427881, 2447774; 427879, 2447772; 427930, 2447722; 427914, 2447661; 427814, 2447666; 427598, 2447732; 427553, 2447727; 427523, 2447732; 427458, 2447772; 427387, 2447757; 427282, 2447842; 427247, 2447872; 427111, 2447887; 427056, 2447862; 427016, 2447912; 426931, 2447952; 426835, 2448008; 426750, 2448043; 426599, 2448113; 426589, 2448188; 426127, 2448336; 426097, 2448378; 426063, 2448412; 426051, 2448421; 426007, 2448440; 425989, 2448455; 425969, 2448492; 425954, 2448543; 425949,

2448584; 425923, 2448613; 425884, 2448631; 425855, 2448652; 425837, 2448658; 425792, 2448676; 425765, 2448685; 425735, 2448700; 425708, 2448709; 425675, 2448727; 425654, 2448744; 425621, 2448768; 425591, 2448786; 425552, 2448813; 425528, 2448834; 425487, 2448867; 425460, 2448891; 425421, 2448924; 425388, 2448948; 425334, 2448975; 425329, 2448978; 425337, 2449010; 425479, 2449057; 425479, 2449181; 425602, 2449067; 425764, 2448953; 425830, 2448991; 425934, 2449001; 426001, 2448953; 426399, 2449038; return to starting point.

(B) **Note:** Map 173 follows:

Map 173 Unit 11 - *Pteralyxia kauaiensis - g*



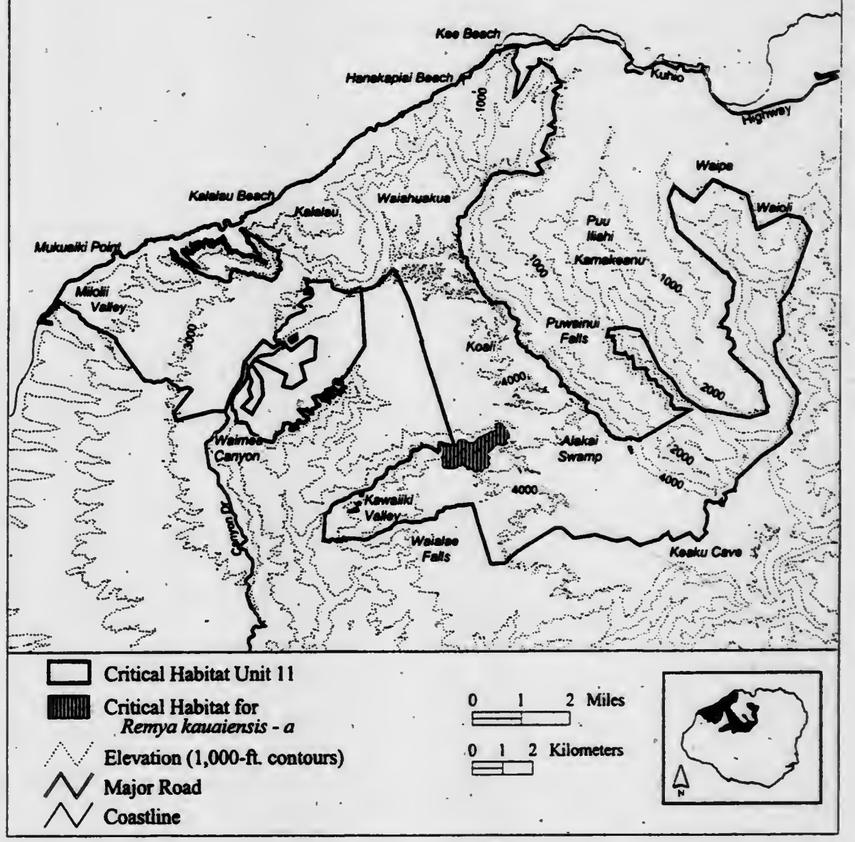
(clxxiv) Kauai 11—*Remya kauaiensis*—a (172 ha; 426 ac)

(A) Unit consists of the following 107 boundary points: Start at 437937, 2443749; 437924, 2443901; 437955, 2444013; 437973, 2444102; 437928, 2444227; 437902, 2444298; 437907, 2444314; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438310, 2444290; 438384, 2444240; 438455, 2444396; 438625, 2444450; 438696, 2444419; 438799, 2444334; 438946, 2444334; 439013, 2444356; 439080, 2444450; 439129, 2444494; 439250, 2444539; 439326, 2444579; 439402, 2444619; 439540, 2444686; 439678, 2444726; 439710, 2444829; 439705, 2444936; 439759, 2444985; 439857, 2445003; 439897, 2444931; 439919, 2444896; 440004, 2444860; 440058, 2444753; 440107, 2444668; 440138, 2444623; 440143, 2444574; 440143, 2444539; 440143, 2444476; 440071, 2444445; 440018, 2444405; 440018, 2444374; 440067, 2444351; 440080, 2444302; 440058, 2444275; 439928, 2444231; 439830, 2444271; 439750, 2444267; 439678, 2444222; 439607, 2444137; 439495, 2444057; 439428, 2444008; 439415,

2443959; 439464, 2443887; 439500, 2443878; 439518, 2443861; 439486, 2443843; 439486, 2443812; 439477, 2443771; 439464, 2443770; 439500, 2443655; 439473, 2443620; 439446, 2443588; 439446, 2443539; 439428, 2443513; 439312, 2443513; 439294, 2443508; 439268, 2443450; 439241, 2443401; 439210, 2443392; 439187, 2443441; 439125, 2443441; 439067, 2443397; 439035, 2443392; 438955, 2443455; 438946, 2443486; 438919, 2443508; 438852, 2443499; 438803, 2443468; 438754, 2443481; 438750, 2443504; 438745, 2443544; 438719, 2443575; 438669, 2443575; 438669, 2443624; 438620, 2443647; 438585, 2443638; 438544, 2443602; 438473, 2443598; 438442, 2443593; 438415, 2443535; 438308, 2443513; 438085, 2443522; 438009, 2443526; 437955, 2443571; 437933, 2443665; 437940, 2443749; return to starting point.

(B) **Note:** Map 174 follows:

Map 174 Unit 11 - *Remya kauaiensis - a*

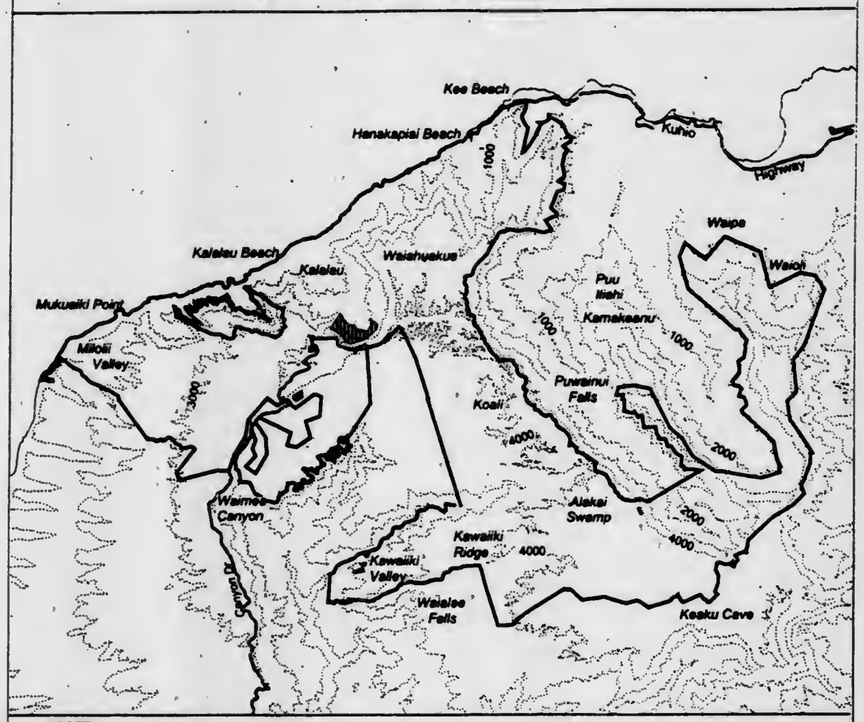


(clxxv) Kauai 11—*Remya kauaiensis*—b (66 ha; 163 ac)

(A) Unit consists of the following 19 boundary points: Start at 434356, 2450470; 434503, 2450255; 434622, 2450093; 434841, 2450072; 434941, 2449932; 435078, 2449914; 435232, 2449871; 435368, 2450079; 435350, 2450294; 435580, 2450125; 435569, 2449953; 435472, 2449863; 435368, 2449752; 435167, 2449623; 434776, 2449484; 434694, 2449462; 434539, 2449541; 434381, 2449771; 434044, 2449989; return to starting point.

(B) **Note:** Map 175 follows:

Map 175 Unit 11 - *Remya kauaiensis - b*



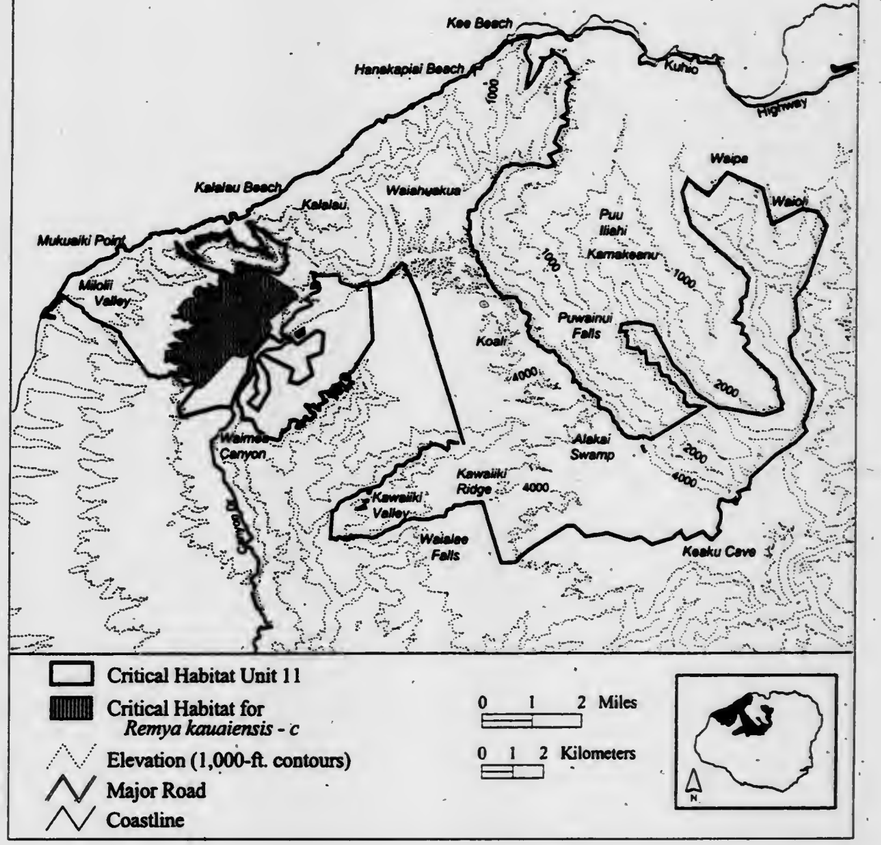
(clxxvi) Kauai 11—*Remya kauaiensis*—c (886 ha; 2,190 ac)

(A) Unit consists of the following 119 boundary points: Start at 431977, 2448160; 432081, 2447933; 431820, 2447620; 431629, 2447412; 431298, 2447081; 431124, 2446995; 430828, 2447064; 430817, 2447078; 429798, 2446041; 429595, 2446048; 429654, 2446125; 429591, 2446167; 429485, 2446305; 429263, 2446389; 429094, 2446389; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428774, 2446550; 428762, 2446580; 428765, 2446584; 429064, 2446531; 429021, 2446658; 429244, 2446797; 428914, 2446797; 428765, 2446882; 428648, 2446839; 428595, 2446892; 428659, 2447052; 428627, 2447073; 428648, 2447201; 428936, 2447211; 428808, 2447318; 428723, 2447414; 428904, 2447477; 429117, 2447477; 429202, 2447435; 429244, 2447541; 429085, 2447595; 429021, 2447658; 428968, 2447658; 428883, 2447797; 429085, 2447829; 429191, 2447914; 429266, 2447914; 429393, 2447839; 429425, 2447946; 429649, 2448063; 429628, 2448105; 429457, 2448095; 429340, 2448244; 429234, 2448158; 429138, 2448286; 428915, 2448244; 428829, 2448339; 429064, 2448361; 429149, 2448424; 429074, 2448478; 429032, 2448552; 429244, 2448829; 429362, 2448914; 429543, 2448924; 429564, 2448807; 429681, 2448818; 429649, 2448882; 429617, 2448967; 429511, 2449084; 429596, 2449254; 429734, 2449318; 429819, 2449233; 429958, 2449244; 430160, 2449169; 429968, 2449371; 430064, 2449382; 430075, 2449339; 430181, 2449307; 430362, 2449254; 430330, 2449414; 430330, 2449415; 430366, 2449436; 430355, 2449451; 430349, 2449466; 430335, 2449474; 430320, 2449476; 430320, 2449477; 430394, 2449658; 430350, 2449658; 430348, 2449666; 430376, 2449750; 430384, 2449766; 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238,

2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431632, 2449893; 432647, 2449237; 432672, 2449222; 432832, 2449094; 432927, 2448966; 432512, 2448626; 431953, 2448167; return to starting point.

(B) **Note:** Map 176 follows:

Map 176 Unit 11 - *Remya kauaiensis - c*

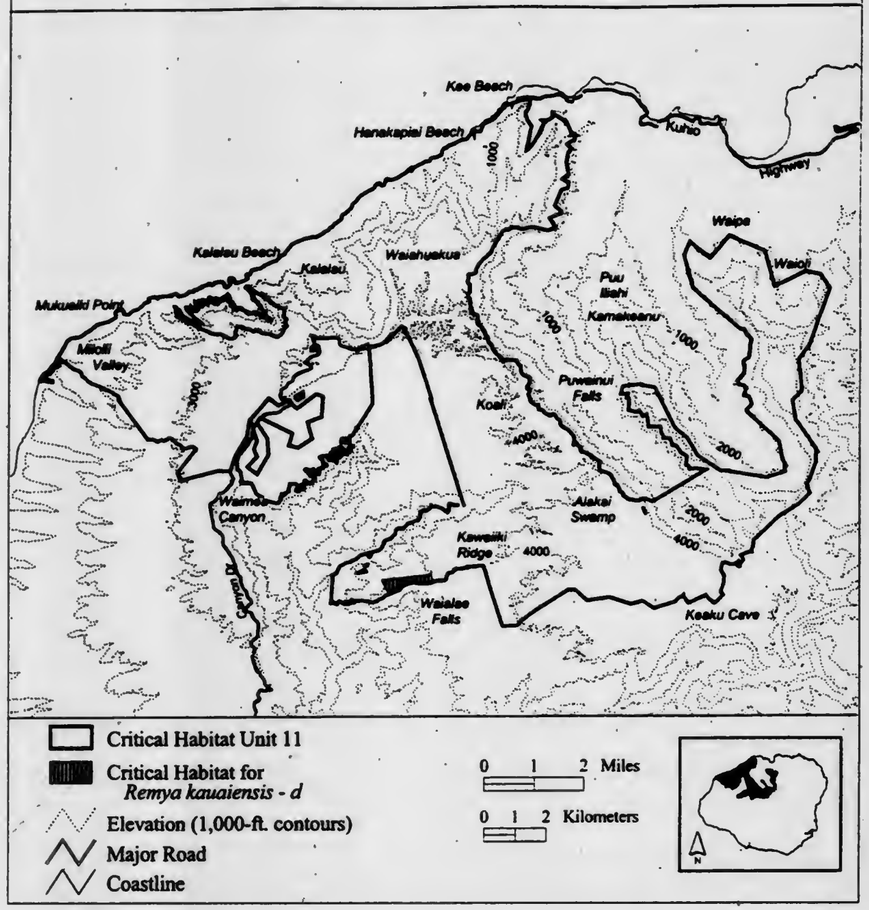


(clxxvii) Kauai 11—*Remya kauaiensis*—d (47 ha; 115 ac)

(A) Unit consists of the following 51 boundary points: Start at 435663, 2441899; 437117, 2442058; 437240, 2442106; 437316, 2441834; 437287, 2441816; 437274, 2441809; 437240, 2441796; 437224, 2441791; 437181, 2441781; 437150, 2441777; 437111, 2441777; 437096, 2441779; 437062, 2441776; 437008, 2441775; 436960, 2441776; 436912, 2441780; 436895, 2441784; 436825, 2441795; 436799, 2441801; 436777, 2441809; 436730, 2441820; 436695, 2441811; 436666, 2441808; 436638, 2441803; 436618, 2441796; 436593, 2441792; 436583, 2441789; 436541, 2441785; 436492, 2441773; 436453, 2441759; 436419, 2441739; 436408, 2441737; 436374, 2441718; 436357, 2441708; 436342, 2441700; 436319, 2441681; 436285, 2441639; 436272, 2441618; 436247, 2441590; 436228, 2441575; 436203, 2441564; 436181, 2441558; 436167, 2441552; 436155, 2441546; 436121, 2441536; 436070, 2441515; 436039, 2441504; 436027, 2441501; 435983, 2441481; 435950, 2441467; 435894, 2441450; return to starting point.

(B) **Note:** Map 177 follows:

Map 177 Unit 11 - *Remya kauaiensis - d*

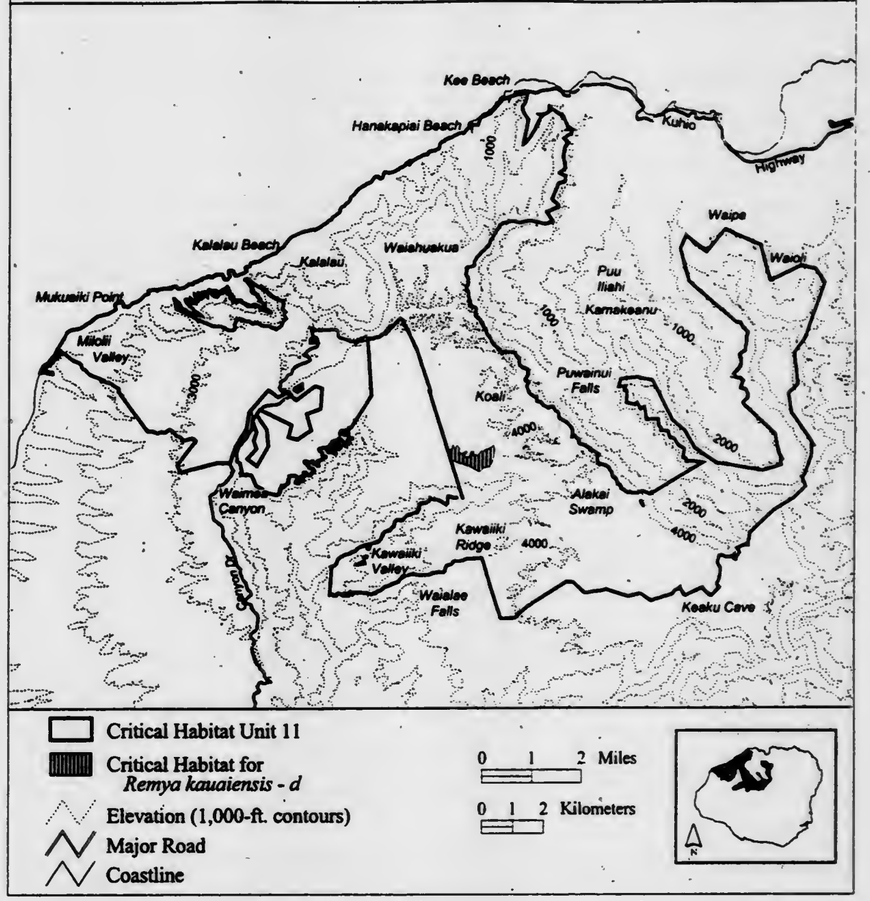


(clxxviii) Kauai 11—*Remya kauaiensis*—e (66 ha, 163 ac)

(A) Unit consists of the following 48 boundary points: Start at 437855, 2445706; 437877, 2445731; 437906, 2445821; 437983, 2445872; 437996, 2445968; 438025, 2445891; 438060, 2445843; 438124, 2445965; 438197, 2445865; 438213, 2445843; 438178, 2445750; 438293, 2445689; 438341, 2445734; 438438, 2445779; 438450, 2445747; 438393, 2445660; 438341, 2445593; 438505, 2445580; 438572, 2445708; 438575, 2445763; 438658, 2445766; 438646, 2445664; 438646, 2445616; 438713, 2445667; 438777, 2445628; 438918, 2445792; 438953, 2445744; 439030, 2445811; 439251, 2445897; 439289, 2445958; 439318, 2445919; 439328, 2445836; 439318, 2445679; 439286, 2445555; 439257, 2445401; 439187, 2445295; 439136, 2445260; 438969, 2445228; 438905, 2445151; 438851, 2445110; 438831, 2445107; 438700, 2445203; 438559, 2445267; 438470, 2445308; 438361, 2445331; 438303, 2445382; 438236, 2445382; 437929, 2445478; return to starting point.

(B) **Note:** Map 178 follows:

Map 178 Unit 11 - *Remya kauaiensis - e*

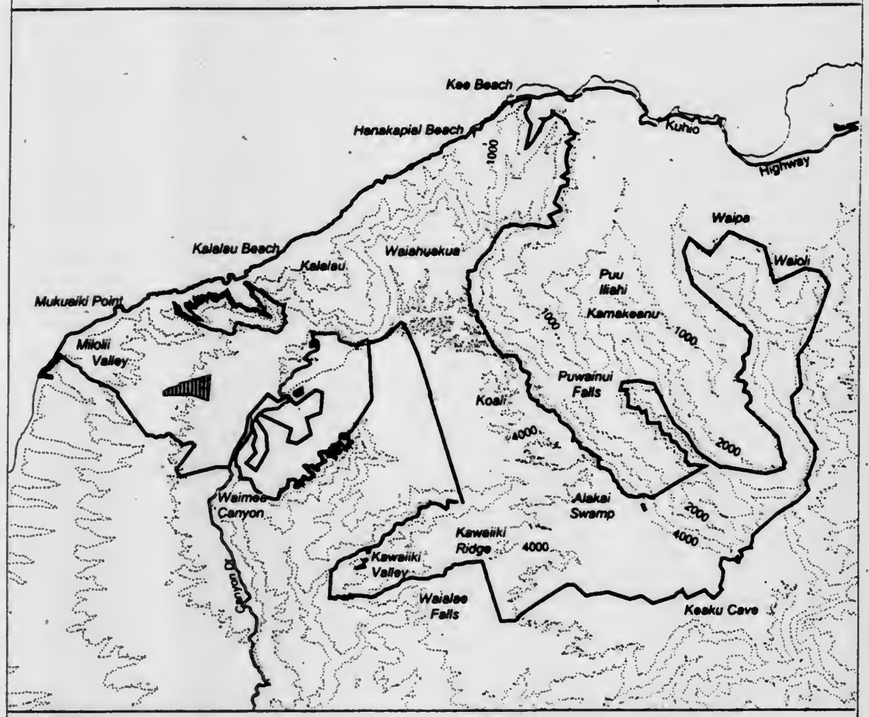


(clxxix) Kauai 11—*Remya montgomeryi*—a (69 ha; 171 ac)

(A) Unit consists of the following 12 boundary points: Start at 428611, 2447702; 428616, 2447840; 428804, 2447934; 428942, 2447978; 429058, 2448006; 429174, 2448056; 429113, 2448100; 429373, 2448149; 430157, 2448370; 430091, 2447531; 429544, 2447708; 428821, 2447708; return to starting point.

(B) **Note:** Map 179 follows:

Map 179 Unit 11 - *Remya montgomeryi - a*



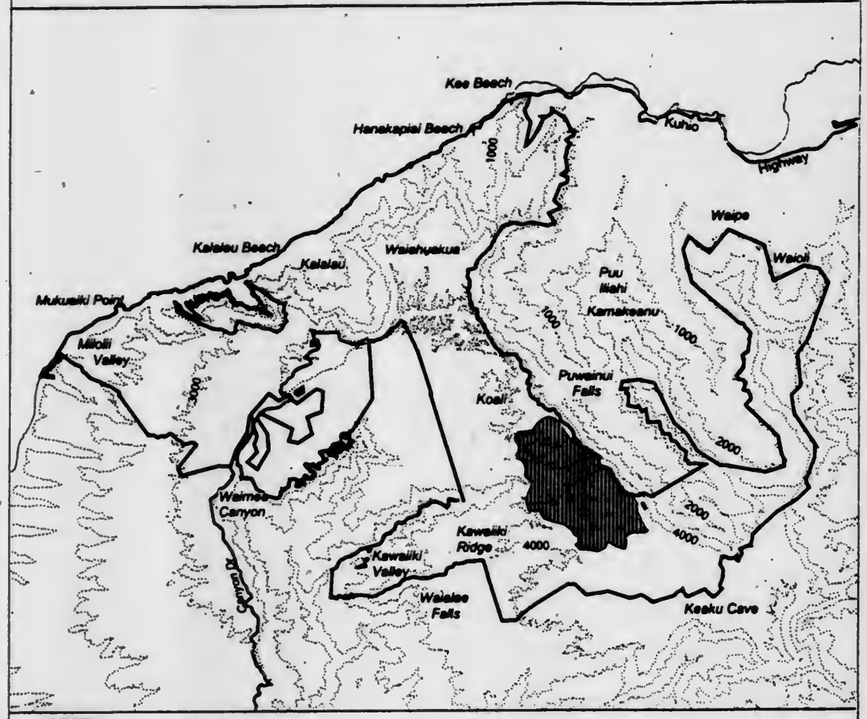
(clxxx) Kauai 11—*Remya montgomeryi*—b (1,010 ha; 2,496 ac)

(A) Unit consists of the following 245 boundary points: Start at 442448, 2445805; 442665, 2445511; 442672, 2445510; 442668, 2445494; 442667, 2445490; 442671, 2445471; 442675, 2445453; 442682, 2445433; 442689, 2445419; 442694, 2445414; 442709, 2445399; 442727, 2445386; 442743, 2445378; 442747, 2445377; 442765, 2445370; 442785, 2445364; 442798, 2445359; 442804, 2445357; 442821, 2445353; 442842, 2445347; 442858, 2445342; 442862, 2445341; 442877, 2445336; 442898, 2445330; 442915, 2445323; 442934, 2445314; 442952, 2445303; 442956, 2445301; 442972, 2445292; 442981, 2445284; 442990, 2445276; 443009, 2445266; 443029, 2445263; 443047, 2445260; 443065, 2445247; 443068, 2445227; 443066, 2445209; 443066, 2445190; 443083, 2445171; 443103, 2445152; 443122, 2445132; 443135, 2445115; 443140, 2445105; 443144, 2445096; 443150, 2445078; 443152, 2445059; 443153, 2445040; 443153, 2445020; 443156, 2445003; 443158, 2444995; 443163, 2444984; 443175, 2444965; 443177, 2444962; 443193, 2444946; 443196, 2444944; 443215, 2444938; 443234, 2444932; 443240, 2444927; 443252, 2444914; 443260, 2444907; 443271, 2444898; 443281, 2444890; 443290, 2444876; 443294, 2444870; 443301, 2444851; 443307, 2444833; 443309, 2444829; 443313, 2444815; 443320, 2444796; 443327, 2444778; 443333, 2444758; 443341, 2444740; 443346, 2444728; 443352, 2444721; 443366, 2444706; 443373, 2444702; 443385, 2444699; 443403, 2444695; 443423, 2444686; 443435, 2444664; 443440, 2444655; 443443, 2444647; 443444, 2444627; 443447, 2444608; 443452, 2444591; 443459, 2444579; 443464, 2444570; 443478, 2444555; 443483, 2444551; 443497, 2444548; 443516, 2444546; 443534, 2444543; 443553, 2444537; 443557, 2444532; 443571, 2444521; 443579, 2444514; 443598, 2444493; 443610, 2444483; 443617, 2444477; 443628, 2444469; 443647, 2444460; 443666, 2444456; 443677, 2444459; 443685, 2444463; 443703, 2444469; 443722, 2444464; 443732,

2444458; 443740, 2444454; 443760, 2444446; 443769, 2444440; 443778, 2444434; 443793, 2444421; 443804, 2444409; 443811, 2444401; 443815, 2444392; 443818, 2444383; 443824, 2444364; 443829, 2444347; 443835, 2444332; 443836, 2444327; 443846, 2444307; 443853, 2444296; 443857, 2444289; 443865, 2444271; 443871, 2444260; 443875, 2444247; 443889, 2444232; 443902, 2444214; 443910, 2444204; 443915, 2444196; 443929, 2444175; 443934, 2444158; 443936, 2444133; 443931, 2444120; 443927, 2444113; 443925, 2444103; 443924, 2444082; 443925, 2444064; 443926, 2444045; 443928, 2444028; 443931, 2444009; 443935, 2443990; 443936, 2443970; 443934, 2443951; 443934, 2443934; 443935, 2443915; 443939, 2443896; 443945, 2443877; 443955, 2443857; 443963, 2443839; 443965, 2443836; 443972, 2443821; 443984, 2443805; 443987, 2443801; 444000, 2443783; 444003, 2443777; 444005, 2443764; 444012, 2443746; 444022, 2443733; 444025, 2443727; 444035, 2443709; 444041, 2443694; 444041, 2443690; 444048, 2443672; 444055, 2443652; 444056, 2443633; 444051, 2443614; 444051, 2443596; 444058, 2443577; 444080, 2443566; 444096, 2443558; 444114, 2443539; 444125, 2443521; 444133, 2443503; 444134, 2443498; 444139, 2443484; 444146, 2443464; 444153, 2443447; 444164, 2443427; 444171, 2443417; 444180, 2443407; 444191, 2443390; 444202, 2443371; 444210, 2443360; 444215, 2443352; 444228, 2443337; 444232, 2443334; 444246, 2443322; 444259, 2443315; 444267, 2443312; 444285, 2443303; 444288, 2443300; 444287, 2443267; 444175, 2443218; 443802, 2443211; 443603, 2443118; 443591, 2442857; 443541, 2442683; 443305, 2442739; 442975, 2442920; 442895, 2442714; 442665, 2442609; 442310, 2442665; 442080, 2442671; 441918, 2442827; 441999, 2442901; 442024, 2443094; 441887, 2443131; 441788, 2443305; 441583, 2443454; 441135, 2443585; 440886, 2443666; 440799, 2443803; 440762, 2443921; 440538, 2443927; 440402, 2443914; 440314, 2444219; 440370, 2444480; 440445, 2444666; 440501, 2444859; 440420, 2444909; 440259, 2445052; 440296, 2445238; 440265, 2445387; 440190, 2445530; 440035, 2445648; 439973, 2445735; 440047, 2445872; 440047, 2446052; 439948, 2446195; 440022, 2446469; 440513, 2446543; 440625, 2446717; 440843, 2446885; 441042, 2446972; 441274, 2446893; 441832, 2446159; 442113, 2445986; 442326, 2445854; 442415, 2445847; 442422, 2445840; 442430, 2445830; 442430, 2445827; 442435, 2445813; 442444, 2445807; return to starting point.

(B) **Note:** Map 180 follows:

Map 180 Unit 11 - *Remya montgomeryi - b*



Critical Habitat Unit 11
Critical Habitat for *Remya montgomeryi - b*
Elevation (1,000-ft. contours)
Major Road
Coastline

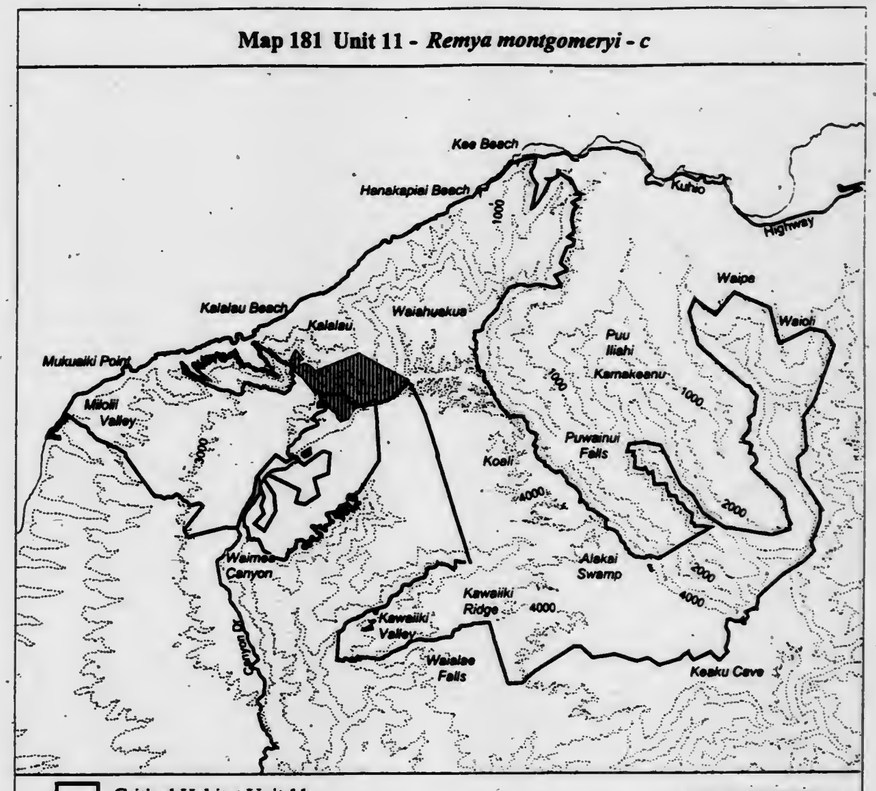
0 1 2 Miles
0 1 2 Kilometers

(clxxxi) Kauai 11—*Remya montgomeryi*—c (435 ha; 1,076 ac)

(A) Unit consists of the following 73 boundary points: Start at 434088, 2448772; 434057, 2448814; 433978, 2448898; 433944, 2448994; 433902, 2449074; 433692, 2449220; 433659, 2449275; 433659, 2449342; 433625, 2449489; 433500, 2449564; 433462, 2449619; 433461, 2449623; 433480, 2449629; 433484, 2449703; 433460, 2449707; 433444, 2449707; 433441, 2449723; 433318, 2449783; 433292, 2449640; 432855, 2450187; 432823, 2450206; 432826, 2450224; 432797, 2450260; 432768, 2450266; 432752, 2450270; 432745, 2450272; 432733, 2450275; 432709, 2450317; 432692, 2450330; 432650, 2450343; 432591, 2450373; 432573, 2450385; 432550, 2450412; 432528, 2450468; 432515, 2450503; 432494, 2450543; 432477, 2450580; 432468, 2450593; 432464, 2450611; 432465, 2450623; 432450, 2450624; 432445, 2450625; 432435, 2450666; 432502, 2450935; 432628, 2451128; 432889, 2450808; 432771, 2450766; 432737, 2450598; 432897, 2450691; 433099, 2450615; 433217, 2450489; 433248, 2450427; 434703, 2451005; 436330, 2450099; 436237, 2450032; 436212, 2450009; 436203, 2450009; 436111, 2449924; 436109, 2449918; 435562, 2449429; 435168, 2449400; 435010, 2449343; 435011, 2449352; 434884, 2449298; 434872, 2449294; 434833, 2449281; 434833, 2449280; 434814, 2449273; 434573, 2449187; 434342, 2448860; 434340, 2448859; 434109, 2448774; 434091, 2448768; return to starting point.

(B) **Note:** Map 181 follows:

Map 181 Unit 11 - *Remya montgomeryi - c*



Critical Habitat Unit 11
Critical Habitat for *Remya montgomeryi - c*
Elevation (1,000-ft. contours)
Major Road
Coastline

0 1 2 Miles
0 1 2 Kilometers

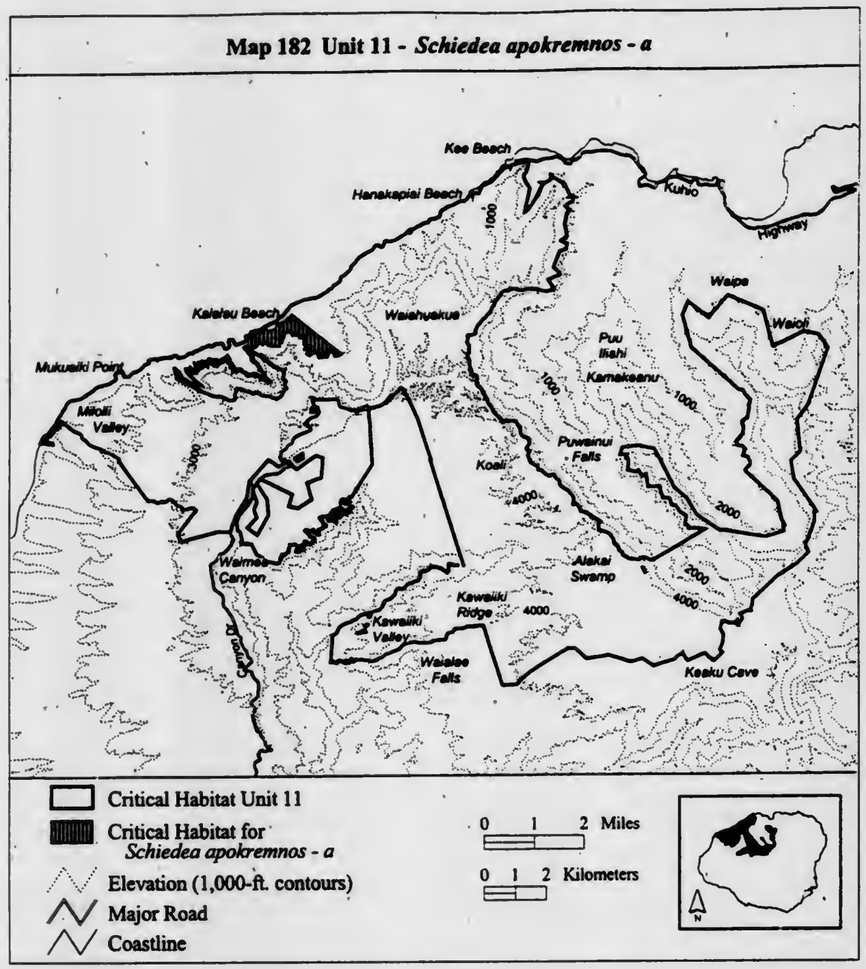
(clxxxii) Kauai 11—*Schiedea apokremnos*—a (170 ha; 420 ac)

(A) Unit consists of the following 121 boundary points: Start at 432745, 2452425; 434404, 2451114; 434287, 2451030; 434135, 2451007; 434062, 2451170; 433978, 2451164; 433917, 2450991; 433698, 2450985; 433608, 2450963; 433524, 2451170; 433328, 2451041; 433188, 2451120; 433322, 2451237; 433132, 2451249; 433143, 2451316; 433210, 2451411; 433126, 2451411; 433098, 2451450; 433132, 2451512; 433109, 2451568; 433126, 2451663; 432980, 2451618; 432969, 2451714; 432919, 2451708; 432812, 2451742; 432773, 2451669; 432689, 2451842; 432621, 2451820; 432571, 2451803; 432537, 2451730; 432504, 2451635; 432453, 2451590; 432453, 2451467; 432347, 2451490; 432347, 2451450; 432392, 2451355; 432319, 2451350; 432201, 2451372; 432139, 2451366; 432016, 2451383; 431932, 2451439; 431893, 2451507; 431831, 2451411; 431775, 2451411; 431736, 2451507; 431657, 2451423; 431618, 2451367; 431579, 2451299; 431511, 2451311; 431416, 2451367; 431378, 2451323; 431373, 2451329; 431370, 2451323; 431360, 2451314; 431351, 2451321; 431337, 2451323; 431318, 2451324; 431304, 2451317; 431293, 2451316; 431287, 2451322; 431281, 2451336; 431277, 2451355; 431264, 2451350; 431245, 2451336; 431233, 2451323; 431242, 2451310; 431267, 2451297; 431294, 2451278; 431312, 2451246; 431348, 2451203; 431384, 2451176; 431402, 2451170; 431407, 2451149; 431415, 2451137; 431428, 2451129; 431432, 2451109; 431442, 2451094; 431457, 2451086; 431456, 2451081; 431450, 2451067; 431455, 2451053; 431467, 2451047; 431486, 2451047; 431488, 2451038; 431482, 2451029; 431481, 2451010; 431487, 2450998; 431504, 2450987; 431499, 2450978; 431486, 2450974; 431476, 2450971; 431456, 2450971; 431455, 2450971; 431158, 2451367; 431349, 2451456; 431321, 2451557; 431287, 2451714; 431371, 2451669; 431438, 2451820; 431461, 2451787; 431567, 2451848; 431685, 2451893; 431769, 2451798; 431808, 2451826; 431775, 2451882; 431853, 2451910; 431937,

2451966; 432016, 2451865; 432027, 2451915; 432083, 2451927; 432150, 2451938; 432223, 2451988; 432251, 2452067; 432319, 2452039; 432319, 2452111; 432448, 2452184; 432532, 2452201; 432593, 2452291; 432672, 2452313; 432706, 2452246; 432700, 2452369; return to starting point.

(B) **Note:** Map 182 follows:

Map 182 Unit 11 - *Schiedea apokremnos - a*

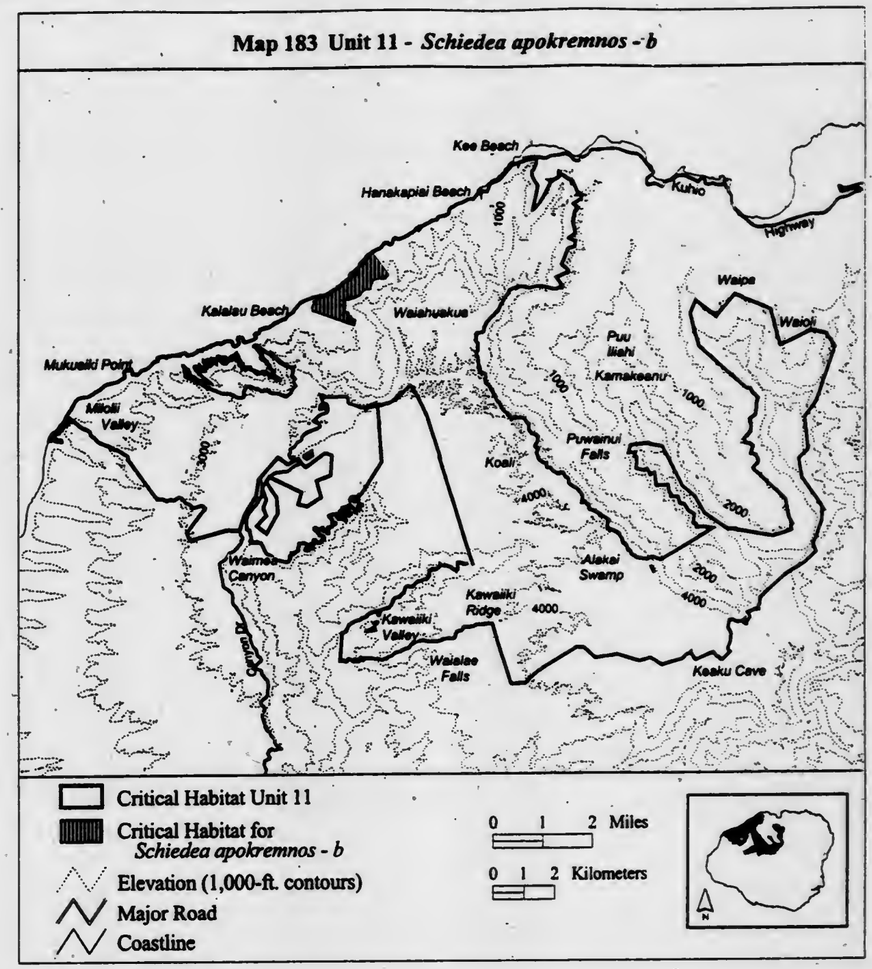


(clxxxiii) Kauai 11—*Schiedea apokremnos*—b (187 ha; 463 ac)

(A) Unit consists of the following 49 boundary points: Start at 435094, 2454278; 435593, 2453600; 435509, 2453505; 435509, 2453460; 435374, 2453455; 435279, 2453455; 435184, 2453449; 435077, 2453393; 435083, 2453309; 435038, 2453287; 435015, 2453130; 434982, 2453113; 434892, 2453113; 434774, 2453068; 434713, 2452945; 434601, 2452884; 434483, 2452816; 434180, 2452744; 434203, 2452592; 434169, 2452385; 434309, 2452374; 434309, 2452307; 434388, 2452245; 434371, 2452195; 434533, 2452116; 434488, 2451948; 433115, 2452430; 433092, 2452565; 433171, 2452677; 433132, 2452722; 433311, 2452806; 433704, 2452951; 433743, 2452957; 433788, 2453029; 433995, 2453164; 434085, 2453242; 434186, 2453332; 434354, 2453438; 434421, 2453516; 434427, 2453617; 434561, 2453584; 434567, 2453712; 434657, 2453819; 434780, 2453964; 434802, 2453948; 434802, 2454032; 434903, 2454149; 434971, 2454132; 434993, 2454233; return to starting point.

(B) **Note:** Map 183 follows:

Map 183 Unit 11 - *Schiedea apokremnos - b*



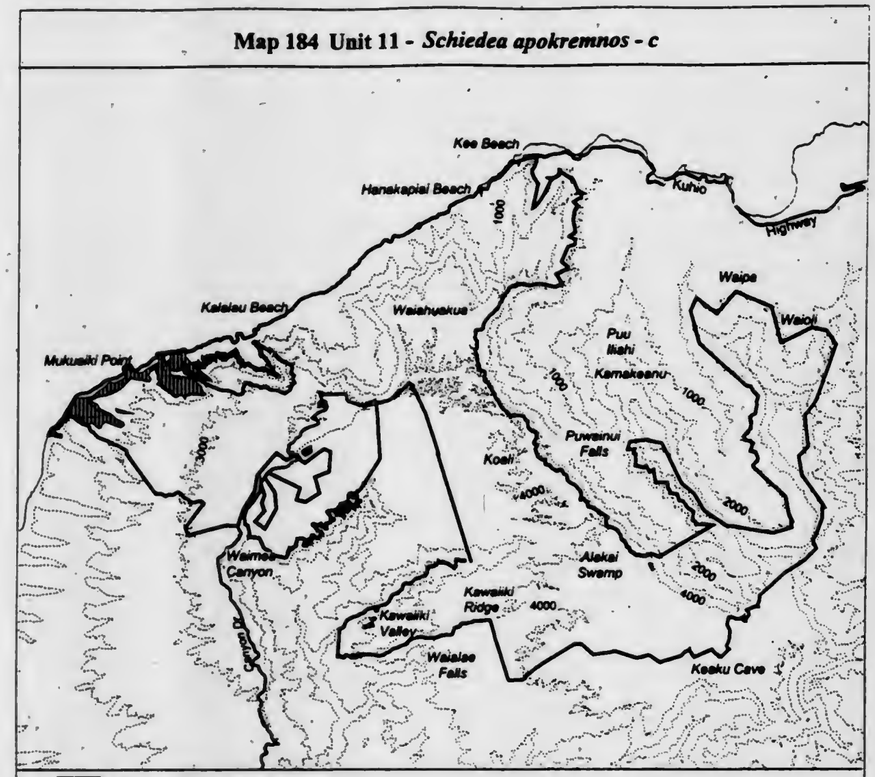
(clxxxiv) Kauai 11—*Schiedea apokremnos*—c (295 ha; 730 ac)

(A) Unit consists of the following 184 boundary points: coastline; 425961, 2449457; 425945, 2449431; 426025, 2449417; 426119, 2449388; 426206, 2449330; 426264, 2449199; 426496, 2449105; 426662, 2449004; 426800, 2448866; 427032, 2448743; 427068, 2448642; 426966, 2448569; 426829, 2448606; 426503, 2448743; 426445, 2448765; 426401, 2448707; 426336, 2448693; 426336, 2448642; 426322, 2448577; 426264, 2448540; 426170, 2448591; 426025, 2448729; 425974, 2448707; 425858, 2448700; 425786, 2448707; 425692, 2448779; 425525, 2448852; 425484, 2448870; 425466, 2448885; 425424, 2448946; 425344, 2449011; 425235, 2449076; 425217, 2449149; 425395, 2449439; 425453, 2449540; 425525, 2449547; 425721, 2449569; 425736, 2449562; 425833, 2449576; 426041, 2449624; 426274, 2449816; 426427, 2449928; 426555, 2450065; 426804, 2450065; 427045, 2450185; 427133, 2450313; 427085, 2450490; 427141, 2450530; 427165, 2450466; 427197, 2450546; 427245, 2450554; 427302, 2450425; 427534, 2450353; 427639, 2450393; 427671, 2450369; 427711, 2450441; 428008, 2450618; 428136, 2450682; 428184, 2450794; 428152, 2450947; 428257, 2450955; 428329, 2450987; 428353, 2450850; 428385, 2450730; 428385, 2450586; 428329, 2450514; 428377, 2450433; 428425, 2450506; 428425, 2450618; 428481, 2450770; 428538, 2450778; 428538, 2450858; 428570, 2450979; 428650, 2451011; 428714, 2450987; 428794, 2450987; 428834, 2450923; 428899, 2451059; 428955, 2451067; 429035, 2450987; 429051, 2450882; 429099, 2450834; 429139, 2450810; 429629, 2450177; 429625, 2450178; 429610, 2450183; 429571, 2450198; 429538, 2450212; 429503, 2450229; 429460, 2450248; 429433, 2450259; 429404, 2450268; 429391, 2450277; 429371, 2450289; 429356, 2450303; 429342, 2450315; 429321, 2450332; 429294, 2450343; 429269, 2450357; 429244, 2450363; 429232, 2450370; 429208, 2450389; 429205, 2450394; 429200, 2450405; 429193, 2450416; 429174, 2450426; 429162,

2450435; 429162, 2450436; 429161, 2450444; 429158, 2450455; 429152, 2450468; 429143, 2450481; 429132, 2450492; 429114, 2450527; 429113, 2450540; 429110, 2450557; 429103, 2450577; 429091, 2450594; 429077, 2450605; 429069, 2450606; 429067, 2450610; 429011, 2450630; 429009, 2450638; 429000, 2450655; 428990, 2450676; 428979, 2450690; 428972, 2450701; 428962, 2450707; 428952, 2450706; 428952, 2450704; 428964, 2450654; 428975, 2450624; 428947, 2450498; 428899, 2450449; 428770, 2450409; 428554, 2450449; 428546, 2450353; 428698, 2450273; 428875, 2450273; 428867, 2450169; 428955, 2450265; 429083, 2450233; 429268, 2450161; 429436, 2450048; 429541, 2449952; 429589, 2449800; 429717, 2449663; 429637, 2449615; 429461, 2449647; 429292, 2449648; 429260, 2449680; 429196, 2449631; 429075, 2449607; 429035, 2449487; 428907, 2449664; 428810, 2449583; 428714, 2449559; 428626, 2449632; 428546, 2449728; 428473, 2449760; 428289, 2449872; 428249, 2449944; 428104, 2449992; 428233, 2450113; 428120, 2450145; 428136, 2450265; 428104, 2450329; 428088, 2450361; 428088, 2450498; 427936, 2450425; 427855, 2450305; 427936, 2450145; 427879, 2450081; 427639, 2450113; 427462, 2450137; 427285, 2450177; 427165, 2450057; 427053, 2449952; 426940, 2449832; 426643, 2449672; 426435, 2449624; 426242, 2449584; 426170, 2449559; 425969, 2449455; coastline.

(B) **Note:** Map 184 follows:

Map 184 Unit 11 - *Schiedea apokremnos - c*

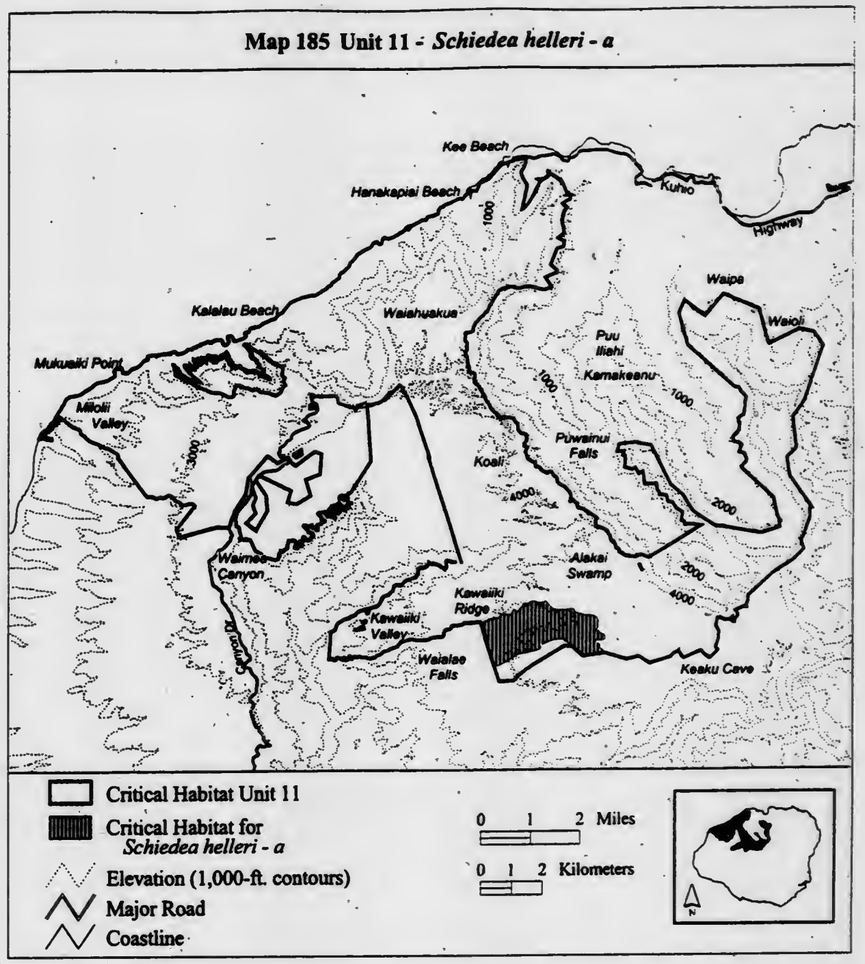


(clxxxv) Kauai 11—*Schiedea helleri*—a (485 ha; 1,198 ac)

(A) Unit consists of the following 100 boundary points: Start at 439125, 2441965; 439082, 2442134; 439060, 2442238; 439038, 2442310; 439065, 2442364; 439202, 2442397; 439262, 2442430; 439514, 2442474; 439586, 2442550; 439651, 2442589; 439788, 2442589; 439876, 2442567; 439925, 2442561; 439969, 2442649; 440018, 2442737; 440035, 2442747; 440073, 2442698; 440073, 2442665; 440150, 2442682; 440248, 2442791; 440363, 2442906; 440407, 2442917; 440468, 2442895; 440577, 2442983; 440654, 2443005; 440774, 2442966; 440769, 2442939; 440862, 2442939; 440988, 2442955; 441059, 2442994; 441141, 2442906; 441207, 2442829; 441306, 2442758; 441415, 2442720; 441651, 2442720; 441810, 2442742; 441908, 2442758; 441968, 2442736; 441996, 2442659; 442111, 2442621; 442341, 2442555; 442434, 2442539; 442598, 2442544; 442659, 2442522; 442659, 2442513; 442735, 2442462; 442779, 2442358; 442757, 2442249; 442757, 2442216; 442763, 2442183; 442752, 2442134; 442697, 2442117; 442675, 2442073; 442708, 2442051; 442768, 2442068; 442796, 2442040; 442850, 2441964; 442933, 2441947; 442987, 2441865; 442987, 2441794; 442954, 2441761; 442883, 2441745; 442779, 2441750; 442719, 2441772; 442681, 2441756; 442681, 2441717; 442730, 2441663; 442812, 2441624; 442823, 2441586; 442812, 2441526; 442856, 2441482; 442916, 2441455; 442954, 2441378; 442982, 2441350; 442631, 2441285; 442287, 2441225; 441900, 2441576; 441842, 2441576; 441832, 2441635; 441804, 2441674; 441733, 2441718; 441667, 2441761; 441651, 2441800; 441519, 2441794; 441251, 2441745; 440977, 2441625; 440917, 2441537; 440884, 2441477; 440725, 2441411; 440511, 2441367; 440265, 2441329; 440194, 2441307; 440018, 2441214; 439892, 2441132; 439761, 2441044; 439553, 2440946; 439492, 2440924; 439405, 2440902; 439076, 2441910; 439120, 2441932; return to starting point.

(B) **Note:** Map 185 follows:

Map 185 Unit 11 - *Schiedea helleri - a*

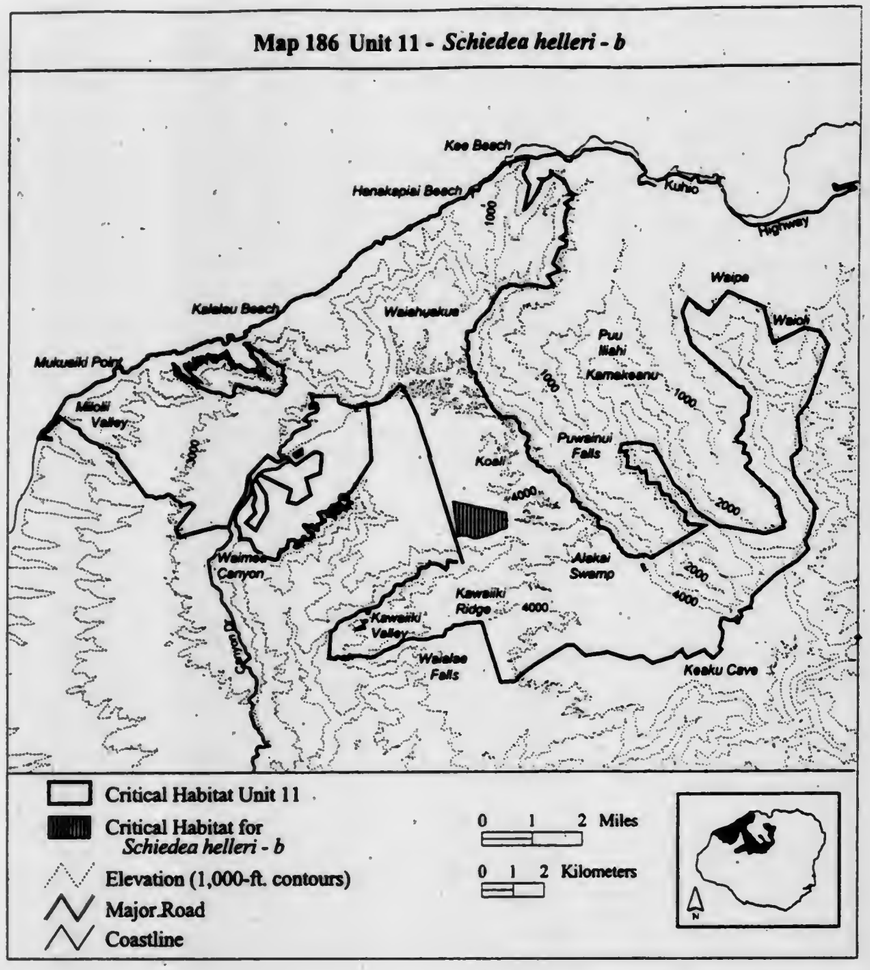


(clxxxvi) Kauai 11—*Schiedea helleri*—b (154 ha; 381 ac)

(A) Unit consists of the following 13 boundary points: Start at 437970, 2446232; 439724, 2445859; 439747, 2445326; 439471, 2445259; 439401, 2445208; 439351, 2445174; 438983, 2445051; 438803, 2445014; 438673, 2445016; 438448, 2445099; 438225, 2445106; 438147, 2445051; 438140, 2445049; return to starting point.

(B) **Note:** Map 186 follows:

Map 186 Unit 11 - *Schiedea helleri - b*

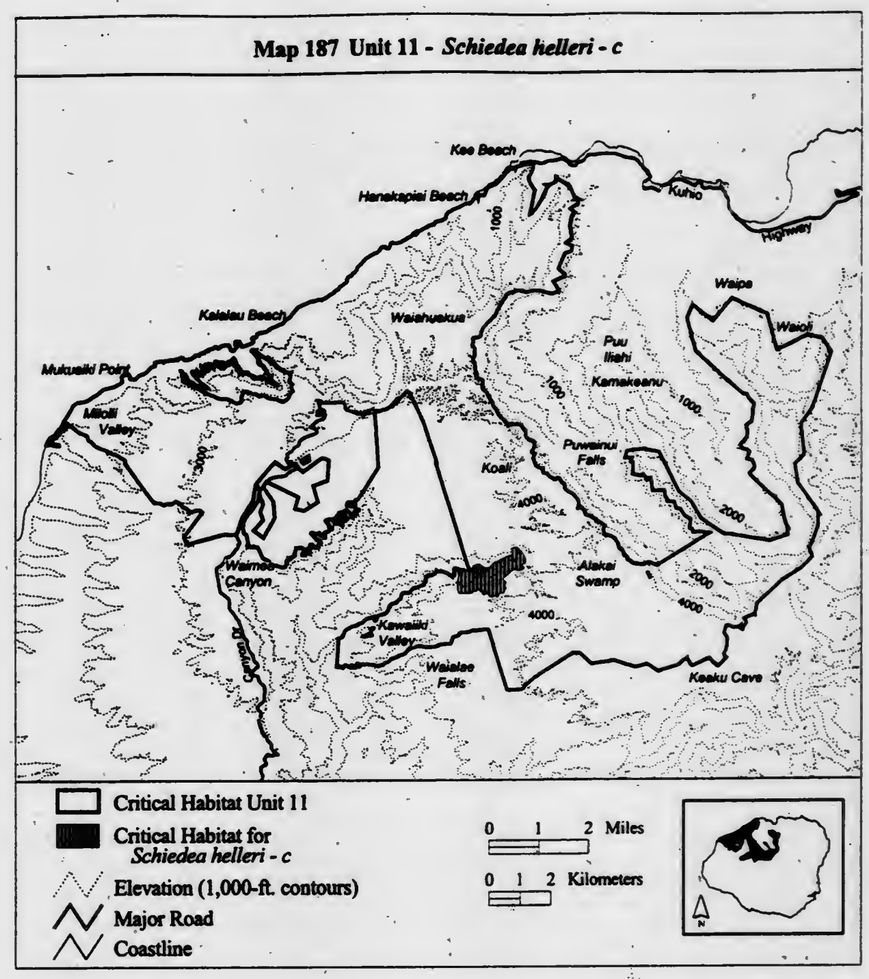


(clxxxvii) Kauai 11—*Schiedea helleri*—c (172 ha; 426 ac)

(A) Unit consists of the following 97 boundary points: Start at 437937, 2443749; 437924, 2443901; 437955, 2444013; 437973, 2444102; 437928, 2444227; 437902, 2444298; 437911, 2444303; 438000, 2444267; 438085, 2444267; 438156, 2444280; 438326, 2444213; 438348, 2444222; 438384, 2444240; 438455, 2444396; 438625, 2444450; 438696, 2444419; 438799, 2444334; 438946, 2444334; 439013, 2444356; 439080, 2444450; 439129, 2444494; 439250, 2444539; 439326, 2444579; 439402, 2444619; 439540, 2444686; 439678, 2444726; 439710, 2444829; 439705, 2444936; 439759, 2444985; 439857, 2445003; 439897, 2444931; 439919, 2444896; 440004, 2444860; 440058, 2444753; 440107, 2444668; 440138, 2444623; 440143, 2444574; 440143, 2444539; 440143, 2444476; 440071, 2444445; 440018, 2444405; 440018, 2444374; 440067, 2444351; 440080, 2444302; 440058, 2444275; 439928, 2444231; 439830, 2444271; 439750, 2444267; 439678, 2444222; 439607, 2444137; 439495, 2444057; 439428, 2444008; 439415, 2443959; 439464, 2443887; 439500, 2443878; 439518, 2443861; 439486, 2443843; 439486, 2443812; 439477, 2443771; 439464, 2443770; 439500, 2443655; 439473, 2443620; 439446, 2443588; 439446, 2443539; 439428, 2443513; 439312, 2443513; 439294, 2443508; 439268, 2443450; 439241, 2443401; 439210, 2443392; 439187, 2443441; 439125, 2443441; 439067, 2443397; 439035, 2443392; 438955, 2443455; 438946, 2443486; 438919, 2443508; 438852, 2443499; 438803, 2443468; 438754, 2443481; 438750, 2443504; 438745, 2443544; 438719, 2443575; 438669, 2443575; 438669, 2443624; 438620, 2443647; 438585, 2443638; 438544, 2443602; 438473, 2443598; 438442, 2443593; 438415, 2443535; 438308, 2443513; 438085, 2443522; 438009, 2443526; 437955, 2443571; 437933, 2443665; 437940, 2443749; return to starting point.

(B) **Note:** Map 187 follows:

Map 187 Unit 11 - *Schiedea helleri - c*

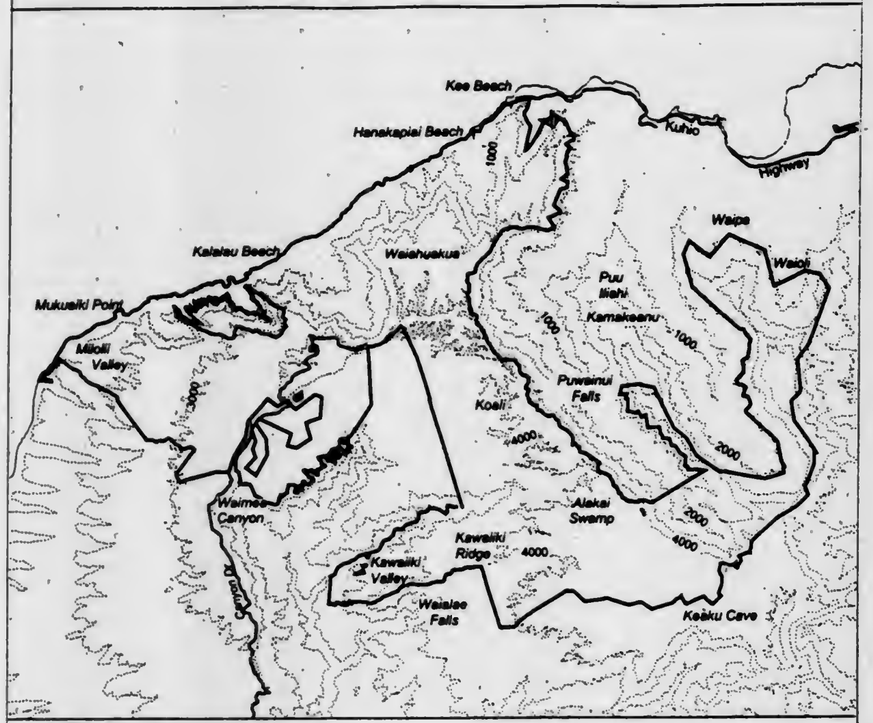


(clxxxviii) Kauai 11—*Schiedea kauaiensis*—a (12 ha; 29 ac)

(A) Unit consists of the following 7 boundary points: Start at 441158, 2456345; 440802, 2456603; 441024, 2456625; 441109, 2456674; 441096, 2456831; 441096, 2456842; 441384, 2456663; return to starting point.

(B) **Note:** Map 188 follows:

Map 188 Unit 11 - *Schiedea kauaiensis - a*

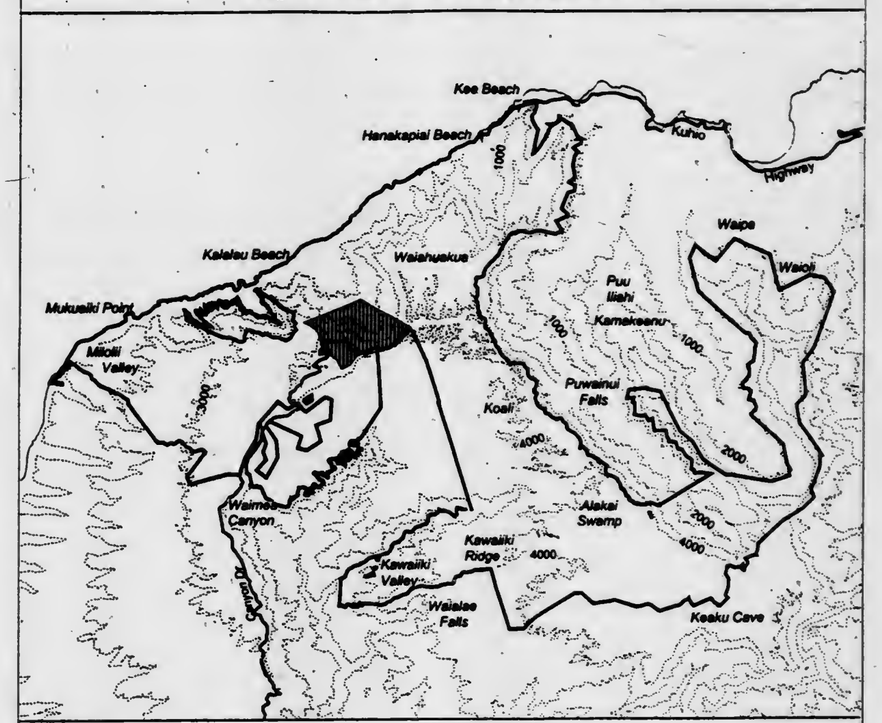


(clxxxix) Kauai 11—*Schiedea kauaiensis*—b (394 ha; 974 ac)

(A) Unit consists of the following 47 boundary points: Start at 434833, 2449278; 434824, 2449275; 434569, 2449182; 434357, 2448899; 434343, 2448881; 434145, 2448778; 434076, 2448743; 434061, 2448769; 433970, 2448925; 433903, 2449067; 433746, 2449177; 433650, 2449258; 433659, 2449418; 433575, 2449511; 433473, 2449595; 433461, 2449623; 433480, 2449629; 433484, 2449703; 433460, 2449707; 433443, 2449707; 433442, 2449724; 433348, 2449773; 433304, 2449883; 433184, 2450065; 433006, 2450176; 432940, 2450230; 432816, 2450278; 433712, 2450629; 434347, 2450868; 434676, 2451014; 434924, 2450872; 435714, 2450443; 436323, 2450091; 436203, 2450009; 436203, 2450009; 436201, 2450007; 436194, 2450002; 435573, 2449422; 435549, 2449426; 435517, 2449423; 435501, 2449420; 435498, 2449418; 435177, 2449404; 435010, 2449343; 435011, 2449352; 434881, 2449297; 434833, 2449281; return to starting point.

(B) **Note:** Map 189 follows:

Map 189 Unit 11 - *Schiedea kauaiensis - b*



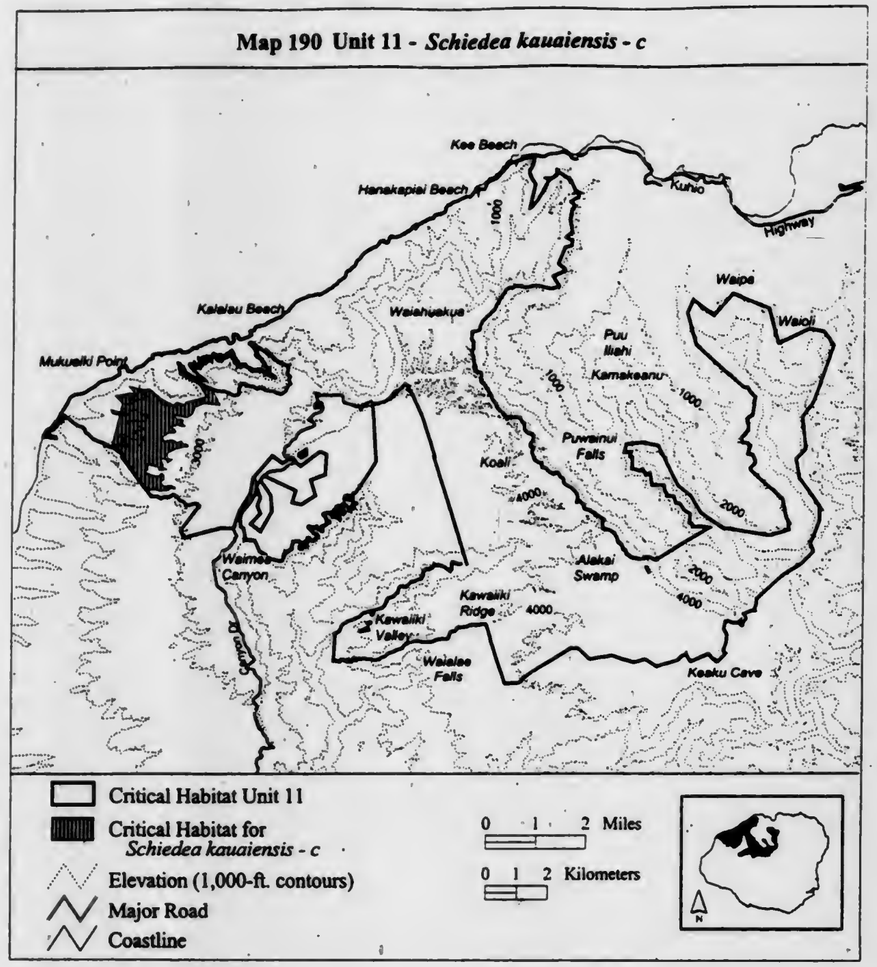
(cxc) Kauai 11—*Schiedea kauaiensis*—c (510 ha; 1,260 ac)

(A) Unit consists of the following 110 boundary points: Start at 426811, 2448002; 427169, 2449411; 426941, 2449644; 427428, 2449744; 427602, 2449670; 427375, 2449950; 427862, 2449850; 428025, 2449872; 428417, 2449538; 428792, 2449348; 428919, 2449417; 429157, 2449343; 429189, 2449432; 429866, 2449617; 429586, 2450082; 429598, 2450077; 429717, 2449996; 429751, 2449978; 429791, 2449963; 429830, 2449956; 429860, 2449947; 429944, 2449910; 429968, 2449904; 430016, 2449884; 430027, 2449878; 430300, 2449348; 429803, 2449411; 429501, 2449279; 429411, 2449047; 429231, 2448941; 428781, 2449052; 428877, 2448948; 428940, 2448908; 429100, 2448884; 429100, 2448820; 429084, 2448749; 429180, 2448669; 429044, 2448677; 428925, 2448749; 428861, 2448677; 428805, 2448685; 428717, 2448637; 428837, 2448565; 428877, 2448470; 428725, 2448462; 428653, 2448462; 428454, 2448318; 428502, 2448174; 428597, 2448198; 428789, 2448214; 428932, 2448119; 429060, 2448182; 429124, 2448087; 429204, 2448095; 429292, 2448023; 429156, 2448007; 428901, 2447951; 428725, 2447863; 428613, 2447816; 428597, 2447736; 428661, 2447616; 428773, 2447616; 428621, 2447520; 428581, 2447624; 428374, 2447648; 428478, 2447465; 428446, 2447369; 428589, 2447313; 428350, 2447281; 428310, 2447393; 427967, 2447465; 427975, 2447369; 427967, 2447289; 427895, 2447289; 427951, 2447186; 428198, 2447098; 428358, 2447098; 428438, 2447193; 428510, 2447122; 428494, 2447098; 428510, 2446994; 428398, 2446906; 428502, 2446755; 428733, 2446787; 428877, 2446723; 428861, 2446667; 428741, 2446707; 428653, 2446635; 428382, 2446595; 428246, 2446651; 427959, 2446635; 427952, 2446615; 427185, 2447661; 427161, 2447669; 427157, 2447676; 427157, 2447711; 427175, 2447754; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427124, 2447837; 427084, 2447847; 427039, 2447867; 426997, 2447892; 426981, 2447902; 426958, 2447923; 426944,

2447941; 426907, 2447965; 426847, 2447992; 426819, 2447998; return to starting point.

(B) **Note:** Map 190 follows:

Map 190 Unit 11 - *Schiedea kauaiensis - c*

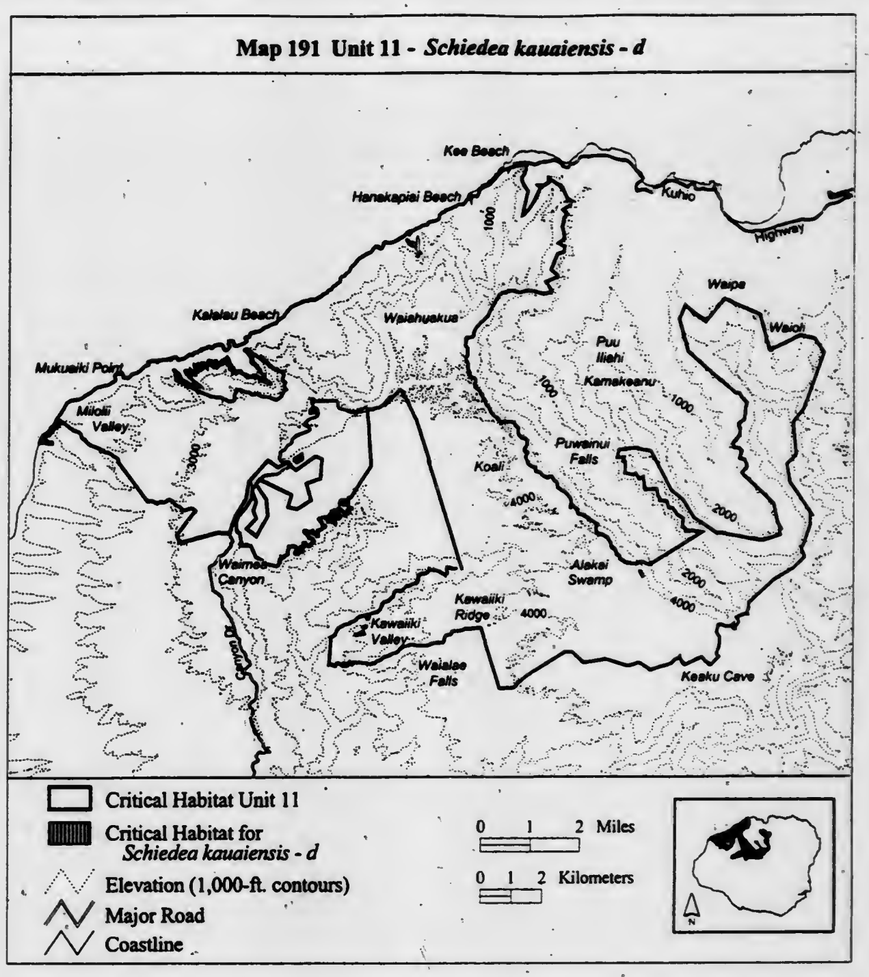


(cxci) Kauai 11—*Schiedea kauaiensis*—d (11 ha; 28 ac)

(A) Unit consists of the following 39 boundary points: Start at 436481, 2454892; 436554, 2454840; 436578, 2454805; 436650, 2454788; 436692, 2454795; 436761, 2454736; 436782, 2454761; 436806, 2454757; 436823, 2454836; 436816, 2454895; 436834, 2454968; 436858, 2454971; 436858, 2454912; 436906, 2454847; 436899, 2454633; 436896, 2454554; 436889, 2454509; 436927, 2454474; 437006, 2454412; 437006, 2454395; 436920, 2454384; 436896, 2454298; 436875, 2454271; 436854, 2454271; 436840, 2454322; 436834, 2454426; 436834, 2454485; 436809, 2454523; 436764, 2454567; 436733, 2454616; 436685, 2454619; 436654, 2454619; 436619, 2454650; 436581, 2454681; 436530, 2454688; 436505, 2454737; 436485, 2454781; 436457, 2454833; 436457, 2454861; return to starting point.

(B) **Note:** Map 191 follows:

Map 191 Unit 11 - *Schiedea kauaiensis - d*

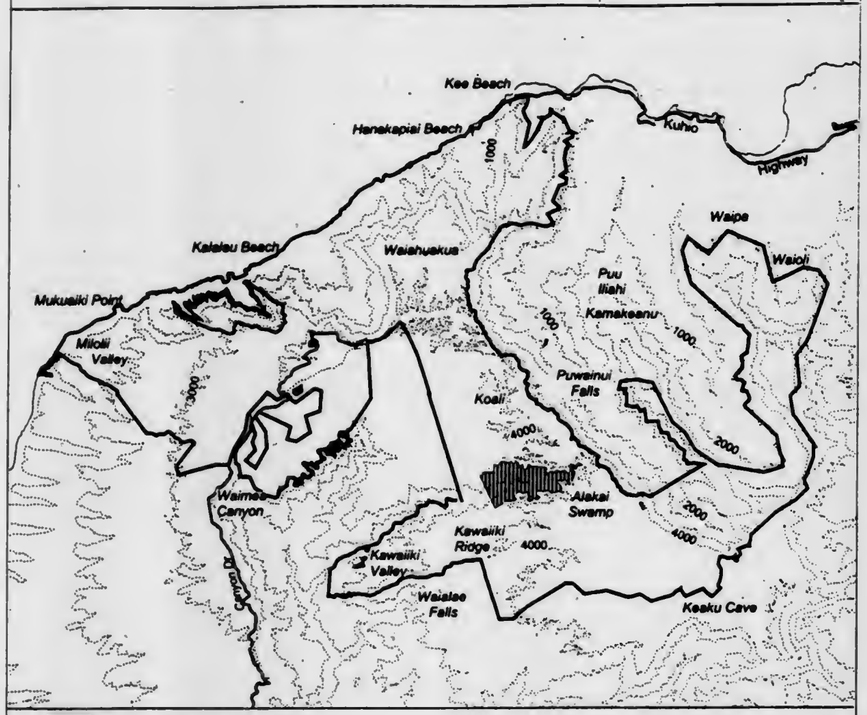


(cxcii) Kauai 11—*Schiedea membranacea*—a (251 ha; 620 ac)

(A) Unit consists of the following 85 boundary points: Start at 439181, 2445148; 439301, 2445148; 439351, 2445232; 439351, 2445395; 439471, 2445366; 439563, 2445479; 439711, 2445479; 439817, 2445437; 439895, 2445501; 439951, 2445409; 440008, 2445430; 440022, 2445515; 440128, 2445458; 440149, 2445310; 440269, 2445402; 440312, 2445218; 440404, 2445267; 440439, 2445409; 440517, 2445373; 440545, 2445317; 440623, 2445352; 441025, 2445302; 441054, 2445211; 441018, 2445055; 441145, 2445161; 441216, 2445175; 441280, 2445140; 441372, 2445225; 441527, 2445133; 441527; 2445196; 441647, 2445210; 441746, 2445083; 441796, 2445203; 441788, 2445309; 441894, 2445387; 441979, 2445345; 442057, 2445465; 442198, 2445373; 442057, 2445359; 441993, 2445246; 441894, 2445295; 441866, 2445253; 441951, 2445182; 441951, 2445104; 441880, 2444878; 441803, 2444780; 441739, 2444787; 441640, 2444914; 441548, 2444857; 441400, 2444893; 441357, 2444857; 441485, 2444751; 441612, 2444547; 441591, 2444490; 441442, 2444554; 441343, 2444504; 441188, 2444490; 441117, 2444582; 440969, 2444533; 440714, 2444554; 440714, 2444434; 440835, 2444363; 440736, 2444264; 440594, 2444377; 440594, 2444250; 440432, 2444243; 440432, 2444321; 440531, 2444392; 440446, 2444406; 440446, 2444519; 440283, 2444483; 440142, 2444554; 440057, 2444420; 439980, 2444378; 440078, 2444300; 440022, 2444243; 439874, 2444229; 439704, 2444236; 439640, 2444145; 439492, 2444074; 439400, 2444003; 438884, 2445049; 438983, 2445042; 438983, 2445141; 439139, 2445169; return to starting point.

(B) **Note:** Map 192 follows:

Map 192 Unit 11 - *Schiedea membranacea - a*

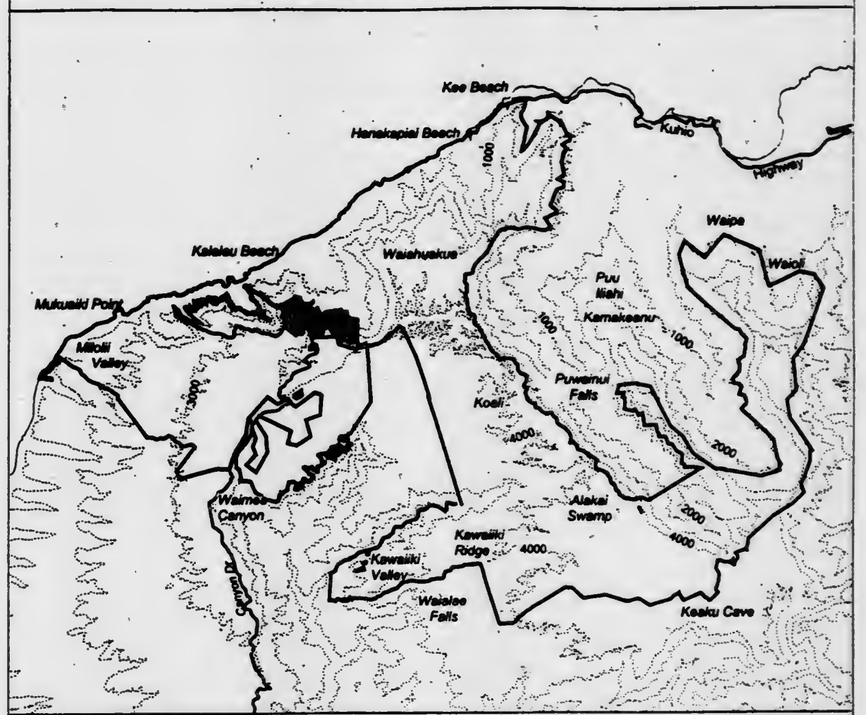


(cxciii) Kauai 11—*Schiedea membranacea*—b (234 ha; 579 ac)

(A) Unit consists of the following 73 boundary points: Start at 432751, 2449809; 432525, 2449982; 432579, 2450036; 432551, 2450083; 432523, 2450130; 432523, 2450182; 432565, 2450262; 432523, 2450304; 432475, 2450313; 432452, 2450337; 432461, 2450375; 432480, 2450426; 432490, 2450478; 432501, 2450529; 432494, 2450543; 432477, 2450580; 432468, 2450593; 432464, 2450611; 432465, 2450623; 432450, 2450624; 432408, 2450635; 432380, 2450644; 432335, 2450666; 432306, 2450682; 432952, 2451018; 433092, 2450986; 433100, 2450920; 433191, 2450796; 433323, 2450788; 433380, 2450813; 433471, 2450895; 433528, 2450805; 433397, 2450640; 433372, 2450550; 433495, 2450640; 433479, 2450443; 433495, 2450369; 433569, 2450435; 433561, 2450632; 433635, 2450681; 433685, 2450566; 433750, 2450410; 433849, 2450517; 434162, 2450566; 434401, 2450615; 434425, 2450525; 434606, 2450525; 434639, 2450327; 434952, 2450270; 434952, 2449497; 434968, 2449447; 434812, 2449447; 434688, 2449421; 434573, 2449489; 434461, 2449513; 434354, 2449390; 434322, 2449449; 434310, 2449628; 434251, 2449664; 434076, 2449767; 433964, 2449950; 433873, 2449910; 433808, 2449826; 433817, 2449668; 433535, 2449656; 433372, 2449777; 433285, 2449871; 433199, 2449958; 433166, 2449867; 433183, 2449769; 433094, 2449708; 432985, 2449744; 432952, 2449654; return to starting point.

(B) **Note:** Map 193 follows:

Map 193 Unit 11 - *Schiedea membranacea - b*

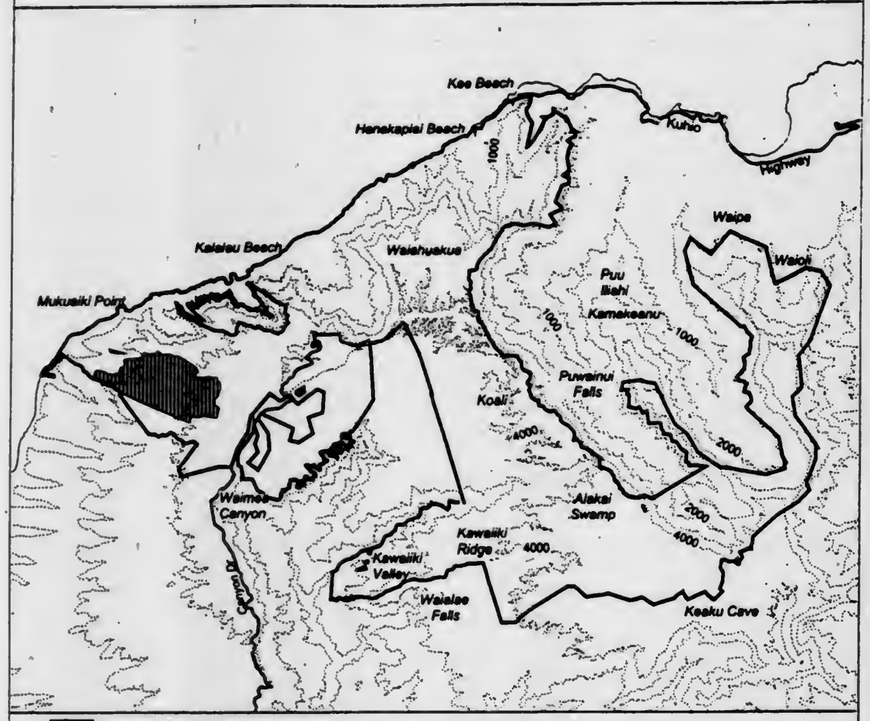


(cxciv) Kauai 11—*Schiedea membranacea*—c (527 ha; 1,303 ac)

(A) Unit consists of the following 95 boundary points: Start at 429500, 2447004; 429408, 2446809; 427175, 2447761; 427176, 2447775; 427171, 2447800; 427160, 2447815; 427124, 2447837; 427084, 2447847; 427039, 2447867; 427014, 2447882; 427019, 2447905; 426996, 2447928; 426906, 2448039; 426874, 2448050; 426752, 2448039; 426667, 2448060; 426648, 2448068; 426613, 2448093; 426561, 2448116; 426560, 2448116; 426491, 2448177; 426375, 2448225; 426316, 2448252; 426316, 2448342; 426321, 2448427; 426380, 2448475; 426438, 2448496; 426550, 2448475; 426699, 2448421; 426784, 2448374; 427049, 2448347; 427102, 2448379; 427166, 2448575; 427170, 2448577; 427171, 2448582; 427181, 2448581; 427241, 2448602; 427288, 2448618; 427294, 2448767; 427288, 2448830; 427368, 2448873; 427655, 2448889; 427830, 2448915; 427873, 2448968; 427899, 2449027; 427979, 2449048; 428059, 2449037; 428106, 2449027; 428282, 2449032; 428335, 2449117; 428377, 2449133; 428415, 2449101; 428478, 2449037; 428537, 2449006; 428670, 2449006; 428755, 2449021; 428824, 2448995; 428845, 2448968; 428999, 2448968; 429063, 2448942; 429350, 2448766; 429514, 2448660; 429642, 2448549; 429690, 2448432; 429658, 2448384; 429589, 2448336; 429605, 2448283; 429769, 2448246; 429844, 2448257; 430024, 2448283; 430088, 2448283; 430120, 2448235; 430152, 2448235; 430184, 2448257; 430322, 2448225; 430295, 2448166; 430290, 2448140; 430391, 2448092; 430412, 2447906; 430412, 2447848; 430348, 2447747; 430322, 2447657; 430258, 2447588; 430232, 2447529; 430237, 2447396; 430354, 2447317; 430348, 2447221; 430295, 2446966; 430242, 2446961; 430093, 2446998; 429977, 2447014; 429881, 2447041; 429764, 2446993; 429647, 2446982; 429514, 2447003; return to starting point.

(B) **Note:** Map 194 follows:

Map 194 Unit 11 - *Schiedea membranacea - c*

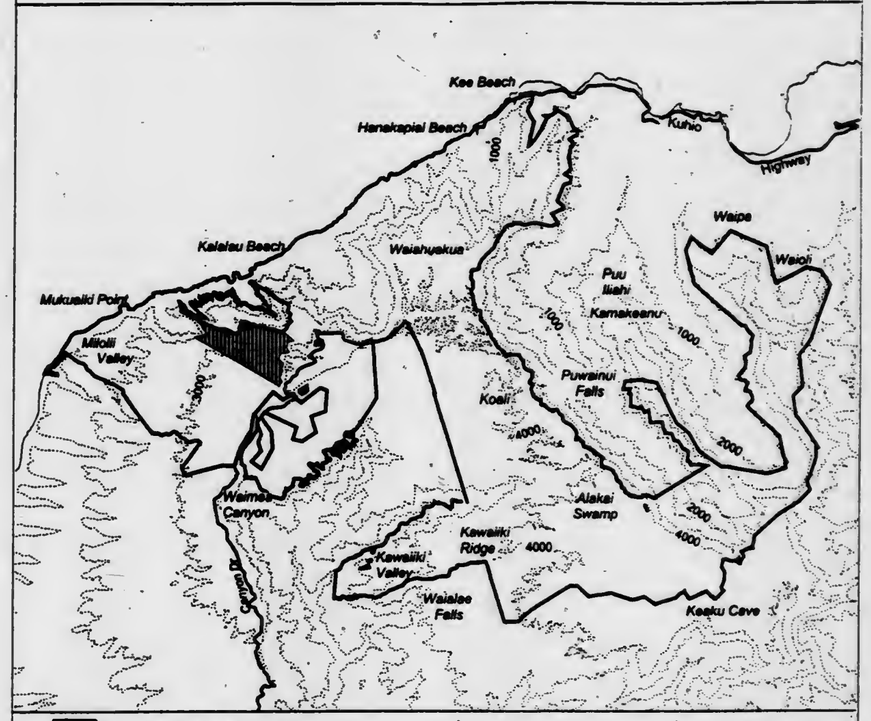


(cxcv) Kauai 11—*Schiedea membranacea*—d (327 ha; 809 ac)

(A) Unit consists of the following 78 boundary points: Start at 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238, 2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431657, 2449890; 431699, 2449876; 431765, 2449810; 431864, 2449801; 431981, 2449792; 432047, 2449787; 432113, 2449740; 432217, 2449712; 432259, 2449679; 432313, 2449721; 432664, 2449391; 432475, 2449358; 432426, 2449177; 432475, 2449062; 432514, 2449029; 432472, 2448986; 432450, 2448988; 432236, 2448980; 432162, 2448799; 432230, 2448747; 432226, 2448740; 432334, 2448663; 432269, 2448470; 432310, 2448387; 432261, 2448338; 432261, 2448264; 432220, 2448239; 432228, 2448165; 432286, 2448050; 432228, 2447976; 432212, 2447910; 429447, 2449531; 429866, 2449654; 429710, 2449811; 429644, 2449942; 429480, 2450139; 429489, 2450138; 429576, 2450092; 429717, 2449996; 429751, 2449978; 429791, 2449963; 429830, 2449956; 429860, 2449947; 429944, 2449910; 429968, 2449904; 430016, 2449884; 430068, 2449856; 430172, 2449815; 430207, 2449804; 430261, 2449795; 430317, 2449781; 430340, 2449778; 430365, 2449787; 430392, 2449798; 430408, 2449802; 430410, 2449802; return to starting point.

(B) **Note:** Map 195 follows:

Map 195 Unit 11 - *Adenophorus periens - d*

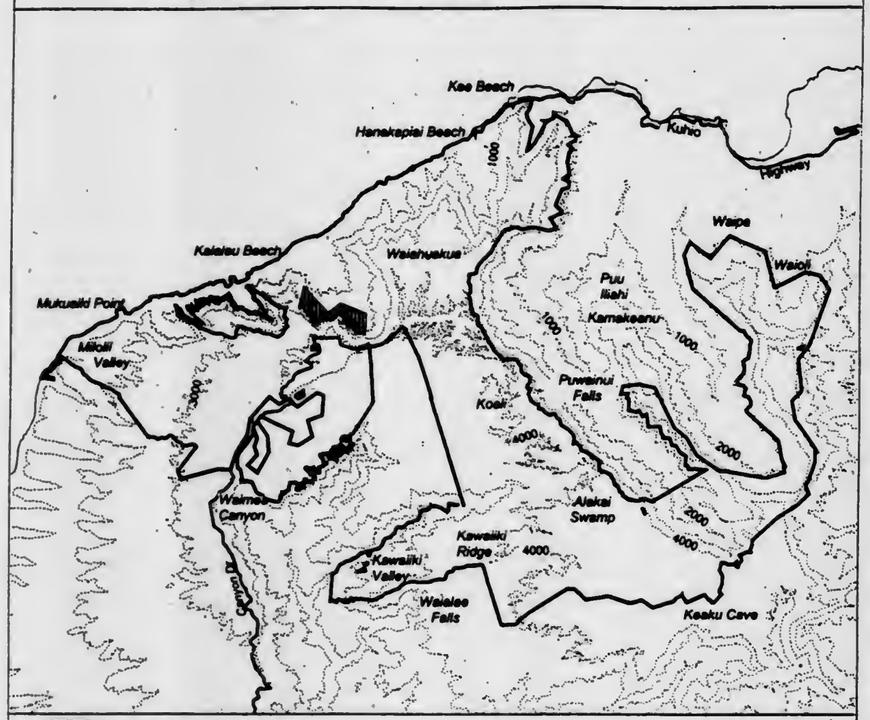


(cxcvi) Kauai 11—*Schiedea spergulina* var. *spergulina*—a (131 ha; 323 ac)

(A) Unit consists of the following 48 boundary points: Start at 432924, 2450644; 433080, 2451343; 433887, 2450474; 434285, 2450789; 435124, 2450447; 435088, 2449734; 434974, 2449796; 434896, 2449749; 434891, 2449796; 434850, 2449796; 434777, 2449718; 434777, 2449827; 434731, 2449827; 434725, 2449889; 434663, 2449889; 434684, 2449998; 434534, 2449951; 434534, 2450013; 434524, 2450039; 434482, 2450018; 434472, 2450096; 434441, 2450132; 434368, 2450101; 434317, 2450106; 434379, 2450323; 434291, 2450354; 434296, 2450396; 434260, 2450432; 434027, 2450241; 433706, 2450194; 433556, 2450112; 433571, 2450029; 433494, 2450050; 433411, 2450070; 433302, 2450251; 433338, 2450303; 433276, 2450298; 433266, 2450344; 433312, 2450365; 433307, 2450391; 433178, 2450355; 433240, 2450463; 433162, 2450448; 433183, 2450500; 433080, 2450489; 433111, 2450593; 433028, 2450629; 432955, 2450557; return to starting point.

(B) **Note:** Map 196 follows:

Map 196 Unit 11 - *Schiedea spergulina var. spergulina - a*



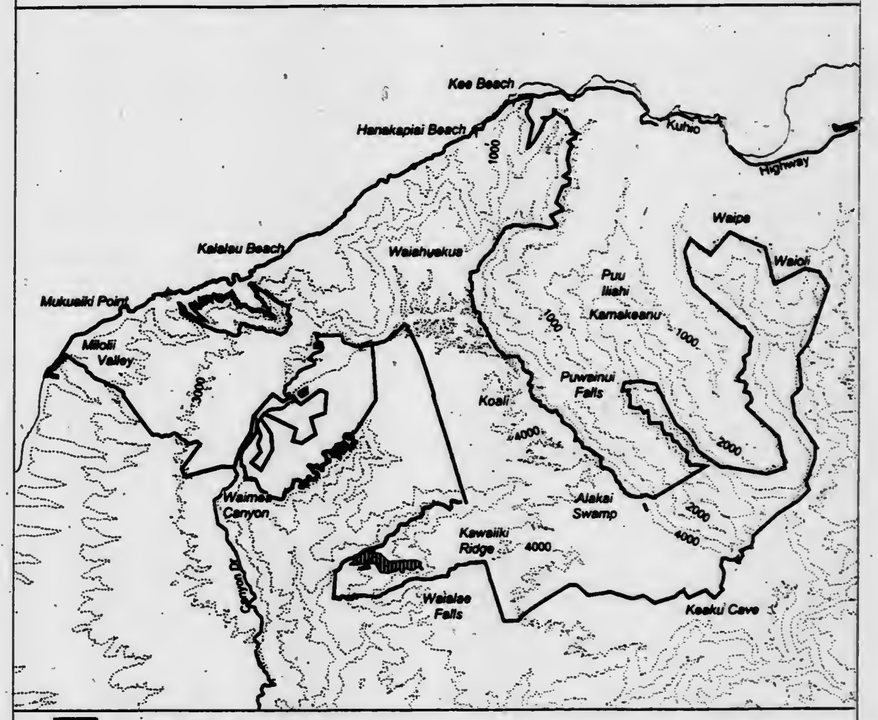
(cxcvii) Kauai 11—*Schiedea spergulina* var. *spergulina*—b (78 ha; 191 ac)

(A) Unit consists of the following 27 boundary points: Start at 435290, 2442650; 435520, 2442618; 435796, 2442364; 436701, 2442400; 436882, 2442335; 436853, 2442241; 436940, 2442103; 436868, 2442082; 436752, 2442198; 436636, 2442089; 436506, 2442082; 436332, 2442154; 436303, 2441988; 436223, 2441988; 436179, 2442031; 436122, 2442125; 436064, 2442053; 435911, 2442024; 435781, 2441966; 435658, 2441995; 435542, 2441995; 435346, 2442306; 434520, 2442249; 435006, 2442690; 435235, 2442658; 435237, 2442643; 435284, 2442631; return to starting point.

(B) Excluding 1 area bounded by the following 4 points (0 ha; 1 ac): Start at 435151, 2442425; 435215, 2442393; 435195, 2442353; 435128, 2442379; return to starting point.

(C) **Note:** Map 197 follows:

Map 197 Unit 11 - *Schiedea spergulina var. spergulina - b*



(cxcviii) Kauai 11—*Schiedea stellarioides*—a (1,260 ha; 3,112 ac)

(A) Unit consists of the following 568 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146, 2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678,

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438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438315, 2444274; 438323, 2444270; 438355, 2444421; 438442, 2444561; 438420, 2444670; 438420, 2444745; 438528, 2444864; 438680, 2444972; 438907, 2445004; 438907, 2445080; 438993, 2445145; 439156, 2445145; 439296, 2445177; 439339, 2445253; 439545, 2445491; 439783, 2445458; 440107, 2445318; 440150, 2445285; 440334, 2445307; 440410, 2445263; 440431, 2445231; 440594, 2445253; 440691, 2445339; 440756, 2445371; 440907, 2445317; 441048, 2445252; 441113, 2445242; 441221, 2445274; 441361, 2445306; 441513, 2445339; 441707, 2445328; 441848, 2445198; 442075, 2445112; 442053, 2445025; 441988, 2444906; 441891, 2444852; 441740, 2444744; 441664, 2444701; 441697, 2444582; 441740, 2444463; 441675, 2444420; 441513, 2444420; 441069, 2444453; 440626, 2444442; 440626, 2444356; 440723, 2444291; 440896, 2444193; 440886, 2444183; 440723, 2444204; 440410, 2444280; 440237, 2444258; 440161, 2444248; 440075, 2444183; 440075, 2444064; 440183, 2443988; 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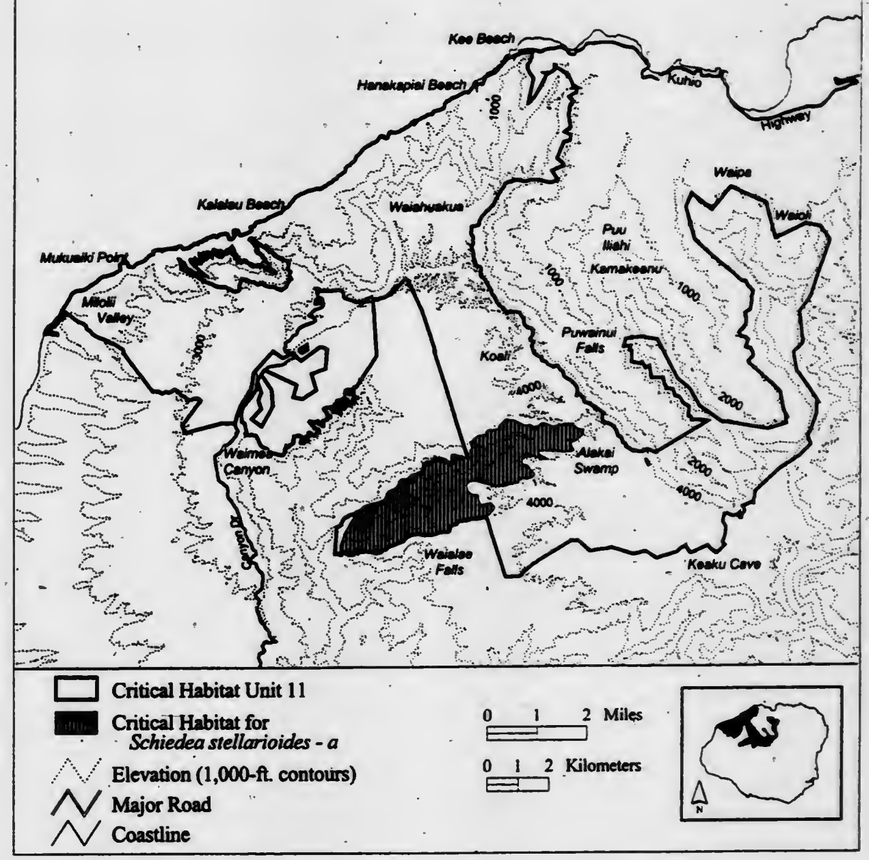
(B) Excluding 2 areas:

(*1*) Bounded by the following 3 points (1 ha; 3 ac): Start at 435132, 2442248; 435160, 2442164; 434848, 2442098; return to starting point; and

(*2*) Bounded by the following 4 points (0 ha; 1 ac): Start at 435151, 2442425; 435215, 2442393; 435195, 2442353; 435128, 2442379; return to starting point.

(C) **Note:** Map 198 follows:

Map 198 Unit 11 - *Schiedea stellarioides - a*

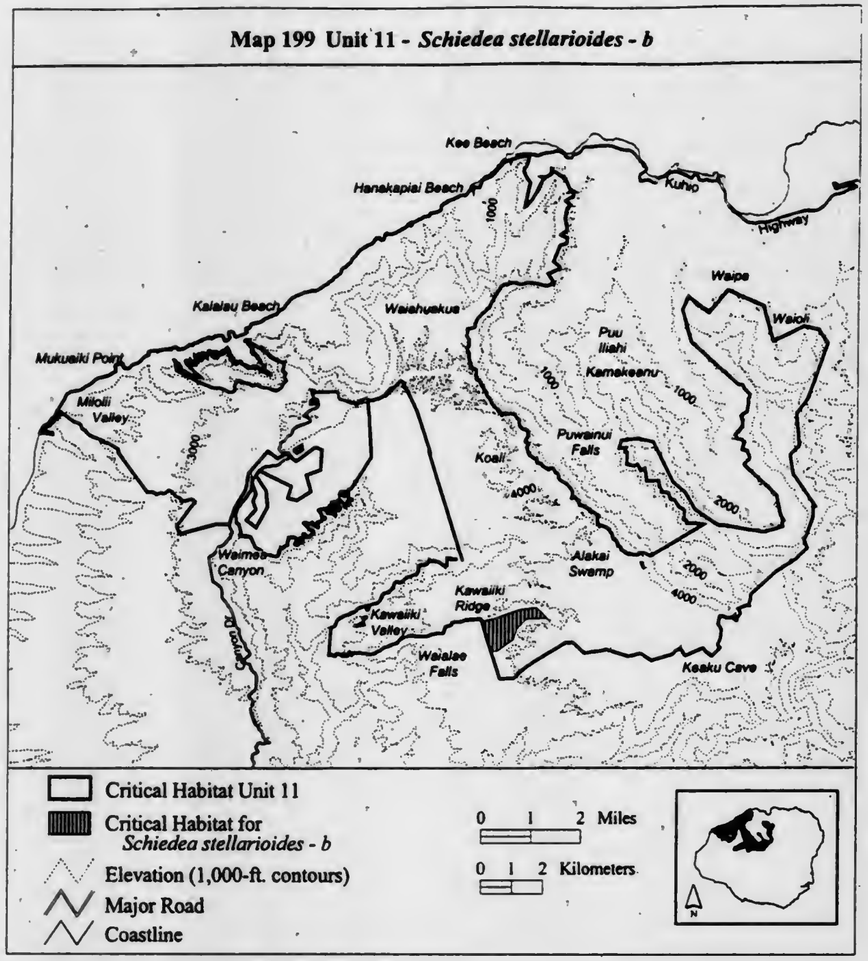


(cxcix) Kauai 11—*Schiedea stellarioides*—b (129 ha; 320 ac)

(A) Unit consists of the following 10 boundary points: Start at 438960, 2442270; 439367, 2442351; 440212, 2442656; 440725, 2442711; 441086, 2442365; 440393, 2442323; 440088, 2442032; 439991, 2441672; 439455, 2441287; 439273, 2441296; return to starting point.

(B) **Note:** Map 199 follows:

Map 199 Unit 11 - *Schiedea stellarioides - b*



(cc).Kauai 11—*Solanum sandwicense*—a (2,398 ha; 5,924 ac)

(A) Unit consists of the following 544 boundary points: Start at 430406, 2449796; 430471, 2449787; 430527, 2449754; 430583, 2449736; 430635, 2449693; 430696, 2449656; 430720, 2449646; 430819, 2449646; 430899, 2449674; 430918, 2449717; 430904, 2449834; 430927, 2449905; 430955, 2449985; 430993, 2450032; 431068, 2450041; 431153, 2450008; 431238, 2449970; 431285, 2449942; 431360, 2449956; 431449, 2449886; 431497, 2449867; 431605, 2449895; 431657, 2449890; 431699, 2449876; 431765, 2449810; 431864, 2449801; 431981, 2449792; 432047, 2449787; 432113, 2449740; 432217, 2449712; 432259, 2449679; 432344, 2449744; 432419, 2449806; 432471, 2449904; 432504, 2449961; 432579, 2450036; 432551, 2450083; 432523, 2450130; 432523, 2450182; 432565, 2450262; 432523, 2450304; 432475, 2450313; 432452, 2450337; 432461, 2450375; 432480, 2450426; 432490, 2450478; 432501, 2450529; 432504, 2450523; 432515, 2450503; 432524, 2450478; 433149, 2450124; 433338, 2449790; 434410, 2449639; 434833, 2449278; 434834, 2449277; 434839, 2449258; 434848, 2449239; 434872, 2449246; 435266, 2448909; 435282, 2448685; 435360, 2447538; 434700, 2446542; 434681, 2446520; 434675, 2446517; 434664, 2446523; 434636, 2446529; 434623, 2446526; 434620, 2446512; 434628, 2446479; 434625, 2446467; 434618, 2446459; 434582, 2446443; 434558, 2446439; 434533, 2446441; 434514, 2446449; 434500, 2446448; 434471, 2446422; 434457, 2446416; 434447, 2446420; 434434, 2446428; 434423, 2446441; 434416, 2446441; 434403, 2446435; 434400, 2446429; 434386, 2446417; 434371, 2446414; 434363, 2446417; 434355, 2446417; 434351, 2446414; 434333, 2446375; 434335, 2446361; 434340, 2446352; 434353, 2446346; 434368, 2446352; 434403, 2446359; 434411, 2446354; 434417, 2446344; 434421, 2446327; 434434, 2446306; 434469, 2446291; 434479, 2446288; 434499, 2446297; 434514, 2446317; 434528, 2446325; 434559, 2446322; 434568, 2446320; 434585,

2446324; 434595, 2446329; 434614, 2446349; 434620, 2446349; 434621, 2446342; 434611, 2446321; 434609, 2446262; 434614, 2446240; 434625, 2446221; 434647, 2446210; 434667, 2446205; 434694, 2446206; 434724, 2446208; 434733, 2446205; 434736, 2446194; 434735, 2446180; 434730, 2446170; 434717, 2446164; 434599, 2446152; 434582, 2446145; 434576, 2446128; 434582, 2446114; 434603, 2446087; 434642, 2446062; 434647, 2446055; 434645, 2446046; 434604, 2446029; 434573, 2446022; 434556, 2446012; 434535, 2445977; 434525, 2445949; 434504, 2445939; 434494, 2445951; 434477, 2446004; 434469, 2446036; 434437, 2446093; 434413, 2446116; 434381, 2446163; 434367, 2446175; 434336, 2446186; 434315, 2446192; 434302, 2446189; 434283, 2446179; 434270, 2446164; 434263, 2446144; 434271, 2446125; 434305, 2446079; 434308, 2446060; 434307, 2446049; 434301, 2446035; 434289, 2446026; 434273, 2446018; 434244, 2446023; 434235, 2446033; 434230, 2446049; 434232, 2446066; 434225, 2446086; 434215, 2446102; 434204, 2446112; 434185, 2446122; 434162, 2446123; 434150, 2446121; 434115, 2446106; 434097, 2446102; 434080, 2446091; 434072, 2446078; 434077, 2446064; 434091, 2446053; 434110, 2446044; 434160, 2446032; 434179, 2446026; 434195, 2446010; 434209, 2445991; 434227, 2445977; 434247, 2445969; 434271, 2445965; 434324, 2445970; 434336, 2445961; 434340, 2445952; 434341, 2445940; 434355, 2445930; 434361, 2445922; 434358, 2445902; 434337, 2445880; 434326, 2445859; 434311, 2445845; 434298, 2445842; 434283, 2445847; 434262, 2445859; 434230, 2445868; 434184, 2445859; 434167, 2445860; 434147, 2445871; 434110, 2445908; 434089, 2445947; 434074, 2445985; 434062, 2445995; 434039, 2446003; 434031, 2446004; 434014, 2445998; 434001, 2445989; 433994, 2445980; 434002, 2445963; 434016, 2445942; 434022, 2445924; 434035, 2445898; 434077, 2445846; 434186, 2445754; 434202, 2445733; 434205, 2445721; 434204, 2445697; 434190, 2445688; 434158, 2445694; 434142, 2445707; 434130, 2445726; 434108, 2445744; 434086, 2445750; 434053, 2445750; 434008, 2445764; 433990, 2445763; 433971, 2445751; 433955, 2445752; 433944, 2445759; 433946, 2445837; 433944, 2445864; 433927, 2445891; 433905, 2445911; 433891, 2445905; 433882, 2445891; 433875, 2445862; 433870, 2445857; 433859, 2445859; 433850, 2445878; 433837, 2445891; 433826, 2445896; 433791, 2445897; 433775, 2445901; 433758, 2445896; 433730, 2445871; 433708, 2445866; 433689, 2445873; 433675, 2445873; 433653, 2445857; 433650, 2445838; 433656, 2445820; 433690, 2445778; 433718, 2445762; 433735, 2445756; 433750, 2445748; 433756, 2445723; 433755, 2445706; 433759, 2445665; 433764, 2445656; 433781, 2445647; 433824, 2445642; 433851, 2445636; 433868, 2445628; 433879, 2445615; 433881, 2445595; 433867, 2445582; 433854, 2445582; 433827, 2445587; 433805, 2445594; 433787, 2445596; 433772, 2445590; 433763, 2445575; 433770, 2445538; 433773, 2445524; 433772, 2445519; 433762, 2445509; 433749, 2445500; 433732, 2445496; 433717, 2445497; 433708, 2445498; 433696, 2445499; 433686, 2445494; 433668, 2445480; 433655, 2445475; 433647, 2445474; 433635, 2445470; 433628, 2445467; 433621, 2445463; 433616, 2445456; 433609, 2445448; 433604, 2445445; 433598, 2445437; 433595, 2445433; 433595, 2445428; 433599, 2445420; 433611, 2445391; 433614, 2445376; 433620, 2445365; 433629, 2445356; 433637, 2445346; 433639, 2445336; 433641, 2445327; 433641, 2445319; 433637, 2445311; 433625, 2445307; 433619, 2445305; 433611, 2445307; 433604, 2445309; 433600, 2445313; 433591, 2445329; 433586, 2445341; 433582, 2445346; 433577, 2445353; 433573, 2445358; 433568, 2445366; 433567, 2445374; 433565, 2445381; 433564, 2445388; 433563, 2445395; 433562, 2445398; 433561, 2445399; 433556, 2445403; 433548, 2445403; 433527, 2445398; 433494, 2445388; 433477, 2445386; 433469, 2445388; 433463, 2445394; 433459, 2445402; 433456, 2445410; 433455, 2445416; 433452, 2445424; 433452, 2445436; 433451, 2445445; 433450, 2445450; 433449, 2445457; 433448, 2445461; 433446, 2445465; 433442, 2445467; 433438, 2445470; 433431, 2445468; 433426, 2445464; 433420, 2445459; 433413, 2445452; 433405, 2445444; 433396, 2445440; 433373, 2445432; 433344, 2445421; 433332, 2445422; 433317, 2445424; 433307, 2445428; 433288, 2445435; 433272, 2445440; 433260, 2445444; 433247, 2445450; 433242, 2445455; 433237, 2445459; 433233, 2445462; 433226, 2445466; 433221, 2445464; 433201, 2445464; 433193, 2445466; 433187, 2445464; 433181, 2445460; 433179, 2445455; 433179, 2445445; 433180, 2445437; 433192, 2445424; 433199, 2445416; 433225, 2445390; 433249, 2445376; 433262, 2445366; 433268, 2445357; 433274, 2445351; 433279, 2445342; 433287, 2445336; 433298, 2445333; 433312, 2445324; 433316, 2445313; 433323, 2445297; 433334, 2445273; 433342, 2445263; 433353, 2445252; 433362, 2445247; 433375, 2445242; 433386, 2445238; 433401, 2445232; 433411, 2445227; 433422, 2445223; 433432, 2445221; 433450, 2445220; 433460, 2445216; 433471, 2445210; 433482, 2445197; 433506, 2445166; 433514, 2445158; 433515, 2445153; 433512, 2445142; 433510, 2445136; 433508, 2445133; 433505, 2445128; 433500, 2445122; 433495, 2445122; 433487, 2445127; 433480, 2445134; 433474, 2445142; 433469, 2445149; 433467, 2445153; 433464, 2445154; 433457, 2445154; 433455, 2445147; 433452, 2445137; 433446, 2445124; 433444, 2445112; 433441, 2445104; 433438, 2445101; 433432, 2445099; 433423, 2445093; 433413, 2445082; 433395, 2445069; 433387, 2445061; 433382, 2445052; 433380, 2445044; 433380, 2445034; 433381, 2445023; 433380, 2445014; 433379, 2445001; 433251, 2445044; 433236, 2445061; 433216, 2445082; 433207, 2445091; 433201, 2445098; 433195, 2445100; 433189, 2445105; 433182, 2445104; 433177, 2445100; 433173, 2445094; 433172, 2445090; 433168, 2445082; 433164, 2445076; 433162, 2445074; 432855, 2445176; 431152, 2445138; 431083, 2445402; 430991, 2445457; 430977, 2445767; 431060, 2445963; 431278, 2446215; 431483, 2446536; 431491, 2446759; 431622, 2446390; 431522, 2446121; 431622, 2445871; 431312, 2445542; 431632, 2445303; 432001, 2445941; 431961, 2446460; 431624, 2446959; 431732, 2447115; 432759, 2446609; 432659, 2446240; 432948, 2446150; 433397, 2446440; 433257, 2446958; 433706, 2447138; 433746, 2447766; 433527, 2447856; 432918, 2447407; 432609, 2447647; 432320, 2447497; 432136, 2447629; 432001, 2447726; 431369, 2447027; 431298, 2446522; 430955, 2445963; 430827, 2445619; 430759, 2445406; 430512, 2445417; 430457, 2445529; 429615, 2446073; 429654, 2446125; 429591, 2446167; 429485, 2446305; 429263, 2446389; 429094, 2446389; 428972, 2446421; 428904, 2446474; 428793, 2446542; 428740, 2446564; 428655, 2446474; 428602, 2446447; 428476, 2446463; 428396, 2446447; 428285, 2446458; 428116, 2446474; 428047, 2446484; 427911, 2446671; 428135, 2446700; 428430, 2446668; 428652, 2446679; 428420, 2446795; 428346, 2446995; 428166, 2447059; 427892, 2447133; 427744, 2447249; 427839, 2447460; 428092, 2447502; 428314, 2447470; 428282, 2447639; 428504, 2447839; 428726, 2447966; 429032, 2448061; 428768, 2448156; 428504, 2448156; 428356,

2448261; 428430, 2448388; 428705, 2448546; 428494, 2448705; 428821, 2448757; 428842, 2448873; 428662, 2448989; 428705, 2449084; 428810, 2449127; 429074, 2449042; 429401, 2449063; 429433, 2449264; 429665, 2449464; 429887, 2449517; 430161, 2449559; 430108, 2449664; 429910, 2449925; 429944, 2449910; 429968, 2449904; 430016, 2449884; 430068, 2449856; 430172, 2449815; 430207, 2449804; 430261, 2449795; 430317, 2449781; 430340, 2449778; 430365, 2449787; 430392, 2449798; 430408, 2449802; 430410, 2449802; return to starting point.

(B) Excluding 3 areas:

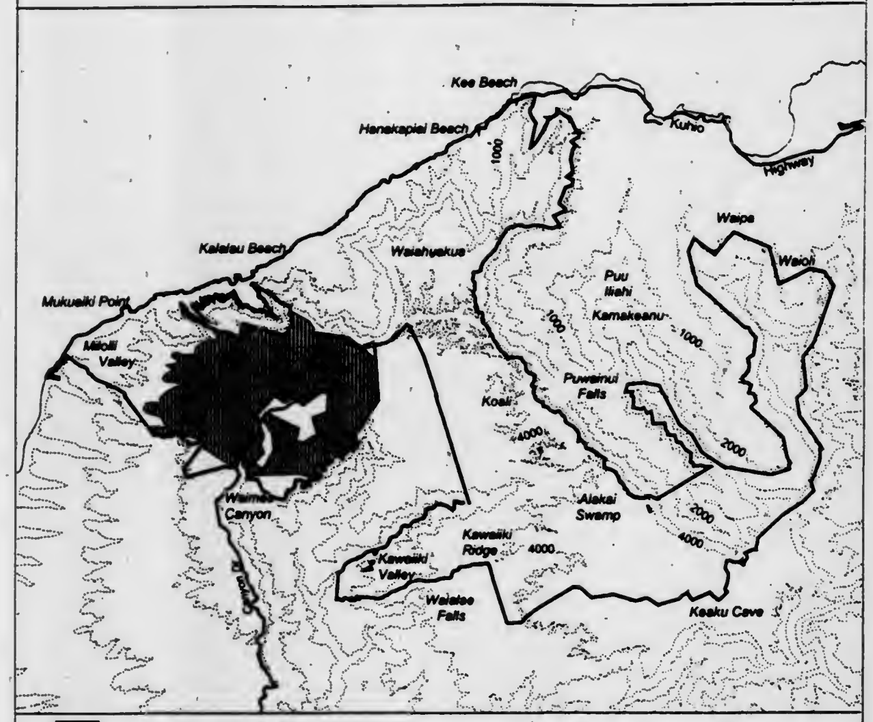
(*1*) Bounded by the following 10 points (3 ha; 8 ac): Start at 433368, 2449292; 433367, 2449352; 433448, 2449426; 433546, 2449412; 433567, 2449398; 433589, 2449323; 433612, 2449262; 433588, 2449244; 433567, 2449260; 433369, 2449255; return to starting point;

(*2*) Bounded by the following 4 points (3 ha; 8 ac): Start at 433109, 2447775; 432932, 2447668; 432827, 2447751; 433094, 2447922; return to starting point; and

(*3*) Bounded by the following 9 points (1 ha; 2ac): Start at 433484, 2449703; 433480, 2449629; 433457, 2449622; 433440, 2449604; 433426, 2449556; 433419, 2449599; 433399, 2449709; 433436, 2449707; 433460, 2449707; return to starting point.

(C) **Note:** Map 200 follows:

Map 200 Unit 11 - *Solanum sandwicense - a*



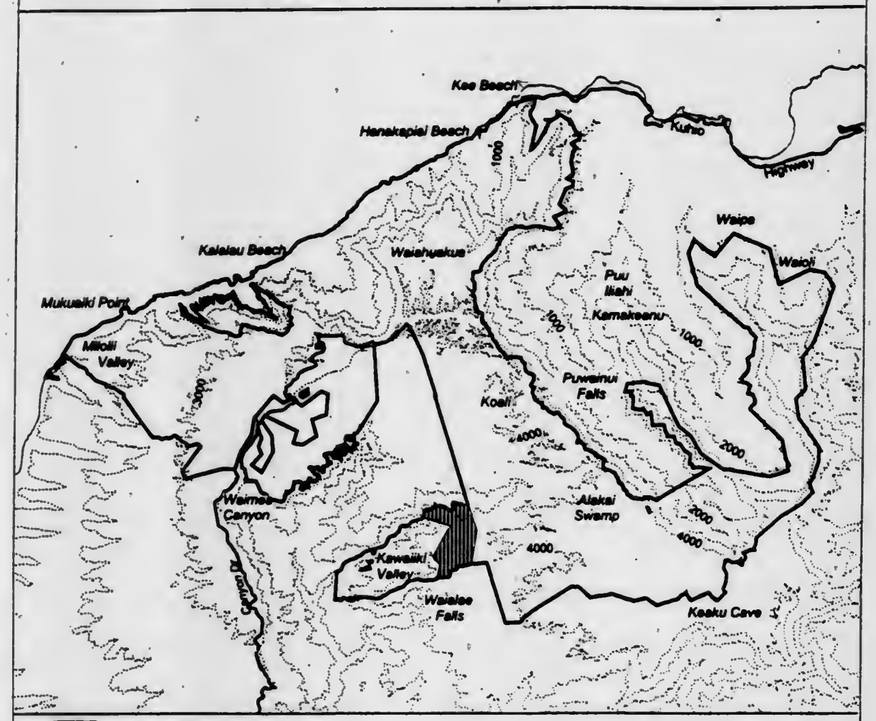
(cci) Kauai 11—*Solanum sandwicense*—b (249 ha; 614 ac)

(A) Unit consists of the following 173 boundary points: Start at 437312, 2441832; 437426, 2442297; 437228, 2442475; 437193, 2442545; 437746, 2443542; 436864, 2443836; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 436914, 2443948; 436913, 2443962; 436910, 2443981; 436908, 2443995; 436908,

2444013; 436911, 2444027; 436918, 2444040; 436926, 2444047; 436933, 2444055; 436942, 2444065; 436951, 2444073; 436961, 2444084; 436969, 2444094; 436975, 2444098; 436983, 2444102; 436994, 2444107; 437009, 2444108; 437026, 2444105; 437049, 2444100; 437067, 2444092; 437076, 2444089; 437106, 2444090; 437119, 2444096; 437128, 2444104; 437133, 2444112; 437137, 2444122; 437144, 2444130; 437156, 2444135; 437169, 2444141; 437183, 2444150; 437191, 2444154; 437202, 2444165; 437212, 2444177; 437228, 2444198; 437239, 2444213; 437245, 2444227; 437254, 2444239; 437263, 2444246; 437278, 2444240; 437294, 2444234; 437310, 2444225; 437332, 2444217; 437351, 2444217; 437370, 2444223; 437391, 2444223; 437412, 2444226; 437428, 2444226; 437445, 2444223; 437462, 2444219; 437482, 2444211; 437497, 2444205; 437541, 2444190; 437563, 2444183; 437578, 2444179; 437593, 2444170; 437610, 2444160; 437624, 2444146; 437636, 2444132; 437651, 2444119; 437671, 2444112; 437691, 2444102; 437703, 2444093; 437722, 2444082; 437732, 2444069; 437749, 2444061; 437758, 2444058; 437768, 2444060; 437780, 2444066; 437810, 2444080; 437821, 2444088; 437831, 2444100; 437833, 2444111; 437835, 2444126; 437833, 2444139; 437827, 2444163; 437822, 2444185; 437820, 2444206; 437818, 2444236; 437824, 2444265; 437828, 2444292; 437836, 2444314; 437843, 2444322; 437854, 2444327; 437871, 2444328; 437887, 2444323; 437909, 2444314; 437933, 2444302; 437960, 2444289; 437984, 2444274; 438007, 2444260; 438028, 2444258; 438048, 2444258; 438072, 2444260; 438087, 2444266; 438109, 2444271; 438133, 2444273; 438164, 2444270; 438196, 2444263; 438335, 2444214; 438611, 2443392; 438453, 2442321; 438453, 2442321; 438436, 2442321; 438433, 2442319; 438418, 2442311; 438392, 2442294; 438376, 2442278; 438355, 2442265; 438305, 2442256; 438254, 2442248; 438238, 2442248; 438219, 2442244; 438157, 2442234; 438130, 2442234; 438114, 2442232; 438098, 2442237; 438065, 2442246; 438049, 2442246; 438030, 2442243; 438012, 2442229; 438000, 2442216; 437998, 2442205; 437996, 2442188; 437984, 2442167; 437973, 2442147; 437954, 2442136; 437939, 2442128; 437926, 2442125; 437912, 2442123; 437873, 2442121; 437839, 2442110; 437826, 2442106; 437806, 2442092; 437791, 2442074; 437777, 2442052; 437766, 2442017; 437758, 2441998; 437754, 2441991; 437751, 2441981; 437745, 2441950; 437740, 2441938; 437736, 2441928; 437717, 2441899; 437711, 2441887; 437705, 2441878; 437689, 2441877; 437674, 2441875; 437647, 2441866; 437635, 2441866; 437617, 2441866; 437602, 2441867; 437566, 2441876; 437532, 2441880; 437522, 2441879; 437495, 2441869; 437460, 2441862; 437391, 2441858; 437366, 2441852; 437346, 2441845; 437332, 2441842; 437317, 2441835; return to starting point.

(B) **Note:** Map 201 follows:

Map 201 Unit 11 - *Solanum sandwicense - b*



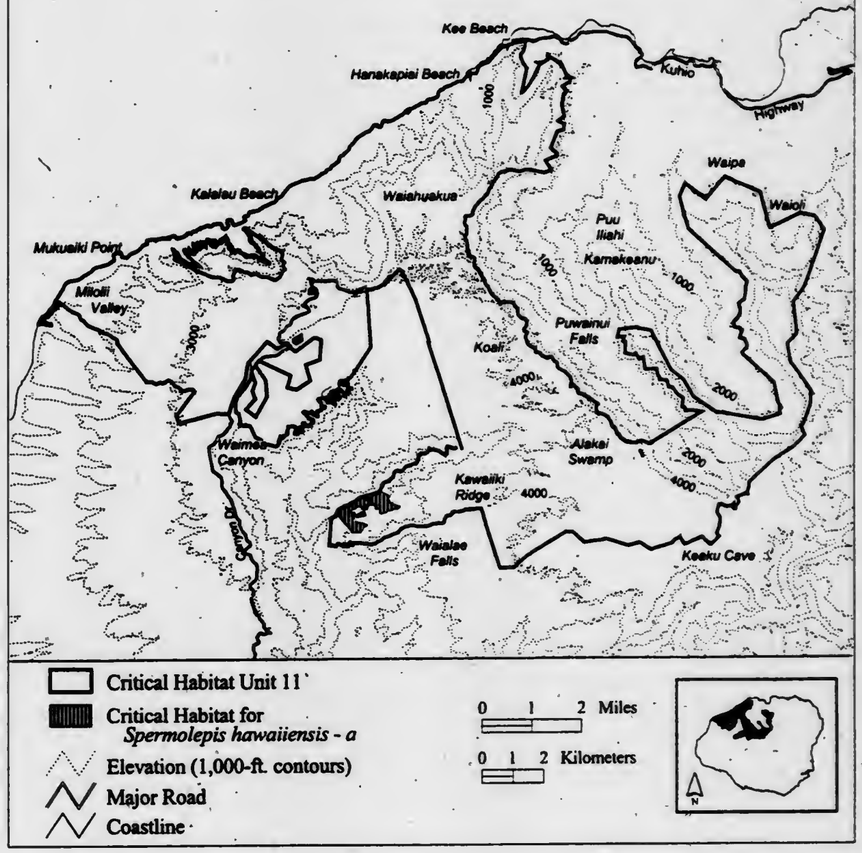
(ccii) Kauai 11—*Spermolepis hawaiiensis*—a (96 ha; 237 ac)

(A) Unit consists of the following 121 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435649, 2442926; 435987, 2442743; 435923, 2442638; 435980, 2442622; 435964, 2442531; 436062, 2442540; 436086, 2442482; 436308, 2442425; 436218, 2442327; 436136, 2442343; 436029, 2442277; 435923, 2442286; 435849, 2442204; 435783, 2442236; 435710, 2442171; 435669, 2442196; 435636, 2442343; 435513, 2442376; 435472, 2442490; 435374, 2442490; 435204, 2442398; 435151, 2442425; 435134, 2442390; 434956, 2442417; 434669, 2442261; 434841, 2442245; 434816, 2442146; 434775, 2442089; 434833, 2442040; 434833, 2441958; 434947, 2441917; 435144, 2441909; 435234, 2441810; 435136, 2441761; 435054, 2441589; 434767, 2441581; 434245, 2442204; 434247, 2442208; 434253, 2442234; 434261, 2442257; 434269, 2442282; 434282, 2442299; 434295, 2442316; 434308, 2442329; 434330, 2442350; 434344, 2442361; 434355, 2442368; 434370, 2442378; 434395, 2442387; 434416, 2442397; 434439, 2442410; 434458, 2442423; 434486, 2442437; 434504, 2442450; 434522, 2442454; 434537, 2442457; 434563, 2442460; 434590, 2442462; 434610, 2442464; 434628, 2442472; 434643, 2442483; 434664, 2442490; 434680, 2442493; 434700, 2442502; 434713, 2442515; 434725, 2442524; 434735, 2442532; 434755, 2442542; 434775, 2442551; 434800, 2442556; 434822, 2442562; 434842, 2442574; 434862, 2442596; 434883, 2442613; 434896, 2442626; 434916, 2442647; 434934, 2442668; 434949, 2442681; 434972, 2442699; 434986, 2442705; 434997, 2442708; 435006, 2442713; 435012, 2442717; 435026, 2442719; 435039, 2442722; 435061,

2442727; 435081, 2442733; 435100, 2442739; 435119, 2442747; 435135, 2442754; 435150, 2442764; 435164, 2442771; 435184, 2442774; 435201, 2442777; 435219, 2442778; 435237, 2442782; 435251, 2442783; 435228, 2442762; 435237, 2442643; 435284, 2442631; return to starting point.

(B) **Note:** Map 202 follows:

Map 202 Unit 11 - *Spermolepis hawaiiensis - a*



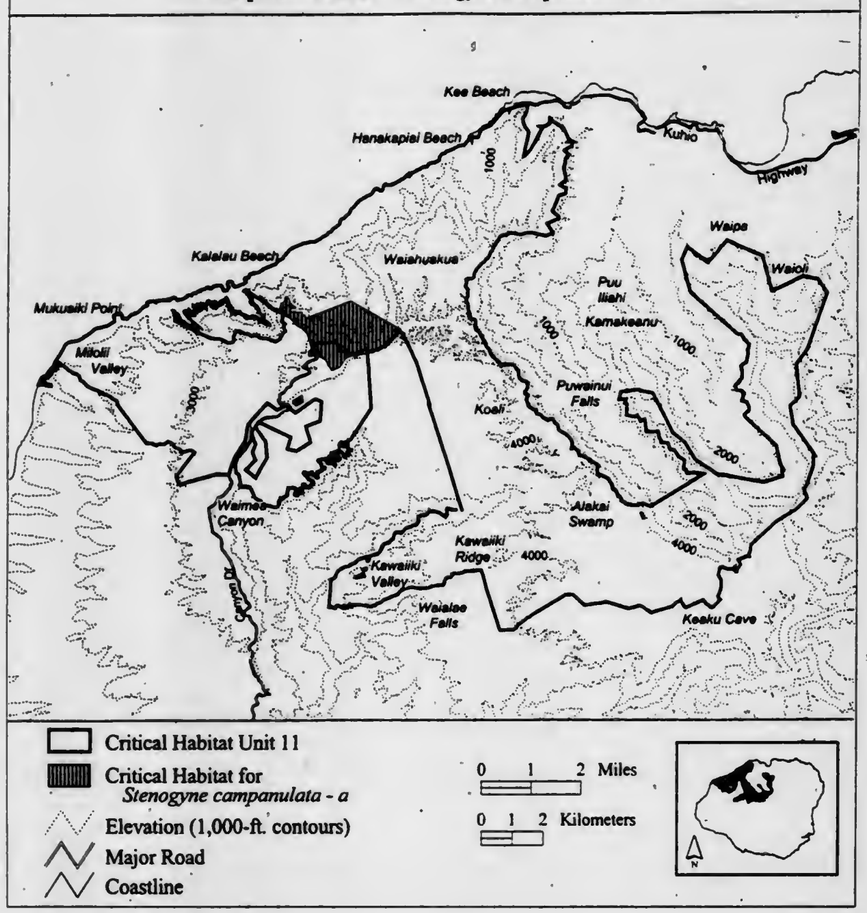
(cciii) Kauai 11—*Stenogyne campanulata*—a (425 ha; 1,050 ac)

(A) Unit consists of the following 144 boundary points: Start at 434899, 2449305; 434804, 2449290; 434736, 2449221; 434553, 2449155; 434346, 2448873; 434346, 2448873; 434133, 2448777; 434083, 2448755; 434075, 2448771; 434056, 2448804; 434012, 2448851; 433982, 2448889; 433967, 2448914; 433940, 2448999; 433923, 2449035; 433901, 2449073; 433878, 2449095; 433816, 2449138; 433722, 2449193; 433702, 2449209; 433670, 2449240; 433661, 2449253; 433655, 2449281; 433657, 2449308; 433655, 2449364; 433644, 2449421; 433637, 2449443; 433599, 2449496; 433583, 2449511; 433542, 2449535; 433502, 2449553; 433474, 2449581; 433459, 2449611; 433455, 2449620; 433457, 2449622; 433480, 2449629; 433484, 2449703; 433460, 2449707; 433445, 2449707; 433447, 2449716; 433452, 2449730; 433426, 2449734; 433382, 2449748; 433360, 2449764; 433333, 2449796; 433315, 2449831; 433305, 2449855; 433306, 2449889; 433274, 2449927; 433264, 2449953; 433222, 2450001; 433205, 2450039; 433187, 2450056; 433159, 2450071; 433150, 2450078; 433137, 2450097; 433123, 2450113; 433092, 2450137; 433056, 2450156; 433000, 2450177; 432990, 2450185; 432989, 2450202; 432984, 2450211; 432948, 2450219; 432933, 2450232; 432915, 2450267; 432908, 2450277; 432893, 2450280; 432816, 2450278; 432928, 2450321; 432968, 2450336; 432937, 2450390; 432818, 2450351; 432724, 2450450; 432672, 2450465; 432566, 2450524; 432499,

2450674; 432388, 2450682; 432448, 2450923; 432499, 2450934; 432562, 2451021; 432566, 2451116; 432649, 2451139; 432688, 2451076; 432704, 2451001; 432732, 2450923; 432850, 2450832; 432925, 2450788; 432893, 2450753; 432811, 2450745; 432740, 2450749; 432767, 2450651; 432822, 2450635; 432909, 2450674; 432953, 2450599; 432980, 2450635; 433130, 2450635; 433130, 2450532; 433201, 2450548; 433225, 2450473; 433286, 2450459; 434695, 2451004; 436326, 2450090; 436322, 2450080; 436296, 2450046; 436244, 2450016; 436213, 2450009; 436203, 2450009; 436111, 2449924; 436104, 2449902; 436086, 2449869; 436075, 2449855; 436058, 2449842; 436017, 2449817; 436001, 2449805; 435988, 2449789; 435981, 2449774; 435967, 2449754; 435899, 2449684; 435876, 2449668; 435842, 2449638; 435825, 2449617; 435797, 2449573; 435765, 2449537; 435716, 2449506; 435664, 2449469; 435598, 2449429; 435576, 2449421; 435549, 2449426; 435517, 2449423; 435501, 2449420; 435469, 2449405; 435418, 2449387; 435390, 2449374; 435368, 2449361; 435334, 2449356; 435319, 2449360; 435292, 2449379; 435269, 2449384; 435247, 2449385; 435234, 2449384; 435201, 2449386; 435171, 2449398; 435011, 2449352; return to starting point.

(B) **Note:** Map 203 follows:

Map 203 Unit 11 - *Stenogyne campanulata - a*



(cciv) Kauai 11—*Wilkesia hobdyi*—a (775 ha; 1,914 ac)

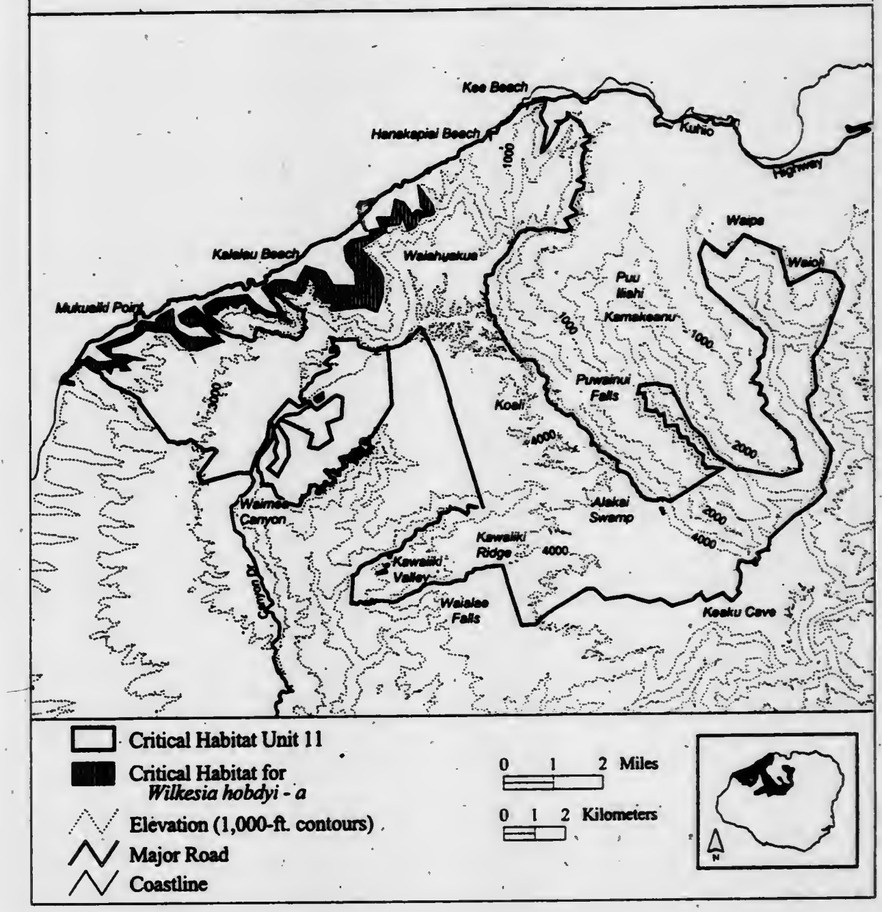
(A) Unit consists of the following 767 boundary points: Start at 429512, 2450126; 429503, 2450126; 429579, 2449948; 429883, 2449645; 429022, 2449316; 428566, 2449468; 428186, 2449923; 427856, 2449949; 427679, 2449974; 427375, 2450025; 427248, 2449898; 426868, 2449645; 426235, 2449468; 426235, 2449240; 426463, 2449240; 426767, 2449215; 426944, 2449037; 426716, 2448911; 426893, 2448708; 426539, 2448708; 426539, 2448809; 426311, 2448809; 426235,

2448581; 426057, 2448759; 425880, 2448733; 425529, 2448833; 425528, 2448834; 425487, 2448867; 425460, 2448891; 425421, 2448924; 425388, 2448948; 425362, 2448961; 425329, 2449019; 425500, 2449189; 425804, 2448987; 426108, 2448987; 426387, 2449063; 426083, 2449215; 425778, 2449493; 426589, 2449797; 427020, 2449949; 427020, 2450126; 427121, 2450227; 427223, 2450328; 427806, 2450227; 427704, 2450354; 427831, 2450506; 428262, 2450708; 428287, 2450176; 428464, 2449974; 428844, 2449771; 429199, 2449771; 429605, 2449746; 429427, 2449923; 429174, 2450151; 428819, 2450100; 428515, 2450278; 428439, 2450480; 428692, 2450657; 428971, 2450784; 429529, 2450252; 429224, 2450733; 429275, 2450809; 429655, 2451037; 430137, 2451088; 430694, 2451163; 430947, 2450860; 431277, 2450632; 431758, 2450480; 431480, 2450885; 431125, 2451366; 431581, 2451594; 431936, 2451594; 432265, 2451492; 432569, 2452049; 433203, 2451846; 433456, 2451416; 434191, 2451390; 434165, 2451821; 433887, 2452200; 433811, 2452631; 434039, 2452884; 434647, 2453010; 434647, 2453187; 435001, 2453263; 434875, 2453592; 435356, 2453592; 435407, 2453845; 435483, 2454174; 435787, 2454073; 435964, 2453820; 435990, 2453668; 436218, 2453845; 436572, 2453668; 436319, 2453946; 436294, 2454098; 436218, 2454629; 436724, 2453971; 436750, 2453667; 436344, 2453566; 436142, 2453263; 435888, 2453162; 435686, 2453643; 435660, 2453364; 435204, 2453314; 435204, 2453136; 434368, 2452605; 434672, 2452251; 434976, 2451922; 435103, 2451593; 435077, 2451061; 434900, 2450529; 434469, 2450707; 434013, 2450656; 433405, 2450580; 433456, 2450859; 433177, 2450859; 432848, 2451163; 432924, 2451416; 432645, 2451669; 432620, 2451492; 432468, 2451188; 432189, 2451138; 431986, 2451264; 431682, 2451163; 431710, 2451085; 431700, 2451088; 431641, 2451117; 431591, 2451154; 431525, 2451187; 431489, 2451219; 431446, 2451247; 431433, 2451261; 431373, 2451329; 431370, 2451323; 431360, 2451314; 431351, 2451321; 431337, 2451323; 431318, 2451324; 431304, 2451317; 431293, 2451316; 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(B) **Note:** Map 204 follows:

Map 204 Unit 11 - *Wilkesia hobdyi - a*

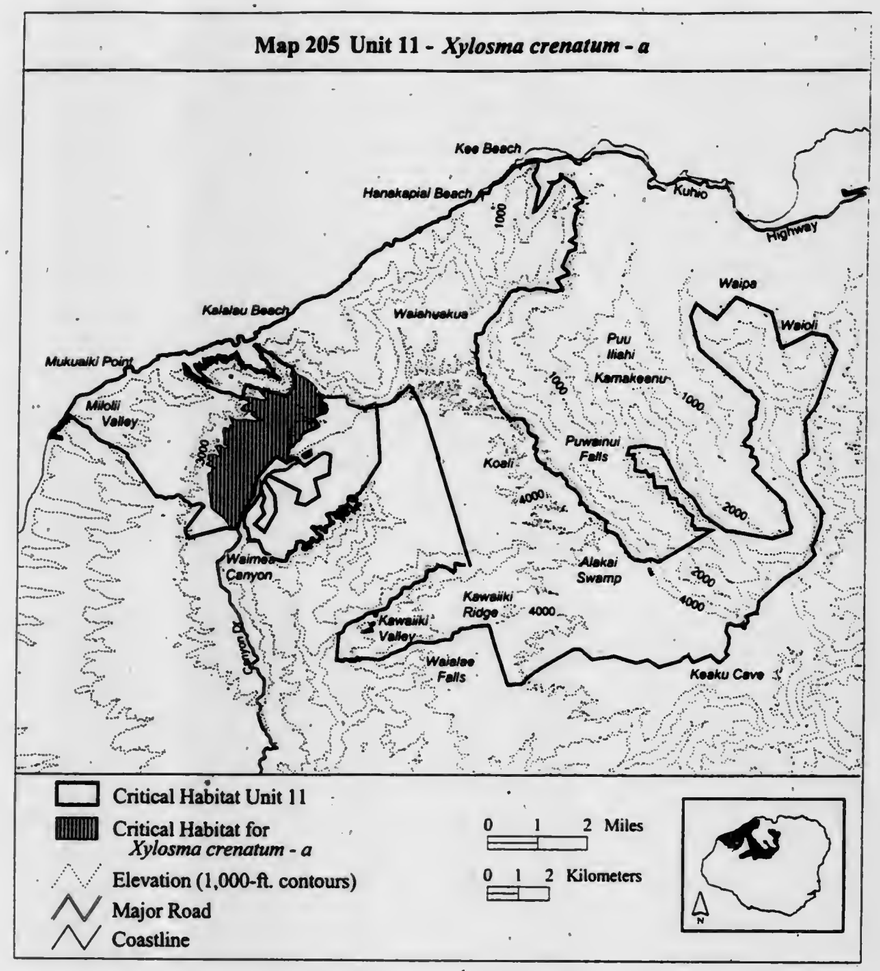


(ccv) Kauai 11—*Xylosma crenatum*—a (840 ha; 2,076 ac)

(A) Unit consists of the following 122 boundary points: Start at 432382, 2447776; 432423, 2447705; 432682, 2447686; 432655, 2447631; 432639, 2447624; 432609, 2447647; 432320, 2447497; 432136, 2447629; 432001, 2447726; 431389, 2447049; 431307, 2447021; 431213, 2446424; 431051, 2446119; 430955, 2445963; 430925, 2445882; 430674, 2445410; 430555, 2445415; 430312, 2445743; 429891, 2446070; 429781, 2447125; 429904, 2447201; 429895, 2447305; 430027, 2447324; 429696, 2447438; 429866, 2447552; 429639, 2447675; 429667, 2447779; 429989, 2447789; 430170, 2447694; 430113, 2447893; 429989, 2448054; 430189, 2448101; 430302, 2447988; 430473, 2448035; 430283, 2448130; 430293, 2448329; 430245, 2448528; 430283, 2448642; 430407, 2448632; 430464, 2448490; 430473, 2448755; 430615, 2448689; 430520, 2448859; 430445, 2449030; 430691, 2448878; 430976, 2448916; 431222, 2448869; 431488, 2448883; 431563, 2448888; 431326, 2448954; 431156, 2449077; 431298, 2449163; 430928, 2449182; 430824, 2449248; 430947, 2449381; 431127, 2449447; 430938, 2449579; 430795, 2449542; 431023, 2449655; 431080, 2449665; 431469, 2449560; 431696, 2449560; 431563, 2449674; 431391, 2449886; 431473, 2449876; 431497, 2449867; 431513, 2449871; 431548, 2449867; 431590, 2449891; 431605, 2449895; 431657, 2449890; 431678, 2449883; 431707, 2449868; 431765, 2449810; 431835, 2449804; 432251, 2449685; 432259, 2449679; 432263, 2449682; 432287, 2449675; 432405, 2449773; 432584, 2450032; 432523, 2450178; 432523, 2450182; 432565, 2450262; 432523, 2450304; 432475, 2450313; 432459, 2450330; 432457, 2450334; 432476, 2450414; 432480, 2450426; 432486, 2450458; 432504, 2450523; 432510, 2450542; 432633, 2450391; 432930, 2450259; 433160, 2450085; 433400, 2449772; 433437, 2449726; 433436, 2449707; 433399, 2449709; 433419, 2449599; 433426, 2449556; 433430, 2449518; 433525, 2449415; 433448, 2449426; 433367, 2449352; 433368,

2449292; 433369, 2449255; 433567, 2449260; 433588, 2449244; 433599, 2449252; 433608, 2449246; 433610, 2449137; 433383, 2449073; 433181, 2448930; 433395, 2448719; 433088, 2448562; 432861, 2448469; 432612, 2448172; 432493, 2448031; 432404, 2447993; 432356, 2447820; return to starting point.

(B) **Note:** Map 205 follows:



(ccvi) Kauai 11—*Zanthoxylum hawaiiense*—a (523 ha; 1,292 ac)

(A) Unit consists of the following 402 boundary points: Start at 435336, 2442801; 435344, 2442802; 435367, 2442807; 435391, 2442814; 435415, 2442819; 435435, 2442826; 435454, 2442831; 435476, 2442838; 435496, 2442844; 435516, 2442850; 435530, 2442853; 435534, 2442855; 435543, 2442858; 435556, 2442862; 435571, 2442867; 435585, 2442876; 435598, 2442885; 435608, 2442891; 435619, 2442899; 435627, 2442904; 435642, 2442920; 435658, 2442932; 435668, 2442948; 435673, 2442959; 435681, 2442977; 435688, 2442995; 435693, 2443006; 435698, 2443024; 435704, 2443036; 435708, 2443047; 435715, 2443064; 435722, 2443078; 435725, 2443086; 435729, 2443093; 435735, 2443103; 435738, 2443112; 435743, 2443127; 435749, 2443138; 435753, 2443149; 435757, 2443155; 435766, 2443169; 435778, 2443179; 435790, 2443186; 435804, 2443188; 435821, 2443194; 435842, 2443199; 435861, 2443202; 435874, 2443204; 435889, 2443208; 435904, 2443211; 435933, 2443223; 435942, 2443232; 435949, 2443246; 435958, 2443255; 435969, 2443263; 435979, 2443271; 435993, 2443281; 436010, 2443297; 436032, 2443316; 436048, 2443332; 436064, 2443343; 436080, 2443358; 436089, 2443375; 436095, 2443390; 436100, 2443403; 436107, 2443421; 436113, 2443456; 436118, 2443477; 436123, 2443502; 436134, 2443520; 436146,

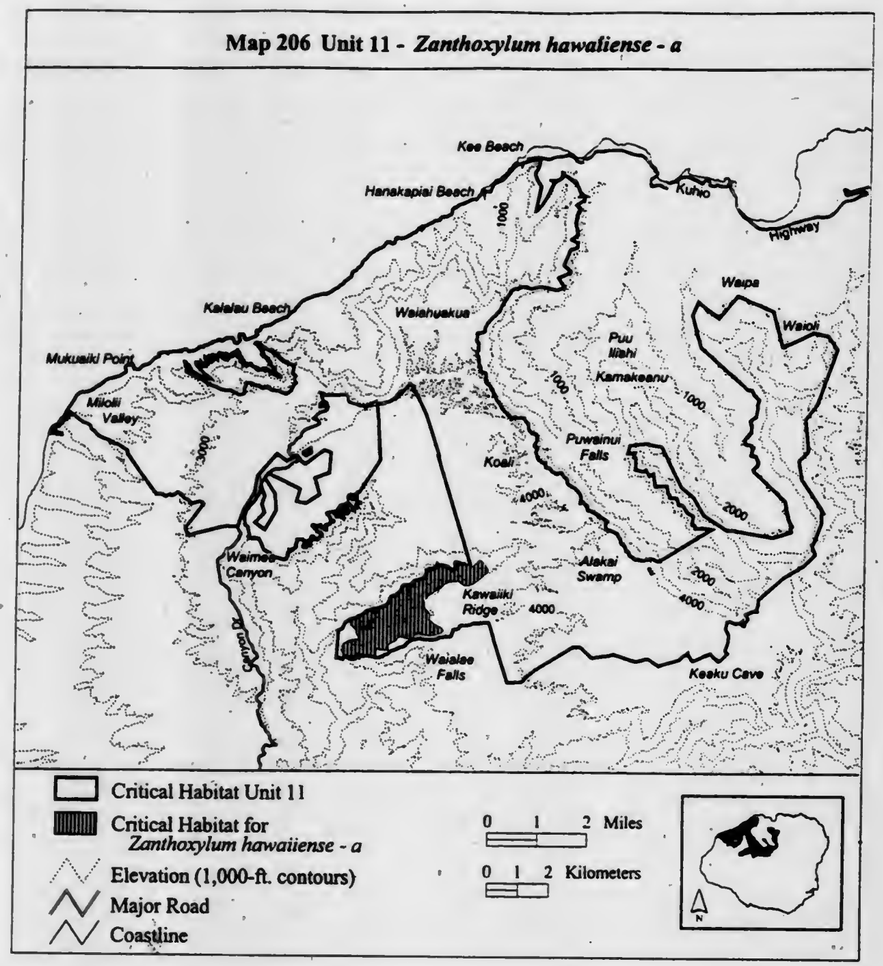
2443534; 436160, 2443543; 436175, 2443554; 436190, 2443560; 436213, 2443563; 436227, 2443563; 436240, 2443562; 436254, 2443557; 436265, 2443552; 436274, 2443547; 436287, 2443540; 436300, 2443537; 436315, 2443532; 436328, 2443529; 436337, 2443528; 436348, 2443531; 436357, 2443536; 436369, 2443546; 436380, 2443558; 436392, 2443572; 436403, 2443585; 436421, 2443611; 436438, 2443631; 436460, 2443655; 436478, 2443676; 436497, 2443688; 436518, 2443696; 436534, 2443700; 436558, 2443707; 436576, 2443711; 436597, 2443714; 436611, 2443716; 436630, 2443718; 436644, 2443720; 436655, 2443724; 436666, 2443731; 436678, 2443742; 436697, 2443756; 436708, 2443763; 436726, 2443769; 436745, 2443772; 436758, 2443775; 436771, 2443776; 436788, 2443776; 436799, 2443778; 436808, 2443781; 436818, 2443785; 436823, 2443786; 436829, 2443790; 436837, 2443797; 436841, 2443801; 436845, 2443807; 436852, 2443819; 436861, 2443831; 436870, 2443847; 436882, 2443863; 436890, 2443877; 436900, 2443900; 436911, 2443923; 436914, 2443936; 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(B) Excluding 2 areas:

(*1*) Bounded by the following 3 points (1 ha, 3 ac): Start at 435132, 2442248; 435160, 2442164; 434848, 2442098; return to starting point; and

(*2*) Bounded by the following 4 points (0 ha, 1 ac): Start at 435151, 2442425; 435215, 2442393; 435195, 2442353; 435128, 2442379; return to starting point.

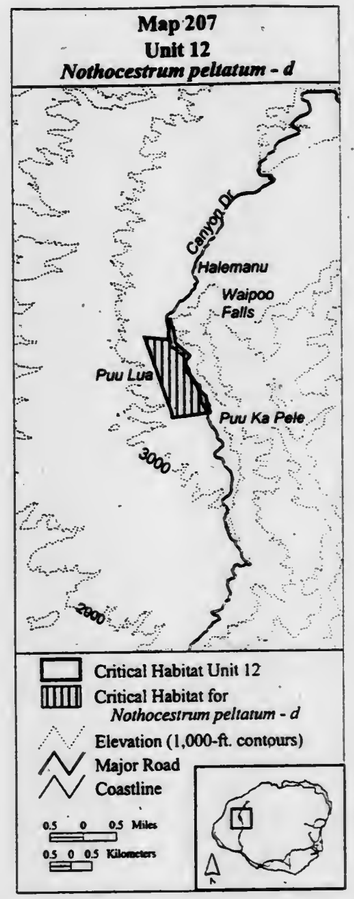
(C) **Note:** Map 206 follows:



(ccvii) Kauai 12—*Nothocestrum peltatum*—d (162 ha; 400 ac)

(A) Unit consists of the following 65 boundary points: Start at 431190, 2442015; 430254, 2441884; 430238, 2442005; 429593, 2443842; 430155, 2443777; 430205, 2444275; 430214, 2444280; 430308, 2443912; 430339, 2443693; 430676, 2443374; 430654, 2443340; 430640, 2443324; 430608, 2443294; 430597, 2443274; 430587, 2443203; 430586, 2443158; 430592, 2443144; 430612, 2443121; 430634, 2443085; 430661, 2443014; 430671, 2442975; 430675, 2442949; 430682, 2442928; 430690, 2442911; 430702, 2442896; 430742, 2442852; 430777, 2442811; 430786, 2442795; 430789, 2442762; 430795, 2442751; 430844, 2442701; 430857, 2442692; 430896, 2442674; 430907, 2442665; 430914, 2442656; 430921, 2442640; 430921, 2442620; 430918, 2442601; 430912, 2442582; 430914, 2442564; 430919, 2442555; 430931, 2442541; 430947, 2442529; 430975, 2442502; 431001, 2442469; 431018, 2442445; 431030, 2442435; 431051, 2442425; 431058, 2442415; 431061, 2442389; 431068, 2442359; 431085, 2442326; 431091, 2442304; 431090, 2442285; 431094, 2442268; 431108, 2442231; 431119, 2442215; 431132, 2442205; 431142, 2442193; 431142, 2442168; 431126, 2442140; 431123, 2442121; 431130, 2442104; 431167, 2442034; 431188, 2442016; return to starting point.

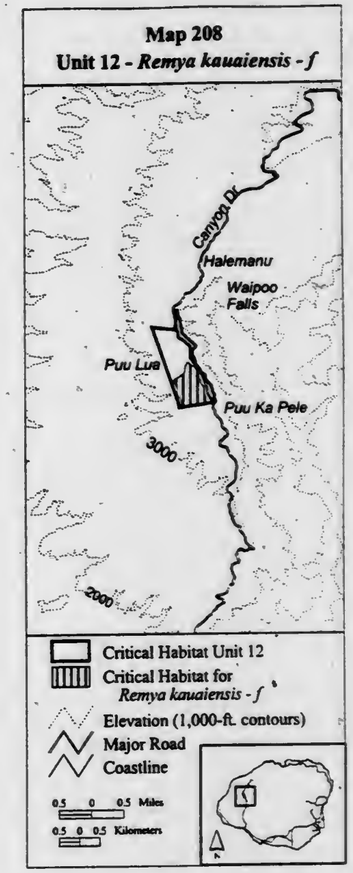
(B) **Note:** Map 207 follows:



(ccviii) Kauai 12—*Remya kauaiensis*—f (52 ha; 128 ac)

(A) Unit consists of the following 42 boundary points: Start at 430320, 2441937; 430316, 2441992; 430320, 2442046; 430290, 2442087; 430221, 2442167; 430221, 2442192; 430203, 2442243; 430214, 2442345; 430181, 2442389; 430163, 2442448; 430130, 2442480; 430119, 2442542; 430148, 2442568; 430258, 2442619; 430334, 2442666; 430382, 2442714; 430407, 2442779; 430407, 2442841; 430422, 2442911; 430458, 2442951; 430465, 2442976; 430502, 2442954; 430542, 2442911; 430608, 2442896; 430659, 2442845; 430684, 2442801; 430684, 2442754; 430695, 2442721; 430728, 2442684; 430739, 2442593; 430779, 2442550; 430783, 2442477; 430812, 2442440; 430859, 2442400; 430877, 2442313; 430881, 2442218; 430907, 2442138; 430921, 2442006; 430888, 2441992; 430699, 2441963; 430582, 2441941; 430356, 2441922; return to starting point.

(B) **Note:** Map 208 follows:

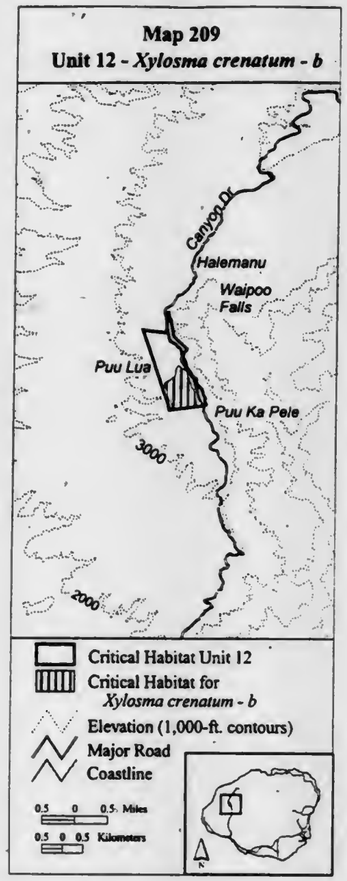


(ccix) Kauai 12—*Xylosma crenatum*—b (52 ha; 128 ac)

(A) Unit consists of the following 42 boundary points: Start at 430320, 2441937; 430316, 2441992; 430320, 2442046; 430290, 2442087; 430221, 2442167; 430221, 2442192; 430203, 2442243; 430214, 2442345; 430181, 2442389; 430163, 2442448; 430130, 2442480; 430119, 2442542; 430148, 2442568; 430258, 2442619; 430334, 2442666; 430382, 2442714; 430407, 2442779; 430407, 2442841; 430422, 2442911; 430458, 2442951; 430465, 2442976; 430502, 2442954; 430542, 2442911; 430608, 2442896; 430659, 2442845; 430684, 2442801; 430684, 2442754; 430695, 2442721; 430728, 2442684; 430739, 2442593; 430779,

2442550; 430783, 2442477; 430812, 2442440; 430859, 2442400; 430877, 2442313; 430881, 2442218; 430907, 2442138; 430921, 2442006; 430888, 2441992; 430699, 2441963; 430582, 2441941; 430356, 2441922; return to starting point.

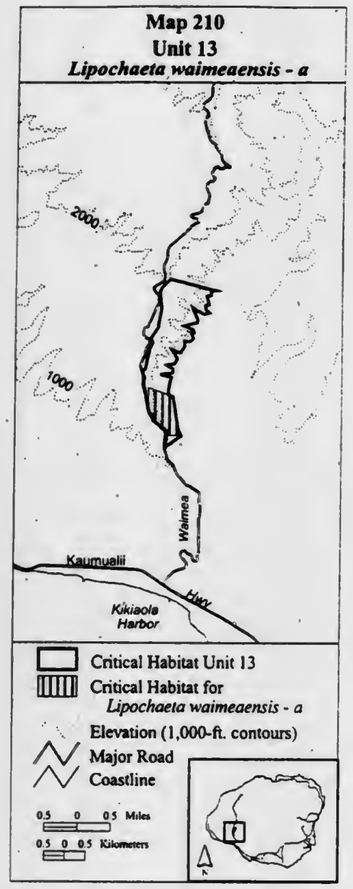
(B) **Note:** Map 209 follows:



(ccx) Kauai 13—*Lipochaeta waimeaensis*—a (56 ha; 139 ac)

(A) Unit consists of the following 18 boundary points: Start at 430198, 2432906; 430189, 2433035; 430229, 2433022; 430792, 2432814; 430834, 2432547; 430921, 2432026; 430997, 2431853; 430996, 2431853; 430633, 2431864; 430621, 2431947; 430622, 2431957; 430619, 2431960; 430615, 2431990; 430308, 2432247; 430317, 2432397; 430247, 2432440; 430207, 2432544; 430198, 2432716; return to starting point.

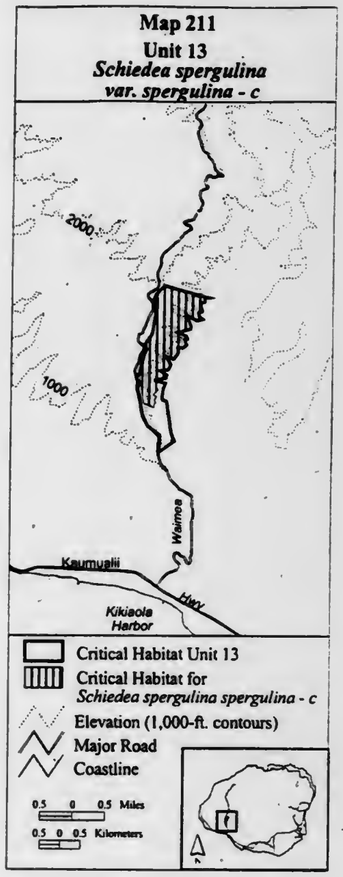
(B) **Note:** Map 210 follows:



(ccxi) Kauai 13—*Schiedea spergulina* var. *spergulina*—c (221 ha; 545 ac)

(A) Unit consists of the following 59 boundary points: Start at 430475, 2432656; 430222, 2432760; 430103, 2433479; 430210, 2433949; 430290, 2434118; 430239, 2434242; 430239, 2434243; 430259, 2434273; 430414, 2434498; 430435, 2434630; 430495, 2434992; 430479, 2435099; 430454, 2435369; 430488, 2435448; 430698, 2435675; 430703, 2435680; 431807, 2435389; 431700, 2435381; 431700, 2435274; 431600, 2435251; 431654, 2435052; 431562, 2435029; 431562, 2434945; 431661, 2434861; 431661, 2434861; 431524, 2434832; 431520, 2434828; 431263, 2434968; 431370, 2434692; 431363, 2434623; 431049, 2434539; 431256, 2434455; 431294, 2434371; 431217, 2434363; 431267, 2434228; 431236, 2434191; 431179, 2434149; 431057, 2434164; 431072, 2434034; 430969, 2433883; 430955, 2433867; 430955, 2433866; 430750, 2433950; 430892, 2433741; 430865, 2433686; 430819, 2433613; 430635, 2433582; 430789, 2433483; 430785, 2433441; 430774, 2433398; 430505, 2433360; 430544, 2433268; 430513, 2433223; 430567, 2433100; 430459, 2432985; 430536, 2432939; 430482, 2432847; 430521, 2432771; 430490, 2432756; return to starting point.

(B) **Note:** Map 211 follows:

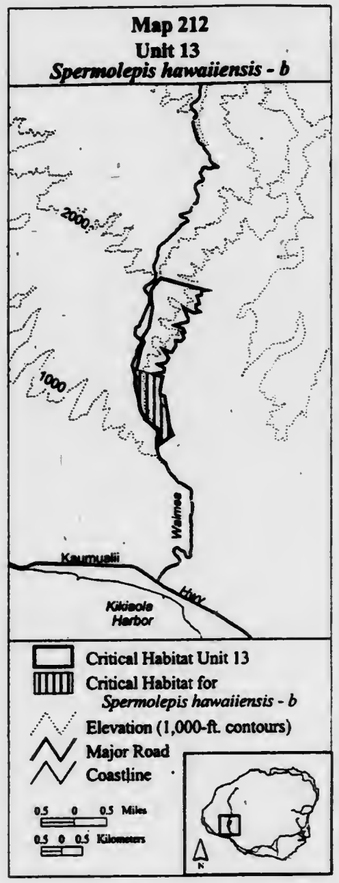


(ccxii) Kauai 13—*Spermolepis hawaiiensis*—b (87 ha; 215 ac)

(A) Unit consists of the following 29 boundary points: Start at 430602, 2431571; 430633, 2431875; 430620, 2431939; 430622, 2431957; 430615, 2431963; 430605, 2432015; 430417, 2432156; 430304, 2432274; 430205, 2432470; 430137, 2432799; 430123, 2432906; 430115, 2432961; 430081, 2433067; 430077, 2433154; 430099, 2433286; 430054, 2433369; 430032, 2433480; 430032, 2433480; 430747,

2433285; 430743, 2433270; 430745, 2433254; 430708, 2433142; 430680, 2432935; 430698, 2432672; 430820, 2432494; 430839, 2432344; 430858, 2432156; 430952, 2431931; 430980, 2431846; return to starting point.

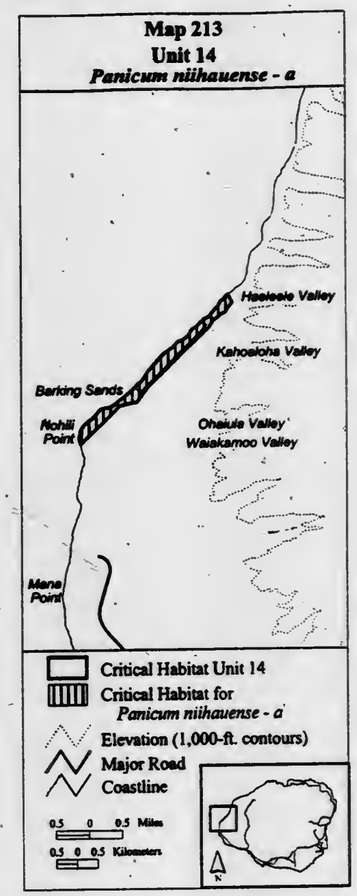
(B) **Note:** Map 212 follows:



(ccxiii) Kauai 14—*Panicum niihauense*—a (120 ha; 297 ac)

(A) Unit consists of the following 17 boundary points: coastline; 420498, 2440857; 420095, 2440787; 419127, 2439857; 422725, 2443464; 422749, 2443432; 422830, 2443273; 422794, 2443226; 422660, 2443057; 422609, 2443018; 422557, 2443003; 422396, 2442865; 422383, 2442876; 422340, 2442802; 422337, 2442797; 422267, 2442675; 422055, 2442471; 420764, 2441227; coastline.

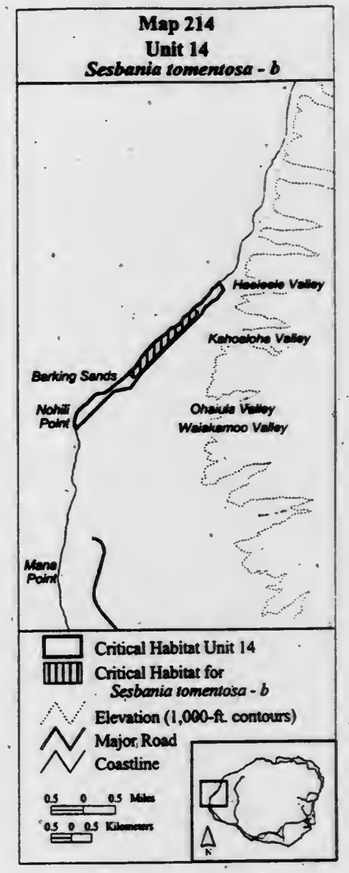
(B) **Note:** Map 213 follows:



(ccxiv) Kauai 14—*Sesbania tomentosa*—b (44 ha; 110 ac)

(A) Unit consists of the following 7 boundary points: coastline; 422206, 2442741; 421987, 2442507; 420735, 2441277; 420643, 2441178; 420572, 2441093; 420438, 2441235; 422071, 2442818; coastline.

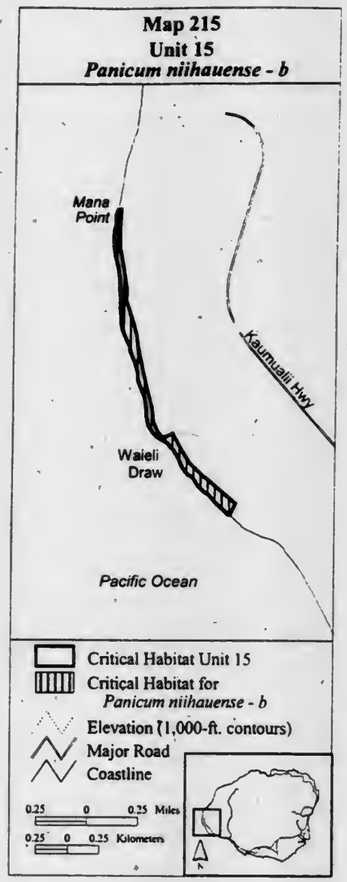
(B) **Note:** Map 214 follows:



(ccxv) Kauai 15—*Panicum niihauense*—b (16 ha; 39 ac)

(A) Unit consists of the following 24 boundary points: coastline; 418718, 2436405; 418711, 2436261; 418713, 2436100; 418746, 2435916; 418771, 2435768; 418763, 2435699; 418816, 2435550; 418853, 2435417; 418863, 2435329; 418904, 2435147; 418938, 2434999; 418971, 2434874; 418992, 2434737; 419022, 2434668; 419057, 2434621; 419092, 2434621; 419145, 2434647; 419209, 2434531; 419280, 2434420; 419395, 2434316; 419428, 2434292; 419645, 2434109; 419600, 2434015; 418693, 2436403 coastline.

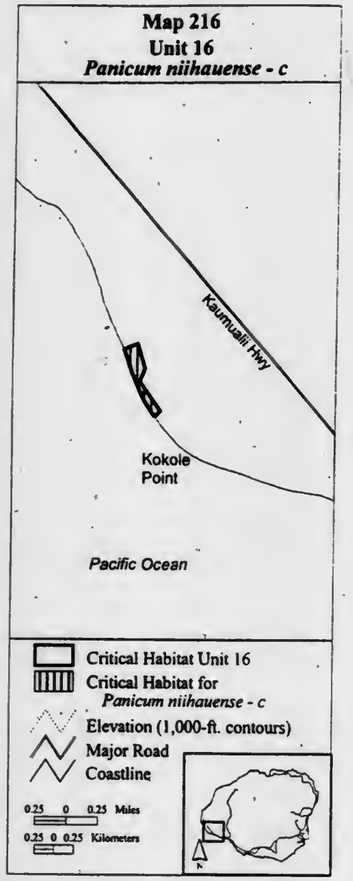
(B) **Note:** Map 215 follows:



(ccxvi) Kauai 16—*Panicum niihauense*—c (11 ha; 28 ac)

(A) Unit consists of the following 8 boundary points: coastline; 421032, 2432070; 421129, 2431750; 421067, 2431592; 421328, 2431221; 421301, 2431191; 421254, 2431147; 420862, 2431988; 420900, 2432013; coastline.

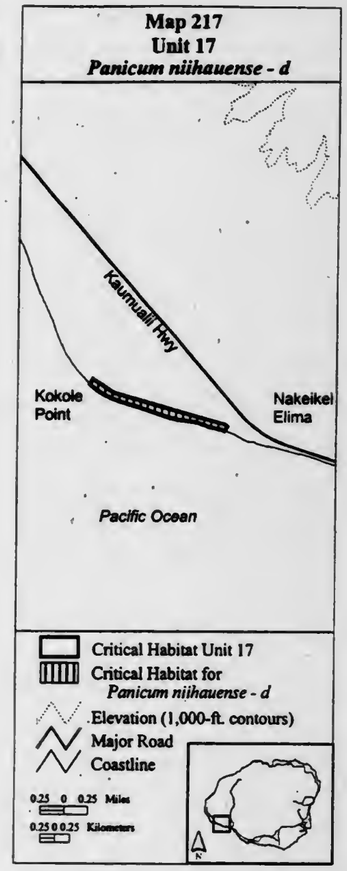
(B) **Note:** Map 216 follows:



(ccxvii) Kauai 17—*Panicum niihauense*—d (28 ha; 68 ac)

(A) Unit consists of the following 5 boundary points: coastline; 423847, 2430037; 423765, 2429965; 422210, 2430021; 421524, 2430758; 421555, 2430809; coastline.

(B) **Note:** Map 217 follows:



(CCXVIII) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI

Unit name	Species occupied	Species unoccupied
Kauai 1—*Ischaemum byrone*—a	*Ischaemum byrone*	
Kauai 2—*Ischaemum byrone*—b		*Ischaemum byrone*
Kauai 3—*Ischaemum byrone*—c	*Ischaemum byrone.*	
Kauai 4—*Adenophorus periens*—a	*Adenophorus periens*	
Kauai 4—*Cyanea asarifolia*—a	*Cyanea asarifolis*	
Kauai 4—*Cyanea recta*—a	*Cyanea recta*	
Kauai 4—*Cyanea recta*—b	*Cyanea recta*	
Kauai 4—*Cyanea remyi*—a	*Cyanea remyi*	
Kauai 4—*Cyrtandra cyaneoides*—a	*Cyrtandra cyaneoides*	
Kauai 4—*Cyrtandra limahuliensis*—a	*Cyrtandra limahuliensis*	
Kauai 4—*Cyrtandra limahuliensis*—b	*Cyrtandra limahuliensis*	
Kauai 4—*Hibiscus clayi*—a		*Hibiscus clayi*
Kauai 4—*Hibiscus clayi*—b		*Hibiscus clayi*

(CCXVIII) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 4—*Hibiscus clayi*—c		*Hibiscus clayi*
Kauai 4—*Hibiscus clayi*—d		*Hibiscus clayi*
Kauai 4—*Hibiscus clayi*—e		*Hibiscus clayi*
Kauai 4—*Labordia lydgatei*—a	*Labordia lydgatei*	
Kauai 4—*Phyllostegia wawrana*—a	*Phyllostegia wawrana*	
Kauai 5—*Hibiscus clayi*—f	*Hibiscus clayi*	
Kauai 5—*Munroidendron racemosum*—a	*Munroidendron racemosum*	
Kauai 6—*Brighamia insignis*—a	*Brighamia insignis*	
Kauai 7—*Brighamia insignis*—b	*Brighamia insignis*	
Kauai 7—*Delissea rhytidosperma*—a	*Delissea rhytidosperma*	
Kauai 7—*Isodendrion longifolium*—a	*Isodendrion longifolium*	
Kauai 7—*Lipochaeta micrantha*—a	*Lipochaeta micrantha*	
Kauai 7—*Melicope haupuensis*—a		*Melicope haupuensis*
Kauai 7—*Munroidendron racemosum*—b	*Munroidendron racemosum*	
Kauai 7—*Myrsine linearifolia*—a		*Myrsine linearifolia*
Kauai 7—*Peucedanum sandwicense*—a	*Peucedanum sandwicense*	
Kauai 7—*Pteralyxia kauaiensis*—a	*Pteralyxia kauaiensis*	
Kauai 7—*Schiedea nuttallii*—a	*Schiedea nuttallii*	
Kauai 8—*Sesbania tomentosa*—a		*Sesbania tomentosa*
Kauai 9—*Schiedea spergulina* var. *leiopoda*—a	*Schiedea spergulina* var. *leiopoda*	
Kauai 10—*Adenophorus periens*—b	*Adenophorus periens*	
Kauai 10—*Bonamia menziesii*—a	*Bonamia menziesii*	
Kauai 10—*Cyanea asarifolia*—b	*Cyanea asarifolia*	
Kauai 10—*Cyanea remyi*—b	*Cyanea remyi*	
Kauai 10—*Cyanea undulata*—a	*Cyanea undulata*	
Kauai 10—*Cyrtandra limahuliensis*—c	*Cyrtandra limahuliensis*	
Kauai 10—*Dubautia pauciflorula*—a	*Dubautia pauciflorula*	
Kauai 10—*Exocarpos luteolus*—a	*Exocarpos luteolus*	
Kauai 10—*Hesperomannia lydgatei*—a	*Hesperomannia lydgatei*	
Kauai 10—*Isodendrion longifolium*—b	*Isodendrion longifolium*	
Kauai 10—*Labordia lydgatei*—b	*Labordia lydgatei*	
Kauai 10—*Labordia tinifolia* var. *wahiawaensis*—a	*Labordia tinifolia* var. *wahiawaensis.*	
Kauai 10—*Lysimachia filifolia*—a	*Lysimachia filifolia*	
Kauai 10—*Myrsine linearifolia*—b	*Myrsine linearifolia*	
Kauai 10—*Phlegmariurus nutans*—a		*Phlegmariurus nutans*
Kauai 10—*Plantago princeps*—a	*Plantago princeps*	
Kauai 10—*Pteralyxia kauaiensis*—b	*Pteralyxia kauaiensis*	
Kauai 10—*Viola helenae*—a	*Viola helenae*	
Kauai 10—*Viola kauaiensis* var. *wahiawaensis*—a	*Viola kauaiensis* var. *wahiawaensis.*	
Kauai 11—*Adenophorus periens*—c	*Adenophorus periens*	
Kauai 11—*Adenophorus periens*—d	*Adenophorus periens*	
Kauai 11—*Alectryon macrococcus*—a	*Alectryon macrococcus*	
Kauai 11—*Alectryon macrococcus*—b	*Alectryon macrococcus*	
Kauai 11—*Alsinidendron lychnoides*—a	*Alsinidendron lychnoides*	
Kauai 11—*Alsinidendron lychnoides*—b	11—*Alsinidendron lychnoides*—a	
Kauai 11—*Alsinidendron lychnoides*—c		*Alsinidendron lychnoides*
Kauai 11—*Alsinidendron viscosum*—a	*Alsinidendron viscosum*	
Kauai 11—*Alsinidendron viscosum*—b	*Alsinidendron viscosum*	
Kauai 11—*Alsinidendron viscosum*—c	*Alsinidendron viscosum*	
Kauai 11—*Alsinidendron viscosum*—d	*Alsinidendron viscosum*	
Kauai 11—*Bonamia menziesii*—b	*Bonamia menziesii*	
Kauai 11—*Brighamia insignis*—c	*Brighamia insignis*	
Kauai 11—*Centaurium sebaeoides*—a	*Centaurium sebaeoides*	
Kauai 11—*Chamaesyce halemanui*—a		*Chamaesyce halemanui*
Kauai 11—*Chamaesyce halemanui*—b	*Chamaesyce halemanui*	
Kauai 11—*Chamaesyce halemanui*—c	*Chamaesyce halemanui*	
Kauai 11—*Ctenitis squamigera*—a		*Ctenitis squamigera*
Kauai 11—*Cyanea recta*—c	*Cyanea recta*	
Kauai 11—*Cyanea recta*—d		*Cyanea recta*
Kauai 11—*Cyanea remyi*—c	*Cyanea remyi*	
Kauai 11—*Cyanea remyi*—d	*Cyanea remyi*	
Kauai 11—*Cyperus trachysanthos*—a	*Cyperus trachysanthos*	
Kauai 11—*Cyrtandra cyaneoides*—b	*Cyrtandra cyaneoides*	
Kauai 11—*Cyrtandra cyaneoides*—c	*Cyrtandra cyaneoides*	
Kauai 11—*Cyrtandra limahuliensis*—d	*Cyrtandra limahuliensis*	
Kauai 11—*Cyrtandra limahuliensis*—e	*Cyrtandra limahuliensis*	
Kauai 11—*Delissea rhytidosperma*—b	*Delissea rhytidosperma*	
Kauai 11—*Delissea rhytidosperma*—c		*Delissea rhytidosperma*
Kauai 11—*Delissea rivularis*—a	*Delissea rivularis*	
Kauai 11—*Delissea undulata*—a		*Delissea undulata*

(CCXVIII) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 11—*Delissea undulata*—b	*Delissea undulata*	
Kauai 11—*Diellia erecta*—a		*Diellia erecta*
Kauai 11—*Diellia pallida*—a	*Diellia pallida*	
Kauai 11—*Diellia pallida*—b	*Diellia pallida*	
Kauai 11—*Diplazium molokaiense*—a		*Diplazium molokaiense*
Kauai 11—*Dubautia latifolia*—1		*Dubautia latifolia*
Kauai 11—*Dubautia latifolia*—b	*Dubautia latifolia*	
Kauai 11—*Dubautia latifolia*—c	*Dubautia latifolia*	
Kauai 11—*Euphorbia haeleeleana*—a	*Euphorbia haeleeleana*	
Kauai 11—*Euphorbia haeleeleana*—b	*Euphorbia haeleeleana*	
Kauai 11—*Euphorbia haeleeleana*—c	*Euphorbia haeleeleana*	
Kauai 11—*Exocarpos luteolus*—b	*Exocarpos luteolus*	
Kauai 11—*Exocarpos luteolus*—c	*Exocarpos luteolus*	
Kauai 11—*Exocarpos luteolus*—d	*Exocarpos luteolus*	
Kauai 11—*Exocarpos luteolus*—e	*Exocarpos luteolus*	
Kauai 11—*Flueggea neowawraea*—a		*Flueggea neowawraea*
Kauai 11—*Flueggea neowawraea*—b	*Flueggea neowawraea*	
Kauai 11—*Flueggea neowawraea*—c	*Flueggea neowawraea*	
Kauai 11—*Flueggea neowawraea*—d	*Flueggea neowawraea*	
Kauai 11—*Flueggea neowawraea*—e	*Flueggea neowawraea*	
Kauai 11—*Flueggea neowawraea*—f	*Flueggea neowawraea*	
Kauai 11—*Gouania meyenii*—a		*Gouania meyenii*
Kauai 11—*Gouania meyenii*—b	*Gouania meyenii*	
Kauai 11—*Gouania meyenii*—c		*Gouania meyenii*
Kauai 11—*Hedyotis cookiana*—a	*Hedyotis cookiana*	
Kauai 11—*Heduptos st.-johnii*—a	*Heduptos st.-johnii*	
Kauai 11—*Hesperomannia lydgatei*—b	*Hesperomannia lydgatei*	
Kauai 11—*Hesperomannia lydgatei*—e	*Hesperomannia lydgatei*	
Kauai 11—*Hibiscadelphus woodii*—a	*Hibiscadelphus woodii*	
Kauai 11—*Hibiscadelphus woodii*—b	*Hibiscadelphus woodii*	
Kauai 11—*Hibiscus waimeae* ssp. *hannerae*—a	*Hibiscus waimeae* ssp. *hannerae*	
Kauai 11—*Ischaemum byrone*—d		*Ischaemum byrone*
Kauai 11—*Isodendrion laurifolium*—a	*Isodendrion laurifolium*	
Kauai 11—*Isodendrion laurifolium*—b	*Isodendrion laurifolium*	
Kauai 11—*Isodendrion longifolium*—c	*Isodendrion longifolium*	
Kauai 11—*Isodendrion longifolium*—d	*Isodendrion longifolium*	
Kauai 11—*Isodendrion longifolium*—e	*Isodendrion longifolium*	
Kauai 11—*Kokia kauaiensis*—a	*Kokia kauaiensis*	
Kauai 11—*Kokia kauaiensis*—b	*Kokia kauaiensis*	
Kauai 11—*Kokia kauaiensis*—c	*Kokia kauaiensis*	
Kauai 11—*Kokia kauaiensis*—d	*Kokia kauaiensis*	
Kauai 11—*Labordia lydgatei*—c	*Labordia lydgatei*	
Kauai 11—*Labordia lydgatei*—d	*Labordia lydgatei*	
Kauai 11—*Labordia lydgatei*—e	*Labordia lydgatei*	
Kauai 11—*Lipochaeta fauriei*—a		*Lipochaeta fauriei*
Kauai 11—*Lipochaeta fauriei*—b	*Lipochaeta fauriei*	
Kauai 11—*Lipochaeta micrantha*—b	*Lipochaeta micrantha*	
Kauai 11—*Lobelia niihauensis*—a		*Lobelia niihauensis*
Kauai 11—*Lobelia niihauensis*—b	*Lobelia niihauensis*	
Kauai 11—*Mariscus pennatiformis*—a		*Mariscus pennatiformis*
Kauai 11—*Melicope haupuensis*—b	*Melicope haupuensis*	
Kauai 11—*Melicope haupuensis*—c	*Melicope haupuensis*	
Kauai 11—*Melicope knudsenii*—a	*Melicope knudsenii*	
Kauai 11—*Melicope knudsenii*—b	*Melicope knudsenii*	
Kauai 11—*Melicope pallida*—a	*Melicope pallida*	
Kauai 11—*Melicope pallida*—b	*Melicope pallida*	
Kauai 11—*Munroidendron racemosum*—c	*Munroidendron racemosum*	
Kauai 11—*Munroidendron racemosum*—d	*Munroidendron racemosum*	
Kauai 11—*Myrsine linearifolia*—c	*Myrsine linearifolia*	
Kauai 11—*Myrsine linearifolia*—d	*Myrsine linearifolia*	
Kauai 11—*Myrsine linearifolia*—e	*Myrsine linearifolia*	
Kauai 11—*Myrsine linearifolia*—f	*Myrsine linearifolia*	
Kauai 11—*Nothocestrum peltatum*—a		*Nothocestrum peltatum*
Kauai 11—*Nothocestrum peltatum*—b	*Nothocestrum peltatum*	
Kauai 11—*Nothocestrum peltatum*—c	*Nothocestrum peltatum*	
Kauai 11—*Peucedanum sandwicense*—b	*Peucedanum sandwicense*	
Kauai 11—*Peucedanum sandwicense*—c	*Peucedanum sandwicense*	
Kauai 11—*Phyllostegia knudsenii*—a	*Phyllostegia knudsenii*	
Kauai 11—*Phyllostegia waimeae*—a	*Phyllostegia waimeae*	
Kauai 11—*Phyllostegia wawrana*—b	*Phyllostegia wawrana*	
Kauai 11—*Phyllostegia wawrana*—c	*Phyllostegia wawrana*	
Kauai 11—*Phyllostegia wawrana*—d	*Phyllostegia wawrana*	

(CCXVIII) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR KAUAI—Continued

Unit name	Species occupied	Species unoccupied
Kauai 11—*Plantago princeps*—b	*Plantago princeps*	
Kauai 11—*Plantago princeps*—c		*Plantago princeps*
Kauai 11—*Plantago princeps*—d	*Plantago princeps*	
Kauai 11—*Platanthera holochila*—a	*Platanthera holochila*	
Kauai 11—*Poa mannii*—a		*Poa mannii*
Kauai 11—*Poa mannii*—b	*Poa mannii*	
Kauai 11—*Poa mannii*—c		*Poa mannii*
Kauai 11—*Poa mannii*—d	*Poa mannii*	
Kauai 11—*Poa sandvicensis*—a	*Poa sandvicensis*	
Kauai 11—*Poa sandvicensis*—b	*Poa sandvicensis*	
Kauai 11—*Poa siphonoglossa*—a	*Poa siphonoglossa*	
Kauai 11—*Poa siphonoglossa*—b	*Poa siphonoglossa*	
Kauai 11—*Pteralyxia kauaiensis*—c	*Pteralyxia kauaiensis*	
Kauai 11—*Pteralyxia kauaiensis*—d	*Pteralyxia kauaiensis*	
Kauai 11—*Pteralyxia kauaiensis*—e	*Pteralyxia kauaiensis*	
Kauai 11—*Pteralyxia kauaiensis*—f	*Pteralyxia kauaiensis*	
Kauai 11—*Pteralyxia kauaiensis*—g	*Pteralyxia kauaiensis*	
Kauai 11—*Remya kauaiensis*—a	*Remya kauaiensis*	
Kauai 11—*Remya kauaiensis*—b	*Remya kauaiensis*	
Kauai 11—*Remya kauaiensis*—c	*Remya kauaiensis*	
Kauai 11—*Remya kauaiensis*—d	*Remya kauaiensis*	
Kauai 11—*Remya kauaiensis*—e	*Remya kauaiensis*	
Kauai 11—*Remya montgomeryi*—a		*Remya montgomeryi*
Kauai 11—*Remya montgomeryi*—b	*Remya montgomeryi*	
Kauai 11—*Remya montgomeryi*—c	*Remya montgomeryi*	
Kauai 11—*Schiedea apokremnos*—a	*Schiedea apokremnos*	
Kauai 11—*Schiedea apokremnos*—b	*Schiedea apokremnos*	
Kauai 11—*Schiedea apokremnos*—c	*Schiedea apokremnos*	
Kauai 11—*Schiedea helleri*—a		*Schiedea helleri*
Kauai 11—*Schiedea helleri*—b	*Schiedea helleri*	
Kauai 11—*Schiedea helleri*—c	*Schiedea helleri*	
Kauai 11—*Schiedea kauaiensis*—a		*Schiedea kauaiensis*
Kauai 11—*Schiedea kauaiensis*—c	*Schiedea kauaiensis*	
Kauai 11—*Schiedea kauaiensis*—c	*Schiedea kauaiensis*	
Kauai 11—*Schiedea kauaiensis*—d		*Schiedea kauaiensis*
Kauai 11—*Schiedea membranacea*—a	*Schiedea membranacea*	
Kauai 11—*Schiedea membranacea*—b	*Schiedea membranacea*	
Kauai 11—*Schiedea membranacea*—c	*Schiedea membranacea*	
Kauai 11—*Schiedea membranacea*—d	*Schiedea membranacea*	
Kauai 11—*Schiedea spergulina* var. *spergulina*—a	*Schiedea spergulina* var. *spergulina*.	
Kauai 11—*Schiedea spergulina* var. *spergulina*—b	*Schiedea spergulina* var. *spergulina*.	
Kauai 11—*Schiedea stellarioides*—a	*Schiedea stellarioides*	
Kauai 11—*Schiedea stellarioides*—b		*Schiedea stellarioides*
Kauai 11—*Solanum sandwicense*—a	*Solanum sandwicense*	
Kauai 11—*Solanum sandwicense*—b		*Solanum sandwicense*
Kauai 11—*Spermolepis hawaiiensis*—a	*Spermolepis hawaiiensis*	
Kauai 11—*Stenogyne campanulata*—a	*Stenogyne campanulata*	
Kauai 11—*Wilkesia hobdyi*—a	*Wilkesia hobdyi*	
Kauai 11—*Xylosma crenatum*—a	*Xylosma crenatum*	
Kauai 11—*Zanthoxylum hawaiiense*—a	*Zanthoxylum hawaiiense*	
Kauai 12—*Nothocestrum peltatum*—d	*Nothocestrum peltatum*	
Kauai 12—*Remya kauaiensis*—f		*Remya kauaiensis*
Kauai 12—*Xylosma crenatum*—b		*Xylosma crenatum*
Kauai 13—*Lipochaeta waimeaensis*—a	*Lipochaeta waimeaensis*	
Kauai 13—*Schiedea spergulina* var. *spergulina*—c		*Schiedea spergulina* var. *spergulina*
Kauai 13—*Spermolepis hawaiiensis*—b	*Spermolepis hawaiiensis*	
Kauai 14—*Panicum niihauense*—a	*Panicum niihauense*	
Kauai 14—*Sesbania tomentosa*—b	*Sesbania tomentosa*	
Kauai 15—*Panicum niihauense*—b		*Panicum niihauense*
Kauai 16—*Panicum niihauense*—c		*Panicum niihauense*
Kauai 17—*Panicum niihauense*—d		*Panicum niihauense*

(2) *Niihau.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general location of the one critical habitat unit designated on the island of Niihau.

(i) Niihau 1—*Brighamia insignis*—a (144 ha; 357 ac)

(A) Unit consists of the following 52 boundary points: Start at 384729,

2427553; 384706, 2427627; 384746, 2427670; 384750, 2427684; 384766, 2427695; 384924, 2427730; 384995, 2427744; 384993, 2427821; 385066, 2427920; 385143, 2427974; 385186, 2428008; 385291, 2428014; 385421, 2428023; 385500, 2428057; 385605, 2428131; 385614, 2428162; 385546, 2428162; 385509, 2428133; 385435, 2428142; 385410, 2428184; 385415, 2428238; 385478, 2428278; 385597, 2428312; 385679, 2428287; 385801, 2428267; 385903, 2428282; 385977, 2428333; 386111, 2428376; 386173, 2428412; 386264, 2428364; 386326, 2428328; 386482, 2428317; 386530, 2428342; 386440, 2428385; 386428, 2428419; 386471, 2428436; 386539, 2428453; 386582, 2428467; 386732, 2428498; 386811, 2428496; 386814, 2428500; 386959, 2428247; 387475, 2427909; 387322, 2427686; 386416, 2427981; 386362, 2427840; 386256, 2427750; 386010, 2427731; 386042, 2427438; 385897, 2427457; 385678, 2427367; 385116, 2427542. return to starting point.

(B) **Note:** Map 218 follows:



(ii) TABLE OF PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR NIIHAU

Unit name	Species occupied	Species unoccupied
Niihau 1—*Brighamia insignis*—a	*Brighamia insignis*	

(b) *Plants on Kauai and Niihau; Constituent elements.*

(1) *Flowering Plants.*

Family Apiaceae: *Peucedanum sandwicense* (makou)

Kauai 7—*Peucedanum sandwicense*—a, Kauai 11—*Peucedanum sandwicense*—b, and Kauai 11—*Peucedanum sandwicense*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Peucedanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliff habitats in mixed shrub coastal dry cliff communities or diverse mesic forest and containing one or more of the following associated native plant species: *Acacia koa, Artemisia australis, Bidens* spp., *Brighamia insignis, Carex meyenii, Chamaesyce celastroides, Diospyros* spp., *Dodonaea viscosa, Eragrostis variabilis, Hibiscus kokio, Lobelia niihauensis, Metrosideros polymorpha, Panicum lineale, Psydrax odorata, Psychotria* spp., or *Wilkesia* spp.; and

(ii) Elevations between 119 and 1,232 m (391 and 4,041 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Kauai 11—*Spermolepis hawaiiensis*—a, Kauai 13—*Spermolepis hawaiiensis*—b, and Kauai 13—*Spermolepis hawaiiensis*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland and containing one or more of the following associated plant species: *Bidens sandvicensis, Doryopteris* spp., *Eragrostis variabilis, Erythrina sandwicensis, Lipochaeta* spp., *Schiedea spergulina*, or *Sida fallax;* and

(ii) Elevations between 56 and 662 m (184 and 2,172 ft).

Family Apocynaceae: *Pteralyxia kauaiensis* (kaulu)

Kauai 7—*Pteralyxia kauaiensis*—a, Kauai 10—*Pteralyxia kauaiensis*—b, Kauai 11—*Pteralyxia kauaiensis*—c, Kauai 11—*Pteralyxia kauaiensis*—d, Kauai 11—*Pteralyxia kauaiensis*—e, Kauai 11—*Pteralyxia kauaiensis*—f, and Kauai 11—*Pteralyxia kauaiensis*—g, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Pteralyxia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Diverse mesic or *Diospyros sandwicensis* mixed mesic forests with *Pisonia* spp. and containing one or more of the following associated plant species: *Acacia koa, Alectryon macrococcus, Alphitonia ponderosa, Antidesma platyphyllum* var. *hillebrandii, Bobea brevipes, Carex* spp., *Charpentiera elliptica, Claoxylon sandwicense, Cyanea* spp., *Dianella sandwicensis, Diospyros* spp., *Dodonaea viscosa, Diplazium sandwichianum, Euphorbia haeleeleana, Freycinetia arborea, Gahnia* spp., *Gardenia remyi, Hedyotis terminalis, Hibiscus kokio, Kokia kauaiensis, Leptecophylla tameiameiae, Metrosideros polymorpha, Myrsine lanaiensis, Neraudia* spp., *Nesoluma polynesicum, Nestegis sandwicensis, Peperomia* spp., *Pisonia sandwicensis, Pipturus* spp., *Pleomele aurea, Poa sandvicensis, Pouteria sandwicensis, Pritchardia* spp., *Psydrax odorata, Psychotria* spp., *Rauvolfia sandwicensis, Santalum freycinetianum* var. *pyrularium, Schiedea* spp., *Syzygium sandwicensis, Tetraplasandra* spp., *Xylosma hawaiiense*, or *Zanthoxylum dipetalum;* and

(ii) Elevations between 127 and 1,563 m (418 and 5,128 ft).

Family Araliaceae: *Munroidendron racemosum* (NCN)

Kauai 5—*Munroidendron racemosum*—a, Kauai 7—*Munroidendron racemosum*—b, Kauai 11—*Munroidendron racemosum*—c, and Kauai 11—*Munroidendron racemosum*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Munroidendron racemosum* on Kauai. Within these units the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep exposed cliffs or ridge slopes in coastal or lowland mesic forest and containing one or more of the following associated plant species: *Bobea brevipes, Brighamia insignis, Canavalia napaliensis, Diospyros sandwicensis, Diospyros hillebrandii, Nestegis sandwicensis, Pisonia sandwicensis, Pisonia umbellifera, Pleomele aurea, Pouteria sandwicensis, Psychotria* spp., *Psydrax odorata, Rauvolfia sandwicensis, Schiedea* spp., *Sida fallax*, or *Tetraplasandra* spp.; and

(ii) Elevations between 11 and 938 m (37 and 3,077 ft).

Family Asteraceae: *Dubautia latifolia* (naenae)

Kauai 11—*Dubautia latifolia*—a, *Kauai 11— Dubautia latifolia*—b, and Kauai 11—*Dubautia latifolia*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Dubautia latifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gentle or steep slopes on well drained soil in semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following native plant species: *Alphitonia ponderosa, Antidesma platyphyllum, Bobea* spp., *Claoxylon sandwicense, Coprosma waimeae, Cyrtandra* spp., *Dicranopteris linearis, Diplazium sandwichianum, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Ilex anomala, Melicope anisata, Nestegis sandwicensis, Pleomele aurea, Pouteria sandwicensis, Psychotria mariniana, Scaevola* spp., or *Xylosma* spp.; and

(ii) Elevations between 545 and 1,277 m (1,786 and 4,189 ft).

Family Asteraceae: *Dubautia pauciflorula* (naenae)

Kauai 10—*Dubautia pauciflorul*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Dubautia pauciflorula* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest within stream drainages containing one or more of the following associated native plant species: *Antidesma platyphyllum, Broussaisia arguta, Cheirodendron* spp., *Dubautia laxa, Embelia pacifica, Hesperomannia lydgatei, Labordia waialealae, Melicope* spp., *Nothoperanema rubiginosa, Pritchardia* spp., *Psychotria* spp., *Sadleria* spp., *Scaevola mollis, Syzygium sandwicensis*, or *Tetraplasandra* spp.; and

(ii) Elevations between 564 and 1,094 m (1,849 and 3,587 ft).

Family Asteraceae: *Hesperomannia lydgatei* (NCN)

Kauai 10—*Hesperomannia lydgatei*—a, Kauai 11—*Hesperomannia lydgatei*—b, and Kauai 11—*Hesperomannia lydgatei*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Hesperomannia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Stream banks and forested slopes in rich brown soil and silty clay in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest and containing one or more of the following associated native plant species: *Adenophorus periens, Antidesma platyphyllum, Broussaisia arguta, Cheirodendron* spp., *Cyanea* spp., *Dubautia knudsenii, Dubautia laxa, Dubautia pauciflorula, Dubautia raillardioides, Elaphoglossum* spp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei, Machaerina angustifolia, Peperomia* spp., *Pritchardia* spp., *Psychotria hexandra*, or *Syzygium sandwicensis;* and

(ii) Elevations between 207 and 1,344 m (680 and 4,409 ft).

Family Asteraceae: *Lipochaeta fauriei* (nehe)

Kauai 11—*Lipochaeta fauriei*—a, and Kauai 11—*Lipochaeta fauriei*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lipochaeta fauriei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moderate shade to full sun on the sides of steep gulches in diverse lowland mesic forests and containing one or more of the following native species: *Acacia koa, Carex meyenii, Carex wahuensis, Dicranopteris linearis, Diospyros* spp., *Dodonaea viscosa, Euphorbia haeleeleana, Hibiscus waimeae, Kokia kauaiensis, Myrsine lanaiensis, Nestegis sandwicensis, Pleomele aurea, Psychotria*

greenwelliae, Psychotria mariniana, or Sapindus oahuensis; and

(ii) Elevations between 438 and 948 m (1,438 and 3,108 ft).

Family Asteraceae: *Lipochaeta micrantha* (nehe)

Kauai 7—*Lipochaeta micrantha*—a, and Kauai 11—*Lipochaeta micrantha*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lipochaeta micrantha* on Kauai. Within these units the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* are the habitat components provided by:

(i) Cliffs, ridges, stream banks, or slopes in mesic to wet mixed communities and containing one or more of the following associated native plant species: *Acacia koa, Antidesma* spp., *Artemisia australis, Bidens sandvicensis, Bobea* spp., *Chamaesyce celastroides* var. *hanapepensis, Diospyros* spp., *Dodonaea viscosa, Eragrostis grandis, Eragrostis variabilis, Hibiscus kokio, Lepidium bidentatum, Lobelia niihauensis, Melicope* spp., *Metrosideros polymorpha, Neraudia kauaiensis, Nototrichium* spp., *Pipturus* spp., *Plectranthus parviflorus, Pleomele aurea, Psydrax odorata, Rumex albescens, Sida fallax,* or *Xylosma hawaiiense;* and

(ii) Elevations between 127 and 1,090 m (418 and 3,574 ft).

Family Asteraceae: *Lipochaeta waimeaensis* (nehe)

Kauai 13—*Lipochaeta waimeaensis*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Lipochaeta waimeaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Precipitous, shrub-covered gulches in diverse lowland forest and containing one or more of the following associated native plant species: *Artemisia australis, Chamaesyce celastroides, Dodonaea viscosa, Lipochaeta connata, Santalum freycinetianum, Schiedea spergulina,* or *Panicum* spp.; and

(ii) Elevations between 44 and 409 m (145 and 1,340 ft).

Family Asteraceae: *Remya kauaiensis* (NCN)

Kauai 11—*Remya kauaiensis*—a, Kauai 11—*Remya kauaiensis*—b, Kauai 11—*Remya kauaiensis*—c, Kauai 11—*Remya kauaiensis*—d, Kauai 11—*Remya kauaiensis*—e, and Kauai 12—*Remya kauaiensis*—f, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Remya kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, north or northeast-facing slopes in *Acacia koa-Metrosideros* polymorpha lowland mesic forest and containing one or more of the following associated native plant species: *Chamaesyce* spp., *Claoxylon sandwicense, Dianella sandwicensis, Diospyros* spp., *Dodonaea viscosa, Hedyotis terminalis, Melicope* spp., *Nestegis sandwicensis, Pouteria sandwicensis, Psychotria* spp., *Schiedea* spp., or *Tetraplasandra* spp.; and

(ii) Elevations between 560 and 1,249 m (1,836 and 4,097 ft).

Family Asteraceae: *Remya montgomeryi* (NCN)

Kauai 11—*Remya montgomeryi*—a, Kauai 11—*Remya montgomeryi*—b, and Kauai 11—*Remya montgomeryi*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Remya montgomeryi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, north or northeast-facing slopes or cliffs in transitional wet or *Metrosideros polymorpha*-dominated mixed mesic forest and containing one or more of the following associated native plant species: *Artemisia australis, Bobea* spp., *Boehmeria grandis, Cheirodendron* spp., *Claoxylon sandwicense, Cyrtandra* spp., *Dubautia* spp., *Ilex anomala, Lepidium serra, Lysimachia* spp., *Myrsine linearifolia, Nototrichium* spp., *Pleomele aurea, Poa mannii, Sadleria* spp., *Scaevola* spp., *Stenogyne campanulata, Tetraplasandra* spp., or *Zanthoxylum dipetalum;* and

(ii) Elevations between 336 and 1,345 m (1,102 and 4,411 ft).

Family Asteraceae: *Wilkesia hobdyi* (dwarf iliau)

Kauai 11—*Wilkesia hobdyi*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Wilkesia hobdyi* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species: *Artemisia australis, Dodonaea viscosa, Eragrostis variabilis, Hibiscus kokio* ssp. *saint johnianus, Lipochaeta connata, Lobelia niihauensis, Myoporum sandwicense, Peperomia blanda, Peperomia* spp., *Peperomia tetraphylla, Peucedanum sandwicense, Psydrax odorata, Sida fallax, Waltheria indica,* or *Wilkesia gymnoxiphium;* and

(ii) Elevations between 12 and 685 m (40 and 2,246 ft).

Family Campanulaceae: *Brighamia insignis* (olulu)

Kauai 6—*Brighamia insignis*—a, Kauai 7—*Brighamia insignis*—b, and Kauai 11—*Brighamia insignis*—c identified in the legal descriptions in paragraph (a)(1) of this section, and Niihau 1—*Brighamia insignis*—a, identified in the legal description in paragraph (a)(2) of this section, constitute critical habitat for *Brighamia insignis* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rocky ledges with little soil or steep sea cliffs in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in) and containing one or more of the following native plant species: *Artemisia australis, Chamaesyce celastroides, Eragrostis variabilis, Heteropogon contortus, Hibiscus kokio, Hibiscus kokio* ssp. *saintjohnianus, Lepidium serra, Lipochaeta succulenta, Munroidendron racemosum,* or *Sida fallax;* and

(ii) Elevations between 0 and 748 m (0 and 2,453 ft).

Family Campanulaceae: *Cyanea asarifolia* (haha)

Kauai 4—*Cyanea asarifolia*—a, and Kauai 10—*Cyanea asarifolia*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea asarifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Pockets of soil on sheer wet rock cliffs and waterfalls in lowland wet forests and containing one or more of the following native plant species: *Bidens* spp., *Dubautia plantaginea, Hedyotis centranthoides, Hedyotis elatior, Lysimachia filifolia, Machaerina angustifolia, Metrosideros polymorpha,* or *Panicum lineale;* and

(ii) Elevations between 182 and 1,212 m (597 and 3,976 ft).

Family Campanulaceae: *Cyanea recta* (haha)

Kauai 4—*Cyanea recta*—a, Kauai 4—*Cyanea recta*—b, Kauai 11—*Cyanea recta*—c, and Kauai 11—*Cyanea recta*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea recta* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulches or slopes in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland and containing one or more of the following native plant species: *Antidesma platyphyllum, Cheirodendron platyphyllum, Cibotium* spp., *Dicranopteris linearis, Diplazium* spp., or *Psychotria* spp.; and

(ii) Elevations between 297 and 1,345 m (975 and 4,411 ft).

Family Campanulaceae: *Cyanea remyi* (haha)

Kauai 4—*Cyanea remyi*—a, Kauai 10—*Cyanea remyi*—b, Kauai 11—*Cyanea remyi*—c, and Kauai 11—*Cyanea remyi*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyanea remyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Narrow drainages and wet stream banks in lowland wet forest or shrubland and containing one or more of the following native plant species: various grammitid and filmy ferns (Grammitidaceae and Hymenophyllaceae), *Adenophorus* spp., *Antidesma platyphyllum, Bidens* spp., *Broussaisia arguta, Cheirodendron* spp., *Cyrtandra* spp., *Diplazium sandwichianum, Eragrostis grandis, Freycinetia arborea, Hedyotis terminalis, Machaerina angustifolia, Metrosideros polymorpha, Perrottetia sandwicensis, Pipturus* spp., *Psychotria hexandra, Syzygium sandwicensis, Thelypteris* spp., *Touchardia latifolia,* or *Urera glabra;* and

(ii) Elevations between 219 and 1,089 m (719 and 3,571 ft).

Family Campanulaceae: *Cyanea undulata* (haha)

Kauai 10—*Cyanea undulata*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Cyanea undulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Narrow drainages and wet stream banks in *Metrosideros polymorpha* dry to montane wet forest or shrubland and containing one or more of the following associated native species: various grammitid and filmy ferns (Grammitidaceae and Hymenophyllaceae), *Adenophorus* spp., *Antidesma platyphyllum, Bidens* spp., *Broussaisia arguta, Cheirodendron* spp., *Diplazium sandwichianum, Dryopteris glabra, Eragrostis grandis, Freycinetia arborea, Machaerina angustifolia, Mariscus* spp., *Melicope feddei, Perrottetia sandwicensis, Pipturus* spp., *Psychotria hexandra, Psychotria mariniana, Sadleria pallida, Sadleria squarrosa, Smilax melastomifolia, Sphenomeris chinensis, Syzygium sandwicensis,* or *Thelypteris* spp.; and

(ii) Elevations between 375 and 1,046 m (1,231 and 3,430 ft).

Family Campanulaceae: *Delissea rhytidosperma* (no common name)

Kauai 7—*Delissea rhytidosperma*—a, Kauai 11—*Delissea rhytidosperma*—b, and Kauai 11—*Delissea rhytidosperma*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Delissea rhytidosperma* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Well-drained soils with medium or fine-textured subsoil in Diospyros diverse lowland mesic forests or diverse *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following native species: *Adenophorus* spp., *Cyanea* spp., *Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Doodia kunthiana, Euphorbia haeleeleana,* grammitid ferns (Grammitidaceae), *Hedyotis* spp., *Leptecophylla tameiameiae, Microlepia strigosa, Nestegis sandwicensis, Pisonia* spp., *Psychotria hobdyi,* or *Pteralyxia kauaiensis;* and

(ii) Elevations between 167 and 895 m (547 and 2,935 ft).

Family Campanulaceae: *Delissea rivularis* (oha)

Kauai 11—*Delissea rivularis*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Delissea rivularis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes near streams in *Metrosideros polymorpha-Cheirodendron trigynum* montane wet or mesic forest and containing one or more of the following native plant species: *Boehmeria grandis, Broussaisia arguta, Carex* spp., *Coprosma* spp., *Diplazium sandwichianum, Dubautia knudsenii, Hedyotis foggiana, Ilex anomala, Machaerina angustifolia, Melicope anisata, Melicope clusiifolia, Pipturus* spp., *Psychotria hexandra,* or *Sadleria* spp.; and

(ii) Elevations between 823 and 1,307 m (2,701 and 4,286 ft).

Family Campanulaceae: *Delissea undulata* (NCN)

Kauai 11—*Delissea undulata*—a, and Kauai 11—*Delissea undulata*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Delissea undulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry or open *Acacia koa-Metrosideros polymorpha* mesic forests or *Alphitonia ponderosa* montane forest and containing one or more of the following native plant species: *Diospyros sandwicensis, Dodonaea viscosa, Doodia kunthiana, Eragrostis variabilis, Euphorbia haeleeleana, Kokia kauaiensis, Microlepia strigosa, Panicum* spp., *Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae,* or *Santalum freycinetianum;* and

(ii) Elevations between 139 and 1,006 m (456 and 3,299 ft).

Family Campanulaceae: *Lobelia niihauensis* (NCN)

Kauai 11—*Lobelia niihauensis*—a, and Kauai 11—*Lobelia niihauensis*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Lobelia niihauensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Exposed mesic mixed shrubland or coastal dry cliffs and containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Chamaesyce celastroides, Charpentiera* spp., *Eragrostis variabilis, Hibiscus kokio* ssp. *saint-johnianus, Lipochaeta connata* var. *acris, Lythrum* spp., *Nototrichium* spp., *Plectranthus parviflorus, Schiedea apokremnos,* or *Wilkesia hobdyi;* and

(ii) Elevations between 36 and 888 m (117 and 2,911 ft).

Family Caryophyllaceae: *Alsinidendron lychnoides* (kuawawaenohu)

Kauai 11—*Alsinidendron lychnoides*—a, Kauai 11—*Alsinidendron lychnoides*—b, and Kauai 11—*Alsinidendron lychnoides*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Alsinidendron lychnoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep riparian clay or silty soil banks in montane wet forests dominated by *Metrosideros polymorpha* and *Cheirodendron* spp., or by *Metrosideros polymorpha* and *Dicranopteris linearis* and containing one or more of the following native plant species: *Asplenium* spp., *Astelia* spp., *Broussaisia arguta, Carex* spp., *Cyrtandra* spp., *Diplazium sandwichianum, Elaphoglossum* spp., *Hedyotis terminalis, Machaerina* spp., *Peperomia* spp., or *Vaccinium* spp.; and

(ii) Elevations between 828 and 1,344 m (2,715 and 4,408 ft).

Family Caryophyllaceae: *Alsinidendron viscosum* (NCN)

Kauai 11—*Alsinidendron viscosum*—a, Kauai 11—*Alsinidendron viscosum*—b, Kauai 11—*Alsinidendron viscosum*—c, and Kauai 11—*Alsinidendron viscosum*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Alsinidendron viscosum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes in *Acacia koa-Metrosideros polymorpha* lowland and montane mesic forest and containing one or more of the following native plant species: *Alyxia oliviformis, Asplenium polyodon, Bidens cosmoides, Bobea* spp., *Carex meyenii, Carex wahuensis, Coprosma* spp., *Dianella sandwicensis, Dodonaea viscosa, Doodia kunthiana, Dryopteris glabra, Dryopteris unidentata, Dryopteris wallichiana, Dubautia laevigata, Gahnia* spp., *Ilex anomala, Melicope* spp., *Panicum nephelophilum, Pleomele aurea, Psychotria* spp., *Pteridium aquilinum* var. *decompositum, Schiedea stellarioides*, or *Vaccinium dentatum*; and

(ii) Elevations between 754 and 1,224 m (2,474 and 4,016 ft).

Family Caryophyllaceae: *Schiedea apokremnos* (maolioli)

Kauai 11—*Schiedea apokremnos*—a, Kauai 11—*Schiedea apokremnos*—b, and Kauai 11—*Schiedea apokremnos*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Schiedea apokremnos* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Crevices of near-vertical basalt coastal cliff faces in sparse dry coastal cliff shrub vegetation and containing one or more of the following associated native plant species: *Artemisia australis, Bidens* spp., *Carex meyenii, Chamaesyce celastroides, Eragrostis variabilis, Lepidium serra, Lipochaeta connata, Lobelia niihauensis, Myoporum sandwicense, Peperomia* spp., *Pleomele aurea, Psydrax odorata*, or *Wilkesia* spp.; and

(ii) Elevations between 11 and 538 m (35 and 1,765 ft).

Family Caryophyllaceae: *Schiedea helleri* (NCN)

Kauai 11—*Schiedea helleri*—a, Kauai 11—*Schiedea helleri*—b, and Kauai 11—*Schiedea helleri*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Schiedea helleri* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Ridges and steep cliffs in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha-Cheirodendron* spp. montane wet forest, or *Acacia koa-M. polymorpha* montane mesic forest and containing one or more of the following associated native plant species: *Broussaisia arguta, Cheirodendron* spp., *Cibotium* spp., *Cyanea* spp., *Dianella sandwicensis, Dubautia* spp., *Elaeocarpus bifidus, Hedyotis terminalis, Melicope* spp., *Myrsine* spp., *Poa sandvicensis, Scaevola procera, Syzygium sandwicensis*, or *Viola wailenalenae*; and

(ii) Elevations between 664 and 1,361 m (2,178 and 4,464 ft).

Family Caryophyllaceae: *Schiedea kauaiensis* (NCN)

Kauai 11—*Schiedea kauaiensis*—a, Kauai 11—*Schiedea kauaiensis*—b, Kauai 11—*Schiedea kauaiensis*—c, and Kauai 11—*Schiedea kauaiensis*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Schiedea kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes in diverse mesic to wet *Acacia koa-Metrosideros polymorpha* forest and containing one or more of the following associated plant species: *Alphitonia ponderosa, Cryptocarya mannii, Diospyros* spp., *Dodonaea viscosa, Euphorbia haeleeleana, Exocarpos luteolus, Leptocophylla tameiameiae, Microlepia strigosa, Nestegis sandwicensis, Peucedanum sandwicense, Pisonia* spp., *Psychotria* spp., or *Psydrax odorata*; and

(ii) Elevations between 117 and 1,290 m (385 and 4,232 ft).

Family Caryophyllaceae: *Schiedea membranacea* (NCN)

Kauai 11—*Schiedea membranacea*—a, Kauai 11—*Schiedea membranacea*—b, Kauai 11—*Schiedea membranacea*—c, and Kauai 11—*Schiedea membranacea*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Schiedea membranacea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliffs or cliff bases in mesic or wet habitats in lowland or montane shrubland or forest communities dominated by *Acacia koa, Pipturus* spp. and *Metrosideros polymorpha* or Urticaceae shrubland on talus slopes and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Alyxia oliviformis, Asplenium* spp., *Athyrium sandwicensis, Bobea brevipes, Boehmeria grandis, Cyrtandra* spp., *Diplazium sandwichianum, Dodonaea viscosa, Eragrostis variabilis, Hedyotis terminalis, Hibiscus waimeae, Joinvillea ascendens* ssp. *ascendens, Labordia helleri, Lepidium serra, Lysimachia kalalauensis, Machaerina angustifolia, Mariscus pennatiformis, Melicope* spp., *Myrsine* spp., *Perrottetia sandwicensis, Pisonia* spp., *Pleomele aurea, Poa mannii, Poa sandvicensis, Pouteria sandwicensis, Psychotria* spp., *Psydrax odorata, Remya kauaiensis, Sadleria cyatheoides, Scaevola procera, Thelypteris cyatheoides, Thelypteris sandwicensis*, or *Touchardia latifolia*; and

(ii) Elevations between 423 and 1,259 m (1,386 and 4,131 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (NCN)

Kauai 7—*Schiedea nuttallii*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Schiedea nuttallii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliffs in lowland diverse mesic forest dominated by *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii, Bidens valida, Chamaesyce celastroides, Eragrostis variabilis, Hedyotis acuminata, Hedyotis fluviatilis, Heteropogon contortus, Lepidium* spp., *Lobelia niihauensis, Psychotria* spp., *Perrottetia sandwicensis*, or *Pisonia* spp.; and

(ii) Elevations between 127 and 702 m (418 and 2,303 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *leiopoda* (NCN)

Kauai 9—*Schiedea spergulina* var. *leiopoda*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Schiedea spergulina* var. *leiopoda* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests and containing one or more of the following native plant species: *Acacia koa, Artemisia australis, Bidens sandvicensis, Carex meyenii, Chamaesyce celastroides, Dianella sandwicensis, Doryopteris* spp., *Eragrostis variabilis, Erythrina sandwicensis, Gahnia* spp., *Heliotropium* spp., *Lepidium serra, Lipochaeta connata, Microlepia strigosa, Nestegis sandwicensis, Nototrichium sandwicense, Panicum lineale, Peucedanum sandwicense*, or *Wilkesia gymnoxiphium*; and

(ii) Elevations between 21 and 90 m (69 and 294 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *spergulina* (NCN)

Kauai 11—*Schiedea spergulina* var. *spergulina*—a, Kauai 11—*Schiedea spergulina* var. *spergulina*—b, and Kauai 13—*Schiedea spergulina* var. *spergulina*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Schiedea spergulina* var. *spergulina* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases in diverse lowland dry to mesic forests and containing one or more of the following native plant species: *Acacia koa, Artemisia australis, Bidens sandvicensis, Carex meyenii, Chamaesyce celastroides, Dianella sandwicensis, Doryopteris* spp., *Eragrostis variabilis, Erythrina sandwicensis, Gahnia* spp., *Heliotropium* spp., *Lepidium serra, Lipochaeta connata, Microlepia strigosa, Nestegis sandwicensis, Nototrichium sandwicense, Panicum lineale, Peucedanum sandwicense*, or *Wilkesia gymnoxiphium*; and

(ii) Elevations between 145 and 829 m (474 and 2,718 ft).

Family Caryophyllaceae: *Schiedea stellarioides* (laulihilihi (=maolioli))

Kauai 11—*Schiedea stellarioides*—a, and Kauai 11—*Schiedea stellarioides*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Schiedea stellarioides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland and containing one or more of the following native plant species: *Alsinidendron viscosum, Artemisia australis, Bidens cosmoides, Chenopodium* spp., *Dianella sandwicensis, Dodonaea viscosa, Mariscus* spp., *Melicope* spp., *Nototrichium sandwicense, Pipturus* spp., *Leptecophylla tameiameiae, Syzygium sandwicensis*, or *Zanthoxylum dipetalum*; and

(ii) Elevations between 376 and 1,251 m (1,135 and 4,102 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Kauai 10—*Bonamia menziesii*—a, and Kauai 11—*Bonamia menziesii*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Bonamia menziesii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry, mesic, or wet *Metrosideros polymorpha-Cheirodendron-Dicranopteris* forest and containing one or more of the following native plant species: *Antidesma platyphyllum, Alphitonia ponderosa, Acacia koa, Cyanea* spp., *Cyrtandra pickeringii, Cyrtandra limahuliensis, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Dubautia knudsenii, Hedyotis terminalis, Isodendrion longifolium, Labordia hirtella, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Nestegis sandwicensis, Pisonia* spp., *Pittosporum* spp., *Pouteria sandwicensis, Psychotria mariniana, Psychotria hexandra, Psydrax odorata, Sapindus oahuensis, Scaevola procera*, or *Syzygium sandwicensis*; and

(ii) Elevations between 566 and 1,127 m (1,858 and 3,695 ft).

Family Cyperaceae: *Cyperus trachysanthos* (puukaa)

Kauai 11—*Cyperus trachysanthos*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Cyperus trachysanthos* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet sites (mud flats, wet clay soil, or wet cliff seeps) on seepy flats or talus slopes and containing the native plant species *Taliparti tiliaceum*; and

(ii) Elevations between 0 and 235 m (0 and 771 ft).

Family Cyperaceae: *Mariscus pennatiformis* (NCN)

Kauai 11—*Mariscus pennatiformis*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Mariscus pennatiformis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open sites in *Metrosideros polymorpha-Acacia koa* mixed mesic forest and containing one or more of the following associated native plant species: *Alsinidendron viscosum, Antidesma platyphyllum* var. *hillebrandii, Carex alligata, Cyperus laevigatus, Dianella sandwicensis, Diospyros hillebrandii, Diospyros sandwicensis, Dodonaea viscosa, Leptecophylla tameiameiae, Myrsine linearifolia, Nestegis sandwicensis, Panicum nephelophilum, Poa sandvicensis, Psydrax odorata, Schiedea stellarioides*, or endemic ferns; and

(ii) Elevations between 605 and 1,065 m (1,983 and 3,493 ft).

Family Euphorbiaceae: *Chamaesyce halemanui* (NCN)

Kauai 11—*Chamaesyce halemanui*—a, Kauai 11—*Chamaesyce halemanui*—b, and Kauai 11—*Chamaesyce halemanui*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for

Chamaesyce halemanui on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes of gulches in mesic *Acacia koa* forests and containing one or more of the following native plant species: *Asplenium* spp., *Alphitonia ponderosa, Antidesma platyphyllum, Bobea brevipes, Carex meyenii, Carex wahuensis, Cheirodendron trigynum, Coprosma* spp., *Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Kokia kauaiensis, Leptecophylla tameiameiae, Microlepia strigosa, Melicope haupuensis, Metrosideros polymorpha, Panicum nephelophilum, Pisonia* spp., *Pittosporum spp., Pleomele aurea, Psychotria greenwelliae, Psychotria mariniana, Pouteria sandwicensis,* or *Santalum freycinetianum;* and

(ii) Elevations between 556 and 1,249 m (1,825 and 4,097 ft).

Family Euphorbiaceae: *Euphorbia haeleeleana* (akoko)

Kauai 11—*Euphorbia haeleeleana*—a, Kauai 11—*Euphorbia haeleeleana*—b, and Kauai 11—*Euphorbia haeleeleana*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Euphorbia haeleeleana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland mixed mesic or dry *Diospyros* forest that is often codominated by *Metrosideros polymorpha* and *Alphitonia ponderosa* and containing one or more of the following native plant species: *Acacia koaia, Antidesma platyphyllum, Carex meyenii, Carex wahuensis, Claoxylon sandwicense, Diplazium sandwichianum, Dodonaea viscosa, Erythrina sandwicensis, Kokia kauaiensis, Pisonia sandwicensis, Pleomele aurea, Pouteria sandwicensis, Psychotria greenwelliae, Psychotria mariniana, Pteralyxia kauaiensis, Rauvolfia sandwicensis, Sapindus oahuensis, Tetraplasandra kavaiensis,* or *Xylosma* spp.; and

(ii) Elevations between 284 and 1,179 m (931 and 3,866 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Kauai 11—*Flueggea neowawraea*—a, Kauai 11—*Flueggea neowawraea*—b, Kauai 11—*Flueggea neowawraea*—c, Kauai 11—*Flueggea neowawraea*—d, Kauai 11—*Flueggea neowawraea*—e, and Kauai 11—*Flueggea neowawraea*—f, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Flueggea neowawraea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus, Antidesma platyphyllum, Bidens sandvicensis, Bobea timonioides, Caesalpinia kavaiensis, Charpentiera* spp., *Diospyros* spp., *Diplazium sandwichianum, Freycinetia arborea, Hibiscus* spp., *Isodendrion laurifolium, Kokia kauaiensis, Melicope* spp., *Metrosideros polymorpha, Munroidendron racemosum, Myrsine lanaiensis, Nesoluma polynesicum, Nestegis sandwicensis, Pittosporum* spp., *Pouteria sandwicensis, Pritchardia minor, Psychotria* spp., *Psydrax odorata, Pteralyxia kauaiensis, Rauvolfia sandwicensis, Streblus pendulinus, Tetraplasandra* spp., *Xylosma crenatum,* or *Xylosma hawaiiense;* and

(ii) Elevations between 210 and 1,178 m (689 and 3,865 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Kauai 8—*Sesbania tomentosa*—a, and Kauai 14—*Sesbania tomentosa*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Sesbania tomentosa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Sandy beaches, dunes, or pond margins in coastal dry shrublands or mixed coastal dry cliffs, and containing one or more of the following associated native plant species: *Chamaesyce celastroides, Cuscuta sandwichiana, Dodonaea viscosa, Heteropogon contortus, Myoporum sandwicense, Nama sandwicensis, Scaevola sericea, Sida fallax, Sporobolus virginicus, Vitex rotundifolia,* or *Waltheria indica;* and

(ii) Elevations between 0 and 130 m (0 and 427 ft).

Family Flacourtiaceae: *Xylosma crenatum* (NCN)

Kauai 11—*Xylosma crenatum*—a, and Kauai 12—*Xylosma crenatum*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Xylosma crenatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Diverse *Acacia koa-Metrosideros polymorpha* montane mesic or wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, and containing one or more of the following associated native plant species: *Athyrium sandwicensis, Cheirodendron* spp., *Claoxylon sandwicense, Coprosma* spp., *Cyanea* spp., *Diplazium sandwichianum, Dubautia knudsenii, Hedyotis* spp., *Ilex anomala, Lobelia yuccoides, Myrsine* spp., *Nestegis sandwicensis, Perrottetia sandwicensis, Pleomele aurea, Poa sandvicensis, Pouteria sandwicensis, Psychotria* spp., *Scaevola procera, Streblus pendulinus, Tetraplasandra* spp., *Touchardia latifolia,* or *Zanthoxylum dipetalum;* and

(ii) Elevations between 941 and 1,284 m (3,086 and 4,212 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Kauai 11—*Centaurium sebaeoides*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Centaurium sebaeoides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Volcanic or clay soils or on cliffs in arid coastal areas and containing one or more of the following native plant species: *Artemisia* spp., *Bidens* spp., *Chamaesyce celastroides, Cyperus phleoides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jacquemontia ovalifolia, Lipochaeta* spp., *Lycium sandwicense, Lysimachia mauritiana, Melanthera integrifolia, Panicum fauriei, Panicum torridum, Scaevola sericea, Sida fallax,* or *Wikstroemia uva-ursi;* and

(ii) Elevations between 0 and 147 m (0 and 483 ft).

Family Gesneriaceae: *Cyrtandra cyaneoides* (mapele)

Kauai 4—*Cyrtandra cyaneoides*—a, Kauai 11—*Cyrtandra cyaneoides*—b, and Kauai 11—*Cyrtandra cyaneoides*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyrtandra cyaneoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Talus rubble on steep slopes or cliffs with water seeps running below, near streams or waterfalls in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha, Cheirodendron* spp., and *Dicranopteris linearis* and containing one or more of the following native species: *Bidens* spp., *Boehmeria grandis, Coprosma* spp., *Cyanea* spp., *Cyrtandra kauaiensis, Cyrtandra limahuliensis, Cyrtandra longifolia, Diplazium sandwichianum, Freycinetia arborea, Gunnera kauaiensis, Hedyotis terminalis, Hedyotis tryblium, Machaerina* spp., *Melicope clusiifolia, Melicope puberula, Perrottetia sandwicensis, Pipturus* spp., *Psychotria* spp., *Pritchardia* spp., or *Stenogyne purpurea;* and

(ii) Elevations between 157 and 1,407 m (514 and 4,614 ft).

Family Gesneriaceae: *Cyrtandra limahuliensis* (haiwale)

Kauai 4—*Cyrtandra limahuliensis*—a, Kauai 4—*Cyrtandra limahuliensis*—b, Kauai 10—*Cyrtandra limahuliensis*—c, Kauai 11—*Cyrtandra limahuliensis*—d, and Kauai 11—*Cyrtandra limahuliensis*—e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Cyrtandra limahuliensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Stream banks in lowland wet forests containing one or more of the following native plant species: *Antidesma platyphyllum, Bidens* spp., *Boehmeria grandis, Charpentiera* spp., *Cibotium glaucum, Cyanea* spp., *Cyrtandra kealiae, Dicranopteris linearis, Diplazium sandwichianum, Dubautia* spp., *Eugenia reinwardtiana, Gunnera kauaiensis, Hedyotis terminalis, Hibiscus waimeae, Metrosideros polymorpha, Perrottetia sandwicensis, Pisonia* spp., *Pipturus* spp., *Pritchardia* spp., *Psychotria* spp., or *Touchardia latifolia;* and

(ii) Elevations between 208 and 1,591 m (681 and 5,217 ft).

Family Lamiaceae: *Phyllostegia knudsenii* (NCN)

Kauai 11—*Phyllostegia knudsenii*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Phyllostegia knudsenii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Bobea timonioides, Claoxylon sandwicense, Cryptocarya mannii, Cyrtandra kauaiensis, Cyrtandra paludosa, Diospyros sandwicensis, Elaeocarpus bifidus, Ilex anomala, Myrsine linearifolia, Perrottetia sandwicensis, Pittosporum kauaiense, Pouteria sandwicensis, Pritchardia minor, Selaginella arbuscula, Tetraplasandra oahuensis,* or *Zanthoxylum dipetalum;* and

(ii) Elevations between 401 and 1,059 m (1,315 and 3,475 ft).

Family Lamiaceae: *Phyllostegia waimeae* (no common name)

Kauai 11—*Phyllostegia waimeae*—a, and Kauai 11—*Phyllostegia waimeae*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Phyllostegia waimeae* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koa-Metrosideros polymorpha* dominated wet or mixed mesic forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominants and containing one or more of the following associated native plant species: *Broussaisia arguta, Claoxylon sandwicense, Diplazium sandwichianum, Dubautia knudsenii, Elaphoglossum* spp., *Gunnera kauaiensis, Hedyotis* spp., *Myrsine lanaiensis, Pleomele aurea, Psychotria* spp., *Sadleria* spp., *Scaevola procera, Syzygium sandwicensis,* or *Vaccinium* spp.; and

(ii) Elevations between 655 and 1,224 m (2,149 and 4,016 ft).

Family Lamiaceae: *Phyllostegia wawrana* (no common name)

Kauai 4—*Phyllostegia wawrana*—a, Kauai 11—*Phyllostegia wawrana*—b, Kauai 11—*Phyllostegia wawrana*—c, and Kauai 11—*Phyllostegia wawrana*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Phyllostegia wawrana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koa-Metrosideros polymorpha-Cheirodendron* mixed mesic forest containing one or more of the following associated native plant species: *Alectryon macrococcus, Asplenium polyodon, Athyrium microphyllum, Carex* spp., *Claoxylon sandwicense, Cyanea fissa, Delissea rivularis, Dianella sandwicensis, Diplazium sandwichianum, Dodonaea viscosa, Doodia kunthiana, Dryopteris wallichiana, Dubautia knudsenii, Dubautia laevigata, Hedyotis tryblium, Machaerina angustifolia, Panicum nephelophilum, Peperomia* spp., *Perrottetia sandwicensis, Poa sandvicensis, Pleomele aurea, Pteridium aquilinum* var. *decompositum, Sadleria pallida, Scaevola procera, Schiedea stellarioides, Syzygium sandwicensis, Touchardia latifolia,* or *Vaccinium dentatum;* and

(ii) Elevations between 400 and 1,284 m (1,311 and 4,212 ft).

Family Lamiaceae: *Stenogyne campanulata* (NCN)

Kauai 11—*Stenogyne campanulata*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Stenogyne campanulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rock faces of nearly vertical, north-facing cliffs in diverse lowland or montane mesic forest and containing one or more of the following associated native plant species: *Lepidium serra, Lobelia niihauensis, Lysimachia* spp., *Melicope pallida, Metrosideros polymorpha, Neraudia kauaiensis, Nototrichium divaricatum, Poa mannii, Remya montgomeryi,* or *Wilkesia gymnoxiphium;* and

(ii) Elevations between 335 and 1,290 (1,100 and 4,232 ft).

Family Loganiaceae: *Labordia lydgatei* (kamakahala)

Kauai 4—*Labordia lydgatei*—a, Kauai 10—*Labordia lydgatei*—b, Kauai 11—*Labordia lydgatei*—c, Kauai 11—*Labordia lydgatei*—d, and Kauai 11—*Labordia lydgatei*—e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Labordia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Streambanks in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii, Cyanea* spp., *Cyrtandra* spp., *Dubautia knudsenii, Hedyotis terminalis, Ilex anomala, Labordia hirtella, Psychotria* spp., or *Syzygium sandwicensis;* and

(ii) Elevations between 182 and 1,148 m (597 and 3,737 ft).

Family Loganiaceae: *Labordia tinifolia* var. *wahiawaensis* (kamakahala)

Kauai 10—*Labordia tinifolia* var. *wahiawaensis*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Labordia tinifolia* var. *wahiawaensis* on

Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Streambanks in lowland wet forests dominated by *Metrosideros polymorpha* and containing one or more of the following associated species: *Antidesma platyphyllum, Athyrium microphyllum, Cheirodendron* spp., *Cyrtandra* spp., *Dicranopteris linearis, Hedyotis terminalis,* or *Psychotria* spp.; and

(ii) Elevations between 458 and 1,006 m (1,502 and 3,301 ft).

Family Malvaceae: *Hibiscadelphus woodii* (hau kuahiwi)

Kauai 11—*Hibiscadelphus woodii*—a, and Kauai 11—*Hibiscadelphus woodii*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Hibiscadelphus woodii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Basalt talus or cliff walls in *Metrosideros polymorpha* montane mesic forest and containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Dubautia* spp., *Hedyotis* spp., *Lepidium serra, Lipochaeta* spp., *Lobelia niihauensis, Lysimachia glutinosa, Melicope pallida, Myrsine* spp., *Nototrichium* spp., *Panicum lineale, Poa mannii,* or *Stenogyne campanulata;* and

(ii) Elevations between 219 and 1,197 m (717 and 3,926 ft).

Family Malvaceae: *Hibiscus clayi* (Clay's hibiscus)

Kauai 4—*Hibiscus clayi*—a, Kauai 4—*Hibiscus clayi*—b, Kauai 4—*Hibiscus clayi*—c, Kauai 4—*Hibiscus clayi*—d, Kauai 4—*Hibiscus clayi*—e, and Kauai 5—*Hibiscus clayi*—f, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Hibiscus clayi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Slopes in *Acacia koa* or *Diospyros* spp.-*Pisonia* spp.-*Metrosideros polymorpha* lowland dry or mesic forest and containing one or more of the following associated native plant species: *Artemisia australis, Bidens* spp., *Cyanea hardyi, Gahnia* spp., *Hedyotis acuminata, Munroidendron racemosum, Pandanus tectorius, Panicum tenuifolium, Pleomele aurea, Pipturus* spp., *Psychotria* spp., or *Psydrax odorata;* and

(ii) Elevations between 121 and 765 m (396 and 2,509 ft).

Family Malvaceae: *Hibiscus waimeae* ssp. *hannerae* (kokio keokeo)

Kauai 11—*Hibiscus waimeae* ssp. *hannerae*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Hibiscus waimeae* ssp. *hannerae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* spp.-*Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* spp., *Bidens* spp., *Bobea* spp., *Cibotium* spp., *Cyanea* spp., *Cyrtandra* spp., *Perrottetia sandwicensis, Pipturus* spp., *Psychotria* spp., *Sadleria* spp., or *Syzygium sandwicensis;* and

(ii) Elevations between 174 and 1,155 m (570 and 3,787 ft).

Family Malvaceae: *Kokia kauaiensis* (kokio)

Kauai 11—*Kokia kauaiensis*—a, Kauai 11—*Kokia kauaiensis*—b, Kauai 11—*Kokia kauaiensis*—c, and Kauai 11—*Kokia kauaiensis*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Kokia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Diverse mesic forest containing one or more of the following associated native plant species: *Acacia koa, Alyxia oliviformis, Antidesma* spp., *Bobea* spp., *Chamaesyce celastroides, Claoxylon sandwicense, Dicranopteris linearis, Diellia pallida, Diospyros hillebrandii, Diospyros sandwicensis, Dodonaea viscosa, Flueggea neowawraea, Hedyotis* spp., *Hibiscus* spp., *Isodendrion laurifolium, Lipochaeta fauriei, Melicope* spp., *Metrosideros polymorpha, Nestegis sandwicensis, Nototrichium* spp., *Pisonia* spp., *Pleomele aurea, Pouteria sandwicensis, Psydrax odorata, Pteralyxia kauaiensis, Rauvolfia sandwicensis, Santalum freycinetianum* var. *pyrularium, Streblus pendulinus, Syzygium sandwicensis, Tetraplasandra* spp., or *Xylosma* spp.; and

(ii) Elevations between 300 and 1,049 m (984 and 3,441 ft).

Family Myrsinaceae: *Myrsine linearifolia* (kolea)

Kauai 7—*Myrsine linearifolia*—a, Kauai 10—*Myrsine linearifolia*—b, Kauai 11—*Myrsine linearifolia*—c, Kauai 11—*Myrsine linearifolia*—d, Kauai 11—*Myrsine linearifolia*—e, and Kauai 11—*Myrsine linearifolia*—f, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Myrsine linearifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with *Cheirodendron* spp. or *Dicranopteris linearis* as co-dominant species, and containing one or more of the following associated native plant species: *Bobea brevipes, Cryptocarya mannii, Dubautia* spp., *Eurya sandwicensis, Freycinetia arborea, Hedyotis terminalis,* Lysimachia glutinosa, *Machaerina angustifolia, Melicope* spp., *Myrsine* spp., *Nothocestrum* spp., *Psychotria* spp., *Sadleria pallida,* or *Syzygium sandwicensis;* and

(ii) Elevations between 129 and 1,345 m (424 and 4,411 ft).

Family Orchidaceae: *Platanthera holochila* (NCN)

Kauai 11—*Platanthera holochila*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Platanthera holochila* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Montane *Metrosideros polymorpha—Dicranopteris linearis* wet forest or *M. polymorpha* mixed bog and containing one or more of the following associated native plant species: *Carex montis-eeka, Cibotium* spp., *Clermontia fauriei, Coprosma elliptica, Dichanthelium* spp., grammitid ferns (Grammitidaceae), *Leptecophylla tameiameiae, Lobelia kauaensis, Machaerina angustifolia, Myrsine denticulata, Oreobolus furcatus, Rhynchospora* spp., *Vaccinium* spp., or *Viola kauaensis;* and

(ii) Elevations between 861 and 1,453 m (2,825 and 4,766 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Kauai 10—*Plantago princeps*—a, Kauai 11—*Plantago princeps*—b, Kauai 11—*Plantago princeps*—c, and Kauai 11—*Plantago princeps*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Plantago princeps* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Windswept areas near waterfalls in *Metrosideros polymorpha-Cheirodendron* montane wet forest with riparian vegetation or *Metrosideros polymorpha* lowland to montane transitional wet forest on cliffs and ridges, growing on basalt rocky outcrops, and containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii, Bidens forbesii, Bidens sandvicensis, Bobea elatior, Boehmeria grandis, Carex meyenii, Carex wahuensis, Charpentiera elliptica, Cyrtandra* spp., *Diplazium sandwichianum, Freycinetia arborea, Gunnera kauaiensis, Hedyotis* spp., *Huperzia* spp. *Isachne pallens, Lipochaeta connata, Lysimachia glutinosa, Lysimachia kalalauensis, Machaerina angustifolia, Melicope* spp., *Myrsine linearifolia, Perrottetia sandwicensis, Pilea peploides, Pipturus* spp., *Poa mannii, Sadleria cyatheoides, Tetraplasandra* spp., or *Wilkesia gymnoxiphium;* and

(ii) Elevations between 434 and 1,563 m (1,424 and 5,128 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Kauai 1—*Ischaemum byrone*—a, Kauai 2—*Ischaemum byrone*—b, Kauai 3—*Ischaemum byrone*—c, and Kauai 11—*Ischaemum byrone*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Ischaemum byrone* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Coastal shrubland near the ocean among rocks and seepy cliffs and containing one or more of the following associated native plant species: *Bidens* spp., *Chamaesyce celastroides, Fimbristylis cymosa, Lipochaeta succulenta, Lysimachia mauritiana,* or *Scaevola sericea;* and

(ii) Elevations between 0 and 159 m (0 and 523 ft).

Family Poaceae: *Panicum niihauense* (lau ehu)

Kauai 14—*Panicum niihauense*—a, Kauai 15—*Panicum niihauense*—b, Kauai 16—*Panicum niihauense*—c, and Kauai 17—*Panicum niihauense*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Panicum niihauense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Sand dunes in coastal shrubland and containing one or more of the following associated native plant species: *Cassytha filiformis, Chamaesyce celastroides, Dodonaea viscosa, Nama sandwicensis, Ophioglossum pendulum* ssp. *falcatum, Scaevola sericea, Sida fallax, Sporobolus virginicus,* or *Vitex rotundifolia;* and

(ii) Elevations between 0 and 29 m (0 and 95 ft).

Family Poaceae: *Poa mannii* (Mann's bluegrass)

Kauai 11—*Poa mannii*—a, Kauai 11—*Poa mannii*—b, Kauai 11—*Poa mannii*—c, and Kauai 11—*Poa mannii*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Poa mannii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliffs or rock faces in lowland or montane mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Artemisia australis, Bidens cosmoides, Bidens sandvicensis, Carex meyenii, Carex wahuensis, Chamaesyce celastroides* var. *hanapepensis, Cyperus phleoides, Diospyros sandwicensis, Dodonaea viscosa, Eragrostis variabilis, Hedyotis terminalis, Lobelia niihauensis, Lobelia yuccoides, Luzula hawaiiensis, Melicope anisata, Melicope barbigera, Melicope pallida, Nototrichium* spp., *Panicum lineale, Pleomele aurea, Pouteria sandwicensis, Psychotria greenwelliae, Psychotria mariniana, Schiedea* spp., or *Wilkesia gymnoxiphium;* and

(ii) Elevations between 327 and 1,222 m (1,072 and 4,009 ft).

Family Poaceae: *Poa sandvicensis* (Hawaiian bluegrass)

Kauai 11—*Poa sandvicensis*—a, and Kauai 11—*Poa sandvicensis*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Poa sandvicensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet, shaded, gentle to steep slopes, ridges, and rock ledges of stream banks in semi-open to closed, wet, diverse *Acacia koa-Metrosideros polymorpha* montane forest and containing one or more of the following associated native species: *Alyxia oliviformis, Bidens sandvicensis, Cheirodendron* spp., *Claoxylon sandwicense, Coprosma* spp., *Dianella sandwicensis, Dicranopteris linearis, Dodonaea viscosa, Dubautia* spp., *Hedyotis* spp., *Melicope* spp., *Peperomia* spp., *Psychotria* spp., *Scaevola procera, Schiedea stellarioides,* or *Syzygium sandwicensis;* and

(ii) Elevations between 473 and 1,270 m (1,553 and 4,165 ft).

Family Poaceae: *Poa siphonoglossa* (NCN)

Kauai 11—*Poa siphonoglossa*—a, and Kauai 11—*Poa siphonoglossa*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Poa siphonoglossa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Shady banks on steep slopes in mesic *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Alyxia oliviformis, Bobea brevipes, Carex meyenii, Carex wahuensis, Coprosma waimeae, Dianella sandwicensis, Dodonaea viscosa, Dubautia* spp., *Hedyotis* spp., *Leptecophylla tameiameiae, Lobelia yuccoides, Melicope* spp., *Microlepia strigosa, Myrsine* spp., *Panicum nephelophilum, Poa sandvicensis, Psychotria* spp., *Scaevola procera, Tetraplasandra kavaiensis, Vaccinium* spp., *Wilkesia gymnoxiphium, Xylosma* spp., or *Zanthoxylum dipetalum;* and

(ii) Elevations between 480 and 1,296 m (1,573 and 4,251 ft).

Family Primulaceae: *Lysimachia filifolia* (no common name)

Kauai 10—*Lysimachia filifolia*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Lysimachia filifolia* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: *Antidesma platyphyllum,*

Bidens valida, Bobea elatior, Chamaesyce remyi var *kauaiensis, Cyanea asarifolia, Dubautia plantaginea* ssp. *magnifolia, Eragrostis variabilis, Machaerina angustifolia, Melicope* spp., *Metrosideros polymorpha,* or *Panicum lineale;* and

(ii) Elevations between 454 and 1,308 m (1,490 and 4,290 ft).

Family Rhamnaceae: *Gouania meyenii* (NCN)

Kauai 11—*Gouania meyenii*—a, Kauai 11—*Gouania meyenii*—b, and Kauai 11—*Gouania meyenii*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Gouania meyenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rocky ledges, cliff faces, and ridge tops in dry shrubland or *Metrosideros polymorpha* lowland diverse mesic forest and containing one or more of the following native plant species: *Bidens* spp., *Carex meyenii, Chamaesyce* spp., *Dodonaea viscosa, Diospyros* spp., *Eragrostis variabilis, Euphorbia haeleeleana, Hedyotis* spp., *Hibiscadelphus* spp., *Lysimachia* spp., *Melicope pallida, Neraudia kauaiensis, Nestegis sandwicensis, Nototrichium divaricatum, Panicum lineale, Poa mannii, Psychotria* spp., *Senna gaudichaudii,* or *Wilkesia gymnoxiphium;* and

(ii) Elevations between 375 and 1,179 m (1,231 and 3,867 ft).

Family Rubiaceae: *Hedyotis cookiana* (awiwi)

Kauai 11—*Hedyotis cookiana*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Hedyotis cookiana* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Streambeds or steep cliffs close to water sources in relict *Metrosideros polymorpha* lowland mesic and lowland wet forest communities containing one or more of the following associated native plant species: *Boehmeria grandis, Chamaesyce celastroides* var. *hanapepensis, Hibiscus kokio* ssp. *saintjohnianus, Machaerina angustifolia, Nototrichium sandwicense, Pipturus kauaiensis, Pleomele aurea, Pouteria sandwicensis, Psydrax odorata,* or *Rauvolfia sandwicensis;* and

(ii) Elevations between 120 and 553 m (392 and 1,814 ft).

Family Rubiaceae: *Hedyotis st.-johnii* (Na Pali beach hedyotis)

Kauai 11—*Hedyotis st.-johnii*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Hedyotis st.-johnii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Crevices of north-facing, near-vertical coastal cliff faces within the spray zone in sparse dry coastal shrubland and containing one or more of the following native plant species: *Artemisia australis, Bidens* spp., *Capparis sandwichiana, Chamaesyce celastroides, Eragrostis variabilis, Heteropogon contortus, Lipochaeta connata, Lycium sandwicense, Myoporum sandwicense, Nototrichium sandwicense,* or *Schiedea apokremnos;* and

(ii) Elevations between 0 and 187 m (0 and 613 ft).

Family Rutaceae: *Melicope haupuensis* (alani)

Kauai 7—*Melicope haupuensis*—a, Kauai 11—*Melicope haupuensis*—b, and Kauai 11—*Melicope haupuensis*—c, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Melicope haupuensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Moist talus slopes in *Metrosideros polymorpha*-dominated lowland mesic forests or *Metrosideros polymorpha-Acacia koa* montane mesic forest and containing one or more of the following associated native plant species: *Antidesma platyphyllum* var. *hillebrandii, Bobea brevipes, Cheirodendron trigynum, Claoxylon sandwicense, Cryptocarya mannii, Dianella sandwicensis, Diospyros hillebrandii, Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Melicope ovata, Pleomele aurea, Pouteria sandwicensis, Pritchardia minor, Psychotria greenwelliae, Psychotria mariniana, Tetraplasandra waimeae,* or *Zanthoxylum dipetalum;* and

(ii) Elevations between 125 and 1,249 m (410 and 4,097 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Kauai 11—*Melicope knudsenii*—a, and Kauai 11—*Melicope knudsenii*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Melicope knudsenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Forested flats with brown granular soil in lowland dry to montane mesic forests and containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma platyphylla, Bobea brevipes, Carex meyenii, Cryptocarya mannii, Diospyros sandwicensis, Diplazium sandwichianum, Dodonaea viscosa, Euphorbia haeleeleana, Gahnia beecheyi, Hedyotis* spp., *Hibiscus waimeae, Isodendrion laurifolium, Leptecophylla tameiameiae, Melicope* spp., *Metrosideros polymorpha, Myrsine lanaiensis, Nestegis sandwicensis, Panicum nephelophilum, Peucedanum sandwicense, Pisonia sandwicensis, Pittosporum kauaiensis, Pleomele aurea, Pouteria sandwicensis, Pritchardia minor, Psychotria hobdyi, Psydrax odorata, Rauvolfia sandwicensis, Remya kauaiensis, Scaevola procera,* or *Xylosma hawaiiense;* and

(ii) Elevations between 346 and 1,065 m (1,135 and 3,492 ft).

Family Rutaceae: *Melicope pallida* (alani)

Kauai 11—*Melicope pallida*—a, and Kauai 11—*Melicope pallida*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Melicope pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep rock faces in lowland to montane mesic to wet forests or shrubland and containing one or more of the following associated native plant species: *Alyxia oliviformis, Artemisia australis, Boehmeria grandis, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Coprosma kauensis, Coprosma waimeae, Dodonaea viscosa, Dryopteris* spp., *Hedyotis terminalis, Lepidium serra, Melicope* spp., *Metrosideros polymorpha, Nototrichium* spp., *Pipturus albidus, Pleomele aurea, Poa mannii, Psychotria mariniana, Pritchardia minor, Sapindus oahuensis, Schiedea membranacea, Tetraplasandra waialealae,* or *Xylosma hawaiiense;* and

(ii) Elevations between 418 and 1,081 m (1,371 and 3,546 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (ae)

Kauai 11—*Zanthoxylum hawaiiense*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry or mesic forests dominated by *Metrosideros polymorpha* or *Diospytos sandwicensis,* and containing one or more of the following associated plant species: *Alectryon macrococcus, Antidesma platyphyllum, Charpentiera elliptica, Dodonaea viscosa, Melicope* spp., *Myrsine lanaiensis, Pisonia* spp., *Pleomele aurea, Streblus pendulinus,* or *Zanthoxylum dipetalum;* and

(ii) Elevations between 332 and 1,151 m (1,089 and 3,774 ft).

Family Santalaceae: *Exocarpos luteolus* (heau)

Kauai 10—*Exocarpos luteolus*—a, Kauai 11—*Exocarpos luteolus*—b, Kauai 11—*Exocarpos luteolus*—c, Kauai 11—*Exocarpos luteolus*—d, and Kauai 11—*Exocarpos luteolus*—e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Exocarpos luteolus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet places bordering swamps or open bogs or on open or dry ridges in lowland or montane mesic *Acacia koa-Metrosideros polymorpha*-dominated forest communities with *Dicranopteris linearis* and containing one or more of the following native plant species: *Bobea brevipes, Cheirodendron trigynum, Claoxylon sandwicense, Dianella sandwicensis, Dodonaea viscosa, Dubautia laevigata, Elaeocarpus bifidus, Hedyotis terminalis, Leptecophylla tameiameiae, Melicope haupuensis, Peperomia* spp., *Pleomele aurea, Poa sandvicensis, Pouteria sandwicensis, Psychotria greenwelliae, Psychotria mariniana, Santalum freycinetianum,* or *Schiedea stellarioides;* and

(ii) Elevations between 416 and 1,453 m (1,364 and 4,766 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Kauai 11—*Alectryon macrococcus*—a, and Kauai 11—*Alectryon macrococcus*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Alectryon macrococcus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry slopes or gulches in *Diospyros* spp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* spp. mixed mesic forest, and containing one or more of the following native plant species: *Acacia koa, Alyxia oliviformis, Antidesma* spp., *Bobea timonioides, Caesalpinia kavaiense, Canavalia* spp., *Carex meyenii, Carex wahuensis, Doodia kunthiana, Hibiscus waimeae, Kokia kauaiensis, Melicope knudsenii, Microlepia strigosa, Munroidendron racemosum, Myrsine lanaiensis, Nesoluma polynesicum, Nestegis sandwicensis, Pisonia* spp., *Pleomele aurea, Pouteria sandwicensis, Psychotria* spp., *Psydrax odorata, Pteralyxia kauaiensis, Rauvolfia sandwicensis, Streblus pendulinus, Tetraplasandra* spp., *Xylosma* spp., or *Zanthoxylum spp.;* and

(ii) Elevations between 343 and 954 m (1,126 and 3,129 ft).

Family Solanaceae: *Nothocestrum peltatum* (aiea)

Kauai 11—*Nothocestrum peltatum*—a, Kauai 11—*Nothocestrum peltatum*—b, Kauai 11—*Nothocestrum peltatum*—c, and *Kauai 12—Nothocestrum peltatum*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Nothocestrum peltatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rich soil on steep slopes in mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Antidesma* spp., *Bobea brevipes, Broussaisia arguta, Cheirodendron trigynum, Claoxylon sandwicense, Coprosma* spp., *Cryptocarya mannii, Dianella sandwicensis, Dicranopteris linearis, Diplazium sandwichianum, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Ilex anomala, Melicope anisata, Melicope barbigera, Melicope haupuensis, Perrottetia sandwicensis, Pleomele aurea, Pouteria sandwicensis, Psychotria mariniana, Psychotria greenwelliae, Tetraplasandra kavaiensis,* or *Xylosma* spp.; and

(ii) Elevations between 581 and 1,290 m (1,906 and 4,232 ft).

Family Solanaceae: *Solanum sandwicense* (aiakeakua, popolo)

Kauai 11—*Solanum sandwicense*—a, and Kauai 11—*Solanum sandwicense*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Solanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Under forest canopies in diverse lowland or montane *Acacia koa* or *Acacia koa-Metrosideros polymorpha* mesic or wet forests and containing one or more of the following associated plant species: *Alphitonia ponderosa, Athyrium sandwicensis, Bidens* spp., *Carex meyenii, Coprosma* spp., *Cryptocarya mannii, Dianella sandwicensis, Dicranopteris linearis, Dubautia* spp., *Hedyotis* spp., *Ilex anomala, Melicope* spp., *Poa* spp., *Pouteria sandwicensis, Psychotria* spp., *Syzygium sandwicensis,* or *Xylosma hawaiiense;* and

(ii) Elevations between 540 and 1,290 m (1,770 and 4,232 ft).

Family Violaceae: *Isodendrion laurifolium* (aupaka)

Kauai 11—*Isodendrion laurifolium*—a, and Kauai 11—*Isodendrion laurifolium*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Isodendrion laurifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Diverse mesic forest dominated by *Metrosideros polymorpha, Acacia koa* or *Diospyros* spp. and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Antidesma* spp., *Claoxylon sandwicense, Dodonaea viscosa, Dubautia* spp., *Elaeocarpus bifidus, Euphorbia haeleeleana, Hedyotis terminalis, Kokia kauaiensis, Melicope anisata, Melicope barbigera, Melicope ovata, Melicope peduncularis, Myrsine lanaiensis, Nestegis sandwicensis, Pisonia* spp., *Pittosporum glabrum, Pleomele aurea, Pouteria sandwicensis, Psydrax odorata, Streblus pendulinus,* or *Xylosma hawaiiense;* and

(ii) Elevations between 397 and 1,164 m (1,303 and 3,817 ft).

Family Violaceae: *Isodendrion longifolium* (aupaka)

Kauai 7—*Isodendrion longifolium*—a, Kauai 10—*Isodendrion longifolium*—b, Kauai 11—*Isodendrion longifolium*—c, Kauai 11—*Isodendrion longifolium*—d,

and Kauai 11—*Isodendrion longifolium*—e, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Isodendrion longifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes, gulches, or streambanks and flats in undisturbed areas, in mesic or wet *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following native species: *Antidesma* spp., *Bidens* spp., *Bobea brevipes, Cheirodendron* spp., *Cibotium* spp., *Cyanea hardyi, Cyrtandra* spp., *Dicranopteris linearis, Diospyros* spp., *Eugenia reinwardtiana, Hedyotis* spp., *Ilex anomala, Melicope* spp., *Nestegis sandwicensis, Peperomia* spp., *Perrottetia sandwicensis, Pipturus* spp., *Pittosporum* spp., *Pritchardia* spp., *Psychotria* spp., *Psydrax odorata*, or *Syzygium sandwicensis;* and

(ii) Elevations between 127 and 1,295 m (418 and 4,246 ft).

Family Violaceae: *Viola helenae* (NCN)

Kauai 10—*Viola helenae*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Viola helenae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Stream drainage banks or adjacent valley bottoms in light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or *Metrosideros polymorpha-Cheirodendron* wet forest and containing one or more of the following native plant species: *Antidesma platyphyllum* var. *hillebrandii, Broussaisia arguta, Dicranopteris linearis, Diplazium sandwichianum, Dubautia* spp., *Freycinetia arborea, Hesperomannia lydgatei, Melicope* spp., or *Pritchardia* spp.; and

(ii) Elevations between 522 and 1,006 m (1,712 and 3,301 ft).

Family Violaceae: *Viola kauaiensis* var. *wahiawaensis* (nani waialeale)

Kauai 10—*Viola kauaiensis* var. *wahiawaensis*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Viola kauaiensis* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Machaerina angustifolia-Rhynchospora rugosa* lowland bog or mixed wet shrubland and adjacent *Metrosideros polymorpha* wet forest and containing one or more of the following native plant species: *Antidesma platyphyllum* var. *hillebrandii, Bidens forbesii, Chamaesyce remyi, Chamaesyce sparsiflora, Coprosma* spp., *Cyanea fissa, Dicranopteris linearis, Diplopterygium pinnatum, Dubautia imbricata, Dubautia raillardioides, Gahnia vitiensis, Leptechophylla tameiameiae, Lobelia kauaensis, Machaerina angustifolia, Machaerina mariscoides, Melicope* spp., *Psychotria wawrae, Sadleria pallida, Scaevola gaudichaudii, Sphenomeris chinensis, Syzygium sandwicensis, Tetraplasandra oahuensis*, or *Vaccinium dentatum;* and

(ii) Elevations between 394 and 1,006 (1,291 and 3,301 ft).

(2) *Ferns and allies.*

Family Aspleniaceae: *Diellia erecta* (no common name)

Kauai 11—*Diellia erecta*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Diellia erecta* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Brown granular soil with leaf litter and occasional terrestrial moss on north-facing slopes in deep shade on steep slopes or gulch bottoms in *Metrosideros polymorpha-Dicranopteris linearis* wet forest or *Metrosideros polymorpha* mixed mesic forest with *Acacia koa* and *Acacia koaia* as co-dominants and containing one or more of the following native plant species: *Asplenium aethiopicum, Asplenium contiguum, Asplenium macraei, Coprosma* spp., *Dodonaea viscosa, Dryopteris fusco-atra, Dryopteris unidentata, Hedyotis terminalis, Leptecophylla tameiameiae, Melicope* spp., *Microlepia strigosa, Myrsine* spp., *Nestegis sandwicensis, Psychotria* spp., *Syzygium sandwicensis*, or *Wikstroemia* spp.; and

(ii) Elevations between 655 and 1,224 m (2,149 and 4,016 ft).

Family Aspleniaceae: *Diellia pallida* (no common name)

Kauai 11—*Diellia pallida*—a, and Kauai 11—*Diellia pallida*—b, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Diellia pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Bare granular soil with dry to mesophytic leaf litter with a pH of 6.9 to 7.9 on steep talus slopes in lowland mesic forests and containing one or more of the following native plant species: *Acacia koa, Alectryon macrococcus, Alphitonia ponderosa, Alyxia oliviformis, Antidesma platyphyllum, Asplenium* spp., *Carex meyenii, Diospyros hillebrandii, Diospyros sandwicensis, Doodia kunthiana, Hedyotis knudsenii, Leptecophylla tameiameiae, Metrosideros polymorpha, Microlepia strigosa, Myrsine lanaiensis, Nestegis sandwicensis, Psychotria mariniana, Psydrax odorata, Pteralyxia kauaiensis, Rauvolfia sandwicensis, Tetraplasandra kavaiensis, Wilkesia gymnoxiphium*, or *Zanthoxylum dipetalum;* and

(ii) Elevations between 445 and 1,028 m (1,461 and 3,371 ft).

Family Aspleniaceae: *Diplazium molokaiense* (NCN)

Kauai 11—*Diplazium molokaiense*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Diplazium molokaiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Brown soil with basalt outcrops near waterfalls in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest; and

(ii) Elevations between 624 and 1,234 m (2,048 and 4,048 ft).

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Kauai 11—*Ctenitis squamigera*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Ctenitis squamigera* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rock faces in gulches in the understory of *Metrosideros polymorpha-Diospyros* spp. mesic forest and diverse mesic forest and containing one or more of the following native plant species: *Myrsine* spp., *Psychotria* spp., or *Xylosma* spp.; and

(ii) Elevations between 538 and 1,069 m (1,765 and 3,507 ft).

Family Grammitidaceae: *Adenophorus periens* (pendent kihi fern)

Kauai 4—*Adenophorus periens*—a, Kauai 10—*Adenophorus periens*—b, Kauai 11—*Adenophorus periens*—c, and Kauai 11—*Adenophorus periens*—d, identified in the legal descriptions in paragraph (a)(1) of this section, constitute critical habitat for *Adenophorus periens* on Kauai. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) On *Metrosideros polymorpha* trunks, in riparian banks of stream systems in well-developed, closed canopy that provides deep shade or high humidity in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest and containing one or more of the following native plant species: *Antidesma platyphyllum, Athyrium sandwichianum, Broussaisia arguta, Cheirodendron trigynum, Cyanea* spp., *Cyrtandra* spp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria* spp., *Syzygium sandwicensis*, or *Tetraplasandra oahuensis;* and

(ii) Elevations between 169 and 1,345 m (553 and 4,411 ft).

Family Lycopodiaceae: *Phlegmariurus nutans* (wawaeiole)

Kauai 10—*Phlegmariurus nutans*—a, identified in the legal description in paragraph (a)(1) of this section, constitutes critical habitat for *Phlegmariurus nutans* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Tree trunks, usually on open ridges and slopes in *Metrosideros polymorpha-Dicranopteris linearis* wet or mesic forests and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Broussaisia arguta, Cheirodendron fauriei, Cibotium* spp., *Diplopterygium pinnatum, Hedyotis terminalis, Hibiscus kokio ssp. kokio, Melicope waialealae, Perrottetia sandwicensis, Psychotria hexandra, Psychotria mariniana, Psychotria wawrae, Scaevola gaudichaudii*, or *Syzygium sandwicensis;* and

(ii) Elevations between 615 and 1,591 m (2,016 and 5,217 ft).

Dated: January 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–2840 Filed 2–26–03; 8:45 am]

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Federal Register

Thursday,
February 27, 2003

Part III

Securities and Exchange Commission

17 CFR Part 242

Regulation Analyst Certification; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 242

[Release Nos. 33–8193; 34–47384; File No. S7–30–02]

RIN 3235–AI60

Regulation Analyst Certification

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission" "SEC" or "we") is adopting new Regulation Analyst Certification ("Regulation AC"). Regulation AC requires that brokers, dealers, and certain persons associated with a broker or dealer include in research reports certifications by the research analyst that the views expressed in the report accurately reflect his or her personal views, and disclose whether or not the analyst received compensation or other payments in connection with his or her specific recommendations or views. Broker-dealers would also be required to obtain periodic certifications by research analysts in connection with the analyst's public appearances. By requiring these certifications and disclosures, Regulation AC should promote the integrity of research reports and investor confidence in those reports.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: James Brigagliano, Thomas Eidt, or Racquel Russell in the Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772.

SUPPLEMENTARY INFORMATION: We are adopting new Regulation Analyst Certification [1] under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act").

I. Introduction and Summary of Regulation Analyst Certification

During 1999, the Commission and Congress began to closely examine research analysts' conflicts of interest. We were particularly concerned that many investors who rely on analysts' recommendations may not know, among other things, that favorable research coverage could be used to market the investment banking services provided by an analyst's firm, and that an analyst's compensation may be based significantly on generating investment banking business. Moreover, news reports stated that some analysts had issued reports that did not reflect their true beliefs and communicated to institutional investors views that differed materially from those expressed in their research reports.[2] Regulation AC, together with other efforts, is intended to address these issues.[3]

On May 10, 2002, we approved rule changes filed by the NYSE and NASD governing analyst conflicts of interest.[4] On December 31, 2002, we noticed for comment a second set of proposed rules filed by the NYSE and NASD to further address research analyst conflicts of interest.[5] These self-regulatory organization rules are part of an ongoing process on our part and that of the NYSE and NASD to address conflicts of interest affecting the integrity and objectivity of research by securities firms. Regulation AC is intended to complement other rules governing conflicts of interest disclosure by research analysts, including NYSE Rule 472, NASD Rule 2711, and the anti-fraud provisions of the federal securities law.

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 ("SOA").[6] Section 501 of the SOA requires that rules governing analyst conflicts be adopted within a year of enactment, including rules: limiting the supervision and compensatory evaluation of securities analysts; defining periods in which brokers or dealers engaged in a public offering of a security as underwriter or dealer may not publish research on such security; and requiring securities analysts and brokers or dealers to disclose specified conflicts of interest. The Commission voted to propose Regulation AC on July 24, 2002, before the passage of the SOA.[7] In the Proposing Release, the Commission noted that it would abide by the directives of the SOA as it continues to address analyst conflicts of interest issues, including with respect to the possible adoption of Regulation AC.

The Commission received twenty-one comment letters in response to the Proposing Release,[8] which generally supported the proposed regulation. After considering the comments, we are adopting Regulation AC with modifications to the rule to reflect commenters' concerns and to clarify and limit certain provisions. We are also providing interpretive guidance requested by commenters.

A. Certifications in Connection With Research Reports

As adopted, Regulation Analyst Certification requires that brokers, dealers, and their associated persons that are "covered persons" [9] that publish,[10] circulate, or provide research reports include in those research reports:

(A) A statement by the research analyst (or analysts) certifying that the views expressed in the research report accurately reflect such research analyst's personal views about the subject securities and issuers; and

(B) A statement by the research analyst (or analysts) certifying either:

(1) That no part of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report; or

(2) That part or all of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report, the statement must include the source, amount, and purpose of such compensation, and further disclose that it may influence the recommendation in the research report.

All certifications must be clear and prominent.[11] If the analyst is unable to certify that the report accurately reflects his or her personal views, distribution of the report by the broker-dealer or covered person would be in violation of Regulation AC. Similarly, if the report does not contain one of the two alternative compensation certifications, distribution of the report by the broker-dealer or covered person would be in violation of Regulation AC.[12]

Research reports generally contain an analyst's summary rating of the security based on his or her particular firm's rating system, as well as an analysis. The summary rating or recommendation is often one word (*e.g.*, buy, sell, overweight), while the analysis may be very detailed and lengthy. Generally, the analysis explains the basis for the rating and provides extensive supplementary information, which, in some instances, significantly qualifies or conditions the stated rating. The Regulation AC certification that the views in the report accurately reflect the analyst's personal views applies to the analysis as reflected in the rating as well as the substance of a research report.

A rating is designed to be a severable summary statement of the analysis in the report. In situations where the analysis significantly qualifies or conditions the stated rating, a communication by the firm or the analyst of only the rating to an investor as representing the analyst's views about the security could be misleading.[13] Further, where the analysis contradicts the stated rating, an analyst and the firm could be in violation of the anti-fraud provisions of the federal securities laws. A rating that contradicts the analysis could also render false the analyst's certification, because the analyst's certification reflects both the analysis as well as the rating.

B. Certifications in Connection With Public Appearances

Under Regulation AC, broker-dealers must make and keep records related to public appearances by research analysts. Specifically, if a broker-dealer publishes, circulates, or provides a research report prepared by a research analyst employed by the broker-dealer or a covered person, the broker-dealer is required to make a record within thirty days after each calendar quarter in which the research analyst made any public appearance, that includes:

- A statement by the research analyst attesting that the views expressed by the research analyst in all public appearances during the calendar quarter accurately reflected the research analyst's personal views at that time about any and all of the subject securities or issuers; and
- A written statement by the research analyst certifying that no part of such research analyst's compensation was, is, or will be directly or indirectly related to any specific recommendations or views expressed in any such public appearance.

In cases where the broker-dealer does not obtain a statement by the research analyst in connection with public appearances as described above, the broker-dealer must promptly notify its examining authority, designated pursuant to section 17(d) of the Exchange Act and Rule 17d–2 thereunder, that the analyst did not provide certification in connection with public appearances. In addition, for 120 days following such notification, the broker-dealer must disclose in any research report it distributes authored by that analyst that the analyst did not provide certification specified in Rule 502(a) of Regulation AC. Further, broker-dealers must keep and maintain these records pursuant to Rule 17a–4.

II. Response to Comments on Regulation Analyst Certification

In the Proposing Release, the Commission sought comment on specific aspects of the proposed regulation, as well as general comments. We received twenty-one comment letters in response to the release. Many commenters expressed support for Regulation AC, although a number also expressed concerns regarding one or more aspects of the proposal, and some suggested alternatives for addressing particular issues. We are adopting Regulation AC with modifications from the proposal that clarify or limit provisions or reflect commenters' views.

A. Defined Terms

We requested comment on whether the proposed definitions of "research report," "research analyst," or "public appearance" should be broader or narrower than proposed. Eleven commenters discussed the scope of the definitions proposed in Regulation AC and noted differences in certain respects compared to definitions contained in the self-regulatory organization ("SRO") rules and the SOA.[14] Generally, commenters believed that compliance efforts would be significantly enhanced by the use of consistent terminology throughout the rules wherever possible.[15] The Commission has conformed the terminology and definitions of Regulation AC to the SRO rules and the SOA wherever appropriate.

1. Definition of "Research Analyst"

Commenters noted that Regulation AC defines "research analyst" more broadly than do the current SRO analyst rules and the SOA. Specifically, the Regulation AC definition as proposed covers "any natural person," rather than only "associated persons of a member" (in the case of the SRO rules) or "associated persons of a registered broker or dealer" (in the case of the SOA). Commenters argued that Regulation AC applies to any person, including employees of investment advisers, foreign entities, or any other third party that prepares a research report that is circulated by a broker-dealer or associated persons.[16]

In this regard, Regulation AC is designed to be broader than the SRO rules and the SOA in that it applies to brokers, dealers, and certain associated persons,[17] which may also include investment advisers and others that prepare research reports. We believe that the broad scope of Regulation AC

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[1] 17 CFR 242.500 through 505.

[2] *See, e.g.*, Gretchen Morgenson, "NASD Sues Star Analyst Over Research," *The New York Times* at A1 (September 24, 2002).

[3] On December 20, 2002, the Commission, New York Attorney General, North American Securities Administrators Association, New York Stock Exchange ("NYSE"), National Association of Securities Dealers ("NASD"), and state securities regulators announced an agreement in principle that, if approved by the Commission, would result in a settlement with major investment firms to resolve issues of conflicts of interest relating to the production of research reports. Securities and Exchange Commission Press Release No. 2002–179 (December 20, 2002).

[4] Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

[5] Securities Exchange Act Release No. 47110 (December 31, 2002), 68 FR 826 (January 7, 2003). The Commission will consider action on these proposed rules after the close of the comment period, which is March 10, 2003.

[6] Pub. L. 107–204 (2002).

[7] Securities Exchange Act Release No. 46301 (August 2, 2002), 67 FR 51510 (August 8, 2002) ("Proposing Release").

[8] *See* Letters to Jonathan G. Katz, Secretary, Commission, from: The Alliance in Support of Independent Research, dated September 20, 2002 ("Alliance"); Association for Investment Management and Research, dated September 30, 2002 ("AIMR"); The Bond Market Association, dated September 23, 2002 ("TBMA"); Charles Schwab &Co., Inc., dated September 23, 2002 ("Schwab"); Cleary, Gottlieb, Steen & Hamilton, dated September 12, 2002 ("Cleary"); Credit Suisse First Boston, dated September 23, 2002 ("CSFB"); David Norr Inc., dated August 16, 2002 ("David Norr"); Goldman Sachs, dated September 23, 2002 ("Goldman"); Investment Company Institute, dated September 23, 2002 ("ICI"); Investment Counsel Association of America, letters dated September 23, 2002 and January 13, 2003 ("ICAA"); Investorside Research Association, dated September 20, 2002 ("Investorside"); Karr Tuttle Campbell, dated September 27, 2002 ("Karr Tuttle"); Rupert Kenna, dated October 10, 2002; Merrill Lynch, dated September 18, 2002 ("Merrill"); North American Securities Administrators Association, Inc., dated September 23, 2002 ("NASAA"); Salomon Smith Barney, dated September 27, 2002 ("SSB"); Securities Industry Association, dated September 23, 2002 ("SIA"); Sullivan & Cromwell, dated September 23, 2002 ("Sullivan"); Thomson Financial, dated September 23, 2002; and Weiss Ratings, Inc., dated September 10, 2002 ("Weiss").

[9] "Covered person" is defined in Rule 500 of Regulation AC, and is discussed in detail below at II.A.2.

[10] Publish means to disseminate by any means, including through any third party.

[11] Regulation AC, 17 CFR 242.501(a). The Commission expects that the certifications will be included on the front page of the research report, or that the front page will specify the page or pages on which each certification is found. Disclosures and references to disclosures must be clear and prominent. Electronic research reports may utilize hyperlinks to this disclosure, provided that the first screen that the investor sees clearly and prominently labels the hyperlinks to the required disclosures. When hyperlinks are not possible (such as a report in PDF format), firms should follow the requirements for paper reports. *See* NYSE Information Memo No. 02–26 (June 26, 2002), and NASD Notice to Members 02–39 (July 2002).

[12] Communications relating to the certifications should be treated as being within the purview of Exchange Act Rule 17a–4(b)(4). *See* Exchange Act Rule 17a–4(b)(4), 17 CFR 240.17a–4(b)(4).

[13] *Cf. Honly* v. *SEC*, 415 F.2d 589, 597 (2d Cir. 1969).

[14] *See* Alliance, AIMR, Cleary, Goldman, ICI, ICAA, SIA, SSB, Schwab, Sullivan, and Thomson Financial.

[15] *See, e.g.*, Cleary and SIA.

[16] *See, e.g.*, Cleary, ICAA, SSB, Sullivan, and Thomson Financial.

[17] *See* Rule 500 of Regulation AC (definition of "covered person").

is warranted because Regulation AC imposes core standards of integrity that should pertain to all research distributed by broker-dealers and covered persons. On the other hand, we note that Regulation AC is narrower than the SRO rules and the SOA in that its certification requirements apply only to the research analyst or analysts primarily responsible for the content of a research report; junior analysts are not required to certify.[18] This distinction is reasonable because the core integrity standards promoted by Regulation AC are achieved where the analysts primarily responsible for the views expressed in the research report are required to certify. In comparison, the coverage of junior analysts by the SRO rules is appropriate because the concerns those provisions seek to address (for example, trading ahead of research reports) exist with respect to all analysts associated with a member firm and those persons who report to analysts.

2. Definition of "Covered Person"

In response to comments, we have added the definition of "covered person" to narrow the scope of persons to which Regulation AC applies. Covered person means persons associated with a broker or dealer,[19] but not including an associated person that has no officers or employees in common with the broker or dealer and where the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer or any of its controlling persons, officers, or employees from influencing the activities of research analysts and the content of research reports prepared by the associated person. In adopting Regulation AC, we have sought to focus the rule on research that appears to be most susceptible to pressures that might compromise its integrity, for example pressures to generate investment banking business.

We believe that it is unnecessary to apply Regulation AC to research published, circulated, or provided by associated persons who have a sufficient level of independence from the broker or dealer with which they are associated. Associated persons who meet the independence criteria in this definition should have a sufficient level of independence so that pressures from the broker-dealer with which they are associated should not compromise their research. In order to avoid the possibility that an associated person might incorrectly believe that the broker-dealer had policies and procedures to prevent influencing the research of the associated person and, therefore, fail to certify when certification was required, we have added a provision to Regulation AC (Rule 504) that requires a broker or dealer to notify its associated persons that issue research reports as to whether the broker or dealer maintains and enforces such written policies and procedures and whether the associated person has any officers (or persons performing similar functions) or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports and, if so, the identity of those persons.[20] We also would not expect that such policies and procedures would interfere with other communications between the associated person and the broker-dealer made in the ordinary course of business and not in violation of any other provision of the securities laws.

We have also excluded from the rule investment advisers that are prohibited under section 203A of the Investment Advisers Act of 1940[21] ("Advisers Act") from registering with the Commission as investment advisers and not otherwise registered or required to be registered as a broker-dealer. Section 203A was added to the Advisers Act by the National Securities Markets Improvement Act of 1996 ("NSMIA"), which amended the Advisers Act to divide responsibility for regulating investment advisers between the Commission and state securities authorities.[22] Section 203A of the Advisers Act effects this division by generally prohibiting investment advisers from registering with us unless they have at least $25 million of assets under management or advise a registered investment company.[23] Advisers prohibited from registering with us are subject to the regulation of state securities authorities, but also continue to be subject to the federal securities laws, including the anti-fraud provisions of the federal securities laws.

We also make clear that no provision of the regulation shall apply to the publisher of any newspaper, news magazine, or business or financial publication of general and regular circulation that is not registered or required to be registered with the Commission as a broker or dealer or investment adviser. Regulation AC was never intended to govern media coverage of issuers.[24]

3. Definition of "Research Report"

The Commission requested comment on whether the definition of "research report" should be broader or narrower than proposed. Commenters discussed several aspects of the proposed definition, including whether it should cover debt securities, whether it should include electronic communications, and guidance concerning what will and will not be considered a research report.

a. Application to Debt Securities

We specifically requested comment on whether the proposed definition of "research report" should be limited to cover only equity securities. Five commenters discussed the application of Regulation AC to fixed income and all supported the application to debt to some extent.[25]

The Commission has determined that applying the requirements of Regulation AC to debt securities as well as equity securities would benefit investors because it would provide to debt investors the same benefits as equity investors by promoting the integrity of research reports and confidence in research analyst recommendations.

b. Electronic Communications

Commenters noted that, unlike the SRO rules, the proposed definition of "research report" in Regulation AC did not explicitly include "electronic communications," and requested that the Commission clarify that the regulation would apply to research reports transmitted electronically.

The Commission believes that electronic communications were included under proposed Regulation AC's definition of "research report." However, in response to commenters' concerns, the Commission has modified the proposed definition of "research report" to explicitly include written communications in electronic form.

c. What Constitutes a Research Report?

The Commission has deleted the "recommendation" element from Regulation AC's proposed definition of "research report" to conform to the definition in the SOA. Therefore, "research report" is defined as "a written communication (including an electronic communication) that includes an analysis of a security or an issuer and provides information reasonably sufficient upon which to base an investment decision."

Commenters requested that the Commission provide guidance concerning what types of communications the rule is not intended to cover.[26] Commenters also requested clarification that Regulation AC would not apply to internal communications.

It is not possible to provide a complete list of all types of communications that would or would not fall within the definition of "research report." Whether a particular communication constitutes a research report for the purposes of Regulation AC will turn on the individual facts and circumstances surrounding that communication. In general, however, the following communications would not be research reports if they do not include an analysis of, or recommend or rate, individual securities or companies:

- Reports discussing broad-based indices, such as the Russell 2000 or S&P 500 index.
- Reports commenting on economic, political, or market conditions.
- Reports commenting on or analyzing particular types of debt securities or characteristics of debt securities.
- Technical analysis concerning the demand and supply for a sector, index, or industry based on trading volume and price.
- Reports that recommend increasing or decreasing holdings in particular industries or sectors or types of securities.

The following communications would generally not be research reports even if they recommend or rate individual securities or companies:

- Statistical summaries of multiple companies' financial data (including listings of current ratings) that do not include any analysis of individual companies' data.
- An analysis prepared for a specific person or a limited group of fewer than fifteen persons.[27]
- Periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients discussing past performance or the basis for previously made discretionary investment decisions.
- Internal communications that are not given to customers.

4. Definition of "Third Party Research Analyst"

In response to commenters' concerns, we have added a definition of "third party research analyst" in order to refine the scope of Regulation AC. A "third party research analyst" is, with respect to a particular broker or dealer, any research analyst not employed by that broker or dealer or any associated person of that broker or dealer. With respect to a covered person, a "third party research analyst" is any research analyst not employed by that covered person, by the broker or dealer with whom that covered person is associated, or by any other associated person of the broker or dealer with whom that covered person is associated. We believe that research prepared by third party research analysts will not be susceptible to pressures from broker-dealers who distribute their research provided that the analyst's employer meets certain independence criteria.

B. Discussion of Certification Requirements

1. Certification by the Primarily Responsible Analyst

Commenters requested clarification on identifying the research analyst that would be required to make the certifications. Commenters argued that multiple certifications would likely be confusing or have other undesirable effects.[28]

Regulation AC requires that the analyst or analysts primarily responsible for the preparation of the content of a research report comply with the certification requirements. Thus, certification by junior analysts involved in the preparation of a research report is not necessary.[29] In some cases, however, there may be more than one research analyst primarily responsible for the content of a research report. In such instances, all analysts who are primarily responsible for the views expressed in the report must provide the certifications. Removing the names of all analysts from a report would not allow the firm to avoid including the required certifications and disclosures; the analyst or analysts primarily responsible for the report must certify.

2. Quantitative and Technical Research

Commenters argued that research based on quantitative and technical models may not be attributed to a particular analyst, may not reflect an analyst's views, and therefore, requested that the Commission provide guidance that these types of research would not be covered.[30] One commenter suggested, as an alternative, that Regulation AC should require a certification by the firm that the views expressed in the report are derived from the firm's systematic quantitative research model.[31]

The Commission has determined that, in cases where there is no identified analyst because the report is based on the firm's quantitative or technical model, the firm itself may provide the certifications that the views expressed in the research report accurately reflect the firm's quantitative research model, and that no part of the firm's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views disclosed in the research report.

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[18] The proposed definition of "research analyst" referred to any natural person "principally" responsible for research reports; the adopted definition refers to any natural person "primarily" responsible. This modification clarifies that, whether or not a natural person is considered to be principally responsible for research reports as a job description, any natural person who is primarily responsible for the preparation of the content of any research report is a research analyst for the purposes of Regulation AC unless otherwise exempted.

[19] The term "person associated with a broker or dealer" is defined in Exchange Act section 3(a)(18), 15 U.S.C. 78c(a)(18).

[20] Associated persons of a member are required under SRO rules to provide prompt notice to his or her employer of employment with any other persons as a result of a business activity. *See* NASD Rule 3030.

[21] 15 U.S.C. 80b–3a.

[22] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code). Section 203A was designed to allow the Commission to better use its limited resources by concentrating its regulatory responsibilities on advisers with national businesses, and to reduce the burden to investment advisers of the overlapping and duplicative regulation existing prior to the enactment of NSMIA. *See* S. Rep. No. 293, 104th Cong., 2d Sess. 2–4 (1996). In conjunction with implementing NSMIA, the Commission amended several "prophylactic" anti-fraud rules under the Advisers Act to make them inapplicable to state-registered advisers because "application of these provisions to state-registered advisers is more appropriately a matter for state law." Investment Advisers Act Release No. 1633 (May 15, 1997), 62 FR 28112 (May 22, 1997).

[23] Pursuant to authority under Advisers Act section 203(a)(1)(A) the Commission adopted Advisers Act Rule 203A–1, which made SEC registration optional for certain investment advisers that have between $25 and $30 million of assets under management. *See* Advisers Act Rule 203A–1(a)(1), 17 CFR 275.203A–1(a)(1).

[24] It is possible that a broker or dealer or covered person could provide a research report to a media entity intending that it be published. In that case, the report must be certified by the research analyst.

[25] *See* CSFB, Goldman, NASAA, SSB, and TBMA. We note that the SOA and the SRO rules apply only to equity securities.

[26] *See* SIA and Schwab.

[27] We have focused on a group of fewer than fifteen persons in part because Congress made a determination that an investment adviser who, during the course of the preceding twelve months, has had fewer than fifteen clients and who, among other things, does not hold themselves out generally to the public as an investment adviser, does not have to register with the Commission as an investment adviser. *See* Advisers Act Rule 203(b)(3), 15 U.S.C. 80b–3(b)(3).

[28] *See, e.g.*, SIA and SSB.

[29] The Commission notes that any person not required to comply with the certification requirements of Regulation AC (*e.g.*, junior analysts) would nonetheless be subject to the antifraud provisions of the federal securities laws.

[30] *See* Schwab and SIA.

[31] *See* Schwab.

However, tying an analyst's compensation to the performance of a quantitative or technical model would indicate that the report is the product of the analyst's subjective views (reflected by the design of the model employed). In that case, that analyst must certify the report containing the model's results in accordance with Rule 501 of Regulation AC.

C. Certifications or Disclosures During Public Appearances

We requested comment on what, if any, disclosures should be required during public appearances by analysts. The four commenters that addressed this issue generally were opposed to requiring certifications during analyst public appearances.[32] We have determined not to require certifications during public appearances by analysts.

The Commission believes that the proposed quarterly certification requirements in connection with analyst public appearances are sufficient. If the analyst does not provide a certification in connection with public appearances, Rule 502 of Regulation AC requires the broker-dealer to provide readers of research reports that it distributes, as well as the broker-dealer's designated examining authority, with notice that the analyst did not provide the certifications.[33] A Rule 502(b) notice in a research report must be in plain English.

D. Compendium Reports

The Commission requested comment on whether Regulation AC should make allowances for compendium research reports covering six or more securities. Commenters that discussed the treatment of certifications in compendium research reports believed that Regulation AC should permit the required disclosures to appear in a place other than the report itself.[34] Most of these commenters specifically supported treatment of compendium reports for the purpose of Regulation AC similar to the treatment allowed under SRO rules. Under SRO rules, members are not obligated to include disclosures in compendiums if the report directs readers to a toll-free number or postal address to write for required disclosures.[35] Electronic compendiums may instead include a hyperlink and paper compendiums may also include a web address where disclosures are located. Two commenters suggested the use of a combined certification that each analyst referenced in the report certifies that the analysis attributed to him or her accurately reflects his or her views.[36]

The Commission has determined not to permit treatment of compendium research reports in a manner similar to that permitted by the SROs because, unlike the SRO rules, the certifications required by Regulation AC are very concise. Nonetheless, when a research report covers more than one company and each research analyst required to certify with respect to the views expressed in a portion of the report is able to certify that: (a) the views expressed in the research report accurately reflect such research analyst's personal views about the subject securities and companies; and (b) that no part of his or her compensation was, is, or will be directly or indirectly related to the specific recommendation or views contained in the research report, the firm may comply with Regulation AC by including one clear and prominent combined certification that, as to each company covered, the respective research analyst (or analysts) certifies as to (a) and (b) above.[37]

E. Application of Regulation AC to Investment Advisers and Banks

Regulation AC is directed at brokers, dealers, and covered persons, because we believe that these entities are subject to the greatest conflicts. Therefore, investment advisers and banks, among others, may be required to comply with the regulation if they are covered persons of a broker-dealer. The Commission noted in the Proposing Release that the term "research analyst" would not include personnel of an investment adviser, such as a mutual fund portfolio manager, who are not principally responsible for preparing research reports, even if the individuals are registered persons of a broker-dealer (similar to the guidance provided by the SROs in the joint interpretive memorandum).[38] The Commission requested comment on whether the regulation should cover banks that are not associated persons and other independent entities, and whether the rule should explicitly exclude investment advisers.

Commenters who addressed the application of Regulation AC to investment advisers generally opposed the rule's coverage of investment advisers and investment advisory personnel.[39] Some commenters called for the specific exclusion of investment advisers.[40] Commenters who addressed the application of Regulation AC to banks generally opposed the rule's coverage of banks.[41] One commenter favored the application of Regulation AC to investment advisers and banks.[42]

The Commission has determined that Regulation AC should not exclude all investment advisers or banks that are associated with broker-dealers. However, as discussed above, the definition of "covered person" substantially narrows the scope of persons associated with a broker-dealer, such as investment advisers and banks, that are subject to Regulation AC. Where the broker-dealer has informational and structural separations from its associated person, the rule does not apply to that associated person. Where the protections are lacking, however, with respect to a person associated with a broker-dealer, that person is a covered person.[43] Accordingly, if an investment adviser or bank is a covered person and publishes, circulates, or provides research reports, the research report certification provisions of Regulation AC will apply. We believe those investment advisers and banks that do not meet the independence criteria that would exclude them from the definition of "covered person" may be subject to greater conflicts than are other investment advisers and banks. Specifically, a broker-dealer's investment banking department could pressure these investment adviser or bank affiliates to comment favorably in a research report or public appearance about a client or prospective client. Moreover, if associated persons that are covered persons were not subject to the certification requirements of Regulation AC, broker-dealers could attempt to funnel research through them to avoid complying with Regulation AC.[44]

[32] *See* AIMR, Goldman, SIA, and SSB.

[33] The Commission believes that merely citing to the rule provision would not constitute an adequate notice.

[34] *See* CSFB, Cleary, Goldman, SIA, SSB, and Schwab.

[35] *See* CSFB, Cleary, SIA, SSB, and Schwab.

[36] *See* SIA and SSB.

[37] This certification must be in plain English. The Commission would expect that broker-dealers would be able to demonstrate that the combined certification in the report is accurate.

[38] *See* NYSE Information Memo No. 02–26 (June 26, 2002), and NASD Notice to Members 02–39 (July 2002).

[39] *See* Alliance, ICAA, ICI, Investorside, SIA, SSB, Sullivan, and Thomson Financial.

[40] *See, e.g.*, ICAA and ICI.

[41] *See* Investorside, SSB, Sullivan, and Thomson Financial.

[42] *See* NASAA.

[43] As discussed above, Regulation AC requires a broker-dealer to inform its associated persons as to whether or not it maintains and enforces the informational barriers described in Regulation AC.

[44] Regulation AC is directed at those regulated persons that prepare research reports, as well as persons associated with regulated persons who might be used if attempts were made to improperly circumvent the rule. See also Exchange Act section 20(b), 15 U.S.C. 78t(b).

F. Application of Regulation AC to Third Party Research

In Proposing Regulation AC, we did not propose to treat research prepared by third parties but distributed by a broker-dealer differently from research produced by the broker-dealer itself. Commenters argued that broker-dealers should not be responsible for certifying research by independent third parties. Moreover, they pointed out practical problems, including the difficulty of tracking analysts employed by third parties.[45] They also cited increased costs. They argued that firms would discontinue providing the valuable service of making third party research available to customers.[46]

We have determined not to apply Regulation AC where a broker-dealer distributes research prepared by a third party research analyst whose employer satisfies certain independence criteria. The independence criteria require that the third party research analyst's employer does not have officers or employees in common with the broker-dealer or covered person distributing its research, and that the broker-dealer has written policies and procedures designed to prevent the broker-dealer, its controlling persons, officers, and employees from influencing the activities of the third party research analyst and the content of his or her research reports. We believe that research analysts employed by these independent third parties will not be sufficiently susceptible to pressures from distributing broker-dealers to warrant certification. Where a broker-dealer distributes the research of a third party that does not meet the independence criteria, however, the broker-dealer must confirm that the research report includes the same research analyst certification as required by Regulation AC.

Commenters argued that it would be difficult to track analysts employed by third parties, some of whom are overseas, in order to monitor their public appearances and obtain written statements from them. In response to commenters' concerns, we have determined that broker-dealers who distribute third party research are not required to obtain the public appearance certifications required by Rule 502 of Regulation AC with respect to public appearances by third party research analysts.

[45] *See* Alliance and Thomson Financial.

[46] *See, e.g.*, Schwab.

G. Application of Regulation AC to Foreign Research

In proposing Regulation Analyst Certification, the Commission did not distinguish between research that was issued by a U.S. entity and research that was issued by a non-U.S. entity. Several commenters raised the issue of the Regulation's effect on research originating from a foreign entity. These commenters generally opposed the proposed scope of Regulation AC, which captured foreign entities (and their associated persons) that issue research reports, including those who are not required to be registered with the Commission under section 15 of the Exchange Act.[47]

In light of these comments, we have created a narrow exception for foreign persons that are located outside of the United States and are not associated with a registered broker-dealer that prepares and provides research on foreign securities[48] to major United States institutions in the U.S. in accordance with the provisions of Rule 15a–6(a)(2). In these instances, the foreign person is excepted from the requirements of Regulation AC.

In addition, in the case of a research analyst employed outside the United States by a foreign person located outside the United States, Rule 502 of Regulation AC only applies to public appearances while the research analyst is physically present in the United States.

H. Supervision and Oversight

Commenters requested that the Commission clarify that the certification pertaining to the analyst's personal views is not intended to prevent research supervisors or review committees from seeking changes to the research product.[49] One commenter argued that Regulation AC should not impede the ability of a supervisor or a review committee to require that a report follow a written firm policy on when a research report can upgrade or downgrade a rating, or when it must withhold a rating to prevent conflicts or for other reasons.[50] Commenters argued that certification also should not preclude the ability of an analyst or a firm to modify the report due to a change in the analyst's opinion or to remove statements that create legal or regulatory concerns.[51]

[47] *See, e.g.*, Cleary and Thomson Financial.

[48] As defined in the rule, for purposes of Regulation AC, "foreign security" means a security issued by a foreign company for which a U.S. market is not the principal trading market.

[49] *See, e.g.*, SIA and SSB.

[50] *See* SIA.

[51] *See* SIA and SSB.

The certification required by Rule 501 of Regulation AC does not impede the oversight or review of research reports. If, at the end of the revision process, the analyst still believes that the report accurately reflects his or her personal views about the subject securities or issuers, then that analyst may certify and the firm may use the research report. If, however, after the review process the research report no longer reflects the analyst's personal views, then that analyst would be unable to certify and the firm would not be in compliance with Regulation AC if it uses the research report without a certification.

I. Regulation AC and Fraud Liability Under Federal Securities Laws

Several commenters requested that the Commission reiterate the position stated in the Proposing Release that Regulation AC does not impose new liability on analysts or their firms.[52] Regulation AC formalizes and potentially adds rigor to analysts' responsibilities to express their views truthfully and without guile.[53] Regulation AC makes explicit the representations that are already implicit when an analyst publishes his or her views—that the analysis of a security published by the analyst reflects the analyst's honestly held views.[54]

Regulation AC does not alter any other existing obligation under the federal securities laws for research analysts or broker-dealers.[55] A research report contains an inherent representation that the views expressed in the report are not knowingly false and do not omit material facts necessary in order to make statements made not misleading.[56] Thus, even without

[52] *See, e.g.*, Karr Tuttle, NASAA, SIA, and SSB.

[53] As the Commission stated in the Proposing Release, Regulation AC is not intended to create new duties under section 10(b) of the Exchange Act. As a result, no private liability will arise from a broker, dealer, or associated person's failure to make the required disclosure, or make, keep, and maintain required records. However, Regulation AC is subject to the full range of the Commission's enforcement authority. With regard to the enforcement of Regulation AC by the SROs, nothing in Regulation AC is inconsistent with Exchange Act Rule 19g2–1. *See* 17 CFR 240.19g2–1.

[54] The use of a certification process echoes and is consistent with one approach employed in the Sarbanes-Oxley Act of 2002, which requires certifications by officers of corporations relating to issuers' financial statements. *See* Sarbanes-Oxley Act sections 302 and 906, Pub. L. 107–204 (2002).

[55] *See, e.g.*, Securities Act sections 17(a) and 17(b), 15 U.S.C. 77q; Exchange Act section 10(b), 15 U.S.C. 78j(b), and Rule 10b–5, 17 CFR 240.10b–5.

[56] *See, e.g.*, Securities Act section 17(a), 15 U.S.C. 77q(a); Exchange Act Rule 10b–5, 17 CFR 240.10b–5; Exchange Act section 15(c)(1)(A), 15 U.S.C. 78o(c)(1)(A); and Exchange Act Rule 15c1–2(b), 17 CFR 240.15c1–2.

Regulation AC, analysts may be found to have violated the anti-fraud provisions of the federal securities laws if they make baseless recommendations or recommendations that they disbelieve.[57]

J. Performance-Based Compensation

Commenters expressed concern that Regulation AC could be read to require disclosure of analyst compensation arrangements based on the accuracy or performance of the views expressed as to the subject company's prospects.[58] Commenters thought that the compensation disclosure provision should be clarified to only require disclosure of compensation that was intended to influence or induce the particular view expressed in the research report.[59]

In the Proposing Release, the Commission noted that Regulation AC does not preclude an analyst from providing otherwise permissible services to his or her firm's investment banking department, and it does not prohibit analysts generally from receiving compensation for covering issuers or for preparing research reports. Instead, Regulation AC focuses on disclosure where the analyst compensation that is related to the specific recommendations or views expressed by the research analyst in the research report. Regulation AC is not intended to address compensation based on the performance of the views expressed regarding the securities discussed.

III. Paperwork Reduction Act

Regulation AC contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[60] We have submitted the proposal to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[61] An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

In the Proposing Release, the Commission solicited comments on the collection of information requirements. In response to comments, the Commission has revised the estimates published in the Proposing Release regarding the collection of information burdens associated with the new rule.

A. Summary of Collection of Information

Regulation AC generally requires that research reports published, circulated, or provided by a broker or dealer or covered person contain a statement attesting that the views expressed in each research report accurately reflect the analyst's personal views and whether or not the research analyst received or will receive any compensation in connection with the views or recommendations expressed in the research report. Regulation AC also requires broker-dealers to, on a quarterly basis, make, keep, and maintain records of research analyst statements regarding whether the views expressed in public appearances accurately reflected the analyst's personal views, and whether any part of the analyst's compensation is related to the specific recommendations or views expressed in the public appearance.

B. Reporting and Cost Burden Estimates

Regulation AC provides that brokers, dealers, and covered persons must include in research reports they publish, circulate, or provide certain certifications and disclosures about the analyst's views expressed in the research reports and any relationship between the analyst's compensation and the specific recommendations or views expressed. The regulation also requires broker-dealers to periodically make, keep, and maintain records of research analyst certifications and disclosures in connection with public appearances.

The staff of the Commission believes that the average amount of time it would take to include the required certifications and disclosures in each research report is one minute per report. In the Proposing Release, the Commission staff estimated that broker-dealers publish approximately 657,000 research reports per year. One commenter provided the Commission with data in response to the Proposing Release.[62] After considering this additional information, the staff of the Commission believes that broker-dealers publish approximately 1,375,865 research reports per year.[63] Therefore, the Commission estimates that the total annual burden in hours for broker-dealers to comply with the research report certification and disclosure requirements is approximately 22,930 hours per year ((1 minute × 1,375,865 reports)/60 minutes).

The Commission staff expects that research analysts will likely be the employees primarily charged with executing certifications and including them in research reports. According to industry sources, research analysts, on average, earn $189,250 per year, for an hourly pay rate of approximately $90. Including 35% overhead, Commission staff estimates that the hourly pay rate for a research analyst would be approximately $121.50. Therefore, the Commission estimates that the total annual burden in dollars for broker-dealers to comply with the research report certification and disclosure requirements is approximately $2,785,995.00[64] per year (22,930 hours × $121.50 per hour).

Rule 501 of Regulation AC, which applies to research reports, may also impose requirements on certain entities if they are associated with a broker-dealer and meet the definition of "covered person." However, "covered persons" are not subject to Rule 502 of Regulation AC, which addresses pubic appearances. The Commission estimates that approximately 2,650 SEC registered investment advisers are associated with a broker-dealer. We believe that not all of these entities write research reports, and that those who do write research reports write relatively few. Of those investment advisers that are associated with a broker-dealer and that write research reports, we do not believe that all of them will meet the definition of a "covered person," as defined by

[57] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968, 34977 (May 16, 2002); Proposing Release at 51512; *Cf. Hanly*, supra note 13, at 597. *See also In the Matter of Robertson Stephens, Inc.*, Administrative Proceeding File No. 3–11003 (January 9, 2003) (settled fraud action against broker-dealer where Commission found that a research analyst employed by the broker-dealer issued recommendations about a public company that were inconsistent with his privately communicated beliefs about the company.)

[58] *See, e.g.*, Goldman and Merrill.

[59] *See, e.g.*, Cleary, SIA, SSB, and Sullivan.

[60] 44 U.S.C. section 3501 *et seq.*

[61] 44 U.S.C. section 3507(d) and 5 CFR 1320.11.

[62] Thomson Financial asserted in its comment letter that the Commission's cost estimate in the Proposing Release was too low. Thomson Financial noted that the Commission cited data from Thomson Financial First Call and estimated that broker-dealers publish 657,000 research reports per year. Thomson Financial asserted that, while this estimate may accurately reflect equity research on U.S. securities transmitted via First Call Notes, it did not capture fixed-income research, research on non-U.S. equities or full-text reports transmitted through First Call Research Direct. Thomson Financial asserted that, when these additional sell-side reports are accounted for, the total exceeds 2 million reports a year. Thomson Financial suggested that the compliance costs for sell-side firms could run as high as $4,116,784.50.

[63] After further consultation with Thomson Financial, they have revised their total estimated number of research reports per year for 2001 to range between 1,375,865 and 1,540,150. The staff believes that the overall calculations are over-inclusive and possibly duplicative. As a result, we are basing our estimates on the lower-end of the range of the number of research reports per year. The staff believes that this estimate continues to be conservative.

[64] The estimated total annual burden in dollars for broker-dealers to comply with the research report certification and disclosure requirements would be approximately $3,118,642.00 if calculated using the high-end of the estimated range for the number of research reports.

Regulation AC. As a conservative estimate, however, if all SEC registered investment advisers are covered persons and on average publish as many research reports per year as the average broker-dealer (250 research reports), the estimated total number of research reports published by SEC registered investment advisers who are associated with a broker-dealer would be approximately 662,500 (250 × 2,650).[65] Therefore, the Commission estimates that the total annual analyst certification burden in hours for these investment advisers would be 11,040 hours ((1 minute × 662,500 research reports)/60 minutes). The Commission estimates that the annual burden in dollars of complying with the research report certification and disclosure requirements for SEC registered investment advisers is approximately $1,341,360 per year[66] (11,040 × $121.50). Unlike Rule 501, Rule 502 of Regulation AC (public appearances) does not apply to covered persons. We note, however, that we believe that a significant number of associated persons would not be "covered person(s)," as defined in Rule 500 of Regulation AC and, as a result, the aggregate burden for persons associated with broker-dealers to comply with the research report certification and disclosure requirements will be significantly lower.

The staff of the Commission believes that the research analyst will prepare the quarterly statement required for public appearances. The staff estimates that the average amount of time it would take a research analyst to prepare the quarterly statements regarding public appearances as required by the regulation is ten minutes per analyst. The staff of the Commission believes that, on average, approximately 519 public appearances by research analysts occur per quarter,[67] or about 2,076 per year. Therefore, the Commission believes that the total annual burden for broker-dealers in hours of complying with the public appearance certification and disclosure requirements would be approximately 346 hours per year ((10 minutes × 2076 appearances) / 60 minutes).

In cases where the broker or dealer does not obtain a statement by the research analyst in connection with public appearances as described above, the broker-dealer must promptly notify its examining authority, designated pursuant to section 17(d) of the Exchange Act and Rule 17d–2 thereunder, that the analyst did not provide certification in connection with public appearances. In addition, for 120 days following such notification, the broker-dealer must disclose in any research report it distributes authored by that analyst that the analyst did not provide certification specified in Rule 502(a) of Regulation AC. Further, broker-dealers must keep and maintain these records pursuant to Rule 17a–4(b)(4). Broker-dealers are also expected to have records that document the process they followed in producing each research analyst certification. The staff of the Commission believes that there will be few, if any, instances where a broker-dealer will provide notification to their examining authority, as analysts and their firms will have strong incentives to avoid having to make the type of disclosures required to be provided to their examining authority. Therefore, the total annual burden, in dollars, of complying with the public appearance certification requirements would be approximately $42,039 (346 hours × $121.50).

The regulation requires that the records of statements regarding public appearances be preserved in accordance with Exchange Act Rule 17a–4(b)(4). Exchange Act Rule 17a–4(b)(4) requires that any communication relating to a broker-dealer's business, including inter-office communications, must be kept for at least three years. In light of the existing record preservation requirement for brokers and dealers under Exchange Act Rule 17a–4(b)(4),[68] the staff of the Commission believes that any additional costs to preserve the records of the certifications required by the regulation would be minimal.

Rule 500 of Regulation AC includes a definition of "covered person," which limits the scope of the regulation's application. Rule 504 of Regulation AC requires a broker-dealer to notify its associated persons that issue research reports as to whether associated persons would meet the definition of "covered persons" under Regulation AC, and, therefore, be subject to the rule. Specifically, the broker-dealer must inform its associated persons whether the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer or any of its controlling persons, officers, or employees from influencing the activities of research analysts and the content of research reports prepared by associated persons. Broker-dealers must also inform its associated persons whether associated persons have any officers or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports and, if so, the identity of those persons.

The staff has not obtained data on the amount of time it would take for broker-dealers to make the necessary determinations and to draft and provide the notification required under Rule 504 of Regulation AC. For PRA purposes, the below calculations represent the staff's estimates of the amount of time that would be required for broker-dealers to comply with Rule 504. The staff estimates that there are approximately 2,650 investment advisers that are associated with at least one broker-dealer. The staff estimates that it would take approximately one hour per year for each of the approximately 2,650 broker-dealers to determine whether it maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer or any of its controlling persons, officers, or employees from influencing the activities of research analysts and the content of research reports prepared by associated persons. The staff estimates that it would take approximately thirty minutes per year for each broker-dealer to determine whether its associated persons have any officers or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports and, if so; the identity of those persons.[69]

The staff estimates that it would take fifteen minutes per year for each broker-dealer to draft and provide the required notification to its associated persons. The Commission staff expects that a compliance officer will likely be the employee primarily charged with making the necessary determinations, and drafting and providing the required notification. According to industry sources, in 2002, compliance officers,

[65] We believe that including all SEC registered investment advisers in calculating the paperwork burden as to covered persons is over-inclusive as to investment advisers, and that this estimate is therefore sufficient to account for other types of entities who would meet the definition of "covered person."

[66] The estimated total annual burden in dollars for SEC registered investment advisers to comply with the research report certification and disclosure requirements would be approximately $1,501,518.00 if calculated using the high-end of the estimated range for the number of research reports.

[67] 519 is approximately 10% of the estimated 5,186 research analysts employed in the U.S., which is based on information provided by Nelson Information. One commenter believes that this estimate is low, but did not provide specific data in support of its views. *See* Thomson Financial.

[68] OMB Control No. 3235–0279.

[69] Broker-dealers should already have mechanisms in place to determine whether such persons exist and, if so, the identity of those persons because of NASD Rule 3030. *See* NASD Rule 3030.

on average, earned approximately $82.00/per hour. Including 35% overhead, Commission staff estimates that the hourly pay rate for a compliance officer would be $110.70 per hour. Therefore, the Commission estimates that the annual burden for broker-dealers in hours of complying with the notification requirements would be approximately 4,638 hours ([2,650 × 105 minutes)/60]. The staff estimates that the annual burden for broker-dealers of complying with the notification requirements in dollars would be approximately $513,427.00 (4,638 hours × $110.70).

Therefore, the Commission estimates that the regulation would result in a total annual burden in hours of approximately 38,954 hours (22,930 hours for broker-dealers to comply with the research report requirements + 11,040 hours for investment advisers to comply with the research report requirements + 346 hours for broker-dealers to comply with the public appearance requirements + 4,638 hours for broker-dealers to comply with the notification requirements), for a total annual cost in dollars of approximately $4,682,821 ($2,785,995 for broker-dealers to comply with the research report requirements + $1,341,360 for investment advisers to comply with research the report requirements + $42,039 for broker-dealers to comply with the public appearance requirements + $513,427 for broker-dealers to comply with the notification requirements).

IV. Costs and Benefits of Adopted Regulation Analyst Certification

To assist the Commission in evaluating the costs and benefits that may result from adopting Regulation AC, the Commission sought comment on any potential costs, as well as any potential benefits, resulting from the proposal for investors, issuers, broker-dealers, other securities industry professionals, SROs, or others. The Commission also requested that commenters provide analysis and data to support their views. Regulation AC is part of an ongoing process by the Commission to address conflicts of interest affecting the production and dissemination of research by securities firms, and to provide increased disclosure to investors. Regulation AC includes a requirement that broker-dealers and covered persons include in research reports they publish certain certifications and disclosures about the analyst's views expressed in the research reports and any relationship between the analyst's compensation and the specific recommendations or views expressed. Regulation AC would also require broker-dealers to make, keep, and maintain records of research analyst certifications and disclosures in connection with public appearances. We are sensitive to the costs and benefits that result from our rules. The Commission initially identified certain costs and benefits relating to the proposals and encouraged commenters to discuss any additional costs or benefits. We discuss these costs and benefits below.

A. Costs

The Commission received letters from twenty-one commenters concerning Regulation AC. Only one commenter provided actual data to quantify the costs identified. This commenter believed that the estimates set forth in the proposing release were low primarily because the estimated number of research reports per year did not capture, among other things, reports by investment advisers and certain full-text reports.[70] The Commission modified its estimates in response to these comments.

The Commission also requested comment on how many public appearance certifications would likely be submitted to brokerage firms per quarter, and how many of those statements would be required to be provided to the firm's examining authority. One commenter believed that the estimate of the number of public appearances was too low, but did not provide specific data in support of its views.[71]

While Regulation AC may lead to some additional costs for brokers, dealers, and covered persons, we continue to believe that any costs should not be significant. In light of current requirements for broker-dealers under SRO rules, the Commission estimates that, beyond the paperwork costs described above, any additional costs to broker-dealers that would result from the required certifications and disclosures would be minimal. In the Proposing Release, the staff estimated that broker-dealers publish approximately 657,000 research reports per year. One commenter provided information that suggests that broker-dealers publish as many as 1,375,865 research reports per year.[72] Given the refined scope of Regulation AC, the staff believes that these two estimates represent a reasonable range with which to estimate research reports affected by the rule. Accordingly, the Commission estimates the total direct costs to be approximately $2.5 million to $4.7 million.[73] In addition, because the rule is minimally burdensome, the Commission believes that, beyond the paperwork costs described above, any additional costs to associated persons that would result from certifications and disclosures would be minimal.

Moreover, with respect to the compensation certifications and disclosures that are required by Regulation AC, broker-dealers are already required to make certain disclosures regarding research analyst compensation under SRO rules. For example, SRO rules currently require that firms disclose in research reports if the associated person preparing the report received compensation that is based upon (among other factors) the member's overall investment banking revenues.[74] Further, SRO rules prohibit members from offering favorable research to a company as consideration or inducement for the receipt of business or for compensation.[75] Additionally, Exchange Act Rule 17a–3(a)(19) currently requires broker-dealers to maintain a record of all agreements pertaining to the relationship between each associated person and the broker-dealer, including a summary of each associated person's compensation arrangement or plan.

In response to commenters' concerns, we modified the proposed rule text to include a definition of "covered person," which limits the scope of the regulation's application. Rule 504 of Regulation AC requires broker-dealers to notify its associated persons that issue research reports as to whether the broker-dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer or any of its controlling

[70] *See* Thomson Financial.

[71] *Id.*

[72] *See* Thomson Financial and footnote 63 for a discussion of revisions to the original estimate.

[73] The total burden range of approximately $2.5 million to $4.7 million is obtained by applying both the low and the high research report estimates. Costs are proportionate to the number of research reports assumed to be issued each year. For purposes of the Paperwork Reduction Act analysis, we used the estimate of 1,375,865 research reports to obtain the high end of the burden range. If we instead substitute the low estimate of 657,000 research reports in place of the high estimate, the low end of the burden range is approximately $2.5 million. The low research report estimate is approximately 48% of the high estimate and the resulting total annual cost burden is approximately $2.5 million ($1,337,278 for broker-dealers to comply with the research report requirements + $643,853 for investment advisers to comply with the research report requirements + $42,039 for broker-dealers to comply with the public appearance requirements + $513,427 for broker-dealers to comply with the notification requirements = $2,536,596).

[74] NASD 2711(h)(2)(A)(i); NYSE 472(k)(2).

[75] NASD Rule 2711(e); NYSE Rule 472(g).

persons, officers, or employees from influencing the activities of research analysts and the content of research reports prepared by the associated person, and to inform associated persons as to whether the associated person has any officers (or persons performing similar functions) or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports and, if so, the identity of those persons. Broker-dealers may incur costs in providing this notification to each of its associated persons. As noted previously, the staff estimates that the paperwork costs for broker-dealers of complying with the notification requirements in dollars would be approximately $513,427.00. Any additional costs should not be significant in part because associated persons of an SRO member are required under SRO rules to provide prompt notice to his or her employer of employment with any other persons as a result of a business activity.[76]

With respect to public appearances, current SRO rules require analysts to make certain disclosures during public appearances, such as the member's or the analyst's ownership interests in the subject company. SRO rules also require analysts to disclose any other actual, material conflict of interest of which the research analyst knows, or has reason to know, at the time of the public appearance.[77]

Broker-dealers should already have in place procedures necessary to comply with many components of Regulation AC due to existing obligations under SRO rules, although these procedures might require some minor modifications to conform with Regulation AC. As noted previously, the Commission estimates that the annual paperwork costs in dollars of complying with the regulation would be approximately $4,682,821.

B. Benefits

We believe that investor confidence in the integrity of research has suffered because there is evidence that, in some cases, research analyst objectivity has been compromised due to, among other things, analysts' personal compensation and firms' investment banking relationships with issuers that are the subjects of research reports. Requiring research analysts to certify that the views expressed in research reports reflect their personal views, and requiring disclosure of information regarding whether analyst compensation is related to the specific recommendations made, should help bolster investor confidence in the quality of research. This, in turn, should help increase investor confidence in the securities markets.

The Commission requested comment on whether the certification and disclosure requirements, if adopted, would promote investor confidence in the views expressed by research analysts and provide investors with useful information with which to evaluate potential biases. Ten commenters expressed support for Regulation AC. Generally, these commenters were of the view that Regulation AC would promote the integrity of research and investor confidence.[78] Three commenters did not agree that Regulation AC would advance investor protection and/or investor confidence to any significant degree.[79]

Regulation AC requires that broker-dealers and covered persons include certifications in research reports regarding the truthfulness of the views expressed in research reports and whether or not the analyst received compensation in connection with his or her specific recommendations or views. Many investors rely on the research reports and recommendations provided by their brokers and covered persons. To the extent that the Regulation AC requires disclosures that provide more transparency than provided by current regulation, these disclosures should provide investors with important information with which to determine the value of the research available to them.[80]

Regulation AC may result in an increase in the overall quality of the research available to the public because broker-dealers and covered persons would be in violation of Regulation AC when issuing research reports unless the reports include the required certifications and disclosures. The requirement that the research analyst (or analysts) primarily responsible for preparing the research report personally certify that the views expressed in the report accurately reflect his or her personal views creates an incentive for analysts to examine, even more carefully, the basis and foundations for his or her recommendations in preparing research reports.

Regulation AC may also result in an increase in the quality of research because of competitive reasons. Firms that publish research reports that do not contain certain analyst certifications will be in violation of the regulation, and firms whose research analysts' compensation is related to the specific recommendations or views provided in research reports (to the extent allowed by SRO rules) may lose some business to firms that are less conflicted. Regulation AC is intended to enhance investor confidence in the integrity of the research available to them. We believe that by requiring research analysts to certify as to the truthfulness of the views expressed in research reports, investor confidence in the securities markets should be enhanced, thereby leading to the benefit of more liquid and efficient markets. The Commission does not have data to quantify the value of the benefits described above. The Commission requested, but did not receive, comment on how it may quantify these benefits. The Commission also requested, but did not receive, comment concerning any benefits, not already identified, that may result from the adoption of Regulation AC.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[81] the Commission certified that Regulation AC will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons supporting the certification, were set forth in the Proposing Release.

The Commission solicited comments on the potential impact of Regulation AC on small entities in the Proposal. No comments were received that discussed the Regulatory Flexibility Act Certification. However, in response to other comments, the Commission has revised its estimates and believes that the total burden in hours required to comply with proposed Regulation AC would be approximately 5.78 hours per year, per small firm, as compared to the original estimate of two hours and two minutes per year, per small firm.

VI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[82] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition,

[76] *See* NASD Rule 3030.

[77] NASD Rule 2711(h); NYSE 472(k)(1).

[78] *See* AIMR, CSFB, Goldman, ICAA, ICI, Merrill, SIA, SSB, Schwab, and TBMA.

[79] *See* David Norr, NASAA, and Thomson Financial.

[80] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

[81] 5 U.S.C. 605(b).

[82] 15 U.S.C. section 78c(f).

and capital formation. In addition, section 23(a)(2)[83] of the Exchange Act requires the Commission to consider the impact any rule would have on competition. Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release, the Commission solicited comment on the proposal's effect on competition, efficiency, and capital formation. Three commenters believed that Regulation AC would impose an inappropriate burden on competition.[84] One commenter asserted that the scope of Regulation AC was overly broad and would apply unnecessarily to, and be an onerous burden on, broker-dealer firms that are not subject to the conflicts the regulation is designed to address.[85] Another commenter asserted that Regulation AC may serve as a barrier to entry and an impediment to competition for firms seeking to provide an alternative to sell-side research.[86]

Regulation AC is intended to enhance investor confidence in the integrity of the research available to them. Further, we have modified the rule from the proposal and have limited the scope of its application. We believe that requiring broker-dealers and covered persons to include analyst certifications in research reports, as well as the other disclosures required by Regulation AC, should enhance investor confidence in the securities markets, thereby leading to a more efficient market.

The Commission has considered Regulation AC in light of the standards in section 23(a)(2) and believes that it would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed above in the Cost-Benefit section, the Commission recognizes that Regulation AC may lead to some additional costs for broker-dealers and covered persons. On balance, we think that the application of Regulation AC is tailored to those situations where the conflicts are most likely to affect research. As such, we do not believe that the rule would create an unreasonable burden on competition. Further, we believe that providing the benefits that will result from the rule in those conflict-laden situations will further the purposes of the rule, including enhancing investor confidence in the market, thereby leading to a more efficient market.

[83] 15 U.S.C. section 78w(a)(2).

[84] *See* Alliance, Investorside, and Thomson Financial.

[85] *See* Alliance.

[86] *See* Investorside.

VII. Statutory Authority

Regulation AC is being adopted pursuant to sections 3, 15, 17, and 23 of the Exchange Act and pursuant to sections 17 and 19 of the Securities Act.

Text of the Rule

List of Subjects in 17 CFR Part 242

Brokers, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

PART 242—REGULATIONS M, ATS, AND AC AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for part 242 continues to be read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

2. The part heading for part 242 is revised as set forth above.

3. Part 242 is amended by adding Regulation AC, §§ 242.500 through 242.505 to read as follows:

Sec.

242.500 Definitions.
242.501 Certifications in connection with research reports.
242.502 Certifications in connection with public appearances.
242.503 Certain foreign research reports.
242.504 Notification to associated persons.
242.505 Exclusion for news media.

Regulation AC—Analyst Certification

§ 242.500 Definitions.

For purposes of Regulation AC (§§ 242.500 through 242.505 of this chapter) the term:

Covered person of a broker or dealer means an associated person of that broker or dealer but does not include:

(1) An associated person:

(i) If the associated person has no officers (or persons performing similar functions) or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports; and

(ii) If the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), and employees of the broker or dealer from influencing the activities of research analysts and the content of research reports prepared by the associated person.

(2) An associated person who is an investment adviser:

(i) Not registered with the Commission as an investment adviser because of the prohibition of section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a); and

(ii) Not registered or required to be registered with the Commission as a broker or dealer.

Note to definition of covered person: An associated person of a broker or dealer who is not a covered person continues to be subject to the federal securities laws, including the anti-fraud provisions of the federal securities laws.

Foreign person means any person who is not a U.S. person.

Foreign security means a security issued by a foreign issuer for which a U.S. market is not the principal trading market.

Public appearance means any participation by a research analyst in a seminar, forum (including an interactive electronic forum), or radio or television or other interview, in which the research analyst makes a specific recommendation or provides information reasonably sufficient upon which to base an investment decision about a security or an issuer.

Registered broker or dealer means a broker or dealer registered or required to register pursuant to section 15 or section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o or 78o–4) or a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(a)(1)(A)).

Research analyst means any natural person who is primarily responsible for the preparation of the content of a research report.

Research report means a written communication (including an electronic communication) that includes an analysis of a security or an issuer and provides information reasonably sufficient upon which to base an investment decision.

Third party research analyst means:

(1) With respect to a broker or dealer, any research analyst not employed by that broker or dealer or any associated person of that broker or dealer; and

(2) With respect to a covered person of a broker or dealer, any research analyst not employed by that covered person, by the broker or dealer with whom that covered person is associated, or by any other associated person of the broker or dealer with whom that covered person is associated.

United States has the meaning contained in § 230.902(l) of this chapter.

U.S. person has the meaning contained in § 230.902(k) of this chapter.

§ 242.501 Certifications in connection with research reports.

(a) A broker or dealer or covered person that publishes, circulates, or provides a research report prepared by a research analyst to a U.S. person in the United States shall include in that research report a clear and prominent certification by the research analyst containing the following:

(1) A statement attesting that all of the views expressed in the research report accurately reflect the research analyst's personal views about any and all of the subject securities or issuers; and

(2)(i) A statement attesting that no part of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in the research report; or

(ii) A statement:

(A) Attesting that part or all of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in the research report;

(B) Identifying the source, amount, and purpose of such compensation; and

(C) Further disclosing that the compensation could influence the recommendations or views expressed in the research report.

(b) A broker or dealer or covered person that publishes, circulates, or provides a research report prepared by a third party research analyst to a U.S. person in the United States shall be exempt from the requirements of this section with respect to such research report if the following conditions are satisfied:

(1) The employer of the third party research analyst has no officers (or persons performing similar functions) or employees in common with the broker or dealer or covered person; and

(2) The broker or dealer (or, with respect to a covered person, the broker or dealer with whom the covered person is associated) maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), and employees of the broker or dealer from influencing the activities of the third party research analyst and the content of research reports prepared by the third party research analyst.

§ 242.502 Certifications in connection with public appearances.

(a) If a broker or dealer publishes, circulates, or provides a research report prepared by a research analyst employed by the broker or dealer or covered person to a U.S. person in the United States, the broker or dealer must make a record within 30 days after any calendar quarter in which the research analyst made a public appearance that contains the following:

(1) A statement by the research analyst attesting that the views expressed by the research analyst in all public appearances during the calendar quarter accurately reflected the research analyst's personal views at that time about any and all of the subject securities or issuers; and

(2) A statement by the research analyst attesting that no part of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in such public appearances.

(b) If the broker or dealer does not obtain a statement by the research analyst in accordance with paragraph (a) of this section:

(1) The broker or dealer shall promptly notify in writing its examining authority, designated pursuant to section 17(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(d)) and § 240.17d–2 of this chapter, that the research analyst did not provide the certifications specified in paragraph (a) of this section; and

(2) For 120 days following notification pursuant to paragraph (b)(1) of this section, the broker or dealer shall disclose in any research report prepared by the research analyst and published, circulated, or provided to a U.S. person in the United States that the research analyst did not provide the certifications specified in paragraph (a) of this section.

(c) In the case of a research analyst who is employed outside the United States by a foreign person located outside the United States, this section shall only apply to a public appearance while the research analyst is physically present in the United States.

(d) A broker or dealer shall preserve the records specified in paragraphs (a) and (b) of this section in accordance with § 240.17a–4 of this chapter and for a period of not less than 3 years, the first 2 years in an accessible place.

§ 242.503 Certain foreign research reports.

A foreign person, located outside the United States and not associated with a registered broker or dealer, who prepares a research report concerning a foreign security and provides it to a U.S. person in the United States in accordance with the provisions of § 240.15a–6(a)(2) of this chapter shall be exempt from the requirements of this regulation.

§ 242.504 Notification to associated persons.

A broker or dealer shall notify any person with whom that broker or dealer is associated who publishes, circulates, or provides research reports:

(a) Whether the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), or employees of the broker or dealer from influencing the activities of research analysts and the content of research reports prepared by the associated person; and

(b) Whether the associated person has any officers (or persons performing similar functions) or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports and, if so, the identity of those persons.

§ 242.505 Exclusion for news media.

No provision of this Regulation AC shall apply to any person who:

(a) Is the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; and

(b) Is not registered or required to be registered with the Commission as a broker or dealer or investment adviser.

Dated: February 20, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4576 Filed 2–26–03; 8:45 am]

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Federal Register

Thursday,
February 27, 2003

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

Docket No. FAA–2001–8690

RIN 2120–AG74

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On April 4, 2000, the FAA published two final rules regarding commercial air tour operations over Grand Canyon National Park (GCNP). The first rule, Commercial Air Tour Limitation in Grand Canyon National Park Special Flight Rules Area, limited the number of commercial air tour operations that may be flown in the GCNP Special Flight Rules Area (SFRA) on an annual basis. This rule became effective on May 4, 2000. The second rule, Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, modified the airspace in the SFRA to accommodate a new route system for commercial air tour operations and to expand the amount of overall airspace protected by flight free zones. This rule initially was scheduled to become effective December 1, 2000. After several delays, the new routes and airspace were adopted for the west end of the GCNP SFRA on April 19, 2001. The routes and airspace on the east end of the GCNP SFRA have been delayed several times since the adoption of the final rule. In December 2001, the FAA delayed the east end routes and airspace until February 20, 2003. This rule stays 14 CFR 93.305 (a) and (b) of the Airspace Modification Final Rule for the east end of the GCNP until February 20, 2006.

DATES: Effective February 20, 2003, 14 CFR 93.305 (a) and (b) are stayed until February 20, 2006. This rule was originally published at 61 FR 69330 on December 31, 1996, and amended April 4, 2000 (65 FR 17736).

ADDRESSES: You may view a copy of this final rule, Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, through the Internet at: *http://dms.dot.gov*. You may also review the public dockets on this regulation in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Nassif Building at the Department of Transportation, 400 7th St., SW., Room 401, Washington, DC 20590.

As an alternative, you may search the **Federal Register**'s Internet site at *http://www.access.gpo.gov/su_docs* for access to this final rule.

You may also request a paper copy of this final rule from the Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680.

FOR FURTHER INFORMATION CONTACT: Kent Stephens, Flight Standards Service, (AFS–200) Federal Aviation Administration, Seventh and Maryland Streets, SW., Washington, DC 20591; Telephone: (202) 267–7493.

SUPPLEMENTARY INFORMATION:

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBRFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov*.

Background

On April 4, 2000, the Federal Aviation Administration published two final rules, the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Airspace Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). *See* 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also published concurrently a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). *See* 65 FR 17698, April 4, 2000. The Commercial Air Tour Limitations final rule was implemented, effective May 4, 2000. The Airspace Modification final rule and the routes set forth in the Notice of Availability were scheduled to become effective December 1, 2000. The Final Supplemental Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

Following the publication of the final rules, the United States Air Tour Association and seven air tour operators petitioned the United States Court of Appeals for the District of Columbia to review the rules. *See USATA* v. *FAA, et. al.* (Docket No. 00–1201). During the course of this litigation, the USATA raised new safety concerns regarding the new routes in the east end of the GCNP SFRA. As a result, the FAA first delayed implementation of the routes until December 28, 2000 (November 20, 2000; 65 FR 69848) so that it could evaluate the new issues. During this evaluation, the FAA determined that modifications could be made to the routes to enhance safety. On December 13, 2000, the FAA published a second Notice of Availability seeking comment on proposed changes to routes in the east-end of the GCNP SFRA (65 FR 78071). Subsequently, the FAA delayed the implementation of the routes until April 1, 2001. (66 FR 2001, January 4, 2001).

During the comment period for the second Notice of Availability, additional safety concerns were raised regarding the proposed revisions to the east end routes. Consequently, the FAA decided to implement the modifications to the route structure of the GCNP SFRA in two phases. First, on April 19, 2001, the FAA implemented the routes and airspace in the west-end (defined as all areas of the SFRA west of the Dragon corridor) of the GCNP SFRA that originally were published on April 4, 2000. Also, on April 19, 2001, the SFRA boundary in the eastern part of the GCNP SFRA over the Navajo Nation lands was extended five miles to the east. Second, the route structure on the east-end (Dragon Corridor and all airspace east of that Corridor) in the GCNP SFRA was stayed until December 1, 2001, to enable the FAA and NPS to determine what changes should be made in the east end of GCNP. In December 2001, the east end route structure was again stayed until February 20, 2003. (66 FR 63293, December 5, 2001). Accordingly, the routes now flown remain almost exactly as that shown under Special Federal Aviation Regulation (SFAR) 50–2, with only slight modification to certain entry and exit points.

In a case decided on August 16, 2002, (*U.S. Air Tour Association, et al.* v. *Federal Aviation Administration*, 298 F.3d 997), the U.S. Court of Appeals for the District of Columbia concluded that the FAA's use of an "average annual day" in lieu of "any given day," in measuring substantial restoration of natural quiet at Grand Canyon National Park "appears inconsistent with both the [National] Park Service's definition of the term and the premise on which that definition was based." The Court also determined that the FAA's explanation for excluding non-tour aircraft in its noise modeling was inadequate and that the FAA had not provided sufficient evidence to conclude that noise from non-tour aircraft did not impact the calculations of substantial restoration of natural quiet achieved in GCNP. The court remanded the matter to the FAA for further proceedings consistent with its opinion.

Once the FAA obtains guidance from the NPS concerning the appropriate way to measure noise in the park and determines how to address non-air tour aircraft noise, the FAA and NPS will conduct the necessary environmental analysis and review process. FAA and NPS may initiate supplemental rulemaking to consider further modifications to the east-end routes and the west-end routes to achieve substantial restoration of natural quiet in the GCNP. The GCNP Noise Model Validation project has begun to yield data that suggests there may be a need to recalibrate the Integrated Noise Model (INM) for use in the GCNP. Recalibration of the INM would affect the determination of how much natural quiet has already been restored and the benefits of pursing the alternative of quiet technology and may warrant public notice and an opportunity for review and comment.

Following a recent congressional hearing on Grand Canyon overflights, the FAA and NPS are also considering a dispute resolution process to assist in developing measures to fulfill the mandate under the National Park Overflights Act. Because this process is not complete, and, based on prior experience, we believe it could take several years to resolve all of the issues and complete the necessary environmental review and any additional rulemaking process, it is necessary to stay 14 CFR 93.305 (a) and (b) as they apply to the east end of GCNP until February 20, 2006. The FAA and the NPS will work to resolve the issues remanded by the court together with the issues surrounding the routes.

The FAA notes that the changes to the routes and airspace in the west end of GCNP finalized in the April 2000 rule have been in effect since April 19, 2001. Those changes were implemented to further the goal of substantial restoration of natural quiet in GCNP.

Immediate Effective Date

The FAA finds that good cause exists under 5 U.S.C. 553(d) for this final rule to become a final rule upon issuance. The FAA notes that the stay only affects the east end of the GCNP SFRA; changes to the west end have been in effect since April 19, 2001.

Environmental Review

In March 2001, the FAA completed a written reevaluation (WR) of the February 22, 2000 Final Supplemental Environmental Assessment (FSEA) for Special flight rules in the Vicinity of Grand Canyon National Park (GCNP). The WR examined the potential environmental impacts associated with a phased implementation of the Airspace rule and the Commercial Air Tour Route Modifications described in the February 2000 FSEA. This phased approach involved implementation of the agency's "preferred" alternative for airspace and air tour route structures as described in the February 2000 FSEA for the GCNP SFRA west of Dragon Corridor. Since no changes to the western portion of the GCNP SFRA as described in the FSEA occurred, the impact evaluation for the "preferred" alternative contained in the FSEA remained valid for the stage-one airspace and routes implementation at the west-end of the GCNP SFRA. The WR also analyzed the planned implementation of the stage-one airspace, routes, and route modifications on the east-end and determined that they were not significant changes from the plans analyzed under the "no action" alternative in the February 2000 FSEA. Therefore, the FAA determined that the proposed route revisions to the SFAR 50–2 route structure conformed to the "no action" alternative analyzed in the FSEA. The FAA determined that the data and analyses contained in the February 2000 FSEA were still substantially valid and all pertinent conditions and requirements of the prior approval have or would be met in the April 2001 action.

While the stay of the east-end route and airspace structure lessens the percentage of the GCNP substantially restored to natural quiet, it is only a temporary delay. In addition, given that the majority of the revised routes and airspace for GCNP were implemented during phase one, the phased implementation process resulted in a gain of substantial restoration of natural quiet for GCNP as described in the February 2000 FSEA.

Therefore for the above reasons and pursuant to FAA Order 1050.1D, Paragraph 92, the FAA determined that the contents of the Final Supplemental Environmental Assessment and its conclusions issued on February 22, 2000 were still valid. Additionally, the FAA found that the previous Section 106 Determination of No Adverse Effect to Traditional Cultural Properties identified by Native Americans issued for the FSEA was also still valid. Copies of the written reevaluation were placed in the public docket for the April 2001 rulemaking, were circulated to interested parties, and were available for inspection at the same time and location as the April 2001 final rule. The findings of the March 2001 WR remain valid for this final rule staying the provisions of 14 CFR 93.305 (a) and (b).

Economic Analysis

The economic analysis completed for the final rule published April 4, 2000 evaluates the east-end and the west-end operations separately since these are distinct markets. This action does not affect the April 19, 2001 implementation of the west-end airspace structure, and the economic analysis from the April 4, 2000 final rule remains valid. At this time the FAA is staying the implementation of the east-end routes. The FAA does not consider that this rulemaking effort imposes any costs on the public since it merely stays the provisions for the east end of GCNP. Commercial air tour operators will continue to use established air tour routes. Benefits from reduced aircraft noise in the east end of GCNP, however, will be delayed. This rulemaking is not a final action. If the agency takes a final action that is different than that published on April 4, 2000, then it may be necessary to complete a revised economic evaluation.

Initial Regulatory Flexibility Determination and Assessment

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final

rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will have only a *de minimus* cost impact on the certificate holders. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act (TAA) of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The TAA also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States. In accordance with the above Act and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Federalism Implications

This amendment will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals. The FAA has determined that this rule will not impose any unfunded mandates.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR part 93 as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Section 93.305 is amended by staying paragraphs (a) and (b) published on December 31, 1996 (61 FR 69330), and amended on April 4, 2000 (65 FR 17736), until February 20, 2006.

Issued in Washington, DC on February 20, 2003.

Marion Blakey,

Administrator.

[FR Doc. 03–4495 Filed 2–24–03; 3:40 pm]

BILLING CODE 4910–13–P

Federal Register

Thursday,
February 27, 2003

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 875

Abandoned Mine Land Reclamation Notices; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 875

RIN: 1029–AB99

Abandoned Mine Land Reclamation Notices

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We are revising our regulations governing the processing of State and tribal grant applications to build public facilities using Abandoned Mine Land (AML) Reclamation Funds. The existing regulations require us to publish a **Federal Register** notice whenever we receive a grant application to build a public facility. We are changing this requirement to one that requires us to publish a notice only when the Director of the Office of Surface Mining (OSM) finds it necessary to ensure adequate public notice of the grant application. We are also correcting errors in four cross-references.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Danny Lytton, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., MS–121–SIB, Washington DC 20240; Telephone: 202–208–2788; E-mail: *dlytton@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of the Final Rule
II. Discussion of the Public Comments Received
III. How Will This Rule Affect State and Indian Programs?
IV. Procedural Matters and Required Determinations

I. Background and Discussion of the Final Rule

On June 19, 2002, we published in the **Federal Register** (67 FR 41756) proposed revisions to our regulations at 30 CFR 875.15(f). Those regulations govern public notification for certain non-coal reclamation projects funded by the AML Reclamation Fund. There are 23 States and 3 Indian tribes with approved AML programs. Only 6 of these programs are currently certified for non-coal reclamation projects, *i.e.*, all of their existing known coal-related reclamation objectives have been completed. They are the programs of the States of Louisiana, Montana, Texas and Wyoming, and the Hopi Tribe and Navajo Nation. Only these 6 programs are, therefore, eligible for 30 CFR part 875 AML funding of non-coal reclamation projects.

The current regulations at 30 CFR 875.15(f) require that the Director publish a **Federal Register** notice announcing the receipt of, and seeking comments on, AML grant applications for non-coal reclamation projects submitted by a governor of a State or the equivalent head of an Indian tribe. The grant applications are requests for funds for the construction of specific public facilities related to the coal or minerals industry in communities impacted by coal or other mineral mining and processing practices. Such construction projects are authorized by section 411(f) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) after all coal-related reclamation objectives have been or are in the process of being completed. For the reasons set forth below, we are making the OSM Director's (hereinafter Director) **Federal Register** notice requirement a discretionary action.

The current regulatory scheme for 30 CFR part 875 provides for a level of public notice that, in most cases, makes the additional **Federal Register** notice of § 875.15(f) redundant. For example, § 875.13 provides for a public notice of a State or Indian tribe's certification that it has completed all existing known coal-related reclamation objectives for eligible lands or waters. Section 875.15(d) then allows the State or Indian tribe to submit to the Director a grant application for AML funding of specific non-coal projects. Section 875.15(e) details the information required in the grant application. In particular, paragraph (e)(7) requires the Director to conduct an analysis and review of the procedures used by the State or Indian tribe to notify and involve the public in the funding request and a copy of all comments received and their resolution by the State or Indian tribe. The 1994 preamble discussion of the § 875.15(e) grant information requirements noted that they were intended to assist the Director in determining whether a "need" exists and whether the public had been "fully appraised and informed" of the grant request. May 31, 1994; 59 FR 28163.

Irrespective of the outcome of the Director's § 875.15(e) public notice determination, § 875.15(f) next requires that the Director prepare a **Federal Register** notice of the State's or Indian tribe's grant application. Following receipt and evaluation of comments generated by that **Federal Register** notice, the Director is to make his/her decision on the grant application. It is not clear why the 1994 rule required the additional § 875.15(f) **Federal Register** notice of the grant application as there was no preamble discussion of this provision and the enabling statute for § 875.15 does not require the additional notice. May 31, 1994; 59 FR 28163–4; 30 U.S.C. 1240(a).

Accordingly, we are making the **Federal Register** notice required by § 875.15(f) discretionary. We believe that if the Director can determine from the § 875.15(e)(7) information previously submitted by the State or Indian tribe in its grant application that the public has already been "fully appraised and informed" of the grant request, a subsequent § 875.15(f) required **Federal Register** notice covering the same ground would not meaningfully add to the Director's decision-making process. Conversely, if the Director cannot determine from the (e)(7) information submitted by the State or Indian tribe that the public has been "fully appraised and informed" of the grant request, the Director should prepare a § 875.15(f) **Federal Register** notice of the grant request so as to ensure adequate public notice. This final rule will give the Director the option of requiring an additional **Federal Register** notice dependent on the extent of prior (e)(7) public notice. This seems to be a reasonable course. It ensures adequate public notice of the State's or Indian tribe's grant request (with or without a **Federal Register** notice) while avoiding the delay and expense of an unnecessary **Federal Register** notice. We are, therefore, revising § 875.15(f) by inserting the words "if necessary to ensure adequate public notification." The first sentence of § 875.15(f), with inserts italicized, will read as follows: "After review of the information contained in the application, the Director shall, *if necessary to ensure adequate public notification,* prepare a **Federal Register** notice regarding the State's or Indian tribe's submission and provide for public comment."

There are several other practical reasons to reject the current rule's § 875.15(f) requirement of a **Federal Register** notice and to adopt the proposed rule's more flexible approach. The first is that, since the rule was initially promulgated seven years ago, there have been no comments submitted in response to any of the required **Federal Register** notices published by the Director. This fact was brought to light as a result of an inquiry from several of the States and Indian tribes attending the August 2001 AML Conference held in Athens, Ohio, who questioned the need for the Director's required § 875.15(f) **Federal Register** notice. We subsequently reviewed our own records and discovered that we had never received any public comments to the required § 875.15(f) **Federal Register** notices. We then polled the 6 eligible AML programs on the public response to their own subsection (e)(7) public notice efforts. All of the programs questioned the need for the required § 875.15(f) **Federal Register** notice and reported a general lack of public response to their individual (e)(7) public notice efforts. The response of Wyoming, which is by far the largest of the AML programs certified under § 875.13 and which has funded thirty-six (36) § 875.15 public facilities projects with AML grant funds, was of particular note. Although Wyoming's AML program provides for extensive local public notice and a public hearing on all proposed § 875.15 projects, that State reported that "even these local opportunities for comment elicit little if any response from those directly impacted by the project." This consistent lack of local response to local notice from the Wyoming AML program regarding prospective § 875.15 projects underscores the fact that the current rule's requirement for additional **Federal Register** notice, while helpful in theory, has not produced meaningful public notice and comment.

Our polling of the 6 States and Indian tribes brought to light additional reasons not to retain the current rule's **Federal Register** notice requirement. The Navajo Nation, which has a substantial number of applications ready for processing as soon as its revised AML plan is approved, strongly opposes the current rule's required **Federal Register** notice because of its own internal AML notice procedures. By tribal law, the Navajo Nation has had to hold public meetings for each of its 100 or more individual political units whenever AML funds are to be used anywhere in their tribal boundaries for the construction of public facilities. The current rule's § 875.15(f) required **Federal Register** notice would, therefore, trigger a redundant, time-consuming round of tribal meetings on the very same projects.

Another reason given by some of the States and Indian tribes for opposing the continuance of the § 875.15(f) required **Federal Register** notice is that, for programs with shorter construction seasons like those of Montana and Wyoming, the required **Federal Register** notice adds 45 to 60 days to the project approval process. These additional 45 to 60 days can push completion of a funded public facility well into the next construction season.

In light of the above, we are removing the requirement in § 875.15(f) that the Director always publish a **Federal Register** notice informing the public of the grant application. Instead, the Director will retain the option of publishing such notice if his/her analysis and review of the notice information required under § 875.15(e)(7) indicates that inadequate procedures were used to notify and involve the public in the funding request. In this way, we can ensure that the public has been fully apprised of the grant application while also being protected from the delay and expense of an unnecessary **Federal Register** notice.

Technical Corrections

In addition to the above, we are also revising our regulations at §§ 875.15(d) and (e) to correct errors in four existing cross-references. In § 875.15(d), we are changing the cross references from paragraphs (a), (d), and (e) to paragraphs (b), (e), and (f), respectively. In § 875.15(e), we are changing the cross reference from paragraph (c) to paragraph (d). These revisions to the cross references will not result in any substantive changes in the application of our regulations.

Finally, we have rewritten § 875.15(f) in plain language format by incorporating numbered paragraphs to make the section more reader friendly. No substantive changes resulted from using the plain language format.

II. Discussion of the Public Comments Received

Comments were requested on the proposed rule and a total of two comments were received. They were from the State of Wyoming's Abandoned Mine Land Program and the Interstate Mining Compact Commission. Both commenters supported the proposed revisions. No one requested a public hearing and none was held.

III. How Will This Rule Affect State and Indian Programs?

Following publication of this final rule, we will evaluate the State and Indian programs approved under section 405 of SMCRA to determine any changes in those programs that may be necessary. When we determine that a particular State program provision should be amended, the particular State will be notified in accordance with the provisions of 30 CFR 884.15. We have made a preliminary determination that no program revisions will be required.

IV. Procedural Matters and Required Determinations

Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The elimination of the mandatory requirement to publish a **Federal Register** notice is not expected to have an adverse economic impact on States and Indian tribes. It may in fact reduce construction costs in northern climates by eliminating delays.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As previously stated, the elimination of the requirement for a mandatory **Federal Register** notice is not expected to have an adverse economic impact. Further, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to

compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1534) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications.

Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. As previously stated, 2 tribes will be affected by the rule, the Hopi Tribe and Navajo Nation. The rule will most likely shorten the processing time for most grant applications received from the Hopi and Navajo by eliminating the mandatory requirement to publish a **Federal Register** notice whenever we receive a grant application to build a public facility.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a "significant energy action" under Executive Order 13211. The elimination of the mandatory requirement to publish a **Federal Register** notice will not have a significant affect on the supply, distribution, or use of energy. The elimination of the mandatory requirement may reduce construction costs in northern climates by eliminating delays.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act to the Office of Management and Budget is not required.

National Environmental Policy Act

We have reviewed this rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.

List of Subjects in 30 CFR Part 875

Grant program—natural resources, Indian lands, Reclamation, Surface mining, Underground mining.

Dated: January 29, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

Accordingly, we are amending 30 CFR part 875 as set forth below.

PART 875—NONCOAL RECLAMATION FUND

1. The authority citation for part 875 constinues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Amend § 875.15 as follows:

a. In paragraph (d), remove the phrases "paragraph (a)," "paragraph (d)," and "paragraph (e)" and in their place add "paragraph (b)," "paragraph (e)," and "paragraph (f)," respectively.

b. In paragraph (e), remove the phrase "paragraph (c)" and add "paragraph (d)."

c. Revise paragraph (f) to read as follows:

§ 875.15 Reclamation priorities for noncoal program.

* * * * *

(f) After review of the information contained in the application, the Director will, if necessary to ensure adequate public notification, prepare a **Federal Register** notice regarding the State's or Indian Tribe's submission and provide for public comment. The Director will then:

(1) Evaluate any comments received;

(2) Determine whether the funding meets the requirements of this part;

(3) Determine whether the funding is in the best interest of the State or Indian tribe AML program;

(4) If the determinations under paragraphs (f)(2) and (f)(3) of this section are positive, approve the request for funding the activity or construction; and

(5) Approve funding under paragraph (f)(4) of this section only at a cost commensurate with its benefits towards achieving the purposes of the Surface Mining Control and Reclamation Act of 1977.

[FR Doc. 03–4647 Filed 2–26–03; 8:45 am]

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S. 141/P.L. 108–8
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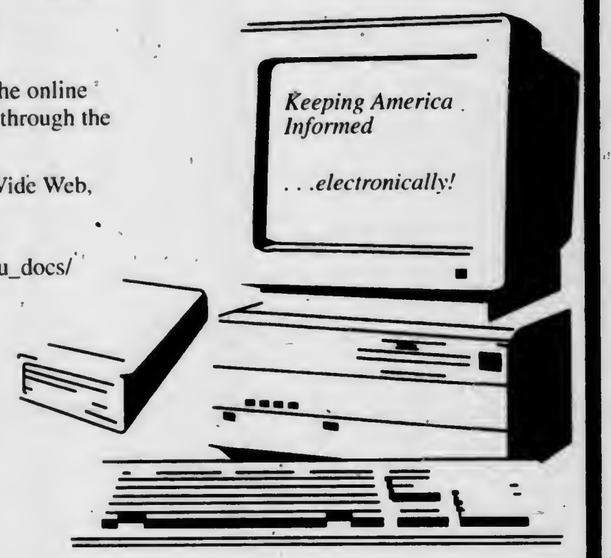
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–47–AD; Amendment 39–13062; AD 2003–04–13]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA341G and SA342J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocoper) Model SA341G and SA342J helicopters. This action requires modifying an electric hoist (hoist) junction box (junction box). This amendment is prompted by the discovery of an anomaly affecting the resistor that is located in the junction box. The actions specified in this AD are intended to prevent failure of the hoist emergency load jettison switch, resulting in an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency and subsequent loss of control of the helicopter.

DATES: Effective March 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–47–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model SA341G and SA342J helicopters with a 300 lb. hoist manufactured by Breeze. The helicopter is fitted with a hoist junction box, part number (P/N) 341A63–1103–00. The DGAC advises of the discovery of an anomaly affecting the current-limiting resistor located in the junction box, which results in insufficient current intensity and can cause failure of the emergency jettison control squib percussion to operate. The unmodified hoist electric junction box is designed to generate 2 amperes for the hoist cable cut percussion squib. The Breeze 300 lb. hoist requires a minimum of 10 amperes to activate the cable cut percussion squib. This AD will modify the limiting resistor in the hoist electric junction box and result in a percussion squib activation current of 18 amperes.

Eurocopter has issued Alert Telex No. 45.05, dated July 8, 2002, which specifies modifying the control unit of the hoist. The DGAC classified this alert telex as mandatory and issued AD 2002–370–043(A), dated July 24, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States. The DGAC recommended modifying the junction box for helicopters with Breeze or TRW (or Lucas or Air Equipment) hoists installed. However, the unmodified junction box functions properly with the TRW (Lucas or Air Equipment) hoists and the FAA does not propose to modify the junction box for helicopters with TRW hoists installed. Helicopters with the Breeze hoist, P/N BL 16–600, BL 16–600–11 or BL 16–600–12, installed require this junction box modification.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, this AD is being issued to prevent failure of the hoist emergency load jettison switch, resulting in an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency and subsequent loss of control of the helicopter. This AD requires modifying the limiting resistor in the junction box. The actions must be accomplished in accordance with the alert telex described previously. The modification is terminating action for the requirements of this AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the modification is required before the next hoist operation and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 2 helicopters will be affected by this AD, that it will take approximately 1 work hour to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $20 per helicopter. Based on these figures, the total cost impact of

the AD on U.S. operators is estimated to be $160.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–47–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–13 Eurocopter France: Amendment 39–13062. Docket No. 2002–SW–47–AD.

Applicability: Model SA341G and SA342J helicopters with electric hoist junction box (junction box), part number (P/N) 341A63–1103–00, installed with the 300 lb. Breeze hoist, P/N BL 16–600, P/N BL 16–600–11, or P/N BL 16–600–12, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before the next hoist operation, unless accomplished previously.

To prevent failure of the hoist emergency load jettison switch, resulting in an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify the limiting resistor in the electric hoist junction box in accordance with paragraph 2.B. of the Accomplishment Instructions in Eurocopter Alert Telex No. 45.05, dated July 8, 2002.

(b) Modifying the limiting resistor is terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits to allow operation of an unmodified hoist will not be issued.

(e) The modification shall be done in accordance with paragraph 2.B. of the Accomplishment Instructions in Eurocopter Alert Telex No. 45.05, dated July 8, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) This amendment becomes effective on March 17, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–370–043(A), dated July 24, 2002.

Issued in Fort Worth, Texas, on February 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4475 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–55–AD; Amendment 39–13060; AD 2002–25–51]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Emergency Airworthiness Directive (EAD) 2002–25–51, sent previously to all known U.S. owners and operators of the specified Agusta S.p.A. (Agusta) helicopters by individual letters. This Airworthiness Directive (AD) requires reducing the tail rotor (T/R) blade life limit and modifying and re-identifying the T/R hub and grip assembly. It also clarifies the never-exceed speed (Vne) restrictions and modifies the T/R visual inspection intervals. The actions specified by this AD are intended to prevent fatigue failure of the T/R blade and subsequent loss of control of the helicopter.

DATES: Effective March 17, 2003, to all persons except those persons to whom it was made immediately effective by EAD 2002–25–51, issued on December 17, 2002, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–55–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The applicable service information may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On October 17, 2002, the FAA issued AD 2002–17–51 (67 FR 67510, November 6, 2002), that superseded Emergency AD 2002–14–51, issued on July 9, 2002. AD 2002–17–51 imposed a Vne of 140 KIAS. That AD also required visually checking the T/R blades on both sides for a crack before each start of the helicopter engines; visually inspecting the T/R blades with a 5x or higher magnifying glass at 25 hour time-in-service (TIS) intervals and any time an increase in vibration occurs; and conducting a dye-penetrant inspection, if necessary; and replacing any cracked T/R blade with an airworthy T/R blade. Since issuing that AD, analysis and tests have shown that the fatigue failure of the T/R blades was caused by unanticipated loads on the T/R blades. The manufacturer has redesigned the T/R grip bushings to reduce these loads; therefore, on December 17, 2002, the FAA issued EAD 2002–25–51 to required modifying the T/R hub and grip assembly with the new bushings by May 31, 2003. Until the T/R grip assembly is modified, the life limit of the T/R blades is reduced to 200 hours TIS. That action was prompted by the failure of a T/R blade that resulted in a forced autorotative landing. The failure, which occurred on June 12, 2002, was determined to be caused by fatigue. This significant reduction in the service life of the T/R blades creates an unsafe condition. This condition, if not corrected, could result in fatigue failure of the T/R blade and subsequent loss of control of the helicopter.

The FAA has reviewed Agusta Alert Bollettino Tecnico 109EP–30, Revision B, dated November 27, 2002 (ABT), which maintains the visual check for cracks, the 5-hour TIS inspections with a magnifying glass, establishes a new life limit for the T/R blades, clarifies the Vne restrictions, modifies the T/R inspection intervals, and describes procedures for modifying and re-identifying the T/R hub and grip assembly by replacing T/R grip bushings (bushings), part number (P/N) 109–8131–29–101. Modifying and re-identifying the T/R hub and grip assembly restores the T/R blade life limits and cancels the Vne limitations.

Since the unsafe condition described is likely to exist or develop on other Agusta Model A109E helicopters of the same type design, the FAA issued EAD 2002–25–51 to prevent fatigue failure of the T/R blade and subsequent loss of control of the helicopter. The AD requires the following:

Applicability A: Agusta Model A109E helicopters with T/R hub and blade assembly, P/N 109–8131–02–151.

- Before further flight, placarding the helicopter and marking the airspeed indicator to reduce the helicopter Vne by 28 KIAS in addition to any reduction in Vne caused by optional equipment installation.
- Before each start of aircraft engines, visually checking each T/R blade for a crack.
- Within 5 hours TIS, and thereafter at intervals not to exceed 5 hours TIS, visually inspecting the T/R blade for a crack using a 5x or higher magnifying glass. If in doubt as to the existence of a crack, dye-penetrant inspect the T/R blades for a crack.
- Before further flight, replacing any unairworthy T/R blade with an airworthy T/R blade.
- Establishing a new life limit on the T/R blade, P/N 109–8132–01–111, of 200 hours TIS.
- Within 10 hours TIS, for helicopters having T/R blades with 190 hours TIS or more, replacing the blades.
- On or before May 31, 2003, modifying the T/R hub and grip assembly. Modifying and re-identifying the T/R hub assembly removes the Vne restrictions imposed, restores the T/R blades life limit to 1,000 hours TIS, and changes the AD requirements for the helicopter from Applicability A to Applicability B.

Applicability B: Agusta Model A109E helicopters, with T/R hub and blade assembly, P/N 109–8131–02–157.

- Before each start of the helicopter engines, visually checking the T/R blade for a crack.
- Within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, visually inspecting the T/R blade for a crack using a 5x or higher magnifying glass. If in doubt as to the existence of a crack, dye-penetrant inspect the T/R blades for a crack.
- Before further flight, replace any unairworthy T/R blade with an airworthy T/R blade.
- Before accumulating 150 hours TIS on the T/R hub assembly, P/N 109–8131–02–159, and thereafter at intervals not to exceed 150 hours TIS, inspect the bushings, P/N 109–8131–30–109. Replace any unairworthy bushing with an airworthy bushing.

The actions must be accomplished in accordance with the ABT described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, the previously stated actions are required before further flight and at the specified time intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD

effective immediately by individual letters issued on December 17, 2002, to all known U.S. owners and operators of Agusta Model A109E helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 48 helicopters of U.S. registry will be affected by this AD, that it will take approximately:

- 1 work hour to placard each helicopter;
- 0.5 work hour to visually inspect the T/R blades;
- 1.0 work hour to dye-penetrant inspect the T/R blades;
- 7 work hours to inspect the T/R grip bushing;
- 2.0 work hours to replace each set of T/R blades; and
- 16 work hours to modify the T/R grips.

The average labor rate is $60 per work hour. Required parts will cost approximately $58,690 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,005,760, assuming for each helicopter, five T/R blade visual inspections, five dye-penetrant inspections, and five bushing inspections.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–55–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–25–51 Agusta S.p.A (Agusta): Docket No. 2002–SW–55–AD. Supersedes AD 2002–17–51, Amendment 39–12936, Docket No. 2002–SW–42–AD.

Applicability A: Model A109E helicopters with tail rotor (T/R) hub and blade assembly, part number (P/N) 109–8131–02–151 (the T/R hub and blade assembly consists of two T/R blades, P/N 109–8132–01–111, and T/R hub and grip assembly, P/N 109–8131–02–127), certificated in any category.

Applicability B: Model A109E helicopters with T/R hub and blade assembly, P/N 109–8131–02–157 (the T/R hub and blade assembly consists of two T/R blades, P/N 109–8132–01–111, and T/R hub and grip assembly, P/N 109–8131–02–159), certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (n) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

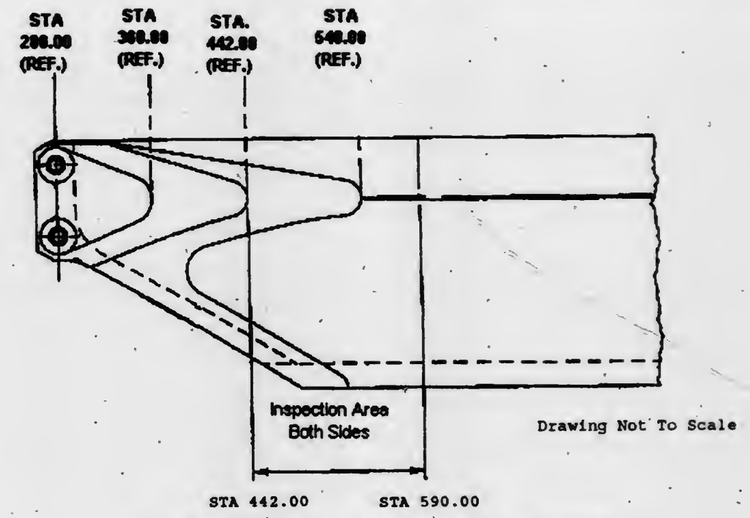
Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the T/R blade and subsequent loss of control of the helicopter, accomplish the following:

Applicability A

(a) Before further flight, placard the helicopter and mark the airspeed indicator to reduce the helicopter never-exceed speed (Vne) by 28 KIAS in addition to any reduction in Vne caused by optional equipment installation, in accordance with the Compliance Instructions, Part I, paragraph 1 of Agusta Alert Bollettino Tecnico 109EP–30, Revision B, dated November 27, 2002 (ABT).

(b) Before each start of the helicopter engines, visually check both sides of each tail rotor blade for a crack in the area depicted in Figure 1 of this AD. An owner/operator (pilot) holding at least a private pilot certificate may perform this visual check and must enter compliance with this paragraph into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). *See* Figure 1:



Part Number 109-8132-01-111 Tail Rotor Blade

FIGURE 1

(c) Within 5 hours time-in-service (TIS), and thereafter at intervals not to exceed 5 hours TIS, and before further flight any time there is an increase in vibration levels:

(1) Using a 5x or higher magnifying glass, visually inspect each T/R blade for a crack in accordance with the Compliance Instructions, Part III, paragraphs 1. through 5., of the ABT. Reporting to Agusta Service Engineering is not required.

(2) If you are unable to determine by the visual inspection whether there is a crack, dye-penetrant inspect the T/R blade for a crack in accordance with the Compliance Instructions, Part III, paragraph 6., of the ABT.

(d) Before further flight, replace any unairworthy T/R blade with an airworthy blade.

(e) This AD establishes a new life limit on the T/R blade, P/N 109–8132–01–111, of 200 hours TIS.

(f) Within 10 hours TIS, for helicopters having T/R blades with 190 hours TIS or more, replace the T/R blades with airworthy blades.

(g) On or before May 31, 2003, modify the T/R hub and grip assembly in accordance with the Compliance Instructions, Part V, of the ABT. Neither returning the removed blades nor the grips and bushings to the manufacturer is required. Modifying the T/R hub and grip assembly removes the Vne restrictions imposed, restores the T/R blades' life limit to 1,000 hours TIS, and changes the AD requirements for the helicopter from Applicability A to Applicability B.

Applicability B

(h) Before each start of the helicopter engines, visually check both sides of each tail rotor blade for a crack in the area depicted in Figure 1 of this AD. An owner/operator (pilot) holding at least a private pilot certificate may perform this visual check and must enter compliance with this paragraph into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). See Figure 1.

(i) Within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, and before further flight any time there is an increase in vibration levels:

(1) Using a 5x or higher magnifying glass, visually inspect each T/R blade for a crack in accordance with the Compliance Instructions, Part III, paragraphs 1. through 5. of the ABT. Reporting to Agusta Service Engineering is not required.

(2) If you are unable to determine by the visual inspection whether there is a crack, dye-penetrant inspect the T/R blade for a crack in accordance with the Compliance Instructions, Part III, paragraph 6., of the ABT.

(j) Before further flight, replace any unairworthy T/R blade with an airworthy blade.

(k) On or before accumulating 150 hours TIS on the T/R hub and grip assembly, P/N 109–8131–02–159, and thereafter at intervals not to exceed 150 hours TIS, inspect the bushings', P/N 109–8131–30–109, linings for wear in accordance with Part VI of the ABT. Replace any unairworthy bushing with an airworthy bushing.

(l) This AD revises the helicopter Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the T/R blade of 200 hours TIS and, after modifying the T/R hub and grip assembly, restores the retirement life to 1,000 hours TIS.

(m) T/R blades, P/N 109–8132–01–111, which have been operated as part of the T/R hub and blade assembly, P/N 109–8131–02–151, are considered unairworthy components of the T/R hub and blade assembly, P/N 109–8131–02–157, regardless of TIS.

(n) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

(o) Special flight permits will not be issued.

(p) The placarding and marking the airspeed indicator, inspecting the T/R blade and bushing, and modifying the T/R hub and grip assembly shall be done in accordance with the Compliance Instructions in Agusta Alert Bollettino Tecnico 109EP–30, Revision B, dated November 27, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(q) This amendment becomes effective on March 17, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–25–51, issued December 17, 2002, which contained the requirements of this amendment.

Note 2: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile, Italy, AD No. 2002–592, dated November 28, 2002.

Issued in Fort Worth, Texas, on February 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4478 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–44–AD; Amendment 39–13072; AD 2003–04–23]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HC–B3TN–5( ) Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hartzell Propeller Inc. model HC–B3TN–5( ) propellers, with blades part number (P/N) T10176H(B,K)–5 or T10178H(B)–11(R) that are installed on Mitsubishi Heavy Industries, Ltd, MU–2 series airplanes. This amendment requires replacement of those blades with blades of the latest design. This amendment is prompted by a report of in-flight propeller blade separation that caused a severe out-of-balance condition, damage to the airplane, and resulted in engine shutdown and a safe landing. The actions specified by this AD are intended to prevent propeller blade separation, damage to the airplane, and possible loss of the airplane.

DATES: Effective April 4, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200, fax (937) 778–4391. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hartzell Propeller Inc. model HC–B3TN–5( ) propellers, with blades P/N T10176H(B,K)–5 or T10178H(B)–11(R) that are installed on Mitsubishi Heavy Industries, Ltd, MU–2 series airplanes was published in the **Federal Register** on October 18, 2002, (67 FR 64321). That action proposed to require replacement of those blades with blades of the latest design in accordance with Hartzell Propeller Inc. SB HC–SB–61–250, Revision 1, dated April 8, 2002. The FAA has received a report of in-flight propeller blade separation that caused a severe out-of-balance condition, damage to the airplane, and resulted in engine shutdown and a safe landing, on a Mitsubishi MU–2 series airplane. Analysis revealed that the blade, made of (hard alloy) 7076 aluminum alloy, separated due to fatigue failure caused by intergranular corrosion. The service difficulty history to date indicates that this condition is limited to Hartzell propellers installed on Mitsubishi MU–2 series airplanes. This condition, if not corrected, could result in propeller blade separation, damage to the airplane, and possible loss of the airplane.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter states that the proposed AD should be expanded to remove all Hartzell "hard alloy" propeller blades from service regardless of the type of aircraft they are installed on.

The FAA does not agree. As stated in the NPRM, the service history indicates that the intergranular corrosion condition found on the affected Hartzell propellers is limited to Hartzell propellers installed on Mitsubishi MU–2 series airplanes. The commenter did not provide any new service history to indicate that this condition exists on other airplanes with the affected Hartzell propellers. Therefore, the AD will not be changed. If in the future, intergranular corrosion conditions are reported to the FAA and are occurring on Hartzell propellers installed on airplanes other than the Mitsubishi MU–2 series airplanes, the FAA will review the need to expand the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 250 Hartzell Propeller Inc. model HC–B3TN–5( ) propellers of the affected design in the worldwide fleet. The FAA estimates that 200 propellers installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per propeller to perform the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10,000 per propeller. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $ 2,120,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–23 Hartzell Propeller Inc.: Amendment 39–13072. Docket No. 2001–NE–44–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HC–B3TN–5( ) propellers, with part numbers (P/N's) T10176H(B)–5, T10176H(K)–5, T10176H–5, T10178H–11, T10178H–11R, T10178H(B)–11, and T10178H(B)-11R blades that are installed on Mitsubishi Heavy Industries, Ltd, MU–2 series airplanes.

Note 1: The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller blade model designation. This AD still applies regardless of whether these letters are present or absent on the propeller blade model designation.

Note 2: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required within 200 flight hours or 1 year from the effective date of this AD, whichever occurs first, unless already done.

To prevent propeller blade separation, damage to the airplane, and possible loss of the airplane, do the following:

(a) Remove and replace propeller blades in accordance with paragraphs 3.A. through 3.C.(3) of the Accomplishment Instructions of Hartzell Propeller Inc. Service Bulletin (SB) HC–SB–61–250, Revision 1, dated April 8, 2002.

(b) After the effective date of this AD, do not install any propeller blade removed in accordance with paragraph (a) of this AD, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(e) The blade removal and replacement must be done in accordance with Hartzell Propeller Inc. Service Bulletin (SB) HC–SB–61–250, Revision 1, dated April 8, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200, fax (937) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 4, 2003.

Issued in Burlington, Massachusetts, on February 19, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–4484 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–100–AD; Amendment 39–13070; AD 2003–04–21]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 440) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 440) series airplanes, that requires replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards. This action is necessary to prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 440) series airplanes was published in the **Federal Register** on August 7, 2002 (67 FR 51147). That action proposed to require replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests That Credit Be Given for Previous Replacement

Two commenters request that the FAA revise the notice of proposed rulemaking (NPRM) to specify that replacement accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A601R–11–077, dated July 12, 2001, is considered acceptable for compliance with the replacement specified in paragraph (a) of the NPRM. One commenter states that, with the exception of the pre-modification location of placards for certain airplanes, the changes embodied in Revision "A" of the service bulletin are not significant for the proper execution of the bulletin and, therefore, result in the same level of safety. Another commenter states that Canadian airworthiness directive CF–2002–12, dated February 4, 2002, allows credit for airplanes modified per the original service bulletin.

We agree. We have added a new paragraph (b) in the final rule to provide operators with credit for previously accomplishing Bombardier Alert Service Bulletin A601R–11–077, dated July 12, 2001, and have redesignated the subsequent paragraphs.

Request To Clarify Reference to Attachments

One commenter requests clarification about the attachments specified in paragraph (a) of the NPRM. The commenter states that Bombardier Alert Service Bulletin A601R–11–077, Revision "A," does not reference "Attachments" within its text. However, the commenter notes that, following page 46 of 46 of the service bulletin, there are two pages—a comment sheet and a compliance sheet. The commenter recommends calling those pages by their given names.

We agree and have revised the names of those sheets in the final rule accordingly. In addition, for clarification purposes, we have changed the service bulletin citation throughout this final rule to exclude those sheets. As stated in the NPRM, this AD does not require operators to complete the comment and compliance sheets.

Explanation of Change to Applicability

We have revised the applicability of the final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 284 Model CL–600–2B19 (Regional Jet Series 440) series airplanes of U.S. registry will be affected by this AD, that it will take approximately between 1 and 2 hours per airplane depending on the airplane configuration to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately between $47 and $195 per airplane depending on the configuration of the airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $30,388 and $89,460, or $107 and $315 per airplane depending on the configuration of the airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, for affected airplanes within the period under the warranty agreement, we have been advised that the manufacturer has committed previously to its customers that it will bear the cost of the placard kits.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–21 Bombardier, Inc. (Formerly Canadair): Amendment 39–13070. Docket 2002–NM–100–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 440) series airplanes, certificated in any category, having the serial numbers listed in the following table:

TABLE—SERIAL NUMBERS

Serial Nos.
7003 through 7434 inclusive.
7436 through 7442 inclusive.
7444 through 7452 inclusive.
7454 through 7458 inclusive.
7460 through 7497 inclusive.
7499 through 7504 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards, accomplish the following:

Replacement of Placards

(a) Within 12 months after the effective date of this AD, replace the overwing emergency exit placards, door weight placards, and no baggage placards with new placards (including cleaning of the applicable surface), as applicable, per Bombardier Alert Service Bulletin A601R–11–077, Revision "A," dated December 11, 2001, excluding Service Bulletin Comment Sheet-Facsimile Reply Sheet and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet.

(b) Replacement accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A601R–11–077, dated July 12, 2001, is considered acceptable for compliance with the replacement specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Alert Service Bulletin A601R–11–077, Revision "A," dated December 11, 2001, excluding Service Bulletin Comment Sheet-Facsimile Reply Sheet and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3 C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–12, dated February 4, 2002.

Effective Date

(f) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4347 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–289–AD; Amendment 39–13068; AD 2003–04–19]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts, and corrective actions, if necessary. This action is necessary to prevent excessive deformation of the floor structure in the event of rapid decompression in the lower cargo hold due to missing attachment bolts in the replaceable frame struts. Such deformation may result in the flight and engine control cables becoming jammed, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on March 28, 2002 (67 FR 14891). That action proposed to require a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

One commenter supports the proposed rule.

Request To Reference Latest Service Information

One commenter requests that Revision 1 to Fokker Service Bulletin SBF100–53–096 be cited as an acceptable source of service information for compliance with the proposed AD. That revision adds two figures to the service bulletin that are applicable to the operator's fleet.

The commenter also states that it notified the manufacturer of typographical errors in Figures 2 and 17 of the service bulletin. The manufacturer informed the commenter that a Service Bulletin Change Notification (SBCN) to correct the typographical errors would be issued. The commenter requests that a statement allowing the use of future service bulletin revisions and SBCNs be included in the proposed AD.

The FAA concurs with the commenter's request to reference Revision 1 of the service bulletin and the applicable SBCN. Since the issuance of the proposed AD, the manufacturer has issued Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001; and Fokker SBCN SBF100–53–096/02, dated January 28, 2002. The proposed rule references the original issue of the service bulletin, dated April 11, 2001, as the appropriate

source of service information for accomplishment of the proposed inspection. The actions in Revision 1 are essentially similar to those in the original issue of the service bulletin. The SBCN corrects typographical errors to part numbers in Figures 2 and 17 of the service bulletin. Part number NAS694V6 in Figure 2 has been changed to NAS674V6. Part number NAS695V10 in Figure 17 has been changed to NAS675V10. The manufacturer notified the FAA that bolts having part numbers NAS694V6 and NAS695V10 do not exist.

We have revised paragraph (a) of the final rule to reference Revision 1 of the service bulletin, including SBCN SBF100–53–096/02 as the appropriate source of service information. We have also included new paragraphs (b) and (d) in this final rule (and re-lettered other paragraphs accordingly) to give credit for inspections and corrective actions accomplished before the effective date of this AD per the original issue of the service bulletin.

Request To Include Alternative Methods of Compliance

One commenter requests that the proposed AD include a statement allowing the use of alternate and interchangeable fasteners approved by Fokker. The commenter states that Fokker Message TS01.60550, dated November 29, 2001, indicates approval from Fokker Services to use interchangeable parts. In regard to the commenter's fleet, the service bulletin lists parts that are inactive and have an interchangeable list or an alternate parts list.

The FAA does not concur with this comment. Paragraph (c)(2) of the final rule allows operators to make repairs per a method approved by either the FAA or the Civil Aviation Authority—The Netherlands (CAA-NL) (or its delegated agent). If an operator wants to make a repair using a part other than the one specified in the service bulletin, that paragraph allows the operator to contact the FAA or CAA-NL (or its delegated agent) for approval.

Request To Revise Cost Impact

One commenter states that it has begun inspections of the affected aircraft in accordance with Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001. Based on this commenter's experience, 12 work hours per airplane are required to accomplish the inspections.

From this comment the FAA infers that the commenter is requesting that the Cost Impact section of the proposed AD be revised. The FAA does not concur. The cost impact information describes only the "direct" costs of the general one-time visual inspection required by the proposed AD. The number of work hours necessary to accomplish the required general visual inspection, specified as 1 work hour in the cost impact information, was provided to the FAA by the manufacturer based on the best data available to date. The economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions required if, during the one-time general visual inspection required by the proposed AD, any attachment bolts are found missing. The "on condition" actions include additional general visual inspections to detect deformations or cracks in the affected floor beams and the fuselage frame C-channels at the strut attachment. Such "on-condition" corrective actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of the airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,340, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–19 Fokker Services B.V.: Amendment 39–13068. Docket 2001–NM–289–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive deformation of the floor structure to the extent that flight and engine control cables might jam, accomplish the following:

Inspection

(a) Within 14 months after the effective date of this AD, do a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts per Part 1, Part 2, and Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001, including Fokker Service Bulletin Change Notification SBF100–53–096/02, dated January 28, 2002; as applicable.

(b) Inspections accomplished prior to the effective date of this AD per Fokker Service Bulletin SBF100–53–096, original issue, dated April 11, 2001, are acceptable for compliance with the requirements of paragraph (a) of this AD.

Corrective Actions

(c) If any attachment bolts are found missing during the inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Drill a new hole and install a new bolt (including nut and washer), per the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001, including Fokker Service Bulletin Change Notification SBF100–53–096/02, dated January 28, 2002.

(2) Do a general visual inspection to detect any deformation or crack in the affected floor beams and the fuselage frame C-channel at the strut attachment. If any deformation or crack exists, before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority—The Netherlands (CAA–NL) (or its delegated agent).

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(d) Corrective actions accomplished prior to the effective date of this AD per Fokker Service Bulletin SBF100–53–096, original issue, dated April 11, 2001, are acceptable for compliance with the requirements of paragraphs (c)(1) and (c)(2) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001, including Fokker Service Bulletin Change Notification SBF100–53–096/02, dated January 28, 2002. Fokker Service Bulletin SBF100–53–096, Revision 1, contains the following list of effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 2, 7, 8, 10, 27–30	1	November 22, 2001.
3–6, 9, 11–26	Original	April 11, 2001.
Fokker Service Bulletin Change Notification SBF100–53–096/02		
1, 3	Original	January 28, 2002.
2	Original	July 1, 2001.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 2001–055, dated April 27, 2001.

Effective Date

(h) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4348 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–389–AD; Amendment 39–13058; AD 2003–04–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that requires a one-time general visual inspection to find wire chafing damage

and to determine adequate clearance between the disconnect panel structure and the wires above the aft left lavatory; and corrective actions, if necessary. This action is necessary to prevent damage to certain wires due to contact between the wires and the adjacent structure, which could result in electrical arcing and consequent smoke and fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on August 30, 2002 (67 FR 55735). That action proposed to require a one-time general visual inspection to find wire chafing damage and to determine adequate clearance between the disconnect panel structure and the wires above the aft left lavatory; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request for Withdrawal of Proposed AD

One commenter disagrees with the need for an AD to require accomplishment of Boeing Alert Service Bulletin MD90–24A074, Revision 01, dated August 8, 2001. The commenter notes that the incident that prompted the proposed AD occurred on a McDonnell Douglas Model MD–88 airplane, not an MD–90–30 airplane. The commenter notes that the affected wire bundle on the incident airplane chafed on a disconnect bracket on an extruded angle. The commenter states that, after considering the design of the disconnect panel on Model MD–90–30 airplanes, it is confident that no wire chafing will be found on Model MD–90–30 airplanes. The commenter points out that the design of the subject disconnect bracket on the Model MD–90–30 airplane is significantly different, especially in length, from that on the Model MD–88 airplane. The bracket on the Model MD–90–30 airplane does not extend to the area where the wire bundle chafing occurred on the Model MD–88 airplane. The commenter requests that the proposed AD, if issued, include information about inspection findings on Model MD–90–30 airplanes.

The FAA infers that the commenter is requesting that we withdraw the proposed AD. We do not agree. The airplane manufacturer has reviewed the installation drawings and has confirmed that the same disconnect bracket (*i.e.*, same part number) is installed in the same location on both Model MD–88 and Model MD–90–30 airplanes. Therefore, Model MD–90–30 airplanes may be subject to the same unsafe condition revealed on the Model MD–88 airplanes, even though no wire chafing damage has been found to date on Model MD–90–30 airplanes. No change to the final rule is necessary in this regard.

Request To Extend Compliance Time

The same commenter requests that, if we deem it necessary to issue an AD, we extend the compliance time from 4 months after the effective date of the AD, as proposed, to 12 months after the effective date of the AD. Aside from its comments regarding the appropriateness of the AD, discussed previously, the commenter provides no further justification for its request.

We concur that the compliance time of this AD may be extended. We have determined that a compliance time of 12 months will ensure that the identified unsafe condition is addressed in a timely manner, while allowing the majority of affected operators to complete the required actions during a scheduled maintenance visit. We have revised paragraph (a) of the final rule accordingly.

Explanation of Editorial Change

In the NPRM, we stated that the proposed actions were to be accomplished "per the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–24A074, Revision 01, including Appendix A, dated August 8, 2001." However, the service bulletin's appendix contains a form for reporting inspection findings. This AD does not include such a requirement. Therefore, we have changed the service bulletin citation throughout this final rule to exclude the appendix of the service bulletin.

Also, we have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the airplane manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Also, the Cost Impact section of the NPRM did not include information about warranty remedies that may be available. We have revised the Cost Impact section of this final rule to refer to warranty remedies.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 113 Model MD–90–30 airplanes of the affected design in the worldwide fleet. We estimate that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of inspection required by this AD on U.S. operators is estimated to be $1,260, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this AD. As a result, the costs attributable to this AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–10 McDonnell Douglas: Amendment 39–13058. Docket 2001–NM–389–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Alert Service Bulletin MD90–24A074, Revision 01, dated August 8, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to certain wires due to contact between the wires and the adjacent structure, which could result in electrical arcing and consequent smoke and fire in the cabin, accomplish the following:

One-Time Inspection/Corrective Actions

(a) Within 12 months after the effective date of this AD: Do a one-time general visual inspection to find wire chafing damage and to determine adequate clearance between the disconnect panel structure and the wires above the aft left lavatory, per the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–24A074, Revision 01, excluding Appendix and Evaluation Form, dated August 8, 2001. If no damage is found and the clearance is adequate, no further action is required by this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no damage is found, but the clearance is inadequate: Before further flight, secure the wires using tie-wraps to obtain 0.50-inch minimum clearance per the service bulletin.

(2) If damage and/or inadequate clearance is found: Before further flight, repair or replace damaged wires with new wires and/or secure the wires using tie-wraps to obtain 0.50-inch minimum clearance, as applicable, per the service bulletin.

(b) Accomplishment of the one-time inspection and corrective actions before the effective date of this AD per Boeing Alert Service Bulletin MD90–24A074, dated May 14, 2001, is considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD90–24A074, Revision 01, excluding Appendix and Evaluation Form, dated August 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4241 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–212–AD; Amendment 39–13067; AD 2003–04–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that requires measuring the length of the wear indicator on the brake stack of the main landing gear (MLG) brake assembly to determine the degree of wear, and follow-on actions. This action also requires eventual replacement of the existing MLG brake assembly with a new, improved or modified assembly, which constitutes terminating action for any repetitive actions being performed per this AD. The actions specified by this AD are intended to prevent failure of the MLG brakes and consequent loss of braking capability, which could result in the airplane overrunning the runway during take-off or landing. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on September 4, 2002 (67 FR 56506). That action proposed to require measuring the length of the wear indicator on the brake stack of the main landing gear (MLG) brake assembly to determine the degree of wear, and follow-on actions. That action also proposed to require eventual replacement of the existing MLG brake assembly with a new, improved or modified assembly, which would constitute terminating action for any repetitive actions being performed per the proposed AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 115 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the measurement of the brake stack wear indicator, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $1,260, or $60 per airplane, per measurement cycle.

It will also take approximately 1 work hour per airplane to accomplish the inspection for discrepancies of the pressure plate of the MLG brake, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $1,260, or $60 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the replacement of the MLG brake assembly, at an average labor rate of $60 per work hour. Required parts will cost approximately $55,000. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $1,162,560, or $55,360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–18 McDonnell Douglas: Amendment 39–13067. Docket 2001–NM–212–AD.

Applicability: Model MD–90–30 airplanes, certificated in any category; equipped with a main landing gear (MLG) brake assembly having part number (P/N) 5012193R, 5012193–1, 5012193–1–P, 5012193–2, 5012193–2–P, 5012193–3, or 5012193–3–P.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG brake and consequent loss of braking capability, which could result in the airplane overrunning the runway during take-off or landing, accomplish the following:

Measurement of Brake Wear

(a) Within 120 days after the effective date of this AD, measure the length of the wear indicator on the brake stack of the MLG brake assembly to determine the degree of wear, according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000.

(1) If the wear indicator measures more than 1.30 inches: Repeat the measurement of the brake stack wear indicator every 260 landings, until the wear indicator measures 1.30 inches or less. When the wear indicator measures 1.30 inches or less, do paragraph (a)(2) of this AD.

(2) If the wear indicator measures 1.30 inches or less: Before further flight, do paragraph (b) of this AD.

Repetitive Inspections for Discrepancies of Pressure Plate

(b) Perform a general visual inspection of the MLG brake assembly for discrepancies of the pressure plate (*i.e.*, the surface of the piston insulator is flush with or has pushed beyond the surface of the counterbore), according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000. If no discrepancy of the pressure plate is found, repeat the inspection at intervals not to exceed 260 landings, until paragraph (c)(1), (c)(2), or (d) of this AD has been accomplished.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions

(c) If any discrepancy of the pressure plate is found during any inspection required by paragraph (b) of this AD: Before further flight, do paragraph (c)(1), (c)(2), (c)(3), or (d) of this AD.

(1) If the length of the wear indicator on the MLG brake is less than 0.40 inch: Overhaul the MLG brake assembly (including replacing the carbon stack) according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000. Such overhaul terminates the repetitive inspections required by paragraph (b) of this AD.

(2) If the length of the wear indicator on the MLG brake is greater than or equal to 0.40 inch but less than or equal to 2.10 inches: Repair the MLG brake assembly according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000. The repair procedures involve replacing the swage tube subassemblies of the brake with new subassemblies, replacing the pressure plate with a new, improved pressure plate, shortening the wear indicator tube, inspecting to determine the radius of the piston insulators, and replacing the piston insulators with reworked insulators if necessary. Such repair terminates the repetitive inspections required by paragraph (b) of this AD.

(3) If the length of the wear indicator on the brake is greater than 2.10 inches: No further action is required by this paragraph.

Replacement With Modified Brake Assembly

(d) Except as provided by paragraph (c) of this AD, at the next brake overhaul, or within 36 months after the effective date of this AD, whichever is first: Replace any MLG brake assembly having P/N 5012193R, 5012193–1, 5012193–1–P, 5012193–2, 5012193–2–P, 5012193–3, or 5012193–3–P; with a new, improved or modified MLG brake assembly having P/N 5012193–4; according to Boeing Service Bulletin MD90–32–045, Revision 01, dated December 15, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–14, dated May 9, 2000. The modification involves replacement of certain wear indicator tubes with new tubes, installation of a new, improved pressure plate, measurement of the radius of the piston insulators, rework of the piston insulators if necessary, and reidentification of the brake assembly. Accomplishment of the replacement specified in this paragraph terminates the requirements of this AD.

Actions Accomplished per Previous Revisions of Service Bulletin

(e) Inspections and corrective actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin MD90–32A042, dated April 27, 2000, is acceptable for compliance with the corresponding actions required by paragraphs (a), (b), and (c) of this AD.

(f) Replacements accomplished before the effective date of this AD according to Boeing Service Bulletin MD90–32–045, dated July 21, 2000, are acceptable for compliance with paragraph (d) of this AD.

Part Installation

(g) As of the effective date of this AD, no person may install a MLG brake assembly having P/N 5012193R, 5012193–1, 5012193–2, or 5012193–3 on any airplane, unless the MLG brake assembly is inspected and any applicable corrective action has been accomplished according to this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Unless otherwise provided in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000; Boeing Service Bulletin MD90–32–045, Revision 01, dated December 15, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–14, dated May 9, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4349 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–60–AD; Amendment 39–13071; AD 2003–04–22]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HD–E6C–3B/E13890K Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hartzell Propeller Inc. model HD–E6C–3B/E13890K propellers with certain serial numbers of model D–1199–2 propeller control units (PCU's) installed. This amendment requires initial and repetitive inspections for below-limit propeller flight idle blade angles, and, as a terminating action, removal of the affected PCU's from service and performance of a complete Major Periodic Inspection (overhaul) when the applicable time-since-new or time-since-overhaul limit is reached, or when any flight idle blade angle is below limits. This amendment is prompted by a review by Hartzell Propeller Inc. of the model D–1199–2 PCU overhaul procedures, that revealed several dimensional checks and a nondestructive evaluation were not performed on certain serial number PCU's during a Major Periodic Inspection (overhaul). The overhaul procedures are required to comply with the Airworthiness Limitation PCU Major Periodic Inspection (overhaul) directive. The actions specified by this AD are intended to prevent below-limit flight idle propeller blade angles that, if not corrected, could result in degraded aircraft performance and control.

DATES: Effective April 4, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hartzell Propeller Inc. model HD–E6C–3B/E13890K propellers with certain serial numbers of model D–1199–2 PCU's installed was published in the **Federal Register** on October 18, 2002 (67 FR 64322). That action proposed to require initial and repetitive inspections for below-limit propeller flight idle blade angles, and, as a terminating action, removal of the affected PCU's from service and performance of a complete Major Periodic Inspection (overhaul) when the applicable time-since-new or time-since-overhaul limit is reached, or when any flight idle blade angle is below limits in accordance with Hartzell Service Bulletin No. (SB) HD–SB–61–025, dated November 7, 2002, or SB No. HD–SB–61–025, Revision 1, dated December 20, 2000.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 78 Hartzell Propeller Inc. model D–1199–2 PCU's of the affected design in the worldwide fleet. The FAA estimates that 50 PCU's installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 1.5 work hours per propeller to perform the initial inspections, 25 work hours per propeller to perform the PCU replacements, and that the average labor rate is $60 per work hour. Required parts would cost approximately $7,321 per propeller. Based on these figures, the total cost of initial inspections of this AD to U.S. operators is estimated to be $4,500, and the total cost of replacement of the affected PCU's to U.S. operators is estimated to be $441,050.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–22 Hartzell Propeller Inc.: Amendment 39–13071. Docket No. 2000–NE–60–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HD–E6C–3B/E13890K propellers with certain serial numbers of model D–1199–2 Propeller Control Units (PCU's) installed, as listed in Table 1 of this AD. These propellers are installed on, but not limited to Fairchild Dornier GmbH 328–100 series airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent below-limit flight idle propeller blade angles that, if not corrected, could result in degraded aircraft performance and control, do the following:

Initial and Repetitive Inspection Requirements

(a) On PCU's listed by serial number in the following Table 1 of this AD, at the next "2A" maintenance check, but no later than 600 hours time-in-service from the effective date of this AD, perform an initial flight idle blade angle inspection, in accordance with paragraph 2A. of the Accomplishment Instructions of Hartzell Service Bulletin (SB) No. HD–SB–61–025, Revision 1, dated December 20, 2000. Table 1 follows:

TABLE 1.—AFFECTED SERIAL NUMBERS, MODEL D–1199–2 PCU'S

PCU–A–29	PCU–A–EFS140	PCU–A–EFS194	PCU–A–EFS234	PCU–A–EFS284
PCU–A–31	PCU–A–EFS141	PCU–A–EFS204	PCU–A–EFS236	PCU–A–EFS290
PCU–A–44	PCU–A–EFS144	PCU–A–EFS207	PCU–A–EFS239	PCU–A–EFS292
PCU–A–46	PCU–A–EFS152	PCU–A–EFS208	PCU–A–EFS242	PCU–A–EFS293
PCU–A–53	PCU–A–EFS155	PCU–A–EFS210	PCU–A–EFS244	PCU–A–EFS294
PCU–A–54	PCU–A–EFS158	PCU–A–EFS212	PCU–A–EFS245	PCU–A–EFS302
PCU–A–57	PCU–A–EFS160	PCU–A–EFS213	PCU–A–EFS246	PCU–A–EFS307
PCU–A–58	PCU–A–EFS162	PCU–A–EFS214	PCU–A–EFS249	PCU–A–EFS319
PCU–A–59	PCU–A–EFS165	PCU–A–EFS218	PCU–A–EFS250	PCU–A–EFS320
PCU–A–EFS101	PCU–A–EFS182	PCU–A–EFS220	PCU–A–EFS257	PCU–A–EFS326
PCU–A–EFS106	PCU–A–EFS184	PCU–A–EFS223	PCU–A–EFS261	PCU–A–EFS328
PCU–A–EFS109	PCU–A–EFS185	PCU–A–EFS224	PCU–A–EFS266	PCU–A–EFS330
PCU–A–EFS110	PCU–A–EFS187	PCU–A–EFS225	PCU–A–EFS268	PCU–A–EFS340
PCU–A–EFS111	PCU–A–EFS188	PCU–A–EFS226	PCU–A–EFS269	PCU–A–EFS347
PCU–A–EFS120	PCU–A–EFS192	PCU–A–EFS228	PCU–A–EFS271	
PCU–A–EFS122	PCU–A–EFS193	PCU–A–EFS233	PCU–A–EFS279	

(b) Remove PCU's that fail the inspection in paragraph (a) of this AD and perform a Major Periodic Inspection (overhaul), in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of Hartzell SB No. HD–SB–61–025, Revision 1, dated December 20, 2000, or replace with a serviceable PCU.

(c) Thereafter, at each successive "4A" maintenance check, but not to exceed 1,200 hours time-in-service, perform the flight idle blade angle inspection until the limiting time-since-overhaul or time-since-new is reached, as specified in Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000.

(d) Remove PCU's that fail the inspection in paragraph (c) of this AD and perform a Major Periodic Inspection (overhaul), in accordance with paragraphs 2.B. and 2.C. of Hartzell SB No. HD–SB–61–025, Revision 1, dated December 20, 2000, or replace with a serviceable PCU.

(e) Once the limiting time-since-overhaul or time-since-new specified in Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000 is reached, remove the PCU from service and perform a Major Periodic Inspection (overhaul), in accordance with paragraphs 2.B. and 2.C. of Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000.

Optional Terminating Action

(f) Replacement with a serviceable PCU is terminating action for the repetitive inspections specified in paragraph (c) of this AD. For the purpose of this AD, a serviceable PCU is one that is not listed in Table 1 of this AD, or is one listed in Table 1 of this AD that has undergone a Major Periodic Inspection (overhaul) after November 17, 2000, in

accordance with paragraphs 2.B. and 2.C. of Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). An alternative method of compliance to Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000, is compliance with Hartzell SB HD–SB–61–025, dated November 17, 2000. Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(i) The inspections must be done in accordance with Hartzell Propeller Inc. Service Bulletin HD–SB–61–025, Revision 1, dated December 20, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on April 4, 2003.

Issued in Burlington, Massachusetts, on February 19, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–4483 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–19–AD; Amendment 39–13063; AD 2003–04–14]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (Bell) Model 427 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell model helicopters that requires replacing the hydraulic solenoid tee fitting (tee fitting) and tubes. This amendment is prompted by the manufacturer's discovery that tee fittings may be installed improperly and restrict hydraulic fluid flow. The actions specified by this AD are intended to prevent restricted flow of hydraulic fluid to the flight control hydraulic actuators resulting in loss of hydraulic control, excessive stiffness in the flight controls, and a subsequent forced landing of the helicopter.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Bell Model 427 helicopters was published in the **Federal Register** on October 18, 2002 (67 FR 64325). That action proposed to require replacing tee fittings, part number (P/N) AS1003W060404, and tubes, P/Ns 427–080–058–101 and 427–080–003–101, with union, P/N AS5230W0606, tee fitting, P/N NAS1763W060404, and tubes, P/Ns 427–080–069–101 and 427–080–068–101.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 427 helicopters. Transport Canada advises that there is a possibility of installing the existing tee fitting in such a way that the hydraulic fluid flow will be significantly restricted. To preclude this possibility, Bell has designed a new tee fitting installation.

Bell has issued Bell Helicopter Textron Alert Service Bulletin No. 427–01–02, dated August 20, 2001, which specifies replacing the tee fitting. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–2002–11, dated January 31, 2002, to ensure the continued airworthiness of these helicopters in Canada.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with one editorial change. The manufacturer's legal name has changed since the issuance of the proposed AD, and the new name is reflected in this AD; this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 31 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to replace the tee fitting and tubes, and that the average labor rate is $60 per work hour. Required parts will cost approximately $527 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,197 to replace the tee fitting and tubes in the entire fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–14 Bell Helicopter Textron Canada: Amendment 39–13063. Docket No. 2002–SW–19–AD.

Applicability: Model 427 helicopters, serial numbers 56001 through 56031, with hydraulic solenoid tee fitting, part number (P/N) AS1003W060404, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required at the next hydraulic filter and fluid replacement or within 30 days, whichever occurs first, unless accomplished previously.

To prevent restricted flow of hydraulic fluid to the flight control hydraulic actuators resulting in loss of hydraulic control, excessive stiffness in the flight controls, and a subsequent forced landing of the helicopter, accomplish the following:

(a) Replace the hydraulic solenoid tee fitting (tee fitting), P/N AS1003W060404, and tubes, P/Ns 427–080–058–101 and 427–080–003–101, with union, P/N AS5230W0606, tee fitting, P/N NAS1763W060404, and tubes, P/Ns 427–080–069–101 and 427–080–068–101, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–02, dated August 20, 2001.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The replacements shall be done in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–02, dated August 20, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 4, 2003.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2002–11, dated January 31, 2002.

Issued in Fort Worth, Texas, on February 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4476 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–15–AD; Amendment 39–13069; AD 2003–04–20]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH.125, HS.125, and BH.125 Series Airplanes; Model BAe.125 Series 800A, 800A (C–29A), 800A (U–125), 800B, 1000A, and 1000B Airplanes; and Model Hawker 800, 800 (including variant U–125A), 1000, and 800XP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Raytheon Model DH.125, HS.125, BH.125, and BAe.125 (U–125 and C–29A) series airplanes; and Model Hawker 800, Hawker 800 (including variant U–125A), Hawker 800XP, and Hawker 1000 airplanes; that currently requires an inspection for cracking or corrosion of the cylinder head lugs of the main landing gear (MLG) actuator and follow-on/corrective actions. This amendment expands the applicability of the existing AD to add an airplane model and further clarify the applicability and, for certain airplanes, to clarify the compliance time of the inspection requirements. This action is necessary to prevent separation of the cylinder head lugs, which could prevent the MLG from extending and result in a partial gear-up landing. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 3, 2001 (66 FR 45575, August 29, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, PO Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–17–26 R1, amendment 39–12619 (67 FR 4171, January 29, 2002), which is applicable to certain Raytheon Model DH.125, HS.125, BH.125, and BAe.125 (U–125 and C–29A) series airplanes; and Model Hawker 800, Hawker 800 (including variant U–125A), Hawker 800XP, and Hawker 1000 airplanes; was published in the **Federal Register** on August 30, 2002 (67 FR 55742). The action proposed to continue to require an inspection for cracking or corrosion of the cylinder head lugs of the main landing gear (MLG) actuator, and follow-on/corrective actions. The action also proposed to expand and clarify the applicability of the existing AD per the referenced service bulletin and type certificate data sheet, and, for certain airplanes, to clarify the compliance time for the inspection requirements in paragraph (b)(3) of this AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Applicability

For clarification purposes, we have revised the wording in the parentheses for Model Hawker 800 airplanes in the applicability throughout this AD to read "(including variant U–125A)."

Conclusion

After careful review of the available data, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,000 airplanes of the affected design in the worldwide fleet. We estimate that 650 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2001–17–26 R1, and retained in this AD, take approximately 20 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $780,000, or $1,200 per airplane.

This AD does not add any new actions or requirements, and only revises the applicability of the AD by adding an airplane model, clarifying the model designations, and clarifying the compliance time for the inspection requirements for certain airplanes. Therefore, the estimated cost impact for this proposed AD is unchanged from the existing AD.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, for affected airplanes within the period under the warranty agreement, we have been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts. We also have been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12619 (67 FR 4171, January 29, 2002), and by adding a new airworthiness directive (AD), amendment 39–13069, to read as follows:

2003–04–20 Raytheon Aircraft Company: Amendment 39–13069. Docket 2002–NM–15–AD. Supersedes AD 2001–17–26 R1, Amendment 39–12619.

Applicability: Model DH.125, HS.125, and BH.125 series airplanes; Model BAe.125 series 800A, 800A (C–29A), 800A (U–125), 800B, 1000A, and 1000B airplanes; and Model Hawker 800, 800 (including variant U–125A), 1000, and 800XP airplanes; as listed in Raytheon Service Bulletin 32–3391, dated August 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the cylinder head lugs, which could prevent the main landing gear (MLG) from extending and result in a partial gear-up landing, accomplish the following:

Restatement of Certain Requirements of AD 2001–17–26 R1:

Inspection

(a) For Model DH.125, HS.125, and BH.125 series airplanes; BAe.125 series 800A, 800A (C–19A), 800A (U–125A), 1000A, and 1000B airplanes; and Model Hawker 800, 800 (including variant U–125A), 800XP, and 1000 airplanes: Perform an eddy current inspection of the actuator cylinder head lugs for cracking or corrosion per Raytheon Service Bulletin 32–3391, dated August 2000, at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable.

(1) For actuator cylinder heads that have 3,000 or less total landings as of October 3, 2001 (the effective date of AD 2001–17–26 R1, amendment 39–12619): Perform the eddy current inspection within 24 months after October 3, 2001.

(2) For actuator cylinder heads that have 3,001 to 4,000 total landings as of October 3, 2001: Perform the eddy current inspection within 6 months after October 3, 2001.

(3) For actuator cylinder heads that have been in service for more than 7 years as of October 3, 2001: Perform the eddy current inspection within 6 months after October 3, 2001.

(4) For actuator cylinder heads that have 4,001 or more total landings as of October 3, 2001: Perform the eddy current inspection within 10 landings after October 3, 2001.

New Requirements of this AD:

(b) For Model BAe.125 series 800B airplanes: Perform an eddy current inspection of the actuator cylinder head lugs for cracking or corrosion per Raytheon Service Bulletin 32–3391, dated August 2000, at the time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) For actuator cylinder heads that have 3,000 or less total landings as of the effective date of this AD: Perform the eddy current inspection within 24 months after the effective date of this AD.

(2) For actuator cylinder heads that have 3,001 to 4,000 total landings as of the effective date of this AD: Perform the eddy current inspection within 6 months after the effective date of this AD.

(3) For actuator cylinder heads that have been in service for more than 7 years or that have 4,001 or more total landings as of the effective date of this AD: Perform the eddy current inspection at the earlier of the times specified in paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

(i) Within 6 months after the effective date of this AD.

(ii) Within 10 landings after the effective date of this AD.

If No Cracking or Corrosion

(c) If no cracking or corrosion is found during the inspection required by paragraph (a) or (b) of this AD, before further flight, accomplish follow-on actions (*e.g.*, "vibro-etching" the MLG actuator data plate, painting a blue stripe on the actuator cylinder head to indicate 1 1/32-inch oversize bushings, replacing bushings, and applying corrosion protection to the lug bores), per Raytheon Service Bulletin 32–3391, dated August 2000.

If Any Cracking or Corrosion

(d) If any cracking or corrosion is found during the inspection required by paragraph (a) or (b) of this AD, before further flight, accomplish either of the actions specified in paragraph (d)(1) or (d)(2) of this AD, per Raytheon Service Bulletin 32–3391, dated August 2000:

(1) Replace the actuator of the MLG with a new or serviceable actuator; or

(2) Replace the actuator cylinder head with a new cylinder head.

Note 2: Raytheon Service Bulletin 32–3391, dated August 2000, references Precision Hydraulics Component Maintenance Manual 32–30–1105 as an additional source of service information.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Raytheon Service Bulletin 32–3391, dated August 2000. This incorporation by reference of that document was approved previously by the Director of the Federal Register as of October 3, 2001 (66 FR 45575, August 29, 2001). Copies may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4586 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–43–AD; Amendment 39–13061; AD 2003–04–12]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 427 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (Bell) model helicopters that requires modifying the auxiliary fin assemblies and revising the Limitations section of the Rotorcraft Flight Manual (RFM) to reduce the never-exceed speed (Vne) for a tail rotor pedal stop failure. This amendment is prompted by several incidents of main rotor blades contacting the top of the fin that have resulted in an upper tuning weight (weight) becoming loose. The actions specified by this AD are intended to prevent a main rotor blade from striking an auxiliary fin; loss of a tuning weight, impact with a tail or main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an AD for Bell Model 427 helicopters was published in the

Federal Register on November 28, 2001 (66 FR 59377). That NPRM would have required modifying the fins, part number (P/N) 427–035–836–101 and 427–035–836–102, to relocate the weights, P/N 407–023–003–145. That proposal recognized that relocating the tuning weights was an interim action and anticipated that contact between the main rotor blades and the top portion of the fins would be addressed in a separate AD. However, prior to publishing the final rule based on that NPRM, the manufacturer published service information about reducing the height of the fins. Further, Transport Canada issued a revised AD requiring the height reduction in Canada. Hence, reducing the height of the fins made the relocation of the tuning weights unnecessary, therefore a supplemental proposal was published in the **Federal Register** on October 18, 2002 (67 FR 64326). That action proposed to require modifying the auxiliary fin assemblies to reduce the height and revising the Limitations section of the RFM to reduce the Vne for a tail rotor pedal stop failure from 80 knots indicated airspeed (KIAS) to 60 KIAS.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 427 helicopters. Transport Canada advises of several ground incidents of main rotor blades contacting the top portion of a fin. Such incidents occurred on helicopters with an internal gross weight capability of 6,350 lbs. and the larger auxiliary fin assemblies.

Bell has issued Alert Service Bulletin 427–01–7, dated November 16, 2001 (ASB), which specifies reducing the height of the auxiliary fin assembly, part number (P/N) 427–035–836–101, –102, –105, and –106 within 300 hours time-in-service (TIS). Transport Canada classified this ASB as mandatory and issued AD No. CF–2001–05R1, dated February 13, 2002, to ensure the continued airworthiness of these helicopters in Canada.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the exception of minor non-substantive changes and updating the Rotorcraft Flight Manual from Revision 3 to Revision 5, which is referenced in Note 2 of the AD.

The FAA estimates that 30 helicopters of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per helicopter to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,685 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,150 to perform the modifications and revisions for the entire fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–12 Bell Helicopter Textron Canada: Amendment 39–13061. Docket No. 2001–SW–43–AD.

Applicability: Model 427 helicopters, serial numbers 56001 through 56030 with auxiliary fin assemblies, part numbers 427–035–836–101, –102, –105, or –106, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a main rotor blade from striking an auxiliary fin, loss of an upper tuning weight, impact with a tail or main rotor blade, and subsequent loss of control of the helicopter:

(a) Within 60 days, modify auxiliary fin assemblies, part numbers (P/N) 427–035–836–101, –102, –105, or –106, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–07, dated November 16, 2001.

(b) After accomplishing paragraph (a) of this AD, reduce the never-exceed speed (Vne) limitation for a pedal stop failure from 80 knots indicated airspeed (KIAS) to 60 KIAS.

Note 2: Bell Helicopter Textron Rotorcraft Flight Manual BHT–427–FM–2, Revision 5, dated April 23, 2002, incorporates the reduced airspeed limitation for a pedal stop failure.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–07, dated November 16, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 4, 2003.

Note 4: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2001–05R1, dated February 13, 2002.

Issued in Fort Worth, Texas, on February 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4477 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–353–AD; Amendment 39–13073; AD 2003–04–24]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes. This action requires a one-time inspection for cracking of the support fitting assemblies and stop pads of the main spoiler actuators, and follow-on actions. This action is necessary to find and fix cracking of the support fitting assemblies of the main spoiler actuator, which could result in damage of adjacent structure such as the rear spar or upper skin panel, and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–353–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–353–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that cracking has been found on a support fitting assembly for the main spoiler actuators on several McDonnell Douglas Model 717–200 airplanes. On one airplane, a crack completely separated a forward attachment lug from the support fitting. This allowed the lug to move forward and contact and damage the rear spar of the wing, which resulted in cracking of the spar and fuel seepage. On another airplane, the support fitting cracked laterally across the center of the fitting. Investigation revealed that the stop pad had been broken off at the pad's aft attachment hole, and contact occurred between the spoiler actuator and fitting. While the root-cause of these cracks is unknown, one possibility is improper rigging of the spoiler hold-down actuator, which could cause additional loading and fatigue in the support fitting. Cracking of a support fitting assembly for a main spoiler actuator, if not corrected, could result in damage of adjacent structure such as the rear spar or upper skin panel, and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002. That service bulletin describes procedures for a one-time visual inspection for cracking of the support fitting assemblies and stop pads of the main spoiler actuators. For support fitting assemblies on which no cracking is found, the service bulletin describes procedures for a follow-on test of the rigging of the spoiler hold-down actuators to ensure that the actuators are rigged correctly. For cracked support fitting assemblies or stop pads, the service bulletin specifies to contact Boeing for instructions for repair and additional inspections.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to find and fix cracking of the support fitting assemblies of the main spoiler actuator, which could result in damage of adjacent structure such as the rear spar or upper skin panel, and consequent reduced structural integrity of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed under the heading "Differences Between This AD and the Service Bulletin." This AD also requires that operators report results of inspection findings to the FAA and to Boeing.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Clarification of Inspection Type

The service bulletin identifies the inspection for cracking or other discrepancy as a "visual" inspection. We have determined that the inspection described in the service bulletin constitutes a "detailed" inspection. Note 2 of this AD defines such an inspection.

Differences Between This AD and the Service Bulletin

Operators should note that, although the service bulletin specifies that the

manufacturer may be contacted for disposition of cracking conditions, this AD would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators also should note that, if no cracking of any spoiler support fitting or stop pad is found, the service bulletin specifies to test the rigging of the spoiler hold-down actuators. However, the service bulletin does not specify any corrective action if a spoiler hold-down actuator is incorrectly rigged. If any spoiler hold-down actuator is not rigged correctly, this AD specifies to correct the rigging per McDonnell Douglas Model 717 Aircraft Maintenance Manual, Chapter 27–67–06, Revision 15, dated January 1, 2003.

Operators may note that certain portions of the service bulletin specify that, if no cracks are found, inspection findings must be submitted to Boeing. However, the Accomplishment Instructions of the service bulletin do not contain such an instruction, and this AD does not require operators to submit inspection findings if no cracking is found.

Operators also may note that note (e) in Figures 1 and 2 of the service bulletin refers to inspecting for cracking or "evidence of riding conditions on the support fitting." We have confirmed with Boeing that the references to "riding conditions" were included inadvertently. It is only necessary to inspect the support fitting assembly and stop pads for cracks, not for evidence of riding conditions. Note 3 of this AD clarifies our intent.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–353–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–24 McDonnell Douglas: Amendment 39–13073. Docket 2002–NM–353–AD.

Applicability: Model 717–200 airplanes, fuselage numbers 5002 through 5106 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the support fitting assemblies of the main spoiler actuator, which could result in damage of adjacent structure such as the rear spar or upper skin panel, and consequent reduced structural integrity of the airplane, accomplish the following:

One-Time Inspection

(a) Within 550 flight hours after the effective date of this AD, perform a one-time detailed inspection for cracking of the support fitting assemblies and stop pads of the main spoiler actuators, per the Accomplishment Instructions of Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: While note (e) in Figures 1 and 2 in Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002, refers to inspecting for cracking or "evidence of riding conditions on the support fitting," this AD requires inspection of the support fitting assembly and stop pads for cracking.

No Cracking Found: Follow-On Test

(b) If no cracking is found during the inspection required by paragraph (a) of this AD, before further flight, perform a test of the rigging of the spoiler hold-down actuators to ensure that the actuators are rigged correctly, per the Accomplishment Instructions of Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002. If any spoiler hold-down actuator is not rigged correctly, before further flight, correct the rigging per McDonnell Douglas Model 717 Aircraft Maintenance Manual, Chapter 27–67–06, Revision 15, dated January 1, 2003.

Cracking Found: Corrective Actions and Reporting Requirement

(c) If any cracking is found during the inspection required by paragraph (a) of this AD, do paragraphs (c)(1) and (c)(2) of this AD.

(1) Before further flight, repair and perform follow-on inspections per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Los Angeles ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

(2) Within 5 days after performing the inspection required by paragraph (a) of this AD, or within 5 days after the effective date of this AD, whichever is later, submit a report of inspection findings to the Manager, Los Angeles ACO, FAA, 3960 Paramount Boulevard, Lakewood, California 90712–4137, fax (562) 627–5210; and to Boeing, at the address specified in Appendix A of Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002. The report must include the fuselage number, a description of the discrepancies found, the number of flight cycles and flight hours on the airplane, and the name and telephone number of a person to contact if the FAA or Boeing needs more information on the findings. The form in Appendix A of the service bulletin may be used for the report. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(d) An alternative method of compliance (AMOC) or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on March 17, 2003.

Issued in Renton, Washington, on February 20, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4487 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14462; Airspace Docket No. 03–ACE–15]

Modification of Class E Airspace; Denison, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Denison, IA revealed a discrepancy in the location of the Denison, IA nondirectional radio beacon (NDB) used in the legal description for the Denison, IA Class E airspace. This action corrects the discrepancy by modifying the Denison, IA Class E airspace and by incorporating the current location of the Denison NDB in the Class E airspace legal description.

DATES: The direct final rule is effective on 0901 UTC, July 10, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14462/ Airspace Docket No. 03–ACE–15, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Denison, IA. It incorporates the current location of the Denison NDB and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14462/Airspace Docket No. 03–ACE–15" The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565; 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Denison, IA

Denison Municipal Airport, IA
(Lat. 41°59′11″ N., long. 95°22′51″ W.)
Denison NDB
(Lat. 41°59′02″ N., long. 95°22′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Denison Municipal Airport and within 2.6 miles each side of the 116° bearing from the Denison NDB extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on February 14, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–4797 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. 03N–0024]

New Animal Drugs; Phenylbutazone; Extralabel Animal Drug Use; Order of Prohibition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (we) is issuing an order prohibiting the extralabel use of phenylbutazone animal and human drugs in female dairy cattle 20 months of age or older. We are issuing this order based on evidence that extralabel use of phenylbutazone in female dairy cattle 20 months of age or older will likely cause an adverse event in humans. We find that such extralabel use presents a risk to the public health for the purposes of the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA).

DATES: This rule is effective May 29, 2003. We invite your written or electronic comments. We will consider all comments that we receive by April 29, 2003.

ADDRESSES: Submit your written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Gloria J. Dunnavan, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1168, e-mail: *gdunnava@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. AMDUCA

AMDUCA (Public Law 103–396) was signed into law on October 22, 1994. It amended the Federal Food, Drug, and Cosmetic Act (the act) to permit licensed veterinarians to prescribe extralabel uses of approved animal and human drugs in animals. However, section 512(a)(4)(D) of the act (21 U.S.C. 360b(a)(4)(D)) gives us authority to prohibit an extralabel drug use in animals if, after affording an opportunity for public comment, we find that such use presents a risk to the public health.

In the **Federal Register** of November 7, 1996 (61 FR 57732), we published the implementing regulations (codified at part 530 (21 CFR part 530)) for AMDUCA. The sections regarding prohibition of extralabel use of drugs in food-producing animals are found at §§ 530.21 and 530.25. These sections describe the basis for issuing an order prohibiting an extralabel drug use in food-producing animals and the procedure to be followed in issuing an order of prohibition.

We may issue a prohibition order if we find that extralabel use in animals presents a risk to the public health. Under § 530.3(e), this means that we have evidence that demonstrates that the use of the drug has caused or likely will cause an adverse event.

Section 530.25 provides for a public comment period of not less than 60 days. It also provides that the order of prohibition will become effective 90 days after the date of publication, unless we revoke the order, modify it, or extend the period of public comment. The list of drugs prohibited from extralabel use is found in § 530.41.

II. Phenylbutazone

Phenylbutazone became available for use in humans for the treatment of rheumatoid arthritis and gout in 1949 (Ref. 1), but is no longer approved, and thus not marketed, for any human use in the United States. This is because some patients treated with phenylbutazone have experienced severe toxic reactions, and other effective, less toxic drugs are available to treat the same conditions (Refs. 1 and 2).

Phenylbutazone is known for its ulcerogenic, nephrotoxic, and hemotoxic effects in horses, dogs, rats, and humans (Refs. 2, 4, 5, 6, 7, and 8). It is known to induce blood dyscrasias, including aplastic anemia, leukopenia, agranulocytosis, thrombocytopenia, and deaths (Refs. 7 and 8). The reported adverse reactions were associated with the human clinical use of 200 to 800 milligrams phenylbutazone per day (Refs. 7 and 8). Hypersensitivity reactions of the serum-sickness type have also been reported in patients with phenylbutazone. The threshold for this effect has not been defined. Therefore, it is unclear what level of exposure would be required to trigger such reactions in sensitive people. Moreover, phenylbutazone is a carcinogen, as determined by the National Toxicology Program (NTP) based on positive results in genotoxicity tests and some evidence of carcinogenicity seen in the rat and mouse in carcinogenicity bioassays NTP conducted (Ref. 3).

For animals, phenylbutazone is currently approved only for oral and injectable use in dogs and horses. Use in horses is limited to use in horses not intended for food. There are currently no approved uses of phenylbutazone in food-producing animals.

Investigation by FDA and state regulatory counterparts has recently found phenylbutazone on farms and identified tissue residues in culled dairy cattle. In addition, the U.S. Department of Agriculture's (USDA's) Food Safety Inspection Service has reported phenylbutazone residues in culled cattle presented for slaughter for human food throughout the United States in the past 2 calendar years. This evidence indicates that the extralabel use of phenylbutazone in female dairy cattle 20 months of age or older will likely result in the presence, at slaughter, of residues that are toxic to humans, including being carcinogenic, at levels that have not been shown to be safe. Because of the likelihood of this adverse event, we are issuing an order prohibiting the extralabel use of phenylbutazone drugs in female dairy cattle 20 months of age or older.

We will continue to monitor the extralabel use of phenylbutazone and will adjust the scope of this prohibition should we find that extralabel use in other species or classes of animals presents a risk to public health.

III. Request for Comments

We are providing 60 days from the date of this publication for you to comment. The order will become effective May 29, 2003, unless we revoke or modify the order, or extend the comment period. You may send written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) by April 29, 2003. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one hard copy. Please identify your comments with the docket number found in brackets in the heading of this document. You may read any comments that we receive at our Dockets Management Branch reading room (see **ADDRESSES**). The reading room is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

IV. Order of Prohibition

Therefore, I hereby issue the following order under section 512(a)(4)(D) of the act and 21 CFR 530.21 and 530.25. We find that extralabel use of phenylbutazone animal drugs and human drugs in female dairy cattle 20 months of age or older likely will cause an adverse event which constitutes a finding under section 512(a)(4)(D) of the act that extralabel use of this drug presents a risk to the public health. Therefore, we are prohibiting the extralabel use of this drug in female dairy cattle 20 months of age or older.

V. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**). You may view them between 9 a.m. and 4 p.m., Monday through Friday.

1. Insel, P. A., "Analgesic-Antipyretics and Anti-inflammatory Agents, and Drugs Employed in the Treatment of Gout," Goodman and Gilman, *The Pharmacological Basis of Therapeutics*, 9th ed., edited by J. G. Hardman, L. E. Limbird, P. B. Molinoff, R. W. Ruddon, and A. G. Gilman, McGraw-Hill, pp. 642–643, 1996.

2. McEvoy, G. K., "American Hospital Formulary Service B Drug Information 93," American Society of Hospital Pharmacists, Inc., Bethesda, MD, p. 1194, 1993.

3. National Toxicology Program, "Toxicology and Carcinogenesis Studies of Phenylbutazone in F344/N rats and B6C3F1 Mice (gavage studies)" National Toxicology Program Technical Report number 367, NIH publication number 90–2822, 1990.

4. Edited by R. J Anderson, J. G. Gambertoglio, and R. W. Schrier, "Clinical Use of Drugs in Renal Failure," Charles C. Thomas, Springfield, IL, p. 6, 1976.

5. Carpenter, S. L., and W. M. McDonnell, "Misuses of Veterinary Phenylbutazone," *Archives of Internal Medicine*, vol. 155, pp. 1229–1231, 1995.

6. Council on Drugs, "Registry on Blood Dyscrasias," Report to the Council, *Journal of the American Medical Association*, vol. 179(11), pp. 888–890, 1962.

7. Hazardous Substances Data Bank, 2000. http://www.csi.micromedex.com/DATA/HS/HS3159F.htm

8. Humphreys, D. J., *Veterinary Toxicology*, Bailliére Tindall, p. 92, 1988.

List of Subjects in 21 CFR Part 530

Administrative practice and procedure, Advertising, Animal drugs,

Labeling, Reporting and recordkeeping requirements.

Accordingly, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, 21 CFR part 530 is amended as follows:

PART 530–EXTRALABEL DRUG USE IN ANIMALS

1. The authority citation for 21 CFR part 530 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e.

§ 530.41 [Amended]

2. Section 530.41 is amended by adding paragraph (a)(12) to read as follows:

§ 530.41 Drugs prohibited for extralabel use in animals.

(a) * * *

(12) Phenylbutazone.

* * * * *

Dated: February 13, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–4741 Filed 2–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 96P–0484]

Medical Devices; Hematology and Pathology Devices; Reclassification of Automated Blood Cell Separator Device Operating by Filtration Principle from Class III to Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the automated blood cell separator (ABCS) device operating by filtration principle, intended for routine collection of blood and blood components, from class III to class II (special controls). The special control requirement for this device is an annual report with emphasis on adverse reactions to be filed by the manufacturer for a minimum of 3 years. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is reclassifying the automated blood cell separator devices operating by filtration principle into class II (special controls) because special controls, in addition to general controls, are capable of providing a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(f)(1) of the act, devices that were not in commercial distribution before May 28, 1976, the date of enactment of the 1976 amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807.

Under section 513(f)(3) of the act, FDA may initiate the reclassification of a device classified into class III under section 513(f)(1), or the manufacturer or importer of a device may petition the Secretary of Health and Human Services for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

II. Regulatory History of the Device

The AUTOPHERESIS–C SYSTEM, an ABCS, intended for the routine collection of blood and blood components, is a postamendments device classified into class III under section 513(f)(1) of the act. Therefore, the device cannot be placed in commercial distribution for the routine collection of blood and blood components unless it is reclassified under section 513(f)(3) of the act, or subject to an approved premarket approval application (PMA) under section 515 of the act (21 USC 360e). FDA is taking this action under section 513(f)(3) of the act and § 860.134, based on information submitted in a petition by Baxter Healthcare Corp. (Baxter) on June 17, 1996, requesting reclassification of the AUTOPHERESIS–C SYSTEM, intended for routine collection of blood and blood components, from class III to class II (Ref. 1). Although Baxter submitted its petition for reclassification under section 513(e) of the act, the request should have been submitted under section 513(f)(3), and therefore FDA has considered the petition filed under section 513(f)(3). Consistent with section 513(f)(3) of the act and § 860.134, FDA referred the petition to the Blood Products Advisory Committee, Medical Devices Panel (the Panel) for its recommendation on the requested change in classification. The Panel met on September 26, 1996, at a public meeting (Ref. 2).

III. Device Description

The AUTOPHERESIS–C SYSTEM, intended for routine collection of blood and blood components, is an automated plasmapheresis system. It utilizes a spinning membrane separation device to achieve rapid and gentle separation by filtration of whole blood into concentrated cellular components for reinfusion and into plasma for collection.

The instrument uses a system of pumps and sensors controlled by a microprocessor and it incorporates a variety of safety and alarm system

functions. It uses a fully automated processing program to collect a preset volume of plasma from a donor. Plasma collection in the AUTOPHERESIS–C SYSTEM involves sequential phases of collection of plasma from the donor and reinfusion of the residual red blood cell concentrate back to the donor.

The AUTOPHERESIS–C SYSTEM is currently employed in plasma centers where it is used to collect Source Plasma, and it is also found in blood centers and hospital blood banks where it is used for the collection of plasma for preparation of fresh frozen plasma.

Any change in the indication for use, i.e., for therapeutic use, would require a PMA because devices for therapeutic use are not included in this reclassification action.

IV. Risks to Health

FDA has identified the following risks associated with apheresis blood donation and processing: (1) The potential loss of blood due to leaks; (2) thrombosis due to activation of factors by foreign surfaces; (3) toxic reaction to citrate or heparin anticoagulant; (4) damage to red cells, activation of complement, and denaturation of proteins; (5) potential for sepsis and fever due to bacterial contamination of the donor's blood returned to the donor; (6) infectious disease risk to the donor or to the operator due to leaks; (7) electrical shock hazard; (8) donor stress reaction due to removal or loss of blood; and (9) reservoir rupture.

Some of the reported adverse donor reactions are: (1) Allergic reaction; (2) vasovagal or synocopal reaction; (3) citrate toxicity; (4) hematoma; (5) hematuria or hemoglobinuria; (6) hypovolemic reaction; (6) myocardial infarct in three cases unrelated to the donation procedure; (7) mesenteric thrombosis unrelated to the donation procedure; (8) chest pains; (9) high blood pressure; (10) blood clotting; (11) nonresponsive donor during or after the donation procedure; (12) death of a donor several days following an apheresis unrelated to the procedure; (13) blood spray; and (14) tubing separation.

In addition to the potential risks of the AUTOPHERESIS–C SYSTEM and subsequent generic types of filtration-based blood cell separators, there is sufficient information about the benefits of the device. Specifically, the AUTOPHERESIS–C SYSTEM has been used since 1986, and the data presented by Baxter show no evidence of cellular or protein damage to the donor blood; the procedure is well tolerated by the donor; and the instrument is safe and effective for plasma collection. The period from 1986 to 1996 showed that a 0.03 percent of donations were associated with some type of potential adverse event that were reported to Baxter.

V. Panel Recommendation

The Panel reviewed the data and information contained in the petition and provided by FDA, and considered the open discussions during the Panel meeting. The Panel consisted of members with personal knowledge of and clinical experience with the device. At a public meeting on September 27, 1996, the Panel unanimously recommended that the AUTOPHERESIS–C SYSTEM and subsequent membrane-based blood cell separators substantially equivalent to this device, intended for routine collection of blood and blood components, be reclassified from class III to class II. The Panel believed that class II with the special controls of a periodic report filed annually for a minimum of 3 years with emphasis on adverse reactions would provide reasonable assurance of the safety and effectiveness of the device.

VI. Special Controls

FDA believes that, in addition to general controls, the special controls described below address these risks and provide reasonable assurance of the safety and effectiveness of the device. FDA described the special controls in the **Federal Register** of May 29, 2001 (66 FR 29149 at 29151), and provided an opportunity for public comment. FDA did not receive any comments on the special controls. Therefore, on September 5, 2001, FDA issued an order to the petitioner reclassifying the AUTOPHERESIS–C SYSTEM, and substantially equivalent devices of this generic type, from class III to class II subject to the special controls described below (Ref. 3). Through this final rule, FDA is codifying the reclassification of this device by revising 21 CFR 864.9245. By listing the contents of the special controls, new manufacturers of substantially equivalent devices can comply with the same special controls.

In addition to general controls of the act, automated blood cell separator devices operating by filtration principle are subject to the following special controls in order to provide reasonable assurance of the safety and effectiveness of the device. The manufacturer must file an annual report with FDA on the anniversary date of reclassification for 3 consecutive years. A manufacturer of a device determined to be substantially equivalent to the AUTOPHERESIS–C SYSTEM, intended for routine collection of blood and blood components, also is required to comply with the same general and special controls. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the act should be included in the annual report.

Each annual report (special control) must include:

1. A summary of adverse donor reactions reported by the users to the manufacturer that do not meet the threshold for medical device reporting under 21 CFR part 803;

2. Any change to the device, including but not limited to:

- new indications for use of the device;
- labeling changes, including operation manual changes;
- computer software changes, hardware changes, and disposable item changes, e.g., collection bags, tubing, filters;

3. Equipment failures, including software, hardware, and disposable item failures, e.g., collection bags, tubing, filters.

VII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small

entities. Reclassification of the affected devices from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act, and may permit small potential competitors to enter the marketplace by lowering their costs. Although the final rule requires manufacturers of these devices to file an annual report with FDA for 3 consecutive years, this is less burdensome than the current premarket approval requirement that annual reports be submitted to FDA on an ongoing basis. The agency, therefore, certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. In addition, the Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule because the rule will not impose costs of $100 million or more on State, local, and tribal governments in the aggregate, or the private sector, in any one year (adjusted annually for inflation).

IX. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilites among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order; and, consequently, a federalism summary impact statement is not required.

XI. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition for reclassification of the Autopheresis-C System from class III to class II by Baxter Healthcare Corp., June 17, 1996.

2. Transcript of the Blood Products Advisory Committee, 52d Meeting, September 27, 1996.

3. Order to the petitioner, September 5, 2001.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 864.9245 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, by adding new paragraph (b), and by revising newly redesignated paragraphs (c) and (d) to read as follows:

§ 864.9245 Automated blood cell separator.

* * * * *

(b) *Classification of device operating by filtration separation principle.* Class II (special controls). The special controls for the device are that the manufacturer must file an annual report with FDA for 3 consecutive years. Each annual report must include the following:

(1) A summary of adverse donor reactions reported by the users to the manufacturer that do not meet the threshold for medical device reporting under part 803 of this chapter;

(2) Any change to the device, including but not limited to:

(i) New indications for use of the device;

(ii) Labeling changes, including operation manual changes;

(iii) Computer software changes, hardware changes, and disposable item changes, e.g., collection bags, tubing, filters;

(3) Equipment failures, including software, hardware, and disposable item failures, e.g., collection bags, tubing, filters.

(c) *Classification of device operating by centrifugal separation principle.* Class III (premarket approval).

(d) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (c) of this section. See § 864.3.

Dated: February 4, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–4690 Filed 2–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9021]

RIN 1545–AX68

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, December 3, 2002 (67 FR 71821). This document contains final regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries.

DATES: This correction is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this corrections are under section 72 of Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9021) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9021), which is the subject of FR. Doc. 02–29204, is corrected as follows:

§1.72(p)–1 [Corrected]

1. On page 71825, column 1, § 1.72(p)–1, A–19, paragraph (a), last 2 lines in the paragraph, the language "of the Internal Revenue Code. See Q&A 16 of this section", is corrected to read "of the Internal Revenue Code. See Q&A–11 through Q&A–16 of this section".

2. On page 71825, column 3, § 1.72(p)–1, A–20, paragraph (a)(2), lines 4 and 5, the language "section (including paragraph (a)(3) of this Q&A 20 and the amount limitations", is corrected to read "section (including the amount limitations".

3. On page 71825, column 3, § 1.72(p)–1, A–20, paragraph (a)(2), the last line of the paragraph, the language "replaced loan.", is corrected to read "replacement loan.".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–4546 Filed 2–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1, 3, 5, 45, 51, 52, 53, 66, 109, 114 and 120

46 CFR Parts 1 and 68

[USCG–2003–14505]

Coast Guard Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes technical changes to various parts of titles 33 (Navigation and Navigable Waters) and 46 (Shipping) of the Code of Federal Regulations. These revisions coincide with the scheduled March 1, 2003, transfer of the Coast Guard from the Department of Transportation to the newly created Department of Homeland Security. This rule, which revises existing regulations to reflect organizational changes, has no substantive effect on the regulated public.

DATES: This rule is effective March 1, 2003.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–2003–14505), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call James McLeod, Project Manager, Office of Regulations and Administrative Law (G–LRA), Coast Guard, at 202–267–6233. If you have questions on viewing, or submitting material to, the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this rule. The rule consists entirely of agency organization, procedure and practice revisions to various regulations in titles 33 (Navigation and Navigable Waters) and 46 (Shipping) of the Code of Federal Regulations (CFR) in response to enactment of the Homeland Security Act of 2002 (HLSA), Public Law 107–296, 116 Stat. 2135 (2002). Congress has established the Department of Homeland Security (DHS) (section 101 of HLSA) and directed the transfer of the Coast Guard (sections 888 and 1512 of HLSA) from the Department of Transportation to DHS. As indicated in the Department of Homeland Security Reorganization Plan submitted on November 25, 2002, by the President to Congress (under section 1502 of the HLSA), the Coast Guard is scheduled to move to DHS on March 1, 2003.

Because it is technical in nature and relates only to agency organization, procedure and practice, under 5 U.S.C. 553(b)(A), the Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements. These changes will have no substantive effect on the public; therefore, it is not necessary for us to publish an NPRM and provide an opportunity for public comment. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of the Rule

In this rule, we are changing "Department of Transportation" to the "Department of Homeland Security" in specified sections in 33 CFR Chapter I and 46 CFR Chapter I. We have also eliminated references to Department of Transportation delegation regulations (*i.e.*, 49 CFR 1.45 and 1.46) in the text of Coast Guard regulations. And we have updated our rulemaking regulations (33 CFR part 1, subpart 1.05) not only to reflect our transition to DHS but to reflect current agency practice and procedure.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As this rule involves internal agency practices and procedures and non-substantive changes, it will not impose any costs on the public.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(a) and (b) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. These regulations are editorial or procedural and concern internal agency functions and organization. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 5

Volunteers.

33 CFR Part 45

Military personnel, Reporting and recordkeeping requirements.

33 CFR Part 51

Administrative practice and procedure, Military personnel.

33 CFR Part 52

Administrative practice and procedure, Archives and records, Military personnel.

33 CFR Part 53

Administrative practice and procedure, Investigations, Military personnel, Whistleblowing.

33 CFR Part 66

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 109

Anchorage grounds.

33 CFR Part 114

Bridges.

33 CFR Part 120

Passenger vessels, Reporting and recordkeeping requirements, Security measures, Terrorism.

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 68

Oil pollution, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 3, 5, 45, 51, 52, 53, 66, 109, 114 and 120, and 46 CFR parts 1 and 68, as follows:

33 CFR Chapter I

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1, subpart 1.05, is revised to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; and 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.4(b), 1.45(b), and 1.46.

§ 1.01–70 [Amended]

2. In § 1.01–70(e), remove "49 CFR 1.46 (ff) and (gg),".

§ 1.05–1 [Amended]

3. In § 1.05–1—

a. In paragraph (a), remove the word "Transportation" and add, in its place, the words "Homeland Security";

b. In paragraph (b), remove the word "Transportation" and add, in its place, the words "Homeland Security"; and remove the last sentence.

§ 1.05–10 [Amended]

4. In § 1.05–10—

a. In paragraph (a), remove the words "and Department of Transportation Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations".

b. In paragraph (b), add the word "significant" immediately before the word "regulatory" wherever "regulatory" appears in the paragraph.

§ 1.05–25 [Amended]

5. In § 1.05–25(a), add the following sentences at the end of the paragraph: "Public dockets for rulemakings originating at Coast Guard Headquarters are kept at a Docket Management Facility (DMS) maintained by the Department of Transportation, at the Nassif Building, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. These dockets are available electronically through the DMS Web site at *http://dms.dot.gov*."

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

6. The authority citation for part 3 is revised to read as follows:

Authority: 14 U.S.C. 633, Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.45, 1.46.

§ 3.01–1 [Amended]

7. In § 3.01–1(a), remove the words "under the authority delegated by 1.45 and 1.46".

§ 3.01–5 [Amended]

8. In § 3.01–5, remove the words "Sections 1.45 and 1.46 of Title 49, Code of Federal Regulations, authorize" and "Transportation", and add, in their places, respectively, the words "Section 888 of Pub. L. 107–296, 116 Stat. 2135, authorizes" and "Homeland Security".

PART 5—COAST GUARD AUXILIARY

9. The authority citation for part 5 is revised to read as follows:

Authority: 14 U.S.C. 633, 892; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46.

§ 5.01 [Amended]

10. In § 5.01(j), remove the word "Transportation" wherever it appears in the paragraph, and add, in its place, the words "Homeland Security".

PART 45—ENLISTMENT OF PERSONNEL

11. The authority citation for part 45 is revised to read as follows:

Authority: 14 U.S.C. 351, 371; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46(b).

§ 45.1 [Amended]

12. In § 45.1(a), remove the word "Transportation", and add, in its place, the words "Homeland Security".

PART 51—COAST GUARD DISCHARGE REVIEW BOARD

13. The authority citation for part 51 is revised to read as follows:

Authority: 10 U.S.C. 1553; Pub. L. 107–296, 116 Stat. 2135.

§ 51.2 [Amended]

14. In § 51.2(a), remove the word "Transportation", and add, in its place, the words "Homeland Security".

PART 52—BOARD FOR CORRECTION OF MILITARY RECORDS OF THE COAST GUARD

15. The authority citation for part 52 is revised to read as follows:

Authority: 10 U.S.C. 1552; 49 U.S.C. 108; Pub. L. 101–225, 103 Stat. 1908, 1914; Pub. L. 107–296, 116 Stat. 2135.

§§ 52.1, 52.2, 52.11, and 52.81 [Amended]

16. In part 52, remove the word "Transportation", and add, in its place, the words "Homeland Security" in the following places:

a. Section 52.1;

b. Section 52.2(a);

c. Section 52.11(a) and (b);

d. Section 52.81.

PART 53—COAST GUARD WHISTLEBLOWER PROTECTION

17. The authority citation for part 53 is revised to read as follows:

Authority: 10 U.S.C. 1034; Pub. L. 100–456, 102 Stat. 1918; Pub. L. 101–225, 103 Stat. 1908; Pub. L. 107–296, 116 Stat. 2135.

§ 53.3, 53.5, 53.7, and 53.9 [Amended]

18. In part 53, remove the word "Transportation", and add, in its place, the words "Homeland Security" in the following places:

a. Section 53.3;

b. Section 53.5 (Board for Correction of Military Records of the Coast Guard), (Inspector General) and (Secretary).

c. Section 53.7(a); and

d. Section 53.9(a) introductory text, and (a)(4).

PART 66—PRIVATE AIDS TO NAVIGATION

19. The authority citation for part 66 is revised to read as follows:

Authority: 14 U.S.C. 83, 85, 43 U.S.C. 1333; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46.

§ 66.01–3 [Amended]

20. In § 66.01–3(a), remove the words "Pursuant to the authority in 49 CFR 1.45(b)" and add, in their place, the words "Under Section 888 of Pub. L. 107–296, 116 Stat. 2135".

PART 109—GENERAL

21. The authority citation for part 109 is revised to read as follows:

Authority: R.S. 4233, as amended, 28 Stat. 647 as amended, 30 Stat. 98, as amended, sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(1), 80 Stat. 940; 33 U.S.C. 180, 258, 322, 471; 49 U.S.C. 1655(g)(1); Pub. L. 107–296, 116 Stat. 2135; Department of Transportation Order 11001, March 31, 1967, 49 CFR 1.4(a)(3).

§ 109.07 [Amended]

22. In § 109.07, remove the citation "49 CFR 1.46(n)(4)", and add, in its place, the citation "Pub. L. 107–296, 116 Stat. 2135,".

PART 114—GENERAL

23. The authority citation for part 114 is revised to read as follows:

Authority: 33 U.S.C. 401, 491, 499, 521, 525, and 535; 14 U.S.C. 633; 49 U.S.C. 1655(g); Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46(c).

§ 114.05 [Amended]

24. In § 114.05(e), (g), and (i), remove the word "Transportation", and add, in its place, the words "Homeland Security".

PART 120—SECURITY OF PASSENGER VESSELS

25. The authority citation for part 120 is revised to read as follows:

Authority: 33 U.S.C. 1231; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46.

§ 120.220 [Amended]

26. In § 120.220(a), remove the word "Transportation", and add, in its place, the words "Homeland Security".

46 CFR Chapter I

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

27. The authority citation for part 1 is revised to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.45, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

§ 1.01–10 [Amended]

28. In § 1.01–10, —

a. In paragraph(b)(1), remove the words "Marine Safety and Environmental" wherever they appear, and add, in their place, the words "Marine Safety, Security, and Environmental", and

b. In paragraph (b)(2), remove the word "Transportation", and add, in its place, the words "Homeland Security".

PART 68—DOCUMENTATION OF VESSELS PURSUANT TO EXTRAORDINARY LEGISLATIVE GRANTS

29. The authority citation for part 68 is revised to read as follows:

Authority: 46 U.S.C. 2103; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46. Subpart 68.01 also issued under 46 U.S.C. App. 876; subpart 68.05 also issued under 46 U.S.C. 12106(d).

Subparts 68.01 and 68.05—[Amended]

30. In part 68, remove the word "Transportation", and add, in its place, the words "Homeland Security" in the following places:

a. Subpart 68.01 in Appendix A and Appendix B; and

b. Subpart 68.05 in Appendix A and Appendix B.

Dated: February 25, 2003.

Robert F. Duncan,

Rear Admiral, U.S. Coast Guard, Chief Counsel.

[FR Doc. 03–4763 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–03–004]

RIN 2115–AE47

Drawbridge Operating Regulations; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Norfolk Southern Railroad bascule bridge across the Inner Harbor Navigation Canal, mile 4.5, in New Orleans, Orleans Parish, Louisiana. This deviation allows the bridge to remain closed to navigation for twenty-four hours from March 19 through March 20, 2003. The deviation is necessary to conduct maintenance to the drawbridge.

DATES: This deviation is effective from 7 a.m. on Wednesday, March 19, 2003

until 7 a.m. on Thursday, March 20, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 504–589–2965. The Bridge Administration Branch, Eighth District, maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Board of Commissioners of the Port of New Orleans has requested a temporary deviation in order to replace the bronze babbitt bearing on the riverside main motor gear drive of the bridge. This repair is necessary for the continued operation of the bridge. This deviation allows the draw of the Norfolk Southern Railroad bascule bridge to remain closed to navigation from 7 a.m. on Wednesday, March 19 through 7 a.m. on Thursday, March 20, 2003.

The bascule bridge has a vertical clearance of one foot above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. The bridge is maintained in the open-to-navigation position and is closed to allow for trains to cross the bridge. In accordance with 33 CFR 117.5, the draw is required to open on signal for the passage of vessels. The bridge will not be able to open for emergencies during the closure period. Navigation on the waterway consists mainly of recreational and fishing vessels and some tugs with tows. Alternate routes are available to any vessel by transiting through the Chef Menteur Pass or the Rigolets Pass.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 19, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–4758 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–03–006]

Drawbridge Operation Regulations: Annisquam River and Blynman Canal, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the SR 127 Bridge, mile 0.0, across the Annisquam River, Blynman Canal, in Gloucester, Massachusetts. This deviation allows the bridge to remain in the closed position from 6 a.m. on March 9, 2003 through 11:59 p.m. on March 15, 2003. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from March 9, 2003 through March 15, 2003.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The SR 127 Bridge, at mile 0.0, across the Annisquam River, Blynman Canal, has a vertical clearance of 7 feet at mean high water, and 16 feet at mean low water in the closed position. The existing regulations are listed at 33 CFR 117.586.

The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs, the replacement of the tread plates and segmental castings, at the bridge.

This deviation to the operating regulations allows the SR 127 Bridge to remain in the closed position from 6 a.m. on March 9, 2003 through 11:59 p.m. on March 15, 2003.

This deviation from the operating regulations is authorized under 33 CFR 117.35 and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: February 10, 2003.

J.L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–4759 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–03–006]

Drawbridge Operation Regulations; Three Mile Creek, Mobile, Baldwin County, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the CSX Transportation Railroad Swing Span Bridge across Three Mile Creek, mile 0.3, at Mobile, Baldwin County, AL. This deviation allows the bridge to remain closed to navigation on March 20, 2003. The deviation is necessary to conduct maintenance to the drawbridge.

DATES: This deviation is effective from 7 a.m. through 3 p.m. on March 20, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: CSX Transportation has requested a temporary deviation in order to lift the girder off the pivot pedestal in order to replace a worn disc that affects the opening and closing of the swing span bridge across Three Mile Creek at mile 0.3 at Mobile, Baldwin County, Alabama. This maintenance is essential for the continued operation of the bridge and is expected to eliminate frequent breakdowns resulting in emergency bridge closures. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. through 3 p.m. on Thursday, March 20, 2003.

The swing span bridge has a vertical clearance of 10 feet above mean high water and 12 feet above mean low water in the closed-to-navigation position. Navigation on the waterway is primarily commercial, consisting of tugs with tows and fishing vessels. There is no recreational boat traffic at the bridge site. The only known commercial users of the waterway, D. R. Jordan Pile Driving, Inc. and Mobile Ship Yard, were both contacted and have no objection to the closure. The bridge normally opens to pass navigation on an average of 3 times per day. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 19, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–4756 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–03–005]

RIN 2115–AE47

Drawbridge Operating Regulations; Falgout Canal, Terrebonne Parish, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 315 drawbridge across the Falgout Canal, mile 3.1, in Terrebonne Parish, Louisiana. This deviation allows the bridge to remain in the closed-to-navigation position for fifty-six hours from March 18 to March 20, 2003. The deviation is necessary to conduct maintenance to the drawbridge.

DATES: This deviation is effective from 8 a.m. on Wednesday, March 18, 2003, until 4 p.m. on Thursday, March 20, 2003.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation from 33 CFR 117.444 in order to replace a defective main pivot pier bearing housing. This deviation allows the draw of the SR 315 drawbridge to remain closed to navigation from 8 a.m. on Tuesday, March 18, 2003 until 4 p.m. on Thursday, March 20, 2003.

The bridge has a vertical clearance of 3.5 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. In accordance with 33 CFR 117.444, the draw is required to open on signal; except that, from 15 August to 5 June, the draw need not be opened from 7 a.m. to 8 a.m. and from 3 p.m. to 4 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

During the closure period, the bridge will not be able to open for the passage of vessels. No alternate routes are available; however, the bridge owner will attempt to contact all waterway users to keep them abreast of the repair work. Navigation on the waterway consists of small tugs with tows, fishing vessels, and other recreational craft. The bridge opens an average of 426 times per month for the passage of vessels.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 19, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–4757 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2002–11865]

RIN 2115–AG35

Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing its notification of arrival and departure requirements for vessels bound for or departing from ports or places in the United States. This rule permanently changes the notice of arrival requirements in 33 CFR part 160. It replaces the temporary rule that has been in place since October 4, 2001. This rule consolidates the Notice of Departure into the Notice of Arrival; requires electronic submission of cargo manifest information to the United States Customs Service; and requires additional crew and passenger information. These permanent changes will help to ensure public safety, security, and the uninterrupted flow of commerce.

DATES: This final rule is effective April 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2002–11865 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LTJG Kimberly Andersen, U.S. Coast Guard (G–MP), at 202–267–2562. If you have questions concerning U.S. Customs Service procedures, call Kimberly Nott at 202–927–0042. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 4, 2001, we published a temporary final rule entitled "Temporary Requirements for Notification of Arrival in U.S. Ports" in the **Federal Register** (66 FR 50565). Subsequently, we published two corrections in the **Federal Register** (November 19, 2001 (66 FR 57877) and January 18, 2002 (67 FR 2571)). The temporary rule increased the submission time for a Notice of Arrival (NOA) from 24 to 96 hours prior to arriving at a U.S. port; required centralized submissions; temporarily suspended exemptions from reporting requirements for some groups of vessels; and required submission of passenger, crew, and cargo information. The

effective period of the temporary rule was extended twice, first until September 30, 2002 (May 30, 2002 (67 FR 37682)), and then again through March 31, 2003 (August 28, 2002 (67 FR 55115)). The second extension allowed us to complete the rulemaking for permanent changes.

On June 19, 2002, we published a notice of proposed rulemaking in the **Federal Register** entitled "Notification of Arrival in U.S. Ports" (67 FR 41659). We received 21 comments addressing our proposal to permanently change the NOA requirements. No public hearing was requested and none was held.

Background and Purpose

This rule permanently changes the NOA requirements in 33 CFR part 160. It replaces the temporary rule issued in response to the attacks on September 11, 2001, and contains most of the same NOA requirements that have been in place since October 4, 2001.

Currently, owners, agents, masters, operators, or persons in charge of vessels bound for U.S. ports must file an NOA before they enter port. (Persons required to submit reports will hereafter in this preamble be called "submitters.") In our notice of proposed rulemaking (NPRM) we proposed the following:

- Requiring additional information items in NOA reports;
- Requiring electronic submissions of cargo manifest information to the United States Customs Service (USCS);
- Requiring earlier submission times for NOAs;
- Revising requirements for reporting changes to submitted information;
- Merging the Notice of Departure (NOD) requirements with the NOA requirements;
- Allowing consolidated NOA reports for multiple port arrivals;
- Requiring centralized NOA submissions;
- Revising exemptions from NOA requirements; and
- Updating definitions.

Each of these issues is discussed in more detail in the remainder of the preamble.

Discussion of Comments and Changes

We received 21 comments on the proposed rule. Generally, the comments recognized our need to increase the amount and type of information required in an NOA and the need for earlier submission of that information. Comments focused generally on:

- Format and readability of the regulation;
- Specific exemptions from NOA requirements;
- Suggestions for reporting requirements for "certain dangerous cargo;"
- Recommendations for a single submission of information to meet the needs of multiple agencies;
- Electronic submissions;
- Questions about the proposed requirement for submission of the cargo manifest to USCS;
- Requests for additional definitions in part 160; and
- Suggestions for changes to information required in an NOA.

Each of these groups of comments is discussed in more detail in the following paragraphs.

Format of regulation. A number of comments said the NPRM was difficult to read and understand. We agree. For ease of understanding, we have reformatted the requirements and renumbered the sections for this final rule. Many of the information requirements are also now provided in table format.

The current codification of part 160 contains both permanent and temporary sections, which are being changed by this rule. We are, therefore, republishing subpart C in its entirety for the public's convenience until the next CFR recodification.

Exemptions. We received nine comments related to exemption from NOA reporting. Six comments recommended exempting towing vessels that are in domestic service and not carrying CDC. We agree. This rule exempts towing vessels and barges not carrying CDC or controlling another vessel carrying CDC that are operating solely between ports or places in the continental U.S. from NOA reporting requirements.

One comment requested that Mobile Offshore Drilling Units (MODUs) moving between operating locations under U.S. jurisdiction be exempt from the NOA requirements. The comment suggested that the report required by 33 CFR 146.202, which notifies the Captain of the Port (COTP) 14 days before a MODU arrives or changes its location on the Outer Continental Shelf (OCS), should be used to meet the NOA requirements. The Coast Guard disagrees and has not exempted MODUs from the NOA requirements in this rule. The NOA information is different from that required by § 146.202. The MODU's arrival or change of location on the OCS does not require submission of an NOA, only the notification to the District Commander required by § 146.202. If a MODU is leaving the OCS to arrive at a U.S. port the MODU must comply with the NOA submission requirement in this rule.

One comment recommended exempting Aleutian Trade Act fish tenders. The comment explained that these fish tenders operate in the remote reaches of Alaska and their movements are unpredictable; it also explained that these fish tenders sail only between U.S. Ports, are U.S. owned, and that 98% of the crew are American citizens. The comment also stated that they do not carry bulk hazardous cargo. Because this issue is specific to Alaska, it can appropriately be addressed by the local COTP who, under § 160.214, may waive provisions of this subpart.

One comment recommended eliminating the exemption for passenger and supply vessels when they are employed in continental shelf resource exploration or extraction. The comment stated, "Logic would dictate that the offshore rigs could be used as a vehicle to aid in terrorism. Passenger and supply vessels often carry a myriad of hazardous materials including explosives." Two comments responded, disagreeing and urging Coast Guard to keep the exemption. The Coast Guard is not changing the exemption for these vessels.

One comment asked us to clarify who is required to report above or below mile 235 on the Mississippi River. Specifically, the comment asked if domestic barges not carrying CDC were required to report on this body of water.

We have revised the proposed regulatory text to more clearly state that all vessels are exempt when operating on the Mississippi River above mile 235, Above Head of Passes, including the tributaries and the Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway and the Red River, the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between those two. NOA requirements for vessels operating below mile 235 on the Mississippi River are the same as any other location in the U.S. covered by this rule.

Certain Dangerous Cargo. We received three (3) comments regarding the definition of Certain Dangerous Cargo (CDC). The comments state that the list of CDCs included in the requirement for NOA submission is too broad and that it impedes the collection of information on cargoes that pose the greatest risk to maritime safety and security. The comments suggest the Coast Guard limit the CDC definition to include only those cargoes that pose the greatest risk to maritime safety and security. They also recommend the Coast Guard use the list of high consequence cargoes in the AWO Security Plan (a list developed with input from the towing industry and Coast Guard representatives) to define CDC for this rule.

The Coast Guard agrees that the definition of CDC should be limited to those cargoes that pose the greatest risk to maritime safety and security. The Coast Guard conducted a comprehensive review of cargoes, which included a review of the CDC list in the NPRM and the high consequence cargo list in the AWO Security Plan. As a result of the review we revised the list of CDCs described in the NPRM to include only those cargoes that currently pose the greatest risk to maritime safety and security.

Duplicate Reporting. Several comments said they were submitting the same information to different federal agencies and recommended a single submission of information. Many remarked that they would welcome the submission of an electronic data file to a central depository, where submissions could then be accessed by or forwarded to each agency needing the information.

We agree and we are currently working to integrate information and data requirements with other government agencies. Once we have this capability, we will revise our reporting requirements.

We also received a comment that COTPs were still asking companies to send their NOA to the COTP, even though it had already been submitted to the National Vessel Movement Center (NVMC). This final rule requires the submission of an NOA to the COTP only for vessels 300 gross tons or less entering a port or place in the Seventh Coast Guard District. Questions about requests from COTPs for duplicate submissions should be referred to LTJG Kimberly Andersen at the phone number in **FOR FURTHER INFORMATION CONTACT.**

National Vessel Movement Center. Four comments asked about the methods for submitting information to the NVMC. The NPRM proposed three methods for submitting NOAs to the NVMC: telephone (1–800–708–9823), fax (1–800–547–8724), and e-mail. Two comments stated that vessels calling or faxing through INMARSAT are unable to use 1–800 numbers. An alternate phone number (304) 264–2502 and fax number (304) 264–2684 have been added for vessels using INMARSAT.

Another comment requested that e-mail be a submission method. E-mail has always been an option for submitting NOAs and remains an option in this final rule. General information about the NVMC and methods for submission are available on the NVMC Web site at *http://www.nvmc.uscg.gov/.*

Electronic Submissions. This rule will not mandate electronic submissions of NOA reports. You may, however, continue to choose to use the voluntary electronic format available on the NVMC website. As mentioned under duplicate reporting, we will continue to work with other government agencies on a common format for electronic data submissions.

In our NPRM, we asked six questions related to electronic submission and we received four comments answering some, or all of, these questions. The six questions and corresponding answers are as follows:

1. *"What are your information security concerns regarding electronic submissions of NOA?"* Of the two comments that responded to this question, both stated there were no security concerns. One of the comments stated that their ships already have known, published schedules. The other comment stated that their member lines already submit NOAs electronically and they assumed the electronic transmissions were being sent to and via a secure website.

2. *"Would you allow the Coast Guard to forward all or parts of your NOA information to entities such as marine exchanges or port authorities as a value added service to facilitate information sharing at the port level?"* Of the three comments that responded to this question, one encouraged the forwarding of NOA information to other entities and one objected. The comment objecting to sharing information stated that it was not apparent what added security benefits it would provide and that it might lead to greater security risks. The comment also stated that they would want to know "exactly what kind of information would lend itself to such information sharing." The third comment stated that they would not object to forwarding this information if the Coast Guard determined sharing this information was absolutely necessary and under the condition that "all such information would *not* be shared with the general public."

3. *"If the Coast Guard produced a desktop application that allowed you to create, manage, and automatically submit NOA via email, would you use it?"* Of the three comments that responded to this question, one said they already submit their NOA via email and that the current formats should continue to be allowed alongside future desktop applications. The second said they "would most likely utilize a CG desktop application." They also said it would have to be deployable on board ship and be compatible with INMARSAT, along with a capability to be transmitted in a compressed format to reduce transmission costs. The third comment stated that the "cost passed on to those purchasing the program would outweigh any benefit derived by industry."

4. *"Which electronic means for submitting NOAs would you prefer? (e.g.: HTML, SMTP, FTP)"* Each of the four comments responded to this question with different answers. One gave no preference. The second also gave no preference but acknowledged that some are more secure than others. This same comment recommended we ensure "one set of standards for all government agencies or the government agencies should have the capability to receive all protocols and programs." A third comment stated they "do not regard these means to be mutually exclusive, and would encourage that as many options be made available to submitters as technically feasible." The final comment rank ordered their preferences beginning with SMTP, then FTP, and finally HTTP. This comment also recommended that vessels without these capabilities be allowed to continue to use fax and e-mail.

5. *"What are your information security concerns if the Coast Guard allowed you to send your NOA to an FTP (File Transfer Protocol) server or web server in the public domain?"* None of the questions listed any security concerns related to FTP servers or web servers, but one suggested "Encryption: PKI scheme based encryption (PGP)."

6. *"If the Coast Guard provided an XML (Extensible markup language) data specification for NOA, would you be able to generate XML documents and submit them via email or other means?"* Of the three comments responding to this question, one stated that they believe they could install an XML plug-in; the second said the format method should be XML; and the third stated, "* * * relatively few shipping companies today have the capability of generating XML documents for NOA submissions." The third comment also reemphasized that no single electronic means should become the exclusive method for submission.

Several comments also requested that in the future we continue to maintain the phone and fax options for NOA submission. Although we are not requiring electronic submission of NOA information to the NVMC in this rule, we are working on electronic submission issues and considering the responses to these questions.

Who May Submit. In the NPRM, we asked whether we should accept NOA submissions from only the vessel owner and operator, or from only the owner,

operator and authorized agent (including shipping agents and marine exchanges) of the vessel. We specifically requested comments on how either of these changes would affect the method of NOA submission used by the submitter.

Five comments responded to this issue. All of them recommended that no change be made and that we continue to accept NOA submissions from "...the owner, agent, master, operator, or person in charge of a vessel...". The Coast Guard agrees and this provision remains unchanged in this final rule.

Cargo Manifest (Cargo Declaration—Customs Form 1302). We received several comments stating that the Coast Guard should not require electronic submission of the cargo manifest to USCS. The comments stated that the cargo manifest submission is already required by USCS and the Coast Guard requirements were different.

We disagree. This requirement is not redundant—a single submission of the Cargo Manifest meets the requirements of both Coast Guard and USCS. The Coast Guard and USCS are working together to obtain vessel arrival information in an automated format that will meet the requirements of both agencies. Including this requirement in the Coast Guard's final rule is one step toward this end.

Definitions. Several comments requested additional definitions for "domestic voyage," and "barge." This final rule adds definitions for "barge," "crewmember," "nationality," and "persons in addition to crewmembers." We are also revising the definition for "certain dangerous cargo," as discussed previously in this preamble. The term domestic voyage is no longer used in this subpart, and therefore, no definition is required.

Another comment asked for a clarification of the definition of crewmember because it was unclear as to what category company personnel; contractors, or other supernumerary persons belonged. The comment stated these persons would be included on the list of "persons in addition to the crew". The Coast Guard agrees that these persons are considered "persons in addition to the crew". The comment requested a clarification because it would be important for purposes of mandatory training required by STCW for crewmembers; requirements of Passenger Services Act; and legal benefits tendered to crewmembers under maritime law. However, the definition of "crewmember" in this rule applies only to 33 CFR part 160, subpart C. It does not affect regulations concerning these other issues. Therefore, the Coast Guard is not changing the definition of "crewmember" in this final rule.

Information Required in an NOA. Six comments discussed specific information items in the NOA. These items included "crewmember information," "operational condition," "any other name by which each individual has been known," "last five ports or places visited," and "24-hour Point of Contact (POC)."

One comment stated that the reporting requirements for crewmembers were excessive and unjustified. This information is necessary for safety and security purposes and we will continue to require it. However, the Coast Guard recognizes the fact that crewmembers may change positions frequently. For this reason, we have added a provision to § 160.208 that states that a notice of change need not be submitted when a change occurs to a crewmember's position or duty on the vessel.

One comment questioned the need for a barge to report the operational condition of the equipment under 33 CFR 164.35. This operational condition report applies to self-propelled vessels of 1600 or more gross tons and would not, therefore, be applicable to a barge. Further, barges operating solely between ports and places in the continental U.S. are exempt from the NOA requirements, unless they are carrying CDC. If they are carrying CDC, we require a consolidated NOA from the towing vessel on both the towing vessel and the barge(s) it is controlling.

Five comments questioned the necessity for reporting any other name including alias, nickname, maiden name, professional or stage name by which an individual has been known. Comments stated that this information is not required on INS Form I–418; it is difficult to produce and/or verify; and the Coast Guard should not require it. We agree, and we have removed it from this final rule.

Several comments questioned the need for requiring the last five ports of call from all vessels. Comments stated that cruise ships and domestic inland barge traffic should be exempt from providing the last five ports of call. We agree that vessels operating solely between ports or places in the continental U.S. should only be required to provide the destination(s) and last port of call. Vessels that have arrived from or have stopped in foreign ports, however, are required to provide their last five ports of call.

We received one comment asking for clarification on the meaning of "Name and telephone number of a 24-hour point of contact (POC) for each port included in the notice of arrival." A new POC need not be provided for each port, nor must the POC be located at that port. We have changed the regulatory text to read as follows: "name and telephone number of a 24-hour point of contact."

Submission Timeframe. One comment asked the Coast Guard to reconsider requiring estimated departure date and time, as well as updates to these times, if the change was more than six hours for vessels not carrying CDC. The comment stated it places undue burden on the industry and results in an unmanageable amount of update filings to the NVMC. Coast Guard COTPs need this information for safety and security reasons. We will continue to require NOA information on estimated departure date and time, as well as updates to those times, when the arrival or departure time has changed by six hours or more.

Discussion of Rule

Required elements in NOA reports. This rule requires the following information be submitted in an NOA: vessel, cargo, and persons on board. Submitters are to identify each of their destinations by listing the names of the receiving facility, the port or place in the U.S., the city, and the state, as well as indicate the location or position of the vessel at the time of reporting. Submitters also must provide a general description of cargo aboard the vessel. The description will inform the Coast Guard if the vessel is carrying items such as grain, oil, containers, etc. Submitters will also identify where each crewmember and each person in addition to crewmembers embarked.

Based on experience with the temporary rule, we have removed the reporting information on the stowage location. We feel this information is adequately covered by the cargo manifest requirements in entry 8 of Table 160.206.

Cargo Manifest Information. The Coast Guard is requiring the vessel's cargo manifest information as described in 19 CFR 4.7(a). This requirement is in addition to entry (3)(i) in table 160.206, "general description of the cargo", and will consist of the information contained in the cargo declaration (Customs Form 1302). Cargo manifest information is necessary to assess vessels entering U.S. ports for potential threats to the national security and to appropriately respond to those threats.

The Coast Guard does not have the capability at NVMC to receive and process the cargo manifest information. The USCS, however, does have an existing capability to receive, process, and share the information with the Coast Guard. The cargo manifest information is to be submitted electronically to USCS through the Sea Automated Manifest System (AMS) at least 96 hours before the vessel arrives at a U.S. port, while all other required NOA information is to be submitted to the NVMC. A single electronic submission of the cargo manifest information (Customs Form 1302) to USCS will satisfy the requirements of both agencies for submission of that data.

To transmit information electronically to USCS, a submitter must be able to use Sea AMS. To enroll in Sea AMS, a submitter must first call the USCS at 703–921–7500 or send a letter to the following address requesting participation in the Sea AMS program: U.S. Customs Service, Client Representative Branch, 7501 Boston Blvd. Rm. 211, Springfield, VA 22153. Upon receiving an inquiry, a USCS client representative will be assigned to work with the submitter. This representative will serve as a technical advisor establishing a Sea AMS interface. Establishing an interface for participation can require as little as two weeks or up to several months, depending on the particular method chosen. This rule, therefore, provides a 90-day delay in implementation of the requirement to submit the cargo information to USCS. This 90-day period should provide sufficient time for submitters to either enroll in Sea AMS or find a submission agent who is already able to use Sea AMS.

AMS will allow participants to transmit manifest information electronically 96 hours prior to vessel arrival. There are four methods of transmitting data to AMS: (1) Establish a direct connection with USCS; (2) use a service provider; (3) use a port authority; and (4) purchase software from a vendor. For general information related to AMS, visit the USCS Automated Commercial System Web site at *http://www.customs.gov/xp/cgov/import/operations_support/automated_systems/ams/sea_features.xml.*

Of vessels already required to submit a "cargo manifest" to USCS, approximately 95 percent submit the manifest information electronically. The new Coast Guard requirement only affects vessels not currently submitting electronically to Customs. The requirement to submit the cargo manifest information electronically will not apply to vessels on a domestic voyage in the United States.

Submission times for NOA. In the temporary rule, we increased the times for submitting an NOA. This rule requires most vessels to submit NOAs at least 96 hours before arrival in the United States. Towing vessels, when in control of a barge or barges carrying CDC and operating solely between ports or places in the continental United States, must submit an NOA before departure but at least 12 hours before entering the port or place of destination. Except for these vessels, this rule contains the same submission times established in our temporary rule.

Submission times for Cargo Declaration (Customs Form 1302). To align USCS and Coast Guard cargo declaration requirements, we have created two new exceptions to the submission times for Cargo Declaration. Except for vessels carrying containerized cargo or break bulk cargo, vessels carrying bulk cargo may submit the Cargo Declaration before departure but at least 24 hours before entering the U.S. port or place of destination. Vessels carrying break bulk cargo operating under a USCS exemption granted under 19 CFR 4.7(b)(4)(ii) may, during the effective period of the USCS exemption, submit the Cargo Declaration before departure but at least 24 hours before entering the U.S. port or place of destination.

Exemptions in this rule from submitting NOAs or particular items in an NOA apply only to the provisions of this subpart. No exemption in this subpart affects USCS or other agency requirements to submit arrival information, particularly the USCS requirement to submit the Cargo Declaration 24 hours prior to lading in a foreign port. In these instances, however, the Coast Guard expects that if a vessel complies with the USCS requirements for submitting 24 hours before lading, that it will also meet the times for submission of that information under this subpart. Thus, one submission will meet the separate requirements of two agencies for the same information.

Reporting changes to submitted NOA information. Changes to NOAs must be reported as soon as practical but not less than 6, 12, or 24 hours prior to entering port depending on vessel and voyage characteristics. When reporting changes, a complete resubmission of an entire report is not necessary.

Notice of Departure. The Coast Guard has combined all of the information elements of a NOD and an NOA into a single NOA report. Both notices contained duplicate reporting elements, although the NOD required the submission of one additional element. The additional element (the estimated date and time of departure) is now included in the NOA, thereby eliminating reporting the same information twice and reducing the reporting burden.

Consolidated NOA Submission. Submitters are allowed to file a single NOA listing all consecutive U.S. destinations during the voyage, along with estimated arrival and departure dates and times for each port.

Towing vessels controlling a barge that is required to submit an NOA under this subpart must submit only one NOA containing the information required for the towing vessel and each barge under its control.

Require centralized submissions. All NOA reports will continue to go to the NVMC instead of to individual COTPs. Vessels of 300 gross tons or less operating in the Seventh Coast Guard District will continue to submit NOA reports to cognizant COTPs.

Vessels transiting inbound on the Saint Lawrence Seaway are able to meet the NOA reporting requirements by continuing to fax their NOA submissions to the Saint Lawrence Seaway Development Corporation (SLSDC) and the Saint Lawrence Seaway Management Corporation of Canada. The SLSDC will forward each vessel's NOA report to the Coast Guard. The cargo manifest must be submitted electronically to USCS.

Exemptions from NOA reporting. The temporary final rule suspended reporting exemptions for vessels complying with Automated Mutual Assistance Vessel Rescue System (AMVER), certain vessels operating solely on the Great Lakes, and vessels operating on a regularly scheduled route. As proposed in our NPRM, these exemptions have been permanently removed.

Under this rule, U.S. vessels, except tank vessels, operating solely between U.S. ports on the Great Lakes are exempt from reporting. Canadian vessels, U.S. tank vessels coming from a foreign port, and vessels complying with AMVER are required to submit an NOA report. Vessels operating on a regularly scheduled route are required to submit an NOA report.

Charterers. We have added a NOA requirement to submit the name of the vessel charterer. This change will continue the requirement (August 19, 2002 (67 FR 53735)) contained in the temporary rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We present this Regulatory Evaluation for the purposes of information. A more detailed analysis can be found in the public docket under **ADDRESSES.**

Evaluation. The regulatory baseline for this rule is the NOA and NOD reporting requirements in 33 CFR part 160 that are to be amended by this rulemaking. At the present, the requirements of part 160 that we are amending are temporarily suspended. During the suspension period of these requirements there has been a temporary final rule in place since October 4, 2001. The temporary reporting requirements are not addressed in this analysis. This means that the cost of the rule is estimated as the incremental expenditure required to meet the provisions of the rule in absence of the temporary rule published October 4, 2001.

The cost for complying with the rule will differ depending on the type of vessel submitting the report. Owners and operators of non-AMVER/non-Great Lakes vessels will have to submit lists of the crew and persons in addition to the crew (information they already have to submit to INS). Additionally, these vessels must provide detail on the persons aboard the vessel (*e.g.*, port where embarked). Owners and operators of AMVER and Great Lakes vessels may complete the INS forms (which they did not have to provide previously), the crew lists, and the crew detail.

The cost of the rule to industry is presented below based on the average number of annual arrivals for 1998 and 1999.

ANNUAL COST AND BENEFIT OF THE RULE (2003 DOLLARS)

NOA report	Arrivals	Cost per arrival	Annual cost
Non-AMVER/Non-Great Lakes	63,286	$95.17	$6,022,715
AMVER	4,040	141.75	572,603
Great Lakes	813	141.75	115,243
Totals			$6,710,561

As shown, the rule is estimated to cost $6.7 million annually. Over the next 10 years, the Present Value (PV) cost of the rule is $50.4 million (2003–2012, 7 percent discount rate, 2003 dollars).

The non-quantifiable benefit of the rule is—

- Providing relevant information about an applicable vessel's cargo, crewmembers, and passengers as well as a threat it may pose; and
- Providing more time to evaluate, analyze, and respond to the information collected.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). It modifies an existing OMB-approved collection—2115–0557. A summary of the revised collection follows..

Title: Advance Notice of Vessel Arrival and Departure.

OMB Control Number: 2115–0557.

Summary of the Collection of Information: The Coast Guard requires pre-arrival messages from any vessel entering a port or place in the United States. This rule will amend 33 CFR part 160 to permanently require:

- Earlier receipt of the notice of arrival—96 hours instead of 24 hours—from vessels currently required to provide advance notification of arrival;
- Submission of NOA reports to a central clearinghouse, the National Vessel Movement Center;
- Removal of the current exemption from notice of arrival reporting requirements for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, some vessels operating on the Great Lakes, and vessels on scheduled routes; and
- Additional information about crewmembers, passengers, cargoes on board the vessel to be provided as items in the notice of arrival report.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard must permanently change regulations relating to the notifications of arrival requirements.

Proposed Use of Information: This information is required to control vessel traffic, develop contingency plans, enforce regulations, and enhance maritime security.

Description of the Respondents: Respondents are owners and operators of vessels that arrive at or depart from a port or place in the United States after departing from foreign ports.

Number of Respondents: The existing OMB-approved collection number of respondents is 10,367 (respondents are owners/operators of the vessels calling on U.S. ports annually). This rule will not increase the number of respondents.

Frequency of Response: Owners/operators of vessels making calls in U.S. ports will submit NOA reports as necessary. The existing OMB-approved collection number of responses is 68,139 (responses are arrivals at and departures from U.S. ports). This rule will not increase the number of responses.

Burden of Response: The existing OMB-approved collection burden of response is approximately 15 minutes (0.250 hours) (burden of response is,the time required to complete the paperwork requirements of the rule for a single response). This rule will increase the burden of response by an average of 60 minutes (1.000 hour) and decrease the burden of response by 1 minute (0.017 hours) for a net total of 74 minutes (1.233 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 39,037 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This rule will increase the total annual burden by 136,278 hours and decrease total annual burden by 1,136 hours for a net total of 174,179 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted a copy of this rule to OMB for its review and approval of the revised collection of information. The existing OMB-approved collection (2115–0557) expires on March 31, 2003.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. If OMB does not approve this revised collection of information, we will publish a notice in the **Federal Register** of OMB's decision.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and will either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined, that to the extent states have a current requirement in effect for notices of vessel arrivals to a state agency, *e.g.*, notices to pilot authorities for pilot services, we do not intend to preempt those requirements with this rule.

However, we reserve our position with respect to preemption of any prospective new state rule or legal requirement for an advance notice of arrival or submission of information requirements that are similar to those set forth in this rule. The U.S. Supreme Court in *United States* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000), held that pursuant to title I of the Ports and Waterways Safety Act (the authority for this rule), the Coast Guard can preempt conflicting or similar State requirements on vessel operation. The Court held also that Congress had preempted the field of marine casualty reporting. Accordingly, based on the Supreme Court's holding in the Locke case, we believe that any prospective state requirement for a notice of arrival or information gathering requirement directed at vessel owners, or operators, that is similar to that contained in this rule is inconsistent with the federalism principles enunciated in that case, and is preempted."

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule changes the requirements in the notification of arrival regulations. They are procedural in nature and therefore are categorically excluded. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

1. The authority citation for part 160 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1226, 1231; 49 CFR 1.46.

Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

2. Revise Subpart C to read as follows:

Subpart C—Notifications of Arrival, Hazardous Conditions, and Certain Dangerous Cargoes

160.201 General.
160.202 Applicability.
160.203 Exemptions.
160.204 Definitions.
160.206 Information required in an NOA.
160.208 Changes to a submitted NOA.
160.210 Methods for submitting an NOA.
160.212 When to submit an NOA.
160.214 Waivers.
160.215 Notice of hazardous conditions.

Subpart C—Notification of Arrival, Hazardous Conditions, and Certain Dangerous Cargos

§ 160.201 General.

This subpart contains requirements and procedures for submitting Notices of Arrival (NOA) and Notice of Hazardous Condition. The sections in this subpart describe:

(a) Applicability and exemptions from requirements in this subpart;

(b) Required information in an NOA;

(c) Required changes to an NOA;

(d) Methods and times for submission of an NOA and changes to an NOA;

(e) How to obtain a waiver; and

(f) Requirements for submission of the Notice of Hazardous Conditions.

§ 160.202 Applicability.

(a) This subpart applies to U.S. and foreign vessels bound for or departing from ports or places in the United States.

(b) This subpart does not apply to recreational vessels under 46 U.S.C. 4301 *et seq.*

(c) Unless otherwise specified in this subpart, the owner, agent, master, operator, or person in charge of a vessel regulated by this subpart is responsible for compliance with the requirements in this subpart.

(d) Towing vessels controlling a barge or barges required to submit an NOA under this subpart must submit only one NOA containing the information required for the towing vessel and each barge under its control.

§ 160.203 Exemptions.

(a) Except for reporting notice of hazardous conditions, the following vessels are exempt from requirements in this subpart:

(1) Passenger and supply vessels when they are employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf.

(2) Oil Spill Recovery Vessels (OSRVs) when engaged in actual spill response operations or during spill response exercises.

(3) Vessels operating upon the following waters:

(i) Mississippi River between its sources and mile 235, Above Head of Passes;

(ii) Tributaries emptying into the Mississippi River above mile 235;

(iii) Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway and the Red River; and

(iv) The Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between those two points.

(b) If not carrying certain dangerous cargo or controlling another vessel carrying certain dangerous cargo, the following vessels are exempt from NOA requirements in this subpart:

(1) Vessels 300 gross tons or less, except for vessels entering any port or place in the Seventh Coast Guard District as described in 33 CFR 3.35–1(b).

(2) Vessels operating exclusively within a Captain of the Port Zone.

(3) Vessels arriving at a port or place under force majeure.

(4) Towing vessels and barges operating solely between ports or places in the continental United States.

(5) Public vessels.

(6) Except for tank vessels, U.S. vessels operating solely between ports or places in the United States on the Great Lakes.

(c) Vessels less than 500 gross tons need not submit the International Safety Management (ISM) Code Notice (Entry (7) to Table 160.206).

(d) Vessels operating solely between ports or places in the continental United States need not submit the Cargo Declaration (Customs Form 1302), (Entry (8) to Table 160.206).

(e) This section does not exempt any vessel from compliance with the U.S. Customs Service (USCS) reporting or submission requirements.

§ 160.204 Definitions.

As used in this subpart:

Agent means any person, partnership, firm, company or corporation engaged by the owner or charterer of a vessel to act in their behalf in matters concerning the vessel.

Barge means a non-self propelled vessel engaged in commerce.

Carried in bulk means a commodity that is loaded or carried on board a vessel without containers or labels and received and handled without mark or count.

Certain dangerous cargo (CDC) includes any of the following:

(1) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(2) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(3) Division 2.3 "poisonous gas", as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation" as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per vessel.

(4) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(5) A liquid material that has a primary or subsidiary classification of Division 6.1 "poisonous material" as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation," as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per vessel when not in a bulk packaging.

(6) Class 7, "highway route controlled quantity" radioactive material or "fissile material, controlled shipment," as defined in 49 CFR 173.403.

(7) Bulk liquefied chlorine gas and Bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(8) The following bulk liquids:

(i) Acetone cyanohydrin,

(ii) Allyl alcohol,

(iii) Chlorosulfonic acid,

(iv) Crotonaldehyde,

(v) Ethylene chlorohydrin,

(vi) Ethylene dibromide,

(vii) Methacrylonitrile, and

(viii) Oleum (fuming sulfuric acid).

Charterer means the person or organization that contracts for the majority of the carrying capacity of a ship for the transportation of cargo to a stated port for a specified period. This includes "time charterers" and "voyage charterers."

Crewmember means all persons carried on board the vessel to provide navigation and maintenance of the vessel, its machinery, systems, and arrangements essential for propulsion and safe navigation or to provide services for other persons on board.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Gross tons means the tonnage determined by the tonnage authorities of a vessel's flag state in accordance with the national tonnage rules in force before the entry into force of the International Convention on Tonnage Measurement of Ships, 1969 ("Convention"). For a vessel measured only under Annex I of the Convention, gross tons means that tonnage. For a vessel measured under both systems, the higher gross tonnage is the tonnage used for the purposes of the 300-gross-ton threshold.

Hazardous condition means any condition that may adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the United States. It may, but need not, involve collision, allision, fire, explosion, grounding, leaking, damage, injury or illness of a person aboard, or manning-shortage.

Nationality means the state (nation) in which a person is a citizen or to which a person owes permanent allegiance.

Operator means any person including, but not limited to, an owner, a charterer, or another contractor who conducts, or is responsible for, the operation of a vessel.

Persons in addition to crewmembers mean any person onboard the vessel, including passengers, who are not included on the list of crewmembers.

Port or place of departure means any port or place in which a vessel is anchored or moored.

Port or place of destination means any port or place in which a vessel is bound to anchor or moor.

Public vessel means a vessel that is owned or demise-(bareboat) chartered by the government of the United States, by a State or local government, or by the government of a foreign country and that is not engaged in commercial service.

Time charterer means the party who hires a vessel for a specific amount of time. The owner and his crew manage the vessel, but the charterer selects the ports of destination.

Voyage charterer means the party who hires a vessel for a single voyage. The owner and his crew manage the vessel, but the charterer selects the ports of destination.

§ 160.206 Information required in an NOA.

(a) Each NOA must contain all of the information items specified in Table 160.206.

TABLE 160.206.—NOA INFORMATION ITEMS

Required information	Vessels not carrying CDC	Vessels carrying CDC	
		Vessels	Towing vessels controlling vessels carrying CDC
(1) Vessel Information:			
(i) Name;	X	X	X
(ii) Name of the registered owner;	X	X	X
(iii) Country of registry;	X	X	X
(iv) Call sign;	X	X	X
(v) International Maritime Organization (IMO) international number or, if vessel does not have an assigned IMO international number, substitute with official number;	X	X	X
(vi) Name of the operator;	X	X	X
(vii) Name of the charterer; and	X	X	X
(viii) Name of classification society	X	X	X
(2) Voyage Information:			
(i) Names of last five ports or places visited;	X	X	X
(ii) Dates of arrival and departure for last five ports or places visited;	X	X	X
(iii) For each port or place in the United States to be visited list the names of the receiving facility, the port or place, the city, and the state;	X	X	X
(iv) For each port or place in the United States to be visited, the estimated date and time of arrival;	X	X	X
(v) For each port or place in the United States to be visited, the estimated date and time of departure;	X	X	X
(vi) The location (port or place and country) or position (latitude and longitude or waterway and mile marker) of the vessel at the time of reporting; and	X	X	X
(vii) The name and telephone number of a 24-hour point of contact	X	X	X
(3) Cargo Information:			
(i) A general description of cargo, other than CDC, onboard the vessel (*e.g.*: grain, container, oil, etc.);	X	X	X
(ii) Name of each certain dangerous cargo carried, including cargo UN number, if applicable; and		X	X
(iii) Amount of each certain dangerous cargo carried		X	X
(4) Information for each Crewmember Onboard:			
(i) Full name;	X	X	X
(ii) Date of birth;	X	X	X
(iii) Nationality;	X	X	X
(iv) Passport or mariners document number (type of identification and number);	X	X	X
(v) Position or duties on the vessel; and	X	X	X
(vi) Where the crewmember embarked (list port or place and country)	X	X	X
(5) Information for each Person Onboard in Addition to Crew:			
(i) Full name;	X	X	X
(ii) Date of birth;	X	X	X
(iii) Nationality;	X	X	X
(iv) Passport number; and	X	X	X
(v) Where the person embarked (list port or place and country)	X	X	X
(6) Operational condition of equipment required by § 164.35 of this chapter	X	X	X
(7) International Safety Management (ISM) Code Notice:			
(i) The date of issuance for the company's Document of Compliance certificate that covers the vessel;	X	X	X
(ii) The date of issuance for the vessel's Safety Management Certificate; and	X	X	X
(iii) The name of the Flag Administration, or the recognized organization(s) representing the vessel flag administration, that issued those certificates	X	X	X
(8) Cargo Declaration (Customs Form 1302) as described in 19 CFR 4.7	X	X	X

(b) Vessels operating solely between ports or places in the continental United States need submit only the name of and date of arrival and departure for the last port or places visited to meet the requirements in entries (2)(i) and (ii) to Table 160.206 of this section.

(c) You may submit a copy of INS Form I–418 to meet the requirements of entries (4) and (5) in Table 160.206.

(d) Any vessel planning to enter two or more consecutive ports or places in the United States during a single voyage may submit one consolidated Notification of Arrival at least 96 hours before entering the first port or place of destination. The consolidated notice must include the name of the port or place and estimated arrival date for each destination of the voyage. Any vessel submitting a consolidated notice under this section must still meet the requirements of § 160.208 of this part concerning requirements for changes to an NOA.

§ 160.208 Changes to a submitted NOA.

(a) Unless otherwise specified in this section, when submitted NOA information changes, vessels must submit a notice of change within the times required in § 160.212.

(b) Changes in the following information need not be reported:

(1) Changes in arrival or departure times that are less than six (6) hours;

(2) Changes in vessel location or position of the vessel at the time of reporting (entry (2)(vi) to Table 160.206); and

(3) Changes to crewmembers' position or duties on the vessel (entry (5)(v) to Table 160.206).

(c) When reporting changes, submit only the name of the vessel, original NOA submission date, the port of arrival, the specific items to be corrected, and the new location or position of the vessel at the time of reporting. Only changes to NOA information need to be submitted.

§ 160.210 Methods for submitting an NOA.

(a) *Submission to the National Vessel Movement Center (NVMC).* Except as provided in paragraphs (b) and (c) of this section, all vessels required to submit NOA information in § 160.206 (entries 1–7 to Table 160.206) to the NVMC, United States Coast Guard, 408 Coast Guard Drive, Kearneysville, WV, 25430, shall do so by:

(1) Telephone at 1–800–708–9823 or 304–264–2502;

(2) Fax at 1–800–547–8724 or 304–264–2684; or

(3) E-mail at *SANS@NVMC.USCG.gov.*

Note to paragraph (a): Information about the National Vessel Movement Center is available on its Web site at *http://www.nvmc.uscg.gov/.* You may submit the notice using any electronic format available on the NVMC website.

(b) *Saint Lawrence Seaway transits.* Those vessels transiting the Saint Lawrence Seaway inbound, bound for a port or place in the United States, may meet the submission requirements of paragraph (a) of this section by submitting the required information to the Saint Lawrence Seaway Development Corporation and the Saint Lawrence Seaway Management Corporation of Canada by fax at 315–764–3235 or at 315–764–3200. The Cargo Declaration (Customs Form 1302) in entry (8) in Table 160.206 must be submitted electronically to the USCS, as required by paragraph (d) of this section.

(c) *Seventh Coast Guard District.* Those vessels 300 or less gross tons operating in the Seventh Coast Guard District must submit an NOA to the cognizant Captain of the Port (COTP). The Cargo Declaration (Customs Form 1302) in entry (8) in Table 160.206 must be submitted electronically to the USCS, as required by paragraph (d) of this section.

(d) *Submission to the United States Customs Service's Sea Automated Manifest System (AMS).*

(1) Beginning July 1, 2003, the Cargo Declaration (Customs Form 1302) in entry (8) in Table 160.206 must be submitted electronically to the USCS Sea AMS by one of the following methods:

(i) By direct connection with USCS or by purchasing the proper software; or

(ii) Using a service provider or a Port Authority.

(2) To become a participant in Sea AMS, submitters must provide a letter of intent to USCS prior to first submission.

§ 160.212 When to submit an NOA.

(a) *Submission of NOA.* (1) Except as set out in paragraph (a)(2) of this section, all vessels must submit NOAs within the times required in paragraph (a)(3) of this section.

(2) Towing vessels, when in control of a vessel carrying CDC and operating solely between ports or places in the continental United States, must submit an NOA before departure but at least 12 hours before entering the port or place of destination.

(3) Times for submitting NOAs areas follows:

If your voyage time is—	You must submit an NOA—
(i) 96 hours or more; or	Before departure but at least 96 hours before entering the port or place of destination; or
(ii) Less than 96 hours	Before departure but at least 24 hours before entering the port or place of destination.

(b) *Submission of changes to NOA.* (1) Except as set out in paragraph (b)(2) of this section, vessels must submit changes in NOA information within the times required in paragraph (b)(3) of this section.

(2) Towing vessels, when in control of a vessel carrying CDC and operating solely between ports or places in the continental United States, must submit changes to an NOA as soon as practicable but at least 6 hours before entering the port or place of destination.

(3) Times for submitting changes to NOAs are as follows:

If your remaining voyage time is—	Then you must submit changes to an NOA—
(i) 96 hours or more;	As soon as practicable but at least 24 hours before entering the port or place of destination;
(ii) Less than 96 hours but not less than 24 hours; or	As soon as practicable but at least 24 hours before entering the port or place of destination; or
(iii) Less than 24 hours	As soon as practicable but at least 12 hours before entering the port or place of destination.

(c) *Submission of the Cargo Declaration (Customs Form 1302).* (1) Except as set out in paragraph (c)(2) of this section, all vessels must submit to USCS the Cargo Declaration (Customs Form 1302) in entry (8) to Table 160.206, within the times required in paragraph (a)(3) of this section.

(2)(i) Except for vessels carrying containerized cargo or break bulk cargo, vessels carrying bulk cargo may submit the Cargo Declaration (Customs Form 1302), (Entry (8) to Table 160.206) before departure but at least 24 hours before entering the U.S. port or place of destination.

(ii) Vessels carrying break bulk cargo operating under a USCS exemption granted under 19 CFR 4.7(b)(4)(ii) may, during the effective period of the USCS exemption, submit the Cargo Declaration (Customs Form 1302), (Entry (8) to Table 160.206) before departure but at least 24 hours before entering the U.S. port or place of destination.

§ 160.214 Waivers.

The Captain of the Port may waive, within that Captain of the Port's designated zone, any of the requirements of this subpart for any vessel or class of vessels upon finding that the vessel, route, area of operations, conditions of the voyage, or other circumstances are such that application of this subpart is unnecessary or impractical for purposes of safety, environmental protection, or national security.

§ 160.215 Notice of hazardous conditions.

Whenever there is a hazardous condition either aboard a vessel or caused by a vessel or its operation, the owner, agent, master, operator, or person in charge shall immediately notify the nearest Coast Guard Marine Safety Office or Group Office. (Compliance with this section does not relieve responsibility for the written report required by 46 CFR 4.05–10.)

Dated: February 19, 2003.

Paul J. Pluta,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–4408 Filed 2–24–03; 4:36 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Paducah, KY 03–003]

RIN 2115–AA97

Safety Zone; Upper Mississippi River, Mile Marker 14.5 to 16.0, Cairo, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River from mile marker 14.5 to 16.0, near Cairo, IL. Significant reductions in river levels have caused extreme low water conditions on the Upper Mississippi River. This safety zone is needed to protect vessels transiting the area from the safety hazards associated with the unprecedented low water conditions. Entry into or operation in this zone is prohibited to all vessels unless authorized by the Coast Guard Captain of the Port Paducah or his on-scene representative.

DATES: This rule is effective 4 p.m., January 30, 2003, until 8 a.m., March 1, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Paducah 03–003] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Paducah, 225 Tully St., Paducah, KY 42003 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Patrick Mounsey, Marine Safety Office Paducah, Port Operations, at (270) 442–1621 ext. 350.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the safety hazards associated with unprecedented low water levels on the Upper Mississippi River.

Background and Purpose

The hazardous condition requiring this regulation is significant reductions in river levels on the Upper Mississippi River. A safety zone is needed to protect vessels transiting the area from the safety hazards associated with the unprecedented low water. Entry into or operation in this zone is prohibited to all vessels unless authorized by the Coast Guard Captain of the Port Paducah or his on-scene representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Inland River Contingency Action Plan provides guidance for marine operations and transportation emergencies on the Upper Mississippi River. The goal of the plan is to serve as a guide for officials of the USCG, U.S. Army Corps of Engineers, and the marine industry to facilitate the safe and orderly movement of barge traffic during a navigational crisis. In accordance with the Mississippi River Contingency Action Plan, members of the USCG, U.S. Army Corps of Engineers, and the marine industry met. Representatives of towing companies that operate in this affected area agreed that in order to protect the vessel traffic transiting the area they will halt all operations until river levels have improved and safe vessel navigation can resume.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Upper Mississippi River, from Mile Marker 14.5 to 16.0 from 4 p.m., January 30, 2003, until 8 a.m., March 1, 2003. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. This rule will be in effect on a temporary basis until conditions improve.

2. This particular area of the Upper Mississippi River does have a significant number of small entity operations.

If you are a small business entity and are significantly affected by this regulation please contact, LTJG Patrick Mounsey, Marine Safety Office Paducah representative, at (270) 442–1621 ext. 350.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T08–013 is added to read as follows:

§ 165.T08–013 Safety Zone; Upper Mississippi River, Mile Marker 14.5 to 16.0, Cairo, IL.

(a) *Location.* The waters of the Upper Mississippi River from mile marker 14.5 to 16.0, extending the entire width of the river.

(b) *Effective period.* This section is effective from 4 p.m. January 30, 2003, until 8 a.m. March 1, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by any vessel is prohibited unless authorized by the Captain of the Port Paducah or his on-scene representative.

(2) All vessels requiring entry into the zone must request permission from Captain of the Port Paducah or his designated representative. They may be contacted via VHF channel 16 or by telephone at (270) 442–1621 ext. 350 or (270) 994–7385.

(3) The Captain of the Port Paducah will notify the public of changes in the status of this zone by Marine Radio Safety Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) and through press releases in local newspapers.

Dated: January 30, 2003.

Patrick T. Keane,

Commander, U.S. Coast Guard, Captain of the Port, Paducah.

[FR Doc: 03–4762 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002–13698]

RIN 2135–AA15

Seaway Regulations and Rules: Automatic Identification System

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

The 2003 Seaway navigation season is scheduled to open on March 25. These amendments will be in effect in Canada on that date. For consistency, because these are joint regulations under international agreement and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make this U.S. version of the amendments effective on that date, March 25, 2003.

DATES: This rule is effective on March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

Background and Purpose

Since the opening of the Saint Lawrence Seaway in 1959, the Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Management Corporation Vessel Traffic Services (VTS) system has been responsible for monitoring the progress of commercial traffic to ensure the safe and expeditious passage of vessels operating in Seaway sectors under their control. Procedures in use today include limits on vessel speed and requirements for all commercial traffic to report by voice on marine VHF radio to the Vessel Control (VTC) centers. These reports are made at designated "call-in-points" along the river. Traffic managers at VTC centers use the vessel reports to monitor traffic patterns, including one-way vessel traffic restricted areas and project the estimated times of arrival (ETA) of vessels at locks in the Seaway.

SLSDC and SLSMC sponsored successful prototype demonstrations and evaluations of a Global Positioning System based VTS system in the fall of 1994 and during the 1995 shipping season. The demonstrations established that a VTS using AIS technology was both feasible and cost effective and can improve the efficiency and safety of operations. In the 1999 shipping season, SLSDC and SLSMC deployed a modernized vessel Traffic Management System (TMS). Now, for the first time, all vessel control centers in the Saint Lawrence Seaway share a common vessel information database. Presently, vessel positions, derived from simulations based on transit histories of vessels, are entered manually into the TMS system by traffic controllers and then updated by voice reports from the vessels during actual transits.

AIS is a broadcast system, operating in the VHF maritime mobile band. It is capable of sending and receiving ship information such as identification, position, course, speed and more, to and from other ships and to and from shore. The Seaway TMS will send pertinent navigation information such as local wind speed and direction, water levels, ice conditions, availability of next lockage, and safety-related messages to vessels.

With the capabilities of ship-to-ship, ship-to-shore and shore-to-ship communications, AIS will greatly enhance the safety, improve the efficiency of the traffic management and increase the vessel security and emergency response capabilities. Specifically, the potential benefits of AIS for the Seaway entities include providing a more efficient vessel traffic management as a result of knowing accurate location and speed of the vessels, monitoring vessel speeds especially for hazardous cargo and deeper draft vessels and faster response time to vessels in case of security concerns and vessel accidents or incidents. The potential benefits to the carrier users include the reduction of overall transit time as a result of better scheduling of lockages and other services timely dispatching of pilots. It also provides real-time position, speed, heading and other pertinent information of the vessel, which will allow master or pilot to better coordinate on the meeting or overtaking in critical reaches of the Seaway.

Comments and Modifications

On November 27, 2002, the SLSDC published a Notice of Proposed Rulemaking asking for public comment. The SLSDC received three comments. All three noted that the joint SLSDC–SLSMC rule would require use of AIS in the Seaway System in advance of the dates set by the International Maritime Organization (IMO) for certain commercial vessels to be permanently equipped with AIS units. One commenter also noted that the joint SLSDC–SLSMC requirement would also be in advance of the same requirement for the navigable waters of the United States under the "Maritime Transportation Security Act of 2002" (Pub. L. 107–295).(U.S. Act). The same commenter voiced concern that production of integrated AIS equipment would not be sufficient to ensure installation within the rule's timeframe. Another commenter also recommended that, since the SLSDC–SLSMC requirement would precede the IMO and the Act's effective dates, portable equipment be made available and its use allowed. The St. Lawrence Seaway is jointly operated under an International Agreement between the United States and Canada. It is an inland waterway to which the IMO requirements do not apply. Furthermore, the U.S. Act's does not apply in the navigable waters of Canada, transit through which is inextricably necessary for passage through the Seaway System. Thus, even if the requirement were not to apply in the navigable waters of the United States, ships would still be required to use it in Canadian waters. Entry into the Seaway System in either direction is only through Canada. Thus, making the rule applicable only in Canadian waters would be impractical. Moreover, the Shipping Federation of Canada, representing approximately 95% of the commercial oceangoing vessels using

the Seaway, has actively supported the Seaway AIS initiative. In addition, according to the SLSMC, the Canadian Shipowners Association, representing the commercial non-oceangoing vessels (lakers) using the Seaway, expects 100% AIS equipage among its members. Notwithstanding, the SLSDC–SLSMC rule does not require permanent installation of integrated AIS equipment as required by the IMO and the U.S. Act before the effective dates of those two requirements. The rule will allow the use of temporary or, in some cases, portable equipment, for those vessels not permanently equipped at considerably less cost. The SLSDC and SLSMC have been working with private navigation equipment and service vendors in Montreal to ensure that rental, temporary AIS units will be available for vessels that do not have permanent shipboard AIS installation. Thus, even if permanent, integrated units were not available as alleged, these temporary units would be. Temporary AIS installation will meet all carriage requirements as specified for vessels required to be fitted with a gyro compass under the Seaway Regulations and Rules. In this regard, subparagraph (b)(6) of the rule has been changed to require "temporary" units meeting the requirements of subparagraphs (b)(1) through (5) for these vessels, as opposed to "portable units," since portable units do not have the gyro compass connection. For vessels that do not have to meet the gyro compass requirement, use of portable units compatible to the requirements of subparagraphs (b)(1) though (3) and (b)(5) still will be allowed under a new subparagraph (b)(7). In addition, to be consistent with the IMO and U.S. Act requirements, subparagraph (a)(1) has been changed to apply only to "commercial" vessels that require pre-clearance and have a 300 gross tonnage or greater, have a Length Over All (LOA) over 20 meters, or carry more than 50 passengers for hire. Another comment was concerned about a possible lack of type approved AIS equipment. There are at least six major AIS transponder manufacturers in the world that have already obtained type approved certificates for AIS equipment from the IMO recognized testing houses such as BSH of Germany and Qinetiq of the United Kingdom. Finally, the reference in paragraph (b)(4) to the "International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 2 April 2002, as amended" has been changed to reflect the final version of "6 January 2003."

Final Rule

The SLSDC and the SLSMC are promulgating a new § 401.20 that requires mandatory use of AIS in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003. All commercial vessels that require pre-clearance and have a 300 gross tonnage or greater, have Length Over All (LOA) over 20 meters, or carry more than 50 passengers for hire, will have to use an AIS transponder to transit the Saint Lawrence Seaway. Dredges and floating plants and towing vessels over 8 meters in length will also be required to use AIS, except only each lead unit of combined and multiple units (tugs and tows) will have to use it. Each vessel will have to meet the following international recommendations, standards, and guidelines:

1. International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

2. International Telecommunication Union, ITU-R Recommendation M.1371–1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

3. International Electrotechnical Commission, IEC 61993–2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS—Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

4. International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 6 January 2003, as amended, and for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

5. Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services.

6. The use of a temporary AIS unit in compliance with Class A AIS transponder specifications and standards, as specified in 1 through 5 above, is permissible.

7. For each vessel less with LOA than 30 meters, the use of portable AIS unit compatible with AIS transponder specifications and standards, as specified in 1, 2, 3 and 5 above, is permissible.

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et reg.*) because it is not a major federal action significantly affecting the quality of human environment. All nine AIS shore base stations (three in U.S. and six in Canada) are co-located with the existing Seaway VHF radio or private telephone towers.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that it does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends 33 CFR chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—[Amended]

1. The authority citation for subpart A of part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4). as amended; 49 CFR 1.52, unless otherwise noted.

2. Part 401 is amended by adding a new § 401.20 to read as follows:

§ 401.20 Automated Identification System.

(a) Each of the following vessels must use an Automatic Identification System (AIS) transponder to transit the Seaway:

(1) each commercial vessel that requires pre-clearance in accordance with § 401.22 and has a 300 gross tonnage or greater, has a Length Over All (LOA) over 20 meters, or carries more than 50 passengers for hire; and

(2) each dredge, floating plant or towing vessel over 8 meters in length, except only each lead unit of combined and multiple units (tugs and tows).

(b) Each vessel listed in paragraph (a) of this section must meet the following requirements to transit the Seaway:

(1) International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

(2) International Telecommunication Union, ITU–R Recommendation M.1371–1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

(3) International Electrotechnical Commission, IEC 61993–2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS—Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

(4) International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 6 January 2003, as amended, and, for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

(5) Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services; or

(6) The use of a temporary unit meeting the requirements of paragraphs (b)(1) through (5) of this section is permissible; or

(7) For each vessel less with LOA less than 30 meters, the use of portable AIS compatible with the requirements of paragraphs (b)(1) through (3) and paragraph (5) of this section is permissible.

Issued at Washington, DC on February 25, 2003.

Saint Lawrence Seaway Development Corporation.

Albert S. Jacquez,

Administrator.

[FR Doc. 03–4740 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 4

RIN 0651–AB12

Complaints Regarding Invention Promoters

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) has added rules of practice to implement the USPTO's procedures for acceptance of complaints under the Inventors' Rights Act of 1999 (the "Act"). The Act requires the USPTO to provide a forum for the publication of complaints concerning invention promoters. The USPTO provided the public with an opportunity to comment on the new rules, received comments, and considered comments in drafting this final rule.

DATES: Effective Date: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Office of Commissioner for Patents, Ms. Cathie Kirik, (703) 305–8800 or *cathie.kirik@uspto.gov.*

SUPPLEMENTARY INFORMATION: An interim final rule and request for comments was published in the **Federal Register** (65 FR 3127) on January 20, 2000. That interim rule implemented regulations 37 CFR part 4, concerning complaints regarding invention promoters.

Three (3) individuals, three (3) law firms, and two (2) organizations submitted written comments regarding the proposal to implement Part 4.

Section 4.2: Definitions Section

With regard to the definition of "invention promoter" in § 4.2(a), Commentator wants to know whether the Act is being interpreted to end protection once a regular application is filed under the exclusion in § 4.2(a)(3). Commentator believes any business that collects compensation for doing "an evaluation to determine commercial potential of * * * patent application" should be included within the scope of the Act.

Response: The rule and the Act contain an identical definition of "invention promoter."

With regard to § 4.2(d), Commentator believes the use of the term "procurement" could be confusing because it is often used as a synonym for "acquire" and suggests replacing the term with "locate or identify" or "procurement of an arrangement or contract."

Response: This definition of "invention promotion services" is identical to that contained in the Act. The definition is unambiguous.

Section 4.3: Submitting Complaints Section

Since § 4.3(b)(5)[1] requires that the complaint identify the name of the mass media in which the invention promoter advertises, Commentators believe that the address of the mass media entity should also be included in the complaint so that complainant or USPTO could send a copy of the complaint and reply to the media entity.

Response: This is an additional requirement beyond the requirements of the Act. See additional comment below under section 4.5.

Commentator suggests a "Sunset provision" which provides that complaints will not be "made public after three years from the date first received." Commentator believes this is necessary in order to preclude stale complaints and complaints that do not

[1] It appears that Commentators mistakenly refer to § 4.3(a)(5). The correct citation is § 4.3(b)(5).

take into account a company's modified and improved current practices.

Response: It is the USPTO's intent that complaints will be removed from its Internet home page three (3) years from the date of their publication. However, to the extent that the USPTO is required to make such documents publicly available under other statutory authority, the documents shall be retained.

Section 4.4: Invention Promotion Reply Section

Commentator suggests extending the proposed thirty (30) day response time to sixty (60) days to allow invention promoters sufficient time to investigate and respond to a complaint.

Response: Presently invention promoters respond to letters of complaint within the thirty (30) day time frame and additional time does not appear to be necessary. A response can include a statement that further investigation into the complaint is being done by the invention promoter. A second response will be accepted and published upon receipt as is provided in this section of the proposed rule. Furthermore, the USPTO will publish an invention promoter's response, even if it is received after the 30-day response period.

Section 4.5: Notice of Publication Section

Commentator feels that the word "complaint" at the end of the sentence, "The invention promoter will be given 30 days from such notice to submit a reply to the complaint" should read "notice which reply includes name and address information where the complaint can be served by mail."

Response: The final rule is modified because only a "Notice of Complaint" will have been reviewed by the invention promoter.

Commentators believe the Office's Internet home page should be the primary source of publication of the Notice of Complaint because inventors and the public at large do not have access to the Official Gazette or **Federal Register.**

Response: Change will be made in the final rule to specify that Notice of Complaints will be posted on the USPTO Internet home page only: *http://www.uspto.gov.*

In Commentator's experience only a small percentage of inventors use the Internet and, thus, publication of complaint and reply should be by paper publication, *i.e.*, the Official Gazette or **Federal Register.**

Response: With today's knowledge-based economy and the move toward e-business it would be ineffective to use the print media to publish the complaints. By using USPTO's Internet web page, no further change to the rules would be needed in the future.

Commentators believe that the Office should forward a copy of a Notice of Complaint to the Federal Communications Commission ("FCC") since the complaint discloses the name of the mass media entity that ran the advertisement for the invention promoter.

Response: Name of mass media may not reflect actual vendor or station where advertisements were placed. The FCC may access the Notice of Complaints through publicly available means.

With regard to the language: "If the Office does not receive a reply from the invention promoter within 30 days, the complaint alone will become publicly available." Commentators believe that publicly available should include (1) publication on the Office's Internet home page, (2) sending a copy of the complaint and reply to the mass media entity, and (3) sending a copy of the complaint to the FCC. Commentators assert that mass media entities cannot do anything unless complaints are brought to their attention, and if so, these entities will take steps to check the credibility of the invention promoters.

Response: For reasons discussed above, complaints will be published on the USPTO Internet home page.

Commentator believes that to require invention promoters to monitor the Official Gazette, **Federal Register,** or Office's Internet home page for notice of complaints places an unfair burden on invention promoters in situations where a complaint has been returned undeliverable. Commentator does not, however, offer an alternative notice scheme.

Response: The source of publication will be the USPTO's Internet home page, thereby making the Notices of Complaint searchable and available at the earliest possible date.

Section 4.6: Attorneys and Agents Section

Commentator believes that § 4.6 (in conjunction with § 4.3(c)) should be modified so that complaints are not required or permitted to include information about patent attorneys, unless the attorneys are engaged in invention promotion services, and these services are the basis for the complaint. Without this modification, commentator believes the Office is soliciting complaints concerning attorneys, regardless of whether the attorney's work is the basis for complaint. Commentator asserts that it is not improper or unethical for attorneys to accept referrals from invention promoters and that attorney complaints should be handled by the Office of Enrollment and Discipline (OED).

Response: The Act provides which attorneys or agents may be identified in a complaint. Any other complaint specifically addressing an attorney or agent is forwarded to OED or returned to complainant. A preliminary review of the complaint is conducted to determine the proper place for the complaint prior to any complaints being forwarded to an invention promoter, OED or returned to the complainant.

Paperwork Reduction Act

Commentators state that if their suggestions were adopted, they would "enhance the quality, utility, and clarity of information to be collected."

Response: See above comments.

Rulemaking Requirements

As prior notice and opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(3)(A), or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and which OMB has approved under control number 0651–0044. Public reporting burden for this collection is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering information, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 37 CFR Part 4

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements.

Accordingly, the USPTO adopts the interim rule promulgating 37 CFR part 4 that was published in the **Federal Register** at 65 FR 3127, January 20, 2000, as a final rule with the following change:

1. The authority citation for 37 CFR part 4 continues to read as follows:

PART 4—[AMENDED]

Authority: 35 U.S.C. 6 and 297.

2. Section 4.5 is revised to read as follows:

§ 4.5 Notice by publication.

If the copy of the complaint that is mailed to the invention promoter is returned undelivered, then the USPTO will primarily publish a Notice of Complaint Received on the USPTO's Internet home page at *http://www.uspto.gov.* Only where the USPTO's Web site is unavailable for publication will the USPTO publish the Notice of Complaint in the *Official Gazette* and/or the **Federal Register.** The invention promoter will be given 30 days from such notice to submit a reply to the Notice of Complaint. If the USPTO does not receive a reply from the invention promoter within 30 days, the complaint alone will become publicly available.

* * * * *

Dated: February 14, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–4428 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–200313; FRL–7453–7]

Approval and Promulgation of Air Quality Implementation Plans; Florida Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Florida that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective February 28, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T), NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Heidi LeSane at the above Region 4 address or at (404) 562–9035.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On June 16, 1999, EPA published a document in the **Federal Register** (64 FR 32348) beginning the new IBR procedure for Florida. In this document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 10, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

2. Section 52.520 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.520 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to January 1, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register.** Entries in paragraphs (c) and (d) of this section with EPA approval dates after January 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of January 1, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T), NW., Washington, DC 20460.

(c) *EPA-approved regulations.*

EPA-APPROVED FLORIDA REGULATIONS

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
Chapter 62–204 Air Pollution Control—General Provisions				
62–204.100	Purpose and Scope	3/13/96	6/16/99 64 FR 32346	
62–204.200	Definitions	3/13/96	6/16/99 64 FR 32346	
62–204.220	Ambient Air Protection	3/13/96	6/16/99 64 FR 32346	
62–204.240	Ambient Air Quality Standards	3/13/96	6/16/99 64 FR 32346	
62–204.260	Prevention of Significant Deterioration Increments	3/13/96	6/16/99 64 FR 32346	
62–204.320	Procedures for Designation and Redesignation of Areas	3/13/96	6/16/99 64 FR 32346	
62–204.340	Designation of Attainment, Nonattainment, and Maintenance Areas	3/13/96	6/16/99 64 FR 32346	
62–204.360	Designation of Prevention of Significant Deterioration Areas	3/13/96	6/16/99 64 FR 32346	
62–204.400	Public Notice and Hearing Requirements for State Implementation Plan Revisions.	11/30/94	6/16/99 64 FR 32346	
Chapter 62–210 Stationary Sources—General Requirements				
62–210.100	Purpose and Scope	11/23/94	6/16/99 64 FR 32346	

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
62–210.200	Definitions	10/15/96	5/27/98 63 FR 28905	
62–210.220	Small Business Assistance Program	10/15/96	5/27/98 63 FR 28905	
62–210.300	Permits Required	8/15/96	1/17/97 62 FR 2587	
62–210.350	Public Notice and Comment	11/23/94	6/16/99 64 FR 32346	
62–210.360	Administrative Permit Corrections	11/23/94	6/16/99 64 FR 32346	
62–210.370	Reports	11/23/94	6/16/99 64 FR 32346	
62–210.550	Stack Height Policy	11/23/94	6/16/99 64 FR 32346	
62–210.650	Circumvention	10/15/92	10/20/94 59 FR 52916	
62–210.700	Excess Emissions	11/23/94	6/16/99 64 FR 32346	
62–210.900	Forms and Instructions	2/9/93	11/7/94 59 FR 46157	
Chapter 62–212 Stationary Souces—Preconstruction Review				
62–212.100	Purpose and Scope	3/13/96	6/16/99 64 FR 32346	
62–212.300	General Preconstruction Review Requirements	11/23/94	6/16/99 64 FR 32346	
62–212.400	Prevention of Significant Deterioration (PSD)	3/13/96	6/16/99 64 FR 32346	
62–212.500	Preconstruction Review for Nonattainment Areas	3/13/96	6/16/99 64 FR 32346	
62–212.600	Sulfur Storage and Handling Facilities	3/13/96	6/16/99 64 FR 32346	
Chapter 62–242 Motor Vehicle Emissions Standards and Test Procedures				
62–242.100	Purpose and Scope	3/21/91	3/22/93 58 FR 15277	
62–242.200	Definitions	3/13/96	6/16/99 64 FR 32346	
62–242.400	Standards and Procedures for Inspection of Gasoline Fueled Vehicles; Pass/Fail Criteria.	2/2/93	10/11/94	
62–242.500	Standards and Procedures for Inspection of Diesel Fueled Vehicles; Pass/Fail Criteria.	2/2/93	10/11/94 59 FR 51382	
62–242.600	Equipment Performance Specifications	2/2/93	10/11/94 59 FR 51382	
62–242.700	Tampering Inspection	2/2/93	10/11/94 59 FR 51382	
62–242.800	Low Emissions Adjustment	2/2/93	10/11/94 59 FR 51382	
62–242.900	Training Criteria For Motor Vehicle Emissions Inspection Personnel	2/2/93	10/11/94 59 FR 51382	
Chapter 62–243 Tampering With Motor Vehicle Air Pollution Control Equipment				
62–243.100	Purpose and Scope	5/29/90	6/9/92 57 FR 24370	
62–243.200	Definitions	1/2/91	6/9/92 57 FR 24378	
62–243.300	Exemptions	1/2/91	6/9/92 57 FR 24378	
62–243.400	Prohibitions	1/2/91	6/9/92 57 FR 24378	
62–243.500	Certification	1/2/91	6/9/92 57 FR 24378	
62–243.600	Enforcement	1/2/91	6/9/92 57 FR 24378	
62–243.700	Penalties	5/29/90	6/9/92 57 FR 24370	

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
Chapter 62–244 Visible Emissions From Motor Vehicles				
62–244.100	Purpose and Scope	5/29/90	6/9/92 57 FR 24370	
62–244.200	Definitions	1/2/91	6/9/92 57 FR 24378	
62–244.300	Exemptions	1/2/91	6/9/92 57 FR 24378	
62–244.400	Prohibitions	1/2/91	6/9/92 57 FR 24378	
62–244.500	Enforcement	1/2/91	6/9/92 57 FR 24378	
62–244.600	Penalties	5/29/90	6/9/92 57 FR 24370	
Chapter 62–252 Gasoline Vapor Control				
62–252.100	Purpose and Scope	2/2/93	3/24/94 59 FR 13883	
62–252.200	Definitions	2/2/93	3/24/94 59 FR 13883	
62–252.300	Gasoline Dispensing Facilities-Stage I Vapor Recovery	2/2/93	3/21/94 59 FR 13883	
62–252.400	Gasoline Dispensing Facilities—Stage II Vapor Recovery	11/23/94	6/16/99 64 FR 32346	
62–252.500	Gasoline Tanker Trucks	9/10/96	7/21/97 62 FR 38918	
62–252.800	Penalties	2/2/93	3/24/94 59 FR 13883	
62–252.900	Form	2/2/93	7/21/97 62 FR 38918	
Chapter 62–256 Open Burning and Frost Protection Fires				
62–256.100	Declaration and Intent	12/09/75	11/1/77 42 FR 57124	
62–256.200	Definitions	11/30/94	6/16/99 64 FR 32346	
62–256.300	Prohibitions	11/30/94	6/16/99 64 FR 32346	
62–256.400	Agricultural and Silvicultural Fires	7/1/71	5/31/72 37 FR 10842	
62–256.450	Burning for Cold or Frost Protection	6/27/91	9/9/94 59 FR 46552	
62–256.500	Land Clearing	11/30/94	6/16/99 64 FR 32346	
62–256.600	Industrial, Commercial, Municipal, and Research Open Burning	7/1/71	5/31/72 37 FR 10842	
62–256.700	Open Burning Allowed	11/30/94	6/16/99 64 FR 32346	
62–256.800	Effective Date	7/1/71	5/31/72 37 FR 10842	
Chapter 62–296 Stationary Sources—Emission Standards				
62–296.100	Purpose and Scope	3/13/96	6/16/99 64 FR 32346	
62–296.320	General Pollutant Emission Limiting Standards	3/13/96	6/16/99 64 FR 32346	
62–296.401	Incinerators	3/13/96	6/16/99 64 FR 32346	
62–296.402	Sulfuric Acid Plants	3/13/96	6/16/99 64 FR 32346	
62–296.403	Phosphate Processing	3/13/96	6/16/99 64 FR 32346	
62–296.404	Kraft (Sulfate) Pulp Mills and Tall Oil Plants	3/13/96	6/16/99 64 FR 32346	
62–296.405	Fossil Fuel Steam Generators with more than 250 million Btu per Hour Heat Input.	3/13/96	6/16/99 64 FR 32346	

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
62–296.406	Fossil Fuel Steam Generator with less than 250 million Btu per Hour Heat Input, New and Existing Emissions Units.	3/13/96	6/16/99 64 FR 32346	
62–296.407	Portland Cement Plants	11/23/94	6/16/99 64 FR 32346	
62–296.408	Nitric Acid Plants	11/23/94	6/16/99 64 FR 32346	
62–296.409	Sulfur Recovery Plants	11/23/94	6/16/99 64 FR 32346	
62–296.410	Carbonaceous Fuel Burning Equipment	11/23/94	6/16/99 64 FR 32346	
62–296.411	Sulfur Storage and Handling Facilities	11/23/94	6/16/99 64 FR 32346	
62–296.412	Dry Cleaning Facilities	3/13/96	6/16/99 64 FR 32346	
62–296.413	Synthetic Organic Fiber Production	3/13/96	6/16/99 64 FR 32346	
62–296.414	Concrete Batching Plants	3/13/96	6/16/99 64 FR 32346	
62–296.415	Soil Thermal Treatment Facilities	3/13/96	6/16/99 64 FR 32346	
62–296.500	Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Emitting Facilities.	11/23/94	6/16/99 64 FR 32346	
62–296.501	Can Coating	11/23/94	6/16/99 64 FR 32346	
62–296.502	Coil Coating	11/23/94	6/16/99 64 FR 32346	
62–296.503	Paper Coating	11/23/94	6/16/99 64 FR 32346	
62–296.504	Fabric and Vinyl Coating	11/23/94	6/16/99 64 FR 32346	
62–296.505	Metal Furniture Coating	11/23/94	6/16/99 64 FR 32346	
62–296.506	Surface Coating of Large Appliances	11/23/94	6/16/99 64 FR 32346	
62–296.507	Magnet Wire Coating	11/23/94	6/16/99 64 FR 32346	
62–296.508	Petroleum Liquid Storage	11/23/94	6/16/99 64 FR 32346	
62–296.509	Bulk Gasoline Plants	10/15/92	10/20/94 59 FR 52916	
62–296.510	Bulk Gasoline Terminals	11/23/94	6/16/99 64 FR 32346	
62–296.511	Solvent Metal Cleaning	11/23/94	6/16/99 64 FR 32346	
62–296.512	Cutback Asphalt	11/23/94	6/16/99 64 FR 32346	
62–296.513	Surface Coating of Miscellaneous Metal Parts and Products	11/23/94	6/16/99 64 FR 32346	
62–296.514	Surface Coating of Flat Wood Paneling	11/23/94	6/16/99 64 FR 32346	
62–296.515	Graphic Arts Systems	11/23/94	6/16/99 64 FR 32346	
62–296.516	Petroleum Liquid Storage Tanks with External Floating Roofs	11/23/94	6/16/99 64 FR 32346	
62–296.570	Reasonably Available Control Technology (RACT)—Requirements for Major VOC and NO_X—Emitting Facilities.	11/23/94	6/16/99 64 FR 32346	
62–296.600	Reasonably Available Control Technology (RACT)—Lead	3/13/96	6/16/99 64 FR 32346	
62–296.601	Lead Processing Operations in General	8/8/94	9/18/96 61 FR 49064	
62–296.602	Primary Lead Acid Battery Manufacturing Operations	3/13/96	9/18/96 61 FR 49064	
62–296.603	Secondary Lead Smelting Operations	8/8/94	9/18/96 61 FR 49064	
62–296.604	Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations.	8/8/94	9/18/96 61 FR 49064	
62–296.605	Lead Oxide Handling Operations	8/8/94	9/18/96 61 FR 49064	
62–296.700	Reasonably Available Control Technology (RACT)—Particulate Matter	11/23/94	6/16/99 64 FR 32346	

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
62–296.701	Portland Cement Plants	11/23/94	6/16/99 64 FR 32346	
62–296.702	Fossil Fuel Steam Generators	11/23/94	6/16/99 64 FR 32346	
62–296.703	Carbonaceous Fuel Burners	11/23/94	6/16/99 64 FR 32346	
62–296.704	Asphalt Concrete Plants	11/23/94	6/16/99 64 FR 32346	
62–296.705	Phosphate Processing operations	11/23/94	6/16/99 64 FR 32346	
62–296.706	Glass Manufacturing Process	11/23/94	6/16/99 64 FR 32346	
62–296.707	Electric Arc Furnaces	11/23/94	6/16/99 64 FR 32346	
62–296.708	Sweat of Pot Furnaces	11/23/94	6/16/99 64 FR 32346	
62–296.709	Lime Kilns	11/23/94	6/16/99 64 FR 32346	
62–296.710	Smelt Dissolving Tanks	11/23/94	6/16/99 64 FR 32346	
62–296.711	Materials Handling, Sizing, Screening, Crushing and Grinding operations.	11/23/94	6/16/99 64 FR 32346	
62–296.712	Miscellaneous Manufacturing Process Operations	11/23/94	6/16/99 64 FR 32346	
	Chapter 62–297 Stationary Sources—Emissions Monitoring			
62–297.100	Purpose and Scope	3/13/96	6/16/99 64 FR 32346	
62–297.310	General Test Requirements	3/13/96	6/16/99 64 FR 32346	
62–297.400	EPA Methods Adopted by Reference	11/23/94	6/16/99 64 FR 32346	
62–297.401	Compliance Test Methods	3/13/96	6/16/99 64 FR 32346	
62–297.411	DEP Method 1	11/23/94	6/16/99 64 FR 32346	
62–297.412	DEP Method 2	10/15/92	10/20/94 59 FR 52916	
62–297.413	DEP Method 3	10/15/92	10/20/94 59 FR 52916	
62–297.415	DEP Method 5	11/23/94	6/16/99 64 FR 32346	
62–297.416	DEP Method 5A	10/15/92	10/20/94 59 FR 52916	
62–297.417	DEP Method 6	11/23/94	6/16/99 64 FR 32346	
62–297.423	EPA Method 12—Determination of Inorganic Lead Emissions from Stationary Emissions Units.	11/23/94	6/16/99 64 FR 32346	
62–297.440	Supplementary Test Procedures	11/23/94	6/16/99 64 FR 32346	
62–297.450	EPA VOC Capture Efficiency Test Procedures	11/23/94	6/16/99 64 FR 32346	
62–297.620	Exceptions and Approval of Alternate Procedures and Requirements	11/23/94	6/16/99 64 FR 32346	

(d) *EPA-approved State Source-specific requirements.*

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Harry S Truman, animal import center	NA	11/26/1996	1/19/2000 65 FR 2882	

(e) *EPA-approved Florida non-regulatory provisions.*

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
Revision to Maintenance Plans for Jacksonville and Southeast Florida Areas	12/10/1999	8/2/2001	66 FR 40137	
Revision to Maintenance Plan for the Tampa, Florida Area	7/9/2000	8/15/2002	67 FR 53314	

[FR Doc. 03–4631 Filed 2–27–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV055–6025a; FRL–7449–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). The revisions change portions of West Virginia's minor new source review and existing stationary source operating permit program. Specifically, today's action converts the partial approval and partial disapproval of West Virginia's minor new source review permit program, published on January 13, 2000 to a full approval. EPA's full approval of the revision to the West Virginia SIP is based on the findings that the deficiencies that formed the basis for the partial approval/disapproval of West Virginia's minor new source review permit program have been corrected in this SIP revision. The rule, as submitted, is in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 29, 2003 without further notice, unless EPA receives adverse written comment by March 31, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Michael I. Ioff, P.E., (215) 814–2166, or by e-mail at *ioff.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 2000 (65 FR 2042), EPA published a final rule notice (FRN) regarding West Virginia's minor new source review and existing stationary source operating permit program. The FRN approved in part, and disapproved in part, changes to West Virginia's minor new source review permit program as a revision to the West Virginia SIP. With the exception of the two separate provisions included in West Virginia's submission, the FRN approved West Virginia's minor new source review and existing stationary source operating permit program under section 110 of the Act as meeting the criteria set forth in a June 28, 1989 **Federal Register** document (54 FR 27274) for state permit programs that can limit a source's potential to emit criteria pollutants. The FRN also approved West Virginia's minor new source review and existing stationary source operating permit program under section 112(l) of the Act as meeting the statutory criteria for state permit programs that can limit a source's potential to emit hazardous air pollutants (HAPs).

Concurrently, the FRN disapproved two separate provisions included in West Virginia's minor new source review and existing stationary source operating permit program. Specifically, the FRN disapproved an exemption from minor new source review for sources that have been issued permits under the State's Federally approved major source operating permit program (developed pursuant to Title V of the Clean Air Act) as such exemption did not comport with the federal requirements of 40 CFR 51.160 regarding the scope of the program. In addition, the FRN disapproved provisions governing the issuance of temporary construction or modification permits with only a 15-day public comment period as such provisions did not satisfy the Federal requirements for a 30-day comment period required by 40 CFR 51.161(b).

Summary of SIP Revision

To address the deficiencies of West Virginia Regulation CSR13 described in the January 13, 2000 rulemaking action, the State of West Virginia submitted on September 21, 2000, a formal revision to its SIP. The submitted SIP, which consists of changes to West Virginia Regulation CSR13, applies statewide and corrects the deficiencies that formed the basis for the partial disapproval of West Virginia's minor new source review and existing stationary source operating permit program. In order to correct the deficiencies, the exemption from minor new source review for sources that have been issued permits under the State's Federally-approved major source operating permit program was removed. In addition, the provision governing the issuance of temporary construction or modification permits with a 15-day public comment period was revised to provide for a 30-day public comment period in order to be consistent with the federal requirements for public participation found at 40 CFR 51.161(b).

As part of its September 21, 2000 SIP revision, West Virginia also submitted a number of additional revisions intended to, among other things, streamline the permitting process. Those revisions include changes to the construction and modification thresholds; creation of a "de-minimis" source list; changes in the definitions of volatile organic compounds (VOCs) and HAPs; and, clarification of the definition of when "construction" commences. Also, West Virginia Regulation CSR13 was revised to incorporate an administrative process

for making relatively minor permit revisions. The revised Regulation CSR13 contains modified public notice procedures, such as: eliminating the two-step notice from the previous regulation; establishing a 30-day notice for certain actions and a 45-day notice for the remainder; and, additional notice methods which may be required by the State. The revised regulation also provides further clarification regarding HAPs and toxic air pollutants and revised procedures for temporary permits. EPA has reviewed these revisions to West Virginia Regulation CSR13 and find that they are at least as stringent as the corresponding requirements of the Clean Air Act.

II. Final Action

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment from either the public or the regulated community. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 29, 2003 without further notice unless EPA receives adverse comment by March 31, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, to approve the West Virginia minor new source review and existing stationary source operating permit program, must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 31, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(52) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(52) Revisions to the West Virginia Regulations 45CSR13—Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation, submitted on September 21, 2000 by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Department of Environmental Protection transmitting revision to West Virginia Regulation 45CSR13.

(B) West Virginia Regulations 45CSR13—Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits and Procedures for Evaluation, effective June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(52)(i) of this section.

[FR Doc. 03–4629 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 266–0383; FRL–7454–4]

Revisions to the California State Implementation Plan, Ventura Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Ventura Air Pollution Control District ("District") portion of the California State Implementation Plan ("SIP"). These revisions were proposed in the **Federal Register** on June 24, 2002, and concern the District's new source review ("NSR") rules. We are now approving these revisions under the Clean Air Act as amended in 1990 ("CAA" or "the Act").

EFFECTIVE DATE: This rule is effective on March 31, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California 93003.

A copy of the rules is also available via the Internet at *http://arbis.arb.ca.gov/drdb/ven/cur.htm.*

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh, EPA Region IX, (415) 972–3978. E-mail address: *zoueshtiagh.nahid@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Proposed Action
A. How the Deficiencies Were Corrected
B. Creation of an Annual Equivalency Program
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On June 24, 2002, we proposed to approve certain District rules into the California SIP. 67 FR 42516. We are finalizing that action today by approving the following District rules into the SIP:

Rule No.	Rule title
10	Permits Required.
26.1	New Source Review—Definitions.
26.2	New Source Review—Requirements.
26.3	New Source Review—Exemptions.
26.4	New Source Review—Emission Banking.
26.6	New Source Review—Calculations.
26.11	New Source Review—ERC Evaluation At Time of Use.

A. How the Deficiencies Were Corrected

We proposed to approve the District rules because we determined that they complied with the relevant CAA requirements, namely part D of title I and section 110(k) of the CAA. In the proposed action, we found that the District had corrected all of the deficiencies initially identified in our limited approval and limited disapproval published in the **Federal Register** on December 7, 2000. 65 FR 76567. The California Air Resources Board ("CARB") submitted the District's revised rules addressing our identified deficiencies on May 20, 2002. In our proposed approval, we found that the District had corrected the following deficiencies: (1) Lack of a requirement for relocating sources to obtain an authority to construct ("ATC") permit, (2) failure to require that emission reduction credits ("ERCs") used as NSR emission offsets be surplus at the time of use, (3) failure to provide for denial of permits for sources in violation of Prevention of Significant Deterioration ("PSD") increments, and (4) improper reliance on the California Environmental Quality Act ("CEQA") analysis for the alternatives analysis required by section 173(a)(5) of the CAA. We received no comments on deficiency numbers 1, 3 and 4 or how the District corrected them. As such, for the complete discussion on these deficiencies and the corrections, please review our proposed approval and the TSD for that proposed action. We discuss the correction for deficiency number 2 in greater detail in this notice.

B. Creation of an Annual Equivalency Demonstration Program

As part of the its revised NSR rules, the District created an annual equivalency demonstration program to correct the deficiency that ERCs used for NSR offset purposes are not required by the District to be surplus at the time of use.[1] The basis for the approval of the

[1] Actually, all emission reductions used for NSR purposes must be surplus at the time of use in order to be creditable, not just ERCs, which are credits for emission reductions that have been banked. We are focusing on ERCs, however, because these are the only emission reductions used for NSR offset purposes with a risk of being non-surplus because the credits were generated and banked at an earlier time. Moreover, since the District's rules primarily rely upon ERCs generated and banked within the District for compliance with offset requirements, it

Continued

annual equivalency demonstration program is contained in CAA section 173(a)(1)(A)'s mandate that new and modified stationary sources seeking to commence operating in a nonattainment area must be required by the state permitting program to obtain sufficient offsetting emission reductions ("offsets") such that "the total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources * * * so as to represent reasonable further progress * * *." This statutory focus on total regional emissions supports the approval of a District offset program that ensures equivalency with the federal NSR offset requirements on an annual aggregate basis. EPA is also working with other California Districts to help them craft approvable annual equivalency demonstration programs.[2]

The goal of the District's offset equivalency tracking system and annual reports, therefore, is to show that the District's rules are requiring appropriately discounted [3] ERCs that are, in the aggregate, equivalent to the credits that would be required under the federal major source NSR offset requirements. To show equivalency, pursuant to District Rule 26.11, the District intends to rely upon ERCs used in minor source permitting actions [4] to make up for any loss in the creditable amount of ERCs provided by a permit applicant for major source NSR permits due to surplus adjustment.

To ensure appropriate District implementation and EPA oversight of the annual equivalency program, the District and EPA entered into a memorandum of understanding ("MOU") on February 18, 2003 describing in detail how the District will implement the annual equivalency program. Generally, the MOU sets forth the records to be maintained by the District, the information the District must include in each annual report submitted to EPA, and the necessary surplus analysis to be performed by the District at the time of permitting. The MOU also describes the proper use of the hammer provision, District Rule 26.11.C.6., which requires that the District discontinue the use of the equivalency program once an annual report demonstrates a deficit of creditable ERCs compared to the amount of reductions necessary to offset emissions for new or modified major NSR sources. As of the time the report demonstrates a deficit, the District rules require that sources provide enough surplus-adjusted ERCs to cover any required NSR offsets at the time of permitting. A copy of the MOU is in the Docket and is available to the public from the Region IX contact listed in this notice.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties:

- CARB; [5]
- California Council for Environment and Economic Benefit ("CCEEB");
- The District; and
- Pillsbury Winthrop on behalf of Western States Petroleum Association ("WSPA").

The commentors generally supported our action to approve the District rules into the SIP and the creation of the annual equivalency demonstration program. The majority of substantive comments focused on our interpretation of what emission reductions are considered non-surplus under Section 173(c)(2). This interpretation is important since the NSR District rules being approved closely track the language of section 173(c)(2), which explicitly excludes emission reductions that are "otherwise required by" the CAA from use as an NSR offset. As section 173(c)(2) does not specifically delineate the type of requirements included within its scope, EPA's interpretation of the application of the provision is very important for proper implementation of the NSR program.

In our proposed approval, we described six categories of emission reductions that we consider non-surplus for NSR offset purposes. Emission reductions falling under any of these categories are therefore not available for use as NSR offsets, whether directly in a permitting action or through their use in an annual equivalency demonstration. In response to comments received on the proposed approval and after further consideration, we are slightly revising item numbers 2 and 5 to be more consistent with the CAA.[6] Since this list of non-surplus reductions is only EPA's interpretation of section 173(c)(2) and District Rule 26.1.28.b. and does not require any change to the District's rules being approved today, the revision of the list does not affect the approvability of the District's rules. Moreover, the finalized list has been incorporated into the MOU between the District and EPA, which further ensures that the annual equivalency demonstration program, including surplus adjustment of ERCs, will be properly implemented.

The following is the revised and final list of what we consider to be non-surplus emission reduction categories:

(1) Any emission reduction required by a stand-alone federal requirement or regulation, including, but not limited to, Acid Rain, New Source Performance Standard, Reasonably Available Control Technology, and Maximum Achievable Control Technology, whether or not the requirements are part of the State Implementation Plan ("SIP") or a local attainment plan.

(2) Any emission reduction relied upon by a permitting authority for attainment purposes, or contained in an approved attainment plan, including emission reductions relied upon for Reasonable Further Progress calculations. Reference 51.165(a)(3)(ii)(G).

(3) Any emission reduction whose original emission is not included in the District's emission inventory. Reference 51.165(a)(3)(ii)(C)(1).

(4) Any emission reduction based on a source-specific or source category-specific SIP provision used to comply with CAA requirements.

(5) Any emission reduction required by a condition of a permit issued to comply with CAA new source review requirements. Any emission reduction required by a permit condition placed on a permit solely: 1) to make the reduction federally enforceable to meet federal creditability criteria for use of the reduction as an offset for new source review purposes, or 2) to assure compliance with a state or local requirement that is not federally enforceable shall not be included in this class. Reference 51.165(a)(3)(ii)(G).

(6) Any emission reduction based on a source-specific emission limitation resulting from an Environmental Protection Agency enforcement case.

The specific comments and EPA responses are summarized below:

Comment 1: CCEEB commented that "Section 173(c)(2) * * * does not provide that banked emission reductions, which were not required when banked, must be adjusted again to reflect later-adopted emission reduction requirements. Further, EPA has not promulgated any regulation to require such discounting." WSPA provided an almost identical comment.

Response 1: We disagree with CCEEB's and WSPA's comments. The requirement for discounting at the time of use derives from the statutory requirement that emission reductions be surplus of CAA requirements. CAA section 173(c)(2). In a 1994 memorandum, EPA set forth its policy that banked ERCs used as NSR offsets must be adjusted at the time of permit issuance to ensure that they are surplus as required by section 173(c)(2). Memo from John S. Seitz, Dir., OAQPS to David Howekamp, Dir., Region IX Air and Toxics Div. (Aug. 26, 1994) ("1994 Seitz Memo"). This is important to ensure that emission reductions are not "double-counted" for CAA purposes, something prohibited by the CAA. Double counting can occur where emission reductions are the result of, or would have been achieved by, controls expressly required by the Act or controls used to satisfy requirements of the Act. For example, a source may voluntarily reduce its emission of hazardous air pollutants ("HAPs") and bank those credits at the time of reduction. Some time after these reductions are achieved, EPA promulgates a Maximum Achievable Control Technology ("MACT") standard that applies to the source. Though these credits may be permanent, real, quantifiable, and enforceable, the promulgation of the new MACT standard would render the portion of the banked ERC that would have been required by the new MACT standard unavailable for NSR offset purposes because it is no longer in excess of requirements under the Act. This is important since many HAPs are also considered volatile organic compounds ("VOCs"). Without a requirement to discount ERCs at the time of use, sources could be relying upon emission reductions that were otherwise required by the CAA. Moreover, the SIP may take credit for the reductions achieved by this MACT rule, raising the further possibility that the reductions would be double-counted for attainment purposes if not surplus adjusted at the time of use.

More than just preventing possible double counting, however, adjusting at the time of use is important to generally ensure proper implementation of the NSR program. The CAA does not require or provide for ERC banking programs, which means that there are no federal requirements ensuring the quality of banks or banked credits for federal offset purposes. Because of this, a surplus at the time of use analysis and appropriate adjustment provides an important first and only review of the proposed ERC's consistency with NSR CAA offset requirements. Without such a review, EPA could not assure that sources were complying with NSR offset requirements of the CAA since most ERCs were banked without EPA review and many without supporting documentation or information.

Despite the necessity for surplus adjustment at the time of use, EPA has worked with the District to create a system where sources may be able to rely on banked ERCs while at the same time maintaining the integrity and legality of the District's NSR program. Through the use of the annual equivalency demonstration program, EPA is allowing the District to give full credit to ERCs provided by major sources for NSR permitting activities as long as the District can identify other retired or used creditable emission reductions that make up for the difference within the year accounting period.

Comment 2: Item number 3 in the list of categories of non-surplus emission reductions in the proposed approval reads "any emission reduction whose original emission reduction is not included in the District's emission inventory. See 40 CFR 51.165(a)(3)(ii)(C)(1)." The District commented that "[t]he citation [40 CFR § 51.165(a)(3)(ii)(C)(1)] refers * * * only to '(e)missions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels'. There is not a requirement in the Code of Federal Regulations to include an emission reduction resulting from a source employing emission reduction techniques, not otherwise required by the federal CAA, in the District's emission inventory."

Response 2: 40 CFR 51.165 describes the minimum regulatory requirements for an approvable state NSR permitting program. 40 CFR 51.165(a)(3)(ii)(C)(1), which deals with offsets, states that reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may generally be credited in NSR permitting actions if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In contrast to the meaning given to it in the District's comment, the provision serves the narrow purpose of stating that ERCs generated by shutting down a source or curtailing production or operating hours can only be used if there is an EPA-approved attainment plan and if the item is "explicitly" included in the most recent emissions inventory. The provision is essentially a safeguard to make sure that emissions from defunct sources are not replaced with new emissions without appropriate review to ensure that such replacements are consistent with attainment purposes for the area. The provision in no way limits or changes the necessity that all emission reductions used for NSR offsetting purposes be incorporated into the area's emission inventory, either explicitly or implicitly. The use of emission reductions for NSR purposes whose original emissions are not included in the emissions inventory, and therefore not considered in the planning process, would be adding new unaccounted emissions into the area thus potentially jeopardizing attainment goals. As such, EPA has maintained the definition for this category as originally proposed.

Comment 3: CCEEB commented that "if an air district includes banked ERCs as a line item in its portion of the SIP, the ERCs are accounted for as emissions in the air and are mitigated by measures in the plan. To discount such ERCs at the time of use would result in a "double mitigation." CCEEB requests that EPA clarify in the future related notices that EPA does not require discounting of ERCs at time of use where the use of ERCs has been mitigated by other specific measures for rate of progress or attainment demonstration purposes."

Response 3: EPA disagrees with CCEEB on its comment. CCEEB's approach would essentially allow any

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is appropriate to focus the surplus discussion on ERCs.

[2] For example, on February 13, 2003, EPA proposed to approve San Joaquin Valley Air Pollution Control District's NSR program, which includes an annual equivalency demonstration. 68 FR 7330. On September 18, 2000, EPA also published a proposed limited approval and limited disapproval for a NSR program that would allow an annual equivalency demonstration program for the Bay Area Air Quality Management District. 65 FR 56284. On December 4, 1996, EPA approved South Coast Air Quality Management District NSR rule revisions based in part on the District's commitment to implement a tracking system to show that in the aggregate it will provide for the offsets required by the CAA. 61 FR 64291.

[3] The words "discount" and "adjust" are used synonymously in this action, and generally refer to a reduction of an ERC by the portion of the original emission reduction that is no longer surplus.

[4] Though the CAA requires that permitting authorities, including local air districts, have minor source permitting programs, it does not require that minor sources obtain offsets. As such, ERCs used to offset new emissions from minor sources may be available for use in the annual equivalency demonstration if the District can demonstrate that the emission reductions underlying the ERCs are surplus to all other requirements of the Act, and are otherwise creditable for federal purposes.

[5] Since CARB only stated its general opinion regarding annual equivalency programs and did not provide any specific comments for this action that required a response, none of CARB's comments have been addressed in this Public Comments and EPA Responses section.

[6] The changes to item number 5 is discussed in the response to comment number 4. The change in item number 2 was the addition of the language "or contained in an approved attainment plan." Though EPA received no comments on this item, we included this language to ensure that *any* and *all* reductions relied upon or required for attainment purposes be considered non-surplus, whether or not the reduction is explicitly set forth in an attainment plan.

emission reduction to be used for NSR offset purposes even if it was required by a provision of the CAA as long as it was incorporated into the area's emissions inventory and accounted for in the area's attainment plan. CCEEB justifies this proposition by the fact that the ERC "has been mitigated by other specific measures for rate of progress or attainment demonstration purposes," and therefore should be allowed as an NSR offset. Allowing the use of such an ERC as an NSR offset, however, would be counter to section 173(c)(2)'s prohibition against use of emission reductions that are otherwise required by the CAA. The mere fact that an ERC is recognized in the inventory and accounted for in the attainment plan and rate of progress in no way "mitigates" the fact that the reduction was elsewhere required under the CAA.[7]

Comment 4: Item number 5 in the list of categories of non-surplus emission reductions in the proposed approval reads "any emission reduction required by a condition of a permit issued to comply with NSR CAA requirements." CCEEB commented that "[t]his item is of concern because air permits in California will typically include requirements that are not required under Federal law. Such requirements are not required by the federal Clean Air Act and should be considered surplus to Federal requirements. This item should not be listed in its current form as an emission reduction that is required by the Act." WSPA provided an almost identical comment.

Response 4: We agree with CCEEB and WSPA, and modified item number 5 accordingly. Specifically, in the updated interpretation provided in this final action and embodied in the MOU, we recognize that the following requirements contained in a federally enforceable NSR permit should not automatically disqualify the emission reduction from use as an NSR offset: (1) Requirements to make the reduction federally enforceable to meet Federal creditability criteria for use of the reduction as an offset for new source review purposes, or (2) requirements to assure compliance with a state or local requirement that is not federally enforceable. This change addresses the commentors' concerns.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is approving these rules into the California SIP.[8]

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards ("VCS"), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: February 18, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(305) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(305) Amended regulations for the following APCD were submitted on May 20, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(1) Rules 10, 26.1, 26.2, 26.3, 26.4, 26.6, and 26.11 adopted on May 14, 2002.

* * * * *

[FR Doc. 03–4628 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

[7] In fact, emission reductions used for NSR offset purposes *must* be included in an area's inventory and attainment plan to be considered for use as an offset in the first place. The 1992 "General Preamble for the implementation of title i of the Clean Air Act Amendments of 1990" ("General Preamble") describes the planning requirements of the Act as amended in 1990. 57 FR 13498 (April 16, 1992). The General Preamble addresses the issue of the use emission reductions for NSR purposes and how areas need to ensure the use of these does not conflict with planning. The two types of planning actions that need to reflect the use of emission reduction credits are rate of progress plans and attainment demonstrations. *See id.* at 13508–509 and 13552–54; *see also* 1994 Seitz Memo. Thus, inclusion of ERCs in required plans is a precondition to satisfying the statutory requirements of section 173(c)(2), but does not by itself fulfill the statutory requirements.

CCEEB and WSPA may be taking their argument one step further, however, by implying that the creation of a growth allowance in an attainment plan would enable a permitting authority to issue permits that allow new emissions despite the source's reliance on non-surplus ERCs. A growth allowance is defined as a "pollutant-specific allowance for additional growth in any designated nonattainment area by controlling existing source emissions beyond the amount of reduction required to demonstrate [reasonable further progress]." 57 FR 13554 (April 16, 1992). CCEEB and WSPA cannot rely upon a growth allowance as a justification for use of non-surplus ERCs, however, as the 1990 CAA amendments restricted the use of new growth allowances with the exception of areas that have been targeted by the administrator, in consultation with the Secretary of Housing and Urban Development ("HUD"), for economic growth. *Id.*; *see also* CAA sections 172(c)(4) and 173(a)(1)(B). Ventura County is not a designated economic growth area.

[8] On February 13, 2003, EPA proposed to find that the California SIP was substantially inadequate due to Health & Safety Code Section 42310(e), which exempts certain agricultural sources from all permitting actions, including NSR permitting actions. 68 FR 7237. This SIP-call, if finalized, will not reactivate the sanctions clock permanently stopped by this final action.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ND–001–0007; FRL–7453–4]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. EPA will handle separately direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective March 31, 2003.

ADDRESSES: Documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2405. Copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58504–5264.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used, we mean EPA.

I. Background

On October 7, 2002 (67 FR 62432), EPA published a notice of proposed rulemaking (NPR) for the State of North Dakota. The NPR proposed approval of revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. As indicated in the NPR, the submittal also included direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program, which we will handle separately.

The revisions being addressed in this document involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (subsection specific to exclusions from Title V permit to operate requirements only); 33–15–15 Prevention of Significant Deterioration; and 33–15–17 Restriction of Fugitive Emissions. For a detailed description of the revisions, please refer to our October 7, 2002 NPR (62 FR 62432).

A brief summary of the revisions is as follows. In the General Provisions chapter, the definition for "public nuisance" was removed and changes were made to clarify reporting requirements when stack testing for air contaminant emissions. In the Emissions of Particulate Matter Restricted chapter, the State incorporated reference information from the Federal rules. Also, the State repealed its requirements for existing infectious waste incinerators because these requirements are now addressed in the State's plan for the control of emissions from existing hospital/medical/infectious waste incinerators, which was approved by EPA in a May 13, 1999 **Federal Register** document (64 FR 25831). In the Restriction of Fugitive Emissions chapter, the State deleted a reference to nuisances and replaced it with a requirement that a source cannot cause air pollution as defined in the general provisions chapter (the State believes that its definition of "air pollution" covers nuisances). The above changes are consistent with Federal requirements and, therefore, are approvable.

In the Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate chapter, a new subsection entitled "Source Exclusions from Title V Permit to Operate Requirements" was added to provide an exemption from the

Title V permitting requirements for certain gasoline service stations, bulk gasoline plants, coating sources, printing, publishing and packaging operations, degreasers using volatile organic solvents, and hot mix asphalt plants. This exclusionary rule creates generic potential-to-emit (PTE) limits for specific source categories, and thereby clarifies which of the sources within the specific categories are minor with respect to the Title V operating permit requirements. The rule does not exclude these certain sources from North Dakota's construction or minor source operating permit programs. We are approving this new subsection, 33–15–14–07, under section 110 of the Clean Air Act, which allows us to approve preconstruction permit programs and rules and non-title V operating permit programs and rules.

In the Prevention of Significant Deterioration (PSD) chapter, the definition of "significant" was updated to match the Federal definition. In addition, a provision was removed that required the North Dakota Department of Health (NDDH) to consult with an impacted state prior to approving a PSD source permit application that will consume more than half of the available increment in the other state. These revisions are consistent with Federal requirements and, therefore, are approvable.

II. Response to Comments

We received adverse comments from the Dakota Resource Council, submitted in a letter dated November 6, 2002, regarding our proposed approval of the revisions to the North Dakota PSD rule (NDAC 33–15–15). Specifically, the commenter disagrees with our approval of the repeal of the provision that required NDDH to consult with an impacted state prior to approving a PSD source permit application that will consume more than half of the available increment in the other state. It is the commenter's belief that removal of this provision relaxes the SIP and is in conflict with section 110(a)(2)(D)(i)(II) of the Clean Air Act, which requires SIPs to include provisions prohibiting any source within a state from emitting any air pollutant which will interfere with measures to prevent significant deterioration of air quality in any other state's applicable implementation plan. The commenter believes that we must not approve the removal of this provision without the State demonstrating that there are other provisions in the North Dakota SIP that ensure that sources in North Dakota will not interfere with other states' plans to prevent significant deterioration of air quality.

We agree with the need for such a demonstration from the State and specifically requested it during our review of these revisions in draft form. In a November 28, 2000, letter from Jeffrey L. Burgess, NDDH, to Dick Long, EPA Region VIII, the State provided such assurances. Specifically, the State indicated that its PSD rules contain all of the notification requirements in the Federal rules (*see* 40 CFR 51.166 and 40 CFR 52.21), including notification during the public comment period to an affected state (see North Dakota Administrative Code (NDAC) 33–15–15–01.5.b.). Although there is no longer a consultation requirement, there are still requirements under North Dakota's PSD program for the NDDH to provide notice to any state, Federal Land Manager, or Indian governing body whose lands may be significantly affected by emissions from a proposed source or modification (*see* NDAC 33–15–15–01.5.b(4)). This notification usually takes the form of a copy of the public notice, a copy of the related analyses, and a copy of the draft permit. The affected parties then have the opportunity during the public comment period to provide comments to the NDDH. The deletion of the language regarding consultation with an affected state was made to make the State rules more consistent with Federal requirements (40 CFR 51.166 and 40 CFR 52.21 do not include this requirement).

Since the revisions to this chapter are consistent with Federal requirements, and the State has demonstrated that there are other provisions in the SIP to ensure that sources in North Dakota will not interfere with other states' plans to prevent significant deterioration of air quality, we believe the revisions are approvable.

III. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The North Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act. The SIP revision amends the State's General Provisions and Methods of Measurement and these changes are consistent with Federal requirements and rules. The repeal of requirements for existing infectious waste incinerators does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because these requirements are addressed in the State's plan for the control of emissions from existing hospital/medical/infectious waste incinerators, which was approved by EPA in a May 13, 1999 **Federal Register** document (64 FR 25831). The new rules that provide for source exclusions from the title V permit to operate requirements are consistent with EPA's authority to approve exclusionary rules under section 110 of the Clean Air Act and the rules do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because they are consistent with the April 14, 1998, EPA guidance from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled "Potential to Emit (PTE) Guidance for Specific Source Categories." The update to the State's PSD rules mirror the Federal rules. Finally, the State's removal of the term "nuisance" does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act since nuisances can still be addressed under the State's definition of "air pollution."

IV. Final Action

EPA is approving North Dakota's SIP revision, as submitted by the Governor with a letter dated June 21, 2001. The revisions in the June 21, 2001 submittal which are being approved in this document involve sections of the following chapters of the North Dakota Administrative Code: 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (specifically, subsection 33–15–14–07, Source Exclusions from Title V Permit to Operate Requirements); 33–15–15 Prevention of Significant Deterioration; and 33–15–17 Restriction of Fugitive Emissions. The June 21, 2001 submittal also included requests for direct delegation of Chapter 33–15–21, Acid Rain Program and Chapter 33–15–22, Emission Standards for Hazardous Air Pollutants for Source Categories, which are being handled separately.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 11, 2003.

Max H. Dodson,

Acting Regional Administrator, Region 8.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(32) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(32) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with a letter dated June 21, 2001. The revisions address air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules as follows: General Provisions 33–15–01–04, 33–15–01–12, and 33–15–01–15; Emissions of Particulate Matter Restricted 33–15–05–04.1; Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate 33–15–14–02.13.b.1, 33–15–14–03.1.c, and 33–15–14–07; Prevention of Significant Deterioration of Air Quality 33–15–15–01.1.hh and 33–15–15–01.2; and Restriction of Fugitive Emissions 33–15–17–01, effective June 1, 2001.

(B) Revisions to the Air Pollution Control Rules as follows: Emissions of Particulate Matter Restricted 33–15–05–03.1, repealed effective July 12, 2000.

[FR Doc. 03–4770 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 414, and 485

[CMS–1204–F2]

RIN 0938–AL21

Medicare Program; Physician Fee Schedule Update for Calendar Year 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the estimates used to establish the sustainable growth rates (SGRs) for fiscal years 1998 and 1999 for the purposes of determining future updates to the physician fee schedule and announces a 1.6 percent increase in the calendar year (CY) 2003 physician fee schedule conversion factor (CF) for March 1 to December 31, 2003. The physician fee schedule CF from March 1 to December 31, 2003, will be

$36.7856. The anesthesia CF for this period will be $17.05. Any information contained in this final rule related to the CY 2003 physician or anesthesia CFs takes the place of the information contained in the December 31, 2002, final rule. All other provisions of the December 31, 2002, final rule are unchanged by this final rule.

DATES: *Effective date:* This rule is effective on March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Marc Hartstein, (410) 786–4539.

SUPPLEMENTARY INFORMATION:

I. Provisions of the Final Rule

In the physician fee schedule final rule with comment period published on December 31, 2002 (67 FR 80018), following notice and comment, we announced a 4.4 percent reduction in the physician fee schedule conversion factor (CF) for 2003. As explained in the December 31, 2002, final rule, we determined the 4.4 percent reduction to the CF using the formula specified in statute. We explained that the statute did not allow us to use later, after the fact, data to revise estimates that were used to determine the sustainable growth rates (SGRs) for fiscal year (FY) 1998 and FY 1999 for the purposes of determining future updates to the physician fee schedule. We further indicated our preference for revising these estimates and establishing a positive update to CY 2003 physician fee schedule rates, if the Congress changed the law to permit these revisions, and we requested comments on how physician fee schedule rates could and should be recalculated prospectively in the event that the Congress provided the Department with legal authority to revise estimates used to establish the SGRs for FY 1998 and FY 1999 and the MVPS for 1990 through 1996.

On February 13, 2003, the Congress enacted the Consolidated Appropriations Resolution of 2003 (CAR), (Pub. L. 108–7) that was signed into law by the President on February 20, 2003. Before enactment of section 402(a) of the CAR, section 1848(i)(1)(C) of the Social Security Act (the Act) precluded judicial review of "the determination of conversion factors under subsection (d)." Section 402(a) of the CAR amended section 1848(i)(1)(C) of the Act to preclude judicial review of "the determination of conversion factors under subsection (d), including without limitation a prospective redetermination of the sustainable growth rates for any or all previous fiscal years." We believe that with this amendment, section 1848, read as a whole, now permits revision of all earlier fiscal year SGRs for the purposes of allowing prospective application of those revisions to future physician fee schedule updates (that is, to the CY 2003 physician fee schedule update). Thus, we are now revising the FY 1998 and FY 1999 SGRs for the purposes of determining future updates to the physician fee schedule including a new physician fee schedule update that will apply from March 1 to December 31, 2003.

As we noted in our final rule of December 31, 2002, CMS believes the estimates used to set the SGRs for FY 1998 and FY 1999 were 6.4 percent lower than if after-the-fact, actual data could have been used, with the greatest differences arising from fee-for-service enrollment in Medicare and real per capita growth in the gross domestic product (GDP). The reasons for the differences between these estimates and later, after-the-fact actual data for 1998 and 1999 are described in more detail below. We noted in our December 31, 2002, final rule that as a result of using estimates in determining the SGRs for FY 1998 and FY 1999, physicians would receive lower payments for their services than if the SGRs and allowed expenditures for those fiscal years were recalculated to reflect later, after-the-fact actual data.

Although the estimates used to set the SGRs for 1998 and 1999 may have been different from later, after-the-fact actual data, before the enactment of section 402(a) of the CAR, section 1848 of the Act did not permit the SGRs for these two fiscal years (1998 and 1999) to be revised later, once "actual" data, or better estimated data became available.

In addition to our final rule of December 31, 2002, we set forth this position in several of our annual notices in previous years in which we announced the CF for the coming year. ("We will not be able to make adjustments to the [1998 and 1999] SGRs based on later data." 64 FR 53394. *See also* 63 FR 69188.) These notices indicated that section 1848 of the Act did not provide the necessary authority to revise the original estimates used to establish the SGRs for FY 1998 and FY 1999 for the purposes of establishing physician fee schedule updates for future years. We believe that as amended by the recently enacted CAR, section 1848 as a whole now permits the prospective redetermination of SGRs for these two previous years.

Section 402(a) of the CAR added language to the "non-reviewability" provisions of section 1848(i) of the Act. Section 402(a) added the phrase "including without limitation a prospective redetermination of the sustainable growth rate for any or all previous fiscal years" to a non-reviewability provision that already existed at section 1848(i)(1)(c). Use of the word "including" in statutory language is typically constructed to mean "including but not limited to." In other words, we believe that the Congress added the new language as a new, non-exclusive example of the instances of non-reviewability that already exist. The example in the added phrase refers to a "prospective redetermination of the sustainable growth rate for any or all fiscal years." (Emphasis added). Prior to the enactment of section 402(a) of the CAR, the substantive provisions of section 1848 of the Act provided only for the prospective redetermination of the SGR for one "fiscal year," that "fiscal year" being FY 2000. The Balanced Budget Refinement Act of 1999 (BBRA) amended section 1848(f)(3) of the Act to change the physician fee schedule to a calendar year system of calculating the SGR beginning in "calendar year" 2000. Thus, we believe that section 402(a) demonstrates the Congress's intent that section 1848 as a whole be read to permit a prospective redetermination of the SGRs for "any or all" "fiscal" years in the plural, to wit, fiscal years 1998 and 1999, in addition to fiscal year 2000. Section 402(a) of the CAR calls for a change in the agency's prior interpretation of section 1848 of the Act as precluding any revision of the SGRs for fiscal years 1998 and 1999 to permit prospective redetermination of SGRs for these "fiscal years" in addition to existing authority for fiscal year 2000. This reading of section 402(a) of the CAR is consistent with the congressional intent behind section 402(a). The Conference Report for the CAR notes that section 402(a) is intended to "[provide] legal protection for the Administration should they make corrections to data errors in the physician payment formula for past fiscal years." (House Rpt. 108–10).

These prospective redeterminations will not have, and are not intended to have, any effect on physician fee schedule payment rates for previous years. (We are making no further revisions to the FY 2000 SGR because section 1848(f)(3) of the Act expressly specifies that we were to make the final revisions to the FY 2000 SGR on the basis of the best data available to the Secretary as of September 1, 2001. Accordingly, we made our final revisions to the FY 2000 SGR in a final rule published in the **Federal Register** on November 1, 2001 (66 FR 55319).)

In this final rule, we are announcing that for the purposes of determining future physician fee schedule updates, including the update for 2003, the SGR was 3.2 percent for FY 1998 and 4.2 percent for FY 1999. This is a change of 1.7 percentage points for FY 1998 and 4.5 percentage points for FY 1999. We will make no further revisions to the SGRs for these years. We are also announcing a 1.6 percent increase to the physician fee schedule CF that will apply from March 1 to December 31, 2003. Therefore, the physician fee schedule CF from March 1 to December 31, 2003, will be $36.7856, an increase of 1.6 percent from the 2002 CF. The anesthesia CF for this period will be $17.05, an increase of 2.7 percent from the 2002 anesthesia CF. In our December 31, 2002 final rule (67 FR 80032), we described our calculation of the 2003 physician fee schedule and anesthesia fee schedule CFs. Any information contained in this final rule related to the 2003 physician or anesthesia fee schedule CFs replaces the information contained in the December 31, 2002, final rule. Further, we are making one revision to our estimate of the CY 2002 SGR. As described below, we are increasing our estimate of the 2002 SGR by 0.2 percentage points to reflect the costs of the new diabetes self-management training benefit. All other provisions of the December 31, 2002, final rule are unchanged by this final rule.

In the December 31, 2002, final rule, we specifically requested comments on the revision of estimates used to establish the Medicare Volume Performance Standard from 1990 through 1996 and the SGRs from FY 1998 and FY 1999. We will respond to any comments received on these issues in a future **Federal Register** publication.

II. Physician Fee Schedule Update

A. Calculation of the Physician Fee Schedule Update

The physician fee schedule update is determined under a methodology specified by statute. Under section 1848(d)(4) of the Act, the update is equal to the product of 1 plus the percentage increase in the Medicare Economic Index (MEI) (divided by 100) and 1 plus the update adjustment factor. For CY 2003, the MEI is equal to 3.0 percent (1.030). The update adjustment factor is now equal to −1.1 percent (0.989). Section 1848(d)(4)(F) of the Act requires an additional −0.2 percent (0.998) reduction to the update for 2003. Thus, the product of the MEI (1.030), the update adjustment factor (0.989), and the statutory adjustment factor (0.998) equals the CY 2003 update of 1.66 percent (1.0166). As described below, we are also making an adjustment of −0.04 percent to maintain budget neutrality for the increase in anesthesia work. With the budget-neutrality adjustment, the increase in the physician fee schedule CF will be 1.62 percent (1.0162).

B. The Update Adjustment Factor

Section 1848(d) of the Act provides that the physician fee schedule update is equal to the product of the MEI and an "update adjustment factor." The update adjustment factor is applied to make actual and target expenditures (referred to in the law as "allowed expenditures") equal. Allowed expenditures are equal to actual expenditures in a base period updated each year by the SGR. The SGR sets the annual rate of growth in allowed expenditures and is determined by a formula specified in section 1848(f) of the Act.

Under section 1848(d)(4)(A) of the Act, the physician fee schedule update for a year is equal to the product of—(1) 1 plus the Secretary's estimate of the percentage increase in the MEI for the year, divided by 100 and (2) 1 plus the Secretary's estimate of the update adjustment factor for the year. Under section 1848(d)(4)(B) of the Act, the update adjustment factor is equal to the sum of the following—

i. *Prior Year Adjustment Component.* An amount determined by—

- Computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services for the prior year (the year prior to the year for which the update is being determined) and the amount of the actual expenditures for such services for that year;
- Dividing that difference by the amount of the actual expenditures for such services for that year; and
- Multiplying that quotient by 0.75.

ii. *Cumulative Adjustment Component.* An amount determined by—

- Computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services from April 1, 1996, through the end of the prior year and the amount of the actual expenditures for such services during that period;
- Dividing that difference by actual expenditures for such services for the prior year as increased by the sustainable growth rate for the year for which the update adjustment factor is to be determined; and
- Multiplying that quotient by 0.33.

As explained above, we are making final prospective redeterminations to the FY 1998 and FY 1999 SGRs in this final rule for the purposes of determining future physician fee schedule updates. We are also making prospective redeterminations to allowed expenditures for the period from April 1, 1997, to March 31, 1999, because allowed expenditures during this period are affected by revisions to the FY 1998 and FY 1999 SGRs. Further, allowed expenditures in all subsequent periods are based on allowed expenditures from this period and are also being prospectively redetermined. Table 1 shows annual and cumulative allowed expenditures for physicians' services from April 1, 1996, through the end of the current CY, including the transition period to a CY system that occurred in 1999, incorporating the redeterminations we are making to the SGRs for FY 1998 and FY 1999.

TABLE 1

Period	Annual allowed expenditures (billion)	Cumulative allowed expenditures (billion)	FY or CY SGR (percent)
4/1/96–3/31/97	$48.9	$48.9	N/A
4/1/97–3/31/98	50.5	99.4	FY 1998=3.2%
4/1/98–3/31/99	52.6	152.0	FY 1999=4.2%
1/1/99–3/31/99	13.3	(1)	FY 1999=4.2%
4/1/99–12/31/99	42.1	(2)	FY 2000=6.9%
1/1/99–12/31/99	55.3	194.1	FY 1999/FY 2000 [3]
1/1/00–12/31/00	59.4	253.4	CY 2000=7.3%
1/1/01–12/31/01	62.0	315.5	CY 2001=4.5%
1/1/02–12/31/02	67.6	383.1	CY 2002=9.0%

TABLE 1—Continued

Period	Annual allowed expenditures (billion)	Cumulative allowed expenditures (billion)	FY or CY SGR (percent)
1/1/03–12/31/03	72.8	455.9	CY 2003=7.6%

[1] Included in $152.0.
[2] Included in $194.1.
[3] **Note:** Allowed expenditures for the first quarter of 1999 are based on the FY 1999 SGR and allowed expenditures for the last three quarters of 1999 are based on the FY 2000 SGR. Allowed expenditures in the first year (April 1, 1996, through March 31, 1997) are equal to actual expenditures during the year. All subsequent figures are equal to quarterly allowed expenditure figures increased by the applicable SGR. Cumulative allowed expenditures are equal to the sum of annual allowed expenditures. We provide more detailed quarterly allowed and actual expenditure data on our Web site under the Medicare Actuary's publications at the following address: *http://www.cms.hhs.gov/statistics/actuary/*. We expect to update the web site with the most current information, including our estimate of the physician fee schedule update for 2004 on or about March 1.

Consistent with section 1848(d)(4)(E) of the Act, Table 1 includes our final revision of allowed expenditures for 2001 and prior periods, a recalculation of allowed expenditures for 2002, and our initial estimate of allowed expenditures for 2003. We will be making further revisions to the 2002 and 2003 SGRs and allowed expenditures later this year through the normal rulemaking process. To determine the update adjustment factor for March 1 to December 31, 2003, we are using cumulative allowed expenditures from April 1, 1996, through December 31, 2002, actual expenditures through December 31, 2002, and the SGR for 2003, as well as annual allowed and actual expenditures for 2002. We are using estimates of allowed expenditures for 2002 and 2003 that will subsequently be revised consistent with section 1848(d)(4)(E) of the Act. Because we are continuing to receive expenditure data for 2002, we are using an estimate for this period. Any differences between current estimates and final figures will be taken into account in determining the update adjustment factor for future years.

We are using figures from Table 1 in the statutory formula illustrated below:

$$UAF = \frac{Target_{02} - Actual_{02}}{Actual_{02}} \times .75 + \frac{Target_{4/96\text{-}12/02} - Actual_{4/96\text{-}12/02}}{Actual_{02} \times SGR_{03}} \times .33$$

UAF = Update Adjustment Factor
$Target_{02}$ = Allowed Expenditures for 2002 or $67.6 billion
$Actual_{02}$ = Estimated Actual Expenditures for 2002 = $69.1 billion
$Target_{4/96\text{-}12/02}$ = Allowed Expenditures from 4/1/1996—12/31/2002 = $383.1 billion
$Actual_{4/96\text{-}12/02}$ = Estimated Actual Expenditures from 4/1/1996–12/31/2002 = $381.9 billion
SGR_{03} = 7.6 percent (1.076)

$$\frac{\$67.6 - \$69.1}{\$69.1} \times .75 + \frac{\$383.1 - \$381.9}{\$69.1 \times 1.076} \times .33 = -0.011$$

Section 1848(d)(4)(A)(ii) of the Act indicates that 1 should be added to the update adjustment factor determined under section 1848(d)(4)(B) of the Act. Thus, adding 1 to −0.011 makes the update adjustment factor equal to 0.989.

III. Medicare Sustainable Growth Rate

As discussed above, the SGR is an annual growth rate that applies to physicians' services paid for by Medicare. The use of the SGR is intended to control growth in aggregate Medicare expenditures for physicians' services. Payments for services are not withheld if the percentage increase in actual expenditures exceeds the SGR. Rather, the physician fee schedule update, as specified in section 1848(d)(4) of the Act, is adjusted based on a comparison of allowed expenditures (determined using the SGR) and actual expenditures. If actual expenditures exceed allowed expenditures, the update is reduced. If actual expenditures are less than allowed expenditures, the update is increased.

Section 1848(f)(2) of the Act specifies that the SGR is equal to the product of the following four factors:

(1) The estimated change in fees for physicians' services.

(2) The estimated change in the average number of Medicare fee-for-service beneficiaries.

(3) The estimated projected growth in real GDP per capita.

(4) The estimated change in expenditures due to changes in law or regulations.

In this final rule, we are making prospective redeterminations of the SGRs for FY 1998 and FY 1999 for the purposes of determining future physician fee schedule updates, including the update for 2003. We are also making a minor revision to the SGR for 2002.

A. Revised Sustainable Growth Rate for FY 1998

The revised FY 1998 SGR is 3.2 percent. Table 2 shows the estimated figures that we used to determine the FY 1998 SGR from the October 31, 1997, **Federal Register** (62 FR 59263), and the revised final figures.

TABLE 2

Statutory factors	10/31/97 estimate (percent)	Revised final (percent)
Fees	2.3 (1.023)	2.0 (1.020)
Enrollment	−2.4 (0.976)	−2.3 (0.977)
Real Per Capita GDP	1.1 (1.011)	3.2 (1.032)
Law and Regulation	0.6 (1.006)	0.3 (1.003)
Total	1.5 (1.015)	3.2 (1.032)

Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for FY 1998

This factor was calculated as a weighted average of the FY 1998 fee increases for the different types of services included in the definition of physicians' services for the SGR that applied in FY 1998. Medical and other health services paid using the physician fee schedule accounted for approximately 91.5 percent of total allowed charges included in the SGR in FY 1998 and are updated using the MEI. The weighted average of the MEI that applied for the calendar years included in FY 1998 was 2.2 percent. ("Incident to" drugs, which are also included in the SGR, are paid using the average wholesale price methodology. Consistent with the methodology used prior to 2003, we used the MEI as a proxy for growth in "incident to" drug prices for both the FY 1998 and FY 1999 SGRs). Diagnostic laboratory tests represent approximately 8.5 percent of Medicare allowed charges included in the SGR in FY 1998. The costs of these tests are typically updated by the CPI-U. Although section 1833(h)(2)(A)(ii)(IV) of the Act required a 0.0 percent update for laboratory services for 1998 to 2002, we used a 3.0 percent update for laboratory services in 1998 to determine the estimated SGR. We are now using a 0.0 percent update for laboratory services for the 9 months of calendar year 1998 that are included in FY 1998. The weighted average of the laboratory update applied in the calendar years included in FY 1998 was 0.8 percent. We determined a weighted average of the MEI and the laboratory updates that applied in FY 1998 using the following information:

TABLE 3

	Weight	Update
MEI	0.915	2.2
Laboratory	0.085	0.8
Weighted Average	1.000	2.0

After taking into account the elements described in table 3, we now estimate that the weighted-average increase in fees for physicians' services in FY 1998 under the SGR (before applying any legislative adjustments) was 2.0 percent. This figure is 0.3 percentage points lower than the estimate we made of this factor in the October 31, 1997, **Federal Register** (62 FR 59265) because of the revision we have made to the update for laboratory services.

Factor 2—The Percentage Change in the Average Number of Part B Enrollees for FY 1998

This factor is our estimate of the percent change in the average number of fee-for-service enrollees from FY 1997 to FY 1998. Services provided to Medicare+Choice (M+C) plan enrollees are outside the scope of the SGR and are excluded from this estimate. Our actuaries have now determined that the average number of Medicare Part B fee-for-service enrollees actually decreased by 2.3 percent from FY 1997 to FY 1998. Table 4 illustrates how this figure was determined:

TABLE 4

	FY 1998	FY 1999
Overall	36.368 million	36.685 million
Medicare+Choice	4.463 million	5.510 million
Net	31.905 million	31.175 million
Percent Increase		−2.3 percent

As we have stated repeatedly, an important factor affecting fee-for-service enrollment is beneficiary enrollment in M+C plans. Because it is difficult to estimate the size of the M+C enrollee population before the start of a calendar year, we cannot predict how actual enrollment in M+C plans during the year will compare to our Actuary's estimates. Despite the difficulty in predicting these figures, the actual decrease in Medicare fee-for-service enrollment of 2.3 percent was almost identical to the Actuary's estimate in 1997 (−2.4 percent).

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth for FY 1998

Actual growth in real per capita GDP from FY 1997 to FY 1998 was 3.2 percent or 2.1 percentage points higher than the 1.1 percent estimate we made in 1997. The large difference between our estimate and the actual growth in real per capita GDP reflects the difficulty in predicting economic growth before the beginning of a year.

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in FY 1998 Compared With FY 1997

The Balanced Budget Act (BBA) of 1997 established or changed coverage for screening mammography, colorectal cancer screening, and screening PAP smears. The BBA also included payment provisions related to nurse practitioners, clinical nurse specialists and physician assistants, Medicare secondary payer, and clinical diagnostic laboratory services. In 1997, we estimated that the net cost of these provisions would increase the FY 1998 SGR by 0.6

percent. Based on the lower than anticipated expenditures for screening mammography and nurse practitioners, clinical nurse specialists and physician assistants, we now estimate that the net cost of these provisions increased the FY 1998 SGR by 0.3 percent.

B. Revised Sustainable Growth Rate for FY 1999

The revised SGR for FY 1999 is 4.2 percent for the purposes of determining future physician fee schedule updates. Table 5 shows the estimated figures that we used to determine the FY 1999 SGR from the November 2, 1998, **Federal Register** (63 FR 59188), and the revised final figures.

TABLE 5

Statutory factors	11/2/98 estimate (percent)	Revised final (percent)
Fees	2.1 (1.021)	2.1 (1.021)
Enrollment	−4.3 (0.967)	−1.1 (0.989)
Real Per Capita GDP	1.3 (1.013)	3.3 (1.033)
Law and Regulation	0.7 (1.007)	−0.1 (0.999)
Total	−0.3 (0.997)	4.2 (1.042)

Factor 1—Changes in Fees for Physicians' Services (Before Applying *Legislative Adjustments*) for FY 1999

This factor was calculated as a weighted average of the FY 1999 fee increases for the different types of services included in the definition of physicians' services for the SGR that applied in FY 1999. Medical and other health services paid using the physician fee schedule accounted for approximately 92 percent of total allowed charges included in the SGR in FY 1999 and are updated using the MEI. The weighted average of the MEI that applied for the calendar years included in FY 1999 was 2.3 percent. Diagnostic laboratory tests represent approximately 8.0 percent of Medicare allowed charges included in the SGR in FY 1999. During FY 1999, section 1833(h)(2)(A)(ii)(IV) of the Act required a 0.0 percent update for laboratory services. We determined a weighted average of the MEI and the laboratory updates that applied in FY 1999 using the following information:

TABLE 6

	Weight	Update
MEI	0.920	2.3
Laboratory	0.080	0.0
Weighted Average	1.000	2.1

After taking into account the elements described in table 6, we now estimate that the weighted-average increase in fees for physicians' services in FY 1999 under the SGR (before applying any legislative adjustments) was 2.1 percent. This figure is unchanged from our original estimate of the weighted-average increase in fees for physicians' services in FY 1999.

Factor 2—The Percentage Change in the Average Number of Part B Enrollees for FY 1999

This factor is our estimate of the percent change in the average number of fee-for-service enrollees from FY 1998 to FY 1999. Our actuaries have now determined that the average number of Medicare Part B fee-for-service enrollees (net of M+C enrollees) actually decreased by 1.1 percent. Table 7 illustrates how this figure was determined:

TABLE 7

	FY 1998 (million)	FY 1999 (million)
Overall	36.685	36.951
Medicare+Choice	5.510	6.109
Net	31.175	30.841
Percent Increase		−1.1

As indicated above, the difficulty in predicting growth in M+C enrollment before the beginning of the year explains the 3.2 percentage point difference between our 1998 estimate of this factor (−4.3 percent) and the actual measured decrease.

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth for FY 1999

Actual growth in real per capita GDP from FY 1998 to FY 1999 was 3.3 percent or 2.0 percentage points higher than the 1.3 percent estimate we made in 1997. The large difference between our estimate and the actual growth in real per capita GDP reflects the difficulty predicting economic growth before the beginning of a year.

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in FY 1999 Compared With FY 1998

In the November 2, 1998, **Federal Register** (63 FR 59189) we increased the SGR by 0.7 percentage points to reflect the effects of the BBA on expenditures for physicians' services included in the SGR. However, we are now reducing the SGR by 0.1 percent for savings associated with BBA provisions. These savings are largely associated with the residual effects of the BBA's Medicare secondary payer provisions. We are also removing the costs associated with diabetes self-management training from the FY 1999 SGR because Medicare coverage associated with this service did not become effective until 2001.

C. Revised Sustainable Growth Rate for 2002

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting from Changes in Law or Regulations in 2002 Compared to 2001 Changes

Based on Medicare data from 2001, we have observed very little utilization of diabetes self-management training services. However, we believe it is likely that utilization of this new benefit increased in 2002 and are including an adjustment to the 2002 SGR for this factor. This adjustment will increase the law and regulation factor and the total SGR for 2002 by 0.2 percentage points relative to the figures included in the December 31, 2002, final rule (67 FR 80028). All other factors included in the 2002 SGR are unchanged at this time. As indicated earlier, we expect to make revisions to all figures included in the 2002 SGR for the final time later this year.

IV. Anesthesia and Physician Fee Schedule Conversion Factors

The 2003 physician fee schedule CF will be $36.7856. The 2003 national average anesthesia CF will be $17.05.

The specific calculations to determine the physician fee schedule and anesthesia CFs for 2003 are explained below.

• *Physician Fee Schedule Conversion Factor.*

Under section 1848(d)(1)(A) of the Act, the physician fee schedule CF is equal to the CF for the previous year multiplied by the update determined under section 1848(d)(4) of the Act. In addition, section 1848(c)(2)(B)(ii)(II) of the Act requires that changes to relative value units (RVUs) cannot cause the amount of expenditures to increase or decrease by more than $20 million from the amount of expenditures that would have been made if such adjustments had not been made. We implement this requirement through a uniform budget neutrality adjustment to the CF. There is one change that will require us to make an adjustment to the CF to comply with the budget neutrality requirement in section 1848(c)(2)(B)(ii)(II) of the Act. We are making a 0.04 percent reduction (0.9996) in the CF to account for the increase in anesthesia work resulting from the 5-year review.

We illustrate the calculation for the 2003 physician fee schedule CF in table 8:

TABLE 8

2002 Conversion Factor	$36.1992
2003 Update	1.0166
Budget-Neutrality Adjustment: Increase in Anesthesia Work	0.9996
2003 Conversion Factor	$36.7856

• Anesthesia Fee Schedule Conversion Factor.

As described in the December 31, 2002, final rule (67 FR 80032), anesthesia services do not have RVUs like other physician fee schedule services. For this reason, we are accounting for the changes to anesthesia work and practice expenses through a 1.6 percent (1.016) adjustment to the anesthesia fee schedule CF. In addition, we are also applying the physician fee schedule update and the budget neutrality adjustment for the increase in anesthesia work that also apply to the physician fee schedule CF. To determine the anesthesia fee schedule CF for 2003, we used the following figures:

TABLE 9

2002 Conversion Factor	$16.6055
Adjustments for Work and Practice Expense	1.0106
2003 Update	1.0166
Budget-Neutrality Adjustment: Increase in Anesthesia Work	0.9996
2003 Conversion Factor	$17.0522

V. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on a proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. In addition, the Administrative Procedure Act (APA) normally requires a 30-day delay in the effective date of a final rule. Furthermore, the Congressional Review Act (CRA) generally requires an agency to delay the effective date of a major rule by 60 days in order to allow for congressional review of the agency action.

We find it unnecessary to undertake notice-and-comment rulemaking prior to implementation of the revisions contained in this final rule. The revisions in this final rule constitute technical corrections to the final rule published on December 31, 2002, which are necessary in order to implement the Congress's decision to confer authority for CMS to make prospective redeterminations of the SGRs for the FY 1998 and FY 1999 but do not otherwise change the policies announced in the final rule. In the December 31, 2002, final rule we expressly indicated that we would make these changes in the event that the Congress conferred the requisite authority upon the agency prior to the March 1, 2003, effective date of the rule. Accordingly, because this final rule simply makes technical modifications to a final rule that has previously gone through notice-and-comment rulemaking, we do not believe that this final rule is subject to notice-and-comment or the 30-day delay in the effective date under the APA. Even if this rule were something other than a technical correction or amendment to the final rule published on December 31, 2002, we believe good cause would exist under the APA to waive the requirements of notice-and-comment rulemaking and the 30-day delay in the effective date.

As indicated above, on December 31, 2002, we announced that, effective March 1, 2003, Medicare physician fee schedule rates would be reduced by an average of 4.4 percent. We indicated in our December 31, 2002, final rule (67 FR 79966) that the 4.4 percent reduction would be inappropriate because it would occur under a statutory methodology that did not allow us to reflect actual, after-the-fact data from earlier years in the determination of the SGR and allowed expenditures. We stated the Department was unable to revise those estimates without further congressional action. ("The Department intends to work closely with Congress to develop legislation that could permit a positive update, and hopes that such legislation can be passed before the negative update takes effect." Since we published the December 31, 2002, final rule, as described above, the Congress has taken action that evinces the Congress's intent to permit revisions of all prior FY SGRs for the purposes of allowing for prospective application of those revisions to future physician fee schedule updates (that is, to the 2003 physician fee schedule update.)

To go through further notice-and-comment rulemaking at this time would be unnecessary, impracticable, and contrary to the public interest because, in our December 31, 2002, final rule we unequivocally expressed our intent to prospectively redetermine the SGRs for FYs 1998 and 1999 in order to establish the 2003 CF. "Because the Department would adopt a change in the formula that determines the physician update if the law permitted it, we have examined how proper adjustments to past data could result in a positive update." To go through notice-and-comment rulemaking at this point, when we have already stated unequivocally our intent to recompute the CF for 2003 if the Congress were to act to permit a prospective redetermination of the SGRs for fiscal years 1998 and 1999, would be unnecessary and contrary to the public interest.

Because the Department wished to make changes to the physician fee schedule update promptly in the event that the Congress acted legislatively, our December 31, 2002, final rule specifically requested public comment on revisions to the estimates that were used to establish the FY 1998 and FY 1999 SGRs, if the statute were to be amended to provide us with this authority. Because we have already requested public comments on the issues included in this final rule, we believe it is unnecessary and contrary to

the public interest to engage in further notice-and-comment rulemaking.

The comment period for the December 31, 2002, rule has not yet closed, but in the event we receive any comments in response to our December 31, 2002, final rule, we will address them in a subsequent publication in the **Federal Register**. No comments have been received to date.

Further, we believe engaging in notice-and-comment rulemaking and delaying the effective date of this final rule would be contrary to the public interest because the Congress specifically sought to avert the negative update to the physician fee schedule for 2003 that we announced on December 31, 2002, by enacting a law conferring upon CMS the authority to reflect actual, after-the-fact data from earlier fiscal years in the determination and allowed expenditures for the purposes of determining future physician fee schedule updates: the very authority, as previously stated in the **Federal Register**, that we would need to revise our prior estimates of the FY 1998 and FY 1999 SGRs to avoid the 4.4 percent reduction in rates on March 1 and establish a 1.6 percent increase in the physician fee schedule CF. Any delay in implementation of this 1.6 percent increase would be contrary to the public interest of the CAR and would run precisely counter to the intent of the Congress in enacting section 402(a) of the CAR to enable CMS to "make corrections to data errors in the physician payment formula for past fiscal years." (*See* House Rpt, 108–10). Moreover a delay in enacting this final rule could adversely affect the provision of services to Medicare beneficiaries because any delay in implementation of the payment increases for physician services provided under the Medicare program may have an adverse impact on Medicare beneficiaries' access to important healthcare services.

Finally, we also note that notice-and-comment rulemaking is not required in this instance because section 1871(b)(2) of the Act provides that when an effective date is within 150 days of enactment of a law, the notice-and-comment requirement does not apply.

With respect to the requirement of a 60-day delay in the effective date of any final rule pursuant to the CRA, *see* 5 U.S.C. section 801, the CRA provides that the 60-day delayed effective date shall not apply to any rule "which an agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. section 808(2)). For the reasons set forth above, we believe that additional notice-and-comment rulemaking on this subject would be impracticable, unnecessary, or contrary to the public interest. Therefore, we do not believe that the CRA requires a 60-day delay in the effective date of this final rule. Moreover, the Congress had 60 days to review the December 31, 2002, final rule. The Congress responded to that final rule by enacting a law to clarify the fee schedule update mechanism described and set forth in the December 31, 2002, final rule. Because we are incorporating this very statutory clarification as the basis for this new final rule, we believe it would be contrary to the CRA and the public interest to provide yet another 60-day review period under the CRA.

VI. Collection of Information Requirements

This document does not impose information collection and record keeping requirements. Consequently, it does not need review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VII. Regulatory Impact Analysis

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for final rules with economically significant effects (that is, a final rule that would have an annual effect on the economy of $100 million or more in any 1 year, or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). We estimate that the changes to the physician fee schedule update will increase Medicare expenditures for physicians' services by $1.1 billion in FY 2003, $2.0 billion in FY 2004 and $2.8 billion in FY 2005 or an estimated $15.7 billion over 5 years and $49.6 billion over ten years. Therefore, this rule is considered to be a major rule because it is economically significant, and, thus, we have prepared a regulatory impact analysis.

The RFA requires that we analyze regulatory options for small businesses and other entities. We prepare a Regulatory Flexibility Analysis unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. The analysis must include a statement in support of the objectives underlying the action being taken, the kinds and number of small entities the rule affects, and an explanation of any meaningful options that achieve the objectives with less significant adverse economic impact on the small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area or New England County Metropolitan Area (NECMA) and has fewer than 100 beds.

For purposes of the RFA, physicians, non-physician practitioners, and suppliers, are considered small businesses if they generate revenues of $8.5 million or less. Approximately 96 percent of physicians are considered to be small entities. There are about 700,000 physicians, other practitioners and medical suppliers that receive Medicare payment under the physician fee schedule.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule will not result in any unfunded mandates for State, local or tribal governments or the private sector, as defined by section 202.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this final rule in accordance with Executive Order 13132 and have determined that this regulation would not have any significant impact on the rights, roles, or responsibilities of State, local, or tribal governments.

We have prepared the following analysis, which together with the rest of this preamble meets all assessment requirements. It explains the rationale for, and purposes of, the rule, details the costs and benefits of the rule, analyzes alternatives, and presents the measures we are using to minimize the burden on small entities. As indicated elsewhere, we are increasing the physician fee schedule CF for March 1 to December 31, 2003, by 1.6 percent. The provisions of this rule are changing only Medicare payment rates for physician fee schedule services, and are not imposing any new regulatory requirements that will impose a burden on small entities.

Table 10 shows the average change in Medicare payment by specialty. It shows the impact of changes in RVUs, the physician fee schedule update, the combined impact, and includes the effect of corrections made to the RVUs for several procedure codes. The table is analogous to Table 24 in the December 31, 2002, final rule (67 FR 80037) but includes the revised physician fee schedule update. The tables reflect application of the revised CF for the full calendar year. However, because the increased CF is only in effect from March 1 to December 31, 2003, the actual impacts will be somewhat less than those shown here.

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Table 10
Estimated Impact All Changes
on Total Medicare Allowed Charges
by Specialty

Category	Medicare Allowed Charges ($ in Billions)	5 Year Review/ RVU Changes	Physician Fee Schedule Update	Total
Physicians:				
ALLERGY/IMMUNOLOGY	0.14	2%	1.6%	3%
ANESTHESIOLOGY	1.24	1%	1.6%	3%
CARDIAC SURGERY	0.28	-1%	1.6%	0%
CARDIOLOGY	4.75	1%	1.6%	3%
CLINICS	2.57	0%	1.6%	2%
DERMATOLOGY	1.55	-4%	1.6%	-2%
EMERGENCY MEDICINE	1.17	0%	1.6%	1%
ENDOCRINOLOGY	0.21	0%	1.6%	2%
FAMILY PRACTICE	3.43	0%	1.6%	2%
GASTROENTEROLOGY	1.34	-1%	1.6%	1%
GENERAL PRACTICE	0.84	0%	1.6%	2%
GENERAL SURGERY	1.98	0%	1.6%	1%
GERIATRICS	0.08	0%	1.6%	1%
HEMATOLOGY/ONCOLOGY	0.95	2%	1.6%	3%
INFECTIOUS DISEASE	0.28	-1%	1.6%	1%
INTERNAL MEDICINE	6.77	0%	1.6%	2%
INTERVENTIONAL RADIOLOGY	0.14	-1%	1.6%	1%
NEPHROLOGY	1.09	-4%	1.6%	-2%
NEUROLOGY	0.91	2%	1.6%	4%
NEUROSURGERY	0.38	-1%	1.6%	1%
OBSTETRICS/GYNECOLOGY	0.48	1%	1.6%	3%
OPHTHALMOLOGY	3.86	-1%	1.6%	1%
ORTHOPEDIC SURGERY	2.40	-2%	1.6%	0%
OTOLARNGOLOGY	0.66	0%	1.6%	1%
PATHOLOGY	0.69	0%	1.6%	2%
PEDIATRICS	0.05	1%	1.6%	2%
PHYSICAL MEDICINE	0.49	2%	1.6%	4%
PLASTIC SURGERY	0.25	0%	1.6%	2%
PSYCHIATRY	1.00	-1%	1.6%	1%
PULMONARY DISEASE	1.12	1%	1.6%	2%
RADIATION ONCOLOGY	0.81	1%	1.6%	3%
RADIOLOGY	3.47	1%	1.6%	3%

RHEUMATOLOGY	0.30	0%	1.6%	2%
THORACIC SURGERY	0.43	-1%	1.6%	1%
UROLOGY	1.36	2%	1.6%	4%
VASCULAR SURGERY	0.37	1%	1.6%	3%
Other Practitioners:				
AUDIOLOGIST	0.02	3%	1.6%	4%
CHIROPRACTOR	0.50	-1%	1.6%	1%
CLINICAL PSYCHOLOGIST	0.40	0%	1.6%	2%
CLINICAL SOCIAL WORKER	0.23	-1%	1.6%	1%
NURSE ANESTHETIST	0.38	1%	1.6%	3%
NURSE PRACTITIONER	0.30	0%	1.6%	1%
OPTOMETRY	0.54	-1%	1.6%	1%
PHYSICAL/OCCUPATIONAL THERAPY	0.61	2%	1.6%	4%
PHYSICIANS ASSISTANT	0.23	-1%	1.6%	1%
PODIATRY	1.17	0%	1.6%	1%
Suppliers:				
DIAGNOSTIC TESTING FACILITY	0.51	4%	1.6%	5%
INDEPENDENT LABORATORY	0.43	4%	1.6%	5%
PORTABLE X-RAY SUPPLIER	0.07	4%	1.6%	6%
ALL OTHER	0.29	-1%	1.6%	0%
ALL PHYSICIAN FEE SCHEDULE	53.53	0%	1.6%	2%

Table 11 shows the difference between 2002 and 2003 payment rates (March 1 to December 31) for selected high volume procedures. This table shows the combined impact of changes in RVUs and the physician fee schedule update on total payment for each procedure. The table is analogous to Table 25 in the December 31, 2002, final rule (67 FR 80037) with the revised physician fee schedule update. There are separate columns that show the change in the facility rates and the nonfacility rates. For an explanation of facility and non-facility practice expense refer to § 414.22(b)(5)(i).

Table 11

Impact of Final Rule and Physician Fee Schedule Update on Medicare Payment for Selected Procedures

HCPCS	MOD	DESC	Non-Facility Old	Non-Facility New	Non-Facility % Change	Facility Old	Facility New	Facility % Change
11721		Debride nail, 6 or more	$ 36.92	$ 37.52	2%	$ 28.96	$ 29.06	0%
17000		Destroy benign/premlg lesion	$ 62.62	$ 61.43	-2%	32.94	$ 33.11	1%
27130		Total hip arthroplasty	N/A	N/A	N/A	1,452.31	$1,343.41	-7%
27236		Treat thigh fracture	N/A	N/A	N/A	1,113.85	$1,068.99	-4%
27244		Treat thigh fracture	N/A	N/A	N/A	1,137.38	$1,155.44	2%
27447		Total knee arthroplasty	N/A	N/A	N/A	1,514.21	$1,445.67	-5%
33533		CABG, arterial, single	N/A	N/A	N/A	1,827.34	$1,799.18	-2%
35301		Rechanneling of artery	N/A	N/A	N/A	1,061.36	$1,073.77	1%
43239		Upper GI endoscopy, biopsy	$354.75	$337.69	-5%	154.93	$ 155.97	1%
45385		Lesion removal colonoscopy	$571.22	$545.53	-4%	287.78	$ 290.61	1%
66821		After cataract laser surgery	$229.50	$229.17	0%	213.94	$ 212.99	0%
66984		Cataract surg w/iol, 1 stage	N/A	N/A	N/A	669.32	$ 670.60	0%
67210		Treatment of retinal lesion	$603.08	$604.39	0%	546.61	$ 548.47	0%
71010	26	Chest x-ray	$ 9.05	$ 9.20	2%	9.05	$ 9.20	2%
71020	26	Chest x-ray	$ 11.22	$ 11.04	-2%	11.22	$ 11.04	-2%
76091		Mammogram, both breasts	$ 90.50	$ 94.17	4%	N/A	N/A	N/A
76091	26	Mammogram, both breasts	$ 43.44	$ 44.14	2%	43.44	$ 44.14	2%
76092		Mammogram, screening	$ 81.81	$ 82.77	1%	N/A	N/A	N/A
76092	26	Mammogram, screening	$ 35.48	$ 36.05	2%	35.48	$ 36.05	2%
77427		Radiation tx management, x5	$167.96	$168.11	0%	167.96	$ 168.11	0%
78465	26	Heart image (3d), multiple	$ 74.93	$ 75.41	1%	74.93	$ 75.41	1%
88305	26	Tissue exam by pathologist	$ 40.54	$ 40.83	1%	40.54	$ 40.83	1%
90801		Psy dx interview	$144.80	$148.98	3%	137.19	$ 140.52	2%
90806		Psytx, off, 45-50 min	$ 95.93	$ 96.38	0%	91.22	$ 92.70	2%
90807		Psytx, off, 45-50 min w/e&m	$103.53	$102.63	-1%	98.82	$ 100.06	1%
90862		Medication management	$ 51.04	$ 50.76	-1%	46.33	$ 47.82	3%
90921		ESRD related services, month	$273.30	$262.28	-4%	273.30	$ 262.28	-4%
90935		Hemodialysis, one evaluation	N/A	N/A	N/A	76.38	$ 71.36	-7%
92004		Eye exam, new patient	$123.44	$123.60	0%	87.96	$ 88.29	0%
92012		Eye exam established pat	$ 61.18	$ 61.43	0%	35.84	$ 36.05	1%
92014		Eye exam & treatment	$ 91.22	$ 90.86	0%	58.64	$ 58.86	0%
92980		Insert intracoronary stent	N/A	N/A	N/A	790.59	$ 800.45	1%
92982		Coronary artery dilation	N/A	N/A	N/A	584.26	$ 594.46	2%
93000		Electrocardiogram, complete	$ 25.34	$ 26.12	3%	N/A	N/A	N/A
93010		Electrocardiogram report	$ 9.05	$ 8.83	-2%	9.05	$ 8.83	-2%
93015		Cardiovascular stress test	$ 99.91	$104.10	4%	N/A	N/A	N/A

93307	26	Echo exam of heart	$ 48.14	$ 48.19	0%	48.14	$ 48.19	0%
93510	26	Left heart catheterization	$230.59	$231.38	0%	230.59	$ 231.38	0%
98941		Chiropractic manipulation	$ 35.48	$ 35.68	1%	31.13	$ 31.27	0%
99202		Office/outpatient visit, new	$ 61.54	$ 62.54	2%	45.61	$ 45.98	1%
99203		Office/outpatient visit, new	$ 91.95	$ 92.70	1%	69.50	$ 70.26	1%
99204		Office/outpatient visit, new	$130.68	$132.06	1%	102.81	$ 103.74	1%
99205		Office/outpatient visit, new	$166.15	$168.48	1%	136.47	$ 137.58	1%
99211		Office/outpatient visit, est	$ 20.27	$ 20.60	2%	8.69	$ 8.83	2%
99212		Office/outpatient visit, est	$ 36.20	$ 36.42	1%	23.17	$ 23.17	0%
99213		Office/outpatient visit, est	$ 50.32	$ 51.13	2%	34.03	$ 34.58	2%
99214		Office/outpatient visit, est	$ 78.91	$ 79.82	1%	56.11	$ 56.65	1%
99215		Office/outpatient visit, est	$115.84	$116.98	1%	90.50	$ 91.23	1%
99221		Initial hospital care	N/A	N/A	N/A	65.16	$ 65.85	1%
99222		Initial hospital care	N/A	N/A	N/A	108.24	$ 109.25	1%
99223		Initial hospital care	N/A	N/A	N/A	150.95	$ 151.92	1%
99231		Subsequent hospital care	N/A	N/A	N/A	32.58	$ 32.74	0%
99232		Subsequent hospital care	N/A	N/A	N/A	53.57	$ 54.07	1%
99233		Subsequent hospital care	N/A	N/A	N/A	76.38	$ 76.88	1%
99236		Observ/hosp same date	N/A	N/A	N/A	214.66	$ 216.67	1%
99238		Hospital discharge day	N/A	N/A	N/A	66.24	$ 69.16	4%
99239		Hospital discharge day	N/A	N/A	N/A	90.86	$ 93.80	3%
99241		Office consultation	$ 47.06	$ 47.45	1%	33.30	$ 33.11	-1%
99242		Office consultation	$ 87.24	$ 88.29	1%	68.05	$ 68.05	0%
99243		Office consultation	$115.84	$116.61	1%	90.14	$ 90.49	0%
99244		Office consultation	$164.34	$165.90	1%	133.58	$ 134.27	1%
99245		Office consultation	$212.85	$215.20	1%	177.01	$ 177.67	0%
99251		Initial inpatient consult	N/A	N/A	N/A	34.75	$ 34.95	1%
99252		Initial inpatient consult	N/A	N/A	N/A	69.86	$ 70.26	1%
99253		Initial inpatient consult	N/A	N/A	N/A	95.20	$ 96.01	1%
99254		Initial inpatient consult	N/A	N/A	N/A	136.83	$ 137.95	1%
99255		Initial inpatient consult	N/A	N/A	N/A	188.60	$ 189.81	1%
99261		Follow-up inpatient consult	N/A	N/A	N/A	21.72	$ 22.07	2%
99262		Follow-up inpatient consult	N/A	N/A	N/A	43.44	$ 43.77	1%
99263		Follow-up inpatient consult	N/A	N/A	N/A	64.80	$ 65.11	0%
99282		Emergency dept visit	N/A	N/A	N/A	26.43	$ 26.85	2%
99283		Emergency dept visit	N/A	N/A	N/A	59.37	$ 60.33	2%
99284		Emergency dept visit	N/A	N/A	N/A	92.67	$ 94.17	2%
99285		Emergency dept visit	N/A	N/A	N/A	144.80	$ 146.77	1%
99291		Critical care, first hour	$208.87	$210.05	1%	198.37	$ 200.11	1%
99292		Critical care, addl 30 min	$108.24	$107.78	0%	98.82	$ 100.06	1%
99301		Nursing facility care	$ 70.23	$ 71.00	1%	60.09	$ 61.06	2%
99302		Nursing facility care	$ 95.57	$ 96.75	1%	80.72	$ 81.30	1%
99303		Nursing facility care	$118.73	$119.92	1%	100.27	$ 101.16	1%
99311		Nursing fac care, subseq	$ 40.18	$ 40.83	2%	30.05	$ 30.53	2%
99312		Nursing fac care, subseq	$ 61.90	$ 62.54	1%	49.95	$ 50.40	1%

99313	Nursing fac care, subseq	$ 84.34	$ 85.71	2%	70.95	$ 71.73	1%
99348	Home visit, est patient	$ 73.85	$ 74.31	1%	N/A	N/A	N/A
99350	Home visit, est patient	$166.52	$167.74	1%	N/A	N/A	N/A
G0008	Admin influenza virus vac	$ 3.98	$ 7.72	94%	N/A	N/A	N/A
G0009	Admin pneumococcal vaccine	$ 3.98	$ 7.72	94%	N/A	N/A	N/A
G0010	Admin hepatitis b vaccine	$ 3.98	$ 7.72	94%	N/A	N/A	N/A

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Impact on Beneficiaries

We do not believe that any problems regarding beneficiary access to care will result from changes in this rule. Moreover, it is possible that potential problems regarding beneficiary access to care that could have resulted from the 4.4 percent reduction contained in the December 31, 2002, final rule (67 FR 79966) will be alleviated by the increase in payment being announced in this rule. Nevertheless, we believe it remains important to continue our efforts to monitor beneficiary access to care.

Any change in Medicare payments will have an impact on beneficiary cost-sharing. If the 4.4 percent reduction were to go into effect and beneficiary access to care were reduced, it is possible that beneficiaries would have lower coinsurance costs but might have problems with access to services (for example, whether physicians continue to see existing or new Medicare beneficiaries). Because we do not know the impact of the 4.4 percent reduction on beneficiary access to care, it is difficult to estimate the effect on out-of-pocket costs. Assuming beneficiary access to care were unaffected, we estimate that the increase in the 1.6 percent increase in the CF compared to a 4.4 percent reduction would increase beneficiary coinsurance liabilities by approximately $300 million in FY 2003 or about $80 million more than if the rates applied in 2002 remained in effect for the remainder of 2003. Some of the increased costs of beneficiary coinsurance may be incurred by the many policies that supplement Medicare. We would note that the 1.6 percent increase will only marginally increase out-of-pocket costs for beneficiaries that do not have any insurance other than Medicare.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this regulation.

This final rule is issued under the authority of sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 19, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: February 24, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–4862 Filed 2–26–03; 11:47 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 214

Defense Federal Acquisition Regulation Supplement; Technical Amendments; Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction to final rule.

SUMMARY: DoD is issuing a correction to the final rule published at 68 FR 7438–7441 on February 14, 2003, making technical amendments to the Defense Federal Acquisition Regulation Supplement. This correction is needed because the February 14, 2003, final rule contained an incorrect paragraph designation.

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

Correction

In the issue of Friday, February 14, 2003, on page 7439, in the third column, amendatory instruction 16 and the corresponding regulatory text are corrected by removing "(vii)" and adding in its place "(viii)".

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 03–4699 Filed 2–27–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030108004–3044–02; ID 010303B]

RIN 0648–AQ28

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 15

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework 15 to the Atlantic Sea Scallop Fishery Management Plan (FMP) developed by the New England Fishery Management Council (Council). This final rule implements management measures for the 2003 fishing year, including a days-at-sea (DAS) adjustment, and continuation of a Sea Scallop Area Access Program (Area Access Program) for 2003. The intent of this action is to achieve the goals and objectives of the FMP under the Magnuson-Stevens Fishery Conservation and Management Act and to achieve optimum yield (OY) in the scallop fishery. In addition, this final rule includes regulatory text that codifies an additional gear stowage provision for scallop dredge gear that was established by the Administrator, Northeast Region, NMFS (Regional Administrator) in 2001.

DATES: Effective March 1, 2003.

ADDRESSES: Copies of Framework Adjustment 15, its Regulatory Impact Review (RIR) including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*. A copy of the Final Regulatory Flexibility Analysis (FRFA) is available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 78–281–9135; e-mail *peter.christopher@noaa.gov*.

SUPPLEMENTARY INFORMATION: On September 12, 2002, the Council adopted Framework 15 to the FMP, which includes annual management measures for the 2003 fishing year (March 1, 2003, through February 29, 2004). On January 16, 2003, NMFS published a proposed rule for Framework 15 (68 FR 2303). Framework 15 increases the annual DAS allocation and extends the Area Access Program in the Hudson Canyon and Virginia Beach Access Areas (Access Areas) for 2003. The only modification to the measures that have been in effect for the 2002 fishing year is an increase in the possession limit allowed to vessels participating in the Area Access Program. Framework 15 was developed during the latter stages of development of Amendment 10 to the FMP (Amendment 10) because it was clear that Amendment 10 would not be implemented by the start of the 2003 fishing year and, therefore, Framework 15 is considered to be an action of limited scope, which is intended to be a stop-gap measure until Amendment 10 is implemented. Additional details concerning the justification for and development of Framework 15 and the implementing regulations were provided in the preamble to the proposed rule and are not repeated here.

Framework 15 increases the annual DAS allocation from the DAS allocations scheduled to take effect in 2003 under Amendment 7 to the FMP. Framework 15 implements 120 full-time, 48 part-time, and 10 occasional DAS, which is an increase from the scheduled DAS of 45, 18, and 4 DAS allocations for full-time, part-time, and occasional vessels, respectively. These DAS allocations in Framework 15 are the same as the DAS that have been implemented since 1999. Framework 15 also extends the Area Access Program in the Access Areas for 2003.

The DAS allocations in Framework 15 are intended to achieve a fishing mortality rate (F) that is consistent with the F target in the FMP. The DAS allocations in Framework 15 are expected to achieve an F of approximately 0.155 for the resource overall. Although this F is still well below the F target, it reduces the potential for more damaging effects on the scallop resource and for impacts on the physical environment that may be associated with higher DAS allocations.

The increase in the Area Access Program possession limit is intended to create an incentive for vessels to fish within the Area Access Program and is consistent with increasing catch rates in the areas. Due to stock abundance in the Areas, a higher level of F can occur in the Areas. This higher F allows for more trips and a higher trip limit, thereby creating more opportunity for vessels to fish in the Areas. The increased opportunity to fish in the Areas should create an incentive for vessels to utilize the Area Access Program where the scallop resource can be harvested at higher rates, thereby removing fishing pressure from other areas that may be more sensitive to fishing pressure.

Approved Measures

This action implements an annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional scallop vessels, respectively, for the 2003 fishing year. This represents an increase over the DAS allocations that would otherwise have become effective March 1, 2003, under Amendment 7 to the FMP (i.e., 45 full-time, 18 part-time, and 4 occasional). The 120, 48, and 10 DAS allocations have been in place each year since 1999, due to better conditions in the scallop resource than were anticipated in Amendment 7.

This final rule continues the Area Access Program that was implemented in the 2001 and 2002 fishing years. The Area Access Program allows controlled scallop fishing in the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. Vessels are prohibited from fishing for scallops in the Sea Scallop Access Areas unless they are fishing under the Area Access Program. The intent of the Area Access Program is to prevent the uncontrolled harvest of a sensitive portion of the scallop resource while increasing the social benefits by allowing all limited access vessels the opportunity to fish in the Areas without creating a derby fishery, thereby increasing economic benefits by promoting an orderly fishery.

The 2003 Area Access Program begins on March 1, 2003. The 2003 Area Access Program will end when the total allowable catch (TAC) allocated to the Area Access Program is caught, or when vessels have used up their allocated number of trips.

The Area Access Program includes a TAC of 17.06 million lb (7,740 mt) and 0.23 million lb (105 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively. These TACs include set-asides of 2 percent and 1 percent to defray the costs of observers and research, respectively. The TACs are expected to achieve an F of 0.32 in each of the two areas. Although this F exceeds the target F of 0.22 for the scallop fishery, it is not expected to jeopardize the rebuilding potential for the Mid-Atlantic stock. Rather, it is anticipated that the higher F for the Access Areas will allow greater levels of effort and catch within the Access Areas, thereby reducing effort and catch in other areas of the Mid-Atlantic. Therefore, overall F for sea scallops in the 2003 fishing year is expected to be 0.155. This anticipated impact on the distribution of fishing effort is expected to continue to provide for rebuilding of the Mid-Atlantic scallop stock and the scallop resource as a whole.

All limited access scallop vessels, including vessels that replace vessels that hold a scallop Confirmation of Permit History, are eligible to fish for the sea scallop TAC under the Area Access Program. Full-time and part-time scallop vessels are restricted to a total of three annual trips into the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. A trip into either of the Areas will count as one of the allowed trips. Vessels participating in the Area Access Program are allowed to take only one of the three allocated trips before May 1, and only two of the three allocated trips before June 1. This measure is meant to prevent a derby style fishery from occurring and may reduce the potential for bycatch by limiting trips in late spring when bycatch, particularly of summer flounder, could be problematic. Vessels in the occasional permit category are allowed to conduct only one trip into the Area of their choice. Participating scallop vessels are allowed to possess and land from the Areas up to 21,000 lb (9,525.4 kg) of scallop meats per trip.

After taking into account data on the number of eligible vessels participating, and on the total number of trips taken, the Regional Administrator will consider adjusting the sea scallop possession limit for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas any time during the season and, on or after October 1, 2003, will consider allocating one or more additional trips for full-time and part-time vessels. In order for additional trips to be allocated, a sufficient amount of the sea scallop TAC must remain to warrant such an adjustment or allocation. In order for a vessel to participate in any additional Area Access Program trips that may be allocated on or after October 1, 2003, that vessel must have started at least one Area Access Program trip prior to September 1, 2003. Vessels with

occasional permits will not be allocated any additional trips.

Any trip of 10 DAS or less by a vessel fishing in the Area Access Program will be counted as 10 DAS. Any trip of over 10 DAS will be counted as the actual DAS used (e.g., if a vessel used 12 DAS, 12 DAS would be deducted from its annual DAS allocation). The purpose of the minimum 10 DAS count is to reduce the number of DAS that are available for use by vessels to fish in other areas, thereby reducing fishing mortality on the scallop resource overall by potentially reducing the number of scallops caught under DAS.

Vessels are allowed to use dredges or trawls when fishing in the Area Access Program. Dredge gear is required to be outfitted with a twine top with a minimum mesh size of 10 inches (25.40 cm). The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) to 10 inches (25.40 cm) for the Area Access Program is to reduce bycatch of groundfish and other finfish. Research and experience from the Georges Bank and Southern New England Closed Area Sea Scallop Exemption Program demonstrate that the 10–inch (25.40–cm) mesh size may significantly reduce bycatch of certain species, especially flatfish species.

All scallop vessels fishing in the Area Access Program are required to have installed on board an operational vessel monitoring system (VMS) unit that meets the minimum performance criteria as specified at § 648.9(b). Vessels with occasional permits are the only limited access scallop vessels not currently required to have a VMS unit and would, therefore, be required to install an approved VMS unit in order to participate in the Area Access Program. Scallop vessels planning to fish in the Area Access Program are required to so declare by notifying the Regional Administrator through the VMS as described below.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Sea Scallop Access Areas prior to the 25th day of the month preceding the month in question through the VMS e-mail system (e.g., if the vessel plans to fish in these areas in July, it would need to notify the Regional Administrator by June 25). This notification requirement facilitates placement of observers and provides for an estimate of the number of potential Area Access Program participating vessels in order to make preliminary projections of potential TAC harvest rates.

Vessel operators are required to report the following information to the Regional Administrator prior to the 25th day of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, the area to be fished, and the anticipated number of trips to be taken in the area in question.

In addition, for the purpose of selecting vessels for observer deployment, a vessel's operator is required to provide notice to NMFS of the time, port of departure, and specific Access Area to be fished, at least 5 working days prior to the beginning of any trip on which it declares into the Area Access Program.

On the day the vessel leaves port to fish under the Area Access Program, the vessel owner or operator must declare into the Program through the VMS. Declaration into the fishery allows for more accurate and timely monitoring of the catch in the fishery.

The operator of each vessel participating in the Area Access Program is required to report specific information on a daily basis through the VMS. For each day of an Area Access Program trip, a vessel's operator is required to report the daily pounds (kg) of scallop meats kept, the area fished that day, and the Fishing Vessel Trip Report page numbers corresponding to the respective Sea Scallop Access Area trip. In addition, vessel operators on vessels carrying an observer are required to provide a separate report of the daily pounds (kg) of scallop meats kept on tows that were observed on that trip.

Vessels that have declared a trip into the Area Access Program are prohibited from possessing more than 50 U.S. bu (17.62 hl) shell-stock or 400 lb (181.4 kg) of meats of shell stock when outside the Access Areas. This limit for shell stock is considered part of the overall Area Access Program possession limit. A limit on the amount of sea scallops landed in the shell is necessary to monitor and enforce the overall meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock helps satisfy a market for large, whole scallops, without compromising the enforceability of the possession limit.

General category permitted vessels and limited access scallop vessels fishing outside a scallop DAS are allowed to fish in the Access Areas throughout the year, provided that no more than 100 lb (45.36 kg) of scallop meats are possessed on board the vessel when the vessel is in the Access Areas. These vessels are prohibited from possessing in-shell scallops while inside the Access Areas, except they are allowed to possess an equivalent of in-shell scallops that are necessary to provide 100 lb (45.36 kg) of scallop meats. Vessels not fishing under the Area Access Program are allowed to transit the Access Areas with more than these possession limits on board, provided their gear is properly stowed according to § 648.23(b). This measure is intended to allow an incidental catch of scallops for scallop vessels that fish for other species outside the Access Areas and to allow for more direct transiting to and from other fishing areas.

To improve the enforceability of the Area Access Program, all limited access scallop vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Area Access Program or not. Also, vessels are required to stow all dredge or trawl gear while transiting to and from the Access Areas pursuant to the applicable gear stowage requirements specified in § 648.23. A new dredge gear stowage requirement included in this rule improves safety on board vessels transiting to and from the Access Areas. Finally, to ensure effective enforcement of the Area Access Program measures, vessels participating in the Area Access Program must land their scallop catch at one location for each trip.

Vessels are required to carry observers when requested. The Council has recommended 10–percent observer coverage for the Hudson Canyon Access Area and 20–percent observer coverage for the Virginia Beach Access Area. Observers will obtain information on catch, catch rates, and bycatch and may obtain information on gear efficiency and selectivity and on other characteristics of the fishery. The vessel owner is responsible for paying for the cost of the observer, regardless of whether any scallops are caught on the trip. At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops, not to exceed a cumulative total of 155 mt or 2 mt for the Hudson Canyon and Virginia Beach Access Areas, respectively, for each trip on which an observer is taken, to help defray the cost of the observer. Additional scallops to fund observers may not exceed a value equal to 2 percent of the overall scallop TAC. One percent of the scallop TAC for both the Hudson Canyon and Virginia Beach Access Areas has been set aside to pay for observers. Similarly, a value equal to 1 percent of the overall TAC has been added on to the amount of observer TAC, also to help vessels pay for the cost of observers. The allocation of 1 percent set-aside and 1 percent additional observer TAC is consistent with the Area Access Program in 2001 and 2002, as well as the Georges Bank Closed Area Exemption Program. A TAC set-aside of 1 percent to fund research is also included as part of the Area Access Program. Amounts over the trip limits for sea scallop meats to be allocated for defraying research costs are limited, by area, up to 77 mt or 1 mt for the Hudson Canyon and Virginia Beach Access Areas, respectively. This research program for the Access Areas is modeled after the research program in the 2000 Georges Bank Sea Scallop Exemption Program. A Request for Proposals notice published in the **Federal Register** on January 17, 2003 (68 FR 2527), provides information on the submission process, eligibility criteria, proposal requirements and priorities, project evaluation, application deadlines and other requirements.

Finally, this final rule codifies a scallop dredge gear stowage provision that was established by the Regional Administrator in 2001. The new provision eliminates the need for vessel operators to disconnect towing wires and reel them fully onto the winch in order for the gear to be considered properly stowed. Reconnecting the wires at sea was determined to be dangerous, particularly in rough seas. The Regional Administrator has the authority to establish new gear stowage provisions through notification through a permit holder letter. Subsequent codification of the provision ensures proper implementation of the requirement.

A discussion of comments received in response to the proposed rule for Framework 15, and their responses, follows.

Comments and Responses

Two comments were received on the proposed rule for Framework 15. While one comment was generally in support of the action; the other opposed it. Many of the specific issues raised in each comment highlight issues that were analyzed in Framework 15. Many of the issues and analyses included in Framework 15 are summarized in the following responses and the commenters and other interested members of the public should refer to the Framework 15 document for a more detailed discussion of the analyses (See **ADDRESSES** for a copy of Framework 15).

Comment 1: The Fisheries Survival Fund (FSF) commented in support of the measures contained in Framework 15, and urged timely implementation in order to avoid "economically devastating" default DAS reductions. The FSF urged NMFS to give more emphasis in the final rule to the habitat and bycatch benefits of the 120–DAS allocation compared to the higher DAS. allocation of 140 DAS that was calculated to be more consistent with the FMP's target F.

Response: NMFS acknowledges FSF's comments in support of Framework 15. With respect to the benefits of implementing 120 full-time DAS versus other DAS alternatives, NMFS has relied on the comparisons of costs and benefits of the various alternatives included in Framework 15. The habitat and bycatch benefits cannot be precisely determined because it is not possible to predict fully the behavior of the fishing fleet in response to these regulations. The amount of habitat and bycatch impact depends not only on the total fleet activity, but also on the distribution of fishing activity relative to the distribution of vulnerable habitats and bycatch. While less fishing usually means fewer impacts, and distribution of habitat or bycatch is known at a broad scale, the response of the fleet to changes in resource distribution and different DAS allocations is not well known. If reductions in DAS allocations were to cause industry to concentrate effort in less remote but more sensitive areas with respect to habitat and bycatch, then the benefits of lower DAS would be reduced. The Council recommended, and NMFS concurs, that the 120 full-time DAS allocation (48 part-time and 10 occasional DAS), combined with the Area Access Program, as a 1–year action, complies best with the goals and objectives of the Scallop FMP. Given the uncertainties of the fleet response to this action, the action is intended to balance conservation of the scallop resource and the economic benefits derived from fishing while minimizing, to the extent practicable, the known adverse effects on the environment, including habitat and species caught as bycatch, in the scallop fishery.

Comment 2: The FSF urged NMFS to reconsider industry recommendations for measures to address the issue of trips into the Area Access Program that are terminated unexpectedly. They advocate more flexibility in determining if such "broken" trips should be charged fewer DAS than the 10 DAS that are automatically charged under the Area Access Program. The FSF believes this is required by National Standard 10 of the Magnuson-Stevens Act, concerning safety at sea.

Response: NMFS understands the problems that arise as a result of the automatic deduction of 10 DAS for Area Access trips, but the Council, working within the short-term context of this action, was unable to develop measures necessary to address broken trips that are clearly understood and can be effectively administered. There are alternatives being developed in Amendment 10 to address this concern. In the meantime, NMFS has determined that this concern can be addressed sufficiently through ad hoc determinations for each instance of a broken trip.

Comment 3: Oceana and the Conservation Law Foundation (Oceana/CLF) commented that Framework 15 allows overfishing in the open areas on Georges Bank and in the Mid-Atlantic. Oceana/CLF contends that the DAS alternative selected (120 full-time, 48 part-time, and 10 occasional DAS) does not constitute a sustainable management strategy for the sea scallop resource and is, therefore, inconsistent with the Magnuson-Stevens Act requirements to prevent overfishing. In addition, Oceana/CLF commented that overfishing in the Mid-Atlantic continues, despite actions under previous Frameworks that were intended to redirect effort into controlled access programs, but failed to do so. Oceana/CLF asserts that NMFS should adequately justify its support of the 120 DAS ("risk-prone") alternative and better elaborate on the long-term effects of the action in the environmental analyses.

Response: The FMP and overfishing definition do not consider the open and closed areas separately (with the exception of the special program for the Area Access Program). While projections indicate that the DAS allocations, if analyzed according to discrete areas, may result in overexploitation of scallops in some areas, Framework 15 is based on analyzing fishing mortality on the resource as a whole. Under this analysis, the fishery overall would not exceed the F target of 0.22, due in part to continued large concentrations of scallops that cannot be fished in the Georges Bank and Southern New England groundfish closed areas.

The analyses in Framework 15 indicate that the 120–DAS alternative complies with the Magnuson-Stevens Act and achieves the goals and objectives of the FMP. Framework 15 clearly demonstrates that overfishing will not occur on the resource as a whole and that F will likely be less than Amendment 7 targets. The current condition of the scallop resource is rebuilt for both the Georges Bank and Mid-Atlantic stocks. To fish at the DAS level scheduled in Amendment 7 would cause the fishing level to fall

unnecessarily well below OY and cause substantial adverse economic and social effects on the scallop industry under rebuilt resource conditions.

The F in the Mid-Atlantic continues to be high, despite efforts in recent years to reduce the effective F through the Area Access Program. However, the FMP does not prescribe different management measures for each stock, consistent with National Standard 3. To enhance the incentive to fish in the Access Areas, Framework 15 allows for an increase in the F for the Area Access Program, which results in an increase in the possession limit. It is expected that this enhanced incentive will reduce fishing pressure in the Mid-Atlantic region outside of the Access Areas.

Comment 4: Oceana/CLF commented that the 100 DAS alternative has greater environmental, biological, and economic benefits than the 120–DAS alternative. Oceana/CLF commented that it is unclear what rationale NMFS is using to justify its proposed action of 120 DAS, when the analyses in Framework 15 clearly support the 100–DAS allocation alternative, touting the following environmental, biological and economic benefits: (1) Reduced unsustainable fishing mortality in the open fishing areas; (2) higher long-term net benefit ($38 - $42 million); (3) likely increase in future landings, rather than the sharp decline predicted under the proposed action; (4) reduced area affected by scallop dredging; and (5) reduced operational costs, and increased producer surplus and net benefits.

Response: Oceana/CLF has focused on the long-term effects of the DAS to be implemented through Framework 15. Framework 15 is intended as a short-term action while the comprehensive Amendment 10 is developed and implemented. In light of the short-term context of Framework 15, NMFS disagrees that Framework 15 clearly supports the 100 DAS alternative, since short-term losses associated with the alternative are not clearly outweighed by the benefits of the reduced DAS. The analysis demonstrates that the 120–DAS alternative, combined with the Area Access Program, has noticeably higher economic and social benefits with only marginal loss of benefits to the scallop resource overall and the environment in the short-term. NMFS believes that the short-term effects of the action are more relevant, because Framework 15 does not contemplate continuation of these measures alone for more than 1 year, despite the analyses that project the effects of the action over as many as 10 years.

Comment 5: Oceana/CLF commented that Framework 15 does not contain measures adequate to minimize adverse fishing impacts on known gravel habitats and sensitive EFH in open areas on Georges Bank. Oceana/CLF asserts that the 120–DAS alternative in Framework 15 "dramatically increases" the amount of EFH impacted by scallop dredging by 60 to 80 percent. Oceana/CLF also commented that the increase in EFH affected by scallop dredging under the 120–DAS alternative is exacerbated by a lack of management measures specifically designed to protect EFH. Oceana/CLF contends that prior scallop amendments modified the framework process "...so that habitat conservation measures may be approved by the Council in a more timely manner than the plan amendment process." Oceana/CLF commented that NMFS and the Council cannot rely on future amendments in the Scallop and Northeast Multispecies FMPs to implement appropriate measures to minimize the impacts on EFH. Finally, Oceana/CLF urged NMFS to take immediate action under Framework 15 to minimize fishing impacts on known gravel habitats and sensitive juvenile cod EFH and other groundfish EFH in the open areas on Georges Bank.

Response: NMFS disagrees that Framework 15 dramatically increases the amount of EFH impacted by scallop dredging. To draw that conclusion, Oceana/CLF compares the action in Framework 15 to the default measures that would otherwise become effective March 1, 2003. These measures include 45 full-time, 18 part-time, and 4 occasional DAS allocations that are well below any level of fishing effort that has occurred in the scallop fishery under recent management and recent historical scallop fishing activity. This conclusion ignores the practicability standard for analyzing the appropriateness of habitat mitigating measures. The 120–DAS alternative maintains the DAS allocations that have been in place since 1999. Therefore, the Framework 15 DAS allocation does not actually increase impacts on EFH at all, when compared to the status quo of current fishing activities.

Frameworks are required to comply with the Magnuson-Stevens Act and minimize the adverse effects of fishing on EFH to the extent practicable. In light of the drastic DAS reductions that would occur under Amendment 7, Framework 15 implements a more appropriate DAS allocation and takes practicable steps to minimize the impacts of the scallop fishery on EFH in order to comply with the Magnuson-Stevens Act and to meet the goals and objectives of the FMP. It is not correct that framework actions must necessarily include a full reconsideration of EFH, or of any of the other 21 frameworkable measures included in the FMP.

Framework 15 was developed during the latter stages of development of Amendment 10 because it was clear that Amendment 10 would not be implemented by the start of the 2003 fishing year and, therefore, Framework 15 is considered to be an action of limited scope, which is intended to be a stop-gap measure until Amendment 10 is implemented. The Council is required to adjust management measures on an annual basis in order to make measures consistent with the condition of the resource and the status of the fishery. The Council and NMFS are maintaining extensive closures of areas of high scallop abundance and potential prime scallop fishing areas on Georges Bank and in Southern New England waters, which provide substantial protection of habitat. The Council is carrying out a full reconsideration of measures to address EFH through the more extensive public process associated with Amendment 10. NMFS notes that the measures have been highly controversial and complex and have been the subject of lengthy debate.

Taking into account the short-term context of Framework 15, the OY calculations, the areas closed to scallop fishing, and other measures already in place that provide extensive EFH protection, Framework 15 minimizes the impacts on EFH to the extent practicable.

Comment 6: Oceana/CLF commented that Framework 15 does not contain measures adequate to accurately report or minimize bycatch of overfished groundfish, skates and other marine life. Specifically, Oceana/CLF commented that high levels of bycatch of fish and other marine life continue in the scallop fishery--most of it unaccounted for due to a lack of observer coverage and unreliable vessel trip report data. Oceana/CLF urged NMFS to improve its compliance with the Endangered Species Act (ESA) with regard to the scallop fishery and to complete a Biological Opinion (BO) for Framework 15 prior to its approval and implementation. Oceana/CLF concluded by requesting that NMFS not approve Framework 15 until it contains adequate measures to: (1) protect sensitive juvenile cod and other sensitive groundfish EFH; (2) increase levels of observer coverage throughout the entire scallop fishery; and (3) stop all illegal takes of threatened and endangered sea turtles and minimize bycatch of other overfished and at-risk species (e.g., barndoor skate, monkfish, and other skates).

Response: National Standard 9 requires that FMPs minimize, to the extent practicable, bycatch and bycatch mortality. Measures currently in place in the scallop fishery, and the measures included in Framework 15, take practicable steps to reduce bycatch in the sea scallop fishery. Gear restrictions, i.e. increasing the minimum twine top mesh size to 10 inches (25.40 cm), in the Area Access Program are intended to reduce bycatch in scallop dredge gear. NMFS is attempting to improve observer coverage in this and other fisheries, i.e. increased percentage coverage in access areas (10–20 percent) although a large increase in observer coverage is limited by Agency resources. Limiting the number of trips by month in the Area Access Program is also designed to reduce bycatch. In addition, maintaining groundfish closed areas will reduce bycatch of such species as yellowtail flounder and skates in the scallop fishery overall. Oceana/CLF specifically noted that much bycatch is unaccounted for due to lack of observer coverage. The lack of more specific information about bycatch and how to avoid it complicates efforts to develop specific management measures to reduce it. In light of the limited scope and context of Framework 15, NMFS has determined that Framework 15 complies with the Magnuson-Stevens Act concerning bycatch requirements. The specific concerns raised by Oceana/CLF have been addressed in Framework 15.

In response to reports of sea turtle takes in the sea scallop fishery, NMFS reinitiated consultation under section 7 of the ESA on December 21, 2001. NMFS completed a BO for the scallop fishery as a whole, including the measures included in Framework 15, on [insert date BO completed]. The BO concluded that the continued implementation of the scallop fishery and the proposed activity may adversely affect but is not likely to jeopardize the continued existence of loggerhead, Kemp's ridley, green, and leatherback sea turtles. In the BO, NMFS provides an incidental take statement allowing the annual take of 88 loggerhead (up to 25 lethal), 7 Kemp's ridley (2 lethal), and 1 green (lethal or non-lethal) sea turtles in the sea scallop dredge fishery. In addition, the incidental take statement allows the lethal or non-lethal observed annual take of one loggerhead, Kemp's ridley, green, or leatherback sea turtles in the scallop trawl fishery.

Changes From the Proposed Rule

One change to the regulatory text in the proposed rule has been made. In § 648.58, paragraph (c)(6) is revised to more clearly address the intent of the prohibition to prevent vessels participating in the Area Access Program from loading up on shell-stock and then shucking the scallops inside the VMS demarcation line.

Classification

The Administrator, Northeast Region, NMFS, determined that Framework 15 is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

For the reasons stated below, the Assistant Administrator for NOAA (AA) waives the 30–day delay in effectiveness for the Framework 15 measures under 5 U.S.C. 553(d)(1) because this rule relieves a restriction.

This action implements DAS allocations of 120, 48, and 10 DAS for full-time, part-time, and occasional scallop vessels, respectively, and continues the Hudson Canyon and Mid-Atlantic Area Access Program with an increase in the possession limit for vessels participating in the Area Access Program. Scallop vessels are precluded from: exceeding the DAS that are allocated to the vessel based on its permit category; fishing in the Hudson Canyon or Virginia Beach Access Areas unless they are participating in the Area Access Program; fishing for more than three trips in the Area Access Program; possessing more than the sea scallop possession limit in the Area Access Program; and violating any provisions of the regulations of the Northeastern United States that are not modified by this action.

The annual DAS allocations implemented in this final rule are less restrictive than the DAS allocations that would otherwise go into effect on March 1, 2003. The DAS scheduled to take effect on March 1, 2003, would have considerable negative economic and social impacts because limited access scallop vessels would only be able to fish 45 full-time, 18 part-time, and 4 occasional DAS, as compared to 120 full-time, 48 part-time and 10 occasional DAS under the preferred alternative. Further, the DAS allocation under Framework 15 would be the same as the allocation last year and therefore would be no more restrictive. In addition, the Area Access Program is a continuation of the program that has been in place for the last 2 years. The only change to the program is an increase in the possession limit. The Council prepared an environmental assessment (EA) for this framework and the Assistant Administrator for Fisheries, NMFS, concluded that there will be no significant impact on the human environment as a result of this rule. This action will result in a minor increase in fishing mortality on sea scallops and will allow continued economic viability of the fishery. The Area Access Program will provide an incentive for vessels to direct fishing effort away from more sensitive open areas in the Mid-Atlantic. A copy of the EA is available from the Council (see **ADDRESSES**).

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act, NMFS prepared an FRFA for Framework 15, which consists of the IRFA, comments and responses contained in this final rule, and a summary of the analyses prepared in support of this final rule. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The reasons why action by the agency is being considered and the objectives of the action are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain reporting and recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 648.

Public Comments

Two sets of comments were received on the proposed rule and are responded to in this rule. One comment addressed indirectly the results of the IRFA and the second set of comments related to issues other than economic impacts. In this comment, the FSF urged timely implementation of the Framework 15 measures in order to avoid "economically devastating" default DAS reductions. NMFS agrees with the FSF that the DAS reductions included in Amendment 7 to the FMP and scheduled to take effect on March 1, 2003, under the no action alternative will have substantially negative economic impacts for vessels participating in the sea scallop fishery and would not be necessary, given the

condition of the scallop resource. This "no action" alternative would be inconsistent with National Standard 1 because it would fail to achieve OY in the scallop fishery. It may also cause safety at sea concerns, as vessels may push crews and trip lengths to hazardous levels.

Number of Small Entities

This action and its alternatives could affect any commercial vessel holding an active Federal permit for sea scallops. Data from the 2001 Northeast permit database show that 310 commercial vessels were permitted with limited access scallop permits, and 2,293 commercial vessels were permitted with general category (open access) scallop permits. Information from the 2002 fishery remains incomplete. The majority, if not all, of the federally permitted vessels readily fall within the Small Business Administration's (SBA) definition of small business and the Regulatory Flexibility Act's definition of "small entity." The management measures included in this final rule propose to increase DAS allocations in the same proportion for each category of the limited access scallop permit. The resulting increase in profits, costs and net revenues are not expected to be disproportional for small versus large entities.

Minimizing Economic Impacts on Small Entities

Framework 15 contains six alternatives, including no action and status quo alternatives. Each alternative, with the exception of the no action alternative, consists of DAS allocations for full-time, part-time, and occasional scallop vessels and a TAC and possession limit derived from a target F for the Access Areas. The alternatives are described in this discussion as the full-time DAS allocation and the target F rate in the Area Access Program. The no action alternative would implement 45 full-time, 18 part-time, and 4 occasional DAS and would open the Hudson Canyon and Virginia Beach Access Areas to general scallop fishery management. The status quo alternative includes 120 full-time DAS and an Area Access Program F of 0.2.

This final rule will implement the 120 full-time DAS with an Area Access Program F = 0.32, which minimizes economic impacts on small entities. The impacts of the proposed alternatives on revenues, costs, and profits of an average vessel were analyzed. The increase in the days-at-sea allocations to 100, 120 or 140 full-time DAS allocations from the 45 full-time DAS allocation scheduled for the 2003 fishing year under Amendment 7 and the Area Access Program will have positive economic impacts on the vessels. The revenues per full-time vessel in 2003 are expected to increase by 56 percent for the preferred action (120 DAS, F=0.22), and by 38 percent (100 DAS, F=0.2) to 58 percent (140 DAS, F=0.32) for non-preferred alternatives compared to the no action (45 full-time DAS, no Area Access Program). The no action alternative would represent a 15–percent decline in revenues from actual revenues in 2002. The profits are expected to more than double under all alternatives including the preferred action relative to the no action alternative. Although the analysis in this section is conducted for an average full-time vessel in the scallop fishery, the results are expected to be positive for all full-time, part-time and occasional vessels as well since their DAS allocations will also be adjusted upwards and they will be able to participate in the Area Access Program.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic sea scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and are also available at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

A formal section 7 consultation under the ESA was initiated for the scallop fishery, including the measures contained in Framework 15. In a BO dated [insert date of BO], the AA determined that fishing activities conducted in the scallop fishery, including activities under Framework 15 and their implementing regulations, are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.23, paragraph (b)(2) is revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) * * *

(2) *Scallop dredges.* (i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is covered so that it is rendered unuseable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

* * * * *

3. In § 648.53, the table in paragraph (b) is revised to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) * * *

DAS Category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008
Full–time	120	120	120	120	120	34	35	38	36	60
Part–time	48	48	48	48	48	14	14	15	17	24

DAS Category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008
Occasional	10	10	10	10	10	3	3	3	4	5

* * * * *

4. In § 648.57, the introductory text of paragraphs (a) and (b) are revised to read as follows:

§ 648.57 Closed and regulated areas.

(a) *Hudson Canyon Sea Scallop Access Area.* Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

(b) *Virginia Beach Sea Scallop Access Area.* Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Virginia Beach Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

5. In § 648.58, paragraphs (c)(1), (c)(4), (c)(6), (e)(2), (e)(3)(ii), (e)(4)(ii), and (f) are revised to read as follows:

§ 648.58 Sea Scallop Area Access Program.

* * * * *

(c) * * *

(1) *Season*—From March 1, 2003, through February 29, 2004, vessels participating in the Sea Scallop Area Access Program may fish for or possess sea scallop in or from the respective Sea Scallop Access Areas specified in § 648.57, unless access to these areas is terminated as specified in paragraph (f) of this section. Should the 2002 fishing year season be closed early (i.e., prior to February 28, 2003), as described in this paragraph (c)(1), the Sea Scallop Area Access Program season for fishing year 2003 will begin on April 1, 2003.

* * * * *

(4) *Number of trips*—(i) *Full and part-time vessels.* Full and part-time vessels are restricted to a total of three trips into the Sea Scallop Access Areas, unless otherwise authorized by the Regional Administrator as specified in paragraph (e)(2) of this section. A trip to either Area counts as one trip. Full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than one of their three allowed Area Access Program trips before May 1, 2003, and no more than two of their three allowed Area Access Program trips before June 1, 2003.

(ii) *Occasional scallop vessels.* Occasional vessels may fish only one trip under the Sea Scallop Area Access Program. The one allowed trip may be conducted in either the Hudson Canyon or Virginia Beach Sea Scallop Access Area specified in § 648.57 at any time during the season, as specified in paragraph (c)(1) of this section.

* * * * *

(6) *Possession and landing limits*—Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2003, a vessel owner or operator may fish for, possess, and land up to 21,000 lb (9,525.4 kg) of scallop meats per trip. No vessel participating in the Sea Scallop Area Access Program may possess shoreward of the VMS demarcation line or land, more than 50 bu (17.62 hl) of in-shell scallops.

* * * * *

(e) * * *

(2) *Adjustment process for number of trips for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas.* On or after October 1, 2003, if the scallop catch in the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas is less than the scallop TACs specified for fishing year 2003 in paragraph (f) of this section, the Regional Administrator may allocate one or more additional trips for the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas for full and part-time limited access sea scallop vessels that declared into and began a trip under the Sea Scallop Area Access Program prior to September 1, 2003. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Vessels with occasional permits would not be allocated an additional trip.

(3) * * *

(ii) *Observer set-aside limits by area.* The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of an observer shall not exceed 2 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 2 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 155 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 2 mt.

* * * * *

(4) * * *

(ii) *Research set-aside limits and number of trips by area.* The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of sea scallop research shall not exceed 1 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 1 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 77 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 1 mt.

* * * * *

(f) *Termination of the Sea Scallop Area Access Program*—(1) *Hudson Canyon Sea Scallop Access Area.* The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 7,585 mt of sea scallops (the TAC less the observer and research set-asides) will be caught

by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Virginia Beach Sea Scallop Access Area.* The Virginia Beach Sea Scallop Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 103 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

* * * * *

[FR Doc. 03–4782 Filed 2–25–03; 2:55 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 40
Friday, February 28, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA81

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to increase certain fees by approximately 4.1 percent; *i.e.*, contract and noncontract hourly rates, certain unit rates, and the administrative tonnage fee increases. These fees apply only to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.1 percent January 2003 Federal pay increase. GIPSA anticipates the increase in the user fees will generate approximately $685,000 in additional revenue.

DATES: March 31, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by E-mail to: *comments.gipsa@usda.gov*. Please state that your comments refer to RIN No. 0580–AA81. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: *David.M.Orr@usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In Fiscal Year (FY) 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. In FY 2001, GIPSA's operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886 and a negative reserve balance of $2,572,080. Using the most recent data available, GIPSA's FY 2002 operating costs were $23,812,292 with revenue of $23,322,247 that resulted in a negative margin of $490,045. The current reserve negative balance of $3,318,041 is well below the desired 3-month reserve of approximately $6 million. GIPSA recognizes the fact that retained earnings are well below the desired level. This proposed action will not have a major impact on improving GIPSA's financial position. GIPSA has been reviewing the fees and will propose changes that will address this deficit in the near future.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The anticipated general and locality salary increase that averages 4.1 percent for GIPSA employees, effective January 2003, will increase GIPSA's costs by approximately $685,000.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload of 78 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.1 percent increase will have to be recovered through increases in fees.

The proposed fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 32 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities that request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 4.1 percent increase in the cost of official inspection and weighing services. This proposed increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these small businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the

Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on March 21, 2002 (67 FR 13084), and became effective on April 22, 2002.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. In FY 2001, GIPSA's operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886 and a negative reserve balance of $2,572,080. Using the most recent data available, GIPSA's FY 2002 operating costs were $23,812,292 with revenue of $23,322,247 that resulted in a negative margin of $490,045. The current reserve negative balance of $3,318,041 is well below the desired 3-month reserve of approximately $6 million. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The salary increase that GIPSA anticipates becoming effective in January 2003 averages 4.1 percent for GIPSA employees. Overall, program costs are estimated to increase by approximately $685,000. GIPSA recognizes that retained earnings are well below the desired level and that this proposed action will not have a major impact on improving its financial position. As a result, GIPSA has been reviewing its overall fee structure. Changes that will address this structure will be considered in the near future and will be proposed as appropriate. GIPSA remains committed to providing the most cost-effective services possible to the grain industry while maintaining program quality and integrity.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload of 78 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.1 percent increase will have to be recovered through increases in fees.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime	Holidays
1-year contract	$28.60	$31.20	$40.40	$48.60
6-month contract	31.60	33.40	42.80	56.00
3-month contract	36.00	37.20	46.60	58.00
Noncontract	41.80	44.00	53.40	65.40

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The anticipated 4.1 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 4.1 percent to the administrative tonnage fee. Accordingly, GIPSA is proposing an approximate 4.1 percent increase to certain hourly rates, certain unit rates, and the administrative tonnage fee in 7 CFR 800.71, Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory; and Table 3—Miscellaneous Services.

This proposed rule provides a 30-day period for interested persons to comment. This comment period is deemed appropriate because the anticipated Federal pay increase is scheduled to become effective on January 1, 2003, and grain export volume and associated requests for official services for such grain are projected to further decrease in the coming months due to seasonal and other adjustments. Accordingly, given the current level of the operating reserve, it would be necessary to implement any fee increase that may result from this rulemaking as soon as possible.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

For the reasons set out in the preamble, 7 CFR Part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

[(1) Inspection and Weighing Services Hourly Rates (per service representative)]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
1-year contract	$29.80	$32.60	$42.10	$50.60
6-month contract	33.00	34.80	44.60	58.40
3-month contract	37.00	38.80	48.60	60.40
Noncontract	43.60	45.80	55.60	68.00

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Corn oil, protein, and starch (one or any combination)	1.50
(iv) Soybean protein and oil (one or both)	1.50
(v) Wheat protein (per test)	1.50
(vi) Sunflower oil (per test)	1.50
(vii) Vomitoxin (qualitative)	12.50
(viii) Vomitoxin (quantitative)	18.50
(ix) Waxy corn (per test)	1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(xi) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).	
(i) All outbound carriers (per-metric-ton) [4]	$0.1199
(a) 1–1,000,000	0.1094
(b) 1,000,001–1,500,000	0.0591
(c) 1,500,001–2,000,000	0.0437
(d) 2,000,001–5,000,000	0.0239
(e) 5,000,001–7,000,000	0.0109
(f) 7,000,001 +	

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1,2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	$19.80
(b) Railcar (per carrier)	29.50
(c) Barge (per carrier)	187.50
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.95
(b) Railcar (per carrier)	19.25
(c) Barge (per carrier)	110.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	11.80
(b) Warehouseman inspection (per sample)	20.00
(c) Factor only (per factor—maximum 2 factors)	5.30
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	13.00
(f) Class X Weighing (per hour per service representative)	57.40
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	29.80
(b) Aflatoxin (per test—TLC method)	113.00
(c) Corn oil, protein, and starch (one or any combination)	9.00
(d) Soybean protein and oil (one or both)	9.00
(e) Wheat protein (per test)	9.00
(f) Sunflower oil (per test)	9.00
(g) Vomitoxin (qualitative)	31.00
(h) Vomitoxin (quantitative)	38.50

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1,2]—Continued

(i) Waxy corn (per test)	10.30
(j) Canola (per test—00 dip test)	10.30
(k) Pesticide Residue Testing [3].	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	114.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service.[4]	
(i) Board Appeals and Appeals (grade and factor)	
(a) Factor only (per factor—max 2 factors)	82.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	43.00
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	30.00
(b) Aflatoxin (TLC)	120.00
(c) Corn oil, protein, and starch (one or any combination)	17.20
(d) Soybean protein and oil (one or both)	17.20
(e) Wheat protein (per test)	17.20
(f) Sunflower oil (per test)	17.20
(g) Vomitoxin (per test—qualitative)	41.00
(h) Vomitoxin (per test—quantitative)	46.00
(i) Vomitoxin (per test—HPLC Board Appeal)	140.00
(j) Pesticide Residue Testing [3].	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	114.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(iii) Review of weighing (per hour per service representative)	82.60
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (Minimum $255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (Minimum $153.00 per ship)	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.65 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative)[2]	$57.40
(2) Certification of diverter-type mechanical samplers (per hour per service representative)[2]	57.40
(3) Special weighing services (per hour per service representative)[2]	
(i) Scale testing and certification	57.40
(ii) Evaluation of weighing and material handling systems	57.40
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	57.40
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	57.40 110.00
(v) Mass standards calibration and reverification	57.40
(vi) Special projects	57.40
(4) Foreign travel (per day per service representative)	510.00
(5) Online customized data EGIS service	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.65
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $57.40 per hour.

[2] Regular business hours—Monday through Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: February 24, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–4688 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA82

Fees for Rice Inspection Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing an approximate 4.1 percent increase in fees for all hourly rates and certain unit rates for inspection services performed under the Agricultural Marketing Act (AMA) of 1946 in the rice inspection program. These increases are needed to cover increased operational costs resulting from the January 2003 Federal pay increase.

DATES: Written comments must be submitted on or before March 31, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by electronic mail or Internet to: *comments.gipsa@usda.gov*. All comments should make reference to the date and page number of this issue of the **Federal Register** and will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: *David.M.Orr@.usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act

This proposed rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, Donna Reifschneider, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee programs to determine if the fees are adequate and continues to seek cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. An anticipated January 2003 general and locality salary increase that averages 4.1 percent for all GIPSA employees will increase program costs in the rice inspection program.

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In Fiscal Year (FY) 2000, operating costs in the rice program were $4,034,964 with revenue of $4,837,116 that resulted in a positive margin of $802,152 and a positive reserve of $406,359. In FY 2001, operating costs in the rice program were $3,842,326 with revenue of $4,102,960 that resulted in a positive margin of $260,634 and a positive reserve of $611,654. Using the most recent data available, GIPSA's FY 2002 operating costs were $3,382,574 with revenue of $3,385,121 that resulted in a positive margin of $2,547. The current positive reserve balance of $311,596 is well below the desired 3-month reserve of approximately $1 million.

GIPSA has reviewed the financial position of our rice inspection program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload. Even though the financial status of the rice inspection program has improved, GIPSA has concluded that it cannot absorb the increased costs caused by the anticipated 4.1 percent salary increase with the small positive reserve balance. This fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2003 work volume of 3.4 million metric tons.

This fee increase applies primarily to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in Arkansas, Louisiana, and Texas. Many of these customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees are being increased, the proposed increase will not be excessive (4.1 percent) and should not significantly affect those entities. Those entities are under no obligation to use GIPSA's service and, therefore, any decision on their part to discontinue the use of service should not prevent them from marketing their products.

There will be no additional reporting or record keeping requirements imposed by this proposed action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the information collection and record keeping requirements in Part 868 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed action is not intended to have a retroactive effect. This proposed action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The current rice fees were published in the **Federal Register** on April 4, 2001 (66 FR 17775), and became effective on May 4, 2001. Under the provisions of the AMA (7 U.S.C. 1621, (*et seq.*)), rice inspection services are provided upon request and GIPSA must collect a fee from the customer to cover the cost of providing such services. Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation and benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In FY 2000, operating costs in

the rice program were $4,034,964 with revenue of $4,837,116 that resulted in a positive margin of $802,152 and a positive reserve of $406,359. In FY 2001, operating costs in the rice program were $3,842,326 with revenue of $4,102,960 that resulted in a positive margin of $260,634 and a positive reserve of $611,654. Using the most recent data available, GIPSA's FY 2002 operating costs were $3,382,574 with revenue of $3,385,121 that resulted in a positive margin of $2,547. The current positive reserve balance of $311,596 is well below the desired 3-month reserve of approximately $1 million.

GIPSA has reviewed the financial position of its rice inspection program based on the anticipated salary and benefit costs, along with the projected FY 2003 workload. Even though the financial status of the rice inspection program has improved, GIPSA has concluded that with the small positive reserve balance it cannot absorb the increased costs caused by the 4.1 percent salary increase. This fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2003 work volume of 3.4 million metric tons.

In 7 CFR 868.91, Table 1—Hourly Rates/Unit Rate Per CWT and Table 2—Unit Rates, currently the regular workday contract and noncontract fees are $44.60 and $54.30, respectively, while the nonregular workday contract and noncontract fees are $61.80 and $75.00, respectively. The unit rate per hundredweight for export port services is currently $0.054 per hundredweight. The rice current unit rates are:

Service	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.80	$30.00	$21.50
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	27.00	27.00	
(b) All other factors (per factor)	12.90	12.90	12.90
Total oil and free fatty acid		42.60	42.60
Interpretive line samples:			
(a) Milling degree (per set)			91.00
(b) Parboiled light (per sample)			22.60
Extra copies of certificates (per copy)	3.00	3.00	3.00

This proposed rule provides a 30-day period for interested persons to comment. This comment period is deemed appropriate because the anticipated Federal pay increase is scheduled to become effective on January 1, 2003, rice inspection volume and associated requests for official services for such rice inspection requests are projected to further decrease in the coming months due to seasonal and other adjustments. Accordingly, given the current level of the operating reserve, it would be necessary to implement any fee increase that may result from this rulemaking as soon as possible.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR Part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087 as amended (7 U.S.C. 1621, *et seq.*)

2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

[Fees for Federal Rice Inspection Services]

Service [1]	Regular workday (Monday–Saturday)	Nonregular workday (Sunday–Holiday)
Contract (per hour per Service representative)	$46.40	$64.40
Noncontract (per hour per Service representative)	56.60	78.00
Export Port Services (per hundredweight) [2]	.056	.056

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$35.50	$30.50	$22.00
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	27.50	27.50	
(b) All other factors (per factor)	13.20	13.20	13.20
Total oil and free fatty acid		43.00	43.00

TABLE 2.—UNIT RATES—Continued

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
Interpretive line samples: [2]			
(a) Milling degree (per set)			94.00
(b) Parboiled light (per sample)			23.00
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Ambassador Drive, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW., STOP 3630, Washington, DC 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in § 868.90, Table 1.

Dated: February 24, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–4689 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Rulemaking on Controlling the Disposition of Solid Materials: Scoping Process for Environmental Issues and Notice of Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments on scope of proposed rulemaking and notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is conducting an enhanced participatory rulemaking on alternatives for controlling the disposition of solid materials that originate in restricted or impacted areas of NRC-licensed facilities, and that have no, or very small amounts of, radioactivity resulting from licensed operations. The NRC is seeking stakeholder participation and involvement in identifying alternatives and their environmental impacts that should be considered as part of the rulemaking. Considerable information collection effort has been conducted in this area and the Commission is building on existing information to focus on potential solutions. To assist in this process, the NRC is holding a workshop to solicit new input with a focus on the feasibility of alternatives identified in this notice that would limit where solid material can go. The NRC has not made a decision on the scope or details of a regulation and is continuing to develop a solid technical basis for the rulemaking.

DATES: Submit comments by June 30, 2003. Comments received after this date will be considered if it is practicable to do so, but the Commission is able to assure consideration only for comments received on or before this date.

In addition to providing opportunity for written (and electronic) comments, a workshop to solicit comments on alternatives, with a focus on the feasibility of alternatives identified in this notice that would limit where solid materials can go, will be held on May 21–22, 2003 from 8:30 a.m.–5 p.m. in the NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov* (then select "Information/Comment Requests" from left-hand column). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web page, contact Ms. Carol Gallagher, (301) 415–5905 (*cog@nrc.gov*).

Copies of any comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Frank Cardile, telephone: (301) 415–6185; e-mail: *fpc@nrc.gov*, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001. Specific comments on the public meeting process should be directed to Chip Cameron; e-mail *fxc@nrc.gov*, telephone: (301) 415–1642; Office of the General Counsel, USNRC, Washington, DC 20555–0001. Specific comments on the environmental scoping process discussed in Section VI should be directed to Phyllis Sobel; e-mail *pas@nrc.gov*, telephone: (301) 415–6714; Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is conducting a rulemaking to evaluate alternatives for controlling the disposition of solid materials with no, or very small amounts of, radioactivity resulting from licensed operations. This **Federal Register** Notice (FRN) provides information on this effort as follows:

(1) *Sections II.1–II–7:* These sections provide background information about why we are conducting this effort and what are some alternatives for controlling the disposition of solid materials.

(2) *Sections III.1–III.2:* These sections discuss the considerable information collection efforts we have conducted to date in this area and what we have learned about the alternatives.

(3) *Sections IV and V:* These sections discuss our current effort to build on information previously collected in this area. The NRC has not made a decision on any alternatives for controlling the disposition of solid materials and invites stakeholders to present new information on alternatives. In particular, Section IV asks specific questions about the feasibility of alternatives that would limit where solid material can go, and Section V announces a workshop scheduled for May 21–22, 2003.

(4) *Section VI:* This section announces a re-opening of the scoping process and requests input on environmental impacts of alternatives.

To further assist stakeholders, the staff is also placing on its website an

information packet which discusses ways in which stakeholders can review the alternatives and issues involved, provide comments to the NRC, and link to other documents (Go to *http://www.nrc.gov/materials.html* and select "Controlling the Disposition of Solid Materials.").

II. Background

The information below in Sections II.1–II.7 has been discussed in various NRC documents and public meetings.[1] It is provided here in summary form as background information on the issues involved and on alternatives for controlling the disposition of solid materials.

1. Solid Materials Being Considered

Just as is the case for many industrial operations (or in a home), there are "solid materials" that are no longer needed or useful at facilities licensed by NRC. This can occur, for example, during normal facility operations when: (a) Metal equipment and tools become surplus, obsolete or worn; (b) glass, plastic, paper, or other trash-like materials are no longer useful; or (c) concrete from a building being renovated or soil being excavated from a site is no longer needed. This can also occur at the end of facility operations when a licensee seeks to terminate its NRC license. At such times, NRC's licensees seek disposition alternatives for solid material that are protective of public health and safety and are economical.

NRC licensees fall into broad categories that include: (a) Academic—university laboratories and small reactors that use radioactivity for research and teaching purposes; (b) medical—hospitals and clinics that use radioactivity for diagnostic and therapeutic medical purposes; (c) manufacturing—facilities and labs that manufacture products that use radioactivity, *e.g.*, smoke detectors, certain types of gauges; and (d) power production—reactor facilities and fuel cycle facilities that handle radioactivity as part of the generation of electricity.

2. The Nature of These Solid Materials

This effort is focused on controlling the disposition of solid materials that are present in areas in NRC-licensed facilities where radioactive materials are used or stored. These areas of the facilities are generally referred to as either "restricted[2]" or "impacted[3]" areas. Despite their location in these restricted or impacted areas, much of this solid material has no, or very small amounts of, radioactivity resulting from licensed operations either because the material was exposed to radioactivity in the facility to only a limited extent or because it has been cleaned. These solid materials can include furniture and ventilation ducts in buildings; metal equipment and pipes; wood, paper, and glass; laboratory materials (gloves, beakers, etc); routine trash; site fences; concrete; soil; or other similar materials.

Other solid materials in these restricted or impacted areas can contain more appreciable levels of radioactivity. However, these are separated from those materials with no, or very small amounts of, radioactivity at the licensed facility and are required to be disposed of at licensed low-level waste (LLW) disposal sites under NRC's existing regulations in 10 CFR part 61. Solid materials containing appreciable levels of radioactivity are not the subject of this NRC rulemaking.

Solid materials not located in restricted or impacted areas, and considered to be free of radioactivity resulting from licensed operations, are not currently required to be part of a disposition radiological survey program. Such materials can include furniture, glass bottles, paper, equipment, or trash in administrative buildings or office areas. This rulemaking does not propose to alter this approach, and therefore, these materials are also not the subject of this NRC effort.

The remainder of this FRN discusses those solid materials from restricted or impacted areas of an NRC-licensed facility that have no, or very small amounts of, radioactivity resulting from licensed operations. For ease of reference, these are referred to as "solid materials."

3. The NRC's Current Approach for Controlling the Disposition of Solid Materials

Currently, the NRC has requirements in its regulations in 10 CFR part 20 that require that solid materials that have been in restricted or impacted areas be surveyed before leaving the site. Solid materials can currently be released for any unrestricted use if the survey does not detect radioactivity from licensed operations on the material or, if it does detect radioactivity, the amount is below a level that is considered to be protective of public health and safety and the environment.

However, 10 CFR part 20 does not currently specify the level below which the material can be released. Decisions on disposition of solid materials are currently made using levels contained in a set of existing guidelines that are based primarily on the ability of survey meters to measure the radioactivity level on, or in, the solid material.[4]

4. Why NRC Is Examining This "Current Approach"

A report by the National Academies indicates that NRC's current approach for controlling the disposition of solid materials protects public health and does not need immediate revamping.

However, the National Academies report also indicates that the current approach is incomplete and inconsistent and that NRC's approach should be based more directly on a risk basis. As a result, the National Academies study states that NRC should conduct a process to evaluate alternatives to provide clear risk-informed direction on controlling the disposition of solid materials.

5. Why NRC Is Conducting a Rulemaking to Potentially Revise its Current Approach

The NRC agrees with the findings in the National Academies report regarding the need to consider modifying its current approach to provide specific direction on controlling the disposition of solid materials.

The generally accepted process that Federal Agencies use to examine or replace an approach that needs improvement is to conduct a rulemaking to amend the Code of Federal Regulations (CFR). A rulemaking is an open process that evaluates the advantages and disadvantages of a range of alternatives and that invites public input on the alternatives early on and throughout the process.

6. NRC's Guiding Policy in Conducting a Rulemaking To Develop a Regulation

NRC's overall policy, as discussed in NUREG–1614 entitled "U.S. Nuclear Regulatory Commission Strategic Plan, Fiscal Year 2000–2005," is that the nation's use of radioactive material be conducted in a manner that protects public health and safety and the environment. In carrying out this policy, the NRC is guided by broad "performance goals" that include:

(1) Maintain safety, protection of the environment, and the common defense and security;

(2) Increase public confidence in our regulatory process;

(3) Make NRC's activities and decisions effective, efficient, and realistic;

(4) Reduce unnecessary regulatory burden on stakeholders.

As discussed in NUREG–1614, protection of public health and safety is paramount among the NRC goals and it is likewise our principal goal in controlling the disposition of solid materials. We also recognize that, in considering alternatives in this area, our decision-making process needs to provide stakeholders with clear and accurate information about, and a meaningful role in, the process. In addition, any requirements we promulgate in this area must not impose unnecessary regulatory burdens beyond what is necessary and sufficient for providing reasonable assurance that public health and safety will be protected.

7. Alternatives for Controlling the Disposition of Solid Materials

Paths by which solid materials with no, or very small amounts of, radioactivity could leave a licensed facility fall into general disposition categories of "release" or "disposal." A set of preliminary alternatives for controlling the disposition of solid materials along these paths was first described in an NRC Issues Paper published for public comment in the **Federal Register** (FR) on June 30, 1999 (64 FR 35090); these alternatives are summarized here:

A. Release: In this disposition path, solid materials could be released into general commerce if a radiation survey verifies that public health and safety is protected and if the materials have some benefit in either a recycled or re-used product. Alternatives for control include:

(1) *Unrestricted use:* Unrestricted use means that solid materials could be released for any use in general commerce after a radiation survey verifies that an allowable level has been met.[5] Two unrestricted use alternatives are:

Alternative 1: Continue NRC's current approach (see Section II.3) which allows unrestricted use based on existing guidance on survey capabilities;

Alternative 2: Amend the NRC's regulations to include a dose based criterion for unrestricted use.

(2) *Conditional use (Alternative 3):* In this alternative, solid material could be released but its further use would be restricted to only certain authorized uses with limited public exposures such as use in controlled or low exposure environments. Examples might include industrial uses such as metals in bridges, sewer lines, or industrial components in a factory, or concrete in road fill.[6]

B. Disposal: In this disposition path, solid materials would be prohibited from general commerce and isolated from the public. Alternatives[7] for control include:

(1) *Landfill disposal (Alternative 4):* In this alternative, solid material would be prohibited from general commerce by requiring it to be placed in an EPA-regulated landfill;

(2) *NRC/Agreement State (AS)-licensed low-level waste (LLW) disposal site (Alternative 5):* In this alternative, solid material would be prohibited from general commerce by requiring it to be placed in an NRC/AS-licensed LLW disposal site and regulated under the NRC's regulations in 10 CFR Part 61.

III. Summary of Efforts to Date and What NRC Has Learned About Alternatives

1. Efforts to Date To Examine Alternatives

The NRC's Issues Paper, published in the FR for public comment in June 1999, indicated that NRC was examining its alternatives for controlling the disposition of solid materials. To provide further opportunity for public input, NRC held a series of four public meetings during the fall of 1999.

The NRC received over 800 public comment letters from stakeholders representing the metals, metal scrap, and concrete industries; citizens groups; licensees and licensee organizations; landfill operators; Federal and State agencies; and Tribal governments. Comments were also received from stakeholders at the four public meetings. Comments were sharply diverse in the views expressed, and there was support and rationale provided by commenters for a range of alternatives for controlling the disposition of solid materials.

On March 23, 2000, the NRC staff provided the Commission with a paper (SECY–00–0070) on the diversity of views expressed in public comments received on the Issues Paper. Attachment 2 of SECY–00–0070 provides a summary of views and comments received; summaries of the comments can also be viewed in NUREG/CR–6682, "Summary and Categorization of Public Comments on the Control of Solid Materials" (September 2000). SECY–00–0070 also provided the status of the staff's technical analyses being developed as support for making decisions in this area and noted the related actions of international and national organizations and agencies that could be factors in NRC's decision-making.

To solicit additional input, the Commission held a public meeting on May 9, 2000, at which stakeholder groups presented their views and discussed alternatives for controlling the disposition of solid materials.

On August 18, 2000, the Commission decided to defer a final decision on whether to proceed with rulemaking and directed the staff to request that the National Academies conduct a study of alternatives for controlling the disposition of solid materials. The Commission also directed the staff to continue to develop technical information and to stay informed of international and U.S. agency activities in this area.

The National Academies study of alternatives for controlling the disposition of solid materials was initiated in August 2000. As part of the study, the National Academies held three information gathering meetings in January, March, and June of 2001, at which it obtained input from various stakeholder groups similar to those that presented information to the NRC earlier. Based on these meetings, and on its deliberations on this topic, the National Academies submitted a report to the NRC in March 2002. The report contains nine recommendations on the decision-making process, potential approaches for controlling the disposition of solid materials, and additional technical information needed. In particular, the National Academies report indicates that NRC's current approach for controlling the disposition of solid materials protects public health and does not need immediate revamping. However, the National Academies report also states that NRC's current approach is

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[1] Many of the documents, as well as summaries of public meetings and other background information, discussed in this paper are available via the NRC's web page at *http://nrc.gov/materials.html*.

[2] A restricted area is defined in the NRC's regulations in 10 CFR 20.1003.

[3] An impacted area is defined in the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) which was jointly prepared by the U.S. Environmental Protection Agency, the U.S. Department of Energy, the U.S. Department of Defense, and the NRC. An impacted area is defined in MARSSIM as an area with a possibility of containing residual radioactivity in excess of natural background or fallout levels.

[4] These guidelines are discussed in the June 1999 Issues Paper and in an All-Agreement States letter (STP–00–070), dated August 22, 2000.

[5] The term "clearance" is also used by various organizations and in various documents to mean removal from regulatory control of material that meets certain release criteria.

[6] Other terms have been used for this alternative, including "conditional clearance" and "restricted use." However, the term "Conditional use" is deemed more appropriate and is used throughout the remainder of this document.

[7] Other terms have been used for this alternative, including "prohibition" and "no release." The alternatives listed here are considered to be clearer in that they provide more information as to the destination of the material and hence are used throughout the remainder of this document.

incomplete and inconsistent and concludes that NRC should therefore conduct a process to evaluate a broad range of alternatives to provide clear risk-informed direction on controlling the disposition of solid materials. The report notes that broad stakeholder involvement and participation in the NRC's decision-making process on the alternatives is critical as the process moves forward. The report also notes that an individual dose standard of 10 μSv/yr (1 mrem/yr) provides a reasonable starting point for the process of considering alternatives for a dose-based standard. A summary of the National Academies report can be found in an NRC staff paper, SECY–02–0133, and a link to the National Academies report, itself, is contained in the Background section of the NRC's web page.

As noted above, the NRC has been conducting technical studies to provide additional analyses to better understand and evaluate the alternatives for controlling the disposition of solid materials. These studies are examining potential impacts of alternatives on human health and the environment; costs to licensees, other industries, and the public resulting from the alternatives; and the ability of radiation detectors to verify the radioactivity level on any solid material so that a licensee can verify compliance with an alternative. The results of some of these studies have been issued for public comment and are available on NRC's web page; additional results will be provided for public comment when they are available.

In addition to NRC efforts in this area, other scientific organizations are engaged in similar processes. Recognized radiation protection standards organizations like the National Council on Radiation Protection and Measurements (NCRP), International Commission on Radiological Protection (ICRP), and American National Standards Institute (ANSI) have issued findings about possible criteria for controlling the disposition of solid materials. The U.S. Department of Energy (DOE) is preparing a Programmatic Environmental Impact Statement on alternatives for disposition of DOE scrap metals. The U.S. Environmental Protection Agency (EPA) sets radiation protection standards in the general environment although they do not currently have a program on controlling the disposition of solid materials from licensed facilities. International agencies (such as the International Atomic Energy Agency and the European Commission) as well as other individual nations, are in the process of establishing standards for controlling the disposition of solid materials. These efforts are significant for the NRC because inconsistency in standards between the U.S. and other nations can result in confusion regarding international trade, in particular if materials released under other nations' regulations arrive as imports in the U.S.

2. Summary of Information and Comments Received to Date on Alternatives

As discussed in Section III.1, NRC has obtained information from public comments, from efforts by scientific organizations, and from various technical studies, including that done by the National Academies. The following sections summarize the information and views obtained about potential alternatives for controlling the disposition of solid materials, as well as the process for examining our approach. This material reflects the NRC performance goals noted in Section III.6, above.

A. Alternative 1—No Action: Retain Current Approach of Allowing Unrestricted Use Using Measurement-based Guidelines

All rulemakings include consideration of a no-action alternative that would continue NRC's current approach. As discussed in Section II.3, above, Alternative 1 permits solid materials that are in restricted or impacted areas to be released for unrestricted use if a radiation survey does not detect radioactivity from licensed operations on the material or, if it does detect radioactivity, the amount is below a level that is considered to be protective of public health and safety. NRC's regulations do not specify the level below which the material can be released; decisions are currently made using levels contained in a set of existing guidelines based primarily on the ability of survey meters to measure the radioactivity level on, or in, the solid material.

The advantages and disadvantages of Alternative 1 were discussed in SECY–02–0133 based on the public comments received on the June 1999 Issues Paper and on the National Academies report. As discussed in SECY–02–0133, advantages of Alternative 1 are that NRC's current approach: (a) Is sufficiently protective of public health and does not need immediate revamping; (b) is workable and familiar to licensees; and (c) requires no staff resources to amend regulations at this time which would allow NRC to focus on other higher-priority safety issues, whereas decommissionings on a large scale are not expected for some time. Disadvantages of Alternative 1 include: (a) Lack of an overall risk basis or consistent approach; (b) use of outdated measurement bases; (c) international consistency issues; (d) issues of regulatory finality caused by lack of regulation as the basis for the current approach; (e) licensees problems using the current approach when dealing with materials day-to-day, and (f) expenditure of NRC staff resources on case-specific reviews under the current approach, which are anticipated to possibly increase due to expanded use of radiation monitors for detecting solid materials with small amounts of radioactivity outside NRC-licensed facilities.

B. Alternative 2: Dose-Based Regulation on Unrestricted Use

As noted in Section II.7, Alternative 2 would allow solid materials to be released for use in general commerce if a radiation survey verifies that the level of radioactivity is protective of public health and safety and if there is some benefit in the materials' recycle or re-use. The June 1999 Issues Paper discussed a range of potential options for values for an allowable dose level, including 0, 1, 10, and 100 μSv/yr (0, 0.1, 1.0, and 10 mrem/yr). The National Academies recommended in their study that a value of 10 μSv/yr (1 mrem/yr) was a good starting point for discussion for a dose-based release standard.

(1) *Summary of information from scientific organizations on the unrestricted use alternative:*

A number of scientific organizations have provided information indicating that 10 μSv/yr (1 mrem/yr) presents a negligible level of risk to the public and is therefore protective of public health and safety. The National Academies report indicates that 10 μSv/yr (1 mrem/yr) is within the acceptable range of values used in U.S. health-based standards, is a small fraction of natural background, and is accepted by recognized national and international organizations. The NCRP and the ICRP both indicate that a 10 μSv/yr (1 mrem/yr) level poses a negligible risk. The Health Physics Society notes that 10 μSv/yr (1 mrem/yr) is well below doses received in routine activities without discernable health effect. EPA radioactive effluent standards in similar areas have safety goals that are comparable to 10 μSv/yr (1 mrem/yr). ANSI has concluded that a value of 10 μSv/yr (1 mrem/yr) is an appropriate criterion for release of solid materials and has published its findings in a standard entitled "Surface and Volume Radioactivity Standards for Clearance," N13.12–1999, August 1999; it is noted that the National Technology Transfer and Advancement Act of 1995 requires Federal agencies to consider this type of technical standard in rulemakings in pertinent areas.

(2) *Summary of information received in public comments:*

Public comments generally fell into categories of issues related to (a) protection of public health and safety and (b) regulatory burden:

(a) Issues related to public health and safety:

Certain commenters agreed with use of the unrestricted use alternative for the reasons noted in the scientific studies. However, other commenters were concerned about an unrestricted use alternative, noting that risks associated with these solid materials are avoidable and involuntary; long term and cumulative impacts cannot be accurately modeled; there is a potential for exposures to multiple products; any dose increases cancer risk; even a small risk when spread over the U.S. population is too high; there is no justification for adding more dose to what we receive from background; releases would not be accurately measured and tracked; licensees and the government cannot be trusted to assure that any releases would be carefully monitored; and a contractor who participated in NRC's technical support analyses had a conflict of interest.

(b) Issues related to regulatory burden:

This alternative engendered strong comment on both sides of this issue. The metals and concrete industries opposed unrestricted use because it would result in a large negative economic impact on steel/concrete industries because consumers would not buy products made with recycled solid material; the amount of steel available from licensed facilities is small, and therefore the economic benefit of recycling is small; and generators of the solid material should handle their own problem and not pass it along to other stakeholders. Other commenters were in favor of unrestricted use because the alternative of disposal of all solid material with no, or very small amounts of, radioactivity in a licensed LLW disposal site is costly to licensees without an accompanying health and safety benefit; and would cause a severe economic impact for small licensees, *e.g.*, medical facilities, universities.

(3) *Summary:* Scientific studies, including the National Academies report, indicate that unrestricted use at a level in the range of 10 μSv/yr (1 mrem/yr) presents negligible risk and is therefore protective of public health and safety, however there was also significant stakeholder comment related to health impact and economic burden issues which could make this alternative potentially difficult to implement.

C. Alternative 3—Conditional Use

Conditional use is an alternative in which solid material could be released but its further use would be restricted to only certain authorized uses.

(1) *Summary of information received in public comments:*

Public comments received generally fell into categories of issues related to (a) protection of public health and safety, (b) regulatory burden, and (c) concern over feasibility of conditional use.

(a) Issues related to public health and safety:

Some commenters noted that a benefit of this alternative is that it could limit radiation dose by permitting the solid material to be released for only certain authorized uses (*e.g.*, industrial products, metal in sewer lines or bridges, concrete in construction fill) that have limited potential for public exposure.

(b) Issues related to regulatory burden:

A benefit cited with the conditional use alternative is that solid materials that have no, or very small amounts of, radioactivity could be used under certain authorized conditions rather than using the more costly licensed LLW disposal alternative.

(c) Concerns about feasibility of conditional use:

Some commenters expressed concern about the feasibility or viability of conditional use, noting: (a) It may not be viable economically to set up a recycling process dedicated only to the limited quantities of solid material from licensed facilities; (b) a regulatory system of restrictions to limit where solid material is used would be hard to establish and enforce; and (c) it is not clear that restrictions would work to limit where the material goes, *i.e.*, solid material could wind up being released for unrestricted use. Commenters also noted that, even if a system of restrictions was set up, the authorized use would have some limited lifetime and the solid material might ultimately end up in an unrestricted use, and therefore that it makes more sense to focus on establishing criteria for unrestricted use. Some commenters indicated that the only viable conditional use would be to retain the solid material within the NRC licensing arena or the DOE complex.

(2) *Summary:* Restricting the further use or disposition of solid materials from licensed facilities to only certain authorized uses can have merit in public health considerations in that exposure scenarios are minimized. However, based on the comments received in the NRC public comment process, it is not evident that conditional use is a technically viable way to make sure the material ends up in its authorized use or that it is an economically feasible approach that will work.

D. Alternatives 4 and 5—Disposal of Solid Materials in Either EPA-Regulated Landfills or NRC/AS-Licensed LLW Disposal Sites

In this alternative, solid material would be prohibited from general commerce. The solid material would be required to be disposed of at an EPA-regulated landfill (Alternative 4) or under NRC's existing regulations in 10 CFR Part 61 in an NRC/AS-licensed LLW disposal site (Alternative 5) (see Section II.7 above).

EPA regulates municipal and industrial solid waste under the Resource Conservation and Recovery Act (RCRA). Under RCRA Subtitle C, the hazardous waste program establishes a system for controlling hazardous waste from the time it is generated until its disposal. Under RCRA Subtitle D, the solid waste program encourages states to develop comprehensive plans for managing non-hazardous industrial solid waste and municipal solid waste and also sets criteria for municipal solid waste landfills and other solid waste disposal facilities. RCRA does not address radioactive material under NRC jurisdiction.

(1) *Summary of information on this alternative from scientific organizations:*

The National Academies report compared disposing of solid material in landfills and in licensed LLW disposal sites, and found that disposal of solid materials in EPA regulated Subtitle C or Subtitle D landfills would be substantially less costly than disposal in sites licensed by the NRC or Agreement States under 10 CFR Part 61.

(2) *Summary of information received in public comments:*

Public comments generally fell into the categories of issues related to (a) protection of public health and safety, (b) regulatory burden, and (c) feasibility of landfill disposal.

(a) Issues related to public health and safety:

A rationale for this approach is that it would prevent solid material from

licensed facilities from entering general commerce thus limiting the potential for radiation dose to the general public. Opponents of this approach cite the National Academies study and the NCRP which both indicate that 10 μSv/yr (1 mrem/yr) levels are trivial for health reasons and, therefore, a requirement for a general prohibition would have minimal positive health impact.

(b) Issues related to regulatory burden:

A principal comment regarding Alternative 5 is that requiring all material, even that which has no, or very small amounts of, radioactivity but which has some economic value, to be sent to NRC/AS-licensed LLW disposal sites would be costly to licensees, in particular smaller entities like hospitals, without an accompanying health and safety benefit. However, a regulation limiting disposal of these materials to an EPA-regulated landfill would have much smaller costs than disposal at a licensed LLW disposal site and place much smaller economic burden on licensees for controlling the disposition of solid materials.

(c) Issues related to concerns over feasibility of landfill disposal:

Some commenters expressed concern about the viability of landfill disposal, noting that a regulatory system of restrictions to limit solid materials would have to consider NRC, EPA, and State responsibilities. Also, it is not clear how restrictions would work to limit where material goes, and it is not clear that landfill operators would accept solid material released from NRC-licensed facilities.

(3) *Summary*—An alternative in which all material from a licensed facility is prohibited from release and instead disposed of either at an EPA-regulated landfill or an NRC/AS-licensed LLW disposal site would keep additional radioactivity out of general commerce, although would be likely more costly than unrestricted or conditional use. If all solid material is required to be disposed of at NRC/AS-licensed LLW sites, the economic burden imposed might be large, especially on small licensees, and the health benefit obtained would likely be small. The economic burden of disposing of this solid material in an EPA-regulated landfill should not be as large. However, some of the same concerns noted in Section III.2.C, above, would also exist for the landfill alternative, in particular regarding whether there would be assurance that the material would not be diverted from, or taken from, the landfill, and also whether landfills would accept all this material. EPA, in cooperation with the NRC, is considering a rulemaking that could permit disposal of certain NRC regulated material in a RCRA permitted facility subject to, if necessary, an appropriate NRC approval process (*e.g.*, a site-specific or general license, or exemption). EPA is working with NRC on an EPA Advance Notice of Proposed Rulemaking to solicit stakeholder comment on disposing of such materials in a RCRA regulated facility.

IV. Current Status of Efforts and Request for Additional Information

As discussed in Section III.1, there has been extensive and wide-ranging discussion of alternatives for controlling the disposition of solid materials as part of NRC and other organizations' efforts. Substantial and substantive information has been developed and input received on potential impacts of the various alternatives on public health and regulatory burden. NRC has received over 800 comment letters and held several public information meetings on controlling the disposition of solid materials. In addition, the National Academies conducted a study on this subject during which they held several information gathering meetings open to the public, and several scientific organizations are conducting studies and/or developing standards in this area.

Based on the National Academies report and on other factors affecting decision-making, the NRC staff developed a set of options for a regulatory process for examining alternatives for controlling the disposition of solid materials and presented these regulatory options to the Commission in SECY–02–0133 on July 15, 2002. Based on this information, the Commission, on October 25, 2002, directed the NRC staff to proceed with an enhanced participatory rulemaking to develop specific requirements for controlling the disposition of solid materials at licensed facilities. Subsequently the staff prepared a plan for conducting this rulemaking which the Commission approved on January 27, 2003.

In directions to the NRC staff, the Commission noted that the rulemaking should give fair consideration to all alternatives in developing a proposed rule so that a broad range of alternatives is identified and can be weighed by the Commission. In particular, the Commission indicated that the NRC staff should seek stakeholder participation and involvement in considering alternative approaches. The Commission noted that, in approaching stakeholders on this issue, the staff should reiterate the Commission's continuing support for the release of solid materials when there are no significant health consequences. This is consistent with the NRC's agency mandate to ensure that the nation's use of radioactive materials is carried out in a manner that protects the public health and safety and the environment.

In its direction to the staff, the Commission noted the considerable information on controlling the disposition of solid materials previously collected (see Section III.1) and indicated that, rather than duplicating these efforts, the staff should build on this existing information (including the concerns and comments expressed in public comment) and utilize it as a starting point to focus on potential solutions. In particular, the Commission directed the staff to explore increased use of web-based methods for interacting with stakeholders for issues that might not warrant additional discussion at a workshop, and to focus additional workshops on areas where substantial new input is needed.

With regard to Alternatives 1, 2, and 5 (no action, unrestricted use, and disposal in NRC-regulated LLW disposal sites), the efforts described in Section III.1 have provided substantial information. However, NRC is interested in obtaining any additional information, beyond that expressed earlier, that should be considered for each of the types of materials noted in Section II.1. This includes areas where:

(a) There has been modification of the views that have been expressed in earlier public comments on any of the alternatives;

(b) additional scientific information is available with regard to any of the alternatives;

(c) additional economic information is available with regard to any of the alternatives;

(d) there are new or modified alternatives beyond those discussed above.

In certain other areas, in particular with regard to Alternative 3 (conditional use) and Alternative 4 (EPA regulated landfill disposal), earlier information collection efforts did not obtain sufficient information to clearly indicate the viability or economic feasibility of these alternatives. Although these alternatives were noted by the National Academies report as potential methods for controlling the disposition of solid materials, earlier public comments raised concerns about their viability. Thus, the Commission specifically directed the staff to explore and document the feasibility of these alternatives and, in particular, noted that the staff should have discussions with stakeholders with regard to whether the alternatives: (1) Are effective; (2) are reasonably possible to implement; and (3) would increase public confidence in the process. To further consider these issues, input on the following questions is requested for each of the types of materials noted in Section II.1:

With regard to conditional use:

(1) The intent of the conditional use alternative is that solid material would be restricted to only certain authorized uses and kept separate from general consumer uses. Consideration needs to be given as to whether this alternative can: (a) Provide assurance that solid material goes to its authorized use and is not diverted to unrestricted use and (b) be established and implemented in a manner that is both practical and economical. Specific questions are:

(a) Can a scrap/manufacturing/ distribution process that is not licensed by NRC provide assurance that the material is limited to its authorized use?

(b) Would it be necessary for NRC to maintain regulatory control by licensing all or some portion of the process (*e.g.*, only the scrap process or the scrap and manufacturing process)? Could involvement by another Federal Agency in the scrap/manufacturing/ distribution process provide assurance that the material remains with its authorized use? What are the feasibility, cost, and increased assurance aspects of NRC or other Federal agency involvement?

(c) What are the feasibility, economic, and assurance aspects of a smelter facility being dedicated to such material, either full-time or as a portion of its process capability?

(d) What end use products could be manufactured under such a conditional use, *e.g.*, bridge girders, sewer pipes, industrial coils? Would there be sufficient need for these products so that a process to manufacture them would be viable given the magnitude of material from NRC/AS licensed facilities and/or from other facilities having similar material?

(e) What typical lifetimes might the conditional (authorized) uses have, and what would likely happen to the solid material after the lifetime was over? Could the material continue to be part of a conditional use, or would it become available for unrestricted use?

(2) What criterion of acceptability should be used before allowing release of solid material to a conditional use (*e.g.*, should dose-based or concentration-based criterion be used and what should it be?)

With regard to landfill disposal:

(1) The intent of the landfill disposal alternative is that the solid material be isolated from the public, and not be diverted to unrestricted use, either in transit or after disposal. Specific questions are:

(a) Would placing the material in a RCRA Subtitle C site accomplish the goal of isolating the material from the public? If so, what controls are in place in a RCRA Subtitle C site to provide such assurance?

(b) Would placing the material in a RCRA Subtitle D landfill accomplish the goal of isolating the material from the public? If so, what controls are in place in a RCRA Subtitle D site to provide such assurance?

(c) What criteria of acceptability should be used before allowing disposal of solid material at a landfill such that the public and landfill workers are protected? In particular, should a different regulatory scheme be used depending on the radioactivity level of the material potentially to be placed in the landfill facility, *i.e.* lesser requirements if the potential dose is lower?

(d) Is it necessary for NRC to maintain regulatory control to achieve the desired isolation of NRC regulated material from the public? If so, is there a need for NRC to license a RCRA landfill either under a specific or general license, or is an exemption with specific conditions adequate to cover material that has come from NRC-licensed facilities?

What cost considerations need to be taken into account and what possible additional assurance of isolation might be realized under these regulatory approaches?

(2) If EPA and/or NRC rulemaking is developed in this area, would RCRA Subtitle C or Subtitle D landfill operators accept material which had been surveyed and released from a NRC-licensed facility?

For either conditional use or landfill disposal

(1) As a backup, should a "cap" be placed limiting the dose that would occur if the restrictions for the conditional use became no longer effective, or if the material being disposed of at a landfill was diverted or removed from the landfill, and the material wound up in an unrestricted use? If so, what should the cap value be?

V. Request for Comment and Announcement of Workshop

To provide opportunity to discuss the issues noted in Section IV, we invite written and electronic comment. To supplement this request for comment, we also plan to hold a workshop on May 21–22, 2003, at NRC headquarters to discuss the alternatives. The workshop agenda will afford an opportunity to discuss the National Environmental Policy Act (NEPA) process (see Section VI of this FRN) and the alternatives being considered, with specific emphasis on building on NRC's earlier information collection efforts (see Section III.1). Because these earlier efforts did not obtain sufficient information to clearly indicate the viability of conditional use or landfill disposal, the workshop will focus on the feasibility of these alternatives as discussed in Section IV above, in particular with regard to the questions raised in Section IV. The first half of the first day of the workshop will focus on background, the NEPA process, and the alternatives being considered for controlling the disposition of solid materials. The second half of the first day and the majority of the second day of the workshop will focus on conditional use and landfill disposal. A detailed agenda will be made available in advance of the workshop. In doing so, we will be receptive to a range of options or scenarios for conditional use or landfill disposal to determine the feasibility of these options that (1) are effective, (2) are reasonably possible to implement, and (3) would increase public confidence in the process.

VI. Scoping Process for Environmental Impact Statement

An environmental scoping process was initiated in June 1999 as part of issuance of the Issues Paper. The rationale for combining the two efforts was that issues raised in a scoping process and in the Issues Paper were similar and therefore it was an efficient use of stakeholder's time and energies to combine the two. As noted earlier, in August 2000 the Commission decided to defer a rulemaking in this area pending a study by the National Academies of alternatives for controlling the disposition of solid materials. Following completion of that study in March 2002, the Commission decided, in October 2002, to conduct an enhanced participatory rulemaking which considers alternatives for controlling the disposition of solid materials. Hence, this FRN provides an opportunity to announce this rulemaking effort and to re-open the earlier scoping process.

In a rulemaking, the Commission must consider the effect of its actions on the environment in accordance with the National Environmental Policy Act (NEPA). Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in

NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decision-making processes.

NRC regulations implementing NEPA are contained in 10 CFR Part 51. To fulfill its responsibilities under NEPA, the NRC would prepare a generic environmental impact statement (EIS) by analyzing alternative courses of action and the impacts and costs associated with those alternatives. A generic EIS would analyze alternatives for establishing requirements for controlling the disposition of solid materials. All reasonable alternatives associated with the proposed action would be analyzed to determine their impacts and costs.

The Commission's regulations in 10 CFR 51.26 contain requirements for conducting a scoping process prior to preparation of an EIS, including preparation of a notice of intent in the **Federal Register** regarding the EIS and indication that the scoping process may include holding a scoping meeting. Requirements are contained in 10 CFR 51.27 regarding the content of the notice of intent, in particular that it should describe the proposed action and describe possible alternatives to the extent that information is available. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

Participants in this scoping process on the environmental impacts of controlling the disposition of solid materials from licensed facilities may provide written or electronic comments and/or attend the workshop indicated under the **DATES** heading of this notice and provide oral comments on the proposed action and possible alternatives. Written (and electronic) comments on the proposed action and alternatives from the public, as well as from meeting participants, can be submitted as indicated under the **DATES** and **ADDRESSES** heading of this notice.

According to 10 CFR 51.29, the scoping process is to address the following topics:

(1) *Define the proposed action.* The NRC is considering whether to develop a regulation for controlling the disposition of solid materials that have no, or very small amounts of, radioactivity resulting from licensed operations.

(2) *Determine EIS scope and significant issues to be analyzed in depth.* The NRC is considering analyzing the impacts and costs associated with rule alternatives for controlling the disposition of solid materials at licensed facilities. Information will be developed on (a) types, and contamination levels, of solid materials present at licensed facilities potentially available for release; (b) pathways of exposure to, and environmental impacts of, solid materials released from licensed facilities; and (c) regulatory alternatives and methods of approach for analysis of the alternatives. Information is specifically requested regarding inventory of solid materials at licensed facilities, including quantities and radioactivity levels, and how control processes at licensed facilities function so that materials from different areas of a facility are kept separate to assure that those materials with no, or very small amounts of, radioactivity do not become mixed with those with higher levels. Information is also requested on scenarios associated with the alternatives, and in particular with regard to viable conditional use and landfill disposal alternatives.

(3) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any issues. Analysis of the scope of environmental impacts for this effort would be principally intended to provide input to decision-making for establishing acceptable regulatory alternatives for controlling the disposition of solid materials, and would not involve analysis of site-specific issues which may arise in the licensing process at specific facilities. The extent to which the environmental analysis may be applicable to a site-specific NEPA process would be described in a draft EIS and draft rulemaking.

(4) *Identify any environmental assessments or environmental impact statements which are being or which will be prepared that are related but are not part of the scope of the EIS under consideration.*

None are being prepared by the NRC. The DOE is preparing a programmatic EIS on disposition of scrap metals.

(5) *Identify other environmental review or consultation requirements related to the proposed action.* The NRC is obtaining contractor assistance in preparation of the generic EIS and cost information for use in the environmental analyses. The NRC has also placed contracts to obtain specific technical assistance regarding material inventories, exposure pathways, collective doses, and the capability of radiation survey instruments to practically and accurately detect radioactive contamination at levels near background.

(6) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decision making schedule.* A draft generic EIS is scheduled to be issued for public comment in September 2004.

(7) *Identify any cooperating agencies.* No cooperating agencies are involved at this time.

(8) *Describe the means by which an EIS would be prepared.* As part of its rulemaking effort, NRC will prepare a draft EIS in accordance with its regulations in 10 CFR Part 51. Specifically, in accordance with 10 CFR Part 51.71, a draft EIS will be prepared using the considerations of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical and other benefits of the proposed action.

In accordance with 10 CFR 51.29, at the conclusion of the scoping process, a concise summary of the determinations and conclusions reached, including the significant issues identified, will be prepared and a copy sent to each participant in the scoping process.

Dated at Rockville, Maryland, this 21st day of February 2003.

For the Nuclear Regulatory Commission.

Martin Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4752 Filed 2–27–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to provide the flightcrew with procedures and limitations for operating the airplane with out-of-tolerance angle of attack (AOA) transducers. This proposal also would require, among other actions, measuring the vane angles and voltage of the AOA transducers; reworking the AOA transducer assemblies; repetitive measurements of the resistance of both AOA transducers; and follow-on and corrective actions, as applicable. This action is necessary to prevent flat spots on the potentiometers of the AOA transducers due to wear, which may cause a delay in the commands for stall warning, stick shaker, and stick pusher operation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–157–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–157–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. TCCA advises that, during testing of an airplane, flat spots were discovered on the potentiometers of the angle of attack (AOA) transducers due to wear. Since the AOA transducers work in conjunction with the stall protection system (SPS), these flat spots, if not corrected, may cause a delay in the commands for stall warning, stick shaker, and stick pusher operation.

Explanation of Relevant Service Information

The manufacturer has issued the applicable Canadair Challenger temporary revisions to the Airplane Flight Manual (AFM) listed in Table 2 of this AD. The temporary revisions describe procedures for revising the Limitations, Emergency Procedures, Normal Procedures, and Abnormal Procedures Sections of the FAA-approved Canadair Challenger AFM, as applicable, to provide the flightcrew with procedures and limitations for operating the airplane with out-of-tolerance AOA transducers.

The manufacturer also has issued the applicable Bombardier service bulletins listed in Table 3 of this AD, which describe the following procedures:

- Measuring the vane angles and voltage of the AOA transducers; follow-on and corrective actions, as applicable; and recording and reporting incorporation of the service bulletin to Bombardier. The follow-on and corrective actions include replacing the stall protection computer (SPC) with a new SPC; recording and repeating actions; disconnecting the breakout box; measuring the baseline resistance of the AOA transducer between certain pins; and measuring the baseline resistance of the other AOA transducer for temporary deferral of reworking the AOA transducer assemblies; as applicable. Certain follow-on actions eliminate the need for the AFM revisions described previously.
- Reworking the AOA transducer assemblies and measuring the baseline resistance of the applicable AOA transducers, which eliminate the need for the AFM revisions described previously;
- Performing repetitive measurements of the resistance of both AOA transducers, and doing applicable corrective actions. The corrective actions include replacement of the AOA transducer with new AOA transducer; visual inspection of the vane assembly; rework, if necessary; a test; and measurement of baseline resistance of the applicable AOA transducer.

In addition, the manufacturer has issued Bombardier Alert Service

Bulletin A601–0519, dated July 30, 1999, including Service Bulletin Incorporation Sheet (for Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and –3R) series airplanes); Bombardier Alert Service Bulletin A600–0693, dated July 30, 1999, including Service Bulletin Incorporation Sheet (for Model CL–600–1A11 (CL–600) series airplanes); and Bombardier Alert Service Bulletin A604–11–009, dated July 30, 1999, including Service Bulletin Incorporation Sheet (for Model CL–600–2B16 (CL–604) series airplanes); as applicable. These service bulletins describe procedures for performing an inspection of the left- and right-side AOA vane decal to verify that the correct decal is installed; performing corrective action if necessary; and recording and reporting incorporation of the service bulletin to Bombardier. The corrective action includes replacing the incorrect AOA vane decal(s) with new, correct vane decal(s), and ensuring that the new decal(s) is the correct type; or removing existing decals, and doing alignment check(s) of the AOA vane transducers, if replacement decals are not available.

Accomplishment of the actions specified in the applicable temporary revisions and service bulletins is intended to adequately address the identified unsafe condition. TCCA has issued Canadian airworthiness directive CF–2002–05, dated January 18, 2002, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable temporary revisions and service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Canadain Airworthiness Directive

Operators should note that, although the parallel Canadian airworthiness directive requires operators to forward a copy of the Test Result Sheets and Service Bulletin Incorporation Sheets of the applicable service bulletin to Bombardier, this proposed AD would not require those actions.

Cost Impact

The FAA estimates that 424 Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes of U.S. registry would be affected by this proposed AD. Table—Cost Impact shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $60 per work hour.

TABLE.—COST IMPACT

Actions	Work hour(s)	Parts cost	Total cost per airplane
AFM revision	1	none	$60
Measurement of the vane angles and voltage of AOA transducers (Part A).	5	none	300
Rework the AOA transducer assemblies and measurement of the baseline resistance of the applicable AOA transducers (Part B).	17	$161	2,737
Measurement of the resistance of both AOA transducers (Part C)	1	none	60
Inspection of the left- and right-side AOA vane decal	1	none	60

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2002–NM–157–AD.

Applicability: This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Model	Serial Nos.
CL–600–1A11 (CL–600) series airplanes.	1004 through 1085 inclusive.
CL–600–2A12 (CL–601) series airplanes.	3001 through 3066 inclusive.
CL–600–2B16 (CL–601–3A and –3R) series airplanes.	5001 through 5194 inclusive.
CL–600–2B16 (CL–604) series airplanes.	5301 and subsequent.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (n) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent flat spots on the potentiometers of the AOA transducers due to wear, which may cause a delay in the commands for stall warning, stick shaker, and stick pusher operation, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Before the accumulation of 300 total flight hours, or within 7 days after the effective date of this AD, whichever occurs later, revise the Limitations, Emergency Procedures, Normal Procedures, and Abnormal Procedures Sections, as applicable, of the applicable Canadair Challenger AFM by inserting a copy of the applicable Temporary Revision listed in Table 2 of this AD. Table 2 is as follows (some Temporary Revisions listed in Table 2 of this AD contain Product Support Publication (PSP) identifiers):

TABLE 2.—TEMPORARY REVISIONS

Model	PSP	Temporary revision	Date
CL–600–1A11 (CL–600) series airplanes	none	600/21	November 26, 2001.
	none	600/20	November 26, 2001.
	none	600–1/17	November 26, 2001.
	PSP 600–1–18	600–1/13	November 26, 2001
CL–600–2A12 (CL–601) series airplanes	none	601/25	November 26, 2001.
	PSP 601–1A–1	601/13	November 26, 2001.
	PSP 601–1A–17	601/24	November 26, 2001.
	PSP 601–1A–18	601/25	November 26, 2001.
	PSP 601–1B	601/17	November 26, 2001.
	PSP–601–1B–1	601/12	November 26, 2001.
CL–600–2B16 (CL–601–3A and –3R) series airplanes.	PSP 601A–1	601/23	November 26, 2001.
	PSP 601A–1–1	601/22	November 26, 2001.
	PSP 601A–1–17	601/22	November 26, 2001.
	PSP 601A–1–18	601/21	November 26, 2001.
	PSP 601A–1–18A	601/24	November 26, 2001.
	PSP 601A–1–20A	601/15	November 26, 2001.
CL–600–2B16 (CL–604) series airplanes	PSP 604–1	604/9	November 26, 2001.

Measurement

(b) Before the accumulation of 300 total flight hours, or within 200 flight hours after the effective date of this AD, whichever occurs later, measure the vane angles and voltage of the angle of attack (AOA) transducers by doing all actions specified in "PART A—Initial Special Check" of the Accomplishment Instructions of the applicable alert service bulletin listed in Table 3 of this AD, per the applicable Bombardier alert service bulletin; except that it is not necessary to complete the Test Results and Service Bulletin Incorporation Sheets. Table 3 is as follows:

TABLE 3.—ALERT SERVICE BULLETINS

For model—	Alert service bulletin	Date	Including—
CL–600–1A11 (CL–600) series airplanes	A600–0715	January 7, 2002	Service Bulletin Compliance Sheet and Appendices A and B.
CL–600–2A12 (CL–601) series airplanes, and CL–600–2B16 (CL–600–3A and –3R) series airplanes.	A601–0550	January 7, 2002	Service Bulletin Compliance Sheet and Appendices A and B.
CL–600–2B16 (CL–604) series airplanes	A604–27–011	January 7, 2002	Service Bulletin Compliance Sheet and Appendices A and B.

Any Voltage Outside Tolerances: Replacement

(c) If, during the measurement required by paragraph (b) of this AD, any recorded voltage is found to be outside the tolerances specified in the applicable Bombardier alert service bulletin identified in Table 3 of this AD, before further flight, replace the stall protection computer (SPC) with a new SPC and do the follow-on actions (*i.e.*, recording in Appendix A and repeat actions), per "PART A—Initial Special Check" of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD.

All Vane Angles Within Tolerances: Disconnection and Measurement

(d) If, during the measurement required by paragraph (b) of this AD, all of the recorded AOA vane angles for both AOA transducers are found to be within the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD, before further flight, do the follow-on actions (*i.e.*, disconnect breakout box, and measure the baseline resistance of the AOA transducer between certain pins), per "PART B—AOA Transducer Assembly Rework/Baseline Resistance Check" of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD. After doing the follow-on actions, the applicable AFM revision required by paragraph (a) of this AD may be removed from the AFM.

One or More AOA Vane Angles Outside Tolerances, But All Vane Angles Within Tolerances

(e) If, during the measurement required by paragraph (b) of this AD, one or more of the recorded AOA vane angles for either or both AOA transducers are found to be outside the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD, but all recorded vane angles are within the expanded tolerances specified in "Table A—Tolerances" of "PART A—Initial Special Check" of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD, do the action specified in paragraph (e)(1) of this AD, except as provided by paragraph (e)(2) of this AD.

(1) Before further flight, do the actions specified in paragraph (g) of this AD.

(2) In lieu of doing the actions required by paragraph (e)(1) of this AD, do the actions specified in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD.

(i) Before further flight, measure the baseline resistance of the other AOA transducer (with recorded vane angles within the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD) per "Table A—Tolerances" of "PART A—Initial Special Check" of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD.

(ii) Within 150 flight hours after doing the measurement required by paragraph (b) of this AD, do the actions specified in paragraph (g) of this AD.

Any AOA Vane Angle Outside Tolerances

(f) If, during the measurement required by paragraph (b) of this AD, any recorded AOA vane angle of the AOA transducers is found to be outside the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD, before further flight, do the actions specified in paragraph (g) of this AD.

Transducer Assembly Rework and Baseline Resistance Measurement

(g) Except as provided by paragraph (e)(2) of this AD, before further flight after doing the measurement required by paragraph (b) of this AD, rework the AOA transducer assemblies and measure the baseline resistance of the applicable AOA transducers by doing all actions specified in "PART B—AOA Transducer Assembly Rework/Baseline Resistance Check" of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD, per the applicable Bombardier alert service bulletin. After doing the rework, the applicable AFM revision required by paragraph (a) of this AD may be removed from the AFM.

Repetitive Measurements and Corrective Actions

(h) Within 300 flight hours after doing the measurement required by paragraph (b) of this AD, measure the resistance of both AOA transducers by doing all actions specified in "PART C—Repetitive Resistance Check/AOA Transducer Assembly Rework" of the Accomplishment Instructions of the applicable alert service bulletin listed in Table 3 of this AD, per the applicable Bombardier alert service bulletin. Repeat the measurement at least every 300 flight hours.

(i) If, during the measurement required by paragraph (h) of this AD, any recorded resistance is found to be outside the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD (*i.e.*, more than 20 ohms from its baseline resistance value), before further flight, do corrective actions (*e.g.*, replace AOA transducer with new AOA transducer; perform a visual inspection of the vane assembly; rework, if necessary; a test; and measure baseline resistance of applicable AOA transducer), as applicable, per PART C—Repetitive Resistance Check/AOA Transducer Assembly Rework" of the Accomplishment Instructions of the applicable alert service bulletin listed in Table 3 of this AD.

Concurrent Requirements: Inspection

(j) For airplanes identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD: Before or at the same time with accomplishment of the requirements of paragraph (b) of this AD, inspect the left- and right-side AOA vane decal to verify that the correct decal is installed per paragraph (j)(1), (j)(2), or (j)(3) of this AD, as applicable.

(1) For Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and –3R) series airplanes having serial numbers 3001 through 3066 inclusive, and 5001 through 5194 inclusive, respectively, on which AOA calibration decals, part numbers (P/N) 600–52267–5 and 600–52267–6, have been installed: Inspect per Bombardier Alert Service Bulletin A601–0519, dated July 30, 1999, excluding Service Bulletin Compliance Sheet.

(2) For Model CL–600–1A11 (CL–600) series airplanes having serial numbers 1004 through 1085 inclusive, on which AOA calibration decals, P/Ns 600–52267–5 and 600–52267–6, have been installed: Inspect per Bombardier Alert Service Bulletin A600–0693, dated July 30, 1999, excluding Service Bulletin Compliance Sheet.

(3) For Model CL–600–2B16 (CL–604) series airplanes having serial numbers 5301 through 5990 inclusive, on which AOA calibration decals, P/Ns 600–52267–5 and 600–52267–6, have been installed: Inspect per Bombardier Alert Service Bulletin A604–11–009, dated July 30, 1999, excluding Service Bulletin Compliance Sheet.

Concurrent Requirements: Corrective Actions

(k) If either of the AOA vane decals is found to be incorrect during the inspection required by paragraph (j) of this AD, before further flight, replace the AOA vane decal(s) with new vane decal(s), and ensure that the new decal(s) is the correct type, per the applicable alert service bulletin identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD; except as provided by paragraph (l) of this AD.

(l) If replacement decals are not available, before further flight, remove existing decals and do the alignment check(s) of the AOA vane transducers per the applicable alert service bulletin identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD.

Parts Installation

(m) As of the effective date of this AD, no person shall install an AOA transducer assembly on any airplane, unless the actions required by paragraphs (b) through (l) of this AD, as applicable, have been done.

Alternative Methods of Compliance

(n) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(o) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–05, dated January 18, 2002.

Issued in Renton, Washington, on February 21, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4739 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–336–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This proposal would require operators to inspect the pitot-true air temperature (TAT) relays and the full authority digital engine control (FADEC) electronic interface resistor modules to detect contamination; perform corrective action if necessary; clean the relay/connector pins and sockets; modify the seal between the cockpit console panels and the storm window; and/or install a new protective frame (protective sheets) at the cockpit relay supports. This action is necessary to detect and correct oxidation of the pitot-TAT relay, which could result in increased resistance and overheating of the relay and consequent smoke in the cockpit; and to detect and correct oxidation of the FADEC electronic interface resistor modules, which could result in in-flight uncommanded engine power roll back to idle. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–336–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–336–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each Issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–336–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–336–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC reports several occurrences of smoke in the cockpit during flight, due to oxidation in the pitot-true air temperature (TAT) #2 relay caused by water leakage from the storm window located above the relay console. This condition, if not corrected, could result in increased resistance and overheating of the relay and consequent smoke in the cockpit.

In addition, the DAC reports a related incident in which oxidation at the connections of the full authority digital engine control (FADEC) interface resistor modules caused an in-flight uncommanded engine power back to idle. The oxidation was caused by water leakage from the storm window located above the console panel. This condition, if not corrected, could result in in-flight uncommanded engine power roll back to idle.

The cockpit design on Model EMB–135 and –145 series airplanes is identical; therefore, both airplane models are subject to the identified unsafe condition.

Explanation of Relevant Service Information

The manufacturer has issued EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001, which describes procedures for inspecting the pitot-TAT relays to detect contamination; cleaning the relay pins and sockets; replacing any contaminated relay, relay socket, or relay socket contact with a new part; modifying the seal between the cockpit console panels and the storm window; and installing new protective sheets at the relay supports.

The manufacturer has also issued EMBRAER Service Bulletin 145–76–

0003, dated April 22, 2002, which describes procedures for inspecting the FADEC electronic interface resistor modules to detect contamination (including moisture and corrosion). Corrective actions include cleaning the resistor modules and the electrical connector pins and replacing the modules and/or their electrical connectors with new parts.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directives 2001–05–01R1, dated February 6, 2002, and 2002–10–03, dated October 24, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Clarification of Inspection Type

Whereas the service bulletins specify that operators "visually inspect" (for contamination), this proposed AD would require a "detailed inspection." The FAA has determined that the procedures as described in the service bulletins constitute a detailed inspection. Note 2 has been included in this proposed AD to define this type of inspection.

Cost Impact

The FAA estimates that 261 airplanes of U.S. registry would be affected by this proposed AD. The FAA provides the following cost estimates to accomplish the proposed actions:

Action	Work hours per airplane	Average hourly labor rate	Parts cost per airplane	Cost per airplane
Inspect the pitot-TAT relay	1	$60	$0	$60
Inspect the FADEC resistor modules	2	60	0	120
Seal the lateral console panels and install protective sheets	3	60	660	840

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket 2002–NM–336–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category, as listed in EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct oxidation of the pitot-true air temperature (TAT) relay, which could result in increased resistance and overheating of the relay and consequent smoke in the cockpit; and to detect and correct oxidation of the full authority digital engine control (FADEC) electronic interface resistor modules, which could result in in-flight uncommanded engine power roll back to idle; accomplish the following:

Inspection and Cleaning of Pitot-TAT Relays

(a) For airplanes identified in paragraph 1.A.(1) ("PART I") of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001: Within 400 flight hours after the effective date of this AD, perform a detailed inspection to detect contamination of the pitot-TAT relays and clean the relay/connector pins and sockets, in accordance with the Accomplishment Instructions ("PART I") of the service bulletin. If any contamination remains after cleaning: Prior to further flight, replace each contaminated relay, relay socket, and relay socket contact with a new part, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Inspection of FADEC Interface Resistor Modules

(b) For airplanes identified in paragraph 1.A.(3) ("PART III") of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001: Within 400 flight hours after the effective date of this AD, perform a detailed inspection to detect contamination (including moisture and corrosion) of the left- and right-hand FADEC electronic interface resistor modules, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–76–0003, dated April 22, 2002. Then do the applicable corrective actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) If any contamination is found during the inspection: Before further flight, clean the resistor modules and/or their respective electrical connector pins, in accordance with Service Bulletin 145–76–0003, dated April 22, 2002.

(2) If any contamination remains after cleaning the modules and pins as specified in paragraph (b)(1) of this AD: Before further flight, replace the modules and connectors with new parts, as applicable, in accordance with Service Bulletin 145–76–0003, dated April 22, 2002.

(3) Following accomplishment of any corrective action specified in paragraph (b)(1) or (b)(2) of this AD: Before further flight, perform the ohmic resistance test of the left- and right-hand FADEC electronic interface resistor modules, and accomplish applicable troubleshooting procedures, in accordance with Service Bulletin 145–76–0003, dated April 22, 2002.

Console Panel Sealing

(c) For airplanes identified in paragraph 1.A.(2) ("PART II") of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001: Before further flight following accomplishment of the requirements of paragraph (a) of this AD, modify the seal between the cockpit console panels and the storm window by applying PVC foam adhesive tape and sealant, in accordance with the Accomplishment Instructions ("PART II") of the service bulletin.

Protective Sheet Installation

(d) For airplanes identified in paragraph 1.A.(3) ("PART III") of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001: Before further flight following accomplishment of the requirements of paragraph (b) of this AD, install new protective sheets at the relay supports in accordance with the Accomplishment Instructions ("PART III") of the service bulletin.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directives 2001–05–01R1, dated February 6, 2002, and 2002–10–03, dated October 24, 2002.

Issued in Renton, Washington, on February 21, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4738 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–147]

RIN 2115–AE47

Drawbridge Operation Regulations; Commercial Boulevard Bridge (SR 870), Atlantic Intracoastal Waterway, mile 1059.0, Lauderdale-by-the-Sea, Broward County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Commercial Boulevard bridge (SR 870) across the Atlantic Intracoastal Waterway, mile 1059.0 in Lauderdale-by-the-Sea, Florida. This proposed rule would require the bridge to open on signal, except that from 7 a.m. to 6 p.m. daily, the bridge would be required to open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. This action is intended to improve the movement of vehicular traffic while providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before April 29, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–147], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

On January 3, 2002, the City of Fort Lauderdale requested that the Coast Guard review the existing regulation of the Commercial Boulevard bridge (SR 870) because the City believed the existing regulations were not meeting the needs of vehicle traffic.

The existing regulation of the Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea, published in 33 CFR 117.261(ee), requires the draws to open on signal, except that, from November 1 through May 15, from 8 a.m. to 6 pm., Monday through Friday, the draws need open only on the hour, quarter-hour, half-hour, and three-quarter-hour, and from 8 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draws need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

This proposed rule would make the seasonal openings effective year round. Traffic studies have shown that vehicular traffic has increased at this location year round and a seasonal schedule is no longer appropriate.

On March 18, 2002, the Coast Guard issued a temporary deviation published in the **Federal Register** (67 FR 11919, March 18, 2002). This deviation was effective from April 17, 2002 until July 16, 2002, and from 7 a.m. to 6 p.m., allowed the bridge to open on the hour, 20 minutes after the hour, and 40 minutes after the hour. We received 38 comments on this deviation, 31 were in favor of the 20-minute schedule and seven comments requested that the schedule be changed to an hour and half-hour schedule. Based on our evaluation of the comments received and neighboring bridge schedules, the Coast Guard proposes to make the 20-minute schedule permanent. A 20-minute schedule is necessary to keep vessel traffic on the waterway moving because the bridge immediately to the north of this bridge is on a 30-minute schedule and the bridge immediately to the south of this bridge is on a 20-minute schedule. If this bridge were placed on a 30-minute schedule, vessels would experience a greater delay in traversing the waterway.

Discussion of Proposed Rule

This proposed rule would require the Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea, to open on signal; except that, from 7 a.m. to 6 p.m. daily, the draws need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because this proposed rule only slightly modifies the existing bridge schedule and still provides for regular openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic effect upon a substantial number of small entities. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Intracoastal Waterway in the vicinity of Commercial Boulevard bridge, persons intending to drive over the bridge, and nearby business owners. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities, because this proposed rule would only slightly modify the existing schedule and would still provide for regular openings.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically effect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 -3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in an expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Although this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reason discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.261(ee) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ee) *Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea.* The draws shall open on signal, except that, from 7 a.m. to 6 p.m. daily, the draws need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: February 10, 2003.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–4760 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 147

[CGD08–02–045]

RIN 2115–AG54

Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico for Viasca Knoll 915

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone around a petroleum and gas production facility in Viasca Knoll 915 of the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this facility would significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed regulation would prevent all vessels from entering or remaining in the specified area around the facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

DATES: Comments and related material must reach the Coast Guard on or before April 29, 2003.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, or comments and related material may be delivered to Room 1341 at the same address between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–6271. Commander, Eighth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, Eighth Coast Guard District (m) between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Requests for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–02–035], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a safety zone around a petroleum producing facility in the Gulf of Mexico: Marlin Tension Leg Platform (Marlin TLP), Viasca Knoll 915 (VK 915), located at position 29°06′27.46″ N, 87°56′37.14″ W.

This proposed safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the proposed safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The fairways include the Gulf of Mexico East-West Fairway, the entrance/exit route of the Mississippi River, and the Mobile Bay approaches. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

Chas R. Havnen & Assoc, Inc., hereafter referred to as Havnen Group has requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Marlin TLP.

The request for the safety zone was made due to the high level of shipping activity around the facility and the safety concerns for both the personnel on board the facility and the environment. The Havnen Group indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility would result in a catastrophic event. The Marlin TLP is a high production oil and gas drilling facility producing approximately 41,000 barrels of oil per day, 310 million cubic feet of gas per day and is manned with a crew of approximately 80 people.

The Coast Guard has reviewed the Havnen Group's concerns and agrees that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. The proposed regulation would significantly reduce the threat of allisions, oil spills and natural gas releases and increase the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

Discussion of Proposed Rule

The following specific risk factors that necessitate a safety zone exist at the Marlin TLP: (1) The facility is located approximately 80 nautical miles directly south of Mobile Bay, on a direct course for vessels not keeping to the fairways; (2) the facility has a high production capacity of 41,000 barrels of petroleum oil per day and 310 million cubic feet of gas per day; and (3) the facility is manned with a crew of 80.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The impacts on routine navigation are expected to be minimal because the safety zone will not encompass any of the safety fairways within the Gulf of Mexico.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Since the Marlin TLP is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area and alternate routes are available for those vessels. Use of an alternate route may cause a vessel to incur a delay of 4 to 10 minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this regulation on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we publish notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; 49 CFR 1.46.

2. Add § 147.827 to read as follows:

§ 147.827 Marlin Tension Leg Platform safety zone.

(a) *Description.* The Marlin Tension Leg Platform (Marlin TLP), Viasca Knoll, Block 915 (VK 915), is located at position 29°06′27.46″ N, 87°56′37.14″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following: (1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: December 9, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–4900 Filed 2–26–03; 2:37 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, and 401

[FRL–7456–4]

RIN 2040–AB74

Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States"

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DoD; and Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On January 15, 2003, the Department of the Army (Army) and the Environmental Protection Agency (EPA) jointly published an Advance Notice of Proposed Rulemaking (ANPRM) on the Clean Water Act (CWA) regulatory definition of "Waters of the United States" (68 FR 1991). That ANPRM requests public input on issues associated with the definition of "waters of the United States" in light of the U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*). It also solicits information or data from the general public, the scientific community, and Federal and State resource agencies on the implications of the *SWANCC* decision for jurisdictional decisions under the CWA. The input received from the public in response to the ANPRM will be used by the agencies to determine the issues to be addressed and the substantive approach for a future proposed rulemaking addressing the scope of CWA jurisdiction.

The Army and EPA sought responses to the ANPRM by March 3, 2003. In response to comments from the public requesting additional time to fully analyze the issues, gather requested information, and prepare comments, we are extending the comment period on the ANPRM to April 16, 2003.

DATES: In order to be considered, comments or information in response to the ANPRM must be postmarked or e-mailed on or before April 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or

through hand delivery/courier. Mail comments to: Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0050.

FOR FURTHER INFORMATION CONTACT: For information on the ANPRM, contact either Donna Downing, U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds (4502T), 1200 Pennsylvania Avenue NW., Washington, DC 20460, phone: (202) 566–1366, e-mail: *CWAwaters@epa.gov*, or Ted Rugiel, U.S. Army Corps of Engineers, ATTN CECW–OR, 441 G Street NW., Washington, DC 20314–1000, phone: (202) 761–4595, e-mail: *Thaddeus.J.Rugiel@HQ02.USACE.ARMY.MIL*.

SUPPLEMENTARY INFORMATION: To submit comments or access the official docket, please follow the detailed instructions as provided in section I.B. of the **SUPPLEMENTARY INFORMATION** section of the January 15, 2003, **Federal Register** document (68 FR 1991). If you have questions, consult one of the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: February 21, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

Dated: February 24, 2003.

George S. Dunlop,

Deputy Assistant Secretary of the Army (Policy and Legislation), Department of the Army.

[FR Doc. 03–4768 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–7456–3]

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Routine Maintenance, Repair and Replacement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking; extension of comment period.

SUMMARY: The EPA is hereby extending for 60 days the public comment period regarding the December 31, 2002 proposal proposing revisions to the regulations governing the NSR programs mandated by parts C and D of title I of the Clean Air Act (CAA). *See* 67 FR 80290. The proposed changes provide a future category of activities that would be considered to be routine maintenance, repair and replacement (RMRR) under the NSR program. The changes are intended to provide greater regulatory certainty without sacrificing the current level of environmental protection and benefit derived from the program. We believe that those changes will facilitate the safe, efficient, and reliable operation of affected facilities.

DATES: *Comments.* Comments must be received on or before May 2, 2003.

ADDRESSES: *Comments.* Comments may be submitted by mail (two copies) to U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Room B108, Mail Code: 6102T, Washington, DC 20406, Attention Docket ID No. A–1002–04.

Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dave Svendsgaard at (919) 541–2380, telefax (919)541–5509, E-mail: *svendsgaard.dave@epa.gov* or by mail at U.S. Environmental Protection Agency, OAQPS, Information Transfer and Program Integration Division, (C339–03), Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Comments: This document extends the public comment period established in the **Federal Register** issued on December 31, 2002 (67 FR 80290). In that document, EPA proposed revisions to the regulations governing the NSR programs mandated by parts C and D of title I of the Clean Air Act (CAA). EPA is hereby extending the comment period, which was set to end on March 3, 2003, to May 2, 2003.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. A–2002–04. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. *E-mail.* Comments may also be sent by electronic mail (e-mail) to *A-and-R-Docket@epamail.epa.gov*, Attention Docket ID No. A–2002–04. In contrast to EPA's electronic public docket, EPA's email system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. *Disk or CD ROM.* You may also submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send two copies of your comments to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail code: 6102T, Washington, DC 20460, Attention Docket ID No. A–2002–04.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC 20004. Attention Docket ID No. A–2002–04. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742. A reasonable fee may be charged for copying.

4. By Facsimile. Fax your comments to the EPA Docket Center at (202) 566–1741, Attention Docket ID. No. A–2002–04.

Dated: February 21, 2003.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–4769 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV055–6025b; FRL–7449–5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of converting the partial approval and partial disapproval of West Virginia's minor new source review and existing stationary source operating permit program to the full approval. EPA also proposes to approve additional rule revisions, made to the minor new source review regulation. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 31, 2003.

ADDRESSES: Written comments should be addressed to Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Michael I. Ioff, P.E., (215) 814–2166, or by e-mail at *ioff.mike@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: January 31, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–4630 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7455–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of a portion of the South Indian Bend Wash Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX announces its intent to delete a portion of the South Indian Bend Wash (SIBW) Site located in Tempe, Maricopa County, Arizona, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

DATES: EPA will accept comments concerning its proposal for partial deletion for thirty (30) days after publication of this document in the **Federal Register** and a newspaper of record.

ADDRESSES: Comments may be mailed to: Melissa Pennington, Superfund Remedial Project Manager, U.S. EPA, Region IX (SFD–8–2), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3153.

Information Repositories: Comprehensive information on the SIBW Site as well as information specific to this proposed partial deletion is available for review at EPA's Region IX office in San Francisco, CA and at the information repositories listed below. There are three Administrative Record files for the SIBW Site: one for the 1993 Record of Decision for VOCs in the Vadose Zone; one for the 1998 Record of Decision for VOCs in Groundwater; and one for the Plug-in Determination issued in January 2002. All three Administrative Record files and the Deletion Docket for this partial deletion are maintained at EPA Region IX's Regional Office Superfund Records Center and the Tempe Public Library. EPA's Superfund Records Center is located at 95 Hawthorne Street (Suite 403S), San Francisco, CA 94105 and the hours of operation are 8–5 p.m., Monday–Friday. The Records Center

staff can be reached at (415) 536–2000. The location of the other information repository where the Deletion Docket is available for public review is: Tempe Public Library (South Area), 3500 South Rural Road, Tempe, AZ 85282.

FOR FURTHER INFORMATION CONTACT: Melissa Pennington (415) 972–3153.

SUPPLEMENTARY INFORMATION: This partial deletion of the SIBW Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995).

In July 2002, the City of Tempe (the City) submitted a petition to EPA for Partial Deletion of a portion of the SIBW Site from the NPL. To help facilitate an ongoing redevelopment project, the City requested that EPA delete a 200-acre property known as the McClintock/Rio Salado Brownfield Redevelopment Area (Redevelopment Area). This proposal for partial deletion from the SIBW NPL Site pertains to the former Allstate Mine Supply Subsite, the Maricopa County Landfill, the Old Tempe Landfill, the Resources Reclamation Corporation of America Landfill, the First Street Landfill and the Bennett Family Trust Landfill, which properties comprise that portion of the Redevelopment Area presently part of the SIBW NPL Site. These properties subject to this proposal for partial deletion are collectively referred to hereafter as the "SIBW Landfill Area". The location of the SIBW Landfill Area is shown on Figure 1. Both Figures 1 and 2 are available for viewing in the Deletion Docket which is maintained at EPA Region IX's Regional Office Superfund Records Center and the Tempe Public Library (details below).

This proposal for partial deletion pertains to all of the soils in the SIBW Landfill Area and a majority of the groundwater underlying the SIBW Landfill Area hereinafter referred to as the "SIBW Deletion Area". The groundwater included in the SIBW Deletion Area is that groundwater with concentrations of trichloroethylene (TCE) less than 5 parts per billion (ppb). Based on existing data, the groundwater in the middle alluvial unit with concentrations of TCE less than 5 ppb is represented as that portion of the groundwater underlying the SIBW Landfill Area that is not within the 5 ppb TCE contour line as depicted on Figure 2 (available for viewing in the Deletion Docket). Once the partial deletion is effective, the only area remaining on the NPL north of Rio Salado Parkway will be the extent of groundwater contamination in the middle alluvial unit above 5 ppb TCE. This area is shown on Figure 2 (available for viewing in the Deletion Docket) as the overlap of the southeast corner of the SIBW Landfill Area and the 5 ppb TCE contour. This overlap has been estimated to cover approximately 7.4 acres.

Additional data may be obtained prior to the final Notice of Deletion that would allow for refinement of the definition of extent of groundwater contamination exceeding 5 ppb TCE depicted on Figure 2 (available for viewing in the Deletion Docket). Such information would then be set out in the final Notice of Deletion.

The SIBW site was added to the NPL because of widespread groundwater contamination caused by numerous facilities within the City of Tempe. The contaminants of concern (COCs) are volatile organic compounds (VOCs), primarily TCE and tetrachloroethylene (PCE). In order to efficiently manage the site, SIBW was divided into two operable units: a soil operable unit and a groundwater operable unit. In 1993, EPA issued a Record of Decision for VOCs in the Vadose Zone (1993 Soils ROD) at SIBW which required investigation of several facilities referred to as subsites. If the subsite investigations indicated that any subsite posed a continuing threat to groundwater or indoor air quality, then Soil Vapor Extraction (SVE) would be required. To date, EPA has completed or has overseen the investigations of approximately twelve subsites. Among the twelve subsites, SVE was required at one subsite in accordance with the (1993 Soils ROD), SVE was voluntarily conducted by the responsible parties at two of the subsites, SVE was not required at seven of the subsites, and the remaining subsites are still under investigation. None of the subsites still under investigation are part of this partial deletion.

EPA has evaluated all existing data regarding the SIBW Landfills and concluded that the COCs are not present at the five landfills at levels which pose a continuing threat to groundwater or indoor air quality. The Focused Remedial Investigation Report for the Allstate Subsite concluded that this subsite does not pose a continuing threat to groundwater or indoor air quality. Therefore, in accordance with the 1993 Soils ROD, EPA has determined that these subsites do not pose a threat to groundwater and that no further federal CERCLA response actions are required at the SIBW Landfill Area with respect to the groundwater.

The focus of EPA's listing of this Site has been on the groundwater contamination and the sources of groundwater contamination. EPA did not intend to address all areas within the SIBW study area that might be contaminated, only those directly linked to the groundwater contamination. As a result of EPA's investigation, EPA has also determined that the contaminated levels in soil at these subsites do not pose a threat to indoor air. However, no determination has been made as to whether these properties are suitable for unrestricted uses. Any attempt to develop the SIBW Landfill Area should be coordinated with the Arizona Department of Environmental Quality (ADEQ), as well as other appropriate state and local agencies, to ensure that non-CERCLA environmental issues associated with these properties are fully investigated and addressed prior to development.

There are three separate plumes of contaminated groundwater (eastern, central and western), resulting from former disposal practices at various SIBW subsites. The remedies selected for the SIBW groundwater plumes are: monitored natural attenuation in the central and eastern plumes and extraction and treatment via air stripping in the western plume. The groundwater operable unit and the remaining subsites of the soil operable unit will remain on the NPL. This proposal to delete the SIBW Deletion Area from the SIBW NPL Site is based on the determination by EPA and ADEQ that all appropriate federal actions under CERCLA with regard to the SIBW Deletion Area have been completed. Based on EPA's discussions with ADEQ, it has also been determined that ADEQ's Voluntary Remediation Program is an option for addressing any remaining environmental issues at the SIBW Landfill Area.

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I. Introduction
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I. Introduction

The United States Environmental Protection Agency (EPA) Region IX announces its intent to delete a portion of the South Indian Bend Wash (SIBW) Site located in Tempe, Maricopa County, Arizona, from the National Priorities List (NPL) and requests public comment on this action. This proposal for partial deletion from the SIBW NPL Site pertains to the former Allstate Mine Supply Subsite, the Maricopa County Landfill, the Old Tempe Landfill, the Resources Reclamation Corporation of America Landfill, the First Street Landfill and the Bennett Family Trust Landfill. These properties subject to this proposal for partial deletion are collectively referred to hereafter as the "SIBW Landfill Area". The location of the SIBW Landfill Area is shown on Figure 1 (available for viewing in the Deletion Docket).

This proposal for partial deletion pertains to all of the soils in the SIBW Landfill Area and a majority of the groundwater underlying the SIBW Landfill Area hereinafter referred to as the "SIBW Deletion Area'.

The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion of the SIBW Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). This guidance allows EPA to delete portions of a site, including deletions by media.

The National Priorities List (NPL) is a list, maintained by EPA, of sites that EPA has determined present a significant risk to human health, welfare, or the environment. This proposal for partial deletion from the SIBW NPL Site pertains to the SIBW Deletion Area defined in the Summary section above (page 2). The location of the SIBW Landfill Area is shown on Figure 1 and the area of groundwater included within the SIBW Deletion Area is shown on Figure 2. Figures 1 and 2 are available for viewing in the Deletion Docket.

The SIBW study area covers approximately three square miles in Tempe, Arizona. The Site consists of groundwater contaminated with VOCs (primarily TCE and PCE) and soil contamination at the facilities on the surface that have contributed to or are contributing to the groundwater contamination. Groundwater at the Site is present in three separated levels or layers. These layers are referred to as the Upper, Middle, and Lower Aquifers. The groundwater contamination is present as three separate plumes known as the western plume, eastern plume and central plume. Land use in the vicinity of the Site includes residential, industrial/commercial, agricultural, public and private recreational (parks, golf courses, playing fields, etc.), undeveloped open space, and waterways.

There have been two Records of Decision (RODs) issued for SIBW to address VOC contamination at the Site, one for soil and one for groundwater. The soils ROD required Soil Vapor Extraction (SVE) at areas within SIBW (known as subsites) that meet specific criteria which are used to assess whether VOC levels at a subsite pose a threat to groundwater and ambient air. The soils ROD was issued in September 1993. The groundwater ROD required Monitored Natural Attenuation in the central and eastern plumes and extraction and treatment of the western plume. The groundwater ROD was issued in September 1998.

The approximate boundaries for the SIBW Landfill Area are the Rio Salado Parkway, which forms a portion of the boundary to the south; the Salt River to the north; Perry Lane, which makes up most of the western boundary; and the eastern boundary is between Rockford Drive and River Drive. However, the actual boundaries are the boundaries of the SIBW Landfill Area as depicted on Figure 1 (available for viewing in the Deletion Docket). The boundaries of the SIBW Deletion Area are defined as the boundaries of the SIBW Landfill Area (described above) with the exception of the area of groundwater contamination in the middle alluvial unit above 5 ppb TCE. This area is shown on Figure 2 (available for viewing in the Deletion Docket) as the overlap of the southeast corner of the SIBW Landfill Area and the 5 ppb TCE contour. This overlap has been estimated to cover approximately 7.4 acres.

In July 2002, the city of Tempe (the City) submitted a petition to EPA for Partial Deletion of a portion of the SIBW Site from the NPL. To help facilitate an ongoing redevelopment project, the City requested that EPA delete a 200-acre property known as the McClintock/Rio Salado Brownfield Redevelopment Area (Redevelopment Area). EPA is proposing only the SIBW Deletion Area, as defined in the Summary section above (page 2), for deletion from the NPL Site (See Figure 1 which is available for viewing in the Deletion Docket). This is because EPA considers only a portion of the entire 200-acre Redevelopment Area to be part of the SIBW NPL Site. The SIBW NPL Site is defined as the groundwater plumes contaminated with VOCs and the facilities on the surface that have contributed to or are contributing contamination to the groundwater plumes.

The SIBW Landfill Area, which encompasses the SIBW Landfills and the Allstate Subsite, has been thoroughly investigated. In October 2001, a Focused Remedial Investigation Report (FRI Report) was prepared for the Allstate Subsite by EPA's contractor (CH2M Hill) and several documents have been prepared describing the conditions at the SIBW Landfills. In December 1993, ADEQ prepared a draft document entitled "Indian Bend Wash (South) Superfund Site, Tempe, Arizona, Evaluation of Landfills." In 1999, ADEQ contracted Roy F. Weston to evaluate the existing landfill information and to prepare a report. This document was entitled "Review of Previous Site Characterization Work at Former Landfills". These documents recommended additional work be performed before a decision could be made regarding remediation at the landfills. In December 2002, EPA's contractor compiled all of the existing landfill data into a technical memorandum. The main objective of this technical memorandum was to utilize data from the landfills as well as groundwater data that had been collected as part of the ongoing groundwater remedy at SIBW to assess whether the soil contamination in, beneath, and in the vicinity of the landfill sites has contributed to the VOC contamination in the groundwater plumes.

For the purposes of this proposal, EPA has evaluated the conclusions regarding the Allstate Subsite in the Allstate FRI Report as well as the data and conclusions in CH2M Hill's December 2002 SIBW Landfill Sites Technical Memorandum. As a result, EPA has determined that the SIBW Landfill Area does not require soil remediation for protection of the groundwater in accordance with the 1993 Soils ROD. Therefore, no further federal CERCLA action is necessary for the SIBW Landfill Area to protect human health and the environment with respect to VOCs in soils contributing to the groundwater contamination. As indicated previously in this document, the 1993 Soils ROD addresses VOCs only. When placed on the NPL, the SIBW Site was defined as groundwater plumes contaminated with VOCs and the surface sources contributing to the VOC contamination in the groundwater. It was never EPA's intention that remediation of the SIBW site would include contaminants other than VOCs. Therefore, this proposed deletion does not draw any conclusions about the potential presence or absence of other contaminants in the SIBW Landfill Area. It is EPA's understanding that further investigation and remediation of the landfill properties will be conducted by the prospective developers prior to

redevelopment of the property. ADEQ is in agreement with this approach.

This proposed deletion specifically addresses the soils at the SIBW Landfill Area and the groundwater beneath the SIBW Landfill Area with concentrations of TCE less than 5 ppb. Groundwater associated with the SIBW Site with concentrations of TCE greater than 5 ppb is being addressed as part of the remedial action at the SIBW Site. The plume south of the SIBW Landfill Area is known as the eastern plume. The remedial design for monitored natural attenuation in the eastern plume is being implemented by an SIBW potentially responsible party. Response activities for the SIBW groundwater plumes are not yet complete and therefore the groundwater operable unit will remain on the NPL. Similarly, the remaining SIBW subsites are not subject to this partial deletion.

The NPL is a list, maintained by EPA, of sites that EPA has determined present a significant risk to human health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning its intent for partial deletion for thirty (30) days after publication of this notice in the **Federal Register** and a newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect human health or the environment. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

A. Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

B. Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

C. Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to human health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. The following procedures were followed for the proposed deletion of the SIBW Deletion Area from the SIBW NPL Site:

(1) EPA received and evaluated a petition for partial deletion from the City of Tempe;

(2) The State of Arizona through the Arizona Department of Environmental Quality pledged support for the partial deletion and encouraged EPA to proceed with the deletion process;

(3) EPA preliminarily concurred with the recommendations for partial deletion and prepared the relevant documents;

(4) Concurrent with this national Notice of Intent for Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a newspaper of record.

(5) EPA has made all relevant documents available at the information repositories listed previously.

This **Federal Register** document, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete the SIBW Deletion Area from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region IX to obtain a copy of the Responsiveness Summary. If, after review of all public comments, EPA determines that the partial deletion from the NPL is still appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the SIBW Deletion Area does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the SIBW Deletion Area from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

Background

The entire study area of the Indian Bend Wash Superfund Site (Site) covers approximately 13 square miles in Scottsdale and Tempe, Arizona. EPA divided the Site into two areas known as the Indian Bend Wash Area—North (NIBW) and the Indian Bend Wash Area—South (SIBW). EPA is proposing to delete a portion of the SIBW site only; all of the NIBW Site and most of the SIBW Site will remain on the NPL.

As discussed below, there are numerous industrial facilities located within the boundaries of the Site study area. Up until the 1970s, industrial solvents containing VOCs were typically disposed of directly onto the ground or in dry wells. These disposal practices, along with other releases, resulted in soil and groundwater contamination at various locations throughout the Site. The groundwater contamination at NIBW was discovered in 1981 when elevated levels of VOCs, including TCE, were found in drinking water wells. Further investigation of regional groundwater quality led to the discovery and characterization of the three SIBW groundwater contamination plumes (western, central and eastern). The unacceptable risks associated with the contamination at SIBW is based on exposure to groundwater contamination. There were no significant levels of inorganic contaminants found in the groundwater. Therefore, all remedial actions required at the SIBW Site were intended to address VOCs in groundwater and VOCs in soils which could contribute to groundwater contamination.

EPA and the State of Arizona have been involved in investigations and cleanup activities at the Site since the initial discovery of VOCs in the groundwater in 1981. The Site, including both NIBW and SIBW, was placed on EPA's NPL in 1983. On September 27, 1993, EPA issued a Record of Decision for VOCs in the Vadose Zone (the 1993 Soils ROD). This ROD selected soil vapor extraction (SVE) as the remedy for VOCs in soils at SIBW and is discussed in more detail below. EPA also characterized contamination in groundwater and issued a second Record of Decision on September 30, 1998 for VOCs in groundwater at SIBW. The groundwater ROD is not discussed in detail in this document.

The surface portion of the SIBW Site is divided into many small isolated locations where soil contaminated with VOCs was expected to be present. These locations are known as subsites. The 1993 Soils ROD utilized an approach called "Plug-in," whereby the ROD did not directly apply the SVE remedy to any particular subsite. Rather, the ROD established criteria that EPA uses to determine whether pre-defined conditions exist at any given subsite thereby indicating that a subsite needs to be remediated using SVE. Each individual subsite had to be evaluated by EPA to determine whether it "Plugged-in" to the SVE remedy. These evaluations are based on the data collected at each of the subsites following issuance of the ROD. Implementation of SVE is required for subsites that "Plug-in," or meet certain criteria, in accordance with the 1993 Soils ROD.

The risks associated with VOCs in the Vadose Zone at the SIBW Landfills and other SIBW subsites were risks solely attributable to the potential for VOCs in soils to enter the groundwater or the air (See Interim Risk Assessment, Operable Unit Feasibility Study, VOCs in Vadose Zone, Appendix A, June 1993). In the Interim Risk Assessment, direct contact and ingestion of VOCs in soil were not considered complete exposure pathways because surface VOCs would likely volatilize before direct contact or ingestion could occur. Therefore, there are no risks associated with direct human exposure to VOCs in soils. The FRI Report for the Allstate Subsite and the SIBW Landfills Technical Memorandum evaluated whether or not VOCs in the Vadose Zone had the potential to impact groundwater or air. If a particular subsite does not meet the plug-in criteria identified in the 1993 ROD, the risks posed by the residual VOC contamination, if any, do not warrant further action.

At the time that the 1993 ROD was issued at SIBW, approximately thirty facilities were considered potential source areas for VOC contamination in the groundwater. Five of these facilities had already been issued unilateral orders to complete site investigations. These five facilities were: DCE Circuits, Eldon Drapery, IMC Magnetics, Prestige Cleaners, and Unitog Cintas. Following additional screening, it was determined that investigations should also be conducted at Arizona Public Service (APS), Circuit Express, Allstate Mine Supply, Desert Sportswear, Cerprobe, Service and Sales, and the City of Tempe Right-of-Way.

In February 1994, EPA issued a Plug-in Determination requiring implementation of SVE at the DCE Circuits Subsite. This work has been conducted with fund-lead money and is currently nearing completion. APS made the determination that SVE was appropriate at its site in lieu of conducting additional investigations. APS implemented SVE successfully at its subsite, and EPA approved its closure report in April of 2001, documenting that soil cleanup had been completed at the APS Subsite.

In January 2002, EPA issued a Plug-in Determination that documented EPA's subsite-specific decision for the following seven SIBW subsites: Eldon; Circuit Express; Allstate Mine Supply; Desert Sportswear; Cerprobe; Service and Sales; and City of Tempe Right-of-Way. In the January 2002 Plug-in Determination, EPA concluded that all seven subsites fall within the Remedy Profile defined in the 1993 Soils ROD and that the subsites contain VOCs in soils at concentrations that do not exceed the Plug-In Criteria. Therefore, SVE was not required for any of these subsites.

The remaining SIBW subsites (IMC Magnetics, Prestige Drapery, and Unitog) are still being evaluated. EPA will address these subsites in future Plug-in Determinations.

Current Surface Conditions at the SIBW Deletion Area

The Allstate Subsite is located at 1926 East First Street, Tempe, Arizona. It is also within the footprint of the Maricopa County Landfill discussed below. Prior to 1963, the property was vacant and undisturbed.

From 1963 to 1976, the property was used in a gravel sorting operation and construction equipment and/or dumpsters became noticeable onsite. During this timeframe, the property served as a storage yard for A&B Enterprises (A&B). A&B was an operation that repaired garbage dumpsters. The repairs included painting, welding, and use of paint thinners.

Beginning in approximately April 1976, Allstate Mine Supply, Inc. and Canyon State Chemical, Inc. used this property to blend soaps, solvents, and other chemicals into finished products to be sold to clients. The products were "specialty cleaning products" which are made by compounding liquid raw materials (chemicals) onsite. The compounding, storing and shipping of raw materials and finished products occurs in 55-gallon drums.

EPA's FRI Report for the Allstate Mine Supply Subsite (Allstate FRI) found that VOCs are present in the soil vapor at the Allstate Subsite to a depth of approximately 43 feet below ground surface (bgs). Although as many as 10 VOCs were detected at the subsite, only 1,1,1-TCA and PCE were consistently present in both shallow and deep samples. Total xylenes were detected at depth in all three sampling events in 1998 and the 1999 sampling event. The maximum concentrations of these contaminants are as follows: PCE at 28 µg/L, 1,1,1-TCA at 210 µg/L, and total xylenes at 88 µg/L. In 1988, 1990 and 1994, shallow soil vapor data were collected for this subsite. Three sampling events were conducted in 1998 (August, September and November) and one sampling event was conducted in July 1999 from one soil vapor monitoring well (SVWM–6). Both shallow and deep soil vapor samples were collected. The soil vapor data show that PCE appears to persist through time and throughout the length of the vadose zone. 1,1,1-TCA and 1,1–DCE appear to decrease with time and depth in the vadose zone. Total xylenes are at the highest concentrations at 43 feet bgs and appear to be decreasing over time. The levels of VOCs at the Allstate Subsite were not high enough to cause the subsite to Plug-in to the 1993 Soils ROD.

The landfill properties are located along the north side of Rio Salado Parkway approximately one quarter of a mile east of McClintock Drive. The landfill property boundaries are shown on Figure 1 (available for viewing in the Deletion Docket). Since these landfills operated sometimes on top of one another, each landfill will be discussed separately. Since the state, county, and

local government agencies did not keep information on landfill activities until after the landfills were closed, little information is available. Most of the information available is from site investigation activities that began around 1988 as part of the SIBW Superfund Site investigation. Five landfills were operated on the property in the vicinity of the proposed redevelopment project in Tempe, Arizona. These landfills are: Maricopa County Landfill; Old Tempe Landfill; Resources Reclamation Corporation of America; First Street Landfill; and the Bennett Family Trust Landfill.

The Maricopa County Landfill operated on the southwest portion of the landfill area properties and consisted of approximately 40 acres. The landfill has two distinct areas, a northern portion and a southern portion, based on apparent differences in fill material, time of emplacement, and soil vapor sampling results.

A number of buildings were constructed on the southern portion of the landfill. None of the buildings were associated with the landfill operations. The buildings housed many industrial businesses, most notably the former Allstate Mine Supply. The Allstate Subsite was investigated as a separate and distinct subsite of SIBW as discussed above.

The Old Tempe Landfill was located on the northeast corner of the landfill properties and consisted of approximately 11.5 acres. This landfill operated between 1971 and 1977, prior to which it was a gravel quarry. Conflicting information exists regarding the operating timeframe of this landfill. According to various property owners in the area, the landfill was operated as a municipal landfill by the cities of Tempe, Mesa, Phoenix, and Scottsdale from 1968 to 1979. The landfill primarily accepted solid waste; however, liquid and/or hazardous wastes may also have been accepted, although never verified. Resources Reclamation Corporation of America (RRCA), discussed below, purchased the property and continued the municipal landfill operations from 1978 to 1982.

The RRCA property totaled approximately 104 acres and included the area of the First Street Landfill, the Old Tempe Landfill, and adjacent parcels in the northwest corner of the landfill properties. The landfill accepted demolition debris, municipal solid wastes, and recyclable material, including metals, glass, and paper from the Cities of Tempe and Mesa, Arizona and reportedly did not accept any liquid or hazardous wastes. Additionally, RRCA was supposedly producing combustible materials for fuel cubes (refuse-derived fuel) from non-recyclable products received at the landfill. RRCA disposed of the wastes over the area of the Old Tempe Landfill. The First Street Landfill property consisted of approximately 80 acres and included the area of the Old Tempe Landfill. The First Street Landfill accepted demolition debris and was to accept only inert materials such as dirt, concrete, and asphalt. Wood and uncontained refuse was also allowed if it was buried above the historical high water level.

The Bennett Family Trust Landfill is located adjacent to the First Street Landfill and is comprised of approximately seven acres. Little information is available for this property. The Bennett Family Trust obtained the property in the 1970s and used an onsite pit for storage of automobiles related to their scrap yard. The pit was susceptible to flooding, so the Bennetts decided to fill the pit with clean material. Supposedly, the Bennetts observed every load of material used to fill the pit and did not allow wood, garbage, tires, or the like to be disposed of in the pit.

The VOCs identified in the shallow soil-vapor within the SIBW Landfill Area include TCE, PCE and 1,1,1–TCA. These VOCs were identified because they were pervasive and persistent with respect to the three shallow soil vapor studies. In addition to the VOCs identified above, methane is also present in soil vapor at the SIBW Landfills. The methane concentrations are well below the lower explosive limit for methane, but still may cause a potential explosion risk if the gases build up inside of a structure.

The highest concentrations of 1,1,1–TCA or PCE observed within the SIBW Landfill Area were associated with the Allstate Subsite. None of the VOCs of concern were detected in the soil beneath the SIBW Landfills at concentrations that suggest that there could be a continuing source contamination to the groundwater into the future. 1,1,1–TCA contamination is present in soil vapor at concentrations ranging from 0.68 mg/L to 210 mg/L. The samples that contained the highest measured concentrations of 1,1,1–TCA are near the drywell on the former Allstate property. Data from SVMW–6, located at the former Allstate property, exhibited concentrations of 1,1,1–TCA that decreased with depth suggesting the 1,1,1–TCA source is above 30 feet bgs.

Within the SIBW Landfill Area, PCE contamination is present in soil vapor at concentrations ranging from 0.24 mg/L to 30 mg/L. The samples that contained the highest measured concentrations of PCE are associated with the former Allstate property. PCE concentrations appear to be decreasing with depth, peak at approximately 30 feet bgs, and decrease below 30 feet bgs at the former Allstate property.

TCE was observed only once within the SIBW Landfill Area in shallow soil vapor at a concentration of 0.55 mg/L in 1990. This TCE concentration was observed in SVMW–6 in 1998 and 1999 which is located at the former Allstate property. Unlike 1,1,1–TCA and PCE, the TCE concentrations do not appear to follow any identifiable pattern related to depth.

The 1993 Soils ROD identified very specific criteria that determines whether or not soil remediation is required at SIBW subsites. The subsite must meet the following criteria in order for EPA to require soil remediation:

(1) Present cancer risk (incremental risk) of more than one in one million to a person from both ingestion of VOCs in groundwater and inhalation of VOCs during other household uses of groundwater, such as showering, over a lifetime;

(2) Present a cancer risk to a person of more than one in one million from inhalation of air above the soils at the subsite itself, over a lifetime;

(3) Present a hazard index for non-cancer effects of more than one to a person from both ingestion of VOCs in groundwater and inhalation of VOCs during household uses of groundwater, over a lifetime;

(4) Present a hazard index for non-cancer effects of more than one to a person from inhalation of air above the soils at the subsite itself, over a lifetime; and

(5) Increase the concentration of VOCs in groundwater (incremental concentration) by an amount greater than the federal Maximum Contaminant Level (MCL) under the Safe Drinking Water Act.

The maximum concentrations of 1,1,1–TCA, TCE and PCE in soil gas at the SIBW Landfill Area were obtained from sample points at the Allstate facility, which did not plug in to the 1993 soils ROD Remedy. Therefore, since the concentrations observed on the landfill properties are less than or equal to the concentrations observed at the Allstate Subsite, EPA has determined that the landfill properties would not meet any of the criteria listed above and therefore would not Plug-in to the 1993 soils ROD Remedy.

In conclusion, the concentration of VOCs detected in soil gas at the SIBW Landfill Area do not require any soil remediation to be conducted under CERCLA.

Current Groundwater Conditions at the SIBW Deletion Area

There are three separate plumes of contaminated groundwater (eastern, central and western), resulting from former disposal practices at various SIBW subsites. The primary contaminants of concern in the groundwater are VOCs, primarily TCE and PCE. EPA characterized contamination in groundwater and issued a Record of Decision on September 30, 1998 for VOCs in groundwater at SIBW (Groundwater ROD). The remedies selected for the SIBW groundwater plumes are: monitored natural attenuation in the central and eastern plumes and extraction and treatment via air stripping in the western plume. The cleanup levels for the SIBW plumes are based on the federal Safe Drinking Water Act Maximum Contaminant Levels (MCLs). The MCL for both TCE and PCE is 5 parts per billion (ppb).

The plume of groundwater with concentrations of TCE above 5 ppb in the vicinity of the SIBW Landfill Area is the eastern plume. This plume is located approximately 100 to 200 feet below ground surface (bgs) in a formation known as the Middle Alluvial Unit. The groundwater included in the SIBW Deletion Area is not part of the eastern plume and contains concentrations of TCE less than 5 ppb. Based on existing data, the groundwater in the middle alluvial unit with concentrations of TCE less than 5 ppb is represented as that portion of the groundwater underlying the SIBW Landfill Area that is not within the 5 ppb TCE contour line as depicted on Figure 2 (available for viewing in the Deletion Docket). Once the partial deletion is effective, the only area remaining on the NPL north of Rio Salado Parkway will be the extent of groundwater contamination in the middle alluvial unit above 5 ppb TCE. This area is shown on Figure 2 as the overlap of the southeast corner of the SIBW Landfill Area and the 5 ppb TCE contour. This overlap has been estimated to cover approximately 7.4 acres.

Additional data may be obtained prior to the final Notice of Deletion that would allow for refinement of the definition of extent of groundwater which is presently above 5 ppb TCE depicted on Figure 2 (available for viewing in the Deletion Docket). Such information would then be set out in the final Notice of Deletion.

Community Relations Activities

Community interest in this site has been relatively low. With the exception of persons wanting to purchase property in the area, very few calls are received from citizens interested in activities at SIBW. EPA issued a fact sheet in February 2002 which described the January 2002 Plug-in Determination for seven (7) SIBW Subsites including the Allstate Subsite. EPA has also conducted two formal public meetings. The first was on July 7, 1993 and was to present the proposed Soil Vapor Extraction Plug-in Remedy and the second was on September 24, 1997 to present the proposed groundwater remedy.

Current Status

The SIBW Landfill Area has been investigated and the plug-in analysis has been performed in accordance with the 1993 Soils ROD. As prescribed by the ROD, SVE remediation is not required and therefore, no further federal CERCLA action is necessary at the SIBW Landfill Area to protect human health and the environment with respect to VOCs in soils. However, any attempt to develop the SIBW Landfill Area should be coordinated with the Arizona Department of Environmental Quality (ADEQ), as well as other appropriate state and local agencies, to ensure that non-CERCLA environmental issues associated with these properties are fully investigated and addressed prior to development of the area. In accordance with 40 CFR 300.425(e)(1)(ii), EPA has determined that all appropriate Fund-financed response under CERCLA has been implemented in accordance with the 1993 Soils ROD, and no further response action by responsible parties is appropriate.

While EPA does not believe that any future response actions at the SIBW Deletion Area will be needed with respect to CERCLA, if future conditions warrant such action, the proposed deletion area of the SIBW Site remains eligible for future Fund-financed response actions. In order to be eligible for future Fund-financed response actions the deleted portion of the SIBW site would either have to be re-listed on the NPL or an imminent and substantial threat would have to be documented that would warrant a CERCLA removal action. Furthermore, this partial deletion does not alter the status of the groundwater operable unit or the remaining subsites of the SIBW Site which are not proposed for deletion and remain on the NPL.

In a letter dated July 2, 2002 the State of Arizona through its Department of Environmental Quality, has pledged its support for the partial deletion of this portion of the SIBW Site.

Dated: February 14, 2003.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 03–4509 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

RIN 3067–AC75

Production or Disclosure of Information

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: On August 28, 1998, FEMA published a proposed rule concerning the production or disclosure of information, (63 FR 45982). There have been numerous changes to FEMA's program for the production or disclosure of information since FEMA published this notice of proposed rulemaking. Therefore, FEMA is withdrawing its notice of proposed rulemaking for the production or disclosure of information.

DATES: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Gayle Furtney, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (202) 646–4079, (facsimile) (202) 646–4536, or e-mail *Gayle.Furtney@fema.gov.*

SUPPLEMENTARY INFORMATION: On August 28, 1998, FEMA published a Notice for proposed rulemaking for the production or disclosure of information, (63 FR 45982). There have been numerous changes to FEMA's program for the production or disclosure of information since FEMA published its August 28, 1998 Notice of proposed rulemaking. Therefore, FEMA is withdrawing its notice of proposed rulemaking for the production or disclosure of information.

Authority: 5 U.S.C. 552 as amended by sections 1801–1804 of the Omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); 5 U.S.C. 301 (Pub. L. 85–619); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12148.

Dated: February 20, 2003.
Michael D. Brown,
Deputy Director.
[FR Doc. 03–4722 Filed 2–27–03; 8:45 am]
BILLING CODE 6718–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 4

[USCG–2001–8773]

RIN 2115–AG07

Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents

AGENCY: Coast Guard, DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the alcohol testing requirements for commercial vessels following a serious marine incident. The 1998 Coast Guard Authorization Act requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of a serious marine casualty. The Coast Guard proposes to establish requirements for testing within the statutory time limits, to expand the existing requirements for commercial vessels to have alcohol-testing devices on board, and to authorize use of a wider variety of testing devices. This rulemaking would also make additional minor procedural changes to Part 4, including a time limit for conducting drug testing following a serious marine incident.

DATES: Comments and related material must reach the Docket Management Facility on or before June 30, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before April 29, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–8773), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Robert C. Schoening, Coast Guard, at 202–267–0684. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–8773), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would be helpful to this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current regulations in 46 CFR part 4 require marine employers to take all practicable steps after a serious marine incident (SMI) to ensure that chemical testing is conducted. The regulations do not specify a time requirement for completing the tests for alcohol or for dangerous drugs following an SMI. Without a specified timeframe to conduct alcohol or drug testing after an SMI, in some instances tests were not conducted, and in other instances tests were not completed soon enough for the results to provide a determination of whether alcohol was present in an individual's system at the time the SMI occurred.

In 1998, Congress passed Public Law 105–383 which revised Title 46, U.S. Code, by adding a new section 2303a—"Post serious marine casualty alcohol testing" (hereafter section 2303a). Section 2303a requires the Coast Guard to establish procedures ensuring that after a serious marine casualty occurs, required alcohol testing is conducted no later than two hours after the casualty occurred. If the alcohol testing cannot be conducted within that timeframe because of safety concerns directly related to the casualty, section 2303a requires the alcohol testing to be conducted as soon thereafter as the safety concerns have been adequately addressed to permit such testing. However, section 2303a prohibits us from requiring alcohol testing to be conducted more than eight hours after the casualty occurs.

The Coast Guard requires that alcohol and drug testing be conducted after a serious marine incident. Section 2303a uses the term "serious marine casualty." For the purpose of this rulemaking serious marine casualty means the same as *serious marine incident* (SMI) as defined in 46 CFR 4.03–2. Section 2303a also uses the phrase "safety concerns directly related to the casualty" as the only reason the marine employer may postpone alcohol testing following an SMI.

This rule would provide that alcohol testing requirements after an SMI will not prevent personnel who are required to be tested for alcohol from performing duties in the aftermath of an SMI when their performance is necessary to meet safety concerns directly related to the casualty.

Coast Guard regulations in 46 CFR part 4 mandating alcohol testing after an SMI currently require marine employers to collect blood or breath specimens from each individual who was directly involved in the SMI, and for breath specimens, to use an alcohol breath-testing device that can accurately determine the presence of alcohol in an individual's system. The regulations also require inspected vessels certificated for unrestricted oceans routes and inspected vessels certificated for restricted overseas routes to have onboard at all times an alcohol breath-testing device capable of determining the presence of alcohol in an individual's system. The voyages of oceangoing vessels take the vessel and its crew far from shore-based facilities where alcohol testing can be conducted. If an SMI were to occur during the voyage, the vessel would not be able to return to a shore-based facility soon enough to complete alcohol testing for the results to indicate whether alcohol was present in an individual's system at the time the SMI occurred. Requiring marine employers to have testing devices onboard these vessels at all times makes it possible for them to ensure that proper alcohol testing is conducted in a timely manner.

Section 2303a applies to all commercial vessels. The majority of these vessels are not currently required to carry alcohol-testing devices on board the vessel. A regulatory requirement to conduct testing within the statutory timeframes cannot, by itself, ensure that alcohol testing after an SMI will be done within 2 hours. For the same reason we currently require oceangoing vessels to carry alcohol breath-testing devices onboard at all times, all other commercial vessels should also carry testing devices onboard their vessels. Having the devices onboard would make it possible for a marine employer to conduct the required alcohol testing within two hours after the occurrence of an SMI.

Given a choice between Evidential Breath Testing (EBT) devices or breath Alcohol Screening Devices (ASDs), we believe that most commercial vessel owners and operators would elect to carry breath ASDs for determining the presence of alcohol in an individual's system. Our assumption is based on the cost differential between the more expensive EBT and less expensive breath ASD. However, the cost of the less expensive breath ASD could still be too expensive for the smallest commercial vessel owners and operators. Providing vessel owners and operators with a wider variety of alcohol-testing devices to choose from would give them more control over the cost of compliance. Therefore, we are proposing to allow commercial vessel owners or operators to carry either breath or saliva alcohol-testing devices to satisfy the requirement to carry alcohol-testing devices onboard their vessels.

Discussion of Proposed Rule

Statutory Time Requirements for Alcohol Testing After an SMI

The Coast Guard proposes adding § 4.06–3, "Requirements for alcohol and drug testing following a serious marine incident," which would require commercial vessel marine employers to conduct alcohol testing within two hours after an SMI, unless precluded by safety concerns directly related to the casualty, as mandated by section 2303a. If alcohol testing is not completed within two hours based on this exception, it must be done within eight hours of the casualty. An explanation on the casualty report form CG–2692B would be required for alcohol testing that is not completed within the prescribed two-hour timeframe, and an additional explanation would be required when testing is not completed within the eight-hour timeframe.

We also propose adding a provision in this section requiring drug testing be conducted as soon as possible after an SMI but no later than 32 hours after its occurrence. We would require the same type of explanation on the casualty reporting form when drug testing is not completed within the prescribed times as when alcohol testing is not completed within provided timeframes.

Responsibility of Individuals Directly Involved in Serious Marine Incidents

We propose amending § 4.06–5, "Responsibility of individuals directly involved in serious marine incidents," so that individuals subject to alcohol testing after an SMI would be prohibited from consuming alcoholic beverages for eight hours following the SMI, or until after the required alcohol testing is completed.

Adding a Requirement To Carry Alcohol-Testing Devices

We propose adding § 4.06–15, "Availability of chemical testing devices," which would require marine employers to have sufficient breath- or saliva-alcohol testing devices capable of determining the presence of alcohol in an individual's system on board vessels. This requirement would make it possible for owners and operators to comply with the statute's two-hour timeframe for alcohol testing.

We would also move § 4.06–20(b), which requires commercial vessel owners and operators to have drug-testing kits readily available for use following an SMI, to this new section.

Allowing Use of Saliva-Alcohol Testing Devices

To prevent a redundancy, we propose moving the specimen collection requirements in § 4.06–10 to the specimen collection requirements in § 4.06–20. We also propose including saliva, along with blood and breath, as specimens that can be collected for alcohol testing. For alcohol testing conducted aboard vessels, we would allow vessel owners and operators to choose any breath- or saliva-alcohol testing device that can determine the presence of alcohol in a individual's system. For drug testing, we will keep the current requirement for testing kits complying with 49 CFR part 40.

Delay of Implementation

We propose a delayed implementation date of 180 days to ensure that all marine employers subject to a new carriage requirement have ample time to procure and learn how to use the required equipment.

Related Rulemaking

During the comment period of a recent rulemaking, docket number USCG 2000–7759 Chemical Testing (66 FR 42964), we received one comment letter that requested several changes to the regulations in 46 CFR part 4 requiring alcohol testing after an SMI. The comment recommended that we revise the regulations to allow the use of saliva-alcohol testing devices. The comment also requested that we remove the requirement to conduct alcohol or drug testing on human remains. A copy of this comment letter has been placed into this rulemaking docket. We have considered the comment and, as described in the discussion of proposed rule section of this notice, we are proposing to amend §§ 4.06–5, 4.06–10, and 4.06–20. However, at this time, we are not proposing to amend § 4.06–30 concerning testing of human remains.

Department of Transportation Drug and Alcohol Testing Regulations

This proposal would have no impact on any existing Department of

Transportation (DOT) or operating administration's drug and alcohol testing regulations. It is clear that the Coast Guard is not subject to the provisions of the Omnibus Transportation Employee Testing Act (OTETA) of 1991 (Pub. L. 102–143), although it does apply to other DOT modes. OTETA does not apply to Coast Guard required alcohol testing of employees in the regulated maritime industry.

The provisions of 49 CFR part 40, the DOT's drug testing requirements, apply to Coast Guard required drug testing. The provisions in 49 CFR part 40 that relate to alcohol testing, including use of the DOT Alcohol Testing Form, however, do not apply to Coast Guard required alcohol testing.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is, however, considered "significant" under the regulatory policies and procedures of the DOT (February 26, 1979 (44 FR 11040)). A separate draft Regulatory Analysis is available in the docket as indicated under **ADDRESSES.** A summary of the analysis follows.

This proposed rulemaking would affect more than 183,400 commercial vessels. However, of those, approximately 2,600 vessels are already required to carry alcohol breath-testing devices. Since these vessels carry alcohol-testing devices on board, these marine employers can meet the statutory alcohol-testing timeframe requirement without additional cost. Thus, the number of vessels affected by the proposed requirement for the first time would be approximately 180,800.

Section 2303a of Title 46, U.S. Code, requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of an SMI. This proposal would establish a requirement for all marine employers to have alcohol-testing devices readily available for use to meet the requirements for alcohol testing following an SMI.

This proposed rule would require that alcohol testing be conducted within two hours of the incident, whereas the current regulation does not specify a time frame for testing. This proposal would help to ensure compliance with the alcohol testing requirements after a SMI.

The cost of this proposal is estimated by assuming that, of the available ASDs, 90 percent of vessels would choose the least costly option of purchasing disposable saliva alcohol testing devices, while only 10 percent of vessels would choose a breath ASD. The lowest price breath ASD is more than twice as expensive as the most expensive saliva ASD. We also assume that no vessels would choose an EBT device because of its much higher initial purchase cost and ongoing maintenance and training costs.

The draft Regulatory Analysis shows a $97 median price for the purchase of saliva ASDs and a $393 median price for a breath ASD. Using those median prices, this proposed rule would have an estimated total cost to industry of approximately $144 million throughout the 10-year analysis period. In the first year, affected vessels would incur approximately $40 million. For subsequent years, the average annual cost is approximately $18 million. The draft Regulatory Analysis available in the docket as indicated under **ADDRESSES** further compares the costs of EBT devices versus ASDs as alternatives.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule could impact about 3,500 small entities, based on the determination made by the Small Business Administration (SBA) in the North American Industry Classification System (NAICS codes 4831, 4832, 4872, 48831, 48832, and 48833). The SBA defines small entities either by revenue size or by employee size for all NAICS sectors. Depending on the NAICS sectors, firms with revenues less than $5 million and firms with less than 500 employees are defined as Small Entities. For the NAICS sectors and sub-sectors that apply to this analysis, SBA defined NAICS sectors 4831 (Deep Sea, Coastal, and Great Lakes water transportation) and 4832 (Inland Water Transportation) by employee size and the rest by revenue size. Those sectors defined by revenue size are: Scenic and Sightseeing Transportation (water), Port and Harbor Operations, Marine Cargo Handling, and Navigational Services to Shipping.

To determine the impact of the cost of this rule on these companies, we made the following assumptions:

- We assumed if a firm's revenues are less than $500,000, or it employs less than 20 employees, then it owns 5 vessels; and
- We assumed if a firm's revenues are in the range of $500,000 to $5 million, or it employs between 20 to 500 employees, then it owns 10 vessels.

With these assumptions, we calculated the cost impact of selecting saliva versus breath ASDs. As shown in Table below, costs will be a very small percentage of revenues for almost all companies.

The initial cost burden of alcohol breath-testing devices for some firms owning 5 vessels is 6.12 percent. It is reasonable to assume that under these circumstances the companies in question would choose to use disposable saliva ASDs or the next lowest priced breath ASDs, which would be a much lower cost to them.

COST BURDEN AS A PERCENTAGE OF ANNUAL REVENUES FOR SMALL ENTITIES

For a Company that owns:	Using saliva ASDs		Using breath ASDs	
	Initial	Recurring annual	Initial	Recurring annual
5 vessels:				
Cost	$925	$750	$2,840	$525.
Impact (Cost/Avg. Revenue).	0.01% to 1.99%	0.01% to 1.62%	0.04% to 6.12%	0.01% to 1.13%.
10 vessels:				
Cost	$1,850	$1,500	$5,680	$1,050.
Impact (Cost/Avg. Revenue).	0.002% to 0.41%	0.001% to 0.33%	0.01% to 1.25%	0.001 to 0.23%.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Robert C. Schoening at 202–267–0684.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information (OMB 2115–0003)

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, and a description of those who must collect the information follow.

The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Marine Casualty Information; Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; and Management Information System Requirements

Summary of the Collection of Information: The proposed regulation would require marine employers to document the reason for delaying the alcohol test on form CG–2692B. The requirement to report this information would be promulgated in 46 CFR 4.06–3. We would revise form CG–2692B accordingly to record the results of all types of alcohol testing (blood, breath, and saliva).

Need for Information: In accordance with 46 U.S.C. 2303a, the proposed regulation would require marine employers to document the reason for delaying the alcohol test on form CG–2692B if alcohol testing were not completed within the two-hour timeframe. If the alcohol test is not completed within the eight-hour timeframe, the marine employer must document the reason for the further delay of alcohol testing on form CG–2692B.

Proposed Use of Information: The information would be used to document the results of alcohol tests after SMIs.

Description of the Respondents: Marine employers whose employees, passengers, or vessels are involved in SMIs.

Number of Respondents: Currently, the approved OMB collection, estimates that 5,703 respondents fill out an accident report. This rulemaking would not change the number of incidents or accidents that trigger a response therefore the increase in respondents would be zero.

Frequency of Response: Continues to be once per incident.

Burden of Response: The possible additional burden imposed by this proposed rule is estimated to be so minimal that it does not merit changing the approved collection (a couple of additional minutes whenever documentation is needed). OMB approved, on previous submissions, the one-hour burden of completing each form CG–2692B.

Estimate of Total Annual Burden: The currently approved annual burden is 5,703 hours. Because the possible additional burden imposed by this proposed rule is estimated to be so minimal, it does not merit changing the approved annual burden.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (*See* the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) Rules on testing merchant marine personnel for drugs and alcohol fall into the category of personnel qualification. Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period, we will undertake appropriate consultations with the affected Indian tribal officials.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(c), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the Coast Guard proposes amending 46 CFR part 4 as follows:

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

1. The citation of authority for Part 4 is revised to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301, and 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

2. In § 4.06–1, in paragraph (b) add the phrase "as required in this part" at the end of the sentence, and revise paragraphs (c) and (d) as follows:

§ 4.06–1 Responsibilities of the marine employer.

* * * * *

(c) The determination of which individuals are directly involved in a serious marine incident (SMI) is to be made by the marine employer. A law enforcement officer may determine that additional individuals are directly involved in the SMI. In such cases, the marine employer shall take all practicable steps to have these additional individuals tested in accordance with this part.

(d) The requirements of this subpart do not prevent personnel who are required to be tested from performing duties in the aftermath of a SMI when their performance is necessary to respond to safety concerns directly related to the incident.

* * * * *

3. Add § 4.06–3 to read as follows:

§ 4.06–3 Requirements for alcohol and drug testing following a serious marine incident.

When a marine employer determines that a casualty or incident is, or is likely to become, an SMI, the marine employer must ensure the following alcohol and drug testing is conducted:

(a) *Alcohol testing.* (1) Alcohol testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The alcohol testing of each individual must be conducted within two (2) hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevented the alcohol testing from being conducted within 2 hours of the occurrence of the incident, then alcohol testing must be conducted as soon as the safety concerns are addressed.

(iii) Alcohol testing is not required to be conducted more than eight (8) hours after the occurrence of the SMI.

(2) Alcohol-testing devices must be used in accordance with procedures specified by the manufacturer of the testing device and this part.

(3) If the alcohol testing required in paragraphs (a)(1)(i) and (a)(1)(ii) of this section is not conducted, the marine employer must document on form CG–2692B the reason the test(s) was not conducted.

(4) The marine employer may use alcohol testing results from tests conducted by Coast Guard or local law enforcement personnel to satisfy the alcohol-testing requirements of this part only if the alcohol testing meets all of the requirements of this part.

(b) *Drug testing.* (1) Drug testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The drug testing of each individual must be conducted within thirty-two (32) hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevented the drug testing from being conducted within 32 hours of the occurrence of the incident, then drug testing must be conducted as soon as the safety concerns are addressed.

(2) Specimen collection and shipping kits used to conduct drug testing must be used in accordance with 49 CFR part 40.

(3) If the drug test required in paragraphs (b)(1)(i) and (b)(1)(ii) of this section is not conducted, the marine employer must document on form CG–2692B the reason the drug test was not conducted.

4. Revise § 4.06–5 to read as follows:

§ 4.06–5 Responsibility of individuals directly involved in serious marine incidents.

(a) Any individual engaged or employed on board a vessel who is determined to be directly involved in a SMI must provide blood, breath, saliva, or urine specimens for chemical testing required by § 4.06–20 when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide blood, breath, saliva, or urine specimens, this refusal must be noted on form CG–2692B and in the vessel's official log book, if one is required. The marine employer must remove the individual from duties that directly affect the safe operation of the vessel as soon as practicable.

(c) Individuals subject to alcohol testing after an SMI are prohibited from consuming alcohol beverages for eight (8) hours following the occurrence of the SMI, or until after the alcohol testing required by this part is completed.

(d) No individual may be compelled to provide specimens for alcohol and drug testing required by this part; however, refusal is a violation of regulations and may subject the individual's to suspension and revocation proceedings under part 5 of this chapter and/or a civil penalty.

§ 4.06–10 [Removed]

5. Remove § 4.06–10.

6. Add § 4.06–15 to read as follows:

§ 4.06–15 Availability of chemical testing devices.

(a) *Alcohol testing.* The marine employer must have sufficient devices capable of determining the presence of alcohol in an individual's system onboard the vessel for use to meet the alcohol testing requirements found under § 4.06–3 of this part.

(b) *Drug testing.* The marine employer must have urine specimen collection and shipping kits meeting the requirements of 49 CFR part 40 that are readily available for use following SMIs. The specimen collection and shipping kits need not be carried aboard each vessel if obtaining the kits and conducting the required drug tests can be completed within 32 hours from the time of the occurrence of the SMI.

7. Revise § 4.06–20 to read as follows:

§ 4.06–20 Specimen collection requirements.

(a) *Alcohol testing.* (1) When conducting alcohol testing required in § 4.06–3(a), an individual determined under this part to be directly involved in the SMI must provide a specimen of their breath, blood, or saliva to the marine employer as required in this subpart.

(2) Collection of an individual's blood to comply with § 4.06–3(a) must be taken only by qualified medical personnel.

(3) Collection of an individual's saliva or breath to comply with § 4.06–3(a) must be taken only by personnel trained to operate the alcohol-testing device in use and must be conducted in accordance with this subpart.

(b) *Drug testing.* When conducting drug testing required in § 4.06–3(b), an individual determined under this part to be directly involved in the SMI must provide a specimen of their urine in accordance with 46 CFR part 16 and 49 CFR part 40.

8. Add § 4.06–70 to read as follows:

§ 4.06–70 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115.

Dated: February 24, 2003.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 03–4809 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D017]

Defense Federal Acquisition Regulation Supplement; Payment Withholding

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement that a contracting officer withhold 5 percent of the payments due under a time-and-materials or labor-hour contract unless otherwise prescribed in the contract Schedule. The proposed rule would permit, but not require, the administrative contracting officer (ACO) to withhold payment amounts if the ACO determines the withholding to be necessary to protect the Government's interests.

DATES: DoD will consider all comments received by April 29, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D017 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D017.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation (FAR) 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, requires the contracting officer to withhold 5 percent of the amounts due, up to a maximum of $50,000, unless otherwise specified in the contract Schedule. The Government retains the withheld amount until the contractor executes and delivers, at the time of final payment, a release discharging the Government from all liabilities, obligations, and claims arising under the contract.

This rule proposes to add DFARS 232.111(b) and DFARS 252.232–7XXX, Alternate A, to specify that, normally, there should be no need to withhold payments when dealing with contractors that typically comply with contractual requirements in a timely manner. This is in contrast to the current requirement in time-and-materials and labor-hour contracts that contracting officers must withhold payments unless other direction is provided in the contract.

DoD is considering revising its policy because the current withholding provisions are administratively burdensome and may, in some situations, result in the withholding of amounts that exceed reasonable amounts needed to protect the Government's interests. In addition, the contractor is already incentivized to execute and deliver the release discharging the Government from all liabilities, obligations, and claims under the contract, since this release is a condition for final payment.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to time-and-materials and labor-hour contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D017.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 232 and 252 as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

2. Section 232.111 is added to read as follows:

232.111 Contract clauses for non-commercial purchases.

(b) Use the clause at FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, with 252.232–7XXX, Alternate A, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(i) Alternate A permits the administrative contracting officer (ACO) to withhold 5 percent of the amount due until a reserve is set aside in an amount the ACO considers to be necessary, but not to exceed $50,000, to protect the Government's interests.

(ii) Normally, there should be no need to withhold payment for a contractor with a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims.

(iii) If the ACO determines that it is necessary to withhold payment to protect the Government's interests, the ACO shall issue written direction to the contractor to withhold 5 percent of amounts due until a sufficient reserve is set aside.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.232–7XXX is added to read as follows:

252.232–7XXX Alternate A.

Alternate A (XXX 2003)

As prescribed in 232.111(b), substitute the following paragraph (a)(2) for paragraph (a)(2) of the clause at FAR 52.232–7:

(a)(2) The Administrative Contracting Officer (ACO) may unilaterally issue written direction to the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the ACO considers necessary to protect the Government's interests. The ACO may withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this clause.

[FR Doc. 03–4700 Filed 2–27–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 021903E]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would exempt one vessel from the minimum mesh size requirements for the Gulf of Maine (GOM) Regulated Mesh Area (RMA); regulations pertaining to the GOM Rolling Closure Areas II, III, IV, and V; days-at-sea (DAS) restrictions; and minimum fish size requirements. The experiment proposes to conduct a study to target cod and flounder using a modified trawl net constructed with a changeable inner mesh size codend surrounded by a small mesh codend cover to determine the selectivity of various square mesh sizes and mesh types. The EFP would allow these exemptions for one commercial vessel, for not more than 24 days of sea trials. All experimental work would be monitored at sea by a biologist from a contracted consulting group and supervised ashore and on board (during key trips) by the project coordinator for the Cooperative Research Partners Initiative-funded project.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before March 17, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Cooperative Research Partners Initiative Gloucester, MA Trawl Selection Study." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fisheries Management Specialist, 978–281–9141.

SUPPLEMENTARY INFORMATION: A completed application for an EFP was submitted by Joseph B. Novello as part of a Cooperative Research Partners Initiative-funded project on January 13, 2003. The EFP would exempt one federally permitted commercial fishing vessel from the following NE multispecies provisions: The minimum mesh size requirements for the GOM RMA at 50 CFR 648.80(a)(3)(i); regulations pertaining to the GOM Rolling Closure Areas II, III, IV, and V at 50 CFR 648.81(g)(1)(ii), (iii), (iv), and (v), respectively; NE multispecies DAS restrictions at 50 CFR 648.82(a); and minimum fish size requirements specified at 50 CFR 648.83(a)(1).

The EFP would allow the commercial vessel to conduct the proposed study using a modified trawl net constructed with a changeable inner mesh size codend (liner) surrounded by a small mesh (3–inch (7.62–cm)) codend cover in order to determine the optimal square mesh net size and net type (knotted vs. unknotted) for bottom trawl gear for the purpose of reducing bycatch. A total of four liners would be constructed, including three using larger square panel knotted mesh nets (6.5, 7.0, and 7.4–inch (16.51–cm, 17.78–cm, and 18.80–cm, respectively)) and one consisting of 6.5–inch (16.51–cm) square panel unknotted mesh. For each liner, three 1–day fishing trips would be directed on cod, and three, 1–day trips would target witch flounder, for a total of 24 DAS. The incidental catch is expected to be primarily dogfish, skates, monkfish, and American lobster; however, summer flounder, winter flounder, yellowtail flounder, and American plaice may be caught during the targeted witch flounder trips.

The applicant requested that the research be conducted in the GOM in an area including 30–minute statistical squares 124, 125, 132, and 133, or between 42°00′ and 43°00′ N. lat. and between 70°00′ and 71°00′ W. long. The tows would take place between April 1 and December 31, 2003. Fish retained by the experimental net would be enumerated, weighed and measured, and returned to the sea as quickly as possible. Selection curves, 50–percent retention lengths, selection factors, and selection ranges would be determined for each of the four square-mesh liners. Since no fish would be landed as a result of this study, a NE multispecies DAS exemption would compensate for the fact that no economic benefit would result from fishing during the course of this EFP.

The participating vessel would be required to report all landings in its Vessel Trip Report. The data collection activities aboard the participating vessel would be conducted by a biologist with the Allan D. Michael & Associates consulting group and supervised ashore and aboard (on key trips) by the project coordinator, or his official designee, to ensure compliance with the experimental fishery objectives. The EFP would also contain a provision that the Regional Administrator has the authority to reconsider the continuation of the experimental fishery on a month-to-month basis, based upon a monthly status report outlining total catch and bycatch submitted by the applicant, and would authorize the Regional Administrator to terminate the experimental fishery at any time, at her discretion.

Based on the results of the EFPs, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4681 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 021403B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP are consistent with the goals and objectives of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and the Atlantic Mackerel, Squid, and Butterfish FMP. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow up to 10 vessels to test the effectiveness of a 5.5–inch (13.97–cm) square mesh extension escapement panel for reducing bycatch of scup and retain Loligo squid inside the Gear Restricted Areas (GRAs), and up to 15 additional vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. In order to fund the survey, the 15 additional vessels would be fishing for specific amounts of named species under the Research Set-Aside (RSA) Program. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before 5 p.m. EST March 17, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on NFI Squid Scup GRA EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, 978–281–9153.

SUPPLEMENTARY INFORMATION: The application process for an EFP was completed by the National Fisheries Institute (NFI) on January 28, 2002. To conduct the experiment, NFI, in cooperation with Rutgers University and Manoment Center for Conservation Sciences, requested EFPs for up to 10 vessels to test the effectiveness of a 5.5–inch (13.97–cm) square mesh extension escapement panel for reducing bycatch of scup and retaining Loligo squid inside the GRAs (mesh study), and for up to 15 additional vessels to harvest RSA allocations. Coordinates of the GRAs are listed at 50 CFR 648.122(a) and (b). The 10 vessels participating in the mesh study and up to 15 additional vessels would make additional compensation fishing tips, during closed seasons, to land up to the total RSA quota allocation of 140,543 lb (63,749 kg) of Loligo squid, 23,325 lb (10,580 kg) of scup, and 21,338 lb (9,679 kg) of black sea bass. However, no fish caught during these compensation fishing trips smaller than the legal minimum size would be sold, traded, bartered, or processed for sale. Landings from such trips would be sold to generate funds that would defray the costs associated with the research project.

The research project would be carried out by the research vessels conducting discard monitoring and net testing. Discard monitoring will rely on vessel reports to identify areas of high scup discarding. Once areas of high scup

discarding are identified, the research vessels would work in pairs to make coordinated trips of about 5 days duration. Each research vessel, working in close proximity to the paired research vessel, would conduct about 10 research tows for a total of about 20 research tows during a coordinated trip. One of the vessels would use unmodified gear (1.875–inch (4.76–cm) standard codend and unmodified extension) and the other would use modified gear (1.875–inch (4.76–cm)) standard codend with a square mesh panel in the extension or other configuration). Nets will be towed using an ABBA pattern of deployment. Approximately 80 combined two-hour research tows will be made to carry out the mesh study. Most tows would occur in March, but some tows may take place in November and December. The catch will be sorted by species and weighed. Target species in order of priority will be scup, Loligo squid, summer flounder, black sea bass, and whiting. Data will be statistically analyzed and a report prepared. Generally, where sampling permits, at least 100 lengths of discards and landings will be collected for each target species.

To conduct the mesh study, the research vessels would be granted exemptions to black sea bass quarterly quota closures at § 648.141; scup trimester quota closures at § 648.121(a); scup time and area restrictions at § 648.122(a) and (b); scup trawl gear restrictions at § 648.123; and *Loligo* squid trip and quarterly closures at § 648.22. In addition, in order to collect individual size measurements and other data, the EFP for the ten vessels identified as research vessels to conduct the mesh study would grant additional exemptions from the following regulations: Minimum sizes for scup at § 648.124(a), summer flounder at § 648.103(a), (b), and (c), and black sea bass at § 648.143. The 1 to 15 vessels that would be used to harvest the RSA would be exempt from the following: Black sea bass trip limits at § 648.140(b)(2); black sea bass quarterly quota closures at § 648.141; scup trimester quota closures at § 648.121(a); and *Loligo* squid possession limit, and quarterly closures at § 648.22(a) and (c).

Any landings that would occur from research or compensation fishing would be reported in the Vessel Trip Report, as required, because the participating vessels possess a commercial scup, *Loligo* squid, summer flounder, or black sea bass moratorium permit. All fish would be landed in compliance with applicable state landing laws.

Based on the results of the EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 03–4680 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 022003B]

Fisheries of the Exclusive Economic Zone Off Alaska; Delay of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability (NOA); request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would delay the effective date of requirements for 100–percent retention and utilization of rock sole and yellowfin sole from January 1, 2003, until June 1, 2004. The purpose of Amendment 75 is to provide the Council and the affected industry with additional time to develop and assess alternatives to address groundfish discards in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI).

DATES: Comments on Amendment 75 must be received by April 29, 2003.

ADDRESSES: Comments on Amendment 75 may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to the NMFS, Alaska Region, 709 West 9th St., Room 453, Juneau, AK, 99801. Comments also may be sent via facsimile (fax) to (907) 586–7557. Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 75 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, (907) 586–7228 or *kent.lind@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP, immediately publish notification in the **Federal Register** that the FMP or amendment is available for public review and comment.

Purpose and Need for Amendment 75

In 1997, the Council adopted a regulatory program to reduce the amount of groundfish discards in the groundfish fisheries off Alaska. This program, known as the Improved Retention/Improved Utilization (IR/IU) Program, was adopted as Amendments 49 to the FMP for the Groundfish Fishery of the BSAI and Amendment 49 to the FMP for Groundfish of the Gulf of Alaska (GOA) (Amendments 49/49). The IR/IU program requires that vessels fishing for groundfish in Alaska retain all pollock and Pacific cod beginning in 1998 when directed fishing for those species is open. In January 1, 2003, the program expanded to include all rock sole and yellowfin sole in the BSAI, and all shallow water flatfish in the GOA.

In December 1995, the Council adopted its IR/IU problem statement. That statement reads as follows:

"In managing the fisheries under its jurisdiction, the North Pacific Fishery Management Council is committed to: (1) assuring the long-term health and productivity of fish stocks and other living marine resources of the North Pacific and Bering Sea ecosystem; and (2) reducing bycatch, minimizing waste, and improving utilization of fish resources in order to provide the maximum benefit to present generations of fishermen, associated fishing industry sectors, communities, consumers, and the nation as a whole...

The Council's overriding concern is to maintain the health of the marine ecosystem to ensure the long-term conservation and abundance of the groundfish and crab resources. As a response to this concern, a program to promote improved utilization and effective control/reduction of bycatch and discards in the fisheries off Alaska should address the following problems:

1. By-catch and discard loss of groundfish, crab, herring, salmon, and other non-target species.

2. Economic loss and waste associated with the discard mortality of target species

harvested but not retained for economic reasons.

3. Inability to provide for a long-term, stable fisheries-based economy due to loss of fishery resources through wasteful fishing practices.

4. The need to promote improved retention and utilization of fish resources by reducing waste of target groundfish species to achieve long-term sustainable economic benefits to the nation."

Under Amendments 49/49, the Council chose to implement 100–percent retention requirements for pollock and Pacific cod effective January 1, 1998, and provided a 5–year delay for the implementation of 100–percent retention requirements for rock sole and yellowfin sole in the BSAI and the shallow water flatfish species complex in the GOA. These requirements were set out in the final rule to implement Amendment 49 for the BSAI (62 FR 63880, December 3, 1997), and the final rule to implement Amendment 49 for the GOA (62 FR 65379, December 12, 1997).

In the EA/RIR/IRFA prepared for BSAI Amendment 49, NMFS assessed the biological, economic and social impacts of improved retention and utilization. This analysis found that the proposed actions could result in significant economic impact on a substantial number of small entities, including a significant number of relatively small catcher/processor vessels that use trawl gear. Because of their size, these vessels are limited to freezing headed and gutted products.

To mitigate some of the effects that IR/IU regulations could have, the Council delayed implementation of the rules on the most negatively affected fisheries (i.e., those groundfish fisheries in which rock sole, yellowfin sole and shallow-water flatfish are caught and discarded) for a period of 5 years.

The Council recognized the need to conduct an assessment of the impacts of IR/IU regulations on small entities to determine whether a modification of the IR/IU regulations would minimize such impacts and continue to meet the Council's objectives. These objectives include ensuring healthy fisheries, reducing bycatch and waste, and improving utilization of fish resources with minimum negative effects of regulations on small entities.

To this end, the Council began an analysis in early 2002, to examine alternative approaches to current 100–percent retention requirements for rock sole and yellowfin sole that could achieve the Council's objectives of reducing bycatch but in a manner that would have less negative effect on industry. The analysis concluded that the potential impact of IR/IU regulations for rock sole and yellowfin sole on some sectors of the groundfish fisheries of the BSAI creates the possibility that some entities currently participating in these fisheries might discontinue their participation due to the economic burden the existing rules could place on their operation.

In June 2002, therefore, the Council revised its IR/IU problem statement to state that 100–percent retention of rock sole and yellowfin sole would result in severe economic losses to certain participants in the fishery, while less than 100–percent retention of only those species would not be enforceable. The Council also began an analysis of a variety of alternative regulatory approaches that would provide for reductions in groundfish discards in a less burdensome manner.

In October 2002, the Council concluded that while several alternative proposals under analysis showed merit, they were not sufficiently developed and analyzed in a manner that would allow for implementation on January 1, 2003. Therefore, the Council adopted BSAI Amendment 75 to delay implementing the 100–percent retention requirements for rock sole and yellowfin sole in the BSAI until June 1, 2004, to provide the Council and industry with additional time to develop alternative regulatory proposals. Also in October 2002, the Council considered whether to delay 100–percent retention requirements for shallow water flatfish in the GOA groundfish fisheries. The Council concluded, however, that full retention of shallow water flatfish in the GOA is practicable and would not result in the same economic burden as would the same requirement for rock sole and yellowfin sole in the BSAI groundfish fisheries. Therefore, the Council decided not to delay 100–percent retention requirements for shallow water flatfish in the GOA.

Public comments are being solicited on the amendment through the end of the comment period stated in this NOA. A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS's evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment, whether specifically directed to the amendment or the proposed rule. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered in the approval/disapproval decision, comments must be received by the close of business on the last day of the comment period specified in this NOA; that does not mean postmarked or otherwise transmitted by that date.

Authority: 16 U.S.C. 2802 *et seq.*

Dated: February 21, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4682 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 40
Friday, February 28, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–025–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations issued under the Animal Welfare Act governing the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers.

DATES: We will consider all comments that we receive on or before April 29, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–025–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–025–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–025–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers, contact Dr. Jerry DePoyster, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Number: 0579–0036.

Type of Request: Extension of approval of an information collection.

Abstract: The regulations in 9 CFR parts 1 through 3 were promulgated under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) to ensure the humane handling, care, treatment, and transportation of regulated animals under the Act. The regulations in 9 CFR part 2 require documentation of specified information by dealers, research institutions, exhibitors, carriers, and intermediate handlers. The regulations in 9 CFR part 2 also require that facilities that use animals for regulated purposes obtain a license or register with the U.S. Department of Agriculture (USDA). Before being issued a USDA license, individuals are required to undergo prelicense inspections; once licensed, a licensee must periodically renew the license.

The Act and regulations are enforced by USDA's Animal and Plant Health Inspection Service (APHIS), which performs unannounced inspections of regulated facilities. A significant component of the inspection process is review of records that must be established and maintained by regulated facilities. The information contained in these records is used by APHIS inspectors to ensure that dealers, research facilities, exhibitors, intermediate handlers, and carriers comply with the Act and regulations.

Facilities must make and maintain records that contain official identification for all dogs and cats and certification of those animals received from pounds, shelters, and private individuals. These records are used to ensure that stolen pets are not used for regulated activities. Dealers, exhibitors, and research facilities that acquire animals from nonlicensed persons are required to have the owners of the animals sign a certification statement verifying the owner's exemption from licensing under the Act. Records must also be maintained for animals other than dogs and cats when the animals are used for purposes regulated under the Act.

Research facilities must also make and maintain additional records for animals covered under the Act that are used for teaching, testing, and experimentation. This information is used by APHIS personnel to review the research facility's animal care and use program.

APHIS needs the reporting and recordkeeping requirements contained in 9 CFR part 2 to enforce the Act and regulations. APHIS also uses the collected information to provide a mandatory annual Animal Welfare Enforcement report to Congress.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.480327 hours per response.

Respondents: Research facilities, "A" and "B" dealers, exhibitors, carriers, and intermediate handlers.

Estimated annual number of respondents: 7,288.

Estimated annual number of responses per respondent: 9.13007.

Estimated annual number of responses: 66,540.

Estimated total annual burden on respondents: 98,501 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of February 2003.

Peter Fernández,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–4743 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–098–2]

Giant Salvinia; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to a proposed field release of the nonindigenous salvinia weevil for the biological control of the aquatic weed giant salvinia. The environmental assessment documents our review and analysis of environmental impacts associated with widespread release of the salvinia weevil. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Robert V. Flanders, Branch Chief, Pest Permit Evaluation, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–5930.

SUPPLEMENTARY INFORMATION:

Background

Giant salvinia (*Salvinia molesta*) is a free-floating aquatic fern, native to South America, with a tremendous growth rate and the potential to significantly affect water-reliant agricultural industries and recreation and the ecology of freshwater habitats throughout much of the United States.

Giant salvinia reproduces vegetatively through fragmenting and from dormant buds breaking away. The colonizing or immature stage of giant salvinia is characterized by small leaves that lie flat upon the water. As plant growth accelerates, the leaves become larger, crowding occurs, and the plants are pushed upright. Mats may grow to a meter thick and can cover large areas.

The Animal and Plant Health Inspection Service (APHIS) listed giant salvinia as a Federal noxious weed in 1983. Under APHIS" regulations, no person may move giant salvinia into or through the United States, or interstate, unless he or she obtains a permit for the movement from APHIS.

Because giant salvinia is a free-floating plant, it disperses by passive means (water currents and wind) and by "hitchhiking." Animals may carry the plants over short distances, but humans can spread it widely on fishing gear and boating equipment. Intercontinental dispersal and dispersal within the United States have probably occurred when giant salvinia was sold in the nursery trade, either intentionally as a plant for aquaria or for ponds, or unintentionally when it "hitchhiked" with other aquatic plants collected for academic study or for use in aquaria or ponds. Although native to southeastern Brazil, giant salvinia is now found in North America, South America, Africa, Asia, Australia, New Guinea, and Oceania.

In the past several years, giant salvinia has been detected in the United States, mostly in association with the nursery trade in aquatic plants. Generally, detections have been in small, confined sites and are currently contained or have been eradicated. Such detections have occurred in Alabama, Arizona, Florida, Hawaii, Indiana, Louisiana, Maryland, Missouri, North Carolina, South Carolina, Texas, and Virginia. Most recently, giant salvinia was found in the Toledo Bend Reservoir and the surrounding areas in Louisiana and eastern Texas. As a result of that infestation, APHIS prepared an environmental assessment (EA) and issued permits for the environmental release of the nonindigenous salvinia weevil (*Cyrtobagous salviniae*) into the limited area of the Toledo Bend Reservoir. The salvinia weevil is native to Brazil, Bolivia, and Paraguay. Salvinia weevil larvae tunnel within the rhizomes of giant salvinia, causing them to disintegrate. The larvae also tunnel in the leaf buds, and adults eat leaves and leaf buds, suppressing growth and vegetative propagation of this sterile weed. This insect has successfully controlled giant salvinia in 12 countries over 3 continents.

Recently, APHIS received an application for a permit to release the salvinia weevil in areas of the continental United States beyond the area considered in the EA mentioned above. The applicant proposes to release the salvinia weevil to reduce the severity and extent of giant salvinia infestation in the United States. In response to the applicant's request, we published a notice in the **Federal Register** (67 FR 66381–66382, Docket No. 02–098–1) on October 31, 2002, in which we announced the availability, for public review and comment, of an EA titled "Field Release of the Salvinia Weevil, *Cyrtobagous salviniae* Calder and Sands (Curculionidae: Coleoptera) for Control of Giant Salvinia, *Salvinia molesta* Mitchell (Hydropteridales: Salviniaceae)" that examined the potential effects of additional releases of salvinia weevil into other areas of the continental United States.

We solicited comments on that EA for 30 days ending on December 2, 2002. We received one comment by that date, which requested that APHIS clarify the meaning of the term "Oceania" as used in our October 2002 notice. As mentioned above, giant salvinia is currently found in a number of regions in the world, including Oceania. The term "Oceania" is commonly used to

refer to the islands of the central and south Pacific, including Melanesia, the Federated States of Micronesia, and Polynesia.

Following the close of the comment period, our State cooperators in California advised us that the EA made available in our October 2002 notice failed to include the results of the host specificity tests that were conducted to examine the potential risks to wild rice (*Zizania aquatica*) and Sanford's arrowhead (*Sagittaria sanfordii*) that may result from the release of salvinia weevil into additional areas of the United States. In this document, we are notifying the public that we have updated the EA to include the host test results for those species.

In addition, we are also advising the public of APHIS' record of decision and finding of no significant impact (FONSI) regarding the proposed field release of the nonindigenous salvinia weevil into additional areas of the continental United States for the biological control of the aquatic weed giant salvinia. The decision, which is based on the analysis found in the EA, reflects our determination that release of the organism will not have a significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the Internet at *http://www.aphis.usda.gov/ppq* by following the link for "Documents/Forms Retrieval System" then clicking on the triangle beside "6-Permits-Environmental Assessments," and selecting document number 0001. You may request paper copies of the EA and FONSI by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The EA and FONSI are also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 25th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–4742 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before March 30, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed addition, the entities of the Federal government identified in the notice for each service will be required to procure the service listed below from the nonprofit agency employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the government.

2. If approved, the action will result in authorizing small entities to furnish the service to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: National Lead Information Center, Call Center, EPA, Supporting Office of Pesticide Programs—National Program, Chemical Division, Washington, DC.

NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.

Contract Activity: Environmental Protection Agency, Washington, DC.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–4803 Filed 2–27–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409, Public Law 96–523, and Public Law 97–375), we are giving notice of a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows: 1. Discussion of estimation of Benchmark Input-Output Accounts; 2. Discussion of integration of the industry accounts with the national accounts, issues and challenges; 3. Discussion of accelerating the annual industry accounts, estimation and methodologies; 4. Discussion of other current issues in national economic accounts.

DATES: On Friday, May 9, 2003, the meeting will begin at 9 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis (BEA), 2nd floor, Conference Rooms A&B, 1441 L Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: J. Steven Landefeld, Director, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone: 202–606–9600.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Verna Learnard of BEA at 202–606–9690 in advance. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Verna Learnard at 202–606–9690.

SUPPLEMENTARY INFORMATION: The Committee was established on September 2, 1999, to advise the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's national, regional, and international economic accounts. This will be the Committee's sixth meeting.

Dated: February 20, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 03–4746 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

Creatine Monohydrate From the People's Republic of China; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of antidumping duty changed circumstances review.

SUMMARY: In response to a request from Suzhou Sanjian Fine Chemical Co., Ltd., the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on creatine monohydrate from the People's Republic of China ("PRC") (*see Notice of Antidumping Duty Order: Creatine Monohydrate from the People's Republic of China*, 65 FR 5583 (February 4, 2000)) and issuing this notice of preliminary results. Suzhou Sanjian Nutrient and Health Products Co., Ltd. has requested that the Department of Commerce review the company's name change and determine that Suzhou Sanjian Nutrient and Health Products Co., Ltd. is the successor-in-interest of Suzhou Sanjian Fine Chemical Co., Ltd.

EFFECTIVE DATE: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Julie Santoboni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4207 or (202) 482–4194 respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2003, the Department received notification from Suzhou Sanjian Fine Chemical Co., Ltd. ("Suzhou Chemical") that on September 15, 2000, its corporate name changed to Suzhou Sanjian Nutrient and Health Products Co., Ltd. ("Suzhou Health Products"). On January 23, 2003, we notified Suzhou Health Products that, in order to determine whether entries naming Suzhou Health Products as exporter should receive the cash deposit rate currently applied to Suzhou Chemical, it is necessary to conduct a changed circumstance review in accordance with section 751(b)(1) of the Act and 19 CFR 351.216. At that time, we also requested certain additional information from Suzhou Health Products concerning the circumstances of the name change. On February 12, 2003, Suzhou Health Products responded to our request for information.

Scope of the Review

Imports covered by this review are creatine monohydrate, which is commonly referred to as "creatine." The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service ("CAS") registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Suzhou Health Product's submissions.

Section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results in a single notice, if the Department concludes that expedited action is warranted. In this instance, because we have the information necessary to make a preliminary finding already on the record and no other interested party has commented on, or objected to, Suzhou Health Products' request for a changed circumstances review, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58, 58–59 (January 2, 2002). While no single factor, or combination of factors, will necessarily prove dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *See e.g., id.* and *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will assign the new company the cash-deposit rate of its predecessor.

In its February 12, 2003, submission Suzhou Health Products stated that the name change was effected solely for the purpose of clarifying the scope of the company's production to enhance its marketing efforts. Suzhou Health Products explained that it produces and sells creatine monohydrate and other health products, which are more accurately described as nutrient or health products, than as fine chemical products. Suzhou Health Products also stated that the name change was not due to a change in ownership, corporate strategy, management, corporate structure or customer base, all of which remain the same. Suzhou Health Products provided documentation in support of these claims including copies of the business licenses of the company

before and after the name change, the resolution of the Board of Directors authorizing the name change, the application for the name change filed with the Wuxian City Foreign Economic and Trade Commission and the Commission's approval of the application, and corporate organization charts before and after the name change. Suzhou Health Products also stated that since the name change, subject merchandise was produced at the same facilities that Suzhou Chemical used to produce subject merchandise during the original sales-at-less-than-fair-value investigation (*see Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999)).

Suzhou Health Products, in its February 12, 2003, submission, has provided evidence there were no changes in the company's corporate structure and management as a result of, or contemporaneously with, the change of name. With respect to supplier relationships, Suzhou Health Products states that no suppliers have discontinued their relationship with the company since the name change and, while certain suppliers have been added, the addition of these new suppliers is merely a consequence of normal market conditions and the availability of supply. Finally, Suzhou Health Products asserts that there have been no changes in its customer relationships or customer base due to the name change, sales of Suzhou Health Products entirely replace the sales of Suzhou Chemical, and there have been no changes in product names or product brands.

Based on the information submitted by Suzhou Health Products, we preliminarily find that Suzhou Health Products is the successor-in-interest to Suzhou Chemical. We find that the company's organizational structure, senior management, production facilities, supplier relationships, and customers have remained essentially unchanged. Furthermore, Suzhou Health Products has provided sufficient documentation of its name change. Based on all the evidence reviewed, we find that Suzhou Health Products operates as the same business entity as Suzhou Chemical. Thus, we preliminarily find that Suzhou Health Products should receive the same antidumping duty cash-deposit rate (*i.e.*, a 50.32 percent antidumping duty cash-deposit rate) with respect to the subject merchandise as Suzhou Chemical, its predecessor company.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: February 24, 2003.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–4793 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Notice of Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b), FMC Corporation, a U.S. producer of persulfates and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on persulfates from the People's Republic of China, as described below. In response to this request, the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on persulfates from the People's Republic of China.

EFFECTIVE DATE: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Robin Moore, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION: On July 7, 1997, the Department published in the **Federal Register** the antidumping duty order on persulfates from the People's Republic of China (PRC). *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China*, 62 FR 36259 (July 7, 1997). In addition, on August 27, 2002, the Department initiated an administrative review of the antidumping duty order on persulfates covering one PRC exporter, Shanghai Ai Jian Import and Export Corporation (Ai Jian), and its wholly-owned subsidiary, Shanghai Ai Jian Reagent Factory (AJ Works). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (Aug. 27, 2002). As part of this review, the Department is considering whether it is appropriate to revoke the antidumping order with respect to Ai Jian and AJ Works.

On January 7, 2003, FMC Corporation (FMC), a U.S. producer of persulfates, notified the Department that Degussa AG (Degussa) had purchased seventy percent of AJ Works and that, as a result, the name of AJ Works changed to Degussa-AJ (Shanghai) Initiators Co., Ltd. (Degussa-AJ). FMC requested that the Department initiate a changed circumstances review to determine whether Degussa-AJ is, in fact, the successor-in-interest to AJ Works, and hence, whether it should be considered the same entity with regards to the pending revocation request. In addition, FMC requested that the Department issue the preliminary results of the changed circumstances review in conjunction with the notice of initiation, in accordance with 19 CFR 351.221(c)(3)(ii).

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by FMC shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(c).

Concerning FMC's request that the Department issue the preliminary results of the changed circumstances review in conjunction with the notice of initiation, FMC has not provided sufficient evidence to support a preliminary finding. FMC requested this changed circumstances review for the purpose of determining whether Degussa-AJ is the successor-in-interest to AJ Works. In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20461 (May 13, 1992). While no single factor, or combination of factors, will necessarily be dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *See, e.g., id.* and *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (Feb. 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company does not operate as the same business entity as its predecessor, the Department will not treat the new company as the successor-in-interest to the predecessor. In this instance, while FMC has stated for the record that the AJ Works' owners, management structure, supplier relationships and customer base have changed, it has not provided evidence supporting these statements.

We note that the circumstances here involve a change in ownership of a producer in a nonmarket economy country. Consequently, the analysis applied and the relevant facts may differ from successor-in-interest determinations in other situations. Nonetheless, we find that a changed circumstances review is warranted, and we will examine such questions in the course of this review.

Therefore, in accordance with section 751(b)(1) of the Act and sections 19 CFR 351.216(b) and 351.221(b)(1), we are initiating a changed circumstances administrative review.

Interested parties may submit comments for consideration in the Department's preliminary results not later than May 1, 2003. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register.**

While the changed circumstances review is under way, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or the ongoing 2001–2002 administrative review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: February 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4792 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

[Docket No. 990813222–0035–03]

RIN 0625–AA55

Allocation of Duty-Exemptions for Calendar Year 2003 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates calendar year 2003 duty exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446, as amended by Pub. L. 103–465 ("the Act").

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with Section 303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2003 is 1,866,000 units for the Virgin Islands (65 FR 8048, February 17, 2000).

The criteria for the calculation of the calendar year 2003 duty-exemption allocations among insular producers are set forth in Section 303.14 of the regulations (15 CFR 303.14).

The Departments have verified and adjusted the data submitted on application form ITA–334P by Virgin Islands producers and inspected their current operations in accordance with Section 303.5 of the regulations (15 CFR 303.5).

In calendar year 2002 the Virgin Islands watch assembly firms shipped 460,504 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 2002 plus the creditable wages paid by the industry during calendar year 2002 to residents of the territory was $3,052,648.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 2003 Virgin Islands annual allocations, based on the data

verified by the Departments, are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc.	500,000
Hampden Watch Co., Inc.	200,000
Unitime Industries, Inc.	100,000
Tropex, Inc.	300,000

The balance of the units allocated to the Virgin Islands is available for new entrants into the program or producers who request a supplement to their allocation.

Faryar Shirzad,

Assistant Secretary for Import Administration, Department of Commerce.

David B. Cohen,

Deputy Assistant Secretary for Insular Affairs, Department of the Interior.

[FR Doc. 03–4794 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 000724218–3028–05]

Native American Business Development Center Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is canceling the announcement to solicit competitive applications under its Native American Business Development Center (NABDC) program to operate the New Mexico Statewide NABDC.

SUPPLEMENTARY INFORMATION: Due to budget constraints and other agency priorities, the Minority Business Development Agency is canceling the announcement to solicit competitive applications under its Native American Business Development Center (NABDC) program to operate the New Mexico Statewide NABDC. The solicitation was originally published in the **Federal Register** notice of Wednesday, October 30, 2002, Vol. 67, No. 210, Pages 66115–66125. All applications will be returned to the applicants by MBDA.

Authority: Executive Order 11625 and 15 U.S.C. 1512.

(Catalog of Federal Domestic Assistance (CFDA) 11.801 Native American Business Development Center)

Dated: February 24, 2003.

Juanita E. Berry,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 03–4697 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, March 11, from 9 a.m. to 3:45 p.m. The Advanced Technology Program Advisory Committee is composed of ten members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an International Panel on Funding R&D Projects, a Competition Update and Program Evaluation Methods (Tool Kit). Discussions scheduled to begin at 9 a.m. and to end at 10 a.m. and to begin at 2:40 p.m. and to end at 3:45 p.m. on March 11, 2003, on ATP budget issues will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Thursday, March 6, 2003, and she will provide you with instructions for admittance. Ms. Peters's email address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene March 11, 2003, at 9 a.m. and will adjourn at 3:45 p.m. on March 11, 2003.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 19, 2003, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions.

Dated: February 20, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–4745 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board (Formerly the Computer System Security and Privacy Advisory Board)

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) (formerly known as the Computer System Security and Privacy Advisory Board (CSSPAB)) will meet Tuesday, March 11, 2003, from 8:30 a.m. until 5 p.m., Wednesday, March 12, 2003, from 8:30 a.m. until 5 p.m. and on Thursday, March 13, from 8:30 a.m. until 2 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/csspab/*.

DATES: The meeting will be held on March 11, 2003, from 8:30 a.m. until 5 p.m., March 12, 2003, from 8:30 a.m. until 5 p.m., and March 13, 2003, from 8:30 a.m. until 2 p.m.

ADDRESSES: The meeting will take place at the Bethesda Hyatt Regency Hotel, 7400 Wisconsin Avenue (One Bethesda Metro Center), Bethesda, MD 20814.

Agenda

—Welcome and Overview
—ISPAB Work Plan Updates
—Development of E-Authentication Panel Agenda
—NIST Information Technology Laboratory Briefings
—Update by OMB on Privacy and Security Issues
—Briefing on Agency GPEA Implementation
—Update on USPS Business Impact Assessment Project
—Agenda Development for June 2003 ISPAB Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than March 7, 2003. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3357.

Dated: February 20, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–4744 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022003C]

International Whaling Commission; Call for Nominations

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for nominations.

SUMMARY: This notice is a call for nominees for the U.S. Delegation to the June 2003 International Whaling Commission (IWC) annual meeting.

DATES: All nominations for the U.S. Delegation to the IWC annual meeting must be received by April 2, 2003.

ADDRESSES: All nominations for the U.S. Delegation to the IWC annual meeting should be addressed to Rolland Schmitten, U.S. Commissioner to the IWC, and sent via post to: Chris Yates, 13727, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. Prospective Congressional advisors to the delegation should contact the Department of State directly.

FOR FURTHER INFORMATION CONTACT: Chris Yates, 301–713–2322, Extension 114.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, Marine Mammal Commission, and by other agencies. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations.

The IWC is hosting its 55th annual meeting from June 16–19, 2003, in Berlin, Germany.

Dated: February 20, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4685 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022403A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Law Enforcement Advisory Panel (LEAP).

DATES: The meeting will be held on Tuesday, March 18, 2003, from 1 to 5 p.m.

ADDRESSES: This meeting will be held at the Marriott's Grand Hotel, One Grand Boulevard, Point Clear, AL; telephone: 251–928–9201.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The LEAP will convene to review an Options Paper for Amendment 13 to the Shrimp Fishery Management Plan (FMP) that includes alternatives to improve the bycatch reporting methodology and to further reduce bycatch from shrimp trawling. The LEAP will also review an Options Paper for Amendment 18 to the Reef Fish FMP that includes a variety of options including: changes to the allowable gear, gear and fishery endorsements, vessel monitoring systems, permit reductions, closed areas, closed seasons, and rebuilding plans for some overfished species. An Options Paper for Amendment 21 to the Reef Fish FMP that includes alternatives for maintaining, eliminating, or modifying the current marine reserves known as the Madison-Swanson and Steamboat Lumps sites off the west coast of Florida will also be reviewed by the LEAP. The LEAP will discuss a preliminary Scoping Paper for Amendment 15 to the Coastal Migratory Pelagics FMP that will look at possibly adding additional species to the FMP or its management unit, prohibition of recreational sales, bag and size limits for cobia, and a standardized bycatch reporting methodology. Other items to be considered by the LEAP include penalties for Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) violations and the current status of regulatory actions that have previously been submitted for approval by NMFS.

The LEAP consists of principal law enforcement officers in each of the Gulf states as well as NMFS, the U.S. Coast Guard, and NOAA's General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 11, 2003.

Dated: February 24, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4683 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022403B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Oversight Committee and Advisory Panel in March 2003, to consider actions affecting New England fisheries in the exclusive economic zone. Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on March 19, 2003, and March 25, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates, times, locations and agendas.

ADDRESSES: The meetings will be held in Portland, ME, and Danvers, MA.

Council address: 50 Water Street, Mill 2, Newburyport, MA, 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, 978–465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Times, Locations and Agendas

On Wednesday, March 19, 2003, the Herring Advisory Panel Meeting will meet at 10 a.m. at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: 207–775–2311. The Panel will review results of the Transboundary Resource Assessment Committee (TRAC) assessment of the herring resource. They will identify issues for inclusion in the scoping document for Amendment 2 to the Herring Fishery Management Plan (FMP). (Amendment 1 will address Essential Fish Habitat (EFH) issues separately.) They will also review a timeline for preparation of annual specifications and Amendment 2 development.

On Tuesday, March 25, 2003, the Herring Oversight Committee Meeting will meet at 9:30 a.m. at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA, 01923; telephone: 978–777–2500. The oversight committee will review results of the TRAC assessment of the herring resource. They will finalize a list of issues to be included in the scoping document for Amendment 2 to the Herring FMP (Amendment 1 will address EFH issues separately). They will also discuss the timeline and location of the Amendment 2 scoping meetings. They will review timeline for preparation of annual specifications and Amendment 2 development.

Although non-emergency issues not contained in this notice may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations, sign language interpretation, or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 24, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4684 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021403D]

Marine Mammals; File No. 559–1442

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Mr. Salvatore Cerchio, Department of Biology and Museum of Zoology, 1109 Geddes Ave. University of Michigan, Ann Arbor, Michigan 48109–1079, has been issued an amendment to scientific research Permit No. 559–144200 to extend the expiration date through June 30, 2003.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of 50 CFR 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.), the provisions of the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 24, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4686 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021303B]

Marine Mammals; File No. 782–1694–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that National Marine Mammal Laboratory, Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Point Way NE, Bin C15700, Seattle, Washington 98115–0070, [Principal Investigator: Dr. Sue Moore, Director], has been issued a permit to collect, import/export species from marine mammals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 10, 2002, notice was published in the **Federal Register** (67 FR 63079) that a request for a scientific research permit to take to take an unlimited number of specimens from species of the Orders Cetacea and Pinnipedia had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Permit authorizes the Holder to collect, acquire, analyze, archive, import/export, re-import, and re-export (worldwide), unlimited numbers and kinds of specimens from dead marine mammal and endangered or threatened species of the Orders Cetacea and Pinnipedia for research purposes.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Assistant Regional Administrator for Protected Resources, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, PO Box 21668, Juneau, AK 99802–1668; phone (907) 586–7235; fax (907) 586–7012;

Assistant Regional Administrator for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4020; fax (562) 980–4027;

Coordinator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941;

Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508) 281–9346; fax (508) 281–9371; and

Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (813) 570–5301; fax (813) 570–5517.

Dated: February 21, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4687 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the Presidential Freedom Scholarship Application. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by April 29, 2003.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. Amiko Matsumoto, Program Coordinator, Learn and Serve America, 1201 New York Avenue, NW., Washington, DC, 20525.

FOR FURTHER INFORMATION CONTACT: Amiko Matsumoto, (202) 606–5000, ext. 556, or at *amatsumoto@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

I. Background

The Presidential Freedom Scholarship program recognizes high school juniors and seniors for outstanding leadership in service. Each high school in the United States may award up to two recipients with a $1,000 scholarship for college: Five hundred dollars ($500) is funded from the Corporation's National Service Trust, and the remaining $500 is secured locally from civic groups, local business, and other community based organizations.

While the selection of the recipients is made by the high school, the principal must complete an application in order for the Corporation to release the funds in the form of a check made out to the student and the college that he/she is planning to attend. The application may be completed either in paper or online form.

II. Current Action

The Corporation is seeking public comment for approval of the Presidential Freedom Scholarship Application which will be used by high school principals to nominate high school juniors and seniors for this scholarship.

Type of Review: New information collection.

Agency: Corporation for National and Community Service.

Title: Presidential Freedom Scholarship Application.

OMB Number: None.

Agency Number: None.

Affected Public: High School Principals and/or guidance counselors.

Total Respondents: 7,000.

Frequency: Annually.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 3,500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 24, 2003.

Amy Cohen,

Director, Learn and Serve America.

[FR Doc. 03–4659 Filed 2–27–03; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Amy Cohen, at (202) 606–5000, extension 484, (*ACohen@cns.gov*); (TTY/TDD) at (202) 606–5256 between the hours of 9 a.m. and 4 p.m. Eastern Standard Time, Monday through Friday.

ADDRESSES: Comments should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10235, Attn: Ms. Fumie Yokota, OMB Desk Officer for the Corporation for National and Community Service, Washington, DC 20503, within 30 days from the date of publication in this **Federal Register**.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Description

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of the application instructions entitled:

a. *Learn and Serve America:* Higher Education Application Instructions; and

b. *Learn and Serve America:* School and Community-Based Program Application Instructions.

The Corporation publishes application guidelines and notices of funding availability that include information about the funding and requirements. The application instructions provide the information, instructions and forms that potential applicants need to complete an application to the Corporation for funding.

The Corporation has recently developed an electronic grants management system that meets the requirements of Public Law 106–107. As part of the development process, the Corporation is redesigning its application forms and instructions to reflect the electronic system design.

Part I

Type of Review: Revised collection.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Higher Education Application Instructions.

OMB Number: 3045–0046.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 400 respondents.

Frequency: Once per year.

Average Time Per Response: Six (6) hours.

Estimated Total Burden Hours: 2,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part II

Type of Review: Revised collection.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America School and Community-Based Program Application Instructions.

OMB Number: 3045–0045.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 225 respondents.

Frequency: Annually.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 2,250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: February 25, 2003.

Amy Cohen,

Director, Learn and Serve America.

[FR Doc. 03–4795 Filed 2–27–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Experimentation will meet in closed session on March 7, 2003, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will examine joint experimentation programs and activities and will recommend ways to enhance the contributions of joint experimentation to transformation.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review the Joint Forces Command's program of joint experimentation and recommend steps to enhance its value by examining the goals, process and substance of the experimentation program, to include: Creating an environment that fosters innovation and learning; collecting, analyzing, interpreting, vetting and disseminating data; engaging the Services, other Commands, key U.S. government agencies and allies; and developing and using models, simulations and other tools. In addition, the Task Force will review the recently completed Millennium Challenge 02 to identify insights and opportunities that may not have been focused on by those closer to the activity.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: February 14, 2003.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4790 Filed 2–27–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Unmanned Aerial Vehicles (UAV) and Uninhabited Combat Aerial Vehicles (UCAV) will meet in closed session on February 27–28, 2003, and March 27–28, 2003, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will review UAV/UCAV systems with special emphasis on affordability and increasing costs, interoperability disconnects, communications architectures to include bandwidth and redundancy, accident rates, operational control in both FAA airspace and military restricted airspace, survivability, military utility analysis, and management approaches.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will identify principal impediments to full and rapid exploitation of the joint warfighting potential of UAV and UCAV systems and, further, recommend how these constraints might be mitigated or removed.

In accordance with section 19(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Due to critical mission requirements and scheduling conflicts, there is insufficient time to provide timely notice required by section 19(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to a Task Force meeting.

Dated: February 14, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–4791 Filed 2–27–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), announcement is made of the following Committee meeting:

Name of Committee: U.S. Army War College (USAWC) Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: April 3 & 4, 2003.

Place: Command Conference Room, Root Hall, USAWC, Carlisle Barracks, Pennsylvania.

Time: 8:30 a.m.–5 p.m.

Proposed Agenda: Review minutes of previous annual meeting and open old business for discussion; updated briefings and new business; discussions with Commandant and selected faculty; examine academic and facility issues in conjunction with transformation; re-assess resident and distance programs, highlight and discuss plans for the Process for Accreditation of Joint Education (PAGE) 2004; Subcommittee reports on charter and membership issues and educational policy, advancement, and fundraising issues; propose new strategies and recommendations that will guarantee compliance with regional accreditation standards, insure a successful PAGE, and continue the momentum of federal accreditation and institutional progress.

FOR FURTHER INFORMATION CONTACT: Colonel Kevin T. Connelly, Director of Joint Education, Department of Academic Affairs, U.S. Army War College, Carlisle Barracks, Pennsylvania 17013, or telephone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee after receiving advance approval to do so. To request approval to attend, participate, or submit, you must contact Colonel Kevin T. Connelly not later than March 17, 2003, at the above address or phone number.

Kevin T. Connelly,

Colonel, U.S. Army, Designated Federal Official.

[FR Doc. 03–4403 Filed 2–27–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Headquarters, U.S. Army Materiel Command are:

1. Major General William H. Russ, Commanding General, Communications-Electronics Command.
2. Mr. Michael Parker, Deputy to the Commander, U.S. Army Soldier and Biological Chemical Command.
3. Ms. Marlene Cruze, Executive Director, Acquisition Center, U.S. Army Aviation and Missile Command.
4. Dr. N. Radhakrishnan, Director, Computational and Information Sciences Directorate, U.S. Army Research Laboratory.
5. Major General Larry J. Dodgen, Commanding General, U.S. Army Aviation and Missile Command.
6. Mr. Victor Ferlise, Deputy to the Commander, U.S. Army Communications-Electronics Command.
7. Dr. Robin Keesee, Director Human Research and Engineering Directorate, U.S. Army Research Laboratory.
8. Mr. Vemula Rao, Vice President for Customer Engineering, Tank-Automotive Research, Development and Engineering Center.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–4787 Filed 2–27–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of the Notice of Intent To Prepare a Supplemental Environmental Impact Statement to the Central and Southern Florida Project Comprehensive Review Study Integrated Feasibility Report and Programmatic Environmental Impact Statement on the Water Preserve Areas Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice; cancellation.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers hereby cancels its notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS) to the Central and Southern Florida Project (C&SF) Comprehensive Review Study Integrated Feasibility Report and Programmatic Environmental Impact Statement on the Water Preserve Areas (WPA) Feasibility Study, as published in the **Federal Register**, July 11, 2000 (64 FR 42681).

The cancellation is necessitated in order to resolve outstanding issues relating to the: (1) Plan Formulation Process—Programmatic Regulations; (2) Quantification of Plan Benefits; (3) Project Sequencing; (4) Water Supply/Savings Clause; and (5) Water Reservations and Allocations. Subsequently, the fourteen components comprising the WPA Feasibility Study and Special Project Implementation Report (SPIR) will be condensed into nine separate, stand-alone Project Implementation Reports (PIR), that will more effectively consider sequencing, project benefits, Water Resources Development Act 2000, and authorization.

Environmental documentation will be prepared and coordinated in conjunction with each of the proposed PIR actions. The public will be notified of forthcoming public hearing dates, location, time, and comment period expiration dates.

FOR FURTHER INFORMATION CONTACT: Questions can be forwarded to Mr. Brad Tarr, Environmental Branch, Planning Division, Jacksonville District, Corps of Engineers, Post Office Box 4970, Jacksonville, Florida 32232–0019, Phone: 904–232–3582.

SUPPLEMENTARY INFORMATION: None.

Dated: February 13, 2003.

James C. Duck,

Chief, Planning Division.

[FR Doc. 03–4786 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–AJ–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 31, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 25, 2003.

John D. Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension of a currently approved collection.

Title: Migrant Education Program (MEP) Proposed Regulations, Sections 200.83, 200.84, and 200.88 (KA).

Frequency: Biennially, Other: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 43.

Burden Hours: 19925.

Abstract: §200.83 of the regulations for Title I, Part C establish the minimum requirements an SEA must meet for development of a comprehensive needs assessment and plan for service delivery as required under Section 1306(b) of the Elementary and Secondary Education Act (ESEA), as amended (Pub. L. 107–110). §200.84 of the regulations establish the minimum requirements the SEA must meet to implement the program evaluation required under Section 1304(c)(2) of ESEA. §200.88 of the regulations clarify that, for the purposes of the MEP, only "supplemental" State or local funds that are used for programs specifically designed to meet the unique needs of migratory children can be excluded in terms of determining compliance with the "comparability" and "supplement, not supplant" provisions of the statute.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.* Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Federal Perkins/NDSL Loan Assignment Form (JS).

Frequency: On Occasion.

Affected Public: Not-for-profit institutions (primary); Businesses or other for-profit (primary); Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 21262;

Burden Hours: 8505.

Abstract: This form is used to collect pertinent data regarding student loans from institutions participating in the Federal Perkins Loan Program. The Perkins Assignment Form serves as the transmittal document in the assignment of such loans to the Federal government.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivion.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.* Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: Revision.

Title: The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS, IIPP, UISFUL, BIE, CIBE, AORC, Language Resource Centers (LRC), International Studies and Research (IRS), Fulbright-Hays Faculty Research Abroad (FRA), Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA), Fulbright-Hays Seminars Abroad (SA), Fulbright-Hays Group Projects Abroad (GPA), and the Technology Innovation and Cooperation for Foreign Information Access (TICFIA) programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,595;

Burden Hours: 30,770.

Abstract: LRC, IRS, FRA, DDRA, SA, GPA, and TICFIA are being added for clearance to the system that already contains seven other programs. Information collection assist International Education and Graduate Programs Services (IEGPS) in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continuation funding from the Department of Education.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–4748 Filed 2–27–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools

AGENCY: Department of Education.

ACTION: Notice of availability.

SUMMARY: As required by section 9524 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB), the Secretary of Education on February 7, 2003, issued guidance on constitutionally protected prayer in public elementary and secondary schools. The purpose of this guidance is to provide State educational agencies (SEAs), local educational agencies (LEAs), and the public with information on this important topic. The guidance also sets forth and explains the responsibilities of SEAs and LEAs with respect to this aspect of the NCLB. This guidance is set forth in the appendix to this notice.

FOR FURTHER INFORMATION CONTACT: Jeanette Lim, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2241. Telephone: (202) 401–0113. Information on this guidance is available on the Internet through the Department of Education's Web site at: *http://www.ed.gov/inits/religionandschools/.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: As a condition of receiving funds under the Elementary and Secondary Education Act, an LEA must certify in writing to its SEA that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The guidance clarifies the rights of students to pray in public schools. As stated in the guidance, "* * * the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals" such as students. Therefore, "[a]mong other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other noninstructional time to the same extent that they may engage in nonreligious activities." Public schools should not be hostile to the religious rights of their students and their families.

At the same time, school officials may not "compel students to participate in prayer or other religious activities." Nor may teachers, school administrators, and other school employees, when acting in their official capacities as representatives of the State, encourage or discourage prayer or actively participate in those activities with students.

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Authority: 20 U.S.C. 7904).

Dated: February 24, 2003.

Rod Paige,

Secretary of Education.

Appendix—Guidance on Constitutionally Protected Prayer In Public Elementary and Secondary Schools—February 7, 2003

Introduction

Section 9524 of the Elementary and Secondary Education Act ("ESEA") of 1965, as amended by the No Child Left Behind Act of 2001, requires the Secretary to issue guidance on constitutionally protected prayer in public elementary and secondary schools. In addition, section 9524 requires that, as a condition of receiving ESEA funds, a local educational agency ("LEA") must certify in writing to its State educational agency ("SEA") that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The purpose of this guidance is to provide SEAs, LEAs, and the public with information on the current state of the law concerning constitutionally protected prayer in the public schools, and thus to clarify the extent to which prayer in public schools is legally protected. This guidance also sets forth the responsibilities of SEAs and LEAs with respect to Section 9524 of the ESEA. As required by the Act, this guidance has been jointly approved by the Office of the General Counsel in the Department of Education and the Office of Legal Counsel in the Department of Justice as reflecting the current state of the law. It will be made available on the Internet through the Department of Education's Web site (*www.ed.gov*). The guidance will be updated on a biennial basis, beginning in September 2004, and provided to SEAs, LEAs, and the public.

The Section 9524 Certification Process

In order to receive funds under the ESEA, an LEA must certify in writing to its SEA that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance. An LEA must provide this certification to the SEA by October 1, 2002, and by October 1 of each subsequent year during which the LEA participates in an ESEA program. However, as a transitional matter, given the timing of this guidance, the initial certification must be provided by an LEA to the SEA by March 15, 2003.

The SEA should establish a process by which LEAs may provide the necessary certification. There is no specific Federal form that an LEA must use in providing this certification to its SEA. The certification may be provided as part of the application process for ESEA programs, or separately, and in whatever form the SEA finds most appropriate, as long as the certification is in writing and clearly states that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

By November 1 of each year, starting in 2002, the SEA must send to the Secretary a list of those LEAs that have not filed the required certification or against which complaints have been made to the SEA that the LEA is not in compliance with this guidance. However, as a transitional matter, given the timing of this guidance, the list otherwise due November 1, 2002, must be sent to the Secretary by April 15, 2003. This list should be sent to:

Office of Elementary and Secondary Education, *Attention:* Jeanette Lim, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

The SEA's submission should describe what investigation or enforcement action the SEA has initiated with respect to each listed LEA and the status of the investigation or action. The SEA should not send the LEA certifications to the Secretary, but should maintain these records in accordance with its usual records retention policy.

Enforcement of Section 9524

LEAs are required to file the certification as a condition of receiving funds under the ESEA. If an LEA fails to file the required certification, or files it in bad faith, the SEA should ensure compliance in accordance with its regular enforcement procedures. The Secretary considers an LEA to have filed a certification in bad faith if the LEA files the certification even though it has a policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

The General Education Provisions Act ("GEPA") authorizes the Secretary to bring enforcement actions against recipients of Federal education funds that are not in compliance with the law. Such measures may include withholding funds until the recipient comes into compliance. Section 9524 provides the Secretary with specific authority to issue and enforce orders with respect to an LEA that fails to provide the required certification to its SEA or files the certification in bad faith.

Overview of Governing Constitutional Principles

The relationship between religion and government in the United States is governed by the First Amendment to the Constitution, which both prevents the government from establishing religion and protects privately initiated religious expression and activities from government interference and discrimination.[1] The First Amendment thus establishes certain limits on the conduct of public school officials as it relates to religious activity, including prayer.

The legal rules that govern the issue of constitutionally protected prayer in the public schools are similar to those that govern religious expression generally. Thus, in discussing the operation of Section 9524 of the ESEA, this guidance sometimes speaks in terms of "religious expression." There are a variety of issues relating to religion in the public schools, however, that this guidance is not intended to address.

The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer.[2] Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals, and the line between government-sponsored and privately initiated religious expression is vital to a proper understanding of the First Amendment's scope. As the Court has explained in several cases, "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."[3]

The Supreme Court's decisions over the past forty years set forth principles that distinguish impermissible governmental religious speech from the constitutionally protected private religious speech of students. For example, teachers and other public school officials may not lead their classes in prayer, devotional readings from the Bible, or other religious activities.[4] Nor may school officials attempt to persuade or compel students to participate in prayer or other religious activities.[5] Such conduct is "attributable to the State" and thus violates the Establishment Clause.[6]

Similarly, public school officials may not themselves decide that prayer should be included in school-sponsored events. In *Lee v. Weisman*,[7] for example, the Supreme Court held that public school officials violated the Constitution in inviting a member of the clergy to deliver a prayer at a graduation ceremony. Nor may school officials grant religious speakers preferential access to public audiences, or otherwise select public speakers on a basis that favors religious speech. In *Santa Fe Independent School District v. Doe*,[8] for example, the Court invalidated a school's football game speaker policy on the ground that it was designed by school officials to result in pregame prayer, thus favoring religious expression over secular expression.

Although the Constitution forbids public school officials from directing or favoring prayer, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,"[9] and the Supreme Court has made clear that "private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."[10] Moreover, not all religious speech that takes place in the public schools or at school-sponsored events is governmental speech.[11] For example, "nothing in the Constitution * * * prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday,"[12] and students may pray with fellow students during the school day on the same terms and conditions that they may engage in other conversation or speech. Likewise, local school authorities possess substantial discretion to impose rules of order and pedagogical restrictions on student activities,[13] but they may not structure or administer such rules to discriminate against student prayer or religious speech. For instance, where schools permit student expression on the basis of genuinely neutral criteria and students retain primary control over the content of their expression, the speech of students who choose to express themselves through religious means such as prayer is not attributable to the state and therefore may not be restricted because of its religious content.[14] Student remarks are not attributable to the state simply because they are delivered in a public setting or to a public audience.[15] As the Supreme Court has explained: "The proposition that schools do not endorse everything they fail to censor is not complicated,"[16] and the Constitution mandates neutrality rather than hostility toward privately initiated religious expression.[17]

Applying the Governing Principles in Particular Contexts

Prayer During Noninstructional Time

Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the educational program that are applied to other privately initiated expressive activities. Among other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other non-instructional time to the same extent that they may engage in nonreligious activities. While school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious speech in applying such rules and restrictions.

Organized Prayer Groups and Activities

Students may organize prayer groups, religious clubs, and "see you at the pole" gatherings before school to the same extent that students are permitted to organize other non-curricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination because of the religious content of their expression. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or announcements regarding non-curricular activities. However, where student groups that meet for nonreligious activities are permitted to advertise or announce their meetings—for example, by advertising in a student newspaper, making announcements on a student activities bulletin board or public address system, or handing out leaflets—school authorities may not discriminate against groups who meet to pray. School authorities may disclaim sponsorship of non-curricular groups and events, provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Teachers, Administrators, and other School Employees

When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies.

Moments of Silence

If a school has a "minute of silence" or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods of time. Teachers and other school employees may neither encourage nor discourage students from praying during such time periods.

Accommodation of Prayer During Instructional Time

It has long been established that schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending. Similarly, schools may excuse students from class to remove a significant burden on their religious exercise, where doing so would not impose material burdens on other students. For example, it would be lawful for schools to excuse Muslim students briefly from class to enable them to fulfill their religious obligations to pray during Ramadan.

Where school officials have a practice of excusing students from class on the basis of parents' requests for accommodation of nonreligious needs, religiously motivated requests for excusal may not be accorded less favorable treatment. In addition, in some circumstances, based on Federal or State constitutional law or pursuant to State statutes, schools may be required to make accommodations that relieve substantial burdens on students' religious exercise. School officials are therefore encouraged to consult with their attorneys regarding such obligations.

Religious Expression and Prayer in Class Assignments

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Thus, if a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards (such as literary quality) and neither penalized nor rewarded on account of its religious content.

Student Assemblies and Extracurricular Events

Student speakers at student assemblies and extracurricular activities such as sporting events may not be selected on a basis that either favors or disfavors religious speech. Where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. By contrast, where school officials determine or substantially control the content of what is expressed, such speech is attributable to the school and may not include prayer or other specifically religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

Prayer at Graduation

School officials may not mandate or organize prayer at graduation or select speakers for such events in a manner that favors religious speech such as prayer. Where students or other private graduation speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, however, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials

may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

Baccalaureate Ceremonies

School officials may not mandate or organize religious ceremonies. However, if a school makes its facilities and related services available to other private groups, it must make its facilities and services available on the same terms to organizers of privately sponsored religious baccalaureate ceremonies. In addition, a school may disclaim official endorsement of events sponsored by private groups, provided it does so in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Footnotes

[1] The relevant portions of the First Amendment provide: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech * * *" U.S. Const. amend. I. The Supreme Court has held that the Fourteenth Amendment makes these provisions applicable to all levels of government—federal, state, and local—and to all types of governmental policies and activities. See *Everson* v. *Board of Educ.*, 330 U.S. 1 (1947); *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940).

[2] *See, e.g., Everson*, 330 U.S. at 18 (the First Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them"); *Good News Club* v. *Milford Cent. Sch.*, 533 U.S. 98 (2001).

[3] *Santa Fe Indep. Sch. Dist.* v. *Doe*, 530 U.S. 290, 302 (2000) (quoting *Board of Educ.* v. *Mergens*, 496 U.S. 226, 250 (1990) (plurality opinion)); *accord Rosenberger* v. *Rector of Univ. of Virginia*, 515 U.S. 819, 841 (1995).

[4] *Engel* v. *Vitale*, 370 U.S. 421 (1962) (invalidating state laws directing the use of prayer in public schools); *School Dist. of Abington Twp.* v. *Schempp*, 374 U.S. 203 (1963) (invalidating state laws and policies requiring public schools to begin the school day with Bible readings and prayer); *Mergens*, 496 U.S. at 252 (plurality opinion) (explaining that "a school may not itself lead or direct a religious club"). The Supreme Court has also held, however, that the study of the Bible or of religion, when presented objectively as part of a secular program of education (e.g., in history or literature classes), is consistent with the First Amendment. *See Schempp*, 374 U.S. at 225.

[5] *See Lee* v. *Weisman*, 505 U.S. 577, 599 (1992); *see* also *Wallace* v. *Jaffree*, 472 U.S. 38 (1985).

[6] *See Weisman*, 505 U.S. at 587.

[7] 505 U.S. 577 (1992).

[8] 530 U.S. 290 (2000).

[9] *Tinker* v. *Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969).

[10] *Capitol Square Review & Advisory Bd.* v. *Pinette*, 515 U.S. 753, 760 (1995).

[11] *Santa Fe*, 530 U.S. at 302 (explaining that "not every message" that is "authorized by a government policy and take[s] place on government property at government-sponsored school-related events" is "the government's own").

[12] *Santa Fe*, 530 U.S. at 313.

[13] For example, the First Amendment permits public school officials to review student speeches for vulgarity, lewdness, or sexually explicit language. *Bethel Sch. Dist.* v. *Fraser*, 478 U.S. 675, 683–86 (1986). Without more, however, such review does not make student speech attributable to the state.

[14] *Rosenberger* v. *Rector of Univ. of Virginia*, 515 U.S. 819 (1995); *Board of Educ.* v. *Mergens*, 496 U.S. 226 (1990); *Good News Club* v. *Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb's Chapel* v. *Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar* v. *Vincent*, 454 U.S. 263 (1981); *Santa Fe*, 530 U.S. at 304 n.15. In addition, in circumstances where students are entitled to pray, public schools may not restrict or censor their prayers on the ground that they might be deemed "too religious" to others. The Establishment Clause prohibits state officials from making judgments about what constitutes an appropriate prayer, and from favoring or disfavoring certain types of prayers—be they "nonsectarian" and "nonproselytizing" or the opposite—over others. *See Engel* v. *Vitale*, 370 U.S. 421, 429–30 (1962) (explaining that "one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services," that "neither the power nor the prestige" of state officials may "be used to control, support or influence the kinds of prayer the American people can say," and that the state is "without power to prescribe by law any particular form of prayer"); *Weisman*, 505 U.S. at 594.

[15] *Santa Fe*, 530 U.S. at 302; *Mergens*, 496 U.S. at 248–50.

[16] *Mergens*, 496 U.S. at 250 (plurality opinion); *id.* at 260–61 (Kennedy, J., concurring in part and in judgment).

[17] *Rosenberger*, 515 U.S. at 845–46; *Mergens*, 496 U.S. at 248 (plurality opinion); id. at 260–61 (Kennedy, J., concurring in part and in judgment).

[FR Doc. 03–4693 Filed 2–27–03; 8:45 am]

BILLING CODE 4000–01–U

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0015; FRL–7454–9]

Agency Information Collection Activities: Submission of EPA ICR No. 1052.07, OMB No. 2060–0026, to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart D, Standards of Performance for Fossil-Fuel-Fired Steam Generating Units. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before March 31, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 564–7054; fax number (202) 564–0050; E-mail address *chadwick.dan@epagov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 *FR* 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0015, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS Subpart D, Standards of Performance for Fossil-Fuel-Fired Steam Generating Units, OMB Control Number 2060–0026, EPA ICR Number 1052.07. This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Owners or operators of steam generating units subject to Subpart D must make one-time-only notifications of construction/reconstruction, anticipated and actual startup, initial performance test, physical or operational changes, and demonstration of a continuous monitoring system. They must also submit reports on initial performance test results, monitoring system performance, and excess emissions. Records must be maintained of startups, shutdowns, malfunctions, and periods when the continuous monitoring system is inoperative.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. The monitoring and excess emissions reports (which are semiannual) are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. The information collected from record keeping and reporting requirements are used for targeting inspections, and for other uses in compliance and enforcement programs.

Responses to this information collection are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 *FR* 36902, September 1, 1976; amended by 43 *FR* 40000, September 8, 1978; 43 *FR* 42251, September 20, 1978; 44 *FR* 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 46.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of fossil-fuel-fired steam generating units subject to Subpart D.

Estimated Number of Respondents: 660.

Frequency of Response: Semiannual.

Estimated Total Annual Hour Burden: 61,545 hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Cost: $9,900,000, which includes $0 annualized capital/startup costs and $9,900,000 annual O & M costs.

Changes in Estimates: There is a decrease of hours in the total estimated burden currently identified in the OMB inventory of Approved ICR Burdens. This decrease is due to a correction in the frequency of reporting from quarterly to semiannual.

Dated: February 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4772 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0042; FRL–7454–8]

Agency Information Collection Activities; Proposed Collection; Comment Request (OMB Control No. 2040–0027, EPA ICR No. 0827.06)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval:

Construction Grants Program. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 31, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Gajindar Singh, Office of Wastewater Management, Mail Code 4204M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0634, fax number: (202) 501–2396, e-mail: *singh.gajindar@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 12, 2002, EPA sought comments on this renewal ICR (67 *FR* 52480) pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0042, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Construction Grants Program (OMB Control No. 2040–0027, EPA ICR Number 0827.06). This is a request to renew an existing approved collection that is scheduled to expire on 3/31/2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the EPA Construction Grants Program, 40 CFR part 35, subpart I, and Title II of the Clean Water Act (CWA). The program includes reporting requirements for municipalities, Indian Tribes, and States. In this ICR, the reporting requirements for the Construction Grants Program are divided into three categories:

1. Requirements associated with new grant awards;
2. Requirements associated with project completions; and
3. Requirements imposed on States.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and municipalities.

Estimated Number of Respondents: 30.

Frequency of Response: On occasion and annually, average about 5 per year/respondent.

Estimated Total Annual Hour Burden: 26,588 hours.

Estimated Total Annual Cost: $887,819, includes $0 annual capital and O&M costs.

Changes in the Estimates: There is a decrease of 50,164 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is because EPA is phasing out the Title II Construction Grants Program due to establishment of State Revolving Loan Fund program.

Dated: February 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4773 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa*.

Weekly receipt of Environmental Impact Statements

Filed February 17, 2003 Through February 21, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030065, DRAFT SUPPLEMENT, FHW, RI, Jamestown Bridge Replacement Project, New Information Regarding the Demolition of the Old Jamestown Bridge (Bridge No. 400), Federal Aid Project Numbers (BRF–0138(002)), U.S. Coast Guard, NPDES, U.S. Army COE Section 404 Permits, North Towns of North Kingstown and Jamestown, Washington and Newport Counties, RI, Comment Period Ends: April 25, 2003, Contact: Ralph Rizzo (401) 528–4548.

EIS No. 030066, DRAFT EIS, FHW, WA, WA–167 Freeway Project, Construct from WA–161 (Meridian Street North) in the City of Puyallup to the WA–509 freeway in the City of Tacoma, Funding, U.S. Coast Guard, NPDES, U.S. Army COE Section 10 and 404 Permits, Cities of Puyallup, Fife, Edgewood, Milton, and Tacoma, Pierce County, WA, Comment Period Ends: April 14, 2003, Contact: Steve Saxton (360) 753–9411.

This document is available on the Internet at: *http://www.wy.blm.com*.

EIS No. 030067, FINAL EIS, AFS, NC, Croatan National Forest Revised Land and Resource Management Plan (1986), Implementation, Carteret, Craven and Jones Counties, NC, Wait Period Ends: March 31, 2003, Contact: Lawrence Hayden (828) 257–4864.

EIS No. 030068, FINAL EIS, FHW, AL, Memphis to Atlanta Corridor, To Construct from I–65 in North Central Alabama Eastward to the Georgia State Line, COE Section 404, U.S. Coast Guard and NPDES Permits, Limestone, Morgan, Madison, Jackson, Marshall, DeKalb and Cherokee Counties, AL, Wait Period Ends: March 31, 2003, Contact: Joe. D. Wilkerson (334) 223–7370.

EIS No. 030069, FINAL EIS, FHW, MS, East Harrison County Connector Construction, I–10 to U.S. 90, Funding, U.S. Army COE and U.S. Coast Guard Permits, Issuance and Possible Transfer of Federal Lands, Harrison County, MS, Wait Period Ends: March 31, 2003, Contact: Cecil W. Vick, Jr. (601) 965–4217.

EIS No. 030070, DRAFT EIS, DOE, SC, Savannah River Site. Construction and Operation of a Mixed Oxide (MOX) Fuel Fabrication Facility, NUREG–1767, Aiken, Barnwell and Allendale Counties, SC, Comment Period Ends: April 14, 2003, Contact: Tim Harris (301) 415–6613.

EIS No. 030071, FINAL EIS, AFS, AZ, Kachina Village Forest Health Project, Forest Health Improvements and Potential Wildfire Reductions on National Forest System Land, Implementation, Coconino National Forest, Mormon Lake Ranger District, Coconino County, AZ, Wait Period Ends: March 31, 2003, Contact: Tammy Randall-Parker (928) 526–0866.

This document is available on the Internet at: *http://www.fs.fed.us/r3/coconinio/nepa*.

EIS No. 230072, DRAFT EIS, COE, IL, Programmatic EIS—East St. Louis and Vicinity, Illinois Ecosystem Restoration and Flood Damage Reduction Project, Implementation, Madison and St. Clair Counties, IL, Comment Period Ends: May 7, 2003, Contact: Deborah Roush (314) 331–8033.

This document is available on the Internet at: *http://www.mvs.usace.army.mil/pm/pmmain.htm*.

EIS No. 030073, FINAL SUPPLEMENT, AFS, MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Updated and New Information concerning Cumulative Effects and Introduction of Alternative F, Clancy-Unionville Implementation Area, Helena National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT, Wait Period Ends: March 31, 2003, Contact: Dan Mainwaring (406) 449–5490.

EIS No. 030074, DRAFT EIS, AFS, CA, Interface Recreation Trails Project, To Design a Recreation Route System, Implementation, Stanislaus National Forest, Calaveras Ranger District, Calaveras County, CA, Comment Period Ends: May 5, 2003, Contact: Robert W. Griffith (209) 795–1381.

This document is available on the Internet at: *http://www.r5.fs.fed.us/stanslaus/calaveras*.

EIS No. 030075, DRAFT EIS, AFS, OR, Steamboat Mountain Mining Operations, Proposal to Conduct Surface Quarry or "Open Pit" Mineral Extraction, Plan-of-Operation, Appelgate Adaptive Management Area, Rogue River National Forest, Applegate Ranger District, Jackson County, OR, Comment Period Ends: April 14, 2003, Contact: Bengf Hamner (541) 899–3800.

Dated: February 25, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–4779 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6638–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–J65373–MT Rating EC2, Canyon Lake Dam and Wyant Lake Dam Project, Proposal to Authorize Access to their Facilities with Prescribe Terms and Conditions, Canyon Creek Irrigation District (CCID), Bitterroot National Forest, Selway Bitterroot Wilderness, Ravalli County, MT.

Summary: EPA expressed environmental concerns and recommended integrating 404 permitting requirements into the EIS process and decision making for selecting among Canyon Lake dam rehabilitation options. EPA recommended preparing a preliminary 404(b)(1) evaluation for proposed placement of dredged or fill materials in U.S. waters, and wetlands for the dam rehabilitation. EPA believes additional information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. D–AFS–L65412–OR Rating EC2, Metolius Basin Forest Management Project, Fuel Reduction and Forest Health Management Activities, Implementation, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR.

Summary: EPA expressed environmental concerns due to impacts to aquatic resources, endangered and threatened species, silvicultural practices, dispersed recreation, tribal consultation, and indirect and cumulative effects.

ERP No. LD–AFS–L65411–WA Rating NS, I–90 Wilderness Study, Review of Land Comprising of 15,000 Acres for Suitability for Preservation as Wilderness, Cle Elum and Leavenworth Ranger Districts, Olanogan and Wenatchee National Forests, Kittitas and Chelan Counties, WA.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based on this screen EPA does not foresee having any environmental objections to the proposed action. Therefore, EPA will not be conducting a detailed review.

ERP No. D–MMS–L02030–AK Rating EC2, Cook Inlet Planning Area Oil and Gas Lease Sales 191 and 199, Outer Continental Shelf, Offshore Marine Environment, Cook Inlet, AK.

Summary: EPA expressed environmental concerns that an alternative that deferred both the Lower Kenai Peninsula and Barren Islands areas was not included. EPA recommended that the Environmental Justice Analysis explain the methods and criteria used to determine minority and low income significance, and identify if the low income and/or people of color communities will be disproportionately impacted. EPA also requested that mitigating measures to protect endangered and threatened species and their critical habitat be adopted as standard lease stipulations.

ERP No. D–USN–K11108–CA Rating EC2, China Lake Naval Air Weapons Station, Proposed Military Operational Increases and Implementation of Associated Comprehensive Land Use and Integrated Natural Resources Management Plans, Located on the

North and South Ranges, Inyo, Kern and San Bernardino Counties, CA.

Summary: EPA raised environmental concerns about potential impacts associated with past use of munitions containing depleted uranium (DU), potential impacts associated with continued or renewed use of DU munitions under any of the fully-evaluated alternatives, and the Navy's environmental restoration efforts to date for DU contamination. EPA also raised concerns about potential air quality impacts associated with the project's implementation, including emissions of air toxics, which can be potentially reduced with mitigation.

Final EISs

ERP No. F-FSA-A65172-00, Programmatic EIS—Conservation Reserve Program Implementation and Expansion, Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), in the United States.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F-NOA-K91011-00, 2003 Pacific Coast Groundfish Fishery, Groundfish Acceptable Biological Catch and Optimum Yield Specifications and Management Measures, Implementation, WA, OR and CA.

Summary: EPA expressed continuing environmental concerns regarding impacts on overfished bocaccio stocks, and the effectiveness of enforcement measures for the 2003 harvest.

ERP No. F-NPS-K61156-00, Lake Mead National Recreation Area, Long-Term Management of Lake Mead and Mohave and Associated Shoreline and Development Area, Lake Management Plan, Clark County, NV and Mohave County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F1-FAA-D51026-00, Potomac Consolidated Teminal (PCT) Radar Approach Control Facility (TRACON) Airspace Redesign in the Baltimore-Washington Metropolitan Area. Newly Consolidated TRACON, Aircraft Performance Improvements and Emerging PCT Technologies, PA, MD, DE, VA, WV and DC.

Summary: EPA has no objection to the proposed action since our previous issues have been addressed in the final EIS.

Dated: February 25, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03-4780 Filed 2-27-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7456-2]

Notice of Extension of Due Date for Proposals for the National Environmental Information Exchange Network (Network) Grant Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of due date for proposals.

SUMMARY: The due date for proposals for the Network Grant Program has been extended to March 18, 2003. Proposals must be submitted by mail or courier to U.S. EPA Headquarters, Office of Information Collection, ATTN: Lyn Burger, EPA West, Mail Code 2821T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and electronically by email: *neenprg@epamail.epa.gov* on or before March 18, 2003.

Funding Vehicle Preference: The grant proposal should indicate whether the applicant prefers receiving grant funds as part of an existing Performance Partnership Grant (PPG), or as a separate grant. If the grant recipient chooses to add funds to an existing PPG, the Network grant work plan commitments must also be included in the PPG work plan negotiated with EPA HQ and Regions.

FOR FURTHER INFORMATION CONTACT: Lyn Burger, U.S. EPA, Office of Information Collection, Mail Code 2821T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Phone (202) 566-1024; E-mail at *neengprg@epamail.epa.gov.* For additional information, please visit the Network Grant website at *www.epa.gov/neengprg.*

Dated: February 21, 2003.

Kimberly T. Nelson,

Assistant Administrator and Chief Information Officer, Office of Environmental Information.

[FR Doc. 03-4771 Filed 2-27-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2003-0072; FRL-7296-1]

Availability of Atrazine Interim Risk Management Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the Interim Reregistration Eligibility Decision (IRED) document for the triazine pesticide atrazine. This decision document has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: Comments, identified by docket ID number OPP-2003-0072, must be received on or before April 29, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kimberly Nesci, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8059; fax number: (703) 308-8041; e-mail address: nesci.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision document for atrazine, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0072. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2003-0072. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2003-0072. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP- 2003-0072.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP-2003-0072. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as

CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments

II. Background

A. What Action is the Agency Taking?

EPA has assessed the risks of atrazine and reached an Interim Reregistration Eligibility Decision (IRED) for this triazine pesticide. Provided that risk mitigation measures are adopted, atrazine fits into its own risk cup--its individual, aggregate risks are within acceptable levels. A chemical used mainly to control weeds on corn, sorghum, and sugarcane, atrazine residues in food do not pose risk concerns. The Agency's drinking water, occupational, residential and ecological risk assessments for atrazine indicate risks of concern. Intermediate-term (seasonal) dietary risk from drinking water exceeds the Agency's level of concern (> 100% cPAD (chronic population adjusted dose)) at the 99.9th exposure percentile for infants, children 1–6 years of age, and adults in 34 community water systems primarily in the Midwest.

Further, there are some concerns for workers who mix, load, and apply atrazine to agricultural and turf sites and for homeowners who apply atrazine products to home lawns. In addition, there are risks of concern for adults and children exposed to atrazine-treated lawns after applications.

For ecological effects, the Agency has conducted a screening level assessment for terrestrial impacts and a refined exposure assessment for aquatic impacts of atrazine use. These assessments indicate that atrazine is likely to result in community- and population-level risk at 10 to 20 parts per billion. The ecological assessment does not address the potential for effects on amphibians endocrinology and reproductive and developmental responses. The Agency will consider amphibian risk after the Agency obtains further data and will address any risks identified in a revision to the IRED to be published by October 31, 2003.

To mitigate risks of concern posed by the uses of atrazine, the Agency considered the mitigation proposal submitted by the technical registrants, as well as comments and mitigation ideas from other interested parties, and has decided on a number of label amendments to address the dietary (drinking water), worker, and residential concerns. In addition, to further address drinking water concerns and to address ecological concerns, the Agency and the technical registrants have agreed to a performance standard for atrazine that must be met in community water systems, prohibition of use in watersheds if the standard is not met, and monitoring data requirements as described in a Memorandum of Agreement between the primary technical registrants of atrazine and the Agency. Results of the risk assessments, the necessary label amendments to mitigate those risks, and information on the Agreement between the Agency and the technical registrants are presented in the IRED.

The interim risk management decision document for atrazine was made through the pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in this interim risk management decision document, which conclude the pilot public participation process for atrazine. As part of the pilot public participation process, numerous opportunities for public comment were offered as this interim risk management decision document was being developed.

The risk assessments for atrazine were released to the public through notices published in the **Federal Register** on February 14, 2001 (66 FR 10287) (FRL–6765–3), and May 6, 2002 (67 FR 30379) (FRL–6836–1).

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision for the triazine pesticides, which share a common mechanism of toxicity. This interim risk management decision document on atrazine cannot be considered final until this cumulative assessment is complete.

When the cumulative risk assessment for the triazine pesticides has been completed, EPA will issue its final tolerance reassessment decision for atrazine and further risk mitigation measures may be needed.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this IRED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products, and either reregistering products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: February 21, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–4778 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0028; FRL–7290–3]

EPTC; Receipt of Request For Amendments to Delete Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by Syngenta Crop Protection Inc. (formerly Zeneca Ag Products) to delete uses in certain registrations for products containing *S*-Ethyl di propyl thiocarbamate or EPTC. In addition, Drexel Chemical Company has asked EPA to cancel or amend their registrations for end-use products containing EPTC. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requests for voluntary cancellation were submitted to EPA in March 2000 and February 2002. EPA also plans to issue a cancellation order for the deleted uses at the close of the comment period for this announcement. EPA will decide whether to approve the requests after consideration of public comment.

DATES: Comments on the requested amendments to delete uses must be submitted to the address provided below by March 31, 2003. Withdrawal of request for deletion of use must be submitted in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8062; e-mail address:fuller.demson@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use EPTC products. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0028. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration/status.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a

brief description written by the docket staff.

II. Request to Amend Registrations

A. Background Information

The Reregistration Eligibility Decision (RED) for EPTC was completed in December 1999. At that time, EPA requested that Syngenta (formerly Zeneca Ag Products) submit field trial data for citrus. On March 21, 2000, Syngenta submitted a written request to EPA seeking to amend the registrations for EPTC, specifically requesting that EPA amend registrations to terminate the use of EPTC on citrus. On August 27, 2000, the registrant further submitted labeling amendments deleting citrus from each label on which it appears. In addition, on February 15, 2002, Drexel Chemical Company requested a voluntary cancellation of citrus for its End-Use products containing EPTC.

B. Requests for Voluntary Cancellation

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180–day comment period. EPA is granting the registrants' request to waive the 180–day comment period. Therefore, EPA will provide a 30–day comment period on the proposed requests. EPA anticipates granting the cancellation request shortly after the end of the 30–day comment period for this notice. The registrations that will be affected by the deletion of citrus are listed in the following Table 1.

TABLE 1.—END-USE PRODUCT REGISTRATION AMENDMENT REQUEST

Company	Reg. No	Product Use
Syngenta Crop Protection, Inc.	100–1023	EPTAM Technical.
Syngenta Crop Protection, Inc.	100–1025	EPTAM 7–E Selective Herbicide.
Drexel Chemical Company.	19713–101	Drexel EPTC–7EC.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA section 6(f)(1) further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**, make reasonable efforts to inform persons who rely on the pesticide for minor agricultural uses, and provide a 30–day period in which the public may comment. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for deletion of use must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**; postmarked before March 31, 2003. This written withdrawal of the request for deletion of use will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the use(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The registrants have submitted amendments to amend registrations to delete uses of EPTC identified in Table 1. Pursuant to section 6(f) of FIFRA, EPA expects to grant these requests for amendment upon the close of the comment period. The effective date of this amendment will be the date of the cancellation order. The orders effecting this requested amendment will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the amendment request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

VI. Future Tolerance Revocations

EPA anticipates drafting a future **Federal Register** notice proposing revocation of this tolerance on commodities which no longer have registered uses of EPTC. In this notice, EPA seeks comment as to whether any individuals or groups want to support continuation of these tolerances.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 6, 2003.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–4774 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0040; FRL–7292–1]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notice of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces that EPA issued a Notice of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA and that the Notice of Intent to Suspend has since become an effective suspension order. The Notice of Intent to Suspend was issued following issuance of the 1991 Thiram Data Call-In Notice (DCI). The DCI required registrants of products containing thiram used as an active ingredient to develop and submit certain data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a DCI is a basis for suspension under section 3(c)(2)(B) of FIFRA. Prochimie International, Inc. holds the registration of a technical thiram product (EPA Registration Number 8236–2) and is therefore subject to the requirements of the 1991 DCI. Prochimie's technical thiram product is currently registered only for nonresidential turf use. This Notice includes the text of the Notice of Intent to Suspend which was issued to Prochimie on November 27, 2002. The text identifies the registrant involved, the active ingredient involved, the EPA Registration Number, the name of the affected product, and the basis upon which the Notice of Intent to Suspend was issued. As required by section 6(f)(2), the Notice of Intent to Suspend was sent by certified mail, return receipt requested to Prochimie, Inc. at its address of record. The Notice of Intent to Suspend was received on December 4, 2002, by the registrant and became an effective suspension order on January 4, 2003.

DATES: The Notice of Intent to Suspend became an effective suspension order January 4, 2003.

FOR FURTHER INFORMATION CONTACT: Harold Day, Agriculture Division, 2225A, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 202–564–4133; fax number: 202–564–0029; e–mail address: day.harold@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you hold EPA registrations for products that contain thiram. Potentially affected entities may include, but are not limited to pesticide registrants. Other types of entities not listed in this unit could also be affected. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the 1991 Thiram Data Call–In and FIFRA regulations, specifically section 3(c)(2)(B). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0040. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et-seq.*, announces that EPA issued a Notice of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA to Prochimie International, Inc. The Notice of Intent to Suspend was issued on November 27, 2002, and was received on December 4, 2002, by the registrant, Prochimie International, Inc., as evidenced by the U.S. Postal Service return receipt. No request for a hearing was received within the required statutory time frame and the Notice of Intent to Suspend became an effective suspension order on January 4, 2003, which was 30 days following the date of receipt of the Notice of Intent to Suspend by the registrant.

III. Text of the Notice to Suspend

The text of the Notice of Intent to Suspend issued to Prochimie International, Inc. follows:

United States Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
Washington, DC 20460

November 27, 2002

Certified Mail
Return Receipt Requested

Ms. Mary Ann Roston
Prochimie International, Inc.
5 Waterside Crossing
Windsor, CT 06095

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing Thiram for Failure to Comply with the Thiram Data Call-In Notice Dated September 16, 1991.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call–In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. The affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report – Product List

Attachment II Suspension Report – Requirement List

Attachment III Suspension Report – Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's Procedural Regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal

argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must: (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to:

Hearing Clerk, 1900
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

An additional copy should be sent to the signatory listed below. The request must be received by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: the Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any ex parte communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call–In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance (2225A)
Agriculture Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) for your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call–In Notice or Section 4 Data Requirements Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 3(c)(2)(B) Data Call–In Notice, please contact Frances Liem at (202) 564–2365.

Sincerely yours,

Director, Agriculture Division, Office of Compliance.

Attachment I Suspension Report – Product List
Attachment II Suspension Report – Requirement List
Attachment III Suspension Report – Explanatory Appendix

IV. Registrant Receiving and Affected by Notice of Intent to Suspend

Prochimie International, Inc. was sent a letter of notification for the following product.

TABLE A.—PRODUCT LIST

EPA Registration Number	Product Name
8236–2	Thiram Technical

V. Basis for Issuance of Notice of Intent; Requirement List

Prochimie International, Inc. failed to submit the following required data or information.

TABLE B.—REQUIREMENT LIST

Guideline Reference Number	Requirement Name	Due Date
71–4(b)	Avian reproduction–duck	9/16/93
72–3(a)	Estuarine/marine toxicity–fish	9/16/92
72–3(b)	Estuarine/marine toxicity–mollusk	9/16/92
72–3(c)	Estuarine/marine toxicity–shrimp	9/16/92
82–2	21–Day dermal toxicity rabbit/rat	9/16/93
83–4	2–Generation reproduction–rat	9/16/95
85–1	General metabolism	9/16/93
122–2	Aquatic plant growth	9/16/92
161–1	Hydrolysis	12/16/91
161–2	Photodegradation–water	12/16/91
162–1	Aerobic soil metabolism	9/16/93
163–1	Leaching/adsorption/desorption	9/16/92
164–1	Terrestrial field dissipation	9/16/93
165–4	Bioaccumulation in fish	9/16/92

VI. Attachment III Suspension Report–Explanatory Appendix

This Explanatory Appendix provides a discussion of the basis for the Notice of Intent to Suspend issued herewith.

On September 16, 1991, EPA issued a Data Call–In ("1991 DCI") to all registrants of products containing thiram under the authority of FIFRA section 3(c)(2)(B). The 1991 DCI required registrants of products containing thiram used as an active ingredient to develop and submit certain data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a DCI is a basis for suspension under section 3(c)(2)(B) of FIFRA. Prochimie holds the registration of a technical thiram product (EPA Registration Number 8236–2) and is therefore subject to the requirements of the 1991 DCI. Prochimie's technical thiram product is currently registered only for nonresidential turf use. The following describes Prochimie's noncompliance with the 1991 DCI and FIFRA section 3(c)(2)(B) for failing to meet certain data requirements in the 1991 DCI applicable to products registered for nonresidential turf use. These data requirements are identified in Appendix II to this Notice.

In its required 90–day response to the 1991 DCI, Prochimie indicated that it elected Option 2 provided in the 1991 DCI as the method for complying with the DCI. In a letter dated June 6, 2001, Prochimie emphasized that it selected only Option 2 for complying with the 1991 DCI and did not select Option 3 (i.e., an offer to pay). Selection of Option 2 indicates that the registrant has entered into a cost share agreement with one or more registrants to jointly develop data required under the 1991 DCI. To qualify for Option 2, the 1991 DCI requires that the registrant provide the name of the party who would be submitting the data. In addition, the registrant must provide documentary evidence that a cost share agreement has been formed. Such evidence can be a letter offering to cost share and a letter accepting such offer, or a written statement by the parties that an agreement exists. Prochimie's 90–day response indicated that it was a member of Thiram Task Force I and that Task Force I would be submitting the data required by the 1991 DCI.

In a letter dated April 20, 1992, EPA notified Prochimie that its 90–day response was insufficient, because there were data requirements in the 1991 DCI that Task Force I had not committed to satisfy. In response, Prochimie provided EPA with a letter dated April 28, 1992, in which Prochimie informed Mr. Jerome C. Rockwell, the chairman of both Thiram Task Force I and Thiram Task Force II, that Prochimie "will participate and cost share in *the Thiram Tosk Force* [emphasis added) submitting information for the EPA Thiram Data Call–In requirements regarding turf use of Thiram only." In subsequent correspondence with the Agency, Prochimie stated that, although not a member of Task Force II, Prochimie had agreed to participate in all Task Force II studies necessary to support nonresidential turf use of thiram.

However, Prochimie has not provided any evidence, nor does the Agency have any other indication, that Thiram Task Forces I and II, either individually or jointly, have generated or committed to generate all studies necessary to satisfy the 1991 DCI requirements for nonresidential turf use. Task Force I was formed in 1985, by a consortium of registrants of products containing thiram, including Prochimie, for the purpose of acquiring or developing data required by a previous DCI issued in 1984 ("1984 DCI"). Although the 1991 DCI restated some of the data requirements contained in the 1984 DCI that were still outstanding, it required additional data that were not included in the 1984 DCI. Prior to its dissolution on July 31, 1992, Task Force I did not commit to satisfying any of the new data requirements in the 1991 DCI that were not imposed earlier by the 1984 DCI. Similarly, Thiram Task Force II was established in May 1989 for the development of data necessary to support primarily food use of thiram, which does not include nonresidential turf use. To date, there are data requirements applicable to nonresidential turf use under the 1991 DCI which neither Task Force I nor Task Force II have satisfied or committed to satisfy. Prochimie has not independently submitted studies or provided evidence that it has agreed to cost share with any other party for developing data to satisfy these data requirements or selected any other option to address such data requirements. Accordingly, Prochimie is in noncompliance with these requirements. These data requirements are identified in Appendix II to this Notice and are as follows: EPA Guideline Nos. 72–3(a), 72–3(b), and 72–3(c), 82–2, and 165–4.

Furthermore, Prochimie failed to submit evidence required by the 1991 DCI that a cost share agreement had been reached between Task Force II and Prochimie. As mentioned above, Prochimie's April 28, 1992 letter to Mr. Rockwell stated that Prochimie "will participate and cost share in *the Thiram Tosk Force* [emphasis added] submitting information for the EPA Thiram Data Call–In requirements regarding turf use of Thiram only." Because Mr. Rockwell was the chairman of both Task Force I and Task Force II, it is not clear whether Prochimie's letter

intended to restate its commitment to cost share with Task Force I or to make an offer to cost share with Task Force II. In any case, Prochimie's letter at most shows that Prochimié made an offer to cost share, which was an option it emphasized that it had not selected. Prochimie did not provide any evidence that it had selected the option of offer to pay or that any such offer had been accepted. In order to support the option Prochimie selected to address the data requirements, it must provide evidence that any such offer had been accepted. Prochimie did not do that. Although Prochimie paid Task Force II for the use of several specific studies which are not involved in this Notice, those payments do not provide any evidence that a cost share agreement has been reached with respect to any other studies required by the 1991 DCI for nonresidential turf use that Task Force II submitted or has committed to submit. In fact, Mr. Rockwell, the chairman of Task Force II, stated in an affidavit dated May 2, 2000, that "No written offer-to-pay or any offer to jointly develop any data as required by and identified in the 1991 DCI has ever been received by Thiram Task Force II. . .from Prochimie." Since Task Force II does not believe that it has ever received an offer to cost share from Prochimie, it is unlikely that a cost share agreement has been reached between Prochimie and Task Force II. Without adequate proof of such an agreement, Prochimie may not claim an ownership interest in Task Force II's data for which Prochimie has not paid and hence may not claim that such data satisfies Prochimie's obligations. Consequently, the Agency considers that Prochimie is in noncompliance with certain data requirements for nonresidential turf use imposed by the 1991 DCI irrespective of Task Force II's actions to address those data requirements. Those data requirements are identified in Appendix II to this Notice and are as follows: EPA Guideline Nos. 71–4(b), 83–4, 85–1, and 122–2.

Moreover, prior to its dissolution, Task Force I failed to satisfy certain 1984 DCI data requirements for nonresidential turf use that were also imposed by the 1991 DCI. Because Prochimie was a member of Task Force I and has not independently submitted data or otherwise addressed these requirements, Prochimie is in noncompliance with these requirements. These data requirements are identified in Appendix II to this Notice and are as follows: EPA Guideline Nos. 161–1, 161–2, 162–1, 163–1, and 164–1.

In a letter dated December 21, 1998, EPA informed Prochimie that the data required under the 1991 DCI were long overdue and that Prochimie had satisfied only those data requirements that had been satisfied by Task Force I prior to its dissolution. In a letter dated January 12, 1999, Prochimie informed EPA that "Prochimie cost shared/co-owned several studies submitted by Task Force II." However, Prochimie did not provide the evidence required by the 1991 DCI that Prochimie and Task Force II have agreed to cost share in the development of any other data required by the 1991 DCI for nonresidential turf use. Prochimie's letter also restated Prochimie's commitment to satisfy certain data requirements that neither Task Forces committed to fulfill. However, Prochimie did not submit any studies or proof required by the 1991 DCI of a cost share agreement with any party obligated to satisfy these data requirements.

In a letter dated June 29, 1999, Prochimie requested data waivers (or determination of nonapplicability or no need for additional data) for, among others, the following data requirements: Guideline Nos. 82–2, 83–4, 122–2, 161–1, 161–2, 163–1, and 164–1, and 165–4. After careful consideration of Prochimie's requests, EPA denied the request for waiver of the above mentioned data requirements in letters dated May 21, 2001 and August 31, 2001.

In a letter dated August 31, 2001, EPA informed Prochimie of its failure to demonstrate that it had taken appropriate steps to secure data required by the 1991 DCI. In an attachment to the letter, EPA identified all of the data requirements for nonresidential turf use under the 1991 DCI and the names of the parties who submitted studies for those requirements. As shown in that attachment, UCB Chemicals Corporation, Inc. ("UCB"), not Task Force I or II, satisfied a number of data requirements under the 1991 DCI for nonresidential turf use. The letter notified Prochimie of the Agency's intent to issue a Notice of Intent to Suspend Prochimie's technical thiram registration unless, within 30 calendar days of its receipt of the letter, EPA received from Prochimie certain required data or proof of an agreement or offer to cost share with UCB. In its October 4, 2001 response, Prochimie did not provide any of the data/information that the Agency required, but instead requested a re–evaluation of the Agency's determination not to waive certain environmental fate studies, clarification of applicable existing data, and a determination of data requirements applicable to the nonresidential turf use.

To date, Prochimie has failed to take appropriate steps to secure certain data required by the 1991 DCI applicable to nonresidential turf use and remains in noncompliance with those data requirements, which are set forth in Appendix II to this Notice. Accordingly, the Agency is issuing this Notice of Intent to Suspend.

V. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection.

Dated: February 4, 2003.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–4776 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0006; FRL–7288–9]

Cymoxanil; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0006, must be received on or before March 31, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP–2003–0006. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0006. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0006. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0006. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001, Attention: Docket ID number OPP–2003–0006.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0006. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time, or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by E. I. du Pont de Nemours and Company and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

E. I. du Pont de Nemours and Company

PP 0F6072

EPA has received a pesticide petition (0F6072) from E. I. du Pont de Nemours and Company, DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880–0038 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.503 by establishing tolerances for residues of the fungicide, cymoxanil; 2-cyano-N-(ethylamino)carbonyl l-2-(methoxyimino)acetamide in or on the raw agricultural commodities cucurbit vegetables at 0.05 parts per million (ppm), fruiting vegetables at 0.2 ppm, and head lettuce at 4.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The plant metabolism of cymoxanil is adequately understood in three diverse crops: potatoes, tomatoes, and lettuce. The results of these plant metabolism studies indicate that cymoxanil degrades extensively to primarily the amino acid glycine, with subsequent re-incorporation into other naturally-occurring products, such as glucose.

2. *Analytical method.* An analytical enforcement method is available for determining these plant residues by high performance level chromotography (HPLC) with ultraviolet (UV) detection. The limit of quantitation allows monitoring of crops with cymoxanil residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues—i. Cucurbit vegetables.* The magnitude and decline of residues of cymoxanil was determined on cucumber, cantaloupe and summer squash, the representative commodities for the cucurbit vegetable crop group as follows:

- *Cucumber.* DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to six test sites in Florida, Georgia, Minnesota, Ohio, Virginia, and Texas. DPX-KP481 50DF was applied as seven broadcast applications at the maximum rate of 0.1875 lb cymoxanil acre for a maximum seasonal use rate of 1.31 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target pre-harvest interval (PHI) was 3 days. Residues of cymoxanil were less than 0.05 ppm.
- *Cantaloupe.* DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to six test sites in Florida, Georgia, Minnesota, Ohio, Virginia, and Texas. DPX-KP481 50DF was applied as seven broadcast applications at the maximum rate of 0.1875 lb cymoxanil/acre for a maximum seasonal use rate of 1.31 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil were less than 0.05 ppm.
- *Summer squash.* DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to five test sites in Florida, Pennsylvania, Minnesota, North Carolina and California. DPX-KP481 50DF was applied as seven broadcast applications at the maximum rate of 0.1875 lb cymoxanil/acre for a maximum seasonal use rate of 1.31 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil were less than 0.05 ppm.

ii. *Fruiting vegetables.* The magnitude and decline of residues of cymoxanil was determined on tomato and pepper, the representative commodities for the fruiting vegetable crop group as follows:

- *Pepper.* Bell and non-bell DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to nine test sites in Georgia, Florida, Ohio, Texas, Arizona, California, and New Mexico. DPX-KP481 50DF was applied as nine broadcast applications at a maximum seasonal use rate of 1.12 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil at the target PHI of 3 days ranged from less than 0.05–0.12 ppm in peppers (bell and non-bell).
- *Tomato.* DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone was applied as a water dispersible granule to 12 test sites in Florida, Maryland, Pennsylvania, California and Indiana. DPX-KP481 50DF was applied as nine broadcast applications at a maximum seasonal use rate of 1.12 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil at the target PHI of 3 days were less than 0.05 ppm in tomatoes.
- *Tomato, process fractions.* DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to one site in California to determine the magnitude of residue in tomato and the extent to which the residue concentrated in tomato processed fractions. DPX-KP481 50DF was applied in nine broadcast applications at 1X and 5X the proposed maximum rate of 1.12 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. When applied at 5X the maximum use rate residues did not concentrate in tomato washed, unwashed, paste or puree.

iii. *Head lettuce.* DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to eight test sites in Arizona, California, Florida, New York, and New Mexico. DPX-KP481 50DF was applied as seven broadcast applications at the maximum rate of 0.1875 lb cymoxanil/acre for a maximum seasonal use rate of 1.31 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil in head lettuce ranged from less than 0.05–2.8 ppm (wrapper leaves attached) and less than 0.05–1.1 ppm (wrapper leaves removed).

B. Toxicological Profile

1. *Acute toxicity.* A battery of acute toxicity tests on technical cymoxanil places it in the following Toxicity Categories:

TABLE 1.—ACUTE TOXICITY RESULTS ON TECHNICAL CYMOXANIL

Oral LD_{50}	Rat	960 mg/kg	Category III
Dermal LD_{50}	Rabbit	>2,000 mg/kg	Category III
Inhalation LC_{50}	Rat	> 5.06 mg/L	Category IV
Eye irritation	Rabbit	Slight irritant	Category IV
Dermal irritation	Rabbit	Not an irritant	Category IV
Dermal sensitization	Guinea pig	Not a sensitizer	

An acute neurotoxicity study was not required with cymoxanil and no acute neurotoxicity has been observed in short-term or subchronic studies.

2. *Genotoxicty.* Cymoxanil was tested in a battery of assays to evaluate genotoxicity and chromosome aberrations with the following results.

TABLE 2.—GENOTOXICITY AND CHROMOSOME ABERRATIONS ASSAY RESULTS

Bacterial gene mutation	*Salmonella typhimurium*	Negative
Mammalian gene mutation *in vitro*	CHO/HGPRT	Negative
Mammalian chromosome aberrations *in vitro*	CHO	Positive
Mammalian chromosome aberrations *in vitro*	Mouse micronucleus	Negative
Unscheduled DNA synthesis *in vitro*	Primary rat hepatocytes	Negative
Unscheduled DNA synthesis *in vitro*	Primary rat hepatocytes and Spermatocytes	Negative

Based on the weight-of-evidence, cymoxanil is not considered to be genotoxic or clastogenic.

3. *Reproductive and developmental toxicity.* The results of a series of studies indicated that there were no reproductive, developmental, or teratogenic hazards associated with cymoxanil.

In a 2-generation cymoxanil rat reproduction study, the no observed effect level (NOEL) for both parents and offspring was approximately 7 milligrams/kilogram/day (mg/kg/day), based on decreased body weight, weight gain and food consumption in adults and decreased pup weight in offspring at 32 mg/kg/day. There were no reproductive or fertility effects. Since offspring effects occurred only in the presence of maternal toxicity, it is considered a secondary effect to the health effects on the dam.

With cymoxanil, developmental studies conducted in rats demonstrated a NOEL of 10 mg/kg/day and a lowest observed effect level (LOEL) of 25 mg/kg/day for both adult and developmental effects. Maternal effects in rats included decreased weight, weight gain, and food consumption. Developmental effects were increases in fetal variations, which were the result of generalized delays in ossification, and overall malformations, although malformations detected were not dose-related. In rabbits, several developmental toxicity studies were conducted with cymoxanil. Based on the weight-of-evidence of all three studies, EPA considered there was no unique sensitivity of perinatal animals to the effects of cymoxanil, nor any anomalies of the fetal nervous system at maternally toxic doses up to and including 32 mg/kg/day (Cymoxanil Agency Risk Assessment, February 18, 1998).

4. *Subchronic toxicity.* Subchronic (90–day) feeding studies were conducted with rats, mice, and dogs. In addition, the following subchronic feeding studies were conducted: A 90–day in rats to evaluate neurotoxicity and 28–day feeding studies in rats and mice to evaluate immunotoxicity. A 28–day dermal study was conducted in rats.

In a subchronic toxicity/neurotoxicity study in rats with cymoxanil, the NOEL of 47.6 mg/kg/day in males was based on decreased body weights and minimal to mild testicular and epididymal effects at higher concentrations. In females, the NOEL of 59.9 mg/kg/day was based on effects on body weight, weight gain, and food efficiency at higher levels.

The subchronic NOEL for male mice administered cymoxanil was 8.25 mg/kg/day based on body weight and weight gain effects at 82.4 mg/kg/day and above. The NOEL for females was 121 mg/kg/day based on increases in spleen and liver weights at 433 mg/kg/day and above.

For cymoxanil, dogs were the most sensitive species in subchronic studies. Reduced body weight gain and/or food consumption was observed at 3 mg/kg/day or greater in females and 15 mg/kg/day and above in males. Both sexes had red blood cells (RBC) changes decreased RBC counts, hemaglobin (Hb), and/or hematocrit (Hct) and increased incidence of ketonuria at the intermediate and high concentration, and changes in serum chemistry (decreases in various electrolytes and proteins) at the high dose. Males had testicular and epididymal effects at the highest concentration, 11 mg/kg/day (raised from 5 mg/kg/day at week 3); this was considered to be retardation of development due to markedly reduced body weight in this group. The NOEL for males was 3 mg/kg/day. There was no NOEL in female dogs in the 90–day study. Although, a NOEL was not established in the dog subchronic study, 3 mg/kg/day was found to be a NOEL in a subsequent chronic study in dogs.

Subchronic 28–day studies were conducted in rats and mice to evaluate the immunotoxicity potential of cymoxanil. Cymoxanil was not immunotoxic up to and including the highest dose tested which was 1,600 ppm in rats (108 and 117 mg/kg/day in males and females, respectively), 1,200 ppm (218 mg/kg/day) in male mice, and 2,400 ppm (552 mg/kg/day) in female mice.

Cymoxanil was applied to the skin of rats 6–hours/day for 28 days at doses of 0, 50, 500, and 1,000 mg/kg/day. There were no effects at any dose tested. The 28–day dermal NOEL was 1,000 mg/kg/day, the highest dose tested.

5. *Chronic toxicity.* Chronic studies with cymoxanil were conducted on rats, mice, and dogs to determine oncogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90–day studies were seen in the chronic studies. Cymoxanil was not oncogenic.

The chronic NOEL for cymoxanil in male rats was 4.08 mg/kg/day based on decreased body weight, weight gain, food efficiency, and non-neoplastic lesions in several organs including lung inflammation, spermatid degeneration, and retinal atrophy at 30.3 mg/kg/day or higher. In addition, male rats in the two highest groups displayed increased aggressiveness and hyperreactivity consistent with the compromised general health status (i.e. systemic toxicity) of those groups. In females, the NOEL of 5.36 mg/kg/day was based on decreased body weight, weight gain, food efficiency, and non-neoplastic lesions in several organs including lungs, liver, intestines, mesenteric lymph nodes, sciatic nerve, and retina at 38.4 mg/kg/day or higher. Retinal atrophy and sciatic lesions are common spontaneous lesions associated with aging. These effects observed in cymoxanil test animals were considered aging-related effects. Spermatid degeneration occurs spontaneously in rats. While the incidence was increased in cymoxanil-treated rats, most were mild or minimal and none were more than moderate. Thus, the effects are considered a mild exacerbation of a spontaneously occurring lesion.

In mice, the chronic NOELs for cymoxanil were 4.19 and 5.83 mg/kg/day for males and females, respectively, based on changes in organ weights, gastrointestinal effects in females and liver, testes and epididymal effects in males at the LOEL. Similar to the rat, the testicular effects were considered an exacerbation of a spontaneous lesion, that occurred in one-quarter of the control mice. The LOELs were 42.0 and 58.1 mg/kg/day for males and females, respectively.

The chronic cymoxanil NOEL for male dogs was 3.0 mg/kg/day based on a temporary decrease in body weight and food consumption, and lower RBC count, hemoglobin, and hematocrit at 5.7 mg/kg/day. In female dogs the only finding was a transient effect on body weight, food consumption, and food efficiency at the highest dose tested, 3.1 mg/kg/day, only during the first week of the study. EPA considered the NOEL in females to be 3.1 mg/kg (Cymoxanil Agency Risk Assessment, February 18, 1998).

6. *Animal metabolism.* When administered by gavage to rats, cymoxanil was readily absorbed and eliminated. Absorption reached maximum concentrations in whole blood within 4 hours post-dosing. A rapid and almost complete elimination was observed in the urine and feces. The majority of radioactivity was recovered within 96 hours, mainly in urine but also in feces. Radioactivity in the tissues and carcass was less than 1%. In the urine and feces, the majority of the radioactivity was free and/or conjugated glycine. 2-Cyano-2-methoxyimino-acetic acid was also found in low levels in the urine and trace levels in the feces. Intact cymoxanil was less than 1% in feces and not detected in the urine. The metabolite profile in urine and feces was similar between sexes, among dose groups, and between dosing regimens (single vs. multiple).

7. *Metabolite toxicology.* There are no metabolites of toxicological significance to mammals.

8. *Endocrine disruption.* Chronic, lifespan, and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine-related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of cymoxanil is negligible.

C. Aggregate Exposure

1. *Dietary exposure.* Cymoxanil is a fungicide currently registered in the United States for use on potatoes. In addition, tolerances have been for cymoxanil on imported tomatoes and grapes. This tolerance petition proposes the following new uses in the United States: Cucurbit vegetables, fruiting vegetables and head lettuce. There are no residential uses.

i. *Food—a. Chronic dietary exposure assessment.* The chronic RfD of 0.041 mg/kg/day is based on a NOEL of 4.08 mg/kg/day from the 1 year rat feeding study and an uncertainty factor of 100. The acute NOEL of 4.0 mg/kg/day is based upon maternal clinical signs and weight effects at higher levels in a rat developmental study.

Chronic dietary cymoxanil exposure risks resulting from the proposed use of DPX-KP481 50DF on cucurbits, fruiting vegetables, head lettuce, potatoes and imported grapes were estimated using the Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1999 Version 6.74). The analysis conservatively assumed that 30% of the crops on the proposed label would be treated with DPX-KP481 50DF and used field trial residue data. The chronic dietary risk estimate for cymoxanil shows that an adequate margin of safety exists for all population subgroups and that no effects would result from dietary exposure to cymoxanil.

The following table presents the analysis which indicate large margins of safety for each population subgroup and very low probability of effects resulting from chronic exposure to cymoxanil in DPX-KP481 50DF. No sensitive subpopulations were identified. For the general populations and all subpopulations 0.2% or less of the chronic RfD used.

TABLE 3.—RESULTS OF CHRONIC DIETARY ANALYSIS WITH CYMOXANIL

Population Group	Maximum Dietary Exposure (mg/kg/day)	% RfD
U.S. population	0.000063	0.2
Non-nursing infants (<1 yr.)	0.000016	<0.1
Children (1–6 yr.)	0.000074	0.2
Children (7–12 yr.)	0.000068	0.2
Females (13+)	0.000074	0.2

b. *Acute dietary exposure.* Results of the Tier 3 acute dietary exposure analysis show that an adequate margin of safety exists for all population subgroups and that no acute effects would result from dietary exposure to cymoxanil. The analysis conservatively assumed that 30% of the crops on the proposed label would be treated with DPX-KP481 50DF and used field trial residue data.

The results of the acute dietary exposure analysis for cymoxanil are given in the table below. The percentages of acute reference dose (aRFD) for cymoxanil were calculated based on an acute NOEL of 4 mg/kg/day from the rabbit developmental study based on maternal clinical signs and weight effects at the higher levels and an uncertainty factor of 100. The results of the acute dietary exposure analysis for cymoxanil indicate that the predicted exposures, expressed as a percentage of the aRFD are well below 100%, showing cymoxanil clearly meets the Food Quality Protection Act (FQPA) standard of reasonable certainty of no harm and presents much lower acute dietary risk than many of its competitors. At the 99.9th percentile, the percentage of the aRFD was 4.47% for the general population and 5.72% for the most sensitive subpopulation, nursing females.

TABLE 4.—RESULTS OF ACUTE DIETARY ANALYSIS WITH CYMOXANIL

Population Group	99th Percentile of Exposure		99th Percentile of Exposure	
	Exposure (mg/kg/day)	%aRfD	Exposure (mg/kg/day)	%aRfD
U.S. population	0.000475	1.19	0.001789	4.47
Non-nursing infants (<1 yr.)	0.000184	0.46	0.000599	1.50
Children (1–6 yr.)	0.000576	1.44	0.002096	5.24
Children (7–12 yr.)	0.000485	1.21	0.001936	4.84
Females (13+ nursing)	0.000635	1.59	0.002287	5.72

ii. *Drinking water.* Surface water exposure was estimated using the Generic Expected Environmental Concentration (GENEEC) model. Ground water exposure was estimated using SCI-GROW. These are screening level

models used for determining upper bound concentrations of pesticides in surface water and ground water.

The acute drinking water levels of concern (DWLOCs) are 1.3 parts per million (ppm) for the U.S. population, and 0.38 ppm for the most exposed population subgroup, children (1–6 years). The estimated maximum concentration of cymoxanil in surface water (8.15 ppb) derived from GENEEC is much lower than the acute DWLOC. Therefore, one can conclude with reasonable certainty that residues of cymoxanil in drinking water will not contribute significantly to the aggregate acute human health risk.

The chronic DWLOCs are 1.4 ppm for the U.S. population and 0.4 ppm for the most sensitive subgroup, children (1–6 years). The DWLOCs are substantially higher than the GENEEC 56–day estimated environmental concentration of 0.37 ppb for cymoxanil in surface water. Therefore, one can conclude with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the aggregate chronic human health risk.

2. *Non-dietary exposure.* Cymoxanil products are not labeled for residential non-food uses, thereby eliminating the potential for residential exposure. Non-occupational, non-dietary exposure for cymoxanil has not been estimated because the proposed products are limited to commercial crop production. Therefore, the potential for non-occupational exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of cymoxanil should be cumulative with those of any other chemical compounds or with each other. Cymoxanil is a unique cyanoacetamide and is chemically unrelated to any other commercial plant disease control agent. Its biochemical mode of action on fungi appears to be unique; it is theorized to act through inhibition of multiple cellular processes, but a definitive mechanism has not been completely elucidated. Similarly, the mechanism of action underlying observed toxicological effects in mammals is not fully characterized and there is no reliable information to suggest that cymoxanil has a mechanism of toxicity in common with any other compound.

Given the distinct chemical and toxicological profile of cymoxanil, its low acute toxicity, absence of genotoxic, oncogenic, developmental, or reproductive effects, and low exposure potential, the expression of cumulative human health effects with any other natural or synthetic pesticide is not anticipated.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population for cymoxanil, and ample margins of safety have been demonstrated for both.

For cymoxanil, assuming 30% crop treated and residues estimated based on field trial results, the chronic dietary exposure for the overall U.S. population is estimated to be 0.000063 mg/kg/day, using 0.2 percent of the RfD. For acute dietary exposure, the estimated exposure is 0.000475 and 0.001789 at the 99th and 99.9th percentiles, which will utilize 1.19 and 4.47%, respectively, of the RfD for the overall U.S. population. The ground application margin of exposure (MOE) was 7,814 for mixers/loaders and 1,430 for applicators. The aerial application MOE was 3,907 for mixers/loaders and 38,763 for applicators. The MOE for flaggers was 10,916. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is reasonable certainty that no harm will result from the aggregate exposure of residues of cymoxanil including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Chronic dietary exposure of cymoxanil for the most highly exposed children's subpopulations are: 0.000074 mg/kg/day for children 1–6 years and 0.000068 mg/kg/day for children 7–12 years, representing 0.2% of the chronic reference dose (cRfD) for each subpopulation. Exposure for all infant subpopulations was negligible. For acute dietary exposure of cymoxanil, the %RfD for children 1–6 years is 1.44 at the 99th percentile and 5.24 at the 99.9th percentile. For non-nursing infants (>1 yr.), the %RfD is 0.46 at the 99th percentile and 1.50 at the 99.9th percentile. There are no residential uses of cymoxanil; it is extremely unlikely that drinking water will be contaminated. Based on the completeness and reliability of the toxicity data base, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to cymoxanil, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of cymoxanil, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

To date, no international tolerances exist for cymoxanil.

[FR Doc. 03–4257 Filed 2–27–03; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1445–DR]

Alaska; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska, (FEMA–1445-DR), dated December 4, 2002, and related determinations.

EFFECTIVE DATE: February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 4, 2002:

Kodiak Island Borough for Public Assistance (already designated for Individual Assistance).

Alaska Railroad right-of-way between Milepost 79 and Milepost 102 along the Turnagain Arm and state highway Milepost 4 Power Creek Road highway in the Cordova area for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4723 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1452–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1452–DR), dated February 4, 2003, and related determinations.

EFFECTIVE DATE: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 4, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from a severe ice storm on December 3–4, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James N. Russo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Beckham, Blaine, Caddo, Canadian, Custer, Kingfisher, Kiowa, Logan, Noble, Osage, Pawnee, Payne, Roger Mills and Washita Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4724 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1451–DR]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina, (FEMA–1451–DR), dated January 8, 2003, and related determinations.

EFFECTIVE DATE: February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 8, 2003:

Cherokee, Greenville, Laurens, Spartanburg, Union, and York Counties for Category E (buildings and equipment) under the Public Assistance program (already designated for Categories A, B, and F).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4725 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3171–EM]

Space Shuttle Columbia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Space Shuttle Columbia (FEMA–3171–EM), dated February 1, 2003, as amended, and related determinations.

EFFECTIVE DATE: February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a memorandum for the Director of the Federal Emergency Management Agency dated February 6, 2003, the President amended and restated his February 1, 2003, declaration of an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the United States in connection with the events relating to the loss of the Space Shuttle Columbia on February 1, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–

5206 (the "Stafford Act"). The basis for my decision to make this declaration pursuant to section 501(b) of the Stafford Act includes the fact that the space shuttle and the space program are Federal property and Federal programs. I, therefore, declare that such an emergency exists for this event.

In order to provide Federal assistance, you are hereby authorized to coordinate and direct other Federal agencies and fund activities not authorized under other Federal statutes and allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide emergency assistance as you deem appropriate under Title V of the Stafford Act at 100 percent Federal funding in the State of Texas.

Pursuant to this emergency declaration, you are also authorized to provide only Federal Operations Support for debris removal under Title V of the Stafford Act, at 100 percent Federal funding, in any other State where you determine the need exists. FEMA will consult with the Governor of any affected State before providing assistance.

This declaration does not affect the February 1, 2003, declaration under the Stafford Act for Louisiana as a result of the loss of the Space Shuttle Columbia.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alexander S. Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared emergency:

Anderson, Angelina, Bell, Cherokee, Collin, Comanche, Dallas, Eastland, Ellis, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hunt, Jefferson, Johnson, Kaufman, Leon, McLennan, Milam, Montgomery, Nacogdoches, Navarro, Orange, Panola, Parker, Rusk, Sabine, San Augustine, Shelby, Smith, Tarrant, Upshur, Walker, Williamson, and Wood Counties for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program at 100 percent Federal funding.

Further, Federal Operations Support for debris removal (Category A) may be provided in any other State where I determine, at a later date, that the need exists.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,
Director.
[FR Doc. 03–4726 Filed 2–27–03; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3171–EM]

Space Shuttle Columbia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of the Presidential declaration of an emergency for the Space Shuttle Columbia, (FEMA–3171–EM), dated February 1, 2003, as amended, and related determinations.

EFFECTIVE DATE: February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of the emergency declaration for the Space Shuttle Columbia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 1, 2003, as amended:

Andrews, Bowie, Cameron, Camp, Chambers, Denton, El Paso, Hardin, Hood, Houston, Jackson, Limestone, Polk, Rockwall, Somervell, and Trinity Counties for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,
Director.
[FR Doc. 03–4727 Filed 2–27–03; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3172–EM]

Louisiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Louisiana: Space Shuttle Columbia (FEMA–3172–EM), dated February 1, 2003, and related determinations.

EFFECTIVE DATE: February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a memorandum dated February 1, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Louisiana in connection with the events relating to the loss of the Space Shuttle Columbia on February 1, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under section to make this declaration pursuant to section 501(b) of the Stafford Act includes the fact that the space shuttle and the space program are Federal property and Federal programs. I, therefore, declare that such an emergency exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to coordinate and direct other Federal agencies and fund activities not authorized under other Federal statutes and allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide emergency assistance as you deem appropriate under title V of the Stafford Act at 100 percent Federal funding.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alexander S. Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared emergency:

Bossier, Caddo, Natchitoches, Ouachita, Rapides, Sabine, and Vernon Parishes for debris removal (Category A), and emergency protective measures (Category B), at 100 percent Federal funding under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,
Director.
[FR Doc. 03–4728 Filed 2–27–03; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3172–EM]

Louisiana; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of the Presidential declaration of an emergency for the State of Louisiana: Space Shuttle Columbia (FEMA–3172–EM), dated February 1, 2003, and related determinations.

EFFECTIVE DATE: February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Louisiana: Space Shuttle Columbia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 1, 2003:

Acadia, Allen, Ascension, Avoyelles, Beauregard, Calcasieu, De Soto, East Baton Rouge, East Feliciana, Evangeline, Grant, Jefferson, Lafayette, Lafourche, Lincoln, Livingston, Morehouse, Orleans, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Webster, West Baton Rouge, West Feliciana, and Winn Parishes for debris removal (Category A), and emergency protective measures (Category B), under the Public Assistance program at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,
Director.
[FR Doc. 03–4729 Filed 2–27–03; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: March 6, 2003.

Place: Building S, Room 113, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Time: 10:30 a.m.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; Counter-terrorism Subcommittee report; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, March 4, 2003, via mail at NATEK Incorporated, 4200–G Technology Court, Chantilly, Virginia 20151, or by telephone at (703) 818–7070, or via facsimile at (703) 818–0165, or via e-mail at *proman@natekinc.com.* This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass that must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10:30 a.m. until 4 p.m. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is "10." If you plan to call in, you should just enter the number "10"—no need to hit any other buttons, such as the star or pound keys.

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on June 5, 2003. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the June 5, 2003 FICEMS Committee Meeting.

Dated: February 19, 2003.

R. David Paulison,
U.S. Fire Administrator, United States Fire Administration.
[FR Doc. 03–4720 Filed 2–27–03; 8:45 am]
BILLING CODE 6718–08–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Radiological Emergency Preparedness: Planning Guidance

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of availability.

SUMMARY: The Federal Emergency Management Agency (FEMA) is announcing the availability of draft REP Program Planning Guidance for comment. The Planning Guidance document is available at *http://www.fema.gov/rrr/rep/.*

DATES: FEMA must receive comments on or before April 29, 2003.

ADDRESSES: You may submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, or send them by e-mail to *rules@fema.gov.* Please reference "REP Planning Guidance" in the subject line of your e-mail or comment letter.

FOR FURTHER INFORMATION CONTACT: Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; telephone: (202) 646–3664, or e-mail: *vanessa.quinn@fema.gov,* or Nancy H. Goldstein, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street, SW., Washington DC 20472, telephone: (202) 646–4285, or (e-mail) *nancy.goldstein@fema.gov.*

SUPPLEMENTARY INFORMATION: In December 2002, the Federal Emergency Management Agency (FEMA) posted a draft Planning Guidance document on its Web site for a 30-day comment period, ending on January 24, 2003. In response to commenters' requests for additional time and for notification through the **Federal Register**, FEMA has extended the conclusion of the comment period to 60 days from the date of this notice. The document may be accessed at *http://www.fema.gov/rrr/rep/.* Comments that were submitted to FEMA during the initial 30-day period do not need to be resubmitted.

Dated: February 11, 2003.

W. Craig Conklin,

Director, Technological Services Division, Office of National Preparedness.

[FR Doc. 03–4721 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–47]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Assessing the Linkages between Dating Violence, Other Peer Violence, and Suicide—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Violence is an important public health problem, particularly among our youth. In the United States, homicide and suicide are the second and third leading causes of death, respectively, for youth aged 15–19 years. Accordingly, there has been a tremendous growth in research on the prevalence, incidence, causes and effects of dating violence, peer violence, and suicide among youth. Various disciplines have contributed to the development of research on the subject including psychology, epidemiology, criminology and public health.

Still, considerable gaps remain in our understanding of the extent to which youth who engage in one type of violent behavior are more likely to engage in other types of violent behavior. Existing research on the linkages across different forms of violent behavior among youth are limited. Research with adults suggests that dating violence and other peer violence are strongly linked, however the strength of this association among adolescents and the degree to which it changes by developmental stage remain unclear. Similarly, regarding the linkages with suicidal behavior, gaps remain in our understanding of the extent to which suicidal behavior varies for those who engage in dating violence versus other peer violence or both types of violence, and how this association varies by age. Also, the extent to which risk for participation in single versus multiple types of violence varies for adolescent males and females is generally not well understood.

Gaps in our understanding of how different types of violent behavior are linked and whether they share common risk factors have limited the ability to design violence prevention and intervention efforts that could address multiple types of violence. Additional information on the linkages among dating violence, other peer violence, and suicidal behavior and how these linkages differ by gender and age is needed to guide the selection, timing, and focus of prevention strategies. This study will increase the knowledge and understanding of the linkages among different types of violence. As a result, CDC will work with a contractor to identify a school district in a high-risk community, identify a sample of students to participate in the study, and develop a questionnaire that will be administered to male and female students at different developmental stages (*i.e.*, 6th, 9th and 12th grade).

The goals of the study are to examine the extent (a) youth engage in multiple types of violence (*i.e.*, dating violence, other peer violence, and suicidal behavior); (b) risk and protective factors for different types of violence are unique or shared; (c) linkages across types of violence vary by gender and developmental stage; and (d) other socio-environmental factors which buffer or exacerbate risk for violence. The questionnaires include information about aggressive and violent behaviors (*e.g.*, verbal, coercive, physical, and sexual) that youth use against dating partners and other peers and suicidal thoughts, plans, and attempts. Additionally, the questionnaires will include information about psycho-social and behavioral factors that may buffer or exacerbate risk for violent behavior. The scales used in the questionnaire are original or modified versions of established scales that were developed for use with adolescents.

A better understanding of the linkages among dating violence, other peer violence, and suicidal behavior, and how these linkages differ by gender and age is needed to guide the selection, timing, and focus of prevention strategies. Ultimately, this information will guide CDC in designing programs that reduce multiple forms of violence among adolescents and young adults. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
6th Grade Students (Male/Female)	1,000	1	45/60	750
9th Grade Students (Male/Female)	1,000	1	45/60	750
12th Grade Students (Male/Female)	1,000	1	45/60	750
Total				2250

Dated: February 24, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 03–4737 Filed 2–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–143]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Analysis of Malpractice Premium Data;

Form No.: CMS–R–143 (OMB #0938–0080);

Use: Survey of medical liability insurers for use in computing the malpractice component of the geographic practice cost index and the malpractice relation value units;

Frequency: Every 3 years;

Affected Public: State, Local, or Tribal Gov't., Business or other for-profit, and not-for-profit insitutions;

Number of Respondents: 50;

Total Annual Responses: 50;

Total Annual Hours: 150.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 20, 2003.

John P. Burke III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–4694 Filed 2–27–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1245–N]

Medicare Program; Request for Nominations to the Advisory Panel on Ambulatory Payment Classifications Groups

AGENCY: Centers for Medicare & Medicaid Services, Department of Health & Human Services.

ACTION: Notice.

SUMMARY: This notice invites nominations of members to the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel). There will be six vacancies on the Panel as of March 31, 2003. The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services concerning the clinical integrity of these groups and weights, which are major elements of the hospital outpatient prospective payment system. The Panel was recently rechartered for a 2-year period through November 21, 2004.

Nominations: Nominations will be considered if received at the appropriate address, which is provided below, no later than 5 p.m. e.s.t. March 31, 2003. Mail or deliver nominations to the following address: CMS, Center for Medicare Management, Hospital & Ambulatory Policy Group, Division of Outpatient Care, Attention: Paul Rudolf, M.D., J.D., Chairman, Advisory Panel on APC Groups, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850.

Web Site: Please refer to the Internet at *http://www.cms.gov/faca* for additional information and updates on the Panel's activities.

Advisory Committees' Information Lines: Information Hotlines at 1–877–449–5659 (toll-free) or 410–786–9379 (local) for additional information.

FOR FURTHER INFORMATION CONTACT: Shirl Ackerman-Ross, at *SAckermanross@cms.hhs.gov* or call her on (410) 786–4474. News media representatives should contact the CMS Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act), as amended by section 201(h)(1)(B) and redesignated by section 202 (a)(2) of the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113), to consult with an advisory panel on APC groups (the Panel). The Panel will meet up to three times annually to review the APC groups and provide technical advice to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (the Administrator) concerning the clinical integrity of the groups and their associated weights. The groups and their weights are major elements of the hospital outpatient prospective payment system (OPPS). The technical advice provided by the Panel will be considered as we prepare the annual Notice of Proposed Rulemaking that will propose changes to the OPPS for the next calendar year.

The current members of the Panel are: Michelle Burke, R.N.; Leslie Jane Collins, R.N.; Geneva Craig, R.N.; Lora A. DeWald, M.ED; Gretchen M. Evans, R.N.; Robert E. Henkin, M.D.; Lee H. Hilborne, M.D.; Stephen T. House, M.D.; Kathleen P. Kinslow, CRNA, Ed.D; Mike Metro, R.N.; Gerald V. Naccarelli, M.D; Beverly K. Philip, M.D.; Karen L. Rutledge, B.S.; William A. Van Decker, M.D., J.D., and Paul E. Wallner, D.O. The Panel Chairperson is Paul M. Rudolf, M.D, J.D., a CMS Medical officer.

The charter allows for up to 15 members plus a Chair, and we will have 6 openings as of March 31, 2003. Therefore, we are requesting nominations for members to serve on the Panel. Panel members serve without compensation, pursuant to advance written agreement; however, travel, meals, lodging, and related expenses will be reimbursed in accordance with standard government travel regulations. We have a special interest for ensuring that women, minorities, and the physically challenged are adequately represented on the Panel, and we encourage nominations of qualified candidates from those groups.

The Secretary, or his designee, will appoint new members to the Panel from among those candidates determined to have the required expertise; new appointments will be done in a manner that will ensure an appropriate balance of membership.

II. Criteria for Nominees

Qualified nominees will meet those requirements necessary to be a Panel member. Panel members must be representatives of Medicare providers (including Community Mental Health Centers) subject to the OPPS, with technical and/or clinical expertise in any of the following areas:

- Hospital payment systems.
- Hospital medical care delivery systems.
- Outpatient payment requirements.
- Ambulatory payment classification groups.
- Use of, and payment for, drugs and medical devices in an outpatient setting.
- Provision of, and payment for, partial hospitalization services.
- Any other relevant expertise.

It is not necessary that any nominee possess expertise in all of the areas listed, but each must have a minimum of 5 years experience and currently be employed full-time in his or her area of expertise. Members of the Panel serve overlapping 4-year terms, contingent upon the rechartering of the Panel.

Any interested person may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include a letter of nomination, a curriculum vita of the nominee, and a statement from the nominee that the nominee is willing to serve on the Panel under the conditions described in this notice and further specified in the Charter.

III. Copies of the Charter

You may obtain a copy of the charter for the Panel by submitting a request to Shirl Ackermann-Ross, CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244, (410) 786–4474, or e-mail the request to *SAckermanross@cms.hhs.gov*. A copy of the charter is also available on the Internet at *http://www.cms.hhs.gov/faca*..

Authority: Section 1833(t)(9)(A) of the Social Security Act (42 U.S.C. 13951(t)(9)(A)) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2).

Dated: February 25, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–4804 Filed 2–27–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2165–N]

Medicaid Program; Infrastructure Grant Program To Support the Competitive Employment of People With Disabilities

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of funding, through grants, for eligible States under section 203 of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWIIA). The grant program is designed to assist States in developing infrastructures to support the competitive employment of people with disabilities by extending necessary Medicaid coverage to these individuals. This notice also contains pertinent information where States may apply for the grant program.

A total of $35 million has been appropriated by the legislation for the infrastructure grant program for fiscal year 2004. In addition, amounts that were appropriated under section 203 of TWWIIA for previous fiscal years but which were not awarded to States are available for these awards in 2004.

We expect to award approximately 50 grants. This includes new as well as continuation grants. Award amounts will be between $500,000 and $1.5 million. There is no State match or cost sharing associated with this grant solicitation. Criteria for evaluating these applications will be listed in the grant solicitation (Web site address listed below).

Who May Apply: State Agencies.

DATES: *Deadline for Letter of Intent to Apply:* States are encouraged to submit a notice of intent to apply for a grant no later than May 2, 2003. Submission of your letter of intent is optional and will not affect the approval of your application.

Date of Applicant's Teleconference: States interested in participating in a teleconference regarding this grant solicitation should check the Ticket to Work Web site listed below for the date and time.

Deadline for Grant Submission: Grant applications must be submitted by July 15, 2003 to be considered under the 2004 annual funding cycle. Applications for these grants are not subject to review under Executive Order 12372—Intergovernmental Review by Federal Agencies (45 CFR part 100).

ADDRESSES: *Application Materials:* Standard application forms and related instructions are available from the Web site, *www.cms.hhs.gov/researchers/priorities/grants.asp* or from Judith Norris, Centers for Medicare & Medicaid Services, Office of Internal Customer Support, Acquisition and Grants Group, C2–21–15 Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5130, e-mail: *Jnorris1@cms.hhs.gov*. Application materials must be formally submitted to Judith Norris.

Please note: State agencies are only required to submit an original application and two copies.

Web site: You may access up-to-date information about the Medicaid Infrastructure Grants and obtain information from the full grant solicitation grant at: *http://www.cms.hhs.gov/twwiia*.

FOR FURTHER INFORMATION CONTACT: Questions about the grants may be directed to: Joe Razes, TWWIIA Program Manager, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, Room S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–6126, e-mail: *Jrazes@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: This notice is the fourth such notice announcing the availability of funds for Medicaid infrastructure grants authorized by the Ticket to Work and Work Incentives Improvement Act. A total of 38 States currently have been awarded Medicaid infrastructure grants under the Ticket to Work legislation that provides Federal grant funding for 11 years through 2011. This notice is consistent with the three previous notices in soliciting States to apply for grants that will expand services and supports for workers with disabling conditions. States that wish to apply for these grants and desire further detailed information, such as application requirements, review procedures, an explanation of a timely submission, necessary forms, and other relevant information, should refer to the above listed Web sites.

Approval for Collection of Information: The collection of information requested in the application for grants funding has been approved by the Office of Management and Budget under the approval number 0938–0811. The current approval expires on November 30, 2003.

Authority: Section 203 of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170. (Catalog of Federal Domestic Assistance Program No. 93.768, Centers for Medicare and Medicaid Services Research, Demonstration, and Evaluations)

Dated: December 23, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–4733 Filed 2–27–03; 8:45am]

BILLING CODE: 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5002–N]

RIN 0938–ZA39

Medicare Program; Demonstration: Capitated Disease Management for Beneficiaries With Chronic Illnesses

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice informs interested parties of an opportunity to apply for a cooperative agreement to participate in a Capitated Disease Management Demonstration. This demonstration uses disease management interventions and payment for services based on full capitation (with risk sharing options) to (1) improve the quality of services furnished to specific eligible beneficiaries, including dual eligibles and the frail elderly, and (2) manage expenditures under Parts A and B of the Medicare program. We are interested in testing models aimed at beneficiaries who have one or more chronic conditions that are related to high costs to the Medicare program, such as stroke, congestive heart failure, or diabetes. We intend to use a competitive application process to select organizations to participate in this demonstration.

DATES: Applications will be considered timely if we receive them on or before May 29, 2003.

ADDRESSES: Mail applications to: Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Research Development and Information, Demonstration Program staff, Attn: Raymond Wedgeworth, Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244.

Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the executive summary, resumes, forms, and documentation supporting the cost proposal. Because of staffing and resource limitations, we cannot accept applications by facsimile (FAX) transmission. Applications postmarked after the closing date, or postmarked on or before the closing date but not received in time for panel review, will be considered late applications.

FOR FURTHER INFORMATION CONTACT: For information concerning this demonstration, contact Raymond Wedgeworth, CMS Project Officer, at (410) 786–6676, or *rwedgeworth@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Eligible Organizations

Potentially qualified applicants are provider sponsored organizations, academic medical centers, Medicare+Choice organizations, or disease management companies, who can demonstrate ability to effectively supply disease management services applicable to the Medicare population, which may include dual eligibles and frail elderly, specific to select chronic conditions.

Administrator Initiative

The clearest statement of the Administration's priorities for Medicare is found in the White House document, "21st Century Medicare," issued on July 12, 2001. In that document, the Administration made a series of proposals for modernizing Medicare benefits so that they would better meet the needs of its beneficiaries. One of the important proposals in the document is to improve the current limits of the program on innovative treatment. The report notes that "Medicare's traditional approach to paying only for discrete visits and services has denied many seniors the opportunity to take advantage of the advances that have been pioneered by integrated health delivery in coordinating care for complex conditions and chronic diseases. These programs can lead to better health outcomes and reduce total medical costs by avoiding complications."

In line with the above goals, the Administration is undertaking a series of disease management demonstration projects to explore a variety of ways to improve beneficiary care in the traditional Medicare plan. These demonstrations provide beneficiaries with greater choices, enhance the quality of their care, and offer better

value for the dollars spent on health care.

The purpose of this demonstration is to test capitated payment arrangements with qualified organizations for the case management of specific diseases. The targeted populations include Medicare beneficiaries with chronic illnesses and special populations, such as dual eligibles and frail elderly. The payment models employed are intended to reduce costs and improve the coordination and quality of care for Medicare beneficiaries with select chronic diseases. In addition, the models may be applied to organizations that target dual eligibles or the frail elderly. Specifically, we will pay predetermined rates for each month for which an individual chooses to receive disease management services under this demonstration, according to a disease-specific risk adjustment approach currently being developed. (Disease specific risk adjusters are being developed as part of the model for M+C Risk adjustment. The legislative mandate for implementation of the risk adjustment model is January 1, 2004 for all plans. This risk adjuster, which will factor a greater number of comorbidities into the payment, is to be announced March 2003.)

There will also be a risk sharing option available (that is, a symmetrical risk sharing on profit and losses around a Medical-Loss-Ratio).

In exchange for the capitation amount, the applicant would be required to cover all Medicare-covered services for an individual participating in the demonstration, in addition to the disease management services. The applicant would be required to make such services available to beneficiaries participating in the demonstration, either directly or through arrangements with other Medicare-certified providers. Medicare beneficiaries participating in this demonstration would be informed that it is a condition of such participation that they receive services through the provider of disease management that has received a payment on behalf of the participant. For non-M+C organizations, only traditional Medicare fee-for-service (FFS) beneficiaries are eligible to participate in the demonstration. The intent of the demonstration is to attract traditional Medicare FFS beneficiaries, however, we will consider, on a case-by-case basis, allowing M+C organizations to market the demonstration to their current M+C beneficiaries and permit participation in the demonstration by one M+C beneficiary for every 2 traditional Medicare FFS beneficiaries they get to participate. Current M+C beneficiaries would have to disenroll from their current M+C plan in order to participate in the demonstration. Organizations allowed to sign up current M+C beneficiary who disenrolled from an M+C plan to participate in the demonstration would have to agree to the monitoring of their Medical-Loss-Ratio (MLR).

The capitated payment method will require the collection and submission of simplified encounter data. The demonstration will use the Group Health Plan Payment System to pay the sites.

Under this demonstration, selected organizations would provide the clinical management of patients with high cost diagnoses such as stroke, congestive heart failure, and diabetes. (Applicants may propose a project that seeks to intervene with disease management services for Medicare eligible beneficiaries who have the potential for renal failure but who are not yet in dialysis. Randomization may be required for a proposal with this model.) The demonstration would be especially appropriate for provider sponsored organizations (PSOs), but is also open to other types of organizations such as disease management organizations, academic medical centers (AMCs) or M+C organizations. By targeting or encouraging the formation of integrated delivery systems and paying a single risk payment rather than reimbursing services on a fee-for-service basis, we hope to improve communication and coordination of services between patient, physician, disease management organizations, and other providers.

I. Background

A. Legislative Background

Section 402(a)(1)(A) of the Social Security Amendments of 1967 (Pub. L. 90–248), 42 U.S.C. 1395b–1(a)(1)(A), authorizes the Secretary to develop and engage in demonstrations "to determine whether, and if so which, changes in methods of payment or reimbursement * * * for health care and services under health programs established by the Social Security Act, including a change to methods based on negotiated rates, would have the effect of increasing efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services. * * *"

Under section 402(b) of the Social Security Act Amendments of 1967, the Secretary is authorized to waive requirements in title XVIII that relate to reimbursement and payment in order to carry out demonstrations authorized under section 402(a) of the Social Security Act Amendments of 1967.

Under this demonstration, we would use the authority in section 402(b) to waive the "fee-for-service" (FFS) payment rules that would ordinarily apply to a beneficiary who has elected the "Original Medicare plan", and would substitute the methodology discussed in this notice, and agreed to in the demonstration contract.

B. Problem

Historically, a small proportion of Medicare beneficiaries has accounted for a major proportion of Medicare expenditures. For example, in 1996, 12.1 percent of all Medicare enrollees accounted for 75.5 percent ($126.1 billion) of all Medicare FFS program payments. Many of these high-cost beneficiaries are chronically ill with certain common diagnoses, and most of the Medicare expenditures for their care are for repeated hospitalizations. During the next 30 years, as the population ages, the number of individuals and estimated cost of care for these individuals are expected to grow dramatically.

In addition, dual eligibles and special populations account for a large proportion of Medicaid and Medicare expenditures. The 1998 Medicare Chart Book reported that in 1995, the 6 million dually eligible beneficiaries accounted for 30 percent Medicare spending, though they only represented 16 percent of the Medicare population. Moreover, the dually eligible accounted for 35 percent of Medicaid spending, though they only made up 17 percent of the Medicaid population.

When services furnished to individuals with chronic illness are reimbursed on a FFS basis, health care has often been fragmented and poorly coordinated across multiple health care providers and multiple sites of care. Evidence-based practice guidelines have not always been followed, nor have patients always been taught how best to care for themselves. These shortcomings are particularly true for patients served under reimbursement systems in which providers lack incentives for controlling the frequency, mix, and intensity of services, and where they have limited accountability for the outcomes of care.

Many M+C organizations and private insurers have realized the importance of effectively coordinating the care of services for persons with select chronic conditions. The quality of care, as well as the cost of care, can be improved through better integration of the delivery system. In order to create incentives to maintain costs, encourage the coordination of services, and improve the quality of care, M+C and private insurers have developed alternative payment systems that put the provider of disease management organizations at full or partial risk for the cost of care.

Concerning dual eligibles, integration across the continuum of primary, acute, and long-term care services for vulnerable populations has gained attention in recent years as an approach that could produce both cost efficiencies and more appropriate decisions on the settings in which care is delivered.

C. Disease Management

The level of interest in and knowledge about disease management is growing dramatically. The Institute of Medicine's report, entitled "Crossing the Quality Chasm," highlights the challenge of managing chronic conditions within a system that was designed to treat acute illness. Major national organizations such as the Disease Management Association of America (DMAA) have been formed to advance the practice of disease management, and the National Committee for Quality Assurance (NCQA) has established standards for disease management programs.

Early efforts at disease management occurred mainly in managed care settings, as the plan and the providers had clear incentives to manage care and the patients were enrolled and "locked into" a delivery system. More recently, a variety of health care organizations including physician group practices, private insurers, commercial firms, and academic medical centers, have developed programs designed to address the challenges inherent in managing chronic illnesses within the context of a FFS system oriented around episodic care. The most obvious of these systems are called PSOs.

The NDMA, NCQA, and other organizations such as the National Pharmaceutical Council have put forward definitions of disease management that contain certain common elements. These definitions view disease management as an approach to delivering health care to persons with chronic illnesses that aims to improve patient outcomes while containing health care costs. These programs tend to target persons whose primary health problem is a specific disease, although certain comorbid conditions are usually addressed as well. Patients with a similar level of severity of a disease tend to face similar problems and therefore receive similar treatment plans. These disease management interventions tend to be highly structured and emphasize the use of standard protocols and clinical guidelines.

Certain common features are found in all of these definitions:

- Identification of patients and matching the intervention with need.
- Use of evidence-based practice guidelines.
- Supporting adherence to the plan of care.
- Supporting adherence to evidence-based medical practice guidelines by providing medical treatment guidelines to physicians and other providers, reporting on the patient's progress in compliance with protocols, and providing support services to assist the physician in monitoring the patient.
- Services designed to enhance patient self-management and adherence to their treatment plan. Examples of these services are patient education, monitoring and reminders, and behavior modification programs aimed at encouraging lifestyle changes.
- Routine reporting/feedback loop-(may include communication with patient, physician, health plan and ancillary providers, and practice profiling).
- Communication and collaboration among providers and between the patient and providers. Related services include team conferences, collaborative practice patterns, and routine reporting and feedback loops. In addition, care managers are often used to relay communication and to coordinate care across providers and between face-to-face encounters with chronically ill patients. Programs that address comorbid conditions extend their communication efforts to include all of the patient's providers and the entire spectrum of care.
- Collection and analysis of process and outcomes measures.

In addition to these standard features, programs may include use of information technology such as specialized software, data registries, automated decision support tools, and callback systems. Although disease management services usually do not include actual treatment of the patient's condition, many disease management programs augment the services provided in the traditional FFS system by adding such services as comprehensive geriatric assessment, social services, preventive services, transportation, including prevention services and necessary prescription drugs and outpatient medications. The interventions provided go beyond those services generally covered under the Medicare FFS program.

In our recent study aimed at investigating and benchmarking case management and disease management efforts, the suggestion was made that case and disease management organizations provide services aimed at addressing one or more of the following goals: improving patient self-care, improving physician prescribing and treatment practices, improving communication and coordination, and arranging and providing for services. Programs vary in their relative focus on these areas. Some disease management programs may emphasize improving physician use of recommended clinical guidelines, others may focus on providing case managers to support and educate the patient and enhance communication, and others may emphasize access to additional services.

D. CMS Demonstrations of Management of Chronic Diseases

We have made three awards pursuant to section 121 of the Medicare, Medicaid, and Benefits Improvement and Protection Act (BIPA)(Pub. L. 106–554, enacted on December 21, 2000) that directs us to conduct a demonstration project for the Medicare FFS population to determine the impact on costs and health outcomes of applying disease management services. Demonstration sites plan to start enrollment in the spring of 2003. Under this BIPA demonstration, services will be supplemented with coverage for prescription drugs provided to beneficiaries with advanced-stage congestive heart failure, diabetes, or coronary heart disease. A key feature of the demonstration is that the selected organizations must guarantee either through reinsurance or some other means, net savings to the Medicare program.

In the past, we have conducted several demonstrations of case management for chronic illnesses, including the national channeling demonstration and the Alzheimer's Disease demonstration. The evaluations of these demonstrations found that none of them showed sufficient savings to cover the additional costs of case management.

There are several possible reasons for the lack of positive results. First, the most appropriate individuals were not always targeted and enrolled into the demonstration. In many cases, the sites enrolled patients with less severe, and therefore less costly conditions, making it more difficult to achieve cost savings by avoiding normal utilization patterns of acute or long-term medical care. The disease management demonstration Web site *www.cms.hhs.gov/healthplans/research/DMDemo.asp* contains

additional information about these demonstrations.

We are currently conducting other demonstrations that test either case or disease management. In one demonstration, Lovelace Health Systems in Albuquerque, New Mexico was chosen to operate demonstrations of intensive case management services for high-risk patients with congestive heart failure and diabetes to improve the clinical outcomes, quality of life, and satisfaction with services. The other is a larger scale demonstration involving 15 sites authorized by the Balanced Budget Act (BBA) of 1997 (Pub. L. 105–33, enacted on August 5, 1997) to evaluate methods such as case management and disease management that improve the quality of care for beneficiaries with a chronic illness. The coordinated care demonstration was designed based on the findings of a review of best practices for coordinating care in the private sector. More information about the Coordinated Care Demonstration can be found on our Web site *www.cms.hhs.gov/healthplans/research/coorcare.asp.*

E. The Capitated Disease Management Demonstration

This demonstration will provide clinical management of—

(1) Patients with high cost diagnoses such as stroke, congestive heart failure, and diabetes, (2) people who receive both Medicare and Medicaid, or (3) frail elderly patients that would benefit from a greater coordination of services. The project will allow us to build on the experiences of existing clinical disease management organizations. The delivery system will be targeted to PSOs but is open to other types of organizations such as disease management organizations, AMCs, or M+C organizations. Participation by qualified beneficiaries currently in the traditional fee-for-service Medicare program is the intended objective, however, we will consider allowing M+C organizations, on a case-by-case basis, to accept one M+C beneficiary for participation in the demonstration for every 2 traditional Medicare FFS beneficiaries that participate. Organizations allowed to accept a current M+C beneficiary (who must actively disenroll in the plan first) must allow the monitoring of their Medical-Loss-Ratio (MLR).

In developing this demonstration, we reviewed the work and recommendations of organizations such as the NDMA and NCQA, and examined our prior and current experience with similar demonstrations.

This demonstration differs from its predecessors in that the focus is on paying a risk adjusted capitated rate with negotiated risk sharing arrangements to qualified organizations in order to create incentives to improve the quality and coordination of care. Moreover, we will be using the recently developed risk-adjustment payment methodology that will apply to all M+C organizations beginning in 2004. It is a selected significant disease model, which includes many chronic illnesses that are relevant to predicting future expenditures.

For the purpose of this demonstration, disease management is defined as a systematic approach to managing health care that aims to improve patient care, physician treatment practices, communication and coordination, and access to needed services, and incorporates the following features:

Eligible Population

Beneficiary participation in this demonstration is strictly voluntary. Each beneficiary must be fully informed about the demonstration and must sign an informed consent form in order to participate. In addition to indicating informed consent, Medicare beneficiaries must satisfy the following conditions in order to be able to participate in the demonstration project:

Eligibility Criteria

- Must be a Medicare beneficiary enrolled in Part A and Part B.
- Medicare must be primary payer.
- Must have a chronic disease, such as stroke, congestive heart failure, or diabetes (except for dual eligible or frail elderly).

Medicare beneficiaries will be excluded from eligibility if they:

- Are currently enrolled in a M+C plan; however, we will consider allowing M+C organizations to allow participation in the demonstration by one M+C beneficiary for every 2 traditional Medicare FFS beneficiaries.
- Are receiving hospice or end stage renal disease benefits.
- Are currently participating in another CMS demonstration.
- Are unable to participate in self-care activities due to severe dementia or other serious mental illness.

Payment

A contracting provider or provider organization will be paid for the services it provides to demonstration participants (without regard to the frequency and intensity of the services received by a given individual) on a monthly capitation basis. In exchange for this payment, the contractor would be responsible for furnishing or arranging for all covered Medicare Part A and Part B services. A listing of the beneficiaries who have elected to receive disease management services through the demonstration will be furnished to us on a monthly basis, which will be submitted to the Group Health Payment System to process payments for the services furnished to these beneficiaries.

The capitated payment rate will be based on the higher of the rate paid under the M+C program or 99 percent of a county-level fee-for-service base rate that will be calculated using a method developed by our Office of the Actuary. The payment rate will be fully risk adjusted using the new risk-adjustment methodology.

In compliance with the legislative mandate in BIPA, we have announced a draft risk adjustment model that includes inpatient and ambulatory diagnosis data, which will be implemented in January 1, 2004. The specific payment methodology will be announced in March 2003. We have chosen a selected significant disease model with approximately 61 condition groups. This model incorporates multiple chronic diseases into the payment system. Although the new risk adjustment payment methodology will not be implemented for the M+C program until January 2004, demonstration payment amounts will be calculated using the new risk-adjustment payment methodology, and will be fully risk adjusted, rather than being phased-in as is the case in the M+C program. (M+C organization payments are subject to the congressionally mandated phase-in of risk adjustment whereby only a portion of the payment is risk adjusted and the other portion of the payment is calculated using demographic factors. Under this demonstration, the payment amount will be fully risk adjusted.)

The following example is for applicants to estimate risk scores based on the current model of the selected significant condition model. This example is for illustrative purposes only.

Our example is a female, age 76, and she is Medicaid eligible. She has the following conditions:

- Chronic obstructive pulmonary disease (COPD).
- Congestive heart failure (CHF).

Go to illustrative table found at *www.cms.hhs.gov/healthplans/encounter/RAmodels.pdf* for determining estimated payments. Use the draft coefficient under the "61-condition" model column to find estimates.

Payment estimate = Female, age 76 ($2,500) + Medicaid ($1,000) + COPD ($2,000) + CHF ($2,300) + CHF*COPD Interaction ($1,400) = $9,200.

In determining the risk score, notice that all the coefficients are added together (demographic characteristics and risk factors). Also, there is additional payment in the model for the interaction between COPD and CHF.

The total predicted expenditures equal $9,200, which is divided by $5,300 to arrive at a 1.74 risk factor estimate. The $5,300 amount is average cost for a Medicare beneficiary in fee-for-service.

An actual payment estimate requires a ratebook that is not available until May 2003. If that rate book were available, you would multiply the risk factor by the rescaled county capitation amounts for the enrollee (Part A and Part B amounts). For more information on this model go to *www.cms.hhs.gov/healthplans/riskadj/.*

If the applicant is proposing risk sharing, the arrangement must be described in detail. The applicant should include examples that illustrate the risk sharing arrangement. The shared risk of gain and loss between us and the participating organization must be symmetrical, and the organization must always remain at significant financial risk.

Because we intend to implement any approved demonstrations as soon as possible, we do not intend to make any significant changes to the payment system used under the M+C program, which would be used to make payments under this demonstration. Thus, we will use the same risk-adjustment method developed for M+C plans to be used beginning in January 2004, except the payment amount will be fully risk-adjusted. The reporting systems used under the M+C data will also apply. If the applicant believes it is necessary to modify any aspects of the payment process, the application should request the modification and provide a detailed justification for the request.

Network

Since the key to a successful disease management product is the composition of the provider network employed by the applicant, and the effectiveness of the network providers' care management, the applicant should describe the structure of the proposed network it would use, and the structure of its existing networks, to the extent applicable. If possible, the applicant should illustrate with a diagram the layering of networks (PSO, HMO, etc.) and describe the important differences in contracting provisions in each network. For the proposed capitated disease management demonstration, the applicant should describe which networks would be used, how existing networks would be modified for Medicare users, and if necessary, how existing networks will be expanded.

As noted above, beneficiaries electing to receive case management through this demonstration would agree, as a condition for doing so, to receive services through the case management provider.

Claims Processing

The application should contain a discussion of the methods for processing and paying claims in the demonstration, including in-network and out-of-network services. The applicant should indicate whether existing claims processing systems used in commercial business will be used or whether new systems must be developed for the Medicare demonstration.

If there are any interface requirements for Medicare intermediaries and carriers, this should be noted and discussed. Estimates of effort required to establish payment protocols should also be included.

Budget Neutrality

This demonstration must be budget neutral. This means that the expected costs that we incur under the demonstration can be no more than the expected costs were the demonstration not to occur. The applicant must submit a budget neutrality calculation in the application. Using the proposed payment methodology (including any risk sharing arrangements), the applicant should estimate our payments with and without the demonstration for each year of the demonstration. Applicants must use both FFS and M+C expenses calculated on a county basis for the without-demonstration baseline for comparison to the with-demonstration costs. The calculation should indicate how the estimates were derived. If risk sharing is proposed, there should be three calculations of budget neutrality—optimistic or best-case assumptions, expected or normal assumptions, and pessimistic or worst-case assumptions. The risk-sharing proposal must include a 2 percent full-risk corridor above and below a targeted Medical-Loss-Ratio. In addition, prior to awards, CMS will work with applicants to determine whether the proposed Medical-Loss-Ratio is set at a level where the risk-sharing arrangement is projected to be budget neutral.

The applicant should include a revenue and expense statement showing calendar year 2003 estimated per member per month Medicare revenue and member premium; benefit expenses (hospital inpatient, hospital outpatient, professional, other Medicare services, and non-Medicare services); and administrative expense. The statement should show any copay credits for the various services.

If risk sharing is proposed, we will share risk only on medical benefit expenses. Administrative expense must be reasonable and consistent with prior practices. The applicant should describe a reconciliation process to be used to determine savings or losses. The administrative cost will not be guaranteed and should be recovered from savings. A reconciliation based on the participating organizations' accumulated medical claims expenses must include an independent audit, funded by the organization, verifying the calculations.

Medigap Issues

Many Medicare beneficiaries have health insurance that supplement Medicare, such as a Medicare supplement (Medigap) policy or coverage through an employer-sponsored group plan. Thus, to be enrolled in the demonstration, beneficiaries must be informed about supplemental health insurance, including Medigap policies and protections. With respect to Medigap policies, a beneficiary who enrolls in the demonstration would generally have the following protections:

- Under section 1882(s)(3)(B)(iii) of the Social Security Act, if an individual is enrolled in an organization operating under demonstration project authority and enrollment ceases under the same circumstances that would permit an individual to disenroll from a Medicare+Choice plan as set forth in 1851(e)(4), (for example, contract termination, moving out of the service area), the individual has a right to purchase certain Medigap policies (generally Plan A, B, C, or F) on a guaranteed issue basis.
- Under section 1882(s)(3)(B)(v) of the Social Security Act, if an individual has a Medigap policy and drops the Medigap policy to enroll, for the first time, in a M+C plan or *any similar organization operating under demonstration project authority* (emphasis added) and the beneficiary disenrolls during the first 12 months of such enrollment, the individual has the right to buy his or her former Medigap policy, if it is still available from the same insurance company. If the former policy is not still available, the individual has the right to buy Plan A, B, C, or F.

While a beneficiary is free to keep his or her Medigap policy, there may be little benefit in doing so, as these policies are designed to complement payments under Original FFS Medicare payment rules.

State Insurance Commission Licensure

Depending on the design of the demonstration, programs under this demonstration may be considered to fall within State laws regulating insurance, and State licensure thus may be required before an applicant can participate. The applicant should discuss State-licensing issues for the proposed demonstration site, and indicate any potential problems in obtaining the appropriate license to participate in the capitated disease management demonstration. If potential problems exist, there should be a discussion of methods for their resolution. The applicant should also discuss any other requirements from local jurisdictions that could impact on the implementation of the capitated disease management demonstration. We will work closely with organizations and their respective States to ensure that all of the State requirements are met before the demonstration is implemented.

Other Features

Applicants will also be expected to follow additional features that include—(1) Identification and assessment of patients, and documentation of their decision to elect to receive disease management through the demonstration, following the rules that apply under the M+C program; (2) Implementation of an appropriate treatment plan based on clinical guidelines; (3) Monitoring, feedback, and communication concerning the patient's condition; and (4) Arranging for and/or providing needed services, including preventive services.

I. Provisions of This Notice

This notice solicits applications for demonstration projects that use disease management to improve the quality of services furnished to specific beneficiaries and manage expenditures under Parts A and B of the Medicare program. Demonstration awardees will receive a capitated payment for all Medicare-covered services for beneficiaries with select diseases electing to receive disease management through the demonstration. The demonstration anticipates savings from more efficient provision and utilization of Medicare-covered services and the prevention of avoidable, costly medical complications. Applicants may propose to manage chronic conditions in which they have demonstrated expertise and ability.

Through this solicitation, project awards will be made to qualified organizations. PSOs, M+C organizations, AMCs, or disease management companies, may propose one or multiple sites for any of their targeted diseases or for multiple diseases. The demonstration projects will operate for 3 years from implementation during which time a formal independent evaluation will be conducted. Each awardee is expected to fully cooperate in all phases of the evaluation. A project officer will be assigned to each selected project that will serve as the point of contact with the demonstration project staff. Our project officer will provide technical consultation regarding cooperative agreement procedures, monitor demonstration site activities, and forward feedback to the demonstration project's staff.

II. Requirements for Submissions

We are seeking innovative proposals from qualified organizations that can test whether capitated models for disease management using a newly developed disease-specific risk-adjustment model will improve clinical outcomes and appropriate use of Medicare-covered services for targeted Medicare beneficiaries, while managing Medicare expenditures under Parts A and B to achieve reduced aggregate Medicare expenditures.

Models that are targeted specifically at the traditional FFS Medicare population and that take into account the beneficiaries' relative health and functional status, age, mental functioning, and other relevant factors, are of particular interest. Preference will be given to proposals that focus on beneficiaries most likely to benefit from disease management interventions and that take patient comorbidities into account in the services provided.

Applicants must submit their applications in the standard format outlined in CMS's Medicare Waiver Demonstration Application in order to be considered for review by the technical review panel. Applications not received in this format will not be considered for review.

The Medicare Waiver Demonstration Application may be accessed at the following Internet address: *http://www.cms.hhs.gov/healthplans/research*. The application outlines all application requirements including the format and content requirements.

III. Evaluation Process and Criteria

A panel of experts will conduct a review of responsive proposals. This technical review panel will convene in the months following the due date for submission of proposals. The panelists' recommendations will contain numerical ratings based on the evaluation criteria, the ranking of all responsive proposals, and a written assessment of each applicant. In addition, we will conduct a financial analysis of the recommended proposals and evaluate the proposed projects to ensure that aggregate Medicare program expenditures are reduced.

A. Evaluation Criteria and Weights

1. Statement of the Problem (5 Points)

The proposal describes—

- The population;
- Patterns of health care;
- Incidence of disease in the geographic area to be served by the disease management program;
- Enhancements planned in the disease management program; and
- Obstacles to providing disease management services.

2. Targeting the Appropriate Population (15 Points)

- The proposal provides details on how the applicant plans to identify, recruit, and obtain participation by eligible Medicare beneficiaries into the demonstration.
- The strategy and plan for recruiting the required number of patients in the control and experimental groups appear reasonable and achievable.
- The applicant describes the process by which it will ensure that participation in the demonstration is voluntary, and the beneficiary is fully informed of all aspects of the demonstration. A draft consent form is included in the proposal and is sufficient. If applicable, the form should include, but not be limited to, information about the randomization process, and use of the patient's medical records (for example, for monitoring quality of care and for evaluating the demonstration project).
- Applicant explicitly states how its referral sources will use common or readily available information, tests, or instruments to properly identify appropriate candidates before soliciting participation in the demonstration in order to reduce the incidence of beneficiary rejection due to ineligibility.
- The applicant provides sufficient information on how many beneficiaries it expects to treat each year at each site.

3. Description of Disease Management Intervention Services (20 Points)

- The proposal provides clear and convincing evidence and supporting materials that proposed disease management services are appropriate for the targeted population, likely to improve the quality of care for these individuals, and likely to result in savings from efficiencies in the use of medical services/products.
- There are adequate mechanisms for ensuring the medical necessity and reasonableness of the disease management services furnished under the demonstration.
- There are adequate mechanisms for ensuring that beneficiaries' physicians are integrated with the project.
- The proposal provides sufficient detail on exactly how each service will be provided, the type and level of staff that will be providing the service, the proposed level of effort required, and a discussion of any special equipment, such as monitoring or electronic input devices.
- The data to be collected, data sources, and data analyses planned are specified in detail and are sufficient to ensure optimal medical management and efficient use of health care services.

4. Organizational Capabilities (20 Points)

- The proposal provides evidence of the availability and adequacy of the following components, which are necessary to ensure adequate service delivery and the provision of high quality of care:
  + Facilities.
  + Equipment.
  + Trained staff.
  + Clinical protocols to guide care delivery and management.
  + Linkages to providers and services necessary to deliver care.
  + Appropriate information systems including the ability to collect and submit data for risk adjustment.
  + Appropriate financial systems.
- The proposal includes a detailed implementation plan describing tasks, time lines, and costs associated with implementing the demonstration program.
- If any modifications to the applicant's current structure are proposed, they have been sufficiently described and justified. Modifications may involve protocols, services, outreach, education initiatives, timelines, etc.
- The organizational and reporting structure of personnel are provided.
- The application should contain a discussion of the methods for processing and paying claims in the demonstration, including in-network and out-of-network services.
- The application provides a detailed plan of all tasks necessary to implement the disease management project, a schedule with timelines for all essential tasks, a listing of key personnel for the project, including an overall point of contact for the demonstration, and a break out of the responsibilities for persons working on the project.
- The applicant expresses willingness to cooperate in an independent formal evaluation of the demonstration, including submission of cost and other program data and site visits, conducted by us and/or our contractor.
- The proposal does not include targeting or treatment protocols that are proprietary in nature, or, if proprietary protocols are included, the proposal clearly indicates the applicant's agreement to the following statement:

"At any phase in the project, including at the project's conclusion, the awardee if so requested by the project officer, must deliver to CMS materials, systems, or other items applied, developed, refined or enhanced in the course of or under the award to be used to further the purpose of this demonstration project. These materials, systems, or other items shall not be subject to use for any other purpose."

5. Effectiveness of Intervention(s) (20 Points)

- For existing disease management programs, the applicant demonstrates prior experience in operating successful disease management programs.
- For existing disease management programs, the applicant shows evidence of positive outcomes from prior and current efforts. Claims of prior success must include definitions of the outcomes measures used, as well as explanations of the length of time over which they were measured and how the measures were calculated. Results from similar projects are cited.
- The applicant expresses a willingness to work with us, the evaluation contractor, and the consortium of awardee sites to determine the specific data to be collected across sites for each disease category, as well as to develop consistent measurement strategies between sites.
- The proposal provides convincing evidence that the intervention will likely increase the appropriate utilization of evidence-based and guideline-recommended therapies, as well as improve patient outcomes.
- Existing information systems and/or proposed new data collection are adequate to meet the quality of care reporting requirements. Applicants should list data to be collected in demonstration.
- The proposal reports strong, credible likelihood of savings and improved patient outcomes calculated from data collected during implementation of similar disease management interventions by the applicant.

6. Payment for Disease Management Services and Reduction of Medicare Expenditures (20 Points)

- The proposal provides justification and explanation for the proposed payment methodology.
- The proposal provides clear, convincing evidence that, over the three years of the demonstration, the aggregate Medicare expenditures under Parts A and B (including incentives and start-up funding, if made) will be less than expected Medicare expenditures in the absence of the demonstration.

B. Final Selection

From among the most highly qualified applicants, the final selection of projects for the demonstration will be made by our Administrator and will take into consideration a number of factors, including operational feasibility, geographic location, and program priorities (such as testing a variety of approaches for delivering services, targeting beneficiaries, and payment). CMS reserves the right to determine the scope of the project, which includes limiting the number of awards and beneficiaries covered under the demonstration. In evaluating applications, we rely on our past experience with successful and unsuccessful demonstrations. We expect to make the awards in 2003.

IV. Collection of Information Requirements

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden. However, the collection requirements associated with this notice have been approved by OMB, under control number 0938–0880, with a current expiration date of 3/31/2003.

Authority: Section 402 of the Social Security Act Amendments of 1967 (42 U.S.C. 1395b–1)

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstrations and Evaluations)

Dated: September 9, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–3879 Filed 2–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3099–N]

Medicaid Program; Annual Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice solicits interested parties to submit requests for review of the appropriateness of the payment amount for a particular intraocular lens furnished by an ambulatory surgical center.

DATES: Requests for review must be received at the address provided no later than 5 p.m. E.S.T. on April 18, 2003.

ADDRESSES: Mail requests for review (one original and three copies) to the Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: Betty Shaw, Mailstop C1–09–06, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Betty Shaw, (410) 786–6100.

SUPPLEMENTARY INFORMATION: On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432) were enacted. Section 141(b) of SSAA 1994 requires us to develop and implement a process under which interested parties may request, for a class of new technology intraocular lens (NTIOLs), a review of the appropriateness of the payment amount for IOLs furnished by ambulatory surgical centers (ASCs) under section 1833(i)(2)(A)(iii) of the Social Security Act (the Act).

On June 16, 1999, we published a final rule in the **Federal Register** titled "Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers" (64 FR 32198), which added subpart F to 42 CFR part 416. That rule set forth the process for adjusting payment amounts for NTIOLs furnished by ambulatory surgical centers (ASCs), defined the terms relevant to the process, and established a flat rate payment adjustment of $50 for intraocular lenses (IOLs) that we determine are NTIOLs. This payment adjustment is good for a 5-year period that begins when we recognize a payment adjustment for the first intraocular lens in a new subset of an existing class of intraocular lens or a new class of technology, as explained below. Any subsequent IOL with the same characteristics as the first IOL recognized for a payment adjustment will receive the adjustment for the remainder of the 5-year period established by the first recognized IOL. After July 16, 2002, we may change the $50 adjustment amount through a notice with comment period. There will be no adjustment change for calendar year 2003.

Review Process for Establishing Classes of New Technology Intraocular Lenses

We evaluate requests for the designation of an IOL as an NTIOL by doing the following:

(1) Publishing a notice in the **Federal Register** announcing the deadline and requirements for submitting a request for us to review payment for an IOL.

(2) Receiving requests to review the appropriateness of the payment amount for an IOL.

(3) Compiling a list of the requests we receive and identify the IOL manufacturer's name, the model number of the IOL to be reviewed, the interested party or parties that submit requests, and a summary of the interested party's grounds for requesting review of the appropriateness of the IOL payment amount.

(4) Publishing a notice in the **Federal Register** listing the requests, and giving the public 30 days to comment on the IOLs for which a review was requested.

(5) Reviewing the information submitted with the request to review, and requesting confirmation from the Food and Drug Administration (FDA) about labeling applications that have been approved on the model lens under review. We also request a recommendation from the FDA about whether or not the lens model represents a new class of technology that sets it apart from other IOLs.

Using a baseline of the date of the last determination of new classes of intraocular lenses, the FDA states an opinion based on proof of superiority over existing lenses of the same type of material or over lenses that are classified by a predominant characteristic as reducing the risk of intraoperative or postoperative complications or trauma, or demonstrating accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

(6) Determining which lenses meet the criteria to qualify for the payment adjustment based on clinical data and evidence submitted for review, the FDA's analysis, public comments on the lenses, and other available information.

(7) Designating a type of material or a predominant characteristic of an NTIOL that sets it apart from other IOLs to establish a new class.

(8) Publishing a notice in the **Federal Register** (within 120 days after we publish the notice identified in paragraph (4) of this section) announcing the IOLs that we have determined are "new technology" IOLs. These NTIOLs qualify for the following payment adjustment:

(a) Determinations made before July 16, 2002—$50.

(b) Determinations made after July 16, 2002—$50 or the amount announced through proposed and final rules in connection with ambulatory surgical center services.

(9) Adjusting payments effective 30 days after the publication of the notice announcing our determinations described in paragraph (8) of this section.

Who May Request a Review

Any party who is able to furnish the information required in § 416.195 (A request to review) may request that we review the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for an IOL that meets the definition of a new technology IOL in § 416.180 (Definitions).

Requests To Review

A request to review must include all of the following information:

- The name of the manufacturer, the model number, and the trade name of the IOL.
- A copy of the FDA's summary of the IOL's safety and effectiveness.
- A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.
- A copy of the IOL's original FDA approval notification.
- Reports of modifications made after the original FDA approval.
- Other information that supports the requestor's claim (that is, clinical trials, case studies, journal articles, *etc.*).

Privileged or Confidential Information

To the extent that information received from an IOL manufacturer can reasonably be characterized as a trade secret or as privileged or confidential commercial or financial information, we maintain the confidentiality of the information and protect it from disclosure not otherwise authorized or required by Federal law as allowed under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and, for trade secrets, the Trade Secrets Act (18 U.S.C. 1905). We recommend that the requestor clearly identify all information that is to be characterized as confidential. Under the Freedom of Information Act, we may not withhold publication of information based on the type of information contained, but rather on an identifiable harm that release of that information would present.

Application of the Payment Adjustment

We recognize the IOL(s) that define a new technology subset for purposes of subpart F of part 416 as belonging to the class of NTIOLs for a period of 5 years effective from the date that we recognize the first new technology IOL within the subset for a payment adjustment. Any IOL that we subsequently recognize as belonging to a new technology subset receives the new technology payment adjustment for the remainder of the 5-year period established with our recognition of the first NTIOL in the subset.

II. Provisions of This Notice

Under our rules at 42 CFR part 416, subpart F, we are soliciting requests for review of the appropriateness of the payment amount for intraocular lenses furnished by an ASC. Requests for review must comply with our regulations at § 416.195 and be received at the address provided by the date specified in the DATES section of this notice. We will announce timely requests for review in a subsequent notice that will allow for public comment. Currently, if we determine a lens as an NTIOL, the lens will be eligible for a payment adjustment of $50 or a different amount implemented through proposed and final rules.

III. Collection of Information Requirements

Because the requirements referenced in this notice will not affect 10 or more persons on an annual basis, this notice does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this notice is not a major rule because it is merely soliciting interested parties to submit requests for review of the appropriateness of the payment amount with regard to a particular intraocular lens furnished by an ambulatory surgical center.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $26 to $29 million or less in any 1 year. We have determined that this notice will not affect small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice does not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not have an economic impact on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1832(a)(2)(F)(i) and 1833(i)(2)(a) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(A)).

(Catalog of Federal Domestic Assistance Program No.93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 24, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–4734 Filed 2–27–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1225–GNC]

RIN 0938–ZA22

Medicare Program; Criteria and Standards for Evaluating Intermediary, Carrier, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carrier Performance During Fiscal Year 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries, carriers, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) regional carriers in the administration of the Medicare program beginning on the first day of the first month following publication of this notice in the **Federal Register**. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary agreement, carrier contract, or DMEPOS regional carrier contract or take other contract actions, for example, assigning or reassigning providers or services to an intermediary or designating regional or national intermediaries. We are requesting public comment on these criteria and standards.

EFFECTIVE DATE: The criteria and standards are effective the March 3, 2003.

Comment Period: Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. (EDT) on March 31, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1225–GNC. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission. Mail written comments (one original and two copies) to the following address:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1225–GNC, P.O. Box 8016, Baltimore, MD 21244–8016.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201 or Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sue Lathroum, (410) 786–7409.

SUPPLEMENTARY INFORMATION: In several instances, we identify a Medicare manual as a source of more detailed requirements. Medicare fee-for-service contractors have copies of the various Medicare manuals referenced in this notice. Members of the public also have access to our manual instructions.

Medicare manuals are available for review at local Federal Depository Libraries (FDLs). Under the FDL Program, government publications are sent to approximately 1,400 designated public libraries throughout the United States. To locate the nearest FDL, individuals should contact any public library.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Information may also be obtained from the following Web site: *http://www.hcfa.gov/pubforms/progman.htm*. Some manuals may be obtained from the following Web site: *http://www.cms.gov/pubforms/p2192toc.htm*.

Finally, all of our Regional Offices (ROs) maintain all Medicare manuals for public inspection. To find the location of our nearest available RO, you may call the individual listed at the beginning of this notice. That individual can also provide information about purchasing or subscribing to the various Medicare manuals.

Response to Public Comments: Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the *Comment Period* section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

Inspection of Public Comments: Comments received timely are available for public inspection beginning approximately 2 weeks after the close of the comment period, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m.

To schedule an appointment to view public comments, phone (410) 786–7197.

I. Background

A. Part A—Hospital Insurance

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with us. These agencies or organizations, known as fiscal intermediaries, determine whether medical services are covered under Medicare, determine correct payment amounts and then make payments to the health care providers (for example, hospitals, skilled nursing facilities (SNFs), community mental health centers, etc.) on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement.

Section 1816(e)(4) of the Act requires us to designate regional agencies or organizations, which are already Medicare intermediaries under section 1816 of the Act, to perform claim processing functions with respect to freestanding Home Health Agency (HHA) claims. We refer to such organizations as Regional Home Health Intermediaries (RHHIs). *See* 42 CFR 421.117 and the final rule published in the **Federal Register** on May 19, 1988 at 53 FR 17936 for more details about the RHHIs.

Evaluations of Medicare fee-for-service contractor performance need not be limited to the current fiscal year (FY), other fixed term basis, or agreement term. We may evaluate performance using a time frame that does not mirror the FY or other fixed term. The evaluation of intermediary performance is part of our contract management process.

B. Part B Medical Insurance

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the amount payable for the services or supplies, and then make payment to the appropriate party.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. Evaluations of Medicare fee-for-service contractor performance need not be limited to the current FY, other fixed term basis, or contract term. We may evaluate performance using a timeframe that does not mirror the FY. The evaluation of carrier performance is part of our contract management process.

C. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

In accordance with section 1834(a)(12) of the Act, we have entered into contracts with four DMEPOS regional carriers to perform all of the duties associated with the processing of claims for DMEPOS, under Part B of the Medicare program. These DMEPOS regional carriers process claims based on a Medicare beneficiary's principal residence by State. Section 1842(a) of the Act authorizes contracts with carriers for the payment of Part B claims for Medicare covered services and items. Section 1842(b)(2) of the Act requires us to publish in the **Federal Register** criteria and standards for the efficient and effective performance of carrier contract obligations. Evaluation of Medicare fee-for-service contractor performance need not be limited to the current FY, other fixed term basis, or contract term. We may evaluate performance using a timeframe that does not mirror the FY. The evaluation of DMEPOS regional carrier performance is part of our contract management process.

D. Development and Publication of Criteria and Standards

In addition to the statutory requirements, § 421.120 and § 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries before implementation. Section 421.201 provides for publication of a **Federal Register** notice to announce criteria and standards for carriers before implementation. The current criteria and standards for intermediaries, carriers, and DMEPOS regional carriers were published in the **Federal Register** on December 28, 2001 at 66 FR 67257.

To the extent possible, we make every effort to publish the criteria and standards before the beginning of the Federal FY, which is October 1. If we do not publish a **Federal Register** notice before the new FY begins, readers may presume that until and unless notified otherwise, the criteria and standards that were in effect for the previous FY remain in effect.

In those instances in which we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the FY, we may publish the criteria and standards notice at any subsequent time during the year. If we publish a notice in this manner, the evaluation period for the criteria and standards that are the subject of the notice will be effective on the first day of the first month following publication. Any revised criteria and standards will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

It is not our intention to revise the criteria and standards that will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of administrative action or congressional mandate, there may be a need for changes that have a direct impact on the criteria and standards previously published, or that require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. If we must make these changes, we will publish an amended **Federal Register** notice before implementation of the changes. In all instances, necessary manual issuances will be published to ensure that the criteria and standards are applied uniformly and accurately. Also, as in previous years, this **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

II. Analysis of and Response to Public Comments Received on FY 2001 Criteria and Standards

In response to the December 28, 2001 **Federal Register** general notice with comment, we received comments from five entities. We reviewed all comments, but none necessitated our reissuance of the FY 2002 criteria and standards. Not all comments submitted pertained specifically to the FY 2002 criteria and standards. We advised Medicare program components of the concerns as appropriate. When warranted, we have incorporated revisions in this **Federal Register** notice. We are responding to the following performance evaluation comments:

Comment: A commenter advised that we have established an "acceptable reversal rate" of intermediary reconsideration determinations by Administrative Law Judges (ALJs), but that we have not developed an acceptable reversal rate for DMEPOS regional carriers.

Response: Section 1816(f)(2) of the Act requires that we develop a standard to evaluate the extent to which intermediary determinations are reversed on appeal. This section of the Act applies only to intermediaries. The statute does not include a similar requirement for carriers and DMEPOS regional carriers, who by law employ a different process in reviewing Part B claims, including an additional level of contractor appeal known as the fair hearing. While there is no similar mandate under the Part B program for carriers or DMEPOS regional carriers, our reviewers routinely evaluate the accuracy of appeals decisions when they conduct a CPE review of a contractor's appeals operation. This review includes an evaluation of reversals both at the fair hearing and the ALJ level. We believe that this process adequately identifies problems with the accuracy of carrier and DMERC appeals decisions.

Comment: A commenter advised that intermediaries must be given specific customer service performance objectives, and providers must be allowed to influence those objectives and to participate directly in the evaluations of contractor performance. The commenter considers provider input more critical if the Administration continues to support contractor reform.

Response: Both intermediaries and carriers are required to have Provider Communications Advisory Groups which are comprised of representatives from the various Medicare provider types, such as hospitals, home health agencies, skilled nursing facilities, and physicians. These groups are to have meetings on a quarterly basis during which the provider representatives give contractors feedback about education and customer service needs and how well these needs are being met. The contractors report the minutes of these meetings to CMS's headquarters in quarterly update reports. We factor in this feedback when setting customer service standards for the contractor. We notify contractors of specific customer service performance standards by means of administrative directives. However, because such standards are not mandated by law or court decision, we do not specify them in this notice.

Currently we evaluate contractor customer service by verifying implementation and execution of administrative directives, reviewing responses to correspondence, monitoring telephone responses, and reviewing educational materials distributed to providers. As we prepare

for the anticipated passage of contracting reform we will be doing even more to seek provider input into customer service performance objectives.

Comment: A commenter requested that we publish the annual evaluations of all of the contractors so that the affected public will know whether contractors meet performance requirements. The commenter advised that currently, the evaluations are available only through a Freedom of Information Act (FOIA) request. Many providers, particularly smaller providers, are not aware of the procedures for making a FOIA request.

Response: The current evaluation reports for Medicare fee-for-service contractors are lengthy narratives, which are not conducive to publication. They are, however, available to the public upon written request. The policy that governs releasing these reports is explained at §§ 401.133(c), 401.135, 401.136, and 401.140. There is no requirement that reports be requested under the FOIA. Written requests for reports may be addressed to: Centers for Medicare & Medicaid Services, ATTN: Center for Medicare Management, Mailstop S2–21–28, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comment: A commenter remarked that the Contractor Performance Evaluation (CPE) Rebuttal Process introduced in FY 2001 which gives contractors an opportunity to submit a written rebuttal within 7 calendar days from the CPE exit conference, needs to be clarified as to how it applies to the review of provider audit workpapers under our Audit Quality Review Program (AQRP). The commenter believes we should have a consistent policy for responding to all CPE findings. The commenter further suggests that CMS needs to clarify its policies with respect to AQRP findings and how they relate to the summarized annual CPE for Provider audit.

Response: The AQRP has an established procedure allowing contractors 30 days to review and respond to draft findings prepared as a result of the AQRP review. We review the contractor's responses for each individual AQRP review, delete or modify the findings as appropriate, prepare a rebuttal for those findings that are not modified, and issue a Management Letter. We then prepare and send to the contractor an Executive Summary of the results of all the individual AQRP reviews. This Executive Summary is then used as a basis for the preparation of a CPE report. Because the contractor has already been given a formal review and rebuttal type process under AQRP that exceeds the 7 calendar day CPE rebuttal process, and because the CPE report adopts the final AQRP findings, we have determined the CPE rebuttal process is unnecessary for AQRP reviews.

III. Criteria and Standards—General

Basic principles of the Medicare program are to pay claims promptly and accurately and to foster good beneficiary and provider relations. Contractors must administer the Medicare program efficiently and economically. The goal of performance evaluation is to ensure that contractors meet their contractual obligations. We measure contractor performance to ensure that contractors do what is required of them by law, regulation, contract, and our directives.

We have developed a contractor oversight program for FY 2003 that outlines expectations of the contractor; measures the performance of the contractor; evaluates the performance against the expectations; and provides for appropriate contract action based upon the evaluation of the contractor's performance.

Several times throughout this notice, we refer to the "readability" of letters, decisions, or correspondence that are going to Medicare beneficiaries from intermediaries or carriers. In those instances, "readability" is defined as being below the 8th grade reading level unless it is obvious that an incoming request from the beneficiary contains language written at a higher level. In such cases, the readability level is tailored to the capacities and circumstances of the intended recipient.

In addition to evaluating performance based upon expectations for FY 2003, we may also conduct follow-up evaluations throughout FY 2003 of areas in which contractor performance was out of compliance with laws, regulations, and our performance expectations during prior review years and thus required the contractor to submit a Performance Improvement Plan (PIP).

In FY 2001, we established the Contractor Rebuttal Process as a commitment to continual improvement of CPE. We will continue the use of this process in FY 2003. The Contractor Rebuttal Process provides the contractors an opportunity to submit a written rebuttal of CPE findings of fact. Whenever we conduct an evaluation of contractor operations, contractors have 7 calendar days from the date of the CPE review exit conference to submit a written rebuttal. The CPE review team or, if appropriate, the individual reviewer will consider the contents of the rebuttal before the issuance of the final CPE report to the contractor.

The FY 2003 CPE for intermediaries and carriers is structured into five criteria designed to meet the stated objectives. The first criterion is "Claims Processing" which measures contractual performance against claims processing accuracy and timeliness requirements as well as activities in handling appeals. Within the Claims Processing Criterion, we have identified those performance standards that are mandated by legislation, regulation, or judicial decision. These standards include claims processing timeliness, the accuracy of Explanations of Medicare Benefits (EOMBs) and Medicare Summary Notices (MSNs), the appropriateness of determinations reversed by ALJs, the timeliness of intermediary reconsideration cases, the timeliness of carrier reviews and hearings, and the readability of carrier reviews. Further evaluation in the Claims Processing Criterion may include, but is not limited to, the accuracy of claims processing, the percent of claims paid with interest, and the accuracy of reconsiderations, reviews, and hearings.

The second criterion is "Customer Service" which assesses the adequacy of the service provided to customers by the contractor in its administration of the Medicare program. The mandated standard in the Customer Service Criterion is the need to provide beneficiaries with written replies that are responsive, that is, provide in detail the reasons for a determination when a beneficiary requests such information, have a customer-friendly tone and clarity, and are at the appropriate reading level. Further evaluation of services under this criterion may include, but is not limited to, the timeliness and accuracy of all correspondence both to beneficiaries and providers; monitoring of the quality of replies provided by the contractor's customer service representatives (quality call monitoring); beneficiary and provider education, training, and outreach activities; and service by the contractor's customer service representatives to beneficiaries who come to the contractor's facility (walk-in inquiry service).

The third criterion is "Payment Safeguards" which evaluates whether the Medicare Trust Fund is safeguarded against inappropriate program expenditures. Intermediary and carrier performance may be evaluated in the areas of Benefit Integrity (BI), Medical Review (MR), Medicare Secondary Payer (MSP), Overpayments (OP), and Provider Enrollment (PE). In addition, intermediary performance may be evaluated in the area of Audit and Reimbursement (A&R). Mandated performance standards for intermediaries in the Payment Safeguards criterion are the accuracy of decisions on Skilled Nursing Facility (SNF) demand bills, and the timeliness of processing Tax Equity and Fiscal Responsibility Act (TEFRA) target rate adjustments, exceptions, and exemptions. There are no mandated performance standards for carriers in the Payment Safeguards criterion. Intermediaries and carriers may also be evaluated on any Medicare Integrity Program (MIP) activities if performed under their agreement or contract.

The fourth criterion is "Fiscal Responsibility" which evaluates the contractor's efforts to protect the Medicare program and the public interest. Contractors must effectively manage Federal funds for both the payment of benefits and costs of administration under the Medicare program. Proper financial and budgetary controls, including internal controls, must be in place to ensure contractor compliance with its agreement with HHS and CMS.

Additional functions reviewed under this criterion may include, but are not limited to, adherence to approved budget, compliance with the Budget and Performance Requirements (BPRs), and compliance with financial reporting requirements.

The fifth and final criterion is "Administrative Activities" which measures a contractor's administrative management of the Medicare program. A contractor must efficiently and effectively manage its operations. Proper systems security (general and application controls), Automated Data Processing (ADP) maintenance, and disaster recovery plans must be in place. A contractor's evaluation under the Administrative Activities criterion may include, but is not limited to, establishment, application, documentation, and effectiveness of internal controls which are essential in all aspects of a contractor's operation, and the degree to which the contractor cooperates with us in complying with the Federal Managers' Financial Integrity Act of 1982 (FMFIA). Administrative Activities evaluations may also include reviews related to contractor implementation of our general instructions and data and reporting requirements.

We have developed separate measures for RHHIs in order to evaluate the distinct RHHI functions. These functions include the processing of claims from freestanding HHAs, hospital-affiliated HHAs, and hospices. Through an evaluation using these criteria and standards, we may determine whether the RHHI is effectively and efficiently administering the program benefit or whether the functions should be moved from one intermediary to another in order to gain that assurance.

Below, we list the criteria and standards to be used for evaluating the performance of intermediaries, RHHIs, carriers, and DMEPOS regional carriers.

IV. Criteria and Standards for Intermediaries

A. Claims Processing Criterion

The Claims Processing criterion contains the following four mandated standards:

Standard 1. 95.0 percent of clean electronically submitted non-Periodic Interim Payment claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean, non-Periodic Interim Payment electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper non-Periodic Interim Payment claims are paid within specified time frames. Specifically, clean, non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. The percentage of reconsideration determinations reversed by ALJs is acceptable. We have defined an acceptable reversal rate by ALJs as one that is at or below 5.0 percent.

Standard 4. 75.0 percent of reconsiderations are processed within 60 days, and 90.0 percent are processed within 90 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 95.0 percent of Part B review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. 90.0 percent of Part B hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims processing accuracy.
- Establishment and maintenance of relationship with Common Working File (CWF) Host.
- Accuracy of processing reconsideration cases with determination letters that are clear and have appropriate customer-friendly tone.

Because intermediaries process many claims for benefits under the Part B Medical Insurance portion of the Medicare Program, we also may evaluate how well an intermediary follows the procedures for processing appeals of any Part B claims. This includes accuracy of reviews and hearings, as well as the appropriateness of the reading level of any review determination letters. (See Claims Process Criterion for carriers under section VI.)

B. Customer Service Criterion

Functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and provider telephone inquiries.
- Quality Call Monitoring.
- Training of Customer Service Representatives.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Providing timely and accurate replies to beneficiaries and providers that address the concerns raised and are written with appropriate customer-friendly tone and clarity and that those written to beneficiaries are at the appropriate reading level.
- Walk-in inquiry service.
- Conducting beneficiary and provider education, training and outreach activities.
- Effectively maintaining an Internet Website dedicated to furnishing providers and physicians timely, accurate, and useful Medicare program information.

C. Payment Safeguards Criterion

The Payment Safeguard criterion contains the following two mandated standards:

Standard 1. Decisions on SNF demand bills are accurate.

Standard 2. TEFRA target rate adjustments, exceptions, and exemptions are processed within mandated time frames. Specifically, applications must be processed to completion within 75 days after receipt

by the contractor or returned to the hospitals as incomplete within 60 days of receipt.

Intermediaries may also be evaluated on any MIP activities if performed under their Part A agreement. These functions and activities include, but are not limited to the following:

- Audit and Reimbursement
+ Performing the activities specified in our general instructions for conducting audit and settlement of Medicare cost reports.
+ Establishing accurate interim payments.
- Benefit Integrity
+ Identifying potential fraud cases that exist within the intermediary's service area and taking appropriate actions to resolve these cases.
+ Investigating allegations of potential fraud that are made by beneficiaries, providers, CMS, Office of Inspector General (OIG), and other sources.
+ Putting in place effective detection and deterrence programs for potential fraud.
- Medical Review
+ Increasing the effectiveness of medical review activities.
+ Exercising accurate and defensible decision making on medical reviews.
+ Effectively educating and communicating with the provider community.
+ Collaborating with other internal components and external entities to ensure correct claims payment, and to address situations of fraud, waste, and abuse.
- Medicare Secondary Payer
+ Accurately reporting MSP savings.
+ Accurately following MSP claim development and edit procedures.
+ Auditing hospital files and claims to determine that claims are being filed to Medicare appropriately.
+ Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.
+ Identifying, recovering, and referring mistaken Medicare payments in accordance with appropriate Medicare Intermediary Manual instructions and our other pertinent general instructions, in the specified order of priority.
- Overpayments
+ Collecting and referring Medicare debts timely.
+ Accurately reporting overpayments to us.
+ Adhering to our instructions for management of Medicare Trust Fund debts.
- Provider Enrollment
+ Complying with assignment of staff to the provider enrollment function and training the staff in procedures and verification techniques.
+ Complying with the operational standards relevant to the process for enrolling providers.

D. Fiscal Responsibility Criterion

We may review the intermediary's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with us.

Additional functions that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure an intermediary's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure an intermediary's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. An intermediary must also test system changes to ensure the accurate implementation of our instructions.

Our evaluation of an intermediary under the Administrative Activities criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, security, etc).
- Disaster recovery plan.
- Implementation of our general instructions.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

V. Criteria and Standards for Regional Home Health Intermediaries (RHHIs)

The following three standards are mandated for the RHHI criterion:

Standard 1. 95.0 percent of clean electronically submitted non-Periodic Interim Payment HHA and hospice claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean, non-Periodic Interim Payment electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper non-Periodic Interim Payment HHA and hospice claims are paid within specified time frames. Specifically, clean, non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 75.0 percent of HHA and hospice reconsiderations are processed within 60 days and 90.0 percent are processed within 90 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 4. 95.0 percent of HHA and Hospice Part B review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of HHA and Hospice Part B hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

We may use this criterion to review an RHHI's performance with respect to handling the HHA and hospice workload. This includes processing HHA and hospice claims timely and accurately; properly paying and settling HHA cost reports; and timely and accurately processing reconsiderations from beneficiaries, HHAs, and hospices.

VI. Criteria and Standards for Carriers

A. Claims Processing Criterion

The Claims Processing criterion contains the following six mandated standards:

Standard 1. 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper claims are processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 98.0 percent of EOMBs and MSNs are properly generated. Our expectation is that EOMB and MSN messages are accurately reflecting the services provided.

Standard 4. 95.0 percent of review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of carrier hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. Review determination letters prepared in response to beneficiary initiated appeal requests are written at an appropriate reading level.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims Processing accuracy.
- Establishment and maintenance of relationship with the CWF Host.
- Accuracy of processing review determination cases.
- Accuracy of processing hearing cases with decision letters that are clear and have appropriate customer-friendly tone.

B. Customer Service Criterion

The Customer Service criterion contains the following mandated standard:

Standard. Replies to beneficiary correspondence address the beneficiary's concerns, are written with appropriate customer-friendly tone and clarity, and are at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and providers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and provider telephone inquiries.
- Quality Call Monitoring.
- Training of Customer Service Representatives.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Walk-in inquiry service.
- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an Internet Website dedicated to furnishing providers timely, accurate, and useful Medicare program information.

C. Payment Safeguards Criterion

Carriers may be evaluated on any MIP activities if performed under their contracts. In addition, other carrier functions and activities that may be reviewed under this criterion include, but are not limited to the following:

- Benefit Integrity
+ Identifying potential fraud cases that exist within the carrier's service area and taking appropriate actions to resolve these cases.
+ Investigating allegations of potential fraud that are made by beneficiaries, providers, CMS, OIG, and other sources.
+ Putting in place effective detection and deterrence programs for potential fraud.
- Medical Review
+ Increasing the effectiveness of medical review activities.
+ Exercising accurate and defensible decision making on medical reviews.
+ Effectively educating and communicating with the provider community.
+ Collaborating with other internal components and external entities to ensure correct claims payment, and to address situations of fraud, waste, and abuse.
- Medicare Secondary Payer
+ Accurately reporting MSP savings.
+ Accurately following MSP claim development/edit procedures.
+ Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.
+ Identifying, recovering, and referring mistaken Medicare payments in accordance with the appropriate Medicare Carriers Manual instructions, and our other pertinent general instructions.
- Overpayments
+ Collecting and referring Medicare debts timely.
+ Accurately reporting overpayments to us.
+ Compliance with our instructions for management of Medicare Trust Fund debts.
- Provider Enrollment
+ Complying with assignment of staff to the provider enrollment function and training staff in procedures and verification techniques.
+ Complying with the operational standards relevant to the process for enrolling suppliers.

D. Fiscal Responsibility Criterion

We may review the carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts.

Additional functions that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure a carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure a carrier's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), Automatic Data Processing (ADP) maintenance, and disaster recovery plans must be in place. Also, a carrier must test system changes to ensure accurate implementation of our instructions.

Our evaluation of a carrier under this criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, security, etc.).
- Disaster recovery plan.
- Implementation of our general instructions.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

VII. Criteria and Standards for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

For FY 2003 Contractor Performance Evaluation for DMEPOS regional

carriers has been structured into five criteria, which are the same criteria used for intermediaries and carriers: Claims Processing; Customer Service; Payment Safeguards; Fiscal Responsibility; and Administrative Activities. These criteria for DMEPOS regional carriers were referred to in prior **Federal Register** notices as Quality, Efficiency, Service, and Benefit Integrity.

In these five criteria there are a total of seven mandated standards against which all DMEPOS regional carriers must be evaluated. There also are examples of other activities for which the DMEPOS regional carriers may be evaluated. The mandated standards are in the Claims Processing and Customer Service Criteria. In addition to being described in these criteria, the mandated standards are also described in Attachment J–37 to the DMEPOS regional carrier statement of work (SOW).

A. Claims Processing Criterion

The Claims Processing criterion contains the following six mandated standards:

Standard 1. 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare DMEPOS regional carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper claims are processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. Properly generated 98.0 percent of MSNs. Our expectation is that MSN messages are accurately reflecting the services provided.

Standard 4. 95.0 percent of review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of DMEPOS regional carrier hearing decisions are completed within 120 days. CMS's expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. Review determination letters prepared in response to beneficiary initiated requests are written at an appropriate reading level and state in detail the reasons for the determination.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims processing accuracy.
- Review determinations and hearing decisions are written accurately and clearly.
- Telephone reviews are appropriately documented and adjudicated timely.
- Requests for ALJ hearings are processed timely.

B. Customer Service Criterion

The Customer Service Criterion contains the following mandated standard:

Standard 1. Replies to beneficiary correspondence address concerns raised, are written with appropriate customer-friendly tone and clarity, and are at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and suppliers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, the DMEPOS regional carrier SOW, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and supplier telephone inquiries.
- Quality Call Monitoring.
- Training of Customer Service Representatives.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Providing timely and accurate replies to beneficiaries, providers, and suppliers that address their concerns and are written with appropriate customer-friendly tone and clarity.
- Walk-in inquiry service.
- Conducting beneficiary and supplier education, training, and outreach activities.
- Effectively maintaining an Internet Website dedicated to furnishing suppliers timely, accurate, and useful Medicare program information.
- Ensuring that communications are made to interested supplier organizations for the purpose of developing and maintaining collaborative supplier education and training activities and programs.

C. Payment Safeguards Criterion

DMEPOS regional carriers may be evaluated on any MIP activities if performed under their contracts. The DMEPOS regional carriers must undertake actions to promote an effective program administration with respect to DMEPOS regional carrier claims. These functions and activities include, but are not limited to the following:

- Benefit Integrity
+ Identifying potential fraud cases that exist within the DMEPOS regional carrier's service area and taking appropriate actions to resolve these cases.
+ Investigating allegations of potential fraud made by beneficiaries, suppliers, CMS, OIG, and other sources.
+ Putting in place effective detection and deterrence programs for potential fraud.
- Medical Review
+ Reducing the error rate by identifying patterns of in appropriate billing.
+ Educating suppliers concerning Medicare coverage and coding requirements.
- Medicare Secondary Payer
+ Accurately reporting MSP savings.
+ Accurately following MSP claim development/edit procedures.
+ Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.
+ Identifying, recovering, and referring mistaken Medicare payments in accordance with the appropriate program instructions in the specified order of priority.
- Overpayments
+ Determining that the DMEPOS regional carrier completely, accurately, timely, and aggressively pursued all outstanding overpayments in adherence with the Medicare Carriers Manual and CMS Program Memoranda resulting from the Debt Collection Improvement Act (DCIA).
+ Verify that all overpayments were timely and accurately recorded.

D. Fiscal Responsibility Criterion

We may review the DMEPOS regional carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts. Additional matters that may be reviewed under this criterion include, but are not limited to the following:

- Compliance with financial reporting requirements.
- Adherence to approved program management and MIP budgets.
- Control of administrative cost and benefit payments.

E. Administrative Activities

We may measure a DMEPOS regional carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives. Our evaluation of a DMEPOS regional carrier under this criterion may include, but is not limited to review of the following:

- Systems Security.
- Disaster recovery plan.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

VIII. Action Based on Performance Evaluations

We evaluate a contractor's performance against applicable program requirements for each criterion. Each contractor must certify that all information submitted to us relating to the contract management process, including, without limitation, all files, records, documents and data, whether in written, electronic, or other form, is accurate and complete to the best of the contractor's knowledge and belief. A contractor will also be required to certify that its files, records, documents, and data have not been manipulated or falsified in an effort to receive a more favorable performance evaluation. A contractor must further certify that, to the best of its knowledge and belief, the contractor has submitted, without withholding any relevant information, all information required to be submitted with respect to the contract management process under the authority of applicable law(s), regulation(s), contract(s), or our manual provision(s). Any contractor that makes a false, fictitious, or fraudulent certification may be subject to criminal and/or civil prosecution, as well as appropriate administrative action. This administrative action may include debarment or suspension of the contractor, as well as the termination or nonrenewal of a contract.

If a contractor meets the level of performance required by operational instructions, it meets the requirements of that criterion. When we determine a contractor is not meeting performance requirements, we will use the terms "major nonconformance" or "minor nonconformance" to classify our findings. A major nonconformance is a nonconformance that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose. A minor nonconformance is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services. The contractor will be required to develop and implement a PIP for findings determined to be either a major or minor nonconformance. The contractor will be monitored to ensure effective and efficient compliance with the PIP, and to ensure improved performance when requirements are not met.

The results of performance evaluations and assessments under all criteria applying to intermediaries, carriers, RHHIs, and DMEPOS regional carriers will be used for contract management activities and will be published in the contractor's annual Report of Contractor Performance (RCP). We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations when—

- Entering into, renewing, or terminating agreements or contracts with contractors, and
- Deciding other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, these decisions depend on the following:
  - Relative overall performance compared to other contractors.
  - Number of criteria in which nonconformance occurs.
  - Extent of each nonconformance.
  - Relative significance of the requirement for which nonconformance occurs within the overall evaluation program.
  - Efforts to improve program quality, service, and efficiency.
  - Deciding the assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

In addition, if the cost incurred by the intermediary, RHHI, carrier, or DMEPOS regional carrier to meet its contractual requirements exceeds the amount that we find to be reasonable and adequate to meet the cost that must be incurred by an efficiently and economically operated intermediary or carrier, these high costs may also be grounds for adverse action.

IX. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million in any one year). Since this notice only describes criteria and standards for evaluating FIs (including RHHIs), carriers, and DMEPOS regional carriers and has no significant economic impact on the program, its beneficiaries, providers or suppliers, this is not a major notice.

The RFA requires agencies to analyze options for regulatory relief of small businesses. This notice does not affect small businesses; individuals and States are not included in the definition of small business entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This notice does not affect small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. In accordance with Section 202, we have determined that the notice does not impose any unfunded mandates on State, local or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a notice that imposes substantial direct

requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

We have not prepared a Regulatory Impact Analysis for this notice, in accordance with Executive Order 12866, because it will not have a significant economic impact, nor does it impose any unfunded mandates on State, local, or tribal governments or the private sector. Furthermore, we certify that the notice will not have a significant impact on a substantial number of small entities or small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

X. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Authority: Sections 1816(f), 1834(a)(12), and 1842(b) of the Social Security Act (42 U.S.C. 1395h(f), 1395m(a)(12), and 1395u(b)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 6, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–4087 Filed 2–27–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0020]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZOMETA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZOMETA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZOMETA (zoledronic acid). ZOMETA is indicated for the treatment of hypercalcemia of malignancy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZOMETA (U.S. Patent No. 4,939,130) from Novartis Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZOMETA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZOMETA is 2,810 days. Of this time, 2,201 days occurred during the testing phase of the regulatory review period, while 609 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: December 12, 1993. The applicant claims September 18, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 12, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 21, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for ZOMETA (NDA 21–223) was initially submitted on December 21, 1999.

3. *The date the application was approved*: August 20, 2001. FDA has verified the applicant's claim that NDA 21–223 was approved on August 20, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,752 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 29, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H.

Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–4691 Filed 2–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting.

Name: Advisory Committee on Infant Mortality (ACIM).

Date and Time: March 26, 2003; 9 a.m.–5 p.m., March 27, 2003; 8:30 a.m.–3 p.m.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007, (202) 726–5000.

Status: The meeting will be open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; factors determining the length of hospital stay following childbirth; strategies to coordinate the variety of Federal, State, and local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2010*.

Agenda: Topics that will be discussed include the following: Low-Birth Weight; Disparities in Infant Mortality; and the Healthy Start Program. Agenda items are subject to change as priorities are further determined.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone: (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ann M. Koontz, C.N.M., Dr. P.H., HRSA, Maternal and Child Health Bureau, telephone: (301) 443–6327.

Dated: February 24, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–4805 Filed 2–27–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: April 9–10, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: A Report of the Director addressing OAR initiatives. The topic of the meeting will be "HIV and HCV Infection."

Place: National Institutes of Health, Building 31C, Conference Room 6C10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jack Whitescarver, Director, Office of AIDS Research, OD, National Institutes of Health, 9000 Rockville Pike, Building 2, Room 4E14, Bethesda, MD 20892, (301) 496–0357.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/od/oar/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institute of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4660 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topic 181: Clinical Trials Data Collection Using Hand-Held Technology.

Date: March 19–20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, (301) 496–7421, *kerwinm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4665 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, HRS Diabetes Supplement.
Date: March 21, 2003.
Time: 12:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814. (Telephone conference call).
Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892. 301–402–7700. *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Disability Prevention and Physical Exercise.
Date: March 24–25, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, EPI Genetic K Awards.
Date: April 2, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alfonso R. Latoni, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892. 301/496–9666. *latonia@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and Oxidative Damage.
Date: April 2, 2003.
Time: 2 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814. (Telephone conference call).
Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, Gateway Building Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. 301–402–7703. *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Presenilin and Alzheimer's Disease.
Date: April 8–9, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4662 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Life Span and Biodemography.
Date: February 24–25, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott Sacramento Midtown, 4422 Y Street, Sacramento, CA 95817.
Contact Person: Ramesh Vemuri, PhD., National Institute on Aging, The Bethesda Gatewary Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.
Date: March 3–4, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Louise L. Hsu, PhD., The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666, *hsul@exmur.nia.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, IGF and Sex.
Date: March 3–4, 2003.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Stanford Terrace Inn, 531 Standfod Avenue, Palo Alto, CA 94306.
Contact Person: Alicja L. Markowska, PhD., DSC, Scientific Review Office, National Institute on Aging, Gateway Building Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7703, *markowsa@nia.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer's Disease and Estrogens.
Date: March 6–7, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.
Date: March 7–8, 2003.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Clarion Ventura Beach Hotel, Venture Beach Marriott, 2055 E. Harbor Blvd., Ventura, CA 93001.
Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666, *harwoodj@mail.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer Disease Patient Registry.
Date: March 11, 2003.
Time: 11 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).
Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave, Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and Dementia.
Date: March 12–13, 2003.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Alessandra M. Bini, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892.
This notices is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4663 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Reproductive Genetics.
Date: March 12, 2003.
Time: 10 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Child Health Development, 6100 Executive Blvd., 5B01, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS).

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4664 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.
Date: March 12, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4666 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Children's Study of Environmental Effects on Health Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study of Environmental Effects on Health Advisory Committee.
Date: March 6–7, 2003.
Time: March 6, 2003, 8:30 a.m. to 5 p.m.
Agenda: Discussions will focus on the measures of racism, recruitment prior to conception, life-course time line and study architecture, thematic areas for study focus.

and prioritization of pilot studies, ethical and community outreach issues as they relate to specific thematic areas, and a review of activities since the December 2002 meeting.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852.

Time: March 6, 2003, 8:30 a.m. to 5 p.m.

Agenda: Members of the public that plan to attend should contact Circle Solutions at (703) 902–1339 or via e-mail *ncs@circlesolutions.com*. For agenda updates, please visit the NCS Web site *nationalchildrensstudy.gov*.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852.

Contact Person: Peter M. Scheidt, MD, Medical Officer, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5C01, Bethesda, MD 20892, (301) 451–6421, *ncs@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4667 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICE

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Pharmacological Approaches To Enhance Neuromodulation in Rehabilitation.

Date: March 13–14, 2003.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4668 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Research Subcommittee, Demographic and Behavioral Sciences (DBS) Review Committee.

Date: March 13–14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4669 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Research Subcommittee, Reproductive Sciences.

Date: March 20–21, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4670 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Regulation of Selected Metabolizing Enzymes in Women.

Date: March 13, 2003.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD., Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4671 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Centers of Complexity Special Emphasis Panel.

Date: March 18–19, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Laura K Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Boom 1AS–13H, Bethesda, MD 20892, (301) 594–3998, moeni@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4672 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MBRS Review Subcommittee B.

Date: March 17–18, 2003.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Shiva P Singh, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13J, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4674 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 DD (10) R21 Application Review.

Date: March 5, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIAAA, Willco Bldg., 6000 Executive Blvd., Rockville, MD 20892. (Telephone conference call.)
Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003. (301) 443–2926. *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R21 Application Review—ZAA1 DD (12).
Date: March 2, 2003.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: NIAAA, Willco Bldg., 6000 Executive Blvd., Room 409, Rockville, MD 20892. (Telephone conference call.)
Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003. (301) 443–2926. *skandasa@mail.nih.gov.*
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1–BB–15:.1 K23 Review.
Date: March 13, 2003.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Health, Willco Building, 6000 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Project Combine—ZAA1 BB (10) U10's to be reviewed.
Date: March 20, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1–BB–13.
Date: March 27, 2003.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Willco Building, 6000 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institute of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–433–9787. *etaylor@niaaa.nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 21, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 03–4675 Filed 2–27–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences, Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.
Date: March 23–25, 2003.
Closed: March 23, 2003, 8 p.m. to 9:30 p.m.
Agenda: To review and evaluate programmatic and personnel issues.
Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27709.
Open: March 24, 2003, 8:30 a.m. to 5 p.m.
Agenda: An overview of the organization and conduct of research in the Laboratory of Molecular Carcinogenesis.
Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.
Closed: March 25, 2003, 8:30 a.m. to adjournment.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.
Contact Person: Steven K. Akiyama, Ph.D., Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709. 919/541–3467. *akiyama@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: February 21, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 03–4677 Filed 2–27–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research on AIDS (CIPRA).
Date: March 3, 2003.
Time: 10 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone conference call.)
Contact Person: Robert C. Goldman, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 3124, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–496–8424. *rg159w@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transportation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 21, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 03–4678 Filed 2–24–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.
Date: March 6–7, 2003.
Time: March 6, 2003, 1 p.m. to 5 p.m.
Agenda: Protocol review.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Time: March 7, 2003, 9 a.m. to 2 p.m.
Agenda: Protocol review.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Stephen M. Rose, PhD, Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *sr8j@nih.gov.*

This notice is being published less than 15 days prior to the meeting because of a delay in planning the meeting agenda.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 20, 2003.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 03–4661 Filed 2–27–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Suicide in China.
Date: February 27, 2003.
Time: 8 a.m. to 9 a.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Multi-site Application.
Date: February 27–28, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Boron Neutron Capture Therapy.
Date: March 3, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed M. Quadri, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (11): Small Business Applications on Imaging Technologies.
Date: March 4, 2003.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select, 8120 Wisconsin Avenue, Montgomery Room, Bethesda, MD 20814.
Contact Person: Robert J. Nordstrom, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 2.
Date: March 4–5, 2003.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hamilton Crown Plaza Hotel, 14 & K Streets, NW., Washington, DC 20005.
Contact Person: Denise Wiesch, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (50): Small Business Applications on Imaging Technologies.
Date: March 4, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Montgomery Room, Bethesda, MD 20814.
Contact Person: Robert J. Nordstrom, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–X13B Electromagnetics.
Date: March 4, 2003.
Time: 8 p.m. to 9:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lee Rosen, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosen@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nephrology/Urology Special Emphasis Panel.
Date: March 4, 2003.
Time: 12 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jean D. Sipe, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814. (301) 435–1743, *sipej@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 2, AIPS, AIDS, sImmunology and Pathogenesis Studies.
Date: March 5–6, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, 285 North Palm Canyon Drive, Palm Springs, CA 92262.
Contact Person: Abraham P. Bautista, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Epidemiology.
Date: March 5, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–1506, *hardyan@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 3.
Date: March 5, 2003.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, 285 North Palm Canyon Drive, Palm Springs, CA 92262.
Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center For Scientific Review Special Emphasis Panel, Pathobiochemistry member.
Date: March 5, 2003.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael M. Sveda, PhD., Scientific Review Administrator, Biochemistry Study Section, Biochemical Sciences IRG, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301)–435–3565, *svedam@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hepatitis D Virus.
Date: March 5, 2003.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Robert Freund, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, (301)–435–1050, *freundr@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Modeling.
Date: March 5, 2003.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 1, 1 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, (301–435–4522, *gibsonj@csr,nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS and AIDS Related Small Business proposals.
Date: March 6, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, 285 North Palm Canyon Drive, Palm Springs, CA 92262.
Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.
Date: March 6–8, 2003.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gordon L. Johnson, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *johnsong@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience SBIR SSS–S 11.
Date: March 6–7, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select, 8120 Wisconsin Avenue, Versailles II, Bethesda, MD 20814.
Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, F10 (29L): Minority/Disability F31S: Physiology and Pathology.
Date: March 6, 2003.
Time: 8:30 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Peter J. Perrin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Stigma and Global Health: Health, Mental Health, and Addictions.
Date: March 6–7, 2003.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Mariela Shirley, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892, (301) 435–3554, *shirleym@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental and Pediatric Brain Disorders and Clinical Neuroscience.
Date: March 6–7, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.
Contact Person: Sherry L Stuesse, PhD., Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Hematology.
Date: March 6, 2003.
Time: 8:30 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Chhanda L. Ganguly, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 6–7, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Karen Sirocco, PhD., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–0676, *siroccok@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 4, Health Services Organization and Delivery.
Date: March 6–7, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Charles N. Rafferty, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–3562, *roffertc@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CCVS 01: Clinical CV Science.
Date: March 6–7, 2003.
Time: 1:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Russell T. Dowell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Review on Biobehavioral Mechanisms of Emotion, Stress, and Health.
Date: March 6, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Luci Roberts, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Reviews in Psychopathology and Adult Disorders.
Date: March 6, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Luci Roberts, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Cardiovascular and Pharmacology.

Date: March 6–7, 2003.

Time: 4 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Chhanda L. Ganguly, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REB: 01 Biochemical and Endocrinology Sciences IRG.

Date: March 6, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–5 50R:PAR–02–142: Tools for Genetic Studies in Zebrafish.

Date: March 7, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Sherry L. Dupere, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *dupres@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF4(03)M: Studies Within the Nucleus.

Date: March 7, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexandra M. Ainsztein, PhD., Scientific Review Administrator Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 451–3848, *ainszteo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2 (04) Ureacycle Disorder Enzymes: Structure/Function.

Date: March 7, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Study Section.

Date: March 8–10, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Inn on The Alameda, 303 East Alameda, Santa Fe, NM 87501.

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4673 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GMA–3 (03): Member Conflicts ALTX–1.

Date: March 5, 2003.

Time: 11:15 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Mushtaq A. Kahn. DVM, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. 301–435–1778. *khanm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neural Cell Death and Injury in Neurodegenerative Disease.

Date: March 5–7, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: David L. Simpson, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892. (301) 435–1278. *simpsod@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 02: Biodefense Vaccines.

Date: March 6, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892. (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering.

Date: March 6, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Gopal C. Sharma, DVM, MS, Ph.D., Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892. (301) 435–1783. *sharmag@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GMA–3 (04): Member Conflicts ALTX–4.

Date: March 6, 2003.

Time: 1:45 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Mushtaq A. Khan, DVM, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. 301–435–1778. *khanm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 11: Small Business: Biodefense Vaccines.

Date: March 7, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Biophysics and Chemistry.

Date: March 10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Donald Schneider, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Respiratory Physiology Study Section.

Date: March 10, 2003.

Time: 8 a.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Everett E. Sinnett, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–H(40) Biodefense and Innate Immunity.

Date: March 10, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: George W. Chacko, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Discovery & Delivery.

Date: March 10–11, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders & Clinical Neuroscience Fellowship.

Date: March 10–11, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Washington Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sherry L. Stuesse, Ph.D., Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Research Fellowship Review.

Date: March 10–11, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Syed M Quadri, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Reveiw Special Emphasis Panel, ZRG1 PTHB 04 M.

Date: March 10, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Martin L. Padarathsingh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders & Clinical Neuroscience SSS S–12 SBIR.

Date: March 10, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246. *etcheber@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Nome of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–A (40) High Field NMR.

Date: March 11, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: John L. Bowers, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.

Date: March 11–12, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Joseph Kimm, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SMB (50) Molecular Basis for Contractures RFA.

Date: March 11, 2003.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Paul D. Wagner, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809. *wagnerp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB 05M.

Date: March 11, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Martin L. Padarathsingh, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892. (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Malarial Enzymes.

Date: March 11,2003.

Time: 12:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Robert Freund, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892. (301) 435–1050. *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genomics and Bioinformatics.

Date: March 12, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael R. Schaefer, PhD., Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7890, Bethesda, MD 20892. (301) 435–2477. *schaefem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (29) Minority/Disability Predoctoral Fellowship Reviews.

Date: March 12, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rookledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892. (301) 435–0902. *krausem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reparative Medicine (ZRG1 SSS–M 01).

Date: March 12–13, 2003.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Jean D. Sipe, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892–7814. (301) 435–1743. *sipej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 9 50 S Biomedical Informatics.

Date: March 12, 2003.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bill Bunnag, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854. (301) 435–1177. *bunnagb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F04 20 L Chemistry/Biophysics Fellowships Panel.

Date: March 12–14, 2003.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: David R. Jollie, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892. (301) 435–1722. *jolliedo@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 9 11B: Biomedical Informatics.

Date: March 12–14, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To reveiw and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Bill Bunnag, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854. (301) 435–1177. *bunnagb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REB 02 Reproductive Cancer.

Date: March 12, 2003.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Dennis Leszczynsik, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BISTI Neuroinformatics.

Dote: March 12–13, 2003.

Time: 6 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Peter Lyster, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892. (301) 435–1256. *lysterp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F06.

Date: March 12–13, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. (301) 435–1041.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93,337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4679 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: March 31, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: For discussion of planning, operational, and clinical research issues.

Place: National Institutes of Health, Building 10, 9000 Rockville Pike, Room 2C116, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's home page: *www.cc.nih.gov/*, where an agenda and any additional information for the meeting will be posted when available.

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4676 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–08]

Notice of Submission of Proposed Information Collection to OMB: Personal Financial and Credit Statement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 31, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0001) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Personal Financial and Credit Statement

OMB Approval Number: 2502–0001

Form Numbers: HUD–92417

Description of the Need for the Information and its Proposed Use: Information collected is used to evaluate the character, ability and capital of the sponsor, mortgagor, and general contractor to develop, build, complete, and maintain a multifamily project.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions

Frequency of Submission: On occasion

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8,000		1		8		64,000

Total Estimated Burden Hours: 64,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 21, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–4732 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–20]

Announcement of Funding Awards for Fiscal Year 2002; Research and Technology Unsolicited Proposals

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2002 Research and Technology unsolicited proposals. The purpose of this document is to announce the names and addresses of the organizations that have been awarded cooperative agreements based on their submission of unsolicited proposals for research funding.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877-TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2002 (Pub. L. 107–73) provided $50,250,000 in Research and Technology funds for contracts, grants and necessary expenses of programs and studies relating to housing and urban problems. The majority of HUD's Research and Technology funding is awarded through competitive solicitations. The unsolicited proposal is another method used by HUD to fund research and development. An unsolicited proposal is submitted to support an idea, method or approach by individuals and organizations solely on the proposer's initiative. Funding of unsolicted proposals is considered a noncompetitive action. An unsolicited proposal demonstrates a unique and innovative concept or a unique capability of the submitter, offers a concept or service not otherwise available to the Government and does not resemble the substance of a pending competitive action. All unsolicited proposals and the resulting award of cooperative agreements include substantial cost sharing on the part of the submitter/awardee.

The Catalog of Federal Domestic Assistance for this program is 14.506.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 STAT. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of FY 2002 Awardees for Cooperatives Agreements

Ameregis, Myron Willard Orfield, Jr., 1313 5th Street, SE, Suite 108, Minneapolis, MN 55414, Grant # H–21393CA, "Local Fiscal Capacity in the U.S. Metropolitan Areas", Total Amount $100,000, Date Awarded 09/30/02

American Association for Higher Education, Yolanda T, Moses, One Dupont Circle, Suite 360, Washington, DC 20036–1110, Grant # H–21358CA, "Developing Socially and Civically Engaged Architects", Total Amount $18,938, Date Awarded 07/25/02

The Brookings Institution, Jay T. Wang, CPA, 1775 Massachusetts Avenue, NW, Washington, DC 20036–2188, Grant # H–21350CA, "Conduct a Policy Forum on Affordable Housing and Growth Management", Total Amount $97,500, Date Awarded 08/15/02

Gabriel, Dr. Stuart A., 801 Sassafras Way, Oak Park, CA 91377, Grant 21360CA, The Impact of Termination Risks and Borrower Heterogeneity on the Pricing of FHA-Insured Mortgages", Total Amount $19,000, Date Awarded 09/24/02

Manpower Demonstration Research Corporation, Jesus M. Amadeo,16 East 34th Street, New York, NY 10016–4326, Grant # H–21042CA, "Jobs-Plus Community Revitalization Initiative for Public Housing Families", Total Amount $700,000, Date Awarded 04/11/02.

McAuley Institute, JoAnne Kane, 8300 Colesville Road, Silver Spring, MD 20910, Grant # H–21375CA, "Success Measures Guidebook Revision", Total Amount $160,000, Date Awarded 9/27/02

NAHB Research Center, Liza K. Bowles, 400 Prince Georges Boulevard, Upper Marlboro, MD 20774–8731, Grant # H–21355CA, "Tool Base Services: The Portal to Technical Information for the Home Building Industry", Total Amount $999,600, Date Awarded 07/19/02

National Trust for Historic Preservation, Richard Moe, 1785 Massachusetts Avenue, NW, Washington, DC 20036–2117, Grant 21357CA, "Best Practice Solutions to the Barriers to Affordable Housing Rehabilitation", Total Amount $183,702, Date Awarded 07/20/02

Portland Cement Association, George B. Barney, 5420 Old Orchard Road, Skokie, IL, 60077–1083, Grant # H–21356CA, "HVAC Sizing Methodology Manual For Insulated Concrete Homes", Total Amount $100,000, Date Awarded 09/23/02

University Consortium for Geographic Information Science, Susan McDonald Jampoler, 43351 Spinks Ferry Road, Leesburg, VA 20176–5631, Grant H–21394CA, Global Urban Quality: Urban Indicators Using Geographic Information Science (GIS)", Phase II, Total Amount $169,625, Date Awarded 09/30/02

University of Maryland at College Park, Antoinette Lawson, 3112 Lee Building, College Park, MD 20742–5141, Grant H–21361CA, "Feasibility Study of Land Market Monitoring" Total Amount $74,935, Date Awarded 09/27/02

Dated: February 21, 2003.

Alberto F. Treviño,

Assistant Secretary for Policy Development and Research.

[FR Doc. 03–4784 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998, court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 20, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–4449 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–21]

Announcement of Funding Awards for Fiscal Year 2002 to the Housing Assistance Council and the Native American Indian Housing Council

AGENCY: Office of the Assistant Secretary for Policy Development and Research HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of two awards for Fiscal Year 2002 to the Housing Assistance Council and the Native American Housing Council.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2002 (Pub. L. 107–73) earmarked $3,300,000 for a grant to the Housing Assistance Council and $2,600,000 for a grant to the Native American Indian Housing Council. HUD's Office of Policy Development and Research administers the grant to the Housing Assistance Council. The administration of the grant to the Native American Indian Housing Council was recently transferred from the Office of Policy Development and Research to the Office of Public and Indian Housing.

The Catalog of Federal Domestic Assistance for these grants is 14.225

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning these awards, as follows:

Housing Assistance Council, Moises Loza, Executive Director, 1025 Vermont Avenue, NW, Suite 606, Washington, DC 20005, Grant # H–21354CA, "Rural Housing Research and Technical Assistance" Amount $3,300,000, Date Awarded 10/01/01.

Native American Indian Housing Council, Gary L. Gordon, Executive Director, 900 Second Street, NE., Washington DC 20002, Grant # H–21362RG Technical Assistance and Training to Indian Housing Agencies and Tribal Housing Agencies, Amount $2,600,000, Date Awarded 09/01/02.

Dated: February 21, 2003.

Alberto F. Treviño,

Assistant Secretary for Policy Development and Research.

[FR Doc. 03–4785 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4463–N–13]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing— Federal Housing Commissioner, HUD.

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning January 1, 2003, is 5¾ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2003, is 5 percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, SW., Room 6164, Washington, DC 20410. Telephone (202) 708–3944, extension 2612, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a satisfactory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 2003, is 5

percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 5 percent for the 6-month period beginning January 1, 2003. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2003.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2003, is 5¾ percent.

HUD expects to publish its next notice of change in debenture interest rates in June 2003.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715*l*, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: February 14, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–4783 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4743–N–05]

Notice of Planned Closing of Brockton, Massachusetts Post-of-Duty

AGENCY: Office of Inspector General, HUD.

ACTION: Notice of planned closing of Brockton, Massachusetts Post-of-Duty station.

SUMMARY: This notice advises the public that the HUD Office of Inspector General (OIG) is closing its Brockton, Massachusetts post-of-duty station, and also provides a cost-benefit analysis of the impact of the closure.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

In 2000, HUD/OIG established a two person post-of-duty station in Brockton, Massachusetts, to give direct support to the Operation Safe Home (OSH) initiative to combat violent and drug related crime in the public and assisted housing in the city and nearby communities. Although Brockton, Massachusetts, is only about 30 miles from Boston, Massachusetts, where the HUD/OIG has it's Regional Office, the nationwide experience since the initiation of OSH in 1994 had proven that the best results/impact could be obtained when an HUD/OIG Special Agent was physically located in the target city. However, in accordance with the requirements of the Fiscal Year 2002 HUD Appropriations Act (Pub. L. 107–73, approved November 26, 2001), HUD/OIG terminated OSH and is re-deploying staff to focus on investigations involving single-family fraud and property flipping. This change eliminates the need to maintain a separate post-of-duty station in Brockton, Massachusetts, and gives HUD/OIG the opportunity to generate cost savings associated with discontinuing an additional office.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganization, which may involve the closing of any field or regional office, of the Department of Housing and Urban Development may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that "[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations)." (See House Conference Report No. 95–1792, October 14, 1978 at 58.)

The two-person duty-station in Brockton, Massachusetts, is a single purpose duty station, and the duty station is being closed based on workload rather than a reorganization of HUD/OIG field offices. Although notice of the closing of a duty station is not subject to the requirement of section 7(p), as supported by legislative history, HUD/OIG nevertheless prepared a cost benefit analysis for its own use in determining whether to proceed with the closing. Through this notice, HUD/OIG advises the public of the closing of the Brockton, Massachusetts, duty station and provides the cost benefit analysis of the impact of the closure.

Impact of The Closure of The Brockton, Massachusetts, Post-Of-Duty Station

HUD/OIG considered the costs and benefits of closing the Brockton, Massachusetts, post-of-duty station, and is publishing its cost-benefit analysis with this notice. In summary, HUD/OIG has determined that the closure will result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area (*i.e.*, OSH activities, of course, will be impacted, but HUD/OIG has been directed to terminate these activities).

Cost-Benefit Analysis

A. Cost Savings: The Brockton, Massachusetts, post-of-duty station currently costs approximately $905 per month for space rental. Additional associated overhead expenses (*e.g.*, telephone service) are incurred to operate the post-of-duty station. Thus, closing the office will result in annual savings of at least $10,000. In addition, by closing the office HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises.

B. Additional Costs: There are no offsetting expenses anticipated. Currently, only one Special Agent is assigned to the Brockton, Massachusetts, post-of-duty station, and he is being reassigned to HUD/OIG's Regional Office in Boston, Massachusetts. No relocation costs are associated with this reassignment.

C. Impact on Local Economy: No appreciable impact on the local economy is anticipated. The post-of-duty station is only 679 square feet and is located in the Federal Courthouse. Further, it is anticipated that the space can easily be re-leased to other tenants.

D. Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services: The establishment of the Brockton, Massachusetts, post-of-duty station was based entirely on the needs of the HUD/OIG to have Special Agents in closer proximity to OSH activities conducted in the Brockton area. These activities have been terminated. Further, as was the case prior to 2000, fraud investigations in the Brockton area can be cost-effectively addressed by special agents assigned to the Boston Regional Office, which is about 30 miles away.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Brockton, Massachusetts, post-of-duty station at the expiration of the 90-day period from the date of publication of this notice.

Dated: February 19, 2003.

Kenneth M. Donohue, Sr.,

Inspector General.

[FR Doc. 03–4731 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–78–P

DEPARTMENT OF THE INTERIOR

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Department of the Interior announces that is has forwarded a Paperwork Reduction Act submission to OMB to request public comments on this submission. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DOI is below parity with the Relevant Civilian Labor Force representation for many mission critical occupations. The Department's Strategic Human Capital Management Plan identifies the job skills that will be needed in our current and future workforce. The job skills we will need are dispersed throughout our eight bureaus and include, among others, making visitors welcome to various facilities, such as parks and refuges, processing permits for a wide variety of uses of the public lands, collecting royalties for minerals extracted from the public lands, rounding-up and adopting-out wild horses and burros found in the west, protecting archaeological and cultural resources of the public lands, and enforcing criminal laws of the United states. As a result of this broad spectrum of duties and services, the Department touches the lives of most Americans.

DATES: OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days: therefore, public comments should be submitted within 30 days of publication of this notice in order to assure their maximum consideration.

FOR FURTHER INFORMATION CONTACT: Samuel Bowser, (202) 208–5549, Assistant Director for Workforce Diversity and Evaluation. The collection instrument is also available on the internet at: *http://www.doi.gov/diversity/doc/di_1935.pdf*. Respondents may also obtain hard copies of the DI 1935 form and the Department of the Interior's submission to OMB.

Brief Description: In order to determine if there are barriers in our recruitment and selection processes, we must track the demographic groups that apply for our jobs. There is no other statistically valid method to make these determinations, and no source of this information other than directly from applicants. The data collected is not provided to selecting officials and plays no part in the merit staffing or the selection processes. The data collected will be used in summary form to determine trends covering the demographic make-up of applicant pools and job selections within a given occupation or organizational group. The records of those applicants not selected are destroyed in accordance with the Department's records management process.

SUPPLEMENTARY INFORMATION:

Title: U.S. Department of the Interior Applicant Background Survey.

Type of Request: Extension of collection approved under OMB Control No.: 1091–0001.

Description of Respondents: Individuals seeking employment.

Annual Responses: 560,000.

Burden: 46,480 hours total (5 minutes per response).

ADDRESSES: Written comments and recommendations on the proposed information collection should be addressed to: Attention: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. In addition, please provide a copy of your comments to Samuel Bowser, at the contact address.

J. Michael Trujillo,

Deputy Assistant Secretary for Human Resources and Workforce Diversity.

[FR Doc. 03–4749 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–03–1020–241A]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Revised Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of rescheduled meetings locations and times for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), meetings of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion at each meeting will include, but are not limited to: April 29–30, 2003 (Fallon, Nevada)-recreational use and tourism promotion of public lands in western Nevada by State of Nevada agencies, Sand Mountain Fee Demonstration Project (including a field trip to Sand Mountain), subcommittee presentation of the Black Rock-High Rock NCA Resource Management Plan, staff update on the Pine Nut Mountains RMP Amendment, and a report on planning progress for the Mustang Ranch; and July 15–17, 2003 (Winnemucca, Nevada)-aspen clone habitat degradation and future management, Sage Grouse program review, field office reports on land fills/mine reclamation, and inspection of riparian habitat sites including an overnight camping trip in the Winnemucca Field Office area. Manager's reports of field office activities will be given at each meeting. The council may raise other topics at any of the two planned meetings.

These two rescheduled meetings are replacing dates/locations originally published in the **Federal Register** for April 24–25 (Reno, Nevada) and July 24–25 (Winnemucca, Nevada).

Dates & Times: The RAC will now meet on April 29–30 (Tuesday and Wednesday), at the Fallon Convention Center (Oasis Room), 100 Campus Way, Fallon, Nevada (including a field trip to the Sand Mountain Recreation Area); and on July 15–17 (Tuesday through Thursday), at the BLM–Winnemucca Field Office, 5100 E. Winnemucca, Blvd., Winnemucca, Nevada (including an overnight field trip on July 16—details to be outlined by July 1, 2003). All meetings and field trips are open to the public. Each meeting will last from approximately 8 a.m. to 4 p.m., plus, a general public comment period, where the public may submit oral or written comments to the RAC, will be at 4 p.m. on the first day of each meeting, unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be available on the internet at least 14 days before each meeting, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than 10 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885–6107. E-mail: *mstruble@nv.blm.gov*

Dated: February 24, 2003.

John O. Singlaub,

Field Manager, Carson City Field Office.

[FR Doc. 03–4736 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension and revision of a currently approved information collection (OMB Control Number 1010–0138).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on an information collection request (ICR) that we will submit to the Office of Management and Budget (OMB) for review and approval. The ICR is titled "30 CFR part 206, Subpart B, Establishing Oil Value on Royalty Due on Indian Leases".

DATES: Submit written comments on or before April 29, 2003.

ADDRESSES: Submit written comments directly to Sharron L. Gebhardt, Regulatory Specialist, Minerals Mangement Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, CO, 80225. If you use overnight courier, the address is Building 85, Room A614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385, e-mail *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206 Subpart B, Establishing Oil Value on Royalty Due on Indian Leases.

OMB Control Number: 1010–0138.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian Trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

On December 20, 1995, MMS published an Advance Notice of Proposed Rulemaking (60 FR 65610) regarding valuation of oil from Federal and Indian leases. In the notice, we asked all interested parties to submit and/or comment on alternate methodologies for valuing oil production. Additionally, we asked for comments related to "significant quantities" in valuation determinations.

Although industry generally had no comments due to pending litigation on this issue, many States and Indian organizations generally believed the current system is outdated and a new system based on either the New York Mercantile Exchange (NYMEX) or spot prices would be more appropriate. In response to these concerns, we published a proposed rule on February 12, 1998 (63 FR 7089), revising the current Indian oil valuation regulations. This proposed rule "Establishing Oil Value for Royalty Due on Indian Leases," added more certainty to valuation of oil produced from Indian lands and eliminated any direct reliance on posted prices.

Then, MMS proposed further changes to its proposed rule regarding the valuation, for royalty purposes, of crude oil produced from Indian leases by publishing a supplementary proposed rule on January 5, 2000 (65 FR 403).

This supplementary proposed rule established a new form—Form MMS–4416, Indian Crude Oil Valuation Report, for collecting value and value differential data. OMB approved the use of this proposed Form MMS–4416 and assigned OMB Control Number 1010–0113. Currently, MMS is seeking OMB's approval to renew the reporting requirements for this form until a final rule is published.

MMS is now requesting OMB to renew its approval for the reporting requirements under the proposed and supplementary proposed rules until a final rule is published. We are also seeking OMB's approval for the existing requirements in 30 CFR part 206, Subpart B, that were overlooked. This notice gives the public an opportunity to comment on the reporting requirements in the proposed and supplementary proposed rules that OMB approved on February 2, 2000, and to also comment on the existing requirements that were inadvertently overlooked and not included in an OMB-approved ICR.

MMS has announced in the **Federal Register** on February 12, 2003 (68 FR 7086), the dates, places, and times for workshops on issues related to the existing rules published March 15, 2000, effective June 1, 2000, governing the valuation for royalty purposes of crude oil produced from Federal leases. The workshops will address, among other things, issues related to calculation of transportation allowances (including the rate of return allowed for calculating actual costs under non-arm's-length transportation arrangements), timing and application of published index prices, and calculation of location and quality differentials under certain circumstances.

Because of the substantive overlap between these issues and issues involved in the proposed rule on Indian oil valuation, and to give persons interested in Indian lease issues an opportunity to participate in the workshops, MMS is reopening the comment period for 60 days on the proposed rule on Indian oil valuation so it can include in the record any relevant comments received. MMS can then consider those comments as they might apply to the Indian oil valuation rule.

Frequency of Response: Annually and monthly.

Estimated Number and Description of Respondents: 236 Companies paying royalties on oil produced from tribal and allotted Indian leases.

- 225 respondents under proposed and supplementary proposed rules, and
- 11 respondents under current regulations.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 6,980 Hours

- 6,680 hours under proposed and supplementary proposed rules, and
- 300 hours under current regulations.

Estimated Annual Reporting and Recordkeeping "Non-Hour" Cost Burden: We have identified no "non-hour" cost burdens.

The following chart details the individual components and estimated hour burdens for the proposed rule, supplementary proposed rule, and the

current reporting requirements under 30 CFR part 206, Subpart B. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

BURDEN HOUR CHART FOR PROPOSED AND SUPPLEMENTARY PROPOSED REPORTING REQUIREMENTS

Proposed 30 CFR 206, subpart B	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
Proposed § 206.52	You must determine the value of oil using the method that yields the highest value.	2	2,700	5,400
Proposed § 206.52(d)	On Form MMS–2014, you must initially report and pay the value of production at the higher of the index-based or gross proceeds-based values * * * You must file this report * * * you must submit an amended Form MMS–2014 with the higher value within 30 days after you receive notice from MMS of the major portion value.	Burden covered under OMB Control Number 1010–0140.		
Proposed § 206.53(a) and (b)	On request, you must make available sales and volume data for production you sold, purchased, or obtained from the designated area or from nearby fields or areas * * * You must make this data available to the authorized MMS * * *. You must retain all data relevant to the determination of royalty value.	Normal records retention for targeted audit purposes—exempt from the Paperwork Reduction Act.		
Proposed § 206.54	You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary.	400	2	800
Proposed/Supplementary Proposed § 206.60(b)(2).	You may ask MMS to approve a transportation allowance deduction * * * You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant supporting documentation * * *.	Burden covered under OMB Control Number 1010–0095		
Proposed/Supplementary Proposed § 206.61 (c)(3)(i), (ii), (iii), and (iv).	If an MMS-calculated differential * * * does not apply to your oil, either due to location or quality differences, you must request MMS to calculate a differential for you * * * After MMS publishes its annual listing of location/quality differentials, you must file your request in writing with MMS for an MMS-calculated differential. You must demonstrate why the published differential does not adequately reflect your circumstances. * * * If you file a request for an MMS-calculated differential within 30 days after MMS publishes its annual listing of location/quality differentials, * * * Send your request to: Minerals Management Service * * *.	40	12	480
Proposed/Supplementary Proposed § 206.61(d)(4).	You must report transportation allowances, location differentials, and quality differentials as separate lines on Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
Proposed/Supplementary Proposed § 206.61(d)(5).	You must submit information on Form MMS–4416 * * * you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease.	Burden covered under OMB Control Number 1010–0113.		
Total			2714	6,680

BURDEN HOUR CHART FOR EXISTING REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B

Current 30 CFR 206, subpart B	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
Valuation Standards				
§ 206.52(e)(1) and (2)	* * * the lessee shall retain all data relevant to the determination of royalty value * * * A lessee shall notify MMS if it has determined value * * * The notification shall be by letter to MMS * * * The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed.	20	1	20

BURDEN HOUR CHART FOR EXISTING REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B—Continued

Current 30 CFR 206, subpart B	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
§ 206.52(g)	The lessee may request a value determination from MMS * * * the lessee shall propose to MMS a value determination method * * * The lessee shall submit all available data relevant to its proposal.	40	1	40
Transportation Allowances				
§ 206.54(b)(2)	Upon request of a lessee, MMS may approve a transportation allowance deduction * * * The lessee must demonstrate that the transportation costs incurred in excess of the limitation * * * were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and support documentation necessary for MMS to make a determination.	Burden covered under OMB Control Number 1010–0095.		
§ 206.55(a)(1)(i)	* * * the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, * * *.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(a)(2)(i)	* * * no allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval.	40	1	40
§ 206.55(a)(2)(ii)	* * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported.	20	1	20
§ 206.55(a)(3)	If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal.	40	1	40
§ 206.55(b)(1)	* * * the lessee must submit a completed Form MMS–4110 * * * A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS * * * MMS may direct a lessee to modify its actual transportation allowance deduction.	Burden covered under OMB Control Numbers 1010–0061 and 1010–0140.		
§ 206.55(b)(2)(iv)	After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.	20	1	20
§ 206.55(b)(2)(iv)(A)	After an election is made, the lessee may not change methods without MMS approval.	20	1	20
§ 206.55(b)(3)(i)	* * * the lessee may not take an allowance for transporting lease production which is not royalty bearing without MMS approval.	40	1	40
§ 206.55(b)(3)(ii)	* * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported.	20	1	20
§ 206.55(b)(4)	Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal.	20	1	20
§ 206.55(b)(5)	A lessee may apply to MMS for an exception from the requirement that it compute actual costs * * *.	20	1	20
§ 206.55(c)(1)(i)	* * * the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(1)(iii)	* * * lessees must submit page one of Form MMS–4410 (and Schedule 1) within 3 months after the applicable contract or rate terminates or is modified or amended, * * *.	Burden covered under OMB Control Number 1010–0061.		

BURDEN HOUR CHART FOR EXISTING REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B—Continued

Current 30 CFR 206, subpart B	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
§ 206.55(c)(2)(i)	* * * the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014 * * *.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(2)(iii)	* * * the lessee shall submit a completed Form 4110 containing the actual costs for the previous reporting period * * * the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year * * * MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period * * *.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(2)(iv)	For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(2)(vi)	Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4410.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(4)	Transportation allowances must be reported as a separate line item on Form MMS–2014 * * *.	Burden covered under OMB Control Number 1010–0140.		
§ 206.55(e)(2)	For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs * * *.	Burden covered under OMB Control Number 1010–0140.		
		Total	11	300

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: February 26, 2003.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 03–4904 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Prepare an Environmental Impact Statement for the General Management Plan for the Buck Island Reef National Monument

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of the Interior, National Park Service will prepare an Environmental Impact Statement on the General Management Plan for the Buck Island Reef National Monument. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the park boundary. Specific issues to be addressed include appropriate levels and types of visitor use in the park, desired conditions for the National Monument's cultural and natural resources, and strategies and approaches needed to achieve and maintain those conditions. In cooperation with local, territory, and other federal agencies, attention will also be given to cooperative management of resources outside the boundaries that affect the integrity of Buck Island Reef National Monument.

DATES: Locations, dates, and times of scheduled public scoping meetings will be published in local newspapers and posted in local libraries. Information on scheduled meetings may also be obtained by contacting the Superintendent, Buck Island Reef National Monument, telephone (340) 773–1460. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concerns. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process for the GMP and EIS at each of the public meetings.

ADDRESSES: Any comments or requests for information should be addressed to: Superintendent, Buck Island Reef National Monument, Danish Customs House, Kings Wharf, 2100 Church St. #100, Christiansted, Virgin Islands 00820–4611, Telephone: (340) 773–1460.

FOR FURTHER INFORMATION CONTACT: John Barrett, National Park Service, Southeast Regional Office, (404) 562–3124, extension. 637 or Joel Tutein, Superintendent, Buck Island Reef National Monument, (340) 773–1460.

SUPPLEMENTARY INFORMATION: Buck Island Reef National Monument was created to preserve one of the finest marine gardens in the Caribbean Sea. The elkhorn coral barrier reef that surrounds two-thirds of the island has extraordinary coral formations, deep grottoes, abundant reef fishes, sea fans, and sea turtles. The park boundary was expanded in 2001 to include additional coral reefs, barrier reefs, sea grass beds, and sand communities, as well as other habitats not included within the initial boundary. The expansion area also contains significant cultural resources, including the remnants of several shipwrecks. The island, which has an overland nature trail and white coral sand beaches, is a rookery for endangered brown pelicans and a nesting area for three species of sea turtles. Buck Island Reef supports one of the last remaining protected nesting populations of endangered hawksbill sea turtles in the eastern Caribbean. Visitors to the park can enjoy an extraordinary array of marine life and tropical flora and fauna, and various water recreational opportunities in the crystal clear waters around the reef.

This planning effort will evaluate a range of alternative methods to provide a quality visitor experience while maximizing protection of resources and operational efficiency. Public documents associated with the planning effort, including all newsletters, will be posted on the Internet through the park's Web site at *http://www.nps.gov/buis.*

Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will be included in the public record. However, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The draft and final environmental impact statement will be distributed to all known interested parties and appropriate agencies. Full public participation by federal, territory, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this environmental impact statement is Regional Director, National Park Service, Southeast Region, 100 Alabama Street SW., Atlanta, Georgia 30303.

Dated: December 11, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 03–4811 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the General Management Plan for the Virgin Islands Coral Reef National Monument

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of the Interior, National Park Service will prepare an Environmental Impact Statement on the General Management Plan for the Virgin Islands Coral Reef National Monument. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the park boundary. Specific issues to be addressed include the management of vessels, appropriate levels and types of visitor use in the park, desired conditions for the national monument's cultural and natural resources, and strategies and approaches needed to achieve and maintain those conditions. In cooperation with local, territorial, and other federal agencies, attention will also be given to cooperative management of resources outside the boundaries that affect the integrity of Virgin Islands Coral Reef National Monument.

DATES: Locations, dates, and times of scheduled public scoping meetings will be published in local newspapers and posted in local libraries. Information on scheduled meetings may also be obtained by contacting the Superintendent, Virgin Islands Coral Reef National Monument, telephone (340) 776–6201, extension 242. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concerns. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process for the GMP and EIS at each of the public meetings.

ADDRESSES: Any comments or requests for information should be addressed to: Superintendent, Virgin Islands National Park, 1300 Cruz Bay Creek, St. John, Virgin Islands, 00830, Telephone: (340) 776–6201, extension 242.

FOR FURTHER INFORMATION CONTACT: John Barrett, National Park Service, Southeast Regional Office, (404) 562–3124, extension 637 or John King, Superintendent, Virgin Islands National Park, (340) 776–6201, extension 242.

SUPPLEMENTARY INFORMATION: The Virgin Islands Coral Reef National Monument, located in the submerged lands off the island of St. John in the U.S. Virgin Islands, contains all the elements of a Caribbean tropical marine ecosystem. The national monument designation furthers the protection of the scientific objects included in the Virgin Islands National Park, created in 1956 and expanded in 1962. The biological communities of the monument live in a fragile, interdependent relationship and include habitats essential for sustaining and enhancing the tropical marine ecosystem, including mangroves, sea grass beds, coral reefs, sand communities, shallow mud and fine sediment habitat, and algal plains. The monument contains several threatened and endangered species, which forage, breed, nest, or rest in the waters. Humpback whales, pilot whales, four species of dolphins, brown pelicans, roseate terns, least terns, and the hawksbill, leatherback, and green sea turtles all use portions of the monument. Countless species of reef fish, invertebrates, and plants utilize these submerged lands during their lives, and over 25 species of sea birds feed in the waters.

This planning effort will evaluate a range of alternative methods to provide a quality visitor experience while maximizing protection of resources and operational efficiency. Public documents associated with the planning effort, including all newsletters, will be posted on the Internet through the park's Web site at *http://www.nps.gov/viis*.

Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will be included in the public record. However, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The draft and final environmental impact statement will be distributed to all known interested parties and appropriate agencies. Full public participation by federal, territory, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this environmental impact statement is the Regional Director, National Park Service, Southeast Region, 100 Alabama Street SW., Atlanta, Georgia 30303.

Dated: December 11, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 03–4812 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the General Management Plan for Virgin Islands National Park

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of the Interior, National Park Service will prepare an Environmental Impact Statement on the General Management Plan for Virgin Islands National Park. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the park boundary. Specific issues to be addressed include appropriate levels and types of visitor use in the park, desired conditions for the park's cultural and natural resources, and strategies and approaches needed to achieve and maintain those conditions. In cooperation with local, territory, and other Federal agencies, attention will also be given to cooperative management of resources outside the boundaries that affect the integrity of Virgin Islands National Park.

DATES: Locations, dates, and times of scheduled public scoping meetings will be published in local newspapers and posted in local libraries. Information on scheduled meetings may also be obtained by contacting the Superintendent, Virgin Islands National Park at 340–776–6201. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concerns. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process for the GMP and EIS at each of the public meetings.

ADDRESSES: Any comments or requests for information should be addressed to: Superintendent, Virgin Islands National Park, P.O. Box 710, St. John, Virgin Islands, 00831–0710, telephone 340–776–6201.

FOR FURTHER INFORMATION CONTACT: John Barrett, National Park Service, Southeast Regional Office, 404–562–3124, extension. 637 or John King, Superintendent, Virgin Islands National Park, 340–776–6201.

SUPPLEMENTARY INFORMATION: Virgin Islands National Park comprises slightly more than half of the island of St. John and almost nine square miles of the waters surrounding St. John. Also part of the park are St. Thomas, Hassel Island, in the Charlotte Amalie harbor, and 15 acres in the Red Hook area. In recognition of its internationally significant natural resources, the park was designated as a Biosphere Reserve in 1976 and is one of the few biosphere reserves in the world to have both significant marine and terrestrial resources. Within its borders lie protected bays of crystal blue-green waters and an abundance of coral reef life, white sandy beaches shaded by seagrape trees, coconut palms, and tropical forests providing habitat for over 800 species of plants. The park's cultural resources are significant in the settlement and colonization of the New World, maritime history and commerce, and African American history. The park features relics from the Pre-Colombian Amerindian civilization, remains of the Danish Colonial sugar plantations, and reminders of African slavery and the subsistence culture that followed during the 100 years after Emancipation. Known submerged resources include 28 shipwrecks recorded in the vicinity of St. John.

This planning effort will evaluate a range of alternative methods to provide a quality visitor experience while maximizing protection of resources and operational efficiency. Public documents associated with the planning effort, including all newsletters, will be posted on the Internet through the park's Web site at *http://www.nps.gov/viis*.

Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will be included in the public record, however, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Notification of the availability of the draft and final environmental impact statement will be made to all known interested parties and appropriate agencies. Full public participation by Federal, territory and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this environmental impact statement is the Regional Director, National Park Service, Southeast Region, 100 Alabama Street SW., Atlanta, Georgia 30303.

Dated: December 11, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 03–4810 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Committee for the Preservation of the White House; Notice of Public Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at the White House at 1 p.m., Friday, March 28, 2003.

DATES: March 28, 2003.

FOR FUTHER INFORMATION CONTACT: Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, D.C. 20242. (202) 619–6344.

SUPPLEMENTARY INFORMATION: It is expected that the meeting agenda will include policies, goals, and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth and social security number, must be received by March 21, 2003. Due to the present mail delays being experienced, clearance information should be faxed to (202) 619–6353 in order to assure receipt by deadline. Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: February 19, 2003.

Ann Bowman Smith,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 03–4813 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and were pending through December 31, 2002, and contract actions that have been completed or discontinued since the last publication of this notice on November 15, 2002. From the date of this publication, future quarterly notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Reclamation announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in *52 FR 11954*, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in *47 FR 7763*, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2003. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the

appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

BON—Basis of Negotiation
BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CUP—Central Utah Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
D&MC—Drainage and Minor Construction
FR—Federal Register
IDD—Irrigation and Drainage District
ID—Irrigation District
M&I—Municipal and Industrial
NEPA—National Environmental Policy Act
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act
R&B—Rehabilitation and Betterment
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act
WCUA—Water Conservation and Utilization Act
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5223.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd:, Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

6. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

7. North Unit ID and or city of Madras, Deschutes Project, Oregon: Long-term municipal water service contract for provision of approximately 125 acre-feet annually from the project water supply to the city of Madras.

8. North Unit ID, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

9. Baker Valley ID, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

10. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

11. City of Cle Elum, Yakima Project, Washington: Contract for up to 2,170 acre-feet of water for municipal use.

12. Burley ID, Minidoka Project, Idaho-Wyoming: Supplemental and amendatory contract providing for the transfer of O&M of the headworks of the Main South Side Canal and works incidental thereto.

13. Minidoka ID, Minidoka Project, Idaho-Wyoming: Supplemental and amendatory contract providing for the transfer of O&M of the headworks of the Main North Side Canal and works incidental thereto.

14. Fremont-Madison ID, Minidoka Project, Idaho-Wyoming: Repayment contract for reimbursable cost of SOD modifications to Grassy Lake Dam.

15. Queener Irrigation Improvement District, Willamette Basin Project, Oregon: Renewal of long-term water service contract to provide up to 2,150 acre-feet of stored water from the Willamette Basin Project (a Corps of Engineers' project) for the purpose of irrigation within the District's service area.

16. Vale ID and Warm Springs IDs, Vale Project, Oregon: Repayment contract for reimbursable cost of SOD modifications to Warm Springs Dam.

17. Hermiston, Stanfield, and West Extension IDs, Umatilla Project, Oregon: Amendatory repayment contracts for long-term boundary expansions to include lands outside of federally recognized district boundaries.

18. Emmett ID and 12 individual contract spaceholders, Boise Project, Payette Division, Idaho: Repayment agreements or contracts for reimbursable costs of SOD modifications to Deadwood Dam.

19. Greenberry ID, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 7,500 acre-feet of project water.

20. Twenty-three irrigation districts of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

The following action has been completed since the last publication of this notice on November 15, 2002:

1. (16) Twenty-two irrigation districts of the Storage Division, Yakima Project, Washington: Repayment agreements for the reimbursable cost of SOD modifications to Keechelus Dam. Completed repayment agreements with 21 of 22 contracts. Remaining action withdrawn.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available Project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of Project facilities for terms up to 1 year; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note.* Upon written request, copies of the standard forms of temporary water service contracts for the various types of service are available from the Regional Director at the address shown above.

2. Contractors from the American River Division, Cross Valley Canal, Delta Division, Friant Division, Sacramento River Division, San Felipe Division, Shasta Division, Trinity River Division, and West San Joaquin Division, CVP, California: Early renewal of existing long-term contracts; long-term renewal of the interim renewal water service contracts expiring in 2003; water quantities for these contracts total in excess of 3.4M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Pub. L. 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

3. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Pub. L. 100–516.

4. El Dorado County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency authorized by Pub. L. 101–514.

5. Sutter Extension and Biggs-West Gridley WDs, Buena Vista Water Storage District, and the State of California Department of Water Resources, CVP, California: Pursuant to Pub. L. 102–575, conveyance agreements for the purpose of wheeling refuge water supplies and funding District facility improvements and exchange agreements to provide water for refuge and private wetlands.

6. Mountain Gate Community Services District, CVP, California: Amendment of existing long-term water service contract to include right to renew. This amendment will also conform the contract to current Reclamation law, including Pub. L. 102–575.

7. CVP Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

8. City of Roseville, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water provided from the Placer County Water Agency. This contract will allow CVP facilities to be used to deliver nonproject water to the City of Roseville for use within their service area.

9. Sacramento Municipal Utility District, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 30,000 acre-feet of project water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

10. Mercy Springs WD, CVP, California: Partial assignment of about 7,000 acre-feet of Mercy Springs WD's water service contract to Westlands WD for agricultural use.

11. Cachuma Operations and Maintenance Board, Cachuma Project, California: Temporary interim contract (not to exceed 1 year) to transfer O&M responsibility of certain Cachuma Project facilities to member units.

12. M&T, Inc., Sacramento River Water Rights Contractors, CVP, California: A proposed exchange agreement with M&T, Inc., to take Butte Creek water rights water from the Sacramento River in exchange for CVP water to facilitate habitat restoration.

13. El Dorado ID, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the El Dorado ID for use within their service area.

14. Horsefly, Klamath, Langell Valley, and Tulelake IDs, Klamath Project, Oregon: SOD repayment of applicable costs. These districts will share in repayment of costs and each district will have a separate contract. Initial contract should be ready by April 2003.

15. Casitas Municipal WD, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

16. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts (up to 25 years) with various entities for conveyance of nonproject water in the Delta-Mendota Canal and the Friant Division facilities.

17. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly long-term contract for storage of nonproject water in New Melones Reservoir.

18. Banta Carbona ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

19. Plain View WD, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

20. City of Redding, CVP, California: Amend water service contract No. 14–06–200–5272A, for the purpose of renegotiating the provisions of contract Article 15, "Water Shortage and Apportionment," to conform to current CVP M&I water shortage policy.

21. Byron-Bethany ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

22. Sacramento Area Flood Control Agency, CVP, California: Execution of a long-term Operations Agreement for flood control operations of Folsom Dam and Reservoir to allow for recovery of costs associated with operating a variable flood control pool of 400,000 to 670,000 acre-feet of water during the flood control season. This agreement is to conform to Federal law.

23. Lower Tule River, Porterville, and Vandalia IDs, and Pioneer Water Company, Success Project, California: Repayment contract for SOD costs assigned to the irrigation purpose of Success Dam.

24. Colusa County WD, CVP, California: Proposed long-term Warren Act contract for conveyance of up to 4,500 acre-feet of ground water through the Tehama-Colusa Canal.

25. Friant Water Users Authority and San Luis and Delta-Mendota Water Authority, CVP, California: Amendments to the Operation, Maintenance, and Replacement and Certain Financial and Administrative Activities' Agreements to implement certain changes to the Direct Funding provisions to comply with applicable Federal law.

26. Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the operation, maintenance, and replacement and certain financial and administrative activities related to the Madera Canal and associated works.

27. El Dorado ID, CVP, California: Title transfer agreement for conveyance of CVP facilities. This agreement will allow transfer of title for Sly Park Dam, Jenkinson Lake, and appurtenant facilities from the CVP to El Dorado ID.

28. Foresthill Public Utility District, CVP, California: Title transfer agreement for conveyance of CVP facilities. This agreement will allow transfer of title for Sugar Pine Dam and appurtenant facilities from the CVP to Foresthill Public Utility District.

29. Carpinteria WD, Cachuma Project, California: Contract to transfer title of distribution system to the District. Title transfer subject to Congressional ratification.

30. Montecito WD, Cachuma Project, California: Contract to transfer title of distribution system to the District. Title transfer subject to Congressional ratification.

31. City of Vallejo, Solano Project, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow Solano Project facilities to be used to deliver nonproject water to the City of Vallejo for use within their service area.

32. Sacramento Suburban WD (formerly Northridge WD), CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the Sacramento Suburban WD for use within their service area.

33. Truckee Meadows Water Authority, Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal Interest, who may have negotiated rights under Pub. L. 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Pub. L. 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the proposed Truckee River Operating Agreement.

34. Contra Costa WD, CVP, California: Amend water service contract No. 175r–3401A to extend the date for renegotiation of the provisions of contract Article 12 "Water Shortage and Apportionment."

35. Cachuma Operation and Maintenance Board, Cachuma Project, California: Long-term contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units.

36. Sacramento River Settlement Contracts, CVP, California: Up to 145 contracts and one contract with Colusa Drain Mutual Water Company will be renewed; water quantities for these contracts total 2.2M acre-feet. Colusa Drain Mutual Water Company will be renewed for a period of 25 years, and the rest will be renewed for a period of 40 years. These contracts reflect an agreement to settle the dispute over water rights' claims on the Sacramento River.

37. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California: Renewal of the long-term water service contract for up to 850 acre-feet with conveyance through the California State Aqueduct pursuant to the CVP–SWP wheeling agreement.

38. A Canal Fish Screens, Klamath Project, Oregon: Negotiation of an O&M contract for the A Canal Fish Screen with Klamath ID.

39. Ady Canal Headgates, Klamath Project, Oregon: Transfer of operational control to Klamath Drainage District of the headgates located at the railroad. Reclamation does not own the land at the headgates, only operational control pursuant to a railroad agreement.

The following contract action has been completed since the last publication of this notice on November 15, 2002:

1. (11) Cachuma Operations and Maintenance Board, Cachuma Project, California: Temporary interim contract (not to exceed 1 year) to transfer O&M responsibility of certain Cachuma Project facilities to member units. Temporary interim contract executed on November 1, 2002, and expires February 28, 2003.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Milton and Jean Phillips, Cameron Brothers Construction Co., Ogram Farms, John J. Peach, Sunkist Growers, Inc., BCP, Arizona: Colorado River water delivery contracts, as recommended by the Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to 3,168 acre-feet per year total.

2. Brooke Water Co., BCP, Arizona: Amend contract for an additional 120 acre-feet per year of Colorado River water for domestic uses, as recommended by the Arizona Department of Water Resources.

3. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in Arizona v. California, and BCP in Arizona and Nevada: Agreement for delivery of Colorado River water for the National Park Service's Federal Establishment PPR for diversion of 500 acre-feet annually and the National Park Service's Federal Establishment perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

4. Miscellaneous PPR entitlement holders, BCP, Arizona and California: New contracts for entitlement to Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the Boulder Canyon Project Act. Miscellaneous PPRs holders are listed in the January 9, 1979, Supreme Court Supplemental Decree in *Arizona* v. *California et al.*

5. Miscellaneous PPR No. 11, BCP, Arizona: Assign a portion of the PPR from Holpal to McNulty *et al.* And assign a portion of the PPR from Holpal to Hoover.

6. Curtis Family Trust *et al.*, BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for irrigation.

7. Beattie Farms SW, BCP, Arizona: Contract for 1,890 acre-feet per year of unused Arizona entitlement of Colorado River water for irrigation.

8. U.S. Fish and Wildlife Service, Lower Colorado River Refuge Complex, BCP, Arizona: Agreement to administer the Colorado River water entitlement for refuge lands located in Arizona to resolve water rights coordination issues, and to provide for an additional entitlement for non-consumptive use of flow through water.

9. Maricopa-Stanfield IDD, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0047 to reschedule repayment pursuant to June 28, 1996, agreement.

10. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

11. San Tan ID, CAP, Arizona: Amend distribution system repayment contract No. 6–07–30–W0120 to increase the repayment obligation by approximately $168,000.

12. Central Arizona Drainage and ID, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0048 to modify repayment terms pursuant to final order issued by U.S. Bankruptcy Court, District of Arizona.

13. Imperial ID/Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with title II of the San Luis Rey Indian Water Rights Settlement Act dated November 17, 1988.

14. Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

15. Salt River Pima-Maricopa Indian Community, CAP, Arizona: O&M contract for its CAP water distribution system.

16. Arizona State Land Department, BCP, Arizona: Colorado River water delivery contract for 1,535 acre-feet per year for domestic use.

17. Miscellaneous PPR No. 38, BCP, California: Assign Schroeder's portion of the PPR to Murphy Broadcasting.

18. Berneil Water Co., CAP, Arizona: Water service contracts associated with partial assignment of water service to the Cave Creek Water Company.

19. Canyon Forest Village II Corporation, BCP, Arizona: Colorado River water delivery contract for up to 400 acre-feet per year of unused Arizona apportionment or surplus apportionment for domestic use.

20. Gila Project Works, Gila Project, Arizona: Title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

21. ASARCO Inc., CAP, Arizona: Amendment of subcontract to extend the deadline to December 31, 2003, for giving notice of termination on exchange.

22. Phelps Dodge Miami, Inc., CAP, Arizona: Amendment of subcontract to extend the deadline until December 31, 2003, for giving notice of termination on exchange.

23. Gila River Indian Community, CAP, Arizona: Amend CAP water delivery contract and distribution system repayment and operation, maintenance, and replacement contract pursuant to Arizona Water Settlements Act, when enacted.

24. California Water Districts, BCP, California: Incorporate into the water delivery contracts with several water districts (Coachella Valley WD, Imperial ID, Palo Verde ID, and The Metropolitan WD of Southern California), through new contracts, contract amendments, contract approvals, or other appropriate means, the agreement to be reached with those water districts to (i) quantify the Colorado River water entitlements for Coachella Valley WD and Imperial ID and (ii) provide a basis for water transfers among California water districts.

25. North Gila Valley IDD, Yuma ID, and Yuma Mesa IDD, Yuma Mesa Division, Gila Project, Arizona: Administrative action to amend each district's Colorado River water delivery contract to effectuate a change from a "pooled" water entitlement for the Division to a quantified entitlement for each district.

26. Indian and/or non-Indian M&I users, CAP, Arizona: New or amendatory water service contracts or subcontracts in accordance with an anticipated final record of decision for reallocation of CAP water, as discussed in the Secretary of the Interior's notice published on page 41456 of the **Federal Register** on July 30, 1999.

27. Litchfield Park Service Company, CAP, Arizona: Proposed assignments of 5,580 acre-feet of CAP M&I water to the Central Arizona Groundwater Replenishment District and to the cities of Avondale, Carefree, and Goodyear.

28. Shepard Water Company, Inc., BCP, Arizona: Contract for the delivery of 50 acre-feet of domestic water.

29. The United States International Boundary and Water Commission, The Metropolitan WD of Southern California, San Diego County Water Authority, and Otay WD, Mexican Treaty Waters: Agreement for the temporary emergency delivery of a portion of the Mexican Treaty waters of the Colorado River to the International Boundary in the vicinity of Tijuana, Baja California, Mexico.

30. Gila River Indian Community, CAP, Arizona: Operation, maintenance, and replacement contract for an archeological repository named the Huhugam Heritage Center.

31. Jessen Family Limited Partnership, BCP, Arizona: Partial contract assignment of agricultural water from Arlin Dulin to Jessen Family Limited Partnership.

32. Robson Communities, Southern Arizona Water Rights Settlement Act, Arizona: United States contract with Robson Communities for the sale of 1,618 acre-feet of long-term water storage credits accrued in the Tucson area during calendar year 2000.

33. Cities of Chandler and Mesa, CAP, Arizona: Amendments to the CAP M&I water service subcontracts of the cities of Chandler and Mesa to remove the language stating that direct effluent exchange agreements with Indian Communities are subject to the "pooling concept."

34. City of Somerton, BCP, Arizona: Contract for the delivery of up to 750 acre-feet of Colorado River water for domestic use.

35. Various Irrigation Districts, CAP, Arizona: Amend distribution system repayment contracts to provide for partial assumption of debt by the Central Arizona Water Conservation District and the United States upon enactment of Federal legislation providing for resolution of CAP issues.

36. Mohave County Water Authority, BCP, Arizona: Amendatory Colorado River Water delivery contract to include the delivery of 3,500 acre-feet per year of fourth priority water and to delete the delivery of 3,500 acre-feet per year of fifth or sixth priority water.

37. Citizens Communications Company (Agua Fria Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City).

38. Harquahala Valley ID, CAP, Arizona: The District has requested that Reclamation transfer title to the District's CAP Distribution System and to assign to the District permanent easements acquired by the United States. Title transfer of the District's CAP distribution system is authorized by Public Law 101–628 and contract No. 3–07–30–W0289 between the District and Reclamation, dated December 8, 1992.

39. All-American Canal, BCP, California: Agreement among Reclamation, Imperial ID, Metropolitan WD, and Coachella Valley WD for the federally funded construction of a reservoir(s) and associated facilities that will improve the regulation and management of Colorado River water (Federal legislation pending).

40. Pasquinelli, Gary J. and Barbara J., BCP, Arizona: Contract for the delivery of 486 acre-feet of Colorado River water for agricultural purposes.

41. Citizens Communications Company (Sun City Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City Division).

42. Citizens Communications Company (Sun City West Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City West Division).

43. Allocation agreement for water conserved from lining the All-American and Coachella Canals, BCP, California: Parties include the United States, The Metropolitan WD of Southern California, the Coachella Valley WD, the Imperial ID, the City of Escondido, Vista, San Luis Rey River Indian Water Authority, and the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians.

44. Tohono O'odham Nation, CAP, Arizona: Amend CAP water delivery contract pursuant to Arizona Water Settlements Act, when enacted.

45. Central Arizona Water Conservation District and the Arizona Department of Water Resources, CAP, Arizona: Arizona Water Settlement Agreement to settle all current CAP water allocation issues.

The following actions have been discontinued since the last publication of this notice on November 15, 2002:

1. (20) Tohono O'odham Nation, CAP, Arizona: Repayment contract for a portion of the construction costs associated with water distribution system for Central Arizona IDD.

2. (21) Tohono O'odham Nation, CAP, Arizona: Contracts for Schuk Toak and San Xavier Districts for repayment of Federal expenditures for construction of distribution systems.

3. (40) Sonny Gowan, BCP, California: Approval to lease up to 175 acre-feet of his PPR water to Moabi Regional Park.

4. (49) All-American Canal, BCP, California: Agreement among Reclamation, Imperial ID, and Metropolitan WD to provide for the construction of lining for 23 miles of the All-American Canal, funded by the State of California.

The following action has been completed since the last publication of this notice on November 15, 2002:

1. (33) Arizona Water Banking Authority and Southern Nevada Water Authority, BCP, Arizona and Nevada: Contract to provide for the interstate contractual distribution of Colorado River water through the off-stream storage of Colorado River water in Arizona, the development by the Arizona Water Banking Authority of intentionally created unused apportionment, and the release of this intentionally created unused apportionment by the Secretary of the Interior to Southern Nevada Water Authority.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users, Initial Units, Colorado River Storage Project; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Russell, Harrison F. and Patricia E.; Aspinall Unit; CRSP; Colorado: Contract for 1 acre-foot to support an augmentation plan, Case No. 97CW39, Water Division Court No. 4, State of Colorado, to provide for a single-family residential well, including home lawn and livestock watering (non-commercial).

(b) Stephens, Walter Daniel; Aspinall Unit; CRSP; Colorado: Contract for 2 acre-feet to support an augmentation plan, Case No. 97CW49, Water Division Court No. 4, State of Colorado, to provide for pond evaporative depletions during the non-irrigation season.

(c) United States Fish and Wildlife Service, Aspinall Unit, CRSP, Colorado: Contract for 25 acre-feet to support an augmentation plan to provide water for the Hotchkiss Fish Hatchery ponds, used to grow out endangered fish, a part of the Endangered Fish Recovery Program.

(d) Upper Gunnison Water Conservancy District (Upper Gunnison), Aspinall Unit, CRSP, Colorado: A 40-year contract for 500 acre-feet of M&I water to support Upper Gunnison's plan of augmentation for non-agricultural water use within the Upper Gunnison District. The 500 acre-feet of water to be resold by Upper Gunnison under third-party contracts approved by Reclamation to water users located within Upper Gunnison's Districts boundaries.

2. Taos Area, San Juan-Chama Project, New Mexico: The United States is reserving 2,990 acre-feet of project water for potential use in an Indian water rights settlement in the Taos, New Mexico area.

3. Water Service Contractors, San Juan-Chama Project, New Mexico: Conversion of water service contracts to repayment contracts for the following entities: City of Santa Fe, County of Los Alamos, City of Espanola, Town of Taos, Village of Los Lunas, and Village of Tao Ski Valley.

4. Various Contractors, San Juan-Chama Project, New Mexico: The United States proposes to lease water from various contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow.

5. Provo River Water Users, Provo River Project, Utah: Contract to provide for repayment of reimbursable portion of construction costs of SOD modifications to Deer Creek Dam.

6. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Long-term water service contract for up to 25,000 acre-feet for irrigation use.

7. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Colorado River Water Conservation District, Uncompahgre Project, Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

8. Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement.

9. Grand Valley Water Users Association, Orchard Mesa ID, and Public Service Company of Colorado, Grand Valley Project, Colorado: Water service contract for the utilization of project water for cooling purposes for a steam electric generation plant.

10. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for a SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Savor River (Great Basin).

11. Individual Irrigators, Carlsbad Project, New Mexico: The United States proposes to enter into long-term forbearance lease agreements with individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. This action will result in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Summer Dam which were made to improve conditions for a threatened species, the Pecos bluntnose shiner.

12. La Plata Conservancy District, Animas-La Plata Project, Colorado and New Mexico: Cost-sharing/repayment contract for up to 1,560 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (title III of Pub. L. 106–554).

13. LeChee Chapter of the Navajo Nation, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 950 acre-feet of water for municipal purposes.

14. Pine River ID, Pine River Project, Colorado: Contract to allow the District to convert up to approximately 3,000 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

15. City of Page, Arizona; Glen Canyon Unit; CRSP; Arizona: Long-term contract for 1,000 acre-feet of water for municipal purposes.

16. Castle Valley Special Service District, City of Huntington, Emery County Project: Assignment of contract for 189 acre-feet of water for municipal purposes.

17. El Paso County Water Improvement District No. 1 and Isleta del Sur Pueblo, Rio Grande Project, Texas: Contract to convert up to 1,000 acre-feet of the Pueblo's project irrigation water to use for traditional and religious purposes.

18. Carlsbad ID and New Mexico Interstate Stream Commission (ISC), Carlsbad Project, New Mexico: Contract to convert irrigation water appurtenant to up to 6,000 acres of land within the project for use by the ISC for delivery to Texas to meet New Mexico's Pecos River Compact obligation.

The following action has been discontinued since the last publication of this notice on November 15, 2002:

1. (4) Various Contractors, San Juan-Chama Project, New Mexico: Three potential contracts among the United States, Middle Rio Grande Conservancy District, and the City of Albuquerque to implement terms of Agreed Order Resolving Plaintiff's Motion for Preliminary Injunction, dated August 2, 2000, and the supplement dated October 5, 2000. The ordered actions were taken without contracts being put in place.

The following actions have been completed since the last publication of this notice on November 15, 2002:

1. (1)(f) David W. and Rebecca A. Dennis, Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support an augmentation plan, Case No. 01CW84, Water Division Court No. 4, State of Colorado, to provide for a single-family residential well, including in-house residential, limited lawn, pond evaporation, and livestock watering (non-commercial). Contract executed May 17, 2002.

2. (13) Dolores Water Conservancy District, Dolores Project, Colorado: Amendment to an existing carriage contract to extend the term of the contract from 25 years to a total of 50 years. Amendment executed August 29, 2002.

3. (14) Ogden River Water Users Association and Weber Basin Water Conservancy District, Ogden River and Weber Basin Projects, Utah: Contract to provide for repayment of water users portion of construction contract due to SOD investigations recommendations at Pineview Dam. Contract executed March 28, 2002.

4. (21) Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Contract to allow the District to use up to approximately 2,500 acre-feet of project water for irrigation and M&I uses. Contract executed June 20, 2002.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

1. Individual irrigators, M&I, and miscellaneous water users: Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term up to 1 year.

2. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

3. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for up to 17,000 acre-feet annually for M&I use; contract with Colorado Water Conservation Board and the U.S. Fish and Wildlife Service for 10,825 acre-feet for endangered fishes.

4. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

5. City of Rapid City, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for storage capacity in Pactola Reservoir. A temporary (1 year not to exceed 10,000 acre-feet) water service contract will be executed with the City of Rapid City, Rapid Valley Unit, for use of water from Pactola Reservoir. A long-term storage contract is being negotiated for water stored in Pactola Reservoir.

6. Pathfinder ID, North Platte Project, Nebraska: Negotiation of a contract regarding SOD program modifications of Lake Alice Dam No. 1 Filter/Drain.

7. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a non-profit corporation for the planning and construction of a rural water supply system.

8. Angostura ID, Angostura Unit, P–SMBP, South Dakota: An interim 3-year contract was executed on June 9, 2000, to provide for a continuing water supply and allow adequate time for completion of the Environmental Impact Statement for long-term contract renewal. A BON for a long-term contract renewal has been approved by the Commissioner's Office. Contract negotiations for a long term 25-year contract have been completed. Both the Record of Decision and the contract will be signed in January 2003.

9. City of Berthoud, Colorado, Colorado-Big Thompson Project, Colorado: Long-term contract for conveyance of nonproject M&I water through Colorado-Big Thompson Project facilities.

10. City of Cheyenne, Kendrick Project, Wyoming: Negotiation of a long-term contract for storage space. Contract for up to 10,000 acre-feet of storage space for replacement water on a yearly basis in Seminoe Reservoir. A temporary contract has been issued pending negotiations of the long-term contract.

11. Highland-Hanover ID, P–SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction costs.

12. Upper Bluff ID, P–SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction cost.

13. Fort Clark ID, P–SMBP, North Dakota: Negotiation of water service contract to continue delivery of project water to the District.

14. Western Heart River ID, P–SMBP, Heart Butte Unit, North Dakota: Negotiation of water service contract to continue delivery of project water to the District.

15. Lower Marias Unit, P–SMBP, Montana: Water service contract with Robert A. Sisk expired in July 1998. Initiating long-term contract for the use of up to 600 acre-feet of storage water from Tiber Reservoir to irrigate 220 acres. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

16. Lower Marias Unit, P–SMBP, Montana: Initiating renewal of long-term water service contract with Julie Peterson for the use of up to 717 acre-feet of storage water from Tiber Reservoir to irrigate 239 acres. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

17. Lower Marias Unit, P–SMBP, Montana: Water service contract with Ray Morkrid as Morkrid Enterprises expired May 1998. Initiating long-term contract for the use of up to 6,855 acre-feet of storage water from Tiber

Reservoir to irrigate 2,285 acres. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

18. Dickinson-Heart River Mutual Aid Corporation, P–SMBP, Dickinson Unit, North Dakota: Negotiate renewal of water service contract for irrigation of lands below Dickinson Dam in western North Dakota.

19. Savage ID, P–SMBP, Montana: The District is currently seeking title transfer. The contract is subject to renewal on an annual basis pending outcome of the title transfer process. Interim contracts are being issued to allow continued delivery of water. The District has requested information concerning renewal of the long-term contract.

20. City of Fort Collins, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance and storage of nonproject M&I water through Colorado-Big Thompson Project facilities.

21. Standing Rock Sioux Tribe, P–SMBP, North Dakota: Negotiate a long-term water service contract with the Standing Rock Sioux Tribe in North Dakota for irrigation of up to 2,380 acres of land within the reservation.

22. Glendo Unit, P–SMBP, Wyoming: Contract renewal for long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

23. Glendo Unit, P–SMBP, Nebraska: Contract renewal for long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID.

24. Belle Fourche ID, Belle Fourche Project, South Dakota: Belle Fourche ID has requested a $25,000 reduction in construction repayment. Negotiations are pending resolution of contract language.

25. Helena Valley Unit, P–SMBP, Montana: Initiating negotiations with Helena Valley ID for renewal of Part A of the A/B contract which expires in 2004.

26. Crow Creek Unit, P–SMBP, Montana: Initiating negotiations with Toston ID for renewal of Part A of the A/B contract which expires in 2004.

27. Milk River Project, Montana: City of Harlem water service contract expired in December 2002. Initiating negotiations for renewal of a water service contract for an annual supply of raw water for domestic use from the Milk River not to exceed 500 acre-feet. An interim contract may be issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract. A draft contract is available for review and public comment. Comments were due by August 15, 2002.

28. Lower Marias Unit, P–SMBP, Montana: Town of Chester water service contract expired in December 2002. Initiating negotiations for renewal of a long-term water service contract for an annual supply of raw water for domestic use from Tiber Reservoir not to exceed 500 acre-feet. An interim contract may be issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract.

29. City of Dickinson, P–SMBP, Dickinson Unit, North Dakota: A temporary contract has been negotiated with the Park Board for minor amounts of water from Dickinson Dam. Negotiate a long-term water service contract with the City of Dickinson or Park Board, for minor amounts of water from Dickinson Dam.

30. Clark Canyon Water Supply Company, East Bench Unit, Montana: Initiating renewal of contract No. 14–06–600–3592 which expires December 31, 2005.

31. East Bench ID, East Bench Unit, Montana: Initiating renewal of contract No. 14–06–600–3593 which expires December 31, 2005.

32. Pueblo Board of Water Works, Fryingpan-Arkansas Project, Colorado: On September 25, 2002, an amendment was executed to extend the term of a conveyance contract by 1 year from October 2002 to October 1, 2003. Initiating negotiations for renewal of a water conveyance contract for annual conveyance of up to 750 acre-feet of nonproject water through the Nast and Boustead Tunnel System.

33. Lower Marias Unit, P–SMBP, Montana: Initiating long-term water service contract with Allen Brown as Tiber Enterprises for up to 910 acre-feet of storage from Tiber Reservoir to irrigate 303.2 acres. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

34. Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Acting by and through the Pleasant Valley Pipeline Project Water Activity Enterprise, beginning discussions concerning a long-term contract for conveyance of nonproject water through Colorado-Big Thompson Project facilities.

35. Miles Land and Livestock Co. (Individual), Kendrick Project, Alcova Reservoir, Wyoming: Negotiate a long-term contract for annual conveyance of up to 153.27 acre-feet of nonproject water through the Casper Canal, Wyoming.

36. Helena Valley Unit, P–SMBP, Montana: The long-term water service contract with the City of Helena, Montana, expires December 31, 2004. Initiating negotiations for contract renewal for an annual supply of raw water for domestic and M&I use from Helena Valley Reservoir not to exceed 5,680 acre-feet of water annually.

37. Chippewa Cree Tribe (Tribe), Rocky Boy's Indian Reservation, Montana: Pursuant to title II, section 201(a)(2), of the Rocky Boy's Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Pub. L. 106–163), Reclamation is negotiating to allocate 10,000 acre-feet per year of stored water in Lake Elwell.

38. Canadian River Municipal Water Authority, Lake Meredith Salinity Control Project, New Mexico and Texas: Negotiation of a contract for the transfer of control (care, operation, and maintenance) of the Project to the Authority in accordance with Pub. L. 102–575, title VIII, section 804(c).

39. Belle Fourche ID, Belle Fourche Project, South Dakota: Negotiate a temporary contract for additional supplemental water up to 10,000 acre-feet from Keyhole Reservoir. Negotiate an amendment to the District's Keyhole Dam repayment contract for increased storage space to store additional amounts of water.

40. Clayton and Debbie Fulfer (Individual), P–SMBP, Boysen Unit, Wyoming: Contract for up to 15 acre-feet of supplemental irrigation water to service 5.72 acres.

41. Midvale ID, P–SMBP, Riverton Unit, Wyoming: Negotiations of a SOD Program contract for modification of Bull Lake Dam.

42. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracts in the Fryingpan-Arkansas Project.

43. Fryingpan-Arkansas Project, Colorado: Consideration of requests for long-term contracts for the use of excess capacity in the Fryingpan-Arkansas Project from the Southeastern Colorado Water Conservancy District, the City of Aurora, and the Regional Water Infrastructure Authority.

Dated: February 20, 2003.

Wayne O. Deason,

Acting Director, Program and Policy Services.

[FR Doc. 03–4735 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1023 (Preliminary)]

Certain Ceramic Station Post Insulators From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of certain ceramic station post insulators, provided for in subheading 8546.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On December 31, 2002, a petition was filed with the Commission and Commerce by Lapp Insulator Company LLC, Le Roy, NY; Newell Porcelain Co., Inc., Newell, WV; Victor Insulators, Inc., Victor, NY; and the IUE–CWA, AFL–CIO, Washington, DC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain ceramic station post insulators from Japan. Accordingly, effective December 31, 2002, the Commission instituted antidumping duty investigation No. 731–TA–1023 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 8, 2003 (68 FR 1068). The conference was held in Washington, DC, on January 21, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 14, 2003. The views of the Commission are contained in USITC Publication 3578 (February 2003), entitled Certain Ceramic Station Post Insulators From Japan: Investigation No. 731–TA–1023 (Preliminary).

By order of the Commission.
Issued: February 21, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–4808 Filed 2–27–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–005]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

TIME AND DATE: March 7, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–991 (Final) (Silicon Metal from Russia)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 19, 2003.)
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:
Issued: February 25, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–4867 Filed 2–26–03; 11:30 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2247–02]

Application for Naturalization, Form N–400: Termination of Acceptance of Editions Issued Prior to May 31, 2001

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice confirms only editions dated May 31, 2001, or later, of the Form N–400, Application for Naturalization, as acceptable for filing by persons applying for United States citizenship. These revised editions include recent legislative changes, clarify the information required from applicants, eliminate obsolete questions, and update the data collection process. This notice advises the public that all Forms N–400 that are mailed, postmarked or otherwise filed on or after March 31, 2003 must bear the edition date of May 31, 2001, or later.

DATES: This notice is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Business Process and Reengineering Division, Immigration and Naturalization Service, 801 I Street, NW., Washington, DC 20536, telephone (202) 514–0788.

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** notice dated November 16, 2001, at 66 FR 57737–57739, the Department of Justice, Immigration and Naturalization Service (Service) announced the establishment of the revised Form N–400, bearing the edition date of May 31, 2001, as the only edition acceptable for applications for United States citizenship. That notice stated that earlier editions of Form N–400 would not be acceptable for filing after December 31, 2001.

Subsequent to publication of the November 16, 2001, notice the Service

continued to allow additional time for transition to the processing of the current Form N–400, during which the previous edition has been accepted for processing. However, it is necessary to complete the conversion to an updated naturalization application format that reflects all current benefits and requirements.

Accordingly, as of March 31, 2003, only the May 31, 2001, or subsequent editions of Form N–400 will be valid for filing an application for naturalization.

To prevent applicants from mistakenly submitting obsolete editions after the termination date of March 31, 2003, offices involved in the distribution of naturalization applications should only provide editions of Form N–400 having an edition date of May 31, 2001, or later.

What Happens After the "Sunset Date" for Accepting the Previous Edition of Form N–400?

Beginning March 31, 2003, only the May 31, 2001, or later editions of Form N–400 will be valid for filing an application for naturalization.

Service Centers will no longer accept earlier editions of the form for filing. Any obsolete editions of the Form N–400 application that the Service Centers may receive on or after March 31, 2003 will be rejected and returned to the applicant with instructions to submit a current Form N–400.

Will the Service Continue to Process the Previous Edition Form N–400 Applications that were Filed Prior to March 31, 2003?

The previous edition of the naturalization applications, if it was properly filed at a Service Center before March 31, 2003 will be processed to completion. However, in cases where there is an eligibility issue that the previous edition does not cover, the Service may ask for additional information.

How Can Applicants Obtain the Current Edition of Form N–400?

Applicants can obtain copies of the current Form N–400 by calling the Service Forms Line at 1–800–870–3676. The current edition of Form N–400 also can be viewed, filled, and printed electronically from the Service's Web site at *www.ins.usdoj.gov.*

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–4863 Filed 2–26–03; 12:08 pm]

BILLING CODE 4410–10–U

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276(a)) and of the other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA020001 (Mar. 1, 2002)
PA020002 (Mar. 1, 2002)
PA020004 (Mar. 1, 2002)
PA020007 (Mar. 1, 2002)
PA020008 (Mar. 1, 2002)
PA020009 (Mar. 1, 2002)
PA020010 (Mar. 1, 2002)
PA020012 (Mar. 1, 2002)
PA020013 (Mar. 1, 2002)
PA020015 (Mar. 1, 2002)
PA020016 (Mar. 1, 2002)
PA020018 (Mar. 1, 2002)
PA020019 (Mar. 1, 2002)
PA020020 (Mar. 1, 2002)
PA020021 (Mar. 1, 2002)
PA020023 (Mar. 1, 2002)
PA020027 (Mar. 1, 2002)
PA020028 (Mar. 1, 2002)
PA020029 (Mar. 1, 2002)
PA020038 (Mar. 1, 2002)
PA020040 (Mar. 1, 2002)
PA020042 (Mar. 1, 2002)
PA020051 (Mar. 1, 2002)
PA020053 (Mar. 1, 2002)
PA020055 (Mar. 1, 2002)
PA020060 (Mar. 1, 2002)
PA020061 (Mar. 1, 2002)
PA020062 (Mar. 1, 2002)
PA020065 (Mar. 1, 2002)

Volume III

Georgia
GA020003 (Mar. 1, 2002)
GA020004 (Mar. 1, 2002)
GA020006 (Mar. 1, 2002)
GA020022 (Mar. 1, 2002)
GA020023 (Mar. 1, 2002)
GA020031 (Mar. 1, 2002)
GA020032 (Mar. 1, 2002)
GA020034 (Mar. 1, 2002)
GA020040 (Mar. 1, 2002)
GA020041 (Mar. 1, 2002)
GA020044 (Mar. 1, 2002)
GA020050 (Mar. 1, 2002)
GA020055 (Mar. 1, 2002)
GA020073 (Mar. 1, 2002)
GA020083 (Mar. 1, 2002)
GA020084 (Mar. 1, 2002)
GA020085 (Mar. 1, 2002)
GA020086 (Mar. 1, 2002)
GA020087 (Mar. 1, 2002)
GA020088 (Mar. 1, 2002)

Mississippi
MS020031 (Mar. 1, 2002)

Volume IV

None

Volume V

Louisiana
LA020001 (Mar. 1, 2002)
LA020005 (Mar. 1, 2002)
LA020009 (Mar. 1, 2002)
LA020018 (Mar. 1, 2002)

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service *(http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 21st day of February 2003.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–4498 Filed 2–27–03; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC, Monticello Nuclear Generating Plant; Exemption

1.0 Background

The Nuclear Management Company, LLC (the licensee), is the holder of Facility Operating License No. DPR–22 which authorizes operation of the Monticello Nuclear Generating Plant (MNGP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located in Wright County, Minnesota.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, Section 50.60(a), requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 requires that pressure-temperature (P/T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak-rate testing conditions. Specifically, 10 CFR part 50, Appendix G, states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Appendix G, limits.

To address provisions of a proposed amendment to change the P/T limits in the Monticello Technical Specifications, the licensee requested an exemption from the application of specific requirements of 10 CFR part 50, Section 50.60(a) and Appendix G, to allow the use of ASME Code Case N–640, "Alternative Reference Fracture Toughness for Development of P–T Limit Curves." ASME Code Case N–640 permits the use of alternate reference fracture toughness (*i.e.*, use of "K_{IC} fracture toughness curve" instead of "K_{IA} fracture toughness curve," where K_{IC} and K_{IA} are "Reference Stress Intensity Factors," as defined in ASME Code, Section XI, Appendices A and G, respectively) for RPV materials in determining the P/T limits. Since the K_{IC} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, provides greater allowable fracture toughness than the corresponding K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1, using ASME Code Case N–640 to establish the P/T limits would be less conservative than the methodology currently endorsed by 10 CFR part 50, Appendix G. Therefore, an exemption is required to use ASME Code Case N–640.

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–640 in order to revise the method used to determine RPV P/T limits because continued use of the present curves unnecessarily restricts the P/T operating windows for the reactor coolant system (RCS). Since the P/T operating window is defined by the P/T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, procedure, continued operation of MNGP with the current P/T curves without the relief provided by ASME Code Case N–640 would unnecessarily require that the RPV be maintained at a temperature exceeding 212 °F in a limited operating window during pressure tests. Consequently, steam

vapor hazards would continue to be a safety concern for personnel conducting inspections in the primary containment. Implementation of the proposed P/T curves, as allowed by ASME Code Case N–640, would not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in the primary containment to be conducted at a lower coolant temperature.

3.0 Discussion

Pursuant to 10 CFR part 50, Section 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. These special circumstances include the following:

(1) Pursuant to 10 CFR part 50, Section 50.12(a)(2)(ii), the circumstance that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. ASME Code, Section XI, Appendix G, provides procedures for determining the allowable loading on the RPV and is approved for that purpose by 10 CFR part 50, Appendix G. Application of these procedures in the determination of P/T operating and test curves satisfies the underlying requirement that (1) the reactor coolant pressure boundary be operated in a regime having a sufficient margin to ensure, when stressed, the vessel boundary behaves in a ductile manner and the probability of a rapidly propagating fracture is minimized; and (2) P/T operating and test limit curves provide an adequate margin in consideration of uncertainties in determining the effects of irradiation on material properties. The ASME Code, Section XI, Appendix G, procedure was conservatively developed based upon the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge concerning these topics has greatly expanded. This increased knowledge permits relaxation of the ASME Code, Section XI, Appendix G, requirements via application of ASME Code Case N–640, while maintaining the underlying purpose of the ASME Code and NRC regulations to ensure an acceptable margin of safety.

(2) Pursuant to 10 CFR part 50, Section 50.12(a)(2)(iii), compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or those incurred by others similarly situated. The P/T operating window from the RCS is defined by the P/T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G procedure. As previously noted, continued operation of MNGP with these P/T curves without the relief provided by ASME Code Case N–640 would unnecessarily restrict the P/T operating window. This restriction requires the MNGP Operations Staff to maintain a high temperature during pressure tests and also subjects the inspection personnel to increased safety hazards while conducting inspections of systems with the potential for steam leaks in a primary containment at elevated temperatures.

This constitutes an unnecessary burden that can be alleviated by the application of ASME Code Case N–640 in the development of the proposed P/T limit curves. Implementation of the proposed P/T limit curves, as allowed by ASME Code Case N–640, would not significantly reduce the margin of safety.

(3) Pursuant to 10 CFR part 50, Section 50.12(a)(2)(v), compliance will provide "only temporary relief from the applicable regulation and the licensee . . . has made good faith efforts to comply with the regulation." The NRC staff finds that the licensee for MNGP has made a good faith effort to comply with the regulation, and the requested exemption provides only temporary relief from the applicable regulation until such time that the NRC generically approves ASME Code Case N–640 for use by the nuclear industry.

The NRC staff examined the licensee's rationale to support the exemption request and concluded that the use of the ASME Code Case N–640 would satisfy 10 CFR part 50, Section 50.12(a)(1) as follows:

(1) The requested exemption is authorized by law: No law exists which precludes the activities covered by this exemption request. The regulation 10 CFR part 50, Section 50.60(b), allows the use of alternatives to 10 CFR part 50, Appendices G and H, when an exemption is granted by the Commission pursuant to 10 CFR part 50, Section 50.12.

(2) The requested exemption does not present an undue risk to the public health and safety: ASME Code Case N–640 permits the use of alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{IA} fracture toughness curve) for RPV Materials in determining the P/T limits. The K_{IC} fracture toughness curve is shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, and provides greater allowable fracture toughness than the corresponding K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1. The other margins involved with the ASME Code, Section XI, Appendix G process of determining P/T limit curves remain unchanged.

Use of the K_{IC} curve in determining the lower bound fracture toughness in the development of the P/T operating limits curve is more technically correct than the K_{IA} curve. The K_{IC} curve models the slow heatup and cooldown process of a reactor vessel. The K_{IC} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a RPV.

Use of this approach is justified by the initial conservatism of the K_{IA} curve when the curve was codified in 1974. This initial conservatism was necessary due to limited knowledge of RPV material fracture toughness. Since 1974, additional knowledge has been gained about the fracture toughness of vessel materials and their fracture response to applied loads. The additional knowledge demonstrates that the lower bound fracture toughness provided by the K_{IA} curve is well beyond the margin of safety required to protect against potential RPV failure. The lower bound K_{IC} fracture toughness provides an adequate margin of safety to protect against potential RPV failure and does not present an undue risk to public health and safety.

P/T limit curves based on the K_{IC} fracture toughness limits will enhance overall plant safety by opening the P/T operating window. Since the RCS P/T operating window is defined by the P/T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, procedure, continued operation of MNGP with these P/T limit curves without using ASME Code Case N–640 would unnecessarily require the RPV to be maintained at a temperature exceeding 212 °F in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in the primary containment.

Use of the revised curves would result in a reduction in the challenges to operators in maintaining a high temperature in a limited operating window and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at lower coolant temperature, while continuing to provide an adequate margin of safety.

(3) The requested exemption will not endanger the common defense and security: The common defense and security are not endangered by this exemption request.

On the basis of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, Appendix G, and ASME Code, Section XI, Appendix G, the NRC staff concludes that application of ASME Code Case N–640, as described above, would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the NRC staff has reached for other licensees under similar conditions based upon the same considerations. The NRC staff has previously granted exemptions to use ASME Code Case N–640 for the Quad Cities Nuclear Power Station and the Limerick Generating Station Unit 1 where the NRC staff concluded that application of ASME Code Case N–640 would provide adequate safety margins consistent with 10 CFR part 50, Appendix G, and Appendix G to ASME Code, Section XI. In the same cases, the NRC staff also concluded that relaxation of the methodology in Appendix G to ASME Code, Section XI, by application of ASME Code Case N–640 is acceptable, and pursuant to 10 CFR 50.12(a)(2)(ii), would maintain the underlying purpose of the NRC regulations to ensure an acceptable margin of safety for the Quad Cities and Limerick Generating Station Unit 1 RPVs and RCSs. The licensee's proposal to use ASME Code Case N–640 for generation of the MNGP P/T limit curves is predicated on the same technical basis as was used for generation of the P/T limits for Quad Cities and Limerick Generating Station Unit 1.

Therefore, the NRC staff concludes that pursuant to 10 CFR part 50, Section 50.12(a)(1), and 10 CFR part 50, Section 50.12(a)(2)(ii), (iii), and (v), granting an exemption is appropriate and that the methodology of ASME Code Case N–640 may be used to revise the P/T limits for MNGP.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR part 50, Section 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the Nuclear Management Company, LLC, an exemption from the requirements of 10 CFR part 50, Section 50.60(a) and 10 CFR part 50, Appendix G, for MNGP.

Pursuant to 10 CFR part 50, Section 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 8052).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of February 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4750 Filed 2–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Finding of No Significant Impact Related to Maine Yankee Atomic Power Company's License Amendment Request for Approval of the License Termination Plan

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–36, issued to Maine Yankee Atomic Power Company (the licensee), for the Maine Yankee Atomic Power Station (Maine Yankee), located in Lincoln County, Maine. The license amendment is related to the licensee's License Termination Plan (LTP). An environmental assessment (EA) was performed by the NRC staff in support of it's review of the license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI).

II. EA Summary

The proposed action would amend Facility Operating License DPR–36 to approve the Maine Yankee LTP. The proposed action is in accordance with the licensee's application dated October 15, 2002.

As described in the EA, the NRC staff found no significant impacts based on it's review of the adequacy of the radiation release criteria and the adequacy of the final status survey to meet NRC's unrestricted release criteria. Also, further described in the EA, the NRC staff focused it's review on land use, ground and surface water, and human health and considered potential non-radiological, radiological, and cumulative impacts. In reviewing the LTP the staff also determined that the environmental impacts were enveloped by the generic analysis performed in support of "Radiological Criteria for License Termination" (62 FR 39058).

III. Finding of No Significant Impact

Based on this review, the NRC staff has concluded that there are no significant environmental impacts on the quality of the human environment. Accordingly, the staff has determined that preparation of an Environmental Impact Statement is not warranted.

IV. Further Information

The licensee's request for the proposed action (ADAMS Accession No: ML022970110) and the NRC's complete Environmental Assessment (ADAMS Accession No.: ML030340122), and other related documents to this proposed action are available for public inspection and copying for a fee at NRC's Public Document Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents, along with most others referenced in the EA, are available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html.*

Any questions with respect to this action should referred to John Buckley, Decommissioning Branch, Mailstop T–7F19, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607.

Dated at Rockville, Maryland, this 24th day of February, 2003.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4751 Filed 2–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft Environmental Impact Statement for the Construction and Operation of the Proposed Mixed Oxide Fuel Fabrication Facility at the Savannah River Site, South Carolina, and Notice of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Draft Environmental Impact Statement and notice of public meetings.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing a Draft Environmental Impact Statement (DEIS) on the proposed construction and operation of a mixed oxide (MOX) fuel fabrication facility at the Savannah River Site in South Carolina. The DEIS is being issued as part of the NRC's decision-making process on whether to authorize Duke Cogema Stone & Webster (DCS), a contractor of the U.S. Department of Energy (DOE), to construct and operate the proposed MOX fuel fabrication facility (MOX facility).

The proposed MOX facility would convert depleted uranium dioxide and weapons-grade plutonium dioxide into MOX fuel. The DEIS discusses the purpose and need for the proposed MOX facility, and reasonable alternatives to the proposed action, including the no-action alternative. The DEIS also discusses the environment potentially affected by the proposal, presents and compares the potential environmental impacts resulting from the proposed action and its alternatives, and identifies mitigation measures that could eliminate or lessen the potential environmental impacts.

Based on the evaluation in the DEIS, the NRC environmental review staff has concluded that mitigation measures identified by DCS, and additional measures identified by NRC staff would reduce or eliminate adverse environmental impacts of the proposed action. The DEIS is a preliminary analysis of the environmental impacts of the proposed action and its alternatives. The Final EIS and any decision documentation regarding the proposed action will not be issued until public comments on the DEIS have been received and evaluated. Notice of the availability of the Final EIS will be published in the **Federal Register**.

Availability of Documents for Review

The DEIS, and other documents on which the DEIS is based, are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm.html*. A selected group of these documents are on the MOX web page: *http://www.nrc.gov/materials/fuel-cycle-fac/mox/licensing.html*. For those without access to the internet, paper copies of any electronic documents may be obtained for a fee by contacting the NRC's Public Document Room at 1–800–397–4209.

Public Comment

The NRC is offering an opportunity for public review and comment on the DEIS in accordance with applicable regulations, including NRC requirements in 10 CFR 51.73, 51.74 and 51.117. Any interested party may submit written comments on the proposed action and on the DEIS for consideration by the NRC staff. To be certain of consideration, comments must be received by April 14, 2003. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before April 14, 2003.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments will also be accepted by e-mail. Interested parties may e-mail their comments to the@nrc.gov. Comments will also be accepted by fax at (301) 415–5398, Attention: Tim Harris.

Public Meetings

The NRC will hold three public meetings to present an overview of the DEIS and to accept oral and written public comments. Prior to the Public Meetings, NRC staff will be available to informally discuss the MOX project and answer questions in an "open house" format. The meeting dates, times and locations are listed below:

March 25, 2003, Coastal Georgia Center, 305 Fahm Street, Savannah, Georgia, Open House: 5:30 p.m. to 7 p.m. Public Meeting: 7 p.m. to 10 p.m.

March 26, 2003, North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina, Open House: 5:30 p.m. to 7 p.m. Public Meeting: 7 p.m. to 10 p.m.

March 27, 2003, Charlotte-Mecklenburg Government Center, 600 E. Fourth Street, Charlotte, North Carolina, Open House: 5:30 p.m. to 7 p.m. Public Meeting: 7 p.m. to 10 p.m.

All meetings will be transcribed and will include (1) a presentation summarizing the contents of the DEIS and (2) an opportunity for interested government agencies, organizations, and individuals to provide comments on the DEIS. Persons should register prior to the start of each meeting to provide oral comments. Individual oral comments may have to be limited by the time available, depending upon the number of persons who register.

If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Harris' attention no later than March 19, 2003, to provide NRC staff with adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA process, please contact: Tim Harris at (301) 415–6613. For general or technical information associated with the proposed MOX facility, please contact: Drew Persinko at (301) 415–6522.

SUPPLEMENTARY INFORMATION: In January 2000, the DOE issued a Record of Decision pertaining to its surplus plutonium disposition program and the DOE's 1999 EIS related to this program [65 FR 1608]. The fundamental purpose of the DOE program is to ensure that plutonium produced for nuclear weapons and declared excess to national security needs is converted to forms that are inaccessible and unattractive for use in nuclear weapons.

The DEIS for the proposed MOX facility was prepared by the staff of the NRC and its contractor, Argonnne National Laboratory, in compliance with the National Environmental Policy Act (NEPA), and the NRC's regulations for implementing NEPA (10 CFR part 51). The proposed action involves a decision by NRC of whether to authorize DCS to construct and later operate the proposed MOX facility at the SRS to convert surplus weapons plutonium into MOX fuel.

If approved by the NRC, the proposed MOX facility would be built in the F-Area of the DOE's Savannah River Site (SRS). Feedstock (surplus plutonium dioxide and depleted uranium dioxide) would have to be transported to SRS to make the MOX fuel. To support operation of the proposed MOX facility, two other new facilities would have to be built by the DOE at the SRS.

Infrastructure upgrades, such as construction waste transfer pipelines, electric utility line realignment, and addition of access roads, would also be required. Any MOX fuel made at the proposed MOX facility would be transported to mission reactors, where it would be irradiated.

NRC published a Notice of Intent to prepare an EIS for the proposed MOX facility, and to conduct a scoping process, in the **Federal Register** on March 7, 2001 [66 FR 13794]. NRC staff subsequently held scoping meetings, and issued a Scoping Summary Report in August 2001. In early 2002, DOE announced its decision to alter its planned approach for surplus weapons plutonium disposition [67 FR 19432], causing the NRC to delay its issuance of the DEIS for the proposed MOX facility. On August 22, 2002, the NRC announced three mid-September public meetings to discuss changes in DCS' Environmental Report that resulted from changes in DOE's plans [67 FR 54501]. The meetings were held on September 17 in Savannah, Georgia, September 18 in Augusta, Georgia, and September 19 in Charlotte, North Carolina.

The DEIS describes the proposed action, and alternatives to the proposed action, including the no-action alternative. The DEIS' discussion of the no-action alternative evaluates the environmental impacts of the continued storage of surplus plutonium in various DOE locations nationwide, in the event NRC decides not to approve the proposed MOX facility. Alternatives considered but not analyzed in detail include alternate locations for the proposed MOX facility in the F-Area, alternative technology and design options, immobilization of surplus plutonium instead of producing MOX fuel, deliberately making off-specification MOX fuel, and the Parallex Project, the latter of which involves irradiating the MOX fuel in Candian CANDU reactors. Additionally, the DEIS compares the impacts of using HEPA filters to the impacts of using sand filters for removal of particulate air emissions.

The DEIS assesses the impacts of the proposed action and its alternatives for the issues of human health, air quality, hydrology, waste management, geology, noise, ecology, land use, cultural and paleontological resources, infrastructure, socioeconomics, accident impacts, decommissioning and environmental justice. Additionally, the DEIS analyzes and compares the costs and benefits of the proposed action.

Based on the evaluation in the DEIS, the NRC's preliminary recommendation is that the proposed action be approved, with implementation of proposed mitigation measures which would eliminate or substantially lessen any potential adverse environmental impacts.

This DEIS is a preliminary analysis of the environmental impacts of the proposed action. The NRC will review the public's comments, conduct any necessary analyses, and make appropriate revisions in developing the Final EIS for the proposed MOX facility.

Participation in the public comment process for the DEIS does not entitle participants to become parties to the ongoing NRC adjudicatory proceeding pertaining to the construction of the proposed MOX facility. Participation in adjudicatory proceedings is governed by the 10 CFR part 2 hearing procedures.

Dated at Rockville, Maryland, this 20th day of February 2003.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Acting Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4753 Filed 2–27–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request For Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15c2–1, SEC File No. 270–418, OMB Control No. 3235–0485.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c2–1 prohibits the commingling under the same lien of securities of margin customers (a) with other customers without their written consent and (b) with the broker or dealer. The rule also prohibits the rehypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the rehypothecation of customer account in contravention of the rule, issue and retain copies of notices of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 177 respondents per year (*i.e.*, broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 3,983 hours to comply with the rule. Each of these approximately 177 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 7,965 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 3,983 burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 21, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4695 Filed 2–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 3, 2003:

Closed Meetings will be held on Wednesday, March 5, 2003 at 10 a.m., and on Thursday, March 6, 2003 at 10 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Wednesday, March 5, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Adjudicatory matter; and

Amicus consideration.

The subject matter of the Closed Meeting scheduled for Thursday, March 6, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 26, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–4950 Filed 2–26–03; 3:58 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47392; File No. SR–NASD–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to NASD Interpretive Material 2260 ("IM–2260")

February 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 [2] thereunder, notice is hereby given that on February 13, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Interpretive Material 2260 ("IM–2260") relating to their approved rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements, and other material.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deleted language is [bracketed].

* * * * *

IM–2260. [Suggested] *Approved* Rates of Reimbursement

(a) The [Board of Governors has determined that the] following [suggested] *approved* rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements and other material [are to be used as a guide by members:] *shall be considered reasonable rates of reimbursement. In addition to the charges specified in this schedule, members also are entitled to receive reimbursement for: (1) actual postage costs (including return postage at the lowest available rate); (2) the actual cost of envelopes (provided they are not furnished by the issuer, the trustee, or a person soliciting proxies); and (3) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.*

(1) Charges for Initial Proxy and/or Annual Report Mailings

(A) [60] *40* cents for each set of proxy material, *i.e.*, proxy statement, form of proxy and annual report when mailed as a unit, *unless an opposition proxy statement has been furnished to securities holders,*[3] [plus postage,] with a minimum of $5.00 for all sets mailed;

(B) [20] *15* cents for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies *with a minimum of $3.00 for all sets mailed;*[.]

(C) $1.00 for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

(D) NASD has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees: $20.00 per nominee plus (i) 10 cents for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5 cents for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

(2) Charges for Proxy Follow-Up Mailings

[(A)] 40 cents for each set of follow-up material, plus postage[, when the follow-up material is mailed to all beneficial owners;].

[(B) 60 cents for each set of follow-up material, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing.]

[(3) Surcharge for Proxy Solicitation

Eighteen and one-half cents for each set of proxy material, *i.e.*, proxy statement, form of proxy and annual report when mailed as a unit, for the period from April 1, 1986 to March 31, 1987 as a surcharge in addition to the appropriate charges specified herein.]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD represents that there was an error in the proposed rule language in its original 19b–4 filing. The phrase "unless an opposition proxy statement is furnished to security holders," should have been underlined to indicate proposed new rule language. Telephone conversation between Shirley H. Weiss, Associate General Counsel, NASD, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on February 21, 2003.

[(4)] (3) [Additional Fee for Proxy Solicitation] *Charge for Providing Beneficial Ownership Information*

Six and one-half cents per [shareholder] name *of non-objecting beneficial owner* provided to the issuer pursuant to the issuer's request. *Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the member, but is furnished through an agent designated by the member, the issuer will be expected to pay the reasonable expenses of the agent in providing such information, in addition to the rate described above. (See SEC rules 14a–13(b) and 14c–7(b) under the Securities Exchange Act of 1934 and notes thereto.)*

Any member that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEC rule 14b–1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

[(5)] *(4)* Charges for Interim Report, Post Meeting Report and Other Material Mailings

[30] *15* cents for each copy, plus postage, for interim reports, post meeting reports, or other material with a minimum of $2.00 for all sets mailed.

[(6)] *(5) Incentive Fees*

An "incentive fee" (as defined below) for proxy material mailings, including the annual report, and 10 cents for interim report mailings, with respect to each account where the member has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically) shall be: (i) 25 cents with respect to issuers whose shares are held in at least 200,000 nominee accounts; and (ii) 50 cents with respect to issuers whose shares are held in fewer than 200,000 nominee accounts.

[(b) Members may charge for envelopes, provided that they are not furnished by the issuer, the trustee, or a person soliciting proxies.]

[(c)] *(b)* Members are reminded that rule 2430 requires that any such charges must be reasonable. *Members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.* [Accordingly, this is a guide and a member may request reimbursement of expenses at other rates after taking into consideration all relevant factors.]

(c) Rule 2260 requires members to forward promptly issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Members are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC rule 14b–1 under the Act).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD proposes to amend IM–2260 to adopt the same fee structure recently adopted by the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex") governing the reimbursement of members for costs incurred in forwarding proxy material, annual reports, information statements and other materials. The proposed amendments to IM–2260 would also advise members that they may request reimbursement of expenses at less than the approved rates, but that no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed without the prior notification to and consent of the person soliciting proxies or the company.

The SEC's proxy rules, rules 14a–13, 14b–1, and 14b–2 under the Act, do not specify the fees that nominees can charge issuers for distributing proxy materials; rather, they state that issuers must reimburse nominees for "reasonable expenses" incurred. The Commission approved the NYSE's current fee structure on March 25, 2002,[4] following numerous meetings of the Proxy Voting Review Committee (the "Committee"), a private initiative that was established to review the NYSE's pilot fee program and the proxy process in general.[5] The Commission found that "the Committee's recommended fee reductions [for 'large issuers'] were reasonable and should help to alleviate the burden and cost that large issuers currently bear in the proxy distribution process and more fairly allocate the cost among large issuers and small issuers."[6] The Commission concluded that the NYSE's proposed fee changes were reasonable and fairly allocated, did not discriminate among issuers, and did not impose any unnecessary burdens on competition. On June 3, 2002, the Amex amended its proxy reimbursement fees to conform to those of the NYSE.[7]

The proposed amendments to IM–2260 will provide members with the

[4] Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) ("NYSE Proposal"). The Commission emphasized that permanent approval of the NYSE's pilot program did not end the discussion of proxy fee reform. The Commission urged the NYSE and the Committee to continue discussing proxy fee reform with the eventual goal that the marketplace, rather than self-regulatory organizations, will establish reasonable and competitive proxy reimbursement fees. The Commission also stated that it expected the NYSE to continue to monitor its fees "to ensure they are related to 'reasonable expenses' of the NYSE's member brokers in accordance with the Act, and propose changes where appropriate."

[5] The Committee concluded that the NYSE's Proxy Reimbursement Guidelines, which had been established in a pilot program and approved by the Commission on March 14, 1997, had been instrumental in setting the costs that issuers incurred in having broker-dealers and intermediaries transmit proxy and other materials to security holders at fair and reasonable levels. On that basis, the Committee voted, with NASD abstaining, to seek permanent approval of the pilot program guidelines, with some modifications to reflect the economies of scale of large issuers, defined by the Committee as companies that have in excess of 200,000 street name shareholders (approximately 200 companies). The Committee voted to reduce the basic mailing fee from 50 cents to 40 cents; increase the suggested per-nominee fee for intermediaries that coordinate the proxy and mailing activities of multiple nominees to $20.10 per set of material required for "small issuers" and $20.05 per set of material required for "large issuers"; and reduce from 50 cents to 25 cents the incentive fee for initial mailings of the materials of large issuers.

[6] *Id.*

[7] Securities Exchange Act Release No. 46146 (June 28, 2002), 67 FR 44902 (July 5, 2002) ("Amex Proposal").

same schedule of fees that have been adopted by the NYSE and Amex. The proposed amendments to IM–2260 will also permit members to request reimbursement of expenses at less than the rates set forth in IM–2260, but it will require members to notify and obtain consent from the person soliciting proxies or the company for reimbursement at rates higher than the approved rates or for items or services not specifically referenced in IM–2260. The proposed rule change also advises members that they are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts), and that they may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules. The proposed rule change will continue to provide that a member providing materials under NASD rule 2260 may not charge for envelopes that are furnished by the issuer, the trustee, or a person soliciting proxies. By conforming its proxy reimbursement guidelines to those adopted by the NYSE and Amex, NASD proposes to adopt reimbursement rates that it believes the Commission has already determined are reasonable and fairly allocated, do not discriminate among issuers, and do not impose any unnecessary burdens on competition.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general and with section 15A(b)(6) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change to IM–2260 is designed to accomplish these ends by providing NASD members with rates of reimbursement for expenses incurred in forwarding proxy and other materials that are fair and reasonable and consistent with fees charged by the NYSE and Amex.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary and appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)[10] of the Act and rule 19b–4(f)(6)[11] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[12]

A proposed rule change filed under rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. NASD has requested that the Commission waive the 30-day pre-operative waiting period because it believes that doing so will be consistent with the protection of investors and public interest.

The Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative as of the date of filing to allow NASD to implement its revised proxy fee schedule immediately.[14] The Commission notes that it has already considered and addressed issues that may be raised by this proposal when it approved a similar proposal by the NYSE, and designated a similar proposal by the Amex as immediately effective upon filing.[15] The Commission further notes that this proposal will allow for consistency in proxy fees between NASD, the NYSE, and, Amex. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–NASD–2003–19 and should be submitted by March 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4696 Filed 2–27–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required under rule 19b–4(f)(6)(iii), NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[15] See NYSE Proposal, *supra* note 4 and Amex Proposal, *supra* note 7. The Commission notes that the NYSE Proposal was published for the full comment period and that the comments received were considered by the Commission and the NYSE.

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3479]

Commonwealth of the Northern Mariana Islands (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency effective February 5, 2003, the above-numbered declaration is hereby amended to include Public Assistance for the Islands of Saipan and Tinian within the Commonwealth of the Northern Mariana Islands. Damages were caused by Super Typhoon Pongsona and occurred on December 8, 2002, and continued through December 16, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 24, 2003, and for economic injury the deadline is September 24, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 21, 2003.

Hebert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–4730 Filed 2–27–03; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Wisconsin District Advisory Council; Public Meeting

The Wisconsin District Advisory Council (Wisconsin DAC) of the U.S. Small Business Administration will be conducting a meeting on Wednesday, March 19th 2003, 12 noon–1 p.m. at the MMAC Building 743 North Milwaukee Street on the 4th floor, in Milwaukee, Wisconsin. The meeting is open to the public. Seating is limited and is available on a first come, first serve basis. The focus of the meeting will be on the future goals, activities, and operations of the Wisconsin DAC.

Anyone wishing to attend and make an oral presentation to the Board must contact Yolanda Staples-Lassiter, no later than Monday, March 17, 2003 via e-mail or fax. Yolanda Staples-Lassiter, U.S. Small Business Administration, Milwaukee District Office, 310 West Wisconsin Avenue, Suite 400, Milwaukee, WI 53203, (414) 297–1090 phone or (414) 297–3928, fax or e-mail *yolanda.lassiter@sba.gov*.

Candace H. Stoltz,

Committee Management Officer.

[FR Doc. 03–4754 Filed 2–27–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Connecticut District Advisory Council; Public Meeting

The U.S. Small Business Administration Connecticut District Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 8:30 a.m., on Monday, March 24, 2003, Connecticut District Office, 330 Main Street, Hartford, Connecticut 06106, to discuss such matters as may be presented. For further information, write or call Marie Record, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut—(860) 240–4700.

Anyone wishing to attend and make an oral presentation to the Board must contact Marie A. Record, no later than Friday, March 21, 2003 via e-mail or fax. Marie A. Record, District Director, U.S. Small Business Administration, Connecticut District Office, 330 Main Street, Hartford, CT 06106 (860) 240–4670 phone or (860) 240–4714 fax or e-mail *marie.record@sba.gov*.

Candace H. Stoltz,

Committee Management Officer.

[FR Doc. 03–4755 Filed 2–27–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4286]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs, the Special Purpose Islamic Regiment, and the Islamic International Brigade

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that:

1. The Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs (a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion, a.k.a. Riyadh-as-Saliheen, a.k.a. the Sabotage and Military Surveillance Group of the Riyadh al-Salihin Martyrs, a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Shahids (Martyrs));

2. The Special Purpose Islamic Regiment (a.k.a. the Islamic Special Purpose Regiment, a.k.a. the al-Jihad-Fisi-Sabililah Special Islamic Regiment, Islamic Regiment of Special Meaning); and

3. The Islamic International Brigade (a.k.a. the Islamic Peacekeeping Brigade, a.k.a. the Islamic Peacekeeping Army, a.k.a. the International Brigade, a.k.a. Peacekeeping International Brigade), have committed, or pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: February 14, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–4781 Filed 2–27–03; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD17–02–005]

Cook Inlet Regional Citizen's Advisory Committee; Charter Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of recertification.

SUMMARY: The Coast Guard has recertified the Cook Inlet Regional Citizen's Advisory Council for the period covering November 27, 2002 through August 31, 2003. Under the Oil Terminal and Oil Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Cook Inlet, Alaska. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by the statute.

DATES: The Cook Inlet Regional Citizen's Advisory Council is certified through August 31, 2003.

ADDRESSES: You may request a copy of the recertification letter by writing to Commander, Seventeenth Coast Guard District(mor), P.O. Box 25517, Juneau, AK 99802–5517; or by calling 907–463–2807.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael Patterson,

Seventeenth Coast Guard District(mor), telephone 907–463–2807.

SUPPLEMENTARY INFORMATION:

Background And Purpose

On November 27, 2002, the Coast Guard recertified the Cook Inlet Regional Citizen's Advisory Council (CIRCAC) through August 31, 2003. Under the Oil Terminal and Oil Tanker Environmental Oversight Act of 1990 (33 U.S.C. 2732), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Cook Inlet, Alaska. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by Congress, 33 U.S.C. 2732(b).

On September 16, 2002, the Coast Guard published a notice of policy on revised recertification procedures for alternative voluntary advisory groups in lieu of councils at Prince William Sound and Cook Inlet, AK (67 FR 58440, 58441). This revised policy indicated that applicants seeking recertification in 2002 need only submit a streamlined application and public comments would not be solicited prior to recertification.

Upon review of the information submitted by CIRCAC as part of the certification package, it was noted that in an audit of the CIRCAC's financial statements the auditor found that CIRCAC's by-laws and corporate structure aligned with the basic structure for non-profit corporations. The auditor also noted that CIRCAC has proper expenditure measures in place and employs contemporary information technology practices. The auditor performing the audit made a recommendation for improving the financial management of the organization. In particular, the auditor recommended that CIRCAC prepare formal, written policies and procedures for its accounting practices. The Coast Guard agrees and recommends that CIRCAC implement the auditor's recommendation.

Dated: February 6, 2003.

James W. Underwood,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 03–4764 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 31, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tay Yoshitani, Executive Director, Port of Oakland, at the following address: 530 Water Street, Oakland, CA 94607. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On February 12, 2003, the FAA determined that the application to impose and use a PFC submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 16, 2003.

The following is a brief overview of the application No. 03–12–C–00–OAK:

Level of proposed PFC: $4.50.

Proposed charge effective date: December 1, 2003.

Proposed charge expiration date: March 1, 2004.

Total estimated PFC revenue: $7,600,000.

Brief Description of the proposed project: Additional Security Expenditures as a Result of September 11, 2001.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA form 1800–31 and Commuters or Small Certificated Air Carriers filing DOT form 298–C T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application in person at the Port of Oakland.

Issued in Lawndale, California, on February 12, 2003.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–4798 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Diego International Airport, San Diego, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Diego International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). The FAA will approve or disapprove the application, in whole or in part, no later than May 16, 2003.

DATES: Comments must be received on or before March 31, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Thella Bowens, Interim Executive Director, San Diego County Regional Airport Authority at the following address: P.O. Box 82776, San Diego, CA 92138–2776. Air carriers and foreign air carriers may submit copies of written comments previously provided to the San Diego County Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: John Milligan, Supervisor Standards Section, Federal Aviation Administration, Airports Division, 15000 Aviation Boulevard, Room 3024, Lawndale, CA 90261, Telephone: (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Diego International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On February 18, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the San Diego County Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 10, 2003.

The following is a brief overview of the impose and use application No. 03–03–C–00–SAN:

Level of proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: December 31, 2005.

Total estimated PFC revenue: $83,975,730.

Brief description of the proposed project: Replace ARFF Vehicle, Taxiway Improvements, Runway Improvements, Commuter Terminal Apron Improvements, Noise Mitigation, Environmental Remediation, Environmental Studies, Airport Security Improvements, Terminal Improvements, Airport Access Improvements, and Infrastructure Data Management System (Phase 3).

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Diego County Regional Airport Authority.

Issued in Lawndale, California, on February 18, 2003.

Ellsworth Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–4799 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–14116

Applicant: Canadian National Railway, Mr. Kenneth J. Bagby, Signals Supervisor, 3460 Bristol Road, Flint, Michigan 48507.

The Canadian National Railway (CN) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, part 236, section 236.408, to the extent that route locking need not be provided for the "32nd Street Crossover" power-operated switches, at milepost 333.28 in the existing traffic control system, at Port Huron, Michigan, on the Flint Subdivision, Midwest Division.

Applicant's justification for relief: The installation is not uncommon in the railroad industry and provides all of the requisite components and safety features of a standard interlocking or an electric lock location that would be found in TCS territory; CN has three similar installations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001.

All Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on February 24, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–4766 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2003–14424, Notice No. 03–2]

Hazardous Materials: Formal Interpretation of Regulations

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Formal interpretation of regulations.

SUMMARY: The Research and Special Programs Administration (RSPA) is

issuing a formal interpretation of the Hazardous Materials Regulations (HMR) identifying when: (1) An airline passenger "offers" hazardous materials in carry-on baggage (including items on his/her person) or checked baggage for transportation under Federal hazardous materials transportation law and the HMR, and (2) when an air carrier accepts carry-on baggage (including items on a passenger's person) or checked baggage for transportation under the Federal hazardous materials transportation law and the HMR.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Assistant Chief Counsel for Hazardous Materials Safety, Research and Technology, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION: RSPA issues the HMR (49 CFR parts 171 through 180) as part of its implementation of the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.* From time to time, RSPA's Chief Counsel issues formal interpretations of the HMR which are published in the **Federal Register**. Publication of these interpretations promotes a better understanding of the HMR and improves compliance.

In addition to formal and informal interpretations issued by the Chief Counsel, RSPA's Office of Hazardous Materials Standards provides information and informal clarifications of the HMR on an ongoing basis through a telephonic information center (800–467–4922 or 202–366–4488) and informal written interpretations or clarifications in response to written inquiries. RSPA's informal letters of clarification (and additional information concerning the HMR) are also available through the Hazmat Safety Homepage at *http://hazmat.dot.gov*. The Chief Counsel's formal and informal interpretations are available through the Chief Counsel's homepage at *http://rspa-atty.dot.gov*. In addition, some of RSPA's interpretations and clarifications may be reproduced or summarized in various trade publications. Further information concerning the availability of informal guidance and interpretations of the HMR is set forth in 49 CFR 105.20.

Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

Background

In general, a hazardous material subject to the HMR is prohibited in the cabin of a passenger-carrying aircraft (49 CFR 175.85) and may only be carried in the cargo compartment of a passenger-carrying aircraft when it fully conforms to the hazard communication, packaging and stowage requirements of the HMR. In order to accommodate the needs of the traveling public, exceptions are provided in 49 CFR 175.10 to allow passengers to carry certain quantities and types of articles, such as medicines and toiletries, in their checked and carry-on baggage (including on one's person). *See* 49 CFR 175.10 for a detailed listing of the materials which passengers are permitted to carry.

Hazardous materials in carry-on baggage and checked baggage are subject to the HMR when offered for transportation in commerce. Section 171.2(a) of 49 CFR provides that "no person may offer or accept a hazardous material for transportation in commerce unless * * * the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of [the HMR], or an exemption, approval or registration issued under [the HMR] * * *." The Secretary of Transportation has delegated to certain agencies within the Department the authority in 49 U.S.C. 5123 to assess a civil penalty against any person who "knowingly violates" a requirement in the HMR, including the provision in § 171.2(a) which is discussed above. Section 5123 (a) provides that a person "acts knowingly" when (A) the person has actual knowledge of the facts giving rise to the violation; or (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

Security concerns have led to enhanced screening of air passengers and their baggage for weapons, explosives, and incendiaries. As a result of this increased focus on passenger carry-on baggage (including items on one's person) and checked baggage, screening personnel are discovering hazardous materials during the screening process. Consequently, there is a need to identify, for purposes of compliance with the HMR, when a passenger "offers" a hazardous material for transportation by aircraft in carry-on or checked baggage and when an air carrier "accepts" a hazardous material for transportation by aircraft in carry-on or checked baggage.

Interpretation

This formal interpretation identifies, for purposes of the HMR, the point at which: (1) An airline passenger "offers" hazardous material in carry-on baggage (including items on his/her person) or checked baggage for transportation in commerce, and (2) an air carrier "accepts" hazardous material in carry-on baggage (including items on a passenger's person) or checked baggage for transportation in commerce. This interpretation addresses only passenger carry-on and checked baggage and does not address or apply to cargo shipments. The Federal Aviation Administration (FAA), which has the primary responsibility for enforcing the HMR with regard to air transportation, concurs with this interpretation. Prior advice given by FAA that may be inconsistent with this interpretation is superseded by this formal interpretation. RSPA has coordinated this interpretation with the Transportation Security Administration, which has responsibility for aviation security.

Carry-on items: A passenger in control of carry-on baggage (including items on his/her person) containing a hazardous material offers and represents that the baggage is fit for transportation by aircraft when the passenger tenders the baggage to screening personnel at an airport security screening checkpoint or otherwise attempts to proceed through the checkpoint with the hazardous material on his/her person. A passenger offers carry-on baggage for transportation by placing the baggage on the X-ray machine conveyer belt, handing the baggage to screening personnel, placing the baggage in a bin or tray for examination by screening personnel, or when the passenger physically passes through the security checkpoint with the baggage (including items on his/her person). Screening personnel at the security screening checkpoint do not need to have physical control of the carry-on baggage for an offer to have occurred; simply presenting the baggage for screening at a security screening checkpoint or passing through the checkpoint with the baggage (including items on a passenger's person) is sufficient to constitute an offer.

Carry-on baggage is accepted by an air carrier when the airline accepts the boarding pass of the passenger while boarding the flight. The passenger is responsible for ensuring compliance with the HMR from the point of offer and at all times until transportation is complete.

Checked baggage: Checked baggage containing a hazardous material is offered to the carrier at the point the passenger presents the baggage for acceptance by the carrier. This can occur at curbside check-in, at the ticket counter at the airport, or when the passenger presents the bag to screening personnel for explosive detection screening as a prerequisite to presentation to the carrier. When the baggage is tendered at curbside check-in or the ticket counter to the air carrier, the baggage is considered to have been accepted when the air carrier issues a baggage claim ticket for the checked baggage.

Accordingly, if a passenger's carry-on baggage or checked baggage contains a hazardous material that does not comply with Federal hazardous materials transportation law or the HMR, and the passenger has tendered the baggage to screening personnel at an airport security screening checkpoint, passed through the checkpoint with the baggage (including items on his/her person), or offered it to the carrier, the passenger may be subject to civil or criminal penalties under Federal hazardous materials transportation law, the HMR, or any other applicable laws or regulations. Likewise, an air carrier that knowingly accepts a passenger's carry-on baggage or checked baggage containing a hazardous material that does not comply with Federal hazardous materials transportation law or the HMR may be subject to civil or criminal penalties under Federal hazardous materials transportation law, the HMR, or any other applicable laws or regulations.

Information Concerning Passengers Who Need Supplemental Oxygen

The above interpretation does not affect the use of oxygen by passengers at airports. Ticketed passengers using their own oxygen on the ground, who do not intend to transport the oxygen because they are receiving oxygen for the flight from the air carrier, are not considered to be offering their oxygen for transportation on an aircraft when they enter or pass through the security screening checkpoint. Passengers may not carry oxygen aboard an aircraft; it must be provided by the aircraft operator (*see* 49 CFR 175.10 and 14 CFR 121.574).

Issued in Washington, DC, on February 25, 2003.

Barbara Betsock,

Acting Chief Counsel.

[FR Doc. 03–4800 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub–No. 174X)]

Illinois Central Railroad Company—Abandonment Exemption—in Randolph County, IL

Illinois Central Railroad Company (IC)[1] has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.45-mile line of railroad between milepost MM 602.55 and milepost 603.0 near Baldwin, in Randolph County, IL. The line traverses United States Postal Service Zip Code 62217.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 30, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 10, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 20, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to IC's representative: Michael J. Barron, Jr., Illinois Central Railroad Company, c/o Canadian National/Illinois Central, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

IC has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 7, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IC's filing of a notice of consummation by February 28, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: February 19, 2003.

[1] IC is a wholly owned subsidiary of Canadian National Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.G.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–4551 Filed 2–27–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–846X and STB Docket No. AB–344 (Sub-No. 2X)]

Illinois Indiana Development Company, LLC—Abandonment Exemption—In LaPorte County, IN; Chicago Southshore & South Bend Railroad—Discontinuance of Service Exemption—In LaPorte County, IN

Illinois Indiana Development Company, LLC (IIDC) and Chicago Southshore & South Bend Railroad (CSS) have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for IIDC to abandon and CSS to discontinue service over an approximately 0.6-mile line of railroad from approximately milepost 157.9, near Dickson Street in Michigan City, northwest across Trail Creek to approximately milepost 158.5, near U.S. Highway 12, in LaPorte County, IN. The line traverses United States Postal Service Zip Code 46360.

IIDC and CSS have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on March 30, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 10, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 20, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Troy W. Garris, Weiner Brodsky Sidman Kider PC, 1300 Nineteenth Street, NW., Fifth Floor, Washington, DC 20036–1609.

If the verified notice contains false or misleading information, the exemptions are void *ab initio*.

Applicants have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 5, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339). Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historical preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IIDC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IIDC's filing of a notice of consummation by February 28, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: February 21, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–4621 Filed 2–27–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 20, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 31, 2003 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0013.

Form Number: PD F 1048 and PD F 2243.

Type of Review: Extension.

Title: Claim for Lost, Stolen or Destroyed U.S. Savings Bonds (1048); and Supplemental Statement for U.S. Savings Bonds (2243).

Description: PD F 1048 and PD F 2243 are used by owner or others having knowledge to request substitute securities or payment of lost, stolen or destroyed securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Burden Hours Per Respondent: PD F 1048—20 minutes, PD F 2243—5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 26,400 hours.

OMB Number: 1535–0035.

Form Number: PD F 4881.

Type of Review: Extension.

Title: Application for Payment of U.S. Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding $1,000 By the Survivor of A Deceased Owner Whose Estate is Not Being Administered.

Description: PD F 4881 is used by survivors of deceased bond owners to apply for proceeds from bonds, or related checks.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,965.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 991 hours.

OMB Number: 1535–0036.

Form Number: PD F 2513.

Type of Review: Extension.

Title: Application by Voluntary Guardian of Incompetent Owner of United States Savings Bonds/Notes.

Description: PD F 2513 is used by voluntary guardian of incompetent bond owner(s) to establish right to act on behalf of incompetent owner.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,650.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 2,600 hours.

OMB Number: 1535–0064.

Form Number: PD F 1980 and PD F 2490.

Type of Review: Extension.

Title: Description of United States Savings Bonds Series HH/H (1980); and Description of United States Bonds/Notes (2490).

Description: PD F 1980 and PD F 2490 are used by owners of United States Savings Bonds/Notes to describe their holdings.

Respondents: Individuals or households .

Estimated Number of Respondents: 19,000.

Estimated Burden Hours Per Respondent: PD F 1980—6 minutes, PD F 2490—6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 1,900 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–4698 Filed 2–27–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Collection Comment Request; Report of International Transportation of Currency or Monetary Instruments

AGENCY: Financial Crimes Enforcement Network (FinCEN).

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites the general public and other Federal agencies to comment on an information collection requirement concerning the Report of International Transportation of Currency or Monetary Instruments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to: FinCEN: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, PO Box 39, Vienna, VA 22183–0039, *Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments.

Comments also may be submitted by electronic mail to the following Internet address: *"regcomments@fincen.treas.gov"* with the caption in the body of the text, *"Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments."

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to:

FinCEN: Russell Stephenson, Office of Regulatory Programs, FinCEN at (202) 354–6400.

Customs: Walter Wilkowski, Financial Investigations, 202–927–1469.

SUPPLEMENTARY INFORMATION:

Title: Report of International Transportation of Currency or Monetary Instruments.

OMB Number: 1515–0014.

Form Number: Customs Form 4790.

Abstract: The Bank Secrecy Act, titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Bank Secrecy Act specifically states that "a person or an agent or bailee of the person shall file a report * * * when the person, agent, or bailee knowingly—(1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time—(A) from a place in the United States to or through a place outside the United States; or (B) to a place in the United States from or through a place outside the United States; or (2) receives monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States." 31 U.S.C. 5316(a). The requirement of 31 U.S.C. 5316(a) has been implemented through regulations promulgated at 31 CFR 103.23 and through the instructions to the Report of International Transportation of Currency or Monetary Instruments (CMIR), U.S. Customs Service Form 4790.

Information collected on the CMIR is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is of use in investigations involving international and domestic money laundering, tax evasion, fraud, and other financial crimes.

Current Actions: No changes are being made at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals, business or other for-profit institutions, not-for-profit institutions.

Estimated Number of Respondents: 180,000.

Estimated Time Per Respondent: 11 minutes.

Estimated Total Annual Burden Hours: 33,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 21, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–4789 Filed 2–27–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–372–88; INTL–401–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, INTL–372–88, (TD 8632), Section 482 Cost Sharing Regulations (§ 1.482–7); INTL–401–88 (TD 8552), Intercompany Transfer Pricing Regulations Under Section 482 (§§ 1.482–1, 1.482–4).

DATES: Written comments should be received on or before April 29, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: (INTL–372–88) Section 482 Cost Sharing Regulations; (INTL–401–88) Intercompany Transfer Pricing Regulations Under Section 482.

OMB Number: 1545–1364.

Regulation Project Number: INTL–372–88; INTL–401–88.

Abstract: The information collections in INTL–372–88 are necessary to determine whether an entity is an eligible participant of a qualified cost sharing arrangement and whether each eligible participant is sharing the costs and benefits of intangible development on an arm's length basis. INTL–401–88 relates to the pricing of transfers of tangible property, intangible property, or services between related parties to ensure that taxpayers clearly reflect income and to prevent the avoidance of taxes with respect to such transactions.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 7 hrs., 51 minutes.

Estimated Total Annual Burden Hours: 7,850 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 20, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–4807 Filed 2–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of 2002 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act: A report summarizing the closed meeting activities of the Art Advisory Panel during 2002, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Internal Revenue Service, Attn: FOI Reading Room, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone (202) 622–5164 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, AP:ART, Internal Revenue Service/Appeals, 1099 14th Street, NW., Washington, DC 20005, Telephone (202) 694–1861 (Not a toll free telephone number).

Robert E. Wenzel,

Acting Commissioner of Internal Revenue.

[FR Doc. 03–4806 Filed 2–27–03; 8:45 am]

BILLING CODE 4830–01–M

Corrections

Federal Register
Vol. 68, No. 40
Friday, February 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Employment Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582

Correction

In notice document 03–2461 beginning on page 5748 in the issue of Tuesday, February 4, 2003, make the following corrections:

1. On page 5757, under the state "KENTUCKY", correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
KENTUCKY	
BALANCE OF WARREN COUNTY	WARREN COUNTY LESS BOWLING GREEN CITY

2. On page 5759, under the state "MICHIGAN", correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
MICHIGAN	
GLADWIN COUNTY GOGEBIC COUNTY HIGHLAND PARK CITY	GLADWIN COUNTY GOGEBIC COUNTY HIGHLAND PARK CITY IN WAYNE COUNTY

3. On page 5761, under the state "NEW JERSEY", correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
NEW JERSEY	
BALANCE OF CUMBERLAND COUNTY	CUMBERLAND COUNTY LESS MILLVILLE CITY VINELAND CITY

4. On page 5763, under the state "NORTH CAROLINA", correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
NORTH CAROLINA	
BALANCE OF GASTON COUNTY N.C. GASTONIA CITY N.C.	GASTON COUNTY N.C. LESS GASTONIA CITY N.C. GASTONIA CITY N.C IN GASTON COUNTY N.C

5. On page 5765, under the state "PENNSYLVANIA", correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
PENNSYLVANIA	
HAZLETON CITY	HAZLETON CITY IN LUZERNE COUNTY

6. On page 5769, under the state "UTAH", correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
UTAH	
DUCHESNE EMERY COUNTY	DUCHESNE COUNTY EMERY COUNTY

7. On the same page, under the state "VIRGINIA", correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
VIRGINIA	
DANVILLE CITY	DANVILLE CITY
DICKENSON COUNTY	DICKENSON COUNTY
GALAX CITY	GALAX CITY

[FR Doc. C3–2461 Filed 2–27–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Payments to Persons Who Hold Certain Categories of Judgments Against Cuba or Iran

February 19, 2003.

Correction

In notice document 03–3925 beginning on page 8077 in the issue of Wednesday, February 19, 2003, make the following correction:

On page 8082, in the third column, under the heading **Part 6. Available Funds for Iran-Related Claims**, the last paragraph on the page should be removed.

[FR Doc. C3–3925 Filed 2–27–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
February 28, 2003

Part II

Environmental Protection Agency

40 CFR Parts 9 and 94
Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters Per Cylinder; Final Rule.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 94

[AMS–FRL–7448–9]

RIN 2060–AJ98

Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters Per Cylinder

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, we are adopting emission standards for new marine diesel engines installed on vessels flagged or registered in the United States with displacement at or above 30 liters per cylinder. These standards are equivalent to the internationally negotiated standards for oxides of nitrogen and will be enforceable under U.S. law for new engines built on or after January 1, 2004. The certification and compliance program we are adopting is similar to the internationally negotiated program, but contains additional provisions reflecting certain Clean Air Act-specific compliance provisions and the related need to adopt test procedures designed to achieve the emission reductions called for under Clean Air Act section 213. These standards will apply until we adopt a second tier of standards in a future rulemaking. In developing that future rulemaking, which will be completed no later than April 27, 2007, we will consider the state of technology that may permit deeper emission reductions and the status of international action for more stringent standards. We will also consider the application of such a second tier of standards to engines on foreign vessels that enter U.S. ports.

We are also adopting additional standards for new engines with displacement at or above 2.5 liters per cylinder but less than 30 liters per cylinder. These standards, which are currently voluntary, are also equivalent to the internationally negotiated standards for oxides of nitrogen. The standards will apply through 2006. Beginning in 2007, the Tier 2 standards we finalized for these engines in 1999 will go into effect (64 FR 73300, December 29, 1999; 40 CFR part 94).

DATES: This final rule is effective April 29, 2003.

The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of April 29, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket Number A–2001–11 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B–102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket and Reading Room by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

For further information on electronic availability of this action, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division hotline, (734) 214–4636, *asdinfo@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected Entities

This action will affect companies and persons that manufacture, sell, or import into the United States new marine compression-ignition engines for use on vessels flagged or registered in the United States; companies and persons that make vessels that will be flagged or registered in the United States and that use such engines; and the owners or operators of such U.S. vessels. Further requirements apply to companies and persons that rebuild or maintain these engines. Affected categories and entities include the following:

Category	NAICS Code[a]	Examples of potentially affected entities
Industry	333618	Manufacturers of new marine diesel engines.
Industry	336611	Manufacturers of marine vessels.
Industry	811310	Engine repair and maintenance.
Industry	483	Water transportation, freight and passenger.
Industry	324110	Petroleum refineries.
Industry	422710, 422720	Petroleum Bulk Stations and Terminals; Petroleum and Petroleum Products Wholesalers.

[a] North American Industry Classification System (NAICS).

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT.**

Additional Information About This Rulemaking

Emission standards for new marine diesel engines at or above 30 liters per cylinder were considered by EPA in two previous rulemakings, in 1996 and in 1999. The notice of proposed rulemaking for the first rule (for the control of air pollution from new gasoline spark-ignition and diesel compression-ignition marine engines) can be found at 59 FR 55930 (November 1994); a supplemental notice of proposed rulemaking can be found at 61 FR 4600 (February 7, 1996); and the final rule can be found at 61 FR 52088 (October 4, 1996). The notice of proposed rulemaking for the second rule (for the control of air pollution from new marine compression-ignition engines at or above 37 kW) can be found at 63 FR 68508 (December 11, 1998); the final rule can be found at 64 FR 73300 (December 29, 1999). These documents are available on our Web sites, *http://www.epa.gov/otaq/marine.htm* and *http://www.epa.gov/otaq.marinesi.htm*. In addition, we recently adopted emission standards for recreational marine diesel engines (67 FR 68242, November 8, 2003). This final rule relies in part on information obtained for those rulemakings, which can be found in Public Dockets A–92–28, A–97–50, and A–2000–01. Those dockets are incorporated by reference into the docket for this proposal, A–2001–11.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, Final Regulatory Support Document, and other rulemaking documents are available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA–AIR* (either select desired date or use Search features).

2. *http://www.epa.gov/otaq* (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

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I. Introduction

A. Background

Marine diesel engines can be significant contributors to local ozone, carbon monoxide (CO), and particulate matter (PM) levels, particularly in commercial ports and along coastal areas.[1,2] This rule addresses these air pollution concerns by adopting national emission standards for the first time for marine diesel engines with per-cylinder displacement at or above 30 liters or more that are installed on vessels flagged or registered in the United States.[3] These engines, also known as Category 3 marine diesel engines, are very large marine engines used primarily for propulsion power on ocean-going vessels such as container ships, tankers, bulk carriers, and cruise ships. Category 3 marine diesel engines have not previously been regulated under our nonroad engine programs. This rule also adopts standards for marine diesel engines with per-cylinder displacement at or above 2.5 liters per cylinder but less than 30 liters per

[1] References to diesel-cycle engines, also referred to as "diesel engines" in this document are intended to cover a particular kind of engine technology, *i.e.*, compression-ignition combustion. Compression-ignition engines are typically operated on diesel fuel, though other fuels, such as compressed natural gas, may also be used. This contrasts with otto-cycle engines (also called spark-ignition or SI engines), which typically operate on gasoline. The requirements set out in this action apply only to compression-ignition engines.

[2] Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of volatile organic compounds (VOC) and NO_X in the presence of heat and sunlight. Hydrocarbons (HC) are a large subset of VOC, and to reduce mobile source VOC levels we set maximum emission standards for hydrocarbons. VOCs can also be part of the secondary formation of PM.

cylinder installed on vessels flagged or registered in the United States.

The emission-control program we are adopting in this rule is a continuation of the process of establishing emission standards for nonroad engines and vehicles under Clean Air Action section 213(a).[4]

This is our third action for emission standards for marine diesel engines above 37 kW. In our first action, in 1999, we adopted emission standards for commercial marine engines above 37 kilowatts (kW) (64 FR 73300, December 29, 1999; 40 CFR part 94). The standards adopted in that rule consist of mandatory standards, referred to as our Tier 2 standards, that apply to engines above 37 kW with per-cylinder displacement up to 30 liters (also known as Category 1 and Category 2 marine diesel engines).[5] These Tier 2 standards apply to oxides of nitrogen (NO_X), hydrocarbon (HC), PM and CO emissions and go into effect in 2004–2007, depending on engine size. Our Tier 2 marine diesel engine standards are expected to achieve a 32-percent reduction in NO_X emissions for Category 1 and Category 2 marine diesel engines by 2030 relative to uncontrolled levels. The Tier 2 standards for Category 1 and Category 2 marine diesel engines also contain PM standards that are expected to achieve a 26-percent reduction in PM emissions by 2030. We did not adopt mandatory emission standards for Category 3 marine diesel engines in 1999. Manufacturers of those engines were expected to comply voluntarily with internationally negotiated NO_X standards.

In our second action for marine diesel engines above 37 kW, we adopted standards for recreational marine diesel engines (67 FR 68242, November 8, 2002). These numerical standards are identical to those we finalized for commercial marine diesel engines in 1999. However, the engines are tested using a different duty cycle and the effective date for recreational marine diesel engines is 2006–2009, depending on engine size.

This third action for marine diesel engines above 37 kW was proposed on May 29, 2002 (67 FR 37548). At a public hearing on June 13 and during the public comment period, which ended on July 16, 2002, we heard from over 50 commenters. The emission-control program we are adopting in this action follows from the approach described in our proposal, though we have made numerous adjustments in response to the comments and other information received since the proposal.

B. How Is This Document Organized?

After this introductory section, Section II describes the set of engines that will be required to comply with the standards. Section III contains the standards we are finalizing. Section IV describes the future rulemaking we are committing to pursue. Section V describes various compliance provisions. Section VI summarizes the projected impacts of the standards. Section VII gives an update on the Blue Cruise program we described in our proposal. Finally, Sections VIII and IX contain information about how we satisfied our administrative requirements and about the statutory provisions for this final rule.

Additional information on many of these topics can be found in the Final Regulatory Support Document and the Summary and Analysis of Comments. These documents and all the comments we received are in Docket A–2001–11.

The remainder of this section summarizes the new requirements and the air quality need for the rulemaking. We also provide an update on the status of U.S. ratification of MARPOL Annex VI.

C. What Requirements Are We Finalizing?

We are adopting emission standards for new marine diesel engines installed on vessels flagged or registered in the United States. We are adopting standards for the first time for new Category 3 marine diesel engines, beginning in 2004. We are also adopting additional standards for some Category 1 and all Category 2 marine diesel engines, also beginning in 2004. This section presents a brief description of this emission-control program. More details can be found in Sections III and IV of this preamble and in the Final Regulatory Support Document.

1. Category 3 Marine Diesel Engines

Clean Air Act section 213(a)(3) requires EPA to adopt regulations that contain standards concerning certain pollutants reflecting the greatest degree of emission reductions achievable through the application of technology that will be available, taking into consideration the availability and costs of the technology, and noise, energy, safety factors and existing motor vehicle standards. EPA is also to revise these standards from time to time. The emission-control program we are adopting in this rule meets these criteria through a two-part approach. First, we are adopting near-term Tier 1 standards that will go into effect immediately based on readily available emission-control technology. Second, we are adopting regulations that set a schedule for a future rulemaking to assess and adopt an appropriate second tier of standards. We recognize that manufacturers can achieve additional reductions with more lead time than is provided by the Tier 1 standards. They can do this by expanding the use and optimization of in-cylinder controls, combined with the significant emission reductions that may be achievable with advanced technologies such as selective catalytic reduction or water injection. We believe, however, that it is appropriate to defer a final decision on the longer-term Tier 2 standards to a future rulemaking. While there is a certain amount of information available about the advanced technologies at this time, there are several outstanding technical issues concerning the widespread commercial use of these technologies. Deferring the Tier 2 standards to a second rulemaking will allow us to obtain important additional information on the use of the these advanced technologies that we expect to become available over the next few years. This new information may include (1) new developments as manufacturers continue to make various improvements to the technology and address any remaining concerns, (2) data or experience from recently initiated in-use installations using the advanced technologies, and (3) information from longer-term in-use experience with the advanced technologies that will be especially helpful for evaluating the long-term durability of emission controls. We believe the projected time frame for the future rulemaking is appropriate to allow us to make the best use of information that will be available to have a sound technical basis for assessing the technological capabilities of emission-control systems that include advanced technologies. We will then be best situated to make a technology-based decision that maximizes emission reductions from these engines, taking into consideration cost and other appropriate factors.

While deferring adoption of the Tier 2 standards to a future rulemaking is appropriate for the reasons described above, an additional reason supporting this approach is to pursue further negotiations in the international arena to achieve more stringent global emission standards for marine diesel engines. As discussed below, adopting appropriate international standards has the potential to maximize the control of emissions from U.S. and foreign vessels.

The near-term Tier 1 standards we are adopting are equivalent to the internationally negotiated NO_X standards established by the International Maritime Organization (IMO) in Annex VI to the International Convention on the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto (more commonly referred to as MARPOL or MARPOL 73/78; the standards are referred to as the Annex VI NO_X standards).[6] As explained in Section III below and in the Final Regulatory Support Document, these standards are achievable almost immediately, with less than one year of lead time, because manufacturers are already achieving and certifying to these standards under our Voluntary Statement of Compliance program for Annex VI. These near-term standards are being achieved through the application of currently available technology, including optimized turbocharging, higher compression ratios, and optimized fuel injection. The certification and compliance program we are adopting is similar to the internationally negotiated program, but contains additional provisions reflecting certain Clean Air Act-specific compliance provisions and the related need to adopt test procedures designed to achieve the emission reductions called for under Clean Air Act section 213. These certification requirements are described in Section V of this preamble. These Tier 1 standards are expected to result in negligible costs because engine manufacturers are already producing engines that meet the MARPOL Annex VI NO_X limits. Engine manufacturers should not have to engage in additional research and development to achieve these standards. Recognizing that some additional lead time is needed for manufacturers in some cases, we are including an interim provision that will allow manufacturers to use their Annex VI test data to show compliance with the Tier 1 standards.

We considered, but rejected, setting near-term Tier 1 standards that would require a level of emission control greater than that necessary to meet the MARPOL Annex VI NO_X limits, for a combination of reasons. We concluded that setting more stringent near-term Tier 1 standards would likely delay achieving greater environmental benefits in the longer term. The additional lead time that would be necessary to set a Tier 1 standard based on further use and optimization of in-cylinder control would lead to two separate—and possibly conflicting—design steps, one for Tier 1 and a second for Tier 2. Dividing manufacturers' resources this way has the potential to delay the Tier 2 standards. For example, manufacturers would potentially need to make initial changes to in-cylinder designs, then pursue an additional development program to optimize the in-cylinder technologies for controlling emissions in conjunction with advanced technologies. We believe the best route to achieving the maximum reductions from Category 3 marine engines is a near-term Tier 1 standard based on the use of existing technologies, followed by a Tier 2 rulemaking in the next few years that focuses on designing the optimum combination of in-cylinder and advanced technology to reduce emissions from these engines.

The second phase of our emission-control program for Category 3 marine diesel engines will consist of more stringent standards that reflect the application of advanced emission-control technologies and further optimization of in-cylinder controls. We understand that further use and optimization of in-cylinder control can achieve emission reductions beyond the levels needed to meet the Tier 1 standards. As discussed in the Final Regulatory Support Document, we believe that manufacturers can, with additional lead time, make greater use and optimization of in-cylinder controls to reduce emissions at least 10 to 15 percent below Tier 1 levels. It is not clear at this time that in-cylinder controls alone could reduce emissions 30 percent below Tier 1 levels. However, in combination with advanced technologies, emission reductions should be greater than 30 percent below Tier 1 levels. In the Tier 2 rulemaking, we therefore expect to focus on standards that would be based on achieving greater emission reductions through optimizing in-cylinder controls and incorporating advanced technologies such as SCR or water. As discussed above, adopting Tier 2 standards at this time based only on in-cylinder controls could lead to two separate and possibly conflicting design steps, potentially delaying introduction of advanced emission-control technologies and their anticipated emission reductions.

At this time, however, there are still several outstanding technical issues involving the use of these advanced emission-control technologies. For example, there are technical issues concerning the impacts of fuel sulfur levels on emissions, the ability of these technologies to achieve emission reductions at low engine loads, and their impacts on PM emissions. With regard to fuel-sulfur content, most of the demonstration engines that currently use these technologies are operated on fuel with a sulfur content ranging from 5,000 to 10,000 ppm. However, the average sulfur content of fuel used by Category 3 marine diesel engines is 27,000 ppm, and it can be as high as 45,000 ppm. At this time, it is not clear how engines will perform with this higher sulfur fuel and what types of adjustments will need to be made to accommodate the higher sulfur. Also, it may be the case that this technology will perform well with fuel at 15,000 ppm, which is the maximum sulfur content allowable for ships operating in SO_X Emission Control Areas pursuant to Annex VI. With regard to emissions at low load, some studies suggest that advanced technologies may not perform as well when the engine is not operating at its optimal fuel-consumption rate. This is important because engines typically operate at low load in port. Once we understand this dynamic better we will be able to evaluate the extent to which it can be addressed technically. With regard to PM emissions, some concerns have been raised that using these advanced technologies to control NO_X emissions may raise PM emissions. Again, once we understand this dynamic better we will be able to evaluate the extent to which it can be addressed technically. Part of this analysis will entail developing a method to measure PM emissions from these very large engines. Each of these issues is discussed in greater detail in Section IV and in the Final Regulatory Support Document.

Engine manufacturers are currently working on many of these issues. Water emulsification has been applied for

[3] This final rule applies to "new" marine diesel engines and to "new" marine vessels that include marine diesel engines. In general, a "new" marine diesel engine or a "new" marine vessel is one that is produced for sale in the United States or that is imported into the United States (*See* section II, below). The emission standards established in this final rule, therefore, will typically apply to marine diesel engines that are installed on vessels flagged or registered in the United States.

[4] Section I of the preamble for our proposal contains an extensive description of the regulatory background for this rulemaking, which we are not repeating here (67 FR 37548, May 29, 2002).

[5] EPA treats voluntary standards equivalent to the internationally negotiated oxides of nitrogen standards as Tier 1 standards. The internationally negotiated standards are contained in MARPOL Annex VI (see footnote 5 and associated text). When they go into force, the internationally negotiated standards will apply to new engines above 130 kW installed on vessels constructed on or after January 1, 2000 and engines that undergo a major conversion on or after January 1, 2000.

[6] Annex VI was adopted by a Conference of the Parties to MARPOL on September 26, 1997, but has not yet entered into force. Copies of the conference versions of the Annex and the NO_X Technical Code can be found in Docket A–97–50, Document II–B–01. Copies of updated versions can be obtained from the International Maritime Organization (*http://www.imo.org*).

some time on the land-based counterparts of these engines, which are primarily used in stationary engines for power generation. Direct water injection and SCR have also been applied in recent years to several engines operating on vessels. These projects are discussed in Section IV and in Chapter 5 of the Final Regulatory Support Document; an Appendix to Chapter 5 provides a list of these vessels. Most of the engines using these technologies have been installed in the past five years. Many of them are on passenger ferries and most are on ships that operate in European waters, with many being delivered only since 1999. To date, the advanced technologies have only been applied in cases where the operating characteristics of the vessels are compatible with the technology. For instance, SCR has primarily been installed on vessels using medium-speed engines, which have higher exhaust temperatures than low-speed engines, and where very low-sulfur fuel is available. Through these projects, engine manufacturers are experimenting with different emission-control techniques and learning about the long-term operation and durability of these systems. These projects will also provide information about the emission levels that can be achieved through the application of these technologies.

Based on these outstanding technical issues, we believe it is not appropriate at this time to attempt to project the engineering answers and solutions to these technical issues. By waiting a few years, we will be able to benefit from the manufacturers' experience as they continue to develop and apply these technologies on marine diesel engines. We can also develop methods to assess the impact of fuel sulfur on emissions, to assess the emission-control potential of these technologies on emissions at low loads, and to measure and address PM emissions. Consequently, we plan to evaluate more stringent Tier 2 standards in a future rulemaking. In the 2004–2005 time frame, engine manufacturers will have five or more years of data on a significant number of vessels. During this period, we will work with manufacturers to learn more about the advanced technologies discussed above and the steps they are taking to resolve operational and technological issues. With this information, we should be in a significantly better position to determine the emission levels that are achievable and appropriate, given appropriate lead time for the use of these advanced technologies.

We have concluded that the standards in this final rule (which are equivalent to the internationally negotiated NO_X standards established under MARPOL Annex VI) are the appropriate controls for the near term. Requiring additional near-term reductions from further use and optimization of in-cylinder controls would potentially delay and disrupt the second tier of standards, which will focus on emission-control systems that rely on optimized in-cylinder controls and advanced technologies to achieve significantly greater reductions. We have also concluded that it is appropriate to defer adoption of Tier 2 standards to a future rulemaking to allow us to take into account several important outstanding technical issues concerning the use of these advanced technologies and address the potential to combine in-cylinder controls with the advanced technologies.

We expect additional information to become available in the next few years that will allow us to more reliably and appropriately determine the level of emission control that is achievable and appropriate for such technologies, given appropriate lead time.

Based on this, we conclude that the near-term Tier 1 emission standards in this final rule satisfy the criteria of Clean Air Act section 213(a)(3) at this time. Section 213(a)(3) directs EPA to promulgate emission standards and from time to time review and revise those standards. This final rule adopts near-term standards and puts EPA on a schedule to review, and if appropriate, revise those standards in accordance with the criteria in section 213(a)(3). We believe this two-step approach is the most appropriate means to address emissions from Category 3 marine engines in the near-term in the face of incomplete information and the significant changes underway in applying emission-reduction technology to very large marine engines.

We are including a regulatory provision in 40 CFR 94.8 that establishes a schedule for a future rulemaking to promulgate additional emission standards for Category 3 marine engines that we determine are appropriate under section 213(a)(3). This rulemaking will reassess the emission standards in light of the developments in and experience with applying emission-reduction technology to Category 3 marine engines. The standards in this final rule will remain in effect until we modify them in a future rulemaking. We are committing to take final action on appropriate standards for marine diesel engines by April 27, 2007, and to issue a proposal no later than approximately one year before. This future rulemaking will allow us to exercise the discretionary authority under Clean Air Act section 213(a)(3), which directs EPA to "from time to time revise" regulations under that provision. EPA considers this time as necessary and appropriate to properly take into consideration additional information expected to become available about emerging technologies, as well as any developments in the international negotiations for more stringent emission limits.

In addition to allowing us to benefit from information that engine manufacturers continue to gather on these advanced technologies, delaying adoption of the Tier 2 until a future rule allows us to facilitate negotiations for appropriate consensus international standards. Adoption of international standards has the potential to maximize the level of emission reductions achieved from emission controls on U.S. and foreign vessels. For example, international standards set at an appropriate level would remove the objections to controlling emissions from engines on foreign vessels. Since engines on foreign-flag vessels account for the majority of emissions from Category 3 marine diesel engines impacting U.S. air quality, successful negotiation of international standards that achieve the greatest emission reduction feasible would result in the greatest improvement to air quality here in the U.S. and around the world. Addressing the long-term standards in the future rulemaking could facilitate such international action, but will also allow us to proceed expeditiously on our own if appropriate international standards are not adopted in a timely way.

The United States has already taken a leadership role for more stringent standards at the International Maritime Organization and has requested that organization to begin consideration of a second tier of international standards. Those discussions are likely to begin in 2004, after Annex VI goes into forces, or as part of a review process if enough countries have not ratified it by the end of 2003.

2. Category 1 and Category 2 Marine Diesel Engines

We proposed to adopt a first tier of standards equivalent to the internationally negotiated NO_X limits for marine diesel engines with per-cylinder displacement of 2.5 to 30 liters. We are adopting these standards in this action. By adopting these standards as Tier 1 standards, we are making them mandatory and enforceable for new engines on U.S. vessels. The Tier 1 standards will begin to apply in 2004 and will continue to apply through 2006. Beginning in 2007, the Tier 2 standards we finalized in 1999 will go into effect.

We proposed to apply all the Tier 2 certification and compliance requirements to the proposed Tier 1 standards as well. After considering the public comments, we are finalizing this approach with two exceptions. First, we allow manufacturers to use test data generated using the procedures in the NO_X Technical Code on an interim basis. Second, we will not require manufacturers to perform production-line testing on their Tier 1 engines.

3. Foreign-Trade Exemption

We are eliminating the foreign-trade exemption for all marine diesel engines, which was available for engines installed on U.S. vessels that spend less than 25 percent of total operating time within 320 kilometers of U.S. territory.

4. Fuel Controls

We are not setting standards for the fuel used by marine diesel engines in this final rule. With regard to the residual fuel used by Category 3 marine diesel engines, we remain concerned that regulating fuel sold in the United States would not necessarily ensure that lower-sulfur fuel is used in U.S. waters, since ships could purchase their fuel in other countries. To obtain the benefits of lower-sulfur fuel, we plan to investigate designation of one or more areas in the United States as SO_x Emission Control Areas pursuant to the international process for this purpose. This is described further in Section IV.B.

With regard to the fuel used by Category 1 and Category 2 marine diesel engines, we are considering distillate marine diesel fuel controls as part of the nonroad diesel rule that is currently under development.

D. Why Is EPA Taking This Action?

Category 3 marine diesel engines generate NO_X, HC, PM and CO emissions that contribute to ozone and CO levels above the National Ambient Air Quality Standards (NAAQS) for ozone and CO (*i.e.*, they contribute to ozone and CO nonattainment) as well as adverse health effects associated with ambient concentrations of PM. As described in more detail below and in the Final Regulatory Support Document, Category 3 marine diesel engines accounted for about 1.6 percent of nationwide mobile source NO_X emissions in 2000. They also accounted for about 2.8 percent of nationwide mobile source PM emissions in 2000. These percentages are expected to increase as a result of increased trade and decreases in emissions from other nonroad sources. The contribution of Category 3 marine diesel engines to nationwide mobile source HC and CO levels is small, at 0.1 and 0.02 percent, respectively, in 2000.

The inventory contribution of Category 3 marine diesel engines can be higher on a port-specific basis. We estimate that these engines contribute about 7 percent of mobile source NO_X in Baton Rouge/New Orleans and Wilmington, NC, and about 5 percent in Miami/ Fort Lauderdale and Corpus Christi. These ships can also have a significant impact on inventories in areas without large commercial ports. For example, they contribute about 37 percent of total area NO_X in the Santa Barbara area.

1. What Are the Health and Welfare Effects of Category 3 Marine Diesel Engine Emissions?

There are important public health and welfare concerns related to Category 3 marine diesel engine emissions.[7] This section contains a summary of the general health effects associated with exposure to ozone, PM, and CO. Further information can be found in Chapter 1 of the Final Regulatory Support Document.

a. Ozone. Volatile organic compounds (VOC) and NO_X are precursors in the photochemical reaction which forms tropospheric ozone. Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of VOCs and NO_X in the presence of heat and sunlight. Hydrocarbons are a large subset of VOC, and to reduce mobile-source VOC levels we set maximum emission limits for hydrocarbon and particulate emissions.

Based on a large number of studies, we have identified several key health effects caused when people are exposed to levels of ozone found today in many areas of the country. A large body of evidence shows that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, which affect people with compromised respiratory systems most severely. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue; produce changes in lung tissue and structure; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses. Children and outdoor workers are likely to be exposed to elevated ambient levels of ozone during exercise and, therefore, are at a greater risk of experiencing adverse health effects. Beyond its human health effects, ozone has been shown to injure plants, which has the effect of reducing crop yields and reducing productivity in forest ecosystems.

There is strong and convincing evidence that exposure to ozone is associated with exacerbation of asthma-related symptoms. Increases in ozone concentrations in the air have been associated with increases in hospitalization for respiratory causes for individuals with asthma, worsening of symptoms, decrements in lung function, and increased medication use, and chronic exposure may cause permanent lung damage. The risk of suffering these effects is particularly high for children and for people with compromised respiratory systems.

In addition to the health effects described above, there exists a large body of scientific literature that shows that harmful effects can occur from sustained levels of ozone exposure at low levels.[8] Studies of prolonged exposures, those lasting about 7 hours, show health effects from prolonged and repeated exposures at moderate levels of exertion to ozone concentrations as low as 0.08 ppm. The health effects at these levels of exposure include transient pulmonary function responses, transient respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital and emergency room visits, and transient pulmonary respiratory inflammation.

The current primary and secondary ozone National Ambient Air Quality Standard (NAAQS) is 0.12 ppm daily maximum 1-hour concentration, not to be exceeded more than once per year on average. EPA is replacing the previous 1-hour ozone standard with a new 8-hour standard. The new standard is set at a concentration of 0.08 parts per million (ppm), and the measurement period is 8 hours. Areas are allowed to disregard their three worst measurements every year and average performance over three years to determine if they meet the standard.

[7] Sections II and VI of the preamble for our proposal contain an extensive description of the air quality problems we are addressing in this rulemaking, which we are not repeating here.

[8] Additional information about these studies can be found in Chapter 2 of "Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements," December 2000, EPA420–R–00–026. Docket No. A–2001–11, Document II–A–55. This document is also available at *http://www.epa.gov/otoq/diesel.htm#documents.*

That is, the standard is set by the 4th highest maximum 8-hour concentration.

Ground level ozone today remains a pervasive pollution problem in the United States. About 51 million people live in areas with design values above the level of the 1-hour ozone standard based on three years of data (1999–2001). In addition, about 111 million people live in areas with design values above the 8-hour ozone standard based on those three years of data. Approximately 61 million of these people live in areas with design values above the 8-hour standard but are below the design standard for the 1-hour ozone standard (*i.e.*, they are attaining the 1-hour standard). The remainder of these people live in areas with design values above the 8-hour ozone standards but are above the design value for the 1-hour ozone standard (*i.e.*, they are not attaining the 1-hour standard).[9] This represents 291 counties with design values above the level of the 8-hour standard.

Over the last decade, declines in ozone levels were found mostly in urban areas, where emissions are heavily influenced by controls on mobile sources and their fuels. Twenty-three metropolitan areas have realized a decline in ozone levels since 1989, but at the same time ozone levels in 11 metropolitan areas with 7 million people have increased.[10] Regionally, California and the Northeast have recorded significant reductions in peak ozone levels, while four other regions (the Mid-Atlantic, the Southeast, the Central and Pacific Northwest) have seen ozone levels increase. The highest ambient concentrations are currently found in suburban areas, consistent with downwind transport of emissions from urban centers. Concentrations in rural areas have risen to the levels previously found only in cities.

b. Particulate Matter. Category 3 marine engines contribute to ambient levels of particulate matter through direct emissions of particulate matter, especially sulfates.

Particulate matter represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. All particles equal to and less than 10 microns are called PM_{10}. Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or less (also known as $PM_{2.5}$), and coarse fraction particles are those particles with an aerodynamic diameter greater than 2.5 microns, but equal to or less than a nominal 10 microns.

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter (which is attributable to several sources including mobile sources) in contributing to a series of health effects.[11] The key health effects categories associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms, including aggravated coughing and difficult or painful breathing, chronic bronchitis, and decreased lung function that can be experienced as shortness of breath. Observable human noncancer health effects associated with exposure to diesel PM include some of the same health effects reported for ambient PM such as respiratory symptoms (cough, labored breathing, chest tightness, wheezing), and chronic respiratory disease (cough, phlegm, chronic bronchitis and suggestive evidence for decreases in pulmonary function). Symptoms of immunological effects such as wheezing and increased allergenicity are also seen. Exposure to fine particles is closely associated with such health effects as premature mortality or hospital admissions for cardiopulmonary disease.

PM also causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States. Other environmental impacts occur when particles deposit onto soils, plants, water or materials. For example, particles containing nitrogen and sulphur that deposit on to land or water bodies may change the nutrient balance and acidity of those environments. Finally, PM causes soiling and erosion damage to materials, including culturally important objects such as carved monuments and statues. It promotes and accelerates the corrosion of metals, degrades paints, and deteriorates building materials such as concrete and limestone.

There are two indicators related to PM NAAQS. The first indicator is PM_{10}, and the second is $PM_{2.5}$. Concentrations above the $PM_{2.5}$ standard are much more widespread than are violations of the PM_{10} standard, and emission reductions needed to attain the $PM_{2.5}$ standards will also lead to attainment of the PM_{10} standards. The NAAQS for PM_{10} was established in 1987. According to these standards, the short term (24-hour) standard of 150 $\mu g/m^3$ is not to be exceeded more than once per year on average over three years. The long-term standard specifies an expected annual arithmetic mean not to exceed 50 $\mu g/m^3$ over three years. Recent PM_{10} monitoring data indicates that there are 8 serious and 58 moderate PM_{10} nonattainment areas with about 30 million people in 63 mainly western counties. The NAAQS for $PM_{2.5}$ indicator was established in 1997. According to these standards, the short term (24-hour) standard is set at 65 $\mu g/m^3$ based on the 98th percentile averaged over three years. The long-term standard specifies an expected annual arithmetic mean not to exceed 15 $\mu g/m^3$ over three years.

Current $PM_{2.5}$ monitored values for 1999–2001, which cover about a quarter of the nation's counties, indicate that at least 65 million people in 129 counties live in areas where design values of ambient fine particulate matter levels are at or above the $PM_{2.5}$ NAAQS. Three years of complete data are required to make regulatory determinations of attainment or nonattainment but, based on more limited available data, there are an additional 9 million people in 20 counties where levels exceeding the NAAQS are being measured, but there are insufficient data at this time to make an official estimate of the design value. In total, this represents 39 percent of the population in the areas with monitors.[12] To estimate the current number of people who live in areas where long-term ambient fine particulate matter levels are at or above 16 $\mu g/m^3$ but for which there are no monitors, we can use modeling performed for the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control rule (also called the "HD07" rule) described elsewhere.[13] At that time, we conducted 1996 base year modeling to reproduce the atmospheric processes resulting in formation and dispersion of $PM_{2.5}$ across the U.S. This 1996 modeling included emissions subject to this final rule. According to our national model predictions, there were a total of 76 million people (1996 population) living in areas with modeled annual average $PM_{2.5}$ concentrations at or above 16 $\mu g/m^3$ (29 percent of the population).[14]

While the final implementation process for bringing the Nation's air into attainment with the $PM_{2.5}$ NAAQS is still being completed, the basic framework is well defined. EPA's current plans call for designating $PM_{2.5}$ nonattainment areas in late-2004. Following designation, section 172(b) of the Clean Air Act allows states up to three years to submit a revision to their state implementation plan (SIP) that provides for the attainment of the $PM_{2.5}$ standards. We expect states to submit these SIPs in late-2007. Section 172(a)(2) of the Clean Air Act requires that these SIP revisions demonstrate that the nonattainment areas will attain the $PM_{2.5}$ standards as expeditiously as practicable but no later than five years from the date that the area was designated nonattainment. However, based on the severity of the air quality problem and the availability and feasibility of control measures, the Administrator may extend the attainment date "for a period of no greater than 10 years from the date of designation as nonattainment." Therefore, we expect that areas will be ultimately be required to attain the $PM_{2.5}$ air quality standard in the 2009 to 2014 time frame.

c. Diesel Exhaust. Diesel emissions are of concern beyond their contribution to ambient PM. There have been health studies specific to diesel exhaust emissions indicating that potential hazards to human health are specific to this emission source. For chronic exposure, these hazards included respiratory system toxicity and carcinogenicity. Acute exposure also causes transient effects (a wide range of physiological symptoms stemming from irritation and inflammation mostly in the respiratory system) in humans though they are highly variable depending on individual human susceptibility. The chemical composition of diesel exhaust includes several hazardous air pollutants, or air toxics.

EPA recently released its final "Health Assessment Document for Diesel Engine Exhaust" (the Diesel HAD).[15] There, we concluded that diesel exhaust is likely to be carcinogenic to humans by inhalation and environmental exposures in accordance with the revised draft 1996/1999 EPA cancer guidelines. A number of other agencies (*e.g.*, National Institute for Occupational Safety and Health, the International Agency for Research on Cancer, the World Health Organization, California EPA, and the U.S. Department of Health and Human Services) have made similar determinations.

EPA concluded in the Diesel HAD that it is not possible to currently calculate a cancer unit risk for diesel particles due to a variety of factors that limit the current studies such as lack of adequate dose-response relations between exposure versus cancer incidence. Even though EPA does not have a carcinogenic potency with which to accurately estimate the carcinogenic impact of diesel exhaust, the likely hazard to humans together with the potential for significant environmental risks leads us to conclude that diesel exhaust emissions should be reduced from nonroad engines in order to protect public health.

d. Carbon Monoxide. Carbon monoxide is a colorless, odorless gas produced through the incomplete combustion of carbon-based fuels. Carbon monoxide enters the bloodstream through the lungs and reduces the delivery of oxygen to the body's organs and tissues. The health threat from CO is most serious for those who suffer from cardiovascular disease, particularly those with angina or peripheral vascular disease. Healthy individuals also are affected, but only at higher CO levels. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, learning ability and performance of complex tasks.

High concentrations of CO generally occur in areas with elevated mobile-source emissions. Peak concentrations typically occur during the colder months of the year when mobile-source CO emissions are greater and nighttime inversion conditions are more frequent. This is due to the enhanced stability in the atmospheric boundary layer, which inhibits vertical mixing of emissions from the surface.

The current primary NAAQS for CO are 35 parts per million for the one-hour average and 9 parts per million for the eight-hour average. These values are not to be exceeded more than once per year. Air quality carbon monoxide value is estimated using EPA guidance for calculating design values. In 1999, 30.5 million people (1990 census) lived in 17 areas designated nonattainment under the CO NAAQS.[16]

Nationally, significant progress has been made over the last decade to reduce CO emissions and ambient CO concentrations. Total CO emissions from all sources have decreased 16 percent from 1989 to 1998, and ambient CO concentrations decreased by 39 percent. During that time, while the mobile source CO contribution of the inventory remained steady at about 77 percent, the highway portion decreased from 62 percent of total CO emissions to 56 percent while the nonroad portion increased from 17 percent to 22 percent.[17] Over the next decade, we would expect there to be a minor decreasing trend from the highway segment due primarily to the more stringent standards for certain light-duty trucks (LDT2s).[18] CO standards for passenger cars and other light-duty trucks and heavy-duty vehicles did not change as a result of other recent rulemakings.

e. *Environmental Effects.* In addition to the health and welfare concerns just described, Category 3 marine diesel engines can contribute to visibility degradation, haze, acid deposition, and eutrophication and nitrophication. Further information on these effects can

[9] Memorandum to Docket A–2001–11 from Fred Dimmick, Group Leader, Air Trends Group, "Summary of Currently Available Air Quality Data and Ambient Concentrations for Ozone and Particulate Matter," December 3, 2002, Air Docket A–2001–11, Document No. IV–B–3.

[10] National Air Quality and Emissions Trends Report, 1998, March, 2000, at 28. This document is available at *http://www.epa.gov/oar/aqtrnd98*. Relevant pages of this report can be found in Memorandum to Air Docket A–2000–01 from Jean Marie Revelt, September 5, 2001, (incorporated into Docket A–2001–11 at Document II–A–58).

[11] EPA (1996) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA452–R–96–013. Docket No. A–2001–11, Document II–A–52. The particulate matter air quality criteria documents are also available at *http://www.epa.gov/ncea/partmott.htm*.

[12] Memorandum to Docket A–2001–11 from Fred Dimmick, Group Leader, Air Trends Group, "Summary of Currently Available Air Quality Data and Ambient Concentrations for Ozone and Particulate Matter," December 3, 2002, Air Docket A–2001–11, Document No. IV–B–3.

[13] See the Final Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (EPA420–R–00–026, December 2000). Docket No. A–2001–11, Document II–A–55. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents*.

[14] Memorandum to Docket A–99–06 from Eric O. Ginsburg, Senior Program Advisor, "Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years," December 6, 2000; Docket No. A–2001–11, Document II–A–61.

[15] U.S. EPA (2000) Health Assessment Document for Diesel Exhaust: SAB Review Draft. EPA/600/8–90–057E Office of Research and Development, Washington DC. This document is available electronically at *http://cfpub.epa.gov/ncea/cfm/dieslexh.cfm*.

[16] National Air Quality and Emissions Trends Report, 1999, EPA, 2001, at Table A–19. This document is available at *http://www.epa.gov/oar/aqtrnd99*. The data from the Trends report are the most recent EPA air quality data that have been quality-assured. A copy of this table can also be found in Docket No. A–2001–11, Document II–A–59.

[17] National Air Quality and Emissions Trends Report, 1998, March, 2000; this document is available at *http://www.epa.gov/oar/aqtrnd98*. National Air Pollutant Emission Trends, 1900–1998 (EPA–454/R–00–002), March, 2000. These documents are available at Docket No. A–2001–11, Document II–A–60. *See also* Air Quality Criteria for Carbon Monoxide, U.S. EPA, EPA 600/P–99/001F, June 2000, at page 3–10; Docket No. A–2001–11, Document II–A–56. This document is also available at *http://www.epa.gov/ncea/coabstract.htm*.

[18] LDT2s are light light-duty trucks greater than 3750 pounds loaded vehicle weight, up through 6000 pounds gross vehicle weight rating.

be found in Chapter 1 of the Final Regulatory Support Document.

2. What Is the Inventory Contribution From the Marine Diesel Engines That Are Subject to This Rule?

Category 3 marine diesel engines contribute to the health and welfare effects described above through their NO_X, PM, HC, and CO emissions. These emissions are summarized in this section. To estimate these inventory impacts, we used baseline estimates developed under contract with E. H. Pechan and Associates, Inc.[19] Inventory estimates were developed separately for vessel traffic within 25 nautical miles of port areas and vessel traffic outside of port areas but within 175 nautical miles of the coastline. The inventories include all Category 3 traffic, including that on the Great Lakes. Different techniques were used to develop the port and non-port inventories. For port areas we developed detailed emissions estimates for nine specific ports using port activity data including port calls, vessel types and typical times in different operating modes. Emission estimates for all other ports were developed by matching each of those ports to one of the nine specific ports already analyzed based on characteristics of port activity, such as predominant vessel types, harbor draft and region of the country. The detailed port emissions were then scaled to the other ports based on relative port activity. We developed non-port emission inventories using cargo movements and waterways data, vessel speeds, average dead weight tonnage per ship, and assumed cargo capacity factors. More detailed information regarding the development of the baseline emission inventofies can be found in Chapter 6 of the Final Regulatory Support Document.

In our inventory estimates work for the proposal we included all Category 3 vessel emissions within 175 nautical miles of the U.S. coastline on the assumption that emission transport would bring these emissions on to shore and affect U.S. ambient air quality. We requested comment on the transport issue, including whether 175 nautical miles was the appropriate distance from shore to consider or whether we should consider a range different from 175 nautical miles as our primary scenario, and whether we should consider different distances from the coast for different areas of the country. We also asked if there was additional information available to help us assess the emission transport issue. In general, the comments received were supportive of including all emissions within 175 nautical miles of the coast in the national emission inventory. While some commenters questioned this distance, we received no substantial new data or information suggesting that a different distance would be more appropriate or that would help us determine what distance from shore we should use in our inventory analysis.

For the purpose of this final rule, we are including all Category 3 vessel emissions within 175 nautical miles of the U.S. coast in our emission inventory estimates. However, we acknowledge that this emission transport issue is complex and requires further investigation. For example, as we noted in the proposal for this rule, the U.S. Department of Defense (DoD) has presented some information to us that suggests a different, shorter (offshore distance) limit be established rather than the proposed 175 nautical miles as the appropriate location where emissions from marine vessels would affect on-shore air quality. DoD's modeling work on the marine vessels issue in Southern California led them to conclude that emissions within 60 nautical miles of shore could make it back to the coast due to eddies and the nature of the sea-breeze effects. They note that this distance seems to be confirmed by satellite data showing a distinct tendency for a curved line of demarcation separating the offshore (unobstructed) or parallel ocean wind flow from a region of more turbulent, recirculated air that would impact on-shore areas. That curved line of demarcation was close to San Nicolas Island, which is about 60 nautical miles offshore. Studies and published information on other coastal areas in California indicates that they experience somewhat a narrower (perhaps 30 nautical miles) region of "coastal influence." Nevertheless, commenters from California support a 175 nautical-mile boundary.

Because of the continued data and modeling uncertainties surrounding this issue, we intend to investigate this issue as part of our future rule. As part of this investigation, we will consider the special characteristics of emission transport in separate parts of the country. For example, we expect that the Gulf Coast and East Coast areas of the United States would have their own unique meteorological conditions that might call for different lines of demarcation between on-shore and off-shore effects due to different prevailing winds in those parts of the country.

We also requested comment on both our future growth estimates and our analysis of emissions from U.S. versus foreign vessels. Commenters suggested that the overall growth that we projected was fine, but that the U.S. vessel contribution to future inventories would likely not change and that all of the future growth would be due to increased foreign vessel traffic. We have modified the future U.S. and foreign vessel emissions split accordingly. Further, in response to comments received and new port calls data we have modified our overall estimates of the relative contributions of U.S. and foreign vessels to be more heavily weighted toward foreign vessels. A complete discussion of these changes to the inventories can be found in the Regulatory Support Document and the Summary and Analysis of Comments.

Baseline emission inventory estimates for Category 3 marine diesel engines in 2000 are summarized in Table I.D–1 in the context of other emission sources. This table shows the contributions of the different mobile-source categories to the overall national mobile-source inventory. Of the total emissions from mobile sources, Category 3 marine diesel engines contributed about 1.6 percent of NO_X and 2.8 percent of PM emissions in the year 2000.

Our emission projections for Category 3 marine diesel engines in 2030 show how emissions from these engines are expected to increase over time after implementation of Tier 1/MARPOL Annex VI NO_X limits. The projections for 2030 are summarized in Table I.D–2 and indicate that Category 3 marine diesel engines are expected to contribute 8.9 percent NO_X and 7.3 percent of PM emissions in the year 2030. Population growth and the effects of other regulatory control programs are factored into these projections. The relative contribution of Category 3 marine diesel engines increases between 2000 and 2030 largely because we have adopted requirements that will substantially reduce emissions from most other categories of nonroad engines. Note that the effectiveness of all control programs is offset by the anticipated growth in engine populations.

[19] "Commercial Marine Emission Inventory Development." E. H. Pechan and Associates, Inc. and ENVIRON International Corporation. April 2002. Air Docket A–2001–11, item II–A–67.

TABLE I.D–1.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2000

[thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for engines subject to new standards (U.S. flagged commercial marine—Category 3)	28	0.2	1	0.0	2	0.0	2.5	0.4
Commercial Marine CI—Category 3 (U.S. and foreign)	214	1.6	9	0.1	19	0.02	19.7	2.8
Commercial Marine CI—Categories 1 and 2	703	5.2	22	0.3	103	0.1	20	2.9
Highway Motorcycles	8	0.1	84	1.1	331	0.4	0.4	0.1
Nonroad Industrial SI>19 kW	308	2.3	226	3.1	1,734	2.3	1.6	0.2
Recreational SI	5	0.0	418	5.7	1,120	1.5	12.0	1.7
Recreation Marine CI	38	0.3	1	0.0	6	0.0	1	0.1
Marine SI Evap	0	0.0	100	1.4	0	0.0	0	0.0
Marine SI Exhaust	32	0.2	708	9.6	2,144	2.8	38	5.4
Nonroad SI <19 kW	106	0.8	1,460	19.8	18,359	24.2	50	7.1
Nonroad CI	2,625	19.6	316	4.3	1,217	1.6	253	35.9
Locomotive	1,192	8.9	47	0.6	119	0.2	30	4.3
Total Nonroad	5,231	39	3,391	46	25,152	33	426	60
Total Highway	7,981	60	3,811	52	49,813	66	240	34
Aircraft	178	1	183	3	1,017	1	39	6
Total Mobile Sources	13,389	100	7,385	100	75,982	100	705	100
Total Man-Made Sources	24,532	.....	18,246	.....	97,735	.....	3,102	.....
Mobile Source percent of Total Man-Made Sources	55	.....	40	.....	78	.....	23	.....

TABLE I.D–2.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2030

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for engines subject to new standards (U.S. flagged commercial marine—Category 3)[a]	28	0.5	1	0.0	2	0.0	2.5	0.3
Commercial Marine CI—Category 3 (U.S. and foreign)	531	8.9	26	0.5	57	0.05	54.0	7.3
Commercial Marine CI—Categories 1 and 2	680	11.4	26	0.5	137	0.1	20.0	2.7
Highway Motorcycles	17	0.3	172	3.4	693	0.7	1.0	0.1
Nonroad Industrial SI > 19 kW	44	0.7	17	0.3	265	0.3	2.0	0.3
Recreational SI	20	0.3	294	5.8	1,843	1.9	10.5	1.4
Recreation Marine CI	52	0.9	2	0.0	11	0.0	1.4	0.2
Marine SI Evap	0	0.0	122	2.4	0	0.0	0	0.0
Marine SI Exhaust	64	1.1	269	5.3	2,083	2.1	29	3.9
Nonroad SI < 19 kW	126	2.1	1,200	23.7	32,310	33.3	93	12.6
Nonroad CI	1,994	33.4	158	3.1	1,727	1.8	306	41.6
Locomotive	531	8.9	30	0.6	119	0.1	18	2.4
Total Nonroad	4,059	68	2,316	46	39,245	40	535	73
Total Highway	1,648	28	2,496	49	56,303	58	158	22
Aircraft	262	4	262	5	1,502	2	43	6
Total Mobile Sources	5,969	100	5,074	100	97,050	100	736	100
Total Man-Made Sources	16,177	.....	16,094	.....	121,428	.....	3,297	.....

TABLE I.D–2.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2030—Continued

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Mobile Source percent of Total Man-Made Sources	37		32		80		22	

[a] These inventories are the same as for 2000 because, based on comments received, we assumed no future increase in U.S. domestic trade.

Further analysis suggests that Category 3 marine diesel engines contribute more significantly in individual port areas. For example, we estimate that these engines contribute about 7 percent of mobile-source NO_X in the Metropolitan Statistical Areas (MSA) of Baton Rouge/New Orleans and Wilmington NC, about 5 percent of mobile-source NO_X in the Miami/ Fort Lauderdale and Corpus Christi MSAs, and about 4 percent in the Seattle/ Tacoma/Bremerton/Bellingham MSA.

In addition, these ships can have a significant impact on inventories even in areas without large commercial ports. For example, Santa Barbara estimates that engines on ocean-going marine vessels currently contribute about 37 percent of total NO_X in their area. These emissions are from ships that transit the area, and "are comparable to (even slightly larger than) the amount of NO_X produced onshore by cars and truck." [20] By 2015 these emissions are expected to increase 67 percent, contributing 61 percent of Santa Barbara's total NO_X emissions. This mix of emission sources led Santa Barbara to point out that they will be unable to meet air quality standards for ozone without significant emission reductions from these vessels, even if they completely eliminate all other sources of pollution.

E. What Are the Internationally Negotiated Standards and What Is the Status of the U.S. Ratification of Annex VI?

In response to growing international concern about air pollution and in recognition of the highly international nature of maritime transportation, the IMO initiated development of international standards for NO_X, SO_X, and a variety of other air emissions arising from marine vessel operations.[21,22] As a result of these discussions, Annex VI was drafted between 1992 and 1997. The Annex VI engine emission standards cover only NO_X emissions; there are no restrictions on PM, HC, or CO emissions. They are based on engine speed and apply to engines above 130 kW. These standards are set out in Table III.A–1. Originally, these standards were expected to reduce NO_X emissions by 30 percent when fully phased in. More recent analysis by EPA, based on newly estimated emission factors for these engines, indicates an expected reduction on the order of only 20 percent when compared to uncontrolled emissions by 2030 when the standards are fully phased-in. The EPA inventory analysis is described in more detail in the Final Regulatory Support Document.

The Annex VI NO_X standards apply to each diesel engine with a power output of more than 130 kW installed on a ship constructed on or after January 1, 2000, or that undergoes a major conversion on or after January 1, 2000. The Annex does not distinguish between marine diesel engines installed on recreational or commercial vessels; all marine diesel engines above 130 kW are subject to the standards regardless of the type of vessel they are used on, and the standards apply to engines installed on vessels only in domestic service as well as to engines on vessels engaged in international voyages. The test procedures to demonstrate compliance are set out in the Annex VI NO_X Technical Code.[23] They are based on ISO 8178 and are performed using distillate fuel. Engines can be pre-certified or certified after they are installed on a vessel. After demonstrating compliance, pre-certified engines would receive an Engine International Air Pollution Prevention (EIAPP) certificate. This document, to be issued by the Administration of the flag country, is needed by the ship owner as part of the process of demonstrating compliance with all the provisions of Annex VI and obtaining an International Air Pollution Prevention (IAPP) certificate for the vessel once the Annex goes into force. The Annex also contains engine compliance provisions based on a survey approach. These survey requirements would apply after the Annex goes into force. An engine is surveyed right after it is installed, every five years after installation, and at least once between five-year surveys. Engines are not required to be tested as part of a survey, however. The surveys can be done by a parameter check, which can be as simple as reviewing the Record Book of Engine Parameters that must be maintained for each engine and verifying that current engine settings are within allowable standards.

After several years of negotiation, the Parties to MARPOL adopted a final version of Annex VI at a Diplomatic Conference on September 26, 1997. However, it will not enter into force until twelve months after the date on which not less than fifteen member states, the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant shipping, have ratified the agreement. To date, more than four years after it was adopted, the Annex has been ratified by only 6 countries representing about 26 percent of the world's merchant shipping.[24]

The Annex requires that engines installed on a ship constructed on or after January 1, 2000 must comply with the specifications set forth in Regulation 13 of the Annex and the NO_X Technical Code. In addition, ship owners must bring existing engines into compliance if the engines undergo a major conversion on or after that date.[25]

[20] Memorandum to Docket A–2001–11 from Jean Marie Revelt, *Santa Barbara County Air Quality News*, Issue 62, July-August 2001 and other materials provided to EPA by Santa Barbara County," March 14, 2002. Air Docket A–2001–11, Document No. II–A–47.

[21] The Annex covers several aspects air emissions from marine vessels: ozone-depleting substances, NO_X, SO_X, VOCs from tanker operations, incineration, fuel oil quality. There are also requirements for reception facilities and platforms and drilling rigs.

[22] To obtain copies of this document, *see* Footnote 5, above.

[23] To obtain copies of this document, *see* Footnote 5, above.

[24] The countries that have ratified Annex VI are Sweden, Norway, Bahamas, Singapore, Marshall Islands, and Liberia. Information about Annex VI ratification can be found at *http://www.imo.org* (look under Conventions, Status of Conventions—Complete List).

[25] As defined in Regulation 13 of Annex VI, a major conversion means either (i) the engine is replaced by a new engine, (ii) it is substantially modified, or (iii) its maximum continuous rating is increased by more than 10 percent. Any existing engine that undergoes a major conversion on or after January 1, 2000 would be required to comply with the Annex VI NO_X limits. Note that EPA's marine diesel engine emission control program does not have a similar provision for marine diesel engines.

[26] For more information about our voluntary certification program, see "Guidance for Certifying to MARPOL Annex VI," VPCD–99–02. This letter is available on our Web site: *http://www.epa.gov/otaq/regs/nonroad/marine/ci/imolettr.pdf* and in Docket A–2001–11, Document No. II–B–01.

[27] More information on the European Union strategy can be found at *http:www.europa.eu.int/comm/environment/air/transport.htm#3.*

Although the Annex has not yet entered into force and is not yet legally binding, it is widely recognized that the vast majority of marine diesel engines manufactured and installed after January 1, 2000 meet the requirements of the Annex. To facilitate implementation while the Annex is not yet in force and to allow engine manufacturers to certify their engines before the Annex goes into force, we have set up a process for manufacturers to obtain a Statement of Voluntary Compliance.[26] Once Annex VI goes into effect for the United States we will develop a process by which an EPA-issued Statement of Voluntary Compliance can be exchanged for an EIAPP. It should be noted that an engine certificate (EIAPP) or Statement of Voluntary Compliance for an engine installed on a U.S. vessel must be issued by the U.S. EPA. Marine classification or survey societies are not authorized to issue such certificates on behalf of the U.S. government for U.S. vessels.

The U.S. government has prepared the appropriate documents for the President to submit Annex VI to the Senate for its advice and consent to ratification. Besides setting standards for NO_X emissions, Annex VI regulates ozone-depleting emissions, sulfur oxides emissions and shipboard incineration, and contains other environmentally protective measures. In transmitting Annex VI to the Senate, the Administration will work with Congress on new legislation to implement the Annex. The United States government also supports a new effort to revise the Annex VI standards to include a second tier of NO_X standards taking into account the emission-reduction potential of new control technologies. Should the Senate provide its advice and consent to ratification of the Annex, the United States will continue its leadership in promoting environmentally responsible international emission standards at the IMO and recognize the role the IMO plays in protecting the world's marine environment from pollution. As described in Section IV.A.4, we have already requested the Marine Environment Protection Committee to begin consideration of more stringent NO_X emission standards for marine diesel engines. In addition, once the Annex goes into force, amendment of NO_X standards to include a second tier of standards will be made easier through the tacit amendment process that would then apply.

F. Recent European Union Action

In November 2002, the European Union adopted a new strategy to address sulfur emissions from marine engines by reducing the sulfur content of marine fuels used in the European Union. The strategy consists of two documents: A Communication from the Commission to the European Parliament and the Council—A European Union strategy to reduce atmospheric emissions from seagoing ships; and a Proposal for a Directive of the European Parliament and of the Council—amending Directive 1999/32/EC as regards the sulphur content of marine fuel.[27] The strategy contains provisions to push the IMO for more stringent NO_X limits for marine diesel engines. It also encourages the development of a Clean Marine award scheme and market-based instruments to promote emission reductions.

The proposal has two main provisions. The first is a 15,000 ppm sulfur content limit that would apply to the fuel used by all oceangoing vessels in the North Sea, English Channel, and Baltic Sea, and to all regular passenger vessels operating in the EU by 2007. This provision is consistent with the SO_x Emission Control Areas designated under MARPOL Annex VI. The second provision would require ships to use fuel with a maximum sulfur content of 2,000 ppm (0.2%) while they are at berth in ports inside the European Union. This provision is intended to reduce sulfur and particulate matter emissions in populated areas. The analysis accompanying the fuel sulfur proposal estimates that the proposed standards will reduce SO_2 emissions by 507,000 metric tons and PM emissions by 8,000 metric tons, saving about 2,000 lives a year. These benefits are monetized at 2.7 billion Euros. The costs, which they note are likely to be born by shipowners through increased fuel prices, is estimated to be 1.07 billion euros per year.

The strategy was finalized on November 20, 2002. The strategy and communication documents will be sent to the European Parliament and Council. The proposal will be discussed in these legislative bodies, and negotiations are anticipated to take about two years.

G. Statutory Authority

We conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991, as directed by section 213(a) of the Clean Air Act (42 U.S.C. 7547(a)). Based on the results of that study, we determined that emissions of NO_X, volatile organic compounds (including HC), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires us to establish (and from time to time revise) emission standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We have determined that marine diesel engines rated over 37 kW cause or contribute to such air pollution (*see also* the preamble to the proposed rule).

Where we determine that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) of the Act authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that cause or contribute to such air pollution. We have determined that marine diesel engines rated over 37 kW cause or contribute to such air pollution. That finding, which covers PM, was made in our 1999 rulemaking (December 29, 1999, 64 FR 73300; *see also* the preamble to that proposed rule, December 11, 1998, 63 FR 68508).

Clean Air Act section 307(d) applies to this final rule, as provided by section 307(d)(1)(V) (42 U.S.C. 7607(d)(1)(V)).

II. Which Engines Are Covered?

The standards we are adopting in this action will apply to new marine diesel engines installed on vessels flagged or registered in the United States. To clarify this scope of application, we are extending the definitions contained in 40 CFR 94.2 to apply to all sizes of marine diesel engines, no longer excluding those with per-cylinder displacement at or above 30 liters. According to those definitions, a marine diesel engine is subject to the standards if it is:

• Manufactured after the emission standards become effective, whether it is made in the United States or is imported;

• Installed for the first time in a marine vessel flagged or registered in the United States after having been used in another application subject to different emission standards (or exempt from emission standards); or

• Installed on a new vessel flagged in the United States.

The standards will apply to new marine diesel engines subject to this rule regardless of how they are used. In other words, engine manufacturers will no longer be able to obtain an exemption for engines used on vessels engaged in foreign trade (defined as vessels flagged or registered in the United States that would spend less than 25 percent of total operating time within 320 kilometers of U.S. territory). This exemption was generally targeted at auxiliary engines, which are invariably less than 30 liters per cylinder.

In the remainder of this section we discuss the scope of application of this final rule in greater detail.

A. What Is a Marine Vessel?

For the purpose of our marine diesel engine standards, "marine vessel" has the meaning specified in the General Provisions of the United States Code, 1 U.S.C. 3 (*see* 40 CFR 94.2). According to that definition, the word "vessel" includes "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

B. What Are Category 1, 2, and 3 Marine Diesel Engines?

In our 1999 commercial marine diesel engine rule, we defined "marine engine" as an engine that is installed or intended to be installed on a marine vessel. We also differentiated between three types of marine diesel engines. As explained in that rule, this approach is necessary because marine diesel engines are typically derivatives of land-based diesel engines and those land-based engines are not all subject to the same numerical standards, test procedures, and effective dates.

The definitions for the different categories of marine diesel engines are contained in 40 CFR 94.2. Category 1 marine diesel engines, those having a rated power greater than or equal to 37 kilowatts and a per-cylinder displacement less than 5 liters, are similar to land-based nonroad engines used in construction and farm equipment. Category 2 marine diesel engines, those with per-cylinder displacement at or above 5 liters but less than 30 liters, are most often similar to locomotive engines. Category 1 and Category 2 marine diesel engines are used as propulsion engines (*i.e.*, an engine that moves a vessel through the water or directs the movement of a vessel (40 CFR 94.2)) on tugboats, fishing vessels, supply vessels, and smaller cargo vessels. They are also used as auxiliary engines (*i.e.*, a marine engine that is not a propulsion engine (40 CFR 94.2)) to provide electricity for navigation equipment and crew service or other services such as pumping, powering winches, or handling anchors.

Category 3 marine diesel engines, which are the primary focus of this final rule, are defined as having per-cylinder displacement at or above 30 liters. These are very large engines used for propulsion on large vessels such as container ships, tankers, bulk carriers, and cruise ships. Most of these engines are installed on ocean-going vessels, though a few are found on ships in the Great Lakes. Category 3 marine diesel engines have no land-based mobile-source counterpart, though they are similar to engines used to generate electricity in certain power-plant applications. In marine applications they are either mechanical drive or indirect drive. Mechanical drive engines can be direct drive (engine speed is the same as propeller speed; this is common on very large ships) or have a gearbox (*i.e.*, they have reduction gears; this is common on ships using medium-speed Category 3 marine diesel engines). Indirect drive engines are used to generate electricity that is then used to turn the propeller shaft. These are common in cruise ships, since they have heavy electricity demands. Category 3 marine diesel engines typically operate at a lower speed and higher power than Category 1 and Category 2 engines, with the slowest speed being about 60 rpm (*see* Table II.B–1).

TABLE II.B–1.—MARINE ENGINE CATEGORY DEFINITIONS

Category	Displacement per cylinder	hp range (kW)	rpm range
1	Disp. <5 liters (and power ≥37 kW)	37–2,300	1,800–3,000
2	5 ≤disp. <30 liters	1,500–8,000	750–1,500
3	Disp. ≥30 liters	2,500–80,000	60–900

C. What Is a New Marine Diesel Engine?

In the proposal for this rule, we proposed that the emission standards would apply to new engines on vessels flagged or registered in the United States. We also requested comment on whether to modify the definition of a "new marine engine" to find that the engine emission standards apply to marine diesel engines that are built after the standards become effective and that are installed on foreign vessels that enter U.S. ports. We have decided to finalize the scope of application as proposed. However, we intend to revisit this issue in our future rule.

1. "New" Engines on Vessels Flagged or Registered in the United States

As set out in 40 CFR 94.2, a new marine engine is (i) a marine engine, the equitable or legal title to which has never been transferred to an ultimate purchaser; (ii) a marine engine installed on a vessel, the equitable or legal title to such vessel has never been transferred to an ultimate purchaser; or (iii) a marine engine that has not been placed into service on a vessel. In cases where the equitable or legal title to an engine or vessel is not transferred to an ultimate purchaser prior to its being placed into service, an engine ceases to be new after it is placed into service.

This means that a marine engine is new and is subject to emission standards before its initial sale is completed or it is placed into service. Practically, it means that any engine must meet emission standards that are in effect the first time it is sold or placed into service or the first time the vessel on which it is installed is sold or placed into service. This is true for any engine that is sold for the first time as a marine engine (placed into service on a marine vessel), regardless of whether it has previously been used for other nonroad or highway purposes. This clarification is necessary because some marine engines are made by "marinizing" existing land-based nonroad or highway engines. Without this clarification, a used highway or land-based engine converted for marine installation would not be subject to the standards, since its title was already transferred to the initial highway or land-based nonroad user.

With respect to imported marine diesel engines, 40 CFR 94.2 defines "new" as an engine that is not covered by a certificate of conformity at the time of importation and that was manufactured after the starting date of the emission standards applicable to such an engine (or which would be applicable to such an engine had it been manufactured for importation into the United States). According to this definition, the standards apply to engines that are imported by any person, whether newly manufactured or used, and whether they are imported as uninstalled engines or if they are already installed on a marine vessel that is imported into the United States. In one example, a person may want to import a vessel with an engine built after the effective date of the standards, but the engine does not have a certificate of conformity from EPA because the engines and vessel were manufactured elsewhere. We would still consider it to be a new engine or vessel, and it would need to comply with the applicable emission standards. This provision is important to prevent manufacturers from trying to avoid the emission standards by building vessels abroad, transferring their title, and then importing them as used vessels.

2. "New" Engines on Vessels Flagged or Registered Elsewhere

This final rule does not apply to Category 1, 2, and 3 marine diesel engines that are built after the standards become effective and that are installed on foreign vessels that enter U.S. ports and are not imported into the United States. Section 213 of the Clean Air Act (42 U.S.C. 7547), authorizes regulation of "new nonroad engine" and "new nonroad vehicle." However, Title II of the Clean Air Act does not define either "new nonroad engine" or "new nonroad vehicle." Section 216 defines a "new motor vehicle engine" to include an engine that has been "imported." EPA modeled the current regulatory definitions of "new nonroad engine" and "new marine engine" at 40 CFR 89.2 and 40 CFR 94.2, respectively, after the statutory definitions of "new motor vehicle engine" and "new motor vehicle." This was a reasonable exercise of the discretion provided to EPA by the Clean Air Act to interpret "new nonroad engine" or "new nonroad vehicle." *See Engine Manufacturers Assoc.* v. *EPA*, 88 F.3d 1075, 1087 (D.C. Cir. 1996).

The 1999 marine engine rule did not apply to marine engines on foreign vessels. 40 CFR 94.1(b)(3). At that time, we concluded that engines installed on vessels flagged or registered in another country that come into the United States temporarily will not be subject to the emission standards. Those vessels are not considered imported under the U.S. customs laws and did not meet the definition of "new" adopted in that rule (64 FR 73300, Dec. 29, 1999).

The May 29, 2002 proposed rule solicited comment on whether to exercise our discretion and modify the definition of a "new marine engine" to find that engine emission standards apply to foreign vessels that enter U.S. ports. As discussed earlier, the standards in this rulemaking will go into effect in 2004. We will also conduct a subsequent rulemaking that will address revisions to these standards for future model years. In this subsequent rulemaking, we will consider adopting more stringent standards that require a longer lead time than the standards adopted in this final rule. The issue of applying these more stringent standards to foreign vessels will also be considered in that subsequent rulemaking.

We must therefore determine whether to revise the definition of "new" to include foreign vessels for purposes of the near-term standards adopted in this final rule. EPA need not decide whether we have the discretion to interpret "new" nonroad engine or vessel in that manner; however, we believe it would be appropriate not to exercise such discretion at this time even assuming we had the discretion to interpret "new'to include foreign vessels.

As noted above, one of the reasons we intend to address a second phase of more stringent standards in a subsequent rulemaking is to facilitate the development of more stringent consensus international requirements. Adoption of international standards has the clear potential to maximize the level of emission reductions achieved from emission control on U.S. and foreign vessels. For example, consensus international standards of appropriate stringency would facilitate and effectively reduce or remove the legal and policy objections to controlling emissions from foreign vessels, and therefore would facilitate achieving the greatest emission reductions from Category 3 vessels. This is one reason we determined to address the second phase of standards in a subsequent rulemaking timed to facilitate such international action, but also timed to allow us to proceed expeditiously on our own if appropriate international standards are not adopted.

Applying the first phase of standards adopted in this final rule to foreign vessels would require us to determine that we have the discretion to interpret new nonroad engine or vessel in that manner, and that it is a reasonable exercise of discretion to do so. However even assuming we have the discretion to interpret "new marine engine" to include engines on foreign vessels, we believe it would be appropriate not to exercise such discretion at this time.

The same reasons that counsel deferring adoption of more stringent standards to a subsequent rulemaking also counsel deferring a decision on applying Clean Air Act standards to foreign vessels to such a rulemaking. We believe that deferring this decision may help facilitate the adoption of more stringent consensus international standards. A new set of internationally negotiated marine diesel engine standards would apply to engines on all vessels, regardless of where they are flagged. Adoption of appropriate international consensus standards has the clear potential to maximize the level of emission reductions from domestic and international vessels.

Our decision to defer application of the standards to engines on foreign flag vessels is not expected to lead to any significant loss in emission reductions. We fully expect that foreign vessels will comply with the MARPOL standards whether or not they are also subject to the equivalent Clean Air Act standards being adopted in this final rule. Consequently, no significant emission reductions would be achieved by treating foreign vessels as "new" for purposes of the near-term standards in this final rule and there is no significant loss in emission reductions by not including them.

In conclusion, we are not including foreign engines and vessels in this rulemaking and are not revising the definition of "new marine engine" at this time. We do not need to decide now whether we have the discretion to include foreign vessels under the nonroad provisions of the Clean Air Act. In the subsequent rulemaking, we will be in a better position to resolve under what circumstances we may and should define new nonroad engine and vessel to include foreign engines and vessels. As part of that determination, we will also assess the progress made by the international community toward the adoption of new more stringent international consensus standards that reflect advanced emission-control technologies.

D. What Is a New Marine Vessel?

1. Newly Manufactured Vessel

The definition of new vessel is set out in 40 CFR 94.2. This definition is similar to the definition of new engine: a new marine vessel is a vessel whose equitable or legal title has never been transferred to an ultimate purchaser. In the case where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, a vessel ceases to be new when it is placed into service.

2. Modification of an Existing Vessel With Category 1 or Category 2 Main Propulsion Engines

In addition, our definition in 40 CFR 94.2 specifies that a vessel is considered new when it has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel. As noted in our 1999 rulemaking, this provision is intended to prevent someone from re-using the hull or other parts from a used vessel to avoid emission standards. This provision is based on a similar provision in our locomotive engine emission control program (*see* 40 CFR 92.2 definition of "freshly manufactured locomotive"). Since we finalized our 1999 commercial marine diesel engine rule we received several questions about how to apply this provision. The following is intended to clarify this provision.

When applying this provision, the modifications must be completed prior to the effective date of the standards that would otherwise apply. For example, for the Tier 2 engine standards that go into effect in 2007 for Category 1 and Category 2 marine diesel engines, modifications that are completed by December 31, 2006 will not trigger the engine requirements and the engines on that vessel would not have to meet the standards. However, if the vessel modifications are completed on or after January 1, 2007, and they exceed 50 percent of the value of the modified vessel, then the engines on the vessel must meet the standards regardless of whether they have been changed as part of the vessel modification.

The definition in 40 CFR 94.2 refers to the "value" of the modifications, rather than the costs. These figures must therefore be based on the appraised value of the vessel before modifications compared with the value of the modified vessel. The following equation demonstrates the calculation, showing that a vessel is new if:

[assessed value after modifications] − [assessed value before modifications] ≥ 0.5
[assessed value after modifications]

If the value of the modifications exceeds 50 percent of the final value of the modified vessel, we would treat the vessel as new under 40 CFR part 94. To evaluate whether the modified vessel would be considered new, one would need to project the fair market value of the modified vessel based on an objective assessment, such as an appraisal for insurance or financing purposes, or some other third-party analysis. While the preliminary decision can be based on the projected value of the modified vessel, the decision must also be valid when basing the calculations on the actual assessed value of the vessel after modifications are complete.

3. Modification of an Existing Vessel With Category 3 Main Propulsion Engines

EPA is adopting a separate definition of "new vessel" for those vessels equipped with a Category 3 engine. A separate definition for these vessels is reasonable because large ocean-going vessels are already subject to a different definition of "new vessel" pursuant to the U.S. adoption of the requirements in MARPOL Annex I, Regulations for the Prevention of Pollution by Oil.[28] The MARPOL Annex I criteria for determining when the modifications made to an existing vessel make that vessel "new" and thereby subject to MARPOL Annex I are contained in its definition for "major conversion" of a ship. The goal of the Annex I provision is similar to the goal of our provision: To require ships that have been so modified as to make them substantially new, to comply with the standards otherwise applicable to new vessels.

Note that while the provisions of MARPOL Annex I apply to all vessels, Annex I distinguishes between vessels at or above 400 gross tonnage, which are subject to the specific MARPOL requirements, and those below 400 gross tonnage, which are subject to potentially different provisions, adopted by each Member State to "ensure that it is equipped as far as practicable and reasonable with [relevant] installations." Vessels above 400 gross tonnage, which are likely to be ocean-going vessels equipped with Category 3 main propulsion engines, are therefore subject to the Annex I criteria for determining when an existing vessel is modified in such a way that it is considered "new" and subject to MARPOL Annex VI's requirements.

For the purpose of this Clean Air Act regulation, we are adopting a definition of "new vessel" for vessels with Category 3 main propulsion engines that is consistent with the way Annex I was adopted into U.S. law (see 40 U.S.C. 2101). According to this approach, an existing vessel with a Category 3 main propulsion engine will be considered a "new vessel" and will be subject to the requirements of using a new engine certified to the emissions standards adopted in this final rule if that vessel undergoes a modification that:

- Substantially alters the dimensions or carrying capacity of the vessel;
- Changes the type of the vessel; or
- Substantially prolongs the life of a vessel.

Under our provision, once a vessel with a Category 3 propulsion engine is determined to be "new" according to the above criteria, then all the engines on that vessel would have to comply with EPA's marine diesel engine emission limits. To the extent that any judgment is required in interpreting this provision, EPA intends to implement this definition consistently with the application of the MARPOL.

E. Is EPA Retaining the Foreign-Trade Exemption?

In addition to their main propulsion engines, which are generally Category 3 marine diesel engines, ocean-going commercial vessels typically have several Category 1 and Category 2 engines that are used in auxiliary power applications. They provide electricity for important navigational and maneuvering equipment, and crew services.

Several commenters to our earlier marine diesel engine rulemaking expressed concern that requiring ship owners to obtain and use compliant Category 1 and Category 2 engines for vessels that spend most of their time outside the United States could be burdensome for those vessels if these engines need to be repaired or replaced when they are away from U.S. ports. Consequently, we provided a foreign-trade exemption for these engines. A vessel owner could obtain this exemption for Category 1 and Category 2 marine diesel engines if it was demonstrated to the Administrator's satisfaction that the vessel: (a) Will spend less than 25 percent of its total engine operation time within 320 kilometers of U.S. territory; or (b) will not operate between two U.S. ports (40 CFR 94.906(d)).

We are eliminating the foreign-trade exemption because the conditions on which it was based no longer apply. Specifically, we have learned that many spare engine parts are kept onboard vessels to enable ship operators to perform maintenance and repairs while the ship is underway. In addition, obtaining parts that are not kept onboard is not expected to be a problem. Modern package delivery systems allow ship owners to obtain parts quickly, even overnight, and necessary parts can be shipped to the next convenient port on a ship's route. In the unlikely case that an engine fails catastrophically and must be replaced by a compliant engine, we are confident that the ship operator will be able to make arrangements to obtain a certified engine, since the major manufacturers of marine diesel engines operate abroad as well as in the United States. Because the burden associated with repairing or replacing engines away from the United States is not significant, we believe it is appropriate to eliminate the exemption. We do not expect this change to have any impact on shipowners and operators.

[28] Annex I to the International Convention on the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto.

III. Standards and Technological Feasibility

The emission standards we are adopting reflect a two-step approach. The first step involves near-term standards designed to be achievable immediately without additional research and development. This section presents these Tier 1 standards and the technologies that will be used to achieve them. The second step consists of a set of long-term standards, discussed in Section IV.

A. What Are the New Emission Standards?

We are adopting standards for marine diesel engines that are equivalent to the internationally negotiated NO_X standards, beginning in 2004. These standards, which are presented in Table III.A–1, apply to marine diesel engines with per-cylinder displacement over 2.5 liters. By adopting these standards, we are making them enforceable under U.S. law for engines on vessels flagged or registered in the United States, regardless of whether Annex VI has entered into force or whether the United States has deposited its instrument of ratification to MARPOL Annex VI.

TABLE III.A–1.—NO_X EMISSION STANDARDS
[g/kW–hr]

Engine Speed (n)		
n ≥ 2000 rpm	2000 > n ≥ 130 rpm	n < 130 rpm
9.8	$45.0 \times n^{-0.2}$	17.0

As described in Section V, we will accept emission data for certification to the near-term standards based on testing with either distillate or residual fuel. Because most or all manufacturers have been using distillate fuel to comply with Annex VI requirements, we expect manufacturers to meet the near-term standards generally by submitting their available emission data from testing with distillate fuels.

For marine diesel engines with per-cylinder displacement between 2.5 and 30 liters, these standards apply from 2004 to 2006, after which the EPA Tier 2 marine engine emission standards established in December 1999 apply (64 FR 73300, December 29, 1999). Testing to show compliance for these engines is generally based on emission measurements with distillate fuels meeting the specifications in 40 CFR 94.108.

We are not adopting the internationally negotiated standards for engines under 2.5 liters per cylinder. This is because our Tier 2 standards for most of those engines are effective in 2004. Marine diesel engines below 0.9 liters per cylinder need not meet EPA emission standards until 2005, but most of those engines are under 130 kW and are therefore not subject to Annex VI standards.

In the December 1999 final rule, we included a requirement to measure or prevent crankcase emissions. We have clarified in the final regulations that this applies only for engines subject to Tier 2 standards. As a result, none of the emission standards in this final rule include requirements related to crankcase emissions.

B. When Do the Engine Emission Standards Apply?

Adopting emission standards for new Category 3 marine engines starting in 2004 allows less than the usual lead time for meeting EPA requirements. We note, however, that manufacturers are generally already meeting the internationally negotiated standards, which apply to engines installed on vessels built on or after January 1, 2000. The near-term standards will require no additional development, design, or testing beyond what manufacturers are already doing to meet the internationally negotiated Annex VI NO_X standards.

Engine manufacturers will need to comply with emission standards for all engines produced after January 1, 2004. For Category 1 and Category 2 engines, the date of manufacture is the date of the final assembly of the engine. However, we recognize that Category 3 engines are often disassembled for shipment to the site at which it is installed in the ship. Therefore, for Category 3 engines, the date of manufacture is based on the first full assembly of the engine.

Shipbuilders and owners are not required to certify their vessels under the program we are adopting in this action. However, shipbuilders are prohibited from selling vessels with noncompliant engines if they initiate construction of a vessel after the date that regulations begin to apply.

C. What Technologies Will Engine Manufacturers Use To Meet the Tier 1 Emission Standards?

The near-term Tier 1 standards are interim standards. They are intended to ensure that Category 3 engines achieve the greatest reductions achievable in this time frame, until the more stringent long-term standards we adopt go into effect. The short lead time associated with these interim standards means they call for the use of engine technologies that already have been or can be applied immediately, with little or no lead time.

The Tier 1 standards are achievable immediately because engine manufacturers are already producing engines that meet these standards. The short lead time involved in meeting Tier 1 standards by January 2004 allows manufacturers only enough time to work through this program's compliance requirements and do all the testing and paperwork required to complete the certification process.

Setting Tier 1 standards that are more stringent than the internationally negotiated NO_X standards (for example, one requiring further development and optimization of in-cylinder controls), would require more lead time to allow engine manufacturers to develop and to optimize existing in-cylinder technologies and apply them to these engines. Moreover, as discussed in Section I.C, adopting an emission standard now that is based only on in-cylinder control technologies would likely delay the adoption of future more stringent emission standards that may be based on optimized in-cylinder controls in combination with advanced technologies such as SCR or water injection.

Similarly, we are not adopting Tier 1 emission standards for HC or CO emissions because the short lead time does not allow manufacturers sufficient time to do the testing and design work that would be necessary to ensure compliance with such standards. As described in the proposal, the focus of controlling emissions from Category 3 engines is on NO_X. The standards we contemplated for HC and CO in the proposal would have achieved modest reductions from baseline levels or, more likely, merely prevented increases in these pollutants as manufacturers apply emission-control technologies to address NO_X emissions. Manufacturers do not have a complete data set to characterize HC and CO emissions from their Category 3 engines, so some engines may well have emission rates above the level we would consider to be a cap that would merely prevent increasing emissions. The short lead time associated with the Tier 1 standards is too short to allow manufacturers in these cases to address this potential. As a result, we believe it is most appropriate to include appropriate emission standards for HC and CO emissions in the future rulemaking, as described below.

Engine manufacturers are meeting the Annex VI standards today with a variety of emission-control technologies. These basic emission-control technologies include a variety of in-cylinder technologies, generally including optimized turbocharging, higher compression ratio, and optimized fuel injection, which may include timing retard or changes to the number and size of injector holes to increase injection pressure.

D. Voluntary Low-Emission Standards

Several state and environmental groups and manufacturers of emission controls have supported our efforts to develop incentive programs to encourage the use of engine technologies that go beyond federal emission standards. Some companies have already significantly developed these technologies. In the final rule for land-based nonroad diesel engines, we included a program of voluntary standards for low-emitting engines, referring to these as "Blue Sky Series" engines (63 FR 56967, October 23, 1998). We included similar programs in several of our other nonroad rules, including that for commercial marine diesel engines. The general purposes of such programs are to provide incentives to manufacturers to produce clean products as well as create market choices and opportunities for environmental information for consumers regarding such products. The voluntary aspects of these programs, which in part provides an incentive for manufacturers willing to certify their products to more stringent standards than necessary, is an important part of the overall application of "Blue Sky Series" programs. While these are voluntary standards, they become binding once a manufacturer chooses to participate. EPA certification will therefore provide protection against false claims of environmentally beneficial products. For the program to be most effective, however, incentives should be in place to motivate the production and sale of these engines. These incentive programs can be put in place by users and state and local governments.

To be designated as a Blue Sky engine, an engine must have emissions at least 80 percent below Annex VI NO_X levels. The specific voluntary low-emission NO_X standard is expressed as $9.0 \times n^{-0.2}$ (in g/kW–hr), with a cap of 3.4 g/kW–hr for engines with rated speed over 130 rpm (no specific standard applies to engines over 2000 rpm, because Category 3 engines all have engine speeds well below 2000 rpm). Data suggest that engines utilizing selective catalytic reduction should be able to meet these emission levels. Establishing an objective qualifying level for voluntary low-emission engines allows state and local governments or individual port authorities to develop meaningful incentive-based programs to encourage preferential use of these very low-emitting engines.

Engines certified to the voluntary low-emission standards must also meet HC and CO standards reflecting baseline emission levels for these pollutants. As described in the proposal, we believe the appropriate levels to cap emissions of these pollutants are 0.4 g/kW–hr for HC and 3.0 g/kW–hr for CO.

IV. Future Actions

The standards we are adopting in this action are equivalent to the internationally negotiated standards contained in MARPOL Annex VI and are expected to achieve a 20-percent reduction in the national Category 3 NO_X inventory by 2030. As noted in Section I, the inventory contribution of these engines to local NO_X and PM inventories, particularly around commercial ports and coastal areas, can be significant. We recognize that manufacturers can achieve additional reductions with more lead time than is provided by the Tier 1 standards. They can do this by expanding the use and optimization of in-cylinder controls and by incorporating advanced technologies, such as selective catalytic reduction or water injection, that may achieve much greater reductions. We believe, however, that it is appropriate not to make a final decision on setting the longer-term Tier 2 standards in this final rule. This section describes how we plan to conduct a future rulemaking that will address a new tier of standards.

Separately, we also intend to pursue additional action to set controls for the fuels used by these engines. The sulfur content of these fuels is considerably higher than the fuel used in land-based nonroad engines. This high sulfur content leads to high PM and SO_X emissions. MARPOL Annex VI contains a provision that would require ships to use lower sulfur fuel when operating in specially designated SO_X Emission Control Areas, or be equipped with an exhaust gas cleaning system or other system that reduces the total SO_X emissions from the ship to 6.0 g/kW-hr or less. If the Annex goes into force, we will assist the other federal agencies in investigating and developing an application to the IMO by the United States for designating relevant coastal and port areas as SO_X Emission Control Areas. If the Annex does not go into force, we may address this issue under our existing authority in a future rule. In addition, we are considering fuel controls as part of the nonroad diesel rule that is currently under development that could affect the distillate fuels used by marine vessels.

A. Future Rulemaking for Engine Standards

1. What Is the Timetable for the Future Rule?

We are adopting a regulatory provision in 40 CFR 94.8 that establishes a schedule for a future rulemaking to promulgate additional engine controls that EPA determines are appropriate under section 213(a)(3) of the Act. This future rulemaking will reassess the standards in place at the time using information about the feasibility of optimizing in-cylinder controls and applying advanced NO_X and PM control technologies to these engines. We intend to consider an additional tier of standards for all marine diesel engines and will also consider application of these standards to engines on foreign vessels that enter U.S. ports. We will also include in our evaluation an assessment of the status of international action to set more stringent standards. The standards in this final rule will remain in effect unless modified by a future rulemaking. We are committing to take final action on appropriate standards for marine diesel engines by April 27, 2007, and to issue a proposal no later than approximately one year before. This future rulemaking will allow us to exercise the discretionary authority under Clean Air Act section 213(a)(3), which directs EPA to "from time to time revise" regulations under that provision.

This schedule for our future rule will allow us to coordinate with future actions of the U.S. government with respect to negotiations for a future tier of standards under MARPOL. As described in Section IV.A.4 below, in 2000 the United States requested the Marine Environment Protection Committee to consider more stringent emission controls for marine diesel engines. We are hopeful that the committee will begin these discussions in the next year or so. At the same time, while harmonizing with future, more stringent MARPOL emission limits is desirable, the standards contained in our future rule will be promulgated pursuant to the Clean Air Act, as described in the next section.

EPA considers this time as necessary and appropriate to properly take into consideration additional information expected to become available about emerging technologies, as well as any developments in the international negotiations for more stringent emission limits.

2. What Standards Will EPA Consider in the Future Rule?

a. Standards for Category 3 Marine Diesel Engines. For the future rule, we intend to set more stringent standards for Category 3 marine diesel engines based on the greatest degree of emission control achievable from technologies that will be available with appropriate lead time. In our proposal, we considered a 30-percent reduction below Annex VI levels to be the primary option for adopting long-term standards for Category 3 marine diesel engines. At the time we believed this could be achieved through the use of in-cylinder controls. However, further review of information on this technological approach shows that these technologies are already being used to meet the internationally negotiated standards. At this point we are not confident that in-cylinder controls alone would reduce emissions much more than 10 or 15 percent below the Tier 1 levels.

We are concerned that, if we were to implement standards based on traditional in-cylinder controls to reduce emissions beyond Annex VI levels, either in this or a future rule, manufacturers would need to divert resources from their advanced technology development programs. In addition, manufacturers would need to optimize their use of in-cylinder controls again when incorporating the advanced emission-control technologies. As a result, the readiness of this technology could be delayed in return for a standard based on traditional in-cylinder controls alone, which may not be capable of reducing NO_X emissions by an additional 30 percent.

We are therefore now considering Tier 2 standards that would focus on optimizing in-cylinder controls with the advanced technologies presented in the proposal, which together are projected to reduce NO_X emissions by significantly more than 30 percent. This approach was supported by commenters representing environmental and state interests, who strongly objected to emission standards that rely on engine-based technologies because of the expectation that these other advanced technologies are available and appear to be cost-effective.

We are, however, not finalizing such Tier 2 standards in this final rule because we believe there are substantial outstanding issues associated with water technologies and selective catalytic reduction. These issues, which include fuel compatibility, low-load effectiveness, and PM impacts, are discussed below in Section IV.A.3.

During the next few years we will have the opportunity to develop a better understanding of the issues that prevent us from adopting standards based on advanced technologies now. For example, several vessels have been equipped recently with selective catalytic reduction, as described in Chapter 5 of the Final Regulatory Support Document. Observing these installations will allow us to gain insight into the effectiveness and durability of these systems, while highlighting any potential technical constraints or problems. We would also have opportunity to learn with engine manufacturers and other industry contacts who are actively pursuing development and implementation of the advanced technologies.

In the future rulemaking, we will also consider the need to adopt emission standards for HC and CO emissions. Although HC and CO emissions are generally low from diesel engines, HC emissions nevertheless combine with NO_X emissions to form ozone; HC and CO can also have direct health impacts. Setting standards for HC and CO may achieve modest emission reductions, but more importantly, may be necessary to prevent HC and CO emission increases that might otherwise result from controlling NO_X emissions alone.

Regarding PM from Category 3 marine engines, the majority of emissions comes directly from the high concentration of sulfur in the residual fuel used by these engines. Short of changing in-use fuel quality, emission-control technologies only address the remaining portion of PM, because engine technologies are ineffective at reducing sulfur-related PM emissions. Furthermore, no acceptable procedure exists for measuring PM from Category 3 marine engines, because currently established PM test methods show unacceptable variability when sulfur levels exceed 0.8 weight percent. Both distillate and residual marine fuels used in these engines commonly exceed that level. No PM test method or calculation methodology has yet been developed to correct that variability. However, the additional time available to prepare the future rulemaking will allow us to take into account any developments related to regulation of in-use fuel quality and PM measurement equipment and procedures as we consider the appropriateness of adopting a PM standard for Category 3 marine diesel engines.

We also intend to revisit various other issues raised in the proposal. For example, we continue to be concerned about controlling emissions at low-power test modes and at operating points between test modes. As described in the proposal, we would like to take steps to ensure that engines meet emission standards when operating on residual fuel, including an appropriate means to correct for the nitrogen content of the test fuel. We also believe that basing emission standards on engine displacement instead of rated speed warrants further consideration. We will also revisit several compliance issues such as onboard NO_X monitoring, adjustable parameters, deterioration factors with advanced technologies, post-certification testing (PLT), broader test conditions, defect reporting, and test fuel. These compliance issues are discussed in Section V.

b. Standards for Category 1 and Category 2 Marine Diesel Engines. For Category 1 and Category 2 marine diesel engines, we have already established Tier 2 emission standards based on in-cylinder controls. However, there are several differences between these engines and Category 3 engines, which made this possible. First, for Category 1 and Category 2 marine diesel engines, manufacturers are able to transfer emission-control technology already developed for the land-based counterparts to these engines. Second,

Category 1 and Category 2 engines are produced in much greater volumes than Category 3 engines which allows manufacturers to more easily amortize their research and development costs. Third, because Category 3 engines generally operate on residual fuel, this provides an additional constraint on what can be achieved through in-cylinder control.

While this final rule primarily addresses Category 3 engines, we intend to use the future rulemaking as an opportunity to reconsider Tier 3 emission standards for Category 1 and Category 2 standards. We proposed Tier 3 standards for these engines on December 11, 1998 (63 FR 68508, December 11, 1998), but chose not to finalize the Tier 3 standards at that time. Given the current and expected advances in emission-control technologies for land-based diesel engines and the need to coordinate standards for all categories of marine engines, we believe this will be the appropriate context to reopen the proposed Tier 3 standards. In the future rulemaking we would also be able to consider applying compliance provisions such as onboard NO_X monitoring to Category 1 and Category 2 engines. This may be especially appropriate for certain applications, such as ferries and tugboats that operate closest to metropolitan areas.

3. What Technologies Will EPA Consider in the Future Rule?

As discussed above, the future rulemaking will focus on technologies we believe can be used to reduce NO_X emissions by significantly more than 30 percent below Tier 1 levels for Category 3 marine diesel engines. These emission-control systems are expected to include a combination of optimized in-cylinder controls and advanced technologies such as selective catalytic reduction and water. These advanced technologies are discussed below. Although we do not believe it is appropriate to set standards for Category 3 marine engines based on these approaches at this time, we believe that remaining technological and operational issues can be addressed in the future. Technologies that could be used to achieve emission reductions beyond the Tier 2 standards for Category 1 and Category 2 marine diesel engines were discussed in an earlier proposal (63 FR 68508, December 11, 1998).[29]

[29] Further analysis of potential Tier 3 standards for Category 1 and Category 2 marine diesel engines may be found in the Draft Regulatory Impact Analysis associated with this proposal which is available in Air Docket A–97–50.

a. Water-based technologies. We believe that significant NO_X control of approximately a 50-percent reduction can be achieved in the future, once certain technical and practical challenges are overcome, by introducing water into the combustion process in combination with appropriate in-cylinder controls. Water can be used in the combustion process to lower maximum combustion temperature, and therefore lower NO_X formation, with an insignificant increase in fuel consumption. Water has a high heat capacity, which allows it to absorb enough of the energy in the cylinder to reduce peak combustion temperatures. Data presented below and in the Final Regulatory Support Document suggest that NO_X reductions significantly more than 30 percent below the Tier 1 standards can be achieved, depending on the ratio of water to fuel and on the method of introducing water into the combustion chamber. These data are primarily based on developmental engines; however, given enough lead time, we believe that introducing water into the combustion process may become an effective emission-control strategy.

Water may be introduced into the combustion process through emulsification with the fuel, direct injection into the combustion chamber, or saturating the intake air. Water emulsification refers to mixing the fuel and water prior to injection. This strategy is limited by the instability of suspending water in fuel. To increase the effective stability, a system can be used that emulsifies the water into the fuel just before injection. Another option is to stratify the fuel and water through a single injector. The Final Regulatory Support Document presents data on these approaches showing a 30–40 percent reduction in NO_X with water fuel ratios ranging from 0.3 to 0.4.

More effective control of the water injection process can be achieved through the use of an independent nozzle for water. Using a separate injector nozzle for the water allows larger amounts of water to be added to the combustion process because the water is injected simultaneously with the fuel, and larger injection pumps and nozzles can be used for the water injection. In addition, the fuel injection timing and the amount of water injected can be better optimized. Data presented in the Final Regulatory Support Document show NO_X reductions of 40 to 70 percent with water-to-fuel ratios ranging from 0.5 to 0.9 if a separate nozzle is used for injecting water. Direct water injection has been installed on medium-speed Category 3 engines on more than a dozen vessels, and there are plans for using it on additional vessels. These vessels are primarily ferries and roll-on roll-off (ro-ro) vessels operating in European waters where there are economic incentives for reducing NO_X emissions. In addition, they make relatively short trips, so water storage is not a significant issue.

Other strategies for introducing water into the combustion process are being developed that will allow much higher water-to-fuel ratios. These strategies include combustion air humidification and steam injection. With combustion air humidification, a water nozzle is placed in the engine intake and an air heater is used to offset condensation. With steam injection, waste heat is used to vaporize water, which is then injected into the combustion chamber during the compression stroke. Data on initial testing, presented in the Final Regulatory Support Document, show NO_X reductions of more than 80 percent with water-to-fuel ratios as high as 3.5.

We believe that the results from initial testing of water introduction strategies is encouraging. We will continue to evaluate this technology in the future. However, we believe there are still outstanding technical issues concerning the use of water-introduction technologies for widespread application on marine engines. These issues are discussed below.

A primary concern with the use of water in the combustion process is the effect on PM emissions. The water in the cylinder reduces NO_X, which is formed at high temperatures, by reducing the temperature in the cylinder during combustion. However, PM oxidation is most efficient at high temperatures. At this time, we do not have sufficient information on the effect of water emulsification and injection strategies on PM emissions to quantify this effect.

Fresh water is necessary for any of these water-based NO_X-reduction strategies. Introducing salt water into the engine could result in serious deterioration due to corrosion and fouling. For this reason, a ship using water strategies would need either to produce fresh water through the use of a desalination or distillation system or to store fresh water on board. Cruise ships may already have a source of fresh water that could be used to enable this technology. This water source is the "gray" water, such as drainage from showers, which could be filtered for use in the engine. However, the use of gray water would have to be tested on these engines, and systems would have to be devised to ensure proper filtering. For example, it would be necessary to ensure that no toxic wastes are introduced into the gray waste-water stream. One manufacturer stated that today's ships operating with direct water injection carry the amount needed to operate the system between ports (two to four days).

Depending on the amount of water necessary, other vessels that use Category 3 marine engines may not be able to generate sufficient amounts of water for this technology, especially at low loads where less heat is available from the engine. These ships would have to carry the water or be outfitted with new or larger distillation systems. Both of these options could displace cargo space. Finally, it should be noted that vessels currently equipped with water-based NO_X-reduction technologies are four-stroke engines and include fast ferries, cruise ships, and cargo ships. The specific vessels travel relatively short distances between stops and need a much smaller volume of fresh water for a trip than would be required for crossing an ocean. More information is needed regarding operation on ocean-going vessels. If the ships were to use this technology only while traveling from 175 nautical miles of the U.S. coast to port, less water-storage capacity would be needed than if the ship used this NO_X reduction strategy at all times. However, ships operating primarily within 175 nautical miles of the U.S. coast would need to be able to carry a volume of water of about one-half the volume of fuel they carry if they wish to keep the same refueling schedule. Ships making long runs, such as from California to Alaska, would have to be able to store enough water for that trip even if the ship travels that route infrequently. Because the standards would not be retroactive to existing vessels, ships could be designed to carry this water, however, this space would not be available to carry cargo or fuel. Lastly, if this technology were applied to two-stroke engines there may be lubricity concerns with the cylinder liner. One manufacturer is developing a strategy to use direct water injection with exhaust gas recirculation to minimize water requirements on such engines.

b. Selective catalytic reduction. Selective catalytic reduction is one of the most effective means of reducing NO_X from large diesel engines. In SCR systems, a reducing agent such as ammonia, is injected into the exhaust. The exhaust then goes through a catalyst where NO_X emissions are reduced. As discussed in the Final Regulatory Support Document, SCR can be used to achieve NO_X reductions of 90 percent or more below the Tier 1 limits, at exhaust temperatures above 300 °C. Lower-cost SCR systems can also be designed for less effective control of NO_X emissions by reducing the amount of reducing agent used in the SCR unit. These systems are being successfully used for stationary applications, which operate under constant, high-load conditions. These systems are also installed in Category 3 engines used on ferries and cruise ships where they operate largely at high loads and over short distances so exhaust temperature and urea storage are not primary issues.

As discussed in the Final Regulatory Support Document, manufacturers are demonstrating similar NO_X reduction using SCR technology for marine applications. These SCR demonstrations include both test systems and in-use vessels. One manufacturer has demonstrated a standard SCR system on eight vessels and a compact SCR system, which uses an oxidation catalyst upstream of the SCR reactor to reduce reactor size, on four vessels. Combined, these twelve vessels are equipped with a total of 40 medium-speed Category 3 marine engines. Another manufacturer has installed systems on 56 Category 2 or Category 3 marine engines. The majority of these engines were in ferries and ro-ros operating in European waters where there are economic incentives to use SCR. In addition, these engines are four-stroke medium-speed engines, which have higher exhaust temperatures than two-stroke low-speed engines which better enables the use of SCR. To prevent sulfur poisoning of the catalysts, the fuel used by these vessels ranges from 0.1 to 1.0 percent sulfur. This fuel includes both residual fuel and marine distillate fuel. In addition, they make relatively short trips between European ports, so urea availability and storage are not significant issues. Also, the relatively short trips allow time for maintenance and provide better access to any needed parts compared with ocean-going trips.

In one case, SCR was equipped on vessels with two-stroke low-speed engines. The goal of this program was to reduce the emissions emitted during the transportation of steel to a facility in Pittsburg, California. Because the vessels were equipped with two-stroke low-speed engines, the exhaust temperatures were low. In addition, the vessels operate at low load near the coast; therefore, certain modifications to the system were necessary. Primarily, the exhaust system was reconfigured to provide the maximum heat to the reactor, which had negative impacts on transient response and efficiency. Also, the catalyst was formulated to be effective at temperatures as low as 270°C. Because such a reactive catalyst is vulnerable to sulfur poisoning, the vessels operate only on 0.05 percent sulfur fuel when the SCR unit is active. These vessels make about 6 calls to California per year and the SCR unit is active for about 12 hours per call, when the vessel is within about 50 miles from the port.

We believe that the results from initial applications of SCR systems are encouraging. We will continue to evaluate this technology in the future. However, we believe there are still outstanding technical issues concerning the use of SCR for widespread application on marine engines. These issues are discussed below.

Lower-sulfur fuel is necessary to ensure the durability of the SCR system because sulfur can be trapped in the active catalyst sites and reduce the effectiveness of the catalyst. This sulfur poisoning can require additional maintenance of the system. We need more information on the impacts of fuel sulfur on SCR. As discussed above, SCR units in service today are operating on fuel ranging from 500 to 10,000 ppmS. Even if these systems can be made to operate on 15,000 ppmS fuel, an infrastructure would be necessary to ensure that ships could refuel with 15,000 ppmS fuel at ports they visit. Lower-sulfur residual fuel is available in areas that provide incentives for using such fuel, including the Baltic Sea; however, such fuel is not yet available at ports throughout the United States. During the next few years we expect to develop a better understanding of the availability of lower-sulfur fuels through the process related to designating SO_X Emission Control Areas under Annex VI. We also intend to learn more about the sensitivity of SCR systems to fuel-sulfur concentrations.

Another issue is the effectiveness of SCR during low-load engine operation. SCR systems available today are effective only over a narrow range of exhaust temperatures (generally above 300 °C). The effectiveness of the SCR system is decreased at reduced temperatures that occur during engine operation at partial loads. Most of the engine operation in and near commercial ports and waterways close to shore is likely to be at these partial loads. In fact, reduced-speed zones can be as large as 100 miles for some ports. Because of the cubic relationship between ship speed and engine power required, engines may operate at less than 25 percent power in a reduced-speed zone. During this low-load operation, no NO_X reduction would be expected, so SCR would be less effective while operating near ports. Some

additional heat to the SCR unit can be gained by placing the reactor upstream of the turbocharger; however, this temperature increase would not be large at low loads and the volume of the reactor would diminish turbocharger response when the engine changes load. The engine could be calibrated to have higher exhaust temperatures; however, this could affect durability if this calibration also increased temperatures at high loads (depending on the fuel used). For an engine operating on residual fuel, vanadium in the fuel can cause damage by reacting with the valves at higher temperatures. In addition, a catalyst that is formulated to be more reactive at lower temperatures is also more sensitive to sulfur poisoning. Any information that becomes available over the next few years would help us understand the potential for SCR systems to control emissions at low engine loads and ensure proper operation in port areas, where emission reductions are most important. This will help ensure that we adopt requirements with an appropriate expectation regarding the effectiveness of the anticipated emission-control technologies.

Sulfur in fuel is also a concern with an oxidation catalyst because, under the right conditions, sulfur can also be oxidized to form direct sulfate PM. At higher temperatures, up to 20 percent of the sulfur could be converted to direct sulfate PM in an oxidation catalyst compared to about a 2 percent conversion rate for a typical diesel engine without aftertreatment. Depending on the precious metals used in the SCR unit, it could be possible to convert some sulfur to direct sulfate PM in the reactor as well. Manufacturers would have to design their exhaust system (and engine calibration) such that temperatures would be high enough to have good conversion of NO, but low enough to minimize conversion of sulfur to direct sulfate PM. Direct sulfate PM emissions could be reduced by using lower sulfur fuel such as distillate.

SCR systems traditionally have required a significant amount of space on a vessel; in some cases the SCR unit is as large as the engine itself. However, at least one manufacturer is developing a compact system that uses an oxidation catalyst upstream of the reactor to convert some NO to NO_2, thus reducing the reactor size necessary. The reactor size is reduced because the NO_2 can be reduced without slowing the reduction of NO. The catalytic reaction is faster by reducing NO_X through two mechanisms. This compact SCR unit is designed to fit into the space already used by the silencer in the exhaust system. If designed correctly, this could also be used to allow the SCR unit to operate effectively at somewhat lower exhaust temperatures. The oxidation catalyst and engine calibration would need to be optimized to convert NO to NO_2 without significant conversion of sulfur to direct sulfate PM. NO_X reductions of 85 to 95 percent have been demonstrated with an extraordinary sound attenuation of 25 to 35 dB(A).[30]

A vessel using an SCR system would also require an additional tank to store ammonia (or urea to form ammonia). This storage tank would be sized based on the vessel use, but could be large for a vessel that travels long distances in U.S. waters between refueling, such as between California and Alaska. Urea consumption increases operating costs. If lower sulfur diesel fuel were required to ensure the durability of the SCR system or to minimize direct sulfate PM emissions, this lower sulfur fuel would also increase operating costs. The operational characteristics of ocean-going vessels may interfere with correct maintenance of the SCR system. Ferries that have incorporated this technology do not run continuously and therefore any maintenance necessary can be performed during regular down times. The availability of time for repair can be an issue for ocean-going vessels that operate continuously for long periods.

Because SCR units are so easily adjustable, if allowed, ship operators may choose to turn off the SCR unit when not operating near the U.S. coast. If they were to use this approach, they would need to construct a bypass in the exhaust to prevent deterioration of the SCR unit when it is not in use. To ensure that the SCR system is operating properly within 175 nautical miles of the U.S. coast, we would need to consider continuous monitoring of NO_X emissions for engines using SCR. This is discussed in more detail below.

If the combustion is not carefully controlled, some of the ammonia can pass through the combustion process and be emitted as a pollutant. This is less of an issue for Category 3 marine engines, which generally operate under steady-state conditions, than for other mobile-source applications. In addition, in ships where banks of engines are used to drive power generators, such as cruise ships, the engines generally operate under steady-state conditions near full load. If ammonia slip still occurred, an oxidation catalyst could be used downstream of the reactor to burn off the excess ammonia.

Slow-speed marine engines generally have even lower exhaust temperatures than medium-speed engines due to their two-stroke design. However, we are aware of four slow-speed Category 3 marine engines that have been successfully equipped with SCR units. Because of the low exhaust temperatures, the SCR unit is placed upstream of the turbocharger to expose the catalyst to the maximum exhaust heat. Also, the catalyst design required to operate at low temperatures is very sensitive to sulfur. Especially at the lower loads, the catalyst is easily poisoned by ammonium sulfate that forms due to the sulfur in the fuel. To minimize this poisoning on these four in-service engines, highway diesel fuel (0.05% sulfur) is required. In addition, these ships operate with the exhaust routed through the SCR unit only when they enter port in the United States, which is about 12 hours of operation every 2 months. Therefore, the sulfur loading on the catalyst is much lower than it would be for a vessel that continuously used the SCR system. To prevent damage to the catalyst due to water condensation, this system needs to be warmed up and cooled down gradually using an external system. Another issue associated with the larger slow-speed engines and lower exhaust temperatures is that a much larger SCR system would be necessary than for a vessel using a smaller medium-speed engine. Size is an issue because of the limited space on most ships.

c. Fuel cells. A third advanced technology that may allow for significant reduction of NO_X emissions involves the use of fuel cells to power the vessel in place of an internal-combustion engine. A fuel cell is like a battery, except where batteries store electricity, a fuel cell generates electricity. The electro-chemical reaction taking place between two gases, hydrogen and oxygen, generate the electricity from the fuel cell. The key to the energy generated in a fuel cell is that the hydrogen-oxygen reaction can be intercepted to capture small amounts of electricity. The byproduct of this reaction is the formation of water. Current challenges include the storage or formation of hydrogen for use in the fuel cell and cost of the catalyst used within the fuel cell.

Recently, several efforts to apply fuel cells to marine applications have been conducted. These include grants from the Office of Naval Research and the U.S. Navy. The Office of Naval Research initiated a three-phase advanced development program to evaluate fuel cell technology for ship service power requirements for surface combatants in 1997. In early 2000, the U.S. Navy sponsored an effort to continue the development of the molten carbonate fuel cell for marine use. The Society of Naval Architects and Marine Engineers released the technical report "An Evaluation of Fuel Cells for Commercial Ship Applications." The report examines fuel cells for application in commercial ships of all types for electricity generation for ship services and for propulsion.

Fuel cell research is currently supported by several sources including the U.S. Maritime Administration (MARAD) and the state of California's Fuel Cell Partnership. MARAD's Division of Advanced Technology has also included the topic of fuel cells as a low air emission technology that should be demonstrated. California's Fuel Cell Partnership seeks to achieve four main goals which include (1) demonstrate vehicle technology by operating and testing the vehicles under real-world conditions in California; (2) demonstrate the viability of alternative fuel infrastructure technology, including hydrogen and methanol stations; (3) explore the path to commercialization, from identifying potential problems to developing solutions; and (4) increase public awareness and enhance opinion about fuel cell electric vehicles, preparing the market for commercialization. At this time, we consider fuel cell technology still be in the early stages of development. Because a mature fuel cell system could have significant environmental benefits, we will consider fuel cells in the future rulemaking.

4. Will the International Community Also Consider More Stringent Standards?

At the time the Annex VI NO_X limits were adopted in September 1997, several Member States expressed concern that the NO_X limits were not stringent enough and would not result in the emission reductions they were intended to achieve. Due to the efforts of these Member States, the Conference of the Parties adopted a resolution that provides for review of the emission limits with the aim of adopting more stringent limits, taking into account the adverse effects of such emissions on the environment and any technological developments in marine engines. This review is to occur at a minimum of five-year intervals after entry into force of the Annex, with amended NO_X limits to reflect more stringent controls if appropriate.

In March 2000, the United States requested the Marine Environment Protection Committee (MEPC) to begin consideration of more stringent emission limits for marine diesel engines.[31] EPA's analysis of emission-control technology for our 1999 rulemaking indicated that more stringent standards are feasible for all Category 1 and Category 2 marine diesel engines. Engine manufacturers were also beginning to apply these emission-control strategies to Category 3 marine diesel engines, as well as more advanced strategies such as water emulsification and selective catalytic reduction. Reflecting the potential emission reductions that could be obtained from applying these strategies to all marine diesel engines, the United States recommended Annex VI Tier 2 NO_X limits be set at 25 to 30 percent below the existing Annex VI NO_X limits for all engines subject to the regulation (engines above 130 kW), to go into effect in 2007. This would allow a seven-year period of stability for the Annex VI NO_X limits, permit engine manufacturers to adjust their engine designs to include new emission-control technologies, and allow manufacturers of marine diesel engines at or above 30 liters per cylinder to develop emission-control strategies for those large engines. This recommendation was discussed at the 44th session of the MEPC (London, March 3–16, 2000), but the committee took no action.

The United States will continue to promote more stringent standards at IMO and encourage MEPC to adopt a second tier of emission limits that will reflect available technology and reduce the impact of marine diesel engines on the world's air quality. Technology has continued to advance since we made our request for review in 2000. EPA now believes that Member States of the IMO should consider further reductions of significantly more than 30 percent from the NO_X limits currently stipulated under Regulation 13 of the Annex, to be applicable to engines installed on vessels constructed on or after a date to be determined. Consideration should be given to use of emission-control systems that include a combination of optimized in-cylinder controls and advanced technologies such as selective catalytic reduction and water-based control technologies.

B. Fuel Controls

The majority of Category 3 engines are designed to run on residual fuel. This fuel is made from the very end products of the oil refining process, formulated from residues remaining after the primary distilling stages of the refining process. It has higher contents of ash, metals, and nitrogen that may increase emissions of exhaust pollutants. Residual fuel also has sulfur content up to 45,000 ppm; the global average sulfur concentration is currently about 27,000 ppm, though fuel sold in the United States has sulfur levels somewhat above the average.[32] Operating on fuels with such high sulfur contents results in high SO_X and direct sulfate PM emissions.

Using a residual fuel with a lower sulfur content would reduce the fraction of PM emissions from ash and metals. Using distillate fuel instead of residual fuel could result in even lower emissions. The simpler molecular structure of distillate fuel may result in more complete combustion with reduced levels of carbonaceous PM. Operation on distillate fuel would also reduce NO_X emissions because distillate fuel generally contains less nitrogen and has better ignition qualities. In general, engines that are designed to operate on residual fuel are capable of operating on distillate fuel. For example, if the engine is to be shut down for maintenance, distillate fuel is often used to flush out the fuel system. However, there are several complications associated with using distillate fuel to reduce emissions. Switching to distillate fuel requires 20 to 60 minutes, depending on how slowly the operator wants to cool the fuel temperatures. According to engine manufacturers, switching from a heated residual fuel to an unheated distillate fuel too quickly could cause damage to fuel pumps. There could also be fuel pump durability problems if the engine is operated on distillate fuel for more than a few days. For continued operation on distillate, ships would need to have separate (or modified) pumps and lines. In addition, modification to the fuel tanks may be necessary to ensure sufficient capacity for lower-sulfur fuel.

1. Is EPA Adopting Fuel Requirements?

In our proposal, we requested comment on whether we should set standards for the fuel that ships use and, if so, what form the standards should take. After reviewing the comments and

[30] Paro, D., "Effective, Evolving, and Envisaged Emission Control Technologies for Marine Propulsion Engines," presentation from Wartsila to EPA on September 6, 2001 (Docket A–2001–11; document II–A–72).

[31] MEPC 44/11/7, Prevention of Pollution from Ships, Revision of the NO_X Technical Code, Tier 2 Emission Limits for Marine Diesel Engines at or Above 130 kW, submitted by the United States. This document is available at Docket A–2001–11, Document No. II–A–16.

[32] Sulphur Monitoring 2002. Report to Marine Environmental Protection Committee, 47th Session. MEPC 47/INF.2, August 28, 2001. A copy of this document can be found in Docket A–2001–11, Document No. II–E–9.

other information, we have decided not to set fuel-based regulations at this time. We remain concerned that regulating fuel sold in the United States would not necessarily ensure that distillate fuel was used in U.S. waters. It is not clear under the Clean Air Act whether we can set standards for more than the fuel sold in the United States. If so, then a fuel sulfur standard would be unlikely to have a significant impact on emissions because ships may choose to refuel before entering or after leaving the United States.

However, as we noted in our proposal, Regulation 14 of MARPOL Annex VI allows areas in need of SO_X emission reductions to petition to be designated as SO_X Emission Control Areas. After the Annex goes into force, ships operating in these designated areas must use fuel with a sulfur content not to exceed 15,000 ppm or an exhaust gas cleaning system to reduce total vessel SO_X emissions to 6.0 g/kW-hr or less. The United States may propose designation of one or more areas in the future pending a review of the relevant emissions, the potential benefits, and the associated costs. However, if the Annex does not go into effect, we will address this issue in the future to the extent appropriate under the Clean Air Act.

2. What Are the MARPOL Annex VI Fuel Provisions?

MARPOL Annex VI contains requirements for fuels used onboard marine vessels. These requirements, which will be effective if and when the Annex goes into force, consist of two parts. First, Annex VI specifies that the sulfur content of fuel used onboard ships cannot exceed 45,000 ppm (4.5 percent). Information gathered in an international monitoring program indicates refiners are currently complying with this requirement and that the current sulfur level of marine bunker fuels ranges between 5,000 and 45,000 ppm with an average sulfur content of about 27,000 ppm. Second, the Annex provides a mechanism to designate SO_X Emission Control Areas, within which ships must either use fuel with a sulfur content not to exceed 15,000 ppm or an exhaust-gas cleaning system or other technology to reduce total vessel SO_X emissions (including both auxiliary and main propulsion engines) to 6.0 kW-hr or less. To date, two SO_X Emission Control Areas have been designated: the North East Atlantic (North Sea, Irish Sea, and English Channel) and the Baltic Sea. After the Annex goes into forces, ships operating in these designated areas must use fuel with a sulfur content not to exceed 15,000 ppm or an exhaust gas cleaning system to reduce total vessel SO_X emissions to 6.0 g/kW-hr or less.

Refiners can produce lower-sulfur residual fuel from a lower-sulfur crude oil or they can put the fuel through a de-sulfonation step in the refinery process. They can also produce it by blending marine distillate fuel, which typically has fuel sulfur levels between 2,000 and 3,000 ppm.

3. How Will SO_x Emission-Control Areas Be Designated in the United States?

Annex VI stipulates that any proposal for designation of a SO_x Emission Control Area (SECA) must meet certain requirements before it will be taken under consideration by the Parties through IMO's Marine Environment Protection Committee (MEPC). The specific requirements, as set out in Appendix III to Annex VI, are:

- A clear delineation of the area and its boundaries;
- A description of the land and sea areas at risk from the impacts of maritime SO_x emissions;
- An assessment that describes the impact of SO_x emissions on terrestrial and aquatic ecosystems, areas of natural productivity, critical habitats, water quality, human health, and areas of cultural and scientific significance, if applicable. The source of relevant data including methodologies used, shall be identified;
- Relevant information pertaining to the meteorological conditions in the proposed area of application and the land and sea areas at risk, in particular prevailing wind patterns, or to topographical, geological, oceanographic, morphological, or other conditions that may lead to an increased probability of higher localized air pollution or levels of acidification;
- The nature of the ship traffic in the proposed area, including the patterns and density of such traffic; and
- A description of the control measures taken by the proposing Party or Parties addressing land-based sources of SO_x emissions affecting the area at risk that are in place and operating concurrent with the consideration of the proposal.

The Treaty does not establish arbitrary limits to the geographic extent of the area to be designated. Instead, it stipulates that the proposing Party or Parties support the size and extent of the proposed area by the relevant science. The two most important factors in determining the offshore boundaries of the area are meteorological conditions in the proposed area and how they influence emission transport to areas ashore and the volume and patterns of maritime traffic.

We plan to begin investigating designation of one or more areas in the future, including a review of the relevant emissions, the potential benefits that could be attained and the associated costs. The first step will be to identify the areas we would like to be considered for SECA designation. Then, we will need to identify data necessary to support any such applications, and the organizations (other federal agencies, State agencies, ports, *etc.*) who are likely to have that data. Once we obtain the data, we will use it to develop any such applications. EPA will work with interested states to consider whether the designation of specific SO_x Emission Control Areas under the Treaty would offer significant benefits to air quality (including PM), considering associated costs. Depending upon the outcome of these consultations and the analysis of the relevant vessel traffic and emissions, the United States may propose designation of one or more areas by amendment to Regulation 14(3) of Annex VI.

4. Are There Other Fuel-Based Controls That May Be Considered?

Additional particulate matter emission benefits could be achieved from engines that use distillate marine diesel fuel by controlling the sulfur content of that fuel. Distillate marine diesel fuel is used in Category 1 and Category 2 marine diesel engines, and is used in Category 3 marine diesel engines for specific purposes such as engine maintenance and, sometimes, for maneuvering and in-port operations. Distillate marine diesel fuel is similar to land-based nonroad diesel fuel and currently has a sulfur content in the range of 2,000 to 3,000 ppm (0.2–0.3 percent).

As noted in Section I.F, above, the European Union is considering a requirement for ships to use fuel with a maximum sulfur content of 2,000 ppm while at port. This generally means that these vessels would use distillate marine diesel fuel for those operations.

In the United States, we recently set fuel standards applicable to distillate highway diesel fuel. Today, the sulfur content of this fuel is under 500 ppm; a 15-ppm cap will apply beginning in 2007. We are currently developing a separate rulemaking that will set limits for the sulfur content of distillate non-road diesel fuel. Among other things, this rule will address what level of sulfur content would be appropriate for distillate marine diesel fuel.

V. Demonstrating Compliance

We are finalizing many, but not all of the compliance provisions that we proposed. As described earlier, we are only finalizing an initial tier of standards in this final rule. Given the nature of these standards, which are equivalent to the internationally negotiated NO_X standards, we are adopting an interim compliance program for Category 3 engines that is harmonized with the international program to the maximum extent possible. This compliance program will apply only for the initial tier of standards in this final rule. Nevertheless, we continue to believe that additional compliance requirements, such as those that we proposed, may be appropriate for later tiers of standards. See Section V.F. for more information about the kinds of additional compliance provisions that we expect to include for later standards. The certification and compliance provisions for the internationally negotiated NO_X standards contained in MARPOL Annex VI are set out in the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines (the NO_X Technical Code).[33]

For those Category 1 and Category 2 engines for which we proposed Tier 1 emission standards (*i.e.*, engines over 2.5 liters per cylinder), we proposed to apply all the Tier 2 requirements for the proposed Tier 1 standards. (Note that we established those Tier 2 requirements in a previous rulemaking, in which we set the Tier 2 standards.) After considering the public comments, we are finalizing this approach with two exceptions. First, we allow manufacturers to use test data generated using the procedures in the NO_X Technical Code on an interim basis, as described below. Second, we will not require manufacturers to perform production-line testing on their Tier 1 engines. Commenters expressed concerns about the lead time available to meet the Tier 1 requirements, and the burdens of deviating from the Annex VI requirements. We believe that these comments are particularly relevant to production-line testing. Given the nature of the Tier 1 standards that are being finalized, we do not believe that the burdens associated with starting a production-line testing program with less than two years lead time would be appropriate. We do not believe that the remainder of the existing compliance program for these engines will be particularly burdensome or require additional lead time. The compliance program that was promulgated previously for Tier 2 engines is not being changed, and will remain in effect as specified in 40 CFR part 94.

Except as noted, the remainder of this section addresses the compliance program for Category 3 engines.

A. Overview of Certification

1. How Do I Certify My Engines?

We are adopting certification and compliance requirements for new Category 3 marine engines that are similar to those already in place for Category 1 and Category 2 marine engines. These provisions are contained in 40 CFR part 94 and were described in detail in the preamble to the final rule establishing those regulations (64 FR 73300, December 29, 1999). In general, these provisions require that a manufacturer do the following things to certify engines:

- Divide engines into groups of engines with similar emission characteristics. These groups are called "engine families".
- Test the highest emitting engine configuration within the family.
- Determine deterioration rate for emissions and apply it to the "zero-hour" emission rate. The deterioration rate is essentially the difference between the emissions of the engine when produced and the point at which it will need to be rebuilt.
- Determine the emission-related maintenance that will be necessary to keep the engines in compliance with the standards.
- Submit the test data to EPA along with other information describing the engines within the engine family. This submission is called the "application for certification".

The certification provisions for new Category 3 engines are discussed more fully below, including discussions of the differences between the requirements the NO_X Technical Code (NTC) and this final rule.

2. How Are These Certification Requirements Different From Those of the NO_X Technical Code?

Our certification process is similar to the NTC pre-certification process. However, the Clean Air Act specifies certain requirements for our certification program that are different from the NTC requirements. The EPA approach differs from NTC in three areas: (1) We allow, but do not require witness testing, (2) we include various provisions to hold the engine manufacturer responsible for the durability of emission controls (see Section V.B.5), and (3) we specify broader temperature ranges and allow manufacturers less discretion in setting engine parameters for testing, with the goal of adopting test procedures that represent a wide range of normal in-use operation. Note also, as described in Section III.B, that the timing of the new standards is based on the date of first full assembly of the engine, while NTC generally applies the standards based on the start-date of the manufacture of the vessel, which may occur before the engine is fully assembled.

We believe the regulations in this final rule are sufficiently consistent with NTC that manufacturers can use a single harmonized compliance strategy to certify under both systems. If manufacturers have used good engineering judgment in exercising their discretion for test parameters under the TNC, there will be little or no difference between the two systems. However, we are aware that the short lead time may not allow manufacturers to take whatever steps may be necessary to address any potential differences. As a result, we are adopting an interim provision in 40 CFR 94.12 to allow manufacturers to rely on test data generated under NTC provisions in place of EPA provisions for certifying all categories of engines through the 2006 model year. Beginning with the 2007 model year, EPA may extend this waiver on a case-by-case basis, provided the manufacturer satisfies EPA that any differences between its application of the NO_X Technical Code test procedures and the test procedures contained in this rule will not adversely affect NO_X emission rates. For the Category 1 and Category 2 engines subject to this rule, manufacturers will start certifying to EPA's Tier 2 standards starting in 2007. For Category 3 engines, the standards don't change in 2007, but this marks an appropriate time to expect manufacturers to make any minor adjustments that might be necessary to fully comply with the EPA provisions for testing and certification.

The relationship between our program and the NTC requirements is described in more detail in Section V.D.

3. How Does a Certificate of Conformity Relate to a Statement of Voluntary Compliance or an EIAPP?

The Clean Air Act requires that manufacturers obtain a certificate of conformity before they introduce a new engine into commerce. Once it goes into force, MARPOL Annex VI will require manufacturers to obtain an "Engine International Air Pollution Prevention

[33] A copy of the conference version of the NO_X Technical Code can be found in Docket A–97–50, Document II–B–01. Copies of updated versions can be obtained from the International Maritime Organization (*http://www.imo.org*).

Certificate" (EIAPP). We anticipate that engines that receive an EPA certificate of conformity will also be eligible for an Engine International Air Pollution Prevention Certificate, since the near-term emission limits are the same as the Annex VI NO_X limits.

Note that EIAPPs will not be issued until the Annex goes into force and can be issued only by the flag-state Administration. Prior to entry into force of the Annex, and to encourage vessel owners to purchase MARPOL Annex VI compliant engines, we have developed a voluntary certification program. Under this program, the engine manufacturer can apply for and obtain a Statement of Voluntary Compliance to the MARPOL Annex VI NO_X limits.[34] It is anticipated that ship owners will be able to exchange this Statement of Voluntary Compliance for an EIAPP after the Annex enters into force. If a shipowner does not have a valid Statement of Voluntary Compliance for an engine, it may be necessary to recertify the engine to obtain an EIAPP after the Annex enters into force. Finally, note that obtaining an EIAPP in this way requires a Statement of Voluntary Compliance from EPA. A shipowner with a Statement of Voluntary Compliance issued by another Administration or by a classification society will have to apply for EPA certification to obtain an EIAPP.

4. What Are the Roles of the Engine Manufacturer and Ship Owner After the Engine Is Installed?

Unlike the provisions of MARPOL Annex VI, the Clean Air Act makes the engine manufacturer responsible for in-use compliance of properly maintained engines. Manufacturers must demonstrate that their engines can meet emission standards through the engine's "useful life" (as described below, the useful life generally refer to the first rebuild cycle). Manufacturers are responsible for correcting failures that occur during that period. The ship owner must ensure that all proper maintenance is performed during the entire "service life" of the engine (service life is the period during which the engine is in service, including the periods after it has been rebuilt). Under both Annex VI and the regulations adopted in this final rule for Category 3 engines, the ship owner is also responsible for compliance with the recordkeeping provisions contained in the NO_X Technical Code. EPA and Coast Guard will work together to develop procedures to verify onboard performance of Annex VI requirements, as Coast Guard has general authority to carry out such procedures on vessels.

While this final rule does not require operators or owners of Category 1 or Category 2 engines to comply with the recordkeeping provisions contained in the NO_X Technical Code, we believe operators will generally choose to comply with these Annex VI recordkeeping requirements anyway, for three reasons. Most importantly, once Annex VI is ratified, compliance with these recordkeeping provisions will be required for U.S. ships that go overseas. Also, full compliance with the maintenance logging requirements under Annex VI would be a simple way to show that an operator is not tampering with the engine. Finally, manufacturers often condition warranty coverage to some degree on proper maintenance of the engine. Thus, having the Annex VI log would facilitate warranty claims.

B. Other Certification and Compliance Issues

1. How Are Engine Families Defined?

Engine grouping for the purpose of certification is accomplished through the application of an "engine family" definition. Engines expected to have similar emission characteristics throughout their useful life are classified in the same engine family. As a default, we are defining engine families consistent with Annex VI. However, to provide for administrative flexibility, we may separate engines normally grouped together or combine engines normally grouped separately, based upon a manufacturer's request, substantiated with an evaluation of emission characteristics over the engine's useful life. It is worth noting that we are not adopting the Annex VI definition of "engine groups". Under Annex VI, manufacturers can choose to certify their engines under a more narrowly defined engine group than an engine family. Annex VI allows more in-use adjustment of these engine group-certified engines.

2. Which Engines Are Selected for Testing?

Manufacturers must select the highest-emitting engine (*i.e.*, "worst-case" engine) in a family for certification testing. This is consistent with the NTC requirements. In making that determination, the manufacturer must use good engineering judgment (considering, for example, all engine configurations and power ratings within the engine family and the range of installation options allowed). By requiring the worst-case engine to be tested, we are assured that all engines within the engine family are complying with emission standards for the smallest number of test engines. If manufacturers believe that the engine family is grouped too broadly, they may request separating engines with dissimilar calibrations (based on an evaluation of emission characteristics over the engine's useful life) into separate engine families.

For these large marine engines, conventional emission testing on a dynamometer becomes more difficult. Often the engine mock-ups that are used for the development of these engines use a single block for many years, while the power assemblies are changed out. For Category 3 engines, certification tests may be performed on these engine mock-ups, as long as their configuration is the same as that of the production engines. In addition, manufacturers may conduct single-cylinder tests, since this should give the same brake-specific emission results as a full engine test, as long as each cylinder in an engine is equivalent in all material respects.

Manufacturers must allow EPA to perform confirmatory testing using their certification engines. In other rules, we have required manufacturers to provide us with actual engines for our confirmatory testing program. However, this would be impractical for Category 3 engines because of their size and cost. Thus, confirmatory testing of Category 3 engines would most likely require the manufacturer to test a specific engine model according to our specifications. For example, we might require that an engine be retested in our presence or tested with specific settings for adjustable parameters.

3. How Does EPA Treat Adjustable Parameters?

Diesel engines are often designed with adjustable components. For example, it is common to be able to adjust the fuel injection timing of an engine. EPA has historically required that these important adjustable parameters be physically limited to the range over which an engine would comply with the standards. Thus, while an uncontrolled diesel engine would typically have a broad (or even unlimited) range of adjustability, EPA-certified engines have a very narrow range of adjustability. Typically, this narrow range is enforced through physical stops on the adjustable parts. In some cases, manufacturers seal a component after final assembly to prevent any adjustment in use. Disabling physical stops, breaking seals, or otherwise adjusting an engine outside of the certified range is considered tampering with the emission controls, and is a violation of section 203(a) of the Clean Air Act.

For marine engines, broad adjustability allows engines to be adjusted for maximum efficiency when used in a particular application. This practice simplifies marine diesel engine production, since the same basic engine can be used in many applications. While we recognize the need for this practice, we are also concerned that the engine meet the proposed emission limits throughout the range of adjustment. Therefore, the Agency has established provisions for Category 2 engines to allow manufacturers to specify in their applications for certification the range of adjustment for these components across which the engine is certified to comply with the applicable emission standards, and demonstrate compliance only across that range. We will also allow such adjustments for Category 3 engines. Practically, this requirement means that a manufacturer would specify different fuel injection timing calibrations for different conditions. These different calibrations would be designed to account for differences in fuel quality, which can be very significant for Category 3 engines. Operators would then be prohibited by the anti-tampering provisions from adjusting engines to a calibration different from the calibration specified by the manufacturer. The operators have to maintain records onboard the vessel demonstrating compliance, and must submit these records to EPA upon request. NTC also allows engines to be adjusted in use, and requires the engine manufacturer to include a description of the allowable adjustments in the Technical File for the engine.

4. How Must Engines Be Labeled?

Each new engine must have a permanent emission label on the engine block or on some other part of the engine that is not normally replaced during maintenance or rebuild. This label must include specific emission-related information such as engine family name, model year, and basic maintenance specifications. The inclusion of this information on the label is in addition to the recordkeeping requirements specified in the NO_X Technical Code.

5. How Does EPA Ensure Durable Emission Controls?

To achieve the full benefit of the emission standards, we need to ensure that manufacturers design and build their engines with durable emission controls. It is also necessary to encourage the proper maintenance and repair of engines throughout their lifetime. The goal is for engines to maintain good emission performance throughout their in-use operation. Therefore, we believe it is necessary to adopt measures to address concerns about possible in-use emission performance degradation. The durability provisions described in the following sections are intended to help ensure that engines are still meeting applicable standards when operated in use. Most of these provisions are carried over from our program for smaller marine diesel engines.

The most fundamental issue related to durability is the concept of useful life. The Clean Air Act specifies that useful life is the period during which an engine is required to meet the emission standards. For Category 3 marine engines subject to our standards, the useful life is the period during which an engine is expected to be properly functioning with respect to reliability and fuel consumption without being rebuilt. For engines that are rebuilt completely at one time, the useful life would be the expected period between original manufacture and the first engine rebuild. For engines that are maintained by replacing individual power assemblies, the useful life would be the expected period between original manufacture and the point at which the last power assembly is replaced. We expect that this period will vary to some degree among engine models. Manufacturers must therefore specify the useful life for their engines at the time of certification. The specified useful life is subject to EPA approval and may not be less than 3 years or 10,000 hours of operation (based on total engine operation, not just operation in or near U.S. waters). This specification does not limit in-use operation. Rather it gives the manufacturer direction for addressing emission deterioration by defining the period during which the manufacturer must demonstrate to EPA that the engine will meet the standards. The useful life period may also not be less than any mechanical warranty that the manufacturer offers for the engine.

These minimum useful life values are lower than the minimum values for Category 2 engines due to the effect of using residual fuel, which generally has much higher sulfur levels than distillate fuels. The high sulfur levels create a more corrosive environment within the combustion chamber, which decreases durability. The period of years (three years) is also affected by the higher usage rate in terms of hours per year.

6. What Are the Manufacturer's Responsibilities for the Emission Warranty and Defect Reporting?

Tied to the useful life is the minimum period for the emission warranty required under section 207(a) of the Clean Air Act. We believe it is important to ensure that the engine manufacturer has designed and built the engine to ensure that it will comply with the emission standards throughout its useful life, as long as it is properly maintained. We therefore specify that the period for the emission warranty is equal to the useful life period (*e.g.*, 10,000 hours or 3 years). The engine manufacturer is responsible for any emission-related repairs to any properly maintained and properly used engine that fails to meets the standard in use during the warranty period. Engine operators are responsible to repair any engines that fail to meet the standards because of improper maintenance during the service life of the engine.

We are also adopting defect-reporting requirements. These provisions require Category 3 engine manufacturers to report to us whenever a specific emission-related defect occurs in two or more engines (or two or more cylinders within the same engine). We generally expect manufacturers to identify defects as part of their normal warranty process. The manufacturer must, however, report all defects, without regard to how they were identified. Note that the defect reporting requirements do not expressly require the manufacturer to collect new information. However if their practice for safety and production defects is to collect new information or conduct investigations, then they must do so with respect to emission-related defects under this regulation. Manufacturers must also track and report information they obtain through normal business practice.

7. What Are Deterioration Factors?

To further ensure that the emission standards are met in use, we require manufacturers to apply a deterioration factor (DF) to engines to evaluate emission-control performance throughout the useful life. The emissions from new engines are mathematically adjusted using the DF to account for potential deterioration in emissions due to aging of emission-control technologies or devices. The resulting emission level is intended to represent the expected emissions at the end of the useful life period for a properly maintained engine. We believe the effectiveness of some emission-control technologies, such as aftertreatment, sophisticated fuel-

[34] Information on how to obtain a Statement of Voluntary Compliance can be found on our Web site *http://www.epa.gov/otaq/morine.htm.*

delivery controls, and some cooling systems, can decline as these systems age. The DF is applied to the certification emission test data to represent emissions at the end of the useful life of the engine. We are proposing that marine diesel engine DFs be determined by engine manufacturers in accordance with good engineering practices. This is more flexible than some more prescriptive approaches that are required for other program. The DFs, however, are subject to EPA approval and must be consistent with in-use test data. Manufacturers must calculate DF values based on the worst-case engine configuration offered within the engine family.

It is not our intent to require a great deal of data gathering on engines that use established technology for which the manufacturers have the experience to develop appropriate DFs. New DF testing may not be needed where sufficient data already exists. However, we are applying the DF requirement to all engines so we can be sure that reasonable methods are being used to determine the capability of engines to meet standards throughout their useful lives. Consistent with other programs, we allow manufacturers the flexibility of using durability emission data from a single engine for other engine families that are being certified to the same standards.

DFs are calculated as an additive value (*i.e.*, the arithmetic difference between the emission level at full useful life and the emission level at the test point) for engines without exhaust aftertreatment devices. In contrast, DFs are calculated as a multiplicative value (*i.e.*, the ratio of the emission level at full useful life to the emission level at the test point) for engines using exhaust aftertreatment devices. This is consistent with the DF requirements applicable to other diesel engines, based on observed patterns of emission deterioration. Given the type of emission controls projected to be used to meet the near-term standards (calibration changes and combustion chamber redesign, but not aftertreatment), it is possible that NO_x emissions may actually decrease with time as the piston rings and cylinder liners wear (thereby reducing peak pressures). In such cases, manufacturers would not be allowed to use a negative DF, and would instead be required to use a DF of zero.

One of the reasons we are adopting a very flexible DF program for this rulemaking is that we do not expect deterioration to be a major problem for these engines. Our history with in-cylinder NO_x control suggests that engine-out NO_x emissions are relatively stable over time. If we eventually adopt an aftertreatment-forcing standard or a standard for PM, we would likely consider more specific requirements for calculating DFs. For example, it might be appropriate to apply to these engines the more specific DF provisions that have been developed for heavy-duty highway engines (40 CFR 86.004–26).

8. What Requirements Apply to In-Use Maintenance?

In previous rules, we have required manufacturers to furnish the ultimate purchaser of each new nonroad engine with written instructions for the maintenance needed to ensure proper functioning of the emission-control system. (Generally, manufacturers require the owners to perform this maintenance as a condition of their emission warranties.) If such required maintenance is not performed by the engine operator, then in-use emission deterioration can result. We therefore require operators of vessels with Category 3 to perform the emission-related maintenance specified by the manufacturer, which we approve as part of the application for certification. This provision is comparable to our requirement for railroads to perform emission-related maintenance for locomotives (40 CFR 92.1004). In that approach, locomotive owners who fail to properly maintain a locomotive are subject to civil penalties for tampering. For marine engines, we consider rebuilding engines and power assemblies to be a part of emission-related maintenance. We believe these requirements are generally consistent in practice with the provisions specified for ship operators in Technical File required by the NO_x Technical Code.

Unlike our regulation for smaller marine engines, we are not adopting minimum allowable maintenance intervals for Category 3 marine diesel engines. This is also consistent with our approach for locomotives. In both cases, we believe the engine manufacturers, allowing for input from the engine owner, can assess what should be the specific maintenance schedules before completing the sale of the engine. The engine manufacturer will then provide those specific maintenance instructions to the ship operator or owner as part of the required maintenance information.

9. What Requirements Apply to Rebuilding Engines?

We are adopting in-use maintenance provisions that require operators to properly perform emission-related maintenance throughout the service life of the engine. This also applies whenever an engine or engine subsystem is rebuilt. In general, we require that all rebuilds return the engine to its original certified condition. We consider failure to rebuild an engine to its original certified condition to be tampering with the emission controls. We believe these maintenance and rebuild provisions address the vast majority of in-use servicing of these engines.

10. What Are the Prohibited Acts and Related Requirements?

We are regulating Category 3 engines under 40 CFR part 94. This means that we are extending the general compliance provisions for smaller marine engines to Category 3 marine engines. These include the general prohibition against introducing an uncertified engine into commerce, as well as the tampering and defeat-device prohibitions. These prohibitions are listed in 40 CFR 94.1103. As discussed above, certain prohibitions applying to ship owners and ship operators are also described in this section.

11. What General Exemptions Apply?

We are applying the exemptions for smaller marine engines to Category 3 marine engines. These include, for example, exemptions for the purpose of national security and exemptions for engines built in the United States for export to other countries. These exemptions, described in 40 CFR part 94, subpart J, typically exempt the engines from emission standards and other requirements, but require the manufacturer to keep records and label exempted engines.

12. What Regulations Apply for Imported Engines?

We are extending the current importation provisions found in 40 CFR part 94 for smaller marine engines to Category 3 marine engines. Imported engines are generally subject to the same requirements, based on their date of original manufacture. The existing provisions for smaller engines include permanent and temporary exemptions from this requirement.

13. What Are a Manufacturer's Recall Responsibilities?

Section 207(c)(1) of the Act specifies that manufacturers must recall and repair in-use engines if we determine that a substantial number of them do not comply with the regulations in use. We are proposing to apply the existing provisions for smaller marine engines to Category 3 marine engines. These provisions are described in 40 CFR part 94, subpart H.

14. What Responsibilities Apply to Ship Owners and Operators?

In this final rule we are requiring ship owners and operators to maintain all records of maintenance, repair, and adjustment of the ship's engines as it relates to emission-control performance. We believe these records currently are kept by most ship operators as part of normal recordkeeping associated with engines of this magnitude, initial investment, and cost of operation. These records would be essential for both the ship operator and the Administration to determine compliance with the applicable requirements. This is especially important for Category 3 marine engines, because operators need to be able to make adjustments that significantly affect the engine's ability to control emissions. These records must be maintained on-board the vessel and be provided to EPA upon request. It is a separate violation of the record keeping and submission requirements to fail to meet the requirements with respect to each required submission or record. Penalties are assessed for each day of each such violation.

In order to maintain the proper emission-control performance of the engine, the ship owner and operator are responsible for maintaining all adjustable parameters within the certified ranges specified by the engine manufacturer, and for ensuring that the engine is rebuilt pursuant to the regulatory requirements. The regulations establish that any adjustment outside the range specified by the manufacturer for proper emission-control performance constitutes a violation of the regulations and the Clean Air Act. Additionally, the regulations require the ship owner and operator to correct any noncompliance within a two-hour period. Failure to correct the noncompliance within a two-hour period is a violation of the regulations, with each two-hour period considered a separate violation. These provisions, like the other maintenance-related provisions, are intended to ensure that owners and operators perform adjustments properly to avoid the significant increase in emissions associated with improper adjustments. In effect, the timely correction of the improperly adjusted parameter is considered a required maintenance event, and failure to properly perform this required maintenance is considered tampering. Given the significant emission increases that can occur with improper adjustments, the reasonable time needed to correct an improper adjustment, and the need for an effective deterrent, the regulations establish a recurring two-hour period as the appropriate requirement.

As a minimum measure of compliance, the ship owner is required to comply with certain basic recordkeeping, as described above, and to review those records periodically to ensure compliance. Specifically, owners must perform an end-of-year review of the applicable maintenance and repair records and send us an annual statement confirming that they have met the emission-related requirements of the regulations for the previous year, or acknowledging any noncompliance, as appropriate. If the ship is operated by a company not controlled by the ship owner, then both companies are responsible to meet this reporting requirement. If EPA receives a valid compliance statement regarding a particular vessel from either the owner or the operator of the vessel, EPA will consider both the owner and the operator to have complied with the reporting requirement.

As described in Section I.E, the NO_x Technical Code Section 2.1 will require each engine covered by the Annex VI NO_x requirements to be surveyed to ensure that it complies with the NO_x limits (this requirement will apply once Annex VI goes into force). Two of the surveys, the pre-certification survey and initial certification survey, are required as part of a ship's initial survey and the issuance of an International Air Pollution Prevention certificate for the vessel. Section 2.1 also contains a requirement for periodic and intermediate surveys "to ensure the engine continues to fully comply with the provisions of the Code." The periodic and interim surveys are to occur every five and every 2½ years, respectively. Annex VI also requires additional unscheduled surveys unless the scheduled surveys are carried out on an annual basis. These surveys are required for engines installed on vessels of 400 gross tonnage or above, as specified in Regulation 5 of the Annex. For smaller vessels, it is up to each country to establish appropriate programs.

The periodic and interim surveys are somewhat similar to the annual compliance statement we are finalizing today. However, while the Annex VI surveys will be carried out by government surveyors, the annual compliance statement described in this section must be completed by the owner of the vessel and therefore creates a liability requirement for the vessel owner. In addition, it is not clear at this time whether the Annex VI survey will be designed only to inspect the engine to make sure it is in compliance at the time of the survey or if it will be designed to ascertain whether the engine has been taken out of compliance (*i.e.*, if there has been tampering) during the interim period. This is because the U.S. Senate has not yet ratified Annex VI, so the implementing legislation and corresponding regulations for adopting the Annex VI and NO_x Technical Code requirements into U.S. law have not yet been adopted. For both of these reasons, we believe it is necessary to include this annual compliance statement requirement in this rule. However, it is possible that the additional documentation required by Annex VI and the associated surveys may be sufficient to ensure compliance. Therefore, in light of this possibility, EPA will reconsider the need for this annual compliance statement in the context of the development of the implementing legislation and supporting regulations for U.S. implementation of MARPOL Annex VI. If such reconsideration leads EPA to rely in the future on the Annex survey in lieu of the annual statement of the compliance, the owner and operator of the vessel would remain liable for all other compliance provisions of the regulations adopted today. This would include maintaining all records of maintenance, repair and adjustment of the ship's engines as it relates to emission-control performance, and maintaining the proper emission-control performance of the engine. The annual compliance certification requirement will remain in effect unless it is specifically rescinded.

C. Test Procedures for Category 3 Marine Engines

Engine manufacturers are currently testing according to the test procedures outlined in The Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines (hereafter referred to as "NO_x Technical Code").[35] The new EPA standards are based on these Annex VI test procedures, with some modifications described below. These modifications are necessary to ensure that the test data used for certification are consistent with the requirements of the Clean Air Act.

1. What Duty Cycle Do I Use To Test My Engines?

The duty cycle used to measure emissions is intended to simulate operation in the field. Testing an engine for emissions consists of exercising it.

[35] A copy of the conference version of the NO_x Technical Code can be found in Docket A–97–50, Document II–B–01. Copies of updated versions can be obtained from the International Maritime Organization (*http://www.imo.org*).

over a prescribed duty cycle of speeds and loads, typically using an engine dynamometer. The nature of the duty cycle used for determining compliance with emission standards during the certification process is critical in evaluating the likely emission-control performance of engines designed to those standards.

To address operational differences between engines, we are adopting two different duty cycles for different types of Category 3 marine engines. Engines that operate on a fixed-pitch propeller curve must be certified using the E3 duty cycle adopted by the International Organization for Standardization (ISO). This is a four-mode steady-state cycle developed to represent in-use operation of marine diesel engines. The four modes lie on an average propeller curve based on the vessels surveyed in the development of this duty cycle. We are adopting the ISO E2 duty cycle for propulsion engines that operate at a constant speed. These are the same cycles specified by Annex VI.

2. How Do I Account for Variable Test Conditions?

We are not limiting certification testing based on barometric pressure or ambient humidity. We limit the allowable ambient air temperature for laboratory testing to a range between 13°C and 30°C and charge air cooling water between 17°C and 27°C. This is somewhat broader than is specified by the NTC. We are adopting the NTC correction factors for temperature and humidity for certification testing in this temperature range. These corrections adjust emission measurements to be equivalent to measurements taken at 25°C and a humidity of 10.71 g/kg. We will allow the use of the corrections for a broader range of test conditions, as long as the manufacturer verifies the accuracy of the correction factors outside of the range of test conditions for certification.

3. How Does Laboratory Testing Relate to Actual In-Use Operation?

If done properly, laboratory testing can provide emission measurements that are the same as measurements taken from in-use operation. However, improper measurements may be unrepresentative of in-use operation. We are therefore adopting regulatory provisions to ensure that laboratory measurements accurately reflect in-use operation. The regulations include a general requirement that manufacturers must use good engineering judgment in applying the NO_X Technical Code test procedures to ensure that the emission measurements accurately represent emission-control performance from in-use engines. We are adding specific requirements for manufacturers to ensure that intake air and exhaust restrictions and coolant and oil temperatures are consistent with in-use operation. Most importantly, we require that manufacturers' simulation of charge-air cooling replicate the performance of in-use coolers within ±3°C.

The definition of maximum test speed, (the maximum engine speed in revolutions per minute, or rpm) is an important aspect of the test cycles. Under the NO_X Technical Code, engine manufacturers are allowed to declare the rated speeds for their engines, and to use those speeds as the maximum test speeds for emission testing. However, we are concerned that a manufacturer might declare a rated speed that is not representative of the in-use operating characteristics of its engine in order to influence the parameters under which their engines may be certified. We are therefore applying the current definition of "maximum test speed", which is already specified for Category and Category 2 engines 40 CFR 94.107, to Category 3 engines. We will also allow manufacturers to ask us to use the maximum in-use engine speed as the maximum test speed.

D. Comparison to NO_X Technical Code Compliance Requirements

1. How Are EPA's Compliance Requirements Different From the NO_X Technical Code Requirements?

We have attempted to define compliance requirements that are sufficiently consistent with the NO_X Technical Code (NTC) to allow manufacturers to use a single harmonized compliance strategy to certify under both systems. This has involved making several changes to proposal to align the certification and compliance program with that specified by NTC. For example, (1) the final rule specifies a test fuel based on engine operation with cleaner-burning distillate fuel; (2) we are not requiring engine manufacturers to test engine emissions to verify compliance after engines are installed in vessels; and (3) operators do not need to conduct onboard emission measurements after adjusting the engines (or before they enter U.S. territorial waters) to demonstrate that the engine continues to meet the standards after such adjustments. We intend to revisit these issues in our future rulemaking.

We are adopting several provisions in our compliance program that are different from the NTC requirements. The differences are based on certain Clean Air Act-specific compliance provisions and the related need to adopt test procedures designed to achieve the emission reductions called for under Clean Air Act section 213. These differences are discussed in detail in Section V.A.2 above and are summarized as follows:

- Liability for in-use compliance—We require that the engine manufacturer be responsible for designing and producing an engine that will comply with the emission standards for the full useful life of the engine, while the NTC program makes the ship operators solely responsible for ensuring in-use compliance. Both the EPA regulations and the NTC provisions require ship operators to properly maintain their engines and to keep records of the maintenance and engine adjustment throughout the service life of the engine. Under NTC, these records are referred to as the Record Book of Engine Parameters.
- Durability demonstration—We require that the engine manufacturer demonstrate prior to production that a properly maintained and used engine will comply with the emission standards for the full useful life of the engine (*see* Section V.B.5). The NTC program only requires manufacturers to demonstrate that the engine meets the standards when it is installed in the vessel; there is no durability demonstration under NTC.
- Witness testing—We allow, but do not require, witness testing for U.S. compliance. Some other countries require witness testing for marine engines. Manufacturers must take this into consideration if they plan to sell the same engines in the United States and those other countries.
- Test conditions—We certify Category 3 marine engines using the NTC test procedures with certain modifications. Annex VI specifies narrow ranges for air and water temperature. This can make it easier for manufacturers to certify, because they might not design for the wide ranges of conditions that actually occur. We believe it is necessary to specify wider temperatures to achieve the level of emission reductions called for under the Act. Test procedures based on real operating parameters provide a robust method of measuring emissions. To address the concern for varying emission levels under extreme conditions, we correct emissions back to standard conditions using Annex VI correction factors.
- Test parameters—NTC allows manufacturers full discretion to adjust certain engine parameters to appropriate settings. For engine parameters such as aftercooler and backpressure simulation, these parameters may significantly affect emission levels. As with the test conditions for air and water temperatures, to avoid unrealistic parameter settings, we simply require good engineering judgment to select representative values for such engine parameters. Also, under NTC, manufacturers may specify a maximum test speed for engine testing that selectively includes lower-emission operation, even if those speeds do not represent an engine's actual operation when installed on a vessel. We instead define an objective way of identifying an engine's maximum test speed, based on the way the engine will operate in use.
- Compliance date for standards—As described in Section III, we apply the new emission standards based on the date the engine is fully assembled for the first time, while Annex VI applies the standards based on the date that the vessel is manufactured. Note that this difference would not matter for the near-term standards, since the effective date of the Annex VI limits has already passed (January 1, 2000).
- Parameter adjustment—We are allowing manufacturers to specify in their applications for certification the range of adjustment across which the engine is certified to comply with the applicable emission standards. This would allow a manufacturer to specify different fuel injection timing calibrations for different conditions. These different calibrations would be designed to account for differences in fuel quality. Operators would then be prohibited by the anti-tampering provisions from adjusting engines to a calibration different from the calibration specified by the manufacturer. The NTC would also prohibit operators from adjusting engines to a calibration different from the calibration specified by the manufacturer.

The durability requirements of the Clean Air Act represent the most fundamental differences between the NTC certification program and the program required by the Clean Air Act. The Act requires that a certificate of conformity be based on a demonstration of compliance with the engine standards, and the engine standards require that the engine manufacturer produces an engine that will comply with the emission standards for the specified useful life of the engine. The NTC certification provisions do not include this kind of requirement, instead making the ship operators solely responsible for ensuring in-use compliance through periodic survey requirements. Nevertheless, since requiring compliance with both would be at least partially duplicative, this rule harmonizes the Act and NTC requirements as closely as possible.

The requirements related to representative engine testing are important to ensure that engines are not designed with emission-control systems that operate well in the laboratory, with less effective control during in-use operation. However, based on our expectation that manufacturers are designing their engines properly today, we will allow manufacturers to rely on test data generated under NTC on an interim basis, as described in Section V.A.2,

2. Can a Manufacturer Comply With EPA Requirements and Annex VI Requirements at the Same Time?

Manufacturers complying with EPA requirements will need to do very little additional work to meet the Annex VI requirements. Engine manufacturers must give the operator a Technical File that has more information than we require. The manufacturer may also need to ensure that the relevant emission testing is witnessed appropriately.

For manufacturers already complying with the NTC, the amount of additional work necessary to satisfy the new EPA requirements depends on how they conducted emission testing. The NTC allows more discretion in testing engines than we allow under our regulations, and does not necessarily require that the engine be tested fully consistent with in-use operation. Under the EPA regulations tests of engines that are not consistent with in-use operation would not be allowed, unless the manufacturer could demonstrate that the test results were equivalent to test results that would result from testing conducted in accordance with the proposed regulations. In these cases, manufacturers would need to repeat the tests according to the proposed test procedures. However, we recognize that some additional lead time is needed for manufacturers that will be repeating tests. Therefore, we have included in 40 CFR 94.12(f) of the final regulations an interim provision which will allow manufacturers to use their Annex VI test data to show compliance with Tier 1 standards. Manufacturers would not need prior approval to do this. We are limiting this allowance to the first three model years of the Tier 1 standards. Beginning with model year 2007, manufacturers would need to make a showing of equivalence before they could deviate from the EPA test procedures.

On the other hand, manufacturers that used good engineering judgment to test their engines consistent with their in-use operation may generally use the same test data for EPA certification. For future testing, manufacturers may test their engines in a way that allows them to simultaneously meet the NTC and EPA requirements.

With respect to other EPA compliance requirements not related to certification testing, manufacturers must do the following things in addition to the Annex VI requirements:

- Demonstrate prior to production that the engines will comply with the emission standards for the useful life of the engine.
- Warrant to the purchasers that the engines will comply with the EPA requirements for the useful life of the engine.
- Specify how the operator should adjust the engine in use and how proper adjustment should be verified through testing.

E. Technical Amendment to 40 CFR Part 94

The regulations in 40 CFR 94.7(d) require that a marine engine be equipped with a connection in the exhaust system for the temporary attachment of gaseous and/or particulate emission-sampling equipment. This provision is intended to facilitate in-use emission testing. Where the engine manufacturer does not add a sample port, for example when an inadequate amount of the exhaust system is supplied to make such an installation practical, the engine manufacturer would have to provide installation instructions for the sample port. If the engine manufacturer properly supplies such instructions, the engine would be covered by the applicable engine certificate when the engine manufacturer provides the engine to the vessel manufacturer for the purposes of installation. The vessel manufacturer would then have to follow these installation instructions or the vessel manufacturer's sale or placement of the vessel into service could be a violation of the prohibited acts. Manufacturers expressed concern that the wording of this requirement could be taken to mean that a failure to install the sample port by the vessel manufacturer could affect their engine certificate. This was clearly not the intent of this provision. To further clarify this issue, we are amending 40 CFR 94.7(d) by deleting the words "invalidate a certificate and" from the last sentence of that regulatory provision.

F. Compliance Issues To Be Considered for Future Rulemaking

The compliance program being finalized in this final rule is appropriate to implement the Tier 1 standards. However, we continue to believe that additional compliance provisions will be necessary for later standards that require more advanced technology and more challenging calibrations. These include provisions related to (1) parameter adjustment, (2) off-cycle emissions, (3) test fuels, and (4) post-certification testing. These issues were discussed in detail in the proposal for this rule, along with potential compliance provisions that could address our concerns. We intend to assess the need for such compliance provisions in our future rulemaking.

1. What Are EPA's Concerns About Parameter Adjustment?

Given the broad range of ignition properties for in-use residual fuels, we expect that our in-use adjustment allowance for Category 3 engines would result in a broader range of adjustment than is expected for Category 2 engines. Because of this broader allowance, we proposed that operators be required to perform a simple field measurement test to confirm emissions after a parameter adjustment or maintenance operation, using onboard emission measurement systems with electronic-logging equipment. We expect that this issue will be equally important for more advanced engines that rely on water injection or after treatment for emission reductions. In addition, in most cases, these advanced technologies can be turned on and off by the operator. Thus, we expect there to be a need for an onboard verification system for these engines as well.

We envision a simpler measurement system than the type specified in Chapter 6 of NO_X Technical Code. As is described in the Final Regulatory Support Document, we believe that onboard emission equipment that is relatively inexpensive and easy to use could be used to verify that an engine is properly adjusted and is operating to the specifications of the engine manufacturer. Note that Annex VI includes specifications allowing operators to choose to verify emissions through onboard testing, which suggests that Annex VI also envisioned that onboard measurement systems could be of value to operators.

We proposed to allow vessel operators to adjust an engine's operating parameters different from the manufacturer's specification when the vessel is sufficiently far from the U.S. coastline. This flexibility is not included in the NTC provisions. Under the proposed approach, engine adjustments different from engine manufacturer's specifications would have been conditional on readjusting the engine's parameters within its certified range and confirming that emissions are within the range of emissions to which the engine is certified to comply before a vessel approaches the U.S. coastline. Failure to take these actions would have constituted tampering with the engine in violation of Clean Air Act section 203(a)(3)(A) and 40 CFR 94.1103(a)(3)(i). While we are finalizing our Tier 1 program without this flexibility, we will continue to evaluate whether it is appropriate for more advanced standards.

While we may revisit some of these issues in our future rulemaking, under this final rule ship operators may not adjust the parameters outside of the ranges specified by engine manufacturers in their application for certification. Any adjustment outside of the certification range would be considered tampering (see Sections V.B.3 and V.B.14).

2. What Are EPA's Concerns About Off-Cycle Emissions?

We are concerned about emission-control performance when the engine is not operating on the ISO E3 test cycle points. For Category 1 and Category 2 engines, we adopted "not-to-exceed" provisions to define an objective measure to ensure that engines would be reasonably controlling emissions under the whole range of expected normal operation, as well as the defeat-device prohibition. Since these smaller engines are mass produced for a wide range of vessels used in many different applications, we expected "normal operation" for these engines to vary considerably around the ideal propeller curve. Generally, Category 3 engines are intended to operate on a propeller curve matched with a propeller for custom installation on a specific vessel. However, we remain concerned that Category 3 engines may have higher emissions between test modes. While the defeat device provisions prohibit manufacturers from producing their engines to control emissions more effectively at established test points than at other points not included in the test, it can be a difficult prohibition to enforce. We expect to revisit this issue in our future rulemaking. For example we may require manufacturers to develop emission targets to allow the operator to ensure that the engine has been readjusted to have performance equivalent to the certified configuration. These emission targets would vary with operating conditions and would include targets for engine speeds other than the test points speeds. In the proposal we defined equivalent control to be either the use of the same injection timing map for the tested and nontested engine speeds, or following a linear interpolation between test points for NO_X emissions at nontest speeds.

In addition, we remain concerned that Category 3 engines operate at relatively low power levels when they are operating within range of a port. Ship pilots generally operate engines at reduced power for several miles to approach a port, with even lower power levels very close to shore. Because of the relatively low weighting of the low-power test modes in the ISO E3 test cycle, it is very possible that manufacturers could meet emission standards without significantly reducing emissions at the low-power modes that are more prevalent for these engines as they operate close to commercial ports. This issue would generally not apply to vessels that rely on multiple engines providing electric-drive propulsion, since these engines can be shut down as needed to maintain the desired engine loading. We will consider several options in our future rulemaking to address this concern. We could re-weight the modes of the duty cycle to emphasize low-power operation. This has several disadvantages. For example, we have no information to provide a basis for applying different weighting factors. Also, changing the duty cycle would depart from the historic norm for marine engine testing. This would make it more difficult to make use of past emission data, which is all based on the established modal weighting. An alternative approach would be to cap emission rates at the two low-power modes. We could set the cap at the same level as the emission standard, or allow for a small variation above the emission standard. For mechanically controlled engines, such an approach could dictate the overall design of the engine. On the other hand, it is likely that Tier 2 engines will have electronic controls, which would enable the manufacturer to target emission controls specifically for low-power operation without affecting the effectiveness of emission controls at higher power.

3. What Are EPA's Concerns About the Fuel Used for Emission Testing?

Appropriate test procedures need to represent in-use operating conditions as much as possible, including specification of test fuels consistent with the fuels that compliant engines will use over their lifetimes. For the standards we are adopting in this rule, we are allowing engine testing using distillate fuel, even though vessels with Category 3 marine engines primarily use the significantly less expensive residual fuel. This allowance is consistent with the specifications of the NTC. We proposed to base the standards on testing using residual fuel, but are not finalizing this requirement at this time due to concerns about the lead time needed by manufacturers to develop the necessary testing capabilities for residual fuels. Most manufacturers have test facilities designed to test engines using distillate fuel because it is easier to work with than residual fuel. Nevertheless, we believe that long-term standards should be based on actual in-use fuels. Thus, we will reconsider the issue of test fuel in a future rulemaking.

In our proposal, we also included a correction factor to account for the emission-related effects of fuel quality, specifically fuel-bound nitrogen. We are not finalizing the correction here. This correction would have been needed for residual fuel testing because of the high levels of nitrogen contained in those fuels. For all testing with Category 3 engines, we proposed to require measuring fuel-bound nitrogen and correcting measured values to what would occur with a nitrogen concentration of 0.4 weight percent. This corrected value would be used to determine whether the engine meets emission standards or not. This correction methodology would have applied equally to testing with distillate or residual fuels. While we are not adopting any correction for fuel effects in this rule, we will reconsider the need for such corrections in a future rulemaking.

4. What Are EPA's Concerns About Production Variability?

To ensure compliance of production engines, we proposed a simple testing program that is modeled loosely on our production line testing (PLT) requirements for other marine engines. The general object of any PLT program is to enable manufacturers and EPA to determine, with reasonable certainty, whether certification designs have been translated into production engines that meet applicable standards. We proposed that each engine a manufacturer produces be tested. We are not including new production testing requirements in this final rule because of concerns about the amount of lead time needed to start such program. However, we will revisit the need to include this type of post-certification testing in our future rulemaking.

VI. Projected Impacts

Our analysis of the projected impacts of new emission standards typically consists of estimating the costs, emission benefits, and cost per ton of pollutant reduced.

We expect the costs of compliance to be negligible. We do not anticipate any engineering or design costs associated with the near-term standards because manufacturers should already be certifying engines to the Annex VI standards to comply with the internationally negotiated program and new Category 3 marine diesel engines installed on ships since January 1, 2000 are widely understood to already comply with the standards set forth in both Annex VI and this rule. While there will be certification and compliance costs, these costs will be negligible, because manufacturers will be able to use the same test data for both programs. As detailed in the information collection request associated with this final rule (OMB #2060–0460), total annual reporting and recordkeeping costs for all affected entities is estimated to be $144,000.[36] Consequently, this program does not impose significant additional costs.

The emission reductions will reflect only reductions from engines that are currently in noncompliance with the Annex VI NO_X limits. For these reasons, the projected impacts of this rule are expected to be negligible (see Table VI–1). Accordingly, we have not calculated values to quantify the cost-effectiveness of the final rule.

TABLE VI–1.—CATEGORY 3 MARINE VESSEL NO_X NATIONAL EMISSION INVENTORIES

	1996	2010	2020	2030
No control baseline (thousand short tons)	190	303	439	659
EPA/MARPOL Annex VI:				
(Thousand short tons)	190	274	367	531
Percent reduction (relative to no control)		9.6	16.2	19.5

VII. The Blue Cruise Program

As described in Section VIII of the proposal, we are interested in developing a voluntary program to encourage ship owners and operators to reduce their air and waste emissions to minimize adverse environmental impacts. Under the envisioned program, a participant ship owner would be awarded a certain designation based on the combination of air and waste emission-control programs adopted. These technologies and systems could be different for new or existing vessels, but would be in addition to any equipment or systems they are already required to have. Qualifying ship owners could use the EPA designation on advertising materials (including the ship itself) to educate consumers and encourage them to choose their vessels.

We will continue the development of the Blue Cruise program separate from the emission-control programs for marine diesel engines. We intend to interact extensively with interested parties through public workshops and a proposal that we intend to publish in mid-2003. After consideration of the public comments we receive on that proposal, we will publish a final program.

VIII. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for public comment following the proposal that we published May 29, 2002 (67 FR 37548). We considered these comments in developing the final rule.

We have prepared a detailed Summary and Analysis of Comments document, which describes the comments we received on the proposal and our response to each of these comments. The Summary and Analysis of Comments is available in the docket for this rule and on the Office of Transportation and Air Quality Internet home page at *http://www.epa.gov/otaq/marine.htm.*

[36] Note that manufacturers have already incurred most of these estimated compliance costs for meeting Annex VI standards. New costs related to the final rule will be much smaller.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866 because it raises novel legal or policy issues due to the international nature of the use of Category 3 marine diesel engines and is therefore subject to OMB review. The Agency believes this regulation will result in none of the economic effects set forth in Section 1 of the Order. A Final Regulatory Support Document has been prepared and is available in the docket for this rulemaking and at the Internet address listed under **ADDRESSES** above. Written comments from OMB and responses from EPA to OMB are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires agencies to submit for OMB review and approval any federal requirements and activities that result in the collection of information from ten or more persons. Information-collection requirements may include reporting, labeling, and recordkeeping requirements. Federal agencies may not impose penalties on persons who fail to comply with collections of information that do not display a currently valid OMB control number.

The information collection requirements in this final rule have been approved by OMB under the Paperwork Reduction Act. The OMB control number for this information collection is 2060–0460, which we sent to OMB under the EPA ICR number 1897.04. The information being collected will be used by EPA to ensure that new marine vessels and fuel systems comply with emission standards through certification requirements and various subsequent compliance provisions.

In addition, this notice announces OMB's approval of the information collection requirements for commercial marine diesel engine for which we adopted emission standards on December 29, 1999 (64 FR 73300) and for recreational marine diesel engines for which we adopted emission standards on November 8, 2002 (67 FR 68242). The estimated annual public reporting and recordkeeping burden for collecting information from these engines is shown in Table IX.B–1.

TABLE IX.B–1.—BURDEN COLLECTING INFORMATION FOR MARINE DIESEL EMISSION-CONTROL PROGRAMS

Engine type	Respondents	Hours per respondent	Hours for all respondents	Capital costs for all respondents	Operating and maintenance costs for all respondents	Total costs for all respondents
Category 3	6	302	1,812	$0	$67,104	$144,022
Commercial—Category 1 and 2	232	93	21,520	0	40,000	2,494,272
Recreational	12	606	7,273	0	870,238	1,178,061

The Information Collection Requests (ICR) were subject to public notice and comment prior to OMB approval and, as a result, EPA finds that there is "good cause" under section 553(b) of the Administrative Procedures Act (5 U.S.C. 553(b)) to include these information-collection requirements in 40 CFR part 9 without additional notice and comment. EPA received various comments on the rulemaking provisions covered by the ICRs, but no comments on the paperwork burden or other information in the ICRs. All comments that were submitted to EPA are considered in the relevant Summary and Analysis of Comments, which can be found in the docket. A copy of any of the submitted ICR documents may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822–T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by e-mail at *auby.susan@epamail.epa.gov*.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of this rulemaking, "small entity" is defined as any one of the following: (1) A small business that meets the definition for businesses based on size standards adopted by the Small Business Administration; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The following Table X.B–1 provides an overview of the primary SBA small business categories that may be affected by this regulation.

TABLE X.B–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS REGULATION

Industry	NAICS[a]	Defined by SBA as a small business if:[b]
Internal Combustion Engines	333618	< 1000 employees
Ship Building	336611	< 1000 employees

TABLE X.B–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS REGULATION—Continued

Industry	NAICS[a]	Defined by SBA as a small business if:[b]
Water transportation, freight and passenger	483	< 500 employees

[a] North American Industry Classification System.
[b] According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

After considering the economic impacts of this rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Our review of the list of manufacturers of Category 3 marine diesel engines indicates that there are no U.S. manufacturers of these engines that qualify as small businesses. We are unaware of any foreign manufacturers of such engines with a U.S.-based facility that qualify as a small business. In addition, this rule will not impose significant economic impacts on engine manufacturers. Engine manufacturers are already achieving the Tier 1 standards and our program will impose only negligible compliance costs. Our review of the U.S. shipyards that build ships that use Category 3 marine diesel engines indicates that there are no U.S. manufacturers of these ships that qualify as small businesses.

Ship operators must take minimal steps to comply with this final rule. This includes an obligation to do emission-related maintenance specified by the engine manufacturer. These costs are not expected to be greater than the costs of maintaining unregulated engines except to the extent that ship operators do not currently maintain engines as specified by the engine manufacturer. Maintenance costs are expected to be minimal, given the overall costs of maintaining all of the vessel's systems and structures. In addition, operators must record certain information related to operating and servicing their engines. For example, maintaining the "record book of engine parameters" and detailing the ship's location when servicing engines is generally already required under MARPOL Annex VI or is readily available as a matter of routine recordkeeping. Finally, we require owners of marine vessels with Category 3 engines to send minimal annual notification to EPA to state whether engine maintenance and adjustments have caused engines to be noncompliant.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or the private sector in any one year. According to our cost estimates, we estimate the aggregate costs (annualized over 20 years) of this rule to be negligible. This final rule is therefore not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule creates no mandates on State, local, or tribal governments. The rule imposes no enforceable duties on these entities, because they do not manufacture any engines that are subject to this rule. This rule will be implemented at the Federal level and impose compliance obligations only on private industry. Executive Order 13132 therefore does not apply to this rule.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to

ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This rule does not have tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and impose compliance costs only on engine manufacturers and shipbuilders. Tribal governments will be affected only to the extent they purchase and use vessels having regulated engines. Executive Order 13175 therefore does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant under the terms of Executive Order 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The aim to reduce emissions from certain nonroad engines and have no effect on fuel formulation, distribution, or use.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule involves technical standards for testing emissions from marine diesel engines. EPA is adopting test procedures contained in the MARPOL NO_X Technical Code, with the certain modifications as described in this document. The MARPOL NO_X Technical Code includes the International Standards Organization (ISO) duty cycle for marine diesel engines (E2, E3, D2, C1) and the American Society for Testing and Materials (ASTM) fuel standards.[37] These procedures are currently used by virtually all Category 3 engine manufacturers to demonstrate compliance with the Annex VI NO_X limits and to obtain Statements of Voluntary Compliance to those standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before the rule is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

[37] The Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines in the Annex VI of MARPOL 73/78 Regulations for the Prevention of Air Pollution from Ships and NO_X Technical Code, International Maritime Organization. *See* footnote 1 regarding how to obtain copies of these documents.

Dated: January 31, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended in the table by adding the center heading and the entries under that center heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	
Control of Emissions From New and In-Use Marine Compression-Ignition Engines	
94.7–94.12	2060–0460.
94.101–94.109	2060–0460
94.203–94.222	2060–0460
94.303–94.310	2060–0460
94.403–94.408	2060–0460
94.508–94.509	2060–0460
94.804	2060–0460
94.904–94.911	2060–0460
. . . . .	

PART 94—CONTROL OF AIR POLLUTION FROM MARINE COMPRESSION-IGNITION ENGINES

1. The authority for part 94 continues to read as follows:

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

2. Section 94.1 is amended by revising paragraph (b) to read as follows:

§ 94.1 Applicability.

* * * * *

. (b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply with respect to the engines identified in paragraphs (a)(1) and (2) of this section where such engines are:

(1) Marine engines with rated power below 37 kW; or

(2) Marine engines on foreign vessels.

* * * * *

3. Section 94.2 is amended by adding, in alphabetical order, definitions to paragraph (b) for "Annex VI Technical Code", "Brake-specific fuel consumption", "Hydrocarbon standard", "Maximum test speed", "Residual fuel", "Round", "Tier 1", "Vessel operator", and "Vessel owner", and revising the definitions for "Designated Officer", "Diesel fuel", and "New vessel" to read as follows:

§ 94.2 Definitions.

* * * * *

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act:

Annex VI Technical Code means the "Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines," adopted by the International Maritime Organization (incorporated by reference in § 94.5).

* * * * *

Brake-specific fuel consumption means the mass of fuel consumed by an engine during a test segment divided by the brake-power output of the engine during that same test segment.

* * * * *

Designated Officer means the Manager of the Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

* * * * *

Diesel fuel means any fuel suitable for use in diesel engines which is commonly or commercially known or sold as diesel fuel or marine distillate fuel.

* * * * *

Hydrocarbon standard means an emission standard for total hydrocarbons, nonmethane hydrocarbons, or total hydrocarbon equivalent; or a combined emission standard for NO_X and total hydrocarbons, nonmethane hydrocarbons, or total hydrocarbon equivalent.

* * * * *

Maximum test speed means the engine speed defined by § 94.107 to be the maximum engine speed to use during testing.

* * * * *

New vessel means:

(1)(i) A vessel, the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(ii) For vessels with no Category 3 engines, a vessel that has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel. The value of the modification is the difference in the assessed value of the vessel before the modification and the assessed value of the vessel after the modification. Use the following equation to determine if the fractional value of the modification exceeds 50 percent:

Percent of value = *[(Value after modification) − (Value before modification)]* × 100% (Value after modification)

(iii) For vessels with Category 3 engines, a vessel that has undergone a modification, which:

(A) Substantially alters the dimensions or carrying capacity of the vessel; or

(2) Changes the type of vessel; or

(3) Substantially prolongs the vessel's life.

(2) Where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, the vessel ceases to be new when it is placed into service.

* * * * *

Residual fuel means a petroleum product containing the heavier compounds that remain after the distillate fuel oils (*e.g.*, diesel fuel and marine distillate fuel) and lighter hydrocarbons are distilled away in refinery operations.

Round means to round numbers according to ASTM E29–02 (incorporated by reference in § 94.5), unless otherwise specified.

* * * * *

Tier 1 means relating to an engine subject to the Tier 1 emission standards listed in § 94.8.

* * * * *

Vessel operator means any individual that physically operates or maintains a vessel, or exercises managerial control over the operation of the vessel.

Vessel owner means the individual or company that holds legal title to a vessel.

* * * * *

4. Section 94.5 is revised to read as follows:

§ 94.5 Reference materials.

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or the Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 94.5 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., PO Box C700, West Conshohocken, PA 19428. Table 1 follows:

TABLE 1 OF § 94.5.—ASTM MATERIALS

Document No. and name	Part 94 reference
ASTM D 86–01, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure	94.108
ASTM D 93–02, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester	94.108
ASTM D 129–00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)	94.108
ASTM D 287–92 (Reapproved 2000), Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).	94.108
ASTM D 445–01, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity).	94.108
ASTM D 613–01, Standard Test Method for Cetane Number of Diesel Fuel Oil	94.108
ASTM D 1319–02a, Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.	94.108

TABLE 1 OF § 94.5.—ASTM MATERIALS—Continued

Document No. and name	Part 94 reference
ASTM D 2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.	94.108
ASTM D 5186–99, Standard Test Method for Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography.	94.108
ASTM E 29–02, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	94.2

(b) *ISO material.* Table 2 of § 94.5 lists material from the International Organization for Standardization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. Anyone may purchase copies of these materials from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

Table 2 follows:

TABLE 2 OF § 94.5.—ISO MATERIALS

Document No. and name	40 CFR part 94 reference
ISO 8178–1, Reciprocating internal combustion engines—Exhaust emission measurement—Part 1: Test-bed measurement of gaseous and particulate exhaust emissions, 1996.	94.109

(c) *IMO material.* Table 3 of § 94.5 lists material from the International Maritime Organization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. Anyone may purchase copies of these materials from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

Table 3 follows:

TABLE 3 OF § 94.5.—IMO MATERIALS

Document No. and name	40 CFR part 94 reference
Resolution 2—Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines, 1997.	94.2, 94.11, 94.108, 94.109, 94.204, 94.211, 94.1004.

5. Section 94.7 is amended by revising paragraph (d) to read as follows:

§ 94.7 General standards and requirements.

* * * * *

(d) Manufacturers shall ensure that all engines subject to the emission standards of this part are equipped with a connection in the engine exhaust system that is located downstream of the engine and before any point at which the exhaust contacts water (or any other cooling/scrubbing medium) for the temporary attachment of gaseous and/or particulate emission sampling equipment. Use good engineering judgment to locate the connection. This connection shall be internally threaded with standard pipe threads of a size not larger than one-half inch, and shall be closed by a pipe-plug when not in use. Equivalent connections are allowed. Engine manufacturers may comply with this requirement by providing vessel manufacturers with clear instructions explaining how to meet this requirement, and noting in the instructions that failure to comply may subject the vessel manufacturer to federal penalties. Vessel manufacturers are required to comply with the engine manufacturer's instructions.

* * * * *

6. Section 94.8 is amended by revising paragraphs (a), (c), (d), (e), (f), and (g) to read as follows:

§ 94.8 Exhaust emission standards.

(a) The Tier 1 standards of paragraph (a)(1) of this section apply until replaced by the standards of paragraph (a)(2) of this section.

(1) *Tier 1 standards.* NO_X emissions from model year 2004 and later engines with displacement of 2.5 or more liters per cylinder may not exceed the following values:

(i) 17.0 g/kW-hr when maximum test speed is less than 130 rpm.

(ii) $45.0 \times N^{-0.20}$ when maximum test speed is at least 130 but less than 2000 rpm, where N is the maximum test speed of the engine in revolutions per minute.

(**Note:** Round speed-dependent standards to the nearest 0.1 g/kW-hr.)

(iii) 9.8 g/kW-hr when maximum test speed is 2000 rpm or more.

(2) *Tier 2 standards.* (i) Exhaust emissions from marine compression-ignition engines shall not exceed the applicable Tier 2 exhaust emission standards contained in Table A–1 as follows:

TABLE A–1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (G/KW-HR)

Engine size liters/cylinder, rated power	Category	Model year [1]	THC+NO_X g/kW-hr	CO g/kW-hr	PM g/kW-hr
disp. < 0.9 and power ≥ 37 kW	Category 1	2005	7.5	5.0	0.40
0.9 ≤ disp. < 1.2, all power levels	Category 1	2004	7.2	5.0	0.30
1.2 ≤ disp. < 2.5, all power levels	Category 1	2004	7.2	5.0	0.20
2.5 ≤ disp. < 5.0, all power levels	Category 1	2007	7.2	5.0	0.20

TABLE A–1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (G/KW-HR)—Continued

Engine size liters/cylinder, rated power	Category	Model year [1]	THC+NO_X g/kW-hr	CO g/kW-hr	PM g/kW-hr
5.0 ≤ disp. < 15.0, all power levels	Category 2	2007	7.8	5.0	0.27
15.0 ≤ disp. < 20.0 power, < 3300 kW	Category 2	2007	8.7	5.0	0.50
15.0 ≤ disp. < 20.0, power ≥ 3300 kW	Category 2	2007	9.8	5.0	0.50
20.0 ≤ disp. < 25.0, all power levels	Category 2	2007	9.8	5.0	0.50
25.0 ≤ disp. < 30.0, all power levels	Category 2	2007	11.0	5.0	0.50
disp. ≥ 30.0, all power levels	Category 3	2007	See paragraph (a)(2)(ii) of this section.		

[1] The model years listed indicate the model years for which the specified standards start.

(ii) EPA has not finalized Tier 2 standards for Category 3 engines. EPA will promulgate final Tier 2 standards for Category 3 engines on or before April 27, 2007.

* * * * *

(c) In lieu of the THC+NO_X standards, and PM standards specified in paragraph (a) of this section, manufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart D of this part. The manufacturer shall then set a family emission limit (FEL) which will serve as the standard for that engine family. The ABT provisions of subpart D of this part do not apply for Category 3 engines.

(d)(1) Naturally aspirated engines shall not discharge crankcase emissions into the ambient atmosphere.

(2) For engines using turbochargers, pumps, blowers, or superchargers for air induction, if the engine discharges crankcase emissions into the ambient atmosphere in use, these crankcase emissions shall be included in all exhaust emission measurements. This requirement applies only for engines subject to hydrocarbon standards (*e.g.*, THC standards, NMHC standards, or THC+NO_X standards).

(3) The crankcase requirements of this paragraph (d) do not apply for Tier 1 engines.

(e)(1) For Category 1 and Category 2 engines, exhaust emissions from propulsion engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed:

(i) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed; or

(ii) 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106.

(2) [Reserved]

(f) The following define the requirements for low-emitting Blue Sky Series engines:

(1) *Voluntary standards.* (i) Category 1 and Category 2 engines may be designated "Blue Sky Series" engines by meeting the voluntary standards listed in Table A–2, which apply to all certification and in-use testing:

TABLE A–2.—VOLUNTARY EMISSION STANDARDS [G/KW–HR]

Rated brake power (kW)	THC+NO_X	PM
Power ≥ 37 kW, and displ. < 0.9	4.0	0.24
0.9 ≤ displ. < 1.2	4.0	0.18
1.2 ≤ displ. < 2.5	4.0	0.12
2.5 ≤ displ. < 5	5.0	0.12
5 ≤ displ. < 15	5.0	0.16
15 ≤ disp. < 20, and power < 3300 kW	5.2	0.30
15 ≤ disp. < 20, and power ≥ 3300 kW	5.9	0.30
20 ≤ disp. < 25	5.9	0.30
25 ≤ disp. < 30	6.6	0.30

(ii) Category 3 engines may be designated "Blue Sky Series" engines by meeting these voluntary standards that would apply to all certification and in-use testing:

(A) A NO_X standard of $9.0 \times N^{-0.20}$ where N = the maximum test speed of the engine in revolutions per minute (or 4.8 g/kW–hr for engines with maximum test speeds less than 130 rpm). (**Note:** Round speed-dependent standards to the nearest 0.1 g/kW–hr.)

(B) An HC standard of 0.4 g/kW–hr.

(C) A CO standard of 3.0 g/kW–hr.

(2) *Additional standards.* Blue Sky Series engines are subject to all provisions that would otherwise apply under this part.

(3) *Test procedures.* Manufacturers may use an alternate procedure to demonstrate the desired level of emission control if approved in advance by the Administrator.

(g) Standards for alternative fuels. The standards described in this section apply to compression-ignition engines, irrespective of fuel, with the following two exceptions for Category 1 and Category 2 engines:

(1) Engines fueled with natural gas shall comply with NMHC+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section; and

(2) Engines fueled with alcohol fuel shall comply with THCE+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section.

7. Section 94.9 is amended by revising paragraphs (a)(1), (b)(1) and (b)(2) to read as follows:

§ 94.9 Compliance with emission standards.

(a) * * *

(1) The minimum useful life is 10 years or 10,000 hours of operation for Category 1, 10 years or 20,000 hours of operation for Category 2, and 3 years or

10,000 hours of operation for Category 3.

* * * * *

(b) * * *

(1) Compliance with the applicable emission standards by an engine family shall be demonstrated by the certifying manufacturer before a certificate of conformity may be issued under § 94.208. Manufacturers shall demonstrate compliance using emission data, measured using the procedures specified in Subpart B of this part, from a low hour engine. A development engine that is equivalent in design to the marine engines being certified may be used for Category 2 or Category 3 certification.

(2) The emission values to compare with the standards shall be the emission values of a low hour engine, or a development engine, adjusted by the deterioration factors developed in accordance with the provisions of § 94.219. Before comparing any emission value with the standard, round it to the same number of significant figures contained in the applicable standard.

* * * * *

8. Section 94.10 is amended by revising paragraph (a) to read as follows:

§ 94.10 Warranty period.

(a)(1) Warranties imposed by § 94.1107 for Category 1 or Category 2 engines shall apply for a period of operating hours equal to at least 50 percent of the useful life in operating hours or a period of years equal to at least 50 percent of the useful life in years, whichever comes first.

(2) Warranties imposed by § 94.1107 for Category 3 engines shall apply for a period of operating hours equal to at least the full useful life in operating hours or a period of years equal to at least the full useful life in years, whichever comes first.

* * * * *

9. Section 94.11 is amended by adding paragraph (g) to read as follows:

§ 94.11 Requirements for rebuilding certified engines.

* * * * *

(g) For Category 3 engines, the owner and operator shall also comply with the recordkeeping requirements in the Annex VI Technical Code (incorporated by reference at § 94.5) regarding the Engine Book of Record Parameters.

10. Section 94.12 is amended by revising the introductory text and adding paragraph (f) to read as follows:

§ 94.12 Interim provisions.

This section contains provisions that apply for a limited number of calendar years or model years. These provisions supercede the other provisions of this part. The provisions of this section do not apply for Category 3 engines.

* * * * *

(f) Manufacturers may submit test data collected using the Annex VI test procedures to show compliance with Tier 1 standards for model years before 2007. Note: Starting in 2007, EPA may approve a manufacturer's request to continue using alternate procedures under § 94.102(c), as long as the manufacturer satisfies EPA that the differences in testing will not affect NO_x emission rates.

Subpart B—[Amended]

11. Section 94.106 is amended by revising the section heading and introductory text to read as follows:

§ 94.106 Supplemental test procedures for Category 1 and Category 2 marine engines.

This section describes the test procedures for supplemental testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e)(1). In general, the supplemental test procedures are the same as those otherwise specified by this subpart, except that they cover any speeds, loads, ambient conditions, and operating parameters that may be experienced in use. The test procedures specified by other sections in this subpart also apply to these tests, except as specified in this section.

* * * * *

12. Section 94.107 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 94.107 Determination of maximum test speed.

(a) *Overview.* This section specifies how to determine maximum test speed from a lug curve. This maximum test speed is used in §§ 94.105, 94.106, and § 94.109 (including the tolerances for engine speed specified in § 94.105).

* * * * *

(f) For Category 3 engines, manufacturers may choose to set the maximum test speed at the maximum in-use engine speed instead of the speed specified in § 94.107(d).

13. Section 94.108 is amended by revising paragraphs (a)(1), (b), and (d)(1) and adding paragraph (e) to read as follows:

§ 94.108 Test fuels.

(a) *Distillate diesel test fuel.* (1) The diesel fuels for testing Category 1 and Category 2 marine engines designed to operate on distillate diesel fuel shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide. The diesel fuel shall also meet the specifications (as determined using methods incorporated by reference at § 94.5) in Table B–5 of this section, or substantially equivalent specifications approved by the Administrator, as follows:

TABLE B–5.—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure [1]	Value
Cetane	ASTM D 613–01	40–48
Distillation Range:		
Initial boiling point, °C	ASTM D 86–01	171–204
10% point, °C	ASTM D 86–01	204–238
50% point, °C	ASTM D 86–01	243–282
90% point, °C	ASTM D 86–01	293–332
End point, °C	ASTM D 86–01	321–366
Flashpoint, °C	ASTM D 93–02	54 minimum
Gravity, API	ASTM D 287–92	32–37
Hydrocarbon composition:		
Aromatics, volume percent	ASTM D 1319–02a or D 5186–99	10 minimum
Olefins and Saturates (paraffins and napththenes)	ASTM D 1319–02a	Remainder
Total Sulfur, weight percent	ASTM D 129–00 or D 2622–98	0.03—0.80

TABLE B–5.—FEDERAL TEST FUEL SPECIFICATIONS—Continued

Item	Procedure [1]	Value
Viscosity at 38 °C, centistokes	ASTM D 445–01	2.0–3.2

[1] All ASTM standards are incorporated by reference in § 94.5.

* * * * *

(b) *Other fuel types.* For Category 1 and Category 2 engines that are designed to be capable of using a type of fuel (or mixed fuel) instead of or in addition to distillate diesel fuel (e.g., natural gas, methanol, or nondistillate diesel), and that are expected to use that type of fuel (or mixed fuel) in service:

(1) A commercially available fuel of that type shall be used for exhaust emission testing. The manufacturer shall propose for the Administrator's approval a set of test fuel specifications that take into account the engine design and the properties of commercially available fuels. The Administrator may require testing on each fuel if it is designed to operate on more than one fuel. These test fuel specifications shall be reported in the application for certification.

(2) [Reserved]

* * * * *

(d) *Correction for sulfur.* (1) Particulate emission measurements from Category 1 or Category 2 engines without exhaust aftertreatment obtained using a diesel fuel containing more than 0.40 weight percent sulfur may be adjusted to a sulfur content of 0.40 weight percent.

* * * * *

(e) *Test fuel for Category 3 engines.* For testing Tier 1 engines, use test fuels meeting the specifications listed in the Annex VI Technical Code (incorporated by reference in § 94.5).

14. A new § 94.109 is added to read as follows:

§ 94.109 Test procedures for Category 3 marine engines.

(a) Gaseous emissions shall be measured using the test cycles and procedures specified by Section 5 of the Annex VI Technical Code (incorporated by reference in § 94.5), except as otherwise specified in this paragraph (a).

(1) The inlet air and exhaust restrictions shall be set at the average in-use levels.

(2) Measurements are valid only for sampling periods in which the temperature of the charge air entering the engine is within 3°C of the temperature that would occur in-use under ambient conditions (temperature, pressure, and humidity) identical to the test conditions. You may measure emissions within larger discrepancies, but you may not use those measurements to demonstrate compliance.

(3) Engine coolant and engine oil temperatures shall be equivalent to the temperatures that would occur in-use under ambient conditions identical to the test conditions.

(4) Exhaust flow rates shall be calculated using measured fuel flow rates.

(5) Standards used for calibration shall be traceable to NIST standards. (Other national standards may be used if they have been shown to be equivalent to NIST standards.)

(6) Certification tests may be performed at any representative pressure and humidity levels. Certification tests may be performed at any ambient air temperature from 13°C to 30°C and any charge air cooling water temperature from 17°C to 27°C. These limits apply instead of the limits specified in section 5.2.1 of the Annex VI Technical Code. Correct emissions for test conditions using the corrections specified in section 5.12.3 of the Annex VI Technical Code.

(7) Test cycles shall be denormalized based on the maximum test speed described in § 94.107.

(b) Analyzers meeting the specifications of either 40 CFR part 86, subpart N, or ISO 8178–1 (incorporated by reference in § 94.5) shall be used to measure THC and CO.

(c) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

Subpart C—[Amended]

15. Section 94.203 is amended by revising paragraph (d)(14) to read as follows:

§ 94.203 Application for certification.

* * * * *

(d) * * *

(14) (i) For Category 1 and Category 2 engines, a statement that the all the engines included in the engine family comply with the Not To Exceed standards specified in § 94.8(e) when operated under all conditions which may reasonably be expected to be encountered in normal operation and use; the manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(ii) [Reserved]

* * * * *

16. Section 94.204 is amended by adding paragraph (f) to read as follows:

§ 94.204 Designation of engine families.

* * * * *

(f) Category 3 engines shall be grouped into engine families based on the criteria specified in Section 4.3 of the Annex VI Technical Code (incorporated by reference in § 94.5), except as allowed in paragraphs (d) and (e) of this section.

17. Section 94.205 is amended by revising paragraph (b) and adding paragraphs (e) and (f) to read as follows:

§ 94.205 Prohibited controls, adjustable parameters.

* * * * *

(b)(1) Category 1 marine engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment in the physically adjustable range.

(2) Category 2 and Category 3 marine engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment in the approved adjustable range.

* * * * *

(e) Tier 1 Category 3 marine engines shall be adjusted according to the manufacturer's specifications for testing.

(f) For Category 3 marine engines, manufacturers must specify in the maintenance instructions how to adjust the engines to achieve emission performance equivalent to the performance demonstrated under the certification test conditions. This must address all necessary adjustments, including those required to address differences in fuel quality or ambient temperatures. For example, equivalent emissions performance can be measured relative to optimal engine performance that could be achieved in the absence of emission standards (*i.e.*, the calibration that result in the lowest fuel consumption and/or maximum firing pressure). In this example, adjustments

that achieved the same percent reduction in NO_X emissions from the optimal calibration would be considered to be equivalent. Alternatively, if the engine uses injection timing retard and EGR to reduce emissions, then retarding timing the same number of degrees (relative to optimal engine performance) and using the same rate of EGR at the different conditions would be considered to be equivalent.

18. Section 94.209 is amended by adding introductory text to the section to read as follows:

§ 94.209 Special provisions for post-manufacture marinizers.

The provisions of this section apply for Category 1 and Category 2 engines, but not for Category 3 engines.

* * * * *

19. Section 94.211 is amended by adding paragraphs (a)(3), (e)(2)(iii), (k) and (l) and revising paragraphs (h) introductory text, and (j)(2) introductory text to read as follows:

§ 94.211 Emission-related maintenance instructions for purchasers.

(a) * * *

(3) For Category 3 engines, the manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that § 94.1004 requires that the emissions-related maintenance be performed as specified in the instructions (or equivalent).

* * * * *

(e) * * *

(2) * * *

(iii) The maintenance intervals listed in paragraphs (e)(3) and (e)(4) of this section do not apply for Category 3.

* * * * *

(h) For Category 1 and Category 2 engines, equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and are:

* * * * *

(j) * * *

(2) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. For Category 1 and Category 2 engines, the manufacturer must show the reasonable likelihood of such maintenance being performed in-use. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (j)(2)(i) through (j)(2)(vi) of this section will be accepted as having a reasonable likelihood of being performed in use.

(k) For engines with rated power greater than 130 kW, the manufacturer must provide the ultimate purchaser with a Technical File meeting the specifications of section 2.4 of the AnnexVI Technical Code (incorporated by reference in § 94.5). The maintenance instructions required by this part to be provided by manufacturer may be included in this Technical File. The manufacturer must provide a copy of this Technical File to EPA upon request.

(l) Owners and operators of Category 3 engines shall transfer the maintenance instructions to subsequent owners and operators of the engine upon sale or transfer of the engine or vessel.

20. Section 94.214 is revised to read as follows:

§ 94.214 Production engines.

Any manufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production engines, as specified by the Administrator. The engines shall be representative of the engines, emission control systems, and fuel systems offered and typical of production engines available for sale or use under the certificate. These engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require. This requirement does not apply for Category 3 engines. Manufacturers of Category 3 engines, however, must allow EPA access to test engines and development engines to the extent necessary to determine that the engine family is in full compliance with the applicable requirements of this part.

21. Section 94.217 is amended by adding paragraph (f) to read as follows:

§ 94.217 Emission data engine selection.

* * * * *

(f) A single cylinder test engine may be used for certification of Tier 1 Category 3 engine families. If you use test data from a single cylinder test engine for certification, explain in your application how you have determined that such data show that the multiple cylinder production engines will comply with the applicable emission standards.

22. Section 94.218 is amended by revising paragraphs (c) and (d)(1) to read as follows:

§ 94.218 Deterioration factor determination.

* * * * *

(c) *Rounding.* (1) In the case of a multiplicative exhaust emission deterioration factor, round the factor to three places to the right of the decimal point.

(2) In the case of an additive exhaust emission deterioration factor, round the factor shall to at least two places to the right of the decimal point.

(d)(1) Except as allowed by paragraph (d)(2) of this section, the manufacturer shall determine the deterioration factors for Category 1 and Category 2 engines based on service accumulation and related testing, according to the manufacturer's procedures, and the provisions of §§ 94.219 and 94.220. The manufacturer shall determine the form and extent of this service accumulation, consistent with good engineering practice, and shall describe this process in the application for certification.

* * * * *

23. Section 94.219 is amended by revising paragraph (a) to read as follows:

§ 94.219 Durability data engine selection.

(a) For Category 1 and Category 2 engines, the manufacturer shall select for durability testing, from each engine family, the engine configuration which is expected to generate the highest level of exhaust emission deterioration on engines in use, considering all exhaust emission constituents and the range of installation options available to vessel builders. The manufacturer shall use good engineering judgment in making this selection.

* * * * *

Subpart D—[Amended]

24. Section 94.305 is amended by revising paragraph (a) to read as follows:

§ 94.305 Credit generation and use calculation.

(a) For each participating engine family, calculate THC+NO_X and PM emission credits (positive or negative) according to the equation in paragraph (b) of this section and round emissions to the nearest one-hundredth of a megagram (Mg). Use consistent units throughout the calculation.

* * * * *

Subpart E—[Amended]

24. Section 94.403 is amended by revising paragraph (a) to read as follows:

§ 94.403 Emission defect information report.

(a) A manufacturer must file a defect information report whenever it determines, in accordance with procedures it established to identify either safety-related or performance defects (or based on other information), that a specific emission-related defect

exists in 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines, or 2 or more Category 3 engines or cylinders. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale of the affected engines to an ultimate purchaser. (Note: These limits apply to the occurrence of the same defect, and are not constrained by engine family or model year.)

* * * * *

Subpart F—[Amended]

25. Section 94.503 is amended by revising paragraphs (a) and (b) to read as follows:

§ 94.503 General requirements.

(a) For Tier 2 and later Category 1 and Category 2 engines, manufacturers shall test production line engines in accordance with sampling procedures specified in § 94.505 and the test procedures specified in § 94.506. The production-line testing requirements of this part do not apply for other engines.

(b) Upon request, the Administrator may also allow manufacturers to conduct alternate production line testing programs for Category 1 and Category 2 engines, provided the Administrator determines that the alternate production line testing program provides equivalent assurance that the engines that are being produced conform to the provisions of this part. As part of this allowance or for other reasons, the Administrator may waive some or all of the requirements of this subpart.

* * * * *

26. Section 94.505 is amended by revising paragraph (a) introductory text to read as follows:

§ 94.505 Sample selection for testing.

(a) At the start of each model year, the manufacturer will begin to select engines from each Category 1 and Category 2 engine family for production line testing. Each engine will be selected from the end of the production line. Testing shall be performed throughout the entire model year to the extent possible. Engines selected shall cover the broadest range of production possible.

* * * * *

27. Section 94.507 is amended by revising paragraph (a) to read as follows:

§ 94.507 Sequence of testing.

(a) If one or more Category 1 or Category 2 engines fail a production line test, then the manufacturer must test two additional engines for each engine that fails.

* * * * *

28. Section 94.508 is amended by revising paragraphs (a), (b), (c), (d), and (e) introductory text to read as follows:

§ 94.508 Calculation and reporting of test results.

* * * * *

(a) Manufacturers shall calculate initial test results using the applicable test procedure specified in § 94.506(a). These results must also include the Green Engine Factor, if applicable. Round these results to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) To calculate test results, sum the initial test results derived in paragraph (a) of this section for each test engine, divide by the number of tests conducted on the engine, and round to the same number of decimal places contained in the applicable standard expressed to one additional decimal place. (For example, if the applicable standard is 7.8, then round the test results to two places to the right of the decimal.)

(c) To calculate the final test results for each test engine, apply the appropriate deterioration factors, derived in the certification process for the engine family, to the test results described in paragraph (b) of this section; round to the same number of decimal places contained in the applicable standard expressed to one additional decimal place. (For example, if the applicable standard is 7.8, then round the test results to two places to the right of the decimal.)

(d) (1) If, subsequent to an initial failure of a Category 1 or Category 2 production line test, the average of the test results for the failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL, the engine family is deemed to be in non-compliance with applicable emission standards, and the manufacturer must notify the Administrator within 2 working days of such noncompliance.

(2) [Reserved]

(e) Within 30 calendar days of the end of each quarter in which production line testing occurs, each manufacturer must submit to the Administrator a report which includes the following information:

* * * * *

29. Section 94.510 is amended by revising paragraph (b) to read as follows:

§ 94.510 Compliance with criteria for production line testing.

* * * * *

(b) A Category 1 or Category 2 engine family is deemed to be in noncompliance, for purposes of this subpart, if at any time throughout the model year, the average of an initial failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL.

Subpart I—[Amended]

30. Section 94.801 is amended by revising paragraph (b) to read as follows:

§ 94.801 Applicability.

* * * * *

(b) Regulations prescribing further procedures for the importation of engines into the Customs territory of the United States are set forth in U.S. Customs Service regulations (19 CFR chapter I).

Subpart J—[Amended]

§ 94.904 [Amended]

31. Section 94.904 is amended by removing paragraph (b)(7).

32. Section 94.906 is amended by revising the section heading and removing paragraph (d) to read as follows:

§ 94.906 Manufacturer-owned exemption, display exemption, and competition exemption.

* * * * *

33. Section 94.907 is amended by revising paragraph (d), introductory text, to read as follows:

§ 94.907 Engine dressing exemption.

* * * * *

(d) New Category 1 and Category 2 marine engines that meet all the following criteria are exempt under this section:

* * * * *

34. Subpart K, consisting of §§ 94.1001, 94.1002, 94.1003, and 94.1004, is added to read as follows:

Subpart K—Requirements Applicable to Vessel Manufacturers, Owners, and Operators

Sec.

94.1001 Applicability.
94.1002 Definitions.
94.1003 Production testing, in-use testing, and inspections.
94.1004 Maintenance, repair adjustment, and recordkeeping.

Subpart K—Requirements Applicable to Vessel Manufacturers, Owners, and Operators

§ 94.1001 Applicability.

The requirements of this subpart are applicable to manufacturers, owners, and operators of marine vessels that

contain Category 3 engines subject to the provisions of subpart A of this part, except as otherwise specified.

§ 94.1002 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.1003 Production testing, in-use testing, and inspections.

(a) [Reserved]

(b) [Reserved]

(c) Manufacturers, owners and operators must allow emission tests and inspections to be conducted and must provide reasonable assistance to perform such tests or inspections.

§ 94.1004 Maintenance, repair, adjustment, and recordkeeping.

(a) Unless otherwise approved by the Administrator, all owners and operators of Category 3 engines subject to the provisions of this part shall ensure that all emission-related maintenance is performed, as specified in the maintenance instructions provided by the certifying manufacturer in compliance with § 94.211.

(b) Unless otherwise approved by the Administrator, all maintenance, repair, adjustment, and alteration of engines subject to the provisions of this part performed by any owner, operator or other maintenance provider that is not covered by paragraph (a) of this section shall be performed, using good engineering judgment, in such a manner that the engine continues (after the maintenance, repair, adjustment or alteration) to meet the emission standards it was certified as meeting prior to the need for service. Adjustments are limited to the range specified by the engine manufacturer in the approved application for certification.

(c) An engine may not be adjusted or altered contrary to the requirements of § 94.11 or § 94.1004(b), except as allowed by § 94.1103(b)(2). If such an adjustment or alteration occurs, the engine must be returned to a configuration allowed by this part within two hours of operation. Each two-hour period during which there is noncompliance is a separate violation. The following provisions apply to adjustments or alterations made under § 94.1103(b)(2):

(1) In the case of an engine that is adjusted or altered under § 94.1103(b)(2)(i), there is no violation under this paragraph (c) for engine operation before completion of the repair or replacement procedure. The provisions of paragraph (c) introductory text apply to all operation following completion of the repair or replacement procedure.

(2) In the case of an engine that is adjusted or altered under § 94.1103(b)(2)(ii), there is no violation under this paragraph (c) if the engine operates for less than two hours following the conclusion of the emergency that prompted the adjustment or alteration before the emission-control system is restored to proper functioning. The provisions of paragraph (c) introductory text apply to all operation that occurs after this two-hour period.

(d) The owner and operator of the engine shall maintain on board the vessel records of all maintenance, repair, and adjustment that could reasonably affect the emission performance of any Category 3 engine subject to the provision of this part. Owners and operators shall also maintain, on board the vessel, records regarding certification, parameter adjustment, and fuels used. For engines that are automatically adjusted electronically, all adjustments must be logged automatically. Owners and operators shall make these records available to EPA upon request. These records must include the following:

(1) [Reserved]

(2) The Technical File, Record Book of Engine Parameters, and bunker delivery notes that are required by the Annex VI Technical Code (incorporated by reference in § 94.5).

(3) Specific descriptions of engine maintenance, repair, adjustment, and alteration (including rebuilding). The descriptions must include at least the date, time, and nature of the maintenance, repair, adjustment, or alteration and the position of the vessel when the maintenance, repair, adjustment, or alteration was made.

(4) Emission-related maintenance instructions provided by the manufacturer.

(e) For each marine vessel containing a Category 3 engine, the owner shall annually review the vessel's records and submit to EPA a signed statement certifying compliance during the preceding year with the requirements of this part that are applicable to owners and operators of such vessels. Alternately, if review of the vessel's records indicates that there has been one or more violations of the requirements of this part, the owner shall submit to EPA a signed statement specifying the noncompliance, including the nature of the noncompliance, the time of the noncompliance, and any efforts made to remedy the noncompliance. The statement of compliance (or noncompliance) required by this paragraph shall be signed by the executive with responsibility for marine activities of the owner. If the vessel is operated by a different business entity than the vessel owner, the reporting requirements of this paragraph (e) apply to both the owner and the operator. Compliance with these review and certification requirements by either the vessel owner or the vessel operator with respect to a compliance statement will be considered compliance with these requirements by both of these parties for that compliance statement. The executive(s) may authorize a captain or other primary operator to conduct this review and submit the certification, provided that the certification statement is accompanied by written authorization for that individual to submit such statements. The Administrator may waive the requirements of this paragraph when equivalent assurance of compliance is otherwise available.

Subpart L—[Amended]

35. Section 94.1103 is amended by adding paragraphs (a)(2)(v), (a)(2)(vi), and (a)(7) and by revising paragraph (a)(3)(i) to read as follows:

§ 94.1103 Prohibited acts.

(a) * * *

(2) * * *

(v) For an owner or operator of a vessel using a Category 3 engine to refuse to allow the in-use testing described in § 94.1003 to be performed.

(vi) For a manufacturer, owner or operator of a Category 3 engine to fail to provide maintenance instructions as required by § 94.211.

(3)(i) For a person to remove or render inoperative a device or element of design installed on or in a engine in compliance with regulations under this part, or to set any adjustable parameter to a setting outside of the range specified by the manufacturer, as approved in the application for certification by the Administrator (except as allowed by §§ 94.1003 and 94.1004).

* * * * *

(7)(i) For an owner or operator of a vessel using a Category 3 engine to fail or refuse to ensure that an engine is properly adjusted as set forth in § 94.1004.

(ii) For an owner or operator of a vessel using a Category 3 to fail to maintain or repair an engine as set forth in § 94.1004.

(iii) For an owner or operator of a vessel using a Category 3 engine to operate an engine in violation of the requirements of § 94.1004(c).

(iv) For an owner or operator of a vessel using a Category 3 engine to fail to comply with any applicable provision in this part for recordkeeping, reporting, or submission of information to EPA, including the annual certification requirements of § 94.1004.

* * * * *

36. Section 94.1106 is amended by adding introductory text, revising paragraphs (a) and (c)(1), and adding paragraph (d) to read as follows:

§ 94.1106 Penalties.

This section specifies actions that are prohibited and the maximum civil penalties that we can assess for each violation. The maximum penalty values listed in paragraphs (a) and (c) of this section are shown for calendar year 2002. As described in paragraph (d) of this section, maximum penalty limits for later years are set forth in 40 CFR part 19.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203, and is subject to the penalty provisions thereunder.

(1) A person who violates § 94.1103(a)(1), (a)(4), (a)(5), (a)(6), or (a)(7)(iv) or a manufacturer or dealer who violates § 94.1103(a)(3) (i) or (iii) or § 94.1103(a)(7) is subject to a civil penalty of not more than $31,500 for each violation.

(2) A person other than a manufacturer or dealer who violates § 94.1103(a)(3) (i) or (iii) or § 94.1103(a)(7) (i), (ii), or (iii) or any person who violates § 94.1103(a)(3)(ii) is subject to a civil penalty of not more than $3,150 for each violation.

(3) A violation with respect to § 94.1103(a)(1), (a)(3)(i), (a)(3)(iii), (a)(4), or (a)(5), (a)(7) constitutes a separate offense with respect to each engine.

(4) A violation with respect to § 94.1103(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 94.1103(a)(5) or (a)(7)(iv) constitutes a separate offense.

(5) Each two hour period of a violation with respect to § 94.1103(a)(7)(iii) constitutes a separate offense. A violation of § 94.1103(a)(7)(iii) lasting less than two hours constitutes a single offense.

* * * * *

(c) *Administrative assessment of certain penalties.* (1) Administrative penalty authority. Subject to 42 U.S.C. 7524(c), in lieu of commencing a civil action under paragraph (b) of this section, the Administrator may assess any civil penalty prescribed in paragraph (a) of this section, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $250,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General is not subject to judicial review. Assessment of a civil penalty shall be by an order made on the record after opportunity for a hearing held in accordance with the procedures found at part 22 of this chapter. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

* * * * *

(d) The maximum penalty values listed in paragraphs (a) and (c) of this section are shown for calendar year 2002. Maximum penalty limits for later years may be adjusted based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based.

[FR Doc. 03–3065 Filed 2–27–03; 8:45 am]

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Federal Register

Friday,
February 28, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 93

Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 93

[Docket No.: FAA–2002–13235; Amendment Nos. 91–273 and 93–82]

RIN 2120–AH57

Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action codifies current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is taking this action to complement flight management procedures established for Niagara Falls by the Canadian government. The intended effect of this action is to prevent unsafe congestion of aircraft in this popular sightseeing area. The FAA is also adopting a number of editorial changes to parts 91 and 93 of Title 14, Code of Federal Regulations.

DATES: Effective on March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Terry Brown or Jan Givings, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this document using the Internet by:

(1) Using the docket number of this rulemaking to search the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2)Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm,* or by e-mailing us at *9–AWA–SBREFA@faa.gov.*

Background

On September 4, 2002, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to codify current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls and to make editorial changes to parts 91 and 93 of Title 14, CFR (67 FR 56740). See the preamble to the NPRM for a discussion of the following:

- Canadian flight restrictions in the area,
- Complimentary U.S. temporary flight restriction,
- The public meeting we sponsored in 1993, and
- The specifics of the proposed rule.

The background material in the NPRM also contains the basis and rationale for this final rule and, except where we have specifically expanded on the background elsewhere in this preamble, provides the justification for this final rule.

The comment period for the NPRM was open for 45 days and closed on October 21, 2002. In response to the NPRM, we received a letter containing comments from the Aircraft Owners and Pilots Association (AOPA), which is discussed below.

Discussion of Comments

In a letter dated October 18, 2002, the AOPA concurs with codifying the current U.S. temporary flight restriction in the vicinity of Niagara Falls to prevent congestion and reduce the risk of collision by sightseeing aircraft. However, the AOPA is opposed to parts of the NPRM that go beyond a simple codification of the existing temporary flight restriction. The commenter believes that certain items in the proposed regulations are advisory in nature and should not be made mandatory. The commenter identified the following parts of proposed § 93.71 as those that should remain recommendations:

- Paragraph (e)(1)—Fly a clockwise pattern,
- Paragraph (e)(2)—Do not proceed north of the Rainbow Bridge,
- Paragraph (e)(3)—Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern,
- Paragraph (e)(6)—Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL,
- Paragraph (e)(7)—Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport,
- Paragraph (f)—These procedures do not relieve pilots from the requirements of § 91.113 of this chapter to see and avoid other aircraft, and
- Paragraph (g)—Flight following, to and from the area, is available through Buffalo Approach.

The commenter asserts that including these proposed provisions in the final rule is unnecessary and inappropriate and mandating them would likely create compliance and enforcement problems. Further, there is no evidence that safety problems have occurred as a result of the procedures being recommended rather than mandated.

The FAA does not agree with the commenter that the provisions in § 93.71(e)–(f) should be advisory. These provisions establish the rules of the road for the airspace above Niagara Falls. While these provisions have been advisory under the temporary flight restriction, this rulemaking is designed to make these advisory procedures mandatory to ensure consistency with Canadian regulations and to safely manage the airspace. In addition, these provisions provide requirements that will not be available once the temporary flight restriction is withdrawn. If we were to allow these procedures to remain advisory, the possibility would exist that someone could operate contrary to all of these procedures without any repercussion, while the majority of pilots in the area would be operating in accordance with them. Such a situation could cause a significant safety problem in this airspace.

We also do not agree with the commenter's characterization of proposed § 93.71(g) as a requirement. We intend this paragraph to simply provide information. For this reason, we are not making any changes to it in this final rule.

Section-by-Section Analysis of the Final Rule

Subpart E—Flight Restrictions in the Vicinity of Niagara Falls, NY

§ 93.71 General operating procedures

The FAA is adopting a new subpart E to 14 CFR part 93 (consisting of § 93.71) that codifies the current temporary flight restrictions in the vicinity of Niagara Falls. This final rule complements and supports flight management procedures established by Transport Canada for Canadian airspace in the vicinity of Niagara Falls to prevent unsafe congestion of sightseeing and other aircraft. Final § 93.71(a) establishes flight restrictions below 3,500 feet MSL in the airspace above Niagara Falls, New York, west of a line from latitude 43°06′33″ N., longitude 79°03′30″ W. (the Whirlpool Rapids Bridge) to latitude 43°04′47″ N., longitude 79°02′44″ W. (the Niagara River Inlet) to latitude 43°04′29″ N., longitude 79°03′30″ W. (the International Control Dam) to the United States/Canadian Border and thence along the border to the point of origin.

Final § 93.71(b) prohibits flight in the area described in final paragraph (a) except for aircraft operations conducted directly to or from an airport/heliport within the area, aircraft operating on an ATC-approved IFR flight plan, aircraft operating the Scenic Falls Route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY (BUF) Automated Flight Service Station (AFSS).

Final § 93.71(c) requires pilots to check with Transport Canada for flight restrictions in Canadian airspace. It also advises pilots that commercial air tour operations approved by Transport Canada are conducting a north/south orbit of the Niagara Falls area below 3,500 feet MSL over the Niagara River.

Final § 93.71(d) establishes the minimum altitude for VFR flight over the Scenic Falls area as 3,500 feet MSL.

Final § 93.71(e) requires pilots to comply with the following procedures when conducting flight over the area described in final § 93.71(a):

(1) Fly a clockwise pattern;

(2) Do not proceed north of the Rainbow Bridge;

(3) Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern;

(4) Use the Niagara Falls airport altimeter setting. Contact Niagara Falls Airport Traffic Control Tower to obtain the current altimeter setting, to facilitate the exchange of traffic advisories/restrictions, and to reduce the risk of midair collisions between aircraft operating in the vicinity of the Falls. If the Control Tower is closed, use the appropriate Automatic Terminal Information Service (ATIS) Frequency;

(5) Do not exceed 130 knots;

(6) Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL; and

(7) Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport.

Final § 93.71(f) tells pilots these procedures do not relieve them from the requirements of § 91.113 of this chapter to see and avoid other aircraft.

Final § 93.71(g) advises pilots that flight following, to and from the area, is available through Buffalo Approach.

Editorial Changes to Parts 91 and 93

The FAA is also adopting a number of editorial changes to 14 CFR parts 91 and 93. These changes include the following:

- Change the title of part 93 from "Special Air Traffic Rules and Airport Traffic Patterns" to "Special Air Traffic Rules." This title better describes the intent of part 93 and the activities it addresses.
- Change § 93.1 to reflect the deletion of the term "airport traffic area" and for the purposes of brevity and clarity. On December 17, 1991, the FAA published a final rule (56 FR 65638) that reclassified various airspace designations and deleted the term "airport traffic area." We intended these changes to apply to all similarly designated airspace areas. However, we have not adopted corresponding changes to part 93 until now.
- Change § 93.51 by deleting the phrase "and traffic patterns" to be consistent with the change to the title of part 93 described above.
- Divide § 93.81, which contains the special air traffic rule for the Valparaiso, Florida, Terminal Area, into two sections, 93.80 and 93.81, with minor editorial changes to new § 93.80, Applicability.
- Make a minor editorial change to § 93.117, which describes the applicability of the special air traffic rule for the Lorain County (Ohio) Regional Airport.
- Divide existing § 93.151, which describes the applicability of the special air traffic rule for the Ketchikan (Alaska) International Airport, into two sections, 93.151 and 93.152, with minor editorial changes to § 93.151.
- Change the alphabetical listing in section 4 of Appendix D to part 91, change the title of subpart T, and change §§ 93.251 and 93.253 to reflect the renaming of Ronald Reagan Washington National Airport.

We do not intend these editorial changes to change the substance of parts 91 or 93.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) Has benefits that justify its costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the

private sector. These analyses, available in the docket, are summarized below.

Economic Assessment

This final rule codifies the current temporary flight restriction for those aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is taking this action to complement flight management procedures established for the Falls by Transport Canada. Additionally, this action makes a number of editorial changes to 14 CFR parts 91 and 93.

As a rule, the FAA does a benefit-cost analysis when this agency makes a temporary flight restriction permanent by rulemaking. However, this temporary flight restriction has been in effect for almost eight years. This length of time makes it difficult to obtain data to estimate baseline costs before the imposition of the temporary flight restriction. The FAA does not believe that the temporary flight restriction imposed significant costs on aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY, and the FAA does not believe this rulemaking will impose significant costs on those operators. We received no comments in response to the NPRM concerning the costs imposed by this rulemaking.

Regarding benefits, the FAA is aware of the mid-air collision in the vicinity of Niagara Falls before the issuance of the temporary flight restriction and before the flight management procedures established by Transport Canada. Since the issuance of the temporary flight restriction and Canadian flight management procedures, there have been no mid-air collisions. The FAA believes that the flight management procedures established in the temporary flight restriction and by Transport Canada are responsible for this improvement in aviation safety. The FAA is making the temporary flight restriction permanent because we believe that there are positive aviation safety benefits from imposing these flight restrictions on aircraft operating in U.S. airspace in the vicinity of Niagara Falls. We did not receive any public comments regarding these benefit findings in response to the NPRM.

The FAA finds that the safety benefits accruing to this rulemaking justify the costs imposed. Therefore, the FAA finds this final rule to be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this action imposes little costs on any small entities subject to this rule. Any costs of complying with the final rule are already borne by those complying with the existing flight restrictions for the past eight years. Consequently, the FAA certifies that the final rule will not have a significant economic impact on a substantial number of small entities. We did not receive any public comments regarding this cost finding.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking to be minimal and has determined that it will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 93

Aircraft flight, Airspace, Aviation safety, Air traffic control.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Amend section 4 of Appendix D to part 91 by removing the words "Washington National Airport" and adding in their place the words "Ronald Reagan Washington National Airport" in the alphabetical list of cities and airports.

PART 93—SPECIAL AIR TRAFFIC RULES

3. The authority citation for 14 CFR part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

4. Amend part 93 by revising the title to read as set forth above.

5. Revise § 93.1 to read as follows:

§ 93.1 Applicability.

This part prescribes special air traffic rules for operating aircraft in certain areas described in this part, unless otherwise authorized by air traffic control.

6. Revise § 93.51 to read as follows:

§ 93.51 Applicability.

This subpart prescribes special air traffic rules for aircraft operating in the Anchorage, Alaska, Terminal Area.

7. Amend part 93 by adding Subpart E consisting of § 93.71 to read as follows:

Subpart E—Flight Restrictions in the Vicinity of Niagara Falls, New York

§ 93.71 General operating procedures.

(a) Flight restrictions are in effect below 3,500 feet MSL in the airspace above Niagara Falls, New York, west of a line from latitude 43°06′33″ N., longitude 79°03′30″ W. (the Whirlpool Rapids Bridge) to latitude 43°04′47″ N., longitude 79°02′44″ W. (the Niagara River Inlet) to latitude 43°04′29″ N., longitude 79°03′30″ W. (the International Control Dam) to the United States/Canadian Border and thence along the border to the point of origin.

(b) No flight is authorized below 3,500 feet MSL in the area described in paragraph (a) of this section, except for aircraft operations conducted directly to or from an airport/heliport within the area, aircraft operating on an ATC-approved IFR flight plan, aircraft operating the Scenic Falls Route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY (BUF) Automated Flight Service Station (AFSS).

(c) Check with Transport Canada for flight restrictions in Canadian airspace. Commercial air tour operations approved by Transport Canada will be conducting a north/south orbit of the Niagara Falls area below 3,500 feet MSL over the Niagara River.

(d) The minimum altitude for VFR flight over the Scenic Falls area is 3,500 feet MSL.

(e) Comply with the following procedures when conducting flight over the area described in paragraph (a) of this section:

(1) Fly a clockwise pattern;

(2) Do not proceed north of the Rainbow Bridge;

(3) Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern;

(4) Use the Niagara Falls airport altimeter setting. Contact Niagara Falls Airport Traffic Control Tower to obtain the current altimeter setting, to facilitate the exchange of traffic advisories/restrictions, and to reduce the risk of midair collisions between aircraft operating in the vicinity of the Falls. If the Control Tower is closed, use the appropriate Automatic Terminal Information Service (ATIS) Frequency;

(5) Do not exceed 130 knots;

(6) Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL; and

(7) Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport.

(f) These procedures do not relieve pilots from the requirements of § 91.113 of this chapter to see and avoid other aircraft.

(g) Flight following, to and from the area, is available through Buffalo Approach.

8. Add new § 93.80 to read as follows:

§ 93.80 Applicability.

This subpart prescribes special air traffic rules for aircraft operating in the Valparaiso, Florida, Terminal Area.

§ 93.81 [Amended]

9. Amend § 93.81 by removing paragraph (a); removing the paragraph designation of paragraph (b); and redesignating paragraphs (b)(1), (2), (2)(i), (2)(ii), and (2)(iii) as (a), (b), (b)(1), (b)(2), and (b)(3) respectively.

10. Revise § 93.117 to read as follows:

§ 93.117 Applicability.

This subpart prescribes a special air traffic rule for aircraft operating at the Lorain County Regional Airport, Lorain County, Ohio.

11. Revise § 93.151 to read as follows:

§ 93.151 Applicability.

This subpart prescribes a special air traffic rule for aircraft conducting VFR operations in the vicinity of the Ketchikan International Airport or Ketchikan Harbor, Alaska.

12. Add new § 93.152 to read as follows:

§ 93.152 Description of area.

Within that airspace below 3,000 feet MSL within the lateral boundary of the surface area of the Ketchikan Class E airspace regardless of whether that airspace is in effect.

Subpart T to Part 93 [Amended]

13. In the heading and text of subpart T, remove the words "Washington National Airport" and add, in their place, the words "Ronald Reagan Washington National Airport".

Issued in Washington, DC on February 19, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–4638 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
February 28, 2003

Part IV

Department of Transportation

Federal Transit Administration

49 CFR Part 661

Buy America Requirements; Amendment to Certification Procedures; Final and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[FTA Docket No. FTA–98–4454]

RIN 2132–AA62

Buy America Requirements; Amendment to Certification Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements a provision of the Buy America statute which allows bidders or offerors the opportunity to correct inadvertent or clerical errors in their Buy America certifications after bid opening.

EFFECTIVE DATE: April 29, 2003.

ADDRESSES: Electronic Access: Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communication software from the Government Printing Office's electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s Home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www/access.gpo.gov/nara.* Electronic access to this final rule and other Buy America guidance material is located at *http://www.fta.dot.gov/library/legal/buyamer/.*

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, Office of the Chief Counsel, FTA, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3020(b) of Transportation Equity Act for the Twenty-First Century created a limited exception to the certification requirements, found at 49 CFR 661.13(b), that require rejection of a bid that is not accompanied by a completed Buy America certificate. To implement section 3020(b), the Federal Transit Administration (FTA) proposed an amendment to 49 CFR 661.13(b) which would provide bidders or offerors an opportunity to correct certifications of noncompliance or incomplete certifications that are the result of an inadvertent or clerical error. 64 FR 8051 (Feb. 18, 1999). FTA proposed that a bidder or offeror claiming inadvertent or clerical error submit to FTA, within 10 days of bid opening, an explanation of the circumstances surrounding the flawed certification and an affidavit stating that the submission resulted from an inadvertent or clerical error.

The proposed rule follows:

Sec. 661.13 Grantee responsibility.

* * * * *

(b) The grantee shall include in its bid specification for procurement within the scope of these regulations an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with Sec. 661.6 or Sec. 661.12 of this part, as appropriate.

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate), may submit to the FTA Chief Counsel within ten (10) days of bid opening a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification of noncompliance, and an affidavit, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(2) The FTA Chief Counsel may request additional information from the bidder or manufacturer, if necessary. The Chief Counsel will endeavor to make a determination within ten (10) days of receipt of the bidder's or manufacturer's submission. *The grantee may not make a contract award* until the FTA Chief Counsel issues his/her determination, except as provided in Sec. 661.15(m).

II. Discussion of Comments

FTA received eight comments to this NPRM, four in favor, three against, and one which advocated a strict reading of the statute: three transit agencies and the American Public Transportation Association (APTA) supported the proposed change; one transit agency and two manufacturers were against the changes; and another manufacturer commented on a narrow reading of the statute. The comments are available online from the Docket Management System, as described above, by searching for Docket No. FTA–98–4454.

The four commenters who supported the amendment offered a few suggestions for the final rule. One suggested that any claim for correction should be made as soon as it is discovered, but certainly within 10 days. Another argued that ten days is too long. FTA believes that ten days is an appropriate amount of time to allow a proper submission without overly burdening the grantee by delaying the procurement indefinitely. FTA agrees that submissions should be made as soon as they are discovered; however, in order to enforce this regulation and make it practicable, we have chosen 10 days as the outside time limit, and hope that petitioners will submit their requests for change as soon as possible, but not beyond ten days. It should be noted that this is ten calendar days, not ten business days. Another comment suggested that petitions be submitted to the regional office. In order to ensure uniformity of application, FTA believes that they should be submitted to headquarters. Two commenters said that the grantees' role should be limited to providing background information. FTA concurs with this position and will request information and assistance from our grantees when necessary; however, the grantee will have no official role in the implementation of this part of the regulation. Three commenters suggested that documentation evidencing intent should be required, such as information about where the product will be manufactured, details of the bidders selection process, invoices or other working documents. FTA concurs with these suggestions.

Another commenter suggested that the petition should be sent to all other bidders so that they may comment. FTA believes that this would unduly lengthen the process without availing it of pertinent information or fulfilling the goal of the statute. FTA does not want to open up the fact of a certification correction for debate among interested but uninformed parties. One commenter who supports the amendment also requested that FTA make a change to the rule that would allow parties to change their certification under changed circumstances when the materials are no longer available in the U.S. This change goes beyond the scope of the statute.

One commenter argued that the amendment would allow non-responsive bidders to become the low responsive bidder and therefore, create unfair competition. This is not correct. A bidder who certifies non-compliance is not necessarily non-responsive. Further, the final rule clearly states that petitions to correct are prohibited where the bidder or offeror has certified to both compliance and non-compliance, or failed to certify to either. Another commenter suggests that there is a huge potential for abuse where a transit agency has doubts about a certification of compliance, the bidder could claim inadvertent error. This abuse will be avoided because an application for change will only be permitted where the bidder certified non-compliance when they intended to certify compliance. Another commenter argued for a very strict reading of the rule, including that only bidders who certify non-compliance could change their certifications, and only date, company name, and title of the official are subject to correction. This commenter also suggests that the standard should be clear and convincing and that at least two employees should be required to testify in support of the assertion of clerical error. The statute narrowly points to incomplete certificates or incorrect certificates of non-compliance. Therefore, it is FTA's position that the rule should apply accordingly: a bidder who fails to properly fill out his certificate (either certificate of compliance or non-compliance) may petition to complete that certificate to fill in the name, date, or title, but not the signature. A bidder who submits a certificate of non-compliance but meant to certify compliance may petition to switch to compliance. FTA made changes to the final rule to clarify this point, please see the discussion below.

III. Final Rule Amendments and Application

The comments against the amendment indicate that the NPRM was not clear. For that reason, FTA has made a few changes intended to clarify the rule. The final rule explicitly states that a bidder may not request approval of a correction of a certificate when that party fails to sign the certificate, files a certification of both compliance and non-compliance, or files neither certificate. The rule does not allow anyone to change a certificate wrongly filed for a reason other than clerical or inadvertent error. These changes allow correction of a certification when there has been a clerical or inadvertent error, as Congress mandated, while prohibiting situations where the bidder would gain a competitive advantage over any other bidders.

FTA has also added a reference to 28 U.S.C. 1746, which allows a party submitting an affidavit or sworn statement to the government to do so in an abbreviated form, without a notary, when the language from the statute is used. Specifically, it provides that,

> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

Id. This change should ease the burden on the petitioning party and remain consistent with other federally required submissions. FTA has also eliminated the statement that "FTA will endeavor to make a determination within ten days," because while that is a true statement, it is not a requirement, and thus does not belong in the regulation.

FTA has added a provision that evidence illustrating original intent must be supplied with the petition. The bidder or offeror will submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. FTA has also added a provision clearly stating that ignorance of the law is not considered an inadvertent or clerical error. When a bidder certifies wrongly because they do not understand the law, that bidder is bound by its certification and cannot request that it be changed.

It should be noted that while there are references to bidders and offerors in the rule, FTA only refers to bid opening, and not best and final offer (BAFO), in the case of a request for proposals (RFP). This was done because there are times when awards are made after receipt of proposals, but before BAFO. It is FTA's position that certifications submitted with a bid are final, and may not be changed except as described in this rule amendment, while certifications submitted as part of the negotiation process of an RFP may be superseded by subsequent certifications, with the final valid certification being the last one submitted before award. Therefore, this provision applies to RFPs in the same fashion it applies to sealed bids—a bidder or offeror may petition to correct the controlling certification.

IV. Regulatory Impacts

Regulatory Analyses and Notices

FTA has determined that this action is not significant under Executive Order 12866 or the regulatory policies and procedures of Department of Transportation. Because this rule merely allows the correction of inadvertent or clerical errors in Buy America certifications, it is anticipated that the impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act, because, based on its past experience with handling inquiries regarding inadvertent or clerical errors, FTA is anticipating only a very small number of requests for correction of Buy America certifications.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995.

List of Subjects in 49 CFR Part 661

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

V. Amendment of 49 CFR Part 661

Accordingly, for the reasons described in the preamble, part 661 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 661—[AMENDED]

1. By revising the authority citation to read as follows:

Authority: 49 U.S.C. 5323(j) (formerly sec. 165, Pub. L. 97–424; as amended by sec. 337, Pub. L. 100–17, sec. 1048, Pub. L. 102–240, and sec. 3020(b), Pub. L. 105–178); 49 CFR 1.51.

2. By revising § 661.13(b) to read as follows:

§ 661.13 Grantee responsibility

* * * * *

(b) The grantee shall include in its bid specification for procurement within the scope of this part an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with § 661.6 or § 661.12 of this part, as appropriate.

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate, submission of certificates of both compliance and non-compliance, or failure to submit any certification), may submit to the FTA Chief Counsel within ten (10) days of bid opening a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification in accordance with 28 U.S.C. 1746, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will also submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(2) The FTA Chief Counsel may request additional information from the bidder or offeror, if necessary. The grantee may not make a contract award until the FTA Chief Counsel issues his/her determination, except as provided in § 661.15(m).

(3) Certification based on ignorance of the proper application of the Buy America requirements is not an inadvertent or clerical error.

* * * * *

Issued on: February 21, 2003.

Jennifer L. Dorn,

Administrator.

[FR Doc. 03–4553 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–99–5709]

RIN 2132–AA68

Buy America Requirements; Permanent Waiver for Microcomputers

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: This document withdraws the Federal Transit Administration's (FTA) October 8, 1999, advanced notice of proposed rulemaking (ANPRM) in which it sought public comment on whether the permanent waiver of the Buy America requirements for microcomputers should be retained, revoked, or modified. Based on a review of the comments to the ANPRM, FTA has concluded that a change is not warranted. Accordingly, FTA hereby withdraws the rulemaking.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, Office of Chief Counsel, Department of Transportation, Federal Transit Administration, Room 9316, 400 Seventh Street, SW., Washington, DC 20590, 202–366–1936 (telephone) or 202–366–3809 (fax).

ADDRESSES: All documents pertaining to this regulatory action, including the comments to the ANPRM, may be viewed and copied at the Docket Management Facility, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001 between 10 a.m. and 5 p.m., E.S.T., Monday through Friday, except Federal holidays. An electronic version of this document, and all documents entered into this docket, are available on the World Wide Web at *http://dms.dot.gov*. To read the comments on the Internet, take the following steps: Go to the Docket Management System ("DMS") Web page of the Department of Transportation (*http://dms.dot.gov*). On that page, click on "search." On the next page (*http://dms.dot.gov/search*), type in the four-digit docket number. The docket number for this rulemaking is 5709. After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Electronic access to this proposed rule and other Buy America guidance material is located at *http://www.fta.dot.gov/library/legal/buyamer/*.

SUPPLEMENTARY INFORMATION:

I. Background

FTA's Buy America regulations, which can be found at 49 CFR part 661, apply to all federally-assisted procurements using funds authorized by the Federal transit laws, 49 U.S.C. Chapter 53. Under those regulations, all manufactured products procured for projects funded under the Federal transit laws must be manufactured in the United States.

In 1985, in response to a request from the American Association of State Highway and Transportation Officials, FTA solicited public comment and subsequently amended its Buy America rule to grant a one-year waiver of the requirements for the purchase of microcomputers. 50 FR 1156 (Jan. 9, 1985). In 1986, FTA granted a permanent waiver for microcomputer equipment of foreign origin and software of foreign origin. 51 FR 36126 (Oct. 8, 1986). FTA noted that many product components were still made and assembled abroad, and it would be difficult to determine when, if ever, microcomputer manufacturing would be relocated to the United States. The definition for Microcomputers follows:

> A computer system whose processing unit is a microprocessor. A basic microcomputer includes a microprocessor, storage, and input/output facility, which may or may not be on one chip.
>
> The same source defines computer system as: A functional unit consisting of one or more computers and associated software, that uses common storage for all or part of a program and also for all or part of the date necessary for the execution of the program; executes user-written or user-designated programs; performs user-designated data manipulation, including arithmetic operations and logic operations; and that can execute programs that modify themselves during their executions. A computer system may be a stand-alone unit or may consist of several interconnected units. Synonymous with ADP system, computing system.

50 FR 18760 (May 2, 1985).

FTA received a request from Prima Facie, Inc. (petitioner) to re-examine the permanent waiver for microcomputers. Prima Facie requested that FTA determine whether the basis for the waiver still existed, and if not, whether it would be appropriate for FTA to revoke the general waiver. In addition, petitioner asked that FTA seek comment on whether the waiver should be modified to include only certain types of microcomputer equipment and whether the inclusion of a microcomputer in a manufactured product should result in the entire product being considered a microcomputer.

In response, FTA issued an ANPRM, which can be found at 64 FR 54855 (Oct. 8, 1999). FTA invited public comment on the issues raised by petitioner.

II. Summary of Comments

FTA received nine written comments in response to its ANPRM. There were three responses from transit authorities; one from the American Public Transit Association (APTA); four from private companies, including the transportation systems and software industries; and one from a professional engineer.

A majority of the commenters, six of the nine, supported retention of the microcomputer waiver. They overwhelmingly emphasized that the waiver should remain in place because microcomputer equipment is still manufactured primarily in non-U.S. markets. They explained that while the technology marketplace has changed over the last fifteen years, there does not appear to have been a change in manufacturing location. According to the commenters, the situation that necessitated the regulation—*i.e.*, the lack of microprocessor suppliers in the U.S.—is still present. They explained that the majority of microchips and other necessary components are still manufactured overseas and unavailable from U.S. sources.

Two commenters also addressed the original intent of the waiver. They explained that with the waiver revoked and only foreign sources available, buyers would be forced to request individual waivers from FTA for each related procurement. This, in turn, would generate a steady stream of waiver requests from grantees. The 1986 regulation was promulgated to prevent such a burden on our grantees.

Of those commenters in favor of the waiver, two did indicate that some modifications of the waiver might be warranted. One commenter noted that there is "some confusion about the scope of the waiver," further stating that it is unclear whether the waiver applies to final manufactured products which contain a microprocessor as only an incidental part. Another commenter advocated a reevaluation of the definition of "minicomputer." The commenter explained that the 1986 definition of minicomputer was intended to facilitate the easier procurement of desktop computers. Today, however, that definition has become inadequate because it does not address the many modern procurements that are filled with microchips and control chips (*e.g.*, fare collection equipment, bus destination signs).

Of the nine responses to the ANPRM, three commenters were opposed to the waiver as it currently exists. Those comments came from the petitioner, a software company, and a professional engineer. All three argued that the current waiver is out-of-date. Petitioner explained that the waiver is out-of-date because the non-availability problems of 1985–86 no longer exist. Petitioner believes that if there is a permanent waiver, it should be extremely limited in scope, and not be extended to equipment simply because the equipment contains a microprocessor.

Another commenter, the software company, requested that "software" not be included in the waiver because the term is far too broad, and its inclusion does not support the original intent of the Buy America requirement. The waiver was intended to support American software businesses, which were few in number in the technology marketplace of 1985–86. Today, according to the company, there are several American software companies that develop and sell the software needed by transit properties and at a price affordable to transit properties, even smaller ones. As a result, the waiver, in effect, "opens the U.S. applications software market to competition from some very large and well-established foreign firms who market enterprise wide, fully integrated software packages."

Finally, the professional engineer agreed with petitioner's position but raised several other issues. He suggested that several additional topics should be opened up for comment, such as the interplay between public safety and microcomputers, the replacement and maintenance problems that arise when components come from foreign sources, the negative economic consequences of a blanket waiver, and the problem of obsolescence in the domestic market with regards to microcomputers.

III. Analysis

At petitioner's request, FTA issued this ANPRM and opened the record. Based on the record developed from this ANPRM, FTA has determined that the permanent waiver for microcomputers should not be revised.

FTA received only nine comments, one of which came from petitioner. That is a particularly small number of comments, especially for an issue that has such broad implications. In addition, the three responses in favor of revoking the waiver, as a whole, did not provide a sufficiently substantive discussion of petitioner's questions. While some of the comments mention or address some of petitioner's issues, the comments did not provide thorough discussions of petitioner's four questions.

Moreover, the majority of comments did not support petitioner's position; specifically, only two commenters shared petitioner's position. Most of the commenters who support the current waiver strongly agreed that the U.S. technology marketplace has not changed enough to warrant a change. Notably, APTA, which consists of over 1,250 member organizations, took that position. Based on the responses from its members, APTA wrote that "it would seem that the U.S. marketplace has not changed that significantly since 1986." If this is, in fact, the case (*i.e.*, that the technology marketplace has not changed), then there is no basis to alter the existing rule. Altering the rule would only create the problems discussed by other commenters, for example, generating a steady stream of waiver requests to FTA, decreasing choices available to transit systems, and increasing costs for transit systems.

Finally, the absence of responses from the U.S. microprocessor industry is notable. Presumably, that industry would have emphatically responded in support of the revocation of the waiver. The waiver greatly impacts their industry, as it opens them up to a great deal of foreign competition, at least with respect to government transit contracts. However, as FTA lacks information from the U.S. microprocessor industry, FTA is left with little basis upon which to support a change in the existing rule.

Given the small number of responses, the lack of support of the public, and the lack of substantive grounding, FTA has decided to withdraw the ANPRM.

IV. Conclusion

FTA will not revoke or modify the microcomputer waiver as it is set forth in Appendix A of 49 CFR 661.7. However, it should be noted that FTA does not apply the waiver to an entire product because it contains a microcomputer. The parameters of the waiver as it currently exists are that if the end product is itself a microcomputer or software as defined above, Buy America is waived. If, however, the end product contains a microcomputer (*e.g.*, a farecard system), that microcomputer is exempt from the requirements of Buy America, but the rest of the end product must be in compliance. Due to the small number of responses to the ANPRM, the lack of public support for the proposed change, and the lack of substantive arguments to justify the change, FTA has concluded that a change is not warranted at this time.

Issued on: February 21, 2003.

Jennifer L. Dorn,

Administrator.

[FR Doc. 03–4552 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–57–P

Federal Register

Friday,

February 28, 2003

Part V

Department of the Treasury

31 CFR Part 50

Departmental Offices; Terrorism Risk Insurance Program; Interim Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA96

Departmental Offices; Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing this interim final rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). That Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This interim final rule sets forth the purpose and scope of the Program and key definitions that Treasury will use in implementing the Program. In general, this interim final rule incorporates interim guidance previously issued by Treasury concerning these definitions. However, the preamble indicates those areas in which Treasury has modified the interim guidance. This interim final rule is the first of a series of regulations Treasury will issue to implement the Program.

DATES: This interim rule is effective February 28, 2003. Written comments on this interim final rule may be submitted to the Treasury Department on or before March 31, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov*. Please include your name, affiliation, address, e-mail address and telephone number in your comment. All comments should be captioned with "February 28, 2003 TRIA Comments." Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730 or Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (Public Law 107–297, 116 Stat. 2322). The Act was effective immediately. Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism as defined in the Act and certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the issuance of regulations and procedures. The Program will sunset on December 31, 2005.

The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

The amount of Federal payment for an insured loss resulting from an act of terrorism is to be determined based upon the insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act. Thus, the Program provides a Federal reinsurance backstop for a temporary period of time. The Act also provides Treasury with authority to recoup Federal payments made under the Program through policyholder surcharges, up to a maximum annual limit.

Each entity that meets the definition of "insurer"(well over 2,000 firms) must participate in the Program. From the date of enactment of the Act through the last day of Program Year 2 (December 31, 2004), insurers under the Program must "make available" terrorism risk insurance in their commercial property and casualty insurance policies and the coverage must not differ materially from the terms, amounts and other coverage limitations applicable to commercial property and casualty losses arising from events other than acts of terrorism. The Act permits Treasury to extend the "make available" requirement into Program Year 3, based on an analysis of factors referenced in the study required by section 108(d)(1) of the Act, and not later than September 1, 2004.

An insurer's deductible increases each year of the Program, thereby reducing the Federal government's involvement prior to sunset of the Program. An insurer's deductible is based on "direct earned premiums" over a statutory Transition Period and the three Program Years. Once an insurer has met its deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an aggregate annual cap of $100 billion. The Act prohibits duplicative payments for insured losses that have been covered under any other Federal program.

As conditions for Federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program, and must submit a claim and certain certifications to Treasury. Treasury will be prescribing claims procedures at a later date.

The Act also contains specific provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 creates an exclusive Federal cause of action, provides for claims consolidation in Federal court and contains a prohibition on Federal payments for punitive damages under the Program. This section also provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program.

B. Previously Issued Interim Guidance

To assist insurers, policyholders and other interested parties in complying with immediately applicable and time sensitive requirements of the Act prior to the issuance of these and future regulations, Treasury issued interim guidance in three separate notices. Treasury publicly released these interim guidance notices on its Program Web site, *http://www.treasury.gov/trip*, and published each notice in the **Federal Register.**

Treasury released the first notice of Interim Guidance on December 3, 2002, within a week of the Act's enactment (Interim Guidance I). Interim Guidance I was published at 67 FR 76206 on December 11, 2002 and addressed several issues pertaining to immediately applicable provisions of the Act, including statutory disclosure obligations of insurers as conditions for Federal payment under the Program and the requirement that an insurer "make available" terrorism risk insurance. The disclosure guidance in Interim Guidance I references certain model forms of the National Association of Insurance Commissioners (NAIC) and provides safe harbor for those insurers that make use of such forms prior to the issuance of regulations, but Interim Guidance I stated that these forms are not the exclusive means by which insurers could comply with the disclosure conditions prior to the issuance of regulations. Interim Guidance I also provided guidance concerning the "direct earned premium" on lines of property and casualty insurance to enable insurers to calculate their "insurer deductible" and enable insurers to price and disclose their premiums for terrorism risk insurance to policyholders within statutory time periods.

On December 18, 2002, Treasury issued a second notice of interim guidance. This interim guidance was published at 67 FR 78864 on December 26, 2002 (Interim Guidance II). Interim Guidance II further addressed the statutory categories of "insurers" that are required to participate in the Program, including their "affiliates"; provided clarification on the scope of "insured loss" covered by the Program and provided additional guidance to enable eligible surplus line carriers listed on the Quarterly Listing of Alien Insurers of the NAIC or federally approved insurers to calculate their insurer deductible for purposes of the Program.

On January 22, 2003, Treasury issued a third notice of interim guidance, published at 68 FR 4544 on January 29, 2003 (Interim Guidance III). Interim Guidance III further clarified certain disclosure and certification questions, issues for non-U.S. insurers, and the scope of the term "insured loss" under the Act.

In issuing each notice of Interim Guidance, Treasury stated that the Interim Guidance may be relied upon by insurers until superseded by regulations or a subsequent notice. Treasury provided safe harbors for actions by those insurers taken in accordance with, and in reliance on, the interim guidance for the time period prior to the issuance of regulations. Treasury now is issuing an interim final rule with request for comment. The interim final rule addresses certain general Program provisions and Program definitions. Treasury is also issuing a companion proposed rule with request for comment.

II. Analysis of the Interim Final Rule

The interim final rule establishes a new Part 50 in Title 31 of the Code of Federal Regulations, 31 CFR Part 50. Part 50 eventually will include other regulations deemed necessary by Treasury to implement the Program. Subpart A of new Part 50 contains certain general provisions and definitions of Program terms.

Some of the definitions are taken virtually verbatim from the Act because they do not need further clarification and are included in the interim final regulations primarily for ease of reference. In addition, the interim final rule generally incorporates the interim guidance provided previously by Treasury as it pertains to Program terms, for example, the terms "insurer," "affiliate", "property and casualty insurance" and "direct earned premium." In several areas, the interim final regulation makes clarifying modifications to, or supplements, the interim guidance. For example, the interim final rule clarifies and emphasizes that the Program covers only commercial lines of property and casualty insurance, subject to the inclusions and exclusions of certain lines of insurance as set forth in the definition of property and casualty insurance in section 102(12) of the Act. The Program does not cover personal lines of property and casualty insurance, even if the latter are reported by an insurer on the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

In implementing the Program, Treasury has been guided by several goals. First, we strive to implement the Act in a transparent and effective manner that, for example, treats comparably those insurers required to participate in the Program and that provides necessary information to policyholders in a useful and efficient manner. Second, Treasury seeks to rely as much as possible on the State insurance regulatory structure. In that regard, Treasury is closely coordinating with the NAIC in implementing definitions and other aspects of the Program. Third, to the extent possible within statutory constraints, Treasury seeks to allow insurers to participate in the Program in a manner consistent with their normal course of business. Finally, given the temporary and transitional nature of the Program, Treasury is guided by the Act's goal for insurers to develop their own capacity, resources and mechanisms for terrorism risk insurance coverage when the Program expires.

Key Program definitions contained in the interim final regulation are analyzed below.

A. What is an "Act of Terrorism" Under the Program?

The Program definition of "act of terrorism" in the interim final rule is the same definition that is contained in section 102(1) of the Act. Section 106(a)(2) of the Act provides that the Act's definition is the exclusive definition of the term "act of terrorism" for purposes of compensation for insured losses under the Act. The Act's definition requires a certification by the Treasury Secretary, in concurrence with the Secretary of State and the Attorney General of the United States, that an act is an act of terrorism within the statutory parameters. These parameters include an act that is violent or dangerous to human life, property or infrastructure; that has resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or if on the premises of a U.S. mission; and that has been committed by individual(s) on behalf of any foreign person or foreign interest, as part of an effort to coerce the U.S. civilian population or to influence the policy or affect the conduct of the U.S. government by coercion.

Thus, for example, acts of domestic civil disturbance would not be covered by the Act's definition of "act of terrorism" or therefore, by the Program. As in the Act, the interim final rule provides that the Secretary's determination or certification with regard to an act is final and is not subject to judicial review. An act of terrorism must meet a $5,000,000 de minimis aggregate loss requirement before it may be certified. The Act also provides that an act is not certifiable if committed as part of a course of war declared by Congress, except with respect to workers compensation coverage.

B. What Entities Must Participate in the Program ("Affiliate", "Control", "Insurer")?

1. Mandatory Participation of Insurers

The general provisions of the interim final rule incorporate the Act's requirement in section 103(a)(3) that each entity meeting the definition of "insurer" under the Act must participate in the Program.

2. "Insurer"

The interim final rule incorporates the statutory definition of "insurer" and generally incorporates the guidance set forth in Interim Guidance II concerning

the categories of insurer and the definition of affiliate. To participate in the Program, an entity, including an affiliate of an insurer, must itself meet all of the requirements of section 102(6)(A), (B) and, as the Treasury may prescribe, (C). This means that to be an insurer, an entity must (1) fall within one of the categories in section 102(6)(A) described below, and (2) must receive direct earned premiums as required by section 102(6)(B) and (3) must meet any additional criteria established by Treasury pursuant to section 102(6)(C).

a. Must Fall Within a Category of Insurers in Section 102(6)(A)

First, an insurer must fall within at least one of the following several categories set forth in section 102(6)(A):

(i) Licensed or admitted to engage in the business of providing primary or excess insurance in any State ("State" includes the District of Columbia and territories of the United States);

(ii) Not so licensed or admitted, but is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the National Association of Insurance Commissioners;

(iii) Approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy or aviation activity; or

(iv) A State residual market insurance entity or State workers' compensation fund.

Consistent with Interim Guidance II, the interim final rule provides that an entity that falls within two categories will be considered by Treasury to fall within the first category it meets under section 102(6)(A)(i)–(v). Therefore, if an entity is a federally approved insurer under section 102(6)(A)(iii) and is licensed or admitted in any State, it will be treated under the Program as a State licensed or admitted insurer under section 102(6)(A)(i).

In each of the categories of insurer in section 102(6)(A)(i)–(iv), the insurer has a pre-existing State or NAIC regulatory framework, or has a *relationship* with a Federal or State program. In developing this interim final rule, Treasury considers such a nexus between an insurer and a Federal or State program or regulatory authority to be extremely important to the effective and efficient administration of the Program. A pre-existing nexus between an insurer and a regulatory structure, for example, assists Treasury in ensuring the financial integrity of participating entities, in obtaining necessary data to implement and evaluate the Program and in carrying out Treasury's surcharge and recoupment, audit and enforcement responsibilities under the Act. Treasury's emphasis on such a nexus is also in accord with the temporary nature of the Program and other aspects of the Program's statutory structure.

"State Licensed or Admitted"

Insurers under clause (i) of section 102(6)(A) include all entities that are licensed or admitted by a State's insurance regulatory authority. This group of insurers includes captive insurers, risk retention groups, and farm and county mutuals, if such entities are State licensed or admitted. The Program treats all State licensed or approved insurers consistently in accord with the plain language of section 102(6)(A)(i). This treatment also furthers other statutory objectives such as ensuring that policyholders have widespread access to the terrorism risk insurance benefits of Program, and spreading potential costs of the Program associated with any federal loss-sharing payments. (For example, see the cost spreading provisions in connection with recoupment as required by section 103(e)(7) and in connection with surcharges as required by section 103(e)(8) to be applied to all commercial property and casualty policyholders).

Other Categories of Insurers

The NAIC has established criteria for approval of eligible surplus line carriers for listing on the NAIC's Quarterly Listing of Alien Insurers. Federally approved insurers under section 102(6)(A)(iii) are addressed in detail below. Treasury intends to issue additional regulations to apply the provisions of the Act to insurers in clause (iv) of State residual market insurance entities and State workers' compensation funds pursuant to section 103(d).

As described above, all State licensed or admitted captive insurers are insurers within the Program under section 102(6)(A)(i). Treasury may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of the Act to "other classes or types of captive insurers and other self insurance arrangements" pursuant to section 103(f) of the Act, but only if such an application is determined before the occurrence of an act of terrorism and all of the provisions of the Act are applied comparably to such entities. Treasury has engaged in consultations, but has not yet made a decision regarding the participation in the Program of captives and other self insurance arrangements that do not fall into other categories in clauses (i)–(iv).

b. Must Receive Direct Earned Premiums As Required by Section 102(6)(B)

The second criteria an entity must meet to be an insurer for purposes of the Program is prescribed by section 102(6)(B). In addition to falling within a category in section 102(6)(A), to be an "insurer" under the Act, an entity must receive "direct earned premiums" (as defined) on any type of commercial property and casualty insurance (as defined). The key aspect of this requirement in the statutory definition of insurer is the Act's specification of a direct measure of premium income as opposed, for example, to a net measure of premium income which accounts for reinsurance. Although the legislative history and design of the Act envision reinsurance arrangements as an important component of capacity within the insurance market, the Act excludes reinsurance from the Program. (Section 103(g) of the Act provides that the Act does not limit or prevent "insurers" from obtaining reinsurance coverage for "insurer deductibles" or "insured losses" retained by insurers.) Therefore, consistent with the Act and Treasury's Interim Guidance II, the interim final rule provides that, if an entity does not receive direct earned premiums as required by section 102(6)(B), and subject to statutory exceptions, then the entity is not an "insurer" under the Act. In that regard, Section 102(6)(B) excepts State residual market insurance entities from the direct earned premium requirement.

c. Must Meet Additional Criteria Prescribed by Treasury Under Section 102(6)(C).

In addition to the requirements of section 102(6)(A) and (B) described above, section 102(6)(C) of the Act requires that an insurer also meet "any other criteria that the Secretary of the Treasury may reasonably prescribe." The interim final rule does not prescribe additional criteria under section 106(C). Published elsewhere in this separate part of the **Federal Register** is a notice of proposed rulemaking in which Treasury solicits public comment on whether the Secretary should prescribe other criteria for certain insurers pursuant to the authority provided by section 102(6)(C) and, if so, what criteria Treasury should prescribe. In this regard, in the notice of proposed rulemaking Treasury solicits comment on appropriate criteria to prevent participation in the Program by newly formed insurance companies deemed by Treasury to be established for the purpose of evading the insurer deductible requirements of the Act and the Program. As stated in the notice of proposed rulemaking, Treasury's objectives are to encourage new sources of capital in the market for terrorism risk insurance, and at the same time, ensure the integrity of the Program and provide comparable treatment of Program participants. Accordingly, the intent of any additional criteria, if proposed, is not to discourage Program participation by newly formed commercial property and casualty insurance companies in their normal course of business, but to administer the Program effectively and fairly, including preventing evasion of insurer deductible requirements by special purpose entities formed to provide terrorism risk only coverage.

Also in the notice of proposed rulemaking published elsewhere in this separate part of the **Federal Register**, Treasury solicits comment on appropriate additional criteria, including financial standards, that should be proposed for federally approved insurers under Treasury's authority in section 102(6)(C). One reason for imposing additional criteria on federally approved insurers is because there are no uniform requirements or standards for federal approval under various federal programs. Although some federal programs impose minimum financial standards, others do not. Therefore, Treasury is considering whether additional criteria for federally approved insurers should be proposed to promote the financial integrity of the Program and to otherwise effectively administer the Program. In addition, in the notice of proposed rulemaking published elsewhere in this separate part of the **Federal Register**, Treasury solicits comment on criteria that Treasury should propose and prescribe under section 102(6)(C) to ensure that payments under the Program do not benefit entities with connections to terrorist organizations.

d. "Federally Approved" Insurer.

If an entity does not fall within section 102(6)(A)(i) or (ii), but is approved or accepted by a Federal agency to offer property and casualty insurance in connection with maritime, energy or aviation activities; receives direct earned premiums for any type of commercial property and casualty insurance as required by 102(6)(B), and, if prescribed, meets any criteria established by Treasury under 102(6)(C), then, such an entity is considered by Treasury to be a federally approved "insurer" under section 102(6)(A)(iii).

As reflected in Interim Guidance II, this interim final rule provides that the scope of insurance coverage (insured losses) under the Program for federally approved insurers under section 102(6)(A)(iii) is only to the extent of federal approval of the commercial property and casualty insurance coverage approved by the Federal Agency in connection with maritime, energy or aviation activity. Insured losses under other insurance coverage that may be offered by a federally approved insurer under section 102(6)(A)(iii) is not covered by the Program. This treatment of federally approved insurers is in accord with the statutory language of the Act in section 102(6)(A)(iii) ("*approved for the purpose of* offering property and casualty insurance by a Federal agency *in connection with* maritime, energy or aviation activity"). This treatment is also in accord with Treasury's consideration of a pre-existing nexus (for example, the nexus of State-licensing or NAIC approval for listing on the Quarterly Listing of Alien Insurers) as very important to the effective and efficient administration of the Program. This nexus is considered by Treasury to be an important aid in ensuring financial integrity of participants in the Program, in obtaining data, and in connection with recoupment, audit and enforcement responsibilities, among others. In addition, this treatment is consistent with the temporary nature and other statutory structure of the Program. Treasury recognizes that it is possible to interpret section 102(6)(A)(iii) more broadly, but for reasons stated above has determined that the narrower reading is not only in accord with the statutory language but serves other important purposes in the administration of the Program.

Examples of federally approved insurers under section 102(6)(A)(iii) are those insurers that do not fall within section 102(6)(A)(i) or (ii), and are approved or accepted by a Federal agency under the following federal programs and statutes:

- Approval of Underwriters for Marine Hull Insurance (Maritime Administration, U.S. Department of Transportation).
- Aircraft Accident Liability Insurance (U.S. Department of Transportation).
- Oil Spill Financial Responsibility for Offshore Facilities (Minerals Management Service, U.S. Department of the Interior).
- Oil Spill Financial Responsibility for Vessels (United States Coast Guard, U.S. Department of Transportation).
- Longshoremen's and Harbor Workers' Compensation Act (Employment Standards Administration, U.S. Department of Labor).
- Price Anderson Act (Nuclear Regulatory Commission, U.S. Department of Energy).

The above list of Federal insurance programs contains an addition to the list contained in Interim Guidance II through the express inclusion of insurers approved or accepted under the Price Anderson Act. This list is provided as a starting reference point and is not exclusive. Any entity that is approved or accepted by a U.S. agency to offer commercial property and casualty insurance in connection with maritime, energy or aviation activities by a program that is not listed above is particularly encouraged to advise the designated Treasury contacts provided by this rule with the name of the program and the name of the Federal agency that approved or accepted them.

Treasury is not prescribing additional criteria under section 102(6)(C) in the interim final rule for federally approved insurers, but solicits comments elsewhere in this separate part of the **Federal Register** on whether and what additional criteria should be prescribed for federally approved insurer.

3. "Affiliates"

The definition of "insurer" in section 102(6) includes "any affiliate thereof." Section 102(2) of the Act defines "affiliate" to mean "with respect to any insurer, any entity that controls, is controlled by or is under common control *with* the insurer" (emphasis supplied). Any affiliate that does not meet the definition of insurer, for example, it does not fall into any of the categories in section 102(6)(A) or does not receive direct earned premiums for commercial property and casualty insurance as required by section 102(6)(B), is not an "insurer" for purposes of the Program. Consistent with Interim Guidance II, and the definition of "control" discussed below, Treasury will treat the parent company, and all affiliates that meet the requirements of "insurer" in section 102(6)(A), (B) and (C), collectively as one "insurer" for purposes of calculating the direct earned premiums on which the insurer deductible is based under the Program. This consolidated treatment is also in accord with the Conference Report to accompany the Act, which states, in the explanation of section 102 of the Act, that "the terms 'affiliate' and 'control' are meant to ensure that affiliated insurers are treated as a consolidated entity for calculating direct earned premiums." H.R. Conf. Rep. No. 107–779 (2002).

For example, if an insurance company is licensed or admitted to engage in the

business of providing primary or excess insurance in a State and receives direct earned premiums as required in section 102(6)(B), and three out of four of its affiliate insurance companies also are State licensed and meet the requirements of section 102(6)(B) and (C), then the parent company and the three affiliates that meet the definition of "insurer" are, collectively, one insurer for purposes of calculating and consolidating direct earned premiums and calculating insurer deductibles under the Program. The affiliate that does not fall within one of the categories in section 102(6)(A) or fails to meet all the requirements to be an "insurer" under section 102(6) is not included in the Program.

As discussed previously in Interim Guidance II, if an entity is "under common control with the insurer," and that entity meets the requirements to be an "insurer" in section 102(6)(A)–(C), Treasury will consider that entity collectively with the other insurer (its affiliate) as one "insurer" for the Program purposes of consolidating direct earned premiums and calculating the insurer deductible. For example, assume that two insurance companies are licensed to engage in the business of providing primary or excess insurance in any State (either in one State or in separate States) and both receive direct earned premiums as required by section 102(6)(B). Each company, would meet the definition of "insurer." Assume additionally that the common parent of the two companies does not fall into any of the categories in section 102(6)(A). Treasury will consider the two affiliated companies to be, collectively, one insurer for purposes of calculating and consolidating direct earned premiums and their insurer deductible under the Program, but their parent company is not an insurer and not included in the Program.

4. "Control"

Related to the definition of insurer and affiliate is the definition of "control" in section 102(3)(A)–(C) of the Act. The definition and determination of "control" for purposes of the Program is used by Treasury to calculate the insurer deductible on a consolidated basis for an insurer "including any affiliate thereof" (see discussion of affiliate above). Under the Act, an entity is in control of another entity if the statutory definition is met under section 102(3)(A) *or* (B), *or* if Treasury makes a determination under (C) that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity. Each category of control for purposes of the Program is described below with examples.

a. "Owns, Controls or has the Power to Vote" 25 Percent of Voting Securities.

Section 102(3)(A) provides that an entity has "control" over another if the entity directly or indirectly or acting through 1 or more other persons owns, controls or has power to vote, 25 percent or more of any class of voting securities of the other entity. For example, if Insurer X owns, or has the power to vote, 25 percent or more of any class of voting securities of Insurer Y, then Insurer X is in control of Insurer Y under section 102(3)(A). This control relationship means, among other things, that Treasury will consolidate the direct earned premiums of these two insurers *under Insurer X* for purposes of calculating the insurer deductible and evaluating a claim for federal payment.

Published elsewhere in this separate part of the **Federal Register** is a notice of proposed rulemaking in which Treasury solicits comments on whether the definition of control contained in the interim final rule should be supplemented by proposing a rule to address situations in which a corporate insurance structure may contain multiple insurers that own, control or have the power to vote more than 25 percent of the voting shares of another insurer. Based on available information, such control arrangements exist but they do not appear to be common. In particular, Treasury is considering consolidating direct earned premiums for purposes of calculating the insurer deductible on a pro rata basis among the multiple controlling owners. For example, if Insurer Y owns 40 percent of the voting shares of Insurer Z and Insurer X owns 30 percent of the voting shares of Insurer Z, then a pro rata allocation of premium income and insured loss under the Program would be, respectively, 57 percent and 43 percent.

b. Controls Election of Majority of Directors or Trustees.

Pursuant to section 102(3)(B), an entity also is in control over another entity for purposes of the Program if the entity controls in any manner the election of a majority of the directors or trustees of the other entity. For example, even if Insurer A does not own or have the power to vote 25 percent or more of any class of voting securities of Insurer B, if Insurer A controls in any manner the election of a majority of the directors or trustees of Insurer B, then Insurer A "controls" Insurer B under the Act. This means that, for purposes of the Program, Treasury will consolidate the direct earned premiums of these two insurers under Insurer A in calculating the insurer deductible and evaluating a claim for federal payment.

c. Control Determination by Treasury under Section 102(3)(C).

If no control relationship exists on the basis of either section 102(3)(A) or (B), Treasury has authority, under section 102(3)(C), to determine, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of another insurer. To provide further guidance for purposes of a control determination under this subsection (C), the interim final rule establishes several rebuttable presumptions. The first rebuttal presumption under section 102(3)(C) is that an entity is in control of another entity for purposes of the Program (including consolidation of direct earned premiums in calculating the insurer deductible) if a State has determined that a control relationship exists between the two entities. If a State has made such a control determination with regard to two insurers, and the affected insurers wish to rebut the presumption established in this interim final rule, then the insurers may request an informal hearing (*e.g.* exchange of documents) in which they will be given an opportunity by Treasury to present and support their position that no control relationship exists, prior to a final determination by Treasury.

The second rebuttable presumption Treasury is establishing is that an insurer exercises directly or indirectly a controlling influence over the management or policies of another insurer under section 102(3)(C) if 25 percent or more of capital of a stock insurer, policyholder surplus of a mutual insurer, or corporate capital of other entities qualifying as insurers is provided by another insurer, even in the absence of voting shares or of control of the election of a majority of the directors or trustees of the other insurer. The third rebuttable presumption is that an insurer exercises directly or indirectly a controlling influence over the management or policies of a syndicate insurer if, at any time during the Program Year, the insurer supplies 25 percent or more of the underwriting capacity for that year to the other insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters.

If the affected insurers wish to rebut the presumptions described above and established by this interim final rule, then such insurers may request a hearing in which they will be given an opportunity to rebut the presumption of control by presenting and supporting their position through written submissions to Treasury and, in Treasury's discretion, through informal oral presentation.

Published elsewhere in this separate part of the **Federal Register** is a notice of proposed rulemaking in which Treasury solicits comment on a pro rata allocation method for control determinations under section 102(3)(C) of the Act, similar to the pro rata method under consideration for controlling insurers under section 102(3)(A), in situations in which multiple insurers each provide 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and in the interim final rule. The pro rata approach under consideration by Treasury would treat each insurer on a standalone basis for Program purposes such as calculation of direct earned premiums and the insurer deductible if no insurer provides 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and the Program.

At a later date, Treasury will be issuing claims procedures. In accordance with the consolidated treatment of direct earned premiums among insurer affiliates, Treasury anticipates that the controlling insurer will be the insurer that will be required to file any claim with Treasury for federal payment under the Program and that this insurer will receive the federal payment that is to be distributed within the consolidated insurer group in accordance with distribution of risk within the consolidated insurer group. Elsewhere in this separate part of the **Federal Register**, Treasury solicits comments on various means to ensure the prompt distribution of the federal payment as appropriate to ensure that the purposes of the Program are not thwarted or evaded, and that the ultimate risk bearing entities are treated in an equitable manner, within the Act's requirements.

C. What is the Scope of Insurance Coverage Under the Program? ("Insured Loss", "Property and Casualty Insurance", "Direct Earned Premium" and Insurer Deductible.")

1. "Insured Loss"

The definition of "insured loss" in the interim final rule incorporates the statutory definition in section 102(5) supplemented by the guidance concerning scope of the term "insured loss" that is contained in Interim Guidance II and Interim Guidance III. Section 102(5) of the Act defines insured loss to mean any loss resulting from a certified "act of terrorism" covered by primary or excess "property and casualty insurance," that is issued by an "insurer," if such loss:

- "Occurs within the United States," or
- Occurs to an "air carrier"; a U.S. flag vessel or a vessel "based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States, regardless of where the loss occurs," or
- Occurs "at the premises of any United States mission."

In general, if the property and casualty insurance coverage is provided within the geographic and other statutory parameters of the definition of "insured loss" in the Act as described above, and is provided by an "insurer" as defined in section 102(6) of the Act (whether or not the insurer is non-U.S. based or owned), then such losses will be covered by the Program, subject to the conditions for payment and other requirements of the Act. However, if insurance coverage is provided by an entity that is not an "insurer" under the Act, then, even if a loss occurs within the United States, or otherwise meets the definitional parameters of "insured loss," *e.g.* occurs to an air carrier or vessel or mission as defined in the Act, the loss would not be covered by the Program. In addition, if insurance is provided by a U.S. insurer, but the loss does not fall within the definition of "insured loss," for example, it occurs on foreign soil and not to a U.S. mission or covered air carrier or vessel, then the loss would not be covered by the Program. Section 102(5)(A) provides that "insured losses" means *any* loss resulting from a certified act of terrorism and covered by primary or excess property and casualty insurance issued by an insurer if such loss occurs *within* the United States.

As described in Interim Guidance III, insured losses under section 102(5)(B) are only those losses that are *incurred* by covered air carriers or vessels, if the insured loss occurs beyond the geographic boundaries of the United States as described in Section 102(5)(A). Losses that are incurred by covered air carriers or vessels would include losses covered by insurance coverage provided to those entities (for example, property insurance coverage and liability coverage). Not included under section 102(5)(B) are losses that are not incurred by covered air carriers or vessels, such as losses covered by third party insurance contracts that are separate from the insurance coverage provided to covered air carriers or vessels.

2. "Property and Casualty Insurance"

Section 102(12) of the Act defines "property and casualty insurance" to mean commercial lines of property and casualty insurance. The statutory definition expressly *includes* "excess insurance, workers compensation insurance and surety insurance." In addition, the Act specifically *excludes* (i) federal crop insurance issued or reinsured under the Federal Crop Insurance Act or any other type of crop or livestock insurance that is privately issued or reinsured; (ii) private mortgage insurance as defined in the Homeowners Protection Act of 1998 or title insurance; (iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations; (iv) insurance for medical malpractice; (v) health or life insurance including group life insurance; (vi) flood insurance provided under the National Flood Insurance Act of 1968; and (vii) reinsurance or retrocessional reinsurance.

Insurance is generally regulated by State law in the United States. There is no uniform or consistent definition of "commercial property and casualty insurance" among the States. In some States, a line of insurance may be considered commercial and in other States the same line of insurance is considered personal. However, as Program administrator, Treasury must designate types or lines of commercial property and casualty insurance on which direct earned premiums and insurer deductibles are to be calculated and for which federal payments will be made for "insured losses" under the Program. Direct earned premiums received by insurers for commercial property and casualty insurance under the Program are the basis for the Program's statutory reinsurance structure, for other terms and for federal payments. In developing a definition of property and casualty insurance for purposes of administrating and implementing the Program, Treasury considered the statutory definition, the Program structure, and effective administration of the Program. In this regard, Treasury also consulted with the NAIC and others regarding State law and premium reports filed with the NAIC.

The interim final rule defines the scope of commercial property and casualty insurance for purposes of the Program to include commercial property and casualty insurance, including those lines of insurance expressly included in section 102(12) of the Act and excluding

those lines of insurance expressly excluded by the same statutory definition. Treasury's interim final rule incorporates the suggested guidance in Interim Guidance I that commercial lines within the following lines of insurance coverage that are reported on the NAIC Annual Statement of the Exhibit of Premiums and Losses—commonly known as Statutory Page 14 are included in the Program: Line 1—Fire; Line 2.1—Allied Lines; Line 3—Farmowners Multiple Peril; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 22—Aircraft (all perils); Line 24—Surety; Line 26—Burglary and Theft; and Line 27—Boiler and Machinery.

The interim final rule also clarifies that premium information on such lines of Statutory Page 14 should only be included in calculating an insurer's direct earned premium and insurer deductible to the extent that coverage is provided for commercial property and casualty exposures. In other words, personal insurance that is reported on the specified covered lines of Statutory Page 14 should be excluded from an insurer's calculation of its direct earned premium and insurer deductible. In making that determination for purposes of the Program, insurers may consider insurance coverage primarily designed to cover personal, family or household purposes to be personal insurance and, therefore, not covered by the Program. Personal insurance policies that include incidental coverage for commercial purposes would be considered to be primarily personal policies. For purposes of the Program, as reflected in this interim final rule, Treasury considers incidental commercial coverage to exist where less than 25 percent of total premium is attributable to commercial coverage.

In contrast, commercial property and casualty insurance generally is designed to cover the commercial interests of business, civic, not-for-profit or governmental entities, or other similar individuals, organizations, or professional practices. In cases where an insurance policy covers both commercial and personal exposures, and is not primarily a personal policy, insurers should allocate the proportion of risk between commercial and personal components in determining what portion of the policy falls under the Program. In suggesting this allocation, Treasury is not establishing a new reporting requirement at this time, but is suggesting a method by which insurers may calculate their deductibles and for Treasury to verify any claims under the Program.

Insurers that do not report premiums to the NAIC on Statutory Page 14 may use the guidance provided above as an analogy or reference point in determining whether and what lines of their commercial property and casualty insurance are included in the Program and in calculating their direct earned premium and insurer deductible. In this regard, as discussed earlier, the insurance coverage of federally approved insurers within the Program covers only those lines for which the insurer has received federal approval.

3. "Direct Earned Premium"

Section 102(4) of the Act defines direct earned premium as a "direct earned premium for property and casualty insurance issued by any insurer for insurance against" insured losses as defined in section 102(5). As discussed below, the term "insurer deductible" is based on direct earned premiums received by insurers during specified time periods. Interim Guidance I and II, provided guidance to concerning the term "direct earned premium" in relation to the terms "insurer deductible", "insured loss" and "property and casualty insurance". The interim final rule reflects this previous guidance but contains further clarifications and supplementary guidance. For insurers that report premiums to the NAIC on Statutory Page 14, "direct earned premium" is the information reported on column 2 for the lines of commercial property and casualty insurance referenced above, with the specified adjustments to remove personal insurance coverage. This interpretation of direct earned premium information is consistent with scope of "insured loss" as defined in the Act and will be used by Treasury to calculate the insurer deductible for these insurers.

Other insurers that are required to participate in the Program but that do not report on Statutory Page 14 may use the discussion above with reference to Statutory Page 14 as an analogy in developing a comparable means by which they may calculate their direct earned premiums. Treasury will use similar premium information (compiled by these entities or their State regulators) to calculate an insurer's deductible. For county or town mutual insurers that do not report to the NAIC, for purposes of calculating direct earned premium, data that is reported to their State regulator or maintained by the insurer should be adjusted to: (1) Reflect an appropriate breakdown between commercial and personal risks as outlined above; and (2) if necessary, re-stated to reflect the accrual method of determining direct earned premium versus direct premium. In addition, such entities should also consider other types of payments that compensate an insurer for the risk of loss (for example, assessments, contributions, or other similar concepts) as being equivalent to premium income for purposes of the Program.

Eligible surplus line carrier insurers may determine the scope of insurance coverage and their insurer deductible under the Program for policies that are in-force as of the date of enactment or that are entered into prior to January 1, 2003, with reference to the geographic scope in the definition of "insured loss," and with reference to the covered commercial property and casualty lines of insurance described above. For policies issued by eligible surplus line carriers after January 1, 2003, as stated in Interim Guidance II, the premium for insurance coverage within the geographic scope of "insured loss" must be priced separately by eligible surplus line carrier insurers.

In calculating the appropriate measure of direct earned premium to determine the deductible for Program Year 1, eligible surplus line carriers may use and rely on the same allocation methodologies contained within the NAIC's "Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation" for allocating premium between coverage within the geographic scope of "insured loss" and all other coverage to estimate the appropriate percentage of premium income for such policies that applies to such risks.

Similarly, consistent with the scope of insurance coverage under the Program and other limitations that apply to federally approved insurers, such insurers should a use methodology similar to that used by eligible surplus line carriers in calculating the appropriate measure of their direct earned premium.

4. "Insurer Deductible"

The Act defines an "Insurer Deductible" in Section 102(7) for the various "Program Years" and other periods covered by the Program. For example, Section 102(7)(B) defines the insurer deductible for Program Year 1 (January 1, 2003 through December 31, 2003) as "the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 1 multiplied by 7 percent". A State licensed or admitted insurer may estimate its insurer deductible by multiplying the applicable percentage (listed in the Act for each of the Program Years) by the direct earned premium information for commercial lines of property and casualty insurance reported on Statutory Page 14 with the appropriate adjustments as described above. Other entities should follow a similar methodology based the definitions of "insured loss," "property and casualty insurance," and "direct earned premium."

Section 102(7)(E) provides Treasury with authority to determine the appropriate methodology for measuring the direct earned premium if an insurer has not had a full year of operations during the calendar year immediately preceding the Program Year.

Because new companies have only had limited business operations, it is likely that their premium income will be somewhat volatile. Such volatility could persist throughout the life of the three-year Program. Thus, to treat these newly formed insurers in a manner that is consistent with other insurers under the Program and to prevent newly formed insurers from having the unfair advantage of lower relative deductibles, this interim final rule specifies that the deductible measure for new companies formed after the date of enactment (November 26) will be based on contemporaneous data for direct earned premium that corresponds to the current Program Year. If a newly formed insurer does not have a full year of operations within a particular Program year, this interim final rule provides that an insurer's direct earned premium for Program year will be annualized to determine an insurer's deductible.

III. Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Preemptions of terrorism risk exclusions in policies, mandatory participation provisions, disclosure and other requirements and conditions for federal payment contained in the Act applied immediately to those entities that come within the Act's definition of "insurer." In the near term, Treasury will be issuing additional regulations to implement the Program. This interim final regulation provides critical information concerning the definitions of Program terms that lays the groundwork for Treasury's implementation of the Program. No one can predict if, or when, an act of terrorism may occur. There is an urgent need for Treasury, as Program administrator, to lay the groundwork for Program implementation through interim final regulations to provide clarity and certainty concerning which entities are required to participate in the Program; the scope and conditions of Program coverage; and other implementation issues that immediately affect insurers, their policyholders, State regulators and other interested parties. This includes the need to supplement, or modify as necessary, previously issued interim guidance.

Accordingly, pursuant to 5 U.S.C. 553(b)(B), Treasury has determined that it would be contrary to the public interest to delay the publication of this rule in final form during the pendency of an opportunity for public comment. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the interim final rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, Treasury is seeking public comment on the regulation and will consider all comments in developing a final rule.

This interim final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, 31 CFR Subtitle A is amended by adding Part 50 to read as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

Subpart A—General Provisions

Sec.

50.1 Authority, purpose and scope.
50.4 Mandatory participation in Program.
50.5 Definitions.
50.6 Rules of construction for dates.
50.7 Special rules for Interim Guidance safe harbors.

Subpart B—Disclosures as Conditions for Federal Payment [Reserved]

Subpart C—Mandatory Availability [Reserved]

Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds [Reserved]

Subpart E—Self-Insurance Arrangements; Captives [Reserved]

Subpart F—Claims Procedures [Reserved]

Subpart G—Audit, Investigative and Civil Money Penalty Procedures [Reserved]

Subpart H—Recoupment and Surcharge Procedures [Reserved]

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C 6701 note).

Subpart A—General Provisions

§ 50.1 Authority, purpose and scope.

(a) *Authority.* This Part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Pub. L. 107–297, 116 Stat. 2322.

(b) *Purpose.* This Part contains rules prescribed by the Department of the Treasury to implement and administer the Terrorism Risk Insurance Program.

(c) *Scope.* This Part applies to insurers subject to the Act and their policyholders.

§ 50.4 Mandatory participation in Program.

Any entity that meets the definition of an insurer under the Act is required to participate in the Program.

§ 50.5 Definitions.

For purposes of this Part:

(a) *Act* means the Terrorism Risk Insurance Act of 2002.

(b) *Act of terrorism.* (1) *In general.* The term *act of terrorism* means any act that is certified by the Secretary, in concurrence with the Secretary of State and the Attorney General of the United States:

(i) To be an act of terrorism;

(ii) To be a violent act or an act that is dangerous to human life, property, or infrastructure;

(iii) To have resulted in damage within the United States, or outside of the United States in the case of:

(A) An air carrier (as defined in 49 U.S.C. 40102) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States); or

(B) The premises of a United States mission; and

(iv) To have been committed by an individual or individuals acting on

behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(2) *Limitations.* The Secretary is not authorized to certify an act as an act of terrorism if:

(i) The act is committed as part of the course of a war declared by the Congress (except with respect to any coverage for workers' compensation); or

(ii) property and casualty losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(3) *Judicial review precluded.* The Secretary's certification of an act of terrorism, or determination not to certify an act as an act of terrorism, is final and is not subject to judicial review.

(c)(1) *Affiliate* means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer. An affiliate must itself meet the definition of insurer to participate in the Program.

(2) For purposes of paragraph (c)(1) of this section, an insurer has *control* over another insurer for purposes of the Program if:

(i) An insurer directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other insurer;

(ii) An insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or

(iii) The Secretary determines, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer, even if there is no control as defined in paragraph (c)(2)(i) or (c)(2)(ii) of this section.

(3) For purposes of a determination of controlling influence under paragraph (c)(2)(iii) of this section, the following rebuttable presumptions will apply:

(i) If a State has determined that an insurer controls another insurer, there is a rebuttable presumption that the insurer that is determined by the State to control another insurer exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(iii) of this section; and

(ii) If an insurer provides 25 percent or more of another insurer's capital (in the case of a stock insurer), policyholder surplus (in the case of a mutual insurer), or corporate capital (in the case of other entities that qualify as insurers), there is a rebuttable presumption that the insurer providing such capital, policyholder surplus, or corporate capital exercises a controlling influence over the management or policies of the receiving insurer for purposes of paragraph (c)(2)(iii) of this section.

(iii) If an insurer, at anytime during a Program Year, supplies 25 percent or more of the underwriting capacity for that year to an insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters, there is a rebuttable presumption that the insurer exercises a controlling influence over the syndicate for purposes of paragraph (c)(2)(iii) of this section.

(4) An insurer deemed to be in a control relationship pursuant to paragraph (c)(2)(iii) of this section as a result of the rebuttable presumption in paragraph (c)(3)(i), (ii) or (iii) of this section may request a hearing in which the insurer will be given an opportunity to rebut the presumption of control by presenting and supporting its position through written submissions to Treasury and, in Treasury's discretion, through informal oral presentations.

(d) *Direct earned premium* means the direct earned premium(s) received by an insurer for commercial property and casualty insurance issued by the insurer against insured losses under the Program.

(1) *State licensed or admitted insurers.* For a State licensed or admitted insurer that reports to the NAIC, direct earned premium is the premium information for commercial property and casualty insurance coverage reported by the insurer on column 2 of the NAIC Exhibit of Premiums and Losses of the Annual Statement (commonly known as Statutory Page 14). (See definition of property and casualty insurance).

(i) Premium information as reported to the NAIC is included in the calculation of direct earned premiums for purposes of the Program only for commercial property and casualty coverage issued by the insurer.

(ii) Premiums for personal property and casualty insurance coverage (coverage primarily designed to cover personal, family or household risk exposures) are excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty insurance coverage that includes incidental coverage for commercial purposes is primarily personal coverage, and therefore premiums are excluded from the calculation of direct earned premium. For purposes of the Program, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage.

(iv) If a property and casualty insurance policy covers both commercial and personal risk exposures and is not primarily a personal insurance policy, insurers may allocate the premiums in accordance with the proportion of risk between commercial and personal components in order to ascertain direct earned premium.

(2) *Insurers that do not report to NAIC.* An insurer that does not report to the NAIC, but that is licensed or admitted by any State (such as certain farm or county mutual insurers), should use the guidance provided in paragraph (d)(1) of this section to assist in ascertaining its direct earned premium.

(i) Direct earned premium may be ascertained by adjusting data maintained by such insurer or reported by such insurer to its State regulator to reflect a breakdown of premiums for commercial and personal property and casualty exposure risk as described in paragraph (d)(1) of this section and, if necessary, re-stated to reflect the accrual method of determining direct earned premium versus direct premium.

(ii) Such an insurer should consider other types of payments that compensate the insurer for risk of loss (contributions, assessments, etc.) as part of its direct earned premium.

(3) *Certain eligible surplus line carrier insurers.* An eligible surplus line carrier insurer listed on the NAIC Quarterly Listing of Alien Insurers must ascertain its direct earned premium as follows:

(i) For policies that were in-force as of November 26, 2002, or entered into prior to January 1, 2003, direct earned premiums are to be determined with reference to the definitions of insured loss and property and casualty insurance by allocating the appropriate portion of premium income that falls within the definition of insured loss. The same allocation methodologies contained within the NAIC's "Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation" for allocating premium between coverage within the definition of insured loss and all other coverage to ascertain the appropriate percentage of premium income to be included in direct earned premium may be used; and

(ii) For policies issued after January 1, 2003, premium for insured losses covered by property and casualty insurance under the Program must be priced separately by such eligible surplus line carrier insurers.

(4) *Federally approved insurers.* A federally approved insurer under section 102(6)(A)(iii) of the Act should use a methodology similar to that specified for eligible surplus line carrier insurers in paragraph (d)(3) of this section to calculate its direct earned premium. Such calculation should be adjusted to reflect the limitations on scope of insurance coverage under the Program (*i.e.* to the extent of federal approval of commercial property and casualty insurance in connection with maritime, energy or aviation activities).

(e) *Insured loss.* (1) The term *insured loss* means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss:

(i) Occurs within the United States;

(ii) Occurs to an air carrier (as defined in 49 U.S.C. 40102), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; or

(iii) Occurs at the premises of any United States mission.

(2)(i) A loss that occurs to an air carrier (as defined in 49 U.S.C. 40102), to a United States flag vessel, or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States, is not an insured loss under section 102(5)(B) of the Act unless it is incurred by the air carrier or vessel outside the United States.

(ii) An insured loss to an air carrier or vessel outside the United States under section 102(5)(B) of the Act does not include losses covered by third party insurance contracts that are separate from the insurance coverage provided to the air carrier or vessel.

(f) *Insurer* means any entity, including any affiliate of the entity, that meets the following requirements:

(1)(i) The entity must fall within at least one of the following categories:

(A) It is licensed or admitted to engage in the business of providing primary or excess insurance in any State (including, but not limited to, State licensed captive insurance companies, State licensed or admitted risk retention groups, and State licensed or admitted farm and county mutuals);

(B) It is not licensed or admitted to engage in the business of providing primary or excess insurance in any State, but is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor to the NAIC;

(C) It is approved or accepted for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, but only to the extent of such federal approval of commercial property and casualty insurance coverage offered by the insurer in connection with maritime, energy or aviation activity;

(D) It is a State residual market insurance entity or State workers' compensation fund; or

(E) As determined by the Secretary, it falls within any other class or type of captive insurer or other self-insurance arrangement by a municipality or other entity, to the extent provided in Treasury regulations issued under section 103(f) of the Act.

(ii) If an entity falls within more than one category described in paragraph (f)(1)(i) of this section, the entity is considered to fall within the first category within which it falls for purposes of the Program;

(2) The entity must receive direct earned premiums for any type of commercial property and casualty insurance coverage, except in the case of:

(i) State residual market insurance entities and State workers' compensation funds, to the extent provided in Treasury regulations; and

(ii) Other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities, if such entities are included in the Program by Treasury under regulations in this Part.

(3) The entity must meet any other criteria as prescribed by Treasury.

(g) *Insurer deductible* means:

(1) For an insurer that was in existence on November 26, 2002 and has had a full year of operations during the calendar year immediately preceding the applicable Program Year:

(i) For the Transition Period (November 26, 2002 through December 31, 2002), the value of an insurer's direct earned premiums over calendar 2001, multiplied by 1 percent;

(ii) For Program Year 1 (January 1, 2003 through December 31, 2003), the value of an insurer's direct earned premiums over calendar year 2002, multiplied by 7 percent;

(iii) For Program Year 2 (January 1, 2004 through December 31, 2004), the value of an insurer's direct earned premiums over calendar year 2003, multiplied by 10 percent;

(iv) For Program Year 3 (January 1, 2005 through December 31, 2005), the value of an insurer's direct earned premiums over calendar year 2004, multiplied by 15 percent; and

(2) For an insurer that came into existence after November 26, 2002, the insurer deductible will be based on data for direct earned premiums for the current Program Year. If the insurer has not had a full year of operations during the applicable Program Year, the direct earned premiums for the current Program Year will be annualized to determine the insurer deductible.

(h) *NAIC* means the National Association of Insurance Commissioners.

(i) *Person* means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(j) *Program* means the Terrorism Risk Insurance Program established by the Act.

(k) *Program Years* means the Transition Period (November 26, 2002 through December 31, 2002), Program Year 1 (January 1, 2003 through December 31, 2003), Program Year 2 (January 1, 2004 through December 31, 2004), and Program Year 3 (January 1, 2005 through December 31, 2005).

(l) *Property and casualty insurance* means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance. Property and casualty insurance:

(1) Includes commercial lines within the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 3—Farmowners Multiple Peril; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 22—Aircraft (all perils); Line 24—Surety; Line 26—Burglary and Theft; and Line 27—Boiler and Machinery; and

(2) Does not include:

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), or Multiple Peril Crop insurance reported on Line 2.2 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ii) Private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1988 (12 U.S.C. 4901)) or title insurance;

(iii) Financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) Insurance for medical malpractice;

(v) Health or life insurance, including group life insurance;

(vi) Flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*); or

(vii) Reinsurance or retrocessional reinsurance.

(m) *Secretary* means the Secretary of the Treasury.

(n) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(o) *Treasury* means the United States Department of the Treasury.

(p) *United States* means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280 and 2281).

§ 50.6 Rule of construction for dates.

Unless otherwise expressly provided in the regulation, any date in these regulations is intended to be applied so that the day begins at 12:01 a.m. and ends at midnight on that date.

§ 50.7 Special rules for Interim Guidance safe harbors.

(a) An insurer will be deemed to be in compliance with the requirements of the Act to the extent the insurer reasonably relied on Interim Guidance prior to the effective date of applicable regulations.

(b) For purposes of this section, Interim Guidance means the following documents, which are also available from the Department of the Treasury at *http://www.treasury.gov/trip:*

(1) Interim Guidance I issued by Treasury on December 3, 2002, and published at 67 FR 76206 (December 11, 2002);

(2) Interim Guidance II issued by Treasury on December 18, 2002, and published at 67 FR 78864 (December 26, 2002); and

(3) Interim Guidance III issued by Treasury on January 22, 2003, and published at 68 FR 4544 (January 29, 2003).

Subpart B—Disclosures as Conditions for Federal Payment [Reserved]

Subpart C—Mandatory Availability [Reserved]

Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds [Reserved]

Subpart E—Self-Insurance Arrangements; Captives [Reserved]

Subpart F—Claims Procedures [Reserved]

Subpart G—Audit, Investigative and Civil Money Penalty Procedures [Reserved]

Subpart H—Recoupment and Surcharge Procedures [Reserved]

Dated: February 25, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–4831 Filed 2–27–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA96

Departmental Offices; Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002. That Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This proposed rule sets forth the purpose and scope of the Program and key definitions that Treasury will use in implementing the Program. In general, the proposed rule incorporates interim guidance previously issued by Treasury concerning these definitions, but with some modifications. This proposed rule, together with the interim final rule published elsewhere in this separate part of the **Federal Register**, are the first in a series of regulations Treasury will issue to implement the Act.

DATES: Written comments may be submitted on or before March 31, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov.* All comments should be captioned with "February 28, 2003 TRIA Comments." Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

Published elsewhere in this separate part of the **Federal Register** is an interim final rule establishing 31 CFR Part 50, which will comprise Treasury's regulations implementing the Terrorism Risk Insurance Act of 2002 (the Act). The preamble to the interim final rule explains these provisions of the proposed rule in detail, and the text of the interim final rule serves as the text for this proposed rule.

In addition, Treasury specifically solicits public comment on whether the Secretary should prescribe criteria for certain insurers pursuant to the authority provided to Treasury in section 102(6)(C) and, if so, what criteria Treasury should prescribe. First, Treasury solicits comment on appropriate criteria to prevent participation in the Program by newly formed insurance companies deemed by Treasury to be established for the purpose of evading the insurer deductible requirements of the Act and the Program. In this regard, Treasury's objectives are to encourage new sources of capital in the market for terrorism risk insurance, and at the same time, ensure the integrity of the Program and provide comparable treatment of Program participants. Accordingly, the intent of any additional criteria, if proposed under section 102(6)(C), is not to discourage Program participation by newly formed commercial property and casualty insurance companies in their normal course of business, but to administer the Program effectively and fairly, including preventing evasion of insurer deductible requirements by special purpose entities formed to provide terrorism risk only coverage.

Second, Treasury solicits comment on appropriate additional criteria, including financial standards, that should be proposed for federally approved insurers under Treasury's authority in section 102(6)(C) of the Act. One reason for imposing additional criteria on federally approved insurers is because there are no uniform requirements or standards for federal approval under various federal programs. Although some federal programs impose minimum financial standards, others do not. Therefore, Treasury is considering whether additional criteria for federally approved insurers should be proposed to promote the financial integrity of the Program and to otherwise effectively administer the Program. Third, Treasury solicits comment on appropriate additional criteria that should be proposed pursuant to section 102(6)(C) to ensure that federal payments made under the Program do not benefit entities with connections to terrorist organizations.

In addition to comments concerning possible additional criteria under section 102(6)(C), Treasury is soliciting comments on whether the definition of control contained in the interim final rule should be supplemented by proposing a rule to address situations in which a corporate insurance structure may contain multiple insurers that own, control or have the power to vote more than 25 percent of the voting shares of another insurer. See Section 102(3)(A) of the Act. Based on available information, such control arrangements exist but they do not appear to be common. In particular, Treasury is considering and solicits comment on consolidating direct earned premiums for purposes of calculating the insurer deductible on a pro rata basis among the multiple controlling owners. For example, if Insurer Y owns 40 percent of the voting shares of Insurer Z and Insurer X owns 30 percent of the voting shares of Insurer Z, then a pro rata allocation of premium income and insured loss under the Program would be, respectively, 57 percent and 43 percent.

Treasury also is considering and solicits comment on a similar pro rata allocation method for control determinations under section 102(3)(C) of the Act in situations in which multiple insurers each provide 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and in the interim final rule. If proposed as considered, this pro rata approach would treat each insurer on a standalone basis for purposes of section 102(3)(C) of the Act if no insurer provides 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and the Program.

In accordance with the consolidated treatment of direct earned premiums among insurer affiliates, Treasury anticipates that the controlling insurer will be the insurer that will be required to file any claim with Treasury for federal payment under the Program and that this insurer will receive the federal payment that is to be distributed within the consolidated insurer group in accordance with distribution of risk within the consolidated insurer group. Treasury solicits comments on various means to ensure the prompt and equitable distribution of the federal

payment as appropriate to ensure that the purposes of the Program are not thwarted or evaded, and that the ultimate risk bearing entities are treated in an equitable manner, within the Act's requirements.

II. Procedural Requirements

This proposed rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. Although the Act affects small insurers, the proposed rule also gives insurers flexibility in calculating their direct earned premium for policies that have both commercial and personal exposures, and it provides a safe harbor to exclude policies that have incidental coverage for commercial purposes. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, the Department of the Treasury proposes to adopt as a final rule the interim final rule adding part 50 to 31 CFR subtitle A, as follows:

[The part title and text of proposed Part 50 is the same as the part title and text of Part 50 in the interim final rule published elsewhere in this separate part of this issue of the **Federal Register**.]

Dated: February 25, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–4832 Filed 2–27–03; 8:45 am]

BILLING CODE 4810–25–P



Federal Register

Friday,
February 28, 2003

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Reduced Vertical Separation Minimum in Domestic United States Airspace; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–12261; Notice No. 03–04]

RIN 2120–AH68

Reduced Vertical Separation Minimum in Domestic United States Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is supplementing the Notice of Proposed Rulemaking (NPRM) on Reduced Vertical Separation Minimum in Domestic United States Airspace (DRVSM) that was published in the **Federal Register** on May 10, 2002 (67 FR 31920). The FAA is adding a proposal to implement Reduced Vertical Separation Minimum (RVSM) between flight levels (FL) 290–410 in Atlantic High and Gulf of Mexico High Offshore airspace and in the San Juan Flight Information Region (FIR). This addition to the proposal better defines RVSM airspace off the eastern and southern coasts of the United States (U.S.) and harmonizes RVSM operations off the east coast of the U.S. between adjoining airspaces in the domestic U.S., Atlantic High Offshore, and the New York Oceanic FIR. The FAA also proposes to remove the proposed option that would have permitted part 91 turbo-propeller aircraft to operate in DRVSM airspace with a single RVSM compliant altimeter.

DATES: Comments must be submitted on or before April 14, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12261 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA (we) received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Swain, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 385–4576.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested persons to participate in this proposed rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, please include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of documents related to this or any rulemaking through the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 5, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Summary of the NPRM Published on May 10, 2002

The NPRM published on May 10, 2002, proposed to implement Reduced Vertical Separation Minimum (RVSM) between flight levels 290–410 over the contiguous U.S. and Alaska and the portion of the Gulf of Mexico where the FAA provides air traffic services. RVSM allows 1,000 feet of vertical separation between aircraft operating between FL 290–410. The FAA would only apply reduced vertical separation minimum between aircraft that meet stringent altimeter and auto-pilot performance requirements. We proposed the action to assist aircraft operators to save fuel and time, to enhance air traffic control flexibility and to provide the potential for enhanced airspace capacity.

Summary of Proposed Changes to the NPRM

We are proposing some changes to the NPRM. First, we propose to add Gulf of Mexico High and Atlantic High Offshore Airspace to the list of potential RVSM airspace published in part 91, Appendix G, section 8 (Airspace Designation). Second, in response to a comment made by the Air Transport Association, in the same timeframe as domestic U.S. implementation, we propose to implement RVSM between FL 290–410 in the San Juan FIR and in the airspace corridor between Florida and the San Juan FIR. Third, we propose to remove the proposal that would have allowed part 91 turbo-propeller aircraft to operate in RVSM airspace with a single RVSM compliant altimeter. The part 91 proposal received opposition from pilot organizations and civil aviation authorities of other countries, including countries with airspace adjoining the U.S.

Proposal To List Atlantic High and Gulf of Mexico High Offshore Airspace

Listing these airspaces would better define the offshore and oceanic airspaces off the eastern and southern coasts of the U.S. where we propose to implement RVSM. Certain airspace beyond 12 miles of the eastern and southern coasts of the U.S. is designated in FAA Order 7400.9 (Airspace Designations and Reporting Points) as Atlantic High and Gulf of Mexico High Offshore Airspace. This area includes airspace between Florida and the San Juan FIR. FAA Order 7400.9 contains a complete description of the horizontal boundaries of this airspace. We have published a chart showing the boundaries of Offshore and Oceanic airspace off the eastern and southern coasts of the U.S. in the docket at *http://dms.dot.gov*, docket number FAA–2002–12261.

Listing Atlantic and Gulf of Mexico High Offshore Airspace in part 91, Appendix G, with oceanic airspace completes the list of airspace off the eastern and southern coasts of the U.S. where we may implement RVSM.

Proposal To Add the Airspace Between Florida and Puerto Rico and the San Juan FIR to the Implementation Plan

The NPRM that we published on May 10, 2002, proposed to implement RVSM in Miami Oceanic FIR airspace over the Gulf of Mexico. In comments on the NPRM, the Air Transport Association (ATA) suggested including "* * *the San Juan and Miami FIR's in their entirety * * *" in the list of airspace where RVSM is proposed to be implemented. We believe that this proposal has merit and can be accomplished by listing Atlantic High Offshore Airspace and the San Juan FIR in part 91, Appendix G, section 8 (Airspace Designation). As noted previously, Atlantic High Offshore Airspace includes a corridor of airspace between Florida and the San Juan FIR. This corridor is bounded in the north by RVSM airspace in the New York Oceanic FIR and in the south by the Havana, Santa Domingo and Port-au-Prince FIR's.

A primary objective of this action is to implement RVSM in the airspaces discussed above at the same time that we implemented it in the domestic U.S. We believe that this will have the following benefits:

(1) It harmonizes RVSM operations between RVSM airspace implemented in 2001 in the New York Oceanic FIR and RVSM airspace proposed over the State of Florida as part of the domestic U.S. RVSM proposal.

(2) It harmonizes RVSM operations for traffic operating north and south between the San Juan and New York Oceanic FIR.

(3) It reduces the complexity of operations and improves safety by providing a common vertical separation standard and flight level orientation scheme for the New York Oceanic FIR, Atlantic High Offshore Airspace, the San Juan FIR and the domestic U.S.

(4) It improves the flow of traffic between Florida and the San Juan FIR by making six more flight levels available.

(5) It provides the potential for harmonizing RVSM operations with the Air Traffic Service Providers in the Caribbean when RVSM is implemented in that area.

(6) It makes all the benefits of RVSM cited in the NPRM available in these airspaces. This benefit includes increased controller flexibility, reduction of controller workload, and enhanced flexibility to enable aircraft to cross intersecting routes.

Effect on Operators

We do not believe that this proposal would require a significant number of operators that had not already obtained or planned to obtain RVSM authority to do so. We have examined the aircraft types and operators that fly in the San Juan FIR and in the airspace between Puerto Rico and Miami. We have found that all of the flights operating between FL 290–410 in the airspace are flown to or from destinations in the U.S., Canada and Europe.

To operate on the routes to or from airports in the U.S. northeast, mid-Atlantic and Canada, operators have already been required to obtain RVSM approval to fly through RVSM airspace in the New York Oceanic FIR. To operate to or from airports in Europe, operators have already been required to obtain RVSM approval to operate in RVSM airspace in the North Atlantic and Europe. In addition, the NPRM proposed to implement RVSM in domestic U.S. airspace. Aircraft operating to or from destinations in the domestic U.S. would be required by that proposal to comply with RVSM standards.

We believe this proposal has a minimal financial impact on U.S. operators, as it would not affect any beyond those identified in the NPRM. We request your comments regarding financial impact on any operators not identified in the NPRM.

Withdrawal of the Proposal To Permit a Single RVSM-Compliant Altimeter

The RVSM standards for aircraft approval are published in 14 CFR part 91, Appendix G, section 2. Section 2 calls for the aircraft to be equipped with two independent altitude measurement systems. In the NPRM, we proposed that turbo-propeller aircraft operated under part 91 that were equipped with a single RVSM-compliant altitude measurement system and all other RVSM required aircraft systems could be considered eligible to conduct RVSM operations within the U.S. airspace and the airspace of foreign countries that authorize such a provision.

In making the proposal, we recognized that the precedence in the first five years of RVSM operations was for RVSM-compliant aircraft to be equipped with two altimetry systems. Both FAA regulations and other civil aviation authorities worldwide followed this precedence. We noted, however, that the 1992 Edition 1 of the International Civil Aviation Authority (ICAO) Manual on RVSM (ICAO Document 9574) contained provision for small aircraft to be equipped with a single RVSM-compliant altimetry system and elected to make the NPRM proposal.

We propose to withdraw the proposal to allow turbo-propeller aircraft operated under part 91 and equipped with a single RVSM-compliant altimeter to conduct RVSM operations within the U.S. and foreign countries adopting that provision. We now conclude that the benefit is not significant enough to warrant changing the RVSM aircraft equipage standard that the FAA and other world authorities have applied for the past five years. We considered the following factors:

First, turbo-propeller aircraft represent a very low percentage of the traffic that operates at FLs where RVSM would be applied, that is, between FLs 290 and 410. Turbo-propeller aircraft operated under part 91 represent an even less significant percentage of traffic at those flight levels. Turbo-propeller aircraft were found to conduct only 0.4 percent of operations between FLS 290 and 410. Turbo-propeller aircraft operated under part 91 are estimated to conduct only 0.3 percent of operations

in the airspace where RVSM will be applied.

The majority of turbo-prop aircraft do not normally operate at or above FL 290, due to performance or design limitations. Operators would most likely avoid RVSM upgrade costs and continue to operate below FL 290. Costs and benefits to turbo-prop operators, therefore were not a factor in the benefit/cost analysis. The vast majority of turbo-propeller aircraft already operate below the floor of RVSM airspace, FL 290, and would retain the option to do so if we implement domestic RVSM.

Second, neither Canada nor Mexico has elected to pursue this proposal for their airspace. U.S. operators are required by 14 CFR part 91, § 91.703 to comply with the regulations in force in foreign countries related to aircraft flight. U.S. operators, therefore, would not be allowed to file a flight plan or accept ATC vectors that would place them in Canadian or Mexican airspace. This would add unnecessary complications to air traffic control in the airspace that borders neighboring countries.

Third, during the comment period, we received comments from other civil aviation authorities and pilot associations advocating that we retain a single standard for RVSM aircraft equipage. They noted that the FAA and world standard for aircraft equipage for the past five years has been for RVSM aircraft to be equipped with two compliant altimeters. They also noted that the Edition 2 (2002) of ICAO Doc 9574 distributed in spring 2002 does not retain the single RVSM compliant altimeter provision provided in Edition 1.

We believe that in the interest of harmonization and standardization of policy and procedures with neighboring states and civil aviation authorities worldwide, we should withdraw the proposal to allow single RVSM compliant altimeter equipped aircraft to conduct RVSM operations within the United States. We have concluded that the potential benefit is not significant enough to warrant revising a standard that has been applied worldwide for the past five years.

Economic Summary

We expect domestic RVSM to produce efficiency benefits for aircraft operators who fly at altitudes from FL 290 through 400. The NPRM for domestic RVSM proposed to require dual altimeters for all aircraft except turbo-propeller aircraft. Canada and Mexico do not permit an exemption from the dual altimeter requirement for turbo-propeller aircraft. Some civil aviation authorities have expressed concern that the proposal in the NPRM is incompatible with Canadian, Mexican, and international standards for RVSM. We have agreed to withdraw the proposal to exempt turbo-propeller aircraft from the dual altimeter requirement. Though this would affect a relatively small number of operators, our decision to require dual altimeters for all aircraft is necessary to achieve the overall benefits attributed to domestic RVSM. U.S. aircraft flying in domestic U.S. RVSM airspace without dual altimeters would not be able to continue at RVSM flight levels on entering Canada or Mexico and would therefore lose the benefits of flying at more efficient altitudes.

We have examined the potential aircraft upgrade costs associated with a dual altimeter requirement for turbo-propeller aircraft to fly in RVSM airspace under part 91 and find the cost to average $140,000 per turbo-propeller aircraft. Flights by turboprop aircraft at (FL) 290–410 and above account for only 0.4 percent of all flights, only 0.1 percent of which are other than part 91 flight. This suggests that; though there may be a large number of turbo-propeller aircraft subject to this rule, few of those aircraft fly at FL 290–410 regularly. We also believe that only a small percentage of those affected operators will find it economical to upgrade their aircraft for RVSM. Those that choose to upgrade would do so because the fuel savings that they would receive regularly from flying at their optimal altitude would pay for the cost of these upgrades. In the economic analysis for the final rule for DRVSM, we have calculated, for the industry as a whole, the cost savings exceeded the upgrade cost by a factor of 6. You can find the analysis for the final rule to Domestic RVSM in the docket on the Internet at *http://dms.dot.gov*, docket number FAA–2002–12261. We believe that those operators that would upgrade their aircraft are not small entities and would not be significantly impacted in an adverse way should they elect to upgrade their aircraft for this requirement.

The FAA recognizes that these upgrade costs could have a significant impact on small operators, but the FAA believes that most small operators would choose not to upgrade. For small operators, the fuel savings associated with flying in FL 290–410 would not exceed the cost of the equipment upgrade. The operational penalties associated with not upgrading or delaying aircraft upgrade plans would not prevent the operators from continuing to operate. Small operators that elect not to upgrade or delay their aircraft upgrade plans would incur on average a 6 percent fuel penalty from conducting operations beneath FL290. We do not believe these operators would fly in RVSM airspace often enough or long enough to incur a significant fuel penalty cost if they choose to fly below RVSM airspace. We request comments on this determination.

Adding Gulf of Mexico High and Atlantic High Offshore Airspace and airspace between Florida and Puerto Rico and the San Juan FIR benefits operators by implementing RVSM in all U.S. domestic airspace. This allows operators who are authorized to fly in RVSM airspace to achieve the full benefits of flying at efficient altitudes.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As flights by turboprop aircraft at FL 290–410 and above account for only 0.3 percent of all flights, we believe that only a small percentage of those affected operators will upgrade their aircraft for RVSM. These upgrade costs are estimated to be $140,000 per aircraft. We believe that those operators that upgrade their aircraft are not small entities.

The FAA recognizes that these upgrade costs could have a significant impact on small operators, but the FAA believes that most small operators would choose not to upgrade. For small operators, the fuel savings associated with flying at FL 290–410 would not exceed the cost of the equipment upgrade. The operational penalties associated with not upgrading or delaying aircraft upgrade plans would not prevent the operators from continuing to operate. Small operators that elect not to upgrade or delay their aircraft upgrade plans would incur on average a 6% fuel penalty from conducting operations beneath FL290. We do not believe these operators would fly in RVSM airspace often enough or long enough to incur a significant fuel penalty cost if they choose to fly below RVSM airspace. We request comments on this determination.

We have determined that the proposed airspace expansion to implement RVSM between FL 290–410 in Atlantic High and Gulf of Mexico High Offshore airspace and in the San Juan Flight Information Region (FIR) would have no cost to U.S. operators beyond those identified in the NPRM.

We therefore conclude that a substantial number of small entity operators would not be significantly affected by the proposals contained in this SNPRM. We request comments on this Regulatory Flexibility Determination.

International Trade Impact Statement

We have assessed the potential effect of this rulemaking and have determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

Federalism Implications

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, we have determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)), there are no requirements for information collection associated with this proposed rule.

Unfunded Mandates Reform Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1501–1571, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector; such as a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on ICAO, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARPs) to maximum extent practicable. The FAA and the JAA jointly developed the operator and aircraft approval process under the auspices of the North Atlantic System Planning Group. We have determined that this amendment would not present any difference.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. We propose that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

Plain Language

In response to the June 1, 1998, Presidential Memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

For the convenience of the reader, the entire proposal (NPRM as modified by the SNPRM) has been published.

List of Subjects in 14 CFR Part 91

Air-traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend part 91 of title 14 of the Code of Federal Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

* * * * *

Subpart B—Flight Rules

1. Amend section 91.159 by revising paragraph (b) to read as follows and by deleting paragraph (c):

§ 91.159 VFR cruising altitude or flight level.

* * * * *

(b) When operating above 18,000 feet MSL, maintain the altitude or flight level assigned by ATC.

2. Amend section 91.179 by revising paragraph (b)(3) introductory text and adding a new paragraph (b)(4) to read as follows:

§ 91.179 IFR cruising altitude or flight level.

* * * * *

(b) In uncontrolled airspace.

* * * * *

(3) When operating at flight level 290 and above in non-RVSM airspace, and—

* * * * *

(4) When operating at flight level 290 and above in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level, at 2,000-foot intervals beginning at and including flight level 290 (such as flight level 290, 310, 330, 350, 370, 390, 410); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level, at 2000-foot intervals beginning at and including flight level 300 (such as 300, 320, 340, 360, 380, 400).

3. Add section 91.180 to subpart B to read as follows:

§ 91.180 Operations within airspace designated as Reduced Vertical Separation Minimum airspace.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:

(1) The operator and the operator's aircraft comply with the minimum standards of appendix G of this part; and

(2) The operator is authorized by the Administrator of the country of registry to conduct such operations.

(b) The Administrator may authorize a deviation from the requirements of this section.

4. In Appendix G, amend section 5 by revising the introductory text; redesignating paragraph (2) as paragraph (a) and by revising newly redesignated (a); and amend section 8 by adding new paragraphs (d), (e), and (f) to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.180 or § 91.706 for a specific flight in RVSM airspace if that operator has not been approved in accordance with Section 3 of this appendix if:

(a) The operator submits a request in a time and manner acceptable to the Administrator; and

(b) * * *

* * * * *

Section 8. Airspace Designation

* * * * * *

(d) *RVSM in the United States.* RVSM may be applied in the airspace of the 48 contiguous states, District of Columbia, and Alaska, including that airspace overlying the waters within 12 nautical miles of the coast.

(e) *RVSM in the Gulf of Mexico.* RVSM may be applied in the Gulf of Mexico in the following areas: Gulf of Mexico High Offshore Airspace, Houston Oceanic ICAO FIR and Miami Oceanic ICAO FIR.

(f) *RVSM in Atlantic High Offshore Airspace and the San Juan FIR.* RVSM may be applied in Atlantic High Offshore Airspace and in the San Juan ICAO FIR.

Issued in Washington, DC, on February 21, 2003.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 03–4765 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
February 28, 2003

Part VII

Department of Justice

8 CFR Parts 1, 3, et al.

28 CFR Part 200

Aliens and Nationality; Homeland Security; Reorganization of Regulations; Final Rule

DEPARTMENT OF JUSTICE

8 CFR Parts 1, 3, 101, 103, 204, 205, 207, 208, 209, 211, 212, 214, 215, 216, 235, 236, 238, 239, 240, 241, 244, 245, 246, 249, 270, 274a, 280, 287, 292, 337, 507, 1001, 1003, 1101, 1103, 1204, 1205, 1207, 1208, 1209, 1211, 1212, 1214, 1215, 1216, 1235, 1236, 1238, 1239, 1240, 1241, 1244, 1245, 1246, 1249, 1270, 1274a, 1280, 1287, 1292, 1299, 1337

28 CFR Part 200

[EOIR No. 137F; AG Order No. 2662–2003]

RIN 1125–AA42

Aliens and Nationality; Homeland Security; Reorganization of Regulations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002, as amended, transfers the functions of the Immigration and Naturalization Service to the Department of Homeland Security. The Homeland Security Act of 2002, as amended, retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review and other functions related to immigration that are indigenous to the functions of the Attorney General. These changes require reorganization of title 8 of the Code of Federal Regulations. This final rule reflects the transfer of functions of the Immigration and Naturalization Service through the division of jurisdiction over regulations currently codified in 8 CFR chapter I, by establishing a new chapter V in 8 CFR, by transferring or duplicating certain parts and sections to the new chapter V and to 28 CFR chapter I, and by making other amendments as are necessary to continue existing authorities after the transfer of functions to the Department of Homeland Security on March 1, 2003.

DATES: This rule is effective on February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470; Civil Division: Thomas W. Hussey, Director, Office of Immigration Litigation, United States Department of Justice, 950 Pennsylvania Ave. NW., Washington, DC 20530, telephone (202) 616–4852.

SUPPLEMENTARY INFORMATION:

Background

The Homeland Security Act of 2002, as amended ("HSA"), transfers the functions of the Immigration and Naturalization Service ("Service" or "INS") to the Department of Homeland Security ("DHS"). Pub. L. 107–296, tit. IV, subtits. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended ("HSA"). The HSA retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review ("EOIR"). HSA, 116 Stat. at 2273. This rule reflects that transfer through the division of jurisdiction over regulations currently codified in 8 CFR Chapter I.

EOIR was created by the Attorney General in 1983 to combine the functions of immigration judges and the Board of Immigration Appeals into a single administrative component of the Department of Justice under the Attorney General. 48 FR 8038 (Feb. 25, 1983). The Office of the Chief Administrative Hearing Officer ("OCAHO") and its administrative law judges were added to EOIR in 1987. 52 FR 44971 (Nov. 24, 1987). This administrative structure separated the administrative adjudication functions from the enforcement and service functions of the INS, both for administrative efficiency and to foster independent judgment in adjudication. However, because both INS and EOIR were elements of the Department of Justice, the regulations affecting these components were included in the same chapter. The Attorney General, as the head of the Department, amended regulations affecting both components in a coordinated manner. The enactment of the Homeland Security Act of 2002, and its transfer of functions to the Department of Homeland Security, now requires that the INS regulations and the EOIR regulations be placed in separate chapters.

As explained more fully below, this final rule transfers certain parts that relate to the jurisdiction and procedures of EOIR to a new chapter V, *i.e.* administrative review provisions. This rule duplicates certain parts and sections of the regulations that relate to proceedings before both the INS and EOIR in both chapter I and chapter V, respectively, *i.e.*, shared provisions. The rule also makes a number of technical amendments to both chapters I and V to ensure that the authorities existing in the INS and EOIR prior to the transfer of functions of the INS to the Department of Homeland Security continue in effect after March 1, 2003.

A. Homeland Security Act of 2002 Division of Jurisdiction and Continuing Relationship

The HSA transfers the enforcement, services, and administrative functions of the INS to the Department of Homeland Security. HSA §§ 441, 451, 455, 456. In addition, the HSA abolishes the INS. HSA § 471. The new structure for immigration enforcement, services and shared services is more fully explained by the HSA, the President's Reorganization Plan under HSA § 1512, and amendments thereto.[1] For the purposes of this rule, and to provide the Secretary of Homeland Security maximum flexibility in the further division of immigration regulations between components of the Department of Homeland Security, if he deems appropriate, this rule makes no changes in the immigration regulations for functions that are being transferred to DHS other than those necessary to effectuate the division of regulations between the functions being transferred to DHS and the functions being retained in the Department of Justice. For purposes of simplicity, this rule continues to refer to the transferred functions as functions held by the INS.

Section 103(g) of the Immigration and Nationality Act, as amended by section 1102 of the HSA provides:

(1) *In General.* The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date [of the Act].

(2) *Powers.* The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.

The final rule creates, a new chapter V within 8 CFR and moves the relevant functions to that chapter. The rule also makes other necessary conforming amendments.

After this rule makes the necessary division of regulations within title 8 CFR to reflect the transfer of INS authorities, the Secretary of DHS can

[1] The Supplementary Information refers to the successor entities to the INS collectively as the INS for the ease of the reader. The Secretary of Homeland Security has further refined the reorganization of functions within the Department of Homeland Security and a further division of the regulations is expected to be made. That division of regulations, on or after March 1, 2003, is not affected by this rule.

make substantive changes to INS rules; the Attorney General can make substantive changes to EOIR rules, and the Secretary and the Attorney General can consult each other when contemplating changes in those rules that affect both EOIR and INS.

B. General Comments

The rule makes no substantive change in the regulations. The rule is a technical rule dividing the regulations for purposes of the transfer of authorities under the HSA. For the ease of public understanding, the structure of chapter V has been created in parallel to the existing structure of chapter I. Accordingly, for example, in asylum proceedings before immigration judges, applicable provisions of chapter I, part 208 (*e.g.*, 8 CFR 208.15(a)) are established in parallel in chapter V, part 1208 (*e.g.*, 8 CFR 1208.15(a)). In creating this parallel structure, the Attorney General is attempting to provide as simple a format as possible for all to understand the legal effect of the transfer, while minimizing the confusion that might occur in practice before the Service and EOIR. Under this technical restructuring, incorrect citation to a regulation that has been transferred into Chapter V will be considered inconsequential. Similarly, until EOIR updates its forms, the references to sections of chapter I should be considered to be references to chapter V, as appropriate.

The rule transfers those parts and sections that deal with procedures before the immigration judges and Board of Immigration Appeals to chapter V. This transfer permits future amendment of the rules without unnecessary conflict with provisions relating to the INS. Similarly, the elimination of those provisions from chapter I that deal with proceedings before EOIR permits the amendment of the substantive regulations of the Service by the Department of Homeland Security without unnecessary conflict with the Attorney General's regulations for EOIR.

The rule duplicates a number of parts and sections that affect both the Service and EOIR, such as the asylum regulations. These provisions necessarily require coordination between the INS and EOIR. The Department of Justice has been guided by the principles of the HSA in duplicating only those provisions that directly affect the authority of EOIR, but has also necessarily duplicated some provisions that affect INS until a further and more detailed division can be accomplished in consultation with the Department of Homeland Security. In this sense, the rule is interim in nature in that further division and elimination of a substantial number of sections is expected in the near future. The inclusion of a section in this duplication process should be understood as a temporary measure to ensure continuity, not as a permanent disposition of authority in the Department of Justice.

The rule also makes a number of specific technical amendments to continue existing authority that cannot be made by simply moving or duplicating sections. For example, the precedent decisions of the Board of Immigration Appeals and the INS are published in *Administrative Decisions under the Immigration and Nationality Laws of the United States*, cited as "I&N Dec." However, there is no rule that currently provides for the publication of Service decisions outside of 8 CFR 103.3, and that provision is incomplete. Accordingly, a provision has been added to chapter I, part 1, providing for the determination of precedent decisions within the Department of Homeland Security and publication of such decisions by EOIR in *Administrative Decisions under the Immigration and Nationality Laws of the United States.*

C. Parts and Sections Affecting EOIR Moved

Part 3, and almost all of part 240, are moved to chapter V because these provisions directly affect only the Executive Office for Immigration Review and proceedings before EOIR. A more general revision of these separated provisions is contemplated in the future to further refine the adjudicatory process, but this rule makes no substantive change in jurisdiction or procedure.

D. Parts and Sections Affecting INS and EOIR Duplicated

A larger number of parts and sections that are currently in chapter I are duplicated in chapter V because they establish processes that are common to both the INS and EOIR. In some cases, for convenience, an entire part has been moved because substantial portions effect common procedure, even though particular sections may affect only the INS or only EOIR. A concerted decision has been made to carry forward the duplication of entire parts to ensure continuity, even though the Attorney General and the Secretary may later amend their respective regulations to further separate the procedures and clarify those sections that affect each agency. It is not manageable at this time to detail a complete paragraph-by-paragraph jurisdictional split between INS and EOIR, and the duplication assures that interpretation will be consistent until coordinated decisions are made respecting these procedures. Thus, for example, part 208, relating to asylum and related forms of relief, is duplicated in part 1208, even though specific subsections relate only with procedure before INS and other subsections relate only to procedure before EOIR. Further disposition of these sections will be made in future rulemaking.

E. Specific Technical Amendments

A number of technical amendments are required to effect a proper division of the authorities from chapter I. In certain instances, new sections must be written, and in others cross-references are required. This is particularly true where only one section or paragraph refers to processes within EOIR, but otherwise the part or section refers only to processes of INS. For example, a number of INS processes result in a decision on an application that may be renewed before an immigration judge or an appeal taken to the Board of Immigration Appeals. Where the part or section is otherwise entirely within the scope of the functions transferred to DHS, only a technical amendment may be necessary to provide for the appeal with the appropriate cross-reference. The major technical changes—which go beyond these cross-references—and the continuity that these changes provide are described below.

Existing 8 CFR § 3.1(g) provides that precedent decisions of the Board of Immigration Appeals and the Attorney General are binding on all Service officers. This historical specification was made by the Attorney General in the course of his overall management of the Service. However, because of the transfer of functions of the Service to the Department of Homeland Security, it is necessary to specify this result in the ongoing regulations of the Service, as well as EOIR. The provision of § 3.1(g) is, therefore, duplicated in chapter I, part 1, § 103.37(g). This restatement of the binding effect of precedent decisions effectuates the clear intent of the Congress in section 1101(2) of the HSA, as amended, amending section 103 of the Immigration and Nationality Act, 8 U.S.C. 1103, by adding subsection (g), and in transferring the Service to DHS while leaving the immigration adjudicatory functions of EOIR under the Attorney General.

Moreover, it is necessary to clarify that the Secretary of Homeland Security may refer cases or questions of law to the Attorney General for decision at any time, both generally, and pursuant to

the proviso of section 103(a)(1) of the Act, 8 U.S.C. 1103(a)(1), relating to the Attorney General's resolution of legal issues. At the same time, the Attorney General has specified the reservation of the parallel authority to refer cases to himself for decision at any time.

Similarly, the authority to publish precedential decisions of the Service in *Administrative Decisions under the Immigration and Nationality Laws of the United States* is set forth in new 8 CFR §§ 103.37 and 1003.1(i). New § 103.37 is added to ensure that the Secretary of Homeland Security can continue to publish appropriate precedent decisions. See, *e.g.*, Matter of Safetran, 20 I&N Dec. 49 (Comm. 1989).

The fees that are charged for applications for relief filed with the INS are also collected in conjunction with applications filed with the immigration judges and, on occasion, on motions to reopen before the Board of Immigration Appeals. A specific authorization is included in chapter V, referencing the fees charged by the Service for these applications. A separate table is not developed within EOIR for the simple reason that the INS must recalculate the fees periodically to conform them to the actual costs, as more fully explained in each of the fee change regulations. Rather than coordinate each change, in a situation in which EOIR does not have an interest in the substance of the fee calculation, but only in the actual fee imposed, it makes more sense to reference the fees charged by the Service as established in 8 CFR 103.7. This provision does not alter the filing fee for appeals and motions before the Board of Immigration Appeals.

Finally, some specific provisions are moved or not moved, duplicated or not duplicated, because that process provides the simplest means of effecting the division of the regulations without substantive effect. For example, part 240 of chapter I is moved to part 1240 of chapter V, with the exception of § 240.25, which deals with the Service's authority to grant voluntary departure. Similarly, § 240.21 and Subpart H are duplicated because these provisions affect both INS and EOIR.

F. Summary of the Changes From 8 CFR Chapter I to Chapter V

Set out below are general descriptions of the sets of changes in chapter I to chapter V and the rationale for each set of changes.

Part 1—Definitions, is duplicated in part 1001, because the same definitions apply to INS and EOIR.

Part 3—Executive Office for Immigration Review, is transferred to part 1003, because this part is the organic regulation for EOIR. Additionally, provisions have been added to clarify certification procedures and the authority of the Secretary of Homeland Security to designate specific officials to certify cases and questions of law to the Attorney General pursuant to redesignated 8 CFR 1003.1(h). These provisions are provided in parallel for the Department of Homeland Security in a new section of part 3. Finally, savings provisions are added to part 103 and part 1003 to clarify that the jurisdiction and procedures in effect on February 28, 2003, continue in effect after the transition on March 1, 2003.

Part 101—Presumption of lawful admission, is duplicated as part 1101, because it establishes a necessary presumption under the Act for both INS and EOIR.

Part 103—Powers and duties of service officers; availability of service records, is partially duplicated and is amended in several sections to ensure that the existing practices of EOIR are not changed through the transfer of functions.

Part 205—Revocation of approval of petitions, is duplicated as part 1205 because the revocation of petitions involves substantial appeals to the Board of Immigration Appeals and the provisions intermingle the jurisdiction and procedures before the Board of Immigration Appeals with the substantive provisions for revocation of approval of petitions.

Part 207—Admission of refugees, is duplicated in part in part 1207. Only § 207.3 necessarily involves procedure before the Executive Office for Immigration Review and this is the only section that is duplicated.

Part 208—Proceedings for asylum and withholding of removal, is duplicated in part 1208 because these provisions relate to both INS and EOIR and are so interrelated that no simple division of jurisdiction is possible. The Department of Justice expects that further division will be accomplished by the Department of Homeland Security and the Department of Justice at a later time.

Part 209—Adjustment of status of refugees and aliens granted asylum, is duplicated as part 1209. For the most part, adjustment of status is accomplished administratively by INS, but provisions that are affected by EOIR are intermingled in this part.

Part 211—Documentary requirements; immigrants; waivers, is duplicated in part in part 1211. The only section that is duplicated is § 211.4, Waiver of documents of returning residents, and this section is duplicated because the section contains the predicate jurisdiction of immigration judges to consider an renewed application in proceedings.

Part 212—Documentary requirements: nonimmigrants: waivers; admission of certain inadmissible aliens; parole, is duplicated in part 1212 because these provisions relate to both INS and EOIR and are so interrelated that no simple division of jurisdiction is possible. Part 212 provides the predicates and standards for proceedings to exclude aliens from the United States.

Part 214—Nonimmigrant classes, is duplicated in part in part 1214, because the specific duplicated provisions provide the jurisdictional predicates for review of certain waiver applications by immigration judges.

Part 215—Controls of aliens departing from the United States, is duplicated in part 1215. Although these provisions have been rarely used, they include a number of jurisdictional predicates for review of administrative decisions by an immigration judge, called a special inquiry officer in these sections. These regulations are joint regulations with the Secretary of State, see 22 CFR part 46, and may require further refinement in the future.

Part 216—Conditional basis of lawful permanent residence status, is duplicated in part 1216. This part contains both the administrative and adjudicatory process for revoking the conditional basis for lawful permanent residence based upon marriage.

Part 235—Inspection of persons applying for admission, is duplicated in part 1235 because nearly all of the provisions of this part affect bond hearings before immigration judges.

Part 236—Apprehension and detention of inadmissible and deportable aliens, removal of aliens ordered removed, is duplicated in part in part 1236. Subpart A relates to the determinations of inadmissibility and deportability of aliens and is duplicated in part 1236. Subpart B of part 236, however, relates to the INS Family Unity Program, which does not relate to EOIR processes. Accordingly, Subpart B is not duplicated, although it may be interpreted in appropriate proceedings.

Part 238—Expedited removal of aggravated felons, is duplicated in part 1238 because the expedited removal under this part can be converted to ordinary removal proceedings before an immigration judge under part 240, and initiated proceedings under part 240 may, upon approval of the immigration judge, be terminated and the INS may then file expedited removal proceedings under part 238.

Part 239—Initiation of removal proceedings, is duplicated as part 1239 because the initiation of proceedings before immigration judges is a detailed mix of authority of service officers to initiate and file charges before an immigration judge.

Part 240—Proceedings to determine removability of aliens in the United States, is largely transferred to part 1240, as proceedings before immigration judges. However, 8 CFR 240.25, which is the INS authority for voluntary departure, is not transferred. Furthermore, 8 CFR 240.21, and subpart H, are duplicated in new part 1240 because these provisions affect both the INS and EOIR. The Department expects, as in many other cases, a further division of these parts will be effected by further regulatory actions by the Department of Homeland Security and the Department of Justice.

Part 241—Apprehension and detention of aliens ordered removed, is duplicated in part 1241 because the finality and implementation of final orders of removal issued by immigration judges and the Board of Immigration Appeals regularly involve the authority of EOIR and interpretation of these regulations by both the INS and EOIR. In particular, changes in the bonding and surrender process currently under consideration will require changes in the authority of both EOIR and the successor agencies of INS within DHS.

Part 244—Temporary protected status for national of designated states, is duplicated in part 1244 because many of the decisions under temporary protected status are made by immigration judges and the Board of Immigration Appeals. Sections 244.1, 244.7, 244.11, and 244.18 all refer to immigration judges' decisional authority. Section 244.20 has a unique fee waiver provisions that also implicates administration and proceedings before EOIR. This duplication will require further refinement to clarify the authority of Secretary of Homeland Security to designate countries for temporary protected status purposes and the duplication should not be viewed as any indication that the Department of Justice is involved in those future decisions. The duplication is necessary at this time to ensure continuity and will be subject to further adjustment by the Department of Homeland Security and the Department of Justice.

Part 245—Adjustment of status to that of person admitted for permanent residence, is duplicated in part 1245 because jurisdiction is intermingled throughout the part. See Matter of Artigas, 23 I&N Dec. 99 (BIA 2001). Further refinement of the division of authority and detailed technical amendments will be required in the future.

Part 246—Rescission of adjustment of status, is duplicated in part 1246 because the part provides the comprehensive procedure before both the Service and EOIR for the rescission of adjustment of status to lawful permanent residence.

Part 249—Creation of records of lawful admission for permanent residence, is duplicated in part 1249 because this part includes both the Service and EOIR procedures for registry of lawful permanent residence. Although the statutory requirements for registry limit the number of cases that arise under this part, the division of authority requires further detailed analysis.

Part 270—Penalties for document fraud, is duplicated in part 1270 because this part sets forth the procedures for document fraud cases before both the Service and the administrative law judges of EOIR. See also 28 CFR Part 68.

Part 274a—Control of employment of aliens, is duplicated as part 1274a because it contains substantial definitional and procedural material relevant to both the INS and the Special Counsel for Immigration-Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice under 28 CFR 0.53, as well as the predicates to administrative proceedings before administrative law judges in EOIR.

Part 280—Imposition and collection of fines, is duplicated in part 1280 because this part is interpreted by the Board of Immigration Appeals in fines appeals. Substantial portions of this duplicated part will ultimately be removed as the jurisdiction of such fines is ultimately transferred from the Board of Immigration Appeals to the administrative law judges of EOIR as previously proposed in other rulemaking. 67 FR 7309 (Feb. 22, 2002).

Part 287—Field officers; powers and duties, is duplicated in part in part 1287 because several discrete provisions of this part provide the underpinnings for specific authority of immigration judges. In particular, the subpoena authority of § 287.4 provides the mechanism for subpoenas before immigration judges. Certification of official records before an immigration judge is provided in § 287.6.

Several sections of part 287 that are not amended or duplicated implicate other authorities of the Attorney General as the United States' prosecutor, including § 287.5 delegations of authority to the Deputy Attorney General to approve the expansion of criminal law enforcement authority in certain areas. That provision, in particular, relates to the Attorney General's inherent authority to manage the criminal law enforcement community, and the delegations that he has made to the Deputy Attorney General to manage the Department. 28 CFR 0.15(a). As with the past practice of the Department, changes in these criminal law enforcement powers are governed by executive branch policies that include review and recommendations from the Criminal Division, through the Deputy Attorney General, to the Attorney General for final determination regarding agencies outside the Department of Justice. The unique regulatory authority in part 287 is the product of statutory requirements in section 287(a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1357(a)(4), as amended by 503(a) of the Immigration Act of 1990, Pub. L. No. 101–690, 104 Stat. 4978 (Nov. 29, 1990). These provisions will require further coordination between the Department of Homeland Security and the Department of Justice.

Part 292—Representation and appearances, is duplicated in part 1292 because representation of aliens before INS and EOIR has historically been considered as a single process and will continue to be so considered for the foreseeable future.

Part 299—Immigration forms, is not duplicated, but is referred to in new part 1299. EOIR will continue to utilize INS forms for most purposes, such as to establish a basis for asylum, adjustment of status, etc. There is no need to create new forms to replicate the forms that are already in use. By the same token, however, there are a number of forms that provide information that is useful to immigration judges in adjudicating cases, and, therefore, the Director of EOIR is authorized to designate the version of the forms to be used.

Part 337—Oath of allegiance, is duplicated in part 1337 only because it involves the authority of immigration judges to administer the oath of citizenship in naturalization ceremonies, and related authorities.

Part 507—Alien terrorist removal procedures, is moved to newly created 28 CFR part 200, to reflect the operational functions of the Office for Immigration Litigation within the Civil Division, which is delegated authority to represent the United States before the Alien Terrorist Removal Court, and the fact that this process is not administrative in nature, but judicial, before Article III judges designated by the Chief Justice of the United States. The sole provision in this part refers to the Attorney General's authority to make a final determination of eligibility

for relief from a judicial order of removal from the Alien Terrorist Removal Court on the grounds that such post-judicial removal would violate the Convention Against Torture.

H. Changes Deferred

A number of changes will need to be made in the future, but are not made at this time. For example, part 215, concerning departure control, refers to "special inquiry officers" instead of immigration judges. This is not uncommon in the older provisions of 8 CFR that have not been amended since 1987. Amendments to this particular part require the concurrence of the Secretary of State because this part is a parallel to 22 CFR part 46. Rather than attempt to conform two separate parts, neither of which will remain within the jurisdiction of the Attorney General, this commonly understood term—a historical anomaly that predates the creation of EOIR and means "immigration judge"—is left in place until such time as the Secretary of State and the Secretary of Homeland Security determine to change the substantive regulations, at which time they, and the Attorney General, will make this necessary but only technical adjustment.

I. Cross-References

The Department will publish in the very near future a table of changes of cross-references in parts of chapter V to other parts of chapter V, and other conforming technical changes.

Administrative Procedure Act

The Department of Justice finds that good cause exists for adopting this rule as a final rule and without public notice and comment under 5 U.S.C. 553 because this rule only makes technical amendments to the organization, procedures, and practices of the Department of Justice to improve the organization of the regulations of the Department of Justice and reflects the transfer of functions contemplated by the Homeland Security Act of 2002. Similarly, because this final rule makes changes in internal delegations and procedures, and is a recodification of existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

List of Subjects

8 CFR Part 1

Administrative practice and procedure and Immigration.

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 101

Immigration.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements and Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedure and Immigration.

8 CFR Part 207

Immigration, Refugees and Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 211

Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements and Students.

8 CFR Part 215

Administrative practice and procedure, Aliens and Travel restrictions.

8 CFR Part 216

Administrative practice and procedure, and Aliens.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 238

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 239

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 240

Administrative practice and procedure and Aliens.

8 CFR Part 241

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 244

Administrative practice and procedure and Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 246

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 249

Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud and Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

8 CFR Part 280

Administrative practice and procedure, Immigration and Penalties.

8 CFR Part 287

Immigration and Law enforcement officers.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers and Reporting and recordkeeping requirements.

8 CFR Part 337

Citizenship and naturalization and Courts.

8 CFR Part 507

Aliens, terrorism.

8 CFR Part 1001

Administrative practice and procedure and Immigration.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 1101

Immigration.

8 CFR Part 1103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 1204

Administrative practice and procedure, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1205

Administrative practice and procedure and Immigration.

8 CFR Part 1207

Immigration, Refugees and Reporting and recordkeeping requirements.

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1211

Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1214

Administrative practice and procedure, Aliens.

8 CFR Part 1215

Administrative practice and procedure, Aliens and Travel restrictions.

8 CFR Part 1216

Administrative practice and procedure, and Aliens.

8 CFR Part 1235

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1236

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1238

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1239

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1240

Administrative practice and procedure and Aliens.

8 CFR Part 1241

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8 CFR Part 1244

Administrative practice and procedure and Immigration.

8 CFR Part 1245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1246

Administrative practice and procedure, Aliens and Immigration

8 CFR Part 1249

Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1270

Administrative practice and procedure, Aliens, Employment, Fraud and Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

8 CFR Part 1280

Administrative practice and procedure, Immigration and Penalties.

8 CFR Part 1287

Immigration and Law enforcement officers.

8 CFR Part 1292

Administrative practice and procedure, Immigration, Lawyers and Reporting and recordkeeping requirements.

8 CFR Part 1299

Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1337

Citizenship and naturalization and Courts.

28 CFR Part 200

Aliens, terrorism.

Authority and Issuance

For the reasons set forth in the preamble, the Department of Justice amends titles 8 and 28 of the Code of Federal Regulations as follows:

TITLE 8—ALIENS AND NATIONALITY

CHAPTER V—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, DEPARTMENT OF JUSTICE

Subchapter A—General Provisions

Subchapter B—Immigration Regulations

Subchapter C—Nationality Regulations

1. Amend title 8 CFR by establishing chapter V and its related subchapters to read as set forth above.

Chapter I, Subchapter A

PART 1—[DUPLICATED AS CHAPTER V, PART 1001]

Chapter V, Subchapter A

PART 1001—DEFINITIONS

2. All sections in part 1 are duplicated in part 1001, as set out in the following table:

Part 1	Heading	Is duplicated in Part 1001 as
§ 1.1	Definitions	§ 1001.1

2a. The authority citation for newly designated part 1001 continues to read as follows:

Authority: 8 U.S.C. 1101; 8 CFR part 2.

Chapter I, Subchapter A

PART 3—[REDESIGNATED AS PART 1003]

3. Transfer 8 CFR part 3 from chapter I, subchapter A, to chapter V, subchapter A, and designate as 8 CFR part 1003.

Chapter V, Subchapter A

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

4. All sections of the newly redesignated part 1003 are set forth in the following table:

Part 3	Heading	Is transferred and designated as Part 1003
§ 3.0	Executive Office for Immigration Review	§ 1003.0
	Subpart A	
§ 3.1	Organization, jurisdiction, and powers of the Board of Immigration Appeals	§ 1003.1
§ 3.2	Reopening or reconsideration before the Board of Immigration Appeals	§ 1003.2
§ 3.3	Notice of Appeal	§ 1003.3
§ 3.4	Withdrawal of appeal	§ 1003.4
§ 3.5	Forwarding of record on appeal	§ 1003.5
§ 3.6	Stay of execution of decision	§ 1003.6
§ 3.7	Notice of Certification	§ 1003.7
§ 3.8	Fees	§ 1003.8
	Subpart B	
§ 3.9	Chief Immigration Judge	§ 1003.9
§ 3.10	Immigration Judges	§ 1003.10
§ 3.11	Administrative control Immigration Courts	§ 1003.11
	Subpart C	
§ 3.12	Scope of rules	§ 1003.12
§ 3.13	Definitions	§ 1003.13
§ 3.14	Jurisdiction and commencement of proceedings	§ 1003.14
§ 3.15	Contents of the order to show cause and notice to appear and notification of change of address.	§ 1003.15
§ 3.16	Representation	§ 1003.16
§ 3.17	Appearances	§ 1003.17
§ 3.18	Scheduling of cases	§ 1003.18
§ 3.19	Custody/bond	§ 1003.19
§ 3.20	Change of venue	§ 1003.20
§ 3.21	Pre-hearing conferences and statement	§ 1003.21
§ 3.22	Interpreters	§ 1003.22
§ 3.23	Reopening or reconsideration before the Immigration Court	§ 1003.23
§ 3.24	Fees pertaining to matters within the jurisdiction of the Immigration Judge	§ 1003.24
§ 3.25	Form of the proceeding	§ 1003.25
§ 3.26	In absentia hearings	§ 1003.26

Part 3	Heading	Is transferred and designated as Part 1003
§ 3.27	Public access to hearings	§ 1003.27
§ 3.28	Recording equipment	§ 1003.28
§ 3.29	Continuances	§ 1003.29
§ 3.30	Additional charges in deportation or removal hearings	§ 1003.30
§ 3.31	Filing documents and applications	§ 1003.31
§ 3.32	Service and size of documents	§ 1003.32
§ 3.33	Translation of documents	§ 1003.33
§ 3.34	Testimony	§ 1003.34
§ 3.35	Depositions and subpoenas	§ 1003.35
§ 3.36	Record of proceeding	§ 1003.36
§ 3.37	Decisions	§ 1003.37
§ 3.38	Appeals	§ 1003.38
§ 3.39	Finality of decision	§ 1003.39
§ 3.40	Local operating procedures	§ 1003.40
§ 3.41	Evidence of criminal conviction	§ 1003.41
§ 3.42	Review of credible fear determination	§ 1003.42
§ 3.43	Motions to reopen for suspension of deportation and cancellation of removal pursuant to section 203(c) of NACARA and section 1505(c) of the LIFE Act Amendments.	§ 1003.43
§ 3.44	Motion to reopen to apply for section 212(c) relief for certain aliens in deportation proceedings before April 24, 1996.	§ 1003.44
§ 3.46	Protective orders, sealed submissions in Immigration Courts	§ 1003.46
	Subpart D—Reserved	
	Subpart E	
§ 3.61	List	§ 1003.61
§ 3.62	Qualifications	§ 1003.62
§ 3.63	Applications	§ 1003.63
§ 3.64	Approval and denial of applications	§ 1003.64
§ 3.65	Removal of an organization or attorney from list	§ 1003.65
	Subpart F—Reserved	
	Subpart G	
§ 3.101	General provisions	§ 1003.101
§ 3.102	Grounds	§ 1003.102
§ 3.103	Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline.	§ 1003.103
§ 3.104	Filing of complaints; preliminary inquires; resolutions; referral of complaints	§ 1003.104
§ 3.105	Notice of Intent to Discipline	§ 1003.105
§ 3.106	Hearing and disposition	§ 1003.106
§ 3.107	Reinstatement after expulsion or suspension	§ 1003.107
§ 3.108	Confidentiality	§ 1003.108
§ 3.109	Discipline of government attorneys	§ 1003.109

4a. The authority citation for the newly redesignated part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

5. A new 8 CFR part 3 is added to read as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

§ 3.0 Executive Office for Immigration Review

Regulations of the Executive Office for Immigration Review relating to the adjudication of immigration matters before immigration judges (referred to in some regulations as special inquiry officers) and the Board of Immigration Appeals are located in 8 CFR chapter V, part 1003.

PART 1003—[FURTHER AMENDED]

6. Section 1003.1 is amended by revising paragraphs (g) and (h) and adding paragraphs (i) through (j) to read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

* * * * *

(g) *Decisions as precedents.* Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and

decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues. Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security to the extent authorized in paragraph (i) of this section, shall serve as precedents in all proceedings involving the same issue or issues.

(h) *Referral of cases to the Attorney General.* (1) The Board shall refer to the Attorney General for review of its decision all cases that:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, refers to the Attorney General for review.

(2) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board or Secretary, as appropriate, for transmittal and service as provided in paragraph (f) of this section.

(i) *Publication of Secretary's precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and, upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General.

(j) *Continuation of jurisdiction and procedure.* The jurisdiction of, and procedures before, the Board of Immigration Appeals in exclusion, deportation, removal, rescission, asylum-only, and any other proceedings, shall remain in effect as in effect on February 28, 2003, until the regulations in this chapter are further modified by the Attorney General. Where a decision of an officer of the Immigration and Naturalization Service was, before March 1, 2003, appealable to the Board or to an immigration judge, or an application denied could be renewed in proceedings before an immigration judge, the same authority and procedures shall be followed until further modified by the Attorney General.

7. Section 1003.14 is amended by adding a new paragraph (d) to read as follows:

§ 1003.14 Jurisdiction and commencement of proceedings.

* * * * *

(d) The jurisdiction of, and procedures before, immigration judges in exclusion, deportation and removal, rescission, asylum-only, and any other proceedings shall remain in effect as it was in effect on February 28, 2003, until the regulations in this chapter are further modified by the Attorney General. Where a decision of an officer of the Immigration and Naturalization Service was, before March 1, 2003, appealable to the Board or an immigration judge, or an application denied could be renewed in proceedings before an immigration judge, the same authority and procedures shall be followed until further modified by the Attorney General.

Chapter I, Subchapter B

PART 101—[DUPLICATED AS CHAPTER V, PART 1101]

Chapter V, Subchapter B

PART 1101—PRESUMPTION OF LAWFUL ADMISSION

8. All the sections in part 101 are duplicated in a new part 1101 in 8 CFR chapter V, subchapter B, as set forth in the following table:

Part 101	Heading	Is duplicated as Part 1101
§ 101.1	Presumption of lawful admission	§ 1101.1
§ 101.2	Presumption of lawful admission; entry under erroneous name or other errors	§ 1101.2
§ 101.3	Creation of record of lawful permanent resident status for person born under diplomatic status in the United States.	§ 1101.3
§ 101.4	Registration procedure	§ 1101.4
§ 101.5	Special immigrant status for certain G–4 nonimmigrants	§ 1101.5

8a. The authority citation newly duplicated part 1101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

9. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

10. Amend § 103.3 by removing from paragraph (c) "§ 3.1(g) of this chapter," and adding in its place "§ 1003.1(g) of chapter V," and by adding at the beginning of paragraph (c) a new sentence to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

* * * * *

(c) Service precedent decisions. The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. * * *

11. Add § 103.37 to read as follows:

§ 103.37 Precedent decisions.

(a) Proceedings before the immigration judges, the Board of Immigration Appeals and the Attorney General are governed by part 1003 of 8 CFR chapter V.

(b)–(f) [Reserved.]

(g) Decisions as precedents. Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues. Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security to the extent authorized in paragraph (i) of this section, shall serve as precedents in all proceedings involving the same issue or issues.

(h) Referral of cases to the Attorney General. (1) The Board shall refer to the Attorney General for review of its decision all cases which:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, refers to the Attorney General for review.

(2) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board or Secretary, as appropriate, for transmittal and service as provided in paragraph (f) of this section.

(i) Publication of Secretary's precedent decisions. The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General Service precedent decisions as set forth in § 103.3(c).

Chapter I, Subchapter B

PART 103—[DUPLICATED IN PART AS PART 1103]

Chapter V, Subchapter B

PART 1103—APPEALS, RECORDS, AND FEES

12. Sections 103.3, 103.4 and 103.7 of part 103 are duplicated in part 1103 and redesignated as set forth in the following table:

Part 103	Heading	Is duplicated as Part 1103
§ 103.3	Denials, appeals, and precedent decisions	§ 1103.3
§ 103.4	Certifications	§ 1103.4
§ 103.7	Fees	§ 1103.7

12a. The authority citation for newly duplicated part 1103 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

Chapter V, Subchapter B

13. Add part 1204 to read as follows:

PART 1204—IMMIGRANT PETITIONS

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

§ 1204.1 Single level of appellate review.

The decision of the Board of Immigration Appeals concerning the denial of a relative visa petition under 8 CFR chapter I, part 204 because the petitioner failed to establish eligibility for the bona fide marriage exemption contained in that part will constitute the single level of appellate review established by statute.

PART 205—[DUPLICATED AS PART 1205]

Chapter V, Subchapter B

PART 1205—REVOCATION OF APPROVAL OF PETITIONS

14. All sections in part 205 are duplicated in part 1205, as set out in the following table:

Part 205	Heading	Is duplicated as Part 1205
§ 205.1	Automatic Revocation	§ 1205.1
§ 205.2	Revocation on notice	§ 1205.2

14a. The authority citation for newly designated part 1205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

Chapter I, Subchapter B

PART 207—[DUPLICATED IN PART AS PART 1207]

Chapter V, Subchapter B

PART 1207—ADMISSION OF REFUGEES

15. Section 207.3 is duplicated in part 1207 of chapter V, subchapter B of 8 CFR, as section 1207.3.

15a. The authority citation for newly designated part 1207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

Chapter I, Subchapter B

PART 208—[DUPLICATED AS PART 1208]

Chapter V, Subchapter B

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

16. All sections in part 208 are duplicated in part 1208, as set out in the following table:

Part 208	Heading	Is duplicated as Part 1208
	Subpart A	
§ 208.1	General	§ 1208.1
§ 208.2	Jurisdiction	§ 1208.2
§ 208.3	Form of application	§ 1208.3
§ 208.4	Filing the application	§ 1208.4
§ 208.5	Special duties toward aliens in custody of the Service	§ 1208.5
§ 208.6	Disclosure to third parties	§ 1208.6
§ 208.7	Employment authorization	§ 1208.7
§ 208.8	Limitations on travel outside the United States	§ 1208.8
§ 208.9	Procedure for interview before an asylum officer	§ 1208.9
§ 208.10	Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprint processing.	§ 1208.10
§ 208.11	Comments from the Department of State	§ 1208.11
§ 208.12	Reliance on information compiled by other sources	§ 1208.12
§ 208.13	Establishing asylum eligibility	§ 1208.13
§ 208.14	Approval, denial, referral, or dismissal of application	§ 1208.14
§ 208.15	Definition of "firm resettlement"	§ 1208.15
§ 208.16	Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.	§ 1208.16
§ 208.17	Deferral of removal under the Convention Against Torture	§ 1208.17
§ 208.18	Implementation of the Convention Against Torture	§ 1208.18
§ 208.19	Decisions	§ 1208.19
§ 208.20	Determining if an asylum application is frivolous	§ 1208.20
§ 208.21	Admission of the asylee's spouse and children	§ 1208.21
§ 208.22	Effect on exclusion, deportation, and removal proceedings	§ 1208.22
§ 208.23	Restoration of status	§ 1208.23
§ 208.24	Termination of asylum or withholding of removal or deportation	§ 1208.24
§ 208.25	Reserved	§ 1208.25
§ 208.26	Reserved	§ 1208.26
§ 208.27	Reserved	§ 1208.27
§ 208.28	Reserved	§ 1208.28
§ 208.29	Reserved	§ 1208.29
	Subpart B	
§ 208.30	Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.	§ 1208.30
§ 208.31	Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.	§ 1208.31

16a. The authority citation for newly duplicated part 1208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

Chapter I, Subchapter B

PART 209—[DUPLICATED AS PART 1209]

Chapter V, Subchapter B

PART 1209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

17. All sections in part 209 are duplicated in part 1209, as set out in the following table:

Part 209	Heading	Is duplicated as Part 1209
§ 209.1	Adjustment of status of refugees	§ 1209.1
§ 209.2	Adjustment of status of alien granted asylum	§ 1209.2

17a. The authority citation for newly designated part 1209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

PART 211—[DUPLICATED IN PART AS PART 1211]

Chapter V, Subchapter B

PART 1211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

18. Section 211.4 is duplicated in part 1211, as section 1211.4.

18a. The authority citation for newly designated part 1211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

PART 212—[DUPLICATED AS PART 1212]

Chapter V, Subchapter B

PART 1212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

19. All sections in part 212 are duplicated in part 1212, as set out in the following table:

Part 212	Heading	Is duplicated as Part 1212
§ 212.1	Documentary requirements for nonimmigrants	§ 1212.1
§ 212.2	Consent to reapply for admission after deportation, removal or departure at Government expense.	§ 1212.2
§ 212.3	Application for the exercise of discretion under section 212(c)	§ 1212.3
§ 212.4	Application for the exercise of discretion under section 212(d)(1) and 212(d)(3)	§ 1212.4
§ 212.5	Parole of aliens into the United States	§ 1212.5
§ 212.6	Border crossing identification cards	§ 1212.6
§ 212.7	Waiver of certain grounds of inadmissibility	§ 1212.7
§ 212.8	Certification requirement of section 212(a)(14)	§ 1212.8
§ 212.9	Applicability of section 212(a)(32) to certain derivative third and sixth preference and nonpreference immigrants.	§ 1212.9
§ 212.10	Section 212(k) waiver	§ 1212.10
§ 212.11	Controlled substance convictions	§ 1212.11
§ 212.12	Parole determinations and revocations respecting Mariel Cubans	§ 1212.12
§ 212.13	[Reserved]	§ 1212.13
§ 212.14	Parole determinations for alien witnesses and informants for whom a law enforcement authority ("LEA") will request S classification.	§ 1212.14
§ 212.15	Certificates for foreign health care workers	§ 1212.15
§ 212.16	Applications for exercise of discretion relating to T nonimmigrant status	§ 1212.16

19a. The authority citation for newly designated part 1212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

Chapter V, Subchapter B

20. Add part 1214 to chapter V to read as follows:

PART 1214—REVIEW OF NONIMMIGRANT CLASSES

Sec.

1214.1 Review of requirements for admission, extension, and maintenance of status.
1214.2 Review of alien victims of severe forms of trafficking in persons; aliens in pending immigration proceedings.
1214.3 Certain spouses and children of lawful permanent residents; aliens in proceedings; V visas.

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

§ 1214.1 Review of requirements for admission, extension, and maintenance of status.

Every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, shall establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. Upon application for admission, the alien shall present a valid passport and valid visa unless either or both documents have been waived. However, an alien applying for extension of stay shall present a passport only if requested to do so by the Service. The passport of an alien applying for admission shall be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien shall agree to abide by the terms and conditions of his or her admission. The passport of an alien applying for extension of stay shall be valid at the time of application for extension, unless otherwise provided in this chapter, and the alien shall agree to maintain the validity of his or her passport and to abide by all the terms and conditions of his extension. The alien shall also agree to depart the United States at the expiration of his or her authorized period of admission or extension, or upon abandonment of his or her authorized nonimmigrant status. At the time a nonimmigrant alien applies for admission or extension of stay he or she shall post a bond on Form I–352 in the sum of not less than $500, to insure the maintenance of his or her nonimmigrant status and departure from the United States, if required to do so by the director, immigration judge or Board of Immigration Appeals.

§ 1214.2 Review of alien victims of severe forms of trafficking in persons; aliens in pending immigration proceedings.

(a) Applications for T visas while in proceedings. Individuals who believe they are victims of severe forms of trafficking in persons and who are in pending immigration proceedings must inform the Service if they intend to apply for T nonimmigrant status under this section. With the concurrence of Service counsel, a victim of a severe form of trafficking in persons in proceedings before an immigration judge or the Board of Immigration Appeals may request that the proceedings be administratively closed (or that a motion to reopen or motion to reconsider be indefinitely continued) in order to allow the alien to pursue an application for T nonimmigrant status with the Service. If the alien appears eligible for T nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, may grant such a request to administratively close the proceeding or continue a motion to reopen or motion to reconsider indefinitely. In the event the Service finds an alien ineligible for T–1 nonimmigrant status, the Service may recommence proceedings that have been administratively closed by filing a motion to re-calendar with the immigration court or a motion to reinstate with the Board. If the alien is in Service custody pending the completion of immigration proceedings, the Service may continue to detain the alien until a decision has been rendered on the application. An alien who is in custody and requests bond or a bond redetermination will be governed by the provisions of part 236 of this chapter.

(b) Stay of final order of exclusion, deportation, or removal. A determination by the Service that an application for T–1 nonimmigrant status is bona fide automatically stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the T application. The filing of an application for T nonimmigrant status does not stay the execution of a final order unless the Service has determined that the application is bona fide. Neither an immigration judge nor the Board of Immigration Appeals has jurisdiction to adjudicate an application for a stay of execution, deportation, or removal order, on the basis of the filing of an application for T nonimmigrant status.

§ 1214.3 Certain spouses and children of lawful permanent residents; aliens in proceedings; V visas.

An alien who is already in immigration proceedings and believes that he or she may have become eligible to apply for V nonimmigrant status should request before the immigration judge or the Board of Immigration Appeals, as appropriate, that the proceedings be administratively closed (or before the Board that a previously-filed motion for reopening or reconsideration be indefinitely continued) in order to allow the alien to pursue an application for V nonimmigrant status with the Service. If the alien appears eligible for V nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely. In the event that the Service finds an alien eligible for V nonimmigrant status, the Service can adjudicate the change of status under this section. In the event that the Service finds an alien ineligible for V nonimmigrant status, the Service shall recommence proceedings by filing a motion to re-calendar.

Chapter I, Subchapter B

PART 215—[DUPLICATED AS PART 1215]

Chapter V, Subchapter B

PART 1215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

21. All sections in part 215 are duplicated in part 1215, as set out in the following table:

Part 215	Heading	Is duplicated as Part 1215
§ 215.1	Definitions	§ 1215.1
§ 215.2	Authority of departure-control officer to prevent alien's departure from the United States.	§ 1215.2
§ 215.3	Alien whose departure is deemed prejudicial to the interests of the United States	§ 1215.3
§ 215.4	Procedure in case of alien prevented from departing from the United States	§ 1215.4
§ 215.5	Hearing procedure before special inquiry officer	§ 1215.5
§ 215.6	Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.	§ 1215.6
§ 215.7	Instructions from the Administrator required in certain cases	§ 1215.7

21a. The authority citation for newly designated part 1215 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, Proc. 3004, 18 FR 489; 8 U.S.C. 1104, 3 CFR, 1953 Supp. Interpret or apply sec. 215, 66 Stat. 190; (8 U.S.C. 1185).

Chapter I, Subchapter B

PART 216—[DUPLICATED AS PART 1216]

Chapter V, Subchapter B

PART 1216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

22. All sections in part 216 are duplicated in part 1216, as set out in the following table:

Part 216	Heading	Is duplicated as Part 1216
§ 216.1	Definitions of conditional permanent resident	§ 1216.1
§ 216.2	Notification requirements	§ 1216.2
§ 216.3	Termination of conditional resident status	§ 1216.3
§ 216.4	Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.	§ 1216.4
§ 216.5	Waiver of requirement to file joint petition to remove conditions by alien spouse	§ 1216.5
§ 216.6	Petition by entrepreneur to remove conditional basis of lawful permanent resident status.	§ 1216.6

22a. The authority citation for newly designated part 1216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

Chapter I, Subchapter B

PART 235—[DUPLICATED IN PART AS PART 1235]

Chapter V, Subchapter B

PART 1235—INSPECTION OF PERSONS APPLYING FOR PERMISSION

23. The following sections in part 235 are duplicated in part 1235, as set out in the following table:

Part 235	Heading	Is duplicated as Part 1235
§ 235.1	Scope of examination	§ 1235.1
§ 235.2	Parole for deferred inspection	§ 1235.2
§ 235.3	Inadmissible aliens and expedited removal	§ 1235.3
§ 235.4	Withdrawal of application for admission	§ 1235.4
§ 235.5	Preinspection	§ 1235.5
§ 235.6	Referral to immigration judge	§ 1235.6
§ 235.8	Inadmissibility on security and related grounds	§ 1235.8
§ 235.9	Northern Marianas identification card	§ 1235.9
§ 235.10	U.S. Citizen Identification Card	§ 1235.10
§ 235.11	Admission of conditional permanent residents	§ 1235.11
§ 235.12	[Redesignated]	§ 1235.12
§ 235.13	[Redesignated]	§ 1235.13

23a. The authority citation for newly designated part 1235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

Chapter I, Subchapter B

PART 236—[DUPLICATED AS PART 1236]

Chapter V, Subchapter B

PART 1236—APPREHENSION AND DETENTION OF INADMISSABLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

24. All sections in part 236, Subpart A, are duplicated in part 1236, as set out in the following table:

Part 236	Heading	Is duplicated as Part 1236
	Subpart A	
§ 236.1	Apprehension, custody, and detention	§ 1236.1
§ 236.2	Confined aliens, incompetents, and minors	§ 1236.2
§ 236.3	Detention and release of juveniles	§ 1236.3
§ 236.4	Removal of S–5, S–6, and S–7 nonimmigrants	§ 1236.4
§ 236.5	Fingerprints and photographs	§ 1236.5
§ 236.6	Information regarding detainees	§ 1236.6
§ 236.7	[Reserved]	§ 1236.7
§ 236.8	[Reserved]	§ 1236.8
§ 236.9	[Reserved]	§ 1236.9

24a. The authority citation for newly designated part 1236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

Chapter I, Subchapter B

PART 238—[DUPLICATED AS PART 1238]

Chapter V, Subchapter B

PART 1238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

25. Section 238.1 is duplicated in part 1238, as § 1238.1.

25a. The authority citation for newly designated part 1238 continues to read as follows:

Authority: 8 U.S.C. 1228; 8 CFR part 2.

Chapter I, Subchapter B

PART 239—[DUPLICATED AS PART 1239]

Chapter V, Subchapter B

PART 1239—INITIATION OF REMOVAL PROCEEDINGS

26. All sections in part 239 are duplicated in part 1239, as set out in the following table:

Part 239	Heading	Is duplicated as Part 1239
§ 239.1	Notice to appear	§ 1239.1
§ 239.2	Cancellation of notice to appear	§ 1239.2
§ 239.3	Effect of filing notice to appear	§ 1239.3

26a. The authority citation for newly designated part 1239 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

Chapter I, Subchapter B

PART 240—[REDESIGNATED IN PART AS PART 1240]

Chapter V, Subchapter B

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

27. Transfer the following sections of 8 CFR part 240 from chapter I, subchapter B, to chapter V, subchapter B, and designate as 8 CFR part 1240, as set out in the following table:

Part 240	Heading	Is transferred and redesignated as Part 1240
	Subpart A	
§ 240.1	Immigration judges	§ 1240.1
§ 240.2	Service counsel	§ 1240.2
§ 240.3	Representation by counsel	§ 1240.3
§ 240.4	Incompetent respondents	§ 1240.4
§ 240.5	Interpreter	§ 1240.5
§ 240.6	Postponement and adjournment of hearing	§ 1240.6
§ 240.7	Evidence in removal proceedings under section 240 of the Act	§ 1240.7
§ 240.8	Burdens of proof in removal proceedings	§ 1240.8
§ 240.9	Contents of record	§ 1240.9
§ 240.10	Hearing	§ 1240.10
§ 240.11	Ancillary matters, applications	§ 1240.11
§ 240.12	Decision of the immigration judge	§ 1240.12
§ 240.13	Notice of decision	§ 1240.13
§ 240.14	Finality of order	§ 1240.14
§ 240.15	Appeals	§ 1240.15
§ 240.16	Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Public Law 104–208.	§ 1240.16
§ 240.17	[Reserved]	§ 1240.17
§ 240.18	[Reserved]	§ 1240.18
	Subpart B	
§ 240.19	[Reserved]	§ 1240.19
§ 240.20	Cancellation of removal and adjustment of status under section 240A of the Act	§ 1240.20
§ 240.22	[Reserved]	§ 1240.22
§ 240.23	[Reserved]	§ 1240.23
§ 240.24	[Reserved]	§ 1240.24
	Subpart C	
§ 240.26	Voluntary departure—authority of the Executive Office for Immigration Review	§ 1240.26
§ 240.27	[Reserved]	§ 1240.27
§ 240.28	[Reserved]	§ 1240.28
§ 240.29	[Reserved]	§ 1240.29
	Subpart D	
§ 240.30	Proceedings prior to April 1, 1997	§ 1240.30
§ 240.31	Authority of immigration judges	§ 1240.31
§ 240.32	Hearing	§ 1240.32
§ 240.33	Applications for asylum or withholding of deportation	§ 1240.33
§ 240.34	Renewal of application for adjustment of status under section 245 of the Act	§ 1240.34
§ 240.35	Decision of the immigration judge; notice to the applicant	§ 1240.35
§ 240.36	Finality of order	§ 1240.36
§ 240.37	Appeals	§ 1240.37
§ 240.38	Fingerprinting of excluded aliens	§ 1240.38
§ 240.39	[Reserved]	§ 1240.39
	Subpart E	
§ 240.40	Proceedings commenced prior to April 1, 1997	§ 1240.40
§ 240.41	Immigration Judges	§ 1240.41
§ 240.42	Representation by counsel	§ 1240.42
§ 240.43	Incompetent respondents	§ 1240.43
§ 240.44	Interpreter	§ 1240.44
§ 240.45	Postponement and adjournment of hearing	§ 1240.45
§ 240.46	Evidence	§ 1240.46
§ 240.47	Contents of record	§ 1240.47
§ 240.48	Hearing	§ 1240.48
§ 240.49	Ancillary matters, applications	§ 1240.49
§ 240.50	Decision of the immigration judge	§ 1240.50
§ 240.51	Notice of decision	§ 1240.51
§ 240.52	Finality of order	§ 1240.52
§ 240.53	Appeals	§ 1240.53
§ 240.54	[Reserved]	§ 1240.54
	Subpart F	
§ 240.55	Proceedings commenced prior to April 1, 1997	§ 1240.55

Part 240	Heading	Is transferred and redesignated as Part 1240
§ 240.56	Application	§ 1240.56
§ 240.57	Extension of time to depart	§ 1240.57
§ 240.58	Extreme hardship	§ 1240.58
	Subpart G—Reserved	

28. The following sections in part 240 are duplicated in part 1240, as set out in the following table:

Part 240	Heading	Is duplicated as Part 1240
	Subpart B	
§ 240.21	Suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment of status under section 240A(b) of the Act for certain nonpermanent residents.	§ 1240.21
	Subpart H	
§ 240.60	Definitions	§ 1240.60
§ 240.61	Applicability	§ 1240.61
§ 240.62	Jurisdiction	§ 1240.62
§ 240.63	Application process	§ 1240.63
§ 240.64	Eligibility—general	§ 1240.64
§ 240.65	Eligibility for suspension of deportation	§ 1240.65
§ 240.66	Eligibility for special rule cancellation of removal	§ 1240.66
§ 240.67	Procedure for interview before an asylum officer	§ 1240.67
§ 240.68	Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprinting.	§ 1240.68
§ 240.69	Reliance on information compiled by other sources	§ 1240.69
§ 240.70	Decision by the Service	§ 1240.70

28a. The authority citation for newly redesignated part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

Chapter I, Subchapter B

PART 241—[DUPLICATED AS PART 1241]

Chapter V, Subchapter B

PART 1241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

29. All sections in part 241 are duplicated in part 1241, as set out in the following table:

Part 241	Heading	Is duplicated as Part 1241
	Subpart A	
§ 241.1	Final order of removal	§ 1241.1
§ 241.2	Warrant of removal	§ 1241.2
§ 241.3	Detention of aliens during removal period	§ 1241.3
§ 241.4	Continued detention of inadmissible, criminal, and other aliens beyond the removal period.	§ 1241.4
§ 241.5	Conditions of release after removal period	§ 1241.5
§ 241.6	Administrative stay of removal	§ 1241.6
§ 241.7	Self-removal	§ 1241.7
§ 241.8	Reinstatement of removal orders	§ 1241.8
§ 241.9	Notice to transportation line of alien's removal	§ 1241.9

Part 241	Heading	Is duplicated as Part 1241
§ 241.10	Special care and attention of removable aliens	§ 1241.10
§ 241.11	Detention and removal of stowaways	§ 1241.11
§ 241.12	Nonapplication of costs of detention and maintenance	§ 1241.12
§ 241.13	Determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future.	§ 1241.13
§ 241.14	Continued detention of removable aliens on account of special circumstances	§ 1241.14
§ 241.15	Information regarding detainees	§ 1241.15
§ 241.16	Reserved	§ 1241.16
§ 241.17	Reserved	§ 1241.17
§ 241.18	Reserved	§ 1241.18
§ 241.19	Reserved	§ 1241.19
	Subpart B	
§ 241.20	Proceedings commenced prior to April 1, 1997	§ 1241.20
§ 241.21	Stay of deportation of excluded alien	§ 1241.21
§ 241.22	Notice to surrender for deportation	§ 1241.22
§ 241.23	Cost of maintenance not assessed	§ 1241.23
§ 241.24	Notice to transportation line of alien's exclusion	§ 1241.24
§ 241.25	Deportation	§ 1241.25
§ 241.26	Reserved	§ 1241.26
§ 241.27	Reserved	§ 1241.27
§ 241.28	Reserved	§ 1241.28
§ 241.29	Reserved	§ 1241.29
	Subpart C	
§ 241.30	Proceedings commenced prior to April 1, 1997	§ 1241.30
§ 241.31	Final order of deportation	§ 1241.31
§ 241.32	Warrant of deportation	§ 1241.32
§ 241.33	Expulsion	§ 1241.33

29a. The authority citation for newly designated part 1241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

Chapter I, Subchapter B

PART 244—[DUPLICATED AS PART 1244]

Chapter V, Subchapter B

PART 1244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

30. All sections in part 244 are duplicated in part 1244, as set out in the following table:

Part 244	Heading	Is duplicated as Part 1244
§ 244.1	Definitions	§ 1244.1
§ 244.2	Eligibility	§ 1244.2
§ 244.3	Applicability of grounds of inadmissibility	§ 1244.3
§ 244.4	Ineligible aliens	§ 1244.4
§ 244.5	Temporary treatment benefits for eligible aliens	§ 1244.5
§ 244.6	Application	§ 1244.6
§ 244.7	Filing the application	§ 1244.7
§ 244.8	Appearance	§ 1244.8
§ 244.9	Evidence	§ 1244.9
§ 244.10	Decision by the director or Administrative Appeals Unit (AAU)	§ 1244.10
§ 244.11	Renewal of application; appeal to the Board of Immigration Appeals	§ 1244.11
§ 244.12	Employment authorization	§ 1244.12
§ 244.13	Termination of temporary treatment benefits	§ 1244.13
§ 244.14	Withdrawal of Temporary Protected Status	§ 1244.14
§ 244.15	Travel abroad	§ 1244.15
§ 244.16	Confidentiality	§ 1244.16
§ 244.17	Annual registration	§ 1244.17
§ 244.18	Issuance of charging documents; detention	§ 1244.18
§ 244.19	Termination of designation	§ 1244.19

Part 244	Heading	Is duplicated as Part 1244
§ 244.20	Waiver of Fees	§ 1244.20

30a. The authority citation for newly designated part 1244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

Chapter I, Subchapter B

PART 245—[DUPLICATED AS PART 1245]

Chapter V, Subchapter B

PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

31. All sections in part 245 are duplicated in part 1245, as set out in the following table:

Part 245	Heading	Is duplicated as Part 1245
§ 245.1	Eligibility	§ 1245.1
§ 245.2	Application	§ 1245.2
§ 245.3	Adjustment of status under section 13 of the Act of September 11, 1957, as amended.	§ 1245.3
§ 245.4	Documentary requirements	§ 1245.4
§ 245.5	Medical examination	§ 1245.5
§ 245.6	Interview	§ 1245.6
§ 245.7	Adjustment of status of certain Soviet and Indochinese parolees under the Foreign Operations Appropriations Act for Fiscal Year 1990 (Pub. L. 101–167).	§ 1245.7
§ 245.8	Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act	§ 1245.8
§ 245.9	Adjustment of status of certain nationals of the People's Republic of China under Public Law 102–404.	§ 1245.9
§ 245.10	Adjustment of status upon the payment of additional sum under section 245(i)	§ 1245.10
§ 245.11	Adjustment of aliens in S nonimmigrant classification	§ 1245.11
§ 245.12	What are the procedures for certain Polish and Hungarian parolees who are adjusting status to that of permanent resident under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996?	§ 1245.12
§ 245.13	Adjustment of status of certain nationals of Nicaragua and Cuba under Public Law 105–100.	§ 1245.13
§ 245.14	Adjustment of status of certain health care workers	§ 1245.14
§ 245.15	Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).	§ 1245.15
§ 245.18	How can physicians (with approved Forms I–140) that are serving in medically underserved areas or at a Veterans Affairs facility adjust status?	§ 1245.18
§ 245.20	Adjustment of status of Syrian asylees under Public Law 106–378	§ 1245.20
§ 245.21	Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Public Law 106–429) Syrian asylees under Public Law 106–378.	§ 1245.21
§ 245.22	Evidence to demonstrate an alien's physical presence in the United States on a specific date.	§ 1245.22

31a. The authority citation for newly designated part 1245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub.L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub.L. 105–277, 112 Stat. 2681; 8 CFR part 2.

Chapter I, Subchapter B

PART 246—[DUPLICATED AS PART 1246]

Chapter V, Subchapter B

PART 1246—RESCISSION OF ADJUSTMENT OF STATUS

32. All sections in part 246 are duplicated in part 1246, as set out in the following table:

Part 246	Heading	Is duplicated as Part 1246
§ 246.1	Notice	§ 1246.1
§ 246.2	Allegations admitted; no answer filed; no hearing requested	§ 1246.2
§ 246.3	Allegations contested or denied; hearing requested	§ 1246.3
§ 246.4	Immigration judge's authority; withdrawal and substitution	§ 1246.4
§ 246.5	Hearing	§ 1246.5
§ 246.6	Decision and order	§ 1246.6
§ 246.7	Appeals	§ 1246.7
§ 246.8	[Reserved]	§ 1246.8
§ 246.9	Surrender of Form I–551	§ 1246.9

32a. The authority citation for newly designated part 1246 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

Chapter I, Subchapter B

PART 249—[DUPLICATED AS PART 1249]

Chapter V, Subchapter B

PART 1249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

33. All sections in part 249 are duplicated in part 1249, as set out in the following table:

Part 249	Heading	Is duplicated as Part 1249
§ 249.1	Waiver of inadmissibility	§ 1249.1
§ 249.2	Application	§ 1249.2
§ 249.3	Reopening and reconsideration	§ 1249.3

33a. The authority citation for newly designated part 1249 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

Chapter I, Subchapter B

PART 270—[DUPLICATED AS PART 1270]

Chapter V, Subchapter B

PART 1270—PENALTIES FOR DOCUMENT FRAUD

34. All sections in part 270 are duplicated in part 1270, as set out in the following table:

Part 270	Heading	Is duplicated as Part 1270
§ 270.1	Definitions	§ 1270.1
§ 270.2	Enforcement procedures	§ 1270.2
§ 270.3	Penalties	§ 1270.3

34a. The authority citation for newly designated part 1270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

Chapter I, Subchapter B

PART 274a—[DUPLICATED AS PART 1274a]

Chapter V, Subchapter B

PART 1274a—CONTROL OF EMPLOYMENT OF ALIENS

35. All sections in part 274a are duplicated in part 1274a, as set out in the following table:

Part 274a	Heading	Is duplicated as Part 1274a
	Subpart A	
§ 274a.1	Definitions	§ 1274a.1
§ 274a.2	Verification of employment eligibility	§ 1274a.2
§ 274a.3	Continuing employment of unauthorized aliens	§ 1274a.3
§ 274a.4	Good faith defense	§ 1274a.4
§ 274a.5	Use of labor through contract	§ 1274a.5
§ 274a.6	State employment agencies	§ 1274a.6
§ 274a.7	Pre-enactment provisions for employees hired prior to November 7, 1986	§ 1274a.7
§ 274a.8	Prohibition of indemnity bonds	§ 1274a.8
§ 274a.9	Enforcement procedures	§ 1274a.9
§ 274a.10	Penalties	§ 1274a.10
§ 274a.11	Reserved	§ 1274a.11
	Subpart B	
§ 274a.12	Classes of aliens authorized to accept employment	§ 1274a.12
§ 274a.13	Application for employment authorization	§ 1274a.13
§ 247a.14	Termination of employment authorization	§ 1274a.14

35a. The authority citation for newly designated part 1274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

Chapter I, Subchapter B

PART 280—[DUPLICATED AS PART 1280]

Chapter V, Subchapter B

PART 1280—IMPOSITION AND COLLECTION OF FINES

36. All sections in part 280 are duplicated in part 1280, as set out in the following table:

Part 280	Heading	Is duplicated as Part 1280
§ 280.1	Notice of intention to fine; administrative proceedings not exclusive	§ 1280.1
§ 280.2	Special provisions relating to aircraft	§ 1280.2
§ 280.3	Departure of vessel or aircraft prior to denial of clearance	§ 1280.3
§ 280.4	Data concerning cost of transportation	§ 1280.4
§ 280.5	Mitigation or remission of fines	§ 1280.5
§ 280.6	Bond to obtain clearance; form	§ 1280.6
§ 280.7	Approval of bonds or acceptance of cash deposit to obtain clearance	§ 1280.7
§ 280.11	Notice of intention to fine; procedure	§ 1280.11
§ 280.12	Answer and request or order for interview	§ 1280.12
§ 280.13	Disposition of case	§ 1280.13
§ 280.14	Record	§ 1280.14
§ 280.15	Notice of final decision to district director of customs	§ 1280.15
§ 280.21	Seizure of aircraft	§ 1280.21
§ 280.51	Application for mitigation or remission	§ 1280.51
§ 280.52	Payment of fines	§ 1280.52
§ 280.53	Civil monetary penalties inflation adjustment	§ 1280.53

36a. The authority citation for newly designated part 1280 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

Chapter I, Subchapter B

PART 287—[DUPLICATED IN PART AS PART 1287]

Chapter V, Subchapter B

PART 1287—FIELD OFFICERS; POWERS AND DUTIES

37. The following sections in part 287 are duplicated in part 1287, as set out in the following table:

Part 287	Heading	Is duplicated as Part 1287
§ 287.4	Subpoena	§ 1287.4
§ 287.6	Proof of official records	§ 1287.6

37a. The authority citation for newly designated part 1287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

Chapter I, Subchapter B

PART 292—[DUPLICATED AS PART 1292]

Chapter V, Subchapter B

PART 1292—REPRESENTATION AND APPEARANCES

38. All sections in part 292 are duplicated in part 1292, as set out in the following table:

Part 292	Heading	Is duplicated as Part 1292
§ 292.1	Representation of others	§ 1292.1
§ 292.2	Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster.	§ 1292.2
§ 292.3	Professional conduct for practitioners—Rules and procedures	§ 1292.3
§ 292.4	Appearances	§ 1292.4
§ 292.5	Service upon and action by attorney or representative of record	§ 1292.5
§ 292.6	Interpretation	§ 1292.6

38a. The authority citation for newly designated part 1292 continues to read as follows:

Authority: Secs. 103, 262, 289, 66 Stat. 173, 224, 234; 8 U.S.C. 1103, 1302, 1359; 45 Stat. 401, 54 Stat. 670; 8 U.S.C. 226a, 451.

Chapter V, Subchapter B

PART 1299—IMMIGRATION REVIEW FORMS

39. Part 1299 is added to chapter V, subchapter C, to read as follows:

Sec.
1299.1 Use of immigration forms.
1299.2 Specific immigration review forms.

Authority: 8 U.S.C. 1103, 1252, 1429, 1443; Homeland Security Act of 2002, Pub. L. 107–296.

§ 1299.1 Use of immigration forms.

In addition to forms prepared by the Executive Office for Immigration Review, the Executive Office for Immigration Review, immigration judges, the Board of Immigration Appeals, and administrative law judges use forms listed under 8 CFR chapter I, part 299.

§ 1299.2 Specific immigration review forms.

The Director of the Executive Office for Immigration Review may designate the specific version of a form listed in 8 CFR chapter I, part 299, which shall be utilized in filings before the immigration judges, the Board of Immigration Appeals, and administrative law judges.

Chapter I, Subchapter C

PART 337—[DUPLICATED AS PART 1337]

Chapter V, Subchapter C

PART 1337—OATH OF ALLEGIANCE

40. All sections in part 337 are duplicated in part 1337, as set out in the following table:

Part 337	Heading	Is duplicated as Part 1337
§ 337.1	Oath of allegiance	§ 1337.1

Part 337	Heading	Is duplicated as Part 1337
§ 337.2	Oath administered by the Immigration and Naturalization Service or an Immigration Judge.	§ 1337.2
§ 337.3	Expedited administration of oath of allegiance	§ 1337.3
§ 337.4	When requests for change of name granted	§ 1337.4
§ 337.5	[Reserved]	§ 1337.5
§ 337.6	[Reserved]	§ 1337.6
§ 337.7	Information and assignment of individuals under exclusive jurisdiction	§ 1337.7
§ 337.8	Oath administered by the courts	§ 1337.8
§ 337.9	Effective date of naturalization	§ 1337.9
§ 337.10	Failure to appear for oath administration ceremony	§ 1337.10

40a. The authority citation for newly designated part 1337 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448; 8 CFR part 2.

41. All references in part 1003 to "§ 3." are revised to read "§ 1003.".

42. All references in part 1101 to "§ 101." are revised to read "§ 1101.".

43. All references in part 1103 to "§ 103.3" are revised to read "§ 1103.3"; references in part 1103 to "§ 103.4" are revised to read "§ 1103.4", and references in part 1103 to "§ 103.7" are revised to read "§ 1103.7'.

44. All references in part 1205 to "§ 205." are revised to read "§ 1205.".

45. All references in part 1208 to "§ 208." are revised to read "§ 1208.".

46. All references in part 1209 to "§ 209."are revised to read "§ 1209.".

47. All references in part 1211 to "§ 211." are revised to read "§ 1211.".

48. All references in part 1212 to "§ 212." are revised to read "§ 1212.".

49. All references in part 1215 to "§ 215." are revised to read "§ 1215.".

50. All references in part 1216 to "§ 216." are revised to read "§ 1216.".

51. All references in part 1235 to "§ 235." are revised to read "§ 1235.", except any reference to "235.7" shall not be revised.

52. All references in part 1236 to "§ 236." are revised to read "§ 1236.".

53. All references in part 1239 to "§ 239." are revised to read "§ 1239.".

54. All references in part 1240 to "§ 240." are revised to read "§ 1240.", except that any reference to "240.25" shall not be revised.

55. All references in part 1241 to "§ 241." are revised to read "§ 1241.".

56. All references in part 1244 to "§ 244." are revised to read "§ 1244.".

57. All references in part 1245 to "§ 245." are revised to read "§ 1245.".

58. All references in part 1246 to "§ 246." are revised to read "§ 1246.".

59. All references in part 1249 to "§ 249." are revised to read "§ 1249.".

60. All references in part 1270 to "§ 270." are revised to read "§ 1270.".

61. All references in part 1274a to "§ 274a." are revised to read "§ 1274a.".

62. All references in part 1280 to "§ 280." are revised to read "§ 1280.".

63. All references in part 1287 to "§ 287.4" are revised to read "§ 1287.4", and references to "§ 287.6" are revised to read "1287.6".

64. All references in part 1292 to "§ 292." are revised to read "§ 1292.".

65. All references in part 1337 to "§ 337." are revised to read "§ 1337.".

Chapter I, Subchapter C

PART 507—[REDESIGNATED AS 28 CFR Part 200]

28 CFR—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 200—ALIEN TERRORIST REMOVAL PROCEDURES

66. 8 CFR part 507 is transferred to 28 CFR chapter I and redesignated as part 200, consisting of § 200.1.

66a. The authority citation for part 200 continues to read as follows:

Authority: Pub. L. 105–277, 112 Stat. 2681.

Dated: February 26, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–4935 Filed 2–27–03; 8:45 am]

BILLING CODE 4410–30–P

Federal Register

Friday,
February 28, 2003

Part VIII

The President

Notice of February 27, 2003—Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Federal Register
Vol. 68, No. 40
Friday, February 28, 2003

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Title 3—

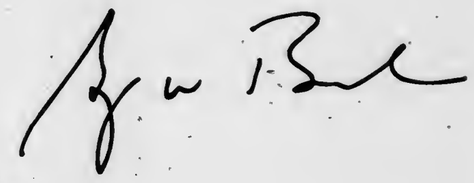
The President

Notice of February 27, 2003

Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, President Clinton declared a national emergency to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Government of Cuba of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. In July 1996 and on subsequent occasions, the Government of Cuba stated its intent to forcefully defend its sovereignty against any U.S.-registered vessels or aircraft that might enter Cuban territorial waters or airspace while involved in a flotilla and peaceful protest. Since these events, the Government of Cuba has not demonstrated that it will refrain from the future use of reckless and excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
Washington, February 27, 2003.

[FR Doc. 03–5016
Filed 2–27–03; 12:34 pm]
Billing code 3195–01–P

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S. 141/P.L. 108–8
To improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes. (Feb. 25, 2003; 117 Stat. 555)

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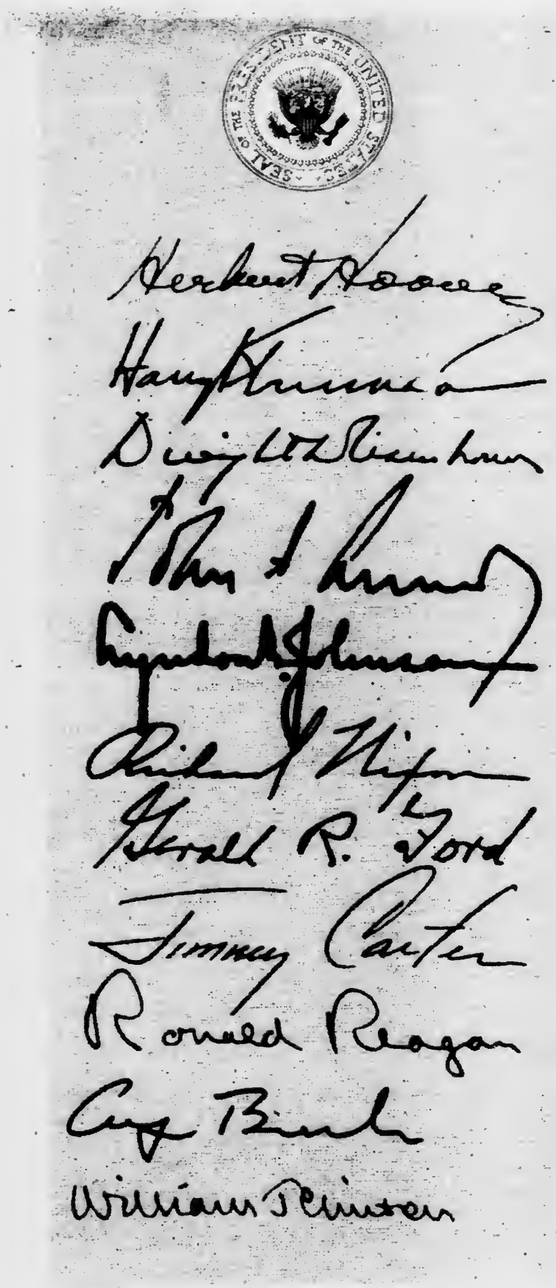
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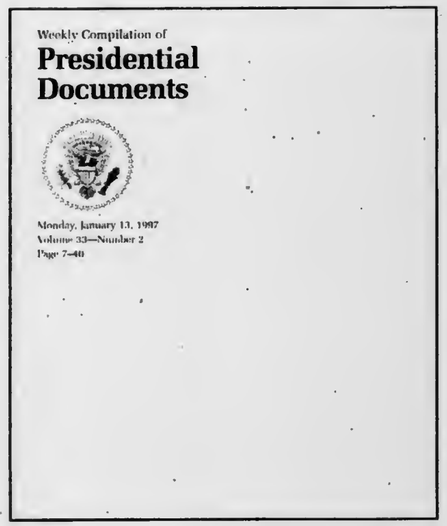
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Federal Register
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Monday, March 3, 2003

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–108–1]

Unshu Oranges From Honshu Island, Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of citrus fruit to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to non-citrus-producing States. We will continue to require fumigation if the fruit is distributed to citrus-producing States. This action is warranted to relieve a restriction that is not needed to mitigate pest risk.

DATES: This interim rule is effective March 3, 2003. We will consider all comments that we receive on or before May 2, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–108–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–108–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–108–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne VanDersal, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a disease that affects citrus and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in Japan infects the twigs, leaves, and fruit of a wide spectrum of citrus species.

Currently, the regulations in 7 CFR 319.28 (referred to below as the regulations) prohibit the importation of citrus from designated areas, with certain exceptions. One exception is for Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma mandarin) grown in citrus canker-free areas in Japan or on Cheju Island, Republic of Korea. After meeting certain growing, packing, and inspection requirements, Unshu oranges from these areas of Japan and the Republic of Korea may be imported into approved areas of the United States. Also, under the regulations in 7 CFR 301.11, the Unshu oranges may not be moved interstate from an approved area into or through any State, territory, or possession where importation is prohibited under part 319.

Unshu oranges from Kyushu Island, Japan, and Cheju Island, Republic of Korea, may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands. The importation of Unshu oranges from Honshu Island, Japan, had been similarly restricted, but in a final rule published in the **Federal Register** on February 1, 2002 (67 FR 4873–4877, Docket No. 99–099–2), we amended the regulations to provide for the importation of Unshu oranges from Honshu Island, Japan, into the citrus-producing States of Arizona, California, Florida, Hawaii, Louisiana, and Texas and required those oranges be fumigated with methyl bromide after harvest and prior to exportation to the United States. As a result of that final rule, Unshu oranges from Honshu Island, Japan, may be imported into any area of the United States except American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

The fumigation requirement was to ensure that Unshu oranges moved into citrus-producing areas of the United States would not introduce mealybugs, mites, and scale insects that could become established in climates where citrus is grown.

In the proposed rule (66 FR 19892–19898, Docket No. 99–099–1, published April 18, 2001) that preceded the February 2002 final rule, we acknowledged that these pests, if introduced into non-citrus-producing areas, would likely not survive due to the effects of climate and lack of host material. We applied the fumigation requirement to all shipments of Unshu oranges from Honshu Island so that there would be no restrictions on the distribution of the fruit within those areas of the United States where its importation is authorized.

We were unaware, however, of the potential economic consequences of this action for producers of Unshu oranges on Honshu Island who had, prior to the February 2002 final rule, been able to ship the Unshu oranges to non-citrus-producing areas of the United States without the mandatory fumigation. The government of Japan has informed us that the fumigation requirement has seriously curtailed this market, creating an economic hardship for Japanese growers and exporters.

Because fumigation is not a necessary pest risk mitigation measure if the Unshu oranges are not distributed in citrus-producing areas of the United States, this interim rule removes the

fumigation requirement for Unshu oranges from Honshu Island that will be distributed only in non-citrus-producing areas of the United States. To effect this change, we have amended § 319.28(b)(5) to specify that fumigation is required only for Unshu oranges from Honshu Island, Japan, that are to be imported into Arizona, California, Florida, Hawaii, Louisiana, or Texas. In addition, we have revised § 319.28(b)(7) to specify the different importation restrictions that apply to fumigated and unfumigated fruit produced on Honshu Island. This latter change will also serve to support the box marking provisions of § 319.28(b)(6)(i), which require the individual boxes in which the oranges are shipped to be stamped or printed with a statement specifying the States into which the Unshu oranges may be imported and from which they are prohibited removal.

Miscellaneous

In order to distinguish between *Citrus reticulata* Blanco varieties *unshu* and *satsuma*, we are removing the reference to Unshu oranges as also being known as Satsumas. Instead, we will refer to Unshu oranges as also being known as Satsuma mandarins. This distinction is important because the Unshu orange or Satsuma mandarin (*Citrus reticulata* Blanco var. *unshu*) is the variety imported from Japan. This variety is not grown commercially in the United States; however, another variety, the Satsuma (*Citrus reticulata* Blanco var. *satsuma*) is grown commercially in California.

Immediate Action

This rule relieves a restriction that is not necessary to mitigate pest risk. Immediate action is warranted to alleviate the negative economic effects that Japanese growers and exporters face as a result of our requirement to fumigate Unshu oranges from Honshu Island that are shipped to non-citrus-producing areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations governing the importation of citrus fruit to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to non-citrus-producing States. We will continue to require fumigation if the fruit is distributed to citrus-producing States. This action is warranted to relieve a restriction that is not needed to mitigate pest risk.

Our economic analysis for the changes in this document is set forth below. It provides an analysis of the potential effects on small entities as required by the Regulatory Flexibility Act.

Unshu oranges are a variety of mandarin orange currently allowed to be imported to the United States from Honshu Island, Japan, as long as they are fumigated with methyl bromide after harvest and before exportation. As a consequence of this interim rule, only Unshu oranges from Honshu Island that are destined for citrus-producing States will still require fumigation. Shipments of Unshu oranges from Honshu Island that are imported into non-citrus-producing States will not require methyl bromide fumigation, and the phytosanitary requirements will essentially revert to those that were in place before January 28, 2002.

Unshu oranges are a specialty fruit associated with the Christmas holiday season. They have a limited area of distribution in the United States and are significantly higher priced than domestically grown mandarin varieties that are similarly loose-skinned and seedless. The analysis focuses on these characteristics in describing the expected economic effects of this interim rule on small entities.

Unshu oranges from Japan are imported into the United States during a 1-month period, from about Thanksgiving until the latter part of December.[1] The fruit is purchased as a Christmas season specialty, and serves a traditional gift-giving role among Asian ethnic groups in particular, although demand is broadening to include all segments of the population.

In addition to a relatively short period of importation, the U.S. market for Unshu oranges is geographically limited. An estimated 70 percent of Unshu orange imports from Japan are sold in Alaska, and the remaining 30 percent are sold in the northwestern United States.

The niche market for Unshu oranges in the United States is all the more apparent when the quantity imported is compared to Canadian import levels. Whereas 8 to 10 containers of Unshu oranges from Japan may be imported in 1 season by the United States, as many as 300 containers are shipped per season to Canada, with sales beginning at least a month earlier than in the United States.

One type of citrus grown commercially in California that is somewhat similar to the Unshu orange is the Satsuma. The wholesale price of Satsumas is less than 50 cents per pound.[2] The wholesale import price of Unshu oranges ranges between $0.80 and $1 per pound.[3] This price difference is another indication of the distinct market for Unshu oranges in the United States. It is unlikely that they would substitute for domestically grown mandarins, particularly given their current geographical distribution.

Even if there were greater likelihood of substitutability, the quantity of Unshu oranges imported is too small to significantly affect U.S. demand for domestically grown mandarins. Table 1 shows imports of Unshu oranges from Japan and South Korea, 1998–2001. There was a significant increase in 2001 over 2000, due to imports from Korea increasing eleven-fold. Over the 4-year period, Japan's exports to the United States averaged about 282 metric tons. When the total quantity of imports for 2001 (3,087 metric tons) is compared to total U.S. tangerine production for the 2001–2002 season (419,000 metric tons), Unshu orange imports represent less than 1 percent of domestic tangerine production.[4]

[1] Information on Unshu orange imports from Japan into the United States and Canada provided by Rob Johns and Jerry Kraft of David Oppenheimer Ltd & Associates, the sole North American importer of Unshu oranges from Japan.

[2] Nearly all commercial production takes place in Fresno, Kern, and Tulare Counties, CA. Of these, only Fresno County has maintained information specific to Satsuma: In 1999, there were 650 acres, yields averaged 4.94 tons of fresh fruit per acre, and the price was about $1,000 per ton (Bruce Clayton, Office of the Fresno County Agricultural Commissioner).

[3] $18 to $22 per 22-pound box, Jerry Kraft, personal communication.

[4] NASS, "Citrus Fruits, 2002 Summary," p. 4. NASS data aggregate mandarin citrus under the heading "tangerine." Tangerine and mandarin both refer to *Citrus reticulata* varieties. If in fact the significant increase in imports from South Korea in 2001 was recorded in error, then Unshu orange imports would represent that much smaller a percentage of domestic tangerine production.

TABLE 1.—UNSHU ORANGE IMPORTS (IN KILOGRAMS) FROM JAPAN AND SOUTH KOREA, 1998–2001

Year	Japan	South Korea	Total
2001	247,681	2,839,200	3,086,881
2000	100,830	255,120	355,950
1999	388,918	403,050	791,968
1998	392,289	None	392,289

Source: APHIS port of entry data.
NOTE: Product designation varies by port, and therefore the annual totals may be subject to error.

There were no Unshu oranges imported into the United States from Japan for the 2002 season. The reason given by the importing firm is that there is a high risk that much of the fruit would not be marketable because of the effects of methyl bromide fumigation on quality. This interim rule, by rescinding the methyl bromide fumigation requirement for Unshu oranges imported from Honshu Island into non-citrus-producing States, will remove this marketing risk. Imports should then resume at a level comparable to that of recent years. The fumigation requirement will remain for imports into citrus-producing States. There is no history of such imports, and given the possible ill effects of fumigation on the quality of the fruit, near term sales to citrus-producing States would appear unlikely.

The entities affected by this rule will be U.S. retailers who sell Unshu oranges from Japan. Supermarkets and other grocery stores are considered small entities by the Small Business Administration if they have annual receipts of $23 million or less, and establishments primarily engaged in retailing fresh fruits and vegetables are considered small if their annual receipts are $6 million or less.[5] Most retailers that are expected to be affected by this rule are small entities. However, given the brief import period for this fruit and its geographically limited distribution, the number of retail establishments that may be affected is not expected to be substantial. Stores that do sell Unshu oranges will benefit from not having to rely solely on imports from South Korea. However, the benefit should be relatively small given that South Korea is the dominant supplier. In 2001, 92 percent of Unshu orange imports were supplied by South Korea and 8 percent by Japan.[6]

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule allows Unshu oranges to be imported into non-citrus-producing areas of the United States from Honshu Island, Japan, without fumigation. State and local laws and regulations regarding Unshu oranges imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 is revised to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.28, paragraph (b) is amended as follows:

a. In the introductory text, by adding the word "mandarin" after the word "Satsuma".

b. By revising paragraphs (b)(5) and (b)(7) to read as set forth below:

§ 319.28 Notice of quarantine.

* * * * *

(b) * * *

(5) To be eligible for importation into Arizona, California, Florida, Hawaii, Louisiana, or Texas, each shipment of oranges grown on Honshu Island, Japan, must be fumigated with methyl bromide after harvest and prior to exportation to the United States. Fumigation must be at the rate of 3 lbs./1,000 cu. ft. for 2 hours at 59 °F or above at normal atmospheric pressure (chamber only) with a load factor of 32 percent or below. Fumigation will not be required for shipments of oranges grown on Honshu Island, Japan, that are to be imported into States other than Arizona, California, Florida, Hawaii, Louisiana, or Texas.

* * * * *

(7) The Unshu oranges may be imported into the United States only through a port of entry listed in § 319.37–14 that is located in an area of the United States into which their importation is authorized. The following importation restrictions apply:

(i) Unshu oranges from Honshu Island, Japan, that have been fumigated in accordance with paragraph (b)(5) of this section may be imported into any area of the United States except American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(ii) Unshu oranges from Honshu Island, Japan, that have not been fumigated in accordance with paragraph (b)(5) of this section; Unshu oranges from Kyushu Island, Japan (Prefectures of Fukuoka, Kumamoto, Nagasaki, and Saga only); and Unshu oranges from Cheju Island, Republic of Korea, may be imported into any area of the United

[5] North American Industrial Classification System (NAICS) code 445110, Supermarkets and Other Grocery (except Convenience) Stores, and NAICS code 445230, Fruit and Vegetable Markets.

[6] If fumigated fruit had been imported in 2002 under the regulations in place for the shipping season, then a benefit of this rule would be any price reduction resulting from forgone fumigation expenses. However, since fumigated Unshu oranges are not being imported, the appropriate comparison is imports without fumigation versus no imports.

States except American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands.

* * * * *

Done in Washington, DC, this 26th day of February, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–4875 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM240, Special Conditions No. 25–227–SC]

Special Conditions: Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air, Inc. These airplanes, as modified, will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of the Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) and Air Data Sensor. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 21, 2003. Comments must be received on or before April 2, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM240, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM240. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 17, 2002, Royal Air, Inc., 2141 Airport Road, Waterford, Michigan 48327, applied for a supplemental type certificate (STC) to modify Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes approved under Type Certificate No. A10CE. The Learjet Model 24/25 series airplanes are small transport category airplanes powered by two turbojet engines, with maximum takeoff weights of up to 15,000 pounds. These airplanes operate with a 2-pilot crew and can seat 6 to 8 passengers. The modification incorporates the installation of the Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) and Air Data Sensor. The ADDU digital air data computing altimeter provides flight critical functions. These advanced systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Royal Air must show that the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The original type certification basis for the modified Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes includes 14 CFR part 25, dated February 1, 1965, through Amendments 25–2 and 25–4; and 14 CFR part 25, dated February 1, 1965, through Amendment 25–18, except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A10CE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirement of part 36, including Amendment 36–1.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Royal Air apply at a later date for design change approval to modify any other model already included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes will incorporate new Air Data Display Units (ADDU) and Air Data Sensor that will perform critical functions. These systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air, Inc.

These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air, Inc. Should Royal Air apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Learjet Model 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D and 25F airplanes modified by Royal Air, Inc.

1. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 21, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4796 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 304

Rules and Regulations Under the Hobby Protection Act

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") requests public comment on the overall costs, benefits, and regulatory and economic impact of its Rules and Regulations Under the Hobby Protection Act ("Rule"), as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until May 2, 2003.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format.)

Alternatively, the Commission will accept papers and comments submitted to the following e-mail address: *hobby@ftc.gov*, provided the content of any papers or comments submitted by e-mail is organized in sequentially numbered paragraphs. All comments and any electronic versions (*i.e.*, computer disks) should be identified as "16 CFR Part 304 Comment—Hobby Protection Act Rule. The Commission will make this notice and, to the extent possible, all papers and comments received in electronic form in response to this notice available to the public through the Internet at the following address: *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3038.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1973, Congress issued the Hobby Protection Act ("Act"), 15 U.S.C. 2101–2106. The Act requires manufacturers and importers of "imitation political items" [1] to mark "plainly and permanently" such items with the "calendar year" such items were manufactured. 15 U.S.C. 2101(a). The Act also requires manufacturers and importers of "imitation numismatic items" [2] to mark "plainly and permanently" such items with the word "copy." 15 U.S.C. 2101(b). The Act further provides that the Commission is to promulgate regulations for determining the "manner and form" that imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word "copy." 15 U.S.C. 2101(c).

Pursuant to the Act, in 1975 the Commission issued Rules and Regulations under the Hobby Protection Act, 16 CFR Part 304. The Rule tracks the definitions of terms used in the Act and implements the Act's "plain and permanent" marking requirements by establishing the sizes and dimensions of the letters and numerals to be used, the location of the marking on the item, and how to mark incusable and nonincusable items.[3] In 1988, the Rule was amended to provide additional guidance on the minimum size of letters for the word "copy" as a proportion of the diameter of coin reproductions.[4] 53 FR 38942 (Oct. 4, 1988).

II. Regulatory Review Program

The Commission has determined to review all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of its Rules and Regulations Under the Hobby Protection Act; possible conflict between the Rule and state, local, or other federal laws; and the effect on the Rule of any technological, economic, or other industry changes.

III. Request For Comment

The Commission solicits written public comment on the following questions:

(1) Is there a continuing need for the Rule as currently promulgated?

(2) What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

(3) Has the Rule imposed costs on purchasers?

[1] An imitation political item is "an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item." 15 U.S.C. 2106(2). The Act defines original political items as being any political button, poster, literature, sticker or any advertisement produced for use in any political cause. *Id.* at 2106(1). Political items dealers sell items such as presidential, local election, and cause-type buttons, pins, posters, tie clasps, cuff links, mugs, photos, inauguration invitations, marshal's badges, medals, ribbons and the like.

[2] An imitation numismatic item is "an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item." 15 U.S.C. 2106(4). The Act defines original numismatic items to include coins, tokens, paper money, and commemorative medals which have been part of a coinage or issue used in exchange or used to commemorate a person or event. *Id.* at 2106(3).

[3] Incusable items are those that can be impressed with a stamp.

[4] Prior to the amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer had to individually request from the Commission a variance from those requirements. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the placing of the word "copy" on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

(4) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers? How would these changes affect the costs the Rule imposes on firms subject to its requirements? How would these changes affect the benefits to purchasers?

(5) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements? Has the Rule provided benefits to such firms? If so, what benefits?

(6) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements? How would these changes affect the benefits provided by the Rule?

(7) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(8) Since the Rule was issued, what effects, if any, have changes in relevant technology, such as e-mail and the Internet, or economic conditions had on the Rule?

List of Subjects in 16 CFR Part 304

Hobbies, Labeling, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–4868 Filed 2–28–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 388

[Docket Nos. RM02–4–000, PL02–1–000; Order No. 630]

Critical Energy Infrastructure Information

February 21, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this final rule establishing a procedure for gaining access to critical energy infrastructure information (CEII) that would otherwise not be available under the Freedom of Information Act (FOIA). These restrictions and the final rule were necessitated by the terrorist acts committed on September 11, 2001, and the ongoing terrorism threat. The final rule adopts a definition of critical infrastructure that explicitly covers proposed facilities, and does not distinguish among projects or portions of projects. The rule also details which location information is excluded from the definition of CEII and which is included. The rule addresses some issues that are specific to state agencies, and clarifies that energy market consultants should be able to get access to the CEII they need. Finally, the rule modifies the proposed CEII process and delegates responsibility to the CEII Coordinator to process requests for CEII and to determine what information qualifies as CEII.

The final rule will affect the way in which companies submit some information, and will add a new process in addition to the FOIA for requesters to use to request information that is not already publicly available. These new steps will help keep sensitive infrastructure information out of the public domain, decreasing the likelihood that such information could be used to plan or execute terrorist attacks.

EFFECTIVE DATE: The rule will become effective April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Wilbur T. Miller, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6457.

SUPPLEMENTARY INFORMATION:

1. In this final rule, the Federal Energy Regulatory Commission (Commission) amends its regulations to address the appropriate treatment of critical energy infrastructure information (CEII) in the aftermath of the September 11, 2001, terrorist attacks on the United States of America. Under the Policy Statement issued in Docket No. PL02–1–000 on October 11, 2001 (Policy Statement), the Commission removed from easy public access certain documents that previously had been public.[1] In order to accomplish this step quickly, staff identified categories of document types that were likely to contain CEII, and those documents were removed from unrestricted public access. Persons seeking removed documents were directed to request the records using the Freedom of Information Act.[2]

2. On January 16, 2002, the Commission issued a Notice of Inquiry (NOI) in RM02–4–000 to determine what changes, if any, should be made to its regulations to restrict unfettered general public access to critical energy infrastructure information, but still permit those with a need for the information to obtain it in an efficient manner.[3] On September 5, 2002, the Commission issued a Notice of Proposed Rulemaking and Revised Statement of Policy (NOPR) in Docket Nos. RM02–4–000 and PL02–1–000.[4] The NOPR proposed procedures for submitting and requesting CEII, and proposed the creation of a new position of CEII Coordinator. The final rule adopts most of the procedures proposed in the NOPR and creates the new position.

3. The process adopted in the final rule offers a more efficient alternative to handling requests for previously public documents than does the FOIA, which the Policy Statement established as the short-term method for requesting previously public documents. The FOIA was useful in the short term where a great deal of information had been removed from public access, some of which the Commission ultimately ascertained did not actually contain CEII. As discussed in the NOPR, however, the FOIA process is not well suited for handling CEII requests.[5] The FOIA mandates disclosure of agency records unless the record falls within one of several specifically enumerated exemptions. Therefore, in order for CEII to be protected from disclosure, it must qualify for a FOIA exemption. For this reason, it is unlikely that requesters will obtain CEII through the FOIA process, although they could use the FOIA to obtain non-CEII portions of documents. In addition, under the FOIA, an agency may not distinguish among requesters based on their particular need for the information. Information given to one FOIA requester must be given to all requesters. The agency also may not restrict the recipient's use or dissemination of the information. All these factors make FOIA an unsatisfactory tool for the agency to use if it wishes to afford requesters with a specific need for information access to exempt and potentially dangerous information. Therefore, the Commission is adding § 375.313 to its regulations to authorize a Critical Energy Infrastructure Information Coordinator to process non-FOIA requests for CEII and make determinations regarding such requests.[6]

[1] *See* 67 FR 3129 (Jan. 23, 2002), IV FERC Stats. & Regs. ¶ 35,542.

[2] 5 U.S.C. 552.

[3] *See* 67 FR 3129, IV FERC Stats. & Regs. ¶ 35,542.

[4] *See* 67 FR 57994 (Sept. 13, 2002), IV FERC Stats. & Regs. ¶ 32,564.

[5] *Id.* at p. 57995, ¶ 32,564 at p. 34,539.

[6] Of course, the Commission emphasizes that requesters always retain the option of seeking information under the FOIA.

4. The NOPR revised the Policy Statement to restrict public access to documents containing detailed specifications of proposed facilities as well as existing facilities, while at the same time determining that basic location information should not be treated as CEII.[7] The final rule formalizes these policies in the regulations.

5. The Commission is issuing this rule under the authority of the Federal Power Act[8] and the Natural Gas Act[9] as the rule establishes a procedure for gaining access to documents collected or created pursuant to those acts that would not otherwise be available under the Freedom of Information Act, 5 U.S.C. 552. Accordingly, this order is subject to rehearing under section 313(b) of the Federal Power Act, 16 U.S.C. 824*l*(b), and section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b), and jurisdiction to review the order lies in the United States Courts of Appeals as provided in those sections.

I. Background

A. The Policy Statement

6. The September 11, 2001, terrorist attacks prompted the Commission to issue a policy statement on October 11, 2001, in PL02–1–000, addressing the treatment of previously public documents.[10] The Commission announced there that it would no longer make available to the public through its Internet site, the Records and Information Management System (RIMS), which has been replaced by the Federal Energy Regulatory Records Information System (FERRIS), or the Public Reference Room, documents such as oversized maps that detail the specifications of energy facilities already licensed or certificated under Part I of the Federal Power Act[11] and section 7(c) of the Natural Gas Act,[12] respectively. Rather, anyone requesting such documents was directed to follow the procedures set forth in section 388.108 of the Commission's regulations (Requests for Commission records not available through the Public Reference Room (FOIA Requests)).[13] The Policy Statement also instructed staff to report back to the Commission within 90 days on the impact of this newly announced policy on the agency's business.

B. Implementation of the Policy Statement

7. To implement the policy, the Commission's staff first disabled RIMS access to all oversized documents, which frequently contain detailed infrastructure information, and also removed them from the Public Reference Room.[14] Staff next identified and disabled or denied access to other categories of documents dealing with licensed or exempt hydropower projects, certificated natural gas pipelines, and electric transmission lines that appeared likely to include critical energy infrastructure information. This effort, which was undertaken as cautiously and methodically as possible, affected tens of thousands of documents.

8. From the issuance of the Policy Statement until mid-January 2003, the Commission received 212 FOIA requests for documents that were not available to the public because of the Policy Statement. The Commission has responded to or otherwise resolved all of these requests. To date, only two CEII requesters have filed timely administrative appeals of the decisions to withhold documents, both of which involved requests for FERC Form No. 715. Nothing is pending in court.

C. The Notice of Inquiry

9. Three months after the Commission issued the Policy Statement, it issued the Notice of Inquiry (NOI).[15] The NOI set forth the Commission's general views on how it intended to treat previously public documents, and asked specific questions on the scope and implications of maintaining the confidentiality of certain previously public documents. The NOI advised infrastructure owners that they could seek confidential treatment of filings or parts of filings that, in their opinion, contain CEII, following the existing procedures in § 388.112 of the Commission's regulations,[16] and by referencing Docket No. PL02–1–000 on the first page of the filing. Approximately 50 entities responded to the NOI, with a handful of commenters filing some portion of their filing nonpublic.

D. The Notice of Proposed Rulemaking and Revised Policy Statement

10. On September 5, 2002, the Commission issued the Notice of Proposed Rulemaking and Revised Statement of Policy (NOPR) in Docket Nos. RM02–4–000 and PL02–1–000.[17] The NOPR proposed to establish a CEII Coordinator with delegated authority to process requests for CEII, and proposed regulations governing submission of CEII and requests for CEII.[18] It also revised the Policy Statement to extend CEII protection to information regarding proposed facilities and eliminate CEII protection for information that only reveals the location of the facility.[19] The Commission received more than forty comments in response to the NOPR. A list of commenters is attached as Appendix A.

II. Discussion

A. The Need for Action

11. As was the case with the NOI, most commenters agree that security considerations make it advisable for the Commission to continue to protect CEII. A few commenters, however, maintain that such protection is either unnecessary to protect the public or outweighed by the benefits of making the information available. Some contend that CEII will be of little use to terrorists,[20] an assertion with which some commenters specifically disagree.[21] Some commenters believe that the NOPR did not adequately take into account the value of making information such as CEII available to the public, and specifically the media.[22]

[7] 67 FR 57994 at p. 57995, FERC Stats. & Regs. ¶ 32,564 at p. 34,539.

[8] 15 U.S.C. 717, *et seq.*

[9] 16 U.S.C. 791a, *et seq.*

[10] *See* 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,030. Shortly after the attacks, the Commission issued another policy statement in Docket No. PL01–6–000, in which it provided guidance to regulated companies regarding extraordinary expenditures necessary to safeguard national energy supplies. *See* 96 FERC ¶ 61,299 (2001). The Commission recognized there that electric, gas, and oil companies may need to adopt new procedures, update existing procedures, and install facilities to further safeguard their systems, and that these efforts might result in extraordinary expenditures. The Commission assured these companies that it would give its highest priority to processing any filing made for the recovery of such expenditures. *See, e.g., Colonial Pipeline Co.*, 100 FERC ¶ 61,035 (2002) (approving Colonial's security surcharge mechanism).

[11] 16 U.S.C. 719a, *et seq.*

[12] 15 U.S.C. 717f(c).

[13] 18 CFR 388.108 (2002).

[14] OMB Watch has misunderstood what was meant by oversized documents, stating "[c]learly file size was used as a criterion for removal of information," terming this a "blunt and clumsy approach." OMB Watch at p. 3. As explained in the Policy Statement, the Commission removed "documents, such as oversized maps." "Oversized" refers to the size of the page itself, not the length of the document. Oversized documents generally contain maps and detailed diagrams, both of which were deemed likely to contain CEII, keeping in mind that location information of existing facilities was being protected at that time.

[15] *See* 67 FR 3129, IV FERC Stats. & Regs. ¶ 35,542.

[16] 18 CFR 388.112.

[17] *See* 67 FR 57994, IV FERC Stats. & Regs. ¶ 32,564.

[18] *Id.* at p. 58001, ¶ 32,564 at p. 34,550.

[19] *Id.* at p. 58000, ¶ 32,564 at pp. 34,547–48.

[20] *E.g.*, American Library Association at p. 2; Lydia Olchoff at p. 1; Reporters Committee for Freedom of the Press and the Society of Environmental Journalists (Reporters Committee) at p. 3.

[21] *E.g.*, GE Power Systems Energy Consulting (GE) at pp. 2–3.

[22] *E.g.*, American Library Association at p. 1; OMB Watch at p. 1, 4.

One commenter contends, for example, that the media has used such information to expose safety hazards in pipelines.[23]

12. The Commission remains convinced that the responsible course is for it to protect CEII. The arguments that such protection is unnecessary are speculative and unconvincing. For instance, one commenter points to an estimate that seventy percent of infrastructure attacks come from insiders as evidence that CEII is unlikely to aid an attack,[24] while another states that "the possibility that terrorists will study government records and take advantage of perceived weaknesses is speculative."[25] The Commission is not prepared to stake the public's safety on this reasoning. According to the National Infrastructure Protection Center, the energy sector is considered one of the most attractive terrorist targets.[26] According to media reports, the FBI identified "multiple casings of sites" where users routed through switches in Saudi Arabia, Indonesia, and Pakistan examined "emergency phone systems, electrical generation and transmission, water storage and distribution, nuclear power plants and gas facilities."[27] Where vulnerable areas exist, the Commission believes its responsibility is to reduce risks rather than to wait for proof that an attack is imminent or even likely.

13. The Commission also is unconvinced that the general public's need for information warrants the risk of disclosure of CEII. The "need to know" has never been absolute: the FOIA itself recognizes this principle by having nine exemptions, and the NOPR proposed to do nothing more than rely upon FOIA exemptions in withholding CEII.[28] The Commission received no convincing arguments in response to the NOPR that there are practical benefits from public availability of CEII that would outweigh possible dangers from attacks on energy infrastructure. Furthermore, this rulemaking is intended to provide an avenue for disclosure in instances where there might be some benefit. The Commission has attempted to strike the best balance possible between the benefits of information and the protection of people and property.

B. Legal Authority to Protect CEII

14. In the NOI that initiated this rulemaking, the Commission invited comments on statutes that might affect the Commission's ability to protect CEII. The FOIA was identified as the statute that could mandate disclosure of some sensitive information. After receiving comments from many commenters, the Commission set out its view, in the NOPR, that one or more of several FOIA exemptions would most likely apply to CEII,[29] namely: (1) Exemption 2, which exempts "records related solely to the internal personnel rules and practices of an agency";[30] (2) Exemption 4, which protects from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential";[31] and (3) Exemption 7, which protects from disclosure certain law enforcement information, including information the disclosure of which might jeopardize a person's life or safety.[32]

15. Most commenters agree with the Commission's belief that one or more of these three exemptions would apply to CEII,[33] and the Commission adopts the analysis in the NOPR to support its decision here.[34] Some, however, either express concerns about the Commission's analysis of one or more exemptions or outright disagree with that analysis.[35] A few commenters assert that the Commission was somehow overriding the FOIA[36] by creating an "extra-legal category of protected information,"[37] or by making CEII non-requestable under the FOIA.[38]

16. The comments asserting that the Commission is somehow attempting to abrogate or circumvent the FOIA reflect a fundamental misunderstanding of this rulemaking. The Commission expressly acknowledged in the NOPR its continuing obligation to comply with the FOIA.[39] This rule does not exempt any information from disclosure under that statute unless it falls within an existing exemption, abrogate in any way the right of any person to submit a request under the FOIA, or make any document or category of documents non-requestable or otherwise not subject to the FOIA. It is not the function of this rule to make any document unavailable that would otherwise be available absent this rulemaking. Instead, the purpose of this rulemaking is to establish a mechanism for making available certain categories of documents that would otherwise be unavailable.

17. The discussion of the FOIA exemptions in the NOPR reflects the Commission's view that a re-evaluation of information access policies, including analysis of the FOIA provisions, is dictated by the changed understanding of safety issues resulting from the 9/11 tragedy.[40] That re-evaluation would be needed regardless of any regulation governing access to CEII. It becomes relevant here as a part of the reasoning behind this rulemaking, but it should not be mistaken for a determination as to whether any specific piece of information is accessible under the FOIA. A FOIA requester has a right to receive an individualized determination based on the document(s) requested. The Commission has not made, and cannot properly make, generic determinations as to whether FOIA exemptions apply. Accordingly, specific arguments with respect to Exemptions 2, 4, and 7 addressed in the NOPR,[41] and raised again here,[42] are best

[23] Reporters Committee at p. 3–4. The Commission does not, however, have jurisdiction over pipeline safety issues, which belongs to the Department of Transportation. *See* 49 U.S.C. Chapter 601.

[24] American Library Association at p. 2.

[25] Reporters Committee at p. 3.

[26] *See* National Infrastructure Protection Center Advisory 02–007 (September 10, 2002) (identifying most attractive targets as transportation and energy sectors and "[f]acilities or gatherings that would be recognized worldwide as symbols of American power or security.") The National Infrastructure Protection Center's mission is to serve as the United States government's focal point for threat assessment, warning, investigation and response for threats or attacks against critical infrastructures, including energy and water systems.

[27] *See The Washington Post, Cyber-Attacks by Al Qaeda Feared*, June 27, 2002, p. A01.

[28] 67 FR 57994 at p. 57996, FERC Stats. & Regs. ¶ 32,564 at p. 34,541.

[29] *Id.* at pp. 57997–800, ¶ 32,564 at pp. 34,542–46.

[30] 5 U.S.C. 552(b)(2).

[31] 5 U.S.C. 552(b)(4).

[32] 5 U.S.C. 552(b)(7)(F).

[33] *E.g.*, American Electric Power System at p. 1; Duke Energy Corporation (Duke) at p. 7; Edison Electric Institute (EEI) at pp. 6–7; Southern California Edison Company (SCE) at p. 10; Southern Company Services, Inc. (Southern) at p. 2; Washington Legal Foundation and Public Interest Clinic, George Mason University School of Law (Washington Legal Foundation) at pp. 5–6.

[34] For the public's convenience, the Commission's FOIA analysis is reiterated in Appendix B.

[35] *E.g.*, Hydropower Reform Coalition (HRC) at p. 3; Massachusetts Energy Facilities Siting Board at p. 3; National Association of Regulatory Utility Commissioners (NARUC) at pp. 3, 7–10, 12–15; OMB Watch at pp. 4–6; Reporters Committee at pp. 2, 4, 7; joint comments of the Public Utilities Commission of Ohio, the Michigan Public Service Commission and the Oklahoma Corporation Commission (States) at pp. 3, 7–10, 12–17; Whitfield Russell Associates at p. 8.

[36] OMB Watch at pp. 4–5; Reporters Committee at pp. 2, 7.

[37] American Library Association at p. 2.

[38] OMB Watch at p. 4.

[39] 67 FR 57994 at p. 57996, FERC Stats. & Regs. ¶ 32,564 at p. 34,541.

[40] *Id.* at pp. 57996–800, ¶ 32,564 at pp. 34,541–46.

[41] *Id.*

[42] *E.g.*, NARUC at p. 12; States at p. 13; OMB Watch at p. 5; Whitfield Russell Associates at p. 8 (harm resulting from terrorist attacks would not constitute competitive harm under Exemption 4); Reporters Committee at p. 7; OMB Watch at p. 6 (information that was previously public is not protected under the FOIA).

resolved in the context of particular FOIA requests, where submitters have the opportunity to enumerate potential competitive harm associated with release, and where the Commission can evaluate the harm of releasing that particular information. For purposes of this rulemaking, however, the Commission continues to believe that the types of information it has identified as CEII are exempt from disclosure under the FOIA.

18. As a separate matter, some commenters raise issues concerning the Commission's experience with Exemption 7 and question whether it applies outside the context of criminal investigations.[43] In particular, OMB Watch wonders how the Commission could have removed from public access tens of thousands of documents on the basis that they were compiled for law enforcement purposes and asks whether the Commission ever relied upon Exemption 7 prior to the 9/11 attack.[44] With respect to OMB Watch's first argument, the Commission did not remove thousands of documents from public access in October 2001 based on Exemption 7. The Commission removed them because they fit within certain categories of documents that were identified as likely to contain information that could be harmful in the hands of terrorists. The Commission did not do a document-by-document review of these documents to determine whether they contained information exempt from disclosure under the FOIA. In response to OMB Watch's second point, the Commission has relied from time to time on Exemption 7 prior to 9/11.[45] More to the point, it has long been recognized that Exemption 7 applies to civil as well as criminal law enforcement.[46] OMB Watch is likewise mistaken that the Commission will claim that all information it collects constitutes law enforcement information.[47] The Commission has no such intention because it recognizes that Exemption 7 does not protect all law enforcement information, but only certain limited types, such as information the disclosure of which might interfere with enforcement proceedings or endanger the safety of an individual.[48]

19. Some commenters raise administrative issues. They assert, for example, that this rulemaking will improperly remove functions from qualified "access professionals," and that the Commission has not adequately explained what qualifications the CEII Coordinator must possess.[49] These concerns are misplaced. As stated above, FOIA requests will continue to be processed according to the Commission's established FOIA procedures and the Commission's FOIA staff. The Commission's goal in appointing the CEII Coordinator will be the same as its goal in assigning staff to handle FOIA requests, or for that matter all of its staff: to ensure that employees are qualified and properly trained to handle their appointed responsibilities. Moreover, as explained below in the discussion on the use of a CEII Coordinator, the Coordinator will be free and indeed encouraged to consult with the staff who provides advice and recommendations on FOIA responses.

20. Some commenters ask whether the Commission will automatically transfer a FOIA request to the CEII Coordinator if it turns out that the requested information is CEII.[50] The answer is, generally no. If a requester files a FOIA request and does not follow the procedures for seeking access to CEII, the request will be handled as a FOIA request and, if the requested information is exempt from disclosure, it will be withheld. The requester will, however, be notified that the information, although exempt from disclosure under the FOIA, may be accessible under the CEII procedures. If the requester seeks access under both the FOIA and CEII procedures, Commission staff will coordinate the response.

21. The Commission received comments questioning whether a utility must claim CEII status for information in order for it to qualify for protection under Exemption 4.[51] The information either is or is not CEII. Thus, a claim that information is CEII is not necessary for the information to qualify as such. For the same reason, a claim that information is CEII will not necessarily qualify it as CEII. Accordingly, a submitter's ability to claim protection under Exemption 4 in particular is not, and cannot be, conditioned on a claim of CEII status. Information may qualify for Exemption 4 protection and not be CEII, just as information may qualify for CEII protection and not fit within Exemption 4, as long as it fits within another FOIA exemption.

22. As stated above, the Commission recognizes that it is bound by the FOIA. Where the FOIA affords certain rights to submitters of information, the Commission remains obligated to recognize those rights, just as it remains obligated to recognize the rights of FOIA requesters. Nevertheless, if a utility fails to claim CEII status for information that would qualify as CEII, the risk that the information will be disclosed is increased because Commission staff may not become fully aware of the dangers of disclosing it. Commission staff will endeavor to identify CEII in processing requests, including information for which submitters have not claimed CEII status, but proper determinations about what information should be released under the FOIA will be easier to make where submitters identify information they believe to constitute CEII.

23. Finally, some requesters express concern whether the Commission will provide adequate information about decisions not to disclose CEII, including information that would allow requesters to challenge claims of competitive harm.[52] Determinations of competitive harm would occur as part of the FOIA process and would be subject to existing FOIA procedures. The Commission informs a FOIA requester of the reason(s) for withholding information and the requester may appeal that determination to the Commission's General Counsel and ultimately to a United States District Court.[53] This rulemaking makes no changes to that procedure. Where information that is exempt from disclosure under the FOIA is found to be CEII, as noted, the Commission will so notify the requester.

C. Definition of CEII

24. The NOPR proposed to define CEII in § 388.113(c)(1) of the Commission's regulations[54] as:

> Information about proposed or existing critical infrastructure that: (i) Relates to the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the location of the critical infrastructure.[55]

This definition departed from the prior policy in that it covered proposed facilities as well as existing facilities, and in that it excluded from the definition of CEII information regarding the location of the infrastructure. The majority of comments regarding the proposed CEII definition involve the meaning of "critical infrastructure," the exclusion of location information, and the inclusion of information about proposed facilities.

1. Definition of Critical Infrastructure

25. A crucial element in defining CEII is determining what qualifies as "critical infrastructure." The NOPR proposed to define critical infrastructure as:

> Systems and assets, whether physical or virtual, that are so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on the security, national economic security, national public health or safety, or any combination of those matters.[56]

The NOPR proposed definition of critical infrastructure was taken directly from the USA PATRIOT Act (Act).[57] In proposing that definition, the Commission believed that all components of the energy infrastructure would qualify as critical infrastructure based on a finding in the Act that "[p]rivate business, government, and the national security apparatus increasingly depend on an interdependent network of critical physical and information infrastructures, including telecommunications, energy, financial services, water and transportation sectors."

26. Some commenters agree with the proposed CEII definition, with EEI noting that "[e]lectricity is an essential public service that sustains public health and welfare, including * * * the provision of power for heating and air conditioning, water supply, street and building, hospital services, food storage and processing, computers, and other electrical equipment," and as such, is vital to the nation's health, security, and economy.[58] Other commenters, however, are concerned that the language could be read to extend CEII coverage only to very large or "vital" projects. For example, the Interstate Natural Gas Association of America (INGAA) requests that the Commission revise the definition of "critical infrastructure" to include "all facilities used in the production, generation, transportation, transmission, or distribution of energy."[59] Conversely, the HRC recommends that the Commission consider "only certain documents of high-risk, high priority cases to be available for CEII protections."[60] Some commenters recommend that the Commission leave it up to the infrastructure owner to determine whether its project qualifies as critical infrastructure,[61] while other commenters voice concern that the definition of CEII is too broad.[62] In this regard, Reporters Committee states that "[b]y defining CEII in a way that can have all major energy infrastructure fall under the CEII rubric, FERC maximizes the control it maintains over information."[63]

27. No matter how broadly or narrowly the Commission defines critical infrastructure, in order to qualify for protection as CEII, the information must be useful to terrorists in planning an attack, be exempt from disclosure under the FOIA, and not merely give the location of the infrastructure. This effectively limits the scope of CEII protection. Moreover, the Commission does not want to define CEII in an ambiguous way that will invite disputes over which facilities are covered. The definition of critical infrastructure should encompass all facilities and components of facilities, not just facilities above a certain threshold. Even though a project may be small, destruction of the project could have serious consequences, particularly where it is part of a larger overall system. It is also important to the Commission that computer systems that control or are part of the energy infrastructure are covered. Therefore, the final rule defines critical infrastructure in new § 388.113(c)(2) of the Commission's regulations[64] as "existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters."

2. Information on Location of Facilities

28. The majority of commenters object to the Commission's decision not to classify location information as CEII.[65] In this regard, some question the Commission's assumption that location information is still publicly available in the wake of September 11.[66] Others posit that the Commission should be a trailblazer, protecting location information even where it is publicly available elsewhere.[67] Certain commenters argue that while the Commission should not protect information that is publicly available from other sources, such as USGS or commercial maps, other location information may warrant protection.[68] Still others contend that information above a certain level of detail should be protected,[69] for example, "location of

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[43] *E.g.*, OMB Watch at p. 7; Reporters Committee at p. 6.

[44] OMB Watch at p. 7.

[45] A review of the Commission's Annual FOIA reports for FY 1998 through 2001 indicates that the Commission relied on Exemption 7 in Fiscal Years 2001 and 1998, specifically citing exemption 7(A) eight times, 7(B) two times, 7(C) three times, 7(D) two times, and 7(E) five times during those two fiscal years. The Commission also relied on Exemption 7(F) more recently in modifying its practice of making the entirety of FERC Form No. 715 available to the public. *See* Order on Treatment of Information Collected in Form No. 715, 100 FERC ¶ 61,141 (2002).

[46] *E.g.*, *Detroit Free Press, Inc.* v. *DOJ*, 73 F.3d 93, 96 (6th Cir. 1996); *Williams* v. *IRS*, 479 F.2d 317, 318 (3rd Cir. 1973).

[47] *See* OMB Watch at p. 7.

[48] 5 U.S.C. 552(b)(7).

[49] OMB Watch at p. 7; Reporters Committee at pp. 4–5.

[50] NARUC at p. 24; States at p. 24.

[51] NARUC at p. 13; States at p. 14.

[52] NARUC at pp. 23–24; States at pp. 24–25.

[53] 18 CFR 388.108(c)(1), 388.110 (2002).

[54] 18 CFR 388.113(c)(1) (2002).

[55] 67 FR 57994 at p. 58000, FERC Stats. & Regs. ¶ 32,564 at p. 34,548.

[56] *Id.* at pp. 58000–01, ¶ 32,564 at p. 34,548.

[57] Pub. L. 107–56.

[58] EEI at p. 2.

[59] INGAA at p. 3.

[60] HRC at p. 5.

[61] *E.g.*, MidAmerican Energy at p. 3; National Grid USA at p. 5.

[62] *E.g.*, HRC at p. 4; Reporters Committee at p. 8; Society of Professional Journalists at p. 2.

[63] Reporters Committee at p. 8.

[64] *See* new 18 CFR 388.113(c)(2).

[65] *E.g.*, American Gas Association at pp. 1–2; Bonneville Power Administration (BPA) at pp. 3–4; Duke at p. 14; INGAA at pp. 8–11; MidAmerican Energy Company (MidAmerican) at pp. 6–7; National Grid USA at pp. 3 and 5; National Hydropower Association at p. 5; Northwest Natural Gas Company (Northwest Natural) at pp. 4–8; Pacific Gas & Electric (PG&E) at p. 1; Williston Basin Interstate Pipeline Company (Williston Basin) at pp. 4–6.

[66] *E.g.*, BPA at p. 4; Duke at p. 13 (citing articles claiming that numerous groups, including the Bureau of Transportation Statistics, the Department of Energy (DOE), the International Nuclear Safety Center, the Department of Transportation (DOT), the National Imagery and Mapping Agency and the United States Geological Survey, removed geographic information from open public access after September 11); EEI at pp. 8–9 (stating that DOE has removed information regarding nuclear facilities containing weapons-grade plutonium or highly enriched uranium, DOT has removed interactive oil pipeline maps, and the Energy Information Agency has removed similar information); and INGAA at p. 10.

[67] *E.g.*, American Gas Association at p. 2; Northwest Natural at pp. 7–8; INGAA at pp. 10–11; PG&E at p. 1; Williston Basin at pp. 4–5. These commenters believe that if the Commission protects this information, others may follow suit, eventually "aging" the information in the public domain, making it less useful to potential terrorists. The Commission appreciates these commenters' views, but believes that while this information might gradually become outdated in the public domain, the probability is remote given the availability of GPS equipment and commercial satellite images.

[68] *E.g.*, PJM Interconnection (PJM) at p. 2, SCE at p. 5. For its part, INGAA, an advocate of protecting location information, concedes "[t]o the extent that maps and/or location information are generally and readily available to the public and contain only non-detailed information of the location of energy facilities [such as state- or county-level maps]," such information could be excluded from the definition of CEII. INGAA at p. 8.

[69] *E.g.*, GE at p. 6 (location of certain types of equipment, such as "phase-angle regulators or critical FACTS devices" should be protected); MidAmerican at p. 6; National Hydropower Association at p. 5 (protect information that provides "details of the sensitive parts of facilities"); North American Electric Reliability Council (NERC) at pp. 4–5 (protect "detailed network topology maps and the details of the interactions performed by Supervisory Control and Data Acquisition (SCADA) and Energy Management Systems (EMS)"; Northwest Natural at p. 5 ("assumes that medium to highly detailed facility location maps" will be protected); PG&E at p. 6.

key communication facilities, control centers, and switching facilities,"[70] and information that "identifies major transmission interconnections and other system components."[71]

29. The Commission has considered the commenters' arguments and suggestions especially with respect to protecting information that may otherwise be available to the public. For this purpose, a check of the Internet revealed that some of the information that had been removed after September 11 is once again available. For instance, the International Nuclear Safety Center currently has interactive maps available on its web site,[72] and the United States Geological Survey lists a variety of maps for sale, including 7.5 minutes maps.[73] Although some information, such as the DOT pipeline maps have not been restored to public access, the Commission believes that there are publicly available sources that would enable a terrorist to locate most energy infrastructure. Without further guidance from the Congress or the Administration, the Commission is reluctant to withhold from public access location information that is otherwise available.

30. The Commission concludes nevertheless that there is some "location" information that does warrant protection as CEII. The Commission intends to release location information generally needed to participate in the National Environmental Policy Act (NEPA) process, while protecting information containing technical details not usually needed by most NEPA participants. Accordingly, the Commission considers the following types of gas and hydropower location information as outside the definition of CEII: (1) USGS 7.5-minutes topographic maps showing the location of pipelines, dams, or other aboveground facilities; (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps. In order to alleviate commenters' concerns about making this information so easily available, the Commission instructs filers to segregate this non-CEII location information into a separate volume or appendix, label it clearly "Non-Internet Public," and submit it with instructions that it not be placed on the Internet.[74] To the extent permissible and practical, the Commission will adhere to those instructions, but the information will still be publicly available through the Public Reference Room.

31. Conversely, the Commission considers the following gas information to qualify as CEII because it provides more than just location: (1) Diagrams of valve and piping details at compressor stations, meter stations, LNG facilities, and pipeline interconnections; (2) flow diagrams and other drawings or diagrams showing similar details such as volumes and operating pressures like those found in Exhibit G; (3) environmental resource reports for LNG facilities, and (4) drawings matching labels with specific buildings at the site, *e.g.*, central gas control centers or gas control buildings.

32. Similarly, examples of hydropower location-related information that the Commission considers to be CEII include: (1) General design drawings of the principal project works (*e.g.*, plan, elevation, profile, and section of dam and powerplant), such as those found in Exhibit F; (2) maps of projects (including location of project works with respect to water bodies, permanent monuments, or other structures that can be noted on the map and recognized in the field), such as those found in Exhibit G; (3) drawings showing technical details of a project, such as plans and specifications, supporting design reports, Part 12 independent consultant reports,[75] facility details, electrical transmission systems, and communication and control center information; (4) locations of critical or vulnerable components of the project; (5) innundation information; and (6) global positioning system (GPS) coordinates of any project features (precise surveyed or GPS coordinates at or above two decimal points of accuracy of equipment and structures).

33. A filing such as a license or certificate application could contain a variety of information falling into one or more of the following categories: public, non-Internet public information, nonpublic CEII, and other nonpublic privileged. In that case, the preferred method of filing would be to segregate each type of information into separate volumes or appendices, each clearly marked with the appropriate heading, and with a cover letter explaining the treatment each volume/appendix should receive as follows:

- The public volume/appendix should be marked "Public," although public is the default treatment for unmarked documents
- The non-internet public volume/appendix containing non-CEII location information should be marked "Non-Internet Public"
- The CEII volume/appendix should be marked "Contains Critical Energy Infrastructure Information—Do Not Release," in accordance with § 388.112(b), and
- Any other nonpublic privileged volumes/appendices should be marked "Contains Privileged Information—Do Not Release."

Filers should note that any filing containing non-Internet public, CEII or other privileged information currently may not be submitted using the electronic filing process.

34. The electric transmission grid differs from dams and pipelines in that the Commission does not have regulatory responsibilities over the siting or licensing of these facilities. Therefore, the Commission is not charged with conducting the NEPA reviews on these facilities. For that reason, there is far less need for the public as a whole to have unfettered access to location information submitted to the Commission regarding the electric grid. Some companies state that portions of FERC Form No. 715, Annual Transmission Planning and Evaluation Report, should fall outside the definition of CEII because it is location information.[76] The Commission disagrees. Certain information in Part 3 of FERC Form No. 715 is not intended primarily to identify the location of the facilities, but rather to show the interrelationship of facilities. Therefore, the Commission considers Part 3 transmission system maps and diagrams used by the utility for transmission planning to be CEII.

3. Information Regarding Proposed Facilities

35. In the NOPR, the Commission reversed its earlier position that information relating to proposed facilities should not be treated as CEII.[77] As noted in the NOPR, "[t]he major concern initially about withholding information about proposed projects was that people might not be able to participate effectively in the National Environmental Policy Act (NEPA) process."[78] After the Policy Statement was issued in October 2001, the Commission treated information that identified location of existing, certificated or licensed facilities as CEII. It recognized that it would be nearly impossible for people to participate effectively in the NEPA process without access to specific information regarding the location of the proposed facility, the area it affects, and the resources it impacts. For that reason, the Policy Statement contemplated the release of CEII regarding proposed facilities, and then the protection of the information as CEII once a certificate or license was issued.[79] This resulted in a fairly cumbersome process and raised the concern that a patient terrorist could collect CEII-type information on proposed projects and then use that information to cause harm to the project and the people living and working in its vicinity once it was built.

36. In the NOPR, recognizing the inconsistency in this approach, the Commission revised the Policy Statement to restrict access to detailed technical information relating to proposed facilities, while at the same time revising the policy to cease protecting location information as CEII.[80] The majority of commenters approve of the decision to include proposed facilities,[81] with only the HRC explicitly disagreeing.[82] As explained in the NOPR, the Commission believes that as long as basic location information is not treated as CEII, protection of other sensitive information about proposed facilities will help protect the infrastructure without interfering with the NEPA process.[83] For example, most NEPA commenters will want to know the location of a proposed pipeline and the footprint of aboveground facilities, but few will need diagrams of valve and piping details, or flow diagrams, or need to know which building will house security and which one will house the computer operations center. Those who do have such a need may file a request for that information using the CEII request procedures in new § 388.113(d) of the Commission's regulations.[84]

37. Duke Energy suggests that the Commission clarify that the definition of CEII extends to "component parts of such systems or assets or * * * formal proposals to create such systems or assets including component parts thereof,"[85] voicing concern that the requirement that the infrastructure be vital to the nation's health, security, and economy "presupposes that the "infrastructure" in question is already in place," effectively excluding information about proposed facilities.[86] As discussed above, the Commission is changing the definition of critical infrastructure in new § 388.113(c)(2) of its regulations[87] to encompass "existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters." This revised definition makes it clear that information regarding proposed facilities may be protected as CEII.

D. Requester's Status and Need for the Information

38. The NOPR proposed a procedure that would not restrict CEII to certain types of applicants, but would take an applicant's identity and need into account.[88] A person seeking access to CEII under proposed § 388.113 would be required to submit information about his identity and need for the information.[89] The NOPR emphasized the importance of intervenors, landowners and other persons being able to participate meaningfully in Commission proceedings.[90] The Commission also expressed its belief that market participants who are not participants in proceedings would be able to access necessary information, either under proposed § 388.113 or through other means, such as the Open Access Same-time Information System (OASIS).[91] The NOPR also proposed to permit owners and operators to get information about their own facility without the need to file a request under the CEII process, and to require agents of an owner/operator to obtain information from the owner/operator.[92] The NOPR pointed out that these requirements would have no application to FOIA requests.[93]

39. Several commenters express concern over the ability of energy market consultants and other participants to obtain data that is important to efforts to expand the energy infrastructure and develop new energy resources.[94] Among the concerns is the possibility that transmission owners might restrict access to CEII in an unfair manner so as to deprive some market participants of the ability to conduct needed research.[95] Some commenters suggest that the Commission adopt a method of pre-qualification for market participants who are not participants in Commission proceedings or include consultants and other market participants in a list of categories of CEII users who would be permitted access.[96]

40. The procedures proposed in the NOPR were intended to provide access to CEII to requesters with legitimate need for the information.[97] Generally speaking, market participants seeking to develop new or expanded energy resources would present such a need. Certainly, continued development of energy infrastructure is one aspect of the nation's defense against attacks upon that infrastructure. The Commission prefers to proceed on a case-by-case basis rather than creating categories of "pre-approved" users, because such an approach is better tailored to ensuring that inappropriate users do not gain access to CEII. The Commission understands that extensive delays in obtaining data could hinder development of energy resources, and has no intention of allowing the CEII process to result in any undue delays in the processing of facilities applications. In addition, once the CEII Coordinator has approved access to CEII on the part of a particular requester on a few occasions, subsequent requests by the same requester for similar information should, in most cases, require less time to process.

41. One matter requires clarification. As National Grid USA points out,[98] owner/operators often are corporations that can act only through agents. The reference to "agent or representative" in § 388.113(d)(2) of the Commission's

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[70] BPA at p. 4.

[71] National Grid USA at p. 3.

[72] *See http://www.insc.anl.gov/pwrmaps/map/world_map.php.*

[73] *See http://mapping.usgs.gov/digitalbackyard/topobkyd.html#5.*

[74] Until instructed otherwise, filers may not submit non-Internet public documents through the electronic filing process. Document submitted through that process are automatically placed in public FERRIS, and are visible on the Internet.

[75] *See* 18 CFR part 12, subpart D.

[76] *E.g.*, Commonwealth Associates, Inc. at p. 2; Whitfield Russell Associates at p. 8.

[77] 67 FR 57994 at p. 58000, FERC Stats. & Regs. ¶ 32,564 at p. 34,548.

[78] *Id.*

[79] 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,030.

[80] 67 FR 57994 at p. 57995, FERC Stats. and Regs. ¶ 32,564 at p. 34,539.

[81] *E.g.*, EEI at p. 9; Industrials (Process Gas Consumers Group, American Forest & Paper Ass'n, American Iron & Steel Institute, Georgia Industrial Group, Florida Industrial Gas Users, Industrial Gas Users of Florida, and United States Gypsum Company) at p. 4; INGAA at p. 4; National Hydropower Association at p. 5; Southern at p. 3; Washington Legal Foundation at p. 2; Williston Basin at p. 4.

[82] HRC at p. 4.

[83] *See* 67 FR 57994 at p. 58000, FERC Stats. & Regs. ¶ 32,564 at p. 34,548.

[84] *See* new 18 CFR 388.113(d).

[85] Duke Energy at p. 12.

[86] *Id.* at pp. 10–11.

[87] *See* new 18 CFR 388.113(c)(2).

[88] 67 FR 57994 at p. 58001, FERC Stats. & Regs. ¶ 32,564 at p. 34,549.

[89] *Id.* at p. 58001, ¶ 32,564 at p. 34,550.

[90] *Id.* at p. 58001, ¶ 32,564 at pp. 34,549–50.

[91] *Id.* at p. 58001, ¶ 32,564 at p. 34,550.

[92] *Id.* at p. 58001, ¶ 32,564 at pp. 34,549–50.

[93] *Id.* at p. 58001, ¶ 32,564 p. 34,549.

[94] *E.g.*, BPA Power Administration at p. 5; Pace Global Energy Services at p. 3; Reliant Resources, Inc. (Reliant) at pp. 2–4.

[95] *E.g.*, Reliant at pp. 4–5.

[96] *E.g.*, Pace Global Energy Services at p. 3; GE at p. 4; Reliant at pp. 4–5.

[97] 67 FR 57994 at p. 58001, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

[98] National Grid USA at p. 9.

regulations[99] is not intended to refer to employees or officials of an owner/operator. They would be covered by § 388.113(d)(1) of the Commission's regulations.[100] That subsection has been clarified accordingly.

E. Verification and Access Issues

1. CEII Coordinator

42. Most commenters approve of the creation of a CEII Coordinator position[101] with some indicating that the agency was better suited to respond to requests than the industry.[102] However, a few commenters believe that owners, operators, and applicants should have more of a role in granting access to CEII. For example, the National Hydropower Association requests that the Commission amend the regulations to permit owners, operators, and applicants to serve as CEII Coordinator in some circumstances,[103] and EEI advocates that submitters of information be able to object to intervenor requests for CEII.[104] The Commission believes that the National Hydropower Association's suggestion would impermissibly interfere with the Commission's administration of the program. EEI's suggestion, however, is consistent with the proposed CEII Coordinator process, which is adopted here. Accordingly, under § 18 CFR 388.112(d) of the Commission's regulations,[105] submitters are given an opportunity to comment on requests for CEII that they submitted.

43. At least one commenter, Reporters Committee, disagrees with the establishment of a CEII Coordinator, voicing concern that the proposed process removes access decisions from the hands of experienced access professionals and permits the agency to avoid the FOIA time limits.[106] As discussed above in paragraph 18, the CEII Coordinator will have access to the same professional staff who evaluate and draft recommended decisions on FOIA requests, so that expertise will be utilized. Also, the time frames set out in new § 388.113(d)(3)(iii) of the Commission's regulations[107] for the CEII Coordinator to process a request are the same as provided by the Commission's regulations for processing FOIA requests. To be sure, missing the CEII deadlines does not have the same legal implications as missing the FOIA deadlines.[108] Nevertheless, the Commission is committed to processing requests for CEII as timely as possible as if it were under the same legal obligations as imposed under the FOIA. Also, of course, if a requester is concerned about the timing for a CEII response running beyond the FOIA statutory time limits, the requester always has the option of filing a FOIA request and seeking access under that statute.

44. Certain commenters request clarification of the authority of the Coordinator. Southern believes that the NOPR did not make it clear that the CEII Coordinator has the authority to make determinations of when information qualifies as CEII. The Commission agrees that the proposed version of § 375.313 of its regulations[109] did not specifically delegate this authority to the Coordinator. The final rule revises proposed 18 CFR 375.313 to add this delegation, and includes language in new § 388.113(d)(3)(ii) of the Commission's regulations[110] to explicitly add this step into the processing of CEII requests.

45. Other commenters request that the Commission provide more concrete standards or guidance for the Coordinator. For example, National Grid USA recommends that the Commission provide "standards that will govern the CEII Coordinator's decision whether to release CEII," explaining that stated criteria may give requesters insight into which requests will be granted and reduce fruitless requests.[111] The National Hydropower Association, the NERC, PJM, and Southern also request that the Commission provide criteria for the Coordinator to use in determining whether information qualifies as CEII, whether a requester has a need for the information, and whether to require a non-disclosure agreement (NDA) as a condition of release.[112] The Commission believes that the standards the Coordinator should use to determine whether information qualifies as CEII are adequately detailed in the definition in new § 388.113(c)(1) of its regulations.[113] That is, does the information relate to the production, generation, transportation, transmission, or distribution of energy; could it be useful to a person in planning an attack on critical infrastructure; is it exempt from disclosure under the FOIA; and does it do more than provide location information?

46. Commenters also ask that the Commission develop guidelines for the Coordinator to use in determining whether to release information to a particular requester.[114] The Commission does not intend to provide within the regulation itself a list of the types of requesters who would be deemed to have a need for CEII. First of all, that determination is fact specific. However, in the preamble to the NOPR and this final rule, the Commission has indicated that intervenors, market participants, energy market consultants, state agencies, landowners, environmental groups, and market participants may be found to have a need for information in a particular situation.[115] It will be in the requester's best interest to explain as fully as possible why he or she needs the information in question. One factor that the Coordinator should factor into a decision is whether the requester's need for the information outweighs the potential harm from release of the information. For instance, if the Commission developed a hierarchical listing of the most critical portions of the infrastructure, it would be highly unlikely to release that information to most requesters, although it might be released to the FBI or the Office of Homeland Security. The final rule has been changed to reflect this balancing in new § 388.113(d)(3)(ii) of the Commission's regulations.[116]

2. Use of PINS and Passwords

47. Some commenters are concerned that adequate security measures be taken to protect access to CEII. For instance, certain commenters favor the use of a password system to provide Internet access to CEII.[117] GE believes it may be beneficial to maintain records on each individual's access to CEII to facilitate investigation of potential inappropriate access.[118] Other commenters have concerns about the security issues associated with providing Internet access to CEII.[119] For the time being, the Commission does not plan to give requesters access to Commission databases containing CEII. If and when that time comes, it is expected that identifications and passwords will be used.

3. Verification/Checks on Requesters

48. In the NOPR, the Commission proposed to require each individual requester to obtain access to information instead of granting access on an organization-by-organization basis.[120] Several commenters urge the Commission to rethink its decision not to grant requesters generic access to nonpublic information. Some note that such generic access would reduce burdens on the Commission and requesters.[121] INGAA, among others, believes that access decisions should be made on a case-by-case basis,[122] while GE recommends a hybrid approach that would allow entities with "continuous legitimate need for information" to gain generic access, while utilizing a case-by-case system for those with more occasional need for the information.[123] For the time being, the Commission is most comfortable granting access on a case-by-case basis. As mentioned in the discussion on standards to be used by the Coordinator, whether someone has a need for information can vary from circumstance to circumstance. The Commission's goal is to limit CEII access to those with a need for the information. Even though a requester may not be a terrorist, the more people who have access to information, the greater likelihood that it may find its way into the wrong hands. As also noted above, someone who requests access frequently will probably be cleared more quickly than a first-time requester, so the burden of multiple requests should not be too great.

49. In the NOPR, the Commission concluded that since the majority of requesters were expected to be entities and individuals who were well known to the Commission, it was not necessary to use the services of outsiders to verify the identity and legitimacy of requesters.[124] The Commission is reconsidering that position and is in the process of evaluating existing databases that it may use to screen requesters.[125] For that reason, the Commission is revising proposed § 388.113(d)(3)(i) to add a requirement that the requester provide his or her date and place of birth and to request that each requester provide his or her social security number[126] in addition to the other information initially proposed in the NOPR.[127] This will help verify that the name that the individual provides is their true name, thus facilitating an accurate screening.

F. State Agency Issues

50. As indicated in the NOI and the NOPR, there are some unique issues with respect to state agency access to CEII.[128] A primary concern is the ability of state agencies, which likely will be subject to their own FOIA rules, to protect CEII received from the Commission. State Commissions[129] also raise the following additional issues:

Whether and on what basis FERC proposes that its CEII rule will preempt state open records laws and rules?

Whether State Commissions will automatically be permitted to obtain all CEII data from FERC or whether State Commission access may be limited on a "need to know" basis?

Whether FERC's rule will adequately preclude utilities from invoking the FERC rule to avoid providing CEII data to State Commissions?

Whether State Commissions will have requisite access to CEII data from utilities not within a State Commission's jurisdiction (*e.g.*, for purposes of examining regional transmission or generation capability)?

Whether State Commissions or their staff will be required to enter into an NDA, and if so, on what terms?[130]

51. As an initial matter, the Commission emphasizes that its goal is to cooperate as fully as possible with the State Commissions, which share the Commission's objective to ensure that CEII does not get into the wrong hands. That said, the Commission grants the National Association of Regulatory Commissioners' (NARUC's) requested clarification on the Federal preemption issue. NARUC states that the Commission has no basis to preempt authority over the totality of access to information regarding gas and electric utility regulation, and that much of the information at issue is not "Federal information," that is, generated by or for the Federal government, but instead is generated by non-Federal entities that have provided similar or identical information to state regulators.[131] The Commission agrees.

52. The NOPR discussion on preemption related to state agency requests to FERC for CEII that the Commission had generated or collected.[132] As NARUC correctly points out, "the NOPR itself declares that FERC's rule does not propose to alter the traditional ability of State Commissions to obtain such data directly" from the companies.[133] Therefore, as requested by NARUC, the Commission confirms that it does not intend that public utilities may rely on this rule to refuse to provide information directly to State Commissions.

53. In addition, State Commissions will be presumed to have a need to know information within their state involving issues within their responsibilities. They also may submit requests for information regarding entities outside of their jurisdictions with an explanation of the need. Such requests should be capable of being resolved in a timely manner. On the other hand, as discussed below, release of CEII to State Commissions and other State Agencies will normally be subject to signing an NDA. It does not make sense for the Commission to release the

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[99] *See* 18 CFR 388.113(d)(2).

[100] *See* 18 CFR 388.113(d)(1).

[101] *E.g.*, EEI at pp. 10–11; Electric Power Supply Association (EPSA) at p. 4; Industrials at pp. 3–4; INGAA at pp. 5 and 7; MidAmerican at pp. 3–4; National Hydropower Association at pp. 3–4; NERC at p. 3; Washington Legal Foundation at p. 2; Whitfield Russell Associates at p. 9.

[102] *E.g.*, American Electric Power at p. 1; Industrials at pp. 3–4; Reliant at p. 5.

[103] National Hydropower Association at pp. 3–4.

[104] EEI at p. 14.

[105] 18 CFR 388.112(d).

[106] Reporters Committee at p. 4.

[107] 18 CFR 388.113(d)(3)(iii).

[108] A FOIA requester may treat an agency's failure to respond within the statutory time limit as constructive exhaustion of administrative remedies, and proceed directly to court without first filing an administrative appeal. *See* 5 U.S.C. § 552(a)(6)(C)(i). Normally, a requester must file an administrative appeal prior in order to exhaust his or her administrative remedies prior to filing in court. *See Stebbins* v. *Nationwide Mutual Ins. Co.*, 757 F.2d 364, 366 (D.C. Cir. 1985) (*per curiam*).

[109] 18 CFR 375.313.

[110] *See* new 18 CFR 388.113(d)(3)(ii).

[111] National Grid USA at pp. 6–7.

[112] National Hydropower Association at p. 4; NERC at p. 5; PJM at p. 1; Southern at pp. 4–6.

[113] *See* new 18 CFR 388.113(c)(1).

[114] *E.g.*, PJM at p. 1; Southern at pp. 4–5.

[115] 67 FR 57994 , FERC Stats. & Regs. ¶ 32,564.

[116] *See* 18 CFR 388.113(d)(3)(ii).

[117] *E.g.*, Duke at p. 17; National Hydropower Association at p. 8; GE at p. 5; SCE at p. 8.

[118] *See* GE at p. 5.

[119] *E.g.*, National Hydropower Association at p. 8; GE at p. 5.

[120] 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

[121] *E.g.*, Duke Energy at p. 17; EPSA at p. 4.

[122] *See* INGAA at p. 7; PJM at p. 2.

[123] *See* GE at p. 3.

[124] 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

[125] One possibility is to use the Interagency Border Inspection Service (IBIS) database, which keeps track of information on suspect individuals, businesses, etc., and which may also be used to access the FBI's National Crime Information Center containing records on wanted persons, criminal histories, etc.

[126] Under the section 7(a)(1) of the Privacy Act, 5 U.S.C. 552a, an agency may not deny a right or benefit provided by law because an individual did not provide his or her social security numbers. Therefore, a requester has the option of not disclosing his or her social security number.

[127] 67 FR 57994 at p. 58001, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.

[128] 67 FR 3129 at pp. 3132–33, FERC Stats. & Regs. ¶ 35,542 at pp. 35,830–33; 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶ 32,564 at p. 34,551.

[129]

[130] NARUC also raises two miscellaneous issues which go beyond the scope of this rule. First, NARUC encourages the Commission to clarify how the CEII rule relates to the Commission's Standard Market Design (SMD) NOPR, "Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design," IV FERC Stats. & Regs. ¶ 32,563 (2002). Without more, and given the comprehensive nature of the SMD NOPR, the Commission is uncertain as to what NARUC's specific concerns are. The Commission believes, however, that there is nothing in this final rule that conflicts with the goals of the SMD NOPR. Second, NARUC suggests that the Commission set a benchmark for what reasonable costs of complying with the CEII rule may be passed through in companies' rates. To start with, not every one who complies with this rule will necessarily be a jurisdictional company whose rates the Commission sets. To the extent jurisdictional companies do incur costs to comply with the rule, the Commission believes that the current rules and policies for recovery of administrative costs are adequate to address the recovery of such compliance costs.

[131] NARUC at pp. 17–18.

[132] 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶ 32,564 at p. 34,551.

[133] NARUC at p. 18.

information to the State Agencies with no agreement to protect the information, at least to the extent permitted by law. The Commission has no intention of asking a state agency to ignore state law, but merely to give the Commission notice and an opportunity to take action to prevent release of the information.

G. Timing Issues

54. The NOPR proposed to provide in § 388.112(d) of the Commission's regulations [134] notice and an opportunity for a CEII submitter to comment when a request was received for its information, and to provide in § 388.112(e) [135] notification to the submitter prior to release.[136] Under the proposal, a submitter would have at least five days in which to submit its comments, and at least five-days notice prior to release of information submitted as CEII.[137] Several commenters claim that these time limits are too short, and advocate having at least 10 days to comment, and up to 30 days notice prior to release.[138] At the same time, other commenters are concerned that the time frames are too long in some circumstances, for instance, where a time for filing a protest or intervention may expire in the interim.[139] At least one, Duke Energy, raises the possibility that the Commission could extend other deadlines where someone is delayed in getting access to information.[140]

55. The Commission has considered these arguments and examined the filings that have very short time limits, for instance responses to rate filings under Sections 205 of the Federal Power Act,[141] or Section 4 of the Natural Gas Act,[142] and does not believe anyone will be prejudiced by the time frames proposed in the NOPR. It is unlikely there will be CEII in most of these filings, and if there is, there should still be sufficient information available for parties to make the required filings in a timely manner. This same issue could arise whenever a company claims confidential treatment for a portion of its filing. To date, that has not proved to be an obstacle to meaningful, timely participation by other parties, and there is no reason to expect that the CEII regulation will cause a problem where none has existed previously.

56. The Commission also has examined the arguments that the proposed time limits do not give submitters adequate time to respond. First of all, the rule provides minimum times. Where circumstances permit, the Coordinator may give submitters a longer amount of time. However, the shorter minimum is needed to permit a quick turnaround where necessary and to facilitate response within the FOIA time limits. Prior to 9/11, the five-day minimums existed in § 388.112 of the Commission's regulations for other requests for nonpublic treatment.[143] For years parties have been able to respond within the time permitted. The Commission sees no reason to extend these time limits for cases involving CEII.

H. Use of Non-Disclosure Agreements (NDAs)

57. The NOPR proposed to require most CEII requesters to sign an NDA as a condition of gaining access to CEII.[144] The major exception was laid out in proposed 18 CFR 388.113(d)(2), which provided that owner/operators would be exempt from the requirement to sign an NDA prior to gaining access to CEII regarding their own projects.[145] The reason for this is that they have at least as great an incentive to protect this information as the Commission has, and probably have access to even more damaging information in the event a rogue employee wanted to cause harm to the facility. The Commission adopts here the proposed exception for owner/operators, and also retains the requirement that agents/representatives (other than employees or officers) of owner/operators obtain CEII directly from the owner/operator, who will be in a better position to judge the agent/representative's need for the information and to impose restrictions on its use.

58. In addition, as explained in the NOPR, NDAs for Federal agency CEII requesters will differ from others in part because the Commission will remind the requester of his or her responsibilities under the Federal Records Act,[146] and will require that the requesting agency refer any subsequent FOIA requests for information provided by the Commission back to the Commission for a determination as to whether the information is subject to release under the FOIA.[147] Similarly, NDAs for State Agency requesters will specify that the information is Federal information that is "on loan" to the State Agency and that the Commission has the right to request return of the information. The Commission will also require that the State Agency notify the Commission whenever a request for the information is received.

59. Several commenters ask the Commission to elaborate on possible penalties for violation of an NDA.[148] There are two that readily come to mind. First, a violation of an NDA could result in the Commission's refusing to give similar information to the violator in the future under the CEII process. Indeed, the Commission would be violating the public's trust if a requester were permitted to violate his or her obligations under an NDA with impunity. Second, the Commission could rightly bar someone from representing people before the Commission for a stated period of time under § 385.2102(a)(2) of the Commission's regulations.[149]

I. Submission of CEII to the Commission

60. In the NOPR, the Commission proposed to make submission of CEII a subcategory of submission of documents subject to claims of privilege under § 388.112 of its regulations,[150] with the same number of copies and the same requirement for a written statement supporting the request for privileged treatment.[151] As adopted here, CEII submissions under that section have to indicate that the information is CEII, paralleling the existing requirement for information submitted with a request for privileged treatment.[152] The Commission proposed to have the submitter determine how best to segregate CEII and non-CEII, such as by creating a separate nonpublic appendix or simply redacting CEII from the public filing.[153] The Commission further cautioned that it would take disciplinary action against submitters who abuse the CEII process by claiming CEII status for extensive portions of non-CEII.[154] Under both the NOPR and the final rule, a claim of privilege has the same effect regardless of whether the privileged information is CEII or other nonpublic information.[155] Under § 388.112 of the Commission's regulations,[156] the portions for which privileged treatment is sought will be placed in the nonpublic file, and will not be released before the submitter has an opportunity to comment on its release, and receives notice of the impending release.

61. Some commenters dislike the practice of creating public and nonpublic documents, expressing concern over potential confusion between versions. These commenters urge the Commission to redesign its forms so that CEII and other nonpublic information are included as a separate attachment.[157] Commonwealth Associates, Inc. (CAI) objects to allowing submitters to designate CEII, out of fear that system owners/operators will abuse the process by making CEII available to their agents, while forcing others to wait for a decision by the CEII Coordinator by making sweeping claims of CEII status. CAI suggests that the Commission determine CEII status in the first instance. Other commenters suggest that the Commission specify penalties for violations of the CEII procedures.[158]

62. The Commission believes, as it did in formulating the NOPR, that the process for submitting CEII will work best if it tracks as closely as possible the existing procedures for submitting other privileged information, procedures that have proven satisfactory over time. It consequently is reluctant to depart from those procedures for fear of creating confusion and encountering unforeseen problems. The suggestion that the CEII Coordinator, rather than the owner of the information, designate CEII in the first instance, rather than reduce any prejudice from delays, will more likely increase the delays. Commission staff would be required to examine every page of a submission to make the determination, as opposed to examining only those portions that are claimed to constitute CEII.

63. The concern that some submitters will make unjustified claims of CEII status is not one that the Commission takes lightly, as it indicated in the NOPR.[159] The Commission will take action against submitters who abuse the system. It does not intend, however, to specify the form that action may take, as it will depend on the circumstances. Admittedly, the Commission's ability to impose penalties is not extensive, but it can disqualify a person from practice before the Commission in the event of "unethical or improper professional conduct."[160]

64. With respect to the process of separating CEII from non-CEII, the Commission agrees with the commenters preferring a separate appendix for documents containing protected information rather than two entire copies, one public and one nonpublic. Accordingly, the Commission will modify § 388.112(b) of its regulations [161] to state a strong preference for an appendix containing protected information. The Commission will, however, leave the option of separate public and nonpublic versions for situations where the use of an appendix would render the document difficult to read. This revision will apply to non-CEII protected information as well. As stated above, the Commission believes that the procedures for CEII and non-CEII protected information should be as similar as possible to avoid confusion.

65. The suggestion that the Commission redesign its forms to place CEII in attachments or appendices is outside the scope of this rulemaking. As discussed below, however, the Commission does intend to re-examine its forms and reports to determine whether changes are needed to provide better protection for CEII. This issue can be addressed at that time. For now, the Commission will add a requirement to § 388.112 of its regulations [162] that all submissions for which CEII status is claimed be stamped "Contains CEII—Do Not Release" on every page containing CEII rather than just on the front page. A similar provision will be added for other types of protected information as well. In addition, the Commission is revising § 388.112(b)(2) of its regulations [163] to direct those who file on electronic media [164] to provide a list of the names of each file containing CEII or other privileged material, and to mark the outside of the media (CD, diskette, tape) itself to indicate CEII or other privileged material. Hopefully these additional steps will prevent inadvertent disclosure of material.

J. Challenges to CEII Status

66. As with the submission of CEII, the NOPR proposed to handle challenges to CEII status through the existing procedures of § 388.112 of the Commission's regulations.[165] Under proposed § 388.112(d), the CEII Coordinator would afford the submitter notice in the event of a request for CEII, and give the submitter at least five days in which to oppose the request.[166] Under proposed § 388.112(e), if the CEII Coordinator denies the claim of privilege, the submitter would receive notice of the denial at least five days prior to release of the information.[167]

67. Several commenters have concerns about the time frames proposed in § 388.112 of the Commission's regulations.[168] They assert that a five-day notice period is insufficient, both for the time in which a submitter must respond to a request for CEII and for the notice of a proposed release. For the former, commenters favor a 10-day notice period.[169] For the latter, commenters prefer anywhere from a 10 to 30-day notice period.[170] The Commission also received suggestions that the time run from receipt of notice and that the notice be "actual" rather than constructive, such as in a **Federal Register** notice.[171] Some commenters also suggest that the Commission provide for an automatic stay of a decision to release CEII in the event of a request for rehearing, arguing that the time limit for making such a request is 30 days and that the information will otherwise be released before that time runs.[172]

68. The Commission continues to believe that the currently existing procedures are adequate. The

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[134] 18 CFR 388.112(d).

[135] 18 CFR 388.112(e).

[136] 67 FR 57994 at p. 58003, FERC Stats & Regs. ¶32,564 at p. 34,552.

[137] *ID.* at pp. 58002–03, ¶32,564 at p. 34,552.

[138] *E.g.*, Duke Energy at p. 5 (advocating a ten-day comment period); EEI at p. 12 (advocating at least 15 days notice prior to release); National Hydropower Association at pp. 7–8, 12 (advocating at least ten business days to comment and ten business days notice prior to release); NERC at p. 4 (advocating 30 days to respond to determination to release CEII to non-governmental requester); Southern at p. 10 (advocating 30 days notice prior to release).

[139] *See, e.g.*, Industrials at pp. 6–8; Massachusetts Energy Facilities Siting Board at p. 5; Transmission Access Policy Study Group at pp. 5–6.

[140] Duke Energy at p. 17.

[141] 16 U.S.C. 824d.

[142] 15 U.S.C. 717c.

[143] *See* 18 CFR 388.112(d) and (e).

[144] 67 FR 57994 at p. 58002, FERC Stats. Regs. ¶32,564 at pp. 34,551–52.

[145] *Id.*

[146] 44 U.S.C. § 3510(b).

[147] 67 FR 57994 at p. 58002, FERC Stats. & Regs. ¶32,564 at p. 34,551.

[148] *E.g.*, EEI at p. 15; Duke at pp. 16–17; MidAmerican at p. 3.

[149] *See* 18 CFR 385.2102(a)(2).

[150] 18 CFR 388.112.

[151] 67 FR 57994 at p. 58003, FERC Stats. & Regs. ¶32,564 at p. 34,552.

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *See id.*

[156] *See* new 18 CFR 388.112.

[157] *E.g.*, NERC at p. 3; National Hydropower Association at pp. 11–12.

[158] *E.g.*, EEI at p. 15; MidAmerican at p. 3.

[159] 67 FR 57994 at p. 58003, FERC Stats. & Regs. ¶32,564 at p. 34,552.

[160] 18 CFR 385.2102(a)(2).

[161] *See* new 18 CFR 388.112(b).

[162] *See* new 18 CFR 388.112.

[163] *See* 18 CFR 388.112(b)(2).

[164] At the present time, nonpublic documents are filed on electronic media such as CDs, diskettes, and tapes. At some point in the future, the Commission will accept nonpublic and non-Internet public documents through its electronic filing process. Certain filers also use Commission-created submission software (e.g., FERC Form No. 2 software) that enables the filer to "flag" certain fields for nonpublic treatment. The Commission will be examining that software and revising it and the associated filing instructions to permit filers to flag CEII and non-Internet Public information as well.

[165] 67 FR 57994 at pp. 58002–3, FERC Stats. & Regs. ¶32,564 at p. 34,552.

[166] *Id.* at p. 58003, ¶32,564 at p. 34,552.

[167] *Id.* at pp. 58002–3, ¶32,564 at p. 34,552.

[168] *See* 18 CFR 388.112.

[169] *E.g.*, Duke at p. 5; National Hydropower Association at pp. 7–8, 12.

[170] *E.g.*, EEI at p. 12; National Hydropower Association at pp. 7–8; National Grid USA at p. 10; NERC at p. 4; Southern at p. 10.

[171] National Hydropower Association at pp. 7–8, 12.

[172] *E.g.*, National Hydropower Association at pp. 7–8, 12; National Grid USA at p. 10.

Commission has not encountered a problem with submitters of privileged information subject to a FOIA request not being able to respond timely. These time frames come into play in situations involving confidential business information that is highly sensitive to submitters. If the current time frames are adequate in such situations, they should be adequate where CEII is requested. It should be noted that the Commission does send notice directly to the submitter, usually by facsimile as well as by mail and frequently alerts the submitter by telephone too, and does not rely on constructive notice.

69. Moreover, as discussed in the NOPR,[173] decisions by the CEII Coordinator, which will be made pursuant to authority delegated here in new § 375.313 of the Commission's regulations,[174] will be subject to requests to the Commission for rehearing.[175] As is true for all orders issued under delegated authority, the time limit for a request for rehearing is thirty days.[176] In addition, the Commission's rules specifically provide that a request for rehearing does not stay the order being challenged unless the Commission orders otherwise.[177] The Commission has found these procedures to be workable in various contexts over the years and believes they will continue to function well in connection with requests for CEII.

K. Other Issues

70. In response to the NOPR, several commenters suggested that the Commission review the information that it collects to determine if such collections are necessary. They reason that if the Commission does not have the information, it cannot be subject to disclosure under the FOIA. Southern is concerned about this, particularly where the information may be available through the Open Access Same-time Information System (OASIS).[178] The Commission agrees with these commenters' logic. As noted in the NOPR, the Commission will be examining its information collections to see where collections can be scaled back or eliminated without compromising fulfillment of its statutory responsibilities.[179] This will most likely be done in conjunction with the periodic Office of Management and Budget clearance process.

71. Commenters also seek Commission action to amend requirements that companies make information available where the Commission is protecting the same information from disclosure.[180] Conversely, at least one commenter, the Transmission Access Policy Study Group, requested that the Commission confirm that it is not eliminating requirements that companies make this information available.[181] The Commission intends to eliminate the inconsistent treatment, and will be making future modifications to its regulations to effect these changes. Until those regulations are changed, the requirements remain in place unless a company successfully obtains a waiver from the requirement.

III. Information Collection Statement

72. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. [182] In the NOPR, the Commission estimated the annual public reporting burden as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–603	200	200	.25	50

Total Annual Hours for Collection (reporting + record keeping, if appropriate) = 50 hours. Information Collection Costs: The NOPR estimated the cost to comply with these requirements. It projected the average annualized cost of all respondents to be: Annualized Capital Startup Costs: The Commission estimated that to respond to this information collection will be a one-time cost of $12.50 per respondent. (50 hours @ $50 hourly rate ÷ 200).

73. None of the commenters challenged the estimates provided in the NOPR. On October 1, 2002, OMB approved without change, the Commission's request for approval of the information collection required by the proposed rule, and assigned it OMB No. 1902–0197. The only information collection changes from the NOPR to the final rule are the added requirement in new § 388.113(d)(3)(i) of the Commission's regulations [183] that requesters provide their date and place of birth and the request that they provide their social security number. OMB regulations provide an exemption where a person is required to provide only facts that are necessary for identification.[184] The requirement that a requester provide his or her date and place of birth and the request that a requester provide his or her social security number are intended to verify the identity of the requester. For that reason, this collection need not be resubmitted to OMB for approval.

IV. Environmental Analysis

74. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[185] Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended.[186] This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act Certification

75. The Regulatory Flexibility Act of 1980 (RFA) [187] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this rule does not have such an impact on small entities.

[173] 67 FR 57994 at p. 58001, FERC Stats. & Regs. ¶ 32,564 at p. 34,550.
[174] 18 CFR 375.313.
[175] 18 CFR 385.1902(a).
[176] 18 CFR 385.713(b).
[177] 18 CFR 385.713(e).
[178] Southern at p. 11.
[179] 67 FR 57994 at p. 58000, n. 41, FERC Stats. & Regs. ¶ 32,564 at p. 34,547, n. 41.
[180] *E.g.*, INGAA at p. 12; Puget Sound Energy, Inc. at pp. 5–6.
[181] Transmission Access Policy Study Group at p. 7.
[182] 5 CFR part 1320 (2002).
[183] *See* new 18 CFR 388.113(d)(3)(i).
[184] 5 CFR 1320.3(h)(1).
[185] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).
[186] 18 CFR 380.4(a)(2)(ii).
[187] 5 U.S.C. 601–612.

VI. Document Availability

76. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

77. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number of this document excluding the last three digits in the docket number field.

78. User assistance is available for FERRIS and the FERC's website during normal business hours from FERC Online Support (by phone at 1–866–208–3673 (toll-free) or 202–502–6652, or by e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

VII. Effective Date

79. These regulations are effective April 2, 2003.

80. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules does not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects in 18 CFR Parts 375 and 388

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends parts 375 and 388, chapter I, title 18, Code of Federal Regulations, as follows.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645, 42 U.S.C. 7101–7352.

2. Add § 375.313 to subpart C to read as follows:

§ 375.313 Delegations to the Critical Energy Infrastructure Information Coordinator.

The Commission authorizes the Coordinator or the Coordinator's designee to:

(a) Receive and review all requests for critical energy infrastructure information as defined in § 388.113(c)(1).

(b) Make determinations as to whether particular information fits within the definition of CEII found at § 388.113(c)(1).

(c) Make determinations as to whether a particular requester's need for and ability and willingness to protect critical energy infrastructure information warrants limited disclosure of the information to the requester.

(d) Establish reasonable conditions on the release of critical energy infrastructure information.

(e) Release critical energy infrastructure information to requesters who satisfy the requirements in paragraph (b) of this section and agree in writing to abide by any conditions set forth by the Coordinator pursuant to paragraph (c) of this section.

PART 388—INFORMATION AND REQUESTS

3. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

4. Section 388.112 is revised to read as follows:

§ 388.112 Requests for privileged treatment of documents submitted to the Commission.

(a) *Scope.* (1) Any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should be withheld from public disclosure.

(2) Any person submitting documents containing critical energy infrastructure information (CEII) as defined in § 388.113 should follow the procedures specified in this section.

(b) *Procedures.* A person claiming that information is privileged under paragraph (a) of this section must file:

(1) For documents submitted in hard copy,

(i) A written statement requesting privileged treatment for some or all of the information in a document, and the justification for nondisclosure of the information;

(ii) One of the following:

(A) In all cases where the privileged information or CEII can, as a practical matter, be segregated into a separate document or appendix:

(*1*) Fourteen copies of the original document, indicating in bold print on the front page either "Privileged Information Contained in Attachment" or "Critical Energy Infrastructure Information Contained in Attachment," and

(*2*) One separate document or appendix, indicating in bold print on the front page either "Contains Privileged Information—Do Not Release" or "Contains Critical Energy Infrastructure Information—Do Not Release," with every page in the document or appendix marked either "Privileged Information—Do Not Release" or "Critical Energy Infrastructure Information—Do Not Release," or

(B) In cases where the privileged information or CEII cannot reasonably or coherently be separated into a separate document or appendix:

(*1*) The original document, indicating in bold print on the front page either "Contains Privileged Information—Do Not Release," or "Contains Critical Energy Infrastructure Information—Do Not Release" and, on every page containing privileged information or CEII, the marking "Privileged Information—Do Not Release," or "Critical Energy Infrastructure Information—Do Not Release," with the privileged information or CEII clearly identified, and

(*2*) Fourteen copies of the document without the information for which privileged treatment is sought, and with a statement indicating that information has been removed for privileged treatment, and

(iii) The name, title, address telephone number, e-mail address, and facsimile number of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Commission.

(2) For documents submitted on electronic media,

(i) A written statement requesting privileged treatment for some or all of the information on the electronic media,

and the justification for non-disclosure of the information;

(ii) One of the following:

(A) In all cases where the privileged information or CEII can, as a practical matter, be segregated into a separate document or appendix:

(*1*) One copy of the electronic media and fourteen paper copies of a filing all without the privileged information or CEII, and all marked either "Privileged Information Contained in Separate Attachment" or "Critical Energy Infrastructure Information Contained in Separate Attachment," and

(*2*) One copy of the electronic media and one paper copy of a separate document or appendix, in both cases marked on media itself and on the front page either "Contains Privileged Information—Do Not Release" or "Contains Critical Energy Infrastructure Information—Do Not Release," with every page in the document or appendix marked either "Privileged Information—Do Not Release" or "Critical Energy Infrastructure Information—Do Not Release," and

(*3*) An index identifying each file on the media and whether it is public, contains Critical Energy Infrastructure Information, or contains other privileged information; or

(B) In cases where the privileged information or CEII cannot reasonably or coherently be separated into a separate document or appendix:

(*1*) One copy of a complete filing on the electronic media and a paper copy, both marked on the media itself and on the front page either "Contains Privileged Information—Do Not Release"or "Contains Critical Energy Infrastructure Information—Do Not Release," with every page containing privileged information or CEII marked either "Privileged Information—Do Not Release" or "Critical Energy Infrastructure Information—Do Not Release" and with the privileged information or CEII clearly and specifically identified, and

(*2*) One copy of the electronic media without the information for which privileged treatment is sought and with a statement that information has been removed for privileged treatment, together with fourteen paper copies without the information for which privileged treatment is sought,

(*3*) An index identifying each file on the media and whether it is public, contains Critical Energy Infrastructure Information, or contains other privileged information, and

(iii) The name, title, address, telephone number, e-mail address, and facsimile number of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Commission.

(c) *Effect of privilege claim—(1)*For documents filed with the Commission. (i) The Secretary of the Commission will place documents for which privileged treatment is sought in accordance with paragraph (b)(1)(ii) of this section in a nonpublic file, while the request for privileged treatment is pending. By placing documents in a nonpublic file, the Commission is not making a determination on any claim for privilege. The Commission retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The Secretary of the Commission will place the request for privileged treatment described in paragraph (b) of this section and a copy of the original document with the privileged information removed in a public file while the request for privileged treatment is pending.

(2) *For documents submitted to Commission staff.* The notification procedures of paragraphs (d); (e), and (f) of this section will be followed by staff before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA or CEII requester seeks a document for which privilege is claimed, or when the Commission itself is considering release of the information, the Commission official who will decide whether to make the document public will notify the person who submitted the document and give the person an opportunity (at least five days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) *Notification before release.* Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, will be given to any person claiming that information is privileged no less than five days before public disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA or CEII requester.

(f) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of information for which a person has claimed privileged treatment, the Commission will notify the person who submitted the documents of the suit.

5. Add § 388.113 to read as follows:

§ 388.113. Accessing critical energy infrastructure information.

(a) *Scope.* This section governs access to critical energy infrastructure information (CEII). The rules governing submission of CEII are contained in 18 CFR 388.112(b). The Commission reserves the right to restrict access to previously filed documents as well as Commission-generated documents containing CEII.

(b) *Purpose.* The procedures in this section are available at the requester's option as an alternative to the FOIA procedures in § 388.108 where the information requested is exempted from disclosure under the FOIA and contains CEII.

(c) *Definitions.* For purposes of this section:

(1) *Critical energy infrastructure information* means information about proposed or existing critical infrastructure that:

(i) Relates to the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) Does not simply give the location of the critical infrastructure.

(2) *Critical infrastructure* means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

(d) *Optional procedures for requesting critical energy infrastructure information.*

(1) An owner/operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from Commission staff without going through the procedures outlined in paragraph (d)(3) of this section.

(2) An agent or representative of an owner/operator must obtain information from the owner/operator.

(3) If any other requester has a particular need for information designated as CEII, the requester may request the information using the following procedures:

(i) File a written request with the Commission's CEII Coordinator. The request shall contain the following: Requester's name, date and place of birth, title, address, and telephone number; the name, address, and telephone number of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Requesters are also requested to include their social security number for identification purposes.

(ii) Once the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information. Where appropriate, the CEII Coordinator will forward a non-disclosure agreement (NDA) to the requester for execution. Once the requester signs any required NDA, the CEII Coordinator will make the critical energy infrastructure information available to the requester. The CEII Coordinator's decisions regarding release of CEII are subject to rehearing as provided in § 385.713 of this chapter.

(iii) The CEII Coordinator will attempt to respond to the requester under this section according to the timing required for responses under the Freedom of Information Act in § 388.108(c), and will provide notice to the submitter in accordance with § 388.112(d) and (e).

Appendix A

List of Commenters

Adirondack Mountain Club
American Electric Power System
American Gas Association
American Library Association
Bonneville Power Administration (BPA)
Commonwealth Associates, Inc.
City Public Service of San Antonio
Duke Energy Corporation (Duke)
Edison Electric Institute (EEI), including the EEI Alliance of Energy Suppliers, and EEI Transmission Group
Electric Power Supply Association (EPSA)
Exelon Generation Corporation on behalf of its public utility subsidiaries PECO Energy Company and Commonwealth Edison Company
Federation of American Scientists
Hydropower Reform Coalition (HRC)
The Industrials: Process Gas Consumers Group, American Forest & Paper Ass'n, American Iron & Steel Institute, Georgia Industrial Group, Florida Industrial Gas Users, Industrial Gas Users of Florida, and United States Gypsum Company
Interstate Natural Gas Association of America (INGAA)
Massachusetts Energy Facilities Siting Board
MidAmerican Energy Company (MidAmerican)
National Association of Regulatory Utility Commissioners (NARUC)
National Grid USA
National Hydropower Association
New York State Public Service Commission
North American Electric Reliability Council (NERC)
Northwest Natural Gas Company (Northwest Natural)
Oklahoma Corporation Commission
Oklahoma Gas and Electric Company
Lydia Olchoff
OMB Watch
Pace Global Energy Services
Pacific Gas & Electric Company (PG&E)
PJM Interconnection, L.L.C. (PJM)
GE Power Systems Energy Consulting (GE)
Puget Sound Energy, Inc.
Reliant Resources, Inc. (Reliant)
Reporters Committee for Freedom of the Press and The Society of Environmental Journalists (Reporters Committee)
Southern California Edison Company (SCE)
Society of Professional Journalists
Southern Company Services, Inc., acting for itself and as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company (Southern)
Public Utilities Commission of Ohio, the Michigan Public Service Commission and the staff of the Oklahoma Corporation Commission (States)
Transmission Access Policy Study Group
Washington Legal Foundation and Public Interest Clinic, George Mason University School of Law (Washington Legal Foundation)
Williston Basin Interstate Pipeline Company (Williston Basin)
Whitfield Russell Associates

Appendix B

Applicability of Freedom of Information Act Exemptions to Critical Energy Infrastructure Information

The Commission's actions in the NOPR and the final rule are based on its position that CEII includes only information that is exempt from disclosure under FOIA. The exemptions most likely to apply to CEII are Exemptions 2, 4, and 7. A discussion of the potential applicability of each follows.

a. Exemption 2

Exemption 2 exempts from disclosure "records related solely to the internal personnel rules and practices of an agency."[1] According to guidance from the Department of Justice (DOJ), "[a]ny agency assessment of, or statement regarding, the vulnerability of such a critical asset should be protected pursuant to Exemption 2."[2] DOJ has counseled agencies that "a wide range of information can be withheld under Exemption 2's 'circumvention' aspect."[3] DOJ also has instructed agencies to take full advantage of the breadth of Exemption 2's protection for critical infrastructure information.[4]

The Commission has concluded that a portion of the CEII is exempt from disclosure under Exemption 2 of FOIA. Illustratively, the Commission is expanding its efforts to help facility owners and operators assess security risks and protect facilities from attack.[5] Information developed or created by the Commission as part of these efforts is likely to fall within the ambit of Exemption 2. Documents describing inspections of regulated facilities likewise will fall within Exemption 2 if they assess or describe vulnerabilities of the project.

b. Exemption 4

Exemption 4 protects from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential."[6] The Commission has determined that much of the CEII falls within the scope of Exemption 4, on the basis that release of the information could cause competitive harm to submitters, impair the Commission's ability to obtain similar information in the future, or impair the effectiveness of the Commission's programs.

There are two primary issues regarding the application of Exemption 4 to CEII. First, whether the fact that this sort of information had been publicly available in the past undermines an argument that it is now confidential, and second, whether the Trade Secrets Act[7] prohibits the Commission from sharing this information on a "need-to-know" basis.

The Commission concludes that the fact that this information has been previously public does not defeat Exemption 4. Americans live in a different world today than they did prior to September 11, 2001. Americans have had to face the harsh realities of terrorism on their soil. This has forced the nation to reassess its vulnerability to terrorist threats. Government agencies as well as private companies have had to reconsider the extent to which they make information freely available to others.

Specifically, under *National Parks & Conservation Assoc.* v. *Morton*, 49 F.2d 765 (DC Cir. 1974) (*National Parks*) and *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871 (DC Cir. 1992) (*Critical Mass*), the initial inquiry in Exemption 4 cases is whether the information was submitted to the government voluntarily or whether it was compelled to be submitted. For voluntary submissions, the information is entitled to protection if it "would customarily not be released to the public by the person from whom it was

[1] 5 U.S.C. 552(b)(2).

[2] DOJ 2001 FOIA Post 19, posted October 15, 2001. DOJ is the Federal agency responsible for the administration of the FOIA.

[3] *Id.*

[4] *Id.*

[5] The Commission has jurisdiction over the safety of hydroelectric projects under sections 4(e), 10(a), and 10(c) of the Federal Power Act. 16 U.S.C. 797(e), 803(a), (c).

[6] 5 U.S.C. 552(b)(4).

[7] 18 U.S.C. 1905.

obtained."[8] This test focuses on the submitter's current treatment of the information, not past treatment. Therefore, if, in the post-September 11 world, the company would not release the information to the public, the Commission should not release the information.

For compelled submissions, there is a three-pronged test—the competitive harm prong, the impairment prong, and the program effectiveness prong. If any of the three tests is met, the information is exempt from mandatory disclosure under FOIA even though it may have been previously public.[9] Under the competitive harm prong, there must be evidence of actual competition, and a likelihood of substantial competitive injury.[10] This inquiry tends to be fact specific, so it is not possible to identify with certainty which categories of CEII would meet the test. However, as utilities transition from monopolies to competitive markets, it may be easier for them to demonstrate actual competition. The inquiry is whether the submitter is facing competition at the time the Commission received the request for the information, not whether there was competition when the information was first submitted to the Commission. If the competitive situation has changed, the likelihood of competitive harm would be analyzed using the current situation, not past conditions. Where competition is found to exist, the next issue is whether release of the information is likely to result in substantial competitive injury to the submitter. Again, the likelihood of competitive injury would be examined at the time the Commission received the request for the information. Whether the information could have harmed the submitter two years earlier is irrelevant; what is relevant is whether release of the information at the time of the request would cause competitive harm to the submitter.[11]

The test most frequently applied under the competitive harm prong is whether use of the information *by competitors* is likely to harm the submitter.[12] This may be fairly challenging to demonstrate in the case of CEII because the primary concern is that the information could be used to plan an attack on the infrastructure, not that it could be used to steal customers or undercut prices. On the other hand, a submitter may be able to show competitive harm where use of the information by someone other than a competitor could cause financial harm to the submitter.[13] As relevant here, a terrorist attack on the energy infrastructure could cause financial harm to the owners and operators of the facilities because of lost opportunity costs as well as repair costs.

For compelled submissions, the impairment prong is satisfied where disclosure may affect the reliability or quality of the information received.[14] The more subjective the filing requirement, the more likely that disclosure of the information could impair the Commission's ability to get thorough and accurate information in the future.[15] As noted by EEI in its comments on the NOI, regulated entities may have discretion regarding how to construct their filings.[16] If companies are worried that information they submit will be subject to public disclosure, they may choose not to submit the same level of detail that they might otherwise submit. In such circumstances, and assuming the submissions would otherwise comply with the Commission's regulations, the information may be exempt from disclosure under the impairment prong of Exemption 4.

Critical Mass recognized that in addition to the competitive harm and impairment prongs, there may be other instances where non-disclosure is warranted in order to protect other governmental interests, such as program effectiveness.[17] Recently, in *Public Citizen Health Research Group* v. *NIH*,[18] the district court relied on *Critical Mass* in determining that "impairment of the effectiveness of a government program is a proper factor for consideration in conducting an analysis under" Exemption 4. The court held that the National Institutes of Health's royalty information was protected under Exemption 4 because release of the information would make companies reluctant to enter into agreements with NIH, thus impairing the effectiveness of NIH's licensing program.[19] The court reached a similar conclusion in *Judicial Watch, Inc.* v. *Export-Import Bank*, where release of certain financial information from foreign export credit agencies was held to be exempt from disclosure because release would make the credit agencies look for financing outside of the United States, undermining the agency's statutory purpose of fostering domestic economic growth by supporting export transactions.[20]

Applying these recent decisions here, indiscriminate release of CEII could impair the effectiveness of the Commission's programs, which are meant to satisfy its mandate to regulate and oversee energy industries in the economic and environmental interest of the American public.[21] Inappropriate release of CEII could make the infrastructure more vulnerable to attack, threatening those industries and resulting in potentially devastating economic and environmental consequences. Release of CEII also could make regulated entities less forthcoming in the information they provide to the Commission, especially where they have discretion as to what they submit.[22] Restricted flow of information between the Commission and the companies could impair the Commission's programs that rely on such information. This is of particular concern in today's world, where the Commission is seeking additional information from licensees to assure that the infrastructure is sited and built safely and remains protected. Finally, release of CEII could harm the relationship between Commission staff and the regulated companies, impairing trust, and causing the parties to deal with each other in a more adversarial manner than necessary. For all of these reasons, much, if not all of the CEII would be exempt from disclosure under the third prong of Exemption 4 as it relates to compelled submissions.

A second issue is whether the Trade Secrets Act prohibits the Commission from sharing Exemption 4 material on an as-needed basis. The Trade Secrets Act states in relevant part that:

> Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which concerns or relates to trade secrets, processes, operations, style of work, or apparatus, or to the identify, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation, or association; * * * to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both;

and shall be removed from office or employment.[23]

See Chrysler Corp. v. *Brown*, 441 U.S. 281, 301(1979) (*Chrysler*). The Trade Secrets Act applies to formal agency actions as well as actions by the agency's individual employees. Courts have found that the coverage of the Trade Secrets Act and Exemption 4 are co-extensive,[24] meaning that the Trade Secrets Act generally prohibits release of information covered by Exemption 4.[25] However, the Trade Secrets Act permits disclosure of trade secret information where "authorized by law."[26] Accordingly, under the Trade Secrets Act, protected information may be released where there is statutory or regulatory authority for the agency to release it. In cases where the authorization for release is found in an agency regulation, the inquiry is whether the regulation permitting the release is authorized by law.[27]

The Commission has statutory authority to release trade secret information. While both the Federal Power and Natural Gas Acts place restrictions on an individual employee's release of information gathered in the course of examining records of a company, they permit the Commission itself to authorize such a release. The Federal Power Act provides:

> The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records and memorandum when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.[28]

In addition, sections 4 and 312 of the Federal Power Act authorize the Commission "[t]o make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use."[29] Section 14 of the Natural Gas Act provides similar authorization. It states:

> The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish in the manner authorized in section 312 of the Federal Power Act * * * information concerning any such matter.[30]

Because these provisions give the Commission broad discretion to release information, such release would be authorized by law under the Federal Power and Natural Gas Acts and, therefore, permitted under the Trade Secrets Act, creating an exception to the normal situation where the Trade Secrets Act prohibits release of information covered by Exemption 4. This, in turn, would permit the Commission to withhold the information from public FOIA disclosure under Exemption 4, and still disclose the information to selected individuals with appropriate restrictions on use and dissemination of that information without violating the Trade Secrets Act.

c. Exemption 7

Exemption 7 exempts from disclosure certain information compiled for law enforcement purposes.[31] For purposes of CEII, the most relevant Exemption 7 provision is 7(F), which allows information to be withheld in order to protect a person's life or physical safety. In order to invoke Exemption 7, the agency must be able to demonstrate that the document at issue involves enforcement of a statute or regulation that the agency is authorized to enforce. The Commission has very broad authority to enforce the provisions of the Federal Power Act and the Natural Gas Act. For instance, under the Federal Power Act, the Commission (1) Monitors and investigates compliance with licenses, exemptions and preliminary permits it issues;[32] (2) determines just and reasonable rates;[33] and (3) ensures compliance with the Act and regulations issued thereunder.[34] Similarly, with respect to the Natural Gas Act, the Commission has broad authority to (1) Determine whether rates and charges are just and reasonable;[35] and (2) enforce violations of the statute or regulations issued thereunder.[36] Thus, given its broad enforcement authority, much of the information the Commission collects qualifies as information collected for a law enforcement purpose. For such law enforcement information to enjoy protection under Exemption 7(F), however, the release of the information must reasonably be expected to endanger a person's life or safety.

As noted in paragraph 11 of the final rule, there have been official warnings that the energy infrastructure could be the target of terrorist attacks. Given that an attack on the energy infrastructure is a legitimate threat, the Commission concludes that release of information that could facilitate or increase the likelihood of the success of such an attack could be expected to endanger life and safety of people. The failure of a dam could cause flooding that would endanger lives, as could the explosion of a natural gas pipeline. Interruptions to gas and electric power supplies likewise could endanger lives of those reliant on power, especially in times of extreme hot or cold weather. For these reasons, information identified as CEII may qualify for protection under Exemption 7(F).

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[8] *Critical Mass*, 975 F.2d at 878.

[9] While most of the submissions to a regulatory agency like FERC may appear to be compelled, this may not necessarily be the case. DOJ has recognized that the "existence of agency authority to require submission of information does not automatically mean such a submission is 'required'; the agency authority must actually be exercised in order for a particular submission to be deemed 'required.'" DOJ Freedom of Information Act Guide & Privacy Act Overview, May 2002 ed., at 202. Courts have found submissions to be voluntary where the agency had issued a subpoena but not sought to enforce it, *see McDonnell Douglas Corp.* v. *EEOC*, 922 F. Supp. 235 (E.D. Mo. 1996), and where the agency did not have authority to enforce the information collection because the information request violated the Paperwork Reduction Act, 44 U.S.C. 3501, *see Center for Auto Safety* v. *NHTSA*, 244 F.3d 144 (D.C. Cir. 2001). At bottom, the question of whether the information has been submitted voluntarily or was compelled must be analyzed on a case-by-case basis.

[10] *See CNA Fin. Corp.* v. *Donovan*, 830 F.2d 1132 (D.C. Cir. 1987) (*CNA*).

[11] The Commission's analysis of a submitter's competitive situation under FOIA is not the same as, and indeed is less rigid than, the analysis it must perform to establish lack of market power for charging market based rates. For FOIA purposes, the competition requirement is satisfied if the submitter faces some level of actual competition. *See Niagara Mohawk Power Corp.* v. *DOE*, 169 F.3d 16, 19 (D.D.C. 1999) (*Niagara*).

[12] *See, e.g., CNA*, 830 F.2d at 1152 & n.158; *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1291 (D.C. Cir. 1983).

[13] *See Nadler* v. *FDIC*, 899 F. Supp. 158, 163 (S.D.N.Y. 1995) (*Nadler*), *aff'd*, 92 F.3d 93 (2d Cir. 1996).

[14] *Id.*

[15] *See Niagara Mohawk*, 169 F.3d at 18 (holding that impairment is unlikely to be found where "data sought appears to take the form of hard, cold numbers on energy use and production, the fudging of which may strain all but the deliberately mendacious.").

[16] EEI NOI comments at p. 42.

[17] *See Critical Mass*, 975 F.2d 879 ("It should be evident from this review that the two interests identified in that *National Parks* test are not exclusive.").

[18] 209 F. Supp. 2d 37 at 52 (D.D.C. Mar. 12, 2002) (alternative holding).

[19] *Id.* at 54.

[20] 108 F. Supp. 2d 19, 30 (D.D.C. 2000).

[21] *See http://www.ferc.gov/About/mission/mission_intro.htm* (2002).

[22] *See Nodler*, 899 F. Supp. 158, 162.

[23] 18 U.S.C. 1905.

[24] *See, e.g., Bortholdi Coble Co.* v. *FCC*, 114 F.3d 274 (D.C. Cir. 1997); *CNA*, 830 F.2d at 1152.

[25] *CNA*, 830 F.2d at 1151.

[26] *Chrysler*, 441 U.S. at 301.

[27] *Id.*

[28] 16 U.S.C. 825(b); *see also* 15 U.S.C. 717g(b) (Natural Gas Act) and 18 CFR 3c.2(a).

[29] 16 U.S.C. 797(d), 825k.

[30] 15 U.S.C. 717m.

[31] 5 U.S.C. 552(b)(7).

[32] 16 U.S.C. 823b.

[33] 16 U.S.C. 824e.

[34] 16 U.S.C. 825m, 825o–1.

[35] 15 U.S.C. 717c.

[36] 15 U.S.C. 717s.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 03N–0068]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its bottled water quality standard regulations by establishing an allowable level for the contaminant uranium. As a consequence, bottled water manufacturers are required to monitor their finished bottled water products for uranium at least once each year under the current good manufacturing practice (CGMP) regulations for bottled water. Bottled water manufacturers are also required to monitor their source water for uranium as often as necessary, but at least once every 4 years unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations. FDA will retain the existing allowable levels for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. This direct final rule will ensure that the minimum quality of bottled water, as affected by uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity, remains comparable with the quality of public drinking water that meets the Environmental Protection Agency's (EPA's) standards. FDA is issuing a direct final rule for this action because the agency expects that there will be no significant adverse comment on this rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed, rule under the agency's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comments and withdraws this direct final rule. The

companion proposed rule and direct final rule are substantively identical.

DATES: This rule is effective December 8, 2003. Submit written or electronic comments by May 2, 2003. If FDA receives no significant adverse comments during the specified comment period, the agency will publish a document in the **Federal Register** no later than June 11, 2003, confirming the effective date of the direct final rule. If the agency receives any significant adverse comment during the comment period, FDA intends to withdraw this direct final rule by publication in the **Federal Register** no later than June 11, 2003. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 165.110(b)(5)(ii) as of December 8, 2003.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Paul South, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1640.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 7, 2000 (65 FR 76708), EPA published the Radionuclides Rule to address potential public health effects from the presence of radionuclides in drinking water. This rulemaking finalized a proposed rule that EPA published in the **Federal Register** of July 18, 1991 (56 FR 33050).

Radionuclides are radioactive elements that occur naturally in the Earth's crust or are formed as a result of cosmic ray interactions. Human activities can also add radionuclides to the environment. Radionuclides emit ionizing radiation when they radioactively decay. The potential for harmful health effects from radionuclide exposure results from the ability of ionizing radiation to chemically change molecules that make up biological tissue through a process called ionization. Studies have shown long-term exposure to radionuclides including uranium in drinking water may result in increased risk of cancer and that exposure to uranium can have adverse health effects on kidney function (65 FR 76708 at 76712–76713).

National primary drinking water regulations (NPDWRs) are issued by EPA to protect the public health from the adverse effects of contaminants in drinking water. NPDWRs specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants. In addition, at the same time that it issues NPDWRs, EPA publishes maximum contaminant level goals (MCLGs), which are not regulatory requirements but rather are nonenforceable health goals that are based solely on considerations of protecting the public from adverse health effects of drinking water contamination.

In the Radionuclides Rule, EPA issued an NPDWR containing an MCL for uranium. EPA retained the existing MCLs for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity and indicated the analytical methods it approved for testing for uranium and three other contaminants. Finally, EPA published an MCLG of zero for all radionuclides. EPA's NPDWR has an effective date of December 8, 2003.

Under section 410(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349(b)(1)), not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-1), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. The effective date for any such standard of quality regulation is to be the same as the effective date of the NPDWR. In addition, section 410(b)(2) of the act provides that a quality standard regulation issued by FDA shall include monitoring requirements that the agency determines to be appropriate for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment technique requirements for the same contaminant.

II. Direct Final Rulemaking

FDA has determined that the subjects of this rulemaking are suitable for a direct final rule. The actions taken should be noncontroversial and the agency does not anticipate receiving any significant adverse comment.

FDA is adopting EPA's MCL for uranium as an allowable level in the quality standard regulation for bottled water. FDA is also retaining the existing allowable levels for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity in the quality standard regulation for bottled water. The existing allowable levels for these radionuclides in bottled water are identical to the existing MCLs for the same radionuclides in drinking water that EPA retained in their Radionuclides Rule. FDA also is specifying analytical methods for determining whether the bottled water is in compliance with the quality standards.

As a consequence of FDA's amending the quality standard for uranium in part 165 (21 CFR part 165), bottled water manufacturers are required to monitor their finished bottled water products for uranium at least once each year (part 129 (21 CFR part 129)). In addition, bottled water manufacturers are required to monitor their source water for uranium at least once every 4 years, unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations (part 129).

If FDA does not receive significant adverse comment on or before May 2, 2003, the agency will publish a notice in the **Federal Register** no later than June 11, 2003, confirming the effective date of the direct final rule. The agency intends to make the direct final rule effective December 8, 2003.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. A comment recommending a change to the rule that is in addition to the rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of the rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule no later than June 11, 2003.

The companion proposed rule, which is in essence identical to the direct final rule, provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments on the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule, and the agency will consider the comments in developing a final rule. FDA will not provide additional opportunity for comment on the companion proposed rule. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. EPA Standards

The SDWA, as amended in 1996, requires EPA to publish an NPDWR that specifies either an MCL or a treatment technique requirement for contaminants that may "have an adverse effect on the health of persons," are "known to occur or [have] a substantial likelihood [of occurring] in public water systems with a frequency and at levels of public health concern," and for which "regulation * * * presents a meaningful opportunity for health risk reduction for persons served by public water systems" (SDWA section 1412(b)(1)(A)). The SDWA (section 300g-1(a)(3)) also requires that EPA issue MCLGs at the same time it issues NPDWRs. MCLGs are nonenforceable health goals that are based solely on considerations of protecting the public from the adverse health effects of contaminants, and not on other considerations, such as potential costs of regulating contaminants and potential technical difficulties of achieving the health goals (59 FR 38668 at 38671). EPA sets MCLs, the enforceable contaminant levels, as close as feasible to the nonenforceable MCLGs.

In its proposed rule on radionuclides (56 FR 33050), EPA proposed comprehensive changes to radionuclides standards in drinking water. However, after conducting a review of costs, benefits, and treatment technologies, in the Radionuclides Rule, EPA established an MCL of 30 micrograms per liter (µg/L) for uranium and retained the existing MCLs of 5 picocuries per liter (pCi/L) for combined radium-226/-228, 15 pCi/L for gross alpha (excluding radon and uranium), and 4 millirem (mrem)/year for beta particle and photon radioactivity (65 FR 76708 at 76722).

Because uranium is a kidney toxin as well as a carcinogen, EPA chose an MCL for uranium, expressed in µg/L, that is protective of both kidney toxicity and carcinogenicity (65 FR 76708 at 76716). Analytical methods approved by EPA for uranium monitoring include activity and mass concentration analyses. If uranium is determined by activity-type methods, a 0.67 pCi/µg conversion factor is used to convert activity to mass concentration (65 FR 76708 at 76725).

IV. FDA Standards

A. The Agency's Approach to the Bottled Water Quality Standards Established Under Section 410 of the Act

Under section 401 of the act (21 U.S.C. 341), the agency may issue a regulation establishing a standard of quality for a food under its common or usual name, when in the judgment of the Secretary of Health and Human Services such action will promote honesty and fair dealing in the interest of consumers. On November 26, 1973 (38 FR 32558), FDA established a quality standard for bottled water that is set forth in § 165.110.

Producers of bottled water are responsible for assuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard (§ 165.110(b)). Bottled water that is of a quality below the prescribed standard is required by § 165.110(c) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWRs by amending the quality standard regulations for bottled water introduced or delivered for introduction into interstate commerce to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that, with few exceptions, EPA standards for contaminants in drinking water are appropriate as allowable levels for contaminants in the quality standard for bottled water when bottled water may be expected to contain the same contaminants.

FDA generally has not duplicated the efforts of EPA in judging the adequacy of MCLs or treatment techniques in NPDWRs for contaminants when determining their applicability to bottled water in order to protect the public health. FDA believes that, in general, it would be redundant for FDA to reevaluate the drinking water standards prescribed by EPA. Further, because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as an estimate for the maximum expected consumption of bottled water by some individuals. Therefore, FDA's view is that generally in cases where bottled water is subject to the same contaminants as tap water, FDA should establish a standard of quality levels in bottled water at the same levels that EPA establishes as MCLs for such contaminants in tap water.

B. Quality Standard for Radionuclides

The quality standard for bottled water, as set forth in § 165.110(b)(5)(i), prescribes that bottled water shall not contain: (A) combined radium-226/-228 activity in excess of 5 picocuries per liter of water, (B) gross alpha particle activity (including radium-226, but excluding radon and uranium) in excess of 15 picocuries per liter of water, and (C) beta particle and photon radioactivity from manmade radionuclides in excess of that which would produce an annual dose equivalent to the total body or any internal organ of 4 millirems per year calculated on the basis of an intake of 2 liters of the water per day. If two or more beta or photon-emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed 4 millirems per year. The quality standard for bottled water, however, does not currently prescribe an allowable level for uranium.

With the exception of uranium, FDA's existing allowable levels for radionuclides (i.e., combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity) in the bottled water quality standard are the same as EPA's existing MCLs for the same radionuclides in drinking water that EPA retained in the Radionuclides Rule. Therefore, FDA will not change the existing allowable levels for these radionuclides in bottled water.

FDA has evaluated the MCL for uranium established by EPA for drinking water. FDA concludes that EPA's MCL for uranium, as a standard of quality level for bottled water, is adequate for the protection of public health. Certain waters used for bottled water may be expected to contain uranium; thus, FDA believes that adopting EPA's MCL for uranium will ensure that the quality of bottled water is equivalent to the quality of public drinking water that meets EPA standards.

Therefore, FDA is establishing in a new paragraph (b)(5)(i)(D) in § 165.110, an allowable level for uranium of 30 micrograms per liter of water.

C. Analytical Methods for Radionuclides

In the Radionuclide Rule, EPA listed the analytical methods that it had approved for use by public water systems to determine compliance with the radionuclide MCLs (i.e. for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity) (65 FR 76708 at 76724). FDA is revising § 165.110(b)(5)(ii) by incorporating by reference EPA approved analytical methods (65 FR 76708 at 76725) for determining compliance with the quality standard for uranium activity in bottled water. FDA is also revising § 165.110(b)(5)(ii) by incorporating by reference EPA approved analytical methods for determining compliance with the quality standard for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity in bottled water (65 FR 76708 at 76725). FDA believes that these methods are sufficient to use for determining the level of uranium in bottled water.

D. Monitoring Provisions of CGMP Regulations for Bottled Water

FDA has established CGMP regulations for bottled water in part 129. Under § 129.35(a)(3)(i), source water must be analyzed by the plant as often as necessary, but at least once every 4 years for radiological contaminants. Therefore, once the rule becomes effective, bottlers will be required to test their source water as often as necessary but at least once every 4 years for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity, unless the bottlers meet the provisions in § 129.35(a)(4) for source water monitoring exemptions. Further, to ensure that a plant's production complies with applicable standards, § 129.80(g)(2) requires radiological analysis by the plant, at least annually, of a representative sample from a batch or segment of a continuous production run for each type of bottled water produced during a day's production. Therefore, once this rule becomes effective, bottlers will be required to test their finished bottled water products at least once a year for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. In addition, bottled water must comply with the allowable levels for radionuclides in the quality standard for bottled water (§ 165.110(b)(5)(i)) unless the label bears a statement of substandard quality under § 165.110(c). As stated in § 165.110(d), bottled water is deemed adulterated if it contains a substance at a level considered injurious to health under section 402(a)(1) of the act (21 U.S.C. 342).

V. Environmental Impact

The agency has determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

A. Regulatory Impact Analysis

FDA has examined the economic implications of this direct final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this direct final rule is not a significant regulatory action as defined by Executive Order 12866.

1. The Need for Regulation

In the Radionuclides Rule, EPA published an NPDWR establishing an MCL for uranium. Under section 410 of the act, when EPA issues a regulation establishing an MCL for a contaminant in public drinking water, FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health. FDA's standard of quality regulations must also include appropriate monitoring requirements. Of the radionuclide standards addressed in EPA's final rule, only the uranium requirement does not have a current standard of quality regulation for bottled water. If FDA does not issue a standard of quality regulation by 180 days before the effective date of EPA's NPDWRs or make a finding that such a regulation is not necessary to protect the public health, the NPDWRs become applicable to bottled water.

2. Regulatory Options

FDA considers three options for this analysis:

Option 1. FDA does not establish a uranium quality standard regulation or make a finding that it is not necessary to protect the public health because uranium is not found in water used for bottled drinking water. Bottled water producers would be subject to the requirements set forth in the NPDWR for uranium.

Option 2. FDA establishes a uranium quality standard regulation. Bottled water producers would be subject to allowable levels in § 165.110 and CGMP monitoring requirements in §§ 129.35 and 129.80.

Option 3. Bottled water producers are not subject to either an FDA quality standard regulation or an EPA NPDWR for uranium.

Note on Option 3: Since water used for bottled water comes from sources that likely contain some level of naturally occurring uranium, section 410(b)(1) of the act does not allow this option. The act specifies two alternatives: "promulgate a standard of quality regulation under this subsection," or find that "such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems * * * but not in water used for bottled drinking water." However, the Office of Management and Budget cost-benefit analysis guidelines recommend discussing statutory requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity cost of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866. Our analysis finds that option 3 does not have the highest net benefits. Therefore, even if option 3 were permissible, the statute does not preclude the option with the highest net benefits.

Assumptions and Estimations Applicable to all Options

For the purposes of this analysis, FDA makes the following assumptions:

- Option 3, which has zero costs and benefits, will be considered the baseline for this analysis.
- The regulatory options we consider will have no organoleptic effect on the final bottled water product, and thus no impact on sales due to product quality. The cost of the regulation will be limited to the direct cost of testing, recordkeeping, and possible treatment technology investment or other compliance activity.
- Bottled water producers market their products based on meeting government safety testing requirements. However, any change in sales resulting from successful marketing either transfers revenue from one producer to another with no net loss to society, or causes increased sales of bottled water, which would mitigate the cost of this regulatory effort.
- Both the EPA NPDWR and the FDA standard of quality regulations will compel facilities to comply with the new uranium standard. Therefore, FDA assumes that options 1 or 2 will not differ in terms of the number of illnesses avoided or the burden placed on facilities compelled to adopt treatment technology. However, EPA and FDA do have differing monitoring requirements.
- *The number of facilities*: Approximately 1,550 plants produced bottled water in 1998 (63 FR 25764, May 11, 1998). According to another database search conducted in 2002, the industry contains only 914 plants that would be subject to these rules. The 2002 count may not include bottled water services to business, but the decrease in facilities may also be a result of industry consolidation (Ref. 1). Because of this uncertainty, we use both totals to define our uncertainty interval.
- *Facilities out of compliance*: As in the EPA NPDWR analysis, we estimate the baseline incidence of facilities out of compliance by using the EPA's National Inorganics and Radionuclides Survey (NIRS). EPA took the results of the concentration of radionuclides found in the NIRS and extrapolated to the expected percent of municipal water facilities that would be out of compliance—by type and population served—for various uranium levels. Since most bottled water facilities that do not use a public water source use ground water, and are relatively small when compared to municipal water plants, we assume that the percent of bottled water plants out of compliance with the uranium standard is approximately the same percent as the number of ground water municipal plants that serve less than 500 people. EPA used two methods to extrapolate the NIRS results to all facilities. Using both approaches, small ground water facilities have by far the largest estimated out of compliance percentages, so this is a conservative assumption. Table 1 of this document presents the four possible numbers of facilities out of compliance, using our two bottled water facility counts and EPA's two percentage estimates for groundwater facilities.[1] The lowest and the highest number of facilities identified here (8–22 facilities) will be used as the out of compliance uncertainty interval for cost calculations.

TABLE 1.—NUMBER OF FACILITIES POTENTIALLY OUT OF COMPLIANCE WITH THE URANIUM STANDARD

Total Number of Facilities	EPA Method 1 (1.4% out of compliance)	EPA Method 2 (0.9% out of compliance)
1550	22	14
914	13	8

Cost Calculations under Options 1 and 2

This cost analysis is separated into two sections: Possible compliance activity that firms may have to undertake to meet the uranium standard, and monitoring requirement for all facilities. Between 914 and 1,550 facilities may have to adopt a test for the uranium standard, and between 8 and 22 facilities may also have to take measures to come into compliance with the uranium standard. Uranium testing is a standard procedure that is available in many labs around the country. Firms can choose among many types of treatment options to come into compliance, including water softening/iron removal, point-of-use reverse osmosis, point-of-use anion exchange/activate alumina, blending, or finding an alternative source.

Compliance costs. FDA assumes that all facilities will come into compliance under options 1 and 2, so the relative ranking of options 1 and 2 is not affected by compliance cost calculations. In their 2000 NPDWR analysis, EPA estimated compliance investment needed per volume of water treated (here presented as per 83,000 gallons, which is the annual per household water use estimate used by EPA) for each of their extrapolation methods mentioned above, for each facility size category, and for several different uranium standards. However, they did not directly estimate the compliance cost of the 30 µg/L standard considered here. We use an average of the compliance costs per gallon between the 40 and 20 µg/L standard levels for which costs were estimated directly tested by EPA. We also assume that each facility out of compliance is of average size. According to EPA's per capita total water use estimates applied to bottled water, an average bottled water facility processes as much water as a municipal system serving between 42 and 72 households, so we use the compliance cost estimated for groundwater facilities serving between 100 and 500 people, which is the closest category EPA presents.

The extrapolation methods used to construct the uncertainty intervals explained above affect both the percent of facilities out of compliance and the total amount of uranium that would need to be removed to come into compliance. Therefore, the per volume costs will be different under EPA's different estimation methods even for identically sized facilities. As mentioned previously, firms can choose among many types of treatment options. Our central value of uncertain compliance cost estimates is based on EPA's study of technology adoption for previous standards and their decision tree analysis, and our uncertainty interval is defined by the least (alternative sourcing) and most (point-of-use methods) expensive options being adopted by every one of the 8–22 facilities assumed to be affected.

Table 2 of this document summarizes these calculations. Considerable economies of scale exist in water treatment, but EPA only estimates the effect of economies of scale between their grouped size categories. Therefore, within the EPA size category we are assuming applies to bottled water, total treatment cost depends only on the amount of water treated, even though it is probable that larger facilities within this class have a lower per volume cost of treating their water. Also, for these options we base estimates of the amount of bottled water treated per facility not on our uncertain number of facilities but

[1] This is actually a percentage out of compliance for all facilities, but the percentage is dominated by small groundwater facilities. Above an MCL of 40 µg/L, no facilities other than groundwater facilities serving less than 500 people were predicted to be out of compliance. Since EPA did not directly estimate compliance percentages for the EPA MCL of 30 µg/L, we must assume that the number of facilities that are not small groundwater and are out of compliance would be negligible.

on a fixed total estimate of bottled water production in the United States. Therefore, except for rounding, our compliance cost estimate is not dependent on the number of facilities. We do expect that fewer facilities treating a larger amount of water would lead to lower per volume costs, but our most accurate estimate cannot take this into account, and this uncertainty does not affect the ranking of alternatives. We assume costs are incurred every year indefinitely into the future. The annual volume of bottled water consumed in the United States increased by an average of 7 percent over the past 11 years (Ref. 3), but again since the cost of treating water is subject to considerable economies of scale (Ref. 2) we assume that per year compliance costs will be roughly constant in the future. The discount rate used is 7 percent. We use the average of all four estimates of the middle value to construct the measure of central tendency, and the average of the two rounded lowest values and the two rounded highest values to construct the uncertainty interval. According to this analysis, total present value compliance costs will average approximately $1,085,000, with a range of $61,000-$2,660,000 for both options 1 and 2.

TABLE 2.—COMPLIANCE COST FOR EPA METHODS 1 AND 2

EPA Calculation Method	No. of Facilities	Cost /83,000 Gallons ($)	Cost Per Facility ($)	Total Annual ($)	Present Value ($)
1	22	100 (10–190)	4,200 (300–7,900)	92,000 (7,000–174,000)	1,406,000 (107,000–2,660,000)
1	13	100 (10–190)	7,200 (500–13,400)	94,000 (7,000–174,000)	1,437,000 (107,000–2,660,000)
2	14	80 (10–190)	3,600 (300–7,900)	50,000 (4,000–111,000)	764,000 (61,000–1,697,000)
2	8	80 (10–190)	6,000 (500–13,400)	48,000 (4,000–107,000)	734,000 (61,000–1,636,000)

Monitoring Costs. FDA has collected several estimates for uranium testing cost, ranging from $25-$150 per sample.[2] We will use the average of these testing costs of $105 as a most likely value and the entire range to define uncertainty. EPA and FDA required testing frequencies under options 1 and 2 differ substantially, as explained below.

Option 1 (EPA) Testing Frequency. Under the EPA testing regime, the 914 or 1,550 facilities would have to adopt a test for the uranium standard. According to the Radionuclides Rule (65 FR 76708 at 76711), all facilities would have to first perform four consecutive quarterly samples. We assume that bottled water facilities would test these samples in the first year after adoption. Based on the average results of these samples, facilities would have to sample once every 3 years (average greater than 50 percent of MCL), once every 6 years (average less than 50 percent of MCL), or once every 9 years (not detected). We assume one-third of facilities would fall in each of these categories, and that future tests would be uniformly distributed across years; for example, one-third of the facilities that only have to test once every 3 years will conduct the test in any one year.

Option 2 (FDA) Testing Frequency. Under § 129.35(a)(3), bottled water producers are required to test their source water for radiological contaminants at least once every 4 years unless exempted from such testing under § 129.35(a)(4). For example, one possible exemption is that the 25 percent of bottled water facilities that use a public water source already subject to EPA regulations may substitute public water system testing results for source water testing. We assume that no facilities that use a public water source will need to test their source water for uranium, and that all bottled water producers using nonpublic water will need to test their source water. All bottled water producers are required to test their final bottled water product for radiological contaminants at least once per year under § 129.80(g)(2).

Table 3 of this document presents the calculations for each option. The low bound is calculated by the low facility count multiplied by the low testing cost estimate, the high bound is calculated by the high facility count multiplied by the high testing cost estimate, and the middle value is the average of the low and high facility counts multiplied by the average of the testing cost estimates. Multiplying all low and high estimates together probably renders the low and high bounds extremely unlikely, but since we do not have a probability distribution associated with these values we have no other method of defining uncertainty. The present value is calculated as if all testing were to be continued indefinitely, with a discount rate of 7 percent.

TABLE 3.—MONITORING COST ESTIMATES

Options	Year 1 tests	Year 1 Cost ($)	*Subsequent* year tests	*Subsequent year cost* ($)	Present Value ($)
Option 1 (EPA)	4	517,000 (91,000–930,000)	.61	79,000 (14,000–142,000)	1,645,000 (291,000–2,956,000)
Option 2 (FDA)	1.19	154,000 (27,000–277,000)	1.19	154,000 (27,000–277,000)	2,353,000 (416,000–4,229,000)

[2] A private lab called General Engineering Laboratories (GEL) in Charleston, SC, provides uranium testing of private wells at a cost of $25 per sample: http://www.scdhec.net/eqc/water/html/urtest2.html, accessed August 15, 2002. The New Hampshire Department of Environmental Services charges $140 per uranium test: http://www.des.state.nh.us/factsheets/ws/ws-3-11.htm, accessed August 15, 2002. The Maine Health and Environmental Testing Laboratory charges $150 per uranium test: http://www.state.me.us/dhs/etl/pubgd99w.html, accessed August, 15, 2002.

3. Benefits of the Regulatory Options

FDA assumes that both option 1 and option 2 would compel all bottled water facilities to come into compliance with the 30 µg/L uranium standard. Uranium carries two distinct risks: An increased risk of cancer and kidney toxicity. In addition, treatment technologies put in place to remove uranium will also reduce the concentration of other bottled water contaminants. However, EPA was unable to quantify the effect of uranium on kidney toxicity and the effect of uranium treatment technology on cocontaminants due to lack of information, and FDA has not found any information made available that would allow the quantification of these effects since EPA's 2000 analysis.

Cases of Cancer Avoided

Exposure. According to the *Bottled Water Reporter*, Americans consumed a per capita average of approximately 73.8 liters of bottled water in 2001 (Ref. 3). This is approximately 18 percent of the per capita consumption of water from all sources estimated by the EPA (Ref 2). Bottled water consumption has been increasing at a rate of approximately 7 percent per year in the United States over the past 11 years, and this trend may continue (Ref 3).

Risk and Valuation of Risk. In September 1999, EPA updated a series of coefficients they developed to express the incremental lifetime risk of cancer morbidity or mortality per unit of intake. They then combined this per unit risk to the average and 90th percentile annual and lifetime intake of water from all sources (including bottled water, but they adjusted for bottled water that did not originate in the municipal water supplies they regulated) to calculate: (1) The total morbidity and mortality cancer risk due to drinking water containing uranium, and (2) the reduction in risk due to their proposed NPDWR for uranium. We adjust these values based on our calculation of the average annual intake of bottled water described above. The mortality risk coefficient per ug of uranium ingested is 3.97E–11, and the morbidity coefficient is 6.13E–11 (Ref. 4). In other words, for each g of uranium ingested the lifetime risk of getting cancer increases by approximately 6 in 100 billion, while the lifetime risk of dying from cancer increases by approximately 4 in 100 billion.

This risk estimate is applied to the decrease in Uranium ingested due to options 1 and 2. Between 0.9 percent and 1.4 percent of bottled water is expected to initially have uranium concentrations over 30 µg/L. Based on 2001 total bottled water consumption, this translates into between 49 million and 76 million gallons of bottled water possibly above the standard. In the Radionuclides rule, EPA expected that the reduction in uranium concentration in the out of compliance municipal water facilities would yield an annual decrease in the number of new fatal and nonfatal statistical[3] cancer cases of 0.82 from an affected number of gallons of approximately 73 million.

For the calculations below, we assume that every bottled water consumer has an equal chance of drinking water from a facility that would be out of compliance with the standard. This makes the calculation much simpler, and since the mortality and morbidity risk coefficients are linear and are not based on past exposure, the total reduction in risk is identical. If out-of-compliance bottled water facilities have uranium concentrations roughly equal to the EPA estimates, then applying this assumed reduction and the total annual per capita consumption attributable to the affected bottled water facilities yields a total number of fatal and nonfatal cancer cases avoided of between 0.55 and 0.85 per year for both options 1 and 2. We use a 6 percent growth rate to take into account an increase in exposure and population, in relation to the 7 percent discount rate used for the cost calculations. We also assume that the cancer mortality will occur 20 years in the future. The central estimate is somewhat sensitive to these assumptions, so we test different assumptions in the net benefits section below. Using standard valuation techniques for cancer morbidity and mortality yields an expected present value benefit of between $8,700,000 and $13,500,000. The calculations summary is in Table 4 of this document.

TABLE 4.—BENEFITS CALCULATIONS

Options	Cases of Cancer Avoided: EPA Method 1	Cases of Cancer Avoided: EPA Method 2	Present Value ($) of Annual Cancer Cases (low-high)	Total Present Value ($) (low-high)
1 and 2	.85	.55	629,000 (494,000–764,000)	11,112,000 (8,731,000–13,493,000)

A final source of uncertainty we need to account for is the upper and lower bound estimated by EPA for their cancer risk coefficients. In the 2000 analysis, EPA assumes an uncertainty cancer risk interval extending one order of magnitude above and below their risk coefficients. Applying this uncertainty interval to the benefits we have already calculated yields a final benefits interval of between $870,000 and $135,000,000. Although EPA does not include a probabilistic confidence interval associated with this additional source of uncertainty, they do state that the central tendency values they use for their main calculations are more likely (Ref. 2).

Sensitivity to Assumptions and Uncertainty: Benefits

These benefits calculations are subject to considerable uncertainty. The uncertainty interval used in the analysis *is due to the uncertainty in the* incidence and concentration of naturally occurring uranium and uncertainty in the uranium risk coefficients. However, the main uncertain benefits that we do not quantify are; (1) The reduction in kidney disease due to reducing uranium concentration in bottled water, and (2) the reduction in cocontaminants due to the adoption of treatment technologies for uranium. Therefore, the quantified cancer benefits probably underestimate the true positive impact of the uranium standard.

4. Net Benefits

Table 5 below presents the total costs and benefits for all three options:

[3] A statistical cancer case refers to expectations. For example, if this risk of contracting cancer sometime during one's life increases for each person by 1 in a million, and the affected population consisted of 1 million people, it is expected that the number of eventual cancer cases observed would increase by 1. However, 1 is only the measure of central tendency in a distribution of effects.

TABLE 5.—COSTS AND BENEFITS

Options	Total Costs ($) (low-high)	Total Benefits ($) (low-high)
1 (EPA Monitoring Requirement)	2,930,000 (352,000–5,616,000)	11,112,000 (8,731,000–13,493,000)
2 (FDA Monitoring Requirement)	3,438,000 (477,000–6,889,000)	11,112,000 (8,731,000–13,493,000)
3 (No Action Taken)	0	0

In the most likely central values in the distribution of cost and benefits, EPA option 1 has positive net measured benefits and FDA option 2 has positive net measured benefits. The ranking of option 1 and 2 depends completely on the frequency of required testing: FDA would require an average of 1.19 tests per year per facility, while EPA, after a series of four tests, would only require an average of .61 test per year per facility. We tested the effects of 5 percent–7 percent discount rates and 15–30 year delays in cancer onset in our benefits calculations, and both options still yield positive net benefits. The choice of the discount rate or time period before onset does not affect the relative ranking of options 1 and 2.

The range of uncertainty between costs and benefits overlaps, but many of the determinants of the range of uncertainty affect both costs and benefits equally, so low costs are associated with low benefits and high costs are associated with high benefits. The exception to this is the uncertainty in the cancer risk coefficient; since this interval is not probabilistic, FDA cannot estimate a probability that this rule will have negative net or positive net benefits for any of these options. However, FDA does consider our central estimates the most likely outcomes. Also note the potentially large benefits from a reduction in kidney toxicity and cocontaminants that we were not able to quantify, which could also affect the size and range of the net benefits.

Finally, our cost-best analysis reaches a different result than EPA's 2000 radionuclide analysis, which concluded that testing for uranium in water destined for human consumption has negative net quantifiable benefits (65 FR 76708). The reason for the difference between our results and EPA's results is that most of the costs of the EPA rule are applied to water that will not be consumed. People do not drink the vast majority of water treated by municipal facilities. Most of that water is used for cleaning, waste disposal, and outdoor uses. In contrast, almost all bottled water is used for human consumption. In fact, a typical bottled water facility processes as much water for drinking as a much larger municipal water facility. Consequently, fewer bottled water facilities would have to incur compliance costs to afford the same level of protection for water consumed as assumed in the EPA analysis.

B. Small Entity Analysis

Under section 603(a) of the Regulatory Flexibility Act, for any proposed rule for which the agency is required by section 553 of the Administrative Procedure Act or any other law to publish a general notice of proposed rulemaking, the agency is required to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency has published, in the companion proposed rule published elsewhere in this **Federal Register**, an initial regulatory flexibility analysis. Because the companion proposed rule is a proposed rule for which a general notice of proposed rulemaking is required, and therefore, is subject to the Regulatory Flexibility Act, the agency will consider any comments it receives on the initial regulatory flexibility analysis in the companion proposed rule when deciding whether to withdraw this direct final rule.

FDA has examined the economic implications of this direct final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this rule would have a significant economic impact on a substantial number of small entities.

FDA feels that the flexibility allowed in source testing requirements under option 2 in the impact analysis is the maximum amount of flexibility possible in this regulation. FDA is not establishing exemptions for final product testing since there is a need to test for naturally occurring uranium, which could be present in all source water.

According to the latest database search across the bottled water industry mentioned above, approximately 72 percent of firms qualify as small by the Small Business Administration (SBA) standard of having less than 500 full-time-equivalent employees. We assume that all SBA small firms operate a single facility for the purposes of this analysis. Since all facilities must adopt uranium testing, between 658 and 1,116 small firm facilities will incur a testing burden. Assuming the same distribution of size among out of compliance plants means that between 6 and 16 small facilities will incur the more costly burden of devoting resources to bring their water into compliance with the uranium standard issued in this rule. Table of this document presents the average and maximum annual costs attributable to this rule for each small firm.

TABLE 6.—ANNUAL AVERAGE AND MAXIMUM COSTS PER FIRM

Category	Average ($)	Maximum ($)
Monitoring	125	179
Compliance	5,246	13,383
Total	5,400	13,600

Most small firms will only incur a $125 (1.19 tests per year at an average cost of $105 per test) uranium testing cost, although a few may incur up to $179 (1.19 tests per year at an average cost of $150 per test) in annual testing costs, which is 0.03 percent of the $580,000 annual revenue of the median small bottled water firm. If a small firm operates more than one facility, testing costs would be multiplied by the number of facilities they operate. However, between 6 and 16 small firms will incur an average of $5,400 in total costs, and may incur as much as $13,600 in total costs if for some reason they need to adopt the most expensive treatment option, although FDA considers this unlikely. The average treatment cost estimates represent .9 percent of median annual small firm sales, but could be as much as 2.3 percent of annual sales. However, 75 percent of the total reduction in cancer incidence of this rule is due to these small firms lowering the amount of uranium in their water, so it is essential that they adopt some sort of treatment technology.

C. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4), requiring cost-benefit and other analyses, in section 1531 (a) defines a significant rule as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any 1 year." FDA has determined that this direct final rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

VII. Paperwork Reduction Act

FDA tentatively concludes that this direct final rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive Order requires agencies to "construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Section 403A of the act (21 U.S.C. 343-1) is an express preemption provision. Section 403A(a)(1) provides that "no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce-(1) any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such standard of identity or that is not identical to the requirement of section 403(g)* * *" FDA has interpreted this provision to apply to standards of quality (21 CFR 100.1(c)(4)). Although this rule has preemptive effect in that it would preclude States from issuing requirements for uranium levels in bottled water that are not identical to the allouable level for uranium as set forth in this rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(c) of the Executive Order further requires that "any regulatory preemption of State law shall be restricted to the minimum level necessary" to achieve the regulatory objective. Under section 410 of the act, not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-1), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment techniques required for the same contaminant. On December 7, 2000, EPA issued an NPDWR containing an MCL for uranium (65 FR 76708). FDA has determined that the MCL for uranium that EPA established for public drinking water is appropriate as a standard of quality for bottled water, and is issuing this regulation consistent with section 410 of the act.

Further, section 4(e) of the Executive Order provides that "when an agency proposed to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings." Given the statutory framework of section 410 of the act for bottled water, EPA's issuance of an MCL for uranium in public drinking water provided notice of possible FDA action for a standard of quality for uranium in bottled water. FDA did not receive any correspondence from State and local officials regarding a uranium standard for bottled water subsequent to EPA's NPDWR on the MCL for uranium. Moreover, FDA is not aware of any States that have requirements for uranium in bottled water that would be affected by FDA's decision to establish a bottled water quality standard for uranium that is consistent with EPA's standard for public drinking water. In addition, we are providing an opportunity for State and local officials to comment on FDA's standard of quality for uranium in bottled water in the context of this rulemaking. For the reasons set forth previously in this document , the agency believes that it has complied with all of the applicable requirements under the Executive order.

In conclusion, FDA has determined that the preemptive effects of the final rule are consistent with Executive order 13132.

IX. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or elctronic comments regarding this document. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

X. Effective Date

The agency intends to make the direct final rule effective December 8, 2003. The agency will publish a confirmation notice for the direct final rule in the **Federal Register** no later than 180 days before the effective date. The agency is providing 180 days before the effective date to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule.

XI. References

1. Hamon, J., "Bottled Water Industry, 2001" Special Industries Spotlight, January 2001. Available at www.merger.com.

2. Industrial Economics, Inc., *Economic Analysis of the Radionuclides National Primary Drinking Water Regulations.* Available from the Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency. November 2000.

3. Rodwan, J. G., "The 2001 Stat: Bottled Water Sales Reach New Heights," *Bottled Water Reporter*, p. 14–20, April/May 2002.

4. Eckerman, K., R. Leggett, C. Nelson, J. Pushkin, and A. Richardson, *Cancer Risk Coefficients for Environmental Exposure to Radionuclides*, Federal Guidance Report No. 13, 1999. (EPA 402–R–99–001). Note that FDA used the risk coefficients as adjusted and reported in Ref. 2 of this document in order to be consistent with the EPA radionuclide impact analysis.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 165 is amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

2. Section 165.110 is amended by adding paragraph (b)(5)(i)(D) and by revising paragraph (b)(5)(ii) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(5) * * *

(i)* * *

(D) The bottled water shall not contain uranium in excess of 30 micrograms per liter of water.

(ii) Analyses conducted to determine compliance with the requirements of paragraph (b)(5)(i) of this section shall

be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of "Standard Methods for the Examination of Water and Wastewater," 20th Ed., may be obtained from the American Public Health Association, 1015 15th St. NW., Washington, DC 20005. Copies of the methods incorporated by reference in this paragraph (b)(5)(ii) may also be examined at the Office of the **Federal Register**, 800 North Capital St. NW., suite 700, Washington, DC, or at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD.

(A) Combined radium-226/-228 shall be measured using the following methods:

(*1*) Method 7500–Ra B—"Precipitation Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*2*) Method 7500–Ra D—"Sequential Precipitation Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(B) Gross alpha particle radioactivity shall be measured using the following method: Method 7110 C—"Coprecipitation Method for Gross Alpha Radioactivity in Drinking Water," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(C) Beta particle and photon radioactivity shall be measured using the following methods:

(*1*) Method 7500–Sr B—"Precipitation Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*2*) Method 7500–^{3}H B—"Liquid Scintillation Spectrometric Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*3*) Method 7120 B—"Gamma Spectroscopic Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(D) Uranium shall be measured using the following methods:

(*1*) Method 7500–U B—"Radiochemical Method" which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(*2*) Method 7500–U C—"Isotopic Method" which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

* * * * *

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4971 Filed 2–27–03; 11:42 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

33 CFR Part 52

[OST Docket No. 2002–13439; Notice 2002–1]

RIN–2105–AD19

Coast Guard Board for Correction of Military Records; Procedural Regulation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is revising and reissuing the procedural regulations of the Coast Guard Board for Correction of Military Records (Board) in order to clarify application procedures; to explain applicants' legal rights and burden of proof; to provide more time and flexibility for applicants to improve their applications; and to facilitate timely decision making by the Board.

EFFECTIVE DATE: April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Ulmer, Chair, Board for Correction of Military Records of the Coast Guard, C–60, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW.; Washington, DC 20590. Telephone: (202) 366–9335.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may download a copy of this final rule at the following Internet addresses: *http://dms.dot.gov; http://www.access.gpo.gov; http://www.archives.gov/federal_register.* An electronic copy may also be obtained by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661.

Background

The Secretary of Transportation, acting through the Board for Correction of Military Records of the Coast Guard, is authorized by section 1552 of title 10 of the United States Code to correct the military records of active duty, reserve, retired, and discharged Coast Guard military personnel who apply for a correction of an error or injustice in their records.

The Board's current rules at 33 CFR Part 52 have become disorganized over time by amendments and have several shortcomings that may negatively affect the Board's applicants and the timeliness of the Board's decisions. This revision of 33 CFR Part 52 is intended to better organize the rules, notify applicants of their rights and Board procedures, and remove other shortcomings as described below.

The current rules fail to inform the public of the following important matters: the proper format for briefs in support of an application; the need for a family member or legal representative to submit proof of his or her proper interest before applying on behalf of a deceased or incompetent veteran; the requirement that applicants inform the Board of any change in their mailing address prior to final action by the Board; the fact that applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing may be entitled to representation by a Coast Guard law specialist in accordance with 10 U.S.C. 1034(f)(3)(A); the presumption of regularity accorded military records and the burden of proof borne by applicants; the possible actions the Secretary or his or her delegate may take when reviewing a recommended decision of the Board; the possible reduction of monetary awards resulting from record corrections because of setoffs required by law or regulation; and the availability of copies of the Board's final decisions, redacted to protect the privacy of applicants, for review in the Board's reading room and on an Internet site.

Furthermore, the current rule allows an applicant only 15 days to respond to the written views of the Coast Guard on his or her application. § 52.82(d). In light of the underway schedules of some of the Board's active duty applicants assigned to sea duty, 15 days is insufficient time for some applicants to respond. Moreover, no provision addresses applicants' requests for extensions to consult counsel or gather more evidence. The current rule requires members who submit evidence after submitting their applications to waive their right to a final decision within ten months and makes no provision for a new deadline. § 52.61(c). Moreover, no provision addresses the consequences of an applicant's decision to change his or her request for relief.

The current rule states that Board action is required before a member can withdraw an application. § 52.26. It also allows the Chair to deny an application, without prejudice and without action by the Board, if he or she believes that the evidence is insufficient or that the application was untimely and lacks merit. § 52.32.

The current rule does not address or facilitate the Board's access to privileged, classified, and sensitive information, such as reports of investigations, which is occasionally necessary for the Board to determine whether an error or injustice has been committed. The current rule also permits applicants to inspect the Board's record of proceedings without expressly providing for the protection of privileged, classified, and sensitive information. § 52.66.

The current rule states that the Board shall consider any written recommendation submitted by the Chief Counsel of the Coast Guard before issuing a decision. § 52.82(e). However, it provides no deadline for the Chief Counsel's submission even though the Board must take final action on each application within ten months. 14 U.S.C. 425. Delayed submissions by the Chief Counsel's office can leave the Board with little or no time to receive the applicant's response, issue a decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. The current rule also does not take into account written views submitted by a delegate of the Commandant of the Coast Guard other than the Chief Counsel. In addition, the current rule fails to require the Coast Guard to describe what "significant issue of Coast Guard policy" is at stake when he or she invokes review of a Board decision by the delegate of the Secretary. § 52.64(a)(2).

The current rule permits the Board to specify any correction of a record in its order and to order the Coast Guard to take "any other action deemed necessary to carry out the Board's recommendation," but it does not expressly permit the Board to order the Coast Guard to convene medical boards to determine an applicant's disability rating so that his or her separation can be corrected. § 52.61(e). The current rule also requires the delegate of the Secretary to review cases in which the Board corrects a record to show that a member is entitled to a medal or award contrary to the Coast Guard's recommendation. In addition, the current rule does not address what the Coast Guard should do if it finds that an order of the Board is incomplete because of an oversight. All of these matters are addressed in the final rule.

Notice and Comment

The Department published a Notice of Proposed Rulemaking on December 11, 2002, at 67 FR 76142. No comments were received in response to that notice. Therefore, this final rule adopts the proposed rule without change.

Section-by-Section Analysis of the Final Rule

Subpart A—Purpose and Authority

Section 52.1 Purpose

This section remains unchanged.

Section 52.2 Authority

This section is amended to reflect the codification of the Board's ten-month deadline for issuing decisions under 14 U.S.C. 425 and to add a citation (10 U.S.C. 1552(a)(4)) for the finality and conclusiveness of the Board's orders.

Subpart B—Establishment, Function, and Jurisdiction of Board

Section 52.11 Establishment and Composition

Throughout this section and all of Part 52, the term Chair is substituted for the term Chairman to establish gender neutrality. This section is also amended to remove a citation to 49 U.S.C. 108(a).

Section 52.12 Function

This section is amended to reflect the fact that the Board considers submissions from the Coast Guard and other Government offices along with applications and military records in reaching its decisions.

Section 52.13 Jurisdiction

No changes have been made to this section.

Subpart C—General Provisions Regarding Applications

Section 52.21 General Requirements

No changes have been made to paragraph (a). Paragraph (b) is amended to inform family members and legal representatives that they must submit proof of their proper interest when applying to the Board for the correction of the military record of a deceased or incompetent veteran. Paragraph (c) is amended to reflect the fact that applications are not docketed by the Board until they are complete and to reflect the need for substantial evidence or information and all military and medical records before an application is considered complete. Paragraph (d) is added to advise applicants of the necessity of keeping the Board informed of any changes in mailing address so that they will receive the Board's correspondence. Paragraph (e) is added to ensure that briefs submitted in support of applications are readable, replicable, and not unduly lengthy.

Section 52.22 Time Limit for Filing Application

This section is reworded to clarify why an applicant must provide reasons

for submitting an application after the three-year statute of limitations has passed.

Section 52.23 Counsel

Paragraph (a) is added to inform applicants that they may be represented by counsel at their own expense but that applicants whose cases are processed under the Whistleblower Protection Act may be entitled to representation by a law specialist at a hearing convened in accordance with Subpart F. The previous text of this section appears in paragraph (b) and is amended by updating two citations and by making the Chair, rather than the Board, responsible for deciding the competence of an applicant's chosen representative.

Section 52.24 Evidence and Burden of Proof

Paragraph (a) is revised to encourage the timely submission of evidence with the initial application and to direct attention toward the new rule concerning late submissions of evidence in § 52.26. Paragraph (b) is added to inform applicants of the presumption of regularity accorded military records and of the burden of proof they must meet to be granted relief, which is the preponderance of the evidence.

Section 52.25 Access to Official Records

This section is amended to consolidate the sentences.

Section 52.26 Right to Timely Decision; Effect of Requests for Extensions, Changes in Requests for Relief, and Late Submissions of Evidence

This new section, which incorporates the provisions in old §§ 52.68 and 52.61(c), informs applicants of their right to a final decision on their applications within ten months of the completion of their applications. It also permits applicants to request extensions, submit evidence after their applications have been docketed, and alter their requests for relief without waiving their right to a timely decision. It provides that, if an applicant requests an extension or unreasonably delays responding to a request from the Board, the Board's ten-month deadline is extended by the duration of the extension or of the unreasonable delay. It further provides that, if in the determination of the Chair, an applicant has submitted significant new evidence or has significantly altered his or her request for relief after his or her application has been docketed, the application is considered newly completed and the applicant has the right to a final decision within ten months of the new date of completion.

Section 52.27 Withdrawal of Application

This section (old § 52.26) is revised to allow the Chair to permit an applicant to withdraw his or her application without Board action.

Section 52.28 Stay of Proceedings

No changes have been made to this section (old § 52.33), apart from its renumbering. It has been renumbered because it belongs better under this Subpart C—General Provisions Regarding Applications than where it was under Subpart D—Consideration of Application.

Subpart D—Consideration of Application and Administrative Closure

Section 52.31 Consideration of Application

This section is amended to show that the Chair's initial review of an application to determine whether it is complete occurs before the application is docketed.

Section 52.32 Administrative Closure

This section is renamed and expanded to clarify the circumstances under which the Chair may close a case without prejudice and without Board action. Paragraph (a) permits the Chair to close a case when he or she determines that the application was erroneously documented because it was never completed, the Board lacks authority to grant the requested relief, the applicant failed to exhaust an administrative remedy before applying to the Board, or the Coast Guard has already made the requested corrections. Paragraph (b) addresses how applicants might reapply after their cases have been administratively closed. Paragraph (c) requires the Chair to inform applicants of their right to reapply whenever he or she administratively closes a case.

Old § 52.33 Stay of Proceedings

This old section has been renumbered as §52.28.

Subpart E—Submissions by the Coast Guord and Other Offices

This new subpart E embodies old Subpart—Miscellaneous Provisions. It has been renamed and repositioned to better reflect its contents and the order of the Board's procedures. Old subpart E is included in subpart F.

Section 52.41 Assistance

No changes have been made to this section (old § 52.81), apart from its renumbering.

Section 52.42 Views of the Coast Guard

Paragraph (a) (old § 52.82(a)) is amended to reflect the amendments to sections 52.21 and 52.32. Paragraphs (a) and (b) (old § 52.82(c)) are amended to reflect the fact that the views of the Coast Guard may be submitted in an advisory opinion by any delegate of the Commandant. Paragraph (c) (old § 52.82(e)) is amended to require the Board to consider the advisory opinion of the Coast Guard only if it is submitted within 135 days of the date the application is complete but to permit the Board to consider advisory opinions submitted after the 135-day deadline has passed. The rule facilitates timely decisions when submissions of advisory opinions by the Coast Guard are delayed to the point where little or no time remains for the Board to receive the applicant's response to the advisory opinion, issue a decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. Paragraph (d) (old § 52.82(d)) increases the time provided for the applicant's response to the advisory opinion from 15 to 30 days and allows the Chair to grant extensions of the time to respond. Paragraph (e), which is new, requires advisory opinions and applicants' briefs in response to advisory opinions to be readable, replicable, and not unduly lengthy.

Section 52.43 Requests for Further Information; Submissions of Classified, Privileged, and Sensitive Information

This section (old § 52.82(b)) has been expanded to address the Board's ability to seek information from applicants and from other Government offices, as well as from the Coast Guard. It addresses how the Board can receive and review classified, privileged, and sensitive information from the Coast Guard or another Government office while providing the applicant with a copy of any part of that information that would be released to him or her if requested by the applicant from the custodian of the information under 49 CFR parts 7 or 10.

Subpart F—Hearings

This subpart incorporates both old Subpart E—Hearings and old Subpart F—Procedure at Hearings because both concern hearings.

Section 52.51 General Provision

No changes other than renumbering and substituting the term Chair for the term Chairman have been made to this section (old § 52.41).

Section 52.52 Notice of Hearing

No changes other than renumbering, substituting the term Chair for the term Chairman, and adding a comma for stylistic consistency have been made to this section (old § 52.42).

Section 52.53 Witnesses

This section (old § 52.43) has been renumbered and amended by substituting the term Chair for the term Chairman, adding a comma for stylistic consistency, and clarifying the language to indicate that the applicant is only responsible for ensuring the appearance of his or her own witnesses at a hearing.

Section 52.54 Expenses

This section (old § 52.44) has been renumbered and amended to inform applicants that they may be entitled to representation by a law specialist if they are granted a hearing and their cases are processed under the Whistleblower Protection Act.

Section 52.55 Nonappearance

No change has been made to this section (old § 52.45), apart from its renumbering.

Section 52.56 Conduct of Hearing

No amendments other than renumbering, substituting the term Chair for the term Chairman, and adding a comma for stylistic consistency have been made to this section (old § 52.51).

Section 52.57 Record of Hearing

No change has been made to this section (old § 52.52), apart from its renumbering.

Subpart G—Judgment and Disposition

Section 52.61 Deliberations and Decision

No amendments other than substituting the term Chair for the term Chairman have been made to paragraphs (a) and (b). Old paragraph (c) is amended and moved to paragraphs 52.24(a) and 52.26(c). New paragraph (c) (old paragraph (d)) is amended only by substituting the term Chair for the term Chairman and by capitalizing the letter b in Board for stylistic consistency. Paragraph (d) (old paragraph (e)) is revised to show that the Board's authority to order the Coast Guard to take "any other action deemed necessary to carry out the Board's recommendation," as previously provided, includes the authority to order the Coast Guard to convene medical boards to help determine an applicant's proper disability rating for a correction of his or her separation. No changes have been made to paragraph (e) (old paragraph (f)).

Section 52.62 Minority Report

No changes have been made to this section.

Section 52.63 Record of Proceedings

Paragraph (a) contains the existing, unamended text of this section. Paragraph (b) has been added to provide for the return of classified, privileged, or sensitive information reviewed by the Board to the custodial Government office and the inclusion of the redacted copy of the information that was provided to the applicant in the Board's permanent record of proceedings after final action is taken.

Section 52.64 Final Action

Paragraph (a)(2) is amended to require the delegate of the Commandant of the Coast Guard to identify and describe in his or her advisory opinion the significant issue of Coast Guard policy challenged in an application that requires its review by the delegate of the Secretary under paragraph (b) if the Board grants relief contrary to the Coast Guard's advisory opinion or if the Board grants substantially different relief than that recommended by the Coast Guard. Paragraph (a)(2) is also amended to make the Board's decision on an application to receive a medal or award final unless the Coast Guard describes a significant issue of Coast Guard policy that is challenged in the application. Paragraph (b) is amended to reflect the range of actions the delegate of the Secretary may take in reviewing a decision of the Board.

Section 52.65 Orders

No changes have been made to this section.

Section 52.66 Notification

This section is amended to make only the permanent record of proceedings, as compiled in accordance with § 52.63(b), available for the applicant's inspection.

Section 52.67 Reconsideration

In paragraphs (a), (b), and (e), the term Chair is substituted for the term Chairman. Paragraph (a)(1) is amended for clarification. Paragraph (c) is amended to better explain who can serve on a Board to reconsider a case. Paragraph (d) is amended to make applications for reconsideration subject to the provisions in § 52.26 for permitting applicants to request extensions, submit evidence late, and alter their requests for relief.

Old section 52.68 Time Limit for Final Action

This old section has been incorporated into §52.26.

Subpart H—Payment of Claims and Implementation of Orders

Section 52.71 Authority To Pay

No changes have been made to this section.

Section 52.72 Implementation of Orders

This section is renamed for clarity and the words "shall transmit" are substituted for the word "transmits." Paragraph (b) is amended to specify that applicants must furnish to the Board or to the Coast Guard information needed to determine the proper parties to a claim. Paragraph (c) is amended to notify applicants that monetary awards resulting from record corrections may be reduced by setoffs required by law or regulation.

Section 52.73 Interpretation

This section is amended to provide that the Coast Guard should return a decision to the Board for clarification or technical amendment if it believes that the Board's order is incomplete because of an oversight.

Section 52.74 Report of Settlement

No changes have been made to this section.

Subpart I—Public Access to Decisions

The old Subpart I—Miscellaneous Provisions is repositioned and renamed as Subpart E—Submissions by the Coast Guard and Other Offices.

Section 52.81 Reading Room and Index

This new section informs the public of the availability of copies of its final decisions, redacted to protect the privacy of applicants, for public review in the Board's reading room and on the Internet.

Regulatory Analyses and Notices

Executive Order 12866

This rule does not constitute a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. The costs of these procedural changes are negligible, their effect on industry is negligible, and they are not of general policy interest.

Regulatory Flexibility Act and Federalism

Under 5 U.S.C. 604, we certify that this rule will not have a significant economic impact on a substantial number of small entities because it will affect only the procedures followed by the Board, the Coast Guard, and applicants in the submission and processing of applications for correction of individuals' personal military records. There are no Federalism factors

to warrant the preparation of a Federalism assessment.

Paperwork Reduction Act

This final rule does not have any information collection requirements subject to review under the Paperwork Reduction Act.

Lists of Subjects in 33 CFR Part 52

Administrative practice and procedures, Archives and records, Military personnel.

Issued this 14th day of February 2003 at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department revises 33 CFR Part 52 to read as follows:

PART 52—BOARD FOR CORRECTION OF MILITARY RECORDS OF THE COAST GUARD

Subpart A—Purpose and Authority

Sec.
52.1 Purpose.
52.2 Authority.

Subpart B—Establishment, Function, and Jurisdiction of Board

52.11 Establishment and composition.
52.12 Function.
52.13 Jurisdiction.

Subpart C—General Provisions Regarding Applications

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52.23 Counsel.
52.24 Evidence and burden of proof.
52.25 Access to official records.
52.26 Right to timely decision; effect of requests for extensions, changes in requests for relief, and late submissions of evidence.
52.27 Withdrawal of application.
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Subpart D—Consideration of Application and Administrative Closure

52.31 Consideration of application.
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Subpart H—Payment of Claims and Implementation of Orders

52.71 Authority to pay.
52.72 Implementation of orders.
52.73 Interpretation.
52.74 Report of settlement.

Subpart I—Public Access to Decisions

52.81 Reading room and index.

Authority: 10 U.S.C. 1552; 14 U.S.C. 425.

Subpart A—Purpose and Authority

§ 52.1 Purpose.

This part establishes the procedure for application for correction of military records of the Coast Guard, for consideration of applications by the Department of Transportation Board for Correction of Military Records of the Coast Guard (hereinafter "the Board"), and for settling claims or determining monetary benefits.

§ 52.2 Authority.

(a) The Secretary of Transportation, acting through boards of civilians, is authorized to correct any military record of the Coast Guard when the Secretary considers it necessary to correct an error or remove an injustice. 10 U.S.C. 1552. The Secretary shall ensure that final action on a complete application for correction is taken within 10 months of its receipt.

14 U.S.C. 425.

(b) Corrections made under this authority are final and conclusive on all officers of the Government except when procured by fraud. 10 U.S.C. 1552(a)(4).

Subpart B—Establishment, Function, and Jurisdiction of Board

§ 52.11 Establishment and composition.

(a) Pursuant to 10 U.S.C. 1552, the Board for Correction of Military Records of the Coast Guard is established in the Office of the Secretary of Transportation.

(b) The Secretary appoints a panel of civilian officers or employees of the Department of Transportation to serve as members of the Board, and designates one such member to serve as Chair of the Board. The Chair designates members from this panel to serve as the Board for each case requiring consideration by a Board. The Board consists of three members, and two members present constitute a quorum of the Board.

(c) The Deputy Chair of the Board exercises the functions prescribed by these regulations and such other duties as may be assigned by the Chair.

§ 52.12 Function.

The function of the Board is to consider all applications properly before it, together with all pertinent military records and any submission received from the Coast Guard or other Government office under subpart E, to determine:

(a) Whether an error has been made in the applicant's Coast Guard military record, whether the applicant has suffered an error or injustice as the result of an omission or commission in his or her record, or whether the applicant has suffered some manifest injustice in the treatment accorded him or her; and

(b) Whether the Board finds it necessary to change a military record to correct an error or remove an injustice.

§ 52.13 Jurisdiction.

(a) The Board has jurisdiction to review and determine all matters properly brought before it, consistent with existing law and such directives as may be issued by the Secretary.

(b) No application shall be considered by the Board until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant.

Subpart C—General Provisions Regarding Applications

§ 52.21 General requirements.

(a) An application for correction of a Coast Guard record shall be submitted on DD Form 149 (Application for Correction of Military or Naval Record) or an exact copy thereof, and shall be addressed to: Chair, Board for Correction of Military Records of the Coast Guard (C–60), United States Department of Transportation, Washington, DC 20590. Forms and explanatory material may be obtained from the Chair of the Board.

(b) The application shall be signed by the person alleging error or injustice in his or her military record, except that an application may be signed by a family member or legal representative with respect to the record of a deceased, incapacitated, or missing person. The family member or legal representative must submit proof of his or her proper interest with the application.

(c) No application shall be docketed or processed until it is complete. An application for relief is complete when all of the following have been received by the Board:

(1) A signed DD Form 149, providing all necessary responses, including a specific allegation of error or injustice, accompanied by substantial evidence or information in support of such allegation;

(2) The military records of the applicant; and

(3) Any applicable military and Department of Veterans Affairs medical records.

(d) It is the applicant's responsibility to include his or her correct mailing address on the DD Form 149 and to inform the Chair in writing of any subsequent change of address until the Board or the Secretary takes final action on the application.

(e) Briefs in support of applications must be assembled in a manner that permits easy reproduction and may not exceed twenty-five double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.22 Time limit for filing application.

An application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. If an application is untimely, the applicant shall set forth reasons in the application why it is in the interest of justice for the Board to consider the application. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely.

§ 52.23 Counsel.

(a) Applicants may be represented by counsel at their own expense. Applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing by the Board may be entitled to representation by a Coast Guard law specialist. 10 U.S.C. 1034(f)(3)(A).

(b) As used in this part, the term "counsel" includes attorneys who are members in good standing of any bar; accredited representatives of veterans' organizations recognized by the Secretary of Veterans Affairs pursuant to 38 U.S.C. 5902; and other persons who, in the opinion of the Chair, are competent to represent the applicant for correction. Whenever the term "applicant" is used in these rules, except in § 52.21(c), the term shall mean an applicant or his or her counsel.

§ 52.24 Evidence and burden of proof.

(a) It is the responsibility of the applicant to procure and submit with his or her application such evidence, including official records, as the applicant desires to present in support of his or her case. All such evidence should be submitted with the applicant's DD Form 149 in accordance with § 52.21(c)(1). Evidence submitted by an applicant after an application has been filed and docketed shall be considered late and its acceptance is subject to the provisions in § 52.26(a)(4) and (c).

(b) The Board begins its consideration of each case presuming administrative regularity on the part of Coast Guard and other Government officials. The applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.

§ 52.25 Access to official records.

The applicant shall have such access to official records or to any information pertaining to the applicant which is in the custody of the Coast Guard as is provided in 49 CFR parts 7 and 10.

§ 52.26 Right to timely decision; effect of requests for extensions, changes in requests for relief, and late submissions of evidence.

(a) Each applicant has a right to have final action taken on his or her application within 10 months after all the elements of a complete application, as defined in § 52.21(c), have been received by the Board, unless the applicant:

(1) Submits a written request, which is granted by the Chair, for an extension of a specific duration to seek counsel or additional evidence;

(2) Submits a written request, which is granted by the Chair, for an extension of the time provided for responding to the views of the Coast Guard in accordance with § 52.42(d);

(3) Submits a signed statement that is determined by the Chair to significantly amend the applicant's request for relief after the application has been docketed;

(4) Submits significant new evidence, as determined by the Chair, after the application has been docketed; or

(5) Is found by the Chair to have unreasonably delayed responding to a request for further information or evidence.

(b) If the applicant requests an extension in accordance with paragraphs (a)(1) or (a)(2) of this section or unreasonably delays responding to a request for further information or evidence in accordance with paragraph (a)(5) of this section, he or she shall have a right to have final action taken on the application for correction within 10 months of the application's completion plus all periods of extension granted to the applicant by the Chair and all periods of unreasonable delay.

(c) If the applicant significantly amends his or her request for relief or submits significant new evidence after the application has been docketed, in accordance with paragraphs (a)(3) or (a)(4) of this section, the application shall be considered newly complete as of the date the amended request for relief or new evidence is received, in which case the applicant shall have a right to have final action taken on the application within 10 months of the date the Board receives the amended request for relief or significant new evidence.

§ 52.27 Withdrawal of application.

The Chair may, at his or her discretion, permit the applicant to withdraw his or her application at any time before final action is taken under § 52.64. Any further consideration by the Board of the issues raised in the withdrawn application shall occur only upon the filing of a new application.

§ 52.28 Stay of proceedings.

An application to the Board for correction of a military record does not operate as a stay of any proceeding or administrative action taken with respect to or affecting the applicant.

Subpart D—Consideration of Application and Administrative Closure

§ 52.31 Consideration of application.

Each application shall be reviewed by the Chair to determine whether it meets the requirements of § 52.21 before it is docketed. The Chair shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing.

§ 52.32 Administrative closure.

(a) The Chair may administratively close a case after it has been docketed and at any time prior to its consideration by the Board if the Chair determines that:

(1) The application was erroneously docketed because the application did not meet the criteria under § 52.21;

(2) Effective relief cannot be granted by the Board;

(3) The Board does not have jurisdiction to determine the issues presented or the applicant has not exhausted an available administrative remedy, as required under § 52.13(b); or

(4) The Coast Guard has granted effective relief satisfactory to the applicant.

(b) Administrative closure does not constitute a denial of relief. Applicants who believe their cases should not have been administratively closed by the Chair may resubmit their applications with a request for further consideration and a statement explaining why the applicant believes his or her case should be docketed and considered by the Board. A request for further consideration shall be regarded as a new application for the purposes of §§ 52.21 and 52.26.

(c) If the Chair administratively closes a case, the applicant shall be advised of the reason and of the right to resubmit his or her application.

Subpart E—Submissions by the Coast Guard and Other Offices

§ 52.41 Assistance.

The Board may request such advice, opinion, assistance, or use of the facilities of any other bureau, board, or office of the Department of Transportation as the Board deems necessary.

§ 52.42 Views of the Coast Guard.

(a) The Board shall transmit to the Commandant of the Coast Guard or his or her delegate a copy of each application for relief submitted and docketed under subpart C of this part, together with any briefs, memoranda, and documentary evidence submitted or obtained in the case.

(b) The Commandant of the Coast Guard or his or her delegate may forward to the Board a written advisory opinion presenting the views of the Coast Guard on any case before the Board.

(c) An advisory opinion furnished by the Coast Guard under this section shall not be binding upon the Board, but shall be considered by the Board, along with all other information and material submitted in the particular case, if it is received by the Board within 135 days of the date the application is complete. The Chair may, in his or her discretion, grant the Coast Guard an extension of the time provided for submitting the advisory opinion.

(d) The Board shall promptly send a copy of each submission made by the Coast Guard under this section to the applicant involved, subject to the limitations in §§ 52.42(c) and 52.43(c). Each applicant has 30 days, from the date the Board sends the submission, to submit to the Board a written rebuttal or response to the Coast Guard's advisory opinion or a written request for an extension of the time to respond, subject to the provisions in § 52.26.

(e) Advisory opinions submitted by the Coast Guard and briefs submitted by applicants in response to the advisory opinions of the Coast Guard must be assembled in a manner that permits easy reproduction and may not exceed fifteen double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.43 Requests for further information; submissions of classified, privileged, and sensitive information.

(a) The Chair or the Board may ask the applicant to submit additional information not included in the application or response to the advisory opinion.

(b) The Chair or the Board may ask the Coast Guard or other Government office to submit any information, including reports of investigations, that the Chair or the Board deems relevant to an applicant's case.

(c) Whenever the Coast Guard or other Government office submits classified, privileged, or sensitive information to the Board in accordance with paragraph (b) of this section or § 52.42(b), it shall identify such information and also provide the Board with a copy of that part of the information that would be released to the applicant by the Coast Guard or other Government office if he or she requested it under 49 CFR parts 7 and 10. The Board shall forward only this redacted copy to the applicant.

Subpart F—Hearings

§ 52.51 General provision.

In each case in which the Chair determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel.

§ 52.52 Notice of hearing.

(a) If the Chair determines that a hearing is warranted, the Chair shall notify the applicant that a hearing has been granted.

(b) The date of hearing shall be not less than 21 days from the date of this notification. Written notice stating the date, time, and place of the hearing shall be given to the applicant and the Coast Guard.

§ 52.53 Witnesses.

(a) In any case in which the Chair has granted a hearing, the applicant shall have the right to present witnesses.

(b) It is the responsibility of the applicant to notify his or her witnesses and to ensure their appearance at the date, time, and place set for the hearing.

§ 52.54 Expenses.

No expenses of any nature whatsoever incurred by an applicant, his or her counsel, witnesses, or others acting on behalf of the applicant shall be paid by the Government, except that an applicant may be entitled to representation by a Coast Guard law specialist if the case has been processed under the Whistleblower Protection Act. 10 U.S.C. 1034(f)(3)(A).

§ 52.55 Nonappearance.

An applicant who fails without good cause to appear in person or by counsel at the appointed date, time, and place for hearing, is deemed to have waived the right to a hearing. The application is then considered by the Board on the basis of all the material of record.

§ 52.56 Conduct of hearing.

(a) The Chair or the Chair's designee shall conduct a hearing so as to ensure a full and fair presentation of the evidence.

(b) The hearing is not limited by legal rules of evidence, but reasonable standards of competency, relevancy, and materiality are observed for the receipt and consideration of evidence.

(c) All testimony shall be given under oath or affirmation.

§ 52.57 Record of hearing.

A hearing pursuant to this subpart in open session shall be recorded verbatim and, at the discretion of the Board or direction of the Secretary, shall be transcribed.

Subpart G—Judgment and Disposition

§ 52.61 Deliberations and decision.

(a) The Board is convened at the call of the Chair and its meetings are recessed or adjourned by order of the Chair. Only members of the Board and its staff may be present during the deliberations of the Board. The Board's deliberations are conducted in executive session and are not reported.

(b) When the Board finds that the facts have not been fully and fairly disclosed by the records, testimony, and any other evidence before the Board, the Board may request the applicant and/or the Coast Guard to obtain and submit such further evidence as it considers essential to a complete and impartial understanding of the facts and issues.

(c) Following the receipt of all evidence, the Chair shall cause to be prepared and shall submit to the Board for its consideration a draft decision containing proposed findings and conclusions and a proposed order. A majority vote of the members of the Board present at a meeting on any matter relating to a draft decision before the Board shall constitute the action of the Board. If a draft decision is approved by the Board, it shall become a decision of the Board.

(d) The decision of the Board shall specify any change, correction, or modification of records to be made by the Coast Guard, and any other action deemed necessary to provide full and effective relief, which may include directing the Coast Guard to convene medical boards.

(e) If the Board deems it necessary to submit a comment or recommendation to the Secretary as to a matter arising from, but not directly related to, the issues in a case, it does so by separate communication.

§ 52.62 Minority report.

In case of disagreement among Board members, a minority report may be submitted dissenting from or concurring with the decision of the Board.

§ 52.63 Record of proceedings.

(a) The Board shall prepare a complete record of each proceeding. The record shall include the application for relief; the written views of the Coast Guard, if any; any transcript of testimony; affidavits and documents considered by the Board; briefs and written arguments filed in the case; the findings, decisions, and recommendations of the Board; minority reports, if any; and all other materials necessary to reflect a true and complete history of the proceedings.

(b) After final action has been taken on an application in accordance with § 52.64, any classified, privileged, or sensitive information in the record of proceedings that has been provided by the Coast Guard or another Government office in accordance with §§ 52.42 or 52.43 shall be returned by the Board to the office from which it was received. Only a copy of the information provided by the Coast Guard or other Government office for release to the applicant in accordance with § 52.43(c) shall be retained in the permanent record of proceedings after final action is taken.

§ 52.64 Final action.

(a) The Board, provided that it acts unanimously, may take final action on behalf of the Secretary, pursuant to 10 U.S.C. 1552, as follows:

(1) The Board may deny an application for the correction of military records.

(2) Unless the Coast Guard, in submitting its views pursuant to § 52.42(b), identifies and describes a significant issue of Coast Guard policy challenged in the application, the Board may approve an application for the correction of military records in any of the following categories:

(i) An application to correct an enlistment or reenlistment contract or agreement to extend an enlistment for the purpose of effecting or increasing entitlement to a Selective Reenlistment Bonus;

(ii) An application to modify an election to participate in the Survivor Benefit Plan;

(iii) An application to change a reenlistment eligibility code;

(iv) An application to correct the character of, or reason for, a discharge or separation; or

(v) An application to receive a medal or award.

(3) The Board may approve any application for correction of military records not included in one of the categories in paragraph (a)(2) of this section, if the Coast Guard recommends the same or substantially same relief as that requested by the applicant.

(b) Except in cases where the Board takes final action under paragraph (a) of this section, the Board shall forward the record of its proceedings to the Secretary, who may approve, disapprove, or concur in the decision of the Board or the minority report, if any, either in whole or in part, and amend the order of the Board accordingly, or return the case to the Board for additional consideration. After taking final action, the Secretary shall send any such statement and the record of proceedings to the Board for disposition.

§ 52.65 Orders.

(a) The Board shall issue such orders or directives as may be necessary to carry out a final action.

(b) The Board may ask the Coast Guard to submit a written report to the Board specifying the action taken and the date thereof with respect to any final action.

(c) Unless doing so is likely to nullify the relief granted, copies of the final decision shall be placed in the military record of the applicant.

§ 52.66 Notification.

After final action is taken under § 52.64, the Board shall send a copy of the final decision to the applicant. The applicant may inspect the permanent record of proceedings at Board offices.

§ 52.67 Reconsideration.

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

(2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

(b) The Chair shall docket a request for reconsideration of a final decision if it meets the requirements of paragraph (a)(1) or (a)(2) of this section. If neither of these requirements is met, the Chair shall not docket such request.

(c) The Board shall consider each application for reconsideration that has been docketed. None of the Board members who served on the Board that considered an applicant's original application for correction shall serve on the Board that decides the applicant's application upon reconsideration.

(d) Action by the Board on a docketed application for reconsideration is subject to §§ 52.26 and 52.64(b).

(e) An applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law. If the Chair dockets an applicant's request for reconsideration, the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

Subpart H—Payment of Claims and Implementation of Orders

§ 52.71 Authority to pay.

(a) The Coast Guard is authorized to pay the claims of any person as the result of any action heretofore or hereafter taken under 10 U.S.C. 1552.

(b) The Coast Guard is not authorized to pay any claim heretofore compensated by Congress through enactment of private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

§ 52.72 Implementation of orders.

(a) In each case the Board shall transmit a copy of its decision or the

Secretary's decision to the proper Coast Guard authority for determination of monetary benefits due, if any, as a result of the action of the Board and for corrections of the military record ordered by the Board.

(b) Upon request, the claimant is required to furnish to the Board or to the Coast Guard any information necessary to determine the proper parties to the claim for payment under applicable provisions of law.

(c) Appropriate records shall be examined in light of the Board's decision to determine all amounts which may be due. Amounts found due are subject to setoff in the amount of any existing indebtedness to the Government arising from Coast Guard service and to other setoffs required by law or regulation.

(d) At the time of payment, the claimant shall be advised as to the nature and amount of the various benefits represented by the total settlement, and of the fact that acceptance of the settlement constitutes a complete release by the claimant of any claim against the United States on account of the correction of record ordered by the Board.

§ 52.73 Interpretation.

If the intent or import of the final decision is not clear to the Coast Guard, if the Coast Guard believes that executing all or part of the order in the final decision is beyond the Coast Guard's authority, or if the Coast Guard believes that the order is incomplete because of an oversight, the final decision shall be returned to the Board for clarification or technical amendment.

§ 52.74 Report of settlement.

When payment is made pursuant to the order of the Board, the Board may request the Coast Guard to notify it of the name of any person to whom payment was made and of the amount of the payment.

Subpart I—Public Access to Decisions

§ 52.81 Reading room and index.

After deleting only so much personal information as is necessary to prevent an unwarranted invasion of privacy of the applicant or other persons mentioned in the final decision of the Board, a redacted copy of each final decision shall be indexed by subject and made available for review and copying at a public reading room. Final decisions created on or after November 1, 1996, shall be made available by electronic means. 5 U.S.C. 552.

[FR Doc. 03–4767 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–143]

RIN 2115–AE47

Drawbridge Operation Regulations: Jamaica Bay and Connecting Waterways, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of the New York City highway bridge, mile 0.8, across Mill Basin on Belt Parkway at New York City, New York. This temporary final rule will allow the bridge to remain closed to vessel traffic from 7 a.m. on February 24, 2003 through 5 p.m. on April 14, 2003. This action is necessary to facilitate the installation of median safety barriers at the bridge.

DATES: This rule is effective from February 24, 2003 through April 14, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–143) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, MA 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this final rule effective in less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest because the work to be performed under this temporary final rule is necessary safety modifications that are scheduled to be performed when the bridge receives the fewest number of requests to open.

On December 27, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Jamaica Bay and Connecting Waterways, New York, in the **Federal Register** (67 FR 79012). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The New York City highway bridge has a vertical clearance of 34 feet at mean high water, and 39 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.795(b).

The bridge owner, New York City Department of Transportation, requested a temporary bridge closure to install median safety barriers between the vehicular travel lanes at the bridge.

The bridge presently has no median safety barriers between the vehicular travel lanes that pass over the moveable lift spans at the bridge. There have been many serious head on automobile accidents at this bridge as a result of the absence of median safety barriers.

The average traffic count is 140,000 vehicles a day. There have been seven (7) head-on travel lane crossover accidents over the past several years, four (4) resulting in fatalities. These accidents resulted from the absence of a median safety barrier separating the opposite vehicular travel lanes.

The installation of the median safety barriers is considered necessary safety repairs that should be performed without delay.

In order to facilitate this structural work the bridge must remain in the closed position for the passage of vessel traffic from 7 a.m. on February 24, 2003 through 5 p.m. on April 14, 2003.

The time frame requested to perform this necessary safety work, February 24, 2003 through April 14, 2003, is the best time to perform this work because the bridge has historically had very few requests to open during that time period. In 2001 only one commercial vessel transit required a bridge opening and in 2002 only three commercial vessel transits required bridge openings between February 24 and April 14.

During the last ten days of the above closure the bridge will be balanced and tested. A limited number of bridge openings would be available for the passage of vessel traffic during the time period the bridge will be balanced and tested.

The Coast Guard believes this temporary final rule is reasonable because this work is essential for public safety and will be performed when the bridge has the fewest number of requests to open.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the waterway users who normally navigate Mill Basin are predominantly recreational vessels. There are four commercial facilities, two recreational vessel marinas, and two recreational/commercial vessel repair yards upstream from the bridge.

The time period the bridge will be closed is historically the time period during which the fewest requests are made to open the bridge. Between February 24 and April 14, 2001, only one commercial vessel transit required the bridge to open. Only three commercial vessel transits required bridge openings during the same period in 2002.

Vessels that can pass under the bridge without a bridge opening may do so at all times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the waterway users who normally navigate Mill Basin are predominantly recreational vessels. There are four commercial facilities, two recreational vessel marinas, and two recreational/commercial vessel repair yards upstream from the bridge.

The time period the bridge will be closed is historically the time period during which the fewest requests are made to open the bridge. Between February 24 and April 14, 2001, only one commercial vessel transit required the bridge to open. Only three commercial vessel transits required bridge openings during the same period in 2002.

Vessels that can pass under the bridge without a bridge opening may do so at all times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because

promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From February 24, 2003 through April 14, 2003, in § 117.795, paragraph (b) is temporarily suspended, and a new temporary paragraph (d) is added, to read as follows:

§ 117.795 Jamaica Bay and Connecting Waterways.

* * * * *

(d) The draw of the New York City highway bridge, mile 0.8, across Mill Basin on Belt Parkway, need not open for the passage of vessel traffic from 7 a.m. on February 24, 2003 through 5 p.m. on April 14, 2003.

Dated: February 10, 2003.

John L. Grenier,

Captain, Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–4761 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 140–2; FRL–7457–8]

Conditional Approval of Implementation Plan; Indiana; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comments, the EPA is withdrawing the direct final rule which conditionally approved the revisions to Indiana's State Implementation Plan for the Prevention of Significant Deterioration provisions for attainment areas. In the direct final rule published on January 15, 2003 (68 FR 1970), EPA stated that if EPA receives adverse comments by February 14, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments, and will address these comments in a subsequent final action based upon the proposed action also published on January 15, 2003 (68 FR 1970). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: This direct final rule is withdrawn as of March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxide, Volatile organic compounds.

Dated: February 19, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

Accordingly, the addition of 40 CFR 52.770 (c)(147) is withdrawn as of March 3, 2003.

[FR Doc. 03–5023 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 140–3; FRL–7457–3]

Conditional Approval of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Indiana Department of Environmental Management (IDEM) has submitted to EPA requested revisions to its Prevention of Significant Deterioration (PSD) State Implementation Plan (SIP). Due to the receipt of adverse comments, EPA is withdrawing its January 15, 2003 direct final action, which conditionally approved the state's submission. In this action, EPA responds to the public comments received, and takes final action to conditionally approve Indiana's PSD provisions.

DATES: This rule is effective on April 2, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please contact Julie Capasso at (312) 886–1426 before visiting the Region 5 office. Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What is the background of this action?
B. What comments did EPA receive and what are EPA's responses?
C. What action is EPA taking today?
D. Statutory and Executive Order Reviews

A. What Is the Background of This Action?

EPA is approving revisions to Indiana's SIP for PSD. IDEM submitted these revisions to EPA on February 1, 2002, following an informal review by EPA in which a number of issues were identified and resolved by the two agencies. On January 15, 2003, EPA published a direct final rule conditionally approving these revisions (68 FR 1970). On the same date, EPA also proposed to approve the revisions (68 FR 1998). In a separate action, we withdrew the direct final rule because we received adverse comments. The proposed approval remained in effect. Today we are responding to those comments and taking final action to conditionally approve Indiana's SIP revision request.

In our January 15, 2003 direct final rulemaking, we discussed the history of Indiana's PSD program, the contents of the State's submission and our analysis. Please consult that document for further information on those matters.

On December 31, 2002, EPA published revisions to its New Source Review (NSR) regulations, including PSD (67 FR 80186). These revisions, which do not take effect until March 3, 2003, will change existing NSR requirements in a number of ways. States which have approved programs under 40 CFR part 51 (as Indiana now has as a result of today's action), will have up to three years in which to adopt and submit revisions implementing the new requirements.

B. What Comments Did EPA Receive and What Are EPA's Responses?

EPA received the comments described below from a number of parties, including corporations, trade associations and private citizens.

Comment: The proposed SIP does not comport with current EPA requirements because it does not incorporate the alternative fuel/raw material exemption of 40 CFR 51.166(b)(2)(iii)(e). The commentor contends that this omission is significant because it means that Indiana's rule fails to provide an exemption for "certain anticipated operational fluctuations, thereby potentially triggering [NSR] in Indiana for otherwise federally exempt minor modifications."

Response: As noted in EPA's January 15, 2003 direct final rulemaking notice, this provision may inadvertently allow changes prohibited in a previously-issued minor construction permit to qualify for the alternative fuel/raw material exemption. Indiana's regulatory language does not prevent minor sources from applying this provision when appropriate to avoid PSD applicability. As EPA also previously noted, Indiana has agreed to address this inadvertent omission within one year of the effective date of approval (68 FR 1971). EPA does not believe that this minor, inadvertent omission warrants the disapproval of the rules.

Comment: Indiana's rule fails to address "pollution control projects."

Response: Currently, federal PSD regulations provide an exemption only for pollution control projects installed at electric utility steam generating units. As a result, Indiana did not submit to EPA for approval of its provision extending the exemption to non-utility sources; and EPA, therefore, could not take any action on the State's provision.

Comment: The Indiana regulations include a definition of "pollution control project." In addition, Indiana regulations omit the word "utility" from the term "electric utility steam generating unit" in the pollution control project exclusion portion of the definition of "major modification" in 326 IAC 2–2–1(x)(2)(H).

Response: As stated above, IDEM did not submit its pollution control project provision to EPA. Therefore, this definition is merely extraneous. In addition, any comments relative to this provision are not relevant.

Comment: IDEM's Office of Environmental Adjudication (OEA) does not provide the same amount of time to file an appeal of a PSD determination as does EPA's Environmental Appeals Board under 40 CFR 124.19. In addition, if an appellant sought to stop construction of a facility, the OEA would require the posting of an appeal bond, something not required under the federal procedures in 40 CFR part 124.

Response: After communications with IDEM's Office of Legal Counsel, it is EPA's understanding that, although there is no provision for an extension of the 15-day filing period, a party may amend and supplement its timely petition for review after filing. EPA also understands that, under Indiana law, a party appealing a PSD permit to the OEA may request a stay of that permit, and that no appeal bond is required.

Comment: 326 IAC 2–1.1–6(a)(5) is written as if a public hearing is optional. The Indiana regulations do not meet or exceed the requirements of 40 CFR 51.166(q)(2)(iii) and do not provide informed public participation in accordance with congressional intent. There appears to be no provision under the Indiana PSD rules for the extension of comment time (see 40 CFR 124.13).

Response: With respect to public participation, Indiana's rules conform with applicable EPA regulations at 40 CFR 51.166. In addition, under Indiana Code 4–21.5, IDEM must individually notify potentially affected parties (which include all commentors) of its final decision. Historically, IDEM's practice has been to go beyond the minimum legal requirements by providing internet postings of applications received, permits subject to public notice and permits issued. IDEM also directly notifies potentially affected parties, which would include previous commentors and contiguous landowners. Also, IDEM has historically granted additional public comment time when it deems it necessary. 40 CFR 124.13 does not mandate that the permitting authority automatically grant additional public comment time upon any request. As a result of the above, EPA does not believe that any procedural differences which may exist between the state and federal programs warrant disapproval.

Comment: There is nothing in 40 CFR part 52, as it is now or as amended by this final approval, stating that Indiana is or would be an approved State to issue PSD permits. EPA has not amended 40 CFR 52.793, which incorporated the federal PSD rules into Indiana's SIP.

Response: Our final action amends the SIP at 40 CFR 52.770(c)(147) to incorporate the Indiana PSD rules into the SIP.

This amendment approves the Indiana PSD program as part of the SIP, thus giving Indiana the authority to issue PSD permits under its own regulations. Our approval of the SIP, therefore, supercedes 40 CFR 52.793.

Comment: Indiana omitted the word "national" from the term "ambient air quality standards" in 326 IAC 2–2–5(a)(1), so as to be able to invoke 326 IAC 1–3 rather than 40 CFR part 50, the national ambient air quality standards.

Response: Indiana has incorporated the national ambient air quality standards from 40 CFR part 50 into 326 IAC 1–3. The omission of the word "national" has no bearing on the approvability of 326 2–2–5(a)(1).

Comment: Indiana regulations have no text resembling 40 CFR 50.10 and 40 CFR part 51, Appendix I, the revised 8-hour ozone standard.

Response: States are not currently required to address the revised ozone standard in their PSD SIPs.

Comment: A number of commentors asserted that EPA should not approve Indiana's current PSD program, but instead rely on the PSD/NSR rules published in the **Federal Register** on December 31, 2002. They further claimed that failure to do so would: (1) Put both the State and Indiana sources at a disadvantage; (2) subject Indiana sources to conflicting PSD obligations; (3) preclude Indiana sources from "tak[ing] advantage of the improvements" under the December 31, 2002 rules, including provisions for "plant-wide applicability limits" and "clean units;" and (4) delay implementation of new rules by three years. One commentor also noted that this makes EPA's conditional approval of Indiana's PSD program problematic because the Indiana regulations must be compared to the 2002 revisions to the Federal NSR rules when the conditional approval issue is corrected and submitted to EPA for approval.

Response: On September 11, 1980, EPA delegated to IDEM the authority to implement and enforce the Federal PSD program. Since that time, Indiana has devoted considerable time and energy to develop its own regulations, for approval by EPA and incorporation into Indiana's SIP. For the reasons provided in EPA's January 15, 2003 direct final rulemaking and in today's action, EPA believes that Indiana's revisions are

approvable under the currently effective regulations at 40 CFR 51.166; and that EPA, in fact, has no choice but to approve them.

The state rules EPA is approving today are now effective as a matter of Federal and state law, providing clarity and certainty to subject Indiana sources. Once the 2002 revisions to the Federal NSR rules become effective, Indiana will then have the opportunity—if it so desires—of revising its rules and submitting them for Federal approval into the SIP. More specifically, Indiana will have up to January 2, 2006 in which to review and analyze the new Federal rules, and then determine whether to adopt and submit the same rules, or "customize" its program with "different but equivalent regulations" (67 FR 80241).

With regard to the impact of NSR revisions on the "conditional" nature of this approval, EPA notes that there is actually only one provision at issue: Indiana's omission of rule language that would specifically exclude changes prohibited in a previously-issued minor construction permits from the alternative fuel/raw material exemption under the definition of "major modification." In response to the commentor's question as to how EPA could fully approve Indiana's program once revised Federal NSR rules are in effect, EPA notes that the revised Federal NSR rules to which the commentor refers actually adopt the same approach with regard to the applicable definition, *i.e.*, that provision would not be revised. Furthermore, and given the uncertainty as to what the applicable Federal requirements may be in one year, disapproval of Indiana's submission because of such a minor omission is not warranted.

Comment: Once comments have been addressed, EPA should provide an additional opportunity for public input.

Response: The Administrative Procedure Act guarantees opportunities for public review and comment in the SIP approval process, and we make every effort to provide opportunity for meaningful and extensive public participation. For this action, we provided a public comment period from January 15, 2003, to February 14, 2003. Once the public has commented, we must respond to issues raised, reach a final decision, and take action. Since we are responding to all comments we received regarding the SIP approval of the Indiana PSD program and we have determined that the commentors have not raised any issues warranting disapproval, we must take final action.

Comment: Indiana has issued a permit which does not conform with the applicable requirements.

Response: This comment is not relevant to today's action.

We also received comments regarding the experience and background of the OEA judges which are not relevant to the approvability of the Indiana PSD regulations. Therefore, we are not responding to those comments in this action. In addition, a commentor requested, as a response to comments, information on previous instances of PSD injunctive relief and information on work hours invested by EPA regarding the Indiana PSD regulations. These requests are not relevant to the approvability of the Indiana PSD regulations and we are not responding to these requests in this action. Requests for information from EPA should be made using the appropriate Freedom of Information Act procedures.

C. What Action Is EPA Taking Today?

EPA is conditionally approving the following rules as part of Indiana's SIP: 326 IAC 2–2–1, Definitions; 326 IAC 2–2–2, Applicability; 326 IAC 2–2–3, Control technology; 326 IAC 2–2–4, Air quality analysis; 326 IAC 2–2–5, Air quality impact; 326 IAC 2–2–6, Increment consumption requirements; 326 IAC 2–2–7, Additional analysis; 326 IAC 2–2–8, Source obligation; 326 IAC 2–2–9, Innovative control technology; 326 IAC 2–2–10, Source information; 326 IAC 2–2–11, Stack height provisions; 326 IAC 2–2–12, Permit recission; 326 IAC 2–2–13, Area designation and redesignation; 326 IAC 2–2–14, Sources impacting Federal Class I areas: additional requirements; 326 IAC 2–2–15, Public participation; 326 IAC 2–2–16, Ambient air ceilings; 326 IAC 2–1.1–6, Public notice, and 326 IAC 2–1.1–8, Time periods for determination on permit applications.

As noted in EPA's January 15, 2003 direct final rulemaking, EPA believes that it is appropriate to grant conditional approval. However, should Indiana fail to correct the identified deficiency within one year of this action, EPA will initiate withdrawal of this approval. In addition, while EPA is approving Indiana's PSD SIP, EPA recognizes that it has a responsibility to insure that all states properly implement their preconstruction permitting programs. EPA's approval of the State's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Indiana are consistent with the requirements of the CAA, EPA regulations, and the SIP. EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of Title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by states. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to Title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is "not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan."

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the state decision fails to comply with applicable requirements. Thus, EPA may not intrude upon the significant discretion granted to states under new source review programs, and will not "second guess" state decisions. Rather, in determining whether a Title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the operating permit.

D. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rulefor the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 24, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-*et seq.*

2. Section 52.770 is amended by adding (c)(147) to read as follows

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(147) On February 1, 2002, Indiana submitted its Prevention of Significant Deterioration rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Title 326 of the Indiana Administrative Code, Rules 2–2–1, 2–2–2, 2–2–3, 2–2–4, 2–2–5, 2–2–6, 2–2–7, 2–2–8, 2–2–9, 2–2–10, 2–2–11, 2–2–12, 2–2–13, 2–2–14, 2–2–15, 2–2–16. Filed with the Secretary of State on March 23, 2001, effective April 22, 2001. (B) Title 326 of the Indiana Administrative Code, Rules 2–1.1–6 and 2–1.1–8. Filed with the Secretary of State on November 25, 1998, effective December 25, 1998. Errata filed with the Secretary of State on May 12, 1999, effective June 11, 1999.

[FR Doc. 03–5024 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AD33

National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are increasing the limit of liability under Coverage D—Increased Cost of Compliance (ICC) of the Standard Flood Insurance Policy from $20,000 to $30,000. New information has led us to decrease our estimate of annual ICC claims, and based on this decrease, we believe the limit of liability can be increased with no change in premium.

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Hayes, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, 202–646–3419, (facsimile) 202–646–7970, or (email) *Thomas.Hayes@fema.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1999, we published at 64 FR 70191 a final rule that increased the limit of liability under Coverage D—Increased Cost of Compliance of the Standard Flood Insurance Policy from $15,000 to $20,000. This is how we summarized our reasons for the increase in 1999 at 64 FR 70191:

"In making initial estimates of ICC claims, we had access to our loss experience from 1978 through 1994. The latest experience period for estimating ICC claims runs through 1998. Based on our additional experience with flood losses—losses large enough to trigger community declarations of substantial damage—we have decreased the number of expected annual ICC claims to a range of 2700–2900. On this basis, we are confident that the limit of liability for ICC coverage can be increased from $15,000 to $20,000 (a 33% increase) with no change in premiums."

With this rule, we are proposing to further increase the limit of liability to $30,000.

First, the pricing for this coverage has to be actuarially sound with premiums varying, to the extent possible, by risk. Second, section 555 of the National Flood Insurance Reform Act of 1994, which mandates ICC coverage, sets a cap of $75 that we may charge for this coverage. Third, our previous estimate was that the number of policyholders receiving benefits under ICC coverage would be 2700–2900 each year. Fourth, we considered the uncertainties associated with the introduction of the product and which extend through the first few years of the coverage.

In making our revised estimate of ICC claims on which we based the increase in the coverage limit to the current level of $20,000, we relied on our loss experience available at the time—both for ICC during the limited time that it had been offered, and on our total program experience from 1978 through 1998. Based on our additional loss experience, which includes data through calendar year end 2001, and concentrating on losses large enough to trigger community declarations of substantial damage, we have further decreased our estimate of the expected annual number of ICC claims to a range of 2200–2500. On this basis, we are confident that the limit of liability can be increased from $20,000 to $30,000 (a 50% increase) with no change in premium. The number of ICC claims actually filed since the introduction of this coverage is small compared to the number that we expected based on our flood claims filed under building coverage. We intend to continue analyzing this discrepancy, make further adjustments in premium charges, coverage amounts, or both as warranted, and to continue our education efforts with policyholders and local officials to make sure that they adequately understand this coverage.

Administrative Procedure Act Determination

We are publishing this final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. This final rule is a rule of agency procedure or practice that is excepted from the prior public comment requirements of section 553(b). The rule makes nonsubstantive, nonsignificant changes to 44 CFR part 61 by conferring a benefit to flood insurance policyholders, increasing coverage for increased cost of compliance without an increase in premium.

National Environmental Policy Act (NEPA)

The requirements of 44 CFR part 10, Environmental Consideration, categorically exclude this final rule. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this final rule under E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. We have reviewed this proposed rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. We do not foresee the rule affecting the distribution of power and responsibilities among the various levels of government or limiting the policymaking discretion of the States.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–1221. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities that increases a benefit to policyholders without increasing premiums. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfounded Federal mandate within the meaning of the Unfunded Mandate Reform Act of 1995, Public Law 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we amend 44 CFR part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. In Appendix A(1) to part 61, revise the first sentence III. D. 2. to read as follows: Appendix A(1) to part 61, Federal Emergency Management Agency, Federal Insurance Administration, standard flood insurance policy, dwelling form.

III. * * *

D. * * *

2. *Limit of Liability.*

We will pay you up to $30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). * * *

* * * * *

3. In Appendix A(2) to part 61, revise the first sentence of III. D. 2. to read as follows: Appendix A(2) to part 61, Federal Emergency Management Agency, Federal Insurance Administration, standard flood insurance policy, general property form.

III. * * *

D. * * *

2. *Limit of Liability.*

We will pay you up to $30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). * * *

* * * * *

4. In Appendix A (3) to part 61, revise the first sentence of III. D. 2. to read as follows: Appendix A(3) to part 61, Federal Emergency Management Agency, Federal Insurance Administration, standard flood insurance policy, residential condominium building association policy.

III. * * *

D. * * *

2. *Limit of Liability.*

We will pay you up to $30,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). * * *

* * * * *

Dated: February 26, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–4902 Filed 2–28–03; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7803]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Risk Communication Division, Federal Insurance and Mitigation Administration, 500 C Street, SW., Room 435, Washington, DC 20472, (202) 646–3443.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance, which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body

adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region IV				
North Carolina: Cramerton, Town of, Gaston County.	370321	May 21, 1992, Reg., March 3, 2003, Susp	3/3/03	3/3/03
Dallas, Town of, Gaston County	370322	October 7, 1992, Emerg.; May 1, 1994, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
Gaston County, Unincorporated Areas	370099	April 16, 1976, Emerg.; May 1, 1980, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
McAdenville, Town of, Gaston County	370101	September 7, 1979, Emerg.; June 1, 1987, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
Ranlo, Town of, Gaston County	370324	December 19, 1989, Emerg., March 3, 2003, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
Region V				
Wisconsin: Lincoln County, Unincorporated Areas	550585	March 8, 1976, Emerg.; February 19, 1986, Reg., March 3, 2003, Susp.	3/3/03	3/3/03
Region II				
New Jersey: Bernardsville, Borough of, Somerset County.	340429	December 17, 1971, Emerg.; March 1, 1978, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
New York: Rotterdam, Town of, Schenectady County.	360740	May 22, 1974, Emerg.; June 15, 1984, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Region V				
Illinois: Frankfort, Village of, Will County	170701	April 11, 1974, Emerg.; November 1, 1979, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Joliet, City of, Will County	170702	April 13, 1973, Emerg.; February 4 1981, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Mokena, Village of, Will County	170705	June 12, 1974, Emerg.; August 1, 1979, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Monroe County, Unincorporated Areas	170509	April 20, 1973, Emerg.; May 15, 1986, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Shorewood, Village of, Will County	170712	May 15, 1974, Emerg.; November 1, 1979, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Will County, Unincorporated Areas	170695	April 22, 1974, Emerg.; April 15, 1982, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Wisconsin: Menasha, City of, Winnebago County	550510	April 25, 1973, Emerg.; April 3, 1978, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Neenah, City of, Winnebago County	550509	April 23, 1974, Emerg.; January 2, 1981, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Omro, City of, Winnebago County	550533	October 22, 1975, Emerg.; August 1, 1980, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Oshkosh, City of, Winnebago County	550511	November 12, 1971, Emerg.; May 16, 1977, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Winnebago County, Unincorporated Areas	550537	April 15, 1974, Emerg.; February 4, 1981, Reg., March 17, 2003, Susp.	3/17/03	3/17/03
Winneconne, Village of, Winnebago County	550512	August 15, 1975, Emerg.; August 1, 1980, Reg., March 17, 2003, Susp.	3/17/03	3/17/03

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: February 25, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–4859 Filed 2–28–03; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AD32

Disaster Assistance; Crisis Counseling Regular Program; Amendment to Regulation

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: We, FEMA, are publishing an interim final rule to make a substantive change that would in limited circumstances allow the Assistant Associate Director to extend the deadline for the Crisis Counseling Regular Program. This rule takes effect immediately, but before publishing a final rule on this subject we ask for and invite comments from all interested and affected parties.

DATES: Effective date: March 3, 2003. Applicability date: This rule applies to Major Disasters Declared on or after September 11, 2001.

We invite comments on this interim final rule, which we should receive on or before May 2, 2003.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, or (fax) (202) 646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Berl Jones, Community and Family Services Branch, Recovery Division, Federal Emergency Management Agency, room 609, 500 C Street, SW., Washington, DC 20472, or (fax) (202) 646–3978, or (email) *Berl.Jones@fema.gov.*

SUPPLEMENTARY INFORMATION: We are amending our regulations to allow FEMA greater flexibility to extend the program period for the Crisis Counseling Regular Program. Currently, the program period for the Crisis Counseling Regular Programs is 9 months, and may be extended by the Assistant Associate Director for an additional 90 days. Under the new rule, the program period generally may be extended beyond the initial 9 months, and the additional 90 days, in limited circumstances for major disasters with catastrophic impact, such as terrorist attacks or other disasters of a catastrophic nature.

Normally, we apply changes to our regulations under the Stafford Act only to disasters declared on or after the effective date of the rule. However, the effect on the public in the New York City and Washington, DC metropolitan areas after September 11, 2001, have caused us to reevaluate the time limitations we placed on the Crisis Counseling Regular Program. Previously, such assistance was limited, by regulation, to 9 months, with the possibility of a 90 day extension. We have determined the extension of the Crisis Counseling Regular Program beyond the usual 9 months plus the additional 90 days is necessary to address the needs of the public after the catastrophic events of September 11, 2001. We have determined that this regulation should apply to the Major Disasters declared in New York and Virginia as a result of the events of September 11, 2001.

National Environmental Policy Act

This interim final rule falls within the exclusion category at 44 CFR 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. Qualifying for this exclusion and because no other extraordinary circumstances have been identified, this interim final rule will not require the preparation of either an environmental assessment or environmental impact statement as defined by the National Environmental Policy Act.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow, we have concluded that this rule is neither an economically significant nor a significant regulatory action under the Executive Order. The rule will accomplish one primary purpose: To allow in limited circumstances the Assistant Associate Director to extend the program period for the Crisis Counseling Regular Program. The Office of Management and Budget has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This interim final rule does not contain a collection of information and it therefore is not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

For the reasons that follow, I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This rule allows in limited circumstances the Assistant Associate Director to extend the program period for the Crisis Counseling Regular Program. The rule does not change in anyway the eligibility of small entities for disaster assistance.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies

must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion, since the rule merely extends the program period for the Crisis Counseling Regular Program.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

Administrative Procedure Act Statement

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest. The public benefit of this rule is the ability to extend the program period for the Crisis Counseling Regular Program.

Therefore, we believe it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register**.

In addition, we believe that, under the circumstances, delaying the effective date of this rule until after a comment period would not further the public interest. For these reasons, we believe we have good cause to publish an interim final rule.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Community facilities, Disaster Assistance, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Accordingly, Amend 44 CFR part 206 as follows:

PART 206—[AMENDED]

1. The authority citation of part 206 continues to read:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 F.R. 41943; 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 F.R. 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 F.R. 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 F.R. 12571, 3 CFR, 1989 Comp., p. 214.

2. Revise § 206.171 (g) (4) (i) to read as follows:

§ 206.171 Crisis counseling assistance and training.

* * * * *

(g) * * *

(4) * * *

(i) Shall not exceed 9 months from the date of the DHHS notice of grant award, except that upon the request of the State to the Regional Director and the Secretary, the Assistant Associate Director may authorize up to 90 days of additional program period because of documented extraordinary circumstances. In limited circumstances, such as disasters of a catastrophic nature, the Assistant Associate Director may extend the program period for more than 90 days where he or she deems it to be in the public interest.

* * * * *

Dated: February 26, 2003.

Joe M. Allbaugh,

Director.

[FR Doc. 03–4901 Filed 2–28–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[WT Docket No. 01–339; RM–10070; FCC 03–26]

Garmin International, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission (FCC) amends its rules to permit Family Radio Service (FRS) units to transmit global positioning system (GPS) location information using emission type F2D in a digital burst of not more than one second, and to permit brief text messaging between FRS units. With the exception of automatically responding to interrogation requests spaced less than 30 seconds apart, an FRS unit shall limit transmission of digital data containing location information, requesting location information from any other FRS unit, or containing any brief text message to another FRS unit, to no more than once within any thirty-second period. The amendment will better serve the public interest by allowing FRS units equipped to transmit location information utilizing GPS technology and permit communication between FRS units through the use of brief text messaging. Equipped with GPS, an enhanced unit can be used to locate a lost family or group member in the woods, or at an amusement park. FRS units capable of transmitting brief text messages will likely reduce channel congestion and increase the usefulness of the service.

DATES: Effective April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Jeannie Benfaida, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233, or via E-mail at *jbenfaid@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Report and Order*, FCC 03–26, adopted on February 3, 2003, and released on February 10, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. On December 20, 2001, we proposed to amend §§ 95.193(a), 95.193(b), and 95.631(d) of our Rules to revise the scope of permissible communications and emission types for FRS units. We initiated this proceeding in response to a petition filed by Garmin International, Inc. (Garmin), requesting that FRS units be allowed to transmit GPS location information using emission type F2D in a digital data burst of not more than one second and to permit brief text messaging between FRS units. We believe that permitting the transmission of location information and text messages over FRS channels will benefit the public.

Procedural Matters

1. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

2. In this *Report and Order*, we authorize an individual to use a FRS unit to satisfy his or her need for non-voice communications for the purpose of providing information about the location of the FRS unit to other FRS units or transmitting text messages. The revised rules apply exclusively to individuals who use FRS units. The modifications are in the public interest because they would allow the public to take advantage of technological developments in equipment and service that have occurred since the authorization of the FRS, availability of equipment at reasonable prices, and the removal of Selective Availability from the GPS signal.

3. In addition, the rules modified in this *Report and Order* affect manufacturers of FRS units. Based on requests from manufacturers for certification of FRS units, we believe that there are between five and ten manufacturers of FRS units, and that none of these manufacturers are small entities. The rule change applies to individuals who use FRS units and does not result in a mandatory change in manufactured FRS units. Rather, the rule changes are permissive and would allow a manufacturer, if it so chooses, to include additional features in the FRS units it manufactures. Therefore, we certify that the modification in this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The FCC will send a copy of the *Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

4. *Paperwork Reduction Analysis.* This *Report and Order* does not contain any new or modified information collection. Therefore it is not subject to the requirements for a paperwork reduction analysis, and the FCC has not performed one.

Ordering Clauses

5. Pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), that sections 95.193(a), 95.193(b), and 95.631(d) of the FCC's rules, 47 CFR 95.193(a). 95.193(b), and 95.631(d), are amended as set forth, effective April 2, 2003.

6. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

7. This proceeding is terminated.

List of Subjects in 47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble the FCC amends 47 CFR part 95 as follows:

PART 95—PERSONAL RADIO SERVICE

1. The authority citation for part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 95.193 is amended by revising paragraphs (a) and (b) to read as follows:

§ 95.193 (FRS Rule 3) Types of communications.

(a) You may use an FRS unit to conduct two-way voice communications with another person. You may use an FRS unit to transmit one-way voice or non-voice communications only to establish communications with another person, send an emergency message, provide traveler assistance, provide location information, transmit a brief text message, make a voice page, or to conduct a brief test.

(b) *Non-voice communications.* (1) The FRS unit may transmit tones to make contact or to continue communications with a particular FRS unit. If the tone is audible (more than 300 Hertz), it must be transmitted continuously no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking.

(2) The FRS unit may transmit digital data containing location information, or requesting location information from one or more other FRS units, or containing a brief text message to another specific FRS unit. Digital data transmissions must be initiated by a manual action or command of a user, except that an FRS unit receiving an interrogation request may automatically respond with its location. Digital data transmissions shall not exceed one second, and shall be limited to no more than one digital transmission within a thirty-second period, except that an FRS unit may automatically respond to more than one interrogation request received within a thirty-second period.

* * * * *

3. Section 95.194 is amended by adding paragraph (d) to read as follows:

§ 95.194 (FRS Rule 4) FRS Units.

* * * * *

(d) FRS units are prohibited from transmitting data in store-and-forward packet operation mode.

4. Section 95.401 is amended by revising the paragraph (b) as follows:

§ 95.401 (CB Rule 1) What are the Citizen Band Radio Services?

* * * * *

(b) The Family Radio Service (FRS)—a private, two-way, very short-distance voice and data communications service for facilitating family and group activities. The rules for this service are contained in subpart B of this part.

* * * * *

5. Section 95.631 is amended by revising paragraph (d) to read as follows:

§ 95.631 Emission types.

* * * * *

(d) An FRS unit may transmit only emission type F3E or F2D. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications, digital data

transmission of location information or text messaging.

* * * * *

4. Section 95.633 is amended by revising paragraph (c) to read as follows:

§ 95.633 Emission bandwidth.

* * * * *

(c) The authorized bandwidth for emission type F3E or F2D transmitted by a FRS unit is 12.5 kHz.

* * * * *

[FR Doc. 03–4869 Filed 2–28–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1540

Prohibited Items; Correction

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Interpretive rule; correction.

SUMMARY: This document makes a correction to the interpretive rule published in the **Federal Register** on February 14, 2003 (68 FR 7444), which provides guidance to the public on the types of property TSA considers to be weapons, explosives, and incendiaries that are prohibited in airport sterile areas and in the cabins of aircraft under the TSA regulations and the types of items that are permitted in sterile areas, the cabins of passenger aircraft, and in passengers' checked baggage. The TSA erroneously included the words "non-refillable" in the discussion of lighters under "Permitted Items; Medical and Personal Items." This document removes this wording and clarifies the type of gas lighter permitted. In addition, TSA erroneously included in the interpretation a paragraph listing "Other items" allowed to be transported in checked baggage. Because these items are not allowed in checked baggage, this document removes that paragraph.

EFFECTIVE DATE: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Vicky Skelly, Aviation Security Specialist, Air Carrier Division, Office of Aviation Security Policy, TSA–9, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (571) 227–2641, e-mail *Vicky.skelly@tsa.dot.gov*. Legal questions may be directed to Ellen Siegler, Attorney, TSA–2, Chief Counsel; telephone (571) 227–2723, e-mail *ellen.siegler@tsa.dot.gov*.

SUPPLEMENTARY INFORMATION: On February 14, 2003 (68 FR 7444), TSA published an interpretive rule providing guidance on the types of property that TSA considers to be weapons, explosives, and incendiaries prohibited in airport sterile areas and in the cabins of aircraft under the TSA regulations. The interpretive rule also explained that certain items that are prohibited in sterile areas and cabins may be transported in checked baggage.

In the last sentence of the ending paragraph of the preamble discussion on permitted items (page 7446, first column, last sentence), as well as in the interpretation, on page 7446, in the third column, paragraph II.A.(9) erroneously included the words "non-refillable" to describe liquefied gas lighters. As both non-refillable (disposable) and refillable lighters (such as Colibri, Dunhill, and Ronson) are filled with liquefied butane gas and are equivalent from a security perspective, there is no reason to allow passengers to carry only non-refillable lighters of this type. Therefore, the words "non-refillable" have been removed and a clarifying reference to refillable, "Colibri-type" lighters has been inserted.

In the interpretation, on page 7447, in the first column, paragraph III.(6) erroneously listed the following as "Other items" that may be carried in checked baggage pursuant to strict conditions imposed by 49 CFR part 175: compressed air guns, fire extinguishers, flare pistols, and gun lighters. None of these items may be carried as checked baggage and should not have been included in this listing. Accordingly, this provision has been deleted from the interpretive rule.

Correction

In interpretive rule FR Doc. 03–3755, published on February 14, 2003 (68 FR 7444), make the following corrections:

1. On page 7446, in the first column, line 21, last sentence of preamble discussion paragraph on "Permitted Items," is corrected to read as follows:

"Consistent with Department of Transportation regulations for hazardous materials, passengers also are permitted to carry no more than four books of matches (other than strike-anywhere matches) and no more than two lighters for individual use, if the lighters are fueled with liquefied gas (BIC-or Colibri-type) or absorbed liquid (Zippo-type)."

2. On page 7446, in the third column, paragraph II.A.(9) is corrected to read as follows:

"Lighters (maximum of two), fueled with liquefied gas (BIC-or Colibri-type) or absorbed liquid (Zippo-type)."

3: On page 7447, in the first column, remove the full paragraph III.(6), which begins "*Other items*. Compressed air guns, * * *".

Issued in Washington, DC, on February 26, 2003.

Mardi Ruth Thompson,

Deputy Chief Counsel for Regulations.

[FR Doc. 03–4920 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 020920220–3038–02; I.D. 090302E]

RIN 0648–AL97

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend portions of the regulations governing the halibut fishery under the Western Alaska Community Development Quota (CDQ) Program. These changes will increase the Regulatory Area (Area) 4E trip limit from 6,000 lb (2.72 metric tons (mt)) to 10,000 lb (4.54 mt) and modify the Area 4 Catch Sharing Plan (CSP) to allow CDQ Program participants to harvest allocations of Area 4D halibut CDQ in Area 4E. This action is intended to enhance harvesting opportunities for halibut CDQ fishermen and to further the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to the CDQ program and the Pacific halibut fishery, consistent with the regulations and resource management objectives of the International Pacific Halibut Commission (IPHC).

DATES: Effective April 2, 2003.

ADDRESSES: Copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or by calling 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228, e-mail *obren.davis@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Commerce (Secretary) is responsible for implementing the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, as provided by the Northern Pacific Halibut Act of 1982 (Halibut Act), at 16 U.S.C. 773. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Council having authority for the geographical area concerned to develop regulations governing the allocation and catch of Pacific halibut (Hippoglossus stenolepis) in U.S. Convention waters. Such regulations must be approved by the Secretary before being implemented and may be in addition to, but not in conflict with, regulations developed by the IPHC.

The commercial halibut fishery in and off Alaska is managed under the Individual Fishing Quota (IFQ) program and the CDQ program. Under the regulations established for these programs, the annual halibut catch limits for Areas 4B, 4C, and 4D are divided between the IFQ and CDQ programs. Twenty percent of the Area 4B annual catch limit is allocated to the CDQ program and the rest is allocated to the IFQ program. For Area 4C, the allocation to the CDQ program is 50 percent, and for Area 4D it is 30 percent. One hundred percent of the Area 4E annual catch limit is allocated to the CDQ program. The halibut CDQ catch limits, or reserves, are divided among eligible CDQ communities in accordance with Community Development Plans (CDP) submitted by CDQ managing organizations (CDQ groups) and approved by NMFS. This current action affects only halibut CDQ harvested in Areas 4D and 4E.

Since 1995, four different CDQ groups have received annual allocations of Area 4D halibut and two CDQ groups have received annual allocations of Area 4E halibut. Between 1995 and 2001, the annual halibut CDQ reserve ranged from 231,000 to 609,000 lb (104.78 to 276.24 mt) in Area 4D and from 120,000 to 390,000 lb (54.43 to 176.9 mt) in Area 4E. Amounts specified for halibut catch limits, reserves, and allocations are all in net (headed and gutted) weight. Halibut CDQ in Areas 4D and 4E must be allocated to the CDQ groups that represent eligible communities located in, or proximate to, Areas 4D and 4E, respectively.

Catch Sharing Plan (CSP) for Area 4

The CSP for Area 4 originally was developed by the Council to apportion the IPHC's halibut catch limit for Area 4 among Areas 4A, 4B, 4C, 4D, and 4E as necessary to carry out the socioeconomic objectives of the IFQ and CDQ programs. The Area 4 CSP was published in the **Federal Register** on March 20, 1996 (61 FR 11337), and implemented that same year.

NMFS subsequently modified the Area 4 CSP to remove Areas 4A and 4B from the CSP in 1998 (63 FR 13000, March 17, 1998). This change was to allow the catch limits for these two areas and a combined Area 4C–4E to be set according to the IPHC's revised biomass-based methodology, under which the IPHC considers that Areas 4A, 4B, and 4C–E each have a separate halibut stock. Beginning in 1998, the IPHC has annually implemented the measures specified in the Area 4 CSP to apportion the combined Area 4C–E catch limit among Areas 4C, 4D, and 4E. The annual management measures for halibut fisheries in 2002 were published on March 20, 2002 (67 FR 12885).

Four out of six CDQ groups have received halibut CDQ allocations in Area 4D since 1995, including Bristol Bay Economic Development Corporation (BBEDC), Coastal Villages Region Fund (CVRF), Norton Sound Economic Development Corporation (NSEDC), and Yukon Delta Fisheries Development Association (YDFDA). Past and current allocations recommended by the State of Alaska and approved by the Secretary have allocated both Area 4D and Area 4E halibut CDQ to just two groups, BBEDC and CVRF, based on their historical participation in the Area 4 halibut fishery and the contents of their CDP applications. NSEDC and YDFDA have received only Area 4D halibut CDQ. Residents of communities represented by these latter two groups (with the exception of two of NSEDC's communities) must travel extended distances offshore to harvest Area 4D halibut CDQ or the quota must be harvested by large, non-local vessels.

In 1999, CDQ groups that received Area 4D quota expressed a desire to increase the amount of halibut CDQ that could be harvested in their locally based inshore halibut fishery by being allowed to harvest Area 4D halibut CDQ in Area 4E. All four of these groups represent communities along the western Alaska coast, ranging from Bristol Bay (south) to the Bering Strait (north). Almost all of the 56 communities represented by these groups are adjacent to Area 4E; only two are in Area 4D. In January 1999, these groups approached the IPHC at its annual meeting and requested a determination as to whether it would be acceptable to harvest halibut CDQ allocated to Area 4D in Area 4E. The IPHC had no objection to the request because it considers the halibut in Areas 4C, 4D, and 4E to be a single stock. This issue was also raised at the February 1999 Council meeting. The Council requested that NMFS prepare an analysis of the proposal to allow Area 4D halibut CDQ to be harvested in Area 4E. The Council also recommended modifying the Area 4E halibut catch limit (see Area 4E Trip Limit, below).

NMFS prepared an EA, RIR, and Initial Regulatory Flexibility Analysis (IRFA) that examined the proposal to allow Area 4D halibut CDQ to be harvested in Area 4E. In December 2001, the Council recommended allowing halibut CDQ that was allocated in Area 4D to be harvested in Area 4E. In January 2002, the IPHC noted that allowing Area 4D halibut CDQ to be harvested in Area 4E would constitute a change to the Area 4 CSP that would need to be addressed by NMFS in rulemaking.

This final rule will modify the Area 4 CSP to incorporate the Council's specific recommendation that Area 4D halibut CDQ may be harvested either in Area 4D or in Area 4E. However, the existing Area 4 CSP framework that apportions the combined Area 4C–E annual catch limit among Areas 4C, 4D, and 4E will remain unchanged. The authority to allocate the annual Area 4 catch limit according to the Area 4 CSP is specified at 50 CFR 300.63(b) and will continue to be implemented by the IPHC in its annual management measures pursuant to 50 CFR 300.62. The following paragraph will be added to the Area 4 CSP:

A CDQ group with an allocation of Area 4D halibut CDQ may harvest all or part of that allocation in Area 4E. This provision is based on the Council's recommendation in December 2001 to allow CDQ fishermen in Area 4E additional halibut CDQ harvesting opportunities. The framework that allocates the IPHC catch limits among Areas 4C, 4D, and 4E remains unchanged.

The Council recommended allowing the harvest of Area 4D halibut in Area 4E and allowing amounts of Area 4D halibut CDQ that had been transferred to Area 4E to be transferred back to Area 4D. NMFS will implement the Council's intent without requiring the CDQ groups to submit documents requesting transfers of halibut CDQ between Areas 4D and 4E. The Council intended that the maximum amount of halibut CDQ that could be caught in Area 4D would

be the amount of halibut CDQ allocated to each CDQ group for Area 4D. The Council also intended that the maximum amount of halibut CDQ that could be caught in Area 4E would be the sum of the amount of halibut CDQ allocated for Areas 4D and 4E combined.

NMFS will monitor each CDQ group's halibut CDQ catch in Areas 4D and 4E. If the catch in Area 4E exceeds the group's initial allocation for Area 4E, then NMFS will subtract this additional catch from the group's Area 4D allocation and it will no longer be available for harvest in Area 4D. Halibut CDQ catch from Area 4D also will be subtracted from each group's Area 4D allocation. This procedure will allow each CDQ group to decide where to catch its Area 4D halibut CDQ allocation without requiring burdensome transfers.

Each CDQ group will be required to monitor the harvest of Area 4D and 4E halibut CDQ to ensure that: (1) its total catch in Area 4D does not exceed its Area 4D allocation, minus any portion of its Area 4D quota harvested in Area 4E, and (2) its total catch in Area 4E does not exceed the sum of its Area 4D and Area 4E allocations, minus any portion of its Area 4D allocation harvested in Area 4D.

Area 4E Trip Limit

In 1988, the Council developed, and the Secretary approved, fishing trip limits for Area 4C of 10,000 lb (4.54 mt) and Area 4E of 6,000 lb (2.72 mt) (53 FR 20327, June 3, 1988). In 1994, the Council recommended, and the Secretary approved, a fishing trip limit for Area 4B of 10,000 lb (4.54 mt) (59 FR 22522, May 2, 1994). These provisions were intended to enhance fishing opportunities for operators of vessels that landed their total annual catch within either Areas 4B, 4C, or 4E. Specifically, the Area 4E trip limit was devised to protect fishermen who landed their total annual catch of halibut at ports in Area 4E from competition with fishermen using vessels large enough to land their Area 4E halibut catch at ports in other regulatory areas. The Area 4E trip limit was incorporated into the Pacific halibut fishery regulations in 1988, and into 50 CFR part 676 (now promulgated as 50 CFR part 679) in 1993, as one of the rules implementing the halibut and sablefish IFQ and CDQ programs (58 FR 59375, November 9, 1993).

In December 1994, the Council recommended eliminating the trip limits in Areas 4B, 4C, and 4E, as these limits were deemed unnecessary due to the forthcoming implementation of the IFQ and CDQ programs. Subsequently, these restrictions were removed from the Pacific halibut regulations at 50 CFR part 301 (now 50 CFR part 300) (60 FR 14651, March 20, 1995). The Area 4E trip limit restriction, however, was inadvertently kept in 50 CFR part 679. In October 1998, NMFS informed the Council that this oversight would be corrected by removing the Area 4E trip limit from 50 CFR part 679. The Council declined to approve this correction, and voted instead to retain the 6,000–lb (2.72–mt) trip limit through September 1 of each year. The Council's rationale for retaining an Area 4E trip limit was to prevent consolidation of the halibut fishery in this area, to the possible detriment of local fishermen.

In December 2001, the Council confirmed its intent to retain the trip limit in Area 4E, but recommended that it be increased to 10,000 lb (4.54 mt) and that it be in effect annually only through September 1. The Council reasoned that retention of the trip limit would promote the near-shore small-scale halibut CDQ fishery in western Alaska, which is typically conducted by small vessels under 32 feet (9.73 m) length overall. Moderately increasing the trip limit, however, could allow harvesters greater operational flexibility during the spring and summer months, particularly for local vessels capable of packing more than 6,000 lb (2.72 mt) of halibut during a fishing trip. Eliminating the trip limit during the fall months will offer CDQ groups the ability to harvest halibut CDQ using vessels large enough to safely operate in adverse weather and sea conditions. Typically, the trip limit is an economic constraint to using larger vessels in the Area 4E halibut CDQ fishery.

This final rule revises the Area 4E trip limit to increase it from 6,000 to 10,000 lb (2.72 to 4.54 mt) and specifies that the Area 4E trip limit will be effective only through September 1 of each year.

NMFS published a proposed rule in the **Federal Register** on October 15, 2002 (67 FR 63600), which described the proposed regulatory amendment and invited comments from the public. No public comments were received on the proposed rule.

Compliance Guide for Small Entities

The Small Business Regulatory Enforcement Fairness Act of 1996 requires that, for each final rule requiring preparation of a FRFA, a plain language explanation of how to comply with the regulation be prepared. NMFS has prepared the following compliance guide that explains how small entities must comply with the regulations implemented in this final rule.

What is the trip limit for vessels fishing for halibut CDQ in Area 4E? A fishing trip limit of 10,000 lb (4.54 mt) applies to halibut CDQ harvesting in Area 4E.

Is the Area 4E trip limit effective for the entire halibut CDQ fishing season? The trip limit is in effect each year from the beginning of the halibut CDQ season through September 1. From September 2 until the end of the halibut CDQ season, vessels fishing for halibut CDQ in Area 4E are not subject to a trip limit.

May halibut CDQ allocated to Area 4D be caught in Area 4E? A CDQ group may choose to harvest all or a portion of its annual Area 4D halibut CDQ allocation in Area 4E.

What are the recordkeeping or reporting requirements associated with the revised trip limit and allowance to harvest Area 4D halibut CDQ in Area 4E? This action does not change the recordkeeping and reporting requirements associated with the halibut CDQ fishery in Area 4. NMFS will modify its halibut CDQ catch accounting software to incorporate the change to the Area 4E trip limit and the option to harvest Area 4D halibut CDQ in Area 4E.

Classification

The Council recommended this action to the Secretary for adoption pursuant to its authority under the Halibut Act. NMFS prepared an EA/RIR/IRFA for the proposed revisions to the Area 4 CSP and the Area 4E trip limit regulatory amendment that describes the management background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives.

NMFS also prepared a FRFA describing the impact of this action on small entities. A summary of the FRFA follows.

The objective of this action is to enhance the economic opportunities associated with the Area 4 halibut CDQ fishery by implementing the following regulatory changes: (1) Modifying the Area 4E trip to increase the trip limit to 10,000 lb (4.54 mt) and (2) amending the Area 4 CSP to allow Area 4D halibut CDQ to be harvested in Area 4E. No public comments were received on the IRFA prepared prior to, and summarized within, the proposed rule published for this regulatory amendment. NMFS considers most of the fishing operations affected by this action to be small entities, based on criteria established by the RFA. The universe of small entities is comprised of four CDQ groups, 58 CDQ-eligible communities, 224 catcher vessels, and 31 halibut registered buyers for a total of 317 small entities. There are no recordkeeping or reporting requirements associated with these actions. A range of alternatives was considered for each action. For the action associated with modifying the Area 4 CSP, allowing Area 4D halibut CDQ to be harvested in Area 4E was the preferred alternative selected by the Council. For the Area 4E trip limit action, the preferred alternative was increasing the trip limit to 10,000 lb (4.54 mt) and suspending the trip limit annually after September 1.

The proposed rule, published in the **Federal Register** on October 15, 2002 (67 FR 63600), contained a more lengthy discussion of the alternatives that were considered for this action and are not repeated here. The preferred alternatives for Actions 1 and 2 constitute the least burdensome alternatives to regulated small entities, among the suite of options available, while simultaneously achieving the objectives of this regulatory amendment. In other words, no other alternatives were identified which would reduce the potential adverse impacts on small entities, while achieving the Council's objectives for the Area 4 Halibut CDQ Program. The Area 4 CSP modification and the revision to 50 CFR part 679 would have no negative impacts in and of themselves, but are intended to increase the harvesting flexibility for participants in the halibut CDQ fishery in Areas 4D and 4E. These changes will allow CDQ groups with halibut CDQ allocations in these areas to tailor their halibut CDQ fishing operations to enhance economic opportunities for the western Alaska communities that they represent.

This final rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. This final rule does not duplicate, overlap, or conflict with other Federal regulations.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 is amended to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub. L. 106–31, Sec. 3027; and Pub. L. 106–554, Sec. 209.

2. In § 679.31, paragraph (b)(3)(iv) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(b) * * *

(3) * * *

(iv) *Area 4E.* In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory area 4E. A fishing trip limit of 10,000 lb (4.54 mt) applies to halibut CDQ harvested in IPHC regulatory area 4E through September 1.

* * * * * *

[FR Doc. 03–4894 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021122284–2323–02; I.D. 021403E]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2003 Commercial Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota restoration.

SUMMARY: NMFS publishes revised 2003 commercial quotas for summer flounder, scup, and black sea bass. This action is necessary to comply with the regulatory provision that requires the Administrator, Northeast Region, NMFS (Regional Administrator) to correct erroneous landings data that factored into an overage deduction. The intent of this action is to provide fishermen the opportunity to harvest the available quota for these fisheries.

DATES: Effective February 25, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail sarah.mclaughlin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS published final specifications and preliminary quota adjustments for the 2003 summer flounder, scup, and black sea bass fisheries on January 2, 2003 (68 FR 60). The final rule included preliminary 2002 landings and 2003 quota adjustments. Sections 648.100(d), 648.120(d), and 648.140(d) provide that, if the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, the Regional Administrator will restore the overage that was deducted in error to the appropriate quota allocation and publish notification in the **Federal Register** announcing the restoration.

During a retrospective review of the 2002 research set-aside (RSA) program and data accounting procedures, NMFS discovered a discrepancy in how RSA landings were attributed and subsequently used for quota monitoring; i.e., the RSA landings were counted as commercial landings in the summer flounder, scup, and black sea bass fisheries. Because RSA landings are authorized under a separate quota for each of these three fisheries, they are intended to be accounted for separately from other landings. As a result, actual commercial landings for certain 2002 quota periods were lower than previously reported, and quota overages calculated for 2002 incorrectly included RSA landings, which resulted in lower adjusted 2003 quotas than are necessary.

During a separate retrospective review of the landings data used to determine overharvest or underharvest of summer flounder in 2002, NMFS determined that, for some states, a portion of the landings considered to be late reports for 2001 landings were misattributed and counted as 2002 landings. In addition, some trip-level data that had already been included in monthly landings data reports were reported by the State of Connecticut. The result of these three findings made during the data review process is that the landings recorded for certain states or quota periods exceeded the actual landings. Therefore, NMFS hereby restores these inappropriately deducted landings to the appropriate state and period quotas for the 2003 fisheries.

Summer Flounder Quota Corrections

A total of 317 lb (144 kg) of summer flounder RSA landings were counted

erroneously as commercial landings, as follows: Connecticut—19 lb (9 kg); Rhode Island—98 lb (44 kg); and New York—200 lb (91 kg). This amount is a negligible fraction of reported 2002 landings and did not result in closure of any state's fishery. However, for these states, corrections have been made to the 2002 landings and the 2003 quotas are revised as appropriate.

In addition, the following states recorded 2002 landings of summer flounder less than those reported in the January 2, 2003, final rule, by the following amounts: New Hampshire—22 lb (10 kg); Rhode Island—337,187 lb (152,947 kg); Connecticut—42,056 lb (19,076 kg); New York—10,918 lb (4,952 kg); New Jersey—198,749 lb (90,152 kg); Maryland—15,385 lb (6,979 kg); Virginia—820,494 lb (372,174 kg); and North Carolina—846,527 (383,982 kg). Revisions to these landings have been made and revisions of 2002 overages (through October 31, 2002) are necessary for Rhode Island, Connecticut, and Virginia. The result is that the initial quotas (less the amount set aside for 2003 research) are restored for Connecticut, Rhode Island, and Virginia, as there was no 2002 overage in those states.

The commercial summer flounder 2003 adjusted quotas, less the amount set aside for 2003 research (as published in the January 2, 2003, final rule), the amounts being restored to the 2003 adjusted quotas, and the revised 2003 quotas (less the amount set aside for 2003 research), by state, are presented in Table 1.

TABLE 1. REVISED 2003 STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER QUOTA ALLOCATIONS

State	2003 Adjusted Quota, less the 2003 Research Set-Aside (as published January 2, 2003)		Amount Restored to the 2003 Adjusted Quota1		Revised 2003 Quota, less the 2003 Research Set-Aside	
	lb[2]	kg[2,3]	lb	kg[3]	lb[2]	kg[2,3]
ME	(6,890)	(3,125)	0	0	(6,890)	(3,125)
NH	64	29	0	0	64	29
MA	907,274	411,537	0	0	907,274	411,537
RI	1,979,786	898,025	204,121	92,589	2,183,907	990,614
CT	301,123	136,588	13,183	5,980	314,306	142,568
NY	1,064,869	483,021	0	0	1,064,869	483,021
NJ	2,329,010	1,056,432	0	0	2,329,010	1,056,432
DE	(45,609)	(20,688)	0	0	(45,609)	(20,688)
MD	283,951	128,799	0	0	283,951	128,799
VA	2,892,405	1,311,986	76,024	34,484	2,968,429	1,346,471
NC	3,821,924	1,733,613	0	0	3,821,924	1,733,613
Total[4]	13,580,406	6,160,032	293,328	133,053	13,873,734	6,293,084

[1] Amount restored was calculated to correct for 2002 RSA landings counted as commercial landings, misattributed portion of late 2001 landings, and specifically for Connecticut, trip level data already summarized in monthly landings data reports.
[2] Parentheses indicate a negative number. A state with a negative quota has an allocation of zero (0). Maine and Delaware continue repayment of overharvest from 2001.
[3] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[4] Total quota is the sum of all states having allocation:, i.e., states other than Maine and Delaware.

Scup Quota Corrections

No RSA landings of scup were made during the Winter I period of 2002. A total of 87,188 lb (39,548 kg) of scup landed under the RSA program during the Summer period of 2002 were counted erroneously as commercial landings. The 2002 Summer period overage reported in the January 2, 2003, final rule was 402,754 lb (182,688 kg), and the 2003 Summer period quota was adjusted to 4,434,691 lb (2,011,563 kg) as a result of that overage. Properly accounting for the RSA landings, the overage should be corrected to 315,566 lb (143,140 kg), resulting in a revised 2003 summer period quota of 4,521,879 lb (2,051,111 kg; a 1.9–percent increase). Per the quota counting procedures, any adjustment to the 2002 Winter II period quota will be made, if necessary, following review of the landings from November 1 through December 31, 2002, to be conducted as soon as possible after June 30, 2003.

The commercial scup 2003 adjusted quotas, less the amount set aside for 2003 research (as published in the January 2, 2003, final rule), the amounts being restored to the 2003 adjusted quotas, and the revised 2003 quotas (less the amount set aside for 2003 research), by period, are presented in Table 2.

TABLE 2. REVISED 2003 COMMERCIAL SCUP QUOTA ALLOCATIONS BY PERIOD

Quota Period	2003 Adjusted Quota, less the 2003 Research Set-Aside (as published January 2, 2003)		Amount Restored to the 2003 Adjusted Quota1		Revised 2003 Quota, less the 2003 Research Set-Aside	
	lb	kg[2]	lb	kg[2]	lb	kg[2]
Winter I	5,602,495	2,541,275	0	0	5,602,495	2,541,275
Summer	4,434,691	2,011,563	87,188	39,548	4,521,879	2,051,111
Winter II	1,979,689	897,981	n/a[3]	n/a[3]	1,979,689	897,981
Total	12,016,875	5,450,819	87,188	39,548	12,104,063	5,490,367

[1] Amount restored was calculated to correct for 2002 RSA landings counted as commercial landings.
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Black Sea Bass Quota Corrections

No RSA landings of black sea bass were made during Quarter 1 of 2002. RSA landings during Quarters 2 and 3 were 4,802 lb (2,178 kg) and 26,360 lb (11,957 kg), respectively, and were counted erroneously as commercial black sea bass landings. Consistent with the quota counting procedures, in the January 2, 2003, final rule, the 2002 Quarter 2 overage reported was 214,338 lb (97,223 kg), the 2003 Quarter 2 quota was adjusted to 750,902 lb (340,607 kg), the 2002 Quarter 3 overage reported was 5,459 lb (2,476 kg), and the 2003 Quarter 2 quota was adjusted to 401,288 lb (182,023 kg). Properly accounting for the RSA landings, the 2002 Quarter 2 overage should be corrected to 209,536 lb (95,045 kg), resulting in a revised Quarter 2 quota of 755,704 lb (342,785 kg; a 0.6–percent increase). Accounting for the RSA landings results in there being no overage of the 2002 Quarter 3 quota, so the 2003 Quarter 3 quota is restored to 406,747 lb (184,499 kg; a 1.4–percent increase). Only Quarters 1 though 3 are included in the calculations of adjusted quotas for the following year.

Under the current quarterly black sea bass quota program, any adjustment to the Quarter 4 quota would be made, if necessary, following review of the 2002 Quarter 4 landings, to be conducted as soon as possible after June 30, 2003. However, Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP, which was approved by NMFS on January 29, 2003, establishes an annual (calendar year) coastwide quota for the commercial black sea bass fishery, and NMFS anticipates that the final rule implementing the Amendment will be effective prior to the end of Quarter 1 for 2003. The annual quota would fully account for the total 2002 quota, all reported 2002 commercial landings, and all reported 2002 RSA landings. Commercial landings made in 2003 to date will be measured against the annual quota, rather than the quarterly quotas, and adjustments would be made, as necessary, at year-end to the annual quota.

The commercial black sea bass 2003 adjusted quotas, less the amount set aside for 2003 research (as published in the January 2, 2003, final rule), the amounts being restored to the 2003 adjusted quotas, and the revised 2003 quotas (less the amount set aside for 2003 research), by quarter, are presented in Table 3.

TABLE 3. REVISED 2003 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY QUARTER

Quarter	2003 Adjusted Quota, less the 2003 Research Set-Aside (as published January 2, 2003)		Amount Restored to the 2003 Adjusted Quota1		Revised 2003 Quota, less the 2003 Research Set-Aside	
	lb	kg[2]	lb	kg[2]	lb	kg[2]
1	1,197,664	543,257	0	0	1,197,664	543,257
2	750,902	340,607	4,802	2,178	755,704	342,785
3	401,288	182,023	5,459	2,476	406,747	184,499
4	652,180	295,827	n/a[3]	n/a[3]	652,180	295,827
Total	3,002,034	1,361,714	.....	.....	3,012,295	1,366,368

[1] Amount restored was calculated to correct for 2002 RSA landings counted as commercial landings.
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4816 Filed 2–25–03; 3:58 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–3037–02; I.D. 110602C]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2003 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 2003 specifications for groundfish and associated management measures; apportionment of reserves; request for comments; closures.

SUMMARY: NMFS announces final 2003 harvest specifications, prohibited species catch (PSC) allowances, and associated management measures for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI.

DATES: The final 2003 harvest specifications and associated apportionment of reserves are effective at 1200 hrs, Alaska local time (A.l.t.), February 25, 2003 through 2400 hrs, A.l.t., December 31, 2003. Comments on the apportionment of reserves must be received by March 18, 2003.

ADDRESSES: Comments on the apportionment of reserves may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be

made to NMFS in the Federal Building, Room 453, 709 West 9th Street, Juneau, AK 99801.

Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action and the Final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228 or e-mail *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background for the 2003 Final Harvest Specifications

Federal regulations at 50 CFR part 679 that implement the FMP govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 679.20(a)(1)(i)). Also specified are apportionments of TACs, and Community Development Quota (CDQ) reserve amounts, prohibited species quota (PSQ) reserves, and PSC allowances. Regulations at § 679.20(c)(3) further require NMFS to consider public comment on the proposed annual TACs and apportionments thereof and the proposed PSC allowances, and to publish final specifications in the **Federal Register**. The final specifications set forth in Tables 1 through 17 of this action satisfy these requirements. For 2003, the sum of TACs is 2 million mt.

The proposed BSAI groundfish specifications and PSC allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 12, 2002 (67 FR 76362). Comments were invited and accepted through January 13, 2003. NMFS received one comment on the proposed specifications. This comment is summarized and responded to in the Response to Comments section. Public consultation with the Council occurred during the December 2002 Council meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 2003 groundfish specifications as recommended by the Council.

Regulations at § 679.20(c)(2)(ii) establish the interim amounts of each proposed initial TAC (ITAC) and allocations thereof, of each CDQ reserve established by § 679.20(b)(1)(iii), and of the proposed PSQ reserves and PSC allowances established by § 679.21 that become available at 0001 hours, A.l.t., January 1, and remain available until superseded by the final specifications. NMFS published the interim 2003 groundfish harvest specifications in the **Federal Register** on December 26, 2002 (67 FR 78739). Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line and pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) management plan. The final 2003 groundfish harvest specifications, PSQ reserves and PSC allowances contained in this action supersede the interim 2003 groundfish harvest specifications.

Implementation of Steller Sea Lion Conservation Measures

In accordance with a biological opinion issued by NMFS on October 19, 2001, NMFS implemented a final rule for the start of the 2003 BSAI groundfish fisheries (68 FR 204, January 2, 2003), that contains measures that were deemed necessary to avoid the likelihood that the pollock, Pacific cod, and Atka mackerel fisheries off Alaska would jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. The final rule implements three types of management measures for the pollock, Pacific cod and Atka mackerel fisheries of the BSAI: (1) Measures to temporally disperse fishing effort, (2) measures to spatially disperse fishing effort, and (3) measures to provide sufficient protection from competition with pollock fisheries for prey in waters immediately adjacent to rookeries and important haulouts.

The final rule establishes a Steller Sea Lion Conservation Area (SCA) to regulate total removals of pollock in an area considered to be critical to the recovery of the endangered western population of Steller sea lions. The final rule restricts pollock harvests within the SCA to a percentage of each sector's seasonal allocation as recommended by the Council.

On December 18, 2002, the United States District Court for the Western District of Washington entered an Order remanding the October 19, 2001, biological opinion prepared for the groundfish fisheries. *Greenpeace, et al.* v. *National Marine Fisheries Service, No. C98–492Z (W.D. Wash.)*. The Court held that the biological opinion's findings of no jeopardy to the continued existence of endangered Steller sea lions and no adverse modification of their critical habitat were arbitrary and capricious. NMFS reached an agreement with the Plaintiffs that the 2003 groundfish fisheries will commence pursuant to the Steller sea lion protection measures examined in the biological opinion pending completion of the remand. The Court issued an order on December 30, 2002, that supported the agreement and extended the effective date of the 2001 Steller sea lion protection measures biological opinion until June 30, 2003.

Acceptable Biological Catch (ABC) and TAC Specifications

The final ABC levels are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used in computing ABCs and overfishing levels (OFLs). The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fishery scientists. This information is categorized into a successive series of six tiers.

At its December 2002 meeting, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed current biological information about the condition of groundfish stocks in the BSAI. This information was compiled by the Council's Plan Team and is presented in the final 2002 SAFE report for the BSAI groundfish fisheries, dated November 2002. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

In December 2002, the SSC, AP, and Council reviewed the Plan Team's recommendations. Except for Bogoslof pollock, sablefish, northern rockfish, Atka mackerel and the "other species" category, the SSC, AP, and Council endorsed the Plan Team's ABC recommendations. Based on the best available information, the SSC recommended slightly higher ABCs for sablefish and Atka mackerel and slightly lower ABCs for Bogoslof pollock and the "other species" category than the Plan Team recommended. For sablefish, the SSC increased the ABC from the Plan Team's recommendation based on the projected 5-year average of catches under the Council's $F_{40\%}$ policy. For Atka mackerel, the SSC recommended a higher, yet still conservative, ABC compared to the Plan Team. The SSC's recommendation was based on an ABC option presented by the stock assessment author that should maintain stock biomass at or near $B_{40\%}$. For Bogoslof pollock, the SSC recommended using a procedure that reduces the ABC proportionately to the ratio of current stock biomass to target stock biomass. For "other species", the SSC recommended for the 5th year, a procedure that moves gradually to a higher ABC over a 10-year period instead of a large increase in one year.

For all species, the AP endorsed the ABCs recommended by the SSC, and the Council adopted them. The final ABCs, as adopted by the Council, are listed in Table 1. For northern rockfish, the SSC concluded that a reliable Bering Sea biomass estimate was not available and therefore used a more conservative procedure than the Plan Team for calculating OFLs and ABCs. This resulted in establishing separate OFLs and ABCs for the Bering Sea and Aleutian Islands subareas. At the Council meeting in January 2003, the SSC and Council received additional reports on northern rockfish biomass estimates and concluded that although variability in the estimates is high, the estimates are considered to be conservative. Thus both the SSC and Council recommended that NMFS consider following the historical approach of BSAI-wide northern rockfish OFL and ABC amounts. This was the approach proposed by NMFS (68 FR 76362, December 12, 2002) and is determined to be appropriate for this stock.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required optimum yield (OY) range of 1.4 million to 2.0 million mt. The Council adopted the AP's TAC recommendations. None of the Council's recommended TACs for 2003 exceed the final ABC for any species category. NMFS finds that the recommended ABCs and TACs are consistent with the biological condition of groundfish stocks as described in the 2002 SAFE document that was approved by the Council.

Table 1 lists the 2003 OFL, ABC, TAC, ITAC and CDQ reserve amounts of groundfish in the BSAI. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—2003 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]

[Amounts are in mt]

Species	Area	OFL	ABC	TAC	ITAC [2]	CDQ reserve [3]
Pollock [4]	Bering Sea (BS)	3,530,000	2,330,000	1,491,760	1,342,584	149,176
	Aleutian Islands (AI)	52,600	39,400	1,000	1,000	
	Bogoslof District	45,300	4,070	50	50	
Pacific cod	BSAI	324,000	223,000	207,500	176,375	15,563
Sablefish [5]	BS	4,290	2,900	2,900	1,233	399
	AI	4,590	3,100	3,100	659	523
Atka mackerel	Total	99,700	63,000	60,000	51,000	4,500
	Western AI		22,990	19,990	16,992	1,499
	Central AI		29,360	29,360	24,956	2,202
	Eastern AI/BS		10,650	10,650	9,053	799
Yellowfin sole	BSAI	136,000	114,000	83,750	71,188	6,281
Rock sole	BSAI	132,000	110,000	44,000	37,400	3,300
Greenland turbot	Total	17,800	5,880	4,000	3,400	300
	BS		3,920	2,680	2,278	201
	AI		1,960	1,320	1,122	99
Arrowtooth flounder	BSAI	139,000	112,000	12,000	10,200	900
Flathead sole	BSAI	81,000	66,000	20,000	17,000	1,500
Other flatfish [6]	BSAI	21,400	16,000	3,000	2,550	225
Alaska plaice	BSAI	165,000	137,000	10,000	8,500	750
Pacific ocean perch	BSAI	18,000				
	BS		2,410	1,410	1,199	106
	AI Total		12,690	12,690	10,787	952
	Western AI		5,850	5,850	4,973	439
	Central AI		3,340	3,340	2,839	251
	Eastern AI		3,500	3,500	2,975	263
Northern rockfish	BSAI	9,468	7,101			
	BS			121	103	9
	AI			5,879	4,997	441
Shortraker/rougheye	BSAI	1,289	967			
	BS			137	116	10
	AI			830	706	62
Other rockfish [7]	BS	1,280	960	960	816	72
	AI	846	634	634	539	48
Squid	BSAI	2,620	1,970	1,970	1,675	
Other species [8]	BSAI	81,100	43,300	32,309	27,463	2,423

TABLE 1.—2003 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]—Continued

[Amounts are in mt]

Species	Area	OFL	ABC	TAC	ITAC [2]	CDQ reserve [3]
Total		4,867,308	3,296,382	2,000,000	1,771,540	187,540

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the Bering Sea subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

[4] The American Fisheries Act (AFA) requires that 10 percent of the annual Bering Sea pollock TAC be allocated as a CDQ reserve and the entire Aleutian Islands and Bogoslof District pollock ITAC be allocated as an incidental catch allowance. NMFS then subtracts 3.5 percent of the remaining Bering Sea pollock as an incidental catch allowance, which is not apportioned by season or area. The remainder of the ITAC is further allocated by sector as directed fishing allocations as follows: inshore, 50 percent; catcher/processor, 40 percent; and motherships, 10 percent.

[5] The ITAC for sablefish reflected in Table 1 is for trawl gear only. Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear and 7.5 percent of the sablefish TAC allocated to trawl gear is reserved for use by CDQ participants (see § 679.20(b)(1)(iii)).

[6] "Other flatfish" includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

[7] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] "Other species" includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the TAC for this species be fully allocated among the CDQ program, the ICA, and the inshore, catcher/processor, and mothership directed fishery allocations.

Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Regulations at § 679.20(a)(5)(i)(A) also require that 10 percent of the Bering Sea subarea pollock TAC be allocated to the pollock CDQ reserve. The entire Aleutian Islands subarea and Bogoslof District pollock TAC is allocated as an ICA (§ 679.20(a)(5)(i)(A)(*1*)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under regulations at § 679.20(a)(5)(i)(A)(*1*), NMFS allocates 3.5 percent of the Bering Sea subarea pollock TAC as an ICA after subtraction of the 10-percent CDQ reserve. This allowance is based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1998 through 2002. During this 5-year period, the incidental catch of pollock ranged from a low of 3 percent in 1998, 2001 and 2002 to a high of 5 percent in 1999, with a 5-year average of 3 percent.

The regulations do not designate the remainder of the non-specified reserve by species or species group, and any amount of the reserve may be apportioned to a target species or to the "other species" category during the year, providing that such apportionments do not result in overfishing. The Administrator of the Alaska Region for NMFS (Regional Administrator), has determined that the ITACs specified for the species listed in Table 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the nonspecified reserve to increase the ITAC to an amount that is equal to TAC minus the CDQ reserve.

TABLE 2.—APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[Amounts are in mt]

Species—area or subarea	Reserve amount	Final ITAC
Atka mackerel—Western Aleutian district	1,499	18,491
Atka mackerel—Central Aleutian district	2,202	27,158
Atka mackerel—Eastern Aleutian district and Bering Sea subarea	799	9,851
Other flatfish—BSAI	225	2,775
Alaska plaice—BSAI	750	9,250
Pacific ocean perch—Western Aleutian district	439	5,411
Pacific ocean perch—Central Aleutian district	251	3,090
Pacific ocean perch—Eastern Aleutian district	263	3,238
Pacific cod—BSAI	15,563	191,938
Shortraker/rougheye rockfish—Bering Sea subarea	10	126
Shortraker/rougheye rockfish—Aleutian Islands subarea	62	768
Northern rockfish—Bering Sea subarea	9	112

TABLE 2.—APPORTIONMENT OF RESERVES TO ITAC CATEGORIES—Continued

[Amounts are in mt]

Species—area or subarea	Reserve amount	Final ITAC
Northern rockfish—Aleutian Islands subarea	441	5,438
Other rockfish—Bering Sea subarea	72	888
Other species—BSAI	2,423	29,886
Total	25,008	308,420

Allocation of Pollock TAC Under the AFA

Section 206(a) of the AFA requires the allocation of 10 percent of the BSAI pollock TAC as a CDQ reserve (§ 679.20(a)(5)(i)(A)). The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels (3.5 percent), including CDQ vessels, harvesting other groundfish species, is allocated as directed fishing allocations (DFA) as follows: 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component (§ 679.20(a)(5)(i)). These amounts are listed in Table 3.

The AFA also contains several specific requirements concerning pollock and pollock allocations. First, at § 679.20(a)(5)(i)(A)(*4*)(*i*) and (*ii*), NMFS will allocate 91.5 percent of the catcher/processor sector allocation to AFA catcher/processors engaged in directed fishing for pollock and 8.5 percent of the catcher/processor sector allocation to AFA catcher vessels delivering to catcher/processors unless changed by the cooperative contracts. Second, unlisted AFA catcher/processors (§ 679.4(k)(1)(2)(ii)) are limited to harvesting not more than 0.5 percent of the catcher/processor sector allocation of pollock (§ 679.20(a)(5)(i)(A)(*4*)(*iii*)).

Table 3 also lists seasonal apportionments of pollock and harvest limits within the SCA. Regulations implementing Steller sea lion protection measures at § 679.20(a)(5)(ii)(A)(*1*) apportion the pollock directed fishing allowances allocated to each component into two seasonal allowances. The first allowance, 40 percent of the DFA, is made available for directed fishing from January 20 to June 10 ("A" season), and the second seasonal allowance, 60 percent of the DFA, is made available from June 10 to November 1 ("B" season)(Table 3). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the annual DFA until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the DFA as set forth in the AFA.

TABLE 3.—2003 ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS [1]

[Amounts are in mt]

Area and sector	2003 allocations	A Season [1]		B Season [1]
		A season DFA (40% of Annual DFA)	SCA harvest limit [2]	B season DFA (60% of Annual DFA)
Bering Sea subarea	1,491,760			
CDQ	149,176	59,670	41,769	89,506
ICA [3]	46,990			
AFA Inshore	647,797	259,119	181,383	388,678
AFA Catcher/Processors [4]	518,237	207,295	145,106	310,942
Catch by C/Ps [4]	474,187	189,675		284,512
Catch by CVs [4]	44,050	17,620		26,430
Restricted C/P cap [5]	2,591	1,036		1,555
AFA Motherships	129,559	51,824	36,277	77,736
Excessive harvesting share [6]	226,729			
Aleutian Islands ICA [7]	1,000			
Bogoslof District ICA [7]	50			

[1] After subtraction for the CDQ reserve (10 percent) and the ICA (3.5 percent), the pollock TAC is allocated as a DFA: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. Under § 679.20(a)(5)(i)(A), the CDQ reserve for pollock is 10 percent. The A season, January 20—June 10, is allocated 40 percent of the DFA and the B season, June 10—November 1, is allocated 60 percent of the DFA.

[2] No more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] The pollock ICA for the BS subarea is 3.5 percent of the TAC after subtraction of the CDQ reserve.

[4] Under § 679.20(a)(5)(i)(A)(*4*)(i) and (*ii*), NMFS will allocate 91.5 percent of the catcher/processor sector allocation to AFA catcher/processors engaged in directed fishing for pollock and 8.5 percent of the catcher/processor sector allocation to AFA catcher vessels delivering to catcher/processors unless changed by the cooperative contracts.

[5] Under § 679.20(a)(5)(i)(A)(*4*)(*iii*), unlisted AFA catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector allocation of pollock.

[6] Under § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the directed fishing allowances established under paragraphs (a)(5)(i) and (a)(5)(ii) of this section.
[7] The Aleutian Islands subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel TAC

Regulations implementing Steller sea lion protection measures at § 679.20(a)(8)(ii) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 ("A" season), and the second seasonal allowance is made available from September 1 to November 1 ("B" season)(Table 4). Under § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian districts.

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian district and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS approved, a 1-percent allocation of the Atka mackerel ITAC in the Eastern Aleutian district and the Bering Sea subarea to the jig gear fleet in 2003. Based on an ITAC and a reserve apportionment which together total 9,851 mt, the jig gear allocation is 99 mt.

A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas (§ 679.20(a)(8)(iii)).

TABLE 4.—2003 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC [1]

[Amounts are in mt]

Subarea & Component	TAC	CDQ reserve	ITAC	Seasonal apportionment [2]			
				A Season [3]		B Season [4]	
				Total	HLA Limit [5]	Total	HLA Limit [5]
Western Aleutian district	19,990	1,499	18,491	9,245	5,547	9,245	5,547
Central Aleutian district	29,360	2,202	27,158	13,579	8,147	13,579	8,147
Eastern AI/BS subarea [6]	10,650	799	9,851				
Jig (1%) [7]			99				
Other gear (99%)			9,753	4,876		4,876	
Total	60,000	4,500	55,500	27,701		27,701	

[1] Regulations at §§ 679.20(a)(8)(ii) and 679.22(a)(8) establish temporal and spatial limitations for the Atka mackerel fishery.
[2] The seasonal apportionment of Atka mackerel is 50 percent in the A season and 50 percent in the B season.
[3] The A season is January 1 through April 15, however trawl gear is prohibited until January 20.
[4] The B season is September 1 through November 1.
[5] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian districts.
[6] Eastern Aleutian district and the Bering Sea subarea.
[7] Regulations at § 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian district and the Bering Sea subarea ITAC be allocated to the jig gear fleet. The amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under regulations at § 679.20(a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(*1*), a portion of the Pacific cod allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, the Regional Administrator specifies an ICA of 500 mt. The remainder of Pacific cod is further allocated to vessels using hook-and-line or pot gear as the following directed fishing allowances: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line catcher vessels, 18.3 percent to pot gear vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the Pacific cod fisheries are temporally dispersed by the apportionment of the ITAC into two seasonal allowances (§§ 679.23(e)(5) and 679.20(a)(7)(iii)(A)). For most non-trawl gear the first allowance of 60 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 40 percent of the ITAC is made available from June 10 to December 31. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. Table 5 lists the 2003 allocations and seasonal apportionments of the Pacific cod ITAC. In accordance with §§ 679.20(a)(7)(ii)(D) and 679.20(a)(7)(iii)(B), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

TABLE 5.—2003 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

[Amounts are in mt]

Gear sector	Percent	Share of gear sector total (mt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment [1]	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC.	51	97,888				
Incidental Catch Allowance				500		
Catcher/Processor and Catcher Vessel sub-total		97,388				
Hook-and-line			80	77,911	Jan 1–Jun 10	46,747
Catcher/Processors					Jun 10–Dec 31	31,164
Hook-and-line			0.3	292	Jan 1–Jun 10	175
Catcher Vessels					Jun 10–Dec 31	117
Pot Gear Vessels			18.3	17,822	Jan 1–Jun 10	10,693
					Sept 1–Dec 31	7,129
Catcher Vessels < 60 feet LOA using hook-and-line or pot gear.			1.4	1,363		
Trawl gear total	47	90,211				
Trawl Catcher Vessel			50	45,105	Jan 20–Apr 1	31,574
					Apr 1–Jun 10	4,510
					Jun 10–Nov 1	9,021
Trawl Catcher/Processor			50	45,105	Jan 20–Apr 1	22,553
					Apr 1–Jun 10	13,531
					Jun 10–Nov 1	9,021
Jig	2	3,839			Jan 1–Jun 10	2,303
					Jun 10–Dec 31	1,536
Total	100	191,938				

[1] For non-trawl gear the first season is allocated 60 percent of the TAC and the second season is allocated 40 percent of the TAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the TAC and the second and third seasons are each allocated 20 percent of the TAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, *10 percent in the second season and 20 percent* in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on the 2003 ITAC and the reserve apportionment which together total 768 mt, the trawl allocation is 538 mt and the non-trawl allocation is 230 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for subareas of the BSAI be allocated between trawl and hook-and-line or pot gear. Gear allocations of TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line/pot gear and for the Aleutian Islands subarea are 25 percent for trawl gear and 75 percent for hook-and-line/pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be apportioned to the CDQ reserve. Additionally, regulations at § 679.20(b)(1)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be apportioned to the CDQ reserve. Gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 6.

TABLE 6.—2003 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in mt]

Subarea and gear	Percent of TAC	Share of TAC (mt)	ITAC (mt) [1]	CDQ reserve
Bering Sea subarea:				
Trawl [2]	50	1,450	1,233	109
Hook-and-line/pot gear [3]	50	1,450	N/A	290
Total	100	2,900	1,233	399
Aleutian Islands subarea:				
Trawl [2]	25	775	659	58
Hook-and-line/pot gear [3]	75	2,325	N/A	465

TABLE 6.—2003 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS—Continued

[Amounts are in mt]

Subarea and gear	Percent of TAC	Share of TAC (mt)	ITAC (mt) [1]	CDQ reserve
Total	100	3,100	659	523

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.
[2] The portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.
[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

PSC limits for halibut are set forth in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,675 mt of halibut mortality and for non-trawl fisheries, the limit is 900 mt of halibut mortality. For chinook salmon, regulations at § 679.21(e)(1)(vii) specify a scheduled reduction of the chinook salmon PSC limit until the final limit is reached in 2004. For 2003, the chinook salmon PSC limit for the pollock fishery is 33,000 fish. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

The red king crab mature female abundance is estimated to be 18.6 million king crab and the effective spawning biomass is estimated to be 37.7 million pounds (17,100 mt) from the 2002 survey data. Based on the criteria set out at § 679.21(e)(1)(ii), the 2003 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals as a result of the mature female abundance above 8.4 million king crab and the effective spawning biomass estimate greater than 14.5 (6,577 mt) but less than 55 million pounds (24,948 mt).

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category and must be based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended, and NMFS approves, a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category within the RKCSS.

Based on 2002 survey data, the *C. bairdi* crab abundance is estimated to be 464.9 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the 2003 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2 as a result of the *C. bairdi* crab abundance estimate of over 400 million animals.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* crab is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2002 survey estimate of 1.49 billion animals, the calculated limit is 1,169,000 animals. Because this limit is less than 4.5 million, under § 679.21(e)(1)(iv)(B), the 2003 *C. opilio* crab PSC limit is 4,350,000 animals.

Under § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS' best estimate of 2003 herring biomass is 152,574 mt. This amount was derived using 2001 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 2003 is 1,526 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut and crab is allocated as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances among five fishery categories. The fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 7.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, is exempting pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because these fisheries use selective gear types that take few halibut compared to other gear types such as nonpelagic trawl. In 2002, total groundfish catch for the pot gear fishery in the BSAI was approximately 15,518 mt with an associated halibut bycatch mortality of about 8 mt. The 2002 groundfish jig gear fishery harvested about 172 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The sablefish IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. NMFS is approving the Council's recommendation. This action results in less halibut discard in the sablefish fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. Estimates for 1996 through 2002 have not been calculated, however NMFS has no information indicating that it would be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are: (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. In December 2002, the Council's AP recommended seasonal PSC apportionments in order to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based upon the above criteria.

The Council adopted and NMFS approves the PSC apportionments specified in Table 7.

TABLE 7.—PROHIBITED SPECIES CATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES [1]

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI [6]	Herring (mt) BSAI	Red King Crab (animals) Zone 1	C. opilio (animals) COBLZ [2]	C. bairdi (animals) Zone 1	C. bairdi (animals) Zone 2
Trawl Fisheries						
Yellowfin sole	886	139	16,664	2,776,981	340,844	1,788,459
January 20—April 1	262					
April 1—May 21	195					
May 21—June 29	49					
June 29—December 31	380					
Rock sole/flat. sole/other flatfish [3]	779	20	59,782	969,130	365,320	596,154
January 20—April 1	448					
April 1—June 29	164					
June 29—December 31	167					
RKCSS [3]			20,924			
Turbot/sablefish/arrowtooth [4]		9		40,238		10,988
Rockfish (June 29—Dec. 31)	69	7		40,237	183,112	324,176
Pacific cod	1,434	20	13,079	124,736	17,224	27,473
Pollock/Atka/other [5]	232	146	200	72,428		
Midwater trawl pollock		1,184				
Total Trawl PSC	3,400	1,526	89,725	4,023,750	906,500	2,747,250
Non-Trawl Fisheries						
Pacific cod—Total	775					
January 1—June 10	320					
June 10—August 15	0					
August 15—December 31	455					
Other non-trawl—Total	58					
May 1—December 31	58					
Groundfish pot & jig	Exempt					
Sablefish hook-&-line	Exempt					
Total Non-Trawl	833					
PSQ RESERVE [7]	342		7,275	326,250	73,500	222,750
GRAND TOTAL	4,575	1,526	97,000	4,350,000	980,000	2,970,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, Figure 13.
[3] The Council at its December 2002 meeting recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)). "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.
[6] With the exception of the non-trawl Pacific cod directed fishery, any unused halibut PSC apportionment may be added to the following season's apportionment. Any unused halibut PSC apportioned to the non-trawl Pacific cod directed fishery during the January 1 through June 10 time period will not be available until August 15.
[7] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The assumed mortality rates are based on the best information available, including information contained in the annual SAFE report.

The Council recommended, and NMFS concurs, that the assumed halibut discard mortality rates (DMRs) developed by the International Pacific Halibut Commission (IPHC) for the 2002 BSAI groundfish fisheries be adopted for purposes of monitoring halibut bycatch allowances established for 2003 (Table 8). In 2001, the IPHC recommended, and the Council and NMFS concurred, to use the 10-year average DMRs for the 2001 through 2003 BSAI non-CDQ groundfish fisheries. Plots of annual DMRs against the 10-year average indicated little change since 1990 for some fisheries, particularly the major trawl fisheries. DMRs were more variable for the smaller fisheries which typically take minor amounts of halibut bycatch. The IPHC also will continue to conduct annual analyses of observer data and recommend changes to the Preseason Assumed DMR where a fishery DMR shows large variation from the average. Results from analysis of halibut release condition data for 2002 showed continued stability in halibut DMRs for many fisheries. The IPHC annually examines the CDQ fisheries and provides recommendations for any appropriate DMR revisions for those fisheries. The IPHC has been calculating the CDQ fisheries DMRs since 1998 and a 10-year average is not available. The Council recommended, and NMFS concurs, with the DMRs recommended by the IPHC for 2003 CDQ fisheries. The

justification for these DMRs is discussed in Appendix A of the final SAFE report dated November 2002.

TABLE 8.—2003 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Preseason assumed mortality (percent)
Hook-and-line gear fisheries:	
Greenland turbot	18
Other species	12
Pacific cod	12
Rockfish	25
Sablefish	22
Trawl gear fisheries:	
Atka mackerel	75
Flathead sole	67
Greenland turbot	70
Midwater pollock	84
Nonpelagic pollock	76
Other flatfish	71
Other species	67
Pacific cod	67
Rockfish	69
Rock sole	76
Sablefish	50
Yellowfin sole	81
Pot gear fisheries:	
Other species	8
Pacific cod	8
CDQ trawl fisheries:	
Atka mackerel	80
Flathead sole	90
Midwater pollock	89
Nonpelagic pollock	90
Rockfish	90
Yellowfin sole	83
CDQ hook-and-line fisheries:	
Greenland turbot	4
Pacific cod	11
CDQ pot fisheries:	
Pacific cod	2
Sablefish	46

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or "other species" category has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)). Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the following remaining allocation amounts will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year:

TABLE 9.—DIRECTED FISHING CLOSURES [1]

Area/species	Gear types	Incidental catch amount
Bogoslof District:		
Pollock	All	50
Aleutian Islands subarea:		
Pollock	All	1,000
Northern rockfish	All	5,438
Shortraker/Rougheye rockfish, trawl	All	538
Shortraker/Rougheye rockfish, non-trawl	All	230
Other rockfish	All	539
Bering Sea subarea:		
Northern rockfish	All	112
"Other rockfish"	All	888

TABLE 9.—DIRECTED FISHING CLOSURES [1]—Continued

Area/species	Gear types	Incidental catch amount
Pacific ocean perch	All	1,199
Shortraker/rougheye rockfish	All	126
Bering Sea Aleutian Islands:		
Other species	All	29,886

[1] The Regional Administrator has determined that the incidental catch amounts will be necessary to support other anticipated groundfish fisheries for the 2003 fishing year (§ 679.20(d)(1)(ii)(B)).

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these species in the specified areas and these closures are effective immediately through 2400 hrs, A.l.t., December 31, 2003.

In addition, the BSAI Zone 1 annual red king crab allowance specified for the trawl rockfish fishery (§ 679.21(e)(3)(iv)(D)) is 0 mt and the BSAI first seasonal halibut bycatch allowance specified for the trawl rockfish fishery is 0 mt. The BSAI annual halibut bycatch allowance specified for the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories is 0 mt (§ 679.21(e)(3)(iv)(C)). Therefore, in accordance with § 679.21(e)(7)(ii) and (v), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in Zone 1 of the BSAI and directed fishing for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI effective immediately through 2400 hrs, A.l.t., December 31, 2003. NMFS is also prohibiting directed fishing for rockfish outside Zone 1 in the BSAI through 1200 hrs, A.l.t., June 29, 2003.

Under authority of the interim 2003 harvest specifications (67 FR 78739, December 26, 2002), NMFS prohibited directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI effective 1200 hrs, A.l.t., January 22, 2003, through 1200 hrs, A.l.t., September 1, 2003 (68 FR 2920, January 22, 2003). NMFS opened the first directed fisheries in the HLA in area 542 and area 543 effective 1200 hrs, A.l.t., January 24, 2003. The first HLA fishery in area 542 remained open through 1200 hrs, A.l.t., January 29, 2003. The first HLA fishery in area 543 remained open through 1200 hrs, A.l.t., January 28, 2003. The second directed fisheries in the HLA in area 542 and area 543 opened effective 1200 hrs, A.l.t., January 31, 2003. The second HLA fishery in area 542 remained open through 1200 hrs, A.l.t., February 5, 2003. The second HLA fishery in area 543 remained open through 1200 hrs, A.l.t., February 4, 2003. NMFS prohibited directed fishing for CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea effective 1200 hrs, A.l.t., January 22, 2003, through 2400 hrs, A.l.t., December 31, 2003 (68 FR 3823, January 23, 2003). Fishing with non-pelagic trawl gear in the red king crab savings subarea of the BSAI closed February 12, 2003, through 2400 hrs, A.l.t., December 31, 2003 (68 FR 8153, February 20, 2003). NMFS prohibited directed fishing for rock sole, flathead sole, and "other flatfish" by vessels using trawl gear in the BSAI effective 1200 hrs, A.l.t., February 18, 2003, through 2400 hrs, A.l.t., April 1, 2003 (68 FR 8726, February 25, 2003).

These closures remain effective under authority of the final 2003 harvest specifications.

These closures supersede the closures announced in the 2003 interim specifications (67 FR 78739, December 26, 2002). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at § 679. In the BSAI, "other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, shortraker, rougheye, and northern rockfish.

Bering Sea Subarea Inshore Pollock Allocations

Regulations at § 679.4(l), set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. NMFS received applications from seven inshore catcher vessel cooperatives. Table 10 lists the pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2003 cooperative allocations that have been approved and permitted by NMFS for the 2003 fishing year. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock.

TABLE 10.—2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [1] (mt)	Percentage of inshore sector allocation (percent)	Annual co-op allocation (mt)
Akutan Catcher Vessel Association	245,527	28.085	181,932
ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER			
Arctic Enterprise Association	36,807	4.210	27,273
BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER			

TABLE 10.—2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS—Continued

Cooperative name and member vessels	Sum of member vessel's official catch histories [1] (mt)	Percentage of inshore sector allocation (percent)	Annual co-op allocation (mt)
Northern Victor Fleet Cooperative	73,656	8.425	54,578
ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL			
Peter Pan Fleet Cooperative	18,693	2.138	13,851
AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N			
Unalaska Cooperative	106,737	12.209	79,091
ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN			
UniSea Fleet Cooperative	201,566	23.056	149,357
ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN–MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE			
Westward Fleet Cooperative	189,942	21.727	140,744
A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC CHALLENGER, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I			
Open access AFA vessels	1,309	0.150	970
Total inshore allocation	874,238	100	647,797

[1] According to regulations that will be effective with the final rule to implement major provisions of the AFA at 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

According to regulations at § 679.20(a)(5)(i)(A)(*3*), NMFS must subdivide the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative (*i.e.*, the open access sector). In addition, under § 679.22(a)(7)(vii), NMFS must establish harvest limits inside the SCA and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, Table 11 lists the apportionment of the Bering Sea subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and allocations for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for sector catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 11. These allocations may be revised based on any corrections to AFA vessels' catch history.

TABLE 11.—2003 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

[Amounts are in mt]

	A season TAC	SCA harvest limit [1,2]	B season TAC
Cooperative sector:			
Vessels >99 ft	n/a	155,616	n/a
Vessels ≤99 ft	n/a	25,495	n/a
Total	258,731	181,111	388,096
Open access sector	388	272	582
Total inshore	259,119	181,383	388,678

[1] Steller sea lion conservation area established at § 679.22(a)(7)(vii).

[2] The SCA harvest limits for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(C)(*2*) which specifies that "the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening."

Listed AFA Catcher/processor Sideboard Limits

In 2003, the formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish changed from calculations made for the sideboard limits in 2000 through 2002. The Council made a distinction between retained and total catch for the purpose of calculating sideboard limits and determined that AFA vessels should not receive sideboard credit for groundfish that were discarded and not utilized. Under regulations at § 679.64(a), the listed catcher/processor sideboard limits for BSAI groundfish (except Atka mackerel, Pacific cod, and some Pacific ocean perch) will be based on the 1995 through 1997 retained catch of such groundfish species by the 20 AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA. For Pacific cod, the sideboard limit will be based on 1997 retained catch only and for Pacific ocean perch in the Aleutian Islands subarea, the sideboard limits will be based on 1996 and 1997 retained catch only. The AFA catcher/processor sideboard limit for Atka mackerel is zero percent of the Bering Sea subarea and Eastern Aleutians annual TAC, 11.5 percent of the Central Aleutian districts annual TAC, and 20 percent of the Western Aleutian districts annual TAC.

The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). The 2003 catcher/processor sideboard limits are set out in Table 12.

All non-pollock groundfish that is harvested by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 12. However, non-pollock groundfish that are delivered to listed catcher/processors by catcher vessels will not be deducted from the 2003 sideboard limits for the listed catcher/processors.

TABLE 12.—2003 LISTED BSAI AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are in mt]

Target species	Area	1995–1997 Retained catch	1995–1997 Available TAC	1995–1997 Ratio	2003 ITAC available to trawl C/Ps	2003 C/P sideboard limit
Pacific cod trawl	BSAI	12,424	51,450	0.241	45,105	10,870
Sablefish trawl	BS	8	1,736	0.005	1,233	6
	AI	0	1,135	0.000	659	0
Atka mackerel	Western AI					
	A season[1]	n/a	n/a	0.200	9,245	1,849
	HLA limit[2]					1,109
	B season[1]	n/a	n/a	0.200	9,245	1,849
	HLA limit[2]					1,109
	Central AI					
	A season[1]	n/a	n/a	0.115	13,579	1,562
	HLA limit[2]					937
	B season[1]	n/a	n/a	0.115	13,579	1,562
	HLA limit[2]					937
Yellowfin sole	BSAI	100,192	527,000	0.190	71,188	13,526
Rock sole	BSAI	6,317	202,107	0.031	37,400	1,159
Greenland turbot	BS	121	16,911	0.007	2,278	16
	AI	23	6,839	0.003	1,122	3
Arrowtooth flounder	BSAI	76	36,873	0.002	10,200	20
Flathead sole	BSAI	1,925	87,975	0.022	17,000	374
Alaska plaice	BSAI	3,243		0.035	9,250	324
Other flatfish	BSAI	3,243	92,428	0.035	2,775	97
Pacific ocean perch	BS	12	5,760	0.002	1,199	2
	Western AI	54	12,440	0.004	5,411	22
	Central AI	3	6,195	0.000	3,090	0
	Eastern AI	125	6,265	0.020	3,238	65
Northern rockfish	BS	8		0.008	112	1
	AI	83	13,254	0.006	5,438	33
Shortraker/rougheye	BS	8		0.008	126	1
	AI	42	2,827	0.015	538	8
Other rockfish	BS	18	1,026	0.018	888	16
	AI	22	1,924	0.011	539	6
Squid	BSAI	73	3,670	0.020	1,675	34
Other species	BSAI	553	65,925	0.008	29,886	239

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Unrestricted AFA catcher/processors are limited to incidental catch amounts in the Eastern Aleutian district and Bering Sea subarea, 20 percent of the available TAC in the Western Aleutian district, and 11.5 percent of the available TAC in the Central Aleutian district.

[2] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA, west of 178 degrees W. long. is prohibited during the Atka mackerel HLA directed fisheries.

Regulations at § 679.64(a)(5) establish a formula for PSC sideboard limits for listed AFA catcher/processors. These amounts are equivalent to the percentage of the PSC amounts taken in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. PSC amounts taken by listed catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 13. These data were used to calculate the relative amount of PSC limits by pollock

catcher/processors, that were then used to determine the PSC sideboard limits for listed AFA catcher/processors in the 2003 non-pollock groundfish fisheries.

PSC that is caught by listed AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 13 would accrue against the 2003 PSC limits for the listed AFA catcher/processors. Regulations at § 679.21(e)(3)(v) authorize NMFS to close directed fishing for non-pollock groundfish for listed AFA catcher/processors once a 2003 PSC limit listed in Table 13 is reached.

Crab or halibut PSC that is caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under regulations at § 679.21(e).

TABLE 13.—2003 LISTED BSAI AFA CATCHER/PROCESSOR PROHIBITED SPECIES CATCH SIDEBOARD LIMITS [1]

PSC species	1995–1997			2003 PSC available to trawl vessels	2003 C/P PSC sideboard limit
	PSC catch	Total PSC	Ratio		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	89,725	628
C. opilio	2,323,731	15,139,178	0.153	4,023,750	615,634
C. bairdi					
Zone 1	385,978	2,750,000	0.140	906,500	126,910
Zone 2	406,860	8,100,000	0.050	2,747,250	137,363

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboard Limits

Regulations at § 679.64(b) establish formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). The 2003 AFA catcher vessel sideboard limits are shown in Tables 14 and 15.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits listed in Table 14.

TABLE 14.—2003 BSAI AFA CATCHER VESSEL (CV) SIDEBOARD LIMITS

[Amounts are in mt]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2003 Initial TAC	2003 catcher vessel sideboard limit
Pacific cod	BSAI			
	jig gear	0.0000	3,839	0
	hook-and-line CV			
	Jan 1–Jun 10	0.0006	175	0
	Jun 10–Dec 31	0.0006	117	0
	pot gear			
	Jan 1–Jun 10	0.0006	10,693	6
	Sept 1–Dec 31	0.0006	7,129	4
	CV < 60 feet LOA using hook-and-line or pot gear	0.0006	1,363	0
	trawl gear			
	catcher vessel			
	Jan 20–Apr 1	0.8609	31,574	27,182
	Apr 1–Jun 10	0.8609	4,510	3,883
	Jun 10–Nov 1	0.8609	9,021	7,766
Sablefish	BS trawl gear	0.0906	1,233	112
	AI trawl gear	0.0645	659	43
Atka mackerel	*Eastern AI/BS*			
	jig gear	0.0031	99	0
	other gear			
	Jan 1–Apr 15	0.0032	4,876	16
	Sept 1–Nov 1	0.0032	4,876	16
	Central AI			
	Jan 1–Apr 15	0.0001	13,579	1
	HLA limit	0.0001	8,147	1
	Sept 1–Nov 1	0.0001	13,579	1
	HLA limit	0.0001	8,147	1
	Western AI			
	Jan 1–Apr 15	0.0000	9,245	0
	HLA limit	0.0000	5,547	0
	Sept 1–Nov 1	0.0000	9,245	0
	HLA limit	0.0000	5,547	0
Yellowfin sole	BSAI	0.0647	71,188	4,606
Rock sole	BSAI	0.0341	37,400	1,275

TABLE 14.—2003 BSAI AFA CATCHER VESSEL (CV) SIDEBOARD LIMITS—Continued

[Amounts are in mt]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2003 Initial TAC	2003 catcher vessel sideboard limit
Greenland turbot	BS	0.0645	2,278	147
	AI	0.0205	1,122	23
Arrowtooth flounder	BSAI	0.0690	10,200	704
Aalaska plaice	BSAI	0.0441	9,250	408
Other flatfish	BSAI	0.0441	2,775	122
Pacific ocean perch	BS	0.1000	1,199	120
	Eastern AI	0.0077	3,238	25
	Central AI	0.0025	3,090	8
	Western AI	0.0000	5,411	0
Northern rockfish	BS	0.0280	112	3
	AI	0.0089	5,438	48
Shortraker/Rougheye	BS	0.0048	126	1
	AI	0.0035	768	3
Other rockfish	BS	0.0048	888	4
	AI	0.0095	539	5
Squid	BSAI	0.3827	1,675	641
Other species	BSAI	0.0541	29,886	1,617
Flathead sole	BS trawl gear	0.0505	17,000	859

The AFA catcher vessel PSC limit for halibut and each crab species in the BSAI for which a trawl bycatch limit has been established, will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997. For the BSAI, the PSC sideboard limits are listed in Table 15.

Halibut and crab PSC that are caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 15 will accrue against the 2003 PSC limits for the AFA catcher vessels. Regulations at § 679.21(d)(8) and (e)(3)(v) provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once a 2003 PSC limit listed in Table 15 for the BSAI is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under regulations at § 679.21(e).

TABLE 15.—2003 AFA CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

PSC species	Target fishery category [2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2003 PSC limit	2003 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod hook-and-line or pot	0.0022	775	2
	Yellowfin sole			
	January 20—April 1	0.1144	262	30
	April 1—May 21	0.1144	195	22
	May 21—June 29	0.1144	49	6
	June 29—December 31	0.1144	380	43
	Rock sole/flathead sole/other flatfish [5]			
	January 20—April 1	0.2841	448	127
	April 1—June 29	0.2841	164	47
	June 29—December 31	0.2841	167	47
	Turbot/Arrowtooth/sablefish	0.2327	0	0
	Rockfish	0.0245	69	2
	Pollock/Atka mackerel/Other species	0.0227	232	5
Red King Crab	Pacific cod	0.6183	13,079	8,087
Zone 1 [4]	Yellowfin sole	0.1144	16,664	1,906
	Rock sole/flathead sole/other flatfish [5]	0.2841	59,782	16,984
	Pollock/Atka mackerel/Other species	0.0227	200	5
C. opilio	Pacific cod	0.6183	124,736	77,124
COBLZ [3]	Yellowfin sole	0.1144	2,776,981	317,687
	Rock sole/flathead sole/other flatfish [5]	0.2841	969,130	275,330
	Pollock/Atka mackerel/Other species	0.0227	72,428	1,644
	Rockfish	0.0245	40,237	986
	Turbot/Arrowtooth/sablefish	0.2327	40,238	9,363
C. bairdi	Pacific cod	0.6183	183,112	113,218
Zone 1	Yellowfin sole	0.1144	340,844	38,993
	Rock sole/flathead sole/other flatfish [5]	0.2841	365,320	103,787

TABLE 15.—2003 AFA CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]—Continued

PSC species	Target fishery category [2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2003 PSC limit	2003 AFA catcher vessel PSC sideboard limit
C. bairdi Zone 2	Pollock/Atka mackerel/Other species	0.0227	17,224	391
	Pacific cod	0.6183	324,176	200,438
	Yellowfin sole	0.1144	1,788,459	204,600
	Rock sole/flathead sole/other flatfish [5]	0.2841	596,154	169,367
	Pollock/Atka mackerel/Other species	0.0227	27,473	624
	Rockfish	0.0245	10,988	269

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.
[4] The Council at its December 2002 meeting recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (§ 679.21(e)(3)(ii)(B)).
[5] "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

Sideboard Directed Fishing Closures

AFA Catcher/Processor and Catcher Vessel Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher/processor and catcher vessel sideboard limits listed in Tables 12 and 14 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the sideboard limits listed in Tables 12 and 14 as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by listed AFA catcher/processors for the species in the specified areas set out in Table 16 and directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 17.

TABLE 16.—AFA LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES [1]

Species	Area	Gear types	Incidental catch amount
Sablefish trawl	BS	Trawl	6
	AI	Trawl	0
Rock sole	BSAI	all	1,159
Greenland turbot	BS	all	16
	AI	all	3
Arrowtooth flounder	BSAI	all	20
Pacific ocean perch	BS	all	2
	Western AI	all	22
	Central AI	all	0
	Eastern AI	all	65
Northern rockfish	BS	all	1
	AI	all	33
Shortraker/Rougheye rockfish	BS	all	1
	AI	all	8
Other rockfish	BS	all	16
	AI	all	6
Squid	BSAI	all	34
Other species	BSAI	all	239

[1] Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

TABLE 17.—AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]

Species	Area	Gear	Incidental catch amount
Pacific cod	BSAI	hook-and-line	0
	BSAI	pot	10
	BSAI	jig	0
Sablefish	BS	trawl	112
	AI	trawl	43
Atka mackerel	Eastern AI/BS	jig	0
	Eastern AI/BS	other	32
	Central AI	all	2
	Western AI	all	0
Greenland Turbot	BS	all	147
	AI	all	23
Arrowtooth flounder	BSAI	all	704

TABLE 17.—AFA CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]—Continued

Species	Area	Gear	Incidental catch amount
Pacific ocean perch	BS	all	120
	Western AI	all	0
	Central AI	all	8
	Eastern AI	all	25
Northern rockfish	BS	all	3
	AI	all	48
Shortraker/Rougheye rockfish	BS	all	1
	AI	all	3
Other rockfish	BS	all	4
	AI	all	5
Squid	BSAI	all	641
Other species	BSAI	all	1,617

[1] Maximum retainable percentages may be found in Table 11 to 50 CFR part 679.

Response to Comments

NMFS received one letter of comment in response to the proposed 2003 harvest specifications (67 FR 76362, December 12, 2002.)

Comment 1. A request for an extension of time in which to comment on the document.

Response. Regulations at 50 CFR 679.20(c)(1)(i)(B) provide for a 30-day comment period on the proposed specifications. NMFS has determined that an extension of the 30-day comment period on the proposed harvest specifications would pose unacceptable management implications for the 2003 groundfish fisheries. Without proposed and interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishery industry. Therefore, NMFS declines to extend the comment period on the proposed specifications.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary management measures are to announce final 2003 harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action affects all fishermen who participate in the BSAI fishery. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact the 2003 harvest specifications may have on small entities, in accordance with the provisions of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). Notice of the availability of the IRFA, and a summary, were published in the classification section of the proposed harvest specifications for the groundfish fisheries in the BSAI in the **Federal Register** on December 12, 2002 (67 FR 76362). The comment period on the proposed BSAI harvest specifications and IRFA ended on January 13, 2003. NMFS did not receive any comments on the IRFA. NMFS has prepared a FRFA for this action and a copy is available from the Council (see **ADDRESSES**).

The small entities affected by this action are those that harvest fish under the terms of the specifications in the BSAI. The FRFA identified 193 small catcher vessels, 31 small catcher/processors, and six small CDQ groups.

No projected additional reporting, recordkeeping or other compliance requirements were identified in connection with the final notice of specifications.

Four alternatives were evaluated, in addition to the preferred alternative. Alternatives were defined by the use of different harvest rates (F values). Impacts of the alternatives were estimated on the basis of their associated overall fleet gross revenue levels. Three alternatives (set F equal to 50% of max F_{ABC}, set F equal to the most recent five year average actual F, and set F equal to zero) all appeared to have greater adverse impacts on small entities than the preferred alternative. Alternative 1 (set F equal to max F_{ABC}) had impacts on small entities that appeared to be similar to those of the preferred alternative. However, this alternative was not chosen because it used 2002 TACs, which do not take into consideration biological survey information collected and analyzed in 2002, and evaluated by the Council and its SSC and AP committees at the end of 2002. The preferred alternative was chosen, rather than Alternative 1, because the TACs in the preferred alternative take into account the best and most recent information available regarding the status of the groundfish stocks, public testimony, and socio-economic concerns.

The apportionment of a portion of the nonspecified reserve (see Table 2) is necessary to provide increased ITAC to provide for more efficient operation of intensive fast-paced fisheries for Pacific cod, Atka mackerel and Pacific ocean perch, and to allow for the orderly conduct of the flatfish and rockfish fisheries. Also, U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, a delay for prior notice and public procedure is contrary to the public interest. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive the requirement for prior notice under 5 U.S.C. 553(b)(3). In accordance with 50 CFR 679(b)(3), comments on the apportionment of reserves are invited by March 18, 2003.

In some cases, the interim specifications currently in effect are not sufficient to allow directed fisheries to continue, resulting in unnecessary closures and disruption within the fishing industry. This action establishes the harvest specifications for the 2003

fisheries in the BSAI. Hence, the action must be effective immediately to provide consistent, uninterrupted management and conservation of fishery resources and to allow the fishing industry to plan its fishing operations. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date.

This action must be effective immediately to provide consistent management and conservation of fishery resources and to give the fishing industry the earliest possible opportunity to plan its fishing operations. Accordingly, the AA finds there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: February 24, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–4815 Filed 2–25–03; 3:57 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 110602B]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2003 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 2003 harvest specifications for groundfish and associated management measures; closures.

SUMMARY: NMFS announces final 2003 harvest specifications for groundfish, reserves and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the GOA (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final 2003 harvest specifications and associated management measures are effective at 1200 hrs, Alaska local time (A.l.t.), February 25, 2003, through 2400 hrs, A.l.t, December 31, 2003.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action and the Final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK, 99510 (907–271–2809) or from its homepage at *http://www.fakr.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at *tom.pearson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background for the 2003 Final Harvest Specifications

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the FMP. The Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(ii)). Regulations at § 679.20(c)(3)(i) further require NMFS to publish annually the final annual TACs, halibut PSC amounts, and seasonal allowances of pollock, Pacific cod, and inshore/offshore Pacific cod. The final specifications set forth in Tables 1 to 11 of this document satisfy these requirements. For 2003, the sum of TAC amounts is 236,440 mt.

The proposed GOA groundfish specifications and Pacific halibut PSC allowances for the groundfish fishery of the GOA were published in the **Federal Register** on December 12, 2002 (67 FR 76344). Comments were invited and accepted through January 13, 2003. NMFS received one comment on the proposed specifications. This comment is summarized and responded to in the "Response to Comments" section. Public consultation with the Council occurred during the December 2002 Council meeting in Anchorage, AK. After considering public comments received, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 2003 groundfish specifications as recommended by the Council.

Regulations at § 679.20(c)(2)(i) establish interim amounts of each proposed TAC and apportionment thereof, and proposed PSC allowances established under § 679.21 that become available at 0001 hours, A.l.t., January 1, and remain available until superseded by the final specifications. NMFS published the interim 2003 groundfish harvest specifications in the **Federal Register** on December 26, 2002 (67 FR 78733). The final 2003 groundfish harvest specifications, apportionments, and halibut PSC allowances contained in this action supersede the interim 2003 groundfish harvest specifications.

Implementation of Steller Sea Lion Conservation Measures

In accordance with a biological opinion issued by NMFS on October 19, 2001, NMFS implemented a final rule for Steller sea lion protection (68 FR 204, January 2, 2003) that contains measures that were deemed necessary to avoid the likelihood that the pollock, Pacific cod, and Atka mackerel fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. The final rule implements three types of management measures for the pollock and Pacific cod fisheries of the GOA: (1) measures to temporally disperse fishing effort, (2) measures to spatially disperse fishing effort, and (3) measures to provide sufficient protection from competition with pollock fisheries for prey in waters immediately adjacent to rookeries and important haulouts.

On December 18, 2002, the United States District Court for the Western District of Washington entered an Order remanding the October 19, 2001, biological opinion prepared for the groundfish fisheries. *Greenpeace, et al. v. National Marine Fisheries Service*, No. C98–492Z (W.D. Wash.). The Court held that the biological opinion's findings of no jeopardy to the continued existence of endangered Steller sea lions and no adverse modification of their critical habitat were arbitrary and capricious. NMFS reached an agreement with the Plaintiffs that the 2003 groundfish fisheries will commence pursuant to the Steller sea lion protection measures examined in the biological opinion pending completion of the remand. The Court issued an order on December 30, 2002, that supported the agreement and extended the effective date of the 2001 Steller sea lion protection measures biological opinion until June 30, 2003.

Acceptable Biological Catch (ABC) and TAC Specifications

The final ABC levels are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used in computing ABCs and overfishing levels (OFLs). The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers.

The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed the most current biological information about the condition of GOA groundfish stocks at their meetings in December 2002. This information was compiled by the Council's GOA Plan Team and was presented in the final 2002 SAFE report for the GOA groundfish fisheries, dated November 2002.

The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

The SSC, AP, and Council adopted the Plan Team's ABC recommendations for all groundfish species categories except sablefish. For sablefish, the SSC increased the ABC from the Plan Team's recommendation based on the projected 5–year average of catches under the Council's F40% policy. The AP endorsed the ABC for sablefish recommended by the SSC, and the Council adopted the ABC. The final ABCs, as adopted by the Council are listed in Table 1.

As in 2002, the SSC's, AP's and Council's recommendation for the method of apportioning the sablefish ABC among management areas includes commercial fishery as well as survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial fishery data needs to be evaluated annually to assure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District.

The AP and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS summer trawl surveys. As in previous years, the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the AP and Council recommended that the TACs be adjusted downward from the ABCs by amounts equal to the 2003 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska (State) for seasons which occur in State waters in the GOA. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC with the required OY range of 116,000 to 800,000 mt. The Council adopted the AP's TAC recommendations. None of the Council's recommended TACs for 2003 exceeds the final ABC for any species category. NMFS finds that the recommended ABCs and TACs are consistent with the biological condition of groundfish stocks as described in the 2002 SAFE report and approved by the Council.

Table 1 lists the final annual 2003 OFL, ABC, TAC, and area apportionments of groundfish in the GOA. The sum of 2003 ABCs for all assessed groundfish is 416,600 mt, which is higher than the 2002 ABC total of 394,780 mt. The apportionment of TAC amounts among gear types, processing sectors, and seasons is discussed below.

Specification and Apportionment of TAC Amounts

The Council adopted the AP's proposals for the 2003 GOA TAC amounts. The Council recommended TACs equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, shortraker and rougheye rockfish, northern rockfish, Pacific Ocean perch, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel. The Council-recommended TACs are less than the ABC for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and other rockfish.

The apportionment of annual pollock TAC among three statistical areas of the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below.

The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal apportionments. The annual pollock TAC in the combined Western/Central/West Yakutat (W/C/WYK) area of the GOA is 47,890 mt. The annual TAC in the Western and Central Regulatory Areas of the GOA is apportioned among Statistical Areas 610, 620, and 630 as well as equally among each of the following four seasons: the A season (January 20 through February 25), the B season (March 10 through May 31), the C season (August 25 through September 15), and the D season (October 1 through November 1)(§ 679.23(d)(2)(i) through (iv) and § 679.20(a)(5)(ii)(B)).

The 2003 Pacific cod TAC is affected by the State's developing fishery for Pacific cod in State waters in the Central and Western GOA, as well as Prince William Sound (PWS). The SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals should not exceed the ABC. Accordingly, the Council recommended that Pacific cod TAC be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA. Respective TACs, therefore, are reduced from ABCs as follows: (1) Eastern GOA 800 mt, (2) Central GOA 6,310 mt, and (3) Western GOA 5,150 mt. These amounts reflect the sum of State's 2003 GHLs in these areas which are 25 percent, 21.75 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively. These percentages are unchanged from 2002.

NMFS is also establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot and jig

gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§ 679.23(d)(3) and § 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the amount for the "other species" category is calculated as 5 percent of the combined TAC amounts for target species. The 2003 GOA-wide "other species" TAC is 11,260 mt, which is 5 percent of the sum of the combined TAC amounts (225,180 mt) for the other groundfish species for which TAC is specified. The sum of the TACs for all GOA groundfish is 236,440 mt, which is within the OY range specified by the FMP. The sum of the 2003 TACs is lower than the 2002 TAC sum of 237,890 mt.

NMFS finds that the Council's recommendations for OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. NMFS has reviewed the Council's recommended TAC specifications and apportionments and approves these specifications under § 679.20(c)(3)(ii). The final 2003 ABCs, TACs, and OFLs are shown in Table 1.

Table 1 - Final 2003 ABCs, TACs, and OFLs of Groundfish for the Western/Central/West Yakutat (W/C/WYK), Western (W), Central (C), Eastern (E) Regulatory Areas, and in the West Yakutat (WYK), Southeast Outside (SEO), and Gulf-Wide (GW) Districts of the GOA. [Amounts are in mt]

Species	Area[1]	ABC	TAC	OFL
Pollock[2]				
Shumagin	(610)	16,788	16,788	
Chirikof	(620)	19,685	19,685	
Kodiak	(630)	10,339	10,339	
WYK	(640)	1,078	1,078	
Subtotal	W/C/WYK	47,890	47,890	69,410
SEO	(650)	6,460	6,460	8,610
Total		54,350	54,350	78,020
Pacific cod[3]				
	W	20,600	15,450	
	C	29,000	22,690	
	E	3,200	2,400	
Total		52,800	40,540	70,100
Flatfish[4] (deep-water)	W	180	180	
	C	2,220	2,220	
	WYK	1,330	1,330	
	SEO	1,150	1,150	
Total		4,880	4,880	6,430
Rex sole	W	1,280	1,280	
	C	5,540	5,540	
	WYK	1,600	1,600	
	SEO	1,050	1,050	
Total		9,470	9,470	12,320
Flathead sole	W	16,420	2,000	
	C	20,820	5,000	
	WYK	2,900	2,900	
	SEO	1,250	1,250	
Total		41,390	11,150	51,560
Flatfish[5] (shallow-water)	W	23,480	4,500	
	C	21,740	13,000	
	WYK	1,160	1,160	
	SEO	2,960	2,960	
Total		49,340	21,620	61,810

Table 1. (continued)

Species	Area[1]	ABC	TAC	OFL
Arrowtooth flounder	W	17,990	8,000	
	C	113,050	25,000	
	WYK	18,190	2,500	
	SEO	5,910	2,500	
Total		155,140	38,000	181,390
Sablefish[6]	W	2,570	2,570	
	C	6,440	6,440	
	WYK	2,320	2,320	
	SEO	3,560	3,560	
Subtotal	E	5,880	5,880	
Total		14,890	14,890	20,020
Pacific[7] ocean perch	W	2,700	2,700	3,220
	C	8,510	8,510	10,120
	WYK	810	810	
	SEO	1,640	1,640	
Subtotal	E			2,900
Total		13,660	13,660	16,240
Short raker/ rougheye[8]	W	220	220	
	C	840	840	
	E	560	560	
Total		1,620	1,620	2,340
Other rockfish[9,10]	W	90	90	
	C	550	550	
	WYK	270	150	
	SEO	4,140	200	
Total		5,050	990	6,610
Northern Rockfish[10,12,15]	W	890	890	
	C	4,640	4,640	
	E	N/A	N/A	
Total		5,530	5,530	6,560
Pelagic shelf rockfish[13]	W	510	510	
	C	3,480	3,480	
	WYK	640	640	
	SEO	860	860	
Total		5,490	5,490	8,220
Thornyhead rockfish	W	360	360	
	C	840	840	
	E	800	800	
Total		2,000	2,000	3,050

Table 1. (continued)

Species	Area[1]	ABC	TAC	OFL
Demersal shelf rockfish[11]	SEO	390	390	540
Atka mackerel	GW	600	600	6,200
Other[14,15] species	GW	N/A	11,260	N/A
TOTAL[16]		416,600	236,440	531,410

[1] Regulatory areas and districts are defined at § 679.2.
[2] Pollock is apportioned in the Western/Central Regulatory areas among three statistical areas. During the A season, the apportionment is based upon an adjusted estimate of relative distribution of pollock biomass at 25 percent, 56 percent, and 19 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 25 percent, 66 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 47 percent, 23 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments are shown in Table 3. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.
[3] The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC are shown in Table 4.
[4] "Deep water flatfish" means Dover sole, Greenland turbot, and deep sea sole.
[5] "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.
[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).
[7] "Pacific ocean perch" means Sebastes alutus.
[8] "Shortraker/rougheye rockfish" means Sebastes borealis (shortraker) and S. aleutianus (rougheye).
[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.
[10] "Slope rockfish" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), and S. reedi (yellowmouth). In the Eastern GOA only, "slope rockfish" also includes northern rockfish, S. polyspinous.
[11] "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).
[12] "Northern rockfish" means Sebastes polyspinis.
[13] "Pelagic shelf rockfish" means Sebastes ciliatus (dusky), S. entomelas (widow), and S. flavidus (yellowtail).
[14] "Other species" means sculpins, sharks, skates, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of assessed target species.
[15] N/A means not applicable.
[16] The total ABC is the sum of the ABCs for assessed target species.

Apportionment of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 679.20(b)(2)). In 2002, NMFS reapportioned all of the reserves in the final harvest specifications. NMFS proposed reapportionment of all reserves in the proposed 2003 GOA groundfish specifications published in the **Federal Register** on December 12, 2002 (67 FR 76344). NMFS received no public comments on the proposed reapportionments. For the final 2003 GOA harvest specifications, NMFS has reapportioned all of the reserve for pollock, Pacific cod, flatfish, and "other species". Specifications of TAC shown in Table 1 reflect apportionment of reserve amounts for these species and species groups.

Apportionments of the Sablefish TAC Amounts to Vessels Using Hook-and-line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Areas, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Western, Central, and Eastern Regulatory Areas may only be used to support incidental catch of sablefish in directed fisheries for other target species. In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended, and NMFS concurs, that 5 percent of the combined Eastern GOA sablefish TAC be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. This recommendation results in an allocation of 294 mt to trawl gear and 2,026 mt to hook-and-line gear in the WYK District and 3,560 mt to hook-and-line gear in the SEO District. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear, resulting in a 3,560 mt allocation. Table 2 shows the allocations of the 2003 sablefish TACs between hook-and-line gear and trawl gear.

Table 2 - Final 2003 Sablefish TAC Specifications in the GOA and Allocations Thereof to Hook-and-line and Trawl Gear. (Amounts are in mt)

Area/District	TAC	Hook-and-line Allocation	Trawl Allocation
Western	2,570	2,056	514
Central	6,440	5,152	1,288
West Yakutat	2,320	2,026	294
Southeast Outside	3,560	3,560	0
TOTAL	14,890	12,794	2,096

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Under regulations at § 679.20(a)(5)(ii)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal apportionments of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season apportionments are available from January 20 through February 25, from March 10 through May 31, from August 25 through September 15, and from October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of pollock biomass, as determined by a composite of NMFS winter surveys, and in the C and D seasons in proportion to

the distribution of pollock biomass, as determined by the four most recent NMFS summer surveys. The Plan Team recommended an adjustment to the distribution of pollock in the Central Regulatory Area during the A season. The Plan Team recommended that during the A season, the winter and summer distribution of pollock be averaged in the Central Regulatory Area to better reflect the distribution of pollock and the performance of the fishery in the area during the A season. The SSC, AP, and Council concurred with the Plan Team's recommendation. Within any fishing year, the underage or overage of a seasonal apportionment may be added to or subtracted from subsequent seasonal apportionments in a manner to be determined by the Administrator, Alaska Region, NMFS, (Regional Administrator), provided that the sum of the revised seasonal apportionment does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(B)). For 2003, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 14,044 mt. The WYK and SEO District pollock TACs of 1,078 mt and 6,460 mt, respectively are not apportioned seasonally.

Regulations at § 679.20(a)(6)(ii) require that the entire amount of the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The seasonal biomass distribution of pollock in the Western and Central GOA, area apportionments, and seasonal apportionments for the A, B, C, and D seasons are summarized in Table 3, except that allocations of pollock for processing by the inshore and offshore components are not shown.

Table 3 - Distribution of Pollock in the Central and Western Regulatory Areas of the GOA; Seasonal Biomass Distribution, Area Apportionments; and Seasonal Apportionments of Annual TAC in 2003. (Amounts are in mt)

Season	Shumagin (Area 610) (biomass distribution)	Chirikof (Area 620) (biomass distribution)	Kodiak (Area 630) (biomass distribution)	Total (biomass distribution)
A	2,894 (25%)	6,535 (56%)	2,274 (19%)	11,703 (100%)
B	2,894 (25%)	7,778 (66%)	1,031 (9%)	11,703 (100%)
C	5,500 (47%)	2,686 (23%)	3,517 (30%)	11,703 (100%)
D	5,500 (47%)	2,686 (23%)	3,517 (30%)	11,703 (100%)
Annual Total	16,788	19,685	10,339	46,812

Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot and jig gear the A season begins on January 1 and ends on June 10, and the B season begins on September 1 and ends on December 31. For trawl gear, the A season begins on January 20 and ends on June 10, and the B season begins on September 1 and ends on November 1 (§ 679.23(d)(3)). Sixty percent of the annual TAC will be available as a directed fishing allowance during the A season and, after subtraction of incidental catch, the remaining 40 percent of the annual TAC will be available for catch during the B season, and will be allocated between the inshore and offshore processing components as provided in 50 CFR § 679.20(a)(6)(iii). Between the A and B seasons, directed fishing for Pacific cod is closed and fishermen participating in other directed fisheries may retain Pacific cod up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). For purposes of clarification, NMFS points out that the A and B season Pacific cod fishery dates differ from those of the A, B, C, and D season dates for the pollock fisheries. In accordance with § 679.20(a)(11)(ii), any overage or underage of Pacific cod harvest from the A season shall be subtracted from or added to the subsequent B season.

Regulations at § 679.20(a)(6)(iii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and component allocations of the Pacific cod TAC for 2003 are shown in Table 4.

Table 4 - Final 2003 Seasonal Apportionments and Allocations of Pacific cod TAC Amounts in the GOA; Allocations for Processing by the Inshore and Offshore Components. (Amounts are in mt)

Regulatory area	TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
Western	15,450	13,905	1,545
A Season (60%)	9,270	8,343	927
B Season (40%)	6,180	5,562	618
Central	22,690	20,421	2,269
A Season (60%)	13,614	12,253	1,361
B Season (40%)	9,076	8,168	908
Eastern	2,400	2,160	240
TOTAL:	40,540	36,486	4,054

"Other Species" TAC

The FMP specifies that amounts for the "other species" category are calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide "other species" TAC is calculated as 11,260 mt, which is 5 percent of the sum of combined TAC amounts for the target species.

Pacific Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear. In December 2002, the Council recommended that NMFS maintain the 2002 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit apportioned to the demersal shelf rockfish (DSR) fishery in the SEO District and the remainder to the remaining hook-and-line fisheries. The DSR fishery is defined at § 679.21(d)(4)(iii)(A) and historically has been apportioned this amount in recognition of its small scale harvests. Although observer data are not available to verify actual bycatch amounts, given most vessels are less than 60 ft (18.3 m) length overall (LOA) and are exempt from observer coverage, halibut bycatch in the DSR fishery is assumed to be low because of the short soak times for the gear and the short duration of the DSR fishery. Also, the DSR fishery occurs in the winter when less of an overlap exists in the distribution of DSR and halibut.

Regulations at § 679.21(d)(4) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. The Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the nontrawl halibut limit for 2003. The Council recommended, and NMFS concurs with, these exemptions because of the low halibut bycatch mortality experienced in the pot gear fisheries (4 mt in 2001 and 2 mt in 2002) and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota (IFQ) program. The sablefish IFQ program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. Halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. However, halibut mortality is assumed to be very low given the small amount of groundfish harvested by jig gear (336 mt in 2001 and 277 mt in 2002) and the assumed high survival rate of any halibut that are incidentally caught by jig gear and released.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the following information be considered by the Council and NMFS in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The emergency interim rule establishing the final 2002 groundfish and PSC specifications (66 FR 956, January 8, 2002) summarizes Council findings with respect to each of the FMP considerations set forth here. At this time, the Council's and NMFS' findings are unchanged from those set forth in 2002. The opening date for the third seasonal allowance of the trawl halibut PSC limit and the start date for directed fishing for rockfish by trawl gear is June 29, 2003. This date will facilitate inseason management of the rockfish fisheries and reduce the effect of the rockfish fisheries on the annual NMFS sablefish survey which occurs later in July.

NMFS concurs with the Council's recommendations described here and listed in Table 5. Regulations at § 679.21(d)(5)(iii) and (iv) specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the following seasonal apportionment within the 2003 fishing year. The following types of

information as presented in, or summarized from, the current SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) or public testimony were considered when establishing the halibut PSC limits:

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2002. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 7, 2002, is 1,997 mt, 246 mt, and 2 mt, respectively, for a total halibut mortality of 2,245 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2002 fishing year. Trawling during the second season closed for the shallow-water complex on May 15 (67 FR 35448, May 20, 2002) and for the deep-water fishery complex on May 24 (67 FR 37726, May 30, 2002). Trawling during the third season closed for the shallow-water complex on August 5 (67 FR 51499, August 8, 2002) and for the deep-water fishery complex on August 2 (67 FR 51129, August 7, 2002). Trawling during the fourth season closed for both the shallow-water complex and the deep-water fishery complex on September 1 (67 FR 55730, August 30, 2002 and 67 FR 56320, September 3, 2002). Except for a brief period between November 6 and 10, 2002 (67 FR 67798, November 7, 2002), all trawling in the GOA closed (with the exception of pelagic trawl gear targeting pollock) for the remainder of the year on October 13 (67 FR 64066, October 17, 2002).

The amount of groundfish that vessels using trawl gear might have harvested if halibut catch limitations had not restricted the season in 2002 is unknown.

(B) Expected Changes in Groundfish Stocks

In December 2002, the Council adopted higher 2003 ABCs for flathead sole, arrowtooth, sablefish, other rockfish, northern rockfish, Pacific ocean perch, demersal shelf rockfish, and thornyhead rockfish than those established for 2002. The Council adopted lower 2003 ABCs for pollock, Pacific cod, and shallow water flatfish than those established for 2002. For the remaining targets, the Council recommended that ABC levels remain unchanged from 2002. More information on these changes is included in the final SAFE report (November 2002) and in the Council and SSC December 2002 meeting minutes.

(C) Expected Changes in Groundfish Catch

The total of the 2003 TACs for the GOA is 236,440 mt, a decrease of less than 1 percent from the 2002 TAC total of 237,638 mt. Those fisheries for which the 2003 TACs are lower than in 2002 are pollock (decreased to 54,350 mt from 58,250 mt), Pacific cod (decreased to 40,540 mt from 44,230 mt), and other species (decreased to 11,260 mt from 11,330 mt). Those species for which the 2003 TACs are higher than in 2002 are shallow water flatfish (increased to 21,620 mt from 20,420 mt), flathead sole (increased to 11,150 mt from 9,280 mt), sablefish (increased to 14,890 mt from 12,820 mt), northern rockfish (increased to 5,530 mt from 4,980 mt), Pacific ocean perch (increased to 13,660 mt from 13,190 mt), demersal shelf rockfish (increased to 390 mt from 350 mt), and thornyhead rockfish (increased to 2,000 mt from 1,990 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was prepared by the IPHC in December 2002. The halibut resource is considered to be healthy, with total catch near record levels. Using the low range of estimates, the current exploitable halibut biomass for 2003 in Alaska is estimated to be 263,086 mt. This is similar to the estimate of 273,950 mt for 2002.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average reproductive biomass for the Pacific halibut resource was estimated at 118,000 mt. Long-term average yield was estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–96) were 33,580 mt for the U.S. and 6,410 mt for Canada, for a combined total of 39,990 mt for the entire Pacific halibut resource. This catch was 48 percent higher than long-term potential yield, which reflects the good condition of the Pacific halibut resource. In January 2003, the IPHC recommended commercial catch limits totaling 36,812 mt (round weight equivalents) for Alaska in 2003, the same as in 2002. Through December 31, 2003, commercial hook-and-line harvests of halibut in Alaska total 37,219 mt (round weight equivalents).

At its January 2003 meeting, IPHC staff reported on the assessment of the halibut stock in 2002. There were some significant changes in the assessment as a result of changes in the underlying data being analyzed and the persistence of smaller sizes at age in the central port of the halibut range. These changes created some uncertainty about differences in the biomass of the stock estimated from the current and previous assessments. Analyses were conducted for the 2002 assessment to ensure that the stock is not in danger of being overharvested. However, the IPHC staff intends to resolve these technical issues with the assessment over the next year. In addition, IPHC staff are investigating a new harvest policy that may result in greater stability in the yield from the fishery and insulate the process of setting catch limits from technological changes in the assessment. This harvest policy will also be reviewed by the IPHC. The resolution of technical issues of the assessmentmay indicate a larger estimate of biomass in the central region of the stock distribution, but application of the proposed harvest policy might dictate slightly lower yields. Because these two processes may be somewhat counterbalancing, IPHC staff wish to complete their investigations before recommending any changes to present catch limits or the harvest policy. While the trajectory of the halibut stock biomass is downward, the biomass is still above the long-term average level and is expected to remain above this level for the next several years.

Additional information on the Pacific halibut stock assessment and the proposed harvest policy may be found in the IPHC's 2002 Pacific halibut stock assessment (dated December 2002), available from the IPHC on its website at *http://www.iphc.washington.edu/hal.com.*

(E) Other Factors

The proposed 2003 specifications (67 FR 76344, December 12, 2002) discuss potential impacts of expected fishing for groundfish on halibut stocks, as well as methods available for, and costs of, reducing halibut bycatch in the groundfish fisheries.

Table 5 - Final 2003 Pacific halibut PSC limits, allowances, and apportionments. The Pacific halibut PSC limit for hook-and-line gear is apportioned to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits. (Amounts are in mt)

Trawl gear		Hook-and line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 20 - Apr 1	550 (27.5%)	Jan 1 - June 10	250 (86%)	Jan - Dec 31	10 (100%)
Apr 1 - June 29	400 (20%)	June 10 - Sept 1	5 (2%)		
June 29 - Sept 1	600 (30%)				
Sept 1 - Oct 1	150 (7.5%)	Sept 1 - Dec 31	35 (12%)		
Oct 1 - Dec 31	300 (15%)				
Total:	2,000 (100%)		290 (100%)		10 (100%)

Regulations at § 679.21(d)(3)(ii), authorize the trawl halibut PSC limit to be further apportioned to trawl fishery categories, based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: a deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species" § 679.21(d)(3)(iii). The final apportionment for these two fishery complexes is presented in Table 6.

Table 6 - Final 2003 apportionment of Pacific halibut PSC trawl limits between the trawl gear deep-water species complex and shallow-water species complex. (Amounts are in mt)

Season	Shallow-water	Deep-water	Total
Jan. 20-April 1	450	100	550
April 1-June 29	100	300	400
June 29-Sept. 1	200	400	600
Sept. 1-Oct. 1	150	Any Remainder	150
Subtotal Jan. 20-Oct. 1	900	800	1,700
Oct. 1-Dec. 31	---	—	300
Total	---	—	2,000

No apportionment between shallow-water and deep-water fishery complexes during the 5th season (Oct. 1 - Dec. 31)

Halibut Discard Mortality Rates

The Council recommended, and NMFS concurs, that the halibut discard mortality rates (DMRs) recommended by the IPHC staff for the 2002 GOA groundfish fisheries be used to monitor halibut bycatch mortality limits established for the 2003 GOA groundfish fisheries. The IPHC recommended use of long-term average DMRs for the 2001–2003 groundfish fisheries. The IPHC recommendation also includes a provision that DMRs could be revised should analysis indicate that a fishery's annual DMR diverges substantially (up or down) from the long-term average. Most of the DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1990 and 1999. DMRs were lacking for some fisheries, so rates from the most recent years were used. For the "other species" fishery, where insufficient mortality data are available, the mortality rates of halibut caught in the trawl, hook-and-line, and pot gear Pacific cod fisheries were recommended as a default rate. The DMRs for 2003 are unchanged from those used in 2002 in the GOA. The DMRs for hook-and-line targeted fisheries range from 8 to 24 percent. The DMRs for trawl targeted fisheries range from 58 to 72 percent. The DMRs for all pot targeted fisheries is 14 percent. The final 2003 DMRs are listed in Table 7. The justification for these DMRs is discussed in Appendix A of the final SAFE report dated November 2002.

Table 7 - Final 2003 Pacific Halibut Discard Mortality Rates for Vessels Fishing in the GOA. (Listed Amounts are percent of halibut bycatch assumed to be dead)

Gear and Target	Mortality Rate
HOOK-AND-LINE	
Other species	14
Pacific cod	14
Rockfish	8
Sablefish	24
TRAWL	
Arrowtooth Flounder	62
Atka mackerel	70
Deep-water flatfish	60
Flathead sole	58
Nonpelagic pollock	61
Other species	61
Pacific cod	61
Pelagic pollock	72
Rex sole	61
Rockfish	69
Sablefish	66
Shallow-water flatfish	69
POT	
Other species	14
Pacific cod	14

Non-exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest and PSC Limitations

Regulations at § 679.64 established groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors, who have not directly benefitted from the AFA, from fishermen and processors who have received exclusive harvesting and processing privileges under the AFA. Under the AFA regulations, listed AFA catcher/processors (§ 679.4(l)(2)(i)) are prohibited from harvesting any species of fish in the GOA (§ 679.7(k)(1)(ii)) and from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). The Council recommended, and NMFS concurs, that certain AFA catcher vessels in the GOA be exempt from groundfish sideboard limits. The AFA regulations exempt AFA catcher vessels in the GOA less than 125 ft (38.1 m) LOA whose annual Bering Sea and Aleutian Islands (BSAI) pollock landings totaled less than 5,100 mt and that made 30 or more GOA groundfish landings from 1995 through 1997 (§ 679.64(b)(2)(i)(A)).

For non-exempt AFA catcher vessels in the GOA, sideboard limits are based upon their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. The AFA regulations base the groundfish sideboard limits in the GOA on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period (§ 679.64(b)(3)(iii)). These amounts are listed in Table 8. All catch of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 8.

Table 8 - Final 2003 GOA Non-Exempt AFA Catcher Vessel (CV) Groundfish Harvest Limitations (Sideboards). (Amounts are in mt)

Species	Apportionments and Allocations by Area/Season/processor/Gear	Ratio of 1995-1997 Non-Exempt AFA CV Catch to 1995-1997 TAC	2003 TAC	2003 Non-Exempt AFA Catcher Vessel Sideboard
Pollock	A Season (W/C areas only)			
	January 20 - February 25			
	Shumagin (610)	0.6112	2,894	1,769
	Chirikof (620)	0.1427	6,535	933
	Kodiak (630)	0.2438	2,274	554
	B Season (W/C areas only)			
	March 10 - June 1			
	Shumagin (610)	0.6112	2,894	1,769
	Chirikof (620)	0.1427	7,778	1,110
	Kodiak (630)	0.2438	1,031	251
	C Season (W/C areas only)			
	August 25 - September 15			
	Shumagin (610)	0.6112	5,500	3,362
	Chirikof (620)	0.1427	2,686	383
	Kodiak (630)	0.2438	3,517	857
	D Season (W/C areas only)			
	October 1 - November 1			
	Shumagin (610)	0.6112	5,500	3,362
	Chirikof (620)	0.1427	2,686	383
	Kodiak (630)	0.2438	3,517	857
	Annual			
	WYK (640)	0.3499	1,078	377
	SEO (650)	0.3499	6,460	2,260

Pacific cod	A Season[1]			
	January 1 - June 10			
	W inshore	0.1423	8,343	1,187
	offshore	0.1026	927	95
	C inshore	0.0722	12,253	885
	offshore	0.0721	1,361	98
	B Season[2]			
	September 1 - December 31			
	W inshore	0.1423	5,562	791
	offshore	0.1026	618	63
	C inshore	0.0722	8,168	590
	offshore	0.0721	908	65
	Annual			
	E inshore	0.0079	2,160	17
	offshore	0.0078	240	2
Flatfish deep-water	W	0.0000	180	0
	C	0.0670	2,220	149
	E	0.0171	2,480	42
Rex sole	W	0.0010	1,280	1
	C	0.0402	5,540	223
	E	0.0153	2,650	41
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	130
	E	0.0048	4,150	20
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	4,120	52
Arrow-tooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sable-fish	W trawl gear	0.0000	514	0
	C trawl gear	0.0720	1,288	93
	E trawl gear	0.0488	294	14
Pacific Ocean perch	W	0.0623	2,700	168
	C	0.0866	8,510	737
	E	0.0466	2,450	114
Short-raker/ Rougheye	W	0.0000	220	0
	C	0.0237	840	20
	E	0.0124	560	7
Other rockfish	W	0.0034	90	0
	C	0.2065	550	114
	E	0.0000	350	0

Northern rockfish	W C	0.0003 0.0336	890 4,640	0 156
Pelagic shelf rockfish	W C E	0.0001 0.0000 0.0067	510 3,480 1,500	0 0 10
Thorny-head rockfish	W C E	0.0308 0.0308 0.0308	360 840 800	11 26 25
Demersal shelf rockfish	SEO	0.0020	390	1
Atka mackerel	Gulf wide	0.0309	600	19
Other species	Gulf wide	0.0090	11,260	101

[1] The Pacific cod A season for trawl gear opens January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

PSC sideboard limits for non-exempt AFA catcher vessels in the GOA are based upon the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). These amounts are shown in Table 9.

Table 9 - Final 2003 Non-Exempt AFA Catcher Vessel PSC Limits for the GOA. (Amounts are in mt)

PSC Species	Target Fishery and Season	Ratio 0f 1995-1997 Non-Exempt AFA CV Retained Catch to Total Retained Catch	2003 PSC Limit	2003 Non-Exempt AFA Catcher Vessel PSC Limit
Halibut (mortality in mt)	Trawl 1st Seasonal Allowance January 20 - April 1 shallow water targets deep water targets	 0.340 0.070	 450 100	 153 7
	Trawl 2nd Seasonal Allowance April 1- June 29 shallow water targets deep water targets	 0.340 0.070	 100 300	 34 21
	Trawl 3rd Seasonal Allowance June 29 - Sept 1 shallow water targets deep water targets	 0.340 0.070	 200 400	 68 28
	Trawl 4th Seasonal Allowance Sept 1 - October 1 shallow water targets deep water targets	 0.340 0.070	 150 0	 51 0
	Trawl 5th Seasonal Allowance October 1 - December 31 all targets	0.205	300	62

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or "other species" category apportioned to a fishery or, with respect to pollock and Pacific cod, to an inshore or offshore component, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA Regulatory Area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the following TAC amounts for the species and species groups listed in Table 10 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year.

Table 10 - Incidental Catch Needed to Support Other Directed Fisheries in the GOA in 2003. (Amounts are in mt)

Target	Regulatory Area	Gear/Component	Amount
Atka Mackerel	entire GOA	all	600
Thornyhead Rockfish	entire GOA	all	2,000
Shortraker Rougheye Rockfish	entire GOA	all	1,620
Other Rockfish	entire GOA	all	990
Sablefish	entire GOA	trawl	2,096
Pollock	entire GOA	all/offshore	unknown

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the species or species groups listed in Table 10 as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, and processing components listed in Table 10. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2003.

Regulations at § 679.64(b)(5) provide for management of AFA catcher vessel groundfish harvest limits and PSC limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv) and 679.21(d)(8) and (e)(3)(v). The Regional Administrator has determined that in addition to the closures listed above, many of the non-exempt AFA catcher vessel sideboard amounts listed in Table 9 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2003 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the directed fishing allowances for the species and species groups in the specified areas in Table 11 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA catcher vessels in the GOA for the species and species groups in the specified areas in Table 11. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2003.

Table 11 - Non-Exempt AFA Catcher Vessel Sideboard Directed Fishing Closures in the GOA. (Amounts are in mt)

Species	Regulatory Area/District	Gear	Amount
Pacific cod	E GOA	all	19
Deep-water flatfish	W and E GOA	all	0 and 42
Rex sole	W and E GOA	all	1 and 41
Flathead sole	E GOA	all	20
Shallow-water flatfish	E GOA	all	52
Arrowtooth flounder	E GOA	all	10
Pacific ocean perch	W GOA	all	168
Northern rockfish	W GOA	all	0
Pelagic shelf rockfish	entire GOA	all	10
Demersal shelf rockfish	SEO District	all	1
Other species	entire GOA	all	101

Under authority of the interim 2003 specifications (67 FR 78733, December 26, 2002), pollock fishing opened on January 20, 2003, for amounts specified in that notice. NMFS has since closed Statistical Area 610 to directed fishing for pollock effective 1200 hrs, A.l.t., January 23, 2003 (68 FR 4115, January 28, 2003), and Statistical Area 630 to directed fishing for pollock effective 1200 hrs, A.l.t., January 21, 2003 (68 FR 2921, January 22, 2003), and opened Statistical Area 630 to directed fishing for pollock effective 1200 hrs., A.l.t., February 13, 2003 through 1200 hrs, A.l.t., February 14, 2003 (68 FR 7448, February 14, 2003). The closures for pollock in Statistical Areas 610 and 630 will remain in effect through 1200 hrs, A.l.t., March 10, 2003. NMFS has prohibited directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component effective 1200 hrs, A.l.t., February 1, 2003 (68 FR 5585, February 1, 2003), by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area, effective 1200 hrs, A.l.t., February 9, 2003 (68 FR 7323, February 13, 2003), and by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area, effective 1200 hrs, A.l.t., February 17, 2003 (68 FR 8154, February 20, 2003). The closures for Pacific cod in the Western and Central Regulatory Areas will remain in effect through 1200 hrs, A.l.t., September 1, 2003.

These closures supersede the closures announced in the interim 2003 harvest specifications (67 FR 78733, December 26, 2002). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at § 679. NMFS may implement other closures during the 2003 fishing year as necessary for effective conservation and management.

Response to Comments

NMFS received one letter of comment in response to the proposed 2003 harvest specifications (67 FR 76344, December 12, 2002).

Comment 1. A request for an extension of time in which to comment on the document.

Response. Regulations at 50 CFR 679.20(c)(1)(i)(B) provide for a 30–day comment period on the proposed specifications. NMFS has determined that an extension of the 30–day comment period on the proposed harvest specifications would pose unacceptable management implications for the 2003 groundfish fisheries. Without proposed and interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishing industry. Therefore, NMFS declines to extend the comment period on the proposed specifications.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This rule's primary management measures are to announce final 2003 harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery

Management Plan for the Groundfish of the GOA. This action affects all fishermen who participate in the GOA fishery. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact the 2003 harvest specifications may have on small entities, in accordance with the provisions of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). Notice of the availability of the IRFA, and a summary, were published in the classification section of the proposed specifications for the groundfish fisheries in the GOA in the **Federal Register** on December 12, 2002 (67 FR 76344). The comment period on the proposed GOA harvest specifications and IRFA ended on January 13, 2003. NMFS did not receive any comments on the IRFA. NMFS has prepared a FRFA for this action and a copy is available from the Council (see **ADDRESSES**).

The small entities affected by this action are those that harvest fish under the terms of the specifications in the GOA. The FRFA identified 1,264 small catcher vessels and 16 small catcher/processors.

No projected additional reporting, recordkeeping or other compliance requirements were identified in connection with the final notice of specifications.

Four alternatives were evaluated, in addition to the preferred alternative used for the specifications. Alternatives were defined by the use of different harvest rates (F values). Impacts of the alternatives were estimated on the basis of their associated overall fleet gross revenue levels. Three alternatives (set F equal to 50 percent of max FABC, set F equal to the most recent 5–year average actual F, and set F equal to zero) all appeared to have greater adverse impacts on small entities than the preferred alternative. One alternative (set F equal to max FABC) had estimated overall gross revenues that were about 4 percent greater than those under the preferred alternative in the GOA. However, this alternative one was not chosen because it was based on 2002 TACs, which do not take into consideration biological survey information collected and analyzed in 2002 and evaluated by the Council and its SSC and AP committees at the end of 2002. The preferred alternative was chosen, rather than alternative one, because the TACs take into account the best and most recent information available regarding the status of the groundfish stocks, public testimony, and socio-economic concerns.

In some cases, the interim specifications currently in effect are not sufficient to allow directed fisheries to continue, resulting in unnecessary closures and disruption within the fishing industry. This action establishes the harvest specifications for the 2003 fisheries in the GOA. Hence, the action must be effective immediately to provide consistent, uninterrupted management and conservation of fishery resources and to allow the fishing industry to plan its fishing operations. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds there is good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in the effective date.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: February 24, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–4814 Filed 2–25–03; 3:57 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 022403E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors and Catcher Vessels 60 Feet (18.3 m)Length Overall and Longer Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 feet (18.3 m) length overall (LOA) and longer using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 interim total allowable catch (TAC) of Pacific cod allocated to these vessels using pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 interim TAC of Pacific cod allocated to vessels using pot gear in the BSAI was established as a directed fishing allowance of 9,465 metric tons by the interim 2003 harvest specifications for groundfish in the BSAI (67 FR 78739, December 26, 2002). See § 679.20(c)(2)(ii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 interim TAC of Pacific cod allocated as a directed fishing allowance to vessels using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 feet (18.3 m) LOA and longer using pot gear in the BSAI. Vessels less than 60 feet (18.3 m) LOA using pot gear in the BSAI may continue to participate in the directed fishery for Pacific cod under a separate Pacific cod allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is

contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 interim TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4887 Filed 2–26–03; 2:55 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 41
Monday, March 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a continuance referendum be conducted among eligible growers and processors of tart cherries in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin to determine whether they favor continuance of the marketing order regulating the handling of tart cherries grown in the production area.

DATES: The referendum will be conducted from March 17 through March 28, 2003. To vote in this referendum, growers and processors must have been engaged in producing or processing tart cherries within the production area during the period July 1, 2001 through June 30, 2002.

ADDRESSES: Copies of the marketing order may be obtained from USDA, Washington, DC Marketing Field Office, 4700 River Road, Unit 155, Room 2A38, Riverdale, Maryland 20737, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Regional Manager, Washington, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 4700 River Road Unit 155, Room 2A38, Riverdale, MD 20737; telephone (301) 734–5243; fax (301) 734–5275; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 1035, Moab, UT 84532; telephone (435) 259–7988; fax (435) 259–4945.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 930 (7 CFR part 930), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers and processors. The referendum shall be conducted during the period March 10 through March 21, 2003, among eligible tart cherry growers and processors in the production area. Only growers and processors that were engaged in the production or processing of tart cherries in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin during the period of July 1, 2001, through June 30, 2002, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers and processors favor continuation of marketing order programs. The USDA would not consider termination of the order if continuance is favored by more than 50 percent of the growers and processors who vote in the referendum provided that they represent more than 50 percent of the volume of produced and processed tart cherries represented in the referendum.

In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0177. It has been estimated that it will take an average of 30 minutes for each of the approximately 40 processors and 905 producers of tart cherries in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after March 21, 2003, will be marked invalid and not included in the vote tabulation.

Kenneth G. Johnson, James B. Wendland, Patricia A. Petrella and Dawana Clark of the Washington, DC Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et. seq*).

Ballots will be mailed to all growers and processors of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Authority: 7 U.S.C. 601–674.

Dated: February 25, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–4874 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1405 and 1499

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 211

RIN 0560–AG49

Ocean Freight Claims Administrative Appeal Process

AGENCIES: Commodity Credit Corporation, USDA, and Agency for International Development.

ACTION: Proposed rule.

SUMMARY: This rule would establish an administrative appeals procedure that would be used by the Commodity Credit Corporation (CCC) with respect to ocean transportation cargo loss and damage claims arising under shipments of agricultural commodities made available by CCC under various foreign donation programs. Whether or not title to the commodities has passed from CCC to a cooperating sponsor, which may be a foreign government, private voluntary organization, or private entity, CCC either retains the right or may be assigned the right to initiate, prosecute, and, with certain limited exceptions, retain the proceeds of cargo loss and damage claims. The rule would require that any recipient of CCC-donated commodities must include in the contract for the ocean transportation of the commodities a provision that the maritime carrier agrees to participate in this administrative appeal process.

For CCC claims initiated on behalf of the United States Agency for International Development (USAID), the rule would also require consultations between agencies and the crediting of funds collected into USAID accounts.

DATES: Comments must be submitted on or before April 2, 2003, to be assured of consideration.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Steve Mikkelsen, Director, Procurement and Donations Division, USDA/FSA/PDD/STOP 0551, 1400 Independence Avenue, SW., Washington, DC 20250–0551 or sent electronically to: *steve_mikkelsen@wdc.fsa.usda.gov*. Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Comments concerning USAID programs should also be addressed to Lauren Landis, Director, Office of Food For Peace, Bureau for Democracy, Conflict, and Humanitarian Assistance, U.S. Agency for International Development, Room 7.06–157, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523 or sent electronically to: *llandis@usaid.gov*.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen of CCC on (202) 720–5074, or Jeffrey Drummond of USAID on (202) 712–0238.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be not significant.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither CCC nor the United States Agency for International Development (USAID) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, or the private sector, in the aggregate of $100 million or more in any 1 year. This rule contains no Federal mandates under the regulatory provisions of title II of the UMRA for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements imposed by this rule have been previously submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). OMB has assigned control number 0051–0035 for this information collection. This regulation does not change any of the information collection requirements.

Background

The regulations set forth at 7 CFR part 1499 establish the general terms and conditions governing CCC's donation of commodities to cooperating sponsors under section 416(b) of the Agricultural Act of 1949 and the Food for Progress programs. Under 7 CFR 1499.15(d)(1), notwithstanding the transfer of title, CCC has the right to file, pursue and, with certain exceptions, retain the proceeds from claims arising from ocean transportation cargo loss and damage arising out of shipments of commodities provided to governmental cooperating sponsors. Under 7 CFR 1499.15(d)(8), if a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise, the nongovernmental cooperating sponsor is required to assign its rights to the claim to CCC. Nongovernmental cooperating sponsors must also assign their claim rights to CCC upon CCC's request.

The regulations set forth at 22 CFR part 211 establish the general terms and conditions governing the U.S. Agency for International Development's (USAID) food donation programs under title II, Public Law 480. CCC makes the agricultural commodities available to USAID for use in these programs. Under 22 CFR 211.9(c)(2)(i), whether or not title to commodities is transferred from CCC to the cooperating sponsor, if USAID contracted for the ocean transportation, CCC has the right to initiate, prosecute, and retain the proceeds of all claims against maritime carriers for cargo loss and damage arising out of shipments of commodities made available by CCC. Under 22 CFR 211.9(c)(2)(ii)(F), if a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise, the nongovernmental cooperating sponsor is required to assign its rights to the claim to CCC. Nongovernmental sponsors must also assign their claim rights to CCC upon CCC's request.

If the commodity is lost or damaged in transit due to the fault of the carrier, existing admiralty law principles control whether the party contracting for the transportation of the goods may recover damages from the carrier. The provisions of the Carriage of Goods by Sea Act (46 U.S.C. 1300 *et seq.*) either

apply by law, or are incorporated by reference into the cargo bookings and charter parties.

CCC does not have an established administrative appeal process to handle the internal review of these cargo claims before the claims are referred to the U.S. Department of Justice for collection through litigation. This rule would establish an administrative appeal process. CCC intends that independent hearing officers would make written determinations with respect to the claims. Once the administrative appeal was completed, if the carrier was determined to be liable for the loss and damage to cargo, CCC would follow the CCC debt settlement policies and procedures set forth in 7 CFR part 1403 to collect the debt. This would include but would not be limited to the administrative offset of the amount of the debt against other freight earned by the carrier which had not been paid or freight earned in the future.

Section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354) provides that, notwithstanding any other provision of law, a person shall exhaust all administrative appeal procedures established by the Secretary of Agriculture before a person may bring an action in a court of competent jurisdiction against the Secretary, the Department of Agriculture, or agency, office, officer or employee of the Department. Therefore, a carrier would have to participate in the administrative appeals procedure before it could file an action in court contesting the establishment of the debt or possible subsequent offset of the debt. The court's review would be limited to the administrative record established in the administrative appeal.

This rule also establishes a consultative process between USAID and CCC for claims pursued under title II, Public Law 480 food donation programs. It also requires CCC to credit the appropriate title II account for any funds collected by or remitted to CCC pursuant to 22 CFR 211.9(c)(2).

List of Subjects

7 CFR Part 1405

Administrative practice and procedure, Agricultural commodities, Cargo claims, Cooperating sponsor, Maritime carriers.

7 CFR Part 1499

Agricultural commodities, Cooperating sponsor.

22 CFR Part 211

Agricultural commodities, Cooperating sponsor.

Accordingly, for the reasons set forth in the preamble, CCC proposes to amend 7 CFR parts 1405 and 1499, and USAID proposes to amend 22 CFR part 211 as follows:

7 CFR CHAPTER XIV

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

1. The authority citation for 7 CFR part 1405 continues to read as follows:

Authority: 15 U.S.C. 714(b) and 714(c).

2. Add § 1405.100 to read as follows:

§ 1405.100 Cargo claims appeal process.

(a) *Applicability.* (1) The administrative appeals process set forth in this section is applicable to all ocean transportation cargo loss and damage claims arising under shipments of agricultural commodities made available by CCC under section 416(b) of the Agricultural Act of 1949, the Food for Progress Act of 1985, and Title II of the Agricultural Trade Development and Assistance Act of 1954, commonly known as Public Law 480, and any other regulation or contract that incorporates by reference the provisions of this section. This includes the movement of cargoes under through bills of lading to inland destinations.

(2) This section is applicable to any determination made by CCC relating to the resolution of disputed cargo loss and damage claims between CCC and the maritime carrier.

(b) *Delegations of authority.* (1) The Deputy Vice President, CCC, who is Deputy Administrator for Commodity Operations of the Farm Service Agency (Deputy Administrator), shall be responsible for administering this section. The Deputy Administrator may delegate the authority provided in this section in the manner deemed appropriate by the Deputy Administrator.

(2) The Executive Vice President, CCC, who is the Administrator for the Farm Service Agency, may modify or reverse any action of the Deputy Administrator or a designee of the Deputy Administrator made with respect to this section.

(c) *Appeal procedure.* (1) If CCC determines that a maritime carrier is liable for loss and damage that occurred during the transportation of commodities made available by CCC, CCC will notify the carrier in writing of the nature of the violation. The carrier will be given 30 days in which to appeal the determination to CCC and request either a hearing before a hearing officer or a hearing by telephone. CCC will provide to the carrier a written acknowledgment of their appeal and request for a hearing.

(2) If the carrier requests to pursue an appeal but not a hearing, CCC will allow the carrier to submit, in writing, the reasons why the carrier believes the determination of CCC to be in error. The carrier will be given 30 days from the receipt of the acknowledgment to file any statements and documents in support of its appeal. The carrier will be given an additional 15 days to respond to any new issues raised by CCC in response to the carrier's initial submission.

(3) If the carrier requests to pursue an appeal and requests a hearing, CCC will notify the carrier of the date of the hearing. All hearings will be held at the Kansas City Commodity Office of the Farm Service Agency, 6501 Beacon Drive, Kansas City, Missouri 64133–4675, except as may be determined by CCC. If a hearing is requested, the carrier will be notified of the date of the hearing and will be afforded 30 days from the receipt of the notification of the scheduling of the hearing to submit any statements and documents in support of the appeal. The carrier will be given an additional 15 days following the date of the hearing to submit any additional material that may have been determined necessary due to issues raised at the hearing.

(4) Determinations of the hearing officer shall be final and no further appeal within CCC shall be available except as may be specified in the final determination of the hearing officer.

(d) *Exhaustion of administrative remedy.* A carrier may not initiate an action in any court of competent jurisdiction prior to the exhaustion of the administrative appeal process set forth in this section.

PART 1499—FOREIGN DONATION PROGRAMS

3. The authority citation for 7 CFR part 1499 continues to read as follows:

Authority: 7 U.S.C. 1431(b), 7 U.S.C. 1736o, E.O. 12752.

4. Amend § 1499.15 by adding paragraph (j) to read as follows:

§ 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

* * * * *

(j) *Required contract term.* Any cooperating sponsor must include the following provision in the contract for the transportation of the commodity made available by CCC: "The provisions of 7 CFR 1405.100 shall be applicable to this contract and are incorporated by reference in their entirety."

22 CFR CHAPTER II

PART 211—TRANSFER OF FOOD COMMODITIES FOR FOOD USE IN DISASTER RELIEF, ECONOMIC DEVELOPMENT AND OTHER ASSISTANCE

5. The authority citation for 22 CFR part 211 continues to read as follows:

Authority: Section 207(c) of the Agricultural Trade Development and Assistance Act of 1954, as amended; see Public Law 101–624, 104 Stat. 3632, 3641, 7 U.S.C. 1726a(c).

6. Amend § 211.9 by adding paragraph (c)(2)(v) to read as follows:

§ 211.9 Liability for loss damage or improper distribution of commodities.

* * * * *

(c) * * *

(2) * * *

(v) Any funds collected by or remitted to CCC pursuant to this section shall be credited to the appropriate Title II account. CCC shall also consult with USAID's Office of Food For Peace in Washington, DC (USAID/FFP) before it authorizes the settlement, compromise, or termination of a claim. CCC shall also consult with USAID/FFP before it authorizes a CS to compromise a claim pursuant to paragraph (c)(2)(ii)(E) of this section.

* * * * *

(i) *Required contract term.* Any cooperating sponsor must include the following provision in the contract for carriage of the commodity donated by CCC: "The provisions of 7 CFR 1405.100 shall be applicable to this contract and are incorporated by reference in their entirety."

Dated: February 18, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

Dated: January 17, 2003.

Roger P. Winter,

Assistant Administrator, DCHA, Agency for International Development.

[FR Doc. 03–4574 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–259–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection to detect abrasion damage and installation discrepancies of the wire bundles located below the P37 panel, and corrective action if necessary. For airplanes already subject to the existing AD, this action would require inspecting to determine whether the existing location of a certain wire support standoff is adequate, relocating the wire support standoff if necessary, installing protective sleeving over the wire bundles, and installing wire bundle support clamps if necessary. This action also would expand the applicability of the existing AD to include additional airplanes, and require inspecting the sleeving on certain wire bundles, and accomplishing corrective action if necessary, on those airplanes. The actions specified in this proposed AD are intended to detect and prevent abrasion damage and correct installation discrepancies of the wire bundles located below the P37 panel, which could result in arcing to structure and consequent fire or loss of function of affected systems.

DATES: Comments must be received by April 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–259–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–259–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–259–AD."

The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–259–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 15, 2001, the FAA issued AD 2001–17–28 R1, amendment 39–12510 (66 FR 58924, November 26, 2001), applicable to certain Boeing Model 767 series airplanes, to require a one-time inspection to detect abrasion damage and installation discrepancies of the wire bundles located below the P37 panel, and corrective action if necessary. That action was prompted by findings of abrasion damage and installation discrepancies of these wire bundles on certain Boeing Model 767 series airplanes. The requirements of that AD are intended to detect and correct such abrasion damage and installation discrepancies, which could result in arcing to structure and consequent fire or loss of function of affected systems.

In the preamble to AD 2001–17–28 R1, we indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered to add requirements to relocate the wire support standoff and install protective sleeving over the wire bundles, and to expand the applicability of the AD to include certain additional airplanes. We have now determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

We have previously reviewed and approved Boeing Alert Service Bulletins 767–24A0134 (for Model 767–200 and –300 series airplanes) and 767–24A0135 (for Model 767–400ER series airplanes), both Revision 1, both dated October 18, 2001. AD 2001–17–28 R1 refers to those alert service bulletins as appropriate sources of service information for the actions required by that AD. Those alert service bulletins identify two "Work Packages," and two groups of airplanes. Work Package 1 describes procedures for the actions that are currently required by AD 2001–17–28 R1 for airplanes listed in Group 1 in the alert service bulletins. Work Package 2, for Group 1 airplanes, describes procedures for performing an inspection to determine whether the existing location of a certain wire support standoff is adequate and whether a grommet is installed and not damaged (*e.g.*, chafed), installing a new grommet if not already installed or if the existing grommet is damaged, relocating the wire support standoff if necessary, installing protective sleeving over certain wire bundles, and installing wire bundle support clamps. Work Package 2, for Group 2 airplanes, describes procedures for inspecting certain wire bundles to determine the type of protective sleeving that is installed and the location of that sleeving, relocating protective sleeving or replacing it with new sleeving if necessary, and installing wire bundle support clamps if necessary. The alert service bulletins specify to make sure that wire bundles are installed inboard/above the insulation blankets when wire bundle support clamps are installed. Accomplishment of the actions specified in the applicable alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–17–28 R1 to continue to require a one-time inspection to detect abrasion damage and installation discrepancies of the wire bundles located below the P37 panel, and corrective action if necessary. The proposed AD would also require, for airplanes already subject to the existing AD, inspecting to determine whether the existing location of a certain wire support standoff is adequate, relocating the wire support standoff if necessary, and installing protective sleeving over the wire bundles. On airplanes not included in the applicability of the existing AD, the proposed AD would require inspecting the protective sleeving on certain wire bundles, and corrective action if necessary. The actions would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed under the heading, "Difference Between Proposed AD and Alert Service Bulletins."

In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the proposed actions. In light of all of these factors, we find an 18-month compliance time for completing the new proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Explanation of Change Made To Existing Requirements

We have changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this proposed AD.

Also, we have changed the alert service bulletin citations throughout this proposed AD to exclude the Evaluation Form. The airplane manufacturer intends for operators to complete and submit this form to provide input on the quality of the alert service bulletin. However, this proposed AD would not include such a requirement.

Difference Between Proposed AD and Alert Service Bulletins

Operators should note that the instructions under Work Package 2 in the alert service bulletins do not specify what type of inspection is needed to determine whether the existing location of a certain wire support standoff is adequate (Group 1 airplanes), or to determine the type of protective sleeving that is installed and the location of that sleeving (Group 2 airplanes). We have determined that a detailed inspection is necessary to make these determinations.

Cost Impact

There are approximately 839 airplanes of the affected design in the worldwide fleet. We estimate that 325 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 2001–17–28 R1 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $39,000, or $120 per airplane.

For airplanes in both Groups 1 and 2 as listed in the alert service bulletins, the new proposed actions would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be negligible. Based on these figures, the cost impact of the new proposed requirements on U.S. operators is estimated to be $39,000, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12510 (66 FR 58924, November 26, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–259–AD. Supersedes AD 2001–17–28 R1, amendment 39–12510.

Applicability: Model 767 airplanes, certificated in any category, line numbers (L/Ns) 1 through 853 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and prevent abrasion damage and correct installation discrepancies of the wire bundles located below the P37 panel, which could result in arcing to structure and consequent fire or loss of function of affected systems, accomplish the following:

Requirements of AD 2001–17–28 R1

Inspection for Damage and Installation Discrepancies

(a) For airplanes with L/Ns 1 through 815 inclusive: Within 90 days after September 13, 2001 (the effective date of AD 2001–17–28, amendment 39–12419), perform a one-time detailed inspection of the wire bundles located below the P37 panel to detect abrasion damage and wire installation discrepancies (including missing standoffs; missing, chafed, or loose cable clamps; chafed grommets; and wire bundles located beneath an insulation blanket), in accordance with Boeing Alert Service Bulletin 767–24A0134, excluding Evaluation Form, dated March 15, 2001, or Revision 1, excluding Evaluation Form, dated October 18, 2001 (for Model 767–200 and –300 series airplanes); or 767–24A0135, excluding Evaluation Form, dated March 15, 2001, or Revision 1, excluding Evaluation Form, dated October 18, 2001 (for Model 767–400ER series airplanes). If any damage or other discrepancy is found, prior to further flight, perform corrective actions in accordance with the applicable alert service bulletin. After December 11, 2001 (the effective date of AD 2001–17–28 R1, amendment 39–12510), only Revision 1 of the alert service bulletins may be used.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

New Requirements of This AD

(b) Within 18 months after the effective date of this AD, do all actions in Work Package 2 of Boeing Alert Service Bulletin 767–24A0134 (for Model 767–200 and –300 series airplanes) or 767–24A0135 (for Model 767–400ER series airplanes), both Revision 1, both excluding Evaluation Form, both dated October 18, 2001, as applicable, in accordance with the Accomplishment Instructions of the applicable alert service bulletin. For Group 1 airplanes, the procedures in Work Package 2 include performing a detailed inspection to determine whether the location of the wire support standoff for wire bundle W298 is adequate and whether a grommet is installed and not damaged (*e.g.*, chafed), installing a new grommet if not already installed or if the existing grommet is damaged, relocating the wire support standoff as applicable, installing protective sleeving over certain wire bundles, and installing wire bundle support clamps. When installing wire bundle support clamps, make sure that wire bundles are installed inboard/above the insulation blankets. For Group 2 airplanes, the procedures in Work Package 2 include performing a detailed inspection of the sleeving on wire bundles W298, W235, and W2130, as applicable, to determine the type of protective sleeving installed and the location of that sleeving, relocating the sleeving or replacing the sleeving with new sleeving as applicable, and installing wire bundle support clamps as applicable. When installing wire bundle support clamps, make sure that wire bundles are installed inboard/above the insulation blankets.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–17–28 R1, amendment 39–12510, are approved as alternative methods of compliance with the corresponding requirements of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 24, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4842 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–90–30 airplanes. This proposal would require replacement of the starter relay of the auxiliary power unit (APU) with a new, improved relay. This action is necessary to prevent failure of the APU starter relay, which could result in depleted main airplane batteries, overheated APU starters, and damage to the wiring adjacent to the APU starter. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–196–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–196–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that main electrical contacts had become stuck on the auxiliary power unit (APU) starter relay on McDonnell Douglas Model MD–90–30 airplanes. The events led to smoke emanating from the APU starter and/or depletion of the main airplane batteries. Analysis of failed relays revealed burned and welded main electrical contacts of the starter relay. Sticking relay contacts may lead to failure of the APU starter relay and consequent depleted main airplane batteries, overheated APU starters, and damage to the wiring adjacent to the APU starter.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD90–49A025, Revision 01, dated April 16, 2002, including an Evaluation Form, which describes procedures for replacing the existing APU starter relay with a new, improved relay. The improved relay has a coil that can maintain main contact pressure (force) at reduced battery voltage, which will minimize the possibility of APU starter relay failure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,039 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $23,079, or $1,099 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–196–AD.

Applicability: All Model MD–90–30 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the starter relay of the auxiliary power unit (APU), which could result in depleted main airplane batteries, overheated APU starters, and damage to the wiring adjacent to the APU starter, accomplish the following:

Starter Relay Replacement

(a) Within 6 months after the effective date of this AD, replace the APU starter relay with a new, improved relay, in accordance with McDonnell Douglas Alert Service Bulletin MD90–49A025, Revision 01, dated April 16, 2002, excluding the Evaluation Form.

(b) Replacement of the APU starter relay before the effective date of this AD, in accordance with McDonnell Douglas Alert Service Bulletin MD90–49A025, dated December 13, 2000, is acceptable for compliance with the requirements of this AD.

Parts Installation

(c) As of the effective date of this AD, no person may install a contactor (starter relay) having part number 5D0387–1, A–770–WA–3, or AH–CXA–016 on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4841 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, –300F, –400, and –400ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires revising the Airworthiness Limitations Section of the Maintenance Planning Data (MPD) Document (767 Airworthiness Limitations Instructions (ALI)). The revision incorporates into the ALI certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSE). This action would expand the applicability in the existing AD, and would require incorporating a new revision into the Airworthiness Limitations Section of the MPD Document. The actions specified by the proposed AD are intended to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–240–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–240–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 19, 2001, the FAA issued AD 2001–08–28, amendment 39–12205 (66 FR 21077, April 27, 2001), applicable to certain Boeing Model 767 series airplanes, to require revising the Airworthiness Limitations Section of the Maintenance Planning Data (MPD) Document (767 Airworthiness Limitations Instructions (ALI)). The revision will incorporate into the ALI certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSE). That action was prompted by analysis of data that identified specific initial inspection thresholds and repetitive inspection intervals for certain PSEs to be added to the ALI. The requirements of that AD are intended to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

Actions Since Issuance of Previous Rule

In the preamble to AD 2001–08–28, we indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. We now have determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

New Revisions of ALI

We have reviewed and approved Subsection B, Section 9, of Boeing Document D622T001–9, entitled "Airworthiness Limitations and Certification Maintenance Requirements," Revisions June 2000, February 2001, and October 2002, of the Boeing 767 MPD Document. That document describes specific initial inspection thresholds and repetitive inspection intervals for certain PSEs (identified as structural significant items in the ALI). That document explicitly identifies all of the PSEs that are to be inspected in accordance with the requirements of the ALI. Boeing Document D622T001–9, Revision June 1997, was referenced in the existing AD for accomplishment of the actions specified.

Subsection B, Section 9, of Boeing Document D622T001–9 of the Boeing 767 MPD Document references Appendix B, Revision December 2002, which provides Damage Tolerance Rating (DTR) Check Forms and the procedures for using the forms after accomplishment of the initial inspections identified in the MPD to determine the repetitive inspection thresholds.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2001–08–28 to expand the applicability in the existing AD and require operators to revise the Boeing Model 767 ALI to incorporate Boeing Document D622T001–9, Revisions June 2000, February 2001, and October 2002 of the Boeing 767 MPD Document. However, nothing in this proposed AD is intended to affect any of the requirements related to the life limits or certification maintenance requirements that are contained elsewhere in the MPD. This proposed AD is intended to address only those PSE inspections that are referred to in Subsection B, Section 9, entitled "Airworthiness Limitations—Structural Inspections" of Boeing Document D622T001–9, Revision October 2002.

Cost Impact

There are approximately 884 airplanes of the affected design in the worldwide fleet. We estimate that 393 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 2001–08–28 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $60 per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $23,580, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12205 (66 FR 21077, April 27, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–240–AD. Supersedes AD 2001–08–28, amendment 39–12205.

Applicability: Model 767–200, –300, –300F, –400 and –400ER series airplanes having line numbers 1 through 895 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that fatigue cracking of various principal structural elements, which could adversely affect the structural integrity of these airplanes, is detected and corrected, accomplish the following:

Restatement of Requirements of AD 2001–08–28

Revise Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document

(a) For Model 767–200 and –300 series airplanes having line numbers 1 through 669 inclusive: Within 3 years after June 1, 2001 (the effective date of AD 2001–08–28, amendment 39–12205), revise Subsection B, Section 9 of Boeing Document D622T001–9 entitled "Airworthiness Limitations and Certification Maintenance Requirements" to incorporate Revision June 1997, June 2000, February 2001, or October 2002.

Note 2: The referenced Subsection B contains a requirement that cracks found during the specified inspections be reported to the Seattle Aircraft Certification Office (ACO), FAA. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 3: For the purposes of this AD, the terms principal structural elements (PSEs) as used in this AD, and structural significant items (SSIs) as used in Section 9 of Model 767 MPD Document, are considered to be interchangeable.

Alternative Inspections and Inspection Intervals

(b) Except as provided by paragraph (e)(1) of this AD: After the actions required by paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the SSIs contained in Section 9 of Boeing 767 MPD Document D622T001–9, Revisions June 1997, June 2000, or February 2001.

New Requirements of This AD

Revise Section 9 of the Boeing 767 MPD

(c) For Model 767–200, –300, –300F, –400 and –400ER series airplanes having line numbers 1 through 895 inclusive: Within 18 months after the effective date of this AD, revise Subsection B, Section 9 of Boeing Document D622T001–9 entitled "Airworthiness Limitations and Certification Maintenance Requirements" to incorporate Revision October 2002; and Appendix B, Revision December 2002.

Alternative Inspections and Inspection Intervals

(d) Except as provided by paragraph (e)(1) of this AD: After the actions required by paragraph (c) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the SSIs contained in Section 9 of Boeing 767 MPD Document D622T001–9, Revision October 2002.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Except as provided by paragraph (e)(3) of this AD: Alternative methods of compliance, approved previously in accordance with AD 2001–08–28, amendment 39–12205, are approved as alternative methods of compliance with paragraphs (a) and (c) of this AD.

(3) The procedures specified in Subsection B of Boeing Document D622T001–9, Revision JUNE 2000; are not approved as alternative methods of compliance with paragraph (d) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4840 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–399–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900 and Falcon 900EX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 900 and Falcon 900EX series airplanes. This proposal would require replacement of certain self-adhering soundproofing mats under the passenger consoles in the cabin, which are not sufficiently fire-retardant, with mats that are not self-adhering and are sufficiently fire-retardant. This action is necessary to prevent an uncontrolled fire in the cabin due to self-adhering soundproofing mats under the passenger consoles in the cabin, which are not sufficiently fire-retardant. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–399–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–399–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–399–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–399–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 900 and Falcon 900EX series airplanes. The DGAC advises that a new type of self-adhering soundproofing mat has been installed under the passenger cabin console on these two airplane models. These mats are placed behind the air-conditioning ducts and are covered with a protective film to prevent sticking. Tests have demonstrated that due to their composition, *i.e.*, self-adhering silicon foam and polyester film, these mats are insufficiently fire retardant. This condition, if not corrected, could result in an uncontrolled fire in the cabin.

Explanation of Relevant Service Information

Dassault has issued Service Bulletins F900–220 and F900EX–109, both including Service Bulletins Compliance Form, both dated June 29, 2001. These service bulletins describe procedures for replacement of certain self-adhering soundproofing mats under the passenger consoles in the cabin, which are not sufficiently fire-retardant, with mats that are not self-adhering and are sufficiently fire-retardant. The service bulletins also describe procedures for reporting compliance. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–267–035(B), dated June 27, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except that reporting compliance is not required.

Cost Impact

The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $86,400, or $4,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault: Docket 2001–NM–399–AD.

Applicability: Model Mystere-Falcon 900 series airplanes, serial numbers 184 through 187 inclusive, and Model Falcon 900EX series airplanes, serial numbers 28 and 65 through 85 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontrolled fire in the cabin due to self-adhering soundproofing mats under the passenger consoles in the cabin, which are not sufficiently fire-retardant, accomplish the following:

(a) Within seven months after the effective date of this AD, replace the self-adhering soundproofing mats with mats that are not self-adhering and are sufficiently fire-retardant, per paragraphs 2.A. through 2.D. of the Accomplishment Instructions of Dassault Service Bulletin F900–220 (for Model Mystere-Falcon 900 series airplanes), or F900EX–109 (for Model Falcon 900EX series airplanes); both excluding Service Bulletins Compliance Form; both dated June 29, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–267–035(B), dated June 27, 2001.

Issued in Renton, Washington, on February 25, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4839 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 03N–0068]

Beverages: Bottled Water; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its bottled water quality standard regulations by establishing an allowable level for the contaminant uranium. As a consequence, bottled water manufacturers would be required to monitor their finished bottled water products for uranium at least once each year under the current good manufacturing practice (CGMP) regulations for bottled water. Bottled water manufacturers would also be required to monitor their source water for uranium as often as necessary, but at least once every 4 years unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations. FDA is not proposing any change in the existing allowable levels for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. This proposed rule will ensure that the minimum quality of bottled water, as affected by uranium, combined radium-

226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity, remains comparable with the quality of public drinking water that meets the Environmental Protection Agency's (EPA's) standards. This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments by May 2, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Paul South, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1640.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. The companion proposed rule and the direct final rule are substantively identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comment and is withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and the agency anticipates that it will receive no significant adverse comments. A detailed discussion of this rule is set forth in the preamble of the direct final rule. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation notice, after the comment period ends, to confirm the effective date of the direct final rule. The confirmation notice will publish no later than June 11, 2003. FDA intends the direct final rule to become effective December 8, 2003. If FDA receives significant adverse comment, the agency will withdraw the direct final rule. FDA will proceed to respond to all of the comments received regarding the rule, and, if appropriate, the rule will be finalized under this companion proposed rule using notice-and-comment procedures.

In the **Federal Register** of December 7, 2000 (65 FR 76708), EPA published the Radionuclides Rule to address potential public health effects from the presence of radionuclides in drinking water. This rulemaking finalized a proposed rule that EPA published in the **Federal Register** of July 18, 1991 (56 FR 33050).

Radionuclides are radioactive elements that occur naturally in the Earth's crust or are formed as a result of cosmic ray interactions. Human activities can also add radionuclides to the environment. Radionuclides emit ionizing radiation when they radioactively decay. The potential for harmful health effects from radionuclide exposure results from the ability of ionizing radiation to chemically change molecules that make up biological tissue through a process called ionization. Studies have shown long-term exposure to radionuclides including uranium in drinking water may result in increased risk of cancer and that exposure to uranium can have adverse health effects on kidney function (65 FR 76708 at 76712–76713).

National primary drinking water regulations (NPDWRs) are issued by EPA to protect the public health from the adverse effects of contaminants in drinking water. NPDWRs specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants. In addition, at the same time that it issues NPDWRs, EPA publishes maximum contaminant level goals (MCLGs), which are not regulatory requirements but rather are nonenforceable health goals that are based solely on considerations of protecting the public from adverse health effects of drinking water contamination.

In the Radionuclides Rule, EPA issued an NPDWR containing an MCL for uranium. EPA retained the existing MCLs for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity and indicated the analytical methods it approved for testing for uranium and three other contaminants. Finally, EPA published an MCLG of zero for all radionuclides. EPA's NPDWR has an effective date of December 8, 2003.

Under section 410(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349(b)(1)), not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-l), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. The effective date for any such standard of quality regulation is to be the same as the effective date of the NPDWR. In addition, section 410(b)(2) of the act provides that a quality standard regulation issued by FDA shall include monitoring requirements that the agency determines to be appropriate for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment technique requirements for the same contaminant.

II. Additional Information

For additional information see the corresponding direct final rule published elsewhere in this issue of the **Federal Register**. All persons who wish to submit comments should review the detailed rationale for these amendments set out in the preamble discussion of the direct final rule.

If FDA receives any significant adverse comments regarding this rule, FDA will publish a document withdrawing the direct final rule and will proceed to respond to the comments under this companion proposed rule using usual notice-and-comment procedures.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. A comment recommending a rule change that is in addition to the rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

III. EPA Standards

The SDWA, as amended in 1996, requires EPA to publish an NPDWR that specifies either an MCL or a treatment technique requirement for contaminants that may "have an adverse effect on the health of persons," are "known to occur or [have] a substantial likelihood [of occurring] in public water systems with a frequency and at levels of public health concern," and for which "regulation * * * presents a meaningful opportunity for health risk reduction for persons served by public water systems" (SDWA section 1412(b)(1)(A)). The SDWA (section 300g-l(a)(3)) also requires that EPA issue MCLGs at the same time it issues NPDWRs. MCLGs are nonenforceable health goals that are based solely on considerations of protecting the public from the adverse health effects of contaminants, and not on other considerations, such as potential costs of regulating contaminants and potential technical difficulties of achieving the health goals (59 FR 38668 at 38671). EPA sets MCLs, the enforceable contaminant levels, as close as feasible to the nonenforceable MCLGs.

In its proposed rule on radionuclides (56 FR 33050), EPA proposed comprehensive changes to radionuclides standards in drinking water. However, after conducting a review of costs, benefits and treatment technologies, in the Radionuclides Rule, EPA established an MCL of 30 micrograms per liter (µg/L) for uranium and retained the existing MCLs of 5 picocuries per liter (pCi/L) for combined radium-226/-228, 15 pCi/L for gross alpha (excluding radon and uranium), and 4 millirem (mrem)/year for beta particle and photon radioactivity (65 FR 76708 at 76722).

Because uranium is a kidney toxin as well as a carcinogen, EPA chose an MCL for uranium, expressed in µg/L, that is protective of both kidney toxicity and carcinogenicity (65 FR 76708 at 76716). Analytical methods approved by EPA for uranium monitoring include activity and mass concentration analyses. If uranium is determined by activity-type methods, a 0.67 pCi/µg conversion factor is used to convert activity to mass concentration (65 FR 76708 at 76725).

IV. FDA Standards

A. The Agency's Approach to the Bottled Water Quality Standards Established Under Section 410 of the Act

Under section 401 of the act (21 U.S.C. 341), the agency may issue a regulation establishing a standard of quality for a food under its common or usual name, when in the judgment of the Secretary of Health and Human Services such action will promote honesty and fair dealing in the interest of consumers. On November 26, 1973 (38 FR 32558), FDA established a quality standard for bottled water that is set forth in § 165.110 (21 CFR 165.110).

Producers of bottled water are responsible for assuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard (§ 165.110(b)). Bottled water that is of a quality below the prescribed standard is required by § 165.110(c) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWRs by amending the quality standard regulations for bottled water introduced or delivered for introduction into interstate commerce to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that, with few exceptions, EPA standards for contaminants in drinking water are appropriate as allowable levels for contaminants in the quality standard for bottled water when bottled water may be expected to contain the same contaminants.

FDA generally has not duplicated the efforts of EPA in judging the adequacy of MCLs or treatment techniques in NPDWRs for contaminants when determining their applicability to bottled water in order to protect the public health. FDA believes that, in general, it would be redundant for FDA to reevaluate the drinking water standards prescribed by EPA. Further, because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as an estimate for the maximum expected consumption of bottled water by some individuals. Therefore, FDA's view is that generally in cases where bottled water is subject to the same contaminants as tap water, FDA should establish standard of quality levels in bottled water at the same levels that EPA establishes as MCLs for such contaminants in tap water.

B. Quality Standard for Radionuclides

The quality standard for bottled water, as set forth in § 165.110(b)(5)(i), prescribes that bottled water shall not contain: (A) combined radium-226/-228 activity in excess of 5 picocuries per liter of water, (B) gross alpha particle activity (including radium-226, but excluding radon and uranium) in excess of 15 picocuries per liter of water, and (C) beta particle and photon radioactivity from manmade radionuclides in excess of that which would produce an annual dose equivalent to the total body or any internal organ of 4 millirems per year calculated on the basis of an intake of 2 liters of the water per day. If two or more beta or photon-emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed 4 millirems per year. The quality standard for bottled water, however, does not currently prescribe an allowable level for uranium.

With the exception of uranium, FDA's existing allowable levels for radionuclides (i.e., combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity) in the bottled water quality standard are the same as EPA's existing MCLs for the same radionuclides in drinking water that EPA retained in the Radionuclides Rule. Therefore, FDA is not proposing any change to the existing allowable levels for these radionuclides in bottled water.

FDA has evaluated the MCL for uranium established by EPA for drinking water. FDA has tentatively concluded that EPA's MCL for uranium, as a standard of quality level for bottled water, is adequate for the protection of public health. Certain waters used for bottled water may be expected to contain uranium; thus, FDA believes that adopting EPA's MCL for uranium will ensure that the quality of bottled water is equivalent to the quality of public drinking water that meets EPA standards.

Therefore, FDA is proposing to establish in a new paragraph (b)(5)(i)(D) in § 165.110, an allowable level for uranium of 30 micrograms per liter of water.

C. Analytical Methods for Radionuclides

In the Radionuclide Rule, EPA listed the analytical methods that it had approved for use by public water systems to determine compliance with the radionuclide MCLs (i.e. for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity) (65 FR 76708 at 76724). FDA is proposing to revise § 165.110(b)(5)(ii) by incorporating by reference EPA approved analytical methods (65 FR 76708 at 76725) for determining compliance with the quality standard for uranium activity in bottled water. FDA is also proposing to revise § 165.110(b)(5)(ii) by incorporating by reference EPA approved analytical methods for determining compliance with the

quality standard for combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity in bottled water (65 FR 76708 at 76725). FDA believes that these methods are sufficient to use for determining the level of uranium in bottled water.

D. Monitoring Provisions of CGMP Regulations for Bottled Water

FDA has established CGMP regulations for bottled water in part 129 (21 CFR part 129). Under § 129.35(a)(3)(i), source water must be analyzed by the plant as often as necessary, but at least once every 4 years for radiological contaminants. Therefore, once the rule becomes effective, bottlers would be required to test their source water as often as necessary but at least once every 4 years for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity, unless the bottlers meet the provisions in § 129.35(a)(4) for source water monitoring exemptions. Further, to ensure that a plant's production complies with applicable standards, § 129.80(g)(2) requires radiological analysis by the plant, at least annually, of a representative sample from a batch or segment of a continuous production run for each type of bottled water produced during a day's production. Therefore, once this rule becomes effective, bottlers would be required to test their finished bottled water products at least once a year for uranium, combined radium-226/-228, gross alpha particle radioactivity, and beta particle and photon radioactivity. In addition, bottled water must comply with the allowable levels for radionuclides in the quality standard for bottled water (§ 165.110(b)(5)(i)) unless the label bears a statement of substandard quality under § 165.110(c). As stated in § 165.110(d), bottled water is deemed adulterated if it contains a substance at a level considered injurious to health under section 402(a)(1) of the act.

V. Environmental Impact

The agency has determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

A. Initial Regulatory Impact Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

1. The Need for Regulation

In the Radionuclides Rule, EPA published an NPDWR establishing an MCL for uranium. Under section 410 of the act, when EPA issues a regulation establishing an MCL for a contaminant in public drinking water, FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health. FDA's standard of quality regulations must also include appropriate monitoring requirements. Of the radionuclide standards addressed in EPA's final rule, only the uranium requirement does not have a current standard of quality regulation for bottled water. If FDA does not issue a standard of quality regulation by 180 days before the effective date of EPA's NPDWRs or make a finding that such a regulation is not necessary to protect the public health, the NPDWRs become applicable to bottled water.

2. Regulatory Options

FDA considers three options for this analysis:

Option 1. FDA does not establish a uranium quality standard regulation or make a finding that it is not necessary to protect the public health because uranium is not found in water used for bottled drinking water. Bottled water producers would be subject to the requirements set forth in the NPDWR for uranium.

Option 2. FDA establishes a uranium quality standard regulation. Bottled water producers would be subject to allowable levels in § 165.110 and CGMP monitoring requirements in §§ 129.35 and 129.80.

Option 3. Bottled water producers are not subject to either an FDA quality standard regulation or an EPA NPDWR for uranium..

Note on Option 3: Since water used for bottled water comes from sources that likely contain some level of naturally occurring uranium, section 410(b)(1) of the act does not allow this option. The act specifies two alternatives: "promulgate a standard of quality regulation under this subsection," or find that "such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems * * * but not in water used for bottled drinking water." However, the Office of Management and Budget (OMB) cost-benefit analysis guidelines recommend discussing statutory requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity cost of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866. Our analysis finds that option 3 does not have the highest net benefits. Therefore, even if option 3 were permissible, the statute does not preclude the option with the highest net benefits.

Assumptions and Estimations Applicable to All Options

For the purposes of this analysis, FDA makes the following assumptions:

- Option 3, which has zero costs and benefits, will be considered the baseline for this analysis.
- The regulatory options we consider will have no organoleptic effect on the final bottled water product, and thus no impact on sales due to product quality. The cost of the regulation will be limited to the direct cost of testing, recordkeeping, and possible treatment technology investment or other compliance activity.
- Bottled water producers market their products based on meeting government safety testing requirements. However, any change in sales resulting from successful marketing either transfers revenue from one producer to another with no net loss to society, or causes increased sales of bottled water, which would mitigate the cost of this regulatory effort.
- Both the EPA NPDWR and the FDA standard of quality regulations will compel facilities to comply with the new uranium standard. Therefore, FDA assumes that options 1 or 2 will not differ in terms of the number of illnesses avoided or the burden placed on facilities compelled to adopt treatment technology. However, EPA and FDA do have differing monitoring requirements.
- *The number of facilities*: Approximately 1,550 plants produced bottled water in 1998 (63 FR 25764, May 11, 1998). According to another database search conducted in 2002, the industry contains only 914 plants that would be subject to these rules. The 2002 count may not include bottled water services to business, but the decrease in facilities may also be a result of industry consolidation (Ref. 1). Because of this uncertainty, we use both totals to define our uncertainty interval.
- *Facilities out of compliance*: As in the EPA NPDWR analysis, we estimate the baseline incidence of facilities out of compliance by using the EPA's National Inorganics and Radionuclides Survey (NIRS). EPA took the results of the concentration of radionuclides found in the NIRS and extrapolated to the expected percent of municipal water facilities that would be out of compliance—by type and population served—for various uranium levels. Since most bottled water facilities that do not use a public water source use ground water, and are relatively small when compared to municipal water plants, we assume that the percent of bottled water plants out of compliance with the uranium standard is approximately the same percent as the number of ground water municipal plants that serve less than 500 people. EPA used two methods to extrapolate the NIRS results to all facilities. Using both approaches, small ground water facilities have by far the largest estimated out of compliance percentages, so this is a conservative assumption. Table 1 of this document presents the four possible numbers of facilities out of compliance, using our two bottled water facility counts and EPA's two percentage estimates for groundwater facilities.[1] The lowest and the highest number of facilities identified here (8–22 facilities) will be used as the out of compliance uncertainty interval for cost calculations.

[1] This is actually a percentage out of compliance for all facilities, but the percentage is dominated by small groundwater facilities. Above an MCL of 40 µg/L, no facilities other than groundwater facilities serving less than 500 people were predicted to be out of compliance. Since EPA did not directly estimate compliance percentages for the EPA MCL of 30 µg/L, we must assume that the number of facilities that are not small groundwater and are out of compliance would be negligible.

TABLE 1.—NUMBER OF FACILITIES POTENTIALLY OUT OF COMPLIANCE WITH THE URANIUM STANDARD

Total Number of Facilities	EPA Method 1 (1.4% out of compliance)	EPA Method 2 (0.9% out of compliance)
1,550	22.	14
914	13	8

Cost Calculations under Options 1 and 2

This cost analysis is separated into two sections: Possible compliance activity that firms may have to undertake to meet the uranium standard, and monitoring requirement for all facilities. Between 914 and 1,550 facilities may have to adopt a test for the uranium standard, and between 8 and 22 facilities may also have to take measures to come into compliance with the uranium standard. Uranium testing is a standard procedure that is available in many labs around the country. Firms can choose among many types of treatment options to come into compliance, including water softening/iron removal, point-of-use reverse osmosis, point-of-use anion exchange/activate alumina, blending, or finding an alternative source.

Compliance costs. FDA assumes that all facilities will come into compliance under options 1 and 2, so the relative ranking of options 1 and 2 is not affected by compliance cost calculations. In their 2000 NPDWR analysis, EPA estimated compliance investment needed per volume of water treated (here presented as per 83,000 gallons, which is the annual per household water use estimate used by EPA) for each of their extrapolation methods mentioned above, for each facility size category, and for several different uranium standards. However, they did not directly estimate the compliance cost of the 30 µg/L standard considered here. We use an average of the compliance costs per gallon between the 40 and 20 µg/L standard levels for which costs were estimated directly tested by EPA. We also assume that each facility out of compliance is of average size. According to EPA's per capita total water use estimates applied to bottled water, an average bottled water facility processes as much water as a municipal system serving between 42 and 72 households, so we use the compliance cost estimated for groundwater facilities serving between 100 and 500 people, which is the closest category EPA presents.

The extrapolation methods used to construct the uncertainty intervals explained above affect both the percent of facilities out of compliance and the total amount of uranium that would need to be removed to come into compliance. Therefore, the per volume costs will be different under EPA's different estimation methods even for identically sized facilities. As mentioned previously, firms can choose among many types of treatment options. Our central value of uncertain compliance cost estimates is based on EPA's study of technology adoption for previous standards and their decision tree analysis, and our uncertainty interval is defined by the least (alternative sourcing) and most (point-of-use methods) expensive options being adopted by every one of the 8–22 facilities assumed to be affected.

Table 2 of this document summarizes these calculations. Considerable economies of scale exist in water treatment, but EPA only estimates the effect of economies of scale between their grouped size categories. Therefore, within the EPA size category we are assuming applies to bottled water, total treatment cost depends only on the amount of water treated, even though it is probable that larger facilities within this class have a lower per volume cost of treating their water. Also, for these options we base estimates of the amount of bottled water treated per facility not on our uncertain number of facilities but on a fixed total estimate of bottled water production in the United States. Therefore, except for rounding, our compliance cost estimate is not dependent on the number of facilities. We do expect that fewer facilities treating a larger amount of water would lead to lower per volume costs, but our most accurate estimate cannot take this into account, and this uncertainty does not affect the ranking of alternatives. We assume costs are incurred every year indefinitely into the future. The annual volume of bottled water consumed in the United States increased by an average of 7 percent over the past 11 years (Ref. 3), but again since the cost of treating water is subject to considerable economies of scale (Ref. 2) we assume that per year compliance costs will be roughly constant in the future. The discount rate used is 7 percent. We use the average of all four estimates of the middle value to construct the measure of central tendency, and the average of the two rounded lowest values and the two rounded highest values to construct the uncertainty interval. According to this analysis, total present value compliance costs will average approximately

$1,085,000, with a range of $61,000-$2,660,000 for both options 1 and 2.

TABLE 2.—COMPLIANCE COST FOR EPA METHODS 1 AND 2

EPA Calculation Method	No. of Facilities	Cost /83,000 Gallons ($)	Cost Per Facility ($)	Total Annual ($)	Present Value ($)
1	22	100 (10–190)	4,200 (300–7,900)	92,000 (7,000–174,000)	1,406,000 (107,000–2,660,000)
1	13	100 (10–190)	7,200 (500–13,400)	94,000 (7,000–174,000)	1,437,000 (107,000–2,660,000)
2	14	80 (10–190)	3,600 (300–7,900)	50,000 (4,000–111,000)	764,000 (61,000–1,697,000)
2	8	80 (10–190)	6,000 (500–13,400)	48,000 (4,000–107,000)	734,000 (61,000–1,636,000)

Monitoring Costs. FDA has collected several estimates for uranium testing cost, ranging from $25-$150 per sample.[2] We will use the average of these testing costs of $105 as a most likely value and the entire range to define uncertainty. EPA and FDA required testing frequencies under options 1 and 2 differ substantially, as explained below.

Option 1 (EPA) Testing Frequency. Under the EPA testing regime, the 914 or 1,550 facilities would have to adopt a test for the uranium standard. According to the Radionuclides Rule (65 FR 76708 at 76711), all facilities would have to first perform four consecutive quarterly samples. We assume that bottled water facilities would test these samples in the first year after adoption. Based on the average results of these samples, facilities would have to sample once every 3 years (average greater than 50 percent of MCL), once every 6 years (average less than 50 percent of MCL), or once every 9 years (not detected). We assume one-third of facilities would fall in each of these categories, and that future tests would be uniformly distributed across years; for example, one-third of the facilities that only have to test once every 3 years will conduct the test in any one year.

Option 2 (FDA) Testing Frequency. Under § 129.35(a)(3), bottled water producers are required to test their source water for radiological contaminants at least once every 4 years unless exempted from such testing under § 129.35(a)(4). For example, one possible exemption is that the 25 percent of bottled water facilities that use a public water source already subject to EPA regulations may substitute public water system testing results for source water testing. We assume that no facilities that use a public water source will need to test their source water for uranium, and that all bottled water producers using nonpublic water will need to test their source water. All bottled water producers are required to test their final bottled water product for radiological contaminants at least once per year under § 129.80(g)(2).

Table 3 of this document presents the calculations for each option. The low bound is calculated by the low facility count multiplied by the low testing cost estimate, the high bound is calculated by the high facility count multiplied by the high testing cost estimate, and the middle value is the average of the low and high facility counts multiplied by the average of the testing cost estimates. Multiplying all low and high estimates together probably renders the low and high bounds extremely unlikely, but since we do not have a probability distribution associated with these values we have no other method of defining uncertainty. The present value is calculated as if all testing were to be continued indefinitely, with a discount rate of 7 percent.

TABLE 3.—MONITORING COST ESTIMATES

Options	Year 1 tests	Year 1 Cost ($)	Subsequent year tests	Subsequent year cost ($)	Present Value ($)
Option 1 (EPA)	4	517,000 (91,000–930,000)	.61	79,000 (14,000–142,000)	1,645,000 (291,000–2,956,000)
Option 2 (FDA)	1.19	154,000 (27,000–277,000)	1.19	154,000 (27,000–277,000)	2,353,000 (416,000–4,229,000)

3. Benefits of the Regulatory Options

FDA assumes that both option 1 and option 2 would compel all bottled water facilities to come into compliance with the 30 µg/L uranium standard. Uranium carries two distinct risks: An increased risk of cancer and kidney toxicity. In addition, treatment technologies put in place to remove uranium will also reduce the concentration of other bottled water contaminants. However, EPA was unable to quantify the effect of uranium on kidney toxicity and the effect of uranium treatment technology on cocontaminants due to lack of information, and FDA has not found any information made available that would allow the quantification of these effects since EPA's 2000 analysis.

Cases of Cancer Avoided

Exposure. According to the *Bottled Water Reporter*, Americans consumed a per capita average of approximately 73.8 liters of bottled water in 2001 (Ref. 3). This is approximately 18 percent of the per capita consumption of water from all sources estimated by the EPA (Ref 2). Bottled water consumption has been increasing at a rate of approximately 7 percent per year in the United States over the past 11 years, and this trend may continue (Ref 3).

Risk and Valuation of Risk. In September 1999, EPA updated a series of coefficients they developed to express the incremental lifetime risk of cancer morbidity or mortality per unit of intake. They then combined this per unit risk to the average and 90th percentile annual and lifetime intake of water from all sources (including bottled water, but they adjusted for bottled water that did not originate in the municipal water supplies they regulated) to calculate: (1) The total morbidity and mortality cancer risk due to drinking water containing uranium, and (2) the reduction in risk due to their proposed NPDWR for uranium. We adjust these values based on our calculation of the average annual intake of bottled water described previously in this document. The mortality risk coefficient per µg of uranium ingested is 3.97E–11, and the morbidity coefficient is 6.13E–11 (Ref. 4). In other words, for each µg of uranium ingested the lifetime risk of getting cancer increases by approximately 6 in 100 billion, while the lifetime risk of dying from cancer increases by approximately 4 in 100 billion.

This risk estimate is applied to the decrease in Uranium ingested due to options 1 and 2. Between 0.9 percent and 1.4 percent of bottled water is expected to initially have uranium concentrations over 30 µg/L. Based on 2001 total bottled water consumption, this translates into between 49 million and 76 million gallons of bottled water possibly above the standard. In the Radionuclides Rule, EPA expected that the reduction in uranium concentration in the out of compliance municipal water facilities would yield an annual decrease in the number of new fatal and nonfatal statistical[3] cancer cases of 0.82 from an affected number of gallons of approximately 73 million.

For the calculations below, we assume that every bottled water consumer has an equal chance of drinking water from a facility that would be out of compliance with the standard. This makes the calculation much simpler, and since the mortality and morbidity risk coefficients are linear and are not based on past exposure, the total reduction in risk is identical. If out-of-compliance bottled water facilities have uranium concentrations roughly equal to the EPA estimates, then applying this assumed reduction and the total annual per capita consumption attributable to the affected bottled water facilities yields a total number of fatal and nonfatal cancer cases avoided of between 0.55 and 0.85 per year for both options 1 and 2. We use a 6 percent growth rate to take into account an increase in exposure and population, in relation to the 7 percent discount rate used for the cost calculations. We also assume that the cancer mortality will occur 20 years in the future. The central estimate is somewhat sensitive to these assumptions, so we test different assumptions in the net benefits section below. Using standard valuation techniques for cancer morbidity and mortality yields an expected present value benefit of between $8,700,000 and $13,500,000. The calculations summary is in Table 4 of this document.

TABLE 4.—BENEFITS CALCULATIONS

Options	Cases of Cancer Avoided: EPA Method 1	Cases of Cancer Avoided: EPA Method 2	Present Value ($) of Annual Cancer Cases (low-high)	Total Present Value ($) (low-high)
1 and 2	.85	.55	629,000 (494,000–764,000)	11,112,000 (8,731,000–13,493,000)

A final source of uncertainty we need to account for is the upper and lower bound estimated by EPA for their cancer risk coefficients. In the 2000 analysis, EPA assumes an uncertainty cancer risk interval extending one order of magnitude above and below their risk coefficients. Applying this uncertainty interval to the benefits we have already calculated yields a final benefits interval of between $870,000 and $135,000,000. Although EPA does not include a probabilistic confidence interval associated with this additional source of uncertainty, they do state that the central tendency values they use for their main calculations are more likely (Ref. 2).

Sensitivity to Assumptions and Uncertainty: Benefits

These benefits calculations are subject to considerable uncertainty. The uncertainty interval used in the analysis is due to the uncertainty in the incidence and concentration of naturally occurring uranium and uncertainty in the uranium risk coefficients. However, the main uncertain benefits that we do not quantify are: (1) The reduction in kidney disease due to reducing uranium concentration in bottled water, and (2) the reduction in cocontaminants due to the adoption of treatment technologies for uranium. Therefore, the quantified cancer benefits probably underestimate the true positive impact of the uranium standard.

4. Net benefits

Table 5 of this document presents the total costs and benefits for all three options.

TABLE 5.—COSTS AND BENEFITS

Options	Total Costs ($) (low-high)	Total Benefits ($) (low-high)
1 (EPA Monitoring Requirement)	2,930,000 (352,000–5,616,000)	11,112,000 (8,731,000–13,493,000)
2 (FDA Monitoring Requirement)	3,438,000 (477,000–6,889,000)	11,112,000 (8,731,000–13,493,000)
3 (No Action Taken)	0	0

In the most likely central values in the distribution of cost and benefits, EPA option 1 has positive net measured benefits and FDA option 2 has positive net measured benefits. The ranking of option 1 and 2 depends completely on the frequency of required testing: FDA would require an average of 1.19 tests per year per facility, while EPA, after a series of four tests, would only require an average of .61 test per year per facility. We tested the effects of 5 percent-7 percent discount rates and 15–30 year delays in cancer onset in our

[2] A private lab called General Engineering Laboratories (GEL) in Charleston, SC, provides uranium testing of private wells at a cost of $25 per sample: *http://www.scdhec.net/eqc/water/html/urtest2.html*, accessed August 15, 2002. The New Hampshire Department of Environmental Services charges $140 per uranium test: *http://www.des.state.nh.us/factsheets/ws/ws-3-11.htm*, accessed August 15, 2002. The Maine Health and Environmental Testing Laboratory charges $150 per uranium test: *http://www.state.me.us/dhs/etl/pubgd99w.html*, accessed August, 15, 2002.

[3] A statistical cancer case refers to expectations. For example, if the risk of contracting cancer sometime during one's life increases for each person by 1 in a million, and the affected population consisted of 1 million people, it is expected that the number of eventual cancer cases observed would increase by 1. However, 1 is only the measure of central tendency in a distribution of effects.

benefits calculations, and both options still yield positive net benefits. The choice of the discount rate or time period before onset does not affect the relative ranking of options 1 and 2.

The range of uncertainty between costs and benefits overlaps, but many of the determinants of the range of uncertainty affect both costs and benefits equally, so low costs are associated with low benefits and high costs are associated with high benefits. The exception to this is the uncertainty in the cancer risk coefficient; since this interval is not probabilistic, FDA cannot estimate a probability that this rule will have negative net or positive net benefits for any of these options. However, FDA does consider our central estimates the most likely outcomes. Also note the potentially large benefits from a reduction in kidney toxicity and cocontaminants that we were not able to quantify, which could also affect the size and range of the net benefits.

Finally, our cost-best analysis reaches a different result than EPA's 2000 radionuclide analysis, which concluded that testing for uranium in water destined for human consumption has negative net quantifiable benefits (65 FR 76708). The reason for the difference between our results and EPA's results is that most of the costs of the EPA rule are applied to water that will not be consumed. People do not drink the vast majority of water treated by municipal facilities. Most of that water is used for cleaning, waste disposal, and outdoor uses. In contrast, almost all bottled water is used for human consumption. In fact, a typical bottled water facility processes as much water for drinking as a much larger municipal water facility. Consequently, fewer bottled water facilities would have to incur compliance costs to afford the same level of protection for water consumed as assumed in the EPA analysis.

B. Initial Small Entity Analysis

Under section 603(a) of the Regulatory Flexibility Act, for any proposed rule for which the agency is required by section 553 of the Administrative Procedure Act or any other law to publish a general notice of proposed rulemaking, the agency is required to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this companion proposed rule is a proposed rule for which a general notice of proposed rulemaking is required, and therefore, is subject to the Regulatory Flexibility Act, the agency will consider any comments it receives on the initial regulatory flexibility analysis in this companion proposed rule when deciding whether to withdraw the direct final rule.

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this rule would have a significant economic impact on a substantial number of small entities.

FDA feels that the flexibility allowed in source testing requirements under option 2 in the impact analysis is the maximum amount of flexibility possible in this regulation. FDA is not establishing exemptions for final product testing since there is a need to test for naturally occurring uranium, which could be present in all source water.

According to the latest database search across the bottled water industry mentioned above, approximately 72 percent of firms qualify as small by the Small Business Administration (SBA) standard of having less than 500 full-time-equivalent employees. We assume that all SBA small firms operate a single facility for the purposes of this analysis. Since all facilities must adopt uranium testing, between 658 and 1,116 small firm facilities will incur a testing burden. Assuming the same distribution of size among out of compliance plants means that between 6 and 16 small facilities will incur the more costly burden of devoting resources to bring their water into compliance with the uranium standard issued in this rule. Table 6 of this document presents the average and maximum annual costs attributable to this rule for each small firm.

TABLE 6.—ANNUAL AVERAGE AND MAXIMUM COSTS PER FIRM

Category	Average ($)	Maximum ($)
Monitoring	125	179
Compliance	5,246	13,383
Total	5,400	13,600

Most small firms will only incur a $125 (1.19 tests per year at an average cost of $105 per test) uranium testing cost, although a few may incur up to $179 (1.19 tests per year at an average cost of $150 per test) in annual testing costs, which is 0.03 percent of the $580,000 annual revenue of the median small bottled water firm. If a small firm operates more than one facility, testing costs would be multiplied by the number of facilities they operate. However, between 6 and 16 small firms will incur an average of $5,400 in total costs, and may incur as much as $13,600 in total costs if for some reason they need to adopt the most expensive treatment option, although FDA considers this unlikely. The average treatment cost estimates represent .9 percent of median annual small firm sales, but could be as much as 2.3 percent of annual sales. However, 75 percent of the total reduction in cancer incidence of this rule is due to these small firms lowering the amount of uranium in their water, so it is essential that they adopt some sort of treatment technology.

C. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4), requiring cost-benefit and other analyses, in section 1531(a) defines a significant rule as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any 1 year." FDA has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

VII. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive Order requires agencies to "construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a)(1) provides that "no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce-(1) any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such standard of identity or that is not identical to the requirement of section 403(g) * * *." FDA has interpreted this provision to apply to standards of quality (21 CFR 100.1(c)(4)). Although this rule has preemptive effect in that it would preclude States from issuing requirements for uranium levels in bottled water that are not identical to the allowable level for uranium as set forth in this rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(c) of the Executive Order further requires that "any regulatory preemption of State law shall be restricted to the minimum level necessary" to achieve the regulatory objective. Under section 410 of the act, not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-1), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment techniques required for the same contaminant. On December 7, 2000, EPA issued an NPDWR containing an MCL for uranium (65 FR 76708). FDA has determined that the MCL for uranium that EPA established for public drinking water is appropriate as a standard of quality for bottled water, and is issuing this regulation consistent with section 410 of the act.

Further, section 4(e) of the Executive order provides that "when an agency proposed to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings." Given the statutory framework of section 410 of the act for bottled water, EPA's issuance of an MCL for uranium in public drinking water provided notice of possible FDA action for a standard of quality for uranium in bottled water. FDA did not receive any correspondence from State and local officials regarding a uranium standard for bottled water subsequent to EPA's NPDWR on the MCL for uranium. Moreover, FDA is not aware of any States that have requirements for uranium in bottled water that would be affected by FDA's decision to establish a bottled water quality standard for uranium that is consistent with EPA's standard for public drinking water. In addition, we are providing an opportunity for State and local officials to comment on FDA's standard of quality for uranium in bottled water in the context of this rulemaking. For the reasons set forth previously in this document, the agency believes that it has complied with all of the applicable requirements under the Executive order.

In conclusion, FDA has determined that the preemptive effects of the final rule are consistent with Executive Order 13132.

IX. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

X. Effective Date

The agency intends to make any final rule based on this proposal effective December 8, 2003. The agency will publish a confirmation notice for a final rule in the **Federal Register** no later than 180 days before the effective date. The agency is providing 180 days before the effective date to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule.

XI. References

1. Hamon, J., "Bottled Water Industry, 2001," Special Industries Spotlight, January 2001. Available at *http://www.merger.com*.

2. Industrial Economics, Inc., *Economic Analysis of the Radionuclides National Primary Drinking Water Regulations*. Available from the Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, November, 2000.

3. Rodwan, John G., "The 2001 Stat: Bottled Water Sales Reach New Heights," *Bottled Water Reporter*, p. 14–20, April/May 2002.

4. Eckerman, K., R. Leggett, C. Nelson, J. Pushkin, and A. Richardson, *Cancer Risk Coefficients for Environmental Exposure to Radionuclides*, Federal Guidance Report No. 13, 1999. (EPA 402–R–99–001). Note that FDA used the risk coefficients as adjusted and reported in Ref. 2 of this document in order to be consistent with the EPA radionuclide impact analysis.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 165 be amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

2. Section 165.110 is amended by adding paragraph (b)(5)(i)(D) and by revising paragraph (b)(5)(ii) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(D) The bottled water shall not contain uranium in excess of 30 micrograms per liter of water.

(ii) Analyses conducted to determine compliance with the requirements of paragraph (b)(5)(i) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of "Standard Methods for the Examination of Water and Wastewater," 20th Ed., may be obtained from the American Public Health Association, 1015 15th St. NW., Washington, DC 20005. Copies of the methods incorporated by reference in this paragraph (b)(5)(ii) may also be examined at the Office of the **Federal Register**, 800 North Capital St. NW., suite 700, Washington, DC, or at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD.

(A) Combined radium-226/-228 shall be measured using the following methods:

(*1*) Method 7500–Ra B—"Precipitation Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(2) Method 7500–Ra D—"Sequential Precipitation Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(B) Gross alpha particle radioactivity shall be measured using the following method: Method 7110 C—"Coprecipitation Method for Gross Alpha Radioactivity in Drinking Water," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(C) Beta particle and photon radioactivity shall be measured using the following methods:

(1) Method 7500–Sr B—"Precipitation Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(2) Method 7500–^{3}H B—"Liquid Scintillation Spectrometric Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(3) Method 7120 B—"Gamma Spectroscopic Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(D) Uranium shall be measured using the following methods:

(1) Method 7500–U B—"Radiochemical Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

(2) Method 7500–U C—"Isotopic Method," which is contained in "Standard Methods for the Examination of Water and Wastewater," 20th Ed., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in the introductory text of paragraph (b)(5)(ii) of this section.

* * * * *

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4972 Filed 2–27–03; 11:42 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 4100

[WO–220–1020–24 1A]

RIN: 1004–AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking for proposed amendments to the BLM's Grazing Administration Regulations and announcement of public meetings.

SUMMARY: The Bureau of Land Management (BLM) requests comments and suggestions to assist us in amending our regulations governing how the BLM administers livestock grazing on public lands. The current regulations, issued in 1995, require amendment to comply with court decisions, provide greater flexibility to managers and permittees, and improve existing administrative procedures and business practices, and promote conservation of public lands. We encourage the public to participate in planned public meetings and to provide comments and suggestions to help us clearly define needed changes to the Grazing Administration Program.

DATES: You must submit your comments by May 2, 2003. BLM may not necessarily consider or include in the Administrative Record for the proposed rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**). See the **SUPPLEMENTARY INFORMATION** section for the dates of the public meetings.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD42.

Personal or messenger delivery: 1620 L Street NW., Room 401, Washington, DC 20036.

Direct Internet response: *www.blm.gov/nhp/news/regulatory/index.html* or go to BLM's external Home page at *http://www.blm.gov/nhp/index.htm* and click on the link.

You may also comment via email to *WOComment@blm.gov*. We intend this address for use by those who want to keep their electronic comments confidential and for those who are unable, for whatever reason, to use the Internet site. Please submit email comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: AD42" and your name and return address in your email message.

You may examine documents pertinent to this proposal at the L Street address. Comments, including names and street addresses of respondents, will be available for public review on the Internet address above and may be published as part of the EIS. Individual respondents may request confidentiality.

FOR FURTHER INFORMATION CONTACT: Kenneth Visser at (202) 452–7743, for information relating to the grazing program or the substance of the regulations to be proposed, or Ted Hudson at (202) 452–5042 or Cynthia Ellis at (202) 452–5012 for information relating to the rulemaking process. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Description of Information Requested

I. Public Comment Procedures

Your written comments should:

1. Be specific;
2. Explain the reason for your comments and suggestions;
3. Be about the issues outlined in this notice; and,
4. Where possible, reference the specific section or paragraph of existing regulations that you are addressing.

The comments and recommendations that are most useful and likely to influence decisions on the content of a proposed rule are:

1. Comments and recommendations supported by quantitative information or studies; and

2. Comments that include citations to and analyses of the applicable laws and regulations.

We are particularly interested in receiving comments and suggestions about the topics listed under III. Description of Information Requested.

If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. We will honor such requests to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

We will conduct public scoping meetings on the Environmental Impact Statement associated with this proposed rulemaking. The meetings will be held on the following dates at the specified locations and times:

Location	Date and time	Address of meeting	Contact person
Billings, Montana	March 18, 2003 6–10 p.m.	Holiday Inn Grand Montana, 550 Midland Road, Billings, MT 59101.	Mary Apple (406) 896–5258
Reno, Nevada	March 20, 2003 6–10 p.m.	Reno Sparks Convention Center, 4590 S. Virginia St., Reno, NV 89502.	JoLynn Worley (775) 861–6515
Albuquerque, New Mexico	March 25, 2003 6–10 p.m.	Hilton of Albuquerque, 1901 University Blvd., NE., Albuquerque, NM 87102.	Kitty Mulkey (505) 438–7511
Washington, DC	March 27, 2003 1–5 p.m.	Courtyard By Marriott (General Scott Room), 1600 Rhode Island Ave., NW., Washington, DC 20036.	Tom Gorey (202) 452–5137

The sites for the public meetings are accessible to individuals with physical impairments. If you need a special accommodation to participate in one or all of the meetings (e.g., interpreting service, assistive listening device, or materials in alternative format), please notify the contact person listed in this notice no later than two weeks prior to the scheduled meeting. Although we will attempt to meet all requests received, the requested accommodations may not always be available.

If you plan to present a statement at the meetings, we will ask you to sign in before the meeting starts and identify yourself clearly for the record. Your speaking time at the meeting(s) will be determined before the meeting(s), based upon the number of persons wishing to speak and the approximate time available for the session. You will be provided at least three minutes to speak

If you do not wish to speak at the meetings but you have views, questions, and concerns about regulations for the BLM's Range Management Program, you may submit written statements for inclusion in the public record at the meeting. You may also submit written comments and suggestions regardless of whether you attend or speak at a public meeting. See the **ADDRESSES** section of this notice for where to submit comments.

II. Background

In this issue of the **Federal Register** BLM is also publishing a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) on the changes we are considering making to the regulations governing BLM's Grazing Administration Program. BLM is committed to making the changes to reflect the Secretary's "4C's" philosophy of "consultation, cooperation, and communication all in the service of conservation." BLM is issuing this Advance Notice of Proposed Rulemaking and the NOI to give the public and interested parties early information about the proposed action, the potential range of alternatives, and the nature of impact analysis being considered in the EIS. We will hold meetings during which the public will be able to comment on the scope, proposed action, and possible alternatives BLM should consider when drafting the proposed rule. BLM seeks comments on this Advance Notice of Proposed Rulemaking.

Since the first set of grazing regulations was issued after passage of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315a–315r), the regulations have been periodically modified, revised, and updated. The last major revision effort culminated when BLM published and implemented comprehensive changes to the grazing regulations in 1995.

The changes BLM is considering would encourage partnerships in public land stewardship and establish new options for BLM and rangeland users in the administration and management of public lands. Our goals are to:

(1) Enhance community-based conservation and citizen-centered stewardship;

(2) improve BLM business practices; and

(3) provide greater flexibility for the manager and the permittee.

III. Description of Information Requested

BLM is committed to carrying out the Secretary's objectives and the Rangeland Management Program established by the Federal Land Policy Management Act of 1976 (43 CFR 1740), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901–1908), and the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315a–315r). We encourage the public to participate in planned public meetings and to provide comments and suggestions to help us clearly define needed changes in the Grazing Administration Program. We specifically are requesting comments on the topics we are considering for the proposed rule. These include, but are not limited to, the following:

A. Definitions; We are considering revising or creating definitions of the following terms:

Active use
Authorized use
Base property
Grazing lease
Grazing permit
Grazing Preference or Preference
Livestock kind or kind of livestock
Monitoring
Reserve common allotment

B. We are considering changing regulations to clarify current requirements and to allow better rangeland management and permit administration. Changes we are considering include:

- Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans.
- Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease.
- Clarifying the provisions addressing grazing preference transfers.
- Reinstating an earlier provision that BLM and the permit holder may share title to certain range improvements if the improvement was constructed under a Cooperative Range Improvement Agreement.
- Clarifying that BLM will follow state law with respect to the acquisition of water rights.
- Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private land and improve livestock operations.
- Clarifying which non-permit related violations BLM may take into account in penalizing a permittee.
- Considering ways to streamline the grazing decision appeal process.
- Extending the time period that BLM may approve nonuse of forage from 3 to 5 years for resource improvement, business, or personal needs.

C. We are also considering amendments related to changes in permitted use. Amendments we are considering include:

- Creating provisions re-emphasizing consideration of social, economic, and cultural impact, in addition to the ecological impacts, of Federal actions to ensure compliance with the National Environmental Policy Act.
- Requiring a permittee/lessee to apply to renew a permit or lease.
- What criteria BLM will consider before approving increases in permitted use.
- Considering whether to amend the provision stating when BLM will implement action that changes grazing management after determining that the allotments used by a permittee or lessee are not meeting or significantly progressing toward meeting land health standards.

D. We are considering adding the following new provisions to the regulations.

- Establishing and administering a new concept called "Reserve Common Allotments" (RCA). RCAs would be managed as reserve forage areas for use by permittees whose allotments are undergoing restoration treatments and require rest from grazing. RCA forage would be allocated on a temporary non-renewable basis to permittees participating in restoration on their allotments.
- Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement/supplemental billing under existing service charge authority. We do not intend to address grazing fees in this rulemaking.

E. We also plan to make minor revisions to correct typographical errors and to make technical changes to improve the clarity of the rule. One change we will make is to remove references to "conservation use" permits to reflect the decision in *Public Lands Council* v. *Babbitt*, 929 F.Supp. 1436 (D. Wyo. 1996), *rev'd in part and aff'd in part*, 167 F.3d 1287 (10th Cir. 1999), *aff'd*, 529 U.S. 728 (2000).

Additional information about BLM's Rangeland, Soils, Water, and Air Program is available at *http://web.blm.gov/internal/wo-200/wo-220/index.html*.

Dated: January 17, 2003.

Rebecca W. Watson,

Assistant Secretary of the Interior.

[FR Doc. 03–4933 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 6]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a one-day public meeting to address issues raised at a recent workshop jointly organized by the Interstate Natural Gas Association of America (INGAA) Foundation and the American Gas Association (AGA) on the proposed 49 CFR part 192.763, "Pipeline Integrity Management in High Consequence Areas". This meeting is intended to give participants a better understanding of the proposed rule. OPS representatives will give an overview of the proposed regulation and will fully discuss identification of high consequence areas and moderate risk areas; confirmatory direct assessment methods; assessment schedules, and criteria for the performance approach to the program. RSPA/OPS is also seeking information on the costs and benefits of implementing the proposed requirements.

ADDRESSES: The meeting is open to all. There is no cost to attend. This meeting will be held on Friday March 14, 2003, from 9 a.m. to 5 p.m. at the Marriott at Metro Center hotel located at 775 12th Street, NW., Washington, DC; Tel: 202–737–2200); fax: 202–347–5886; website: *www.marriott.com*. You may register electronically for this meeting at: *http://primis.rspa.dot.gov/meetings*. Please make your reservations as soon as possible as hotel rooms are limited. For other details on this meeting contact Janice Morgan at 202–366–2392.

You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. You may also submit comments to the docket electronically. To do so, log on to the Internet Web address *http://dms.dot.gov*. And click on "Help" for instructions on electronic filing of comments. All written comments should identify the docket number RSPA–03–14448; Notice 3.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comments, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Jenny Donohue by phone at (202) 366–4046, regarding this document. General information about RSPA/OPS programs may be obtained by accessing RSPA's Internet page at *http://rspa.dot.gov*.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance, contact Janice Morgan, (202) 366–2392.

SUPPLEMENTARY INFORMATION:

Background

To better prevent pipeline failures that can imperil the health and safety of nearby residents and cause significant damage to their property, RSPA/OPS is promulgating a series of rules to require pipeline operators to develop integrity management programs. The programs include conducting baseline and periodic assessments of certain pipeline segments. Although the hazardous liquid and natural gas programs are structured somewhat differently to accommodate the differences between the two types of pipeline systems, both integrity management programs are designed to identify the best method(s) for maintaining the structural soundness (*i.e.*, integrity) of pipelines operating across the United States.

On January 9, 2002, RSPA/OPS began the integrity management rulemakings for gas transmission lines by first proposing a definition of high consequence areas (*See* 67 FR 1108). We also described our plan to propose integrity management program requirements for gas transmission pipelines affecting those areas. RSPA/OPS finalized the high consequence area definition on August 6, 2002 (67 FR 50824), and published the proposed rule on integrity management program requirements on January 28, 2003 (68 FR 4278).

This meeting is being held to give participants a better understanding of the proposed rule. OPS representatives will give an overview of the proposed rule and discuss fully the identification and protection of high consequence areas and moderate risk areas; and the methodology of confirmatory direct assessment. OPS will answer any questions related to the proposed rule and will seek additional information from the public about costs and benefits of implementing the proposed rule.

The preliminary agenda for this meeting is as follows:

Pipeline safety legislation—The impact of the recently passed legislation on integrity management program requirements.

Overview of proposed regulation—The intent and structure of the proposed rule.

HCA Identification—The refinement of the definition of high consequence areas and moderate risk areas in the proposed rule.

Risk assessment, plan development, and data integration—Proposed risk assessment, with particular emphasis on confirmatory direct assessment methods, and the proposed plan development process, identification of high consequence areas and moderate risk areas; confirmatory direct assessment methods; assessment schedules, and criteria for the performance approach to the program.

IMP Implementation & Data Integration

Costs and benefits—The draft regulatory evaluation.

Open Forum & Q&A

Issued in Washington, DC, on February 26, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–4919 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 030128024–3024–01; I.D. 121002A]

RIN 0648–AQ63

Fisheries of the United States; National Standard 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of revision to national standard 1 guidelines; extension of comment period.

SUMMARY: NMFS extends the public comment period on an advanced notice of proposed rulemaking that announces that the agency is considering revisions to the national standard guidelines for national standard 1 that specify criteria for determining overfishing and establishing rebuilding schedules. Because the scientific community, fisheries managers, the fishing industry, and environmental groups expressed concern about the appropriateness of some aspects of national standard 1 guidelines, particularly in light of new issues arising from rebuilding programs that have been underway for several years, this action solicits public input on the effectiveness and appropriateness of the these guidelines in complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comment period is extended from March 17, 2003, to April 16, 2003.

ADDRESSES: Comments may be mailed to Mr. John H. Dunnigan, Director, Office of Sustainable Fisheries, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301–713–1193. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Mark R. Millikin, at 301–713–2341 or via e-mail at *Mark.Millikin@noaa.gov*.

SUPPLEMENTARY INFORMATION: The preamble of the advance notice of proposed rulemaking (ANPR)(68 FR 7492, February 14, 2003) is republished here in its entirety for the convenience of the public. This action extends the public comment period of the ANPR another 30 days, from March 17, 2003, to April 16, 2003.

National standard 1 reads, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." In 1996, the Sustainable Fisheries Act (SFA) amended the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) to, among other things, provide definitions for "overfishing" and modify the definition of "optimum yield." The Magnuson-Stevens Act, in section 303(a)(10), now requires each fishery management plan (FMP) to "specify objective and measurable criteria for identifying when the fishery to which the FMP applies is overfished." In addition, section 304(e) specifies requirements for rebuilding overfished fisheries. The revised national standard guidelines, including national standard 1, were proposed at 62 FR 41907, August 4, 1997, and published as final guidelines at 63 FR 24212, May 1, 1998.

As they currently exist, the national standard 1 guidelines provide definitions and require determination, to the extent possible, of maximum sustainable yield (MSY), or an acceptable surrogate; specification of status determination criteria including a maximum fishing mortality threshold and a minimum stock size threshold; ending overfishing and rebuilding overfished stocks; and specification of optimum yield (OY) in fisheries.

In response to the SFA, these national standard guidelines were implemented in 1998, over 5 years ago. Since that time, we have developed new perspectives, new issues, and new problems regarding their application. Concerns that have been identified for possible revision include, but are not limited to, the following:

1. The definition and use of the minimum stock size threshold (MSST) for determining when a stock is

overfished. There has been considerable discussion about the utility of the concept of MSST, the definition of MSST contained in the guidelines, difficulties in estimating the MSST (especially in data-poor situations), and identifying appropriate proxies for MSST.

2. Calculation of rebuilding targets appropriate to the prevailing environmental regime. Currently, the guidelines do not address how rebuilding targets should accommodate changing environmental conditions. Rebuilding rates based upon current stock productivity may be inconsistent with rebuilding targets based upon historical stock productivity when there are persistent, long-term changes in environmental conditions.

3. Calculation of maximum permissible rebuilding times for overfished fisheries. The SFA established a maximum allowable 10–year rebuilding time for a fishery, except where the biology of the fish will not allow it or the fishery is managed under an international agreement. If the minimum time for a fishery to rebuild is 10 years or greater, the maximum allowable rebuilding time under the guidelines becomes the time to rebuild in the absence of any fishing mortality, plus one mean generation time. This has created a discontinuity where the difference in allowable rebuilding times between a stock with a minimum rebuilding time of 9 years and another stock with a minimum rebuilding time of 11 years, may be several decades in the case of long-lived species. This results in the need for much more restrictive management measures in the first case compared to the second, even though there is not much difference between them in terms of rebuilding potential.

4. The definitions of overfishing as they relate to a fishery as a whole or a stock of fish within that fishery. There are currently over 900 fish stocks identified for the purpose of determining their status with regard to overfishing, many of which are caught in small amounts and whose status is unknown. Combining assessments and status determination criteria for assemblages of minor stocks may make more sense biologically and economically than attempting to assess and manage them one by one. Further guidance is needed on the most ecologically sound and economically expedient ways to manage these fisheries.

5. Procedures to follow when rebuilding plans require revision after initiation, especially with regard to modification of the rebuilding time frame. The guidelines do not currently address what to do when observed rebuilding rates are greater or lower than expected or when new assessments change estimates of rebuilding targets or other parameters.

NMFS solicits input from the public regarding: (1) whether or not the national standard 1 guidelines should be revised and (2) if revisions are desired, what parts of the national standard 1 guidelines should be revised, how they should be revised, and why. NMFS will use the information in determining whether to proceed with a revision to the existing guidelines, and if so, the issues to be addressed.

The ANPR was published in the **Federal Register** on February 14, 2003 (68 FR 7492). The comment period for that action was scheduled to end on March 17, 2003. NMFS decided to extend the comment period for the ANPR for another 30 days to give the public additional time to review the national standard guidelines in 50 CFR part 600 as they pertain to national standard 1.

This advance notice of proposed rulemaking has been determined to be significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–4886 Filed 2–26–03; 2:55 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020503A]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Scoping Process; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of scoping meeting; request for comments; correction.

SUMMARY: NMFS published a notification announcing that the Mid-Atlantic and New England Fishery Management Councils (Councils) intended to prepare jointly, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures for managing the spiny dogfish (*Squalus acanthias*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The Councils are developing Amendment 1 to the Spiny Dogfish Fishery Management Plan (FMP) to address rebuilding targets and timeframes, methods to estimate discard mortality and reduce discarding, the quota allocation scheme, and other potential management measures as well. The notification announced a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to management of spiny dogfish and requested public participation in the process. The intent of this document is to correct the date of the scoping meeting announced in the February 18, 2003, published notification.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, 302–674–2331.

SUPPLEMENTARY INFORMATION: On February 18, 2003, NMFS published the notice of intent to prepare an EIS in the **Federal Register** (68 FR 7749). In addition to issues related to the preparation of the EIS, NMFS announced a scoping meeting to be held on Monday, March 17, 2003, at 7 p.m., at the Sheraton Oceanfront Hotel (36th Street & Atlantic Ave.), in Virginia Beach, VA. This document corrects the date of the scoping meeting from March 17, 2003, to March 18, 2003, at 7 p.m. at the same location.

Need for Correction

As published, the document of February 18, 2003 (68 FR 7740), which was the subject of document FR Doc. 03–3845, is corrected as follows:

1. On page 7749, third column, under **DATES**, third line, remove "Monday, March 17," and add "Tuesday, March 18," in its place.

2. On page 7749, third column, second paragraph, under **ADDRESSES**, second line, remove "March 17, " and add "March 18," in its place.

3. On page 7750, second column, under Public Scoping Meeting Schedule, third line down, remove "March 17" and insert "March 18".

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4821 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 41
Monday, March 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Mission Brush, Bonners Ferry Ranger District, Idaho Panhandle National Forests; Boundary County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Bonners Ferry Ranger District of the Idaho Panhandle National Forests is proposing rehabilitation of the vegetation in the Brush Creek and Mission Creek watersheds, identified as the Mission Brush project area. These watersheds are located 14 and 19 miles, respectively, north of Bonners Ferry, Idaho. Priorities are treatment of stands of off-site Ponderosa pine and dry sites, and taking steps to begin restoring the diversity that was found historically in mixed conifer stands. The project, as proposed, will provide additional benefits to the water resources and result in some reduction of fuels adjacent to private property in a portion of the project area. The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of implementing vegetative and aquatic restoration activities on National Forest System lands within the project area.

DATES: Comments, suggestions, or requests to be placed on the project mailing list, should be received on or before April 1, 2003. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April 2002.

ADDRESSES: Submit written comments and suggestions on the proposal or requests to be placed on the project mailing list to Doug Nishek, Project Team Leader, Bonners Ferry Ranger District, Route 4, Box 4860, Bonners Ferry, Idaho 83805–9764, e-mail address: *dnishek@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Doug Nishek, project leader, Bonners Ferry Ranger District, (208) 267–5561, e-mail address: *dnishek@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The purpose and need for this project is derived from the Land and Resource Management Plan for the Idaho Panhandle National Forests, the Interior Columbia Basin Ecosystem Management Project (ICBEMP), the Northern Region Overview and the Kootenai River basin Geographic Assessment (GA). Findings from these studies document the dense, insect- and disease-prone state of the dry-site ecosystems across the Idaho Panhandle National Forests and the Kootenai River basin. These large-scale analyses describe the changes these ecosystems have undergone over the past century, such as a significant loss in the once-dominant western white pine in northern Idaho. Current conditions are causing concern due to increased wildfire hazard and potential for severe fires. Site-specific information indicates these conditions are present in Mission Creek and Brush Creek watersheds.

Initial assessment identified insect and disease problems placing stands at a high risk of serious losses through tree mortality and the resulting changes in habitat structure. The same is true for stands planted with off-site Ponderosa pine following wildfire in 1945. Lodgepole pine stands are at high risk of mountain pine beetle infestation. Western white pine is no longer a key component of these forests.

Objectives of this project are two-fold, as follows: On dry sites begin restoration of historical vegetative conditions that favored development of large, open-grown stands of ponderosa pine and western larch; and, in the mixed conifer and subalpine forests increase size, species, and age-class diversity through treatments to begin returning western white pine to its historical role and treating lodgepole pine stands at high risk to insects. The management activities would reduce fuel loadings and potential for severe fires on National Forest System lands adjacent to private property in the western portion of the Mission Creek drainage. Water quality and aquatic resources would benefit from reconstruction of portions of roads to reduce the amount of sediment entering streams. There will also be opportunities to improve recreation facilities in the Brush Lake area.

Preliminary issues include forest health, water quality, timber supply and demand, wildlife, fish, and plant species.

The Forest Service will consider a range of alternatives, including the "no action" alternative, under which there would be no change from current management of the area. Additional alternatives will represent a range of strategies to accomplish the goals of this project. The Forest Plan provides guidance for management objectives within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Inland Native Fish Strategy guidelines (USDA Forest Service, 1995) supersede Forest Plan guidelines established for riparian areas.

The first public notice of proposed management activities in this area was made in July 1997 for a project identified as Mission Round Prairie environmental assessment (EA). At that time the Forest Service was assessing the conditions and proposing treatments in a larger area that also included Round Prairie Creek, Gillon Creek and Hellroaring Creek watersheds. The Mission Brush project will analyze management strategies in the watersheds identified as high priority through that initial assessment. Based on scoping and changes in Agency direction the Forest Service believes an EIS is the appropriate level of documentation. Members of the public are encouraged to visit with Forest Service officials during the analysis and prior to the decision. Comments provided by the public and other agencies will be used to develop strategies for management of natural resources in the project area. Comments received during the earlier scoping and analysis for the Mission Round Prairie EA will be considered during the environmental analysis for this EIS and will be a part of the public record. People, organizations and agencies on the Mission Round Prairie mailing list will be included in the Mission Brush EIS mailing list. The Forest Service is also seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations that may be interested in or affected by the proposed actions.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April 2003. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register.** The comment period on the draft environmental impact statement will end 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is anticipated that a final environmental impact statement will be published in June, 2003. A Record of Decision will also be published at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation to the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 5129,553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

I am the responsible official for this environmental analysis. My address is Idaho Panhandle National Forest, 3815 Schreiber Way, Coeur d'Alene, ID 83814.

Dated: February 24, 2003.

Ranotta McNair,

Forest Supervisor.

[FR Doc. 03–4855 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–121–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–01–A]

Opportunity for Designation in the Grand Forks (ND), Idaho, Lewiston (ID), Minnesota, Ohio Valley (IN), and Utah Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in September and November 2003. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies: Grand Forks Grain Inspection Department, Inc. (Grand Forks); Idaho Grain Inspection Service, Inc. (Idaho); Lewiston Grain Inspection Service, Inc. (Lewiston); Minnesota Department of Agriculture (Minnesota); Ohio Valley Grain Inspection, Inc. (Ohio Valley); and Utah Department of Agriculture and Food (Utah).

DATES: Applications and comments must be postmarked or electronically dated on or before April 1, 2003.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604; FAX 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647–S, 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

1. CURRENT DESIGNATIONS BEING ANNOUNCED FOR RENEWAL

Official agency	Main office	Designation start	Designation end
Grand Forks	Grand Forks, ND	10/01/2002	09/30/2003
Idaho	Pocatello, ID	12/01/2000	11/30/2003
Lewiston	Lewiston, ID	12/01/2000	09/30/2003
Minnesota	Saint Paul, MN	01/01/2001	09/30/2003
Ohio Valley	Evansville, IN	11/01/2000	09/30/2003
Utah	Salt Lake City, UT	12/01/2000	09/30/2003

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Grand Forks.

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State Route 200 west-northwest to the western Traill County line; the western Traill County line; the southern Grand Forks and Nelson County lines; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Grand Fork's assigned geographic area does not include the following grain elevators inside Grand Fork's area which have been and will continue to be serviced by the following official agencies: Fessenden Coop Association, Fessenden; and Fessenden Coop Association, Manfred; both in Wells County (located in Grain Inspection, Inc.'s area ; and Harvey Farmers Elevator, Harvey, Wells County (located in Minot Grain Inspection, Inc.'s area. b.

Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Idaho, is assigned to Idaho.

The southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Idaho, is assigned to Lewiston.

The northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

d. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Minnesota, except those export port locations within the State, is assigned toMinnesota.

e. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Indiana, Kentucky, and Tennessee, is assigned to Ohio Valley.

Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties, Indiana.

Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties, Kentucky.

Cheatham, Davidson, and Robertson Counties, Tennessee.

f. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Utah, is assigned to Utah.

2. Opportunity for Designation

Interested persons, including Grand Forks, Idaho, Lewiston, Minnesota, Ohio Vally, and Utah, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning October 1, 2003, and ending September 30, 2006. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *www.usda.gov/gipsa/oversight/parovreg.htm*.

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Grand Forks, Idaho, Lewiston, Minnesota, Ohio Vally, and Utah, official agencies. Commenters are encouraged to submit pertinent data concerning the these official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–4872 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–03–S]

Designation for the Jamestown (ND), Lincoln (NE), Memphis (TN), Omaha (NE), Sioux City (IA), and Tischer (IA) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Grain Inspection, Inc. (Jamestown); Lincoln Inspection Service, Inc. (Lincoln); Memphis Grain Inspection Service (Memphis); Omaha Grain Inspection Service, Inc. (Omaha); Sioux City Inspection and Weighing Service Company (Sioux City); and A. V. Tischer and Son, Inc. (Tischer).

EFFECTIVE DATES: April 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 3, 2002, **Federal Register** (67 FR 56264), GIPSA asked persons Interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by October 1, 2002.

Jamestown, Lincoln, Memphis, Omaha, Sioux City, and Tischer were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Jamestown, Lincoln, Memphis, Omaha, Sioux City, and Tischer are able to provide official services in the geographic areas specified in the September 3, 2002, **Federal Register**, for which they applied, Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start–end
Jamestown	Jamestown, ND, 701–252–1290	04/01/2003–03/31/2006
Lincoln	Lincoln, NE, 402–435–4386	04/01/2003–03/31/2006
Memphis	Memphis, TN, 901–942–3216, Additional Service Location: North Little Rock, AR.	04/01/2003–03/31/2006
Omaha	Omaha, NE, 402–341–6739	04/01/2003–03/31/2006
Sioux City	Sioux City, IA, 712–255–8073	04/01/2003–03/31/2006
Tischer	Fort Dodge, 515–955–7012	04/01/2003–03/31/2006

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–4873 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of application filing deadline.

SUMMARY: The Rural Utilities Service (RUS) announces its Distance Learning and Telemedicine Program application window for funding during fiscal year (FY) 2003. For FY 2003, $27 million in grants and $300 million in loans will be made available for distance learning and telemedicine projects serving rural America. The funding will be provided in three categories: (1) $17 million will be available for grants; (2) $200 million will be available for loans; and (3) $110 million will be available for combination grants and loans ($100 million in loans paired with $10 million in grants, *i.e.*, $100 loan: $10 grant ratio).

DATES: Applications for grants must be postmarked no later than May 2, 2003. Applications for FY 2003 loans or combination loans and grants may be submitted at anytime up to July 31, 2003, and will be processed on a first-come, first serve basis.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division, Telecommunications Program."

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Branch Chief, Distance Learning and Telemedicine Branch, U.S. Department of Agriculture, Rural Utilities Service, STOP 1550, Room 2838, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–1550. Telephone: (202) 720–0413, FAX: (202) 720–1051.

SUPPLEMENTARY INFORMATION: For FY 2003, $17 million in grants, a combination of $10 million in grants paired with $100 million in loans, and $200 million in loans will be made available for distance learning and telemedicine projects. RUS encourages early submission of grant applications to determine whether all required items specified in 7 CFR 1703.125 are clearly in form, identifiable, and complete. RUS will examine, provide comment, and return applications that include items that would disqualify them from further consideration for modification if they are submitted by April 2, 2003. All applications for grants must be postmarked no later than May 2, 2003, to be eligible for FY 2003 grant funding. Each application will be reviewed for completeness in accordance with 7 CFR part 1703, subparts D, E, F, and G. Ineligible applications will be returned within 15 working days of receipt.

Notice is hereby given that under 7 CFR 1703.124, 1703.133, and 1703.143, RUS has determined the maximum amount of an application for a grant that will be considered for funding in FY 2003 as $500,000. The maximum amount for a loan, generally, that will be considered for funding in FY 2003 is $10 million. However, RUS may fund a project greater than $10 million subject to the project's feasibility and the availability of loan funds.

Applications for financial assistance must be submitted in accordance with 7 CFR part 1703, subparts D, E, F, and G, which establish the policies and procedures for submitting an application for financial assistance. These subparts and an application guide to assist in the preparation of applications are available on the Internet at the following address: *http://www.usda.gov/rus/telecom/dlt/dlt.htm*. Application guides may also be requested from RUS by contacting the Distance Learning and Telemedicine Branch, USDA–RUS, Phone: (202) 720–0413.

Dated: February 25, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–4949 Filed 2–28–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–2002]

Foreign-Trade Zone 50—Long Beach, CA; Application for Subzone Status; Amendment of Application—Ricoh Electronics, Inc. (Copiers, Printers, Thermal Paper and Related Products)

Notice is hereby given that the application of the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, requesting special-purpose subzone status for the copier, printer, thermal paper and related products

manufacturing plant of Ricoh Electronics, Inc. (Ricoh), at sites in the Orange County, California, area (67 FR 72641, 12/6/02), has been amended to include additional products in its scope of manufacturing authority under zone procedures and to clarify certain elements of its proposed FTZ inventory management procedures.

The applicant is requesting to add electrical machines having individual functions not specified elsewhere (HTSUS 8543) to its imported parts list; and, photographic film in rolls, sensitized and unexposed (HTSUS 3702); other plastic plates, sheets, film, foil and strips (HTSUS 3921); other office machines (HTSUS 8472); and electrical machines having individual functions not specified elsewhere (HTSUS 8543) to its finished product list.

It also seeks to clarify its proposed FTZ inventory management procedures with respect to its thermal paper products. Master rolls of both thermal tag paper (HTSUS 4811.90.8000) and synthetic thermal paper (HTSUS 4811.51.2050) will be entered into U.S. Customs territory from the proposed subzone, instead of customer specified lengths of thermal tag paper and synthetic thermal paper (HTSUS 4811.90.9000 and HTSUS 4811.51.6000, respectively). The applicant indicates that this would simplify and facilitate FTZ entry procedures for these final products.

The application remains otherwise unchanged.

The comment period is reopened until April 2, 2003.

Dated: February 20, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–4923 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2002]

Foreign-Trade Zone 26—Atlanta, GA; Application for Subzone Status; Amendment of Application—Ricoh Electronics, Inc. (Copiers, Printers, Thermal Paper and Related Products)

Notice is hereby given that the application of the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting special-purpose subzone status for the toner cartridges, related toner products, and thermal paper products manufacturing plant of Ricoh Electronics, Inc. (Ricoh) in Lawrenceville, Georgia (67 FR 72642, 12/6/02), has been amended to include additional products in its scope of manufacturing authority under zone procedures and to clarify certain elements of its proposed FTZ inventory management procedures.

The applicant is requesting to add electrical machines having individual functions not specified elsewhere (HTSUS 8543) to its imported parts list; and, photographic film in rolls, sensitized and unexposed (HTSUS 3702); other plastic plates, sheets, film, foil and strips (HTSUS 3921); and electrical machines having individual functions not specified elsewhere (HTSUS 8543) to its finished product list.

It also seeks to clarify its proposed FTZ inventory management procedures with respect to its thermal paper products. Master rolls of both thermal tag paper (HTSUS 4811.90.8000) and synthetic thermal paper (HTSUS 4811.51.2050) will be entered into U.S. Customs territory from the proposed subzone, instead of customer specified lengths of thermal tag paper and synthetic thermal paper (HTSUS 4811.90.9000 and HTSUS 4811.51.6000, respectively). The applicant indicates that this would simplify and facilitate FTZ entry procedures for these final products.

The application remains otherwise unchanged.

The comment period is reopened until April 2, 2003.

Dated: February 20, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–4924 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in § 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with § 351.213(2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of March 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period
Antidumping Duty Proceeding	
Bangladesh: Cotton Shop Towels, A–538–802	3/1/02—2/28/03
Brazil: Certain Hot-Rolled Carbon Steel Flat Products, A–351–828	3/12/02—2/28/03
Canada: Iron Construction Castings, A–122–503	3/1/02—2/28/03
France:	
Brass Sheet & Strip, A–427–602	3/1/02—2/28/03
Stainless Steel Bar, A–427–820	8/2/01—2/28/03
Germany:	
Brass Sheet & Strip, A–428–602	3/1/02—2/28/03
Stainless Steel Bar, A–428–830	8/2/01—2/28/03
India: Sulfanilic Acid, A–533–806	3/1/02—2/28/03
Italy:	
Brass Sheet & Strip, A–475–601	3/1/02—2/28/03

	Period
Stainless Steel Bar, A–475–829	8/2/01—2/28/03
Japan: Stainless Steel Butt-Weld Pipe Fittings, A–588–702	3/1/02—2/28/03
Republic of Korea: Stainless Steel Bar, A–580–847	8/2/01—2/28/03
Spain: Stainless Steel Bar, A–469–805	3/1/02—2/28/03
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing, A–583–803	3/1/02—2/28/03
Thailand: Circular Welded Carbon Steel Pipes & Tubes, A–549–502	3/1/02—2/28/03
The People's Republic of China:	
Chloropicrin, A–570–002	3/1/02—2/28/03
Glycine, A–570–836	3/1/02—2/28/03
United Kingdom: Stainless Steel Bar, A–412–822	8/2/01—2/28/03
Countervailing Duty Proceeding	
France: Brass Sheet and Strip, C–427–603	1/1/02—12/31/02
India: Sulfanilic Acid, C–533–807	1/1/02—12/31/02
Iran: In-Shell Pistachios Nuts, C–507–501	1/1/02—12/31/02
Italy: Stainless Steel Bar, C–475–830	6/6/01—12/31/02
Pakistan: Cotton Shop Towels, C–535–001	1/1/02—12/31/02
Turkey: Welded Carbon Steel Pipes and Tubes, C–489–502	1/1/02—12/31/02

Suspension Agreements

None.

In accordance with § 351.213(b) of the regulations, an interested party as defined by § 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with §351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of March 2003. If the Department does not receive, by the last day of March 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 25, 2003.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 03–4929 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–847]

Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Determination To Revoke the Order in Part: Certain Cut-to-Length Carbon-Quality Steel Plate Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review and determination to revoke order in part.

SUMMARY: On January 10, 2003, the Department of Commerce (the Department) published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain cut-to-length carbon-quality steel plate (CTL plate) products from Japan. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Japan*, 68 FR 1436 (January 10, 2003) (*Initiation and Preliminary Results*). We are now revoking this order, in part, with respect to the particular abrasion-resistant steel products meeting the specifications described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to these particular abrasion-resistant steel products. The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of the abrasion-resistant steel products meeting the specifications indicated below, entered or withdrawn from warehouse, for consumption on or after February 1, 2002, the day after the most recent time period for which the Department has issued assessment instructions to Customs (02/01/2001–01/31/2002).

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Mark Manning, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230; telephone (202) 482–5505 and 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2002, NKK Corporation (NKK) and Mitsubishi International Steel, Inc. (MISI) requested that the Department revoke the antidumping duty order on CTL plate from Japan with respect to two abrasion-resistant steel products produced by NKK: "NK–EH–360 (NK Everhard 360)" and "NK–EH–500 (NK Everhard 500)." *See* NKK's and MISI's letter to the Secretary, dated November 27, 2002 (*Changed Circumstances Review Request*). Specifically, NKK and MISI requested that the Department revoke the order with respect to imports meeting the following detailed product descriptions: (1) NK–EH–360: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; (b) Heat Treatment: Controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max; and (2) NK–EH–500: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; (b) Heat Treatment: Controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max. *See Changed Circumstances Review Request* at 2. The order with regard to imports of other CTL plate from Japan is not affected by this request.

On December 17 and 18, 2002, Bethlehem Steel Corporation, IPSCO Steel Inc., Nucor Corporation, and United States Steel Corporation, petitioners in the antidumping duty investigation of CTL plate from Japan (with the exception of Nucor Corporation), stated that they do not object to the exclusion of these two NKK products from the scope of the order. *See* Memorandum to the File from Jack Dulberger, Financial Analyst, "Telephone Discussions With Legal Counsel For Petitioners Regarding Continued No Interest," dated December 19, 2002, which is on file in Import Administration's Central Records Unit, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room B–099, Washington, DC 20230. Subsequently, as noted above, we published the *Initiation and Preliminary Results* and gave interested parties an opportunity to comment on the Department's preliminary results of review. We received no comments from interested parties.

New Scope Based on This Changed Circumstances Review

The products covered by this antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of these orders are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of these orders are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these orders unless otherwise specifically excluded. The following products are specifically excluded from these orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels, *i.e.*, USS AR 400, USS AR 500, NK–EH–360 (NK Everhard 360), NK–EH–500 (NK Everhard 500). (NK–EH–360 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; (b) Heat Treatment: controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max. NK–EH–500 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; (b) Heat Treatment: Controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these orders is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning abrasion-resistant steel products (*i.e.*, NK–EH–360 and NK–EH–500), meeting the specifications described above, constitutes changed circumstances sufficient to warrant partial revocation of this order. Also, no party commented on the *Initiation and Preliminary Results*. Therefore, the Department is partially revoking the order on CTL plate from Japan with regard to abrasion-resistant steel products (*i.e.*, NK–EH–360 and NK–EH–500) which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(d)(2002).

The Department will instruct Customs to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of abrasion-resistant steel products (*i.e.*, NK–EH–360 and NK–EH–500) meeting the specifications indicated above, entered or withdrawn from warehouse, for consumption on or after February 1, 2002, the day after the most recent period for which the Department has issued assessment instructions to Customs (02/01/2001–01/31/2002). The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of abrasion-resistant steel products (*i.e.*, NK–EH–360 and NK–EH–500) meeting the specifications indicated above, entered or withdrawn from warehouse, for consumption on or after February 1, 2002, in accordance with section 778 of the Act.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216(e) and 351.222(g) of the Department's regulations.

Dated: February 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4926 Filed 2–28–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jon Freed, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 2002, the Department of Commerce ("Department") published a notice of opportunity to request an administrative review of the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan for the period June 1, 2001, through May 31, 2002. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 38640 (June 5, 2002). On June 25, 2002, Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. ("petitioners") requested an antidumping duty administrative review for the following companies: Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), Liang Feng Stainless Steel Fitting Co., Ltd. ("Liang Feng"), and Tru-Flow Industrial Co., Ltd. ("Tru-Flow") for the period June 1, 2001, through May 31, 2002. On June 28, 2002, Ta Chen requested an administrative review of its sales to the United States during the period of review ("POR"). On July 24, 2002, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 2001, through May 31, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 67 FR 48435 (July 24, 2002). The preliminary results are currently due no later than March 2, 2003.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. Completion of the preliminary results within the 245 day period is impracticable for the following reasons: (1) this review involves certain complex Constructed Export Price ("CEP") adjustments including, but not limited to CEP profit and CEP offset; (2) this review involves complex warehouse expenses in the United States including, but not limited to inland freight and inventory; (3) this review involves complex cost issues with respect to subcontractors' costs of production.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the due date for the preliminary results by 90 days until June 2, 2003, in accordance with section 751 (a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: February 24, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–4925 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–818]

Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Tom Futtner, AD/CVD

Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0651, and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that urea ammonium nitrate solutions (UANS) from the Russian Federation (Russia) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended, (the Act). The estimated margins of sales at LTFV are shown in the *Final Determination of Investigation* section of this notice.

Case History

On October 3, 2002, the Department of Commerce (the Department) published the preliminary determination of sales at LTFV in the antidumping duty investigation of UANS from Russia. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from the Russian Federation*, 67 FR 62008 (October 3, 2002) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

During October 2002, the Department conducted a verification of JSC Nevinnomysskij Azot's (Nevinka's) sales and factors of production (FOP) information. *See* Memorandum from Paige Rivas to the File, "Verification of Sales and Factors of Production Information Reported by Nevinnomysskij Azot," dated December 11, 2002.

On November 1, 2002, the petitioner [1] filed a request for a public hearing in this investigation. However, no hearing was held in this investigation because the petitioner withdrew its request for a hearing.

On November 7, 2002, the Department published a postponement of the final determination of sales at LTFV in the antidumping duty investigation of UANS from Russia. *See Postponement of the Final Determinations in the Less-Than-Fair-Value Investigations of Urea Ammonium Nitrate Solutions From Belarus, the Russian Federation, and Ukraine*, 67 FR 67823 (November 7, 2002).

The petitioner, Nevinka, and JR Simplot filed surrogate value information and data on November 26, 2002.

Parties filed case and rebuttal briefs on January 7 and January 14, 2002, respectively.

Continuation of Investigation

On February 19, 2003, the Department signed a suspension agreement with Nevinka, JSC Kuybyshevazot/Togliatti, and S.P. Novolon/Novomoskovsk. On February 20, 2003, we received a request from the petitioner requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. If the International Trade Commission (ITC) determines that material injury exists, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections 734b(1) and (c) of the Act, as appropriate and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms.

Scope of the Investigation

For purposes of this investigation, the product covered is all mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, regardless of nitrogen content by weight, and regardless of the presence of additives, such as corrosion inhibitors. The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3102.80.00.00. Although the HTSUS item number is provided for convenience and U.S. Customs Service (the Customs Service) purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 2001, through March 31, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Memorandum from Bernard T. Carreau to Faryar Shirzad, "Issues and Decision Memorandum for the Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from the Russian Federation," dated concurrently with this notice (*Decision Memorandum*), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Non-Market Economy

The Department has treated Russia as a nonmarket economy (NME) country in previous antidumping investigations (*see e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From the Russian Federation*, 67 FR 35490 (May 20, 2002); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347, (September 27, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510 (February 4, 2000)). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. On June 6, 2002, the Department revoked Russia's NME status effective April 1, 2002. Because the POI for this investigation precedes the effective date of the market economy determination, this final determination is based on information contained in the NME questionnaire responses submitted by the respondent. Therefore, pursuant to section 771(18)(C) of the Act, the Department has continued to treat Russia as an NME country for the purposes of this investigation.

Separate Rates

In our *Preliminary Determination*, we found that the only responding company, Nevinka, met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the preliminary determination which would warrant reconsideration of our separate rates determination with respect to this company. For a complete discussion of the Department's determination that Nevinka is entitled to a separate rate, see the *Preliminary Determination*.

The Russia-Wide Rate

In the *Preliminary Determination*, we found that the use of a Russia-wide rate was appropriate for other exporters in Russia based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Russian government. Because we have received no comments regarding our decision to apply the Russia-wide rate to all entries of the merchandise under investigation except for entries from Nevinka, we have continued to apply this rate in the final determination. We also determined that, pursuant to section 776(a) of the Act, the Department is required to base the margin for the Russia-wide entity on the facts available, because information necessary to calculate this margin is not available on the record. Further, we determined, pursuant to section 776(b) of the Act, that because the Russia-wide entity had failed to act to the best of its ability by not responding to the Department's requests for information, it was appropriate to use an adverse inference in selecting the facts available. The Russia-wide rate applies to all entries of the merchandise under investigation except for entries from Nevinka.

When analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioner relied in calculating the estimated dumping margin and determined that the margin in the petition was appropriately calculated and supported by adequate evidence, in accordance with the statutory requirements for initiation. In order to corroborate the petition margin for purposes of using it as adverse facts available, we examined the price and cost information provided in the petition in the context of our preliminary determination. For further details, see Memorandum from Paige Rivas to Holly A. Kuga, "Corroboration of Secondary Information," dated September 26, 2002. We received no comments on this decision and continue to find in this final determination that the rate contained in the petition, as recalculated, has probative value.

Since the preliminary determination, we have revised several surrogate values. In order to take into account these values, we have recalculated the petition margin using, where possible, the revised surrogate values. As a result of this recalculation, the Russia-wide rate is, for the final determination, 239.14 percent. *See* Memorandum from Paige Rivas to the File, "Corroboration of Secondary Information," dated February 21, 2003.

Surrogate Country

For purposes of the final determination, we continue to find that Egypt remains the appropriate surrogate country for Russia. For further discussion and analysis regarding the surrogate country selection for Russia, see the *Preliminary Determination*.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, see the *Changes Since the Preliminary Determination* section below.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the *Preliminary Determination*. These adjustments are listed below and discussed in detail in the (1) *Decision Memorandum*, (2) Memorandum from the Team to the File, "Final Factors of Production Valuation Memorandum," dated February 21, 2003, (Factors Memorandum) and (3) Memorandum from the Team to the File, "Calculation Memorandum for the Final Determination," dated February 21, 2003 (Calculation Memorandum).

1. We accepted minor corrections to the FOP database presented at verification. For our final calculations, we used the updated consumption rates submitted by Nevinka at verification. *See* Calculation Memorandum.
2. We calculated a surrogate value for water using the water consumption rate for residential use for Egypt found on the Department's Trade Information Center web page (*http://www.trade.gov/td/tic*), rather than including water in overhead as we did in the preliminary determination. *See* Comment 5 of the *Decision Memorandum*.
3. We calculated a surrogate value for steam energy by converting the energy content for steam, which is measured in gigacalories, to kilowatt hours using the electricity surrogate value calculated in the *Preliminary Determination*, rather than including it in overhead as was done in the *Preliminary Determination*. *See* Comment 5 of the *Decision Memorandum*.
4. In determining U.S. price, we calculated the market economy freight expenses for inland freight for shipments of UANS to the port of export. *See* Calculation Memorandum.
5. We revised the surrogate value for labor and are using the 2000 wage rate for Russia, as corrected on the Department's website in February 2003. *See* Factors Memorandum.
6. We revised our calculation of freight costs for the FOP to include the revised distances identified during verification. *See* Calculation Memorandum.
7. We revised our calculation of the net U.S. price to not include foreign inland freight for observations 7, 8, and 9. *See* Comment 4 of the *Decision Memorandum*.
8. We revised our calculation of the net U.S. price to include billing adjustments, where appropriate. *See* Comment 2 of the *Decision Memorandum*.
9. We revised our calculation of surrogate financial ratios. *See* Comment 6 of the *Decision Memorandum*.

Suspension of Liquidation

On February 19, 2003, the Department signed a suspension agreement with Nevinka. Pursuant to that suspension agreement, we have instructed Customs to terminate the suspension of liquidation of all entries of UANS from Russia. Any cash deposits for entries of UANS from Russia shall be refunded and any bonds shall be released. On February 20, 2003, we received a request from the petitioner that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margins:

Manufacturer/exporter	Weighted-average margin (percent)
JSC Nevinnomysskij Azot	106.98
Russia-Wide Rate	239.14

The Russia-wide rate applies to all entries of the subject merchandise except for entries from Nevinka.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the Agreement will have no force or effect, and the investigation shall be terminated. *See*

[1] The petitioner in this investigation is the Nitrogen Solutions Fair Trade Committee. Its members consist of CF Industries, Inc., Mississippi Chemical Corporation, and Terra Industries Inc.

section 734(f)(3)(A) of the Act. If the ITC determines that such injury does exist, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (c)(l) of the Act, and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Whether the Department Should Continue to Value Natural Gas Using the Price from Gas Producers to the Egyptian Government.

Comment 2: Whether the Department Should Continue to Deny Billing Adjustments.

Comment 3: Whether the Department Should Consider Observation 16 to be Within the POI.

Comment 4: Whether the Department Should Reflect in its Final Determination that Nevinka Did Not Pay Foreign Inland Freight Charges for Observations 7 through 9.

Comment 5: Whether the Department Should Continue to Treat Catalysts, Water, and Water-based Inputs as Overhead Items.

Comment 6: Whether the Department Should Calculate its Surrogate Financial Ratios Based Upon One Egyptian Producer.

[FR Doc. 03–4927 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Suspension of Antidumping Duty Investigation: Urea Ammonium Nitrate Solutions From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 3, 2003.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Thomas F. Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0651, and (202) 482–3814, respectively.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving urea ammonium nitrate solutions (UANS) from the Russian Federation (Russia). The basis for this action is a suspension agreement (the Agreement) between the Department, JSC Nevinnomysskij Azot (Nevinka), JSC Kuybyshevazot/Togliatti, and S.P. Novolon/Novomoskovsk, which together account for substantially all imports of UANS from Russia. In the Agreement, the signatory companies have agreed to cease exports of UANS from Russia to the United States until July 1, 2003, and, following that period, to revise prices to ensure that such exports are sold at or above an agreed reference price.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2002, the Department initiated antidumping duty investigations to determine whether imports of UANS from Lithuania, Belarus, Russia, and Ukraine are being, or are likely to be, sold in the United States at less than fair value (LTFV). *See Initiation of Antidumping Investigations: Urea Ammonium Nitrate Solutions from Belarus, Lithuania, the Russian Federation, and Ukraine*, 67 FR 35492 (May 20, 2002). On June 4, 2002, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of UANS from Belarus, Russia and Ukraine. *See Urea Ammonium Nitrate Solution from Belarus, Lithuania, the Russian Federation and Ukraine*, 67 FR 39439 (June 7, 2002). On October 3, 2002, the Department published its preliminary determination that UANS is being, or is likely to be, sold in the United States at LTFV, as provided in section 733 of the Act (67 FR 62008). *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from the Russian Federation*, 67 FR 62008 (October 3, 2002) (*Preliminary Determination*). The Department and Nevinka initialed a proposed agreement suspending this investigation on January 17, 2003, at which time we invited interested parties to provide written comments on the agreement. We received comments from Agrium US, Inc. on February 5, 2003, the Nitrogen Solutions Fair Trade Committee (the petitioner), Nevinka, the Committee For Competitive Fertilizer Markets, and J.R. Simplot, on February 10, 2003. We have taken these comments into account in the final version of the suspension agreement.

The Department, Nevinka, JSC Kuybyshevazot/Togliatti, and S.P. Novolon/Novomoskovsk signed the final suspension agreement on February 19, 2003.

Accordingly the Department has suspended the investigation pursuant to sections 734(b)(1) and (c) of the Act. Pursuant to section 734(g) of the Act, parties have 20 days from the date of publication of this notice to request a continuation of the investigation.

Scope of Investigation

For a complete description of the scope of the investigation, *see Preliminary Determination*.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. Based on our review of these comments, we have made changes to the originally proposed agreement. In accordance with section 734(c)(l) of the Act, we have determined that extraordinary circumstances are present in this case. *See* Memorandum from Bernard Carreau to Faryar Shirzad, "Existence of Extraordinary Circumstances: Agreement Suspending the Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from the Russian Federation."

In accordance with section 734(c)(l)(A) and (B) of the Act, we have determined that the Agreement provides that the subject merchandise will be sold at or above the established reference price and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all LTFV entries of the producer/exporter examined during the course of the investigation. We have determined that the Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of UANS by imports of that merchandise from Russia. *See* Memorandum from Bernard Carreau to Faryar Shirzad, "The Prevention of Price Suppression or Undercutting of Price Levels in the Suspension Agreement On UANS from the Russian Federation."

In addition, in accordance with section 734(c)(1) of the Act, we have determined that the signatory producers/exporters collectively are the producers and exporters in Russia which, during the antidumping duty investigation of the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States. *See Id.*

Moreover, in accordance with section 734(d) of the Act, we have determined that the agreement is in the public interest, and that the agreement can be monitored effectively. See Memorandum to Faryar Shirzad from Jeffrey May, "Public Interest Assessment of the Agreement Suspending the Antidumping Duty Investigation of UANS from the Russian Federation." We find, therefore, that the criteria for suspension of an investigation pursuant to sections 734(b)(1), (c), and (d) of the Act have been met. The terms and conditions of this agreement, signed February 19, 2003, are set forth in Annex 1 to this notice.

International Trade Commission

In accordance with section 733(f) of the Act, the Department has notified the ITC of the Agreement.

Suspension of Liquidation

Pursuant to section 734(f)(2)(B) of the Act, the suspension of liquidation of all entries of UANS from Russia entered, or withdrawn from warehouse, for consumption, directed in our *Preliminary Determination*, shall continue in effect, subject to subsection 734(h)(3). This suspension of liquidation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published unless a review petition is filed under section 734(h)(1) of the Act.

Notwithstanding the Agreement, the Department will continue the investigation if it receives such a request within 20 days after the date of publication of this notice in the **Federal Register**, in accordance with section 734(g) of the Act.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: February 19, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Annex 1—Agreement Suspending the Antidumping Investigation on Urea Ammonium Nitrate Solutions From the Russian Federation

Pursuant to section 734(b)(1) and (c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b)(1) and (c)) (the Act), and section 208 of part 351 of Title 19 of the Code of Federal Regulations (the Regulations) (2002), the U.S. Department of Commerce (the Department or DOC) and the signatory producers/exporters of Urea Ammonium Nitrate Solutions ("UANS") from the Russian Federation (the Signatories) agree as follows:

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. *Agreement*—For purposes of this Agreement, means this UANS suspension agreement pursuant to sections 734(b)(1) and (c) of the Act.

B. *UANS*—means the urea ammonium nitrate solutions from the Russian Federation and referred to as the "subject merchandise" of the suspended investigation.

C. *Effective Date*—means the date on which this Agreement is signed by the Department and producers/exporters from the Russian Federation representing substantially all of the imports of UANS into the United States.

D. *Date of Sale*—means the date on which price and quantity become firm, e.g., the date the contract is signed or the specification date if the price and quantity become firm on that date.

E. *Party to the Proceeding*—means any interested party, as provided for in section 771(9) of the Act, that actively participated in the antidumping investigation; through written submission of factual information or written argument, or a signatory to this Agreement.

F. *Producer/Exporter*—means: (1) A foreign manufacturer or producer of UANS; (2) a foreign producer or reseller that also exports UANS; and (3) an affiliated person by whom or for whose account UANS is imported into the United States, as defined in section 771(33) of the Act. U.S. imports of UANS produced by any producer in the Russian Federation will be attributed to that producer for purposes of this Agreement, regardless of whether first shipped to the United States by another exporter in the Russian Federation or in another country.

G. *Quarter*—means the relevant quarter calendar year, consistent with the following schedule:

First Quarter—January 1–March 31;
Second Quarter—April 1–June 30;
Third Quarter—July 1–September 30; and
Fourth Quarter—October 1–December 31.

H. *Reference Price*—means the minium F.O.B. Russian port of export price calculated weekly by DOC for sales of UANS for export to the United States, as described in Section VI.

I. *Floor Price*—means the fixed price, as designated in Section VI, below which the Reference Price may not fall.

J. *Current Market Price*—means the U.S. domestic price calculated weekly by DOC as described in Section VI.

K. *Moratorium Period*—means the period defined in section IV of this Agreement.

L. *Violation*—means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

M. *Indirect Exports*—means exports of UANS from Russia to the United States through one or more third countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin, or through arrangements such as swaps, exchanges, or displacements.

N. *United States*—means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

O. *U.S. Purchaser*—means the first purchaser in the United States that is not affiliated with the Russian producer or exporter and all subsequent purchasers, from trading companies to consumers.

P. *Selling Agent*—means an importer, agent, broker, distributor, or any other entity involved in the transaction between the Signatory and the first unaffiliated U.S. customer.

II. Suspension of Investigation

On the Effective Date, the Department will suspend its antidumping investigation of UANS from the Russian Federation initiated on May 9, 2002 (67 FR 35492, May 20, 2002), in accordance with section 734(b)(1) and (c) of the Act and 19 CFR 351.208 (2002).

The Department determines that extraordinary circumstances are present in this case, that this Agreement will eliminate completely the injurious effect of exports to the United States of UANS from the Russian Federation, and that this Agreement will prevent suppression or undercutting of price levels of domestic products by imports of that merchandise. The Department also determines that this Agreement is in the public interest, and that effective monitoring of the Agreement by the United States is practicable.

The Signatories collectively are the producers and exporters in the Russian Federation that, during the antidumping duty investigation of UANS from the Russian Federation, accounted for substantially all of the subject merchandise exported from the Russian Federation to the United States, as defined in section 351.208(c) of the Regulations. The Department may at any time during the operation of the Agreement require additional producers/exporters to sign the Agreement in order to ensure that not less than substantially all sales of UANS from the Russian Federation to the United States are covered by the Agreement.

III. Contingency

Continued application of the Suspension Agreement shall be dependent upon all of the signatory Russian producers and exporters of UANS reaching an agreement, by March 3, 2003, with the Russian Federation Ministry of Economic Development and Trade MEDT, whereby MEDT and the signatories agree to establish an Export Certification Program and to abide by each of the conditions outlined in the Appendix to the letter dated February 19, 2003, from Maxim Medvedkov, Deputy Minister of MEDT, to Faryar Shirzad, Assistant Secretary of Commerce for Import Administration. A copy of this Agreement ("the Russian Agreement") shall be placed on the record of this Suspension Agreement at that time. Should this contingency not be met by this date, this Suspension Agreement shall lapse and the provisions of section 734(i) of the Act shall apply.

IV. Moratorium Period

As of the Effective Date, each Signatory Producer/Exporter agrees, pursuant to section 734(b)(1) of the Act, to cease exports of UANS to the United States during the period ending on June 30, 2003.

V. Reference Price Period

Each Signatory agrees that, following the Moratorium Period, *i.e.*, beginning July 1, 2003, and in order to satisfy the requirements of section 734(c)(1)(B) of the Act, for each entry of UANS subject to this Agreement, the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 per cent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries examined during the investigation.

VI. Reference Price Methodology

A. The Reference Price will be based on a Current Market Price, adjusted to reflect an F.O.B. Russian Federation port of export price. In addition, there will be a Floor Price below which the Reference Price shall not fall. The Reference Price will be determined on a weekly basis.

B. The Department will issue the first Reference Price under this Agreement seven days before the termination of the Moratorium Period, utilizing the calculation methodology in section VI.C. below. This first Reference Price will be applicable to the week after the end of the Moratorium Period.

C. The Current Market Price will be determined as follows:

1. The Department will calculate an average of the weekly Northeast and Southeast F.O.B. from Green Markets and the Atlantic Coast region of Fertilizer Week price ranges from publicly available information.

2. The Department will calculate a simple average of the four most recent weekly averages derived in subsection 1 above. This four week average (converted from a short ton basis to a metric ton basis) will be the Current Market Price.

3. After consultations, the Department and the Signatories to the Agreement, should they agree that the currently used sources for the valuation of the Current Market Price for UANS are no longer appropriate, may agree to select an alternative source. The Department will give parties at least 30 days notice before choosing another source(s) for the purposes of Current Market Price valuation.

4. To express the Current Market Price on an F.O.B. Russian Federation port of export basis, an amount for costs associated with delivering the merchandise from the Russian Federation to the United States shall be deducted from the Current Market Price calculated in section C.2. This amount will be $36 per metric ton. Except when section C.3 applies, the result of this calculation shall be the Reference Price. After consultations, the Department and the signatories to the Agreement, should they agree that the amount for costs associated with delivering the merchandise from the Russian Federation to the United States are no longer appropriate, may revise this amount. The Department will give parties at least 30 days notice prior to any change becoming effective.

D. The Floor Price is the price below which the UANS subject to this Agreement may not be sold. The Floor Price will be $85 F.O.B. Russian Federation port. The Reference Price shall be not less than the Floor Price.

E. Reference Prices are F.O.B. Russian Federation port of export. If the sale for export is on terms other than F.O.B. Russian Federation port of export, the Signatories to this Agreement shall ensure that the F.O.B. Russian Federation port of export price is not lower than the Reference Price, by adjusting the relevant costs to ensure compliance with the Reference Price requirements.

VII. Reporting Requirements

A. Each Signatory will supply to the Department 30 days after the end of each Quarter all information that the Department determines is necessary to ensure that the Signatory is in full compliance with the terms of this Agreement. Such information shall include, but not be limited to, complete price information on each sale of UANS directly or indirectly to unaffiliated purchasers in the United States, including information supporting any relevant adjustments to the price under section 772 of the Act.

B. The Department may reject any information submitted under this Agreement that is untimely or any information which it is unable to verify to its satisfaction.

VIII. Disclosure

The Department may make available to representatives of each domestic Party to the Proceeding, under administrative protective orders drawn in accordance with section 777 of the Act and section 351.305 of the Regulations, business proprietary information submitted to the Department for each Quarter, as well as the results and methodology of its calculation of Reference Prices.

IX. Monitoring

A. The Department will monitor entries of UANS from the Russian Federation to ensure compliance with this Agreement. Among other means, the Department will review publicly-available data and other official import data, including, as appropriate, records maintained by the U.S. Customs Service, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

B. The Department may require, and each Signatory agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The Department may require that such documentation be provided, and be subject to verification, within 30 days of the sale.

C. The Department may require, and each Signatory agrees to report, on computer disk in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

D. Each Signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

X. Expedited Reviews

A. If a surge, as defined in paragraph B, in U.S. imports of UANS from the Russian Federation occurs, any party to the proceeding may request that the Department conduct a review pursuant to section 751(b) of the Act to determine whether the Suspension Agreement continues to meet the requirements of section 734(c)(1)(A) of the Act. If a surge has occurred, and the Department receives an appropriately documented request, the Department will regard the surge as good cause to conduct a changed circumstances review and shall conduct such a review and complete it within 45 days of initiation.

B. For purposes of section X.A., a surge in U.S. imports of UANS from the Russian Federation shall be considered to have occurred whenever imports of such UANS exceed the following amounts in metric tons. These annual levels will be divided evenly into four quarterly amounts, and a surge will be considered to have occurred if, in any one calendar quarter, the level of imports exceeds one-quarter of those annual amounts.

Moratorium to June 30, 2003	July–Dec. 2003	2004	2005	2006	2007
	60,000 MT	150,000 MT	200,000 MT	250,000 MT	300,000 MT

XI. Anticircumvention

A. The Signatories will not circumvent this Agreement. Together with each sales report provided pursuant to section VII.A, each Signatory will certify to the Department in writing that the sales reported therein include all sales by that signatory directly or indirectly to unaffiliated purchasers in the United States or for delivery to the United States, and that the Signatory did not make any other such sales pursuant to any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap, exchange, or other arrangement in circumvention of this Agreement.

B. The signatories to this Agreement will not engage in any of the following activities:

1. Exchange ("swap") subject merchandise for non-subject merchandise to be entered into the United States in place of the subject merchandise, thereby evading the requirements of this Agreement. Swaps include but are not limited to the following different types of swaps:

a. Ownership Swaps—involve the exchange of ownership of UANS without physical transfer. These may include exchange of ownership of UANS in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of UANS produced in different countries, so that the parties obtain ownership of products of different national origin.

b. Flag Swaps—involve the exchange of indicia of national origin of UANS, without any exchange of ownership.

c. Displacement Swaps—involve the sale or delivery of UANS from the Russian Federation to an intermediary country (or countries) which, regardless of the sequence of events, results in the ultimate sale or delivery into the United States of displaced UANS, where the exporter in the Russian Federation knew or had reason to know that the export sale would have that result.

2. Transship subject merchandise to the United States through third countries inconsistent with the terms of this Agreement.

C. To help prevent circumvention of this Agreement, Signatories agree to take the following steps:

1. Establish contracts that incorporate the terms of this Agreement and obligate purchasers, including customers in and outside the United States (i) to only use, resell, or enter into any other arrangements pursuant to terms that prohibit circumvention of this Agreement, (ii) not to engage in any of the activities listed in section XI.B, (iii) to include the same requirement in any subsequent contracts for the sale or transfer of such UANS, (iv) to provide to the Department all requested information, including subsequent arrangements entered into for the sale, transfer, exchange, or loan to the United States of UANS, and (v) to comply with requests for verification. Signatories shall refuse to enter into contracts with parties unwilling to comply with the terms of this Agreement. Signatories must ensure that their customers of any nationality will not engage in activities to circumvent this Agreement.

2. Require any Selling Agents to establish a contract with third parties to ensure that their sales of subject merchandise are consistent with the requirements of this Agreement. These contracts must also require the Selling Agent to maintain documentation demonstrating that sales of subject merchandise are made consistent with this Agreement and authorize the Department to verify the Selling Agent's records.

D. At any time and without prior notice, the Department may conduct verifications of Importers or Selling Agents to determine whether they are selling subject merchandise in accordance with this Agreement.

E. The Department shall investigate any allegations of circumvention brought to its attention.

XII. Consultations

A. The Department and any Signatory may request consultations at any time regarding the implementation, operation (including any changes in the relationship of the reference price to

market prices), and/or enforcement of this Agreement.

B. If the Department requests consultations with any Signatory concerning potential noncompliance with, or Violation of, this Agreement, it may simultaneously request that Signatory to provide the Department with all information relating to the allegation, including all sales information pertaining to covered and non-covered merchandise manufactured or sold by the Signatory. The Signatory will provide the requested information to the Department within 15 days of the Department's request. Any Party to the Proceeding may submit comments on the information submitted by the Signatory within 10 days after the information is received by the Department. The consultations shall be held within 45 days after the Department's request for consultations or for relevant information, unless the Department and the Signatory agree on a later date.

XIII. Termination

Any Signatory may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 90 days after such notice is received by the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

XIV. Violations

A. In reviewing the operation of this Agreement for the purpose of determining whether this Agreement has been violated or no longer meets the requirements of section 734(d)(1) of the Act, the Department will consider imports of UANS into the United States from all sources, and factors including, but not limited to, the volume of trade, patterns of trade, and whether any reseller's export price is being complied with and is satisfying the conditions under section 734 of the Act.

B. If the Department determines that this Agreement is being or has been violated or no longer meets the requirements of section 734(c) or (d) of the Act, the Department shall take whatever action it deems appropriate under section 734(i) of the Act and the Regulations.

C. In the event that the Department resumes the original investigation, it will conduct the resumed investigation on the basis of the original administrative record and the statutes, regulations, policies, and practices in effect on the Effective Date.

XV. Other Provision

By entering into this Agreement, the Signatories do not admit that any sales of UANS have been made at less than fair value.

XVI. Duration

This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. law, or until it is terminated pursuant to section XIII or XIV of this Agreement.

XVII. Effective Date

The effective date of this Agreement is February 19, 2003.

Signed on the 19th day of February, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Walter J. Spak,

White & Case, Counsel to JSC Nevinnomysskij Azot, Counsel to JSC Kuibyshevazot/Togliatti, Counsel to S.P. Novolon/Novomoskovsk.

[FR Doc. 03–4928 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–007.

Applicant: U.S. Department of Agriculture, Agricultural Research Service, Pacific West Area, 800 Buchanan Street, Albany, CA 94710.

Instrument: Electron Microscope, Model Tecnai G^2 12 TWIN; G^2 Upgrade, and Accessories.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used to study plant, insect and microbial viruses, and bacterial cells. Objectives to be pursued include:

(1) Verification or validation of the structural integrity of purified plant, insect and microbial viruses;

(2) Characterization of the structural properties of viruses *in situ* and *in vitro* and bacterial cells; and

(3) Characterization of the interaction(s) between bacterial cells and insect vector host tissues *in insecta*, and bacterial cells and plant host tissues *in planta*.

Application accepted by Commissioner of Customs: February 7, 2003.

Docket Number: 03–008.

Applicant: The Rockefeller University, 12230 York Avenue, New York, NY 10021.

Instrument: Electron Microscope, Model Tecnai G^2 12 BioTWIN.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used to explore the mechanisms governing development and differentiation in epidermis and hair of mammalian skin and to understand how these processes go awry in human genetic skin diseases.

Application accepted by Commissioner of Customs: February 12, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–4931 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The University of Texas at Austin; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–050.

Applicant: The University of Texas at Austin, Austin, TX 78712.

Instrument: "Helimak" Custom Magnetized Plasma Turbulence Apparatus.

Manufacturer: Academia Sinica Institute of Plasma Physics, Peoples Republic of China.

Intended Use: See notice at 68 FR 742, January 7, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) A magnetized plasma embedded in a 0.1 T field with a temperature of approximately 10 eV and a density in the range of 10^{17} m^{-3} and (2) an externally applied and controlled sheared flow. The U.S. Department of Energy, Princeton Plasma Physics Laboratory advised February 13, 2003 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–4930 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021127289–3042–02 I.D. 091002E]

RIN 0648–ZB34

Financial Assistance for Research and Development Projects in the Gulf of Mexico and off the U.S. South Atlantic Coastal States; Cooperative Research Program (CRP); Revision

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes this notice to revise an action entitled "Notice of Solicitation for Applications" to extend the due date for Applications.

ADDRESSES: You can obtain an application package from, and send your completed applications to: Ellie Francisco Roche, Chief, State/Federal Liaison Office, Southeast Regional Office, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702. You can also obtain the application package from the SERO homepage at: *http://caldera.sero.nmfs.gov/grants/programs/*. You must submit one igned original and two copies of the completed application (including supporting information). We will accept neither facsimile applications, nor electronically forwarded applications.

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, Chief, State/Federal Liaison Office, (727)570–5324.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS) published a notice soliciting applications for financial assistance in the **Federal Register** of December 17, 2002 (67 FR 77235), entitled "Notice of Solicitation for Applications." Page 77235 of that **Federal Register** notice is revised. The **DATES** section should be revised to read as follows:

"**DATES:** We must receive your application by close of business (5 p.m. eastern standard time) on March 5, 2003]. Applications received after that time will not be considered for funding. Applications received from February 19, 2003 through that date will be treated as having been received in a timely manner."

You should consult the December 17, 2002, notice for all of the other requirements for submitting an application.

Dated: February 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–4817 Filed 2–25–03; 3:58 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020213030–3031–02; I.D. No. 010903C]

Announcement of Funding Opportunity to Submit Proposals for the Monitoring and Event Response for Harmful Algal Blooms (MERHAB) Program FY2004

AGENCY: National Centers for Coastal Ocean Sciences/Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (NCCOS/CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of funding availability for financial assistance for project grants and cooperative agreements.

SUMMARY: The purpose of this document is to advise the public that NCCOS/CSCOR/COP is soliciting proposals for two types of projects: targeted research and regional intensive monitoring. It is anticipated that projects funded under this announcement will have a February 1, 2004, start date.

NCCOS/CSCOR/COP is soliciting targeted research proposals for 1 to 3 years of research and development of tools, approaches and technologies that could be included as routine components of existing Harmful Algal Bloom (HAB) monitoring programs. NCCOS/CSCOR/COP is also soliciting proposals from regional multi-investigator partnerships of 1 to 5 years for intensive monitoring of HABs that build the capacity of existing local, state, tribal, or regional coastal monitoring programs to provide early warning of HAB events to coastal communities and increase regional ability to rapidly respond to HAB events. Funding is contingent upon the availability of Fiscal Year 2004 Federal appropriations. It is anticipated that final recommendations for funding under this announcement will be made in early Fiscal Year 2004.

DATES: The deadline for receipt of proposals at the NCCOS/CSCOR/COP office is 3 p.m., local time, June 3, 2003. (Note that late-arriving applications provided to a delivery service on or before June 3, 2003, with delivery guaranteed before 3 p.m., local time, on June 3, 2003, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below guaranteed by the specified closing date and time and, in any event, the proposals are received in the NCCOS/CSCOR/COP office by 3 p.m. local time, no later than 2 business days following the closing date.)

ADDRESSES: Submit the original and 15 copies of your proposal to (MERHAB03) Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (N/SCI2), National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 8th Floor Station 8243, Silver Spring, MD 20910, attn. MERHAB 2004.

NOAA and Standard Form Applications with instructions are accessible on the following CSCOR/COP Internet site: *http://www.cop.noaa.gov* under the COP Grants Information Section, Part D, Application Forms for Initial Proposal Submission.

Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to NCCOS/CSCOR/COP with original signatures. If you are unable to access this information, you may call COP at

301–713–3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT:

Technical Information. Marc Suddleson, MERHAB 2004 Program Manager, NCCOS/CSCOR/COP, 301–713–3338/ ext 162, Internet: *marc.suddleson@noaa.gov*

Business Management Information. Leslie McDonald, NCCOS/CSCOR/COP Grants Administrator, 301–713–3338/ ext 155, Internet: *Leslie.McDonald@noaa.gov*

SUPPLEMENTARY INFORMATION:

Electronic Access

The following web sites furnish supplementary informationfrom reports dealing with harmful algal blooms: Boesch *et.al*, Feb 1997, *Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control and Mitigation*, Silver Spring, MD at *http://www.cop.noaa.gov/pubs/das/das10.html*; and Anderson *et.al.*, Sept 2000, *Estimated Annual Economic Impact from Harmful Algal Blooms (HABs) in the U.S. WHOI* at *http://www.redtide.whoi.edu/hab/pertinentinfo/Economics_Report.pdf.*

Information on the Harmful Algal Bloom and Hypoxia Research and Control Act and the 2000 National Assessment of HABs in U.S. Waters, National Science and Technology Council Committee on Environment and Natural Resources (CENR), Washington, DC, can be located at *http://www.habhrca.noaa.gov.*

Details about ongoing MERHAB projects currently funded by the NCCOS/CSCOR/COP MERHAB Program are found at *http://www.cop.noaa.gov/Fact_Sheets/MERHAB.htm.* Hard copies of these resources can be obtained from the CSCOR/COP office.

Background

Program Description

For complete program description and other requirements for NCCOS/CSCOR/COP, see the General Grant Administration Terms and Conditions for the Coastal Ocean Program annual notification in the **Federal Register** November 8, 2002 (67 FR 68103), and at the CSCOR/COP home page.

In spite of a growing list of affected resources and coastal communities, our ability to prevent, control, and mitigate the impacts of HABs remains limited. Acting on the findings of a 1996 NOAA and DOI Report, Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control and Mitigation, the research agenda of the Ecology and Oceanography of Harmful Algal Bloom (ECOHAB) program for the past five years has focused on building a scientific understanding about the cause and behavior of HABs. ECOHAB continues to support research that develops understandings of the linkages between the biology, ecology, physiology, and behavior of harmful species and the physics, chemistry, bathymetry, and meteorology of the surrounding environment. ECOHAB research is developing the capabilities to forecast bloom landfall, evaluate toxicity, and provide mitigation strategies that might ameliorate the impact of blooms along U.S. coasts. ECOHAB is also producing new state-of-the art HAB technologies, such as detection assays and molecular probes.

With the maturation of ECOHAB and other HAB research programs, more effort is needed to adapt their research products into regionally and locally tested tools that can be used to prevent, control, or mitigate the impact of HABs. The 1996 NOAA and Department of Interior (DOI) Report noted that knowledge about the basic information on the causes and behavior of HABs would ultimately lead to the development of prevention, control, and mitigation (PCM) strategies. The plan called for Federal and state agencies with responsibilities for resource management, environmental protection, and public health to support PCM research.

While prevention of HABs is the preferred management option, effort to enhance the current abilities to reduce the incidence and extent of harmful algal blooms (before they begin) requires additional research and face legislative hurdles. For example, more research is needed to determine whether a cause-and-effect relationship exists between increased pollution and nutrient loading and an incidence of some HAB species (e.g., Pfiesteria, Pseudo-nitzchia, cyanobacteria). Further, a national regulatory strategy to effectively control polluted run off and nutrient loading is under development; but more research is required to educate decision makers.

Efforts to control HABs are also being explored, but these, too, face serious scientific and policy hurdles. Attempts to use chemicals to directly control HAB cells encounter many logistical problems and environmental objections. Chemicals are likely to be nonspecific, indiscriminately targeting all co-occurring algae and other organisms along with the target algal species. Chemical application and other options, such as flocculants or biological controls need additional research to determine their wider impacts to the coastal ecosystem.

Strategies to mitigate or minimize human health risks, ecosystem damage, fisheries losses, and declines in tourism due to algal blooms are currently the best option for coastal management of the HAB problem. Many different types of actions can be taken to mitigate the impact of HABs, including forecasting bloom development and movement, monitoring HAB cells and toxins, and responding rapidly to HAB events.

Monitoring combined with rapid response to HAB events has been identified as the most effective way to mitigate the impact of HABs (CENR 2000). A number of coastal states have existing monitoring programs designed to prevent human illness from shellfish poisoning syndromes. State shellfish monitoring programs detect toxins in different fisheries species either to provide advance warning of outbreaks or to delineate areas that require harvest restrictions. Fewer coastal states monitor the environment for HAB blooms and forecast their development and movement. However, states with environmental monitoring programs for plankton and fish in coastal estuaries and bays are often able to provide early warning of blooms and help focus shellfish toxicity testing efforts.

Some states supplement their HAB monitoring activities with rapid response teams that are deployed to assess suspected HAB events. HABs have the potential to develop rapidly, and often the observable event may be short-lived. Rapid response is essential to ensure that the appropriate sampling is done to determine whether a HAB event is in progress. A few regions have also have established communication networks to distribute information about outbreaks to researchers, managers, and the public. Providing rapid and accurate information is critical to assess the risks to resources and human health and to avoid public misconceptions about the safety of coastal resources. Such misconceptions have caused severe economic impacts to regions not directly affected by HAB events. A study completed by Woods Hole Oceanographic Institute in September 2000 calculated the total estimated annual cost from HABs on public health, commercial fisheries, recreation and tourism, and monitoring and management in the United States to be $49 million. This estimate was noted by the authors to be highly conservative and sensitive to single events that equal or exceed the total estimated economic impact.

Most coastal communities experiencing HABs are not covered by regular public or private monitoring programs for HABs, and many do not receive adequate information about outbreaks. State monitoring programs have not kept pace with the expansion of the HABs problem. Tight state budgets and the need to monitor for more toxins in more organisms over larger areas have left many monitoring programs underfunded. Further, support of state monitoring efforts through the Federal Clean Water Program has not specifically addressed the need for increased HAB monitoring. The problem is exacerbated by managers' inability to quantify the benefits to human health, commercial fisheries, recreation and tourism of controlling HABs and to compare these to the costs of mitigation strategies.

NCCOS/CSCOR/COP Program Interest

Through the MERHAB program, NCCOS/CSCOR/COP intends to build capabilities of local, state, tribal, and private sector for regular and intensive measurement of HAB parameters. This will make existing monitoring programs more efficient while providing better coverage in time and space. MERHAB will enable rigorous field testing of state-of-the-art technology through targeted projects and will incorporate the new methods of detecting and tracking HABs into existing monitoring programs through regional, intensive monitoring projects. MERHAB will also develop event-response capabilities within affected regions to ensure trained and equipped personnel are able to mobilize quickly, conduct appropriate sampling and testing, and communicate effectively during HAB events.

With faster, less expensive, and more reliable detection methods for HAB cells and toxins, and stronger mechanisms in place to respond to outbreaks, programs will be better able to mitigate the impact of HABs on vital resources and will protect public health. As a result, managers will be able to better address the expanding HAB problems facing their coastal regions and, therefore, they will be better positioned to request long-term support from Federal and state agencies or from other funding entities.

MERHAB Goal

The primary goal of the MERHAB program is to incorporate products generated from past or ongoing HAB research programs into operational components of existing monitoring programs in HAB-impacted coastal regions. MERHAB is not intended to provide long-term support for routine monitoring efforts.

A. MERHAB-Targeted Research Project

(1) Objectives:

(a) Develop a technology that will enhance HAB monitoring activities in U.S. coastal waters; and (b) incorporate that technology into existing HAB monitoring programs.

(2) Characteristics:

(a) Should rigorously field-test new technologies to detect algal species, toxin, or toxicity and/or monitor the environmental conditions that support HABs. New technologies may include, but are not limited to, rapid field assays for shellfish, improved diagnostic techniques for in situ detection of HAB cells, and remote sensing technology to help target sampling efforts; (b) may be led either by an individual or by small investigative team; and (c) must address specified research needs of the HAB community.

Investigators should include in their work plans efforts to build support for the incorporation of technology into one or more existing state or regional HAB monitoring programs. (See Part II: Further Supplementary Information Section (11) "Project Funding Priorities.")

B. MERHAB-regional, Intensive Monitoring Projects

(1) Objectives:

(a) Develop new or increase existing regional capabilities for HAB monitoring; (b) incorporate new tools for HAB measurement into existing monitoring efforts;(c) include local, state, regional, Federal, or non-governmental entities as active partners in identifying environmental measurements and their importance to managing coastal resources and protecting human health (i.e. generating public advisories) in the area; (d) determine and work to secure long-term local, state, regional, or other funding that will support enhancements in HAB monitoring that result from MERHAB project funding; and (e) develop local and/or regional capabilities to respond to HAB events.

(2) Characteristics:

(a) Include a suite of annual studies and involve a multi-disciplinary, collaborative team of investigators. The team should represent groups with strong interests in improved HAB monitoring, including, but not limited to, the natural and social science research community, existing monitoring programs, communities dependent upon affected resources, business and industry associations, and non-profit organizations; (b) provide evidence that local, state, tribal, regional, and Federal representatives were consulted in the development of the proposal to ensure appropriate economic, regulatory, and management issues are addressed; (c) include a plan for continued consultation with these representatives to facilitate the incorporation of research results into existing monitoring programs and to identify means to continue HAB monitoring efforts after MERHAB project funding has ended; and (d) form a management team with a designated chairperson serving as the main point of contact with the MERHAB Program Manager.

In similar NCCOS/CSCOR/COP research programs i.e. ECOHAB, management teams provide strong leadership and solid partnerships among principal investigators and collaborators. Teams serve to interpret results collected from the expanded suite of pilot studies, permitting acceptance or rejection of the approaches, techniques, or tools explored during each annual budget period. MERHAB management teams will also analyze results for application under local conditions and assess effectiveness under specific constraints so that application to other coastal systems or species may be determined.

Shared Research Project Characteristics

The following characteristics are shared by both MERHAB-targeted projects and MERHAB-regional, intensive monitoring projects.

(1) Project results will be distributed to stakeholders via scientific, peer-reviewed articles, synthesis documents, briefings, electronic web sites, and any other means defined by the proposers.

(2) Project proposals should clearly identify a timetable of accomplishments and major program elements that will lead to specific interim and final assessments of applicability and effectiveness of a number of monitoring approaches.

Continuation of funding will be contingent upon the availability of funds from Congress, satisfactory performance, and is at the sole discretion of the agency; and determination by the awarding agency that the selected project is on course to provide both interim and final products that will improve HAB monitoring capabilities in the local or national coastal environment impacted by HABs.

Expected Products and Outcomes

A. MERHAB-Targeted Projects

(1) Development and testing of new HAB monitoring tools;

(2) Demonstration of effective application of technology in an existing monitoring program; and

(3) Comprehensive data analysis and integration that advances the state of

science and management (i.e. technical reports, peer-reviewed publications, databases, numerical and conceptual models, etc.).

B. MERHAB-regional, Intensive Monitoring Projects

(1) Include regional stakeholder input and participation through means that may include, but are not limited to, annual workshops, management and technical advisory committees that involve a broad spectrum of regional interests and training in use of new technology;

(2) Provide recommendations to management of the parameters to be measured in a region and the types of instruments that should be developed or adapted into existing monitoring programs;

(3) Deploy new HAB monitoring tools in existing monitoring programs;

(4) Conduct comprehensive data analysis and integration that advances the state of science and management. (i.e. technical reports, peer-reviewed publications, data bases, numerical and conceptual models; regional case studies with explicit applications to important management issues; risk analysis of management scenarios; regional economic valuation of direct and indirect costs associated with HAB events; and region-specific management recommendations based on study results);

(5) Accept commitments from one or more local, state, tribal, regional, or Federal organizations for continued, long-term support of expanding HAB monitoring capabilities;

(6) Develop real-time, scientific response capability during HAB outbreaks for the region that includes, but is not limited to, the use of local experts, establishing local academic-government- NGO-private partnerships for providing immediate analytical and sampling capacities, and expanding local abilities for transferring samples to analytical services outside the region; and

(7) Conduct outreach to improve awareness of HAB outbreaks and their environmental and societal costs, and to mitigate their impact on vital natural resources, public health and local/regional economies.

Part I: Schedule and Proposal Submission

This document requests full proposals only. The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline (refer to DATES) or proposals that deviate from the prescribed format will be returned to the sender without further consideration. Information regarding this announcement, additional background information, and required Federal forms are available on the CSCOR/COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 15 proposal copies at time of submission. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of proposal copies provide for a timely review process. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All recipients must follow the instructions in the preparation of the NCCOS/CSCOR/COP application forms included in *Part II: Further Supplementary Information, (10) Application forms and kit.*

For clarity in the submission of proposals, the following definitions are provided for recipient use: (1) Funding and/or Budget Period—The period of time when Federal funding is available for obligation by the recipient. The funding period must always be specified in multi-year awards, using fixed year funds. This term may also be used to mean "budget period" A budget period is typically 12 months. (2) Award and/or Project Period—The period established in the award document during which Federal sponsorship begins and ends. The term "award period" is also referred to as project period in 15 CFR 14.2(cc) Each proposal must also include the following nine elements or it will be returned to sender without further consideration:

(1) *Standard Form 424.* At time of proposal submission, all applicants anticipating direct funding shall submit the Standard Form, SF–424, "Application for Federal Assistance," to indicate the total amount of funding proposed for the whole project period. This form is to be the cover page for the original proposal and all requested copies. Multi-institutional proposals must include signed SF–424 forms from all institutions requesting funding.

(2) *Signed Summary title page.* The title page should be signed by the Principal Investigator (PI). The Summary title page identifies the project's title, starting with the acronym: MERHAB 2004, a short title (less than 50 characters), and the PI's name and affiliation, complete address, phone, FAX and E-mail information. The requested budget for each fiscal year should be included on the Summary title page. Multi-institution proposals must also identify the lead investigator from each fiscal year for each institution and the requested funding for each fiscal year for each institution on the title page, but no signatures are required on the title page from the additional institutions. Lead investigator and separate budget information is not requested on the title page for institutions that are proposed to receive funds through a subcontract to the lead institution; however, the COP Summary Proposal Budget Form and accompanying budget justification must be submitted for each subcontractor. For further details on budget information, please see Section (7) Budget of this Part.

(3) *One-page abstract/project summary.* The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed NCCOS/CSCOR/COP format for the Project Summary Form can be found on the CSCOR/COP Internet site under the Grants Information section, Part D.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost, and budget period. It should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(4) *Project description.* The description of the proposed project must be complete and divided into annual increments of work that include: identification of the problem, scientific objectives, proposed methodology, relevance to the MERHAB 2004 program goals, and its scientific priorities. For MERHAB-Targeted project proposals, the project description (including relevant results from prior support) should not exceed 15 pages. For MERHAB-regional, intensive monitoring project proposals, the project description (including relevant results from prior support) should not exceed 20 pages. Both page limits are inclusive of figures, other visual materials, and letters of endorsement, but are exclusive of references, a milestone chart, and letters of collaboration from unfunded collaborators.

This section should clearly identify project management with a description

of the functions of each PI within a team. It should provide a full scientific justification for the research, rather than simply reiterating justifications presented in this document. It should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goals;

(d) Potential coordination with other investigators.

(5) *References cited.* Reference information is required. Each reference must include the names of all authors in the same sequence they appear in the publications, the article title, volume number, page numbers, and year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside the 15–page MERHAB-targeted project or the 20–page MERHAB-regional project descriptions.

(6) *Milestone chart.* Provide time lines of major tasks covering the duration of the proposed project.

(7) *Budget.* At time of proposal submission, all applicants are required to submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include a COP Summary Proposal Budget Form for each institution, and multi-investigator proposals using a lead investigator with a subcontract's approach must submit a COP Summary Proposal Budget Form for each subcontractor.

Each subcontract or subgrant should be listed as a separate item. Describe products/services to be obtained and indicate the applicability or necessity of each to the project. Provide separate budgets for each subgrant or contract regardless of the dollar value and indicate the basis for the cost estimates. List all subgrant or contract costs under line item number 5—Subcontracts on the COP Summary Proposal Budget Form.

The use of this budget form will provide for a detailed annual budget and for the level of detail required by the NCCOS/CSCOR/COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with NCCOS/CSCOR/COP and can be found on the CSCOR/COP home page under Grants Information section, Part D.

All applications must include a budget narrative and a justification to support all proposed budget categories. The SF–424A, Budget Information (Non-Construction) Form, will be requested only from those applicants subsequently recommended for award. See references to single year or multi year awards under Part II: Further Supplementary Information, (10) Application Forms and Kits regarding submission of the SF–424A.

Ship time needs should be clearly identified in the proposed budget. The investigator is responsible for requesting ship time and for meeting all requirements to ensure the availability of requested ship time. Copies of relevant ship time request forms should be included with the proposal.

(8) *Biographical sketch.* All principal and co-investigators must provide summaries of up to 2 pages that include the following:

(a) A listing of professional and academic essentials and mailing address;

(b) A list of up to five publications most closely related to the proposed project and five other significant publications. Additional lists of publications, lectures, and the rest should not be included;

(c) A list of all persons (including their organizational affiliation) in alphabetical order, with whom the investigator has collaborated on a project or publication within the last 48 months, including collaborators on the proposal and persons listed in the publications. If no collaborators exist, this should be so indicated;

(d) A list of persons (including their organizational affiliation) with whom the individual has had an association like thesis advisor or postdoctoral scholar sponsor;

(e) A list of the names and institutions of the individual's own graduate and postgraduate advisors.

The material presented in (c, d, and e) is used to assist in identifying potential conflicts or bias in the selection of reviewers.

(9) *Current and pending support.*. Describe all current and pending financial/funding support for all principal and co-investigators, including subsequent funding in the case of continuing grants. All current support from all sources (e.g., Federal, state or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the principal investigator or co-investigators should be included, even if they receive no salary support from the projects. The total award amount for the entire award period covered (including indirect costs) should be shown as well as the number of person-months per year to be devoted to the project, regardless of source of support.

(10) *Proposal format and assembly.* The original proposal should be clamped in the upper left-hand corner, but left unbound. The 15 additional copies can be stapled in the upper left-hand corner or bound on the left edge. The page margin must be one inch (2.5 cm) at the top, bottom, left, and right, and the typeface standard 12–point size must be clear and easily legible. Proposals should be single spaced.

Part II: Further Supplementary Information

(1) *Program authorities.* For a list of all program authorities for the NCCOS/CSCOR/COP, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** November 8, 2002 (67 FR 68103) and at the CSCOR/COP home page. Specific authority cited for this announcement is 33 U.S.C. 1442 and Public Law 105–383, title VI, Nov. 13, 1998.

(2) *Catalog of Federal Domestic Assistance (CFDA) number.* The CFDA number for the Coastal Ocean Program is 11.478.

(3) *Program description.* For complete NCCOS/CSCOR/COP program descriptions, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** November 8, 2002 (67 FR 68103).

(4) *Funding availability.* Funding is contingent upon availability of Federal appropriations. It is anticipated that three to five MERHAB-Targeted research projects will be funded at approximately $100,000 per year for up to 3 years and that two to three MERHAB-regional, intensive monitoring proposals will be funded at approximately $600,000 per year for up to 5 years. Support in out years after FY 2004 is contingent upon the availability of funds.

If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Continuation of an award to increase funding or extend the period of performance is based on satisfactory performance and is at the total discretion of the funding agency. Priority for these funds will be given to proposals that promote balanced

coverage of the science objectives stated under this announcement.

Publication of this document does not obligate the CSCOR/COP to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements.* None.

(6) *Type of funding instrument.* They are project grants and cooperative agreements.

(a) Research Project Grants: A research project grant is one in which substantial programmatic involvement by NOAA is not anticipated by the recipient during the project period. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from NOAA.

(b) Cooperative Agreements: A cooperative agreement implies that NOAA will assist recipients in conducting the proposed research. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with NOAA. A cooperative agreement is appropriate when substantial NOAA involvement is anticipated. This means that the recipient can expect substantial agency collaboration, participation, or intervention in project performance. Substantial involvement exists when: responsibility for the management, control, direction, or performance of the project is shared by the assisting agency and the recipient; or the assisting agency has the right to intervene (including interruption or modification) in the conduct or performance of project activities.

(c) Determination of which instrument to use: Applicants must specify the type of award for which they are applying, either a grant or a cooperative agreement. The funding agency will review the applications in accordance with the evaluation criteria. Before issuing awards, NOAA will determine whether a grant or cooperative agreement is the appropriate instrument based upon the need for substantial NOAA involvement in the project.

(d) In an effort to maximize the use of limited resources, applications from non-Federal, non-NOAA Federal and NOAA Federal applicants will be competed against each other. Research proposals selected for funding from non-Federal researchers will be funded through a project grant or cooperative agreement.

Research proposals selected for funding from non-NOAA Federal applicants will be funded through an interagency transfer, provided legal authority exists for the Federal applicant to receive funds from another agency. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from the applicants, the Economy Act (31 U.S.C. section 1535) is not an appropriate basis. Support may be solely through COP or partnered with other Federal offices and agencies.

Proposals deemed acceptable from NOAA Federal researchers will be funded through an intraagency transfer.

(7) *Eligibility criteria.* For complete eligibility criteria for the NCCOS/CSCOR/COP, see the General Grant Administration Terms and Conditions for the Coastal Ocean Program annual document in the **Federal Register** November 8, 2002 (67 FR 68103), and the CSCOR/COP home page. Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, and Federal agencies that possess the statutory authority to receive financial assistance.

(i) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-federal researchers should comply with their institutional requirements for proposal submission.

(ii) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(iii) NCCOS/CSCOR/COP will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above. (iv) Non-federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

(8) *Project/Award period.* Full proposals for targeted projects can cover a project/award period of up to 3 years, and full proposals for regional, intensive monitoring projects can cover a project/award period of up to 5 years. Multi-year awards may be funded incrementally on an annual basis, but, once awarded, those awards will not compete for funding in subsequent years. (See section (10) Application Forms and Kit for directions on submission of Federal forms for multi year award funding for those applicants subsequently recommended for award.) Each annual award shall require an Implementation Plan and project description that can be easily divided into annual increments of meaningful work representing solid accomplishments (if prospective funding is not made available, or is discontinued).

(9) *Indirect costs.* Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of: (a) the line item amount for the Federal share of indirect costs contained in the approved budget of the award; or (b) the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

(10) Application forms and kit. For complete information on application forms for the NCCOS/CSCOR/COP, see General Grant Administration Terms and Conditions for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103), at the CSCOR/COP home page and the information given under *Required Elements*, paragraph (7) Budget. The following is a description of Multi-Year Awards for those applicants subsequently recommended for award. This information can also be found on the COP web site under Grants Information. Multi-Year Awards: Multi Year Awards are awards which have an award/project period of more than 12 months of activity. Multi Year Awards are partially funded when the awards are approved, and are subsequently funded in increments. One of the purposes of Multi Year Awards is to reduce the administrative burden on both the applicant and the operating unit. For example, with proper planning, one application can suffice for the entire multi year award period. Funding for each year's activity is contingent upon the availability of funds from Congress, satisfactory performance, and is at the sole discretion of the agency. Multi-year funding is appropriate for projects to be funded for 2 to 5 years. Once approved, full applications are not required for the continuations into the out years.

(11) *Project funding priorities.* For description of project funding priorities, see the annual General Grant Administration Terms and Conditions for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103), and the CSCOR/COP home page.

(12) *Evaluation criteria.* For complete information on evaluation criteria, see the annual General Grant Administration Terms and Condition for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103), and the CSCOR/COP home page.

(13) *Selection procedures.* For complete information on selection procedures, see the annual General Grant Administration Terms and Conditions for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103), and the CSCOR/COP home page. All proposals received under this specific document will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and/or panel review. No consensus advice will be given by the independent peer mail review or the review panel.

(14) Other requirements.

(a) For a complete description of other requirements, see the annual General Grant Administration Terms and Conditions for the Coastal Ocean Program document in the **Federal Register** November 8, 2002 (67 FR 68103) and the CSCOR/COP home page. NOAA has specific requirements that environmental data be submitted to the National Oceanographic Data Center (see section 16, Data Archiving).

(b) The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

(c) Please note that NOAA is developing a policy on internal overhead charges; NOAA scientists considering submission of proposals should contact the appropriate CSCOR/COP Program Manager for the latest information.

(15) *Intergovernmental review.* Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." It has been determined that this notice is not significant for purposes of Executive Order 12866. Pursuant to 5 U.S.C. 553(a) (2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

(16) *Data archiving.* Any data collected in projects supported by NCCOS/CSCOR/COP must be delivered to a National Data Center (NDC), such as the National Oceanographic Data Center (NODC), in a format to be determined by the institution, the NODC, and Program Officer. It is the responsibility of the funded institution for the delivery of these data; the DOC will not provide additional support for delivery beyond the award. Additionally, all biological cultures established, molecular probes developed, genetic sequences identified, mathematical models constructed, or other resulting information products established through support provided by NCCOS/CSCOR/COP are encouraged to be made available to the general research community at no or a modest handling charge (to be determined by the institution, Program Officer, and DOC). For more details, refer to NCCOS/CSCOR/COP data policy posted at the CSCOR/COP home page.

(17) *Collection of information requirements.* This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The following requirements have been approved by OMB under control number 0648–0384; a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these requirements and the burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to *leslie.mcdonald@noaa.gov*. Copies of these forms and formats can be found on the CSCOR/COP home page under Grants Information sections, Parts D and F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: February 24, 2003.

Ted I. Lillestolen,

Associate Deputy Assistant Administrator, National Oceanic and Atmospheric Administration, National Ocean Service.

[FR Doc. 03–4895 Filed 2–28–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012903A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Oil and Gas Exploration Activities in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for a small take authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Minerals Management Service (MMS) of the Department of the Interior, for authorization to harass small numbers of marine mammals, principally the sperm whale, incidental to conducting seismic surveys in the Gulf of Mexico (GOM). As a result of that request, NMFS is considering whether to propose regulations that would govern the incidental taking of small numbers of marine mammals under Letters of Authorization (LOAs) issued to members of the seismic industry that might have interactions with sperm whales. In order to promulgate regulations and issue LOAs, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the preliminary application and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than April 2, 2003.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application and a list of references used in this document may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). A copy of the MMS draft Programmatic Environmental Assessment (Draft PEA) is available by writing to: Minerals Management Service, Public Information Office, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request; the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On December 20, 2002, MMS petitioned NMFS, as a precautionary measure, for rulemaking under section 101(a)(5)(A) of the MMPA to authorize any potential take of sperm whales (*Physeter macrocephalus*) incidental to conducting seismic surveys during oil and gas exploration activities in the GOM (MMS, 2002a). MMS has preliminarily determined that the taking will involve only small numbers of sperm whales; have no more than a negligible impact on the species and stocks of affected marine mammals; and not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses. It should be noted that MMS expects to update its petition for regulations to include the incidental take of other species of marine mammals, such as dolphins, beaked whales, and Bryde's whales (*Balaenoptera edeni*), based upon information currently being assessed under the National Environmental Policy Act (NEPA). The NEPA document will be submitted to NMFS prior to its determination on whether or not to proceed with this rulemaking. If NMFS decides to proceed with rulemaking, that document will expand the description of seismic airgun operations and on the analysis of impacts on marine mammals by seismic airgun arrays.

Description of the Specified Activity

Marine geophysical seismic surveys are conducted to obtain information on surface and near-surface geology and on subsurface geological formations. Typical seismic surveying operations tow an array of airguns (the seismic sound source) and a streamer (signal receiver cable) behind the vessel, 5–10 m (16.4–32.8 ft) below the sea surface. The airgun array produces a burst of underwater sound by releasing compressed air into the water column that creates an acoustic energy pulse. The release of compressed air every several seconds creates a regular series of strong acoustic impulses separated by silent periods lasting 7–16 seconds, depending on survey type and depth to the target formations. Airgun arrays are designed to focus the sound energy downward. Acoustic (sound) signals are reflected off the subsurface sedimentary layers and recorded near the water surface by hydrophones spaced within the streamer cables. These streamer cables are often 3 mi (4.8 km) or greater in length. Vessel speed is typically 4.5–6 knots (about 4–8 mph) with gear deployed.

The 3–D (3–Dimensional) seismic surveying enables a more accurate assessment of potential hydrocarbon reservoirs to optimally locate exploration and development wells, and minimize the number of wells required to develop a field. State-of-the-art interactive computer mapping systems can handle much denser data coverage than the older 2–D seismic surveys. Multiple-source and multiple-streamer technologies are used for 3–D seismic surveys. A typical 3–D survey might employ a dual array of 18 guns per array. Each array might emit a 3,000 cubic-inch burst of compressed air at 2,000 kilojoule (kJ) of acoustic energy for each burst. The streamer array might consist of 6–8 parallel cables, each 6–8 km (3.7–5 mi) long, spaced 75 m (246 ft) apart. A series of 3–D surveys collected over time (4–D seismic survey) is used for reservoir monitoring and management (the movement of oil, gas, and water in the reservoirs can be observed over time).

For management purposes, MMS has divided the Northern GOM into three planning areas: Eastern, Central and Western. In general, Federal waters offshore Florida and Alabama are in the Eastern Planning Area, Federal waters offshore Mississippi and Louisiana are in the Central Planning Area, and Federal waters offshore Texas are in the Western Planning Area. For seismic exploration, about 1300 blocks in the Western and Central Planning Areas have not yet been surveyed with 3–D seismic techniques (R. Brinkman, MMS GOM Region, pers comm, 2002). It is assumed that a lower level of new seismic survey activity will occur in the Eastern Planning Area relative to the other two areas (i.e. the vast majority of survey activities are expected in the Central and Western Planning Areas). Industry interest in the Eastern GOM has historically been limited to the westernmost portions of the planning area and is usually defined by MMS' 5–Year Leasing Plan (MMS, 2002a).

The different types of seismic survey activity in the northern GOM can occur on any day of a given year during the scope of the petition (5 years). Seismic surveys may span one day, weeks, or months. MMS (2002b) provides detailed characteristics of the different types of operations and equipment applicable to seismic surveys employed in the region. That information will be used by NMFS during this rulemaking.

Seismic surveys may be conducted in any Federal waters of the GOM. Tables provided in the MMS application (MMS, 2002a) project the anticipated surveys for vertical seismic profiling, deep seismic, and high resolution seismic operations in the GOM over the next 5 years.

Description of Marine Mammals Affected by the Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. General information on these species can be found in NMFS Stock Assessment Reports (Waring, 2001, 2002). These documents are available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html/ Stock Assessment Reports.*

Any of these 29 marine mammal species may be exposed to acoustic energies introduced into Federal waters by seismic survey operations. At this time, the MMS is requesting authorization of take for only GOM sperm whales under this petition; therefore, the remainder of this section addresses this species only. Additional information on sperm whales in the GOM is available in NMFS (2002a), which is available for viewing or downloading at: *http://www.nmfs.noaa.gov/prot_res/overview/publicat.html/ section.*

Sperm whales are the most abundant large cetacean in the GOM, and are the most important Gulf cetacean in terms of collective biomass. The GOM sperm whales are comprised of mostly female and juvenile animals, although a few large bulls have been sighted in the northern Gulf. Some large males have been observed in the Gulf in recent summer surveys, particularly in the DeSoto Canyon region. Calves are frequently sighted. The GOM sperm whale abundance has recently been estimated by NMFS at 1,213 (CV 0.35) whales with a minimum population estimate of 911 whales. The presence of cow/calf pairs indicates that the northern GOM is a biologically important nursery area for sperm whales. Based on seasonal aerial surveys, sperm whales are present in the northern GOM in all seasons, but sightings in the northern GOM are more common during the summer months. Based on recent survey efforts, areas of concentration appear to be off the Mississippi River Delta, off Southern Florida, and off South Texas.

Sperm whales have been observed throughout the GOM from the upper continental slope near the 100–m (328.1–ft) isobath to the seaward extent of the U.S. Exclusive Economic Zone (EEZ) and beyond. It should be noted that both the apparent seasonality and the areas of concentration could be affected by, or the result of, geographic and seasonal patterns of existing surveys and, as such, should be considered tentative findings.

Potential Effects of Seismic Activities on Marine Mammals

The Federal waters of the GOM are inhabited by a diverse assemblage of marine mammal species, including the sperm whale. Seismic surveys are conducted in these waters, and acoustic energies introduced into Gulf waters may adversely impact marine mammals in the vicinity of the activity. The potential adverse impacts to Gulf sperm whales are detailed in NMFS (2002a). Additional information describing potential impacts is documented in MMS (2002b). Because loud underwater noise has the potential to harass, injure, and possibly cause the mortality of marine mammals, MMS is seeking an authorization, under the MMPA, for the harassment, injury, and/or mortality of sperm whales in GOM that may occur as a result of seismic surveys as described in this document and in MMS (2002a and 2002b). While the serious injury or mortality of sperm whales or other marine mammals is believed to be unlikely, especially due to the implementation of effective mitigation measures to protect marine mammals (see Mitigation), MMS has requested authorization for takings by incidental mortality at least until additional impact assessments are completed under NEPA and any rulemaking. This authorization is being sought by the MMS on the behalf of the offshore oil and gas industry and seismic contractors operating within the GOM.

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson et al., 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a cetacean may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a cetacean to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might (in turn) have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Sperm whales spend large amounts of time at depth and use low frequency sound to communicate and navigate. Therefore, they are considered sensitive to the marine acoustic environment and may respond to sound emissions in many ways. Reactions to acoustic emissions may include, but are not limited to, cessation of vocalizations, disruption of feeding and dive behaviors, and physical avoidance. Seismic operations can introduce noise into the sea that may cause temporary or permanent hearing impairment in marine mammals if the noise is strong enough and/or if the animal is in close proximity to the sound source when transmitting. Such impairment could have the potential to diminish the individual's chance for survival. Tolerance of noise is often demonstrated, but this does not prove that the animals are unaffected by noise; adverse levels of noise might interrupt or decrease feeding activity, social interactions, or parenting (e.g. nursing calves, if the interruption is extended). Therefore, behavioral responses causing adverse effect to individuals and cow/

calf pairs, reproduction, feeding or temporary or permanent threshold shifts due to seismic activity may negatively impact GOM sperm whales if disruptions are extended. There are no documented data on auditory-induced physical effects of underwater seismic noise on sperm whales. There is observational evidence that sperm whales may be temporarily displaced to areas near those where seismic operations are underway. However, while MMS believes that sperm whales apparently are not being displaced from the northern Gulf due to seismic surveys, NMFS notes that no data have been provided to support this statement. Nonetheless, it is unknown whether their site fidelity reflects low sensitivity to seismic noise or a high motivation to remain in the area in spite of this noise. Details of such emissions and potential impacts to sperm whales are characterized in NMFS (2002a) and MMS (2002b).

NMFS anticipates an unspecified number of sperm whales within Federal waters of the GOM may be adversely affected by seismic activities, especially in known areas of concentration (primarily off the Mississippi River delta) where cow/calf pairs are frequently sighted (NMFS, 2002a). At this time, there are insufficient data regarding the demography of the Gulf sperm whale stock to estimate the number of takes of sperm whales by age, sex, and reproductive condition. Most animals potentially exposed to seismic noise are expected to be adult females and immature animals, including young calves. It is understood that all animals comprising the Gulf stock (1,213 sperm whales) may be exposed to seismic noise during their lifetimes, and repeated exposure is anticipated, particularly in light of the facts that (a) sperm whales are wide-ranging animals, and (b) acoustic energy may travel great distances, depending on a suite of variables. At present, the means to accurately estimate the anticipated number of exposures for Level A or B Harassment takes of sperm whales as a result of seismic activity are not available.

In the absence of species-specific data on auditory impacts for sperm whales, a received sound pressure level of 180 dB re 1 µPa (rms) or greater will be used as an indication of potential concern about temporary and/or permanent hearing impairment (Level A Harassment, as used by NMFS in previous rulemakings).

While a spreading loss equation of 20 log R is recommended by Richardson et al. (1995) for calculating underwater transmission loss in deep water, MMS believes a spreading loss equation of 15 log R is more appropriate for shallow water such as the GOM. Using a spreading equation (15log(R)), the 180–dB re 1 µPa (rms) isopleth in surface and near-surface waters occurs at 295 m (968 ft) from a standard airgun array. Similarly, the 180 dB re 1 µPa (rms) isopleth vertically below the seismic source is calculated to be 6,310 m (3.92 mi). By means of a Gulf-wide Notice to Lessees (NTL) for all seismic activities (30 CFR 250.103, August 22, 2002), MMS has implemented a 500–m (1,640–ft) impact zone to minimize possible effects to sperm whales. For typical 2–D and 3–D towed array seismic surveys with estimated source levels of 257 dB re 1 µPa (-3 dB rms conversion), a 500–m (1,640–ft) impact zone for a 180 dB isopleth equates to an estimated source level of approximately 232 dB. According to NMFS (2002a), at source levels of 257 dB (rms), the 20 Log(R) model and associated calculation above produce received levels of 203 dB re 1 µPa at 500 m (1,640 ft) from the source in subsurface waters (a conservative estimate) and 183 dB in surface waters due to the array effect. Presently, the impact zone of 500 m (1,640 ft) closely approximates the received dB levels in surface waters, but may not accurately reflect the 180 dB isopleth and associated impact zone beneath an array. These disparities between dB measurements for surface and sub-surface waters indicate the need for better data to effectively formulate models that can be used to better calculate an impact zone for sperm whales.

In the absence of good sound scientific information for sperm whales in the GOM, a received sound pressure level of 160 dB re 1 µPa (rms) will be used in this application as the default indicator of, or for, potential concern to disturb a sperm whale in the wild by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B Harassment, as used previously by NMFS for impulse noise). Using a spherical spreading equation (15log(R), -20 dB for the array effect, and -3 dB for zero-to-peak to RMS conversion), the 160 dB re 1 µPa (rms) isopleth in surface and near-surface waters occurs at 6,309 m (3.92 mi) from the seismic airgun source. Similarly, the 160 dB re 1 µPa (rms) isopleth below the seismic source is calculated to extend to the sea floor.

Given that (a) the Level B Harassment impact zone ranges between 6,309 m (3.92 mi) and depth below the vessel (3.92 mi and greater), (b) the Level A Harassment (injury) or mortality impact zone ranges between 295 m (968 ft) and 6,309 m (3.92 mi), (c) seismic survey operations may be conducted over broad swaths of the Gulf, (d) sperm whales are wide-ranging and inhabit oceanic waters of the northern Gulf, (e) animals may or may not avoid seismic noise sources, and (f) sperm whales may potentially be repeatedly exposed to seismic noise introduced into the GOM, MMS expects that an unspecified number of sperm whales (chiefly adult females and immature animals) may be exposed to levels of 160 dB or greater if they do not avoid exposure by moving away from the noise source. The MMS anticipates new information in the near future from which it will calculate anticipated take numbers for seismic activity. These numbers will be included in MMS' NEPA document and provided to NMFS for rulemaking needs.

NMFS has been determined (NMFS, 2002a) that ramp-up procedures and visual monitoring of an impact zone coupled with passive acoustic monitoring systems will more effectively minimize possible adverse effects to sperm whales than ramp-up and visual observations alone, as currently required by MMS' NTL No. 2002–G07 and Addendum 1. Conservative estimates should be used to calculate impact zones for sperm whales without the array effect until more appropriate models can be formulated from field measurements that effectively minimize the risk of threshold shift to sperm whales. The use of mitigation measures such as visual and acoustic monitoring of adjacent waters (e.g. delineated by the 160 or 180 dB re 1 µPa (rms) isopleths), shut-downs, or ramping up seismic airguns are presumably effective techniques that may reduce the potential number of sperm whales taken by harassment as a result of seismic surveys. It is assumed that the likelihood of impacts will be reduced relative to the scope of mitigation measures employed by seismic operators. For example, it is presumed that some animals may experience Level A Harassment if only visual monitoring is employed, and animals do not actively avoid noise or are missed during visual monitoring. Similarly, fewer animals will experience Level A Harassment if visual and effective acoustics monitoring are conducted in conjunction with shut-downs and ramping up. An acoustic model that incorporates acoustic noise propagation, environmental variables, and ecological and behavioral variables known for marine mammals (e.g. sperm whales) would be necessary for the MMS to quantify the anticipated takes of sperm whales attributable to seismic operations in the GOM; the MMS presently does not have access to such a model.

There is a reasonable potential that seismic surveys are exposing sperm whales to noise levels that may cause behavioral disturbance. The most probable disturbance is avoidance (moving away) from an actively-transmitting seismic vessel. The degree of displacement, length of time involved, and types of normal activities interrupted would influence the significance of this disturbance. Less likely, but possible, is that sperm whales will remain within acoustic exposure levels that will cause temporary hearing impairment or permanent hearing damage. This outcome would require whales to lack the ability to detect harmful sound intensities, "ignore" the signal in favor of other behavior such as feeding, or be in close proximity to a sudden start-up of the airguns. The GOM environment is deep, open waters. Short of a physically impaired whale or a whale being caught between two seismic sources, no physical constraints exist in the GOM that would "trap" a whale near a seismic sound source.

The area of most concern is the area of apparent concentration of whales located on the continental slope offshore of the Mississippi River mouth (and extending east to the DeSoto Canyon area in the Eastern Planning Area), where a year-round population of sperm whales has been documented. Although sperm whales apparently are not being displaced from this area due to seismic surveys, it is unknown whether their site fidelity reflects low sensitivity to seismic noise or a high motivation to remain in the area in spite of this noise. Because there is some evidence of sperm whale responses to low frequency noise, including possibly leaving an area where seismic surveys are occurring, it is reasonable to presume that these animals are being exposed to adverse noise levels (i.e., noise levels that would cause behavior modification, such as avoidance or displacement) in a preferred habitat. Minor behavioral changes typically do not adversely affect either the individual or the population. To date, there is no evidence that behavioral changes prompted by seismic noise are of sufficient magnitude to have meaningful effects on this population in that no large-scale displacement or voids in sperm whale occurrence relative to seismic activities have been observed. The present state of knowledge indicates sperm whales may react to seismic activity, but results are not consistent. Studies are underway to precisely determine the behavioral responses of Gulf sperm whales to airguns. Current mitigation procedures include ramp-up, visual monitoring and shut-down of seismic operations if sperm whales are within the 500–m (1,640–ft) impact zone. These measures are expected to significantly reduce the potential for noise impacts to sperm whales. However, because the potential for acoustic impact by oil and gas seismic surveys cannot be completely eliminated, nor are potential impacts clearly documented or understood at this time, a precautionary approach taken by MMS is to keep any impacts at an insignificant level. Therefore, MMS has preliminarily determined that while impacts on sperm whales are still somewhat speculative, and the potential for harm to the species or stock is unlikely, impacts to the species or stock will not be more than "negligible."

Research

A major field study of GOM sperm whales and other cetaceans, sponsored by MMS, in cooperation and with support from the GOM seismic industry (the Sperm Whale Seismic Study (SWSS)), has been completed. Major accomplishments included tagging a number of sperm whales with data-reporting satellite tags, and field testing a passive acoustic listening system for its ability to detect and locate sperm whales, relative to effectiveness of visual marine mammal observers. Although formal reports on findings have not yet been published, MMS has determined that the passive acoustic monitoring system was far superior to visual observers, as it could detect cetaceans underwater and at distances or in sea states where visual observations are not reliable.

In 1999, MMS hosted a workshop to identify protected species concerns in the GOM. The expert panel concluded possible acoustic impacts from anthropogenic sources were a valid concern and that information for the marine environment in the GOM was extremely limited. Recommendations to MMS included initiation of research on acoustic effects on marine mammals. Seismic exploration (i.e., airgun arrays) was identified as the sound source of primary concern. The MMS, with cooperative funding from the Office of Naval Research (ONR), immediately modified the existing research to develop and test research methods to address this topic. The pilot study successfully developed a multi-disciplinary approach and new technology to conduct research. In FY 2002, MMS and ONR initiated a 3–year study, the SWSS, managed by Texas A&M Research Foundation, to establish habitat use and normal behavior of sperm whales in the GOM, evaluate physical oceanographic correlates to whale locations and movements, obtain DNA profiling of GOM whales, and investigate seasonal movements and breeding behavior. In addition to addressing many aspects of sperm whale biology, the study will look at both short-term behavioral resonses to seismc airguns and any longer-term displacement using two types of whale tags. The offshore industry contributed use of a seismic vessel and acoustic array in FY 2002 to support this research. In FY 2003, MMS/ONR will obtain additional support from the National Science Foundation and the oil industry to expand the efforts so far described and also to begin investigating effects on sperm whale prey (squid). Embedded in SWSS are efforts to improve underwater detection (range, bearing, depth estimates) for sperm whales using passive acoustics. The immediate intent is to study sperm whale locations near seismic vessels and for effective tagging efforts. A spin-off of this work will be the means to detect and estimate relative locations to sperm whales using acoustics. Applications for using this technology for mitigation monitoring are being explored by MMS.

If NMFS proceeds with rulemaking, it intends to monitor the results of this research during the rule's effectiveness period to ensure that the determinations made during the rulemaking are correct. As appropriate, research results may lead to amendments to LOAs and/or rulemaking to ensure that marine mammals are protected to the greatest extent practicable.

Mitigation

In response to NMFS' question regarding the availability and feasibility (economic and technological) of equipment, methods and manner of conducting oil and gas seismic surveys to effect the least practicable adverse impact on potentially affected marine mammals, MMS noted that current mitigation measures for the oil and gas seismic industry in the GOM include: ramp-up, visual monitoring, establishment of an impact zone (currently 500 m (1,640–ft) around the sound source), and mandatory "shut-down" to avoid injury to whales in or about to enter the impact zone. Each of these helps insure the least practicable adverse impact to the sperm whales. Ramp-up, or soft start, requires seismic operators to start firing the acoustic array with one gun and gradually over

time add more guns until the array is fully operational. This allows whales in the area to move away from the sound source before discomfort or injury might result. Visual observers monitor the area around the sound source for 30 minutes prior to ramp-up and throughout seismic operations. Any time a sperm whale enters or surfaces within 500 m (1,640 ft) of the sound source, seismic operations are immediately ceased in order to minimize as much as possible the exposure of the whales to potentially damaging levels of sound.

MMS notes that an expanded seismic observer program is currently in development that will require trained observers on all seismic vessels. MMS expects to issue updated guidelines for the seismic observer program in early 2003 and an enhanced monitoring and reporting will also be put in place later in 2003. However, in the interim period before this rulemaking is complete, MMS will enforce the mitigation measures outlined in this section to ensure the protections required by the ESA and MMPA. As these mitigation measures would be the subject of any rulemaking under the MMS application, these measures may be adopted or amended according to this action.

Monitoring

Currently, monitoring and reporting requirements for the offshore seismic industry are set forth by MMS in MMS NTL No. 2002–G07 and 2002–G07. At this time, MMS is proposing to continue this monitoring program until an enhanced monitoring program can be designed.

Visual observers must monitor waters (with the assistance of binoculars) for sperm whales within and adjacent to the exclusion zone for 30 minutes prior to initiating the airgun ramp-up procedures. Observers must monitor the exclusion zone and adjacent waters during seismic operations, unless atmospheric conditions reduce visibility to zero or during hours of darkness (i.e., night). When sperm whales are observed entering or within the exclusion zone, observers must call for the shut down of the airgun array; seismic operators must shut down the seismic array when instructed by an observer. Ramp-up (see MMS NTL No. 2002–G07 for specified procedure) and seismic activities may be reinitiated only when the observer has: (a) determined that the sperm whale(s) has departed the exclusion zone, and (b) visually monitored the exclusion zone for at least 30 minutes since the last sperm whale sighting within the exclusion zone.

Reporting

The MMS proposes that when sperm whales are sighted prior to or during a seismic survey operation, observers must document the information listed below. This information must be reported to MMS within 8 days of the sighting by email. The following observations are to be included in the reports: (1) The date, time, and location (latitude/longitude) of each observation; (2) the number of sperm whales sighted; (3) whether or not a sperm whale entered the exclusion zone warranting a shut-down; (4) how long the shut-down occurred (i.e., how long the sperm whale was in the exclusion zone); and (5) the name and contact information for the person submitting the report. These observations and reporting requirements will identify all observed taking by harassment within the exclusion zone from seismic operations in the GOM.

NEPA

In February, 2002, MMS completed a draft PEA that is available upon written request (see ADDRESSES). That draft NEPA document has undergone extensive review by MMS and other Federal agencies, and by state, non-governmental, and interested private sector parties. This draft PEA, along with a document reviewing the public comments, was provided to NMFS to support the information contained in MMS' application and has been determined by NMFS to be sufficient for use at this stage of rulemaking. Based in part on public comments, a final PEA is being substantially revised by MMS, and is expected to be available for release prior to NMFS' issuance of a proposed rule on the MMS application. A copy of the final PEA will be available at that time.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to promulgation of a final rule.

Information Solicited

As this document is being published in conformance with NMFS regulations implementing the small take program (50 CFR 216.104(b)(1)(ii)), NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. As required by 50 CFR 216.105, NMFS will consider this information in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be provided with a 45–day period within which to submit comments on the proposed rule.

Dated: February 25, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4896 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Science Advisory Board; Open Meeting

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, March 18, 2003, from 10 a.m. to 5:30 p.m.; and Wednesday, March 19, 2003, from 8 a.m. to 5:15 p.m. These times and the agenda topics described below may be subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC.

Status: The meeting will be open to public participation with two 30-minute time periods set aside for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by March 7, 2003, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after March 7, 2003, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) The final report of the SAB Review Panel regarding NOAA Social Science Research, (2) the NOAA Climate Change Science Plan, (3) the NOAA Earth Observing Summit, (4) FY 2004 budget requests, (5) the U.S. Commission on Ocean Policy, (6) Pew Oceans Commission reports, (7) SONAR and marine mammals, (8) Stellar sea lions, (9) National Polar-orbiting Operational Environmental Satellite Systems, and (10) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, E-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: February 25, 2003.

Louisa Koch,

Acting Assistant Administrator, OAR.

[FR Doc. 03–4823 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012803B]

Endangered Species; Permits 1316

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit modification

SUMMARY: Notice is hereby given that Dr. Jeff Schmid, The Conservancy of Southwest Florida, 1450 Merrihue Drive, Naples, FL 34102, has been issued a modification to scientific research permit No. 1316.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Carrie Hubard, (301)713–2289).

SUPPLEMENTARY INFORMATION: On August 28, 2002, notice was published in the **Federal Register** (67 FR 55201) that an amendment of Permit No. 1316 issued January 8, 2002 (67 FR 38648), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Modification no. 2 to permit no. 1316 allows the Holder to take up to 30 Kemp's ridley sea turtles for purposes of scientific research.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 24, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4820 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA)

February 26, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that lastol elastic yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA.

SUMMARY: On February 21, 2003, the Chairman of CITA received a petition from the Dow Chemical Company alleging that lastol elastic yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that apparel from such yarns or from U.S.-formed fabrics containing such yarns be eligible for preferential treatment under the AGOA and the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 18, 2003 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, United States Department of Commerce, 14th and Constitution Avenue, NW. Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001.

Background

The AGOA and the CBTPA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA and the CBTPA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more AGOA or CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA or the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On February 21, 2003, the Chairman of CITA received a petition from the Dow Chemical Company alleging that lastol elastic yarn, which is a crosslinked, heat resistant elastic yarn having elevated temperature elasticity comprising a cured, irradiated or crosslinked ethylene polymer, classified

under items 5402.49.9005 and 5404.10.8005 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests quota- and duty-free treatment under the AGOA and the CBTPA for apparel articles that are both cut (or knit-to-shape) and sewn in one or more AGOA or CBTPA beneficiary countries from such yarns or from U.S.-formed fabrics containing such yarns.

Essential characteristics of the yarn in question are:

1. Created from a synthetic polymer, with low but significant crystallinity, composed of at least 99 percent by weight of ethylene and at least one other olefin unit.
2. Heat resistance to temperatures up to and greater than 220 degrees Celsius.
3. Exhibits substantial elasticity.
4. Chemical resistance to the most stringent chemicals used in textile processing today.

CITA is soliciting public comments regarding this request, particularly with respect to whether these yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these yarns for purposes of the intended use. Comments must be received no later than March 18, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that these yarns can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarns stating that it produces the yarns that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–4957 Filed 2–26–03; 4:39 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Purchasing Land and Establishing a Naval Special Warfare Riverine and Jungle Training Range in the Easement Buffer of the National Aeronautical and Space Administration's John C. Stennis Space Center, Hancock County, MS, and to Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and the regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the Department of Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of purchasing 5,200 acres of privately owned property located within the northwestern acoustic buffer zone at the National Aeronautical and Space Administration's John C. Stennis Space Center (Stennis Space Center) in Hancock County, Mississippi, and using the acquired acreage as a Naval Special Warfare Riverine and Jungle Training Range. Live-fire training on the range would use small arms Short Range Training Ammunition (SRTA) that has a plastic, non-lead, non-explosive projectile, and a limited flight profile.

DATES AND ADDRESSES: Public scoping meetings will be held in Hancock County, MS and St. Tammany Parish, LA to receive oral and written comments on environmental concerns that should be addressed in the EIS. Public scoping open houses will be held on Tuesday, March 18, 2003, from 4 p.m. to 7 p.m. at Hancock High School, 7084 Stennis Airport Dr., Kiln, MS and Thursday, March 20, 2003, from 4 p.m. to 7 p.m. at Slidell City Auditorium, 2056 2nd St., Slidell, LA.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Davis, Southern Division, Naval Facilities Engineering Command, PO Box 190010, North Charleston, SC 29419–9010, telephone (843) 820–5589, facsimile (843) 820–7472.

SUPPLEMENTARY INFORMATION: The proposed action will provide Special Operations Forces with reliable and priority access to a training range characterized by a permanent riverine and jungle environment and where live-fire exercises using SRTA can be conducted adjacent to the Stennis Space Center. Establishment of this range would meet the need of Special Operations Forces to train under realistic combat scenarios, thereby increasing their readiness to support national defense objectives and reducing combat casualties. It would also provide a range where Special Operations Forces could deploy the maritime unmanned aerial vehicle and conduct exercises using helicopters, boats, and vehicles.

Alternatives to be considered in the EIS address the type and tempo of training to be conducted on the range. The basic range alternative includes small arms training with SRTA along the reaches of the Pearl and Mikes River. Enhanced training alternatives will also be analyzed, which will also provide for the additional use of maritime unmanned aerial vehicles and helicopter insertions and extractions at variable tempos (tentatively either 36 or 60 events annually). A discussion of preliminary range locations will be included and the alternative of no action will also be addressed. In addition, the EIS may also consider other alternatives should they be defined during the public scoping process and meet established training criteria.

The EIS will evaluate the environmental effects associated with identified alternatives. Issues to be addressed will include, but not be limited to: Geology; biotic communities, including threatened and endangered species; water resources; noise; air quality; non-military land uses and access; cultural resources; transportation and waterway navigation; and water and land contaminants. The analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts. No decision will be made to implement any alternative until the NEPA process is completed.

The Navy is initiating the scoping process to identify community concerns and local issues that should be addressed in the EIS. Federal, state, and local agencies, and interested persons are encouraged to provide oral and/or written comments to the Navy to identify specific issues or topics of environmental concern that should be addressed in the EIS. Written comments must be postmarked by April 21, 2003, and should be mailed to: Special Warfare Training Range EIS, c/o Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina 29419–9010, Attn: Code ES12/RD (Richard A. Davis), telephone (843) 820–5589, facsimile (843) 820–7472, e-mail: *DavisRA@efdsouth.navfac.navy.mil.*

Dated: February 25, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–4871 Filed 2–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors (BOA) to the President, U.S. Naval War College (NWC)

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The BOA to the President, U.S. NWC, will meet to discuss educational, doctrinal, and research policies and programs at the NWC. The meetings will be open to the public.

DATES: The meetings will be held on Thursday, March 20, 2003, from 8 a.m. to 4 p.m. and on Friday, March 21, 2003, from 8 a.m. to 4 p.m.

ADDRESSES: The meetings will be held in Conolly Hall, U.S. NWC, 686 Cushing Road, Newport, RI.

FOR FURTHER INFORMATION CONTACT: Mr. Richard R. Menard, Office of the Provost, U.S. NWC, 686 Cushing Road, Newport, RI 02841–1207, telephone number (401) 841–3589.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of the Board of Advisors meeting is to elicit advice on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the College since the last meeting of the BOA on 15 and 16 August 2000.

Dated: February 26, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corp, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–4980 Filed 2–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[Number DE–PS36–03GO93007]

DOE Expression of Program Interest Regarding Hydrogen Production and Delivery Research

AGENCY: Golden Field Office, U.S. Department of Energy (DOE).

ACTION: Issuance of Expression of Program Interest (EOPI).

SUMMARY: The U.S. Department of Energy (DOE) Office of Hydrogen, Fuel Cells, and Infrastructure Technologies, as part of the President's FreedomCAR and Fuel Initiative, is requesting information through this Expression of Program Interest (EOPI) from interested parties regarding topics for research and development in the hydrogen production and delivery technologies areas. DOE may use this information in preparation of a solicitation and is seeking input from the hydrogen community to ensure topics covered in the solicitation encompass promising technology areas.

DATES: The EOPI is currently open and will close on March 14, 2003. It is anticipated that a solicitation will be issued later in Fiscal Year (FY) 2003.

ADDRESSES: To obtain a copy of the EOPI, interested parties should access the DOE Golden Field Office Web site at *http://www.golden.doe.gov/businessopportunities.html*, click on "Solicitations", and then access the solicitation link. The link will provide direct access to the EOPI (listed as DE–PS36–03GO93007) on the DOE Industry Interactive Procurement System (IIPS) Web site. Instructions for using the IIPS Web site are provided at *http://www.golden.doe.gov/businessopportunities.html.*

The EOPI can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing for existing business opportunities and then browsing "Opportunities by Program Office" for those actions issued by the Golden Field Office. DOE will not issue paper copies of the EOPI.

Any future solicitation resulting from this EOPI will be assigned the same Number (DE–PS36–03GO93007) and will be accessible via the Golden Field Office Web site or IIPS Web site as described above.

FOR FURTHER INFORMATION CONTACT: The EOPI submissions and any questions should be sent via e-mail to: *hydrogen_interest@nrel.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) Office of Hydrogen, Fuel Cells, and Infrastructure Technologies, as part of the President's FreedomCAR and Fuel Initiative, is requesting information from interested parties regarding topics for research and development in the hydrogen production and delivery technologies areas. DOE is preparing to issue a solicitation and is seeking input from the hydrogen community to ensure topics covered in the solicitation encompass promising technology areas. A framework for submissions is provided in the EOPI, including objective, types information to be submitted, format requirements, and eligibility. Please note that submissions to DOE under this EOPI are provided for information only and will not result in any type of award or financial assistance from DOE to the submitter. Also, DOE will not reimburse any costs associated with submissions under this EOPI.

It is anticipated that a solicitation will be issued later in FY 2003, with DOE financial assistance awards made in FY 2004. A separate announcement will be made by DOE for the issuance of the solicitation.

Issued in Golden, Colorado, on February 19, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–4864 Filed 2–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Number DE–PS36–03GO93004]

Inventions and Innovation Program

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Notice of solicitation for financial assistance applications.

SUMMARY: The Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE), Weatherization and Intergovernmental Program, is funding a competitive grant program entitled the Inventions and Innovation (I&I) Program. The goals of the I&I Program are to improve energy efficiency through the promotion of innovative ideas and inventions that have a significant, potential energy impact and a potential, future commercial market. The following EERE offices and programs are of particular

interest to I&I: Biomass Program; Building Technologies Program; Distributed Energy & Electric Reliability Program; Federal Energy Management Program; FreedomCAR & Vehicle Technologies Program; Geothermal Technologies Program; Hydrogen, Fuel Cells & Infrastructure Technologies Program; Industrial Technologies Program; Solar Energy Technology Program; Weatherization & Intergovernmental Program; and Wind & Hydropower Technologies Program.

DATES: DOE issued the solicitation on February 13, 2003. The deadline for receipt of applications will be 3 p.m. Mountain Time on April 12, 2003.

ADDRESSES: All Golden Field Office (GO) solicitations will be posted on the Industry Interactive Procurement System (IIPS) Web site at *http://e-center.doe.gov*; however, you may access them, along with IIPS instructions, through links on the GO Web site at: *http://www.golden.doe.gov/businessopportunities.html* by clicking on "Solicitations." IIPS provides the medium for disseminating solicitations, receiving financial assistance applications, and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to enter their company into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Margo Gorin, Contract Specialist, at *go_I&I@nrel.gov*.

SUPPLEMENTARY INFORMATION: *Solicitation Specifications:* Eligibility requirements include the following:

(1) Individuals that are U.S. citizens, either native-born or naturalized; (2) Small businesses (as defined by the Small Business Administration) that are incorporated and operating in the U.S. and that conduct at least 50% of the effort; or (3) Institutions of higher learning located in the U.S.—eligible to apply only under Category 1. Individual inventors and very small businesses (15 or fewer employees) are especially encouraged to participate. More than one application may be submitted by an applicant for different innovations. However, funding will be limited to one award per applicant, per cycle. Also more than one organization may be involved in an application as long as the lead organization and lead financial assistance management responsibilities are defined. The Catalog of Federal Domestic Assistance number assigned to the I&I Program is 81.036. Cost sharing by applicants and/or cooperating participants is not required but highly encouraged. In addition to direct financial contributions, cost sharing can include beneficial services or items such as manpower, equipment, consultants, and computer time that are allowable in accordance with applicable cost principles.

The Golden Field Office has been assigned the responsibility of issuing the solicitation and administering the awards. Ideas that have a significant energy savings impact and future commercial market potential are chosen for financial support through the competitive solicitation process. The I&I Program will provide financial assistance of up to $75,000 for Category 1 and up to $250,000 for Category 2 to applications that fall within the "conceptual" and "developmental" stages of development, respectively. To be considered for a Category 2 award, a bench-scale model and/or other preliminary investigations must be complete. Each award may cover a project period of up to one year for Category 1 and up to two years for Category 2.

A selection of former projects funded by the I&I Program that have reached commercial markets include the following:

- *Meta-Lax Stress Relief Equipment* offers distinct advantages over conventional heat treatment methods. It uses less energy, is portable, can handle any size metal part, and treats metal stress in hours versus days.
- *Aero Cylinder Technology* replaces conventional cylinders by combining air spring bellows into assemblies for use on machines (such as punch presses) to control motion and large masses. The air springs act as counter balancers and press cushioners to eliminate alignment problems. This proper alignment reduces downtime and compressed air losses, resulting in significant energy savings.
- *Electro-Optic Inspection of Heat Exchangers* is a laser-based, nondestructive evaluation system for inspecting heat exchanger tubing for internal corrosion, erosion, scale buildup, and deformation. Benefits to petrochemical, pulp and paper, and power-generation plants include reduced downtime and increased efficiency.
- *Hydrodynamic Multi-Deflection Pad Bearings* optimize bearing operation in high-speed, combined heat and power turbines, high-load electric motors or gear boxes, air or gas compressors, and air conditioning refrigeration equipment. Energy loss due to friction is reduced up to forty-percent by using fluids as a wedge between pads and moving parts.

Availability of Funds for FY 2003: DOE is announcing the availability of up to $1.2 million in agreement funds for Fiscal Year 2003. The awards will be made through a competitive solicitation. DOE reserves the right to fund in whole or in part any, all, or none of the proposals submitted in response to this notice.

Issued in Golden, Colorado, on February 13, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance, Golden Field Office.

[FR Doc. 03–4865 Filed 2–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–001]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

February 24, 2003.

Take notice that on February 19, 2003, High Island Offshore System, L.L.C. (HIOS) tendered for filing an explanation concerning the revised tariff sheets filed in this docket on December 31, 2002, as required by the Commission's Order of January 30, 2003 in this docket.

HIOS states that such revised tariff sheets were primarily the result of the elimination of Rate Schedules T and I, as well as necessary ministerial and conforming changes related to the elimination of those schedules.

HIOS states that a full copy of its filing is being served on all jurisdictional customers, applicable state commissions and interested parties that have requested service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4847 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–258–001]

Iroquois Gas Transmission System, L.P.; Notice of Tariff Filing

February 24, 2003.

Take notice that on February 20, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) informed the Commission that the following tariff sheets tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, on February 14, 2003, are proposed to have an effective date of April 1, 2003:

Tenth Revised Sheet No. 4A
Eighth Revised Sheet No. 58
Eighth Revised Sheet No. 59
First Revised Sheet No. 60E
Fifth Revised Sheet No. 67
Original Sheet No. 4B
First Revised Sheet No. 58A
Original Sheet No. 60D.01
Third Revised Sheet No. 66A

Iroquois states that the proposed effective date originally proposed in the February 14, 2003 filing was March 14, 2003. However, by a letter dated February 20, 2003, Iroquois advised the Commission that it had determined that it will not be able to commence the new service until April 1, 2003, and therefore the proposed effective date of the tariff sheets is April 1, 2003. Iroquois respectfully requests any necessary waivers of the Commission's regulations to permit the filing to become effective as proposed.

Iroquois states that the purpose of the tariff changes is to implement a new Extended Receipt and Extended Delivery Point Service, which would extend, on a secondary basis, a shipper's existing firm transportation path to downstream or upstream zones.

Iroquois states that copies of this amended filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4848 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–52–000]

The Mission Group, on Behalf of its Public Utility Subsidiaries; Notice of Filing

February 24, 2003.

Take notice that on February 5, 2003, The Mission Group (Applicant), acting on behalf of its public utility subsidiaries, filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a transfer of indirect control of jurisdictional facilities, arising from the proposed reincorporation of the Applicant under the laws of the State of Delaware. Applicant states that the proposed transaction brings it within the same corporate governance regime as its principal subsidiaries, Edison Mission Energy and Mission Energy Holding Company, and will have no effect on competition, rates, or regulation and is consistent with the public interest.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4845 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–51–000]

Natural Gas Pipeline Company of America; Notice of Application

February 24, 2003.

Take notice that on February 13, 2003, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket

No. CP03–51–000 an application, pursuant to section 7(c) of the Natural Gas Act (NGA) and subpart A of part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations. Natural requests a certificate of public convenience and necessity authorizing the construction and operation of six (6) new injection/withdrawal wells (I/W) and, appurtenant facilities, and the conversion of three (3) observation wells to I/W wells at Natural's Sayre Storage Field (Sayre) located in Beckham County, Oklahoma , all as more fully set forth in its petition which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any questions concerning Natural's application should be directed to Floyd Hofstetter, Vice President, Storage Operations, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148 at (630) 691–3660.

Natural states that these additional facilities are necessary to maintain Sayre's current level of service to the interstate market and will offset reduced deliverability resulting from a reduction of cushion inventory by Oklahoma Natural Gas Storage Company. Natural notes that the current certificated maximum capacity is 90.4 Bcf and the certificated maximum daily withdrawal is 400 MMcf, however, Natural is not requesting an increase in the maximum inventory or in the peak day withdrawal. Natural states that the cost of the project is approximately $2.8 million and Natural requests rolled-in rate treatment for the new facilities.

There are two ways to become involved in the Commission's review of this project: First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (19 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to the project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commissions' final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4844 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–078]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

February 24, 2003.

Take notice that on February 20, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Original Sheet No. 26D.01, to be effective January 1, 2003.

Natural states that the filing is submitted pursuant to the Commission's order issued January 30, 2003, in Docket No. RP99–176–075, which conditionally accepted Sheet No. 26D.01.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4850 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–259–000]

Questar Pipeline Company; Notice of Tariff Filing

February 24, 2003.

Take notice that on February 20, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff, to be effective March 22, 2003.

Second Revised Sheet No. 4
Twenty-Eighth Revised Sheet No. 5
Fifteenth Revised Sheet No. 5A
Fifteenth Revised Sheet No. 6
Tenth Revised Sheet No. 6A
Third Revised Sheet No. 11
Fifth Revised Sheet No. 56A
Sixth Revised Sheet No. 58
Tenth Revised Sheet No. 59
Seventh Revised Sheet No. 60B
Sixth Revised Sheet No. 62
Sixth Revised Sheet No. 63
First Revised Sheet No. 67A
Eighth Revised Sheet No. 68
Second Revised Sheet No. 69
Original Sheet No. 69A
Ninth Revised Sheet No. 75
Second Revised Sheet No. 99I
Seventh Revised Sheet No. 163
First Revised Sheet No. 179H
First Revised Sheet No. 185A
First Revised Sheet No. 185B
Third Revised Sheet No. 187
Fourth Revised Sheet No. 193
Second Revised Sheet No. 194
Third Revised Sheet No. 196
Third Revised Sheet No. 197

Questar states that its filing proposes a "cleanup" of specific aspects of its tariff language, including the removal of tariff language affected by the Commission's announcement of the removal of the waiver of the rate ceiling on short-term capacity-release transactions that expired September 30, 2002, pursuant to 18 CFR 284.8(i).

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4849 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–50–000]

Tennessee Gas Pipeline Company; Notice of Application

Dated: February 24, 2003.

On February 11, 2003, Tennessee Gas Pipeline Company (Tennessee), 9 East Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP03–50–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon in place the Yalobusha pipeline segment 800–2 located in Grenada County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Tennessee states that in 1963 it constructed a secondary river crossing of the Yalobusha River in Grenada County, Mississippi, pursuant to authorization granted in Docket No. CP63–48–000 and this segment known as the Yalobusha pipeline segment 800–2 is thirty inches in diameter and is approximately 1,000 feet in length. Tennessee further states that: (1) The Yalobusha pipeline segment 800–2 was constructed to minimize service interruption while the existing crossing, Line 800–1, was lowered; (2) to safely lower Line 800–1, Tennessee first constructed the new crossing and then temporarily removed Line 800–1 from service; and (3) subsequent to lowering Line 800–1, Tennessee redirected the flow of gas from the Yalobusha pipeline segment 800–2 back to Line 800–1.

Tennessee indicates that it does not currently rely on the Yalobusha pipeline segment 800–2 to provide service to any customers. In addition, Tennessee states that it plans to perform maintenance on the Line 800–1 segment in 2003 to make it piggable. Because of its infrequent use, maintenance issues, and redundant nature, Tennessee states that it proposes to abandon the Yalobusha pipeline segment 800–2 when Tennessee is in Grenada County, Mississippi, performing maintenance on Line 800–1 to make it piggable. Additionally, Tennessee states that the abandonment of the line will not significantly affect its capacity. According to Tennessee, the results of the abandonment of Yalobusha pipeline segment 800–2 will be a 0.060% reduction in capacity and that the cost associated with the proposed abandonment is $262,000.

Any questions concerning this application may be directed to Jacques Hodges, Attorney, Tennessee Gas Pipeline Company, 9 East Greenway Plaza, Houston, Texas 77046, at (832)

676–5509 or fax (832) 676–2251 or Veronica Hill, Certificates & Regulatory Compliance, at (832) 676–3295 or fax (832) 676–2231.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4843 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–51–000]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell, Westar Energy, Inc.; Order Conditionally Granting Authorization To Issue Long-Term Unsecured Debt and Announcing New Policy on Conditioning Securities Authorizations

Issued: February 21, 2003.

1. In this order, the Commission will grant Westar Energy, Inc.'s (Westar, formerly Western Resources, Inc.) request to issue long-term, unsecured debt, but will do so conditionally with restrictions on this authorization. In addition, the Commission intends that all future issuances of secured and unsecured debt authorized by the Commission will be similarly conditioned. This order benefits customers by ensuring that the authorization of a public utility to issue securities accords with the requirements of section 204 of the Federal Power Act (FPA).[1]

Background

2. On September 6, 2002, Westar submitted an application pursuant to section 204(a) of the FPA [2] seeking authorization to issue long-term, unsecured debt in an amount not to exceed $650 million at any one time. Westar also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2 (2002).

3. On November 1, 2002, the Director of the Office of Markets, Tariffs, and Rates' Division of Tariffs and Market Development-Central requested additional information from Westar. Westar filed its response on November 15, 2002 (Westar Response). Westar, among other things, provided details related to its existing soon-to-mature debt securities,[3] its proposed debt issuance and why it believes the proposed issuance of the long-term, unsecured debt is in the public interest.

Notice, Interventions and Motions

4. Notices of the application and the data request response were published in the **Federal Register**, 67 FR 59058 (2002) and 67 FR 70725 (2002), respectively. The Kansas Commission filed a notice of intervention and comments on October 2, 2002. MBIA Insurance Company (MBIA) submitted timely motions to intervene and comments on October 3, 2002, and December 11, 2002.

5. The Kansas Commission states that the Commission should view Westar's application in the context of concerns about the capital structure and debt obligations of Westar and its affiliates.[4] The Kansas Commission also states that the Commission should not construe its filing as a request to deny Westar financing. However, the Kansas Commission emphasizes that its decision not to protest is based and conditioned upon Westar's declarations that the proceeds will be used solely to retire existing debt and that any debt issued will be "unsecured."[5]

6. MBIA insures approximately $500 million of bonds secured by the first mortgage pledge of Westar and its subsidiary, Kansas Gas and Electric Company, and closely tracks Westar's financial health. MBIA states that it has become alarmed at what it views as recent indications regarding troubling financial and management issues with Westar,[6] and that Westar's application contains scant information on how Westar's proposed issuance will relate to Westar's strained financial status. MBIA encourages the Commission to exercise appropriate due diligence to ensure that the standards of section 204 are met and that the issuance of the securities will not lead to further deterioration.[7]

7. On October 18, 2002, Westar submitted an answer in response to the Kansas Commission's and MBIA's comments.

8. On November 26, 2002, the Kansas Commission filed a motion to lodge its Order No. 51, requiring financial and corporate restructuring by Westar. This order requires Westar to obtain Kansas Commission approval before the issuance of any debt, to structurally separate its utility subsidiaries from its non-utility businesses and to reverse certain accounting transactions among its affiliates. Order No. 51 also provides

[1] 16 U.S.C. 824c (2000).

[2] 16 U.S.C. 824c(a) (2000).

[3] Westar's pre-existing debt issuances were authorized by either this Commission or the Kansas Corporation Commission (Kansas Commission) with no conditions imposed on how much of the borrowings could be used for non-utility businesses or the amount of Westar's assets that could be used to secure the debt.

[4] *See* Kansas Commission Notice of Intervention at 2.

[5] Id. at 3–4.

[6] MBIA notes: (1) An anticipated Kansas Commission order requiring a comprehensive restructuring, (2) reports of grand jury investigations of company executives and (3) Westar's efforts in seeking an exemption from limitations imposed by the Investment Company Act of 1940.

[7] *See* Motion to Intervene at 1–2.

that Westar should take steps to reduce its debt, utilizing available cash flow from electric operations to reduce non-utility debt secured by utility assets. The Kansas Commission states that Westar should consider the sale of subsidiaries Protection One, Inc. and ONEOK, Inc. stock, and a reduction of dividends.[8]

9. On January 6, 2003, the Kansas Commission filed a motion to lodge its Order

No. 55, clarifying Order No. 51. Among other things, Order No. 55 clarifies Westar's financial and corporate restructuring requirements; establishes an August 1, 2003, restructuring deadline; requires monthly progress reports on Westar's debt reduction; affirms that Westar must reduce secured utility debt by $100 million per year from cash flow; affirms that the appropriate amount of debt after the restructuring is $1.47 billion; and affirms the Kansas Commission's authority to require Kansas Commission approval before the issuance of any additional debt.[9]

Discussion

Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2002), the notice of intervention and timely, unopposed motion to intervene serve to make the parties that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213, prohibits answers to protests unless otherwise permitted by the decisional authority. We do not find that good cause exists to allow Westar's answer, as it does not provide additional information assisting us in the decision-making process.

11. Rule 212(a)(2) of the Commission's Rules of Practice and Procedure allows motions to be filed by participants who have filed timely, interventions that have not been denied.[10] Accordingly, the Commission accepts, and the Commission will grant, the Kansas Commission's motions to lodge Order Nos. 51 and 55.

Westar's Conditional Securities Authorization

12. Section 204(a) of the FPA provides that requests for authority to issue securities or to assume liabilities shall be granted if the Commission finds that the issuance:

(a) is for some lawful object, within the corporate purposes of the applicant, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes.[11]

13. The Commission concludes that Westar's requested authorization, as conditioned below, meets the standards of section 204.

14. The Commission finds that the proposed issuance of long-term, unsecured debt is for a lawful object within Westar's corporate purposes and is necessary, appropriate and consistent with Westar's performance as a public utility. Westar states it will issue the proposed debt in the second quarter of 2003 and use the proceeds to refinance debt that effectively matures in August 2003 by virtue of a put/call agreement.[12] Westar also states it is refinancing the unsecured debt in order to meet the requirements of a bank credit agreement requiring the debt to be retired 60 days prior to maturity and that without the ability to refinance Westar could potentially face a liquidity crisis.[13] Refinancing or retiring debt is a lawful object and is routinely practiced in the electric industry. The Commission further finds that the authorization, as conditioned below, is necessary and appropriate, giving Westar, a non-investment grade issuer,[14] the flexibility necessary to refinance its debt securities with the most favorable terms.

15. In reviewing filings under section 204, the Commission evaluates a utility's financial viability based on a review of the financial statements submitted in the application and the utility's interest coverage ratio. An interest coverage ratio is a measure of the utility's ability to meet future debt and interest payments.[15] Westar's pro forma interest coverage ratio is less than what the Commission would typically prefer due in large part to approximately $657 million of non-cash charges from its non-utility subsidiaries that negatively impacted Westar's financial statements. However, Westar has a bank covenant requirement in place, similar to the Commission's interest coverage ratio, whereby Westar must attain a minimum ratio of consolidated earnings before interest, taxes, depreciation, and amortization to consolidated interest expense of 2.0 to 1.0. Westar's ratios on an actual and pro forma basis are 2.7 to 1.0 and 2.5 to 1.0, respectively, and as these ratios show, Westar meets the bank covenant requirement both before and after the proposed financing.[16]

16. In evaluating Westar's financial viability, the Commission also reviewed Westar's debt maturities and cash flow projections over the next five years. While Westar's debt maturities between October 2002 and December 2007 total more than $2.7 billion, Westar projects it will be able to meet these obligations as they come due.[17] Westar also projected a free cash flow remaining after the payment of interest and dividends in excess of $115 million for each of the next four years [18] and states it will be used to further reduce company debt.[19]

17. The Commission has considered all the above information concerning Westar's financial viability.[20] While we recognize that Westar's financial condition has deteriorated, in large part due to its non-utility business activities, without the proposed authorization to refinance soon-to-mature debt Westar could face a liquidity crisis, ultimately harming the public interest.

18. We also note that authorization can be granted only if doing so will be consistent with Westar providing public utility service and will not impair its ability to provide such service. We believe that with the conditions ordered below we can make this finding.

19. Therefore, the Commission will conditionally authorize Westar's request to issue long-term, unsecured debt in an amount not to exceed $650 million, subject to the following conditions.[21]

[8] *See* Motion to Lodge Order No. 51 at 1–2.

[9] *See* Motion to Lodge Order No. 55 at 2–3.

[10] *See* 18 CFR 385.212 (2002).

[11] 16 U.S.C. 824c(a) (2000).

[12] *See* Application at 2–3; Westar Response 7.

[13] *See* Westar Response 7.

[14] *See* Westar Response 7. Independent credit agencies, such as Standard and Poor's and Moody's Investors Services, rated Westar's unsecured debt securities as BB- and Ba2, respectively, with negative outlooks. *See* Application at 2.

[15] The interest coverage ratio is a calculation of income before interest and taxes divided by total interest expense.

[16] *See* Westar Response 6.

[17] *See* Westar Response 12.

[18] Westar calculates free cash flow by adding depreciation and amortization to net income, then subtracting capital expenditures and stock dividends.

[19] *See* Westar Response 12.

[20] The Division of Regulatory Audits in the Commission's Office of the Executive Director performed an audit and found that since 1995 Westar has issued substantial amounts of new debt and used the proceeds to finance non-utility business ventures and to cover operating losses incurred by non-utility businesses. The audit report identifies the following adverse consequences: The credit rating for Westar securities is "junk status;" Westar debt is more costly and more difficult to obtain on economically favorable terms; Westar's ratepayers are at risk for paying the increased cost of debt if Westar cannot generate enough cash flow from utility operations to cover the increased debt costs; and Westar will be left with a disproportionate amount of debt if it "spins off" some or all of its non-utility businesses.

[21] The scope of the Commission's jurisdiction over securities issuances is limited. For example,

Continued

First, the proceeds of the debt must be used solely for the purpose of retiring outstanding indebtedness, including accrued and unpaid interest due at maturity. Second, Westar is required to file quarterly informational status reports detailing its financial condition and debt-reduction efforts within 30 days of the end of each calendar quarter. Third, Westar must file a Report of Securities Issued within 30 days after the sale or placement of the long-term, unsecured debt, as stated in the Commission's regulations.[22] Finally, Westar must also abide by the following restrictions on secured and unsecured debt.

20. The Commission will impose four additional restrictions and it is the Commission's intention that these restrictions will be applied to all future public utility issuances of secured and unsecured debt authorized by this Commission.[23] First, public utilities seeking authorization to issue debt that is secured (*i.e.*, backed) by utility assets must use the proceeds of the debt for utility purposes only. Second, with respect to such utility asset-secured debt issuances, if any utility assets that secure such debt issuances are divested or "spun off," the debt must "follow" the asset and be divested or "spun off" as well.

21. Third, if assets financed with unsecured debt are divested or "spun off," the associated unsecured debt must follow those assets. Specifically, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt likewise must "follow" the non-utility assets and if the non-utility assets are divested or "spun off" then a proportionate share of debt must "follow" the associated non-utility assets by being divested or "spun off" as well. Last, with respect to unsecured debt used for utility purposes, if utility assets financed by unsecured debt are divested or "spun off" to another entity, then a proportionate share of the debt also must be divested or "spun off".

22. These restrictions should prevent public utilities from borrowing substantial amounts of monies and using the proceeds to finance non-utility businesses. These restrictions thus should ensure that future issuances of debt are compatible with the public interest, will not impair a public utility's ability to perform in the future and provide appropriate ratepayer protection.[24]

Information To Be filed in Future Section 204 Applications

23. Part 34 of the Commission's regulations sets out the filing requirements for public utilities seeking Commission authorization of the issuance of securities or the assumption of liabilities.[25] In order for the Commission to determine if a security issuance is in the public interest, an application for authority to issue securities must contain, among other things, certain corporate information, a statement as to whether or not any state regulatory body requires an application for authorization to issue the securities, a summary of any rate changes that may apply during or after the period of the issuances, along with accompanying exhibits.[26]

24. The Commission takes this opportunity to remind public utilities that they must include in their applications all information required in part 34 of the Commission's regulations. Specifically, public utilities must include information on the amount, type, maturity date and whether any of the proposed debt issuances will be secured or unsecured. Public utilities also must provide a detailed explanation of the purpose for the requested securities and state if the issuance will be used for utility or non-utility purposes. Public utilities must explain how the proposed issuance meets the standards of section 204(a), rather than merely making a declaration that it does so. Finally, the board of directors' resolutions must include a discussion of the type, amount, and purpose of the proposed issuance and the financial statements should be calculated on both an actual and pro forma basis.

25. We also remind public utilities that section 204 gives the Commission the authority to issue supplemental orders, and modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any security or the associated proceeds may be applied.[27] Westar as well as other public utilities are hereby put on notice that the Commission plans to review the required filings and reports, and may issue supplemental orders as necessary.

26. Finally, while state regulatory authorities may not have approval over a public utility's request for authority to issue securities or assume liabilities filed with the Commission pursuant to section 204 of the FPA, we recognize such matters can have a significant impact on the applicant's ability to perform its public utility obligations at the retail level. Thus, the Commission would find the views of the state commissions with retail rate jurisdiction over section 204 applicants helpful and we encourage those commissions to file comments in section 204 proceedings.

The Commission orders:

(A) Westar is hereby conditionally authorized to issue long-term, unsecured debt in an amount not to exceed $650 million at any one time, under the terms and conditions and for the purposes specified in the application and this order, subject to the conditions discussed in the body of this order.

(B) Westar's requested waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2 is hereby granted.

(C) This authorization is effective as of the date of this order and terminates two years thereafter.

(D) The authorization granted in Ordering Paragraph (A) above is without prejudice to the authority of the Commission with respect to rates, services, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may come before the Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

(F) The Secretary is hereby directed to publish this order in the **Federal Register**.

section 204 of the FPA does not apply to a public utility organized and operating in a state where its securities issuances are regulated by a state commission. *See*, 16 U.S.C. 824c(f) (2000). The Kansas Commission follows a similar statute whereby it must authorize the issuance of long-term securities unless the issuance requires a registration statement to be filed with the Securities and Exchange Commission or the public utility obtains authorization from another state or federal agency. *See* K.S.A. § 66–125 (2001). As directed in Order Nos. 51 and 55, for all future securities authorizations Westar must receive Kansas Commission approval before the issuance of any future debt. Thus, as long as Westar complies with this requirement it will not need our approval prior to such issuance. Westar should, however, file with us an informational copy of any future securities issuance applications that are subject to approval by the Kansas Commission.

[22] *See* 18 CFR 34.10, 131.43 (2002).

[23] MBIA recently testified at the Commission's January 16, 2003, technical conference on capital availability for energy markets, citing concerns that holding companies use assets of regulated utilities to keep shaky unregulated ventures afloat. MBIA requested that the Commission take a more active role in analyzing proposed securities issuances and use its section 204 authority to rigorously evaluate how debt will be used. *See* 16 U.S.C. 824c(a) (2000).

[24] These restrictions are also consistent with the audit report discussed above. *See supra* note 20.

[25] *See* 18 CFR part 34 (2002).

[26] *Id.* at §§ 34.3 through 34.9.

[27] *See* 16 U.S.C. 824c(b) (2000).

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4835 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–156–003, et al.]

TRANSLink Development Company, LLC, et al.; Electric Rate and Corporate Filings

February 24, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. TRANSLink Development Company, LLC

[Docket Nos. EC01–156–003, ER01–3154–003 and ER03–83–002]

Take notice that on February 19, 2003, TRANSLink Development Company, LLC (TRANSLink) tendered for filing with the Federal Energy Regulatory Commission (Commission), for its review and approval, a compliance filing in the aforementioned dockets.

The compliance filing responds to Commission Orders regarding the rates and terms of service that TRANSLink will provide to customers after joining the Midwest ISO as an independent transmission company, thereby expanding the scope of the Midwest ISO regional transmission organization to include the transmission systems of the TRANSLink Participants, including both jurisdictional utilities and municipal and cooperative public power systems.

TRANSLink states that this compliance filing has been served on the parties for the service lists in Docket Nos. EC01–156, ER01–3154, and ER03–83, to the state regulatory authorities in each of the states in which any of the jurisdictional TRANSLink Participants provides electric service to consumers or operates transmission facilities, and to all customers taking service under an open transmission tariff of one of the TRANSLink Participants that will be superseded by the TRANSLink Rate Schedule.

Comment Date: March 12, 2003.

2. PJM Interconnection, L.L.C.

[Docket No. ER03–85–001]

Take notice that on February 19, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing Original Sheet No. 96GGGG to PJM's Open Access Transmission Tariff, Fifth Revised Volume No. 1. PJM states that it submits this revised tariff sheet to comply with the Commission's order of December 12, 2002 in this proceeding. PJM proposes to make the subject tariff sheet effective on November 1, 2002, consistent with the effective date of the remainder of PJM's tariff revisions accepted in this docket and subject to the outcome of the Commission's final rule in Docket No. RM02–1–000.

PJM states that copies of this filing were served upon the official service list for Docket Nos. ER02–1333 and ER03–85, all members of PJM, and the state electric utility regulatory commissions within the PJM region.

Comment Date: March 12, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–86–002]

Take notice that on February 19, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to certain provisions of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's December 19, 2002, Order in this docket. The Midwest ISO has requested an effective date of February 20, 2003.

The Midwest ISO states that it has served a copy of this filing electronically upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been posted electronically on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: March 12, 2003.

4. Unitil Energy Systems, Inc.

[Docket No. ER03–140–001]

Take notice that on February 20, 2003, Unitil Energy Systems, Inc., submitted a corrected Table of Contents to the Open Access Transmission Tariff dated November 1, 2002.

Comment Date: March 13, 2003.

5. Entergy Mississippi, Inc.

[Docket No. ER03–171–002]

Take notice that on February 19, 2003, Entergy Mississippi, Inc., (Entergy) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's order issued January 31, 2003, 102 FERC 61,105, directing Entergy to file an agreement for the lease of Silver Creek Substation (the lease agreement) or submit an explanation identifying why such a filing is not necessary. Entergy submitted its explanation as to why the submittal of the lease agreement is not required by either section 203 or section 205 of the Federal Power Act.

Comment Date: March 12, 2003.

6. Ameren Services Company

[Docket No. ER03–460–001]

Take notice that on February 19, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Service between ASC and Cinergy Services, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Cinergy Services, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: March 12, 2003.

7. Ameren Services Company

[Docket No. ER03–491–001]

Take notice that on February 19, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Service between ASC and Westar Energy, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Westar Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: March 12, 2003.

8. Public Service Company of New Mexico

[Docket No. ER03–542–000]

Take notice that on February 19, 2003, Public Service Company of New Mexico (PNM) tendered for filing a Revised Funding Agreement (designated as First Revised Service Agreement No. 198 under PNM Electric Tariff, Second Revised Volume No. 4) that modifies certain provisions of the original Funding Agreement for the design, engineering and construction services associated with the facilities necessary to interconnect the FPL Energy New Mexico Wind, LLC (FPLE) proposed 204 MW name plate capacity wind farm generation project in eastern New Mexico to PNM's transmission system.

PNM states that copies of the filing have been sent to FPLE, the New Mexico Public Regulation Commission, and the New Mexico Attorney General.

Comment Date: March 12, 2003.

9. Wisconsin Electric Power Company

[Docket No. ER03–543–000]

Take notice that on February 19, 2003, Wisconsin Electric Power Company (Wisconsin Electric) filed with the Federal Energy Regulatory Commission (Commission), a notice of cancellation of First Revised Service Agreement No. 25 under FERC Electric Tariff, Third Revised Volume No. 1. Wisconsin Electric is requesting the cancellation be effective June 1, 2003.

Wisconsin Electric states that copies of the filing have been served on Badger Power Marketing Authority of Wisconsin, Inc., and the Public Service Commission of Wisconsin.

Comment Date: March 12, 2003.

10. Southern Company Services, Inc.

[Docket No. ER03–544–000]

Take notice that on February 19, 2003, Southern Company Services, Inc. (SCS), acting on behalf of itself, Alabama Power Company, and Mississippi Power Company, filed a notice of termination notifying the Commission that the Long-Term Transmission Service Agreement between Entergy Power, Inc. and Alabama Power Company, Mississippi Power Company, and Southern Company Services, Inc., designated SCSI Rate Schedule No. 78, effective on April 27, 1992, and filed with the Federal Energy Regulatory Commission by Southern Company Services, Inc., terminated by its own terms.

Comment Date: March 12, 2003.

11. PacifiCorp

[Docket No. ER03–545–000]

Take notice that on February 20, 2003, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission), unexecuted Umbrella Service Agreements with Conoco Inc., J. Aron & Company, Reliant Energy, Portland General Electric, Pinnacle West, Sempra Energy Trading Corp., UBS Warburg Energy and Williams Energy Marketing & Trading Company under PacifiCorp's market based rate tariff, FERC Electric Tariff, Third Revised Volume No. 12.

PacifiCorp states that copies of this filing were supplied to the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: March 13, 2003.

12. Public Service Electric and Gas Company, and PSEG Energy Resources & Trade LLC

[Docket No. ER03–546–000]

Take notice that on February 20, 2003, Public Service Electric and Gas Company (PSE&G) and PSEG Energy Resources & Trade LLC (PSEG ER&T), filed with the Federal Energy Regulatory Commission (Commission) a request for waiver of the Commission's rules and their market-based rate tariffs and codes of affiliate conduct to the extent necessary to permit PSEG ER&T to participate in the auction for Basic Generation Service (BGS), as approved by the New Jersey Board of Public Utilities, and provide BGS within the service territory of its affiliate PSE&G.

Comment Date: March 13, 2003.

13. Southwest Power Pool, Inc.

[Docket No. ER03–547–000]

Take notice that on February 20, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed agreement between SPP and the SPP Transmission Owners that addresses the relief of capacity restraints at the LaCygne to Stillwell 345 kV Transmission Line (the Circuit). SPP seeks an effective date of February 21, 2003, for this agreement and seeks waiver of the requirements of section 35.13(c)-(h) of the Commission regulations.

The SPP Transmission Owners were served with a copy of this filing.

Comment Date: March 13, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4948 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 24, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket no.	Date filed	Presenter or requester
Prohibited:		
1. RP01–620–000	2–12–03	Ibtissam Chang
2. EC03–20–000/001/002	2–19–03	Ronald L. Leibow
Exempt:		
1. ER02–2330–001/002	2–7–03	Richard A. Montuori
2. ER02–2330–001/002	2–10–03	Robby Robertson
3. ER02–2330–001/002	2–10–03	Deborah B.Goldberg
4. ER02–2330–001/002	2–10–03	William J. Mauro, Jr
5. ER02–2330–001/002	2–10–03	Mark J. Purple
6. ER02–2330–001/002	2–10–03	Benjamin E. Puritz
7. Project No. 2069–007	2–12–03	Nan Allen
8. Project No. 2493–006	2–12–03	D. Robert Lohn
9. CP02–396–000	2–12–03	Trevor Loveday
10. Project No. 2726–012	2–13–03	John Blair/Jennifer Hill
11. CP02–396–000	2–20–03	Joanne Wachholder
12. Project No. 637–000	2–20–03	John T. Gangemi

Magalie R. Salas,

Secretary.

[FR Doc. 03–4846 Filed 2–28–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0016; FRL–7456–7]

Agency Information Collection Activities: Submission for OMB Review and Approval; Comment Request; NSPS Subpart Da—Standards of Performance for Electric Utility Steam Generating Units, ICR No. 1053.07, OMB Number 2060–0023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart Da—Standards of Performance for Electric Utility Steam Generating Units, OMB Control Number 2060–0023, EPA ICR No. 1053.07. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before April 2, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 564–7054; fax number (202) 564–0050; email address *chadwick.dan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0016, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov* or by mail to EPA Docket Center, Environmental Protection Agency, Mail code: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May

31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS Subpart Da—Standards of Performance for Electric Utility Steam Generating Units (OMB Control Number 2060–0023, EPA ICR No. 1053.07). This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Owners or operators of electric utility steam generating units subject to NSPS Subpart Da must make one-time notification of construction/reconstruction, anticipated and actual startup, initial performance test, physical or operational changes, and demonstration of a continuous monitoring system. They must also submit a report on initial performance test results, monitoring results, and excess emissions. Records must be maintained of startups, shutdowns, malfunctions, periods when the continuous monitoring system is inoperative, and of various fuel combustion and pollutant emission parameters.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. The monitoring and excess emissions reports are used for problem identification, as a check on source operation and maintenance, and for compliance determination. The information collected from recordkeeping and reporting requirements are used for targeting inspections, and for other uses in compliance and enforcement programs.

Responses to these information collections are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 4000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 85 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of electric utility steam generating units subject to Subpart Da.

Estimated Number of Respondents: 655.

Frequency of Response: Semiannually, quarterly.

Estimated Total Annual Hour Burden: 33,553.

Estimated Total Annual Cost: $19,490,000, includes $2,200,000 annualized capital and $9,660,000 O&M costs.

Changes in the Estimates: There is an increase of 104,947 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the size of the regulated universe.

Dated: February 19, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4913 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0022; FRL–7456–8]

Agency Information Collection Activities: Submission of EPA ICR No. 1893.03 (OMB No. 2060–0430) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: Federal Emission Guidelines For Existing Municipal Solid Waste Landfills (Small) (40 CFR part 62, subpart GGG) (OMB Control Number 2060–0430; EPA ICR No. 1893.03). The ICR which is abstracted below, describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before April 2, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For questions about this ICR, contact Sharie Centilla, Office of Enforcement and Compliance/Office of Compliance, mail code 2224A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; phone number: (202) 564–0697; fax number: (202) 564–0009; e-mail address: *centilla.sharie@epa.gov.* Refer to EPA ICR Number 1893.03.

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 7, 2002 (67 FR 67830) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0022, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC Docket is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to ECDIC at *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, mail code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure otherwise is restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to http://www.epa.gov./edocket.

Title: Federal Emission Guidelines For Existing Municipal Solid Waste Landfills (Small) (40 CFR part 62, subpart GGG) (OMB Control Number 2060–0430, EPA ICR Number 1893.03). This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Environmental Protection Agency (EPA) is charged under section 111 of the Clean Air Act, as amended, to collect data. The information will be used by Agency enforcement personnel to (1) identify existing sources subject to these standards; (2) ensure that Best Demonstrated Technology is being properly applied; and (3) ensure that the emission control devise is being properly operated and maintained on a continuous basis. In addition, records and reports are necessary to enable the EPA to identify landfills that may not be in compliance with these standards. Based on reported information, the EPA can decide which landfills should be inspected and what records or processes should be inspected at the landfill. The records that landfills maintain would indicate to the EPA whether the personnel are operating and maintaining control equipment properly. The type of data required is principally emissions data and would not be confidential. If any information is submitted to the EPA for which a claim of confidentiality is made, the information would be safeguarded according to the Agency policies set forth in 40 CFR, chapter 1, part 2, subpart B.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 7, 2002. No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 12 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 173.

Estimated Number of Respondents: 173.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 11,678.

Estimated Total Annual Cost: $659,428 includes $242,000 for Operating and Maintenance costs.

There is a decrease of 3,432 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to recalculations, correction of high estimates of affected landfills, and no new respondents.

Dated: February 21, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4914 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7457–1]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held March 18–20, 2003, at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: Tuesday, March 18 the Science/Regulatory Work Group will meet; plenary sessions will take place Wednesday, March 19 and Thursday March 20.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Science/Regulatory Work Group will meet Tuesday, March 18 from 9 a.m. to 5 p.m. The plenary CHPAC will meet on Wednesday, March 19 from 9 a.m. to 5 p.m., with a public comment period at 4:45 p.m., and on Thursday, March 20 from 9 a.m. to 12 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting.

Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and reports from the Science and Regulatory Work Group. Other potential agenda items include an EPA briefing on Information Quality Guidelines and an informational panel on human milk contamination.

FOR FURTHER INFORMATION CONTACT: Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

Dated: February 26, 2003.

Elizabeth Blackburn,

Acting Designated Federal Official.

[FR Doc. 03–4915 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7457–2]

Notice of Availability and Opportunity To Provide Comment on the Draft Final Guidelines for Carcinogen Risk Assessment and the Draft Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: EPA is today announcing the availability of, and opportunity to comment on, the Draft Final Guidelines for Carcinogen Risk Assessment and the draft Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens.

In 1996, EPA published for public comment proposed revisions to EPA's 1986 Guidelines for Carcinogen Risk Assessment. Since the 1996 proposal, the Agency has benefitted from extensive public comment and scientific peer review, including three reviews by EPA's Science Advisory Board (SAB). The major issues currently being considered by EPA as it proceeds to issue final Guidelines are identified in the Supplementary Information section of this notice. As announced in November 2001, the July 1999 draft revised Guidelines will continue to serve as EPA's interim guidance to EPA risk assessors preparing cancer risk assessments until final Guidelines are issued.

The Draft Final Guidelines issued today for comment explicitly call for consideration of possible sensitive subpopulations and/or lifestages (such as childhood). Therefore, concurrent with release of the Draft Final Guidelines, EPA is also requesting public comment on draft supplemental guidance describing possible approaches that could be used to assess risks resulting from early life exposure to potential carcinogens. This draft supplemental guidance will be peer reviewed by the Agency's Science Advisory Board at a public meeting that will be announced in a separate **Federal Register** notice. The supplemental guidance is separate from the Guidelines so that it may be more easily updated in a timely manner given the expected rapid evolution of scientific understanding about the effects of early-life exposures.

DATES: Comments must be received by Thursday, May 1, 2003.

ADDRESSES:

Document Availability

The Draft Final Guidelines for Carcinogen Risk Assessment (February 2003, NCEA–F–0644A) and the draft Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens (EPA/630/R–03/003) are available via the Internet from *http://www.epa.gov/ncea/raf/cancer2003.htm.* A limited number of paper copies of the documents are available from the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: 202–564–3261; facsimile: 202–565–0050.

Submitting Comments

One of three methods may be chosen to submit comments, and comments may be in electronic or paper copy format. First, comments may be submitted through EPA's electronic public docket and comment system, EPA Dockets. EPA Dockets is available at *http://www.epa.gov/edocket/.* Once in the system, select "search," then key in the appropriate docket identification number (OAR–2003–0008). Second, comments may be submitted via e-mail to "*a-and-r-Docket@epa.gov.*" Third, paper copies of comments may be submitted (in duplicate if possible) to the Air Docket at the Environmental Protection Agency, EPA Docket Center (EPA/DC), Office of Air and Radiation, Mail Code 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please refer to Public Docket Number OAR–2003–0008 in e-mail and in paper correspondence. Acknowledgments will not be sent for electronic or paper comment submissions. Persons providing information or comments should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright because all comments will be made available for public viewing.

Viewing Public Comments

Public comments pertaining to this notice may be viewed by using EPA Dockets, or by visiting EPA's Air Docket. EPA intends to make all comments received in response to this **Federal Register** Notice available in EPA Dockets (*http://www.epa.gov/edocket/*), including documents originally submitted in paper format. To view comments select "search," then key in the appropriate docket identification number (OAR–2003–0008). Also, paper copies of materials related to this notice are available for review under Public Docket No. OAR–2003–0008 at EPA's Air Docket. EPA's Air Docket also makes available for review the comments received on the 1996 Proposed Guidelines under Public Docket No. ORD–CAN–96–02 and comments received on the 1999 draft revised Guidelines during the November 2001 public comment period under Public Docket No. ORD–CAN–2001. EPA's Air Docket is located at the following address: U.S. Environmental Protection Agency (EPA), Public Reading Room, Room B102 EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20460. The Reading Room is open between 8 a.m. and 4:30 p.m., Monday through Friday, except on legal holidays. Visitors to the Public Reading Room are required to show photographic identification and sign the Agency's visitor log. There may be a reasonable fee for copying docket materials, as provided in 40 CFR part 2. You can reach the Air Docket by telephone at 202–566–1742, and by facsimile at 202–566–1741.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Wood, Risk Assessment Forum (mail code 8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone 202–564–3361, or send electronic mail inquiries to *risk.forum@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1983, the National Academy of Sciences/National Research Council (NRC) published its report entitled, Risk Assessment in the Federal Government: Managing the Process. In that report, the NRC recommended that Federal regulatory agencies establish "inference guidelines" to promote consistency and technical quality in risk assessments and to ensure that the risk assessment process was maintained as a scientific effort separate from risk management. EPA responded to this recommendation by publishing a set of risk assessment guidelines in 1986, including Guidelines for Carcinogen Risk Assessment (51 FR 33992, September 24, 1986). These Guidelines set forth principles and procedures to guide EPA scientists in assessing the cancer risks from chemicals or other agents in the environment and to inform the public about these procedures. EPA continues to revise its risk assessment guidelines and to develop new guidelines as experience and scientific understanding evolve. Revisions to the Guidelines for Carcinogen Risk Assessment are intended to make greater use of the increasing scientific understanding of the mechanisms that underlie the carcinogenic process. As part of that process, the Agency published Proposed Guidelines for Carcinogen Risk Assessment in 1996 (61 FR 17960, April 23, 1996).

The draft revisions to the Guidelines have been subject to extensive public comment and scientific peer review, including three reviews by EPA's Science Advisory Board (SAB). In 2001, EPA published a notice (66 FR 59593, November 29, 2001) providing an additional opportunity for public comment on a 1999 draft of the Guidelines. Comments were invited on experience gained in applying previous draft revised Guidelines and on issues raised in previous comments by the SAB and the public. EPA has also considered the recommendations of the NRC (Science and Judgment in Risk Assessment, 1994) in revising the Guidelines. EPA's approach to the recommendations is reflected in the Guidelines themselves. Draft EPA responses to the NRC recommendations were presented in the preamble to the 1996 draft of these revised Guidelines (61 FR 18003, April 23, 1996). EPA anticipates issuing final responses to the NRC recommendations when it issues final Guidelines.

Role of Risk Assessment Guidelines at EPA

The final Guidelines will be guidance only. They will not establish any substantive "rules" under the Administrative Procedure Act or any other law and will have no binding effect on EPA or any regulated entity, but instead will represent a non-binding statement of policy. EPA believes that the Draft Final Guidelines represent a sound and up-to-date approach to cancer risk assessment, and the final Guidelines will enhance the application of the best available science in EPA's risk assessments. However, EPA cancer risk assessments may be conducted differently than envisioned in the final Guidelines for many reasons, including (but not limited to) new information, new scientific understanding, or new science policy judgment. The science of risk assessment continues to develop rapidly, and specific components of the final Guidelines may become outdated or may otherwise require modification in individual settings. Use of the final Guidelines in future risk assessments will be based on decisions by EPA that approaches from the final Guidelines are suitable and appropriate in the context of those particular risk assessments. These judgments will be tested through peer review, and risk assessments will be modified to use different approaches if appropriate.

Even though the final Guidelines will not be binding rules, EPA is issuing them in a manner consistent with the procedures in the Administrative Procedure Act that are generally applicable to rulemaking, including providing an opportunity for public comment. EPA will consider and respond to all significant public comments as it prepares the final Guidelines, and will send a copy of the final Guidelines to Congress. EPA certifies that the Draft Final Guidelines will not have a significant impact on a substantial number of small entities because the Guidelines are for the benefit of EPA and impose no requirements or costs on small entities.

Issues Identified in 2001 Public Comments

A range of views were expressed in the comments submitted to EPA in response to the 2001 notice (66 FR 59593, November 29, 2001) (see the Addresses section for information on viewing these comments). Comments on four issues of interest identified by EPA in the 2001 notice included the following:

(1) Default assumptions. Default assumptions are options that EPA can apply in risk assessments when information about the effects of a substance on human health is unavailable, limited, or of insufficient quality. (For example, if no information is available on the effects of a chemical on humans, a common default assumption is that adverse effects observed in animals due to chemical exposure have the potential to occur in humans as well.) Commenters differed on whether default assumptions should be (a) built into each risk assessment unless sufficient evidence is available to depart from them, or (b) invoked only when determined to be necessary given the data available in a particular risk assessment. Commenters also differed on whether EPA's proposed default assumptions should be more protective of public health versus already being excessively conservative.

(2) Hazard descriptors. Under the 1999 draft Guidelines, one or more standard descriptors (*e.g.*, "Likely to be Carcinogenic to Humans") were used to express conclusions about the weight of evidence for human carcinogenic potential. Many commenters generally agreed with EPA's approach for the descriptors, but most recommended that EPA refine the phrases and descriptions to enhance their clarity. Two commenters preferred that descriptors not be used at all. A number of commenters advised the Agency to use the "Carcinogenic to Humans" descriptor only when epidemiological evidence of carcinogenicity is conclusive.

(3) Mode of action. EPA's draft 1999 Guidelines emphasized the value of understanding a chemical's "mode of action," which refers to the series of steps and processes that lead to cancer formation. Many commenters disagreed with EPA's proposal that confirmatory data be available or a "cogent biological rationale" be developed before a mode of action identified in adults (or mature animals) could be considered applicable to children as well. On the other hand, several commenters stated that EPA should require much stronger evidence before concluding that a particular mode of action operates in both adults and children.

(4) Margin of exposure analysis. A margin of exposure analysis is an approach described in the 1999 draft Guidelines to inform decision-makers about cancer risks at relatively low levels of exposure. The 1999 draft Guidelines suggested its use in the case of certain carcinogens where mode of action data support a nonlinear approach for describing the relationship between dose and response for the chemical. Several commenters expressed concern that the margin of exposure analysis as described by EPA would not be sufficiently protective of public health. Other commenters stated that it inappropriately mixed risk assessment and risk management considerations and was problematic because it removed quantitative estimation of cancer risk from risk assessment.

Key Features of the Draft Final Guidelines

EPA's guiding principle for revisions to the Guidelines is that Agency cancer risk assessments be both public health protective and scientifically sound. By public health protective, EPA means that risk assessments should consider a range of susceptibilities among the human population and, in the absence of complete knowledge, employ assumptions that will reflect the risks to susceptible subpopulations and lifestages. By scientifically sound, EPA means that risk assessments should reflect current and evolving scientific practice and describe risks in a clear, consistent, and reasonable manner. In particular, the revisions to the Guidelines are intended to make greater use of the increasing scientific understanding of the mechanisms that underlie the carcinogenic process. EPA has also designed the Guidelines to be flexible enough to accommodate future scientific advances in science and risk assessment practices. EPA is particularly interested in public comments on the following areas that have been the focus of the Agency's attention in preparing today's Draft Final Guidelines:

(1) Use of default options. The Draft Final Guidelines clarify the role of default options (default assumptions) in the Agency's risk assessments. Rather than view default options as the starting point from which departures may be justified by new scientific information, the Guidelines emphasize that assessments begin with a critical analysis of the available data, and defaults would be invoked as needed when too much uncertainty exists or critical data are missing. In keeping with EPA's mission and the advice of numerous scientific advisory panels, the Agency's default options are constructed to be public health protective. The decision to invoke a default option would be determined on a case-by-case basis. Given the multitude of different types of risk assessments and potential default options, it is neither possible nor desirable to specify step-by-step criteria for decisions to invoke a default option. The Guidelines, however, identify general principles for invoking default options (as originally articulated by the National Research Council): Such decisions should be scientifically defensible, consistent with EPA's statutory mission, and responsive to the needs of decision-makers.

(2) Hazard descriptors. The Draft Final Guidelines continue to emphasize the importance of weighing all of the evidence in reaching conclusions about the human carcinogenic potential of agents, with hazard descriptors used to facilitate clarity in describing carcinogenicity conclusions. Several of the hazard descriptors presented in the Draft Final Guidelines have been modified from previous drafts of the Guidelines, and the discussion of when they would apply has been strengthened. Descriptors may apply only to certain routes of exposure, dose ranges, and durations of exposure. The following five descriptors are discussed in the Guidelines: Carcinogenic to Humans; Likely to Be Carcinogenic to Humans; Suggestive Evidence of Carcinogenic Potential; Inadequate Information to Assess Carcinogenic Potential; and Not Likely to Be Carcinogenic to Humans.

(3) Mode of action. The use of mode of action in the assessment of potential carcinogens is the main thrust of the Draft Final Guidelines. This area of emphasis arose because of scientific breakthroughs concerning the causes of cancer induction. As discussed in the Draft Final Guidelines, an important use of mode-of-action information is to identify susceptible populations and lifestages. Because it is rare to have epidemiologic studies or animal bioassays conducted in susceptible individuals, identifying the key events of the mode of action and the risk factors that can augment these key events can be critical in understanding risks to susceptible populations.

(4) Extrapolation to lower doses. An important issue to address in most EPA risk assessments is the estimation of risks at levels of environmental exposure (doses) that are lower than the levels at which adverse effects (responses) have been observed. Historically, EPA used an approach known as linear extrapolation for all potential carcinogens, which involves modeling risk in an approximately straight line extrapolation from a particular dose level (the point of departure) to the zero dose/zero response point. This approach differs from that used by EPA in assessing risks in the case of most noncancer effects, which typically involve nonlinear extrapolation. The Draft Final Guidelines generally reaffirm the use of a linear extrapolation approach for carcinogens when mode of action information is limited or indicates a linear dose-response relationship, such as in the case of mutagenic agents. The Draft Final Guidelines also discuss potential uses of nonlinear extrapolation when consistent with understanding of the mode of action, and recommend the development of a reference dose (or reference concentration) as established by EPA for effects other than cancer. This default approach is in keeping with the Agency's goal of harmonizing the assessment of risks from agents, whether carcinogens or not, that operate by a nonlinear mode of action.

(5) Susceptible populations and lifestages. The Draft Final Guidelines explicitly recognize that variability exists among people in their susceptibility to carcinogens and emphasize that this variability should be considered in risk assessment. Some subpopulations may experience increased susceptibility to carcinogens throughout their lives, such as people who have inherited a predisposition to certain cancer types or reduced capacity to repair genetic damage. Also, during certain lifestages the entire population may experience heightened susceptibility to carcinogens. In particular, the Guidelines note that childhood may be a lifestage of greater susceptibility for a number of reasons, such as susceptibility related to the rapid growth and development that occurs prenatally and after birth.

Supplemental Guidance on Early-Life Exposure

The discussion of consideration of childhood risks in the Draft Final Guidelines has been augmented by the development of the separate draft document entitled "Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens." This document contains an analysis of studies and a possible approach for how quantitative scientific data could inform risk assessments when exposure to carcinogens occurring during childhood is considered. The draft document will be reviewed by EPA's Science Advisory Board following the public comment period. After SAB recommendations and public comments are incorporated into the document, the supplemental guidance will be issued separately from the final Cancer Guidelines so that it may be more easily updated in a timely manner given the expected rapid evolution of scientific understanding about the effects of early-life exposures.

Request for Comment

EPA requests comments on today's Draft Final Guidelines and will consider all comments in completing final Guidelines. Comments on earlier drafts of the revised Guidelines already submitted to EPA need not be resubmitted. Public comments are also invited on the draft supplemental guidance on early-life exposure to carcinogens. Following the public comment period, EPA's SAB will peer-review the supplemental guidance. A separate notice of the planned SAB meeting will also appear in the **Federal Register**.

Dated: February 25, 2003.

Paul Gilman,

Assistant Administrator for Research and Development.

[FR Doc. 03–4912 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of $113 million worth of U.S. goods and services to a buyer in India. The equipment will enable the Indian buyer to produce 553,000 metric tons of Pure Terephthalic Acid (PTA) annually. According to the foreign buyer, the additional capacity of PTA is likely to be entirely consumed in the Indian market. However, depending on market conditions in India, some of the production could be exported to China, the leading market for the Indian buyer's other products. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Ave., NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 03–4866 Filed 2–28–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

February 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232 or via Internet at *Kim_A._Johnson@omb.eop.gov*, and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by February 20, 2003.*

OMB Control Number: 3060–0113.

Type of Review: Revision of a currently approved collection.

Title: Broadcast EEO Program Report, FCC Form 396.

Form Number: FCC 396.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,000.

Estimated Time per Response: 1.5 hours.

Frequency of Response: Recordkeeping; Renewal reporting requirement.

Total Annual Burden: 3,000 hours.

Total Annual Cost: $100,000.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC*. The new rules reinstate the requirement that broadcast licensees file the FCC Form 396–A at the time they file applications for construction permits, or assignments or transfers of license. The new EEO rules also ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. While FCC Form 396–A remains almost entirely the same as the form used under the rules adopted in 2000, the Second R&O also builds in flexibility for licensees to implement a program in compliance with the new

OMB Control Number: 3060–0120.

Type of Review: Revision of a currently approved collection.

Title: Broadcast Equal Employment Opportunity Model Program Report, FCC Form 396–A.

Form Number: FCC 396–A.

Respondents: Business or other for-profit entity; Not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 5,000 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC*. The new rules reinstate the requirement that broadcast licensees file the FCC Form 396 at the time they file for renewal of license. The new EEO rules also ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. Among other things, the Second R&O affords broadcasters with five or more full-time employees maximum flexibility in designing EEO programs while ensuring broad dissemination of full-time employment opportunities. These broadcasters must file annually an EEO public file report detailing their outreach efforts. In addition, licensees must include a narrative statement demonstrating how the station achieved an inclusive outreach in the prior two years and report the status of any employment discrimination complaints.

rules, *i.e.*, it allows for a range of community outreach programs to those interested in broadcast careers, and broadcasters with five or more full-time employees may list recruitment sources they plan to use.

OMB Control Number: 3060–0212.

Type of Review: Revision of a currently approved collection.

Title: Section 73.2080, Equal Employment Opportunities (EEO Rule).

Form Number: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 10,825.

Estimated Time per Response: 42 hours.

Frequency of Response: Recordkeeping; Annual reporting requirement.

Total Annual Burden: 454,650 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new EEO rules ensure equal employment opportunity in broadcast and multi-channel video program distributor industries through outreach to the community in recruitment and prevention of employment discrimination. Specifically, the Second R&O adopts EEO recordkeeping and reporting requirements; specifies which EEO materials must be kept in the public inspection file; and requires all broadcasters to adhere to the EEO rules' general anti-discrimination provisions. Only station employment units with five or more full-time employees are subject to the EEO program provisions. Among other requirements, broadcasters must widely distribute job vacancy information and provide full-time job vacancy information to requesting organizations. Broadcasters must also retain records to demonstrate that they have recruited for all full-time permanent positions, *i.e.*, full-time vacancy filled, listings of recruitment sources, dated copies of advertisements, etc., and place such types of records annually in their local public inspection file.

OMB Control Number: 3060–0349.

Type of Review: Revision of a currently approved collection.

Title: Equal Employment Opportunity Requirements.

Form Number: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,125.

Estimated Time per Response: 42 hours.

Frequency of Response: Recordkeeping; Annual and five year reporting requirements.

Total Annual Burden: 89,250 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* Among other things, the Second R&O adopts several EEO recordkeeping and reporting requirements. It specifies which EEO materials must be kept in the public inspection file. All multi-channel video program distributor (MVPD) employment units with six or more full-time employees are subject to EEO program provisions and must disseminate employment information widely. MVPDs must also retain records to demonstrate they have recruited for all full-time permanent positions and must place a listing of all full-time vacancies filled and recruitment sources used for each vacancy for the preceding year in their EEO records file.

OMB Control Number: 3060–0922.

Type of Review: Revision of a currently approved collection.

Title: Broadcast Mid-Term Report, FCC Form 397.

Form Number: FCC 397.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 4,300.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping; Mid-point reporting requirement.

Total Annual Burden: 269 hours (one-eighth of respondents file annually).

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new rules adopt a new version of FCC Form 397. The new EEO rules also ensure equal employment opportunity in the broadcast and multi-channel video program distribution industries through outreach to the community in recruitment and prevention of employment discrimination. The new version of FCC Form 397 is filed only once at the mid-point of the eight-year license term of television licensees, with five or more full-time employees, and radio licensees, with ten or more full-time employees. Licensees must certify that they have complied with the FCC's EEO rules during the period prior to the date of the Mid-Term Report and must include copies of EEO reports that are required to be placed in the licensees' local public file for the prior two years.

OMB Control Number: 3060–XXXX.

Type of Review: New collection.

Title: Multi-Channel Video Program Distributor EEO Program Annual Report, FCC Form 396–C.

Form Number: FCC 396–C.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,200.

Estimated Time per Response: 10 mins. to 2.5 hrs.

Frequency of Response: Recordkeeping; Annual and five-year reporting requirements.

Total Annual Burden: 3,188 hours.

Total Annual Cost: None.

Needs and Uses: On November 7, 2002, the FCC adopted a Second Report and Order and Third NPRM (Second R&O), MM Docket No. 98–204, FCC 02–303, which established new EEO rules and forms to comply with the court's decision in *MD/DC/DE Broadcasters Association* v. *FCC.* The new EEO rules ensure equal employment opportunity in the broadcast and multi-channel video program distribution (MVPD) industries through outreach to the community in recruitment and prevention of employment discrimination. In addition, the Second R&O combined previous FCC Forms 395–A and 395–M, which requested substantially the same information. The FCC adopted new Form 396–C, which is substantially the same as those portions of FCC 395–A and 395–M that sought data about the MVPD's compliance with EEO program requirements, but it omits those portions of the prior forms that sought workforce data. All MVPDs must file an EEO report annually in the public file detailing their outreach efforts and the results for the prior year, as part of the in-depth MVPD investigation conducted once every five years.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4828 Filed 2–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

February 20, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0474.

Title: Section 74.1263, Time of Operation.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other profit entities; Not-for-profit institutions.

Number of Respondents: 75.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 38 hours.

Total Annual Costs: $0.00.

Needs and Uses: 47 CFR 74.1263(c) requires licensees of FM translator or booster stations to notify the Commission of their intent to discontinue operations for 30 or more consecutive days. In addition, licensees must notify the Commission within 48 hours of the station's return to operation. Section 74.1263(d) requires FM translator or booster station licensees to notify the Commission of their intent to permanently discontinue operations and to forward the station license to the FCC for cancellation. FCC staff uses these data to keep records up-to-date. These notifications inform FCC staff that frequencies are not being used for a specified amount of time and that frequencies have become available for other users.

OMB Control Number: 3060–0602.

Title: Section 76.917, Notification of Certification Withdrawal.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: State, Local or Tribal Government.

Number of Respondents: 5.

Estimated Time per Response: 0.5 hours.

Frequency of Response: One time reporting requirement.

Total annual burden: 3 hours.

Total Annual Costs: $0.00.

Needs and Uses: 47 CFR 76.917 of the FCC Rules requires a local franchising authority ("LFA") that has been certified to regulate basic service tier ("BST") cable rates to notify the Commission if it no longer intends to regulate BST cable rates. The notifications are used by the Commission to readily determine the extent of BST rate regulation of cable systems and to be aware of circumstances where certified LFAs no longer intend to regulate BST cable rates.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4829 Filed 2–28–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

February 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0927.

Title: Auditor's Annual Independence and Objectivity Certification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5.

Estimated Time Per Response: 5 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 25 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Responsible Accounting Officer (RAO) letter requires that carriers' independent auditors disclose in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence; confirm in writing in its professional judgment it is independent of the carrier; and discuss the auditor's independence. The information will be used to determine whether the independent auditors are performing their audits independently and unbiased of the carrier they audit.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4830 Filed 2–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Pre-Disaster Mitigation Program

AGENCY: Federal Insurance and Mitigation Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of Pre-Disaster Mitigation planning grants.

SUMMARY: FEMA gives notice of the availability of mitigation planning grants for fiscal year (FY) 2003 under the Pre-Disaster Mitigation (PDM) Program, authorized by section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5133, as amended by section 102 of the Disaster Mitigation Act of 2000 (DMA), Public Law 106–390, 114 Stat. 1552. Consolidated Appropriations Resolution, 2003, H.J. Res. 2 (February 20, 2003), directs FEMA to provide $250,000 of the FY 2003 appropriation to each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa for eligible State and local (to include Indian Tribal governments) hazard mitigation planning. However, a general provision in the law directs that every program, project, and activity be reduced by .65 percent. Therefore, the maximum Federal share is $248,375.

FEMA will contribute up to 75 percent of the cost of activities approved for funding up to a maximum of $248,375. At least 25 percent of the total eligible costs must be provided from a non-Federal source. There will be no additional FEMA funding available for cost overruns.

All contributions, cash and in-kind, are accepted as part of the non-Federal matching share. Except as allowed by Federal statute, no other Federal funds can be used as a match. Requirements for in-kind contributions can be found in 44 CFR 13.24. In-kind contributions must be comprised of eligible program costs. The following documentation is required for in-kind contributions: record of source of donor, dates, rates, amounts, and deposit slips (cash contributions only).

Grants awarded to small, impoverished communities may receive a Federal cost share of up to 90 percent of the total cost to implement eligible PDM activities. A small, impoverished community must meet all of the following criteria:

- It must be a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city;
- It must be economically disadvantaged, with residents having an average per capita annual income not exceeding 80 percent of national per capita income, based on best available data;
- It must have a local unemployment rate that exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and
- It must meet any other factors as determined by the State in which the community is located.

DATES: Each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa must submit a grant application to the appropriate FEMA Regional Office by April 30, 2003. If an applicant cannot meet the April 30, 2003, application deadline due to budget issues related to cost share, a letter of intent must be submitted to the Regional Director by April 30, 2003. The letter should indicate the intent to submit a FY 2003 PDM planning grant application, include an explanation of relevant budget issues, and provide a list of proposed activities and sub-grantees. Grant applications from applicants that submit a letter of intent by April 30, 2003, are due to FEMA by July 31, 2003.

ADDRESSES: FEMA Regional Offices:

Serving Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and Massachusetts: FEMA Region I, Federal Regional Center, Building A, 63 Old Marlboro Road, Maynard, MA 01754–2147.

Serving New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands: FEMA Region II, 26 Federal Plaza, Rm. 1337, New York, NY 10278–0002.

Serving the District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia: FEMA Region III, 1 Independence Mall, 6th Floor, 615 Chestnut Street, Philadelphia, PA 19106–4404.

Serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: FEMA Region IV, 3003 Chamblee Tucker Road, Atlanta, GA 30341.

Serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: FEMA Region V, 536 S. Clark Street, 6th Floor, Chicago, IL 60605.

Serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: FEMA Region VI, FRC 800 North Loop 288, Denton, TX 76201–3698.

Serving Iowa, Kansas, Missouri, and Nebraska: FEMA Region VII, 2323 Grand Avenue, Suite 900, Kansas City, MO 64108.

Serving Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming: FEMA Region VIII, Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

Serving Arizona, California, Hawaii, Nevada, the Territory of American Samoa, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia: FEMA Region IX, Building 105, Presidio of San Francisco, San Francisco, CA 94129–1250.

Serving Alaska, Idaho, Oregon, and Washington: FEMA Region X, Federal Regional Center, 130 228th Street, SW., Bothell, WA 98021–979.

FOR FURTHER INFORMATION CONTACT: Margaret Lawless, Program Planning and Delivery Division, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Room 401, Washington, DC 20472, (202) 646–3027 or E-mail: *Margaret.Lawless@fema.gov.*

SUPPLEMENTARY INFORMATION:

Appropriations

Consolidated Appropriations Resolution, 2003, H.J. Res. 2 (February 20, 2003), directs FEMA to provide $250,000 of the $150M appropriated in FY 2003 for each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa for eligible State and local (to include Indian tribal governments) hazard mitigation planning. However, a general provision in the law directs that every program, project, and activity be reduced by .65 percent. Therefore, the maximum Federal share is $248,375. We are requesting applications for mitigation planning grants from these entities.

Background

44 CFR part 201, Hazard Mitigation Planning, establishes criteria for State and local hazard mitigation planning, pursuant to section 322 of the Stafford Act, as amended by section 104 of the DMA. After November 1, 2003, FEMA-approved local mitigation plans will be required as a condition of receiving Pre-Disaster Mitigation grants for local mitigation project grants. After November 1, 2004, a FEMA-approved Standard State mitigation plan will be required as a condition of receiving Pre-Disaster Mitigation grants for State and local mitigation project activities. The Standard State Mitigation Plan will also be required for non-emergency assistance provided under the Stafford Act, including Public Assistance restoration of damaged facilities and Hazard Mitigation Grant Program funding. Therefore, the development of State and local multi-hazard mitigation plans is key to maintaining eligibility for future FEMA mitigation funding.

For FY 2003 PDM planning funds, awards will be governed by H.J. Res. 2 (February 20, 2003), section 203 of the Stafford Act, this notice, and program guidance, which will be made available to the public on the FEMA Internet site; *http://www.fema.gov.*

Applicant Eligibility

Each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa is eligible to apply to FEMA for assistance as a grantee under this Notice of Funds Availability.

Local governments and Indian Tribal governments should consult the official designated point of contact in their State/Territory for more information on the process the State requires to be followed in applying for assistance.

All applicants must be participating in the National Flood Insurance Program (NFIP) if they have been identified through the NFIP as having a Special Flood Hazard Area (a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued). In addition, the community must not be suspended or on probation from the NFIP (except as directed by H.J. Res 2, February 20, 2003).

Grant Application Process

Local governments and Indian Tribal governments should consult the official designated point of contact in their State for more information on the process the State requires to be followed in applying for assistance.

Each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa are requested to submit to the appropriate FEMA Regional Office the grant application, which can be obtained from the FEMA Regional Office.

The grant application should include:

- Application for Federal Assistance, Standard Form 424;
- Budget Information—Non-Construction Program, FEMA Form 20–20;
- Budget Narrative explaining cost items that have been budgeted;
- Summary Sheet for Assurances and Certification, FEMA Form 20–16;
- Assurances—Non-Construction Program, FEMA Form 20–16A;
- Certification Regarding Lobbying; Debarment, Suspension and Other Responsible Matters; and Drug-Free Workplace Requirements, FEMA Form 20–16C;
- Disclosure of Lobbying Activities, Standard Form LLL;
- Approved Indirect Cost Agreement, if applicable; and,
- Program Narrative identifying the activities for which funding is requested.

The Program Narrative should include the following:

- Individual planning locations and name of Sub-grantees;
- Individual planning costs, including Federal and non-Federal shares;
- Individual planning scopes of work, including timelines and key milestones;
- Certification that the included planning activities have been evaluated, meet all PDM Program eligibility criteria, and will be implemented in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- Assessment of the extent to which communities meet the relevant criteria under section 203(g) of the Stafford Act.

All planning activities included in the Program Narrative should be ranked in order of priority to the grantee.

Eligible Activities

Funds may be used to develop State, Tribal, and local hazard mitigation plans that meet the planning criteria outlined in 44 CFR part 201, which implements § 322 of the Stafford Act. This may include developing countywide or multi-jurisdictional plans (must be adopted by all jurisdictions participating) since many issues are better resolved by evaluating hazards in a more comprehensive fashion. Multi-hazard mitigation planning may include hazards caused by non-natural forces but must be primarily focused on natural hazards. Risk assessments for mitigation plans are also eligible.

As part of the planning grant, up to 10 percent of the funds awarded may be used to fund activities to disseminate information regarding cost-effective mitigation technologies. These activities include marketing, outreach, training and education (including planning workshops), as related to plan development.

Up to 5 percent of the funds awarded may be used to assist in soliciting and reviewing PDM applications and for providing technical assistance to sub-grantees. Sub-grantee management costs to implement awarded activities will be limited to 5 percent of the sub-grant award and may be included as part of the activity costs. Indirect costs should be included as part of management costs, if applicable, and must be supported with a current Indirect Cost Rate approved by a Federal Cognizant Agency.

Reporting Requirements

The following reports are required:

- Federal Cash Transaction Reports. If the Grantee uses the HHS Payment Management System-SMARTLINK, the Grantee shall submit a copy of the PMS 272 Cash Transaction Report submitted to the Federal Health and Human Services (HHS) to FEMA.
- Financial Status Reports. The Grantee shall submit Financial Status Reports, SF 269 or FF 20–10, to the FEMA regional office within 30 days from the end of the first federal quarter following the initial grant award. The Regional Director may waive this initial report. The Grantee shall submit quarterly financial status reports thereafter until the grant ends. Reports are due on January 30, April 30, July 30, and October 30.
- Performance Reports:

1. The Grantee shall submit performance reports (no required format) to the FEMA Regional Office within 30 days after end of each quarter.

The report shall consist of a comparison of actual accomplishment to the approved activity objectives. Reports are due January 30, April 30, July 30 and October 30. Final financial reports are due 90 days after the close of the grant. Performance Reports should be submitted to the Assistance Officer, listed under Article V, FEMA Officials.

2. Quarterly performance report shall report the name, completion status, expenditure, and payment-to-date of each approved activity/sub-grant award under the Grant Award.

• Final Reports. The Grantee shall submit a Final Financial Status Report and Performance Report within 90 days from Grant Award Performance Period expiration date, per 44 CFR 13.50.

• Enforcement. The Regional Director may suspend draw downs from the HHS/Payment Management System-SMARTLINK if quarterly reports are not submitted on time.

Dated: February 26, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–4903 Filed 2–28–03; 8:45 am]

BILLING CODE 6718–04–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0277]

Office of Citizen Services and Communications; Market Research Collection

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for comments on a new one-time collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration, has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Market Research for the Office of Citizen Services and Communications. A request for public comments was published at 67 FR 72690, December 6, 2002. No comments were received.

This information collection will be used to determine the utility and ease of use of GSA's Web site, *GSA.gov*. The respondents include individuals and representatives from businesses currently holding GSA contracts.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of the functions of the agency including whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before: April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Sharon Holcombe, Office of Citizen Services and Communications, (202) 501-2719.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 3090–0277.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this information collection is to inform the General Services Administration (GSA) on how to best provide service and relevance to the American public via GSA's Web site, *GSA.gov*. The information collected from an online survey, focus groups, and Web site usability testing, will be used to refine the *GSA.gov* Web site. The questions to be asked are non-invasive and do not address or probe sensitive issues. It is important for the GSA to gain information from the many diffuse groups it serves; therefore, the GSA will be questioning individuals and households, and businesses and other-for-profit groups.

B. Annual Reporting Burden

Respondents: 190.
Responses Per Respondent: 1.
Total Responses: 190.
Hours Per Response: 72.6 minutes.
Total Burden Hours: 230.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC, 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communication, in all correspondence.

Dated: February 24, 2003.

Susan While,

Deputy Chief Information Officer.

[FR Doc. 03–4827 Filed 2–28–03; 8:45 am]

BILLING CODE 6820–CX–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03038]

Cooperative Agreement for Development of the National Violent Death Reporting System; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391(a) (42 U.S.C. 280b(a)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement surveillance program to expand the implementation of the National Violent Death Reporting System (NVDRS) as mandated in FY 2003 Senate appropriations language. NVDRS will assist State governments to understand the extent of the violence problem in their states and to develop and evaluate violence prevention program efforts. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

In response to Congressional appropriations language in FY 2002, CDC began implementation of NVDRS in six states. The purpose of NVDRS is to generate public health surveillance information at the national, state, and local levels that is more detailed, useful, and timely than is currently available. This information will help develop, inform, and evaluate violence prevention strategies at the state level. The proposed system builds upon a pilot system, the National Violent Injury Statistics System (NVISS) that has been under development since 1999. Additional information on this pilot system can be found at: *http://www.NVISS.org.*

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

Assistance will be provided only to the health departments of states or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the federally recognized Indian tribal governments. In consultation with states, assistance may be provided to political subdivisions of states. States funded under Program Announcement 02059—Cooperative Agreement for Development of National Violent Death Reporting System (Maryland, Massachusetts, New Jersey, Oregon, South Carolina and Virginia) are not eligible to apply.

The ability to obtain population-based information from core data sets is crucial for the successful development of the NVDRS. Eligible applicants must document, through letters of support and memorandums of agreement/understanding (MOA/MOU), access to information on individual, identifiable decedents from all of the following data sources:

1. Death certificates.
2. Medical examiner and/or coroner records.
3. Police records (Supplemental Homicide Reports at a minimum).
4. Crime laboratory records.

The letters of support must come from the agency authorized to grant access to the specific required data. Each letter must note the most recent year for which data is available to the health department, and note that a MOA/MOU is in place between the applicant and the data agency. The MOA/MOU must provide the applicant access to data while specifying any limitations regarding data use. A copy of the MOA/MOU must accompany each letter of support to confirm access.

Applicants from states that do not have centralized, statewide medical examiner/coroner, or police records must obtain letters of support from the agencies with authority over the four required data sources in three cities or counties within the state, and MOA/MOUs from at least three of the four agencies in each city or county.

Applications that fail to submit all evidence listed above will be considered non responsive and will be returned without review.

Applications will be classified into two categories, "New" and "Experienced." States with funding from an external source (other than state funds) for any form of violent death reporting or surveillance occurring among adults, defined as 18 years of age or older, will be considered "Experienced." States with surveillance projects (state or local) funding, such as the Harvard Injury Control Research Center's National Violent Injury Statistics System (NVISS) will be considered "Experienced." States without any such external funding will be considered as "New" systems. Funds awarded for this program cannot be used to supplant (replace) existing activity funds.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $2,250,000 is available in FY 2003 to fund approximately eight awards. It is expected that the average award will be $240,000, ranging from $150,000 to $220,000 for states with up to 800 cases of violent death in calendar year 2001 and from $220,000 to $320,000 for states with greater than 800 cases of violent death in 2001. At least one applicant will be funded in each funding range.

"New" and "Experienced" system applications will be evaluated separately; at least one new applicant and one experienced applicant will be funded. It is expected that the awards will begin on or about September 1, 2003 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1A. or 1B., Recipient Activities, and CDC will be responsible for the activities under 2. CDC Activities.

Recipient Activities

1A. For New Violent Death Reporting Systems

a. Establish an advisory committee that will help in the development of the state violent death reporting system. Membership should include representatives from agencies that control medical examiner/coroner records, death certificates, police records, and crime laboratory data.

b. Establish routine access to uniquely identifiable case information from each of the four critical data sources for deaths occurring on or after 1/01/2004.

c. Use case definition and uniform data elements developed under Program Announcement 02059.

d. Obtain and code data from all core data sources for all cases identified. The means for obtaining data may be conducted by abstraction from the required data sources, electronic transfer or other method(s).

e. Develop procedures to combine information from the data sources. Maintain a unique case ID number.

f. Establish (1) a centralized location for maintaining a secure data storage system that allows for ready access to and retrieval of your collected data and (2) an off-site, backup storage system for all your data.

g. Transmit data free of personal identifiers electronically to CDC using software provided by the CDC. Office of Management and Budget (OMB) clearance for this data collection is pending.

h. Develop a quality assurance program that includes a systematic review of the accuracy, completeness and timeliness of the data collection process. This should include reabstraction of a sample of cases where applicable, and monitoring of time intervals from death to case completion, as well as routine checks to identify duplicate cases.

i. Evaluate the surveillance system annually using standard guidelines. These include: simplicity, flexibility, data quality, acceptability, sensitivity, predictive value positive, representativeness, timeliness, and stability. (See Morbidity and Mortality Weekly Report (MMWR) Recommendations and Reports, "Updated guidelines for evaluating public health surveillance systems," RR–13, vol. 50, 07/27/2001, found at: *http://www.cdc.gov/mmwr/PDF/RR/RR5013.pdf.*)

j. Prepare standard reports with aggregated data and distribute them widely.

k. Share information learned from project through presentations, peer-reviewed publications and media events.

l. Participate in a collaborative effort coordinated by the CDC to establish a

national violent death reporting system that collects uniform data across states as prescribed in the FY 2002 and FY 2003 appropriations report language. Meetings will be held on a semiannual basis.

Recipient Activities

1B. For Experienced Violent Death Reporting Systems

a. Maintain an advisory committee that will help in the enhancement of the reporting system. The committee should be able to help develop methods for data dissemination and set priorities for helping to develop prevention strategies. The committee should include, at a minimum, representatives from agencies that control the core data sources.

b. Maintain or expand routine access to uniquely identifiable case information from each of the four core data sources for deaths occurring on or after 1/01/2004.

c. Use the case definition and uniform data elements developed under Program Announcement 02059.

d. Use or modify existing procedures that combine information from the data sources. Maintain a unique case ID number.

e. Maintain or modify (1) a centralized location for maintaining a secure data storage system that allows for ready access to and retrieval of all your collected data and (2) an off-site, backup data storage system for all your data.

f. Develop a quality assurance program that includes a systematic review of the accuracy, completeness and timeliness of the data collection process. This should include reabstraction of a sample of cases where applicable and monitoring of time intervals from death to case completion, as well as routine checks to identify duplicate cases.

g. Transmit data free of personal identifiers electronically to CDC using software provided by the CDC. OMB clearance for this data collection is pending.

h. Evaluate the surveillance system annually using standard guidelines. These include: simplicity, flexibility, data quality, acceptability, sensitivity, predictive value positive, representativeness, timeliness, and stability. (*See* MMWR Recommendations and Reports, "Updated guidelines for evaluating public health surveillance systems," RR–13, vol. 50, 07/27/2001, found at: *http://www.cdc.gov/mmwr/PDF/RR/RR5013.pdf.*)

i. Prepare standard reports with aggregated data and distribute them widely.

j. Share information learned from the project through presentations, peer review publications and media events.

k. Participate in a collaborative effort coordinated by the CDC to establish a national violent death reporting system that collects uniform data across states as prescribed in the FY 2002 and FY 2003 appropriations report language. Meetings will be held on a semiannual basis.

Note: "New" recipients may choose to begin data gathering in smaller geographic areas, such as cities, counties or regions rather than beginning statewide. "Experienced" recipients may choose to expand data gathering to a broader geographic area, if not currently statewide. If an applicant chooses to begin collecting data in a portion of the state, the applicant must outline a plan for expansion statewide within the five-year project period.

2. CDC Activities " Provide national leadership in the development and implementation of NVDRS through the following:

a. Provide a case definition and required uniform data elements to be collected.

b. Provide standardized model software that can be used to store and transmit data to CDC electronically, and provide software updates, as needed.

c. Train recipients on surveillance systems. This includes: data standards, coding, data entry, data editing, quality assurance functions, record tracking, and reporting format.

d. Provide technical assistance in solving problems in all aspects of the system.

e. Review submitted records for quality and completeness and provide feedback to recipients. Work with the recipient to systematically resolve problems of missing or inaccurate data.

f. Prepare an analysis file of final edited data to be shared with the recipient for data analysis and reporting of findings.

g. Prepare standard reports with aggregated data and distribute them widely.

h. Prepare Office of Management and Budget (OMB) package to obtain clearance for data collection.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages, double-spaced, printed on one side, 1.5-inch left margin, 1-inch top, bottom, and right margins, and Courier New 12-point font. The total number of pages should not exceed 70 pages, including appendices and abstract (MOA/MOUs are not counted in the overall page total.) Applicants that fit into the "Experienced" category are allowed up to an additional five pages (total of 75 pages) for a required appendix that evaluates their current violent death surveillance system according to standard CDC guidelines.

Note: Applicants who do not follow the content guidelines will have the following point reductions to their overall evaluation score: 1 point for more than 30 pages of the narrative; 1 point for use of a font smaller than 12-point; and 1 point for less than specified margins.

The narrative will consist of, Background, Goals and Objectives, Methods, Experience, Capacity and Staffing, Evaluation and Collaboration.

The application should include the following information: (Documentation of access to required data source should be included in the appendices.)

1. A one-page abstract of proposed activities and project outcomes. The abstract should specify the type of applicant ("New" or "Experienced") and the number of violent deaths category into which the state fits (less than or equal to 800 or greater than 800 deaths.)
2. Background.
3. Goal(s) and Objectives. (Including an outline of a five-year plan with timeline.)
3. Methods.
4. Experience.
5. Capacity and Staffing.
6. Evaluation.
8. Collaboration.
9. Human Subjects.
10. Budget.
11. Appendices.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161—1 (OMB Number 0920–0428.) Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time June 2, 2003.

Submit the application to: Technical Information Management—PA03038, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Applications which are complete and responsive will be subjected to a preliminary evaluation by a Special Emphasis Panel (SEP) to determine if the application is of sufficient technical and scientific merit to warrant further full review. Priority scores will be assigned by the SEP to the core applications. CDC will withdraw from further consideration applications judged to be noncompetitive.

Each application will be evaluated individually against the following criteria by a Special Emphasis Panel (SEP) appointed by CDC:

1. Methods (25 points)

a. The extent to which the applicant describes the methods used for ascertaining cases and obtaining data from core data sources. This should include a discussion of methods used in motivating reporting sources, ensuring high quality data, and resolving data issues.

b. The extent to which the applicant provides a detailed and clear description of how linkage of records from different sources is, or will be, accomplished.

c. The extent to which the applicant describes how data will be stored in a central location in the state.

d. The extent to which the applicant provides a detailed plan for protecting data from loss and assuring confidentiality where required by state law or regulation.

e. The extent to which the applicant provides evidence that proposed activities are not duplications of existing activities. (Experienced applicants only)

2. Goal(s) and Objectives (15 points)

a. The extent to which the applicant has included goals, which are relevant and consistent with the purpose of the program announcement.

b. The extent to which the objectives are specific, measurable, assigned to specific staff, realistic, and time-phased.

c. The extent to which the applicant has included a five-year plan with timeline. Is it realistic? Does it accomplish the goals and objectives?

3. Experience (15 points)

a. The extent to which the applicant documents experience in accessing, collecting, linking, editing, managing, and analyzing surveillance information from multiple data sets, especially experience with mortality surveillance.

b. The extent to which the applicant provides evidence of experience in injury surveillance, conducting data quality assurance activities, and generating data reports.

4. Capacity and Staffing (15 points)

a. The extent to which the applicant provides evidence of existing staff with expertise in SAS software and database manager, (*e.g.*, Microsoft Access), computer programming skills, and skills in data management and quality assurance, especially involving large complex databases.

b. The extent to which the applicant provides a plan, with position description(s), to hire someone with such skills and expertise. Resumes or curriculum vitae should be included.

c. The extent to which the applicant provides a timetable showing when information regarding the occurrence of a violent death during a given calendar quarter is available to the applicant from each of the four required data sources.

5. Collaboration (15 points)

a. The extent to which the applicant provides evidence of involvement by key stakeholders in the current system or a plan for including key stakeholders in the development of a violent death reporting system.

b. The extent to which the applicant documents the quality and specificity of access to required and optional data sources, *e.g.*, the limitations of that access, the most recent year data are available, the timeliness and availability of data from all core and optional data sources, the duration of access, etc. Information from the letters of support will be considered in this context.

c. The extent to which the applicant provides additional letters of support from potential partners in the project.

d. The extent to which the letters of support document specific contributions of the partner, including but not limited to a description of the precise nature of past and proposed collaborations, products, services, and other activities that will be provided by and to the applicant through the proposed collaboration.

6. Evaluation (10 points)

a. The extent to which the applicant provides a detailed plan for evaluating the surveillance system. The plan should include standard CDC surveillance evaluation measures described above.

b. The extent to which the applicant describes both system and data quality assurance procedures.

7. Background (5 points)

The extent to which the applicant documents the magnitude of the violent death problem in the applicant's state and/or target area.

8. Human Subjects (Not Scored)

The extent to which the applicant adequately addresses the requirements of Title 45 CFR part 46 for the protection of human subjects. Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

9. Budget (Not Scored)

The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient and consistent with the stated objectives and planned activities. The Budget should include funds for at least two trips to CDC for program related meetings and training.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, due on July 2 of each year. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
2. Financial status report, due December 29 of each year.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site:

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements Projects that involve the collection of information from 10 or more persons and that are funded by cooperative agreements will be subject to review and approval by the Office of Management and Budget (OMB.)
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–21 Small, Minority, Women-Owned Businesses
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Van A. King, Grants Management, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2751, E-mail address: *Vking@cdc.gov.*

For program technical assistance, contact: Leroy Frazier, Jr., MSPH, CHES, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE, MS K60, Atlanta, GA 30341, Telephone number: (770) 488–1507, E-mail address: *Lfrazier1@cdc.gov.*

Dated: February 24, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–4858 Filed 2–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Alaska Subsistence Household Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Officer at the address listed below.

DATES: Submit comments on or before May 2, 2003.

ADDRESSES: Send your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, and related forms, contact Anissa Craghead by phone at (703) 358–2445 or by e-mail at *anissa_craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested parties and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* CFR 1320.8(d)). The U.S. Fish and Wildlife Service (we, or the Service) plans to submit a request to OMB for approval of a collection of information related to the subsistence migratory bird harvest in Alaska. We a requesting a 3-year term of approval for this collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Migratory Bird Treaty Act (16 U.S.C. 703–712) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the management of migratory bird populations frequenting the United States and for the setting of harvest regulations that allow for the conservation of those populations. These responsibilities include gathering accurate geographical and temporal data on various characteristics of migratory bird harvest. We use that data to promulgate harvest regulations. Annually, we adjust harvest regulations as needed to provide a maximum of subsistence harvest opportunity while keeping migratory bird populations at desired levels.

The Migratory Bird Treaty Act Protocol Amendment (1995) (Amendment) provides for the customary and traditional use of migratory birds and their eggs for subsistence use by indigenous inhabitants of Alaska. The Amendment, however, states that it is not the intent of the Amendment to cause significant increases in the take of species of migratory birds relative to their continental population sizes. A May 20, 1996, letter of submittal from the Department of State to the White House, which officially accompanied the Amendment, specifies the need for harvest monitoring and states that harvest estimates will be collected cooperatively by the Service, the State Department of Fish and Game, and Native organizations within the subsistence eligible areas. Harvest survey data help ensure that customary and traditional use of migratory birds and their eggs for subsistence use by indigenous inhabitants of Alaska does not significantly increase the take of species of migratory birds relative to their continental population sizes.

We have monitored the subsistence harvest in Alaska for the past 14 years through the use of annual household surveys in the most heavily used subsistence harvest areas (*e.g.*, Yukon-Kuskokwim Delta). Continuation of this monitoring would enable tracking of any significant changes or trends in levels of harvest and user participation after legalization of the harvest. The harvest survey method and forms that we used to collect information were not approved by the Office of Management and Budget (OMB). We are initiating the process to request OMB approval of these forms through this publication and to request public comment on this information collection. We will not conduct or sponsor any surveys until we obtain OMB approval of this information collection.

This collection helped, and would help, us gather information on the annual subsistence harvests of 49 species of birds, including geese, ducks, swans, cranes, loons, seabirds, shorebirds, and upland game birds. The survey was, and would be, conducted by local village resident surveyors in the subsistence-eligible areas of Alaska, under the guidance of Service employees and contractors (such as native organizations and the Alaska Department of Fish and Game). The local village surveyors annually provided, and would provide, us lists of all households in each village. Randomly selected households then received, and would receive, survey forms from the village surveyor. The household either completed, and would complete, the form independently, or the village surveyor helped, and would help, the household complete the form. Forms were then, and would be, turned in to us. The resulting estimates of harvest per household were, and would be, combined with the complete list of households in the subsistence-eligible areas to provide estimates of the total annual harvest of the 49 species of birds.

We used, and would use, four forms to collect this information. They are described below.

Title: List of All Occupied Households, with Hunting Category Noted.

Approval Number: 1018–xxxx.

Form number: 7–FW–100.

Frequency of Collection: Once per year.

Description of Respondents: Local village surveyors.

Total Annual Responses: 188. We estimate one form for each of the 188 communities, which amounts to 188 forms annually.

Total Annual Burden Hours: 433 hours. We estimate the reporting burden at one minute for each of the total 26,000 households in 188 communities, or 433 hours total.

Note: This form is maintained by the local village surveyor. This form does not record, nor is it arranged or retrieved, by personal identifier.

Title: Households Separated by Hunting Category.

Approval Number: 1018–xxxx.

Form number: 7–FW–101.

Frequency of Collection: Once per year.

Description of Respondents: Local village surveyors.

Total Annual Responses: 188. We estimate one form for each of the 188 communities, which amounts to 188 forms annually.

Total Annual Burden Hours: 94 hours. We estimate it takes each surveyor an average of one-half hour to transfer the information from Form 7–FW–100 to Form 7–FW–101. With an estimated 188 surveyors in up to 188 communities, we estimate 94 hours total annual burden.

Note: The local village surveyor provides this form to us. This form does not record, nor is it arranged or retrieved, by personal identifier.

Title: Permission Slip for Participation in the Survey.

Approval Number: 1018–xxxx.

Form number: 7–FW–102.

Frequency of Collection: Once per year.

Description of Respondents: Households within the subsistence eligible areas of Alaska (Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range (50 CFR part 92.5)).

Total Annual Responses: 16,000. We estimate up to 13,000 of the approximately 26,000 households in the subsistence eligible areas, will participate in the survey. Up to 16,000 households will have to be asked permission in order to get a sample size of 13,000 households.

Total Annual Burden Hours: 1,333 hours. It will take the surveyor an average of 5 minutes per household to determine whether or not that household agrees to participate in the subsistence harvest survey. With an estimated 16,000 households responding to the permission slip, this amounts to 1,333 hours total annual burden.

Note: This form is maintained by the local village surveyor. The surveyor asks each household if that household will participate in the subsistence harvest survey. The surveyor then notes a "yes" or a "no" on a permission slip. Each household with a "yes" permission slip is given a survey form (described below). This form does not record, nor is it arranged or retrieved, by personal identifier.

Title: Migratory Bird Subsistence Harvest Household Survey.

Approval Number: 1018–xxxx.

Form number: 7–FW–103.

Frequency of Collection: Three times per year—spring, summer, and fall.

Description of Respondents: Households within the subsistence eligible areas of Alaska (Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range (50 CFR part 92.5)).

Total Annual Responses: 13,000. We estimate up to 13,000 of the approximately 26,000 households in the subsistence eligible areas will participate in the survey.

Total Annual Burden Hours: 3,250 hours. We estimate the reporting burden to average 5 minutes per respondent for the Migratory Bird Subsistence Harvest Household Survey. With an estimated 13,000 respondents filling out the form three times annually, the annual burden hours total 3,250 hours.

Note: The local village surveyor provides completed survey forms to us. The survey form consists of three pages, one page each for spring, summer, and fall. Each page has 51 bird illustrations, with spaces beside each illustration to mark down numbers of birds and eggs taken. This form does not record, nor is it arranged or retrieved, by personal identifier; the household number is written on each page of the survey form, along with a village number. The results of this annual survey help us understand the effect of subsistence hunting on migratory bird populations, while also evaluating the effects of newly established spring/summer season dates, species closures, and methods and means prohibitions.

We invite comments on this proposed information collection on the following: (1) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be

collected; and (4) ways to minimize the burden of the collection on respondents.

Dated: February 24, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–4876 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 2, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–067283

Applicant: Ralph A. Musella, Arbutus, MD.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–066261

Applicant: Zoo New England, Boston, MA.

The applicant requests a permit to import one male and one female captive born jaguar (Panthera onca) from Zoologico La Jungla, Parque Recreativo Urban (Irtra) Petapa, Ciudad de Guatemala, Guatemala, for the purpose of enhancement of the survival of the species through conservation education and captive breeding.

PRT–066262

Applicant: Tulsa Zoological Park, Tulsa, OK.

The applicant requests a permit to import one male captive born jaguar (Panthera onca) from Zoologico La Jungla, Parque Recreativo Urban (Irtra) Petapa, Ciudad de Guatemala, Guatemala, for the purpose of enhancement of the survival of the species through conservation education and captive breeding.

PRT–066263

Applicant: Akron Zoological Park, Akron, OH.

The applicant requests a permit to import one male captive born jaguar (*Panthera onca*) from Zoologico La Jungla, Parque Recreativo Urban (Irtra) Petapa, Ciudad de Guatemala, Guatemala, for the purpose of enhancement of the survival of the species through conservation education and captive breeding.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–067553

Applicant: Daniel R. Kehoe, Moline, IL.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada, for personal use.

PRT–067142

Applicant: Ricky H. Jackson, Thomasville, NC.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada, prior to April 30, 1994, for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: February 7, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–4880 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 2, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–067368

Applicant: The Dallas World Aquarium, Dallas, TX,

The applicant requests a permit to purchase in interstate commerce one female captive-born jaguar (*Panthera onca*) from D.C."s Country Junction Zoo, Lowell, IN, for the purpose of enhancement of the survival of the species through conservation education.

PRT–057924

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE,

The applicant requests a permit to import four male and three female captive-born cheetahs (*Acinonyx jubatus*) from Hoedspruit Research and Breeding Center, Pretoria, Republic of South Africa, for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: February 14, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–4881 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

DATES: Written comments on these requests for permits must be received April 2, 2003.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director—Ecological Services, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicants have requested renewal of scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Paul A. Jankowski, Colorado Department of Transportation, Durango, Colorado, TE–067482.

The applicant requests a permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Edward J. Peters, University of Nebraska, Lincoln, Nebraska, TE–067486.

The applicant requests a permit to take pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Craig Kling, TRC Mariah Associates, Inc., Laramie, Wyoming, TE–052582.

The applicant requests a permit amendment to add take of American burying beetle (*Nicrophorus americanus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Applicant: Terry Lincoln, Dakota Zoological Society, Bismarck, North Dakota, TE–051815.

The applicant requests a permit amendment to possess pallid sturgeon (*Scaphirhychus albus*) for public display in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Applicant: Allen Crockett, Walsh Environmental, Golden, Colorado, TE–056101.

The applicant requests a permit amendment to add take of Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

Dated: February 6, 2003.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 03–4822 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Standard Grant Application Instructions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice notifies the public that updated instructions for applying for standard grants (*see* **SUPPLEMENTARY INFORMATION**) under the U.S. North American Wetlands Conservation Act are available on the Internet at *http://birdhabitat.fws.gov.*

DATES: Proposals may be submitted at any time. To ensure adequate review time prior to upcoming North American Wetlands Conservation Council (Council) meetings, the Council Coordinator must *receive* proposals by March 7, 2003, and July 25, 2003.

ADDRESSES: For detailed application instructions, sample proposal information, and eligibility criteria visit the North American Wetlands Conservation Act (NAWCA) Web site at *http://birdhabitat.fws.gov.* If you cannot access the Web site, contact the Council Coordinator at U.S. Fish and Wildlife Service, Division of Bird Habitat Conservation, 4401 North Fairfax Drive, MBSP 4075, Arlington, VA 22203, or by phone at 703–358–1784, or by fax at 703–358–2282, or by e-mail at *dbhc@fws.gov.* Send proposals to the Council Coordinator at the above address by mail (faxed proposals are not accepted). Send one original and two copies by regular mail and send one copy by electronic mail to the Council Coordinator. Send a copy of the proposal to your U.S. North American Waterfowl Management Plan (NAWMP) Joint Venture Coordinator (see next section for JV Coordinators) and all partners in the proposal.

FOR FURTHER INFORMATION CONTACT: North American Wetlands Conservation Council Coordinator at (703) 358–1784 or *dbhc@fws.gov*; Bettina Sparrowe at (703) 358–1784 or *bettina_sparrowe@fws.gov*, or a JV Coordinator at the number given below. JV Coordinators can give you advice about developing a proposal, about proposal ranking, and additional information that may be required for compliance requirements for the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and contaminant surveys.

Atlantic Coast (CT, DE, FL, GA, MA, MD, ME, NC, NH, NJ, NY, PA, Puerto Rico, RI, SC, VA, VT, WV) 413–253–8269 or *andrew_milliken@fws.gov*.

Central Valley (Central Valley of CA) 916–414–6459 or *robert_shaffer@fws.gov*.

Gulf Coast (coastal areas of AL, LA, MS, TX) 505–248–6876 or *greg_esslinger@fws.gov*.

Intermountain West (AZ, eastern CA, western CO and ID, southwest MT, western NM, NV, eastern OR, UT, eastern WA, WY) 801–975–3330 x129 or *iwjv@xmission.com*.

Lower Mississippi Valley (AR; eastern KY; northern LA; eastern MS, OK, and TN; northeastern TX) 601–629–6600 or *charles_baxter@fws.gov*.

Northern Great Plains 701–250–4463 x141 or *aschollett@fs.fed.us*.

Pacific Coast (AK, coastal areas of northern CA, HI, coastal areas of OR and WA) 360–696–7630 or *carey_smith@fws.gov*.

Playa Lakes (southeastern CO, southwestern KS, eastern NM, western OK, TX panhandle) 303–926–0777 or *mike.carter@pljv.org*.

Prairie Pothole (northwestern IA, western, MN, northern MT, northern and southeastern ND, eastern SD) 303–236–8155 x252 or *carol_lively@fws.gov*.

Rainwater Basin (17 counties in southeastern NE) 308–382–8112 or *steve_moran@fws.gov*.

San Francisco Bay (San Francisco Bay in CA) 415–883–3854 or *bhuning@sfbayjv.org*.

Upper Mississippi River-Great Lakes (Eastern IA and counties bordering the Missouri River, IL, IN, KS counties bordering the Missouri River, MI, MO, eastern MN, NE counties bordering the Missouri River, OH, WI) 612–713–5433 or *Barbara_pardo@fws.gov*.

SUPPLEMENTARY INFORMATION: The Council has two U.S. conservation grants programs for acquisition, restoration, and enhancement of wetlands in the U.S. Any individual or organization who has a long-term, partner-based project with matching funds can apply. The focus of this notice is standard grant proposals for requests from $51,000 to $1,000,000 per proposal (if well justified, more may be requested). A separate notice will be issued later this year for small grant proposals for requests up to $50,000 per proposal.

The NAWCA established the Council, a Federal-State-private body that recommends projects to the Migratory Bird Conservation Commission (MBCC) for final approval and requires that proposals contain a minimum 1:1 ratio of non-Federal matching funds to grant funds. "Match" (as referred to throughout this document) can be cash, in-kind services, or land acquired/title donated for wetlands conservation purposes.

This notice provides a summary of the 2003 proposal instructions and eligibility criteria available on the internet to develop a NAWCA standard grant proposal. In order to complete a proposal correctly, consult the Web site at *http://birdhabitat.fws.gov* for detailed instructions. If you cannot access the Web site, contact the Council Coordinator.

Paperwork Reduction Act: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501), the Office of Management and Budget has assigned clearance number 1018–0100 to this information collection authorized by the North American Wetlands Conservation Act of 1989, as amended (16 U.S.C. 4401 *et seq.*). The information collection solicited is necessary to gain a benefit in the form of a grant, as determined by the Council and MBCC, is necessary to determine the eligibility and relative value of wetland projects, results in an approximate paperwork burden of 400 hours per application, and does not carry a premise of confidentiality. Your response is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public is invited to submit comments on the accuracy of the estimated average burden hours for application preparation and to suggest ways in which the burden may be reduced. Comments may be submitted to: Information Collection Clearance Officer, Mail Stop 224 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240 and/or Desk Officer for Interior Department (1018–0100), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

New NAWCA Proposal Information: Six documents are available on the Internet at *http://birdhabitat.fws.gov* and are summarized below:

1. *2003 Grant Administration Policies and Assistance Award.* Describes policies and procedures that NAWCA projects must comply with and shows the one-page grant agreement that will be completed if the proposal is funded.

2. *2003 Eligibility Criteria & Processes.* Describes eligible activities and costs for NAWCA projects, gives links to cost principles that apply to all Federal grant programs, and describes steps in the proposal funding process. A standard grant proposal is a four-year plan of action supported by a NAWCA grant and partner funds to conserve wetlands and wetlands-associated fish and wildlife through acquisition (including easements and land title donations), restoration, and/or enhancement (including creation). Match must be non-Federal and at least equal the grant request (referred to as a 1:1 match). Match is eligible up to two years prior to the year the proposal is submitted and grant and match funds are eligible during the two-year future Grant Agreement period.

3. *2003 Proposal Instructions.* Describes changes from the 2002 instructions, gives required information for a proposal and provides examples. A proposal has the following sections: Project Officer's Page; Summary; Purpose and Scope; Budget and Work Plan; Technical Assessment Questions; Attachments (budget table, tract table, partner contribution statements, optional matching contributions plan, Standard Form 424, optional aerial photographs, maps); and Easements, Leases, and Indirect Cost Rate Agreement.

4. *2003 Word Proposal Outline.* A fill-in-the-blank proposal using the Word program.

5. *2003 WordPerfect Proposal Outline.* A fill-in-the-blank proposal using the WordPerfect program.

6. *2003 Excel Budget Table.* A fill-in-the-blank budget table in case you do not want to use the budget tables provided in the Word and WordPerfect files.

Dated: February 4, 2003.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–4878 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On October 30, 2002, a notice was published in the **Federal Register** (67 FR 66166), that an application had been filed with the Fish and Wildlife Service by Neil Bayley for a permit (PRT–063291) to import one polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on February 3, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On November 27, 2002, a notice was published in the **Federal Register** (67 FR 70962), that an application had been filed with the Fish and Wildlife Service by Larry Seiler for a permit (PRT–063898) to import one polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on January 21, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On November 27, 2002, a notice was published in the **Federal Register** (67 FR 70962), that an application had been filed with the Fish and Wildlife Service by William J. Schagel for a permit (PRT–063596) to import one polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on February 3, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: February 7, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–4879 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council) Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). The meeting is open to the public.

DATES: March 4, 2003, 1 p. m.

ADDRESSES: The meeting will be held at the Department of the Interior, South Penthouse, 18th and C Streets, NW., Washington, DC 20240. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop: MBSP 4501–4075, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784 or *dbhc@fws.gov*.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to, and final funding approval by, the Commission. Proposal due dates, application instructions, and eligibility requirements are available through the NAWCA Web site at *http://birdhabitat.fws.gov*. Proposals require a minimum of 50 percent non-Federal matching funds. Eighteen Canadian proposals will be considered at the Council meeting. The tentative date for the Commission meeting is June 18.

Dated: February 20, 2003.

Paul R. Schmidt,

Assistant Director—Migratory Birds and State Programs.

[FR Doc. 03–4877 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–923–03–1320–00]

Fair Market Value Meeting for the South Crandall Canyon Coal Tract, Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting and call for public comment on the proposed sale and fair market value and maximum economic recovery consideration for coal lease application UTU–78953.

SUMMARY: The Bureau of Land Management (BLM) will hold a public meeting on March 17, 2003, for the proposed competitive sale, of the South Crandall Canyon coal Tract. BLM requests public comment on the fair market value and environmental effects of this tract. The BLM and the Manti-La Sal National Forest signed a Decision Notice/Finding of No Significant Impact dated February 13, 2003 that discusses the environmental effects of mining this tract. The Notice of Decision was published in the Emery County Progress and the Sun Advocate on February 18, 2003. The lands included in the delineated Federal coal lease tract ("South Crandall Canyon") are located in Emery County, Utah approximately 5 miles north of Huntington, Utah on public lands located in the Manti-La Sal National Forest and are described as follows:

T. 16 S., R. 7 E., SLM, Emery County, Utah.
Section 4, W2SW4, S2SW4NW4,
Section 5, SE4, S2SE4NE4,
Section 8, E2, NE4NW4, S2NW4,
Section 9, NW4
Approximately 880 acres

Genwal Resources submitted the application for the coal lease. The company plans to mine the coal as an extension from their existing Crandall Canyon mine if the lease is obtained. The South Crandall Canyon coal tract has two potentially minable coal beds, the Blind Canyon and Hiawatha. The minable portions of the coal beds in this area are from 6 to 8 feet in thickness. The tract contains more than 5 million tons of recoverable high-volatile C bituminous coal. The coal quality in the seams on an "as received basis" is as

follows: 12,790 Btu/lb., 5.26 percent moisture, 4.68 percent ash, 44.18 percent volatile matter, 45.88 percent fixed carbon and 0.61 percent sulfur. The public is invited to the meeting to make public and/or written comments on the environmental implications of leasing the proposed tract, and also to submit comments on the Fair Market Value and the Maximum Economic Recovery of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR parts 3422 and 3425, the public meeting is being held on the proposed sale to allow public comment on and discussion of the potential effects of mining and proposed lease. The meeting is being advertised in the Sun Advocate located in Price, Utah and the Emery County Progress located in Emery, Utah. 43 CFR part 3422 states that, No less than 30 days prior to the publication of the notice of sale, the Secretary shall solicit public comments on the Fair Market Value appraisal and Maximum Economic Recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Utah State Office during regular business hours (8 a.m.–4 p.m.) Monday through Friday. Comments on the Fair Market Value and Maximum Economic Recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to the following information.

1. The quality and quantity of the coal resource;

2. The mining methods or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production;

3. Whether this tract is likely to be mined as part of an existing mine and therefore should be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;

4. Whether the tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (*i.e.*, a tract which does not in itself form a logical mining unit);

5. Restrictions to mining that may affect coal recovery;

6. The price that the mined coal would bring when sold;

7. Costs, including mining and reclamation, of producing the coal and the time of production.

8. The percentage rate at which anticipated income streams should be discounted, either with inflation or in the absence of inflation, in which case the anticipated rate of inflation should be given;

9. Depreciation, depletion, amortization and other tax accounting factors;

10. The value of any surface estate where held privately;

11. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area;

12. Any comparable sales data of similar coal lands; and coal quantities and the Fair Market Value of the coal developed by BLM may or may not change as a result of comments received from the public and changes in the market conditions between now and when final economic evaluations are completed.

DATES: The public meeting is being held on Monday, March 17, 2003 at the Huntington Senior Citizen Center, address 100 North, 176 West, starting at 7 p.m. The building is just east of the Fire Department.

FOR FURTHER INFORMATION CONTACT: Written comments on the Fair Market Value and Maximum Economic Recovery must be received by April 14, 2003 and should be addressed to Stan Perkes, 801–539–4036, Bureau of Land Management, Utah State Office, Division of Lands and Minerals, PO Box 45155, Salt Lake City, Utah 84145–0155. Information on the Joint Decision Notice/Finding of No Significant Impact can be obtained by contacting Mr. Stan Perkes, 801–539–4036 for the Bureau of Land Management or Mr. Karl Boyer or Mr. Carter Reed, 435–637–2817 at the Manti-La Sal National Forest Supervisors Office, Price, Utah. The appeal periods for Joint Decision Notice/Finding of No Significant Impact document for the Forest Service Decision to consent to leasing will end on April 4, 2003 and the appeal period for BLM's decision to lease will end on March 20, 2003. Any appeals must be postmarked as of these dates.

Dated: February 24, 2003.

Kent Hoffman,

DSD, Division of Lands and Minerals.

[FR Doc. 03–4853 Filed 2–28–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–24 1A]

RIN 1004–AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the proposed amendments of the Bureau of Land Management's grazing administration regulations and announcement of public meetings.

SUMMARY: Under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on amending the regulations governing BLM livestock grazing administration on public lands. The current rule, issued in 1995, requires amendment to comply with court decisions, provide greater flexibility to managers and permittees, improve existing administrative procedures and business practices, and promote conservation of public lands. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs as well concerns regarding possible changes to the Grazing Administration Program. The public scoping process will identify issues and develop criteria in the context of the needs and interests of the public. We encourage the public to participate in planned public meetings and to provide comments and suggestions to help us clearly define possible changes to the Grazing Administration Program.

DATES: You must submit your comments by May 2, 2003. BLM may not necessarily consider or include in the Administrative Record for the proposed rule comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed below (*see* **ADDRESSES**). In addition, BLM will hold public scoping meetings to focus on relevant issues and environmental concerns, identify possible alternatives, and help determine the scope of the EIS. The public scoping meetings will be held on the following dates at the specified locations and times:

Location	Date and time	Address of meeting	Contact person
Billings, Montana	March 18, 2003, 6–10 p.m	Holiday Inn Grand, Montana, 550 Midland Road, Billings, MT 59101.	Mary Apple, 406–896–5258.
Reno, Nevada	March 20, 2003, 6–10 p.m	Reno Sparks Convention Center, 4590 S. Virginia St., Reno, NV 89502.	JoLynn Worley, 775–861–6515.
Albuquerque, New Mexico	March 25, 2003, 6–10 p.m	Hilton of Albuquerque, 1901 University Blvd., NE., Albuquerque, NM 87102.	Kitty Mulkey, 505–438–7511.
Washington, DC	March 27, 2003, 1–5 p.m	Courtyard By Marriott, (General Scott Room) 1600 Rhode Island Ave., NW., Washington, DC 20036.	Tom Gorey, 202–452–5137.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD42.

Personal or messenger delivery: 1620 L Street, NW., Room 401, Washington, DC 20036. *Direct internet response: http://www.blm.gov/nhp/news/regulatory/index.html* or go to BLM's external homepage at *http://www.blm.gov/nhp/index.htm* and click on the link.

You may also comment via email at the following address: *WOComment@blm.gov*. We intend this address for use by those who want to keep their electronic comments confidential. Please submit email comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include "Attn: AD42" and your name and return address in your email message. You may examine documents pertinent to this proposal at the L Street address. Comments, including names and street addresses of respondents, will be available for public review on the Internet address above and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information relating to the grazing program or the substance of the regulations to be proposed, contact Kenneth Visser at (202) 452–77434. For information relating to the rulemaking process, contact Cynthia Ellis at (202) 452–5012. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the above individuals.

SUPPLEMENTARY INFORMATION: In this issue of the **Federal Register**, BLM is also publishing an advance notice of proposed rulemaking on the changes we are considering making to the regulations governing BLM's Grazing Administration Program. BLM is committed to making the changes to reflect the Secretary's "4C's" philosophy of "consultation, cooperation, and communication all in the service of conservation." Since the first set of grazing regulations was issued after passage of the Taylor Grazing Act of 1934 as amended (43 U.S.C. 315, 315a–315r), the regulations have been periodically modified, revised and updated. The last major revision effort culminated when BLM published and implemented comprehensive changes to the grazing regulations in 1995.

The changes BLM is considering would encourage partnerships in public land stewardship and establish new options for BLM and rangeland users in the administration and management of public lands. Our goals are to:

(1) Enhance community-based conservation and citizen-centered stewardship;

(2) Improve BLM business practices; and

(3) Provide greater flexibility for the manager and the permittee.

Description of Information Requested

BLM is committed to carrying out the Secretary's objectives and the Rangeland Management Program established by the Federal Land Policy Management Act of 1976 (43 CFR 1740), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901–1908), and the Taylor Grazing Act of 1934 as amended (43 U.S.C. 315, 315a–315r). We specifically request comments on the topics we are considering for the proposed rule, as they relate to the EIS. These topics include, but are not limited to, the following (the listing is identical to that which appears in the advance notice of proposed rulemaking):

A. Definitions.

We are considering revising or creating definitions of the following terms: Active use; Authorized use; Base property; Grazing lease; Grazing permit; Grazing preference or Preference; Livestock kind or kind of livestock; Monitoring; Reserve common allotment.

B. We are considering changing regulations to clarify current requirements and to allow better rangeland management and permit administration. Changes we are considering include:

- Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans.
- Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease.
- Clarifying the provisions addressing grazing preference transfers.
- Reinstating an earlier provision that BLM and the permit holder may share title to certain range improvements if the improvement was constructed under a Cooperative Range Improvement Agreement.
- Clarifying that BLM will follow state law with respect to the acquisition of water rights.
- Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private land and improve livestock operations.

• Clarifying which non-permit related violations BLM may take into account in penalizing a permittee.
• Considering ways to streamline the grazing decision appeal process.
• Extending the time period that BLM may approve nonuse of forage from 3 to 5 years for resource improvement, business, or personal needs.

C. We are also considering amendments related to changes in permitted use. Amendments we are considering include:
• Creating provisions re-emphasizing consideration of social, economic, and cultural impacts, in addition to the ecological impacts, of Federal actions to ensure compliance with the National Environmental Policy Act.
• Requiring a permittee/lessee to apply to renew a permit or lease.
• What criteria BLM will consider before approving increases in permitted use.
• Considering whether to amend the provision stating when BLM will implement action that changes grazing management after determining that the allotments used by a permittee or lessee are not meeting or significantly progressing toward meeting land health standards.

D. We are considering adding the following new provisions to the regulations.
• Establishing and administering a new concept called "Reserve Common Allotments" (RCA). RCAs would be managed as reserve forage areas for use by permittees whose allotments are undergoing restoration treatments and require rest from grazing. RCA forage would be allocated on a temporary non-renewable basis to permittees participating in restoration on their allotments.
• Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement/supplemental billing under existing service charge authority. We do not intend to address grazing fees in this rulemaking.

E. We also plan to make minor revisions to correct typographical errors and to make technical changes to improve the clarity of the rule. One change we will make is to remove references to "conservation use" permits to reflect the decision in *Public Lands Council* v. *Babbitt*, 929 F.Supp. 1436 (D. Wyo. 1996), *rev'd in part and aff'd in part*, 167 F.3d 1287 (10th Cir. 1999), *aff'd*, 529 U.S. 728 (2000).

Additional information about BLM's Rangeland, Soils, Water, and Air Program is available at *http://web.blm.gov/internal/wo-200/wo-220/index.html*.

Dated: January 17, 2003.
Rebecca W. Watson,
Assistant Secretary of the Interior.
[FR Doc. 03–4934 Filed 2–28–03; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.
ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet on March 25, 2003. The agenda for the Committee meeting will include discussion of Sacramento Valley Region issues, administrative matters, governance, finance, multi-year planning, priorities, and implementation of the CALFED Bay-Delta Program with State and Federal officials.

DATES: The meeting will be held Tuesday, March 25, 2003 from 10 a.m. to 6 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 657–2666 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Chico Masonic Family Center located at 1110 West East Avenue, Chico, California.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 654–4214, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide assistance and recommendations to Secretary of the Interior Gale Norton and California Governor Gray Davis on implementation of the CALFED Bay-Delta Program. The Committee will advise on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system, integrity, and water supply reliability. The Program is a consortium of 23 State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the CALFED Bay-Delta Web site: *http://calfed.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et. seq.*; the Endangered Species Act, 16 U.S.C. 1531 *et. seq.*, and the Reclamation Act of 1902, 43 U.S.C. 371 *et. seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Title 34 of Pub. L. 102–575).

Dated: February 19, 2003.
Nan M. Yoder,
Acting Special Projects Officer, Mid-Pacific Region.
[FR Doc. 03–4854 Filed 2–28–03; 8:45 am]
BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–745 (Review)]

Steel Concrete Reinforcing Bar From Turkey

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to § 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on steel concrete reinforcing bar from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on March 1, 2002 (67 FR 9465) and determined on June 4, 2002, that it would conduct a full review (67 FR 40965, June 14, 2002). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 11, 2002 (67 FR 57628). The hearing was held in Washington, DC, on December 12, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg dissenting.

The Commission transmitted its determination in this review to the Secretary of Commerce on February 24, 2003. The views of the Commission are contained in USITC Publication 3577 (February 2003), entitled *Steel Concrete Reinforcing Bar from Turkey: Investigation No. 731–TA–745 (Review)*.

By order of the Commission.
Issued: February 25, 2003.
Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 03–4825 Filed 2–28–03; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation TA–2111–1]

The Impact of Trade Agreements: Effect of the Tokyo Round, U.S.-Israel FTA, U.S.-Canada FTA, NAFTA, and the Uruguay Round on the U.S. Economy

AGENCY: International Trade Commission.
ACTION: Request for additional written comments.

SUMMARY: The United States International Trade Commission invites additional public input from interested parties (*e.g.*, manufacturers, service providers, labor, other interest groups, etc.) regarding the impact of the following trade agreements: the Tokyo Round of Multilateral Trade Negotiations, the United States-Israel Free Trade Agreement, the United States-Canada Free Trade Agreement, the North American Free Trade Agreement, and the Uruguay Round Agreements. In particular, the Commission is interested in the impact of these five agreements on a sector-specific basis.

DATES: *Effective Date:* February 24, 2003.

To be assured of consideration by the Commission, written comments (a signed original and 14 copies of each set of comments, along with a cover letter) should be submitted no later than March 31, 2003.

FOR FURTHER INFORMATION CONTACT: John Davitt, Industries Coordinator (202–205–3407), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on other aspects of this investigation, contact Kyle Johnson, Project Leader (202–205–3229) or Russell Hillberry, Deputy Project Leader (202–708–5405), Office of Economics. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission also may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this study may be viewed on the Commission's electronic docket at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted the investigation for the purpose of fulfilling the requirement in section 2111 of the Trade Act of 2002 (Pub. L. 107–210, 116 Stat. 933), that it report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than one year after the date of enactment (*i.e.*, by August 6, 2003) regarding the economic impact on the United States of the aforementioned trade agreements. The Commission held a public hearing in connection with the investigation on January 14, 2003. 67 FR 59007 (Sept. 19, 2002).

To further inform the quantitative and qualitative analysis that will be included in the report, the Commission seeks additional input from interested parties (*e.g.*, manufacturers, service providers, labor, other interest groups, etc.) concerning their opinions or experiences with respect to the trade agreements. The Commission invites commentators to address in as much detail as possible the impact of these five agreements, their specific provisions, and their effectiveness. In particular, the Commission is interested in the impact of the five trade agreements on individual sectors relative to any other developments that have affected the sectors since 1980 (*e.g.*, changes in government regulation or trade policy, industry structure, technology, level of globalization, and competitive strength/position relative to foreign producers). The Commission also is interested in any sector-specific differentiation that can be made between the effects of tariff liberalization versus non-tariff measure liberalization. In this regard, the Commission also seeks interested party views on the effectiveness of negotiated commitments in facilitating actual market access.

Written Submissions: Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties.

The Congressional committees have requested that the Commission prepare a public report (containing no confidential business information). Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the entity supplying the information. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436. Hand-delivered comments must be delivered to the prescribed room during the Commission's official business hours (8:45 a.m. to 5:15 p.m.) in order to be deemed filed on the day they are delivered. The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules, as amended, 67 FR 68036 (Nov. 8, 2002).

List of Subjects

TPA, Trade Act of 2002, Tariffs, Imports.

By Order of the Commission.
Issued: February 25, 2003.
Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 03–4824 Filed 2–28–03; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Technology Institute: National Shipbuilding Research Program ("NSRP")

Notice is hereby given that, on January 13, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Technology Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the National Shipbuilding Research Program ("NSRP"). The notifications were filed for the purpose of extending

the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Newport News Shipbuilding and Dry Dock Co., Newport News, VA was acquired by Northrup Grumman Corporation and became Northrup Grumman Newport News. Ingalls Shipbuilding, Inc., Pascagoula, MS and Avondale Industries, Inc., New Orleans, LA were wholly owned subsidiaries of Litton Industries. Litton Industries was acquired by Northrup Grumman Corporation. Subsequently, Ingalls Shipbuilding, Inc. has changed its name to Northrup Grumman Ship Systems, Inc. (Ingalls Operations). Avondale Industries, Inc. merged into Northrop Grumman Ship Systems, Inc. and changed its name to Northrop Grumman Ship Systems (Avondale Operations). Halter Marine, Inc., Gulfport, MS was acquired by Vision Technologies Systems, Inc. and became VT Halter Marine, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Technology Institute intends to file additional written notification disclosing all changes in membership.

On March 13, 1998, Advanced Technology Institute filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on October 24, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 3, 2002 (67 FR 348).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–4837 Filed 2–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on January 31, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chryso, Charlestown, IN has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on October 1, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 6, 2002 (67 FR 67649).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–4838 Filed 2–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: National Security Entry-Exit Registration System; File No. OMB–34.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is contained in the preamble of the INS proposed rule No. 2216–02 (RIN 1115–AG7) which was published in the **Federal Register** on June 13, 2002 at 67 FR 40581. The publication allowed for a 60-day public comment period. Comments were received and were reconciled in the final rule published in the **Federal Register** on August 12, 2002 at 67 FR 52584.

The INS intends to request an extension of this information collection. Therefore, the purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extensions of a previously approved information collection.

(2) *Title of the Form/Collection:* National Security Entry-Exit Registration System.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number: File No. OMB–34, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. INS regulations are amended to require certain nonimmigrant aliens to make specific reports to the INS upon arrival; approximately 30 days after arrival; every 12 months after arrival; upon certain events, such as change of address, employment or school; and at the time they leave the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 70,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: February 26, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–4910 Filed 2–28–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–10840, et al.]

Proposed Exemptions; Deutsche Bank AG

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffittb@pwba.dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG
Located in New York, New York
Exemption Application Number D–10840

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Retroactive Relief

For the period from June 4, 1999 until the date this proposed exemption is granted, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Bank Plan or a Client Plan (either, a Plan) in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the Bundesanstalt fur Finanzdienstleistungsaufsicht (the BAFin),[1] and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) The investment is:

(i) Made by a Bank Plan; or

(ii) Made by a Client Plan and expressly authorized pursuant to a provision of such Plan (or trust thereof) or expressly authorized by an independent fiduciary,[2] as defined in

[1] For purposes of this exemption, if granted, supervision of Deutsche Bank AG by the BAFin is deemed to include supervision of Deutsche Bank AG by the Federal Banking Supervisory Authority (das Bundesaufsichtsamt fuer das Kreditwesen), the predecessor to the BAFin.

[2] The Department notes that the Act's general standards of fiduciary conduct would apply to arrangements involving the investment of Plan assets permitted by this proposed exemption, if

Continued

section III (g), with respect to such Plan; and

(d) in situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 5% of the total amount of the plan's assets managed by such investment manager.

Section II—Prospective Relief

Effective after the date this proposed exemption is granted, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Plan in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section II (f);

(c) Prior to: (i) An investment of Plan assets in bank deposits; or (ii) the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(A) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank AG or its subsidiaries or branches; and

(B) A description of the applicable sovereign regulatory authority/authorities governing the activities of Deutsche Bank AG;

(d) A fiduciary independent of Deutsche Bank AG and its affiliates (other than with respect to a Bank Plan) receives, upon request, copies of the most recent financial statement of Deutsche Bank AG and/or its subsidiaries;

(e) Immediately after any material adverse change in the financial condition of Deutsche Bank AG, Deutsche Bank AG will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary;

(f) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 1% of the total amount of the plan's assets managed by such investment manager;

(g) Deutsche Bank AG—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank AG; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(h) The investment is:

(i) Made by a Bank Plan and authorized by a Bank Plan fiduciary; or

(ii) Made by a Client Plan and authorized by an independent fiduciary with respect to such Client Plan.

Notwithstanding (h)(i) and (h)(ii) above, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank AG does not receive any response from such Plan pursuant to two written requests by Deutsche Bank AG (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) with respect to Plans that invest in the deposits of Deutsche Bank AG prior to the date this proposed exemption is granted, the first request occurs not later than 45 days after the date the proposed exemption is granted and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank AG following the date this proposed exemption is granted, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter;

(i) Investments in the deposits of a subsidiary of Deutsche Bank AG will be backed by the full faith and credit of Deutsche Bank AG;

(j) Short-term debt issued by Deutsche Bank AG is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution;

(k) Deutsche Bank AG maintains or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described below in paragraph (1) of this proposed exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank AG, the records are lost or destroyed prior to the end of the six-year period; and

(l)(1) Except as provided in paragraph (2) of this section (l) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k) are unconditionally available at their customary location in the United States for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (l)(1)(ii) and (iii) shall be authorized to examine trade secrets of Deutsche Bank AG, or commercial or financial information that is privileged or confidential.

Section III—Definitions

(a) The term "bank" means a bank supervised by the United States, a state, or a sovereign government.

(b) An "affiliate" of a person includes:

(1) Any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) A "Client Plan" refers to an employee benefit plan as described in section 3(3) with respect to which Deutsche Bank AG acts as a trustee or custodian.

(e) A "Bank Plan" means a plan sponsored or maintained by:

(1) Deutsche Bank AG or any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank AG or;

(2) Any entity in which Deutsche Bank AG holds more than a ten percent equity interest.

(f) A "reasonable" rate of interest means a rate of interest determinable by reference to short-term rates available to other customers of the bank, those offered by other banks, those available from money market funds, those applicable to short-term instruments such as repurchase agreements, or by reference to a benchmark such as sovereign short term debt (e.g., in the U.S., treasury bills), all in the jurisdiction where the rate is being evaluated. The requirement that an interest rate be "reasonable" does not preclude the payment of no interest in situations where the deposit is with a branch or subsidiary of Deutsche Bank AG that acts as a local subcustodian and no interest is paid to similarly situated custody clients of the global custodian so long as, prior any investment in deposits that pays no interest, Deutsche Bank AG discloses to the appropriate Plan fiduciary that no interest may be paid with respect to an arrangement described above. Notwithstanding the foregoing, if local law is changed to preclude the payment of interest, and Deutsche Bank AG discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

(g) An "independent fiduciary" means a fiduciary independent of Deutsche Bank AG and its affiliates who has the authority to make the investments described herein, or to instruct the trustee or other fiduciary with respect to such investments, and who has no interest in the transaction which may affect the exercise of such authorizing fiduciary's best judgment as a fiduciary so as to cause such authorization to constitute an act described in section 406(b) of the Act.

Summary of Facts and Representations

1. Deutsche Bank AG (hereinafter, Deutsche Bank or the Applicant) is a German banking corporation and commercial bank that provides a wide range of services to various types of entities worldwide. Deutsche Bank is one of the largest financial institutions in the world in terms of assets held, managing over $585 billion in assets either through collective trusts, separately, managed accounts, or mutual funds.

Deutsche Bank Trust Company Americas (DBTCA)[3] is a wholly-owned indirect subsidiary of Deutsche Bank. DBTCA is a commercial bank that provides a wide range of services to various types of entities worldwide.

2. In general terms, the transactions contained in this proposed exemption involve the investment of "idle" foreign currency in bank deposits, either directly or through a cash management program. In this regard, the Applicant states that, for various reasons, a portfolio manager may seek to hold foreign currency "idle" for short periods of time. For example, the Applicant states that an investment manager may hold "idle" the foreign currency a portfolio has received from the liquidation of foreign securities while determining how to reinvest such currency.

3. According to the Applicant, there are limited options with respect to the investment of "idle" foreign currency. In this regard, the Applicant states that most short-term investment vehicles are denominated in U.S. dollars. As a result, to invest foreign currency in such vehicles, an investment manager would have to convert the foreign currency to U.S. dollars (and, thereafter, convert the U.S. dollars back to foreign currency). Due to the costs associated with such conversion(s), the Applicant states, it is often not economically viable to invest "idle" foreign currency in most of the financial vehicles available for short-term investments.

Given this and for the reasons stated below, the Applicant states that investment managers and plan sponsors often seek to invest "idle" currency in bank deposits. In this regard, the Applicant represents that most global banks take deposits in many different foreign currencies. Accordingly, an investment manager may invest the currency of a particular foreign nation in the same-currency deposits of a bank without incurring the costs associated with converting the currency from/to U.S. dollars.[4] The Applicant additionally represents that an investment in bank deposits may be made for short periods of time, rendering such investments vehicles essential in foreign markets where collective investment funds are not available to invest short-term cash balances. Finally, the Applicant states that an investment in bank deposits provides a competitive rate of return on currency being held "idle" pending reinvestment, making such an investment attractive with respect to portfolios investing globally.

4. The Applicant states that the investment of "idle" foreign currency in bank deposits may be achieved either directly or through cash management programs. According to the Applicant, the arrangement by which foreign currency is invested often is determined by the amount of time an investment manager anticipates the assets being invested will remain in such an investment vehicle. In this regard, the Applicant represents that an investment manager who seeks to invest plan assets in bank deposits on a day-to-day basis will likely allow such assets to be "swept" into the bank deposits of the plan's global custodian through a cash management program. Pursuant to such a program, uninvested cash balances left with any subcustodian are placed on an overnight basis into the same currency deposits of the global custodian or the subcustodian (which may or may not be a branch or an affiliate of the global custodian).[5]

By comparison, the Applicant represents that to the extent an investment manager expects "idle" foreign currency will remain in bank deposits on a short-term basis of fixed duration (*i.e.*, 30 days, 60 days, etc.), the manager may choose to invest the currency directly in bank deposits. Unlike a cash management program, this method of investing in bank deposits involves an investment manager's affirmative act of investing in the deposits of a particular bank (upon taking into consideration, among other things, the interest rates and credit ratings of various banks).

5. The Applicant states that global custodians often provide cash

granted. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent fiduciary with respect to a Plan must act prudently with respect to: (1) The decision to enter into an arrangement described herein; and (2) the negotiation of the terms of such an arrangement, including, among other things, the specific terms by which Plan assets will be invested in the deposits of Deutsche Bank AG. The Department further emphasizes that it expects plan fiduciaries, prior to allowing or authorizing the transactions described herein, to fully understand the benefits and risks associated with such transactions, following disclosure by Deutsche Bank AG of all relevant information. In addition, the Department notes that such plan fiduciaries must periodically monitor, and have the ability to so monitor, the services provided by Deutsche Bank AG.

[3] Formerly, Bankers Trust Company.

[4] For example, when a portfolio that uses the EAFE index as a benchmark (and has assets invested primarily in Europe, Asia and the Far East) holds "idle" foreign currency, the portfolio will generally allow such assets to remain in a foreign currency until the next investment in that country sector occurs.

[5] The Applicant notes, however, that in certain instances (*i.e.*, late trades) uninvested balances may have to remain with the subcustodian without being placed into the global custodian's deposits.

management services whereby foreign currency left with an affiliated subcustodian will be either: (1) Swept into the deposits of the global custodian (or branch of subsidiary thereof); or (2) left in a non-interest bearing account with the subcustodian. According to the Applicant, "idle" foreign currency may be swept to the global custodian for several reasons. For example, the global custodian may offer a better interest rate and/or have a better credit rating than banks that are not parties in interest with respect to such plan. By comparison, "idle" foreign currency may remain with the subcustodian in situations where the movement of the currency outside the subcustodial bank would be too costly. Finally, "idle" foreign currency may remain in the account of a client of the subcustodian in situations involving, among other things, late trades and unpredicted cash flows.

6. Accordingly, the Applicant seeks an exemption to permit the investment of Plan assets in deposits of Deutsche Bank and its non-U.S. banking branches and subsidiaries, either directly or through cash management programs. The Applicant states that this exemption, if granted, is intended to cover only those Plan investments in bank deposits that are temporary in nature.

The Applicant cites a lack of applicable statutory relief with respect to deposits in branches or subsidiaries of foreign banks affiliated with a custodian or a trustee when such foreign banks are not supervised by the U.S. or a state.[6] In addition, the Applicant cites a lack of administrative relief with respect to the investment of plan assets in overnight deposits by a plan sponsor who is not an in-house asset manager (*i.e.*, an INHAM as described in PTE 96–23 (61 FR 15975 (Apr. 10 (1996)) or by an investment manager who is not a qualified professional asset manager (*i.e.*, a QPAM as described in PTE 84–14 (49 FR 9494 (Mar. 13, 1984) and corrected at 50 FR 41430 (Oct. 10 1985)).

7. Specifically, the Applicant states that DBTCA is a global custodian that offers a cash management program (the DBTCA Program)[7] to every account for which it acts either as a custodian or trustee.[8] Such Program, the Applicant states, is comprised of two parts: One that relates to domestic portfolios (*i.e.*, assets that are invested in the U.S.) and another that relates to global portfolios. In this regard, the Applicant states that with respect to domestic-only portfolios, upon opening an account, the Plan fiduciary responsible for choosing DBTCA as the Plan's trustee or custodian also selects a sweep vehicle for cash left temporarily uninvested (Idle Cash) by the Plan's portfolio manager (which may or may not be DBTCA or an affiliate). The Applicant represents that the sweep vehicle is often a collective trust for short-term investments managed by DBTCA or an affiliate although, at the election of the fiduciary, the cash sweep vehicle may also be a mutual fund affiliated with DBTCA or a fund managed by, for example, an investment manager not affiliated with DBTCA. The Applicant states that Plans investing in DBTCA's collective funds are informed, as part of the disclosure that accompanies these investments, of the sweep vehicle used.

For global investments, the Applicant states that each Client Plan fiduciary and each Bank Plan fiduciary is provided detailed disclosure, including the types of overnight investments utilized by the global cash management program and the fees related to the program. ERISA clients investing globally that have uninvested U.S. dollars have access to the types of "cash sweep" vehicles described above.

According to the Applicant, Idle Cash is invested pursuant to the DBTCA cash management program in one of two ways. First, Idle Cash denominated as sweep currencies[9] are deposited in the London Branch of DBTCA (the London Branch) in the same currency in which it is maintained (although some residual amounts, in the same currency, may remain in the deposits of the local subcustodian). For all other currencies, the Applicant states, Idle Cash remains in deposits of the local subcustodian.

The Applicant states that, with respect to all currencies that are part of the sweep to the London Branch, the amount of interest paid equals the deposit rate less a cash management fee. In this regard, the deposit rate is the higher of the London Branch overnight deposit rate for such currency (generally, a weekly or monthly average, depending on the currency) or the subcustodian's rate. According to the Applicant, the cash management fees differ by currency and are disclosed in advance to an independent fiduciary for each Client Plan and an appropriate Bank Plan fiduciary for each Bank Plan. The Applicant notes that Plan fiduciaries are informed that they will earn interest at the calculated rate on the entire contractual cash balances[10] without any action necessary on their part and without any minimum balance requirements. In addition, the Applicant states that Plan fiduciaries are informed that their respective Plans will receive the specified rate on all cash that is part of the Plan's contractual cash balance, regardless of whether their contractual cash balance exceeds their actual balance.

Second, for all currencies that are not swept,[11] the Idle Cash will remain in deposits of the local subcustodian. Deutsche Bank represents that with respect to these currencies, Deutsche Bank earns a cash management fee. In markets where individual client accounts are maintained with the subcustodian due to local regulations, Plans will receive interest on actual balances with no minimum rate guaranteed. In these currencies, no fee or spread is earned for the DBTCA program.

The Applicant represents that Plan sponsors and/or Plan investment managers will receive information regarding the amounts of Idle Cash remaining, account activity, and the rates paid on the Idle Cash through monthly reports. Plan sponsors and Plan investment managers may also receive such information through DBTCA's proprietary on-line system (provided that they arrange for this service).

8. The Applicant represents that Deutsche Bank is supervised by the Deutsche Bundesbank and the BAFin.[12] The Deutsche Bundesbank is the central bank of the Federal Republic of Germany and part of the European System of Central Banks (the ESCB). The Applicant represents that the Deutsche Bundesbank is primarily focused on maintaining the stability of the "Euro"[13] and the execution of domestic and international payments. In addition, the Applicant states that the Deutsche Bundesbank also participates in the supervision of credit institutions and financial services institutions.

The BAFin is the German Federal Banking Supervisory Authority, an independent federal institution responsible to the German Ministry of Finance. The BAFin supervises the operations of banks, banking groups, financial holding groups and branches of foreign banks in Germany and has the authority to: (a) Issue and withdraw banking licenses; (b) issue regulations on the capital and liquidity requirements of banks; (c) request information and conduct investigations; and (d) intervene in cases of inadequate capital or liquidity, or in cases of endangered deposits or risk of bankruptcy by means of temporarily prohibiting certain banking transactions.

Specifically, the BAFin ensures that Deutsche Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards such as: Requirements for adequate internal controls, oversight, administration and financial resources. The BAFin further reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits as ordered by the supervisory authorities. The BAFin obtains information on the condition of Deutsche Bank and its branches by requiring the submission of periodic, consolidated financial reports, and through a mandatory annual report prepared by an independent auditor.[14]

Deutsche Bank represents that the annual audit includes foreign branches and subsidiaries. The auditor is required to give positive assurance regarding whether the institution has fulfilled its duties under the German Banking Act. This requires, Deutsche Bank notes, the auditor to comment on the asset quality and the internal control environment of each part of the institution, including subsidiaries, in detail. The BAFin also receives information regarding capital adequacy, country risk exposure and foreign exchange exposures from Deutsche Bank. German banking law mandates penalties to ensure correct reporting to the BAFin. The auditors of Deutsche Bank face penalties for gross violation of their auditing duties.

The BAFin supervises all branches of Deutsche Bank, wherever located, subjecting them to announced and unannounced on-site audits and all other supervisory controls applicable to German banks. Deutsche Bank represents that in its branches located in a member state of the European Economic Area (the EEA), such audits are carried out consistent with the applicable European Directives, and with respect to branches outside the EEA, consistent with the applicable international agreements, memoranda of understanding or other arrangements with the relevant foreign supervisory authorities. Deutsche Bank subsidiaries are consolidated with Deutsche Bank for purposes of the capital ratios that the bank is required to meet on a group-wide basis. Supervision extends to the adequacy of equity capital of banking and financial holding groups and compliance with the regulation regarding large loans granted by such groups.

9. Deposits in branches of Deutsche Bank are insured. In this regard, Deutsche Bank represents that there are two deposit insurance programs that currently cover Deutsche Bank and its foreign branches. The first is the European Union deposit insurance system, which insures deposits up to the lesser of 90% of the deposit or 20,000 euros. This statutory deposit protection system is maintained by the German Bank Institution for Indemnification, the Entschadigungseinrichtung dutscher Banken (the EdB), which is maintained by the Association of German Banks, the Bundesverband Deutscher Banken, and is subject to supervision by the BAFin.

The second deposit insurance program is the Deposit Protection Fund, the Einlagensicherungsfonds, maintained by the Association of German Banks. This fund, the participation in which is voluntary, safeguards liabilities in excess of the thresholds guaranteed by the European Union program, up to a protection ceiling for each creditor of 30% of the liable capital of the bank.[15] This program is funded by the premiums paid by participating German banks and deposit-taking trust companies. The fund relies on the Auditing Association of German Banks, which audits banks and makes recommendations that are required to be implemented.

Deposits in subsidiaries of Deutsche Bank are not insured through the German deposit insurance system. However, the Applicant represents that investments by Plans in the deposits of a subsidiary of Deutsche Bank will be backed by the full faith and credit of Deutsche Bank.

10. The Applicant proposes certain safeguards applicable to both the retroactive and prospective portions of this proposed exemption. In this regard, the Applicant states that the investment by a Plan in the deposits of Deutsche Bank will be limited. With respect to the retroactive portion of the exemption, if granted, in situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank does not average, over any six month period, more than 5% of the total amount of the assets managed by such investment manager. With respect to the prospective portion of the exemption, if granted, the percentage limitation described above shall equal one percent. In all cases, the Applicant states, the interest earned on the deposits described herein will be

[6] The Applicant states that where the global custodian is a U.S. or state supervised bank or trust company, relief for the investment in bank deposits by a plan is provided by section 408(b)(4) of ERISA. In addition, the applicant states that in situations where the foreign subcustodian is not affiliated with the global custodian, the global custodian may rely on PTE 84–14 to exempt the extension of credit and the use of plan assets by the foreign subcustodian party in interest inherent in the investment in that subcustodian's deposits.

[7] According to Applicant, the DBTCA is currently the only cash management program offered by Deutsche Bank containing the types of transactions described herein.

[8] The Applicant states that Deutsche Bank is not seeking relief pursuant to this proposed exemption with respect to the Bankers Trust Program itself or, to the extent relevant, any other cash management program. Rather, the Applicant states that if this proposed exemption is granted, the Bankers Trust Program, and any future program involving the types of transactions provided relief herein, will comply with the statutory exemption contained in 408(b)(6) of ERISA. Accordingly, the Department is not providing any relief herein with respect to the Bankers Trust Program or any other cash management offered by Deutsche Bank AG.

[9] The Applicant represents that, as of January 29, 2000, the Australian Dollar, British Pound Sterling, Canadian Dollar, Danish Krone, EMU Euro, Hong Kong Dollar, Norwegian Krone, South African Rand, Swedish Krona, Swiss Franc, and the U.S. Dollar are considered sweep currencies. Pursuant to the Bankers Trust Program, U.S. Dollars are swept to the U.S. and put in collective trusts.

[10] A contractual balance, Deutsche Bank notes, is the cash, securities and other investments that the Client Plan would expect to have on a given date, assuming all transactions have settled in a timely fashion. Thus, assuming that an investment manager executed a sale of a security to settle trade date plus 3 days (T+3), and the investment manager did not execute a trade using those sales proceeds until a date two days hence, the proceeds would be swept to a deposit pursuant to the sweep program regardless of whether such proceeds are received on the third day.

[11] In this regard, as of January 29, 2000, the currencies on which interest is credited, but are not swept to the London Branch are: the Argentine Peso, Czech Koruna, Greek Drachma, Hungarian Forint, Indonesian Rupiah, Israeli Shekel, Japanese Yen, Jordanian Dinar, Korean Won, Mexican Peso, New Taiwan Dollar, New Zealand Dollar, Philippine Peso, Polish Zloty, Singapore Dollar, Slovak Koruna, Thai Baht, and Turkish Lire.

[12] Deutsche Bank AG, New York Branch, is regulated by the New York State Banking Department. In addition, certain activities of the U.S. affiliates of Deutsche Bank are regulated by the Federal Reserve Bank of New York.

[13] The term "Euro" means the single European currency adopted by eleven Member States of the European Union, which are: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain.

[14] Deutsche Bank notes that the audits of their financials are done in accordance with the auditing standards established by the International Federation of Accountants (IFAC), which is an organization of national accountancy bodies, including the American Institute of Certified Public Accountants (AICPA), to develop and harmonize worldwide auditing standards. The financial statements are prepared in accordance with standards established by the International Accounting Standards Committee (IASC), which is a body formed to achieve uniformity in accounting principles used in financial statement reporting. The international equivalents to the U.S.'s AICPA and the Financial Accounting Standards Board (FASB) are the IFAC and the IASC, respectively.

[15] Liable Capital means the core capital and additional capital.

reasonable, determinable by reference to, among other things, short-term rates available to other customers of Deutsche Bank, those offered by other banks, and those available from money market funds. The Applicant notes that in situations where the deposit is with a branch or subsidiary of Deutsche Bank that acts as a local subcustodian, no interest may be paid with respect to such deposit to the extent that: no interest is paid to similarly situated custody clients of the global custodian, and, prospectively, Deutsche Bank discloses to the appropriate Plan fiduciary that no interest may be paid pursuant to such an arrangement. In addition, no interest may be paid in situations where local law is changed to preclude the payment of interest and Deutsche Bank discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

Retroactively, a Client Plan must authorize an investment in the deposits of Deutsche Bank pursuant to a provision of such Plan or the trust thereof (unless the investments were expressly authorized by an independent fiduciary). Prospectively, investments in the deposits of Deutsche Bank must be: (i) Made by a Bank Plan and authorized by an Bank Plan fiduciary; or (ii) made a Client Plan and authorized by an independent fiduciary with respect to such Client Plan. In this regard, Notwithstanding, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank does not receive any response from such Plan pursuant to two written requests by Deutsche Bank (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) With respect to Plans that invest in the deposits of Deutsche Bank prior to the date this proposed exemption is granted, the first request occurs not later than 45 days after the date the proposed exemption is granted and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank following the date this proposed exemption is granted, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter.

Further, Deutsche Bank has been and will continue to be supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank, by similar local government authorities.

11. With respect to the prospective portion of this proposed exemption, the Applicant represents that Plans will be further protected in that Deutsche Bank will furnish to each Plan certain relevant information including its most recent available audited and unaudited financial statements and will give prompt notice of any material adverse changes in its financial condition that occur prior to the date of such statements. Upon giving this notice, the Applicant states, Deutsche Bank AG will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary.

In addition, with respect to the deposit cash management program described herein, Deutsche Bank, and its branches and subsidiaries, will comply with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1(a)(2)(i)(A).[16] Further, Deutsche Bank: (a) Agrees to submit to the jurisdiction of the courts of the United States; (b) agrees to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consents to service of process on the Process Agent; (d) agrees that it may be sued in the courts of the United States in connection with transactions described in this proposed exemption; (e) agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and (f) agrees to comply with, and be subject to, all relevant provisions of the Act.

The Applicant states that the deposits described herein will be in safe, well-capitalized financial institutions. In this regard, the proposal prospectively requires that short-term debt issued by Deutsche Bank must be rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution.

12. The Applicant represents that the proposed exemption would be administratively feasible since the transactions would be transparent to Client Plan fiduciaries and no action on the part of the government or plan sponsors would be necessary to effectuate such transactions, other than the grant of the exemption and an initial authorization by a Client Plan fiduciary that is independent of Deutsche Bank (*i.e.*, an independent fiduciary) or an appropriate Bank Plan fiduciary.

13. In summary, the Applicant represents that, retroactively, the described transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) Deutsche Bank was supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank, was also supervised by similar local government authorities;

(b) The deposits provided each affected Plan with a rate of interest that was reasonable; and

(c) In situations where Deutsche Bank, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank does not average, over any six month period, more than 5% of the total amount of the assets managed by such investment manager.

14. The Applicant represents that, prospectively, the described transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) Prior to either: An investment of Plan assets in bank deposits; or the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(i) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank or its subsidiaries or branches; and

(ii) A description of the applicable sovereign regulatory authority/ authorities governing the activities of Deutsche Bank;

(b) Immediately after any material adverse change in the financial condition of Deutsche Bank, Deutsche Bank will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of the appropriate Bank Plan fiduciary or an independent Client Plan fiduciary;

(c) Deutsche Bank—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint the Process Agent;

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(d) Investments in the deposits of a subsidiary of Deutsche Bank will be backed by the full faith and credit of Deutsche Bank; and

(e) Short-term debt issued by Deutsche Bank is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution.

For Further Information Contact: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

[16] The Department is expressing no opinion as to whether the requirements of ERISA section 404(b) and the regulations promulgated thereunder have been met.

Metropolitan Life Insurance Company (MetLife)
Located in New York, NY
[Application No. D–11042]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[17] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective April 6, 2001, to the cash sale (the Sale) to MetLife of a note (the Note), issued by the Pacific Gas & Electric Company (PG&E), by MetLife's Liquidity Plus Account (the Account) for which MetLife acts as investment manager and is a party in interest with respect to employee benefit plans (the Plans) invested in such Account, provided that the following conditions were met:

(a) The Sale was a one-time transaction for cash.

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

(d) As manager of the Account, MetLife determined, at the time of the transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein, and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

Effective Date: If granted, this proposed exemption will be effective as of April 6, 2001.

Summary of Facts and Representations

1. MetLife is a life insurance company organized under the laws of New York and is subject to supervision and examination of the New York Superintendent of Insurance (the Superintendent). MetLife is a wholly owned subsidiary of MetLife, Inc., a publicly held Delaware corporation. In terms of assets, MetLife is the second largest life insurance company in the United States. As of September 30, 2002, MetLife, including its insurance company subsidiaries, had total assets under management of approximately $290.1 billion[18] and, as of December 31, 2001, approximately $1.9 trillion of life insurance in force. Among the insurance products and services it offers, MetLife and certain of its affiliates provide funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act. MetLife maintains pooled and single plan separate accounts in which Title I pension, profit-sharing, welfare benefit, and thrift plans invest, and MetLife and/or its affiliates manage all or a portion of the assets of such separate accounts. Additionally, MetLife has a number of subsidiaries and affiliates that provide certain financial services, including investment management and brokerage services.

2. MetLife is the investment manager or adviser (or an affiliate of such investment manager or adviser) of various portfolios that are subject to the Act. Among the separate accounts managed by MetLife is the Account, which is a short term liquidity plus separate account that invests in short-term debt obligations. The Account is managed by MetLife on behalf of ERISA and non-ERISA regulated Plans, including the Metropolitan Life Retirement Plan for United States Employees (the MetLife Plan), the surviving entity following the merger of the Metropolitan Life Retirement Plan for United States Salaried Employees and the Metropolitan Life Retirement Plan for the United States Commissioned Employees. MetLife believes that the MetLife Plan became a participant in the Account at or near the time of its inception. The investing Plans hold units in the Account on a pro rata basis. MetLife represents that the purchase by the MetLife Plan of units in the Account is covered under section 408(b)(8) of ERISA.[19]

On February 2, 1971, the Account was initially approved by New York State Insurance Department (the NYSID), an independent state agency that regulates MetLife. The purpose of the Account is to achieve the highest possible current income consistent with the preservation of capital and maintenance of liquidity. The Account is permitted to invest in money market instruments with maturities of 13 months of less. Generally, the average maturity is less than 60 days. The Account is valued daily and is managed to maintain a stable one dollar value, similar to a money market fund. As of April 6, 2001, which is the date of the Sale transaction described herein, the Account had a market value of $119,000,000. Also as of such date, participating investors in the Account included a number of ERISA Plan[20] and the MetLife Plan, which had invested approximately $66,746,000 in the Account.

3. On December 15, 2000, the Account purchased, in book-entry form, certain commercial paper (the Commercial Paper) (CUSIP 69430JPC1) from Merrill Lynch, an unrelated third party, at a discount from face value for $15,856,284.27. The Commercial Paper, which was also issued on December 15, 2000 by PG&E, California's largest public utility and an unrelated party, had a maturity date of February 12, 2001. The par value[21] of the Commercial Paper was $16,031,000, which was payable at maturity. The Commercial Paper's yield was 6.723274 percent and it represented approximately 13 percent of the Account's assets.[22]

4. The decision to invest assets in the Commercial Paper was made by MetLife

[17] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[18] This figure does not include the fourth quarter, which has not yet been published.

[19] The Department, is expressing no opinion herein on whether the purchase by the MetLife Plan of units in the Account is statutorily exempt under section 408(b)(8) of the Act.

[20] Primarily, defined benefit pension plans.

[21] Defined as the value of the Commercial Paper at maturity.

[22] As of December 15, 2000, the MetLife Pension Plan had total assets of $4,047,574,285.00. Of the total assets, the MetLife Pension Plan invested $11,494,583.03 in the Commercial Paper, which represented approximately 0.3 percent of such Plan's assets.

as investment manager of the Account. MetLife represents that the investment was consistent with the Account's investment policies and objectives.[23] At the time the Account acquired the Commercial Paper, it was rated "A–1" by Standard & Poor's Corporation and "P–1" by Moody's Investor Services, Inc.

5. Due to its inability to pay the principal amount of the Commercial Paper as a result of the energy crisis (the Energy Crisis),[24] PG&E unilaterally converted, dollar-for-dollar, the Commercial Paper into an interest-bearing floating rate note (*i.e.*, the Note) (also in book-entry form) in order to credit the holders of the Commercial Paper until it could resolve its difficulties. The conversion occurred on February 12, 2001. Everyone who held the Commercial Paper received Notes in the conversion, including the Account. The Note earned interest at the London Interbank Offered Rate (LIBOR), a floating rate with no fixed floor. According to the applicant, the LIBOR rate was presumably selected because it is a published rate that matches up with commercial paper rates. Although the Note had no specific maturity date, PG&E announced during a teleconference with all of its debt holders and in a subsequent news release that its plan was to pay the Note down as soon as possible. The Note is currently traded by independent brokers and is not listed on an exchange. As described below in Representation 6, no interest has been paid on the Note since PG&E's declaration of bankruptcy.

6. On April 6, 2001, PG&E declared bankruptcy and filed a voluntary petition under Chapter 11 of the Bankruptcy Code. As a result of PG&E's bankruptcy filing, the market value of the Note decreased according to verbal quotes obtained by MetLife's money traders from two independent brokers. Since the market values for all PG&E securities were trading below par and would continue to trade in that way until the bankruptcy was settled, MetLife determined that if the Account retained the Note, the value of the Account would be required to be reported below a value of $1.00 per share resulting in a loss to the Account investors. Therefore, MetLife sought permission from the NYSID to acquire the Note from the Account.

7. The transaction was subsequently approved by the NYSID on April 6, 2001, and it became effective on that date. MetLife purchased the Note from the Account for a cash payment of $16,041,857.11. This sum was the same as the par value of the Note, plus the accrued interest. The Account paid no commissions or other expenses in connection with the Sale. MetLife represents that the Sale allowed the Account to continue operation in the manner customers expected. Specifically, additions and withdrawals from the Account could continue to be made at $1.00 per share. Accordingly, MetLife requests an administrative exemption from the Department with respect to the Sale. If granted, the exemption will be effective on April 6, 2001.

8. MetLife represents that because PG&E had declared bankruptcy and purchasers would not pay face value for the Note, the purchase price was set above the market price. In this regard, MetLife has provided a letter from Gian Solomon, of the New York Money Desk of Goldman Sachs & Co. (Goldman Sachs) dated August 9, 2002 regarding the price at which the Commerical Paper would have traded on April 6, 2001. According to Mr. Solomon, Goldman Sachs did not effect any trades in the Commercial Paper on April 6, 2001. However, on April 3, 2001, Goldman Sachs effected trades in PG&E commercial paper having a scheduled maturity date of January 19, 2002, at dollar prices between $72–$74 of the par amount. Mr. Solomon notes that these dollar prices were below the face amount of such securities.

Mr. Solomon also states that Goldman Sachs has no interest in the Commercial Paper that is subject of the exemption request. Further, he represents that Goldman Sachs has no personal interest or bias with respect to the subject matter of the exemption application or the parties involved, and that Goldman Sachs has received no compensation for providing the pricing information.[25]

9. MetLife represents that the Sale resulted in an assignment of all of the Account's rights, claims and causes of action against PG&E. Accordingly, MetLife states that if the exercise of any of the foregoing rights, claims or causes of action results in its recovering from PG&E an aggregate amount that is greater than the sales price for the Note, such excess amount will be refunded to the Account (after deducting all reasonable expenses incurred in connection with the recovery).

10. In summary, it is represented that the transaction has satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Sale was a one-time transaction for cash.

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

(d) As manager of the Account, MetLife determined, at the time of such transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

Notice to Interested Persons

MetLife will provide notice of the proposed exemption to all interested persons by first class mail within 30 days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments regarding the proposed exemption and requests for a public hearing are due within 60 days of the date of publication of the notice of pendency in the **Federal Register**.

For Further Information Contact: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Archer Daniels Midland Company (Archer) Located in Decatur, Illinois
[Application No. D–11068]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Agrinational Insurance Company (Agrinational) in connection with insurance contracts sold by Minnesota Life Insurance Company (Minnesota Life), or any successor insurance company to Minnesota Life which is unrelated to Archer, to provide basic and supplemental life insurance benefits to participants in Archer's programs to provide such benefits to its employees (the Plans),[26] provided the following conditions are met:

(a) Agrinational—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Archer that is described in section 3(14) (E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Agrinational, there will be immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Minnesota Life or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plans only contract with insurers with a rating of A or better from A. M. Best Company (Best's). The reinsurance arrangement between the insurers and Agrinational will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plans should Agrinational be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) Agrinational retains an independent fiduciary (the Independent Fiduciary), at Archer's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of the proposed exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Archer or Agrinational (this relationship hereinafter referred to as an "Affiliate");

(2) Is not an officer, director, employee of, or partner in, Archer or Agrinational (or any Affiliate of either);

(3) Is not a corporation or partnership; in which Archer or Agrinational has an ownership interest or is a partner;

(4) Does not have an ownership interest in Archer or Agrinational, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plans Prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "Independent Fiduciary," no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Archer, Agrinational, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exception granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property

[23] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Note by the Account violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion on whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

[24] In this regard, PG&E, along with other California utilities, was hit by soaring wholesale power costs and the state's 1996 deregulation law. Energy deregulation caused blackouts throughout California. Soaring utility rates were the subject of debate as the wholesale prices of electricity skyrocketed, jumping to an average of $30 per megawatt hour. California was the first state to deregulate its electricity market in 1996. The move was supposed to lower the bills of consumers by preventing most utilities from passing rising costs on to their customers. Under deregulation, the state's investor-owned utilities sold most of their power plants and were forced to repurchase them at higher market prices. PG&E was faced with $9 billion in debt and debt payments of $500 million in February 2001 and $1.6 billion in March 2001. PG&E, having only $500 million in cash reserves and little to no ability to borrow following rating downgrades, filed for bankruptcy on April 6, 2001.

[25] In addition to the above, MetLife represents that its money market traders obtained verbal bids for the Note on an indicative basis from three independent brokers at around the time of the Sale. According to MetLife, bids received from Goldman Sachs ranged from $57–$62 of the par value of the Note. Bids received from the Bank of America ranged from $56–$60 of the par value of the Note. Bids received from Merrill Lynch ranged from $55–$60 of the par value of the Note. MetLife further states that all of these bids were below the price that it paid for the Note.

[26] Each Plan will be considered an "employee welfare benefit plan" as defined in section 3(1) of the Act.

from, sell any property to, or borrow funds from Archer, Agrinational, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

Preamble

On August 7, 1979, the Department published a class exemption (Prohibited Transaction Exemption 79–41 (PTE 79–41), 44, FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales or life insurance, health insurance or annuity contracts with fund such plans if certain conditions are satisfied.

In PTE 79–41, the Department states its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction under the Act.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Archer is engaged in the business of procuring, transporting, storing, processing and merchandising agricultural commodities and products. It is one of the world's largest producers of oilseeds, corn and wheat. Archer also processes cocoa beans, milo, oats, barley and peanuts. Other operations include transporting, merchandising and storing agricultural commodities and products. These operations and processes produce products which have primarily two end uses: Food or feed ingredients. Each commodity processed is itself a feed ingredient as are the by-products produced during the processing of each commodity. Archer complements its own resources with a world-wide network of affiliates engaged in processing, transportation, storage and sales. Archer was incorporated under the laws of the State of Delaware in 1923 as successor to the Daniels Linseed Co., which was founded in 1902.

2. Agrinational is a wholly-owned subsidiary of Archer. Agrinational was incorporated in Vermont on September 10, 1987, and on September 21, 1987, the Commissioner of Banking and Insurance for the State of Vermont granted it a Certificate of Authority to transact the business of a captive insurance company in the State of Vermont. The only restrictions placed by the State of Vermont on the type of insurance that Agrinational may write pertain to personal motor vehicle or homeowner's insurance and to excess workers' compensation insurance under certain circumstances, and thus are not relevant to the exemption proposed herein.

3. At year end 2000, Agrinational had capital in the amount of $10,000,000, retained earnings in the amount of $22,731,920 and earned premium in the amount of $17,176,878. Agrinational presently provides insurance and reinsurance coverage for property, casualty and marine risks of Archer and its subsidiaries world-wide. In addition, Agrinational participates as a quota share reinsurer of various insurance company treaties that contain risks unrelated to Archer and its subsidiaries. The independent certified public accounting firm of Ernst & Young, LLP (EY), which prepared Agrinational's most recent audited financial statement, has served as Agrinational's auditor since its incorporation. EY will examine Agrinational's reserves on an annual basis in connection with the employee benefit business to be reinsured by Agrinational to ensure that appropriate reserve levels are maintained.

4. Archer maintains the ADM Omnibus Health and Welfare Plan for Salaried Employees and the ADM Omnibus Health and Welfare Plan for Hourly Employees (*i.e.*, the Plans) for substantially all of its salaried and hourly employees. The Plans provide both basic (the Basic Program) and supplemental (the Supplemental Program) life insurance programs. The Plans have been historically insured with Connecticut General Life Insurance Company, and, most recently, with Minnesota Life. However, Archer recently formulated a plan to utilize Agrinational for the reinsurance of benefits and has made or will make substantial improvements to the Plans in anticipation of that transaction.

5. Specifically, the new benefits are as follows:

(i) With respect to the life insurance program for salaried employees, the maximum benefit under the Basic Program has been increased from one-times base salary up to $100,000 to one-times base salary up to $1,000,000. In addition, the Basic Program will add an accelerated death benefit feature (which would provide benefits to the terminally ill) to the policy covering all participants. Finally, a non-contributory Accidental Death and Dismemberment benefit will be added to the Basic Program covering up to three times the basic life insurance benefit, subject to a schedule of amounts. All premiums under the Basic Program are fully paid by Archer. In addition, the maximum benefit under the Supplemental Program, which is employee paid, has been increased from up to four times salary with a cap of $1,000,000 to up to five times salary with a cap of $2,000,000. Dependent life insurance for the employee's spouse and children has been added on a voluntary basis. Portability of coverage has been added to all policies, so that coverage may continue at the group rates if a covered employee leaves employment. Finally, a waiver of premium provision has been added to the Supplemental and dependent coverage so in the event of the disability of the employee, coverage will continue without the payment of the premium. The new and/or enhanced benefits in the Supplemental Program are voluntary and the premiums are fully paid by the participants who elect them.

(ii) With respect to the life insurance program for hourly employees who are not covered by a collective bargaining agreement, the new non-contributory Accidental Death and Dismemberment benefit will be added to the Basic Program covering up to three times the basic life insurance benefit, subject to a schedule of amounts. All premiums under the Basic Program are fully paid by Archer. In addition, the Basic Program will add the accelerated death benefit feature (which would provide benefits to the terminally ill) to the policy covering all hourly employees who are not covered by a collective bargaining agreement. With respect to these employees, the Supplemental Program, which is employee paid, has been increased from various levels to up to five times base pay with a cap of $2,000,000, and dependent life insurance for the employee's spouse and children has been added on a voluntary basis; and

(iii) With respect to the life insurance program for hourly employees who are covered by a collective bargaining agreement, Archer cannot unilaterally implement similar improvements to those which will be made to the Programs for salaried employees and hourly employees not covered by a collective bargaining agreement. However, Archer will implement such improvements if agreed to by the unions representing the hourly employees.

In addition, Archer recently has enhanced benefits for employees by making two new benefit programs available for its salaried employees and for its hourly employees who are not covered by a collective bargaining agreement. Archer will also implement these programs for hourly employees covered by a collective bargaining agreement if agreed to by the unions representing such employees in collective bargaining. The first of the new benefits is a legal services program, which provides certain legal services through Hyatt Legal Plans, Inc., for a set premium each month. The premiums are paid by the employees through amounts deducted from their paychecks. The second new program is an auto and home insurance program, which offers eligible employees group rates for automobile, home and other personal property through Hanover Insurance Company. The premiums for this program are also paid by the employees.

6. The life insurance Plans are now insured by Minnesota Life, which currently has a rating of A++ from Best's. The applicant represents that if the Plans choose another insurer in the future, that insurer will have a rating of A or better from Best's. The applicant anticipates that upon the granting of the exemption proposed herein, Minnesota Life will enter into reinsurance agreements with Agrinational. Minnesota Life was recently acquired by Liberty Mutual Insurance Company (Liberty), an A+ rated (by Best's) carrier located in Boston, Massachusetts. Liberty is rated by Moody's as Aa3 (Excellent) and by Standard & Poor's as AA– (Very Strong).

Minnesota Life will continue to insure the Plan, with the enhanced new benefits. However, Minnesota Life will reinsure up to 100% of the risk with Agrinational. The percentage of the risk to be insured will be specified in the reinsurance agreements between Minnesota Life and Agrinational. The reinsurance agreements between Minnesota Life and Agrinational will be indemnity reinsurance only, so that Minnesota Life will not be relieved of its liability to the Plans should Agrinational be unwilling or unable to cover any liability arising from the reinsurance arrangement.

The Plans will pay no more than adequate consideration for the insurance contracts with Minnesota Life or any successor insurer. The formula used to calculate premiums by Minnesota Life or any successor insurer[27] will be similar to formulae used by other insurers providing life insurance coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer providing coverage under the Plans and its competitors with the same or a better rating providing the same coverage under comparable programs.

7. In connection with this exemption request, Agrinational has engaged the services of Milliman USA (Milliman), (formerly Milliman and Robertson, Inc.) as the Independent Fiduciary for the Plans. Milliman is an international firm of consultants and actuaries with expertise in all facets of employee benefits, including insurance. Charles M. Waldron, FSA (Mr. Waldron), a Principal and Consulting Actuary employed by Milliman, has signed the Independent Fiduciary representations on behalf of Milliman. Milliman's consultants are frequently retained to advise corporations on the insurance arrangements underlying their benefit programs and have considerable expertise in the area of reinsurance and captive insurers.

8. For purposes of demonstrating independence, Mr. Waldron has represented that:

(a) Neither he nor Milliman is an Affiliate of Archer, Minnesota Life or Agrinational;

(b) He is not an officer, director, employee of, or partner in Archer, Agrinational or Minnesota Life;

(c) Milliman is not a corporation in which Archer, Agrinational or any of the other insurers involved in the proposed transaction has an ownership interest or is a partner;

(d) Neither he nor Milliman has an ownership interest in Archer, Agrinational, or Minnesota Life, or in any Affiliate of those firms;

(e) He was not a fiduciary with respect to the Plans prior to his appointment for this transaction;

(f) He has acknowledged in writing on behalf of Milliman its acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which either he or Milliman has an interest that might affect their fiduciary duty;

(g) The gross income received by Mr. Waldron and Milliman separately and combined from Archer, Agrinational, Minnesota Life, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department), does not exceed 5 percent of Mr. Waldron's or Milliman's gross annual income from all sources for any fiscal year; and

(h) Neither Milliman nor Mr. Waldron has acquired any property from, sold property to, or borrowed funds from Archer, Agrinational, or Minnesota Life or their Affiliates.

9. Mr. Waldron represents that Agrinational is licensed to do business in the State of Vermont and has been conducting business since 1987 insuring and reinsuring property, casualty and marine business. Agrinational's reserves for the past two (2) years have been reviewed by the actuarial services group of EY, which is a firm independent of Agrinational and Archer. Mr. Waldron has reviewed the report on the reserves and is satisfied that there are no issues to be resolved. In addition, Mr. Waldron represents that future reserves will be reviewed by a qualified actuary approved by the State of Vermont. Mr. Waldron has confirmed that Agrinational has undergone an examination by EY, an independent certified public accountant, for its last completed taxable year.

10. Mr. Waldon has concluded that, as a result of the reinsurance agreement described in representation 6, above, the Plans' risks will be 100% covered by Minnesota Life, a carrier rated A++ by Best's, even if Agrinational were unable or unwilling to cover the Plans' liabilities it is assuming as a result of the reinsurance agreement. Mr. Waldon represents that he has reviewed the terms of the proposed reinsurance agreement between Minnesota Life and Agrinational. Mr. Waldron states that the agreement provides for the risk retained by Agrinational to revert back to Minnesota Life at no further cost to the Plans should Agrinational be unable or unwilling to pay the benefits.

11. Mr. Waldron has represented that he reviewed the Plans' benefits before the reinsurance transaction and the benefits implemented in anticipation of

[27] The applicant states that any successor insurer would be a legal reserve life insurance company with assets of such a size as to afford similar protection and responsibility.

the reinsurance transaction. He has concluded that there is an immediate benefit to the Plans' participants from the reinsurance transaction. Generally all participants in the Supplemental Program receive increased benefits and options. For the Basic Program, generally all participants have received an accelerated death benefit coverage and will receive Accidental Death and Dismemberment Insurance up to three times the basic life insurance benefit. Finally, there are increased basic life insurance benefits for salaried employees with annual salaries exceeding specified amounts (e.g., $100,000).

12. Mr. Waldron makes the following representations concerning the determination of the initial premium to the Plans under the proposed arrangement. The Plans contacted Minnesota Life and were quoted a rate based on Minnesota Life's evaluation of the risk. Archer received quotes from three different companies to provide insurance coverage for the group life, supplemental life and dependent life insurance programs. From these three companies, Archer selected Minnesota Life, which was the middle one in terms of premium. Minnesota Life was 3% above the lowest cost and 7.5% below the highest cost provider. The premium paid to Agrinational is based on a reinsurance agreement where Agrinational receives a portion of the premium charged equal to the proportion of the risk that Agrinational covers. This is a typical reinsurance arrangement for life insurance products. Mr. Waldron further represents that, based upon his review, the premiums charged by Minnesota Life are similar to premiums charged by other insurers providing group life, supplemental life, and dependent life insurance under similar plans. The applicant represents that the Independent Fiduciary (i.e., either Milliman or another qualified fiduciary acting as a successor, as noted below) will confirm on an annual basis that each Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

13. Milliman will represent the interests of the Plans as the Independent Fiduciary at all times.[28] Milliman will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

14. The applicant represents that the proposed reinsurance transaction will meet the following conditions of PTE 79–41 covering direct insurance transactions:

(a) Agrinational is a party in interest with respect to the Plans (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with Archer, which maintains the Plans;

(b) Agrinational is licensed to conduct reinsurance transactions by the State of Vermont. The law under which Agrinational is licensed requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(c) Agrinational has undergone an examination by the independent certified public accountant firm of EY for its last completed taxable year;

(d) Agrinational has received a Certificate of Authority from its domiciliary state, Vermont, which has neither been revoked nor suspended;

(e) The Plans will pay no more than adequate consideration for the insurance. In addition, in the initial year of the proposed reinsurance transaction, there will be an immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits; and

(f) No commissions will be paid by the Plans with respect to the reinsurance arrangement with Agrinational, as described herein.

In addition, the Plans' interests will be represented by a qualified, independent fiduciary (*i.e.*, Milliman or its Successor), who has initially determined that the proposed reinsurance transactions will be in the best interests, and protective, of the Plans and their participants and beneficiaries. The Independent Fiduciary will also confirm on an annual basis that the Plans are paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plans with comparable claims experience.

15. In summary, the applicant represents that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act because: (a) The Plans' participants and beneficiaries are afforded insurance protection by Minnesota Life, a carrier rated A++ by Best's, at competitive market rates arrived at through arm's-length negotiations; (b) Agrinational, which will enter into the reinsurance agreements with Minnesota Life, is a sound, viable insurance company which has been in business since 1987; (c) the protections described in representation 14, above, provided to the Plans and their participants and beneficiaries under the proposed reinsurance transactions are based on those required for direct insurance by a "captive" insurer, under the conditions of PTE 79–41 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with the insurer);[29] (d) Mr. Waldron, acting on behalf of Milliman as the Plans' Independent Fiduciary, has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the best interests of, the Plans and that there will be an immediate benefit to the Plans' participants as a result thereof by reason of an improvement in benefits under the terms of the Plans; and (e) Milliman will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department,

[28] In this regard, the applicant makes a representation regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace Milliman and Mr. Waldron, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have the responsibilities, experience and independence similar to those of Milliman and Mr. Waldron.

[29] The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement.

Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular product or arrangement must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a–1).

telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 26th day of February, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–4921 Filed 2–28–03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–03; Exemption Application No. D–11095 et al.]

Grant of Individual Exemptions; Reagent Chemical & Research, Inc. Employees' Profit Sharing Plan and Trust (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Reagent Chemical & Research, Inc. Employees' Profit Sharing Plan and Trust (the Plan); Located in Middlesex, New Jersey

[Prohibited Transaction Exemption No. 2003–03; Exemption Application No. D–11095]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a 73.4815% tenancy-in-common interest (the Property Interest) by the Plan to Brian Skeuse, a vice president and shareholder of Reagent Chemical & Research, Inc., and his spouse, Jan Skeuse, parties in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time cash transaction;

(b) The Plan receives the greater of either: (i) $180,029.68; or (ii) the current fair market value for the Property Interest established at the time of the sale by an independent qualified appraiser; and

(c) The Plan pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on December 30, 2002 at 67 FR 79654.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Michigan Conference of Teamsters Welfare Fund (the Plan); Located in Detroit, MI

[Prohibited Transaction Exemption 2003–04; Exemption Application No. L–11058]

Exemption

The restrictions of sections 406(a)(1)(A) and (D) of the Act shall not apply to the cash sale, by the Plan, of certain parcels of real estate (the Property) to the Detroit Teamsters Temple Association (DTTA), a party in interest with respect to the Plan and a lessee of a portion of such Property.

This exemption is subject to the following conditions:

(a) DTTA pays the fair market value as determined by a qualified, independent appraiser on the date of the transaction.

(b) The sale transaction has been reviewed and approved by an Independent Fiduciary, who was appointed by the United States District Court for the Eastern District of Michigan, Southern Division for purposes of enforcing a settlement agreement dated January 21, 1998.

(c) The sale is a one-time transaction for cash.

(d) The Plan pays no fees or commissions in connection with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 18, 2002 at 67 FR 69566.

Extension of Comment Period

The notice of proposed exemption invited interested persons to submit comments to the Department on or before December 28, 2002. The applicant agreed to provide notice to interested persons by personal delivery or first class mail within ten days of the date that the proposal appeared in the **Federal Register**. A total of 23,511 notices was sent to Plan participants and other interested persons by first class mail. Of that total, 14,234 notices were sent on November 27, 2002 and 8,951 notices were sent on November 29, 2002 (November 28, 2002 being a federal holiday). On December 3, 2002, the applicant learned that 266 notices had not been included in the original mailings and that 66 envelopes from these mailings had been damaged. These remaining 332 notices were sent by first class mail on December 4, 2002.

To ensure that Plan participants would have a sufficient amount of time in which to provide their comments to the Department, the applicant decided to extend the comment period for another 46 days, or until February 14, 2003. In this regard, the applicant represents that on December 27, 2002, postcards were sent to the Plan's 5,662 retired participants by first class mail informing them that the period for submitting comments had been extended until February 14, 2003. In addition, on January 7, 2003, the applicant states that letters were sent by first class mail to the principal officers of the 19 Local Unions comprising the Michigan Conference of Teamsters instructing them to post an enclosure stating that the period for submitting comments had been extended until February 14, 2003. On January 8, 2003, a notice was posted on the Plan's website stating that the period for submitting comments had been extended until February 14, 2003.

Written Comments

During the comment period, the Department received two written comments with respect to the proposed exemption. The first comment expressed approval of the exemption transaction. The second comment, which was submitted by a Plan participant who chose to remain anonymous, stated matters that were not germane to the exemption request.

For further information regarding the comments received and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. L–11058) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of February, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–4922 Filed 2–28–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Jim Walter Resources, Inc.

[Docket No. M–2003–010–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility) to its No. 7 Mine (MSHA I.D. No. 01–01401) located in Tuscaloosa County, Alabama. The petitioner proposes to use a 2,400-volt power center with a high-voltage trailing cable to power a continuous miner inby the last open crosscut and within 150 feet of pillar workings. The petitioner has listed in this petition for modification specific terms and conditions that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to comments@msha.gov, or on a computer disk along with an original hard copy to the Office of Standards,

Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before April 2, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 25th day of February, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–4860 Filed 2–28–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, Task Force on National Workforce Policies for Science & Engineering.

DATE AND TIME: March 3, 2003, 12 p.m.–1 p.m.; Open session.

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 120, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Monday, March 3, 2003; open session.

Open Session (12 p.m. to 1 p.m.)

—Discussion of comments on the draft report of the NSB/EHR Task Force on National Workforce Policies for S&E.

FOR FURTHER INFORMATION CONTACT: Gerard Glaser, Executive Officer, NSB, (703) 292–7000, *http://www.nsf.gov/nsb.*

Gerard Glaser,

Executive Officer.

[FR Doc. 03–5007 Filed 2–27–03; 12:17 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35594, License No. 37–30603–01, EA No. 02–072]

In the Matter of Advance Medical Imaging and Nuclear Services, Easton, PA; Order Imposing a Civil Monetary Penalty

I

Advanced Medical Imaging and Nuclear Services (Licensee) is the holder of Byproduct Materials License No. 37–30603–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The License authorizes the Licensee to possess and use certain byproduct materials (identified in 10 CFR 35.100 and 35.200) at its Easton, Pennsylvania facility for any uptake, excretion, imaging, and localization procedures approved in those parts. The license was issued on February 16, 2001, and is due to expire on February 28, 2011.

II

An inspection of the Licensee's activities was conducted on November 30, 2001, at the Licensee's facility located in Easton, Pennsylvania. Further, an investigation was also conducted by the NRC Office of Investigations. The results of this inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written notice of violation and proposed imposition of civil penalty (notice) was served upon the Licensee by letter dated October 22, 2002. The notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the notice, in a letter, dated November 21, 2002. In its response, the Licensee: (1) Admits the first of three violations that were classified as a Severity Level II problem; (2) denies the other two violations that were part of the Severity Level II problem; (3) contests the Severity Level II classification for the three violations; (4) contests the amount of the civil penalty for the Severity Level II problem; and (5) admits two other violations that were classified at Severity Level IV.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that an adequate basis was not provided for withdrawal of any violations, for reduction of the Severity Level II classification, or for reduction or withdrawal of the penalty. Therefore, the NRC staff has determined that a penalty of $43,200 should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $43,200 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.*

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations B and C of the notice referenced in section II above, and

(b) Whether, on the basis of such violations, and the additional violations

set forth in the notice of violation that the Licensee admitted, this Order should be sustained.

Dated in Rockville, Maryland, this 19th day of February, 2003.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

Appendix

Evaluations and Conclusion

On October 22, 2002, a notice of violation and proposed imposition of civil penalty (notice) was issued for violations identified during an NRC inspection conducted at the Licensee's facility located in Easton, Pennsylvania. The penalty was issued for three violations that were classified as a Severity Level II problem. The Licensee responded to the notice in a letter, dated November 21, 2002. In its response, the Licensee: (1) Admits the first of the three violations that were classified as a Severity Level II problem; (2) denies the other two violations that were part of the Severity Level II problem; (3) contests the Severity Level II classification for the three violations; (4) contests the amount of the civil penalty for the Severity Level II problem; and, (5) admits two other violations that were classified at Severity Level IV. The NRC's evaluation and conclusion regarding the Licensee's request is as follows:

1. Restatement of the Three Violations Classified at Severity Level II and Assessed a Civil Penalty

A. 10 CFR 35.11 requires, in part, that a person shall not use byproduct material for medical use except in accordance with a specific license or under the supervision of an authorized user as provided in 10 CFR 35.25.

Contrary to the above, from June 2001 to November 30, 2001, a Nuclear Medicine Technologist (NMT) used byproduct material for patient diagnosis on approximately 590 occasions, and the use by the NMT was not in accordance with a specific license. In addition, the NMT was not under the supervision of an authorized user.

B. 10 CFR 35.21(a) requires that a licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in daily operation of the licensee's byproduct material program.

Contrary to the above, from about March 2001 to November 30, 2001, the licensee conducted licensed activities, including ordering and administering radiopharmaceuticals on approximately 590 occasions, and during that time, the licensee had not appointed a Radiation Safety Officer responsible for implementing the radiation safety program, to ensure that activities were being performed in accordance with approved procedures and regulatory requirements in daily operations of the licensee's program.

C. 10 CFR 30.9(a) requires, in part, that information required by license conditions to be maintained by the licensee, shall be complete and accurate in all material respects.

License condition 15.A of the NRC license for AMINS requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in various documents, including the license application dated October 20, 2000.

Item 10, Attachment 10.6 of the NRC license application for AMINS dated October 20, 2000, requires that written records will be made that identify the Authorized User when ordering radioactive materials.

Contrary to the above, on November 30, 2001, information required to be maintained by the licensee was not complete and accurate in all material respects. Specifically, all records of radioactive materials ordered between March 2001 and November 2001 indicated that the Authorized User who ordered the radiopharmaceuticals was Dr. Brij Mohan Gupta (Dr. Mohan). These records were not accurate in that Dr. Mohan was not employed by the licensee as an Authorized User, nor did he function in that capacity. This statement was material because an Authorized User was required by the license and by NRC regulations for supervision of the administration of radiopharmaceuticals to patients.

These violations represent a Severity Level II problem (Supplement IV). Civil Penalty—$43,200

2. Summary of Licensee's Response Denying Violation 1.B

The licensee denies Violation 1.B, involving the licensee not appointing an RSO responsible for implementing the program when the radiopharmaceuticals were ordered and administered on the approximately 590 occasions. The licensee contends that with the assistance of its consultant, it was able to assure regulatory requirements were met during daily operations of the facility.

NRC Evaluation of Licensee's Response Denying Violation 1.B

Although the licensee denies this violation, the licensee, in its response, admits that it was unable to finalize arrangements with the individual who was listed on its license as the RSO. Therefore, since such arrangements were never finalized, and since the individual listed as the RSO never served as the licensee's RSO, the licensee did not appoint an RSO, consistent with requirements, responsible for implementing the radiation safety program. Rather, the license identified an individual as the RSO who was not employed by the licensee either directly, or as a contractor or consultant, and who did not implement the radiation safety program at any time, including between March 2001 and November 30, 2001, when the radiopharmaceuticals were ordered and administered on the approximately 590 occasions. Therefore, even though the licensee indicates that it was able to assure, as evidenced by a subsequent review by its consultant, that other regulatory requirements had been met during daily operations of the facility, the licensee did not provide an adequate basis for the NRC to withdraw Violation 1.B in the notice. Accordingly, the violation remains as stated in the notice.

3. Summary of Licensee's Response Denying Violation 1.C

The licensee denies Violation 1.C involving the creation of inaccurate records of the radioactive materials ordered on the 590 occasions. The records were considered inaccurate in that the licensee listed as the authorized user an individual physician who was not employed by the licensee and was not performing the duties of the authorized user. The licensee denies this violation because the physician was identified on the license as the AU, and the records were completed in a manner consistent with the license. The licensee states that it was not aware of any regulatory requirement that the authorized user be employed by the licensee.

NRC Evaluation of Licensee's Response Denying Violation 1.C

The NRC had determined that Violation 1.C occurred because information required to be maintained by the licensee was not complete and accurate in all material respects. Specifically, all records of radioactive materials ordered between March 2001 and November 2001 indicated that the Authorized User who ordered the radiopharmaceuticals was Dr. Brij Mohan Gupta (Dr. Mohan). These records were not accurate in that Dr. Mohan was not employed by the licensee, nor acting in any capacity, as an Authorized User.

In denying this violation, the licensee states that the crux of this regulatory requirement is that the licensee's records be accurate, and that the performance by the AU of his/her obligations is not the focus of this regulation but is covered under other regulations. The NRC maintains that these records were not accurate because the individual listed in the records as the AU was never employed by the licensee, nor did that individual otherwise serve or act as the AU (such as via a contractor or consultant arrangement). Therefore, the licensee did not provide an adequate basis for the NRC to withdraw Violation 1.C in the notice. Accordingly, the violation remains as stated in the notice.

4. Summary of Licensee's Response Contesting Classification of the Three Violations at Severity Level II

The licensee contests the Severity Level II problem classification for the three violations set forth in section I of the notice. The licensee contends that the violations were not willful; the VP and COO have been penalized; even if the VP and COO's actions were willful, the action taken against them obviates the need for substantial penalties to the licensee; there were no actual or realistic potential safety consequences as a result of the violations; and classification of the violations at a Level II is inconsistent with NRC policy and prior determinations. With respect to the last point, the licensee indicates that the seven examples of Severity Level II described in the HP supplement of the enforcement policy, relate to overexposures or unauthorized releases.

Further, the licensee provided a list of 16 other Severity Level III enforcement actions that the licensee maintains are similar to its case.

NRC Evaluation of Licensee's Response Contesting Classification of the Three Violations at Severity Level II

In assessing the significance of violations, and assigning an appropriate Severity Level, the NRC considers the actual and potential consequences of the violations, their impact on the regulatory process, and any willful aspects of the violations, as noted in section IV.A of the NRC enforcement policy (NUREG–1600). The supplements to the enforcement policy provide examples of different Severity Levels and serve as guidance in determining the appropriate Severity Level for the violations, as noted in section IV.B of the enforcement policy. In this case, since the violations included the failure to have an AU and RSO, the violations would normally have been classified at Severity Level III in accordance with section C.8 of Supplement VI of the enforcement policy. However, section IV.A.4 of the enforcement policy specifies that violations may be considered more significant if they include indications of willfulness. In deciding whether to increase the significance of the violations, the NRC considers the positions and responsibilities of the persons involved, the significance of the underlying violations, the intent of the violators, and the economic advantage gained.

In this case, the NRC maintains that the violations were deliberate, notwithstanding the licensee's denial. As noted in the NRC October 22, 2002, letter transmitting the notice of violation and proposed imposition of civil penalty, the NRC considered the following facts in concluding that the violations were deliberate: (1) The VP prepared the NRC license application in October 2000, with the aid of a consulting physicist, and he listed an individual (a physician) as the AU and RSO on the application; however, the named individual was never employed by AMINS and never performed the duties of the AU or RSO at AMINS; (2) from June 2001 through November 2001, AMINS staff listed that individual as the AU of record when it ordered and administered radiopharmaceuticals on approximately 590 occasions; (3) in October 2001, a consulting physicist conducted an audit that revealed that the duties of the AU/RSO had not been performed, and he briefed the licensee regarding the problem at the end of the audit, yet NRC licensed activities continued until the NRC inspection on November 30, 2001; (4) the VP, when interviewed by an OI investigator, admitted that he knew the facility was required to have an AU and RSO and knew as early as June 2001 that not having an AU and RSO was a problem, but he did not take action to correct the situation; and (5) both the VP and COO admitted to the OI investigator that there were financial considerations associated with keeping the facility open.

Furthermore, the violations were the result of the actions by senior individuals in the organization (namely a Vice President and the Chief Operating Officer), and there was an economic advantage to the licensee when it performed 590 administrations of radioactive materials at a time when it did not have an RSO and AU. Accordingly, even though there were no safety consequences identified from these violations, and actions were taken against both the Vice President and Chief Operating Officer, by both the licensee and the NRC, the NRC maintains that it was appropriate to increase the Severity Level classification from a Severity Level III to a Severity Level II in this case, and that such an increase is consistent with NRC policy and past determinations. In addition, contrary to the licensee's assertion, the 16 enforcement actions listed in the licensee's response are not similar to the circumstances of the AMINS enforcement action. Only six involved medical or human uses, and each of those six only involved one or two incidents of regulatory violations.

5. Summary of Licensee's Response Contesting the Amount of the Civil Penalty and Requesting Withdrawal or Reduction of the Civil Penalty

The licensee contests the amount of the civil penalty, contending that the NRC has abused its discretion by proposing a civil penalty of $43,200. In support of that contention, the licensee reiterates that it denies two of the three violations that were classified as the Severity Level II problem. In addition, the licensee maintains that it should be given credit for notification, asserting that the COO and VP voluntarily informed the inspector of the violations. Also, the licensee stated that even if it is not entitled to credit for identification, the violations should be classified at Severity Level III and the penalty should not exceed the base amount of $3000 for a Severity Level III. Finally, the licensee states that the use of weekly civil penalties was not warranted and was inconsistent with prior NRC cases, and cited examples of prior enforcement actions that the licensee believes to be inconsistent with the action taken against the licensee.

NRC Evaluation of Licensee's Response Contesting the Amount of the Civil Penalty and Requesting Withdrawal or Reduction of the Civil Penalty

The NRC disagrees that it has abused its discretion in determining the amount of the civil penalty in this case. For the reasons set forth in sections 3 and 4 above, the NRC maintains that all three violations occurred as stated in the notice, and were appropriately classified as a Severity Level II problem.

In addition, the NRC also maintains that the licensee is not entitled to credit for identification because the violations were identified by the NRC when the inspector arrived at the site on November 30, 2001. The NRC was not informed of such violations prior to that inspection, nor were there any indications in licensee's records identifying the violations. During that inspection, the NRC learned that the licensee's consulting physicist had identified the failure to have an AU during an audit, and briefed the licensee regarding the problem on October 3, 2001.

Finally, as noted in the October 22, 2002, letter transmitting the notice of violation and proposed imposition of civil penalty, the NRC decided that consideration of daily civil penalties was appropriate in this case, due to the multiple instances of deliberately ordering and administering byproduct material to human patients without the benefit of a physician authorized user and a radiation safety officer, the level of management involved, the economic benefit associated with continuing to operate without an AU and RSO, and the failure to correct the problem even after the findings of the licensee's consultant on October 3, 2001. The NRC has also reviewed the enforcement cases referenced by the licensee, and finds that the circumstances in this case are not similar to any of the cases cited. Accordingly, the NRC maintains that it is appropriate to issue: (1) A base civil penalty amount of $4,800 for the occurrence of the violations between March 2001 and October 3, 2001; and (2) additional civil penalty in the base amount of $4,800 for each of the eight weeks that the violations continued even after the consultant identified the problem to the licensee on October 3, 2001. Therefore, the licensee has not provided an adequate basis to withdraw or reduce that civil penalty.

6. NRC Conclusion

The NRC has concluded that the Licensee did not provide an adequate basis for withdrawal of any of the violations, or for withdrawal or reduction of the civil penalty amount. Accordingly, the proposed civil penalty in the amount of $43,200 should be imposed.

[FR Doc. 03–4891 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export a Utilization Facility

Pursuant to 10 CFR 110.70(b)(1) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *<http://www.nrc.gov/NRC/ADAMS/index.html>* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as

defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION FOR A UTILIZATION FACILITY

Name of applicant, date of application, date received, Application No., Docket No.	Description of facility	End use	County of destination
General Electric Nuclear Energy (GE), February 6, 2003.	Equipment—major components of a GE Advanced Boiling Water Reactor (ABWR).	Teollisuuden Voima Oy (TVO) Finland 5 Nuclear Power Plant (FIN5).	Finland.
February 10, 2003, XR168, 11005399 ...	Approximate Value: $750,000,000.00.		

For the Nuclear Regulatory Commission.

Dated this 24th day of February 2003, at Rockville, Maryland.

Donna C. Chaney,

Acting Director, Office of International Programs.

[FR Doc. 03–4889 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting; Pre-application Early Site Permit Meeting for the Clinton Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting in Clinton, Illinois.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will hold a facilitated meeting on March 20, 2003, to provide information to the public on the NRC Early Site Permit review process, as well as the opportunities for public involvement in that process for the Clinton site. Exelon Generation Company is expected to file an early site permit application in June 2003 for a new reactor or reactors at the Clinton site.

DATE/TIME: The meeting will be held on Thursday, March 20, 2002, from 7 p.m. through 9 p.m. The meeting will be preceded by an informal "orientation session" from 6 p.m. through 7 p.m. to allow for individual discussions with NRC staff members.

Location: Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, Illinois.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Council for Public Liaison, Office of General Council, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov*. Mr. Cameron will facilitate the meeting.

SUPPLEMENTARY INFORMATION: Additional information can be obtained from the Web site (*http://nrcweb.nrc.gov:300/reactors/new-licensing/license-reviews/esp.html*), or by contacting Ms. Nanette Gilles at (301) 415–1180, or via e-mail at *nvg@nrc.gov*.

Dated at Rockville, Maryland, this 26th day of February 2003.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4892 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting; Pre-application Early Site Permit Meetings for the North Anna Site

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meetings in Mineral, Virginia.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) will hold facilitated meetings on April 1, 2003, to provide information to the public on the NRC Early Site Permit (ESP) review process, as well as the opportunities for public involvement in that process for the North Anna site. Dominion Energy, Incorporated (Dominion) is expected to file an ESP in September 2003 for a new reactor or reactors at the North Anna site.

Date/Time: The meetings will be held on Tuesday, April 1, 2003, beginning with the first meeting from 2 p.m. through 4:30 p.m., followed by a later meeting from 7 p.m. through 9:30 p.m. Each meeting will be preceded by an "open house" one hour prior to the meeting to allow for individual discussions with staff members.

Location: Louisa County Library, 881 Davis Highway, Mineral, Virginia

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Council for Public Liaison, Office of General Council, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov*. Mr. Cameron will facilitate the meeting.

SUPPLEMENTARY INFORMATION: Additional information can be obtained from the Web site (*http://nrcweb.nrc.gov:300/reactors/new-licensing/license-reviews/esp.html*), or by contacting Mr. Michael Scott at (301) 415–1421, or via e-mail at *mls3@nrc.gov*.

Dated at Rockville, Maryland this 26th day of February 2003.

For the Nuclear Regulatory Commission:

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4893 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity to Comment on Model Safety Evaluation on Technical Specification Improvement To Eliminate Post Accident Sampling Requirements for Babcock and Wilcox Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the elimination of requirements on post accident sampling imposed on licensees through orders, license conditions, or technical specifications. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to remove requirements for the Post Accident Sampling System (PASS) for Babcock and Wilcox (B&W) Reactors. Licensees of nuclear power reactors to which the models apply could request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the SE and NSHC determination to its reactor and provide the requested plant-specific verifications and commitments. The NRC staff is requesting comments on the model SE and model NSHC determination before announcing their availability for referencing in license amendment applications.

DATES: The comment period expires April 2, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Dennig, Mail Stop: O–12H2, Technical Specifications Section, Operating Reactor Improvement Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1156.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The Consolidated Line Item Improvement Process (CLIIP) is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the Standard Technical Specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that removes requirements for the PASS for B&W plants. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to technical specifications are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the elimination of requirements for PASS and related administrative controls in technical specifications for B&W plants. This proposed change was proposed for incorporation into the standard technical specifications by the B&W Owners Group (BWOG) participants in the Technical Specification Task Force (TSTF) and is designated TSTF–442. TSTF–442 is supported by the NRC staff's safety evaluation dated November 14, 2002, for the BWOG topical report BAW–2387, "Justification for the Elimination of the Post Accident Sampling System (PASS) from the Licensing Basis of Babcock and Wilcox-Designed Plants," which was submitted to the NRC on June 25, 2001. The BWOG request followed the staff's approval of similar requests for elimination of PASS requirements from the Combustion Engineering Owners Group (CEOG), the Westinghouse Owners Group (WOG), and the Boiling Water Reactor Owners Group (BWROG).

Applicability

This proposed change to remove requirements for PASS from technical specifications (and other elements of the licensing bases) is applicable to B&W plants.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–442 using the CLIIP to address the following plant-specific verifications and regulatory commitments. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested verifications and regulatory commitments. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review. In making the requested regulatory commitments, each licensee should address: (1) That the subject capability exists (or will be developed) and will be maintained; (2) where the capability or procedure will be described (*e.g.*, severe accident management guidelines, emergency operating procedures, emergency plan implementing procedures); and (3) a schedule for implementation. The amendment request need not provide details about designs or procedures.

Each licensee shall fulfill the actions, verifications or commitments that are identified in section 4.0 of the following proposed safety evaluation.

Public Notice

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the staff's evaluation of comments received as a result of this notice, the staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed no significant hazards consideration determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the elimination of the PASS requirements for each plant that applies for and receives the requested change.

Proposed Safety Evaluation; Consolidated Line Item Improvement; Technical Specification Task Force (TSTF) Change TSTF–442; Elimination of the Post Accident Sampling System (PASS) From the Licensing Basis of Babcock and Wilcox Designed Plants

1.0 Introduction

In its letter dated June 25, 2001, the BWOG submitted for the NRC staff's review topical report BAW–2387,

"Justification for the Elimination of the Post Accident Sampling System (PASS) from the Licensing Basis of Babcock and Wilcox-Designed Plants." The NRC staff's safety evaluation for the BWOG topical report is dated November 14, 2002 (ADAMS Accession Number ML022560119). The BWOG proposed elimination of the PASS requirements from the standard technical specifications by submitting TSTF–442.

In the aftermath of the accident at Three Mile Island (TMI), Unit 2, the Nuclear Regulatory Commission (NRC) imposed requirements on licensees for commercial nuclear power plants to install and maintain the capability to obtain and analyze post-accident samples of the reactor coolant and containment atmosphere. The desired capabilities of the Post Accident Sampling System (PASS) were described in NUREG–0737, "Clarification of TMI Action Plan Requirements." The NRC issued orders to licensees with plants operating at the time of the TMI accident to confirm the installation of PASS capabilities (generally as they had been described in NUREG–0737). A requirement for PASS and related administrative controls was added to the technical specifications (TS) of the operating plants and was included in the initial TS for plants licensed during the 1980s and 90s. Additional expectations regarding PASS capabilities were included in Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants To Assess Plant and Environs Conditions During and Following an Accident."

Significant improvements have been achieved since the TMI accident in the areas of understanding risks associated with nuclear plant operations and developing better strategies for managing the response to potentially severe accidents at nuclear plants. Recent insights about plant risks and alternate severe accident assessment tools have led the NRC staff to conclude that some TMI Action Plan items can be revised without reducing the ability of licensees to respond to severe accidents. The NRC's efforts to oversee the risks associated with nuclear technology more effectively and to eliminate undue regulatory costs to licensees and the public have prompted the NRC to consider eliminating the requirements for PASS in TS and other parts of the licensing bases of operating reactors.

The staff has completed its review of the topical report submitted by the Babcock and Wilcox Owners Group (BWOG) that proposed the elimination of PASS. The justifications for the proposed elimination of PASS requirements center on evaluations of the various radiological and chemical sampling and their potential usefulness in responding to a severe reactor accident or making decisions regarding actions to protect the public from possible releases of radioactive materials. As explained in more detail in the staff's safety evaluations for the topical report, the staff has reviewed the available sources of information for use by decision-makers in developing protective action recommendations and assessing core damage. Based on this review, the staff found that the information provided by PASS is either unnecessary or is effectively provided by other indications of process parameters or measurement of radiation levels. The staff agrees, therefore, with the owners group that licensees can remove the TS requirements for PASS, revise (as necessary) other elements of the licensing bases, and pursue possible design changes to alter or remove existing PASS equipment.

2.0 Regulatory Evaluation

The ways in which the requirements and recommendations for PASS were incorporated into the licensing bases of commercial nuclear power plants varied as a function of when plants were licensed. Plants that were operating at the time of the TMI accident are likely to have been the subject of confirmatory orders that imposed the PASS functions described in NUREG–0737 as obligations. The issuance of plant specific amendments to adopt this change, which would remove PASS and related administrative controls from TS, would also supersede the PASS specific requirements imposed by post-TMI confirmatory orders.

The NRC staff prepared this model safety evaluation (SE) relating to the elimination of requirements on post accident sampling for B&W plants and solicited public comments in [insert FR number] in accordance with the CLIIP. The use of the CLIIP in this matter is intended to help the NRC to efficiently process amendments that propose to remove the PASS requirements from TS. Licensees of nuclear power reactors to which this model apply were informed that they could request amendments conforming to the model, and, in such requests, should confirm the applicability of the SE to their reactors and provide the requested plant-specific verifications and commitments.

3.0 Technical Evaluation

The technical evaluations for the elimination of PASS sampling requirements are provided in the safety evaluation dated November 14, 2002, for BWOG topical report BAW–2387. As described in its safety evaluation for the topical report, the staff finds that the post-accident sampling requirements for the following may be eliminated for B&W plants:

1. Reactor coolant dissolved gases.
2. Reactor coolant hydrogen.
3. Reactor coolant oxygen.
4. Reactor coolant chlorides.
5. Reactor coolant pH.
6. Reactor coolant boron.
7. Reactor coolant conductivity.
8. Radionuclides in the reactor coolant.
9. Containment atmosphere hydrogen.
10. Containment atmosphere oxygen.
11. Radionuclides in the containment atmosphere.
12. Radionuclides in the containment sump.
13. Containment sump pH.
14. Chlorides in the containment sump.
15. Boron in the containment sump.

PASS sampling of the above 15 parameters is specified in NUREG–0737 and RG 1.97. The sampling of the parameters are either not required to manage an accident and recover plant conditions, or not necessary due to redundancy in sampling capabilities. Based upon the detailed justifications provided in topical report BAW–2387 and its associated safety evaluation of November 14, 2002, the staff concludes that the proposals to eliminate PASS sampling of the above parameters is acceptable.

The staff concludes that sampling of radionuclides is not required to support emergency response decision making during the initial phases of an accident because the information provided by PASS is either unnecessary or is effectively provided by other indications of process parameters or measurement of radiation levels. Therefore, it is not necessary to have dedicated equipment to obtain this sample in a prompt manner.

The staff does, however, believe that there could be significant benefits to having information about the radioisotopes existing post-accident in order to address public concerns and plan for long-term recovery operations. As stated in the safety evaluation for the topical report, the staff has found that licensees could satisfy this function by developing contingency plans to describe existing sampling capabilities and what actions (*e.g.*, assembling temporary shielding) may be necessary to obtain and analyze highly radioactive samples from the reactor coolant system (RCS), containment sump, and containment atmosphere. The use of the contingency plans for obtaining samples would depend on the plant conditions and the need for information by the decision-makers responsible for responding to the accident (*see* section 4.0 below).

In addition, the staff considers radioisotope sampling information to be useful in classifying certain types of events (such as a reactivity excursion or mechanical damage) that could cause fuel damage without having an indication of a loss of reactor coolant inventory. However, the staff agrees with the topical report's contentions that other indicators of failed fuel, such as radiation monitors, can be correlated to the degree of failed fuel.

In lieu of the information that would have been obtained from PASS, the staff believes that licensees should maintain or develop the capability to monitor radioactive iodines that have been released to offsite environs. This information would be useful for decision makers trying to assess a release of and limit the public's exposure to radioactive materials.

The staff believes that the changes related to the elimination of PASS that are described in the topical report, related safety evaluation and this proposed change to TS are unlikely to result in a decrease in the effectiveness of a licensee's emergency plan. Each licensee, however, must evaluate possible changes to its emergency plan in accordance with 10 CFR 50.54(q) to determine if the change decreases the effectiveness of its site-specific plan. Evaluations and reporting of changes to emergency plans should be performed in accordance with applicable regulations and procedures.

The staff notes that containment hydrogen concentration monitors are required by 10 CFR 50.44 and are relied upon to meet the data reporting requirements of 10 CFR part 50, Appendix E, section VI.2.a.(ii)(3). The staff concludes that these hydrogen monitors provide an adequate capability for monitoring containment hydrogen concentration during the early phases of an accident. The staff sees value in maintaining the capability to obtain grab samples for complementing the information from the hydrogen monitors in the long term (*i.e.*, by confirming the indications from the monitors and providing hydrogen measurements for concentrations outside the range of the monitors). The licensee's contingency plan for obtaining highly radioactive samples will include sampling of the containment atmosphere and may, if deemed necessary and practical by the appropriate decision-makers, be used to supplement the hydrogen monitors.

(**Note 1**—Each licensee should specify a desired implementation period for its specific amendment request. The implementation period would be that period necessary to develop and implement the items in section 4.0 below and, as necessary, to make other changes to documentation or equipment to support the elimination of PASS requirements. As an alternative, the licensee may choose to have a shorter implementation period and include the scheduling of items in section 4.0 as part of the regulatory commitments associated with this amendment request. Amendment requests that include commitments for implementation of the items in section 4 within 6 months of the implementation of the revised TS will remain within the CLIIP.)

(**Note 2**—There may be some collateral changes to the TS as a result of the removal of the administrative controls section for PASS. For example, the elimination of the TS and other regulatory requirements for PASS would result in additional changes to TS such as (*e.g.*, the renumbering of sections or pages or the removal of references). The changes are included in the licensee's application to revise the TS in order to take advantage of the CLIIP. The staff has reviewed the changes and agrees that the revisions are necessary due to the removal of the TS section on PASS. The changes do not revise technical requirements beyond that reviewed by the NRC staff in connection with the supporting topical reports or the preparation of the TS improvement incorporated into the CLIIP.)

4.0 Summary and Licensee Required Actions

The staff concludes that BAW–2387 provides a sufficient technical basis to eliminate sampling the above 15 PASS parameters specified in NUREG–0737 and RG 1.97. The staff has identified the following licensee required actions, verifications or commitments that must be fulfilled by a licensee that eliminates the PASS for sampling the above 15 parameters in accordance with BAW–2387 and this safety evaluation. The licensee shall verify that it has, and make a regulatory commitment to maintain, or a regulatory commitment to develop and maintain:

1. A capability for classifying fuel damage events at the Alert level threshold (typically this is 300 microcuries per ml dose equivalent iodine). This capability may utilize the normal sampling system or correlations of sampling or letdown line dose rates to coolant concentrations.
2. Contingency plans for obtaining and analyzing highly radioactive samples of reactor coolant, containment sump, and containment atmosphere.
3. Offsite capability to monitor radioactive iodines.

The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitments are provided by the licensee's administrative processes, including its commitment management program. Should the licensee choose to incorporate a regulatory commitment into the emergency plan, final safety analysis report, or other document with established regulatory controls, the associated regulations would define the appropriate change-control and reporting requirements. The staff has determined that the commitments do not warrant the creation of regulatory requirements, which would require prior NRC approval of subsequent changes. The NRC staff has agreed that NEI 99–04, Revision 0, "Guidelines for Managing NRC Commitment Changes," provides reasonable guidance for the control of regulatory commitments made to the NRC staff. (*See* Regulatory Issue Summary 2000–17, Managing Regulatory Commitments Made by Power Reactor Licensees to the NRC Staff, dated September 21, 2000 (ADAMS Accession Number ML003741774).) The commitments should be controlled in accordance with the industry guidance or comparable criteria employed by a specific licensee. The staff may choose to verify the implementation and maintenance of these commitments in a future inspection or audit.

5.0 State Consultation

In accordance with the Commission's regulations, the State official was notified of the proposed issuance of the amendments. The State official had ((1) no comments or (2) the following comments—with subsequent disposition by the staff).

6.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR

51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendments delete requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated in Rockville, Maryland, this 21st day of February, 2003.

For the Nuclear Regulatory Commission.

Robert L. Dennig,

Section Chief, Technical Specifications Section, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4890 Filed 2–28–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Notice of RRB and SSA Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs; notification to individuals who are railroad employees, or applicants and beneficiaries under the Railroad Retirement Act or who are applicants or beneficiaries under the Social Security Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, information obtained from the Social Security Administration (SSA) of the amount of wages reported to SSA and the amount of benefits paid by that agency. The RRB is also issuing public notice, on behalf of the Social Security Administration, of SSA's use and intent to use, in ongoing computer matching programs, information obtained from the RRB of the amount of railroad earnings reported to the RRB.

The purposes of this notice are (1) to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from SSA by means of a computer match and (2) to advise individuals applying for or receiving benefits under the Social Security Act of the use made by SSA of this information obtained from RRB by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program. The last notice for the matching program which began October 2, 2000, was published at 65 FR 50724 (August 21, 2000).

Name of Participating Agencies: Social Security Administration and Railroad Retirement Board.

Purpose of the Match: The RRB will, on a daily basis, obtain from SSA a record of the wages reported to SSA for persons who have applied for benefits under the Railroad Retirement Act and a record of the amount of benefits paid by that agency to persons who are receiving or have applied for benefits under the Railroad Retirement Act. The wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (42 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f). The benefit information is needed to adjust the tier I annuity component for the receipt of the Social Security benefit. This information is available from no other source.

In addition, the RRB will received from SSA the amount of certain social security benefits which the RRB pays on behalf of SSA. Section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)) provides that the RRB shall make the payment of certain social security benefits. The RRB also requires this information in order to adjust the amount of any annuity due to the receipt of a social security benefit. Section 10(a) of the Railroad Retirement Act (45 U.S.C. 231i(a)) permits the RRB to recover any overpayment from the accrual of social security benefits. This information is not available from any other source.

Thirdly, the RRB will receive from SSA once a year a copy of SSA's Master Benefit Record for earmarked RRB annuitants. Section 7(b)(7)) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7) requires that SSA provide the requested information. The RRB needs this information to make the necessary cost-of-living computation quickly and accurately for those RRB annuitants who are also SSA beneficiaries.

SSA will receive form RRB weekly RRB earnings information for all railroad employees. SSA will match the identifying information of the records furnished by the RRB against the identifying information contained in its Master Benefit Record and its Master Earnings File. If there is a match, SSA will use the RRB earnings to adjust the amount of Social Security benefits in its Annual Earnings Reappraisal Operation (AERO). This information is available from no other source.

SSA will also receive from RRB on a daily basis RRB earnings information on selected individuals. The transfer of information may be initiated either by RRB or by SSA. SSA needs this information to determine eligibility to Social Security benefits and, if eligibility is met, to determine the benefit amount payable. Section 18 of the Railroad Retirement Act (45 U.S.C. 231q(2)) requires that earnings considered as compensation under the Railroad Retirement Act be considered as wages under the Social Security Act for the purposes of determining entitlement under the Social Security Act if the person has insufficient years of railroad service to qualify for an annuity under the Railroad Retirement Act, or has sufficient years of service but does not have a current connection with the railroad industry at the time of his/her death.

Authority for Conducting the Match: Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act.

Sections 202, 205(o) and 215(f) of the Social Security Act (42 U.S.C. 402, 405(o) and 415(f) relate to benefit provisions, inclusion of railroad compensation together with wages for payment of benefits under certain circumstances, and the recomputation of benefits.

Categories of Records and Individuals Covered: All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of any social security wages and the amount of any social security benefits furnished to the RRB by SSA. In addition, all persons who ever worked in the railroad industry after 1936 will have a record of their service and compensation furnished to SSA by RRB. The applicable Privacy Act Systems of Records used in the matching program are as follows:

RRB–5, Master File of Railroad Employees' Creditable Compensation; RRB–22, Railroad Retirement, Survivor, Pensioner Benefit System; SSA/OSR, 09–60–0090, Master Beneficiary Record (MBR); and SSA/OSR, 09–60–0059, Master Earnings File (MEF).

Inclusive Dates of the Matching Program: The consolidated matching program shall become effective no sooner than 40 days after notice of the

matching program is sent to Congress and the Office of Management and Budget (OMB), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be or has been furnished to the Office of Management and Budget and the designated committees of both Houses of Congress.

Dated: February 25, 2003. By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–4857 Filed 2–28–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47394; File No. SR–NASD–2003–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Proposed Rule Change to Section 9 of Schedule A to the NASD By-Laws

February 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. NASD has designated the proposed rule change as "establishing or changing a due, fee, or other charge" under section 19(b)(3)(A)(ii) of the Act[3] and rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend section 9, Schedule A of the By-Laws of NASD to implement a fee schedule for NASD member firms that choose to use a secure Web-based electronic file transfer application to submit to the CRD or IARD systems multiple form filings in a single transaction or to download member firm data and processing results from Web CRD or IARD. Below is the text of the proposed rule change. The proposed fee becomes operative on March 24, 2003. Proposed new language is in italics; proposed deletions are in brackets..

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

* * * * *

Section 9—Subscription Charges for [Firm Access Query System (FAQS)] *Registration Batch Filing/Data Download Via the Web CRD Electronic File Transfer (EFT) System*

(a) Each firm electing to subscribe to the [Firm Access Query System (FAQS)] *Web CRD Electronic File Transfer (EFT) System for registration batch filing and/or data download* will be assessed [a user fee consisting of three components (1) a monthly data base access charge, (2) an hourly usage fee, and (3) a charge per 1,000 characters ("kilocharacter") of information sent or received.] *an annual subscription fee based on the type of service that the firm uses.* The fee schedule to be paid by each firm is as follows:

(1) [Monthly Data Base Access Charge—$70.00] *Data Download—$1,800.00*

(2) [Hourly Usage Charge—$70.00 per hour; and] *Form Filing—$3,600.00*

(3) [Kilocharacter Transmission Charge—$0.70] *Data Download and Form Filing—$4,800.00*

[Each firm which subscribes to the service will provide its own terminal and modem.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to amend section 9 of Schedule A to the NASD By-Laws by deleting the Firm Access Query System ("FAQS") subscription charges[5] and, in its place, establishing a yearly subscription charge for NASD member firms that choose to use a new secure web-based electronic file transfer application ("Web EFT") to submit multiple Form U–4 and Form U–5 filings in a single transaction to the CRD or IARD systems (hereinafter referred to as "batch filing") or to download member firm data and processing results from the CRD or IARD systems.

Although NASD retired the legacy CRD system and the FAQS functionality in 1999, it did not retire a legacy electronic filing transfer ("Legacy EFT") application. Legacy EFT gives participating firms the ability to interface electronically with the CRD system to (1) submit "batch" filings and (2) download registration data and accounting reports on a regular basis. Legacy EFT, which is based on older technology that provides limited batch filing and data download capabilities, is currently available to NASD members that choose to submit form filings and download data via a dedicated (modem) line established by the firm.

In the first quarter of 2003, NASD plans to introduce Web EFT, a state-of-the-art application that will replace the current Legacy EFT.[6] Web EFT will allow NASD firms to interface with NASD systems in an automated manner to submit batch filings to NASD and/or to download registration data (*i.e.*, firm

[5] The FAQS functionality enabled members to enter non-disclosure-related amendments to the Form U–4, and full terminations (with or without disclosure) or partial terminations via the Form U–5 directly onto the legacy CRD system via a dedicated (modem) line established by the member. Upon implementation of the Web CRD system in August 1999, NASD retired the legacy CRD system (which relied primarily on hard copy filing of uniform registration forms that were data-entered upon receipt) and the FAQS functionality. Since the implementation of Web CRD, members use the Internet as their primary method of filing forms into the CRD system.

[6] NASD plans to deploy the Web EFT application in the first quarter of 2003, but it does not plan to retire the Legacy EFT application until the third quarter of 2003. This will give firms time to test and convert to Web EFT.

data and processing results from Web CRD or IARD). Web-based form filing (on a single transaction basis) will remain available through Web CRD and IARD; therefore, member firms will not be required to use Web EFT.

Member firms that elect to use the new Web EFT application will be charged a fee based on whether they choose to use the data download or form filing functionalities, or both. NASD is proposing annual subscription fees of $1,800.00 per year for data downloading; $3,600.00 per year for form filing; and $4,800.00 per year for data downloading and form filing. The proposed fees would be effective upon full deployment of Web EFT, currently scheduled for March 24, 2003.[7] The proposed fees are designed to recover the cost of developing and operating registration-related batch filing and data downloads via Web EFT.

Web EFT will benefit NASD and member firms by eliminating the costs and risks associated with maintaining Legacy EFT, enhancing security, and increasing efficiencies through the expanded batch filing and data download options that will be available. Further, the proposed Web EFT application and accompanying infrastructure will give firms a more secure interface to NASD systems, and it will enable firms that use the registration batch filing service to submit in batches additional filing types not currently available through the legacy system.[8] For example, the new application will enable firms to batch file all forms for registered persons and all filings for non-registered personnel who are required to be fingerprinted. As with Legacy EFT, firms will not be able to submit filings that include Disclosure Reporting Pages ("DRPs"). The new application will also enable firms to download more reports than are currently available to firms through Legacy EFT.

Web EFT should be especially attractive to larger member firms that process high volumes of filings (*e.g.*, office of employment address changes for large numbers of registered individuals when there is a branch relocation), or that wish to download from Web CRD or IARD large amounts of data on their registered persons (*e.g.*, to obtain a download of exam results for registered persons at the firm for a specified period) to populate their own internal systems. In this regard, large member firms that maintain such internal systems have expressed a desire for a more robust EFT application to support registration transactions because of the efficiencies it will provide them, including the elimination of duplicative data entry.

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed subscription charges are reasonable fees that fairly reflect the benefit to be gained by members from using a secure Web-based EFT application to submit batch filings in a single transaction or to download member firm data and processing results from Web CRD or IARD.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as "establishing or changing a due, fee, or other charge" under section 19(b)(3)(A)(ii) of the Act[9] and rule 19b–4(f)(2) thereunder,[10] which renders the proposal effective upon receipt of this filing by the Commission. The NASD will implement the fee on March 24, 2003. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the file number in the caption above and should be submitted by March 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4833 Filed 2–28–03; 8:45 am]

BILLING CODE 8010–01–P

[7] Details on how a firm can sign up for Web EFT, payment schedules, and additional information on Web EFT are available on NASD's Web site at *http://www.nosdr.com/3400_eft.osp.*

[8] Web EFT will add six additional filing types that were not available in Legacy EFT.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before May 2, 2003.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Thomas Mueller, Deputy Associate Administrator, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, SW., Suite 6400, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Thomas Mueller, Deputy Associate Administrator, (202) 205–7301 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: SBA Counseling Evaluation.
Form No: 1419.
Description of Respondents: Small Business Clients.
Annual Responses: 2,800.
Annual Burden: 476.

Title: National Training Participant Evaluation Questionnaire.
Form No: 20.
Description of Respondents: Individuals Receiving SBA Training and Counseling Assistance.
Annual Responses: 26,000.
Annual Burden: 6,500.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 03–4932 Filed 2–28–03; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4288]

Office of Oceans Affairs; Comprehensive Environmental Evaluations for Antarctic Activities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State gives notice of the availability of three draft Comprehensive Environmental Evaluations (CEEs) for activities proposed to be undertaken in Antarctica. Interested members of the public are invited to submit comments relative to these CEEs.

DATES: Comments must be submitted on or before June 3, 2003.

ADDRESSES: Send comments to OES/OA, Room 5805; Department of State; Washington, DC 20520, or to *SaturniFM@state.gov.*

FOR FURTHER INFORMATION CONTACT: Fabio M. Saturni, Office of Oceans Affairs, (202) 647–0237.

SUPPLEMENTARY INFORMATION: Article 3 of Annex I to the Protocol on Environmental Protection to the Antarctic Treaty requires parties to prepare a CEE for any proposed Antarctic activity likely to have more than a minor or transitory impact. Draft CEEs are to be made publicly available with a 90-day period for receipt of comments. This notice is published pursuant to 16 U.S.C. 2403a(h).

The Department of State has received three draft CEEs:

1. The Czech Republic has submitted a draft CEE for proposed construction and operation of a scientific station at James Ross Island. The document is available at this Web site: *http://www.cep.aq/default.asp?casid=5768.*

2. New Zealand has submitted a draft CEE for the ANDRILL program of proposed Antarctic scientific stratigraphic drilling. The document is available at this Web site: *http://www.antarcticanz.govt.nz/DownLoadDocuments/PDF/Environment/ANDRILL%20Final%20Jan22.pdf.*

3. The Russian Federation has submitted a draft CEE for water sampling of the subglacial Lake Vostok. The document is available at this Web site: *http://www.cep.aq/default.asp?casid=5762.*

The Department of State invites interested members of the public to provide written comments on these draft CEEs.

Dated: February 24, 2003.

Raymond V. Arnaudo,
Deputy Director, Office of Oceans Affairs, Department of State.
[FR Doc. 03–4909 Filed 2–28–03; 8:45 am]
BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4262]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Friday, March 28, 2003, at 2:30 p.m. in the Diplomatic Reception Rooms. The meeting will last until approximately 3:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on October 18, 2002 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2002 through December 31, 2002.

Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by March 12, 2003, telephone (202) 647–1990 to make arrangements to enter the building. The pubic may take part in the discussion as long as time permits and at discretion of the chairman.

Dated: February 17, 2003.

Gail F. Serfaty,
Secretary, Fine Arts Committee, Department of State.
[FR Doc. 03–4907 Filed 2–28–03; 8:45 am]
BILLING CODE 4710–38–P

DEPARTMENT OF STATE

[Public Notice 4268]

Overseas Buildings Operations; Industry Advisory Panel Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, March 27, 2003 from 9:45 until 11:45 a.m. and 1 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street NW., (entrance on 23rd Street), Washington, DC. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Luigina Pinzino at 703/875–7109 before Wednesday, March 12th, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Luigina Pinzino 703/875–7109.

Dated: February 20, 2003.

Charles E. Williams,
Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.
[FR Doc. 03–4908 Filed 2–28–03; 8:45 am]
BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on March 14, 2003, from 9 a.m. to 3:30 p.m. The meeting will be closed to the public from 9 a.m. to 1:30 p.m. and opened to the public from 1:30 p.m. to 3:30 p.m.

DATES: The meeting is scheduled for March 14, 2003, unless otherwise notified.

ADDRESSES: The meeting will be held at the Charleston Place Hotel, 205 Meeting Street, Charleston, SC.

FOR FURTHER INFORMATION CONTACT: Tamara Underwood, DFO for ISAC–14 at (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or Christina Sevilla, Director for Intergovernmental Affairs, on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda item will be discussed.

- Updates on the Free Trade Area of the Americas (FTAA) and the United States' Free Trade Agreements (FTAs) with Morocco, Australia, and the Central African Customs Union.
- Overview of Customs' Recent Projects and Programs.
- Overview of the Trade Advisory Committee System's Functions, Roles, and Responsibilities (for purposes of outreach and recruitment of new members to the ISACs).

Christopher A. Padilla,
Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.
[FR Doc. 03–4882 Filed 2–28–03; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed Between February 3, and February 21, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Applications filed during week ending: February 7, 2003.
Docket Number: OST–2003–14440.
Date Filed: February 3, 2003.
Parties: Members of the International Air Transport Association.

Subject

PTC3 0608 dated 3 January 2003
TC3 Within South Asian Subcontinent Resolutions r1–r10
PTC3 0609 dated 3 January 2003
TC3 Within South East Asia Resolutions r11–r23 (except between Malaysia and Guam)
PTC3 0610 dated 3 January 2003 r24–r29
TC3 Within South West Pacific Resolutions
PTC 0611 dated 3 January 2003 r–30–r37
TC3 Between South East Asia and South Asian Subcontinent Resolutions
PTC3 0612 dated 3 January 2003 r38–r44
TC3 between South Asian Subcontinent and South West Pacific Resolutions
PTC3 0613 dated 3 January 2003 r45–r51
TC3 between South East Asia and South West Pacific Resolutions except between Malaysia and American Samoa
PTC3 0614 dated 3 January 2003 r52–r63
TC3 between Japan and Korea Resolutions
PTC3 0622 dated 17 January 2003 (Technical Correction)
PTC3 0615 dated 3 January 2003 r64–r78
TC3 between Japan, Korea and South Asian Subcontinent Resolutions
PTC3 0616 dated 3 January 2003 r79–r95
TC3 between Japan, Korea and South East Asia Resolutions except between Korea (Rep.of) and Guam, Northern Mariana Islands
PTC3 0617 dated 3 January 2003 r–96–r157
TC3 between Japan, Korea and South West Pacific Resolutions except between Korea (Rep.of) and American Samoa
Minutes—PTC3 0623 dated 24 January 2003
Tables—PTC3Fares 0196, 0197, 0198, 0199, 0200, 0201, 0202, 0203, 0204 and 0205 all dated 10 January 2003
Intended effective date: 1 April 2003

Docket Number: OST–2003–14478.
Date Filed: February 7, 2003.
Parties: Members of the International Air Transport Association.

Subject

PTC3 0626 dated 7 February 2003
Mail Vote 264—Resolution 010n,
TC3 Special Passenger Amending Resolution from Papua New Guinea
Intended effective date: 20 February 2003

Docket Number: OST–2003–14480.
Date Filed: February 7, 2003.
Parties: Members of the International Air Transport Association.

Subject

CTC COMP 0396 dated 21 June 2002
Composite Cargo Resolution 502 R1
Correction—CTC COMP 0404 dated 9 July 2002
Minutes—CTC COMP 0400 dated 25 June 2002 Airline Economic Justifications: American, Delta, FedEx and United
Intended effective date: 1 October 2002

Docket Number: OST–2003–14481.
Date Filed: February 7, 2003.
Parties: Members of the International Air Transport Association.

Subject

CTC COMP 0408 dated 2 August 2002
Composite Resolutions r1–r27
Minutes–CTC COMP 0400 dated 25 June 2002
Airline Economic Justifications: American, Delta, FedEx and United
Tables–CTC COMP Rates 0197 dated 13 August 2002
CTC COMP Rates 0198 dated 23 August 2002
Intended effective date 1 October 2002

Docket Number: OST–2003–14482.
Date Filed: February 7, 2003.
Parties: Members of the International Air Transport Association.

Subject:

CTC COMP 0410 dated 2 August 2002
Worldwide Area Resolutions (excluding changes to rates) except Alliance Countries r1–r7,
Minutes—CTC COMP 0400 dated 25 June 2002
Tables—CTC2 AFR Rates 0013 dated 13 August 2002
CTC2 ME Rates 0024 dated 13 August 2002
CTC2 EUR–AFR Rates 0022 dated 13 August 2002
CTC2 EUR–ME Rates 0032 dated 13 August 2002
Intended effective date: 1 October 2002

Applications filed during week ending: February 14, 2003.
Docket Number: OST–2003–14485.
Date Filed: February 10, 2003.
Parties: Members of the International Air Transport Association.

Subject

PTC2 EUR–ME 0152 dated 28 January 2003
TC2 Europe-Middle East Expedited Resolution 001a
Intended effective date: 1 April 2003

Docket Number: OST–2003–14486.
Date Filed: February 10, 2003.
Parties: Members of the International Air Transport Association.

Subject

CTC COMP 0412 dated 2 August 2002
Worldwide Area Resolutions (changes to rates) to/from USA/US Territories except Alliance Countries r1–r5
Correction—CTC COMP 0418 dated

20 August 2002
Minutes—CTC COMP 0400 dated 25 June 2002
Airline Economic Justifications: American, Delta FedEx and United
Tables—CTC1 Rates 0016 dated 16 August 2002
CTC3 Rates 0019 dated 16 August 2002
CTC12 NATL–TC2 Rates 0067 dated 16 August 2002
CTC23 AFR–TC3 Rates 0021 dated 16 August 2002
CTC31 N/C Rates 0015 dated 20 August 2002
CTC31 S Rates 0012 dated 20 August 2002
CTC123 Rates 0014 dated 20 August 2002
Intended effective date: 1 October 2002

Docket Number: OST–2003–14490.
Date Filed: February 10, 2003.
Parties: Members of the International Air Transport Association.

Subject

CTC COMP 0413 dated 2 August 2002
Worldwide Area Resolutions—
Alliance Countries r1-r8
Minutes—CTC COMP 0400 dated 25 June 2002
Airline Economic Justifications: American, Delta, FedEx and United
Tables—CTC1 Rates 0016 dated 16 August 2002
CTC3 Rates 0019 dated 16 August 2002
CTC12 NATL–TC2 Rates 0067 dated 16 August 2002
CTC23 AFR–TC3 Rates 0021 dated 16 August 2002
CTC31 N/C Rates 0015 dated 20 August 2002
CTC31 S Rates 0012 dated 20 August 2002
CTC123 Rates 0014 dated 20 August 2002
Intended effective date: 1 October 2002

Applications filed during week ending: February 21, 2003.
Docket Number: OST–2003–14540.
Date Filed: February 19, 2003.
Parties: Members of the International Air Transport Association.

Subject

PTC12 NMS–ME 0183 dated 11 February 2003
North Atlantic-Middle East Expedited Resolutions 002as, 015v r1-r2
PTC12 NMS–ME 0184 dated 11 February 2003 r3
North Atlantic-Middle East Expedited Resolution 002bo
Intended effective dates: 15 March and 31 March 2003

Docket Number: OST–2003–14541.
Date Filed: February 19, 2003.
Parties: Members of the International Air Transport Association.

Subject

PTC1 0251 dated 14 February 2003
Mail Vote 265—Resolution 010o
TC1 Special Passenger Amending Resolution—From Uruguay
Intended effective date: 25 February 2003

Docket Number: OST–2003–14562.
Date Filed: February 20, 2003.
Parties: Members of the International Air Transport Association.

Subject

PTC12 NMS–ME 0188 dated 21 February 2003
Mail Vote 266—TC12 Mid/South Atlantic-Middle East
Special Passenger Amending Resolution 010p and Resolution 015v Add-ons (except in USA)
Intended effective date: 15 March and 31 March 2003

Docket Number: OST–2003–14568.
Date Filed: February 21, 2003.
Parties: Members of the International Air Transport Association.

Subject

PAC/Reso/418 dated January 17, 2003—Mail Vote A108
Resos 800t (r1) and 814 (r2)
PAC/Reso/419 dated January 17, 2003—Mail Vote A109
Reso 850 (r3)
Intended effective date: expedited March 1, 2003.

Dorothy Y. Beard,
Chief, Docket Operations & Media Management, Federal Register Liaison.
[FR Doc. 03–4917 Filed 2–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) Filed With the Department Between February 10, and February 21, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Applications filed during week ending: February 14, 2003.

Docket Number: OST–2003–14525.

Date Filed: February 14, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 7, 2003.

Description: Application of Reliant Airlines, Inc., pursuant to 49 U.S.C. 41102 and Subpart B, requesting the transfer of its certificate of public convenience and necessity, issued by Order 98–11–23, authorizing it to engage in interstate/foreign charter air transportation, to Kalitta Charters II, LLC.

Applications filed during week ending: February 21, 2003.

Docket Number: OST–2003–14553.

Date Filed: February 20, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 13, 2003.

Description: Application of Chautauqua Airlines, Inc., requesting that the Department disclaim jurisdiction over, or in the alternative approve, the transfer of the operating authority held by Chautauqua to a newly formed Indiana corporation to be named Chautauqua Airlines, Inc. ("Newco").

Docket Number: OST–2003–14554.

Date Filed: February 20, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 13, 2003.

Description: Application of Shuttle America Corporation, requesting that the Department disclaim jurisdiction over, or in the alternative approve, the transfer of the operating authority held by Shuttle America to a newly formed Indiana corporation to be named Shuttle America Corporation ("Newco").

Dorothy Y. Beard,
Chief, Docket Operations and Media Management, Federal Register Liaison.
[FR Doc. 03–4916 Filed 2–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 2003–14502]

Request for Renewal of Currently Approved Information Collection: Certification of Enforcement of Vehicle Size and Weight Laws

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of FHWA to request the Office of Management and Budget (OMB) to renew its clearance of the currently approved information collection identified below under **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before May 2, 2003.
ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the specific collection of information that is being commented on by referencing its OMB control number. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Davis, (202) 366–2997, Federal Highway Administration, Office of Freight Management and Operations, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

OMB Number: 2125–0034.

Background: Title 23, U.S.C., Section 141, requires each State, the District of Columbia, and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that the enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce its size and weight laws, and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, Section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, 2701) requires each jurisdiction to inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Respondents: The State Departments of Transportation (or equivalent) in the 50 States, the District of Columbia, and Puerto Rico.

Estimated Total Annual Burden: 4,160 hours. This number has not changed from the last approved OMB clearance.

Frequency: The reports must be submitted annually.

Authority: 23 U.S.C. 141; 44 U.S.C. 3506(c)(2)(A); 23 CFR 657; sect. 123, Pub. L. 95–599, 92 Stat. 2701; 49 CFR 1.48.

Issued on: February 24, 2003.

James R. Kabel,
Chief, Management Programs and Analysis Division.
[FR Doc. 03–4918 Filed 2–28–03; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Missoula County, MT

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared in accordance with the National Environmental Policy Act for proposed transportation improvements in the vicinity of Miller Creek Road in Missoula County, Montana.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Genzlinger, P.E., Operations Engineer, Federal Highway Administration, 2880 Skyway Drive, Helena, Montana 59602; Telephone (406) 449–5302, extension 240 or Ms. Jeanette Lostracco, Carter & Burgess, Inc., 707 17th Street, Suite 2300, Denver, Colorado, 80202; Telephone (303) 820–4808.

SUPPLEMENTARY INFORMATION: The FHWA hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), Pub. L. 91–190, 83 Stat. 852, 1969), as amended, for road and bridge improvements in the vicinity of Miller Creek Road, Missoula County, Montana. The study area is approximately four miles long and three miles wide including portions of US 93, the Bitterroot River, the city of Missoula, Missoula County and Lolo National Forest. The study area begins near the intersection of Miller Creek Road and US 93 to the north and extends southward approximately four miles along US 93. The east-west boundaries are approximately .25 miles west of US 93 and approximately 2.5 miles east of US 93.

Alternatives being considered will include a no build and build alternatives. The build alternatives will connect to US 93 and provide a new structure crossing the Bitterroot River.

Improvements to the corridor are necessary as the population is expected to increase in the near future. The need for a second connection to U.S. 93 in this area has been a priority to the local community, Missoula County, and the city of Missoula. A second entrance into the Miller Creek area is needed for safety and to relieve congestion. An additional access could provide regional benefits to connectivity, improving air quality by reducing total vehicle miles traveled (VMT), improving pedestrian and bike circulation, facilitating bus service to the Miller Creek and Linda Vista area, and providing secondary emergency egress and, potentially, improved emergency response times.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A formal public scoping meeting is scheduled for Wednesday, March 26th from 5 p.m. to 8 p.m. at the Linda Vista Golf Course Clubhouse located on 4915 Lower Miller Creek Road, Missoula, Montana. Brief identical presentations will be

given at 6 p.m. and 7 p.m. A series of public meetings will be held in Missoula. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. Additional project information can be obtained at the Web site (*www.millereis.com*) or from the Telephone Information 'Hotline' (1–800–865–6905).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs an activities apply to this proposed action.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued February 25, 2003.

Dale Paulson,

Program Development Engineer, Montana Division, Federal Highway Administration, Helena, MT 59602.

[FR Doc. 03–4856 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 5, 2002. No comments were received.

DATES: Comments must be submitted on or before April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Olsen, Maritime Administration (MAR–560), 400 Seventh Street, SW., Washington, DC 20590. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Determination of Fair and Reasonable Rates for Carriage of Agricultural Cargoes on U.S. Commercial Vessels.

OMB Control Number: 2133–0514.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. citizens who own or operate U.S.-flag vessels.

Form(s): MA–1025, MA–1026, and MA–172.

Abstract: This collection of information requires U.S.-flag operators to submit annual vessel operating costs and capital costs data to MARAD officials. The information is used by MARAD in determining fair and reasonable guideline rates for the carriage of preference cargoes on U.S.-flag vessels. In addition, U.S.-flag vessel operators are required to submit Post Voyage Reports to MARAD after completion of a cargo preference voyage.

Annual Estimated Burden Hours: 700 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, D.C. 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on February 26, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–4898 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement; Correction

The notice, announcing the extension of the Voluntary Intermodal Sealift Agreement (VISA) for another two-year period until February 13, 2005, appearing on pages 8800–8808 in the issue of Tuesday, February 25, 2003, should have included the following flow chart entitled: "Figure 1—VISA Activation Process Diagram" at the end of the document.

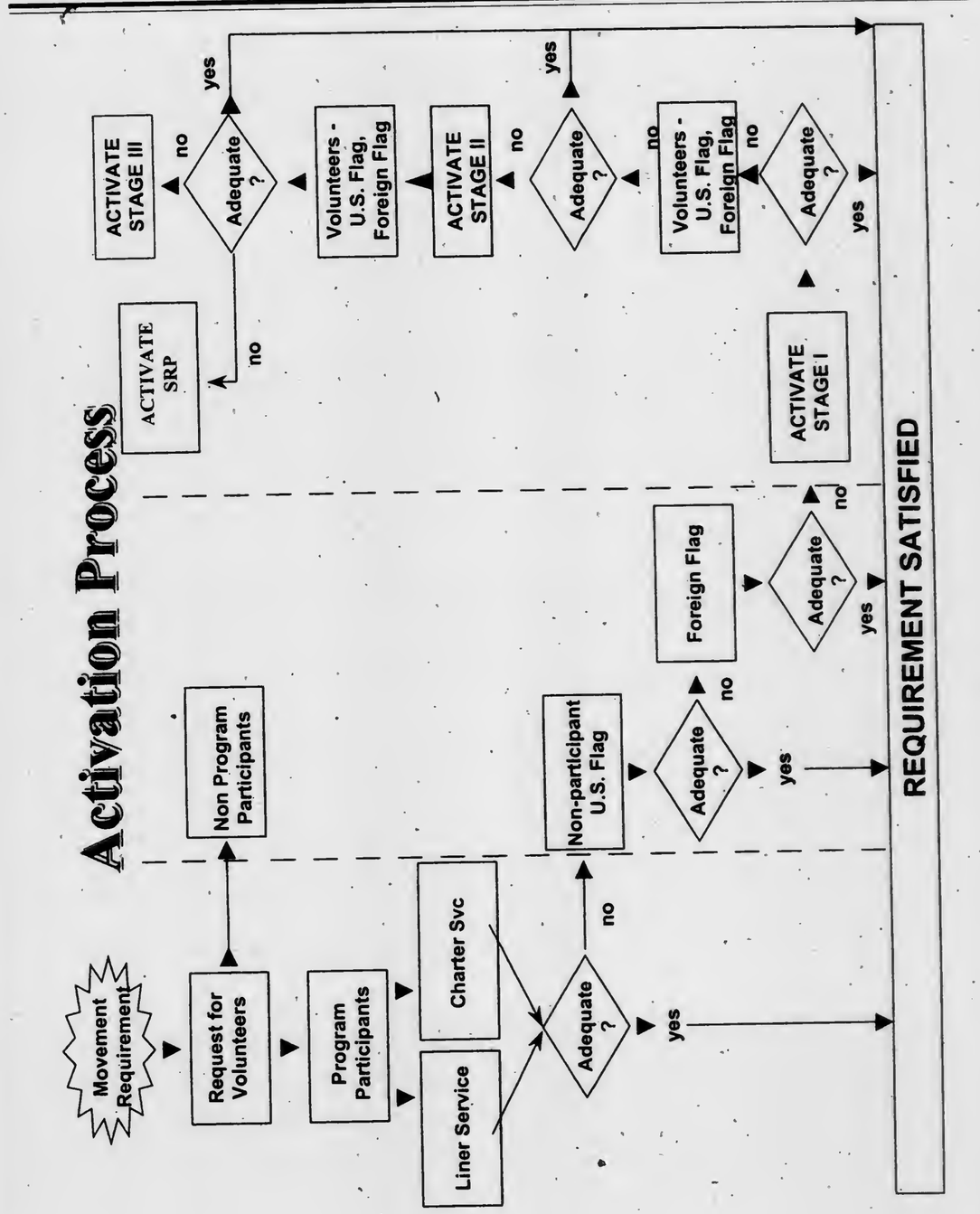
By Order of the Maritime Administrator.

Dated: February 26, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

BILLING CODE 4910–81–P



[FR Doc. 03–4899 Filed 2–28–03; 8:45 am]
BILLING CODE 4910–81–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–02–13956, Notice 2]

Lotus Cars Ltd.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 201

This notice grants the application of Lotus Cars Ltd. ("Lotus") of Norwich, England, for a renewal of NHTSA Temporary Exemption No. 99–12, from S7, *Performance Criterion*, of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact*, as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We published notice of receipt of the application on December 4, 2002, requesting public comment on it (67 FR 72267).

Background

On November 10, 1999, NHTSA granted Lotus Cars Ltd. NHTSA Temporary Exemption No. 99–12 from S7, *Performance Criterion*, of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact* (64 FR 61379). The basis of the grant was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. The exemption covered the Esprit model, and was to expire on September 1, 2002. However, Lotus applied for a renewal of its hardship exemption on May 10, 2002, thereby staying the expiration date until the agency has acted upon its petition (49 CFR 555.8(e)). The reader is referred to the 1999 notice for information on the original application and Administrator's decision to grant it.

Why Lotus Needs a Temporary Exemption

In early 1997, Lotus decided to terminate production of the Esprit on September 1, 1999, and to homologate another model, the Elise, for the American market beginning in 2000. This decision allowed it to choose the option for compliance with S7 provided by S6.1.3, *Phase-in Schedule #3*, of Standard No. 201, to forego compliance with new protective criteria for the period September 1, 1998—September 1, 1999, and to conform 100 percent of its production thereafter.

But a fresh look was taken at the direction of the company, and the plans of early 1997 were abandoned. In due course, new management decided to continue the Esprit in production beyond September 1, 1999, until September 1, 2002, while developing an all-new Esprit, and to remain in the American market without interruption. However, as described in its original petition, the company found itself unable to conform the current Esprit to Standard No. 201. It petitioned for, and received, a temporary exemption until September 1, 2002. Its continued need for an exemption is explained in the next section.

Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 201

Lotus remarked that the entity that ultimately controls Lotus Cars is the manufacturer of Proton cars, "the Malaysian company Perusahan Otomobile Nasional Berhad (Proton)." We noted in the December 4, 2002, notice that Lotus' balance sheets and income statements did not indicate that this Asian entity, itself a motor vehicle manufacturer, made capital contributions to Lotus or otherwise participated in the management of this British company. Lacking these indicia of control, we stated that we had decided not to count cumulatively the production of the two companies which, if totaling at least 10,000 units would render Lotus ineligible for a hardship exemption.

On December 16, 2002, during the comment period, Lotus addressed the question of its relationship to Proton. At the time Lotus filed its application in May 2002, Proton owned 80 percent of the shares of Lotus but had since acquired total ownership of the company. Proton had in fact made a capital contribution to the company "since its acquisition," which allowed Lotus "to pay off certain debts, return to solvency, and thus to continue trading." It noted that "the capital infusion also permitted continued operations from a cash-flow basis." Lotus argued that we should more properly consider the facts that (1) there is no similarity of design between the cars produced by Proton and Lotus, (2) Lotus designed and engineered the Esprit without assistance from Proton, and (3) Lotus's vehicles are imported and sold both in the U.S. and Europe by a dealer/distributor network "totally independent" of Proton. In support, Lotus reminded us that we had established these three criteria in deciding that Maserati (when it was owned by Chrysler Corporation and G.B.M. S.p.A) and Ferrari (when Fiat held a 90-percent ownership interest) were eligible to apply for hardship exemptions (*See* respectively, 53 FR 28324, July 27, 1988 and 54 FR 46321, November 2, 1989). These three factors also exist in the Lotus case, and an additional one of relevance: the vehicle for which exemption is sought was designed well over 20 years ago when Lotus was an independent company. Therefore, we have decided that Lotus remains a small volume manufacturer within the meaning of the exemption legislation. In 1999, Lotus produced 2,569 automobiles; in 2000, 2,993 automobiles (including 127 Opel/Vauxhall cars); and in 2001, 5,181 automobiles (including 3,046 for Opel/Vauxhall). Over the same three-year period it exported 112, 162, and 48 vehicles respectively to the United States.

Notwithstanding the increase in production between 1999 and 2001, Lotus's financial submissions show the company's operating loss of 7,513,000 Pounds for its fiscal year 2001–2002, a loss of 20,244,000 Pounds for its fiscal year 2000–2001, and an operating profit of 12,368,000 Pounds for its fiscal year 1999–2000. This represents a cumulative loss of 15,389,000 Pounds, or $24,622,400 computed at a rate of $1.6 = 1 Pound.

Lotus had intended to cease production of the exempted Esprit by August 31, 2002, but the successor project was cancelled in early 2001 because of lack of capital. A back-up plan was conceived for a project called M260, but "was unable to launch itself." By the end of 2001, Lotus had laid off 197 employees, and, by early 2002, "an additional 241 employees were made redundant." However, it had located "an additional supply of air bags and transmissions * * * permitting the construction of up to an additional 140 vehicles." The company stated that its "only hope for keeping the US market alive [is] to build the additional 140 Esprits, ending production on December 21, 2003," the period for which it has requested an exemption. No further exemption will be requested for the Esprit. It hopes to "find a way to finance" the M260 project for introduction in the U.S. in 2004, a vehicle being designed to conform with Standard No. 201.

Absent an exemption until 2004, Lotus will suffer the loss of the U.S. market, a substantial economic hardship.

Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

In its application, Lotus simply said that "the extension will continue to be consistent with the public interest and the objectives of the Safety Act." On December 16, 2002, it repeated and confirmed the assertions made in the past that, after many years of sales of the Esprit with its current body shape, the company knew of no head injuries suffered by occupants contacting the upper interior of the cockpit. The number of vehicles anticipated to be sold during the exemption period is insignificant in terms of the number of vehicles already on the roads.

If Lotus USA is required to close because of a denial, its employees will be out of work and its dealers "significnatly adversely affected." In its new application, the company adds that its "image and credibility would be ruined." An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

Comments Received on the Lotus Petition

We received five comments on the Lotus petition, all of which supported an extension of the exemption. Three of the comments emphasized the importance of adequate repair facilities and availability of spare parts for the continued safe operation of Lotus cars in the United States.

The Agency's Findings

Both the 1999 and 2002 petitions by Lotus clearly demonstrate the financial turmoil that the company has experienced in the past few years. With recent losses cumulating over $24,000,000, Lotus has experienced some temporary relief by the infusion of capital from Proton. This relief will allow it to manufacturer from existing parts the final 140 Esprits and to sell them in the Untied States (cars which, built to American specifications, might not be saleable elsewhere). In engineering the M260 to comply with Standard No. 201, Lotus has made a good faith effort to comply with that standard. The term of the exemption would be short and only a limited number of vehicles produced under it. An exemption would assure an adequate supply of spare parts and afford a continuing, uninterrupted commercial relationship with Lotus dealers and their employees in the United States.

According, for the reasons discussed above, it is hereby found that to require compliance with Standard No. 201 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that a temporary exemption from Standard No. 201 would be in the public interest and consistent with the objectives of traffic safety. Therefore, NHTSA Temporary Exemption No. 99–12, exempting the Esprit model from 49 CFR 571.201 Standard No. 201, *Occupant Protection in Interior Impact*, is hereby extended to February 1, 2004.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: February 25, 2003.

Jeffrey W. Runge,
Administrator.

[FR Doc. 03–4801 Filed 2–28–03; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20994]

New Jersey Transit Bus Operations, Inc.—Pooling—Academy Lines, L.L.C.

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed pooling application.

SUMMARY: By application filed on January 27, 2003,[1] New Jersey Transit Bus Operations, Inc. (NJT Bus), and Academy Lines, L.L.C. (Academy), jointly request approval of a service pooling agreement under 49 U.S.C. 14302 and 49 CFR 1184.1, *et seq.* to pool portions of their commuter operations that extend over U.S. Highway 9 between Lakewood, NJ, and New York, NY (the Route 9 Corridor).

DATES: Comments on the proposed service pooling agreement may be filed with the Board in the form of verified statements on or before April 2, 2003. If comments are filed, applicants' rebuttal statement is due on or before April 22, 2003. The Board will issue a decision on the merits after consideration of any comments and rebuttal that are submitted.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20994 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to each of applicants' representatives: (1) E. Philip Isaac, Deputy Attorney General, One Penn Plaza East, Newark, NJ 07105–2246; and (2) Joseph J. Ferrara, 111 Paterson Avenue, Hoboken, NJ 07030.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the proposed pooling agreement, the carriers will coordinate their schedules and fares over the involved routes for their regularly scheduled passenger bus operations. The carriers do not intend to pool revenues or share expenses (except for the costs associated with preparing and printing public timetables showing their combined coordinated services and Port Authority Bus Terminal (PABT) gate and platform fees), but will cross-honor their independently sold commutation tickets and reimburse each other accordingly.

In 1991, NJ Transit was authorized to perform these same pooling operations with another regulated passenger carrier, Suburban Trails, Inc. (Suburban). *See NJ Transit Bus Operations, Inc.—Pooling—Suburban Trails, Inc.*, No. MC–F–19737 (ICC served Mar. 19, 1991). Effective January 3, 2003, however, Suburban ceased serving the Route 9 Corridor, withdrew from the pooling agreement, and exited the market. By the filing of this application, approval is being sought to allow Academy to assume Suburban's place in the pooling operation.[2]

NJT Bus is a wholly owned subsidiary of the New Jersey Transit Corporation,

[1] Applicants concurrently filed a petition under 49 U.S.C. 13541(a) requesting exemption from 49 U.S.C. 14302 so as to enable them to conduct interim operations under their service pooling agreement for a period of not more than 50 days, or such other time as the Board may direct, pending Board action on the pooling application. Applicants' request was granted by decision served February 12, 2003 in *New Jersey Transit Bus Operations, Inc.—Pooling—Academy Lines, L.L.C., Exemption Pursuant to 49 U.S.C. 13541 From the Provisions of 49 U.S.C. 14302*, STB Docket No. MC–F–20994 (STB served Feb. 12, 2003).

[2] In an application filed on February 4, 2003 in STB Docket No. MC–F–20997, *Coach USA, Inc., et al.—Purchase and Sale of Assets—Academy Bus, L.L.C., et al.*, Coach USA, Inc. and two of its subsidiaries, Suburban Transit Corp., and Red & Tan Tours, Inc. (the Coach applicants), and Academy Bus, L.L.C. and two of its subsidiaries, Academy Express, L.L.C., and Academy (the Academy applicants) state that they have entered into a transaction to "swap" certain interstate and intrastate motor passenger carrier operating authorities in order to enhance the efficiency of their respective operations. The Academy applicants will transfer to the Coach applicants the "Academy Routes," while the Coach applicants will transfer to the Academy applicants the "Route 9 Corridor route," the "Suburban Atlantic City Routes," and the "Red & Tan Routes." This proceeding is presently pending before the Board. Reference is made to it here because Academy and Suburban (another Coach subsidiary) are involved in the instant proceeding.

an instrumentality of the State of New Jersey. NJT Bus holds operating authority in No. MC–3647 and subnumbers thereunder. It operates a fleet of about 2,025 buses and conducts interstate operations over approximately 238 bus routes, including commuter operations to and from the PABT in New York City. NJT Bus currently operates approximately 123 daily weekday peak period trips in the Route 9 Corridor to and from midtown Manhattan, NY. NJT Bus will provide some service on Saturdays and Sundays, but on a substantially reduced basis compared with weekday schedules.

Academy is a privately held New Jersey limited liability company, holding operating authority in No. MC–414016 and subnumbers thereunder. Applicant operates a fleet of over 600 buses rendering scheduled, regular-route intercity operations primarily in commuter services from specified origins in New Jersey to various points in New York City, including the PABT. Academy presently is a competitor in the Route 9 Corridor, serving the Wall Street area of lower Manhattan, rather than the PABT in midtown Manhattan. Under the negotiated pooling agreement, Academy anticipates operating approximately 74 daily weekday peak period trips between New Jersey points and the PABT. Academy will operate from the gates in the PABT that are used by NJT Bus, and passengers will board and alight from buses at the same locations both in New York City and in the communities along the Route 9 Corridor.

Applicants assert that there is substantial competition on the pooled route to protect the public and that the pooling agreement does not threaten to produce an unreasonable restraint on competition. According to applicants, private automobiles provide ample competition for the pooled operations on the Route 9 Corridor. Moreover, the New Jersey Coast Line and the Northeast Corridor Line are not too distant from the Route 9 Corridor, and the frequent weekday rail service which the rail arm of NJ Transit and the National Railroad Passenger Corporation (Amtrak) offer is another alternative available to applicants' passengers.

Applicants state that the proposed pooling of the bus lines' schedules will result in better service to the public, will render operations more economical and efficient, and will not unreasonably restrain competition. In addition, they assert that approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

Copies of the pooling application may be obtained free of charge by contacting applicants' representatives. Alternatively, the application may be inspected at the offices of the Surface Transportation Board, Room 755, during normal business hours, or a copy of the application may be obtained from the Board's Web site at "*http://www.stb.dot.gov.*"

A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; the New York Department of Transportation, Truck and Bus Safety Section, Room 501–A, Building 7A, 1220 Washington Avenue, Albany, NY 12232; and the New Jersey Department of Transportation/Office of Regulatory Affairs (Commercial Bus Inspection), 225 E. State Street, P.O. Box 611, Trenton, NJ 08666–0611.

Decided: February 25, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–4888 Filed 2–28–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service; Request for Comments

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: At its January 8th public meeting, the Commission established its public-comment process. This process is designed to ensure that every affected and interested party has an opportunity to share its views and concerns with us. Pursuant to the procedures established at the January 8th public meeting, the Commission has received numerous written comments from a wide variety of sources. Most of these comments are now posted on the Commission's Web site at *http://www.treas.gov/offices/domestic-finance/usps.*

To ensure that all views are properly considered and tested, the Commission will give interested parties an opportunity to respond to the assertions and recommendations made by other parties during the public-comment process. Rebuttal comments should clearly indicate the specific assertion or recommendation that is being challenged as well as the party that had advanced this assertion or recommendation in its public comment.

The Commission has established three methods by which rebuttal comments can be submitted for consideration and review:

1. Transmission by Email to the following address: *pcusps_rebuttal@do.treas.gov.* Statements can be embedded in the Email as ASCII text or sent as a MS Word or ASCII text attachment. Do not include artwork or other graphic elements.

2. Stored on 3½ inch high density computer disk as a MS word or ASCII text document (Windows format only) and mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

3. Typewritten statements may be mailed or hand-delivered to: President's Commission on the United States Postal Service, 1120 Vermont Avenue, NW., Suite 971, Washington, DC 20005.

DATES: E-mail transmissions of all rebuttal comments must be received by the Commission no later than 5 p.m. Eastern Standard Time on Thursday, March 13. Mailed submissions must be postmarked no later than 5 p.m. Eastern Standard Time on Thursday, March 13.

FOR FURTHER INFORMATION CONTACT: If you have any questions about this rebuttal process, please contact Randall Lewis or Jana Sinclair White of the Commission staff at (202) 622–5930.

SUPPLEMENTARY INFORMATION: To be accepted by the Commission, rebuttal comments must not exceed a maximum length of 10 pages of double-spaced written text. Please be aware that the Commission may, at its discretion, post any rebuttal comments it receives on the Commission's Web site at *http://www.treas.gov/offices/domestic-finance/usps.*

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–4819 Filed 2–28–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (collectively, the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On November 8, 2002, the agencies requested public comment for 60 days on proposed revisions to the Country Exposure Report and the Country Exposure Information Report, which are currently approved collections of information. After considering the two comments the agencies received, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, adopted the proposed revisions.

DATES: Comments must be submitted on or before April 2, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0100, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to "Country Exposure Report, 7100–0035," may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to "Country Exposure Report, 3064–0017." Commenters are encouraged to submit comments by fax or electronic mail [Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia M. Ayouch, Board Clearance Officer, (202) 452–2204, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Tamara R. Manly, Management Analyst, (202) 898–7453, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with revision, the following currently approved collections of information:

Report Title: Country Exposure Report/Country Exposure Information Report.

Form Number: FFIEC 009 and FFIEC 009a.

Frequency of Response: Quarterly.

Affected Public: Business or other for profit.

For OCC

OMB Number: 1557–0100.

Estimated Number of Respondents: 21 (FFIEC 009), 21 (FFIEC 009a).

Estimated Average Time per Response: 30 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 2,520 burden hours (FFIEC 009), 441 burden hours (FFIEC 009a).

For Board

OMB Number: 7100–0035.

Estimated Number of Respondents: 31 (FFIEC 009), 16 (FFIEC 009a).

Estimated Average Time per Response: 30 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 3720 burden hours (FFIEC 009), 336 burden hours (FFIEC 009a).

For FDIC

OMB Number: 3064–0017.

Estimated Number of Respondents: 22 (FFIEC 009), 22 (FFIEC 009a).

Estimated Average Time per Response: 30 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 2,640 burden hours (FFIEC 009), 462 burden hours (FFIEC 009a).

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 and 1817 (for national banks), 12 U.S.C. 248(a), 1844(c), and 3906 (for state member banks and bank holding companies); and 12 U.S.C. 1817 and 1820 (for insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given

confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment. Small businesses (*i.e.*, small banks) are not affected.

Abstract

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of one percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

Current Action

On November 8, 2002, the OCC, the Board, and the FDIC jointly published a notice soliciting comments for 60 days on proposed revisions to the FFIEC 009 and FFIEC 009a (67 FR 68228). The agencies proposed to require electronic submission of all FFIEC 009 and 009a reports effective with the March 31, 2003, report date. The agencies proposed to have the Board collect and process the FFIEC 009 and 009a reports on their behalf via the Federal Reserve System's Internet Electronic Submission (IESUB) system. Electronic filing capability via IESUB is available on the Internet through the use of data entry or a file transfer feature. These methods are secure and result in a minimal burden to banks and bank holding companies. The agencies would no longer accept paper (hard copy) reports from banks and bank holding companies after the December 31, 2002, report date. The submission deadline would remain 45 calendar days after the report date. No other changes to the FFIEC 009 reporting forms or the FFIEC 009a reporting forms and instructions were proposed.

Type of Review: Revision of a currently approved collection.

Comments Received on the Agencies' Proposal

In response to the November 8, 2002, notice, the agencies received 2 comment letters, one from a banking organization and one from a bankers' association. The two commenters alluded to their familiarity with the IESUB system filing requirements and supported the proposed submission method. However, the commenters expressed concern about the start-up time and effort required to initially submit their FFIEC 009 and 009a reports electronically. The commenters specifically cited the lack of currently approved FFIEC 009 and 009a vendor software applications as a concern. The commenters recommended the agencies investigate the possibility of providing a standardized pre-formatted form for file transfer submission to alleviate this concern.

The FFIEC and the agencies have considered the comments received and determined that it would not be practical or necessary for the Board, or the Federal Reserve district banks, to create a specific pre-formatted form for filing the FFIEC 009 and 009a via IESUB using the file transfer method. Rather than developing a pre-formatted form for file transfer submissions, the Federal Reserve district banks will provide technical assistance to any respondent who needs assistance creating files for their initial FFIEC 009 and 009a submission via IESUB. Any FFIEC 009 and 009a respondent who needs assistance is encouraged to visit the Federal Reserve System Web site *http://www.reportingandreserves.org/req.html* for additional information on IESUB. The Web site also includes a link that respondents may use to contact their local Federal Reserve district bank for assistance with IESUB.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: February 24, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 24th day of February, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–4911 Filed 2–28–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, April 1, 2003, from 3 p.m. e.s.t. to 4:30 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 26, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–4883 Filed 2–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, March 18, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, March 18, 2003, from 1:30 to 3 pm EST via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 24, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–4884 Filed 2–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will meet on Tuesday, Wednesday and Thursday, March 11, 12 and 13, 2003, in the first floor conference room, 1575 Eye Street, NW., Washington, DC. On March 11, the meeting will be from 8:30 a.m. until 2:30 p.m. On March 12 and 13, the meeting will be from 8:30 a.m. until 5 p.m. The meeting is open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs and to assure that stakeholder and beneficiary concerns are fully addressed. The Commission will consider recommendations prepared by VA's Under Secretary for Health, veterans service organizations, individual veterans, Congress, medical school affiliates, VA employees, local government entities, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs regarding the realignment and allocation of capital assets necessary to meet the demands for veterans health care services over the next 20 years.

This is the second meeting of the Commission. On March 11, the principal agenda topic is a detailed briefing and discussion of the CARES Demand Model. On March 12, the Commission will receive detailed briefings and discuss CARES Market Areas, Gap Analysis, Special Disability Populations and Stakeholder Communication. On March 13, the Commission will receive a detailed briefing and discuss CARES Planning Initiatives.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Commission. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Department of Veterans Affairs, CARES Commission (OOCARES), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing additional information should contact Mr. Richard E. Larson at (202) 501–2000.

Dated: February 24, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–4906 Filed 2–28–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Thursday, March 6, 2003, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC and is open to the general public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

The morning and afternoon sessions will be a discussion of format and issues for the Final Report to the President.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia 22209.

Dated: February 24, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–4905 Filed 2–28–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 41

Monday, March 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2003–14449; Notice No. 03–03]

RIN 2120–AH78

Enhanced Flight Vision Systems

Correction

In proposed rule, document 03–3265 beginning on page 6802 in the issue of Monday, February 10, 2003 make the following corrections:

§ 91.175 [Corrected]

1. On page 6807, in § 91.175, in the third column, under the heading "EFVS Proposed Rule" in paragraph (c), in the second line, "paragraph (1)" should read "paragraph (l)".

2. On the same page, in the same section, in the same column, under the same heading, in paragraph (e)(1), in the first line, the words "pilot operating" should be removed.

3. On the same page, in the same section, in the same column, under the same heading, in the same paragraph, in the second line "paragraph (c) or (1)" should read "paragraph (c) or (l)".

4. On the same page, in the same section, in the same column, under the same heading, in paragraph (l), in the first line, the words "may land that approach" should be removed.

5. On the same page, in the same section, in the same column, under the same heading, in the same paragraph, in the fifth line, "at any airport at any airport" should read "at any airport".

6. On page 6808, in the same section, in the third column, under the heading "EFVS Proposed Rule", in paragraph (l)(7), in the third line, "his" should read "has".

[FR Doc. C3–3265 Filed 2–28–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
March 3, 2003

Part II

Department of Treasury

Alcohol and Tobacco and Trade Bureau

27 CFR Parts 4, 5, and 7
Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R–199P); Final Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[TTB T.D.–1; Ref: ATF Notice Nos. 884, 892, and 896]

RIN: 1512–AB97

Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R–199P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: TTB is amending the regulations to prohibit the appearance on labels or in advertisements of any health-related statement, including a specific health claim, that is untrue in any particular or tends to create a misleading impression. A specific health claim on a label or in an advertisement is considered misleading unless the claim is truthful and adequately substantiated by scientific evidence; properly detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. In addition, TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of specific health claims on labels. If FDA determines that a specific health claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of such statement on a label.

Health-related statements that are not specific health claims or health-related directional statements will be evaluated on a case-by-case basis to determine if they tend to mislead consumers. The final rule provides that health-related directional statements (statements that direct or refer consumers to a third party or other source for information regarding the effects on health of alcohol consumption) will be presumed misleading unless those statements include a brief disclaimer advising consumers that the statement should not encourage consumption of alcohol for health reasons, or some other appropriate disclaimer to avoid misleading consumers. TTB believes that the final regulations will ensure that labels and advertisements do not contain statements or claims that would tend to mislead the consumer about the significant health consequences of alcohol consumption.

DATES: This rule is effective June 2, 2003.

FOR FURTHER INFORMATION CONTACT: William H. Foster, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION: Please note: References to "ATF" are to the Bureau of Alcohol, Tobacco and Firearms as it existed before January 24, 2003. The new Alcohol and Tobacco Tax and Trade Bureau (TTB) has taken over the former ATF's responsibilities for alcohol beverage labeling regulations.

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I. Background

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and (f), authorizes TTB to issue regulations on the packaging, labeling and advertising of alcohol beverages in order to prohibit deception of the consumer, and to prohibit, irrespective of falsity, statements relating to analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer. The FAA Act generally requires bottlers and importers of alcohol beverages to obtain certificates of label approval prior to the bottling or importation of alcohol beverages for sale in interstate commerce. Pre-approval of advertising is not required by the FAA Act.

Regulations that implement the provisions of section 205(e) and (f), as they relate to the labeling and advertising of wine, distilled spirits, and malt beverages, are set forth in Title 27, Code of Federal Regulations (CFR), parts 4, 5, and 7, respectively. These current regulations prohibit the appearance on labels or in advertisements of any statement, design, representation, pictorial representation, or device representing that the use of wine, distilled spirits, or malt beverages has curative or therapeutic effects if the representation is untrue in any particular or tends to create a misleading impression. This standard originated more than 60 years ago with the initial labeling and advertising regulations issued under the FAA Act.

TTB and its predecessor agencies have historically taken a very strict view of the regulatory prohibition on false or misleading curative or therapeutic claims about alcohol beverages. This strict interpretation is based on the view that "distilled spirits, wines and malt beverages are, in reality, alcoholic beverages and not medicines of any sort, * * *." FA–129, dated January 5, 1938.

In view of the undisputed health risks associated with alcohol consumption, we and our predecessors have always taken the position that statements attributing positive effects on health to the consumption of alcohol beverages are misleading unless such statements are appropriately qualified and properly balanced. TTB views statements that make substantive claims regarding health benefits associated with alcohol beverage consumption (*e.g.*, "moderate alcohol consumption is good for your health") as making curative or therapeutic claims. Claims that set forth only a partial picture or representation might be as likely to mislead the consumer as those that are actually false. A claim that is supported by scientific evidence might still mislead the consumer without appropriate qualification and detail. Any such claim is considered misleading unless it is properly qualified and balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive effects on health would be outweighed by numerous negative effects on health.

II. Health Consequences of Alcohol Consumption

The risks associated with alcohol consumption are well documented. In Notice No. 884, ATF summarized these risks as set forth in an article by Charles H. Hennekens, M.D. as follows: [1]

> The hazards of heavy alcohol consumption are clear and substantial and have far-reaching health and social consequences. Alcohol is the second leading cause of preventable deaths in the United States as well as most industrialized countries, second only to cigarette smoking. Drinking increases the risk of cancer of the liver, mouth, tongue, and esophagus and has been implicated as a cause of 3 to 5 percent of all cancer deaths. Heavy alcohol consumption is also associated with increased risks of hemorrhagic stroke and cardiomyopathy, and it predisposes to hepatic cirrhosis, the ninth most common cause of death in the United States. In pregnant women, heavy alcohol consumption is associated with fetal alcohol syndrome. Alcohol drinking is also implicated in over 40 percent of all fatal traffic crashes, which are a chief cause of premature deaths in younger people, and it is associated with suicides, industrial accidents, sex crimes, robberies, and murders. It is estimated that 14 million U.S. residents suffer from alcohol abuse and dependence, and 76 million are affected by its presence in a family member. (Citations omitted).

It is true that heavier levels of alcohol consumption cause many of these health risks. It is also true that there are millions of Americans with alcohol dependency problems who find themselves unable or unwilling to control their consumption of alcohol. Given the serious health risks associated with higher levels of alcohol consumption, and given the fact that most medical studies agree that the effects of moderate consumption differ from individual to individual, it was ATF's longstanding, and is now our, position that any claim associating health benefits with moderate alcohol consumption must be carefully evaluated to ensure that it does not mislead the consumer about the various health consequences related to the consumption of alcohol beverages.

Prior to engaging in this rulemaking, ATF recognized that there were several scientific studies establishing a link between moderate alcohol consumption and a reduced risk of coronary artery disease ("CAD").[2] However, it was ATF's conclusion that there was not significant scientific evidence to support an unqualified conclusion that moderate alcohol consumption has net health benefits for all or even most individual consumers. Some studies have suggested that only older drinkers will accrue any net health benefits from moderate alcohol consumption.[3] This is because younger individuals have such a low risk for coronary artery disease, and are much more likely to be at risk from alcohol consumption, even at lower levels. This difference in risk factors has been explained as follows:[4]

> The net outcome of all-cause mortality associated with a certain alcohol consumption level therefore also depends on the drinker's absolute risk of dying from these various causes. Accordingly, older people—who are at high absolute risk of coronary heart disease and ischemic stroke and at low risk for injury, cirrhosis, and other alcohol-related diseases are most likely to benefit from low levels of alcohol consumption. In contrast, for men and women under age 40, who have relatively low absolute risk of dying from strokes, heart disease, and alcohol-related diseases but a high absolute risk of dying from injury, all-cause mortality will increase even at relatively low alcohol-consumption levels. * * *. Finally, the absolute risk of death from injury or coronary heart disease is lower in young women than in young men, leading to an increase in all-cause mortality even in young women who are light drinkers (less than two drinks every 3 days) compared with abstainers. (Citations omitted).

Overall, the available scientific literature establishes that there may be serious health risks associated with heavy as well as moderate alcohol consumption, depending on the individual.[5]

III. Industry Circular 93–8

On August 2, 1993, ATF published Industry Circular 93–8. The circular generally restated ATF's longstanding position regarding misleading curative and therapeutic claims. ATF explained that claims that set forth only a partial picture, representation, or truth might be as likely to mislead the consumer as those that are actually false. Thus, a statement that attributed health benefits to the moderate consumption of alcohol beverages, even if backed up by medical evidence, might have an overall misleading effect if such statement was not properly qualified, did not give all sides of the issue, and did not outline the categories of individuals for whom any such positive effect would be outweighed by numerous negative effects on health.

ATF also explained that its policy regarding health claims on labels had been reinforced by the 1988 enactment of the Alcoholic Beverage Labeling Act (ABLA), 27 U.S.C. 213 *et seq.* The ABLA contains a declaration of policy and purpose which states that the Congress finds that "the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information and to minimize burdens on interstate commerce." 27 U.S.C. 213. As a result of this concern, the ABLA requires that any alcohol beverage container held for sale or distribution in the United States must bear the following statement on the label:

> Government Warning: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

It is clear that one of the purposes of the ABLA was to avoid confusing the American public about the health hazards associated with the consumption of alcohol beverages. In order to effectuate this goal, Congress prescribed specific language that must appear on the labels of alcohol beverage containers. To the extent that the overall message of any health claim is inconsistent with the message of the Government warning statement, then it may result in label information that is confusing and could mislead the consumer, and would thus be prohibited under the FAA Act.

In Industry Circular 93–8, ATF further noted that other Federal agencies, such as the Food and Drug Administration and the Federal Trade Commission, might have jurisdiction over certain aspects of advertising and labeling issues involving health claims. We will address this issue further in section IV ("Role of Other Federal Agencies with Respect to Specific Health Claims and other Health-Related Statements").

ATF also stated that the distribution of advertising materials that included the full text of the April 1992 edition of "Alcohol Alert," a publication of the National Institute on Alcohol Abuse and Alcoholism (NIAAA), would not be in violation of current regulations. This NIAAA publication provides a comprehensive discussion of the health consequences of moderate alcohol consumption. The industry circular

stated that if the advertising materials also contained editorializing, advertising slogans, or exhortations to consume the product, ATF would evaluate the additional text to determine whether or not the advertisement presented a balanced picture of the risks associated with alcohol consumption. In addition, ATF stated that the use of buttons, shelf talkers (additional product information placed on the retail shelf), table tents, and similar items that excerpt any portion of the NIAAA publication, contain health slogans or other inferential statements drawn from this publication, or are based on any other publication or article citing the health benefits of alcohol consumption, would be closely scrutinized to determine if they presented a balanced picture of the risks associated with alcohol consumption.

ATF reminded industry members in Industry Circular 93–8 that substantive health claims on labels are considered to be misleading unless they are properly qualified, present all sides of the issue, and outline the categories of individuals for whom any positive effects on health would be outweighed by numerous negative effects on health. Finally, ATF stated that it intended to initiate rulemaking on this issue; however, pending rulemaking, ATF would continue to evaluate claims in labeling and advertising on a case-by-case basis.

IV. Role of Other Federal Agencies With Respect to Specific Health Claims and Other Health-Related Statements

While TTB now has primary jurisdiction over the labeling and advertising of alcohol beverages, under certain circumstances the labeling and advertising of alcohol beverages may also be subject to the jurisdiction of the Food and Drug Administration (FDA) or the Federal Trade Commission (FTC). For example, since certain wine products containing less than 7 percent alcohol by volume are not wines subject to the FAA Act, the labeling of such products generally falls within FDA's jurisdiction. ATF always utilized, as TTB does now, the scientific and public health expertise of FDA in approving ingredients in alcohol beverages, requiring label disclosure of certain substances, and identifying adulterated alcohol beverages that are deemed mislabeled.

By letter dated April 9, 1993, FDA advised ATF that certain curative, therapeutic, or disease-prevention claims for an alcohol beverage might place the product in the category of a drug under the Federal Food, Drug and Cosmetic Act (FFDC Act), 21 U.S.C. 321(g)(1)(B). FDA evaluates health claims on food labels pursuant to its authority under the FFDC Act, as amended by the Nutrition Labeling and Education Act (NLEA), Pub. L. 101–535 (1990). The law provides that a food product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with certain procedures mandated by FDA. 21 U.S.C. 343(r)(1)(B). FDA's regulations provide that FDA will approve a health claim when it determines, "based on the totality of publicly available scientific evidence" that there is "significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence." 21 CFR 101.14(c).

FTC's general jurisdiction over advertising extends to alcohol beverages. In a policy statement published in the **Federal Register** on June 1, 1994 (59 FR 28394), FTC stated that it is necessary to examine "whether qualified claims are presented in a manner that ensures that consumers understand both the extent of the support for the claim and the existence of any significant contrary view within the scientific community." The FTC policy statement stated that an unqualified health claim in the advertising of a food was likely to be deceptive if the food also contained a nutrient that increased the risk for another disease or health-related condition, and the risk-increasing nutrient was closely related to the subject health claim.

V. Fourth Edition of the Dietary Guidelines for Americans (1995)

The Fourth Edition (1995) of the "Dietary Guidelines for Americans" was published by the U.S. Department of Agriculture (USDA) and the U.S. Department of Health and Human Services (HHS) in 1996. This edition of the Guidelines contained a detailed discussion of the health consequences of alcohol consumption.

The 1995 Guidelines acknowledged that "[c]urrent evidence suggests that moderate drinking is associated with a lower risk for coronary heart disease in some individuals." The Guidelines then went on to discuss the "serious health problems" caused by higher levels of alcohol consumption, including increased risk for high blood pressure, stroke, and heart disease.

The 1995 Guidelines recommended that if adults chose to drink alcohol beverages, they should consume them only in moderation. The term "moderation" was defined as no more than one drink per day for women and no more than two drinks per day for men. However, the 1995 Guidelines stressed that many people should not drink alcohol beverages at all, including children and adolescents, women who are trying to conceive or who are pregnant, individuals who plan to drive or take part in activities that require attention or skill, and individuals using prescription and over-the-counter medications. Finally, the 1995 Guidelines suggested that individuals of any age who could not restrict their drinking to moderate levels should not drink at all.

VI. Competitive Enterprise Institute Petition

On May 9, 1995, the Competitive Enterprise Institute (CEI) submitted a petition asking ATF to issue a rule allowing alcohol beverage labels and advertisements to carry statements regarding the purported benefits of moderate alcohol consumption. More specifically, CEI proposed that ATF issue a rule specifically allowing the following statement to appear on labels and in advertisements: "There is significant evidence that moderate consumption of alcoholic beverages may reduce the risk of heart disease." By letter dated November 10, 1995, CEI submitted a survey purporting to show that less than 42 percent of the general public was "aware of the medical benefits of moderate consumption."

By letter dated January 13, 1997, ATF denied CEI's rulemaking petition. ATF determined that CEI's proposed claim was not appropriately qualified, in that it did not define the categories of individuals for whom there would be no appreciable benefits (such as younger individuals already at low risk of heart disease), or individuals for whom there would be significant risks associated with moderate alcohol consumption (such as recovering alcoholics and persons otherwise at risk for alcohol abuse, or people with certain medical conditions). The claim was not balanced, in that it did not explain the significant risks associated with higher levels of alcohol consumption, as well as the potential risks of moderate alcohol consumption for certain individuals. ATF found that the claim, taken in isolation, would tend to mislead the consumer about the significant health consequences of alcohol consumption.

Before ATF had issued its denial of CEI's petition, CEI had filed suit (October 29, 1996) in the United States District Court for the District of Columbia, challenging ATF's delay in acting on its petition. In 1997, CEI amended its complaint to challenge ATF's denial of the rulemaking petition. CEI also alleged that ATF had a "de facto" ban on the use of health claims, which violated the First Amendment and the FAA Act. In 1998, the district court granted the Government's motion for summary judgment on CEI's challenge to the denial of its rulemaking petition. Both parties filed motions for summary judgment on the remaining issues.

VII. Other Health-Related Statements on Alcohol Beverage Labels

On February 4, 1999, ATF approved two applications for certificates of label approval bearing directional health-related statements directing consumers to the Dietary Guidelines or their family doctor for information about the "health effects of wine consumption." ATF approved those labels based on its determination that the statements were not substantive health claims, but instead were neutral statements directing consumers to third parties for additional information regarding the effects on health of alcohol consumption. The first approved labeling statement read as follows:

> The proud people who made this wine encourage you to consult your family doctor about the health effects of wine consumption.

The second labeling statement read as follows:

> To learn the health effects of wine consumption, send for the Federal Government's *Dietary Guidelines for Americans*, Center for Nutrition Policy and Promotion, USDA, 1120 20th Street, NW., Washington, DC 20036 or visit its web site: *http://www.usda.gov/fcs/cnpp.htm*.

Prior to being approved, the two applications received a great deal of public attention. In July of 1997, both HHS and FTC urged ATF not to approve the labels until a consumer survey was conducted. In that same month, Senators Robert Byrd and Strom Thurmond wrote to the Secretary of the Treasury, also raising several concerns about the proposed labeling statements. ATF also received several letters from public health organizations concerned that the labels would encourage consumers to consume alcohol beverages for health reasons. In view of these concerns, ATF decided to defer final action on the labels pending the completion of a consumer survey by the Center for Substance Abuse Prevention (CSAP), a component of HHS.

In January of 1998, CSAP transmitted to ATF the main findings from its consumer survey. The survey found that most subjects reported that they do not read wine labels, and that neither of the two labeling statements would likely induce wine drinkers to alter their drinking pattern, quantitatively or otherwise. However, several members of the focus groups reported that information about the positive effects on health of wine consumption from the media had led them to increase their wine intake.

While the CSAP survey did not establish that the labeling statements would influence the drinking patterns of wine drinkers, it did indicate that heavy drinkers may justify or increase their consumption levels based on their independent understanding of information regarding the alleged health benefits of moderate consumption. Furthermore, the survey established that consumers would be no more likely to seek additional health information after reading the proposed labeling statements.

Based on the evidence before it, including the consumer survey conducted by CSAP, ATF concluded that there was insufficient evidence in the record to establish that the directional statements tended to mislead consumers about the effects on health of alcohol consumption. Accordingly, the labels were approved.

The approval of these labels generated considerable interest from Federal health officials, members of Congress, and public advocacy groups, who expressed concern about consumer perception of the label statements. Of particular note, former Surgeon General David Satcher expressed concern that people might draw an incorrect message from these labels.

Moreover, ATF became aware of a number of press accounts interpreting the directional statements as actual health claims about the benefits of alcohol consumption. For example, on February 5, 1999, the "Wall Street Journal" wrote that the expected decision to approve the labels would allow "wine producers to put labels on bottles that point to the potential health benefits of their product." On February 5, 1999, the Associated Press reported the decision as follows: "Scientific studies have suggested it, and now winemakers finally may get a chance to tout it through their labeling: A glass or two of the grape each day could be good for you." On February 6, 1999, the "Los Angeles Times" reported that "[t]he federal government approved changes Friday that will allow winemakers for the first time to tout on labels the connection between drinking wine and better health." That same date, the "Washington Post" reported that ATF had "decided that winemakers may add another label to the bottle to encourage consumers to learn more about the possible benefits of drinking wine." In an article dated February 9, 1999, the "San Francisco Examiner" stated that ATF's decision "would allow winemakers to carry bottle labels suggesting consumers check with their doctors or the government's nutritional guidelines on the possible health benefits of wine."

VIII. Notice of Proposed Rulemaking

On October 25, 1999, ATF invited comments on its current policy on health claims and health-related statements by publishing the policy as a proposed regulation in the **Federal Register** (Notice No. 884; 64 FR 57413). As proposed, labels or advertisements could not contain any statement, design, representation, pictorial representation, or device, whether explicit or implicit, representing that consumption of alcohol beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. A substantive claim regarding health benefits associated with the use of an alcohol beverage would be misleading unless such claim was properly qualified and balanced, sufficiently detailed and specific, and outlined the categories of individuals for whom any positive effects on health would be outweighed by numerous negative effects on health.

ATF also sought comments on whether even balanced and qualified health claim statements should be prohibited because the negative consequences of alcohol consumption are so serious as to make any health-related statement on labels or in advertisements inherently misleading. In addition, ATF sought comments on whether health-related directional statements such as those approved in February 1999 tend to mislead consumers about the health consequences of alcohol consumption.

The comment period for Notice No. 884, initially scheduled to close on February 22, 2000, was extended until June 30, 2000, pursuant to Notice No. 896. (*See* following section, "Notice of Hearings.")

IX. Notice of Hearings

On December 9, 1999, ATF announced in a press release that after the close of the comment period, it would hold public hearings on the issue of health claims in the labeling and advertising of alcohol beverages. ATF stated that the hearings would provide it with a comprehensive record on

which to base final regulations on health claims.

Because it was seeking public comments on this very issue, ATF announced that it would suspend action on any new applications for label approval bearing similar health-related directional statements pending the completion of the rulemaking proceeding. ATF noted that due to the adverse consequences of alcohol consumption, it was concerned about any risk of misperception resulting from the two approved statements.

On February 28, 2000, ATF published a notice in the **Federal Register** announcing the dates and locations of five hearings that it planned to hold concerning the proposed regulations (Notice No. 892; 65 FR 10434). ATF subsequently canceled the hearings that were scheduled for Atlanta, Chicago, and Dallas, due to the low number of requests to present oral comments in those locations (Notice No. 896; 65 FR 24158). In addition, the hearings scheduled for Washington, DC and San Francisco, California, were limited to two days each. The hearing in Washington, DC was held on April 25–26, 2000, and the hearing in San Francisco was held on May 23–24, 2000. ATF also extended the close of the comment period regarding Notice No. 884 from February 22, 2000, to June 30, 2000. Written comments addressing testimony presented at the hearings could also be submitted up until June 30, 2000.

X. Recent Developments

A. 1999 Alcohol Alert

In 1999, NIAAA published an "Alcohol Alert" on "Alcohol and Coronary Heart Disease" (No. 45–1999). In this publication, NIAAA reaffirmed that "[r]esearch has revealed an association between moderate alcohol consumption and lower risk for CHD." (Footnote omitted). However, NIAAA cautioned that "[a]n association between moderate drinking and lower risk for CHD does not necessarily mean that alcohol itself is the cause of the lower risk. For example, a review of population studies indicates that the higher mortality risk among abstainers may be attributable to shared traits other than the participants' nonuse of alcohol." (Footnote omitted). NIAAA noted that "[t]he role of exercise in the alcohol-CHD association requires additional study."

NIAAA noted that "[t]he apparent benefits of moderate drinking on CHD mortality are offset at higher drinking levels by increasing risk of death from other types of heart disease; cancer; liver cirrhosis; and trauma, including trauma from traffic crashes. Moderate drinking is not risk free. The trade-offs between risks and benefits can be exemplified by the fact that alcohol's anticlotting ability, potentially protective against heart attack, may increase the risk of hemorrhagic stroke, or bleeding within the brain." (Footnotes omitted).

In a commentary that appeared with the Alert, NIAAA Director Enoch Gordis, M.D., offered the following advice with respect to the health implications of alcohol consumption:

> (1) Individuals who are not currently drinking should not be encouraged to drink solely for health reasons, because the basis for health improvements has not yet been established as deriving from alcohol itself;
>
> (2) Individuals who choose to drink and are not otherwise at risk for alcohol-related problems should not exceed the one-to two-drink-per-day limit recommended by the U.S. Dietary Guidelines; and
>
> (3) Individuals who currently are drinking beyond the U.S. Dietary Guidelines' recommended limits should be advised to lower their daily alcohol intake to these limits.

B. Dietary Guidelines—Fifth Edition (2000)

In the summer of 2000, USDA and HHS published the "Dietary Guidelines for Americans, 2000." The 2000 Dietary Guidelines contain more specific guidance about alcohol consumption, and summarize the current medical evidence regarding the risks associated with alcohol consumption as follows:

> Alcoholic beverages supply calories but few nutrients. Alcoholic beverages are harmful when consumed in excess, and some people should not drink at all. Excess alcohol alters judgment and can lead to dependency and a great many other serious health problems. Taking more than one drink per day for women or two drinks per day for men * * * can raise the risk for motor vehicle crashes, other injuries, high blood pressure, stroke, violence, suicide, and certain types of cancer. Even one drink per day can slightly raise the risk of breast cancer. Alcohol consumption during pregnancy increases risk of birth defects. Too much alcohol may cause social and psychological problems, cirrhosis of the liver, inflammation of the pancreas, and damage to the brain and heart. Heavy drinkers are also at risk of malnutrition because alcohol contains calories that may substitute for those in nutritious foods. If adults choose to drink alcoholic beverages, they should consume them only in moderation * * * and with meals to slow alcohol absorption.

The 2000 Dietary Guidelines also contain a discussion of the possible health benefits of alcohol consumption; however, the following excerpt from this section emphasizes that these benefits accrue primarily to older drinkers, and that there are other ways of reducing the risk of heart disease:

> Drinking in moderation may lower risk for coronary heart disease, mainly among men over age 45 and women over age 55. However, there are other factors that reduce the risk of heart disease, including a healthy diet, physical activity, avoidance of smoking, and maintenance of a healthy weight. Moderate consumption provides little, if any, health benefit for younger people. Risk of alcohol abuse increases when drinking starts at an early age. Some studies suggest that older people may become more sensitive to the effects of alcohol as they age.

The 2000 Dietary Guidelines recommend that if adults choose to drink alcohol beverages, they should consume them only in moderation. The term "moderation" is defined as no more than one drink per day for women and no more than two drinks per day for men. The Dietary Guidelines also conclude that for some people, even moderate drinking is not recommended. Thus, many people should not drink alcohol beverages at all, including children and adolescents; individuals of any age who cannot restrict their drinking to moderate levels; women who may become pregnant or who are pregnant; individuals who plan to drive, operate machinery, or take part in other activities that require attention, skill, or coordination; and individuals taking prescription or over-the-counter medications that can interact with alcohol.

C. Recent Developments in the CEI Litigation

On June 18, 2001, the district court granted the Government's motion for summary judgment on the remaining issues in the CEI litigation. The court ruled that the case was not ready for judicial review given the fact that ATF was in the middle of a rulemaking proceeding on the very issues raised by CEI in the litigation. The plaintiffs appealed this decision to the Court of Appeals. On May 10, 2002, the appellate court upheld the district court's ruling that the case was not ripe (ready) for judicial review because ATF was nearing completion of a rulemaking proceeding on the use of health claims. Thereafter, the plaintiffs filed a petition for rehearing with the Court of Appeals that was denied.

XI. Analysis of Comments Received in Response to Notice No. 884

In response to Notice No. 884, ATF received 535 comments. Comments were submitted by several United States Senators, two Federal agencies, an agency of a foreign government, consumers and consumer organizations, medical professionals (including physicians, nurses, and local health departments), public health organizations, industry members, and others.

As previously noted, in Notice No. 884 ATF sought comments on whether the serious health risks associated with alcohol consumption meant that any health claim, even a balanced and qualified one, was inherently misleading to consumers. In response, approximately 45 commenters supported the use of substantive health claims or health-related statements in the labeling and advertising of alcohol beverages. On the other side, approximately 120 commenters opposed the use of either substantive health claims or health-related directional statements in the labeling or advertising of alcohol beverages. Many of these commenters suggested that health statements were inherently misleading when used to market alcohol beverages.

ATF specifically sought comments on whether health-related directional labeling statements such as the ones approved in February 1999 tended to mislead consumers about the health consequences of alcohol consumption. The vast majority of the commenters focused exclusively on this issue. Approximately 355 comments supported the use of health-related directional statements on alcohol beverage labels. The major issues raised by the commenters, as well as the individuals who testified at the public hearings, are summarized below.

XII. Is There a Need To Engage in Rulemaking on This Issue?

A. Issue

Four comments either opposed ATF's decision to engage in rulemaking on this issue or suggested that the notice of proposed rulemaking be withdrawn. These were comments submitted by the Beer Institute, a trade association for domestic and international brewers; the National Association of Beverage Importers (NABI), a trade association representing importers of beer, wine, and distilled spirits; the Distilled Spirits Council of the United States (DISCUS), a national trade association representing producers and marketers of distilled spirits and importers of wine; and a comment submitted jointly by CEI and Consumer Alert (CA).

DISCUS, the Beer Institute, and NABI all questioned the necessity for engaging in rulemaking on the issue of health claims and health-related statements in the labeling and advertising of alcohol beverages. (Comments 530, 396, and 522). These comments suggested that the authorization of any directional statement on a label would be in violation of the ABLA. TTB does not agree with this legal analysis. This issue will be discussed further in section XIII.

DISCUS and Beer Institute also objected to the proposed advertising regulations. DISCUS suggested that ATF's proposal was "insurmountably vague and ambiguous. It only would serve to interfere with the rights of advertisers to engage in truthful, non-misleading speech about their products that are consumed responsibly by over a hundred million Americans." DISCUS suggested that "[a]n advertiser could run afoul of the provisions of BATF's proposed rule without making any type of curative or therapeutic claim," giving as an example an advertisement depicting attractive individuals relaxing in an enjoyable setting. The Beer Institute similarly suggested that the requirements for labeling and advertising should be separate, and that the proposed regulation complicated the existing advertising standard. The Beer Institute suggested that the current standard is readily understood and straightforward, and that instead of issuing new regulations, ATF should adopt a more formal review process of health statements on a case-by-case basis.

These commenters also suggested that large portions of the alcohol beverage industry had no interest in using health claims in the labeling or advertising of their products. For example, the Beer Institute comment suggested that there was no need to amend the malt beverage regulations, since to its knowledge, none of its constituents had ever used such claims in the past, and none had any intention to do so in the future. NABI raised similar concerns, and stated that it did not support the proposed amendment to the regulations "because any such support might imply the industry intends to make health-related statements on its labels and in its advertising." The comment from DISCUS stressed that "America's distillers do not recommend that consumers drink beverage alcohol for health reasons." (Comment 530).

CEI, a pro-market public interest group dedicated to advancing the principles of free markets and limited government, and CA, a free-market consumer advocacy group, suggested that the proposed rule should be withdrawn because the issuance of a regulation based on the proposal would restrict commercial speech in a way that violates the First Amendment. (Comment 326). These issues will be discussed further in section XIX.

B. Decision

After carefully considering the record, TTB has determined that it is important to issue a final rule on specific health claims and other health-related statements in the labeling and advertising of alcohol beverages. The rulemaking record confirms that alcohol abuse is an important public health issue. The use of health claims and health-related statements in the labeling and advertising of alcohol beverages requires a balance between a producer's First Amendment right to label and advertise its products in a truthful and non-misleading fashion and the public's right to be informed of the significant health risks associated with alcohol consumption. Specific regulations on the use of health claims and other health-related statements in the labeling and advertising of alcohol beverages will ensure that both the industry and the public are aware of the restrictions on the use of labeling and advertising statements that might tend to mislead the consumer about the serious health risks associated with alcohol consumption.

TTB recognizes that based on the administrative record, it does not appear that distillers and brewers are interested in using health claims or health-related statements in the labeling or advertising of alcohol beverages. However, as noted later in this preamble, both the Wine Institute and the American Vintners Association (AVA), two industry associations representing hundreds of wineries, supported ATF's proposed rule regarding substantive health claims. At least one individual testifying at the hearing, Mr. John Hinman, indicated that there were wineries interested in using a 664-word substantive health claim in advertising materials. The Wine Institute and AVA, as well as many individual wineries, commented in favor of allowing directional statements in the labeling of alcohol beverages. Thus, the record reflects that there may be some wineries interested in using substantive health claims in the advertising of alcohol beverages, and that many wineries are interested in using directional statements on labels. For this reason, TTB believes it is important to issue regulations that set forth the standards that must be met in the event that a specific health claim or other health-related statement is used in the labeling or advertising of alcohol beverages. As set forth later in section XVII, the same standards should apply to wines, distilled spirits, and malt beverages, even if there is no evidence that any members of the malt beverage or distilled spirits industries are

interested in using health claims or health-related statements. The rule does not require anyone to use such statements; it merely sets forth the standards that would apply in the event that an industry member wishes to use a specific health claim or a health-related statement on a label or in an advertisement.

TTB does not agree that the proposed regulations would inject uncertainty with respect to the use of advertisements that do not involve health claims or health-related statements, such as the example provided by DISCUS of an advertisement that shows people relaxing in an attractive setting. There is nothing in the proposed rule that would extend the definition of a health claim or curative or therapeutic claim to cover such advertisements. However, we agree that the lack of any definition of a "curative or therapeutic claim" or "health claim" in the proposed rule might give rise to some uncertainty as to what types of advertising claims would be covered by the regulation. Accordingly, the final rule includes definitions of the terms "health-related statement" (which includes statements of a curative or therapeutic nature), "specific health claims," and "health-related directional statements." We believe that these definitions should resolve any concerns by the commenters that the labeling or advertising regulations are intended to broaden ATF's traditional interpretation of a curative or therapeutic claim.

XIII. Does the ABLA Preclude the Use of Specific Health Claims or Other Health-Related Statements on the Labels of Alcohol Beverages?

A. Issue

Five commenters, including Senator Thurmond (Comment 526), DISCUS (Comment 530), the Beer Institute (Comment 396), NABI (Comment 522), and Remy Amerique, Inc. (Comment 531), suggested that the use of any health claims or other health-related statements on alcohol beverage labels was foreclosed by the provisions of the ABLA. They argued that it was Congress' intent to foreclose the use of any other health-related statements on alcohol beverage labels.

B. Decision

TTB does not agree with those commenters who suggested that the ABLA specifically precludes the voluntary use by industry members of any health-related statements on alcohol beverage labels other than the required warning statement. The ABLA was enacted in 1988. Pursuant to 27 U.S.C. 215, alcohol beverage containers distributed or sold in the United States must bear a Government warning statement, which warns that alcohol consumption during pregnancy may cause birth defects; that alcohol consumption impairs one's ability to drive a car or to operate machinery; and that consumption of alcohol beverages "may cause health problems."

Some commenters argued that the ABLA provided ATF with authority to deny any statement on an alcohol beverage label that discusses the relationship between alcohol consumption and health. The ABLA provides that "[n]o statement relating to alcoholic beverages and health, other than the statement required by section 204 [27 U.S.C. 215] of this title, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the material from which made, that contains such a container." This section of the law preempts State governments from each requiring their own version of a health warning statement on alcohol beverage containers. However, it in no way precludes producers from voluntarily placing either additional warning statements or health claims on alcohol beverage labels. *See* also 27 U.S.C. 213 (setting forth Congress' policy to ensure that the public is adequately reminded about any health hazards that may be associated with alcohol consumption or abuse, and not impeded by "diverse, nonuniform, and confusing requirements for warnings or other information on alcoholic beverage containers with respect to any relationship between the consumption or abuse of alcoholic beverages and health").

Some commenters argued that 27 U.S.C. 217 provides the exclusive method for allowing additional statements regarding alcohol consumption and health on the label. Section 217 provides that if the Secretary, after consulting with the Surgeon General, determines that there should be a change in the mandatory health warning statement, or if such statement should be deleted, he shall report such information to the Congress together with specific recommendations for necessary amendments to the ABLA. After soliciting public comments on this issue, ATF determined in 1993 that there was no need to seek changes to the required health warning statement. However, this provision applies only to the required health warning statement, not to voluntary statements that producers seek to place on alcohol beverage labels. Thus, it is clear that the statute does not specifically preclude the voluntary use of additional health-related statements on alcohol beverage labels.

XIV. What Are the Effects on Health of Alcohol Consumption?

A. Issue

Most of the commenters who addressed this issue agreed that there was a link between moderate alcohol consumption and a reduced risk of heart disease in certain individuals. However, some commenters concluded that the risks associated with alcohol consumption greatly outweighed any purported cardiovascular benefits, while other commenters emphasized the benefits associated with moderate consumption.

CEI and CA presented a review of the medical evidence summarized by Michael Gough (Ph.D.), which concluded that most adults would benefit from moderate alcohol consumption. Dr. Gough stated that "with the exception of those well-defined groups of people who should avoid alcohol, there is clearly convincing evidence for the health benefits of moderate alcohol consumption." Dr. Gough acknowledged that individuals in their 20s and 30s do not accrue net benefits from consuming alcohol since they are at low risk for heart disease; however, he suggests that "[b]ased on understanding of the biological basis for the protective effects of alcohol, it is likely that moderate alcohol consumption in the 20s and 30s is important to the beneficial effects seen in later years."

CEI attached numerous medical studies regarding the effects on health of alcohol consumption. In most important respects, the studies were consistent with ATF's summary of the medical evidence in Notice No. 884. Several of the studies reported an association between light to moderate alcohol consumption and a reduced risk of heart disease. However, many of these same studies supported the conclusion that the health benefits of alcohol consumption do not apply to certain groups.

For example, the authors of one study began by noting that "[m]en and women who drink alcoholic beverages regularly have, in comparison with abstainers, higher death rates from injuries, violence, suicide, poisoning, cirrhosis, certain cancers, and possibly hemorrhagic stroke, but lower death rates from coronary heart disease and thrombotic stroke. The net balance of risks and benefits is likely to differ in different age groups and populations."[6] (Footnotes omitted). One of the conclusions of the study is that "the balance of adverse and beneficial effects of drinking on mortality from all causes depends not only on the amount of alcohol consumed but also on age and background cardiovascular risk."[7]

Another article noted that it has not yet been determined how alcohol reduces the risk of coronary heart disease. The authors stated that:[8]

> Several possible mechanisms for a protective role of alcohol against coronary disease have been hypothesized, including alcohol-mediated increases in HDL cholesterol levels. * * * Knowledge of the basic mechanisms by which alcohol exerts a protective effect against coronary heart disease is critical to assessing the potential importance of moderate alcohol consumption to the public health, particularly if the beneficial effects of alcohol can be achieved through other interventions. Because heavy consumption of alcohol has been implicated in accidents, cirrhosis, cancer, and other adverse outcomes, the difference between drinking small-to-moderate quantities of alcohol and drinking large amounts may mean the difference between preventing and causing disease. Any clinical recommendations based on this epidemiologic evidence should therefore be cautious. (Footnotes omitted).

Among the more recent studies submitted by CEI and CA was one that focused on the effects on health of alcohol consumption on women. The authors noted that before beginning the study, it was unclear "[w]hether the apparent overall benefit of light-to-moderate alcohol intake among men" could be extrapolated to women, noting that "[a]s compared with men, women have a lower risk of coronary heart disease, attain higher blood alcohol concentrations for a given amount of alcohol consumed, and are more susceptible to alcoholic liver disease. Moreover, women who consume moderate quantities of alcohol have an increased risk of breast cancer."[9] (Footnotes omitted). The results of the study showed that light to moderate female drinkers had a reduced risk of heart disease, with women who drank one to three drinks per week having the lowest risk of mortality.[10] However, the study concluded that "the apparent benefit of light-to-moderate alcohol consumption was mainly confined to women at greater risk for coronary heart disease, specifically older women and women with one or more coronary risk factors."[11]

The Wine Institute, representing over 500 California winery and associate members, also submitted summaries of several medical studies that established a link between moderate alcohol consumption and reduced risk of cardiovascular disease (Comment 401). In its summary of these studies, the Wine Institute asserted that moderate drinkers have a 40–50 percent reduction in coronary artery disease risk compared with individuals who are abstinent, with a lower overall mortality rate as well.

As ATF stated in Notice No. 884, the serious health risks associated with alcohol consumption are well established, and ATF received many comments from public health organizations that focused on those adverse consequences. The major points made by these commenters are summarized below.

Many of the commenters focused on the serious public health risks associated with alcohol abuse. The National Council on Alcoholism and Drug Dependence, Inc. (NCADD) commented that "[w]hile most people who choose to drink do so without negative health or life consequences, there are 13.8 million Americans over the age of 18 who have problems with drinking, including 8.1 million people who are alcoholic. Millions of others, because of a family history or the addictive potential of alcohol, are at risk for developing an addiction." (Comment 15). NCADD noted that alcohol contributes to 100,000 deaths annually, making it the third leading cause of preventable mortality in the United States, after tobacco and diet/activity patterns. While there are fewer deaths from alcohol-related causes than from cancer or heart disease, alcohol-related deaths tend to occur at much younger ages.

Some commenters focused on the cost to society associated with alcohol abuse. For example, the Center for Science in the Public Interest (CSPI) commented that "[a] substantial body of evidence has shown a positive relationship between the aggregate consumption of alcohol in society and population rates of alcohol-related diseases, accidents, criminal violence, and suicide. According to the National Institute on Alcohol Abuse and Alcoholism (NIAAA), alcohol abuse and alcoholism cost society more than $166 billion annually and each year over 110,640 deaths have alcohol-related causes." (Comment 400). (Footnotes omitted).

Many of the commenters set forth the serious risks associated with higher levels of alcohol consumption. NCADD noted that "[h]eavy and chronic drinking can harm virtually every organ and system in the body, and is the single most important cause of illness and death from liver disease. It is also associated with cardiovascular diseases such as cardiomyopathy, hypertension, arrhythmias and stroke." The Marin Institute identified similar health risks associated with alcohol consumption. (Comment 324).

Many recognized experts on the effects on health of alcohol consumption testified at the public hearings held by ATF in Washington, DC and San Francisco, California. Dr. David Satcher, former Assistant Secretary for Health and Surgeon General, testified about the public health dangers associated with alcohol consumption as follows:

> Although the majority of Americans who consume alcoholic beverages do so safely, alcohol is one of the nation's leading causes of preventable injury and premature death. Each year, over 100,000 premature deaths result from alcoholism and alcohol abuse. Alcohol represents, therefore, the third leading cause of premature death, right behind tobacco and physical inactivity. Traffic crashes involving alcohol killed more than 16,000 people in 1997, and one in four victims of violent crime report that the offender had been drinking alcohol prior to committing the crime. Fetal alcohol syndrome continues to be the leading preventable cause of mental retardation. I think we fail to appreciate that the roots of alcoholism and alcohol abuse have their origins in adolescence and that children are especially vulnerable to its dangers. Alcohol is the nation's number one drug problem among youth, and it is involved in teen automobile crashes, homicides, and suicides, the three leading causes of teen death. (April 25, 2000; Washington, DC, pages 72–73).

Other physicians testified regarding the effects on health of alcohol consumption. Dr. Carlos Camargo, an emergency room physician and alcohol researcher, testified at the invitation of CSPI. He stated that "there is persuasive evidence that moderate alcohol consumption reduces risk of coronary heart disease in some people. There is also persuasive evidence that even moderate drinking carries significant health risks for many people." (April 25, 2000; Washington, DC, page 94).

Dr. Michael Criqui, a physician, epidemiologist, and professor, also expressed concerns regarding the use of any health-related statement in connection with the labeling of alcohol beverages. Dr. Criqui stressed that when evaluating the potential health benefits associated with alcohol consumption, it is important to look at the effects of various diseases on the potential years of life lost before age 75. He noted that while heart disease is the single largest cause of death in developed countries, it usually occurs at older ages. Motor vehicle crashes and suicides together cause the loss of more potential years of

life in men than heart disease, and both are linked to alcohol use. In women, breast cancer and motor vehicle accidents each account for more potential years of life lost before age 75 than heart disease. (May 23, 2000; San Francisco, CA, pages 53–54).

Dr. Criqui also stressed the importance of evaluating the patterns of consumption among drinkers. He said that in the United States, about 80% of men and 70% of women drink alcohol, with 50% of drinkers reporting temporary problems with alcohol. (*Id.* at page 55). About 10% of men and 5% of women are alcoholics. Furthermore, Dr. Criqui stated that "half of all the alcohol consumed in the United States is consumed by the 10% of men and the 5% of women who are alcohol-dependent." (*Id.* at page 57).

Other medical professionals stressed the health benefits associated with moderate drinking for persons who do not belong in the categories of individuals for whom alcohol consumption is contraindicated. Dr. Curtis Ellison, a Professor of Medicine, testified that "science clearly indicates that moderate drinkers have much lower risk of coronary heart disease and ischemic stroke. Because these are the number one and number three causes of death, it is not surprising that moderate drinkers will live longer in the United States." (April 26, 2000; Washington, DC, page 109). Dr. Ellison suggested that "if I am withholding from a patient information that may reduce that individual's risk of a heart attack by 30 or 40 percent and do not tell him about it, I am doing him a disservice." (*Id.* at page 110).

B. Decision

The evidence presented by the medical experts, as well as the studies presented with some of the comments, indicate that there are differences of opinion as to how the relative risks and benefits of alcohol consumption should be weighed. The evidence reflects a broad consensus that heavy levels of alcohol consumption pose serious health risks. The record also reflects that there is a broad consensus that certain categories of people should not consume any alcohol. With regard to those individuals for whom alcohol consumption is not contraindicated, there was some difference among the experts as to how to weigh the relative risks and benefits of moderate consumption, with some experts stressing the protection against cardiovascular disease, and other experts stressing the increased risk of injury and certain cancers.

Because TTB is not an expert on public health issues, we (and our predecessors) have generally deferred to the findings of the Department of Health and Human Services, including NIAAA, FDA, CSAP, and the Surgeon General, on issues related to the effects on health of alcohol consumption. In the case at hand, TTB finds that the evidence in the rulemaking record supports the findings of NIAAA's 1999 "Alcohol Alert" and the 2000 Dietary Guidelines published by USDA and HHS. The main points of these findings can be summarized as follows:

- Alcohol beverages are harmful when consumed in excess, and some people should not drink at all. Excess alcohol alters judgment and can lead to dependency and many other serious problems. Heavy levels of alcohol consumption cause social and psychological problems, cirrhosis of the liver, inflammation of the pancreas, and damage to the brain and heart.
- Taking more than one drink per day for women or two drinks per day for men can raise the risk for motor vehicle accidents, other injuries, high blood pressure, stroke, violence, suicide, and certain types of cancer. Even one drink per day can slightly raise the risk of breast cancer.
- Alcohol consumption during pregnancy increases the risk of birth defects.
- Certain individuals should not drink any alcohol; for these individuals, even moderate levels of alcohol consumption may cause health risks. Included in this category are children and adolescents; individuals of any age who cannot restrict their drinking to moderate levels; women who may become pregnant or who are pregnant; individuals who plan to drive, operate machinery, or take part in other activities that require attention, skill, or coordination; and individuals taking prescription or over-the-counter medications that can interact with alcohol.
- Moderate levels of alcohol consumption are associated with a reduced risk of coronary artery disease for certain individuals, but causation has not been conclusively established.
- To the extent that moderate consumption is linked to a lowered risk for coronary heart disease, the link appears mainly among men over 45 and women over age 55. Moderate consumption provides little, if any, health benefit for younger people.
- The effects on health of alcohol consumption vary from individual to individual, depending on the individual's health profile and history, as well as the levels of consumption. Risk of alcohol abuse increases when drinking starts at an early age. Some studies suggest that older people may become more sensitive to the effects of alcohol as they age.

Based on the above, it is TTB's conclusion that the medical data still supports ATF's longstanding (and now our) position that notwithstanding the data linking moderate alcohol consumption to a reduced risk of heart disease in some individuals, there are significant health risks associated with all levels of alcohol consumption. The medical data submitted by the commenters, as well as the testimony presented by experts at the public hearings, suggest that there is a link between moderate alcohol consumption and a reduced risk of heart disease in certain individuals; however, causation has not been conclusively established. The risk/benefit ratio varies with the individual's own health profile and the level of consumption. For example, moderate alcohol consumption confers few, if any, benefits on people at low risk for heart disease. The evidence also establishes that there are serious risks associated with higher levels of alcohol consumption, and that even moderate consumption poses health risks for certain individuals. Finally, there are certain categories of individuals for whom any level of alcohol consumption is not recommended.

XV. Are Health Claims and Health-Related Statements in the Labeling and Advertising of Alcohol Beverages Inherently Misleading?

A. Comments in Opposition to the Use of Health Claims and/or Health-Related Statements

Approximately 120 comments opposed the use of health claims and/or health-related statements (including directional statements) in the labeling and advertising of alcohol beverages. Many of these commenters, including the American Medical Association, the American Cancer Society, and the Center for Science in the Public Interest, commented in support of a complete ban on the use of such statements in the labeling or advertising of beverage alcohol. The primary arguments made by these commenters are summarized below.

1. It Has Not Been Proven That Moderate Alcohol Consumption Lowers the Risk of Heart Disease

NCADD commented that the evidence for the alleged health benefits of alcohol consumption was "far from concrete," noting that the 1999 NIAAA report concludes that while there is "an association between moderate drinking and a lower risk of CHD, science has not confirmed that alcohol itself causes the lower risk." "Alcohol Alert," National Institute on Alcohol Abuse and Alcoholism, No. 45, October 1999. (Comment 15). Most other commenters, however, acknowledged that there was a link or association between moderate alcohol consumption and reduced risk of heart disease in some individuals.

2. Because the Negative Health Consequences of Alcohol Consumption Outweigh the Potential Benefits, Health Claims and Health-Related Statements Are Inherently Misleading and Should Be Banned

Many of the commenters stated that health claims for alcohol beverages were inherently misleading because the health risks associated with alcohol consumption outweigh the purported cardiovascular benefits. For example, the American Cancer Society commented in favor of a ban on all health benefit claims and health-related statements in the labeling and advertising of alcohol beverages. (Comment 527). They noted that "[w]hile moderate intake of alcohol has been shown to reduce the risk of coronary heart disease in middle-aged adults, 100,000 deaths each year are attributed to alcohol-related diseases."

The American Medical Association (AMA) strongly urged ATF to reject any type of beneficial claim for alcohol products on container labels, noting that such claims would be misleading, and for many persons, inaccurate. (Comment 534). AMA stated that "[w]hile some research indicates that moderate drinking is associated with a decreased risk of some diseases, other research shows that such risks actually substantially increase for certain people."

Senator Strom Thurmond opposed the use of any health-related statements on alcohol beverage labels. (Comment 526). He testified that health claims were inherently misleading because of the serious health risks associated with alcohol consumption; because the supposed health benefits of moderate drinking have not been conclusively established; and because any explanatory statements are simply insufficient to clarify a misleading health claim. (April 25, 2000; Washington, DC, pages 14–16).

CSPI argued that health claims are inherently misleading for five reasons:

(1) There are serious health risks associated with alcohol consumption, even moderate consumption;

(2) the health benefits of moderate alcohol consumption do not apply universally, but only to a discrete segment of the population;

(3) there are many groups of people who should abstain from, or minimize, their consumption of alcohol;

(4) allowing health claims would undermine the Government warning label; and

(5) explanatory statements are insufficient to clarify a misleading health claim. (Comment 400).

CSPI noted that researchers for the Centers for Disease Control and Prevention (CDC) found that, after decreasing during the late 1980s, alcohol consumption among pregnant women in the United States began to increase after 1991, and the lead author hypothesized that the increased consumption might be due to the media attention to the reports on the health benefits of moderate drinking. At the Washington, DC hearing, Mr. George Hacker, director of CSPI's Alcohol Policies Project, testified in opposition to the use of health claims. Mr. Hacker stressed the health risks associated with even moderate alcohol consumption, and stated that "[a]lcohol is a potentially dangerous, potentially addictive, and potentially deadly drug. Any positive health statement about such a drug must be presented, if at all, only in a balanced and non-misleading manner." (April 25, 2000; Washington, DC, page 56).

On behalf of its three million members and supporters, Mothers Against Drunk Driving (MADD) commented in favor of banning any health claims or directional statements in the labeling and advertising of alcohol beverages. (Comment 20). MADD commented that "[t]he negative consequences and the risk associated with alcohol consumption greatly outweigh any purported 'health benefits.'" MADD quoted Gen. Barry McCaffrey, former Director of the Office of National Drug Control Policy, as telling an alcohol policy conference in 1997 that, "Undoubtedly, alcohol is the principal drug abuse problem in America today."

MADD also noted that in 1998, 15,935 people were killed in alcohol-related traffic crashes and an estimated 850,000 were injured. These alcohol-related crashes result in an annual cost of $114,800,000 in the United States.

The National Association for Children of Alcoholics commented that "the health risks of alcohol far outweigh the health benefits" and advocated a complete ban on health-related claims on alcohol beverage containers. (Comment 29). This comment noted that 76 million Americans, about 43% of the U.S. adult population, have been exposed to alcoholism in the family. Almost one in five (18%) of American adults lived with an alcoholic while growing up. Its comment also noted the negative impact of alcoholism on family and marital relationships, the association between alcoholism and violent crime and child abuse, and the devastating impact of alcoholism on the children of alcoholics.

The Marin Institute for the Prevention of Alcohol and Other Drug Problems ("Marin Institute") commented in favor of a complete ban on all health-related statements (other than the required warning statement) in the labeling and advertising of alcohol beverages. (Comment 324). The Marin Institute commented that "[s]tatements attributing positive health effects to the consumption of alcoholic beverages (as is the case with the previously approved wine labels) are misleading and potentially dangerous because media and marketing messages can be misinterpreted as public health recommendations." They stated that "[s]implistic and misleading messages about the health effects of alcohol are dangerous to the health and safety of Americans and could increase the enormous toll of alcohol-related problems in this country. Because of the evidence regarding the risks associated with alcohol consumption, alcoholic beverages should not be held to a lower standard of accountability regarding health messages than well-regulated prescription drugs. Banning all health claim-related statements on labels or in advertising of alcoholic beverages assures that public health information is accurate and free of potentially harmful misinformation."

Other public health organizations strongly urged a ban on health claims. *See,* Pacific Drug Policy Institute, Inc. (Comment 34); American Council on Alcohol Problems (Comment 37); and West Los Angeles Alcohol Policy Coalition (Comment 384).

Many individuals made similar comments, noting the serious health risks associated with alcohol consumption. Some shared personal experiences with alcoholism or alcohol abuse. *See* comments 23, 28, and 35.

Many of the individuals testifying at the public hearings also emphasized the human costs associated with alcohol abuse. For example, Barrett Duke, Ph.D., testified on behalf of the Ethics and Religious Liberty Commission, the moral concerns agency for the Southern Baptist Convention. He shared his concerns from the perspective of the faith community, and noted that "[m]ost faith communities deal with the

devastating consequences of alcohol abuse on a regular basis in their churches, missions, and benevolent ministries. * * * Families have been destroyed. Lives have been lost. Careers have been ruined. Men and women have left the ministry as a direct result of alcohol abuse. Furthermore, alcohol is often a primary contributing component to poverty, forcing faith communities to use precious limited resources to assist the alcohol abuser as well as the abuser's intended or unintended victims." (April 25, 2000; Washington, DC, page 151).

Ms. Suzanne Harrington-Cole, Chair of the Vallejo Alcohol Policy Coalition, testified in favor of a complete ban on the use of health claims on alcohol beverage containers. She stated that alcohol is present in more than 50% of all incidents of domestic violence (May 24, 2000; San Francisco, CA, page 245), and noted that "[w]e do not need a government sanction on more drinking in the name of health." (*Id.* at page 243).

3. The Issue Is Too Complex To Be Summarized on an Alcohol Beverage Label Because the Effects on Health of Alcohol Consumption Vary From Person to Person

Many of the commenters stated that a summary statement of health benefits on an alcohol beverage label would mislead consumers because the effects on health of alcohol consumption vary from person to person, based on various factors. These commenters also suggested that the issue was too complex to be summarized on an alcohol beverage label, rendering all such labeling statements inherently misleading. Thus, the American Cancer Society noted that the potential health impact of alcohol consumption varied from individual to individual, and that a "brief message on any beverage container cannot provide a consumer with adequate information to make an informed decision about drinking 'for health related reasons.'" (Comment 527).

NCADD urged ATF to "prohibit labels and advertisements that make claims regarding potential health benefits associated with the consumption of alcoholic beverages, because it would be impossible to adequately and appropriately convey the negative health consequences." (Comment 15). NCADD noted that elderly consumers have special concerns, and that NIAAA's definition of moderate drinking for women and men over the age of 65 is no more than one drink a day. They cited a study showing that among persons older than 65, moderate and heavy drinkers were 16 times more likely than nondrinkers to die of suicide.[12]

Senator Thurmond also testified that the effects of alcohol consumption vary from individual to individual, and any clarifying statement along those lines would "have to address factors such as age, sex, family, medical history, diet, weight, and activity." (April 25, 2000; Washington, DC, page 16). MADD noted ATF's historic policy of requiring balance in health claims, and suggested that in "order to 'appropriately qualify and balance' the alleged health claim benefits with the negative consequences, the alcohol label would have to be the size of a billboard and advertising messages would be longer than the State of the Union Address." (Comment 20). Accordingly, MADD suggested that to avoid misleading consumers, such claims should be banned entirely.

The United Communities Against Drug & Alcohol Abuse commented that "[n]o brief message on any beverage container can possibly provide a consumer with adequate information to make a decision about drinking 'for health-related reasons.'" Instead, they suggested that in order to balance a health message, "consumers would need to be provided with a detailed multi-page document (similar to those now provided by manufacturers of prescription medication) in order to make [an] informed choice about whether or not a decision to consume an alcoholic-beverage for health reasons would be, on balance, a good or a bad decision." (Comment 31). The Marin Institute (Comment 324) agreed, commenting that "[d]etailed, balanced and cautionary information about potential harmful effects would be required (as it is with advertisements of prescription drugs) in order to offset the demonstrated confusion of the general public about the health effects of alcohol. The volume of information needed could hardly be legible if it were displayed on a bottle of wine or beer."

4. Even if Moderate Alcohol Consumption Is Linked to a Reduced Risk of Heart Disease, There Are Safer Ways To Achieve the Same Reduction Without the Risks Associated With Alcohol Consumption

Many commenters suggested that even if alcohol consumption resulted in health benefits for certain individuals, there were less risky ways to obtain those benefits. For example, the Central Nebraska Council on Alcoholism, Inc. (Comment 14) noted that "[t]here are simply less risky ways to attain the same health benefits that consuming small amounts of alcoholic beverages provide to a limited group of people. It would be irresponsible for the government to allow a health-claims statement on alcoholic beverages that urge the most risk laden way of obtaining those benefits."

CSPI also suggested that there were safer methods of reducing one's risk of heart disease, stating that the "discrete category of people who may benefit from moderate drinking could also lower their risk of heart disease by other less risky alternatives, such as quitting smoking, reducing fat in the diet, getting regular exercise, taking a daily low dose aspirin, or reducing stress. All of those methods are much less likely to cause accidents or other health problems than consuming alcohol, even in moderation." (Comment 400).

The Tangipahoa Alcohol and Drug Abuse Council (Comment 24) noted that consumers often look for "the easy way out," and that many may believe that drinking alcohol will get the same benefits as an overall healthy lifestyle. The Pacific Drug Policy Institute, Inc. commented that "smoking cessation, good diet, exercise, and stress management techniques provide cardiac benefits with much lower risk of adverse consequences. When there are low risk ways to attain the health benefits attributed to wine, it would appear absurd to allow advertisement of medicinal value in high-risk alcohol consumption." (Comment 34).

Ted Miller, PhD, an economist, testified at the hearings that a more cost-effective way to obtain the purported benefits associated with consumption of wine would be to walk a mile, drink a glass of juice, or eat one cup of vegetables every day. (April 25, 2000; Washington, DC, pages 179–183).

5. Health Claims and Health-Related Messages Would Be Misconstrued by Consumers, Particularly Those With a History of Alcoholism or Who Are Susceptible to Alcohol Abuse Problems, as an Endorsement To Consume or Abuse Alcohol

Many professionals in the field of addiction medicine commented that health claims and health-related messages were likely to be misinterpreted by those most susceptible to problem drinking. Many of these commenters were particularly concerned with the risk that recovering alcoholics would use information about the purported health benefits of alcohol consumption to justify their continued use of alcohol. For example, a physician who has worked in the alcohol and substance abuse treatment field for 18 years stated that any message about purported health benefits sends the wrong message to the public, especially the alcohol abuser or alcoholic. He expressed concern that such a message "would only encourage the alcoholic to drink more to 'help his heart'" and feared that "many current alcoholics who are in total recovery and abstinence may use this as a justification to begin drinking alcohol again, thinking they can control it." (Comment 381). Another doctor made a similar point, (Comment 385) as follows:

> The American public has become accustomed to warning labels on harmful products * * *. A label touting health benefits of use of alcoholic beverages in controlled and low amounts, is likely to be misinterpreted by problem drinkers, especially by alcoholics, whose belief systems about their drinking distort reality with respect to the relative benefits and risks of consumption. * * * I do not deny the scientific validity of reports of health benefits of consumption of one glass of wine per day for females or two glasses of wine per day for males. However, the risk of misinterpretation by the drinking public is far greater than any public health or public information benefit that may be alleged to accrue from adding labels to products that promote health benefits from drinking.

The National Association for Children of Alcoholics (Comment 29) also suggested that health claims can lead to confusion among children of alcoholics about the role of alcohol, and can reinforce and perpetuate the denial process of the alcohol-addicted person.

6. The Use of the Term "Moderate" in a Specific Health Claim Would Be Misleading Unless the Term Is Defined

Many public health organizations commented that the use of the term "moderate" in a health claim could mislead consumers who did not understand the definition of the term. The United Communities Against Drug & Alcohol Abuse noted that "moderate" drinking was poorly defined. It noted that the Substance Abuse and Mental Health Services Administration (SAMSHA) study showed that "virtually all drinkers define their personal level of consumption as 'moderate,' whether they consume one drink per week or five per day." (Comment 31). CSPI also noted that consumers had varying definitions of the term "moderate." (Comment 400). Rather than recommending moderate consumption, CSPI suggested that any health claims should provide specific quantities of alcohol that constitute moderate consumption, including a recommendation that consumers drink no more than one drink per day.

Nancy Piotrowski, PhD, testified that she had been conducting research on alcohol consumption for the past 16 years, and is in the middle of ongoing research on the perceptions of drinkers regarding moderate alcohol consumption. She noted that previous studies had shown that perceptions of moderate drinking were clearly related to drinkers' current drinking patterns and their history of problems relating to drinking. (May 23, 2000; San Francisco, page 37).

B. Comments in Favor of Health Claims

A few commenters specifically supported ATF's proposal to allow qualified, detailed and balanced health claims in the labeling and advertising of alcohol beverages. One comment, from CEI and CA, specifically supported the use of summary health claim statements without qualification or disclosure of the adverse effects on health caused by alcohol consumption. Finally, approximately 45 commenters supported the general use of health claims with respect to alcohol beverages.

1. Comments in Favor of Allowing Balanced Health Claims, as Set Forth in the Proposed Rule

The comments in favor of the substantive health claim provisions of the proposed rule generally stated that ATF had struck an appropriate balance in dealing with a difficult issue. For example, the National Consumers League (NCL), a national nonprofit consumer advocacy organization that was founded in 1899 to represent consumers in the marketplace and workplace, recognized the difficult nature of the issue as follows:

> NCL believes that the proposed rule raises a serious public policy question for which there is no easy answer. NCL understands ATF's concern as to whether health claims should be permitted on alcoholic beverages at all. While there is a body of research showing that moderate consumption of alcohol reduces the risk of coronary heart disease (CHD), there is also evidence that moderate drinking may increase the risk of certain cancers. Moreover, as ATF notes, moderate drinking is risky for certain individuals who are prone to alcoholism, some of whom may not realize that they are. Excessive alcohol consumption is unquestionably harmful. Whether a properly qualified health claim should be permitted on alcoholic beverage labels is a serious policy question that has been debated by public health experts for years.

NCL concluded that while it "has reservations about authorizing any health claim for alcoholic beverages, we believe a properly qualified and balanced claim would be of value to many consumers. * * * A healthclaim that includes the elements specified in the proposed rule would provide these consumers with useful information." (Comment 388).

Two major associations representing the wine industry also commented in support of the substantive health claims provisions of the proposed rule. The Wine Institute commented "that the public should receive the whole story regarding the responsible consumption of wine and applaud[ed] ATF's efforts, as reflected in the additional proposed regulation language, to refine and focus the conditions which must be met before any substantive claim regarding health benefits can be made on wine labels or in advertisements." (Comment 401).

The AVA also stated it had no objection to the proposed amendment to the regulations to reflect current ATF policy, noting that "[a]s our members have been required to conform to these policies for some years, converting them to regulation would pose no further hardship." (Comment 417).

A comment from the Washington Legal Foundation (WLF) focused primarily on legal issues, noting that if the rule was properly implemented, it would pass muster under the First Amendment. (Comment 390). This comment will be discussed further under section XIX.

2. Comment Supporting Summary Health Claims Without Qualification or Disclosure of Adverse Effects

Only CEI and CA specifically argued in favor of allowing summary health claims without qualification or disclosure of adverse effects in the labeling and advertising of alcohol beverages. CEI and CA opposed ATF's notice on the grounds that it would serve to suppress truthful and non-misleading speech. (Comment 326). CEI and CA argued that the cardiovascular and overall health benefits associated with moderate alcohol consumption are amply supported by the medical evidence, and summary statements of these benefits are protected by the First Amendment.

CEI and CA suggested that those individuals who would not benefit from moderate drinking "know who they are and are unlikely to be misled." CEI and CA also suggested that the CSAP survey supports a conclusion that consumers would not be misled by directional statements, that such statements would not change the drinking patterns of consumers, and that the population studied understands the risks of drinking, particularly that drinking is counter-indicated during pregnancy.

CEI and CA claimed that other Federal agencies have approved summary health statements without the

extensive qualifications that would be required under ATF's proposed rule. As examples, they pointed to health claims approved by FDA for diets low in saturated fat and cholesterol and diets low in sodium. They also suggested that the "balance" ATF is ostensibly seeking would automatically be provided by the mandatory health warning statement on alcohol beverage containers.

The CEI and CA comment suggested that the proposed rule would result in regulations that violated the First Amendment; thus, the proposed rule should be withdrawn. At the public hearing, Mr. Ben Lieberman testified on behalf of CEI and stated that CEI believed that the rulemaking should result in a "policy allowing a wide range of accurate summary statements about moderate drinking and health to appear on alcoholic beverage labels and ads." (April 25, 2000; Washington, DC, page 119). Mr. Lieberman also suggested that ATF had not accurately summarized the evidence demonstrating the health benefits associated with moderate alcohol consumption, but instead spent "much of its time identifying and somewhat exaggerating every conceivable category of individual who is not likely to benefit from moderate drinking, such as adults too young to be at risk for heart disease, pregnant women, and recovering alcoholics." (*Id.* at page 120).

In response to a question from the panel, Mr. Lieberman confirmed that it was CEI's belief that a health claim regarding cardiovascular benefits, such as "there is significant evidence that moderate consumption of alcoholic beverages may reduce the risk of cardiovascular disease," could appear on a label with no disclaimer and still not mislead consumers. He stated that "it is well known that people understand the limitations of advertising and labeling and that they would be skeptical. They would also read the government warning, which does at least allude to the other side of this story." (April 25, 2000; Washington, DC, pages 133–134).

3. Other Comments in Favor of Health Claims

Approximately 45 comments supported the use of substantive health claims in the labeling and advertising of alcohol beverages. However, these commenters did not specifically support the type of summary health claim advocated by CEI and CA. Instead, they commented in favor of the general principle that health claims for alcohol beverages are not inherently misleading. In some cases, it was difficult to determine whether these commenters meant to support directional statements only or whether they specifically supported the use of substantive health claims on labels or in advertisements.

Most of the comments that favored a rule allowing the use of substantive health claims reflected a general perception that consumers were entitled to information about potential health benefits associated with moderate alcohol consumption. For example, one individual suggested that "consumers have the right to know and can be trusted to handle this scientific information." (Comment 300). Another comment supported "the rights of wineries to list the health benefits of their product on the labels." (Comment 277).

Some of the individuals commenting in favor of health claims specifically supported the concept that the claims be balanced, although it was unclear whether they were suggesting that the balance would come from qualifications in the claims or the required Government warning statement. For example, one individual stated that "[i]t is only fair and proper that the labels on the bottle contain the positive health benefits as well as the proper health warnings." (Comment 143). Another commenter expressed his support for "producers of wine to be able to print both the adverse and the positive effects of consuming wine." (Comment 340).

Many of the commenters suggested that consumers need to be made aware of health-related information, including the positive and negative effects of alcohol consumption, in order to make informed decisions regarding its use. For example, one commenter, a psychologist and attorney, stated that it was "necessary to rationally accept that alcohol has benefits as well as dangers * * *. Since Americans can easily and legally drink, and most in fact do so, the need to inform them of the range of drinking consequences and the related drinking limits for each is both prudent and democratic." (Comment 243). A doctor commented as follows:

> It makes more sense to put more information on the label in order for the consumer to make a better decision. As a physician, I implore my patients to read labels. There are certainly some potential health benefits to wine as well as potential downsides in individuals. (Comment 145).

Two commenters argued that alcohol producers have a First Amendment right to market the health benefits of alcohol consumption, provided that such information is presented in a non-misleading manner. However, neither of these comments suggested that industry members were entitled to use summary health claims without any qualification or disclosure of adverse effects. The First Amendment issues raised by these commenters will be addressed separately in section XIX.

Among the medical experts who testified at the hearings in favor of allowing health claims or health-related statements on labels or in advertisements, some specifically noted that consumers should be made aware of both the risks and purported benefits of moderate alcohol consumption. For example, Dr. Ellison suggested that an appropriate message on a label would be "'[w]hile light to moderate alcohol consumption can be consistent with a healthy lifestyle for most individuals and has been shown to dramatically reduce the risk of heart disease, certain individuals should not drink at all.' Then, you should go through the list of the people that we are advising not to drink." (April 26, 2000; Washington, DC, page 116).

Finally, Mr. John Hinman testified on behalf of the American Wine Alliance for Research and Education as well as the Coalition for Truth and Balance, a group of California wineries. Mr. Hinman suggested that it was the Government warning statement, rather than the directional statements, which misled consumers about the health consequences of alcohol consumption. (May 23, 2000; San Francisco, CA, page 149). Mr. Hinman was also one of the few individuals responding to ATF's question about whether it was possible to craft a balanced substantive health claim. He noted that he had submitted a 664-word statement to ATF for review in 1993, entitled "Wine and Health—Behind the French Paradox." (*Id.* at page 151). Mr. Hinman stated that "considering that 664 words makes for a very wordy wine label, we seriously doubt whether any wine maker really has an interest in providing such a statement on the bottle. However, the statement can and should be available to hand out to those customers who request more information or are interested in the subject matter." (*Id.* at page 152). Accordingly, Mr. Hinman stated he was resubmitting the statement to ATF for review, and later clarified in response to a question from the panel that he would put the statement on an application for label approval. (*Id.* at pages 152, 165).

In response to a question from the panel, Mr. Hinman stated that neither the American Wine Alliance nor the Coalition for Truth and Balance was "interested, to my knowledge, in necessarily using CEI's proposed label. * * * On the other hand, as a lawyer * * * that's an absolutely accurate statement that CEI is using on that particular thing, and I would support their First Amendment right to utilize it. It's going to be up to them to find people that are, in fact, going to use it." (*Id.* at page 167).

C. Decision

After careful consideration of the record, TTB finds that the comments and testimony on this issue establish that the use of health claims in the labeling or advertising of alcohol beverages has the potential to mislead consumers as to the very serious health consequences associated with alcohol abuse and consumption. In particular, TTB finds that the rulemaking record overwhelmingly supports the conclusion that the type of detail, qualification, and balance required by the proposed rule would be necessary to avoid misleading consumers about the serious health risks associated with alcohol consumption.

Based on the comments on this issue, however, TTB is adopting certain changes to the final rule to set forth more specifically how a substantive health claim would comply with the requirements of the regulation. For example, TTB agrees with the NCADD comment that it has not been proven that alcohol itself lowers the risk of heart disease in certain people; this comment is consistent with the 1999 "Alcohol Alert" published by NIAAA. The 2000 Dietary Guidelines state only that "[d]rinking in moderation may lower risk for coronary heart disease, mainly among men over age 45 and women over age 55." The final rule provides that a specific health claim would not be approved unless it is truthful and adequately substantiated by scientific or medical evidence. Thus, TTB would not approve any claim implying that alcohol consumption itself caused a reduced risk of heart disease in the absence of scientific or medical evidence substantiating such a claim.

TTB also agrees with those commenters who suggested that the effects on health of alcohol consumption vary from person to person, and that any labeling or advertising statement that failed to take this into account would mislead consumers. Consistent with the 2000 Dietary Guidelines, many commenters noted that moderate consumption provided little, if any, health benefit for younger people, who are at low risk of heart disease. As noted above, the Dietary Guidelines provide that "[d]rinking in moderation may lower risk for coronary heart disease, mainly among men over age 45 and women over age 55."

In consideration of these comments, the final rule specifically provides that a claim will not be approved unless it is sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies. For example, assuming that the evidence continues to indicate that the potential health benefits associated with moderate alcohol consumption are mainly associated with men over age 45 and women over age 55, then the claim would have to specifically set forth this qualification. Furthermore, the concerns expressed in the comments regarding the definition of the term "moderate" would also be addressed by requiring, where necessary, sufficient detail in the claim itself regarding the meaning of this term. This level of detail could include specific information as to what constitutes "moderate" levels of consumption, possibly including separate definitions for men, women, and the elderly.

Many commenters suggested that there are safer ways to reduce the risk of heart disease without the negative health consequences associated with alcohol consumption. Again, this is a point noted in the 2000 Dietary Guidelines, which remind consumers that "there are other factors that reduce the risk of heart disease, including a healthy diet, physical activity, avoidance of smoking, and maintenance of a healthy weight." In reviewing whether a health claim tends to mislead consumers, TTB will certainly consider whether the health claim misstates the role played by these factors in reducing one's risk of heart disease.

Several commenters suggested that any health claim might be misinterpreted by alcoholics and other abusers of alcohol as a rationalization for their own consumption levels. TTB recognizes the possibility that certain consumers will selectively interpret data regarding the health consequences of alcohol consumption to justify their own behavior. We believe that summary health benefit claims that do not disclose the adverse health consequences of alcohol consumption would be particularly susceptible to this type of misinterpretation. We recognize the possibility that certain abusers of alcohol may use information regarding the potential cardiovascular benefits of alcohol consumption to justify alcohol abuse that clearly poses significant health risks. However, it is our conclusion that the best way to prevent this type of misinterpretation of a health claim, by both alcohol abusers as well as consumers who do not abuse alcohol, is to require detailed information regarding the health risks associated with various levels of alcohol consumption.

Accordingly, the final rule provides that a specific health claim must adequately disclose the health risks associated with both moderate and heavier levels of alcohol consumption. It is misleading to imply that moderate alcohol consumption confers only health benefits; the administrative record establishes that there are significant risks associated with moderate consumption, including an increased risk of certain cancers. Even if a claim is made regarding only moderate consumption, consumers should be advised of the health risks of heavier levels of alcohol consumption. The record reveals that a high percentage of the alcohol consumed in this country is consumed at levels that exceed "moderate drinking." The Marin Institute comment states that alcohol is consumed at heavy levels (3 or more drinks per day, or more than 5 drinks at one time) in 78 percent of all drinking occasions. (Comment 324). Furthermore, Dr. Criqui testified that half of all the alcohol consumed in the United States is consumed by the 10% of men and the 5% of women who are alcohol-dependent. (May 23, 2000; San Francisco, CA, page 57). Finally, a study submitted by CEI and CA noted that "[i]n the United States, less than 10% of the population reports drinking more than two drinks per day, the cutoff for 'heavy drinking' in national survey research. This means that 'moderate' drinkers, because of their much greater numbers, probably account for well over half of all alcohol problems, a finding that led researchers at the Institute of Medicine to observe in a groundbreaking report that 'if all the clinically diagnosed alcoholics were to stop drinking tomorrow, a substantial fraction of what we understand as alcohol problems would still remain.'"[13] These statistics make it clear that a specific health claim touting the potential health benefits of moderate alcohol consumption would be misleading without a referral to the health risks associated with both moderate and higher levels of alcohol consumption.

In addition, the administrative record establishes that there are certain categories of individuals for whom any alcohol consumption at all is not recommended. Accordingly, the final rule provides that any specific health claim must outline the categories of individuals for whom any levels of alcohol consumption may cause health risks. The Beer Institute commented that ATF's proposed standard on this issue made it unclear whether "disclaimers

are required only for categories of individuals whose potential negative health effects are literally numerous or whether the potential negative health effects would be aggregated for the purposes of performing the balancing test envisioned by the proposed regulation." (Comment 396). Accordingly, the final rule clarifies that this requirement is intended to cover the categories of individuals for whom alcohol consumption is not recommended (e.g., pregnant women, individuals taking certain medications, *etc.*).

We do not agree with CEI and CA that it is unnecessary to set forth this information in conjunction with a health claim because these people know who they are. For example, it is not at all clear that most consumers know that alcohol can interact harmfully with a variety of prescription and over-the-counter medications. It is TTB's conclusion that any labeling or advertising statement that makes a substantive health claim regarding alcohol consumption would mislead consumers if it does not set forth this important information about the adverse consequences of alcohol consumption. Notwithstanding the above, we find that the rulemaking record does not support a conclusion that health claims in the labeling and advertising of alcohol beverages are inherently misleading. Nor does the record support a conclusion that the potentially misleading nature of such claims cannot be cured with the appropriate use of disclaimers and qualifying statements.

Initially, it should be noted that none of the commenters who supported a total ban on the use of health claims in the labeling and marketing of alcohol beverages presented consumer data on the use of substantive health claims in the labeling or advertising of alcohol beverages. Thus, we have no consumer data establishing that consumers would be misled by the use of properly qualified health claims that are sufficiently detailed and specific, and which disclose the adverse health consequences of alcohol consumption.

A complete ban on the use of health claims or health-related statements in the labeling and advertising of alcohol beverages would prohibit even the most qualified, detailed, and balanced discussion of health consequences in advertising materials. For example, in Industry Circular 93–8, ATF advised industry members that the regulations did not prohibit them from including the entire text of NIAAA's April 1992 edition of "Alcohol Alert" in advertising materials. This NIAAA publication presents a comprehensive overview of the benefits and risks associated with alcohol consumption. If the regulations imposed a complete ban on advertising materials that included health-related statements, then industry members would no longer be allowed to include this NIAAA publication in advertising materials. Yet TTB finds nothing in the record to establish that the inclusion of this type of comprehensive discussion of effects on health in an advertisement in any way misleads consumers as to the health risks of alcohol consumption. Accordingly, we find that the record does not support an overall ban on the use of specific health claims and health-related statements in the advertising of alcohol beverages.

A closer issue is presented by the labeling of alcohol beverages. As ATF noted in Industry Circular 93–8, we believe that it would be difficult to compose a health claim that is detailed and specific enough to meet our standards, yet short enough to fit on a traditional alcohol beverage label. In addition, TTB will not approve any labeling health claim that contradicts the message of the required Government warning statement.

TTB agrees with the commenters who suggested that a summary substantive health claim which does not include sufficient detail and qualification would mislead consumers about the serious health consequences of alcohol consumption. However, we do not believe that this provides a basis for banning all substantive health claims on alcohol beverage labels. Instead, as set forth above, TTB is making changes to the final rule to clearly provide that a specific health claim will not be allowed unless it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks.

We disagree with the arguments made by CEI and CA, the only commenters who specifically favored allowing industry members to make summary statements regarding health benefits that contained no qualification, balance, or disclosure of adverse effects. In the first place, the record did not establish that there was any concrete interest on the part of the alcohol beverage industry in using the summary health claim proposed in the CEI petition. Secondly, we find that statements such as the one proposed by CEI would mislead consumers by not disclosing the significant adverse effects on health associated with alcohol consumption, which are set forth in great detail in this rulemaking record.

TTB has not drafted a model health claim for use on alcohol beverage labels because this extensive rulemaking record has revealed little, if any, interest on the part of industry members in using substantive health claims on alcohol beverage labels. In fact, industry members not only failed to express such an interest, in many cases, they specifically disavowed any interest in using substantive health claims. Furthermore, as discussed further in section XVIII, any such claim might well subject the product to regulation as a drug under FDA regulations.

Accordingly, TTB will leave it to any interested industry members to seek approval of a substantive health claim through the label approval process. The final rule sets forth the standards that would apply to any such labeling statement. If an industry member wishes to use a substantive health claim on a label in compliance with the standards set forth in the final rule, it should apply for a certificate of label approval.

ATF announced in Industry Circular 93–8 that dissemination of the full text of the April 1992 edition of "Alcohol Alert" as published by NIAAA, would not be in violation of the regulations. The final rule does not change this policy. Furthermore, dissemination of the entire Dietary Guidelines as advertising materials by industry members, or dissemination of the two pages from the current Guidelines dealing with alcohol beverages (pages 36 and 37) would not violate the final rule. Both of these materials provide a comprehensive discussion of the health consequences of alcohol consumption. The information in these materials regarding the health consequences of alcohol consumption is truthful and supported by scientific evidence. The information is sufficiently detailed, qualified and specific, and sets forth the health risks associated with both moderate and heavier levels of alcohol consumption. Both of these publications further set forth the categories of individuals for whom any level of alcohol consumption may pose health risks. Accordingly, these materials comply with the standards set forth in the regulations.

As ATF stated in Industry Circular 93–8, we will continue to evaluate any additional text that accompanies these materials, such as editorializing, advertising slogans, or exhortations to consume the product, to determine whether or not the advertisement as a whole presents truthful and non-misleading information regarding the risks associated with alcohol consumption. Furthermore, the use of any buttons, shelf talkers, table tents, and similar items that excerpt any portion of the NIAAA publication or the Dietary Guidelines, or that are based on any other publication or article about the health consequences of alcohol consumption, will be closely scrutinized to determine if they tend to mislead consumers about the serious risks associated with alcohol consumption.

XVI. Are Health-Related Directional Statements Misleading?

As previously noted, the vast majority of the commenters addressed the issue of health-related directional statements, such as the ones approved by ATF in 1999, rather than the issue of substantive health claims. Approximately 355 commenters expressed support for the use of directional statements on alcohol beverage labels. Many commenters stated that directional statements are not substantive health claims and that they merely refer consumers to other sources for information about the effects on health of alcohol consumption. As such, the commenters maintain that directional statements are not misleading to consumers. On the other hand, most of the approximately 120 comments in opposition to the use of health claims also opposed the use of health-related directional statements in the labeling and advertising of alcohol beverages.

A. Comments and Testimony in Favor of the Use of Health-Related Directional Statements

Most of the comments in support of directional statements shared the view set forth in the Wine Institute's comment as follows:

> Directing consumers to consult with their doctors or to refer to the Dietary Guidelines regarding the health effects of wine consumption constitutes a responsible and neutral message. Far from misleading the public, such statements are designed to educate and empower each individual to make fully informed choices regarding the consumption of wine. (Comment 401).

The Wine Institute's comment also stated that health-related directional statements were "certainly not misleading because they do not constitute substantive health claims in the first instance." They cited the CSAP survey, which concluded that the drinking patterns of 88.3% of the participants would not be influenced by directional statements, with an additional 3.9% indicating they would drink less.

In response to ATF's question of whether the negative consequences of alcohol consumption and abuse disqualified alcohol beverages from entitlement to health claims or health-related statements, the Wine Institute submitted extensive summaries of scientific studies on moderate consumption of wine and alcohol for the Dietary Guidelines Review Process. An updated compilation of that submission was attached to their comment. The Wine Institute stated that it "fully subscribes to an open and vigorous dialogue driven by the findings of the scientific community on the health effects of alcohol consumption."

The Wine Institute submitted a supplemental comment in which it stated that it wished "to underscore how critical it is to make the distinction between health-related statements and those in which a substantive claim of health benefits is advanced. A substantial number of submissions you have received to date appear to blur this crucial difference and argue against directional labels by incorrectly classifying such labels as health claims." (Comment 401b).

Mr. John DeLuca, President and CEO of the Wine Institute, testified at both the Washington, DC and San Francisco, California hearings. Mr. DeLuca stated that he believed that wineries have a First Amendment right to use the directional label, and pointed to the CSAP survey as evidence that consumers would not increase consumption as a result of directional statements. (April 25, 2000; Washington, DC, page 32). He urged the empowerment of the public through dissemination of information, and urged that the public should be trusted "to handle this information." (*Id.* at pages 32–33).

When asked about substantive health claims, Mr. DeLuca stated that "we are not trying to sell wine as health food or as a medicine." (*Id.* at page 37). He said that "we should be erring on the side of making it as hard as possible for someone to make a health claim. It really is not the province of the industry to be talking that way. We want third-party peer review journals research to be what is presented to the public, not what we put to the public." (*Id.* at page 38). In response to a question about whether the directional statements were perceived as health claims, Mr. DeLuca stated that the Wine Institute had withdrawn its original label submission, which included the phrase "health benefits," because they "knew it was going to lead to a cascade of criticism" and that the phrase "health effects" came from the Appropriations Committee's language in appropriating funds for NIH and NIAAA to research the effects on health of moderate drinking. (*Id.* at page 40).

When asked about consumer reaction to the directional statements, Mr. DeLuca noted that only 17 companies had received approval from ATF for using directional statements before the moratorium went into effect—5 received approval for the Dietary Guidelines statement, and 12 utilized the family doctor statement. (May 23, 2000; San Francisco, CA, pages 14–15). Mr. DeLuca stressed that the Wine Institute did not encourage wineries to use the label, noting that "[w]e always thought of this as a voluntary option for our members. They were designed primarily for public policy, not for public relations, a distinction with an enormous difference." (*Id.* at 15).

The AVA, a trade association of American wineries representing approximately 600 members, also noted that it had been involved on behalf of one of its members in the ATF review process for the directional statements approved in 1999. (Comment 417). AVA stated that it agreed with the applicant, Mr. Patrick Campbell, that the directional statement "makes no claim, pro or con, therapeutic or curative, true or false. The COLA [certificate of label approval] makes no claim at all. It merely (and sensibly) encourages consumers to consult with their family doctor about their personal use of the product. * * * Since this COLA makes no claim, questions about its potential to mislead are irrelevant." (Comment 417). The President of AVA, Mr. Simon Siegl, testified at the public hearings in support of a winery's right to use a directional label. (April 26, 2000; Washington, DC, page 65).

Many winemakers also commented in support of the use of directional statements. Some emphasized the neutral content of the directional statements. The Associated Vintage Group asked "what can be a better message than referring them [consumers] to our own government's nutritional guides or, even better, checking with their doctors." (Comment 173). Mr. Kent Rosenblum commented that "[d]irectional labels do not constitute health claims, and government survey data indicate no changes in drinking patterns would occur." (Comment 151). He then went on to note that "[t]here is a developing scientific consensus that moderate wine and alcohol consumption can be part of

a healthy diet and lifestyle for those who choose to drink."

Other wineries specifically referenced the directional statements as providing balance to the Government warning statement, or referring to the "benefits" of consumption. For example, De Rose Vineyards commented that "[t]he U.S. Dietary Guidelines for Americans constitutes a responsible and neutral message." The winery also stated that "[t]here is a very substantial body of scientific data that verifies the efficacy and healthfulness of moderate wine consumption. Withholding this most helpful and beneficial information, and instead only emphasizing the harmful effects of wine consumption, is ludicrous and ultimately destructive and irresponsible. A forthright balance of both positive and negative simply educates an informed public and allows them to make responsible decisions." (Comment 172). Two other wine producers made similar comments (Comments 214 and 387).

Many commenters who did not identify themselves as being part of the wine industry also supported the directional statements. Some supported the general concept of directing consumers to the Dietary Guidelines or their physician for more information about the effects on health of alcohol consumption. One suggested that "[t]he wording is neutral and *not* positive, thereby serving as education rather than propaganda." (Comment 332). Several commenters referred to the consumer survey conducted by CSAP as evidence that the statements did not mislead consumers.

Some commenters argued that consumers have a right to know all the scientific information available on both the positive and negative effects of various levels of alcohol consumption, and that such information allows consumers to make informed decisions regarding alcohol consumption. For example, one commenter stated that "people are generally capable of making sensible decisions, if assisted by complete information. * * * Moreover, the small minority who do not make sensible decisions will not be deterred by suppressing the presentation of accurate, balanced information." (Comment 423). An individual suggested that "in an era when we all are trying to eliminate governmental control of those areas of our lives where we can be treated as adults, it seems odd for you to be against a neutral statement that wine drinkers should consult their doctors about the possible health benefits of wine." (Comment 136).

Many of the commenters suggested that the directional statements or other positive health-related statements were necessary to "balance" the negative information provided by the Government warning statement. For example, one commenter supported the directional statements because the warning statement should be supplemented with "equally valid" information "explaining the benefits and positive effects of responsible consumption." (Comment 296). Another individual supported the use of "positive health related statements" and stated that "[t]he wine industry deserves to be afforded an opportunity to address the latest beneficial health aspects of moderate wine consumption, as outlined in the U.S. dietary guidelines, on its products. The entire thrust of Government Warning labels has been entirely negative." (Comment 240).

Finally, some commenters argued that the Government should encourage consumers to seek the best advice possible from the most credible sources available on any health issue. With respect to the consumption of alcohol beverages, the National Association of Beverage Retailers suggested that "[p]hysicians and the U.S. Dietary Guidelines are among the most credible sources available to give professional, objective, responsible and balanced advice on an important health issue." (Comment 424).

At the hearings, several doctors testified in support of the directional labeling statements. Some specifically supported the statement encouraging consumers to consult with their physician. For example, Dr. Michael Apstein, a gastroenterologist and liver doctor, testified that advice regarding alcohol consumption should be targeted to specific populations rather than generalized for the entire population. He stated that "[t]hese are complex issues that can't easily be summarized on a label that goes on a wine bottle. They need to be discussed with a person's physician and individualized to that person's situation. Therefore, I am in favor of a directional label that advises individuals to discuss this topic with their physicians, because I am hopeful that a directional label will stimulate another kind of educational experience, so people can use alcohol responsibly if they so desire and avoid it if they should be avoiding it." (April 25, 2000; Washington, DC, page 167).

Similarly, Dr. Harvey Finkel, a physician and clinical professor of medicine, testified that both directional statements should be allowed, stressing the importance of advising consumers to consult their doctors, because the public has a right to be fully informed about the health consequences of alcohol consumption. (April 26, 2000; Washington, DC, pages 30–33). Mr. George Linn, a consumer, also testified in support of the concept of referring consumers to their physicians for more individualized advice about alcohol consumption. (May 24, 2000; San Francisco, CA, page 256). On the other hand, Dr. Paul Scholten, an associate professor of obstetrics, gynecology, reproductive medicine, and nursing, testified in support of the directional statement referring consumers to the Dietary Guidelines, but expressed concerns about whether doctors were well trained to advise patients about the health consequences of alcohol consumption. (May 23, 2000; San Francisco, CA, pages 170–171).

Some individuals commented in support of the general concept of directional statements. Dr. Dwight Heath, a Professor of Anthropology, testified that while he opposed the use of substantive health claims, he favored the use of the directional statements on labels. (April 26, 2000; Washington, DC, page 13). Dr. Heath suggested that the more people know about alcohol consumption, the less likely they are to have alcohol-related problems. (*Id.* at page 5). Similarly, Professor R.L. Williams, of the Oenological Research Facility of Old Dominion University, stated that in his opinion, "the level of scientific information regarding the positive health effects of moderate consumption of wine is now quite overwhelming. * * * This information should be made more available to the consumers in regard to the directional health statements." (April 26, 2000; Washington, DC, page 91). Mr. Archie Brodsky, a senior research associate in psychiatry and the law, testified in favor of the use of directional statements on alcohol beverage labels. He stated that the CSAP survey confirmed that the labels would have a "negligible" influence on consumers' drinking habits. (April 26, 2000; Washington, DC, page 171).

Mr. Patrick Campbell of Laurel Glen Winery, who submitted the first directional statement to ATF for approval in 1995, testified on behalf of the Coalition for Truth and Balance. Mr. Campbell stated that discussion of the health benefits or risks of alcohol consumption was not relevant to a discussion of the directional statements, since "the approved messages do not constitute health-related statements or make substantive claims regarding health benefits." (May 23, 2000; San Francisco, CA, page 75). He asserted that the message encouraging consumers to consult with their family doctors "is neither true nor false. It makes no claim * * * positive or negative, therapeutic or curative, pro or con." (*Id.* at 76). Mr. Campbell argued that the message was not misleading in that it "presumes nothing. It presupposes nothing. It in no way directs the outcome of any consultation the consumer may or may not undertake with his or her family physician. For all the winery knows, the doctor might tell all of his or her patients never to touch the stuff * * *. It's a thoroughly neutral and impartial message." (*Id.* at 76–77).

Mr. Campbell expressed surprise at the controversy over the message, and said he would have expected that "every health professional and governmental agency in the country would welcome it. * * * After all, if you can't trust your family doctor for truthful and not misleading advice on health issues who can you trust?" (*Id.* at 78). Mr. Campbell noted that the American Heart Association "publishes a section on alcohol in their dietary guidelines that explicitly recommends that patients consult with their personal physician on questions of alcohol use * * *." (*Id.* at 80).

Mr. Campbell stated that on June 3, 1999, before the moratorium on approving directional statements went into effect, ATF approved a version of the directional statement which omitted the language about "the proud people who made this wine" and instead read as follows: "We encourage you to consult with your family doctor about the health effects of wine consumption." (*Id.* at page 74). He stated that he now preferred this version, since he believes that it fits better in the label, it's not pompous, and it was an appropriate response to the people who argued that the "proud people" language constituted an implicit endorsement of alcohol consumption. (*Id.* at page 87).

In response to a question from the panel, Mr. Campbell stated that he had gotten no feedback from consumers as to how they viewed the directional statements. He said that "[n]obody's said anything, it's unbelievable. I mean, it cost a lot of money to put these on the label." (*Id.* at page 88).

Mr. Jack Stuart testified on behalf of the Napa Valley Vintners Association. He stated that "we think that the directional warning is a good thing. We don't consider it to be a positive health claim. If you take out the phrase 'proud people,' certainly it's a neutral statement, it's simply a way of getting information, and we think it's a good idea for anyone who is proposing to drink, or who does drink, or who does any other thing having to do with food, their diet, their lifestyle, to consult their physician about the choices they make in that regard." (May 24, 2000; San Francisco, California, page 200). In response to a question from the panel, Mr. Stuart suggested that "to have a balanced message, to me the ideal would be to somehow combine both the warning and the directional message." (*Id.* at page 210).

Mr. Mark Chandler, the Executive Director of the Lodi-Woodbridge Winegrape Commission, also testified in favor of the directional statements. He stated that "[g]rowers and wineries have no intention to market their products as health food. But, unlike other food products, we are prevented by regulation from even mentioning our product's positive health attributes, thus the need for directional labels." (May 24, 2000; San Francisco, CA, page 250). Mr. Gordon Murchie testified on behalf of the Virginia Wineries Association in favor of the use of directional statements, calling them public service announcements that "direct the concerned citizen to another source of professional non-biased, balanced information." (April 26, 2000; Washington, DC, page 78). In response to a question from the panel, Mr. Murchie said his members would be interested in using directional statements on labels, but were reluctant to do so until they saw that the statements were accepted by the Government and the public. (*Id.* at pages 86–87).

Dr. Ellen Mack, a physician and part owner of a winery, testified that "[i]f wine were considered a medication—and I'm not at all advocating that it should be—it would be like most other medications, the dose is critical. Too little may not have the desired effect, and too much can be dangerous or even deadly." (May 23, 2000; San Francisco, CA, page 132). Dr. Mack suggested that "the directional wine labels are effective agents in that the sources of information—the U.S. Dietary Guidelines and personal physicians—will clearly make the point that the beneficial health effects result from moderate consumption of alcohol, and these sources will define moderate as no more than one drink per day for women and no more than two drinks per day for men." *Id.*

Various other individuals testified in favor of the directional statement. For example, Ms. Annette Shafer, author of "The Wine Sense Diet" testified in favor of a "more balanced message on the bottle," suggesting that the warning label is "very one-sided." (May 24, 2000; San Francisco, CA, page 212).

B. Comments and Testimony in Opposition to Directional Statements

Public health organizations and other commenters raised the following specific objections to the use of directional health-related statements in the labeling and advertising of alcohol beverages.

1. Directional Statements Are Implicit Health Claims That Reinforce the Inaccurate Perceptions of Consumers About Alcohol and Health

CSPI commented that the directional statements were actually implied health claims. Its comment argued that the "reference to the 'health effects of wine consumption' offers no useful information, but simply reinforces existing inaccurate knowledge about the health benefits of alcohol consumption, as spread through the media and the wine industry's misleading publicity campaign, and implies that those benefits are substantial and universal." (Comment 400).

The American Cancer Society noted that "[w]ith the publicity in the past few years about the health benefits of consuming alcoholic beverages, any less-detailed claim or reference to health impacts or benefits might be interpreted by the uninformed consumer as a suggestion that people should drink alcohol for their health. Sufficient information is needed to allow consumers to make a well-educated decision regarding their risk from consumption of this product." (Comment 527). Accordingly, the American Cancer Society concluded that directional labels "may mislead the general public regarding the health benefits of alcohol consumption by providing inadequate information regarding the risks."

Senator Thurmond commented that the directional statements were inherently misleading. He stated that it was unlikely that consumers who read the directional statements would actually send for the Dietary Guidelines or consult their physicians. Instead, Senator Thurmond suggested that "consumers may be left with the impression that these statements refer to studies that suggest drinking alcohol may have some positive health benefits." He noted that "[t]his impression may reinforce inaccurate assertions about the health benefits of alcohol consumption spread through the media. These statements may also be inappropriately viewed as the government's endorsement of drinking. However, any suggestion that the government endorses drinking for health reasons is false." (Comment 526).

2. Directional Statements Undermine the Mandatory Government Warning Statement and May Be in Violation of the Alcoholic Beverage Labeling Act

NCADD's comment stated that the directional statements approved by ATF in 1999 "are misleading and potentially confusing to consumers in juxtaposition to the federally mandated government warning on all alcoholic beverage containers sold in the United States." (Comment 15). Similarly, MADD commented that "[t]he public and particularly youth are being given a mixed message with the inclusion of 'health messages' in alcohol advertising and on warning labels and the net result is consumer confusion." (Comment 20). MADD also noted that "[w]arning labels on alcoholic beverages were created for a specific purpose—to make the consumer aware of the potential harm they could suffer as a result of the use or abuse of the product."

The United Communities Against Drug & Alcohol Abuse commented that "Congress has already required a warning statement on alcoholic-beverage containers. Any other reference to health impacts or benefits is likely to confuse consumers and undermine the impact of the existing warning statement." (Comment 31). The American Council on Alcohol Problems urged ATF "not to contribute to confusion by allowing any insinuation of health benefits from alcohol consumption." (Comment 37).

Dr. Thomas Greenfield, a psychologist, testified in opposition to the use of health-related statements. He stated he was principal investigator of the Impact of Alcoholic Beverage Warning Labels Research Project from 1991–1997. He stated that research showed that the mandatory Government warning statement had "fragile but beneficial effects" and that "one must be concerned that a vague health effects message, by implication positive, may wipe out the small gains in reminding the public of situational hazards of drinking when driving or pregnant, and also the health risks." (May 24, 2000; San Francisco, CA, pages 182–183). He suggested that in order to be truly neutral, a directional statement "should have a tone that would be to look at the health risks and health benefits, and potential health benefits. And one would have to do it in such a way that it emphasized that—which is, we believe, strongly the case—that the health benefits [are] * * * relatively small in comparison to the health harms." (*Id.* at page 191).

CSPI commented that if ATF allowed any health claim or health-related statement on a label, it "should be worded and displayed in a manner that does not overshadow, contradict, or undermine the government warning label. For example, the claim should appear in the same type size and style as the government warning label, and should not contain any claim that contradicts any of the statements in the warning label." (Comment 400).

Senator Thurmond testified that the purpose of the ABLA was to provide "a clear, non-confusing reminder of the health hazards associated with alcohol consumption." (April 25, 2000; Washington, DC, page 17). Senator Thurmond suggested that "the two directional statements which the ATF approved last year dilutes the required warnings and, worse, may be seen as the government's endorsement of drinking. As one of the authors of the Alcohol Beverage Labeling Act, let me stress that the intent of the legislation was to exclude such misleading statements." *Id.* In response to the First Amendment concerns raised by some individuals, Senator Thurmond suggested that at a minimum, "groups supporting health-related statements should be required to prove beyond any reasonable doubt that such claims are not misleading and do not detract from the government warning." (*Id.* at page 18).

In addition to Senator Thurmond's comment, a letter signed by Senators Thurmond, Byrd, and Helms supported a ban on all health-related statements and directional health statements on labels. (Comment 526). In this comment, the three Senators stated that the directional statements approved by ATF in 1999 "dilute the required government warning and mislead consumers. In fact, these labels might inappropriately be seen as the government's endorsement of alcohol consumption." The comment also noted the difficulty of presenting a balanced statement on the effects on health of alcohol consumption on an alcohol beverage label. The Senators stated that "Congress has spoken clearly on this important public health issue. The purpose of the ABLA should not be subverted."

3. Directional Statements Are Misleading Because Drinkers Are Unlikely To Seek Health Information

Many commenters suggested that the directional statements were misleading because the CSAP consumer survey established that consumers who read the directional labels were unlikely to seek additional information from their doctors or send for the Dietary Guidelines. For example, CSPI argued that "referring consumers to a government publication which offers balanced information is only credible if there is a reasonable likelihood that such referral will in fact result." (Comment 400). CSPI suggested that "according to consumer research, few people would actually look at or write for the Dietary Guidelines on the basis of the label language." CSPI and others questioned whether consumers would get complete information from either the Dietary Guidelines or their doctors.

Similar points were raised in the testimony of Mr. James Mosher on behalf of the California Council on Alcohol Policy, a nonprofit membership organization dedicated to promoting public health approaches to the prevention of alcohol-related problems. Mr. Mosher argued that the directional labels were inherently misleading and thus did not constitute protected commercial speech under the First Amendment. Because the directional statements themselves make no claim about the effects on health of alcohol consumption, Mr. Mosher suggested that the key to determining whether they would mislead consumers depends upon "the sources to be consulted, the likelihood of consumers actually consulting them, and the possibility that the wording will lead to consumer confusion, misleading or deceptive impressions." (May 23, 2000; San Francisco, CA, page 92).

4. Directional Statements Are Misleading Because Drinkers Are Likely To Rationalize Their Consumption Patterns

As previously mentioned, several doctors who have been certified by the American Society of Addiction Medicine commented in opposition to the use of both health claims and health-related directional statements in the labeling and advertising of wines. These commenters suggested that health claims and directional statements could be misconstrued by problem drinkers in order to rationalize their own levels of consumption. For example, one doctor suggested that these statements could be misconstrued by consumers, because "consumers, especially those with a vulnerability to alcoholism, may take the message as an endorsement of excessive drinking." Accordingly, he urged that ATF "prohibit the alcoholic-beverage industry from making these misleading and potentially dangerous claims." (Comment 167).

Another medical doctor urged ATF to rescind approval of the directional labeling statements, stating that "[a] brief message on any beverage container will not provide consumers with adequate information about use of alcohol for health-related reasons. Due to the publicity in the past few years about the health benefits of moderate alcohol consumption, a brief label may be interpreted by the uninformed consumer as a government-authorized statement supporting consumption of alcohol for health benefit." (Comment 410).

NCADD also cited the CSAP study as establishing that focus group members were "generally aware" of the reports on positive effects on health of wine consumption, and that the heavier drinkers were more aware of the media reports. NCADD suggested that heavy drinkers would use these "beliefs" about the effects on health of wine consumption to justify their drinking levels. (Comment 15).

Ms. Joan Kiley, coordinator of the Alcohol Policy Network of Alameda County, testified in favor of a complete ban on health claims or health-related statements in the labeling or advertising of alcohol beverages. She stated that the directional statements were inherently misleading, since they were "incomplete statements that do not put research results in their proper context." (May 24, 2000; San Francisco, CA, page 228). Ms. Kiley noted that "[c]onsumers are not always aware of the effect that images and attitudes promoted in advertising have on their own desires." (*Id.* at page 232). In response to a question from the panel, Ms. Kiley said that in her experience, people with alcohol problems were "very skilled at finding good reasons to drink. They * * * can use a multiple number of reasons to drink, that might just be another one." (*Id.* at page 239).

5. Directional Statements Could Be Interpreted as the Government's Endorsement of Alcohol Consumption

The former Surgeon General, Dr. David Satcher, testified that it was important to "carefully consider any action, whether it involves the health warning or claims that could encourage underage drinking or mislead about the very real, adverse health consequences." (April 25, 2000; Washington, DC, page 73). Dr. Satcher stated he was "concerned that references to the U.S. dietary guidelines on the labels of certain wine products could wrongly lead consumers to conclude that consumption of wine would reduce health risks or that it was recommended by guidelines or by family physicians. References to alcohol in the guidelines should not be construed as evidence of health benefits nor encouragement that consumers drink. * * * In fact, the Public Health Service does not recommend consumption of alcohol beverages." (*Id.* at page 74).

The Marin Institute for the Prevention of Alcohol and Other Drug Problems (Comment 324) suggested that the directional statements attributed positive effects on health to the consumption of alcohol beverages, and were thus "misleading and potentially dangerous because media and marketing messages can be misinterpreted as public health recommendations." The Marin Institute stated that the "60 Minutes" report on the possible heart protective effects of drinking red wine led to a 44 percent increase in red wine sales. They quoted the marketing manager of a winery as stating in "Impact" magazine in 1997 that information about health benefits was "increasing consumption more than anything else." Ms. Hilary Abramson testified on behalf of the Marin Institute at the San Francisco hearing that the so-called French Paradox ("the apparent coexistence in France of a low heart disease rate and a diet rich in saturated fat, and the belief that alcohol [red wine] is the explanation for it") had been overestimated, and the French heart disease statistics underestimated. She stated that after the 60 Minutes Broadcast in November 1991 on the French Paradox, "sales of red wine in the United States rocketed 44%, and a Gallup poll showed that 58% of Americans were aware of research linking moderate drinking to lower rates of heart disease." (May 23, 2000; San Francisco, CA, pages 115–116).

Similarly, the Greater Spokane Substance Abuse Council's Prevention Center commented that "[a]ny statement or labeling in reference to supposed 'health benefits' could be construed by an uninformed consumer population as a government endorsement to consume a likely harmful product." (Comment 32). The American Council on Alcohol Problems also commented that "[i]f health claims are allowed on labels or even implied, many uninformed consumers would interpret this as a government sanctioned statement suggesting that people drink alcohol for their health. Quite to the contrary, research clearly shows that any measure which increases the level of alcohol consumption will result in increased levels of disease and accidents." (Comment 37).

6. Other Testimony Against Directional Statements

Many of the medical experts who testified at the public hearings expressed concerns that the directional statements would mislead consumers about the effects on health of alcohol consumption. For example, Dr. Camargo concluded that "with all of these variety of factors influencing the net health effect of alcohol, I think it is really quite foolhardy to believe that any one-sentence generic health claim about moderate wine consumption would serve public-health interests, or even provide reliable consumer advice. In addition to the gross simplification of a complex risk/benefit analysis, the labels will also lead to several other levels of confusion." (April 25, 2000; Washington, DC, page 90). In particular, he noted that few consumers would actually consult the Dietary Guidelines for information on the effects of alcohol consumption, that many people who notice the label would interpret the phrase "health effects" as "healthy effects," that there is considerable confusion about what constitutes moderate drinking, and that if consumers do consult their family physician, "it is very unlikely the physician will be in a position to provide accurate, up-to-date information about all of the risks and benefits of moderate drinking." (April 25, 2000: Washington, DC, pages 91–92). Dr. Camargo also noted that "generic health claims are likely to be misinterpreted by those at greatest risk of alcohol problems, a group that would likely use the health claim to justify continued or increased consumption of excessive alcohol with all of its attendant health hazards." (*Id.* at page 92).

Dr. Criqui also testified that because of the negative health consequences associated with alcohol consumption and abuse, the directional statements are inherently misleading. (May 23, 2000; San Francisco, CA, page 60). He stated that the approved directional statements appear to implicitly endorse the value of alcohol as a pharmacological protective agent. (*Id.* at page 59). Dr. Criqui offered his opinion that consumers interpret the approved statements as substantive health claims, which means that at least for most people drinking is good and has health benefits and that the Government endorses this position. Because the directional statements are recent and come in the context of media discussion about the possible benefits of alcohol consumption, Dr. Criqui stated that the statements are likely to be interpreted as implicitly endorsing alcohol consumption as being potentially healthy, since they do not emphasize or even mention the dangers of alcohol consumption. (*Id.* at pages 59–60).

Some people suggested that consumers would interpret the directional statements as making positive health-related claims simply because of an assumption that the industry would not use the statements

unless they were positive. For example, Dr. Duke, representing the Ethics and Religious Liberty Commission, the moral concerns agency for the Southern Baptist Convention, suggested that the directional statements were misleading because they "create an impression of endorsement of the health claims made by the alcohol industry. * * * The average person would not conclude that the alcohol industry would direct people to information damaging to their claim. Consequently, the average person will assume a doctor would agree that drinking alcohol is good for one's health." (April 25, 2000; Washington, DC, 154–155).

Ms. Diana Conti testified on behalf of the American Public Health Association in support of a ban on all health-related statements on labels and in advertisements, other than the required warning statement. Ms. Conti suggested that the directional statement regarding the Dietary Guidelines "provides no specific information, no definition of moderate drinking, and no cautions to those who should not drink. The message is confusing and it's contradictory to the warning label." (May 23, 2000; San Francisco, CA, page 106). She stated that "[t]he lack of substantive information creates the impression that the government says moderate wine consumption is good for your health, and few, if any, will actually read the guidelines for the more complete information." (*Id.* at page 107).

C. Decision

When ATF approved the directional statements in 1999, it concluded that the record did not establish that the statements would mislead consumers about the risks associated with alcohol consumption. ATF relied heavily upon the CSAP consumer survey, which concluded that the directional statements would not encourage most consumers to alter their consumption levels or patterns.

After careful consideration of the comments and testimony on this issue, it is TTB's conclusion that while the two directional statements approved in 1999 were worded in a way that was intended to represent a neutral referral to doctors or the Dietary Guidelines for additional information, the statements were capable of being interpreted in a very different fashion. In particular, the statements could be interpreted as encouraging the consumption of alcohol for health reasons.

While the CSAP survey established that the vast majority of consumers would not alter their consumption patterns after exposure to the two directional statements, it did not explore whether consumers would interpret the statements as encouraging the consumption of alcohol for health reasons. Since TTB has no consumer data on this issue, we must rely upon the secondary data that is available to us, including the opinions of medical and public health experts in the field of alcohol and health.

Initially, TTB would note that many media reports about approval of the directional statements referred to these statements as health claims or references to health benefits. *See* section VII, *infra*. We recognize that these reports only indirectly reflect consumer reactions to the directional statements, and that they may have been influenced by the industry's or the public health sector's characterizations of the statements. Nonetheless, to the extent that these media reports both reflect and shape the perceptions of consumers, we believe that these reports are persuasive evidence that the directional statements are perceived by many as making a positive claim about the effects on health of alcohol consumption.

We are also persuaded by the opinions of many of the foremost public health experts in the nation. These public health experts believe that the allegedly neutral directional statements in fact communicated a message that the Government endorsed drinking for health reasons, or that the Dietary Guidelines or a family physician would endorse the consumption of alcohol for health reasons. For example, the former United States Surgeon General testified that he was "concerned that references to the U.S. dietary guidelines on the labels of certain wine products could wrongly lead consumers to conclude that consumption of wine would reduce health risks or that it was recommended by guidelines or by family physicians." (April 25, 2000; Washington, DC, page 74). Similarly, the American Cancer Society noted that "[w]ith the publicity in the past few years about the health benefits of consuming alcoholic beverages, any less-detailed claim or reference to health impacts or benefits might be interpreted by the uninformed consumer as a suggestion that people should drink alcohol for their health" and concluded that directional labels "may mislead the general public regarding the health benefits of alcohol consumption by providing inadequate information regarding the risks." (Comment 527). Other commenters, including the American Medical Association and the Marin Institute, supported a ban on directional statements for similar reasons.

TTB also finds persuasive the testimony of many of the foremost experts on the medical research regarding alcohol and health. For example, Dr. Camargo testified that in his opinion, consumers would interpret the phrase "health effects" to mean "healthy effects." (April 25, 2000; Washington, DC, pages 90–92). Dr. Criqui offered his opinion that the approved directional statements appear to implicitly endorse the value of alcohol as a pharmacological protective agent, and that consumers interpret the approved statements as substantive health claims meaning that at least for most people drinking is good and has health benefits and that the Government endorses this position. Because the directional statements are recent and come in the context of media discussion about the possible benefits of alcohol consumption, Dr. Criqui stated that the statements are likely to be interpreted as implicitly endorsing alcohol consumption as being potentially healthy, since they do not emphasize or even mention the dangers of alcohol consumption. (May 23, 2000; San Francisco, CA, pages 59–60).

TTB does not disregard the testimony of those medical professionals, including Dr. Apstein, Dr. Finkel, and Dr. Scholten, who testified in favor of the use of directional statements. We agree that industry members have the right to suggest, in labels or in advertisements, that consumers refer to third party sources for additional information regarding the effects on health of alcohol consumption. The question presented is how to make such referrals without misleading consumers.

We would also note that many of the comments in favor of the use of directional statements referred to the need to provide "balance" to the negative message of the health warning statement, and thus implicitly recognized that the directional statements were meant to convey a positive message about the effects on health of alcohol consumption. In this regard, it is noteworthy that in a comment submitted after the hearings were held, Beer Institute suggested that the position of several proponents of directional statements that such statements did not constitute health claims was inconsistent with those same proponents' attempts "to defend the directional statements by relying on well-known published medical literature that attributes certain health benefits to the moderate consumption of alcohol beverages. Given the history of this issue and the evidence cited by supporters of the directional statements, it seems impossible to characterize the directional statements as anything but health claims subject to the automatic

qualifying provisions of the proposed new regulations." (Comment 396b).

After careful consideration of the comments and testimony in the rulemaking record, it is TTB's view that the directional statements approved in 1999 may be interpreted as advocating the consumption of alcohol beverages for health reasons. We recognize that producers of alcohol beverages have contended that they have a constitutionally protected right to advocate that consumers drink their products for health reasons. However, if such a claim is made on a label or in an advertisement, it must be made in a truthful and non-misleading fashion. Furthermore, such a claim would fall within the category of a specific health claim, and would be subject to the requirements in the final rule applicable to such claims. To the extent that producers instead wish to make a neutral referral to third parties for additional information regarding the effects on health of alcohol consumption, we believe that it is necessary to provide a disclaimer that clarifies that the labeling or advertising statement should not encourage consumption of alcohol for health reasons.

Accordingly, the final rule provides that directional statements will not be allowed in the labeling or advertising of alcohol beverages unless accompanied by a disclaimer. The final rule provides a model disclaimer that alcohol beverage producers may use in conjunction with a general statement that directs consumers in a neutral or other non-misleading manner to a third party for balanced information regarding the effects on health of alcohol (wine, distilled spirits, or malt beverage) consumption: "This statement should not encourage you to drink or to increase your alcohol consumption for health reasons." It should be noted that in some cases, an acceptable disclaimer might be incorporated into the language of the directional statement itself; thus, if the directional statement makes it clear that it is not advocating consumption of alcohol for health reasons, then an additional disclaimer may not be necessary.

XVII. Should the Same Standards Apply to Wines, Distilled Spirits, and Malt Beverages?

A. Issue

The DISCUS comment opposed the Bureau's suggested "case-by-case" approach, noting that the effects on health of alcohol consumption apply across the board to all beverage alcohol products. Accordingly, DISCUS suggested that public policy and regulatory policy require fair and equal treatment for each form of beverage alcohol, and any label statement for a beverage alcohol container should apply equally to each type of beverage alcohol. (Comment 530).

B. Decision

Both the proposed and final rules make it clear that the same standards apply to wine, distilled spirits, and malt beverages. The rulemaking record does not provide a basis for setting forth different standards for these types of alcohol beverages. The two directional statements approved by ATF in 1999 were both submitted by wineries, and thus both referred to the effects on health of "wine consumption." To the extent that a directional statement complies with the standards set forth in this final rule, it may be used in the labeling of a wine, distilled spirit, or malt beverage product.

XVIII. Should TTB Adopt the Procedures Set Forth in FDA's Regulations?

A. Issue

Several commenters suggested that ATF should adopt the substantive standards already in place in FDA's regulations governing the use of health claims in the labeling of foods. FDA also raised several concerns about consistency between ATF's proposed regulations and its own health claim regulations.

FDA (Comment 327) commented that it was "imperative that [ATF] regulate these claims in a manner consistent with the provisions of the Federal Food, Drug, and Cosmetic Act (FFDC Act) to ensure the meaningful and non-misleading use of such claims." FDA pointed out that pursuant to the Nutrition Labeling and Education Act (NLEA), a manufacturer may make a health claim on a food label only if FDA determines "based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence." 21 U.S.C. 343(r)(3)(B)(i).

FDA also noted that the use of claims for foods that may have a negative health impact generally is not appropriate under the NLEA. The statute provides that a health claim may not be made for a food that contains, as determined by regulation, any nutrient in an amount that increases to persons in the general population the risk of a disease or health-related condition that is diet-related. 21 U.S.C. 343(r)(3)(A)(ii). FDA may grant an exception to allow foods with disqualifying nutrient levels to bear a health claim if the claim is accompanied by a disclosure statement regarding the disqualifying nutrient and FDA has determined by regulation that such a claim would assist consumers in maintaining healthy dietary practices. 21 U.S.C. 343(r)(3)(A)(ii) and 343(r)(2)(B). FDA requires rigorous evidence to support a conclusion that a health claim on a food with a disqualifying nutrient level would assist consumers in maintaining healthy dietary practices.

FDA expressed the following concern about the use of health claims on alcohol beverage labels:

> Alcohol beverages are foods for which there is evidence of a substantial number of undisputed negative health effects. FDA has not evaluated the evidence supporting the putative health benefits of alcohol beverages. Therefore, we cannot say whether health claims for an alcohol beverage would be prohibited under FDA's existing health claim authorization process, or if not prohibited, could be authorized with a disclosure statement of the type required by 21 U.S.C. 343(r)(2)(B). We are concerned, however, that the evidence for the well-known direct causative relationships between alcohol and numerous health risks would be a significant hurdle to our concluding that label information about a relationship between consumption of alcohol and a health claim could assist consumers in maintaining healthy dietary practices.

FDA also noted that the absence of any significant nutritive value of alcohol products would be another obstacle to FDA authorizing a health claim for alcohol beverages.

FDA stated that it was concerned that "certain therapeutic or curative claims sought by manufacturers of alcohol beverages may in fact be claims that would require regulation of the alcohol beverages as drugs." It noted that FDA has authority and responsibility under the FFDC Act to regulate all products bearing drug claims, and that the term "drug" is defined by statute to include an article "intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease." 21 U.S.C. 321(g)(1)(B). FDA concluded that "[a]lcohol beverages could fall within this definition if their labeling contains drug claims."

FDA expressed a concern that certain health claims that would be allowed under ATF's proposed rule might render the product a drug subject to regulation under the FFDC Act. The FFDC Act

provides that any drug that is not generally recognized by qualified experts as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling, or that has not been used to a material extent or for a material time under such conditions, is a "new drug." 21 U.S.C. 321(p). A new drug may not be legally marketed unless FDA has approved a new drug application for such a drug. 21 U.S.C. 331(d) and 355(a). FDA noted that the FFDC Act requires substantial evidence of effectiveness and evidence that the drug is safe for its intended use before FDA will approve a new drug application. 21 U.S.C. 355(d). FDA suggested that this standard differed from the "not misleading" standard proposed by the ATF notice of proposed rulemaking.

FDA advised that ATF should explicitly articulate in its regulations the processes by which it would review claims intended for alcohol beverages. It stated that it was unable to determine, based on the proposed rule, whether the proposed process for a review of health-related statements would be consistent with FDA's statutory and regulatory authorities. Accordingly, FDA urged ATF to clarify the process and criteria it intends to use to substantiate the validity of any health claims or other health-related statements before finalizing the proposed rule.

The former Surgeon General, Dr. David Satcher, also testified in support of adopting standards "consistent with that relied upon by the Food and Drug Administration or for regulated health claims for foods and drugs." (April 25, 2000; Washington, DC, page 77). Accordingly, "[c]laims should be based on significant scientific agreement, and they should be qualified to identify those categories of persons for whom the claims are relevant, as well as to identify those for whom the negative consequences would outweigh any positive effect." (*Id.* at page 78). In response to a question from the panel, Dr. Satcher agreed that there were problems with consumers self-medicating without knowing all the facts, noting that "with alcohol, you also have the added effect that you are dealing with an addictive drug." (*Id.* at page 80). Senator Thurmond also commented that "[a]pplication of the FFDC Act to this issue would appear to prohibit any health-related statements on alcohol beverage labels. It is absurd that the government would prevent whole milk from making health-related claims but allow such claims by alcohol beverages." (Comment 526).

CSAP commented that "[a]lcohol abuse and alcoholism continue to be among the most vexing public health problems facing the United States. Indeed, alcohol is the nation's number one drug problem among youth." While CSAP did not take a position on any of the issues on which comment was sought, it noted that "[o]ne of the key issues challenging our efforts is the mixed or misleading messages that consumers receive from a variety of sources. The addition of health related information on beverage alcohol labels must be carefully considered in relation to the general public's understanding of alcohol-related health risk." (Comment 430).

CSPI suggested that ATF adopt regulations similar to FDA's regulations under the NLEA, noting that USDA did so on a voluntary basis for health claims on meat and poultry. CSPI stated that under regulations similar to those of FDA, health claims would be prohibited because alcohol consumption increases the risk of other diseases, noting that "[t]o allow health claims for alcohol, America's most devastating drug, while health claims for foods such as whole milk are prohibited, would be indefensible and would make a mockery of the federal government's health-claim regime."

CSPI also noted that if an alcohol beverage label or advertisement claims that alcohol may reduce the risk of disease, the beverage may be regulated as a drug by FDA. CSPI argued that, "aside from its regulatory classification, alcohol is a drug. Depending on a variety of factors such as dose and schedule of use; individual metabolism, personality factors, and situation, alcohol is variously a stimulant and depressant, euphorigan and soporific, irritant and anxiety reducer. Alcohol, like other intoxicants, can produce such dependency phenomena as persistent search behavior, withdrawal, relapse, and loss of control."

B. Decision

After giving careful consideration to these comments, and consulting with FDA, TTB does not agree that its health claim regulations should be identical to those of FDA. FDA regulations were promulgated pursuant to a very specific grant of authority by Congress under the NLEA. Because of the differences in statutory authority, as well as the differences in the products regulated under these two statutes, TTB's regulatory scheme for health claim labeling will differ from FDA's regulatory scheme.

However, TTB agrees with the FDA comment in several respects. Most importantly, we agree that it is important to ensure that alcohol beverage producers do not violate the new drug provisions of the FFDC Act when seeking to use specific health claims on alcohol beverage labels. It would be where the use of that claim would render the product subject to FDA's jurisdiction over drugs. Furthermore, FDA's authority over new drugs has significant public health and safety consequences. TTB does not wish to create any confusion on the part of industry members regarding their obligations to comply with FDA's requirements over drug claims.

In the past, ATF merely advised industry members that they should be aware of the fact that the use of a health claim on an alcohol beverage label may subject the product to FDA's jurisdiction. However, after reviewing the comments on this issue, we met with FDA to discuss a process whereby TTB and FDA could consult on the use of specific health claims on alcohol beverage labels. In this way, FDA would have an opportunity to object to the use of a specific health claim, based on its jurisdiction over drugs, prior to any TTB action.

Accordingly, the final rule now provides that TTB will consult with FDA, as needed, on the use of specific health claims on labels. If FDA determines that a specific health claim is a drug claim that is not in compliance with the requirements of the FFDC Act, TTB will not approve the use of such statement on a label. There is no similar provision in the advertising regulations, since advertisers are not required to obtain prior approval from TTB. We will of course consult with FDA, as appropriate, if the question arises as to whether an advertisement is in violation of the FFDC Act.

XIX. Is the Final Rule Consistent With the First Amendment?

A. Issue

As previously noted, many commenters suggested that the proposed rule did not comply with the protection accorded truthful and non-misleading commercial speech under the First Amendment. CEI and CA argued that ATF is precluded from placing any restrictions on the dissemination of truthful information about health benefits in the labeling and advertising of alcohol beverages. Beer Institute, DISCUS, and NABI suggested that the proposed advertising regulations would restrict protected commercial speech. Mr. Rex Davis, representing the President's Forum of the Beverage Alcohol Industry, testified that he believes the proposed rule violates the First Amendment because it would restrict the industry from communicating the benefits of alcohol consumption through labels and advertisements. (April 26, 2000; Washington, DC, pages 133–141). Many other commenters defended the constitutionality of a complete ban on the use of health-related statements in the labeling and advertising of alcohol beverages.

Some of the comments that (or commentators who) addressed the First Amendment issue suggested that while ATF would have authority to restrict the use of misleading health claims, a complete ban on the use of health-related statements would be unconstitutional. For example, the Washington Legal Foundation concluded that an outright ban on the use of truthful health claims would be unconstitutional, but stated that the proposed regulations, "if properly implemented, strike the appropriate balance in ensuring the First Amendment rights of industry and consumers, and the dissemination of important information regarding the health benefits proven to flow from moderate consumption of alcohol beverages." (Comment 390). A comment submitted on behalf of the Oregon Winegrower's Association also stated that a ban on the use of health claims on labels or in advertisements would be unconstitutional; however, the comment stated that the agency should instead "adhere to a policy of allowing labeling and advertising claims about such health-related benefits to be fairly and objectively evaluated for substantiation, balance and qualification." (Comment 380).

A comment from Mr. Erik Bierbauer (Comment 395) attached a copy of a note that he wrote for the New York University Law Review as a third-year law student, entitled "Liquid Honesty: The First Amendment Right to Market the Health Benefits of Moderate Alcohol Consumption," 74 N.Y.U.L. Rev. 1057 (1999). The note concludes that alcohol producers have a First Amendment right to market the health benefits of moderate drinking, as long as they do so accurately and include certain limited disclaimers. Mr. Bierbauer suggested that while such limited disclaimers would be constitutionally authorized, "the sort of disclosure described in ATF's Industry Circular 93–8 probably would be too burdensome to comply with the First Amendment." However, Mr. Bierbauer's comment suggested that "[t]he Constitution would permit the government to require health-related alcohol advertisements and labels to mention lesser-known risks that are present at moderate levels of drinking. For example, the government might legitimately require a disclaimer warning consumers of the possible link between moderate drinking and breast cancer, and also a statement warning certain vulnerable consumers not to drink at all." Mr. Bierbauer concluded that "[a]ds and labels that merely direct the consumer to other sources of information, such as the wine labels approved by ATF in February 1999, clearly would enjoy First Amendment protection."

B. Decision

As set forth in this final rule, TTB is not imposing a complete ban on the use of health claims or other health-related statements in the labeling and advertising of alcohol beverages. Accordingly, it is not necessary to consider whether such a ban would be constitutional. Instead, the final rule requires TTB to evaluate health claims on a case-by-case basis to determine if such claims would tend to mislead the consumer.

The final rule codifies ATF's longstanding position that any substantive health benefit claim is considered misleading unless it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. The final rule clarifies that the identified health risks must include those associated with both moderate and higher levels of consumption. Thus, the rule would require any such claim to include appropriate qualifications and disclaimers about the health risks associated with alcohol consumption. In addition, health-related directional statements that are not substantive health claims must nonetheless include a disclaimer to clarify that the statement does not advocate the consumption of alcohol beverages for health reasons, or some other appropriate disclaimer to avoid misleading consumers. The rule's requirements for appropriate disclaimers and qualifications in order to avoid consumer deception about a health issue comport completely with the safeguards articulated by the Supreme Court to protect non-misleading commercial speech.

Commercial speech is defined as speech that proposes a commercial transaction. *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976). Information on alcohol beverage labels is considered commercial speech. *Rubin* v. *Coors Brewing Co.*, 514 U.S. 476, 481 (1995). Commercial speech is generally protected by the First Amendment; however, it enjoys a more limited measure of protection. *Florida Bar* v. *Went For It, Inc.*, 515 U.S. 618 (1995). Nonetheless, the Government bears the burden of justifying a restriction on commercial speech. *See Greater New Orleans Broadcasting Ass'n* v. *United States*, 527 U.S. 173, 183 (1999).

In order to regulate commercial speech, the Government must satisfy a 4-prong test. *Central Hudson Gas & Electric Corp.* v. *Public Serv. Comm'n*, 447 U.S. 557, 563–566 (1980). First, the expression is protected by the First Amendment only if it concerns lawful activity and is not misleading. Second, the Government must establish a substantial interest. Third, the regulation must directly advance the governmental interest asserted. Finally, the regulation must be no more extensive than necessary to serve the interest asserted.

In two recent cases involving alcohol beverages, the Supreme Court has struck down bans on truthful and non-misleading commercial speech. In *Rubin* v. *Coors Brewing Co.*, 514 U.S. 476, 491 (1995), the Supreme Court applied the *Central Hudson* analysis in striking down the FAA Act's prohibition against statements of alcohol content on malt beverage labels unless required by State law. In *44 Liquormart, Inc.* v. *Rhode Island*, 517 U.S. 484 (1996), the Supreme Court struck down Rhode Island's ban on advertising the price of alcohol beverages on First Amendment grounds. More recently, in *Lorillard Tobacco Co.* v. *Reilly*, 533 U.S. 525 (2001), the Supreme Court struck down certain restrictions imposed by the State of Massachusetts on the advertisement of tobacco products on First Amendment grounds. However, none of these decisions restricts the Government's authority to regulate misleading or potentially misleading commercial speech.

If commercial speech is actually misleading, then it is not protected by the First Amendment. If commercial speech is potentially misleading, the Government may regulate such commercial messages if the restrictions are "no broader than reasonably necessary to prevent the deception." *In re R.M.J.*, 455 U.S. 191, 203 (1982). Potentially misleading speech cannot be banned "if the information also may be presented in a way that is not deceptive" through the use of "disclaimers or explanation." *Id.* Requirements for disclaimers have been

upheld as long as the disclaimers are "reasonably related to the State's interest in preventing deception" and do not constitute an undue burden on the advertiser. *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626, 651–53 (1985).

TTB recognizes that under the commercial speech doctrine, there is a preference for disclosure over suppression. *See e.g., Zauderer* and *Pearson* v. *Shalala*, 164 F.3d 650 (D.C. Cir. 1999). In *Pearson*, the Court of Appeals for the D.C. Circuit required the Food and Drug Administration to consider appropriate disclaimers for health claims on dietary supplement labels. The Court noted that "the government's interest in preventing the use of labels that are true but do not mention adverse effects would seem to be satisfied—at least ordinarily—by inclusion of a prominent disclaimer setting forth those adverse effects." 164 F.3d at 659.

Consistent with the Supreme Court cases cited above, as well as the DC Circuit's ruling in the *Pearson* case, the final rule requires any industry member who wishes to make an explicit or implicit health claim on a label or in an advertisement to make a more complete disclosure of the adverse effects on health caused by alcohol consumption. The final rule does not impose any additional requirements on industry members who do not wish to make such claims. However, given the very serious health risks associated with alcohol consumption, TTB believes that the use of health claims without such qualifications and disclaimers would be misleading to consumers.

The final rule is completely consistent with the preference expressed by the courts for disclosure over suppression in the commercial speech arena. The Supreme Court has held that more speech, not less, is the preferred means of ensuring that consumers have sufficient information to make informed choices in the commercial arena. *In re R.M.J.*, 455 U.S. at 203. The final rule does not "ban" any type of speech regarding health claims or health-related statements in the labeling or advertising of alcohol beverages. Instead, the rule simply requires disclaimers for specific health claims and health-related directional statements.

CEI and CA suggested that there is no need for disclaimers in connection with health claims in the labeling or advertising of alcohol beverages. They point to the fact that the Government warning statement required on alcohol beverage containers already advises consumers that "Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems." CEI and CA further suggest that consumers are well aware of the health risks associated with alcohol abuse, and there is no need to remind them of such risks.

TTB does not agree with this comment. The administrative record contains overwhelming evidence of the serious health risks associated with alcohol consumption. These risks are not merely hypothetical; they are well documented. Among other things, the comments established that over 8 million American adults are alcoholics; alcohol is a known human carcinogen; and alcohol contributes to the deaths of more than 100,000 Americans each year. Furthermore, alcohol abuse has devastating effects on innocent third parties. In 1998, 15,935 people were killed in alcohol-related traffic crashes, and an estimated 850,000 were injured. Mothers Against Drunk Driving commented that the NIH estimated that the overall societal costs of alcohol abuse and alcoholism in 1995 ($167 billion) were more than 50 percent higher than the costs to society of illegal drug use ($110 billion). The health risks associated with alcohol consumption are not simply hypothetical; on the contrary, they present a serious public health problem in this country. Accordingly, the record supports a conclusion that a health claim that does not include information about these serious health risks would tend to mislead consumers about the health consequences of alcohol consumption.

TTB also disagrees with the suggestion by CEI and CA that health-related statements presented a necessary "balance" to the warning presented by the mandatory Government warning statement. The warning statement was intended by Congress to present a clear and nonconfusing reminder of the health hazards associated with consumption or abuse of alcohol beverages. *See* 27 U.S.C. 213. The use of health claims or other health-related statements without qualification or disclosure of adverse effects to "balance" the mandatory warning statement not only undermines the intent of the ABLA; it also tends to confuse consumers about the very real health risks associated with alcohol consumption.

The administrative record contains significant evidence that truthful statements about certain health benefits associated with moderate consumption of alcohol beverages for certain individuals will tend to mislead consumers unless such statements are truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately disclose the health risks associated with both moderate and heavier levels of alcohol consumption; and outline the categories of individuals for whom any levels of alcohol consumption may cause health risks. Most consumers are unable to conduct or verify health research for themselves to determine whether a health claim is valid as to their own alcohol consumption, and are ill equipped to interpret the medical data, evaluate the potential benefits, or identify and weigh the other medical factors that may bear upon their individual decision to use alcohol for therapeutic reasons. *See In re R.M.J.*, 455 U.S. at 202 (the public's comparative lack of knowledge regarding the product being advertised is an important factor in determining whether speech is misleading). A requirement for disclaimers of this nature in such a situation is clearly directly related to the Government's interest in ensuring that consumers are not misled by health statements on alcohol beverage labels.

Some commenters suggested that the types of disclaimers and qualifications required by the proposed regulations would overly burden industry members who wish to make health claims about alcohol consumption, making such requirements unconstitutional. CEI and CA suggested that "summary" health claims for alcohol consumption are just as truthful as other short health claims allowed by FDA for diets low in saturated fat and cholesterol, as well as diets low in sodium. Other commenters suggested that because an alcohol beverage label is not large enough to include the volume of information necessary in order to give consumers a complete picture of the effects on health of alcohol consumption, such statements should be banned completely from alcohol beverage labels.

TTB agrees that the regulations make it difficult to present a substantive health claim (for example, one involving cardiovascular benefits associated with moderate alcohol consumption) on an alcohol beverage label, because of the level of qualification and explanation that would be necessary to set forth the risks associated with such consumption. TTB would also note that there seems to be an overwhelming lack of interest on the part of the alcohol beverage industry in using such health claims on alcohol beverage labels. The comments from major trade associations representing wineries, importers, brewers, and distillers did not indicate a concrete interest in using substantive health claims in the labeling or advertising of alcohol beverages. One lawyer testified in support of a 664-word labeling statement regarding effects on health and asserted that members of the wine industry had the right to make such statements; however, in response to questioning, he conceded that such a long statement would not be likely to be used on a label.

In the absence of any concrete indications of industry interest in using substantive health claims on alcohol beverage labels, there is no reason for TTB to draft a model health claim for use by industry members. Discussions of whether the regulations would unduly burden the industry's ability to use qualified and truthful health claims in the labeling of alcohol beverages will be better informed if and when industry members submit such statements to TTB for review. Nothing in the regulation itself indicates that the requirements for qualification and balance are unduly burdensome. Furthermore, it must be concluded that the length of any required disclaimers and qualifications are directly related to the serious health risks associated with alcohol consumption, rather than any desire by the Government to suppress speech. In particular, the comparison made by CEI and CA with claims regarding diets low in saturated fat and cholesterol or diets low in sodium is not persuasive in the absence of any suggestion that such diets are associated with the types of documented health risks associated with alcohol consumption. Accordingly, TTB concludes that the requirements of the regulations do not unduly burden speech about the effects on health of alcohol consumption.

Because the directional statements do not make substantive health claims, but instead have been interpreted as implicitly encouraging the consumption of alcohol for health reasons, TTB does not believe it is necessary to require the same level of detail in the disclaimers required to ensure that such statements do not mislead consumers. In addition, there clearly is interest on the part of several industry members in using the directional statements. Accordingly, we have provided a model disclaimer that may be used by industry members in conjunction with such directional statements in order to avoid misleading consumers. This one-sentence disclaimer is not overly burdensome, and complies with the court cases allowing the Government to mandate disclosures necessary to prevent consumer deception. TTB will consider other disclaimers on a case-by-case basis.

Accordingly, the final rule is in accordance with the case law under the commercial speech doctrine. Because the rule does not ban any speech, but merely sets forth the type of qualification, detail, and disclosure required in order to set forth a non-misleading health-related statement in the labeling or advertising of alcohol beverages, the rule is completely consistent with the First Amendment protection accorded truthful and non-misleading commercial speech. On the other hand, the rule is also consistent with TTB's statutory responsibility to protect consumers from misleading commercial speech regarding the serious effects on health of alcohol consumption.

XX. Final Rule

Accordingly, this final rule amends the regulations to provide that labels and advertisements may not contain any health-related statement, including a specific health claim, that is untrue in any particular or tends to create a misleading impression. A specific health claim on an alcohol beverage label or advertisement will be considered misleading unless it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any alcohol consumption poses risks. This information must appear as part of the specific health claim and, in the case of advertising, must also appear as prominent as the specific health claim. In addition, TTB will consult with FDA, as needed, on the use of specific health claims on labels. If FDA determines that a specific health claim is a drug claim that is not in compliance with the requirements of the FFDC Act, TTB will not approve the use of such statement on a label.

The final rule provides that a health-related statement that is not a specific health claim or a health-related directional statement will be allowed in the labeling or advertising of alcohol beverages only if TTB determines that the claim is not untrue in any particular and does not tend to create a misleading impression as to the effects on health of alcohol consumption. We will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or other qualifying statement to dispel any misleading impression created by the health-related statement.

With regard to the "directional" statements approved by ATF in 1999, we recognize that the producers of alcohol beverages may have a protected right under the First Amendment to convey the message on labels and in advertisements that consumers should refer to their doctors or the Government's Dietary Guidelines for additional information about the effects on health of alcohol consumption, as long as that message is conveyed in a fashion that does not mislead consumers about the health consequences of alcohol consumption. As discussed above, TTB has also determined that without disclaimers, the directional statements approved in 1999 tended to mislead consumers about the health consequences of alcohol consumption.

Accordingly, the final rule provides that a health-related directional statement is presumed misleading unless it directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of alcohol consumption and includes as part of the health-related directional statement a brief disclaimer stating that the statement should not encourage consumption of alcohol for health reasons, or some other appropriate disclaimer to avoid misleading consumers.

As a clarifying change, the final rule uses the term "health-related statement" instead of "curative or therapeutic claim." However, the definition of a "health-related statement" in the final rule incorporates ATF's historic position on what constitutes a statement of a curative or therapeutic nature, as set forth in the preamble of it's final rule concerning the labeling and advertising regulations under the FAA Act (T.D. ATF–180, 49 FR 31667; August 8, 1984). Accordingly, a health-related statement includes any claim of a curative or therapeutic nature that, expressly or by implication, suggests a relationship between the consumption of alcohol, wine, distilled spirits, malt beverages, or any substance found within the alcohol beverage, and health benefits or effects on health. The term "health-related statement" also includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, distilled spirits, malt beverages, or any substance found within the alcohol beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming wine, distilled spirits, or

malt beverages, as well as statements and claims of nutritional value. Statements concerning caloric, carbohydrate, protein, and fat content of alcohol beverages are not considered nutritional claims about the product. However, statements of vitamin content are considered nutritional value claims, and will be prohibited if presented in a fashion that tends to mislead consumers as to the nutritional value of the product.

The term "specific health claim" is defined as a type of health-related statement that, expressly or by implication, characterizes the relationship of the alcohol beverage (*e.g.*, wine, distilled spirits, or malt beverage), alcohol, or any substance found within the alcohol beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between the alcohol beverage (wine, distilled spirits, or malt beverages), alcohol, or any substance found within the alcohol beverage, and a disease or health-related condition.

The term "health-related directional statement" is defined as a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of alcohol consumption.

The definitions in the final rule also clarify that TTB is not expanding its traditional interpretation of a curative or therapeutic claim to cover, for example, advertisements in which people are shown relaxing in an enjoyable setting while consuming alcohol beverages. Accordingly, the final rule in no way impinges on the right of industry members to advertise their products in a truthful and non-misleading fashion.

XXI. Applications for and Certificates of Label Approval

Upon the effective date of this final rule, applications for certificates of label approval must be in compliance with the regulations. In accordance with the provisions of 27 CFR 13.51 and 13.72(a)(2), upon the effective date of this final rule, certificates of label approval that are not in compliance with the regulations will be revoked by operation of regulation. Certificate holders must voluntarily surrender all certificates that are no longer in compliance and submit new applications for certificates that are in compliance with the new requirements.

XXII. Notes Appearing in Text of Supplementary Information

1. Hennekens, C.H., "Alcohol and Risk of Coronary Events," Research Monograph No. 31, "Alcohol and the Cardiovascular System" at 15 (National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD, 1996).

2. *See, e.g.*, Boffetta, P. & Garfinkel, L., "Alcohol drinking and mortality among men enrolled in an American Cancer Society prospective study," "Epidemiology" 1(5):342–348, 1990; Stampfer, M.J.; Colditz, G.A.; Willett, W.C.; Speizer, F.E. & Hennekens, C.H., "A prospective study of moderate alcohol consumption and the risk of coronary disease and stroke in women," "New England Journal of Medicine," 319(5):267–273, 1988; Klatsky, A.L.; Armstrong, M.A.; and Friedman, G.D., "Alcohol and Mortality," "Annals of Internal Medicine," 117(8):646–654, 1992. See generally National Institute on Alcohol Abuse and Alcoholism, "Moderate Drinking," "Alcohol Alert," No. 16, April 1992, at 2, and studies cited therein.

3. *See, e.g.*, Criqui, M.H., "Moderate Drinking: Benefits and Risks," "Alcohol and the Cardiovascular System," at 117–118 ("Clearly, younger persons cannot possibly benefit much from alcohol consumption, at least in the short term, because their risk of ischemic CVD events is low.")

4. DuFour, M.C., "Risks and Benefits of Alcohol Use Over the Life Span," "Alcohol Health & Research World," Vol. 20, No. 3:145–150 at 147, 1996.

5. *See, e.g.*, Hennekens, C.H., "Alcohol and risk of coronary events," Research Monograph No. 31, "Alcohol and the Cardiovascular System" at 20 (National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Bethesda, MD 1996) ("while the health risks of excessive drinking are clear, there may also be hazards associated with moderate intake that must be weighed, on an individual basis, against the apparent protection against CHD.").

6. Thun, M.J.; Peto, R.; Lopez, A.D.; Monaco, J.H.; Henley, S.J.; Heath, C.W.; and Doll, R; "Alcohol Consumption and Mortality Among Middle-Aged and Elderly U.S. Adults," "The New England Journal of Medicine," 337(24):1705–1714 at 1705, 1997.

7. *Id.* at 1712.

8. Manson, J.E.; Tosteson, H.; Ridker, P.M.; Satterfield, S; Hebert, P.; O'Connor, G.T.; Buring, J.E.; and Hennekens, C.H.; "The Primary Prevention of Myocardial Infarction," "The New England Journal of Medicine," 326(21):1406–1416 at 1412, 1992.

9. Fuchs, C.S.; Stampfer, M.J.; Colditz, G.A.; Giovannucci, E.L.; Manson, J.E.; Kawachi, I.; Hunter, D.J.; Hankinson, S.E.; Hennekens, C.H.; Rosner, B; Speizer, F.E.; and Willett, W.C.; "Alcohol Consumption and Mortality Among Women," "The New England Journal of Medicine," 332(19):1245–1250 at 1245, 1995.

10. *Id.* at 1246.

11. *Id.* at 1249.

12. Grabbe, L; Demi, A; Camann, M.A.; *et al.* "The health status of elderly persons in the last year of life; A comparison of deaths by suicide, injury, and natural causes." "American Journal of Public Health" 87(3):434–437, 1997.

13. Stampfer, M.J.; Rimm, E.B.; Walsh, D.C.; "Commentary: Alcohol, the Heart, and Public Policy," "American Journal of Public Health," 83(6): 801–804 at 803, 1993.

XXIII. How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

TTB has determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. TTB has certified that this final rule will not have a significant economic impact on a substantial number of small entities. In general, the final regulations merely clarify TTB's existing policy concerning the use of health claims in the labeling and advertising of alcohol beverages and impose no burdens on the industry. With respect to health-related statements, TTB believes that the burden imposed by the additional wording required by a disclaimer or other qualifying statement is minimal. Accordingly, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of the notice of proposed rulemaking, all comments, the hearing transcripts, and this final rule will be available for public inspection by appointment during normal business hours at: TTB Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC; 202–927–7890.

Drafting Information

The originating drafter of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

However, personnel from other offices of the Bureau participated in developing this Treasury decision.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

27 CFR Part 7

Advertising, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

For the reasons discussed in the preamble, TTB amends 27 CFR Parts 4, 5, and 7 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Section 4.39 is amended by revising paragraph (h) to read as follows:

§ 4.39 Prohibited practices.

* * * * *

(h) *Health-related statements.* (1) *Definitions.* When used in this paragraph (h), terms are defined as follows:

(i) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, wine, or any substance found within the wine, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, or any substance found within the wine, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the wine, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the wine, alcohol, or any substance found within the wine, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between wine, alcohol, or any substance found within the wine, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption.

(2) *Rules for labeling.* (i) *Health-related statements.* In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(ii) *Specific health claims.* (A) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a wine label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a wine label.

(B) TTB will approve the use of a specific health claim on a wine label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of wine or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement the following disclaimer: "This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;" or

(*2*) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

* * * * *

3. Section 4.64 is amended by revising paragraph (i) to read as follows:

§ 4.64 Prohibited practices.

* * * * *

(i) *Health-related statements.* (1) *Definitions.* When used in this paragraph (i), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, wine, or any substance found within the wine, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, or any substance found within the wine, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the wine, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the wine, alcohol, or any substance found within the wine, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between wine, alcohol, or any substance found within the wine, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related

statement that directs or refers consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption.

(2) *Rules for advertising.* (i) *Health-related statements.* In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must appear as prominent as the health-related statement.

(ii) *Specific health claims.* A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of wine or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: "This statement should not encourage you to drink or increase your alcohol consumption for health reasons;" or

(*2*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

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PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

4. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

5. Section 5.42 is amended by revising paragraph (b)(8) to read as follows:

§ 5.42 Prohibited practices.

* * * * *

(b) * * *

(8) *Health-related statements.* (i) *Definitions.* When used in this paragraph (b)(8), terms are defined as follows:

(A) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(B) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between distilled spirits, alcohol, or any substance found within the distilled spirits, and a disease or health-related condition.

(C) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(ii) *Rules for labeling.* (A) *Health-related statements.* In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(B) *Specific health claims.* (*1*) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a distilled spirits label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a distilled spirits label.

(*2*) TTB will approve the use of a specific health claim on a distilled spirits label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(C) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption is presumed misleading unless it—

(*1*) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of distilled spirits or alcohol consumption; and

(*2*)(*i*) Includes as part of the health-related directional statement the following disclaimer: "This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;" or

(*ii*) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

* * * * *

Par. 6. Section 5.65 is amended by revising paragraph (d) to read as follows:

§ 5.65 Prohibited practices.

* * * * *

(d) *Health-related statements.* (1) *Definitions.* When used in this paragraph (d), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between distilled spirits, alcohol, or any substance found within the distilled spirits, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(2) *Rules for advertising.* (i) *Health-related statements.* In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must appear as prominent as the health-related statement.

(ii) *Specific health claims.* A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of distilled spirits or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: "This statement should not encourage you to drink or increase your alcohol consumption for health reasons;" or

(*2*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

7. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

8. Section 7.29 is amended by revising paragraph (e) to read as follows:

§ 7.29 Prohibited practices.

* * * * *

(e) *Health-related statements.* (1) *Definitions.* When used in this paragraph (e), terms are defined as follows:

(i) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, malt beverages, or any substance found within the malt beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the malt beverage, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the malt beverage, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest; within the context in which they are presented, that a relationship exists between malt beverages, alcohol, or any substance found within the malt beverage, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(2) *Rules for labeling.* (i) *Health-related statements.* In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading

impression conveyed by the health-related statement.

(ii) *Specific health claims.* (A) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a malt beverage label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a malt beverage label.

(B) TTB will approve the use of a specific health claim on a malt beverage label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement the following disclaimer: "This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;" or

(*2*) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

* * * * *

9. Section 7.54 is amended by revising paragraph (e) to read as follows:

§ 7.54 Prohibited statements.

* * * * *

(e) *Health-related statements.* (1) *Definitions.* When used in this paragraph (e), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, malt beverages, or any substance found within the malt beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the malt beverage, as well as statements and claims of nutritional value (*e.g.*, statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the malt beverage, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between malt beverages, alcohol, or any substance found within the malt beverage, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(2) *Rules for advertising.* (i) *Health-related statements.* In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must appear as prominent as the health-related statement.

(ii) *Specific health claims.* A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: "This statement should not encourage you to drink or increase your alcohol consumption for health reasons;" or

(*2*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

* * * * *

Signed: February 13, 2003.

Arthur J. Libertucci,

Administrator.

February 25, 2003,

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 03–4836 Filed 2–28–03; 8:45 am]

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 219, 225, and 240

Conforming the Federal Railroad Administration's Accident/Incident Reporting Requirements to the Occupational Safety and Health Administration's Revised Reporting Requirements; Other Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219, 225, and 240

[Docket No. FRA–2002–13221, Notice No. 2]

RIN 2130–AB51

Conforming the Federal Railroad Administration's Accident/Incident Reporting Requirements to the Occupational Safety and Health Administration's Revised Reporting Requirements; Other Amendments

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA conforms, to the extent practicable, its regulations on accident/incident reporting to the revised reporting regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor (DOL). This action permits the comparability of data on occupational fatalities, injuries, and illnesses in the railroad industry with such data for other industries, allows the integration of these railroad industry data into national statistical databases, and enhances the quality of information available for railroad casualty analysis. In addition, FRA makes certain other amendments to its accident reporting regulations unrelated to conforming to OSHA's revised reporting regulations. Finally, FRA makes minor changes to its alcohol and drug regulations and locomotive engineer qualifications regulations in those areas that incorporate concepts from its accident reporting regulations.

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: For technical issues, Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 17, Office of Safety, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6280). For legal issues, Anna L. Nassif, Trial Attorney, or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 12, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6166 or 202–493–6043, respectively).

SUPPLEMENTARY INFORMATION: In addition to revising its regulations in the *Code of Federal Regulations*, FRA has revised its *Guide for Preparing Accident/Incident Reports (Guide or FRA's Guide)*. Instructions for electronically submitting monthly reports to FRA are available in the 2003 companion guide: *Guidelines for Submitting Accident/Incident Reports by Alternative Methods*. The *2003 Guide* and companion guide are posted on FRA's Web site at *http://safetydata.fra.dot.gov/guide*.

For more detailed information on OSHA's revised reporting regulations, see *http://safetydata.fra.dot.gov/OSHA-materials*.

Also, note that for brevity, all references to CFR parts will be parts in 49 CFR, unless otherwise noted.

Privacy Act Statement: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

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I. Overview of OSHA's Revised Reporting Regulations and FRA's Final Rule

On January 19, 2001, OSHA published revised regulations entitled, "Occupational Injury and Illness Recording and Reporting Requirements; Final Rule," including a lengthy preamble that explains OSHA's rationale for these amendments. *See* 66 FR 5916, to be codified at 29 CFR parts 1904 and 1952; *see also* 66 FR 52031 (October 12, 2001) and 66 FR 66943 (December 27, 2001) (collectively, OSHA's Final Rule). A side-by-side comparison of OSHA's previous reporting and recordkeeping provisions with OSHA's new requirements appears at *http://safetydata.fra.dot.gov/OSHA-materials*. With the exception of three provisions, OSHA's final rule became effective on January 1, 2002. *See* 66 FR 52031; *see also* 67 FR 44037 (July 1, 2002) and 67 FR 44124 (July 1, 2002).

FRA's railroad accident/incident reporting regulations, which are codified at part 225, include, among other provisions, sections that pertain to railroad occupational fatalities, injuries, and illnesses; these sections are consistent with prior OSHA regulations, with minor exceptions. These sections of FRA's accident/incident regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. Accordingly, through this final rule, FRA makes conforming amendments to its existing accident/incident reporting regulations and *Guide*. Further, FRA makes minor amendments to its alcohol and drug regulations (part 219) and locomotive engineer qualifications regulations (part 240) in those areas that incorporate terms from part 225.

Note: Throughout this preamble to the final rule, excerpts from OSHA regulations are provided for the convenience of the reader. The official version of the OSHA regulations appears in 29 CFR part 1904.

In addition, FRA will draft a memorandum of understanding (MOU) between FRA and OSHA to address specific areas that are unique to the railroad industry, and where it was not practical for FRA's regulations to be maintained in conformity with OSHA's final rule. Such divergence from OSHA's Final Rule is permitted under a provision of the rule:

> If you create records to comply with another government agency's injury and illness recordkeeping requirements, *OSHA will consider those records as meeting OSHA's Part 1904* recordkeeping requirements *if OSHA accepts the other agency's records under a memorandum of understanding* with that agency, or *if the other agency's records contain the same information* as this Part 1904 requires you to record.

Emphasis added. *See* 29 CFR 1904.3. Specific provisions of part 225 that do not conform to OSHA's final rule are discussed in detail in the preamble.

Finally, FRA makes other miscellaneous amendments to part 225 and the *Guide*, including revisions not solely related to railroad occupational casualties, such as the telephonic reporting of a train accident that fouls a main line track used for scheduled passenger service.

II. Proceedings and Summary of Issues Addressed by the Working Group

A. The Development of the Railroad Safety Advisory Committee (RSAC) Accident/Incident Reporting Working Group

FRA developed the Notice of Proposed Rulemaking (NPRM), published October 9, 2002, and this final rule through its Railroad Safety Advisory Committee (RSAC). *See* 67 FR 63022. RSAC was formed by FRA in March of 1996 to provide a forum for consensual rulemaking and program development. The Committee has representatives from all of the agency's major interest groups, including railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically proposes to assign a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If a working group is unable to reach consensus on recommendations for action, FRA will move ahead to resolve the issue through traditional rulemaking proceedings.

On April 23, 2001, FRA presented task statement 2001–1, regarding accident/incident reporting conformity, to the full RSAC. When FRA presented the subject of revising its accident reporting regulations and *Guide* to RSAC, the agency stated that the purpose of the task was to bring FRA's regulations and *Guide* into conformity with OSHA's final rule, and to make certain other technical amendments. The task was accepted, and a working group was established to complete the task.

Members of the Working Group, in addition to FRA, include representatives of the following 26 entities: the American Public Transportation Association (APTA); the National Railroad Passenger Corporation (Amtrak); the Association of American Railroads (AAR); The American Short Line and Regional Railroad Association (ASLRRA); the Brotherhood of Locomotive Engineers (BLE); the Brotherhood of Railroad Signalmen (BRS); Transportation Communications International Union/Brotherhood Railway Carmen (TCIU/BRC); Canadian National Railway Company (CN) and Illinois Central Railroad Company (IC); the Sheet Metal Workers International Association; the Brotherhood of Maintenance of Way Employes (BMWE); The Burlington Northern and Santa Fe Railway Company (BNSF); Canadian Pacific Railway Company (CP); Consolidated Rail Corporation-Shared Assets (CR); CSX Transportation, Inc. (CSX); Norfolk Southern Railway Company (NS); Union Pacific Railroad Company (UP); The Long Island Rail Road (LIRR); Maryland Transit Administration (MARC); Southern California Regional Rail Authority (Metrolink); Virginia Railway Express (VRE); Trinity Rail (TR); North Carolina Department of Transportation (NCDOT); Northeast Illinois Regional Commuter Rail Corp. (Metra); the United Transportation Union (UTU); and Wisconsin Central Ltd. (WC).

B. The Working Group's Resolution of Issues Prior to Publication of the NPRM

Prior to the publication of the NPRM, the Working Group held a total of eight meetings related to this task statement. As a result of these meetings, the Working Group developed consensus recommendations proposing to change the FRA regulations and *Guide* with respect to all issues presented except for one. Consensus could not be reached on whether railroads should be required to report deaths and injuries of the employees of railroad contractors who are killed or injured while off railroad property. Prior to this rulemaking, FRA had interpreted part 225 as not requiring the reporting of such cases. After the last Working Group session before publication of the NPRM, FRA developed a compromise position, proposing that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad's rail transportation business. To accomplish this result, FRA proposed a three-tier definition of the term "event or exposure arising from the operation of a railroad." *See* proposed § 225.5.

The NPRM intended to reflect a Working Group consensus on all other issues that were summarized in the preamble. With regard to part 225, the Working Group recommended

amending § 225.5, which contains definitions; § 225.9, which pertains to telephonic reporting of certain accidents/incidents; and § 225.19(d), which pertains to reporting deaths, injuries, and occupational illnesses. To make certain other miscellaneous conforming changes, the Working Group recommended amending § 225.21, which pertains to forms; § 225.23(a), which pertains to joint operations; § 225.33, which pertains to internal control plans; and § 225.35, which pertains to access to records and reports. To address occupational illnesses and injuries that are privacy concern cases; claimed occupational illnesses, and other issues, the Working Group also recommended amending § 225.25, pertaining to recordkeeping. Finally, the Working Group recommended adding a new § 225.39, pertaining to FRA's policy on how FRA will maintain and make available to OSHA certain data FRA receives pertaining to cases that meet the criteria as recordable injuries or illnesses under OSHA's regulations and that are reportable to FRA, but that would not count towards the data in totals compiled for FRA's periodic reports on injuries and illnesses.

With regard to the *Guide*, the Working Group proposed to revise Chapter 1, pertaining to an overview of accident/incident reporting and recordkeeping requirements; Chapter 2, containing definitions; Chapter 4, pertaining to Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record"; Chapter 6, pertaining to Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"; and Chapter 7, pertaining to Form FRA F 6180.54, "Rail Equipment Accident/Incident Report"; and to create a new Chapter 12, pertaining to reporting by commuter railroads, and a new Chapter 13, pertaining to new Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to Be Work-Related." The Working Group also proposed changing various codes used in making accident/incident reports to FRA. These codes are listed in appendices of the *Guide*. The Working Group supported revising Appendix C, "Train Accident Cause Codes"; Appendix E, "Injury and Illness Codes," including revising codes related to the nature of the injury or illness, and the location of the injury; and Appendix F, "Circumstance Codes." The latter included revising codes related to the physical act the person was doing when hurt; where the person was located when injured; what, if any, type of on-track equipment was involved when the person was injured or became ill; what event was involved that caused the person to be injured or become ill; what tools, machinery, appliances, structures, or surfaces were involved when the person was injured or became ill; and the probable reason for the injury or illness. Further, the Working Group advocated revising Appendix H, pertaining to accident/incident reporting forms, particularly Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report," and Form FRA F 6180.81, "Employee Human Factor Attachment." Finally, the Working Group recommended making additional conforming changes to the *Guide*.

With regard to part 219, FRA decided that two terms used in that part, "reportable injury" and "accident or incident reportable under Part 225 of this chapter," should be given a slightly different meaning. In particular, the terms would be defined for purposes of part 219 as excluding accidents or incidents that are classified as "covered data" under proposed § 225.5 (*i.e.*, accidents or incidents that are reportable solely because a physician or other licensed health care professional recommended in writing that a railroad employee take one or more days away from work, that the employee's work activity be restricted for one or more days, or that the employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the medication was taken). In part 240, the term "accidents or incidents reportable under part 225" is used in § 240.117(e)(2). Instead of creating a separate definition of the term for purposes of part 240, an explicit exception for covered data would be added to § 240.117(e)(2) itself.

Each of these issues is described in greater detail in the next sections of the preamble. The full RSAC accepted the recommendations of the Working Group as to those changes that were proposed for part 225 and the *Guide* on which consensus was reached. With regard to the one issue on which consensus was not reached, and with regard to the minor proposed revisions to parts 219 and 240, not presented to the Working Group, the full RSAC accepted FRA staff recommendations. In turn, FRA's Administrator adopted the recommendations embodied in the proposal, and the NPRM was subsequently published.

C. Comments Received and Post-NPRM Working Group Meeting

After publication of the NPRM on October 9, 2002, FRA received comments on the proposed rule and *Guide* from AAR [1] and a private citizen.[2] On December 4, 2002, the Working Group held a meeting in Washington, DC to discuss the comments on the NPRM. Because the majority of AAR's comments focused on clarifying the *Guide*, many of the issues were able to be resolved at the meeting. RSAC consensus on those issues and the summary of the Working Group meeting was confirmed by ballot on January 29, 2003. For those issues where consensus could not be reached, AAR sent FRA a post-meeting letter further explaining its views. The unresolved issues were outlined and presented to the Deputy Administrator, who acted on the rulemaking under a delegation from the Administrator, along with copies of the comments and responses, for resolution.

III. Issues Addressed by the Working Group

A. Applicability of Part 225—§ 225.3

OSHA's Final Rule states, "(1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS [Bureau of Labor Statistics] informs you in writing that you must keep records under § 1904.41 or § 1904.42." 29 CFR 1904.1(a). FRA's accident reporting regulations do not have such an exemption from the central reporting requirements for railroads with ten or fewer employees at all times during the last calendar year. Rather, the extent and exercise of FRA's delegated statutory safety jurisdiction are addressed fully in part 209, Appendix A, and the applicability of part 225 in particular is addressed in § 225.3. Under § 225.3(a), the central provisions of part 225 apply to:

All railroads except—

(1) A railroad that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation or that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation and used for freight operations.

(2) Rail mass transit operations in an urban area that are not connected with the general railroad system of transportation.

(3) A railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular. An operation is not considered insular if one or more of the following exists on its line:

(i) A public highway-rail grade crossing that is in use;

(ii) An at-grade rail crossing that is in use;

(iii) A bridge over a public road or waters used for commercial navigation; or

(iv) A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

Section 20901 of title 49, U.S. Code (superseding 45 U.S.C. 38 and re-codifying provisions formerly contained in the Accident Reports Act, 36 Stat. 350 (1910), as amended), requires each railroad to file a monthly report of railroad accidents. *See* Public Law 103–272. Accordingly, FRA will apply its accident reporting regulations to all railroads under FRA's jurisdiction, unless the entity meets one of the exceptions noted in § 225.3. FRA will address the difference as to which entities are covered by the reporting requirements, in an MOU with OSHA.

B. Revisions and Additions to Definitions in the Regulatory Text—§ 225.5

Proposal

FRA proposed to amend and add certain definitions to conform to OSHA's final rule or to achieve other objectives. Specifically, FRA proposed to revise the definitions of "accident/incident," "accountable injury or illness," "day away from work," "day of restricted work activity," "medical treatment," and "occupational illness." As previously mentioned, FRA proposed to remove the term "arising from the operation of a railroad" and its definition and add the term "event or exposure arising from the operation of a railroad" and its definition. FRA proposed to create definitions of "covered data," "general reportability criteria," "medical removal," "musculoskeletal disorder," "needlestick or sharps injury," "new case," "occupational hearing loss," "occupational tuberculosis," "privacy concern case," "significant change in the number of reportable days away from work," "significant illness," and "significant injury."

Comments and Final Rule/Decision

These changes will be discussed in context later in the section-by-section analysis or elsewhere in this preamble.

C. Revisions to Provision on Telephonic Reporting—§ 225.9

Proposal

The Working Group agreed to propose certain amendments to § 225.9, pertaining to telephonic reporting, and the corresponding instructions related to telephonic reporting in the Guide. Prior to this final rule, FRA had required immediate telephonic reporting of accidents/incidents to FRA through the National Response Center (NRC) in only a limited set of circumstances, *i.e.*, the occurrence of an accident/incident arising from the operation of a railroad that results in the death of a rail passenger or employee or the death or injury of five or more persons. *See* 1997's § 225.9(a). In contrast, under OSHA's final rule,

> Within eight (8) hours after the death of any employee from a work-related incident or the *in-patient hospitalization of three or more employees* as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident.

Emphasis added. 29 CFR 1904.39(a). Further, OSHA's final rule states,

> Do I have to report a fatality or hospitalization that occurs long after the incident?
>
> No, you must only report each fatality or multiple hospitalization incident that occurs *within (30) days of an incident.*

Emphasis added. 29 CFR 1904.39(b)(6). Finally, OSHA's final rule states,

> *Do I have to report a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system? No,* you do not have to call OSHA to report a fatality or multiple hospitalization incident if it involves a commercial airplane, train, subway or bus accident. * * *

Emphasis added. 29 CFR 1904.39(b)(4). This provision would seem to exempt railroads from telephonically reporting to OSHA all but a very few railroad accidents/incidents. The extent of the exemption from OSHA's telephonic reporting requirement depends on how broadly "commercial or public transportation system" is interpreted.

As recommended by the Working Group, FRA proposed to broaden the set of circumstances under which a railroad would be required to report an accident/incident telephonically to the NRC, and to make certain other refinements to the rule. Specifically, FRA first proposed to add requirements for telephonic reporting when there is a death to any employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad. Railroads are increasingly using contractors to perform work previously performed by railroad employees. When those workers are exposed, the hazards are often unique to the railroad environment or otherwise involve conditions under FRA's responsibility. Receiving these reports will assist FRA in discharging its responsibility for monitoring the safety of railroad operations.

FRA also proposed to require the telephonic reporting of certain train accidents that are relevant to the safety of railroad passenger service, including otherwise reportable collisions and derailments on lines used for scheduled passenger service and train accidents that foul such lines. These events are potentially quite significant, since they may indicate risks which affect passenger service (*e.g.*, poor track maintenance or operating practices). Further, these events often cause disruption in intercity and commuter passenger service. Major delays in commuter trains, for instance, have direct economic effects on individuals and businesses.

FRA also proposed to incorporate provisions similar to the National Transportation Safety Board's (NTSB) requirements for telephonic reporting (part 840) into its own regulations and *Guide*. The key provisions of NTSB's requirements, excerpted in the NPRM for the convenience of the reader, can be found at §§ 840.3 and 840.4. See also 67 FR 63025–26.

The reason FRA proposed to incorporate requirements similar to NTSB's standards for telephonic reporting into its own regulations and *Guide* is that, unlike NTSB, FRA can enforce these requirements through the use of civil penalties. FRA has long relied upon reports required to be made to NTSB as a means of alerting its own personnel who are required to respond to these events. Although most railroads are quite conscientious in making telephonic reports of significant events, including some not required to be reported, from time to time FRA does experience delays in reporting that adversely affect response times. In this regard, it should be noted that FRA conducts more investigations of railroad accidents and fatalities than any other public body, and even in the case of the

[1] AAR's comments on the NPRM will be discussed throughout this preamble. After the publication of the NPRM and a discussion of the comments at the final Working Group meeting, AAR submitted a letter, dated December 13, 2002, and a supplemental response that was e-mailed to FRA on January 3, 2003.

[2] FRA has reviewed the comments from the private citizen, which did not specifically address any of the proposed amendments and vaguely asserted that FRA was not fulfilling its duty to carry out statutory mandates. Although the commenter did not provide specific recommendations to FRA on how to revise the NPRM, FRA believes that the provisions in the final rule will improve the overall quality and integrity of FRA's accident/incident data.

relatively small number of accidents that NTSB selects for major investigations, FRA provides a substantial portion of the technical team participating from the public sector. Accordingly, it is appropriate that FRA take responsibility for ensuring that timely notification is provided. As can be seen by comparing the referenced NTSB regulations to § 225.9, FRA has not adopted NTSB's standards wholesale, but extracted necessary additions to FRA's existing requirements (*e.g.*, train accident requiring evacuation of passengers), used terminology from FRA regulations to describe the triggering events (*e.g.*, "train accident" as defined in § 225.5), and slightly modified the contents of the required report (*e.g.*, "available estimates" instead of "estimate").

Some members of the Working Group expressed concern about which railroad should be responsible for making the telephonic report in the case of joint operations. The Working Group agreed that for purposes of telephonic reporting, the dispatching railroad, which controls the track involved, would be responsible for making the telephonic report.

There was much discussion in the Working Group regarding whether railroads should be required to telephonically report certain incidents to the NRC "immediately." One suggestion was to set a fixed period, such as three or four hours, to report an accident/incident, or in any event, to provide a reasonable amount of time in which to report. Prompt reporting permits FRA and (where applicable) NTSB to dispatch personnel quickly, thereby making it possible for them to arrive on scene before re-railing operations and track reconstruction begin and key personnel become unavailable for interview. Decades of experience in accident investigation have taught FRA that the best information is often available only very early in the investigation, before physical evidence is disturbed and memories cloud.

In addition, there was a suggestion that railroads be permitted to immediately report certain incidents by several methods other than by a telephone call, including use of a facsimile, or notification by e-mail. Railroad representatives indicated that telephonic reporting is sometimes burdensome, particularly when a busy manager must wait to speak to an emergency responder for extended periods of time. FRA rejected this suggestion, and is requiring that immediate notification be done by telephone, and only by telephone, because FRA is concerned that if notification is given by other methods, such as facsimile or e-mail, it is possible that no one will be available to immediately receive the facsimile or e-mail message. Conversely, with a telephone call to an emergency response center, a railroad should be able to speak immediately to a person, or at the very least, should hear a recording that would immediately direct the caller to a person.

Some members of the Working Group expressed concern that continued use of the term "immediate" in conjunction with a broadening of the events subject to the FRA rule might produce harsh results, due to the need to address emergency response requirements for the safety and health of those affected and to determine the facts that are predicates for reporting. The proposed rule addressed this concern by stating that,

> [t]o the extent the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report would be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment.

§ 225.9(d).Since FRA and the Working Group believe that immediate telephonic reporting raises issues related to emergency response unique to the railroad industry, the Working Group agreed not to conform in some respects to OSHA's oral or in-person reporting requirements. Accordingly, to the extent that OSHA's requirements regarding oral reports by telephone or in person apply to the railroad industry and that part 225 diverges from those requirements, FRA will include in the MOU with OSHA a provision specifying how and why FRA has departed from OSHA's requirements in this area.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, FRA has adopted the language as proposed in the NPRM for this final rule.

D. Revisions to Criteria for Reporting Occupational Fatalities, Injuries, and Illnesses—§ 225.19(d)

1. FRA's Reporting Criteria Applicable to Railroad Employees

Proposal

Section 225.19(d), as in effect until May 1, 2003, reads as follows:

> Group III-Death, injury, or occupational illness. Each event arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if it results in:
>
> (1) Death to any person;
>
> (2) Injury to any person that requires medical treatment;
>
> (3) Injury to a railroad employee that results in:
>
> (i) A day away from work;
>
> (ii) Restricted work activity or job transfer; or
>
> (iii) Loss of consciousness; or
>
> (4) Occupational illness of a railroad employee.
>
> * * * * *

The comparable provisions of OSHA's Final Rule, excerpted in the NPRM for the convenience of the reader, can be found at 29 CFR 1904.4(a) and 1904.7(b). See also 67 FR 63026–27. As indicated in the NPRM and in the above-referenced rule text, OSHA's final rule has specific recording criteria for cases described in 29 CFR 1904.8 through 1904.12. These cases involve work-related needlestick and sharps injuries, medical removal, occupational hearing loss, work-related tuberculosis, and independently reportable work-related musculoskeletal disorders. *See* Web site for OSHA regulations located in the **SUPPLEMENTARY INFORMATION** section.

Comments and Final Rule/Decision

No specific comments were received on the definitions of work-related "needlestick or sharps injury" and "occupational tuberculosis." FRA has adopted these definitions as proposed. Although no specific comments were received on the definition of "medical removal," and FRA has adopted this definition almost exactly as proposed, this term will be discussed later in this section of the preamble, in context with the discussion of the "float vs. fixed" issue. Before addressing the comments received on occupational hearing loss and work-related musculoskeletal disorders, it is necessary to provide an overview of OSHA's evolved position on these issues, since OSHA had not yet adopted its position at the time that the Working Group had reached consensus.

Overview of OSHA's Position on Occupational Hearing Loss and Musculoskeletal Disorders

In response to several comments received after publication of its Final Rule, which was scheduled to take effect on January 1, 2002, OSHA delayed the effective date of three of the rule's provisions until January 1, 2003, so as to allow itself further time to evaluate 29 GFR 1904.10, regarding occupational hearing loss, and 29 CFR 1904.12 and 1904.29(b)(7)(vi),[3] regarding musculoskeletal disorders ("MSDs"). *See* 66 FR 52031. On July 1, 2002, OSHA published a final rule establishing a new standard for the recording of occupational hearing loss cases for calendar year 2003. *See* 67 FR 44037. However, because OSHA was still uncertain about how to craft an appropriate definition for musculoskeletal disorders, and whether or not it was necessary to include a separate column on the OSHA log for the recording of these cases and occupational hearing loss cases, OSHA simultaneously published a proposed delay of the effective dates of these provisions, from January 1, 2003 to January 1, 2004, and requested public comment on the provisions. *See* 67 FR 44124. On December 17, 2002, OSHA published a final rule adopting the proposed delay. *See* 67 FR 77165.

Prior to OSHA's final rule, the recordkeeping rule had no specific threshold for recording hearing loss cases. *See* 67 FR 44038. The Final Rule established a new 10-dB standard at 29 CFR 1904.10:

> If an employee's hearing test (audiogram) reveals that a Standard Threshold Shift (STS) has occurred, you must record the case on the OSHA 300 Log by checking the "hearing loss" column. * * * A standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(c)(10)(i) as a change in hearing threshold, relative to the most recent audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz in one or both ears.

See 66 FR 6129 (January 19, 2001). On October 12, 2001, OSHA delayed the provision until January 1, 2003, in order to seek comments on what should be the appropriate hearing loss threshold. *See* 66 FR 52031. As an interim policy for calendar year 2002, OSHA added a new paragraph (c) to 29 CFR 1904.10 that adopted the 25-dB standard set forth in OSHA's enforcement policy, which had been in effect since 1991, and which was FRA's approach at the time of this rulemaking.[4] The enforcement policy stated that OSHA would cite employers for failing to record work-related shifts in hearing of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. Thus, the hearing loss of an employee would be tested by measuring the difference, or shift, between the employee's current audiogram and the employee's original baseline audiogram. *See* 67 FR 44037, 44038. If the shift was 25 dB or more, OSHA required that it be recorded. The employee's original baseline audiogram is one of two starting points, or baselines, from which you can measure a Standard Threshold Shift (STS), the other being audiometric zero.

Audiometric zero represents the statistical average hearing threshold level of young adults with no history of aural pathology, thus it is not specific to the employee. This is the starting point from which the American Medical Association (AMA) measures a 25-dB permanent hearing impairment. The employee's original baseline audiogram, on the other hand, is taken at the time the worker was first placed in a hearing conservation program.[5] This starting point, which has been enforced by OSHA since 1991 and is the starting point in use by FRA until the effective date of this final rule, fails to take into account any hearing loss that the employee has suffered in previous jobs and can present a problem if the employee has had several successive employers at high-noise jobs.

Thus, if an individual employee has experienced some hearing loss before being hired, a 25-dB shift from the employee's original baseline would be a larger hearing loss than the 25-dB shift from audiometric zero that the AMA recognizes as a hearing impairment and disabling condition. For example, if an employee experienced a 20-dB shift from audiometric zero prior to being hired in a job where he later suffered a 15-dB shift hearing loss from his original baseline audiogram, the AMA would count this as a 35-dB shift, a serious hearing impairment, but under OSHA's enforcement policy (and FRA's approach prior to this final rule), this would only have counted as a 15-dB shift that is not recordable under OSHA's enforcement policy or 29 CFR 1904.10 for calendar year 2002. In order for it to become recordable, the employee would have had to suffer an additional 10-dB shift, which would mean that the employee would have suffered a 45-dB shift from audiometric zero—almost twice the amount that the AMA considers to be a permanent hearing impairment.

After considering several comments demonstrating that a 25-dB shift from an employee's original baseline audiogram was not protective enough and that a 10-dB shift from an employee's original baseline audiogram was overly protective (and more appropriate as an early warning mechanism that should trigger actions under the Occupational Noise Exposure Standard[6] to prevent impairment from occurring), OSHA adopted a compromise position that made a 10-dB shift from an employee's original baseline audiogram recordable in those cases where this shift also represented a 25-dB shift from audiometric zero.

Proposal

As OSHA's new approach to defining and recording occupational hearing loss cases was not before the Working Group when consensus was reached, FRA sought comment on whether FRA should adopt OSHA's new (2003) approach as FRA's fixed approach, beginning on the effective date of FRA's final rule, or whether FRA should diverge from OSHA and continue to enforce OSHA's 2002 approach (which was approved by the Working Group and the RSAC and was the same as FRA's approach at the time of this rulemaking) as a fixed approach beginning on the effective date of FRA's final rule. *See* proposed *Guide* at Ch. 6, pp. 27–28, and Appendix E, p. 4.

Comments

In its written comment, AAR strongly opposed the adoption of OSHA's new policy "without any discussion of the wisdom of the policy by the RSAC working group considering the issues posed in this proceeding." AAR also noted that the policy would result in a greater number of hearing loss cases being reported by the railroad industry and result in an adverse trend in the occurrence of railroad injuries

[3] The effective date of the second sentence of § 1904.29(b)(7)(vi), which states that musculoskeletal disorders are not considered privacy concern cases, was delayed until January 1, 2003 in OSHA's October 12, 2001, final rule. On July 1, 2002, OSHA proposed to delay the effective date of this same provision until January 1, 2004. *See* 67 FR 44124. On December 17, 2002, OSHA adopted this proposed delay. *See* 67 FR 77165. This provision will be discussed in the context of privacy concern cases in the section-by-section analysis at "III.G.1." of this preamble.

[4] *See 1997 Guide* at Appendix E, p. 4. FRA's Occupational Illness Code #1151 in the *1997 Guide*, concerning noise-induced hearing loss, provides in part: "An STS is a change in hearing threshold relative to a baseline audiogram that averages 10 dB or more at 2000, 3000, and 4000 hertz in either ear. Documentation of a 10 dB shift is not, of and by itself, reportable. There must be a determination by a physician * * * that environmental factors at work were a significant cause of the STS. However, if an employee has an overall shift of 25 dB or more above the original baseline audiogram, then an evaluation must be made to determine to what extent it resulted from exposure at work."

[5] Not all employees are placed in a hearing conservation program. OSHA only requires such a program to be in place in general industry when the noise exposure exceeds an 8-hour time-weighted average of 85 dB.

[6] Under 29 CFR 1910.95, employers must take protective measures (employee notification, providing hearing protectors or refitting of hearing protectors, referring employee for audiological evaluation where appropriate, etc.) to prevent further hearing loss for employees who have experienced a 10-dB shift from the employee's original baseline audiogram. *See* 67 FR at 44040–41.

regardless of the railroads' actual performance.

At the post-NPRM working group meeting, FRA replied that the RSAC Working Group was able to consider only one approach at the Working Group meeting: whether or not to adopt OSHA's *old* enforcement policy (that was finally put into rule form), which was essentially the same as FRA's policy at that time. In contrast, OSHA was able to consider this issue in more detail and over a greater period of time than was FRA, as is evident from the overview of OSHA's evolved position on this issue.

AAR acquiesced in accepting the criteria for reporting, but was concerned that there would be increases in reportables for the first few years, as OSHA had estimated that this new change would result in a significant increase in cases. AAR asked FRA to consider reporting the hearing loss cases under covered data, spread over three years. After the meeting, AAR sent a letter to FRA dated December 13, 2002, echoing the concerns expressed at the meeting.

Final Rule/Decision

OSHA also noted concern among employers because the application of the new criteria in 29 CFR 1904.10 would result in an increase in recorded hearing loss cases. *See* 67 FR 44038–40. However, after recognizing that the new criteria will capture more hearing loss cases, and that caution must be used when comparing the future data with prior years, OSHA emphasized that by requiring an employer to record only those STSs that exceed 25 dB from audiometric zero, the regulation "assures that all recorded hearing losses are significant illnesses." *See* 67 FR 44040. In the discussion of its decision, OSHA concluded that it would be inappropriate to adopt a policy of recording only 25-dB shifts from the employee's baseline audiogram as this would "clearly understate the true incidence of work-related hearing loss." *See* 67 FR 44040–41. Additionally, aligning the recording threshold with the STS criterion in OSHA's Noise Standard will provide more opportunities for employer intervention and prevention of future hearing loss cases. *See* 67 FR 44046. Thus, OSHA was fully aware of the expected increase in occupational hearing loss cases, but nevertheless concluded that it was very important that this data be collected. FRA agrees. The importance of capturing the true magnitude of work-related hearing loss, is justification alone for adopting these criteria; however, it is important to note that the increase in the number of reportables will be partially offset by OSHA's reclassification as non-reportable many events that previously were reportable.[7] Because the Working Group could not reach full consensus, the issue was presented to FRA for resolution. Upon careful consideration and review of AAR's comments and letter, FRA has decided not to include occupational hearing loss cases under covered data. Note that, for clarification and simplicity, the rule text definition has been amended to reflect the actual recording criteria used by OSHA (for calendar year 2003 and beyond) rather than the citation to the relevant section of OSHA's regulation. This amendment does not represent a substantive change from OSHA's criteria.

Proposal

As noted above, OSHA is reconsidering the definition of musculoskeletal disorder and the requirement of having a separate column on the OSHA 300 log for the recording of MSD and occupational hearing loss cases, having delayed these provisions until January 1, 2004. *See* 67 FR 77165. As the issue of OSHA's proposed delay was not before the Working Group when consensus was reached and the delay had not been adopted by OSHA prior to the publication of FRA's NPRM, FRA sought comment on whether or not the definition and column requirements should be adopted if OSHA's proposed January 1, 2004 delay took effect. It was noted in the NPRM that if FRA were to go forth with the provisions as approved by the Working Group, FRA would be adopting these provisions in advance of OSHA, a result that may not have been contemplated by the Working Group when it agreed to follow OSHA on these issues prior to the proposed delays.

In the event that OSHA chose not to delay the effective date of these provisions, FRA sought comment on whether or not to diverge from OSHA by not adopting the definition or column requirements, since FRA already had its own forms and methods in place to collect this data for OSHA's purposes. Instead of requiring railroads to record cases and check boxes on the OSHA 300 log, FRA requires railroads to report these cases using assigned injury codes on the FRA Form F 6180.55a. Code 1151, for example, is the code for occupational hearing loss cases, thus no additional column would be necessary. Similarly, the different kinds of injuries that could qualify as an MSD are given separate codes. Once OSHA decides what types of injuries are appropriate to include in the category or definition of an MSD, OSHA would be able to identify the MSD cases by their respective code numbers, thereby allowing OSHA to use FRA's data for national statistical purposes. Although it is not practical for FRA's injury codes to be as extensive as OSHA's codes, it would be possible to amend the *Guide* so as to reflect the major codes recognized by OSHA and to add a category such as "Other MSDs, as defined by OSHA in § 1904.12."

FRA also sought comment on whether or not a definition of an MSD was necessary, since FRA had no special criteria in its regulations beyond the general recording criteria for determining which MSDs to record, and because OSHA's definition appeared to be used primarily as guidance for when to check the MSD column on the 300 Log. *See* 66 FR 6129–6130.

Comments

AAR believes no purpose would be served by having separate columns, since OSHA would still be able to use FRA's data for statistical purposes without adoption of this requirement. Although no specific comments were received regarding the adoption of a definition of an MSD, FRA raised the issue at the post-NPRM Working Group meeting. FRA pointed out that there were no special reporting criteria for MSDs and that there may be more problems in trying to delete the definition than to leave it in. Because MSDs must be independently reportable, there seemed to be little or no effect on the regulated community by retaining the proposed definition. AAR indicated that it was inclined to leave the definition in, but might reconsider the issue and provide FRA with a position on the issue after the meeting. However, no further comments were received.

Final Rule/Decision

Since FRA already has its own forms and methods in place to collect data on occupational hearing loss and MSD cases for OSHA's statistical purposes, and because OSHA has not yet adopted the column requirement, FRA has not adopted the column requirement for the reporting of occupational hearing loss and MSD cases in its final rule. Additionally, for the reasons stated above, FRA has adopted the MSD definition as proposed. *See also* the discussion of deleting the exclusion of MSDs from the definition of "privacy concern case." This difference will be addressed in the MOU with OSHA, as appropriate.

[7] *See* later discussion concerning the definitions of "medical treatment" and "first aid" at section "III.J.3." of this preamble.

Proposal

FRA also sought comment on whether the definitions of terms in its regulations should "float," *i.e.*, change automatically anytime OSHA revises the definition of the term in its regulations, since the main purpose of this rulemaking was to bring FRA's rule into general conformity with OSHA's regulations (which are developed by OSHA after a full opportunity for notice and comment), or whether FRA's adoption of a fixed and certain approach to the definitions of terms could better serve FRA's safety objectives and the needs of the regulated community. This issue was particularly relevant for the proposed definition of "medical removal." Because medical removal is such a complex issue, and one that is rarely, if at all, encountered in the railroad environment, FRA sought comment on whether this particular definition should "float" with OSHA's. That is, should we word our definition so that it is tied to OSHA's standard anytime OSHA might change that standard? Since the proposed definition [8] referenced OSHA's standard without restating it within the rule text or preamble, this would appear to reflect the intent of the Working Group.

Comments

AAR commented that it was opposed to the concept of floating regulations, stating that there should be an opportunity for FRA's regulated community to comment on the suitability of any changes in OSHA's regulations since there is sometimes a need to differ from OSHA.

Final Rule/Decision

FRA still believes that with respect to issues that are not unique to railroading, AAR would have a full opportunity for notice and comment through OSHA's rulemaking in the event that OSHA decides to change its regulations. However, FRA recognizes AAR's concerns and has decided not to float the definition of "medical removal" or any other terms. Accordingly, any definitions that have been modeled on OSHA's wording have been adopted by using the same or similar wording; any definitions that incorporate OSHA's regulations by reference are noted as adopting the year-specific version of such regulations.

[8] The proposed definition read: "*Medical removal* means medical removal under the medical surveillance requirements of an Occupational Safety and Health Administration standard in 29 CFR part 1910, even if the case does not meet one of the general reporting criteria."

Proposal

Finally, OSHA added another category of reportable cases: "significant injuries or illnesses." With regard to the reportability of illnesses and injuries of railroad employees, there were at least three primary differences between OSHA's reporting criteria and FRA's reporting criteria at the time of this rulemaking, at least as stated in § 225.19(d). First, FRA required that all occupational illnesses of railroad employees be reported. *See* §§ 225.5 and 225.19(d)(4). By contrast, under OSHA's Final Rule, only certain occupational illnesses are to be reported, namely those that: result in death, medical treatment, days away from work, or restricted work or job transfer; constitute a "significant illness"; or meet the "application to specific cases of [29 CFR] 1904.8 through 1904.12." Second, for the reason that FRA's interpretation of part 225 was already very inclusive, FRA's § 225.19(d) criteria did not use the term "significant injuries," which is incorporated in OSHA's Final Rule. While FRA did not use the phrase "significant injuries" in its 1997 rule text, the *1997 Guide* did require the reporting of conditions similar to OSHA's "significant injuries."

The distinction between medical treatment and first aid depends not only on the treatment provided, but also on the severity of the injury being treated. First aid * * * [i]nvolves treatment of only *minor* injuries * * * An injury is not minor if * * * [i]t impairs bodily function (*i.e.*, normal use of senses, limbs, etc.): * * * [or] [i]t results in damage to the physical structure of a nonsuperficial nature (*e.g.* fractures); * * *

1997 *Guide*, Ch. 6, p. 6. Accordingly, under the 1997 *Guide*, fractures were considered not to be minor injuries, and a punctured eardrum was likewise not considered a minor injury because it would involve impairment of "normal use of senses." *Id.* Third, FRA did not have "specific cases" reporting criteria for occupational injuries of railroad employees.

FRA proposed to conform part 225 to OSHA's Final Rule with regard to these three differences by amending its regulations at § 225.19(d) and related definitions at § 225.5. FRA would, however, distribute the specific conditions specified under OSHA's "significant" category (§ 1904.7(b)(7)) into injuries and illnesses, subcategories that OSHA could, of course, aggregate, and FRA would omit the note to OSHA's description of "significant illnesses and injuries," which did not appear to be necessary for a proper understanding of the concept and which might have been read as open-ended, a result FRA did not intend. The text of the note is excerpted below:

Note to § 1904.7: OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in § 1904.7(a) * * * . In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of the diagnosis but are likely to be recommended as the disease progresses. OSHA believes that cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

29 CFR 1904.7(b)(7). FRA believed that the note was intended to reference a statutory issue not present in the case of FRA's reporting system and could be omitted from FRA's rule as not relevant and to avoid potential ambiguity. FRA also proposed to explain these new reporting requirements in the *2003 Guide*. *See* later discussion of Chapter 6 of the *2003 Guide*.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, FRA has adopted the amendments to the rule and *Guide* as proposed.

2. FRA's Reporting Criteria Applicable to Employees of a Contractor to a Railroad

Proposal

As previously noted, under the 1997 rule's § 225.19(d), "Each event arising from the operation of a railroad shall be reported * * * if it results in * * * (1) Death to any person; (2) Injury to any person that requires medical treatment * * *." Under the "definitions" section of the accident reporting regulations, "person" included an independent contractor to a railroad. *See* 1997's § 225.5. Reading these regulatory provisions together, deaths to employees of railroad contractors that arose from the operation of a railroad, and injuries to employees of railroad contractors that arose from the operation of a railroad and required medical treatment would appear to be reportable to FRA. (The 1997 *Guide*, however, narrowed the requirement through its reading of "arising from the operation of a railroad.") FRA did not require reporting of occupational illnesses of contractors; under 1997's § 225.19(d)(4), only the occupational illnesses of

railroad employees were required to be reported.

By contrast, under OSHA's Final Rule, the reporting entity is required to report work-related injuries and illnesses, including those events or exposures meeting the special recording criteria for employees of contractors, only if the employee of the contractor is under the day-to-day supervision of the reporting entity.

If an employee in my establishment is a contractor's employee, must I record an injury or illness occurring to that employee? If the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

29 CFR 1904.31(b)(3).

In the Working Group meetings, APTA noted that it was difficult to comply with FRA's 1997 rule, read literally, with respect to an employee of a contractor to a railroad while he or she is off railroad property. Many commuter railroads often do not know whether an employee of a contractor to the railroad is injured or sickened if the event occurred on property other than property owned, leased, or maintained by the commuter railroad; it was difficult to follow up on an injury or illness suffered by such an employee. For example, ABC Railroad contracts with XYZ Contractor to repair ABC's railcars at XYZ's facilities. An employee of XYZ Contractor, while repairing ABC's railcar at XYZ's facility, receives an injury resulting in medical treatment. ABC Railroad notes that it may not know about the injury and, therefore, could not report it. Furthermore, no information is lost in the national database since the contractor must report the injury to OSHA even if ABC Railroad does not report the injury. The Working Group could not reach consensus on whether to require reporting of injuries to employees of railroad contractors while off railroad property.

A similar difficulty with reporting occurred in the context of fatalities to employees of contractors to a railroad. With respect to whether to require that railroads report fatalities of employees of contractors that arose out of the operation of the railroad but occurred off railroad property, the Working Group also could not reach consensus. AAR noted that for the reasons stated above related to injuries and illnesses, it was difficult for railroads to track fatalities of persons who were not employed by the railroad. Rail labor representatives noted on the other hand, that fatalities were the most serious cases on the spectrum of reportable incidents and that it would be important that those cases be reported to FRA. In addition, rail labor representatives noted that railroads often contract for taxi services to deadhead railroad crews to their final release point and that if a driver died in a car accident transporting a railroad crew, FRA should know about those cases. FRA noted that as a practical matter, those types of cases occurred infrequently, and that FRA data showed only two possible fatal car accidents occurring off railroad property that involved employees of contractors to a railroad. As a compromise, rail labor representatives proposed that only fatalities that involved transporting or deadheading railroad crews be reportable, but that all other fatalities to employees of contractors to a railroad that occur off railroad property, not be reportable, even if the incident arose out of the operation of the railroad.

Since the Working Group could not reach consensus on the issue of reporting injuries, illnesses, or fatalities of contractors to a railroad that arose out of the operation of the railroad but occurred off railroad property, FRA drafted a proposal based upon its reasoned consideration of the issue. In this regard, FRA attempted to balance its need for comprehensive safety data concerning the railroad industry against the practical limitations of expecting railroads to be aware of all injuries suffered by contractors off of railroad property.

FRA recognized that certain types of accident/incidents occurring off of railroad property involved scenarios in which the fact that the contractor was performing work for a railroad was incidental to the accident or incident, and would offer no meaningful safety data to FRA, *e.g.*, ordinary highway accidents involving an on-duty contractor to a railroad.

FRA proposed deleting the term "arising from the operation of a railroad" and its definition from § 225.5. The definition read as follows: "*Arising from the operation of a railroad* includes all activities of a railroad that are related to the performance of its rail transportation business." The new term "event or exposure arising from the operation of a railroad" would be added to § 225.5's list of defined terms and given a three-tier definition. First, "event or exposure arising from the operation of a railroad" would be defined broadly with respect to any person on property owned, leased, or maintained by the railroad, to include any activity of the railroad that relates to its rail transportation business and any exposure related to that activity. Second, the term would be defined broadly in the same way with respect to an employee of the railroad, but without regard for whether the employee is on or off railroad property. Third, the term would be defined narrowly with respect to a person who is neither on the railroad's property nor an employee of the railroad, to include only certain enumerated events or exposures, *i.e.*, a train accident, a train incident, or a highway-rail crossing accident/incident involving the railroad; or a release of hazardous material from a railcar in the railroad's possession or a release of another dangerous commodity if the release is related to the railroad's rail transportation business.

When read together with the rest of proposed § 225.19(d), the new definition of "event or exposure arising from the operation of a railroad" would mean that a railroad would not have to report to FRA the death or injury to an employee of a contractor to the railroad who is off railroad property (or deaths or injuries to any person who is not a railroad employee) unless the death or injury results from a train accident, train incident, or highway-rail grade crossing accident involving the railroad; or from a release of a hazardous material or some other dangerous commodity in the course of the railroad's rail transportation business. In addition, FRA would require railroads to report work-related illnesses only of railroad employees and under no circumstances the illness of employees of a railroad contractor. These proposed reporting requirements diverge from the OSHA standard, which would require the reporting of the work-related death, injury, or illness of an employee of a contractor to the reporting entity if the contractor employee is under the day-to-day supervision of the reporting entity. 29 CFR 1904.31(b)(3).

Comments

Although no specific comments were received on the proposal itself, AAR commented that the *Guide's* discussion of contractors did not reflect FRA's proposed approach and should be amended to do so.

Final Rule/Decision

For the reasons stated above, FRA has adopted the proposal as stated and has amended the *Guide* to reflect this new approach. FRA intends to address the divergence from OSHA on the employee of a contractor issue in the MOU.

3. Reporting Criteria Applicable to Illnesses

Proposal

At a pre-NPRM meeting of the Working Group, AAR proposed that major member railroads would file, with their FRA annual report, a list of claimed but denied occupational illnesses not included on the Form FRA F 6180.56, "Annual Railroad Report of Employee Hours and Casualties by State," because the railroads found the illnesses not to be work-related. The list would be organized by State, and would include the name of the reporting contact person. FRA and other Working Group members had expressed appreciation for this undertaking. It was agreed that this was appropriate for implementation on a voluntary basis, and no comment was sought on this matter.

Comments and Final Rule/Decision

No specific comments were received on this issue. The list, as an attachment to the annual report (FRA F 6180.56), will be adopted on a voluntary basis. Note, however, that after discussing the disadvantages of failing to capture data concerning claimed illnesses and injuries on a standard FRA form, the Working Group agreed to the mandatory recording of this data on a new form (FRA F 6180.107). *See* discussion of recording claimed illnesses in section "III.G.2." of the preamble, below.

E. Technical Revision to § 225.21, "Forms"

Proposal

The Working Group agreed to add a new subsection § 225.21(j) to create a new form (Form FRA F 6180.107), which would be labeled "Alternative Record for Illnesses Claimed to Be Work-Related." This form would call for the same information that is included on the Form FRA F 6180.98 and would have to be completed to the extent that the information is reasonably available. A further discussion of the nature of this new form is discussed under the revisions to § 225.25, later in this preamble.

Comments and Final Rule/Decision

No specific comments were received on this issue. The changes to this form have been adopted as proposed.

F. Technical Revision to § 225.23, "Joint Operations"

Proposal

The Working Group agreed to propose certain minor changes to the regulatory text (specifically, to § 225.23(a), concerning joint operations) simply to bring it into conformity with the other major changes to the regulatory text that are proposed. Note that for purposes of telephonic reporting in joint operations, the dispatching railroad would be required to make the telephonic report. *See* proposed § 225.9.

Comments and Final Rule/Decision

No specific comments were received on this issue. The regulatory text amendments have been adopted as proposed.

G. Revisions to § 225.25, "Recordkeeping"

1. Privacy Concern Cases

Proposal

The Working Group agreed to propose changes to the regulatory text under § 225.25, concerning recordkeeping, by revising § 225.25(h) to address a class of cases described by OSHA as "privacy concern cases." OSHA requires an employer to give its employees and their representatives access to injury and illness records required by OSHA, such as the OSHA 300 Log, with some limitations that apply to privacy concern cases. 29 CFR 1904.35(b)(2), 1904.29(b). A "privacy concern case" is defined by OSHA in 29 CFR 1904.29(b)(7); one type of a privacy concern case is, *e.g.*, an injury or illness to an intimate body part. FRA proposed to define the term similarly in § 225.5. In privacy concern cases, OSHA prohibits recording the name of the injured or ill employee on the Log. The words "privacy case" must be entered in lieu of the employee's name. The employer must "keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so." 29 CFR 1904.29(b)(6). In addition, if the employer has a reasonable basis to believe that the information describing the privacy concern case may be personally identifiable even though the employee's name has been left out, the employer may use discretion in describing the injury or illness. The employer must, however, enter enough information to identify the cause of the incident and the general severity of the injury or illness, but need not include details, *e.g.*, a sexual assault case may be described as an injury from assault.

By contrast, FRA required that an employee have access to information in the FRA-required Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) regarding his or her own injury or illness, not the FRA-required records regarding injuries or illnesses of other employees. 1997's § 225.25(a), (b), (c). This rendered the FRA-required log of reportables and accountables with its information on the name and Social Security number of the employee, inaccessible to other employees. *Id.* Additionally, FRA proposed to amend the requirement that the record contain an employee's Social Security Number, opting to allow a railroad to enter an employee's identification number instead. *See* 2003's § 225.25(b)(6). Therefore, FRA considered this difference a sufficient reason not to adopt OSHA's privacy requirements with regard to the reportable and accountable log.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, the regulatory text amendments have been adopted as proposed. FRA intends to address its variation from OSHA's privacy requirements with regard to the reportable and accountable log in the MOU.

Proposal

Although FRA has not allowed wide access to the reportable and accountable log, FRA requires, however, the posting in a conspicuous place in each of the employer's establishments, certain limited information on reportable accidents/incidents that occurred at the establishment, thereby making this information accessible to all those working at the establishment and not simply the particular employee who suffered the injury or illness. § 225.25(h). That limited information that must be posted includes the incident number used to report the case, the date of the injury or illness, the regular job title of the employee involved, and a description of the injury or condition. Even though the name of the employee is not required to be listed, the identity of the person might in some cases be determined, particularly at small establishments. Under 1997's § 225.25(h)(15), FRA permitted the railroad not to post an injury or illness at the establishment where it occurred if the ill or injured employee requested in writing to the railroad's reporting officer that the injury or illness not be posted. The proposed revision of the rule concerning the posting of injuries or illnesses would be consistent with OSHA's requirements with regard to its Log, but more expansive than those requirements. FRA would also give railroads discretion not to provide details of the injury or condition that constitutes a privacy case.

Comments and Final Rule/Decision

No comments were received on these proposed changes. For the reasons stated above, the amendments have been adopted as proposed. FRA intends to address these slight variations from OSHA's privacy requirements in the MOU.

Proposal

Another issue relevant to reporting privacy concern cases arose in § 1904.29(b)(7)(vi) of OSHA's January 19, 2001, Final Rule, which stated that musculoskeletal disorders were not considered privacy concern cases. OSHA delayed the effective date of this exclusion until January 1, 2003, in its October 12, 2001, final rule. On July 1, 2002, OSHA proposed to delay the effective date of this same provision until January 1, 2004, and requested comment on the provision. *See* 67 FR 44124. On December 17, 2002, OSHA published a final rule adopting the proposed delay. *See* 67 FR 77165. As the issue of OSHA's proposed delay of this provision was not before the Working Group when consensus was reached, FRA sought comment on whether or not this exclusion should be adopted if OSHA's proposed January 1, 2004, delay took effect. It was noted that if FRA were to adopt the exclusion as approved by the Working Group, FRA would be doing so in advance of OSHA's adoption of it and in advance of OSHA's defining the very term that is supposed to be excluded, a result that may not have been contemplated by the Working Group when it agreed to the proposed rule text on this issue prior to OSHA's issuance of the proposed delay. *See* discussion concerning reporting criteria for MSDs at section "III.D.1." of the preamble, above. Even if OSHA chose not to delay the effective date of this provision and to give it effect on January 1, 2003, FRA sought comment on whether or not FRA should diverge from OSHA by not adopting the exclusion.

Comments

Although no specific comments were received regarding the adoption of OSHA's proposed exclusion of MSDs from the definition of "privacy concern case," FRA raised this issue at the post-NPRM Working Group meeting. FRA noted that because OSHA had not yet adopted this exclusion and had not even adopted a definition of MSDs that would indicate what should be excluded, it would not make sense for FRA to adopt this exclusion. When presented with the issue at the meeting, there seemed to be general agreement by all concerned to have this exclusion in the definition of "privacy concern case" deleted from the revised part 225 and the FRA *Guide*.

Final Rule/Decision

Because OSHA has not yet adopted the exclusion of MSDs from its definition of "privacy concern case," and since FRA has not been provided with a justification for departing from OSHA on this issue, FRA has *not* adopted the exclusion of MSDs from the definition of "privacy concern case" in its final rule.

Finally, the question was raised in the Working Group whether FRA's proposed regulations conformed to the Health Insurance Portability and Accessibility Act of 1996 (Pub. L. 104–191 (HIPAA)) and to the Department of Health and Human Services' regulations implementing HIPAA with regard to the privacy of medical records. *See* "the Standards for Privacy of Individually Identifiable Health Information." 65 FR 82462 (Dec. 28, 2000), codified at 45 CFR parts 160 and 164. Since it appears that OSHA's regulations conform to HIPAA, and FRA proposes to conform to OSHA in all essential respects with regard to the treatment of medical information, FRA believes that its final regulations will not conflict with HIPAA requirements.

2. Claimed Illnesses for Which Work-Relatedness Is Doubted

a. Recording Claimed Illnesses

Proposal

Under the 1997 FRA rule, all accountable or reportable injuries and illnesses were required to be recorded on Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," or an equivalent record containing the same information. The subset of those cases that qualified for reporting were then reported on the appropriate forms. *See* 1997's § 225.25(a), (b). If the case was not reported, the railroad was required to state a reason on Form FRA F 6180.98 or the equivalent record. *See* 1997's § 225.25(b)(26). Although this system has generally worked well, problems have arisen with respect to accounting of claimed occupational illnesses. As further explained below, railroads are subject to tort-based liability for illnesses and injuries that arise as a result of conditions in the workplace. By their nature, many occupational illnesses, particularly repetitive stress cases, may arise either from exposures outside the workplace, inside the workplace, or a combination of the two. Accordingly, issues of work-relatedness become very prominent. Railroads evaluate claims of this nature using medical and ergonomic experts, often relying upon job analysis studies as well as focusing on the individual claims.

With respect to accounting and reportability under part 225, railroad representatives stated their concern that mere allegations (*e.g.*, receipt of a complaint in a tort suit naming a large number of plaintiffs) not give rise to a duty to report. They added that many such claims are settled for what amounts to nuisance values, often with no admission of liability on the part of the railroad, so even the payment of compensation is not clear evidence that the railroad viewed the claim of work-relatedness as valid.

Although sympathetic to these concerns, FRA was disappointed in the quality of data provided in the past related to occupational illnesses. Indeed, in recent years the number of such events reported to FRA has been extremely small. FRA has an obligation to verify, insofar as possible, whether the railroad's judgments rest on a reasonable basis, and discharging that responsibility requires that there be a reasonable audit trail to verify on what basis the railroad's decisions were made. While the basic elements of the audit trail are evident within the internal control plans of most railroads, this is not universally the case.

Accordingly, FRA asked the Working Group to consider establishing a separate category of claimed illnesses. This category would be comprised of (1) illnesses for which there is insufficient information to determine whether the illness is work-related; (2) illnesses for which the railroad has made a preliminary determination that the illness was not work-related; and (3) illnesses for which the railroad has made a final determination that the illness is not work-related. These records would contain the same information as the Form FRA F 6180.98, but might at the railroad's election—

- Be captioned "alleged";
- Be retained in a separate file from other accountables; and
- If accountables are maintained electronically, be excluded from the requirement to be provided at any railroad establishment within 4 hours of a request.

This would permit the records to be kept at a central location, in either paper or electronic format.

The railroad's internal control plan would be required to specify the custodian of these records and where they could be found. For any case determined to be reportable, the designation "alleged" would be removed, and the record would be transferred to the reporting officer for retention and reporting in the normal manner. In the event the narrative block (Form FRA F 6180.98, block 39) indicated that the case was not reportable, the explanation contained in that block would record the reasons the railroad determined that the case was not reportable, making reference to the "most authoritative" information relied upon. Although the Form FRA F 6180.107 or equivalent would not require a railroad to include all supporting documentation, such as medical records, it would require a railroad to note where the supporting documentation was located so that it would be readily accessible to FRA upon request.

FRA believes that the system of accounting for contested illness cases described above will focus responsibility for these decisions and provide an appropriate audit trail. In addition, it will result in a body of information that can be used in the future for research into the causes of prevalent illnesses. Particularly in the case of musculoskeletal disorders, it is entirely possible that individual cases may appear not to be work-related due to an imperfect understanding of stressors in the workplace. Review of data may suggest the need for further investigation, which may lead to practical solutions that will be implemented either under the industrial hygiene programs of the railroads or as a result of further regulatory action. Putting this information "on the books" is a critical step in sorting out over time what types of disorders have a nexus to the workplace. *See* amendments to §§ 225.21, 225.25, 225.33, and 225.35 and new Chapter 13 of the *2003 Guide*.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, FRA has adopted the amendments and new form as proposed.

b. FRA Review of Railroads' Work-Relatedness Determinations

Proposal

Concern arose within the Working Group regarding how FRA planned to review a reporting officer's determination that the illness was not work-related. As discussed below in section "III.P.3." of the preamble, it is the railroad's responsibility to determine whether an illness is work-related. In connection with an inspection or audit, FRA's role will be to determine whether the reporting officer's determination was reasonable. Even if FRA disagrees with the reporting officer's determination not to report, FRA will not find that a violation has been committed as long as the determination was reasonable. FRA understands that this is consistent with the approach OSHA is employing under its revised rule, and in any event it is most appropriate given the assignment of responsibility for reporting to the employing railroad. FRA plans to establish access to appropriate expert resources (medical, ergonomic, etc.) as necessary to evaluate the reasonableness of railroad decisions not to report particular cases.

Comments and Final Rule/Decision

No specific comments were received on this issue. FRA has adopted the policy as proposed.

3. Technical Amendments

Proposal

The Working Group also agreed to propose certain minor changes to subsections 225.25(b)(16), (b)(25), (e)(8), and (e)(24), simply to bring these subsections into conformity with the other major changes to the regulatory text that are proposed.

Comments and Final Rule/Decision

No specific comments were received on these changes. For the reasons stated above, the amendments have been adopted as proposed.

H. Addition of § 225.39, "FRA Policy Statement on Covered Data"

Proposal

FRA proposed to add a new section to the regulatory text that would include a policy statement on covered data. Specifically, § 225.39 would state that FRA will not include in its periodic summaries of data for the number of occupational injuries and illnesses, reports of a case, not otherwise reportable under part 225, involving (1) one day away from work when in fact the employee returned to work, contrary to the written recommendation to the employee by the treating physician or other licensed health care professional; (2) one day of restricted work when in fact the employee was not restricted, contrary to the written recommendation to the employee by the treating physician or other licensed health care professional; or (3) a written over-the-counter medication prescribed at prescription strength, whether or not the medication was taken.

Comments

AAR commented that the *Guide* needed to be clearer in its discussion of covered data so as to include: a definition of that term; instructions on how to report such cases; and clarification of the treatment of these cases in the questions and answers section of the *Guide* and in the instructions for Form FRA F 6180.55a. In its comments on the NPRM, verbal comments at the post-NPRM Working Group Meeting, and post-meeting letter and e-mail, AAR expressed concern regarding the sharp increase in the number of reportables that would result upon adoption of the proposed changes. In order to soften the impact of these changes on railroad industry data, AAR requested that the covered data classification be extended to three other areas of reporting:

1. One Time Dosage of Prescription Medication

In the revised OSHA regulation, a one-time dosage of a prescription medication, regardless of whether it is a topical medication or a drug that is taken orally, is now considered a reportable event. Multiple treatments or an injection have always been reportable. AAR requested that all one-time dosages be classified as "covered data."

2. Oxygen Therapy

The administration of oxygen is often a matter of routine, *e.g.*, a pre-hospital protocol performed by an Emergency Medical Technician (EMT). The administration of oxygen, in and of itself, is *not* reportable. However, when oxygen is provided in response to "signs or symptoms," the case becomes reportable. Previously, oxygen administered for a short period of time was classified as "first aid" and *not* reportable, but OSHA has now removed that distinction. AAR requested that oxygen therapy for a short time be classified as a "covered data" case.

3. Hearing Loss

OSHA has revised its reporting rules for hearing loss, and the Working Group acquiesced in adopting OSHA's new standard in FRA's regulation. AAR, however, requested that the occupational illness cases involving hearing loss under the new OSHA regulation be classified as "covered data."

Final Rule/Decision

Because the Working Group could not reach full consensus on whether to extend covered data to include these additional three areas, the issues were

presented to the Administrator for resolution.

With respect to one-time dosages of a prescription medication, FRA concluded that the one-time treatment of *topical* medication should be a "covered data" case, because prescription strength Neosporin is often what is available to, and applied by, the treating medical professional, even when over-the-counter Neosporin would likely suffice. Prescription medication that is ingested is a different matter. Since the original OSHA regulation, major advances have been made with designer drugs and time-release medications. The single dosage prescription medicines have replaced medicine that previously would have required multiple dosages. Accordingly, FRA has concluded that medication *ingested*, even as a *single* dosage not be listed as a "covered data" case. The definition of "covered data" in § 225.39 and the corresponding discussion of "covered data" in the *Guide* have been amended to address AAR's concerns regarding clarity and to reflect the addition of one-time dosages of *topical* prescription medication.

With respect to the administration of oxygen issue, FRA has determined that the administration of oxygen should not be treated as "covered data" cases, even if such administration was for a short time, if there were "signs and symptoms" that triggered the administration of oxygen. This is consistent with other parts of the OSHA/FRA reporting requirements, such as the administration of a vaccine due to exposure to a contagious disease. If the employee does not exhibit any "signs or symptoms," then the case is not reportable; however, if the employee does exhibit signs, then the administration of the vaccine becomes reportable.

As discussed earlier in section "III.D.1." of the preamble, FRA decided *not* to classify new hearing loss cases as "covered data." FRA has an interest in maintaining the integrity and value of its database.

I. Revisions to Chapter 1 of the Guide, "Overview of Accident/Incident Reporting and Recordkeeping Requirements'

Proposal

Chapter 1 of the *Guide* was revised to reflect the major changes to part 225 and the rest of the *Guide*, such as important definitions, the revision of the telephonic reporting requirement, and the revision of the reportability criteria in § 225.19(d). In addition, Chapter 1 has been revised to change the closeout date for the reporting year. Under FRA's reporting requirements, in effect since 1997, railroads were permitted until April 15 to close out their accident/incident records for the previous reporting year. *1997 Guide*, Ch. 1, p. 11. FRA has amended its *Guide* to extend the deadline for completing such accident/incident reporting records until December 1, and will extend the deadline even beyond that date on a case-by-case basis for individual records or cases, if warranted.

Comments and Final Rule/Decision

Comments received will be discussed in context with the issues as stated elsewhere in this preamble.

J. Revisions to Chapter 6 of the Guide, Pertaining to Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"

FRA has amended its *Guide* to bring it, for the most part, into conformity with OSHA's recently published Final Rule on recordkeeping and reporting. The Working Group also wanted to make it clear, by noting in Chapter 6, that railroads are not required to report occupational fatalities, injuries, and illnesses to OSHA if FRA and OSHA have entered into an MOU that so provides.

Under OSHA's Final Rule, reporting requirements have changed in many ways, several of which are described below. *See also* § 225.39 regarding FRA's treatment of cases reportable under proposed part 225 solely because of, *e.g.*, recommended days away from work that are not actually taken.

1. Changes in How Days Away from Work and Days of Restricted Work Are Counted

Proposal

Under OSHA's Final Rule, if a doctor orders a patient to rest and not return to work for a number of days, or recommends that an employee engage only in restricted work, for purposes of reporting days away from work or restricted work, an employer must report the actual number of days that the employee was ordered not to return to work or ordered to restrict the type of work performed, even if the employee decides to ignore the doctor's orders by opting to return to work or to work without restriction. Specifically, under OSHA's Final Rule,

> If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not.

29 CFR 1904.7(b)(3)(ii). FRA agrees with the position taken by OSHA, that the employee should be encouraged to follow the doctor's advice about not reporting to work and/or taking restricted time to allow the employee to heal from the injury.

OSHA states a similar rule with respect to reporting the number of days of recommended restricted duty. Specifically, OSHA's final rule states,

> May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company? Yes, if the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restricted/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

29 CFR 1904.7(b)(3)(viii). In contrast, under FRA's *1997 Guide*, a railroad was only required to report the actual number of days that the employee did not return to work or was on restricted work duty due to a work-related injury or illness: "A record of the actual count of these days must be maintained for the affected employee." *See 1997 Guide*, Ch. 6, pp. 13–14.

There was much discussion at the Working Group meetings as to whether FRA should conform to OSHA's final rule with respect to reporting the number of days away from work or number of days of restricted duty. Some Working Group members wanted to leave FRA's current reporting system in place, while others saw merit in OSHA's approach. FRA representatives met with OSHA representatives to address this issue. OSHA insisted that since it tracks an index of the severity of injuries, with days away from work being the most severe non-fatal injuries and illnesses, it was important to OSHA to maintain a uniform database and have those types of injuries captured in its statistics.

A compromise was reached on the issue of reporting the number of days away and number of days of restricted work activity that was acceptable both to the Working Group and, preliminarily, to OSHA. Specifically, FRA proposed that if no other reporting criteria apply but a doctor orders a patient to rest and not to report to work for a number of days because of a work-related injury or illness, the railroad must report the case under a special category called "covered data." The *Guide* would explain how this covered data would be coded. The principal purpose of collecting covered data is so that this information can be provided to DOL for inter-industry comparison. The general rule is as follows: Where a doctor orders days of rest for an employee because of a work-related injury or illness, the railroad must report the resulting actual days away from work unless the employee misses no days of work because of the injury or illness, in which case, the railroad must report one day. Note: If the employee takes more days than the doctor ordered, the railroad must still report actual days away from work unless the railroad can show that the employee should have returned to work sooner. The following examples illustrate the application of this principle in combination with existing requirements that would be carried forward.

- If the doctor orders the patient to five days of rest, and the employee reports to work the next day and takes no other days off as a result of the injury or illness, the railroad must report one day away from work. (This case would be separately coded and not included in FRA accident/incident aggregate statistics.)
- If, on the other hand, the employee takes three days of rest, when the doctor ordered five days of rest, then the railroad must report the actual number of days away from work as three days away from work.
- Of course, if the doctor orders five days of rest and the employee takes five days of rest, then the railroad must report the full five days away from work.
- Finally, if the doctor orders five days of rest, and the employee takes more than the five days ordered, then the railroad must report the actual number of days away from work, unless the railroad can show that the employee should have returned to work sooner than the employee actually did.

FRA noted that it may be appropriate to take into consideration special circumstances in determining the appropriate reporting system for the railroad industry. While compensation for injuries and illnesses in most industries is determined under state-level worker compensation systems, which provide recovery on a "no-fault" basis with fixed benefits, railroad claims departments generally compensate railroad employees for lost workdays resulting from injuries or occupational illnesses. In the event a railroad employee is not satisfied with the level of compensation offered by the railroad, the injured or ill employee may seek relief under FELA (Federal Employer's Liability Act), which is a fault-based system and subject to full recovery for compensatory damages. Further, railroad employees generally are subject to a federally-administered sickness program, which provides benefits less generous than under some private sector plans. Although it is not readily apparent in any quantitative sense how this combination of factors influences actual practices with respect to medical advice provided and employee decisions to return to work, clearly the external stimuli are different than one would expect to be found in a typical workplace. Accordingly, it seemed appropriate that the Working Group found it wise to recommend that FRA adopt a compromise approach that blends the new OSHA approach with the traditional emphasis on actual outcomes. The approach described above will foster continuity in rail accident/incident trend analysis while permitting inter-industry comparability, as well.

Comments

In its comments, AAR sought clarification as to whether the same principles that applied to counting days away from work applied to counting days of restricted work. AAR also commented that the Guide needed to be clearer in its discussion of covered data. At the post-NPRM Working Group meeting, FRA confirmed that the same principles that applied to counting days away from work would also apply to counting days of restricted work and vice versa.

Final Rule/Decision

With some slight modifications in accordance with AAR's request for greater clarity, FRA has adopted the proposed method for counting days away from work and days of restricted work. FRA will address the slight variations on this issue in its MOU with OSHA.

2. Changes in the "Cap" on Days Away From Work and Days Restricted; Including All Calendar Days in the Count of Days Away From Work and Days of Restricted Work Activity

Proposal

In addition, to conform to OSHA's Final Rule, FRA proposed amendments to its Guide that lower the maximum number of days away or days of restricted work activity that must be reported, from 365 days to 180 days, and change the method of counting days away from work and days of restricted work activity. The Working Group noted that counting calendar days is administratively simpler for employers than counting scheduled days of work that are missed. Using this simpler method of counting days away from work provides employers who keep records some relief from the complexities of counting days away from work under FRA's former system. Moreover, the calendar day approach makes it easier to compare an injury/illness date with a return-to-work date and to compute the difference between those two dates. The calendar method also facilitates computerized day counts. In addition, calendar day counts are a better measure of severity, because they are based on the length of disability instead of being dependent on the individual employee's work schedule. Accordingly, FRA proposed to adopt OSHA's approach of counting calendar days because this approach was easier than the former system and provided a more accurate and consistent measure of disability duration resulting from occupational injury and illness and thus would generate more reliable data. Under FRA's *1997 Guide*, days away from work and days of restricted work activity were counted only if the employee was scheduled to work on those days. In the *2003 Guide*, because it is a preferred approach, and to be consistent with OSHA's Final Rule, days away from work includes all calendar days, even a Saturday, Sunday, holiday, vacation day, or other day off, after the day of the injury and before the employee reports to work, even if the employee was not scheduled to work on those days.

Comments

Although there were no specific comments directly related to the proposed 180-day cap amendment, there was a comment with respect to an alleged disparity between the time period of the proposed cap and the time period of a pre-existing requirement for updating reports. AAR commented that there was a disparity between the proposed *Guide's* discussion of updating reports and the discussion that took place in the RSAC meetings. The proposed *Guide* stated that railroads were required to monitor employee illnesses and injuries for 180 days after the occurrence of the injury or the diagnosis of the illness and update accident/incident reports during that period. *See* Question and Answer No. 91 in the proposed *Guide*, Ch. 6, pp. 34–35. AAR concluded that this policy was inconsistent with FRA's requirement that a railroad file late reports for up to five years after the end of the calendar year to which the reports relate. *See* proposed *Guide*, Ch. 1, p. 12. It appears there was some confusion on what had actually been agreed upon related to this

comment and the difference in the requirement to update an injury versus an occupational illness, since occupational illnesses become reportable on the date of diagnosis.

At the post-NPRM meeting, FRA explained that the requirements were not inconsistent. There is a difference between *monitoring* (for 180 days) an illness or injury about which the railroad had prior knowledge, or already reported or listed as an accountable, versus having to file a *late report* for injuries or illnesses that were *never reported in any form* but should have been. With respect to the cases being *monitored*, the five-year reporting obligation would only hold the railroad responsible for failing to report a change in an employee's illness or injury that occurred within the 180-day monitoring period. Thus, if a change occurred on the 180th day, and the railroad did not discover its error in failing to report until two years later, an obligation to file a late report would still exist, but if a change occurred on the 181st day, the railroad is no longer under an obligation to *actively monitor or investigate* the case and would not be held accountable for failing to report such a *change* one day, one year, or five years later. If a railroad is provided with information or documentation of consequences that the employee claims is related to an injury that occurred more than 180 days ago, the railroad would have to handle the injury as it would a new case.

Final Rule/Decision

FRA has adopted the 180-day cap as proposed. The new cap reflects Working Group agreement that reportable and accountable injuries are tracked for 180 days from the date of the incident. However, if an injury becomes reportable *during that monitoring/tracking period*, the carrier will report it when it becomes known, even after the 180 days. This approach differs slightly from OSHA's approach, which appears to require an employer to continue counting days until the 180-day maximum is reached, regardless of whether those days were consecutive or intermittent. Thus, an employer may have to monitor or track an injury for more than 180 days. In contrast, FRA's cap of 180 days will only be reached if the employee misses those days consecutively. It has generally been FRA's experience that a reportable injury will meet one or more of the general reportability criteria within the 180-day time frame and that only a few cases continue to result in missed days beyond this time frame. Additionally, this difference would not likely have a substantial effect on the data for purposes of OSHA's severity index, since under that index 120 days away from work missed intermittently over a 180-day period would be comparable in severity to 180 days missed consecutively, or 180 days missed intermittently over a two-year period. Thus, FRA has concluded that the burden on the employer of having to monitor a case for as long a period as necessary to compile 180 days away from work outweighs the benefit of capturing more days in a few cases by adopting an intermittent 180-day cap.

FRA has added to the *2003 Guide* an explanation of the difference in occupational illness reporting versus injury and has clarified the discussion concerning the required time period for monitoring and how it relates to updating reports. FRA will address the differences in the 180-day cap in its MOU with OSHA.

3. Definitions of "Medical Treatment" and "First Aid"

Proposal

FRA's *1997 Guide* indicated what constituted "medical treatment" and what constituted "first aid" and how to categorize other kinds of treatment. *See 1997 Guide*, Ch. 6, pp. 6–9. As stated in the *1997 Guide*, "medical treatment" rendered an injury reportable. If an injury or illness required only "first aid," the injury was not reportable, but was, instead, accountable. Under OSHA's final rule, a list is provided of what constitutes "first aid." 29 CFR 1904.7(b)(5). If a particular procedure is not included on that list, and does not fit into one of the two categories of treatments that are expressly defined as not medical treatment (diagnostic procedures and visits for observation or counseling), then the procedure is considered to be "medical treatment." *Id.* FRA proposed to amend its regulations and *Guide* to conform to OSHA's definition and new method of categorizing what constitutes medical treatment and first aid. Specifically, FRA proposed to amend its regulations and the *Guide* to address the following four items:

a. Counseling. Under FRA's "definitions" section of its regulations,

> * * * Medical treatment also does *not* include preventive emotional trauma counseling provided by the railroad's employee counseling and assistance officer *unless* the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct.

See § 225.5. In contrast, under OSHA's final rule, "medical treatment does not include: (A) Visits to a physician or other licensed health care professional solely for observation or *counseling.* * * *" Emphasis added. *See* 29 CFR 1904.7(b)(5)(i). Accordingly, to conform to OSHA's final rule, FRA proposed to amend its definition of "medical treatment" to exclude counseling as a type of medical treatment. *See* proposed § 225.5.

b. Eye patches, butterfly bandages, Steri-Strips™, and similar items. Under FRA's *1997 Guide*, use of an eye patch, butterfly bandage, Steri-Strip™, or similar item was considered medical treatment, rendering the injury reportable. Under OSHA's final rule, however, use of an eye patch, butterfly bandage, or Steri-Strip™ is considered to be first aid and, therefore, not reportable. In order to conform *FRA's Guide* to OSHA's Final Rule, FRA proposed to amend the *Guide* so that use of an eye patch, butterfly bandage, or Steri-Strip™ would be considered first aid.

c. Immobilization of a body part. Under FRA's *1997 Guide*, immobilization of a body part for transport purposes was considered medical treatment. Given, however, that OSHA's final rule considers immobilization of a body part for transport to be first aid, FRA proposed to amend its *Guide* so that immobilization of a body part solely for purposes of transport would be considered first aid.

d. Prescription versus non-prescription medication. Under FRA's *1997 Guide*, a doctor's order to take over-the-counter medication was not considered medical treatment even if a doctor ordered a dosage of the over-the-counter medication at prescription strength. Under OSHA's final rule, however, a doctor's order to take over-the-counter medication at prescription strength is considered medical treatment rather than first aid. For example, under OSHA's final rule, if a doctor orders a patient to take simultaneously three 200 mg. tablets of over-the-counter Ibuprofen, this case would be reportable, since 467 mg. of Ibuprofen is considered to be prescription strength.

The Working Group struggled with this issue. On the one hand, it is a legitimate concern that reportability not be manipulated by encouraging occupational clinics to substitute a non-prescription medication when a prescription medication is indicated. That result, however, may be more humane than a circumstance in which the medical provider is wrongly encouraged not to order an appropriate dosage.

Further, in some cases, physicians may direct the use of patent medicines simply to save the employee the time of filling a prescription or simply to hold down costs to the insurer. Also, the physician may find the over-the-counter preparation to be more suitable in terms of formulation, including rate of release and absorption.

As in the case of recommended days away from work not taken (discussed above), the Working Group settled on recommending a compromise position. Where the treating health care professional directs in writing the use of a non-prescription medication at a dose equal to or greater than that of the minimum amount typically prescribed, and no other reporting criterion applies, the railroad would report this as a special case ("covered data" under §§ 225.5 and 225.39). FRA explored whether it was practical to add to Chapter 6 of the *2003 Guide*, a list of commonly used over-the-counter medications, including the prescription strength for those medications. FRA has concluded that this list would be helpful to the regulated community; thus, a list of over-the-counter medications that conforms to OSHA's published standards has been added to Chapter 6. If OSHA revises its list of over-the-counter medications in the future, the revised list will be posted on FRA's Web site at *http://safetydata.fra.dot.gov/guide*. As covered data, the case would be included in aggregate data provided to DOL, but would not be included in FRA's periodic statistical summaries. FRA would have the data available to reference, and if a pattern of apparent abuse emerged, FRA could examine both the working conditions in question and also review possible further amendments to these reporting regulations.

Comments and Final Rule/Decision

No specific comments were received concerning the above-proposed changes to the definitions of "medical treatment" and "first aid." For the reasons stated above, the changes have been adopted as proposed. However, the issue was raised with respect to the classification of the administration of oxygen and one-time dosages of prescription medication. These issues were resolved by FRA, and the provisions have been amended accordingly. For a more detailed discussion, please see section "III.H." of the preamble, above.

K. Revisions to Chapter 7 of the Guide, "Rail Equipment Accident/Incident Report"

Proposal

To allow for better analysis of railroad accident data, FRA proposed to amend Chapter 7 of the *Guide* to include the new codes for remote control locomotive operations, and for reporting the location of a rail equipment accident/incident using longitude and latitude variables. *See also* sections "III.M." and "III.P.1." of the preamble, below.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, the amendments have been adopted as proposed.

L. New Chapter 12 of the Guide on Reporting by Commuter Railroads

Proposal

FRA has been faced with a number of commuter rail service reporting issues. For example, in reviewing accident/incident data using automated processing routines, FRA could not distinguish Amtrak's commuter activities from its intercity service, and could not always distinguish between a commuter railroad that ran part of its operation and contracted for another part of its operation with a freight railroad. FRA developed alternative strategies with the affected railroads for collecting these data to ensure that commuter rail operations accurately reflected the entire scope of operations, yet did not increase the burden of reporting for affected railroads. This issue also arose in the context of an NTSB Safety Recommendation, R–97–11, following NTSB's investigation of a collision on February 16, 1996, in Silver Spring, Maryland, between an Amtrak passenger train and a MARC commuter train. During the accident investigation, NTSB requested from FRA a five-year accident history for commuter railroad operations. FRA was not, however, able to provide a composite accident history for some of the commuter railroad operations because they were operated under contract with Amtrak and other freight railroads, and the accident data for some commuter railroads were commingled with the data of Amtrak and the other contracted freight railroads. Accordingly, NTSB's Safety Recommendation R–97–11 addressed to FRA read as follows: "Develop and maintain separate identifiable data records for commuter and intercity rail passenger operations."

When RSAC Task Statement 2001–1 was presented, FRA determined that a new chapter in the *Guide* was needed to address NTSB's and FRA's concerns regarding commuter railroad reporting. At the initial May 2001 meeting, FRA representatives presented the issue to the Working Group. FRA representatives were tasked to develop a chapter specifically dealing with commuter rail reporting. In the August 2001 Working Group meeting, FRA presented a draft of the new chapter. A task group was formed that included representatives of Amtrak, Metra, APTA, and FRA. The new Chapter 12 was presented in November of 2001 to the entire Working Group, and the Working Group accepted the chapter in its entirety.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, Chapter 12 has been adopted as proposed.

M. Changes in Reporting of Accidents/Incidents Involving Remote Control Locomotives

Proposal

An FRA notice entitled, "Notification of Modification of Information Collection Requirements on Remote Control Locomotives," stated that the Special Study Blocks on the rail equipment accident report and highway-rail crossing report, as well as special codes in the narrative section of the "Injury and Illness Summary Report (Continuation Sheet)," were for only temporary use until part 225 and the *Guide* were amended. 65 FR 79915, Dec. 20, 2000. At the November 2001 Working Group meeting, some members raised the issue of addressing this statement in FRA's notice and the need to craft regular means for reporting accidents/incidents involving remote control locomotives (RCL). In response, a special task group was formed to study the reporting of RCL-related rail equipment accidents, highway-rail crashes, and casualties.

In December of 2001, the task group initially decided to recommend modifying the "Rail Equipment Accident/Incident Report Form" (FRA F 6180.54) and the "Highway-Rail Grade Crossing Accident/Incident Report Form" (FRA F 6180.57) to add an additional block to capture RCL operations, but the task group was not able to reach consensus on the "Injury and Illness Summary Report (Continuation Sheet)" (FRA F 6180.55a).

Railroad representatives were concerned about modifying the accident/incident database with additional data elements. The FRA

representatives proposed a new, modified coding scheme that utilized the Probable Reason for Injury/Illness Code field in the set of Circumstance Codes and also included some additional Event Codes and two special Job Codes.

During a subsequent Working Group meeting, a new element was added as Item 30a, "Remote Control Locomotive," on the "Rail Equipment Accident/Incident Report" form to allow entry of one of four possible values:

"0"—Not a remotely controlled operation;

"1"—Remote control portable transmitter;

"2"—Remote control tower operation; and

"3"—Remote control portable transmitter—more than one remote control transmitter.

For the "Highway-Rail Grade Crossing Accident/Incident Report" form to capture RCL operations, the "Rail Equipment Involved" block was modified to add three additional values:

"A"—Train pulling—RCL;

"B"—Train pushing—RCL; and

"C"—Train standing—RCL.

These recommendations were accepted by the Working Group, as well as the changes in the Job Codes and Circumstance Codes for the "Injury and Illness Summary Report (Continuation Sheet)."

Comments and Final Rule/Decision

No specific comments were received regarding the changes in the reporting of accidents/incidents involving remote control locomotives. The amendments have been adopted as proposed. *See also* discussion concerning changes in Circumstance Codes in section "III.N." of this preamble, below.

N. Changes in Circumstance Codes (Appendix F of the Guide)

Prior to 1997, the "Injury and Illness Summary Report (Continuation Sheet)" contained a field called "Occurrence Code." The field attempted to describe what the injured or ill person was doing at the time he or she was injured or became ill. Often the action of the individual was the same, but the equipment involved was different, so a different Occurrence Code was needed for each situation, *e.g.*, getting off locomotive, getting off freight car, getting off passenger car. Another problem with the Occurrence Code was that the code did not provide the information necessary to explain the incident, *e.g.*, if the injury was electric shock, the Occurrence Code was "using hand held tools," so FRA could not tell from the report if the electrical shock was from the hand tool, the third rail, lightning, or drilling into a live electric wire.

To address these concerns, the Occurrence Code field was replaced in 1997 with the Circumstance Code field. The change allowed for more flexibility in describing what the person was doing when injured or made ill. Under the broad category of Circumstance Codes, FRA had developed five subsets of codes: Physical Act; Location; Event; Tools, Machinery, Appliances, Structures, Surfaces (etc.); and Probable Reason for Injury/Illness.

During the next five years, FRA and the railroad reporting officers realized that there were still gaps in the codes. FRA proposed expanding the list of Circumstance Codes and determined that some injuries and fatalities should always be reported using a narrative. Also, some Circumstance Codes required the use of narratives. At the July 2001 Working Group meeting, the railroads noted that expanded Circumstance Codes would assist in reporting and analysis. FRA asked the railroads to provide an expanded list of Circumstance Codes for the next meeting, with the understanding that a narrative would be required when the codes did not adequately describe the incident. By the September 2001 meeting, the railroads had produced many new codes, which FRA compiled and presented at the November 2001 meeting. At that meeting, rail labor representatives discussed RCL reporting. In the January 2002 Working Group meeting, the members reviewed the compiled list, including the special RCL codes. The Working Group made recommendations to move some of the codes to other areas. At the March 2002 Working Group meeting, a task group was formed to resolve the remaining issues with respect to codes. Specifically, the Working Group started by referring to proposed codes that pertained to switching operations. These codes were Probable Reason codes that came out of a separate FRA Working Group on Switching Operations Fatality Analysis (SOFA). The task group revised the SOFA codes and added them to Appendix F. The entire Working Group then reviewed and voted to approve all of the task force's proposed codes.

Comments and Final Rule/Decision

Although no specific comments were received with respect to Circumstance Codes during the comment period, FRA was later alerted to several errors in the Circumstance Codes by a representative of BNSF. A copy of BNSF e-mails concerning Circumstance codes have been placed in the docket. The proposed *Guide* did not reflect the codes as updated by a 1997 FRA memo. Accordingly, other than the edits incorporating the codes from the 1997 memo into Appendix F of the *2003 Guide*, FRA has adopted the amendments to the codes as proposed.

O. Changes in Three Forms (Appendix H of the Guide)

Proposal

The Working Group converted the Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report," and Form FRA F 6180.81, "Employee Human Factor Attachment" to question-and-answer format, and simplified the language so that they are easier to understand. One issue raised was whether a specific warning related to criminal liability for falsifying the form should be included on the form. Some Working Group members believed that a warning would only serve to intimidate employees from filling out the form. FRA noted that it was important to put the warning on the form to deter employees from falsifying information on the forms. FRA also noted that the same warning would be included on the form for reporting officers. In deference to the fact that rail labor representatives felt strongly that the language was too intimidating, it was agreed that a general warning would be included on the back of the form, which would not specifically state the penalties for falsifying information on the form. In addition, the Working Group agreed to modification of Form FRA F 6180.98 to include an item for the county in which the accident/incident occurred.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, the amendments have been adopted as proposed.

P. Miscellaneous Issues Regarding Part 225 or the Guide

1. Longitude and Latitude Blocks for Two Forms

Proposal

Following discussion of this issue, the Working Group agreed that provision could be made for voluntarily reporting the latitude and longitude of a rail equipment accident/incident, a trespasser incident, and an employee fatality. FRA proposed to add blocks to Form FRA F 6180.54 and Form FRA F 6180.55a for this information. The reason FRA is seeking to gather this information is to better determine if there is a pattern in the location of certain rail equipment accidents/incidents, trespasser incidents, and employee fatalities. Geographic information systems under development in the public and private sectors provide an increasingly capable means of organizing information. Railroads are mapping their route systems, and increasingly accurate and affordable Global Positioning System (GPS) receivers are available and in widespread use.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, the blocks have been adopted as proposed.

2. Train Accident Cause Code "Under Investigation" (Appendix C of the Guide)

Proposal

One of the tasks addressed by the Working Group was to define "under investigation," as that term is used in Cause Code M505, "Cause under investigation (Corrected report will be forwarded at a later date)," and to put that definition in Chapter 7 of the Guide under subpart C, "Instructions for Completing Form FRA F 6180.54," block 38, "Primary Cause Code" and Appendix C of the Guide. Currently, many accidents/incidents of a significant nature, *e.g.*, ones that are involved in private litigation for many years, are coded as "under investigation." Even if FRA and the railroad think that they know the primary cause of an accident, some railroads will not assign a specific cause code to the accident, either for liability reasons, or because the railroad or a local jurisdiction (or some other authority) is still investigating the accident.

To provide finality to the process of investigating an accident/incident, the Working Group agreed that "under investigation" would mean under active investigation by the railroad. When the railroad has completed its own investigation and received all laboratory results, the railroad must make a "good faith" determination of the primary cause of the accident, any contributing causes, and their proper codes. The railroad must not wait for FRA or NTSB to complete their investigations before assigning the most applicable cause code(s) available. After FRA or NTSB completes its investigation, the railroad may choose to amend the cause code on the accident report. Accordingly, FRA proposed to revise the *Guide* to demonstrate that the meaning of the cause code in question has been changed to "Cause under active investigation by reporting railroad (Amended report will be forwarded when reporting railroad's active investigation has been completed)."

In addition, the Working Group agreed to add a new code "M507" to denote accidents/incidents in which the investigation is complete but the cause of the accident/incident could not be determined. If a railroad uses this code, the railroad is required to include in the narrative block an explanation for why the cause of the accident/incident could not be determined.

Comments and Final Rule/Decision

No specific comments were received. For the reasons stated above, the amendments have been adopted as proposed.

3. "Most Authoritative": Determining Work-Relatedness and Other Aspects of Reportability

Proposal

The duty to report work-related illnesses under the current rule has occasioned concern and disagreement about not only whether an illness exists, but, more importantly and more controversially, whether the illness is work-related. Often an employee's doctor's opinion is that an employee's illness is work-related, while the railroad's doctor's opinion is that the illness is not work-related. In providing guidance as to how a reporting officer determines whether an illness is work-related, OSHA's final rule states,

[the employer] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Sec. 1904.5(b)(2) applies.

29 CFR 1904.5(a). In addition, the preamble to OSHA's final rule states,

Accordingly, OSHA has concluded that the determination of work-relatedness is best made by the employer, as it has been in the past. Employers are in the best position to obtain the information, both from the employee and the workplace, that is necessary to make this determination. Although expert advice may occasionally be sought by employers in particularly complex cases, the final rule provides that the determination of work-relatedness ultimately rests with the employer.

66 FR 5950.

Following publication of this final rule, the National Association of Manufacturers (NAM) filed a First Amended Complaint challenging portions of the final rule. As part of the NAM–OSHA settlement agreement, published in the **Federal Register**, the parties agreed to the following:

Under this language [29 CFR 1904.5(a)], a case is presumed work-related if, and only if, an event or exposure in the work environment is a *discernable* cause of the injury or illness or of a *significant* aggravation to pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.

Section 1904.5(b)(2) states that a case is not recordable if it "involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment." This language is intended as a restatement of the principle expressed in 1904.5(a), described above. Regardless of where signs or symptoms surface, a case is recordable only if a work event or exposure is a *discernable* cause of the injury or illness or of a *significant* aggravation to a pre-existing condition.

Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, *the employer* "must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or *significantly* aggravated a pre-existing condition." This means that *the employer* must make a determination whether it is *more likely than not* that work events or exposures were a cause of the injury or illness, or a *significant* aggravation to a pre-existing condition. If the employer decides the case is not work-related, and OSHA subsequently issues a citation for failure to record, the Government would have the burden of proving that the injury or illness was work-related.

(Emphasis added.) 66 FR 66944. FRA proposed to conform to this language, particularly with respect to making reference to the terms "discernable" and "significant" to qualify the type of causation and aggravation, respectively. *See* definition of "accident/incident" and proposed reportability criteria at proposed § 225.19(d).

The other part of the problem of determining whether an injury or illness is work-related is "who decides." The Working Group proposed to adopt OSHA's final rule definition of "most authoritative" stated in OSHA's final rule. In the context of discussing how to determine whether or not a case is new, OSHA's final rule states,

If you receive recommendations from two or more physicians or other licensed health care professionals, you must make a decision

as to which recommendation is the most authoritative (best documented, best reasoned, or most [persuasive]) and record the case based upon that recommendation.

29 CFR 1904.6(b)(3). (Note: the preamble to OSHA's final rule uses the word "persuasive" while the rule text uses the word "authoritative" where FRA put the word "persuasive" in brackets. FRA chose to use the language from the preamble, instead of that in the rule text, to avoid redundancy.)

The question of who is the "most authoritative" physician or other licensed health care professional arises in a number of contexts when there is a conflict of medical opinion. Conflicting medical opinions, often between an employee's physician and a railroad's company physician, arise regarding the following questions: whether an injury or illness is work-related; whether an employee needs days away from work (or days of restricted work) to recuperate from a work-related injury or illness, and if so, how many days; and whether a fatality is work-related, or arose from the operation of a railroad. FRA proposed to adopt in its *Guide* OSHA's definition in its Final Rule of "most authoritative," and to adopt the language from the NAM–OSHA settlement agreement in order to resolve this issue. *See also* discussion of FRA review of work-relatedness determinations under section "III.G.2.b." of the preamble.

Comments

Although no specific comments were received on this issue, a discussion occurred at the post-NPRM Working Group meeting, where representatives from AAR and TRE (Trinity Railway Express) expressed concern that FRA might adopt what they perceived as OSHA's position, namely, that work-relatedness was presumed in hearing loss cases unless the physician stated otherwise. After reviewing OSHA's final rule, FRA explained that although OSHA had originally proposed a presumption of work-relatedness, OSHA later determined that it was not appropriate to include this presumption in its final rule. See 67 FR 44045 (July 1, 2002). Consequently, OSHA decided that there are no special rules for determining work relationship with respect to hearing loss cases, rather the general approach would apply; thus, a hearing loss would be work-related "if one or more events or exposures in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss." *Id.*

Final Rule/Decision

FRA has adopted its proposed policy concerning work-relatedness. However, based on the foregoing discussion of OSHA's rejection of the presumption of work-relatedness for hearing loss cases, Question and Answer No. 74 in the *2003 Guide* has been amended to reflect OSHA's changed position.

4. Job Title versus Job Function

Proposal

An additional issue resolved by the Working Group was to propose amending the Guide's instructions for completing blocks 40–43 of FRA Form F6180.54 to make it clear that the job function of the employee, rather than the employee's job title, would be used to determine the employee's job title for reporting purposes when the railroad gives the employee a job title other than "engineer," "fireman," "conductor," or "brakeman."

Comments and Final Rule/Decision

No specific comments were received. The amendments have been adopted as proposed.

5. "Recording" versus "Reporting"

Proposal

Under OSHA's final rule, the term "recording" is used. Under FRA's regulations and *Guide*, the term "reporting" is used. Since FRA has always used the term "reporting" in its regulations and *Guide*, and since one of the statutes authorizing part 225 uses the term "reporting," FRA proposed to continue to use the term "reporting" instead of "recording." *See* 49 U.S.C. 20901(b)(1) ("In establishing or changing a monetary threshold for the reporting of a railroad accident or incident * * * .")

Comments and Final Rule/Decision

No specific comments were received. FRA will continue to use the term "reporting" instead of "recording" as proposed.

IV. Section-by-Section Analysis

Section 219.5 Definitions

Proposal

For purposes of FRA's rule on alcohol and drugs (part 219), the term "accident or incident reportable under Part 225" was redefined to exclude a case that is classified as "covered data" under § 225.5 of this chapter (*i.e.*, employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, or for a work restriction when the employee instead worked unrestricted, or for a non-prescription medication recommended in writing to be taken at a prescription dose, whether or not the medication was taken). The term "accident or incident reportable under Part 225" appears in § 219.301(b)(2), in the description of an event that authorizes breath testing for reasonable cause:

* * * * *

The employee has been involved in an *accident or incident reportable under Part 225 of this chapter*, and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident;

* * * * *

[Emphasis added.] It should also be noted that § 219.301(b)(2) is incorporated by reference in § 219.301(c) as a basis for "for cause drug testing."

In addition, the definition of "reportable injury" for purposes of part 219 was revised to mean an injury reportable under part 225 of this chapter except for an injury that is classified as "covered data" under § 225.5 of this chapter. The term "reportable injury" appears in three provisions of part 219, each of which describes an event that triggers the requirement for post-accident toxicological testing: (i) A "major train accident" that includes a release of hazardous material lading with a "reportable injury" resulting from the release; (ii) an "impact accident" involving damage above the current reporting threshold and resulting in a "reportable injury"; and (iii) a passenger train accident with a "reportable injury" to any person. §§ 219.201(a)(1)(ii)(B), 219.201(a)(2), and 219.201(a)(4).

The reason that "accident or incident reportable under Part 225" and "reportable injury" does not, for purposes of part 219, include covered data cases is that while these cases are of importance from the standpoint of rail safety analysis and therefore reportable, they are, nevertheless, comparatively less severe than fatalities, other injuries and illnesses and, as such, should not trigger alcohol and drug testing or related requirements and sanctions.

Comments and Final Rule/Decision

No specific comments were received on this section. Note, however, that comments were received on the definition of "covered data" and that the category of covered data has been expanded to include another subset of

cases. See § 225.39 and above discussion of covered data at section "III.H." of this preamble. The definitions have been adopted as proposed, except for the modifications made to the description of covered data cases.

Section 225.5 Definitions

Proposal

"Accident/incident" for purposes of FRA's accident/incident reporting rule was redefined to conform to OSHA's final rule. Under FRA's 1997 rule, "accident/incident" is defined in part as,

(3) Any event arising from the operation of a railroad which results in:
(i) Death to any person;
(ii) Injury to any person that requires medical treatment;
(iii) Injury to a railroad employee that results in:
(A) A day away from work;
(B) Restricted work activity or job transfer; or
(C) Loss of consciousness; or
(4) Occupational illness.

(The designation "(4)" in the definition above should read "(iv)." *See* § 225.19(d)(3).) The parallel language in FRA's proposed definition read as follows:

"Accident/incident" means:

* * * * *

(3) Any event or exposure arising from the operation of a railroad, if the event or exposure is a discernable cause of one or more of the following outcomes, and this outcome is a new case or a significant aggravation of a pre-existing injury or illness:
(i) Death to any person;
(ii) Injury to any person that results in medical treatment;
(iii) Injury to a railroad employee that results in:
(A) A day away from work;
(B) Restricted work activity or job transfer; or
(C) Loss of consciousness;
(iv) Occupational illness of a railroad employee that results in any of the following:
(A) A day away from work;
(B) Restricted work activity or job transfer;
(C) Loss of consciousness; or
(D) Medical treatment;
(v) A significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;
(vi) An illness or injury that meets the application of the following specific case criteria:
(A) A needlestick or sharps injury to a railroad employee;
(B) Medical removal of a railroad employee;
(C) Occupational hearing loss of a railroad employee;
(D) Occupational tuberculosis of a railroad employee; or
(E) An occupational musculoskeletal disorder of a railroad employee that is independently reportable under one or more of the general reporting criteria.

The phrase "discernable cause" was included in the proposed definition, and the words "or exposure" were added before the word "arising." The addition of the word "discernable" was intended to take into account the OSHA–NAM settlement agreement, which also uses "discernable" to describe "cause." As defined in *Webster's Third New International Dictionary, Unabridged* (1971), "discernable" means "capable of being discerned by the senses or the understanding: distinguishable (a ~ trend) (there was ~ the outline of an old trunk-Floyd Dell)." FRA understands why some Working Group members requested this change as a matter of conformity and to emphasize that the employer is not required to speculate regarding work-relatedness. By the same token, FRA emphasizes that when confronted with specific claims regarding work-relatedness, it is the employer's responsibility to fairly evaluate those claims and opt for reporting if an event, exposure, or series of exposures in the workplace likely contributed to the cause or significantly aggravated the illness.

The Working Group agreed that the definition of "accident/incident" also needed to include that the case had to be a new case, or a significant aggravation of a pre-existing condition. This reference to a "new case" was added to conform to 29 CFR 1904.4(a)(2) of OSHA's final rule, and the reference to "significant" aggravation of a pre-existing condition was added to conform to the OSHA–NAM settlement agreement.

The inclusion of "death to any person" remained the same. "[I]njury to any person which requires medical treatment" was changed to "Injury to any person that results in medical treatment"; no substantive change was proposed. Injury to a railroad employee that results in "(A) A day away from work; (B) Restricted work activity or job transfer; or (C) Loss of consciousness' was not changed. FRA did, however, propose a change to the 1997 rule that all occupational illnesses of railroad employees are to be reported and required that they be reported only under certain enumerated conditions. This also made it clear that an occupational illness of an employee to a contractor to a railroad is not to be reported. Further, FRA proposed to add to its criteria for reportability "significant injuries or illnesses," "needlestick or sharps injuries," "medical removal," "occupational hearing loss," "occupational tuberculosis," and an independently reportable "occupational musculoskeletal disorder" to railroad employees to track OSHA's Final Rule. Finally, as previously discussed, a three-tier definition of "event or exposure arising from the operation of a railroad" was added.

Comments and Final Rule/Decision

No specific comments were received on this definition. For the reasons stated above, the amendments have been adopted as proposed.

Proposal

The definition of "accountable injury or illness" was revised by substituting the words "railroad employee" for "railroad worker," and by adding the word "discernably" before the word "associated." These were technical changes to bring the language into conformity with the rest of the regulatory text.

Comments and Final Rule/Decision

No specific comments were received on this definition. For the reasons stated above, the amendments have been adopted as proposed.

Proposal

Under the 1997 rule, the definition of "day away from work" meant "any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad employee does not report to work for reasons associated with his or her condition." § 225.5. Under the *1997 Guide*, "If the days away from work were entirely unconnected with the injury (*e.g.*, plant closing or scheduled seasonal layoff), then the count can cease at this time." *1997 Guide*, Ch. 6, p. 31, question 34. FRA proposed to come closer to following OSHA's general recording criteria under 29 CFR 1904.7 of "day away from work" by proposing that the definition be "any calendar day subsequent to the day of the injury or the diagnosis of the illness that a railroad employee does not report to work, or was recommended by a physician or other licensed health care professional not to return to work, as applicable, even if the employee was not scheduled to work on that day." Under the 1997 rule, if a doctor recommended that an employee not return to work, but the employee ignored the doctor's advice and returned to work anyway, this would not count as a day away from work. Under OSHA's Final Rule, however, the

reporting entity would still have to count all the days the doctor recommended that the employee not work. As a compromise, FRA proposed that the railroad be required to report as covered data one day away from work, even if the employee did not actually miss a day of work subsequent to the day of the injury or diagnosis of the illness, as discussed previously in the preamble. The revision of the definition of "day away from work" was intended to take into account the new rule for reporting the number of days away from work.

The definition of "day of restricted work activity" was revised for the same reason that FRA revised the definition of "day away from work."

Comments and Final Rule/Decision

No specific comments were received on these definitions, however in its comments with respect to covered data cases, AAR sought clarification as to whether the same principles that applied to counting days away from work would apply to counting days of restricted work. At the post-NPRM Working Group meeting, FRA explained that the same principles would apply and agreed to edit the *Guide* to clarify that these cases are to be handled in the same manner. Upon further review of the *Guide* and the rule text definitions, FRA concluded that although all of the information concerning the reporting of days away from work and days of restricted work were present in the *Guide* and rule text collectively, the rule text definitions were not as clear as they could be in setting forth FRA's interpretation, as agreed upon by the Working Group. In an effort to avoid confusion and misinterpretation, FRA has amended the rule text definitions of "day away from work" and "day of restricted work activity," and the corresponding discussions in the *Guide*, for clarification. *See also* comments and related discussion on change in method of counting days and 180 day cap at sections "III.J.1." and "III.J.2." of this preamble.

Proposal

The definition of "event or exposure arising from the operation of a railroad" was added to include the following: (1) With respect to a person who is on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; (2) with respect to an employee of the railroad (whether on or off property owned, leased, or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; and (3) with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad—(i) a train accident; a train incident; a highway-rail crossing accident/incident involving the railroad; or (ii) a release of a hazardous material from a railcar in the railroad's possession or a release of other dangerous commodity that is related to the performance of the railroad's rail transportation business. Accordingly, with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad, the definition of "event or exposure arising from the operation of a railroad" is more narrow, covering a more limited number of circumstances than for persons who are either on railroad property, or for railroad employees whether on or off property owned, leased or maintained by the railroad. The justification for narrowing the set of circumstances in which a railroad is required to report certain injuries and illnesses for events that occur off railroad property is that it is difficult for railroads to know about, and follow up on, injuries off railroad property to persons who are not railroad employees, including employees of railroad contractors. Railroads simply have more limited opportunity to know about injuries and illnesses to persons other than those who are injured on their property or who are employed by the railroad. Accordingly, injuries to such persons are not to be considered for reporting purposes as events or exposures arising from the operation of the railroad.

Comments

Although no specific comments were received on the substance of the definition or proposal itself, AAR commented that the *Guide's* discussion of contractors did not reflect FRA's proposed approach and should be amended to do so.

Final Rule/Decision

FRA has adopted the proposal as stated and has amended the *Guide* to reflect this new approach. FRA intends to address the divergence from OSHA on the issue of the employee of a contractor in the MOU. *See also* earlier discussion of this issue at section "III.D.2." of this preamble.

Proposal

The definition of "medical treatment" was revised, as discussed earlier in the preamble, to conform generally to OSHA's new definition under 29 CFR 1904.7(b)(5)(i) of "medical treatment." The proposed definition read,

> any medical care or treatment beyond "first aid" regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

FRA proposed that any type of counseling, in and of itself, is not considered to be medical treatment. If, for example, a locomotive engineer witnesses a grade crossing fatality and subsequently receives counseling after being diagnosed as suffering from Post Traumatic Stress Syndrome, the case is not reportable. The only factors that would make the case reportable would be if, in addition to the counseling, the employee receives prescription medication (such as tranquilizers) has a day away from work, is placed on restricted work, is transferred to another job, or meets one of the other criteria for reportability in § 225.19(d). In addition to the general objective of inter-industry conformity, this change is supported by the absence of meaningful interventions available to prevent such disorders. Although involvement in highway-rail grade crossing and trespass casualties is a known cause of stress in the railroad industry, FRA and the regulated community are already aware of that fact and are making every effort to prevent these occurrences. Further, the industry is actively engaged in preventive post-event counseling.

Comments and Final Rule/Decision

No specific comments were received concerning the definition of "medical treatment." The definition of "medical treatment" has been adopted as proposed. However, the issue of what constitutes medical treatment was raised with respect to the classification of the administration of oxygen and one-time dosages of prescription medication. These issues were resolved by FRA, and the provisions have been amended accordingly. For a more detailed discussion, please see sections "III.J.3." and "III.H." of the preamble, above.

Proposal

"General reportability criteria" was defined as the criteria set forth in § 225.19(d)(1)–(5).

Comments and Final Rule/Decision

No specific comments were received on this definition. FRA has adopted the definition as proposed.

Proposal

"Medical removal" was defined as it is described in OSHA's recording criteria under 29 CFR 1904.9 for medical removal cases. "Medical removal" refers to removing an employee from a work location because that location has been determined to be a health hazard. FRA proposed that this definition change automatically if OSHA elects to revise its recording criteria.

Comments

Although no specific comments were received on the definition itself, AAR commented that it was opposed to the concept of floating regulations.

Final Rule/Decision

FRA has adopted the proposed definition of "medical removal" and its incorporation of OSHA's provision in 29 CFR part 1910. However, in order to make clear that FRA is not "floating" this definition with OSHA's definition of that term, FRA has adopted a year-specific version of OSHA's definition, namely, the 2002 version. *See also* earlier discussion of this definition in the context of the "float" vs. "fixed" issue at section "III.D.1." of this preamble.

Proposal

"Needlestick and sharps injury" and "new case" were defined in general conformity with OSHA's definitions of these terms under 29 CFR 1904.8 and 1904.6, respectively.

Comments and Final Rule/Decision

No specific comments were received on these definitions. The definitions have been adopted as proposed.

Proposal

"Privacy concern case" was defined as in 29 CFR 1904.29, except that FRA would categorically exclude MSDs from its definition of "privacy concern case." As discussed in section "III.G.1.," above, FRA sought comment on whether or not FRA should adopt this exclusion, especially if OSHA's proposed January 1, 2004, delay took effect, but in either case. FRA also sought comment on whether it should adopt the proposed exclusion of MSDs from its definition of "privacy concern case" as a fixed approach beginning on the effective date of FRA's final rule or whether FRA should "float" with OSHA, *i.e.*, make the existence or nonexistence of the exclusion contingent on OSHA's action.

Comments and Final Rule/Decision

No specific comments were received on this definition. FRA has adopted the definition as proposed and has not adopted the exclusion of MSDs from its definition of "privacy concern case."

See also discussion at section "III.G.1." of this preamble. FRA intends to address the slight differences on this issue in its MOU with OSHA.

Proposal

"Occupational hearing loss" was defined as OSHA defined it under 29 CFR 1904.10 for calendar year 2002. As discussed in section "III.D.1.," above, FRA sought comment on whether FRA should adopt OSHA's new approach for calendar year 2003 as its fixed approach, beginning on the effective date of FRA's final rule, or whether FRA should diverge from OSHA and continue to enforce OSHA's current approach (which was approved by the Working Group and the RSAC and is the same as FRA's current approach) as a fixed approach beginning on the effective date of FRA's final rule.

Comments

AAR strongly opposed the adoption of OSHA's new policy, noting that the policy would lead to a greater number of hearing loss cases being reported by the railroad industry and result in an adverse trend in the occurrence of railroad injuries regardless of the railroads' actual performance. After further discussion of the criteria at the post-NPRM meeting, AAR acquiesced in accepting the criteria for reporting, but was still concerned regarding the anticipated increases in reportables. AAR requested that FRA consider placing the hearing loss cases under covered data.

Final Rule/Decision

The importance of capturing the true magnitude of work-related hearing loss is justification alone for adopting OSHA's criteria; however, it is important to note that the increase in the number of reportables will be partially offset by OSHA's reclassification as non-reportable many events that previously were reportable.[9] For a more detailed discussion of this issue, see sections "III.D.1." and "III.H." of this preamble. Note that, for clarification and simplicity, the rule text definition has been amended to reflect the actual recording criteria used by OSHA (for calendar year 2003 and beyond) rather than the citation to the relevant section of OSHA's regulation. This amendment does not represent a substantive change from OSHA's criteria.

[9] *See* earlier discussion concerning the definitions of "medical treatment" and "first aid" at section "III.J.3." of this preamble.

Proposal

The definition of "occupational illness" was revised to make it clear that only certain occupational illnesses of a person classified under Chapter 2 of the *Guide* as a Worker on Duty-Employee are to be reported. By contrast, under the 1997 definition of "occupational illness," other categories of persons, such as Worker on Duty-Contractor, were included in the definition, but illnesses to those persons were not reportable because § 225.19(d)(4) limited the reportability of occupational illnesses to those of "a railroad employee."

Comments and Final Rule/Decision

No specific comments were received on this definition. The definition has been adopted as proposed.

Proposal

"Occupational musculoskeletal disorder" was defined essentially as it was set forth by OSHA in January 2001. *See* 29 CFR 1904.12 as published in 66 FR 6129. One of the most common forms of occupational musculoskeletal disorder is Carpal Tunnel Syndrome and other repetitive motion disorders. Under § 1904.12 of its January 19, 2001, final rule, OSHA defined musculoskeletal disorders (MSDs) as:

> disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

66 FR at 6129. *See also* 66 FR at 52034. However, as noted in the overview in section "I." of this preamble, OSHA delayed the effective date of this provision from January 1, 2002, to January 1, 2003, and proposed delaying the effective date until January 1, 2004, "to give [OSHA] the time necessary to resolve whether and how MSDs should be defined for recordkeeping purposes." *See* 67 FR 44125. After the publication of this NPRM, OSHA adopted this proposed delay in its December 17, 2002 final rule. See 67 FR 77165.

As the issue of OSHA's proposed delay of this provision was not before the Working Group when consensus was reached, FRA sought comment on whether or not FRA should still adopt the above definition of MSDs if OSHA's proposed January 1, 2004 delay took effect. FRA noted that if the provision were adopted as approved by the Working Group, FRA would be adopting

the definition in advance of OSHA's defining the term, a result that may not have been contemplated by the Working Group when it agreed to follow OSHA on this issue prior to issuance of the proposed delay. *See* discussion concerning reporting criteria for MSDs at section "III.D.1." of the preamble, above. Even if OSHA chose not to delay the effective date of this provision, FRA sought comment on whether or not FRA should even adopt OSHA's definition for calendar year 2003, since it stated that there were no special criteria beyond the general recording criteria for determining which MSDs to record and because OSHA's definition appeared to be used primarily as guidance for when to check the MSD column on the 300 Log. *See* 66 FR 6129–6130. It was noted that choosing to exclude this definition from FRA's final rule would not have affected an employer's obligation to report work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness. FRA also sought comment on whether or not this definition should "float" with OSHA's. *See* discussion of "float" vs. "fixed" at section "III.D.1." of the preamble, above.

Comments

Although no specific comments were received regarding the adoption of a definition of an MSD, FRA raised the issue at the post-NPRM Working Group meeting. FRA pointed out that there were no special reporting criteria for MSDs and that there may be more problems in trying to delete the definition than to leave it in. Because MSDs must be independently reportable, there seemed to be little or no effect on the regulated community by retaining the proposed definition. AAR indicated that it was inclined to leave the definition in, but might reconsider the issue and provide us with a position after the meeting. However, no further comments were received.

Final Rule/Decision

For the reasons stated above, FRA has adopted the MSD definition as proposed. *See also* the discussion of MSDs in section "III.D.1." of this preamble, and the discussion of deleting the exclusion of MSDs from the definition of "privacy concern case" at section "III.G.1." of this preamble. Because FRA has adopted a requirement beyond what OSHA requires, this difference will be addressed in an MOU with OSHA, if necessary.

Proposal

"Occupational tuberculosis" was defined in general conformity with OSHA's recording criteria under 29 CFR 1904.11 for work-related tuberculosis cases. The word "occupational" was included in the term because the term is intended to cover only the occupational illness; it would be confusing to define simply "tuberculosis" when the unmodified term would seem to call for a medical definition of tuberculosis in general.

Comments and Final Rule/Decision

No specific comments were received on this definition. For the reasons stated above, the definition has been adopted as proposed.

Proposal

"Significant change in the number of reportable days away from work" was defined as a 10-percent or greater change in the number of days away from work that the railroad would have to report. FRA decided on 10 percent as the threshold so that railroads would not have to submit amended reports for *de minimis* changes in data. For example, if a railroad estimated that an employee would be away from work for 30 days and reported the 30-day estimate to FRA, but the employee was actually away from work for 32 days, the railroad would not have to amend its accident report to reflect this change. Moreover, FRA uses a 10-percent threshold for amending rail equipment accident reports. Specifically, if a railroad estimates the damage from a rail equipment accident to be $7,000, a railroad need not amend that report unless the actual damage exceeds $7,700. If on the other hand, the actual damage is less than the reporting threshold, but less than 10-percent difference from the estimate, the railroad would be allowed to amend the report to indicate that the incident was not a reportable accident. For example, in the scenario above, if the actual damage was $6,400 (less than 10-percent difference from the $7,000 estimate), the railroad would nevertheless be permitted to withdraw its report of that accident. While the 10-percent threshold was included in Chapter 6 of the *1997 Guide*, FRA proposed to create a definition in the regulatory text since the General Accounting Office recommended that FRA define this term. For clarification of the terms "significant illness" and "significant injury," *see* discussion in section "III.D.1." of the preamble, above.

Comments and Final Rule/Decision

No specific comments were received on this definition, however in its comments with respect to covered data cases, AAR sought clarification as to whether the same principles that applied to counting days away from work would apply to counting days of restricted work. At the post-NPRM Working Group meeting, FRA explained that the same principles would apply and agreed to edit the *Guide* to clarify that these cases are to be handled in the same manner. Upon further review of the *Guide* and the rule text definitions, FRA found that the rule text definition concerning a "significant change in the number of days away from work" did not express FRA's policy that the 10-percent threshold also applies to days of restricted work activity. Given that this policy was set forth in the *1997 Guide* and was re-approved by the Working Group and the full RSAC for the *2003 Guide*, FRA concluded that the definition should be amended to clarify that the same 10-percent threshold policy that applies to amending reports with respect to days away from work also applies with respect to days of restricted work activity.

Similarly, as noted in the preambles of the NPRM and this final rule, FRA uses a 10-percent threshold for amending rail equipment accident reports. Both the *1997 Guide* and the *2003 Guide* explain a railroad's duty to amend its rail equipment accident reports when an estimated value of the damage costs is significantly in error. A significant difference is defined as a 10-percent variance. Because FRA and the Working Group agreed that the *Guide's* explanation of "significant change in the number of reportable days away from work" should be included in the rule text as a definition, FRA concluded that it would be equally appropriate to include the *Guide's* explanation concerning a significant change for purposes of amending rail equipment accident reports. Accordingly, FRA has added a definition of "significant change in the damage costs for reportable rail equipment accidents/incidents" that conforms to FRA's previous policy on this matter.

Section 225.9 Telephonic Reports of Certain Accidents/Incidents and Other Events

Proposal

Under the 1997 rule, § 225.9 required a railroad to report immediately by telephone any accident/incident arising from the operation of the railroad that resulted in the death of a railroad employee or railroad passenger or the death or injury of five or more persons. FRA proposed an amendment to this section, as recommended by the Working Group, to add new circumstances under which a railroad is to telephonically report and to clarify existing procedures for telephonic reporting of the expanded list of events.

Proposed subsection (a) listed the events that a railroad would be required to report telephonically. In proposed subsection (a)(1), "Certain deaths or injuries," FRA proposed that each railroad must report immediately, whenever it learns of the occurrence of an accident/incident that arose from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that has certain specified consequences. FRA proposed to use the phrase "may have arisen" in the proposed regulatory text, instead of keeping the current language "arising from the operation of a railroad," because a railroad may not learn for some time that a particular event in fact arose from the operation of the railroad. By stating that a railroad must report an event that "may" have arisen from the operation of the railroad, FRA is assured to capture a broader group of cases. For example, if a railroad employee dies of a heart attack on the railroad's property, the railroad may not know for weeks, following a coroner's report, what the cause of death was and whether the death was work-related. This case might not get immediately reported because the railroad did not immediately learn that the death arose out of the operation of the railroad. Under the proposed change, if the death "may" have arisen out of the operation of the railroad, the case must be immediately reported, permitting FRA to commence its investigation in a timely manner. Even when death is ultimately determined to be caused by a coronary event, for instance, it is appropriate to inquire whether unusual workplace stressors (*e.g.*, extreme heat, excessive physical activity without relief) may have played a role in causing the fatality. In addition, under subsection (a)(1), FRA has added the death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad as a new category requiring telephonic reporting.

In proposed subsection (a)(2), FRA captures certain train accidents or train incidents even if death or injury does not necessarily occur as a result of the accident or incident. Under the 1997 rule, FRA did not require telephonic reporting of certain train accidents or train incidents *per se*, but required that they be reported only if they resulted in death of a rail passenger or employee, or death or injury of five or more persons. Accordingly, FRA proposed that railroads telephonically report immediately, whenever it learns of the occurrence of any of the following events:

(i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring admission to a hospital;

(ii) A train accident resulting in evacuation of a passenger train;

(iii) A fatality at a highway-rail grade crossing as a result of a train accident or train incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000, to railroad and nonrailroad property; or

(v) A train accident resulting in damage of $25,000 or more to a passenger train, including railroad and nonrailroad property.

In proposed subsection (a)(3), FRA requires telephonic reporting of incidents in which a reportable derailment or collision occurs on, or fouls, a line used for scheduled passenger service. This final provision permits more timely initiation of investigation in cases where the underlying hazards involved could threaten the safety of passenger operations. For clarification of other aspects of this proposed section, *see* discussion at section "III.C." of this preamble, above.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, the amendments have been adopted as proposed.

Section 225.19 Primary Groups of Accidents/Incidents

Proposal

FRA proposed to amend subsection (d), "Group III, "Death, injury, occupational illness." See prior discussion in section-by-section analysis of the definition of "accident/incident" and "event or exposure arising from the operation of a railroad" in § 225.5.

Comments and Final Rule/Decision

No specific comments were received on this provision. The amendments have been adopted as proposed.

Section 225.23 Joint Operations

Proposal

FRA proposed to make technical amendments to § 225.23(a) simply to bring it into conformity with the rest of the proposed regulatory text.

Comments and Final Rule/Decision

No specific comments were received on this provision. The amendments have been adopted as proposed.

Section 225.25 Recordkeeping

Proposal

FRA proposed to amend this section by revising subsection 225.25(h)(15) to apply to "privacy concern cases," which would be defined in proposed § 225.5. Accordingly, under the proposed subsection, a railroad is permitted not to post information on an occupational injury or illness that is a "privacy concern case."

Comments and Final Rule/Decision

No specific comments were received on this provision. The amendments have been adopted as proposed.

Section 225.39 FRA Policy Statement on Covered Data

Proposal

In connection with the requirements for reporting employee illness/injury cases exclusively resulting from a written recommendation of a physician or other licensed health care provider (POLHCP) for time off when the employee instead returned to work, or a written recommendation for a work restriction when the employee instead worked unrestricted, and in connection with the provision for special reporting of cases exclusively resulting from the direction of a POLHCP in writing to take a non-prescription medication at prescription dose, FRA proposed that these cases not be included in FRA's regular statistical summaries. The data are requested by DOL to ensure comparability of employment-related safety data across industries. The data may also be utilized for other purposes as the need arises, but they would not be reported in FRA's periodic statistical summaries for the railroad industry.

Comments

AAR commented that the *Guide* needed to be clearer in its discussion of covered data so as to include: a definition of that term; instructions on how to report such cases; and clarification of the treatment of these cases in the questions-and-answers section of the *Guide* and in the instructions for Form FRA F 6180.55a. In its comments on the NPRM, verbal comments at the post-NPRM Working Group Meeting, and post-meeting letter and e-mail, AAR expressed a concern regarding the sharp increase in the number of reportables that would result by adopting the proposed changes. In order to soften the impact of

these changes on the railroad industry data, AAR requested that the covered data criteria be extended to three other areas of reporting: one-time dosages of prescription medication, oxygen therapy, and occupational hearing loss.

Final Rule/Decision

FRA determined that the definition of "covered data" in § 225.39 and the corresponding discussion of covered data in the *Guide* should be amended to address AAR's concerns regarding clarity and to reflect the addition of one-time dosages of topical prescription medication. For a more detailed discussion of FRA's policy statement on covered data, see section "III.H." of this preamble.

Section 240.117 Criteria for Consideration of Operating Rules Compliance Data

Proposal

FRA proposed a minor change to its locomotive engineer qualifications regulations, which uses a term from part 225. In particular, § 240.117(e)(2) of the locomotive engineer qualifications regulations defines one of the types of violations of railroad rules and practices for the safe operation of trains that is a basis for revoking a locomotive engineer's certification pursuant to part 240; specifically, failures to adhere to the conditional clause of a restricted speed rule "which cause reportable accidents or incidents under part 225 of this chapter. * * *" This amendment creates an exception for accidents or incidents that are classified as "covered data" under part 225. The reason that "covered data" were excluded as a partial basis for decertification under § 240.117(e)(2) is that the injuries and illnesses associated with "covered data" cases are comparatively less severe than other types of injuries and illnesses, and, as such, when coupled with a violation of restricted speed, should not trigger revocation under part 240.

Comments and Final Rule/Decision

No specific comments were received on this section. The exception has been adopted as proposed. Note, however, that comments were received on the definition of "covered data" and that the category of covered data has been expanded to include another subset of cases. *See* § 225.39 and above discussion of covered data at section "III.H." of this preamble.

V. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory impact analysis addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov*.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of this final rule. The analysis also contains qualitative discussions of benefits that were not quantified. Over a 20-year period, the Present Value (PV) of the estimated costs is $476,000, and the PV of the estimated benefits is $612,000.

The major costs anticipated from adopting this final rule include those incurred in complying with additional OSHA-conformity reporting requirements, such as the covered data cases. Additional reporting burdens on railroads will also occur from an increase in telephonic reporting, an increase in reporting of occupational hearing loss cases, and from the recording of claimed occupational illnesses cases. Finally, there are costs associated with the familiarization of the railroad reporting officers with the revised *Guide*, and for revisions to FRA and railroad electronic reporting systems and databases.

The major benefits anticipated from implementing this final rule include savings from a simplification in the reporting of occupational injuries due to a new definition of "first aid." This benefit will produce a savings in the decision making process for both reportable injuries and accountable injuries. Additional savings will also occur from a reduction in the average burden time to complete a Rail Equipment Accident/Incident Report. This savings is largely a product of a revision to the train accident cause codes. The revised casualty circumstance codes will produce a savings from a reduction in the use of the narrative block on the railroad injury and illness reports. Finally, railroads will receive a savings from a simplification in the counting of the number of days away from work or of restricted work activity. This includes a savings due to a reduction from 365 to 180 days for the maximum number of days that the railroads would have to track and report injuries and illnesses. FRA also anticipates that there will be qualitative benefits from this rulemaking from better data on railroad reports, and the increased utility that the additional data codes would provide to future analysis.

B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a Federal agency to review its proposed and final rules in order to assess their impact on small entities (small businesses, small organizations, and local governments). If the agency determines that its final rule would have a significant economic impact on a substantial number of small entities, then the agency must prepare an Regulatory Flexibility Analysis (RFA). If the agency determines the opposite, then the agency must certify that determination; an RFA may also provide the basis for the agency's determination that the final rule would not have a significant economic impact on a substantial number of small entities.

"Small entity" is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity" is 1,500 employees for "Line-Haul Operating" Railroads, and 500 employees for "Switching and Terminal Establishments." SBA's "size standards" may be altered by Federal agencies on consultation with SBA and in conjunction with public comment. Pursuant to section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published an interim policy that formally establishes "small entities" as being railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024, Aug. 11, 1997. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold for a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment. *See* 49 CFR part 1201. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposed to use this alternative definition of "small entity" for this rulemaking, and requested comments on its use. No comments were received related to this proposal.

Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," requires in part that a Federal agency notify the Chief Counsel for Advocacy of the SBA of any of its draft rules that would have a significant economic impact on a substantial number of small entities. This Executive Order also requires Federal agencies to consider any comments provided by the SBA, and to include in the preamble to the final rule the agency's response to any written comments by the SBA unless the agency head certifies that including such material would not serve the public interest. 67 FR 53461 (Aug. 16, 2002). Since this final rule does not have a significant economic impact on a substantial number of small entities, FRA has not notified the Office of Advocacy at SBA, and therefore, has not received any comments from Advocacy.

In accordance with the Regulatory Flexibility Act of 1980, FRA has prepared and placed in the docket an RFA, which assesses the small entity impact of this final rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov*.

As stated in the RFA, FRA has determined that there are over 650 small railroads that could potentially be affected by this rulemaking; however, the frequency of accidents/incidents, and therefore reporting burden, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller, all other things being equal. For example, in 1998, only 327 railroads reported one or more casualties.

The economic impacts anticipated from final rule are primarily a result of an increase in casualty reporting due to the reporting of some casualties, due to OSHA recordkeeping requirements which this rulemaking is adopting into FRA reporting requirements. In addition, the railroad industry will incur small burdens for an increase in telephonic reporting of some accident/incidents, and for modifications made to computer software and databases. However, FRA does not anticipate that any of these burdens will be imposed on small entities due to the decreased likelihood of a casualty occurring on a small railroad. The computer-based burdens are not expected to impact small entities either since most small railroads report using personal computer (PC)-based software provided by FRA. It is estimated by FRA that small entities will incur five percent or less of the total costs for this final rule.

It is important to note that this final rule will also reduce recordkeeping burdens by simplifying the method used to count employee absences and work restrictions, and by reducing the requirement to keep track of lengthy employee absences. The final rule also simplifies reporting requirements with clarifying definitions for things such as "medical treatment" and "first aid." Train accident cause codes and injury occurrence codes would be added, so that accident and injury data would be more precise and the need for some narratives will be eliminated.

This final rule does not provide alternative treatment for small entities in the regulation or reporting requirements. However, small railroads that report using PC-based software will not be burdened with any costs for modifying or changing the software, since FRA provides this software free to all railroads that utilize it. It is important to note that just by the fact that small railroads report fewer accidents/incidents and casualties, they are less likely to be burdened by the final rule.

The RFA concludes that this final rule will not have a significant economic impact on a substantial number of small entities; therefore, FRA certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities. For the same reason, consistent with Executive Order 13272, the draft rule has not been submitted to the SBA. In order to determine the significance of the economic impact for this RFA, FRA invited comments from all interested parties concerning the potential economic impact on small entities in the notice of proposed rulemaking. The Agency considered the lack of comments and data it received in making this decision and certification.

C. Paperwork Reduction Act of 1995

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.9—Telephone Reports—Certain Accidents/Incidents and Other Events.	685 railroads	500 reports	15 minutes	125	$5,250
225.11—Reporting of Rail Equipment Accidents/Incidents (Form FRA F 6180.54).	685 railroads	3,000 forms	2 hours	6,000	252,000
225.12(a)—Rail Equipment Accident/Incident Reports—Human Factor (Form FRA F 6180.81).	685 railroads	1,000 forms	15 minutes	250	10,500
225.12(b)—Rail Equipment Accident/Incident Reports—Human Factors (Part 1, Form FRA F 6180.78).	685 railroads	4,100 notices/copies	10 minutes and 3 minutes	372	15,624
225.12(c)—Rail Equipment Accident/Incident Reports—Human Factor—Joint Operations.	685 railroads	100 requests	20 minutes	33	1,386
225.12(d)—Rail Equipment Accident/Incident Reports—Human Factor—Late Identification.	685 railroads	20 attachments + 20 notices.	15 minutes	10	420
225.12(e)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Supplement (Part II, Form FRA F 6180.78).	685 railroads	75 statements	1.5 hours	113	2,938

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.12(f)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Confidential Letter.	Railroad Employees	10 letters	2 hours	20	520
225.13—Amended Rail Equipment Accident\Incident Reports.	685 railroads	10 amended reports, 20 copies.	1 hour + 3 minutes	11	462
225.17—Doubtful Cases; Alcohol/Drug Involvement	685 railroads	80 reports	30 minutes	40	1,680
—Appended Reports	685 railroads	5 reports	30 minutes	3	126
225.19—Highway—Rail Grade Crossing Accident\Incident Reports (Form FRA F 6180.57).	685 railroads	3,400 forms	2 hours	6,800	285,600
—Death, Injury, or Occupational Illness (Form FRA F 6180.55a).	685 railroads	13,800 forms	20 minutes	4,400	184,800
225.21 Forms:					
—Form FRA F 6180.55—Railroad Injury\Illness Summary.	685 railroads	8,220 forms	10 minutes	1,370	57,540
—Form FRA F 6180.56—Annual Report of Employee Hours and Casualties by State.	685 railroads	685 forms	15 minutes	171	7,182
—Form FRA F 6180.98—RR Employee Injury and/or Illness Record.	685 railroads	18,000 forms	1 hour	18,000	756,000
—Form FRA F 6180.98—Copies	685 railroads	540 copies	2 minutes	18	756
—Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record.	685 railroads	13,000 forms	30 minutes	6,500	273,000
—Form FRA F 6180.107—Alternate Record For Illnesses Claimed to Be Work Related.	685 railroads	300 forms	15 minutes	75	3,150
225.25—Posting of Monthly Summary	685 railroads	8,220 lists	16 minutes	2,192	92,064
225.27—Retention of Records	685 railroads	1,900 records	2 minutes	63	2,646
225.33—Internal Control Plans—Amended	685 railroads	25 amendments	14 hours	350	14,700
225.35—Access to Records and Reports—Lists	15 railroads	400 lists	20 minutes	133	5,586
—Subsequent Years	4 railroads	16 lists	20 minutes	5	210
225.37—Magnetic Media Transfers	8 railroads	96 transfers	10 minutes	16	672
—Batch Control (Form FRA F 6180.99)	685 railroads	200 forms	3 minutes	10	420

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, 725 17th St., NW., Washington, DC 20503. OMB is required to make a decision concerning the information collection requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, entitled, "Federalism," issued on August 4, 1999, requires that each agency "in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *."

When issuing the proposed rule and final rule in this proceeding, FRA has adhered to Executive Order 13132. FRA engaged in the required Federalism consultation during the early stages of the rulemaking through meetings of the full RSAC, on which several representatives of groups representing State and local officials sit. To date, FRA has received only one concern about the Federalism implications of this rulemaking from these representatives, regarding whether or not FRA's notification requirements would preempt State accident notification requirements. Although FRA's regulations under part 225 preempt States from prescribing accident/incident reporting requirements, there is nothing in these regulations that preempts States from having their own, perhaps even different, accident notification requirements:

> Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accident/incidents and injuries/illnesses which occur in that State.

49 CFR 225.1. FRA did not propose to change this provision that a State may require a railroad to submit to the State copies of reports required by part 225 regarding accidents in the State.

Additionally, section 20902 of title 49 of the United States Code, which authorizes the Secretary of Transportation to investigate certain accidents and incidents, provides: "[i]f the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation." This section contemplates that States have an interest in carrying out simultaneous investigations in coordination with the Secretary, where convenient. It would be consistent with this interest to permit States to adopt their own accident notification requirements so as to allow a prompt, and perhaps coordinated, investigation. Accordingly, FRA believes that it has satisfied the Executive Order.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

> (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:
>
> * * * * *
>
> (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The final rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) that is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

List of Subjects

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 225

Accident investigation, Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends Chapter II, Subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

> **Authority:** 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

2. Section 219.5 is amended by adding a definition of *Accident or incident reportable under part 225* and revising the definition of *Reportable injury* to read as follows:

§ 219.5 Definitions.

* * * * *

Accident or incident reportable under part 225 does not include a case that is classified as "covered data" under § 225.5 of this chapter (*i.e.*, employee injury/illness cases reportable exclusively because a physician or other licensed health care professional either made a one-time topical application of a prescription-strength medication to the employee's injury or made a written recommendation that the employee: Take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness; work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no other days of restricted work activity in connection with the injury or illness; or take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication).

* * * * *

Reportable injury means an injury reportable under part 225 of this chapter except for an injury that is classified as "covered data" under § 225.5 of this chapter (*i.e.*, employee injury/illness cases reportable exclusively because a physician or other licensed health care professional either made a one-time topical application of a prescription-strength medication to the employee's injury or made a written recommendation that the employee: Take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness; work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no other days of restricted work activity in

connection with the injury or illness; or take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication.

* * * * *

PART 225—[AMENDED]

3. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

4. Section 225.5 is amended as follows:

a. By revising paragraph (3) of the definition of the term *Accident/incident;*

b. By revising the definitions of the terms *Accountable injury or illness, Day away from work, Day of restricted work activity, Medical treatment,* and *Occupational illness;*

c. By removing the term *Arising from the operation of a railroad* and its definition; and

d. By adding definitions of the terms *Covered data, Event or exposure arising from the operation of a railroad, General reporting criteria, Medical removal, Musculoskeletal disorder, Needlestick or sharps injury, New case, Occupational hearing loss, Occupational tuberculosis, Privacy concern case, Significant change in the damage costs for reportable rail equipment accidents/incidents, Significant change in the number of reportable days away from work or days restricted, Significant illness,* and *Significant injury* to read as follows:

§ 225.5 Definitions.

* * * * *

Accident/incident means:

* * * * *

(3) Any event or exposure arising from the operation of a railroad, if the event or exposure is a discernable cause of one or more of the following outcomes, and this outcome is a new case or a significant aggravation of a pre-existing injury or illness:

(i) Death to any person;

(ii) Injury to any person that results in medical treatment;

(iii) Injury to a railroad employee that results in:

(A) A day away from work;

(B) Restricted work activity or job transfer; or

(C) Loss of consciousness;

(iv) Occupational illness of a railroad employee that results in any of the following:

(A) A day away from work;

(B) Restricted work activity or job transfer;

(C) Loss of consciousness; or

(D) Medical treatment;

(v) Significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;

(vi) Illness or injury that meets the application of any of the following specific case criteria:

(A) Needlestick or sharps injury to a railroad employee;

(B) Medical removal of a railroad employee;

(C) Occupational hearing loss of a railroad employee;

(D) Occupational tuberculosis of a railroad employee; or

(E) Musculoskeletal disorder of a railroad employee if this disorder is independently reportable under one or more of the general reporting criteria.

Accountable injury or illness means any condition, not otherwise reportable, of a railroad employee that is discernably caused by an event, exposure, or activity in the work environment which condition causes or requires the railroad employee to be examined or treated by a qualified health care professional.

* * * * *

Covered data means information that must be reported to FRA under this part concerning a railroad employee injury or illness case that is reportable exclusively because a physician or other licensed health care professional—

(1) Recommended in writing that—

(i) The employee take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness,

(ii) The employee work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no days of restricted work activity in connection with the injury or illness, or

(iii) The employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication; or

(2) Made a one-time topical application of a prescription-strength medication to the employee's injury.

Day away from work means a day away from work as described in paragraph (1) of this definition or, if paragraph (1) does not apply, a day away from work solely for reporting purposes as described in paragraph (2) of this definition. For purposes of this definition, the count of days includes all calendar days, regardless of whether the employee would normally be scheduled to work on those days (*e.g.*, weekend days, holidays, rest days, and vacation days), and begins on the first calendar day after the railroad employee has been examined by a physician or other licensed health care professional (PLHCP) and diagnosed with a work-related injury or illness. In particular, the term means—

(1) Each calendar day that the employee, for reasons associated with his or her condition, does not report to work (or would have been unable to report had he or she been scheduled) if not reporting results from:

(i) A PLHCP's written recommendation not to work, or

(ii) A railroad's instructions not to work, if the injury or illness is otherwise reportable; or

(2) A minimum of one calendar day if a PLHCP, for reasons associated with the employee's condition, recommends in writing that the employee take one or more days away from work, but the employee instead reports to work (or would have reported had he or she been scheduled). This paragraph is intended to take into account "covered data" cases and also those non-covered data cases that are independently reportable for some other reason (*e.g.*, "medical treatment" or "day of restricted work activity"). The requirement to report "a minimum of one calendar day" is intended to give a railroad the discretion to report up to the total number of days recommended by the PLHCP.

Day of restricted work activity means a day of restricted work activity as described in paragraph (1) of this definition or, if paragraph (1) does not apply, a day of restricted work activity solely for reporting purposes as described in paragraph (2) of this definition; in both cases, the work restriction must affect one or more of the employee's routine job functions (*i.e.*, those work activities regularly performed at least once per week) or prevent the employee from working the full workday that he or she would otherwise have worked. For purposes of this definition, the count of days includes all calendar days, regardless of whether the employee would normally be scheduled to work on those days (*e.g.*, weekend days, holidays, rest days, and vacation days), and begins on the first calendar day after the railroad employee has been examined by a physician or other licensed health care professional (PLHCP) and diagnosed with a work-related injury or illness. In particular, the term means—

(1) Each calendar day that the employee, for reasons associated with his or her condition, works restricted duty (or would have worked restricted duty had he or she been scheduled) if the restriction results from:

(i) A PLHCP's written recommendation to work restricted duty, or

(ii) A railroad's instructions to work restricted duty, if the injury or illness is otherwise reportable; or

(2) A minimum of one calendar day if a PLHCP, for reasons associated with the employee's condition, recommends in writing that the employee work restricted duty for one or more days, but the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled). This paragraph is intended to take into account "covered data" cases and also those non-covered data cases that are independently reportable for some other reason (*e.g.*, "medical treatment" or "day of restricted work activity"). The requirement to report "a minimum of one calendar day" is intended to give a railroad the discretion to report up to the total number of days recommended by the PLHCP.

* * * * *

Event or exposure arising from the operation of a railroad includes—

(1) With respect to a person who is on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity;

(2) With respect to an employee of the railroad (whether on or off property owned, leased, or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; and

(3) With respect to a person who is not an employee of the railroad and not on property owned, leased, or maintained by the railroad—an event or exposure directly resulting from one or more of the following railroad operations:

(i) A train accident, a train incident, or a highway-rail crossing accident or incident involving the railroad; or

(ii) A release of a hazardous material from a railcar in the possession of the railroad or of another dangerous commodity that is related to the performance of the railroad's rail transportation business.

* * * * *

General reporting criteria means the criteria listed in § 225.19(d)(1), (2), (3), (4), and (5).

* * * * *

Medical removal means medical removal under the medical surveillance requirements of the Occupational Safety and Health Administration standard in 29 CFR part 1910 in effect during calendar year 2002, even if the case does not meet one of the general reporting criteria.

Medical treatment means any medical care or treatment beyond "first aid" regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

Musculoskeletal disorder (MSD) means a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, and spinal discs. The term does not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

Needlestick or sharps injury means a cut, laceration, puncture, or scratch from a needle or other sharp object that involves contamination with another person's blood or other potentially infectious material, even if the case does not meet one of the general reporting criteria.

New case means a case in which either the employee has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the employee previously experienced a reported injury or illness of the same type that affected the same part of the body but had recovered completely (all signs had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

* * * * *

Occupational hearing loss means a diagnosis of occupational hearing loss by a physician or other licensed health care professional, where the employee's audiogram reveals a work-related Standard Threshold Shift (STS) (*i.e.*, at least a 10-decibel change in hearing threshold, relative to the baseline audiogram for that employee) in hearing in one or both ears, and the employee's total hearing level is 25 decibels or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS.

Occupational illness means any abnormal condition or disorder, as diagnosed by a physician or other licensed health care professional, of any person who falls under the definition for the classification of Worker on Duty—Employee, other than one resulting from injury, discernably caused by an environmental factor associated with the person's railroad employment, including, but not limited to, acute or chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact.

Occupational tuberculosis means the occupational exposure of an employee to anyone with a known case of active tuberculosis if the employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, even if the case does not meet one of the general reporting criteria.

* * * * *

Privacy concern case is any occupational injury or illness in the following list:

(1) Any injury or illness to an intimate body part or the reproductive system;

(2) An injury or illness resulting from a sexual assault;

(3) Mental illnesses;

(4) HIV infection, hepatitis, or tuberculosis;

(5) Needlestick and sharps injuries; and

(6) Other injuries or illnesses, if the employee independently and voluntarily requests in writing to the railroad reporting officer that his or her injury or illness not be posted.

* * * * *

Significant change in the damage costs for reportable rail equipment accidents/incidents means at least a ten-percent variance between the damage amount reported to FRA and current cost figures.

Significant change in the number of reportable days away from work or days restricted means at least a ten-percent variance in the number of actual reportable days away from work or days restricted compared to the number of days already reported.

Significant illness means an illness involving cancer or a chronic irreversible disease such as byssinosis or silicosis, if the disease does not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

Significant injury means an injury involving a fractured or cracked bone or a punctured eardrum, if the injury does

not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

* * * * *

5. Section 225.9 is revised to read as follows:

§ 225.9 Telephonic reports of certain accidents/incidents and other events.

(a) *Types of accidents/incidents and other events to be reported.* (1) *Certain deaths or injuries.* Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of an accident/incident arising from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that results in the—

(i) Death of a rail passenger or a railroad employee;

(ii) Death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad; or

(iii) Death or injury of five or more persons.

(2) *Certain train accidents or train incidents.* Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any of the following events that arose from the operation of the railroad:

(i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring their admission to a hospital;

(ii) A train accident resulting in evacuation of a passenger train;

(iii) A fatality at a highway-rail grade crossing as a result of a train accident or train incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000, to railroad and nonrailroad property; or

(v) A train accident resulting in damage of $25,000 or more to a passenger train, including railroad and nonrailroad property.

(3) *Train accidents on or fouling passenger service main lines.* The dispatching railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any train accident reportable as a rail equipment accident/incident under §§ 225.11 and 225.19(c)—

(i) that involves a collision or derailment on a main line that is used for scheduled passenger service; or

(ii) that fouls a main line used for scheduled passenger service.

(b) *Method of reporting.* (1) Telephonic reports required by this section shall be made by toll-free telephone to the National Response Center, Area Code 800–424–8802 or 800–424–0201.

(2) Through one of the same telephone numbers (800–424–0201), the National Response Center (NRC) also receives notifications of rail accidents for the National Transportation Safety Board (49 CFR part 840) and the Research and Special Programs Administration of the U.S. Department of Transportation (Hazardous Materials Regulations, 49 CFR 171.15). FRA Locomotive Safety Standards require certain locomotive accidents to be reported by telephone to the NRC at the same toll-free number (800–424–0201). 49 CFR 229.17.

(c) *Contents of report.* Each report must state the:

(1) Name of the railroad;

(2) Name, title, and telephone number of the individual making the report;

(3) Time, date, and location of the accident/incident;

(4) Circumstances of the accident/incident;

(5) Number of persons killed or injured; and

(6) Available estimates of railroad and non-railroad property damage.

(d) *Timing of report.* (1) To the extent that the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report will be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment.

(2) NTSB has other specific requirements regarding the timeliness of reporting. *See* 49 CFR part 840.

6. In section 225.19, paragraph (d) is revised to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(d) *Group III—Death, injury, or occupational illness.* Each event or exposure arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if the event or exposure is a discernable cause of one or more of the following outcomes, and this outcome is a new case or a significant aggravation of a pre-existing injury or illness:

(1) Death to any person;

(2) Injury to any person that results in medical treatment;

(3) Injury to a railroad employee that results in:

(i) A day away from work;

(ii) Restricted work activity or job transfer; or

(iii) Loss of consciousness;

(4) Occupational illness of a railroad employee that results in any of the following:

(i) A day away from work;

(ii) Restricted work activity or job transfer;

(iii) Loss of consciousness; or

(iv) Medical treatment;

(5) Significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;

(6) Illness or injury that meets the application of any of the following specific case criteria:

(i) Needlestick or sharps injury to a railroad employee;

(ii) Medical removal of a railroad employee;

(iii) Occupational hearing loss of a railroad employee;

(iv) Occupational tuberculosis of a railroad employee; or

(v) Musculoskeletal disorder of a railroad employee if this disorder is independently reportable under one or more of the general reporting criteria.

* * * * *

7. In section 225.21, a new paragraph (j) is added to read as follows:

§ 225.21 Forms.

* * * * *

(j) Form FRA 6180.107—*Alternative Record for Illnesses Claimed to Be Work-Related.* (1) Form FRA F 6180.107 shall be used by a railroad to record each illness claimed to be work-related that is reported to the railroad—

(i) For which there is insufficient information to determine whether the illness is work-related;

(ii) For which the railroad has made a preliminary determination that the illness is not work-related; or

(iii) For which the railroad has made a final determination that the illness is not work-related.

(2) For any case determined to be reportable, the designation "illness claimed to be work-related" shall be removed, and the record shall be transferred to the reporting officer for retention and reporting in the normal manner.

(3) In the event the narrative block (similar to Form FRA F 6180.98, block 39) indicates that the case is not reportable, the explanation contained on that block shall record the reasons the railroad determined that the case is not reportable, making reference to the most authoritative information relied upon.

(4) Although the Form FRA F 6180.107 may not include all supporting documentation, such as medical records, the Form FRA F 6180.107 shall note the name, title, and address of the custodian of those documents and where the supporting documents are located so that they are readily accessible to FRA upon request.

8. In section 225.23, paragraph (a) is revised to read as follows:

§ 225.23 Joint operations.

(a) Any reportable death, injury, or illness of an employee arising from an accident/incident involving joint operations must be reported on Form FRA F 6180.55a by the employing railroad.

* * * * *

9. Section 225.25 is amended by revising paragraphs (b)(6), (b)(16), (b)(25)(v), (e)(8), (e)(24), (h)(15), and new paragraphs (b)(25)(xi), (b)(25)(xii) and (i) are added to read as follows:

§ 225.25 Recordkeeping.

* * * * *

(b) * * *

(6) Employee identification number or, in the alternative, Social Security Number of railroad employee;

* * * * *

(16) Whether employee was on premises when injury, illness, or condition occurred;

* * * * *

(25) * * *

(v) If one or more days away from work, provide the number of days away and the beginning date;

* * * * *

(xi) Significant injury or illness of a railroad employee;

(xii) Needlestick or sharps injury to a railroad employee, medical removal of a railroad employee, occupational hearing loss of a railroad employee, occupational tuberculosis of a railroad employee, or musculoskeletal disorder of a railroad employee which musculoskeletal disorder is reportable under one or more of the general reporting criteria.

* * * * *

(e) * * *

(8) County and nearest city or town;

* * * * *

(24) Persons injured, persons killed, and employees with an occupational illness, broken down into the following classifications: worker on duty—employee; employee not on duty; passenger on train; nontrespasser—on railroad property; trespasser; worker on duty—contractor; contractor—other; worker on duty—volunteer; volunteer—other; and nontrespasser-off railroad property;

* * * * *

(h) * * *

(15) The railroad is permitted not to post information on an occupational injury or illness that is a privacy concern case.

* * * * * *

(i) *Claimed Occupational Illnesses.* (1) Each railroad shall maintain either the Form FRA F 6180.107, to the extent that the information is reasonably available, or an alternate railroad-designed record containing the same information as called for on the Form FRA F 6180.107, to the extent that the information is reasonably available, for each illness claimed to be work-related—

(i) For which there is insufficient information to determine whether the illness is work-related;

(ii) For which the railroad has made a preliminary determination that the illness is not work-related; or

(iii) For which the railroad has made a final determination that the illness is not work-related.

(2) For any case determined to be reportable, the designation "illness claimed to be work-related" shall be removed, and the record shall be transferred to the reporting officer for retention and reporting in the normal manner.

(3) In the event the narrative block (similar to Form FRA F 6180.98, block 39) indicates that the case is not reportable, the explanation contained on that block shall record the reasons the railroad determined that the case is not reportable, making reference to the most authoritative information relied upon.

(4) In the event the railroad must amend the record with new or additional information, the railroad shall have up until December 1 of the next calendar year for reporting accidents/incidents to make the update.

(5) Although the Alternative Record for Illnesses Claimed to be Work-Related (or the alternate railroad-designed form) may not include all supporting documentation, such as medical records, the alternative record shall note the custodian of those documents and where the supporting documents are located so that they are readily accessible to FRA upon request.

10. Section 225.33 is amended by adding new paragraph (a)(11) to read as follows:

§ 225.33 Internal Control Plans.

(a) * * *

(11) In the case of the Form FRA F 6180.107 or the alternate railroad-designed form, a statement that specifies the name, title, and address of the custodian of these records, all supporting documentation, such as medical records, and where the documents are located.

* * * * *

11. Section 225.35 is amended by designating the first paragraph as paragraph (a), designating the second paragraph as paragraph (b), and adding after the fourth sentence of newly designated paragraph (b) the following two sentences:

§ 225.35 Access to records and reports.

* * * * *

(b) * * * The Form FRA F 6180.107 or the alternate railroad-designed form need not be provided at any railroad establishment within 4 hours of a request. Rather, the Form FRA F 6180.107 or the alternate railroad-designed form must be provided upon request, within five business days, and may be kept at a central location, in either paper or electronic format. * * *

12. Section 225.39 is added to read as follows:

§ 225.39 FRA policy on covered data.

FRA will not include covered data (as defined in § 225.5) in its periodic summaries of data on the number of occupational injuries and illnesses.

PART 240—[AMENDED]

13. The authority citation for part 240 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

14. In section 240.117, paragraph (e)(2) is revised to read as follows:

§ 240.117 Criteria for consideration of operating rules compliance data.

* * * * *

(e) * * *

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules (*i.e.*, the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under

§ 225.5 of this chapter (*i.e.*, employee injury/illness cases reportable exclusively because a physician or other licensed health care professional either made a one-time topical application of a prescription-strength medication to the employee's injury or made a written recommendation that the employee: Take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness; work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no other days of restricted work activity in connection with the injury or illness; or take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication, as instances of failure to adhere to this section;

* * * * *

Issued in Washington, DC, on February 19, 2003.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 03–4633 Filed 2–28–03; 8:45 am]

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S. 141/P.L. 108–8
To improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes. (Feb. 25, 2003; 117 Stat. 555)
Last List February 24, 2003

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
*1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4]Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
*4	(869–050–00003–2)	9.59	Jan. 1, 2003
5 Parts:			
1–699	(869–048–00004–6)	57.00	Jan. 1, 2002
700–1199	(869–048–00005–4)	47.00	Jan. 1, 2002
1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
*53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
*400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–048–00017–8)	61.00	Jan. 1, 2002
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–048–00021–6)	46.00	Jan. 1, 2002
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
1–50	(869–048–00025–4)	58.00	Jan. 1, 2002
51–199	(869–048–00026–7)	56.00	Jan. 1, 2002
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
*1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–048–00033–0)	45.00	Jan. 1, 2002
500–599	(869–048–00034–8)	42.00	Jan. 1, 2002
600–End	(869–048–00035–6)	61.00	Jan. 1, 2002
13	(869–048–00036–4)	47.00	Jan. 1, 2002
14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
*140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
1200–End	(869–048–00041–1)	41.00	Jan. 1, 2002
15 Parts:			
*0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
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800–End	(869–048–00044–5)	40.00	Jan. 1, 2002
16 Parts:			
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1000–End	(869–048–00046–1)	57.00	Jan. 1, 2002
17 Parts:			
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240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
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19 Parts:			
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141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
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20 Parts:			
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21 Parts:			
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200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
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600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–048–00067–4)	22.00	Apr. 1, 2002
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
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23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
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§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–048–00081–0)	60.00	Apr. 1, 2002
§§ 1.441–1.500	(869–048–00082–8)	47.00	Apr. 1, 2002
§§ 1.501–1.640	(869–048–00083–6)	44.00	[6]Apr. 1, 2002
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§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
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30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–048–00094–1)	12.00	[5]Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002

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200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0–42	(869–048–00098–4)	58.00	July 1, 2002
43–end	(869–048–00099–2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
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1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200–End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
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9		13.00	[3]July 1, 1984
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18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
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1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
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47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
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3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
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100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
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Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 2003

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
March 3	March 18	April 2	April 17	May 2	June 2
March 4	March 19	April 3	April 18	May 5	June 2
March 5	March 20	April 4	April 21	May 5	June 3
March 6	March 21	April 7	April 21	May 5	June 4
March 7	March 24	April 7	April 21	May 6	June 5
March 10	March 25	April 9	April 24	May 9	June 9
March 11	March 26	April 10	April 25	May 12	June 9
March 12	March 27	April 11	April 28	May 12	June 10
March 13	March 28	April 14	April 28	May 12	June 11
March 14	March 31	April 14	April 28	May 13	June 12
March 17	April 1	April 16	May 1	May 16	June 16
March 18	April 2	April 17	May 2	May 19	June 16
March 19	April 3	April 18	May 5	May 19	June 17
March 20	April 4	April 21	May 5	May 19	June 18
March 21	April 7	April 21	May 5	May 20	June 19
March 24	April 8	April 23	May 8	May 23	June 23
March 25	April 9	April 24	May 9	May 27	June 23
March 26	April 10	April 25	May 12	May 27	June 24
March 27	April 11	April 28	May 12	May 27	June 25
March 28	April 14	April 28	May 12	May 27	June 26
March 31	April 15	April 30	May 15	May 30	June 30

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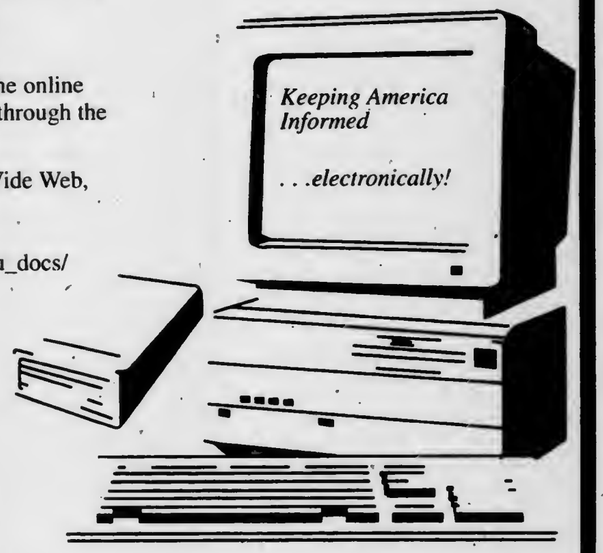
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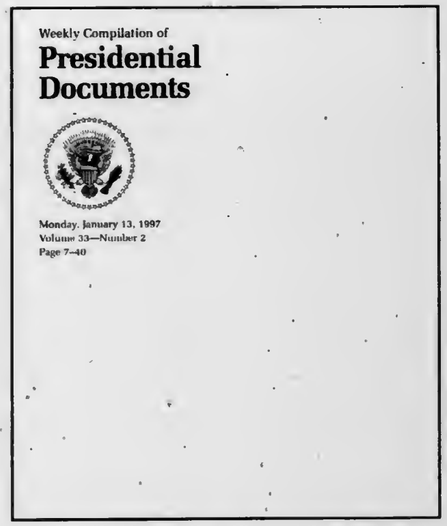
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The President

Memorandum of February 12, 2003

Designation of Officers of the Department of Veterans Affairs To Act as Secretary of Veterans Affairs

Memorandum for the Secretary of Veterans Affairs

By the authority vested in me as President under the Constitution and laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, I hereby order that:

Section 1. *Order of Succession.*

During any period when the Secretary of Veterans Affairs (Secretary), the Deputy Secretary of Veterans Affairs (Deputy Secretary), and the officers designated by Executive Order 13247 of December 18, 2001, to perform the functions and duties of the office of Secretary have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary, the following officers of the Department of Veterans Affairs, in the order listed, shall perform the functions and duties of the office of Secretary, if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Secretary:

Veterans Integrated Service Network (VISN) 8 Director, Veterans Health Administration;

VISN 7 Director, Veterans Health Administration;

Veterans Benefits Administration Southern Area Director; and

North Florida/South Georgia Healthcare System Director.

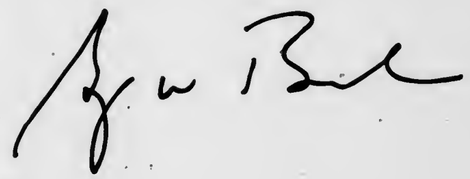
Sec. 2. *Exceptions.*

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this memorandum.

(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this memorandum in designating an acting Secretary.

Sec. 3. *Publication.*

You are authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, February 12, 2003.

[FR Doc. 03–5196
Filed 3–3–03; 8:45 am]
BILLING CODE 8320–01–M

Rules and Regulations

Federal Register
Vol. 68, No. 42
Tuesday, March 4, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

[INS No. 2256–03]

RIN 1115–AG94

Automated Inspection Services—Extension of Enrollment Period

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Automated Inspection Services (AIS) programs, such as the INS Passenger Accelerated Service System (INSPASS) and the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), are automated systems designed to identify pre-registered, low-risk travelers and permit them to enter the United States within a predictable wait time by reducing the interaction of the traveler with the inspector at the time of entry. The extension of the enrollment period for AIS programs will benefit both the Immigration and Naturalization Service (Service), and the applicants of the INSPASS and SENTRI programs.

The Service regulations currently limit the period of approval to the program to 1 year, thereby requiring applicants to resubmit a new application and fee each year. This is a very burdensome process for both the traveling public and the Federal agencies administering the programs. This rule amends the Service's regulations to extend the current enrollment period for the AIS programs from 1 year to 2 years. The Service has determined that it can effectively maintain the integrity of the program and the security of the border without requiring applicants to undergo an annual application renewal.

DATES: *Effective date:* This interim rule is effective February 28, 2003.

Comment date: Written comments must be submitted on or before April 29, 2003.

ADDRESSES: Please submit written comments, to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling please reference INS number 2256–03 on your correspondence. You may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, you must include INS number 2256–03 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Thomas C. Campbell, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone number (202) 305–9246.

SUPPLEMENTARY INFORMATION:

What Is an Automated Inspection Service (AIS)?

The AIS, also known as PORTPASS programs, are automated systems designed to identify pre-registered, low-risk travelers using various technologies, and permit them to enter the United States within a predictable wait time by reducing the interaction of the traveler with the inspector at the time of entry. The Service currently operates several AIS systems, including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) dedicated commuter lanes along the southern border, and Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS), at several airport locations. The AIS programs incorporate a pre-registration of participants that includes an interview, various agency law enforcement database and criminal record checks, capturing of biometrics, and inspection of the vehicle, if appropriate. Upon entry to the United States, the traveler is identified using various technologies, such as transponders, proximity cards, or other means of biometric verification. In dedicated commuter lanes, the participant's photograph and other information displays on the screen to the inspector in designated vehicle lanes, who can verify the identity of the traveler. For INSPASS, travelers approach a kiosk and submit to a biometric (hand geometry) verification and database check upon entry. These programs benefit both the traveling public and the government by providing advance information about persons entering the United States, thereby allowing minimal inspection of low-risk, known travelers, while permitting border inspectors to focus attention and resources on unknown, or higher-risk travelers.

What is INSPASS?

- INSPASS is an AIS Program currently operational at international airports at: Los Angeles, Miami, Newark, New York (JFK), San Francisco, Washington-Dulles, and the U.S. preclearance sites at Vancouver, and Toronto in Canada. Citizens of the United States, Canada, Bermuda, and Visa Waiver Pilot Program (VWPP) countries who travel to the U.S. on business three or more times a year, or who are diplomats, representatives of international organizations, or airline crews from the VWPP nations may voluntarily enroll in the INSPASS Program.
- Enrollment into INSPASS is not available to anyone with a criminal record or to aliens who require a waiver of inadmissibility to enter the U.S.
- Arriving at a Port-of-Entry, the traveler proceeds to an INSPASS inspection queue. There, the person inserts a card issued to them at enrollment to an INSPASS kiosk, similar to automated bank teller devices. Responding to messages on the kiosk's touch-screen display, the traveler is prompted to enter their flight number and to place their hand in a hand geometry reader. Screen prompts are used to achieve correct alignment of the hand, with the hand reader. The kiosk software automatically compares the live scan of the traveler's hand geometry biometric to the image captured at enrollment. If the traveler's identity is validated by this comparison, an I–94 (if required) or receipt of his inspection is printed by the Kiosk that directs the traveler to proceed to U.S. Customs Inspection. If this check is not successful, a screen Message refers the

traveler to an Immigration Inspector in a nearby inspection booth.

What is SENTRI?

- SENTRI is an AIS Program that enables enrolled travelers to rapidly enter the United States through a dedicated commuter lane (DCL) at specific Land Border Ports-of-Entry.
- To be eligible to use SENTRI, you must be able to lawfully enter the United States and pass a three-part comprehensive background check. These record checks are conducted for all applicants (18 years of age and older) by the U.S. Immigration and Naturalization Service, U.S. Customs Service, and Federal Bureau of Investigation.
- When an enrolled automobile approaches the inspection booth in the SENTRI lane, a radio frequency transponder that is affixed to the automobile emits radio signals that are picked up by receivers located at the port of entry. Each transponder has a unique number that retrieves a specific record in the SENTRI enrollment database. Within moments, this record, which contains a photograph and detailed information about the vehicle and its occupants, appears on a color monitor screen in front of the inspector. Next, each auto occupant swipes an identification card through a magnetic reader located at the inspection booth, (a process similar to using an ATM card). The inspector verifies that the vehicle's occupants are enrolled in the SENTRI system and authorizes the vehicle and its occupants to enter the United States. As at other ports of entry, the inspector may refer vehicles for a more thorough inspection. In addition, a small percentage of travelers are randomly chosen by computer and referred for a secondary inspection to ensure compliance with the rules and regulations of the SENTRI system.

Are Security Checks Conducted in the AIS Programs?

Yes. The Service requires that all AIS Programs perform various agency law enforcement database and criminal record checks. AIS travelers may also undergo additional random referrals and compliance checks to ensure that the participants remain in compliance with the program guidelines and the laws and regulations that govern entry in the United States.

How Does This Rule Amend the Regulations?

This rule extends the period of enrollment in the AIS programs from 1 year to 2 years. This change will significantly reduce the paperwork burden on the general public and the inspection services while causing no reduction in the security of the automated inspection systems or the international border. The Service will continue to perform regular queries of the law enforcement databases on the enrolled travelers as well as requesting updates of information from enrolled travelers through periodic mailings. The Service will also continue to perform regular queries of the law enforcement databases on the enrolled travelers, as well as requesting updates of information from enrolled travelers through periodic mailings, if necessary. The Service will also continue to conduct random referrals and compliance checks to ensure that participants remain in compliance with the programs guidelines and the laws and regulations that govern entry into the United States.

Why Is the Service Changing the Length of the Enrollment Period?

With the growing popularity of the AIS programs particularly along the southern border, the large number of applicants has placed a strain on the ability of the enrollment centers to process all applications in a timely manner, resulting in extensive backlogs of applicants waiting to be processed. The annual renewal requirement further exacerbates this workload. Because the data provided at the time of enrollment by the traveler typically remains the same from year to year, the Service has determined that it does not require the re-submission of this data on an annual basis. However, the Service will continue to evaluate this and other aspects of the AIS programs to determine whether additional changes should be made at a later date.

How Will the Service Measure Its Performance on Enrollments?

An extension of the enrollment from 1 year to 2 years would aid the Service in its goal to reduce the enrollment backlog to 60 days by July 1, 2003. Thousands of applicants each year will no longer be required to visit the enrollment center, re-enroll or pay an additional application fee. By eliminating an extra enrollment fee, a reduction in cost for program participation is returned to the traveler. Fewer visitors to the enrollment centers decrease the strenuous workload for the Service. Attention could then be focused on the reduction of the thousands of applicants backlogged instead of processing yearly re-applications.

If I am Already Enrolled in an AIS Program, Will My Enrollment Period Be Automatically Extended to 2 Years?

Yes, the Service will consider your enrollment period to be valid 2 years from the date of your last enrollment approval. You will not have to pay an additional enrollment fee for the extension.

What if My Visa or Immigration Status Is Valid for Less Than 2 Years When I Submit my Application?

The actual authorization of any AIS participation is determined by the individual's underlying immigration status. The individual's immigration status must be valid at all times to participate in the program and they must be in possession of all appropriate immigration and identity documents at the time of each entry. The initial period of approval will be limited in accordance with the underlying immigration status, but can be extended, without application or fee, for the full 2-year period once the participant establishes the appropriate visa or immigration status validity.

Has the Service Consulted With Other Entities in Developing This New Rule?

The Service has consulted with numerous stakeholders and received positive feedback on this change from all entities. These stakeholders include the Border Trade Alliances, individual travelers, business and trade associations, congressional officials, and the other federal inspection service agencies involved in the affected programs.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(1). The reason for immediate implementation is as follows: This rule is intended to benefit both the traveling public and the Service by decreasing the workload at the enrollment centers and alleviating the backlog of pending applications. In addition, this rule relieves the burden on the program participant of having to file an application annually and will also reduce the cost to the participant since the participant will not have to pay the additional enrollment fee for the second year. As previously stated, having as much advance information about as many travelers to the United States as possible promotes greater security of the border and the United States. In addition, since the events of September 11, 2001, ports-of-entry have operated under a higher threat level. This has often resulted in a dramatic increase in the time persons must wait to enter the United States at a land port-of-entry. The increased wait times result in increased release of emissions from vehicles into the communities surrounding the ports and impact the economy as the amount of trade and travel between the United States and its neighbors is decreased. The heightened security measures have required the inspection services to stretch scarce resources. AIS programs alleviate these harms by allowing quicker passage through the port and by allowing the government to focus inspection resources on higher risk travelers. Accordingly, the Service finds that it is impracticable and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553. This rule will be effective immediately upon publication under 5 U.S.C. 553(d)(1) because the rule relieves the burden on the program participant of having to file an application and pay a fee on a yearly basis. This benefits both the traveling public and the government by decreasing the workload at the enrollment center and alleviating the backlog of pending applications. In addition the good cause exception at 5 U.S.C. 553(d)(3) also permits the rule to become effective immediately for the reasons stated above.

Regulatory Flexibility Act

Although some of the enrollees in the AIS programs may be considered small entities, the majority of the travelers participating in the AIS programs are individuals who cross the border frequently for a variety of reasons, both business and personal. The intent of this rule is to reduce the burden on all of the participants in the AIS programs by eliminating the requirement of having to file an application annually and by reducing the cost to the participant. Accordingly, the Acting Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

The Service has assessed both the costs and benefits of this rule required by section 1(b)(6) of Executive Order 12866 and has made a reasonable determination that as previously stated in the "Good Cause Exception" that the intent of this rule is to reduce the burden on all of the participants in the AIS programs by eliminating the requirement of having to file an application annually and by reducing the cost to the participant. This will also reduce the strenuous workload of the Service in having to re-enroll thousands of applicants each year.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The Form I–823, Application—Alternative Inspection Services, is used for enrolling applicants in the AIS programs. This form has previously been approved for use by the Office of Management and Budget (OMB). The OMB control number for this collection is 1115–0174.

List of Subjects in 8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

§ 235.7 [Amended]

2. Section 235.7(a)(4)(xi) is amended in the first sentence by revising the phrase "1 year" to read: "2 years".

Dated: January 29, 2003.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–5189 Filed 2–28–03; 3:03 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA–2003–14578]

Aviation Safety and Health Partnership Program

AGENCY: Federal Aviation Administration

ACTION: Notice of program establishment and request for comments.

SUMMARY: By this notice, the Federal Aviation Administration (FAA) announces the creation of the air carrier Aviation Safety and Health Partnership Program (ASHPP). The FAA intends to enter into partnership agreements with participating air carriers, which will provide, at minimum, air carrier employee injury and illness data to the FAA for collection and analysis. The FAA will establish an Aviation Safety and Health Program (ASHP) Aviation Rulemaking Committee to provide advice and recommendations to:

a. Develop the scope and core elements of the partnership program agreement,

b. Review and analyze the employee injury and illness data,

c. Identify the scope and extent of systematic employee injury and illness trends,

d. Make recommendations to the FAA concerning remedies that uses all current FAA protocols, including rulemaking activities if warranted, to abate employee hazards, and

e. Any other advisory and oversight functions deemed necessary by the FAA.

The FAA invites air carriers interested in entering into an ASHPP to respond in accordance with this notice. Additionally, the FAA invites persons interested in serving on the ASHP Aviation Rulemaking Committee to request membership in accordance with this notice. The FAA will select members to provide a balance of viewpoints, interests, and expertise. Membership on the committee may be limited to facilitate discussions and maintain a balance of interests. This program preserves FAA's complete and exclusive responsibility for determining whether proposed abatements of safety and health hazards would compromise or negatively affect aviation safety.

DATES: *Membership:* Air carriers interested in participating in the voluntary ASHPP with the FAA should submit their intentions and the name and contact information of their representative before March 31, 2003. Air carriers belonging to a trade organization may elect to be represented by that organization. Air carrier trade associations, air carrier employee unions and other persons interested in participating on the ASHP Aviation Rulemaking Committee should submit their request on or before March 31, 2003. Selected committee members will be advised, in writing, of their participation and first meeting details.

Comments: The FAA will consider all comments on this ASHP Aviation Rulemaking Committee filed on or before May 30, 2003. We will consider comments filed late if it is possible to do so without incurring expense or delay.

ADDRESSES: *Membership:* People that request membership or participation in the ASHP Aviation Rulemaking Committee should contact the person listed below under **FOR FURTHER INFORMATION CONTACT.**

Comments: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify docket number FAA–2003–14578 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

You may also submit comments through the Internet at *http://dms.dot.gov*. You may review the public docket containing comments to the ASHP Aviation Rulemaking Committee, in person, in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review comments made to this public docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Gene Kirkendall, AFS–200W, rm. 831, 800 Independence Ave., SW., Washington, DC 20591, (202) 267–7074, facsimile at (202) 267–5229, or by email: *Gene.Kirkendall@FAA.GOV*

SUPPLEMENTARY INFORMATION:

Background

The joint FAA and Occupational Safety and Health Administration (OSHA) Aviation Safety and Health Team (ASHT) was established by a Memorandum of Understanding (MOU) between the two agencies in August 2000. The MOU directed the team to determine whether certain OSHA requirements could be applied to the working conditions of employees on aircraft in operation (other than flightdeck crew) without compromising aviation safety. The ASHT produced a report that outlined several legal, enforcement, compliance, and aviation safety issues that prevented the team from recommending jurisdiction over the working environment of employees on aircraft in operation be granted or ceded to OSHA. The team also identified a lack of reliable empirical data concerning injury and illness hazards on aircraft in operation necessary to justify any rulemaking activities at that time. The ASHT recognized that the overall safety of air carrier operations dictates that the FAA play an active role in the application of any safety and health standards and recommended abatements if they were to be applied to the working conditions of employees on aircraft in operation. The team developed an action plan that created the FAA ASHP and proposed that air carriers voluntarily enter into an ASHPP with the FAA. These documents and other ASHP information may be obtained on the FAA, ASHP Web site at *www.faa.gov/avr/afs/osha/ashp.cfm*.

The ASHPP proposes that air carriers voluntarily provide selected safety and health protections for employees currently not covered by OSHA, establish a steering committee consisting of members from FAA, air carriers, and employee unions, and contain evaluation criteria to assert program effectiveness. The program would also preserve the FAA's preeminent authority over aviation safety issues by reserving to the FAA complete and exclusive responsibility for determining whether proposed abatements of safety and health hazards would compromise or negatively affect aviation safety. The ASHPP would include electronic web based procedures for air carriers to report employee injury and illness information, thereby enabling FAA to obtain the required data. This data will be used to determine if FAA should take additional measures, including rulemaking activities, to address safety and health issues in air carrier operations. The initial plan focused on those employees whose workplace was on aircraft in operation (other than flightdeck crew). Limiting the data collection to only one employee work group would exclude other air carrier employees, such as pilots, mechanics and ramp personnel, whose working conditions are or may also be preempted from OSHA coverage under section 4(b)(1) of the OSH Act. Therefore, at the discretion of the committee, the scope of the employee injury and illness data collection under the partnership program may be expanded to include other air carrier employees. This expansion of data collection would provide FAA with a more comprehensive assessment of the overall safety and health hazards present within the air carrier industry rather than limiting the data collection to specific air carrier employees or job functions.

Public Participation in the ASHP Aviation Rulemaking Committee

The FAA invites members of the public to serve on the ASHP Aviation Rulemaking Committee. The committee will serve as the steering committee, provide an oversight role, receive data evaluation results, and provide advice and recommendations to the FAA to assist the agency in determining if the FAA should take additional measures to address safety and health issues in air carrier operations. The committee acts solely in an advisory capacity. The committee will discuss and present input, guidance, and recommendations considered relevant to the ultimate disposition of issues.

Because of the diversity and complexities of the air carrier industry, the committee will be structured with a steering committee with the FAA as the chairperson. The steering committee will consist of members selected by the FAA, including aviation associations, industry representatives, employee unions, the FAA and other government entities (such as OSHA), and other participants, to provide a balance of views, interests, and expertise. Membership on the committee will be limited to facilitate discussions. Priority will be given to those applicants representing an identified segment of the air carrier community who are empowered to speak for that segment.

Other subcommittees or work groups may be established if required.

All non-Government representatives serve without Government compensation and bear all costs related to their participation on the committee or work groups. Members and participants should be available to attend all scheduled committee or work group meetings for the duration of the committee activities.

The first meeting of the committee will be scheduled as soon as possible after the comment period is expired. Work groups will be scheduled as determined by the committee and work group members to provide information and meet schedule requirements.

Make your request to participate in the ASHPP and/or on the committee, in writing, on or before March 31, 2003. Your request should provide the following information:

—Contact information (name, company and position, address, phone, facsimile, and e-mail)
—Segment(s) of the industry or organization/association you represent
—Experience, subject expertise, or other background information

The FAA will notify all selected members and participants, in writing, in advance of the first meeting. Additional information on the committee, membership, dates, and other information may be obtained on the FAA ASHP Web site at *http://www.faa.gov/avr/afs/osha/ashp.cfm*.

Commenters should be as specific as possible and provide as much detail in comments as necessary to facilitate decisionmaking. The FAA anticipates that the comments provided in response to this voluntary ASHPP and ASHP Aviation Rulemaking Committee will assist the FAA in considering options to address and enhance the safety and health of employees in the air carrier industry.

Issued in Washington, DC on February 26, 2003.

Louis C. Cusimano.

Deputy Director, Flight Standards Service.

[FR Doc. 03–5000 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–23–AD; Amendment 39–13059; AD 2003–04–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B and –200F Series Airplanes Powered by Pratt & Whitney JT9D–70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–200B and –200F series airplanes powered by Pratt & Whitney JT9D–70 series engines, that requires repetitive detailed inspections of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat damage (discoloration), wrinkling, and cracking; and corrective action, if necessary. The actions specified by this AD are intended to find and fix such damage, which could result in cracking or fracture of the nacelle struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Boeing Model 747–200B and –200F series airplanes powered by Pratt & Whitney JT9D–70 series engines was published in the **Federal Register** on November 27, 2002 (67 FR 70875). That action proposed to require repetitive detailed inspections of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat damage (discoloration), wrinkling, and cracking; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 7 airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,880, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–11 Boeing: Amendment 39–13059. Docket 2002–NM–23–AD.

Applicability: Model 747–200B and –200F series airplanes powered by Pratt & Whitney JT9D–70 series engines, certificated in any category; as listed in Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix heat damage of the pylon skin and internal structure of the nacelle struts, which could result in cracking or fracture of the struts, and consequent reduced structural integrity and possible separation of the strut and engine from the airplane; accomplish the following:

Repetitive Inspections/Corrective Action

(a) Within 6 months after the effective date of this AD: Do a detailed inspection of the pylon skin and internal structure of the nacelle struts adjacent to and aft of the precooler exhaust vent for heat discoloration, wrinkling, and cracking, per the Work Instructions of Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001, excluding Evaluation Form. Repeat the inspection at least every 18 months.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any sign of heat discoloration is found, but there is no wrinkling: Before further flight, do a conductivity test of the discolored area(s) per the service bulletin. If the conductivity test is within the limits specified in Figures 3 and 4, as applicable, of the Work Instructions of the service bulletin, and no cracking is found, before further flight, do a penetrant or high frequency eddy current (HFEC) inspection for cracking.

(2) If any sign of wrinkling is found: Before further flight, do a penetrant or HFEC inspection of the wrinkled area(s) for cracking, per the service bulletin.

(3) If any sign of cracking is found: Before further flight, do the corrective action required by paragraph (b) of this AD.

(b) If, during any inspection or test done by this AD, any wrinkling or cracking is found, or the conductivity limits exceed the limits specified in Figures 3 and 4, as applicable, of the Work Instructions of Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001, excluding Evaluation Form: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 747–54–2210, dated December 19, 2001, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 8, 2003.

Issued in Renton, Washington, on February 20, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4589 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–32–AD; Amendment 39–13075; AD 2003–04–26]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 1900D airplanes. This AD requires you to inspect the alternating current (AC) inverter and modify the AC inverter and inverter sync wire shield. This AD is the result of reports that electrical noise causes the inverter to shut down in flight with loss of AC-powered flight instruments. The actions specified by this AD are intended to prevent electrical noise causing the inverter to shut down, which could result in failure of key aircraft electrical systems. Such failure could lead to loss of flight instruments during flight.

DATES: This AD becomes effective on April 21, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 21, 2003.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–32–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Dixon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4152; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received nine reports of electrical noise causing the alternating current (AC) inverter to shutdown on certain airplanes. These airplanes are equipped with KGS Electronics AC Inverter part number (P/N) SPC–10(PW), Mod 2, serial numbers 306 to 803. The shutdown of the inverter resulted in the loss of the electronic flight information system (EFIS), Radio Magnetic Indicator (RMI), and related AC-powered systems. Some airplanes experienced the loss of engine torque indication.

What is the potential impact if FAA took no action? Such failure of the inverter could lead to loss of flight instruments during a critical phase of flight.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 1900D airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 25, 2002 (67 FR 65519). The NPRM proposed to require you to inspect the alternating current (AC) inverter and modify the AC inverter and inverter sync wire shield.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 232 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the AC inverter inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 = $120 for each inverter	No cost for parts	$240	232 × $240 = $55,680

We estimate the following costs to accomplish any necessary AC inverter modification that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 = $120 for each inverter ($240 per aircraft)	$310	$550 for each airplane.

We estimate the following costs to accomplish any necessary AC inverter sync wire shield modification that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
8 workhours × $60 = $480	$6.00	$486

Compliance Time of This AD

What would be the compliance time of this AD? The compliance time of this AD is within 6 months after the effective date of the AD.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Failure of the aircraft AC inverters is only unsafe during airplane operation. However, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 50 hours time-in-service (TIS) as it is for an airplane with 1,000 hours TIS.

For this reason, the FAA has determined that a compliance based on calendar time will be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–04–26 Raytheon Aircraft Company: Amendment 39–13075; Docket No. 2002–CE–32–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

(1) Group 1 Airplanes: Model 1900D, serial numbers UE–1 through UE–265.

(2) Group 2 Airplanes: Model 1900D, serial numbers UE–266 through UE–388.

(3) Group 3 Airplanes: Model 1900D, serial numbers UE–389 through UE–410.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent electrical noise causing the alternating current (AC) inverter to shut down, which could result in failure of key aircraft electrical systems. Such failure could lead to loss of flight instruments during a critical phase of flight.

Note 1: Refer to paragraph (a) to determine if your airplane is assigned to Group 1, Group 2, or Group 3. If your airplane is assigned to Group 1, Group 2, or Group 3, you only have to accomplish the requirements of either paragraph (d), (e), or (f), respectively.

(d) *What actions must I accomplish to address this problem if I have a Group 1 airplane?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the AC inverter to determine if the KGS Electronics AC Inverter part number (P/N) SPC–10(PW), with a serial number in the range of 306 through 803, is installed and is identified as Mod 2DD. (i) This may be accomplished by checking the logbook and positively showing that a Mod 2DD inverter is installed. A person holding a pilot's certificate may accomplish this check. (ii) If, by checking the airplane logbook or by visual inspection, it can be positively shown that a Mod 2DD inverter is installed, then the requirements of paragraph (d)(2) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within 6 months after April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001.
(2) If during the inspection required in paragraph (d)(1), it is found that the Mod 2DD inverter is not installed, accomplish the AC inverter modification.	Before further flight after the paragraph (d)(1) inspection of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.

Actions	Compliance	Procedures
(3) Inspect the AC inverter to determine if STC #SA00245WI–D is installed. (i) This may be accomplished by checking the logbook and positively showing that STC #SA00245WI–D has never been installed. A person holding a pilot's certificate may accomplish this check. (ii) If, by checking the logbook or visual inspection, it can be positively shown that STC #SA00245WI–D has never been installed, then the requirements of paragraph (d)(4) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within 6 months after April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001.
(4) If during the inspection required in paragraph (d)(3), STC #SA00245WI–D is found installed, accomplish the AC inverter sync wire shield modification.	Before further flight after the paragraph (d)(3) inspection of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.
(5) Do not install, on any affected airplane, any KGS Electronics AC inverter with a S/N between 306 through 803 not identified as Mod 2DD.	As of April 21, 2003 (the effective date of this AD).	Not Applicable.
(6) Do not install STC #SA00245WI–D on any airplane unless the AC inverter modification required in paragraph (d)(4) of this AD is accomplished.	As of April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.

(e) *What actions must I accomplish to address this problem if I have a Group 2 airplane?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the AC inverter to determine if the KGS Electronics AC Inverter part number (P/N) SPC–10(PW), with a serial number in the range of 306 through 803, is installed and is identified as Mod 2DD. (i) This may be accomplished by checking the logbook and positively showing that a Mod 2DD inverter is installed. A person holding a pilot's certificate may accomplish this check. (ii) If, by checking the airplane logbook or visual inspection, it can be positively shown that a Mod 2DD inverter is installed, then the requirements of paragraph (e)(2) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within 6 months after April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001.
(2) If during the inspection required in paragraph (e)(1), a Mod 2DD inverter is not installed, accomplish the AC inverter modification.	Before further flight after the paragraph (e)(1) inspection of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.
(3) Accomplish the AC inverter sync wire shield modification.	Within 6 months after April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.

Actions	Compliance	Procedures
(4) Do not install, on any affected airplane, any KGS Electronics AC inverter with a S/N between 306 through 803 not identified as Mod 2DD.	As of April 21, 2003 (the effective date of this AD).	Not Applicable.

(f) *What actions must I accomplish to address this problem if I have a Group 3 airplane?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the AC inverter to determine if the KGS Electronics AC Inverter part number (P/N) SPC–10(PW), with a serial number in the range of 306 through 803, is installed and is identified as Mod 2DD. (i) This may be accomplished by checking the logbook and positively showing that a Mod 2DD inverter is installed. A person holding a pilot's certificate may accomplish this check. (ii) If, by checking the airplane logbook or visual inspection, it can be positively shown that the Mod 2DD inverter is installed, then the requirements of paragraph (f)(2) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within 6 months after April 21, 2003 (the effective date of this AD).	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001.
(2) If during the inspection required in paragraph (f)(1), it is found that the Mod 2DD inverter is not installed, accomplish the AC inverter modification.	Before further flight after the paragraph (f)(1) inspection of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001, and the Model 1900D Airliner Maintenance Manual.
(3) Do not install, on any affected airplane, any KGS Electronics AC inverter with serial number in the range of 306 through 803 not identified as Mod 2DD.	As of April 21, 2003 the effective date of this AD).	Not Applicable.

Note 2: An owner/operator of an airplane assigned to a Group may disregard the above Group paragraphs that do not apply to his/her airplane.

(g) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact Todd Dixon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4152; facsimile: (316) 946–4407.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(j) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, June 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(k) *When does this amendment become effective?* This amendment becomes effective on April 21, 2003.

Issued in Kansas City, Missouri, on February 21, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4595 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–18–AD; Amendment 39–13074; AD 2003–04–25]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers, Models R354, R375, R389, and R390 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers. This amendment requires a one-time inspection of the hub joint mating surfaces for fretting. This amendment is prompted by reports of fretting on the joint mating faces of propeller hubs. The actions specified by this AD are intended to prevent failure of the hub due to loose hub through bolts.

DATES: Effective April 8, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road, East Gloucester GL2 9QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers was published in the **Federal Register** on March 22, 2002 (67 FR 13294). That action proposed to require a one-time inspection of the hub joint mating surfaces for fretting in accordance with Dowty Aerospace Propellers Mandatory Service Bulletin (MSB) SF340–61–96, dated April 18, 2000. The Civil Aviation Authority (CAA) issued AD 005–04–2000 in order to ensure the airworthiness of these Dowty propellers in the United Kingdom (UK).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter states that extensive experience and service history had been recorded while operating a large fleet of aircraft in excess of 25,000 flight hours over the past 17 years. The operator states that the AD would impose undue cost and maintenance requirements that would not increase the propeller safety or reliability, and that the AD would not do anything positive such as eliminating the problem or creating a safer hub component.

The FAA does not agree with the commenter. The FAA considers the one-time inspection to be a necessary safety-related inspection to guard against possible propeller hub failure as the result of loss of hub bolt preload torque that may well foster hub cracking and complete propeller loss.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 418 Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers, of the affected design in the worldwide fleet. The FAA estimates that 169 propellers installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per propeller to perform the required actions, and that the average labor rate is $60 per work hour. There are no required parts per propeller. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $60,840.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–25 Dowty Aerospace Propellers: Amendment 39–13074. Docket No. 2000–NE–18–AD.

Applicability: This airworthiness directive (AD) is applicable to Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers. These propellers are installed on, but not limited to, SAAB 340A and 340B airplanes.

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required within 1,800 flying hours after the effective date of this AD, unless already done.

To prevent failure of the hub due to loose hub through bolts, do the following:

One-Time Inspection of the Propeller Hub

(a) If the propeller hub has not been disassembled since it was received from Dowty Aerospace Propellers, no further action is required. Otherwise, do the following:

(1) Within 1,800 flying hours after the effective date of this AD, perform a one-time inspection of the hub for loose hub through bolts in accordance with 3.A.(1) through 3.A.(10) of the Accomplishment Instructions of Dowty Aerospace Propellers mandatory service bulletin (MSB) SF340–61–96, dated April 18, 2000.

(2) If wear exceeds the limits specified in 3.A.(8) of the Accomplishment Instructions of Dowty Aerospace Propellers MSB SF340–61–96, dated April 18, 2000, replace the hub with a serviceable part.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(d) The inspection must be done in accordance with Dowty Aerospace Mandatory Service Bulletin (MSB) SF340–61–96, dated April 18, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road, East Gloucester GL2 9QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 005–04–2000, dated April 18, 2000.

Effective Date

(e) This amendment becomes effective on April 8, 2003.

Issued in Burlington, Massachusetts, on February 20, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–4596 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–334–AD; Amendment 39–13057; AD 2003–04–09]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires repetitive inspections for discrepancies of the internal fuselage skin panels located in the stub wing areas; and corrective action if necessary. This action is necessary to detect and correct heat damage to the fuselage skin panels caused by the leakage of hot air from one of the bleed air ducts inside the stub wing, which could result in reduced structural integrity of the engine support structure. This action is intended to address the identified unsafe condition.

DATES: Effective April 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes was published in the **Federal Register** on November 21, 2002 (67 FR 70189). That action proposed to require repetitive inspections for discrepancies of the internal fuselage skin panels located in the stub wing areas; and corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the proposed required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,440, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–09 Fokker Services B.V.: Amendment 39–13057. Docket 2001–NM–334–AD.

Applicability: All Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct heat damage to the fuselage skin panels caused by the leakage of hot air from one of the bleed air ducts inside the stub wing, and consequent reduced structural integrity of the engine support structure; accomplish the following:

Repetitive Inspections

(a) Within 6,000 flight cycles after the effective date of this AD: Perform a general visual inspection of the internal fuselage structure between frames 16060 and 16660 and the beams at the upper and lower stub wing angles in the stub wing (engine pylon) areas, for discoloration of the primer paint, buckling or waviness of the skin panel, loose and/or missing fasteners, or fasteners with sheared-off heads, by accomplishing all actions specified in Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/53–151, dated June 4, 2001. Repeat the inspection at intervals not to exceed 6,000 flight cycles.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions

(b) Except as provided by paragraph (c) of this AD, if any discrepancy is found (*i.e.*, primer paint discoloration; buckling or waviness of the skin panel; missing, damaged, or loose rivets) during the general visual inspection required by paragraph (a) of this AD, before further flight, perform the applicable follow-on corrective actions (*e.g.*, eddy current inspection; measurement of the length and depth of buckles or waves in the skin panel; repair of skin panels with heat damage, buckling, or waviness that are not within the acceptable limits specified in the service bulletin, or replacement with new skin panels; and replacement of loose and/or missing fasteners, or fasteners having sheared-off heads with new fasteners; as applicable) specified in the Accomplishment Instructions of Fokker Service Bulletin F28/53–151, dated June 4, 2001.

(c) If buckling or waviness of the skin panel is detected during the general visual inspection required by paragraph (a) of this AD, and the depth is within the limits specified in Part 2, paragraph C.(2) of the Accomplishment Instructions of Fokker Service Bulletin F28/53–151, dated June 4, 2001, the affected area must be repaired within 2,000 flight cycles after accomplishment of the inspection required by paragraph (a) of this AD.

(d) Repair or replacement of damaged fuselage skin panels or fasteners does not terminate the repetitive inspections required by this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Fokker Services B.V.

Service Bulletin F28/53–151, dated June 4, 2001, excluding Manual Change Notification—Maintenance Documentation MCNM F28–025, dated June 4, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 2001–093, dated July 31, 2001.

Effective Date

(h) This amendment becomes effective on April 8, 2003.

Issued in Renton, Washington, on February 13, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4165 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–93–AD; Amendment 39–13076; AD 2003–04–27]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier CL–600–2C10 series airplanes, that requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate functional and operational checks of the active and standby actuators of the rudder travel limiter (RTL) system. The actions specified by this AD are intended to prevent a significant latent failure in the RTL, which could lead to a critical loss of RTL function under certain conditions, and consequent loss of controllability of the airplane or structural damage. This action is intended to address the identified unsafe condition.

DATES: Effective April 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier CL–600–2C10 series airplanes was published in the **Federal Register** on September 25, 2002 (67 FR 60187). That action proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate functional and operational checks of the active and standby actuators of the rudder travel limiter (RTL) system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to Final Rule

We have revised this final rule to specify that the accountable Aircraft Certification Office (ACO) is the New York ACO, 10 Fifth Street, Third Floor, Valley Stream, New York, not the Atlanta ACO.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 15 Model CL–600–2C10 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $900, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–27 Bombardier, Inc. (Formerly Canadair): Amendment 39–13076. Docket 2002–NM–93–AD.

Applicability: All Model CL–600–2C10 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR part 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR part 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Compliance: Required as indicated, unless accomplished previously.

To prevent a significant latent failure in the rudder travel limiter (RTL), which could lead to a critical loss of RTL function under certain conditions, and consequent loss of controllability of the airplane or structural damage, accomplish the following:

Revise Airworthiness Limitations Section

(a) Within 30 days of the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness by incorporating the tasks of the Temporary Revisions of Part 2 of the Maintenance Requirements Manual (MRM), Section 1, Appendix A, Certification Maintenance Requirements; as listed in the following table; into the Airworthiness Limitations Section:

CRJ 700 regional jet temporary revision	Task number	Task description
MRM2–41, dated September 28, 2001	27–20–00–108	RTL standby actuator (with SSCU part number (P/N) C13045BA01): Operational check of the RTL standby actuator.
MRM2–42, dated September 28, 2001	27–20–00–107	RTL active and standby actuators (with SSCU P/N C13045BA02): Functional check of the RTL active and standby actuators.
MRM2–43, dated September 28, 2001	27–20–00–102	RTL active and standby actuators (with SSCU P/N C13045BA02): Operational check of the RTL active and standby actuators.

(b) Thereafter, except as provided by paragraph (c) of this AD, no alternative operational and functional checks or check intervals may be approved for the task numbers specified in the temporary revisions listed in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The action shall be done in accordance with CRJ 700 Regional Jet, Temporary Revision MRM2–41, dated September 28, 2001; CRJ 700 Regional Jet, Temporary Revision MRM2–42, dated September 28, 2001; and CRJ 700 Regional Jet, Temporary Revision MRM2–43, dated September 28, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–06, dated January 21, 2002.

Effective Date

(f) This amendment becomes effective on April 8, 2003.

Issued in Renton, Washington, on February 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4852 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 97N–0449]

RIN 0910–AB51

Revision to the General Safety Requirements for Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations regarding general biological products standards by adding an administrative procedure for obtaining exemptions from the general safety test (GST) requirements. We are taking this action because the GST may not be relevant or necessary for certain biological products. The rule will permit manufacturers of biological products to apply for an exemption from the GST requirement provided they submit information to demonstrate that they use appropriate production controls and quality assurance safeguards.

DATES: This rule is effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics

Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Under § 610.11 (21 CFR 610.11), manufacturers of biological products must perform a test for general safety on biological products intended for administration to humans. The GST is one of several tests listed in Part 610 *General Biological Product Standards* (21 CFR part 610) that are intended to help ensure the safety, purity, and potency of biological products administered to humans. The test is used to detect extraneous toxic contaminants that may be present in the product in the final container from every final filling of each lot of the biological product.

The source of such toxic contaminants may be bacterial and fungal by-products that persist after the bacteria are removed by filtration or killed by sterilization, or formulation errors that result in harmful levels of certain substances, *e.g.*, preservatives. The test serves as a safety net to detect harmful contaminants.

Technological advances have increased the ability of manufacturers to control and analyze the manufacture of many biotechnology derived biological products. After more then a decade of experience with these products, we found that we could evaluate many aspects of a biological product's safety, purity, or potency with tests other than those prescribed in part 610. In response to these developments, FDA published in the **Federal Register** on May 14, 1996 (61 FR 24227), a final rule exempting certain biotechnology and synthetic biological products from a number of regulations applicable to biological products, including the GST (see 21 CFR 601.2(c)).

In the **Federal Register** of April 20, 1998, we published a direct final rule and a companion proposed rule (63 FR 19399 and 19431, respectively) to revise the general safety requirements for biological products. The direct final rule amended the regulations to exempt cellular therapy products from the GST requirement and added an administrative procedure for manufacturers of other biological products to request exemptions from performing the GST. We published a companion proposed rule to provide a procedural framework within which the rule could be finalized in the event we received any significant adverse comments regarding the direct final rule and we withdrew or severed the direct final rule.

We received six comments. We did not receive any significant adverse comments to the amendment to specifically exempt "cellular therapy products" in § 610.11(g)(1). We received significant adverse comments on the administrative procedure provision § 610.11(g)(2). In this rulemaking, we respond to all comments received.

Accordingly, we published a notice in the **Federal Register** of August 5, 1998 (63 FR 41718), confirming in part and withdrawing in part the direct final rule amending the GST requirements. We confirmed a revision to § 610.11(g)(1) to add "cellular therapy products" to the list of products excepted from the GST. Based on receipt of adverse comments, we withdrew the revision of § 610.11(g)(2) that provided a general administrative procedure for requesting and obtaining exemptions from the GST. We applied the comments regarding the withdrawn portion of the rule to the companion proposed rule and considered them in developing this final rule.

II. Highlights of the Final Rule

The final rule codifies, at § 610.11(g)(2), an administrative procedure under which manufacturers of biological products may request and obtain exemptions from the GST. Many biological products are currently manufactured, or will be manufactured in the future, under highly controlled and rigorously monitored conditions. Therefore, under § 610.11(g)(2) we will permit biological product manufacturers who employ appropriate production and final filling controls and quality assurance safeguards to apply for an exemption from the GST requirement. Manufacturers who request an exemption must provide supporting documentation to the Director, Center for Biologics Evaluation and Research (CBER), as to why a product should not be subject to the GST requirement. The request must include an explanation of why the GST is unnecessary or cannot be performed due to the mode of administration, the method of preparation, or the special nature of the product and must describe alternate procedures, if any, to be employed. The Director of CBER may grant an exemption if he/she finds that the manufacturer's submission justifies an exemption.

Manufacturers wishing to obtain an exemption to the GST for a particular product should contact the appropriate CBER product division for specific information regarding how to apply and what information should be included in the application or supplemental application.

III. Comments on the Proposed Rule

(Comment 1) Proposed § 610.11(g)(1) would add "cellular therapy products" to the list of products excepted from the GST.

One comment supported the amendment, and none of the comments objected to the amendment to add "cellular therapy products" to the list of exceptions.

We confirmed a revision to § 610.11(g)(1) in the **Federal Register** of August 5, 1998, notice to add "cellular therapy products" to the list of products excepted from the GST.

(Comment 2) Proposed § 610.11(g)(2) would add an administrative procedure for manufacturers to request and obtain an exemption from the GST. The proposal would require manufacturers to submit information as part of a biologics license application submission or a supplement to an approved biologics license application.

One comment opposed proposed § 610.11(g)(2) because the mechanism for requiring each licensed manufacturer to submit a license supplement to gain an exemption from the GST was too restrictive and alternative mechanisms should be available by which all manufacturers of a specific product or a group of products could be exempted.

We disagree with this comment. The comment did not suggest an alternate mechanism for our consideration. We believe such changes should be addressed on a case-by-case basis through a biologics license application or supplement so that we can ensure appropriate controls are in place to detect contaminants ordinarily found by the GST.

(Comment 3) One comment specifically objected that the administrative procedure in proposed § 610.11(g)(2) would codify FDA's use of the biologics licensure process to achieve the regulatory objectives that should be achieved instead only through notice and comment rulemaking.

We intend to revise our regulations only when a group of products which can be defined as a product type, such as "cellular therapy products," can be excepted from a regulatory provision. Rulemaking is not an efficient vehicle for exempting specific or individual products or specific manufacturers, or when there are limitations to the exemptions, which should be outlined in some detail. We believe the biologics licensure process is a more efficient process than rulemaking for granting exemptions to the GST.

(Comment 4) Proposed § 610.11(g)(2) would allow manufacturers to request an exemption from the GST; it would not allow other entities to request such exemptions.

One comment argued that a letter from a trade association should suffice to obtain such an exemption.

We disagree with this comment. The request for exemption represents an alternative to the regulations to establish a firm, enforceable commitment by the manufacturer to FDA as to specific obligations. Submissions by an association would not be suitable because it is the manufacturer that must follow the regulations. Trade associations cannot compel specific actions by their member manufacturers. In addition, trade associations do not have the authority to change an applicant's submission.

However, anyone may submit a request to FDA, with supporting information, to revise the regulations to provide for exceptions from GST requirements.

(Comment 5) One comment noted that the proposal did not create a procedural mechanism to allow for partial exemptions. The comment explained that partial exemptions could be appropriate for specific subclasses of products.

We decline to amend the rule as suggested by the comment. The comment did not provide enough information that would allow us to determine the merits of or need for partial exemptions. However, under § 610.11(g)(2), we may accept a request for an exemption in the form of a biologics license supplement for a limited group of products after a case-by-case evaluation. Section 610.11(g)(2) gives manufacturers a mechanism for obtaining exemptions for specific biological products on an individual basis, rather than for whole "classes" of products, such as are excepted in § 610.11(g)(1). We believe such exemptions should be addressed on a case-by-case basis through a biologics license application or supplement.

(Comment 6) Two comments would revise the proposal to exempt allergenic products if each lot of stock concentrates of allergenic extracts and each lot of diluent contained in the final product satisfies the GST requirements. The comments requested that we modify 21 CFR 680.3(b)(1) to exempt allergenic extracts from the requirement to perform the repeat GST on final products when a GST is performed on a stock concentrate. The comments explained that the suggested amendment would eliminate an unnecessary burden on the allergenic product industry that would result from separate rulemaking procedures.

The issue of exempting allergenic products is outside the scope of this rulemaking. Consequently, we decline to amend the rule as suggested by the comment.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles set forth in the Executive order. OMB has determined that the final rule is a significant regulatory action as defined by the Executive order and is subject to review under the Executive order.

In accordance with the principles of Executive Order 12866, the final rule will provide increased flexibility for applications with approved biological products and may substantially reduce the burdens on some applicants seeking approval of certain biological products.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because the final rule has no compliance costs and does not result in any new requirements, the agency certifies that the final rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

V. Environmental Impact

This agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Request for Exemptions from the General Safety Testing Requirements for Biological Products.

Description: FDA is revising the requirements for GST set forth in § 610.11. The test may detect harmful contaminants that may enter or be introduced through undetected failures in the manufacture of biological products. The revision would add an administrative procedure for obtaining exemptions from the GST requirements for biological products not already excepted under § 610.11(g)(1). FDA is codifying the new administrative procedure because alternatives to the GST may be feasible or appropriate for some biological products. FDA anticipates that manufacturers requesting exemptions would have demonstrated a record of the GST compliance, well-documented in-process safety controls, and use sophisticated analytical techniques to adequately characterize the product and validate its safety. Manufacturers would submit their requests and documentation to the Director, CBER, who may grant the exemption if it is determined that the manufacturer's submission justifies such an action.

Description of Respondents: Manufacturers of biological products.

This final rule requires only those manufacturers requesting an exemption from the GST under § 610.11(g)(2) to submit additional information as part of a biologics license application or supplement to an approved biologics license application. Based on our experience, we estimate that we will receive approximately 10 requests for administrative exemption from the GST under § 610.11(g)(2) annually. We also estimate that an applicant will take 40 hours to complete and submit the appropriate information for the exemption request. Since the applicant

ordinarily compiles and organizes the information while performing the GST, we anticipate that the additional time needed to submit an exemption request will be minimal.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.11(g)(2)	10	1	10	40	400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The direct final rule and companion proposed rule of April 20, 1998 (63 FR 19399 and 19431, respectively) provided a 60-day public comment period on the information collection provisions reflected in this final rule. Although some comments objected to the license supplement mechanism of gaining approval for an exemption as being too burdensome, we received no comments on the actual burden estimates for submitting such supplements.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in that the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

2. Section 610.11 is amended by adding paragraph (g)(2) to read as follows:

§ 610.11 General safety.

* * * * *

(g) * * *

(2) For products other than those identified in paragraph (g)(1) of this section, a manufacturer may request from the Director, Center for Biologics Evaluation and Research, an exemption from the general safety test. The manufacturer must submit information as part of a biologics license application submission or supplement to an approved biologics license application establishing that because of the mode of administration, the method of preparation, or the special nature of the product a test of general safety is unnecessary to assure the safety, purity, and potency of the product or cannot be performed. The request must include alternate procedures, if any, to be performed. The Director, Center for Biologics Evaluation and Research, upon finding that the manufacturer's request justifies an exemption, may exempt the product from the general safety test subject to any condition necessary to assure the safety, purity, and potency of the product.

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4973 Filed 3–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 92

[Docket No. FR–4111–C–04]

RIN 2501–AC30

HOME Investment Partnerships Program; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; correction.

SUMMARY: On October 1, 2002, HUD published a final rule making several streamlining and clarifying amendments to the regulations for the HOME Investment Partnerships Program. The final rule inadvertently removed the 36-month timeframe for purchasing a home under lease-purchase programs assisted with HOME funds. This document makes the necessary correction to the final rule.

DATES: *Effective Date:* October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7164, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: On October 1, 2002 (67 FR 61752), HUD published a final rule making several streamlining and clarifying amendments to the regulations for the HOME Investment Partnerships Program. Among other changes, the final rule amended § 92.254(a)(7), which establishes the income eligibility requirements for lease-purchase agreements, to reflect a statutory change made by section 599B of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, approved October 21, 1998) (QHWRA). Section 599B of QHWRA eliminated the requirement that HOME-assisted homebuyers qualify as income eligible at the time of occupancy or when the HOME funds are invested, whichever is later. In the case of a lease-purchase agreement, section 599B requires the homebuyer to qualify as low-income at the time the agreement is signed.

In amending § 92.254(a)(7) to implement section 599B of QHWRA, the October 1, 2002 final rule inadvertently removed the 36-month timeframe for purchasing a home under lease-purchase programs assisted with HOME funds. This provision requires that the home must be purchased by the homebuyer within 36 months of signing the lease-purchase agreement. This document makes the necessary correction to the October 1, 2002 final rule.

Accordingly, rule FR Doc. 02–24820 published on October 1, 2002 (67 FR 61752) is corrected as follows:

1. On page 61756, in the third column, § 92.254(a)(7) is corrected to read as follows:

§ 92.254 Qualification as affordable housing: Homeownership.

(a) * * *

(7) *Lease-purchase.* HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The housing must be purchased by a homebuyer within 36 months of signing the lease'purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in § 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

* * * * *

Dated: February 20, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–4941 Filed 3–3–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 31, 53, 54, 56, 301, and 602

[TD 9046]

RIN 1545–AX81; 1545–BB49; 1545–BB50; 1545–BB48; 1545–BB53; 1545–BB51; 1545–BB52; 1545–AW26; 1545–AX79

Tax Shelter Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These regulations finalize the rules relating to the filing by certain taxpayers of a disclosure statement with their Federal tax returns under section 6011(a), the rules relating to the registration of confidential corporate tax shelters under section 6111(d), and the rules relating to the list maintenance requirements under section 6112. These regulations affect taxpayers participating in reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers and sellers of potentially abusive tax shelters.

DATES: *Effective Date:* These regulations are effective February 28, 2003.

Applicability Date: For dates of applicability, see § 1.6011–4(h), § 20.6011–4(b), § 25.6011–4(b), § 31.6011–4(b), § 53.6011–4(b), § 54.6011–4(b), § 56.6011–4(b), § 301.6111–2(h), and § 301.6112–1(j).

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis or Charlotte Chyr, 202–622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1545–1685, 1545–1687, and 1545–1686. Responses to these collections of information are mandatory. Form 8886, "Reportable Transaction Disclosure Statement", reflects the collection of information relating to the disclosure of reportable transactions for the regulations under § 1.6011–4, and was approved by OMB under control number 1545–1800. Form 8264, "Application for Registration of a Tax Shelter", reflects the collection of information relating to the registration of tax shelters for the regulations under § 301.6111–2 and § 301.6111–1T, and was approved by OMB under control number 1545–0865.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent/recordkeeper for the collection of information in § 1.6011–4 will be reflected on Form 8886. The estimated annual burden for the collection of information in Form 8886 is 3,770 hours and the estimated number of respondents/recordkeepers is 500. The estimated annual burden per respondent/recordkeeper for the collection of information in § 301.6111–2 is reflected on Form 8264. The estimated annual burden for the collection of information in Form 8264 is 14,382 hours and the estimated number of respondents/recordkeepers is 350. The estimated annual burden per recordkeeper for the collection of information in § 301.6112–1 is 100 hours and the estimated number of recordkeepers is 500.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR part 1 to provide rules relating to the disclosure of reportable transactions by certain taxpayers on their Federal tax returns under section 6011, and also amends 26 CFR parts 20, 25, 31, 53, 54, and 56 to provide rules for purposes of estate, gift, employment, and pension and exempt organizations excise taxes requiring the disclosure of listed transactions by certain taxpayers on their Federal tax returns under section 6011. This document amends 26 CFR part 301 to provide rules regarding the registration of confidential corporate tax shelters under section 6111(d) and rules relating to the list maintenance requirements under section 6112.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (TD 8877, REG–103735–00; TD 8876, REG–110311–98; TD 8875, REG–103736–00) (the February 2000 regulations). The February 2000 regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11269; 65 FR 11215, 65 FR 11272; 65 FR 11211, 65 FR 11271) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations modifying the rules under sections 6011, 6111, and 6112 (TD 8896, REG–103735–00, REG–110311–98, REG–103736–00) (the August 2000 regulations). The August 2000 regulations were published in the **Federal Register** (65 FR 49909, 65 FR 49955) on August 16, 2000. On August 2, 2001, the IRS issued temporary and proposed regulations modifying the rules under sections 6011 and 6111 (TD 8961, REG–103735–00, REG–110311–98) (the August 2001 regulations). The August 2001 regulations were published in the **Federal Register** (66 FR 41133, 66 FR 41169) on August 7, 2001. On June 14, 2002, the IRS issued temporary and

proposed regulations modifying the rules under sections 6011 and 6111 (TD 9000, REG–103735–00, REG–110311–98) (the June 2002 regulations). The June 2002 regulations were published in the **Federal Register** (67 FR 41324, 67 FR 41362) on June 18, 2002. On October 17, 2002, the IRS issued temporary and proposed regulations modifying the rules under sections 6011, 6111, and 6112 (TD 9017, REG–103735–00, REG–154117–02, REG–154116–02, REG–154115–02, REG–154429–02, REG–154423–02, REG–154426–02, REG–110311–98; TD 9018, REG–103736–00) (the October 2002 regulations). The October 2002 regulations were published in the **Federal Register** (67 FR 64799, 67 FR 64840; 67 FR 64807, 67 FR 64842) on October 22, 2002. On December 11, 2002, and on January 7, 2003, the IRS and Treasury Department held a public hearing on these regulations. Written and electronic comments responding to the temporary regulations and the notices of proposed rulemaking were received. After consideration of all the statements and comments, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

Explanation and Summary of Comments

1. In General

These regulations finalize the rules for disclosure of reportable transactions, registration of confidential corporate tax shelters, and list maintenance of potentially abusive tax shelters. Sections 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, 56.6011–4, and 301.6111–2 finalize each corresponding proposed regulation with few, if any, changes. Sections 1.6011–4 and 301.6112–1 modify and finalize each corresponding proposed regulation.

The IRS and Treasury Department received numerous comments relating to the October 2002 temporary regulations regarding disclosure under § 1.6011–4T and list maintenance under § 301.6112–1T. All comments were reviewed thoroughly. In particular, the IRS and Treasury Department reviewed the commentators' suggested clarifications to the rules pertaining to loss transactions and transactions with a significant book-tax difference, and to the rules pertaining to who must disclose transactions under section 6011. The IRS and Treasury Department also focused specifically on the comments relating to the rules pertaining to material advisors and the rules pertaining to the persons who must be included on lists under section 6112. In response to the commentators' suggested clarifications, the final regulations have been revised to tailor more narrowly the scope of the transactions for which disclosure and maintenance of information under sections 6011 and 6112 is required. The major changes to the regulations are described below.

2. Section 6011—Participants

The definition of participation has been clarified in the final regulations. Reporting of transactions by RICs and reporting of certain leasing transactions have been excluded from the requirements under § 1.6011–4, provided that the transactions are not listed transactions.

3. Section 6011—Confidential Transactions

A confidential transaction is a transaction that is offered under conditions of confidentiality. The regulations generally provide a presumption of non-confidentiality if the taxpayer receives written authorization to disclose the tax treatment and tax structure of the transaction. Some commentators suggested the following changes to the regulations: (1) clarification regarding when the written authorization to disclose has to be effective, (2) clarification regarding whether proprietary transactions are confidential if there is a written authorization to disclose, and (3) an exception for certain merger and acquisition transactions. In response to those comments, the IRS and Treasury Department have made modifications to the factors for a confidential transaction in the final regulation.

The final regulations delete the clarification, under the definition of a confidential transaction for purposes of both section 6011 and section 6111, that a privilege held by the taxpayer does not cause a transaction to be confidential. The IRS and Treasury Department believe that this clarification is not necessary because the attorney-client privilege (or the confidentiality privilege of section 7525(a)) does not affect whether a transaction is confidential. A claim of privilege does not restrict the taxpayer's ability to disclose the tax treatment or tax structure of a transaction.

4. Section 6011—Transactions with Contractual Protection

Commentators indicated that it is inappropriate to require the reporting of a transaction for which the taxpayer obtains tax insurance. Other commentators suggested that the contractual protection factor would require the reporting of numerous non-abusive types of transactions, such as legitimate business transactions with tax indemnities or rights to terminate the transaction in the event of a change in tax law. In response to these comments, the IRS and Treasury Department changed the focus of the contractual protection factor to whether fees are refundable or contingent. However, if it comes to the attention of the IRS and Treasury Department that other types of contractual protection, including tax insurance or tax indemnities, are being used to facilitate abusive transactions, changes to the regulations will be considered.

5. Section 6011—Loss Transactions

Many commentators suggested that the loss transaction factor was over broad and would require disclosure of a significant number of transactions occurring in the ordinary course of business. In response to these comments, exceptions to the loss transaction factor will be issued in separate published guidance.

6. Section 6011—Transactions with a Significant Book-Tax Difference

The IRS and Treasury Department received many comments on the use of U.S. GAAP, the manner in which gross assets are to be calculated, and the potential exclusion of items for purposes of the book-tax difference factor. In response, the final regulations revise the book-tax difference factor to provide that if a taxpayer in the ordinary course of its business keeps books on a basis other than U.S. GAAP and does not use U.S. GAAP for any purpose, then the taxpayer may determine the treatment of a book item by using the books maintained by the taxpayer, provided the books are kept on the same basis consistently from year to year. In addition, the final regulations increase the requisite gross asset amount to $250 million or more and specify that the amount of gross assets is determined by ascertaining whether the gross assets equaled or exceeded $250 million for book purposes at the end of any financial accounting period that ends with or within the entity's taxable year in which the transaction occurs.

In response to comments that the scope of the book-tax difference factor was over broad, the IRS and Treasury Department have revised the exceptions to this factor. The exceptions to the book-tax difference factor have been removed from the regulations and will be issued in separate published guidance.

7. Section 6011—Form 8886

Taxpayers will disclose reportable transactions under the final regulations on Form 8886. Reportable transactions entered into on or after January 1, 2003, and prior to February 28, 2003, for which the taxpayer does not choose to apply the final regulations, may be disclosed on Form 8886 or as provided in § 1.6011–4T(c) as published in the **Federal Register** (67 FR 41324) on June 18, 2002. Form 8886 will allow taxpayers to aggregate substantially similar transactions on one form for disclosure purposes.

8. Section 6112

Commentators requested clarification on the definition of a material advisor and the threshold fee requirement. In response to those comments, the final regulations provide that a person is a material advisor if the person is required to register a transaction under section 6111, or the person receives at least a minimum fee with respect to the transaction and makes a tax statement to certain taxpayers. In addition, the IRS and Treasury Department have clarified that fees are defined as all fees for services for advice (whether or not tax advice) or for the implementation of a transaction that is a potentially abusive tax shelter.

In the final regulations, the IRS and Treasury Department have clarified that the procedures for asserting a privilege claim apply to information required to be maintained in § 301.6112–1(e)(3)(i)(I) that might be privileged. This change reflects the IRS and Treasury Department's belief that the other information covered by these regulations is not privileged. These procedures neither expand nor contract the scope of items that may be privileged.

Effective Date

Regulations §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, 56.6011–4, 301.6111–2, and 301.6112–1 apply to transactions entered into on or after February 28, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. With regard to disclosure and registration, this certification is based upon the fact that the time required to prepare or retain the disclosure or registration is not lengthy and will not have a significant impact on those small entities that are required to provide disclosure or to register. With regard to list maintenance, this certification is based upon the fact that the number of respondents is small, those persons responsible for maintaining the list described in the regulations are principally sophisticated businesses, including accounting firms and law firms, and very few respondents, if any, are likely to be small businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charlotte Chyr of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate tax, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 56

Excise taxes, Lobbying, Nonprofit organizations, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 31, 53, 54, 56, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6011–4 is added to read as follows:

§ 1.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* Every taxpayer that has participated, as described in paragraph (c)(3) of this section, in a reportable transaction within the meaning of paragraph (b) of this section and who is required to file a tax return must attach to its return for the taxable year described in paragraph (e) of this section a disclosure statement in the form prescribed by paragraph (d) of this section. The fact that a transaction is a reportable transaction shall not affect the legal determination of whether the taxpayer's treatment of the transaction is proper.

(b) *Reportable transactions*—(1) *In general.* A reportable transaction is a transaction described in any of the paragraphs (b)(2) through (7) of this section. The term transaction includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan. There are six categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and

transactions involving a brief asset holding period.

(2) *Listed transactions.* A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

(3) *Confidential transactions*—(i) *In general.* A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality. A transaction is considered offered to a taxpayer under conditions of confidentiality if the taxpayer's disclosure of the tax treatment or the tax structure of the transaction is limited in any manner by an express or implied understanding or agreement with or for the benefit of any person who makes or provides a statement, oral or written, to the taxpayer (or for whose benefit a statement is made or provided to the taxpayer) as to the potential tax consequences that may result from the transaction, whether or not such understanding or agreement is legally binding. A transaction also will be considered offered to a taxpayer under conditions of confidentiality if the taxpayer knows or has reason to know that the taxpayer's use or disclosure of information relating to the tax treatment or tax structure of the transaction is limited in any other manner (such as where the transaction is claimed to be proprietary or exclusive) for the benefit of any person, other than the taxpayer, who makes or provides a statement, oral or written, to the taxpayer (or for whose benefit a statement is made or provided to the taxpayer) as to the potential tax consequences that may result from the transaction. All the facts and circumstances relating to the transaction will be considered when determining whether a transaction is offered to a taxpayer under conditions of confidentiality, including the prior conduct of the parties.

(ii) *Exceptions*—(A) *Securities law.* A transaction is not considered offered to a taxpayer under conditions of confidentiality if disclosure of the tax treatment or tax structure of the transaction is subject to restrictions reasonably necessary to comply with securities laws and such disclosure is not otherwise limited.

(B) *Mergers and acquisitions.* In the case of a proposed taxable or tax-free acquisition of historic assets of a corporation (other than an investment company, as defined in section 351(e), that is not publicly traded) that constitute an active trade or business the acquirer intends to continue, or a proposed taxable or tax-free acquisition of more than 50 percent of the stock of a corporation (other than an investment company, as defined in section 351(e), that is not publicly traded) that owns historic assets used in an active trade or business the acquirer intends to continue, the transaction is not considered a confidential transaction under this paragraph (b)(3) if the taxpayer is permitted to disclose the tax treatment and tax structure of the transaction no later than the earlier of the date of the public announcement of discussions relating to the transaction, the date of the public announcement of the transaction, or the date of the execution of an agreement (with or without conditions) to enter into the transaction. However, this exception is not available where the taxpayer's ability to consult any tax advisor (including a tax advisor independent from all other entities involved in the transaction) regarding the tax treatment or tax structure of the transaction is limited in any way.

(iii) *Presumption.* Unless the facts and circumstances indicate otherwise, a transaction is not considered offered to a taxpayer under conditions of confidentiality if every person who makes or provides a statement, oral or written, to the taxpayer (or for whose benefit a statement is made or provided to the taxpayer) as to the potential tax consequences that may result from the transaction, provides express written authorization to the taxpayer in substantially the following form: "the taxpayer (and each employee, representative, or other agent of the taxpayer) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer relating to such tax treatment and tax structure". Except as provided in paragraph (b)(3)(ii) of this section, this presumption is available only in cases in which each written authorization permits the taxpayer to disclose the tax treatment and tax structure of the transaction immediately upon commencement of discussions with the person providing the authorization and each written authorization is given no later than 30 days from the day the person providing the written authorization first makes or provides a statement to the taxpayer regarding the tax consequences of the transaction. A transaction that is claimed to be exclusive or proprietary to any party other than the taxpayer will not be considered a confidential transaction under this paragraph (b)(3) if written authorization to disclose is provided to the taxpayer in accordance with this paragraph (b)(3)(iii) and the transaction is not otherwise confidential.

(4) *Transactions with contractual protection*—(i) *In general.* A transaction with contractual protection is a transaction for which the taxpayer or a related party (as described in section 267(b) or 707(b)) has the right to a full or partial refund of fees (as described in paragraph (b)(4)(ii) of this section) if all or part of the intended tax consequences from the transaction are not sustained. A transaction with contractual protection also is a transaction for which fees (as described in paragraph (b)(4)(ii) of this section) are contingent on the taxpayer's realization of tax benefits from the transaction. All the facts and circumstances relating to the transaction will be considered when determining whether a fee is refundable or contingent, including the right to reimbursements of amounts that the parties to the transaction have not designated as fees or any agreement to provide services without reasonable compensation.

(ii) *Fees.* Paragraph (b)(4)(i) of this section only applies with respect to fees paid by or on behalf of the taxpayer or a related party to any person who makes or provides a statement, oral or written, to the taxpayer or related party (or for whose benefit a statement is made or provided to the taxpayer or related party) as to the potential tax consequences that may result from the transaction.

(iii) *Exceptions*—(A) *Termination of transaction.* A transaction is not considered to have contractual protection solely because a party to the transaction has the right to terminate the transaction upon the happening of an event affecting the taxation of one or more parties to the transaction.

(B) *Previously reported transaction.* If a person makes or provides a statement to a taxpayer as to the potential tax consequences that may result from a transaction only after the taxpayer has entered into the transaction and reported the consequences of the transaction on a filed tax return, and the person has not previously received fees from the taxpayer relating to the transaction, then any refundable or contingent fees are not taken into account in determining whether the transaction has contractual protection. This paragraph (b)(4)(iii)(B) does not provide any substantive rules regarding when a person may charge refundable or contingent fees with respect to a transaction. See Circular 230, 31 CFR Part 10, for the regulations governing practice before the IRS.

(5) *Loss transactions*—(i) *In general.* A loss transaction is any transaction resulting in the taxpayer claiming a loss under section 165 of at least—

(A) $10 million in any single taxable year or $20 million in any combination of taxable years for corporations;

(B) $10 million in any single taxable year or $20 million in any combination of taxable years for partnerships that have only corporations as partners (looking through any partners that are themselves partnerships), whether or not any losses flow through to one or more partners; or $2 million in any single taxable year or $4 million in any combination of taxable years for all other partnerships, whether or not any losses flow through to one or more partners;

(C) $2 million in any single taxable year or $4 million in any combination of taxable years for individuals, S corporations, or trusts, whether or not any losses flow through to one or more shareholders or beneficiaries; or

(D) $50,000 in any single taxable year for individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a section 988 transaction (as defined in section 988(c)(1) relating to foreign currency transactions).

(ii) *Cumulative losses.* In determining whether a transaction results in a taxpayer claiming a loss that meets the threshold amounts over a combination of taxable years as described in paragraph (b)(5)(i) of this section, only losses claimed in the taxable year that the transaction is entered into and the five succeeding taxable years are combined.

(iii) *Section 165 loss.* (A) For purposes of this section, in determining the thresholds in paragraph (b)(5)(i) of this section, the amount of a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. See § 1.165–1(c)(4). However, a section 165 loss does not take into account offsetting gains, or other income or limitations. For example, a section 165 loss does not take into account the limitation in section 165(d) (relating to wagering losses) or the limitations in sections 165(f), 1211, and 1212 (relating to capital losses). The full amount of a section 165 loss is taken into account for the year in which the loss is sustained, regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or a net capital loss under section 1212 that is a carryback or carryover to another year. A section 165 loss does not include any portion of a loss, attributable to a capital loss carryback or carryover from another year, that is treated as a deemed capital loss under section 1212.

(B) For purposes of this section, a section 165 loss includes an amount deductible pursuant to a provision that treats a transaction as a sale or other disposition, or otherwise results in a deduction under section 165. A section 165 loss includes, for example, a loss resulting from a sale or exchange of a partnership interest under section 741 and a loss resulting from a section 988 transaction.

(6) *Transactions with a significant book-tax difference*—(i) *In general.* A transaction with a significant book-tax difference is a transaction where the amount for tax purposes of any item or items of income, gain, expense, or loss from the transaction differs by more than $10 million on a gross basis from the amount of the item or items for book purposes in any taxable year. For purposes of this determination, offsetting items shall not be netted for either tax or book purposes. For purposes of this paragraph (b)(6), the amount of an item for book purposes is determined by applying U.S. generally accepted accounting principles (U.S. GAAP) for worldwide income. However, if a taxpayer, in the ordinary course of its business, keeps books for reporting financial results to shareholders, creditors, or regulators on a basis other than U.S. GAAP, and does not maintain U.S. GAAP books for any purpose, then the taxpayer may determine the amount of a book item for purposes of this paragraph (b)(6) by using the books maintained by the taxpayer, provided the books are kept on the same basis consistently from year to year. Adjustments to any reserve for taxes are disregarded for purposes of determining the book-tax difference.

(ii) *Applicability*—(A) *In general.* This paragraph (b)(6) applies only to—

(*1*) Taxpayers that are reporting companies under the Securities Exchange Act of 1934 (15 U.S.C. 78a) and related business entities (as described in section 267(b) or 707(b)); or

(*2*) Business entities that have $250 million or more in gross assets for book purposes at the end of any financial accounting period that ends with or within the entity's taxable year in which the transaction occurs (for purposes of this determination, the assets of all related business entities (as defined in section 267(b) or 707(b)) must be aggregated).

(B) *Consolidated returns.* For purposes of this paragraph (b)(6), in the case of taxpayers that are members of a group of affiliated corporations filing a consolidated return, transactions solely between or among members of the group will be disregarded. Moreover, where two or more members of the group participate in a transaction that is not solely between or among members of the group, items shall be aggregated (as if such members were a single taxpayer), but any offsetting items shall not be netted.

(C) *Foreign persons.* In the case of a taxpayer that is a foreign person (other than a foreign corporation that is treated as a domestic corporation for Federal tax purposes under section 269B, 953(d), 1504(d) or any other provision of the Internal Revenue Code), only assets that are U.S. assets under § 1.884–1(d) shall be taken into account for purposes of paragraph (b)(6)(ii)(A)(*2*) of this section, and only transactions that give rise to income that is effectively connected with the conduct of a trade or business within the United States (or to losses, expenses, or deductions allocated or apportioned to such income) shall be taken into account for purposes of this paragraph (b)(6).

(D) *Owners of disregarded entities.* In the case of an eligible entity that is disregarded as an entity separate from its owner for Federal tax purposes, items of income, gain, loss, or expense that otherwise are considered items of the entity for book purposes shall be treated as items of its owner, and items arising from transactions between the entity and its owner shall be disregarded, for purposes of this paragraph (b)(6).

(E) *Partners of partnerships.* In the case of a taxpayer that is a member or a partner of an entity that is treated as a partnership for Federal tax purposes, items of income, gain, loss, or expense that are allocable to the taxpayer for Federal tax purposes, but otherwise are considered items of the entity for book purposes, shall be treated as items of the taxpayer for purposes of this paragraph (b)(6).

(7) *Transactions involving a brief asset holding period.* A transaction involving a brief asset holding period is any transaction resulting in the taxpayer claiming a tax credit exceeding $250,000 (including a foreign tax credit) if the underlying asset giving rise to the credit is held by the taxpayer for 45 days or less. For purposes of determining the holding period, the principles of section 246(c)(3) and (c)(4) apply. Transactions resulting in a foreign tax credit for withholding taxes or other taxes imposed in respect of a dividend that are not disallowed under section 901(k) (including transactions eligible for the exception for securities

dealers under section 901(k)(4)) are excluded from this paragraph (b)(7).

(8) *Exceptions*—(i) *In general.* A transaction will not be considered a reportable transaction; or will be excluded from any individual category of reportable transaction under paragraphs (b)(3) through (7) of this section, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of this section. The Commissioner may make a determination by individual letter ruling under paragraph (f) of this section that an individual letter ruling request on a specific transaction or type of transaction satisfies the reporting requirements of this section with regard to that transaction or type of transaction for the taxpayer who requests the individual letter ruling.

(ii) *Special rule for RICs.* For purposes of this section, a regulated investment company (RIC) as defined in section 851 or an investment vehicle that is owned 95 percent or more by one or more RICs at all times during the course of the transaction are not required to disclose a transaction that is described in any of paragraphs (b)(3) through (7) of this section unless the transaction is also a listed transaction.

(iii) *Special rule for lease transactions.* For purposes of this section, leasing transactions of the type excepted from the registration requirements under section 6111(d) of the Code and the list maintenance requirements under section 6112 as described in Notice 2001–18 (2001–1 C.B. 731) (see § 601.601(d)(2) of this chapter) are excluded from paragraphs (b)(3) through (7) of this section.

(c) *Definitions.* For purposes of this section, the following terms are defined as follows:

(1) *Taxpayer.* The term *taxpayer* means any person described in section 7701(a)(1), including S corporations. Except as otherwise specifically provided in this section, the term *taxpayer* also includes an affiliated group of corporations that joins in the filing of a consolidated return under section 1501.

(2) *Corporation.* When used specifically in this section, the term *corporation* means an entity that is required to file a return for a taxable year on any 1120 series form, or successor form, excluding S corporations.

(3) *Participation*—(i) *In general*—(A) *Listed transactions.* A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under paragraph (b)(2) of this section. A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy described in published guidance that lists a transaction under paragraph (b)(2) of this section. Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction.

(B) *Confidential transactions.* A taxpayer has participated in a confidential transaction if the taxpayer's tax return reflects a tax benefit from the transaction and the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in paragraph (b)(3) of this section. If a partnership's, S corporation's or trust's disclosure is limited, and the partner's, shareholder's, or beneficiary's disclosure is not limited, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the confidential transaction.

(C) *Transactions with contractual protection.* A taxpayer has participated in a transaction with contractual protection if the taxpayer's tax return reflects a tax benefit from the transaction and, as described in paragraph (b)(4) of this section, the taxpayer has the right to the full or partial refund of fees or the fees are contingent. If a partnership, S corporation, or trust has the right to a full or partial refund of fees or has a contingent fee arrangement, and the partner, shareholder, or beneficiary does not individually have the right to the refund of fees or a contingent fee arrangement, then the partnership, S corporation, or trust, and not the partner, shareholder, or beneficiary, has participated in the transaction with contractual protection.

(D) *Loss transactions.* A taxpayer has participated in a loss transaction if the taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss equals or exceeds the threshold amount applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. If a taxpayer is a partner in a partnership, shareholder in an S corporation, or beneficiary of a trust and a section 165 loss as described in paragraph (b)(5) of this section flows through the entity to the taxpayer (disregarding netting at the entity level), the taxpayer has participated in a loss transaction if the taxpayer's tax return reflects a section 165 loss and the amount of the section 165 loss that flows through to the taxpayer equals or exceeds the threshold amounts applicable to the taxpayer as described in paragraph (b)(5)(i) of this section. For this purpose, a tax return is deemed to reflect the full amount of a section 165 loss described in paragraph (b)(5) of this section allocable to the taxpayer under this paragraph (c)(3)(i)(D), regardless of whether all or part of the loss enters into the computation of a net operating loss under section 172 or net capital loss under section 1212 that the taxpayer may carry back or carry over to another year.

(E) *Transactions with a significant book-tax difference.* A taxpayer has participated in a transaction with a significant book-tax difference if the taxpayer's tax treatment of an item from the transaction differs from the book treatment of that item as described in paragraph (b)(6) of this section. In determining whether a transaction results in a significant book-tax difference for a taxpayer, differences that arise solely because a subsidiary of the taxpayer is consolidated with the taxpayer, in whole or in part, for book purposes, but not for tax purposes, are not taken into account.

(F) *Transactions involving a brief asset holding period.* A taxpayer has participated in a transaction involving a brief asset holding period if the taxpayer's tax return reflects items giving rise to a tax credit described in paragraph (b)(7) of this section. If a taxpayer is a partner in a partnership, shareholder in an S corporation, or beneficiary of a trust and the items giving rise to a tax credit described in paragraph (b)(7) of this section flow through the entity to the taxpayer (disregarding netting at the entity level), the taxpayer has participated in a transaction involving a brief asset holding period if the taxpayer's tax return reflects the tax credit and the amount of the tax credit claimed by the taxpayer exceeds $250,000.

(G) *Shareholders of foreign corporations*—(*1*) *In general.* A reporting shareholder of a foreign corporation participates in a transaction described in paragraphs (b)(2) through (5) and (b)(7) of this section if the foreign corporation would be considered to participate in the transaction under the rules of this paragraph (c)(3) if it were a domestic corporation filing a tax return that reflects the items from the transaction. A reporting shareholder participates in a transaction described in paragraph (b)(6) of this section only if the foreign corporation would be considered to participate in the transaction under the rules of this paragraph (c)(3) if it were a domestic corporation and the transaction reduces or eliminates an income inclusion that otherwise would be required under section 551, 951, or 1293. A reporting shareholder (and any successor in interest) is considered to participate in a transaction under this paragraph (c)(3)(i)(G) only for its first taxable year with or within which ends the first taxable year of the foreign corporation in which the foreign corporation participates in the transaction, and for the reporting shareholder's five succeeding taxable years.

(*2*) *Reporting shareholder.* The term *reporting shareholder* means a United States shareholder (as defined in section 551(a)) in a foreign personal holding company (as defined in section 552), a United States shareholder (as defined in section 951(b)) in a controlled foreign corporation (as defined in section 957), or a 10 percent shareholder (by vote or value) of a qualified electing fund (as defined in section 1295).

(ii) *Examples.* The following examples illustrate the provisions of paragraph (c)(3)(i) of this section:

Example 1. Notice 95–53 (1995–2 C.B. 334) (see § 601.601(d)(2) of this chapter), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and receives consideration which the transferor treats as current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a transferred basis transaction, for example, a transaction described in section 351. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor's and transferee corporation's tax returns reflect tax positions described in Notice 95–53. Therefore, the transferor and transferee corporation have participated in the listed transaction. In the section 351 transaction, the transferor will have received stock with low value and high basis from the transferee corporation. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a transferred basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived indirectly from the lease stripping transaction, then the taxpayer has participated in the listed transaction. Accordingly, the taxpayer must disclose the transaction and the manner of the taxpayer's participation in the transaction under the rules of this section. If a bank lends money to the transferor, transferee corporation, or taxpayer for use in their transactions, the bank has not participated in the listed transaction because the bank's tax return does not reflect tax consequences or a tax strategy described in the listing notice (nor does the bank's tax return reflect a tax benefit derived from tax consequences or a tax strategy described in the listing notice), nor is the bank described as a participant in Notice 95–53.

Example 2. XYZ is a limited liability company treated as a partnership for tax purposes. X, Y, and Z are members of XYZ. X is an individual, Y is an S corporation, and Z is a partnership. XYZ enters into a confidential transaction under paragraph (b)(3) of this section. X is bound by the confidentiality agreement, but Y and Z are not bound by the agreement. As a result of the transaction, XYZ, X, Y, and Z all reflect a tax benefit on their tax returns. Because XYZ's and X's disclosure of the tax treatment and tax structure are limited in the manner described in paragraph (b)(3) of this section and their tax returns reflect a tax benefit from the transaction, both XYZ and X have participated in the confidential transaction. Neither Y nor Z has participated in the confidential transaction because they are not subject to the confidentiality agreement.

Example 3. Partnership AB has gross assets with a book value of over $250 million. Partner A is an SEC reporting company and partner B is an individual. AB enters into a transaction that results in a book-tax difference for AB of $25 million. The transaction is a reportable transaction for AB under paragraph (b)(6) of this section because the book-tax difference exceeds $10 million. As a result of A's partnership interest in AB and the allocation of items relating to the transaction to A, A has a book-tax difference of $11 million. The transaction is a reportable transaction for A under paragraph (b)(6) of this section because the $11 million book-tax difference exceeds $10 million. However, even though $14 million of the book-tax difference would be allocated to B, the transaction is not a reportable transaction for B under paragraph (b)(6) of this section because B, an individual, is not subject to paragraph (b)(6) of this section.

Example 4. (i) P corporation, the parent corporation of a group of corporations that file a consolidated tax return, owns 60% of the stock of T corporation. T files its own tax return and is not included as a member of the P group on the P group consolidated tax return. For book purposes, some or all of T's income is included by the group of corporations that includes P. T engages in a transaction that results in items of book income but does not result in items of income for tax purposes. P and T are SEC reporting companies.

(ii) T participated in the transaction. T has no items of taxable income but has items of book income. If items from the transaction result in a book-tax difference determined in accordance with paragraph (b)(6) of this section of $10 million in any single year, T will be required to file Form 8886. The P group did not participate in the transaction, and does not have a book-tax difference for purposes of paragraph (b)(6) of this section because, even if the P group included $10 million in book income, the book tax difference arises solely because T is not part of P's consolidated group for tax purposes.

(iii) If the facts were changed so that P corporation owned 80% of the stock of T and T was a member of the P consolidated group for tax purposes, the P group would be the taxpayer that participated in the transaction. If, in any single year, the transaction produced items of income for book purposes of $10 million but no items of taxable income, P would be required to file Form 8886. This result would not change if T separately reported its items for book purposes, if P reported none of T's items on its consolidated financial statements, or if the P consolidated financial statements included only part of a $10 million book-tax difference relating to items from T's transaction.

Example 5. Domestic corporations X and Y each own 50 percent of the voting stock of CFC, a controlled foreign corporation. X, Y, and CFC each use the calendar year as their taxable year. CFC is not engaged in the conduct of a trade or business within the United States and has no U.S. source income. Accordingly, CFC is not required to file a U.S. Federal income tax return. *See* § 1.6012–2(g). Under paragraph (c)(3)(i)(G)(*2*) of this section, X and Y are reporting shareholders with respect to CFC. CFC purchases a Euro-denominated bond on June 1; 2003, for 104,400,000 Euros. The bond matures on June 7, 2003, and CFC collects 104,500,000 Euros, equal to the bond's 100,000,000 Euro face amount plus 5,000,000 Euros of accrued but unpaid interest, less a 10% foreign withholding tax of 500,000 Euros. The average dollar-Euro exchange rate for the year is $.80 = 1 Euro, so CFC adds $400,000 to its post-1986 foreign income taxes pool as a result of the transaction. *See* sections 986(a)(1) and 902(c)(2). Under paragraph (c)(3)(i)(G)(*1*) of this section, X and Y have each participated in a transaction involving a brief asset holding period described in paragraph (b)(7) of this section for their taxable years 2003 through 2008 because both X and Y are reporting shareholders of CFC, and CFC would have been considered to have participated in a reportable transaction if it were a domestic corporation.

(4) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of disclosure. The following examples illustrate situations where a transaction is the same as or substantially similar to a listed transaction under paragraph (b)(2) of this section. (Such transactions may also be reportable transactions under paragraphs (b)(3) through (7) of this section.) The following examples

illustrate the provisions of this paragraph (c)(4):

Example 1. Notice 2000–44 (2000–2 C.B. 255) (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not adjust basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000–44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000–44.

Example 2. Notice 2001–16 (2001–1 C.B. 730) (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001–16 describes M as a member of a consolidated group that has a loss within the group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001–16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain recognized on the sale of those assets with currently generated losses.

(5) *Tax.* For purposes of this section, the term tax means Federal income tax.

(6) *Tax benefit.* A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(7) *Tax return.* For purposes of this section, the term tax return means a Federal income tax return and a Federal information return.

(8) *Tax treatment.* The tax treatment of a transaction is the purported or claimed Federal income tax treatment of the transaction.

(9) *Tax structure.* The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal income tax treatment of the transaction.

(d) *Form and content of disclosure statement.* The IRS will release Form 8886, "Reportable Transaction Disclosure Statement" (or a successor form), for use by taxpayers in accordance with this paragraph (d). A taxpayer required to file a disclosure statement under this section must file a completed Form 8886 in accordance with the instructions to the form. The Form 8886 is the disclosure statement required under this section. The form must be attached to the appropriate tax returns as provided in paragraph (e) of this section. If a copy of a disclosure statement is required to be sent to the Office of Tax Shelter Analysis (OTSA) under paragraph (e) of this section, it must be sent to: Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW., Washington, DC 20224, or to such other address as provided by the Commissioner.

(e) *Time of providing disclosure*—(1) *In general.* The disclosure statement for a reportable transaction must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed with the taxpayer's tax return. If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. In the case of a taxpayer that is a partnership or S corporation, the disclosure statement for a reportable transaction must be attached to the partnership's or S corporation's tax return for each taxable year in which the partnership or S corporation participates in the transaction under the rules of paragraph (c)(3)(i) of this section.

(2) *Special rules*—(i) *Listed transactions.* If a transaction becomes a listed transaction after the filing of the taxpayer's final tax return reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction) and before the end of the statute of limitations period for that return, then a disclosure statement must be filed as an attachment to the taxpayer's tax return next filed after the date the transaction is listed.

(ii) *Loss transactions.* If a transaction becomes a loss transaction because the losses equal or exceed the threshold amounts as described in paragraph (b)(5)(i) of this section, a disclosure statement must be filed as an attachment to the taxpayer's tax return for the first taxable year in which the threshold amount is reached and to any subsequent tax return that reflects any amount of section 165 loss from the transaction.

(3) *Multiple disclosures.* The taxpayer must disclose the transaction in the time and manner provided for under the provisions of this section regardless of whether the taxpayer also plans to disclose the transaction under other published guidance, for example, Rev. Proc. 94–69 (1994–2 C.B. 804) (see § 601.601(d)(2) of this chapter).

(4) *Example.* The following example illustrates the application of this paragraph (e):

Example. In January of 2004, F, a domestic calendar year corporation, enters into a transaction that is not a listed transaction when entered into and is not a transaction described in any of the paragraphs (b)(3) through (7) of this section. All the tax benefits from the transaction are reported on F's 2004 tax return. On March 1, 2008, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Thus, upon issuance of the notice, the transaction becomes a reportable transaction described in paragraph (b) of this section. The statute of limitations for F's 2004 taxable year is still open. F is required to file Form 8886 for the transaction as an attachment to F's next filed Federal income tax return and must send a copy of Form 8886 to OTSA. If F's 2007 Federal income tax return has not been filed on or before the date the Service identifies the transaction as a listed transaction, Form 8886 must be attached to F's 2007 return and at that time a copy of Form 8886 must be sent to OTSA.

(f) *Rulings and protective disclosures*—(1) *Requests for ruling.* A taxpayer may, on or before the date that disclosure would otherwise be required under this section, submit a request to the IRS for a ruling as to whether a transaction is subject to the disclosure requirements of this section. If the request fully discloses all relevant facts relating to the transaction, the potential obligation of that taxpayer to disclose the transaction will be suspended during the period that the ruling request is pending and, if the IRS subsequently concludes that the transaction is a reportable transaction subject to disclosure under this section, until the 60th day after the issuance of the ruling (or, if the request is withdrawn, 60 days after the date that the request is withdrawn). Furthermore, in that taxpayer's individual ruling, the Commissioner in his discretion may determine that the submission satisfies the disclosure rules under this section for that particular transaction or type of transaction.

(2) *Protective disclosures.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, the taxpayer may disclose the transaction in accordance with the requirements of this section, and indicate on the disclosure statement that the taxpayer is uncertain whether the transaction is required to be disclosed under this section and that the disclosure statement is being filed on a protective basis.

(3) *Rulings on the merits of a transaction.* If a taxpayer requests a ruling on the merits of a specific transaction on or before the date that disclosure would otherwise be required under this section, and receives a favorable ruling as to the transaction, the disclosure rules under this section will be deemed to have been satisfied by that taxpayer with regard to that transaction, so long as the request fully discloses all relevant facts relating to the transaction which would otherwise be required to be disclosed under this section.

(g) *Retention of documents.* In accordance with the instructions to Form 8886, the taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the tax treatment or tax structure of the transaction. The documents must be retained until the expiration of the statute of limitations applicable to the final taxable year for which disclosure of the transaction was required under this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) The documents may include the following: marketing materials related to the transaction; written analyses used in decision-making related to the transaction; correspondence and agreements between the taxpayer and any advisor, lender, or other party to the reportable transaction that relate to the transaction; documents discussing, referring to, or demonstrating the purported or claimed tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction. A taxpayer is not required to retain earlier drafts of a document if the taxpayer retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of the document that is material to an understanding of the purported tax treatment or tax structure of the transaction.

(h) *Effective dates.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (a) through (g) of this section apply to transactions entered into on or after February 28, 2003. All the rules in paragraphs (a) through (g) of this section may be relied upon for transactions entered into on or after January 1, 2003, and before February 28, 2003. Otherwise, the rules that apply with respect to transactions entered into before February 28, 2003 are contained in § 1.6011–4T in effect prior to February 28, 2003 (see 26 CFR part 1 revised as of April 1, 2002, 2002–28 I.R.B. 90, and 2002–45 I.R.B. 818 (see § 601.601(d)(2) of this chapter)).

§ 1.6011–4T [Removed]

Par. 3. Section 1.6011–4T is removed.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 4. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. Section 20.6011–4 is added to read as follows:

§ 20.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an estate tax under chapter 11 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

§ 20.6011–4T [Removed]

Par. 6. Section 20.6011–4T is removed.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 7. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 8. Section 25.6011–4 is added to read as follows:

§ 25.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves a gift tax under chapter 12 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

§ 25.6011–4T [Removed]

Par. 9. Section 25.6011–4T is removed.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 10. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 11. Section 31.6011–4 is added to read as follows:

§ 31.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

§ 31.6011–4T [Removed]

Par. 12. Section 31.6011–4T is removed.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 13. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 14. Section 53.6011–4 is added to read as follows:

§ 53.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 42 of subtitle D of the Internal Revenue

Code (relating to private foundations and certain other tax-exempt organizations), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

§ 53.6011–4T [Removed]

Par. 15. Section 53.6011–4T is removed.

PART 54—PENSION EXCISE TAXES

Par. 16. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 17. Section 54.6011–4 is added to read as follows:

§ 54.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 43 of subtitle D of the Internal Revenue Code (relating to qualified pension, etc., plans), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

§ 54.6011–4T [Removed]

Par. 18. Section 54.6011–4T is removed.

PART 56—PUBLIC CHARITY EXCISE TAXES

Par. 19. The authority citation for part 56 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 20. Section 56.6011–4 is added to read as follows:

§ 56.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* as defined in § 1.6011–4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 41 of subtitle D of the Internal Revenue Code (relating to public charities), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

§ 56.6011–4T [Removed]

Par. 21. Section 56.6011–4T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 22. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 23. Section 301.6111–2 is added as follows:

§ 301.6111–2 Confidential corporate tax shelters.

(a) *In general.*—(1) Under section 6111(d) and this section, a confidential corporate tax shelter is treated as a tax shelter subject to the requirements of sections 6111 (a) and (b).

(2) A confidential corporate tax shelter is any transaction—

(i) A significant purpose of the structure of which is the avoidance or evasion of Federal income tax, as described in paragraph (b) of this section; for a direct or indirect corporate participant;

(ii) That is offered to any potential participant under conditions of confidentiality, as described in paragraph (c) of this section; and

(iii) For which the tax shelter promoters may receive fees in excess of $100,000 in the aggregate, as described in paragraph (d) of this section.

(3) For purposes of this section, references to the term *transaction* include all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and include any series of steps carried out as part of a plan. For purposes of this section, the term substantially similar includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of registration. For examples, see § 1.6011–4(c)(4) of this chapter.

(4) A transaction described in paragraph (b) of this section is for a direct or an indirect corporate participant if it is expected to provide Federal income tax benefits to any corporation (U.S. or foreign) whether or not that corporation participates directly in the transaction.

(b) *Transactions structured for avoidance or evasion of Federal income tax*—(1) *In general.* The avoidance or evasion of Federal income tax will be considered a significant purpose of the structure of a transaction if the transaction is described in paragraph (b)(2) or (3) of this section. However, a transaction described in paragraph (b)(3) of this section need not be registered if the transaction is described in paragraph (b)(4) of this section. For purposes of this section, Federal income tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(2) *Listed transactions.* A transaction is described in this paragraph (b)(2) if the transaction is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service (IRS) has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. If a transaction becomes a listed transaction after the date on which registration would otherwise be required under this section, and if the transaction otherwise satisfies the confidentiality and fee requirements of paragraphs (a)(2)(ii) and (iii) of this section, registration shall in all events be required with respect to any interests in the transaction that are offered for sale after the transaction becomes a listed transaction. However, because a transaction identified as a listed transaction is generally considered to have been structured for a significant tax avoidance purpose, such a transaction ordinarily will have been subject to registration under this section before becoming a listed transaction if the transaction previously satisfied the confidentiality and fee requirements of paragraphs (a)(2)(ii) and (iii) of this section.

(3) *Other tax-structured transactions.* A transaction is described in this paragraph (b)(3) if it has been structured to produce Federal income tax benefits that constitute an important part of the intended results of the transaction and the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably expects the transaction to be presented in the same or substantially similar form to more than one potential participant, unless the promoter reasonably determines that—

(i) The potential participant is expected to participate in the transaction in the ordinary course of its business in a form consistent with customary commercial practice (a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business); and

(ii) There is a generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are properly allowable under the Internal Revenue Code for substantially similar transactions. There is no minimum period of time for which such a generally accepted understanding must exist. In general, however, a tax shelter promoter (or other person who would be responsible for registration under this section) cannot reasonably determine whether the intended tax treatment of a transaction has become generally accepted unless information relating to the tax treatment and tax structure of such transactions has been in the public domain (*e.g.*, rulings, published articles, etc.) and widely known for a sufficient period of time (ordinarily a period of years) to provide knowledgeable tax practitioners and the IRS reasonable opportunity to evaluate the intended tax treatment. The mere fact that one or more knowledgeable tax practitioners have provided an opinion or advice to the effect that the intended tax treatment of the transaction should or will be sustained, if challenged by the IRS, is not sufficient to satisfy the requirements of this paragraph (b)(3)(ii).

(4) *Excepted transactions.* The avoidance or evasion of Federal income tax will not be considered a significant purpose of the structure of a transaction if the transaction is described in either paragraph (b)(4)(i), (ii), or (iii) of this section.

(i) In the case of a transaction other than a transaction described in paragraph (b)(2) of this section, the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. This paragraph (b)(4)(i) applies only if the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no basis that would meet the standard applicable to taxpayers under § 1.6662–3(b)(3) of this chapter under which the IRS could disallow any significant portion of the expected Federal income tax benefits of the transaction. Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. However, the determination of whether the IRS would or would not have a reasonable basis for such a position must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, administrative guidance, and judicial decisions that establish principles of general application in the tax law (*e.g.*, *Gregory* v. *Helvering*, 293 U.S. 465 (1935)). The determination of whether the IRS would or would not have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS.

(ii) The IRS makes a determination by published guidance that the transaction is not subject to the registration requirements of this section.

(iii) The IRS makes a determination by individual ruling under paragraph (b)(5) of this section that a specific transaction is not subject to the registration requirements of this section for the taxpayer requesting the ruling.

(5) *Requests for ruling.* If a tax shelter promoter (or other person who would be responsible for registration under this section) is uncertain whether a transaction is properly classified as a confidential corporate tax shelter or is otherwise uncertain whether registration is required under this section, that person may, on or before the date that registration would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the registration requirements of this section. If the request fully discloses all relevant facts relating to the transaction, that person's potential obligation to register the transaction will be suspended during the period that the ruling request is pending and, if the IRS subsequently concludes that the transaction is a confidential corporate tax shelter subject to registration under this section, until the sixtieth day after the issuance of the ruling (or, if the request is withdrawn, sixty days from the date that the request is withdrawn). In the alternative, that person may register the transaction in accordance with the requirements of this section and append a statement to the Form 8264, "Application for Registration of a Tax Shelter", which states that the person is uncertain whether the transaction is required to be registered as a confidential corporate tax shelter, and that the Form 8264 is being filed on a protective basis.

(6) *Example.* The following example illustrates the application of paragraphs (b)(1) through (4) of this section. Assume, for purposes of the example, that the transaction is not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions under section 6111 and, thus, is not described in paragraph (b)(2) of this section. The example is as follows:

Example. (i) *Facts.* Y has designed a combination of financial instruments to be issued as a package by corporations. The financial instruments are expected to be treated as equity for financial accounting purposes and as debt giving rise to allowable interest deductions for Federal income tax purposes. Y reasonably expects to present this method of raising capital to more than one potential corporate participant. Assume that, because of the unusual nature of the combination of financial instruments, Y cannot conclude either that the transaction represented by the financial instruments is in customary commercial form or that there is a generally accepted understanding that interest deductions are available to issuers of substantially similar combinations of financial Instruments. Further, assume that Y cannot reasonably determine that the IRS would have no reasonable basis to deny the deductions.

(ii) *Analysis.* The transaction represented by this combination of financial instruments is a transaction described in paragraph (b)(3) of this section. However, if Y is uncertain whether this transaction is described in paragraph (b)(3) of this section, or is otherwise uncertain whether registration is required, Y may apply for a ruling under paragraph (b)(5) of this section, and Y will not be required to register the transaction while the ruling is pending or for sixty days thereafter.

(c) *Conditions of confidentiality*—(1) *In general.* All the facts and circumstances relating to the transaction will be considered when determining

whether an offer is made under conditions of confidentiality as described in section 6111(d)(2), including prior conduct of the parties. Pursuant to section 6111(d)(2)(A), if an offeree's disclosure of the tax treatment or tax structure of the transaction is limited in any manner by an express or implied understanding or agreement with or for the benefit of any tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. The tax treatment of a transaction is the purported or claimed Federal income tax treatment of the transaction. The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal income tax treatment of the transaction. Pursuant to section 6111(d)(2)(B), an offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know that the offeree's use or disclosure of information relating to the tax treatment or tax structure of the transaction is limited for the benefit of any person other than the offeree in any other manner, such as where the transaction is claimed to be proprietary or exclusive to the tax shelter promoter or any party other than the offeree.

(2) *Exceptions*—(i) *Securities law.* An offer is not considered made under conditions of confidentiality if disclosure of the tax treatment or tax structure of the transaction is subject to restrictions reasonably necessary to comply with securities laws and such disclosure is not otherwise limited.

(ii) *Mergers and acquisitions.* In the case of a proposed taxable or tax-free acquisition of historic assets of a corporation (other than an investment company, as defined in section 351(e), that is not publicly traded) that constitute an active trade or business the acquirer intends to continue, or a proposed taxable or tax-free acquisition of more than 50 percent of the stock of a corporation (other than an investment company, as defined in section 351(e), that is not publicly traded) that owns historic assets used in an active trade or business the acquirer intends to continue, the transaction is not considered offered under conditions of confidentiality under paragraph (c)(1) of this section if the offeree is permitted to disclose the tax treatment and tax structure of the transaction no later than the earlier of the date of the public announcement of discussions relating to the transaction, the date of the public announcement of the transaction, or the date of the execution of an agreement (with or without conditions) to enter into the transaction. However, this exception is not available where the offeree's ability to consult any tax advisor (including a tax advisor independent from all other entities involved in the transaction) regarding the tax treatment or tax structure of the transaction is limited in any way.

(3) *Presumption.* Unless facts and circumstances indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction, and all materials of any kind (including opinions or other tax analyses) that are provided to the offeree related to such tax treatment and tax structure. Except as provided in paragraph (c)(2) of this section, this presumption is available only in cases in which each written authorization permits the offeree to disclose the tax treatment and tax structure of the transaction immediately upon commencement of discussions with the tax shelter promoter providing the authorization and each written authorization is given no later than 30 days from the day the tax shelter promoter commenced discussions with the offeree. A transaction that is exclusive or proprietary to any party other than the offeree will not be considered offered under conditions of confidentiality if written authorization to disclose is provided to the offeree in accordance with this paragraph (c)(3) and the transaction is not otherwise confidential.

(d) *Determination of fees.* All the facts and circumstances relating to the transaction will be considered when determining the amount of fees, in the aggregate, that the tax shelter promoters may receive. For purposes of this paragraph (d), all consideration that tax shelter promoters may receive is taken into account, including contingent fees, fees in the form of equity interests, and fees the promoters may receive for other transactions as consideration for promoting the tax shelter. For example, if a tax shelter promoter may receive a fee for arranging a transaction that is a confidential corporate tax shelter and a separate fee for another transaction that is not a confidential corporate tax shelter, part or all of the fee paid with respect to the other transaction may be treated as a fee paid with respect to the confidential corporate tax shelter if the facts and circumstances indicate that the fee paid for the other transaction is in consideration for the confidential corporate tax shelter. For purposes of determining whether the tax shelter promoters may receive fees in excess of $100,000, the fees from all substantially similar transactions are considered part of the same tax shelter and must be aggregated.

(e) *Registration*—(1) *Time for registering*—(i) *In general.* A tax shelter must be registered not later than the day on which the first offering for sale of interests in the shelter occurs. An offer to participate in a confidential corporate tax shelter shall be treated as an offer for sale. If interests in a confidential corporate tax shelter were first offered for sale on or before February 28, 2000, the first offer for sale of interests in the shelter that occurs after February 28, 2000 shall be considered the first offer for sale under this section.

(ii) *Special rule.* If a transaction becomes a confidential corporate tax shelter (*e.g.*, because of a change in the law or factual circumstances, or because the transaction becomes a listed transaction) subsequent to the first offering for sale after February 28, 2000, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section if interests are offered for sale after the transaction becomes a confidential corporate tax shelter. The transaction must be registered by the next offering for sale of interests in the shelter. If, subsequent to the first offering for sale, a transaction becomes a confidential corporate tax shelter because the transaction becomes a listed transaction on or after February 28, 2003, and the transaction was not previously required to be registered as a confidential corporate tax shelter under this section, the transaction must be registered under this section within 60 days after the transaction becomes a listed transaction/confidential corporate tax shelter if any interests were offered for sale within the previous six years.

(2) *Procedures for registering.* To register a confidential corporate tax shelter, the person responsible for registering the tax shelter must file Form 8264, "Application for Registration of a Tax Shelter". (Form 8264 is also used to register tax shelters defined in section 6111(c).) Similar to the treatment provided under Q&A–22 and Q&A–48 of § 301.6111–1T, transactions involving similar business assets and similar plans or arrangements that are offered to corporate taxpayers by the same person or related persons are aggregated and considered part of a single tax shelter. However, in contrast with the requirement of Q&A–48 of § 301.6111–1T, the tax shelter promoter may file a single Form 8264 with respect to any such aggregated tax shelter, provided an amended Form 8264 is filed to reflect any material changes and to include any additional or revised written materials presented in connection with an offer to participate in the shelter. Furthermore, all transactions that are part of the same tax shelter and that are to be carried out by the same corporate participant (or one or more other members of the same affiliated group within the meaning of section 1504) must be registered on the same Form 8264.

(f) *Definition of tax shelter promoter.* For purposes of section 6111(d)(2) and this section, the term *tax shelter promoter* includes a tax shelter organizer and any other person who participates in the organization, management or sale of a tax shelter (as those persons are described in section 6111(e)(1) and § 301.6111–1T (Q&A–26 through Q&A–33) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person.

(g) *Person required to register*—(1) *Tax shelter promoters.* The rules in section 6111 (a) and (e) and § 301.6111–1T (Q&A–34 through Q&A–39) determine who is required to register a confidential corporate tax shelter. A promoter of a confidential corporate tax shelter must register the tax shelter only if it is a person required to register under the rules in section 6111(a) and (e) and § 301.6111–1T (Q&A–34 through Q&A–39).

(2) *Persons who discuss the transaction; all promoters are foreign persons*—(i) *In general.* If all of the tax shelter promoters of a confidential corporate tax shelter are foreign persons, any person who discusses participation in the transaction must register the shelter under this section within 90 days after beginning such discussions.

(ii) *Exceptions.* Registration by a person discussing participation in a transaction is not required if either—

(A) The person does not participate, directly or indirectly, in the shelter and notifies the tax shelter promoter in writing, within 90 days of beginning such discussions, that the person will not participate; or

(B) Within 90 days after beginning such discussions, the person obtains and reasonably relies on both—

(*1*) A written statement from one of the tax shelter promoters that such promoter has registered the tax shelter under this section; and

(*2*) A copy of the registration.

(iii) *Determination of foreign status.* For purposes of this paragraph (g)(2), a person must presume that all tax shelter promoters are foreign persons unless the person either—

(A) Discusses participation in the tax shelter with a promoter that is a United States person; or

(B) Obtains and reasonably relies on a written statement from one of the promoters that at least one of the promoters is a United States person.

(iv) *Discussion.* Discussing participation in a transaction includes discussing such participation with any person that conveys the tax shelter promoter's proposal. For purposes of this paragraph (g)(2), any person that participates directly or indirectly in a transaction will be treated as having discussed participation in the transaction not later than the date of the agreement to participate. Thus, a tax shelter participant will be treated as having discussed participation in the transaction even if all discussions were conducted by an intermediary and the agreement to participate was made indirectly through another person acting on the participant's behalf (for example, through an intermediary empowered to commit the participant to participate in the shelter).

(v) *Special rule for controlled entities.* A person (first person) will be treated as participating indirectly in a confidential corporate tax shelter if a foreign person controlled by the first person participates in the shelter, and a significant purpose of the shelter is the avoidance or evasion of the first person's Federal income tax. For purposes of this paragraph (g)(2)(v), control of a foreign corporation or partnership will be determined under the rules of section 6038(e)(2) and (3), except that such section shall be applied by substituting "10" for "50" each place it appears and "at least" for "more than" each place it appears. In addition, section 6038(e)(2) shall be applied for these purposes without regard to the constructive ownership rules of section 318 and by treating stock as owned if it is owned directly or indirectly. Section 6038(e)(3) shall be applied for these purposes without regard to the last sentence of section 6038(e)(3)(B). Any beneficiary with a 10 percent or more interest in a foreign trust or estate shall be treated as controlling that trust or estate for purposes of this paragraph (g)(2)(v).

(vi) *Other rules.* (A) For purposes of the registration requirements under section 6111(d)(3), it is presumed that the tax shelter promoters will receive fees in excess of $100,000 in the aggregate unless the person responsible for registering the tax shelter can show otherwise.

(B) Any person treated as a tax shelter promoter under section 6111(d) solely by reason of being related (within the meaning of section 267 or 707) to a foreign promoter will be treated as a foreign promoter for purposes of this paragraph (g)(2).

(h) *Effective dates.* This section applies to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. If an interest is sold after February 28, 2000, it is treated as offered for sale after February 28, 2000, unless the sale was pursuant to a written binding contract entered into on or before February 28, 2000. However, paragraphs (a) through (g) of this section apply to confidential corporate tax shelters in which any interests are offered for sale on or after February 28, 2003, and to transactions described in paragraph (e)(1)(ii) of this section. The rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, and before February 28, 2003, are contained in § 301.6111–2T in effect prior to February 28, 2003 (*see* 26 CFR part 301 revised as of April 1, 2002, 2002–28 I.R.B 91, and 2002–45 I.R.B. 823 (*see* § 601.601(d)(2) of this chapter)).

§ 301.6111–2T [Removed]

Par. 24. Section 301.6111–2T is removed.

Par. 25. Section 301.6112–1 is added as follows:

§ 301.6112–1 Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters.

(a) *In general.* Each organizer and seller, as described in paragraph (c) of this section, of a transaction that is a potentially abusive tax shelter, as described in paragraph (b) of this section, shall prepare and maintain a list of persons in accordance with paragraph (e) of this section and upon request shall furnish such list to the Internal Revenue Service (IRS) in accordance with paragraph (g) of this section.

(b) *Potentially abusive tax shelters.* For purposes of this section, a potentially abusive tax shelter is any transaction that is a section 6111 tax shelter, as described in paragraph (b)(1) of this section, or that has a potential for tax avoidance or evasion, as described in paragraph (b)(2) of this section. The term *transaction* includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or

arrangement, and includes any series of steps carried out as part of a plan.

(1) *Transaction that is a section 6111 tax shelter.* A section 6111 tax shelter is any transaction that is required to be registered with the IRS under section 6111, regardless of whether that tax shelter is properly registered pursuant to section 6111.

(2) *Transaction that has a potential for tax avoidance or evasion*—(i) *In general.* A transaction that has a potential for tax avoidance or evasion includes—

(A) Any listed transaction as defined in § 1.6011–4(b)(2) of this chapter that is subject to disclosure under §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter;

(B) Any transaction that a potential material advisor (at the time the transaction is entered into or an interest is acquired) knows is or reasonably expects will become a reportable transaction under § 1.6011–4(b)(3) through (7) of this chapter; and

(C) Any interest in a type of transaction that is transferred if the transferor knows or reasonably expects that the transferee will sell or transfer an interest in that type of transaction to another transferee (subsequent participant), and the type of transaction would be a listed transaction under §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter, or a transaction described in § 1.6011–4(b)(3) through (7) of this chapter assuming that the relevant thresholds are met.

(ii) The determination of whether a transaction has the potential for tax avoidance or evasion does not depend upon whether the transaction is properly disclosed pursuant to §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter.

(iii) If a transaction becomes a potentially abusive tax shelter on or after February 28, 2003, because it is a listed transaction as defined in § 1.6011–4 of this chapter and is subject to disclosure under § 1.6011–4 of this chapter this section shall apply with respect to any such transaction entered into or any interest acquired therein after February 28, 2000 (including interests acquired before the transaction becomes a listed transaction). If a transaction becomes a listed transaction as defined in § 1.6011–4 of this chapter and is subject to disclosure under §§ 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter, this section shall apply with respect to any such transaction entered into or any interest acquired therein on or after January 1, 2003 (including interests acquired before the transaction becomes a listed transaction).

(c) *Organizer and seller*—(1) *In general.* A person is an organizer of, or a seller of an interest in, a transaction that is a potentially abusive tax shelter if that person is a material advisor, as described in paragraph (c)(2) of this section, with respect to that transaction.

(2) *Material advisor*—(i) *In general.* A person is a material advisor with respect to a transaction that is a potentially abusive tax shelter if the person is required to register the transaction under section 6111; or the person receives or expects to receive at least a minimum fee (as defined in paragraph (c)(3) of this section) with respect to the transaction, and the person makes a tax statement (as defined in paragraph (c)(2)(iii) of this section) to or for the benefit of—

(A) A taxpayer who is required to disclose the transaction under §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter because the transaction is a listed transaction or who would have been required to disclose a listed transaction under §§ 1.6011–4, 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4, or 56.6011–4 of this chapter if the transaction had become a listed transaction within the statute of limitations period in § 1.6011–4(e)(2);

(B) A taxpayer who the potential material advisor (at the time the transaction is entered into) knows is or reasonably expects to be required to disclose the transaction under § 1.6011–4 because the transaction is or is reasonably expected to become a transaction described in § 1.6011–4(b)(3) through (7);

(C) A person who is required to register the transaction under section 6111;

(D) A person who purchases (or otherwise acquires) an interest in a section 6111 tax shelter; or

(E) A transferee of an interest if the interest is described in paragraph (b)(2)(i)(C) of this section.

(ii) *Special rules.* A material advisor generally does not include a person who makes a tax statement solely in the person's capacity as an employee, shareholder, partner or agent of another person. Any tax statement made by that person will be attributed to that person's employer, corporation, partnership or principal. However, a person shall be treated as a material advisor if that person forms or avails of an entity with the purpose of avoiding the rules of section 6111 or 6112 or the penalties under section 6707 or 6708.

(iii) *Tax statement*—(A) *In general.* A tax statement means any statement, oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011–4(b)(2) through (7) or a tax shelter as described in section 6111.

(B) *Confidential transactions.* A tax statement relates to an aspect of a transaction that causes it to be a confidential transaction if the statement concerns a tax benefit related to the transaction and either the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited in the manner described in § 1.6011–4(b)(3) of this chapter by or for the benefit of the person making the statement, or the person making the statement knows the taxpayer's disclosure of the tax structure or tax aspects of the transaction is limited in the manner described in § 1.6011–4(b)(3) of this chapter.

(C) *Transactions with contractual protection.* A tax statement relates to an aspect of a transaction that causes it to be a transaction with contractual protection if the statement concerns a tax benefit related to the transaction and either—

(*1*) The taxpayer has the right to a full or partial refund of fees paid to the person making the statement or if these fees are contingent in the manner described in § 1.6011–4(b)(4) of this chapter; or

(*2*) The person making the statement knows that the taxpayer has the right to a full or partial refund of fees (as described in § 1.6011–4(b)(4)(ii)) paid to another if all or part of the intended tax consequences from the transaction are not sustained or that fees (as described in § 1.6011–4(b)(4)(ii)) paid by the taxpayer to another are contingent on the taxpayer's realization of tax benefits from the transaction in the manner described in § 1.6011–4(b)(4) of this chapter.

(D) *Loss transactions.* A tax statement relates to an aspect of a transaction that causes it to be a loss transaction if the statement concerns an item that gives rise to a loss described in § 1.6011–4(b)(5) of this chapter.

(E) *Transactions with a significant book-tax difference.* A tax statement relates to an aspect of a transaction that causes it to be a transaction with a significant book-tax difference if the statement concerns an item that gives rise to a book-tax difference described in § 1.6011–4(b)(6) of this chapter.

(F) *Transactions involving a brief asset holding period.* A tax statement relates to an aspect of a transaction involving a brief asset holding period if the statement concerns an item that gives rise to a tax credit described in § 1.6011–4(b)(7) of this chapter.

(iv) *Exceptions*—(A) *Post-filing advice.* A person will not be considered to be a material advisor with respect to a transaction if that person does not make or provide a tax statement regarding the transaction until after the first tax return reflecting tax benefit(s) of the transaction is filed with the IRS.

(B) *Publicly-filed statements.* A tax statement with respect to a transaction that includes only information about the transaction contained in publicly-available documents filed with the Securities and Exchange Commission no later than the close of the transaction will not be considered a tax statement to or for the benefit of a person described in paragraph (c)(2)(i)(A) through (E) of this section.

(3) *Minimum fee*—(i) *In general.* The minimum fee is $250,000 for a transaction if every person to whom or for whose benefit the potential material advisor makes or provides a tax statement with respect to the transaction is a corporation. The minimum fee is $50,000 for a transaction if any person to whom or for whose benefit a potential material advisor makes or provides a tax statement with respect to the transaction is a partnership or trust, unless all owners or beneficiaries are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is $250,000. For all other transactions, the minimum fee is $50,000. For purposes of this paragraph (c)(3)(i) a corporation means a corporation other than an S corporation.

(ii) *Listed transactions.* For listed transactions described in §§ 1.6011–4(b)(2), 20.6011–4(a), 25.6011–4(a), 31.6011–4(a), 53.6011–4(a), 54.6011–4(a), or 56.6011–4(a) of this chapter, the minimum fees in paragraph (c)(3)(i) of this section are reduced from $250,000 to $25,000 and from $50,000 to $10,000.

(iii) *Determination of fees.* In determining whether the minimum fee threshold is satisfied, all fees for services for advice (whether or not tax advice) or for the implementation of a transaction that is a potentially abusive tax shelter are taken into account. For purposes of this section, the minimum fee threshold must be met independently for each transaction that is a potentially abusive tax shelter and aggregation of fees among transactions is not required. Fees for advice or implementation include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent return preparation fees are unreasonable in light of all of the facts and circumstances. The IRS will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a transaction that is a potentially abusive tax shelter constitutes fees for purposes of this section.

(d) *Definitions.* For purposes of this section, the following terms are defined as follows:

(1) *Interest.* The term *interest* includes, but is not limited to, any right to participate in a transaction by reason of a partnership interest, a shareholder interest, or a beneficial interest in a trust; any interest in property (including a leasehold interest); the entry into a leasing arrangement or a consulting, management or other agreement for the performance of services; or any interest in any other investment, entity, plan, or arrangement. The term *interest* includes any interest that purportedly entitles the direct or indirect holder of the *interest* to any tax consequence (including, but not limited to, a deduction, loss, or adjustment to tax basis in an asset) arising from the transaction. An *interest* also includes information or services regarding the organization or structure of the transaction if the information or services are relevant to the potential tax consequences of the transaction.

(2) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of list maintenance.

(3) *Person.* The term *person* means any person described in section 7701(a)(1), including an affiliated group of corporations that join in the filing of a consolidated return under section 1501.

(4) *Related party.* A person is a related party with respect to another person if such person bears a relationship to such other person described in section 267 or 707.

(5) *Tax.* For purposes of this section, the term *tax* means Federal tax.

(6) *Tax benefit.* A tax benefit includes deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, status as an entity exempt from Federal income taxation, and any other tax consequences that may reduce a taxpayer's Federal tax liability by affecting the amount, timing, character, or source of any item of income, gain, expense, loss, or credit.

(7) *Tax return.* For purposes of this section, the term *tax return* means a Federal tax return and a Federal information return.

(8) *Tax treatment.* The tax treatment of a transaction is the purported or claimed Federal tax treatment of the transaction.

(9) *Tax structure.* The tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed Federal tax treatment of the transaction.

(e) *Preparation and maintenance of lists*—(1) *In general.* A separate list of persons must be prepared and maintained for each transaction that is a potentially abusive tax shelter. However, one list must be maintained for substantially similar transactions that are potentially abusive tax shelters. A list may be maintained on paper, card file, magnetic media, or in any other form, provided the method of maintaining the list enables the IRS to determine without undue delay or difficulty the information required in paragraph (e)(3) of this section.

(2) *Persons required to be included on lists*—(i) *In general.* A material advisor is required to list each person described in paragraphs (c)(2)(i)(A) through (D) of this section to whom (or for whose benefit) the material advisor makes or provides a tax statement with respect to a transaction that is a potentially abusive tax shelter. However, a material advisor is not required to list a person described in paragraph (c)(2)(i)(A) of this section if that person entered into, or acquired an interest in, a listed transaction more than 6 years before the transaction was listed.

(ii) *Subsequent participant.* A material advisor must list any subsequent participant if the material advisor knows the identity of that subsequent participant, and the material advisor knows that the subsequent participant either entered into a transaction that must be disclosed under § 1.6011–4(b) of this chapter or sold or transferred to another subsequent participant an interest in that type of transaction.

(iii) *Section 6111 registrant.* A material advisor required to register a

transaction under section 6111 also must list each person who purchases (or otherwise acquires) an interest in the transaction.

(iv) *Examples.* The following examples illustrate the provisions of this section:

Example 1. An investment firm provides a tax statement as to a type of transaction to three taxpayers: Corporation X, Corporation Y, and Corporation Z (all of which are C corporations). Each taxpayer agrees to pay the investment firm $300,000 in connection with the transaction, and each taxpayer engages in a separate transaction (transaction X, transaction Y, and transaction Z, respectively). At the time the transactions are entered into, the investment firm knows or reasonably expects that the transactions will result in a single taxable year loss of $9 million for Corporation X, $15 million for Corporation Y, and $12 million for Corporation Z. The transactions do not satisfy the definitions of a reportable transaction under § 1.6011–4(b)(2), (3), (4), (6) or (7) of this chapter.

(i) *Transaction X.* At the time transaction X is entered into, the investment firm does not know or reasonably expect that the transaction is a reportable transaction, because the $9 million loss associated solely with transaction X does not satisfy the $10 million threshold under § 1.6011–4(b)(5) of this chapter (relating to loss transactions). Accordingly, transaction X is not a potentially abusive tax shelter. The investment firm is not required to maintain a list with respect to transaction X.

(ii) *Transactions Y and Z.* The investment firm satisfies the requirements for being a material advisor with respect to transaction Y and transaction Z. First, both of the transactions are potentially abusive tax shelters with respect to the investment firm because the investment firm knows, or reasonably expects, at the time the transactions are entered into, that the losses for each of Corporation Y and Z will exceed the $10 million threshold and, thus, the investment firm knows or reasonably expects that the transactions are or will become reportable transactions under § 1.6011–4(b)(5) of this chapter (relating to loss transactions). Second, the investment firm provides a tax statement to Corporation Y and Corporation Z as to the transactions. Third, the investment firm receives $300,000 in connection with each transaction (viewed independently of each other and without regard to any other transaction), which exceeds the minimum fee with respect to each transaction ($250,000). Accordingly, the investment firm must maintain a list with respect to transactions Y and Z. Because transactions Y and Z are based on the same or similar tax strategy, transactions Y and Z are substantially similar transactions, and the investment firm must keep one list with respect to both transactions. The list must contain information about Corporation Y and Corporation Z (see paragraph (e)(2)(i) of this section).

Example 2. (i) Corporation M provides a tax statement to Corporation N (a C corporation) describing the potential loss from a type of transaction. Corporation N pays Corporation M $300,000 for the information about that type of transaction. Corporation M knows that Corporation N will sell the information to Taxpayer O (a C corporation) and Taxpayer P (an individual), and that Taxpayer O and Taxpayer P will participate in transactions of the type that Corporation M described to Corporation N. Corporation N, in turn, provides a tax statement as to that type of transaction to Taxpayer O and Taxpayer P. Each taxpayer agrees to pay Corporation N $250,000 in connection with its transaction, and each taxpayer engages in a separate transaction (transaction O and transaction P, respectively). At the time the transactions are entered into, both Corporation M and Corporation N know that the transactions are or will become reportable transactions under § 1.6011–4(b)(5) of this chapter.

(ii) Corporation N is a material advisor with respect to transaction O and transaction P. First, at the time the transactions are entered into, Corporation N knows that the transactions are reportable transactions. Thus, the transactions are potentially abusive tax shelters. Second, Corporation N provides a tax statement to Taxpayer O and Taxpayer P as to the transactions. Third, Corporation N receives $250,000 in connection with transaction O and transaction P (each viewed independently of any other transaction), which equals or exceeds the minimum fee for those transactions ($50,000 and $250,000, respectively). Accordingly, Corporation N must keep a list with respect to transaction O and transaction P. The list must contain information about Taxpayer P (see paragraph (e)(2)(i) of this section). Because transactions O and P are based on the same or similar tax strategy, transactions O and P are substantially similar transactions, and Corporation N must keep one list with respect to both transactions. The list must contain information about Taxpayer O and Taxpayer P (see (e)(2)(i) of this section).

(iii) Corporation M's tax statement to Corporation N constitutes a potentially abusive tax shelter under paragraph (b)(2)(C) of this section. Corporation M transferred information to Corporation N regarding the potential tax consequences of a type of transaction that, if entered into and if the relevant thresholds are met, would be a reportable transaction described in § 1.6011–4(b)(5). In addition, Corporation M knew that Corporation N would transfer that information to another person. Corporation M is a material advisor with respect to that potentially abusive tax shelter. Corporation M made a tax statement to Corporation N and Corporation M received $300,000 in connection with the potentially abusive tax shelter, which exceeds the minimum fee for that transaction ($250,000). Accordingly, Corporation M must keep a list with respect to that potentially abusive tax shelter. The list must contain information with respect to Corporation N (see paragraph (e)(2)(i) of this section). The list must also contain information about Taxpayer O and Taxpayer P because Corporation M knows the identity of Taxpayer O and Taxpayer P, and Corporation M knows that Taxpayer O and Taxpayer P entered into transaction O and transaction P, respectively (see paragraph (e)(2)(ii) of this section).

(3) *Contents*—(i) *In general.* Each list must contain the following information—

(A) The name of each transaction that is a potentially abusive tax shelter and the registration number, if any, obtained under section 6111;

(B) The TIN (as defined in section 7701(a)(41)), if any, of each transaction;

(C) The name, address, and TIN of each person required to be on the list;

(D) If applicable, the number of units (*i.e.*, percentage of profits, number of shares, etc.) acquired by each person required to be included on the list, if known by the material advisor;

(E) The date on which each person required to be included on the list entered into each transaction, if known by the material advisor;

(F) The amount invested in each transaction by each person required to be included on the list, if known by the material advisor;

(G) A detailed description of each transaction that describes both the tax structure and its expected tax treatment;

(H) A summary or schedule of the tax treatment that each person is intended or expected to derive from participation in each transaction, if known by the material advisor;

(I) Copies of any additional written materials, including tax analyses or opinions, relating to each transaction that are material to an understanding of the purported tax treatment or tax structure of the transaction that have been shown or provided to any person who acquired or may acquire an interest in the transactions, or to their representatives, tax advisors, or agents, by the material advisor or any related party or agent of the material advisor. However, a material advisor is not required to retain earlier drafts of a document provided the material advisor retains a copy of the final document (or, if there is no final document, the most recent draft of the document) and the final document (or most recent draft) contains all the information in the earlier drafts of such document that is material to an understanding of the purported tax treatment or the tax structure of the transaction; and

(J) For each person required to be on the list, if the interest in the transaction was not acquired from the material advisor maintaining the list, the name of the person from whom the interest was acquired.

(ii) [Reserved]

(f) *Retention of lists.* Each material advisor must maintain the list described in paragraph (e) of this section for seven years following the earlier of the date on which the material advisor last made a tax statement relating to the transaction, or the date the transaction was entered into, if known. If the material advisor required to prepare, maintain, and furnish the list is a corporation, partnership, or other entity (entity) that has dissolved or liquidated before completion of the seven-year period, the person responsible under state law for winding up the affairs of the entity must prepare, maintain and furnish the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. If state law does not specify any person as responsible for winding up the affairs, then each of the directors of the corporation, the general partners of the partnership, or the trustees, owners, or members of the entity are responsible for preparing, maintaining and furnishing the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. The responsible person must also provide notice to OTSA of such dissolution or liquidation within 60 days after the dissolution or liquidation. The list and the notice provided to OTSA may be sent to: IRS LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW., Washington, DC 20224, or to such other address as provided by the Commissioner.

(g) *Furnishing of lists*—(1) *In general.* Each material advisor and person responsible for maintaining a list of persons must, upon written request by the IRS, furnish the list to the IRS within 20 days from the day on which the request is provided. The request is not required to be in the form of an administrative summons. The list may be furnished to the IRS on paper, card file, magnetic media, or in any other form, provided the method of furnishing the list enables the IRS to determine without undue delay or difficulty the information required in paragraph (e)(3) of this section.

(2) *Claims of privilege*—(i) In any case in which an attorney or federally authorized tax practitioner within the meaning of section 7525 is required to maintain a list with respect to a transaction that is a potentially abusive tax shelter, and that person has a reasonable belief that information specified in paragraph (e)(3)(i)(I) required to be furnished under this paragraph (g) is protected by the attorney-client privilege or by the confidentiality privilege of section 7525(a), the attorney or federally authorized tax practitioner must still maintain the list of persons pursuant to the requirements of this section. When the list is requested by the IRS, as provided in paragraph (g)(1) of this section, the material advisor may assert a privilege claim as to the information specified in paragraph (e)(3)(i)(I) subject to the requirements of this paragraph (g)(2).

(ii) The claimed privilege must be supported by a statement that is signed by the attorney or federally authorized tax practitioner under penalties of perjury, must identify and describe (as set forth in this paragraph (g)(2)) the nature of each document that is not produced which will allow the IRS to determine the applicability of the privilege or protection claimed, without revealing the privileged information itself, and must include the following representations with respect to each document for which the privilege is claimed—

(A) Specifically represent that the information was a confidential practitioner-client communication and, in the case of information which a federally authorized tax practitioner claims is privileged under section 7525, that the omitted information was not part of tax advice that constituted the promotion of the direct or indirect participation of a corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)); and

(B) Specifically represent that to the best of such person's knowledge and belief, that the person and all others in possession of the omitted information did not disclose the omitted information to any person whose receipt of such information would result in a waiver of the privilege.

(iii) Identification and description of a document includes, but is not limited to—

(A) The date appearing on such document or, if it has no date, the date or approximate date that such document was created;

(B) The general nature, description and purpose of such document and the identity of the person who signed such document, and, if it was not signed, the identity of each person who prepared it; and

(C) The identity of each person to whom such document was addressed and the identity of each person, other than such addressee, to whom such document, or a copy thereof, was given or sent.

(h) *Designation agreements.* If more than one material advisor is required to maintain a list of persons, in accordance with paragraph (e) of this section, for a potentially abusive tax shelter, the material advisors may designate by written agreement a single material advisor to maintain the list or a portion of the list. The designation of one material advisor to maintain the list does not relieve the other material advisors from their obligation to furnish the list to the IRS in accordance with paragraph (g)(1) of this section, if the designated material advisor fails to furnish the list to the IRS in a timely manner. A material advisor is not relieved from the requirement of this section because a material advisor is unable to obtain the list from any designated material advisor, any designated material advisor did not maintain a list, or the list maintained by any designated material advisor is not complete.

(i) *Procedure for obtaining rulings.* A person may submit a request to the IRS for a ruling as to whether a specific transaction will be considered a potentially abusive tax shelter for purposes of this section and whether that person is a material advisor with respect to that transaction. If the request fully discloses all relevant facts relating to the transaction (including all facts relevant to the person's relationship to such transaction), then the requirement to maintain a list shall be suspended for that person during the period that the ruling request is pending and for 60 days thereafter; however, if it is ultimately determined that the transaction is a potentially abusive tax shelter and that the person is a material advisor with respect to that transaction, the pendency of such a ruling request shall not affect the requirement to maintain the list, nor shall it affect the

persons required to be included on the list (including persons who acquired interests in the potentially abusive tax shelter prior to and during the pendency of the ruling request), or the other information required to be included as part of the list.

(j) *Effective date.* This section applies to any transaction that is a potentially abusive tax shelter entered into, or any interest acquired therein, on or after February 28, 2003. However, this section shall apply to any transaction that was entered into, or in which an interest was acquired, after February 28, 2000, if the transaction becomes a potentially abusive tax shelter on or after February 28, 2003 because it is a listed transaction as defined in § 1.6011–4 of this chapter, and is subject to disclosure under § 1.6011–4 of this chapter. This section also shall apply to any transaction that was entered into, or in which an interest was acquired, after January 1, 2003, if the transaction becomes a listed transaction as defined in § 1.6011–4 of this chapter and is subject to disclosure under §§ 20.6011–4, 25.6011–4, 31.6011–4, 53.6011–4, 54.6011–4 or 56.6011–4 of this chapter. The rules in § 301.6112–1T as contained in 2002–45 I.R.B. 826 (see § 601.601(d)(2) of this chapter) apply only to a transaction entered into, or an interest acquired therein, on or after January 1, 2003, and before February 28, 2003, if the transaction is a listed transaction as defined in § 1.6011–4 of this chapter or a section 6111 tax shelter. Otherwise, the rules that apply with respect to any transaction that is a potentially abusive tax shelter entered into, or any interest acquired therein, before January 1, 2003, are contained in § 301.6112–1T in effect prior to January 1, 2003 (see 26 CFR part 301 revised as of April 1, 2002). Additionally, the IRS will not ask to inspect any list for a potentially abusive tax shelter that is entered into, or any interest acquired therein, on or after January 1, 2003, until June 1, 2003, unless the potentially abusive tax shelter is a listed transaction as defined in § 1.6011–4 of this chapter or a transaction that is a section 6111 tax shelter.

§ 301.6112–1T [Removed]

Par. 26. Section 301.6112–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 27. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 28. In § 602.101, paragraph (b) is amended as follows:

1. The following entries to the table are removed:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.6011–4T	1545–1685
. . . . .	
301.6111–2T	1545–0865 1545–1687
301.6112–1T	1545–1686
. . . . .	

2. The following entries are added in numerical order to the table:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.6011–4	1545–1685
. . . . .	
301.6111–2	1545–0865 1545–1687
301.6112–1	1545–1686
. . . . .	

Approved: February 26, 2003.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Pamela F. Olsen,

Assistant Secretary of the Treasury.

[FR Doc. 03–4958 Filed 2–28–03; 10:47 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–088–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: We are correcting our decision on an amendment submitted by the State of West Virginia as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On May 1, 2002, we published our decision on the provisions submitted by West Virginia. We are correcting our decisions on four of the State's responses that were intended to satisfy required program amendments. The decisions being corrected concern the use of an unjust hardship criterion in support of granting temporary relief of an order, economic feasibility related to appeals to the Environmental Quality Board concerning the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) and, water supply replacement waivers, and coal removal incidental to development. This correction is intended to comply with the decision of the United States District Court for the Southern District of West Virginia.

EFFECTIVE DATE: March 4, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, Internet address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

Background

By letter dated November 30, 2000 (Administrative Record Number WV–1189), the West Virginia Department of Environmental Protection (WVDEP) sent us an amendment to its program, under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment included numerous attachments and was submitted in response to several required program amendments codified in the Federal regulations at 30 CFR 948.16.

We announced receipt of the proposed amendment in the January 3, 2001, **Federal Register** (66 FR 335–340), and provided for public comment until February 28, 2001.

By letter dated February 26, 2002, WVDEP sent us a status report regarding the required program amendments codified at 30 CFR 948.16 (Administrative Record Number WV–1276). The report included 14 attachments, and outlined actions taken in an attempt to satisfy the required program amendments. The actions include proposed policies, rules and laws, form changes, and referrals to legal staff. In addition, WVDEP stated that law and rule changes that would satisfy some of the required amendments would be proposed during the 2002 regular legislative session, and that none of the proposed revisions would be implemented without OSM approval. In the end, the State failed to pass legislation on the required program amendments codified at 30 CFR 948.16(nnn) concerning the use of an unjust hardship criterion in support of granting temporary relief of an order, (ooo) concerning economic feasibility related to appeals to the Environmental Quality Board concerning the WVSCMRA, and (oooo) concerning coal removal incidental to development.

By letter dated March 8, 2002, WVDEP sent us revisions to two of the attachments it had sent us in its February 26 letter (Administrative Record Number WV–1280). The March 8, 2002, letter also included one new attachment intended to address the required amendment at 30 CFR 948.16(sss) relating to water supply replacement waivers.

In the March 25, 2002, **Federal Register** (67 FR 13577–13585), we reopened the comment period to provide the public an opportunity to review and comment on the topics discussed in the January 15, 2002, meeting; WVDEP's February 26 and March 8, 2002, submittals; and related information that we provided to WVDEP (Administrative Record Number WV–1285). The comment period closed on April 9, 2002.

In our May 1, 2002, decision (67 FR 21904) on these amendments, we removed all of the required amendments, including the required amendments at 30 CFR 948.16(nnn), (ooo), and (oooo) where the State failed to take legislative action, and the required amendment at 30 CFR 948.16(sss) where the State committed to implementing its program consistent with the Federal law and regulations despite the existing State language being inconsistent with Federal provisions.

Need for the Correction

On January 9, 2003, the United States District Court for the Southern District of West Virginia in *West Virginia Highlands Conservancy* v. *Norton*, Civil Action No. 2:00–1062 (S.D. W.Va. Jan.9, 2003), vacated OSM's decisions to remove the required program amendments codified in the Federal regulations at 30 CFR 948.16(nnn), (ooo), (sss), and (oooo).

To implement this decision, we are amending the Federal regulations at 30 CFR 948.16 to reinstate the required program amendments at (nnn), (ooo), (sss), and (oooo) that we deleted in the May 1, 2002, **Federal Register**. We are requiring that within 60 days of publication of this notice, West Virginia must submit either proposed amendments or descriptions of amendments together with timetables for enactment that will satisfy these required amendments.

Administrative Procedure Act

The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because, consistent with the Court's opinion, this rule merely reinstates required program amendments that the Court remanded to OSM for reconsideration. Therefore, opportunity for prior comment is unnecessary and we are issuing this regulation as a final rule.

In addition, under 5 U.S.C. 553(d)(3), we find good cause for dispensing with the 30-day delay in the effective date of this final rule because we are merely restoring required program amendments that the court remanded to OSM for reconsideration.

Dated: January 28, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.16 is amended by adding paragraphs (nnn), (ooo), (sss), and (oooo) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(nnn) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise § 22B–1–7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3, of the West Virginia Code.

(ooo) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise § 22B–1–7(h) by removing reference to Article 3, Chapter 22.

* * * * *

(sss) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR § 38–2–14.5(h) and § 22–3–24(b) to clarify that the replacement of water supply can only be waived under the conditions set forth in the definition of "Replacement of water supply," paragraph (b), at 30 CFR 701:5.

* * * * *

(oooo) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR § 38–2–23.

* * * * *

[FR Doc. 03–4969 Filed 3–3–03; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[WT Docket No. 01–90; ET Docket No. 98–95; RM–9096; FCC 02–302]

Regarding Dedicated Short-Range Communication Services in the 5.850–5.925 GHz Band (5.9 GHz Band)

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: In this document the Federal Communications Commission incorporates into the licensing and service rules for the 5.9 GHz band, issues raised in two petitions for reconsideration filed in response to the Allocation Report and Order because the issues raised in them address issues concerns the licensing and services rules. As a consequence, the Commission dismisses the two petitions as moot and incorporates them into the

docket to the licensing and service rules.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy M. Zaczek at (202) 418–7590, Gerardo Mejia at (202) 418–2895 or via e-mail at *nzaczek@fcc.gov* or *gmejia @fcc.gov*, or via TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Order*, FCC 02–302, adopted on November 7, 2002, and released on November 15, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. Dismissal of Petitions for Reconsideration. Further, the FCC also seek comment on issues raised by two Petitions for Reconsideration or Clarification of the Allocation Report and Order. PanAmSat sought reconsideration of the FCC's decision that prior coordination between DSRC operations applications and Fixed Satellite Service (FSS) uplinks is unnecessary. Mark IV Industries sought reconsideration or clarification of the power levels and emission mask requirements established in the Allocation Report and Order. The FCC dismisses these two petitions for reconsideration as moot because the FCC is seeking comment on the issues raised through an NPRM which published on January 15, 2003 (68 FR 1999), and, with the benefit of a fuller record, will address those issues in this proceeding, *i.e.*, WT Docket 01–90.

I. Ordering Clause

2. The Petitions for Reconsideration or Clarification of the Allocation Report and Order, ET Docket No. 98–95, filed by PanAmSat Corporation and Mark IV Industries Limited, I.V.H.S. Division are dismissed as moot.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–4870 Filed 3–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 022403C]

RIN 0648–AQ70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Charter Vessel and Headboat Permit Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a corrected amendment; request for comments.

SUMMARY: NMFS has submitted an amendment to correct Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico (Amendment 14) and South Atlantic and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20) for review, approval, and implementation by the agency.

Specifically, this amendment will eliminate one eligibility criterion in the final rule implementing Amendment 14 and Amendment 20, which states that the charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). The corrected amendment also reopens the application process for obtaining Gulf charter vessel/headboat moratorium permits and extends the applicable deadlines; extends the expiration dates of valid or renewable open access permits for these fisheries; and extends the expiration date of the moratorium to account for the delay in implementation.

DATES: Written comments must be received on or before May 5, 2003.

ADDRESSES: Comments must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the corrected amendment, which includes an environmental assessment (EA), a regulatory impact review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5305; fax: 727–570–5583.

FOR FURTHER INFORMATION CONTACT: Phil Steele, 727–570–5305; fax 727–570–5583; e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or plan amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or plan amendment, immediately publish a document in the **Federal Register** stating that the plan or plan amendment is available for public review and comment.

NMFS promulgated the charter moratorium regulations (67 FR 43558, June 28, 2002) to implement Amendment 14 and Amendment 20. However, after reviewing the administrative record, NMFS determined that the amendments contained an error that did not correctly reflect the actions approved by the Gulf of Mexico Fishery Management Council (Council). Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations. In order to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium, due to an error in the amendments, and to fully comply with Magnuson-Stevens Act requirements, NMFS prepared this corrected amendment to address this error and, as such, to reflect the actions approved by the Council. Specifically, this corrected amendment will eliminate one eligibility criterion in the final rule which states that the charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). The corrected amendment also reopens the application process for obtaining Gulf charter vessel/headboat moratorium permits and extends the applicable deadlines; extends the expiration dates of valid or renewable open access permits for these fisheries; and extends the expiration date of the moratorium to account for the delay in implementation.

In order to comply with the procedural requirements of the Magnuson-Stevens Act as stated above, the entire amendment will be submitted for review by the Secretary of Commerce, even though only one specific section of the document will be substantively altered, and if approved, new regulations will be promulgated accordingly from the properly processed amendment. Portions of the document, specifically the environmental and economic analysis required pursuant to other laws, remain in the document to provide clarity for reviewers and facilitate meaningful public comment. These analyses were previously disseminated and subject to public comment in the original amendment package. The majority of the analyses remain valid and unaffected, given that most of the regulatory measures analyzed will be unaltered by the new amendment. As stated above, the changes to the original permit moratorium relate to a single eligibility criterion and the timing of implementation of the moratorium. Where substantive changes were made to the amendment, new analyses describing these effects were conducted for the RIR and IRFA. This information is provided in the RIR and a IRFA that is included as an attachment to the amendment.

In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to implement the corrected amendment to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by May 5, 2003, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the FMP. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the FMP or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 26, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–5048 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021120279–3047–02 ; I.D. 102302B]

RIN 0648–AN12

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP, this final rule establishes an annual coastwide quota for black sea bass and allows vessels to fish under a Southeast Region Snapper/Grouper permit and to retain their Northeast Region Black Sea Bass Permit during a Federal fishery closure. Finally, this final rule requires that vessels issued a Federal moratorium permit for summer flounder, scup, and black sea bass be subject to the presumption that any fish of these species on board were harvested from the exclusive economic zone (EEZ).

DATES: The measures contained in the final rule are effective on March 31, 2003.

ADDRESSES: Copies of the FMP, Amendment 13, its Regulatory Impact Review (RIR) including the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 200 S. New Street, Dover, DE 19904–6790. The FEIS/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

SUPPLEMENTARY INFORMATION: This final rule implements measures contained in Amendment 13, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on January 29, 2003. The purpose of Amendment 13 is to rectify problems in the black sea bass commercial fishery (specifically regarding the temporal and geographic distribution of landings and permit relinquishment requirements for certain vessels) and to consider management measures to minimize the adverse effects of fishing on essential fish habitat.

Details concerning the justification for and development of Amendment 13 and the implementing regulations were provided in the preamble to the proposed rule (67 FR 72131, December 4, 2002) and are not repeated here.

Approved Measures

To implement Amendment 13, this final rule: (1) establishes an annual (calendar year) coastwide quota for the commercial black sea bass fishery to replace the current quarterly quota allocation system; and (2) allows vessels to retain their Northeast Region Black Sea Bass Permit during a Federal fishery closure; previously, vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit were required to relinquish their Northeast Black Sea Bass Permits for 6 months if they wanted to continue to fish for black sea bass south of Cape Hatteras under their Snapper/Grouper Permits during a Federal black sea bass fishery closure.

In addition, this final rule revises the presumptions in 50 CFR 648.14(x) for summer flounder, scup, and black sea bass. NMFS determined that § 648.14(x) erroneously omitted the presumption that summer flounder, scup, and black sea bass on board were caught in the EEZ for vessels issued moratorium permits under the three fisheries covered by the FMP. Therefore, this final rule adds the presumption that all summer flounder, scup, and black sea bass possessed on board a vessel issued a Federal permit under 50 CFR 648.4 are deemed to have been harvested from the EEZ within the management unit for the particular species. This presumption, as it pertains to black sea bass, does not apply to vessels issued a Southeast

Region Snapper/Grouper permit and a Northeast Black Sea Bass permit that are fishing for black sea bass south of Cape Hatteras during a closure of the black sea bass fishery for the area north of Cape Hatteras.

Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 13, which this final rule implements, is necessary for the conservation and management of the black sea bass fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final environmental impact statement was prepared for Amendment 13; a notice of availability was published on October 30, 2002 (67 FR 66103). NMFS determined, upon review of the Amendment/FEIS and public comments, that approval and implementation of Amendment 13 is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the resource and its environment.

An FRFA was completed for this action that contains the items specified in 5 U.S.C. 604(a). The FRFA supplements the IRFA and contains a summary of the analyses completed in support of this action. A copy of the analyses is available from the Council (see **ADDRESSES**). A description of the action, a discussion of why it is being considered, and its legal basis are also contained in the preamble to the proposed rule and are not repeated here. The summary of the analyses of the potential impacts of the management alternatives considered in the FMP are provided in the Classification section of the proposed rule and are not repeated here. The items specified in 5 U.S.C. 604(a) are summarized as follows:

Public Comments

No comments were received on the IRFA, or on the measures contained in the proposed rule. Comments received in response to the Notice of Availability for the amendment pertained to issues other than economic impacts of the action.

Number of Small Entities

The IRFA identified 727 individual vessels that were active in the black sea bass fishery in 2000, all of which appear to be small entities.

Permits and Reporting Requirements

No additional reporting requirements are included in this final rule.

Minimizing Significant Economic Impacts on Small Entities

The Council analyzed several quota program alternatives and selected the alternative (Federal coastwide quota) that provides the most flexibility to the states in managing their fisheries under the state-by-state quota program approved by the Commission. This alternative, relative to the others considered, is the one most beneficial for fishermen as it does not affect adversely the distribution of fishing opportunities from state to state, reduces uncertainty regarding availability of quota, and allows for more traditional fishing and trip planning. Regulations implemented by the states under the Commission's Fishery Management Plan for black sea bass, which include state-by-state quota allocations, would overlap, but would not duplicate or conflict with the Federal coastwide quota program proposed in this action. Any unavoidable adverse effects of the quota program should be minimized due to the compatibility of the Federal coastwide annual quota program and the Commission's FMP.

Although NMFS was unable to conduct analyses on the disproportionality or profitability of the regulations as part of the overall economic analysis due to a lack of quantifiable data, NMFS did project changes to gross revenues for vessels. According to both the Northeast and Southeast Region databases, allowing vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit to keep their Northeast Region Black Sea Bass Permit during a fishery closure north of Cape Hatteras if they want to continue fishing for black sea bass south of Cape Hatteras under their Southeast Region Snapper/Grouper Permit would affect five vessels. Because the action would allow vessels to continue fishing south of Cape Hatteras, it would have no negative impacts on the five affected vessels, or any other vessels that in the future may be affected by the proposed elimination of the restriction. In comparison, continuation of the status quo, or requiring vessels to relinquish their Northeast Region Black Sea Bass Permit during a closure, could contribute to revenue losses for vessels that would lose fishing time north of Cape Hatteras when the fishery re-opened. However, as noted, this would affect only 5 of the 727 vessels considered in the IRFA.

For a description of the alternatives considered but rejected, see the IRFA discussion in the Classification section of the proposed rule (67 FR 72131).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of Federal permits issued for the black sea bass fishery. In addition, copies of this final rule and guide are available from the Regional Administrator (see **ADDRESSES**) and on the Internet at *http://www.nero.noaa.gov*.

This final rule contains no collection-of-information requirements.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: February 26, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (b) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements

under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species except tilefish managed under this part must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium, or a spiny dogfish, or bluefish, commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coast-wide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the **Federal Register** stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters.

* * * * *

3. In § 648.14, paragraphs (a)(96), (u)(3), (u)(11), (x)(3), (x)(6), and (x)(7) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(96) Purchase or otherwise receive for commercial purposes black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3′ N. lat., after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

(u) * * *

(3) Land black sea bass for sale in any state, or part thereof, north of 35°15.3′ N. lat. after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

(11) Possess black sea bass after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Grouper Permit and fishes for and possess black sea bass south of 35°15.3′ N. lat.

* * * * *

(x) * * *

(3) *Summer flounder.* All summer flounder retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

* * * * *

(6) *Scup.* All scup retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(7) *Black sea bass.* All black sea bass retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, unless the vessel also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3′ N. lat.

* * * * *

4. In § 648.140, paragraphs (b)(1), (b)(2), and (d) are revised to read as follows:

§ 648.140 Catch quotas and other restrictions.

* * * * *

(b) * * *

(1) A commercial quota allocated annually, set from a range of zero to the maximum allowed to achieve the specified target exploitation rate, set after the deduction for research quota.

(2) A commercial possession limit for all moratorium vessels may be set from a range of zero to the maximum allowed to assure that the annual coastwide quota is not exceeded, with the provision that these quantities be the maximum allowed to be landed within a 24–hour period (calendar day).

* * * * *

(d) *Distribution of annual quota.* (1) Beginning on March 31, 2003, a commercial annual coastwide quota will be allocated to the commercial black sea bass fishery.

(2) All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3′ N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters will be counted against the quota by the state in which it is landed, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3′ N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the **Federal Register** advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3′ N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission.

(3) Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and

landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

* * * * *

[FR Doc. 03–5043 Filed 2–27–03; 3:38 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 42
Tuesday, March 4, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections to detect cracking of the front spar web of the wing, and corrective action, if necessary. This action would add one airplane to the applicability, change certain compliance times, add certain new requirements, and provide an optional modification. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the front spar web, which could result in fuel leaking onto an engine and a consequent fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–228–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–228–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 14, 2000, the FAA issued AD 2000–25–12, amendment 39–12047 (65 FR 81331, December 26, 2000), applicable to certain Boeing Model 747 series airplanes, to require inspections to detect cracking of the front spar web of the wing, and corrective action, if necessary. That action was prompted by a report indicating that an operator found a 24-inch-long crack in the front spar web of the right wing. The requirements of that AD are intended to detect and correct fatigue cracking of the front spar web, which could result in fuel leaking onto an engine and a consequent fire.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–25–12, an operator reported finding a crack in the front spar web during accomplishment of the modification specified in paragraph (b) of that AD on a Model 747 series airplane. The airplane had accumulated approximately 19,500 total flight cycles and 82,000 total flight hours. The crack was found outboard of the new web section at approximately front spar station inboard (FSSI) 694, common to the splice plate and upper chord. Cracking of the web in this area can result in fuel leakage into the struts, which could result in excess fuel drainage onto an engine and a consequent fire.

Additionally, it has been determined that the optional web inspections specified in paragraph (a) of the existing AD do not provide the crack detection necessary to support the compliance time for the repeat inspection intervals. Therefore, the optional web inspections have been removed from the requirements of this AD.

Related AD

On May 3, 1999, the FAA issued AD 99–10–09, amendment 39–11162 (64 FR 25194, May 11, 1999), applicable to certain Boeing Model 747–100, –200, and 747–SP series airplanes and military type E–4B airplanes. That AD requires repetitive inspections to detect cracking of the wing front spar web, and repair of cracked structure. That AD provides for optional terminating action (modification) for the repetitive inspection requirements. This proposed AD would require post-modification inspections of that modification, if accomplished.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2311, Revision 1, including Appendices A and B, dated June 14, 2001; and Boeing Service Bulletin 747–57A2311, Revision 2, dated February 21, 2002; both including Evaluation Form. The service bulletins describe procedures for various repetitive inspections (detailed, ultrasonic, high frequency eddy current (HFEC)) of the front spar web between the fixed leading edge seal ribs at FSSI 628 through 711 inclusive, to find cracking of the front spar web of the wing, and corrective action, if necessary. The inspections include:

- For Group 1 through Group 8 airplanes on which the optional modification specified in AD 99–10–09, amendment 39–11162, has not been done, the affected area is divided into 2 zones. Part 1 of the service bulletin describes procedures for inspecting to find cracking of the front spar web between the seal rib at FSSI 628 and the rib post at FSSI 684 (Zone A); and between FSSI 684 and FSSI 711 inclusive (Zone B).
- For Group 1 through Group 8 airplanes on which the optional modification specified in AD 99–10–09, amendment 39–11162, has been done, the affected area is divided into 3 zones. Part 1 of the service bulletin describes procedures for inspecting to find cracking of the front spar web between the seal rib at FSSI 628 and the rib post at FSSI 668 (Zone A); between FSSI 693 and FSSI 711 inclusive (Zone B); and between FSSI 668 and FSSI 693 inclusive (Zone C).
- For Group 9 through Group 31 airplanes, the affected area is divided into two zones. Part 1 of the service bulletin describes procedures for inspecting to find cracking of the front spar web between the seal rib at FSSI 628 and the rib post at FSSI 684 (Zone A); and between FSSI 684 and FSSI 711 inclusive (Zone B).
- For Group 1 through Group 8 airplanes, the inspections in this service bulletin do not replace the inspections required by AD 99–10–09.

The service bulletins also describe procedures for optional modification of the front spar web. The procedures include removing the existing fasteners and doing an open hole, rotating probe HFEC inspection of the holes for web cracks. If no cracks are found, the service bulletin describes procedures for oversizing the holes, and installing tension type fasteners. The service bulletin also describes procedures for an operational test after doing the modification. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

In addition, the service bulletin specifies that repair instructions for cracking should be obtained from the manufacturer.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–25–12, to continue to require inspections to detect cracking of the front spar web of the wing, and corrective action, if necessary. This new action would add one airplane to the applicability, change certain compliance times, add certain new requirements, and provide an optional modification. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between Service Information and This Proposed AD

The service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, but this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 479 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 97 airplanes of U.S. registry would be affected by this proposed AD.

The external inspections that are required by AD 2000–25–12 take approximately 48 work hours per airplane (not including access and close-up), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the external inspections is estimated to be $2,880 per airplane, per inspection cycle.

The new inspections that are proposed in this AD action would take approximately 74 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspections is estimated to be $4,440 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the optional modification that would be provided by this AD action, it would take approximately 40 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be between $8,606 and $28,036 per airplane. Based on these figures, the cost impact of the optional modification would be between $11,006 and $30,436 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12047 (65 FR 81331, December 26, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–228–AD. Supersedes AD 2000–25–12, Amendment 39–12047.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747–57A2311, Revision 2, dated February 21, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the front spar web of the wing, which could result in fuel leaking onto an engine and a consequent fire, accomplish the following:

Restatement of Certain Requirements of AD 2000–25–12

Repetitive Inspections

(a) Excluding Group 31 airplanes, as specified in Boeing Service Bulletin 747–57A2311, Revision 2, dated February 21, 2002: At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, except as provided by paragraph (b) of this AD, perform the Part 1 external web inspection—including detailed, ultrasonic, and high frequency eddy current (HFEC) inspections—to detect cracking of the front spar web of the wing, in accordance with Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles until accomplishment of the inspections required by paragraph (e) of this AD. Accomplishment of an optional inspection of the front spar web per AD 2000–25–12, amendment 39–12047, is considered acceptable for compliance with the applicable inspection requirement in this paragraph.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) Prior to the accumulation of 13,000 total flight cycles or 30,000 total flight hours, whichever occurs first.

(2) Within 18 months after January 30, 2001 (the effective date of this AD 2000–25–12, amendment 39–12047).

Exception for Modified Airplanes

(b) Except as provided by paragraph (g) of this AD, for airplanes on which the front spar web between front spar station inboard (FSSI) 668 and FSSI 692 has been replaced before the effective date of this AD with a shot-peened front spar web, in accordance with AD 99–10–09, amendment 39–11162: Within 13,000 flight cycles or 30,000 flight hours after the replacement, whichever occurs first, inspect the new section of the front spar web that overlaps with the inspection area specified in Boeing Alert Service Bulletin 747–57A2311 (the area between FSSI 668 and FSSI 684), dated January 27, 2000. Repeat the inspections thereafter, in accordance with paragraph (a) of this AD.

Repair

(c) If any cracking is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

New Requirements of This AD

Compliance Times

(d) Where the compliance time inspection threshold is based on "after the date of this service bulletin," in Boeing Alert Service Bulletin 747–57A2311, Revision 1, including Appendices A and B, dated June 14, 2001; or Boeing Service Bulletin 747–57A2311, Revision 2, dated February 21, 2002; both excluding Evaluation Form: This AD requires compliance within the inspection interval specified in the service bulletin "after the effective date of this AD."

Repetitive Inspections

(e) Except as provided by paragraph (g) of this AD: Do detailed, ultrasonic, and high frequency eddy current (HFEC) inspections, as applicable, to find cracking of the front spar web of the wing, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2311, Revision 1, including Appendices A and B, dated June 14, 2001; or Boeing Service Bulletin 747–57A2311, Revision 2, dated February 21, 2002; both excluding Evaluation Form. Do the inspections at the applicable initial inspection threshold times specified in Figure 1, Tables 1 through 8 inclusive, of the service bulletin. Repeat the applicable inspection thereafter at the applicable repeat inspection interval specified in Figure 1, Tables 1 through 8 inclusive, of the service bulletin. Accomplishment of the inspections required by this paragraph terminates the repetitive inspections required by paragraph (a) of this AD.

Optional Modification

(f) Accomplishment of the optional modification of the front spar web of the wing (includes removing the existing fasteners and doing an open hole, rotating probe HFEC inspection of the holes for web cracks, and if no cracks are found, oversizing the holes, and installing tension type fasteners), in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2311, Revision 1, including Appendices A and B, dated June 14, 2001; or Boeing Service Bulletin, Revision 2, dated February 21, 2002; both excluding Evaluation Form; terminates the repetitive inspections required by paragraph (e) of this AD.

Post-Modification Inspections

(g) For airplanes on which the actions specified in paragraph (b) or (f) of this AD have been done before the effective date of this AD: In lieu of the inspections required by paragraph (b) or (e) of this AD, as applicable, do the applicable post-modification inspection specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2311, Revision 1, including Appendices A and B, dated June 14, 2001; or Boeing Service Bulletin 747–57A2311, Revision 2, dated February 21, 2002; both excluding Evaluation Form; at the post-modification inspection threshold times specified in Figure 1, Tables 1 through 8 inclusive, of the service bulletin. Repeat the applicable inspection thereafter at the applicable post-modification repeat inspection interval specified in Figure 1, Tables 1 through 8 inclusive, of the service bulletin.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–25–12, amendment 39–12047, are approved as alternative methods of compliance with paragraph (c) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4851 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–219–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that currently requires repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. This action would mandate the previously optional overhaul or replacement of the carriage spindles, which would end the repetitive inspections required by the existing AD. The actions specified by the proposed AD are intended to prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–219–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–219–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 22, 2002, the FAA issued AD 2002–22–05, amendment 39–12929 (67 FR 66316, October 31, 2002), applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, to require repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. That action also provides for an optional action of overhaul or replacement of the carriage spindles, which would extend the repetitive inspection interval. The requirements of that AD are intended to prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane.

Actions Since Issuance of Previous Rule

In the preamble to AD 2002–22–05, we specified that the actions required by that AD were considered "interim action" and that we were considering requiring the optional overhaul or replacement of the carriage spindles. We have now determined that it is necessary to require the overhaul or replacement of the carriage spindles, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–57A1218, Revision 3, dated July 25, 2002. (Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002, was referenced in the existing AD as the appropriate source of service information for accomplishment of the inspections to find discrepancies of each carriage spindle, and corrective action, if necessary.) Service Bulletin 737–57A1218 describes procedures for replacement or overhaul of each carriage spindle (two on each flap) of the left and right outboard mid-flaps. Such replacement or overhaul would end the repetitive inspections specified in Service Bulletin 737–57A1277. Accomplishment of the actions specified in Service Bulletin 737–57A1218 is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2002–22–05 to continue to require repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. This new action would mandate the previously optional overhaul or replacement of the carriage spindles, which would end the repetitive inspections required by the existing AD. The actions would be required to be accomplished in accordance with Service Bulletin 737–57A1218, Revision 3, except as discussed below.

Difference Between Service Information and Proposed AD

The service bulletin references Boeing 737 Overhaul Manual, chapter 57–53–35 (for Model 737–100, –200, and –200C series airplanes), and chapter 57–53–36 (for Model 737–300, –400, and –500 series airplanes), for the procedures for the overhaul specified in the proposed AD. Those chapters reference Boeing 737 Standard Overhaul Practices Manual (SOPM) chapter 20–42–09, titled, "Electro-deposited Nickel Plating," for the nickel plating procedures. The amount of nickel plating required to restore functional capability and part geometry have made certain processing steps critical within the plating process for the spindle region of the flap carriage. The processing steps are specified in paragraph (d) of this AD, and are necessary to prevent structural failures of the carriage spindle due to hydrogen embrittlement. These processing steps have been identified by the manufacturer as critical details of the plating process, and Boeing Alert Service Bulletin 737–57A1218, Revision 3, is being revised to reflect these requirements.

Cost Impact

There are approximately 3,132 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,384 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 2002–22–05 take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $830,400, or $600 per airplane.

It would take approximately 2 work hours per airplane to accomplish the new detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $166,080, or $120 per airplane, per inspection cycle.

Should an operator be required to accomplish the overhaul, it would take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the overhaul proposed by this AD is estimated to be $1,920 per airplane.

Should an operator be required to accomplish the replacement, it would take approximately 32 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $45,000 per carriage spindle. Based on these figures, the cost impact of the replacement proposed by this AD is estimated to be $46,920 per spindle, per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12929 (67 FR 66316, October 31, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–219–AD. Supersedes AD 2002–22–05, Amendment 39–12929.

Applicability: All Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 2002–22–05

Repetitive Inspections

(a) Do general visual and nondestructive test (NDT) inspections of each carriage spindle (two on each flap) of the left and right outboard mid-flaps to find cracks, fractures, or corrosion at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002. Repeat the inspections at least every 180 days until paragraph (b) or (c) of this AD is done, as applicable.

(1) Before the accumulation of 12,000 total flight cycles or 8 years in-service on new or overhauled carriage spindles, whichever is first.

(2) Within 90 days after November 15, 2002 (the effective date of AD 2002–22–05, amendment 39–12929).

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Action

(b) If any crack, fracture, or corrosion is found during any inspection required by paragraph (a) of this AD: Before further flight, do the applicable actions for that spindle as specified in paragraph (b)(1) or (b)(2) of this AD, per the Work Instructions of Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002. Then repeat the inspections required by paragraph (a) of this AD every 12,000 flight cycles or 8 years, whichever is first, on the overhauled or replaced spindle only.

(1) If any corrosion is found in the carriage spindle, overhaul the spindle.

(2) If any crack or fracture is found in the carriage spindle, replace with a new or overhauled carriage spindle.

Note 3: Although Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002, recommends that operators report inspection findings of any crack or fracture in the carriage spindle to the manufacturer, this AD does not contain such a reporting requirement.

New Requirements of This AD

Overhaul or Replacement

(c) Overhaul or replace, as applicable, all four carriage spindles (two on each flap) of the left and right outboard mid-flaps at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, per the Work Instructions of Boeing Alert Service Bulletin 737–57A1218, Revision 3, dated July 25, 2002. Then repeat the applicable overhaul or replacement every 12,000 flight cycles or 8 years, whichever is first. Accomplishment of this paragraph ends the repetitive inspections required by paragraphs (a) and (b) of this AD.

(1) For Model 737–100, –200, and –200C series airplanes, overhaul or replace at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle, or within 8 years since overhaul of the spindle or installation of a new spindle, whichever is first.

(ii) Within 1 year after the effective date of this AD.

(2) For Model 737–300, –400, and –500 series airplanes, overhaul or replace at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle, or within 8 years since overhaul of the spindle or installation of a new spindle, whichever is first.

(ii) Within 2 years after the effective date of this AD.

(d) During accomplishment of any overhaul required by paragraph (c) of this AD, use the procedures specified in paragraphs (d)(1) and (d)(2) of this AD during application of the nickel plating of the carriage spindle in addition to those specified in Boeing 737 Standard Overhaul Practices Manual, Chapter 20–42–09.

(1) Begin the hydrogen embrittlement relief bake within 10 hours after application of the plating, or less than 24 hours after the current was first applied to the part, whichever is first.

(2) The maximum thickness of the nickel plating that is deposited in any one plating/baking cycle must not exceed 0.020 inch.

(e) Overhauling or replacing the carriage spindles before the effective date of this AD, in accordance with Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002, is considered acceptable for compliance with the overhaul or replacement specified in paragraph (c) of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 26, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4990 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104385–01]

RIN 1545–AY75

Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Generation Assets Cease to be Public Utility Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance on the normalization requirements applicable to electric utilities that benefit (or have benefitted) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law. The proposed regulations permit a utility whose electricity generation assets cease to be public utility property to return to their ratepayers the normalization reserves for excess deferred income taxes (EDFIT) and accumulated deferred investment tax credits (ADITC)) with respect to those assets. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 2, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 25, 2003, at 10 a.m. must be received by June 2, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–104385–01), room 5226, Internal Revenue Service, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–104385–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically by submitting comments directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Selig, at (202) 622–3040; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Treena Garrett, at (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the normalization requirements of sections 168(f)(2) and 168(i)(9) of the Internal Revenue Code (Code), section 203(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2146), and former section 46(f) of the Code. The proposed regulations respond to changes in the electric power industry resulting from deregulation of electricity generation facilities.

Section 168 of the Code permits the use of accelerated depreciation methods. Section 168(f)(2) provides, however, that accelerated depreciation is permitted with respect to public utility property only if the taxpayer uses a normalization method of accounting for ratemaking purposes.

Under a normalization method of accounting, a utility calculates its ratemaking tax expense using depreciation that is no more accelerated than its ratemaking depreciation (typically straight-line). In the early years of an asset's life, this results in ratemaking tax expense that is greater than actual tax expense. The difference between the ratemaking tax expense and the actual tax expense is added to a reserve (the accumulated deferred federal income tax reserve, or ADFIT). The difference between ratemaking tax expense and actual tax expense is not permanent and reverses in the later years of the asset's life when the ratemaking depreciation method provides larger depreciation deductions and lower tax expense than the accelerated method used in computing actual tax expense.

This accounting treatment prevents the immediate flowthrough to utility ratepayers of the reduction in current taxes resulting from the use of accelerated depreciation. Instead, the reduction is treated as a deferred tax expense that is collected from current ratepayers through utility rates, and thus is available to utilities as cost-free investment capital. When the accelerated method provides lower depreciation deductions in later years, only the ratemaking tax expense is collected from ratepayers and the difference between actual tax expense and ratemaking tax expense is charged to ADFIT, depleting the utility's stock of cost-free capital.

Excess Deferred Income Tax

The Tax Reform Act of 1986 reduced the highest corporate tax rate from 46 percent to 34 percent. The excess deferred federal income tax (EDFIT) reserve is the balance of the deferred tax reserve immediately before the rate reduction over the balance that would have been held in the reserve if the 34 percent rate had been in effect for prior periods. The EDFIT reserves were amounts that utilities had collected from ratepayers to pay future taxes that, as a result of the reduction in corporate tax rates, would not have to be paid.

Section 203(e) of the Tax Reform Act of 1986 specifies the manner in which the EDFIT reserve can be flowed through to ratepayers under a normalization method of accounting. It provides that the EDFIT reserve may be reduced, with a corresponding reduction in the cost of service the utility collects from ratepayers, no more rapidly than the EDFIT reserve would be reduced under the average rate assumption method (ARAM). For taxpayers that did not have adequate data to apply the average rate assumption method, subsequent guidance permitted use of the reverse South Georgia method as an alternative. In general, both the average rate assumption method and the reverse South Georgia method spread the flowthrough of the EDFIT reserve over the remaining lives of the property that gave rise to the excess.

Accumulated Deferred Investment Tax Credits (ADITC)

Former section 46 of the Code similarly limited the ability of ratepayers to benefit from the investment tax credit determined under that section. Under former section 46(f)(2), an electing utility could flow through the investment credit ratably (that is; could reduce the cost of service collected from ratepayers by a ratable portion of the credit) over the investment's regulatory life. The balance of the credit remaining to be flowed through to ratepayers would be held in a reserve for accumulated deferred investment tax credits (ADITC). If the utility elected ratable flowthrough of the credit, the rate base (the amount on which the utility is permitted to collect a return from ratepayers) could not be reduced by reason of any portion of the credit.

Deregulation of Generation Assets

When the normalization provisions were added to the Internal Revenue Code, electric utilities were vertically integrated to include generation, transmission, and distribution functions. Accelerated depreciation, investment credits, and normalization enhanced the cash flow needed to acquire and construct new generation assets. Driven by changes in technology and economics, however, the electric industry has been undergoing substantial changes. Many utilities have been selling generation assets to new entities that are not subject to rate of return regulation and are becoming transmission and distribution (or distribution-only) companies. In many cases, the deregulation of generation assets is occurring before the EDFIT and ADITC reserves associated with those assets have been flowed through to ratepayers.

The Service has issued a number of private letter rulings holding that flowthrough of the EDFIT and ADITC reserves associated with an asset is not permitted after the asset's deregulation, whether by disposition or otherwise. These rulings were based on the principle that flowthrough is permitted only over the asset's regulatory life and when that life is terminated by deregulation no further flowthrough is permitted. After further consideration, the Service and Treasury have concluded that neither former section 46(f)(2) nor section 203(e) of the Tax Reform Act suggests that the EDFIT and ADITC reserves should not ultimately be flowed through to ratepayers. Instead, Congress provided a schedule for flowing through the reserves so that utilities would have the benefit of cost-free capital for a predictable period.

The proposed regulations provide that utilities whose generation assets cease to be public utility property, whether by disposition, deregulation, or otherwise, may continue to flow through EDFIT and ADITC reserves associated with those assets without violating the normalization rules. The rate of

flowthrough is limited, however, to the rate that would have been permitted if the assets had remained public utility property and the taxpayer had continued to use a normalization method of accounting (or ratable flowthrough of the credit) with respect to the assets. This result does not impose on utilities any burden unanticipated prior to deregulation and provides the flow-through originally anticipated by ratepayers, utility commissions, and utilities.

Comments Requested

In addition to comments relating to this notice of proposed rulemaking, comments are requested on the proper disposition of tax reserves (ADFIT, EDFIT, and ADITC) under the following set of facts. Regulated transmission assets from several public utilities (related or otherwise) are transferred to a utility partnership. This partnership is created solely as a transmission company. The transaction is subject to section 721 of the Code. The transmission assets are public utility property before the transfer and will be public utility property after the transfer. Is there a normalization violation if the deferred tax reserves are transferred to the new transmission company's regulated books and are considered in setting rates for the new transmission company? Alternatively, is there a normalization violation if the deferred tax reserves remain on the transferors' regulated books and are considered in setting their rates?

In addition, the proposed regulations do not address the treatment of deregulated assets under former section 46(f)(1) (relating to the use of the investment credit to reduce the rate base of electing taxpayers). Comments are also requested on this issue.

Proposed Effective Date

The regulations are proposed to apply to property that becomes deregulated generation property after March 4, 2003. In addition, a utility may elect to apply the proposed rules to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching a written statement to the utility's return for the tax year in which the proposed rules are published as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted (in the manner described in the **ADDRESSES** caption) timely to the IRS. All comments will be available for public inspection and copying. Treasury and IRS specifically request comments on the clarity of the proposed regulations and how they may be made clearer and easier to understand.

A public hearing has been scheduled for June 25, 2003, at 10 a.m. in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and submit an outline of the topics to be discussed and the time to be devoted to each topic by June 2, 2003.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.46–6 is amended by adding paragraph (k) to read as follows:

§ 1.46–6 Limitation in case of certain regulated companies.

* * * * *

(k) Treatment of accumulated deferred investment tax credits upon the deregulation of regulated generation assets—(1) *Scope.* This paragraph (k) provides rules for the application of former section 46(f)(2) of the Internal Revenue Code with respect to public utility property that is used in electric generation and ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated generation property).

(2) *Amount of reduction.* If public utility property of a taxpayer becomes deregulated generation property to which this section applies, the reduction in the taxpayer's cost of service permitted under former section 46(f)(2) is equal to the amount by which the cost of service could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued to reduce its cost of service by a ratable portion of the credit with respect to such property.

(3) *Cross reference. See* § 1.168(i)–(3) for rules relating to the treatment of balances of excess deferred income taxes when utilities dispose of regulated generation assets.

(4) *Effective date*—(i) *General rule.* This paragraph (k) applies to property that becomes deregulated generation property after March 4, 2003.

(ii) *Election for retroactive application.* A utility may elect to apply this paragraph (k) to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching the statement "ELECTION UNDER § 1.46–6(k)" to the taxpayer's return for the tax year in which this paragraph (k) is published as a final regulation.

Par. 3. Section 1.168(i)–3 is added to read as follows:

§ 1.168(i)–(3) Treatment of excess deferred income tax reserve upon disposition of regulated generation assets.

(a) *Scope.* This section provides rules for the application of section 203(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2146) with respect to public utility property that is used in electric generation and ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated generation property).

(b) *Amount of reduction.* If public utility property of a taxpayer becomes deregulated generation property to which this section applies, the reduction in the taxpayer's excess tax reserve permitted under section 203(e) of the Tax Reform Act of 1986 is equal to the amount by which the reserve could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued use of its normalization method of accounting with respect to such property.

(c) *Cross reference. See* § 1.46–6(k) for rules relating to the treatment of accumulated deferred investment tax credits when utilities dispose of regulated generation assets.

(d) *Effective date*—(1) *General rule.* This section applies to property that becomes deregulated generation property after March 4, 2003.

(2) *Election for retroactive application.* A taxpayer may elect to apply this section to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching the statement "ELECTION UNDER § 1.168(i)–3" to the taxpayer's return for the tax year in which this section is published as a final regulation.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–4885 Filed 3–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY–031–FOR]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes revisions to its coal rules about roads, mine facilities, and excess spoil. Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and clarify ambiguities.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t., April 3, 2003. If requested, we will hold a public hearing on the amendment on March 31, 2003. We will accept requests to speak until 4 p.m., m.s.t., on March 19, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office.

Guy Padgett, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918, 307/261–6550, Internet: *GPadgett@osmre.gov.*

Dennis Hemmer, Department of Environmental Quality, Herschler Building, 4th Floor West, Cheyenne, Wyoming 82002, 307/777–7682, Internet: *dhemmer@state.wy.us.*

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550. Internet: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background of the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of [the] Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to [the] Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated November 28, 2002, Wyoming sent us a proposed amendment to its program, (administrative record number WY–36–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a 30 CFR part 732 letter dated February 21, 1990, and an October 3, 1990, follow-up letter (administrative record numbers WY–36–6 and WY–36–7) that we sent to Wyoming, and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Wyoming proposes to revise the following Coal Rules:

(1) Chapter 1, Section 2, and Chapter 2, Section 2(a) and (b), miscellaneous revisions regarding use of the terms, "primary" and "ancillary" roads and "mine facilities;" (2) Chapter 1, Section 2(bu), definition of public road; (3) Chapter 1, Section 2(bz), definition of road; (4) Chapter 2, Section 2(b)(i)(D)(V), maps and plans; (5) Chapter 2, Section 2(a) and (b), permit applications; (6) Chapter 2, Section 2(b)(xix), road systems; (7) Chapter 4, Section 2(j), road classification system; (8) Chapter 4, Section 2(j)(v), performance standards; (9) Chapter 4, Section 2(j)(v), reclamation; (10) Chapter 4, Section 2(j)(i)(A), and 2(j)(ii), roads and other transportation facilities; (11) Chapter 4, Section 1(a)(v), access roads and haulage roads; (12) Chapter 4, Section 2(j)(vii), primary roads; (13) Chapter 4, Section 2(j), exemptions concerning

roads; (14) Chapter 4, Section 2(m), disposal of mine facilities; (15) Chapter 4, Section 2(c), topsoil, subsoil, overburden, and refuse; (16) Chapter 5, Section 7(a)(ii), remining; and (17) Chapter 18, Section 3(c)(xvii), 3(d)(vi)(A), and 3(d)(ix), consistent use of the Office of Surface Mining's road classification system.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. WY–031–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261–6550.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on March 19, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 6, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–4970 Filed 3–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–3039–01; I.D. 081602B]

RIN 0648–AQ04

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments

SUMMARY: NMFS proposes to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to identify gear modifications that sufficiently reduce the risk of entanglement to western North Atlantic right whales (right whales) under the Dynamic Area Management (DAM) program and, as such, would allow NMFS to utilize the option of allowing gear with certain modifications within a DAM zone. Specifically, NMFS proposes to identify Seasonal Area Management (SAM) anchored gillnet and lobster trap/pot gear as gear that could be allowed within a DAM zone. NMFS also includes in this proposed rule a provision to clarify one of the SAM gear modification requirements (600 lb (272.4 kg) weak link) for lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area.

DATES: Comments on the proposed rule must be received by 5 p.m. EST on April 3, 2003.

ADDRESSES: Send comments on this proposed rule to Mary Colligan, Assistant Regional Administrator for Protected Resources, Protected Resources Division, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930. Comments will not be accepted if sent via e-mail or Internet. Copies of the draft Environmental Assessment/Regulatory Impact Review for this action can be obtained from the ALWTRP website listed under the Electronic Access portion of this document. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katherine Wang, NMFS, Southeast Region, 9721 Executive Center Dr., St.Petersburg, FL 33702–2432. For additional **ADDRESSES** and web sites for document availability see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.wh.whoi.edu/psb/sar2001.pdf*. In addition, copies of the documents entitled "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options" and "Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation" are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or can be downloaded from the Internet at *http://www.nero.nmfs.gov/whaletrp/*.

Background

The ALWTRP (50 CFR 229.32) is a multi-faceted plan that includes area closures, gear requirements in areas open to fixed gear fishing, gear research to develop new modifications to current practices and/or fishing techniques, a right whale Sighting Advisory System, and a disentanglement program to free whales caught in fishing gear.

As part of the ALWTRP, NMFS issued a final rule to implement the Dynamic Area Management (DAM) program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002), which clarified its authority under 50 CFR 229.32 to temporarily restrict the use of lobster traps and/or anchored gillnet gear in areas where right whales aggregate. The DAM program establishes criteria and procedures to temporarily restrict lobster trap and anchored gillnet gear on an expedited basis within defined areas (i.e. DAM zone) north of 40° N. latitude in order to further reduce risk of entanglement to right whales by such gear. When the criteria for establishing a DAM zone are triggered, NMFS may implement fishing restrictions within the DAM zone through publication in the **Federal Register**.

Factors NMFS would consider in deciding what restrictions to implement within the DAM zone include: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data. Once a DAM zone is identified, the regulations allow NMFS to: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow modified lobster trap and anchored gillnet gear within a DAM zone for a 15–day period; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period. NMFS may either extend or shorten the duration of the DAM zone depending on the presence or absence of right whales in the DAM zone.

While the DAM final rule did envision, at some point in the future, that DAM zones could be implemented with gear modifications, it did not identify specific gear modifications that would sufficiently reduce the risk of entanglement to right whales. Therefore, no gear modifications were included within the analysis that supported the DAM rulemaking. This proposed rule would identify acceptable gear that could be allowed under the DAM program. This proposed rule, if adopted, would complete the regulatory actions planned and described in the recent amendments to the ALWTRP, which included the Seasonal Area Management (SAM) program (67 FR 1142, January 9, 2002; 67 FR 65722, October 28, 2002), expanded gear modifications (67 FR 1300, January 10, 2002; 67 FR 15493, April 2, 2002), as well as the DAM program.

Proposed Lobster Trap and Anchored Gillnet Gear Modifications for Use in DAM Zones

On January 9, 2002, NMFS established a SAM program (67 FR 1142) to protect predictable annual congregations of right whales in the waters east of Cape Cod and seaward to the outer limits of the Exclusive Economic Zone (EEZ). Under the SAM program, NMFS defined two areas (SAM West and SAM East) and required gear modifications for lobster trap and anchored gillnet gear within these defined areas. The interim final rule restricts lobster trap and anchored gillnet gear set within each SAM area to those types designated as Level II or Low Risk Gear, which is defined as gear where death or serious injury resulting from entanglement would be highly unlikely. The requirements under the SAM program are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Gillnet Waters.

The information and analysis provided in the proposed rule for the SAM program (66 FR 59394, November 28, 2001) demonstrates that the gear modifications, including replacing floating line with neutrally buoyant and/or sinking line, installing additional weak links, reducing breaking strengths for weak links and limiting the number of buoy lines (i.e. allowing only one buoy line) prevent serious injury or mortality to right whales. NMFS estimated that the SAM requirements resulted in approximately an 85–percent reduction in floating line for offshore lobster gear and 50–percent reduction in vertical line for gillnet and lobster gear. Thus, the SAM gear modifications reduce both the potential for interaction through a significant reduction in floating and vertical line, and the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths.

As the DAM program was developed in advance of the SAM program, NMFS was not able to identify or analyze SAM gear as part of the DAM program. This proposed rule identifies and analyzes the SAM gear as gear that could be used under the DAM program. NMFS believes that Level II or Low Risk gear modifications are appropriate to allow in a DAM zone because this gear has been determined to sufficiently reduce risk of entanglement of right whales. NMFS maintains that the data available and presented in the SAM proposed rule provides sufficient evidence that fishing with SAM modified gear in a DAM zone is unlikely to result in serious injury or mortality of a right whale.

This proposed rule would identify SAM modified gear as gear that could be allowed under the DAM program. NMFS analyzed additional management alternatives when deciding which type of gear modification to allow within the DAM zone (see **ADDRESSES** section for a copy of the Environmental Assessment (EA) and Classification section's summary of the Initial Regulatory Flexibility Analysis, which describes other alternatives considered). NMFS seeks comments from the public on this proposed rule and these alternatives.

The proposed gear modifications to the ALWTRP DAM program are described below. These requirements are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Great South Channel Restricted Lobster Area (July 1 through March 31), Stellwagen Bank/Jeffreys Ledge Restricted Area (lobster trap and gillnet area descriptions), Cape Cod Bay Restricted Area (lobster trap and gillnet area descriptions: May 16 through December 31), Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), Mid-Atlantic Coastal Waters (gillnet area description) and Other Northeast Gillnet Waters and are consistent with the gear restrictions implemented under the SAM program. Time periods are incorporated to clarify when critical habitat areas are subject to the DAM program, which, as described (66 FR 50160, October 2, 2001; 67 FR 1142, January 9, 2002) and implemented by NMFS, are time periods when the requirements for critical habitat areas are no more conservative than the surrounding waters. Additionally, proposed SAM gear modification requirements under the DAM program are applicable to ALWTRP management areas north of 40° N. latitude where a DAM zone could be triggered.

Lobster Trap Gear

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines and buoy lines must be made entirely of either sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;
2. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys; and
3. Fishermen utilizing lobster trap gear within the DAM zone must have no more than one buoy line per trawl string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Great South Channel Restricted Lobster Area (July 1 through March 31) and Offshore Lobster Waters Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines and buoy lines must be made of either sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;
2. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys; and
3. Fishermen utilizing lobster trap gear within the DAM zone must have no more than one buoy line per trawl string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

Anchored Gillnet Gear

In addition to the universal gear and gear marking requirements, fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters, Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines and buoy lines must be made of sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;
2. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys;
3. Each net panel must have a total of 5 weak links with a maximum breaking strength of 1,100 lb (498.8 kg) each. Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include 3 floatline weak links. The placement of the weak links on the floatline must be as follows: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining 2 weak links must be placed in the center of each of the up and down lines at the panel ends;
4. Fishermen utilizing gillnets within the DAM zone must have no more than one buoy line per net string. This buoy line must be at the northern or western end of the gillnet string depending on the direction of the set; and
5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth style anchor at each end of the net string.

Clarification of Weak Link Requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap with SAM Areas

NMFS includes in this proposed rule a provision clarifying that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area must have a weak link with a maximum breaking strength of 600 lb (272.4 kg) at all buoys. Prior to the SAM rulemaking, the ALWTRP regulations already required a 600 lb (272.4 kg) weak link for all lobster gear in the Northern Nearshore Lobster Waters, and it was one of a suite of required options in the Northern Inshore State Lobster Waters. Although the proposed rule for SAM discussed the relationship between the proposed SAM restrictions and the existing gear requirements within the ALWTRP, the description of the SAM lobster trap gear requirements did not explicitly articulate the weak link requirement for the portions of the Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters overlapped by the SAM areas. NMFS noted this discrepancy in the preamble to the SAM interim final rule (67 FR 1142, January 9, 2002) and intended to correct this oversight in the interim final rule. However, although NMFS discussed these changes in the preamble of the interim final rule, NMFS inadvertently omitted this clarification from the regulatory text of the SAM interim final rule. To dispel confusion NMFS may have caused in the SAM rulemaking, this action would amend the ALWTRP regulations to state explicitly that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area must have a weak link with a maximum breaking strength of 600 lb (272.4 kg) at all buoys as part of the required SAM gear modifications.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

This proposed rule would identify gear modifications that sufficiently reduce the risk of entanglement to right whales under the DAM program. The objective of this proposed rule, issued pursuant to section 118 of the Marine Mammal Protection Act (MMPA), is to reduce the level of serious injury and mortality of right whales in East Coast lobster trap and finfish gillnet fisheries. The small entities affected by this proposed rule are anchored gillnet and lobster trap fishermen fishing north of 40° N. latitude. Since DAM is used to respond to unusual and unexpected sightings of right whales, it is difficult for NMFS to predict exactly where DAM zones may be implemented in the future. Therefore, providing an accurate estimate of the number of small entities that will be affected is problematic. In the northeast, there are potentially 7,147 vessels fishing lobster gear and 312 vessels fishing sink gillnet gear (Bisack, 2000). However, NMFS does not expect that number of vessels to be affected by any one DAM zone because of the limited size and duration of a DAM zone. Data from aerial surveys in 2000 were used to retrospectively evaluate the use of the recommended DAM triggers. Based on the analysis of this data, six DAM zones would have been triggered in 2000. Four of the six hypothetical DAM zones would have been subsumed under the Seasonal Area Management (SAM) program and the other DAM zone would have occurred in Canadian waters, which are outside of U.S. jurisdiction. Therefore the

impacts were assessed with respect to one hypothetical DAM zone from June 20 to July 6, 2000. For example, based on 2000 right whale sightings data and 2000 Vessel Trip Report (VTR) data, from June 20th to July 6th the proposed rule would have affected 45 lobster and sink gillnet vessels (29 lobster vessels and 16 sink gillnet vessels), which represents 0.4 percent of the vessels (0.004=29/7,147 lobster vessels) associated with the lobster fleet and 5.1 percent of the vessels (0.051=16/312 sink gillnet vessels) associated with the sink gillnet fleet in the northeast. This proposed rule contains no reporting, record keeping, or other compliance requirements. There are no relevant Federal rules that duplicate, overlap, or conflict with the proposed rule.

Four alternatives, including a status quo or no action alternative, the preferred alternative (PA), and two other alternatives were evaluated using a retrospective analysis based on 2000 right whale sightings data and 2000 VTR data. Under all alternatives, from June 20th to July 6th, 45 vessels, of which 29 were lobster vessels and 16 were sink gillnet vessels, were affected by a DAM zone. A summary of the analysis follows:

1. NMFS considered a "no action" or status quo alternative that would result in no changes to the current measures under the ALWTRP. For the status quo, the economic impact analysis considered a complete closure to lobster and sink gillnet gear when a DAM is implemented. In the worst case scenario, a vessel would choose not to fish and therefore incur revenue losses plus the cost of moving their gear. Under status quo, if a lobster vessel chose not to fish outside the DAM zone, annual revenues would be reduced by 5 percent if these vessels chose not to fish from June 20th to July 6th. It is important to note that this represents forgone revenues for one DAM zone, and a vessel could be subject to multiple DAM zones or closures that are extended in time and space. Annual forgone revenues would be reduced by approximately 9 percent for a sink gillnet vessel if they also chose not to fish outside the DAM zone from June 20th to July 6th.

2. The Preferred Alternative would allow SAM gear modifications to be used under the DAM program. SAM gear modifications include, amongst other requirements, the use of neutrally buoyant or sinking line on all ground lines and buoy lines and restricts fishermen to one endline (buoy line) per trawl or string. Under the proposed rule, if a vessel converts its gear, Class I (length less than 35 feet (10.66m)) and Class II (length between 35 and 50 feet (15.2m)) vessels fishing lobster gear will have profits reduced by a minimum of 3 percent (maximum of 9 percent) and 1 percent (maximum of 2 percent), respectively. A Class I (length less than 40 feet (12.2m)) and Class II (greater than 40 feet (12.2m)) vessel fishing sink gillnet gear will have profits reduced by a minimum of 0.4 percent (maximum of 0.7 percent) and 1.2 percent (maximum of 1.9 percent), respectively.

3. NMFS considered an alternative (Non-preferred alternative (NPA) 1) that would implement SAM gear modifications with two endlines (buoy lines) and floating line on the bottom third of each endline. Vessels fishing both lobster and sink gillnet gear have been grouped by size classes. Under the NPA 1 plan, if a vessel converts its gear, Class I (length less than 35 feet (10.66m)) and Class II (length between 35 and 50 feet (15.2m)) vessels fishing lobster gear will have profits reduced by a minimum of 3 percent (maximum of 10 percent) and 1 percent (maximum of 3 percent), respectively. A Class I (length less than 40 feet (12.2m)) and Class II (greater than 40 feet (12.2m)) vessel fishing sink gillnet gear will have profits reduced by a minimum of 0.4 percent (maximum of 0.7 percent) and 1.5 percent (maximum of 2.2 percent), respectively.

4. NMFS considered an alternative (NPA 2) that would implement SAM gear modifications with two endlines (buoy lines). Thus, this alternative would allow lobster trap and anchored gillnet fishermen to retain a second end line on each end of the lobster trap or gillnet trawl. Vessels fishing both lobster and sink gillnet gear have been grouped by size classes. Under the NPA 2 plan, if a vessel converts its gear, Class I (length less than 35 feet (10.66m)) and Class II (length between 35 and 50 feet (15.2m)) vessels fishing lobster gear will have profits reduced by a minimum of 3.5 percent (maximum of 10.7 percent) and 1 percent (maximum of 3 percent), respectively. A Class I (length less than 40 feet (12.2m)) and Class II (greater than 40 feet (12.2m)) vessel fishing sink gillnet gear will have profits reduced by a minimum of 0.5 percent (maximum of 0.7 percent) and 1.6 percent (maximum of 2.3 percent), respectively.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this proposed rule is consistent with the enforceable policies of the approved coastal management program for that state.

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments.

This proposed rule would also clarify that vessels in Northern Inshore State and Northern Nearshore Lobster Waters must install and use a 600 lb (272.4 kg) weak link at each buoy when fishing in SAM West during the time it overlaps the Norther Inshore State and Northern Nearshore Lobster Waters. Requiring a 600 lb (272.4 kg) weak link in those waters rather than a 1,500 lb (680.4 kg) weak link would benefit right whales since more right whales would be able to break a 600 lb (272.4 kg) weak link and each whale would have to exert less force since the breaking strength is lower. The impacts of this proposed requirement on small entities falls within the scope of the regulatory flexibility analyses performed in conjunction with the original SAM proposed and interim final rules. The December 2001 SAM EA/RIR analyzed impacts of requiring a 1,500 lb (680.4 kg) weak link, rather than a 600 lb (272.4 kg) weak link. The cost of a 600 lb (272.4 kg) weak link is similar or less than the cost of the 1,500 lb (680.4 kg) weak link used in the analysis and the effects of using a 600 lb weak link on fishing operations were considered and analyzed while promulgating the December 21, 2000, interim final rule (65 FR 80368). Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(a) and (c), no further analysis is required. Copies of the SAM EA/RIR are available upon request. (see **ADDRESSES.**)

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: February 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 229 as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.32, paragraph (g)(3)(iii)(B) is revised and paragraph (g)(4)(i)(B)(*2*)(*ii*) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(3) * * *

(iii) * * *

(B) Allow fishing within a DAM zone with anchored gillnet and lobster trap gear, provided such gear satisfies the requirements specified in paragraphs (g)(4)(i)(B)(*1*) and (g)(4)(i)(B)(*2*). These requirements are in addition to requirements found in § 229.32 (b) through (d) but supercede them when the requirements in paragraphs (g)(4)(i)(B)(*1*) and (g)(4)(i)(B)(*2*) are more restrictive than those in § 229.32 (b) through (d). Requirements for anchored gillnet gear in Other Northeast Gillnet Waters are as specified in paragraph (g)(4)(i)(B)(*1*) and requirements for lobster trap gear in Offshore Lobster Waters, Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters are as specified in paragraph (g)(4)(i)(B)(*2*). Requirements for anchored gillnet gear in Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters are the same as requirements for Other Northeast Gillnet Waters. Requirements for lobster trap gear in Southern Nearshore Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31) and Stellwagen Bank/Jeffreys Ledge Restricted Area are the same as requirements for Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters. Requirements for lobster trap gear in the Great South Channel Restricted Lobster Area (July 1 through March 31) are the same as requirements for Offshore Lobster Waters.

* * * * *

(4) * * *

(i) * * *

(B) * * *

(*2*) * * *

(*ii*) Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters areas buoy weak links- All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 600 lb (272.4 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

* * * * *

[FR Doc. 03–4897 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 42
Tuesday, March 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–013–1]

Availability of an Environmental Assessment for Field Testing Bursal Disease-Marek's Disease Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Bursal Disease-Marek's Disease Vaccine for use in chickens. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before April 3, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–013–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–013–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–013–1" on the subject line.

You may read the environmental assessment, the risk analysis (with confidential business information removed), and any comments that we receive in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

You may request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed) by writing to Dr. Michel Y. Carr, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010, or by calling (515) 232–5785. Please refer to the docket number, date, and complete title of this notice when requesting copies.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314. For information regarding the environmental assessment and/or the risk analysis, contact Dr. Michel Y. Carr, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232–5785.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Biomune Company.

Product: Bursal Disease-Marek's Disease Vaccine, Serotypes 2 and 3, Live Virus, Live Herpesvirus Vector, Code 1A88.R1.

Field Test Locations: Arkansas, California, Delaware, Georgia, Nebraska, Pennsylvania, and Texas.

The above mentioned product is a combination Bursal Disease-Marek's Disease Vaccine prepared using serotypes 2 and 3 Marek's disease virus. Serotype 3 Marek's disease virus has been genetically modified to express bursal disease virus antigens. The vaccine is for use in chickens as an aid in the prevention of disease caused by bursal disease virus, and serotypes 2 and 3 Marek's disease virus.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a final EA and finding of no significant impact (FONSI) and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 26th day of February, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–5010 Filed 3–3–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of resource advisory committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public Law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, March 17, 2003. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is: update on the RAC new committee members, revisit RAC FY 2003 proposals and updates of proposal information, accounting and follow up responsibilities for FY 2002 projects, review Madera County RAC mission and clarify voting procedures.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, March 17, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Update on the RAC new committee members; (2) revisit RAC FY 2003 proposals and updates of proposal information; (3) accounting and follow up responsibilities for FY 2002 projects; (4) review Madera County RAC mission and; (5) clarify voting procedures. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 25, 2003.

David W. Martin,

District Ranger.

[FR Doc. 03–4978 Filed 3–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Grain Inspection, Packers and Stockyards Administration (GIPSA) intention to request an extension for and revision to a currently approved information collection related to the delivery of services conducted under the official inspection, grading, and weighing programs authorized under the United States Grain Standards Act and the Agricultural Marketing Act of 1946. This voluntary survey would give customers of the official inspection, grading, and weighing programs, who are primarily in the grain, oilseed, rice, lentil, dry pea, edible bean, and related agricultural commodity markets, an opportunity to provide feedback on the quality of services they receive and will provide information on new services that they would like to receive. This feedback would assist GIPSA's Federal Grain Inspection Service (FGIS) to improve services and service delivery provided by the official inspection, grading, and weighing system.

DATES: Written comments must be submitted on or before May 5, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by electronic mail or Internet to: *comments.gipsa@usda.gov*. All comments should make reference to the date and page number of this issue of the **Federal Register** and will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Gregory J. Hawkins, Public and Congressional Relations Staff, e-mail address: *gregory.j.hawkins@usda.gov*, telephone (202) 720–3553.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71–87) (USGSA), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) (AMA), authorize the Secretary of the United States Department of Agriculture to establish official inspection, grading, and weighing programs for grains and other agricultural commodities. Under the USGSA and AMA, GIPSA's FGIS offers inspecting, weighing, grading, quality assurance, and certification services for a user-fee, to facilitate the efficient marketing of grain, oilseeds, rice, lentils, dry peas, edible beans, and related agricultural commodities in the global marketplace. Under FGIS oversight, the official inspection, grading, and weighing programs is a public-private partnership including Federal, State, and private agencies and provides official inspection, grading, and weighing services to the domestic and export trade.

There are approximately 2,500 current users of the official inspection, grading, and weighing programs. These customers are located nationwide and represent a diverse mixture of small, medium, and large producers, merchandisers, processors, exporters, and other financially interested parties. These customers request official services from an FGIS Field Office; delegated, designated, or cooperating

State office; or designated private agency office.

The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities. To accomplish this goal and in accordance with Executive Order 12862, FGIS is seeking feedback from customers to evaluate the services provided by the official inspection, grading, and weighing programs.

Title: Survey of Customers of the Official Inspection, Grading, and Weighing Programs (Grain and Related Commodities).

OMB Number: 0580–0018.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The collection of information using a voluntary customer service survey will provide all paying customers of FGIS and the official inspection, grading, and weighing programs an opportunity to evaluate, on a scale of one to five, the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of services and results, and the professionalism of employees. Customers will also have an opportunity to indicate what new or existing services they would use if such services were offered or available.

FGIS needs to have a more formal means of determining customers' expectations or the quality of service that is delivered. To collect this information, FGIS proposes to distribute, over a 3-year period, a voluntary customer service survey. The initial survey instrument will consist of nine questions. Subsequent survey instruments will be tailored to earlier responses. The information collected from the survey will allow FGIS to ascertain customers' satisfaction with existing services, compare results from year to year, and determine what new services customers desire. The customer service survey consists of one document comprised of nine questions where customers assess the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of services and results, and the professionalism of employees. Some examples of survey questions include the following: "I receive results in a timely manner," "Official results are accurate," and "Inspection personnel are knowledgeable." These survey questions will be assessed using a one to five rating scale with responses ranging from "strongly disagrees" to "strongly agrees" or "no opinion." Customers are also asked for which product they primarily request service, and what percentage of their product is officially inspected. There is also space available on the survey for the customer to provide a response to the following statement: "I would use the following new/existing service if they were offered/available."

By obtaining information from customers through a voluntary customer service survey, FGIS could continue to improve services and service delivery provided by the official inspection, grading, and weighing programs to meet or exceed customer expectations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes (*i.e.*, 0.167 hours) per response.

Respondents: The primary respondents will be the direct paying customers of FGIS and the official inspection, grading, and weighing programs.

FY 2003: Estimated Number of Respondents: 1,875 (*i.e.*, 2,500 total customers times 75% response rate = 1,875).

Frequency of Responses: 1.

Estimated Annual Burden: 313 hours. (1,875 responses times 0.167 hours/response = 313 hours).

FY 2004: Estimated Number of Respondents: 1,875.

Frequency of Responses: 1.

Estimated Annual Burden: 313 hours.

FY 2005: Estimated Number of Respondents: 1,875.

Frequency of Responses: 1.

Estimated Annual Burden: 313 hours.

Copies of this information collection can be obtained from Tess Butler, Grain Inspection, Packers and Stockyards Administration, FGIS, at (202) 720–7486.

Comments: Comments are invited on: (a) Whether the collection of the information is necessary for the proper performance of the functions of FGIS, including whether the information will have a practical utility; (b) the accuracy of FGIS' estimate of the burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

Comments should be addressed to Tess Butler, as referenced above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 26, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–5011 Filed 3–3–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 23, 2003–FEBRUARY 21, 2003

Firm name	Address	Date petition accepted	Product
Victoria Vogue, Inc	90 Southland Drive, Bethlehem, PA 18017.	02/07/03	Powder puffs, sponges, brushes, eye shadow applicators, bath sponges and other cosmetic and beauty accessories.
Hardinge, Inc	One Hardinge Drive, Elmira, NY 14902.	02/03/03	Metal cutting machine (CNC) tools (lathes/turning machines).
Lauraville Specialty Products	122 North Genesee Street, Geneva, NY 14456.	02/07/03	Encapsulated labels.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 23, 2003–FEBRUARY 21, 2003—Continued

Firm name	Address	Date petition accepted	Product
Magruder Color Co., Inc	11029 Newark Avenue, Elizabeth, NJ 07208.	02/03/03	Organic and fluorescent color pigments and printing ink vehicles.
NTR, Inc. dba Blue Water, Ltd	209 Lovvorn Road, Carrollton, GA 30177.	01/30/03	Recreational climbing rope.
House Manufacturing Co., Inc	3720 Hwy 1, Cherry Valley, AR 72324.	01/28/03	Equipment for wastewater treatment (irrigation), and aeration including pumps.
Laville Frames, Inc	8300 Madrid Avenue, Baton Rouge, LA 70814.	01/30/03	Wooden frames.
Infidel, Inc	1417 Roy Road, Bellingham, VA 98226.	02/04/03	Salmon.
Riggins Engineering, Inc	13932 Saticoy Street, Van Nuys, CA 91402.	02/11/03	Components of flight control systems.
A. Rafkin Company	1400 Sans Souci Parkway, Wilkes Barre, PA 18083.	02/07/03	Specialty locking bags used for cash management control and mail delivery.
Weiss-Aug Co., Inc	3 Merry Lane, East Hanover, NJ 07936.	02/07/03	Custom stamped and insert molded components of metal and plastic for the auto, telecommunications, medical and electronics industries.
Colonial Bronze Co., Inc	511 Winsted Road, Torrington, CT 06790.	02/14/03	Cabinet and appliance hardware—knobs, pulls and handles of bronze and brass.
Hansen Farms	Rt. 1, Box 134, Palacios, TX 77465 ..	02/14/03	Agricultural and aquaculture farming including catfish.
Jerry A. Yagie	P.O. Box 65, Perryville, AK 99648	01/30/03	Salmon.
Dennis F. Shangin dba F/V Miranda Leigh.	P.O. Box 3104, Soldotna, AK 99669	12/11/02	Salmon.
Raechel Hinderer dba F/V Miranda Leigh.	P.O. Box 13, Chignik, AK 99564	01/30/03	Salmon.
Archie A. Kalmakoff	P.O. Box 69, Perryville, AK 99648	01/30/03	Salmon.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.)

Dated: February 25, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–4979 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1270]

Grant of Authority for Subzone Status, J. Ray McDermott, Inc., (Offshore Drilling/Production Platforms) Amelia, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, an application from the Port of South Louisiana Commission, grantee of FTZ 124, for authority to establish special-purpose subzone status for the offshore drilling/production platform manufacturing facilities of J. Ray McDermott, Inc., in Amelia, Louisiana, was filed by the Board on November 12, 2002, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 51–2002, 67 FR 70046, 11–20–2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

Now, therefore, the Board hereby grants authority for subzone status at the offshore drilling/production platform manufacturing facilities of J. Ray McDermott, Inc. (JRM), in Amelia, Louisiana (Subzone 124I), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following special conditions: (1) Any foreign steel mill products admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill; and, (2) J. Ray McDermott, Inc., shall annually advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that

the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 21st day of February 2003.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–5055 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1269]

Approval of Request for Manufacturing Authority Within Foreign-Trade Zone 46, Cincinnati, OH (Automobile Transmissions)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 46, has requested authority under 15 CFR 400.31 of the Board's regulations on behalf of ZF Batavia, LLC to manufacture automobile transmissions under zone procedures within Site 3 of FTZ 46 (filed 3–20–2002, FTZ Docket 18–2002);

Whereas, notice inviting public comment was given in **Federal Register** (67 FR 15527, 4/2/2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby approves the request subject to the Act and the Board's regulations, including 15 CFR 400.28.

Signed at Washington, DC, this 21st day of February 2003.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–5054 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–OS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122–822]

Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 4, 2003.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of corrosion-resistant carbon steel flat products from Canada until no later than September 1, 2003. This review covers the period August 1, 2001, through July 31, 2002. The extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act").

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Julio A. Fernandez, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–3148 or (202) 482–0961, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) received a request on August 30, 2002, from Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (petitioners) for an administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada, with respect to Stelco, Inc. (Stelco) and Dofasco, Inc. (Dofasco). On September 25, 2002, the Department published a notice of initiation of this administrative review for the period of August 1, 2001, through July 31, 2002 (67 FR 60210).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In light of the complexity of analyzing Stelco and Dofasco's cost calculations, and Stelco's inputs obtained from affiliated parties, it is not practicable to complete this review by the current deadline of May 3, 2003.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 120 days, until no later than August 31, 2003. However, as this date falls on a weekend, the due date will fall on the next business day, September 1, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance to sections 751(a)(1) and 777(I)(1) of the Act.

Dated: February 25, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–5056 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 021127288–2288–01]

Proposed Withdrawal Of Seventeen (17) Federal Information Processing Standards (FIPS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) proposes to withdraw seventeen (17) Federal Information Processing Standards (FIPS) from the FIPS series. Some of these FIPS adopt voluntary industry standards for Federal government use, but the FIPS documents have not been updated to reference current or revised voluntary industry standards. Other FIPS adopt data standards that are developed and used by other Federal government agencies. These FIPS have not been updated to reflect changes and modifications in the data representations. The remaining FIPS provide advisory guidance to Federal agencies on computer security issues. This advisory guidance, which has no requirements for compulsory and binding use, has been updated by NIST and issued in more recent recommendations and publications.

Prior to the submission of this proposed withdrawal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

DATES: Comments on the proposed withdrawal of these FIPS must be received on or before June 2, 2003.

ADDRESSES: Written comments concerning the withdrawal of these FIPS should be sent to: Information Technology Laboratory, ATTN: Proposed Withdrawal of 17 FIPS, Mail Stop 8930, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899. Electronic comments should be sent to: *fips.comments@nist.gov.*

Information about the FIPS is available on the NIST web pages: *http://www.itl.nist.gov/fipspubs/index.htm.*

Comments received in response to this notice will be published electronically at *http://csrc.nist.gov/publications/fips/index.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Radack, telephone (301) 975–2833, MS 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899 or via e-mail at *shirley.radack@nist.gov.*

SUPPLEMENTARY INFORMATION: Federal agencies and departments are directed by the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, to use technical standards that are developed in voluntary consensus standards bodies. Consequently, there no longer is a need for FIPS that duplicate voluntary industry standards.

The following Federal Information Processing Standards (FIPS) Publications are proposed for withdrawal from the FIPS series:

- FIPS 8–6, Metropolitan Areas (Including MSAs, CMSAs, PMSAs, and NECMAs)
- FIPS 9–1, Congressional Districts of the U.S.
- FIPS 31, Guidelines for Automatic Data Processing Physical Security and Risk Management
- FIPS 48, Guidelines on Evaluation of Techniques for Automated Personal Identification
- FIPS 55–3, Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States, Puerto Rico, and the Outlying Areas
- FIPS 66, Standard Industrial Classification (SIC) Codes
- FIPS 73, Guidelines for Security of Computer Applications
- FIPS 83, Guideline on User Authentication Techniques for Computer Network Access Control
- FIPS 87, Guidelines for ADP Contingency Planning
- FIPS 92, Guideline for Standard Occupational Classification (SOC) Codes
- FIPS 95–2, Codes for the Identification of Federal and Federally Assisted Organizations
- FIPS 102, Guideline for Computer Security Certification and Accreditation
- FIPS 112, Password Usage
- FIPS 127–2, Database Language SQL (ANSI X3.135–1992)
- FIPS 159, Detail Specification for 62.5-um Core Diameter/125-um Cladding Diameter Class 1A Multimode, Graded-index Optical Waveguide Fibers
- FIPS 171, Key Management Using ANSI X9.17
- FIPS 173–1, Spatial Data Transfer Standard.

The FIPS are being proposed for withdrawal because they are obsolete, or have not been updated to adopt current voluntary industry standards, current federal data standards, or current good practices for computer security. Withdrawal of these FIPS does not lessen agency responsibilities to use current voluntary industry standards and available good practices in their acquisition and management activities. The Information Technology Management Reform Act of 1996 (Division E of Public Law 104–106) and Executive Order 13011 emphasize agency management of information technology and Government-wide interagency support activities to improve productivity, security, interoperability, and coordination of Government resources.

Withdrawal means that these FIPS would no longer be part of a subscription service that is provided by the National Technical Information Service. NIST will continue to provide relevant information on standards and guidelines by means of electronic dissemination methods, and will keep references to the withdrawn FIPS on its FIPS Web pages.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce, pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), the Computer Security Act of 1987 (Pub. L. 100–235), and Appendix III to Office of Management and Budget Circular A–130.

Classification: Executive Order 12866: This notice has been determined not to be significant for the purposes of Executive Order 12866.

Dated: February 26, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–4936 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, March 18, 2003, from 8:25 a.m. to 5 p.m. and Wednesday, March 19, 2003, from 9 a.m. to noon. The Visiting Committee on Advanced Technology is composed of 14 members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a NIST update; an update on NIST Customer Liaison Function/Industrial Liaison Office, Measuring NIST's Economic Impacts, a Homeland Security update, laboratory tours of Homeland Security projects, Science and Technology in the FY 2004 Budget: Congressional and Administration Priorities and Implications of Congressional and Administration Science and Technology Priorities for NIST. Discussions scheduled to begin at 4 p.m. and to end at 5 p.m. on March 18, 2003, and to begin at 9 a.m. and to end at noon on March 19, 2003, on the NIST budget, planning information and feedback sessions will be closed.

Agenda may change to accommodate Committee business. Final agenda will be posted on Web site. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address

and phone number to Carolyn Peters no later than Thursday, March 13, 2003, and she will provide you with instructions for admittance. Mrs. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is (301) 975–5607.

DATES: The meeting will convene March 18, 2003, at 8:25 a.m. and will adjourn at noon on March 19, 2003.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 25, 2003, that portions of the meeting of the Visiting Committee on Advanced Technology which deal with discussion of sensitive budget and planning information that would cause harm to third parties if publicly shared be closed in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2.

Dated: February 27, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–5001 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022603A]

Proposed Information Collection; Comment Request; Gulf of Mexico Shrimp Mandatory Vessel Owner Economic Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 5, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Travis, Department of Commerce, NOAA, National Marine Fisheries Service, 9721 Executive Center Drive North, St, Petersburg, FL 33702–2439, (727) 570–5335.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA proposes to collect census-level information on fishing vessel and gear characteristics in the Gulf of Mexico shrimp fishery (Exclusive Economic Zone only) to conduct economic analyses that will improve fishery management decision-making in that fishery; satisfy NOAA's legal mandates under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performance measures in the National Marine Fisheries Service Strategic Operating Plans. Used in conjunction with landings and price data already being collected in this fishery as part of the dealer reporting program, and economic data to be collected under a voluntary program (implementation of which is expected later this year), this data will be used to properly describe the fishery and its operations. The collected information will also help to assess how fishermen will be impacted by and respond to any regulation likely to be considered by fishery managers. In addition, this data will be used to determine how fishing communities will be impacted by proposed fishing regulations.

II. Method of Collection

The vessel and gear characterization form will be mailed to all vessel owners who either currently have or who apply for Gulf of Mexico federal shrimp permits. Vessel owners will be asked for information about the nature and extent of their operations in the Gulf shrimp fishery, as well the types of electronic equipment and gear they use to conduct this fishery. Submission of a completed vessel and gear characterization form would be mandatory.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 5,250.
Estimated Time Per Response: 20 minutes.
Estimated Total Annual Burden Hours: 1,750.
Estimated Total Annual Cost to Public: $0. (Costs exclude valuation of respondents' time.)

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 25, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–5046 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022603B]

Proposed Information Collection; Comment Request; Gulf of Mexico Red Snapper Individual Fishing Quota Referendum Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 5, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Phil Steele, Department of Commerce, NOAA, National Marine Fisheries Service, 9721 Executive Center Drive North, St, Petersburg, FL 33702–2439, (727) 570–5305.

SUPPLEMENTARY INFORMATION:

I. Abstract

This data collection is needed for the Secretary of Commerce (Secretary) to properly implement the referendum procedures specified in Section 407(c) of the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*). The Act provides that on or after October 1, 2000, the Gulf of Mexico Fishery Management Council (Council) may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota (IFQ) program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class. These actions can only take place if the preparation of such plan, amendment, or regulation is approved in a referendum, and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum.

Only a person who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date) and vessel captains who harvested red snapper in a commercial fishery using such endorsement in each red snapper fishing season occurring between January 1, 1993, and such date (i.e., September 1, 1996) may vote in the referendums.

II. Method of Collection

The Secretary, at the request of the Council, will conduct these referendums. The Secretary has sufficient data, collected under OMB approval 0648–0205, needed to contact persons who held an annual vessel permit with a red snapper endorsement for such permit on September 1, 1996 (or any person to whom such permit with such endorsement was transferred after such date). However, the Secretary does not have such data on the vessel captains who harvested red snapper in a commercial fishery using such endorsement in each specified fishing season. Therefore, the Secretary will use several communication methods to attempt to identify such captains and make them aware of the referendum procedures. One possible communication method that involves data collection would be a request for detailed information from persons with a vessel permit with a red snapper endorsement, regarding vessel captains who harvested red snapper using such endorsement in each specified fishing season.

Prior to each referendum, the Secretary, in consultation with the Council, shall (a) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and (b) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program. Submission of the paper questionnaires would be voluntary.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 200.
Estimated Time Per Response: 10 minutes for a response to an initial referendum on preparation; 20 minutes for a response to a subsequent referendum; and 10 minutes per response for any information request regarding vessel captains.
Estimated Total Annual Burden Hours: 102.
Estimated Total Annual Cost to Public: $122. (Costs exclude valuation of respondents' time.)

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 25, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–5047 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013003B]

Marine Mammals: Final Environmental Assessment of Issuing a Bowhead Whale Subsistence Quota to the Alaska Eskimo Whaling Commission for the Years 2003 through 2007

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of an Environmental Assessment (EA), in accordance with the National Environmental Policy Act (NEPA), to assess the impacts of issuing the International Whaling Commission (IWC) subsistence quota for bowhead whales to the Alaska Eskimo Whaling Commission (AEWC) for the years 2003 through 2007. NMFS has identified a preferred alternative in the EA that will grant the AEWC the IWC quota of 255 landed bowhead whales, with an annual strike quota of 67 bowhead whales per year for the years 2003 through 2007, where no more than 15 unused strikes are added to the strike quota for any one year.

ADDRESSES: Copies of the EA may be obtained via the Internet (see Electronic Access). Copies of the EA may be requested by writing to Gale Heim,

NOAA/NMFS, Office of Protected Resources, 13th Floor, 1315 East-West Hwy, Silver Spring, MD 20910. Mark the outside of the envelope with "Request for Bowhead EA."

FOR FURTHER INFORMATION CONTACT: Chris Yates or Winnie Chan, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Copies of the EA may be obtained over the Internet at the Office of Protected Resources Marine Mammal website under "Quick Information Links" at *http://www.nmfs.noaa.gov/prot_res/overview/mm.html*. The link is titled "Bowhead Whale Environmental Assessment".

Background

At the 5th Special Meeting of the IWC held in October, 2002 the Commission approved a 5–year aboriginal subsistence quota for the take of Western arctic bowhead whales. The quota allows for a combined total of up to 280 whales to be landed in the years 2003 through 2007 by Alaskan Eskimos and Russian natives. For each of these years, the number of bowhead whales struck shall not exceed 67, except that any unused portion of a strike quota from any year shall be carried forward and added to the strike quota of any subsequent year, provided that no more than 15 strikes shall be added to the strike quota for any one year.

The basis for the quota was a joint request by the Russian Federation and the United States for 280 whales (255 for Alaska Eskimos and 25 for Russian natives) over a 5–year period. The annual strike limits and quotas for whales are determined at the beginning of each year after consultation with the Russian government.

At the 54th annual meeting of the IWC, held in May, 2002 the Scientific Committee reiterated its previous advice for the Bering-Chukchi-Beaufort Seas stock of bowhead whales. That is, it is very likely that a catch limit of 102 whales or less would be consistent with the requirements under IWC regulation.

The International Convention for the Regulation of Whaling, under which the IWC operates, is implemented domestically through the Whaling Convention Act (WCA). Under the WCA, NMFS issues a share of the IWC bowhead quota to the AEWC.

Alaska Eskimos have been taking bowhead whales for at least 2,000 years. Alaska Native subsistence hunters take less than one percent of the population of bowhead whales per year. Since 1977, the number of takes has ranged between 14 and 75 per year.

NEPA requires that Federal agencies conduct an environmental analysis of the effect of their proposed actions on the environment. Although all quotas under the WCA are issued on an annual basis, NMFS evaluated the effects of issuing them over a 5–year period. A draft EA was distributed for public comment on December 9, 2002. The EA analyzed four alternatives:

Alternative 1 - Grant the AEWC a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where no unused strikes are added to the strike quota for any one year.

Alternative 2 - Grant the AEWC a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where no more than 15 unused strikes are added to the strike quota for any one year.

Alternative 3 - Grant the AEWC a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where, for unused strikes, up to 50 percent of the annual strike limit is added to the strike quota for any one year.

Alternative 4 (No Action) - Do not grant the AEWC a quota.

After reviewing and addressing the comments received, NMFS selected Alternative 2 as the preferred alternative. NMFS issued a final EA and Finding of No Significant Impact on February 23, 2003. The Final EA was prepared in accordance with NEPA, implementing regulations at 40 CFR parts 1500 through 1508, and NOAA guidelines concerning implementation of NEPA found in NOAA Administrative Order 216–6.

Dated: February 26, 2003.

Stephen L. Leathery,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–5045 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022603C]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Research Set Aside (RSA) Committee and its Executive Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, March 18, through Thursday, March 20, 2003. On Tuesday, March 18, there will be a Research Set-Aside (RSA) Workshop from noon until 5 p.m. There will be a Dogfish Scoping meeting from 7 pm to 8:30 p.m. On Wednesday, March 19, the Executive Committee will meet from 8 a.m. to 9 a.m. The Council will meet from 9 a.m. to 11 a.m. The Council will tour the U.S. Coast Guard Museum and hear a presentation on Homeland Defense from 11 a.m. to 1:15 p.m. The Council will meet from 1:30 p.m. to 4:30 p.m. The Council will then visit the Virginia Marine Science Museum from 5 p.m. to 8 p.m. On Thursday, March 20, the Council will meet from 8 a.m. until noon.

ADDRESSES: This meeting will be held at the Sheraton Oceanfront Hotel, 36th Street and Atlantic Avenue, Virginia Beach, VA; telephone: 757–425–9000 or 800–325–3535.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The Council and NMFS will hold a collaborative workshop from noon to 5 p.m. on March 18, 2003 to discuss the Council's RSA program.

The RSA program is carried out through the cooperation of the Council, NMFS, and the Atlantic States Marine Fisheries Commission. It provides a mechanism to fund research relevant to the Council's and Commission's fishery management plans and to compensate vessels through the sale of fish harvested under specially designated RSA quotas. Research projects have been funded through the RSA in 2002 and 2003, and a notice for solicitation of 2004 projects has recently been published in the **Federal Register** (68, FR 3864, 1/27/2003). The NMFS is currently soliciting proposals for research activities concerning the summer flounder, scup, black sea bass, *Loligo* squid, *Illex* squid, Atlantic mackerel, butterfish, and bluefish fisheries. While the tilefish fishery is part of the RSA program, the Council has voted to set the tilefish RSA quota to zero until a stock assessment has been completed. All research proposals to be considered under this solicitation must be received by March 28, 2003.

The purpose of the workshop is to receive public input from RSA project participants and the general public on how to improve the RSA program, and to inform the public and potential RSA quota recipients about the opportunities and requirements of the RSA program. Main agenda items for the workshop will be:

(1) Welcome and Description of the RSA Program, (2) The RSA 2004 Request for Proposals (RFP) Solicitation, (3) The RSA Grants Review/Approval Process, (4) Overview and Discussion of the Exempted Fishing Permit Process Requirements RSA Recipients Must Comply With, (5) Public Input from RSA Project Participants and General Public with Suggestions on How to Improve the RSA Program, (6) Integration of RSA Projects with NMFS Northeast Fisheries Science Center Programs, (7) Integration of RSA Project Findings Into the Fisheries Management Process.

Additional agenda items for the Council's committees and the Council itself are: Conduct a scoping meeting for Amendment 1 to the Dogfish Fishery Management Plan (consider, among other management measures, the following items for inclusion in Amendment 1: define a rebuilding biomass target for Bmsy, establish rebuilding timeframe consistent with Section 304(e) of the Magnuson-Stevens Act (MSA), address bycatch/discard issues, and address different allocation processes; the Executive Committee will discuss potential Council actions regarding MSA and Marine Mammal Protection Act (MMPA) Reauthorizations; hear a presentation on the peer review and stock assessment workshop process; hear a NMFS presentation on initiative to change recreational fishing data collection (report on the new coastwide methodology to collect catch and effort data from the for-hire recreational fleet and discuss how new system would affect Marine Recreational Fishery Statistics Survey (MRFSS); review and discuss directions and priorities for 2003 and 2004 for summer flounder, scup, and black sea bass; receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; and, act on any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 26, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–5044 Filed 3–3–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; Information Collection 3038–0043, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Mauldin at CFTC, (202) 418–5120; FAX: (202) 418–5524; e-mail: *lmauldin@cftc.gov* and refer to OMB Control No. 3038–0043.

SUPPLEMENTARY INFORMATION:

Title: Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, OMB Control No. 3038–0043. This is a request for extension of a currently approved information collection.

Abstract: 17 CFR part 171 rules require a registered futures association to provide fair and orderly procedures for membership and disciplinary actions. The Commission's review of decisions of registered futures associations in disciplinary, membership denial, registration, and member responsibility actions is governed by section 17(h)(2) of the Commodity Exchange Act, 7 U.S.C. section 21(h)(2). The rules establish procedures and standards for Commission review of such actions, and the reporting requirements included in the procedural rules are either directly required by section 17 of the Act or are necessary to the type of appellate review role Congress intended the Commission to undertake when it adopted that provision.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2002 (67 FR 68995).

Burden statement: The respondent burden for this collection is estimated to average 1.42 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transit or otherwise disclose the information.

Respondents/Affected Entities: 22.

Estimated number of responses: 89.

Estimates total annual burden on respondents: 126 hours.

Frequency of collection: on occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0043 in any correspondence.

Linda Mauldin, Office of General Counsel, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs.

Office of Management and Budget, Attention: Desk Office for CFTC, 725 17th Street, Washington, DC 20503.

Issued in Washington, DC on February 26, 2003.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–5003 Filed 3–3–03; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of disposable and novelty cigarette lighters. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Cigarette Lighters (16 CFR part 1210). The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than May 5, 2003.

ADDRESSES: Written comments should be captioned "Cigarette Lighters" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR Part 1210, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: In 1993, the Commission issued the Safety Standard for Cigarette Lighters (16 CFR Part 1210) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of death and burn injury from fires accidentally started by children playing with cigarette lighters. The standard contains performance requirements for disposable and novelty lighters that are intended to make cigarette lighters subject to the standard resist operation by children younger than five years of age.

A. Certification Requirements

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms "establish and maintain" records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for cigarette lighters. These regulations require manufacturers and importers to submit a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and other information before the introduction of each model of lighter in commerce. These regulations also require manufacturers, importers, and private labelers of disposable and novelty lighters to establish and maintain records to demonstrate successful completion of all required tests to support the certificates of compliance that they issue. 16 CFR Part 1210, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of disposable and novelty lighters to protect consumers from risks of accidental deaths and burn injuries associated with those lighters. More specifically, the Commission uses this information to determine whether lighters comply with the standard by resisting operation by young children. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations for cigarette lighters under control number 3041–0116. OMB's most recent extension of approval will expire on April 30, 2003. The Commission proposes to request an extension of approval without change for these collection of information requirements.

B. Estimated Burden

The cost of the rule's testing, reporting, recordkeeping, and other certification-related provisions is comprised of time spent by testing organizations on behalf of manufacturers and importers, and time spent by firms to prepare, maintain and submit records to CPSC. There are an estimated 60 firms involved. Each of the 60 affected firms are expected to test an average of one to two new models of lighters each year, for a total of 60–120 responses. Testing of two lighters is expected to take 175 hours, therefore, 60 firms times 175 hours equals 10,500 total hours requested. Many firms' submissions rely on previous testing (16 CFR 1210.14) of lighters. Thus, they may not need to do new child testing for lighters to qualify for importation.

The cost of the rule's testing, reporting, recordkeeping and other certification-related provisions is comprised of time spent by testing organizations on behalf of manufacturers and importers, and time spent by firms to prepare, maintain, and submit records to CPSC. Testing costs are estimated to total roughly $15,000 per test series. If each of the 60 affected firms tests an average of one or two new models of lighters each year, total annual testing costs may be $900,000 to $1.8 million. The Commission staff has estimated record preparation at approximately $42.32 per hour, on the average. For an average of roughly 20 to 40 hours per firm in a typical year, the total records preparation and submission costs for all 60 affected firms is approximately $51,000 to $102,000 per year. Total industry testing and administrative costs are therefore approximately $951,000 to $1.9 million per year. Total burden hours for testing and recordkeeping, using the two model per firm figures, would be 10,540 (10,500 for testing plus 40 for recordkeeping).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: February 26, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–5037 Filed 3–3–03; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–2]

Matter of Daisy Manufacturing Co., d/b/a/ Daisy Outdoor Products, 400 West Stribling Drive, Rogers, AK 72756; Final Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of final prehearing conference.

DATES: This notice announces the final prehearing conference to be held in the matter of Daisy Manufacturing Company on April 21, 2003 at 10 a.m.

ADDRESSES: The final prehearing conference will be in room 410 of the Bethesda Towers Building, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Secretary, U.S. Consumer Product Safety Commission, Washington, DC; telephone (301) 504–7923; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: This public notice is issued pursuant to 16 CFR 1025.21(c) of the U.S. Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings to inform the public that a prehearing conference will be held in an administrative proceeding under section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2064, and section of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1274, captioned CPSC Docket No. 02–2, In the Matter of Daisy Manufacturing Company doing business as Daisy Outdoor Products. The Presiding Officer in the proceeding is United States Administrative Law Judge William B. Moran. At this time, the Final Prehearing Conference is planned to be conducted by telephone. Those members of the public attending the conference will be able to listen to the conference, except for such portions, if any, which require that the public be excused. It is also possible that last minute issues may require that the parties' representatives attend the Conference in person.

The public is referred to 16 CFR 1025.21(a) for identification of the issues to be raised at the conference and is advised that the dates, times and places for the hearing also will be noted at this conference.

As stated in the **Federal Register** Notice announcing the First Prehearing Conference, substantively, the issues being litigated in this proceeding continue to include: Whether certain identified models of the Daisy Powerline Airgun, designed to shoot BBs or pellets, contain defects which create a substantial product hazard defect in that, allegedly, BBs can become lodged within a "virtual magazine," or fail to feed into the firing chamber, with the consequence that one may fire or shake the gun without receiving any visual or audible indication that it is still loaded. Consequently, the complaint asserts that these alleged problems can lead consumers to erroneously believe that the gun is empty and that such phenomena mean that the gun is "defective" within the meaning of section 15 of the CPSA, 15 U.S.C. 2064 and section 15 of the FHSA, 15 U.S.C. 1274.

The Complaint further alleges that the gun's design, by making it difficult to determine when looking into the loading port whether a BB is present, constitutes a "defect" under the CPSA and the FHSA and presents a "substantial product hazard," creating a substantial risk of injury to consumers, within the meaning of section 15(a)(2), of the CPSA, 15 U.S.C. 2064(a)(2), and presents a substantial risk of injury to children under sections 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2). The public should continue to be mindful that these are allegations only and that the CPSC staff bears the burden of proof in establishing any violations. Should these allegations be proven, Complaint Counsel for the Office of Compliance of the U.S. Consumer Product Safety Commission seeks a finding that these products present a substantial product hazard and present a substantial risk of injury to children and that public notification of such hazard and risk of injury be made pursuant to section 15(c) of the CPSA and that other appropriate relief be directed, as set forth in the Complaint.

Dated: February 27, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–5038 Filed 3–3–03; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Strategic Plan Review

AGENCY: Corporation for National and Community Service.

ACTION: Notice of request for comments.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") announces a request for comments concerning its strategic plan. To comply with the Government Performance and Results Act (GPRA), the Corporation must revise its strategic plan by September, 2003. In making revisions, the Corporation seeks input from organizations and individuals interested in helping to define the Corporation's mission, goals, and strategies, including organization and management, to support a culture of citizenship, service, and responsibility in America. Final approval of the strategic plan rests with the Corporation's Board of Directors.

In addition to seeking input through this notice, the Corporation will hold a series of focus groups, meetings, and discussions with organizations and individuals interested in the Corporation. For further background information about the Corporation, you should visit our Web site at *http://www.cns.gov.* You may access the existing strategic plan at *http://www.cns.gov/about/1997–2002.pdf.*

DATES: The deadline for submitting comments is May 1, 2003.

ADDRESSES: You may send any comments to Ms. Winsome Packer at *wpacker@cns.gov,* or to the following address: Corporation for National and Community Service, Office of Research and Policy Development, Attn: Ms.

Winsome Packer, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, you may contact: Ms. Winsome Packer at (202) 606–5000, ext. # 498, or *wpacker@cns.gov*. The TDD number is (202) 565–2799.

Dated: February 25, 2003.

David Reingold,

Director, Research and Policy Development.

[FR Doc. 03–4937 Filed 3–3–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0152]

Federal Acquisition Regulation; Information Collection; Service Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0152).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning service contracting. This OMB clearance expires on May 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 5, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA, 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement implements the statutory requirements of sec. 834, Public Law 101–510, concerning uncompensated overtime. The coverage requires that offerors identify uncompensated overtime hours and the uncompensated overtime rate for procurements valued at $100,000 or more. This permits government contracting officers to ascertain cost realism of proposed labor rates for professional employees.

B. Annual Reporting Burden

Number of Respondents: 19,906
Responses Per Respondent: 1
Annual Responses: 19,906
Average Burden Per Response: 30 minutes
Total Burden Hours: 9,953
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0152, Service Contracting; in all correspondence.

Dated: February 26, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–4946 Filed 3–3–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076]

Federal Acquisition Regulation; Information Collection; Novation/ Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0076).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning novation/change of name requirements. This OMB clearance expires on May 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 5, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a firm performing under government contracts wishes the government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the government.

B. Annual Reporting Burden

Respondents: 1,000
Responses Per Respondent: 1
Annual Responses: 1,000
Hours Per Response: .458
Total Burden Hours: 458
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: February 26, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–4947 Filed 3–3–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 6,191,744 entitled "Probe movement system for spherical near-field antenna testing" and U.S. Patent No. 6,354,167 entitled "Scara type robot with counterbalanced arms".

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Surface Warfare Center, Crane Div., Code OCF, Bldg 64, 300 HWY 361, Crane, IN 47522–5001 and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Boggess, Naval Surface Warfare Center, Crane Div., Code OCF, Bldg 64, 300 HWY 361, Crane, IN 47522–5001, Telephone (812) 854–1130. An application for license may be downloaded from: *http://www.crane.navy.mil/foia_pa/CranePatents.asp.*

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: February 26, 2003.

R. E. Vincent II

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–4981 Filed 3–3–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 3, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 26, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision of a currently approved collection.
Title: Integrated Postsecondary Education Data System (IPEDS), Web-Based Collection System (KI).
Frequency: Annually.
Affected Public:
Not-for-profit institutions (primary).
Businesses or other for-profit.
State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 63550; Burden Hours: 183080.
Abstract: IPEDS is a system of surveys designed to collect basic data from approximately 9,600 postsecondary institutions in the United States. The IPEDS provides information on numbers of students enrolled, degrees completed, other awards earned, dollars expended, staff employed at postsecondary institutions, and cost and pricing information. The amendments to the Higher Education Act of 1998, Part C, Sec. 131, specify the need for the "redesign of relevant data systems to improve the usefullness and timeliness of the data collected by such systems." As a consequence, in 2000 IPEDS began to collect data through a web-based data collection system and to concentrate on those institutions that participate in Title IV federal student aid programs; other institutions may participate on a voluntary basis.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–4956 Filed 3–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Submission for OMB Review: Comment Request

AGENCY: Department of Energy.

ACTION: Agency Information Collection Extension.

SUMMARY: The Department of Energy (DOE) has submitted information collection package 1910–5112, Chronic Beryllium Disease Prevention to the Office of Management and Budget (OMB) for extension under the Paperwork Reduction Act of 1995. The package covers the collection of information from DOE and DOE contractors that are subject to the Department's Chronic Beryllium Disease Prevention Program (10 CFR part 850). The regulations contained in the Chronic Disease Prevention Program have been promulgated under authority in the Atomic Energy Act of 1954, and the Department of Energy Organization Act.

DATES: Comments regarding this collection of information should be sent on or before April 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the DOE contact listed in this notice.)

ADDRESSES: Address comments to DOE Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget; Docket Library, Room 10102, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. Comments should also be addressed to the Records Management Division, Office of the Chief Information Officer, at the address listed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Susan L. Frey, Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer, IM–11/GTN Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, (301)–903–3666, or E-mail *susan.frey@hq.doe.gov*. (Also notify Jacqueline D. Rogers, Office of Environment, Safety and Health, EH–5/270CC, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290 (301–903–5684).)

SUPPLEMENTARY INFORMATION: (1) *Current OMB Control Number:* 1910–5112 (2) *Package Title:* Chronic Beryllium Disease Prevention Program (3) *Summary:* A three-year extension is requested to provide DOE employers with the information needed to manage chronic beryllium disease prevention programs, provide information to employees, and permit oversight of their programs by DOE management. (4) *Purpose:* This collection provides the Department with the information needed to reduce the number of workers currently exposed to beryllium in the course of their work at DOE facilities managed by DOE or its contractors; minimize the levels and potential exposure to beryllium; and provide medical surveillance to ensure early detection of disease. (5) *Type of Respondents:* DOE and DOE contractor employers of workers exposed or potentially exposed to beryllium; current workers. (6) *Number of respondents:* 1,703 annually; (7) *Total annual burden hours:* 32,952 hours. *Statutory Authority:* Atomic Energy Act of 1954, 42 U.S.C. 2201.

Issued in Washington, DC on February 25, 2003.

Susan L. Frey,

Director, Records Management, Office of Business and Information Management, Office of the Chief Information Officer.

[FR Doc. 03–4992 Filed 3–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–196–B]

Application To Export Electric Energy; Minnesota Power, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Minnesota Power, Inc. (Minnesota Power) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 3, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 11, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–196 authorizing Minnesota Power to transmit electric energy from the United States to Canada. Minnesota Power is a Minnesota corporation that owns electric generation and transmission facilities and sells and distributes electricity within its northern Minnesota service territory. That two-year authorization expired on February 11, 2001.

On March 2, 2001, Minnesota Power filed an application with FE for renewal of that export authority for a two-year term. That authorization was issued on May 23, 2001.

On February 3, 2003, Minnesota Power applied for renewal of its authorization to export electric energy to Canada for a five year term beginning upon the expiration of its current authorization. Minnesota Power proposes to arrange for delivery of electric energy to Canada over transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, International Transmission, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Inc., Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Co., Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company.

The electric energy that Minnesota Power proposes to export will be either firm or interruptible. The exported energy will be purchased from other entities voluntarily and, therefore, will be surplus to the needs of the selling entities.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Minnesota Power request to export to Canada should be clearly marked with Docket EA–196–B. Additional copies are to be filed directly with Steven W. Tyacke, *Esq.*, Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802–2092.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had been granted in FE Order No. EA–196. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–196 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity," from the Regulatory Info menu, and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on February 21, 2003.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–4997 Filed 3–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–19; Research in Innovative Approaches to Fusion Energy Sciences

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE), announces its interest in receiving grant applications for research in innovative approaches to fusion energy sciences. All individuals or groups planning to submit applications for new or renewal funding in Fiscal Year 2004 should submit in response to this Notice.

Specifically, projects funded under this Notice should be responsive to the MFE Goal 2 of the Report of the Integrated Program Planning Activity for the DOE OFES Program (IPPA 2000), Report DOE/SC–0028 (*http://vlt.ucsd.edu/IPPAFinalDec00.pdf*). The Goal calls for resolving outstanding scientific issues and establishing reduced-cost paths to more attractive fusion energy systems by investigating a broad range of innovative magnetic confinement configurations, as recommended in the report on "Priorities and Balance within the Fusion Energy Sciences Program" by the Fusion Energy Sciences Advisory Committee (FESAC), September 1999 (*http://vlt.ucsd.edu/revisedpanel.pdf*). Proposals exploring new and innovative approaches for creating compact plasmas with high β and high temperatures in pulsed or steady state, and for the active control of magnetized plasmas are particularly welcome. Research involving highly innovative experimental approaches to improve our understanding of magnetized plasmas, and exploration of highly innovative plasma operations in support of proof-of-principle and higher performance plasmas in support of the above Goal, may also be considered. Although the main thrust of the research efforts funded under this Notice is experimental, consideration will also be given to applications that are directed at scientific assessment of new concepts and approaches that are not ready for experimental investigation. Applications for research on existing large facilities, or initiatives in Inertial Fusion Energy should not be submitted in response to this Notice.

Due to the limited availability of funds, Principal Investigators with continuing grants may not submit a new application in the same area(s) of interest as their previous application(s) which received funding. A Principal Investigator may submit only one application under this Notice.

OFES may also solicit proposals from time to time under separate announcements of Initiatives to support coordinated, goal-directed community efforts. These Initiatives will be funded to achieve specific programmatic and scientific aims and will be subject to requirements that are different from those of this Notice. Such grants, if funded, will be subject to periodic reviews of progress.

DATES: To permit timely consideration for awards early in Fiscal Year 2004, applications submitted in response to this Notice must be received by DOE no later than 4:30 p.m., May 1, 2003. Electronic submission of formal applications in PDF format is required using a minimum number of files.

Applicants are requested to submit a letter-of-intent by April 4, 2003, which includes the title of the application, the name of the Principal Investigator(s), the requested funding, and a one-page abstract. These letters-of-intent will be used to organize and expedite review processes. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application submitted in a timely fashion. The letters-of-intent should be sent by E-mail to the following E-mail address: *john.sauter@science.doe.gov* and the Subject line should state: Letter-of-intent regarding Program Notice 03–19.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: http://e-center.doe.gov/. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. It is suggested that this registration be completed several days prior to the date on which you plan to submit the formal application. The Office of Science will include attachments as part of this Notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS using a minimum number of files. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS, please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at: (301) 903–5212 in order to gain assistance for submission through IIPS, or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Office of Fusion Energy Sciences, Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Dr. Francis Thio is the Team Leader for the ICC Program. Specific contacts for each area of interest within the ICC program, along with telephone numbers and Internet addresses, are listed below:

1. *Spherical torus:* Dr. Don Priester, Research Division, SC–55, Telephone: (301) 903–3752, or by Internet address: *don.priester@science.doe.gov*.
2. *Stellarator, electric tokamak, levitated dipole configuration, innovative research in tokamaks:* Dr. Charles Finfgeld, Research Division, SC–55, Telephone: (301) 903–3423, or by Internet address: *Charles.Finfgeld@science.doe.gov*.
3. *Reversed Field Pinch, field reversed configuration, spheromak, magnetized target fusion, electrostatic confinement, plasma heating:* Dr. Francis Thio, Research Division, SC–55, Telephone: (301) 903–4678, or by Internet address: *francis.thio@science.doe.gov*.
4. *Configuration with strong shear flow stabilization:* Dr. Curt Bolton, Research Division, SC–55, Telephone: (301) 903–4914, or by Internet address: *curt.bolton@science.doe.gov*.
5. *Active and passive plasma control:* Dr. Steve Eckstrand, Research Division, SC–55, Telephone: (301)

903–5546, or by Internet address: *steve.eckstrand@science.doe.gov.*

6. *All other innovative concepts and approaches:* Dr. Francis Thio, Research Division, SC–55, Telephone: (301) 903–4678, or by Internet address: *francis.thio@science.doe.gov.*

SUPPLEMENTARY INFORMATION: General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of an application if an award is not made.

In selecting applications for funding, the DOE Office of Fusion Energy Sciences will give priority to applications that can produce experimental results within three to five years after grant initiation. Theoretical research will be accepted for consideration under this Notice when bundled with and in support of an experimental application.

Applications concerned with scientific assessment of new concepts or approaches that are not ready for experimental investigation should have a well-defined scope. The product of such assessment would be a clear scientific description of the concept and its operation, its physics and engineering basis, critical analysis of major difficulties to be overcome in developing the concept as a net producer of energy through the fusion process, and an analysis of what would be achieved by moving to experimental research.

Program Funding

It is anticipated that about $6,000,000 of Fiscal Year 2004 funding will be available to fund new work or renewals of existing work from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Future year funding will depend upon suitable progress and the availability of funds. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. Applications for scientific assessment of new concepts will be limited to a maximum of $150,000 in any year. Applications requiring annual funding as low as $50,000 are welcome and encouraged.

Collaborative research projects involving more than one institution are encouraged. Applications submitted from different institutions, which are directed at a common research activity, should clearly indicate they are part of a proposed collaboration and contain a brief description of the overall research project. However, each application must have a distinct scope of work and a qualified principal investigator, who is responsible for the research effort being performed at his or her institution. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are also encouraged, though no funds will be provided to these organizations under this Notice. Further information on preparation of collaborative applications may be accessed via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Applications from individual PIs or small groups (1–4 people) should be limited to a maximum of twenty (20) pages (including text and figures) of technical information, while applications from larger research groups should be limited to thirty (30) pages. The PDF file may also include a few selected publications in an Appendix as background information. In addition, in the electronic submission, please limit biographical and publication information for the principal investigator and key personnel to no more than two pages each. Each principal investigator should provide an e-mail address.

In addition to the information required by 10 CFR part 605 each application should contain the following items: (1) A statement about the goal of the proposed investigation, (2) a synopsis of the research plan, (3) the specific results or deliverable expected at the end of the project period, (4) a discussion of why this research would have an important impact on the prospects for fusion energy, or why this research would lead to an attractive pathway towards practical fusion energy, (5) a discussion of how the research would elucidate the physics principles of the innovation, (6) a detailed research plan, and (7) information on the adequacy of the facilities and budget.

Merit Review

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605. (*http://www.sc.doe.gov/production/grants/605index.html*)

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of the applicant's personnel and adequacy of the proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

The Office of Fusion Energy Sciences shall also consider, as part of the evaluation, other available advice or information as well as program policy factors such as ensuring an appropriate balance among the program areas and within the program areas, coupling to the theory and computational efforts, and quality of previous performance. Selection of applications/proposals for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed research to the Office of Fusion Energy Sciences' mission, and funding availability. Funding under this Notice is limited to supporting research activities based in the U.S., though subcontracts with limited funding for collaborators outside the U.S. may be allowed with appropriate justifications.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on February 24, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–4994 Filed 3–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[DE–PS07–03ID14447]

Nuclear Energy Plant Optimization Program (NEPO)

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of competitive financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking proposals from nuclear utility R&D organizations, nuclear reactor owner's groups, nuclear R&D organizations, reactor vendors, and other nuclear industry companies to conduct advanced research and development designed to improve the operation of present U.S. nuclear power plants. The purpose of the NEPO program is to conduct Research and Development that meets at least one of the following objectives: (1) Contributes to the increase of electrical generation capability from existing nuclear power plants; (2) contributes to continued improvement in average industry capacity factors, and (3) contributes to the development of break-through technologies in long-term operation to ensure a minimum of 60 years of operation.

DATES: Solicitation Number DE–PS07–03ID14447 was issued on February 21, 2002. The deadline for receipt of completed applications is 4 p.m. e.s.t. April 24, 2003.

ADDRESSES: The formal solicitation document was disseminated electronically through the Industry Interactive Procurement System (IIPS) located at the following URL: *http://e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Elaine Richardson, Contracting Officer, at *richarem@id.doe.gov,* facsimile at (208) 526–5548, or by telephone at (208) 526–2640.

SUPPLEMENTARY INFORMATION: DOE anticipates making no more than 15 cooperative agreement awards, each ranging from $250,000 to $500,000 in federal funding. The project performance period for each R&D project is anticipated to be no more than 12 to 18 months.

Fifty percent (50%) minimum industry cost share is required for all projects. The solicitation is available in its full text via the Internet at the following address: *http://e-center.doe.gov.* The statutory authority for this program is section 31 of the Atomic Energy Act, 42 U.S.C. 2051. The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.121, Nuclear Energy Research, Development and Demonstration.

Issued in Idaho Falls on February 21, 2003.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 03–4996 Filed 3–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–099]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

February 26, 2003.

Take notice that on February 24, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing its compliance filing in conformity with the order of the Federal Energy Regulatory Commission issued on January 24, 2003, 102 FERC • 61,059 (2003).

CEGT states that a copy of this filing has been served on each person designated on the official service list in Docket No. RP96–200–091.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5106 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–260–000]

Central New York Oil And Gas Company, LLC; Notice of Tariff Filing

February 25, 2003.

Take notice that on February 20, 2003, Central New York Oil and Gas Company, LLC (CNYOG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective March 22, 2003:

First Revised Sheet No. 1
Original Sheet No. 4A
Second Revised Sheet No. 31
Original Sheet Nos. 34–49
Original Sheet No. 51
Original Sheet No. 53 Original Sheet No. 54
Original Sheet Nos. 55–69
First Revised Sheet No. 85
First Revised Sheet No. 99
First Revised Sheet No. 101
First Revised Sheet No. 121
Second Revised Sheet No. 122
First Revised Sheet No. 137
First Revised Sheet No. 140
Original Sheet No. 142
Original Sheet No. 144
Original Sheet No. 146
First Revised Sheet No. 2
Second Revised Sheet No. 5
Second Revised Sheet No. 32
Original Sheet No. 50
Original Sheet No. 52
First Revised Sheet No. 75
Second Revised Sheet No. 98
First Revised Sheet No. 100
First Revised Sheet No. 108
Original Sheet No. 121A
Second Revised Sheet No. 132
Second Revised Sheet No. 138
Original Sheet No. 141
Original Sheet No. 143
Original Sheet No. 145
Original Sheet No. 147

CNYOG states that the purpose of its filing is to add Rate Schedule PAL to its tariff, so that CNYOG may provide park and loan services to its customers, and to make certain enhancements to the interruptible storage service CNYOG offers under its Rate Schedule ISS.

CNYOG further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4967 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–411–002]

Chandeleur Pipe Line Company; Notice of Compliance Filing

February 26, 2003.

Take notice that on February 24, 2003, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2002:

Second Substitute Fourth Revised Sheet No. 3
Second Substitute Seventh Revised Sheet No. 19A
Second Substitute Second Revised Sheet No. 19A.02
Second Substitute Fourth Revised Sheet No. 19C
Second Revised Sheet No. 31A
Fifth Revised Sheet No. 32
Substitute 1st Rev Original Sheet No. 32A
Second Substitute Original Sheet No. 52B
Original Sheet No. 52C.

Chandeleur asserts that the purpose of this filing is to comply with the Commission's order issued February 10, 2003, in Docket No. RP02–411–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5105 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–076]

Columbia Gulf Transmission Company; Notice of Compliance Filing

February 26, 2003.

Take notice that on February 24, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 316, with an effective date of December 15, 2002.

Columbia Gulf states that it is submitting FTS Service Agreement No. 71557, which is an agreement for firm transportation service to be provided by Columbia Gulf to Stone Energy and the November 2, 2001 Amendment to FTS–2 Service Agreement No. 71557 (together the Stone Agreement). Service under the Stone Agreement commenced on December 15, 2001 and will continue for a three-year term.

Columbia Gulf states that the Stone Agreement is inconsistent with its tariff and its pro forma Rate Schedule FTS service agreement and therefore constitutes a non-conforming service agreement within the meaning of section 154.1(d) of the Commission Regulations.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: March 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5107 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–53–000]

Natural Gas Pipeline Company of America; Notice of Application

February 25, 2003.

Take notice that on February 20, 2003, Natural Gas Pipeline Company of America (Natural), tendered for filing in Docket No. CP03–53–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder requesting permission and approval to abandon a firm gas transportation service, and related interruptible overrun gas transportation service, authorized in Docket No. CP82–50, as amended, performed under Natural's Rate Schedule X–129 for Texas Gas Transmission Corporation (Texas Gas).

Natural states that pursuant to a gas transportation agreement between Natural and Texas Gas dated October 20, 1981, as amended, Natural receives on a firm basis up to 50,000 MMBtu of natural gas per day, with related interruptible overrun gas transportation service, for the account of Texas Gas in Beckham, Custer, Washita and Woodward Counties, Oklahoma and Wheeler County, Texas (Anadarko Area) and redelivers such gas to Texas Gas at Lowry in Cameron Parish, Louisiana.

Natural states that by a Termination Agreement between Natural and Texas Gas dated January 16, 2003, Natural and Texas Gas agreed to terminate the Agreement, as amended, effective May 27, 2003. Natural seeks authority to abandon its firm gas transportation service, and interruptible overrun gas transportation service, for Texas Gas performed under the Agreement, as amended, and Natural's Rate Schedule X–129 authorized in Docket No. CP82–50, as amended, effective May 27, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4964 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–079]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

February 25, 2003.

Take notice that on February 21, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 26W.24 through 26.W.26 to be effective February 21, 2003.

Natural states that the purpose of this filing is to implement an amendment to two (2) existing negotiated rate transactions entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: March 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4968 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–13–000]

Northwest Pipeline Corporation; Notice of Site Visit

February 25, 2003.

On March 12, 2003, the staff of the Office of Energy Projects (OEP) will conduct a site visit of Northwest Pipeline Corporation's (Northwest's) proposed Clackamas River Project in Clackamas County, Washington. The site visit will begin at 9 am at Northwest's Oregon City Compressor Station south of the Clackamas River. Both sides of the Clackamas River crossing will be visited. Representatives of Northwest, the U.S. Fish and Wildlife Service, the NOAA Fisheries, the U.S. Army Corps of Engineers, and the State of Oregon may accompany the staff. Any person interested in attending the site visit should meet with FERC staff at 9:00 am at the Oregon City Compressor Station and must provide their own transportation.

The address of the Oregon City Compressor Station is 15124 South Springwater Rd, Oregon City, OR 97045, phone number (503) 631–2163 x 2460. This station can be accessed by using the Carver exit off Highway 212/224. For further information about the project, please contact the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4962 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–32–000]

Northwest Pipeline Corporation; Notice of Interagency Meeting and Site Visit

February 25, 2003.

On March 11, 2003, the staff of the Office of Energy Projects (OEP) will conduct a meeting and site visit of Northwest Pipeline Corporation's (Northwest's) proposed White River

Replacement Project in King County, Washington. The meeting will begin at 9 am inside the Muckleshoot Indian Tribe's Department of Planning and Public Works. Representatives of Northwest, the Muckleshoot Indian Tribe, the U.S. Fish and Wildlife Service, the NOAA Fisheries, the U.S. Army Corps of Engineers, and the State of Washington may accompany the staff. The meeting will be followed by a site visit to both sides of the White River crossing. Any person interested in attending the site visit should meet with FERC staff at 12:00 noon in the parking lot of the Muckleshoot Indian Tribe's Department of Planning and Public Works. Those planning to attend must provide their own transportation.

The location of the Muckleshoot Indian Tribe's Department of Planning and Public Works is 40320 Auburn-Enumclaw Road SE (State Route 164) in Auburn, Washington, 98092, phone number (360) 802–1922. For further information about the project, please contact the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4963 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–58–000, et al.]

AEP Texas Central Company and AEP Texas North Company, et al.; Electric Rate and Corporate Regulation Filings

February 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

1. AEP Texas Central Company and AEP Texas North Company

[Docket No. EC03–58–000]

Take notice that on February 21, 2003, American Electric Power Company, Inc. filed with the Federal Energy Regulatory Commission (Commission) on behalf of AEP Texas Central Company and AEP Texas North Company (AEP Companies), an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities to Pedernales Electric Cooperative, Inc. (PEC).

American Electric Power Company, Inc. States that SEP Companies' filing was served on PEC and the Public Service Commission of Texas.

Comment date: March 14, 2003.

2. CMS Marketing, Services & Trading Company

[Docket No. EC03–59–000]

Take notice that on February 24, 2003, CMS Marketing, Services & Trading Company (CMST) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act seeking authorization to dispose of jurisdictional and power sales contracts to Constellation Power Source, Inc. (CPSI). CMST and CPSI are Commission-authorized power marketers.

Comment date: March 17, 2003.

3. Wisvest Connecticut, LLC and ISO New England Inc.

[Docket No. EL03–11–001]

Take notice that on February 24, 2003, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc., (ISO–NE) filed with the Federal Energy Regulatory Commission (Commission) their Report of Compliance in response to the requirements of the Commission's December 26, 2002 order in Wisvest-Connecticut, LLC, 101 FERC • 61,372 (2002).

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissioners and the Participants in NEPOOL.

Comment date: March 26, 2003.

4. Cabazon Power Partners, LLC

[Docket No. ER03–521–000]

Enron Wind Systems, LLC

[Docket No. ER03–522–000]

Zond Windsystems Partners Ltd., Series 85–A

[Docket No. ER03–523–000]

Zond Windsystems Partners Ltd., Series 85B

[Docket No. ER03–524–000]

Sky River Partnership

[Docket No. ER03–525–000]

Victory Garden Phase IV Partnership

[Docket No. ER03–526–000]

ZWHC, LLC

[Docket No. ER03–527–000]

Painted Hills Wind Developers

[Docket No. ER03–528–000]

Take notice that on January 31, 2003, Cabazon Power Partners, LLC, Enron Wind Systems, LLC, Zond Windsystems Partners Ltd., Series 85–A; Zond Windsystems partners Ltd., Series 85B; Sky River Partnership, Victory Garden Phase IV Partnership, ZWHC LLC and Painted Hill Wind Developers filed amended Power Purchase Agreements under section 205 of the Federal Power Act.

Comment Date: March 19, 2003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5093 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–57–000, et al.]

Calhoun Power Company I, LLC, et al.; Electric Rate and Corporate Filings

February 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calhoun Power Company I, LLC and Alabama Power Company

[Docket No. EC03–57–000]

Take notice that on February 19, 2003, Calhoun Power Company I, LLC (Calhoun) and Alabama Power Company (Alabama Power) jointly filed with the Federal Energy Regulatory Commission an application for authorization under Section 203 of the Federal Power Act for a transfer from Calhoun to Alabama Power of limited facilities located within the Bynum Substation, which interconnects the Calhoun generating facility to the Alabama Power transmission system.

Comment Date: March 12, 2003.

2. Oildale Energy LLC

[Docket Nos. EL03–48–000 and QF84–518–005]

Take notice that on February 7, 2003, Oildale Energy LLC, a limited liability company with its principal place of business at 2420 Camino Ramon, Suite 101, San Ramon, California 94583, filed with the Federal Energy Regulatory Commission (Commission) a petition for a limited waiver of the Commission's efficiency standard pursuant to § 292.205" of the Commission's regulations.

Comment Date: March 7, 2003.

3. Quest Energy, L.L.C.

[Docket No. ER00–1832–001]

Take notice that on February 14, 2003, WPS Resources Corporation (WPSR), on behalf of Quest Energy, L.L.C. (Quest), submitted a notice of change in status under Quest's market-based rate authority to reflect WPSR's indirect acquisition of Quest.

Comment Date: March 7, 2003.

4. Ameren Services Company; American Transmission Systems, Incorporated; Northern Indiana Public Service Company; National Grid USA; GridAmerica LLC; GridAmerica Holdings, Inc.; and Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER02–2233–003 and EC03–14–003]

Take notice that on February 18, 2003, the GridAmerica Participants (National Grid USA; GridAmerica LLC; GridAmerica Holdings, Inc., the managing member of GridAmerica; and the GridAmerica Companies which include Ameren Services Company, as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; and Northern Indiana Public Service Company) and the Midwest Independent Transmission System Operator, Inc. submitted a Compliance Filing as required by Ordering Paragraph (B) of the Commission's December 19, 2002 Order, 101 FERC ¶ 61,320 (2002); in this proceeding.

The parties state that they are serving copies of the filing on the parties to the above-referenced proceeding, as well as affected state commissions, in accordance with the requirements of § 385.2010 of the Commission's Regulations, 18 CFR 385.2010 (2002), and are serving the filing by e-mail on the parties on the Midwest ISO's extensive email service list.

Comment Date: March 12, 2003.

5. El Paso Electric Company

[Docket No. ER03–23–002]

Take notice that on February 14, 2003, El Paso Electric Company tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report as directed by the Commission in El Paso Elec. Co., 101 FERC ¶ 61,276 at P 5 (2002).

Comment Date: March 7, 2003.

6. ConocoPhillips Company

[Docket No. ER03–428–002]

Take notice that on February 14, 2003, ConocoPhillips Company tendered for filing with the Federal Energy Regulatory Commission (Commission) an Amended Code of Conduct to be attached to its Amended Notice of Succession notifying the Commission that, effective December 31, 2002, Conoco Inc. changed its name to ConocoPhillips Company.

Comment Date: March 7, 2003.

7. American Transmission Company LLC

[Docket No. ER03–537–000]

Take notice that on February 14, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin River Power Company. ATCLLC requests an effective date of January 15, 2003.

Comment Date: March 7, 2003.

8. ONEOK Energy Marketing and Trading Company, L.P.

[Docket No. ER03–538–000]

Take notice that on February 14, 2003, ONEOK Energy Marketing and Trading Company, L.P. filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, a Revised Rate Schedule to allow for sales, assignments, or transfers of energy or capacity. This Revised Rate Schedule replaces that which is currently on file with the Commission.

Comment Date: March 7, 2003.

9. Carolina Power & Light Company and Florida Power Corporation

[Docket No. ER03–540–000]

Take notice that on February 14, 2003, Carolina Power & Light Company, doing business as Progress Energy Carolinas and Florida Power Corporation, doing business as Progress Energy Florida (Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) modifications to their Open Access Transmission Tariffs (OATT). The modifications consist of changes to the creditworthiness provisions so that the OATTs reflect the current climate of credit risk in the industry.

Progress Energy Carolinas and Progress Energy Florida respectfully request that the OATT modifications become effective on March 1; 2003 in order to minimize the potential exposure of the companies and their native load customers to unreimbursed expenses.

Applicants state that copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission and South Carolina Public Service Commission.

Comment Date: March 7, 2003.

10. Wayne-White Counties Electric Cooperative

[Docket No. ER03–541–000]

Take notice that on February 14, 2003, Wayne-White Counties Electric Cooperative (Wayne-White or Cooperative) tendered for filing two executed Service Agreements for Firm Point-to-Point Transmission Service with Illinois Power Company. Under the Service Agreements, Wayne-White states that they will provide firm point-to-point transmission service to Illinois Power Company under the Cooperative's Open Access Transmission Tariff. Wayne-White requests an effective date of February 1, 2003, the date service was first provided, for the Fourth Revised Service Agreement between Wayne-White and Illinois Power Company. Wayne-White requests an effective date of April 1, 2003, for the Fifth Revised Service Agreement between Wayne-White and Illinois Power Company.

Wayne-White states that a copy of the filing was served upon Illinois Power Company.

Comment Date: March 7, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5092 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1115–001, et al.]

Calpine Construction Finance Company. L.P., et al.; Electric Rate and Corporate Filings

February 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calpine Construction Finance Company, L.P.

[Docket No. ER00–1115–001]

Take notice that on February 24, 2003, Calpine Construction Finance Company, L.P., submitted for filing its triennial market power analysis in compliance with the Commission Order issued in this docket on February 23, 2000.

Comment Date: March 17, 2003.

2. PJM Interconnection, L.L.C.

[Docket No. ER02–1726–000]

Take notice that on January 29, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing a Notice of Withdrawal of the Facilities Operation Agreement among PJM, Rock Springs Generation, L.L.C., and CED Rock Springs, Inc., filed in the above proceeding on May 6, 2002.

Comment Date: March 7, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. ER02–2562–000]

Take notice that on January 29, 2003, PJM Interconnection, L.L.C., (PJM) tendered for filing a request that the Commission end its deferral of action in a proceeding filed on September 17, 2002 of an Executed Interconnection Service Agreement between PJM and the owners of the Rock Springs Generating Facility.

Comment Date: March 7, 2003.

4. Carolina Power & Light Company and Florida Power Corporation

[Docket No. ER03–540–001]

Take notice that on February 24, 2003, Carolina Power & Light Company, doing business as Progress Energy Carolinas and Florida Power Corporation, doing business as Progress Energy Florida tendered for filing with the Federal Energy Regulatory Commission modifications of their February 14, 2003 filing in this docket. The filing further modifies the creditworthiness provisions so that the OATTs reflect the current climate of credit risk in the industry and corrects clerical errors in the February 14 filing.

Progress Energy Carolinas and Progress Energy Florida respectfully request that the OATT modifications become effective on March 1, 2003 in order to minimize the potential exposure of the companies and their native load customers to unreimbursed expenses.

Progress Energy Carolinas and Progress Energy Florida state that copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission and South Carolina Public Service Commission.

Comment Date: March 17, 2003.

5. Southern California Edison Company

[Docket No. ER03–553–000]

Take notice that on February 24, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) for the Power Contract (Power Contract) and the Capacity Exchange Agreement (Capacity Exchange Agreement) between SCE and the Department of Water Resources of the State of California (CDWR). The purpose of this filing is to modify the terms and conditions pursuant to which SCE may curtail the hourly schedules of Return Energy, Additional Energy and Exchange Energy to CDWR to be consistent with the new electric market structure in California, to reflect that SCE has divested its oil and gas-fired generation, and to be consistent with the scheduling protocols of the California Independent System Operator Corporation.

Copies of this filing were served upon the Public Utilities Commission of the State of California and CDWR.

Comment Date: March 17, 2003.

6. Virginia Electric and Power Company

[Docket No. ER03–554–000]

Take notice that on February 24, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Industrial Power Generating Corporation (Ingenco). The Interconnection Agreement sets forth the terms and conditions governing the interconnection between Ingenco's generating facility and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission waive its notice of filing requirements and accept this filing to make the Interconnection Agreement effective on February 25, 2003, the day after filing.

Dominion Virginia Power states that copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Comment Date: March 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings:

Magalie R. Salas,

Secretary.

[FR Doc. 03–5094 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1305–006, et al.]

Westar Generating, Inc., et al.; Electric Rate and Corporate Filings

February 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Westar Generating, Inc.

[Docket No. ER01–1305–006]

Take notice that on February 20, 2003, Westar Generating, Inc., (WG) submitted for filing a Notice of Withdrawal of First Revised Rate Schedule FERC No. 1 dated February 1, 2003, in Docket No. ER01–1305–006, filed January 31, 2003. WG is withdrawing the referenced filing based on discussions with the Kansas Corporation Commission, and will submit a new filing shortly reflecting these discussions.

Comment Date: March 13, 2003.

2. Illinois Power Company

[Docket No. ER03–249–001]

Take notice that on February 21, 2003, Illinois Power Company (Illinois Power), submitted a response to the Commission's Letter Order dated January 20, 2003 regarding Illinois Power's December 6, 2002 filing of an executed interconnection agreement with Franklin County Power of Illinois.

Comment Date: March 14, 2003.

3. Northern Indiana Public Service Company

[Docket No. ER03–250–001]

Take notice that on February 20, 2003, Northern Indiana Public Service Company, in compliance with the Commission's Order issued on January 21, 2003, is submitted the service agreement designations as required by Order No. 614 for the service agreements on December 6, 2002.

Comment Date: March 13, 2003.

4. Soyland Power Cooperative, Inc.

[Docket No. ER03–289–001]

Take notice that on February 21, 2003, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (Commission) revised rate schedules in the format required by the Commission's Order No. 614. The filing was made in compliance with the Commission's letter order dated January 21, 2003.

Comment Date: March 14, 2003.

5. San Diego Gas & Electric Company

[Docket No. ER03–548–000]

Take notice that on February 20, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing its First Revised Service Agreement No. 9 and First Revised Service Agreement No. 11 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6, incorporating revisions to the Expedited Interconnection Facilities Agreement with CalPeak Power Enterprise, LLC and CalPeak Power Border, LLC, (collectively, CalPeak) respectively. The revised Service Agreements implement Internal Revenue Service Notice 2001–82, "Expansion of Safe Harbor Provisions Under Notice 88–129", which provides that in certain circumstances, regulated public utilities such as SDG&E will not realize income upon contributions by interconnecting electric generators of certain interconnection facilities. The amendment further clarifies terms pertaining to creditworthiness requirements of CalPeak and the guarantor of CalPeak's financial obligations as contemplated by Section 10.22

SDG&E requests an effective date of September 24, 2001 for the Revised Service Agreements, and a waiver of the sixty-day notice requirement of 18 CFR 35.11.

SDG&E states that copies of the filing have been served on CalPeak and on the California Public Utilities Commission.

Comment Date: March 13, 2003.

6. Southern California Edison Company

[Docket No. ER03–549–000]

Take notice that on February 20, 2003, Southern California Edison Company (SCE), tendered for filing revised Service Agreements (Service Agreements) for Wholesale Distribution Service between SCE and City of Azusa, City of Banning, City of Colton, City of Riverside and Southern California Water Company. The Service Agreement serves to provide the terms and conditions under which SCE provides Distribution Service under SCE's FERC Electric Tariff, First Revised Volume No. 5. SCE is proposing revised rates and rate terms. The proposed changes would increase revenues from jurisdictional service by $1,233,175 based on the 12-month period following the effective date. Additionally, SCE is revising the rate terms to be consistent with its proposed rates and proposing to revised the Real Power Loss Factors in the Service Agreements.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and the affected customers.

Comment Date: March 13, 2003.

7. New England Power Pool and ISO New England Inc.

[Docket No. ER03–550–000]

Take notice that on February 21, 2003, ISO New England Inc. and the New England Power Pool (NEPOOL) jointly submitted revisions to NEPOOL Market Rule 1 and Appendix A thereto, under Section 205 of the Federal Power. NEPOOL and ISO New England Inc. have requested an effective date for the proposed changes of April 1, 2003.

NEPOOL states that copies of said filing have been served upon NEPOOL Participants and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the governors and utility regulatory agencies of the six New England States.

Comment Date: March 14, 2003.

8. Baltimore Gas & Electric Company

[Docket No. ER03–551–000]

Take notice that on February 21, 2003, Baltimore Gas and Electric Company (BGE) submitted for filing a restated and revised Interconnection Agreement between BGE and Constellation Power Source Generation, Inc., (CPSG), formerly Constellation Generation, Inc., (CGI), that supercedes the Interconnection Agreement between BGE and CGI filed with the Commission on February 11, 2000 in Docket No.

ER00–1598–000 and accepted by the Commission by letter order dated March 29, 2000. The Interconnection Agreement has been revised to reflect a redefined Point of Interconnection for Wagner Unit 4, Constellation Power Source Generation, Inc.'s new legal name, and certain minor corrections in terminology.

BGE seeks an effective date of May 1, 2003 for the revised Interconnection Agreement.

Comment Date: March 14, 2003.

9. New York Independent System Operator, Inc.

[Docket No. ER03–552–000]

Take notice that on February 21, 2003, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff). The proposed filing would amend the NYISO's creditworthiness requirements for participation in the NYISO-administered markets. The NYISO has requested that the Commission make the filing effective on April 30, 2003.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: March 14, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4965 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Paper Scoping and Soliciting Scoping Comments

February 25, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* 1413–032.

c. *Date filed:* October 30, 2002.

d. *Applicant:* Fall River Rural Electric Cooperative, Inc.

e. *Name of Project:* Buffalo River Hydroelectric Project.

f. *Location:* On the Buffalo River near it's confluence with the Henry's Fork River, in Fremont, Idaho. The project occupies 9.8 acres of land within the Targhee National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825.

h. *Applicant Contact:* Fall River Rural Electric Cooperative, Inc., 1150 North 3400 East, Ashton, Idaho 83420, Tel. # (208) 652–7431, and/or Brent L. Smith, President, Northwest Power Services, Inc, P.O. Box 535, Rigby, Idaho 83442, Tel. # (208) 745–0834.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–6032, gaylord.hoisington@FERC.gov.

j. Deadline for filing scoping comments is March 27, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site, *http://www.ferc.gov*, under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Description of the Project*: The existing Buffalo River Project consists of: (1) a 142-foot-long by 12-foot-high timber-faced rock-filled diversion dam; (2) a 40-foot-long by 3-foot-high concrete slab spillway with stop logs; (3) a fish passage structure; (4) a concrete intake structure with a 5-foot steel slide gate; (5) a trash rack; (6) a 52-foot-long by 5-foot-diameter concrete encased steel penstock; (7) a 34-foot-long by 22-foot-high masonry block powerhouse containing a 250-kilowatt Bouvier Kaplan inclined shaft turbine; and (8) other appurtenant facilities. The applicant estimates that the total average annual generation would be 1,679 megawatthours.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* Scoping is intended to advise all parties regarding the proposed scope of the environmental analysis and to seek additional information pertinent to this analysis. The Commission intends to prepare an environmental assessment (EA) for the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

At this time, the Commission staff do not propose to conduct any formal public or agency meetings or an on-site visit. Instead, we will solicit comments, recommendations, information, and alternatives by conducting paper scoping through issuing Scoping Document 1 (SD1).

Copies of SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of SD1 are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

As part of scoping the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from comments all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis. Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the subject project's impacts to the aforementioned.

o. The tentative schedule for preparing the Buffalo River EA is:

Major Milestone and Target Date
Ready for Environmental Analysis Notice
October 30, 2003.
Draft EA Issued
January 30, 2004.
Final EA Issued
April 3, 2004.

Note: The schedule is going to vary depending upon the circumstances of the project (deficiencies, additional information, etc.) *See* Guidance for Publishing Hydro Licensing Schedules.

Magalie R. Salas,

Secretary.

[FR Doc. 03–4966 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Reissuance of Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

February 26, 2003.

The Commission is re-issuing this notice which was originally issued on January 22, 2003, because several state and federal agencies have requested additional time to provide comments or motions to intervene on the application.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Design and Project Boundary Due to Proposed Relocation of Powerhouse.

b. *Project No:* 11175–016.

c. *Date Filed:* April 4, 2002.

d. *Applicant:* Crown Hydro, LLC.

e. *Name of Project:* Crown Mill.

f. *Location:* The project is located on the Mississippi River, in Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r), 799 and 801.

h. *Applicant Contact:* Tom Griffin, Crown Hydro LLC, 5436 Columbus Avenue South, Minneapolis, MN 55427, (612) 825–1043.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov*.

j. *Deadline for filing comments and or motions:* March 18, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–11175–016) on any comments or motions filed.

k. *Description of Request:* Crown Hydro LLC (Crown) is proposing a change in project boundary to relocate the project's powerhouse, and to make additional modifications to the project. The project as originally licensed in 1999 included a powerhouse containing two vertical Kaplan generating units with a total capacity of 3,400 kW to be located in the basement of the historic Crown Roller Building on the west side of West River Parkway. Crown is now proposing to construct a powerhouse containing two vertical Kaplan generating units with a total capacity of 3,150 kW, on the east side of the West River Parkway, within the footprint of the remains of the Holly and Cataract Mill Foundation. The relocated powerhouse would be designed as an at-grade structure with two stairwells that would have above ground fencing, located within the Minneapolis Park and Recreation Board's property, at the Mill Ruins Park. Resources affected by this proposed amendment include cultural and aquatics.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 with or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5095 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12158–000]

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12158–000.

c. *Date filed:* April 25, 2002.

d. *Applicant:* Rye Patch Hydro, LLC.

e. *Name of Project:* Rye Patch Dam Project.

f. *Location:* On the Humboldt River, in Pershing County, Nevada. The Project would utilize the U.S. Bureau of Reclamation's existing Rye Patch Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Brent Smith, Rye Patch Hydro, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Bureau of Reclamation's existing Rye Patch Dam and consist of: (1) A proposed 150-foot-long, 48-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit having an installed capacity of 2.5 MW, (3) a proposed 3-mile-long, 15 kV transmission line, and (4) appurtenant facilities.

The applicant estimates that the average annual generation would be 10.95 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will con1sider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12158–000) on any comments or motions filed.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5096 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application;* Preliminary permit.

b. *Project No.:* 12276–000.

c. *Date filed:* June 26, 2002.

d. *Applicant:* Red Bluff Hydro, LLC.

e. *Name of Project:* Red Bluff Diversion Dam Project.

f. *Location:* On the Sacramento River, in Tehama County, California. The project would utilize the U.S. Bureau of Reclamation's existing Red Bluff Diversion Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Brent Smith, Red Bluff Hydro, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Bureau of Reclamation's existing Rye Patch Dam and consist of: (1) a proposed 250-foot-long, 168-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit having an installed capacity of 6 MW, (3) a proposed 1-mile-long, 25 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 45 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5097 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12420–000.

c. *Date filed:* November 25, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D#11 Project.

f. *Location:* On the Mississippi River, in Dubuque County, Iowa, utilizing the U.S. Army Corps of Engineers Mississippi Lock and Dam #11.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing Mississippi Lock and Dam # 11 and consist of: (1) 12 proposed 80-foot-long, 114-inch-diameter steel penstocks, (2) a proposed powerhouse containing six generating units having an installed capacity of 18.4 MW, (3) a proposed 300-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 113 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5098 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Prepare Environmental Assessment, Availability of Scoping Document, and Soliciting Scoping Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with Commission and are available for public inspection:

a. *Type of Application:* New minor license.

b. *Project No.:* 12423–000.

c. *Date filed:* November 25, 2002.

d. *Applicant:* American Falls River District No. 2 and Big Wood Canal Company.

e. *Name of Project:* Lateral 993 Hydroelectric Project.

f. *Location:* Juncture of the 993 Lateral and North Gooding Main Canal, Boise Meridian, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho. The initial diversion is the Milner Dam on the Snake River. The North Gooding Main Canal is part of a U.S. Bureau of Reclamation (Bureau) project. The project would occupy about 10–15 acres of Federal land managed by the Bureau.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825").

h. *Applicant Contact:* Lynn Harmon, General Manager, American Falls Reservoir District No. 2 and Big Wood Canal Company, Box C, Shoshone, Idaho, 83352; (208) 886–2331.

i. *FERC Contact:* Allison Arnold at (202)502–6346 or *allison.arnold@ferc.gov*.

j. *Deadline for filing scoping comments:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official Service List for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "FERRIS" link.

k. This application is not ready for environmental analysis at this time.

l. The Lateral 993 Hydroelectric Power Project would consist of:

(1) A new concrete diversion structure located across the North Gooding Main Canal with a maximum height of 10 feet; (2) a new 7,000-foot-long canal with a bottom width of 25 feet that is to be excavated from rock, with some earth embankment, having a hydraulic capacity of 350 cubic feet per second (cfs); (3) a 10-foot-high gated concrete diversion structure that would divert up to 350 cfs to a concrete intake structure; (4) a 2,900-foot-long steel pipe (or HDPE) penstock (72-inch-diameter); (5) a 30 by 50-foot concrete with masonry or metal walled powerhouse containing two 750-kilowatt (kW) turbines with a total installed capacity of 1,500 kW; (6) an enlarged 100-foot-long tailrace channel with a bottom width of 40 feet that would discharge into the North Gooding Main Canal; (7) a 2.4-mile-long transmission line, and (8) appurtenant facilities. The annual generation would be approximately 5.8 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* Pursuant to the National Environmental Policy Act and procedures of the Federal Energy Regulatory Commission (Commission or FERC), the Commission staff intends to prepare an Environmental Assessment (EA) that evaluates the environmental impacts of issuing a new license for the Lateral 993 Hydroelectric Project, located at the juncture of the 993 Lateral and North Gooding Main Canal, Boise Meridian, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho.

The EA will consider both site-specific and cumulative environmental effects, if any, of the proposed action and reasonable alternatives, and will include an economic, financial, and engineering analysis. Preparation of staff's EA will be supported by a scoping process to ensure identification and analysis of all pertinent issues.

We prepared the enclosed Scoping Document 1 (SD1) to provide you with information on:

- The Lateral 993 Hydroelectric Project;
- The environmental analysis process we will follow to prepare the EA; and
- Our preliminary identification of issues that we will address in the EA.

We invite the participation of governmental agencies, non-governmental organizations, and the general public in the scoping process, and have prepared this SD1 to provide information on the proposed project and to solicit written comments and suggestions on our preliminary list of issues and alternatives to be addressed in the EA. The SD1 has been distributed to parties on the Service List for this proceeding and is available from our Public Reference Room at (202) 502–8371. It can also be accessed online at *http://www.ferc.gov* under the "FERRIS" link.

Given the fact that no comments have been filed to date related to the licensing, we do not anticipate at this time that there is adequate justification: (1) To arrange for Commission staff and interested members of the public to visit the project site; or (2) to hold a public meeting near the project site.

Please review this document and, if you wish to provide written input, follow the instructions contained in section 5.0. Please direct any questions about the scoping process to Allison Arnold at (202) 502–6346.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5099 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12426–000.

c. *Date filed:* December 17, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Red River Lock and Dam #1 Project.

f. *Location:* On the Red River, in Catahoula County, Louisiana. The project would utilize the U.S. Army Corps of Engineer's existing Red River L&D #1.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12381–000; date filed: October 1, 2002; date notice closes: March 24, 2003.

l. *Description of Project:* The proposed project using the U.S. Army Corps of Engineer's Red River Lock and Dam #1 and impoundment would consist of : (1) eight proposed 80-foot-long, 114-inch diameter steel penstocks, (2) a proposed powerhouse containing eight generating units having a total installed capacity of 16.2 MW, (3) a proposed 500-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 99 GWh that would be sold to a local utility.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5100 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12431–000.

c. *Date filed:* January 13, 2003.

d. *Applicant:* The University of Iowa.

e. *Name of Project:* Burlington Street Dam Project.

f. *Location:* On Iowa River, in Johnson County, Iowa. The Burlington Street Dam is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Doug True, The University of Iowa, 105 Jessup Hall, Iowa City, IA 52242–1316, (319) 335–3552.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) the existing 274.5-foot long, 19-foot-high concrete dam, (2) an existing reservoir having a surface area of 125 acres with a storage capacity of 700 acre-feet and a normal water surface elevation of 639.5 feet msl,(3) a proposed powerhouse containing two generating units having an installed capacity of 600 kW, (4) an existing transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 3.5 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5101 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

February 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1960–002.

c. *Date filed:* February 19, 1999.

d. *Applicant:* Dairyland Power Cooperative—Wisconsin.

e. *Name of Project:* Flambeau Hydroelectric Station.

f. *Location:* On the Flambeau River in Rusk County, Wisconsin. The project does not utilize Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Dave Carroll, Coordinator, Dairyland Power Cooperative, 3200 East Avenue, South La Cross, WI 54601, (608) 788–4000.

i. *FERC Contact:* Timothy Konnert, *Timothy.Konnert@ferc.gov*, or (202) 502–6359.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should file the request by the deadline specifiedin item k below.

k. *Deadline for filing motions to intervene and protests and requests for cooperating agency status:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The project consists of the following existing facilities: (1) A right earthen dam, 2,570 feet-long and a left earthen dam 2,130 feet-long, separated by a 138 foot-long gated spillway section with a crest elevation of 1157.0 feet NGVD; (2) a 1,900-acre reservoir with a normal water surface elevation of 1183.48 feet NGVD; (3) a powerhouse containing 3 vertical Kaplan turbines each connected to generator units for a total installed capacity of 15,000 kW; and (4) appurtenant facilities. The average annual energy generation is 60,727,590 kWh. The dam and existing project facilities are owned by the applicant.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *Alternative procedure schedule and final amendments:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issue a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposal alternative procedure, they should file comments by the deadline specified in item k above. The application will be processed according to the following schedule, and revisions to the schedule will be made as appropriate. *Issue Scoping Document 1 for comments:* March 2003. *Issue Scoping Document 2, if necessary:* June 2003. *Notice of application is ready for environmental analysis:* July 2003. *Notice of the availability of the EA:* December 2003. *Ready for Commission's decision on the application:* January 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5103 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–060]

Notice of Drought Contingency Plan and Soliciting Comments, Motions To Intervene, and Protests

February 26, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Alcoa Power Generating, Inc filed a Drought Contingency Plan describing the actions to be taken at the Yadkin River hydroelectric project in the event of a drought during the summer of 2003.

b. *Project No:* 2197–060.

c. *Date Filed:* February 14, 2003.

d. *Applicant:* Alcoa Power Generating, Inc.(licensee).

e. *Name of Project:* Yadkin River.

f. *Location:* The project is located on the Yadkin/Pee Dee River, in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Julian Polk, Alcoa Power Generating Inc.; 293 NC 740 Highway, PO Box 576, Badin, NC 28009–0576, (704) 422–5617.

i. *FERC Contact:* Any questions on this notice should be directed to Mr. T.J. LoVullo at (202) 502–8900, or e-mail address: *thomas.lovullo@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 28, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2197) on any comments or motions filed.

k. *Description of Drought Plan:* By letter dated December 20, 2002, the Commission stated that if precipitation during the winter of 2002/2003 is below average and ground water tables have not completely recharged, severe drought conditions could return to the region during the summer of 2003. To minimize any adverse impacts associated with a drought, the Commission required the licensee to file a drought contingency plan for the summer of 2003.

The licensee's Drought Contingency Plan discusses competing demands for water in the Yadkin-Pee Dee River Basin and describes a process for monitoring and responding to drought conditions. The licensee's plan includes: (1) Declaring the existence of a drought when the U.S. Drought Monitor elevates 10% or more of the Yadkin—Pee Dee River basin to a drought severity classification of D1 or higher; (2) developing action and communication plans should drought conditions emerge; (3) holding meetings with officials from North and South Carolina, Progress Energy and the U.S. Fish & Wildlife Service to monitor conditions; (4) implementing operational changes to balance competing interests; and (5) continuing to study salt-water intrusion at fresh water intakes on the coast of South Carolina.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter Project No. 2197 excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

o. *Filing and Service of Responsive Documents:* All filings must bear in capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time deadline specified, it will be presumed to have no comments other than any included with the licensee's filing. One copy of an agency's comments should be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5104 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065]

El Dorado Irrigation District, California; Notice of Public Meetings

February 26, 2003.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies are working collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. Meetings will be held as follows:

March 10 Plenary Meeting—9 a.m.–4 p.m.;
March 11 Plenary Meeting—9 a.m.–4 p.m.;
March 18 Plenary Meeting—9 a.m.—4 p.m.; and
March 19 Plenary Meeting—9 a.m.—4 p.m.

We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the El Dorado Board of Directors Meeting Room, located at EID Headquarters, 2890 Mosquito Road, Placerville, California.

For further information, please contact Elizabeth Molloy at (202) 502–8771 or John Mudre at (202) 502–8902.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5102 Filed 3–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2005 Resource Pool, Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed procedures and call for applications.

SUMMARY: Western Area Power Administration (Western), Upper Great Plains Customer Service Region, a Federal power marketing agency of the Department of Energy (DOE), is publishing this notice to seek comments on proposed procedures and call for applications from preference entities interested in an allocation of Federal power. The Energy Planning and Management Program (Program) provides for establishing project-specific resource pools and allocating power from these pools to new preference customers and other purposes as determined by Western. Western, in accordance with the Program, proposes allocation procedures for comment and consideration for entities interested in a Federal power resource pool increment

of up to 1 percent (approximately 20 megawatts) of the long-term marketable resource of the Pick-Sloan Missouri Basin Program, Eastern Division (P–SMBP–ED) that may become available January 1, 2006. Preference entities that wish to apply for an allocation of power from Western's Upper Great Plains Customer Service Region must submit formal applications as outlined below.

DATES: Entities interested in commenting on proposed procedures and/or applying for an allocation of Western power must submit written comments and/or applications to Western's Upper Great Plains Customer Service Regional Office at the address below. Western must receive written and/or electronic comments and/or applications by 4 p.m., MDT, on June 2, 2003. Entities are encouraged to use certified mail, e-mail, or fax for delivery of comments and/or applications. Western will accept comments and/or applications received via regular mail through the United States Postal Service if postmarked at least 3 days before June 2, 2003, and received no later than June 9, 2003. Western reserves the right to not consider any comments and/or applications that are not received by the prescribed dates and times. Western will hold public information forums (not to exceed 2 hours) and public comment forums (immediately following the information forums) on the proposed procedures and applications.

The public information and comment forum dates are:

1. April 8, 2003, 1 p.m. to 5 p.m., Billings, Montana.
2. April 9, 2003, 1 p.m. to 5 p.m., Moorhead, Minnesota.
3. April 10, 2003, 9 a.m. to 1 p.m., Sioux City, Iowa.

ADDRESSES: Send applications for an allocation of Western power and written comments regarding these proposed procedures to Robert J. Harris, Regional Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266. Applications for an allocation of Western power and comments on the proposed procedures may also be faxed to (406) 247–7408 or e-mailed to Post2005UGP@wapa.gov. Applications are available upon request or may be accessed at *http://www.wapa.gov/ugp/contracts/post2005/APD.htm*. Applicants are encouraged to use the application form provided at the above Web site.

The public information and comment forum locations are:

1. Billings—Holiday Inn Billings Plaza Hotel and Convention Center, 5500 Midland Road, Billings, MT 59101
2. Moorhead—Courtyard by Marriott, Moorhead Area Conference Center, 1080 28th Avenue South, Moorhead, MN 56560
3. Sioux City—Hilton Sioux City, 707 Fourth Street, Sioux City, IA 51101–1701

FOR FURTHER INFORMATION CONTACT: Jon R. Horst, Public Utilities Specialist, Upper Great Plains Customer Service Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7444, e-mail *horst@wapa.gov*.

All documents developed or retained by Western in developing this Post–2005 Resource Pool will be available for inspection and copying at the Upper Great Plains Customer Service Region in Billings, Montana. Public comments will be available for viewing at *http://www.wapa.gov/ugp/contracts/post2005/comments.htm* after the close of the comment period.

SUPPLEMENTARY INFORMATION: On October 20, 1995, Western published the Final Program Rule. The Final Rule became effective on November 20, 1995. Subpart C–Power Marketing Initiative of the Program, Final Rule, 10 CFR part 905, provides for project-specific resource pools and allocations of power from these pools to eligible new customers and/or for other appropriate purposes as determined by Western. The additional resource pool increments shall be established by pro rata withdrawals, on 2 years' notice, from then-existing customers. Specifically, 10 CFR section 905.32 (b) provides:

> At two 5-year intervals after the effective date of the extension to existing customers, Western shall create a project-specific resource pool increment of up to 1 percent of the long-term marketable resource under contract at the time. The size of the additional resource pool increment shall be determined by Western based on consideration of the actual fair-share needs of eligible new customers and other appropriate purposes.

On April 22, 2002, Western published a Notice for Letters of Interest in the **Federal Register** (67 FR 19571) in which Western solicited and received Letters of Interest regarding a resource pool of up to 1 percent (approximately 20 megawatts) of the marketable resource that may become available January 1, 2006, for new customers and/or other appropriate purposes pursuant to the Program. Traditionally, Western has marketed allocations of firm power to be apportioned to eligible new preference entities in such a manner as to encourage the most widespread use thereof, in accordance with Federal Reclamation Law.

Letters of Interest

Western received 65 Letters of Interest regarding the up to 1 percent resource pool. The letters were evaluated and categorized into three main areas of interest. Sixteen letters were from entities interested in becoming a new customer. Eleven letters were from entities that expressed an interest in other appropriate purposes such as: increasing current customer allocations, adjusting past allocations, and supporting renewable resources. Thirty-eight of the letters were from entities that recommended Western forego implementation of the proposed resource pool. The 38 letters also recommended if Western proceeds with the proposed resource pool, the pool should not be made available for other appropriate purposes.

Response to Letters of Interest

Western has historically marketed power from resource pools to new preference customers through marketing plans and initiatives. Western recognizes the interest expressed from 16 potential new customers in an allocation from the P–SMBP–ED. Western encourages the new customer interest that lends support to Western's mission of allocating low-cost hydropower in such a way as to promote the most widespread use thereof.

Western received various Letters of Interest regarding the need for other appropriate purposes. Several letters were received from entities desiring adjustments or increases to their current allocations. Specifically, two letters were received in support of adjusting two separate Tribal allocations from the P–SMBP–ED Post-2000 Resource Pool (62 FR 11174) (Post-2000 Resource Pool). Also, several letters were received from municipal utilities in support of increasing their current allocations. Historically, Western has not changed or increased allocations within the P–SMBP–ED that were established in past marketing initiatives. Western recognizes that customer loads continue to grow and change and increases in individual allocations would be beneficial. However, if Western were to entertain requests for increases or adjustments to allocations, all customers would need to be afforded the opportunity to submit new applications. If this were to occur, it is likely Western would receive significant modification requests, which would be extremely difficult to substantiate and likely not be supportable with the power available from this resource pool. Any significant modifications could result in a new marketing plan which is not the intent of the Program. Therefore, Western is not proposing to adjust or increase current customer allocations.

Other comments received suggested supporting renewable resources as an other appropriate purpose for the resource pool. Comments suggested that any commitment of the resource pool to support renewable resources through allocations should be subject to existing laws, regulations, and guidelines set forth in previous marketing initiatives, specifically the requirement that any applicant must meet preference status. Western agrees that any use of the resource pool must comply with existing laws, regulations, and guidelines, and must be made to preference entities. Western has allocated power to the majority of eligible preference entities within the P–SMBP–ED marketing area. Should a renewable resource program be developed using power from this resource pool, Western would be withdrawing power from entities across the region to develop a very small renewable program available to these same entities. Western believes the best manner to support renewable resources with this power is to allow existing customers to retain the power that may be available after allocating to new customers. This will allow all preference entities across the marketing area to leverage this power and use existing allocations to support renewable resources if they so choose. Western recognizes that many customers are already demonstrating support of renewable resources through their investments in various wind projects across the P–SMBP–ED marketing area near Moorhead, Minnesota; Lincoln, Nebraska; Grand Forks, Minot, and Valley City, North Dakota; and also in Chamberlain and Howard, South Dakota. Wind projects are being developed and implemented by Western's customers regardless of any potential new allocation from this resource pool.

Use of the Post-2005 Resource Pool

Based on examination of the Letters of Interest, Western has determined the resource pool should be made available to new preference customers and is not proposing to use a share of the resource pool for other appropriate purposes. Allocations to new preference customers shall be made in accordance with the P–SMBP–ED Final Post-1985 Marketing Plan (45 FR 71860) (Post-1985 Marketing Plan) and the Program. Western intends to carry forward the key principles and criteria that were established in the Post-2000 Resource Pool, except as modified herein.

The Proposed Post-2005 Resource Pool Allocation Procedures

These proposed procedures for the P–SMBP–ED address (1) eligibility criteria; (2) how Western plans to allocate the resource pool in accordance with the Program to eligible applicants as new preference customers and not for other appropriate purposes; and (3) the terms and conditions under which Western will sell the power allocated.

I. Amount of Pool Resources

Western proposes to allocate up to 1 percent (approximately 20 megawatts) of the P–SMBP–ED long-term firm hydroelectric resource available as of January 1, 2006, as firm power to eligible new preference customers. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western electric service contract.

II. General Eligibility Criteria

Western proposes to apply the following general eligibility criteria to applicants seeking an allocation of firm power under the proposed Post-2005 Resource Pool Allocation Procedures.

A. Qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. Qualified applicants must be located within the currently established P–SMBP–ED marketing area.

C. Qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P–SMBP–ED firm power allocation. Qualified Native American applicants, who did not receive an allocation from the Post-2000 Resource Pool, are not subject to this requirement.

D. Qualified utility and non-utility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.

E. Qualified utility applicants that desire to purchase power from Western for resale to consumers, including cooperatives, municipalities, public utility districts, and public power districts must have met utility status by January 1, 2003. Utility status means the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. Qualified Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended.

III. General Allocation Criteria

Western proposes to apply the following general allocation criteria to applicants seeking an allocation of firm power under the proposed Post-2005 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercise of its discretion under Federal Reclamation Law.

B. An allottee will have the right to purchase firm power only upon the execution of an electric service contract between Western and the allottee, and satisfaction of all conditions in that contract.

C. Firm power allocated under these procedures will be available only to new preference customers in the existing P–SMBP–ED marketing area. This marketing area includes Montana (east of the Continental Divide), North Dakota, South Dakota, and specific areas in western Iowa, western Minnesota and eastern Nebraska. The marketing area of the P–SMBP–ED is Montana east of the Continental Divide, all of North and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and thence northwesterly to the northern boundary of the state at the 96½° meridian.

D. Allocations made to Native American tribes will be based on the actual load experienced in calendar year 2002. Western has the right to use estimated load values should actual load data not be available. Western will adjust inconsistent estimates during the allocation process.

E. Allocations made to qualified utility and non-utility applicants will be based on the actual loads experienced in calendar year 2002. Western will apply the Post-1985 Marketing Plan and the Program criteria to these loads. Western will carry forward key principles and criteria established in the Post-2000 Resource Pool, except as modified herein.

F. Energy provided with firm power will be based upon the customer's monthly system load pattern.

G. Any electric service contract offered to a new customer shall be executed by the customer within 6 months of a contract offer by Western, unless otherwise agreed to in writing by Western.

H. The resource pool will be dissolved subsequent to the closing date for executing firm power contracts. Firm

power not under contract will be used as determined by Western.

I. The minimum allocation shall be 100 kilowatts (kW).

J. The maximum allocation for qualified utility and non-utility applicants shall be 5,000 kilowatts (kW).

K. Contract rates of delivery shall be subject to adjustment in the future as provided for in the Program.

L. If unanticipated obstacles to the delivery of hydropower benefits to Native American tribes arise, Western retains the right to provide the economic benefits of its resources directly to the tribes.

IV. General Contract Principles

Western proposes to apply the following general contract principles to all applicants receiving an allocation of firm power under the proposed Post-2005 Resource Pool Allocation Procedures.

A. Western shall reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project pumping requirements, by giving a minimum of 5 years' written notice in advance of such action.

B. Western, at its discretion and sole determination, shall reserve the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Any such adjustments shall only take place after a public process by Western.

C. Each allottee is ultimately responsible for obtaining its own third-party delivery arrangements. Western may assist the allottee in obtaining third-party transmission arrangements for delivery of firm power allocated under these procedures to new customers.

D. Contracts entered into under the Post-2005 Resource Pool Allocation Procedures shall provide for Western to furnish firm electric service effective from January 1, 2006, through December 31, 2020.

E. Contracts entered into as a result of the proposed procedures shall incorporate Western's standard provisions for power sales contracts, integrated resource planning, and the general power contract provisions.

F. Contracts entered into will include provisions for a reduction of up to 1 percent of the current contracted rate of delivery effective January 1, 2011, in accordance with the Program.

V. Applications for Firm Power

This notice formally requests applications from qualified entities wishing to purchase power from the Upper Great Plains Customer Service Region. Applicant Profile Data (APD) is requested so Western will have a uniform basis upon which to evaluate the applications. To be considered, applicants must submit an application to the Upper Great Plains Customer Service Region as requested below. To ensure that full consideration is given to all applicants, Western will not consider applications submitted before publication of this notice or after the deadlines specified in the Dates Section. Applications are available upon request or may be accessed at *http://www.wapa.gov/ugp/contracts/post2005/APD.htm*. Applicants are encouraged to use the application form provided at the above Web site.

A. Applicant Profile Data Application

The content and format of the APD are outlined below. Requested information should be submitted in the sequence listed. The applicant must provide all requested information or the most reasonable available estimate. The applicant should note any requested information that is not applicable. Western is not responsible for errors in data or missing pages. All items of information in the APD should be answered as if prepared by the organization seeking the allocation. The APD shall consist of the following:

1. Applicant

a. Applicant's (entity requesting a new allocation) name and address.

b. Person(s) representing applicant: Please provide the name, title, address, telephone and fax number, and e-mail address of such person(s).

c. Type of organization: For example, Federal or state agency, irrigation district, municipal, rural, or industrial user, municipality, Native American tribe, public utility district, or rural electric cooperative. Please provide a brief description of the organization that will interact with Western on contract and billing matters and whether the organization owns and operates its own electric utility system.

d. Parent organization of applicant, if any.

e. Name of members, if any.

f. Applicable law under which the organization was established.

g. Applicant's geographic service area: if available, submit a map of the service area, and indicate the date prepared.

2. Loads

a. Utility and Non-utility Applicants:

i. If applicable, number and type of customers served; *e.g.*, residential, commercial, industrial, military base, agricultural.

ii. The actual monthly maximum demand (in kilowatts) and energy use (in kilowatt-hours) experienced in calendar year 2002.

b. Native American Tribe Applicants:

i. If applicable, number and type of customers served; *e.g.*, residential, commercial, industrial, military base, agricultural.

ii. The actual monthly maximum demand (in kilowatts) and energy use (in kilowatt-hours) experienced in calendar year 2002.

iii. If actual demand and energy data is not available, provide estimated monthly demand (in kilowatts) with a description of the method and basis for this estimated demand.

3. Resources

a. A list of current power supplies, including the applicant's own generation and purchases from others. For each supply, provide capacity and location.

b. Status of power supply contract(s), including a contract termination date. Indicate whether power supply is on a firm basis or some other type of arrangement.

4. Transmission

a. Point(s) of delivery: Provide the preferred point(s) of delivery on Western's system or a third-party's system and the required service voltage.

b. Transmission arrangements: Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery. Provide a single-line drawing of applicant's system, if one is available.

5. Other Information: The applicant may provide any other information pertinent to receiving an allocation.

6. Signature: The signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for allocation is required.

B. Western's Consideration of Applications

1. When Western receives the APD, Western will verify the general eligibility criteria set forth in Section II have been met, and that all items requested in the APD have been provided.

a. Western will request in writing additional information from any applicant whose APD is determined to be deficient. The applicant shall have 15 days from the date on Western's letter of request to provide the information.

b. If Western determines the applicant does not meet the general eligibility criteria, Western will send a letter explaining why the applicant did not qualify.

c. If the applicant has met the eligibility criteria, Western will determine the amount of firm power to be allocated pursuant to the general allocation criteria set forth in Section III. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amount of firm power allocated to the applicant.

2. All firm power shall be allocated according to the procedures in the general allocation criteria set forth in Section III.

3. Western reserves the right to determine the amount of firm power to allocate to an applicant, as justified by the applicant in its APD.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

VII. Small Business Regulatory Enforcement Fairness Act

Western determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

VIII. Determination 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, this notice requires no clearance by the Office of Management and Budget.

IX. Environmental Compliance

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in 60 FR 53181, October 12, 1995. Western's NEPA review assured all environmental effects related to these actions have been analyzed.

Dated: February 13, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–4993 Filed 3–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Proposed Extension of the Transmission Service Rate Schedules—Rate Order No. WAPA–100

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Extension of the Transmission Service Rate Schedules.

SUMMARY: This action is a proposal to extend the existing Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP–ED) Transmission Service Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FTP1, UGP–NFPT1, and UGP–NT1 of Rate Order No. WAPA–79, through September 30, 2005. The existing Transmission Service Rate Schedules will expire July 31, 2003. These Transmission Service Schedules contain formulary rates that are recalculated from yearly updated financial and load data. This notice of proposed extension of rates is issued pursuant to 10 CFR part 903.23(a)(1). Consistent with these regulations, Western Area Power Administration (Western) will not hold a consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7388, or e-mail *riehl@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–0037.00 effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in rate adjustments at 10 CFR part 903, Western's P–SMBP–ED Transmission Service Rate Schedules were submitted to FERC for confirmation and approval on August 3, 1998. On November 25, 1998, in Docket No. EF98–5031–000 at 85 FERC ¶ 61,273, FERC issued an order confirming, approving, and placing into effect on a final basis the Transmission Service Rate Schedules for the P–SMBP–ED. The Transmission Service Rate Schedules, Rate Order No. WAPA–79, were approved for 5 years beginning August 1, 1998, and ending July 31, 2003.

Western is currently evaluating several options for joining the Midwest Independent System Operator, a FERC-approved Regional Transmission Organization. That decision could redefine our current rate provisions. Therefore, Western believes it is premature to proceed with a formal rate process at this time. Extending the existing Transmission Service Rate Schedules to September 30, 2005, should provide enough time to complete our evaluation process. Western proposes to extend the current rate schedules pursuant to 10 CFR part 903. Upon its approval, Rate Order No. WAPA–79 will be extended under Rate Order No. WAPA–100.

Western's existing formulary Transmission Service Rate Schedules, which are recalculated annually, would sufficiently recover project expenses (including interest) and capital requirements through September 30, 2005.

All documents made or kept by Western for developing the proposed extension of the Transmission Service Rate Schedules will be made available for inspection and copying at the Upper Great Plains Customer Service Region, located at 2900 4th Avenue North, Billings, Montana.

Thirty days after publication of this notice Rate Order No. WAPA–100 will be submitted to the Deputy Secretary for approval through September 30, 2005.

Dated: February 14, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–4995 Filed 3–3–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7457–7]

A National Agenda for the Environment and the Aging: Setting Priorities for Research and Education To Address Environmental Hazards That Threaten the Health of Older Persons

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public listening sessions and request for comments.

SUMMARY: In October 2002 EPA launched an Aging Initiative to study the effects of environmental health hazards on older persons and examine the impact that a rapidly aging population will have on the environment. The Initiative will also identify model programs that will provide opportunities for older persons to volunteer in their communities to reduce environmental hazards and protect the environment for future generations. EPA is seeking public comment through Friday, May 16, 2003 to assure that the final agenda includes input from the broadest base of expertise including Federal, State, local and tribal governments, public and private organizations, professional health, aging and environmental associations, academia, business and volunteer organizations, and others including older Americans and their families. EPA encourages comments from all those interested in addressing environmental health hazards that affect the health of older persons.

In addition, six public listening sessions will be held this Spring to gather input for the National Agenda. The meetings are open to the public. Pre-registration is required due to the limited seating capacity at each location. When registering to attend or present comments during the public listening sessions, individuals requiring special accommodations should note their needs so that appropriate arrangements can be made. In addition, every effort will be made to ensure that non-English speaking persons can participate in public meetings and through written comments.

Public Listening Sessions

DATES:

	Registration deadline*
1. Thursday, April 3, 2003, 1:30–3:30 p.m., Tampa, FL.	March 26.
2. Tuesday, April 8, 2003, 1:30–3:30 p.m., San Antonio, TX.	April 1.
3. Tuesday, April 15, 2003, 1:30–3:30 p.m., Iowa City, IA.	April 8.
4. Wednesday, April 23, 2003, 2–4 p.m., Pittsburgh, PA.	April 16.
5. Tuesday, April 29, 2003, 1:30–3:30 p.m., Los Angeles, CA.	April 22.
6. Wednesday, May 7, 2003, 1:30–3:30 p.m., Baltimore, MD.	April 29.

*Pre-registration is required.

ADDRESSES:

1. *Tampa* Auditorium, University of South Florida College of Public Health, 13201 Bruce B. Downs Boulevard, Tampa, Florida
2. *San Antonio* University Auditorium, University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, Texas
3. *Iowa City* Second Floor Ballroom, Iowa Memorial Union, the University of Iowa, Corner of Jefferson and Madison Streets, Iowa City, Iowa
4. *Pittsburgh* Pennsylvania Room, First Floor, Pittsburgh Athletic Association, 4215 Fifth Avenue (Oakland area), Pittsburgh, Pennsylvania
5. *Los Angeles* Grand Horizon Room, 3rd Floor, Covel Commons, Sunset Village on the UCLA campus, Los Angeles, California
6. *Baltimore* Auditorium, School of Nursing, University of Maryland Baltimore, 655 West Lombard Street (corner of Lombard and Penn), Baltimore, Maryland

For additional information, contact Kathy Sykes, EPA's Aging Initiative Coordinator, at 202–564–2188 or by email: *aging.info@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA's Aging Initiative is working with various partners on the development of a National Agenda on the Environment and the Aging

1. *Tampa* University of South Florida; West Central Florida Area Agency on Aging
2. *San Antonio* University of Texas Health Science Center at San Antonio; Bexar County Area Agency on Aging
3. *Iowa City* University of Iowa College of Public Health and The Center on Aging; The Heritage Agency
4. *Pittsburgh* University of Pittsburgh Graduate School of Public Health; Allegheny Area Agency on Aging
5. *Los Angeles* University of California Los Angeles (UCLA) Graduate School of Public Health, UCLA Center on Aging, City of Los Angeles Department of Aging; Los Angeles County Area Agency on Aging
6. *Baltimore* University of Maryland Baltimore School of Medicine and Center for Research on Aging, University of Maryland Baltimore School of Nursing

At the beginning of each public listening session an EPA official will describe the process that will be used to develop the National Agenda on the Environment and the Aging. Public comments will follow from pre-registered speakers who wish to contribute to the agenda by offering brief comments on one or all of the three priority areas described below. Each presentation will be limited to three minutes and the written or preferably typed statement of the comments must be provided in advance. Please fax your statement to (202) 564–2733 no later than the registration deadline for the session you have selected (*see* above for listing of deadlines). There is no page limitation on written comments.

If time allows, members of the audience will have an opportunity to provide comments. Pre-registration is required for attendance at each session and for providing comments due to limited seating and time. To register to attend or participate, go to *http://www.epa.gov/aging* and click on the "Public Listening Sessions" side bar and follow instructions to register to attend or to speak. Deadlines to pre-register for each session are provided.

National Agenda for the Environment and the Aging

Setting Priorities for Research and Education to Address Environmental Hazards That Threaten the Health of Older Persons

In October 2002 EPA launched an Aging Initiative to study the effects of environmental health hazards on older persons and examine the impact that a rapidly aging population will have on the environment. The Initiative will also identify model programs that will provide opportunities for older persons to volunteer in their communities to reduce environmental hazards and protect the environment for future generations. EPA is seeking public comment through Friday, May 16, 2003, to assure that the final agenda includes input from the broadest base of expertise including Federal, State, local, and tribal governments, public and private organizations, professional health, aging and environmental associations, academia, business and volunteer organizations, and other stakeholders, including older Americans and their families. EPA encourages comments from all those interested in contributing to the agenda. The agenda will be developed through an open, participatory process. The National Agenda will be composed of three parts:

(1) Identifying research gaps in environmental health;

(2) Preparing for an aging society; and

(3) Encouraging older adults to volunteer to address environmental hazards.

I. Identifying Research Gaps in Environmental Health

Strategy To Address Environmental Hazards That Threaten the Health of Older Persons: Research and Educational Priorities

The National Agenda for the Environment and the Aging will lay out a strategy that combines research and educational programs that promote preventive actions to address environmental health hazards. One fundamental question is: How do environmental hazards affect older persons differently from younger persons? Understanding the biology underlying differing age-related responses can inform a scientific rationale for decisions on how to appropriately incorporate the differential sensitivity of those who are aging into environmental risk assessment, decisions and actions.

EPA's effort to develop a national agenda to address environmental issues that affect the health and well-being of the nation's older persons has been advanced by a workshop on the "Differential Susceptibility and Exposure of Older Persons to Environmental Hazards" convened by the National Academy of Sciences in December 2002. At that meeting, experts discussed priority issues for the National Agenda on the Environment and the Aging. Experts focused on exposures to environmental hazards found in drinking water, indoor and outdoor air, and food residues that may have health effects including respiratory and cardiopulmonary disease, neurotoxicity, infectious disease and cancer.

EPA invites public comments on environmental hazards that may affect the health of older persons in states and local communities. Among questions which may be considered are:

- What specific environmental exposures in your community particularly affect the health of older persons?
- Which health conditions specific to older adults may increase their susceptibility to chemical toxicants?
- Which lifestyle factors of older adults may increase the exposure to environmental hazards?
- What steps may individuals and communities take to reduce the potential environmental health risks that older adults may face?

II. Preparing for an Aging Society

Impact of an Aging Population on the Environment

The EPA invites comments on the extent to which an aging population may affect the environment. The nation's demographics will have changed dramatically by 2030: the U.S. population over 65 years of age is expected to double. The largest cohort born in U.S. history (76 million Americans were born between 1946 and 1964) begins to turn 65 in 2011 and will markedly influence the quality of life for both older persons and young people. The National Agenda will focus on the interface between older persons and their environment.

As an increasing number of adults approach retirement age, migration may substantially increase to areas characterized by temperate climates, lower population and traffic density, and better environmental quality. These areas may be sparsely populated and ecologically diverse regions. To ensure harmony between the needs of this growing population and preserving important natural resources, it is important to have the tools available for regional and landscape planning. The EPA invites comments on the extent to which an aging population has unique needs with respect to housing, transportation, health care, recreation, and other quality of life issues, and how these needs may affect the environment. Issues which may be considered include:

- What can city, county and regional planners do to meet the needs of today's older adults and prepare for the anticipated increase in the number of retirees and at the same time enhance preservation of natural resources for recreation, wildlife, water, air and land quality?
- Can you identify unique resource needs and utilization patterns of older adults that may generate novel ecological pressures?
- What steps can individual baby boomers and older adults take to not only reduce potential hazards to the environment but also preserve and enhance the quality of the environment for themselves and future generations?

III. Encouraging Older Adults to Volunteer to Reduce Environmental Hazards

Opportunities for Older Persons To Enhance the Environment and Their Health

The National Agenda will not only identify strategies to protect the quality of life for older persons from environmental hazards, but also suggest ways to engage the nation's older persons in programs and strategies designed to enhance the environment for all generations.

Many older Americans contribute their time, energy and expertise to protect their environment and educate their communities about environmental hazards to citizens and threats to natural resources. The EPA intends to encourage further involvement and expand opportunities for older persons to volunteer in programs designed to lessen environmental hazards. Programs or activities that are of interest include activities that increase awareness of environmental hazards, and preserve the quality of the environment for today and tomorrow's citizens. The EPA welcomes comments on encouraging older adults to volunteer to reduce environmental hazards in their communities. Among the questions to which the EPA invites comments are the following:

- Which volunteer programs that address environmental hazards in your community warrant examination for possible replication in other communities?
- What incentives are needed to encourage older persons to volunteer their time and ideas to protect the environment, reduce environmental hazards and enhance the health of and the environment for people of all ages?
- In an effort to raise awareness of environmental factors important to all citizens, how can older persons serve as models of good practice and mentors for younger generations about environmental hazards found in the community?
- In your community or state, what intergenerational environmental projects have been successful in improving the health of children or older persons?
- What potential barriers exist to volunteering in your community to reduce environmental hazards?

Public comments will be accepted until Friday, May 16, 2003.

(1) To pre-register to attend or speak at a public listening session, please go to EPA's Aging Initiative Web site: *http://www.epa.gov/aging*.

(2) To submit written comments, please send them by mail or hand deliver to: EPA's Aging Initiative, Mail Code 1107A, 1200 Pennsylvania Avenue, NW., Room 2512 Ariel Rios North, Washington, DC 20460, or

(3) Fax comments to: National Agenda for the Environment and the Aging (202) 564–2733, or

(4) E-mail comments to: *aging.info@epa.gov.*

Dated: February 26, 2003.

Joanne Rodman,

Acting Director, Office of Children's Health Protection.

[FR Doc. 03–5031 Filed 3–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7457–6]

EPA Science Advisory Board, Environmental Health Committee, Notification of an Upcoming Meeting and Request for Information on the Proposed Panel for the Review of the Supplemental Guidance for Assessing Cancer Susceptibility From Early-life Exposure to Carcinogens (SGACS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Request for Information on the Panel and Notification of an Upcoming Meeting.

DATES: April 24, 2003—Teleconference meeting of the Environmental Health Committee Submissions concerning the proposed panel are due by March 18, 2003.

ADDRESSES: U.S. EPA Science Advisory Board (1400A), Suite 6450P EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001 (zip code for FedEx—20004).

FOR FURTHER INFORMATION CONTACT: Dr. Suhair Shallal, Designated Federal Officer, by telephone/voice mail at (202) 564–4566, by fax at (202) 501–0582; or via e-mail at *shallal.suhair@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

1. *Background on the EPA Science Advisory Board:* The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) is providing notification of an upcoming meeting and requesting information on the proposed SCAGS review panel.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. Those selected to serve on the SCAGS review panel will review the draft materials identified in this notice and respond to the appropriate charge questions. Upon completion, the panel's report will be submitted to the SAB executive committee for final approval.

2. *Background on this advisory activity:* Pursuant to a request by EPA's Office of Research and Development, the SAB will conduct a peer review of the draft document entitled Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens. In a separate FR Notice, EPA announced the availability of, and the opportunity to comment on the above mentioned document.

The SAB was selected to lead this review due to its experience in reviewing various documents associated with the EPA's Draft Cancer Guidelines and the relevance of the expertise of its members to this review. In 1996, EPA published for public comment proposed revisions to EPA's 1986 Guidelines for Carcinogen Risk Assessment (61 FR 17960, April 23, 1996). Since the 1996 proposal, EPA's Science Advisory Board (SAB) has conducted three scientific peer reviews. In February 1997, the Science Advisory Board's Environmental Health Committee (SAB EHC) was asked to review the proposed revisions to the Agency's first cancer guidelines issued in 1986 (*http://www.epa.gov/sab/pdf/ehc9710.pdf*). In January 1999, the EHC met again to consider selected sections of the draft Guidelines that were revised to address recommendations from the public and the earlier SAB review (1997) of the Guideline (*http://www.epa.gov/sab/pdf/ec15.pdf*). A third meeting took place in July 1999 to provide advice and comment to the EPA on issues related to applying the provisions of EPA's proposed revised Cancer Risk Assessment Guidelines to children (*http://www.epa.gov/sab/pdf/ec0016.pdf*).

Availability of the Meeting Materials—The materials for this review are available from the Office of Research and Development's National Center for Environmental Assessment, Risk Assessment Forum Web site, located at: *http://cfpub.epa.gov/ncea/raf/index.cfm.* For questions and information concerning the materials, please contact Dr. William P. Wood, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; tel. (202) 564–3361, or e-mail: *risk.forum@epa.gov.*

3. *Meeting via Teleconference of the Environmental Health Committee—April 24, 2003:* Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Health Committee of the U.S. EPA Science Advisory Board (SAB) will meet on Thursday, April 24, 2003 via teleconference at 3 p.m.–5 p.m. Eastern Standard Time (EST) to begin the review of the EPA's Office of Research and Development draft document entitled, Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens (SGACS). This document provides a possible approach for assessing cancer susceptibility from early-life exposure to carcinogens. The purpose of the teleconference is: (a) To discuss the charge and the adequacy of the review materials provided to the SGACS Review Panel; (b) to clarify any questions and issues relating to the charge and the review materials; (c) to discuss specific charge assignments to the SGACS Review Panelists; and (d) to clarify specific points of interest raised by the Panelists in preparation for the face-to-face meeting. All times noted are Eastern Standard Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews or consultations are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents generated by the SAB and the relevant Program Office is included above.

The meeting will begin on April 24, 2003 at 3 p.m. EST and adjourn no later than 5 p.m. EST that day. The meeting will be held at EPA Headquarters, Washington, DC, Ariel Rios North, room 6013. For further information concerning this meeting, please contact the individuals listed at the beginning of this **Federal Register** notice. A copy of the draft agenda for the meeting will be posted on the SAB Web site (*www.epa.gov/sab*) (under the AGENDAS subheading) approximately 10 days before the meeting. Information concerning a subsequent face to face meeting will be forthcoming in a separate **Federal Register** notice.

Providing Oral or Written Comments at SAB Meetings—It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any

length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted below in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Zisa Lubarov-Walton (*lubarov-walton.zisa@epa.gov*) or by telephone/voice mail at (202) 564–4533 at least five business days prior to the meeting date so that appropriate arrangements can be made.

4. *Solicitation of information on the Proposed Review Panel:* To provide the Agency with meaningful input, we have determined that the following expertise is needed for the review: toxicology including carcinogenicity; biostatistics; epidemiology; pediatrics; radiation biology; risk assessment and the application of the Agency's risk assessment guidelines. As requested by EPA's ORD, the EPA Science Advisory Board's Environmental Health Committee, a standing committee of the Board, will conduct this review. The SAB EHC will be augmented with members from the SAB Radiation Advisory Committee, the FIFRA Science Advisory Panel (SAP) and the Children's Health Protection Advisory Council (CHPAC) to form the SGACS review Panel. By including members of the three EPA advisory bodies in the review of this document, the requesting office hopes to benefit from their unique expertise in children's risk assessment and to receive a peer review report which reflects the views of these bodies on the charge questions in an expedited manner. Therefore, we are not soliciting additional experts for this review.

The SAB Staff Office will post the names and biosketches for members of the review Panel on the SAB Web site at: *http://www.epa.gov/sab.* The public has the opportunity to provide information, analysis or other documentation relevant to the membership of the panel before the SAB Staff Office makes a final decision. Information, analysis or documentation must be received by the Designated Federal Officer (DFO) no later than March 18, 2003. Please see the address/contact information noted above. The complete SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, which can found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf.*

For the EPA SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Information provided by the public will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) scientific credibility and impartiality; and (e) ability to work constructively and effectively in committees.

Dated: February 26, 2003.

Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board.

[FR Doc. 03–5029 Filed 3–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7457–5]

Science Advisory Board, Environmental Health Subcommittee; Request for Nominations for Additional Expertise for the Formaldehyde/Acetaldehyde/Vinyl Acetate Toxicological Reviews (FAVATR) Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Request for nominations.

DATES: All nominations are due by March 25, 2003.

ADDRESSES: U.S. EPA Science Advisory Board (1400A), Suite 6450P EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001 (zip code for FedEx—20004)

FOR FURTHER INFORMATION CONTACT: Dr. Suhair Shallal, Designated Federal Officer, by telephone/voice mail at (202) 564–4566, by fax at (202) 501–0582; or via e-mail at *shallal.suhair@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at: *http//www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

1. *Background on the EPA Science Advisory Board:* The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) is requesting nominations to add expertise to the Environmental Health Committee.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection

Agency Science Advisory Board, which can found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf.* Those selected to serve on the FAVATR panel will review the draft materials identified in this notice and respond to the charge questions provided below. Upon completion, the panel's report will be submitted to the SAB executive committee for final approval.

2. *Background on this Advisory Activity:* The Agency has requested that the SAB conduct a peer review of the set of three toxicological reviews including: formaldehyde, acetaldehyde, and vinyl acetate. The SAB has been asked to conduct this review because of their previous review of the draft formaldehyde risk assessment update (EPA-SAB-EHC–92–021), the precedent setting nature of the assessments using mode of action and biologically based models, and the high priority with respect to programmatic relevance of these documents.

Formaldehyde, acetaldehyde, and vinyl acetate are all listed as hazardous air pollutants (HAPs) on the Clean Air Act Amendments of 1990 and each is associated with significant ambient exposures. These assessments are required for each to support major regulatory initiatives and methods for program offices. Because of these priorities, all three have been listed for development of toxicological reviews to be included on the Integrated Risk Information System (IRIS).

An overview of the documents to be reviewed can be found on the EPA's National Center for Environmental Assessment website (*http://cfpub.epa.gov/ncea/*). The final draft toxicological review for each chemical (Acetaldehyde, Formaldehyde and Vinyl Acetate) will be released in May 2003.

3. *Tentative Charge to the FAVATR Review Panel.* The overall charge to the FAVATR review panel is to review the set of three (3) IRIS toxicological reviews for consistency in application of the proposed revised cancer guidelines and principles of mode-of-action modeling, with special emphasis on: (a) Weight-of-the-evidence issues to identify key events; (b) the use of pharmacokinetic and pharmacodynamic data; (c) motivation for dose surrogate and effect measures; (d) model structures for interspecies dosimetric adjustment; (e) model structures for dose-response analysis; (f) data-derived uncertainty factors for interspecies and intrahuman variability; and (g) leveraging of data on critical health effects and model structure sharing between routes and across chemically-related compounds to help inform alignment of the estimates.

4. *SAB Request for Nominations:* The EPA SAB is requesting nominations of individuals who are recognized, national-level experts in one or more of the following disciplines necessary to contribute to the charge questions to be addressed by the FAVATR review panel: (a) Inhalation dosimetry modeling (*e.g.*, computational fluid dynamics (CFD) modeling), (b) physiologically based pharmacokinetic (PBPK) modeling, (c), (d) biologically-based dose-response (BBDR) modeling for cancer, (e) epidemiology, (f) biochemistry, (g) inhalation toxicology and respiratory physiology, (h) gastrointestinal tract toxicology and physiology, (i) pathology, (j) carcinogenesis, (k) respiratory biology and immunology, (l) toxicology (including, genetic, reproductive, developmental), (m) quantitative risk assessment, (n) biostatistics and mathematical modeling.

5. *Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate qualified individuals to add expertise in the above areas for the FAVATR review panel. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB website. The form can be accessed through a link on the blue navigational bar on the SAB website, *www.epa.gov/$ab.* To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations in electronic format may contact Dr. Suhair Shallal at the mailing address given at the end of this notice. Nominations should be submitted in time to arrive no later than March 25, 2003. Any questions concerning either this process or any other aspects notice should be directed to Dr. Shallal.

The EPA Science Advisory Board Staff Office will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast"), SAB Staff will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab,* and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation that the SAB Staff should consider in evaluating candidates for the specific expertise to add to the FAVATR review panel.

For the EPA SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form, which is submitted by EPA SAB Members and Consultants, allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.* Subcommittee members will likely be asked to attend at least one public face-to-face meeting and several public conference call meetings over the anticipated course of the advisory activity.

The approved policy under which the EPA SAB selects review panels is described in a recent SAB document, EPA Science Advisory Board (SAB) Panel Formation Process: Immediate Steps to Improve Policies and Procedures—An SAB Commentary (EPA–SAB–EC–COM–002–003), which can be found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ecm02003.pdf.*

Additional information concerning the EPA Science Advisory Board, including its structure, function, and composition, may be found on the EPA SAB Web site at: *http://www.epa.gov/sab;* and in the EPA Science Advisory Board FY2001 Annual Staff Report, which is available from the EPA SAB Publications Staff at phone: (202) 564–4533; via fax at: (202) 501–0256; or on the SAB Web site at: *http://www.epa.gov/sab/annreport01.pdf.*

Dated: February 26, 2003.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board.

[FR Doc. 03–5030 Filed 3–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

February 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232 or via Internet at *Kim_A._Johnson@omb.eop.gov,* and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by March 14, 2003.*

OMB Control Number: 3060–0055.

Type of Review: Revision of a currently approved collection.

Title: Application for Cable Television Relay Service Station Authorization, FCC Form 327.

Form Number: FCC 327.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 814.

Estimated Time per Response: 3.2 hours.

Frequency of Response: On occasion, annual, and five-year reporting requirements.

Total Annual Burden: 2,605 hours.

Total Annual Cost: $179,000.

Needs and Uses: On May 22, 2002, the FCC adopted a Report and Order (R&O), CS Docket No. 99–250, FCC 02–149, which expanded the class of those eligible to hold Cable Television Relay Service (CARS) licenses to all Multichannel Video Programming Distributors (MVPDs) and, thus, the reporting requirement is imposed on an additional group of persons. Previously, only cable systems and wireless cable systems (MDS and MMDS) were eligible for CARS licenses. CARS is principally a video transmission service used for intermediate links in a distribution network. FCC Form 327 consists of multiple schedules and exhibits, depending upon the specific action for which it is filed—initial applications are the most complete and renewal applications are the briefest. FCC Form 327 is the application for CARS microwave radio license.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–5058 Filed 3–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 24, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 760.

Estimated Time per Response: 7 hours.

Frequency of Response: Annual reporting requirements.

Total annual burden: 5,320 hours.

Total Annual Costs: $159,600.

Needs and Uses: Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming and equipment. The report must compare the prices charged by cable systems subject to effective competition and those not subject to effective competition. The annual Price Survey is intended to collect data needed to prepare this report.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 03–5059 Filed 3–3–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 25, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0241.

Title: Temporary Authorizations.

Form Nos.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, State, local or tribal government.

Number of Respondents: 145.

Estimated Time Per Response: .25—2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 157 hours.

Total Annual Cost: $62,000.

Needs and Uses: The Commission is consolidating four information collections into one comprehensive collection covering temporary authorizations. All four collections were under different OMB control numbers but the Commission will retain 3060–0241 as the active OMB control number. All four rule sections require that the licensees of various services file an informal request for special temporary authorization. The data is used to ensure that the temporary authorization of stations will not cause interference to other existing stations and to assure compliance with current FCC rules and regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–5060 Filed 3–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

February 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232 or via Internet at *Kim_A._Johnson@omb.eop.gov,* and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by February 26, 2003.*

OMB Control Number: 3060–XXXX.

Type of Review: New collection.

Title: Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 400 hours.

Total Annual Cost: None.

Needs and Uses: On October 10, 2002, the FCC adopted a First Report and Order (Order), MM Docket No. 99–325, FCC 02–286, in which the Commission selects in-band, on-channel (IBOC) as the technology that will permit AM and FM radio broadcasters to introduce digital operations efficiently and rapidly. In addition, provisions of the Order require radio station licensees to provide information relative to implementation of interim hybrid digital operations. Implementation of hybrid digital operations is entirely voluntary. Commercial and noncommercial AM and FM radio stations that choose to begin hybrid digital transmissions must notify the FCC within 10 days of the commencement of digital operations. The notification letter shall certify that the digital operations conform to applicable rule and standards. Furthermore, implementation of the notification letter will eliminate both the need for the FCC staff to issue an STA to the broadcaster and for the broadcaster to file and pay the initial and any subsequent filing fees.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–5061 Filed 3–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–494]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission notifies the public, State Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Interested parties may file comments in this proceeding no later than April 1, 2003. Reply comments may be filed no later than April 21, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket 98–67, released February 24, 2003. This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html.* They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Interested parties may file comments in this proceeding no later than April 1, 2003. Reply comments may be filed no later than April 21, 2003. When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via e-mail in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 6–A432, Washington, DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov.* Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67), type of pleading (comment or reply

comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five-year period of July 26, 2003 to July 25, 2008, must demonstrate that the State TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–17–02

Public Utility Commission of Texas

State of Texas

File No: TRS–61–02

U.S. Virgin Islands Public Utilities Commission

U.S. Virgin Islands

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–5057 Filed 3–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–02]

XM International, Inc v. Brilliant Logistics Group, Inc.; Notice of Filing of Complaint and Assignment

XM International, Inc. ("XM") has filed a complaint against Brilliant Logistics Group, Inc. ("BLG"). XM states that it imports various commodities from the Far East, and that BLG is a licensed Ocean Transportation Intermediary ("OTI") and importer.

XM states that it has a service contract with COSCO Container Lines Company Limited ("COSCO"). XM contends that BLG's representatives asked XM to ship BLG cargo under its contract by claiming that the cargo belonged to XM or an XM subsidiary authorized under the contract. XM claims that BLG offered to pay it for this arrangement. XM rejected this proposal. XM contends that, notwithstanding its rejection, BLG surreptitiously shipped under XM's contract rates by using XM's contract number, and misrepresenting that it was XM's cargo rather than its own (XM advises that this practice is referred to as "code-loading" in the industry). XM alleges that BLG violated section 10(a)(1) of the Shipping Act of 1984 ("Shipping Act") by knowingly and willfully obtaining ocean transportation through an unfair device or means. XM states that it has been damaged because when COSCO became aware of these shipments, it increased the contract's rates and limited the space made available to XM, forcing it to ship on other shipping lines at higher rates. Also, XM contends it lost two customers due to the higher prices attributable to the increased freight charges.

XM asks that BLG be required to answer its charges, and that after hearing, an order be made commanding BLG to: Cease and desist from the alleged Shipping Act violations; establish and put in force such practices as the Commission determines to be lawful and reasonable; pay XM $1,490,000 in reparations for the unlawful conduct, with interest and attorney's fees or such other sum as the Commission determines to be proper as an award of reparations; and such further order or orders as the Commission determines to be proper.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution, such as those described in subpart U of the Commission's rules of practice and procedure, 46 CFR 502.401—502.411.

The hearing, if any, shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 24, 2004, and the final decision of the Commission shall be issued by June 23, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–4960 Filed 3–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. SNB Bancshares, Inc., Macon, Georgia; to acquire 100 percent of the voting shares of Bank of Gray, Gray, Georgia.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. TCF Financial Corporation, Wayzata, Minnesota; to acquire up to an additional 5.10 percent of the voting shares of TransCommunity Bankshares Incorporation, Richmond, Virginia, thereby increasing its ownership interest to no more than 9.99 percent and thereby indirectly acquire Bank of Powhatan, National Association, Powhatan, Virginia and Bank of Goochland, National Association, Goochland, Virginia.

Board of Governors of the Federal Reserve System, February 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–5013 Filed 3–3–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Monday, March 10, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a *recorded announcement* of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an *electronic announcement* that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–5141 Filed 2–28–03; 11:55 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Notice of Availability (NOA) of the Record of Decision for the Environmental Impact Statement (EIS) for the Future Master Plan Development for the Centers for Disease Control (CDC) in Chamblee, GA; Record of Decision, Master Plan Expansion for Chamblee Campus Centers for Disease Control, Chamblee, GA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and GSA Order PBS P 1095.4E.F,2, PBS 1095.4C, ADM 1020.1, GSA has prepared an Environmental Impact Statement (EIS) for the Centers for Disease Control (CDC). The Proposed Action is the implementation of a Master Plan at the Chamblee Campus. The purpose of the EIS is to provide public notice of the Proposed Action and Alternatives, reasonable time for public comment, and to develop and implement mitigation measures based on the impacts identified.

A. Proposed Action

The Centers for Disease Control and Prevention (CDC) is an agency of the U.S. Department of Health and Human Services (HHS) with a critical mission to safeguard the health of the American public through detection, investigation, control, and prevention of communicable diseases. The Proposed Action is the implementation by the CDC of a Master Plan to expand and upgrade facilities at the Chamblee Campus. The Chamblee Campus currently consists primarily of buildings constructed between 1940 and 1993, many of which no longer satisfy the essential technical needs of CDC programs. Chamblee is one of two primary CDC campuses in the Atlanta Metro Area; the other is the main Roybal Campus and CDC Headquarters at Clifton Road. The Proposed Action would also consolidate leased facilities onto the Chamblee Campus and would accommodate the projected CDC growth at the Chamblee Campus to the year 2010 and beyond.

The Chamblee Campus is home to the National Center for Environmental Health (NCEH) and the Division of Parasitic Diseases (DPD). The Current laboratories at Chamblee Campus operate at a maximum bio-safety level (BSL) of 2 on a bio-safety scale of 1 (lowest) to 4 (highest). Practices, equipment, and facilities at BSL 2 are applicable to clinical, diagnostic, teaching and other facilities in which work is done with moderate-risk agents. The CDC anticipates an increase in personnel at the Chamblee Campus from a current staff of approximately 700 employees to approximately 4,000 in ten years. To accommodate this growth, the Master Plan provides for demolition of 17 outdated buildings, the construction of four new buildings, as well as the renovation of several other buildings on the existing 48.5-acre property. The Master Plan incorporates CDC's current inventory of 245,500 net usable square feet (NUSF) of office and laboratory space. This includes two buildings (#103 and #109) that are currently under construction to replace space from buildings recently demolished. The Master Plan would meet a cumulative need for 706,200 NUSF of space. Additional parking would be required to increase capacity from the current total of 591 spaces to 3,390 spaces at completion of full build-out. Design and construction of specific buildings, associated parking, and support facilities would be based on year-by-year Federal appropriations to fund individual projects. The General Services Administration (GSA) has prepared the EIS for the CDC and is serving as the lead agency for the NEPA process. However, the CDC will be responsible for implementing all aspects of the Proposed Action including, planning, designing, contracting, construction management, physical security, and operations and maintenance for new facilities.

B. Purpose and Need

The purpose of the Proposed Action is to enable the CDC to perform its public health and safety missions effectively and to better utilize Federal property and assets. The need for the

Proposed Action is dictated in part by national security due to the importance of the CDC missions. The Proposed Action is needed to: Facilitate the performance of CDC's National missions. Alleviate overcrowded and substandard space and conditions at the Chamblee Campus, Consolidate CDC Chamblee programs that are currently performed at leased facilities. Accommodate projected growth in CDC programs associated with expanding missions. Provide campus environment that meets building codes and security requirements. Improve internal pedestrian and traffic flow.

C. Alternatives Considered

No-Action Alternative

The No-Action Alternative would maintain the status quo at the Chamblee Campus, perpetuating the use of overcrowded substandard buildings and continued reliance on off-campus leased space to support programs. Under this alternative, construction, renovation, traffic improvements, and other components of the Proposed Action, would not be implemented. The impacts of the No-Action Alternative on the natural and human environment were evaluated based on extrapolations of current traffic, building density, and other conditions for the same 10-year planning period as used to evaluate the Proposed Action.

Chamblee Campus Master Plan Implementation Alternative

Under the Master Plan Implementation Alternative, which is the Government's preferred alternative, CDC would construct eight new buildings, including parking decks and a central utility plant, on the Chamblee Campus and demolish 17 existing obsolete buildings over a 10-year planning period. These activities would be restricted to the existing disturbed areas of the campus comprising 26 acres, except for approximately two acres of upland vegetated area in the southwestern portion of the property and a strip of upland fringe on the eastern side of the developed area. The balance of approximately 20 acres, including 11.4 acres of floodplains and 4.6 acres of jurisdictional wetlands, is currently vegetated and would remain undisturbed during implementation of the Master Plan. Any future activity that would disturb this 20-acre area would require additional NEPA compliance as outlined the EIS.

Evaluation Approach and Future Tiering

The Chamblee Campus Master Plan is intended as a steering document rather than a detailed blueprint. The phasing of actions proposed in the plan must remain flexible due to uncertainties regarding the availability and timing of Federal funds. Therefore, the approach taken in this EIS for the evaluation of the Master Plan Implementation Alternative assumes that the exact locations and configurations of facilities, and activities supported, will be determined after the completion of this EIS. In the event that specific future actions are beyond the information outlined in the Master Plan and the assumptions followed for this EIS, subsequent NEPA documentation will be required consistent with the tiering process outlined in the CEQ regulations (40 CFR 1502.20). Such documentation may consist of Categorical Exclusions (at a minimum), site-specific Environmental Assessments (more likely), or an addendum/amendment to this EIS if appropriate. Chapter II provides specific examples of future actions that would be subject to tiering review.

D. Environmental Consequences to Affected Environment

The environmental consequences of implementing this Proposed Action and mitigation measures identified are summarized below.

Aesthetics

Due to the age and condition of various buildings and structures on site, continuing deterioration of these facilities will occur with the No-Action Alternative and there will be no adverse aesthetic impacts. The Master Plan Alternative would improve the aesthetic quality of the campus by eliminating overcrowded and deteriorating facilities, improving pedestrian and vehicle circulation, and upgrading landscaped areas. Short-termed adverse impacts during construction would be restricted to previously disturbed areas of the campus.

Geophysical Resources

The No-Action Alternative would not affect geologic features or soil conditions on the campus. Demolition and construction activities for the Master Plan Alternative would not significantly affect geologic features or soils on the property. Construction would be limited generally to the previously disturbed areas of the campus, which are underlain by Urban Land soils that have been altered during prior development. Construction for the Master Plan Alternative will include us of best management practices (BMPs) that generally comply with the Soil Erosion and Sedimentation Control Ordinance of the City of Chamblee (Municipal Code, Part II, Chapter 34, Article IV) and the DeKalb County Code (Chapter 14, Article II, Section 14–38), to reduce soil erosion and sedimentation impacts.

Surface Water Resources

The No-Action Alternative would not alter surface waters, drainage, floodplains, or wetlands on the campus, because there would be no change in existing structures and uses on site. With appropriate uses of BMPs during construction, compliance with the General Storm Water Permit requirements, and implementation of the SWMP, the Master Plan Alternative would be in compliance with state and local regulations and would provide a net benefit over existing water resource conditions.

Biological Resources

There are no critical species or habitats on the Chamblee Campus for any Federally or state-protected rare, threatened or endangered species listed under the Endangered Species Act (1973). The No-Action Alternative would not affect flora and fauna on the campus. The Master Plan Alternative would not have adverse impacts on wildlife or plant species. No Federally or state-protected rate, threatened, or endangered species listed under the Endangered Species Act (1973) will be impacted.

Cultural Resources

Based on consultation with the Georgia State Historic Preservation Officer (SHPO) as documented in Chapter VIII, no archeological resources have been identified on the campus, and none of the structures designated for future demolition are eligible for the National Register of Historic Places (NRHP). Therefore, the Proposed Action would have no impact on cultural resources.

Demographics and Socioeconomic

Under the No-Action Alternative, future operations at the Chamblee Campus would have no effect on population, housing, economic activity, or employment in the city and county. The Master Plan Alternative would not adversely affect population growth in DeKalb county either directly or indirectly. The exposure of local businesses on Buford Highway and the International Village to increasing numbers of employees at the nearby Chamblee Campus may have a favorable impact on local services and retail commerce. The potential increase in trade opportunities for local businesses may have a small impact on the demand for local housing. The increase in jobs at the campus would provide a net favorable effect on employment for the City of Chamblee but have no impact on countywide employment, because relocations by significant numbers of existing CDC employees would not be expected. Nearby leased space to be vacated by CDC in conjunction with the Master Plan would be absorbed by the regional commercial real estate market without measurable effect over the 10-year planning period.

Environmental Justice (EJ)

Under the No-Action Alternative, existing operations would continue at Chamblee Campus and at offsite, leased facilities without environmental Justice consequences. However, because there would be no change in the number of employees on site, there would be no potential for local economic stimulus from CDC actions. The Master Plan Alternative would not adversely and disproportionately affect minority and low-income groups who live near the Chamblee Campus. As indicated in Chapter 4, the distributions of minorities and low-income groups in the immediate vicinity of the campus are not substantially greater than in the broader local community. Also, the campus would perform essentially the same programs it currently performs without any change in bio-safety level (currently BSL 2) for laboratories onsite. All Master Plan activities would occur on existing Federal property; hence, the Federal government would not purchase any additional land for the Proposed Action, and there would be no impact on the tax base. The improvements would add over 3,000 more employees to the Chamblee Campus, which would add to the local employment base. Through potential increased patronage by greater numbers of employees on the campus, the Master Plan Alternative may also benefit nearby businesses, such as restaurants, shops, and service establishments that employ higher proportions of minorities and the economically disadvantaged. In this way, the Master Plan Alternative—would potentially support the economic development plans of the City of Chamblee and DeKalb County for the nearby DeKalb International Corridor.

Community Services

After the events of September 11, 2001, CDC assessed security at the Chamblee Campus to insure the appropriate level of protection for facilities, staff, and the surrounding community. CDC has also improved the coordination of emergency response activities with the DeKalb Homeland Security Office and the Governors Office for Homeland Security. Under the No-Action Alternative, future operations at the Chamblee Campus would not affect responsibilities of the Chamblee Police Department, the DeKalb Fire Services Bureau, regional medical facilities, the DeKalb County Public School System, or park authorities in the city and county. However, the No-Action Alternative also would not resolve potential existing deficiencies in water distribution on campus to provide adequate fire response, as indicated by CDC's engineering consultant. The increase in facilities and staff operations at the Chamblee Campus envisioned in the Master Plan Alternative will emphasize the needs for security and emergency coordination by CDC. The size of the campus and extent of developed area will remain unchanged within the existing perimeter. Therefore, the Master Plan alternative would not have adverse impacts on the operations and responsibilities of the Chamblee Police Department, DeKalb Fire Services Bureau, and regional medical facilities. Also, because the Proposed Action would not influence population growth in DeKalb County, the Master Plan Altnerative would not affect service providers, the school system, or recreational resources adversely.

Land Use and Planning

The No-Action Alternative would not affect local land use. Because the Master Plan Alternative would affect future development only of the existing property and would not require additional property acquisition, it would have no impact on local zoning or land use plans. GSA and CDC have consulted with planning authorities of both the City of Chamblee and DeKalb County regarding this Proposed Action, and the current land use on the Chamblee Campus is consistent with the classification for the site in the DeKalb County Comprehensive Plan. The proposed development under the Master Plan Alternative would also be compatible with adjacent land uses, zoning districts, and future plans of the City of Chamblee and DeKalb County.

Transportation

Prior traffic studies as summarized in Chapter IV and discussed in Appendix A have indicated that the levels of service at intersections in the vicinity of Chamblee Campus would remain unchanged over the 10-year planning period without the Proposed Action except at the intersection of Buford Highway and Chamblee-Tucker Road. The level of service at that intersection was projected to deteriorate by one category. The No-Action Alternative would not affect other means of transportation in the area; however, it also would not address existing pedestrian safety issues on Buford Highway adjacent to the campus. For the Master Plan Alternative, the traffic evaluations of this EIS in association with the prior traffic studies in the vicinity of the campus have indicated a potential for significant adverse impacts on levels of service at nearby intersections. Therefore, an updated traffic study should be performed after the two replacement buildings currently under construction (#103 and #109) are completed and occupied. The Master Plan Alternative would improve pedestrian safety on campus by separating vehicle and pedestrian routes. Also, to help mitigate problems associated with existing pedestrian traffic adjacent to the campus, consideration of a sidewalk along the entire CDC frontage on Buford Highway has been requested by the county. Additionally, the Master Plan alternative would increase the use of Marta by CDC Chamblee Campus employees due to the proximity of the Campus to the Chamblee Marta Station. This would reduce the total number of vehicle trips and be a positive impact that would result from the Master Plan alternative.

Utilities and Services

The Chamblee Campus is located within established grids of typical urban infrastructure, and all required utilities are available. Existing suppliers are meeting all current demands for utilities. Under the No-Action Alternative, future operations at the Chamblee Campus would not affect current utilities consumption rates or infrastructure capacities.

However, based on a review of the water distribution system map for the Chamblee Campus, the CDC's engineering consultant recommended the testing of fire hydrants, because the campus may not have adequate service for fire protection. The No-Action Alternative would not address this issue. For the Master Plan Alternative, CDC's design consultant would develop the projected demands on all utilities as part of the project development design phase. Because of the long lead time (10-year planning period), it is expected that all local utilities suppliers would be capable of adjusting system capacities to satisfy the demands of the facilities

included in the alternative upon completion. Because all suppliers are expected to have adequate capacity to serve the future demands resulting from the Master Plan Alternative, there would not be any significant adverse impacts on utilities. By correcting potential deficiencies in the water distribution system and other utilities on campus, the Master Plan Alternative would have a net beneficial impact on these services.

Air Quality

Air emissions at the Chamblee Campus are currently covered under a Title V permit. For the No-Action Alternative, there would be no changes in emissions that would affect the existing permit. For the Master Plan Alternative, construction equipment would generate emissions of CO, NO_2, various hydrocarbons, PM–10, and small amounts of SO_2; however, the impact of these additional emissions would be highly localized and limited to periods of construction. Short-term impacts would be minimal, and no long-term impacts would occur as a result of construction activities. After completion of Master Plan elements, site-generated traffic would increase and result in additional congestion on area streets. The associated pollutant emissions would have minor adverse impacts on air quality. However, the increases in air pollutant emissions would be minimal on a regional basis and would not be expected to cause any violations of NAAQS. In addition, as each development activity within the Master Plan Alternative is funded; the Title V permit is reviewed and updated.

Noise

For the Master Plan Alternative, noise levels in the nearby residential areas from construction activity on campus would fall within background sound levels and be masked by the intervening traffic noise. Potential short-term noise impacts will be reduced by maintaining construction equipment in good working condition with standard muffling apparatus installed, by limiting demolition and construction activities to daytime hours, and by complying with the noise restrictions of the Chamblee Code of Ordinances. Increased traffic noise after full Master Plan build-out would not have a significant impact on surrounding communities.

Rationale for Decision:

1. As part of environmental review completed for CDC, GSA conducted Public Scoping Meetings and consultations with the local community to identify potential impacts and concerns that would result form proceeding with the proposed CDC Master Plan Alternative.

2. The community, through two Public Meetings and correspondence and consultation, identified no issues.

3. GSA consulted with other government agencies including local, State, and Federal Agencies, to solicit their input on the proposed Master Plan Alternative. All issues identified and responses provided are presented in the Draft and Final EIS documents.

4. GSA consulted with the State Historic Preservation Officer and received reconfirmation the proposed action would have no effect on historic properties.

5. Potential impacts that were identified during the NEPA process will be mitigated with additional NEPA documentation if necessary as individual projects are funded. CDC will institute the mitigation measures identified in the EIS and will consult with the appropriate groups and agencies at the appropriate time to insure that the identified mitigation measures are implemented.

6. *Should potentially significant* impacts be later identified in the future development of the Master Plan, CDC will conduct additional NEPA documentation before proceeding with the implementation of the Master Plan. In this event, CDC will supplement this EIS with additional documentation identifying the mitigation measures as required by the National Environmental Policy Act.

Therefore, having given consideration to all of the factors discovered during the 16-month environmental review process, the NEPA process is completed with the execution of this document for the CDC Proposed Action is the implementation of the Master Plan Alternative at the CDC Campus in Chamblee, Georgia, and is outlined in the Final Environmental Impact Statement Dated July 6, 2002, and this Record of Decision.

Dated: February 20, 2003.

Philip B. Youngberg,

Environmental Manager, Southeast Sunbelt Region, General Services Administration.

[FR Doc. 03–4945 Filed 3–3–03; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–31–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Test of Four Intimate Partner Violence (IPV) Measurement—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Intimate partner violence (IPV) is considered by many to be a serious problem that cuts across cultures, socioeconomic status and gender. The Centers for Disease Control and Prevention (CDC) considers IPV to be a "substantial public health problem for Americans that has serious consequences and costs for individuals, families, communities and society." The past 20 years have witnessed an extraordinary growth in research on the prevalence, incidence, causes and effects of IPV. Various disciplines have contributed to the development of research on the subject including psychology, epidemiology, criminology and public health.

Still, there is a lack of reliable information on the extent and prevalence of IPV. Estimates vary widely regarding the magnitude of the problem. This variance is due in large part to the different contexts, instruments, and methods that are used to measure IPV. Thus, the CDC is engaged in work to improve the quality of data, and hence knowledge, about violence against women. Part of this process includes identifying the strengths and limitations of different scales used to measure IPV and to determine the appropriateness of each of the scales for use with individuals of different racial/ethnic backgrounds.

The purpose of this project is to administer and test the statistical properties of four scales, via telephone interviews, that measure both victimization from and perpetration of intimate partner violence (IPV). The scales will be administered to a random sample of women ages 18–50, from five racial/ethnic backgrounds: African-American, American Indian, Asian, Caucasian and Hispanic.

The four scales are: the Sexual Experiences Survey(SES), the Conflict Tactics Scale 2 (CTS2), the Index of Spouse Abuse (ISA) and the Women's Experience with Battering (WEB) scale. The survey instrument will contain each of these scales and introductory and transitional text developed specifically for this study.

The overall benefit of this project is to increase knowledge about the reliability and validity of these scales, which have been used in previous studies. Ultimately, this knowledge will assist the CDC in establishing an on-going data collection system for monitoring IPV. The National Center for Injury Prevention and Control (NCIPC) intends to contract with an agency to conduct the survey. The estimated annualized burden is 2,035 hours.

Data collection instrument	Number of respondents	Number of responses/ respondent	Average burden/respondent (in hours)
Pilot Test	50	1	42/60
Screening Interviews	12,000	1	3/60
IPV Measurement Scales	2,000	1	42/60

Dated: February 25, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–4982 Filed 3–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–28–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Reader Evaluation of ATSDR Agency Profile and Annual Report—New—The Agency for Toxic Substances and Disease Registry (ATSDR) publishes an agency profile and annual report every fiscal year to highlight the agency's major activities and findings. The report provides a record of the agency's significant accomplishments in meeting its mandates under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and other federal statutes. The annual report gives a snapshot of the agency's activities for the fiscal year. It is distributed to our partners in state, Federal, and other agencies; to researchers; schools of public health; and other interested groups. It is also available on the ATSDR Internet Web site and by request.

ATSDR staff has developed a reader survey to get readers' opinions and suggestions about the agency annual report. The survey will be inserted and mailed with each annual report. An online version of the reader survey will be available on the ATSDR Web site. The survey will collect information on the readability and effectiveness of the report, the affiliation of the readers, and any suggestions on improving readability or content.

It is anticipated that the reader survey will provide important feedback that will enable ATSDR staff to better tailor future reports to the needs of its readers. Gathering reader feedback will ensure that appropriate information is included in the document to provide a good overview of the agency's activities. The information will be used to improve customer satisfaction related to the annual report. The annualized estimated burden is 41 hours.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hours)
Academia	100	1	5/60
State and Local Government Staff	100	1	5/60
General Public	300	1	5/60

Dated: February 25, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–4983 Filed 3–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–29–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written

comments should be received within 30 days of this notice.

Proposed Project: National Vital Statistics Report Forms (OMB No. 0920–0213)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background

The National Vital Statistics Report Forms (0920–0213) is an approved collection of the compilation of national vital statistics. This collection dates back to the beginning of the 20th century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. The National Vital Statistics Report forms provide counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces. Similar data have been published since 1937 and are the sole source of these data at the national level. The data are used by the Department of Health and Human Services and by other government, academic, and private research and commercial organizations in tracking changes in trends of vital events.

Respondents for the Monthly Vital Statistics Report Form (CDC 64.146) are registration officials in each State and Territory, the District of Columbia, and New York City. In addition, 60 local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this Form. The data are routinely available in each reporting office as a by-product of ongoing activities. This form is designed to collect counts of monthly occurrences of births, deaths, infant deaths, marriages, and divorces immediately following the month of occurrence. There are no costs to respondents.

Respondents to the form: Monthly Vital Statistics Report (CDC 64.146)	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)
State and Territory registration officials	57	12	12/60
New Mexico County officials	60	12	6/60

The Annual Marriage and Divorce Statistical Report Form (CDC 64.147) collects final annual counts of marriages and divorces by month for the United States and for each State. The statistical counts requested on this form differ from provisional estimates obtained on the Monthly Vital Statistics Report Form in that they represent complete and final counts of marriages, divorces, and annulments occurring during the months of the prior year. These final counts are usually available from State or county officials about eight months after the end of the data year. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution.

Respondents for the Annual Marriage and Divorce Statistical Report Form are registration officials in each State, the District of Columbia, New York City, Guam, Puerto Rico, Virgin Islands, Northern Marianas, and American Samoa. In addition, counts of marriages will be collected from individual counties in New Mexico, and counts of divorces will be collected from individual counties in California, Colorado, Indiana, Louisiana, New Mexico, and the boroughs of New York City due to a lack of centralized complete collections in these registration areas. The data are routinely available in each reporting office as a by-product of ongoing activities. The total estimated annualized burden for this data collection is 410 hours.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)
State/Territory/City registration officials	56	1	30/60
County/Borough officials	348	1	30/60

Dated: February 25, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–4984 Filed 3–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0303]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry on Formal Dispute Resolutions; Appeals Above the Division Level

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on Formal Dispute Resolutions; Appeals Above the Division Level" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 16, 2002 (67 FR 63929), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0430. The approval expires on February 28, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4976 Filed 3–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0398]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry: "Assessment of the Effects of Antimicrobial Drug Residues From Food of Animal Origin on the Human Intestinal Flora"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by April 3, 2003.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: "Assessment of the Effects of Antimicrobial Drug Residues From Food of Animal Origin on the Human Intestinal Flora"

In the **Federal Register** of December 27, 2001 (66 FR 66910), FDA published a 60-day notice that requested comments to the proposed collection of information. In response, the agency received two submissions containing several comments. The commenters generally supported the pathway approach outlined in the draft guidance. The comments centered on the type of information that needs to be included and the endpoints that need to be addressed. Based on suggestions contained in the comments, this final guidance will eliminate the endpoint of metabolic activity of the intestinal flora (which was proposed in the draft guidance) and will consider human data to have more weight as evidence of adverse effect on the intestinal flora, when human data is available.

Sponsors of new animal drugs must meet certain statutory requirements for new animal drug approval under section 512 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360b). Among other things, the sponsor must demonstrate that the use of the drug is safe. Thus, when the Center for Veterinary Medicine (CVM) reviews new animal drug applications for drugs that will be used in food-producing animals, it must determine whether residues of the drug that may remain in human food derived from those animals would be harmful to humans. One possible harmful effect of residues of antimicrobial drugs that CVM considers in this determination is the possible effect of residues on human intestinal flora.

This guidance document describes the pathway approach for assessing such effects. An assessment of the safety of antimicrobial drug residues in food is a major issue that we recommend be addressed by the sponsor of a new animal drug. For residues determined to have no antimicrobial activity against representatives of the human intestinal flora, an acceptable daily intake (ADI) is recommended to be calculated based on traditional toxicological studies. The burden hours required are reported and approved under OMB control number 0910–0032. However, the guidance recommends that additional information be provided for certain drugs if an assessment of microbiological safety determines that a new animal drug produces residues in foods that are microbiologically active in the human colon. The likely respondents to this collection of information are sponsors of antimicrobial new animal drugs that will be used in food-producing animals. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Guidance	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Assessments (microbiological studies) of safety of antimicrobial drug residues that are microbiologically active in the human colon	5	1	5	14,110	70,550

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates in table 1 of this document resulted from discussions with sponsors of new animal drugs. The estimated burden includes studies, analysis of data, and writing the assessment. The number of respondents provided is based on current experience, however, the number may change in the future.

Dated: February 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4977 Filed 3–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 13, 2003, from 8 a.m. to 6 p.m., and March 14, 2003, from 8:30 a.m. to 4 p.m.

Location: Hilton DC North—Gaithersburg, Grand Ballrooms A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

Contact: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting. FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Linda A. Smallwood or Pearline K. Muckelvene at 301–827–1281 at least 7 days in advance of the meeting. Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

Agenda: On March 13, 2003, the following committee updates are tentatively scheduled: FDA consolidation, Medical Device User Fee and Modernization Act, Clinical Laboratory Improvement Amendments waiver for human immunodeficiency, type 1 human immunodeficiency virus-1 (HIV–1) rapid tests, and the Trans Net pilot program. The committee will hear presentations, discuss, and provide recommendations on the topic of West Nile Virus testing. On March 14, 2003, the following committee updates are tentatively scheduled: Limitations on validation of anticoagulant and additive solutions to permit freezing and irradiation of red cells, and particulates in blood bags. The committee will hear presentations, discuss, and provide recommendations on the topic of extensions of the dating period for pooled platelets.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 7, 2003. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m.; and 3 p.m. and 4:30 p.m. on March 13, 2003, and between approximately 9 a.m. and 9:30 a.m.; and 10:50 a.m. and noon on March 14, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 7, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that was unable to publish this notice 15 days prior to the March 13 and 14, 2003, Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4974 Filed 3–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Advisory Committee for Pharmaceutical Science. This meeting was announced in the **Federal Register** of February 3, 2003 (68 FR 5297). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Kathleen Reedy or LaNise Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 3, 2003 (68 FR 5297), FDA announced that a meeting of the Advisory Committee for Pharmaceutical Science would be held on March 12 and 13, 2003. On page 5298, in the first column, the second sentence in the *Agenda* portion of the document is amended to read as follows:

On March 13, 2003, the committee will: (1) Discuss and provide direction for future subcommittee: Pharmacology/Toxicology Subcommittee; (2) receive an update on the Office of Pharmaceutical Science research projects; (3) discuss and provide comments on dose content uniformity, parametric interval test for aerosol products; (4) discuss and provide comments on bioequivalence/bioavailability of endogenous drugs; and (5) discuss and provide comments on comparability protocols.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–4975 Filed 3–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Special Fraud Alert on Telemarketing by Durable Medical Equipment Suppliers

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth the recently issued OIG Special Fraud Alert addressing telemarketing by durable medical equipment (DME) suppliers. For the most part, OIG Special Fraud Alerts address national trends in health care fraud, including potential violations of the anti-kickback statute for federal health care programs. This Special Fraud Alert specially highlights the statutory provision prohibiting DME suppliers from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, waste, and abuse in the department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations, and inspections. To reduce fraud and abuse in the federal health care programs, including Medicare and Medicaid, the OIG actively investigates fraudulent schemes that are used to obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify practices in the health care industry that are particularly vulnerable to abuse.

The OIG issues Special Fraud Alerts based on information it obtains concerning particular fraudulent or abusive practices within the health care industry. Special Fraud Alerts are intended for widespread dissemination to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs. To date, the OIG has published in the **Federal Register** the texts of 11 previously-issued Special Fraud Alerts.[1]

This Special Fraud Alert focuses on section 1834(a)(17) of the Social Security Act, which prohibits suppliers of DME, except under limited circumstances, from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, and possible telemarketing practices by DME suppliers through the use of independent marketing firms.

II. Special Fraud Alert: Telemarketing by Durable Medical Equipment Suppliers (January 2003)

Section 1834(a)(17) of the Social Security Act prohibits suppliers of durable medical equipment (DME) from making unsolicited telephone calls to Medicare beneficiaries regarding the furnishing of a covered item, except in three specific situations: (i) the beneficiary has given written permission to the supplier to make contact by telephone; (ii) the contact is regarding a covered item the supplier has already furnished the beneficiary; or (iii) the supplier has furnished at least one covered item to the beneficiary during the preceding fifteen months. Section 1834(a)(17)(B) also specifically prohibits payment to a supplier who knowingly submits a claim generated pursuant to a prohibited telephone solicitation. Accordingly, such claims for payment are false and violators are potentially subject to criminal, civil, and administrative penalties, including exclusion from federal health care programs.

Notwithstanding the clear statutory prohibition, the Office of Inspector General has received credible information that some DME suppliers continue to use independent marketing firms to make unsolicited telephone calls to Medicare beneficiaries to market DME. Suppliers cannot do indirectly that which they are prohibited from doing directly. Except in the three specific circumstances described in the statute, section 1834(a)(17) prohibits unsolicited telemarketing by a DME supplier to Medicare beneficiaries, whether contact with a beneficiary is made by the supplier directly or by another party on the DME supplier's behalf. Moreover, a DME supplier is responsible for verifying that marketing activities performed by third parties with whom the supplier contracts or otherwise does business do not involve prohibited activity and that information purchased from such third parties was neither obtained, nor derived, from prohibited activity. If a claim for payment is submitted for items or services generated by a prohibited solicitation, both the DME supplier and the telemarketer are potentially liable for criminal, civil, and administrative penalties for causing the filing of a false claim.

What to do if you Have Information About Fraud and Abuse Against Medicare or Medicaid Programs

If you have information about DME suppliers or telemarketers engaging in any of the activities described above, contact any of the regional offices of the Office of Inspector General, U.S. Department of Health and Human Services, at the following locations:

Regional offices	States served	Telephone
Boston	MA, VT, NH, ME, RI, CT	617–565–2664.
New York	NY, NJ, PR, VI	212–264–1691.
Philadelphia	PA, MD, DE, WV, VA, DC	215–861–4576.
Atlanta	GA, KY, NC, SC, FL, TN, AL	404–562–7603.
Chicago	IL, MN, WI, MI, IN, OH	312–353–2740.
Dallas	TX, NM, OK, AR, LA, MS	214–767–8406.
Kansas City	CO, UT, WY, MT, ND, SD, NE, KS, MO, IA	816 426–4000.
Los Angeles	AZ, NV, So. CA, HI,	714–246–8302.
San Francisco	No. CA, AK, OR, ID, WA, AK	415–437–7961.

[1] All OIG Special Fraud Alerts are available on the Internet at the OIG Web site at *http://oig.hhs.gov/fraud/fraudalerts.html#1*.

Dated: February 3, 2003.

Janet Rehnquist,

Inspector General.

[FR Doc. 03–5004 Filed 3–3–03; 8:45 am]

BILLING CODE 4150–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–05]

Notice of Proposed Information Collection: Comment Request; Previous Participation Certification

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: May 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne__Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–3730 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department if submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Previous Participation Certification.

OMB Control Number, if applicable: 2502–0118.

Description of the need for the information and proposed use: This information is necessary to ensure that responsible individuals and organizations participate in HUD's multifamily housing programs. The information will be used to evaluate participants' previous participation in government programs and ensure that the past record is acceptable prior to granting approval to participate in HUD's multifamily housing programs. The collection of this information will be 100 percent automated.

Agency form numbers, if applicable: HUD–2530.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 4,300; the frequency of responses is 1 unless additional actions require additional submissions; estimated time to gather and enter the information into the automated system is estimated to be 30 minutes per submission, and the estimated total annual burden hours are 2,150.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 24, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–4939 Filed 3–3–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–06]

Notice of Proposed Information Collection: Comment Request; Funds Authorizations for Reserve for Replacements/Residual Receipts Funds

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne__Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: William Hill, Director, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–3730 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Funds Authorization for Reserve for Replacements/Residual Receipts Funds.

OMB Control Number, if applicable: 2502–New Collection.

Description of the need for the information and proposed use: This information is necessary to ensure that the Department reviews and authorizes all advances from the Reserve for Replacements and Residual Receipts funds.

Agency form numbers, if applicable: HUD–9250.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 8,500; the frequency of responses is 1 unless additional actions require additional submissions; estimated time to gather and enter the information into the automated system is estimated to be 30 minutes per submission, and the estimated total annual burden hours are 4,250.

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 24, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–4940 Filed 3–3–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–02]

Notice of Proposed Information Collection for Public Comment—Public Housing Construction Report

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Construction Report.

OMB Control Number: 2577–0027.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) are responsible for contract administration for low-income housing projects. The architect, or other person licensed under State law, prepares the report and submits it to the PHA from the date of contract execution to final inspection. The report provides information on contractors, contract amount, starting/completing dates, progress on site improvements and buildings, inspection forecast and acceptance for occupancy. HUD uses the information to track the progress of construction to ensure that contract and inspection dates comply with HUD procedures.

Agency form numbers, if applicable: HUD–5378.

Members of affected public: State or Local Government.

Estimation of the total number of hours needed to pare the information collection including number of respondents, frequency of response, and hours of response: 158 (projects), 12 months average construction period x two reports a month = 24 for each project totaling 3,792 responses, 15 minutes per response, 568 hours total reporting burden, 152 hours total recordkeeping burden. Total burden hours are 720.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 26, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Public Housing Construction Report

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0027 (exp.5/31/2003)

See Instructions on Back

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect or sponsor, and you are not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937 and 24 CFR Part 941 HUD regulations. PHAs are responsible for contract administration for low-income housing projects. The architect, or other person licensed under State law, preperes the report and submits it to the PHA from the date of contract execution to final inspection. The report provides information on contractors, contract amount, starting/completing dates, progress on site improvements and buildings, inspection forecast and acceptance for occupancy. HUD uses the information to track the progress of construction to ensure that contract and inspection dates comply with HUD procedures. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Name of Public Housing Agency	Development Number	Total Number of Buildings
Development Name	Report Number	Total Dwelling Units Scheduled
Development Address and Telephone number of Project Office	Period Ended	Dwelling Units Scheduled Elderly

1. Contract Data — **Scheduled Completion:** % — **Actual Completion:** %

Prime Contractors	Division of Work	Adjusted Contract Amount	Adjusted Value of Work in Place	Contract Starting Date	Contract Completion Date
		$	$		
		$	$		
		$	$		
		$	$		
		$	$		
		$	$		
	Totals	$	$		

2. Average Effective Employment During Reporting Period:

3. Dwelling Buildings Progress	Not Started	In Progress	Completed	4. Site Improvements Progress	Not Started	In Progress	Completed
a. Foundations				a. Utilities			
b. Mechanical Roughing				b. Streets and Walks			
c. Interior Finish				c. Lawns and Planting			
d. Punch List				d. Other			

5. Supervisory and Inspection Force Employed by: (1) Local Authority: (2) Architect:

Duty	Full Time	Part Time	Duty	Full Time	Part Time
a.			c.		
b.			d.		

6. Inspection Forecast			7. Acceptance for Occupancy and Use	
Item	No. of Units	Date to beReady	Item	No. of Units
a. Final - First Group			a. Dwelling Units Previously Accepted	
b. Final - Second Group			b. Dwelling Units Accepted this Period	
c. Final - Third Group			c. Total Dwelling Units Accepted to Date	

8. Narrative Report: Special Circumstances, Construction Delays, Problems, etc., If Project Includes Other Facilities, such as Community M and M Building. Show the Percent Completion under this heading, also include Status of Off-Site Work. Continue on back if necessary.

Contracting Officer's Name & Signature & Date:

x

Previous edition is obsolete

form HUD - 5378 (2/94)
ref Handbooks 7417.1 & 7450.1

8. Narrative Report: (continued)

Instructions for Preparation of form HUD - 5378, Public Housing Construction Report

1. General. Form HUD - 5378 shall be prepared and mailed on the 1st and 16th day of each calendar month of the construction period. Each report shall be numbered in serial order, commencing with No. 1 and continuing through the final report. All spaces must be filled on each report, including the street address of the project and the telephone number of the project office.

2. Body of Report.
   a. Item 1: Contract Data
   Completion Percentages: Fill in accurately the scheduled and the actual completion percentages.
   Prime Contractors: Arrange Prime Contracts in the order of award.
   Division of Work: Enter the division of the work awarded to each.
   Adjusted Contract Amount: For each contract, enter the contract amount as adjusted by all approved Change Orders.
   Adjusted Value of Work in Place: Each Contractor's latest periodical estimate for partial payment shall be utilized.
   Contract Starting Date: Enter the effective starting date established by Notice to Proceed for each of the Contractors listed.
   Contract Completion Date: Enter the contract completion date established by Notice to Proceed for each of the Contractors listed.

   b. Item 2: Average Effective Employment During Reporting Period: This is intended to show the approximate size of the productive labor force.

   c. Item 3: Dwelling Building Progress: Enter the number of dwelling buildings under each appropriate heading.

   d. Item 4: Site Improvements Progress: This covers all on-site non-dwelling construction. Enter an "X" under each appropriate heading. If "In Progress," show the percentage of completion.

   e. Item 5: Supervisory and Inspection Force: This should show the current composition of these forces and by whom they are employed.
   Employment: Indicate with an "X" by whom these forces are employed.
   Duty: Enter the active duty assignments for the period. Do not use individual's names.
   Time Classification: Enter the number of persons performing the duty under each time classification.

   f. Item 6: Inspection Forecast: This forecast is to provide HUD with advance information for planning itineraries of Construction Representatives and should be revised in successive reports as necessary.

   g. Item 7: Acceptance of Occupancy and Use: These items are self-explanatory.

   h. Item 8. Narrative Report: The report should be the historical record of the construction of the project, written in conversational style, and should include the names and titles of all official visitors, including the Architects.

3. Signatures: The original and all copies must be signed and dated by the Contracting Officer, with the name typed below the signature.

Previous edition is obsolete

form HUD - 5378 (2/94)
ref Handbooks 7417.1 & 7450.1

[FR Doc. 03–4942 Filed 3–3–03; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–09]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Project Applications and Review of Applications—Lender Processing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0331) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Project Applications and Review of Applications—Lender Processing.

OMB Approval Number: 2502–0331.

Form Numbers: HUD–92264, 9664A, 92664T, 92273, 92274, 92326, 92329, 92331, and 92485.

Description of the Need for the Information and Its Proposed Use: The Multifamily Accelerated Processing (MAP) lender submits information to HUD for multifamily properties needing FHA insurance. Lender's underwriters involved are architects, costs analysts, appraisers, and mortgage credit analysis.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
230	10.5		25		60,605

Total Estimated Burden Hours: 60,605.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 25, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–4943 Filed 3–3–03; 8:45 am]
BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–10]

Notice of Submission of Proposed Information Collection to OMB: Insurance for Home Equity Conversion Mortgages (HECM), Residential Loan Application for Reverse Mortgage

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0524) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Insurance for Home Equity Conversion Mortgages (HECM), Residential Loan Application for Reverse Mortgage.

OMB Approval Number: 2502–0524.

Form Numbers: HUD–92900–A, HUD–92900–B, Fannie Mae Form 1003, Fannie Mae Form 1009None.

Description of the Need for the Information and its Proposed Use: Lenders will use this streamlined application to gather borrower data to determine eligibility for the HECM Program. The Department will gather the data for reports to Congress regarding the Program.

Respondents: Individuals or households, Business or other for-profit.

Frequency of Submission: On occasion, Annually.

Reporting Burden:

Number of respondents	Annual response	×	Hours per response	=	Burden hours
5,000	1		1		5,000

Total Estimated Burden Hours: 5,000.

Status: Reinstatement, without change, of previously approved.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 25, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–4944 Filed 3–3–03; 8:45 am]
BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR,

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Friday, March 14, 2003, Time 1:30 p.m. to 4 p.m.

ADDRESSES: Market Towns Office, Slatington Borough Hall, 125 South Walnut Street, Slatington PA 18080.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and national resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988, and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sanchse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton, PA 18042 (610) 923–3548.

Dated: February 25, 2003.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 03–4985 Filed 3–3–03; 8:45 am]
BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before April 3, 2003, to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–065377

Applicant: San Andreas Land Conservancy, Santa Cruz, California. The applicant requests a permit to take (harass, capture, translocate, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with bullfrog eradication efforts in Alameda, San Mateo, and Santa Clara Counties, California for the purpose of enhancing its survival.

Permit No. TE–048470

Applicant: Sonoma County, Santa Rosa, California. The permittee requests an amendment to take (harass by survey, capture, and release) the Sonoma distinct population segment of the California tiger salamander (Ambystoma californiense) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–832262

Applicant: Department of Parks and Recreation, San Luis Obispo, California.

The permittee requests an amendment to take (harass by survey) the Morro shoulderband (= banded dune) snail (*Helminthoglypta walkeriana*) in conjunction with presence or absence surveys and ecological research throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE–066621

Applicant: Martin Ruane, Ventura, California.

The applicant request a permit to take (locate nests and harass by survey) the California least tern (*Sterna antillarum browni*) in conjunction with monitoring activities in Ventura County, California for the purpose of enhancing its survival.

Permit No. TE–020557

Applicant: Malik Tamimi, San Diego, California.

The permittee requests an amendment to take (harass by survey, collect, and sacrifice) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus wootoni*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–837307

Applicant: Holly Cheong, San Diego, California.

The permittee requests an amendment to take (harass by survey, collect, and sacrifice) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus wootoni*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–799568

Applicant: Dana Kamada, San Clemente, California.

The permittee requests an amendment to take (capture, handle, and band) the least Bell's vireo (*Vireo bellii pusillus*), and to take (harass by survey, monitor nests, capture, handle, and band) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–056557

Applicant: Bureau of Reclamation, Burley, Idaho.

The applicant request a permit to take (capture, collect, and sacrifice) the Utah valvata snail (*Valvata utahensis*) in conjunction with demographic, hydrologic, and genetic research throughout the range of the species for the purpose of enhancing its survival.

Permit No. TE–047805

Applicant: National Audubon Society, Honolulu, Hawaii.

The permittee requests an amendment to take (capture) short-tailed albatross (*Phoebastria nigripes*) in conjunction with research on various fishing methods, including underwater chutes, side-setting, and blue-dyed squid bait, aimed at reducing capture of the short-tailed albatross on Hawaiian tuna longline vessels in Federal waters off the State of Hawaii for the purpose of enhancing its survival.

Permit No. TE–067064

Applicant: Lindsay Messett, Lakewood, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–067159

Applicant: Kristen Reifel, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: February 3, 2003.

Rowan W. Gould,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–4986 Filed 3–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit: Permits for Scientific Purposes, Enhancement of Propagation or Survival (i.e., Recovery Permits), and Interstate Commerce Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by April 3, 2003.

ADDRESSES: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES**). You may also comment via the Internet to *victoria_davis@fws.gov*. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed above (*see* **FOR FURTHER INFORMATION**). Finally, you may hand deliver comments to the Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice:

Applicant: Assistant Regional Director, Ecological Services, Fish and Wildlife Service, Southeast Region, Atlanta, Georgia, TE697819–2.

The applicant requests renewal of the existing authorization to take, or remove and reduce to possession, all wildlife and plant species listed as threatened or endangered in 50 CFR parts 17.11 and 17.12, from throughout these species' ranges in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Arkansas, Louisiana, Puerto Rico, and the U.S. Virgin Islands. Activities authorized under this permit are for the purpose of enhancement of survival of the species which include but are not limited to collection of seeds, leaves, stems, and rhizomes; capture, release, and tracking using radio telemetry; and habitat disturbance while conducting population surveys and recovery activities.

Applicant: National Park Service-Buffalo National River, Superintendent Ivan D. Miller, Harrison, Arkansas, TE065726–0.

The applicant requests authorization to take (survey, capture, and release) the following endangered bats: Ozark big-eared bat (*Corynohinus townsendii ingens*), gray bat (*Myotis grisescens*), and Indiana bat (*Myotis sodalis*) while conducting presence/absence surveys in caves and abandoned mines. The proposed activities will take place in the Buffalo National River; Marion, Searcy, Baxter, and Newton Counties, Arkansas.

Applicant: John M. Alderman, Aquatic Endangered Species Biologist, Pittsboro, North Carolina, TE065756–0.

The applicant requests authorization to take (survey, capture, release, and collect relict shells) the following species: Tar River spinymussel (*Elliptio steinstansana*), James spinymussel (*Pleurobema collina*), dwarf wedgemussel (*Alasmidonta heterodon*), Appalachian elktoe (*Alasmidonta raveneliana*), littlewing pearlymussel (*Pegias fabula*), Waccamaw silverside (*Menidia extensa*), Cape Fear shiner (*Notropis mekistocholas*), and spotfin chub (*Cyprinella monacha*). Take may occur while conducting presence/absence or catch-per-unit-effort surveys. The proposed activities will take place in all river basins in North Carolina and South Carolina.

Applicant: Mississippi Department of Environmental Quality, Phil Bass, Pearl, Mississippi TE065948–0.

The applicant requests authorization to take (survey, capture, release, and collect relict shells) the following species: Cumberland combshell (*Epioblasma brevidens*), southern combshell (*Pleurobema decisum*), orangenacre mucket (*Lampsilis perovalis*), black clubshell (*Pleuroblema curtum*), southern clubshell (*Pleuroblema decisum*), flat pigtoe (*Pleuroblema marshalli*), ovate clubshell (*Pleuroblema perovatum*), heavy pigtoe (*Pleuroblema taitianum*), inflated heelsplitter (*Potamilum inflatus*), Stirrupshell (*Quadrula stapes*), gulf sturgeon (*Acipenser oxyrinchus desotoi*), and bayou darter (*Etheostoma rubrum*). Take may occur while conducting biological assessment activities. All species recognized as threatened or endangered will be released immediately. The proposed activities will take place throughout the state of Mississippi.

Applicant: Environmental Resource Analysts, Inc., Joseph Freda, Auburn, Alabama TE065979–0.

The applicant requests authorization to take (survey, capture, measure, release, and collect relict shells) the following species: eastern indigo snake (*Drymarchon couperi*), purple bankclimber mussel (*Elliptoideus sloatianus*), shiny-rayed pocketbook mussel (*Lampsilis subangulata*), gulf moccasinshell mussel (*Medionidus penicillatus*), and oval pigtoe mussel (*Pleurobema pyriforme*). Take may occur while conducting presence/absence surveys in Clay County, Georgia. All species recognized as threatened or endangered will be released immediately. The proposed aquatic activities will take place in small creeks of the Chattahochee River, including Drag Nasty Creek, Pataula Creek, Crooked Creek, Sany Branch, and Sandy Creek. Gopher tortoise burrows within the project area will be surveyed to determine the presence of the eastern indigo snake.

Applicant: U.S. Forest Service, Ozark-Saint Francis National Forests, Forest Supervisor, Russellville, Arkansas TE065972–0.

The applicant requests authorization to take (survey, monitor, capture, measure, release, and collect relict shells) the following species: gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), bald eagle (*Haliaeetus leucocephalas*), interior least tern (*Sterna antillarum*), fat pocketbook (*Potamilus capax*), scaleshell (*Leptodea leptodon*), pink mucket (*Lampsilis abrupta*), pallid sturgeon (*Scaphirhynchus albus*), cave crayfish (*Cambarus aculabrum*), cave crayfish (*Cambarus zophonastes*), Magazine Mountain shagreen (*Inflectarius magazinensis*), American burying beetle (*Nicrophorus americanus*), American alligator (*Alligator mississippiensis*), *Geocarpon minimum* (Geocarpon), and *Lesquerella filiformis* (Missouri bladderpod). Take may occur while conducting presence/absence surveys and during monitoring and management of the populations. The proposed activities will take place on the Ozark-Saint Francis National Forest; Baxter, Benton, Conway, Crawford, Franklin, Johnson, Lee, Logan, Madison, Newton, Phillips, Searcy, Stone, Van Buren, Washington, and Yell Counties, Arkansas.

Dated: February 21, 2003.

Sam D. Hamilton,

Regional Director.

[FR Doc. 03–4987 Filed 3–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before April 3, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for

a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–812206

Applicant: Robin Church, Spring Valley, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–067347

Applicant: Crysta Dickson, Rancho Santa Marguerita, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–813545

Applicant: Brock Ortega, Poway, California.

The permittee requests an amendment to take (harass by survey and translocate) the arroyo toad (*Bufo microscaphus californicus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–067786

Applicant: John W. Martin, Sacramento, California.

The applicant requests a permit to take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*), and take (capture, mark, and release) the salt mouse harvest mouse (*Reithrodontomys raviventris*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–067351

Applicant: Cynthia Hopkins, El Cerrito, California.

The applicant requests a permit to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–027427

Applicant: The Wildlife Project, Modesto, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–027736

Applicant: Erik LaCoste, Ramona, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–063608

Applicant: Brian Lohstroh, San Diego, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–063230

Applicant: Jim Rocks, San Diego, California.

The permittee requests an amendment to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–807078

Applicant: Point Reyes Bird Observatory, Stinson Beach, California.

The permittee requests an amendment to take (locate and monitor nests, capture, and band) the California least tern (*Sterna antillarum browni*) in conjunction with monitoring activities in San Luis Obispo and Santa Barbara Counties, California for the purpose of enhancing its survival.

Permit No. TE–832262

Applicant: The California Department of Parks and Recreation, San Luis Obispo, California.

The permittee requests an amendment to take (collect and sacrifice) the Morro shoulderband snail (*Helminthoglypta walkeriana*) in conjunction with genetic research throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: February 14, 2003.

Rowan W. Gould,

Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–4988 Filed 3–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1610–DS]

Notice of Availability of the Draft Environmental Impact Statement for the Snake River Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement (EIS) for the Snake River Resource Management Plan (RMP), Teton County, Wyoming.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a Draft RMP/EIS for the Snake River planning area. This planning effort addresses the BLM-administered public lands and mineral estate in the vicinity of the Snake River and the Town of Jackson, Teton County, Wyoming. When completed, the RMP will provide general management direction for BLM-administered public lands and mineral estate and their uses in the planning area. The planning area contains approximately 1,073 acres of BLM surface/mineral estate and 15,123 acres of Federal mineral estate under private surface lands. The BLM administers these lands through its Pinedale Field Office, Pinedale, Wyoming, 80 miles south of Jackson. The Draft EIS analyzes six alternatives, ranging from continuing current management (No Action) to disposing of the BLM-administered public surface lands.

When approved, the RMP will contain land and resource management decisions that were deferred from consideration under the Pinedale RMP (EIS/Record of Decision 1988). Because the ownership status of these tracts of land was in question during the planning processes for Pinedale RMP, the BLM decided that a separate RMP would be prepared for these tracts at a later date.

DATES: Written comments on the Draft EIS for the Snake River RMP will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability of the Draft EIS in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, or mailings.

ADDRESSES: Written comments should be sent or hand-delivered to: Snake River RMP Team Leader, Bureau of Land Management, Pinedale Field Office, 432 South Mill Street, P.O. Box 768, Pinedale, Wyoming 82941. Comments submitted by electronic mail should be sent to: *pinedale_wymail@blm.gov*. Please submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include "Attn: Snake River RMP" and your name and return address in the text of the message. If you do not receive a confirmation of receipt message notifying you that the BLM has received your electronic comments within 72 hours of electronic mailing, please contact the Pinedale Field Office directly by telephone at (307) 367–5300.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Copies of the Draft EIS for the Snake River RMP are available in the Pinedale Field Office at the above address, and at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Anyone wishing to be placed on the mailing list for the Snake River planning effort should contact the Pinedale Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Priscilla Mecham, Field Manager, or Kellie Roadifer, Snake River RMP Team Leader, Pinedale Field Office, Bureau of Land Management, at the above address, or at (307) 367–5300.

SUPPLEMENTARY INFORMATION: The BLM-administered public lands and mineral estate in the planning area currently do not have an approved land use plan. In December 1999, the BLM issued a Notice of Intent to prepare a land use plan for those lands and mineral estate under its jurisdiction. Upon approval, the Snake River RMP would establish management direction for the surface and mineral estates and associated resources under BLM administration near Jackson, Wyoming.

The BLM has conducted the Snake River RMP process under Federal regulations established to meet the provisions of the Federal Land Policy Management Act and National Environmental Policy Act, at 43 Code of Federal Regulations (CFR) 1600 and 40 CFR 1500–1508, respectively.

Public participation has been sought through scoping, public meetings, and surveys to ensure that this planning effort addresses all issues and concerns from those interested in the management of the public lands within the Snake River planning area.

Based on issues and concerns raised by the public during scoping and public participation activities the BLM has developed six alternative plans for managing the 23 parcels (1,073 acres) of public land and resources in the Snake River valley. The BLM's preferred alternative proposes disposal or transfer of ownership of administrative responsibilities for 23 parcels (1,073 acres) of BLM-administered public lands to other Federal, State, or local government agencies. The preferred alternative also considers disposal of the parcels to a private entity or entities with land conservation or open-space preservation interests. All mineral estate would be retained in federal ownership. Sand and gravel mining would be allowed under certain circumstances. The lands would be closed to all other mineral activity. The remaining alternatives range from continuation of current management (No Action) to varying combinations of preservation, protection, and development of the BLM-administered lands and resources in the planning area.

During the Snake River planning process the BLM identified issues associated with land use and resource management that guided development of the six alternatives. These key issues include:

1. Cooperative Management

The BLM-administered public lands along the Snake River are interspersed among tracts of private and State lands. With the exception of three parcels, all of the BLM-administered parcels are surrounded or "landlocked" by lands in private ownership. Private and State lands in the planning area are similarly bounded by Federal lands administered by the following agencies: National Park Service—Grand Teton National Park; U.S. Fish and Wildlife Service—National Elk Refuge; and U.S. Department of Agriculture Forest Service—Bridger-Teton National Forest. In addition, the U.S. Army Corps of Engineers administers the Snake River channel and facilities associated with flood control. Opportunities for cooperative management of surface uses by various Federal and State agencies include access to private and commercial river-based recreation, land ownership adjustment, development and maintenance of additional trail-based recreation activities, and such activities as scientific study and information sharing.

2. Recreation Opportunities

BLM-administered public lands along the Snake River are generally accessible to the public for recreation activities. Private recreation use is primarily by Teton County residents, especially those from the communities of Jackson and Wilson. There is also substantial commercially outfitted river floating, with visitors from throughout the United States and from foreign countries. The primary recreation activities are hiking, walking, horseback riding, cross-country skiing, picnicking, watching wildlife, and river-based recreation, such as fishing and boating. At present, no recreation use fees are collected by the BLM. Recreation use, particularly commercially outfitted floating, is increasing. This results in increased crowding, introduction of noxious weeds, and degradation of riparian vegetation. Questions addressed in the Snake River RMP involve how best to accommodate the

demand for recreation use of BLM-administered public lands.

3. Availability and Development of Mineral Materials for Construction

At present, there is a small, localized sand and gravel mining industry within the planning area. These mineral materials are needed primarily for maintenance of the flood control levees along the Snake River, and for road and building construction and maintenance around the Jackson Hole area. These mineral materials are not readily available from other Federal, State, or local government lands, nor are they readily available from private lands. Sand and gravel are often trucked in from outside the Jackson Hole area at a higher cost to users. Questions addressed in the Snake River RMP include whether sand and gravel mining from BLM-administered public lands would be appropriate, and what conditions would be necessary to protect recreation opportunities, watershed resources and important wildlife habitat.

4. Land Surface Ownership Adjustment

Because of the small acreage and irregular shape of each of the 23 BLM-administered parcels under consideration, their scattered nature, and their proximity to private real estate of high value, BLM is considering disposal or transfer of public ownership or administration of these parcels. Questions addressed in the Snake River RMP include whether the parcels should be retained in Federal ownership, how these lands should be administered, who should administer the lands, and under what criteria would the parcels be evaluated and deemed suitable for disposal, if appropriate administration could not be established.

The Snake River RMP Draft EIS alternative plans were developed in conformance with the BLM's National Fire Plan and the National Energy Policy (May 2001). The potential in the Snake River RMP planning area for development of energy resources such as oil and gas, coal, geothermal, and wind resources has been determined to be very low.

Dated: November 27, 2002.

Robert P. Henry,

Acting Associate State Director.

[FR Doc. 03–5165 Filed 3–3–03; 12:50 pm]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on March 25, 2003, at Cochise College, 1025 State Route 90 in Benson, Arizona. It will begin at 9:30 a.m. and conclude at 5 p.m. The agenda items to be covered include: Review of the January 27, 2003, meeting minutes; BLM State Director's Update on Statewide Issues; Arizona Statewide Fire Plan Amendment and Planning Updates, BLM Safford's Grazing Monitoring Program, Off-Highway Vehicle "Decision Tree" Concept, status of the San Pedro Grazing Moratorium, RAC Questions on Written Reports from BLM Field Office Managers; Update Proposed Field Office Rangeland Resource Teams, Reports by the Standards and Guidances, Recreation, Public Relations, Land Use Planning, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on March 25, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Michael Taylor,

Acting Arizona State Director.

[FR Doc. 03–4961 Filed 3–3–03; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PF; GP3–0098]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held March 25, 2003, in the conference room of the Spokane District BLM Office, beginning at 9 a.m. The public comment period will begin at approximately 10 a.m. to 10:30 a.m. and the meeting will adjourn at approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Eastern Washington. At this meeting, topics we plan to discuss include:

- Interior Columbia Basin Ecosystem Management Project Status.
- Briefing by Resource Advisory Council Chair on meeting with BLM Director.
- Agenda for Future Resource Advisory Council Meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

Dated: February 26, 2003.

Joseph K. Buesing,

District Manager.

[FR Doc. 03–4989 Filed 3–3–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–AC]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held April 11, 2003, in Miles City, MT beginning at 8 a.m. When determined, the meeting place will be announced in a news release. The public comment period will begin at approximately 11 a.m. and the meeting will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics we plan to discuss include: OHV update; National RAC meeting; Weatherman Draw Subcommittee update; Oil and gas EIS update and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: February 25, 2003.

David McIlnay,

Field Manager.

[FR Doc. 03–5053 Filed 3–3–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–EU; HAG–03–0018; OR 57458]

Notice of Disclaimer of Interest; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Dennis D. Ashenfelter, has filed an application on behalf of Progress Quarry, L.L.C., for a record disclaimer of interest from the United States pursuant to the authority of section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), for the following described land:

Willamette Meridian, Oregon

T. 2 S., R. 1 W.,
Sec. 5, S½NE¼ and SE¼

The area described contains 240.00 acres in Washington County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jenny Liang, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–808–6299.

SUPPLEMENTARY INFORMATION: The above described land was granted by the United States to the Oregon and California Rail Road Company by patent No. 1, dated May 9, 1871, pursuant to the Act of July 25, 1866, and June 25, 1868. The patent contained the statement excluding and accepting from the transfer, all mineral lands should any such be found to exist, but this exception and exclusion according to the terms of the statute shall not be construed to include coal and iron lands. The Bureau of Land Management (BLM) will determine if the United States has any claim to the minerals in the land described above; whereby, issuance of the proposed recordable disclaimer of interest would remove a cloud on the title to the land. For a period of 90 days from the date of publication of this notice, all persons who wish to present comments, suggestions, or objections in connection with the proposed disclaimer may do so by writing to the Chief, Branch of Realty and Records Services, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208. If no objections are received, the disclaimer will be published shortly after the 90 days has lapsed.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 03–5006 Filed 3–3–03; 8:45 am]

BILLING CODE 4310–33–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–03–006]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

TIME AND DATE: March 11, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–355 and 731–TA–659–660 (Review) (Remand) (Grain-Oriented Silicon Electrical Steel from Italy and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the U.S. Court of International Trade on or before March 24, 2003).
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 27, 2003.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–5182 Filed 2–28–03; 2:08 pm]

BILLING CODE 7020–02–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–03–007]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

TIME AND DATE: March 12, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–990 (Final) (Non-Malleable Cast Iron Pipe Fittings from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 24, 2003).
5. Inv. Nos. 701–TA–319 and 322 and 731–TA–573 and 578 (Review) (Remand) (Certain Carbon Steel Products (Cut-to-Length Plate) from Belgium and Germany)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the U.S. Court of International Trade on or before March 28, 2003.)

6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 27, 2003.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–5183 Filed 2–28–03; 2:08 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day Emergency Notice of Information Collection Under Review: New Bioterrorism Preparedness Act: Entity/Individual Information.

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by March 9, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to David M. Hardy, Records/Information Dissemination Section, Federal Bureau of Investigation, 935 Pennsylvania Ave. NW., Washington, DC 20535, or call (202) 324–3625.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* Bioterrorism Preparedness Act: Entity/Individual Information.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: FD–961 (2–24–03), Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. Other. Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is designed to prevent bioterrorism and other public health emergencies. The law requires entities and persons possessing agents or toxins deemed to be a severe threat to human, animal or plant health, or to animal or plant products, to be registered with the Secretary of Agriculture or Secretary of Health and Human Resources. Under the Act the Attorney General has the responsibility to determine whether any individual is a restricted person, as that term is defined in 18 U.S.C. 175b(d) or is reasonably suspectd by any Federal law enforcement or intelligence agency of committing a Federal crime of terrorism, or having knowing involvement with an organization that engages in domestic or international terrorism, or with any other organization that engages in intentional crimes of violence; or an agent of a foreign power. The Attorney General delegated this responsibility to the Federal Bureau of Investigation (FBI). The collection of this information is necessary for the FBI to make the required determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply. It is estimated 20,000 entities/individuals will complete the information in approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this application is 10,000 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: February 26, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–4959 Filed 3–3–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 20, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or e-mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines.

OMB Number: 1219–0119.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Type of Public: Recordkeeping and Reporting.

Number of Respondents: 114.

Annual Responses: 101,944.

Estimated Time Per Respondent: 0.57 hours (34 minutes).

Total Burden Hours: 58,265.

Total Annualized Capital/Startup Costs: $60,492.

Total Annual Costs (operating/maintaining systems or purchasing services): $316,140.

Description: 30 CFR parts 7, 36, 70, and 75 mandate safety requirements in three major areas of concern: diesel engine design and testing requirements; safety standards for the maintenance and use of equipment; and exhaust gas. The information collection requirements in these provisions are necessary to protect the health and safety of miners.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–5049 Filed 3–3–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 24, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or e-mail *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employee Benefits Security Administration (EBSA).

Title: National Medical Support Notice—Part B.

OMB Number: 1210–0113.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Third party disclosure.

Number of Respondents: 156,000.

Number of Annual Responses: 800,000.

Estimated Time Per Response: 1 hour and 47 minutes for small plans (fewer than 10 participants) and 37 minutes for plans with more than 10 participants.

Total Burden Hours: 530,614.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,216,000.

Description: Section 609 of ERISA and 29 CFR 2590.609–2 establish a National Medical Support Notice, Part B of which is used to implement coverage of children under ERISA covered group health plans pursuant to "Qualified Medical Child Support Orders."

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–5050 Filed 3–3–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL3–92]

TUV Rheinland of North America, Inc.; Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV Rheinland of North America, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of the application.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by March 19, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by March 19, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by March 19, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL3–92, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the

delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL3–92, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Webpage *http://www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Webpage. Please contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210, or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Sherry Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV Rheinland of North America, Inc. (TUV), has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUV's expansion request covers the use of additional test standards. OSHA's current scope of recognition for TUV may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/tuv.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform *independent* safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL.

The Agency processes applications for initial recognition or for expansion or renewal of this recognition following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

The most recent notice published by OSHA for TUV's recognition covered a renewal of recognition, which became effective on March 18, 2002 (67 FR 12051).

The current address of the testing facility (site) that OSHA recognizes for TUV is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

General Background on the Application

TUV has submitted a request, dated October 16, 2001 (see Exhibit 28), to expand its recognition to use 132 additional test standards. The NRTL Program staff has determined that 17 of the 132 standards cannot be included in the expansion because they are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing expansion requests from any NRTL. Therefore, OSHA would include 115 standards in the expansion, as listed below. OSHA performed an on-site review of the NRTL in June 2002 and recommended the expansion in a memo dated October 17, 2002 (*see* Exhibit 29).

The NRTL Program staff found that a few of the standards requested by TUV have been withdrawn or replaced by the standards developing organization. Under OSHA policy, we can no longer recognize the NRTL for such test standards but the NRTL may request or OSHA can provide recognition for comparable test standards, *i.e.*, other appropriate test standards covering similar types of product testing. The appropriate deletions and substitutions are reflected in the listing below.

ANSI A17.5 Elevators and Escalator Electrical Equipment
ANSI A90.1 Safety Standard for Belt Manlifts
ANSI C12.1 Code for Electricity Meters
ANSI C37.21 Control Switchboards
ANSI Z8.1 Commercial Laundry and Dry-cleaning Equipment and Operations
ANSI/NFPA 72 Installation, Maintenance, and Use of Protective Signaling Systems
UL 44 Rubber-Insulated Wires and Cables Thermoset-Insulated Wires and Cables
UL 45 Portable Electric Tools
UL 50 Enclosures for Electrical Equipment
UL 62 Flexible Cord and Fixture Wire
UL 65 Wired Cabinets
UL 69 Electric-Fence Controllers
UL 83 Thermoplastic-Insulated Wires and Cables
UL 150 Antenna Rotators
UL 187 X-Ray Equipment
UL 201 Garage Equipment
UL 224 Extruded Insulating Tubing
UL 231 Power Outlets
UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles
UL 244A Solid-State Controls for Appliances
UL 291 Automated Teller Systems
UL 294 Access Control System Units
UL 325 Door, Drapery, Gate, Louver, and Window Operators and Systems
UL 347 High-Voltage Industrial Control Equipment
UL 416 Refrigerated Medical Equipment
UL 427 Refrigerating Units
UL 429 Electrically Operated Valves
UL 444 Communications Cables
UL 466 Electric Scales
UL 467 Electrical Grounding and Bonding Equipment
UL 484 Room Air Conditioners
UL 496 Edison Base Lampholders
UL 498 Attachment Plugs and Receptacles
UL 508A Industrial Control Panels
UL 542 Lampholders, Starters, and Starter Holders for Fluorescent Lamps
UL 551 Transformer-Type Arc-Welding Machines
UL 563 Ice Makers
UL 574 Electric Oil Heaters
UL 588 Christmas-Tree and Decorative-Lighting Outfits
UL 603 Power Supplies for Use with Burglar-Alarm Systems
UL 606 Linings and Screens for Use with Burglar-Alarm Systems
UL 609 Local Burglar-Alarm Units and Systems
UL 632 Electrically Actuated Transmitters
UL 634 Connectors and Switches for Use with Burglar-Alarm Systems
UL 636 Holdup Alarm Units and Systems
UL 639 Intrusion-Detection Units
UL 664 Commercial Dry-Cleaning Machines (Type IV)
UL 676 Underwater Lighting Fixtures
UL 681 Installation and Classification of Burglar and Holdup Alarm Systems
UL 756 Coin and Currency Changers and Actuators
UL 773 Plug-In Locking-Type Photocontrols for Use With Area Lighting
UL 773A Nonindustrial Photoelectric Switches for Lighting Control
UL 813 Commercial Audio Equipment

UL 817 Cord Sets and Power-Supply Cords
UL 827 Central Station Alarm Services
UL 834 Heating, Water Supply, and Power Boilers—Electric
UL 845 Motor Control Centers
UL 869A Standard for Service Equipment
UL 884 Underfloor Raceways and Fittings
UL 916 Energy Management Equipment
UL 917 Clock-Operated Switches
UL 924 Emergency Lighting and Power Equipment
UL 983 Surveillance Cameras Units
UL 998 Humidifiers
UL 1008 Transfer Switch Equipment
UL 1023 Household Burglar-Alarm System Units
UL 1029 High-Intensity Discharge Lamp Ballasts
UL 1030 Sheathed Heater Elements
UL 1034 Burglary Resistant Electric Locking Mechanisms
UL 1054 Special-Use Switches
UL 1076 Proprietary Burglar-Alarm Units and Systems
UL 1077 Supplementary Protectors for Use in Electrical Equipment
UL 1086 Household Trash Compactors
UL 1088 Temporary Lighting Strings
UL 1090 Electric Snow Movers
UL 1097 Double Insulation Systems for Use in Electrical Equipment
UL 1206 Electric Commercial Clothes-Washing Equipment
UL 1241 Junction Boxes for Swimming Pool Lighting Fixtures
UL 1261 Electric Water Heaters for Pools and Tubs
UL 1283 Electromagnetic-Interference Filter
UL 1286 Office Furnishings
UL 1414 Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio-Television-Type Appliances
UL 1433 Control Centers for Changing Message Type Electric Signs
UL 1447 Electric Lawn Mowers
UL 1448 Electric Hedge Trimmers
UL 1450 Motor Operated Air Compressors, Vacuum Pumps and Painting Equipment
UL 1472 Solid-State Dimming Controls
UL 1565 Positioning Devices
UL 1581 Standard for Electrical Wires, Cables, and Flexible Cords
UL 1610 Central-Station Burglar-Alarm Units
UL 1637 Home Health Care Signaling Equipment
UL 1638 Visual Signaling Appliances
UL 1740 Industrial Robots and Robotic Equipment
UL 1778 Uninterruptible Power Supply Equipment
UL 1951 Electric Plumbing Accessories
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 1994 Low-Level Path Marking and Lighting Systems
UL 1996 Duct Heaters
UL 2044 Commercial Closed Circuit Television Equipment
UL 2097 Double Insulation Systems for Use in Electronic Equipment
UL 2106 Field Erected Boiler Assemblies
UL 2111 Overheating Protection for Motors
UL 3044 Surveillance Closed Circuit Television Equipment
UL 60335–2–8 Household and Similar Electric Appliances, Part 2; Particular Requirements for Electric Shavers, Hair Clippers and Similar Appliances
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Motor-Compressors
UL 60730–1 Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–10A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Motor Starting Relays
UL 60730–2–11A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61058–1 Switch for Appliances for Household and Similar Applications

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA's recognition of TUV, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization (*e.g.*, UL 1008) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1008). Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. Contact "NSSN" (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

Existing Condition

Currently, OSHA imposes the following condition on its recognition of TUV. This condition would apply also to the recognition of the additional test standards and applies solely to TUV's NRTL operations. It is in addition to any other condition that OSHA normally imposes in its recognition of an organization as an NRTL.

TUV must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products.

Preliminary Finding on the Application

TUV has submitted an acceptable request for expansion of its recognition as an NRTL. As mentioned, in connection with this request, OSHA has performed an on-site review of TUV's NRTL testing facility. The NRTL has resolved any discrepancies noted by the assessor following the review, and the assessor factored such resolution into the memo on the recommendation (*see* Exhibit 29).

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to TUV the expansion of recognition as an NRTL to use the additional test standards listed above, subject to the conditions as noted. The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Assistant Secretary has made a preliminary finding that the TUV Rheinland of North America, Inc., can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition, subject to the above conditions. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether TUV has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (*see* **ADDRESSES**), no later than the last date for comments (*see* **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above

no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of TUV's requests, the on-site review reports, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL3–92 contains all materials in the record concerning TUV's application.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant TUV's expansion request. The Agency will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 25th day of February, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–5051 Filed 3–3–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–028)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Critical Care Innovations, Inc., having offices in Chantilly, Virginia, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,869,238, entitled "Quantitative Method of Measuring Metastatic Activity," and in continuations, divisional applications, and foreign applications corresponding to this case. The 5,869,238 patent is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by March 19, 2003.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: February 26, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–5042 Filed 3–3–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before May 5, 2003.

ADDRESSES: Send comments to Ms. Susan Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by e-mail to: *sdaisey@neh.gov*. Telephone: 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L 104–13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

This Notice also lists the following information:

Type of Review: Extension of a currently approved collection.

Agency: National Endowment for the Humanities.

Title of Proposal: Generic Clearance Authority for the National Endowment for the Humanities.

OMB Number: 3136–0134.

Affected Public: Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH grantees.

Total Respondents: 10,670.

Frequency of Collection: On occasion.

Total Responses: 10,670.

Average Time per Response: Varied according to type of information collection.

Estimated Total Burden Hours: 91,412 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Lynne Munson,

Deputy Chairman.

[FR Doc. 03–5012 Filed 3–3–03; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Billing Instructions for NRC Cost Type Contracts.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* Monthly and on occasion.

5. *Who will be required or asked to report:* NRC contractors.

6. *An estimate of the number of annual responses:* 2,140.

7. *The estimated number of annual respondents:* 55.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,070 (754 hours billing burden + 316 hours license fee recovery cost burden).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* The NRC Division of Contracts in administering its contracts provides Billing Instructions for its contractors to follow in preparation of invoices. These instructions stipulate the level of detail in which supporting data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs are in accordance with the contract terms and conditions.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 3, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0109), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated in Rockville, Maryland, this 25th day of February, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–5026 Filed 3–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237, 50–249, 50–254, and 50–265]

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3, Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Acceptance for Docketing of Application and Notice of Opportunity for a Hearing Regarding Renewal of Facility Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering an application for the renewal of Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30 for the Dresden Nuclear Power Station, Units 2 and 3, and the Quad Cities Nuclear Power Station, Units 1 and 2, respectively. Renewal of the licenses would authorize the applicant to operate each of the facilities for an additional 20 years beyond the period specified in the current operating licenses period. The current operating licenses for the Dresden Nuclear Power Station, Units 2 and 3, expire on December 22, 2009, and January 12, 2011, respectively. Both of the current operating licenses for the Quad Cities Nuclear Power Station, Units 1 and 2, expire on December 14, 2012.

On January 3, 2003, the Commission received an application from the Exelon Generation Company, LLC, filed pursuant to section 104b of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, to renew Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30 for the Dresden Nuclear Power Station, Units 2 and 3, and the Quad Cities Nuclear Power Station, Units 1 and 2, respectively. A notice of receipt of application, "Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; Quad Cities Nuclear Power Station, Units 1 and 2; notice of receipt of application for renewal of Facility Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30 for an additional 20-year period," was published in the **Federal Register** on January 30, 2003 (68 FR 4800).

The Commission's staff (the staff) has determined that the Exelon Generation Company has submitted information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is complete and acceptable for docketing. The current Docket Nos. 50–237, 50–249, 50–254, and 50–265 for Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30, respectively will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the Commission will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the Commission will prepare an environmental impact statement that is a supplement to NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants" (May 1996). Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold public scoping meetings. Detailed information regarding these meetings will be included in a future **Federal Register** notice. The Commission also intends to hold public meetings to discuss the license renewal process and the schedule for conducting the review. The Commission will provide prior notice of these meetings. As discussed further herein, in the event that a hearing is held, issues that may be litigated will be confined to those pertinent to the foregoing.

Within 30 days from the date of publication of this **Federal Register** notice, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses in accordance with the provisions of 10 CFR 2.714.

The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002,

inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows:

In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) the nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room (PDR), 11555 Rockville Pike (first floor) Rockville, Maryland, and on the Commission's Web site at *http://www.nrc.gov* (the Public Electronic Reading Room). If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission will rule on the request(s) and/or petition(s), and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed by the above date, the Commission may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to 15 days before the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specific requirements described above.

Not later than 15 days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and, because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. John L. Skolds, President and Chief Nuclear Officer, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Detailed information about the license renewal process can be found on the Commission's Web page at *http://www.nrc.gov*. A copy of the application is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML030090359. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available on the NRC Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, while the application is under review. The staff has verified that a copy of the license renewal application is also available to local residents near the Dresden Nuclear Power Station at the Morris Public Library in Morris, Illinois, and at the Coal City Public Library in Coal City, Illinois. For local residents near the Quad Cities Nuclear Power Station, the license renewal application is available at the River Valley District Library in Port Byron, Illinois, the Cordova District Library in Cordova, Illinois, and at the Davenport Public Library in Davenport, Iowa.

Dated in Rockville, Maryland, this 26th day of February, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–5025 Filed 3–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2259]

Notice of Amendment Request for Pathfinder Mining Company To Revise a Site-Reclamation Milestone in License No. SUA–672 for the Lucky Mc Site Gas Hills, Wyoming, and Opportunity To Provide Comments and To Request a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 5, 2002, as supplemented by an e-mail received February 3, 2003, a request from Pathfinder Mining Company to amend License Condition (LC) 61A(3) and 61B(1) of Source Material License SUA–672 for the Lucky Mc Site. The license amendment request proposes to modify LC 61A(3) to change the completion date for radon barrier placement to December 31, 2004, a delay of two years, and to modify LC 61B(1) to change the target completion date for the erosion protection placement to December 31, 2004, a delay of two years.

II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

III. Opportunity To Request a Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provision of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications of Materials and Operator Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by email to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mining Company, 935 Pendell Boulevard PO Box 730 Mills, Wyoming 82664, Attention: Tom Hardgrove; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301)–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Other Information

Pathfinder's request to amend LC 61A(3) and 61B(1) of Source Material License SUA–672, which describes the proposed changes to the license condition, and the reason for the request, is being made available for public inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Numbers: ML023440222 and ML030410500). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Michael Raddatz, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6334; Fax: (301) 415–5390.

Dated at Rockville, Maryland, this 25th day of February, 2003.

For the Nuclear Regulatory Commission

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–5027 Filed 3–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6622]

Notice of Amendment Request for Pathfinder Mining Company To Revise a Site-Reclamation Milestone in License No. SUA–442 for the Shirley Basin Site, Wyoming, and Opportunity To Provide Comments and To Request a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 26, 2002, as supplemented by an e-mail received February 3, 2003, a request from Pathfinder Mining Company to amend License Condition (LC) 50A(3) & 50B(1)

of Source Material License SUA–442 for the Shirley Basin Site. The license amendment request proposes to modify LC 50A(3) to change the completion date for radon barrier placement to December 31, 2006, a delay of two years, and to modify LC 50B(1) to change the target completion date for the erosion protection placement to December 31, 2006, a delay of one year.

II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

III. Opportunity To Request a Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provision of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications of Materials and Operator Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–0001; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mining Company, 935 Pendell Boulevard P.O. Box 730 Mills, Wyoming 82664, Attention: Tom Hardgove; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–0001, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Other Information

Pathfinder's request to amend LC 50A(3) and LC 50B(1) of Source Material License SUA–442, which describes the proposed changes to the license condition, and the reason for the request, is being made available for public inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Numbers: ML030030172 and ML030410500). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Michael Raddatz, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6334; Fax: (301) 415–5390.

Dated at Rockville, Maryland, this 25th day of February, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–5028 Filed 3–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY Nuclear Regulatory Commission.

DATES: Weeks of March 3, 10, 17, 24, 31, April 7, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 3, 2003

Monday, March 3, 2003

10 a.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs—Waster Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

2 p.m. Discussion of Security Issues (Closed—Ex. 1)

Week of March 10, 2003—Tentative

There are no meetings scheduled for the Week of March 10, 2003.

Week of March 17, 2003—Tentative

Thursday, March 20, 2003

10 a.m.—Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1)

2 p.m.—Discussion of Management Issues (Closed—Ex. 2)

Week of March 24, 2003—Tentative

Thursday, March 27, 2003

10 a.m.—Briefing on Status of Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of March 31, 2003—Tentative

There are no meetings scheduled for the Week of March 31, 2003.

Week of April 7, 2003—Tentative

Friday, April 11, 2003

9 a.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

12:30 p.m.—Discussion of Management Issues (Closed—Ex. 2)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: February 27, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–5167 Filed 2–28–03; 2:08 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, February 7, 2003, through February 20, 2003. The last biweekly notice was published on February 18, 2003 (68 FR 7810).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 3, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884, April 29, 2002.

following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: January 14, 2003.

Description of amendment request: The proposed amendment would revise the TMI–1 Technical Specification Sections 3.8.9, 3.15.2, and 4.12.2, and the associated Bases to delete the requirements for the Reactor Building Purge Air Treatment System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change will delete the existing Technical Specifications 3.15.2 and 4.12.2 and revise Technical Specification 3.8.9. The proposed change does not impact nor change the physical configuration of any system, structure or component, nor does it change the manner in which any system is operated. Any change to the system design will be evaluated in accordance with the requirements of 10 CFR 50.59. Failure of the system will neither initiate any type of accident nor increase the severity of the consequences of an accident previously evaluated. Previously approved analyses of the dose consequences of the accidents described in the TMI Unit 1 UFSAR [Updated Final Safety Analysis Report] are not affected by the proposed change and dose consequences remain below the limits of 10 CFR 50.67 without the operation of the Reactor Building Purge Air Treatment System fan and filter components. The Reactor Building Purge Air Treatment System fan and filter components are not required for mitigation of any accident as described in the TMI Unit 1 UFSAR. Reactor Building purge operations will continue to be conducted in accordance with the existing plant administrative controls, which will ensure the limits of 10 CFR part 50 Appendix I are met.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This activity will delete sections of the Technical Specifications applicable to the Reactor Building Purge Air Treatment System fan and filter components. The proposed change does not physically alter any system, structure or component. Any change to the system design will be evaluated in accordance with 10 CFR 50.59. The proposed change will not cause the Reactor Building Purge Air Treatment System to operate outside of its existing design basis. There will be no impact to any operational feature of the system or any procedures that control its operation that could result in a new or different failure mode. The design basis of the Reactor Building Purge Air Treatment System as currently described in the TMI Unit 1 UFSAR is not revised.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The deletion of Technical Specification Sections 3.15.2 and 4.12.2 and the revision of Technical Specification 3.8.9 will not impact the operation of the Reactor Building Purge Air Treatment System. The proposed change will not cause the system to be placed in a configuration outside of its design basis. The proposed change will not reduce the margin of safety of any safety related system. Reactor Building purge operations will continue to be conducted in accordance with existing plant administrative controls, which will ensure the limits of 10 CFR part 50 appendix I are met. The system will continue to be operable in accordance with applicable plant operating procedures.

The system will also continue to be tested and maintained under periodic operations surveillance and the TMI Unit 1 Preventive Maintenance Program.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, Docket No. 50–237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of amendment request: January 31, 2003.

Description of amendment request: The proposed amendments would revise the safety limit minimum critical power ratio for Unit 2 for two loop operation and for single loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC [Nuclear Regulatory Commission] approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change conservatively establishes the safety limit for the minimum critical power ratio (SLMCPR) for Dresden Nuclear Power Station (DNPS), Unit 2, Cycle 18 such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences (AOOs).

Changing the SLMCPR does not increase the probability of an evaluated accident. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

The proposed change revises the SLMCPR to protect the fuel during normal operation as well as during any transients or anticipated operational occurrences. Operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (*i.e.*, that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences) is met. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not expected to increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed change does not involve any modifications of the plant configuration or allowable modes of operation. The proposed change to the SLMCPR assures that safety criteria are maintained for DNPS, Unit 2, Cycle 18. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The value of the proposed SLMCPR provides a margin of safety by ensuring that no more than 0.1% of the rods are expected to be in boiling transition if the MCPR limit is not violated. The proposed change will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (*i.e.*, that at least 99.9% of the fuel rods do not experience transition boiling during normal operation as well as AOOs) are met.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: December 20, 2002.

Description of amendment request: The proposed amendment would make an administrative change to Technical Specification (TS) Sections 6.7, 6.14, and 6.15 by replacing "Station Review Board" to "Plant Operations Review Committee" to be consistent with the name for this type of onsite review committee that is used at other FirstEnergy Nuclear Operating Company plants. Additionally, the proposed amendment would make an administrative change to TS 6.8 to update the version of Regulatory Guide 1.33 referenced in that Section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The administrative changes do not affect any existing limits, and accident initial conditions, probability, and assumptions remain as previously analyzed. The proposed change to the name of the onsite review committee or the version of the Regulatory Guide will have no significant effect on accident initiation frequency. The proposed changes do not invalidate the assumptions used in evaluating the radiological consequences of any accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative and do not introduce any new or different accident initiators. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative and will not have a significant effect on any margin of safety. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, FENOC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: January 14, 2003.

Description of amendment requests: The proposed amendments would revise the Technical Specifications (TSs) for the control room emergency ventilation system (CREVS) such that movement of irradiated fuel assemblies will be allowed to commence with one CREVS pressurization train inoperable, provided the appropriate TS Action requirements are implemented.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Probability of Occurrence of an Accident Previously Evaluated

[Cook Nuclear Plant] CNP TS 3.0.4 requires that TS limiting conditions for operation be met without reliance on the Action statements prior to entering an Applicability condition. The proposed change to the CNP CREVS TS to allow an exception to TS 3.0.4 during movement of irradiated fuel assemblies does not affect any accident initiators or precursors. The CREVS function is purely mitigative. There is no design basis accident that is initiated by a failure of the CREVS function. An exception to TS 3.0.4 will not create any adverse interactions with other systems that could result in initiation of a design basis accident. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated

The accident consequence that is relevant to the proposed change is the dose to control room personnel from a fuel handling accident. The CNP licensing basis analysis of a fuel handling accident has determined that the dose would be within the applicable limits of GDC 19. The current TS specify actions to be taken if one CREVS pressurization train is inoperable during movement of irradiated fuel assemblies. These actions provide assurance that the CREVS will perform its mitigating function as assumed in the accident analysis. Since the proposed change will continue to require these actions, the fuel handling accident analysis will remain valid. Therefore, the consequences of an accident previously analyzed are not significantly increased.

In summary, the probability of occurrence and the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change does not create any new or different accident initiators or precursors. The option to commence movement of irradiated fuel assemblies while relying on the provisions of the Action statement does not affect the manner in which any accident begins. The proposed change does not create any new accident scenarios and does not change the interaction between the CREVS and any other system. Thus, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The margin of safety associated with the proposed change is that associated with the applicable control room dose limit specified by GDC 19. The proposed change will continue to require actions that assure the dose to control room personnel determined by the fuel handling accident analysis remains valid. Therefore, the proposed change does not involve a significant reduction in margin of safety.

In summary, based upon the above evaluation, [Indiana Michigan Power] I&M has concluded that the proposed change involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: January 14, 2003.

Description of amendment request: The proposed one-time change revises the steam generator inservice inspection frequency requirements in Technical Specification 4.4.5.3.a for V.C. Summer Nuclear Station (VCSNS) immediately after refueling outage RF–12. The change would allow a 58-month maximum inspection interval after two inspections resulting in C–1 classification, rather than a 40-month maximum inspection interval. This change is proposed to eliminate premature/unnecessary steam generator inspections, due to a shortened operating cycle, which will result in significant dose and schedule impacts.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed one-time extension of the Technical Specification inspection interval does not involve changing any structure, system or component or affect plant operations. It is not an initiator of any accident and does not change any FSAR [Final Safety Analysis Report] safety analyses. As such, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Probability of an Accident

The VCSNS Steam Generator Management Program includes provisions that are more rigorous than existing Technical Specification requirements. The topics addressed by the program include:

- Steam generator performance criteria, including a reduced operational leakage limit.
- Steam generator repair criteria and repair methods.
- Steam generator inspections that include Degradation Assessments, Condition Monitoring Assessments, and Operational Assessments.
- NDE [nondestructive examination] technique requirements.

The results of the above program requirements demonstrated that all performance requirements were met during Refuel 12.

Consequences of an Accident

The consequences of design basis accidents are, in part, functions of the specific activity in the primary coolant and the primary to secondary leakage rates resulting from an accident. Therefore, limits are included in the Technical Specifications for operational leakage and for specific activity in the reactor coolant to ensure the plant is operated in its analyzed condition.

The VCSNS program requires a 150-gallon per day per steam generator limit for leakage prior to an accident. This limit is a reduction in the current Technical Specification value. The post accident leak rate remains at the same value assumed by the accident analysis (1 gallon per minute). Since the new operational leakage limit is more conservative than the existing value, it will not increase the likelihood or consequences of an accident.

In consideration of the above, past 100% eddy current results after 5.4 EFPY [effective full-power years] of operation, and the current leak free condition of the steam generators, extending the tube inspection frequency does not involve a significant increase in the consequences of a previously evaluated accident.

Summary

The proposed change does not affect the design of the steam generators, their method of operation, or primary coolant chemistry controls. The change does not adversely impact any other previously evaluated design basis accident.

Therefore, the change does not affect the consequences of a SGTR [steam generator tube rupture] or any other accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed one-time extension of the Technical Specification inspection interval does not involve changing any structure, system or component or affect plant operations. It is not an initiator of any accident and does not change any FSAR safety analyses.

Primary to secondary leakage that may be experienced during plant conditions is expected to remain within current accident analysis assumptions.

The proposed change does not affect the design of the steam generators, their method of operation, or primary coolant chemistry controls. In addition, the change does not impact any other plant system or component.

Therefore, the change does not create the possibility of a new or different type of accident or malfunction from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

Response: No.

The steam generator tubes are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system pressure and inventory. As part of the RCS [reactor coolant system] boundary, the tubes are unique in that they are also relied upon as a heat transfer medium between the primary and secondary systems such that heat may be removed from the primary system. Additionally, the steam generator tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of the steam generator is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. Extending the tube inspection frequency will not alter the design function of the steam generators. Previous inspections conducted during Refuel 12 demonstrate that there is no active tube damage mechanism. The improved design of the Model Delta 75 generator also provides reasonable assurance that leakage is not likely to occur over the next operating period.

For the above reasons, the margin of safety is unchanged and overall plant safety will be maintained by the proposed Technical Specification revision.

Pursuant to 10 CFR 50.91, the preceding analyses provide a determination that the proposed Technical Specification change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: January 14, 2003.

Description of amendment request: The proposed change will exclude the Charging/Safety Injection (SI) pumps and the Residual Heat Removal pumps from the requirement to vent emergency core cooling system pump casings located in Technical Specification (TS) Section 4.5.2.b.2, eliminate the 31-day venting surveillance for the SI pumps, and add discussion for this exclusion in the Technical Basis of TS Section B 3/4.5.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to Technical Specification 4.5.2.b.2 and its associated bases do not contribute to the initiation of any accident previously evaluated. Supporting factors are as follows:

- The safety function of the Charging/SI system, which is related to accident mitigation, has not been altered. Therefore, the probability of an accident is not increased by the exclusion of the Charging/SI system discharge venting requirements.
- The exclusion of the Charging/SI system venting requirements does not affect the integrity of the Charging/SI system such that its function in the control of radiological consequences is affected. In addition, the exclusion of the Charging/SI system venting requirements does not alter any fission product barrier. The exclusion of the Charging/SI system venting requirements does not change, degrade, or prevent the response of the Charging/SI system to accident scenarios, as described in FSAR [Final Safety Analysis Report] Chapter 15. In addition, the exclusion of the Charging/SI system venting requirements does not alter any assumptions previously made in the radiological consequence evaluations nor affect the mitigation of the radiological consequences of an accident described in the FSAR. Therefore, the consequences of an accident previously evaluated in the FSAR will not be increased.
- The clarification of the RHR [residual heat removal] pump piping venting does not affect the integrity of the RHR system such that its function in the control of radiological consequences is affected. In addition, the

clarification does not alter any of the fission product barriers. The clarification does not change, degrade, or prevent the response of the RHR system to accident scenarios, as described in FSAR Chapter 15. In addition, the clarification to the RHR pump piping venting does not alter any assumption previously made in the radiological consequences evaluations nor affect the mitigation of the radiological consequences of an accident described in the FSAR. Therefore, the consequences of an accident previously evaluated in the FSAR will not be increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to Technical Specification 4.5.3.b.2 and its associated bases do not introduce any new accident initiator mechanisms. The clarification of the RHR pump piping venting and the exclusion of the Charging/SI system venting requirements does not cause the initiation of any accident nor create any new credible limiting single failure. The exclusion of the Charging/SI system venting requirements does not result in any event previously deemed incredible being made credible. As such, it does not create the possibility of an accident different than any evaluated in the FSAR.

3. Does this change involve a significant reduction in margin of safety?

Response: No.

The exclusion of the Charging/SI system venting requirements does not result in a condition where the design, material, and construction standards that were acceptable prior to this change of the Charging/SI or RHR system venting requirements are altered. The proposed changes to Technical Specification 4.5.2.b.2 and its associated bases will have no affect on the availability, operability, or performance of the Charging/SI or RHR systems. Therefore, the clarification of the RHR pump piping venting and the exclusion of the Charging/SI system venting requirements will not reduce the margin of safety, as described in the bases to any technical specification.

Pursuant to 10 CFR 50.91, the preceding analyses provide a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: July 25, 2002 as supplemented by letter dated February 5, 2003.

Brief description of amendments: The proposed amendments would change the CPSES Facility Operating Licenses as follows: Section 2.C.(4)(b) would be changed to be consistent with the license conditions stated in the U.S. Nuclear Regulatory Commission (NRC) Order and Safety Evaluation issued December 21, 2001, which approved the direct transfer of ownership interest and operating authority for CPSES to TXU Generation Company LP; Section 2.E, which requires reporting any violations of the requirements contained in Section 2.C of the licenses, would be deleted. Additionally, Technical Specification Table 5.5–2 "Steam Generator Tube Inspection," Table 5.5–3, "Steam Generator Repaired Tube Inspection for Unit 1 Only," and Section 5.6.10, "Steam Generator Tube Inspection Report," would be revised to delete the requirement to notify the NRC pursuant to Section 50.72(b)(2), "Immediate notification requirements for operating nuclear power reactors," of Title 10 of the Code of Federal Regulations (10 CFR) if the steam generator tube inspection results are in a C–3 classification. The basis for the proposed no significant hazards consideration determination associated with the application was published in the **Federal Register** on September 3, 2002 (67 FR 56329).

By letter dated February 5, 2003, TXU Generation Company, LP requested that the proposed change to license conditions in Section 2.C.(4)(b) be superseded by the proposed deletion of the license conditions, related to Decommissioning Trusts, specified in Sections 2.C.(4)(a), 2.C.(4)(b), 2.C.(4)(d), 2.C.(4)(e), and 2.C.(6).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), "Notice for public comment; State consultation," the licensee has provided its analysis of the issue of no significant hazards consideration, as they relate to the February 5, 2003 supplement, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The requested changes delete certain license conditions pertaining to Decommissioning Trust Agreements currently in Sections 2.C.(4)(a), 2.C.(4)(b), 2.C.(4)(d), 2.C.(4)(e), and 2.C.(6) of the CPSES Facility Operating Licenses (NPF–87 and NPF–89). The requested changes are consistent with the NRC's Final Rule for Decommissioning Trust Provisions as published in the **Federal Register** on December 24, 2002 (67 FR 78332).

The revised regulations of 10 CFR 50.75(h)(4)[, "Reporting and recordkeeping for decommissioning planning,") state "Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility that does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves "no significant hazard[s] consideration'."

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves administrative changes only to be consistent with the NRC's Final Rule for Decommissioning Trust Provisions as published in the **Federal Register** (67 FR 78332).

No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

This request involves administrative changes only to be consistent with the NRC's Final Rule for Decommissioning Trust Provisions as published in the **Federal Register** (67 FR 78332).

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c), "Issuance of amendment," are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: November 13, 2002, as supplemented November 20, 2002.

Brief description of amendments: The amendments delete Technical Specification 5.5.3, "Post Accident Sampling System (PASS)," and thereby eliminate the requirements to have and maintain the PASS at Brunswick Steam Electric Plant, Units 1 and 2.

Date of issuance: February 11, 2003.

Effective date: February 11, 2003, to be implemented within 180 days of issuance.

Amendment Nos.: 226 & 253.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 799).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002, as supplemented by letter dated December 6, 2002.

Brief description of amendment: The amendment revises the technical specification safety function lift setpoint tolerances for the Safety/Relief valves (S/RVs). The changes also allow surveillance of the relief mode of operation of the S/RVs to be performed without physically lifting the disk of a valve off the seat at power.

Date of issuance: February 13, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 130.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 25, 2002 (67 FR 42822).

The December 6, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: April 19, 2002, as supplemented by letters dated September 9, 2002 and January 3, 2003.

Brief description of amendments: The amendments revise Technical Specifications (TS) 3.6.6, "Containment Spray and Cooling Systems," to change the frequency of Surveillance Requirement (SR) 3.6.6.8 from "10 years" to "Following maintenance that could result in nozzle blockage *OR* Following fluid flow through nozzles."

Date of issuance: February 20, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 126.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 11, 2002 (67 FR 40023) The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The safety evaluation addresses Braidwood Station Units 1 and 2 only. The NRC staff's evaluation of the Byron Units 1 and 2 will be addressed separately.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 2003.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 5, 2002, as supplemented August 13, September 30, October 31, November 13, and November 25, 2002.

Brief description of amendment: The amendment approves an increase in maximum steady-state core power level from 2544 megawatts thermal (MWt) to 2568 MWt, an increase of approximately 0.9 percent.

Date of issuance: December 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 205.

Facility Operating License No. DPR–72: Amendment revises the Facility

Operating License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42826). The August 13, September 30, October 31, November 13, and November 25, 2002, supplements contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 2002.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 13, 2002.

Brief description of amendment: The amendment revises Improved Technical Specification (ITS) 3.3.8, "Emergency Diesel Generator (EDG) Loss of Power Start (LOPS)," by changing the completion time for required action D.2 from 12 to 36 hours. The amendment also corrects a typographical error in ITS 3.3.8.

Date of issuance: February 11, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 206.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45570).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2003.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 16, 2001, as supplemented by letter dated September 13, 2002.

Brief description of amendments: The amendments revise Technical Specification (TS) 1.1, "Definitions, Dose Equivalent I–131," and authorize revision of the Final Safety Analysis Report (FSAR) Update to reflect the revised steam generator tube rupture and main steam line break radiological consequences analyses.

Date of issuance: February 20, 2003.

Effective date: February 20, 2003, and shall be implemented in the next periodic update to the FSAR Update.

Amendment Nos.: Unit 1—156; Unit 2—156.

Facility Operating License Nos. DPR–80 and DPR–82: The amendment revised the Technical Specifications and the FSAR Update.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 931). The September 13, 2002, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 4, 2002 (TS 01–03).

Brief description of amendments: The amendments revise the SQN Unit 1 and 2 Technical Specifications (TSs) by deleting one definition and modifying several subsections contained in TS Section 6.0, "Administrative Controls." These changes have been prepared based on existing NRC guidance.

Date of issuance: February 11, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment Nos.: 281 & 272.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TSs.

Date of initial notice in ***Federal Register:*** April 16, 2002 (67 FR 18649). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2003.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 3, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[2] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted

[2] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraph (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: January 16, 2003, as supplemented on January 31, 2003.

Brief description of amendment: The amendment modifies Technical Specification 3.1.7 to permit the use of an alternate method of determining rod position for Control Rod H–10 until the end of Cycle 22 or until the next shutdown of sufficient duration, whichever occurs first.

Date of issuance: February 13, 2003.

Effective date: February 13, 2003.

Amendment No. 197.

Facility Operating License No. DPR–23. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (68 FR 3556 dated January 24, 2003). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by February 24, 2003, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated February 13, 2003.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Dated at Rockville, Maryland, this 21st day of February 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4623 Filed 3–3–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47400; File No. SR–CBOE–2003–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Withdrawal of Approval for Securities Underlying Options Traded on the Exchange

February 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 5.4 sets forth the guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Specifically, Interpretation and Policy .01(a) to CBOE Rule 5.4 provides that absent exceptional circumstances, the Exchange may not list additional series on an option class if there are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under section 16(a) of Act[3] (the "float" requirement). Interpretation and Policy .01(b) to CBOE Rule 5.4 provides that, absent exceptional circumstances, the Exchange may not list additional series on an option class if there are fewer than 1,600 holders of the underlying security (the "holders" requirement).

The Exchange is now proposing to add new Interpretation and Policy .11 to CBOE Rule 5.4 to clarify the manner in which the Exchange determines whether the so-called "float" of the underlying security was fewer than 6.3 million shares or the number of "holders" of the underlying security was fewer than 1,600.

Specifically, the Exchange proposes to expressly state that in determining whether any of the events specified in Interpretation and Policy .01(a) or (b) to CBOE Rule 5.4 have occurred, the Exchange would monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash dividends, recapitalizations, and stock buy backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Interpretation and Policy .01(a) or (b) to CBOE Rule 5.4, the Exchange would not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Interpretation and Policy .01(a) or (b) to CBOE Rule 5.4 have occurred, the Exchange shall consider the events specified in

[3] 15 U.S.C. 78p(a).

Interpretation and Policy .01(a) and (b) to have been satisfied.[4]

2. Statutory Basis

The Exchange believes that the current proposal will allow it to provide investors with those options that are most useful and demanded by them without sacrificing any investor protection. As such, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any unnecessary or inappropriate burdens on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[4] The Exchange represents that existing Interpretation and Policy .03 to CBOE Rule 5.4 would continue to apply when the Exchange considers whether any of the events specified in Interpretation and Policy .01 have occurred with respect to an underlying security. Specifically, Interpretation and Policy .03 to CBOE Rule 5.4 provides that the Exchange shall ordinarily rely on information made publicly available by the issuer and/or markets in which such security is traded. Telephone conversation between Patrick Sexton, CBOE, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on February 11, 2003.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–CBOE–2003–03 and should be submitted by March 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4952 Filed 3–3–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47393; File No. SR–CBOE–2002–40]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on the CBOE Asian 25 Index and Options on the CBOE Euro 25 Index

February 24, 2003.

I. Introduction

On July 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on the CBOE Euro 25 Index and the CBOE Asian 25 Index, both broad-based indexes. On January 13, 2003, CBOE filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change, as amended, appeared in the **Federal Register** on February 5, 2003.[4] The Commission received no comments on the proposed rule change. On February 19, 2003, CBOE filed Amendment No. 2 to the proposed rule change and requested accelerated effectiveness of the proposed rule change.[5] This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposed Rule Change

CBOE proposes to list and trade cash-settled, European-style stock index options on the CBOE Euro 25 Index and the CBOE Asian 25 Index, both broad-based indexes. The CBOE Euro 25 Index and the CBOE Asian 25 Index are capitalization-weighted indexes of twenty-five (25) American Depository Receipts ("ADR"), New York Registered Shares ("NYS"), or NYSE Global Shares® ("NGS"), which are traded on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("AMEX"), or the NASDAQ.

A. Index Design

The CBOE Euro 25 Index and the CBOE Asian 25 Index have each been designed to measure the performance of large market capitalization companies in their respective regions.[6] Options on

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 10, 2003 ("Amendment No. 1") (replacing the original filing in its entirety). Amendment No. 1, among other things: (1) Clarified the initial and maintenance criteria for the underlying component securities of the indices, including further detail on the component securities that are ADRs and not subject to comprehensive surveillance agreements; (2) clarified that options on both indices will be A.M. settled; (3) provided more recent market capitalization and weighting figures; and (4) specified that CBOE's surveillance procedures are adequate to monitor the trading of these products.

[4] *See* Securities Exchange Act Release No. 47287 (January 30, 2003), 68 FR 5942.

[5] *See* letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated February 18, 2003 ("Amendment No. 2"). In Amendment No. 2, CBOE requests accelerated effectiveness of the proposed rule change to begin listing and trading options on the CBOE Euro 25 and CBOE Asian 25 Indexes.

[6] The Exchange will make an updated list of the components underlying each index available to the public on the internet by accessing the following

Continued

both indexes shall be A.M. settled. The component securities included in each index must have a minimum market capitalization of $250 million and a trading volume of at least 500,000 shares on the NYSE, NASDAQ, or AMEX in each of the previous six months to be included in the index.[7]

Unless otherwise specified herein, both indexes shall satisfy the following general initial and maintenance criteria. (1) At least 75% of the index, in terms of market capitalization weighting, must meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. (2) Any non-U.S. component security (common stock or ADR) that is not subject to a comprehensive surveillance agreement shall not in the aggregate represent more than 20% weight of the index's aggregate market capitalization, unless those non-U.S. components satisfy the alternative criteria under Interpretation and Policy .03 to Rule 5.3, as further discussed below. (3) No single component security will represent more than 30% of the weight of the index. (4) Finally, the five highest weighted component security, in the aggregate, shall not account for more than 60% of the total weight of the index.

CBOE represents that it will review each index quarterly following the expiration of the respective index option contract to ensure that the above criteria are satisfied, and to make quarterly share changes as appropriate. CBOE believes that the CBOE Euro 25 Index satisfies the index criteria provided above.[8] In addition, CBOE believes that the CBOE Asian 25 Index satisfies the index criteria noted above.[9]

B. Calculation

According to CBOE, the methodology used to calculate the value of the indices is similar to the methodology used to calculate the value of other well-known broad-based indices.[10] The daily calculation of each index is computed by dividing the total market value of the companies in the respective Index by the index divisor. The divisor is adjusted periodically to maintain consistent measurement of the index. The values of each Index will be calculated by CBOE and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via Options Price Reporting Authority.

C. Index Option Trading

In addition to regular Index options, CBOE proposes to provide for the listing of long-term index option series ("LEAPS'®") in accordance with CBOE Rule 24.9.

For options on each index, strike prices will be set to bracket the respective index in 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The trading hours for options on both indexes will be from 8:30 a.m. to 3:02 p.m. Chicago time.[11]

D. Maintenance

Both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be monitored and maintained by CBOE. The CBOE will make all necessary adjustments to the indexes to reflect component additions and deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. CBOE represented that over time the number of component securities in the Index may change, but at no time will the number of underlying components drop to less than twenty. In the event of a component replacement, the divisor will be adjusted accordingly to provide continuity in index values.

Absent prior Commission approval, the component securities in either index will not exceed 40 nor be lower than 20 and shall satisfy the criteria as provided above. If the Index fails at any time to satisfy the maintenance criteria, CBOE will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on each respective Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

E. Surveillance

CBOE will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options and LEAPS. For surveillance purposes, CBOE will make all reasonable efforts to monitor the trading activity and other pertinent information relating to the underlying components. CBOE represents that its surveillance procedures are adequate to monitor trading of these products.

F. Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. The exercise settlement value of the Index at option expiration will be calculated by CBOE based on the opening prices of the component securities on the business day prior to expiration. If a component security fails to open for trading, the last available price on the security will be used in the calculation of the index, as is done for currently listed indices.

G. Position Limits

CBOE proposes to establish position limits for options on the CBOE Euro 25 Index and the CBOE Asian 25 Index at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are roughly equivalent to the limits applicable to options on other broad-based indices under CBOE Rule 24.4(a).[12]

H. Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will be applicable to both CBOE Euro 25 Index options and CBOE Asian 25 Index options. Index option contracts based on both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be subject to the position limit requirements of CBOE Rule 24.4(a). Additionally, CBOE affirms that it possesses the necessary systems capacity to support a new series that would result from the introduction of both CBOE Euro 25 Index options and CBOE Asian 25 Index options. CBOE has also been informed that OPRA has the capacity to support such new series.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[13] and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission finds that the listing and trading of options on the Euro 25 Index and Asian 25 Index will permit investors to participate in the price movements of large market capitalization companies in their respective regions on which the indices are based. The Commission also believes that the listing and trading of options on the Euro 25 Index and Asian 25 Index will allow investors holding positions in some or all of the securities underlying the Indexes to hedge the risks associated with their portfolios. Accordingly, the Commission believes that the Indexes will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of highly market capitalized European Union and Asian equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of these index options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[15] Nevertheless, the trading of options on the Euro 25 Index and Asian 25 Index raises several issues related to the design and structure of the Indexes, customer protection, surveillance, and market impact. The Commission believes, however, that the CBOE has adequately addressed these issues for the reasons discussed below.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and therefore to permit CBOE's rules applicable to the trading of broad-based index options to apply to these Index options. First, both the Euro 25 Index and Asian 25 Index consists of 25 actively traded equity securities. Second, the Euro 25 Index and Asian 25 Index each consist of 25 of the most highly capitalized securities and ADRs in their respective regions. For example, CBOE represented in the proposing release that on December 20, 2002, the market capitalization of the individual securities in the Euro 25 Index ranged from a high of $97.208 billion to a low of $5.37 billion, with a mean value of $30.326 billion. The market capitalization of the individual securities in the Asian 25 Index ranged from a high of $49.140 billion to a low of $382.722 million, with a mean value of $10.696 billion. Third, CBOE's maintenance criteria require that at least 75% of each Index, in terms of market capitalization, must meet the listing criteria for equity options set forth in CBOE Rule 5.3, the minimum market capitalization of component securities is $250 million, and component securities must have a trading volume of 500,000 shares in each of the previous six months. The Commission believes that CBOE's maintenance criteria will help ensure that the Indexes continue to be comprised of component securities that are highly capitalized and actively traded. Fourth, CBOE's maintenance criteria require that no single component security will represent more than 30% of the weight of the index. The Commission believes that this will help to ensure that the index maintains its broad representative sample of securities in the Euro 25 Index and Asian 25 Index and that no single or small group of securities dominate the Indexes.

The Commission also believes that the general broad diversification of the Indexes' component securities, as well as their high capitalization and trading activity, minimize the potential for manipulation of the Indexes. First, as discussed above, the Euro 25 Index and Asian 25 Index represent a broad cross-section of highly-capitalized securities, with no single industry group or component security dominating each Index. Second, the securities underlying each Index are relatively actively traded. Third, the Commission believes that the Index continues to represent securities with the highest capitalization and trading volume. In addition, the CBOE has proposed position and exercise limits for the Indexes that are consistent with other broad-based index options.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as the Euro 25 and Asian 25 Index options (including full-value and reduced-value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the index options and index LEAPS will be subject to the same regulatory regime as the other standardized options traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Euro 25 and Asian 25 Index options and Index LEAPS.[16]

C. Surveillance

In evaluating derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and

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URL: *http://www.cboe.com/optprod/index/indexoptions.asp.*

[7] In the case of depository receipts, the market capitalization is determined based on the shares outstanding in the "home" market and the price in U.S. Dollars of the ADRs, NYSs, and NGSs.

[8] Specifically, CBOE has represented the following as of December 20, 2002: (1) 23 of the 25 securities in the CBOE Euro 25 Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 92.59% of the index by market capitalization weight and 92% by number. (2) 23 of the 24 ADR or NYS components that underlie the index are subject to comprehensive surveillance agreements. (3) No single component represents greater than 30% of the aggregate weight of the CBOE Euro 25 Index. (4) Finally, the five highest weighted component securities in the aggregate do not account for more than 60% of the weight of the Index.

[9] Specifically, CBOE has represented the following as of December 20, 2002: (1) 18 of the 25 components in the CBOE Asia 25 Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 77.73% of the index by market capitalization weight and 72% by number. (2) 13 of the 25 components, representing 68.71% of the index by market capitalization weight, in the CBOE Asian 25 Index are either subject to comprehensive surveillance agreements or are common stocks that are not required to have comprehensive surveillance agreements. CBOE also notes that the Commission has specified in the past that a non-U.S. security need not be considered in calculating the 20% threshold if at least 50% of the worldwide trading volume in that particular security occurs within the U.S. market. *See* CBOE Mexico Index filing, Securities Exchange Act Release No. 34241 (June 22, 1994), 59 FR 33557 (June 29, 1994) (SR–CBOE–94–18). CBOE notes that this is consistent with Interpretation and Policy .03(ii) to CBOE Rule 5.3. Thus, CBOE plans to apply Interpretation and Policy .03 to CBOE Rule 5.3 to any non-U.S. component that exceeds the 20% threshold for non-U.S. components that are not subject to comprehensive surveillance sharing agreements.

[10] CBOE noted that the indices base date is January 2, 2002, when the respective index values were set to 100. On April 16, 2002, the CBOE Euro 25 Index had a closing value of 95.99 and the CBOE Asian 25 Index had a closing value of 95.64.

[11] Exhibits F and G to proposed rule change present proposed contract specifications for CBOE Euro 25 Index options and CBOE Asian 25 Index options.

[12] Specifically, CBOE Rule 24.4(a) imposes a standard position limit of 50,000 contracts on the same side of the market for CBOE's Mexico 30 Index and CBOE's Germany 25 Index.

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options will provide investors with a hedging vehicle that should reflect the overall market of securities representing a segment of the U.S. securities market.

[16] In addition, CBOE has represented that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support these new series of options that would result from the introduction of Index options and Index LEAPS. *See* letter from Joe Corrigan, Executive Director, OPRA, to John Hiatt, CBOE, dated July 11, 2002.

deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation. It is for this reason that it is important that the Commission determine that there is an adequate mechanism in place to provide for the exchange of information between the market trading the derivative product and the market on which the securities underlying the derivative product are traded. Such mechanisms enable officials to surveil trading in both the derivative product and the underlying securities. For foreign stocks index derivative products, such mechanisms are especially important for the relevant foreign and domestic exchanges to facilitate the collection of necessary regulatory, surveillance and other information.

As a general matter, the Commission believes that comprehensive surveillance sharing agreements between the relevant foreign and domestic exchanges are important where an index derivative product comprised of foreign securities is to be traded in the United States.[17] In absence of comprehensive surveillance sharing agreements between the foreign and domestic exchanges, the Commission has relied in the past on surveillance sharing arrangements between the relevant regulators. In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by options on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place between the foreign and domestic exchanges will ensure the integrity of the market.

Under CBOE's current proposal, however, the Commission believes that it is appropriate to permit the listing and trading of options on an ADR without the existence of a comprehensive surveillance sharing agreement with the foreign market where the underlying security trades, as long as the U.S. market for the underlying ADRs is at least as large as the market for the underlying foreign security. Specifically, the proposed listing standards require that any non-U.S. component security (common stock or ADR) that is not subject to a comprehensive surveillance sharing agreement shall not in the aggregate represent more than 20% of the weight of each Index's market capitalization, unless those non-U.S. components satisfy the alternative criteria under Interpretation and Policy .03 to CBOE Rule 5.3.[18]

According to the CBOE, 23 of the 24 ADR or NYS component securities of the Euro 25 Index are subject to comprehensive surveillance sharing agreements. Further, 13 of the 25 component securities of the Asian 25 Index are either subject to comprehensive surveillance sharing agreements, or are common stocks. The ADR components of the Asian 25 Index that are not subject to comprehensive surveillance agreements satisfy the alternative criteria in Interpretation and Policy .03 of CBOE Rule 5.3. In addition, 21 of the 25 component securities or approximately 89% of the aggregate index market capitalization of the Asian 25 Index do satisfy CBOE's acceptable listing standards. The Commission believes that CBOE's standards will ensure that the relevant pricing market for the options on ADRs is the U.S. ADR market rather than the market where the security underlying the ADR trades. In these cases, the Commission believes that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. The CBOE represented that it will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options and LEAPS, and that its surveillance procedures are adequate to monitor the trading of these products.

D. Market Impact

The Commission believes that the listing and trading of Euro 25 and Asian 25 Index options on the CBOE will not adversely affect the underlying securities markets. First, as described above, both Indexes are broad-based and comprised of 25 securities with no one component or industry group dominating the Index. Second, as noted above, the component securities contained in the Indexes all have large market capitalizations and are actively traded. Third, existing CBOE index options rules and surveillance procedures will apply to Euro 25 and Asian 25 Index options. Fourth, the position limits of 50,000 contracts on either side of the market, with no more than 30,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Furthermore, the Commission notes that absent prior SEC approval, the component securities in either Index will not exceed 40 or be lower than 20 and shall satisfy CBOE's maintenance criteria. If an Index fails at any time to satisfy the maintenance criteria, CBOE will immediately notify the Commission of the fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on each respective Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposed rule change, as amended by Amendment No. 1, has been published for public comment in the **Federal Register** as of February 5, 2003. The Commission has not received any comments on the proposal. Further, the Commission notes that Amendment No. 2 does not change the proposed rule change; rather, CBOE requests that the Commission accelerate the effectiveness of the proposal so that the CBOE may begin the trading of the Euro 25 Index and Asian 25 Index immediately. The Commission is accelerating approval of the proposed rule change, as amended by Amendment No. 1, prior to the expiration of the comment period because these proposed Indexes are similar the other broad-based index options that CBOE currently trades, and CBOE has addressed the relevant regulatory issues, especially pertaining to comprehensive surveillance agreements. Because Amendment No. 2 does not change the proposed rule change but only request acceleration prior to the expiration of the comment period, the Commission is noticing and approving this amendment on an accelerated basis. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change, and Amendment Nos. 1 and 2 thereto, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 to the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–2002–40 and should be submitted by March 25, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2002–40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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[17] The Commission believes that a comprehensive surveillance sharing agreement should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that such agreements require that the parties provide each other, upon request, information about market trading activity, clearing activity, and the identity of the purchasers and sellers of securities underlying the derivative product.

[18] Specifically, the Commission notes that: (1) As provided in Interpretation and Policy .03(ii) to CBOE Rule 5.3, an individual ADR without a comprehensive surveillance sharing agreement will satisfy CBOE's listing criteria if over 50% of the combined worldwide trading volume in the ADR occurs in the U.S. ADR market for the previous three months from date of selection; or (2) as provided in Interpretation and Policy .03(iii) to CBOE Rule 5.3, an individual ADR without a comprehensive surveillance sharing agreement will satisfy CBOE's listing criteria if: (a) At least 20% of the worldwide trading volume in that foreign security occurs within the U.S. market and a market for which CBOE has a comprehensive surveillance agreement; (b) the average daily trading volume of the ADR over the past 3 months is 100,000 shares or more; and, (c) the trading volume is at least 60,000 shares per day in U.S. markets on a majority of trading days during the past months.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47402; File No. SR–OCC–2002–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Stock/Loan Hedge Program

February 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 21, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on July 16 and September 26, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify OCC's Stock/Loan Hedge Program ("Hedge Program") to establish: (i) Heightened financial requirements as a condition for clearing members to designate accounts as margin-ineligible; (ii) additional eligibility requirements for eligible securities; and (iii) limits on the notional value of the stock loan/borrow position that a clearing member may maintain in a single stock in a margin-ineligible account.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify OCC's Hedge Program, under which OCC operates a centralized facility for clearing stock loan/borrow transactions between OCC clearing members. In order to provide enhanced risk management while maintaining the flexibility of the current program, OCC proposes to establish: (i) Heightened financial requirements as a condition for clearing members to designate accounts as margin-ineligible; (ii) additional eligibility requirements for eligible securities; and (iii) limits on the notional value of the stock loan/borrow position that a clearing member may maintain in a single stock in a margin-ineligible account.

OCC's Hedge Program is intended to facilitate stock lending transactions among OCC's clearing members. Clearing members effecting stock loan/borrow transactions through the Hedge Program obtain the advantages of centralized clearing of those transactions as well as reduced credit risk through the substitution of OCC as the counterparty in all transactions. Unless a clearing member has designated an account as margin-ineligible for purposes of the Hedge Program, stock loan and borrow positions are margined by OCC's TIMS[3] margin system using the same basic risk assessment procedures that are used for positions in options or futures. For many clearing members, this results in an important advantage of the Hedge Program. By taking into consideration the reduction in risk where stock loan/borrow positions are on the opposite side of the market from option positions on the same underlying stock, the margin system will calculate a reduced margin requirement for the account containing the offsetting positions.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] The Theoretical Intermarket Margin System, known as TIMS, uses advanced portfolio theory to recognize economically and statistically reasonable hedges among various positions and to correctly assess the dollar risk of those positions.

[4] While similar offsets may exist between positions in index options, on the one hand, and a group of stock loan/borrow positions that are identified as baskets comprised of constituent securities in the index, the stock borrow basket/stock loan basket feature of the Hedge Program, although provided for in the OCC By-Laws and Rules, has not been placed into operation for systems reasons. OCC is proposing in this filing to add an interpretation following Section 2 of Article

Continued

For other clearing members, however, the margin offset or hedging aspect of the Hedge Program is of little or no benefit. For these clearing members, the nature of their business or the organization of their business within the firm is such that they rarely if ever have stock loan/borrow transactions that provide any significant offset against their options positions. These firms may nevertheless desire to use the Hedge Program because of its other benefits. The participation of these clearing members, which tend to be the larger clearing members, is desirable from OCC's perspective because they contribute liquidity to the program and facilitate inclusion in the program of the hedging activity of some of OCC's less well-capitalized clearing members. It reduces OCC's risk when a market maker clearing firm, for example, carries stock loan/borrow positions in the same OCC account as the positions that the loan/borrow positions hedge.[5] However, in order to do that, the clearing firm must find a stock loan counterparty that is willing to submit the transaction to OCC for clearance. If the counterparty is not itself entering into the transaction for hedging purposes, it may be willing to clear the transaction through OCC only if it can do so on a margin-ineligible basis to avoid additional cost.

For those clearing members whose stock loan/borrow positions are not ordinarily offset by options positions, clearing stock loan/borrow activity through the Hedge Program increases rather than reduces their risk margin requirement at OCC. In the stock loan market, collateral (usually equal to 100% or 102% of the value of the loaned stock) is provided by the borrower to the lender to secure the lender's obligation to return the stock. Daily mark-to-market payments between the borrower and lender maintain the collateral at that level. The same is true when stock loan activity is cleared through the Hedge Program. However, in addition to the collateral that is passed by OCC between the borrowing and lending clearing members, OCC's TIMS system also assesses both the borrower and the lender an amount of risk margin equal to one day's anticipated maximum market movement in order to protect OCC against a default by the borrower or the lender in its mark-to-market obligations. Because this risk margin is collected only for stock loan transactions that are submitted to OCC, clearing these transactions through OCC imposes additional costs on some clearing members.

In order to address this issue, the Hedge Program permits clearing members to elect to carry stock loan and borrow transactions on a margin-ineligible basis. If a clearing member designates an account as margin-ineligible, OCC will exclude any stock loan or borrow positions in that account when calculating the regular margin requirement for the account. OCC, however, relies on other elements of its protection systems[6] to assess its potential exposure with respect to positions carried in a margin-ineligible account. Margin will be required for positions carried in a margin-ineligible account if predefined concentration monitoring parameters are exceeded.

OCC believes that permitting clearing members to carry stock loan and borrow positions on a margin-ineligible basis is appropriate, safe, and essential to the competitiveness of the Hedge Program. However, in recognition of the fact that this alternative does create uncollateralized risk for OCC, OCC has conducted a study of credit practices in the stock loan market generally and has determined to implement certain measures to reduce its risk.

Although OCC's current risk management practices are consistent with industry standards, OCC is nevertheless proposing elevated financial standards for clearing members wishing to designate accounts as margin-ineligible for purposes of the Hedge Program. Clearing members would be required to maintain excess net capital of at least $75 million in order to carry margin-ineligible accounts with OCC.[7] OCC believes this requirement is sufficient to ensure strong participant credit standing without unduly hindering program participation.

The excess net capital requirement would be supplemented by a profitability standard. A clearing member would not be permitted to maintain a margin-ineligible account if it has: (i) Losses in one month equal to or exceeding 50 percent of its excess net capital; (ii) cumulative losses over two consecutive months equal to or exceeding 60 percent of its excess net capital; or (iii) cumulative losses over three consecutive months equal to or exceeding 70 percent of its excess net capital. These excess net capital and profitability standards would be ongoing tests and would have to be met at all times by a clearing member wishing to carry stock loan or borrow positions in any account on a margin-ineligible basis. Clearing members falling out of compliance with these standards would be precluded from clearing opening transactions in a margin-ineligible account while out of compliance.

The rationale for these requirements is that unlike a participant in the regular stock loan market, which has the ability to consider the impact of new transactions on counterparty credit limits before entering into them, OCC becomes a counterparty solely at the discretion of the lender and borrower without the ability to approve or disapprove individual loans on a credit basis before they are accepted for clearance. OCC's excess net capital and profitability standards should substitute for a transaction-by-transaction credit review. Using these straightforward requirements instead of a credit limit or activity cap makes it unnecessary for OCC to reserve the right to reject completed transactions in cases where acceptance would put one of the parties above its cap.

As an additional safety measure, OCC is proposing to amend the definition of "Eligible Stock" to exclude non-option stocks from the program subject to limited exceptions.[8] Loans for non-option stocks will be permitted to be maintained (i) if the loan was accepted prior to the implementation of the restriction or (ii) if the stock is deliverable upon exercise of an outstanding option (*e.g.*, where a stock ceases to be an option stock but options on that stock remain outstanding or where a non-option stock is distributed to holders of an option stock and options on the latter are adjusted to require delivery of both stocks). The restriction applies only to non-option stocks because OCC does not want to limit clearing members' ability to include option hedging transactions in their accounts.

Finally, no lender or borrower would be allowed to maintain a stock loan or borrow position in a single issue in a margin-ineligible account if the notional value of the position exceeded the clearing member's excess net capital. This restriction is intended to address concentration risk. Where the positions are carried in a margin-eligible account, the restriction is deemed unnecessary because OCC will hold collateral sufficient to cover the risk.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[9] and the rules and regulations thereunder applicable to OCC because it will promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in the custody and control of OCC by providing for enhanced risk management while maintaining the flexibility of the current Hedge Program.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–OCC–2002–11. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC.

All submissions should refer to File No. SR–OCC–2002–11 and should be submitted by March 25, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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XXI of the By-Laws stating that OCC will provide notice to its clearing members when this feature becomes operative.

[5] As an economic matter, option and security futures positions are hedged not by a clearing member's stock loan or borrow positions, but by its related long or short positions in the underlying stock. However, it is the stock loan/borrow positions that generate cash mark-to-market payments when the market moves against the member's options or futures positions. When the loan/borrow positions are carried in the Hedge Program, OCC is able to capture those payments. This is what enables OCC to reduce its margin requirements for the account in which the positions are carried.

[6] OCC especially relies on its concentration monitoring system, known as ConMon, which provides a comparison of the capital and net worth of each OCC clearing member to the market risk associated with the clearing member's positions. Securities Exchange Act Release No. 40083 (June 11, 1998), 63 FR 33424 (June 18, 1998) [File No. SR–OCC–98–3].

[7] Clearing members currently maintaining margin-ineligible accounts would be given a one-year grace period in which to conform to the minimum excess net capital requirement. If a clearing member is not in compliance at the end of that period, OCC would thereafter treat all of the clearing member's accounts as margin-eligible.

[8] As originally filed, the proposed rule change sought to amend the definition of "Eligible Stock" to require that non-option stocks that are the subject of program transactions have a price per share of at least $10.00 at the time the transaction is submitted to clearance. The September 26, 2002, amendment proposes to exclude non-option stocks from the program subject to limited exceptions in order to more closely align the use of the Hedge Program with its primary objective of recognizing the intermarket hedges between a participant's stock and options positions.

[9] 15 U.S.C. 78q–1.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47396; File No. SR–OCC–2002–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Procedures for Processing Late and Supplementary Exercise Instructions

February 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 28, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC Rules 801 and 805 to modify the existing fees for processing late instructions and supplementary exercise notices and would amend Rule 801 to establish a specific cut-off time for accepting late exercise notices after the start of critical processing and to eliminate OCC's ability to accept instructions to modify a previously submitted exercise after the start of critical processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to amend Rules 801(e) and 805(g) to

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

modify OCC's fees for processing late exercise instructions and supplementary exercise notices and to amend Rule 801(e) to establish a specific cut-off time for accepting late exercise notices after the start of critical processing and to eliminate OCC's ability to accept instructions to modify a previously submitted exercise notice after the start of critical processing.

Background

Rule 801 sets forth the procedures for submitting exercise notices on a business day which is not an expiration date, including the requirement that such submissions be completed by 7 P.M. (All times are Central Time.) Rule 801(e) provides OCC with the authority to permit clearing members to file, revoke, or modify exercise notices after 7 P.M. for the purpose of correcting bona fide errors. Authority to accept or reject such late instructions is vested with the Chairman, Management Vice Chairman, President, or such officer's delegate.

If a late instruction is accepted, Rule 801(e) requires the clearing member submitting the instruction to pay a late filing fee.[3] The fees for late instructions increase the later the notice is received. Late instructions accepted for filing after the start of critical processing are processed on a best efforts basis and only if the assigned clearing member(s) can be notified before 8 a.m. Previously submitted exercises may not be revoked after the start of critical processing.

These late exercise procedures help provide a monetary incentive for clearing members to take precautions to avoid exercise errors and to identify those errors that do occur earlier in OCC's processing cycle. The earlier late exercise notices are submitted, the easier and less costly it is for OCC to process these exercises. Late exercise notices submitted before the start of OCC's critical processing cycle can be readily accommodated through standard procedures. Late exercise notices submitted after the start of critical processing require supplemental assignment procedures.

Rule 805 sets forth the procedures for submitting exercise notices on expiration dates. Rule 805 permits clearing members to submit exercise notices with respect to expiring options ("supplementary exercise notices") after the normal deadline but before their expiration time (*i.e.*, 10:59 P.M.), by following prescribed procedures. A clearing member submitting such a supplementary exercise notice is required to pay a late filing fee.[4] As under Rule 801, the filing fees increase the later the notice is received. Supplementary exercise notices submitted in accordance with the prescribed procedures are irrevocable.

Discussion

OCC recently completed a review of these rules as a result of an increase in the number of late instructions received from clearing members. Based on that review, OCC is proposing to change the applicable fee schedules and cut-off times for processing late instructions and supplementary exercise notices.

Fees

One of the principal purposes for charging a filing fee for late instructions under both Rule 801 and Rule 805 is to provide an incentive for clearing members to discover exercise errors earlier in the processing cycle. The recent increase in the number of late instructions has led OCC to conclude that the current fee schedules do not provide a sufficient incentive. The current and proposed fee schedules are as follows:

Rule 801(e)

Submission time	Current fee	Proposed fee
7 p.m.–8 p.m.	$500/any accepted request	$2,000/any accepted request.
8:01 p.m.—start of critical processing	$2,000/any accepted request	$5,000/any accepted request.
After start of critical processing up until 8 a.m.[5]	$10,000/line item on any exercise notice or modification notice accepted.	$20,000/ line item on any exercise accepted.[6]

[5] On approval of this filing, this time will be 6:30 a.m.
[6] On approval of this filing, only exercise notices (*i.e.*, not modifications) will be accepted after the start of critical processing.

Rule 805(g)

Submission time	Current fee	Proposed fee
After the prescribed deadline for the submission of exercise instructions—start of critical processing.	$2,000/any exercise notice accepted	$5,000/any notice exercise accepted.
After start of critical processing—expiration time	$10,000/line item on any exercise notice accepted.	$20,000/line item on any notice accepted.

Late Exercise Cut-Off Time; Instructions To Modify

Rule 801(e) does not specify a cut-off time for the acceptance of late exercise notices. To provide for greater consistency in processing late exercise notices, OCC has concluded that it is desirable to establish a uniform cut-off time (*i.e.*, 6:30 a.m.) for their acceptance. A 6:30 A.M. cut-off allows adequate time for OCC to process a late exercise notice and to inform all assigned clearing members before 8 a.m.

Finally, OCC is proposing to stop accepting modifications to previously submitted exercise instructions after the start of critical processing. Rule 801(e) currently provides that modifications will be accepted after the start of critical processing on a best efforts basis, but revocation instructions will not be accepted after the start of critical processing. This prohibition is in place because the procedures involved in processing revocations are riskier than those associated with accepting a late exercise due to the need to back out data. A modification that reduces the number of exercised contracts requires use of the same revocation procedures. OCC therefore believes that modifications and revocations should be treated alike. A request by a clearing member to exercise additional contracts will be considered as a request to file a late exercise (and not a request to modify a previously submitted exercise notice) and will be handled pursuant to the rules applicable to late exercise instructions.

OCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it improves the efficiency of OCC's procedures for the acceptance of late exercise notices and supplementary exercise notices and therefore promotes the improvement of the national system for the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–OCC–2002–14. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–14 and should be submitted by March 25, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4955 Filed 3–3–03; 8:45 am]

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[3] Late filings, revocations, and modifications of exercise may also be the subject of disciplinary action. Rule 801(e)(4) and 805(g).

[4] Late filings of supplementary exercise notices may also be the subject of disciplinary action. See note 3 above.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47385; File No. SR–Phlx–2003–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Changes to Its Nasdaq-100 Index Tracking Stock sm Fee Schedule

February 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 31, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to change its Nasdaq-100 Index Tracking Stock ("QQQ") sm Fee Schedule[3] in two ways: (1) amending the Customer, Non-PACE[4] per-trade fee and (2) eliminating the Specialist $0.002 per-share fee.

First, in connection with the Phlx's QQQ Fee Schedule, the Phlx proposes to replace the current Customer, Non-PACE per-trade fee of $1.00 per-trade with the equity transaction charge currently in effect on the Phlx's Summary of Equity Charges. Therefore, the Customer, Non-PACE per-trade fee of $1.00 per-trade will be replaced with the following:

Transaction charge	Rate per-share
First 500 shares	$0.00
Next 2,000 shares	0.0075
Remaining shares	0.005

$50 maximum fee per-trade side.[5]

Second, the Phlx proposes to eliminate the specialist $0.002 per-share ($50.00 cap per-trade) fee.

The Phlx intends to implement the changes beginning with transactions settling on or after February 3, 2003.

The text of the proposed rule change is available at the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq® The Nasdaq Stock Market®, Nasdaq 100 Shares sm, Nasdaq-100 Trust sm, Nasdaq-100 Index Tracking Stock sm and QQQ sm are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-200 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust sm, or the beneficial owners of Nasdaq-100 Shares sm. Nasdaq has complete control and sole discretion in determining, composing or calculating the Index or in modifying in any way its method for determining, composing or calculating the Index in the future.

[4] "PACE" is the acronym for the Phlx's Automated Communication and Execution System. It is the Phlx's order routing, delivery, execution and reporting system for its equity trading floor. See Phlx Rules 229 and 229A.

[5] This fee will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Phlx by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to simplify the Phlx's fee schedule by applying the same equity transaction charge for customer non-PACE transaction charges for the QQQs that is currently in effect for equity transactions. In addition, the Phlx proposes to delete the specialist fee of $0.002 per-share to provide the specialist unit with incentives to grow its specialist activity in the QQQs by reducing its costs of doing business and providing it with additional funds to commit to trading, which should, in turn, promote liquidity.

2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Phlx members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx neither solicited nor received written comments concerning the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Phlx, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx–2003–06 and should be submitted by March 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4954 Filed 3–3–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(4).
[8] 15 U.S.C. 78s(b)(3)(A).
[9] 17 CFR 240.19b–4(f)(2).
[10] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Office of Personnel Management (OPM))—Matches 1005, 1019, 1020, 1021

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of an existing computer matching program which is scheduled to expire on April 6, 2003.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with OPM.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate; the Committee on Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner, Office of Income Security Programs, 760 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Office of Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 25, 2003.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Office of Personnel Management (OPM)

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

This matching program will have four separate components. The purposes of each of these parts are as follows:

SSA Match 1005: OPM records will be used in a matching program where SSA will match OPM's data with SSA's records to verify the accuracy of information furnished by applicants and recipients concerning eligibility factors for the Supplemental Security Income (SSI) and Special Veterans' Benefits (SVB) programs. The SSI program provides payments to individuals who have income and resources below levels established by law and regulations, and the SVB program provides special benefits to certain World War II veterans.

SSA Match 1019: SSA will match OPM's records of civil service disability benefit and payment data with SSA's records of Social Security disability insurance benefits to identify disability insurance beneficiaries whose benefits should be reduced under the Social Security Act because the disabled worker is receiving a civil service disability annuity benefit. SSA will match the OPM data to verify information provided (or identify such information that should have been provided) by the disabled worker at the time of initially applying for Social Security benefits and on a continuous basis to ensure any reduction in Social Security disability benefits is based on the current civil service disability benefit amount.

SSA Match 1020: OPM records will be used in a matching program where SSA will match OPM's civil service benefit and payment data with SSA's records for disabled and retired annuitants. These annuitants may be subject to the use of a modified benefit computation formula used by SSA under the Social Security Act for certain persons who receive both a civil service benefit and a Social Security retirement or disability benefit. SSA will use the OPM data to verify the pension or annuity information provided (or identify such information that should have been provided) directly to SSA by the retirees/annuitants.

SSA Match 1021: SSA will match OPM's civil service benefit and payment data with SSA's records of beneficiaries receiving Social Security spouse's benefits which are subject to reduction under the Social Security Act when the beneficiary is also receiving a government pension based on employment not covered under that Act. SSA will match the OPM data to verify information provided (or identify such information that should have been provided) by the SSA beneficiary at the time of initially applying for Social Security benefits and on a continuing basis to ensure that any reduction in Social Security benefits is based on the current pension amount.

C. Authority for Conducting the Matching Program

SSA Match 1005: Section 1631 (e)(1)(B) and (f) of the Social Security Act [42 U.S.C. 1383 (e)(1)(B) and (f)] for the SSI program; section 806 of the Social Security Act [42 U.S.C. 1006] for the SVB program.

SSA Match 1019: Section 224 of the Social Security Act [42 U.S.C. 424a].

SSA Match 1020: Sections 215 (a)(7) and 215(d)(3) of the Social Security Act [(42 U.S.C. 415 (a)(7) and 415(d)(3)].

SSA Match 1021: Section 202 (b)(4)(A), (c)(2)(A), (e)(7)(a), (f)(2)(A), and (g)(4)(A) of the Social Security Act [42 U.S.C. 402 (b)(4)(A), (c)(2)(A), (e)(7)(A), (f)(2)(A) and (g)(4)(A)].

D. Categories of Records and Individuals Covered by the Match

OPM will provide SSA with an electronic file extracted from OPM's Annuity and Survivor Master File. The extracted file will contain information about each new annuitant and annuitants whose pension amount has changed. Each record on the OPM file will be matched to SSA's Master Beneficiary Record or Supplemental Security Income and Special Veterans' Benefits Record for the purposes described above in Section B.

E. Inclusive Dates of the Match

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 03–4999 Filed 3–3–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4292]

Culturally Significant Objects Imported for Exhibition Determinations: "Christian Schad and the Neue Sachlichkeit"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Christian Schad and the Neue Sachlichkeit," imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie, New York, NY from on or about March 14, 2003 to on or about June 9, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: February 27, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational ond Cultural Affairs, Department of State.

[FR Doc. 03–5091 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Rwanda has adopted an effective visa system and related procedures to prevent ulawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Rwanda qualify for the textile and apparel benefits provided uner the AGOA.

DATES: Effective March 4, 2003.

FOR FURTHER INFORMATION CONTACT: William Jackson, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Rwanda as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Rwanda has taken, I have determined that Rwanda has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Rwanda" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–5052 Filed 3–3–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–13411]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 33 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs).

DATES: March 4, 2003.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, you may contact Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On December 12, 2002, the FMCSA published a Notice of its receipt of applications from 33 individuals, and requested comments from the public (67 FR 76439). The 33 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are: Michael D. Archibald, Howard K. Bradley, Kirk G. Braegger, Daniel L. Butler, Ambrosio E. Calles, Sandy Clark, Jose G. Cruz, Everett A. Doty, Donald K. Driscoll, Donald J. Goretski, Alf M. Gronstedt, David R. Gross, Thomas L. Hall, Raymond G. Hayden, Harry P. Henning, Bruce G. Horner, Jeffery S. Lathrop, Tommy R. Masterson, Daniel A. McKeon, Ralph J. Miles, William R. New, Kirby G. Oathout, Ronald F. Prezzia, Joseph J. Rettenmeier, Thomas C. Rylee, Stanley B. Salkowski III, Wolfgang V. Spekis, James A. Stoudt, Michael G. Thomas, Brian S. Thompson, William H. Twardus, Ronald J. Watt, and Dale R. Wheeler.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 33 petitions on their merits and made a determination to grant the exemptions to all of them. The comment period closed on January 13, 2003. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the petitions.

Vision And Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers", October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supported the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 33 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but seven of the applicants were either born with their vision impairments or have had them since childhood. The seven individuals who sustained their vision conditions as adults have had them for periods ranging from 6 to 40 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, *i.e.* the FMCSRs, however, require more.

While possessing a valid CDL or non-CDL, these 33 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 40 years. In the past 3 years, one of the drivers has had a conviction for a traffic violation—speeding. Five drivers were involved in an accident but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the December 12, 2002, Notice. Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 67 FR 76439.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA–98–3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 33 applicants receiving an exemption, we note that the applicants have had only five accidents and one traffic violation in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally

required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 33 applicants listed in the December Notice.

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 33 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

One individual wrote in support of granting an exemption to Mr. Archibald.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

After considering the comments to the docket and based upon its evaluation of the 33 exemption applications, the FMCSA exempts Michael D. Archibald, Howard K. Bradley, Kirk G. Braegger, Daniel L. Butler, Ambrosio E. Calles, Sandy Clark, Jose G. Cruz, Everett A. Doty, Donald K. Driscoll, Donald J. Goretski, Alf M. Gronstedt, David R. Gross, Thomas L. Hall, Raymond G. Hayden, Harry P. Henning, Bruce G. Horner, Jeffery S. Lathrop, Tommy R. Masterson, Daniel A. McKeon, Ralph J. Miles, William R. New, Kirby G. Oathout, Ronald F. Prezzia, Joseph J. Rettenmeier, Thomas C. Rylee, Stanley B. Salkowski III, Wolfgang V. Spekis, James A. Stoudt, Michael G. Thomas, Brian S. Thompson, William H. Twardus, Ronald J. Watt, and Dale R. Wheeler from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: February 24, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 03–5014 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2000–7006, FMCSA–2000–7363, and FMCSA–2000–7918]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA's decision to renew the exemptions for 29 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations.

DATES: This decision is effective March 7, 2003. Comments from interested persons should be submitted by April 3, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov*. Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds Asuch exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The procedures for receiving an exemption (including renewals) are set out in 49 CFR Part 381, Waivers, Exemptions, and Pilot Programs. This notice addresses 29 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 29 petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. The individuals are:

Henry Ammons, Jr.
Larry N. Arrington
Robert D. Bonner
James F. Bower
Ben T. Brown
David S. Carman
Darrell B. Dean
Cedric E. Foster
Glen T. Garrabrant
Johnny C. Hall
John R. Hughes
Joseph V. Johns
Alan L. Johnston
Mark J. Koscinski
John N. Lanning
Robert C. Leathers
Calvin E. Lloyd
Newton H. Mahoney, III
Luther A. McKinney
Carl A. Michel, Sr.
Dennis I. Nelson
Rance A. Powell
Shannon E. Rasmussen
James R. Rieck
Garfield A. Smith
Frederick E. St. John
Daniel R. Viscaya
Henry L. Walker
Michael P. Walsh

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 29 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 20245, 65 FR 57230, 65 FR 45817, 65 FR 77066, 65 FR 66286, 66 FR 13825). Each of these 29 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of the safety record for each of these individuals, while driving with the respective vision deficiencies over the past 2 years, indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 3, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: February 24, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 03–5015 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–14223]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 21 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in the FMCSRs.

DATES: Comments must be received on or before April 3, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov*. Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 21 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Gordon L. Apple

Mr. Apple, 71, has had crossed eyes since childhood and alternates from one eye to the other. His best-corrected visual acuity is 20/25 in the right eye and 20/25 in the left. His ophthalmologist examined him in 2002 and certified, "The condition should be stable and he is visually able to drive commercially." Mr. Apple submitted that he has driven straight trucks for 18 years, accumulating 360,000 miles, tractor-trailer combinations for 35 years, accumulating 2.6 million miles, and buses for 6 months, accumulating 2,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

2. Stanley E. Bernard

Mr. Bernard, 57, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/300 and in the left, 20/20. Following an examination in 2002, his optometrist certified, "Stan Bernard meets the visual requirements to perform the driving tasks needed to operate a commercial vehicle." Mr. Bernard reported that he has driven straight trucks for 30 years, accumulating 1.5 million miles. He holds a Class DM1 driver's license from Alaska. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

3. John D. Bolding, Jr.

Mr. Bolding, 43, has a macular scar in his left eye due to an injury in 1995. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/200. An optometrist examined him in 2002 and stated, "In our professional opinion, Mr. Bolding has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Bolding submitted that he has driven tractor-trailer combinations for 14 years, accumulating 700,000 miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

4. Ronald B. Brown

Mr. Brown, 55, lost the central vision in his right eye due to a retinal vein occlusion in 1993. His best-corrected visual acuity in the right eye is hand motions and in the left, 20/25. His ophthalmologist examined him in 2002 and stated, "I would hereby certify that in my medical opinion, Mr. Brown has vision adequate to perform the tasks of his present occupation, that of driving a commercial vehicle." Mr. Brown submitted that he has driven straight trucks for 6 years, accumulating 300,000 miles, and tractor-trailer combinations for 24 years, accumulating 2.9 million miles. He holds a Class A CDL from Maine. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

5. Michael P. Curtin

Mr. Curtin, 47, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2002, his optometrist certified, "I do not feel this should decrease his ability to safely drive a commercial vehicle." Mr. Curtin submitted that he has driven straight trucks for 20 years, accumulating 100,000 miles, and tractor-trailer combinations for 2 years, accumulating 10,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

6. Albion C. Doe

Mr. Doe, 44, has a congenital toxoplasmosis scar in his right eye. His visual acuity is counting fingers in the right eye and 20/25 in the left. Following an examination in 2002, his optometrist certified, "Mr. Doe has a congenital toxoplasmosis scar in his right eye which will not impair his ability to drive a commercial vehicle in any way." Mr. Doe submitted that he has driven straight trucks for 15 years, accumulating 780,000 miles. He holds a Class A CDL from New Hampshire. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

7. James M. Eads

Mr. Eads, 52, is blind in his left eye due to injury at age 5. His best-corrected visual acuity in the right eye is 20/20. An optometrist examined him in 2002 and stated, "His right eye is revealed to have good ocular health and he has adapted well with his monocular vision to safely drive a commercial vehicle." Mr. Eads reported that he has driven straight trucks for 12 years, accumulating 480,000 miles. He holds a chauffeur's license from Indiana. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

8. Richard L. Elyard

Mr. Elyard, 55, is blind in his right eye due to an accident 30 years ago. The best-corrected visual acuity in his left eye is 20/20. Following an examination in 2002, his optometrist certified, "It is my opinion that Mr. Elyard is visually qualified to operate a commercial vehicle at this time." Mr. Elyard reported that he has driven tractor-trailer combinations for 30 years, accumulating 3.1 million miles. He holds a Class A CDL from Virginia. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

9. Michael R. Forschino

Mr. Forschino, 56, has amblyopia in his left eye. His best-corrected visual acuity is 20/25 in the right eye and 20/50—in the left. His optometrist examined him in 2002 and stated, "Mr. Forschino possesses sufficient vision required to operate a commercial motor vehicle." Mr. Forschino reported that he has driven straight trucks for 7 years, accumulating 434,000 miles. He holds a Class B CDL from Connecticut. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

10. John C. Gadomski

Mr. Gadomski, 38, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left. His optometrist examined him in 2002 and stated, "I do believe that his vision is sufficient to perform driving tasks required to operate a commercial vehicle." Mr. Gadomski reported that he has driven straight trucks for 15 years, accumulating 1.5 million miles. He holds a Class B CDL from New York. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

11. Richard H. Hammann

Mr. Hammann, 64, has reduced vision in his left eye due to trauma in 1998. His best-corrected visual acuity is 20/30 in the right eye and 20/200 in the left. His ophthalmologist examined him in 2002 and stated, "In my opinion he has adequate vision to operate a commercial vehicle." Mr. Hammann reported that he has driven straight trucks for 44 years, accumulating 1.8 million miles, tractor-trailer combinations for 15 years, accumulating 1.2 million miles, and buses for 44 years, accumulating 2.6 million miles. He holds a Class BCDM CDL from Wisconsin. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

12. Carl M. Hill

Mr. Hill, 68, has had a histoplasmosis scar in his left eye since childhood. His best-corrected visual acuity is 20/20 in his right eye and 20/100 in the left. An optometrist examined him in 2002 and stated, "In my opinion, Mr. Hill has sufficient vision to operate a commercial vehicle." Mr. Hill reported that he has driven straight trucks for 3 years, accumulating 3,000 miles, tractor-trailer combinations for 13 years, accumulating 975,000 miles, and buses for 1 year, accumulating 5,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

13. David A. Hiller

Mr. Hiller, 53, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2002, his optometrist stated, "It is my professional opinion that Mr. Hiller's visual condition has not previously affected his ability to operate a commercial motor vehicle nor should it affect any further performance." Mr. Hiller submitted that he has driven straight trucks for 34 years, accumulating 3.2 million miles. He holds a Class A CDL from Minnesota. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

14. Billy L. Johnson

Mr. Johnson, 25, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60–2. His optometrist examined him in 2002 and certified, "I do feel, in my opinion, that he does have sufficient vision to perform commercial driving tasks and it is the same now as over the past few years." Mr. Johnson submitted that he has driven tractor-trailer combinations for 4 years, accumulating 270,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

15. Christopher J. Kane

Mr. Kane, 44, has retinal scarring in his left eye due to injury at age 12. His best-corrected visual acuity is 20/20 in the right eye and 20/80—in the left. Following an examination in 2002, his optometrist stated, "I would certify Mr. Kane's vision as sufficient for operating a commercial vehicle." Mr. Kane reported that he has driven straight trucks for 2 years, accumulating 28,000 miles, and tractor-trailer combinations for 4 years, accumulating 158,000 miles. He holds a Class A CDL from Vermont. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

16. Jack E. Kettner

Mr. Kettner, 33, experienced optic atrophy in his left eye due to tumor resection in 1992. His best-corrected visual acuity is 20/20 in the right eye and counting fingers in the left. An optometrist examined him in 2002 and certified, "Jack Kettner has sufficient vision to perform commercial driving tasks." Mr. Kettner submitted that he has driven straight trucks for 10 years, accumulating 150,000 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

17. Wallace F. Mahan, Sr.

Mr. Mahan, 68, experienced a retinal vein occlusion in his right eye in 1998. His best-corrected visual acuity is 20/400+1 in the right eye and 20/25+3 in the left. Following an examination in 2002, his ophthalmologist certified, "It is my medical opinion that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Mahan reported that he has driven tractor-trailer combinations for 40 years, accumulating 1.6 million miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

18. James R. Petre

Mr. Petre, 50, has counting fingers vision in his left eye due to a childhood injury. His best-corrected visual acuity in the right eye is 20/20. His optometrist examined him in 2002 and stated, "I do certify in my opinion, that Mr. James Petre has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Petre submitted that he has driven straight trucks for 30 years, accumulating 600,000 miles. Mr. Petre holds a Class B CDL from Maryland. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

19. William E. Reveal

Mr. Reveal, 37, has a retinal detachment in his right eye resulting from a congenital condition. His best-corrected visual acuity in the left eye is

20/20 and in the right, hand motions. His optometrist examined him in 2002 and stated, "Due to the clarity of Mr. Reveal's vision in the left eye, and his life long adaptation to the reduction of vision in his right eye, it is my opinion that his vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Reveal reported that he has driven straight trucks for 14 years, accumulating 420,000 miles. He holds a Class B CDL from Ohio. His driving record shows no accidents and two convictions for moving violations—speeding and "failure to obey a traffic control device/sign"—in a CMV. He exceeded the speed limit by 10 mph.

20. Robert P. Sanderson

Mr. Sanderson, 59, is blind in his left eye due to a central retinal artery occlusion that occurred in 1998. His best-corrected visual acuity in the right eye is 20/20. His ophthalmologist examined him in 2002 and certified, "Mr. Sanderson's visual acuity in his good eye is stable and I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Sanderson submitted that he has driven straight trucks for 15 years, accumulating 300,000 miles, and tractor-trailer combinations for 30 years, accumulating 2.4 million miles. He holds a Class A CDL from Vermont. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

21. Janusz Tyrpien

Mr. Tyrpien, 45, has had a chorio-retinal scar in his left eye since 1998. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. An optometrist examined him in 2002 and stated, "It is my opinion that he has sufficient vision to perform the tasks required to operate a commercial vehicle." Mr. Tyrpien reported that he has driven tractor-trailer combinations for 3 years, accumulating 300,000 miles. He holds a Class A CDL from Florida. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: February 24, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 03–5017 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 5, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number _." Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (Order). *See* CFR part 232, appendix B. Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR part 232, appendix B, requiring that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the order. The Order does not require retaining cards or tags. When a car bearing a tag for movement under the Order arrives at its destination, the tags are simply removed.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 800 tags.

Average Time Per Response: 5 minutes per tag.

Estimated Total Annual Burden: 67 hours.

Status: Regular Review.

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Abstract: Under 49 CFR part 207, railroads are required to notify states of all designated railroad police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 60 (30 rpts. + 30 rcds.).

Average Time Per Response: 5 hrs. p/rpt. + 10 min. p/rcd.

Estimated Total Annual Burden: 155 hours.

Status: Regular Review.

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Abstract: The information collection requirements contained in pre-employment and "for cause" testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

Form Number(s): FRA F 6180.73, 6180.74, 6180.94A, 61880.94B.

Affected Public: Businesses.

Reporting Burden:

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
219.7—Waivers	100,000 employees	2 letters	2 hours	4 hours	$140
219.9.(b)(2)—Responsibility for compliance	450 railroads	2 requests	1 hour	2 hours	70
219.11(b)(2)—Gen'l conditions for chemical tests.	450 Medical Fac.	1 document	15 minutes	15 minutes	4
219.11 (g) & 219.301 (c)(2)(ii)—Training—Alcohol and Drug.	5 railroads	5 programs	3 hours	15 hours	525
—Training	50 railroads	50 training class	3 hours	150 hours	5,250
219.23 (d)—Notice to Employee Organizations.	5 railroads	5 notices	1 hour	5 hours	175
219.104/219.107/40.67—Removal from cov. Service.	450 railroads	20 letters	1 hour	20 hours	700
219.201 (c) Good Faith Determination	450 railroads	10 reports	30 minutes	5 hours	175
219.203/207/209—Notifications by Phone to FRA.	450 railroads	104 phone calls	10 minutes	17 hours	595
219.205—Sample Collection and Handling	450 railroads	400 forms	15 minutes	100 hours	3,500
—Form covering accidents/incidents	450 railroads	100 forms	10 minutes	17 hours	595
219.209 (c)—Records—Tests promply admin.	450 railroads	40 records	30 minutes	20 hours	700
219.211 (b)—Analysis and follow-up MRO	450 railroads	8 reports	15 minutes	2 hours	200
219.302 (f)—Tests not promptly administered.	450 railroads	200 records	30 minutes	100 hours	3,500
219.401/403/405—Voluntary referral and Co-worker report policies.	5 railroads	5 report	20 hours	100 hours	3,500
219.405 (c)(1)—Report by Co-worker	450 railroads	450 reports	5 minutes	38 hours	1,330
219.403/405—SAP Counselor Evaluation	450 railroads	700 reports	30 minutes	350 hours	12,250
219.601 (a)—RR Random Drug Testing Programs.	5 railroads	5 programs	1 hour	5 hours	175
—Amendments	450 railroads	20 amendemnts	1 hour	20 hours	700
219.601(b)(1)—Random Selection Proc.—Drug.	450 railroads	5,400 documents	4 hours	21,600	324,000
219.601(b)(4/219.601 (d)—Notice to Employees.	5 railroads	100 notices.	5 minute	1 hour	35
—New Railroads	5 railroads	5 notices	10 hours	50 hours	1,750
—Employee Notices—Tests	450 railroads	25,000 notices	1 minute	417 hours	14,595
219.603(a)—Specimen Security—Notice By Employee Asking to be Excused—Urine Testing.	20,000 employees	200 excuse doc	15 minutes	5 hours	145
219.607(a)—RR Random Alcohol Testing Programs.	5 railroads	5 programs	8 hours	40hours	1,400

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Amendments to Approved Program	450 railroads	20 amendments	1 hour	20 hours	700
219.608—Administrator's Determination of Random Alcohol Testing Rate.	53 railroads	53 MIS reports	2 hours	106 hours	3,710
219.707 9(c)(d) & 40.33—Review by MRO of Urine Drug Testing Results/Employee Notification;					
—Positive Drug Test Result	450 MROs	980 reports	2 hours	1,960 hours	196,000
—Copies of Positive Test Results to Employees.	450 railroads	980 tests	15 minutes	245 hours	3,675
219.709—Retests—Written Request by employee.	450 railroads	10 letters	30 minutes	5 hours	175
219.711(c) & 40.25(f)(22)(ii)—Employee Consent.	100,000 employees	60 letters	5 minutes	5 hours	175
40.65—Submission of Test Result to Employer.	450 railroads	20 tests	15 minutes	5 hours	175
40.69—Physician's Written Statement	450 railroads	10 statements	1 hour	10 hours	1,000
40.81—Availability/Disclosure of Alchol Testing.	450 railroads	60 letters	5 minutes	5 hours	175
Information about individual Employees —Copies of Records—Breath Alcohol Test	40,000 employees	4 requests	30 minutes	2 hours	70
40.83—Maintenance/Disclosure of Records concerning EBTs and BATs.	450 railroads	1,500	5 minutes	25 hours	4,375
219.801—Reporting Alcohol/Drug Misuse Prevention Program Results in a Management info. System Data Collection Form.	53 railroads	25 forms	4 hours	100 hours	3,500
—Easy Data Collection Form—No Alcohol/Drug Misuse.	53 railroads	28 forms	2 hours	56 hours	1,960
219.901/903—Retention of Breath Alcohol Testing Records; Retention of Urine Drug Testing.	450 railroads	100,500 records	5 minutes	8,375 hours	125,625
—Summary Report of Bath Alcohol/Drug Test,	450 railroads	200 reports	2 hours	400 hours	6,000
40.29(g)(1) & (5)—Lab Test Result Rpts to MRO.	25 laboratories	52,920	30 minutes	26,460 hours	926,100
40.29(g)(6)—Lab/Monthly Stat Summary of Urinalysis.	25 laboratories	600 reports	2 hours	1,200 hours	42,000
40.29(g)(8) & (m)—Recordkeeping—Labs	25 laboratories	25 document files	240 hours	6,000 hours	210,000
40.31(d)(6) Unsatisfactory Perf. Test Results.	25 laboratories	2 reports	10 hours	20 hours	700
40.31(d)(7) & (8)—False Positive Error/Retesting.	25 laboratories	1 report	50 hours	50 hours	1,750
—False Positive on Blind Test Performance	25 laboratories	1 report	50 hours	50 hours	1,750
40.33—Reporting/Review—Split Sample Test Results.	200 railroads	8 letters	30 minutes	9 hours	315
—Split Sample Failure to Reconfirm Drug Presence.	200 railroads	2 reports	30 minutes	1 hour	35
40.37—Employee Request for Access to Test Records.	40,000 employees	30 requests	30 minutes	15 hours	525

Respondent Universe: 450 railroads.

Frequency of Submission: On occasion.

Total Responses: 190,886.

Estimated Total Annual Burden: 68,307 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on February 27, 2003.

Kathy A. Weiner,

Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–5041 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 2, 2002. No comments were received.

DATES: Comments must be submitted on or before April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Otto A. Strassburg, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4161; Fax: 202–366–7901, or e-mail: *joe.strassburg@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Approval of Underwriters for Marine Hull Insurance.

OMB Control Number: 2133–0517.

Type of Request: Extension of currently approved collection.

Affected Public: Underwriters of marine insurance and marine insurance brokers.

Form(s): None.

Abstract: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Applicants will be required to submit financial data upon which MARAD approval would be based. This information is needed in order that MARAD officials can evaluate the underwriters and determine their suitability for providing marine hull insurance on MARAD vessels.

Annual Estimated Burden Hours: 46 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 27, 2003.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 03–5022 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–12367; Notice 2]

Toyota Motor Corporation; Grant of Application for Decision for Determination of Inconsequential Non-Compliance

This notice grants the application by Toyota Motor Corporation (TMC) of Aichi-ken, Japan, to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials." TMC has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Pursuant to 49 CFR part 556, "Exemption for Inconsequential Defect or Noncompliance," TMC has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301, "Motor Vehicle Safety." The basis of the grant is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published July 8, 2002, (67 FR 45182) affording an opportunity for comment. The comment closing date was August 7, 2002. No comments were received.

From January 8, 2001 to May 17, 2001, TMC manufactured 5,789 airdams for use in 2002 Lexus SL 430 passenger cars that do not meet the labeling requirements of paragraph S6 of FMVSS No. 205. The airdams were not marked with the "DOT" symbol and a manufacturer's code.

FMVSS No. 205, paragraph S6, "Certification and marking," requires that each piece of glazing material shall be marked in accordance with Section 6 of the American National Standard "Safety Code for Safety Glazing Materials for Glazing Materials for Glazing in Motor Vehicles Operating on Land Highways' Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26). This specifies all safety glazing materials for use in accordance with this code shall be legibly and permanently marked in letters and numerals at least 0.070 inch (1.78 mm) in height, with the words "American National Standard" or the characters "AS" and, in addition, with a model number that will identify the type of construction of the glazing material. The glazing materials shall also be marked with the manufacturer's distinctive designation or trademark. In addition, FMVSS No. 205, paragraph S6.2 requires that each piece of glazing material be marked with the symbol "DOT." The TMC airdams were constructed to comply as glazing materials under American National Standard Items 4 and 5, and should have been identified as "AS 4" or "AS 5." TMC stated that the noncompliance consists of the airdams not being marked with the "DOT" symbol and the AS 4 or AS 5 codes.

According to TMC, during its design and testing process, it confirmed that the airdam meets the performance requirements of ANS Z26 for item 4 and item 5 glazing as referenced by FMVSS No. 205. It supplied two "Notice of Equipment Compliance" reports. The American Association of Motor Vehicle Administrators issued the first report, and the Japan Vehicle Inspection Association issued the second. The first, dated 1993, provided compliance information for AS 4 and AS 5 material that was used in the vehicle prior to inclusion of the marking and that expired in 1998. The second, dated 2001, provided compliance information for AS 4 and AS 5 material that was used after the marking was placed on the airdam. TMC claims there is virtually no difference between the compliance data; therefore, TMC believes there is no safety risk.

NHTSA has reviewed TMC's application and, for the reasons discussed in this paragraph, concludes that the noncompliance of the TMC airdam is inconsequential to motor vehicle safety. TMC has provided documentation indicating that the airdams do comply with all other safety performance requirements of the standard except the labeling. Consequently, the noncompliance would not affect the purposes of FMVSS No. 205 that include reducing injuries from impacts to glazing surfaces, ensuring driver visibility, or minimizing the possibility of occupants being thrown through the vehicle windows in collisions. The lack of labeling to the airdam described herein, would not result in inadvertent replacement of the airdams with the wrong glazing material. Since TMC is the only certifying manufacturer of the airdam, a person attempting to replace the airdam would have to contact TMC for the proper part. Consequently TMC, or their representative, would be able to provide the correct replacement airdam.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety.

Accordingly, the application is granted, and the applicant is exempted

from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

The applicant is hereby informed that all products manufactured on and after the date it determined the existence of this noncompliance must fully comply with the requirements of FMVSS No. 205.

Authority: 49 U.S.C. 30118(b), 30120(h), delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 27, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–5039 Filed 3–3–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 3, 2003 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: FinCEN Office of Regulatory Programs (ORP) Customer Satisfaction Survey.
Description: This survey will measure customer satisfaction with regulatory guidance provided by FinCEN.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 100 hours.
Clearance Officer: Steve Rudzinski (703) 905–3845, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–5018 Filed 3–3–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 24, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 3, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0973.
Form Number: IRS Form 8569.
Type of Review: Extension.
Title: Geographic Availability Statement.
Description: The data collected from this form is used by the executive panels responsible for screening internal and external applicants for the SES Candidate Development Program, and other executive positions.
Respondents: Individuals or households, Federal Government.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 84 hours.
OMB Number: 1545–1128.
Regulation Project Number: CO–69–87 Final, CO–68–87 Final and CO–18–90 Final.
Type of Review: Extension.
Title: CO–69–87 and CO–68–87 Final: Final Regulations under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; and

CO–18–90 Final: Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

Description: (CO–69–87 and CO–68–87) These regulations require reporting by a corporation after it undergoes an "ownership change" under sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (CO–18–90) These regulations provide rules for the treatment of options under Internal Revenue Code (IRC) section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 75,150.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours, 56 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 220,575 hours.
OMB Number: 1545–1617.
Regulation Project Number: REG–124069–02 NPRM, Temporary and Final; and REG–118966–97 Final.
Type of Review: Extension.
Title: REG–124069–02 NPRM, Temporary and Final Regulations: Section 6038—Returns Required with Respect to Controlled Foreign Partnerships;

REG–118966–97 Final: Information Reporting with Respect to Certain Foreign Partnership and Certain Foreign Corporations.

Description: (REG–124069–02) Treasury Regulation § 1.6038–3 requires certain United States persons who own interests in controlled foreign partnerships to annually report information to the IRS on Form 8865. This regulation amends the reporting rules under Treasury Regulation section § 1.6038-e to provide that a U.S. person must follow the filing requirements that are specified in the instructions for Form 8865 when the U.S. person must file Form 8865 and the foreign partnership completes and files Form 1065 or Form 1065–B.

(REG–118966–97) Section 6038 requires certain U.S. persons who own interest in controlled foreign partnerships or certain foreign corporations to annually report information to the IRS. This regulation provides reporting rules to identify foreign partnerships and foreign corporations which are controlled by U.S. persons.

Respondents: Business or other for-profit, Individual or households.
Estimated Number of Respondents/Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 250 hours.
OMB Number: 1545–1806.
Form Number: IRS Form 8883.
Type of Review: Revision.
Title: Asset Allocation Statement Under 338.
Description: Form 8883 is used to report information regarding transactions involving the deemed sale of corporate assets under section 338.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 201.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—16 hr., 44 min.
Learning about the law or the form—3 hr., 40 min.
Preparing and sending the form to the IRS—4 hr., 6 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 4,929 hours.
OMB Number: 1545–1808.
Form Number: IRS Form 8887.
Type of Review: Extension.
Title: Health Insurance Credit Eligibility Certificate.
Description: Form 8887 is used to notify a TAA (trade adjustment assistance), alternative TAA, or PBGC (Pension Benefit Guaranty Corporation) recipient that they may qualify for the health insurance credit on Form 8885.
Respondents: State, Local or Tribal Government, Individual or households.
Estimated Number of Respondents/Recordkeepers: 300,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 min.
Learning about the law or the form—2 min.
Preparing the form—5 min.
Copying, assembling, and sending the form to the IRS—10 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 123,000 hours.
Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–5019 Filed 3–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 3, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1049.
Regulation Project Number: IA–7–88 Final.
Type of Review: Extension.
Title: Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.
Description: The final regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 4.
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2 hours.
OMB Number: 1545–1557.
Revenue Procedure Number: Revenue Procedure 99–39.
Type of Review: Extension.
Title: Form 941 e-file Program.
Description: Revenue Procedure 99–39 provides guidance and the requirements for participating in the Form 941 e-file Program.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal.
Estimated Number of Respondents/Recordkeepers: 390,200.
Estimated Burden Hours Per Respondent/Recordkeeper: 37 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 238,863 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–5020 Filed 3–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of Meeting.

SUMMARY: Notice is given of a meeting of the President's Commission on the United States Postal Service.

DATES: The meeting will be held on Tuesday, March 18, 2003 from 9:30 a.m. to approximately 3 pm.

ADDRESSES: The meeting will be held at The LBJ Library and Museum, 8th Floor Atrium, 2313 Red River Street, Austin, Texas 78705.

FOR FURTHER INFORMATION CONTACT: Roger Kodat, Designated Federal Official, 202–622–7073.

SUPPLEMENTARY INFORMATION: At the public meeting, the Commission will examine (1) the impact of the electronic diversion of First-Class letter mail, (2) the automation and other technologies currently utilized by the United States Postal Service, and (3) potential opportunities for business growth that may be available as result of technological innovations. Witnesses will testify at the invitation of the Commission. At the meeting, the Technologies Challenges and Opportunities Subcommittee will report to the Commission. Seating is limited to a maximum of 200.

Dated: February 26, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–4938 Filed 3–3–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM
FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On November 8, 2002, the agencies requested public comment for 60 days on proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments the agencies received, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, adopted some of the proposed revisions after making certain modifications to them. The FFIEC and the agencies are continuing to evaluate the other proposed revisions from the November proposal. In addition, on July 12, 2002, the agencies requested public comment for 60 days on a separate proposed revision to the Call Report related to the collection of data on subprime consumer lending programs, which the FFIEC and the agencies have decided not to implement.

DATES: Comments must be submitted on or before April 3, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to "Consolidated Reports of Condition and Income, 7100–0036," may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov*, or by fax to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to "Consolidated Reports of Condition and Income, 3064–0052." Commenters are encouraged to submit comments by fax or electronic mail [Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Sample copies of the revised Call Report forms for March 31, 2003, can be obtained at the FFIEC's Web site (*http://www.ffiec.gov*). Sample copies of the revised Call Report forms also may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia M. Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Tamara R. Manly, Management Analyst, (202) 898–7453, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with revision, the following currently approved collections of information:

Report Title: Consolidated Reports of Condition and Income.

Form Number: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

For OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,200 national banks.

Estimated Time per Response: 42.20 burden hours.

Estimated Total Annual Burden: 371,360 burden hours.

For Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 978 state member banks.

Estimated Time per Response: 48.25 burden hours.

Estimated Total Annual Burden: 188,754 burden hours.

For FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,354 insured state nonmember banks.

Estimated Time per Response: 32.85 burden hours.

Estimated Total Annual Burden: 703,411 burden hours.

The estimated time per response for the Call Report is an average, which varies by agency because of differences in the composition of the banks under each agency's supervision (*e.g.*, size distribution of institutions, types of activities in which they are engaged, and number of banks with foreign offices). For the Call Report as it would be revised, the time per response for a bank is estimated to range from 15 to 550 hours, depending on individual circumstances.

General Description of Report

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks, and for all banks for deposit information). Except for selected items, these information collections are not given confidential treatment. Small businesses (*i.e.*, small banks) are affected.

Abstract

Banks file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of reporting banks and the industry as a whole. In addition, Call Reports provide the most current statistical data available for evaluating bank corporate applications such as mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Reports are also used to calculate all banks' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

On November 8, 2002, the OCC, the Board, and the FDIC jointly published a notice soliciting comments for 60 days on proposed revisions to the Call Report (67 FR 68229). The agencies' notice addressed a number of different types of changes to the Call Report requirements. These changes related to the content of the Call Report itself, the submission deadline for certain banks, and the agencies' process for validating and releasing the data that banks report. First, the agencies proposed several revisions to the content of the Call Report and one instructional clarification. These revisions focus on improving the information reported by banks that engage in certain specific activities and generally will be applicable to small percentages of banks rather than to most or all banks. This first group of proposed revisions, which were proposed to take effect as of March 31, 2003, include:

- Adding five items dealing with accrued fees and finance charges on credit card accounts, allowances for uncollectible accrued fees and finance charges, and charge-offs of such accrued amounts, which would be reported by banks with a significant volume of credit card activity;
- Splitting the item in the securitization schedule (Schedule RC–S) for seller-provided credit enhancements to the bank's securitization structures (other than credit-enhancing interest-only strips) into separate items, one for on-balance sheet assets and another for other enhancements;
- Separating the current income statement (Schedule RI) item for income from insurance activities into two items, one for insurance underwriting income and the other for income from other insurance activities;
- Adding a yes/no question asking whether any of the bank's Internet Web sites has transactional capability, *i.e.*, allows the bank's customers to execute transactions on their accounts;
- Extending to banks with less than $100 million in assets the requirement to disclose the fair values of derivative contracts in Schedule RC–L—Derivative and Off-Balance Sheet Items, because current accounting standards require derivatives to be reported on the balance at fair value;
- Changing where banks report any provisions for allocated transfer risk in the income statement (Schedule RI);
- Clarifying the instructions for the reporting of certain loans;
- Clarifying that, for the Memorandum items on the number and amount of deposit accounts by size of account in the insurance assessments schedule (Schedule RC–O), the dollar amount for the size of an account represents the deposit insurance limit in effect on the report date; and
- Creating a supplement to the Call Report that would enable the agencies to collect a limited amount of data from certain banks in the event of an immediate and critical need for specific information.

Second, the agencies proposed to reduce the Call Report filing period for banks with more than one foreign office from 45 to 30 days effective June 30, 2003. In connection with this change, the FDIC would be authorized to contact not more than 20 of these banks around May 1, 2003, if their March 31 reports have not yet been received in order to obtain certain deposit data needed to estimate insured deposits.

Third, to improve the timeliness with which Call Report data become available to the public, the agencies would begin posting the reports for individual banks on the FDIC's Web site as soon as the agencies' analysis of an individual report has been completed. The agencies stated that this change would begin as early as with the first quarter 2003 reports.

Finally, in conjunction with the planned implementation of a new business model for collecting and validating Call Reports in 2004, the agencies proposed that a bank's Call Report must pass all validity edits and must include an explanatory comment addressing each quality edit exception identified in the bank's report in order for the agencies to accept the bank's Call Report submission.

After considering the comments the agencies received, the FFIEC and the agencies decided to modify the proposed changes relating to allocated transfer risk and the instructional clarification addressing loans held for trading. Some additional insurance-related instructional clarifications also will be made. Except as noted in the following sentence, the FFIEC and the agencies are proceeding with all of the other proposed revisions. In this regard, the FFIEC and the agencies are continuing to evaluate three elements of their November 2002 proposal: the creation of a supplement to the Call Report that would enable the agencies to collect a limited amount of data from certain banks to meet an immediate and critical need for specific information, the reduction from 45 to 30 days in the Call Report filing period for banks with more than one foreign office, and the establishment of edit criteria that would have to be met in order for a bank's Call Report to be accepted. If and when the agencies decide to proceed with one or more of these three proposals, one or more separate **Federal Register** notices would then be published and submissions to OMB would then be made.

With respect to the Call Report filing period for banks with multiple foreign offices, the agencies' proposal had called for the shortening of this period from 45 to 30 days to take effect with the reports for June 30, 2003. The agencies note that the Board proposed on December 24, 2002, to reduce the filing period for the FR Y–9C report filed by certain bank holding companies from 45 to 35 days effective June 30,

2004 (67 FR 78467). The comment period for the Board's proposal ended on February 24, 2003. Because the filing period part of the Call Report proposal remains under study, the agencies are deferring the date when any shortening of the filing period would take effect until a report date after June 30, 2003. However, as long as the current 45-day filing period remains in effect, the FDIC would be authorized to contact not more than 20 banks with one or more foreign offices on or about each May 1 and November 1 if their March 31 and September 30 Call Reports have not been received in order to obtain certain deposit data needed to estimate insured deposits.

In addition, in November 2002, the American Institute of Certified Public Accountants disclosed that it was rescinding its Statement of Position (SOP) No. 92–3, *Accounting for Foreclosed Assets*, because of the issuance by the Financial Accounting Standards Board of Statement No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (FAS 144). Under SOP 92–3, it is rebuttably presumed that foreclosed assets are held for sale. After foreclosure, foreclosed assets held for sale are carried at the lower of fair value less estimated costs to sell or cost, with any deficiency recognized as a valuation allowance, and this determination is made on an individual asset basis. These provisions of SOP 92–3 are not present in FAS 144, but the application of these provisions represents prevalent practice in the banking industry and is consistent with safe and sound banking practices and the accounting objectives set forth in section 37(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(a)). Accordingly, the agencies are retaining these provisions of SOP 92–3 as part of the Call Report instructions and will expect banks to continue to follow these provisions when accounting for foreclosed real estate.

In order to carry out the provisions of section 314(a) of the USA PATRIOT Act of 2001, "Cooperative efforts to deter money laundering," the agencies will collect contact information for the persons who are in charge of each bank's section 314(a) anti-money laundering searches and who could be contacted by federal law enforcement officers for additional information related to anti-terrorist financing and anti-money laundering. This USA PATRIOT Act contact information, which the agencies will begin to collect with the March 31, 2003, Call Reports, is for the confidential use of the agencies and will not be released to the public.

Finally, on July 12, 2002, the agencies jointly published a notice soliciting comments for 60 days on a proposed new Call Report schedule that would collect data on subprime consumer lending programs beginning March 31, 2003 (67 FR 46250). After the comments received on the proposal from 36 banking organizations, bankers' associations, and community and consumer groups, the FFIEC and the agencies decided not to proceed with the proposal.

Type of Review: Revisions of currently approved collections.

Comments Received on the Agencies' Proposal

In response to their November 8, 2002, notice, the agencies received 13 comment letters, eight from banks and banking organizations, three from bankers' associations, one from a governmental entity, and one from a trade group outside the banking industry. The FFIEC and the agencies have considered the comments received from these 13 respondents.

Accrued Fees and Finance Charges on Credit Card Accounts

Three commenters addressed the proposed new items that would provide data related to accrued fees and finance charges on credit card accounts. Two of these three responded to the agencies' question asking whether these new items should be added to four different Call Report schedules, as had been proposed, or instead placed together in a single separate schedule. Both of these commenters preferred keeping the new items in the four different schedules, which the agencies will continue to do. The other commenter noted that the banks with which it had discussed this proposal stated that they would need until the second quarter 2003 report to complete the systems changes necessary to provide the new information and, therefore, would report good faith estimates in the first quarter 2003 report. As stated in the agencies' proposal, banks will be permitted to provide reasonable estimates for any new item in the first quarter 2003 report, including the new items related to credit card fees and finance charges. This commenter also recommended that the new items permit banks to net "nonprincipal" recoveries from the "nonprincipal" balances charged off within the quarter. Because the new items are intended to provide the agencies and other Call Report users with more complete information on credit card fees and finance charges that are written off as uncollectible, the agencies decided not to adopt the suggested netting option.

Income from Insurance Activities

One commenter submitted an extensive number of recommendations concerning the reporting of income from insurance activities and other matters relating to the insurance activities of banking organizations. In this regard, the commenter favored the agencies' proposal to separate the current Call Report income statement item for income from insurance activities into separate items for insurance underwriting income and income from other insurance activities. This commenter also questioned the agencies' instructional language pertaining to underwriting income, noting that it calls for reporting of premium revenue partially on the basis of generally accepted accounting principles (GAAP) and partially on a statutory reporting basis. The agencies' intent has been for premium revenue to be reported in accordance with GAAP. Therefore, the agencies are revising this instructional language.

In addition, the commenter provided other instructional suggestions. These included providing more explicit detail in the instructions concerning items to be included in and excluded from the two separate insurance income items and having the instructions for other assets and other liabilities specifically refer to certain insurance-related assets and liabilities. The agencies are incorporating several of these suggested details into the Call Report instructions.

Allocated Transfer Risk Reserves

The agencies proposed to change where banks report any provisions for allocated transfer risk in the Call Report income statement. As proposed, these provisions would be included in the provision for loan and lease losses rather than in other noninterest expense, with the amount of any provision for allocated transfer risk included in the provision for loan and lease losses separately disclosed. One commenter supported this change in income statement presentation as being more consistent with GAAP, but recommended that the agencies also change the way in which banks report allocated transfer risk reserves (ATRRs) on the Call Report balance sheet so that they are also presented in the same manner as on institutions' financial statements prepared in accordance with GAAP.

The agencies agreed with this recommendation and are revising the Call Report instructions to instruct banks to include any ATRRs related to loans and leases in the allowance for loan and lease losses. In making this change, the proposed requirement for banks to disclose the amount of — provision for allocated transfer risk included in the provision for loan and lease losses would be replaced with a disclosure of the amount of ATRR related to loans included in the allowance for loan and lease losses. The reporting of loan charge-offs and recoveries and the reconcilement of the loan loss allowance in Call Report Schedule RI-B would also be conformed to this revised balance sheet and income statement presentation method for ATRRs.

Instructional Clarification for the Reporting of Certain Loans

Because of questions concerning the categorization of certain loans as trading assets, the agencies proposed to revise the Glossary entry for "Trading Account" and establish a rebuttable presumption that loans should not be reported as trading assets. The instructions would have explained that, in order to overcome this presumption for a particular loan, a bank must demonstrate, from the pattern and practice of its activity, that it is acquiring the loan principally for the purpose of selling it in the near term with the objective of generating profits on short-term differences in price. The instructions also would have identified two situations where loans should not be reported as trading assets.

Two commenters addressed this proposed instructional change. One recommended that the agencies avoid creating a "rebuttable presumption" that does not exist in the accounting literature. The other also noted certain difficulties with this presumption. These commenters believe that it is appropriate to classify loans as trading assets under GAAP when they have been acquired as part of a trading activity, trading business, or trading strategy. Reference was also made to the accounting literature for the broker-dealer industry because a broker-dealer's activities are similar to loan trading operations. In addition, one commenter agreed with the proposed instructional language stating that loans originated and held for securitization purposes should be reported as held for sale, but disagreed with the inclusion of loans acquired from third parties and held for securitization in the held-for-sale category.

In considering these two commenters' views, the agencies note that their primary purpose in proposing this instructional revision was to identify situations in which loans for which a trading designation had been assigned should have been reported as held for sale or held for investment, based on facts and circumstances. As a result, the agencies conclude that it would be more appropriate to describe these situations in the General Instructions section of the Call Report loan schedule (Schedule RC–C, part I), which collects data on both loans held for sale and loans held for investment, rather than in the "Trading Account" Glossary entry. In so doing, the agencies have removed the rebuttable presumption language from the revision they are making to the loan schedule's General Instructions.

Furthermore, the agencies have retained the instructional language that explains that loans acquired, *i.e.*, originated or purchased, and held for securitization purposes should be reported as loans held for sale. The agencies believe that, under GAAP, the purchase and origination of loans for sale to permanent investors, which is a result of the securitization process, should be accounted for in the same manner, *i.e.* as loans held for sale. In this regard, FASB Statement No. 65, *Accounting for Certain Mortgage Banking Activities*, states that "[m]ortgage loans are acquired for sale to permanent investors from a variety of sources, including applications received directly from borrowers (in-house originations), purchases from realtors and brokers, [and] purchases from investors."

Earlier Public Release of Individual Bank Call Report Data

One commenter addressed the agencies' plan to begin posting the Call Reports for individual banks on the FDIC's Web site as soon as the agencies' analysis of an individual report has been completed. Because the agencies currently release the Call Reports for all banks simultaneously approximately 60 days after the quarter-end report date, this change would give the public access to some banks' Call Reports about 30 days sooner than at present. The commenter expressed general support for this change. However, this commenter suggested that, if market conditions were "turbulent," Call Report data should be released by peer group rather than by a small number of banks at a time in order to avoid unintended consequences to a bank whose data became publicly available sooner than the data for its peers.

In implementing this change in their policy for making Call Report data available to the public, which may begin as early as the first quarter 2003 Call Reports, the agencies believe that the method by which they will release the data should mitigate the commenter's concern. The first quarter in which this posting process is implemented, individual bank reports for which the agencies' analyses have been completed will be posted to the Internet beginning the fifth Friday after the report date, *e.g.*, May 2, 2003, for the March 31, 2003, report or August 1, 2003, for the June 30, 2003, report. Additional bank reports whose analyses have been completed will be posted each Friday thereafter. In quarters subsequent to the first quarter in which the early release of individual bank Call Report data to the Internet has been implemented, this posting process will start on the fourth Friday after the report date. Based on the agencies' experience in processing and analyzing Call Reports, about 1,500 or more individual bank reports would be placed on the FDIC's Web site on the initial posting date. Should the agencies decide to make individual banks' reports publicly available at an earlier date, banks will be notified in advance of such a change.

Other Comments

One commenter asked the agencies to revise the Call Report to collect additional detailed data on construction and land development loans, *e.g.*, separate data for residential and nonresidential construction loans. Another commenter suggested that "additional institutional detail" be collected on the deposit balances of individuals, partnerships, and corporations. The agencies had not included revisions of this nature in their November 2002 proposal and are not implementing these commenters' recommended changes. However, the agencies are undertaking overall reviews of their Call Report data needs with respect to bank lending activities and bank liabilities and will include the commenters' suggestions in their reviews.

One commenter from a bank stated that because holdings of life insurance with cash surrender value are reported as part of "Other assets" on the Call Report, this reporting treatment gives the impression that this asset, which actually generates earnings, is not an earning asset. This banker observed that most of his bank's peer group comparisons are distorted because the denominator in many ratios is "earning assets," which does not include cash value life insurance. The commenter recommended that these holdings of life insurance should be treated as an earning asset for analytical purposes. The agencies note that the amount of a bank's "earning assets" is not collected in the Call Report, but is a figure that

is calculated from Call Report data for use in the Uniform Bank Performance Report. This recommendation has been referred to the agencies' coordinator for the Uniform Bank Performance Report.

One commenter expressed concern about the increase in the amount of data collected in the Call Report over the last ten years and asked why a small non-complex bank has to complete a detailed report designed for larger banks. The commenter recommended reducing the size of the Call Report for small banks. The Call Report already collects different amounts of data from different size banks even though the report form itself covers banks in all size ranges. The data items that are to be completed by banks that meet certain size or other criteria are clearly identified on the forms. The commenter noted that his bank uses Call Report software to complete the Call Report. Such software can be easily designed to filter out the data items that small banks do not need to complete. Furthermore, the November 2002 proposal further reflects the agencies' recognition that certain data does not need to be reported by all banks. In this regard, the new items relating to accrued fees and finance charges on credit card accounts are only to be completed by banks that have $500 million or more in outstanding credit card receivables or are credit card specialty banks.

Request for Comment

Comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of these information collection requests.

Dated: February 26, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 26th day of February, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–4998 Filed 3–3–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P



Federal Register

Tuesday,
March 4, 2003

Part II

Department of Transportation

14 CFR Part 47
Aircraft Registration Requirements; Clarification of "Court of Competent Jurisdiction"; Final rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 47

[Docket No. FAA–2002–12377; Amendment No. 47–26]

RIN 2120—AH75

Aircraft Registration Requirements; Clarification of "Court of Competent Jurisdiction"

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: FAA is amending language in the aircraft registration regulations governing aircraft last previously registered in a foreign country. This amendment clarifies the term "court of competent jurisdiction", and what the Administrator considers satisfactory evidence that foreign registration of an aircraft has ended or is invalid. This amendment is necessary for FAA compliance with obligations from the Convention on International Civil Aviation.

DATES: Effective April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Julie A. Stanford, Aircraft Registration Branch, AFS–750, Civil Aviation Registry, Flight Standards Service, Federal Aviation Administration, Post Office Box 25504, Oklahoma City, OK 73125; Telephone (405) 954–3131.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at (3) *http://www.faa.gov/avr/armhome.htm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question about this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm,* or by e-mailing us at *9-AWA-SBREFA@faa.gov.*

Background

On August 9, 1946, the United States became a party to the Convention on International Civil Aviation, 61 Stat. 1180 (Chicago Convention). Under the Chicago Convention, the contracting parties agreed on certain principles and arrangements so international civil aviation could develop in a safe and orderly manner.

In considering the orderly registration of aircraft, Chapter III–NATIONALITY OF AIRCRAFT, Article 17 of the Chicago Convention, provides that "aircraft have the nationality of the State in which they are registered." Therefore, "an aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another" (Article 18). The rules for changing registration mandate that "the registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations" (Article 19). Before registering an aircraft, an importing State must first ensure that the exporting State has removed the aircraft from its registry. Under Article 21 of the Chicago Convention, the importing State requests proof from the State of last registration that registration of a specific aircraft has ended and the aircraft is no longer on the exporting State's registry.

In promulgating § 47.37(b)(2), the Administrator determined that "a final judgment or decree of a court of competent jurisdiction that determines, under the law of the country concerned, that the registration has in fact become invalid" is satisfactory evidence of termination of foreign registration. The Administrator interprets the phrase "court of competent jurisdiction" to be a court of the country where the aircraft was last registered.

In two recent cases (*IAL Aircraft Holding, Inc.* v. *Federal Aviation Administration, 206 F.3d 1042,* vacated, *216 F.3d 1304 (11th Cir. 2000)* [hereinafter referred to as IAL Aircraft] and *Air One Helicopters, Inc.* v. *Federal Aviation Admin., 86 F.3d 880 (9th Cir. 1996)* [hereinafter referred to as Air One]), a divided panel of the court interpreted the phrase "court of competent jurisdiction" differently from FAA. In Air One, the Ninth Circuit decided that a United States court of appeals was itself a "court of competent jurisdiction" capable of rejecting a determination of the Spanish registry that the aircraft's Spanish registry was valid. In IAL Aircraft, the Eleventh Circuit held that a state trial court having jurisdiction over the aircraft *in rem* was a "court of competent jurisdiction." Therefore, a state trial court could determine that a Brazilian registration was invalid, despite Brazil's continued insistence that its registration remained valid.

On July 6, 2000, the Eleventh Circuit vacated its earlier decision. The Eleventh Circuit found the court lacked Article III jurisdiction at the time it issued its decision. IAL Aircraft had not disclosed the sale of the aircraft while the case was pending before the court.

FAA does not agree with these decisions, which reject the agency's interpretation of its own regulation. Moreover, continuing to litigate such cases of interpretation would adversely impact FAA resources. Therefore, on May 17, 2002, FAA issued a notice of proposed rulemaking to amend § 47.37(b)(2). The proposed amendment would add language to that section to clearly state that the "court of competent jurisdiction" must be a court of the country where the aircraft was last registered. FAA did not receive any comments about the proposal.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations. This amendment is necessary for FAA compliance with the agreements contained in the Convention.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination the benefits of the intended regulation justify its costs. Our assessment of this rulemaking shows that its economic impact is minimal because the issues addressed by this change rarely occur. FAA is aware of only two cases where judgments were pursued and obtained in countries other than where the aircraft was last registered (*IAL Aircraft Holding, Inc.* v. *Federal Aviation Administration, 206 F.3d 1042, 1045,* vacated, *216 F.3d 1304 (11th Cir. 2000)* and *Air One Helicopters, Inc.* v. *Federal Aviation Admin., 86 F.3d 880 (9th Cir. 1996).* The judgment occurred in the country where the aircraft was last registered in other similar aircraft registration changes.

This amendment will affect only those few cases where the change in aircraft registration is filed in the United States rather than the country where the aircraft was last registered. While there may be some costs associated with these cases, such costs would vary depending on the country of last registration. Sometimes, the costs may be less than those normally associated with obtaining a proper judgment from a court of the United States.

We have not prepared a "regulatory impact analysis" because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order. Similarly, we have not prepared a full "regulatory evaluation," which is the written cost/benefit analysis normally required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to prepare a full evaluation where the economic impact of a rule is minimal.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) established "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact of a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rules clarifies the term "court of competent jurisdiction." This action will have a minimal impact on small entities in the aviation industry. Consequently, FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities in the aviation industry.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities, and thus have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, October 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

FAA has assessed the energy impact of the final rule in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined the final rule is not a major regulatory action under the EPCA.

List of Subjects in 14 CFR Part 47

Aircraft; Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 47 of Chapter I of Title 14, Code of Federal Regulations as follows:

PART 47—AIRCRAFT REGISTRATION

1. The authority citation for part 47 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113–40114, 44101–44108, 44110–44111, 44703–44704, 44713, 45302, 46104, 46301; 4 U.S.T. 1830.

2. Amend § 47.37(b)(2) to read as follows:

§ 47.37 Aircraft last previously registered in a foreign country.

* * * * *

(b) * * *

(2) A final judgment or decree of a court of competent jurisdiction of the foreign country, determining that, under the laws of that country, the registration has become invalid.

Issued in Washington, DC, on February 26, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–5040 Filed 3–3–03; 8:45 am]

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Federal Register

Tuesday,
March 4, 2003

Part III

Department of Energy

10 CFR Part 490

Office of Energy Efficiency and Renewable Energy; Alternative Fuel Transportation Program; Private and Local Government Fleet Determination; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 490

[Docket No. EE–RM–FCVT–03–001]

RIN 1904–AA98

Office of Energy Efficiency and Renewable Energy; Alternative Fuel Transportation Program; Private and Local Government Fleet Determination

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking (NOPR) and public hearing.

SUMMARY: Pursuant to the Energy Policy Act of 1992 (EPAct), the Department of Energy proposes to determine that a regulatory requirement for the owners and operators of certain private and local government fleets to acquire alternative fueled vehicles is not "necessary," and thus cannot and should not be promulgated, because such a program would result in no appreciable increase in the percentage of alternative fuel and replacement fuel used by motor vehicles in the United States and thus would not appreciably contribute to the achievement of the replacement fuel goal set forth in section 502(b)(2) of EPAct.

DATES: Written comments (eight copies and, if possible, an e-mail copy) on the proposed determination must be received by DOE on or before June 2, 2003; electronic copies of comments may be sent to the e-mail address listed below.

Oral views, data, and arguments may be presented at the public hearing, which will be held on May 7, 2003. The length of each oral presentation is limited to 10 minutes. The public hearing will be held at the U.S. Department of Energy Main Auditorium, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Requests to speak at the hearing must be submitted to DOE no later than 4 p.m. on April 22, 2003.

ADDRESSES: Written comments (eight copies) and requests to speak at the public hearing should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2G, Docket Number EE–RM–FCVT–03–001, 1000 Independence Avenue, SW., Washington, DC 20585–0121. E-mails may be sent to: *regulatory_info@afdc.nrel.gov*.

Copies of this notice, the transcript from the hearing, and written comments will be placed at the following website address: *http://www.ott.doe.gov/epact/private_fleets.shtml*. You may also access these documents using a computer in DOE's Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. To request a copy of this notice or arrange on-site access to paper copies of other information in the docket, contact Mr. Dana V. O'Hara at the phone number or e-mail address below.

For more information concerning public participation in this rulemaking see the "Opportunity for Public Comment" section found in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice: Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121; (202) 586–9171; *regulatory_info@afdc.nrel.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Previous Opportunities for Public Comment
III. Private and Local Government Fleet Determination
IV. Whether to Modify Replacement Fuel Goal
V. Opportunity for Public Comment
VI. Review Under Executive Order 12988
VII. Review Under Executive Order 12866
VIII. Review Under the Regulatory Flexibility Act
IX. Review Under the Paperwork Reduction Act
X. Review Under the National Environmental Policy Act
XI. Review Under Executive Order 13132
XII. Review of Impact on State Governments—Economic Impact on States
XIII. Review of Unfunded Mandates Reform Act of 1995
XIV. Review of Treasury and General Government Appropriations Act, 1999
XV. Review of Treasury and General Government Appropriations Act, 2001
XVI. Review Under Executive Order 13175
XVII. Review Under Executive Order 13045
XVIII. Review Under Executive Order 13211

I. Introduction

Section 507(e) of EPAct states that "* * * the Secretary shall . . . determine whether a fleet requirement program is necessary under this section" with respect to certain private and local government vehicle fleets (42 U.S.C. 13257(e)). The Department of Energy (DOE) proposes to determine that it is not "necessary" to promulgate a regulation requiring these fleets to acquire alternative fueled vehicles (AFVs). DOE proposes this determination because implementation of a private and local government fleet rule program would not appreciably contribute to the achievement of EPAct's existing 2010 replacement fuel goal of 30 percent, or of a revised replacement fuel goal were one to be adopted. DOE's review of EPAct, existing fleet programs, and the status of markets for alternative fuels and AFVs leads it to conclude that adopting a private and local government fleet rule would result in no appreciable increase in the percentage of alternative fuel and replacement fuel used by motor vehicles in the United States.

This conclusion and DOE's proposed determination are based on two interrelated findings and reasons. First, DOE has concluded that the number of fleets that would be covered by a private and local government fleet mandate and the number of AFV acquisitions that would occur are too small to cause an appreciable increase in the percentage of replacement fuel that is used as motor fuel. This is because of the limitations placed by EPAct itself on DOE's authority to promulgate a private and local government fleet acquisition mandate. For example, and as will be explained below, a private and local government fleet program could only apply to light duty vehicles (*i.e.*, less than 8,500 lbs. gross vehicle weight rating (GVWR)), to fleets that are located in certain metropolitan areas, and could not apply to a number of excluded vehicle classes and types (*e.g.*, rental vehicles, emergency vehicles, and vehicles garaged at residences overnight). Furthermore, EPAct requires that even fleets potentially covered by a fleet mandate may avoid some or all of its acquisition requirements if they fall within one of the numerous exemptions set forth in the statute.

Second, even if a private and local government fleet acquisition mandate were adopted and substantial numbers of AFVs were acquired as a result, there is no assurance that the AFVs acquired by covered fleets would actually use replacement fuel. EPAct gives DOE no authority to require that vehicles acquired by private and local government fleets use any particular fuel. Moreover, DOE's experience with implementation of the Federal fleet, State fleet, and alternative fuel provider fleet programs required by EPAct leads DOE to conclude that as a result of the lack of alternative fuel infrastructure, lack of suitable AFV models, lack of reasonable vehicle prices, and high alternative fuel costs relative to conventional motor fuels, market forces would prevent appreciable increases in replacement fuel use in covered fleets, even if DOE were to impose a private and local government fleet vehicle acquisition requirement pursuant to EPAct sections 507(e) and (g).

DOE's proposed determination that a private and local government fleet regulatory program is not "necessary" under the standards set forth in EPAct section 507(e) and therefore cannot and should not be promulgated is also consistent with the view expressed in many of the comments DOE received during earlier stages of work that preceded issuance of this notice of proposed rulemaking. In these earlier stages, commenters (especially potentially covered fleets) expressed concerns regarding the lack of available fueling infrastructure and suitable AFV models. In addition, a number of alternative fuel proponents stated that the best means of increasing the introduction of AFVs and the use of alternative fuels would be to provide incentives for their use rather than adopting new mandates. These proponents urged DOE to support legislative initiatives that would provide incentives for the use of AFVs and alternative fuels. This Administration is in fact supporting the adoption of incentives for high-efficiency, advanced technology vehicles, which include AFVs. In addition, the President and DOE have proposed the FreedomCAR and Hydrogen Fuel Initiative, which is a major new initiative focused on significantly increasing the availability and use of non-petroleum motor fuels.

In evaluating whether to propose adoption of a private and local government fleet rule under EPAct sections 507(e) and (g), DOE reviewed the status of progress toward achieving the current replacement fuel goal. Based on this review, DOE believes that extraordinary measures would be required to achieve the current goal of 30 percent petroleum replacement by 2010.

At the same time, DOE takes note of the fact that Congress is widely expected to take up comprehensive legislation that may significantly affect our nation's energy future and may bear importantly not only on the achievability of the current goals but also on what any potential revised goals might be. In addition, the FreedomCAR and Hydrogen Fuel Initiative is focused on dramatically increasing the availability and use of replacement fuels and reducing reliance on petroleum as a motor fuel. In light of the momentum that this effort is engendering; in light of what DOE understands to be the principal purpose of EPAct's replacement fuel goals[1]—to keep the pressure on policymakers, industry and the public to engage in aggressive action to expand the use of alternative and replacement fuels; and in light of the likelihood of consideration and enactment of new legislation this Congress that would have a significant bearing on these issues, DOE has concluded that it should not make a determination under EPAct concerning the achievability of the 2010 goals at this time. Therefore DOE also is not proposing at this time to use its EPAct authority to seek to modify these goals. DOE will continue to evaluate this issue.

A. Authority

The issue DOE addresses in this notice of proposed rulemaking is whether a private and local government fleet requirement program is "necessary" under EPAct section 507(e). That section states that a private and local government fleet program shall be promulgated if DOE determines such a program is "necessary," and that such a program "shall be considered necessary" only if DOE finds that "the goal of replacement fuel use * * * is not expected to be actually achieved * * * without such a fleet requirement program" and "such goal is practicable and actually achievable * * * through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals."

The statutory definitions of vehicles and fuels in EPAct are key to DOE's determination discussed in this notice. An "alternative fuel vehicle" is a "dedicated vehicle or a dual fuel vehicle." (EPAct section 301(3)). A "dual fuel" vehicle is one "capable of operating on alternative fuel and on gasoline or diesel fuel." (EPAct section 301(8)(A)). The purchase of an AFV does not assure that "alternative" or "replacement" fuel will be used to operate the AFV. As discussed below, fleets are not required to use alternative or replacement fuel in their AFVs (except for alternative fuel providers, which are required to use alternative fuel in their AFVs by section 501(a)(4) of EPAct).

"Replacement fuel" is defined by EPAct to mean "*the portion of any motor fuel* that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquified fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers," or any other fuel that the Secretary determines meets certain statutory requirements. (42 U.S.C. 13211(14) (emphasis added)) "Alternative fuel" is defined to include many of the same types of fuels (such as methanol, natural gas, hydrogen and electricity), but also includes certain "mixtures" of petroleum-based fuel and other fuels. (10 CFR 490.2 (2002)[2]) Thus, a certain mixture might constitute an "alternative fuel," but only the portion of the fuel that fell within the definition of "replacement fuel" would actually constitute "replacement fuel." For example, a mixture of 85 percent methanol and 15 percent gasoline would, in its entirety, constitute "alternative fuel," but only the 85 percent that was methanol would constitute "replacement fuel." Also by way of example, gasohol (a fuel blend typically consisting of approximately 10 percent ethanol and 90 percent gasoline), considered as a total fuel blend, would not qualify as an "alternative fuel," but the 10 percent that is ethanol would qualify as "replacement fuel."

The rulemaking process for determining whether to promulgate a private and local government fleet rule is very different from the previous DOE rulemaking concerning State government and alternative fuel provider fleets. With that rule, DOE was not required to make any findings in order to promulgate a fleet rule; EPAct itself imposed the fleet program. The determination of whether to adopt AFV acquisition mandates for private and local government fleets, however, is conditional and depends on several critical findings by DOE. Regulations covering private and local government fleets, if adopted, in other respects would likely be similar to those already in place for State government and alternative fuel provider fleets. These regulations essentially require that a percentage of a covered fleet's annual acquisitions of light-duty vehicles must be AFVs. *See Alternative Fuel Transportation Program*, 10 CFR Part

[1] The replacement fuel goals call for a certain percentage of motor fuel demand to be supplied by "replacement fuels." Because petroleum (*i.e.*, gasoline and diesel) is the dominant fuel used for motor vehicles, the replacement fuel goals are sometimes referred to in this document as petroleum replacement goals. DOE notes that because the EPAct goals reference "replacement fuel," they cannot be met by simply using less petroleum (such as through efficiency measures), but rather must be met by increasing the overall percentage of non-petroleum or replacement fuels that is used.

[2] EPAct defines "alternative fuel" (see 42 U.S.C. 13211(2)), but DOE has exercised its authority to modify, by regulation, this definition. Therefore, the currently effective definition of "alternative fuel" is set forth at 10 CFR 490.2 (2002).

490 (2002). Section 507(g) sets forth a tentative schedule for implementing a program for covered fleets that would be enforced if DOE were to promulgate a private and local government AFV acquisition mandate.

In order to determine whether a fleet requirement program for private and local government fleets is "necessary" pursuant to section 507(e), DOE considered the number of fleets that likely would be covered by such a rule and the likely increase in the amount of replacement fuel that would be used by covered fleets as a result of the acquisition mandate. EPAct severely limits the universe of fleets that could be covered by a private and local government fleet rule. These limitations are described in the definitions, exceptions, and exemptions contained in the relevant sections of EPAct, as discussed below.

A "fleet" is defined in section 301(9) of EPAct as follows:

> [T]he term "fleet" means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a governmental entity or other person who owns, operates, leases, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—
>
> (A) Motor vehicles held for lease or rental to the general public;
>
> (B) Motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;
>
> (C) Motor vehicles used for motor vehicle manufacturer product evaluations or tests;
>
> (D) Law enforcement motor vehicles;
>
> (E) Emergency motor vehicles;
>
> (F) Motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;
>
> (G) Nonroad vehicles, including farm and construction motor vehicles; or
>
> (H) Motor vehicles which under normal operations are garaged at personal residences at night.

The key limitations in this definition include: (1) Only light duty vehicles (*i.e.*, vehicles less that 8,500 GVWR) are covered, and all medium-duty and heavy duty vehicles are excluded; (2) the vehicles must be part of a fleet of 20 vehicles used primarily in a large metropolitan area; (3) the vehicles must be centrally fueled or capable of being centrally fueled; (4) they must be owned or controlled by a local government or an entity that owns at least 50 such vehicles; (5) fleets of rental vehicles are excluded; (6) law enforcement and emergency vehicles are excluded; and (7) vehicles garaged at personal residences are excluded.

Moreover, even if it is determined that a particular private or local government fleet constitutes a "fleet" under EPAct, the statute provides several exemptions. Section 507(i) allows a fleet to obtain an exemption from DOE for all or part of its fleet, from an otherwise applicable fleet mandate, on grounds of: (1) Non-availability of appropriate AFVs and alternative fuels; (2) non-availability of appropriate alternative fuels; and (3) with respect to local government entities, for a financial hardship.

EPAct furthermore contains a petition provision in section 507(n). That section provides that "[a]s part of the rule promulgated * * * pursuant to subsection * * * (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program * * * nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet the needs of a fleet." As a result, even to the extent a fleet constitutes a "fleet" under the narrow EPAct definition, and does not otherwise qualify for one of the statutory exemptions, it could petition for relief or suspension of a fleet mandate for any one of several different reasons.

Finally, AFV purchase requirements that DOE could impose under section 507(g) could only apply to the purchase of "light duty motor vehicles." A light duty motor vehicle is defined as "a light duty truck or light duty vehicle * * * having a gross vehicle weight rating of 8,500 pounds or less, before any after-market conversion to alternative fuel operation." See 10 CFR 490.2 (2002). Therefore, medium- and heavy-duty vehicles would not be covered by any mandatory section 507 private and local government fleet program.

DOE originally estimated that about 2 million private and local government fleet vehicles would be covered under a fleet program, were one to be adopted, with AFV acquisitions eventually rising to about 320,000 annually. As discussed below in Section III, however, DOE's original estimate of the number of fleet vehicles that would be covered under a private and local government fleet rule, and thus the number of annual AFV acquisitions resulting from such a rule, probably was far too high.

The limitations on the potential contribution of a private and local government fleet program to the replacement fuel goal are discussed in Section III. In brief, however, one DOE report issued in 1996 estimated that total fuel use from all fleets, including private and local government fleets, potentially covered by EPAct fleet programs to be approximately 1.2 percent of U.S. gasoline use. *See Assessment of Costs and Benefits of Flexible and Alternative Fuel Use in the U.S. Transportation Sector, Technical Report Fourteen: Market Potential and Impacts of Alternative Fuel Use in Light-Duty Vehicles: A 2000/2010 Analysis* (DOE/PO–0042) (January 1996) [hereinafter *Technical Report 14*]. Similarly, a subsequent DOE report stated that, even if an AFV acquisition mandate for private and local government fleets was imposed, fleets covered by EPAct mandates would provide no more than about 1.5 percent replacement fuel use. These reports were issued before DOE had much experience with implementation and operation of EPAct Fleet programs. A more recent analysis (September 17, 2000), discussed in Section III of this notice of proposed rulemaking, indicated that replacement fuel use would increase only .25 percent if a private and local government rule was promulgated.

Section 504(c) of EPAct limits DOE's authority to promote the use of replacement fuel. Specifically, DOE is precluded from promulgating rules that would mandate any of the following: "production of alternative fueled vehicles or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles subject to this Act." Section 504(c) also precludes rules that would "mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels." Thus, DOE's authority under EPAct to promote the use of replacement fuels is primarily limited to the following: implementation of the limited fleet programs found in sections 303, 501 and 507; research and development (R&D) activities with industry under Title XX, subtitle B; and voluntary promotional efforts, such as those fostered by the Clean Cities Program under sections 405, 409, and 505.

EPAct section 507 directs DOE to determine whether private and local government fleets should be required to acquire AFVs as they replace their existing stock of light-duty vehicles. Requirements for private and local government fleets, if adopted, would likely be similar to those mandated by EPAct (42 U.S.C. 13251, 13257(o)) and already in place for State government and alternative fuel provider fleets. *See Alternative Transportation Fuel Program*, 10 CFR part 490 (2002).

EPAct authorizes DOE to conduct two separate rulemakings in order to determine whether to promulgate a private and local government fleet rule. First, section 507(b) allows for an early rulemaking, to be completed by December 15, 1996. As part of that rulemaking, section 507(a)(3) of EPAct required DOE to publish an Advance Notice of Proposed Rulemaking (ANOPR). If no final rule was promulgated by December 15, 1996, then sections 507(b)(3)(c), and (e) require a later rulemaking to determine whether vehicle acquisition requirements are "necessary" under the standards set forth in section 507(e) and should be imposed on private and local government fleets.

The relevant guidance for determining whether a private and local government fleet rule should be implemented is set forth in EPAct section 507(e). This section states that DOE shall promulgate a private and local government fleet requirement program only if it determines that such a program is "necessary." Section 507(e) further states that such a program is "necessary" if "the Secretary finds that" the replacement fuel goal, or a revised replacement fuel goal, "is not expected to be actually achieved by 2010 * * * without such a fleet requirement program" and the goal is practicable and achievable "through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals."

Section 507(l) requires: "In carrying out this section, the Secretary shall take into consideration energy security, costs, safety, lead time requirements, vehicle miles traveled annually, effect on greenhouse gases, technological feasibility, energy requirements, economic impacts, including impacts on workers and the impact on consumers (including users of the alternative fuel for purposes such as for residences, agriculture, process use and non-fuel purposes) and fleets, the availability of alternative fuels and alternative fueled vehicles, and other relevant factors." Section 507(e) is equally categorical in requiring DOE to promulgate a private and local fleet requirement program only upon a determination that such a program is "necessary" to achieve the replacement fuel goal, and section 507(e) sets forth the criteria DOE is to apply in determining whether such a program is "necessary."

It not clear that section 507(l) should be interpreted to apply to a rulemaking proceeding under section 507(e). Section 507(l) includes factors such as greenhouse gas and economic effects that have no bearing on a determination of "necessity" under section 507(e). Moreover, the section 507(l) factors seem geared to helping decide the proper contours of a fleet acquisition mandate once DOE has decided to promulgate such a program, rather than to the threshold determination of whether a program should be promulgated in the first place.

Regardless, it is not necessary in this proceeding to determine whether section 507(l) is properly interpreted as applying to a section 507(e) rulemaking proceeding. Even assuming that it does apply, consideration of the section 507(l) factors would not alter DOE's proposed determination that a private and local government fleet program is not "necessary" under section 507(e).

As explained below, DOE proposes to determine that because implementation of a private and local government fleet AFV acquisition mandate would result in no appreciable increase in the use of replacement fuel, such a program is not "necessary" under the standard set forth in section 507(e). None of the section 507(l) factors could change the outcome of the analysis because they would not change the conclusion that there would be no appreciable increase in the use of replacement fuels. Therefore, even if all of the section 507(l) factors pointed uniformly and strongly in favor of the implementation of a private and local government fleet mandate, and they do not, consideration of those factors could not and would not alter DOE's proposed determination that a fleet program is not "necessary" because such a mandate still would not appreciably increase the use of replacement fuel.

Section 507(m) of EPAct requires DOE to consult with the Secretary of Transportation (DOT) and Administrator of the Environmental Protection Agency (EPA) and other appropriate agencies in carrying out the requirements of section 507. DOE provided a pre-publication draft of today's notice of proposed rulemaking to DOT, EPA, and the Office of Management and Budget for their review.

B. Regulatory Time Line

On August 7, 1996, and as required by EPAct sections 507(a) and (b), DOE published in the **Federal Register** an ANOPR to evaluate progress toward achievement of the replacement fuel goals in EPAct, identifying problems with achieving those goals, assess the adequacy and practicability of the goals, and consider actions needed to achieve the goals. *See* 61 FR 41031. DOE intended this notice to stimulate comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and AFVs. Three hearings were held to receive oral comments on the ANOPR. They were held on September 17, 1996, in Dallas, Texas; on September 25, 1996, in Sacramento, California; and on October 9, 1996, in Washington, DC. A total of 70 persons spoke at the three hearings, and 105 written comments were received by November 5, 1996.

On April 23, 1997, DOE published in the **Federal Register** a Notice of Termination stating that DOE would not promulgate regulations to implement AFV requirements for private and local government fleets pursuant to the early rulemaking schedule of EPAct section 507(a)(1). *See* 62 FR 19701.

On April 17, 1998, and for the purposes of EPAct sections 507(e), (g), and (k), DOE published in the **Federal Register** an ANOPR that asked for comments to assist DOE in making decisions concerning future rulemaking actions and non-regulatory initiatives to promote alternative fuels and alternative fueled vehicles. *See* 63 FR 19372. DOE held three hearings to receive oral comments on the ANOPR. They were held on May 20, 1998, in Los Angeles, California; on May 28, 1998, in Minneapolis, Minnesota; and on June 4, 1998, in Washington, DC. A total of 110 persons spoke at the three hearings, and/or submitted written comments.

On January 12, 2000, consistent with section 507(h) of EPAct (42 U.S.C. 13257(h)), DOE published in the **Federal Register** a notice, stating that it was extending by 90 days the January 1, 2000, deadline contained in section 507(e) in order to provide additional time for consultations with State and local officials, as required by Executive Order 13132. *See* 65 FR 1831. On July 20, 2000, DOE published in the **Federal Register** a notice stating that DOE was further delaying the section 507 rulemaking proceedings concerning private and local government fleets until after it had completed consultations with State and local government officials. *See* 65 FR 44987. DOE said that it was preserving the option of promulgating, at a later time, requirements for private and local government vehicle fleets. In the notice, DOE announced that it would hold three public workshops in order to discuss regulatory options and other

issues related to potential alternative fuel transportation requirements for private and local government fleets. In furtherance of its objective of consulting with affected State and local government officials, the first two workshops were open only to State and local officials. DOE held workshops on August 1, 2000 in Chicago, Illinois; on August 22, 2000 in Denver, Colorado; and on September 26, 2000 in Washington, DC.

On January 2, 2002, EarthJustice, on behalf of the Center for Biological Diversity, Bluewater Network, and Sierra Club, filed a lawsuit in the U.S. District Court for the Northern District of California which, in addition to seeking redress of other grievances, sought to compel DOE to "issue a proposed rule and final determination on the necessity of a private and municipal fleet program." On July 26, 2002, the Court granted plaintiffs' motion for summary judgment on the issue of whether DOE had missed the deadline set forth in EPAct section 507(e) for completing the rulemaking; as a result, the Court ordered a September 26, 2002, hearing to determine a timetable for completing the rulemaking. *See Center for Biological Diversity* v. *Abraham, et al.*, No. C 02–00027 (N.D. Calif., July 26, 2002) (order on motions for summary judgment). On September 27, 2002, the District Court ordered DOE to complete its proposed rulemaking by January 27, 2003 and its final rule by November 27, 2003. *See Center for Biological Diversity* v. *Abraham, et al.*, No. C 02–00027 (N.D. Calif., Sept. 27, 2002). The Court subsequently granted a 30-day extension (to February 26, 2003) of the deadline for DOE to complete work on this notice of proposed rulemaking.

As required by section 507 of EPAct and the order of the U.S. District Court for the Northern District of California, DOE has issued today's notice of proposed rulemaking which proposes to determine that DOE should not promulgate regulatory requirements for private and local government fleets.

C. Program Background

Titles III, IV, and V of EPAct are focused on promoting the use of non-petroleum motor fuels, including replacement fuels and alternative fuels, in the transportation sector. EPAct focused on the transportation sector because of its almost complete reliance on petroleum as a fuel source and its significant contribution to petroleum demand. The transportation sector is nearly 97 percent dependent on oil as a fuel and is a major reason the U.S. is so dependent on imported oil. *See* Center for Transportation Analysis, Oak Ridge National Laboratory, *Transportation Energy Data Book Edition 22*, p. 2–4 (Table 2.2) (ORNL 6967) (Sept. 2002) (*www.ornl.gov*) [hereinafter *Energy Data Book*]. The transportation sector's demand for oil has continued to grow while other sectors have become less reliant on oil. In 1973, the U.S. transportation sector accounted for 52 percent of total U.S. petroleum use (9.05 of 17.31 million barrels per day (mmbd)). *Id.* at p. 1–18 (Table 1.13). In 2001, transportation sector demand for petroleum accounted for roughly 67 percent of total U.S. petroleum demand and exceeded domestic production by 5.2 mmbd equivalent of oil. *Id.* at pp. 1–16 (Table 1.12), 1–18 (Table 1.13).

The U.S. Energy Information Administration (EIA) has projected that transportation sector consumption of petroleum will rise to 19.22 mmbd by 2020. *See* EIA, *Annual Energy Outlook 2002*, p. 141 (Table A11) (DOE/EIA–0383(2002)) (December 2001) [hereinafter AEO 2002]. In 2020, passenger cars and light-duty trucks, which are the primary focus of Titles III–V of EPAct, are expected to account for 59 percent of the total energy used by the transportation sector. *Id.* at p. 136 (Table A7). In 2020, it is projected that U.S. oil production will provide only about half the total energy needed to fuel light-duty vehicles. *Id.* at pp. 141 (Table A11), 136 (Table A7).

As demand for transportation petroleum has grown, so too have U.S. petroleum imports. Dependence on imported petroleum was 41 percent when EPAct was enacted (6.96 mmbd), reached nearly 56 percent in 2001 (10.9 mmbd), and is expected to reach 63 percent by 2020 (16.6 mmbd). *See Energy Data Book* at p. 1–16 (Table 1.12), and AEO 2002 at p. 141 (Table A11). Of net U.S. imports, members of the Organization of Petroleum Exporting Countries (OPEC) currently supply almost 50 percent, with Persian Gulf states supplying almost half of this amount. *See* EIA, *Monthly Energy Review*, Table 1.8 (November 2002) (*http://www.eia.doe.gov/emeu/mer/txt/mer1–8*). OPEC members now account for approximately 40 percent of world oil production, and 52 percent of the petroleum export market. *See* EIA, *International Energy Outlook 2002* Tables D4, 11; *http://www.eia.doe.gov/oiaf/ieo/* [hereinafter *IEO 2002*]. According to the *IEO 2002* (Table 11), OPEC's share of worldwide crude oil exports is projected to increase to 64 percent by 2020. Much of the oil controlled by OPEC is concentrated in the Middle East, which contains nearly two-thirds of the world's proven reserves. *See IEO 2002* Table 8.

Reducing total petroleum use and reducing petroleum imports decrease our economy's vulnerability to oil price shocks. Reducing dependence on oil imports from unstable regions enhances our energy security and can reduce payments to nations that may be hostile to U.S. interests. In 2000, the annual U.S. trade deficit in oil reached $106 billion. *See AEO 2002* at p. 141 (Table A–11). Reducing the growth rate of oil use through conservation and use of non-petroleum motor fuels also relieves pressure on an already strained domestic refinery capacity, decreasing the likelihood of price volatility. Finally, conserving energy and using non-petroleum fuels, many of which are low in carbon intensity, help achieve the goal of decreasing greenhouse gas emissions.

Reductions in the U.S. demand for petroleum can significantly affect worldwide oil demand because the U.S. accounts for one-fourth of total world oil consumption. *See Energy Data Book* at 1–5 (Table 1.4). The consumption of motor fuels by U.S. light-duty vehicles in 2000 accounted for almost 10 percent of total world demand. As demand declines, prices for oil also are generally expected to decline. DOE has previously stated that a "reasonable rule of thumb is that a 1 percent decrease in U.S. petroleum demand will reduce world oil price by 0.5 percent, in the long-run." Short-term impacts are expected to be even greater. *See* Energy Efficiency and Renewable Energy, DOE, *Replacement Fuel and Alternative Fuel Vehicle—Technical and Policy Analysis* p. viii–ix (Dec. 1999—Amendments Sept. 2000); *http://www.ccities.doe.gov/pdfs/section506.pdf* [hereinafter *Section 506 Report*] (issued pursuant to EPAct section 506).

DOE manages a number of different programs that are aimed at reducing reliance on petroleum motor fuels. Part of this effort includes continued implementation of the programs contemplated under EPAct, including the fleet AFV acquisition programs for Federal, State government and fuel provider fleets (see below for discussion of EPAct Programs). These programs are primarily focused on the development and use of AFVs. DOE will continue efforts through its Clean Cities Program to encourage fleets to expand their use of alternative fuels and AFVs. These efforts involve primarily focusing on niche market fleets, but also include continued support for regulated fleets. DOE also plans to continue research programs involving replacement fuels, including biofuels, such as ethanol and biodiesel, in order to make these fuels less costly and more widely used. The use of replacement fuels in fuel blends has a number of advantages that makes their increased use likely, including an ability to use the existing petroleum infrastructure, the ability to enable advanced engine control strategies, and relatively low costs compared with other immediate strategies.

Most importantly, the President and DOE have recently announced the creation of the FreedomCAR and Hydrogen Fuel Initiative, which is intended to make clean and affordable automotive energy a reality for all consumers. This initiative is focused on the introduction of hydrogen as a transportation fuel for the future and involves a number of different DOE programs. These efforts complement work already done in the area of hybrid electric drive systems and fuel cells, and look to advance these technologies beyond their existing state. DOE is working with the EPA, industry, academia, State Energy Offices, and DOE's national laboratories to bring the promise of low-cost, clean, and efficient hydrogen energy to the market. Although it will be many years before hydrogen vehicles and fuels are widely available, steps must be taken today in order to make hydrogen possible for the future. At the same time, DOE will continue to work with its partners through R&D programs to improve current technologies in order to make them cleaner, more economical and more fuel-efficient.

D. Description of the Energy Policy Act's Alternative Fuel Transportation Programs

Alternative Fuel Provisions in the Energy Policy Act

Titles III, IV, V, and VI of EPAct contain the basic provisions for various non-research alternative fuel-related programs, all of which are aimed at displacing motor vehicle petroleum consumption. (*See* 42 U.S.C. 13211 *et seq.*) Title III contains definitions of (1) alternative fuel; (2) AFV; and (3) covered fleet. Title III also sets forth requirements for Federal fleet acquisitions of AFVs, which began in fiscal year 1993.

Title IV authorizes, subject to the availability of appropriations, a financial incentive program for States, a public information program, and a program for certifying alternative fuel technicians. The public information program is intended to promote the use of AFVs and alternative fuels.

Title V specified percentages of light duty vehicles acquired by State governments and alternative fuel providers that must be AFVs. The minimum acquisition requirements are phased-in, escalating from year to year until reaching a fixed percentage. Title V also gives DOE authority under specified conditions to impose by rule a similar mandate on private and local government fleets. Title V authorizes the allocation of credits to covered fleets that exceed their AFV acquisition requirements. These credits may be sold and used by other fleets that are subject to Title V vehicle acquisition mandates. It also contains investigative and enforcement authorities, including provisions for civil penalties and, in certain circumstances, criminal fines for noncompliance with the statutory mandates and implementing regulations. Finally, section 505 of Title V contains voluntary supply commitments that are covered by the Clean Cities Program.

Title VI of the Act confers on DOE a variety of authorities to promote, subject to the availability of appropriations, development and utilization of electric motor vehicles. Subtitle A provides for a commercial demonstration program for electric motor vehicles, and Subtitle B provides for an infrastructure and support systems development program.

DOE Implementation of the Energy Policy Act

Since 1992, DOE has taken a number of steps to implement EPAct's alternative fuel programs. DOE coordinates various aspects of the Federal fleets' efforts to comply with the vehicle acquisition requirements established under section 303. (42 U.S.C. 13212) DOE has promulgated and implemented regulations and guidance for alternative fuel providers and State government fleets, which are subject to the fleet provisions contained in sections 501 and 507(o), respectively. The implementation of the fleet regulations, in particular, has given DOE considerable experience in understanding the issues associated with fleet mandates.

DOE also has experience with implementing voluntary alternative fuel programs. The Clean Cities Program (Clean Cities) (sections 405, 409 and 505 of EPAct), is the primary means by which DOE promotes the use of alternative fuels. This program supports public and private partnerships that deploy AFVs and build supporting infrastructure. The Clean Cities Program has established the following relevant goals: (1) One million AFVs operating exclusively on alternative fuels by 2010; and, (2) one billion gasoline gallon equivalents per year used in AFVs by 2010.

Unlike traditional command and control regulatory programs, Clean Cities takes a unique, voluntary approach to AFV development, working with coalitions of local stakeholders to help develop the AFV industry. The program thrives on strong local initiatives and a flexible approach to building alternative fuels markets, providing participants with options to address problems unique to their cities and fostering partnerships to help overcome them. There are currently more than 80 local Clean Cities organizations around the country. From local businesses and municipal governments to regional air quality organizations and national alternative fuel companies, more than 4,400 stakeholders have found the Clean Cities to be an effective route to building local alternative fuels markets.

Many Clean Cities organizations have focused their efforts on marketing to niche markets. Niche market fleets offer the best opportunities for overcoming the barriers that often limit alternative fuel use. These barriers include limited refueling infrastructure, higher acquisition costs, and lower operational range for vehicles. High-mileage, centrally-fueled fleets are a good example of a niche market. High-mileage fleets consume larger quantities of fuel, so over time, fleet managers can benefit from the cost savings associated with alternative fuels that cost less than conventional fuels. Low-mileage, high-fuel-use vehicles—those that must often wait, idling, or those with repeated starts and stops, such as airplane tugs and airline baggage carts—are another niche market. Predictable routes and centralized refueling stations also facilitate scheduling and allow for overnight or off-hour refueling, leaving more time for scheduled stops during the workday. Considering these factors, alternative fuels in many niche applications make sense and can be economical today. With the many niche markets in communities across the country—taxis, delivery fleets, shuttle service and transit bus fleets, airport ground fleets, school bus fleets, and national park vehicles—market penetration for alternative fuels and vehicles is viable and can have an impact on alternative fuel growth.

Additional details on the Clean Cities Program may be found on the world wide web at *www.ccities.doe.gov*. Details on DOE's existing fleet regulations may be found on the World Wide Web at *http://www.ott.doe.gov/epact/*.

Status of Alternative Fuel and Alternative Fueled Vehicle Markets

According to the EIA, the number of AFVs on the road has more than doubled since EPAct's passage in 1992. *See Energy Data Book* at 9–3 (Table 9.1), and EIA, *Alternatives to Traditional Transportation Fuels 2000* Table 1 (Sept. 2002) (hereinafter *Transportation Fuels 2000*] (*www.eia.doe.gov/fuelalternate.html*). As of 2002, EIA estimates that AFVs number slightly more than a half million vehicles, comprising a small fraction of the total U.S. vehicle stock. *Id.* Of the forecasted 2002 total, approximately 281,000 will be fueled by liquefied petroleum gas (propane); 126,000 will be fueled by compressed natural gas; 5,900 will be fueled by M85 (a blend of 85 percent methanol and 15 percent gasoline); 82,500 will be fueled by E85 (a blend of 85 percent ethanol and 15 percent gasoline); and almost 20,000 will be fueled by electricity. The remaining quantity of AFVs consists of a very small number of vehicles fueled by liquefied natural gas, M100 (100 percent methanol), and E100 (100 percent ethanol). *Id.* DOE estimates that approximately 20,000–25,000 new AFVs are acquired annually as a result of the Federal fleet requirements under section 303 of EPAct and the State and Alternative Fuel Provider Fleet Programs found in sections 501 and 507(o).

In addition to the vehicles described above, EIA estimates that by 2000 there were approximately 2.6 million flexible fueled vehicles (FFVs) on U.S. roads capable of operating on ethanol blends of E85. *Transportation Fuels 2000* at Table 1. An FFV is "any motor vehicle engineered and designed to be operated on any mixture of two or more different fuels." 10 CFR 490.2. The number of FFVs is expected to grow significantly in future years as automakers continue to sell hundreds of thousands of these vehicles each year. EIA does not count most of these vehicles in its AFV figures above since these vehicles include cars and light trucks owned by non-fleet owners, who for the most part are not expected at this time to use ethanol in their vehicles. These vehicles, however, could use ethanol if the infrastructure becomes more widely available and fuel supplies are offered at a competitive price.

When EPAct was enacted in 1992, EIA estimated that total alternative fuel and replacement fuel use accounted for approximately 1.6 percent of total motor fuel consumption. This figure rose quickly to 2.2 percent in 1993 largely as a result of requirements under the Clean Air Act Amendments of 1990, which required the use of oxygenated and reformulated fuels. EIA has projected that, for 2002, the annual consumption of alternative fuels in alternative fuel vehicles will reach the equivalent of approximately 294 million gasoline gallons. Factored together with the use of replacement fuels such as ethanol and MTBE, the total amount of replacement fuel and alternative fuel consumption will displace the equivalent of approximately 4 billion gallons of gasoline. While encouraging, this figure represents only a small part (2.8 percent) of total 2002 on-road motor vehicle fuel consumption. Thus, despite the efforts of the past decade and significant improvements in the state of alternative fuel technology, alternative and replacement fuel use has grown relatively little.

II. Previous Opportunities for Public Comment

Pursuant to the rulemaking process set out in sections 507(c)–(g) of EPAct, DOE issued an advanced notice of proposed rulemaking (ANOPR) and held a series of stakeholder workshops to discuss various options open to it for implementing a private and local government fleet program and in general how to encourage increased use of replacement fuel. Commenters also were asked to provide input on the replacement fuel goals contained in EPAct. The comments and public statements DOE received have informed the determination proposed today. The sections below describe the process used to solicit information, the different proposals made, and the input received. DOE notes that neither EarthJustice nor the other entities it represented in the lawsuit in *Center for Biological Diversity* v. *Abraham* filed written comments or provided testimony in response to the opportunities for public comment described below.

A. 1998 Advanced Notice of Proposed Rulemaking

On April 17, 1998, DOE published in the **Federal Register** an ANOPR stating that DOE was beginning its process for determining whether to promulgate a rule imposing possible AFV acquisition requirements on private and local government fleets. *See* 63 FR 19372. Accordingly, DOE requested comments on a number of issues potentially relating to such a rule, arising from section 507(g) of EPAct, as well as relating to possible alternative fuel requirements for urban transit buses under section 507(k). In May and June of 1998, DOE held three public hearings in Minneapolis, MN; Los Angeles, CA; and Washington, DC. More than 110 interested parties responded by providing written and verbal comments.

The ANOPR requested comments on 23 questions within three broad areas: replacement fuel goals, fleet requirements, and urban transit buses. Many of the comments expressed during the public workshops included common themes and overlap among these three areas. Information related to the ANOPR and this rulemaking, in general, is located on the World Wide Web at *http://www.ott.doe.gov/epact/private_fleets.shtml*.

Discussion of Replacement Fuel Goals and Fleet Requirements

More than 40 commenters addressed the question whether the goal of replacing 30 percent of the Nation's motor fuel by 2010 is achievable. Commenters also identified likely problems in achieving this goal. Less than half of the commenters who explicitly addressed this question regarded the goal as unachievable. Many of the commenters considered the goal unachievable under the then-present economic conditions, and many offered suggestions as to what changes would be required to make the goal feasible. Commenters were in general agreement that the lack of alternative fuel infrastructure, low petroleum fuel prices, and various limitations on AFV availability were key barriers to achievement of EPAct's 30 percent petroleum replacement goal and implementation of any new fleet rules. Many commenters cited the lack of an alternative fuel infrastructure as a significant barrier. One commenter said public access to most existing natural gas refueling sites in his area is either restricted or prohibited. Another commenter said supplies of alternative fuels themselves were inadequate at present.

Two commenters pointed to the low prices of petroleum-derived fuels as an impediment to alternative fuel implementation. One commenter said that low petroleum prices implied that AFV fleet operators might never see a return on their investment. A related comment, noted that installation of an alternative fuel infrastructure could be a financial burden for small and independent fuel retailers and could be unfair to them.

The cost of AFVs and the lack of selection among AFVs were mentioned by a number of commenters. Several commenters also mentioned that it was difficult to lease AFVs or acquire certified conversions. Two commenters said incremental costs of AFVs could inhibit widespread acceptance of the vehicles and technology.

Five comments identified the resale or residual value of AFVs as a barrier to fleets' acceptance of AFVs. Two of these comments urged government action to address this problem. One commenter stated that government purchase of AFVs at the end of their lease life or a resale price guarantee by the government was needed. The other said that government should establish a resale market (or surrogate), or create a residual value insurance pool for alternative fueled vehicles, analogous to resale value insurance that can be obtained for fleet vehicles.

Commenters who opposed adoption of a private and local government fleet mandate questioned the benefits of or the justification for such a mandate, and suggested it would foster non-compliance and limit participation in voluntary programs. Several commenters questioned DOE's authority to promulgate a private and local government fleet rule. These comments argued that DOE had not yet demonstrated that a private and local government fleet rule was "necessary" or that meeting the EPAct fuel replacement goal through a fleet rule was economically achievable. One commenter said that DOE had not yet performed the cost/benefit analysis called for in section 507(l) of EPAct. Commenters also cited the draft *Section 506 Report* (section III below) which indicated that a private and local government fleet mandate would result in only 1.5 percent fuel displacement.

Several commenters also asserted that much of the additional alternative fuel used under a fleet program would actually be imported, and hence promoting the use of such fuel would do little to meet the section 502(b)(2) provision that at least half of the replacement fuel used to meet EPAct's replacement fuel goals must consist of "domestic fuels." They also believed that there was not currently a match between the AFVs available and vehicles which could meet the normal business requirements of the fleets that would be subject to the acquisition mandate. These commenters, and a few others stated the 30 percent replacement fuel goal set forth in EPAct was arbitrary, and that any modified goal would be equally arbitrary. These commenters stated that DOE should concentrate on accelerating public information programs and increasing participation in voluntary programs, like Clean Cities and Clean Airports. In contrast, two commenters argued in favor of mandates, with one saying failure to impose them would indicate a lack of confidence in the alternative fuels industry.

DOE's second question solicited input on what level of replacement fuel use is actually achievable, if the goal originally specified in EPAct is not feasible or achievable. Eight commenters responded to this question; only one provided an alternative numerical goal.

DOE's third question asked for information on the practicality of EPAct's replacement fuel goals and whether they should be modified. In response, one commenter criticized the fundamental assumption that replacement fuel goals are needed. Several commenters said that some AFVs are not necessarily cleaner than gasoline-fueled vehicles and that current AFV models are more expensive to operate than their conventional fueled counterparts. Commenters urged DOE to consider the effects of current AFV programs on fleet economics, on progress toward reaching EPAct's replacement fuel goals, and to consider alternatives to mandates. Another commenter questioned the reasonableness of DOE's projections of the number of AFVs that would be necessary in the future to achieve the replacement fuel goals.

DOE's fourth question asked commenters to describe the general outline, structure and implementation of a possible program that focused on fuel use instead of simply on vehicle acquisitions. Many commenters urged the adoption of an incentives-based program instead of new mandates. Other commenters, however, supported a new mandate. Nearly all commenters, including those opposed to mandates, thought that focusing on fuel use rather than vehicle acquisitions was a good idea. A number of commenters recommended replacement fuel programs that were based on or emphasized specific alternative fuels, even though DOE historically and uniformly has been of the view that it should remain fuel neutral in implementing EPAct's regulatory programs.

Some commenters said that DOE should focus its efforts on programs already in place, especially the Clean Cities and Clean Airports Programs. One commenter thought that these programs, combined with the mandatory fleet programs already in place, constituted a sufficient replacement fuel program.

DOE's next two questions concerned what other measures could be taken, in addition to or instead of an acquisition mandate, to further the achievement of the replacement fuel goals, and what types of incentives should be offered, what form should they take, and whom should they benefit. These questions drew the largest response from commenters. The overwhelming majority of commenters recommended the adoption of financial and non-financial incentives. There was an almost equal split between commenters that advocated measures other than mandates, and commenters that advocated measures in addition to mandates. One commenter, who advocated incentives in addition to mandates, said the adoption of incentives should precede mandates. Another commenter, who called for incentives instead of mandates, said that mandates should be imposed only if the adoption of incentives fails to elicit adoption of alternative fuels. Two commenters opposed incentives; one said they were inappropriate for uneconomic fuels and the other predicted they would not further significant petroleum replacement.

A common theme among comments by State and local government representatives was that incentives also should be available to them. In addition, one commenter suggested linking incentives to actual alternative fuel use. Numerous commenters discussed how incentives could be funded. Commenters suggested a 1-cent-per-gallon tax on gasoline, as well as a tax, or import tariff, on foreign petroleum. One commenter called for additional taxes to be placed on all fuels produced from imported petroleum. Another commenter suggested that incentives be funded through the Transportation Trust Fund.

Many commenters called for tax incentives, including credits for the acquisition of vehicles, fueling infrastructure investments, and alternative fuel use. One commenter noted that if tax incentives are adopted, they should be available for a sufficient period, with a specified phase-out date to facilitate business planning. In addition to tax credits, two commenters advocated direct grants for entities that could not take advantage of tax credits.

Several commenters recommended of non-financial incentives, including granting AFVs access to high-occupancy vehicle (HOV) lanes or their own dedicated travel lanes, parking and toll preferences, relaxed vehicle inspection standards, lower vehicle registration fees, and lower sales taxes. DOE notes that while some such incentives already exist, additional incentives, including new tax credits, would either require new legislation from Congress or legislation or regulatory actions at the State and local government levels.

Several comments suggested regulatory intervention in the vehicle

and fuel markets. One called for a requirement that conventional motor fuel station operators install alternative fuel storage and dispensing systems and sell alternative fuel(s) as a minimum of 10 percent of their annual sales by 2000, and a minimum of 30 percent by 2010. All of these suggestions call for actions that are outside of DOE's authority or are expressly prohibited by EPAct.

Most commenters wanted fleets and other AFV owners and operators to be the primary targets of incentives. One commenter said that incentives should be targeted to small businesses and users, and not to large Original Equipment Manufacturers (OEMs). A few commenters thought that fuel providers should qualify for financial incentives as a way to encourage infrastructure development.

Commenters favoring a program to encourage fuel use offered suggestions on how such a program could work. The general aim of these suggestions was to allow covered and potentially covered fleet operators greater flexibility in meeting requirements. Suggestions for such a program included providing acquisition credits for medium- and heavy-duty vehicles, extra credits for electric and dedicated alternative fueled vehicles, providing credits to non-covered fleets, and providing credits for alternative fuel use.

Commenters voiced considerable support for tying credits (and other incentives) to the amount of alternative fuel(s) actually consumed by the vehicles. Several commenters suggested that emissions trading credits be granted to AFV operators who exceeded alternative fuel use requirements.

DOE asked for guidance on how to factor in changes in oil price and availability into the decision-making process. Relatively few commenters addressed this question. Two pointed to a General Accounting Office study that estimated the benefits to the U.S. of using low-cost imported petroleum to be in the hundreds of billions of dollars, and to outweigh the benefits of alternative fuels. One commenter said that alternative fuel mandates, while they might reduce petroleum imports, could increase imports of other fuels. Two commenters suggested DOE consider the national defense and security costs of the country's current petroleum imports, one of them calling for excise taxes on petroleum that reflect its "costs to society."

There were 15 responses to DOE's question about measures to encourage use of alternative fuels, rather than conventional fuels, in bi-fuel and FFVs. Three commenters recommended DOE simply require alternative fuel use in FFVs. One commenter argued that alternative fuel use in bi-fuel vehicles and FFVs at least 50 percent of the time should be sufficient to qualify these vehicles for EPAct compliance, while another recommended DOE establish a guideline that an AFV must operate at least 75 percent of the time on alternative fuel if the vehicle is to count toward an operator's compliance with EPAct.

One commenter suggested that DOE add biodiesel and reformulated gasoline (RFG) to the list of alternative fuels specified in the EPAct. In the Final Rule for the Alternative Fuel Transportation Program promulgated on March 14, 1996, DOE added neat (or 100 percent) biodiesel to the definition of "alternative fuel." Additionally, after enactment of section 7 of the Energy Conservation Reauthorization Act of 1998 (ECRA) (Pub. L. 105–388) which allowed covered fleets to earn acquisition credits by using biodiesel blends in medium- and heavy-duty vehicles, DOE issued regulations allowing credit in these circumstances as well. *See* 64 FR 27169 (May 19, 1999). However, DOE has consistently stated that it cannot add RFG to the definition of "alternative fuel" because RFG is more than 80 percent petroleum, and therefore is not "substantially not petroleum" as required by EPAct section 301(2). *See* 61 FR 10622, 10630 (March 14, 1996) (notice of final rulemaking establishing 10 CFR Part 490).

The final replacement fuel question on which DOE sought comments was how to estimate the impacts of replacement fuel. One commenter predicted that achievement of the 30 percent replacement fuel goal would create supply and price problems for current propane users in the agricultural, residential, and industrial sectors. This commenter predicted price increases of several hundred percent, and cited a DOE report that projected vehicle fuel demand for propane could go from 35,000 barrels per day (bbl/day) to 1.7 million bbl/day, and imports could increase from 200,000 bbl/day to 1.7 million bbl/day. General Accounting Office report GAO/RCED–98–260, entitled *Energy Policy Act: Including Propane as an Alternative Motor Fuel Will Have Little Impact on Propane Market*, addressed this concern. The report asserted that EPAct's effects on the supply and price of propane would be minimal and the increase in overall price of propane, attributable to EPAct, would be negligible. It also stated that EPAct would have little effect on existing consumers of propane because the price increases will be so small.

In the area of fleet requirements, DOE asked whether the AFV acquisition schedule in section 507(g) of EPAct should be adhered to, and if not, what alternative schedule should be used. Section 507(g) requires that if DOE promulgates an AFV acquisition mandate for private and local government fleets, annually escalating percentages of the light duty vehicles acquired by the covered fleets must be AFVs, beginning with 20 percent in model year 2002 and rising to 70 percent in model year 2005 and thereafter, although this section also gives DOE authority to change these years and percentages. Eight commenters spoke in favor of retaining the section 507(g) schedule, although one advised making the schedule applicable only to local government fleets and adopting incentives for these fleets. Several commenters supported adoption of a new mandate for local government fleets, including transit agencies, but not for private fleets. Six commenters opposed the schedule in section 507(g). Some commenters opposed any mandate, while others recommended a longer phase-in schedule.

DOE received numerous comments in response to its question regarding what programs other than the fleet requirement program would maximize market penetration of alternative fuels and AFVs, and what market penetration these programs would induce. Many of these comments simply reiterated the call for incentives of various types. A number of commenters, however, said that a concerted effort to expand existing infrastructure would enable fleets to expand their use of AFVs. Though not responsive to the question, a number of commenters suggested expanding the existing fleet programs to cover medium- and heavy-duty vehicles. A few commenters also thought that the statutory geographical limitations on fleet programs should be removed.

A number of commenters cited the Clean Cities Program as an effective means of expanding AFV use. Some called for the program to be expanded, in terms of the number of its participants, the areas it covers, and in funding. Commenters also recommended that Clean Cities coordinators receive training in how to seek Department of Transportation Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds.

A number of commenters urged continued Federal leadership in establishing the use of alternative fuels and alternative fueled vehicles. These commenters indicated that the Federal Government must do a better job of meeting its own AFV acquisition requirements and using alternative fuels in its vehicles. DOE has worked closely with all the Federal agencies to maximize acquisitions of alternative fueled vehicles and increase the use of alternative fuels. DOE participated actively in the development of Executive Order 13149, which strengthens the Federal Government's commitment to using AFVs and gives DOE a greater role in assisting Federal agencies compliance with EPAct's AFV acquisition requirements and report on their acquisitions.

DOE's final question about fleet requirements asked how DOE should weigh the factors in section 507(l) of EPAct when deciding whether to promulgate a private and local government fleet program. Nine responses explicitly addressed this question. There was no clear consensus that DOE should accord the greatest weight to any particular factor. Four commenters mentioned economic factors: the impacts on fleets, workers, consumers (particularly non-transportation propane consumers); cost burdens the rule would impose on local governments; and fuel market impacts. One commenter said Congress did not intend that a fleet mandate be imposed if it would harm the economic well-being of businesses, workers, or consumers. This commenter also stated that the evidence suggests the costs of such a mandate would greatly exceed its benefits. Three commenters mentioned AFV availability as a concern that should be considered before DOE proposes any fleet AFV acquisition program. Another commenter said the unavailability of suitable vehicles had been regarded by Congress as sufficient reason to defer imposition of fleet mandates.

A commenter raised the issue of environmental benefits of AFVs, saying Congress had not intended for acquisition mandates to be imposed on fleets if AFVs did not confer environmental benefits. The same commenter noted earlier that AFVs at one time had been automatically assumed to have lower environmental impacts than petroleum-fueled vehicles, but that the evidence had since showed this assumption to be false. This commenter also urged DOE to weigh vehicle safety and greenhouse gases in its consideration of a possible private and local government fleet program.

Discussion of Urban Transit Buses

In the ANOPR, DOE asked for input on how it should determine if the inclusion of urban transit buses in the proposed rule would help meet the replacement fuel goals. Virtually all the commenters responding to this question took it as soliciting their opinion on whether an urban transit bus fleet rule should be promulgated. Eighteen commenters urged DOE to promulgate a mandate that urban transit bus operators acquire alternative fuel buses. A number of these comments suggested that this mandate could be adopted independent of a private fleet mandate. There was general agreement among supporters of a transit fleet mandate that transit buses were a good fit for alternative fuels.

Nine commenters, six of them urban transit bus operators, opposed the imposition of an urban transit bus AFV mandate. Two of them described such a mandate as "unfunded." One argued that imposition of such a requirement would be overly ambitious, financially burdensome, and could decrease urban transit bus ridership. Several commenters stated that requiring the acquisition of more expensive alternative fueled buses could lead to reduced ridership if transit agencies had to raise fares to pay for the buses. One commenter said transit riders already help reduce petroleum imports by not driving their own cars, and that DOE should recognize that the petroleum fuel consumed by urban transit buses is going to the "highest use." Two commenters pointed out that an increasingly large percentage of new urban transit bus purchases are alternative fueled, and that alternative fuels have made impressive inroads in the urban transit bus sector. Two other commenters said these gains have been made without mandates, and voluntary adoption of alternative fueled urban transit buses should continue, as local funding and circumstances permit.

DOE asked how it should quantify the impact on public transit properties of requiring them to acquire alternative fueled buses. Thirteen of the 15 respondents to this question spoke directly or indirectly to the issue of economics. All said that it would be a financial burden because of the higher cost of alternative fuel buses, the cost of installing the infrastructure (or the operational costs of off-site refueling), the cost of training maintenance personnel, and the costs (in some cases) of retrofitting large facilities to accommodate AFVs. One also pointed out that increasing (conventional) diesel engine efficiency had permitted a reduction in transit bus fuel consumption over the past 10 years.

DOE asked for comment on whether an urban transit bus fleet mandate, if imposed, should apply to public and private urban transit bus operators, or only to public operators. By a substantial margin (nine to one), commenters favored applying the requirement equally to public and private operators.

Two commenters commented on ways to address offset the economic penalties of owning and operating alternative fueled urban transit buses. One favored using a life-cycle cost approach, rather than emphasizing the first cost of vehicles and infrastructure. The other noted that CMAQ funds are available from the Department of Transportation and that other Federal funds are available to help finance alternative fueled bus purchases. This commenter urged DOE to work with the Federal Transit Administration (FTA) and the Federal Highway Administration to secure the maximum available funding for urban transit bus projects.

In response to its question concerning what implementation schedule, if any, should be used for transit bus fleets, DOE received three comments advocating use of the schedule that is described in section 507(g) of EPAct, described above. One commenter called for an emphasis on fuel replacement, but offered no specific advice on how this objective should be accomplished. Eight comments suggested other schedules, mostly longer phase-in periods.

DOE's final question about a potential AFV mandate for urban transit buses concerned the types of exemptions and exclusions it should provide transit agencies. Three transit properties called for exemption of all urban transit bus fleets irrespective of size. One commenter said participation of urban transit bus fleets should be based not on acquisition numbers, but on annual fuel use. Three other transit properties said exemptions should be based on the cost-effectiveness and/or the technical applicability of alternative fueled urban transit bus operation for the fleet in question. Another commenter said that fleets with fewer than 100 buses should be exempted if an urban transit bus fleet rule were imposed.

B. Stakeholder Meetings—Fall 1998

In the Fall of 1998, DOE held a series of informal meetings with stakeholder groups to supplement the formal hearings held in conjunction with the ANOPR several months earlier. These meetings were held because DOE was interested in expanding the scope of regulatory options that it was considering and in gauging stakeholder reactions. At these meetings, DOE discussed the issues affecting the development of the NOPR, including DOE's processes, requirements, and

authority. In addition to giving them a forum to respond to the options presented, DOE offered stakeholders an opportunity to identify key barriers to increased use of alternative fuels and to suggest possible solutions. Invitees included fuel providers, fleets (both public and private), regulatory agencies, technology research organizations, vehicle fuel systems providers, consulting firms, vehicle manufacturers, and related associations and coalitions.

In connection with new stakeholder workshops, DOE developed several new potential regulatory options. These alternatives were raised as a way of soliciting comments on whether DOE could encourage or require fuel replacement in addition to or instead of requiring fleets to acquire AFVs. DOE developed these potential options because of its concern that simply adopting the fleet mandate authorized by section 507(e) and (g) would not result in a significant increase in alternative fuel use or petroleum replacement. This focus on fuel use was also a potential way of responding to sentiments expressed in comments DOE received during ANOPR process.

DOE developed these new options, in part, in response to the direction in EPAct section 507(a)(3) and 507(c) for DOE to evaluate "all actions needed to achieve [the replacement fuel] goals." This directive obviously did not limit the scope of DOE's analysis to only regulatory actions and policies that were within DOE's current legal authority to promulgate. As a result, DOE concluded that it should ask for comments on a number of different options without regard to whether those options or the other options commenters might offer were within DOE's statutory authority under EPAct.

DOE's concern about fuel use arose in part from its experience in implementing the mandate for State government fleets under section 507(o). Based on this experience, DOE believed that many State government fleets use alternative fuels a relatively small percentage of the time in their alternative fueled vehicles. With no requirement to use alternative fuels, many State fleets are acquiring FFVs and running them on gasoline. Many fleets prefer these vehicles because they have little or no incremental cost. At the same time, State fleets lack inducements to actually fuel their FFVs with alternative fuel. Reasons for this vary. For example, the existing infrastructure for ethanol is very localized and limited. Many States do not have any locations that provide ethanol. The ethanol industry is focusing its efforts on having ethanol blended into gasoline and RFG, and for the most part, has not focused on developing a widespread fueling infrastructure for E85. Additionally, ethanol, in general, costs more at the pump than gasoline. *See Alternative Fuel Price Report (www.afdc.doe.gov/documents/pricereport/pricereports.html).*

A few State fleets make substantial use of alternative fuel. These States tend to be those where natural gas and/or propane is abundant, or where the Governor has publicly committed to using alternative fuels, such as California, New York, Texas and West Virginia. These States also tend to acquire dedicated alternative fueled vehicles as a larger portion of their new acquisitions.

Because DOE's experience had shown that fleets will opt to fuel AFVs with gasoline or diesel rather than alternative fuels, DOE sought to identify ways to require or encourage local government and private fleets to use alternative fuel. DOE turned to the public comments it received in response to the ANOPR and on the proposed rule for the State and Alternative Fuel Provider Fleet Program. Commenters suggested a variety of ideas to DOE in these forums, including that DOE should mandate fuel use or provide credits for alternative fuel use. At the same time, a number of commenters stated that DOE does not have the authority to require fuel use. Many of the comments in favor of a fuel use requirement suggested that fleets should receive credits based on the amount of alternative fuel their vehicles used and that medium- and heavy-duty vehicles, because they use more fuel than light-duty vehicles, should receive multiple credits. Some commenters suggested that dedicated vehicles be awarded multiple credits or that dual-fueled vehicles should only receive half a credit.

No efforts were made during the meetings to achieve consensus. Meetings ranged in size from approximately 15 to 40 representatives in attendance, and included a reasonably representative cross-section of stakeholders. DOE identified representatives from stakeholder groups and invited them to attend the stakeholder meetings. In some cases, an individual representing multiple stakeholders was invited (such as from an association), while in other cases, an individual representing a particular interest was invited (such as from a single company or government organization).

The schedule for the meetings was as follows:

October 26, 1998—Private Fleets, Transit Bus Operators, and Medium-/Heavy-Duty Fleets
October 27, 1998—Local and State Government Fleets
October 28, 1998—Electric Utilities and Fleets
October 30, 1998—Liquid Fuel Providers
November 2, 1998—Natural Gas Fuel Providers, Propane Fuel Providers and Fleets

The meetings were held in Washington, DC. In addition, DOE held several informal meetings or discussions with automobile manufacturers outside of the stakeholder meetings, with the same purposes and information as the stakeholder meetings identified above. These consisted of the following:

October 6, 1998—American Honda Motor Company
October 29, 1998—Toyota Motor Corporation
November 9, 1998—Ford Motor Company
November 10, 1998—Chrysler Corporation
November 10, 1998—General Motors Corporation

DOE began each meeting by discussing the replacement fuel goals, the authority to modify these goals, the possible regulatory options for a fleet requirement rule, and the additional statutory authority related to urban transit buses. DOE also presented four regulatory options that were under consideration at the time. These options were:

Option #1—Proposing a rule based solely upon the AFV acquisition requirements identified within section 507(g);
Option #2—Including all elements of Option #1, but adding a requirement that the alternative fueled vehicles must operate on alternative fuels wherever available;
Option #3—Including all elements of Option #1, but adding a provision for the allocation of credits for actual use of replacement fuel; and
Option #4—Proposing a replacement fuel program, focused on reducing fleet petroleum consumption by requiring fleets to reduce their light-duty fleet petroleum consumption through the use of replacement fuel.

Most of the discussions at the stakeholder workshops focused on the specific approaches to developing a fleet rule. Some of the discussions also concerned to the replacement fuel goals.

Many of the comments made during these meetings were similar to those made during the ANOPR process. Private fleets cited barriers to increased alternative fuel use, including the incremental price of many AFVs, the lack of sufficient infrastructure, increased operational costs of AFVs, and the lack of established resale value for AFVs. Several commenters suggested ways of overcoming these barriers. Private fleets suggested providing incentives not only for the development of alternative fuels infrastructure, but for maintenance and training as well. Private fleets also favored imposing a moratorium on taxes of AFVs and/or alternative fuels.

Private fleets also suggested that DOE investigate the possibility of making certain requirements conditional upon market events. For example, if AFV or alternative fuel prices came down to a certain level or infrastructure developed to a certain point, AFV acquisitions or alternative fuel use could then be required.

Transit bus operators cautioned that their cost-effectiveness is closely tied to Federal Transit Authority funding policies. They also cautioned that anything that increases fares discourages overall ridership. For this reason, among others, transit bus operators opposed any mandates. Some stakeholders expressed support for including the transit bus industry in a private and local government fleet mandate. These stakeholders indicated that current new orders for alternative fuel transit buses are increasing. Some also indicated that transit buses are a very successful market niche for alternative fuels.

Medium- and heavy-duty fleet stakeholders favored establishing non-financial incentives at the local level and providing them to State and local government fleets alike. One suggested providing special curb access (non-ticketing zones) to alternative fuel delivery vehicles. These stakeholders generally believed that medium- and heavy-duty vehicles are a good fit for alternative fuel use, often better than light-duty vehicles. These stakeholders stated, however, that DOE should not require the acquisition of medium- and heavy-duty AFVs, but instead should provide credits for the use of alternative fuels by medium- and heavy-duty vehicles.

Local government attendees identified a number of barriers to alternative fuel use. They said they have trouble justifying incremental purchase and higher operating costs for AFVs, especially for governments with severe fiscal constraints. Conversions were generally viewed as a cost-effective alternative to OEM product offerings. In some cases, a mandate, if too costly, might impede some local government agencies from fully completing their core missions. Several local government representatives also said that the Federal Government must lead first, before local governments can be expected to follow.

Local governments offered a number of proposals to address barriers. While they saw financial incentives as critical to increasing alternative fuel use, a number of fleet managers also indicated their support for non-financial incentives. These included giving AFVs the right to use HOV lanes with and "green" parking spaces where AFVs would have receive preferential parking locations, possibly at reduced or no cost). Commenters also said that because heavy-duty vehicles use significantly more fuel than light-duty vehicles, their use should be strongly encouraged, and large numbers of credits should be provided for these vehicles (such as based upon a comparison of annual fuel use).

State representatives provided information both in their capacity as government agencies interested in pursuing certain societal goals (such as increased energy security or improved environment) and in their capacity as the owners of fleets operating under the current AFV acquisition requirements. State fleets asserted that there needs to be a more explicit tie between energy and environment among the Federal agencies. For example, States (and others) would like to receive EPAct credit for alternative fuels dispensed from stations they build. They pointed out that States could make use of alternative fuels and AFVs by private entities a condition of receiving State contracts. State fleets already regulated under DOE's existing regulations were interested in finding out if other AFV-related programs (such as those discussed above) could be available to them.

Electric utilities indicated that they would like to receive credits for putting infrastructure in place. They also expressed an interest in receiving credits for R&D commitments. Some of these commenters expressed the belief that many organizations (including the electric utilities) are acquiring vehicles slightly larger than 8500 GVWR limit for light duty vehicles so as to avoid acquisition requirements, and that these practices are causing greater petroleum use by these fleets. Others, however, thought that AFV acquisition requirements should be extended to medium- and heavy-duty vehicles, to provide manufacturers with a greater incentive to make these vehicles available as alternative fueled vehicles. They also said that increased competition in the electric industry is forcing many utilities to re-evaluate their electric vehicle (EV) programs, since they typically have not been cost-effective. This means that not only fleet purchases, but deployment, demonstration, R&D, infrastructure, and fleet assistance programs are coming under greater scrutiny.

Liquid alternative fuel providers and petroleum providers seemed to support an approach similar to option number 4, the replacement fuel/reduced fuel consumption approach. Overall, the oil industry asserted that there is little value in achieving a replacement fuel goal. These providers stated that there is a disconnect between projected or desired demand and actual demand for alternative fuels, which is seriously hindering development of the infrastructure. Fuel suppliers would also like to see some sort of credit for providing alternative fuel.

The natural gas and propane providers comprised the largest stakeholder group and raised many issues and concerns. These providers said option 4 provided the most flexible method for fleets to comply with a fleet rule, while also avoiding the situation of having dual-fueled vehicles not operating on alternative fuels. At the same time, several organizations said that an AFV acquisition program approach should not be completely abandoned.

Many attendees asserted that including medium- and heavy-duty vehicles within an AFV acquisition program would be advisable, for several reasons: First, they would present significant opportunities for using larger quantities of alternative fuels. Second, this would close off a perceived way around the requirements for fleets (eliminating the chance to avoid requirements through acquisition of vehicles above the 8,500 lbs. GVWR level). In addition, there was significant interest in adding requirements for transit buses, due to the current success in this market as well as their potential for large consumption of alternative fuel.

Most attendees felt that including any contribution from fuel efficiency would "water down" the contribution from alternative fuels, and was not really in keeping with the purpose of the alternative fuels portions of EPAct. At the same time, they felt it was important to keep the rule "wide open" for a variety of vehicle technologies, as well as for generation of credits by fleets that may not be covered.

Several stakeholders voiced strong opinions that no matter which approach is ultimately adopted, enforcement must be made an integral part of the program, and must be seen as a program priority. Otherwise, many fleets were likely to disregard the requirements.

Meetings and discussions with automobile manufacturers focused primarily upon presentation of DOE's authority, possible approaches, and issues. The manufacturers indicated their continuing interest in alternative fueled vehicles and their desire in being informed concerning development of the rule. As a whole, the automakers expressed interest in options that provided the maximum flexibility to the fleets. They also encouraged aggressive enforcement of the existing requirements for Federal, State, and alternative fuel provider fleets. Several automakers reemphasized that their corporate policies do not favor governmental mandates.

C. Public Workshops—August—September 2000

Pursuant to its Notice of Intergovernmental Consultation, DOE conducted three public workshops (Argonne, IL; Golden, CO; and Washington, DC) and solicited written comments from the public concerning the replacement fuel goals and a potential private and local government fleet program. *See* 65 FR 44987 (July 20, 2000). These workshops were held to ensure that the requirements of Executive Order 13132 (*Federalism*) (*See* 64 FR 43255 (August 10, 1999)) and DOE's statement of policy regarding intergovernmental consultation (DOE *Statement of Policy*) (*See* 65 FR 13735 (March 14, 2000)) were met. Under these directives, DOE must consult with State and local governments before issuing any proposed rule which would have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. To ensure that State and local government organizations had ample opportunities to respond, the first two workshops were limited primarily to those types of organizations, with Clean Cities coordinators also permitted. The Washington, DC workshop was open to all groups. A total of over 100 interested persons attended, and 28 sets of written comments were received. Neither EarthJustice nor any of the entities it represents in the lawsuit that resulted in the court order compelling the issuance of this notice filed comments in those proceedings.

Public workshops were held in Chicago, IL (August 1, 2000); Denver, CO (August 22, 2000); and Washington, DC (September 26, 2000). DOE once again took the opportunity to solicit input on a number of different options for implementing a private and local government fleet rule. Some of these options involved creative alternatives to the section 507(e) mandate that DOE acknowledged might require new legislative authority for their adoption. The options presented at these workshops included:

Option 1—No Regulatory Requirement for Local Government and Private Fleets is Proposed
Option 2—The Local Government and Private Fleet AFV Acquisition Program as Provided by Section 507(g) of EPAct
Option 3—The Fleet Rewards Program
Option 4—The Replacement Fuel Program
Option 5—Extension of Flexible Options to Other Fleets
Option 6—An Alternative Fueled Urban Transit Bus Acquisition Program as Provided by Section 507(k) of EPAct

The discussion that follows provides details concerning each of these options.

Option 1—No Regulatory Requirement for Local Government and Private Fleets Is Proposed

Under this option, DOE indicated that it could decide that no requirement for local private and local government fleets should be promulgated.

Option 2—The Local Government and Private Fleet AFV Acquisition Program as Provided by Section 507(g) of EPAct

Under this option, DOE would require certain private and local government fleets to acquire AFVs as a percentage of their new light-duty vehicle acquisitions starting with Model Year 2002. The program was envisioned to parallel the existing program for State and alternative fuel provider fleets.

DOE acknowledged that there were significant drawbacks to this option, primarily that it did not guarantee alternative fuel use or petroleum replacement. Because of the experiences with the similar programs for State and fuel provider fleets, as well as the Federal fleet, there was concern that this option would result in little actual alternative fuel use. DOE indicated that it had considered the option of promulgating a rule, based upon section 507(g), with a fuel use requirement, but stated at the time that it was doubtful that DOE had authority to require fuel use under section 507(g). For this reason, the options presented did not include a 507(g) rule with a fuel use requirement as had earlier been discussed as a possibility.

Option 3—The Fleet Rewards Program

Under this option, DOE would craft a regulatory program that encouraged fuel use. Although the local government and private fleet market is very large, imposing AFV acquisition requirements on this market would not necessarily result in the expansion of alternative fuel use, nor the complementary expansion of the alternative fuel infrastructure necessary to permit that expansion. DOE again reiterated its belief that section 507(g) does not require the fleets to use alternative fuel in the AFVs they acquire. DOE indicated that it was considering adoption of a Fleet Rewards Program to fill this gap. Under this option, fleets could meet the requirements of 507(g) directly (through AFV acquisitions), or opt into the Fleet Rewards Program under which they could meet their requirements through a combination of voluntary AFV acquisitions and alternative fuel use.

Under the Fleet Rewards Program, the number of light-duty vehicles acquired by a fleet in a model year would still serve as the basis for determining the potential proposed rule's requirements. As under the prior option, a specific percentage of the light-duty vehicles each covered fleet acquired would have to be AFVs. However, the Fleet Rewards Program would differ by allowing a fleet to take specific actions, called AFV-Equivalency actions, to achieve compliance with its AFV acquisition requirements while also encouraging the use of alternative fuel. Specifically, a fleet would receive AFV-Equivalency Credits for any size and class of AFV it acquired, and for each 500 gasoline gallons equivalent (GGEs) of alternative fuel it consumed. Each AFV acquired by a fleet, regardless of size or class, would earn an AFV-Equivalency Credit. Each discrete use of 500 GGEs of alternative fuel would also earn an AFV-Equivalency Credit. Two AFV-Equivalency credits would be allocated for the acquisition of dedicated AFVs. The operation of an existing dedicated AFV in a fleet would also be eligible for AFV-Equivalency Credit.

Option 4—The Replacement Fuel Program

For Option 4, DOE stated it was considering whether to design a program different from the 507(g) acquisition requirements, that was more tailored to achieving the overall goals of displacing petroleum through use of replacement fuel. Such a program might avoid the shortcomings of EPAct's existing approach toward fleets, which solely focuses on acquiring AFVs, but not on the use of alternative fuel.

The Replacement Fuel Program would require fleets to reduce their light-duty vehicle petroleum usage by increasing the percentage of replacement fuel used by their light-duty vehicles. In order to use a sufficient amount of replacement fuel, fleets would eventually need to acquire AFVs, even though AFV acquisitions themselves would not be specifically required. DOE proposed a possible compliance schedule that included certain percentages, which represented the portion of a fleet's light-duty fuel use that would have to be replacement fuel. The required replacement fuel portion of a fleet's light-duty vehicle fuel use would eventually rise to 50 percent. Another option that was presented included adopting a schedule that would rise to a maximum of 70 percent, which is the same as the top AFV acquisition percentage requirement set forth in section 507(g).

As with other fleet programs, this option would include a credit program allowing fleets to bank or trade credits. However, since the Replacement Fuel Program would not be restricted to the credit program currently in place for State and alternative fuel provider fleets, the program could be designed to provide fuel providers with replacement fuel credits for installation of refueling stations, which they could then sell to organizations with requirements under the Replacement Fuel Program. Under this approach, there would also be a new opportunity for fuel blends to have a key role, since blends of replacement fuels with conventional fuels would greatly assist fleets in meeting their requirements. This option could include extending credit generation to non-covered fleets or to the general public.

Option 5—Extension of Flexible Options to Other Fleets

Participants in the stakeholder groups discussion repeatedly asked DOE whether any of the optional program concepts (such as the Fleet Rewards Program) could be extended to fleets currently operating under the Alternative Fuel Transportation Program. The two types of fleets currently covered by this program are State government and alternative fuel provider fleets.

Section 507(o) of EPAct required that DOE promulgate a rule requiring State fleets to acquire specified percentages of AFVs. The State program acquisition requirements started in model year 1996 (ultimately modified to 1997) with percentages increasing through model year 2000 (modified to 2001) to a maximum of 75 percent. Because EPAct section 507(o) makes the State fleet AFV acquisition mandate program mandatory, DOE does not believe that it could extend the Fleet Rewards Program concept to State fleets.

Likewise, section 501 of EPAct required DOE to promulgate a rule covering alternative fuel provider fleets. Again, the language in this section made it clear this was a mandatory program. Section 501 specifies an AFV acquisition program, with requirements starting in model year 1996 (modified to 1997) and increasing to 90 percent or more of new acquisitions in model year 1999 (modified to 2000) and thereafter. Congress also provided one additional requirement on alternative fuel providers which was not imposed on any other fleet type: that their AFVs must operate on alternative fuels wherever the fuels are available. DOE believes it would be inappropriate to allow alternative fuel provider fleets to receive credits for using alternative fuels when they are already required by statute to do so.

The Fleet Rewards Program option would only allow covered fleets to earn credits. The Replacement Fuel Program, on the other hand, would allow non-covered fleets to earn credits to provide additional flexibility, encourage additional persons to use alternative fuels, and possibly increase the overall use of alternative fuels.

Option 6—An Alternative Fueled Urban Transit Bus Acquisition Program as Provided by Section 507(k) of EPAct

This option was previously discussed with stakeholders and in the ANOPR. DOE again solicited comments on whether it should adopt a fleet rule that included urban transit buses, as authorized under section 507(k) of EPAct. DOE offered several different options for how transit operators could comply with a fleet requirement. One possible option would require that a portion of new bus acquisitions be alternative fuel buses, with percentages requirements similar to those contained in section 507(g) or perhaps rising to a maximum of only 50 percent. Another possible option would allow urban transit bus operators the opportunity to "opt into" the Fleet Rewards Program as an optional compliance path. Under this approach, urban transit bus operators might receive credit both for acquisitions of AFVs and for alternative fuel use. As with the light-duty vehicle program, the bus program would include a fair and appropriate AFV-Equivalency Credit program.

DOE also discussed a Replacement Fuel Program for urban transit bus fleets. DOE requested comments on whether urban transit bus operators should have a separate Fleet Rewards or Replacement Fuel Program, or whether it should be a subset of a possible Fleet Rewards or Replacement Fuel Program for private and local government fleets.

Summary of Workshop Proceedings

The first workshop was held on August 1, 2000 in Chicago, Illinois. Representatives from State government, city governments, and Clean Cities coalitions located in Illinois, Wisconsin, and Indiana were the primary attendees.

Representatives at the workshop generally agreed that DOE should take steps to increase use of alternative fuels and reduce dependence on petroleum imports. A number of organizations indicated that additional efforts to promote the use of alternative fuels would likely not occur without government action. A number stated that many of the voluntary programs to promote use of alternative fuels have been developed in anticipation of new mandates. These organizations said that without additional mandates from DOE these efforts would stall.

Representatives generally agreed that whatever mechanism DOE selects needs to be flexible and focus on fuel use. There seemed to be slightly more support for a fleet rewards-type concept, certainly more than for a straight 507(g) AFV acquisition mandate. The Replacement Fuel Program option also generated considerable interest and prompted many questions. Attendees also thought that DOE should gradually phase in any option it might select, whether requirements for private fleets could be promulgated separately from requirements for local government fleets, since the situations of private and local government fleets are very different.

Some attendees at the workshop expressed concern about the level of refueling infrastructure—both its current and future availability, and what it will take to encourage the necessary investments by fuel retailers. Representatives from areas with relatively little refueling infrastructure were concerned about options focused on fuel use. Ethanol was singled out as a concern—there are many FFVs that could operate on it, but very few stations, and fuel cost has been high.

Some commenters indicated that fleets are moving away from central refueling, which may make fuel records difficult to obtain for fuel use-based programs. In addition, even centrally-fueled fleets often do not keep records on a vehicle-by-vehicle basis, and therefore it may be difficult to determine which fuel is used in a light-duty vehicle and which in a medium-or heavy-duty vehicle. Commenters also continued to express concerns about vehicle availability.

A number of local government organizations (especially cities) said

their fleets likely would oppose a mandatory program. Other organizations expressed significant concern that private fleets, and their representatives, would fight any requirements (including through court challenges). Other representatives indicated that DOE should simply "get on with it," whatever DOE should decide to do.

Organizations not supporting mandates stated that they supported incentives instead of mandates. Despite the fact that no large source of funds was expected to be available from DOE, organizations asked for DOE's assistance in applying for funds from other sources (*e.g.*, CMAQ funds). In addition, several organizations indicated that incentives must be large enough to make them worth pursuing because small grants simply are not worth the time and expense required to secure them.

Some attendees expressed interest in extending flexible options to other fleets, although there was concern regarding the administrative burden this would place on DOE and whether DOE would be able to obtain sufficient funding to implement such a program properly. Some attendees also expressed interest in transit buses, especially given their success as a niche market for alternative fuels, but most attendees acknowledged they could not provide detailed input on this issue.

The second workshop was held in Denver, Colorado on August 22, 2000. Representatives from State governments, city governments, and Clean Cities coalitions, plus one municipal utility attended. The largest number of representatives were from Colorado, but representatives from California, Louisiana, Kentucky, Kansas, Oklahoma, Arizona, Washington, Oregon, and Missouri attended as well.

As at the Chicago workshop, the consensus was that DOE should take additional actions to increase demand for alternative fuels and to reduce petroleum imports. Additionally, attendees felt that energy goals (and any requirements that might grow out of them) needed to be closely tied to environmental goals, such as those from the Clean Air Act Amendments (Pub. L. 101–549). Attendees said that incentives were the key to building necessary infrastructure. Conversely, tax credits were viewed as too complex and of no real assistance for government fleets. One Clean Cities coordinator pointed out that a number of fleets joined the coalition because of potential future mandates, and that without additional mandates it was unlikely that fleets would continue to be interested in alternative fuels. Participants echoed the sentiment from the first meeting that regardless of which requirements are imposed, they should ramp up slowly to allow fleets time to plan their acquisitions or determine how to obtain fuel. Attendees again expressed concerns about the necessary infrastructure—not only the number of refueling sites but also maintenance and training requirements for stations as well as actually being able to reliably find the correct fuel. There was some frustration with the level of investment by fuel providers.

Attendees generally favored the Replacement Fuel Program and the Fleet Rewards Program, the latter receiving the most support. There was general support for extending credits to non-covered fleets. Fleets already covered under the existing State and Alternative Fuel Provider Programs expressed an interest in participating in either the Replacement Fuel Program or the Fleet Rewards Program. A common theme was that fuel use should be encouraged or required. A very small number of attendees opposed any kind of new mandate. Several representatives addressed transit buses, emphasizing local air quality issues and the benefits of using alternative fuels in transit buses. Several attendees felt that there would be more overall support for a new regulatory program if transit buses were included.

There was some general concern with the technical performance of AFVs. Many of these concerns were associated with earlier generation vehicles, including conversions. However, several commenters noted that there also had been problems with vehicles offered by OEMs.

The last workshop was held in Washington, DC on September 26, 2000. Unlike the previous two workshops, attendees included not only representatives from State, city governments, and Clean Cities coalitions, but also from nongovernmental entities including transit operators, alternative fuels associations, vehicle manufacturers, fleet associations, and fuel providers.

A number of attendees made specific points about the replacement fuel goals. Some said the replacement fuel goals covered by sections 502 and 504 of EPAct were important to determining what path to take. Several attendees indicated that more data and analysis were required in order to make decisions. Others said it would be arbitrary for DOE to set a revised goal in the absence of this information. Some attendees identified the need for an overall plan incorporating all regulatory and voluntary programs and others suggested that a coordinated approach for implementation of programs between State, local, and Federal Government efforts is very important. For example, many participants believed DOE should be working more closely with EPA.

Certain representatives asserted that environmental drivers for alternative fuels, while still important in the near-term would diminish in the future as petroleum vehicle technologies become cleaner. Attendees said flexibility was key element of all programs. Several attendees stated that they were looking to DOE to display leadership with respect to alternative fuels. Attendees had differing opinions on the subject of efficiency and its role within the goals and under fleet programs. Some felt that programs should address both efficiency and alternative fuels. Others felt that efficiency was not addressed within Title V of EPAct and therefore was outside of DOE's authority. Some attendees asserted that alternative fuel use would displace more petroleum than efficiency measures, at least on a per-vehicle basis.

The Washington, DC attendees also discussed the subject of barriers to greater utilization of alternative fuel and replacement fuel. First, they identified the following overall barriers: Vehicle incremental purchase costs, vehicle reliability and range, fuel costs, public/private education and awareness, and infrastructure. Second, concerning vehicle costs, several participants indicated that it might help if they could use the General Services Administration buying schedule, or if all fleet purchases could be "bundled" to reduce costs through larger acquisitions. Third, attendees wanted DOE to work more closely with OEMs to ensure that AFVs meet covered fleet demand for performance, range, reliability, and design. For example, several fleet managers asserted that OEMs adding tanks in pickup beds to increase range was unacceptable, since it reduces pickup bed utility. R&D was also highlighted as a key need, especially since the OEMs are still spending many times more on R&D to improve petroleum-fueled vehicles than AFVs. Fourth, within infrastructure, attendees identified refueling availability and reliability, the need for trained technicians, maintenance facility costs, and the ability to have vehicles maintained at convenient facilities as key issues. Several fleet managers asserted that their costs would rise if a fleet AFV acquisition mandate were promulgated, not only because of increased costs to meet the vehicle or fuel acquisition requirements, but also for increased costs of maintenance and

to conduct planning and reporting. Fifth, attendees generally agreed on the need for incentives to help offset the costs of moving toward alternative fuels, especially the costs of infrastructure. Some stated that incentives should be adopted instead of mandates, while others said incentives were useful in conjunction with mandates.

The attendees at the Washington, DC workshop also raised issues concerning education and outreach needs. First and foremost they saw, education and outreach programs as key activities, whether or not a fleet rule is proposed. They identified a major need to provide information to fleet operators and decision-makers. Second, they stated that education of personnel is also now more complicated, because of the need to train them on the aspects of complex, computer-controlled vehicles. Third, attendees asserted that most of the public does not understand the true affect of oil use, and how individual actions impact the Nation's energy security. Attendees argued that the general public hears about supply issues, but not about demand. They asserted that large vehicles (like sport utility vehicles and full-size pickup trucks) are often not actually needed by the drivers using them, but that the OEMs are selling these vehicles in large numbers. Attendees argued that until the general public understands the impacts of oil use, support for higher budgets (such as for local governments or incentives) to help AFV programs, and changes to the relative economics of oil and alternative fuels is unlikely.

In contrast to the attendees at the first two workshops described above, attendees at the Washington, DC workshops had widely differing opinions on possible regulations. This wide divergence of opinions was primarily was due to the unrestricted attendance at the Washington workshop.

While a number of attendees supported some form of regulatory action by DOE, several not only had a negative view of mandates, but also asserted that because of the substantial legal issues presented, virtually any mandate by DOE would be met with litigation. Of those who supported regulatory action, most supported a Replacement Fuel Rule, with some stating that the Fleet Rewards Program should be a fall-back position. Most attendees supported a flexible approach that focused on fuel use, and felt that vehicle acquisition programs do not result in alternative fuel use. Several commenters felt that unless DOE moved forward with some regulatory action, it would be sending a message that replacing petroleum is not important.

Several attendees were interested in whether private fleets could be separated from local government fleets, so that different requirements could be imposed on each. Several State government representatives discussed the relationship between a potential private and local government rule and the existing fleet regulations because they were interested in opting into a Replacement Fuel Rule or Fleet Rewards Program.

Attendees said enforcement of existing and future fleet programs was an issue. For any regulations put in place, commenters asserted that DOE must be committed to enforcing them to ensure that the program goals are being achieved.

Summary of Written Comments

DOE received 28 sets of written comments in response to the notice for intergovernmental consultation, from equipment suppliers, local governments, alternative fuel organizations, Clean Cities coalitions and coordinators, and fleet management and leasing organizations, among others. These comments in many respects echo the remarks made at the three workshops. Some important themes run through these comments, and are summarized below.

While most comments focused almost exclusively on a potential fleet requirement rule, a few key addressed the replacement fuel goals. A representative from a conversion company asserted that reducing the use of petroleum is important, and that incentives are needed for natural gas companies to provide public stations. The representative also stated that grants are needed for stations and equipment, but organizations trying to move things ahead are being penalized by matching requirements. One local government representative submitted a similar statement, arguing that DOE should focus on reducing the financial burden on fleets from AFV acquisition programs, through additional grants for vehicles and refueling infrastructure.

An alternative fuel association representative stated that EPAct's energy security objectives are not being met under current conditions. This representative felt that the present regulatory framework is not effective in displacing petroleum, and that DOE should reform existing fleet programs by adding greater flexibility and multiple options. The representative also believed that DOE must realize EPAct's replacement fuel goals cannot be achieved solely through AFV acquisitions and alternative fuel use by private and local government fleets. This representative supported adoption of financial and non-financial incentives, including tax incentives and grant programs, especially for infrastructure.

A representative for Clean Cities coalitions stated that its chapters strongly support fuel-neutral incentives. This representative said its chapter were working toward an initial appropriations target of $25–30 million to support AFV acquisitions, infrastructure construction, and educational programs. This additional funding would be used to increase alternative fuel use.

One Northeastern State asserted that not achieving the replacement fuel goals set forth in EPAct is a function of policy limitations, not potential. The State said fleets are acquiring FFVs and dual-fuel vehicles, and thus gaining the capability of using alternative fuels, but operating them on gasoline. The State felt that DOE should keep the 30 percent by 2010 replacement fuel goal in EPAct.

The U.S. Conference of Mayors, an association representing potentially-covered fleets, stated that it strongly supports policies to promote use of alternative fuels, but does not support mandates. It suggested that DOE work with communities to support the use of alternative fuels. It also suggested that DOE work with EPA to develop a comprehensive policy integrating clean air objectives and EPAct goals. Its members adopted a resolution supporting reducing dependence on imported fossil fuels and increasing fuel diversity, as well as one indicating that widespread use of alternative fuels provides air quality, economic, and national security benefits. It said that Clean Cities has not provided sufficient funding to support widespread promotion and implementation of alternative fuel programs. Further, the resolution indicated that community leaders are committed to actively implementing AFV projects if adequate resources are available, and that the organization supports making alternative fuels a priority for the Nation, but calls upon the Federal government to provide sufficient funds. In addition, the National League of Cities expressed the concern that the proposals presented did not include sufficient information concerning costs to local governments and availability of infrastructure.

An association representing vehicle dealers indicated that a successful local government or private fleet AFV acquisition program needs to try to reduce the cost differentials between

AFVs and powered vehicles for cost-sensitive fleet buyers. This could include tax credits, grant funding, access to Federal acquisition pricing, and an expansion of allowable vehicles to include hybrids. Cost and performance are key considerations for fleets, and alternative fuels must be comparable to, if not better than, conventional fuels. The association said that most available alternative fuels do not meet these criteria. Therefore, it opposed new mandates because there are still too many barriers to increased use of alternative fuels to make an AFV acquisition mandate practicable. The association suggested that DOE could scale back Clean Cities to focus on niche market fleets selected for high likelihood of success and reproducibility. The association said resale value of used AFVs was a big issue to dealers, who are the largest purchasers and resellers of used fleet vehicles. If AFVs are not well-accepted by the market, the impact on dealers could be disastrous, according to the association. It said that DOE should assist in guaranteeing a resale value floor.

A member of an association of State fleet administrators suggested that programs need to provide incentives or accommodation for future technologies and current emerging technologies, especially high fuel economy vehicles. The commenter strongly urged a restructuring of the basic legislation to allow flexibility to recognize technologies that achieve the objectives of EPAct and the Clean Air Act Amendments.

A large city government suggested creation of a voluntary incentive-based program, although it cautioned that DOE needs to determine whether this would meet DOE's objectives under EPAct. It felt that DOE needs to conduct cost and operational impacts analyses and seek long-term Federal funding to offset costs for local governments for operation and maintenance, repair facility retrofits, land acquisition, staffing, etc., and that DOE should also coordinate efforts with EPA. Specifically, it stated that DOE needs to assist local governments concerning technical issues, such as vehicle availability, performance, operational limitations, health and safety requirements, as well as lack of fueling infrastructure.

One fuel producer asserted that if DOE chooses to seek to increase the use of alternative or replacement fuels through funding, it should be done in a fuel-neutral manner, providing equal funds for all alternative/replacement fuel. Under this approach, if a fuel does not require funding for refueling infrastructure, funds could be used to increase production. A Midwestern State argued that the two most critical aspects of reducing petroleum consumption are having AFVs available that meet consumer needs at prices comparable to conventional vehicles, and having alternative fuels readily available at prices comparable to conventional fuels. The State did not view raising the price of petroleum to high levels as the answer. From a fleet perspective, the State said efforts to provide incentives to manufacturers and fuel providers have not worked well, since the availability of vehicles and fuels is still relatively low and has grown very slowly.

A second alternative fuel provider association voiced its preference for a comprehensive package of incentives that would encourage, not require, private fleets to use AFVs and alternative fuels. It also argued that energy security is an important national priority, and that the U.S. will not be able to protect itself from future oil supply disruptions unless it offsets petroleum demand with alternative fuel use. The association also asserted that more efficient vehicles were no substitute for AFVs in this regard. "Even if more efficient vehicles were available in large numbers, it would take many years for them to replace the existing fleet of vehicles and have an impact on petroleum consumption * * *. Efforts to increase efficiency should be encouraged but should not be used to undermine the basic goal of Titles III–V of EPAct: replacing petroleum motor fuels with the use of alternative fuels."

This trade association also believed that the EPAct goal of 30 percent replacement fuel use by 2010 was a high requirement, but that it is an important goal that should be retained. It commented that the markets covered by EPAct are too small, especially since medium- and heavy-duty vehicles are excluded, and are thus insufficient to create economies of scale that would cause vehicle owners not subject to an acquisition mandate to participate. In addition, it said that the government has been slow to enforce existing programs. It also mentioned FFVs as a problem, since due to the higher price of the fuels, there is no incentive for operators to use anything but gasoline. The association asserted that financial incentives would be key, especially to encourage voluntary alternative fuel use. It suggested that these could include tax incentives, increased funding for infrastructure projects, and a competitive grant program. It also said that market development, including building up international markets, identification of key market sectors, and coordination of AFV acquisitions among all types of government fleets should be pursued. Air quality and energy security criteria should be applied when providing Federal grants, and States should receive State implementation plan (air quality) credits for AFV programs. In addition, the trade association argued that funding for alternative fuel R&D is also required to improve vehicle efficiency, reduce emissions, reduce the cost and improve the reliability of fueling infrastructure, and demonstrate AFV systems in new applications. It said that education and outreach were required to improve public awareness of alternative fuels and their benefits.

One Western State stated that a number of efforts should be pursued to reduce the barriers to alternative fuel use. For example, it said that the Federal Government should work with local organizations to more fully utilize existing refueling stations. It said that the Federal fleet should not put large numbers of ethanol FFVs into States where there is no ethanol refueling. Along with a county board of commissioners from another Western State and a California coastal city, it also encouraged DOE to improve grant programs, encourage legislation to help fleets for whom tax incentives do not work, encourage development of highly fuel-efficient vehicles, encourage the use of new technologies (*e.g.*, hybrid vehicles), provide recommendations to Congress for encouraging use of AFVs and alternative fuels by the public, change current programs to be fuel- rather than AFV-based, and establish a reward program for organizations that exceed their requirements.

A small Eastern State's agriculture department stated that it has been working with soybean organizations to support use of biodiesel in its State. It believed that the future of U.S. agriculture depends upon increasing the utilization of the Nation's renewable resources and that DOE should consider options that benefit the use of agricultural-based fuels, which can help energy security, the environment, and the agriculture sector.

The fleets that would be potentially covered by new regulations were overwhelmingly opposed to the adoption of mandates. Most fleets expressed their support for alternative fuels but said that they have limited funding to pay for the added costs of many (especially local governments) such requirements. These fleets supported using incentives to encourage increased use of alternative fuels. A number of State representatives

expressed their interest in being included in a Replacement Fuel or Fleet Rewards Program. These fleets generally thought that it would be unfair and impracticable to set up two separate programs, one for covered State fleets, and another new one covering local government fleets.

At least one commenter expressed an interest in drastically reworking the existing EPAct fleet programs in order to provide credits for infrastructure investments. Several commenters favored providing credits for petroleum-fueled hybrid electric vehicles. Most commenters supported a Fleet Rewards or Replacement Fuel Program. Very few commenters were in favor of adopting a fleet program of the type set forth in EPAct section 507(g) (*i.e.*, an AFV acquisition only mandate). In fact, a number of commenters suggested that such a program would not result in significant petroleum replacement.

Several comments addressed enforcement and potential loopholes. One commenter asserted that if DOE is not serious about enforcement it should not adopt new mandates. It also noted that fleets could break up their fleets into smaller units or develop employee vehicle ownership programs as a way of avoiding the mandates. Several comments questioned DOE's authority to promulgate any new regulations. One comment noted that EPAct's deadline for promulgating a private and local government fleet rule had lapsed.

Only one organization addressed the issue of whether DOE had the legal authority to adopt a Fleet Rewards or Replacement Fuel Program. That organization asserted that DOE had authority under section 502 of EPAct to promulgate a Replacement Fuel Program but did not have that authority under section 507(g). The comments appear to assert that DOE has authority independent of section 507(g) to require fuel use regardless of the fleets that are covered.

D. November 2002 Meeting

In November of 2002, representatives of the National Association of Fleet Administrators (NAFA) met with DOE officials to express their views on the private and local government fleet rulemaking. DOE stated at that time that it was working on a draft. NAFA representatives stated that its members are opposed to additional mandates, including requirements to purchase AFVs. With respect to the replacement fuel goal, NAFA expressed concern that DOE would establish a replacement fuel goal that would not accomplish any societal objective or any of the stated objectives of EPAct, but that was gerrymandered so that it would serve as the basis for DOE to establish an AFV acquisition mandate for private and local government fleets.

III. Private and Local Government Fleet Determination

A. Statutory Requirements

EPAct section 507(e) directs DOE to determine whether private and local government fleets should be required to acquire AFVs. In this respect, the rulemaking process for the private and local government fleet rule is very different from the previous rulemaking on the State government and alternative fuel provider fleet rule. In the case of the State government and alternative fuel provider fleet rule, DOE was not required to make any findings in order to promulgate a fleet rule. The determination of whether to adopt regulations for private and local government fleets, however, is conditional and depends on DOE first making several critical findings. Regulations covering private and local government fleets, if adopted, would in other respects likely be similar to those already in place for State government and alternative fuel provider fleets. As described above, these regulations essentially require that a percentage of a covered fleet's annual acquisitions of light-duty vehicles must be AFVs. *See Alternative Fuel Transportation Program*, 10 CFR Part 490. Section 507(g) sets forth a tentative AFV acquisition schedule for private and local government fleets should DOE establish such a program.

Section 507(e) sets forth the requirements for determining whether a private and local government fleet program is "necessary." Section 507(e)(1) states that:

> * * * Such a program shall be considered necessary and a rule therefor shall be promulgated if the Secretary [of Energy] finds that—(A) the goal of replacement fuel use described in section 502(b)(2)(B), as modified under section 504, is not expected to be actually achieved by 2010, or such other date as is established under section 504, by voluntary means or pursuant to this title or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 502(b)(2)(A), as modified under section 504; and (B) such goal is practicable and actually achievable within periods specified in section 502(b)(2), as modified under section 504, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals. (42 U.S.C. 13257(e)(1))

The question addressed in this portion of this **SUPPLEMENTARY INFORMATION** is whether a fleet rule is "necessary" under the section 507(e) standard. DOE believes that a determination of whether a fleet rule is "necessary" depends on the following factors: The amount of replacement fuel use that would result if such a program would adopted (*i.e.*, whether it provides more than a very small percentage contribution to overall U.S. use of replacement fuels in motor vehicles); the level of certainty about the contribution such program might make; whether the replacement fuel use resulting from such a fleet rule could be encouraged through other means, including voluntary measures; and whether certain necessary market conditions (*e.g.*, whether alternative fuel and suitable AFVs are sufficiently available) exist to support a new fleet rule.

B. Rationale for the Private and Local Fleet Determination

Statutory Limitations

As described above, while EPAct authorizes DOE to mandate certain vehicle acquisitions, it severely limits the universe of fleets that would be covered by a private and local government fleet mandate, thus limiting the replacement fuel use that would result from such a program. The definition for "fleet" in EPAct section 301(9), (42 U.S.C. 13211(9)), limits coverage to large, centrally-fueled fleets located in major metropolitan areas. Only those fleets that operate or own at least 50 or more light duty vehicles may be considered for coverage. In addition, the definition of fleet specifically excludes from coverage a number of vehicle types and classes (*e.g.*, rental vehicles, emergency vehicles, demonstration vehicles, vehicles garaged at personal residences at night, etc.). Vehicles that tend to use larger amounts of fuel, medium- and heavy-duty vehicles, are also excluded from coverage.

Even for potentially covered fleets, EPAct section 507(i) provides several opportunities for regulatory relief through exemptions for non-availability of appropriate AFVs and alternative fuels. Specifically, any private and local government fleet rule "shall provide for the prompt exemption" by DOE of any fleet that demonstrates AFVs "that meet the normal requirements and practices of the principal business of the fleet owner are not reasonably available for acquisition," alternative fuels "that meet the normal requirement and practice of the principal business of the fleet owner are not available in the area in which the vehicles are to be

operated," *or* for government fleets, if the requirements of the mandate "would pose an unreasonable financial hardship." Section 507(a)(3) further reinforces these exemptions: "Nothing in [Title V of EPAct] shall be construed as requiring any fleet to acquire alternative fueled vehicles or alternative fuels that do not meet the normal business requirements and practices and needs of the fleet."

Taken together, these statutory exemptions would likely dramatically lower the number of fleets and fleet vehicles subjects to a private and local government AFV acquisition mandate. The provision concerning state and local government might not be implicated by a majority of otherwise covered government fleets, since in times when local government budgets are particularly stretched and many local governments are required to cut services or raise taxes to maintain existing levels of service, there will be greater likelihood that petitions for exemption from hard-pressed local governments would be granted. Even if DOE were disinclined to grant such petitions, the prospects that these petitions must be considered would create a "stop and go" quality about the local government portion of a private and local government fleet requirement program.

The ability of a private and local government fleet rule to affect petroleum consumption also depends, in significant part, on whether DOE can require covered fleets to use alternative or replacement fuels in addition to requiring that they acquire AFVs. DOE's experience with fleet programs demonstrates that vehicle acquisition requirements alone result in a relatively small (in the context of overall U.S. fuel consumption) amount of petroleum replacement. However, as will be explained below, DOE believes it does not have the authority, were it to promulgate a private and local government fleet mandate program, to require that the vehicles acquired use any particular fuel, including alternative fuels.

The only explicit requirement for fuel use in EPAct is contained in section 501, which extends only to alternative fuel provider fleets. Section 501(a)(4) states that "vehicles purchased pursuant to this section shall be operated solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable." Section 507, which concerns private and local government fleets, does not contain a similar provision, nor does it contain a provision either authorizing DOE to mandate fuel use or explicitly prohibiting DOE from mandating fuel use. Therefore, DOE recognizes that it may be argued that section 507's silence leaves the issue of imposing a requirement to use alternative fuel open to DOE rulemaking authority.

However, DOE believes the more appropriate interpretation is that, because Congress specifically required use of alternative fuel in section 501(a)(4), but not in section 507, the omission was deliberate. As a result, DOE believes that Congress did not intend for DOE, when acting under section 507, to have authority to promulgate regulations containing a requirement that fleet vehicles use particular types of fuel.

Although this textual analysis is sufficient to support DOE's determination that it should not impose a fuel use requirement under section 507(e) and (g), it also is worthwhile to revisit Congressman Philip Sharp's remarks when he called up the conference report on EPAct for House approval. Congressman Sharp was one of the key architects of EPAct, and the floor manager for the bill in the U.S. House of Representatives. Congressman Sharp said:

> Under section 501, covered persons must actually run their alternative fueled vehicles on alternative fuels when the vehicle is operating in an area where the fuel is available. This requirement was not included in the fleet requirement program under section 507, because the conferees were concerned that the alternative fuel providers might charge unreasonable fuel prices to the fleets that are not alternative fuel providers if such fleets were required to use the alternative fuel.

138 *Cong. Rec.* H11400 (October 5, 1992).

Thus, Congressman Sharp's floor statement is fully consistent with DOE's interpretation that it does not have statutory authority to mandate fuel use under a section 507 fleet program, and that in enacting section 507, Congress specifically intended to withhold that authority from the agency.

Finally, DOE is also limited in its authority to affect other market behavior. Section 504(c) precludes DOE from promulgating rules that would:

> * * * mandate the production of alternative fueled vehicles or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles subject to this Act. Nothing in this Act shall be construed to give the Secretary authority to mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels.

[42 U.S.C. 13254(c)]

These limitations severely restrict DOE's opportunities to affect the use of replacement fuel, or to establish the market conditions necessary to support a private and local government fleet rule.

In addition to all of these provisions, Congress furthermore enacted a petition provision in section 507(n). That section provides:

> As part of the rule promulgated * * * pursuant to subsection * * * (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program * * * nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet the needs of a fleet. In the event that the Secretary determines that a modification or suspension of the fleet requirements program on a regional basis would detract from the nationwide character of any fleet requirement program established by rule or would sufficiently diminish the economies of scale for the production of alternative fueled vehicles or alternative fuels and thereafter the practicability and effectiveness of such program, the Secretary may only modify or suspend the program nationally. The procedures shall include provisions for notice and public hearings. The Secretary shall deny or grant the petition within 180 days after filing.

(42 U.S.C. 13257(n))

Thus, even if DOE had authority to require alternative fuel use or could adopt an approach that awarded credits (*e.g.*, Fleet Rewards) for fuel use, the "normal requirements and practices" provisions in sections 507(i)(1) and 507(g)(3), described above, and the petition procedure for modification or suspension of a fleet requirement program under section 507(n), would likely result in many fleets potentially covered by the fleet rule in the first instance being able to obtain relief from the rules requirements.

Consequently, it is fair to say that there is an unusually high degree of regulatory uncertainty built into Title V of EPAct, and that Congress has substantially limited the effectiveness of any fleet program that might be promulgated under section 507. The nature of the exemption and petition procedures and the associated regulatory uncertainty would undermine the potential effectiveness of a regulatory mandate to purchase significant numbers of alternative fueled vehicles, and accordingly, support today's proposed finding that a private and local government fleet requirement program would make no appreciable contribution to actual achievement of any replacement fuel goal and therefore is not "necessary" under the section 507(e) standard.

Analysis of Potential Replacement Fuel Use

The limitations on the potential contributions of a private and local government fleet program identified above are supported by analyses conducted for and by DOE. In both *Technical Report 14* and the *Section 506 Report*, estimates of the potential replacement fuel use from a private and local government fleet program were very similar. *Technical Report 14* estimated total fuel use from all EPAct fleet programs to be approximately 1.2 percent of U.S. gasoline use (p. 63, Table III–21). The *Section 506 Report* was only slightly more optimistic, indicating that "[a]lternative fuel use by EPACT covered fleets, even with the contingent mandates for private and local government fleets, is unlikely to provide more than about 1.5 percent replacement fuel use * * *" *Section 506 Report* at p. 35 In either case, subtracting out the portion of replacement fuel use represented by the existing (Federal, State, and alternative fuel provider) fleet programs, would leave the potential private and local government fleet program contribution at closer to 1 percent. It should be noted that both reports chose to include calculations based only upon the percentage of light-duty fuel use, represented as solely gasoline at the time of these reports. Therefore, replacement fuel use from the private and local government fleet program when viewed as a percentage of all on-highway motor fuel use would be on the order of 0.7 to 0.8 percent.

Both the analyses in *Technical Report 14* and the *Section 506 Report* were conducted before DOE had much experience with implementation and operation of the EPAct fleet programs. This experience has shown that the number of fleets originally envisioned to be covered was far larger than actually occurred.

Estimates prepared by Oak Ridge National Laboratory indicated that approximately 380,000 AFVs would be acquired annually pursuant to the various AFV acquisition mandates in EPAct, if a private and local government fleet program were promulgated and once all EPAct programs reached their maximum mandated percentage requirements. (*See TAFV Model Report*, p. 25, and Technical Documentation of the Transitional Alternative Fuels and Vehicles TAFV Model, Model Version 1.0, ONRL, July 1997, table 10, pp. 32–33 (hereafter, *TAFV Documentation*)). More specifically, fleets covered by the current Federal Government, State Government, and Alternative Fuel Provider fleet programs were projected to require approximately 60,000 AFVs each year, while private and local government fleets were projected to require approximately 320,000 vehicles each year. Based upon replacement rates of 3 years for private fleet cars, 4.5 years for private fleet light trucks, and 6.75 years for all local government light-duty vehicles, this equates to a total covered fleet vehicle population of approximately 1.87 million light-duty fleet vehicles at the maximum AFV acquisition requirement of 70 percent.

The TAFV model, however, has proven to be incorrect for fleets currently subject to EPAct AFV acquisition requirements. That model estimated that the current EPAct fleet programs would result in approximately 60,000 AFV acquisitions annually, but DOE's experience with those programs shows that the covered fleets are acquiring closer to 20,000 to 25,000 AFVs per year. (*See* Federal Fleet and State and Fuel Provider programs at *http://www.ott.doe.gov/epact.*) Based on this experience, which DOE believes would likely be replicated with respect to private and local government fleets, the TAFV estimate of AFV acquisitions that would result from a private and local government fleet mandate probably is 2 to 2 ½ times the actual level of AFV acquisitions that would result. Thus, annual AFV acquisitions resulting from a potential private and local government fleet AFV acquisition mandate probably would be in the neighborhood of 130,000 to 160,000, with total covered light-duty fleet vehicles of approximately 750,000. Similarly, DOE's experience has also been that fleets not required to use alternative fuel often tend to acquire FFVs or bi-fuel vehicles, and operate them on gasoline. There is no reason to believe the results would be any different with private and local government fleets.

A more recent analysis, *The Alternative Fuel Transition: Results from the TAFV Model of Alternative Fuel Use in Light-Duty Vehicles 1996–2000* (ORNL.TM2000/168) (September 17, 2000) [hereinafter *TAFV Model Report*], *http://pzl1.ed.ornl.gov/tafv99report31a_ornltm.pdf*, appears to incorporate more realistic assumptions regarding these fleet programs. The *TAFV Model Report* states that, "In particular, over all of the price scenarios, we find that the [private and local government fleet] rule increases the alternative fuel penetration in 2010 from 0.12% (without the private and local government rule) to, at most, 0.37% [with a private and local government rule] of total fuel sales." *TAFV Model Report* at p. 28 Thus, this analysis placed contributions from the private and local government fleet rule at 0.25 percent. Again, as with *Technical Report 14* and the *Section 506 Report*, the percentages were based only upon fuel use by light-duty vehicles. Therefore, the contribution from a potential rule drops below 0.2 percent when compared against all on-highway motor fuel use.

Thus, a potential private and local fleet program under authority provided to DOE by EPAct would be expected to contribute, at best, an extremely small amount toward achievement of replacement fuel goals. Even without the statutory limitations in EPAct described above, such a contribution would still be very small.

Infrastructure and Fuel Availability

During the ANOPR and public workshops, a number of commenters expressed their concern that alternative fuel infrastructure was not adequate to support a private and local government fleet rule. Since that time, it is DOE's view that fuel provider investments in alternative fuel infrastructure have in fact slowed down. In the early 1990's, shortly after EPAct's passage, a significant number of natural gas and electric utilities entered the transportation fuels market, hoping to market alternative fuels to fleets subject to the Clean Air Act and EPAct. The number of alternative fuel stations, natural gas stations in particular, grew from little more than a handful to several thousand. The total number of alternative fuel stations, however, appears to have stalled or slightly declined in the past few years. *See* Department of Energy, Alternative Fuel Data Center, *Refueling Stations* (*http://www.afdc.doe.gov/refuel/state_tot.shtml*) (Dec. 2002) [hereinafter *AFDC Refueling Stations*].

Restructuring in the utility industry and the lack of demand for alternative fuels have played a part in the reduced role of utilities in the development of these facilities. Under existing fleet mandates and voluntary programs, electric utilities have expressed their discouragement at the lack of EVs on the road. A private and local government fleet rule probably would not appreciably affect that calculus given the small percentage of vehicles covered fleets would seek to operate on those fuels. Therefore, it is DOE's view that, if it were to adopt an AFV acquisition requirement for private and local government fleets, there is no assurance

or even any demonstrable likelihood that utilities would invest in the infrastructure needed to support these fleets.

The ethanol industry also has made only limited investment in building infrastructure for supplying E–85, the fuel used by ethanol FFVs, of which there are several million in service today. That industry has primarily focused its attention on supplying the gasohol and gasoline oxygenate market. DOE furthermore has concerns that if, in the future, the demand for ethanol blends increases as a result of market forces outside of any DOE mandate, there could be a lack of domestic ethanol to meet the demand for E–85. Today, there are only approximately 150 fueling outlets nationwide that provide E–85. *See AFDC Refueling Stations.*

Major energy suppliers, principally oil companies, have been unwilling to invest in the alternative fuels market (or they have actively opposed it) and instead have primarily focused their attention on ensuring that gasoline and diesel fuels meet current and future environmental regulations. Thus, DOE does not expect that the major oil retailers would install infrastructure necessary to support a private and local government fleet rule given the extremely small amount of replacement fuel use that likely would result from such a mandate; certainly that infrastructure is not in place now. This lack of infrastructure is likely to result in exemption requests and petitions to suspend any fleet requirement program DOE might impose under section 507(e), and DOE's granting of those requests.

Alternative Fueled Vehicle Availability

Automakers have for several years now offered some variety of AFVs, including passenger cars, light-duty pickup trucks and vans. The availability of these vehicles is in stark contrast to when EPAct was passed. In 1992, there were virtually no OEM vehicles available that operated on alternative fuel. Consumers and fleets had to have an existing gasoline vehicle converted by an aftermarket shop if they wanted an AFV. The AFVs that are available today are built by auto manufacturers for two primary purposes: (1) To meet the needs of the fleets currently subject to fleet mandates; and, (2) to provide credits to automakers that can be used to meet the corporate average fuel economy (CAFE) standards. Automobile manufacturers are awarded CAFE credits as an incentive develop a fleet of AFVs that will in turn lead to the development of infrastructure to support alternative fuel use. Manufacturers currently offer up to a million new FFVs each year. Other AFVs are available in significantly lower numbers, generally on the order of 10,000 per year.

DOE is concerned that if it adopts a requirement for private and local government fleets to acquire AFVs, there may not be an adequate supply of suitable AFVs available. The number of AFVs that likely would be acquired under a private and local government fleet mandate are, in DOE's view and based on the comments it has received, insufficient to create the market demand that would cause manufacturers to build sufficient numbers of AFVs, suitable for the covered fleets, at affordable prices. Under the existing State government and alternative fuel provider fleet programs, DOE has been obliged to provide exemptions to a number of fleets that are unable to acquire AFVs that meet their business needs. Unless automakers significantly expand their current offerings of AFVs, DOE likely would be forced to process and approve thousands of exemption requests each year.

Because EPAct expressly prohibits DOE from mandating the production of AFVs or to specify the types of AFVs that are made available, there is little that DOE can do, outside of the voluntary efforts already underway with vehicle manufacturers, to ensure that adequate supplies suitable of AFVs would be available.

Alternative Fuel Costs and Alternative Fuel Use

At the present time, the cost of some alternative fuels (such as biofuels) exceeds the cost of conventional motor fuel, and it is reasonable to assume that, absent changes in technology, in the supply of petroleum, or in policy as established by law, the price differential will continue and will influence fleet owners and operators for the foreseeable future. The likely effect of the price differential is predictable in light of DOE's experience in administering the State government fleet requirement program under section 507(o) of EPAct. Most State government fleets are acquiring significant numbers of FFVs and operating them lawfully using conventional motor fuels. Although this practice in part may be a function of lack of infrastructure, the fuel cost differential of ethanol is probably a significant contributing factor. There is no reason to assume that the result would be any different—and substantial reason to believe that the result would be exactly the same—if DOE were to impose a private and local government fleet requirement program under section 507(e).

Discussion of Previous Proposals

DOE considered but ultimately has decided not to propose a Fleet Rewards or Replacement Fuel Program, or any of the tax credit, tax incentive, or other programs discussed in the earlier stages of this rulemaking proceeding. Many commenters supported these concepts, but few offered any arguments that DOE had authority to implement such programs under section 507(e). On the other hand, a number of comments did question whether DOE had sufficient legal authority to promulgate or implement them. DOE believes it has no legal authority under EPAct to promulgate the tax credit and tax incentive programs that were discussed by DOE and commenters, and believes it is doubtful DOE has authority to promulgate the other types of incentive programs discussed.

One advantage of the Fleet Rewards program was that it did not require fuel use, so it was not an explicit fuel use requirement; it would have allowed fuel use credits to be used instead of requiring vehicle acquisitions. Therefore, the program would not have been an explicit fuel use mandate, which DOE believes it has no authority to promulgate. Even so, DOE still has serious doubt about its authority to adopt such a program under section 507 because EPAct only provides credits for vehicle acquisitions. Specifically, EPAct section 508 sets forth a detailed crediting system, but allows credits to be earned only for AFV acquisitions, not fuel use or some other action. Moreover, even if DOE did have authority to provide credits for fuel use, DOE believes that there would be little incentive for most fleets to choose this option, since they could comply by acquiring FFVs that have little or no incremental cost, and could operate them on gasoline.

In any event, a Fleet Rewards or Replacement Fuel Program would be of little use unless it was accompanied by a mandate for vehicle acquisitions or fuel use; those programs would be alternative methods to comply with the mandates. Because DOE is proposing to determine that a private and local government program is not "necessary" and thus cannot and should not be promulgated, there is no reason or need for DOE to consider or propose adopting a Fleet Rewards or Replacement Fuel Program in this notice. Furthermore, coupling a Fleet Rewards or Replacement Fuel Program with a private and local government fleet AFV acquisition mandate would be extremely unlikely to change significantly the amount of estimated alternative and replacement fuel use by covered fleets and thus would not alter the analysis described above as to whether a fleet program is "necessary." There is no evidence that the Fleet Rewards or Replacement Fuel Programs would result in enough fuel use to significantly change the economics and practicability of using alternative or replacement fuels, and therefore there is no evidence that such programs would affect covered fleets' willingness or ability to use alternative or replacement fuels to any appreciable degree.

Summary of Determination

For the reasons stated in this part of the **SUPPLEMENTARY INFORMATION**, DOE proposes to determine that a private and local government fleet requirement rule under sections 507(e) and (g) of EPAct is not "necessary," and therefore should not be imposed. Such a mandate would make no appreciable contribution (less than 0.2 to 0.8 percent of on-highway motor fuel use) toward achievement of the 2010 replacement fuel goal in EPAct section 502 or a revised goal, and even this extremely small contribution is highly uncertain. As a result, DOE cannot make either of the two determinations set forth in section 507(e), both of which must be determined in the affirmative before a private and local government fleet requirement program can be determined to be "necessary" and thus implemented. At this time, DOE cannot determine that the 2010 replacement fuel goal in EPAct (or a revised goal) is not expected to be achieved "without such a fleet requirement program," or that the replacement fuel goal can be achieved "through implementation of such a fleet requirement program" in combination with other means.

First, there are the limitations in EPAct itself, which include: (1) Limitations on the coverage of a private and local government fleet requirement program to only certain light-duty vehicle fleets; (2) procedures allowing case-by-case exemptions; and (3) DOE's lack of authority to require alternative or replacement fuel use or to create an effective substitute regulatory program. Second, even if DOE imposed AFV acquisition requirements, market conditions will encourage covered fleets to file petitions seeking modification and/or suspension of the entire fleet requirement program and/or its application to specific fleets and vehicles. Those conditions, which are likely to persist for the foreseeable future, are: (1) Lack of an alternative fuel infrastructure; (2) unavailability of suitable AFVs; and (3) high alternative fuel costs (for certain fuels) relative to the costs of conventional motor fuels.

On the basis of the foregoing, DOE today proposes to determine that a private and local government fleet requirement program is not "necessary" under the standards set forth in EPAct section 507(e) and therefore cannot and should not be promulgated.

C. Determination for Fleet Requirements Covering Urban Transit Bus Option and Law Enforcement Vehicles

Section 507(k)(1) of EPAct provides in relevant part: "If the Secretary determines, by rule, that the inclusion of fleets of law enforcement motor vehicles in *the fleet requirement program established under subsection (g)* would contribute to achieving the [replacement fuel] goal described in section 502(b)(2)(B) * * * and the Secretary finds that such inclusion would not hinder the use of the motor vehicles for law enforcement purposes, the Secretary may include such fleets in such program * * *." (emphasis added). Section 507(k)(2) contains similar language with regard to new urban buses. 42 U.S.C. 13257(k)(1) and (2).

DOE considered whether to interpret section 507(k) to mean that law enforcement vehicle fleets and urban buses must be considered in making a determination under section 507(e) and (g) as to whether a private and local government fleet acquisition mandate program is "necessary" or, alternatively, whether a rulemaking to consider whether law enforcement fleets and urban buses should be covered by a fleet acquisition mandate only may follow completion of a rulemaking under section 507(e) and (g) that determines a private and local government fleet acquisition program is "necessary" and that promulgates such a program. In DOE's view, EPAct prohibits DOE from considering law enforcement vehicle fleets when making the "necessary" determination under sections 507(e) and (g) because such fleets are specifically excluded from the statutory definition of the term "fleet" (42 U.S.C. 13211(9)). Similarly, it is DOE's view that EPAct prohibits DOE from considering urban buses when making the "necessary" determination under sections 507(e) and (g) because the statutory definition of the term "fleet" is limited to "light duty vehicles" which are vehicles no more than 8,500 lbs. GVWR, and under the definition of "urban bus" referenced in section 507(k) and contained in 40 CFR 86.093–2, most urban buses would not qualify as light duty vehicles.

Furthermore, sections 507(k)(1) and (2) specifically refer to "the fleet requirement program established under subsection (g)." In DOE's view, the better interpretation of section 507(g) is that it did not in and of itself "establish" a fleet requirement program. That section merely sets forth a vehicle acquisition schedule that, in order to have any applicability or force at all, must be implemented by DOE with a rule promulgated pursuant to a determination under section 507(e) that a private and local government fleet rule is "necessary." As a result, in order for section 507(k) to come into operation, a private and local government fleet program first must be "established" by DOE pursuant to the authority in sections 507(e) and (g). Although it is perhaps arguable that subsection (k) could be construed to merely refer to subsection (g) without the necessity for DOE to have first acted to establish a private and local fleet program under sections 507(e) and (g), this alternative interpretation is not as reasonable as DOE's interpretation in view of the text of the statutory definition of "fleet" and the use of that term in subsection (g).

Moreover, in DOE's view, this alternative interpretation is undesirable as a matter of policy. First of all, with respect to urban transit buses, during the earlier stages of this rulemaking some commenters argued that an AFV acquisition mandate should not be imposed on urban transit buses because the buses and their riders already were reducing petroleum consumption by the fact the riders were not using their personal cars. These commenters argued that imposing an AFV acquisition mandate could raise the cost of riding an urban transit bus, which could then reduce ridership and actually increase petroleum consumption by causing riders to return to driving their cars. DOE agrees with these concerns.

Second, and with respect to law enforcement vehicles, EPAct already expresses a policy that such vehicles should not be considered "fleets." DOE believes that, as a matter of policy, it should not seek to impose mandates on law enforcement authorities until a mandate first was extended to other local governmental fleets, both because the numbers are insufficient to appreciably change the overall analysis of the necessity or desirability of a private and local government fleet mandate program, and because commenters generally did not support imposing mandates on such fleets. Therefore, on the basis of the foregoing, today's rulemaking notice does not address law enforcement fleets and urban buses under section 507(k).

IV. Whether To Modify Replacement Fuel Goal

DOE has decided not to propose modification of the 2010 replacement fuel goal of 30 percent in this notice of proposed rulemaking. As noted earlier, the process of determining whether to adopt a regulatory requirement for private and local fleets depends on whether such a rule is "necessary" to achieve EPAct's petroleum replacement fuel goals. As part of the process of evaluating whether to propose AFV acquisition mandates for private and local government fleets pursuant to EPAct section 507, DOE reviewed the replacement fuel goals in EPAct section 502 and considered whether to revise them, but decided for several reasons that it would not propose any such modifications.

First of all, EPAct does not require DOE to revise the petroleum replacement fuel goal in order for DOE to determine whether a private and local government fleet rule is "necessary." Although section 507(e)(2) permits DOE to modify the replacement fuel goal in the context of making a private and local government fleet determination, the statute does not require the goals to be modified.

Second, DOE believes it would not promote the right incentives or actions to propose modifications to the 2010 replacement fuel goal at this time. Congress in 1992 created by statute (in EPAct section 502(b)(2)) an initial national goal of using replacement fuels for at least 10 percent of motor fuel used in the United States in 2000, and a long-term goal of at least 30 percent in 2010, on a petroleum fuel energy equivalent basis. EPAct's legislative history does not explain why Congress chose these particular goals and dates, nor does it provide any analysis supporting them. However, and in light of the overall purposes of EPAct, DOE believes that Congress set these particular goals to establish aggressive aspirational petroleum reduction targets for the Federal government and the public. Congress apparently intended to encourage action that would aggressively advance the availability and use of replacement fuels. DOE believes that the goals as set in EPAct were intended to encourage actions that would lead to significant increases in replacement fuel use.

Since EPAct's enactment in late 1992, the Federal government has implemented a number of regulatory and voluntary programs in an effort to increase the use and availability of replacement fuels. These programs are discussed in more detail in the Introduction section of this **SUPPLEMENTARY INFORMATION**. While these programs have had a favorable impact on the environment and on the use of alternative fuels and replacement fuels, these programs have not had the desired effect of greatly increasing the availability or use of alternative and replacement fuels, or of causing the use of replacement fuels to become a viable alternative, on a large-scale basis, to the use of petroleum-based fuels in vehicles. The result is that although the use of replacement and alternative fuels has increased since 1992, the overall use of these fuels relative to total petroleum consumption remains relatively small. In 1992, replacement fuels accounted for slightly less than 2 percent of total motor fuel consumption; by 2001, replacement fuels accounted for less than 3 percent. *See Transportation Fuels 2000* at Table 10. Thus, to date, very little progress has been made toward achieving the aggressive goals established by EPAct and little progress will be made in the future without major new initiatives.

At the same time, DOE takes note of the fact that Congress is widely expected to take up comprehensive legislation that may significantly affect our nation's energy future and may bear importantly not only on the achievability of the current goals but also on what any potential revised goals might be. Moreover, the President and DOE have proposed bold initiatives to dramatically increase the availability, use and commercial viability of replacement fuels in the transportation sector. DOE's primary efforts are focused on the long-term goal of developing the technology and infrastructure to allow hydrogen to become a key motor vehicle fuel. These efforts, if fully supported with necessary enabling legislation and funding as DOE has proposed, offer the potential to achieve the long term goal of replacing petroleum as the primary transportation fuel.

In light of the momentum that these various efforts are engendering; in light of what DOE understands to be the principal purpose of EPAct's replacement goals in section 502(b)(2)—to encourage policymakers, industry and the public to engage in aggressive action to expand the use off alternative and replacement fuels; and in light of the likelihood of consideration and enactment of new legislation by this Congress that would have significant bearing on these issues, DOE has concluded that it should not make a determination under EPAct concerning the achievability of the 2010 goals at this time. Therefore DOE is not at this time proposing to change the 2010 replacement fuel goal set forth in EPAct section 502(b)(2). DOE will continue to evaluate this issue and may in the future, if it considers appropriate, review and modify the 2010 replacement fuel goal pursuant to its authority in EPAct Title V.

V. Opportunity for Public Comment

A. Participation in Rulemaking

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments with respect to the subject set forth in this notice and the proposals made by DOE. DOE encourages the maximum level of public participation possible in this proceeding. Individual consumers, representatives of consumer groups, manufacturers, associations, coalitions, States or other government entities, and others are urged to submit written comments on the proposal. DOE also encourages interested persons to participate in the public hearing announced at the beginning of this notice. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted.

B. Written Comment Procedures

Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Alternative Fuel Transportation Program: Private and Local Government Fleet Determination, NOPR, Docket Number EE–RM–FCVT–03–001" and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit written comments and cannot provide eight copies, alternative arrangements can be made in advance by calling Mr. Dana O'Hara at (202) 586–9171. Additionally, DOE would appreciate an electronic copy of the comments to the extent possible. Electronic copies should be e-mailed to *regulatory_info@afdc.nrel.gov*. DOE is currently using Corel WordPerfect or Microsoft Word.

All comments received on or before the date specified at the beginning of this notice of proposed rulemaking and other relevant information will be considered by DOE before final action is taken on the proposal. All comments submitted will be made available in the electronic docket set up for this rulemaking. This docket will be available on the World Wide Web at the following address—*http://www.ott.doe.gov/epact/private_fleets.shtml*. Pursuant to the provisions of 10 CFR 1004.1, anyone submitting information or data that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as seven (7) copies, if possible, from which the information has been deleted. DOE will make a determination as to the confidentiality of the information and treat it accordingly.

C. Public Hearing Procedures

The time and place of the public hearing are set forth at the beginning of this notice. DOE invites any person who has an interest in this proceeding, or who is a representative of a group or class of persons that has an interest, to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice and should be received by the time specified in the **DATES** section of this notice.

The person making the request should briefly describe his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of the group or class of persons that has such an interest. The person also should provide a phone number where he or she may be reached during the day. Each person selected to speak at the public hearing will be notified as to the approximate time that he or she will be speaking. A person wishing to speak should bring ten copies of his or her statement to the hearing. In the event any person wishing to speak at the hearing cannot meet this requirement, alternative arrangements can be made in advance by calling Mr. Dana O'Hara, at (202) 586–9171.

DOE reserves the right to select persons to be heard at the hearing, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes, or based on the number of persons requesting to speak.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act. (42 U.S.C. 7191). At the conclusion of all initial oral statements, each person may, if time allows, be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. The hearing may be canceled in the event no public testimony has been scheduled in advance.

VI. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive Agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. Executive Order 12988 does not apply to this rulemaking notice because DOE is not proposing any regulations and instead is proposing to determine that regulations are not "necessary" under section 507(e) and (g) of EPAct.

VII. Review Under Executive Order 12866

This proposed regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review. *See* 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). A draft of today's action and any other documents submitted to OIRA for review are a part of the rulemaking record and are available for public review as provided in the **ADDRESSES** section of this notice of proposed rulemaking.

VIII. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Public Law 96–354, 5 U.S.C. 601–612, requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. The proposed negative determination under EPAct section 507(e) would not result in compliance costs on small entities. Therefore, DOE certifies that today's proposed determination will not have a significant economic impact on a substantial number of small entities, and accordingly, no initial regulatory flexibility analysis has been prepared.

IX. Review Under the Paperwork Reduction Act

Because DOE has proposed not to promulgate requirements for private and local government fleets, no new record keeping requirements, subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, would be imposed by today's regulatory action.

X. Review Under the National Environmental Policy Act

The proposed rule would determine that a regulatory requirement for the owners and operators of certain private and local government light-duty vehicle fleets to acquire alternative fueled vehicles would make no appreciable contribution to actual achievement of the replacement fuel goal in EPAct or a revised goal, and therefore is not "necessary" under EPAct section 507(e). The "to its achievement. The negative determination regarding the necessity for a fleet requirement program would not require any government entity or any member of the public to act or to refrain from acting. Accordingly, DOE has determined that its proposed determination is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being interpreted or amended.

XI. Review Under Executive Order 13132

Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999), imposes

certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed determination and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

XII. Review of Impact on State Governments—Economic Impact on States

Section 1(b)(9) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), established the following principle for agencies to follow in rulemakings: "Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated State, local and tribal regulatory and other governmental functions."

Because DOE is proposing to determine that a private and local government fleet AFV program is not "necessary" under section 507(e) and therefore is not proposing the promulgation of such a program, no significant impacts upon State and local governments are anticipated. The position of State fleets currently covered under the existing EPAct fleet program is unchanged by this action. Before reaching these conclusions, DOE sought and considered the views of State and local officials. DOE's efforts in this regard are discussed above in the portion of this **SUPPLEMENTARY INFORMATION** describing the workshops DOE conducted on various options for implementing a fleet program.

XIII. Review of Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires each Federal agency to assess the effects of Federal regulatory actions on State, local and tribal governments and the private sector. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published in the **Federal Register** a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820). The notice of proposed rulemaking published today does not propose or contain any Federal mandate, so the requirements of the Unfunded Mandates Reform Act do not apply.

XIV. Review of Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's notice of proposed rulemaking and proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

XV. Review of Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

XVI. Review Under Executive Order 13175

Under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), 65 FR 67249 (November 9, 2000), DOE is required to consult with Indian tribal officials in development of regulatory policies that have tribal implications. Today's notice and proposed determination would not have such implications. Accordingly, Executive Order 13175 does not apply to this notice and proposed determination.

XVII. Review Under Executive Order 13045

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), 62 FR 19885 (April 23, 1997) contains special requirements that apply to certain rulemakings that are economically significant under Executive Order 12866. Today's action is not economically significant. Accordingly, Executive Order 13045 does not apply to this rulemaking.

XVIII. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. A determination that a private and local government fleet AFV acquisition program is not "necessary" under EPAct section 507(e) does not require private and local government fleets, suppliers of energy, or distributors of energy to do or to refrain from doing anything. Thus, although today's proposed negative determination is a significant regulatory action, if finalized the determination will not have a significant adverse impact on the supply, distribution, or use of energy. Consequently, DOE has concluded there is no need for a Statement of Energy Effects.

Issued in Washington, DC, on February 26, 2003.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 03–4991 Filed 3–3–03; 8:45 am]

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 944

[Docket No. FV03–911–1 FR]

Limes Grown in Florida and Imported Limes; Termination of Marketing Order and Implementing Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This final rule terminates the marketing order covering limes grown in Florida, the rules and regulations established under the order, and the requirements for limes imported into the United States that are shipped to the fresh market. The Department of Agriculture (USDA) has determined the order should be terminated due to the results of a recent referendum where growers indicated they did not support the continuance of the program. The termination of the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone (863) 324–3375, Fax (863) 325–8793; or Anne Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This action is being taken under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," and §§ 911.49(b) and 911.64(d) of Marketing Order No. 911, regulating the handling of limes grown in Florida, hereinafter referred to as the "order."

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including limes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

USDA is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule terminates the marketing order covering Florida limes and the rules and regulations established under the order.

The order has been in effect since 1955. It authorizes the establishment of grade, size, quality, pack, and container requirements, although such requirements have not been in effect since February 2002. The order also authorizes production and marketing research and development. The program is funded by assessments imposed on lime handlers.

Section 911.64(d) of the order specifies that continuance referenda must be conducted among lime producers every sixth year before March 31. Therefore, during the period from September 9 to September 28, 2002, USDA conducted a referendum among lime growers to determine if they favored continuation of their program. The referendum order provided that USDA would consider terminating the provisions of the order if less than two-thirds of the number of growers voting and growers of less than two-thirds of the lime volume represented in the referendum favored continuance.

Ballots were mailed to 54 known lime growers in Florida. By the close of the voting period, 11 valid votes had been cast. The results show that 18.2 percent of the growers voting, who produced 57.73 percent of the volume represented in the referendum, favored continuation of the program. The order failed to pass either criteria for continuance, demonstrating a lack of producer support needed to carry out the objectives of the Act. In addition, effective February 19, 2002 (67 FR 6837), grade, size, quality, maturity, pack, inspection, assessment collection, reporting, and other requirements prescribed under the order as specified in §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344 were suspended. Thus, it has been determined that the provisions of the order no longer tend to effectuate the declared policy of the Act.

Therefore, pursuant to section 8c(16)(A) of the Act and § 911.64 of the order, it has been found that the order provisions should be terminated.

Section 8c(16)(A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order program. Congress was so notified on November 6, 2002.

Pursuant to § 911.65 of the order, the members of the Lime Administrative Committee shall serve as trustees to conclude and liquidate the affairs of the committee.

Section 8e of the Act provides that whenever certain specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities. Since this rule terminates the lime marketing order for domestically produced limes and the resultant rules and regulations, a corresponding change to the import regulations must also be made.

In addition, effective February 19, 2002 (67 FR 6837), grade, size, quality, maturity, pack, inspection, assessment collection, reporting, and other requirements prescribed under the order as specified in §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344 were suspended.

Consequently, this rule removes § 944.209.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 54 producers of limes in the production area and approximately 6 handlers subject to regulation under the marketing order. In addition, approximately 240 importers of limes are subject to import regulations and will be impacted by this termination. Small agricultural producers are defined as those having annual receipts of less than $750,000, and small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000.

The average f.o.b. price for fresh limes during the 2000–01 season was around $14.75 per bushel and total shipments were 344,032 bushels for the season. Using this price and total volume for the season, all lime handlers could be considered small businesses under the SBA definition. The majority of Florida lime producers may also be classified as small entities.

In calendar year 2000, imports of limes totaled 9.7 million bushels. Assuming the same average f.o.b. price as for Florida limes, the average importer receives gross receipts of about $600,000. Thus, the majority of lime importers can be classified as small entities.

This final rule terminates the marketing order covering limes grown in Florida, the rules and regulations established under the order, and the requirements for limes imported into the United States that are shipped to the fresh market. USDA has determined the order should be terminated. In a recent referendum, growers indicated that they did not support the continuance of the program.

This action eliminates program requirements imposed on lime handlers and importers. Minimum grade, size, maturity and quality requirements for limes imported into the United States are effective under § 944.209 (7 CFR 944.209). As this rule terminates the marketing order for limes and the corresponding regulations, the import regulations for limes imported into the United States are also terminated. All regulations were previously suspended effective February 19, 2002.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being terminated by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. Termination of the order is expected to reduce the total annual reporting burden on Florida lime handlers by a total of 73.98 burden hours.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the results of a recently held producer referendum, it is hereby found that the lime marketing order and the rules and regulations in effect under the order do not tend to effectuate the declared policy of the Act and, therefore, are terminated.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This action relieves restrictions on handlers and importers by terminating the requirements of the lime marketing order and the lime import regulations; (2) handlers were given notice of this action in a widely distributed press release issued on November 5, 2002; (3) a final rule was published in the **Federal Register** on February 14, 2002, suspending all regulations from February 19, 2002 through February 24, 2003; and (4) no useful purpose would be served by delaying the effective date.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, 7 CFR Parts 911 and 944 are amended as follows:

PART 911—[REMOVED]

1. Part 911 is removed.

PART 944—FRUITS; IMPORT REGULATION

§ 944.209 [Removed]

2. Section 944.209 is removed.

§ 944.350 [Amended]

3. In § 944.350, the word "limes," is removed in the section heading and each place it appears in the section.

§ 944.400 [Amended]

4. In § 944.400, the word "limes," is removed in the section heading and each place it appears in the section.

Dated: February 26, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–5080 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV02–984–1 FIR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Walnut Marketing Board (Board) for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2002–03 anticipated expenses of $2,970,000. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget. The Board locally administers the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended, (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Board for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts.

The California Walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0124 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 13, 2002, and unanimously recommended 2002–03 expenditures of $2,970,000 and an assessment rate of $0.0120 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $3,124,800. The assessment rate is $0.0004 lower than the $0.0124 rate previously in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 275,000 tons (247,500,000 kernelweight pounds merchantable), and the budget is about 5 percent less than last year's budget. Thus, sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major categories in the budget recommended by the Board for the 2002–03 year include $2,438,403 for program expenses, including marketing and production research projects, $333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, $80,500 for office expenses, $79,500 for other operating expenses, and $38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001–02 were $2,566,569 for program expenses including marketing and production research projects, $313,200 for employee expenses, $130,600 for office expenses, $76,000 for other operating expenses, and $38,431 as a reserve for a contingency.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 247,500,000 kernelweight pounds which should provide $2,970,000 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2002–03 budget has been reviewed and approved by USDA. Those for subsequent marketing years will also be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,800 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Current industry information shows that 14 of the 43 handlers (32.5 percent) shipped over $5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under $5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 58 walnut producers, or about 1 percent of the 5,800 total producers, would be considered large producers with annual income over $750,000. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Board and collected from handlers for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2002–03 expenditures of $2,970,000. The assessment rate should generate sufficient income to meet the Board's 2002–03 anticipated expenses. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget.

Major categories in the budget recommended by the Board for the 2002–03 year include $2,438,403 for program expenses, including marketing and production research projects, $333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, $80,500 for office expenses, $79,500 for other operating expenses, and $38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001–02 were $2,566,569 for program expenses including marketing and production research projects, $313,200 for employee expenses, $130,600 for office expenses, $76,000 for other operating expenses, and $38,431 as a reserve for a contingency.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended $0.0120 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 247,500,000 kernelweight pound estimate of assessable walnuts for the year. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year according to § 984.69.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2002–03 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2002–03 year as a percentage of total grower revenue could range between 1.7 and 2.5 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 13, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on November 21, 2002 (67 FR 70146). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 21, 2003, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 984—WALNUTS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 984 which was published at 67 FR 70146 on November 21, 2002, is adopted as a final rule without change.

Dated: February 26, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–5081 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Parts 1001, 1003, 1101, 1103, 1205, 1208, 1209, 1212, 1216, 1235, 1236, 1238, 1239, 1240, 1241, 1244, 1245, 1246, 1249, 1270, 1274a, 1292, 1337

[EOIR No. 137F1; OLC Order No. 2]

RIN 1125—AA42

Aliens and Nationality; Homeland Security; Reorganization of Regulations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002, as amended, transfers the functions of the Immigration and Naturalization Service to the Department of Homeland Security. In a rule published in the **Federal Register** on February 28, 2003, the Department of Justice reorganized title 8 of the Code of Federal Regulations to reflect the transfer of functions of the Immigration and Naturalization Service through the division of jurisdiction over regulations currently codified in 8 CFR chapter I, by establishing a new chapter V in 8 CFR, by transferring or duplicating certain parts and sections to the new chapter V and to 28 CFR chapter I, and by making other amendments as necessary to continue existing authorities after the transfer of functions to the Department of Homeland Security on March 1, 2003. This rule effects technical amendments to internal citations in chapter V.

DATES: This rule is effective on February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470; Civil Division: Thomas W. Hussey, Director, Office of Immigration Litigation, United States Department of Justice, 950 Pennsylvania Ave. NW., Washington, DC 20530, telephone (202) 616–4852.

SUPPLEMENTARY INFORMATION: The Homeland Security Act of 2002, as amended, ("HSA") transfers the functions of the Immigration and Naturalization Service ("Service" or "INS") to the Department of Homeland Security ("DHS"). Public Law 107–296, title IV, subtitles D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended ("HSA"). The HSA retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review ("EOIR") and other law determination and litigation functions. HSA, 116 Stat. at 2273. This rule reflects technical amendments to citations in 8 CFR chapter V.

Changes to section citations to sections within the same part of chapter V have already been accomplished in the rule published February 28, 2003. This rule sets out the tables of citation changes for citations to sections in other parts of both chapters I and V. Where appropriate, the changes are made to the conformed sections of chapter V, but there are instances where the conformed section and specific paragraph cite to authority that does not related to functions that will remain in the Department of Justice. Accordingly, these citations are changed to refer to the appropriate section of chapter I of this part as it is being transferred to the Department of Homeland Security. For example, authority of the Service that is contained in chapter I often requires a change in chapter V to eliminate "in this chapter" language and refer directly to the Service's authority "in chapter I." This is consistent with the Department of Justice long range plan in eliminating unnecessary duplication of provisions between chapter I and chapter V.

Administrative Procedure Act

The Department of Justice finds that good cause exists for adopting this rule as a final rule and without public notice and comment under 5 U.S.C. 553 because this rule only makes technical amendments to the organization, procedures, and practices of the Department of Justice to improve the organization of the regulations of the Department of Justice and reflects the transfer of functions contemplated by the Homeland Security Act of 2002. Similarly, because this final rule makes only technical changes in cross-references in existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

List of Subjects

8 CFR Part 1001

Administrative practice and procedure and Immigration.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 1101

Immigration.

8 CFR Part 1103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 1205

Administrative practice and procedure and Immigration.

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1209

Immigration, Refugees and Reporting and recordkeeping requirements.

8 CFR Part 1211

Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1216

Administrative practice and procedure, and Aliens.

8 CFR Part 1235

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1236

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1238

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1239

Administrative practice and procedure, Aliens and Immigration .

8 CFR Part 1240

Administrative practice and procedure and Aliens.

8 CFR Part 1241

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1244

Administrative practice and procedure and Immigration.

8 CFR Part 1245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1246

Administrative practice and procedure, Aliens and immigration.

8 CFR Part 1249

Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1270

Administrative practice and procedure, Aliens, Employment, Fraud and Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

8 CFR Part 1292

Administrative practice and procedure, Immigration, Lawyers and Reporting and recordkeeping requirements.

8 CFR Part 1337

Citizenship and naturalization and Courts.

Authority and Issuance

For the reasons set forth in the preamble, the Department of Justice amends titles 8 and 28 of the Code of Federal Regulations as follows:

Title 8—Aliens and Nationality

Chapter V—Executive Office for Immigration Review, Department of Justice

PART 1001—DEFINITIONS

1. The authority citation for part 1001 continues to read as follows:

Authority: 8 U.S.C. 1101; 8 CFR part 2.

2. Amend part 1001 as follows:

AMENDMENT TABLE FOR PART 1001

Amend:	By removing the reference to:	And adding in its place:
1001.1(j)	292.1(a)(2), (3), (4), (5), (6), and 292.1(b)	1292.1(a)(2), (3), (4), (5), (6), and 1292.1(b).
1001.1(r)	242.1 of this chapter	242.1 of 8 CFR chapter I.

Chapter V, Subchapter A

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

4. Amend part 1003 as follows:

AMENDMENT TABLE FOR PART 1003

Amend:	By removing the reference to:	And adding in its place:
1003.1(b)(2)	Part 240	Part 1240.
1003.1(b)(3)	Part 240	Part 1240.
1003.1(b)(5)	Parts 204 and 205, respectively, of this chapter.	Parts 204 and 205, respectively, of 8 CFR chapter I or parts 1204 and 1205, respectively, of this chapter.
1003.1(b)(6)	Part 212	Part 1212.
1003.1(b)(7)	Part 236	Part 1236.
1003.1(b)(8)	Part 246	Part 1246.
1003.1(b)(9)	208.2(b)	1208.2(b).
1003.1(b)(10)	Part 244	Part 1244.
1003.1(b)(12)	245.13(n)(2) and 245.15(n)(3)	1245.13(n)(2) and 1245.15(n)(3).
1003.1(b)(12)	245.13(d)(2) and 245.15(e)(2)	1245.13(d)(2) and 1245.15(e)(2)
1003.1(b)(14)	241.14	1241.14.
1003.1(d)(2)(D)(iii)	292.2(d)	1292.2(d).
1003.1(d)(5)	292.2(d)	1292.2(d).
1003.2(c)(1)	1.1(p)	1001(p).
1003.2(c)(3)(iv)	208.22(f)	1208.22(f).
1003.4	1.1(q)	1001(q).
1003.6(b)	242.22 of this chapter	242.22 of 8 CFR chapter I.
1003.8(a)	103.7(b)(1)	1103.7(b)(1).
1003.8(b)	103.7(b)	1103.7(b).
1003.14(a)	3.19, 236.1(d) and 240.2(b)	1003.19, 1236.1(d) and 1240.2(b).
1003.14(c)	337.2(b)	1337.2(b).
1003.15(b)(5)	292.1	1292.1.
1003.16(b)	Part 292	Part 1292.
1003.19(a) (two times)	Part 236	Part 1236.
1003.19(h)(1)(i)(D)	236.1(c)(2)	1236.1(c)(2).
1003.19(h)(1)(i)(E)	236.1(c)	1236.1(c).
1003.19(h)(1)(ii)	Part 235 or 236	Part 1235 or 1236.
1003.19(h)(2)(ii)	Part 235 or 236	Part 1235 or 1236.
1003.23(b)(1)	208.22	1208.22.
1003.24	103.7	1103.7.
1003.30	240.10(b)	1240.10(b).
1003.31(b)	240.11(f)	1240.11(f).
1003.31(b)	103.7(a)	1103.7(a).
1003.61(a)(1)	292.2	1292.2.
1003.61(a)(2)	292.2	1292.2.
1003.61(a)(4)	1.1(f)	1001.1(f).
1003.62	292. (in each place it appears)	1292.
1003.62	1.1(f) (in each place it appears)	1001.1(f).
1003.64	103.3(a)(1)(ii)	1103.3(a)(1)(ii).
1003.65	103.3(a)(1)(ii)	1103.3(a)(1)(ii).
1003.101	1.1 (in each place it appears)	1001.1.
1003.102	292 (in each place it appears)	1292.
1003.105(a)	103.5a of this chapter	103.5a of 8 CFR chapter I.
1003.106(a)(1)(ii)	103.5a of this chapter	103.5a of 8 CFR chapter I.
1003.106(a)(1)(v)	240.9	1240.9.
1003.106(c)	103.5a of this chapter	103.5a of 8 CFR chapter I.
1003.107	1.1 (in each place it appears)	1001.1.

Chapter V, Subchapter B

PART 1101—PRESUMPTION OF LAWFUL ADMISSION

5. The authority citation for part 1101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

6. Amend part 1101 as follows:

AMENDMENT TABLE FOR PART 1101

Amend:	By removing the reference to:	And adding in its place:
1101.4	264.2 of this chapter	264.2 of 8 CFR chapter I.

PART 1103—APPEALS, RECORDS, AND FEES

7. The authority citation for part 1103 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

8. Amend part 1101 as follows:

AMENDMENT TABLE FOR PART 1103

Amend:	By removing the reference to:	And adding in its place:
1103.3(a)(1)(ii)	3.1(b)	1003.1(b).
1103.3(a)(1)(ii)	1103.1(f)(2)	103.1(f)(2).
1103.3(a)(1)(iii)(B)	1103.4 and 1103.5 of this part	1103.4 of this part and 103.5 of 8 CFR chapter I.
1103.3(a)(1)(iii)(B)	Part 292	Part 1292.
1103.3(a)(1)(v) (three times)	292	1292.
1103.3(a)(2)(iii)	1103.5(a)(5)(i) of this part	103.5(a)(5)(i) of 8 CFR chapter I.
1103.3(a)(2)(v)(A)(2)(ii)	1103.5(a)(5)(i) of this part	103.5(a)(5)(i) of 8 CFR chapter I.
1103.3(a)(2)(v)(B)(2)(ii)	1103.5(a)(5)(i) of this part	103.5(a)(5)(i) of 8 CFR chapter I.
103.4(a)(6)	3.1(b)	1003.1(b).
103.7(c)(1)	3.3(b)	1003.3(b).
103.7(c)(4)	240.20	1240.20.

Chapter V, Subchapter B

PART 1205—REVOCATION OF APPROVAL OF PETITIONS

9. The authority citation for part 1205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

10. Amend part 1205 as follows:

AMENDMENT TABLE FOR PART 1205

Amend:	By removing the reference to:	And adding in its place:
1205.1(a)	Part 204 of this chapter	Part 204 of 8 CFR chapter I.
1205.2(d)	Part 3	Part 1003.
1205.2(d)	Part 103 of this chapter	Part 103 of 8 CFR chapter I.

Chapter V, Subchapter B

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

11. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

12. Amend part 1208 as follows:

AMENDMENT TABLE FOR PART 1208

Amend:	By removing the reference to:	And adding in its place:
1208.1(a)	Parts 3 and 103	Parts 1003 and 1103.
1208.2(c)(3)(i)	Part 240	Part 1240.
1208.4(a)(2)(ii)	103.2(a)(7) of this chapter	103.2(a)(7) of 8 CFR chapter I.
1208.4(a)(2)(ii)	3.13	1003.13.
1208.4(b)(3)(ii)	Part 3	Part 1003.
1208.4(b)(4)	3.2 and 3.8	1003.2 and 1003.8.
1208.4(b)(4)	Part 3	Part 1003.
1208.4(b)(5)	Part 1103	Part 103.
1208.5(b)(2)	212.5	1212.5.
1208.7(a)(1)	274a.12(c)(8) and 274a.13(a)	1274a.12(c)(8) and 1274a.13(a).
1208.7(a)(2)	103.2(b)(8) of this chapter	103.2(b)(8) of 8 CFR chapter I.
1208.7(a)(4)	274a.12(c)(8)	1274a.12(c)(8).
1208.8(b)	212.5(f)	1212.5(f).
1208.12	8 CFR part 103	28 CFR part 16.
1208.14(c)(4)(i)	212.5(d)(2)(i)	1212.5(d)(2)(i).
1208.14(c)(4)(ii)	235.3(b)	1235(b).
1208.14(c)(4)(ii)(A)	235.3(b)	1235.3(b).
1208.17(d)(1)	3.11	1003.11.
1208.17(e)(1)	3.11	1003.11.
1208.18(b)(2)	3.23 and 3.2	1003.23 and 1003.2.
1208.18(b)(3)(ii)(A)	3.2 and 3.23	1003.2 and 1003.23.
1208.22(f)	(d)(5) of this chapter	(d)(5) of 8 CFR chapter I.
1208.23(f)	3.2 and 3.23	1003.2 and 1003.23.
1208.30(f)	212.5	1212.5.
1208.30(g)(2)(iii)	3.27	1003.27.

AMENDMENT TABLE FOR PART 1208—Continued

Amend:	By removing the reference to:	And adding in its place:
1208.31	241.8(b)	1241.8(b).

Chapter V, Subchapter B

PART 1209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

13. The authority citation for part 1209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

14. Amend part 1209 as follows:

AMENDMENT TABLE FOR PART 1209

Amend:	By removing the reference to:	And adding in its place:
1209(c)	207.2(c)	207.2(c) of chapter I.

Chapter V, Subchapter B

PART 1212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

15. The authority citation for part 1212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

16. Amend part 1212 as follows:

AMENDMENT TABLE FOR PART 1212

Amend:	By removing the reference to:	And adding in its place:
1212.1(g)(3) (two times)	of this chapter	of 8 CFR chapter I
1212.3(e)(3)	3.36	1003.36.
1212.4(b)	Part 3	part 1003.
1212.5(b)	235.3(b)	1235.3(b).
1212.5(b)(3) (two times)	236.3(a)	1236.3(a).
1212.5(c) (three times)	235.3(b)	1235.3(b).
1212.6(a)(2)	235.1(f)	1235.1(f).
1212.6(d)(1)	292.2	1292.2.
1212.6(e)	103.7(b)(1)	1103.7(b)(1).
1212.7(a)(1)(iii) (two times)	245.15(t)	1245.15(t).
1212.7(a)(1)(iv) (two times)	245.13(k)(2)	1245.13(k)(2).
1212.7(b)(2)(iv)	245.15(t)(2)	1245.15(t)(2).
1212.7(b)(2)(v)	245.13(k)(2)	1245.13(k)(2).
1212.7(b)(5)	Part 103 of this chapter	part 103 of 8 CFR chapter I.
1212.7(c)(7)	Part 204 of this chapter	part 204 of 8 CFR chapter I.
1212.7(c)(9)(ii)(B)	8 CFR part 103	8 CFR part 1103.
1212.7(c)(9)(vi)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1212.7(c)(9)(vi)(A)	214.2(h)(2)(i)(E) of this chapter	214.2(h)(2)(i)(E) of 8 CFR chapter I.
1212.7(c)(9)(vi)(B)	214.2(h)(2)(i)(D) and (E) of this chapter	214.2(h)(2)(i)(D) and (E) of 8 CFR chapter I.
1212.7(c)(9)(vi)(B)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1212.7(c)(9)(vi)(C)(2)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1212.7(c)(9)(vi)(D)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1212.8(b)	204.2(j) of this chapter	204.2(j) of 8 CFR chapter I.
1212.10	part 236	Part 1236.
1212.14(a)(1)(vi)	235.3	1235.3.

Chapter V, Subchapter B

PART 1216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

17. The authority citation for part 1216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

18. Amend part 1216 as follows:

AMENDMENT TABLE FOR PART 1216

Amend:	By removing the reference to:	And adding in its place:
216.3(a)	103.2(b)(2) of this chapter	103.2(b)(2) of 8 CFR chapter I.
216.3(a)	Part 239	Part 1239.
1216.4(a)(1)	103.7(b) of this chapter	103.7(b) of 8 CFR chapter I.
1216.4(a)(4)	211.1(b)(1)	1211.(b)(1).
1216.4(a)(4)	235.11	1235.11.
1216.4(a)(6)	239.2	1239.2.
1216,4(d)(2)	Part 239	Part 1239.
1216.5(b)	103.7(b) of this chapter	103.7(b) of 8 CFR chapter I.
1216.6(a)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1216.6(a)(1)	211.1(b)(1)	1211.1(b)(1).
1216.6(a)(1)	235.11	1235.11.
1216.6(a)(5)	242.7 of this chapter	242.7 of 8 CFR chapter I.
1216.6(b)(3) (two times)	242.7 of this chapter	1216.6(a)(5).

Chapter V, Subchapter B

PART 1235—INSPECTION OF PERSONS APPLYING FOR PERMISSION

19. The authority citation for part 1235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

20. Amend part 1235 as follows:

AMENDMENT TABLE FOR PART 1235

Amend:	By removing the reference to:	And adding in its place:
1235.1(d)(1)	211.11	211.1.
1235.1(d)(4)	208.30	1208.30.
1235.1(d)(4)	208.2(b)(2)	1208.2(b)(2).
1235.1(e)(1)(iii)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1235.1(e)(1)(v)	217.2(a) of this chapter	217.2(a) of 8 CFR chapter I.
1235.1(e)(2)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1235.1(e)(5)(ii)	217.2(a) of this chapter	217.2(a) of 8 CFR chapter I.
1235.1(f)(1)(i)	212.1(a)	1212.1(a).
1235.1(f)(1)(iii)	212.1(c)(1)	1212.1(c)(1).
1235.1(f)(1)(iv)	212.1(c)(1)	1212.1(c)(1).
1235.1(f)(1)(v)	212.1(c)(1)	1212.1(c)(1).
1235.3(b)(1)(i)	1.1(q)	1001.1(q).
1235.3(b)(2)(i)	211.1(b)(3) or § 212.1 of this chapter	1211.1(b)(3) or § 1212.1 of this chapter.
1235.3(b)(4)	208.30	1208.30.
1235.3(b)(5)(ii)	211.1 (b)(3)	1211.1(b)(3).
1235.3(b)(5)(iii)	223.2(b)(2)(ii) of this chapter	223.2(b)(2)(ii) of 8 CFR chapter I.
1235.3(b)(5)(iii)	223.2(b)(2)(i) of this chapter	223.2(b)(2)(i) of 8 CFR chapter I.
1235.3(b)(8)	Part 241	Part 1241.
1235.3(c)	212.5	1212.5.
1235.3(f)	236.1(e)	1236.1(e).
1235.4	212.5(b)	1212.5(b).
1235.5(a)	and 240	and 1240.
1235.5(a)	Part 240	Part 1240.
1235.6(a)(2)(iii)	208.2(b)(1)	1208.2(b)(1).
1235.8(b)(4)	Part 208	Part 1208.
1235.8(e)	1.1(q)	1001.1(q).
1235.11(c)	211.1(b)(1)	1211.1(b)(1).

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PART 1236—APPREHENSION AND DETENTION OF INADMISSABLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

21. The authority citation for part 1236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

22. Amend part 1236 as follows:

AMENDMENT TABLE FOR PART 1236

Amend:	By removing the reference to:	And adding in its place:
1236.1(a)	287.7 of this chapter	287.7 of 8 CFR chapter I.

AMENDMENT TABLE FOR PART 1236—Continued

Amend:	By removing the reference to:	And adding in its place:
1236.1(b)	287.5(e)(2) of this chapter	287.5(e)(2) of 8 CFR chapter I.
1236.1(b)	287.5(e)(3) of this chapter	287.5(e)(3) of 8 CFR chapter I.
1236.1(c)(10)	103.6 of this chapter	103.6 of 8 CFR chapter I.
1236.1(c)(10)	3.19	1003.19.
1236.1(c)(11)	3.19(h)	1003.19(h).
1236.1(d)(1)	Part 240	Part 1240.
1236.1(d)(1)	3.19	1003.19.
1236.1(d)(3)(i)	3.38	1003.38.
1236.1(d)(4)	3.19(i)	1003.19(i).
1236.1(f)	3.19(g)	1003.19(g).
1236.2(a)	239.1	1239.1.
1236.2(a)	103.5a(c) of this chapter	103.5a(c) of 8 CFR chapter I.
1236.5(d)	208.2 and 208.16	1208.2 and 1208.16.

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PART 1238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

23. The authority citation for part 1238 continues to read as follows:

Authority: 8 U.S.C. 1228; 8 CFR part 2.

24. Amend part 1238 as follows:

AMENDMENT TABLE FOR PART 1238

Amend:	By removing the reference to:	And adding in its place:
1238.1(a)	239.1	1239.1
1238.1(b)(1)(iii)	3.41	1003.41.
1238.1(b)(2)(i)	103.5a(c)(2) of this chapter	103.5a(c)(2) of 8 CFR chapter I.
1238.1(b)(2)(iv)	Part 3	Part 1003.
1238.1(b)(2)(iv)	Part 292	Part 1292.
1238.1(c)(1)	208.16	1208.16.
1238.1(f)(1)	241.2	1241.2.
1238.1(f)(3)	208.16	1208.16.
1238.1(f)(3)	208.31	1208.31.
1238.1(g)	287.5(e)(2) of this chapter	287.5(e)(2) of 8 CFR chapter I.

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PART 1239—INITIATION OF REMOVAL PROCEEDINGS

25. The authority citation for part 1239 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

26. Amend part 1239 as follows:

AMENDMENT TABLE FOR PART 1239

Amend:	By removing the reference to:	And adding in its place:
1239.2(a)	3.14	1003.14.
1239.2(c)	3.14	1003.14.

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PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

27. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

28. Amend part 1240 as follows:

AMENDMENT TABLE FOR PART 1240

Amend:	By removing the reference to:	And adding in its place:
1240.2(a)	3.38	1003.38.
1240.2(a)	3.23	1003.23.
1240.3	Part 292	Part 1292.

AMENDMENT TABLE FOR PART 1240—Continued

Amend:	By removing the reference to:	And adding in its place:
1240.7	3.35	1003.35.
1240.10(a)(2)	Part 3	Part 1003.
1240.10(a)(2)	292.2	1292.2.
1240.10(b)	3.27	1003.27.
1240.11(a)(1)	Parts 245 and 249	Parts 1245 and 1249.
1240.11(a)(1)	Part 216	Part 1216.
1240.11(c)(1)	208.14	1208.14.
1240.11(c)(2)	208.4(c)	1208.4(c).
1240.11(c)(2)	208.111	208.11.
1240.11(c)(3)	Part 208	Part 1208.
1240.11(c)(3)	208.14 or 208.16	1208.14 or 1208.16.
1240.11(c)(3)(iii)	208.13	1208.13.
1240.11(e)	208.14(b)	1208.14(b).
1240.11(f)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1240.13(a)	3.3	1003.3.
1240.14	3.39	1003.39.
1240.15	Part 3	Part 1003.
1240.15	3.3, 3.31, and 3.38	1003.3, 1003.31, and 1003.38.
1240.15	3.3	1003.3.
1240.15	3.1(d)(2)	1003.1(d)(2).
1240.20(a)	103.7(b) of this chapter	103.7(b) of 8 CFR chapter I.
1240.20(b)	3.14	1003.14.
1240.21(b)(2)(iii)	245.13(e)	1245.13(e).
1240.21(b)(5)(ii)	212.5	1212.5.
1240.21(c)	3.1(d)(3) and 3.39	1003.1(d)(3) and 1003.39.
1240.26	1240.25	240.25.
1240.32(a)	Part 235	Part 1235.
1240.32(a)	Part 3	Part 1003.
1240.32(a)	292.2	1292.2.
1240.33(a)	208.14(b)	1208.14(b).
1240.33(b)	208.4(c)	1208.4(c).
1240.33(b)	208.11	1208.11.
1240.33(c)	Part 208	Part 1208.
1240.33(c)	208.13(c)	1208.13(c).
1240.33(c)(1)	236.3	1236.3.
1240.33(c)(3)	208.13	1208.13.
1240.35	3.37	1003.37.
1240.36	3.37	1003.37.
1240.37	3.38	1003.38.
1240.40	Part 240	Part 1240.
1240.42	Part 292	Part 1292.
1240.46	3.35	1003.35.
1240.48(a)	Part 3	Part 1003.
1240.48(a)	292.2	1292.2.
1240.49(a)	Parts 240, 245, and 249	Parts 1240, 1245, and 1249.
1240.49(a)	Part 216	Part 1216.
1240.49(c)(2)	208.14(b)	1208.14(b).
1240.49(c)(3)	208.4(b)	1208.4(b).
1240.49(c)(3)	208.11	1208.11.
1240.49(c)(4)	Part 208	Part 1208.
1240.49(c)(4)	208.13 or 208.16	1208.13 or 1208.16.
1240.49(c)(4)(iii)	208.13	1208.13.
1240.49(e)	208.2	1208.2.
1240.49(e)	208.14(b)	1208.14(b).
1240.51(a)	3.3	1003.3.
1240.52	3.39	1003.39.
1240.53	Part 3	Part 1003.
1240.53(a)	3.3, 3.31, and 3.38	1003.3, 1003.31, and 1003.38.
1240.53(a)	3.3(b)	1003.3(b).
1240.53(a)	3.1(d)(2)	1003.1(d)(2.)
1240.55	Part 240	Part 1240.
1240.56	Part 240	Part 1240.
1240.62	3.43	1003.43.
1240.63(a)	103.7(b)(1)	1103.7(b)(1).
1240.63(a)	103.7(c)	1103.7(c).
1240.63(b)	1260.62(b)	1240.62(b).
1240.67(a)	103.2(e) of this subchapter	103.2(e) of 8 CFR chapter I.
1240.67(b)(1)	208.9	1208.9.
1240.69	208.12	1208.12.

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PART 1241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

29. The authority citation for part 1241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

30. Amend part 1241 as follows:

AMENDMENT TABLE FOR PART 1241

Amend:	By removing the reference to:	And adding in its place:
1241.2	287.5(e) of this chapter	287.5(e) of 8 CFR chapter I
1241.3(b)(1)	208.16 or 208.17	1208.16 or 1208.17.
1241.3(b)(1)	236.1	1236.1.
1241.3(b)(2)	212.12	1212.12.
1241.3(b)(3)	Part 241	Part 1241.
1241.3(b)(3)	208.17(d)	1208.17(d).
1241.3(b)(4) (two times)	241.13	1241.13.
1241.4(j)	212.5(c)	1212.5(c).
1241.6(a)	212.5	1212.5.
1241.6(b)	Part 3	Part 1003.
1241.8(e)	208.31	1208.31.
1241.11(d)	208.5(b)	1208.5(b).
1241.11(d)	208.30	1208.30.
1241.11(d)	208.30	1208.30.
1241.11(d)	212.5	1212.5.
1241.13(b)(1)	Section 241.4	Section 1214.4.
1241.13(b)(3)(i)	212.12	1212.12.
1241.13(g)(1)	214.14	1241.14.
1241.13(g)(2)	214.14	1241.14.
1241.14(d)(3)(ii)	Part 292	Part 1292.
1241.14(g)(3)(i)	Part 292	Part 1292.
1241.14(h)(4)	3.38	1003.38.
1241.14(i)(3)	240.13(a) or (b)	1240.13(a) or (b).
1241.14(i)(4)(ii)	3.1(d)(3)	1003.1(d)(3).
1241.14(k)(6)(ii)	3.23 or 3.2	1003.23 or 1003.2.
1241.14(k)(6)(iii)	3.38	1003.38.
1241.15	236.6	1236.6.
1241.22	Part 240	Part 1240.
1241.30	Part 241	Part 1241.
1241.31	Part 240	Part 1240.
1241.33	212.5(b)	1212.5(b).

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PART 1244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

31. The authority citation for part 1244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

32. Amend part 1244 as follows:

AMENDMENT TABLE FOR PART 1244

Amend:	By removing the reference to:	And adding in its place:
1244.8	292.1	1292.1.
1244.10(b)	244.3, and 244.4	1244.3, and 1244.4.
1244.10(c)(2)	240.11 and 244.18	1240.11 and 1244.18.
1244.10(d)(1)	240.18(b)	1240.18(b).
1244.11	3.3	1003.3.
1244.13	240.14(a)(3)	1244.14(a)(3).
1244.18(d)	240.3(c) and 240.4	1244.3(c) and 1244.4.

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PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

33. The authority citation for part 1245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

34. Amend part 1245 as follows:

AMENDMENT TABLE FOR PART 1245

Amend:	By removing the reference to:	And adding in its place:
1245.1(b)(7)	212.1(e)	1212.1(e).
1245.1(b)(8)	Part 217 of this chapter	Part 217 of 8 CFR chapter I.
1245.1(b)(10)	274a.12(c)(9)	1274a.12(c)(9).
1245.1(c)(1)	212.8(b)	1212.8(b).
1245.1(c)(2)	212.7(c)(9)	1212.7(c)(9).
1245.1(c)(3)	Part 247 of this chapter	Part 247 of 8 CFR chapter I.
1245.1(c)(4)	Part 204 of this chapter	Part 204 of 8 CFR chapter I.
1245.1(c)(6)(i)	214.2(k) of this chapter	214.2(k) of 8 CFR chapter I.
1245.1(c)(6)(ii)	214.2(k) of this chapter	214.2(k) of 8 CFR chapter I.
1245.1(c)(7)	245.11	1245.11.
1245.1(d)(1)(ii)	Part 214 of this chapter	Part 214 of 8 CFR chapter I.
1245.1(d)(2)	214.2(f) of this chapter	214.2(f) of 8 CFR chapter I.
1245.1(d)(2)	214.2(j) of this chapter	214.2(j) of 8 CFR chapter I.
1245.1(f)	Parts 235 and 249	Parts 1235 and 1249.
1245.2(a)	Part 245	Part 1245.
1245.2(a)	Part 240	Part 1240.
1245.2(a)(2)(i)(B)	Parts 103 and 245	Parts 103 of 8 CFR chapter I and 1245 of this chapter.
1245.2(a)(5)(ii) (two times)	Part 240	Part 1240.
1245.2(a)(5)(iii) (two times)	Part 240	Part 1240.
1245.4	Part 211	Part 1211.
1245.5	214.2(k) of this chapter	214.2(k) of 8 CFR chapter I.
1245.5	Part 235	Part 1235.
1245.9(k)(1)	Part 245	Part 1245.
1245.10(a)(2)(i)	103.2(a)(1) and (a)(2) of this chapter	103.2(a)(1) and (a)(2) of 8 CFR chapter I.
1245.10(a)(4)	205.1(a)(3)(i) or (a)(3)(ii) of this chapter	1205.1(a)(3)(i) or (a)(3)(ii) of this chapter.
1245.10(d) (two times)	103.2 of this chapter	103.2 of 8 CFR chapter I.
1245.10(f)(1)	103.5 of this chapter	103.5 of 8 CFR chapter I.
1245.11(d)(1)	245.2	1245.2.
1245.12(a)(2)	232.1 of this chapter	232.1 8 of CFR chapter I.
1245.13(c)(1)	212.7	1212.7.
1245.13(e)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(e)(2)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(g)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(g)	103.7 of this chapter	103.7 of 8 CFR chapter I.
1245.13(g)	240.11(f)	1240.11(f).
1245.13(g)	103.2(e) of this chapter	103.2(c) of 8 CFR chapter I.
1245.13(j)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(j)(2)	274a.13(d)	1274a.13(d).
1245.13(k)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(k)(3)	212.2	1212.2.
1245.13(m)(1)(i)	239.1	1239.1.
1245.13(n)(1)	3.10	1003.10.
1245.13(n)(1)	Part 240	Part 1240.
1245.13(n)(2)	3.3 and 3.8	1003.3 and 1003.8.
1245.14	212.15	1212.15.
1245.15(a)	204.3(b) of this chapter (each time that it appears).	204.3(b) of 8 CFR chapter I.
1245.15(c)(2)(iv) B)	103.7(c) of this chapter	103.7(c) of 8 CFR chapter I.
1245.15(c)(2)(iv)(B)	240.11(f)	1240.11(f).
1245.15(d)(4)	(d)(5) of this chapter	(d)(5) of 8 CFR chapter I.
1245.15(e)(2)	212.7	1212.7.
1245.15(g)(3)(iii)	241.6	1241.6.
1245.15(h)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.15(h)(2)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.15(n)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.15(n)(2)	274a.13(d)	1274a.13(d).
1245.15(p)(1)	3.11 and 3.31	1003.11 and 1003.31.
1245.15(r)(2)(i)	239.1	1239.1.
1245.15(s)(3)	3.3 and 3.8	1003.3 and 1003.8.
1245.15(t)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.15(t)(3)	212.2	1212.2.
1245.18	this chapter (each time it appears)	8 CFR chapter I.
1245.20	this chapter (each time it appears)	8 CFR chapter I.
1245.20(k)	Part 240	Part 1240.

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PART 1246—RESCISSION OF ADJUSTMENT OF STATUS

35. The authority citation for part 1246 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

36. Amend part 1246 as follows:

AMENDMENT TABLE FOR PART 1246

Amend:	By removing the reference to:	And adding in its place:
1246.1	240.70	1240.70.
1246.3	240.3, 240.4, 240.5, 240.6, 240.7, and 240.9	1240.3, 1240.4, 1240.5, 1240.6, 1240.7, and 1240.9.
1246.5(a)	3.23	1003.23.
1246.5(a)	Part 292	Part 1292
1246.6	240.13(a) and (b) and 240.14	1240.13(a) and (b) and 1240.14.
246.7	Part 3	Part 1003.

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PART 1249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

37. The authority citation for part 1249 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

38. Amend part 1249 as follows:

AMENDMENT TABLE FOR PART 1249

Amend:	By removing the reference to:	And adding in its place:
1249.2 (two times)	Part 240	Part 1240.
1249.3	103.5 of this chapter	103.5 of 8 CFR chapter I.

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PART 1270—PENALTIES FOR DOCUMENT FRAUD

39. The authority citation for part 1270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

40. Amend part 1270 as follows:

AMENDMENT TABLE FOR PART 1270

Amend:	By removing the reference to:	And adding in its place:
1270.1(c)	287.4	1287.4.
1270.1(d)	103.5a(a)(2) of this chapter	103.5a(a)(2) of 8 CFR chapter I.
1270.1(h)	242.1 of this chapter	242.1 of 8 CFR chapter I.
1270.1(i)	103.5a(a)(2) of this chapter (each time it appears).	103.5a(a)(2) of 8 CFR chapter I.

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PART 1274a—CONTROL OF EMPLOYMENT OF ALIENS

41. The authority citation for part 1274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

42. Amend part 1274a as follows:

AMENDMENT TABLE FOR PART 1274A

Amend:	By removing the reference to:	And adding in its place:
1274a.10	Part 103 of this chapter	Part 103 of 8 CFR chapter I.
1274a.10	242.1 of this chapter	242.1 of 8 CFR chapter I.
1274a.12(b)(1)	214.2(a) of this chapter	214.2(a) of 8 CFR chapter I.
1274a.12(b)(2)	214.2(a) of this chapter	214.2(a) of 8 CFR chapter I.
1274a.12(b)(3)	214.2(c) of this chapter	214.2(c) of 8 CFR chapter I.
1274a.12(b)(5)	214.2(e) of this chapter	214.2(e) of 8 CFR chapter I.
1274a.12(b)(6)	214.2(f) of this chapter	214.2(f) of 8 CFR chapter I.
1274a.12(b)(6)(ii)	214.2(f) of this chapter	214.2(f) of 8 CFR chapter I.
1274a.12(b)(7)	214.2(g) of this chapter	214.2(g) of 8 CFR chapter I.
1274a.12(b)(8)	214.2(g) of this chapter	214.2(g) of 8 CFR chapter I.
1274a.12(b)(9)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1274a.12(b)(10)	214.2(i) of this chapter	214.2(i) of 8 CFR chapter I.

AMENDMENT TABLE FOR PART 1274A—Continued

Amend:	By removing the reference to:	And adding in its place:
1274a.12(b)(11)	214.2(j) of this chapter	214.2(j) of 8 CFR chapter I.
1274a.12(b)(12)	214.2(l) of this chapter	214.2(l) of 8 CFR chapter I.
1274a.12(b)(13)	214.2(o) of this chapter	214.2(o) of 8 CFR chapter I.
1274a.12(b)(14)	214.2(p) of this chapter	214.2(p) of 8 CFR chapter I.
1274a.12(b)(15)	214.2(q)(1) of this chapter	214.2(q)(1) 8 CFR of chapter I.
1274a.12(b)(16)	214.2(r) of this chapter	214.2(r) of 8 CFR chapter I.
1274a.12(b)(17)	214.2(o) of this chapter	214.2(o) of 8 CFR chapter I.
1274a.12(b)(18)	214.2(o) of this chapter	214.2(o) of 8 CFR chapter I.
1274a.12(b)(19)	214.2(e) of this chapter	214.2(e) of 8 CFR chapter I.
1274a.12(b)(20)	214.2 or 214.6 of this chapter	214.2 or 216 of 8 CFR chapter I.
1274a.12(c)(1)	214.2(a)(2) of this chapter	214.2(a)(2) of 8 CFR chapter I.
1274a.12(c)(2)	214.2(e) of this chapter	214.2(e) of 8 CFR chapter I.
1274a.12(c)(3)(i)	214.2(f) of this chapter	214.2(f) of 8 CFR chapter I.
1274a.12(c)(4)	214.2(g) of this chapter	214.2(g) of 8 CFR chapter I.
1274a.12(c)(5)	214.2(j) of this chapter	214.2(j) of 8 CFR chapter I.
1274a.12(c)(6)	214.2(m) of this chapter	214.2(m) of 8 CFR chapter I.
1274a.12(c)(7)	214.2(n) of this chapter	214.2(ng) of 8 CFR chapter I.
1274a.12(c)(8)	Part 208	Part 1208.
1274a.12(c)(8)(i) (two times)	208.7	1208.7.
1274a.12(c)(9)	245.13(j) and 245.15(n)	1245.13(j) and 1245.15(n).
1274a.12(c)(16)	Part 249	Part 1249.
1274a.12(c)(20)	Part 210 of this chapter	Part 210 of 8 CFR chapter I.
1274a.12(c)(22)	Part 245a of this chapter	Part 245a of 8 CFR chapter I.
1274a.12(c)(23)	215.2(q)(15) of this chapter	215.2(q)(15) of 8 CFR chapter I.
1274a.14(a)(2)	208.3 and 208.4	1208.3 and 1208.4

Chapter V, Subchapter B

PART 1292—REPRESENTATION AND APPEARANCES

43. The authority citation for part 1292 continues to read as follows:

Authority: Secs. 103, 262, 289, 66 Stat. 173, 224, 234; 8 U.S.C. 1103, 1302, 1359; 45 Stat. 401, 54 Stat. 670; 8 U.S.C. 226a, 451.

44. Amend part 1292 as follows:

AMENDMENT TABLE FOR PART 1292

Amend:	By removing the reference to:	And adding in its place:
1292.1(a)(1)	1.1(f)	1001(f).
1292.1(a)(6)	1.1(f)	1001(f).
1292.3(a)(1)	3.102	1003.102.
1292.3(a)(1)	Part 3	Part 1003.
1292.3(a)(2)	1.1(f)	1001(f).
1292.3(a)(2)	1.1(j)	1001(j).
1292.3(b)(1) (two times)	3.102	1003.102.
1292.3(c)(1)	3.102(h)	1003.102(h).
1292.3(c)(3)	3.105 and 3.106	1003.105 and 1003.106.
1292.3(c)(4)	3.102(h)	1003.102(h).
1292.3(d)(1)(ii)	3.104(a)	1003.104(a).
1292.3(e)(1)	3.102	1003.102.
1292.3(e)(1)	103.5a of this chapter	103.5a of 8 CFR chapter I.
1292.3(e)(3)	3.105(c)	1003.105(c).
1292.3(f)(1)	3.106(a)	1003.106(a).
1292.4(a)	3.16 and 3.36	1003.16 and 1003.36.
1292.4(b)	this chapter (each place that it appears)	8 CFR chapter I.
1292.6	Part 3	Part 1003.

Chapter V, Subchapter C

PART 1337—OATH OF ALLEGIANCE

45. The authority citation for part 1337 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448; 8 CFR part 2.

46. Amend part 1292 as follows:

AMENDMENT TABLE FOR PART 1337

Amend:	By removing the reference to:	And adding in its place:
All sections	this chapter (each place that it appears)	8 CFR chapter I.

Dated: February 28, 2003.

Joan L. Larsen,

Deputy Assistant Attorney General.

[FR Doc. 03–5154 Filed 2–28–03; 3:10 pm]

BILLING CODE 4410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 00–105–2]

RIN 0579–AB36

Payments for Cattle and Other Property Because of Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the regulations regarding payments made in connection with animals and other property disposed of because of bovine tuberculosis. The interim rule provided that the Animal and Plant Health Inspection Service will make payments to owners of dairy cattle and other property used in connection with a dairy business and a dairy processing plant in the area of El Paso, TX, provided the owners agreed to dispose of their herds within 2 years, close their existing dairy operations, and refrain from establishing new cattle breeding operations in the area. As amended by this document, we will allow owners 3 years to dispose of their herds. The interim rule was necessary to further tuberculosis eradication efforts in the United States and protect livestock not affected with bovine tuberculosis from the disease.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (tuberculosis) is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" and in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," January 22, 1999, edition, which is incorporated by reference into the regulations in part 77. Additionally, the regulations in 9 CFR part 50 (referred to below as the regulations) provide for the payment of indemnity to owners of certain animals destroyed because of tuberculosis, in order to encourage destruction of animals that are infected with, or at significant risk of being infected with, the disease.

In an interim rule effective and published in the **Federal Register** on July 26, 2002 (57 FR 48745–48752, Docket No. 00–105–1), we amended the regulations in part 50 by providing that APHIS will make payments to owners of dairy cattle and other property used in connection with a dairy business and a dairy processing plant in the area of El Paso, TX, provided the owners agreed to dispose of their herds, close their existing dairy operations, and refrain from establishing new cattle breeding operations in the area. The interim rule was necessary to further tuberculosis eradication efforts in the United States and protect livestock not affected with bovine tuberculosis from the disease.

Comments on the interim rule were required to be received on or before September 24, 2002. We did not receive any comments by that date. However, we are making one change to the interim rule. One condition of eligibility for payment for dairy cattle was that each owner agree to cease operations within the described area and dispose of all sexually intact cattle on the dairy operation premises no later than 2 years after eligible owners signed their respective agreements. We have learned from representatives of dairy cattle owners affected by the interim rule that 2 years is an insufficient amount of time to dispose of all of their cattle through market channels. Therefore, we are amending the regulations to provide that owners of dairy cattle and other property in the described area must cease all dairy cattle operations and dispose of all sexually intact cattle on the dairy operations premises no later than 3 years after all eligible owners sign their respective agreements.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, the interim rule amending 9 CFR part 50 that was published at 67 FR 48745–48752 on July 26, 2002, is adopted as a final rule with the following changes:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. In § 50.17, paragraphs (b)(1) and (d) are revised to read as follows:

§ 50.17 Payment.

* * * * *

(b) * * *

(1) Cease all dairy cattle operations within the described area and dispose of all sexually intact cattle on the dairy operation premises no later than 3 years after all eligible owners have signed their respective agreements;

* * * * *

(d) Any dairy cattle added to a premises after the date an owner has signed the agreement required under paragraph (b) of this section will not be included in the rate calculation in paragraph (c) of this section and must be disposed of within 3 years after all eligible owners have signed their respective agreements.

* * * * *

Done in Washington, DC, this 28th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–5133 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

RIN 3150–AH10

Source Material Reporting Under International Agreements

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations which require licensees to report their holdings of source material (uranium and thorium) to the agency. Currently, licensees are required to file a report with the NRC whenever they receive or transfer uranium or thorium mined outside the United States (U.S.). The amended regulations require licensees to report the receipt or transfer of source material controlled under any of the various international Agreements for Peaceful Nuclear Cooperation. This change will enable the U.S. Government to maintain the comprehensive national inventory of nuclear materials required under these agreements. This rule also allows licensees additional flexibility in submitting their annual source material inventory statements. The amended regulations permit licensees to submit these statements along with their material status reports for special nuclear material.

DATES: The final rule is effective October 1, 2003, unless significant adverse comments are received by April 4, 2003. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126; e-mail *mlh1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Current regulations in 10 CFR Part 40 and 10 CFR part 150 require each NRC and Agreement State materials licensee to maintain an updated inventory of its holdings of source material of foreign origin (*e.g.*, thorium, depleted uranium, and natural uranium mined outside the U.S.). Licensees are required to submit a report to the NRC whenever they receive or transfer source material of foreign origin. Some licensees are also required to submit an annual statement detailing their inventory of such material. Information in these reports is entered into a national nuclear materials database called the Nuclear Materials Management and Safeguards System (NMMSS). The NMMSS, managed jointly by the NRC and the Department of Energy (DOE), is the U.S. Government's official computerized accounting system for the possession, use, and shipment of nuclear materials (primarily special nuclear material and source material) in the U.S., whether of foreign or domestic origin.

The U.S. Government uses data in the NMMSS to meet its source material reporting requirements under a number of international agreements promoting global cooperation in the peaceful uses of nuclear energy. U.S. participation in international Agreements for Peaceful Nuclear Cooperation is provided for in Section 123 of the Atomic Energy Act, and approximately 24 such Agreements are in place and active at this time. Under these Agreements, the U.S. Government is obliged to impose controls on the use of certain nuclear materials, ensure that such materials are used only for peaceful ends, and enforce other conditions placed on the import, export, or transfer of specific equipment and nuclear material. As part of an information exchange required by the Agreements, the U.S. Government periodically provides to the governments of cooperating countries an updated inventory of certain nuclear material held in the U.S. To enable the U.S. Government to meet this obligation, the NRC must ensure that licensees document movement within the U.S. of nuclear material subject to these Agreements, and track any additional nuclear material produced through the use of that material.

As noted, existing NRC regulations require licensees to track and report their holdings of source material of foreign origin, *i.e.*, source material mined outside the U.S. However, under the Agreements for Peaceful Nuclear Cooperation to which it is a party, the U.S. Government is required to report a different range of source material. The NRC's current reporting requirements, which focus on the national origin of source material, no longer adequately serve this purpose. The aim of this rulemaking is to align the NRC's source material reporting requirements for licensees with international reporting requirements agreed to by the U.S. Government. The new requirements will require licensees to track and report source material which the U.S. Government is obliged to report under existing international agreements.

The amended regulation will replace requirements that licensee holdings of foreign-origin source material be reported to the NRC with requirements that licensees track and report source material with foreign obligations. Source material with foreign obligations (or foreign-obligated source material) is nuclear material that the U.S. is obliged to track, control, and report to foreign governments under existing international agreements. Requiring NRC licensees to track and report foreign-obligated source material will result in a database that is more robust and that will better satisfy the U.S. Government's need for specific information on source materials with foreign obligations. Part 110 was revised in 2000 to require importers and exporters to report on license applications the foreign obligations associated with nuclear material being imported or exported (65 FR 70287; November 22, 2000).

A change has also been made to the timing of the yearly statement required for source material with a foreign obligation, providing licensees with increased flexibility. Licensees are given a choice of submitting their annual inventory statements either at the same time as they submit the material status reports on special nuclear material that are required under Parts 72 and 74, or within 30 days after September 30th of each year, as is currently required.

In addition, a change is made to require reporting for any Agreement State licensee who exports one kilogram or more of uranium or thorium source material. The current regulations only require licensees that import such material to report. This information is needed because the U.S. Government is required to report all exports of source material of 1 kg or more to the International Atomic Energy Agency (IAEA). Part 40 already contains this requirement.

Finally, to clarify the scope of this amendment, parts 40 and 150 will define the term "foreign obligations" for use in those parts to mean "the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material." This definition is consistent with the definition of "obligations" in part 110.

Section-by-Section Analysis

Section 40.4—Definitions

This section is revised to add a definition of "foreign obligations."

Section 40.64—Reports

This section is revised to reflect a change from a requirement to report source material of foreign origin to reporting source material with foreign obligations. This section is also revised to allow licensees to submit their yearly inventory statement of source material with foreign obligations with their material status reports on special nuclear material, providing more flexibility to licensees.

Section 150.3—Definitions

This section is revised to add a definition of "foreign obligations." In addition, the format of this section is updated to conform to current Office of the Federal Register standards for the listing of definitions in 10 CFR Chapter 1. The paragraph designations are removed and the definitions in the section are presented in alphabetical order.

Section 150.17—Submission to Commission of Source Material Reports

This section is revised to reflect a change from a requirement to report source material of foreign origin to reporting source material with foreign obligations. This section is also revised to require the reporting of exports of 1 kilogram or more of source material. This amendment makes Part 150 consistent with Part 40, which already requires the reporting of such exports. In addition, this section is revised to allow licensees to submit their yearly inventory statement of source material with foreign obligations with the licensee's material status reports on special nuclear material, providing more flexibility to licensees.

Procedural Background

Because the NRC considers this action to be noncontroversial and because it is necessary in order to support the U.S. Government's obligations in this area, the NRC is using the direct final rule process for this rule. The amendments to the rule will become effective on October 1, 2003. However, if the NRC receives significant adverse comments on this direct final rule by April 4, 2003, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is revising the reporting requirements for source material, using as the basis of the requirement whether the material has

foreign obligations rather than the foreign origin of the material. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1), (c)(2), and (c)(3); therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement

This direct final rule decreases the burden on licensees to report the transfer, import, or export of foreign origin source material (NRC Form 741, OMB Approval Number 3150–0003) by reducing the number of responses by 855 for an annual burden reduction of 641 hours (855 responses × 0.75 hrs per response). Because the burden for this direct final rule is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0020, –0032, and –003.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection request unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. The information reported is necessary to satisfy U.S. Government obligations under nuclear agreements for cooperation. Because not all foreign origin source material has associated foreign obligations, the rule may result in an insignificant decrease in regulatory burden on licensees. DOE/NRC Form-741 is used for the Nuclear Material Transaction Reports required by Parts 40 and 150. Approximately 36,500 DOE/NRC Form-741s are filed each year. Two NRC licensees submit the majority of the reports documenting the transfer, import, or export of foreign origin source material. These licensees have indicated that approximately 855 fewer reports will be required if the reporting requirement is changed to report only foreign obligation source material. The burden associated with each report is 0.75 hours for a total burden reduction of 641 hours.

The U.S. Government is required to report to IAEA the export of 1 kg or more of source material. The inclusion of Agreement State licensee reporting requirements for exports of 1 kg or more of source material should result in an insignificant increase in regulatory burden to licensees. Based on current information for the last 6 years, only 1 Agreement State licensee has exported source material of 1 kg or more. This licensee actually submitted a DOE/NRC Form-741 for its exports.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is necessary to reflect the nuclear non-proliferation policies of the Executive branch and U.S. Government obligations under nuclear agreements for cooperation.

Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR chapter I. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 40 and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 40.4, the definition of *Foreign obligations* is added to read as follows:

§ 40.4 Definitions.

* * * * *

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

* * * * *

3. In § 40.64, paragraphs (a) and (b) are revised to read as follows:

§ 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each specific licensee who transfers, receives, or adjusts the inventory, in any manner, of uranium or thorium source material with foreign obligations by 1 kilogram or more or who imports or exports 1 kilogram of uranium or thorium source material shall complete a Nuclear Material Transaction Report in computer-readable format in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Safety, Washington, DC 20555–0001. Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee authorized to possess at any one time and location more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under part 72 or 74, a statement of its source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR–0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

4. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97—425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

5. In § 150.3, the paragraph designations are removed, the definitions are arranged in alphabetical order, and the definition of *Foreign obligations* is added to read as follows:

§ 150.3 Definitions.

* * * * *

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

* * * * *

6. In § 150.17, paragraphs (a) and (b) are revised to read as follows:

§ 150.17 Submission to Commission of source material reports.

(a) Except as specified in paragraph (d) of this section and § 150.17a, each person who, pursuant to an Agreement State specific license, transfers or receives or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material with foreign obligations or who imports or exports 1 kilogram or more of uranium or thorium source material shall complete and submit in computer-readable format Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001. Each person who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each person who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Except as specified in paragraph (d) of this section and § 150.17a, each person authorized to possess at any one time and location, under an Agreement State license, more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under part 74, a statement of the licensee's source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR–0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001.

* * * * *

Dated at Rockville, Maryland, this 21st day of February, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–5168 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM244, Special Conditions No. 25–228–SC]

Special Conditions: Learjet Model 24/25 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Learjet Model 24/25 Series airplanes, modified by Avcon Industries, Inc. These modified airplanes will have novel and unusual design features when compared to the

state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions and Support, Inc., Air Data Display Units, and a single Innovative Solutions and Support, Inc., Analog Interface Unit that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 20, 2003. Comments must be received on or before April 4, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM244, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM244.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On July 10, 2002, Avcon Industries, Inc., P.O. Box 748, Newton, Kansas 67144, applied for a supplemental type certificate (STC) to modify Learjet Model 24/25 series airplanes. These models are currently approved under Type Certificate No. A10CE. The Learjet model 24 series airplanes have two aft-mounted General Electric Turbojet engines, a maximum operating altitude of 45,000 feet, and carries a crew of two with a maximum of six passengers. The Learjet model 25 series airplanes have two aft-mounted General Electric Turbojet engines, a maximum operating altitude of 51,000 feet, and carries a crew of two with a maximum of eight passengers. The modification incorporates the installation of dual Innovative Solutions and Support, Inc. (IS&S) Air Data Display Units (ADDU) and a single IS&S Analog Interface Unit (AIU) that are replacements for the existing altimetry system. The dual IS&S ADDU and a single IS&S AIU system use electronics to a far greater extent than the original altimetry system and may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. This disruption of these signals could result in loss of altitude, or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1992, Avcon Industries, Inc., must show that the Learjet Model 24/25 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the Learjet Model 24/25 Series airplanes includes § 21.29; 14 CFR part 25 effective February 1, 1965, as amended by Amendments 25–2 and 25–4. Other applicable amendments, regulations, and special conditions are noted in Type Certificate Data Sheet (TCDS) A10CE.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 24/25 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Learjet Model 24/25 series airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Avcon Industries, Inc., apply at a later date for a supplemental type certificate to modify any other model already included on Type Certificate Data Sheet (TCDS) A10CE to incorporate the same or similar novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Learjet Model 24/25 Series airplanes modified by Avcon Industries, Inc., will incorporate installation of dual IS&S Air Data Display Units (ADDU), and a single IS&S Analog Interface Unit (AIU) that will perform critical functions. These advanced systems use electronics to a far greater extent than the original altimetry system and may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet Model 24/25 series airplanes, modified by Avcon Industries, Inc. These special conditions require that new sensitive avionics/electronics and electrical systems that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Learjet Model 24/25 series airplanes modified by Avcon Industries, Inc. Should Avcon Industries, Inc., apply at a later date for a supplemental type certificate to modify any other model already included on Type Certificate A10CE to incorporate the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on Learjet Model 24/25 series airplanes modified by Avcon Industries, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Learjet Model 24/25 series airplanes modified by Avcon Industries, Inc.

1. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 20, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–5129 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14463; Airspace Docket No. 03–ACE–16]

Modification of Class D Airspace; and Modification of Class E; Dubuque, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class D and Class E airspace at Dubuque, IA. An examination of controlled airspace for Dubuque, IA revealed discrepancies in the Dubuque Regional Airport, IA, airport reference point used in the legal descriptions for the Dubuque, IA Class D and Class E airspace areas. This action corrects the discrepancies by modifying the Dubuque, IA Class D, Class E4 and Class E5 airspace areas. It also incorporates the revised Dubuque Regional Airport, IA airport reference point in the Class D, Class E4 and Class E5 airspace legal descriptions.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14463/ Airspace Docket No. 03–ACE–16, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal. any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class D airspace, the Class E airspace designated as an extension to a Class D or Class E surface area and the Class E airspace area extending upward from 700 feet or more above the surface of the earth at Dubuque, IA. An examination of controlled airspace for Dubuque, IA revealed discrepancies in the Dubuque Regional Airport, IA airport reference point used in the legal descriptions for these airspace areas. This amendment incorporates the revised Dubuque Regional Airport, IA airport reference point and brings the legal descriptions of these airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace designated as an extension to a Class D or Class E surface area and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6004 and 6005, respectively, of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14463/Airspace Docket No. 03–ACE–16." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034,. February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE IA D Dubuque, IA

Dubuque Regional Airport, IA
(Lat. 42°24′07″N., long. 90°42′34″W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of Dubuque Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE IA E4 Dubuque, IA

Dubuque Regional Airport, IA
(Lat. 42°24′07″N., long. 90°42′34″W.
Dubuque VORTAC
(Lat. 42°24′05″N., long. 90°42′33″W.)

That airspace extending upward from the surface within 2.6 miles each side of the 321° radial of the Dubuque VORTAC extending from the 4.2-mile radius of Dubuque Regional Airport to 7 miles northwest of the VORTAC and within 2.6 miles each side of the 132° radial of the Dubuque VORTAC extending from the 4.2-mile radius of Dubuque Regional Airport to 7 miles southeast of the VORTAC and within 2.6 miles each side of the 189° radial of the Dubuque VORTAC extending from the 4.2-mile radius of Dubuque Regional Airport to 7 miles south of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Dir4ectory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE IA E5 Dubuque, IA

Dubuque Regional Airport, IA
(Lat. 42°24′07″N., long. 90°42′34″W.)
Dubuque VORTAC
(Lat. 42°24′05″N., long. 90′42′33″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Dubuque Regional Airport and within 2.6 miles each side of the 321° radial of the Dubuque VORTAC extending from the VORTAC to 7 miles northwest of the airport and within 3 miles each side of the 133° radial of the Dubuque VORTAC extending from the VORTAC to 13.5 miles southeast of the airport and within 3 miles each side of the 189° radial to the Dubuque VORTAC extending from the VORTAC to 7.4 miles south of the airport.

* * * * *

Issued in Kansas City, MO on February 19, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–5132 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–12]

Establishment of Class E Airspace; Moundridge, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Moundridge, KS. An Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17 ORIGINAL Standard Instrument Approach Procedure (SIAP) and an RNAV (GPS) RWY 35 ORIGINAL SIAP have been developed to serve Moundridge Municipal Airport, Moundridge, KS. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing these approaches.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 2, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Moundridge, KS. The proposal was to establish controlled airspace extending upward from 700 feet AGL to protect aircraft executing instrument approaches to Moundridge Municipal Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Moundridge, KS. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures at Moundridge Municipal Airport. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Moundridge, KS

Moundridge Municipal Airport, KS
(Lat. 38°12'25" N., Long. 97°30'11" W.)

That airspace extending upward from 700 feet above the surface of the earth within a 6.5-mile radius of Moundridge Municipal Airport.

* * * * *

Issued in Kansas City, MO on February 19, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–5130 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

Protection of Stratospheric Ozone

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 81 to 85, revised as of July 1, 2002, on page 342, in § 82.4, remove Table I at the end of paragraph (t)(4).

[FR Doc. 03–55508 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0036; FRL–7292–8]

Hexythiazox; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of hexythiazox in or on date, dried fruit. The Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 5, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0036, must be received on or before May 5, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9368; e-mail address: *jamerson.hoyt@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0036. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of March 14, 2002 (67 FR 11480) (FRL–6826–3), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (1E6325) by the Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by Gowan Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.448 be amended by establishing a tolerance for combined residues of the miticide, hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the 4-chlorophenyl-4-methyl-2-oxo-3-thiazolidine moiety in or on date, dried fruit at 1.0 parts per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of hexythiazox on date, dried fruit at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile and Endpoints

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by hexythiazox and the endpoints use in risk assessment are discussed in Unit III. A. and B. of the final rule on hexythiazox pesticide tolerances published in the **Federal Register** of April 18, 2001 (66 FR 19879) (FRL–6778–8). Please refer to this document should you desire detailed toxicological information on hexythiazox.

The Agency has identified an acute dietary endpoint for females 13 years and older. The acute population adjusted dose (aPAD) for females is 2.4 milligrams/kilograms/day (mg/kg/day). No acute dietary endpoint was identified for the general population including infants and children; a dose and endpoint attributable to a single exposure were not identified from the available oral toxicity studies, including maternal toxicity in the developmental toxicity studies. The chronic population adjusted dose (cPAD) for all populations is 0.025 mg/kg/day. Hexythiazox has been classified as a category C, possible human carcinogen, for cancer. The calculated Q* for hexythiazox is 2.22×10^{-2}.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.448) for the combined residues of hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the 4-chlorophenyl-4-methyl-2-oxo-3-thiazolidine moiety in or on a variety of raw agricultural commodities (RAC) including tolerances for milk, fat, and meat byproducts of cattle, goat, horse, sheep, and swine. Risk assessments were conducted by EPA to assess dietary exposures from hexythiazox in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The dietary exposure evaluation model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Default processing factors were used, and 100 percent crop treated (PCT) information for all commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A partially-refined dietary analysis was performed using anticipated residue levels for most crops (calculated from field trial data) and PCT or anticipated market-share information for all crops.

iii. *Cancer.* A partially-refined dietary-exposure analysis was performed using anticipated residue (AR) levels for most crops, processing factors where applicable, and PCT or anticipated market share information for all crops.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group, and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The following Table 1 provides a summary of the anticipated residue (AR) and PCT information used for the chronic and cancer exposure assessments. The Agency has issued emergency exemptions to the state of California for use of hexythiazox on dates since 1998. The PCT information for dates is based on applications made under these emergency exemptions. The majority of dates grown in the United States are grown in California.

TABLE 1.—SUMMARY OF HEXYTHIAZOX ANTICIPATED RESIDUES (AR) FOR CHRONIC AND CANCER DIETARY EXPOSURE ASSESSMENT BASED ON FIELD-TRIAL DATA

Commodity	Established or HED Recommended Tolerances (ppm)	AR (ppm)	CT/Anticipated Market Share (%)
Almond hulls	10	2.7	2
Almond nutmeat	0.30	0.046	2
Apples	0.50	0.12	4
Apple juice	0.50	0.12	4
Apricots	1.0	0.20	2
Caneberry crop subgroup	1.0	0.34	15
Cherries	1.0	0.20	<1
Cottonseed meal	0.20	0.059	1
Dates	1.0	0.24	45
Fat	0.02	0.0000076	
Hog Fat	0.02	6.3×10^{-10}	
Hog Liver	0.02	4.8×10^{-9}	
Hog Meat by-products (except liver)	0.02	2.0×10^{-9}	
Hops	2.0	2.0	45
Liver	0.02	0.000058	
Meat by-products (except liver)	0.02	0.000024	
Milk	0.02	0.0000053	
Nectarines	1.0	0.054	2
Other nutmeat	0.30	0.046	<1
Peaches	1.0	0.14	1
Pears	0.30	0.30	3
Pecans	0.30	0.01	<1
Peppermint, tops	2.0	0.77	5
Plum	0.10	0.050	1
Plum, prune, dried	0.40	0.050	<1
Plum, prune, fresh	0.10	0.050	<1
Refined cottonseed oil	0.20	0.059	1
Spearmint, tops	2.0	0.77	5
Strawberries	3.0	0.75	14
Undelinted cottonseed	0.20	0.059	1
Wet apple pomace	0.80	0.12	4

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which hexythiazox may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for hexythiazox in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of hexythiazox.

The Agency uses the generic estimated environmental concentration (GENEEC) or the pesticide root zone/exposure analysis modeling system (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to hexythiazox they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of hexythiazox for acute exposures are estimated to be 1.81 parts per billion (ppb) for surface water and 0.009 ppb for ground water. The EECs for chronic exposures are estimated to be 0.91 ppb for surface water and 0.009 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Hexythiazox is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether hexythiazox has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, hexythiazox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that hexythiazox has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors (UF) in calculating a dose level that poses no appreciable risk to humans.

The prenatal and postnatal toxicology data base for hexythiazox is complete with respect to FQPA considerations. The nature of the toxic effects caused by hexythiazox are discussed in Unit III. D. of the final rule on hexythiazox pesticide tolerances published in the **Federal Register** of April 18, 2001 (66 FR 19879) (FRL–6778–8). Please refer to this document should you desire detailed toxicological information on hexythiazox regarding FQPA considerations.

The results of the prenatal and postnatal toxicology studies indicated no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to hexythiazox. There is a complete toxicity data base for hexythiazox and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed and reduced to 1X. The FQPA factor is removed because an additional safety factor is not needed to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a

point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = chronic (cPAD) – (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the U.S. EPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* An acute dietary endpoint has only been identified for females (13 years and older). Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to hexythiazox will occupy less than 1% of the aPAD for females 13 years and older. In addition, there is potential for acute dietary exposure to hexythiazox in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HEXYTHIAZOX

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13 years and older	2.4	<1%	1.81	0.009	72,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to hexythiazox from food will utilize less than 1% of the cPAD for the U.S. population and all infants and children subpopulations. There are no residential uses for hexythiazox. There is potential for chronic dietary exposure to hexythiazox in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HEXYTHIAZOX

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.025	<1%	0.91	0.009	870
Children	0.025	<1%	0.91	0.009	250
Infants	0.025	<1%	0.91	0.009	250

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposures take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Hexythiazox is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Hexythiazox has been classified as a Category C possible human carcinogen ($Q_1^* = 2.22 \times 10^{-2}$). Using the exposure assumptions discussed in this unit for cancer, the carcinogenic risk estimate from food for the general U.S. population is 2.5×10^{-7}. There is potential for chronic dietary exposure to hexythiazox in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the estimated cancer risk for aggregate exposure to exceed 1×10^{-6} as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HEXYTHIAZOX

Population Subgroup	Q_1^*	Estimated Carcinogenic Risk (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Cancer DWLOC (ppb)
U.S. population	2.22×10^{-2}	2.5×10^{-7}	0.91	0.009	1.2

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to hexythiazox residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The high-performance liquid chromatography/ultraviolet (HPLC/UV) analytical method used for determining the combined residues of hexythiazox and its metabolites in dates is adequate for data collection purposes. Adequate method validation data were submitted. This method is based on Method AMR-985–87, which has been deemed acceptable as a tolerance enforcement method in conjunction with a petition for use on apples. The method has been validated for use on various crop commodities, and has been forwarded to the Food and Drug Administration (FDA) for inclusion in Pesticide Analytical Method Volume II (PAM II). This earlier method is considered sufficient to enforce the proposed permanent tolerances for residues in or on dates.

B. International Residue Limits

There are no Mexican, Canadian or Codex maximum residue limits (MRLs) established for hexythiazox in or on dates.

C. Magnitude of Residues

An adequate number of residue field trials reflecting the proposed use directions were submitted to EPA to demonstrate that the tolerance for date, dried fruits at 1.0 ppm will not be exceeded when hexythiazox products labeled for this use are used as directed.

D. Rotational Crop Restrictions

As dates are a perennial crop, confined and field rotational crop studies are not required to support the subject petitions.

V. Conclusion

Therefore, the tolerance is established for combined residues of hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the 4-chlorophenyl-4-methyl-2-oxo-3-thiazolidine moiety, in or on date, dried fruit at 1.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0036 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 5, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its

inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0036, to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.448 is amended by alphabetically adding the commodity "date, dried fruit" to the table in paragraph (a), and by removing and reserving paragraph (b) as follows:

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

Commodity	Parts per million
Date, dried fruit	1.0

(b) [Reserved]

* * * * *

[FR Doc. 03–5194 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0075; FRL–7296–2]

Folpet; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of folpet (N-(trichloromethylthio)phthalimide) in or on hop, dried cones. Makhteshim-Agan of North America Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 5, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0075, must be received on or before May 5, 2003.

ADDRESSES: Written objections and hearing requests– may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Richard P. Keigwin, Jr., Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW..Washington, DC 20460–0001; telephone number: (703) 305–7618; e-mail address: *keigwin.richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111), Crop production.
- Industry (NAICS 112), Animal production.
- Industry (NAICS 311), Food manufacturing.
- Industry (NAICS 32532), Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0075. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_(_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments. access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of January 9, 2003 (68 FR 1182) (FRL–7287–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 2E6512) by Makhteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100 New York, NY 10176. That notice included a summary of the petition prepared by Makhteshim-Agan of North America Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.191 be amended by establishing a tolerance for residues of the fungicide folpet, (N–(trichloromethylthio)phthalimide), in or on hop at 120 parts per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to

exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of folpet on hop, dried cones at 100 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by folpet are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 160 milligrams/kilogram/day (mg/kg/day) LOAEL = 500 mg/kg/day based on 5 percent decrease in body weight
870.3150	90–Day oral toxicity in nonrodents	NOAEL = <790 mg/kg/day (lowest dose tested)(LDT) LOAEL = 790 mg/kg/day based on decreased weight gain in males and females, testicular atrophy in males
870.3200	28–Day dermal toxicity	NOAEL = 1 mg/kg/day LOAEL = 10 mg/kg/day based on dermal irritation;systemic toxicity as reduced body weight gain occurred only at doses greater than 10 mg/kg/day
870.3700	Prenatal developmental in rodents Crl: COBS-CD-(SD) BR strain.	Maternal NOAEL = 10 mg/kg/day LOAEL = 60 mg/kg/day based on reduced body weight Developmental NOAEL = 60 mg/kg/day LOAEL = 360 mg/kg/day based on possible incomplete ossification of one or both pubes and/or eschia
870.3700	Prenatal developmental in rodents CD Rats	Maternal NOAEL = 150 mg/kg/day LOAEL = 550 mg/kg/day based on decreased body weight gain, soft feces Developmental NOAEL = <150 mg/kg/day (LDT) LOAEL = 550 mg/kg/day based on small fetuses, reduced ossification of interparietal bone as well as increase in angulated ribs
870.3700	Prenatal developmental in nonrodents HY/CR Albino Rabbits	Maternal NOAEL = 40 mg/kg/day LOAEL = 160 mg/kg/day based on decrease in body weight gain and food consumption Developmental NOAEL = 10 mg/kg/day LOAEL = 40 mg/kg/day based on delayed ossification of stemebrae and lack of ossification of caudal vertebrae distal to caudal vertebra 15.
870.3700	Prenatal developmental in nonrodents NZW Rabbits	Maternal NOAEL = 10 mg/kg/day LOAEL = 20 mg/kg/day based on decreased food consumption & body weight gain during gestation. At 60 mg/kg/day, decreased food consumption & body weight gain, hydrocephalus and related skull malformations. Developmental NOAEL = 10 mg/kg/day LOAEL = 20 mg/kg/day based on Increased incidence of hydrocephalus & domed skull & irregularly shaped fontanelles
870.3800	Reproduction and fertility effects Charles River Rat	Parental/Systemic NOAEL = 19.1 mg/kg/day in males; 22.5 mg/kg/day in females LOAEL = 112 mg/kg/day in males and 134 mg/kg/day in females based on diffuse hyperkeratosis of the non-glandular epithelium of in both sexes of both generations. Reproductive NOAEL = 370 mg/kg/day in males; 436 mg/kg/day in females highest dose tested (HDT) Offspring NOAEL = 112 mg/kg/day in males and 134 mg/kg/day in females LOAEL = 370 mg/kg/day in males and 565 mg/kg/day in females based on lower pup body weights primarily in the F1 litter generation

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects Sprague-Dawley Rat	Parental/Systemic NOAEL = 35 mg/kg/day LOAEL = 160 mg/kg/day based on decreased weight gain in F1 offspring. Reproductive NOAEL = 35 mg/kg/day LOAEL = 160 mg/kg/day based on decreased fertility in males
870.4100	Chronic toxicity rodents Crl:CD(SD)BR albino rats	NOAEL = 10 mg/kg/day LOAEL = 40 mg/kg/day based on ulceration/erosion, hyperkeratosis of stomach in males and females
870.4100	Chronic toxicity rodents Fischer 344 Rat	NOAEL = 25 mg/kg/day LOAEL = 50 mg/kg/day based on hyperkeratosis of nonglandular epithelium of stomach in both sexes.
870.4100	Chronic toxicity rodents	NOAEL = 12 mg/kg/day in males; 15 mg/kg/day in females LOAEL = 81 mg/kg/day in males and 100 mg/kg/day in females based on an increase in incidence and severity of hyperkeratosis of the esophagus and nonglandular epithelium of the stomach.
870.4100	Chronic toxicity dogs	NOAEL = 10 mg/kg/day LOAEL = 60 mg/kg/day based on decreased food consumption & body weight gain; decreased serum cholesterol and serum proteins
870.4200	Carcinogenicity rats Crl:CD(SD)BR albino rats	NOAEL = Not achieved. LOAEL = 10 mg/kg/day on increased incidence of C-cell adenoma & carcinoma of thyroid in males & intrietical cell tumors of testes
870.4200	Carcino-genicity rats Fischer 344 Rat	NOAEL =50 mg/kg/day LOAEL = 100 mg/kg/day on increased benign fibroepithelial tumor of the mammary glands & C-cell adenoma of the thyroid No evidence of carcinogenicity
870.4200	Carcinogenicity mice B6C3F1 Strain	NOAEL = Not achieved: LOAEL = 150 mg/kg/day based on duodenal carcinoma and stomach papilloma both sexes; malignant lymphoma in high dose females only Evidence of carcinogenicity
870.4200	Carcinogenicity mice CD-1 Mice	NOAEL = Not achieved. LOAEL = 150 mg/kg/day based on a dose related increase in incidence of intestinal adenomas and adenocarcinomas in both sexes Evidence of carcinogenicity
870.5195	Mutagenic-Lymphoma Mutation in L5178Y/TK mouse lymphoma cells	Positive for forward mutations in L5178Y/TK mouse lymphoma cells. Higher concentration necessary in the presence of S-9 fraction
870.5275	Mutagenic-Sex Link Recessive in Drosophilia	Positive for sex linked recessive lethals
870.5300	Mutagenic-*In vivo* Cytogenetic toxicity in Mouse	No effect on the incidence of coat color spots - negative for mutations. Significant pup mortality at all doses levels. Decreased survival of pups during lactation. Increased melanocyte toxicity in pups at 4310 ppm. decreased weight gain in dams at 4310.
870.5300	Mutagenic-*In Vivo* Cytogenetic in Mouse	Decreases in the number and percentage of live born pups; maternal weight gain
870.5375	Mutagenic-Chromosome Aberration in Rats	Not a clastogen at the HDT. No measure of cytotoxicity in bone marrow. Dose used not supported by evidence that the HDT was a maximum tolerated dose.
870.5380	Cytogenetics Chromosome Aberration in Chinese hamster ovary cells	Folpet was tested up to toxicity in non-activated (2.5 µg/mL) & activated Chinese hamster ovary cells (CHO) (25.7 & 75.0 µg/mL) in 10 & 20 hour assays. Results: There was a 10-30 fold difference in toxicity sensitivity. The test article induced chromosomal aberrations at marginally cytotoxic concentrations of 0.75 µg/mL in the non-activated system, and 0.26 µg/mL in the 10 hour activ. assay, but required 25.0 µg/mL in the 20 hour activation assay.
870.5395	Mutagenic Micronucleus Assay in the Mouse (CD-1)	No evidence of mutagenicity.
870.5450	Mutagenic-Dominant Lethal Test in the Mouse	Negative for mutation

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5500	Mutagenic-Reverse Mutation	Positive direct acting mutagen. Both batches tested were equally mutagenic. Effect of metabolic activation not assessed.
870.5500	Mutagenic-DNA Repair Test	Positive for DNA damage without metabolic activation.
870.5550	Unscheduled DNA Synthesis in WI 38 Fibroblasts:	Positive in the presence of metabolic activation only.
870.5500	Reverse Mutation	Positive for reverse mutations in *Salmonella* TA100, TA1535 & TA1538, & in *E. coli* WP2. Rat liver S-9 had no effect on mutagenicity
870.5575	Mutagenic-Recomb/ Convers Assay	Positive for recombinants with/without metabolic activity.
870.6200	Acute neurotoxicity screening battery	Not available.
870.6200	Subchronic neurotoxicity screening battery	Not available.
870.6300	Developmental neurotoxicity	Not available.
870.7485	Metabolism and pharmacokinetics	Doses: 50 and 5,000 ppm. Results: The 5,000 ppm level had been shown to cause the tumors in mice but not in rats. The studies suggested that folpet was tumorigenic in the mouse and not in the rat because: Greater intake in the mouse and greater target tissue exposure to active metabolites that the mouse could not detoxify; greater local effects on mouse upper gastrointestinal tract; and greater reliance by the mouse on glutathione for detoxification of folpet.
870.7485	Metabolism and pharmacokinetics	C^{14}-Folpet was administered orally to Sprague-Dawley rats in 3 studies: 1. Single dose of 10 mg/kg; 2. Single dose of 500 mg/kg; and 3. On day 15, 10 mg/kg of C^{14}-Folpet after 14 consecutive days of unlabeled folpet at 10 mg/kg. Samples were examined for radioactivity for up to 120 hours post C^{14}-dosing. Results: 1. Single C^{14}-Folpet at 10 mg/kg was absorbed > 90% of the dose, there was rapid urinary excretion and by 120 hours, there was little detactable radioactivity. 2. Single C^{14}-Folpet at 500 mg/kg was about 60% absorbed with the urinary excretion rate being slower that after the 10 mg/kg dose (possibly due to rate-limiting absorption). 3. Single C^{14}-Folpet at 10 mg/kg following 14 daily non-labeled doses of 10 mg/kg yielded results similar to those observed after a single c^{14} dose. 4. No accumulation of folpet was detected during the 5 days after dosing; concentrations of radioactivity in measured tissues were generally below the limit of detection at 10 mg/kg or were detected at very low levels at 500 mg/kg. 5. Phthalamic acid was determined to be the single active metabolite found in urine & it was suggested that its formation from Folpet may have been by trichloromethylthio groups loss and hydrolytic cleavage of the maleimide ring. At 10 mg/kg,the major fecal metabolite was phthalamic acid and at 500 mg/kg, the radioactivity was primarily associated with unchanged C^{14}-folpet (assumed to be unabsorbed test article).
870.7600	Dermal penetration	Doses: C^{14}-Folpet was administered dermally to male doses of 10, 1, 0.1, and 0.01 mg/rat (200 uL volume of test suspension to 18.9 cm2 of clipped skin) for up to 24 hours. Blood, urine, feces, carcass and skin radioactivity was measured (up to 24 hrs). Results: 1. Rapid absorption into the skin and carcass; 2. Low blood levels; 3. Primary excretion by urine with rate apparently inversely related to quantity applied; and 4. Minor bile involvement in excretion as little in feces.

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/ UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for folpet used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FOLPET FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age)	NOAEL = 10 mg/kg/day UF = 100 Acute RfD = 0.1 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.1 mg/kg/day	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Chronic Dietary (All populations)	NOAEL = 9 mg/kg/day UF = 100 Chronic RfD = 0.09 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.09 mg/kg/day	Chronic Toxicity Study in Rat LOAEL = 35 mg/kg/day based on hyperkeratosis/acanthosis and ulceration/ erosion of non-glandular stomach epithelium in both sexes
Short-Term Dermal (1 to 7 days) (Residential)	oral study NOAEL= 10 mg/kg/day (dermal absorption rate = 2.7%)	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Intermediate-Term Dermal (1 week to several months) (Residential)	oral study NOAEL = 10 mg/kg/day (dermal absorption rate = 2.7%	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Short-Term Inhalation (1 to 7 days) (Residential)	oral study NOAEL= 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Intermediate-Term Inhalation (1 week to several months) (Residential)	oral study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Cancer (oral, dermal, inhalation)	Cancer potency factor (Q1*) is 1.86×10^{-3}.		Based on increased incidences of adenomas and carcinomas in the duodenum of male and female mice in two strains

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.191) for the residues of folpet, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from folpet in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model-Food Commodity Intake Database (DEEM-FCID™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Anticipated residues for most commodities and percent crop treated for many commodities. For hop, the dietary exposure analysis assumed tolerance level residues and 100 percent crop treated.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model Food Commodity Intake Database (DEEM FCID) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998] nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Anticipated residues for most commodities and percent crop treated for many commodities. For hop, the dietary exposure analysis assumed tolerance level residues and 100 percent crop treated.

iii. *Cancer.* In conducting this cancer dietary risk assessment the Dietary Exposure Evaluation Model Food Commodity Intake Database (DEEM-FCID™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Anticipated residues for most commodities and percent crop treated for many commodities. For hop, the dietary exposure analysis assumed tolerance level residues and 100 percent crop treated.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

The Agency did use anticipated residue calculations in conducting its risk assessment. These calculations are based upon submitted field trial data and could be further refined through the use of monitoring data.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. The only registered food use of folpet in the United States is avocados grown in Florida. According to data available from the United States Department of Agriculture's National Agricultural Statistics Service, California accounted for 89 percent of avocado production in the United States, followed by Florida at nearly 11 percent and Hawaii at approximately 0.1 percent. Therefore, the Agency has assumed that only 11 percent of the U.S. avocado crop is treated with folpet. As stated earlier, for the hop use, the Agency assumed 100 percent crop treated even though imports of hop accounted for less than 50 percent of the crop consumed in the United States, based upon data available from the Hop Growers of American 2001 Statistical Report. For all other commodities (except hops and avocados), the Agency assumed a maximum percent crop treated value of 1% for each commodity (i.e., apple, cranberry, cucumber, grape, lettuce, melon, onion, strawberry, and tomato) based upon information derived through an analysis of import and domestic production data available from the United States Department of Agriculture for the years 1995 through 1999 and adjusted for the countries in which folpet is registered.

The Agency believes that the three conditions listed in Unit III. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. In using these data, the Agency also took into account the specific countries where folpet is registered. In the case of avocados, the Agency based its PCT estimate on the volume of the avocado crop grown in the United States, utilizing data from the U.S. Department of Agriculture. For all potentially-treated commodities, EPA used estimated maximum PCT assumptions in conducting both the acute and chronic dietary exposure assessments. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which folpet may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for folpet in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of folpet.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to folpet they are further discussed in the aggregate risk sections in Unit III.E..

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of folpet for acute exposures are estimated to be 309 parts per billion (ppb) for surface water and 0.83 ppb for ground water. The EECs for chronic exposures are estimated to be 0.62 ppb for surface water and 0.83 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Folpet is currently registered for use as an additive in paints and stains for use both occupationally and by the homeowner. Four major exposure scenarios for homeowner handlers using folpet containing paints and stains labeled for pesticidal use and three major scenarios for homeowners using folpet containing products not labeled for pesticidal use were evaluated. The highest exposure level for combined inhalation and dermal exposures were based upon a homeowner applying a ready-to-use stain formulation with an airless sprayer. This exposure level was used to estimate the short- and intermediate-term risks for folpet.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether folpet has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, folpet does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that folpet has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

Captan and folpet share a common metabolite, thiophosgene, which the Agency believes to be responsible for the carcinogenic effects of these compounds. Thiophosgene is a highly reactive, short-lived compound. Studies indicate that thiophosgene causes local irritation of the site with which it comes in contact, and is believed to cause tumors through irritation of the duodenum. Because they are so short-lived, thiophosgene residues cannot be quantified. Without measurable residues of the common metabolite, it is difficult to relate exposures of captan to those of folpet since the formation of thiophosgene may be different for both compounds. However, assuming that the carcinogenic effects observed in both pesticides are due solely to the metabolite thiophosgene, the Agency believes it is reasonable to add the estimate cancer risks from the individual aggregate risks from both folpet and captan to obtain a worst-case estimate.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The data provided no indication of increased susceptibility in two prenatal developmental toxicity studies in rats following in utero or in the two (2) 2–generation reproduction studies in rats. Two developmental toxicity studies in rabbits are also available. In a study with New Zealand rabbits, folpet caused an increase in the incidence of hydrocephalus in fetuses and with the associated dome skull and irregularly-shaped fontanelles at the mid and high dose groups in the presence of maternal toxicity. Both fetal and litter incidences of this malformation were increased in a dose-related manner. There were no toxicological effects noted on litter size, resorptions, sex ratio, or number of skeletal malformations. For maternal toxicity, the NOAEL was 10 mg/kg/day and the LOAEL was 20 mg/kg/day, based on decreased body weight gain and food consumption. For developmental toxicity, the NOAEL was

10 mg/kg/day and the LOAEL was 20 mg/kg/day, based upon an increase in the number of fetuses and litters with hydrocephaly and related skull malformations. Although the developmental malformations (hydrocephaly) and associated maternal toxicity occur at similar doses, such effects are toxic manifestations as a result of exposure.

In order to determine the critical period of treatment for the occurrence of hydorcephaly and other treatment-related fetal anomalies observed in the above study, another developmental toxicity study was conducted with the same strain of rabbit with the highest dose group (60 mg/kg/day) receiving folpet on gestation days 7-9, 10-12, 13-15, or 16-18. The incidence of hydrocephalus was higher than historical or concurrent controls, but lower than in the previous study. The maternal toxicity noted was a dose-related decreased food consumption and variable decrease in body weight gain. Significantly increased incidence of irregularly-shaped fontanelles and slightly increased incidences of angulated hyoid alae were noted in the 60 mg/kg/day dose group.

In a second rabbit developmental toxicity study, HY/CR strain rabbits received folpet on gestation days 7 through 19. For maternal toxicity, the NOAEL was 40 mg/kg/day and the LOAEL was 160 mg/kg/day, based on decreased body weights and food consumption as well as clinical signs. For developmental toxicity, the NOAEL was 10 mg/kg/day and the LOAEL was 40 mg/kg/day, based on delayed ossification of the sternebrae. There was no evidence of hydrocephaly observed in this study at dose levels greater than in the previous study.

In addition, the Agency examined the available studies for captan, the structural analog of folpet, and determined that there was no indication of increased susceptibility of rabbits or hamsters to pre- or post-natal exposure to captan. In prenatal developmental toxicity studies in rabbits and hamsters and reproduction studies in the rat, all conducted using captan as the test material, toxicity to the offspring occurred at equivalent or higher doses than maternal toxicity.

3. *Conclusion.* i. There is a complete toxicity data base for folpet and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency has determined that the FQPA Safety Factor can be reduced to 1X based upon the following weight-of-the-evidence considerations:

a. There was no evidence of quantitative or qualitative susceptibility in two developmental toxicity studies in the rat;

b. There was no evidence of enhanced suspectibility to the pups in two different 2–generation reproduction studies in the rat;

c. Folpet is not a cholinesterase inhibitor and, therefore, comments made at the June 26-27, 2002 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) meeting on the Determination of the Appropriate FQPA Safety Factor(s) in the Organophosphorous Pesticide Cumulative Risk Assessment: Susceptibility and Sensitivity to the Common Mechanism, Acetylcholinesterase Inhibition should not influence this uncertainty factor decision.

d. There is inconsistency between the two available developmental toxicity studies in the rabbit. When tested at lower doses, there is a concern for hydrocephaly. However, when this study was repeated in the same strain of rabbit at higher dose levels, no evidence of hydrocephaly was observed. Nevertheless, for purposes of risk assessment, the Agency has selected the developmental NOAEL of 10 mg/kg/day from the rabbit developmental study in which hydrocephaly was observed as the endpoint for evaluating acute risk.

e. Other than the one rabbit developmental toxicity study, there are no other signs from the available toxicology database of a concern for neurotoxic effects.

f. Furthermore, the Agency's exposure assumptions are conservative. The assessment assumes that all hops consumed in the United States are treated with folpet. In addition, the analysis presumes that all avocados grown in Florida are treated with this fungicide. The percent crop treated data for the imported commodities assumed that all crop exported to the U.S. from countries in which folpet is registered are treated with this chemical. Therefore, a figure of 1% crop treated was assumed for the following commodities: Apple, cranberry, cucumber, grape, lettuce, melon, onion, strawberry, and tomato.

ii. The Agency has also determined that a developmental neurotoxicity study for folpet is not warranted based upon the following considerations:

a. Although hydrocephalus was observed in one developmental toxicity study in the rabbit, it occurred at maternally toxic doses and was only seen in one species;

b. No alterations to the fetal nervous system were seen in the developmental rat studies at the same doses that induce hydrocephaly in rabbits;

c. Although there are no acute or subchronic neurotoxicity studies available, there is no evidence of neurotoxicity or neuropathology in adult animals in any of the studies;

d. The available data indicate that the developmental neurotoxicity study would have to be tested at dose levels higher than 150 mg/kg/day because no developmental toxicity was observed in rats at 2,000 mg/kg/day. In addition, given the results in the 2–generation reproduction study (NOAEL of 168 mg/kg/day), it is anticipated that in order to elicit any fetal nervous system abnormalities in the developmental neurotoxicity study, the selected dose levels would have to be higher than 160 mg/kg/day.

e. Since the dose level selections for the developmental neurotoxicity study would be greater than 160 mg/kg/day, the resultant NOAEL would be either comparable to, or higher than, the doses currently used in the risk assessment. The NOAEL of 10 mg/kg/day selected for the acute reference dose and the residential exposure and risk assessments is seventeen times lower than the offspring NOAEL in the reproduction study. The NOAEL of 9 mg/kg/day selected for the chronic reference dose is nineteen times lower than the offspring NOAEL in the reproduction study. Therefore, it is unlikely that the developmental neurotoxicity study would change the current doses used for overall risk assessments.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to folpet will occupy <1 % of the aPAD for females 13 years and older. In addition, there is potential for acute dietary exposure to folpet in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FOLPET

Population Subgroup	aPAD (mg/kg/day)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females, 13-49 years old	0.1	<1	309	0.83	2,800

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to folpet from food will utilize less than 1% of the cPAD for all population subgroups within the United States. Based the use pattern, chronic residential exposure to residues of folpet is not expected. In addition, there is potential for chronic dietary exposure to folpet in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FOLPET

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.09	<1%	0.62	0.83	3,100
All Infants	0.09	<1%	0.62	0.83	900
Children, 1-2 years	0.09	<1%	0.62	0.83	900
Females, 13-49 years	0.09	<1%	0.62	0.83	2,700
Adults, 50+ years	0.09	<1%	0.62	0.83	3,100

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposures take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Folpet is currently registered for use that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term and intermediate-term exposures for folpet.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 370. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term and intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of folpet in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term or intermediate-term aggregate exposures to exceed the Agency's level of concern, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENTS FOR SHORT-TERM AND INTERMEDIATE-TERM EXPOSURES TO FOLPET

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	DWLOC (ppb)
Females, 13-49 years	370	100	0.62	0.83	2,200

4. *Aggregate cancer risk for U.S. population.* The aggregate cancer risk (food plus residential) from exposure to folpet is estimated to be 7.2×10^{-8}. Assuming a negligible risk level of 1.0×10^{-6}, the cancer DWLOC would be 15 ppb. Based on the FIRST and SCI-GROW models the EECs for chronic exposures to folpet are estimated to be 0.62 ppb for surface water and 0.83 ppb for ground water, significantly lower than the DWLOC.

As discussed in Unit III.C.4., captan and folpet share a common metabolite, thiophosgene, which the Agency believes to be responsible for the carcinogenic effects of these compounds. Thiophosgene is a highly reactive, short-lived compound. Studies indicate that thiophosgene causes local irritation of the site with which it comes in contact, and is believed to cause tumors through irritation of the duodenum. Because they are so short-lived, thiophosgene residues cannot be quantified. Without measurable residues of the common metabolite, it is difficult to relate exposures of captan to those of folpet since the formation of thiophosgene may be different for both compounds. However, assuming that the carcinogenic effects observed in both pesticides are due solely to the metabolite thiophosgene, the Agency believes it is reasonable to add the estimate cancer risks from the individual aggregate risks from both folpet and captan to obtain a worst-case estimate.

For captan, the estimated cancer risk for the U.S. population from exposure to food only is 1.26×10^{-7}. As discussed above, the estimate cancer risk (food only) from exposure to folpet is 7.2×10^{-8}. If these two risk estimates are added together, the total estimated cancer risk is 2.0×10^{-7}. Assuming a negligible cancer risk in the range of 1.0×10^{-6} to 3.0×10^{-6}, the smallest cancer DWLOC would be 11 ppb. Based on the FIRST and SCI-GROW models the EECs for chronic exposures to folpet are estimated to be 0.62 ppb for surface water and 0.83 ppb for ground water. The EECs for chronic exposure to captan are estimated to be 4 ppb for surface water and 1 ppb for groundwater. The combined EECs for chronic exposure to captan plus folpet are 5 ppb for surface water and 2 ppb for groundwater, both below the DWLOC of 11 ppb.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to folpet residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate gas chromatography/electron capture detector (GC/ECD) analytical method is available for enforcing tolerances of folpet in or on plant commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No CODEX MRLs exist for folpet on hop.

V. Conclusion

Therefore, the tolerance is established for residues of folpet, (N–(trichloromethylthio)phthalimide), in or on hop, dried cones at 120 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0075 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 5, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0075, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 25, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.191 is amended:

i. By designating the existing text as paragraph (a) and adding a heading, and alphabetically adding a commodity to the table in newly designated paragraph (a); and

ii. By adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.191 Folpet; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * *	* * *
Hop, dried cones	120[1]
* * *	* * *

1 There are no U.S. registrations on hop, dried cones as of February 14, 2003

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–5192 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Clarendon, TX

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 70 to 79, revised as of October 1, 2002, in § 73.202(b), on page 108, the Table of FM Allotments is amended under Texas by adding Clarendon, Channel 257C2.

[FR Doc. 03–55507 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1080–AI17

Endangered and Threatened Wildlife and Plants; Final Rule to List the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (*Brachylagus idahoensis*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for the Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*) pursuant to the Endangered Species Act of 1973, as amended (Act). This population consists of fewer than 30 wild individuals in Douglas County, Washington, and a small captive population.

The Columbia Basin pygmy rabbit is imminently threatened by recent decreases in its population size and distribution that have caused it to be susceptible to the combined influence of catastrophic environmental events, habitat degradation and fragmentation, disease, predation, demographic limitations, and loss of genetic heterogeneity. We find that these threats constitute a significant risk to the well-being of the Columbia Basin pygmy rabbit and, as such, make the protective measures afforded by the Act immediately available with publication of this final rule.

DATES: This rule becomes effective on March 5, 2003.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 East Montgomery Drive, Spokane, Washington 99206.

FOR FURTHER INFORMATION CONTACT: Christopher Warren, at the address listed above (telephone 509/891–6839; facsimile 509/891–6748; electronic mail: *chris_warren@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

The pygmy rabbit (*Brachylagus idahoensis*) is a member of the family Leporidae, which includes hares and rabbits. The species has been placed in a number of genera since it was first classified in 1891 as *Lepus idahoensis* (Washington Department of Fish and Wildlife (WDFW) 1995a). In 1904, it was reclassified and placed in the genus *Brachylagus*. In 1930, it was again reclassified and placed in the genus *Sylvilagus*. More recent examination of dentition (Hibbard 1963) and analysis of blood proteins (Johnson 1968) suggest that the pygmy rabbit differs significantly from species within either the *Lepus* or *Sylvilagus* genera. The pygmy rabbit is now generally considered to be within the monotypic genus *Brachylagus*, and classified as *B. idahoensis* (Green and Flinders 1980a; WDFW 1995a). There are no recognized subspecies of the pygmy rabbit (Dalquest 1948; Green and Flinders 1980a).

The pygmy rabbit is the smallest Leporid in North America, with mean adult weights from 375 to about 500 grams (0.83 to 1.1 pounds), and lengths from 23.5 to 29.5 centimeters (cm) (9.3 to 11.6 inches (in)) (Orr 1940; Janson 1946; Wilde 1978; Gahr 1993; WDFW 1995a; T. Katzner, Arizona State University, pers. comm. 2002). Females tend to be slightly larger than males. Pygmy rabbits undergo an annual molt. During summer, their overall color is slate-gray tipped with brown. Their legs, chest, and nape (back of neck) are tawny cinnamon-brown, their bellies are whitish, and the entire edges of their ears are pale buff. Their ears are short (3.5 to 5.2 cm (1.4 to 2.0 in)), rounded, and thickly furred outside. Their tails are small (1.5 to 2.4 cm (0.6 to 0.9 in)), uniform in color, and nearly unnoticeable in the wild (Orr 1940; Janson 1946; WDFW 1995a). The pygmy rabbit is distinguishable from other Leporids by its small size, short ears, gray color, small hind legs, and lack of white on the tail.

Pygmy rabbits are typically found in areas of tall, dense sagebrush (*Artemisia* spp.) cover, and are highly dependent on sagebrush to provide both food and shelter throughout the year (Orr 1940; Green and Flinders 1980a; WDFW 1995a). The winter diet of pygmy rabbits is comprised of up to 99 percent sagebrush (Wilde 1978), which is unique among Leporids (White *et al.* 1982). During spring and summer in Utah, their diet consists of roughly 51 percent sagebrush, 39 percent grasses (particularly native bunch-grasses, such as *Agropyron* spp. and *Poa* spp.), and 10 percent forbs (an herb other than grass) (Green and Flinders 1980b). There is evidence that pygmy rabbits preferentially select native grasses as forage during this period in comparison to other available foods. In addition, total grass cover relative to forbs and shrubs may be reduced within the immediate areas occupied by pygmy rabbits as a result of its use as a food source during spring and summer (Green and Flinders 1980b). The specific diets of pygmy rabbit populations likely change depending on the region occupied (T. Katzner, pers. comm. 2002).

The pygmy rabbit is believed to be one of only two Leporids in North America that digs its own burrows (Nelson 1909; Green and Flinders 1980a; WDFW 1995a), the other being the volcano rabbit (*Romerolagus diazi*) found in central Mexico (Durrell and Mallinson 1970). Pygmy rabbit burrows are typically found in relatively deep, loose soils of wind-borne or water-borne (*e.g.*, alluvial fan) origin. Pygmy rabbits occasionally make use of burrows abandoned by other species, such as the yellow-bellied marmot (*Marmota flaviventris*) or badger (*Taxidea taxus*) (Wilde 1978; Green and Flinders 1980a; WDFW 1995a) and, as a result, may occur in areas of shallower or more compact soils that support sufficient shrub cover (Bradfield 1974). During winter, pygmy rabbits make extensive use of snow burrows, possibly to access sagebrush forage (Bradfield 1974), as travel corridors among their underground burrows, and/or as thermal cover (Katzner and Parker 1997).

Pygmy rabbits, especially juveniles, likely use their burrows as protection from predators and inclement weather (Bailey 1936; Bradfield 1974). The burrows frequently have multiple entrances, some of which are concealed at the base of larger sagebrush plants (WDFW 1995a). Burrows are relatively simple and shallow, often no more than 2 meters (m) (6.6 feet (ft)) in length and usually less than 1 m (3.3 ft) deep with no distinct chambers (Bradfield 1974; Green and Flinders 1980a; Gahr 1993). Burrows are typically dug into gentle slopes or mound/inter-mound areas of more level or dissected topography (Wilde 1978; U.S. Department of Agriculture (USDA)1991; Gahr 1993). In general, the number of active burrows in an area increases over the summer as the number of juveniles increases. However, the number of active burrows may not be directly related to the number of individuals in a given area because some individual pygmy rabbits appear to maintain multiple burrows, while some individual burrows are used by multiple individuals (Gahr 1993; WDFW 1995a).

Pygmy rabbits begin breeding their second year and, in Washington, breeding occurs from February through July (WDFW 1995a). In some parts of the species' range, females may have up to three litters per year and average six young per litter (Green 1978; Wilde 1978). Breeding appears to be highly synchronous in a given area and juveniles are often identifiable to cohorts (Wilde 1978). No evidence of nests, nesting material, or lactating females with young has been found in burrows (Bradfield 1974; Gahr 1993; WDFW 1995a). Individual juveniles have been found under clumps of sagebrush, although it is not known precisely where the young are born in the wild or if they may be routinely hidden at the bases of scattered shrubs or within burrows (Wilde 1978).

Current information on captive pygmy rabbits indicates that females may excavate specialized "natal" burrows for their litters in the vicinity of their regular burrows (P. Swenson, Oregon Zoo, pers. comm. 2001; L. Shipley, Washington State University (WSU), pers. comm. 2001). Apparently, females begin to dig and supply nesting material (*e.g.*, grass clippings) to these burrows several days prior to giving birth, and may give birth and nurse their young at the ground surface in a small depression near the burrow's entrance. After nursing, the young return to the burrow and the female re-fills the burrow entrance with loose soil and otherwise disguises the immediate area to avoid detection. Other "dead-end" burrows that females construct nearby are apparently associated with the natal burrows and may be important for providing proper aeration. Females may also alter their defecation and latrine habits while pregnant and nursing (P. Swenson, pers. comm. 2001). Further work with captive and wild pygmy rabbits should shed additional light on the details of their reproductive strategy.

Pygmy rabbits may be active at any time of the day or night and appear to be most active during mid-morning (Bradfield 1974; Green and Flinders 1980a; Gahr 1993). Pygmy rabbits maintain a low stance, have a deliberate gait, and are relatively slow and vulnerable in more open areas. They can evade predators by maneuvering through the dense shrub cover of their preferred habitats, often along established trails, or by escaping into their burrows (Bailey 1936; Severaid 1950; Bradfield 1974).

Pygmy rabbits tend to have relatively small home ranges during winter, remaining within roughly 30 m (98 ft) of their burrows (Orr 1940; Janson 1946; Gahr 1993; Katzner and Parker 1997), although some snow burrows may extend outward up to 100 m (328 ft) (Bradfield 1974). They have larger home ranges during spring and summer (Orr 1940; Janson 1946; Gahr 1993; Katzner and Parker 1997). During the breeding season in Washington, females tend to make relatively short movements within a small core area and have home ranges covering roughly 2.7 hectares (ha) (6.7 acres (ac)); males tend to make longer movements, traveling among a number of females, resulting in home ranges covering roughly 20.2 ha (49.9 ac) (Gahr 1993). These home range estimates in Washington are considerably larger than for pygmy rabbit populations in other areas of their historic range (WDFW 1995a; Katzner and Parker 1997). Pygmy rabbits may travel up to 1.2 kilometers (km) (0.75 miles (mi)) from their burrows (Gahr 1993), and there are a few records of apparently dispersing individuals moving up to 3.5 km (2.17 mi) (Green and Flinders 1979; Katzner and Parker 1998).

The annual mortality rate of adult pygmy rabbits may be as high as 88 percent, and over 50 percent of juveniles can apparently die within roughly 5 weeks of their emergence (Wilde 1978; WDFW 1995a). However, the mortality rates of adult and juvenile pygmy rabbits can vary considerably between years, and even between juvenile cohorts within years (Wilde 1978). Predation was shown to be the main cause of pygmy rabbit mortality in Idaho (Green 1979). Potential predators include badgers, long-tailed weasels (*Mustela frenata*), coyotes (*Canis latrans*), bobcats (*Felis rufus*), great horned owls (*Bubo virginianus*), long-eared owls (*Asio otus*), ferruginous hawks (*Buteo regalis*), northern harriers (*Circus cyaneus*), and common raven (*Corvus corax*) (Janson 1946; Gashwiler *et al.* 1960; Green 1978; Wilde 1978; WDFW 1995a; D. Hays, WDFW, pers. comm. 2002; M. Hallet, WDFW, pers. comm. 2002).

Population cycles are not known in pygmy rabbits, although local, relatively rapid population declines have been noted in several States (Bradfield 1974; Weiss and Verts 1984; WDFW 1995a). After initial declines, pygmy rabbit populations may not have the same capacity for rapid increases in numbers as other Leporids due to their close association with specific components of sagebrush ecosystems, and the relatively limited availability of their preferred habitats (Wilde 1978; Green and Flinders 1980b; WDFW 1995a).

Distribution and Status

The historic distribution of the pygmy rabbit included much of the semi-arid, shrub steppe region of the Great Basin and adjacent intermountain zones of the conterminous western United States (Green and Flinders 1980a), and included portions of Montana, Idaho, Wyoming, Utah, Nevada, California, Oregon, and Washington (Figure 1).

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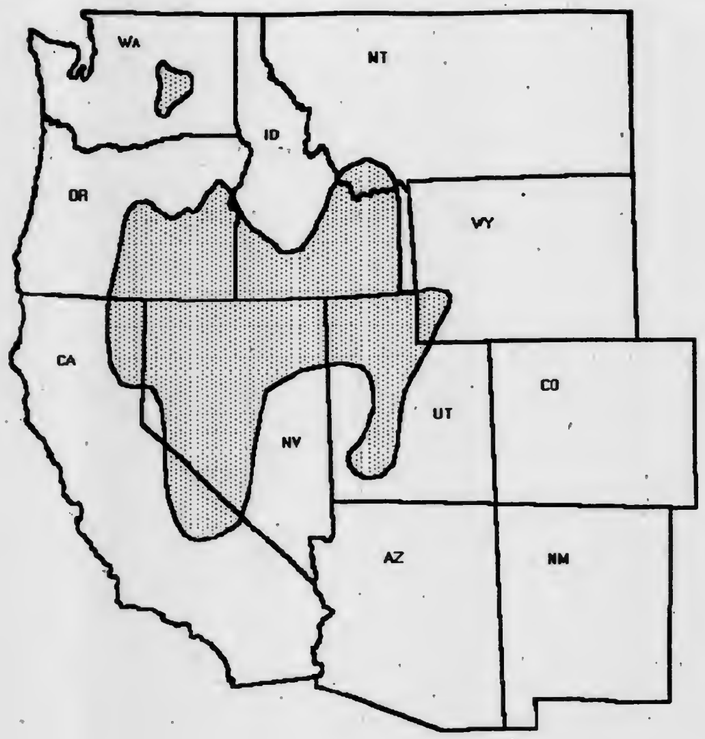


Figure 1. The approximate historic range-wide distribution of the pygmy rabbit (Weiss and Verts 1984; WDFW 1995; T. Katzner, pers. comm., 2002).

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Currently, pygmy rabbits are not distributed continuously across their range, nor were they in the past. Rather, they are found in areas within their broader distribution where sagebrush cover is sufficiently tall and dense, and soils are sufficiently deep and loose to allow burrowing (Bailey 1936; Green and Flinders 1980a; Weiss and Verts 1984; WDFW 1995a). The local distribution of these habitat patches, and thus pygmy rabbits, likely shifts across the landscape in response to various sources of disturbance (*e.g.*, fire, flooding, grazing, crop production) combined with long- and short-term weather patterns. In the past, more dense vegetation along permanent and intermittent stream channels, alluvial fans, and sagebrush plains probably provided travel corridors and dispersal habitat for pygmy rabbits between appropriate use areas (Green and Flinders 1980a; Weiss and Verts 1984; WDFW 1995a). Since European settlement of the western United States, more dense vegetation associated with some human activities (*e.g.*, fence rows, roadway shoulders, crop margins, abandoned fields) may have also acted as avenues of dispersal between local populations of pygmy rabbits (Green and Flinders 1980a; Pritchett *et al.* 1987).

Prehistoric Distribution

There is very little information currently available regarding the prehistoric distribution of the pygmy rabbit throughout the majority of its range. However, the pygmy rabbit has been present within the Columbia Basin, a geographic area that extends from northern Oregon through eastern Washington (Quigley *et al.* 1997), for over 100,000 years (Lyman 1991). This population segment, which we refer to as the Columbia Basin pygmy rabbit, is believed to have been disjunct from the remainder of the species' range since at least the early Holocene (10,000 to 7,000 years before present (BP)), as suggested by the fossil record (Grayson 1987; Lyman 1991). This separation is in contrast to the relatively short-term, local patterns of isolation, extirpation, and recolonization that likely occur throughout pygmy rabbit range (see above). The Columbia Basin pygmy rabbit probably had a broader distribution during the mid-Holocene (roughly 7,000 to 3,000 years BP) (Lyman 1991). Gradual climate change affecting the distribution and composition of sagebrush communities is thought to have resulted in a reduction of the Columbia Basin pygmy rabbit's range during the late Holocene (3,000 years BP to present) (Grayson 1987; Lyman 1991).

Historic and Current Distribution

Columbia Basin pygmy rabbits have been considered rare with local areas of occurrence within the Columbia Basin for many years (Dalquest 1948), although there is little comprehensive information available regarding their historic distribution and abundance within this region (WDFW 1995a). Museum specimens and reliable sight records indicate that Columbia Basin pygmy rabbits probably occurred in portions of at least five Washington counties during the first half of the 1900s, including Douglas, Grant, Lincoln, Adams, and Benton (Figure 2).

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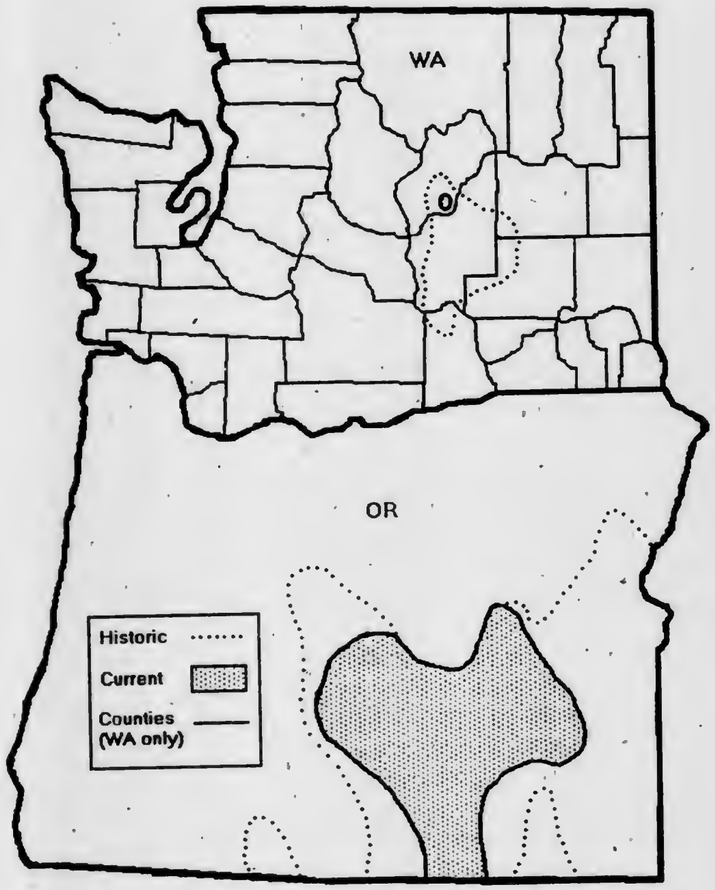


Figure 2. The approximate historic and current distribution of the pygmy rabbit in Washington and Oregon (Weiss and Verts 1984; WDFW 1995).

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Once thought to be extirpated, Columbia Basin pygmy rabbits were again located in Washington in 1979. Intensive surveys in 1987 and 1988 discovered five small subpopulations in southern Douglas County; three occurred on State lands and two on private lands (WDFW 1995a). With the exception of a single site record from Benton County in 1979, Columbia Basin pygmy rabbits have been found only in southern Douglas and northern Grant counties since 1956 (WDFW 2000a). The Washington Wildlife Commission designated the pygmy rabbit as a State threatened species in 1990, and reclassified it as endangered in 1993 (WDFW 1995a).

The number of Columbia Basin pygmy rabbit subpopulations and active burrows in Washington has declined over the past decade (WDFW 2001a). Four of the five subpopulations located in 1987 and 1988 were very small, with fewer than 100 active burrows (WDFW 1995a); the largest subpopulation (at the State-owned Sagebrush Flat site in Douglas County) contained roughly 588 active burrows in 1993, when it was estimated to support fewer than 150 rabbits (Gahr 1993). While an additional subpopulation was discovered on private land in northern Grant County in 1997, three of the small subpopulations originally located were extirpated during the 1990s, leaving just three known subpopulations in 1999 (WDFW 2001a).

One of the three remaining sites experienced a catastrophic fire in 1999 and declined to three active burrows, while the newly discovered site in Grant County declined for unknown reasons to two active burrows following the winter of 1999–2000 (WDFW 2001a). These two subpopulations are now thought to be extirpated (WDFW 2001b). In addition, during the winter of 1997–1998, the number of active Columbia Basin pygmy rabbit burrows at the Sagebrush Flat site declined by approximately 50 percent, and has continued to decline each year since (WDFW 2001a). The entire, wild Columbia Basin pygmy rabbit population is now considered to consist of fewer than 30 individuals from just one known subpopulation at the Sagebrush Flat site in Douglas County (D. Hays, pers. comm. 2002).

Although habitat loss and fragmentation have likely played a primary role in the long-term decline of the Columbia Basin pygmy rabbit, it is unlikely that these factors have directly influenced the post-1995 declines at the Sagebrush Flat site and the extirpations of some of the smaller populations (WDFW 2001a). Once populations decline below a certain threshold, they are at risk of extirpation from a number of influences including chance environmental events (*e.g.*, extreme weather), catastrophic habitat or resource failure (*e.g.*, due to fire or insect infestations), predation, disease, demographic limitations, and loss of genetic heterogeneity. The Columbia Basin pygmy rabbit in the wild is currently at such risk and, without intervention, is likely to become extirpated in the near future (WDFW 2001a).

Previous Federal Action

We added the pygmy rabbit to our candidate species list on November 21, 1991, as a category 2 species (56 FR 58804). A category 2 species was one for which we possessed information indicating that a proposal to list it as threatened or endangered under the Act was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. In a February 28, 1996, notice, we discontinued the designation of category 2 species as candidates for listing under the Act (61 FR 7596). The Columbia Basin pygmy rabbit was not included as a candidate for listing in this notice.

In FY 2001, the Service was nearly faced with a situation where it could not comply with all its court orders. Early in calendar year 2001, it became apparent that the cost of compliance with existing court orders exceeded our FY 2001 listing funding. After more than 6 months of negotiating, the Service was able to reach an agreement with several plaintiffs that allowed us to postpone a few actions previously scheduled for work in FY 2001. This agreement allowed us to reallocate funding to complete court-ordered work as well as some listing actions. On August 28, 2001, we reached an agreement with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, and the California Native Plant Society to complete work on a number of species proposed for listing. Under this agreement, we were required to issue several final listing decisions, propose a number of other species for listing, and review three species for emergency listing, including the Columbia Basin DPS of the pygmy rabbit (Center for Biological Diversity, *et al.* v. *Norton*, Civ. No. 01–2063 (JR) (D.D.C.), entered by the court on October 2, 2001).

On November 30, 2001, we published an emergency rule to list the Columbia Basin pygmy rabbit as endangered (66 FR 59734). We found that emergency listing action was justified because immediate and significant risks to the well-being of this DPS existed due to its recent decreases in population size and distribution over the past several years. Our November 30, 2001, emergency rule provided Federal protection to the Columbia Basin pygmy rabbit pursuant to the Act for a period of 240 days. Concurrently with the emergency rule, we also published a proposed rule to list this DPS as endangered under our normal listing procedures (66 FR 59769). On February 7, 2002, we published a notice in the **Federal Register** extending the comment period for the proposed rule through February 28, 2002 (67 FR 5780). The comment period was reopened to accommodate requests by State resource agencies and private interests for additional time to provide input. On February 12, 2002, we held a public meeting in East Wenatchee, Washington, to discuss the proposed rule with any interested parties. On July 17, 2002, we published a notice in the **Federal Register** extending the comment period for the proposed rule through August 1, 2002 (67 FR 46951).

In accordance with section 10(a)(1)(A) of the Act, on December 18, 2001, we issued a recovery permit to the WDFW (TE050644) for their ongoing management actions to protect and conserve the Columbia Basin pygmy rabbit (see Current Management Actions, below). We issued revisions to this permit on January 10, 2002, and March 18, 2002. We also published notices in the **Federal Register** on December 19, 2001, and March 20 and April 3, 2002, describing the emergency circumstances, announcing receipt of permit applications, and issuing public notice exemptions concerning this permit and its revisions (66 FR 65508, 67 FR 15825, 67 FR 13004).

Current Management Actions

The WDFW has undertaken a variety of conservation actions for the Columbia Basin pygmy rabbit since 1979 (WDFW 1995a, 2001a). These actions have included population surveys, habitat inventories, land acquisitions, habitat restoration, land management agreements, initiation of studies on the effects of livestock grazing, and predator control. These efforts have been funded by a variety of sources. As funding sources and staffing levels allow, WDFW efforts to conserve the Columbia Basin pygmy rabbit in the wild will continue (D. Hays, pers. comm. 2002).

During the fall of 2000, the WDFW, in cooperation with the Oregon Zoo, initiated a study of husbandry techniques for pygmy rabbits (WDFW 2001a). This study used five pygmy rabbits captured in Idaho and was undertaken to improve the information base for proposed captive propagation and release efforts for the Columbia Basin pygmy rabbit. Due to the continuing decline of pygmy rabbit subpopulations and active burrows in Washington, the WDFW, in cooperation with WSU, expedited their captive propagation efforts for the Columbia Basin pygmy rabbit during the spring of 2001 (WDFW 2001b; D. Hays, pers. comm. 2001).

The main goal of this effort is to capture up to 20 individuals to establish a captive breeding stock. The actual number and type (gender, age, family unit) of pygmy rabbits to be taken from the wild is based partly on information from the ongoing husbandry study of Idaho pygmy rabbits, partly on estimates of what is needed to allow for appropriate manipulation of family lineages to better manage this population's unique genetic profile, and partly on the availability of animals for capture. Any Columbia Basin pygmy

rabbits that are not considered essential to the captive propagation effort will be left in the wild, and ongoing management to protect the wild portion of this population will continue.

Since the spring of 2001, 16 Columbia Basin pygmy rabbits (nine females, seven males) have been captured as an initial source for captive breeding efforts (D. Hays, pers. comm. 2002). In addition, shortly after being captured, one female gave birth to a litter of five offspring (two females, three males) that was conceived in the wild (D. Hays, pers. comm. 2001; L. Shipley, pers. comm. 2001). Of the adult rabbits, two males and one female captured from the wild subsequently died (WDFW 2001c). Full necropsies were conducted on these three specimens, with the following results: One male, which died shortly after being captured, may have had reduced body condition while in the wild; the other male died from unknown causes; and the female died due to complications caused by a fall from a sagebrush plant placed in her cage. Several procedures, developed in coordination with results from the ongoing husbandry study, have been implemented to reduce the risk of capture-related mortality of pygmy rabbits. In addition, in order to reduce the risk of catastrophic loss of a single captive population, a number of Columbia Basin pygmy rabbits have been placed at the Oregon Zoo facility. Appropriate measures have been taken to ensure that the Columbia Basin pygmy rabbits remain completely segregated from the pygmy rabbits captured in Idaho that are being used for the husbandry study.

The remaining 18 captive Columbia Basin pygmy rabbits appear to have adjusted well to the two rearing facilities (WDFW 2001c). As opportunities arise, the intent is to capture additional Columbia Basin pygmy rabbits that will complement the genetic profiles and potential breeding scenarios of those already in captivity (D. Hays, pers. comm. 2002; K. Warheit, WDFW, pers. comm. 2002).

The WDFW's captive propagation program affords an opportunity to protect and maintain the Columbia Basin pygmy rabbit until conditions can be made more favorable for its survival in the wild. Ultimately, the goal of the captive propagation effort is to release captive-bred Columbia Basin pygmy rabbits back into suitable habitats within their historic range where viable subpopulations can become re-established and self-sustained in the wild (WDFW 2001b; D. Hays, pers. comm. 2001). The number and size of the wild subpopulations necessary for recovery pursuant to the Act have not yet been determined. Columbia Basin pygmy rabbits within captive rearing facilities will not be counted towards recovery of the species. The timing and objectives for the release phase of the program will be further developed as the captive propagation effort becomes established. The WDFW will remain the lead agency for these efforts, and has developed a Science Advisory Group to provide recommendations and technical oversight for the conservation program. The group is currently comprised of State and Federal agency personnel, public zoo, and university experts, representatives from non-governmental organizations, and private individuals with interests in the conservation of the Columbia Basin pygmy rabbit.

The Nature Conservancy (TNC), a non-governmental natural resource advocacy organization, has acquired, or obtained easements on, portions of the remaining shrub steppe habitat in southern Douglas and northern Grant counties, including the acquisition of approximately 6,900 ha (17,000 ac) adjacent to the WDFW's Sagebrush Flat site. As appropriate, TNC lands in central Washington will be managed to support the conservation efforts undertaken for the Columbia Basin pygmy rabbit (C. Warner, TNC, pers. comm. 2001).

Portions of the remaining shrub steppe habitat in southern Douglas and northern Grant counties are under the jurisdiction of the U.S. Bureau of Land Management (BLM) and State resource agencies. Conservation measures for the Columbia Basin pygmy rabbit are considered in the management of these agency lands (D. Hays, pers. comm. 2001; N. Hedges, BLM, pers. comm. 2001). Many of the existing and future land acquisitions and management actions of the TNC, BLM, and State agencies in this area are targeted at sites recently occupied by the Columbia Basin pygmy rabbit and at providing connectivity of appropriate habitats between these sites.

Large areas of privately owned lands in Douglas County are currently withdrawn from crop production and planted to native and non-native cover under the Federal Conservation Reserve Program (CRP), established in 1985 (USDA 1998). These lands, some of which have been set aside since the late 1980s, provide grass and shrub cover that may improve the habitat conditions of areas potentially occupied or used as dispersal corridors by the Columbia Basin pygmy rabbit. New and re-signed program contracts completed in 1998 increased the acreage of CRP lands in Douglas County. However, contracts extend for just 10 years, and new standards for CRP lands were implemented that required replanting of significant acreage under existing contracts (USDA 1998; M. Schroeder, WDFW, pers. comm. 2001). Presently, it is unclear what effects the CRP lands and current changes to the program may have on the Columbia Basin pygmy rabbit.

Currently, we are assisting private landowners and their conservation districts with development of a county-wide habitat conservation plan (HCP) for agricultural lands in Douglas County, Washington. When completed, the Foster Creek HCP will likely include measures to protect the Columbia Basin pygmy rabbit and may complement other, ongoing conservation efforts in Douglas County.

Distinct Vertebrate Population Segment

Pursuant to the Act (16 U.S.C. 1531 *et seq.*), we must consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act and Congressional direction, the Service and the National Marine Fisheries Service (NMFS) developed a joint policy in 1996 that addresses the recognition of DPS for potential listing actions (61 FR 4722). The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures.

Two elements are used to assess whether a population segment under consideration for listing pursuant to the Act constitutes a DPS. The two elements are: (1) The population segment's discreteness from the remainder of the taxon; and (2) the population segment's significance to the taxon to which it belongs. A systematic application of these elements is appropriate, with discreteness criteria applied first, followed by significance analysis. If we determine that a population segment being considered for listing represents a DPS, then the status of the population and level of threats to the population segment is evaluated based on the five listing factors established by the Act to determine if listing the DPS as either threatened or endangered is warranted.

Discreteness

Discreteness may be demonstrated by either, or both, of the following: (1) Physical, physiological, ecological, behavioral, morphological, or genetic discontinuity between population segments; or (2) international governmental boundaries between which differences in regulatory mechanisms exist that are significant with regard to conservation of the taxon. The pygmy rabbit does not occur outside of the lower 48 conterminous United States, so the international boundary criterion does not apply.

The Columbia Basin pygmy rabbit has been physically discrete from the remainder of the taxon for several millennia (*see* Distribution and Status, above). In addition, there is current evidence that the Columbia Basin pygmy rabbit is genetically and ecologically discrete from the remainder of the taxon (*see* Significance, below). Based on this information, we find that the Columbia Basin pygmy rabbit population segment is discrete from the remainder of the taxon pursuant to the Act. Physiological, behavioral, or morphological differences between the Columbia Basin pygmy rabbit and populations throughout the remainder of the species' range are not known at this time.

Significance

The types of information that may demonstrate the significance of a discrete population segment to the remainder of its taxon include, but are not limited to: (1) Persistence of the population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the population segment differs markedly from other population segments in its genetic characteristics. The following significance factors have bearing on the Columbia Basin pygmy rabbit.

Markedly different genetic characteristics. Several studies have been initiated to investigate the pygmy rabbit's genetic profile (WDFW 2000c; WDFW 2001a, c; Cegelski and Waits, undated). To date, the genetic analyses include current (*ca* 1990s to present) samples from Washington, Idaho, and Montana; and museum specimens (*ca* 1910s to 1980s) from Washington, Idaho, Montana, and Oregon, with a median date of 1949 among these States (WDFW 2001c). Analyses have included both mitochondrial DNA (from current samples only) and nuclear DNA markers (WDFW 2001c; K. Warheit, pers. comm. 2001, 2002).

Results from recent genetic analyses indicate that the Columbia Basin pygmy rabbit is markedly different from other pygmy rabbit population segments (WDFW 2001c; K. Warheit, pers. comm. 2001, 2002). These differences are consistent in both mitochondrial DNA and nuclear DNA indices, and between current (Washington versus Idaho and Montana) and museum (Washington versus Idaho, Montana, Oregon) samples. The genetic results suggest that the Columbia Basin pygmy rabbit diverged (*i.e.*, was genetically isolated) from the remainder of the taxon at least 10,000 to 25,000 years BP, and possibly as long as 40,000 to 115,000 years BP (WDFW 2001c; K. Warheit, pers. comm. 2001, 2002). The genetic differences that have so far been identified between the Columbia Basin pygmy rabbit and other pygmy rabbit populations are similar in nature to subspecific differences recognized in other mammal species. However, potential taxonomic reorganization of the pygmy rabbit species will require additional study (WDFW 2001c).

In addition to the genetic differences that likely result from long-term isolation described above, the Columbia Basin pygmy rabbit also exhibits significantly less genetic diversity compared to other pygmy rabbit populations. Furthermore, the level of genetic diversity in this population segment has declined significantly and at an accelerated rate since the mid-1900s (Washington current versus Washington museum specimens). These results suggest a recent and rapid decline in the effective population size (*i.e.*, the number of individuals contributing to reproduction) of the Columbia Basin pygmy rabbit, and that this population segment may be experiencing a degree of inbreeding depression (WDFW 2001c).

Two conclusions may be drawn from the recent results of the genetic research on the pygmy rabbit—(1) the unique genetic characteristics of the Columbia Basin pygmy rabbit represent an important component in the evolutionary legacy of the species and, therefore, a genetic resource worthy of conservation; and (2) efforts should be undertaken to address the low level of genetic diversity within this population segment (K. Warheit, pers. comm. 2001, 2002).

Persistence in an unusual or unique ecological setting. With regard to the historic distribution of the pygmy rabbit, several studies have defined and mapped landscape-level ecosystem components of Washington and Oregon and, to varying degrees, address the management of natural resources within these regional ecosystems (Daubenmire 1988; Franklin and Dyrness 1988; Keane *et al.* 1996; Quigley *et al.* 1997; Wisdom *et al.* 1998). Although there are considerable differences between the studies, the ecosystem mapping units that were developed as a result of these studies are relatively consistent. These ecosystem mapping units are important for determining if the Columbia Basin pygmy rabbit may occupy an unusual or unique ecological setting. In addition, it is important for delineating the boundaries of any potential DPS in the region, as required by our DPS policy. Currently, there is insufficient information available to address the other shrub steppe ecosystems comprising historic pygmy rabbit range outside of Washington and Oregon.

During the early 1900s, the pygmy rabbit populations in Washington and Oregon (Figure 2) occurred in five ecosystems identified by the above studies. For the purposes of this DPS analysis, we refer to these ecosystems as the Columbia Basin, High Lava Plains, Northern Great Basin, Owyhee Uplands, and Modoc Plateau (after Quigley *et al.* 1997). The Columbia Basin occurs in Washington and northern Oregon; the other four ecosystems occur in central and southern Oregon (Figure 3).

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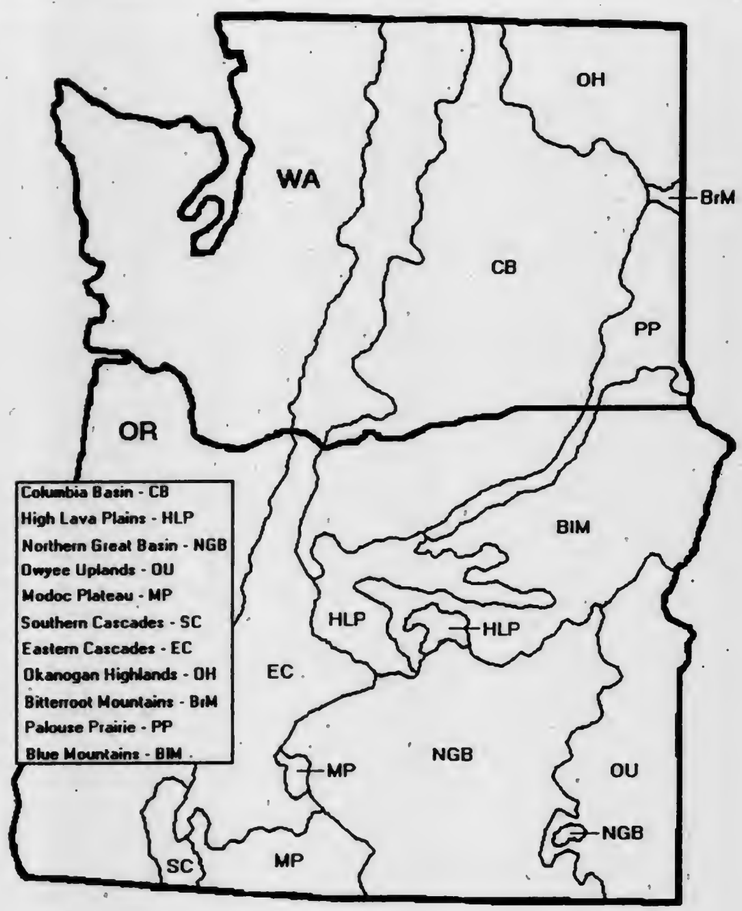


Figure 3. The ecosystems of eastern Washington and Oregon (as modified from Daubenmire 1988; Franklin and Dyrness 1988; Keane et al. 1996; Quigley et al. 1997).

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These ecosystems are interspersed to varying degrees with forested habitats of the Southern and Eastern Cascades ecosystems to the west, Okanogan Highlands to the north, Bitterroot and Blue Mountains to the east, and steppe (grassland) habitats of the Palouse Prairie to the east.

The historic range of the Columbia Basin pygmy rabbit occurred entirely within the Columbia Basin of central Washington, and this population segment has been the only representation of the taxon within this ecosystem for thousands of years. During the early 1900s, the population segment of pygmy rabbits in central and southern Oregon was apparently locally dispersed across the High Lava Plains, Northern Great Basin, Owyhee Uplands, and Modoc Plateau (Figures 2 and 3). The distribution of the pygmy rabbit in Oregon has likely declined during the last century (Weiss and Verts 1984; WDFW 2000b) and, currently, primarily

encompasses areas within the Northern Great Basin ecosystem.

A number of significant differences are found between the Columbia Basin ecosystem and the balance of pygmy rabbit range in central and southern Oregon. In general, the Columbia Basin is lower in elevation, contains soils of varying origin, and has been influenced by different geological processes. These structural differences, combined with regional climatic conditions, significantly influence the broad plant associations found within each ecosystem (Daubenmire 1988; Franklin and Dyrness 1988). Historically, transitional steppe habitats were much more prevalent in the Columbia Basin than in the ecosystems of central and southern Oregon. In contrast, juniper (*Juniperus* spp) woodlands and salt-desert shrub habitats were much more common in central and southern Oregon. Finally, there are significant differences in the type and distribution of sagebrush taxa among the ecosystems (Table 1).

TABLE 1. DIFFERENCES IN ECOSYSTEM ELEMENTS BETWEEN REGIONS OCCUPIED BY THE EXTANT POPULATION SEGMENTS OF THE PYGMY RABBIT IN WASHINGTON AND OREGON (AFTER WINWARD 1980; DAUBENMIRE 1988; FRANKLIN AND DYRNESS 1988; MCNAB AND AVERS 1994; DOBLER *et al.* 1996; QUIGLEY *et al.* 1997).

Ecosystem Elements: Geologic, Edaphic, and Transitional Habitats

Population segment	Elevations	Soils	Channeled scablands	Internally-drained playas	Steppe	Juniper woodland	Salt-desert scrub
Columbia Basin	<914m (<3,000 ft)	Deep/Loamy Glacial/ Eolian.	Prominent (north).	Rare/Absent	Abundant (east)	Rare/Absent	Rare/Absent.
Central/Southern Oregon.	>1,067 m (<3,500 ft)	Thin/Rocky Volcanic (HLP [1]) Deep/Alluvial (NGB [1], OU [1]).	Rare/Absent	Prominent (NGB, OU).	Rare/Absent	Abundant (HLP) Present (NGB, OU).	Abundant (NGB, OU).

Ecosystem Elements: Sagebrush (*Aretemesia*) Taxa [2]

Population segement	Basin ssp.	Wyoming ssp.	Mountain ssp.	Low	Three-tip	Stiff	Early	Silver	Black
Columbia Basin	Dominant	Present (west).	Rare/Absent	Rare/Absent	Abundant (north).	Abundant	Rare/Absent	Rare/Absent	Rare/Absent.
Central/Southern Oregon	Rare/Absent	Dominant	Abundant	Abundant	Present (OU).	Present	Present (HLP).	Present (NGB, OU).	Present (NGB, OU).

[1] Element primarily applies to the ecosystems noted: HLP—High Lava Plains; NGB—Northern Great Basin; OU—Owyhee Uplands.
[2] Big Sagebrush (*A. tridentata*) Subspecies (ssp): Basin—*A.t. tridentata*, Wyoming—*A.t. wyomingensis*, Mountain—*A.t. vaseyana*; Low—*A. arbuscula*; Three-tip—*A. tripartita*; Stiff—*A. rigida*; Early—*A. longiloba*; Silver—*A. cana*; Black—*A. nova*.

There are a number of broad habitat associations in common between the Columbia Basin and the ecosystems of central and southern Oregon (Daubenmire 1988; Franklin and Dyrness 1988). However, even within these common habitat associations, notable differences exist. In general, the composition of forb species differs considerably between the Columbia Basin and the ecosystems in central and southern Oregon (*cf* Daubenmire 1988; Franklin and Dyrness 1988). Even when the same forb species may be present, the two regions typically support different subspecies or varieties of these taxa (Hitchcock and Cronquist 1973).

Currently, it is unclear if the Columbia Basin pygmy rabbit is different in several respects (*i.e.*, physiologically, behaviorally, or morphologically) from other pygmy rabbit populations throughout the remainder of the species' historic range. However, based on the above ecological information, and the pygmy rabbit's close association with sagebrush ecosystems, we conclude that the Columbia Basin represents a unique ecological setting for the taxon due to its different geologic, climatic, edaphic (soil), and plant community components. In addition, the Columbia Basin ecosystem holds different management implications for the Columbia Basin pygmy rabbit compared to the ecosystems of southern Oregon and the population segment of pygmy rabbits occupying that region (*see* above), and likely also compared to the other sagebrush ecosystems and population segments found throughout the remainder of the species' range (*see* Background, above, and Summary of Factors Affecting the DPS, below).

Significant gap in the range of the taxon. The Columbia Basin pygmy rabbit represents an isolated portion of the northern-most extent of the historic distribution of the taxon (Figure 1). Paleontological records indicate that the prehistoric distribution of this population segment (*ca* 150 to 10,000 + years BP) may have encompassed roughly 23 percent of the Columbia Basin (after Lyman 1991). As recently as the early 1900s, this population segment was distributed across approximately 10 percent of the Columbia Basin ecosystem (*cf* Figures 2 and 3). Currently, the Columbia Basin pygmy rabbit occurs in less than 1 percent of its overall historic distribution, and a small fraction of its potential prehistoric distribution.

A number of studies address the characteristics of peripheral and/or isolated populations and their influences on, and importance to, the remainder of the taxon. These studies indicate that peripheral and isolated populations may experience increased directional selection due to marginal or varied habitats at range peripheries, exhibit adaptations specific to these differing selective pressures, demonstrate genetic consequences of reduced gene flow dependent on varying levels of isolation, and/or have different responses to anthropogenic influences (Levin 1970; MacArthur 1972; Morain 1984; Lacy 1987; Hengeveld 1990; Saunders *et al.* 1991; Hoffmann and Blows 1994; Furlow and Armijo-Prewitt 1995; Garcia-Ramos and Kirkpatrick 1997).

The available information regarding the past distribution and isolation of the Columbia Basin pygmy rabbit demonstrates that this population segment is likely experiencing increased directional selection due to marginal and varied habitats at the periphery of the taxon's range. In addition, this population segment is exhibiting genetic

consequences of long-term isolation from other population segments and is responding, and will continue to respond, to the different anthropogenic influences in the region.

Based on the above information, we conclude that the loss of the Columbia Basin pygmy rabbit would represent a significant gap in the range of the taxon, due to the loss of a conspicuous peripheral and isolated extension of its current and historic range.

Conclusion of DPS Review

Based on the available information described above, we find that the Columbia Basin pygmy rabbit is discrete from, and significant to, the remainder of the taxon, and thus constitutes a DPS. The discreteness of this population segment is demonstrated by its physical, genetic, and ecological isolation from the remainder of the taxon. The significance of this population segment is demonstrated by: (1) Its genetic characteristics, which differ markedly from other population segments; (2) its long-term persistence in the unique ecological setting of the Columbia Basin; and (3) the significant gap in the current and historic range of the taxon that the loss of this population segment would represent. As required by our DPS policy, we have determined that the bounds of this DPS are conterminous with the historic distribution of the pygmy rabbit within the Columbia Basin ecosystem (Figure 2).

Summary of Comments and Recommendations

In our November 30, 2001, proposed rule (66 FR 59769) and associated notifications, we requested that all interested parties submit comments, data, or other information that might contribute to development of a final listing decision. The comment period for the proposed rule was originally open from November 30, 2001, through January 29, 2002. During this period, we received a number of requests to extend the comment period and five requests to hold a public hearing to address the proposed rule. On February 7, 2002, we extended the comment period for the proposed rule through February 28, 2002. In addition, after coordinating meeting details with the requesters, on February 12, 2002, we held a public meeting in East Wenatchee, Washington, to present the information we had available on the Columbia Basin pygmy rabbit, to receive input, and to discuss the proposed rule with any interested parties. On July 17, 2002, we extended the comment period for the proposed rule through August 1, 2002.

On November 30, 2001, February 7, 2002, and July 17, 2002, we contacted appropriate Federal, State, tribal, and local resource agencies and governmental offices, scientific organizations, agricultural organizations, outdoor user groups, environmental groups, and other interested parties and requested that they comment on the proposed rule. We established several methods for interested parties to provide comments and other materials, including verbally or in writing at the public meeting, by letter, facsimile, or, during the original and final open comment periods, by electronic mail. Notices of the extended comment period and public meeting announcement were also published in local newspapers on February 7, 2002, including the Wenatchee World, Columbia Basin Herald, and Spokesman Review.

We received a total of 34 letters, facsimiles, comment cards, and electronic mailings from the public with comments and/or questions concerning the proposed rule on the Columbia Basin pygmy rabbit during the three comment periods. We also received 2 letters from the same individual. Of the comments received, 9 were in support of the listing action, 6 were opposed to the listing, and 19 were neutral.

We revised and updated the information contained in this final rule to reflect the additional information we received during the open comment period for the proposed rule. We address substantive comments concerning various aspects of the proposed rule, below. General topics are categorized and comments of a similar nature under each topic are grouped together below, along with our response to each.

Impact of Listing Action

Issue 1: We received a number of requests to explain more fully what the potential effects of listing the Columbia Basin pygmy rabbit would be on private lands, or private management actions on public lands, throughout the population's historic distribution.

Our Response: Once a species becomes listed, either through our emergency or normal listing process, section 9 of the Act sets forth a series of general prohibitions that apply to that species. Of primary concern for Columbia Basin pygmy rabbits, the prohibitions make it illegal for any person subject to the jurisdiction of the United States to "take" them. The definition of "take" under the Act includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to the listed wildlife by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. "Harass" is further defined to include actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Other general prohibitions make it illegal to import or export listed wildlife or its parts or products, transport it in interstate or foreign commerce in the course of commercial activity, or sell it or offer it for sale in interstate or foreign commerce. Section 11 of the Act describes the civil and criminal penalties that may be imposed on any individual or organization that violates these prohibitions.

Section 10 of the Act provides a number of exceptions to the prohibitions against prescribed in section 9. In other words, activities that could result in take of the Columbia Basin pygmy rabbit may be permitted by the Service if certain conditions are met. Under section 10(a)(1)(A), we may permit activities otherwise prohibited by section 9 if they are conducted for scientific purposes or to enhance the propagation or survival of the Columbia Basin pygmy rabbit (recovery permits). Under section 10(a)(1)(B), we may permit activities otherwise prohibited by section 9 if the resulting take is incidental to, and not the purpose of, the otherwise lawful activities (incidental take permits). In order for us to issue an incidental take permit, an applicant must submit an HCP that specifies: (1) The impact that will likely result from such taking; (2) what steps will be taken to minimize and mitigate such impacts, and the funding that will be available to implement such steps; (3) what alternative actions to such taking were considered and the reasons why such alternatives are not used; and (4) other such measures that the Secretary of Interior (Secretary) may require.

With regard to non-Federal property, if pygmy rabbits are not present on the property, the Act's taking prohibition would not apply there. Where non-Federal property is occupied by the Columbia Basin pygmy rabbit, if management activity would not result in take, section 9 would also not apply. Even if non-Federal property is occupied by the pygmy rabbit and management activities are likely to result in take, an incidental take permit may still be available under section 10(a). Service and technical assistance will be available to landowner(s) and/or operator(s) to help them avoid, minimize, or mitigate any adverse impacts to the Columbia Basin pygmy rabbit.

Proposed activities authorized, funded, or carried out by a Federal agency are subject to the consultation requirements Congress prescribed in section 7 of the Act. Circumstances under which a proposed Federal action or Federal nexus may affect the Columbia Basin pygmy rabbit will be handled through consultation with the involved Federal agency and applicant(s), as necessary, on a case-by-case basis, in accordance with section 7 of the Act.

Issue 2: Various commenters expressed concern regarding circumstances where landowners or operators of currently unoccupied habitat are adjacent to occupied sites or areas potentially used for reintroduction efforts, and what the consequences of future occupation of these lands by the Columbia Basin pygmy rabbit may be.

Our Response: Authorization of take of rabbits incidental to otherwise lawful activities may be available through development of HCPs and issuance of incidental take permits in accordance with section 10(a) of the Act. In addition, landowners or operators may enter into Safe Harbor Agreements that provide regulatory assurances to landowners who manage their properties in such a way as to attract Columbia Basin pygmy rabbits. As with currently occupied habitats, we will continue to work cooperatively with, and provide technical assistance to, landowners and operators to help them avoid, minimize, or mitigate any potential future impacts to the Columbia Basin pygmy rabbit.

Critical Habitat

Issue 3: We received a number of comments concerning critical habitat and how it relates to the emergency, proposed, and final rules for the Columbia Basin pygmy rabbit.

Our Response: Neither our emergency; proposed, nor this final rule designates critical habitat for the Columbia Basin pygmy rabbit. We find that designation of critical habitat for the Columbia Basin pygmy rabbit is not determinable at this time because information sufficient to perform the required analyses of the impacts of the designation is lacking (*see* Critical Habitat, below). We will continue to protect the Columbia Basin pygmy rabbit and its habitat through section 7 consultations on Federal actions that may affect this population segment, through the recovery process, through HCPs under section 10, and through enforcement of take prohibitions under section 9 of the Act.

National Environmental Policy Act (NEPA)

Issue 4: Several comments suggested the need for NEPA analyses, or requested an explanation of why the NEPA process is not necessary, for this final rule.

Our Response: We have determined that environmental assessments (EAs) and environmental impact statements (EISs) developed pursuant to NEPA do not need to be prepared in connection with regulations adopted pursuant to the listing process under section 4(a) of the Act. The Federal Council on Environmental Quality has determined, based on court decisions, that listing actions under the Act are exempt from NEPA review as a matter of law. We published a notice that further describes our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Determination of Status of Columbia Basin and Other Pygmy Rabbit Populations

Issue 5: We received a number of comments and questions concerning how new information about the presence of additional subpopulations of Columbia Basin pygmy rabbits may affect the status of the population, the listing process, or this final rule.

Our Response: If significant new information becomes available regarding additional subpopulations of Columbia Basin pygmy rabbits, the new information could affect the priority of the management actions identified for the captive propagation program and/or the ongoing conservation actions being implemented for the remaining wild portion of the population. The information we currently have available indicates that it is unlikely that a sufficiently large, well distributed "unknown" subpopulation may still occur that would completely remove the need for protection of the species under the Act. No additional information on locations of other subpopulations of Columbia Basin pygmy rabbits was provided during the comment period.

Issue 6: We received a number of comments and questions concerning how we determined the historic range of the pygmy rabbit, what the abundance and status of various pygmy rabbit populations are, how abundance estimates are determined, and the causes behind the recent declines in the Columbia Basin pygmy rabbit.

Our Response: Information concerning the current, historic, and prehistoric distribution of the Columbia Basin pygmy rabbit population primarily comes from scientific literature, including peer-reviewed journal articles, doctoral dissertations, master's theses, and/or State natural resource agency reports and data. These sources are referenced within the body of the rule, as appropriate. As discussed above (*see* Distribution and Status), there is very little information currently available regarding the abundance of pygmy rabbits throughout the majority of their current range. Due to the ongoing efforts of the WDFW to monitor and study pygmy rabbits over the last several decades, there is considerably more information available regarding the current abundance and distribution of the Columbia Basin population.

With regard to the past distribution and abundance of the Columbia Basin pygmy rabbit, we assume that this population was more broadly distributed and had a greater abundance of individuals within this region historically. This assumption is based on the available information addressing other pygmy rabbit populations, the population dynamics of other Leporid species, and the general concepts and theory of minimum viable populations. Given this available information, it is unlikely that the Columbia Basin pygmy rabbit would have persisted within this region for thousands of years with such a limited distribution and at such minimum abundance levels. Nevertheless, the available information only indicates the occurrence of several small subpopulations in portions of five counties in central Washington since the early 1900s. As such, the historic distribution and abundance of the Columbia Basin pygmy rabbit that we report in this final rule represent minimum estimates.

Obtaining precise estimates of wildlife abundance levels is often very difficult. This is because: (1) The abundance of many wildlife populations naturally fluctuates between years, and even between seasons within years; (2) individuals are often difficult to observe; (3) individuals often move between observations or there is an unknown amount of mixing of individuals between observed areas; and (4) observation techniques can affect the behavior of the individuals being observed. Because of these limitations, managers often use a "surrogate", or index, to estimate a probable range of values concerning wildlife abundance levels. With regard to pygmy rabbits, the occurrence of their burrows and estimates of the burrows' ages and/or

activity levels (*e.g.*, active, fresh, old, very old) are typically used to monitor the status of a given population.

We understand that there are limitations in the available information addressing the current and historic distribution and abundance of the Columbia Basin and other pygmy rabbit populations. However, the available information provides several important parameters with regard to our listing determination, including: (1) The distribution of the Columbia Basin pygmy rabbit has declined dramatically from historic levels; (2) five of six known subpopulations remaining in the mid-1990s have been extirpated; and (3) the abundance of active burrows and, by extension, individual pygmy rabbits within the last known occupied site, has declined dramatically over this same recent time period. The estimates of individual Columbia Basin pygmy rabbits known to remain in the wild, as presented in the proposed rule and this final rule, represent maximum estimates and are based on the best professional judgement of recognized experts.

As discussed below (*see* Summary of Factors Affecting the DPS), several factors and their interactions are implicated in the historic and recent declines of the Columbia Basin pygmy rabbit, including habitat conversion and fragmentation, wildfire, predation, livestock grazing, and disease. However, addressing the extremely small size and limited distribution of this population is our primary concern for the immediate conservation and protection measures for the Columbia Basin pygmy rabbit. Measures to address the more general and/or long-term threat factors will be identified as our recovery program is further developed (*see* Captive Propagation and Recovery, below).

Livestock Grazing

Issue 7: We received a large number of comments concerning our interpretation of the available information with regard to livestock grazing and the potential effects it has on the Columbia Basin pygmy rabbit. Some comments suggested that we were overly critical concerning the negative effects of livestock grazing and did not adequately address its potential benefits to the Columbia Basin pygmy rabbit. In contrast, other comments suggested that we down-played the negative effects of livestock grazing and implied that regulatory restrictions should be placed on grazing activities in all areas currently or potentially used by the Columbia Basin pygmy rabbit.

Our Response: As with the available information addressing distribution and abundance (see above response), we understand that there are limitations in the available information concerning the effects of livestock grazing on the Columbia Basin pygmy rabbit. However, with regard to adverse effects of livestock grazing, the one study available found several important characteristics—(1) Male Columbia Basin pygmy rabbits tend to make longer movements and require larger home ranges during the breeding season in recently grazed areas as opposed to areas that have not been grazed for several decades (Gahr 1993); (2) there tend to be fewer burrows available to, or constructed by, Columbia Basin pygmy rabbits in recently grazed areas (L. Shipley, pers. comm. 2001); (3) Columbia Basin pygmy rabbits occupying recently grazed sites tend to have a greater proportion of their summer through winter diets composed of sagebrush as opposed to grasses and forbs (L. Shipley, pers. comm. 2001); (4) the nutritional quality of the available grasses and shrubs tends to be less from fall through spring in recently grazed areas (L. Shipley, pers. comm. 2002); and (5) livestock can directly damage pygmy rabbit burrow systems through trampling (Rauscher 1997; N. Siegel, WSU, pers. comm. 2001; M. Hallet, pers. comm. 2002).

Other, more general, information also suggests the adverse effects on the Columbia Basin pygmy rabbit associated with livestock management activities. These other potential impacts include sagebrush control efforts, effects on predator distribution and density through the use of artificial watering or supplemental nutrition and feeding sources for livestock, structural damage to dense stands of sagebrush by livestock, removal of current herbaceous growth or residual cover of native grasses and forbs by livestock for forage, and increases in the density or distribution of various invasive weed species.

The available information described above suggests there is a potential for take of the Columbia Basin pygmy rabbit to occur, as defined by the Act, in association with some livestock grazing operations. These potential impacts may be in the form of direct take (*e.g.*, injury or mortality due to trampling of occupied burrows or sagebrush eradication efforts), or in the form of indirect take (*e.g.*, harm or harassment due to habitat modification or degradation that significantly impairs normal behavioral patterns associated with the Columbia Basin pygmy rabbit's breeding, feeding, or sheltering activities). Due to the extremely low number and restricted distribution of Columbia Basin pygmy rabbits, additional mortality resulting from livestock grazing practices currently represents a potentially significant threat to their continued existence.

Pygmy rabbits have coexisted with various levels of livestock grazing activities throughout their historic range for many years. Currently, it is unclear if light or moderate levels of livestock grazing may be compatible with, or even beneficial to, long-term conservation efforts for otherwise secure populations of pygmy rabbits. The effects of livestock grazing that have been identified to potentially benefit the Columbia Basin pygmy rabbit include: (1) Increasing the vigor of grass species through mechanical disturbance by livestock; (2) increasing the abundance of sagebrush cover through altered competitive advantage by removal or reduction of associated shrub steppe vegetation; (3) increasing the biological diversity of wildlife and vegetation species; and (4) creating more open habitats that provide improved security through increased visual line-of-sight for pygmy rabbits.

It is our intention, once the captive propagation program becomes better established and appropriate protection measures are in place to ensure the security of the remaining wild portion of the population, to reinitiate or support future studies to address the potential effects of livestock grazing (both positive and negative) on the Columbia Basin and/or other pygmy rabbit populations. These efforts should attempt to include the evaluation of pygmy rabbits in areas subject to various intensities and timing of livestock grazing, areas where livestock grazing has been discontinued for known periods of time, sites that have historically remained free of livestock grazing, and areas of varying soils and initial ecosystem conditions. These evaluations will help fill the current information gaps regarding the effects of livestock grazing on the Columbia Basin pygmy rabbit and provide a basis for analyzing grazing activities under sections 7 and 10(a) of the Act.

The specific conditions under which livestock grazing activities will be addressed in habitats occupied by the Columbia Basin pygmy rabbit will be further defined as our recovery program is developed (*see* Captive Propagation and Recovery, below).

Issue 8: We received several comments concerning the effects of current and historic grazing by native herbivores, such as white-tailed deer (*Odocoileus virginianus*), mule deer (*O. hemionus*), elk (*Cervus elaphus*), and American bison (*Bison bison*), on the Columbia Basin pygmy rabbit. In addition, some comments expressed concern regarding why this form of grazing is treated differently than the effects of livestock grazing and what management actions we may undertake to address these grazing effects.

Our Response: The available information suggests that the shrub steppe habitats of the Columbia Basin evolved in the absence of substantial grazing pressure from large native herbivores since the latest period of glaciation, roughly 12,000 years BP (Mack and Thompson 1982; Daubenmire 1988; Lyman and Wolverton 2002). Deer and elk are also primarily browsing, as opposed to grazing, animals. In addition, the ecological effects of grazing by various livestock (*e.g.*, cattle, horses, sheep) are not typically considered to be comparable to those of native herbivores (Lyman and Wolverton 2002). In relatively large, well distributed pygmy rabbit populations, we would not expect grazing by native herbivores to represent a significant threat to their long-term security.

Historically, central Washington supported extensive livestock grazing operations throughout the shrub steppe habitats potentially used by the Columbia Basin pygmy rabbit (Daubenmire 1988; WDFW 1995a). Excessive livestock grazing pressure can have significant impacts on the shrub steppe ecosystems found throughout the historic range of the Columbia Basin pygmy rabbit (Fleischner 1994), and these impacts may be exacerbated in the Columbia Basin (see above response). Contemporary grazing levels are much reduced from historic levels; however, large livestock operations continue within the shrub steppe habitats of the Columbia Basin to the present. From 1986 to 1993, an average of roughly 280,000 cattle were being supported in the five central Washington counties that historically harbored the Columbia Basin pygmy rabbit (WDFW 1995b).

The available information suggests that the historic and seasonal use patterns and concentrations of native herbivores and their associated grazing effects within the Columbia Basin are considerably different from those of livestock operations. In addition, the available information does not indicate that natural levels of grazing by native herbivores, or their grazing patterns as they may have been altered by contemporary human activities, currently represent a risk to the Columbia Basin pygmy rabbit.

Predation and Disease

Issue 9: We received a number of questions and comments concerning our interpretation of the available information addressing predation and disease and the potential effects they have on the Columbia Basin pygmy rabbit. In addition, several commenters raised issues and questions concerning our potential future management actions to address these threat factors.

Our Response: Information concerning the potential current and historic impacts from predation and disease on the Columbia Basin and other pygmy rabbit populations primarily comes from scientific literature, including peer-reviewed journal articles, doctoral dissertations, master's theses, and/or State natural resource agency reports and data. In addition, the past and current management efforts that the WDFW has undertaken to address these threat factors are presented in the preamble to the rule. The details of planned future Federal management actions to address these threat factors will be further defined as our recovery program is developed (*see* Captive Propagation and Recovery, below).

The available information suggests that in relatively large, well distributed pygmy rabbit populations, predation and disease are not likely to represent a significant threat to their long-term security. However, due to the extremely small size and localized occurrence of the Columbia Basin pygmy rabbit, the available information suggests that human-altered predation and/or disease patterns, and even natural levels of predation and disease, may significantly impair conservation efforts for the remaining wild and captive portions of this population segment.

Captive Propagation and Recovery

Issue 10: We received a number of comments regarding the captive propagation program established by the WDFW and our potential management activities to address recovery of the Columbia Basin pygmy rabbit. These comments addressed a wide variety of issues and questions, including the health and breeding success of captive pygmy rabbits, impacts to pygmy rabbit populations associated with research or conservation efforts, other potential differences between the various pygmy rabbit populations (*e.g.*, physiological, behavioral, morphological), the survival characteristics of captive bred versus wild individuals, habitat enhancement or restoration standards for mitigation efforts, Federal recovery policy for down-listing or delisting the Columbia Basin pygmy rabbit, and reintroduction protocols and potential release sites for the recovery program.

Our Response: The available information we have regarding the biology and ecology of the Columbia Basin pygmy rabbit, impacts to the populations, and mitigation efforts is referenced within the preamble to this final rule.

The WDFW's captive propagation program affords an opportunity to maintain a sufficient number of Columbia Basin pygmy rabbits in captivity until appropriate recovery measures are developed and implemented to ensure the population's survival in the wild. Ultimately, the goal of the captive propagation effort is to release captive-bred Columbia Basin pygmy rabbits back into suitable habitats within their historic range so that viable subpopulations can become re-established. However, the number and size of the wild subpopulations necessary for recovery pursuant to the Act have not yet been determined.

Listing the Columbia Basin pygmy rabbit as endangered will provide for the development of a recovery plan. Such a plan would bring together Federal, State, and local efforts for the conservation of the species to form a recovery planning team. During the Federal recovery planning process, a team develops a plan to establish a framework for agencies to coordinate recovery efforts and cooperate with each other in conservation efforts. A recovery plan will set recovery objectives and priorities, such as habitat enhancement and/or restoration efforts, reintroduction protocols, and potential release sites, assign responsibilities to achieve those goals and objectives, and estimate costs of various tasks necessary to achieve conservation and survival of this species. A recovery plan will also identify goals and objectives that need to be met in order to downlist or delist the species. The following comments may provide further clarification.

Issue 11: Concern was expressed regarding possible mixing of Columbia Basin pygmy rabbits being held in captivity with those from the Idaho population being used for the husbandry studies.

Our Response: There have been no instances of intermixing between the two source populations of captive pygmy rabbits. The WDFW, WSU, and Oregon Zoo implemented a number of appropriate measures to avoid the possibility of commingling of Columbia Basin and other pygmy rabbits being held in captivity. These, and additional measures, were also made conditions of the December 18, 2001, recovery permit we issued for the captive propagation program (*see* Previous Federal Action, above). These measures include

maintaining secure and appropriately marked cages, providing discrete holding areas or separation fencing between cages, and developing and adhering to strict transport and handling procedures to minimize any potential for direct contact between the captive pygmy rabbit populations. Furthermore, notification of any instances of commingling of Columbia Basin and other pygmy rabbits will be provided to the Service within 3 working days of the incident, and will include a description of the circumstances under which the commingling occurred and corrective measures to address that and any potential future incidents.

Issue 12: Concerns were expressed regarding the potential impacts to the Columbia Basin pygmy rabbit from various ongoing research and conservation activities, and our potential actions to address these concerns.

Our Response: We recognize that certain research and conservation activities have the potential to directly and indirectly affect the Columbia Basin pygmy rabbit. The available information addressing the circumstances under which these impacts may be occurring, or have the potential to occur in the future, are referenced in the preamble to the rule, as appropriate.

Research and management activities for the Columbia Basin pygmy rabbit will be regulated under the section 10 permitting process. The WDFW has closely coordinated its management activities to conserve the Columbia Basin pygmy rabbit with us. In addition, in cooperation with the WDFW, WSU, and the Oregon Zoo, we have developed a number of appropriate measures to avoid or reduce the risk of take of the Columbia Basin pygmy rabbit. These measures were made conditions of the December 18, 2001, recovery permit and its revisions that we issued for the captive propagation program and ongoing management activities at the Sagebrush Flat site (*see* Previous Federal Action, above). We will continue to work cooperatively with interested parties on activities conducted for scientific purposes or to enhance the propagation or survival of the Columbia Basin pygmy rabbit under section 10 of the Act.

Issue 13: Concern was expressed regarding our use and incorporation of information from other pygmy rabbit populations in the background biological discussions and other sections of the emergency and proposed listing rules. In addition, questions were raised regarding whether this information is appropriate or applicable to the Columbia Basin pygmy rabbit.

Our Response: Wildlife investigations often use information concerning closely related populations, subspecies, species, and even genera when making biological inferences about a given population. It is important that any inferences made from these comparisons recognize the potential differences between the populations (or higher taxa), and that any conclusions are limited to what the available information supports. However, understanding the life history of a closely related population (or higher taxa) is often beneficial, and at times even essential, to a more complete understanding of the population of interest. While the Columbia Basin pygmy rabbit is distinct from other pygmy rabbit populations, we recognize that they share many similarities in their life history characteristics. Recognizing these similarities is critical to our understanding of the Columbia Basin population.

Service policy concerning the consideration of a DPS for listing under the Act requires us to evaluate the discreteness and significance of a given population in comparison to the remainder of its taxon. Considering all of the available information on a species helps determine if significant differences may exist between its discrete populations.

Issue 14: Several commenters expressed concern regarding the area affected by the listing, and the potential extent of reintroduction efforts that may be undertaken to address recovery of the Columbia Basin pygmy rabbit.

Our Response: This final rule lists as endangered the pygmy rabbit in the Columbia Basin of central Washington (Figure 2). Appropriate sites within this region that could potentially be used for reintroduction efforts will be identified as our recovery program is further developed. Pygmy rabbit populations in other States throughout the species' historic range are not included in this listing action, nor will any areas outside of the historic range of the Columbia Basin pygmy rabbit population be considered for any recovery actions.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we sought independent expert review by seven specialists during the comment period on the proposal to list the Columbia Basin pygmy rabbit. The purpose of these reviews is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. The seven independent reviewers would provide expertise on pygmy rabbit biology, population genetics, Columbia Basin shrub steppe ecology and rangeland management. Six of these reviewers submitted comments on the proposed listing, and one did not respond. Experts that provided comments include: Two pygmy rabbit researchers, one from Arizona State University and one from Idaho State University; a research wildlife biologist from the Biological Resources Division of the U.S. Geological Survey; a population geneticist from the University of Denver; a research biologist from the WDFW; and a senior scientist from NMFS. All of the experts concurred that the proposed listing action was justified and appropriate. We have incorporated their comments into this final determination. We address substantive comments raised by the peer reviewers concerning various aspects of the emergency and proposed rules below, and issues of a similar nature are grouped together, along with our response to each.

Issue 1: The role of habitat loss and fragmentation in the long-term decline of the Columbia Basin pygmy rabbit should be further emphasized in the final rule. In addition, measures to address habitat protection and restoration, including identifying specific habitat parameters and the control of exotic and/or invasive plant species, should be further addressed in the final rule.

Our Response: We recognize that habitat loss and fragmentation have likely played a primary role in the long-term decline of the Columbia Basin pygmy rabbit. In addition, we recognize that habitat protection and restoration will play a central role in future conservation efforts for this population. We will review and further develop specific habitat parameters and criteria, in cooperation with interested parties, at such time as we undertake future Federal conservation or recovery initiatives for the Columbia Basin pygmy rabbit.

Issue 2: The biophysical role of habitat (*e.g.*, thermal cover provided by native bunch grasses), and the potential impacts to this role from livestock grazing, should be further emphasized in the final rule.

Our Response: We recognize the potential for habitat to play an important biophysical role for the Columbia Basin pygmy rabbit, and that livestock grazing may affect these habitat parameters. However, there is very little additional information available regarding this potential relationship and, until it becomes available, clarification of this issue needs further investigation.

Issue 3: An expert comment was made that our use of the terms "prehistoric", "historic", and "recent" be further clarified in the final rule.

Our Response: In general, use of the identified terms in the final rule is as follows: prehistoric refers to information relating to conditions greater than roughly 200 years BP (*i.e.*, prior to extensive European settlement of the western United States), and recorded largely after the fact (*e.g.*, paleontological records); historic refers to information relating from roughly 200 to 50 years BP, and recorded primarily in the written tradition and at the time of occurrence; and recent refers to recorded information from the previous several decades. We recognize that the use of these terms is not absolute and some overlap between them is inevitable. As possible, we have added clarity to the use of these terms in the final rule, including the use of "past" when referring to all of these time periods combined, and "current" when referring to the contemporary time frame (*i.e.*, roughly the previous decade).

Issue 4: It was emphasized that plague is exotic to North American ecosystems and that native species are likely to be poorly adapted to this potential threat factor. In addition, epizootics (an outbreak of disease) in wild animals are often very difficult to detect, and disease can not easily be ruled out as a significant possible risk factor. Finally, the potential occurrence of plague in badgers from Idaho was identified, and it was suggested that disease may be implicated in other mammal declines in the Columbia Basin (*e.g.*, jack rabbits).

Our Response: We concur with these clarifications and continue to consider disease a significant potential threat to the Columbia Basin pygmy rabbit.

Issue 5: It was emphasized that a successful captive propagation program should be considered extremely important for the conservation and management of the Columbia Basin pygmy rabbit's unique genetic profile.

Our Response: We concur with this clarification. We will continue to support the development of an effective captive propagation program for the Columbia Basin pygmy rabbit in order to release the species into suitable habitats within their historic range so that viable subpopulations can become established and self-sustained in the wild.

Issue 6: It was suggested that the reasoning behind identifying threat factors B, C, and D for the Columbia Basin pygmy rabbit (*see* below) was somewhat circular; that is, if the population was not endangered from other, long-term causal factors (A and E), these other factors (B, C, D) would not represent current threats to the population. In addition, it was presumed that protection for the Columbia Basin pygmy rabbit under the Act could have been considered sooner to lessen the potential influences and complications of any such "secondary" threat factors.

Our Response: We are required to fully consider all five threat factors identified by the Act, regardless of whether they may be proximate or ultimate causal factors in the status of a given taxon. In addition, with regard to potential conservation and recovery efforts, identifying and controlling these more immediate threat factors is often critical to the long term security of a taxon, and consideration of longer-term conservation measures needed to ultimately achieve recovery of the taxon is often of a less urgent nature.

It is appropriate to propose a species for listing at the time when sufficient information is available. For the Columbia Basin pygmy rabbit, when we had sufficient information we took the appropriate action.

Issue 7: Concern was expressed regarding whether the emergency listing process was needed, whether it was as thorough as the Service's normal listing process, and whether there are significant differences between the two listing pathways.

Our Response: Emergency listing is appropriate when there are significant and imminent risks to the well-being of a taxon. We determined that such risks existed for the Columbia Basin pygmy rabbit primarily due to the population's extremely small size, ongoing loss and significant decline of its identified subpopulations, genetic indicators suggesting the likelihood of inbreeding depression within the population, and the unproven nature of the proposed captive breeding and subsequent reintroduction efforts for the species.

The principal differences between emergency and normal listing processes are that, under emergency listing, the Secretary may make the protective measures of the Act immediately available to the species, upon a finding of a significant risk posed to its well-being, but the listing is in force for only 240 days, and there are certain exemptions regarding the requirements of public notification and input. The 240-day expiration of an emergency listing is the primary reason we attempt to concurrently, or shortly thereafter, publish a proposed rule to list the species, as was done for the Columbia Basin pygmy rabbit, and finalize the listing as soon as possible.

Issue 8: The suggestion was made that the status of the pygmy rabbit as a monotypic genus could be a consideration regarding the potential significance of its discrete populations.

Our Response: Currently, we do not consider the status of taxa above the species level in our DPS analyses, nor is it specifically identified in the joint Service/NMFS policy addressing the recognition of DPS. However, we do consider taxonomic delineations above the species level in our priority ranking system to address the status of proposed and candidate species for potential listing actions under the Act.

Issue 9: It was emphasized that, during our DPS analyses, careful consideration should be given to the appropriateness of using the same database to address both the discreteness and significance of a population in comparison to the remainder of its taxon, especially with regard to the available genetic data.

Our Response: We concur with this clarification and recognize that, in various instances, it may be appropriate to consider the same database to address both DPS criteria. As suggested by the genetic information for the Columbia Basin pygmy rabbit presented above, we recognize that it is important to note whether the available data can be used primarily to address the isolation (*i.e.*, discreteness) of a taxon's populations, the potential differentiation of a taxon's discrete populations from one another (*i.e.*, significance), or as the data may relate to both criteria. In addition to the genetic information, we recognize that other sources of data, including behavioral, physiological, morphological, genetic, and ecological, may also apply to a taxon's discreteness and significance simultaneously. We will continue to address these conservation issues with regard to the pygmy rabbit throughout the species historic range as any additional information may become available.

Additional Information and Evaluations

Comments and additional data received during the comment periods, as well as further analysis on our part, raised several issues addressed in this final rule. We address these issues more specifically below.

Additional information became available as follows:

(1) The common raven is a significant potential predator of the Columbia Basin pygmy rabbit, and we also discuss WDFW's past and ongoing management efforts to address this threat factor.

(2) Vandalism has the potential to result in direct or indirect take of

Columbia Basin pygmy rabbits held in captivity, and site security as an important management consideration to address this potential threat. *See* Summary of Factors Affecting the DPS and Available Conservation Measures sections.

(3) Washington State legislation (HB 1309) provides measures with regard to conservation of the Columbia Basin pygmy rabbit. *See* Summary of Factors Affecting the DPS section.

(4) Regarding the status and results of ongoing conservation and research efforts for the Columbia Basin pygmy rabbit, there is updated information concerning the WDFW's captive propagation program and research addressing the effects of livestock grazing. *See* Current Management Actions, Distinct Population Segment Review, and Summary of Factors Affecting the DPS sections.

(5) There is potential for a significant gap in the range of the pygmy rabbit should the Columbia Basin population segment become extirpated. This assessment helps further clarify the concept of significance as it is defined in the Act and our policy addressing the recognition of DPS. *See* Distinct Population Segment Review section.

(6) Control of exotic plant species is a habitat protection and restoration measure for consideration during management actions and scientific investigations. *See* Available Conservation Measures section.

Summary of Factors Affecting the DPS

After a thorough review and consideration of all available information, we have determined that the Columbia Basin pygmy rabbit warrants classification as an endangered DPS pursuant to the Act. We followed procedures found in section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424). We may determine a DPS to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Columbia Basin pygmy rabbit (*Brachylagus idahoensis*) follow.

A. *Present or threatened destruction, modification, or curtailment of habitat or range.* During the first half of the 1900s, large portions of more mesic (moist) shrub steppe habitats on deeper soils within the Columbia Basin were converted for dryland crop production (Daubenmire 1988; Franklin and Dyrness 1988; WDFW 1995a). During the mid-1900s, large-scale irrigation projects led to further conversion of more xeric (dry) shrub steppe habitats on deeper soils within the Columbia Basin for irrigated agriculture (WDFW 1995a; Franklin and Dyrness 1988; U.S. Department of Interior (USDI) 1998). In addition, urban and rural developments (*e.g.*, housing, industrial facilities, transportation corridors) in central Washington permanently remove native shrub steppe habitats. In 1994, it was estimated that approximately 60 percent of the original shrub steppe habitat in Washington had been converted for human uses (Dobler 1994), and shrub steppe habitats within the Columbia Basin continue to be converted for a variety of human uses. The Columbia Basin pygmy rabbit can not occupy these converted sites. Due to the small home ranges and relatively restricted movements of pygmy rabbits, conversion of native habitats in the Columbia Basin also removes or severely limits their dispersal corridors between suitable habitats.

A number of other, often interacting, influences affect the remaining native shrub steppe habitat within the Columbia Basin, including altered fire frequencies, invasion by non-native species, recreational activities, and livestock grazing. Sagebrush is easily killed by fire and, when it occurs at increased frequencies, it can remove sagebrush from the vegetation assemblage (Daubenmire 1988). In the absence of a sufficient seed source, sagebrush cannot readily reinvade sites where it has been removed, and it may be many years before it can become reestablished (WDFW 1995a). Due to a variety of factors (*see* below), the fire frequency has increased over portions of the remaining shrub steppe habitat within the Columbia Basin. Because of their close association with tall, dense stands of sagebrush, pygmy rabbits are precluded from occupying frequently burned areas.

Various non-native, invasive plant species, such as cheatgrass (*Bromus tectorum*) and knapweed (*Centauria* spp.), have become well established throughout the Columbia Basin (Daubenmire 1988; Franklin and Dyrness 1988). Areas with dense cover of cheatgrass are apparently avoided by pygmy rabbits in Oregon (Weiss and Verts 1984), and these newly established plant communities often provide fine fuels that can carry a fire. Combined with widespread unimproved road access and informal recreational activities that provide multiple sources of ignition, the establishment of non-native species increases the risk of fire and further reduces the security of areas that could potentially support the Columbia Basin pygmy rabbit (WDFW 1995a).

Fire was implicated in the loss of the only pygmy rabbit subpopulation ever recorded in Benton County, Washington, in 1979 (WDFW 1995a), and was directly associated with the loss of one of the few remaining subpopulations in Douglas County in 1999 (WDFW 2001b). The WDFW has taken measures to reduce the risk of fire at the Sagebrush Flat site (*e.g.*, constructing firebreaks). However, unimproved road access and informal recreational activities provide a continuing source for ignition of uncontrolled fires in the area (WDFW 1995a). Due to the extremely low number of Columbia Basin pygmy rabbits in the wild, their restriction to one known site, and their reliance on relatively tall, dense stands of sagebrush, natural and human-caused fire represents a significant threat to this portion of the population.

Land managed for livestock grazing is often cleared of sagebrush to increase the production of grasses and forbs as forage for cattle (WDFW 1995a; Rauscher 1997), although this management practice in the Columbia Basin has declined from past levels (L. Hardesty, WSU, pers. comm. 2002). Clearing areas of sagebrush cover removes habitat patches potentially used by the Columbia Basin pygmy rabbit. In addition, it can reduce the value of more marginal stands of sagebrush that may act as dispersal corridors for pygmy rabbits, further fragmenting the remaining suitable habitats. Much of the remaining shrub steppe habitat in the Columbia Basin is managed for livestock grazing (WDFW 1995a; N. Hedges, pers. comm. 2001).

Excessive livestock grazing removes current herbaceous growth and residual cover of native grasses and forbs and can increase the density of various non-native, invasive species and—over several years—young sagebrush stands (Daubenmire 1988; WDFW 1995a). In some instances, this disturbance may eventually result in the growth of tall, dense stands of sagebrush (Daubenmire 1988), potentially improving the shrub forage and cover conditions for pygmy rabbits. However, livestock grazing at these levels potentially reduces the forage base and cover characteristics of grasses and forbs for Columbia Basin pygmy rabbits (Green and Flinders 1980b; Rauscher 1997). Excessive livestock grazing may also cause structural damage to dense stands of older sagebrush. This acts to open the canopies of these sites and potentially makes them less suitable as cover for Columbia Basin pygmy rabbits (Gahr 1993; Rauscher 1997). Currently, it is unclear if light or moderate levels of livestock grazing may be compatible with pygmy rabbit conservation efforts over the long-term.

There are several past and ongoing studies that have investigated the effects of different livestock grazing strategies on Columbia Basin pygmy rabbits and their habitat (Gahr 1993; WDFW 1995a; Sayler *et al.* 2001; L. Shipley, pers. comm. 2001). Gahr (1993) found that male pygmy rabbits at the Sagebrush Flat site made longer movements during the breeding season, resulting in larger home ranges, in recently grazed areas as opposed to areas that had not been grazed for nearly 40 years. In addition, relative to unit size, there are more pygmy rabbit burrows in the ungrazed areas of Sagebrush Flat than the recently grazed areas (L. Shipley, pers. comm. 2001). Further evaluation of the distribution and availability of appropriate soils across the Sagebrush Flat site will help clarify these results. Nevertheless, they suggest that Columbia Basin pygmy rabbits may be more susceptible to predation in areas used for livestock grazing due to longer movements away from cover and fewer burrows available for escape.

Results of an ongoing study also indicate that Columbia Basin pygmy rabbits occupying grazed sites tend to have a greater proportion of their summer through winter diets composed of sagebrush as opposed to grasses and forbs (L. Shipley, pers. comm. 2001). In addition, the nutritional quality (*e.g.*, less protein and greater fiber content) of the available grasses and shrubs in recently grazed sites tends to be less from fall through spring (L. Shipley, pers. comm. 2002). These results provide support for the contention that livestock may compete directly with pygmy rabbits for available forage during these periods (Green and Flinders 1980b; Rauscher 1997). There is also evidence that cattle can directly damage pygmy rabbit burrow systems through trampling (Rauscher 1997; N. Siegel, WSU, pers. comm. 2001; M. Hallet, pers. comm. 2002). These impacts may be especially critical during the Columbia Basin pygmy rabbits' reproductive period.

Populations of pygmy rabbits have coexisted with various levels of livestock grazing activities throughout their historic range for many years (WDFW 1995a). However, due to the extremely low number and restricted distribution of Columbia Basin pygmy rabbits, any additional mortality or population stress associated with livestock grazing practices represents a significant threat to the security of the wild portion of this population segment.

Due to the combined influences described above, Washington's native shrub steppe habitats, including those considered essential to the long-term security of the Columbia Basin pygmy rabbit, are considered among the least protected areas in the State (Cassidy 1997).

B. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Pygmy rabbits are often difficult to distinguish from species of cottontail rabbits (*Sylvilagus* spp.) (Garber 1993; WDFW 1995a). Because of this, accidental shooting of Columbia Basin pygmy rabbits may occur in association with hunting of other small game species in Washington (WDFW 1979). Due to their extremely low numbers, restricted distribution, and preference for dense habitats, combined with relatively few small game hunters at the Sagebrush Flat site, the risk from accidental shooting of Columbia Basin pygmy rabbits is currently considered relatively low (WDFW 1995a; D. Hays, pers. comm. 2001). However, in such reduced populations, accidental shooting could become a significant source of mortality if it is not carefully controlled.

Investigations that require trapping, handling, and captivity of pygmy rabbits can result in mortality from several causes, including exposure (due to excessively high or low temperatures); direct injury from entanglement in traps, trap predation, and intra-specific fighting; and capture stress (Bailey 1936; Severaid 1950; Wilde 1978; Gahr 1993; Rauscher 1997). Capture-related mortality rates (including recaptures) reported for pygmy rabbits are roughly 3 percent (Gahr 1993), 5 percent (Wilde 1978), and 13 percent (Rauscher 1997). The mortality rate for one study approached 20 percent when the total number of captured animals was considered (11 deaths of 58 individuals), and all of the mortalities in this study occurred in just one portion of the study area (Rauscher 1997). Trapping methods, daily and seasonal timing, study location, holding facilities and site security, and husbandry techniques may all affect the level of capture-related mortality incurred. In addition, vandalism of captive rearing facilities remains a threat following capture (L. Hardesty, pers. comm. 2002).

Currently, the WDFW is leading efforts to establish a captive breeding population of Columbia Basin pygmy rabbits (*see* Current Management Actions, above). To date, three capture-related deaths have occurred in this program. These deaths represent roughly a 14 percent mortality rate for the captured animals (3 of 21 individuals). While the captive propagation program is necessary to help ensure the long-term survival of the Columbia Basin pygmy rabbit, and we support these efforts, the potential for capture-related mortality to significantly affect the success of this program remains.

Some pygmy rabbit burrows are relatively shallow and may collapse when walked on by humans (Wilde 1978). Investigations of pygmy rabbits often entail the destruction of individual burrows, while measuring of the vegetation community and other site characteristics immediately surrounding burrow systems, and/or disturbance to the general area occupied by the pygmy rabbits (Janson 1946; Bradfield 1974; Green 1978; Wilde 1978; Gahr 1993; Gabler 1997; Rauscher 1997). Furthermore, various ongoing management and maintenance activities of the WDFW at the Sagebrush Flat site (*e.g.*, establishment of firebreaks, species and habitat surveys, fencing removal or construction) have the potential to directly or indirectly affect the Columbia Basin pygmy rabbit.

It is unlikely that any of the above activities alone has played a significant role in the long-term population decline and range reduction of the Columbia Basin pygmy rabbit. However, due to the current vulnerability of both the wild and captive portions of this population segment, any additional source of mortality may now play a significant role and could impair efforts to conserve the Columbia Basin pygmy rabbit.

C. *Disease or predation.* Pygmy rabbits often harbor a high parasite load (Gahr 1993; WDFW 1995a). Some of the parasites of pygmy rabbits, including ticks, fleas, and lice, can be vectors of disease. Episodes of plague and tularemia from these vectors have been reported in populations of a number of other Leporid species and are often fulminant (rapidly spreading) and fatal (Quan 1993). Severe disease epidemics have not been reported in pygmy rabbits, and parasites have not been viewed as a significant threat to the species (Green 1979; Gahr 1993). However, evidence of plague was reported in a coyote taken from the site of one of the recently extirpated subpopulations of Columbia Basin pygmy rabbits (WDFW 2001a). The potential occurrence of plague in this subpopulation is being investigated using blood samples obtained prior to its extirpation (D. Hays, pers. comm. 2001). Additional studies have been proposed to investigate the occurrence of plague and other diseases, and their possible control, in wild and captive

populations of pygmy rabbits (C. Brand, National Wildlife Health Center, pers. comm. 2001). Because so few Columbia Basin pygmy rabbits remain, the potential for disease outbreak represents a significant threat to both the wild and captive portions of this population segment.

Predation is thought to be a major cause of mortality among pygmy rabbits (Green 1979; Wilde 1978). However, pygmy rabbits have adapted to the presence of a wide variety of avian and terrestrial predators that occur throughout their historic distribution (Janson 1946; Gashwiler *et al.* 1960; Green 1978; Wilde 1978; WDFW 1995a). In relatively large, well distributed pygmy rabbit populations, predation is not likely to represent a significant threat to their long-term security. In contrast, due to the extremely small size and localized occurrence of the Columbia Basin pygmy rabbit population, altered predation patterns, or even natural levels of predation, currently represent a significant threat to both the wild and captive portions of this population segment and could impair ongoing conservation efforts.

Due to confirmed evidence of coyote predation on the Columbia Basin pygmy rabbit, the WDFW implemented a predator control program during the fall-winter periods of 1998–1999 and 1999–2000 (WDFW 2000a). Numerous coyotes and several long-tailed weasels were removed, by shooting, traps, or snares, over roughly 52 square kilometers (20 square miles) around and including the Sagebrush Flat site. The level of effort to control terrestrial predators varied among years and areas, and the efficacy of this program to protect the Columbia Basin pygmy rabbit is unknown. There are also a variety of avian predators that may occur at the Sagebrush Flat site. In an effort to help control the occurrence of common ravens and other predatory birds, the WDFW recently removed two obsolete windmills from the area that could have potentially been used as perching or nesting sites (M. Hallet, pers. comm. 2002).

Because of the relatively restricted distribution of the Columbia Basin pygmy rabbit, terrestrial and avian predators may also have a reduced search area and/or increased success rate at the Sagebrush Flat site. To further address the threat of predation on the Columbia Basin pygmy rabbit, additional measures are being considered by the WDFW for this area, such as controlling artificial food sources (e.g., spilled grain, trash, carnivore baits), the removal of unnecessary fencing potentially used as perch sites for avian species, and providing appropriate predator exclusion fencing (M. Hallet, pers. comm. 2002; D. Hays, pers. comm. 2002).

Several measures (e.g., double fencing, monitoring) have been taken to reduce the risk of predation on the captive portion of the Columbia Basin pygmy rabbit population (R. Sayler, WSU, pers. comm. 2001; L. Shipley, pers. comm. 2001). In addition, captive animals are currently being held at multiple facilities, which reduces the risk of catastrophic loss at a single facility (D. Hays, pers. comm. 2002). However, while the risk has been greatly reduced, the potential for certain predators to access cages at the captive rearing facilities remains.

Due to the extremely small size of the Columbia Basin pygmy rabbit population, even low levels of predation represent a significant risk to the immediate security of both the wild and captive portions of this population segment.

D. *Inadequacy of existing regulatory mechanisms.* Washington State classification of the Columbia Basin pygmy rabbit as endangered makes it illegal to attempt to kill, injure, capture, harass, possess, or control individuals of the species (WDFW 1995a). However, illegal or accidental shooting of Columbia Basin pygmy rabbits may occur in association with hunting seasons for other small game species (*see* factor C above). In addition, State designation does not provide regulatory protection of the habitats considered essential to the long-term security of the Columbia Basin pygmy rabbit.

Pursuant to Washington State legislation passed in 1993 (HB 1309), the Washington State Conservation Commission (WSCC) oversaw the development and provided approval of ecosystem standards for State-owned agricultural and grazing lands (WSCC 1995). HB 1309 called for implementation of the ecosystem standards to maintain and restore fish and wildlife habitat within the State by improving overall ecosystem health. The standards developed under HB 1309 are mandated for lands under the jurisdiction of the WDFW and Washington Department of Natural Resources (WDNR). Application of the standards on lands managed by the WDNR must be consistent with the agency's fiduciary obligations.

Currently, we are assisting private landowners with development of a county-wide HCP to protect important plant and animal species on agricultural lands in Douglas County. However, there are no regulatory protections for unlisted species during development of HCPs. Revegetation standards under the CRP promote the improvement of habitats potentially used by the Columbia Basin pygmy rabbit, and the CRP restricts livestock grazing on contract lands except under severe drought conditions (M. Ruud, Farm Service Agency, pers. comm. 2001).

E. *Other natural or human-caused factors affecting the species' continued existence.* The immediate concerns for the Columbia Basin pygmy rabbit are associated with the population's extremely small size, history of fragmentation and extirpation, and the recent, dramatic decline in its distribution and abundance. Small populations are susceptible to random environmental events (*e.g.*, severe storms, prolonged drought, extreme cold spells, volcanic fallout), abrupt changes in cover and food resources, altered predator or parasite populations, disease outbreaks, and fire. Small populations are also more susceptible to demographic and genetic problems (Shaffer 1981). These threat factors, which may act in concert, include natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in gene frequencies due to genetic drift, and lack of genetic diversity caused by inbreeding.

Genetic indices indicate that the Columbia Basin pygmy rabbit had less genetic diversity historically than the remainder of the taxon. In addition, this population segment has undergone further loss of genetic diversity since roughly the mid-1900s. Severe loss of genetic diversity may make the Columbia Basin pygmy rabbit more susceptible to extinction due to inbreeding depression or, assuming inappropriate introduction of other pygmy rabbit genes, swamping of their unique genetic profile. Reduced genetic diversity, and the relatively few family lineages remaining in the Columbia Basin pygmy rabbit population, may also complicate captive breeding strategies conducted to reestablish a minimum effective population size. Ultimately, an appropriate effective population size will help ensure the maintenance and enhancement of the genetic heterogeneity that is still present within this population segment (K. Warheit, pers. comm. 2001, 2002).

In relatively large, well distributed pygmy rabbit populations, the above threats are not likely to represent a significant risk to their long-term security. However, due to the extremely small size and localized occurrence of both the wild and captive portions of the Columbia Basin pygmy rabbit population, these threats represent a significant risk to the long-term security of this DPS.

Conclusion

Due to the combined influence of the above threats, extirpation of the Columbia Basin pygmy rabbit from the wild may occur at any time (WDFW 2001b). In addition, the risks to the captive portion of the population, and the potential for extinction of the Columbia Basin pygmy rabbit, remain high. We have carefully assessed the best scientific and commercial information available regarding the past, present, and potential future threats faced by the Columbia Basin pygmy rabbit. Based on our evaluation of the five threat factors discussed above, we have determined that the Columbia Basin pygmy rabbit is in danger of extinction. As such, we are listing the Columbia Basin pygmy rabbit as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our implementing regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analyses of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. We may exclude any area from critical habitat if we determine that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species.

We find that designation of critical habitat for the Columbia Basin pygmy rabbit is not determinable at this time because information sufficient to perform the required analyses of the impacts of the designation is lacking. We specifically solicited information on potential critical habitat, biological information, and information that would aid our prudency analysis in our proposed rule. We received no comments regarding specific physical or biological features essential to the Columbia Basin pygmy rabbit which provided information that added to our ability to determine critical habitat. In addition, the extent of habitat essential to the conservation of the species has not been identified. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent.

We will continue to protect the Columbia Basin pygmy rabbit and its habitat through section 7 consultations to determine whether Federal actions may affect this population segment, through the recovery process, through HCPs and through enforcement of the Act's "take" prohibitions (*see* 16 U.S.C. 1538; 50 CFR 17.21).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, prohibitions against certain activities, and development of recovery plans. Recognition through listing results in public awareness and encourages conservation actions by Federal, State, and Tribal agencies, non-governmental conservation groups, and private individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for listed species. The protection required of Federal agencies, and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agencies, whose actions may require consultation for the Columbia Basin pygmy rabbit include, but are not limited to, those within the jurisdictions of the Service, BLM, Bureau of Reclamation, Natural Resources Conservation Service, and Farm Service Agency. In addition, activities that are authorized, funded, or administered by Federal agencies on non-Federal lands will be subject to section 7 review.

We believe that protection and recovery of the Columbia Basin pygmy rabbit will require reduction of the threats from uncontrolled fire, altered predation patterns, excessive livestock grazing, disease outbreaks, mortality associated with the captive propagation and release programs, and loss of genetic viability. These threats should be considered for management actions in habitats currently and potentially occupied by the Columbia Basin pygmy rabbit, and those deemed important for dispersal between their appropriate use areas. Monitoring should also be undertaken for any management actions or scientific investigations designed to address these threats or their potential impacts.

Listing the Columbia Basin pygmy rabbit as endangered provides for the development and implementation of a recovery plan for the population. This plan will bring together Federal, State, tribal, and local efforts for conservation of the species, and will establish a framework for interested parties to coordinate recovery efforts. The plan will set recovery priorities, assign responsibilities, and estimate the costs of the various tasks necessary to achieve conservation and survival of the species. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to the State of Washington for management actions promoting the protection and recovery of this species.

Considerations for management actions and scientific investigations to

address the above threats to the Columbia Basin pygmy rabbit include, but are not limited to:

(1) *Fire*—implementation of agreements between fire-fighting districts and/or agency departments to provide adequate coverage, construction of fire breaks, availability of fire-fighting equipment, fire-fighting techniques, weed control, use of prescribed fire, and removal or restriction of unimproved road access and informal recreational activities;

(2) *Livestock Grazing*—season(s) of use, stocking rate(s) and type(s), location of supplemental water and salt/minerals, loading and transport facilities, exclusion fencing, and removal;

(3) *Habitat Protection and Restoration*—control of exotic and/or invasive plant species, planting types and techniques, soils and hydrologic analyses, land acquisition and connectivity, and control of unauthorized access.

(4) *Predation*—identification of primary predators and predation patterns, development of protocols for fence removal and/or new fence construction, and predator deterrents and/or lethal control of predators to protect the wild and captive portions of the population;

(5) *Disease*—identification and control of potential disease and disease vectors in wild and captive portions of the population;

(6) *Capture, husbandry, and reintroduction*—development of protocols for survey, capture, handling, and husbandry techniques; maintenance and security of multiple holding facilities for captive stock; inventory and evaluation of appropriate release sites; and development of release and site maintenance protocols; and

(7) *Genetics*—identification of additional genetic markers, implementation of appropriate breeding scenarios, and establishment of a minimum effective population for captive breeding and reintroduction efforts.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9 of the Act, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving listed species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practical, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. For the Columbia Basin pygmy rabbit, based upon the best available information, we believe the following actions are unlikely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States of dead specimens of Columbia Basin pygmy rabbits that were collected prior to the date of publication of the emergency listing rule in the **Federal Register**;

(2) Any action authorized, funded, or carried out by a Federal agency that may affect the Columbia Basin pygmy rabbit (*e.g.*, land exchanges, land clearing, prescribed burning, livestock grazing, pest control, utility line or pipeline construction, mineral extraction or processing, housing developments, off-road vehicle use, recreational trail or campground development, road construction, shooting, poisoning, habitat conversion, road construction, water development and impoundment, unauthorized application of herbicides or pesticides in violation of label restrictions) when the action is conducted in accordance with an incidental take statement issued under section 7 of the Act;

(3) Any action carried out for scientific research or to enhance the propagation or survival of the Columbia Basin pygmy rabbit that is conducted in accordance with the conditions of a section 10(a)(1)(A) permit under the Act; and

(4) Any incidental take of the Columbia Basin pygmy rabbit resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued under section 10(a)(1)(B) of the Act.

Activities that we believe could potentially result in a violation of section 9 include, but are not limited to:

(1) Unauthorized possession, trapping, handling, collecting, or release of pygmy rabbits within the historic range of the Columbia Basin pygmy rabbit. Research efforts involving these activities will require a permit under section 10(a)(1)(A) of the Act;

(2) Other activities that actually kill or injure a Columbia Basin pygmy rabbit by significantly impairing essential behavioral patterns (such as breeding, feeding or sheltering) through significant habitat modification or degradation (*e.g.*, via land clearing, prescribed burning, habitat conversions, over-grazing or trampling by livestock, pest control, minerals extraction or processing, housing developments, off-road vehicle use, recreational trail or campground development, shooting, intentional poisoning, road construction, water development and impoundment, unauthorized application of herbicides or pesticides in violation of label restrictions). Otherwise lawful activities that incidentally take a Columbia Basin pygmy rabbit will require a permit under section 10(a)(1)(B) of the Act.

Questions regarding whether specific activities risk violating section 9 should be directed to our Upper Columbia Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, including general inquiries regarding prohibitions and issuance of permits under the Act, may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Immediate Effective Date

The emergency listing that protected the Columbia Basin pygmy rabbit for 240 days expired on July 29, 2002. The threats to the species remain imminent and severe. Because of the extremely small size of the only remaining wild population, and the expiration of its interim protection, we find that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined in the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The existing OMB control number is 1018–0094 and expires July 31, 2004.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of references cited herein is available upon request from the Upper Columbia Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this final rule is Christopher Warren of the Upper Columbia Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 will continue to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), add the following to the List of Endangered and Threatened Wildlife in alphabetical order under MAMMALS:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Rabbit, Columbia Basin pygmy.	*Brachylagus idahoensis.*	U.S.A. (western conterminous U.S.).	U.S.A. (WA—Douglas, Grant, Lincoln, Adams, Benton Counties).	E	.....	NA	NA

Dated: February 20, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–5076 Filed 3–4–03; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 68, No. 43
Wednesday, March 5, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

RIN 3150–AH10

Source Material Reporting Under International Agreements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations which require licensees to report their holdings of source material (uranium and thorium) to the agency. Currently, licensees are required to file a report with the NRC whenever they receive or transfer uranium or thorium mined outside the United States (U.S). The proposed amendment would require licensees to report the receipt or transfer of source material controlled under any of the various international Agreements for Peaceful Nuclear Cooperation. This change will enable the U.S. Government to maintain the comprehensive national inventory of nuclear materials required under these agreements. This proposed rule will also allow licensees additional flexibility in submitting their annual source material inventory statements. The proposed amendment would permit licensees to submit these statements along with their material status reports for special nuclear material.

DATES: Comments on the proposed rule must be received on or before April 4, 2003.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

Because NRC considers this action noncontroversial and routine and because it is necessary in order to support the U.S. Government's obligations in this area, the NRC is publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on October 1, 2003. However, if the NRC receives significant adverse comments on this direct final rule by April 4, 2003, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 40 and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2),83, 84, Pub. L. 95–604, 92Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 40.4, the definition of *Foreign obligations* is added to read as follows:

§ 40.4 Definitions.

* * * * *

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

* * * * *

3. In § 40.64, paragraphs (a) and (b) are revised to read as follows:

§ 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each specific licensee who transfers, receives, or adjusts the inventory, in any manner, of uranium or thorium source material with foreign obligations by 1 kilogram or more or who imports or exports 1 kilogram of uranium or thorium source material shall complete a Nuclear Material Transaction Report in computer-readable format in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Safety, Washington, DC 20555–0001. Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee authorized to possess at any one time and location more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under Part 72 or 74, a statement of its source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR–0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

4. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 160.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

5. In § 150.3, the paragraph designations are removed, the definitions are arranged in alphabetical order, and the definition of *Foreign obligations* is added to read as follows:

§ 150.3 Definitions.

* * * * *

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

* * * * *

6. In § 150.17, paragraphs (a) and (b) are revised to read as follows:

§ 150.17 Submission to Commission of source material reports.

(a) Except as specified in paragraph (d) of this section and § 150.17a, each person who, pursuant to an Agreement State specific license, transfers or receives or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material with foreign obligations or who imports or exports 1 kilogram or more of uranium or thorium source material shall complete and submit in computer-readable format Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001. Each person who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each person who receives the material shall submit a Nuclear Material Transaction Report in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which

has been previously submitted in paper form.

(b) Except as specified in paragraph (d) of this section and § 150.17a, each person authorized to possess at any one time and location, under an Agreement State license, more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under part 74, a statement of the licensee's source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR–0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001.

* * * * *

Dated at Rockville, Maryland, this 21st day of February, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–5169 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. For certain airplanes that are subject to the existing AD, this action would add requirements for a new one-time inspection for gaps, a new one-time torque check for loose bolts, corrective actions if necessary, and eventual replacement of existing titanium bolts with steel bolts. These actions are necessary to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–142–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–142–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 24, 2002, the FAA issued AD 2002–22–07, amendment 39–12932 (67 FR 66043, October 30, 2002), applicable to certain Boeing Model 767 series airplanes, to require a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. That action was prompted by an evaluation by the airplane manufacturer that revealed that the titanium bolts on the inboard main flap did not have an acceptable fatigue life or damage-tolerance rating, and a subsequent report indicating that an operator found one missing bolt and two loose bolts out of four bolts at the aft attachment locations on the outboard support of the inboard main flap. The requirements of that AD are intended to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane.

Actions Since Issuance of Previous Rule

In the preamble to AD 2002–22–07, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered to require the new inspection for gaps, the torque check for loose bolts, and the replacement of existing titanium bolts with steel bolts described in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. (The existing AD refers to that service bulletin as an appropriate source of service information for the required actions.) The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2002–22–07 to continue to require a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. These actions would continue to be required to be accomplished per Boeing Alert Service Bulletin 767–27A0176, Revision 1, except as specified under the heading "Differences Between This AD and Service Bulletin" in AD 2002–16–05, amendment 39–12844 (67 FR 52401, August 12, 2002). (AD 2002–22–07 superseded AD 2002–16–05.)

For certain airplanes, the proposed AD would add requirements for a new one-time inspection for gaps, a new one-time torque check for loose bolts, corrective actions if necessary, and eventual replacement of existing titanium bolts on the inboard and outboard supports of the inboard main flap with steel bolts. The actions would be required to be accomplished per Boeing Alert Service Bulletin 767–27A0176, Revision 1.

Cost Impact

There are approximately 821 airplanes of the affected design in the worldwide fleet. The FAA estimates that 374 airplanes of U.S. registry would be affected by this proposed AD.

The initial inspection that is currently required by AD 2002–16–05 takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $134,640, or $360 per airplane.

For an affected airplane, the new inspection for gaps that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection is $60 per airplane.

For an affected airplane, the new torque test that is proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed torque test is $360 per airplane.

For an affected airplane, the replacement of bolts that is proposed in this AD action would take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,880 per airplane. Based on these figures, the cost impact of this proposed replacement is $2,480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12932 (67 FR 66043, October 30, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–142–AD. Supersedes AD 2002–22–07, Amendment 39–12932.

Applicability: Model 767 series airplanes, including Model 767–400ER series airplanes, line numbers 1 through 879 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect missing, loose, or cracked bolts on the inboard and outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane, accomplish the following:

Restatement of Requirements of AD 2002–22–07

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(a) Within 90 days after August 27, 2002 (the effective date of AD 2002–16–05, amendment 39–12844), do a one-time general visual inspection to determine if any bolt is missing from the outboard support of the

inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (g) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (g) of this AD is accomplished within the compliance time specified in this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no bolt is missing, before further flight, do a general visual inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of the service bulletin. If no bolt is missing and no gap is found, no further action is required by this paragraph.

(2) If any bolt is missing, before further flight, do paragraph (b) of this AD. In lieu of paragraph (b) of this AD, airplanes in Group 1 may comply with paragraph (g) of this AD.

Group 1 and 2 Airplanes: Missing Bolts or Gaps—Follow-On Actions

(b) For Group 1 or 2 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If any bolt is missing or any gap is found during the inspections per paragraph (a) or (f) of this AD, before further flight, remove all of the bolts in the subject area and replace them with new or serviceable bolts, per Figure 6, 7, or 8 of the service bulletin, as applicable. For any attachment hole where the bolt was missing, install a new or serviceable bolt made from the same material as the other bolts, per the Accomplishment Instructions of the service bulletin.

(1) An existing bolt may be reinstalled if a fluorescent dye penetrant inspection for cracking is done per Part 5 of the Accomplishment Instructions of the service bulletin, and the bolt is found to be free of any crack.

(2) Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Model 767–400ER Series Airplanes: Initial Inspection and Corrective Actions

(c) For Model 767–400ER series airplanes: Within 90 days after August 27, 2002, do a one-time general visual inspection to determine if any bolt is missing from the inboard and outboard support of the inboard main flap, and do a detailed inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Figure 2 of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002.

(1) If no bolt is missing and no gap is found: No further action is required by this paragraph.

(2) If any bolt is missing or any gap is found: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically refer to this AD.

(ii) Within 10 days after the inspections: Submit a report of inspection findings to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227–1159. The report must include the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (i.e., missing bolt or gap found). Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Previously Accomplished Inspections and Bolt Replacements

(d) Inspections and bolt replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 767–27A0176, dated November 16, 2001, are acceptable for compliance with the corresponding actions required by this AD.

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(e) Within 90 days after November 14, 2002 (the effective date of AD 2002–22–07, amendment 39–12932): Do the one-time general visual inspection required by paragraph (a) of this AD to determine if any bolt is missing from the inboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (g) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (g) of this AD is accomplished within the compliance time specified in this paragraph.

New Requirements of This AD

Group 1 Airplanes: Follow-On Actions

(f) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If no bolt is missing and no gap is found during the inspections required by paragraphs (a), (a)(1), and (e) of this AD, prior to the accumulation of 5,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later, perform a general visual inspection to find any gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 3 of the Accomplishment Instructions of the service bulletin.

(1) If no gap is found, before further flight, do a torque check per Part 4 of the Accomplishment Instructions of the service bulletin.

(i) If, during the torque check, the nut does not turn, remove the nut, clean the bolt and threads, and reinstall the nut per Part 4 and Figure 4 of the service bulletin. Do paragraph (g) of this AD at the time specified in that paragraph.

(ii) If the nut turns, do paragraph (b) of this AD. Then, do paragraph (g) of this AD at the time specified in that paragraph.

(2) If any gap is found, do paragraph (b) of this AD. Then, do paragraph (g) of this AD at the time specified in that paragraph.

Group 1 Airplanes: Replacement of Titanium Bolts

(g) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: Prior to the accumulation of 10,000 total flight cycles, or within 48 months after the effective date of this AD, whichever is later, replace all subject titanium bolts with new steel bolts per Part 6 of the Accomplishment Instructions of the service bulletin. This action is acceptable for compliance with paragraph (a), (e), and (f) of this AD and eliminates the need for the inspections required by those paragraphs. This action is acceptable for compliance with paragraph (b) of this AD, provided that the replacement of bolts per this paragraph is accomplished at the time specified in paragraph (b) of this AD. Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–16–05, amendment 39–12844, and AD 2002–22–07, amendment 39–12932, are approved as alternative methods of compliance for the corresponding requirements of paragraphs (b) and (c)(2)(i) of this AD.

(3) Alternative methods of compliance, approved previously in accordance with paragraph (c) of AD 2002–16–05, amendment 39–12844, and AD 2002–22–07, amendment 39–12932, are approved as alternative methods of compliance for the requirements for paragraph (g) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–5123 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–02–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require either revising the Airplane Flight Manual (AFM) to require a maximum operating altitude of 25,000 feet; or modifying the flight attendant's seat, or reworking the oxygen bottle kit, as applicable, and revising the AFM to require a maximum operating altitude of 30,000 feet. This action is necessary to prevent the unavailability of supplemental oxygen to the flight attendant in the event of cabin decompression, which could result in loss of consciousness of the flight attendant. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–02–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that investigation has revealed that installation of the forward lavatory on these airplanes has resulted in the relocation of the oxygen dispensing units and masks to a location that cannot be reached by a flight attendant while seated in the attendant seat, when the oxygen masks are automatically deployed due to emergency cabin decompression. (The units and masks had previously been installed at the ceiling or at the wardrobe wall in front of the first double seat of the forward passenger cabin and had been dedicated to the right-hand front row passenger and flight attendant.) The unavailability of supplemental oxygen to the flight attendant in the event of cabin decompression, if not corrected, could result in loss of consciousness of the flight attendant.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–25–0264, Change 01, dated July 22, 2002, which describes the following procedures:

- For certain airplanes: Modifying the flight attendant's seat (figure 1) by replacing the shock absorber and installing an oxygen bottle under the seat, including installing placards (figure 2).
- For certain other airplanes: Reworking the oxygen bottle kit (figure

3), including installing placards and attaching the oxygen mask hose to the oxygen bottle.

The DAC classified Change 01 of EMBRAER Service Bulletin 120–25–0264 as mandatory and issued Brazilian airworthiness directive 2001–11–03 R1, dated September 13, 2002, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require either revising the Limitations Section of the Airplane Flight Manual (AFM) to require a maximum operating altitude of 25,000 feet; or modifying the flight attendant's seat, or reworking the oxygen bottle kit, as applicable, and revising the Limitations Section of the AFM to require a maximum operating altitude of 30,000 feet. Modification of the flight attendant's seat, or rework of the oxygen bottle kit, as applicable; are required to be accomplished per EMBRAER Service Bulletin 120–25–0264, Change 01, except as described below.

Clarification of Applicability

The applicability of Brazilian airworthiness directive 2001–11–03 R1 specifies all Model EMB–120 series airplanes equipped with a lavatory installed in the forward part of the passenger cabin. However, paragraph 1.1.1, part I, of Change 01 of the service bulletin limits its effectivity to certain serial numbers of the affected airplane models equipped with a forward toilet and galley and on which the original issue of the service bulletin has not been accomplished. In addition, paragraph 1.1.2, part II, of Change 01 of the service bulletin limits its effectivity to certain serial numbers of the affected airplane models equipped with a forward toilet and galley and on which the original issue of the service bulletin has been accomplished.

The FAA considers that the effectivity of Change 01 of the service bulletin provides a more accurate listing of the specific airplanes that are applicable to the actions required by this proposed AD. For this reason, the applicability of this proposed AD specifies those airplanes as listed in the service bulletin.

Differences Between This Proposed AD and the Brazilian Airworthiness Directive

Operators should note the following differences:

- Part I of the Compliance section of the Brazilian airworthiness directive limits flight operations to 25,000 feet unless the right-hand aisle passenger seat in the front row is reserved for the flight attendant's use during operation above 25,000 feet.
- Part II of the Compliance section of the Brazilian airworthiness directive specifies that, for those airplanes that have accomplished Change 01 of EMBRAER Service Bulletin 120–25–0264, flight operations are limited to 30,000 feet unless the right-hand front row aisle passenger seat is reserved for flight attendant use during flight operations above 30,000 feet.

We have determined that reserving a passenger seat for use by the flight attendant does not adequately address the identified unsafe condition. During an emergency event such as the rapid loss of cabin pressure, it is necessary for the flight attendant to communicate with both the flightcrew and passengers via the airplane communication system. The existing system is located at the flight attendant's seat and is not within reach of the flight attendant if seated in the front row passenger seat. Therefore, in an emergency, the flight attendant would not be able to provide the flightcrew with emergency information about the passengers and airplane condition or to provide the necessary emergency instructions to the passengers. For these reasons, the AFM revisions required by this proposed AD limit flight operations to 25,000 feet; or to 30,000 feet if the actions required by this proposed AD (modification or rework, as applicable) have been accomplished.

We have consulted with the DAC about this difference between the maximum operating altitudes specified in the Brazilian airworthiness directive and the operating altitudes required by this proposed AD. After considering this information, the DAC has agreed with the flight operation limitations required by this proposed AD.

Cost Impact

The FAA estimates that 150 Model EMB–120 series airplanes of U.S. registry would be affected by this proposed AD.

Should an operator be required to revise the AFM (maximum operating altitude of 25,000 feet), it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed AFM revision on U.S. operators is estimated to be $60 per airplane.

Should an operator be required to accomplish either the modification or rework action, it would take approximately 8 work hours per airplane to accomplish the proposed modification or rework action, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,960 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $4,440 per airplane.

Should an operator be required to revise the AFM (maximum operating altitude of 30,000 feet), it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed AFM revision on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket 2003–NM–02–AD.

Applicability: Model EMB–120 series airplanes as listed in EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the unavailability of supplemental oxygen to the flight attendant in the event of cabin decompression, which could result in loss of consciousness of the flight attendant, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD.

Airplane Flight Manual (AFM) Revision

(1) Revise the Limitations Section of EMBRAER EMB120 Brasilia Airplane Flight Manual AFM–120/794 to include the following information, and operate the airplane per those limitations (this may be accomplished by inserting a copy of this AD into the AFM):

"Maximum operating altitude is limited to 25,000 feet."

(2) Accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

Modification

(i) For airplanes listed in paragraph 1.1.1., Part I, of the effectivity of EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002: Replace the shock absorber of the flight attendant's seat with a new part, and install an oxygen bottle kit under the seat (including installing placards); per paragraph 2.1 of the Accomplishment Instructions of that service bulletin.

Rework

(ii) For airplanes listed in paragraph 1.1.2., Part II, of the effectivity of EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002: Rework the oxygen bottle kit (including installing placards and attaching the oxygen mask hose to the oxygen bottle), per paragraph 2.2 of the Accomplishment Instructions of that service bulletin.

AFM Revision

(b) Before further flight following the accomplishment of paragraph (a)(2) of this AD: Revise the Limitations Section of EMBRAER EMB120 Brasilia Airplane Flight Manual AFM–120/794 to include the following information, and operate the airplane per those limitations (this may be accomplished by inserting a copy of this AD into the AFM):

"Maximum operating altitude is limited to 30,000 feet."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–11–03 R1, dated September 13, 2002.

Issued in Renton, Washington, on February 27, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–5122 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 95N–0304]

RIN 0910–AC51

Dietary Supplements Containing Ephedrine Alkaloids; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 30 days the comment period for a proposed rule entitled "Dietary Supplements Containing Ephedrine Alkaloids" that published in the **Federal Register** of June 4, 1997 (62 FR 30678) (the June 1997 proposal). In that document, FDA proposed a number of requirements relating to dietary supplements containing ephedrine alkaloids, including a requirement for a warning statement on the product label. Since publication of the June 1997 proposal, new scientific evidence has come to light concerning health risks associated with the use of dietary supplements containing ephedrine alkaloids. FDA is reopening the comment period to receive comment on this new evidence, as well as on the warning statement it is now considering for dietary supplements containing ephedrine alkaloids. FDA also intends to consider, to the extent possible, whether in light of current information FDA should determine that dietary supplements containing ephedrine alkaloids present a "significant or unreasonable risk of illness or injury under conditions of use recommended or suggested in labeling, or if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use."

DATES: Submit written or electronic comments April 4, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Anthony Curry, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2071.

SUPPLEMENTARY INFORMATION:

I. Reopening of Comment Period

In the **Federal Register** of June 4, 1997 (62 FR 30678) (the June 1997 proposal), FDA ("we" or "the agency") proposed to amend our regulations to require the label of dietary supplements containing ephedrine alkaloids to bear a warning statement. The proposed warning statement contained several elements, including cautions that consumers not use the product if they have certain diseases or health conditions or are using certain drugs, and that they stop using the product if they develop certain signs or symptoms. FDA also proposed restrictions on the potency and composition of dietary supplements containing ephedrine alkaloids, including a prohibition on the use of ephedrine alkaloids in dietary supplements with ingredients, or with ingredients that contain substances that have a known stimulant effect, such as caffeine. In addition, the agency proposed several requirements and restrictions relating to labeling claims and directions for use.

We proposed these actions in response to reports of serious illnesses and injuries, including a number of deaths, associated with the use of dietary supplements containing ephedrine alkaloids and the agency's investigations and assessment of these illnesses and injuries.

The comment period for the proposed rule closed on August 18, 1997. On September 18, 1997, FDA reopened the comment period for 75 days until December 2, 1997 (62 FR 48968).

In the **Federal Register** of April 3, 2000 (65 FR 17474), we withdrew the proposed requirements and restrictions concerning potency, labeling claims, and directions for use, but not the proposed warning statement or the proposed prohibition on dietary supplements that combine ephedrine alkaloids with other stimulant ingredients. In the same issue of the **Federal Register** (65 FR 17510), we also announced the availability of adverse event reports and related information that had become available since the June 1997 proposal; we reopened the comment period until May 18, 2000, to receive comments on this new information (Docket No. 00N–1200).

Recently, more scientific evidence has come to light concerning the risks posed by ephedrine alkaloids, including approximately 17,000 adverse event reports received overall by FDA. For example, one study compared the risks of adverse events attributable to ephedra and other herbal products through a comparative case series investigation based upon poison control center reporting (Ref. 1). Another study, a case-controlled investigation, examined the association between the use of ephedra and the risk for hemorrhagic stroke (Ref. 2). One study evaluated the adverse cardiovascular events from the FDA database that were temporally associated with the use of ephedra (Ref. 3). Another study evaluated the pharmacology of ephedrine alkaloids and caffeine after a single dose in humans (Ref. 4). Two studies were double-blind controlled clinical trials that evaluated the efficacy of ephedra in combination with caffeine for weight loss, with treatment durations of 6 weeks (Ref. 5) or 6 months (Ref. 6). Further, the RAND Corporation, under contract with the U.S. Department of Health and Human Services, has conducted an evidence based review of all available sources of information on ephedrine alkaloid containing dietary supplements (Ref. 7).

Comments to the June 1997 proposal stressed the importance of ensuring that consumers were aware of the risks of consuming dietary supplements containing ephedrine alkaloids. Therefore, in light of the new scientific evidence as well as the comments received in response to the June 1997 proposal, FDA is considering the following warning statement for dietary supplements containing ephedrine alkaloids. This statement is consistent with the recent scientific reports referenced in this document.

The following warning statement would appear on the principal display panel of the product:

> **WARNING**: ***Contains ephedrine alkaloids. Heart attack, stroke, seizure, and death have been reported after consumption of ephedrine alkaloids***. Not for pregnant or breast-feeding women or persons under 18. Risk of injury can increase with dose or if used during strenuous exercise or with other products containing stimulants (including caffeine). Do not use with certain medications or if you have certain health conditions. Stop use and contact a doctor if side effects occur. See more information [...].

The following additional information would appear on the outer product label or in product labeling that is an integral part of the outer product packaging such that this information may be read at point of purchase (For example, this information could be contained in the outer information panel, riser backing, panel extension, outsert, etc.):

> **This product contains ephedrine alkaloids, which can have potentially dangerous effects on the heart and central nervous system.**
>
> ☛ **Do not use with**
> - ✓ a monoamine oxidase inhibitor (MAOI) or for 2 weeks after stopping a MAOI drug;
> - ✓ certain drugs for depression, psychiatric, or emotional conditions;
> - ✓ drugs for Parkinson's disease;
> - ✓ drugs for obesity or weight control;
> - ✓ methyldopa.
>
> ☛ **Contact a doctor before using this product if you have or ever had**
> - ✓ heart disease, high blood pressure, thyroid disease, seizure, diabetes, depression, other mental, emotional or behavioral conditions, glaucoma, or difficulty urinating due to prostate enlargement.
>
> ☛ **Stop use and contact a doctor immediately if these side-effects occur**
> - ✓ dizziness, severe headache, rapid and/or irregular heartbeat, chest pain, shortness of breath, nausea, loss of consciousness, or changes in emotions or behavior (such as depression, hallucinations or severe mood swings).
>
> ☛ **Your risks of serious side-effects from this product can increase**
> - ✓ with increased dose, frequency, or duration of use;
> - ✓ if you take it with other dietary supplements containing ephedrine alkaloids (such as ephedra, ma huang, Sida cordifolia);
> - ✓ if you take it with additional products containing stimulants, such as caffeinated beverages and foods (including dietary supplements containing guarana, kola nut, mate, yohimbine/yohimbe, Citrus aurantium);
> - ✓ if you take it with medications containing synephrine, phenylephrine, ephedrine, pseudoephedrine, or phenylpropanolamine;
> - ✓ if you use it before or during strenuous exercise.

FDA also intends to consider, to the extent possible, whether in light of current information FDA should determine that dietary supplements containing ephedrine alkaloids present a "significant or unreasonable risk of illness or injury under conditions of use recommended or suggested in labeling, or if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use" (see 21 U.S.C. 342(f)(1)(A)). Furthermore, FDA

seeks comment on what additional legislative authorities, if any, would be necessary or appropriate to enable FDA to address this issue most effectively.

For interested parties who would like to submit comments on these issues or additional data from any well-conducted scientific studies, we are reopening the comment period of the June 1997 proposal for 30 days. If, after evaluating the comments received on this document, FDA believes that a warning statement on the labels of dietary supplements containing ephedrine alkaloids is necessary to protect the health of individuals consuming such products, the agency will move quickly to publish a final rule requiring the appropriate warning statement and to take any other action we determine to be appropriate.

II. How to Submit Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Identify all comments with the docket numbers found in brackets in the heading of this document. You may review received comments in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Bent, S., T. N. Tiedt, M. C. Odden, and M. G. Shlipak, "The Relative Safety of Ephedra Compared with Other Herbal Products," published in the *Annals of Internal Medicine*, March 2003, vol. 138, number 6.

2. Morgenstern, L. B., C. M. Viscoli, W. N. Kernan, L. M. Brass, J. P. Broderick, E. Feldmann, J. L. Wilterdink, T. Brott, and R. I. Horwitz, "Use of Ephedra-Containing Products and Risk for Hemorrhagic Stroke," published in the *Journal of Neurology*, 2003; vol. 60: pp. 132–135.

3. Samenuk, D., M. S. Link, M. K. Homoud, R. Contreras, T. C. Theohardes, P. J. Wang, Estes NA 3d., "Adverse Cardiovascular Events Temporally Associated With ma huang, an Herbal Source of Ephedrine," *Mayo Clinic Proceedings*, 2002, vol. 77(1):12–6.

4. C. A., Haller, P. Jacob 3rd, N. L. Benowitz, "Pharmacology of Ephedra Alkaloids and Caffeine After Single-dose Dietary Supplement Use," *Clinical Pharmacology and Therapeutics*, 2002, June, vol. 71(6), pp. 421–432.

5. Boozer, C. N., J. A. Nasser, S. B. Heymsfield, V. Wang, G. Chen, J. L. Solomon, "An Herbal Supplement Containing Ma Huang-Guarana for Weight Loss: A Randomized, Double-blind Trial," *International Journal of Obesity and Related Metabolic Disorders*, 2001;25(3):316–24.

6. Boozer, C. N., P. A. Daly, P. Homel, J. L. Solomon, D. Blanchard, J. A. Nasser, et. al. "Herbal Ephedra/Caffeine for Weight Loss: a 6-month Randomized Safety and Efficacy Trial," *International Journal of Obesity Related and Metabolic Disorders*, 2002, vol. 26(5): pp. 593–604.

7. Shekelle, P. G, M. L. Hardy, M. Maglione, S. C. Morton, "Ephedra and Ephedrine for Weight Loss and Athletic Performance Enhancement: Clinical Efficacy and Side Effects," Agency for Healthcare Research and Quality (in press).

Dated: February 27, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–5072 Filed 2–28–03; 3:30 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AB86

National Forest Service Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of public comment period.

SUMMARY: Notice is hereby given that the public comment period for the proposed rule for National Forest System Land and Resource Management Planning, published in the **Federal Register** on December 6, 2002 (67 FR 72770), is being extended. The original comment period end date was March 6, 2003.

DATES: Comments on the proposed rule must be received in writing, on or before the new deadline of April 7, 2003.

ADDRESSES: Comments may be sent to USDA FS Planning Rule, Content Analysis Team, PO Box 8359, Missoula, MT 59807; via email to *planning_rule@fs.fed.us;* or by facsimile to Planning Rule Comments at (406) 329–3556. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Jody Sutton, Content Analysis Team Program Coordinator, Forest Service, (801) 517–1023.

SUPPLEMENTARY INFORMATION: The Diversity Options Workshop was held February 18–20, 2003, to discuss the approaches to implementing the National Forest Management Act (NFMA) diversity requirement in the proposed rule; address strengths and weaknesses of the two diversity options in the proposed rule; and to discuss any additional options for implementing the NFMA diversity requirement. Proceedings from the Diversity Options Workshop are expected to be posted on World Wide Web at *www.fs.fed.us/emc/nfma* by March 17, 2003.

Dated: February 26, 2003.

Bov B. Eav,

Acting Chief.

[FR Doc. 03–5116 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1243–P]

RIN 0938–AM41

Medicare Program; Proposed Change in Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) Under the Acute Care Hospital Inpatient Prospective Payment System

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: In this proposed rule, we are proposing to change the methodology for determining payments for extraordinarily high-cost cases (cost outliers) made to Medicare-participating hospitals under the acute care hospital inpatient prospective payment system.

Under the existing outlier methodology, the cost-to-charge ratios from hospitals' latest settled cost reports are used in determining a fixed-loss amount cost outlier threshold. We have become aware that, in some cases, hospitals' recent rates of charge increases greatly exceed their rates of cost increases. This disparity results in their cost-to-charge ratios being set too high, which in turn results in an overestimation of their current costs per case. Therefore, we need to make revisions to our outlier payment methodology to correct those situations in which hospitals would otherwise receive overpayments for outlier cases due to excessive charge increases.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 4, 2003.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–1243–P, PO Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building.

A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

In commenting, please refer to file code CMS–1243–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

For information on viewing public comments, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

For comments that relate to information collection requirements, mail a copy of comments to the following addresses:

Centers for Medicare & Medicaid Services,
Office of Strategic Operations and Regulatory Affairs, Division of Regulations and Issuances, PRA Reports Clearance Office, 7500 Security Boulevard, Baltimore, MD 21244–1850, *Attn.:* Julie Brown, CMS 1243–P; and
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, *Attn.:* Brenda Aguilar, CMS Desk Officer.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4548.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call telephone number: (410) 786–9994.

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html*.

I. Background

A. Description of the Acute Care Hospital Inpatient Prospective Payment System (IPPS)

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. This payment system is referred to as the acute care hospital inpatient prospective payment system (IPPS). Under the IPPS, each case is categorized into a diagnosis-related group (DRG). Each DRG has a payment weight assigned to it, based on the average resources used to treat Medicare patients in that DRG.

The base payment rate is divided into a labor-related share and a nonlabor-related share. The labor-related share is adjusted by the wage index applicable to the area where the hospital is located, and if the hospital is located in Alaska or Hawaii, the nonlabor-related share is adjusted by a cost-of-living adjustment factor. This base payment rate is multiplied by the DRG relative weight.

If the hospital treats a high-percentage of low-income patients, it receives a percentage add-on payment applied to the DRG-adjusted base payment rate. This add-on payment, known as the disproportionate share hospital (DSH) adjustment, provides for a percentage increase in Medicare payment for hospitals that qualify under either of two statutory formulas designed to identify hospitals that serve a disproportionate share of low-income patients. For qualifying hospitals, the amount of this adjustment may vary based on the outcome of the statutory calculation.

Also, if the hospital is an approved teaching hospital it receives a percentage add-on payment for each case paid through the IPPS. This add-on payment, known as the indirect medical education (IME) adjustment, varies depending on the ratio of residents-to-beds under the IPPS for operating costs and according to the ratio of residents-to-average daily census under the IPPS for capital costs.

Additional payments may be made for cases that involve new technologies that have been approved for special add-on payments. To qualify, a new technology must demonstrate that it is a substantial clinical improvement over technologies otherwise available, and that, absent an add-on payment, it would be inadequately paid under the regular DRG payment.

Finally, for particular cases that are unusually costly, known as outlier cases (discussed below), the IPPS payment is increased. This additional payment is designed to protect the hospital from large financial losses due to unusually expensive cases. Any outlier payment due is added to the DRG-adjusted base payment rate, plus any DSH, IME, and new technology add-on adjustments.

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." The basic methodology for determining

capital prospective payments is set forth in our regulations at §§ 412.308 and 412.312. Under the capital prospective payment system, payments are adjusted by the same DRG for the case as they are under the operating IPPS. Similar adjustments are also made for IME and DSH as under the operating IPPS. Hospitals also may receive an outlier payment for those cases that qualify.

B. Payment for Outlier Cases

1. General

Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for cases incurring extraordinarily high costs. To qualify for outlier payments, a case must have costs above a fixed-loss cost threshold amount (a dollar amount by which the costs of a case must exceed payments in order to qualify for outliers).

Hospital-specific cost-to-charge ratios are applied to the covered charges for the case to determine whether the costs of the case exceed the fixed-loss outlier threshold. Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the costs above the threshold. For Federal fiscal year (FY) 2003, the existing fixed-loss outlier threshold is $33,560.

The actual determination of whether a case qualifies for outlier payments takes into account both operating and capital costs and DRG payments. That is, the combined operating and capital costs of a case must exceed the fixed-loss outlier threshold to qualify for an outlier payment. The operating and capital costs are computed separately by multiplying the total covered charges by the operating and capital cost-to-charge ratios. The estimated operating and capital costs are compared with the fixed-loss threshold after dividing that threshold into an operating portion and a capital portion (by summing the operating and capital ratios and determining the proportion of that total comprised by the operating and capital ratios, and then applying these percentages to the fixed-loss threshold). The thresholds are also adjusted by the area wage index (and capital geographic adjustment factor) before being compared to the operating and capital costs of the case. Finally, the outlier payment is equal to 80 percent of the combined operating and capital costs in excess of the fixed-loss threshold (90 percent for burn DRGs).

The following example simulates the outlier payment for a case at a generic hospital that receives IME and DSH payments in San Francisco, California (a large urban area). The patient was discharged after October 1, 2002, and the hospital incurred Medicare-covered charges of $150,000. The DRG assigned to the case was DRG 286, Adrenal and Pituitary Procedures, with a FY 2003 relative weight of 2.0937. There is no new technology add-on payment for the case.

Step 1: Determine the Federal operating and capital payment with IME and DSH adjustment based on the following values:

Operating Portion	
National Large Urban Standardized Amounts	
Labor-related	$3,022.60
Nonlabor-related	1,228.60
San Francisco MSA Wage Index	1.4142
IME Operating Adjustment Factor	0.0744
DSH Operating Adjustment Factor	0.1413
DRG 286 Relative Weight	2.0937
Labor-Related Portion	0.711
Nonlabor-Related Portion	0.289

Federal Payment for Operating Costs = DRG Relative Weight × [(Labor-Related Large Urban Standardized Amount × San Francisco MSA Wage Index) + Nonlabor-Related National Large Urban Standardized Amount] × (1 + IME + DSH): 2.0937 × [($3,022.60 × 1.4142) + $1,228.60] × (1 + 0.0744 + 0.1413) = $14,007.26

Capital Portion	
Federal Capital Rate	$407.01
Large Urban Add-On	1.03
San Francisco MSA Geographic Adjustment Factor	1.2679
IME Capital Adjustment Factor	0.0243
DSH Capital Adjustment Factor	0.0631

Federal Payment for Capital Costs = DRG Relative Weight × Federal Capital Rate × Large Urban Add-On × Geographic Adjustment Factor × (1 + IME + DSH): 2.0937 × $407.01 × 1.03 × 1.2679 × (1 + 0.0243 + 0.0631) = $1,210.12.

Step 2: Determine operating and capital costs from billed charges by applying the respective cost-to-charge ratios.

Billed Charges	$150,000
Operating Cost-to-Charge Ratio	0.50
Operating Costs = (Billed Charges × Operating Cost-to-Charge Ratio) ($150,000 × .50)	75,000
Capital Cost-to-Charge Ratio	0.06
Capital Costs = (Billed Charges × Capital Cost-to-Charge Ratio) ($150,000 × .06)	9,000

Step 3: Determine outlier threshold.

Fixed Loss Threshold	$33,560
Operating Cost-to-Charge Ratio to Total Cost-to-Charge Ratio .. (Operating Cost-to-Charge Ratio) / (Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio) (.50)/(.50 + .06)	0.8929

Operating Outlier Threshold = {[Fixed Loss Threshold × ((Labor-Related portion × San Francisco MSA Wage Index) + Nonlabor-Related portion)] × Operating Cost-to-Charge Ratio to Total Cost-to-Charge Ratio] + Federal Payment with IME and DSH: [$33,560 × [(0.711 × 1.4142) + 0.289] × 0.8929} + $14,007.26 = $52,797.78

Capital Cost-to-Charge-Ratio to Total Cost-to-Charge Ratio = [(Capital Cost-to-Charge Ratio)/(Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio)]:{(.06)/(.50 + .06)} = 0.1071

Capital Outlier Threshold = (Fixed Loss Threshold × Geographic Adjustment Factor × Large Urban Add-On × Capital CCR to Total CCR) + Federal Payment with IME and DSH: ($33,560 × 1.2679 × 1.03 × 0.1071) + $1,210.12 = $5,904.02

Step 4: Determine outlier payment.

Marginal Cost Factor = 0.80

Outlier Payment = (Costs—Outlier Threshold) × Marginal Cost Factor

Operating Outlier Payment = ($75,000—$52,797.78) × 0.80 = $17,761.78

Capital Outlier Payment = ($9,000—$5,904.02) × 0.80 = $2,476.78

2. Cost-to-Charge Ratios

Under existing regulations at § 412.84(h), the operating cost-to-charge ratio and, effective with cost reporting periods beginning on or after October 1, 1991, the capital cost-to-charge ratio used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report.

In the September 30, 1988 final rule with comment period published in the **Federal Register** (53 FR 38503), we initiated the use of hospital-specific cost-to-charge ratios to determine hospitals' costs for assessing whether a case qualifies for payment as a cost outlier. Prior to that change, we determined the cost of discharges based on a nationwide cost-to-charge ratio of 60 percent. We indicated at the time that the use of hospital-specific cost-to-charge ratios is essential to ensure that outlier payments are made only for cases that have extraordinarily high costs, and not merely high charges.

Currently, cost-to-charge ratios are determined using the most recent settled cost report for each hospital. At the end of the cost reporting period, Medicare charges from all claims are accumulated through the Provider Statistical and Reimbursement Report (PS&R). The PS&R contains data such as the number of discharges and the actual charges from each hospital. The hospital also submits a cost report to its fiscal intermediary, which is used to determine total allowable inpatient Medicare costs. Once all these data are available, the fiscal intermediary then determines the cost-to-charge ratio for the hospital by using charges from the PS&R and costs from the cost report.

Statewide average cost-to-charge ratios are used in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. CMS sets forth these parameters and the statewide cost-to-charge ratios in the annual notices of prospective payment rates that are published by August 1 of each year in accordance with § 412.8(b). For FY 2003, those parameters are set at operating cost-to-charge ratios lower than 0.194 or greater than 1.258, or capital cost-to-charge ratios lower than 0.012 or greater than 0.163. These ranges represent 3.0 standard deviations (plus or minus) from the geometric mean of cost-to-charge ratios for all hospitals.

The Congress intended that outlier payments would be made only in situations where the cost of care is extraordinarily high in relation to the average cost of treating comparable conditions or illnesses. Under our existing outlier methodology, if hospitals' charges are not sufficiently comparable in magnitude to their costs, the legislative purpose underlying the outlier regulations is thwarted.

Recent analysis indicates that some hospitals have taken advantage of two vulnerabilities in our methodology to maximize their outlier payments. One vulnerability is the time lag between the current charges on a submitted bill and the cost-to-charge ratio taken from the most recent settled cost report. The second vulnerability, in some cases, is that hospitals may increase their charges so far above costs that their cost-to-charge ratios fall below 3 standard deviations from the geometric mean of cost-to-charge ratios and a higher statewide average cost-to-charge ratio is applied. In this proposed rule, we are proposing to implement new regulations to ensure outlier payments are paid only for truly high-cost cases.

Because the fixed-loss threshold is determined based on hospitals' historical charge data, hospitals that have been inappropriately maximizing their outlier payments have caused the threshold to increase dramatically for FY 2003. As illustrated by the table below, the cost outlier threshold increased by 80 percent from $9,700 in FY 1997 to $17,550 in FY 2001. In addition, the cost outlier threshold increased by 91 percent from $17,550 in FY 2001 to $33,560 in FY 2003. The table also demonstrates, for the 3 most recent years, the level at which the threshold would have to have been set in order to result in outlier payments equal to 5.1 percent of total DRG payments (absent further behavioral responses by hospitals).

Fiscal year	Outlier percentage	Payments in excess of target of 5.1%* (in billions of dollars)	Outlier threshold	Threshold that would have paid out 5.1%
1997	5.5	0.3	$9,700	****
1998	6.5	1.0	11,050	****
1999	7.6	1.8	11,100	****
2000	7.6	1.8	14,050	$21,825
2001	7.7	1.9	17,550	26,200
2002	6.9	1.6	21,025	30,525
2003	5.1	N/A	33,560	****

*All payments are estimated and reflect operating payments only (not capital payments).

II. Provisions of this Proposed Rule

A. Updating Cost-to-Charge Ratios

Currently, we use the most recent settled cost report when determining cost-to-charge ratios for hospitals. The covered charges on bills submitted for payment during FY 2003 are converted to costs by applying a cost-to-charge ratio from cost reports that began in FY 2000 or, in some cases, FY 1999. These covered charges reflect all of a hospital's charge increases to date, in particular those that have occurred since FY 2000 and are not reflected in the FY 2000 cost-to-charge ratios. If the rate-of-charge increases since FY 2000 exceeds the rate of the hospital's cost increases during that time, the hospital's cost-to-charge ratio based on its FY 2000 cost report will be too high, and applying it to current charges will overestimate the hospital's costs per case during FY 2003. Overestimating costs may result in some cases qualifying for outlier payments that, in actuality, are not high cost cases.

Using the Medicare Provider Analysis and Review (MedPAR) file data from FY 1999 to FY 2001, we found 123 hospitals whose percentage of outlier payments relative to total DRG payments increased by at least 5 percentage points over that period, and whose case-mix (the average DRG relative weight value for all of a hospital's Medicare cases) adjusted charges increased at a rate at or above the 95th percentile rate of charge increase for all hospitals (46.63 percent) over the same period. We adjusted for case-mix because a hospital's average charges per case would be expected to change from one year to the next if the

hospital were treating new or different types of cases.

Because we use settled cost reports to compute hospitals' cost-to-charge ratios, the recent dramatic increases in charges for these hospitals are not reflected in their cost-to-charge ratios. For example, among these 123 hospitals, the mean rate of increase in charges was 70 percent. Meanwhile, cost-to-charge ratios for these hospitals, which were based upon cost reports from prior periods, declined by only 2 percent.

Because a hospital has the ability to increase its outlier payments during this time lag through dramatic charge increases, in this proposed rule we are proposing new regulations at § 412.84(i)(1) that would allow fiscal intermediaries to use more up-to-date data when determining the cost-to-charge ratio for each hospital. As mentioned above, currently fiscal intermediaries use the hospital's most recent settled cost report. We are proposing to revise our regulations to specify that fiscal intermediaries will use either the most recent settled or the most recent tentative settled cost report, whichever is from the later cost reporting period.

Hospitals must submit their cost reports within 5 months after the end of their fiscal year. CMS makes a decision to accept a cost report within 30 days. Once the cost report is accepted, CMS makes a tentative settlement of the cost report within 60 days. The tentative settlement is a cursory review of the filed cost report to determine the amount of payment to be paid to the hospital if an amount is due on the as-filed cost report. After the cost report is tentatively settled, it can take 12 to 24 months, depending on the type of review or audit, before the cost report is final-settled. Thus, using cost-to-charge ratios from tentative settled cost reports, as we are proposing in this proposed rule, would reduce the time lag for updating cost-to-charge ratios by a year or more.

However, even the later ratios calculated from the tentative settled cost reports would overestimate costs for hospitals that have continued to increase charges much faster than costs during the time between the tentative settled cost report period and the time when the claim is processed. That is, even though we are proposing to reduce the lag in time by proposing to revise the regulations to use the latest tentative settled cost report, rather than the latest settled cost report, if it is from a later cost reporting period, there would still be a lag of 1 to 2 years during which a hospital's charges may still increase faster than costs. Therefore, we are proposing to add a new provision to the regulations at § 412.84(i). Under this proposed provision, in the event more recent charge data indicate that a hospital's charges have been increasing at an excessive rate (relative to the rate of increase among other hospitals), CMS would have the authority to direct the fiscal intermediary to change the hospital's operating and capital cost-to-charge ratios to reflect the high charge increases evidenced by the later data. In addition, we are proposing to allow a hospital to contact its fiscal intermediary to request that its cost-to-charge ratios, otherwise applicable under § 412.84(i), be changed if the hospital presents substantial evidence that the ratios are inaccurate. Any such requests would have to be approved by the CMS Regional Office with jurisdiction over that fiscal intermediary.

B. Statewide Averages

As hospitals raise their charges faster than their costs increase, over time their cost-to-charge ratios will decline. If hospitals continue to increase charges at a faster rate than their costs increase over a long period of time, or if they increase charges at extreme rates, their cost-to-charge ratios may fall below the range considered reasonable under the regulations (0.194 for operating cost-to-charge ratios and 0.012 for capital cost-to-charge ratios in FY 2003 (67 FR 50125)), and, per current regulations at § 412.84(h), their fiscal intermediaries will assign a statewide average cost-to-charge ratio. These statewide averages are generally considerably higher than the threshold. Therefore, under existing regulations, these hospitals benefit from an artificially high ratio being applied to their already high charges. Furthermore, hospitals can continue to increase charges faster than costs, without any further downward adjustment to their cost-to-charge ratios.

For example, in a 3-year span, one hospital was found to have an increase in charges of 60 percent from FY 1999 to FY 2000, 35 percent from FY 2000 to FY 2001, and 13 percent from FY 2001 to FY 2002. This hospital's actual operating cost-to-charge ratio for FY 2003 was 0.093. Because this number is below the threshold of 0.194, the fiscal intermediary assigned this urban California hospital the statewide average cost-to-charge ratio of 0.328 (from Table 8A of the August 1, 2002 final rule, 67 FR 50263). In this case, receiving the statewide average cost-to-charge ratio increased the hospital's estimated costs per case far above the estimate using the actual ratio, leading to substantially higher outlier payments to the hospital as a result of this policy.

In December 2002, we issued Program Memorandum A–02–122 requesting that fiscal intermediaries identify all hospitals receiving the statewide average operating or capital cost-to-charge ratio because their cost-to-charge ratios fell below the floor of reasonable parameters. We received a list of 43 hospitals that were assigned the statewide average operating cost-to-charge ratio and 14 hospitals that were receiving the statewide average capital cost-to-charge ratio. Three hospitals were found on both lists. Prior to application of the statewide average cost-to-charge ratios, the average actual operating cost-to-charge ratio for the 43 hospitals was 0.164, and the average actual capital cost-to-charge ratio for the 14 listed hospitals was 0.008. In contrast, the statewide average operating cost-to-charge ratio for the 43 hospitals was 0.3425 and the statewide average capital cost-to-charge ratio for the 14 hospitals was 0.035.

Because of hospitals' ability to increase their charges to lower their cost-to-charge ratios in order to be assigned the statewide average, we are proposing to remove the current requirement in our regulations specifying that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below the floor. We are proposing that hospitals would receive their actual cost-to-charge ratios, no matter how low their ratios fall.

We are proposing that statewide average cost-to-charge ratios would still apply in those instances in which a hospital's operating or capital cost-to-charge ratio exceeds the upper threshold. Cost-to-charge ratios above this range are probably due to faulty data reporting or entry, and should not be used to identify and pay for outliers. In addition, hospitals that have not yet filed their first Medicare cost reports with their fiscal intermediaries would still receive the statewide average cost-to-charge ratios.

C. Reconciling Outlier Payments Through Settled Cost Reports

Under the IPPS, hospitals submit a bill for each Medicare patient stay for which they expect a payment from Medicare. The bill includes information needed to: (1) Classify the case to a DRG; (2) determine whether the case was a transfer; (3) identify whether a new technology eligible for add-on payments was involved; and (4) calculate the costs of a case to determine whether it is eligible for an outlier payment or a new technology add-on payment. This latter calculation is based on the covered charges reported on the bill, which, as discussed above, are also used to estimate the covered costs of the case by applying the cost-to-charge ratio.

The information from the bill is processed through the fiscal intermediary's claims processing system to determine the payment amount for each case. Unless a hospital qualifies for periodic interim payments under § 412.116(b), payment is made on the basis of the actual amount determined for each bill processed. For hospitals that qualify for periodic interim payments, the fiscal intermediary estimates a hospital's IPPS payments and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year. However, outlier payments are not made on an interim basis, but are made on a claim-by-claim basis (even for hospitals that qualify for interim payments under § 412.116(b)), and generally represent final payment (§ 412.116(e)).

An exception to this finality is the provision for medical review of a sample of outlier cases and for adjustments to be made to covered charges for any services that are found to be noncovered (§ 412.84(d)). In situations where a pattern of inappropriate utilization by a hospital is found, all outlier cases from that hospital may be subject to prepayment medical review (§ 412.84(e)).

CMS has generally limited the situations in which outlier payments may be reopened. This is in contrast to payments under the IME adjustment and the DSH adjustment, both of which are routinely adjusted when hospitals' cost reports are settled to reflect updated data such as the number of residents or patient days during the actual cost reporting period. With respect to outliers, it has been CMS's policy that payment determinations are made on the basis of the best information available at the time a claim is processed and are not revised, upward or downward, based upon updated data.

As stated earlier in this preamble, we are increasingly aware that some hospitals have taken advantage of the current outlier policy by increasing their charges at extremely high rates, knowing that there would be a time lag before their cost-to-charge ratios would be adjusted to reflect the higher charges. The steps we are proposing in this proposed rule to direct fiscal intermediaries to update cost-to-charge ratios using the most recent tentative settled cost reports (and in some cases, even later data) and using actual rather than statewide average ratios for hospitals that have cost-to-charge ratios that are more than 3.0 standard deviations below the geometric mean cost-to-charge ratio, would greatly reduce the opportunity for hospitals to manipulate the system to maximize outlier payments. However, they would not completely eliminate all such opportunity. A hospital would still be able to dramatically increase its charges by far above the rate of increase in costs during any given year. This possibility is of great concern, given the recent findings that some hospitals that have been able to receive large outlier payments by doing just that.

Therefore, we are proposing to add a provision to our regulations to provide that outlier payments will become subject to adjustment when hospitals' cost reports are settled (proposed § 412.84(i)(2)). Payments would be processed throughout the year using operating and capital cost-to-charge ratios based on the best information available at that time. When the cost report is settled, any reconciliation of outlier payments by fiscal intermediaries would be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

This process would require some degree of recalculating outlier payments for individual claims. It is not possible to distinguish, on an aggregate basis, how much a hospital's outlier payments would change due to a change in its cost-to-charge ratios. This is because, in the event of a decline in a ratio, some cases would no longer qualify for any outlier payments while other cases would qualify for lower outlier payments. Therefore, the only way to accurately determine the net effect of a decrease in cost-to-charge ratios on a hospital's total outlier payments is to assess the impact on a claim-by-claim basis. We are still assessing the procedural changes that would be necessary to implement this change.

Because, under our proposal, outlier payments would now be based on the relationship between the hospital's costs and charges at the time a discharge occurred, the proposed methodology would ensure that when final outlier payments are made they would reflect an accurate assessment of the actual costs the hospital incurred. Nevertheless, a final vulnerability remains. Even though the final payment would reflect a hospital's true cost experience, there would still be the opportunity for a hospital to manipulate its outlier payments by dramatically increasing charges during the year in which the discharge occurs. In this situation, the hospital would receive excessive outlier payments, which, although the hospital would incur an overpayment and have to pay the money back when the cost report is settled, would allow the hospital to obtain excess payments from the Medicare Trust Fund on a short-term basis.

Under section 1886(d)(5)(A)(iii) of the Act, the amount of any outlier payment should "approximate the marginal cost of care" in excess of the DRG payment and the fixed-loss threshold. Accordingly, because a hospital would have had access to any excess outlier payments until they are repaid to the Trust Fund (or, in the case of an underpayment, would not have had access to the appropriate amount during the same period), it may be necessary to adjust the amount of the final outlier payment to reflect the time value of the funds for that time period. Therefore, we are proposing to add § 412.84(m) to provide that when the cost report is settled, outlier payments would be subject to an adjustment to account for the value of the money during the time period it was inappropriately held by the hospital. This adjustment would also apply in cases where outlier payments were underpaid to the hospital. In those cases, the adjustment would result in additional payments to hospitals. Any adjustment would be based upon a widely available index to be established in advance by the Secretary, and would be applied from the midpoint of the cost reporting period to the date of reconciliation (or when additional payments are issued, in the case of underpayments). This adjustment to reflect the time value of a hospital's outlier payments would ensure that the outlier payment received by the hospital at the time its cost report is settled appropriately reflects the hospital's true costs of providing the care.

This adjustment is also intended to account for the unique susceptibility of outlier payments to manipulation. Hospitals set their own level of charges and are able to change their charges, without review by their fiscal intermediaries. As outlined above, changes in charges directly affect the level of outlier payments. This lack of fiscal intermediary review of a factor affecting a hospital's payments is in contrast to other IPPS adjustments, such as the IME adjustment or the DSH adjustment, where the fiscal intermediary must agree to a change to the determining factor (the resident-to-

bed ratio or the share of low-income patients, respectively).

Under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less then 5 percent nor more than 6 percent of the total estimated operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Despite the fact that each individual hospital's outlier payments may be subject to adjustment when the cost report is settled, we continue to believe that the fixed-loss outlier threshold should be based on projected payments using the latest available historical data without retroactive adjustments, either mid-year or at the end of the year, to ensure that actual outlier payments are equal to 5.1 percent of total DRG payments. That is, the above proposed change is intended only to allow for use of the actual cost-to-charge ratio from the cost reporting period that corresponds to the discharges for which the outlier payments are made. This adjustment would be made irrespective of whether the nationwide percentage of outlier payments relative to total operating DRG payments is equal to the outlier offset that is applied to the average standardized amounts (generally, 5.1 percent).

Outlier payments are intended to recognize the fact that hospitals occasionally treat cases that are extraordinarily costly and otherwise not adequately compensated under an average-based payment system. However, we can only estimate actual costs based on the charges for a case because charges are the only data available that indicate the resource usage for an individual case. Therefore, our ability to identify true outlier cases is dependent on the accuracy of the cost-to-charge ratios. To the extent some hospitals may be motivated to maximize outlier payments by taking advantage of the lag in updating the cost-to-charge ratios, the payment system remains vulnerable to overpayments to individual hospitals. Therefore, we believe the only way to eliminate the potential for such overpayments is to provide a mechanism for final settlement of outlier payments using actual cost-to-charge ratios from final, settled cost reports.

However, the fixed-loss outlier threshold is an important aspect of the prospective nature of the IPPS. The outlier payment policy is designed to alleviate any financial disincentive hospitals may have against providing any medically necessary care their patients may require, even those patients who become very sick and require extraordinary resources. The preestablished threshold allows hospitals to approximate their Medicare payment for an individual patient while that patient is still in the hospital. Because we are proposing to base outlier payments on the hospital's actual cost-to-charge ratios during the contemporaneous cost reporting period, the hospital should still be in a position to make this approximation. Hospitals have immediate access to the information needed to determine what their cost-to-charge ratio will be when their cost report is settled. Even if the final cost-to-charge ratio is likely to be different from the ratio used initially to process and pay the claim, as noted above, hospitals not only have the information available to estimate their cost-to-charge ratio, but also have the ability to control it, through the structure and levels of their charges.

If we were to make retroactive adjustments to outlier payments to ensure total payments are 5.1 percent of DRG payments (by retroactively adjusting outlier payments), we would be removing this important aspect of the prospective nature of the IPPS. Because such an across-the-board adjustment would either lead to more or less outlier payments for all hospitals, hospitals would no longer be able to reliably approximate their payment for a patient, while the patient is still hospitalized. We believe it would be neither necessary nor appropriate to make such an aggregate retroactive adjustment.

Furthermore, we do not believe it would be consistent with the intent of the language at section 1886(d)(5)(A)(iv) of the Act to do so. This section calls for the Secretary to ensure that outlier payments are equal to or greater than 5 percent and less than or equal to 6 percent of projected or estimated (not actual) DRG payments. We believe this language reflects Congress's intent regarding the prospectivity of the IPPS. However, we do not believe it prevents settling outlier payments based on hospitals' actual cost-to-charge ratios during the period when the discharge occurs.

D. Fixed-loss Outlier Threshold

As noted above, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total estimated operating DRG payments plus outlier payments; and section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to reduce the average standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases.

In the August 1, 2002 final rule, we established the FY 2003 outlier fixed-loss threshold at $33,560 (67 FR 50122). This was a nearly 60 percent increase over the FY 2002 threshold of $21,025. The primary reason for this dramatic increase was a change in our methodology to use the rate of increase in charges rather than the rate of increase in costs to determine the threshold. That is, because we use FY 2001 cases to project the threshold for FY 2003, it is necessary to inflate the charges on the FY 2001 bills to approximate the charges on a similar claim for FY 2003. Prior to the calculation of the FY 2003 outlier threshold, we used the rate-of-cost increase from the most recent cost reports available to inflate actual charges on the prior year's bills to estimate what the charges would be in the upcoming year.

Our analysis indicated hospitals' charges were increasing at a much faster rate than costs. Therefore, in the August 1, 2002 final rule, we changed our methodology to inflate charges (67 FR 50122). Rather than using the observed rate of increase in costs from the cost reports, we inflated the FY 2001 charges by a 2-year average annual rate of change in actual charges per case from FY 1999 to FY 2000, and from FY 2000 to FY 2001, to estimate what the charges would be in FY 2003 for a similar claim.

This proposed rule would make several changes to better target outlier payments to the most costly cases. As a result, if our present proposals are implemented as part of our final policy, outlier payments to the hospitals that have been most aggressively increasing their charges to maximize outlier payments would be dramatically reduced. However, we are concerned that unrestrained charge increases may continue to occur during FY 2003 prior to the implementation of these proposed changes as final, and possibly may result in outlier payments in excess of the 5.1 percent offset established by the August 1, 2002 final rule. For example, hospitals intending to maximize outlier payments during FY 2003 could continue to do so by increasing charges enough to outpace the increase in the threshold. In fact, given the public attention on this behavior over the past few months and the potential for other hospitals to begin to aggressively increase their charges, and consequently their outlier payments, it is possible this type of aggressive gaming of the outlier policy has become more widespread in recent months.

Because of the extreme uncertainty regarding the effects of aggressive hospital charging practices on FY 2003 outlier payments to date, we are proposing no change to the FY 2003 fixed-loss threshold at this time. The threshold would remain at $33,560. However, we note that data for the first quarter of FY 2003 inpatient claims will be available soon, and these data may allow us to evaluate the current threshold and whether outlier payments to date appear to be approximately 5.1 percent of the total DRG payments.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

As discussed below, we are soliciting comment on the recordkeeping requirements, as referenced in the proposed amendments to § 412.84 discussed in this proposed rule. Under the proposed amendments to § 412.84(h), a hospital may request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. The burden imposed by this section is the time it takes to write the request. We estimate that 120 hospitals would make this request per year and that it would take each one 8 hours for a total annual burden of 960 hours.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attn: Reports Clearance Officer, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Julie Brown, CMS–1243–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

IV. Impact Analysis

A. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 Pub. L. 104–4), and Executive Order 13132.

B. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have determined that this proposed rule is a major rule as defined in 5 U.S.C. 804(2). Therefore, we have prepared the quantitative analysis presented in section IV.G. of this preamble.

C. Regulatory Flexibility Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either based on their nonprofit status or by having revenues of $5 million to $25 million in any 1 year. For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity. As stated above, we are presenting a quantitative analysis at section IV.G. of this preamble.

D. Effects on Rural Hospitals

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule (and subsequent final rule) that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the IPPS, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this proposed rule would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and that the effects on some hospitals might be significant. Therefore, the discussion in section IV.G. of this preamble, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

E. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any proposed rule (or a final rule, which has been preceded by a proposed rule) that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would not result in any unfunded mandates for State, local, or tribal governments or the private sector, as defined by section 202.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule in light of Executive Order 13132 and have

determined that it would not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

G. Quantitative Analysis

As described above, the changes we are proposing would better target outlier payments to the most costly cases. First, by proposing to use the cost-to-charge ratios from the latest tentative settled cost reports at the time the claim is processed, instead of the latest settled cost reports, the lag time between the cost-to-charge ratio used to adjust charges to costs and the charges on the claim will be reduced by a year or more. Second, we are proposing that fiscal intermediaries would no longer assign the statewide average cost-to-charge ratio in place of the actual cost-to-charge ratio when the hospital's actual ratio is more than 3 standard deviations below the geometric mean cost-to-charge ratio. Finally, we are proposing that outlier payments may be subject to reconciliation when the cost report corresponding with the outlier cases is settled, using the actual cost-to-charge ratio calculated from the final settled cost report rather than the cost-to-charge ratio from the latest tentative settled cost report at the time the claim is processed.

We anticipate these proposed changes will redistribute outlier payments away from hospitals that have been aggressively gaming the existing outlier payment methodology by manipulating their charges toward those hospitals with truly high-cost cases. For some hospitals, the effects of this redistribution may be quite dramatic. For example, as noted previously, we have identified 123 hospitals that appear to have been most aggressively gaming the current policy. On average, current outlier payments for these hospitals comprise 24 percent of their total DRG payments. The changes we are proposing would be likely to greatly reduce the level of outlier payments for these hospitals.

However, as we also noted above, it is not currently possible to assess the extent to which other hospitals may have begun to engage in similar practices, particularly given the public attention that has focused on this problem. Therefore, hospitals that may not previously have been aggressively gaming the policy, and that would otherwise appear to benefit from the redistribution of outlier payments, may in fact also be negatively impacted by these proposed changes. At this time, however, data are not available to assess fully the degree to which other hospitals began this practice during FY 2002, and no data are yet available for FY 2003.

Therefore, we are unable to quantify the likely impacts of these proposed changes. We anticipate that by the time we prepare the final rule, more data will be available to better assess the winners and losers of these proposed changes. If so, we will include a quantitative impact analysis at that time.

H. Alternatives Considered

For purposes of analysis, we considered several alternatives to the proposed changes discussed above. One alternative would be to not make any changes to the current outlier policy. However, we believe that in light of the evidence that hospitals have been manipulating our current outlier policy, it is important to change the current policy to ensure these payments go to truly expensive cases. Therefore, we do not believe that retaining our current policy is a viable option.

We also considered establishing a policy that hospitals' cost-to-charge ratios would be based on their rates of increase in charges as an alternative to reconciling outlier payments on the cost reports. However, we believe this approach would be extremely complex. In addition, this approach would require us to make assumptions about the relationship between costs and charges that may not apply in particular circumstances. Therefore, this alternative would be likely to lead to inequitable treatment of some hospitals.

We considered eliminating the application of statewide average cost-to-charge ratios altogether. However, it is necessary to have some ratio to assign to new hospitals that have not yet filed their first cost report. Also, we believe it remains appropriate to assign the statewide average cost-to-charge ratio in cases where a hospital's cost-to-charge ratio exceeds 3 standard deviations from the geometric mean.

I. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "**DATES**" section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Change of the Required 60-Day Comment Period to a 30-Day Comment Period

Section 1871 of the Social Security Act provides that the Secretary shall provide for notice of any proposed regulation in the **Federal Register** and a period of not less than 60 days for public comment before issuing a regulation in final form. However, this notice-and-comment procedure may be waived if the agency, for good cause, finds that the notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and the reasons for it into the notice issued.

We believe there is good cause to waive the 60-day comment period. In light of the importance of the outlier issue and the extensive changes being proposed, however, we believe it is also important to provide a public comment period on the proposed policies, not because it is required, but as a matter of good public policy. Accordingly, in order to balance these competing interests, we are voluntarily providing a 30-day period for the submission of public comments.

The Congress intended that outlier payments would be made only in situations where the cost of care is extraordinarily high in relation to the average cost of treating comparable conditions or illnesses. Under our existing outlier methodology, if hospitals' charges are not sufficiently comparable in magnitude to their costs, the legislative purpose underlying the outlier regulations is thwarted. In addition, if these proposed changes are not implemented expeditiously, additional hospitals will likely begin to increase their charges to take advantage of the vulnerabilities of the current system, and those hospitals that already have engaged in this activity will continue to do so. This has the undesirable impact not only of further distorting the distribution of outlier payments, but it also has negative impacts on other insurers and the public. In the case of other insurers, Medicare's payments often serve as a benchmark for establishing their payments to individual hospitals. To the extent Medicare continues to pay excessive outlier payments to some hospitals, this may have spillover effects to private insurance companies. In the case of the public, particularly those without health insurance, they face the prospect of being expected to pay these exorbitant hospital charges when they become hospitalized at an institution that has engaged in these practices. Extending the duration of these payment inequities would be contrary to the public interest and could adversely affect the provision of services to Medicare beneficiaries.

We believe that providing a 30-day comment period for the proposed policies in this document allows hospitals and the general public sufficient opportunity to address any concerns or issues that they may have, and at the same time, allows CMS to address the issue of excessive outlier payments within the current fiscal year (FY 2003). Hospitals are already familiar with the existing outlier payment policies and should be able to readily assess the impact that the proposed changes may have on their programs and respond to the proposed changes in the outlier payment methodology.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons stated in the preamble of this proposed rule, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 412 as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.84 is amended by—

A. Revising paragraph (h).

B. Redesignating paragraphs (i), (j), and (k) as paragraphs (j), (k), and (l), respectively.

C. Adding a new paragraph (i).

D. In redesignated paragraph (k), removing the phrase "paragraph (k) of this section" and adding in its place "paragraph (l) of this section."

E. In redesignated paragraph (l), removing the phrase "paragraph (j) of this section" and adding in its place "paragraph (k) of this section."

F. Adding a new paragraph (m).

The revisions read as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(h) For discharges occurring before the effective date of the final rule, the operating and capital cost-to-charge ratios used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report. Statewide cost-to-charge ratios are used in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. CMS sets forth the reasonable parameters and the statewide cost-to-charge ratios in each year's annual notice of prospective payment rates published under § 412.8(b).

(i)(1) For discharges occurring on or after the effective date of the final rule, the operating and capital cost-to-charge ratios applied at the time a claim is processed are based on either the most recent settled or the most recent tentative settled cost report, whichever is from the latest cost reporting period (unless otherwise specified by CMS based on later available data). A hospital may also request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. Such a request must be approved by the CMS Regional Office. If a fiscal intermediary is unable to determine an accurate operating or capital cost-to-charge ratio for a hospital in one of the following circumstances, it may use a statewide average cost-to-charge ratio:

(i) New hospitals that have not yet submitted their first Medicare cost report. (For this purpose, a new hospital is defined as an entity that has not accepted assignment of an existing hospital's provider agreement in accordance with § 489.18 of this chapter.)

(ii) Hospitals whose operating or capital cost-to-charge ratio is in excess of three standard deviations above the corresponding national geometric mean. This mean is recalculated annually by CMS and published in the annual notice of prospective payment rates published under § 412.8(b).

(iii) Other hospitals for whom the fiscal intermediary determines accurate data upon which to calculate either an operating or capital cost-to-charge ratio (or both) are not available.

(2) For discharges occurring on or after the effective date of the final rule, any reconciliation of outlier payments will be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

* * * * *

(m) Effective for discharges occurring on or after the effective date of the final rule, at the time the cost report is settled, outlier payments may be adjusted to account for the time value of any underpayments or overpayments. Any adjustment will be based upon a widely available index to be established in advance by the Secretary, and will be applied from the midpoint of the cost reporting period to the date of reconciliation.

§ 412.116 [Amended]

3. In § 412.116(e), the second sentence is removed.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: January 24, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 6, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–5121 Filed 2–28–03; 12:03 pm]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 03J–1]

Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process

AGENCY: Federal Communications Commission.

ACTION: Solicitation of comments.

SUMMARY: On November 8, 2002, the Federal Communications Commission requested that the Federal-State Joint Board on Universal Service "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled." In particular, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier is providing services, as well as the Commission's rules regarding support for second lines. The Commission also asked the Joint Board to examine the process for designating ETCs. In this document, the Joint Board invite public comment on whether these rules continue to fulfill their intended purposes, whether

modifications are warranted, and if so, how the rules should be modified.

DATES: Comments are due on or before May 5, 2003. Reply comments are due on or before June 3, 2003.

ADDRESSES: Send comments to 445 12th Street, SW., Washington DC 20554. See **SUPPLEMENTARY INFORMATION** section for more information on where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney, Telecommunication Access Policy Division, Wireline Competition Bureau or Paul Garnett, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On November 8, 2002, the Federal Communications Commission (Commission) requested that the Federal-State Joint Board on Universal Service (Joint Board) "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled." In particular, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing services, as well as the Commission's rules regarding support for second lines. The Commission also asked the Joint Board to examine the process for designating ETCs. By this Public Notice, the Joint Board initiates its review. As set forth below, we invite public comment on whether these rules continue to fulfill their intended purposes, whether modifications are warranted, and if so, how the rules should be modified.

Issues for Comment

1. We seek comment on whether changes to the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing services and the Commission's rules regarding support for second lines are warranted, and if so, how those rules should be modified. We also seek comment regarding the process for designating ETCs. With respect to each of these issues, we ask that commenters specifically address how any proposed modifications will further, or impede, the Act's goals of maintaining universal service and fostering competition. We also ask commenters to address the effect of any rule changes on incentives to invest in and upgrade the network and on incentives to provide supported services in high-cost areas. In addition, commenters should address how any proposed modifications to the high-cost loop support mechanism for rural carriers would affect the specific conclusions adopted in the *Rural Task Force Order*, 66 FR 34603 (June 29, 2001), as well as its five-year time frame.

A. State of the Marketplace and Universal Service Fund

2. We seek to establish a complete record on the development of competition in high-cost areas, the effect of the Commission's current policies on such development, and how line growth in high-cost areas may impact the universal service fund. To the extent possible, we request that commenters provide detailed data on competition and line growth in high-cost areas. The more specific data that we receive, the better able we will be to tailor our recommendations to meet the Act's goals of maintaining universal service and fostering competition.

3. Based on Universal Service Administrative Company (USAC) data, a total of approximately 1,400 ETCs received approximately $803 million in high-cost support disbursed in the third quarter of 2002 for service to approximately 31 million lines. Of these ETCs, 45 were competitive ETCs, of which 15 were mobile wireless providers, and 30 were competitive LECs. The competitive ETCs received approximately $14 million for service to 1.2 million lines for the same time period, representing approximately 1.8 percent of the total amount of high-cost support provided to ETCs. In contrast, in the first quarter of 2001, competitive ETCs received approximately $2 million out of approximately $638 million in high-cost support, or approximately 0.4 percent of total high-cost support.

4. To what extent will support for competitive ETCs likely grow over time? Is the growth rate of support for competitive ETCs over the last eighteen months indicative of what one would expect to see in the future? How does the growth in support for competitive ETCs compare to the growth in support for other ETCs (i.e., incumbent LECs)?

5. According to the Commission's most recent *Local Telephone Competition* report, 93 percent of United States households are located in zip codes where there is at least one competitive local exchange carrier. In some states, however, entry is occurring in only a limited number of zip codes. According to the Commission's most recent *CMRS Competition* report, 94 percent of the total United States population lives in counties with access to three or more different mobile telephone service operators (including cellular, broadband Personal Communications Services, and/or digital Specialized Mobile Radio providers). What percentage of consumers in rural and high-cost areas have access to competitive alternatives for services provided by incumbent LECs? What economic and business factors affect competitive entry in rural and high-cost areas? To what extent, if any, is there a relationship between competitive entry and receipt of high-cost support by competitive ETCs?

6. In addition, we encourage commenters to provide the Joint Board with data on the number of telephone connections in high-cost areas, and to also indicate the type of technological platform providing the telephone connections. Is there line growth in high cost areas, and if so, how much of the line growth is due to services being provided by wireline, wireless, and other technology platforms? To what extent does such growth represent secondary lines, and to what extent does it represent new end users? Where are such lines located? To what extent are such lines eligible for high-cost support, i.e., provided by ETCs? How many currently receive support?

7. To what extent does wireless or other technology represent the addition of complementary service rather then substitution for traditional wireline in rural and high-cost areas? We note that, according to the Commission's most recent *Telephone Subscribership in the United States* report, as of November 2001, 1.2 percent of households in the United States indicated that they had only wireless phones. Is it reasonable to assume that this statistic on household wireless substitution nationwide is indicative of the degree of substitution occurring in high-cost areas? To what extent have customers of mobile wireless competitive ETCs substituted wireless for wireline service?

B. Methodology for Calculating Support in Competitive Study Areas

8. We seek comment regarding the methodology for calculating support for ETCs in competitive study areas. Under the Commission's current rules, per-line support for all ETCs is based on the support that the incumbent LEC would receive for the same line. This means that support to the competitive ETC is based on a variety of factors directly related to the incumbent's operations.

9. We seek comment on the policy goals of portable support. Does providing universal service support for multiple ETCs in high-cost areas result in inefficient competition and impose greater costs on the universal service fund? Do the current rules promote competitive neutrality and properly balance the statutory goals of competition and universal service? Do the current rules promote efficient competition in high-cost areas? Do they operate in a competitively neutral manner? Do they remove or create barriers to entry? Do the current rules have the effect of supporting the costs of two or more networks serving the same area concurrently? If so, is that consistent with the purpose of section 254 of the Act?

10. To what extent do the costs of competitive ETCs differ from the costs of incumbents? Do the Commission's rules create an unfair advantage for ETCs with lower costs? Should support vary depending on an ETC's technology platform? What is the effect of competitive entry in rural and non-rural study areas on the amount of support that an incumbent ETC receives?

11. We also seek comment on alternative methodologies for calculating support for competitive ETCs. For example, should the Commission calculate support for a competitive ETC based on its own costs? What would be the competitive effects of paying different amounts per "customer" or per "line" to each ETC? To the extent competitive ETCs were to receive support based on their own costs, what costs would be appropriately included in determining support? Under such an approach, should support be based on competitive ETCs' forward-looking economic costs or embedded costs? Should the methodology used to calculate competitive ETC support be the same as the methodology used to calculate support for the incumbent? We note that the Commission's forward-looking cost model is designed to model the costs of a wireline network, and that competitive ETCs are not subject to the same regulatory and reporting requirements as incumbent LECs. Also, several ETCs now provide service using wireless technology. What reporting requirements would be necessary in order to implement a requirement that support for each competitive ETC be based on its own costs? Under such an approach, would it be appropriate to calculate support for competitive ETCs on a per-line basis? If so, should per-line support amounts reflect solely the competitive ETC's line count, or some combination of the line counts reported by all area ETCs? What are the alternatives to calculating support on a per-line basis?

12. In addition, we seek comment on other methods of determining high-cost support for ETCs in competitive study areas. For example, should support in competitive areas be based on the lowest-cost provider's costs, in order to promote efficiency? For example, if a fixed wireless carrier can serve an area at lower cost, should support to all carriers serving that area be based on the cost of the fixed wireless service? How should the Commission determine the lowest cost of service and to what extent should quality of service be considered when making such a determination? To the extent the costs of competitive ETCs are lower than the costs of incumbent LECs, what effect would such rules have on incumbent providers?

13. We also seek comment on whether and how auctions might be utilized to award support. For example, should high-cost support be awarded to the ETC with the lowest bid for support in a designated service area for a set period of time? Under such a system, how would the geographic units of the auction be determined, what criteria should determine when an ETC or ETCs receive support, what regulatory authority should administer the process, and how frequently should auctions be conducted? What responsibilities should be imposed on the ETC that receives high-cost support? Should such an ETC be required to assume quality of service obligations? How would auctions be implemented in light of section 214(e)(2) of the Act, which requires states to determine through the ETC process whether designation of a competitive ETC in a given service area would serve the public interest? What other laws should be considered when determining the suitability of auctions as a mechanism for directing support to rural or non-rural service areas? What would be the effect of auctions on the objective of fostering competition and the principle of competitive neutrality in high-cost areas? Specifically, what impact would auctions have on investment by incumbents and competitors in high-cost areas? What sort of measures could be adopted to encourage auction winners, as well as losers, to continue investing in high-cost areas? What level of competition should be present prior to auctions being conducted in a given service area? Under an auction system, would adequate incentives exist to ensure each carrier would provide its lowest bid?

14. In addition, we seek comment on the Commission's rules governing calculation of high-cost support for competitive ETCs utilizing UNEs. Currently, a competitive ETC that provides supported services utilizing UNEs receives the lesser of the UNE price or the per-line support amount available to the incumbent LEC. Some competitive UNE-based ETCs serving high-cost areas may receive support equal to the full price of the UNEs they purchase from the incumbent LEC. As a result, these competitive ETCs have no net UNE cost, and may pay only non-UNE costs such as customer service support, administrative costs, and network costs ancillary to the UNE costs. Also, the geographic area for which support is calculated for competitive ETCs may be different from the area for which UNE prices are calculated by the state commission. Should the Commission revise its rules? If so, how? For example, should the Commission require a competitive ETC to qualify for high-cost support based on its cost associated with the purchase of UNEs? What costs do competitive ETCs have in addition to the cost of purchasing UNEs? Under such an approach, how should these additional costs be considered in determining whether to provide support to a competitive ETC that utilizes UNEs? How should such costs be determined? Are modifications to the Commission's rules warranted in order to clarify how incumbents report loops sold as UNEs to competitive ETCs?

15. With respect to any proposed alternative methodologies, commenters should provide a detailed explanation as to how support should be calculated and the administrative burdens entailed. In particular, we seek a comprehensive assessment of the reporting obligations and the frequency of such reporting, and the necessity for either regular Commission review of embedded costs or development and update of models. Commenters should quantify the burden of any proposed reporting obligations and any necessary embedded cost or model review. Commenters should also address how any proposed alternative methodologies would affect competition and competitive neutrality, and how they would serve the principles of section 254 of the Act. In addition, commenters should address the relationship between carrier of last resort obligations and the proposed alternative methodology. To the extent a commenter's proposal would result in a change in the amount of support paid to an ETC, that commenter should also explain whether the change should occur as soon as possible, be phased in, or be deferred to hold existing ETCs harmless from the change.

16. Furthermore, we seek comment on whether the support available to competitive ETCs in high-cost areas should be subject to limitations similar

to those imposed on support for incumbent LECs. Under the Commission's current rules, high-cost loop support for competitive ETCs is not capped, whereas the Commission's rules limit the overall amount of rural high-cost loop support available to incumbent LECs. Should the maximum amount of support available to a single competitive ETC have some relation to the total amount of high-cost support available to the incumbent in the same area? Should the total amount of funding available to all ETCs in a geographic area be capped in some manner? Commenters should address the potential benefits and costs of modifying these rules on the stability, predictability, and sufficiency of the fund, as well as their potential effects on competition.

17. In addition, we seek comment regarding the specific concerns raised by the Rural Task Force relating to excessive growth in the fund if incumbent rural carriers lose a significant number of lines to competitive ETCs. The Rural Task Force stated, for example, that as a rural incumbent LEC "loses" lines to a competitive ETC, the rural incumbent LEC must recover its fixed costs from fewer lines, thus increasing its average per-line costs. With higher average per-line costs, the rural incumbent LEC could receive greater per-line support, which would also be available to the competitive ETC for each of the lines that it serves. In response to these concerns, the Commission sought comment on whether to freeze per-line support amounts available to the rural incumbent LEC and any competitive ETC in competitive study areas served by rural carriers. We invite commenters to update the record and provide alternative proposals that may be appropriate to address this issue. Commenters should support their responses with data or other empirical information regarding loss of lines by rural carriers to competitive ETCs. We request that such empirical information be categorized by customer class or service, including residential and business, single and multi-line business, special access, etc.

18. We also seek comment regarding the methodology for determining the location of a line served by a mobile wireless provider, and whether modifications are warranted. Currently, competitive ETCs providing mobile wireless service use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area. In the Rural Task Force Order, the Commission concluded that this approach was reasonable and the most administratively simple solution to the problem of determining the location of a wireless customer for universal service purposes, although it could be subject to abuse. The Commission also stated that it might revisit this approach "[a]s more mobile wireless carriers are designated as eligible to receive support[.]" We invite commenters to address the reasonableness of the Commission's current approach and whether it should be reevaluated. To the extent commenters assert this approach has led to unintended consequences, they should describe such situations with specificity. We ask commenters to provide suggestions regarding alternative methods of determining the location of lines served by a mobile wireless service provider. Commenters should specifically address the administrative burdens entailed by any proposed approaches.

C. Scope of Support

19. Under the Commission's current rules, all residential and business connections provided by ETCs are eligible for high-cost support. In its 1996 recommendations to the Commission regarding universal service, the Joint Board recommended that support be limited to the provision of a single connection to a subscriber's primary residence and to businesses with only a single connection. The Joint Board also recommended that support not be provided to second residences. In declining to adopt this recommendation, the Commission stated that it shared the Joint Board's concern regarding this matter, but it would continue to evaluate this recommendation as it further developed a support mechanism based on forward-looking economic costs.

20. As noted above, currently incumbent LECs and competitive ETCs collectively serve a total of 32.2 million lines in high-cost areas. What percentage of these lines, or lines in any particular geographic area, are second lines? To the extent possible, commenters should provide detailed empirical information and should address whether the percentage of lines that should be deemed "second lines" varies in any way between incumbent LECs and competitive ETCs.

21. We seek comment regarding whether the goals of section 254 would be better served if support were limited to a single connection to the residential or single-line business end-user—whether provided by the incumbent or a competitive ETC. Would limiting support to primary lines be consistent with the universal service principle stating that access in rural and high-cost areas should be "reasonably comparable" to urban areas? How would a primary line restriction affect the implementation of federal support mechanisms based on embedded or forward-looking costs? How would such a restriction affect the implementation of the Commission's interstate access reform goals adopted in the *CALLS Order*, 65 FR 57739, September 26, 2000 and *MAG Order*, 66 FR 59719, November 30, 2001? Commenters also should address the significance of carrier of last resort obligations to these issues. What would be the impact of primary line restrictions on consumers, ETCs, and an ETC's ability to provide universal service?

22. If support were limited to a single connection, how would it be determined which line receives support? Is it administratively feasible to distinguish primary from second lines? Commenters should address whether and how primary lines should be defined. Should the end user be defined as a household, or a single individual? How would a rule limiting support to a single residential end user affect households in which two or more unrelated individuals reside? The Commission previously acknowledged the administrative difficulties associated with applying different primary and non-primary residential SLC rates. Would similar problems arise if the Commission were to limit high-cost support to primary lines? Would such problems be magnified in a multi-carrier environment? Would limiting support to primary lines reduce incentives to construct second lines in high-cost areas or create a negative financial effect on the incumbent? If the Commission limited support to primary lines, would the Commission also need to revise how it determined the amount of support per line? If so, how should the level of support be determined?

23. If support were limited to a single connection, should the end user designate the line to be supported, and if so, how would this rule be administered? How would consumers be affected by such action? How would this affect the price of services for single line subscribers and multi-line subscribers? Under such an approach, should support depend on the type of line designated by the end user?

24. Should support be provided to second residences, and if not, how would second residences be defined? Alternatively, should the number of connections eligible for high-cost support be limited in some manner other than a primary line restriction?

25. We also ask commenters to discuss whether any proposed rule modifications would advance the goals of section 254, would be competitively neutral, and would promote more efficient competition in competitive study areas. How would a limit on the number of lines that receive support affect incumbent LECs' and competitive ETCs' incentives to compete for all lines? Would a limit on the number of lines that receive support be a barrier to entry? In addition, to what extent would any proposed modifications affect the size of the universal service fund?

D. Process for Designating ETCs

26. In order to receive universal service support, carriers must obtain ETC designation from the relevant state commission, or the Commission in cases where the state commission lacks jurisdiction. Before designating an additional ETC for an area served by a rural telephone company, the state commission or the Commission must find that the designation is in the public interest. We seek comment regarding the system for resolving requests for ETC designations under sections 214(e)(2) and 214 (e)(6) of the Act. Is there a need to clarify the standards for ETC designations under the Act? What factors should the Commission consider when it performs ETC designations pursuant to section 214(e)(6)? In particular, what factors should the Commission consider in determining whether designation of more than one ETC is consistent with the public interest, convenience, and necessity? What additional factors, if any, should be considered when considering whether to designate an ETC in a rural carrier study area?

27. We also seek specific comment on ETC designations performed by states pursuant to section 214(e)(2) of the Act. Is it advisable to establish permissive federal guidelines for states to use in designating ETCs pursuant to section 214(e)(2), and if so, what should be included in such guidelines? Should the Commission encourage states to have similar standards for the designation of ETCs? In considering this issue, commenters should also address the impact of the Fifth Circuit's decision regarding the Commission's ability to prohibit states from imposing additional eligibility criteria on ETCs. In addition, what effect, if any, does the current ETC designation system have on the emergence of competition? We also seek comment on the public interest finding that must be made before any competitive carrier can be designated as an ETC in a rural telephone company's study area. What sort of factors do state commissions currently consider when evaluating whether the designation is in the public interest? If greater consistency among the states in performing the public interest evaluation is desirable, should the Commission provide guidance regarding the factors a state commission's public interest analysis should consider? To what extent are similar universal service obligations or quality of service obligations not imposed on incumbent LECs and competitive ETCs? Should any Commission guidelines differ depending upon whether or not the rural exemption has been lifted in the area for which ETC status is sought?

28. In the *Rural Task Force Order*, the Commission determined that rural carriers should be permitted to disaggregate and target per-line high-cost universal service support into geographic areas below the study area level. The Commission concluded that such action would ensure that support is "distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service." The Commission also determined that rural incumbent LECs must submit maps that clearly specify the boundaries of the designated disaggregation zones of support. Do the Commission's reporting requirements adequately ensure that competitors have sufficient information about the geographic scope of incumbent disaggregation zones? We invite commenters to address whether the Commission should clarify its requirements. Further, the Commission concluded in the *Rural Task Force Order* that the level of disaggregation of support should be considered in determining whether to certify new ETCs for a service area other than a rural carrier's entire study area. In light of the Commission's finding that disaggregation zones encourage efficient market entry, what weight should states and the Commission place on the presence of such zones when determining whether the designation of a competitive ETC below the study area level is in the public interest?

29. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before May 5, 2003, and reply comments on or before June 3, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and CC Docket No. 96–45. Parties also may submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

30. All paper filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties who choose to file by paper also should send three copies of their filings to Sheryl Todd, Telecommunications Access Policy Division, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, parties who choose to file by paper must send copies of their comments on diskette to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Such submissions should be on a 3.5-inch diskette formatted in an IBM-compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, CC Docket No. 96–45, the type of pleading (comment or reply comment), the date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

31. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

BILLING CODE 6712–01–P

APPENDIX A

Percentage of Zip Codes with Competitive Local Exchange Carriers

(As of June 30, 2002)

State	Number of CLECs								
	Zero	One - Three	Four	Five	Six	Seven	Eight	Nine	Ten or More
Alabama	39 %	46 %	12 %	2 %	2 %	0 %	0 %	0 %	0 %
Alaska	76	24	0	0	0	0	0	0	0
Arizona	28	33	7	10	9	9	4	1	0
Arkansas	69	31	0	0	0	0	0	0	0
California	15	42	7	7	7	6	6	4	6
Colorado	26	52	4	2	7	9	0	0	0
Connecticut	1	42	34	16	6	0	0	0	0
Delaware	0	100	0	0	0	0	0	0	0
Dist. of Columbia	15	19	26	22	19	0	0	0	0
Florida	9	28	8	6	5	5	6	5	27
Georgia	26	29	4	6	7	6	5	3	15
Hawaii	60	40	0	0	0	0	0	0	0
Idaho	45	55	0	0	0	0	0	0	0
Illinois	35	36	4	4	4	2	3	5	8
Indiana	45	46	5	3	0	0	0	0	0
Iowa	38	62	1	0	0	0	0	0	0
Kansas	60	33	6	1	0	0	0	0	0
Kentucky	79	21	0	0	0	0	0	0	0
Louisiana	26	45	7	4	4	7	7	0	0
Maine	34	66	0	0	0	0	0	0	0
Maryland	0	49	12	14	13	11	0	0	0
Massachusetts	1	40	23	11	11	5	5	3	0
Michigan	1	31	18	15	8	6	6	6	10
Minnesota	34	46	7	5	4	4	1	0	0
Mississippi	10	88	2	0	0	0	0	0	0
Missouri	49	30	6	6	3	3	3	0	0
Montana	93	7	0	0	0	0	0	0	0
Nebraska	67	28	5	0	0	0	0	0	0
Nevada	54	46	0	0	0	0	0	0	0
New Hampshire	3	82	14	0	0	0	0	0	0
New Jersey	2	40	18	16	11	8	4	0	0
New Mexico	85	15	0	0	0	0	0	0	0
New York	6	23	8	8	9	8	7	7	25
North Carolina	18	55	6	4	3	2	2	2	7
North Dakota	67	33	0	0	0	0	0	0	0
Ohio	37	39	7	5	4	2	3	3	0
Oklahoma	44	31	7	8	6	3	0	0	0
Oregon	51	30	10	7	3	0	0	0	0
Pennsylvania	19	35	8	7	5	5	4	4	13
Puerto Rico	81	19	0	0	0	0	0	0	0
Rhode Island	1	43	36	19	0	0	0	0	0
South Carolina	31	40	6	6	5	7	5	0	0
South Dakota	68	32	0	0	0	0	0	0	0
Tennessee	42	32	8	10	6	2	0	0	0
Texas	17	23	5	3	3	3	5	5	36
Utah	36	53	11	0	0	0	0	0	0
Vermont	14	86	0	0	0	0	0	0	0
Virginia	28	48	6	6	6	4	1	0	0
Washington	42	38	6	3	4	4	4	0	0
West Virginia	99	1	0	0	0	0	0	0	0
Wisconsin	32	54	6	5	3	0	0	0	0
Wyoming	45	55	0	0	0	0	0	0	0
Nationwide	33 %	38 %	7 %	5 %	4 %	3 %	2 %	2 %	6 %

[FR Doc. 03–5155 Filed 3–4–03; 8:45 am]
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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–021–1]

Tropical Soda Apple; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the control of tropical soda apple, *Solanum viarum* Dunal (Solanaceae). The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous beetle, *Gratiana boliviana* Spaeth (Coleoptera: Chrysomelidae), into the environment as a biological control agent to reduce the severity of infestations of tropical soda apple in Florida and other infested States in the continental United States. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 4, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–021–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–021–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–021–1" on the subject line.

You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Tracy A. Horner, Ecologist, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1236; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering an application from a researcher at the University of Florida for a permit to release a nonindigenous beetle, *Gratiana boliviana* Spaeth (Coleoptera: Chrysomelidae), into the environment to reduce the severity of infestations of tropical soda apple, *Solanum viarum* Dunal (Solanaceae) in Florida and other infested States in the continental United States.

Tropical soda apple is a perennial shrub that belongs to the plant family Solanaceae, section Acanthophora, genus *Solanum*, and subgenus *Leptostemonum*. A plant with foliage unpalatable to livestock, tropical soda apple can infest a pasture or rangeland in 1 to 2 years, resulting in lower stocking rates. It is native to Brazil and Argentina but has become a weed in other areas of South America and in Africa, India, Nepal, the West Indies, Honduras, Mexico, and the United States. Tropical soda apple was originally detected in the United States in Florida in 1988. The pasture land infested in 1992 was estimated to be approximately 150,000 acres; 10 years later, the infested area had increased to more than 1 million acres of improved pastures, citrus groves, sugar cane fields, ditches, vegetable crops, sod farms, forestlands, and natural areas. Tropical soda apple was placed on the Federal Noxious Weed List in 1995, and it is listed as one of the most invasive species in Florida by the Florida Exotic Pest Plant Council. In addition to Florida, the plant has been reported in Alabama, Georgia, Mississippi, Louisiana, Texas, North Carolina, South Carolina, Tennessee, and Pennsylvania. Researchers believe that it has the potential to expand its range even further in the United States.

Three types of controls are currently being used to limit the spread of tropical soda apple: chemical, mechanical, and regulatory. Chemical control involves the use of herbicides. Mechanical control is attempted by mowing to a three- to four-inch height to prevent the plants from producing fruit and seeds. Several southern States are trying to prevent the spread of tropical soda apple by means of regulatory control, regulating the movement of cattle, hay, sod, manure, lots of seed, and soil from infested areas to areas free of infestation. Unfortunately, herbicides and mowing only provide temporary weed suppression, and in addition to being expensive, they are not always practical in inaccessible areas. Moreover, herbicides can have negative environmental effects, which include leaving undesirable chemical residues in the ecosystem and in commodities and adversely affecting non-target organisms.

The biological control agent *G. boliviana*, a nonindigenous tortoise beetle in the insect family Chrysomelidae, has the potential to reduce the severity of infestations of tropical soda apple in Florida and other infested States in the continental United States. Adults and larvae feed on tropical soda apple leaves, restricting the vigor and growth rate of the plants and potentially reducing the competitive advantage this invasive weed has over native vegetation. APHIS has completed an environmental assessment that considers the effects of, and alternatives to, the release of *G. boliviana* into the environment as a biological control agent for tropical soda apple.

APHIS' review and analysis of the potential environmental impacts associated with releasing *G. boliviana*

into the environment are documented in detail in an environmental assessment entitled "Field Release of a Nonindigenous Beetle, *Gratiana boliviana* (Coleoptera: Chrysomelidae), for Biological Control of Tropical Soda Apple, *Solanum viarum* (Solanaceae)" (February 2003). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by following the link for "Document/Forms Retrieval System," then clicking on the triangle beside "6-Permits-Environmental Assessments" and selecting document number 0033. You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC this 28th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–5134 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—National Hunger Clearinghouse Survey

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces FNS' intention to request renewal of Office of Management and Budget (OMB) approval of the National Hunger Clearinghouse Survey.

DATES: Comments on this notice must be received by May 5, 2003.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Pam Phillips, Director, Consumer and Community Affairs, Office of Communications and Governmental Affairs, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 912, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Pam Phillips, (703) 305–2298. Copies of this information collection can be obtained from Martha Newton at the address listed above.

SUPPLEMENTARY INFORMATION:

Title: National Hunger Clearinghouse Survey.

OMB Number: 0584–0474.

Expiration Date: 2/28/03.

Type of Request: Renewal of OMB approval.

Abstract: Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)), which was added to the Act by section 123 of Pub. L. 103–448 on November 2, 1994, mandated that FNS enter into a four-year contract with a non-governmental organization to establish and maintain an information clearinghouse (named "USDA National Hunger Clearinghouse" or "Clearinghouse") for groups that assist low-income individuals or communities regarding nutrition assistance programs or other assistance. FNS awarded the contract to World Hunger Year (WHY), Inc. on September 29, 1995; the contract ended on September 30, 1999.

Section 26(d) was amended by section 112 of Pub. L. 105–336 on October 31, 1998 to extend funding for the Clearinghouse (now called "National Hunger Clearinghouse" or "Clearinghouse") through fiscal year 2003. FNS awarded the five-year contract to World Hunger Year on September 29, 1999; it expires on September 30, 2003.

The Clearinghouse includes a database of non-governmental, grassroots programs that work in the areas of hunger and nutrition, as well as a mailing list of relevant local governmental agencies. Under the original contract, Clearinghouse staff established the database by reviewing relevant programs of organizations contained in several existing mailing lists. Program and mailing information about organizations culled from these lists were collected and entered into the database once each contract year (years one through four of the original contract and years one through four so far of the existing contract) through a series of electronically-processed survey questionnaires sent through the United States Postal Service. Clearinghouse staff followed up by phone or facsimile to ensure the highest possible return rate on the questionnaires. Surveys could also be completed on the World Wide Web. Returned surveys were scanned and data entered into the database.

Survey questionnaires will be sent out one more time (year five) in the current contract. For this information collection, the following information was determined:

Estimate of the Burden: Public reporting burden for this collection of information is estimated to average five minutes for the survey (the survey includes one two-page instrument).

Respondents: The respondents are non-governmental organizations that have grassroots food and nutrition programs.

Estimated Number of Respondents: 1,750.

Estimated Number of Responses per Respondent: One response per respondent.

Estimated Total Annual Burden on Respondents: 146 hours.

Dated: February 27, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 03–5114 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; FNS–245, Negative Case Action Review Schedule; FNS–247, Statistical Summary of Sample Disposition; and FNS–248, Status of Sample Selection and Completion

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed revision to the burden for information collection for the FNS–245, Negative Case Action Review Schedule and the FNS–248, Status of Sample Selection and Completion. The FNS–247, Statistical Summary of Sample Disposition, is being eliminated since the information on this form is available through the Food Stamp Quality Control System (FSQCS). The proposed collection is a revision of collection currently approved under OMB No. 0584–0034.

DATES: Written comments must be submitted on or before May 5, 2003.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Send comments and requests for copies of this information collection to: Dan Wilusz, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. You may FAX comments on this rule to (703) 305–0928. Copies of the FNS–245, FNS–247, and FNS–248 forms may be downloaded at *http://www.fns.usda.gov/fsp/qc/default.htm*. An electronic version of this notice may be downloaded at *http://www.fns.usda.gov/fsp/rules/Regulations/default.htm*. Comments may be submitted via the Internet at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Dan Wilusz, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Quality Control Negative Case Action Review Schedule; Statistical Summary of Sample Disposition; Status of Sample Selection and Completion.

OMB Number: 0584–0034.

Form Number: FNS–245, FNS–247, & FNS–248.

Expiration Date: 02/28/03.

Type of Request: Revision of a currently approved collection.

Abstract: The FNS–245, Negative Case Action Review Schedule, is designed to collect quality control (QC) data and serve as the data entry form for negative case action QC reviews in the Food Stamp Program. State agencies complete the FNS–245 for each negative case in their QC sample. The FNS–248, Status of Sample Selection and Completion, tracks a State's progress in sample selection and case completion on a monthly basis. We are eliminating the FNS–247, Statistical Summary of Sample Disposition report, which summarized the data obtained from a State's active and negative QC samples over the course of each annual reporting period. Data on this report is currently available through FSQCS so the report is no longer necessary. The total reporting and recordkeeping estimate for the eliminated report was one hour.

FNS–245

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53.

Number of Responses Per Respondent: 760.

Estimated Reporting Time per Response: 3.0236 Hours.

Estimated Reporting Annual Burden: 121,736.

Estimated Recordkeeping Time per Response: .0236 Hours.

Number of Recordkeepings Per Respondent: 760.

Estimated Time per Recordkeeping: 0.0236 Hours

Estimated Recordkeeping Annual Burden: 950 Hours.

Total Annual Reporting and Recordkeeping Burden: 122,686 Hours.

FNS–248

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53.

Number of Responses Per Respondent: 12.

Estimated Reporting Time per Response: 0.5236 Hours.

Estimated Reporting Annual Burden: 333 Hours.

Number of Recordkeepings Per Respondent: 12.

Estimated Time per Recordkeeping: 0.0236 Hours.

Estimated Recordkeeping Annual Burden: 15 Hours.

Total Annual Reporting and Recordkeeping Burden: 348 Hours.

Dated: February 27, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–5115 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to remove one standard and issue four revised conservation practice standards in Section IV of the FOTG. The revised standards are: Diversion (362), Stream Habitat Improvement and Management (395), Waste Water Treatment Strip (635), and Watering Facility (614). The standard we intend to remove from the FOTG is Bedding (310). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, (317) 290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: February 11, 2003.

Travis Neely,

Acting State Conservationist, Indianapolis, Indiana.

[FR Doc. 03–5085 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–16–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, March 11–12, 2003, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, March 11, 2003

1:30–5 p.m.—Passenger Vessels Ad Hoc Committee (closed session).

Wednesday, March 12, 2003

9–10:30 a.m.—Public Rights-of-Way Ad Hoc Committee (closed session).
10:30–11:30 a.m.—Planning and Budget Committee.
11:30–12:30 p.m.—Technical Programs Committee.
2–3:30 p.m.—Board meeting.

ADDRESSES: The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

Open Meeting

- Approval of the January 15, 2003, Board meeting minutes;
- Technical Programs Committee Report;
- Planning and Budget Committee Report;
- Election of officers.

Closed Meeting

- Passenger Vessels Accessibility Guidelines;
- Public Rights-of-Way Accessibility Guidelines.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Elizabeth A. Stewart,

Deputy General Counsel.

[FR Doc. 03–5117 Filed 3–4–03; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Ohio Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, March 20, 2003, at the University of Cincinnati School of Law, Clifton Avenue and Calhoun Street, Cincinnati, Ohio 45221. The purpose of the meeting is to discuss civil rights events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Lynwood L. Battle, Jr., 513–281–4330, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 27, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–5139 Filed 3–4–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m. on April 16, 2003, at the Westin Hotel, 1900 5th Avenue, Seattle, Washington 98101. The purpose of the meeting is to plan future activities and discuss civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, (213) 894–3437 (TDD (213) 894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 27, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–5140 Filed 3–4–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the emergency clearance procedures of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Survey of Minority Commercial Broadcast Owners.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency.

Burden Hours: 250.

Number of Respondents: 500.

Average Hours Per Response: 30 minutes.

Needs and Uses: The Minority Telecommunications Development Program (MTDP), National Telecommunications and Information Administration has developed a survey instrument to collect information for its periodic minority commercial broadcast ownership report. The survey will be the principal method of systematically gathering information about the experiences of minority entrepreneurs entering the broadcast industry or expanding their operations. The report will provide a basis for national policies to increase minority participation in broadcasting, as well as Administration initiatives to promote economic opportunity for minority-owned businesses.

Affected Public: Business or other for-profit organizations.

Frequency: Biennially, or annually if resources permit.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by contacting Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent by March 19, 2003 to David Rostker, OMB Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503.

Dated: February 27, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–5078 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Information and Communications Technology Business Development Mission

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies and relevant parties to participate in the overseas business Development Mission described below. For a more complete description of the mission, obtain a copy of the mission statement from the contact officer indicated below.

Undersecretarial Business Development Mission, Belfast, Northern Ireland and Dublin, Republic of Ireland, April 6–11, 2003

Department of Commerce technology-sector leaders will convene a senior-level business development mission to Belfast, Northern Ireland (N.I.) and Dublin, Republic of Ireland (R.O.I.) The focus of the mission will be to help U.S. companies explore business opportunities in both Northern Ireland and the Republic of Ireland. The delegation will include approximately 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing the information and communications technology (ICT) sector. Additional opportunities may exist for non-government organizations and academic representatives to accompany the mission. Recruitment closes on March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Nuala O'Connor Kelly, Chief Counsel for Technology, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4835, Washington, DC 20230, telephone 202–482–1984, fax 202–482–0253, or visit *www.commerce.gov*.

SUPPLEMENTARY INFORMATION:

Goals for the Mission: The Business Development Mission will further both U.S. commercial policy objectives and advance specific U.S. business interests in the ICT sector. It is focused on: introducing U.S. companies to the markets of Northern Ireland and the Republic of Ireland and promoting expanded commercial opportunities in these areas; assisting small and new-to-market U.S. firms in evaluating the market potential for their products and to gain an understanding of how to operate successfully in the markets of Northern Ireland and the Republic of Ireland; highlighting the accessibility of the market and the successes of U.S. businesses in the markets of Northern Ireland and the Republic of Ireland; and fostering dialogue between policy makers and academics in the technology arena in the United States, Northern Ireland, and the Republic of Ireland.

Scenario for the Mission: The business Development Mission will provide participants with exposure to high-level business and government contacts and an understanding of market and technology trends and the commercial environment of Northern Ireland and the Republic of Ireland. U.S. Embassy and U.S. Consulate General officials will provide detailed briefings on the economic, commercial and political climates, and participants will receive individual counseling on their specific interests from local U.S. Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Representational events also will be organized to provide mission participants with opportunities to meet Northern Ireland's and the Republic of Ireland's business and government representatives, as well as U.S. business people living and working in Northern Ireland and the Republic of Ireland.

The tentative trip itinerary is as follows:

April 6—Arrive Belfast, Northern Ireland; evening events and briefing
April 7—One-on-One business Meetings in Belfast; group policy meetings
April 8—Business and Policy Meetings in Northern Ireland; Travel to Dublin, Republic of Ireland
April 9—One-on-One business Meetings, group policy meetings, mission events, and briefings in Dublin
April 10—One-on-One business Meetings, group policy meetings, mission events, and briefings in Dublin
April 11—Departure for the United States

The precise schedule will depend in part on the availability of local government and business officials and the specific goals of the mission participants.

Criteria for Participation of Companies

Recruitment

The recruitment of mission members will be conducted in an open and public manner utilizing Commercial Service Export Assistance Centers, International Trade Administration industry teams, and Technology Administration and National Telecommunications and Information Administration teams. Promotion will include publication of notice of the event in the **Federal Register**, direct mailing, e-mailing, broadcast fax, press releases to appropriate media, posting on the Commerce Department trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet websites, promotion at domestic exhibitions and conferences, and publicized announcements through a network of business organizations. Companies will be selected according to the criteria set out below. Approximately 10–15 companies will be selected.

Eligibility

Participating companies must be incorporated in the United States. A company is eligible to participate only if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent

of the value of the finished good or service.

Selection Criteria

Company participation will be determined on the basis of:

- Level of seniority of designated company representatives and consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Potential for business activity in Northern Ireland and the Republic of Ireland as applicable;
- Timely receipt of a completed application and participation agreement signed by a company officer and the participation fee; and
- Provision of adequate information on the company's products and/or services, and communication of the company's primary objectives to facilitate appropriate matching with potential business partners.

In addition, the Department may consider whether the company's overall business objectives, including those of any U.S. or overseas affiliates, are fully consistent with the mission's objectives. Any partisan political activities of an applicant, including political contributions, will be entirely irrelevant to the selection process.

Time Frame for Applications

Applications for the Business Development Mission to Northern Ireland and the Republic of Ireland will be made available on February 24, 2003. The fee to participate in the mission will be between $2,500.00 and $3,500.00 and will not cover travel or lodging expenses. For additional information on the Business Development Mission or to obtain an application, businesspersons should be referred to Nuala O'Connor Kelly, Chief Counsel for Technology, U.S. Department of Commerce, (202) 482–1984. Applications should be submitted to the Chief Counsel for Technology, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4835, Washington, DC 20230, (or via facsimile at 202–482–0253) by March 12, 2003, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Ms. Nuala O'Connor Kelly, U.S. Department of Commerce, telephone 202–482–1984.

Dated: February 26, 2003.

Nuala O'Connor Kelly,

Chief Counsel for Technology, U.S. Department of Commerce.

[FR Doc. 03–5077 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary antidumping duty determination of sales at less than fair value.

EFFECTIVE DATE: March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, or (202) 482–0159, respectively.

Scope of the Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangosius Pangasius*), and *Pangasius Micronemus*. The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 [1] (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[1] The petitioners have included this tariff classification code because they believe that the merchandise under investigation is entering the United States under this classification based on previous uses of the term 'sole' to describe Vietnamese basa and tra.

Background

On January 29, 2003, An Giang Fisheries Import and Export Joint Stock Company ("Agifish"), Vinh Hoan Company Limited ("Vinh Hoan"), Nam Viet Company Limited ("Nam Viet") and Can Tho Agricultural and Animal Products Import Export Company ("CATACO"), hereinafter collectively referred to as "Mandatory Respondents," timely filed allegations that the Department made ministerial errors in the preliminary determination.

On February 3, 2003, Catfish Farmers of America ("CFA") and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as "Petitioners," timely filed allegations that the Department made ministerial errors in the preliminary determination.

Amendment of Preliminary Determination

On January 24, 2003, the Department of Commerce ("the Department") preliminarily determined that certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(a) of the Tariff Act. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Preliminary Determination")* 68 FR 4986 (January 31, 2003).

The Department is amending the *Preliminary Determination* in the antidumping investigation of certain frozen fish fillets from the Socialist Republic of Vietnam.

Significant Ministerial Error

A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g).

Ministerial Error Allegations from the Mandatory Respondents

Comment 1: U.S. Price to Normal Value Comparison

The Mandatory Respondents argue that in calculating the company-specific dumping margins for the *Preliminary Determination*, the Department applied an incorrect U.S. price for Mandatory Respondents' sales of glazed frozen fish fillets (coated with water, then frozen). The Mandatory Respondents claim that for sales involving glazed fillets, Mandatory Respondents reported in the field "NETPRIU," the per-unit price for glazed fillets based on the actual sales quantity (minus the weight of the glaze). In addition, the Mandatory Respondents also reported the corresponding net sales quantity (minus the weight of the glaze) in the filed labeled "QTYNETU."

The Mandatory Respondents argue that the Department inadvertently relied upon a price for glazed sales reported in the field "GRSUPRU." However, the Mandatory Respondents argue, the prices reported in this field for glazed fillets do not reflect the actual per-unit prices of glazed products. The Mandatory Respondents note that the per-unit prices reported in "GRSUPRU" field are based on gross sales quantities, including the weight of the glaze. The Mandatory Respondents claim that the Department did not intend to use the gross-weight prices for glazed sales reported in this field in the margin calculations. Therefore, the Mandatory Respondents argue, the Department must rely upon the per-unit price for glazed products reported in the field "NETPRIU."

Department's Position

We agree with the Mandatory Respondents. In our *Preliminary Determination*, we overlooked that the Mandatory Respondents' factor utilization rates, and hence normal values, were calculated based on weights net of glazing water. Therefore, when calculating the dumping margin, we compared each Mandatory Respondent's normal value based on net weight to U.S. prices based on gross weight. This resulted in a distortion which we are correcting.

During the course of the investigation, each Respondent explained that some customers purchased subject merchandise that was water glazed. In addition, the Mandatory Respondents stated that the water and other inputs used to produce glazed products were reported in the factors of production data. Therefore, in the numerator, the Mandatory Respondents included those factors of production used to produce subject merchandise inclusive of water glazing. However, the denominator used by the Mandatory Respondents represents the weight of the frozen fish products without the excess water weight associated with glazing. Consequently, the consumption ratio of each factor of production reported by the Mandatory Respondents was calculated by using the factors of production (including glazing) as the numerator and the weight of the frozen fish products without the excess water weight associated with glazing as the denominator. As a result, the consumption ratios used to calculate the normal value are based on a weight net of water.

For every U.S. sale, the Mandatory Respondents reported a gross and net price (adjusted for net weight) and a gross and net weight (net of water content associated with glazing). In our *Preliminary Determination*, we based our U.S. starting prices on gross price and weighted the average price per control number (CONNUM) by the gross weight.

To calculate the dumping margins, in the *Preliminary Determination*, we compared the U.S. starting gross price to the normal value calculated on a net basis, inadvertently creating a distorted comparison. For this amended preliminary determination, we have corrected the U.S. sales starting price by replacing the gross price with the net price and have averaged the dumping margins by the net weight in order to achieve a net normal value for a comparison to the net U.S. price. We note that the Department will revisit all aspects of this issue in the final determination.

The correction of this error in combination with the correction of the other errors would result in a margin of 38.09% for Nam Viet and 31.45% for Agifish, while the margins of the remaining Mandatory Respondents do not change significantly as noted below. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination*. Accordingly, the error regarding the use of net weight and net price alleged by the Mandatory Respondents is a significant ministerial error within the meaning of 19 CFR 351.224(g) with regard to Nam Viet and Agifish.

However, we note that the correction of this error in combination with the correction of the others does not fulfill the requirement of a significant ministerial error within the meaning of 19 CFR 351.224(g) for CATACO and Vinh Hoan. Therefore, we are not amending our *Preliminary Determination* with regard to CATACO's and Vinh Hoan's U.S. price to normal value comparisons. For a more detailed analysis, please see the company-specific analysis memorandums.

Comment 2: ByProduct Offset

Citing the factors valuation memorandum that accompanied the *Preliminary Determination*, the Mandatory Respondents argue that the Department clearly stated that "for each of the companies in this investigation, the Department has offset the cost of manufacturing by the value of the reported by-products." *See Memorandum to the File from Alex Villanueva, Lisa Shishido, Joseph Welton, and Paul Walker, through Edward C. Yang and James C. Doyle: Factors Valuations for Agifish, Vinh Hoan, Nam Viet and CATACO ("Factor Memo")*, dated January 24, 2003 at 7. However, the Mandatory Respondents argue, in the company-specific margin calculations, the Department did not follow its stated methodology and, instead, applied each company's byproduct credit as an offset to the final normal value, rather than as a deduction to the cost of manufacturing. According to the Mandatory Respondents, the Department's *Factor Memo* indicates that the Department fully intended to deduct each company's byproduct offset from the cost of manufacturing. The Mandatory Respondents assert that it is the Department's normal practice to treat income generated from the sale of byproducts as an offset to production costs and that the cost associated with the production of byproducts are reflected in the costs of the primary products generated in the production process. Thus, the Mandatory Respondents argue, the Department erred in deducting each company's by-product credits from normal value and must reconfigure the preliminary dumping margin calculations to ensure that the company-specific byproduct offsets are correctly deducted from the cost of manufacturing.

Department's Position

We agree with the Mandatory Respondents that the Department incorrectly deducted the byproduct credit from normal value. The *Factor Memo* clearly stated that for each of the companies in this investigation, the Department would offset the cost of manufacturing by the value of the reported byproducts. We note, however,

that the company-specific analysis memorandums provided the programming language demonstrating the byproduct offset was being deducted from the total normal value. In addition, our *Preliminary Determination* clearly stated that the by-product offset would be taken from normal value. "Where applicable, we deducted from each respondent's normal value the value of byproducts sold during the POI."[2] *See Preliminary Determination*, 68 FR at 4994. However, given the conflicting statements on the record, the fact that this is our normal practice, and that there was no explanation in the *Preliminary Determination* regarding the change, we agree that deducting the by-products from the total normal value represents an error. Therefore, for this amended preliminary determination, we are deducting each Mandatory Respondent's byproduct offset from the cost of manufacturing and not from normal value. We note that the Department will carefully revisit all aspects of this issue in the final determination.

The correction of this error in combination with the correction of the other errors would result in a margin of for 38.09% for Nam Viet and 31.45% for Agifish, while the margins of the remaining Mandatory Respondents do not change significantly, as noted below. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination*. Accordingly, the error regarding the correction of the byproduct offset alleged by the Mandatory Respondents is a significant ministerial error within the meaning of 19 CFR 351.224(g) for Nam Viet and Agifish.

We note that the correction of this error does not fulfill the requirement of a significant ministerial error within the meaning of 19 CFR 351.224(g) for CATACO and Vinh Hoan. Therefore, we are not amending our *Preliminary Determination* with regard to CATACO's and Vinh Hoan's byproduct offset. For a more detailed analysis, please see the company-specific analysis memorandums.

Comment 3: Agifish's Fish Waste Offset

Agifish argues that the Department incorrectly calculated Agifish's factor input for fish waste re-introduced in the production of the subject merchandise. Agifish asserts that rather than using the total amount of fish waste re-introduced in the company's first two production stages, the Department used only the amount of fish waste re-introduced at one of the production stages. According to Agifish, the Department's error drastically reduced the fish waste to subject merchandise ratio. Agifish argues that this is an apparent inadvertent ministerial error because the Department, in calculating dumping margins for the other three mandatory Mandatory Respondents, used the amount of fish waste reported for all production stages.

Department's Position

We agree with Agifish that the Department incorrectly calculated Agifish's factor input for fish waste re-introduced in the production of the subject merchandise. Specifically, on January 17, 2003, Agifish submitted supplementary information indicating the amount of fish waste generated and sent to make fish feed which is re-introduced into the production process. Based on the factors of production data, we noted that the amount of fish waste generated and sent to make fish feed that Agifish indicated in its January 17, 2003 response was significantly lower than the actual amount used to make fish feed during the POI. Therefore, for the *Preliminary Determination*, we capped the amount of the fish waste offset at the actual amount of fish waste re-introduced as fish feed during the POI.

We note, however, that in capping the offset as described above, the Department neglected to give Agifish credit for a byproduct described in the calculation database as "fish flour." As the claim for this byproduct exists in the database and as there was no information on the record at the time of the preliminary determination casting doubt on the appropriateness of this claim, the Department will grant this claim. In order to value the fish flour byproduct, the Department is applying the surrogate value for fish flour. We note that the Department will revisit all aspects of this issue in the final determination.

The correction of this error in combination with the correction of the other errors would result in a margin of 31.45% for Agifish. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination*. Accordingly, the error regarding the correction of the fish waste offset alleged by Agifish is a significant ministerial error within the meaning of 19 CFR 351.224(g).

Therefore, we are amending our *Preliminary Determination* with regard to Agifish's fish waste offset. For a more detailed analysis, please see the company-specific analysis memorandums.

Comment 4: CATACO's Coal Consumption Ratio

CATACO argues that the Department incorrectly calculated CATACO's coal consumption ratio in the *Preliminary Determination*. According to CATACO, the coal consumption ratio used by the Department includes coal used in both the farming and processing stages. CATACO argues that the Department should apply CATACO's coal consumption ratio specific to only the processing stage of the production process.

Department's Position

We agree with CATACO. In our *Preliminary Determination*, we used a coal consumption ratio that was slightly higher than the coal consumption ratio that CATACO reported for the processing stage. Specifically, the coal consumption ratio we used in the *Preliminary Determination* included the amount of coal used in a stage preceding the processing stage. Consequently, the coal consumption used by the Department in the *Preliminary Determination* was overstated. Therefore, we have replaced the coal consumption ratio used in the *Preliminary Determination* with the correct coal consumption ratio reported by CATACO that is specific to only the processing stage of the production process. We note that the Department will revisit all aspects of this issue in the final determination.

However, we note that the correction of this error in combination with the other alleged errors does not change the margin by a significant amount as required by 19 CFR 351.224(g). Therefore, we are not amending our *Preliminary Determination* with regard to CATACO's coal consumption ratio.

Ministerial Error Allegations from the Petitioners

Comment 1: Agifish's and Vinh Hoan's Fish Oil Offset

The Petitioners argue that the Department erred in calculating Agifish's and Vinh Hoan's fish oil by-product offset. The Petitioners note that the Department stated that, in accordance with its policy, it would only grant byproducts credits for the amount of fish oil generated and sold by the Mandatory Respondents. *See Memorandum from Alex Villanueva to the File regarding the Analysis of the Preliminary Determination of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Agifish*, dated January 24, 2003 at 3, and *Memorandum from Lisa Shishido to the File regarding the Analysis of the Preliminary Determination of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Vinh Hoan*, dated January 24, 2003 at 3. According to the Petitioners, both Agifish and Vinh Hoan sold more fish oil during the POI than they actually generated during the POI. Therefore, the Petitioners argue, based on the Department's stated policy, the Department should only have granted byproduct credits for the amount of fish oil both generated and sold during the POI, which was smaller than the amount of fish oil sold.

Department's Position

We agree with the Petitioners that the Department erred in calculating Agifish's and Vinh Hoan's fish oil byproduct offset. The Petitioners correctly note that the Department stated that, in accordance with our practice, we would only grant byproducts credits for the amount of fish oil generated and sold by the Respondent companies. Both Agifish's and Vinh Hoan's January 17, 2003 supplemental responses revealed that the amount of fish oil sold during the POI was significantly more than the total amount of fish oil generated during the same period. In our *Preliminary Determination*, we did not cap the amount of the fish oil byproduct offset at the amount of fish oil generated and sold during the POI. Therefore, we have recalculated the amount of fish oil byproduct offset used in the *Preliminary Determination* and capped that offset at the amount of fish oil generated and sold during the POI. For a more detailed explanation, please see Agifish's and Vinh Hoan's analysis memorandums.

We note that the Department will revisit all aspects of this issue in the final determination.

The correction of this error in combination with the correction of the other errors would result in a margin of 31.45% for Agifish. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination*. Accordingly, the error regarding the correction of the fish oil offset alleged by Agifish is a significant ministerial error within the meaning of 19 CFR 351.224(g).

However, the correction of this error in combination with the correction of the other errors would not result in a significant ministerial error within the meaning of 19 CFR 351.224(g) for Vinh Hoan. Accordingly, we are not amending our *Preliminary Determination* with regard to Vinh Hoan's fish oil offset.

Comment 2: Nam Viet's International Freight Expense

The Petitioners argue that to value freight costs incurred by Nam Viet, on sales shipped by non-market economy carriers, the Department calculated the average rate incurred on shipments made by the market economy carriers. However, the Petitioners argue, in making the calculation, the Department incorrectly included sales values which did not incur freight costs in the denominator of its average. According to the Petitioners, by including these sales, the Department understated the ocean freight costs to be applied to those sales which were shipped on non-market economy carriers.

Department's Position:

We agree with the Petitioners that, when valuing freight costs incurred by Nam Viet on sales shipped by non-market economy carriers, the Department incorrectly included sales which did not incur freight costs in calculating the average rate incurred on shipments made by the market economy carriers. Consequently, the average freight rate used by the Department in the *Preliminary Determination* was understated. Therefore, we have recalculated the average freight costs used in the *Preliminary Determination*, excluding those sales made by Nam Viet that were identified as FOB sales. We note that the Department will revisit all aspects of this issue in the final determination.

The correction of this error in combination with the other errors would result in a margin of 38.09% for Nam Viet. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination*. Accordingly, the error regarding the correction of freight costs alleged by the Petitioners is a significant ministerial error within the meaning of 19 CFR 351.224(g). Therefore, we are amending our *Preliminary Determination* with regard to Nam Viet's average freight costs. For a more detailed analysis, please see the company-specific analysis memorandums.

As a result, we are amending the *Preliminary Determination* of the antidumping duty investigation of certain frozen fish fillets from the Socialist Republic of Vietnam to reflect the correction of the above-cited ministerial errors. The revised final weighted-average dumping margins are as follows:

The weighted-average dumping margins are as follows:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Producer/manufacturer/exporter	Prelim margin	Amended prelim margin
Agifish	61.88	31.45
Vinh Hoan	37.94	37.94
Nam Viet	53.96	38.09
CATACO	41.06	41.06
Afiex	49.16	36.76
CAFATEX	49.16	36.76
Da Nang	49.16	36.76
Mekonimex	49.16	36.76
QVD	49.16	36.76
Viet Hai	49.16	36.76
Vietnam-Wide Rate	63.88	63.88

Suspension of Liquidation

We will instruct U.S. Customs Service to continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP, as indicated above.

With respect to Nam Viet and the parties receiving the Vietnam-wide rate, the Department will direct the U.S.

[2] Period of Investigation.

Customs Service to continue to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after November 2, 2002, the date which is 90 days prior to the date of publication in the **Federal Register** of our original preliminary determination in this investigation in accordance with section 733(d) of the Act . With respect to Agifish, Vinh Hoan and CATACO, the Department will direct the U.S. Customs Service to continue to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of our original preliminary determination in this investigation (*i.e.*, January 31, 2003) in accordance with section 733(d) of the Act.

We note that the effective date of the suspension of liquidation for Afiex, CAFAEX, Da Nang, Mekonimex, QVD and Viet Hai continues to be January 31, 2003, because we have not determined whether critical circumstances exists for these companies. As noted in our preliminary determination, we will publish our preliminary critical circumstances decision with respect to Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai at a later date. Therefore, with respect to Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai, the Department will direct the U.S. Customs Service to continue to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of our original preliminary determinations in these investigations (*i.e.*, January 31, 2003) in accordance with section 733(d) of the Act. These instructions to be issued to the U.S. Customs Service following publication of this amended preliminary determination will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our amended preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: February 26, 2003.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–5185 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–451–801]

Final Results of Inquiry Into Lithuania's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Laws Under a Changed Circumstances Review of the Solid Urea Order Against Lithuania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: George Smolik, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1843.

Background: The Department has treated Lithuania as a non-market economy ("NME") country in past antidumping duty investigations and administrative reviews. *See, e.g.*, Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value, 52 FR 19557 (May 26, 1987); and, Solid Urea from the Union of Soviet Socialist Republics; Transfer of the Antidumping Duty Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment, 57 FR 28828 (June 29, 1992). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act.

On May 15, 2002, the Department received a letter from the Embassy of Lithuania requesting a review of Lithuania's status as NME country. On June 5, 2002, the GOL submitted a document supporting its request for market economy status. On August 20, 2002, the Department received a letter from the Embassy of Lithuania requesting that the Department review Lithuania's NME status under a changed circumstances review of the solid urea order against Lithuania. In response to this latter request, the Department initiated an inquiry into Lithuania's status as an NME in the context of a changed circumstances review of the solid urea order against Lithuania pursuant to sections 751(b) and 771(18)(C)(ii) of the Act.

On September 10, 2002, the Department published a Notice in the **Federal Register** requesting comments from the public concerning this matter. See Notice of Initiation of Inquiry Into the Status of Lithuania as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Laws Under a Changed Circumstances Review of the Solid Urea Order Against Lithuania, 67 FR 57393, September 10, 2002. The comments due date was extended to November 8, 2002. Rebuttal comments were due no later than December 9, 2002.

SUMMARY: The Government of Lithuania ("GOL") has implemented comprehensive economic and institutional reforms aimed at establishing a market economy since 1991. See memorandum to Faryar Shirzad from Barbara Mayer *et al, Decision Memorandum Regarding Lithuania's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Law under a Changed Circumstances Review of the Solid Urea Order Against Lithuania* (February 28, 2003). Lithuania's currency, the litas, is fully convertible for trade purposes and effectively convertible for investment purposes. Wages are freely negotiated between employees and management. Workers have the right to unionize and engage in collective bargaining, and employers are free to transfer or fire workers. Foreign direct investment has been encouraged by the GOL in almost all sectors of the economy. Foreign investors compete on a level playing field with domestic investors. Lithuania's efforts toward privatizing the economy have been wide-spread and effective. Seventy-five percent of Lithuania's gross domestic product is in the hands of the private sector with only a few large state-owned enterprises remaining. Land, including land for agricultural use, is under private ownership, and foreigners are permitted to purchase land for non-agricultural use. The GOL has eliminated its previous role as an allocator of resources by completely privatizing the commercial banking sector and eliminating price controls. Additionally, Lithuania has been a member of the World Trade Organization since May 2001 and is slated to join the European Union at the beginning of 2004.

Notwithstanding, several areas of Lithuania's economy require additional reform. Foreign direct investment remains relatively low and the commercial banking sector does not play a significant role in lending to the private sector. In particular, small- and medium sized enterprise growth is currently hampered by the reluctance of banks to provide credit.

Overall, however, Lithuania has made far-reaching changes in the structure of the economy. Therefore, based on the evidence on reforms in Lithuania to date, analyzed as required under section 771(18)(B) of the Act, the Department determines that (1) revocation of Lithuania's NME country status under section 771(18)(A) is warranted, and (2) Lithuania has operated as a market-economy country since January 1, 2003. Lithuania producers and exporters will be subject, therefore, to the antidumping rules applicable to market economies with respect to the analysis of transactions occurring after January 1, 2003. In addition, the U.S. countervailing duty law will apply now to Lithuania where the proceeding at issue involves an adequate period of investigation after this effective date.

Dated: February 27, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–5187 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–447–801]

Final Results of Inquiry Into Estonia's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Laws Under a Changed Circumstances Review of the Solid Urea Order Against Estonia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: George Smolik, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1843.

Background: The Department has treated Estonia as an non-market economy ("NME") country in past antidumping duty investigations and administrative reviews. *See, e.g.*, Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value, 52 FR 19557 (May 26, 1987); and, Solid Urea from the Union of Soviet Socialist Republics—Transfer of the Antidumping Duty Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment, 57 FR 28828 (June 29, 1992). A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C)(i) of the Act.

On July 10, 2003, the Department received a letter from the Republic of Estonia Ministry of Foreign Affairs requesting a review of Estonia's status as a NME country. In the letter, the Government of Estonia submitted documentation supporting its request for market economy status. The Department subsequently received a letter from the Ambassador of Estonia to the United States dated September 20, 2002, requesting a review of Estonia's NME status under a changed circumstances review of the antidumping duty order on solid urea from Estonia. In response to this latter request, the Department initiated a changed circumstances review in order to examine whether Estonia is still a NME country for purposes of the antidumping and countervailing duty laws, pursuant to sections 751(b) and 771(18)(C)(ii) of the Act.

On October 16, 2002, the Department published a Notice in the **Federal Register** requesting comments from the public concerning this matter. See Notice of Initiation of a Changed Circumstances Review of the Antidumping Duty Order on Solid Urea From Estonia, 67 FR 63886, October 16, 2002. Comments were due no later than December 2, 2002 and rebuttal comments were due January 02, 2003. The Government of Estonia ("GOE") submitted comments supporting its request to revoke Estonia's NME status. No comments were received by the Department opposing the GOE's request.

SUMMARY: The GOE has implemented economic and institutional reforms since regaining its independence in 1991. The reforms initiated by the GOE specifically relating to the factors examined by the Department under section 771(18)(B) are comprehensive. See memorandum to Faryar Shirzad from Shauna Lee-Alaia *et al, Decision Memorandum regarding Estonia's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Law under a Changed Circumstances Review of the Solid Urea Order Against Estonia* (February 28, 2003).

The Estonian kroon, established in 1992, is freely convertible for both current and capital account purposes. There are no restrictions on repatriation of earnings. The central bank sets monetary policy and regulates private-sector banks, independent of the government. Wages are freely negotiated between employees and management. The right to unionize and bargain collectively is guaranteed by law. Foreign and domestic investors are treated equally. In fact, Estonia enjoys one of the highest foreign direct investment per capita rates in the region. Privatization of most medium-sized and large industrial enterprises is complete, with 80 percent of gross domestic product in the hands of the private sector. Private property rights are respected in Estonia. Both foreigners and Estonians are able to own agricultural and non-agricultural land. Entrepreneurship is encouraged by the GOE and adequately protected *de jure* and *de facto*. The financial sector, predominately foreign owned and completely privately owned, acts as a financial intermediary between investors and savings. Consumer prices were liberalized in 1992. As of mid 2002, Estonia had closed 26 of 31 chapters of the acquis communitaire and is expected to accede to the European Union in 2004. Estonia has been a member of the World Trade Organization since November 1999.

Overall, Estonia has made far-reaching changes in the structure of its economy resulting in a successful transition to a market economy. Under section 771(18)(B) of the Act, the U.S. Department of Commerce determines that (1) revocation of Estonia's NME country status under section 771(18)(A) is warranted, and (2) Estonia has operated as a market-economy country since January 1, 2003. Estonia producers and exporters will be subject, therefore, to the antidumping rules applicable to market economies with respect to the analysis of transactions occurring after January 1, 2003. In addition, the U.S. countervailing duty law will apply now to Estonia where the proceeding at issue involves an adequate period of investigation after this effective date.

Dated: February 27, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–5188 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Notice of Initiation of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of countervailing duty new shipper review.

SUMMARY: On December 17, 2002, the Department of Commerce received a request to conduct a new shipper review of the countervailing duty order on certain pasta from Italy. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating this new shipper review.

EFFECTIVE DATE: March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Cho or Craig Matney, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798 or (202) 482–1778, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2002, the Department received a request from Pastificio Carmine Russo S.p.A. ("Pastificio Russo"), to conduct a new shipper review of the countervailing duty order on certain pasta from Italy, issued July 24, 1996 (61 FR 38544). This order has a January semi-annual anniversary month. Pastaficio Russo's request was made pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), for new shipper reviews of the countervailing duty order on certain pasta from Italy. On February 24, 2003, the Department received additional submission from Pastificio Russo in which Pastificio Russo provided information to the Department describing how Pastificio Russo was formed as a new corporate entity through a corporate buy-out of Carmine Russo, S.p.A. We will further review this change-in-ownership as part of the new shipper review of the countervailing duty order.

Initiation of Review

In accordance with 19 CFR 351.214(b)(2) of the Department's regulations, Pastificio Russo provided certification that: (1) It did not export subject merchandise to the United States during the period of investigation ("POI"), and (2) that, since the investigation was initiated, it never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation. Also, in accordance with 19 CFR 351.214(b)(2), Pastificio Russo submitted documentation establishing: (1) The date subject merchandise was first entered, or withdrawn from warehouse, for consumption, or if the exporter or producer could not establish the date of first entry, the date on which they first shipped the subject merchandise for export to the United States; (2) the volume of the first and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States. In addition, the company provided a certification stating that it has informed the Government of Italy that it will be required to provide a full response to the Department's countervailing duty questionnaire.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the countervailing duty order on certain pasta from Italy. Pursuant to 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. All provisions of 19 CFR 351.214 will apply to Pastificio Russo throughout the duration of this new shipper review.

In a countervailing duty proceeding, the standard period of review ("POR") in a new shipper review is the same as the period specified in 19 CFR 351.213(e)(2) for an administrative review. Therefore, the POR for this new shipper review is January 1, 2002 through December 31, 2002 and we will review the subsidies received by the company during that period.

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by the company listed above.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: February 21, 2003.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–5186 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022103E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils (Councils), in cooperation with NMFS's Southeast Fisheries Science Center, will hold a series of data workshops as part of the Southeast Data Assessment and Review (SEDAR) process.

DATES: The data workshops will be held in March 2003. See **SUPPLEMENTARY INFORMATION** for specific times and dates.

ADDRESSES: The meeting will be held at the Florida Marine Research Institute, 100 Eighth Avenue, Southeast, St. Petersburg, FL 33701–5095; telephone: 727–896–8626.

Copies of documents are available from the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL, 33619.

FOR FURTHER INFORMATION CONTACT: Phil Steele, National Marine Fisheries Service, Southeast Regional Office, 9721 North Executive Center Drive, St. Petersburg, FL, 33702; telephone 727–570–5305; fax 727–570–5583; e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Councils, in cooperation with NMFS's Southeast Fisheries Science Center, will hold a series of data workshops as part of the SEDAR process. The purpose of these data workshops will be to convene a select panel of scientists, industry representatives, and other knowledgeable persons to review available fishery data of all types on particular species, provide additional data that may not be presently known, and recommend data needs required for future stock assessments. Also, approaches to gather additional needed data will be identified.

Meeting Times

There will be three data workshops for each of the three species that are currently of interest to at least two of the Councils. The first data workshop will consider data for yellow tail snapper, which involves all three Councils. It will be held from 1 p.m. March 3, 2003, to 5 p.m. March 4, 2003. The second data workshop will be for goliath grouper and will also involve all three Councils. It will be held from 8 a.m. from March 5, 2003, to 12 noon on March 6, 2003. The third data workshop will be for vermilion snapper and will involve the Gulf of Mexico and Caribbean Fishery Management Councils. It will be held from 1 p.m. on March 6, 2003, to 5 p.m. March 7, 2003.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 25, 2003.

Dated: February 27, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–5069 Filed 2–27–03; 3:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Statutory Invention Registration.

Form Number(s): PTO/SB/94.

Agency Approval Number: 0651–0036.

Type of Request: Extension of a currently approved collection.

Burden: 29 hours annually.

Number of Respondents: 73 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take 24 minutes (0.4 hours) to submit a Statutory Invention Registration request. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: 35 U.S.C. 157, administered by the USPTO through 37 CFR 1.298–1.297, authorizes the USPTO to publish a statutory invention registration containing the specifications and drawings of a regularly filed application for a patent without examination, providing the applicant meets all the requirements for printing, waives the right to receive a patent on the invention within a certain period of time prescribed by the USPTO, and pays all application, publication, and other processing fees. This collection includes information needed by the USPTO to review and approve and/or deny such requests. The applicant may petition the USPTO to review final refusal to publish or to withdraw a request to publish a statutory invention registration prior to the date of the notice of the intent to publish.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms, the Federal Government, and State, Local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before April 4, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 25, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–5135 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed application entitled: AmeriCorps Promise Fellows 2003 Continuation Request Instructions. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by May 5, 2003.

ADDRESSES: Send comments to the Corporation for National and Community Service, Ms. Shelly Ryan, Program Coordinator, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Ms. Shelly Ryan at (202) 606–5000, ext. 549 or *sryan@cns.gov*.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The Corporation publishes application guidelines and notices of funding availability that include information about the funding and requirements. The application instructions provide the information, instructions and forms that potential applicants need to complete an application to the Corporation for funding.

The Corporation has developed an electronic grants system to meet the requirements of Pub. L. 106–107. As part of the development process, the Corporation is redesigning its application forms and instructions to reflect the electronic system design.

Current Action

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application instructions.

Type of Review: Reinstatement, with change.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Promise Fellows Continuation Request Instructions.

OMB Number: 3045–0073.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 41.

Frequency: Once per year.

Average Time Per Response: 25 hours.

Estimated Total Burden Hours: 1,025 hrs.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 26, 2003.

Nancy Talbot,

Director, Program Planning and Development.

[FR Doc. 03–5068 Filed 3–4–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children With Disabilities

AGENCY: Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS), DOD.

ACTION: Notice.

SUMMARY: Pursuant to Pub. L. 92–463, as amended (5 U.S.C. app. II), the Federal Advisory Committee Act, notice is hereby given that a meeting of the Domestic Advisory Panel on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children with Disabilities is scheduled. The meeting is open to the public.

The purpose of the meeting is to (1) Review the responses to the panel's recommendations from its December 2002 meeting; (2) review and comment on data and information provided by Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS); and (3) establish subcommittees as necessary.

DATES: April 29–30, 2003 from 8:30 a.m. to 3:30 p.m. each day.

ADDRESSES: The meeting will be held in the District Central Office at Building 855, 855 Stone Street, Camp Lejeune, NC 28547.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Chen, (678) 364–8010.

SUPPLEMENTARY INFORMATION: Persons desiring to attend the meeting or desiring to make oral presentation or submit written statements for consideration by the panel must contact Dr. Cynthia Chen at (678) 364–8010 by April 15, 2003.

Dated: February 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–5064 Filed 3–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests.

DATES: March 20, 2003, from 8 a.m. to 5 p.m., and March 21, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Lodge on the Desert in Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than March 10, 2003.

Dated: February 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–5065 Filed 3–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on March 24, 2003 at Institute for Defense Analyses, Alexandria, VA.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons security.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: February 24, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–5066 Filed 3–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing:

U.S. Patent No. 6,371,384: Aqueous Foam Generating System and Method for Generating Foam Having Long Wet-to-Dry Transition Times.//U.S. Patent No. 6,380,888: Self-Contained, Self-Surveying Differential GPS Base Station and Method of Operating Same.//U.S. Patent No. 6,381,352: Method of Isolating Relevant Subject Matter in an Image.//U.S. Patent No. 6,386,086: Line Charge Sympathetic Detonation Arrestor.//U.S. Patent No. 6,408,847: Rebreather System That Supplies Fresh Make-Up Gas According to a User's Respiratory Minute Volume.//U.S. Patent No. 6,420,803: System for Improving Vehicle Safety in Crash Situations.//U.S. Patent No. 6,421,469: Image Data Manipulation for Improved Image Visualization and Analysis.//U.S. Patent No. 6,422,170: Hydrofoil Angular Alignment Tool.//U.S. Patent No. 6,431,508: Adaptable and Universal System for Attachments.//U.S. Patent No. 6,445,647: Wideband-to-Narrowband Conversion Method and Apparatus.//U.S. Patent No. 6,447,115: Dive Mask With Integrated Monitoring System.//U.S. Patent No. 6,449,566: Acoustic Scattering Measurement and Processing for Determining Variances in Multiple Features.//U.S. Patent No. 6,463,925: Hot Water Heater for Diver Using Hydrogen Catalytic Reactions.// U.S. Patent No. 6,463,942: Apparatus for Confined Underwater Cryogenic Surface Preparation.//U.S. Patent No. 6,468,358: Confined Underwater Cryogenic Surface Preparation.//U.S. Patent No. 6,470,246: Method for Controlling Lateral Position of an Underwater Towed Body.//U.S. Patent No. 6,470,805: Fire Retardant Bio-Friendly Practice Munition.//U.S. Patent No. 6,471,366: Depth-Compensated Underwater Light.//U.S. Patent No. 6,473,364: High Frequency Acoustic Float for the Versatile Mine System.//U.S. Patent No. 6,476,610: Magnetic Anomaly Sensing System and Methods for Maneuverable Sensing Platforms.//U.S. Patent No. 6,484,660: Underwater Nuclear Material Reconnaissance System.//U.S. Patent No. 6,494,035: Towing Rocket Motor Assembly.//U.S. Patent No. 6,503,115: Flexible Buoy Assembly.//U.S. Patent No. 6,505,574: Vertical Motion Compensation for a Crane's Load.//

ADDRESSES: Requests for copies of the patents cited should be directed to Coastal Systems Station, Dahlgren Division, NSWC, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001, telephone (850) 234–4646.

Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: February 27, 2003.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–5126 Filed 3–4–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

The following patents are available for licensing: U.S. Patent No. 5,880,552: Diamond or Diamond Like Carbon Coated Chemical Sensors and a Method of Making Same, Navy Case No. 77,845.//U.S. Patent No. 6,208,752: System for Eliminating or Reducing Exemplar Effects in Multispectral or Hyperspectral Sensors, Navy Case No. 78,735.//U.S. Patent 6,320,295: Diamond or Diamond Like Carbon Coated Chemical Sensors and a Method of Making Same, Navy Case No. 79,589//U.S. Patent No. 6,336,368: Method and Apparatus for Energy Efficient Tracking of Resonant Devices, Navy Case No. 79,877.//U.S. Patent Application Serial No. 09/433,367: Hyperspectral Visualization Extensible Workbench (Hyview), Navy Case No. 79,087.//U.S. Patent Application Serial No. 09/492,071: Fabrication of Patternable Electrically Conductive Thin Films for Chemiresistor Chemical Sensor Applications with Layer Evaporation Technique, Navy Case No. 79,708.//U.S. Patent Application Serial No. 10/080,403: Functionalized Small Molecules for Sensor Applications, Navy Case No. 80,053.//U.S. Patent Application Serial No. 10/046,298: Novel Chemoselective Dendritic Polymers for Chemical Sensor Applications, Navy Case No. 80,055.// U.S. Patent Application Serial No. 09/895,292: Linear and Branched Chemoselective Carbosilanes and Polysilanes for Chemical Sensor Applications, Navy Case No. 80,056.// U.S. Patent Application Serial No. 09/895,293: Linear and Branched Chemoselective Poly (siloxane)s for Chemical Sensor Applications, Navy Case No. 80,123.//U.S. Patent Application Serial No. 10/091,024: Hyperbranched Chemoselective Silicon-Based Polymers for Chemical Sensor Applications, Navy Case No. 83,517.// Navy Case No. 82,971: Device and Method for Pneumatic Gas Sampling for Gas Sensors.//Navy Case No. 83,418: Fabrication of Conductive/Non-Conductive Nanocomposites by Laser Evaporation.//Navy Case No. 84,285: Hyperbranched Chemoselective Silicon-Based Polymers for Chemical Sensor Applications.//Navy Case No. 84,508: A Miniature Biocollector and Processing Technique for Biological Agent Detection Applications.

ADDRESSES: Requests for copies of the patents or inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: February 27, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocote General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–5127 Filed 3–4–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

[Number DE–PS07–03ID14489]

Plant Wide Assessments

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is soliciting the submission of proposals for plant-wide assessments. A plant-wide assessment is a systematic approach to assess plant energy efficiency and identify opportunities for energy reduction in industrial facilities. For a relatively low initial investment, prior experience has shown that companies can identify very significant reductions in annual energy costs from a combination of energy efficiency and productivity improvements and waste reductions. The objective of this solicitation is to continue partnership with energy intensive industries to identify new assessment approaches and methodologies that will lead to substantial improvements in industrial energy efficiency, enhanced competitiveness and reduced environmental impacts.

DATES: The issuance date of Solicitation Number DE–PS07–03ID14489 will be on or about February 28, 2003. The deadline for receipt of applications will be approximately on May 29, 2003.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov.* The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov*

FOR FURTHER INFORMATION CONTACT: Trudy Harmel, Contract Specialist, *harmelta@id.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE anticipates making up to 10 cooperative agreement awards depending on availability of funds. Individual awards will not exceed $100,000 of DOE funding, and the project timeframe will be no more than one year. The DOE Industrial Technologies Program requires a minimum of fifty per cent (50%) non-federal cost-share for this solicitation to ensure industrial involvement in each of the proposals. There will be no waivers of this cost share requirement. The statutory authority for this program is the U.S. Department of Energy Organization Act (Pub. L. 95–91). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on February 26, 2003.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 03–5150 Filed 3–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; DOE/Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Thursday, March 13, 2003, 8:30 a.m. to 5:30 p.m.; Friday, March 14, 2003, 8:30 a.m. to 1 p.m.

ADDRESSES: Hamilton Crowne Plaza Hotel, 14th and K Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Melea Baker, Office of Advanced Scientific Computing Research; SC–30/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone (301) 903–7486 (E-mail: *Melea.Baker@science.doe.gov*).

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the advanced scientific computing research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, March 13, 2003

Introduction
Remarks from the Director, Office of Science
Advanced Scientific Computing Research Program Budget Discussion
Briefings on Major Facilities by Laboratory Personnel
Public Comment

Friday, March 14, 2003

Scientific Discovery through Advanced Computing Update and Project Report
Subcommittee Update on Charge to Office of Science Advisory Committees Regarding New/Upgraded Facilities
Report on High Performance Computing Joint Research Activities with Other Agencies
New Business
Advisory Committee Open Discussion of Issues
Public Comment

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Melea Baker via FAX at 301–903–4846 or via e-mail *(Melea.Baker@science.doe.gov).* You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on February 27, 2003.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 03–5147 Filed 3–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Thursday, March 20, 2003 5:30 p.m.—9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m. Informal Discussion
6 p.m. Call to Order; Introductions; Approve February Minutes; Review Agenda
6:10 p.m. DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m. Ex-officio Comments
6:40 p.m. Public Comments and Questions
6:50 p.m. Review of Action Items
7:05 p.m. Break
7:15 p.m. Presentation
- Information to be Presented at Chairs Meeting
- Sewer Rehabilitation Update

8 p.m. Public Comments and Questions
8:10 p.m. Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:40 p.m. Administrative Issues
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on February 27, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–5148 Filed 3–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Tuesday, March 18, 2003, 8 a.m.–6 p.m.; Wednesday, March 19, 2003, 8 a.m.–5 p.m.

Public participation sessions will be held on: Tuesday, March 18, 2003, 12:15–12:30 p.m, 5:45–6 p.m.; Wednesday, March 19, 2003, 11:45–12 noon, 4–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Red Lion Hotel in the Teton/Bonneville Rooms, 475 River Parkway, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet Home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/.*)

- The Environmental Management Program and the implementation of the Performance Management Plan
- The budget allocation for the Environmental Management Program for Fiscal Year 2003
- Budget priorities for the Fiscal Year 2004 environmental management budget request
- Grouting and plans for use of grouting at the INEEL
- Environmental permitting for the Idaho Nuclear Technology and Engineering Center
- Resolution of the Notice of Violation
- High-level radioactive waste tank closure activities
- Resolution of the lawsuit involving waste incidental to reprocessing (if possible)
- Science and technology strategies for the Water Integration Project
- Proposed LaSalle Nuclear Fuel Project and the ramifications for the INEEL
- Plans for deactivation and decommissioning surplus facilities at the INEEL
- Final INEEL Strategic Plan and the results of the Laboratory Consolidation Study
- New Office of Legacy Management and how the reorganization will affect the INEEL
- Follow-up activities related to the Site Specific Advisory Board Transuranic Waste Workshop
- Preparations for the upcoming Site Specific Advisory Board Chairs Meeting

- Discussion of the role of the CAB with the site Manager

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or tele-phone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Penny Pink, INEEL CAB Administrator, North Wind Environmental, Inc., PO Box 51174, Idaho Falls, ID 83405 or by calling (208) 528–8718.

Issued at Washington, DC, on February 27, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–5149 Filed 3–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–60–000]

Aquila Merchant Services, Inc.; Notice of Filing

February 27, 2003.

Take notice that on February 24, 2003, Aquila Merchant Services, Inc. (AMS) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33. AMS seeks authorization and approval to assign a call option agreement to Duke Energy Trading and Marketing, L.L.C. pursuant to an assignment agreement dated February 17, 2003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5109 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–52–000]

Colorado Interstate Gas Company; Notice of Application

February 27, 2003.

Take notice that on February 19, 2003, Colorado Interstate Gas Company (CIG), PO Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP03–52–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing the construction, ownership and operation of facilities to enhance the natural gas storage injection capabilities of its Fort Morgan Gas Storage Field (Fort Morgan) located in Morgan County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

CIG states that the proposed enhancement is necessary to satisfy the end-of-season storage field injection needs, and to provide operational flexibility to respond to customers' changing summertime usage patterns of Fort Morgan.

CIG states that it is proposing to construct and operate a 1,151 horsepower (ISO) compressor unit that will be used in staged-compression with existing compressor units. Such a unit, according to CIG, will increase the installed site horsepower to 6,551 (ISO), and the end-of-season injection capabilities by a minimum of 30 MMcf/d, with actual injection capability depending upon system operating conditions. CIG states that no increase in withdrawal capacity or total storage capacity of Fort Morgan will accompany the proposed compression addition.

CIG states that the total cost of the proposed facilities is estimated to be $2,928,500 and that CIG states that it will assume the costs associated with the proposed facilities until the next general rate case. CIG also states it is proposing rolled-in treatment for the proposed project.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Colorado Interstate Gas Company, P. O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3788 or fax (719) 667–7534; or to Judy A. Heineman, Vice President and General Counsel, Colorado Interstate Gas Company, PO Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–4829 or fax (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5108 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–296–000]

Flying Cloud Power Partners, LLC; Notice of Issuance of Order

February 27, 2003.

Flying Cloud Power Partners, LLC (Flying Cloud) filed an application requesting authority to transact at market-based rates along with the accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates and for the resale of transmission rights. Flying Cloud also requested waiver of various Commission regulations. In particular, Flying Cloud requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Flying Cloud.

On January 24, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Flying Cloud should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 10, 2003.

Absent a request to be heard in opposition by the deadline above, Flying Cloud is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Flying Cloud, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Flying Cloud's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5112 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–51–000]

North Hartland LLC; Notice of Filing

February 27, 2003.

Take notice that on February 26, 2003, North Hartland LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) a Request for Declaratory Order to Resolve a Controversy of Obligation to Pay Interconnection Cost. North Hartland LLC objects to the use charge. It argues that Central Vermont, the interconnecting utility, is not entitled to a 10% after tax rate of return on the project's investment in interconnection facilities, and the calculated use charge is fatally flawed.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5110 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–52–000]

Public Service Company of New Mexico Complainant, v. Arizona Public Service Company Respondent; Notice of Complaint

February 27, 2003.

Take notice that on February 26, 2003, Public Service Company of New Mexico (PNM), 2401 Aztec Road, NE., Albuquerque, New Mexico, 87107, filed with the Federal Energy Regulatory Commission a complaint against Arizona Public Service Company (APS) regarding APS' rejection of PNM's attempts to exercise rights of first refusal related to two separate long-term point-to-point transmission service agreements on APS' transmission system.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: March 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5111 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7458–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by Juanita Stewart and the Louisiana Environmental Action Network, represented by the Tulane Environmental Law Clinic: *Stewart* v. *Whitman*, No. 02–1030–C–M1 (M.D. La.). On or about October 31, 2002, plaintiffs filed a complaint seeking to compel Christine Todd Whitman, in her official capacity as Administrator of the EPA, to respond to an administrative petition to object to a state operating permit issued by the Louisiana Department of Environmental Quality ("LDEQ"). Under the terms of the proposed settlement agreement, EPA will respond to the petition by May 9, 2003. Within thirty days of EPA's response to the petition, plaintiffs will file a motion for voluntary dismissal of the complaint, with prejudice to its refiling.

DATES: Written comments on the proposed settlement agreement must be received by April 4, 2003.

ADDRESSES: Written comments should be sent to Cecilia Kim, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed settlement are available from Phyllis J. Cochran, (202) 564–7606.

SUPPLEMENTARY INFORMATION: The Clean Air Act affords EPA a 45-day period to review and object to, as appropriate, Title V operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this 45-day review period to object to state operating permits if EPA has not done so. Plaintiffs filed an administrative petition to object to a state operating permit issued by LDEQ to the Georgia-Pacific Corporation for a pulp and paper mill near Port Hudson, East Baton Rouge, Louisiana. The lawsuit alleges that EPA has a nondiscretionary duty to grant or deny the petition within 60 days, and seeks to compel EPA to respond to the petition.

The settlement agreement provides that, within ten days after execution by the parties, the parties will file a joint motion with the court requesting the lawsuit be stayed. Plaintiffs may request the court to lift the stay of the lawsuit, and establish a schedule for further proceedings if EPA fails to sign a response to the petition by May 9, 2003.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: February 24, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 03–5191 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0334; FRL–7296–3]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group will hold a one-day meeting on March 19, 2003. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Wednesday, March 19, 2003, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), Environmental Protection Agency, Crystal Mall #2, Room 1126 (Fishbowl), 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Michael R. Barrett, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6391; fax number: (703) 308–6309; e-mail address: *barrett.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal, Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0334. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

On a quarterly interval, the Exposure Modeling Work Group (EMWG) meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. Tentative Agenda

This section provides tentative agenda topics for the one-day meeting:

1. Welcome and introductions.
2. Old action items.
3. Brief updates.
i. EU activities.
ii. USDA/EXAMS Model.
iii. Rice modeling.
iv. WARP model.
v. Spray Drift Task Force Progress.
vi. Temperature routine question in PRZM.
vii. Using the entire distribution to estimate drinking water exposure.
viii. EXAMINER.
ix. PLUS.
4. Major topics.
i. EFED Water Quality Priorities.
ii. PRZM/EXAMS EFED Shell Update.
iii. PE QA/QC Issues Update.
iv. Water Erosion Prediction Project (WEPP) Model.
v. Prospective ground water database.
vi. Pesticide behavior in thatch.
vii. Pesticide runoff simulations on turf.
viii. History of modeling.
5. Wrap-up and action items.

List of Subjects

Environmental protection, Pesticides, Pests, Modeling.

Dated: February 21, 2003.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 03–5035 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0014; FRL–7288–4]

Norflurazon; Completion of Comment Period for Tolerance Reassessment Progress and Interim Risk Management Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act, concludes the comment period for the Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for norflurazon. No comments were submitted.

FOR FURTHER INFORMATION CONTACT: Beth Edwards, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5400; fax number: (703) 308–8041; e-mail address: *edwards.beth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insectidice, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug,

and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0014. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m.; Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

This notice constitutes and announces the closing of the comment period for the norflurazon TRED. This decision has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are using to involve the public in the reassessment of pesticide tolerances under FFDCA. EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard of the new law.

In reviewing these tolerances, the Agency must consider, among other things, aggregate risks from non-occupational sources of pesticide exposure, whether there is increased susceptibility to infants and children, and the cumulative effects of pesticides with a common mechanism of toxicity. The tolerances are considered reassessed once the safety finding has been made that aggregate risks are not of concern. A reregistration eligibility decision (RED) was completed for norflurazon in June 1996, prior to FQPA enactment, and therefore, needed an updated assessment to consider the provisions of the Act.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this TRED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient (a.i.), "the Administrator shall determine whether pesticides containing such a.i. are eligible for reregistration," and either reregister products or take "other appropriate regulatory action."

List of Subjects

Environmental protection, Pesticide tolerances.

Dated: January 17, 2003.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–5033 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0029; FRL–7290–4]

Benomyl; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a cancellation order requested by Hi-Yield Chemical Company for their registration of the pesticide product containing methyl 1-(butylcarbamoyl)-2-benzimidazole carbamate, or benomyl, and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a September 9, 2002, notice of receipt of request for the above mentioned voluntary registration cancellation. In that notice, EPA requested comments on the proposed cancellation and indicated that it would issue an order confirming the cancellation. Any distribution, sale, or use of canceled benomyl products is permitted only in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellation is effective March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: *fuller.demson@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use benomyl products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0029. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at *http://www.epa.gov/pesticides/reregistration/status.htm.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

II. Receipt of Request to Cancel Registrations

A. Background

Benomyl is a benzimidazole carbamate and systemic foliar fungicide which was registered for use on a variety of fruit and vegetable crops. The technical registrant, E.I. du Pont de Nemours & Company (DuPont), met with the Agency on April 18, 2001, and requested a voluntary cancellation of all their registrations for products containing benomyl. DuPont stated that this decision was based on business reasons. Following a public comment period on the proposed cancellations and consideration of comments received, the cancellation order was published in the **Federal Register** and became effective on August 8, 2001 (66 FR 41589) (FRL–6794–9).

In addition, the Agency also received letters from the following registrants requesting voluntary cancellation of all their products containing benomyl: American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc.

In their letter dated July 31, 2002, Hi-Yield (represented by their agent, Brazos Associates Inc.) stated that they no longer manufacture or distribute the end use product that contained benomyl and there are no inventories of remaining stocks.

Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced receipt of the request from Hi-Yield Chemical Company in a **Federal Register** notice published on September 9, 2002 (67 FR 57726) (FRL–7197–5). In that notice, EPA provided a 30–day comment period. The registrant requested the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(c), and EPA granted this request. No public comments were received during the 30–day comment period.

B. Requests for Voluntary Cancellation of Products

Pursuant to FIFRA section 6(f)(1)(A), Hi-Yield Chemical Company has submitted a request for voluntary cancellation of registration for their product containing benomyl. The registration for which the cancellation was requested is identified in the following table.

PRODUCT REGISTRATION CANCELLATION REQUEST

Company	Registration No.	Product
Hi-Yield Chemical Company	34911–27	Hi-Yield Benomyl

III. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA is approving the requested cancellation. Accordingly, EPA orders that the registration identified in the table in Unit II.B., is hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in the table above in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this document will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of cancellation.

A. Distribution or Sale by the Registrant

Cancellation orders generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. However, the registrant has stated that they no longer manufacture or distribute end use products that contain benomyl.

In addition, the distribution of benomyl products in the channels of trade ended on December 31, 2002, prohibiting the sale of these products. Therefore, the distribution or sale of existing stocks by the registrant is not lawful under FIFRA after March 5, 2003 except for the purposes of returns and shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

B. Distribution and Sale by Other Persons

Sale or distribution by any person of existing stocks of the product identified in the table in Unit II.B. is not lawful under FIFRA after March 5, 2003. The legal sale and distribution of benomyl products ended on December 31, 2002.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 6, 2003.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–4777 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0009; FRL–7291–2]

Pyrimethanil; Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0009, must be received on or before April 4, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP–2003–0009. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0009. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID number OPP–2003–0009. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–20032–0009.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0009. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer Corporation

2F6439 and 9E6054

EPA has received pesticide petitions (2F6439) from Bayer Crop Science, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.518 by establishing tolerances for residues of pyrimethanil (4,6-dimethyl-*N*-phenyl-2-pyrimidinamine) in or on the Raw Agricultural Commodities (RAC): Tree nut, nutmeat, group at 0.25 parts per million (ppm), tree nut, hulls, group at 12 ppm, fruit, pome, group at 0.20 ppm, apple, wet pomace at 0.75 ppm, fruit, stone, group at 3.0 ppm, grape at 3.0 ppm, grape, dry pomace at 20 ppm, grape, wet pomace at 7.0 ppm, grape, raisin waste at 50 ppm, grape, raisin at 5.0 ppm, vegetable, bulb, group at 2.0 ppm, vegetable, tuberous and corm, subgroup at 0.05 ppm, strawberry at 3.0 ppm, tomato at 0.50 ppm, wheat, rotational at 0.05 ppm, cattle, meat at 0.1 ppm, cattle, meat byproducts at 0.1 ppm, and milk at 0.03 ppm. EPA also received a pesticide petition (9E6054) from AgrEvo USA Company, now owned by Bayer Crop Science, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.518 by establishing a tolerance for residues of pyrimethanil in or on the RAC: Banana at 0.10 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolic profile of pyrimethanil has been investigated following application to five different crops (apple, carrots, grapes, lettuce and tomatoes) and is well understood. In plants, pyrimethanil is the only significant residue ranging from essentially all of the Total Radioactive Residues (TRR) in carrots and tomatoes to 44% in lettuce. Limited metabolism of pyrimethanil occurs with minor amounts (less than 10%) of the phenyl and pyrimidyl hydroxylated metabolites (AE C614276, AE C614277, AE C614278, and AE C621312) being released after acid hydrolysis. Analysis of the foliage from apples and carrots confirmed that the metabolism of pyrimethanil in plants proceeded primarily via hydroxylation of the aromatic ring structures as well as the methyl groups.

2. *Analytical method.* The plant metabolism studies indicated that analysis for the parent compound, pyrimethanil was sufficient to enable the assessment of the relevant residues in crop commodities. Following a dichloromethane surface wash and extraction of the crop matrix and sample cleanup, the analytical enforcement method relies on the use of NMR, High Performance Liquid Chromotography (HPLC), or Thin Layer Chromotography (TLC) for determination of the residue levels and metabolite identification. These methods allow detection and measurement of residues in or on agricultural commodities at or above the proposed tolerance level.

3. *Magnitude of residues.* Magnitude of residue trials were conducted for pyrimethanil on almonds, apples, apricots, grapes, onions, peaches, pears, plums, potatoes, strawberries, and tomatoes. Trials were conducted in the various required regions across the United States. Samples were collected at harvest according to good agricultural practices. The preharvest interval (PHI) ranged from 1–day to 72 days depending on the crop. Samples harvested at maturity were analyzed with a method having a level of quantitation (LOQ) of 0.05 ppm pyrimethanil. Residues in the RAC samples (range, maximum and average) are given below.

i. *Tree nuts (almonds, pistachios, beechnuts, chestnuts, and chinquapins).* Six trials were conducted on almonds during 2001. An end use formulation containing 400 g/l or 3.34 lbs active ingredient/gallon of pyrimethanil was applied three times as a broadcast application at a maximum rate of 0.70 lbs active ingredient/acre. Applications were made approximately every 7 days. In almond hull RAC samples collected, the maximum residues were 10.2 ppm for pyrimethanil at a 30 ± 1–day preharvest interval. In almond nutmeat RAC samples collected, the maximum residues were 0.135 ppm for pyrimethanil at a 30 ± 1–day preharvest interval. According to Agency standard operating procedure 2000.1, residue trials on almonds will support the use of this product on pistachios, beechnuts, chestnuts and chinquapins.

ii. *Bulb vegetables (onions, green onions, dry bulb onions, welsh onions, garlic, great-headed garlic, leeks, and shallots).* Dry bulb and green onions were treated with pyrimethanil, a 400 g/l or 3.34 lbs active ingredient/gallon end use product. Nine trials were established for the study, three in California, two in Texas and one each in, New York, Michigan, Colorado, and Oregon. Each trial was conducted under typical cropping practices for its location. Pyrimethanil was applied to onion plants three times prior to harvest. Applications were made at a nominal rate of 0.71 lb active ingredient/acre, with 7 days between applications, the last application being made 7 days prior to harvest. A control (non-treated) plot was included in each trial. Mean pyrimethanil residue levels found in or on the non-decline trial samples ranged from 0.10 ppm to <LOQ for dry bulb onions and 1.62 ppm to 0.26 ppm for green onions. Pyrimethanil residues declined rapidly in dry bulb onions, with residues of 0.168 at 0 day PHI, 0.074 ppm at 7–day PHI (normal harvest), and <LOQ at 10–day PHI and thereafter. These trials will support registrations on the entire bulb vegetable crop groups.

iii. *Grapes.* Grapes were treated with pyrimethanil, a 400 g/l or 3.34 lb active ingredient/gallon formulation. Twelve RAC residue trials were established for the study, 8 in California, 2 in New York, and 1 each in Washington and Oregon. Pyrimethanil was applied to the grape vines two times, once at 35 days and once at 7 days prior to harvest. Applications were made at a nominal rate of 0.71 lb active ingredient/acre. Mean pyrimethanil residue levels found in or on the grapes sampled at 7 days PHI ranged from 0.13 ppm to 0.47 ppm. At the decline trial, mean pyrimethanil residues declined from 0.51 ppm at 1–day PHI to 0.20 ppm at 28 days PHI. Ground applications of pyrimethanil at a nominal rate of 1 kg active ingredient/hectare at flowering, grape closure, color change and 21 days prior to harvest results in residues of 0.51 ppm in the whole fruit. Processing of the fruit into

commodities results in residues of 0.34 ppm in the juice, 1.18 ppm in wet pomace, 3.31 ppm in dry pomace, 0.80 ppm in raisins, and 9.25 ppm in raisin waste. No concentration of the residue occurs in the juice, a 2.3 fold concentration occurs in the wet pomace, a 6.5 fold concentration occurs in the dry pomace, a 1.6 fold concentration occurs in the raisins, and an 18.1 fold concentration occurs in raisin waste.

iv. *Stone fruits (apricots, nectarines, peaches, plums, chickasaw plums, damson plums, japanese plums, plumcots, and prunes) (except cherries).* Five RAC residue trials were established on apricots, four in California, and one in Washington. Pyrimethanil was applied to the apricot trees three times prior to harvest. Applications were made at a nominal rate of 0.71 lb active ingredient/acre, approximately 69, 9, and 2 days prior to normal harvest. Mean pyrimethanil residue levels found in or on the apricot fruit from the non-decline trials ranged from 0.60 ppm to 1.66 ppm. Mean pyrimethanil residue levels found in or on the fruit from the decline trial ranged, from 1.39 ppm at 0 day PHI to 0.74 ppm at 21 days PHI. In addition, RAC residue trials were established on peaches in Pennsylvania, Georgia, South Carolina, North Carolina, Virginia, Arkansas, Michigan, Oklahoma, and California (four trials). Pyrimethanil was applied to the peach trees times times prior to harvest. Applications were made at a nominal rate of 0.71 lb ai/acre, 69, 9, and 2 days prior to normal harvest. Mean pyrimethanil residue levels found in or on the peach fruit from the non-decline trials ranged from 0.38 ppm to 1.63 ppm. At the decline trial mean pyrimethanil residue levels found in or on the peach fruit ranged from 2.61 ppm at 2 days to 0.95 at 21 days PHI. The apricot and peach trials are sufficient to support registrations on all stone fruits with the exception of cherries.

v. *Pome fruit (apples, pears, oriental pears, crabapples, loquats, mayhew, and quince).* Twelve trials were established for this study, 3 in Washington, 2 in New York, and 1 each in Pennsylvania, Virginia, Michigan, Ohio, Colorado, California, and Idaho. Pyrimethanil was applied to the apple trees four times prior to harvest. Applications were made at a nominal rate of 0.40 lb ai, with 7 days between applications. Mean pyrimethanil residue levels found in or on the apple fruit ranged from less than the 0.05 ppm LOQ to 0.16 ppm. No decline of the residue was seen between 65 and 93 days PHI at the decline trial. A single trial was established in Washington as a processing study. Pyrimethanil was applied to apple trees four times prior to harvest. Applications were made at a nominal rate of 2.0 lb ai/acre, with 7 days between applications. This rate is approximately five times the proposed label application rate. Mean pyrimethanil residue levels found in or on the samples were: Whole apple fruit 0.17 ppm, wet pomace 0.69 ppm, and juice 0.06 ppm. No pyrimethanil-derived residue concentrated from the whole fruit into the apple juice. However, the pyrimethanil residues concentrated from the whole apples into the wet pomace by a factor of 4.

vi. *Tuberous and corm vegetables (potatoes, sweet potatoes, arracacha, arrowroot, artichokes, Chinese artichokes, Jerusalem artichokes, edible canna, cassava, bitter cassava, sweet cassava, chayote root, chufa, dasheen, ginger, leren, tanier, tumeric, yam bean, true yam).* Sixteen trials were established for the study, 4 in Idaho, 2 in Washington, and 1 each in New York, Pennsylvania, North Carolina, Wisconsin, Ohio, Michigan, Minnesota, California, Florida, and Colorado. Pyrimethanil was applied to potato plants five times prior to harvest. Applications were made at a nominal rate of 0.27 lb active ingredient/acre, with 7 days between applications. No pyrimethanil residues at or above the 0.05 ppm LQO of the analytical method were found in or on any samples in the study. Thus, no decline could be determined from the samples taken from the decline trials. A single trial was established in Idaho for the purposes of conducting a potato processing study. Pyrimethanil was applied to the potato plants five times prior to harvest. Applications were made at a nominal rate of 1.34 lb active ingredient/acre, with 7 days between applications. This rate is approximately five times the proposed label application rate. It is also the theoretical concentration factor for potatoes. No pyrimethanil-derived residues (0.05 ppm LOQ) were detected in or on the whole tuber samples. Therefore, it can be stated that no concentration of residues would occur into the processed fractions. For this reason, the processed fractions were not analyzed. According to the crop subgrouping 1C, potatoes will support the use of this product on additional minor crops mentioned above.

vii. *Strawberries.* Eight trials were established for the strawberries RAC residue study. Three trials in California, and one each in Pennsylvania, Wisconsin, Oregon, New Jersey, and Florida. Pyrimethanil was applied to strawberry plants three times prior to harvest. Applications were made at a nominal rate of 0.80 kg active ingredient/hectare (approximately 0.71 lb active ingredient/acre) with 7 days between applications, the last application being made 1–day prior to harvest. Mean pyrimethanil residue levels found in or on the non-decline trial samples ranged from 0.36 ppm (3 days PHI) to 2.33 ppm (1–day PHI). Mean pyrimethanil residue levels in or on samples from the decline trial ranged from 1.33 ppm (1 day PHI) to 0.19 ppm (21 days PHI).

viii. *Tomatoes.* Sixteen trials were established for the tomato RAC residue study, 11 in California, 2 in Florida, and 1 each in Pennsylvania, North Carolina, and Ohio. Pyrimethanil was applied to tomato plants five times prior to harvest, with 7 days between applications. Applications were made at a nominal rate of 0.27 lb active ingredient/acre, the last application being made 1 day prior to harvest. Mean pyrimethanil residue levels found in or on samples from the non-decline trials ranged from less than the 0.05 ppm LOQ of the analytical method to 0.37 ppm. Mean pyrimethanil residue levels found in or on samples from the decline trials ranged from less than the 0.05 ppm LOQI of the analytical method to 0.37 ppm. One trial was conducted in California for the purposes of establishing tomato processing commodities residues. Pyrimethanil was applied to the tomato plants five times prior to harvest. Applications were made at a nominal rate of 1.34 lbs ai/acre, with 7 days between applications, the last application being made 1–day prior to harvest. The mean uncorrected pyrimethanil derived residue in or on the unwashed tomatoes from the trial was 1.35 ppm. The mean uncorrected pyrimethanil derived residue in the tomato puree was 0.45 ppm and 1.57 ppm in the tomato paste. Concentration factors relative to the unwashed tomatoes were 0.33 and 1.16 for the puree and paste respectively. These factors are significantly less than the theoretical concentration factors of 1.4 for the puree and 5.5 for the paste.

ix. *Magnitude of residue trials were conducted on bananas using aerial application equipment that would result in the highest possible residues.* Residues in whole fruit, edible pulp and peel fractions from bagged banana samples were all below the method LOQ. In one unbagged sample, a residue of 0.09 ppm was reported. The proposed tolerance of 0.10 ppm will adequately cover any potential residues in/on banana.

B. Toxicological Profile

1. *Acute toxicity.* Pyrimethanil is of low acute toxicity placing the active

ingredient in Toxicity Category II, III and IV. Pyrimethanil is non-irritating to the eyes and skin and is not a skin sensitizer.

2. *Genotoxicity.* Pyrimethanil is not mutagenic or genotoxic in any assay in either the presence or absence of metabolic activation.

3. *Reproductive and developmental toxicity.* Pyrimethanil is not a developmental or reproductive toxicant.

i. *Teratology—Rat.* Thirty Sprague Dawley rats/group received doses of 0, 7, 85, 1,000 milligrams/kilogram (mg/kg) of pyrimethanil by gavage from gestation days 6–15. At the highest dose tested (HDT), reduced maternal body weight gain was observed during gestation days 6–15, along with a slight but statistically significant decrease in food consumption, hair loss, hunched posture, slight emaciation, and slightly reduced mean fetal body weight. The maternal and developmental no observed adverse effect level (NOAEL) was 85 mg/kg.

ii. *Teratology—Rabbit.* Groups of at least 18 time-mated New Zealand white rabbits received oral gavage doses of 0, 7, 45 or 300 mg/kg/day pyrimethanil over gestation days 7–19. At the HDT, there was a decrease in body weight gain, production of feces and food consumption. Three females were euthanized due to severe emaciation. The HDT, 300 mg/kg/day exceeded the maternal maximum tolerated dose (MTD). The maternal NOAEL was 45 mg/kg/day due to reduced fecal production in 1/3 of the animals. The HDT resulted in reduced mean fetal body weight, increased incidence of runts, delayed skeletal ossification and incidence of fetuses with 13 thoracic vertebrae and ribs. The maternal NOAEL was 7 mg/kg/day. The developmental NOAEL was 45 mg/kg/day.

iii. *Two-generation reproduction—Rat.* Three groups of 30 Sprague-Dawley rats per sex received dietary exposure to pyrimethanil at levels of 0, 1.7, 20.9 or 266.7 mg/kg/day. In the parental generation at the highest dose tested there was a statistically significant decrease in mean body weight gain in both sexes. Mean pup weights, observed on postnatal day (PND1) through weaning, were reduced, though were within the range of historical controls. In the F1 generation at the HDT, mean body weights and mean food consumption were reduced. Though the mean score for the combined sexes was the same as the controls, a marginally different air-righting reflex at PND11 associated with reduced body weight was seen in high dose male pups. The NOAEL for maternal and developmental toxicity was 20.9 mg/kg/day. The reproductive NOAEL was 266.7 mg/kg/day.

4. *Subchronic toxicity—28–day dietary—*i. *Rat.* Five Sprague-Dawley rats/sex/group received dietary exposure to pyrimethanil for 28 days at 0, 844, 1,161, 1,500, and 2,710 mg/kg/day. All doses exceeded the maximum tolerated dose. Severe emaciation was observed at all dose levels. Body weight gains and food consumption were reduced. Liver and thyroid histopathology were observed, along with reduced hemoglobin, Maxium Concentration Volume (MCV), and Mean Corpuscular Hematocrit (MCH). Kidney, adrenal and liver weights were altered. No NOEL or NOAEL was achieved.

ii. *90–Day dietary—Rat.* Ten Sprague-Dawley rats/sex/group received pyrimethanil in the diet at dose levels of 0, 5.4–6.8, 54.5–66.7, 545–667 mg/kg/day (males and females, respectively). High dose animals had reduced body weight gain and food consumption, increased urinary protein in males, colored urine (not blood or bilirubin) and minimal hepatocellular hypertrophy. The NOAEL in males was 54.5–66.7 (males and females, respectively) due to colored urine and a low incidence of minimal centrilobular hepatocellular hypertrophy. The NOAEL was 5.4 mg/kg/day (males) – 6.8 mg/kg/day (females).

iii. *28–Day dietary—Mouse.* Five CD-1 mice/sex/group received dietary doses of 0, 167–236, 567–667, 1,960–2,357 mg/kg/day males and females respectively, for 28 days (all the mice in one additional high dose group, 30,000 ppm, died within the first week of the study). At 1,960–2,357 mg/kg/day, animals experienced body weight loss (females), decreased body weight gain during the first 2 weeks (males), a statistically significant decrease in cholesterol, statistically significant decreases in relative liver weights (females), pigmentation of thyroid follicles, urolithiasis, moderate urothelial hyperplasia in urinary bladder, and slight kidney tubular degeneration (females). The NOAEL was 167–236 mg/kg/day.

iv. *90–Day dietary—Mouse.* Twenty CD-1 mice/sex/group received pyrimethanil diet exposure at dose levels of 0, 12–18, 139–203, 1,864–2,545 mg/kg/day males-females for 90 days. At the high dose, animals had decreased body weight and increased food consumption, cholesterol and total bilirubin. High dose females had increased relative liver weights. Histopathology in the high dose animals was found in the kidneys, liver, thyroid, and urinary bladder. High dose males had slight urinary tract tubular dilation and slight to moderate hyperplasia of bladder epithelium. The NOAEL was determined to be 12 mg/kg/day (males) 18 mg/kg/day (females). Based on mild hepatic glycogen depletion, the NOAEL was 139–203 mg/kg/day (males and females, respectively).

v. *90–Day dietary—Dog.* Four beagle dogs/sex/group received pyrimethanil by gavage for 90 days at doses of 0, 6, 80, 1,000 mg/kg/day. The high dose was lowered to 800 mg/kg/day on day 7 due to frequent and consistent vomiting. Decreased body weight, food and water consumption were observed. Males had a significant reduction in phosphate, while females experienced a slight reduction in sodium, anion gap and total protein. At 80 mg/kg/day, infrequent vomiting after dosing and decreased water consumption were observed. After 4 weeks of dosing at 80 mg/kg/day, males had significantly reduced phosphate. The NOEL was 80 mg/kg/day. The NOAEL was 6 mg/kg/day.

vi. *Dermal toxicity evaluation.* No dermal studies have been conducted for pyrimethanil.

5. *Chronic toxicity—*i. *Chronic toxicity—Dog.* Four beagle dogs/sex/group received pyrimethanil by gavage at levels of 0, 2, 30, or 250 mg/kg/day for 12 months. The high dose was reduced from 400 to 250 mg/kg/day on day 8 of treatment due to excessive vomiting during the first week of treatment. At the high dose, there was a decrease in mean body weight gain and mean consumption of food and water. The NOAEL for the study was 30 mg/kg/day, with the high dose of 250 mg/kg/day being the NOAEL.

ii. *Combined chronic toxicity/oncogenicity—Rat.* Seventy Sprague-Dawley rats/sex/group received pyrimethanil by diet at levels of 0, 1.3–1.8, 17–22, 221–291 mg/kg/day (males and females, respectively) for 2 years. At the HDT, body weight gain and food consumption were decreased. Absolute liver weights were increased. Histopathology revealed centrilobular hepatocyte hypertrophy, increased incidence of eosinophilic foci (males), thyroid follicular hyperplasia, hypertrophy and colloid depletion, and the presence of a brown pigment, identified as lipofuscin in thyroid follicular cell epithelium. There was a statistically significant, dose-dependent increase in the incidence of benign thyroid follicular cell adenomas. There was no increased incidence in any malignant tumor or increase in tumor multiplicity as a result of daily dietary ingestion of pyrimethanil at any dose level. The results of special studies, discussed below, demonstrate that the benign thyroid tumors are likely a secondary result of a disruption of thyroid-pituitary homeostasis, a well-known, threshold-mediated mechanism. The NOAEL was 17 mg/kg/day (males) and 22 mg/kg/day (females).

iii. *Oncogenicity—Mouse.* Fifty–one CD-1 mice/sex/group received pyrimethanil by diet at 0, 16, 160, and 1,600 ppm (corresponding to 0, 2–2.5, 20–24.9, 210.9–253.8 mg/kg/day in males and females, respectively). There was an increase in the number of high dose male deaths caused by urogenital tract lesions. Urinary bladder histopathology on those dying during the course of the study indicates an increase in the incidence of male urinary bladder distension, cystitis, urothelial hyperplasia and inflammation of the penis. These findings are consistent with the findings of both the 28–day and 90–day studies indicating that high dose administration of pyrimethanil resulted in urolith formation leading to irritation, distension and hyperplasia of the urinary bladder and urinary tract. Chronic dietary treatment with pyrimethanil produced no increased incidence of tumor-bearing mice nor of any specific tumor type suggestive of a carcinogenic effect. The NOAEL for both sexes was 20–24.9 mg/kg/day (males and females, respectively).

iv. *Special studies.* Since rodent thyroid tumors are fairly common, and since the EPA has established that five lines of evidence are required to prove the thyroid-pituitary disruption mode of action for rodent thyroid tumors, special studies were undertaken.

Thyroid mechanistic study (14–day). Sprague Dawley rats received 378.5 mg/kg/day of pyrimethanil for 14 days to study the effects of pyrimethanil on the thyroid and liver microsomal enzymes. An increase in the levels of UDPGT and a corresponding statistically significant increase in liver weight were observed. Thyroid hormones T4 and T3 were decreased, while TSH levels were significantly increased. All effects were shown to be reversible.

Dietary thyroid function test using perchlorate discharge (7–day). Sprague Dawley rats received 509 mg/kg/day pyrimethanil or 177 mg/kg/day propylthiouracil, or 109 mg/kg/day phenobarbital in order to study the function of the thyroid gland. The animals fed pyrimethanil had 43% decreased body weight gain, 21% decreased food consumption and a 150% increase in uptake of iodine-125. There was no significant discharge of radioactive iodine from the thyroid after administration of perchlorate.

The required five lines of evidence to support the threshold mode of action for thyroid pituitary disruption and rat thyroid tumors are satisfied in the pyrimethanil studies.

EPA's final rule establishing a tolerance for pyrimethanil in wine stated that "The Agency's Carcinogenicity Peer Review Committee (CPRC)" chose a non-linear approach MOE based on a NOAEL of 17 mg/kg/day for increased incidences of thyroid tumors in rats. The MOE methodology was selected because of thyroid tumors associated with administration of pyrimethanil in the rat, which may be due to a disruption in the thyroid-pituitary status. This chemical has been classified as a Group C chemical (possible human carcinogen) and a non-linear methodology MOE was applied for the estimation of human cancer risk. The estimated MOE does not exceed the Agency's level of concern and therefore, EPA has a reasonable certainty that no harm will result from exposures to residues of pyrimethanil.

6. *Animal metabolism.* Pyrimethanil is rapidly metabolized and excreted from lactating dairy cows. The observed total radioactive residues in edible tissues and milk were as follows: Milk maximum residue of 0.069 ppm; liver - 0.363 ppm; kidney 0.249 ppm, and muscle 0.017 ppm. The metabolic pathway is similar to that of plants involving hydroxylation of the phenyl and pyrimidine rings as well as hydroxylation of the methyl substituents. Further metabolic reactions occur including cleavage of the phenyl ring to produce substituted pyrimidines. The major metabolite was AE C614276 (46% of the kidney residues, 63% of the milk residues resulting from hydroxylation of the phenyl ring. Hydroxylation of the pyrimidinyl ring of pyrimethanil resulted in formation of minor amounts of AE C614277. Hydroxylation of the methyl groups of pyrimethanil resulted in formation of minor amounts of AE C614278. Hydroxylation of the methyl groups of AE C614276 resulted in formation of minor amounts of AE C614800.

7. *Metabolite toxicology.* The primary residue of concern in both crop and animal commodities is pyrimethanil. In the animal metabolism, since major metabolites are produced following the oral administration of pyrimethanil, toxicology data for metabolites are completely supported by data obtained for pyrimethanil.

8. *Endocrine disruption.* Chronic, life span, and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of pyrimethanil is negligible.

C. Aggregate Exposure

1. *Dietary exposure.* Tolerances are proposed under 40 CFR part 180 for pyrimethanil in or on tree nuts, bulb vegetables, grapes, stone fruits (except cherries), pome fruit, tuberous and corm vegetables, strawberries, and tomatoes. An import tolerance for wine grapes has been approved by the EPA. A petition for registration of pyrimethanil on bananas is pending at EPA. There are no residential uses proposed for pyrimethanil. Therefore, potential human risk scenarios cover aggregate exposure from food residues and drinking water.

i. *Food.* Refined estimates of acute dietary exposure from potential pyrimethanil residues on the proposed crops are all well under 100% of the acute reference dose (aRfD) at the 99.9th percentile. The most highly exposed sub population of children (1–6) utilizes 7.9% of the RfD, while the U.S. population utilizes 3.4%. These potential dietary exposures were estimated in a Tier 3 Monte Carlo risk assessment using the DEEM™ software, Version 7.76 (Novigen Sciences, Inc.). The 1994–96, 1998 Continuing Survey of Food Intake by Individuals (CSFII) consumption data from Department of Agriculture (USDA) was used which includes the Supplemental Children's Survey (1998). Residue values included in the assessment were distributions of the field trail values incorporating percent crop treated (PCT) as zeroes for all non-blended and partially blended items. Blended items were included as the average residue and adjusted for PCT. These PCT values are the anticipated market share of pyrimethanil for the crops at market maturity (5 years). Concentration factors derived from processing studies were included where appropriate. Secondary residues for meat and milk were included in the assessment. These were calculated using theoretical dietary burdens from sensible diets for beef and dairy cattle and tissue to feed ratios from the ruminant feeding study.

Refined chronic dietary exposure estimates resulting from the proposed uses of pyrimethanil are well within acceptable limits for all population subgroups examined. The most highly exposed group of children (1–6) utilized 0.3% of the RfD with the .U.S

population utilizing 0.1% of the RfD. A Tier 3 chronic analysis was done using the DEEM™ software, Version 7.76 (Novigen Sciences, Inc.). The 1994–96, 1998 CSFII consumption data from USDA were used. Average anticipated residue values were calculated from the appropriate field trial studies conducted for pyrimethanil. The average residue values were adjusted by the projected PCT at product maturity. Concentration factors derived from processing studies were included where appropriate. Secondary residues were calculated using theoretical dietary burdens derived from sensible diets for beef and dairy cattle and tissue to feed ratios from the ruminant feeding study.

ii. *Drinking water.* U.S. EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was followed to perform the Tier 1 drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessments, including water models such as Screening Concentration in Ground Water (SCI-GROW), FIRST, Pesticide Root Zone Model (PRZMS)/EXAMS, and monitoring data. If monitoring data are not available then the models are used to predict potential residues in surface and ground water and the highest levels (whether ground or surface) are assumed to be the drinking water residue. In the case of pyrimethanil, monitoring data are not available. SCI-GROW and FIRST were used to estimate a drinking water residue. Calculation of the Drinking Water Estimate Concentration (DWEC) for surface water for the worst case pyrimethanil use scenario results in an acute DWEC of 122 parts per billion (ppb) and a chronic DWEC of 37 ppb. DWLOCs calculated based on the acute and chronic risk assessments described above are many fold higher than these conservative DWECs. The adult acute and chronic DWLOCs are 10,146 ppb and 5,944 ppb respectively. Children's acute and chronic DWLOCs are 2,762 ppb and 1,695 ppb respectively.

2. *Non-dietary exposure.* Pyrimethanil products are not labeled for residential uses (food or non-food), thereby eliminating the potential for residential exposure or non-occupational exposure.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." There are no available data to determine whether pyrimethanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyrimethanil does not appear to form a toxic metabolite produced by other substances. For the purposes of the tolerance petition and this reduced risk rationale, therefore, it has been assumed that pyrimethanil does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the assumptions and data described above, based on the completeness and reliability of the toxicity data, it is concluded that dietary risk from the proposed uses of pyrimethanil are acceptable for all populations examined. Chronic exposure for the U.S. population utilizes 0.1% (0.00015 mg/kg bwt/day) of the cRfD. Acute exposure for the U.S. population utilizes 3.4% (0.01012 mg/kg bwt/day) of the aRfD. The most highly exposed population of children 1–6 utilizes only 0.3% of the cRfD and 7.9% of the aRfD. The actual exposures are likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD (acute or chronic), because the RfD represents the level at or below which exposure will not pose appreciable risk to human health. DWLOC for adults both acute (10,146 ppb) and chronic (5,944 ppb) are several orders of magnitude above the conservative DWEC for acute (122 ppb) and chronic (37 ppb) worst case scenarios. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) to residues of pyrimethanil.

2. *Infants and children.* The relevant toxicity studies as discussed in the toxicology section above show no extra sensitivity of infants and children to pyrimethanil, therefore, the FQPA safety factor can be removed. Using the assumptions and data described in the exposure section above, it is concluded that dietary risk from the proposed uses of pyrimethanil are acceptable for all infant and children sub-populations examined. The most highly exposed sub-population was children 1–6 for both the chronic and acute analyses. The sub-population children 1–6 utilizes 0.3% (0.00047 mg/kg bwt/day) of the cRfD and 7.9% (0.02377 mg/kg bwt/day) of the aRfD. All other infant and children populations have less exposure. The chronic and acute drinking water levels of concern for children (1,695 ppb and 2,762 ppb respectively) are well above the conservative DWEC for chronic and acute scenarios. The chronic DWEC is 37 ppb and the acute DWEC is 122 ppb. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of pyrimethanil.

F. International Tolerances

Maximum residue limits for pyrimethanil have not been established by the Codex Alimentarius Commission.

[FR Doc. 03–5032 Filed 3–4–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0027; FRL–7291–1]

Imidacloprid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0027, must be received on or before April 4, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5409; e-mail address: *daniel.dani@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0027 The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0027. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is

placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0027.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0027. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience

PP 0E6074

EPA has received a pesticide petition (0E6074) from Bayer CropScience, 2 T.W. Alexander Drive, PO Box 12014, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.472, by establishing an import tolerance for residues of imidacloprid, [(1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine] in or on the raw agricultural commodity (RAC): Banana at 0.01 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method.* The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary gas chromatography mass spectrometry (GC-MS) selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and high performance liquid chromatography ultraviolet (HPLC-UV) which has been validated by EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues.* For bananas, Bayer conducted 12 residue crop field trials to evaluate the quantity of imidacloprid expected in bananas from applications of Confidor 70 WG and Confidor 350 SC. Trials were conducted at eight sites in the Caribbean coastal area of Central America and 4 sites in the Pacific coastal area of Ecuador. Imidacloprid residues in banana whole fruit were quantitated by GC using a mass selective detector. The limit of quantitation (LOQ) was 0.01 ppm. The highest average field trial (HAFT) was 0.01 ppm in bananas.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} values for imidacloprid technical ranged from 424 milligrams/kilograms (mg/kg) in the male rat and <450 mg/kg in the female rat. The acute dermal LD_{50} was <5,000 mg/kg in the rat. The 4–hour rat inhalation LC_{50} was <5.33 mg/L. Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs. In an acute neurotoxicity study the lowest observed adverse effect level (LOAEL) = 42 mg/kg body weight day (bwt/day).

2. *Genotoxicty.* Mutagenicity studies have demonstrated that imidacloprid is non-mutagenic both *in vivo* and *in vitro*.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study with Sprague-Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg bwt/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 milligrams/kilograms of body weight/day (mg/kg bwt/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., Cesarean section evaluation). At 100 mg/kg bwt/day, developmental toxicity manifested as wavy ribs (fetus = 7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOAEL was 10 mg/kg bwt/day lowest dose tested (LDT) based on decreased body weight gain; a NOAEL was not established. For developmental toxicity, the NOAEL was 30 mg/kg bwt/day and the LOAEL was 100 mg/kg bwt/day based on increased wavy ribs master record identification (MRID No. 42256338). In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24, or 72 mg/kg bwt/day during gestation days 6 through 18. For maternal toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities (MRID No. 42256339). In a 2-generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg bwt/day for males and 0, 8.0, 20.5, or 57.4 mg/kg bwt/day for females) (MRID No. 42256340, Doc. No. 010537). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg bwt/day) and the LOAEL was 750 ppm (52 mg/kg bwt/day), based on decreases in body weight in both sexes in both generations. Based on these factors, EPA recommended that the Data Evaluation Record should be revised to indicate the parental/systemic/reproductive NOAEL and LOAEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

4. *Subchronic toxicity.* In a dermal toxicity study, groups of five male and five female New Zealand white rabbits received repeated dermal applications of imidacloprid (95%) at 1,000 mg/kg bwt/day (LD), 6 hours/day, 5 days/week for 3 weeks. No dermal or systemic toxicity was seen. For systemic and dermal toxicity, the NOAEL was <1,000 mg/kg bwt/day, a LOAEL was not established (MRID No. 42256329). In an oral toxicity study, groups of Fischer 344 rats (12/sex/dose) were fed diets containing imidacloprid (98.8%) at 0, 150, 1,000, or 3,000 ppm (0, 9.3, 63.3, or 196 mg/kg bwt/day in males and 0, 10.5, 69.3 or 213 mg/kg bwt/day in females, respectively) for 90 days. No treatment-related effects were seen at 150 ppm. Treatment-related effects included decreases in body weight gain during the first 4 weeks of the study at 1,000 ppm (22% in males and 18% in females) and 3,000 ppm (50% in males and 25% in females) with an associated decrease in forelimb grip strength especially in males. The NOAEL was 150 ppm (9.3 and 10.5 mg/kg bwt/day in males and females, respectively) and the LOAEL was 1,000 ppm (63.3 and 69.3 mg/kg bwt/day in males and females, respectively) (MRID No. 43286401). In a rat inhalation study (28–day study in which rats were exposed 6 hours/day, 5 days/week for 4 weeks), the NOAEL for imidacloprid was 5.5 mg/m^3 (MRID No. 422730–01).

5. *Chronic toxicity.* In a chronic toxicity study, groups of beagle dogs (4/sex/dose) were fed diets containing imidacloprid (94.9%) at 0, 200 or 1,250/2,500 ppm (0, 6.1, 15 or 41/72 mg/kg bwt/day, respectively) for 52 weeks. The 1,250 ppm dose was increased to 2,500 ppm from week 17 onwards. The threshold NOAEL was 1,250 ppm (41 mg/kg bwt/day). The LOAEL was 2,500 ppm (72 mg/kg bwt/day) based on increased cytochrome-P-450 levels in both sexes and was considered to be a threshold dose. Due to the lack of toxicity at 1,250 ppm, a LOAEL was not established in this study following the dose increase to the 2,500 ppm level, toxicity was observed, thus making 1,250 ppm the threshold NOAEL and 2,500 ppm the threshold LOAEL (MRID No. 42273002).

6. *Animal metabolism.* The metabolism imidacloprid in rats was reported in seven studies. These data show that imidacloprid was rapidly absorbed and eliminated in the excreta (90% of the dose within 24 hours), demonstrating no biologically significant differences between sexes, dose levels, or route of administration. Elimination was mainly renal (70–80% of the dose) and fecal (17–25%). The major part of the fecal activity originated in the bile. Total body accumulation after 48 hours consisted of 0.5% of the radioactivity with the liver, kidney, lung, skin and plasma being the major sites of accumulation. Therefore, bioaccumulation of imidacloprid is low in rats. Maximum plasma concentration was reached between 1.1 and 2.5 hours. Two major routes of biotransformation were proposed for imidacloprid. The first route included an oxidative cleavage of the parent compound rendering 6-chloronicotinic acid and its glycine conjugate. Dechlorination of this metabolite formed the 6-hydroxynicotinic acid and its mercapturic acid derivative. The second route included the hydroxylation followed by elimination of water of the parent compound rendering imidacloprid. A comparison between [methylene-^{14}C]-imidacloprid and [imidazolidine-4,5-^{14}C]-imidacloprid showed that while the rate of excretion was similar, the renal portion was higher with the imidazolidine-labeled compound. In addition, accumulation in tissues was generally higher with the imidazolidine-labeled compound. A comparison between imidacloprid and one of its metabolites, WAK 3839, showed that the total elimination was the same for both compounds. The proposed metabolic pathways for these two compounds were different. WAK 3839 was formed following pretreatment (repeated dosing) of imidacloprid.

7. *Endocrine disruption.* The toxicology data base for imidacloprid is current and complete. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short-term or long-term exposure. These studies revealed no

primary endocrine effects due to imidacloprid.

C. Aggregate Exposure

1. *Dietary exposure.* Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population and selected population subgroups to residues of imidacloprid. These analyses cover all registered crops including rotational crops; uses pending with EPA in the 2003 work plan including dry beans, peas, bushberries, lingonberry, juneberries, salal, carrots, turnips, okra, cranberries, artichoke (globe), watercress, beet roots, leaves of root and tuber vegetables, stone fruit, mamey sapote, guava, feijoa, jaboticaba, wax jambu, starfruit, passion fruit, acerola, strawberry, cucumber (greenhouse), and tomato (greenhouse), this import tolerance petition on bananas; and active and proposed section 18 uses on blueberries, cranberries, table beets, strawberries, turnips.

Novigen Sciences, Inc.'s Dietary Exposure Evaluation Model (DEEM™), which is licensed to Bayer, was used to estimate the chronic and acute dietary exposure. This software uses the food consumption data from the 1994–1998 Department of Agriculture (USDA) continuing surveys of food intake by individuals (CSFII) 1994–1998.

The endpoint for acute dietary risk assessments is based on neurotoxicity characterized by decreases in motor or locomotor activity in female rats at 42 mg/kg bwt/day, the LOAEL from an acute neurotoxicity study. Based on an uncertainty factor (UF) of 10x for inter-species and 10x for intra-species the acute reference dose (aRfD) = 0.42 mg/kg bwt/day. EPA has determined that an additional UF for FQPA (reduced to 3x) applies to all population subgroups for acute risk. Application of the additional 3x safety factor results in an acute population adjusted dose (aPAD) 0.14 mg/kg bwt/day or a margin of exposure (MOE) of 300. For chronic dietary analyses, EPA has established the reference dose (RfD) for imidacloprid at 0.057 mg/kg/day based on a NOAEL of 5.7 mg/kg bwt/day from a rat chronic toxicity carcinogenicity study and uncertainty factors of 10x for inter-species and 10x for intra-species. EPA has determined that an additional UF for FQPA (reduced to 3x) applies to all population subgroups for chronic risk. Application of the additional 3x safety factor results in a chronic population adjusted dose (cPAD) of 0.019 mg/kg bwt/day. Results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of imidacloprid on currently registered and pending uses.

i. *Food.* Acute and chronic (tier 3) risk assessments were made using the results of field trials conducted at maximum label application rates and the shortest pre-harvest intervals. For some of the vegetable crops, these residue data were collected at 1.5x or greater than the maximum label rate of 0.5 lb active ingredient/acre per season. In addition, no adjustments were made to account for dissipation of residues during storage, transportation from the field to the consumer, washing or peeling. Therefore, the actual dietary exposure will be less than that presented here. For the chronic analysis, mean field trial residues were calculated. For the acute Monte Carlo analysis, the entire distribution of residue field trial data was used for the "non-blended" and "partially blended" foods as determined by EPA's HED SOP 99.6. For the foods considered as "blended" by EPA'S HED SOP 99.6, mean field trial residue data were used. As allowed in EPA's draft guidance for submission of probabilistic human health exposure assessments one half limit of detection (LOD)/LOQ values were used for all non-detected values (values below the sensitivity of the method). Bayer's acute Monte Carlo dietary exposure assessment estimated percent of the aPAD and corresponding MOE for the overall U.S. population, (all seasons), and various subpopulations. In this analysis, the exposure for the total U.S. population was equal to 7.73% of the aPAD at the 99.9th percentile. The most highly exposed population subgroup, children (1–6 years), had an exposure equal to 16.42% of the aPAD at the 99.9th percentile. Therefore, the acute dietary exposure estimates are below EPA's level of concern for the overall U.S. population as well as the various subpopulations. Bayer's chronic dietary exposure estimated the percent of the cPAD for the overall U.S. population (all seasons) and various subpopulations. In this analysis, the exposure for the total U.S. population was equal to 1.4% of the cPAD. The most highly exposed population subgroup, children (1-6 years), had an exposure equal to 3.0% of the cPAD. Therefore, the chronic exposure estimates are below EPA's level of concern for the overall U.S. population as well as the various subpopulations.

ii. *Drinking water.* EPA, as published in the **Federal Register** of April 10, 2001 (66 FR 18554) (FRL–6777–6), calculated acute and chronic DWLOCs and compared them with the EECs for surface and ground water. Based on this comparison, they determined that acute exposure and chronic exposure would not be expected to exceed the aPAD and cPAD, respectively. It is not expected that the additional exposure from the minor crops pending in EPA's 2003 work plan would significantly change EPA's water assessment.

2. *Non-dietary exposure*—i. *Residential turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 - 41,546 for 10–year old children and 6,859 - 45,249 for 5–year old children were estimated by comparing dermal exposure doses to the imidacloprid NOAEL of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year old children ranged from 5.6 - 38.2 $\mu g/cm^2$ and for 5–year old children from 5.1 - 33.5 $\mu g/cm^2$. This compares with the average imidacloprid transferable residue level of 0.080 $\mu g/cm^2$ present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA and Bayer. Data indicate that the MOS for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0×10^{-7} and 2.4×10^{-8}, respectively - and exposure can thus be considered negligible.

iii. *Tobacco.* Smoke Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2% of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOAEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA with the conclusion that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Cumulative Effects

Imidacloprid is a chloronicotinyl insecticide. At this time, EPA has not made a determination that imidacloprid and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for these tolerance petitions, it is assumed that imidacloprid does not have a common mechanism of toxicity with other substances and only the potential risks of imidacloprid in its aggregate exposure are considered.

E. Safety Determination

1. *U.S. population.* EPA has considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. These studies are discussed under section A (Toxicology Profile) above. The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study did not identify any increased sensitivity of rats to *in utero* or post-natal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different MOS will be safe for infants and children. MOS are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors (UF) in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard UF (usually 100 for combined inter-species and intra-species variability) and not the additional tenfold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/UF.

Although developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, no increased sensitivity in pups as compared to adults was seen in the 2-generation reproduction toxicity study in rats, and the toxicology data base is complete as to core requirements, EPA has determined that the additional safety factor for the protection of infants and children will be retained but reduced to 3x based on the following weight-of-the-evidence considerations relating to potential sensitivity and completeness of the data:

i. There is concern for structure activity relationship. Imidacloprid, a chloronicotinyl compound, is an analog to nicotine and studies in the published literature suggests that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*.

ii. There is evidence that imidacloprid administration causes neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2–year carcinogenicity study.

iii. The concern for structure activity relationship along with the evidence of neurotoxicity dictates the need of a developmental neurotoxicity study for assessment of potential alterations on functional development. Because a developmental neurotoxicity study potentially relates to both acute and chronic effects in both the mother and the fetus, EPA has applied the additional UF for FQPA for all population subgroups, and in both acute and chronic risk assessments.

Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that the dietary exposure estimates from all label and pending uses of imidacloprid are 7.73% of the aPAD at the 99.9th percentile and 1.4% of the cPAD for the U.S. population. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* Based on the exposure assessments described above for the safety determination of the U.S. population and on the completeness and reliability of the toxicity data, it can be concluded that the dietary exposure estimates from all label and pending uses of imidacloprid are 16.42% of the aPAD at the 99.9th percentile and 3.0% of the cPAD for the most sensitive population subgroup, children 1–6 years. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

F. International Tolerances

No CODEX Maximum Residue Levels have been established for residues of imidacloprid on any crops pending in EPA's 2003 work plan.

[FR Doc. 03–5034 Filed 3–4–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0047; FRL–7294–5]

Trifloxystrobin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0047, must be received on or before April 4, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP–2003–0047. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0047. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 21, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed. The Interregional Research Project No. 4 (IR–4) assembled and submitted the petition to EPA in behalf of Bayer CropScience, the registrant.

Interregional Research Project Number 4 and Bayer CropScience

PP 3E6522

EPA has received a pesticide petition (3E6522) from Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.555 by establishing a tolerance for residues of trifloxystrobin in or on the raw agricultural commodities (RACs) vegetable, root, except sugar beet, subgroup 1B, except radish at 0.1 part per million (ppm) and leafy petiole subgroup 4B at 2.0 ppm. EPA has determined that the petition contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of trifloxystrobin in plants (cucumbers, apples, wheat, sugar beets, and peanuts), is well understood. Identified metabolic pathways are substantially similar in plants and animals (goat, rat, and hen). EPA has determined that trifloxystrobin parent and its metabolite CGA–321113 are the residues of concern for tolerance setting purposes.

2. *Analytical method.* A practical analytical methodology for detecting and measuring levels of trifloxystrobin in or on RACs has been submitted. The limit of detection (LOD) for each analyte of this method is 0.08 nanogram (ng) injected, and the limit of quantitation (LOQ) is 0.02 ppm. The method is based on crop specific cleanup procedures and determination by gas chromatography (GC) with nitrogen-phosphorus detection.

3. *Magnitude of residues—i. Vegetable root, except sugar beet, subgroup 1B, except radish.* Interregional Research Project Number 4 received a request from Michigan for the use of trifloxystrobin on carrots. Interregional Research Project Number 4 performed

10 field trials to support the requested tolerance of 0.1 ppm.

ii. *Leaf petiole subgroup 4B.* Interregional Research Project Number 4 received a request from Florida, Michigan, Oregon, California, and Ohio, for the use of trifloxystrobin on celery. Interregional Research Project Number 4 performed nine field trials to support the requested tolerance of 2.0 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Studies conducted with the technical material of trifloxystrobin:

- *Rat.* Acute oral toxicity study with a lethal dose (LD_{50}) >5,000 milligrams/kilogram (mg/kg).
- *Mouse.* Acute oral toxicity study with a LD_{50} >5,000 mg/kg.
- *Rabbit.* Acute dermal toxicity study with a LD_{50} >2,000 mg/kg.
- *Rat.* Acute dermal toxicity study with a LD_{50} >2,000 mg/kg.
- *Rat.* Acute inhalation toxicity study with a lethal concentration (LC_{50}) >4.65 milligrams/liter (mg/L).
- *Rabbit.* Eye irritation study showing slight irritation (toxicity category III).
- *Rabbit.* Dermal irritation study showing slight irritation (toxicity category IV).
- *Guinea pig.* Dermal sensitization study with the Buehler's method showing negative findings.
- *Guinea pig.* Dermal sensitization study with the maximization method showing some positive findings.

2. *Genotoxicity.* No genotoxicity activity is expected of trifloxystrobin under *in vivo* or physiological conditions. The compound has been tested for its potential to induce gene mutation and chromosomal changes in five different test systems. The only positive finding was seen in the *in vitro* test system (chinese hamster V79 cells) as a slight increase in mutant frequency at a very narrow range (250 – 278 micrograms/milliliter (µg/ml) of cytologic and precipitating concentrations (compound solubility in water was reported to be 0.61 µg/ml; precipitate was visually noted in culture medium at 150 µg/ml). The chemical was found to be non-mutagenic in the *in vivo* system or all other *in vitro* systems. Consequently, the limited gene mutation activity in the V79 cell line is considered a nonspecific effect under non-physiological *in vitro* conditions and not indicative of a real mutagenic hazard.

3. *Reproductive and developmental toxicity.* FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base on trifloxystrobin relative to prenatal and postnatal effects for children is complete.

In assessing the potential for additional sensitivity of infants and children to residues of trifloxystrobin, data were considered from teratogenicity studies in the rat, rabbit, and a 2–generation reproduction studies in the rat. The teratogenicity studies are designed to evaluate adverse effects on the developing embryo as a result of chemical exposure during the period of organogenesis. Reproduction studies provide information on effects from chemical exposure on the reproductive capability of mating animals and systemic and developmental toxicity from *in utero* exposure.

In the rat teratology study, reductions in body weight gain and food consumption were observed in the dam at ≥100 mg/kg. No teratogenic effects or any other effects were seen on pregnancy or fetal parameters except for the increased incidence of enlarged thymus, which is a type of variation, at 1,000 mg/kg. The developmental no observed adverse effect level (NOAEL) was 100 mg/kg.

In the rabbit teratology study, body weight loss and dramatically reduced food consumption were observed in the dam at ≥250 mg/kg. No teratogenic effects or any other effects were seen on pregnancy or fetal parameters except for the increase in skeletal anomaly of fused sternebrae–3 and –4 at the top dose level of 500 mg/kg. This finding is regarded as a marginal effect on skeletal development that could have resulted from the 40–65% lower food intake during treatment at this dose level. The developmental NOAEL was 250 mg/kg.

In the 2–generation rat reproduction study, body weight gain and food consumption were decreased at ≥750 ppm, especially in females during lactation. Consequently, the reduced pup weight gain during lactation (≥750 ppm) and the slight delay in eye opening (1,500 ppm) are judged to be a secondary effect of maternal toxicity. No other fetal effects or any reproductive changes were noted. The low developmental NOAEL, 50 ppm (5 mg/kg), seen in this study was probably due to the lack of intermediate dose levels between 50 and 750 ppm. Based on an evaluation of the dose-response relationship for pup weight at 750 ppm and 1,500 ppm, the NOAEL should have been nearly ten-fold higher if such a dose was available.

Based on all these teratology and reproduction studies, the lowest NOAEL for developmental toxicity is 5 mg/kg while the lowest NOAEL in the subchronic and chronic studies is 2.5 mg/kg/day (from the rat chronic study). Therefore, no additional sensitivity for infants and children to trifloxystrobin is suggested by the data base.

4. *Subchronic toxicity.* In subchronic studies, several mortality related changes were reported for the top dose in dogs (500 mg/kg) and rats (800 mg/kg). At these dose levels, excessive toxicity has resulted in body weight loss and mortality with the associated and nonspecific changes in several organs (such as atrophy in the thymus, pancreas, bone marrow, lymph node, and spleen) which are not considered specific target organs for the test compound.

In the dog, specific effects were limited to hepatocellular hypertrophy at ≥150 mg/kg and hyperplasia of the epithelium of the gall bladder at 500 mg/kg. Target organ effects in the rat were noted as hepatocellular hypertrophy (≥200 mg/kg) and the related liver weight increase (≥50 mg/kg). In the mouse, target organ effects included single cell necrosis (≥300 mg/kg) and hypertrophy (1,050 mg/kg) in the liver and extramedullary hematopoiesis (≥300 mg/kg) and hemosiderosis in the spleen (1,050 mg/kg).

In general, definitive target organ toxicity, mostly in the liver, was seen at high feeding levels of over 100 mg/kg for an extended treatment period. At the lowest observed adverse effect level (LOAEL), no serious toxicity was observed other than mostly non-specific effects including a reduction in body weight and food consumption or liver hypertrophy.

5. *Chronic toxicity.* The liver appears to be the major primary target organ based on the chronic studies conducted in mice, rats, and dogs. It was identified as a target organ in both the mouse and the dog studies with trifloxystrobin. However, no liver effect was seen in the chronic rat study which produced the lowest NOAEL of 2.5 mg/kg based on reduced body weight gain and food consumption seen at higher dose levels.

The compound did not cause any treatment-related increase in general tumor incidence, any elevated incidence of rare tumors, or shortened time to the development of palpable or rapidly lethal tumors in the 18–month mouse and the 24–month rat studies. Dosages in both studies were sufficient for identifying a cancer risk. In the absence of carcinogenicity, a reference dose (RfD) approach is appropriate for quantitation of human risks.

6. *Animal metabolism.* Trifloxystrobin is moderately absorbed from the gastrointestinal tract of rats and is rapidly distributed. Subsequent to a single oral dose, the half life of elimination is about 2 days and excretion is primarily via bile. Trifloxystrobin is extensively metabolized by the rat into about 35 metabolites, but the primary actions are on the methyl ester (hydrolysis into an acid), the methoxyimino group (O-demethylation), and the methyl side chain (oxidation to a primary alcohol). Metabolism is dose dependent as it was almost complete at low doses but only about 60% complete at high doses.

In the goat, elimination of orally administered trifloxystrobin is primarily via the feces. The major residues were the parent compound and the acid metabolite (CGA–321113) plus its conjugates. In the hen, trifloxystrobin is found as the major compound in tissues and in the excreta, but hydroxylation of the trifluormethyl-phenyl moiety and other transformations, including methyl ester hydrolysis and demethylation of the methoxyimino group, are also seen. In conclusion, the major pathways of metabolism in the rat, goat, and hen are the same.

7. *Metabolite toxicology.* Metabolism of trifloxystrobin has been well characterized in plants, soil, and animals. In plants and soil, photolytically induced isomerization results in a few minor metabolites not seen in the rat; however, most of the applied materials remained as parent compound as shown in the apple and cucumber studies. All quantitatively major plant and/or soil metabolites were also seen in the rat. The toxicity of the major acid metabolite, CGA–321113 (formed by hydrolysis of the methyl ester), has been evaluated in cultured rat hepatocytes and found to be 20 times less cytologic than the parent compound. Additional toxicity studies were conducted for several minor metabolites seen uniquely in plants and/or soil. The studies indicate that these metabolites, including CGA–357261, CGA–373466, and NOA–414412, are not mutagenic to bacteria and are of low acute toxicity (LD_{50} >2,000 mg/kg).

In conclusion, the metabolism and toxicity profiles support the use of an analytical enforcement method that accounts for parent trifloxystrobin.

8. *Endocrine disruption.* CGA–279202 does not belong to a class of chemicals known for having adverse effects on the endocrine system. Developmental toxicity studies in rats, rabbits, and reproduction study in rats, gave no indication that CGA–279202 might have any effects on endocrine function related to development and reproduction. The subchronic and chronic studies also showed no evidence of a long-term effect related to the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population and selected population subgroups to residues of trifloxystrobin. These analyses cover all registered crops plus the crops of vegetable, root, except sugar beet, subgoup1B, except radish; and the leafy petiole subgroup 4B.

The dietary exposure evaluation model ((DEEM™) v.7.76 software) was used to estimate the chronic and acute dietary exposure. This software uses the food consumption data from the United States Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals CSFII 1994–1998.

EPA established an acute population adjusted dose (aPAD) of 2.5 milligrams/kilogram/day (mg/kg/day) for acute dietary risk assessments based on a NOAEL of 250 milligrams/kilogram of body weight/day from a rabbit developmental toxicity study and an uncertainty factor (UF) of 100. For chronic dietary analyses, EPA established a chronic population adjusted dose (cPAD) of 0.038 based on a NOAEL of 3.8 from a rat reproductive toxicity study and UF of 100.

Bayer CropScience believes that results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of trifloxystrobin on currently registered uses plus the pending uses on vegetable root crops, except sugar beets, subgoup1B, except radish; and the leafy petiole subgroup 4B.

i. *Food.* Acute and chronic dietary exposure assessments were performed using tolerance values for all crops and assuming 100% crop treated. Acute exposure, expressed at the 95th percentile of exposure, was 0.59% of the aPAD for females 13 to 50 years old (only population subgroup of concern). The chronic exposure was 17.3% cPAD for the total U.S. population and 51.5% cPAD for the most sensitive population, children 1 to 6 years old.

ii. *Drinking water.* Using DEEM software, acute and chronic drinking water levels of concern (DWLOC) were calculated. The acute DWLOC was 74,560 and the chronic DWLOC was 1,100 for the total U.S. population and 184 for the most sensitive population subgroup, children 1 to 6 years old. These values are above the estimated concentrations of trifloxystrobin and its metabolites in drinking water as published in the **Federal Register** of May 22, 2002, (67 FR 35915–35924) (FRL–7178–6). Therefore, Bayer CropScience believe that there is reasonable certainty that exposure from trifloxystrobin will not result in harm to the adult U.S. population or infants and children.

2. *Non-dietary exposure.* As published in the **Federal Register** of May 22, 2002, (67 FR 35915–35924) (FRL–7178–6), EPA calculated post application exposure estimates and risk estimates for adults and children resulting from the use of trifloxystrobin on turf and recreational use sites.

The margin of exposure (MOE) that resulted were above 100 and all risks were considered below EPA's level of concern (LOC).

D. Cumulative Effects

EPA has determined that unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. Therefore, EPA has not assumed, as published in the **Federal Register** of May 22, 2002, (67 FR 35915–35924) (FRL–7178–6), that trifloxystrobin has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Based on the information supplied under aggregate exposure described above, Bayer CropScience believe that there is reasonable certainty that exposure from trifloxystrobin will not result in harm to the adult U.S. population.

2. *Infants and children.* Based on the information supplied under aggregate exposure described above, Bayer CropScience believes that there is reasonable certainty that exposure from trifloxystrobin will not result in harm to infants and children.

F. International Tolerances

There are no codex, Canadian, or Mexican maximum residue limits (MRLs) established for trifloxystrobin.

[FR Doc. 03–5193 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0051; FRL–7294–3]

Ammonium Thiosulfate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0051, must be received on or before April 4, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: tompkins.jim]@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111)
- Crop production (NAICS 112)
- Animal production (NAICS 311)
- Food manufacturing, and Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket (ID) number OPP–2003–0051. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket.

Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

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E. What Should I Consider as I Prepare My Comments for EPA?

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1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Siemer and Associates Inc., and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Siemer and Associates, Inc.

PP 6F4789

EPA has received a pesticide petition (PP 6F4789) from Siemer and Associates, Inc. on behalf of National Chelating, 4672 West Jennifer, Suite 103, Fresno, CA 93722, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from the requirements for a tolerance for ammonium thiosulfate when used for blossom thinning on apples.

Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as amended, Siemer and Associates, Inc., on behalf of National Chelating has submitted the following

summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Siemer and Associates, Inc., and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

On August 30, 1996 Siemer and Associates on behalf of National Chelating petitioned EPA, under pesticide petition 6F4789, for a permanent exemption from the requirements of a tolerance for ammonium thiosulfate on apples.

Section 408(b)(2)(A) of the amended Federal Food, Drug, and Cosmetic Act allows the EPA to establish an exemption from the requirements for a tolerance only if the Administrator determines that there is a "reasonable certainty that no harm will result from the aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information."

The available information indicates that there is a reasonable certainty that no harm will result from various types of exposure. Requests for waivers from the requirements of performing studies for known chemistry are presented and substantiated. The following is a summary of the information submitted to EPA, to support the establishment, under Section 408(b)(2)(D) of the amended FFDCA, of a tolerance for ammonium thiosulfate on apples.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of ammonium thiosulfate in apple is adequately understood. The requirement for residue studies was waived by EPA based on the knowledge that ammonium thiosulfate has been used as a soil applied and foliar applied fertilizer for many years. Prior experience and numerous publications teach that ammonium thiosulfate ionizes when placed into water, forming an ammonium ion and a thiosulfate ion which further degrades to form elemental sulfur and a sulfate ion. The sulfur is further oxidized to form a sulfate ion. The ammonium and sulfate ions thus formed are absorbed into the growing plant and moved into the naturally occurring nitrogen and sulfate pools that occur naturally in growing plants. Once applied to the plant, without isotope identification, it is not possible to separate the ammonium and sulfate ions that will occur from those that already occur naturally in the plant. On this basis, an exemption from the requirements of a tolerance is justified. There is no analytical method needed since there is no practical way to separate the ammonium and sulfate ions from those that naturally occur.

2. *Analytical method.* The need for an analytical method is waived on the basis that there is no need for analyzing for the component of ammonium and sulfate ion applied for blossom thinning purposes.

3. *Magnitude of residues.* No residues of ammonium thiosulfate will be identified separately from those ammonium and sulfate ions naturally occurring. This result supports the proposed exemption from the requirements for a tolerance.

B. Toxicological Profile

A request to waive the battery of mammalian toxicity studies for ammonium thiosulfate is based on and justified by the following:

1. *Acute toxicity.* Based on EPA criteria, ammonium thiosulfate previously registered for a non-food use as an ornamental herbicide has been shown to be relatively non-toxic and has been registered for non-food use purposes as a Category III herbicide. These data have previously been supplied to the agency.

2. *Genotoxicity.* A request for a waiver from the following requirements is made on the basis that sodium thiosulfate is on the Food and Drug Administration's Generally Recognized as Safe (GRAS) list at 21 CFR 184.1807, and ammonium thiosulfate is already exempted from the requirements of a tolerance when used in accordance with good agricultural practices as inert (or occasionally active) ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest (at 40 CFR 180.1001(c)). Ammonium thiosulfate ionizes to form ammonium ion and thiosulfate ion in water with neither of these ions being mutagenic or genotoxic. On that basis the following tests are requested to be waived.

i. Gene Mutation - Ames.

ii. *In vitro* Structural chromosomal aberration assay.

iii. *In vitro* CHO/HGPRT assay.

iv. *In vivo* micronucleus aberration assay.

3. *Reproductive and developmental toxicity.* A request for waiving the data requirements for the following is made on the basis of the discussion in paragraph B. above. In addition, all of the tests listed below rely on feeding the test substance, to animals that have acidic stomachs. Placing ammonium thiosulfate into an acidic environment will cause near instantaneous ion formation giving rise to ammonium and thiosulfate ions, which ultimately breaks down to elemental sulfur and sulfite. These sulfur forms will be quickly oxidized under acidic conditions to sulfate, which will be incorporated into the normal sulfate pool that exists within the metabolic system of the various animal test systems. The ammonium ion will react with the acidic component, most likely forming ammonium chloride which will be metabolized in a well understood pathway in the systems of the various animal test systems. The new moiety formed in this acidic medium is the sulfite ion which also is well understood and is quickly oxidized to sulfate. The FDA instituted studies in 1975 and 1985 on the GRAS status of sulfite and, as a result of these studies, has substantiated the GRAS status except for a few individuals that might be allergic to sulfite. In this proposed usage, however, the sulfite will not reach the possibly allergic people, since the sulfite will be metabolized to sulfate in the plant system before reaching any sensitive people who may consume the treated tissue. The data waivers requested are as follows:

i. Teratology in rats.

ii. Teratology in rabbits.

iii. 2-Generation reproduction in rats.

4. *Subchronic toxicity.* The data requirements listed below are requested to be waived on the basis illustrated above at paragraph B. 3.

i. 28–Day dermal in rats.

ii. 13–Week oral feeding in rats.

iii. 90–Day oral feeding in dogs.

5. *Chronic toxicity.* The data requirements listed below are requested to be waived for reasons listed above at paragraph B. 3.

i. 1–Year chronic toxicity in dogs.

ii. 18–month chronic toxicity and carcinogenicity in mice.

iii. 24–month chronic toxicity and carcinogenicity in rats.

6. *Animal metabolism.* The metabolism of ammonium thiosulfate is well understood in animals. As listed above, this substance rapidly ionizes in the acidic portion of the animal gut, giving rise to ammonium ion and sulfate ion. Both of these substances are required and occur in the metabolism of animals.

7. *Metabolite toxicology.* No toxicologically significant metabolites will be detected in plant or animal metabolism studies using ammonium thiosulfate. Therefore, no metabolites are required to be regulated.

8. *Endocrine effects.* There is no information available that suggest that ammonium thiosulfate would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure—i Food.* There will be no residues of ammonium thiosulfate that will reach any portion of the U.S. population as a result of using ammonium thiosulfate as a blossom thinner on apples. The ammonium and sulfate ions that will arise will not be different from the naturally occurring forms of the ions, which exceed by far the amount that will be applied as a result of the use of the ammonium thiosulfate.

ii. *Drinking water.* Ammonium and sulfate ions that arise from ammonium thiosulfate use will add no additional burden to the drinking water. The end points of the two ions formed as a result of ammonium thiosulfate use will both be used in plant nutrition. The ammonium form of nitrogen resists leaching by binding to the colloid fraction in the soil to resist ground water contamination. The amount of sulfate added as a result of the described use will add an imperceptible amount to the sulfate level already in existence in the soil.

There is a reasonable certainty that no harm will result from dietary exposure to ammonium thiosulfate, because dietary exposures to residues on food cannot be differentiated from those that will occur naturally in food, and exposure through drinking water is expected to be insignificant.

2. *Non-dietary exposure.* There is no non-dietary exposure expected, since any ammonium thiosulfate finding its way onto the plants or around any plants will be absorbed and metabolized into naturally occurring plant constituents.

D. Cumulative Effects

There are no cumulative effects expected since the ammonium thiosulfate metabolites are all incorporated into naturally occurring constituents found in all plant systems.

E. Safety Determination

1. *U.S. population.* The natural occurrence of the metabolites of the ammonium and sulfate ions in all plants and in humans is the basis for the Generally Recognized As Safe characterization of the thiosulfate ion and the use of the ammonium ion as a component in nearly all fertilizers, supports the conclusion that there is a "reasonable certainty of no harm" from aggregate exposure to ammonium thiosulfate.

2. *Infants and children.* No developmental, reproductive or fetotoxic effects have been associated with ammonium thiosulfate and its use as a fertilizer. The calculation of safety margins with respect to ammonium thiosulfate is unnecessary since the ammonium and sulfate ions that will arise from the use of ammonium thiosulfate will add only slightly to the already naturally occurring nitrogen and sulfur pools in existence in various plants. Since there will be no residues of toxicological significance resulting from ammonium thiosulfate, calculations of safety margins are not necessary based on the lack of any unnatural residues.

F. International Tolerances

There is no codex maximum residue level established for ammonium thiosulfate on apple. However, ammonium thiosulfate is widely used as a nutrient in many parts of the world.

[FR Doc. 03–5036 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0305; FRL–7281–6]

Pesticides; Final Guidance for Pesticide Registrants on Labeling of Pesticide Products Under the National Organic Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of a pesticide registration notice (PR Notice) titled "Labeling of Pesticide Products Under the National Organic Program." This PR Notice was issued by the Agency on January 31, 2003 and is identified as PR Notice 2003–1. PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular final PR Notice provides guidance to the registrant concerning obtaining EPA approval of pesticide product label language indicating that all ingredients (active and inert) in a pesticide product and all uses of that pesticide product meet the criteria defined in the National Organic Program Rule. This notice is being issued because of registrant requests to be able to identify, on pesticide product labels, pesticide products that are allowable under the National Organic Program.

FOR FURTHER INFORMATION CONTACT: Robert Torla, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8098; fax number: (703) 308–7026; e-mail address: *torla.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who wish to consider including language on their pesticide labeling identifying their pesticide product as allowable under the National Organic Program. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Guidance Does this PR Notice Provide?

This PR Notice provides guidance to the registrant concerning how registrants may obtain EPA approval of label language indicating that all ingredients (active and inert) in a pesticide product and all uses of that product meet the criteria defined in the National Organic Program Rule (7 CFR part 205). This notice provides information on:

1. The conditions which must be met for approval of the label language.

2. An example of acceptable label language.

3. Guidance on materials to be submitted for Agency review.

4. Guidance for inserting label language on pesticide products exempted from FIFRA regulation under 40 CFR 152.25.

III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

IV. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0305. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. You may obtain an electronic copy of other PR Notices, both final and draft, at http://www.epa.gov/opppmsd1/PR_Notices.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit IV.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 31, 2003.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 03–4775 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 03–510]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 28, 2003, the Commission released a public notice announcing the March 19, 2003 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATE: Wednesday, March 19, 2003 9 am.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: *Released:* February 28, 2003.

The North American Numbering Council (NANC) has scheduled a meeting to be held Wednesday, March 19, 2003, from 9 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW, Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Wednesday, March 19, 2003, 9 am

1. Announcements and Recent News
2. Approval of Minutes
   —Meeting of January 22, 2003
3. Report of the North American Numbering Plan Administrator (NANPA)
   —CO Code activity
   —NRUF Update
   —Publishing NPA and NANP exhaust projections
   —Other NANPA activity
4. Report of National Thousands Block Pooling Administrator
   —Activity report
   —Trend of problems caused by intra-Service Provider porting on contaminated number blocks.
5. Report of Oversight Working Group
   —NANPA Performance Review
   —Review of Change Orders
   —Review of PA semi-annual forecasting issue
   —Performance Improvement Plan
6. Report of 3-Digit DIG IMG
7. Status of Industry Numbering Committee activities
8. Report of the Local Number Portability Administration (LNPA) Working Group
   —Standard for service providers requiring multiple LRNs
   —Wireless Number Portability Operations (WNPO) Subcommittee
9. Report from NBANC
10. Report of Cost Recovery Working Group
11. Briefing on ENUM Developments
12. Conclude discussion of VoIP use of numbers (continued from January meeting)
13. Summary of Action Items
14. Steering Committee
    —Table of NANC Projects
15. Public Comments and Participation (5 minutes per speaker)
16. Other Business

Adjourn no later than 5 p.m.

Next Meeting: Tuesday, May 13, 2003.

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 03–5151 Filed 3–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011539–009.

Title: Libra/Lykes/ML Space Charter and Sailing Agreement.

Parties:

Companhia Libra de Navegacao
Lykes Lines Limited, LLC
TMM Lines Limited, LLC

Synopsis: The proposed agreement amendment expands the geographic scope to include the Atlantic Coast of Florida and Trinidad and Tobago.

Agreement No.: 011591–002.

Title: EUKOR/WWL Space Charter Agreement.

Parties:

EUKOR Car Carriers. Inc.
Wallenius Wilhelmsen Lines AS

Synopsis: The amendment substitutes EUKOR Car Carriers for Hyundai Merchant Marine Co., Ltd. as a party to the agreement.

Agreement No.: 011841.

Title: Lykes/Libra Slot Charter Agreement.

Parties:

Companhia Libra de Navegacao
Lykes Lines Limited, LLC.

Synopsis: The proposed agreement would authorize Libra to take space on Lykes' vessels operating between the U.S. and Mexican Gulf Coasts and the Atlantic Coast of Colombia.

Agreement No.: 011842.

Title: Crowley/Dole Space Charter and Sailing Agreement.

Parties:

Crowley Liner Services
Dole Ocean Cargo Express, Inc.

Synopsis: The agreement authorizes the parties to engage in reciprocal vessel slot chartering in the trade between Port Everglades, Florida, and Puerto Limon, Costa Rica. The parties request expedited review.

Agreement No.: 011843.

Title: LT/ZIM Cross Space Charter and Cooperative Working Agreement.

Parties:

Lloyd Triestino de Navigazione S.p.A.
Zim Israel Navigation Company Ltd.

Synopsis: The agreement authorizes the parties to exchange space on their respective services in the trades between the U.S. East Coast and the Caribbean, Central America and the Far East.

By Order of the Federal Maritime Commission.

Dated: February 28, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–5152 Filed 3–4–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) on behalf of the agencies a request for review of the information collection described below. The agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

On December 9, 2002, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the revision, without extension, of the currently approved information collection: the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The comment period expired February 7, 2003.

DATES: Comments must be submitted on or before April 4, 2003.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies. Written comments, which should refer to the "Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, 7100–0032," should be addressed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov*, or fax them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside those hours. Both the mailroom and the security control room are accessible from the Eccles building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room M–P–500 between 9

a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: A draft copy of the proposed FFIEC 002 reporting form may be obtained at the FFIEC's Web site (*http://www.ffiec.gov*). A copy of the proposed revisions to the collection of information may also be requested from Cindy Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collection of information:

Report Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 002.

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 295.

Estimated Total Annual Responses: 1,180.

Estimated Time per Response: 22.50 burden hours.

Estimated Total Annual Burden: 26,550 burden hours.

General Description of Report

This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract

On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions

The agencies did not receive any comments in response to the notice published in the **Federal Register** on December 9, 2002 (67 FR 72951) requesting public comment to revise this currently approved information collection.

The revisions to the FFIEC 002 summarized below have been approved by the FFIEC. The agencies will implement these changes as of the March 31, 2003, reporting date. The revisions will improve the agencies' ability to analyze the risks and activities of branches and agencies and achieve consistency with the Reports of Condition and Income (Call Report) (forms FFIEC 031 and 041) filed by insured commercial banks and FDIC-supervised savings banks.

Schedule RAL—Assets and Liabilities

1. Splitting item 1.c(2), "Mortgage-backed securities," into separate items 1.c(2)a "Issued or guaranteed by U.S. Government agencies" and 1.(c).2b "Other." The breakdown will provide information on the composition of mortgage-backed securities held by branches and agencies, which will enter into the derivation of weekly bank credit data used by the Board for monetary policy purposes.

2. Splitting item 1.d., "Federal funds sold and securities purchased under agreements to resell" into separate items 1.d.(1), "Federal funds sold," 1.d.(1)a, "With depository institutions in the U.S.," 1.d.(1)b, "With others," and 1.d.(2), "Securities purchased under agreements to resell," 1.d.(2)a, "With depository institutions in the U.S.," 1.d.(2)b, "With others." The breakdown will provide greater insight into the liquidity of branches and agencies. These institutions actively participate and often hold large positions in the federal funds and repurchase agreement market. The separation will also achieve consistency with the existing Reports of Condition and Income (Call Report) because insured commercial banks and FDIC-supervised savings banks currently report federal funds sold separately from securities purchased under agreements to resell.

3. Splitting item 4.b., "Federal funds purchased and securities sold under agreements to repurchase" into separate items 4.b.(1), "Federal funds purchased," 4.b.(1)a, "With depository institutions in the U.S.," 4.b.(1)b, "With others" and 4.b.(2), "Securities sold under agreements to repurchase," 4.b.(2)a, "With depository institutions in the U.S.," 4.b.(2)b, "With others." The rationale for this change, which deals with a funding source for branches and agencies, is essentially the same as the justification above for splitting "Federal funds sold and securities purchased under agreements to resell".

4. Splitting item 1.f, "Trading Assets," into separate items 1.f(1), "U.S. Treasury and Agency Securities" and 1.f(2), "Other trading assets." The breakdown will provide information on the composition of the trading assets of branches and agencies, which will enter into the derivation of weekly bank credit data used by the Board for monetary policy purposes. On November 8, 2002, the agencies published a notice soliciting comments for 60 days on proposed revisions to the Reports of Condition and Income (Call Report) (67 FR 68234). The notice includes a proposed clarification to the "Trading Account" Glossary entry on when loans can be designated as trading assets. Accordingly, the agencies are proposing the same clarification for the FFIEC 002 "Trading Account" Glossary entry to achieve consistency with the changes to the Call Report.

Schedule L—Derivatives and Off-Balance-Sheet Items

1. Adding Memoranda items 1.a., "Gross positive fair value," and 1.b., "Gross negative fair value" to Memoranda item 1., "Notional amount of all credit derivatives on which the reporting branch or agency is the guarantor." The new items will provide a better measure of credit and market risk, particularly for branches and agencies with large positions in credit derivatives. These new items will also achieve consistency with the existing Reports of Condition and Income (Call Report) filed by insured commercial banks and FDIC-supervised savings banks.

2. Adding Memoranda items 2.a., "Gross positive fair value," and 2.b., "Gross negative fair value" to Memoranda item 2., "Notional amount of all credit derivatives on which the reporting branch or agency is the beneficiary." The rationale for the change is the same as the justification above for adding items to Memoranda item 1.

Schedule O—Other Data for Deposit Insurance Assessments

Modifying the captions for Memorandum items 1.a., "Deposit accounts of $100,000 or less," and 1.b., "Deposit accounts of more than $100,000," to reflect the deposit insurance limits in effect on the report date that are to be used as the basis for reporting the number and amount of deposit accounts in Memorandum item 1. Memorandum item 1, collects information on the number and amount of deposit accounts of (a) $100,000 or less and (b) more than $100,000. This information provides the basis for calculating "simple estimates" of the amount of insured and uninsured deposits. The captions for these memorandum items explicitly refer to $100,000, which is the current deposit insurance limit. Given the purpose of these memorandum items, the dollar amount cited in the caption will be changed if the deposit insurance limit were to change. The revision will ensure that such a change occurs automatically as a function of the deposit insurance limit in effect on the report date.

Schedule S—Securitization and Asset Sale Activities

Splitting item 2.b., "Standby letters of credit, subordinated securities, and other enhancements," into two items, one for securitization credit enhancements that are on-balance sheet assets and another for other credit enhancements. This will be accomplished by adding a new item 2.c., "Standby letters of credit and other enhancements," where branches and agencies will disclose the unused portion of standby letters of credit and the maximum contractual amount of recourse or other credit exposure not in the form of an on-balance sheet asset that has been provided or retained in connection with the securitization structures reported in item 1 of Schedule S. This revision will enable the agencies to better understand the types of credit support that branches and agencies are providing to their securitizations, including which types are typically used for different types of securitized loans. The revisions will also achieve consistency with the changes to the Reports of Condition and Income (Call Report) filed by insured commercial banks and FDIC-supervised savings banks.

Request for Comment

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Board of Governors of the Federal Reserve System, February 27, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–5070 Filed 3–4–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Harrodsburg First Financial Bancorp, Inc.*, Harrodsburg, Kentucky; to engage *de novo* through its subsidiary, First South Credit of Versailles, Inc., Versailles, Kentucky, in consumer finance activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–5071 Filed 3–4–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–48]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Performance Evaluation Program for Rapid HIV Testing—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

To support our mission of improving public health and preventing disease through continuously improving laboratory practices, the Model Performance Evaluation Program (MPEP), Division of Laboratory Systems, Public Health Practice Program Office, Centers for Disease Control and Prevention intends to provide a new HIV rapid testing performance evaluation program (HIV Rapid Testing MPEP). This program will offer external performance evaluation (PE) for rapid tests such as the OraQuick® Rapid HIV–1 Antibody Test, recently approved as a waived test by the U.S. Food and Drug Administration, and for other licensed tests such as the Abbott-Murex SUDS® HIV–1 Test. Participation in PE programs is expected to lead to improved HIV testing performance because participants have the opportunity to identify areas for improvement in testing practices. This program will help to ensure accurate testing as a basis for development of HIV prevention and intervention strategies.

This external quality assessment program will be made available at *no cost* (for receipt of sample panels) to sites performing rapid testing for HIV antibodies. This program will offer laboratories/testing sites an opportunity for:

(1) Assuring that the laboratories/testing sites are providing accurate tests through external quality assessment.

(2) Improving testing quality through self-evaluation in a non-regulatory environment.

(3) Testing well characterized samples from a source outside the test kit manufacturer.

(4) Discovering potential testing problems so that laboratories/testing sites can adjust procedures to eliminate them.

(5) Comparing individual laboratory/testing site results to others at a national and international level, and consulting with CDC staff to discuss testing issues.

Participants in the MPEP HIV Rapid Testing program will be required to complete a laboratory practices questionnaire survey annually. In addition, participants will be required to submit results twice/year after testing mailed performance evaluation samples. The estimated annualized cost to respondents is $2,625.00.

Forms	Number of respondents	Frequency of responses	Average burden/response (in hours)	Total burden (in hours)
HIV Rapid Testing Questionnaire	300	1	15/60	75
HIV Rapid Testing Results Booklet	300	2	10/60	100
Total				175

Dated: February 27, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–5120 Filed 3–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17, 2003, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: topperk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–414, VITRASE (hyaluronidase for intravitreal injection), ISTA Pharmaceuticals, for the treatment of vitreous hemorrhage. The background material for this meeting will be posted on the Internet when available or 1 working day before the meeting at http://www.fda.ohrms/dockets/ac/menu.htm.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 10, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 10, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Littleton Topper at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the March 17, 2003, Dermatologic and Ophthalmic Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Dermatologic and Ophthalmic Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–5074 Filed 3–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dietary Supplement Subcommittee of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dietary Supplement Subcommittee of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 25, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn (Ballrooms A and B), 10000 Baltimore Ave., College Park, MD, 301–345–6700.

Contact Person: Constance J. Hardy, Center for Food Safety and Applied Nutrition (HFS–811), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1433, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: To be a dietary supplement as defined in section 201(ff) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(ff)), a product must contain at least one "dietary ingredient." Section 201(ff)(1) of the act lists those substances that are considered "dietary ingredients." Among other things, the term "dietary ingredient" includes a metabolite of any other dietary ingredient defined in section 201(ff)(1) of the act. The statute is ambiguous, however, as to what substances are, or are not, metabolites of other substances. The practical result of this ambiguity is that it is often difficult to determine whether a particular substance meets the dietary ingredient definition and, therefore, whether products containing the substance can be marketed as dietary supplements. The purpose of this meeting is to explore whether there are recognized scientific principles that would facilitate reaching a conclusion as to whether a particular substance is a "metabolite" of another substance that is a "dietary ingredient" defined in the act and, therefore, is itself a dietary ingredient within the scope of section 201(ff)(1) of the act. The background material for this meeting will be posted on the Internet when available or 1-working day before the meeting at http://www.cfsan.fda.gov/~lrd/vidtel.html.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 17, 2003. Oral presentations from the public will be scheduled on March 25, 2003, between approximately 11 a.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 20, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Constance J. Hardy at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 27, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–5073 Filed 3–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 18, 2003, from 10:30 a.m. to 12:45 p.m.

Location: Food and Drug Administration, 5515 Security Lane, conference room A on the 11th floor, suite 1113, Rockville, MD. This meeting will be held by a telephone conference call. The public is welcome to attend the open portion of the meeting at the location in the first sentence of this paragraph. A speaker phone will be provided at the specified location.

Contact Person: Jody G. Sachs or Denise H. Royster, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–71), 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss the selection of strains to be included in the influenza virus vaccine for the 2003–2004 season.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 12, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 12, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and

an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jody G. Sachs or Denise H. Royster at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the March 18, 2003, Vaccines and Related Biological Products Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–5075 Filed 3–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–10]

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Salishan Revitalization Project, City of Tacoma, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of intent.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that the City of Tacoma, WA acting under its authority as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4, and jointly the City of Tacoma and Tacoma Housing Authority (THA) acting under their authority as lead agencies in accordance with the State Environmental Policy Act (SEPA) (Revised Code of Washington (RCW) 43.21) intends to prepare an Environmental Impact Statement (EIS) for the redevelopment of the Salishan housing project. This notice is given in accordance with the Council on Environmental Quality regulations [40 CFR parts 1500–1508].

Lead Agencies: The EIS will be prepared as a joint NEPA and Washington State SEPA document intended to satisfy the requirements of both federal and state environmental statutes. In accordance with specific statutory authority and HUD's regulations under 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has authorized the City of Tacoma to assume authority as the NEPA Responsible Entity. The City of Tacoma is also the SEPA lead agency and has agreed to share lead agency status with THA with the City as nominal lead as allowed under Washington Administrative Code 197–11–944. Federal agencies with jurisdiction by law, special expertise, or other special interest should report their interests and indicate their willingness to participate in the EIS process as a "Cooperating Agency."

ADDRESSES: Notice of intent to prepare an EIS is hereby given and all interested federal, state, and local agencies, Indian tribes, groups, and the public are invited to comment on the scope of the EIS. Comments relating to the scope of the EIS are requested and will be accepted by the contact person listed below for a period of 30 days following issuance of this notice. Parties interested in receiving future notices to comment on the published Draft EIS should also notify the contact person within the 30-day time period.

FOR FURTHER INFORMATION CONTACT: Karie Hayashi, Land Use Administration Planner, City of Tacoma, 747 Market Street, Tacoma, Washington, 98404; Phone (253) 591–5387, Fax: (253) 591–5433; e-mail: *khayashi@cityoftacoma.org.*

SUPPLEMENTARY INFORMATION:

A. Background

The Salishan Public Housing Development (Salishan) was originally constructed in 1942 as war time temporary housing on 147.7 acres on the east side of Tacoma. Located in what is known as the East Side neighborhood, Salishan is bordered on the west by Portland Avenue and on the east by Swan Creek. In 2000, THA submitted a successful HOPE VI grant application for the redevelopment of Salishan. The amount of the HOPE VI grant awarded in connection with the Salishan revitalization project was $35 million. Under the proposed Revitalization Plan, all of the units will be demolished and Salishan will be redeveloped into a community of approximately 1,200 units. The project will require temporary and permanent relocation of all existing residents. The new unit mix will incorporate low-income, affordable, and market rate housing with single- and multi-family dwellings, and senior and special needs housing. The redevelopment project will also include a mixture of commercial uses and improvements to community facilities such as expanding the existing health clinic, day care, family investment center, and gymnasium. There are currently 837 housing units, in which approximately 810 families reside.

Alternatives to be considered in the EIS include a no action alternative and a range of development alternatives from 1,100 units to 1,400 units. An additional option that will be considered as part of the two development alternatives will be a potential land swap with Metro Parks. Metro Parks is proposing to develop a portion of their property and the land they get from THA for active and passive recreation uses. THA will develop the land from Metro Parks for housing or other community facilities.

B. Need for the EIS

This proposal may constitute an action with potentially significant impact on the human environment and significant adverse impacts on the environment. Therefore the lead agencies have elected to prepare an EIS pursuant to 24 CFR 58.37 and RCW 43.21.030(2)(c). Respondents may comment on EIS alternatives, probable significant adverse impacts, mitigation measures, and licenses or other approvals that may be required. Responses to this notice will be used to: (1) Determine significant environmental issues, (2) assist in developing the range of alternatives to be considered, and (3) identify interested parties who would like to participate in the EIS process.

C. Scoping

A public scoping meeting is scheduled to occur on March 19, 2003 from 4 p.m. to 8 p.m. (childcare and language translation services will be available at the meeting). The EIS scoping meeting will provide an opportunity for the public to learn more about the project and provide input on the scope of the EIS. The public scoping meeting will be held at the following location: Tacoma Housing Authority, Salishan Meeting Rooms, 1724 E. 44th Street, Tacoma, Washington 98404.

D. EIS Issues

The lead agencies have identified the following areas for potential discussion in the EIS: geology and soils, air quality, water resources, vegetation and wetlands, fish and wildlife, threatened and endangered species, hazardous materials, noise, land use, housing, displacement, and relocation, social and economic (including environmental justice), historic resources, cultural and archaeological resources, recreation, visual resources and aesthetics, transportation, public services, and utilities.

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: February 28, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–5254 Filed 3–4–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Southwestern Willow Flycatcher Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of the Final Recovery Plan for the southwestern willow flycatcher (*Empidonax traillii extimus*). The breeding range of this bird includes southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and possibly extreme northern portions of the Mexican states of Baja, California del Norte, Sonora, and Chihuahua. Within this region, the species breeds in dense riparian tree and shrub communities associated with rivers, swamps, and other wetlands including lakes (*e.g.*, reservoirs). Most of these habitats are classified as forested wetlands or scrub-shrub wetlands.

ADDRESSES: Persons wishing to obtain a copy of the Recovery Plan may contact Greg Beatty, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951 (602/242–0210 x247, *Greg_Beatty@fws.gov*). The Plan is also available at *http://arizonaes.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Beatty (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. On June 6, 2001, the Service published in the **Federal Register** an announcement of the availability for public review of the draft Recovery Plan for the southwestern willow flycatcher. Public comments were accepted through October 4, 2001. The comment period was subsequently reopened on October 10, 2001, for a period of 60 days extending through December 10, 2001. Seventy-eight letters of comment were received during the two comment periods. The draft Recovery Plan was revised and finalized based on this input.

The Southwestern Willow Flycatcher Recovery Plan describes the status, current management, recovery objectives and criteria, and specific actions needed to reclassify the southwestern willow flycatcher from endangered to threatened, and to ultimately delist it. The Recovery Plan was developed by a Technical Subgroup comprised of 14 technical specialists, and geographically-based teams of stakeholders (Implementation Subgroups), which include representatives of Native American Tribes, State and local governments, ranchers, private land owners and managers, agency representatives, and others.

The southwestern willow flycatcher is known to currently breed in dense riparian vegetation in southern California, southern Nevada, southern Utah, Arizona, New Mexico, and southwestern Colorado. Although extreme northwestern Mexico and western Texas are considered part of its breeding range, no nesting birds are presently known to occur in these areas. The dense riparian vegetation that is needed for breeding was historically rare and sparsely distributed, and is now more rare. Destruction and modification of riparian habitats have been caused mainly by: Reduction or elimination of surface and subsurface water due to diversion and groundwater pumping; changes in flood and fire regimes due to dams and stream channelization; clearing and controlling vegetation; livestock overgrazing; changes in water and soil chemistry due to disruption of natural hydrologic cycles; and establishment of non-native plants. Concurrent with habitat loss have been increases in brood parasitism by the brown-headed cowbird (*Molothrus ater*) and the presence of nest predation which inhibits reproductive success and further reduces population levels. Actions needed to recover the southwestern willow flycatcher are those that would increase and improve breeding habitat by restoring and/or re-creating natural physical and biotic processes that influence riparian ecosystems, and reducing other stresses on the flycatcher. Specific actions include: Changing management of surface and groundwater where feasible; restoring flood cycles; reducing impacts of domestic livestock, wild burros, and native ungulates; improving metapopulation stability; securing long-term protection of breeding habitat; managing exotic plant species; reducing brood parasitism by brown-headed cowbirds; and conducting research to refine management practices and knowledge of ecology. The Recovery Plan was finalized based on comments received during meetings with the Implementation Subgroups, as well as comments received from the public.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 19, 2002.

David A. Yazzie,

Acting Regional Director.

[FR Doc. 03–5124 Filed 3–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to Office of Management and Budget.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs is seeking to extend clearance for an information collection request. The information collection, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, is cleared under OMB Control Number 1076–0112. Interested parties are invited to comment on this collection.

DATES: Submit comments on or before April 4, 2003.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street NW., Washington, DC 20503. Send a copy of your comments to Larry Blair, Bureau of Indian Affairs, Office of Tribal Services, Division of Social Services, 1951 Constitution Avenue, NW., MS 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair, (202) 513–7621, Facsimile number (202) 208–2648.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian tribe may reassume jurisdiction over Indian child proceedings when a state asserts any jurisdiction. Tribes have the right to pursue this alternative because this action is authorized by the Indian Child Welfare Act, Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 1918, and is incorporated in 25 CFR 13.11. A 60-day notice for public comments was published on December 12, 2002 (67 FR 76413). There were no comments received.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

Please note, any comments, names and addresses concerning this submission are available for public review during regular business hours (8 a.m. to 4:30 p.m). If you wish your name and address withheld from public review, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB is required to make a decision concerning this information collection request between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment will receive the best consideration by OMB if it is submitted early during this comment period.

III. Data

Type of action: Renewal.

Title of the Information Collection: Tribal Reassumption of Jurisdiction Over Child Custody Proceedings.

Summary of Collection of Information: The collection of information will ensure that the provisions of Pub. L. 95–608 are met.

Affected Entities: Federally recognized tribes who submit tribal reassumption petitions for review and approval by the Secretary of the Interior.

Frequency of Response: Annually.

Estimated Number of Annual Responses: 2.

Estimated Time Per Application: 8 hours.

Estimated Total Annual Burden Hours: 16 hours.

Dated: February 26, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–5079 Filed 3–4–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Ponca Tribe of Nebraska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 3 acres, more or less, of land into trust for the Ponca Tribe of Nebraska on December 20, 2002. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: George Skibine, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–4543 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR part 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR part 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On December 20, 2002, the Assistant Secretary—Indian Affairs decided to accept approximately 3 acres, more or less, of land into trust for the Ponca Tribe of Nebraska under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The Ponca Tribe was legislatively terminated in 1962 pursuant to the Ponca Termination Act, Public Law 87–629, 25 U.S.C. 971–980. Pursuant to Public Law 101–484, 25 U.S.C. 983–983(h), dated October 31, 1990 the Tribe was restored to federal recognition. In a memorandum dated November 22, 2002, the Associate Solicitor, Division of Indian Affairs, concluded that the prohibition on gaming on after-acquired trust lands contained in Section 20 of IGRA, 25 U.S.C. 2719, does not apply in this case because the Ponca Tribe is a restored tribe within the meaning of 25 U.S.C. 2719(b)(1)(B)(iii), and the acquisition of land in Knox County qualifies as "the restoration of lands" for an Indian tribe that is restored to Federal recognition for purposes of 25 U.S.C. 2719(b)(1)(B)(iii) because it is located within Knox County, and the Ponca Tribe Restoration Act mandates that the Secretary acquire land for the Ponca Tribe in Knox County.

The legal description of the property is as follows:

A tract of land lying wholly in Out Lot G, Park Addition to the Village of Crofton, Knox County, Nebraska, more particularly described as follows: Commencing at a point 150.0 feet West of the Northeast corner of said Out Lot G; thence West, along the North line of said Out Log G, 166.0 feet; thence South 132.8 feet; thence East 70.7 feet; thence South 42.2 feet; thence East 95.3 feet; thence North 1750.0 feet to the point of beginning.

The property consists of approximately 3 acres located in Knox County, Nebraska.

Dated: December 20, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–5062 Filed 3–4–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF JUSTICE

Civil Rights Division

Office of Special Counsel for Immigration Related Unfair Employment Practices; Immigration Related Employment Discrimination Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration related unfair employment discrimination. Grants will range in size from $40,000 to $100,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualified them to educate workers, employers and the general public about the antidiscrimination provisions of the INA. OSC welcomes proposals from diverse nonprofit organizations such as local, regional or national ethnic and immigrants rights advocacy organizations, labor organizations, trade associations, industry groups, professional organizations, or other nonprofit entities, including state and local government agencies, providing information services to potential victims of discrimination and/or employers.

Application Due Date: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lilia Iraizarry, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Ave., Washington, DC 20530. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). OSC's e-mail address is: *osccrt@usdoj.gov*.

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct cost-effective public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers, workers covered by this statute, and/or the general public.

Background: The Immigration and Nationality Act protects worker-authorized individuals from employment discrimination based on their citizenship status and/or national origin. Federal law also makes knowingly hiring unauthorized workers unlawful, and requires employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

Employers of four or more employees are prohibited from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment and referral for a fee, and engaging in document abuse in the employment eligibility verification process on the basis of national origin or citizenship status.

U.S. citizens and certain classes of work authorized individuals are protected from *citizenship status discrimination*. Protected non-citizens include:

- Temporary Residents;
- Lawful Permanent Residents;
- Refugees; and
- Asylees.

Citizens and *all* work authorized individuals are protected from *discrimination on the basis of national origin*. However, under INA this prohibition applies only to employers with four to fourteen employees. National original discrimination complaints against employers with fifteen or more employees are under the jurisdiction of the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964, U.S.C. 2000e, *et seq.*

In addition, under the *comment abuse provision* of the law, employers cannot request more or different documents than are required by the Immigration and Naturalization Service (INS) for completion of the Employment Eligibility Verification (I–9) Form or prefer or require one form of documentation over another, if made for the purpose or with the intent of discriminating against an individual on the basis of national origin or citizenship status.

OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with specially designated administrative law judges. OSC also initiates independent investigations of possible immigration related job discrimination.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individual and employers about the antidiscrimination provisions of the INA. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of responsibilities.

Purpose: OSC seeks to educate both workers and employers about their rights and responsibilities under the antidiscrimination provisions of INA. Because previous grantees have developed a wealth of materials (*e.g.*, brochures, posters, booklets, information packets and videos) to educate these groups, OSC has determined that the main focus of the program should be on the *actual delivery* of these materials to educate further both potential victims and employers. OSC seeks proposals that will use *existing materials* effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions. OSC will, of course, consider any proposal that articulates and substantiates other creative means of reaching these populations.

Program Description: The program is designed to develop and implement cost-effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. *Application may propose to educate potential victims only, employers only, or both in a single campaign.* Program budgets include the travel, lodging and other expenses necessary for up to two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn). Proposals should outline the following key elements of the program:

Part I: Intended Audience(s)

The educational efforts under the grant should be directed to (1) work-authorized non-citizens who are protected individuals, since this group is especially vulnerable to employment discrimination; (2) those citizens who are most likely to become victims of employment discrimination; and/or (3) employers, especially small businesses. The proposals should define the characteristics of the work authorized population or the employer group(s) intended to be the focus of the educational campaign, and the applicant's qualification to reach credibly and effectively large segments of the intended audience(s).

The proposals should also detail the reasons for focusing on each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign focuses and supporting the reasons for the selection, applicants may use census data, studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible intended audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for educating members of national or linguistic groups that have limited community-based support and communication networks.

Grants are an important component of OSC partnerships to better serve the public, employers and potential discrimination victims. Grantees should plan to include OSC attorneys and other professional staff in public outreach programs in order to more successfully reach their audiences and prevent discrimination before it occurs or combat it where it exists.

Some grantees who are conducting citizenship campaigns have, in the past, combined those efforts and resources with the INA antidiscrimination education campaigns in order to maximize the scope and breadth of the project and to reach a larger number of individuals. Applicants proposing to combine these efforts should discuss how the programs will interact and how the budgets will be administered.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, applicants should include in their budget proposals the costs for distribution of materials received from OSC or from current/past OSC grantees.

To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials must be approved by OSC prior to production to ensure legal accuracy and proper emphasis. Proposed revisions/translations of OSC-approved materials must also be submitted for clearance. All information distributed should also identify OSC as a source of assistance, information and action, and include the correct address and telephone numbers of OSC, (including the toll-free numbers, TDD numbers) and OSC e-mail and Internet addresses.

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future public education efforts.

Therefore, it is crucial that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusion of a campaign. Interim evaluation/activity reports are due at least quarterly, or more frequently as needed throughout the grant year.

Selection Criteria: The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

A panel made up of OSC staff will review and rate the applications and make recommendations to the Special Counsel regarding funding. The panel's results are advisory in nature and not binding on the Special Counsel. *Letters of support, endorsement, or recommendation are not part of the grant application process and will not be considered.*

In determining which applications to fund, OSC will consider the following (based on a one-hundred point scale):

1. Program Design (50 points)

Sound program design and cost-effective strategies for educating the intended population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (10 points)

b. Selection and definition of the intended audience(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to reach effectively the intended audience(s). (15 points)

c. A cost-effective campaign strategy for educating employers and/or members of the protected class, with a justification for the choice of strategy, including the degree to which the campaign has prevented immigration related unfair employment practices and has reached individuals with such claims. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 points)

Proposals will be rated in terms of the capability of the applicant to define the intended audience, reach it, and implement the public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided. (10 points)

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying individually, propose the use of subcontractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project.

3. Staff Capability (10 points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants: This grant competition is open to nonprofit organizations, including labor organizations, employer groups and state and local government agencies.

Grant Period and Award Amount: It is anticipated that several grants will be awarded and will range in size from $40,000 to $100,000.

Publication of this announcement does not require OSC to award any specific number of grants, or to obligate all or any part of available funds. The period of performance will be twelve months from the date of the grant award, in most cases beginning October 1, 2003.

Application Deadline: All applications must be received by 6 p.m. EDT, April 21, 2003. If using regular first-class mail, send to: U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Avenue NW., Washington, DC 20530. If using messengers, overnight or priority mail, send to: Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, 1425 New York Ave., NW., Suite 9000, Washington, DC 20005. *Applications may not be submitted via facsimile machine.*

Application Requirements: Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424). Note: The Catalogue of Federal Domestic Assistance number is 16.110 and the title is "Education & Enforcement of the Antidiscrimination Provisions of the Immigration and Nationality Act" (box #10 of the SF 424).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. Disclosure Form to Report Lobbying (SF LLL).

4. OJP Form 4000/3 (Assurances).

5. An abstract of the full proposal, not to exceed one page.

6. A program narrative of not more than fifteen (15) double-spaced typed pages that includes the following:

a. A clear statement describing the approach and strategy to be used to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion and the extent of OSC participation in grantee outreach events;

c. The proposed staffing plan. Note: If the grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff, hiring is subject to review and approval by OSC at that time; and

d. Description of how the project will be evaluated.

7. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the cognizant Federal agency must accompany the budget. Note: Program budgets must include the travel, lodging and other expenses necessary for *not more* than two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn).

8. Copies of resumes of the professional staff proposed in the budget.

Application forms may be obtained by writing or telephoning: U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Avenue NW., Washington, DC 20530. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). This announcement and the required forms will also appear on the World Wide Web at: *http://www.usdoj.gov/crt/osc/*. In order to facilitate handling, please do not use covers, binders or tabs.

Dated: February 27, 2003.

Katherine A. Baldwin,

Deputy Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 03–5090 Filed 3–4–03; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act

Under 28 C.F.R. 50.7, notice is hereby given that on February 14, 2003, a proposed consent decree ("consent decree") in *United States* v. *Chicago Specialties, L.L.C.*, Civil Action No. 03C 0864, was lodged with the United States District Court for the Northern District of Illinois. This consent decree resolves claims against Chicago Specialties, L.L.C., for violations of the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act.

In this action the United States sought penalties and injunctive relief for violations under the Clean Air Act of the Illinois State Implementation Plan (the "SIP"), violations of the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry ("HON" or "HON regulations"), 40 CFR part 63, subparts F, G and H, violations of the Spill Prevention, Control and Countermeasures ("SPCC") standards, 40 CFR 112.7, and violations of RCRA waste-handling and record-keeping requirements in Illinois' EPA-authorized program. Under the terms of the consent decrees, Chicago Specialties agrees to shutdown its paracresol process, perform supplemental environmental projects (SEPs) valued at $310,000, pay $100,000 in civil penalties (half to the United States and half to the State of Illinois) and reimburse the State of Illinois for $71,000 in costs incurred in connection with the Facility. The decision to shutdown the paracresol process was a business decision made by Chicago Specialties, as an alternative to installing pollution controls.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Chicago Specialties, L.L.C.*, Civil Action No. 03 C 0864, D.J. Ref. 90–5–2–1–06918.

The consent decrees may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, Illinois 60604. During the public comment period, the consent decree may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdop.gov)*, fax no (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent decree, please enclose a check in the amount of $53.50 (25 cents per page reproduction cost) payable tot he U.S. Treasury for the consent decree with attachments, or $11.00 for the consent decree without attachments.

William Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–5190 Filed 3–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Homeless Veterans' Reintegration Program (HVRP) Competitive Grants for PY 2003

AGENCY: Veterans' Employment and Training Service, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for Homeless Veterans' Reintegration Programs (SGA 03–02).

SUMMARY: *This competition is targeting eligible applicants that have not received HVRP or Veterans' Workforce Investment Program (VWIP) Funds.* All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for Homeless Veterans' Reintegration Programs (HVRP) authorized under the Homeless Veterans Comprehensive Assistance Act of 2001 (HVCAA). This notice contains all of the necessary information and forms needed to apply for grant funding. Applicants should design programs to assist eligible veterans who are homeless by providing employment, training, support services and assistance. Under this solicitation, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $1.0 million of funds available and expects to award up to five (5) grants in PY 2003. The HVRP program is designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. VETS in Program Year (PY) 2003 will continue to seek applicants that provide direct services through a case management approach, link with Federal, State and Local resources for homeless veterans and have clear strategies for employment and retention of the homeless.

DATES: Applications are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., Eastern Standard Time, April 21, 2003.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–02, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FORMS OR AMENDMENTS: If another copy of a Standard form is needed, go online to *http://www.nara.gov*.

To receive amendments to this Solicitation (Please reference SGA 03–02), all applicants must register their name and address with the Grant Officer at the following address:

U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline.

It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) amended the Homeless Veterans' Reintegration Programs at 38 U.S.C. § 2021, and provides "the Secretary * * * shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force."

The Homeless Veterans' Reintegration Program (HVRP) was the first nationwide Federal program that focused on placing homeless veterans into jobs. Both types of programs, urban and non-urban, in the past have provided valuable information on approaches that work in the different environments.

In accordance with the HVCAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $1.0 million of the funds available to award up to 5 grants to eligible applicants that have not previously received HVRP grants.

The Department has published SGAs for urban and non-urban HVRP grants at the same time. Applicants who have not previously received HVRP grants also may apply for those SGAs.

II. Application Process

A. Potential Jurisdictions To Be Served

Both urban and non-urban areas within the United States and its territories are eligible jurisdictions to receive services under this competition. Urban areas are defined as the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. Non-urban areas are defined as the geographic areas outside of the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. Applicants must identify whether they are applying for an urban or non-urban grant award. Please be advised that urban requests exceeding the $300,000 and non-urban requests exceeding $200,000 will be considered non-responsive.

B. Eligible Applicants

Entities that have *not* previously operated a HVRP or VWIP and have a proven capacity to manage grants and have or will provide the necessary linkages with other service providers are encouraged to apply. Applications for funds will be accepted from State and local workforce investment boards, local public agencies, for-profits/commercial entities, and nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and population to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBS) as defined in Section 111 and 117 of the Workforce Investment Act, are eligible applicants, as well as State and local public agencies.

2. Local public agencies, meaning any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through sub-awards, experienced public agencies, private nonprofit organizations, and private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to homeless veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are for-profit/commercial entities and private nonprofit organizations, including faith-based community organizations. Entities described in Section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement as Section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

C. Funding Levels

The total amount of funds available for this solicitation is $1.0 million. It is anticipated that up to 5 awards may be made under this solicitation. Individual grant awards will not exceed $200,000 for non-urban areas and $300,000 for urban areas. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the amounts specified above will be considered non-responsive.

D. Period of Performance

The period of performance will be for twelve (12) months from the date of award unless modified. It is expected that successful applicants will commence program operations under this solicitation by July 1, 2003. Program funds must be obligated by June 30, 2004, however, funds may be reserved for limited activities of closeout package.

E. Optional Year Funding

Should there be action by Congress to appropriate funds for this purpose, optional year funding may be considered. The Government does *not*, however, guarantee optional year funding for any awardee. Should VETS decide that an optional year for funding be exercised, the grantees' performance during the previous period of operations will be taken into consideration as follows:

1. The grantee must meet 85% of planned goals for Federal expenditures, enrollments, and placements in each quarter; and

2. The Grantee must be in compliance with all terms identified in the solicitation for grant applications, general and special provisions.

3. All program and fiscal reports must have been submitted by the established due date and must be verifiable for accuracy.

All instructions for modifications and announcement of fund availability will be issued at a later date. For these competitive grants, only two optional years of HVRP funding may be available.

F. Submission of Proposal

A cover letter, an original and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal must consist of two (2) separate and distinct parts: (a) The technical proposal and (b) the cost proposal; (1) one completed, blue ink-signed original SF 424 grant application with an original and two (2) copies of the Technical Proposal; and an original and two (2) copies of the Cost Proposal.

G. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 p.m. ET, April 21, 2003, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before April 21, 2003; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to April 21, 2003; and

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume

the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give proper consideration, even if it was timely mailed, the Department is not required to consider the application.

III. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term "homeless or homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. [42 U.S.C. 11302 (a)].

B. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [38 U.S.C. 101(2)]

IV. Related HVRP Program Development Activities

Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

A. *Providers of hands-on services to the homeless veteran,* such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

B. *Federal, State and local entitlement services* such as the Social Security Administration (SSA), Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

C. *Civic and private sector groups,* and especially veterans' service and community-based (including faith-based organizations), to describe homeless veterans and their needs.

D. *Stand Down Support:*

A "Stand Down," as it relates to homeless veterans, is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing, and medical attention. This type of event is mostly volunteer effort, which is organized within a community and brings service providers together such as the DVA, Disabled Veterans' Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on-site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such events have been held throughout the nation.

In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP grant funds may be used to supplement the Stand Down effort where funds are not otherwise available, and should be reflected in the budget and budget narrative.

V. Program Summary

A. Program Concept and Emphasis

The HVRP grants under Section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) are intended to address two objectives:

(1) To provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans. These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in PY 2003 will continue to strengthen the development of effective service delivery systems, to provide comprehensive services through a case management approach that will address the complex problems facing eligible veterans trying to transition into gainful employment, and improve strategies for employment and retention.

B. Scope of Program Design

The project design must provide for the following services:

1. Outreach, intake, assessment, counseling to the degree practical and employment services. Outreach must be provided at shelters, day centers, soup kitchens, VA medical centers, and other programs for the homeless. Program staff providing outreach services should be a veteran who has experience in dealing with, and an understanding of the needs of the homeless.

2. Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists, Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the workforce development system's One-Stop Centers, and Veterans' Workforce Investment Programs (VWIPs);
—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary, and other programs, including those offering transitional housing; and
—Veteran service organizations such as The American Legion, Disabled American Veterans, the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS);

3. Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drugs;
—Medical;
—Post Traumatic Stress Disorder;
—Mental Health;
—Coordinating with McKinney Homeless Assistance Act (MHAA) Title VI programs for health care for the homeless [health care programs under the HVCAA];

4. Referral to housing assistance provided by, for example:

—Local shelters;
—Federal Emergency Management Administration (FEMA) food and shelter programs;
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV [and under the HVCAA];
—Permanent housing programs for the handicapped homeless funded under MHAA Title IV [and under the HVCAA];
—Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers; and

5. Employment and training services such as:

—Basic skills instruction;
—Remedial education activities;
—Job search activities, including job search workshops;
—Job counseling;
—Job preparatory training, including resume writing and interviewing skills;
—Subsidized trial employment (Work Experience);
—On-the-Job Training;
—Classroom Training;
—Job placement in unsubsidized employment;
—Placement follow up services; and
—Services provided under WIA.

C. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to local needs, and will carry out the objectives of the program to successfully reintegrate homeless veterans into the workforce. Under the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes. The outcome measurement established for HVRP grants is for grantees to meet a minimum entered employment rate of 56%, *e.g.*, number of entered employments divided by enrollments (These outcomes will be reported quarterly on Technical Performance Goals Form, Appendix D.). While entering employment is a viable outcome, it will be necessary to measure results over a longer term (retention) to determine the success of programs.

The following program discussion must be considered in a program model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter homeless veterans.

Once the eligible participants have been identified, an assessment must be made of their abilities, interests, needs and barriers to employment. In some cases, these participants may require referrals to services such as social rehabilitation, drug or alcohol treatment or a temporary shelter before they can be enrolled into core training.

When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination should be made as to whether they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan can be monitored by the staff.

Entry into full-time employment or a specific job training program should follow, in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Supportive services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process.

Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The following program discussion emphasizes that follow-up is an integral program component. Follow-up to determine whether the veteran is in the same or similar job at the 90 and 180 day period after entering employment is required. It is important that the grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. The 90 and 180 day follow-up is fundamental to assessing the results of the program success. Grantees need to budget for this activity so that follow-up can and will occur for those placed at or near the end of the grant performance period. Grantees prior to the end of the grant performance period must obligate funds to ensure that follow-up activities are completed. Such results will be reported in the final technical performance report.

VI. Required Contents

There are seven program activities that all applications must contain to be found technically acceptable under "this SGA." Programs must be "employment focused" and must be responsive to the rating criteria in Section IX. These activities are:

1. Outreach
2. Pre-Enrollment Assessments;
3. Employment Development Plans for all clients;
4. Case Management
5. Job Placement and job retention follow-up (at 90 and 180 days) after individual enters employment.
6. Utilization of DVOP and LVER staff in service delivery.
7. Programs must show community linkages with other programs and services which provide support to homeless veterans.

VII. Proposal Content

The proposal consists of two parts, Part 1 being the Technical portion and Part 2 the Cost portion. The information provided in these two parts is essential in gaining a sound understanding of the programmatic and fiscal contents of the grant proposal.

A. *Part 1—The Technical Proposal* will consist of a narrative proposal that demonstrates: the applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the homeless veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal narrative must not exceed fifteen (15) pages double-spaced, font size no less than 11pt. and typewritten on one side of the paper only. [The applicant also must complete the forms, *i.e.* Technical Performance Goals chart provided in the SGA, Appendix D.].

The proposal must include an outreach component which uses veterans whenever possible to provide outreach. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) in the jurisdiction is required.

Programs must be "employment focused". The services provided will be directed toward: (a) Increasing the employability of homeless veterans through training or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

The following format for the technical proposal is strongly recommended:

1. *Need for the program:* The applicant must identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community

infrastructure that contribute to the employment and other barriers faced by the targeted veterans, and how the program would respond to these needs. Include Labor Market Information (LMI) on the outlook for job opportunities in the service area.

2. *Approach or strategy to increase employment and job retention:* Applicants must be responsive to the Rating Criteria contained in Section IX and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) Outline the type(s) of training available—is training for demand occupations, the length of training, the training curriculum and how the training will enhance the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (c) provide a plan for follow-up to address retention after 90 and 180 days with participants who entered employment. (See discussion on results in Section V.c.); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. *Linkages with other providers of employment and training services to the homeless veterans:* Describe the linkages this program will have with other providers of services to homeless veterans outside of the HVRP grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representatives (LVER) program, and programs under the Workforce Investment Act; and list the type of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system must be delineated. Describe any linkages with any other resources and/or other programs for Homeless veterans. Indicate how the program will be coordinated with any efforts for the homeless that are conducted by agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

4. *Linkages with other federal agencies:* Describe any program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (DVA) for the homeless, to include the Compensated Work Therapy (CWT) and Per Diem programs. Indicate how the applicant will coordinate with any "continuum of care" efforts for the homeless among agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

5. *Proposed supportive service strategy for veterans:* Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary, if Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

6. *Organizational capability to provide required program activities:* The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. A summary narrative of program experience and employment and training performance outcomes is required. The applicant must also provide evidence of key staff capability to support veterans seeking employment and training opportunities.

7. *Proposed housing strategy for homeless veterans:* Describe how housing resources for homeless veterans will be obtained or accessed. These resources should be from linkages or sources other than the HVRP grant such as HUD, HHS, community housing resources, DVA leasing, or other programs. The applicant is not allowed to use HVRP resources to support housing needs.

Note: Resumes, charts, standard forms, transmittal letters, MOUs, agreements, lists of contracts and grants and letters of support are not included in the page count. [If provided include these documents as attachments to the technical proposal.]

B. *Part 2—Cost Proposal* must contain: (1) The Standard Form (SF) 424, "Application for Federal Assistance", (original, signed in blue-ink) (2) the Standard Form (SF) 424A "Budget Information Sheet" in Appendix B, and (3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative" and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. In addition to the cost proposal the applicants must include the Assurance and Certification signature page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this SGA. All applicants must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

The Catalog of Federal Domestic Assistance number for this program is 17.805. It must be entered on the SF 424, Block 10.

All applicants must include, as a separate appendix, a list of all government grants and contracts that it has had in the past three (3) years, including grant/contract officer contact information. Veterans' Employment and Training Service reserves the right to have a representative within each State review and verify this data. Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness.

VIII. The Cost Proposal Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

A. A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub-awardees);

B. An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages);

C. An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-awards/ contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges will not exceed 36 cents per mile;

D. A plan, which includes all associated costs, for retaining participant information pertinent to a longitudinal follow-up survey, six (6) months after the program performance period ends;

E. A description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

F. An identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

IX. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs *e.g.*, cost per enrollment and placement, demonstration models, and geographic service areas. While points will not be awarded for cost issues, cost per entered employment will be given serious consideration in the selection of awardee. The Grant Officer's determination is final agency action for award under SGA 03–02 is the final agency action.

Panel Review Criteria

1. Need for the Project: 15 Points

The applicant will document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers that characterize the target population.

2. Overall Strategy To Increase Employment and Retention: 40 Points

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, any employer commitments to hire, placement, and post-placement follow-up services. Applicants must address how they will target occupations in expanding industries, rather than declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local resources services and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs including (DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Investment Boards or entities where in place, must be presented. Applicant must indicate how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, entered employment/placements and job retention. (See Appendix D) Of the 40 points possible in the strategy to increase employment and retention, 5 points will be awarded to grant proposals that demonstrate the ability to maintain a six-month employment retention rate of 50 percent or greater.

3. Quality and Extent of Linkages With Other Providers of Services to the Homeless and to Veterans: 10 Points

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless veterans in the local community outside of the HVRP grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. [Describe, to the extent possible, how the project would fit into the community's continuum of care approach to respond to homelessness and any linkages to HUD, HHS or DVA programs or resources to benefit the proposed program.]

4. Demonstrated Capability To Provide Required Program Services: 20 Points

The applicant must describe its capability to provide and operate employment and training programs and providing services to participants similar to those that are proposed under this solicitation. The applicant must address its capability and ability for timely startup of the program. The applicant should delineate its staff capability and ability to manage the financial aspects of a grant program, including a recent (within the last 12 months), financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit.

5. Quality of Overall Housing Strategy: 15 Points

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, DVA lease, or other means. HVRP funds may not be used to purchase housing or vehicles.

X. Post-Award Conference

A post-award conference will be held for those grantees awarded PY 2003 HVRP funds from the competition. It is expected to be held in May or June 2003. Up to two grantee representatives must be present; a fiscal and a program representative is recommended. The site of the Post-Award conference has not yet been determined, for planning and budgeting purposes, please plan on five days and use Washington, DC as the conference location. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget.

XI. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (*i.e.*, October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET that contains the following:

1. A comparison of actual accomplishments to established goals

for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) Identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

C. 90 Day Follow-Up Report

The grantee must submit no later than 120 days after the grant expiration date a final report containing the following:

1. Financial Status Report (SF–269A) (copy to be provided following grant awards); and

2. Technical Performance Report—(Program Goals).

D. Six (6) Month Follow-Up/Closeout Report

No later than 210 days after the grant performance period ends, the grantee must submit a follow-up report containing the following:

1. Final Financial Status Report (SF–269A).

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of participants that remained employed 90 and 180 days after entering employment; (c) whether the veterans are still employed at the same or similar job, if not what are the reasons; (d) whether the training received was applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

XII. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

2. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

3. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Administrative Standards and Provisions

Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must provide that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition. All grants will be subject to the following administrative standards and provisions:

1. 29 CFR Part 93—Lobbying.

2. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.

3. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

4. 29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

5. 29 CFR Part 98—Federal standards for Government-wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants).

6. 29 CFR Part 99—Audit Of States, Local Governments, and Non-profit Organization.

7. 29 CFR Parts 30, 31, 32, 33 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally-Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs and Activities; and Nondiscrimination on the Basis of Sex in Education Programs Receiving or Benefiting from Federal Financial Assistance.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, VETS may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC. this 27 day of February, 2003.

Daniel P. Murphy,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424
Appendix B: Budget Information Sheet
Appendix C: Assurances and Certifications Signature Page
Appendix D: Technical Performance Goals Form
Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants
Appendix F: The Glossary of Terms
Appendix G: List of 75 largest U.S. Cities

BILLING CODE 4510–79–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code):*

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS				
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
	FUTURE FUNDING PERIODS (Years)			
(a) Grant Program	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
21. Direct Charges:
22. Indirect Charges:
23. Remarks:

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 90 Days				
Number Retaining Jobs For 180 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total _____ _____

	Administration	Program
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs ----------	_____	_____
	Administration	Program

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans' Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Rank	Area Name	Census Population	
		April 1, 2000	April 1, 1990
1	New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA	21,199,865	19,549,649
2	Los Angeles--Riverside--Orange County, CA CMSA	16,373,645	14,531,529
3	Chicago--Gary--Kenosha, IL--IN--WI CMSA	9,157,540	8,239,820
4	Washington--Baltimore, DC--MD--VA--WV CMSA	7,608,070	6,727,050
5	San Francisco--Oakland--San Jose, CA CMSA	7,039,362	6,253,311
6	Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA	6,188,463	5,892,937
7	Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA	5,819,100	5,455,403
8	Detroit--Ann Arbor--Flint, MI CMSA	5,456,428	5,187,171
9	Dallas--Fort Worth, TX CMSA	5,221,801	4,037,282
10	Houston--Galveston--Brazoria, TX CMSA	4,669,571	3,731,131
11	Atlanta, GA MSA	4,112,198	2,959,950
12	Miami--Fort Lauderdale, FL CMSA	3,876,380	3,192,582
13	Seattle--Tacoma--Bremerton, WA CMSA	3,554,760	2,970,328
14	Phoenix--Mesa, AZ MSA	3,251,876	2,238,480
15	Minneapolis--St. Paul, MN--WI MSA	2,968,806	2,538,834
16	Cleveland--Akron, OH CMSA	2,945,831	2,859,644
17	San Diego, CA MSA	2,813,833	2,498,016
18	St. Louis, MO--IL MSA	2,603,607	2,492,525
19	Denver--Boulder--Greeley, CO CMSA	2,581,506	1,980,140
20	San Juan--Caguas--Arecibo, PR CMSA	2,450,292	2,270,808
21	Tampa--St. Petersburg--Clearwater, FL MSA	2,395,997	2,067,959
22	Pittsburgh, PA MSA	2,358,695	2,394,811
23	Portland--Salem, OR--WA CMSA	2,265,223	1,793,476
24	Cincinnati--Hamilton, OH--KY--IN CMSA	1,979,202	1,817,571
25	Sacramento--Yolo, CA CMSA	1,796,857	1,481,102
26	Kansas City, MO--KS MSA	1,776,062	1,582,875
27	Milwaukee--Racine, WI CMSA	1,689,572	1,607,183
28	Orlando, FL MSA	1,644,561	1,224,852
29	Indianapolis, IN MSA	1,607,486	1,380,491
30	San Antonio, TX MSA	1,592,383	1,324,749
31	Norfolk--Virginia Beach--Newport News, VA--NC MSA	1,569,541	1,443,244
32	Las Vegas, NV--AZ MSA	1,563,282	852,737
33	Columbus, OH MSA	1,540,157	1,345,450
34	Charlotte--Gastonia--Rock Hill, NC--SC MSA	1,499,293	1,162,093
35	New Orleans, LA MSA	1,337,726	1,285,270
36	Salt Lake City--Ogden, UT MSA	1,333,914	1,072,227
37	Greensboro--Winston-Salem--High Point, NC MSA	1,251,509	1,050,304
38	Austin--San Marcos, TX MSA	1,249,763	846,227
39	Nashville, TN MSA	1,231,311	985,026
40	Providence--Fall River--Warwick, RI--MA MSA	1,188,613	1,134,350
41	Raleigh--Durham--Chapel Hill, NC MSA	1,187,941	855,545
42	Hartford, CT MSA	1,183,110	1,157,585
43	Buffalo--Niagara Falls, NY MSA	1,170,111	1,189,288
44	Memphis, TN--AR--MS MSA	1,135,614	1,007,306
45	West Palm Beach--Boca Raton, FL MSA	1,131,184	863,518
46	Jacksonville, FL MSA	1,100,491	906,727
47	Rochester, NY MSA	1,098,201	1,062,470
48	Grand Rapids--Muskegon--Holland, MI MSA	1,088,514	937,891
49	Oklahoma City, OK MSA	1,083,346	958,839
50	Louisville, KY--IN MSA	1,025,598	948,829
51	Richmond--Petersburg, VA MSA	996,512	865,640
52	Greenville--Spartanburg--Anderson, SC MSA	962,441	830,563
53	Dayton--Springfield, OH MSA	950,558	951,270
54	Fresno, CA MSA	922,516	755,580
55	Birmingham, AL MSA	921,106	840,140
56	Honolulu, HI MSA	876,156	836,231
57	Albany--Schenectady--Troy, NY MSA	875,583	861,424
58	Tucson, AZ MSA	843,746	666,880
59	Tulsa, OK MSA	803,235	708,954
60	Syracuse, NY MSA	732,117	742,177
61	Omaha, NE--IA MSA	716,998	639,580
62	Albuquerque, NM MSA	712,738	589,131
63	Knoxville, TN MSA	687,249	585,960
64	El Paso, TX MSA	679,622	591,610
65	Bakersfield, CA MSA	661,645	543,477
66	Allentown--Bethlehem--Easton, PA MSA	637,958	595,081
67	Harrisburg--Lebanon--Carlisle, PA MSA	629,401	587,986
68	Scranton--Wilkes-Barre--Hazleton, PA MSA	624,776	638,466
69	Toledo, OH MSA	618,203	614,128
70	Baton Rouge, LA MSA	602,894	528,264
71	Youngstown--Warren, OH MSA	594,746	600,895
72	Springfield, MA MSA	591,932	587,884
73	Sarasota--Bradenton, FL MSA	589,959	489,483
74	Little Rock--North Little Rock, AR MSA	583,845	513,117
75	McAllen--Edinburg--Mission, TX MSA	569,463	383,545

[FR Doc. 03–5087 Filed 3–4–03; 8:45 am]
BILLING CODE 4510–79–C

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Non-Urban Homeless Veterans' Reintegration Program Competitive Grants for PY 2003

AGENCY: Veterans' Employment and Training Service, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for Homeless Veterans' Reintegration Programs (HVRP) (SGA 03–03).

SUMMARY: *All applicants for grant funds should read this notice in its entirety.* The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for non-urban grants for Homeless Veterans' Reintegration Programs (HVRP) authorized under the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) for HVRP grants for non-urban areas. This notice contains all of the necessary information and forms needed to apply for grant funding. Such programs will assist eligible veterans who are homeless by providing employment, training, support services and assistance. Under this solicitation, VETS anticipates that up to $2.0 million will be available for grant awards in Program Year (PY) 2003 and expects to award up to fifteen (15) grants. The HVRP programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. VETS in Program Year (PY) 2003 will continue to seek applicants that provide direct services through a case management approach, link with Federal, State and Local resources for homeless veterans and have clear strategies for employment and retention of the homeless.

DATES: Applications are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., eastern standard time, April 21, 2003.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–03, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

Forms or Amendments: If another copy of a standard form is needed, go online to *http://www.nara.gov.*

To receive amendments to this solicitation (please reference SGA 03–

03), all applicants must register their name and address with the Grant Officer at the following address: U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) amended the Homeless Veterans Reintegration Programs at 38 U.S.C. 2021, (HVCAA) and provides "the Secretary * * * shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force."

The Homeless Veterans' Reintegration Project (HVRP) was the first nationwide Federal program that focused on placing homeless veterans into jobs. Both types of programs, urban and non-urban, in the past have provided valuable information on approaches that work in the different environments.

II. Application Process

A. Potential Jurisdictions To Be Served

This SGA is for non-urban HVRP grants. Separate SGA's for urban and *new grantees* HVRP grants have been issued at the same time. Due to the amount of funds available, and the emphasis on establishing or strengthening existing linkages with other recipients of funds under the HVCAA, the only potential jurisdictions which will be served through this non-urban competition for HVRPs in PY 2003 are the areas outside of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. The 75 U.S. cities largest in population are listed in Appendix G.

B. Eligible Applicants

Applications for funds will be accepted from State and local workforce investment boards, local public agencies, for-profit/commercial entities, and nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and population to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBS) as defined in sections 111 and 117 of the Workforce Investment Act, are eligible applicants, as well as State and local public agencies.

2. Local public agencies, meaning any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through sub-awards, experienced public agencies, private nonprofit organizations, private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to homeless veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are for-profit/commercial entities and private nonprofit organizations that have operated an HVRP or similar employment and training program for the homeless or veterans and proven a capacity to manage grants and have or will provide the necessary linkages with other service providers. Entities described in section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement as section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

C. Funding Levels

The total amount of funds available for this solicitation is $2.0 million. It is anticipated that up to 15 awards may be made under this solicitation. Awards are expected to range from $150,000 to $200,000. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the $200,000 will be considered non-responsive.

D. Period of Performance

The period of performance will be for twelve (12) months from date of award unless modified. It is expected that successful applicants will commence program operations under this solicitation by July 1, 2003. Program funds must be obligated by June 30, 2004, however, funds may be reserved for limited activities of close-out.

E. Optional Year Funding

Should there be action by Congress to appropriate funds for this purpose, optional year funding may be considered. The government does *not*, however, guarantee optional year funding for any awardee. Should VETS decide that an option year for funding be exercised, the grantees' performance during the previous period of operations will be taken into consideration as follows:

1. The grantee must meet at minimum 85% of planned goals for Federal expenditures, enrollments, and placements in each quarter; and

2. The grantee must be in compliance with all terms identified in the solicitation for grant application, general and special provisions.

3. All program and fiscal reports must have been submitted by the established due date and must be verifiable for accuracy.

All instructions for modifications and announcement of fund availability will be issued at a later date. For these competitive grants, only two optional years of HVRP funding may be available.

F. Submission of Proposal

A cover letter, an original and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal must consist of two (2) separate and distinct parts: (a) The technical proposal and (b) the cost proposal; one (1) completed, blue ink-signed original SF 424 grant application with an original and two (2) copies of the Technical Proposal; and an original and two (2) copies of the Cost Proposal.

G. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 p.m. e.t., April 21, 2003, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before April 21, 2003; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to April 21, 2003; and

3. It is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give proper consideration, even if it was timely mailed, the Department is not required to consider the application.

III. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term "homeless or homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (42 U.S.C. 11302 (a)).

B. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. (38 U.S.C. 101(2))

IV. Related HVRP Program Development Activities

Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

A. *Providers of hands-on services to the homeless veteran*, such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

B. *Federal, State and local entitlement services* such as the Social Security Administration (SSA), Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

C. *Civic and private sector groups*, and especially veterans' service and community-based (including faith-based organizations), to describe homeless veterans and their needs.

D. *Stand Down Support.* A "Stand Down", as it relates to homeless veterans, is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing, and medical attention. This type of event is mostly volunteer effort, which is organized within a community and brings service providers together such as the DVA, Disabled Veterans' Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on-site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such events have been held throughout the nation.

In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP grant funds may be used to supplement the Stand Down effort where funds are not otherwise available, and should be reflected in the budget and budget narrative.

V. Program Summary

A. Program Concept and Emphasis

The HVRP grants under section 5 of the Homeless Veterans' Comprehensive Assistance Act (HVCAA) of 2001 are intended to address two objectives: (1) To provide services to assist in reintegrating homeless veterans into meaningful employment within the

labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans.

These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 2003 will continue to strengthen the development of effective service delivery systems, to provide comprehensive services through a case management approach that will address the complex problems facing eligible veterans trying to transition into gainful employment, and improve strategies for employment and retention.

B. Scope of Program Design

The project design must provide for the following services:

1. Outreach, intake, assessment, counseling to the degree practical and employment services. Outreach must be provided at shelters, day centers, soup kitchens, VA medical centers, and other programs for the homeless. Program staff providing outreach services should be veterans who have experience in dealing with, and an understanding of the needs of the homeless.

2. Coordination with veterans' services programs and organizations such as:

- Disabled Veterans' Outreach Program (DVOP) Specialists, Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the workforce development system's One-Stop Centers, and Veterans' Workforce Investment Programs (VWIPs);
- Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary, and other programs, including those offering transitional housing; and
- Veteran service organizations such as The American Legion, Disabled American Veterans, the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS);

3. Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

- Alcohol and drugs;
- Medical;
- Post Traumatic Stress Disorder;
- Mental health;
- Coordinating with McKinney Homeless Assistance Act (MHAA) title VI programs for health care for the homeless (health care programs under the HVCAA);

4. Referral to housing assistance provided by, for example:

- Local shelters;
- Federal Emergency Management Administration (FEMA) food and shelter programs;
- Transitional housing programs and single room occupancy housing programs funded under MHAA title IV (and under the HVCAA);
- Permanent housing programs for the handicapped homeless funded under MHAA title IV (and under the HVCAA);
- Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers; and

5. Employment and training services such as:

- Basic skills instruction;
- Remedial education activities;
- Job search activities, including job search workshops;
- Job counseling;
- Job preparatory training, including resume writing and interviewing skills;
- Subsidized trial employment (work experience);
- On-the-job training;
- Classroom training;
- Job placement in unsubsidized employment;
- Placement follow up services; and
- Services provided under WIA.

C. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to the local needs, and will carry out the objectives of the program to successfully reintegrate homeless veterans into the workforce.

Under the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes. The outcome measurement established for HVRP grants is for grantees to meet a minimum entered employment rate of 56%, *e.g.*, number of entered employments divided by enrollments (these outcomes will be reported quarterly on Technical Performance Goals Form, Appendix D). While entering employment is a viable outcome, it will be necessary to measure results over a longer term (retention) to determine the success of programs.

The following program discussion must be considered in a program model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter homeless veterans.

Once the eligible participants have been identified, an assessment must be made of their abilities, interests, needs and barrier to employment. In some cases, these participants may require referrals to services such as social rehabilitation, drug or alcohol treatment or a temporary shelter before they can be enrolled into core training.

When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination should be made as to whether they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should follow, in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Supportive services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process.

Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The following program discussion emphasizes that follow-up is an integral program component. Follow-up to determine whether the veteran is in the same or similar job at the 90 and 180 day period after entering employment is required. It is important that the grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. The 90 and 180 day follow-up is fundamental to assessing the results of the program success. Grantees need to budget for this activity so that follow-up can and will occur for those placed at or near the end of the grant performance period. Grantees, prior to the end of the grant performance period, must obligate funds to ensure that follow-up activities are completed. Such results will be reported in the final technical performance report.

VI. Required Content

There are seven program activities that all applications must contain to be found technically acceptable under this SGA. Programs must be "employment focused" and must be responsive to the rating criteria in section IX. These activities are:

1. Outreach;
2. Pre-enrollment assessments;
3. Employment Development Plans for all clients;
4. Case management;
5. Job placement and job retention follow-up (at 90 and 180 days) after individual enters employment.
6. Utilization of DVOP and LVER staff in service delivery.
7. Programs must show community linkages with other programs and services which provide support to homeless veterans.

VII. Proposal Content

The proposal consists of two separate and distinct parts, part 1 is the technical proposal and part 2 is the cost proposal. The information provided in these two parts is essential in gaining an understanding of the programmatic and fiscal contents of the grant proposal.

A. *Part 1—The Technical Proposal* consists of a narrative proposal that demonstrates: The applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the homeless veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal narrative must not exceed fifteen (15) pages double-spaced, font size no less than 11 pt., and typewritten on one side of the paper only. (The applicant also must complete the forms, *i.e.*, Technical Performance Goals chart provided in the SGA, Appendix D.)

The proposal must include an outreach component which uses veterans whenever possible to provide outreach. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) in the jurisdiction is required.

Programs must be "employment focused". The services provided will be directed toward: (a) Increasing the employability of homeless veterans through training or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

The following format for the technical proposal is strongly recommended:

1. *Need for the program:* The applicant must identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to the employment and other barriers faced by the targeted veterans, and how the project would respond to these needs. Include Labor Market Information (LMI) on the outlook for job opportunities in the service area.

2. *Approach or strategy to increase employment and job retention:* Applicants must be responsive to the Rating Criteria contained in section IX and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) Outline the type(s) of training available—is training for demand occupations, the length of training, the training curriculum and how the training will enhance the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (c) provide a plan for follow up to address retention after 90 and 180 days with participants who entered employment (*see* discussion on results in section VII); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. *Linkages with other providers of employment and training services to the homeless veterans:* Describe the linkages this program will have with other providers of services to homeless veterans outside of the HVRP grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representatives (LVER) program, and programs under the Workforce Investment Act; and list the type of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system must be delineated. Describe any linkages with any other resources and/or other programs for homeless veterans. Indicate how the program will be coordinated with any efforts for the homeless that are conducted by agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

4. *Linkages with other Federal agencies:* Describe any program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (DVA) for the homeless, to include the Compensated Work Therapy (CWT) and per diem programs. Indicate how the applicant will coordinate with any "continuum of care" efforts for the homeless among agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

5. *Proposed supportive service strategy for veterans:* Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary.

6. *Organizational capability to provide required program activities:* The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant which has operated a HVRP or other Homeless Employment and Training program, JTPA IV–C program, or VWIP program, must include final or most recent technical performance reports. For those applicants with no prior grant experience, a summary narrative of program experience and employment and training performance outcomes is required. The applicant must also provide evidence of key staff capability.

7. *Proposed housing strategy for homeless veterans:* Describe how housing resources for homeless veterans will be obtained or accessed. These resources should be from linkages or sources other than the HVRP grant such as HUD, HHS, community housing resources, DVA leasing, or other programs. The applicant is not allowed to use HVRP resources to support housing needs.

Note: Resumes, charts, standard forms, transmittal letters, MOUs, agreements, lists of contracts and grants, and letters of support are not included in the page count. (If provided include these documents as attachments to the technical proposal.)

B. *Part 2—Cost Proposal* must contain: (1) the Standard Form (SF) 424, "Application for Federal Assistance" (original, signed in blue ink), (2) the Standard Form (SF) 424A "Budget Information Sheet" in Appendix B, and

(3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative" and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. In addition to the cost proposal the applicants must include the Assurance and Certification signature page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this SGA. All applicants must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

The Catalog of Federal Domestic Assistance number for this program is 17.805. It must be entered on the SF 424, block 10.

All applicants must include, as a separate appendix, a list of all government grants and contracts that it has had in the past three (3) years, including grant/contract officer contact information. Veterans' Employment and Training Service reserves the right to have a representative within each State review and verify this data. Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of placement and enrollment costs.

VIII. The Cost Proposal Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

A. A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub-awardees);

B. An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages);

C. An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-awards/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges may not exceed 36 cents per mile;

D. A plan, which includes all associated costs, for retaining participant information pertinent to a longitudinal follow up survey, six (6) months after the program performance period ends;

E. A description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

F. An identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in section B of the Budget Information Sheet.

IX. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the government reserves the right to award on the basis of the initial proposal submissions, the government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer.

The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs *e.g.*, cost per enrollment and placement, demonstration models, and geographic service areas. While points will not be awarded for cost issues, cost per entered employment will be given serious consideration in the selection of awardee. The Grant Officer's determination for award under SGA 03–03 is the final agency action. The submission of the same proposal from any prior year HVRP or Homeless Veterans' Employment and Training (HVET) competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. *Need for the Project:* 15 points.

The applicant will document the extent of need for this project, as demonstrated by: (a) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (b) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (c) the extent of gaps in the local infrastructure to effectively address the employment barriers that characterize the target population.

2. *Overall Strategy to Increase Employment and Retention:* 40 points.

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, any employer commitments to hire, placement, and post-placement follow-up services. Applicants must address how they will target occupations in expanding industries, rather than declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local services and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs (including DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. Applicant must indicate how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, entered employment/placements and job retention. (*See* Appendix D.) Of the 40 points possible in the strategy to increase employment and retention, 5 points will be awarded to grant proposals that demonstrate the ability to maintain a six month employment retention rate of 50 percent or greater.

3. *Quality and Extent of Linkages with Other Providers of Services to the Homeless and to Veterans:* 10 points.

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless veterans in the local community outside of the HVRP grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. (Describe, to the extent possible, how the project would fit into the community's continuum of care approach to respond to homelessness and any linkages to HUD, HHS or DVA programs or resources to benefit the proposed program.)

4. *Demonstrated Capability in Providing Required Program Services:* 20 points.

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to those which are proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant must also address its capability and ability for timely startup of the program. The applicant should delineate its staff capability and ability to manage the financial aspects of a grant program, including a recent (within the last 12 months), financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit.

5. *Quality of Overall Housing Strategy:* 15 points.

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, DVA lease, or other means. HVRP funds may not be used to purchase housing or vehicles.

X. Post-Award Conference

A Post-Award conference will be held for those grantees awarded PY 2003 HVRP funds from the competition. It is expected to be held in May or June, 2003. Up to two grantee representatives must be present; a fiscal and a program representative is recommended. The site of the Post-Award conference has not yet been determined, for planning and budgeting purposes, please plan on five days and use Washington, DC as the conference location. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget.

XI. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (*i.e.*, October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET that contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) Identification of corrective action which will be taken to meet the planned goals, if required; and (ii) a timetable for accomplishment of the corrective action.

C. 90 Day Follow-Up Report

The grantee must submit no later than 120 days after the grant expiration date a final report containing the following:

1. Financial Status Report (SF–269A) (copy to be provided following grant awards); and

2. Technical Performance Report—(Program Goals).

D. Six (6) Month Follow-Up/Closeout Report

No later than 210 days after the grant performance period ends, the grantee must submit a follow up report containing the following:

1. Final Financial Status Report (SF–269A); and

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) whether the veterans are still employed at the same or similar job, if not what are the reasons; (d) whether the training received was applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

XII. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

2. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

3. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Administrative Standards and Provisions

Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must provide that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

All grants will be subject to the following administrative standards and provisions, if applicable:

1. 29 CFR part 93—Lobbying.

2. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.

3. 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

4. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

5. 29 CFR part 98—Federal standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

6. 29 CFR part 99—Audit of States, Local Governments, and Non-profit Organization.

7. 29 CFR parts 30, 31, 32, 33 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally-Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs and Activities; and Nondiscrimination on the Basis of Sex in Education Programs Receiving or Benefiting from Federal Financial Assistance.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, VETS may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

Signed in Washington, DC this 27th day of February, 2003.

Daniel P. Murphy,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: The Glossary of Terms

Appendix G: List of 75 largest U.S. Cities

BILLING CODE 4510–79–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$				$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (*sum of 6a-6h*)					
j. Indirect Charges					
k. TOTALS (*sum of 6i and 6j*)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS				
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
21. Direct Charges: 22. Indirect Charges:
23. Remarks:

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year), and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 90 Days				
Number Retaining Jobs For 180 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Trainng				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total _____ _____

	Administration	Program
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs	_____	_____

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Rank	Area Name	Census Population	
		April 1, 2000	April 1, 1990
1	New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA	21,199,865	19,549,649
2	Los Angeles--Riverside--Orange County, CA CMSA	16,373,645	14,531,529
3	Chicago--Gary--Kenosha, IL--IN--WI CMSA	9,157,540	8,239,820
4	Washington--Baltimore, DC--MD--VA--WV CMSA	7,608,070	6,727,050
5	San Francisco--Oakland--San Jose, CA CMSA	7,039,362	6,253,311
6	Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA	6,188,463	5,892,937
7	Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA	5,819,100	5,455,403
8	Detroit--Ann Arbor--Flint, MI CMSA	5,456,428	5,187,171
9	Dallas--Fort Worth, TX CMSA	5,221,801	4,037,282
10	Houston--Galveston--Brazoria, TX CMSA	4,669,571	3,731,131
11	Atlanta, GA MSA	4,112,198	2,959,950
12	Miami--Fort Lauderdale, FL CMSA	3,876,380	3,192,582
13	Seattle--Tacoma--Bremerton, WA CMSA	3,554,760	2,970,328
14	Phoenix--Mesa, AZ MSA	3,251,876	2,238,480
15	Minneapolis--St. Paul, MN--WI MSA	2,968,806	2,538,834
16	Cleveland--Akron, OH CMSA	2,945,831	2,859,644
17	San Diego, CA MSA	2,813,833	2,498,016
18	St. Louis, MO--IL MSA	2,603,607	2,492,525
19	Denver--Boulder--Greeley, CO CMSA	2,581,506	1,980,140
20	San Juan--Caguas--Arecibo, PR CMSA	2,450,292	2,270,808
21	Tampa--St. Petersburg--Clearwater, FL MSA	2,395,997	2,067,959
22	Pittsburgh, PA MSA	2,358,695	2,394,811
23	Portland--Salem, OR--WA CMSA	2,265,223	1,793,476
24	Cincinnati--Hamilton, OH--KY--IN CMSA	1,979,202	1,817,571
25	Sacramento--Yolo, CA CMSA	1,796,857	1,481,102
26	Kansas City, MO--KS MSA	1,776,062	1,582,875
27	Milwaukee--Racine, WI CMSA	1,689,572	1,607,183
28	Orlando, FL MSA	1,644,561	1,224,852
29	Indianapolis, IN MSA	1,607,486	1,380,491
30	San Antonio, TX MSA	1,592,383	1,324,749
31	Norfolk--Virginia Beach--Newport News, VA--NC MSA	1,569,541	1,443,244
32	Las Vegas, NV--AZ MSA	1,563,282	852,737
33	Columbus, OH MSA	1,540,157	1,345,450
34	Charlotte--Gastonia--Rock Hill, NC--SC MSA	1,499,293	1,162,093
35	New Orleans, LA MSA	1,337,726	1,285,270
36	Salt Lake City--Ogden, UT MSA	1,333,914	1,072,227
37	Greensboro--Winston-Salem--High Point, NC MSA	1,251,509	1,050,304
38	Austin--San Marcos, TX MSA	1,249,763	846,227
39	Nashville, TN MSA	1,231,311	985,026
40	Providence--Fall River--Warwick, RI--MA MSA	1,188,613	1,134,350
41	Raleigh--Durham--Chapel Hill, NC MSA	1,187,941	855,545
42	Hartford, CT MSA	1,183,110	1,157,585
43	Buffalo--Niagara Falls, NY MSA	1,170,111	1,189,288
44	Memphis, TN--AR--MS MSA	1,135,614	1,007,306
45	West Palm Beach--Boca Raton, FL MSA	1,131,184	863,518
46	Jacksonville, FL MSA	1,100,491	906,727
47	Rochester, NY MSA	1,098,201	1,062,470
48	Grand Rapids--Muskegon--Holland, MI MSA	1,088,514	937,891
49	Oklahoma City, OK MSA	1,083,346	958,839
50	Louisville, KY--IN MSA	1,025,598	948,829
51	Richmond--Petersburg, VA MSA	996,512	865,640
52	Greenville--Spartanburg--Anderson, SC MSA	962,441	830,563
53	Dayton--Springfield, OH MSA	950,558	951,270
54	Fresno, CA MSA	922,516	755,580
55	Birmingham, AL MSA	921,106	840,140
56	Honolulu, HI MSA	876,156	836,231
57	Albany--Schenectady--Troy, NY MSA	875,583	861,424
58	Tucson, AZ MSA	843,746	666,880
59	Tulsa, OK MSA	803,235	708,954
60	Syracuse, NY MSA	732,117	742,177
61	Omaha, NE--IA MSA	716,998	639,580
62	Albuquerque, NM MSA	712,738	589,131
63	Knoxville, TN MSA	687,249	585,960
64	El Paso, TX MSA	679,622	591,610
65	Bakersfield, CA MSA	661,645	543,477
66	Allentown--Bethlehem--Easton, PA MSA	637,958	595,081
67	Harrisburg--Lebanon--Carlisle, PA MSA	629,401	587,986
68	Scranton--Wilkes-Barre--Hazleton, PA MSA	624,776	638,466
69	Toledo, OH MSA	618,203	614,128
70	Baton Rouge, LA MSA	602,894	528,264
71	Youngstown--Warren, OH MSA	594,746	600,895
72	Springfield, MA MSA	591,932	587,884
73	Sarasota--Bradenton, FL MSA	589,959	489,483
74	Little Rock--North Little Rock, AR MSA	583,845	513,117
75	McAllen--Edinburg--Mission, TX MSA	569,463	383,545

[FR Doc. 03–5086 Filed 3–4–03; 8:45 am]
BILLING CODE 4510–79–C

DEPARTMENT OF LABOR

Veterans' Employment and Training Services

Urban Homeless Veterans' Reintegration Program Competitive Grants for PY 2003

AGENCY: Veterans' Employment and Training Services, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for Homeless Veterans' Reintegration Programs (SGA 03–04).

SUMMARY: All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for urban grants for Homeless Veterans' Reintegration Programs (HVRP) authorized under the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA). This notice contains all of the necessary information and forms needed to apply for grant funding. Applicants should design programs to assist eligible veterans who are homeless by providing employment, training, support services and assistance. Under this solicitation, VETS anticipates that up to $7 Million will be available for grant awards in Program Year (PY) 2003 and expects to award up to twenty-five [25] grants.

The HVRP programs is designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. VETS in Program Year (PY) 2003 will continue to seek applicants that provide direct services through a case management approach, link with Federal, State and Local resources for homeless veterans and have clear strategies for employment and retention of the homeless.

DATES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–04, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210 by April 21, 2003.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–04, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

Forms or Amendments: If another copy of a Standard form is needed, go online to *http://www.nara.gov.*

To receive amendments to this Solicitation (Please reference SGA 03–

04), all applicants must register their name and address with the Grant Officer at the following address: U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

I. Background

Section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) amended the Homeless Veterans' Reintegration Programs at 38 U.S.C. 2021, and provides "the Secretary * * * shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force."

The Homeless Veterans' Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. Both types of programs, urban and non-urban, in the past have provided valuable information on approaches that work in the different environments.

II. Application Process

A. Potential Jurisdictions To Be Served

This SGA is for urban HVRP grants. Separate SGAs for non-urban and *new grantees* HVRP grants have been issued at the same time.

Due to the amount of funds available, and the emphasis on establishing or strengthening existing linkages with other recipients of funds under the HVCAA, the only potential jurisdictions which will be served through this urban competition for HVRPs in PY 2003 are the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. All potential HVRP jurisdictions are listed in Appendix G.

B. Eligible Applicants

Applications for funds will be accepted from State and Local workforce investment boards, local public agencies, for-profit/commercial entities, and nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and population to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBS) as defined in Section 111 and 117 of the Workforce Investment Act, are eligible applicants, as well as State and local public agencies.

2. Local public agencies, meaning any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties.) A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through partnerships or sub-awards, experienced public agencies, private nonprofit organizations, private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to homeless veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are for-profit/commercial entities and private nonprofit organizations that have operated an HVRP or similar employment and training program for the homeless or veterans and proven a capacity to manage grants and have or will provide the necessary linkages with other service providers. Entities described in Section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement as Section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

C. Funding Levels

The total amount of funds available for this solicitation is up to $7.0 million. It is anticipated that up to 25 awards may be made under this solicitation. Awards are expected to range from $250,000 to $300,000. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the $300,000 will be considered non-responsive.

D. Period of Performance

The period of performance will be for twelve (12) months from date of award unless modified. It is expected that successful applicants will commence program operations under this solicitation by July 1, 2003. Program funds must be obligated by June 30, 2004, however, funds may be reserved for limited activities of the close-out.

E. Optional Year Funding

Should there be action by Congress to appropriate funds for this purpose, optional year funding may be considered. The Government does *not*, however, guarantee optional year funding for any awardee. Should VETS decide that an option year for funding be exercised, the grantees' performance during the previous period of operations will be taken into consideration as follows:

1. The grantee must meet at minimum 85% of planned goals for Federal expenditures, enrollments, and placements in each quarter; and

2. The grantee must be in compliance with all terms identified in the solicitation for grant application, general and special provisions.

3. All program and fiscal reports must have been submitted by the established due date and must be verifiable for accuracy.

All instructions for modifications and announcement of fund availability will be issued at a later date. For these competitive grants, only two optional years of HVRP funding may be available.

F. Submission of Proposal

A cover letter, an original and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal must consist of two (2) separate and distinct parts: (a) the technical proposal and (b) the cost proposal; (1) one completed, blue ink-signed original SF 424 grant application with an original and two (2) copies of the Technical Proposal; and an original and two (2) copies of the Cost Proposal.

G. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 p.m. ET, April 21, 2003, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before April 21, 2003; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to April 21, 2003; and

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give proper consideration, even if it was timely mailed, the Department is not required to consider the application.

III. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term "homeless or homeless individual" includes persons who 1ack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. [42 U.S.C. 11302 (a)].

B. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [38 U.S.C. 101(2)]

IV. Related HVRP Program Development Activities

Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

A. *Providers of hands-on services to the homeless veteran*, such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

B. *Federal, State and local entitlement services* such as the Social Security Administration (SSA), Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

C. *Civic and private sector groups*, and especially veterans' service and community-based organizations (including faith-based organizations), to describe homeless veterans and their needs.

D. *Stand Down Support*

A "Stand Down", as it relates to homeless veterans, is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing, and medical attention. This type of event is mostly volunteer effort, which is organized within a community and brings service providers together such as the DVA, Disabled Veterans' Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on-site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such events have been held throughout the nation.

In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP grant funds may be used to supplement the Stand Down effort where funds are not otherwise available, and should be reflected in the budget and budget narrative.

V. Program Summary

A. Program Concept and Emphasis

The HVRP grants under Section 5 of the Homeless Veterans Comprehensive Assistance Act (HVCAA) of 2001 are intended to address two objectives: (1) to provide services to assist in reintegrating homeless veterans into

meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans. These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 2003 will continue to strengthen the development of effective service delivery systems, to provide comprehensive services through a case management approach that will address the complex problems facing eligible veterans trying to transition into gainful employment, and improve strategies for employment and retention.

B. Scope of Program Design

The project design must provide for the following services:

1. Outreach, intake, assessment, counseling to the degree practical, and employment services. Outreach must be provided at shelters, day centers, soup kitchens, VA medical centers, and other programs for the homeless. Program staff providing outreach services should be veterans who have experience in dealing with, and an understanding of the needs of the homeless.

2. Coordination with veterans' services programs and organizations such as:

- Disabled Veterans' Outreach Program (DVOP) Specialists, Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the workforce development system's One-Stop Centers, and Veterans' Workforce Investment Programs (VWIPs);
- Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary, and other programs, including those offering transitional housing; and
- Veteran service organizations such as The American Legion, Disabled American Veterans, the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS);

3. Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

- Alcohol and drugs;
- Medical;
- Post Traumatic Stress Disorder;
- Mental Health;
- Coordinating with McKinney Homeless Assistance Act (MHAA) Title VI programs for health care for the homeless or [health care programs under the HVCAA];

4. Referral to housing assistance provided by, for example:

- Local shelters;
- Federal Emergency Management Administration (FEMA) food and shelter programs;
- Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV [and under HVCAA];
- Permanent housing programs for the handicapped homeless funded under MHAA Title IV [and under HVCAA];
- Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers; and

5. Employment and training services such as:

- Basic skills instruction;
- Remedial education activities;
- Job search activities, including job search workshops;
- Job counseling;
- Job preparatory training, including resume writing and interviewing skills;
- Subsidized trial employment (Work Experience);
- On-the-Job Training;
- Classroom Training;
- Job placement in unsubsidized employment;
- Placement follow up services; and
- Services provided under WIA.

C. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to the local needs, and will carry out the objectives of the program to successfully reintegrate homeless veterans into the workforce.

Under the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes. The outcome measurement established for HVRP grants is for grantees to meet a minimum entered employment rate of 56%, *e.g.*, number of entered employments divided by enrollments (These outcomes will be reported quarterly on Technical Performance Goals Form, Appendix D.). While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs.

The following program discussion must be considered in a results-oriented model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter homeless veterans.

Once the eligible participants have been identified, an assessment must be made of their abilities, interests, needs, and barriers to employment. In some cases, these participants may require referrals to services such as social rehabilitation, drug or alcohol treatment or a temporary shelter before they can be enrolled into core training.

When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination should be made as to whether they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should follow, in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Supportive services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process.

Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The following program discussion emphasizes that follow-up is an integral program component. Follow-up to determine whether the veteran is in the same or similar job at the 90 and 180 day period after entering employment is required. It is important that the grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. The 90 and 180 day follow-up is fundamental to assessing the results of the program success. Grantees need to budget for this activity so that follow-up can and will occur for those placed at or near the end of the grant performance period. Grantees, prior to the end of the grant performance period, must obligate funds to ensure that follow-up activities are completed. Such results will be reported in the final technical performance report.

VI. Required Content

There are seven program activities that all applications must contain to be found technically acceptable under this SGA. Programs must be "employment focused" and must be responsive to the rating criteria in Section IX. These activities are:

1. Outreach
2. Pre-Enrollment Assessments;
3. Employment Development Plans for all clients;
4. Case Management
5. Job Placement and job retention follow-up (at 90 and 180 days) after individual enters employment.
6. Utilization of DVOP and LVER staff in service delivery.
7. Programs must show community linkages with other programs and services which provide support to homeless veterans.

VII. Proposal Content

The proposal consists of two separate and distinct parts, Part 1 is the technical proposal and Part 2 is the cost proposal. The information provided in these two parts is essential in gaining an understanding of the programmatic and fiscal contents of the grant proposal.

A. Part 1—The Technical Proposal consists of a narrative proposal that demonstrates: the applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the homeless veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal narrative must not exceed fifteen (15) pages double-spaced, font size no less than 11 pt., and typewritten on one side of the paper only. [The applicant also must complete the forms, i.e., Technical Performance Goals chart provided in the SGA, Appendix D.].

The proposal must include an outreach component which uses veterans whenever possible to provide outreach. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) in the jurisdiction is required.

Programs must be "employment focused". The services provided will be directed toward: (a) increasing the employability of homeless veterans through training or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

The following format for the technical proposal is strongly recommended:

1. *Need for the program:* The applicant must identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to the employment and other barriers faced by the targeted veterans, and how the project would respond to these needs. Include Labor Market Information (LMI) on the outlook for job opportunities in the service area.

2. *Approach or strategy to increase employment and job retention:* Applicants must be responsive to the Rating Criteria contained in Section IX and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) Outline the type(s) of training available " is training for demand occupations, the length of training, the training curriculum and how the training will enhance the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (c) provide a plan for follow-up to address retention after 90 and 180 days with participants who entered employment. (See discussion on results in Section V.c.); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. *Linkages with other providers of employment and training services to the homeless veterans:* Describe the linkages this program will have with other providers of services to homeless veterans outside of the HVRP grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) program, and programs under the Workforce Investment Act; and list the type of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system must be delineated. Describe any linkages with any other resources and/or other programs for Homeless veterans. Indicate how the program will be coordinated with any efforts for the homeless that are conducted by agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

4. *Linkages with other federal agencies:* Describe any program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (DVA) for the homeless, to include the Compensated Work Therapy (CWT) and Per Diem programs. Indicate how the applicant will coordinate with any "continuum of care" efforts for the homeless among agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

5. *Proposed supportive service strategy for veterans:* Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary, if Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

6. *Organizational capability to provide required program activities:* The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. A summary narrative of program experience and employment and training performance outcomes is required. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant which has operated a HVRP or other Homeless Employment and Training program, or VWIP program, must include final or most recent technical performance reports. The applicant must also provide evidence of key staff capability.

7. *Proposed housing strategy for homeless veterans:* Describe how housing resources for homeless veterans will be obtained or accessed. These resources should be from linkages or sources other than the HVRP grant such as HUD, HHS, community housing resources, DVA leasing, or other programs. The applicant is not allowed to use HVRP resources to support housing needs.

Note: Resumes, charts, standard forms, transmittal letters, MOUs, agreements, lists of contracts and grants and letters of support are not included in the page count. [If provided, include these documents as attachments to the technical proposal.]

B. Part 2—Cost Proposal must contain: (1) The Standard Form (SF) 424, "Application for Federal Assistance", (original, signed in blue-ink) (2) the Standard Form (SF) 424A

"Budget Information Sheet" in Appendix B, and (3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative" and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. In addition to the cost proposal the applicants must include the Assurance and Certification signature page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this SGA. All applicants must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

The Catalog of Federal Domestic Assistance number for this program is 17.805. It must be entered on the SF 424, Block 10.

All applicants must include, as a separate appendix, a list of all government grants and contracts that it has had in the past three (3) years, including grant/contract officer contact information. Veterans' Employment and Training Service reserves the right to have a representative within each State review and verify this data. Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness.

VIII. The Cost Proposal Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

A. A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including subawardees);

B. An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages);

C. An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subawards/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges may not exceed 36 cents per mile;

D. A plan, which includes all associated costs, for retaining participant information pertinent to a follow-up survey, six (6) months after the program performance period ends;

E. A description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

F. An identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

IX. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs *e.g.*, cost per enrollment and placement, demonstration models, and geographic service areas. While points will not be awarded for cost issues, cost per entered employment will be given serious consideration in the selection of awardee. The Grant Officer's determination for award under SGA 03–04 is the final agency action. The submission of the same proposal from any prior year HVRP or Homeless Veterans Employment and Training (HVET) competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. *Need for the Project:* 15 points.

The applicant will document the extent of need for this project, as demonstrated by: (a) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (b) the rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (c) the extent of gaps in the local infrastructure to effectively address the employment barriers that characterize the target population.

2. *Overall Strategy To Increase Employment and Retention:* 40 points.

The application must include a description of the approach to providing comprehensive employment and training services, including job training, job development, any employer commitments to hire, placement, and post-placement follow up services. Applicants must address how they will target occupations in expanding industries, rather than declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local services and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs (including DVOP and LVER Programs), One-stops, VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. Applicant must indicate how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, placement/entered employments and job retention. (See Appendix D). Of the 40 points possible in the strategy to increase employment and retention, 5 points will be awarded to grant proposals that demonstrate the ability to maintain a six-month employment retention rate of 50 percent or greater.

3. *Quality and Extent of Linkages with Other Providers of Services to the Homeless and to Veterans:* 10 points.

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless veterans in the local community outside of the HVRP grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe, to the extent possible, how the project would fit into the community's continuum of care approach to respond to homelessness and any linkages to HUD, HHS or DVA programs or resources to benefit the proposed program.

4. *Demonstrated Capability in Providing Required Program Services:* 20 points.

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to those which are proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant must also address its capacity for timely startup of the program. The applicant should delineate its staff capability and ability to manage the administrative, programmatic and financial aspects of a grant program, including a recent (within the last 12 months), financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit.

5. *Quality of Overall Housing Strategy:* 15 points.

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, DVA lease, or other means. HVRP funds may not be used to purchase housing or vehicles.

X. Post-Award Conference

A Post-Award conference will be held for those grantees awarded PY 2003 HVRP funds from the competition. It is expected to be held in May or June, 2003. Up to two grantee representatives must be present; a fiscal and a program representative is recommended. The site of the Post-Award conference has not yet been determined, for planning and budgeting purposes, please use five days and use Washington, DC as the conference location. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget.

XI. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (*i.e.*, October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET that contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) identification of corrective action which will be taken to meet the planned goals, if required; and (ii) a timetable for accomplishment of the corrective action.

C. 90 Day Follow-Up Report

The grantee must submit no later than 120 days after the grant performance expiration date a report containing the following:

1. Financial Status Report (SF–269A) (copy to be provided following grant awards); and

2. Technical Performance Report—(Program Goals).

D. Six (6) Month Follow-Up/Closeout Report

No later than 210 days after the grant performance period ends, the grantee must submit a follow-up report containing the following:

1. Final Financial Status Report (SF–269A); and

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed after the 6 month follow-up period; (c) whether the veterans are still employed at the same or similar job, if not what are the reasons; (d) whether the training received was applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

XII. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

2. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

3. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Administrative Standards and Provisions

Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must provide that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition. All grants will be subject to the following administrative standards and provisions, if applicable:

1. 29 CFR part 93—Lobbying.

2. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.

3. 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

4. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

5. 29 CFR part 98—Federal standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

6. 29 CFR part 99—Audit Of States, Local Governments, and Non-profit Organization.

7. 29 CFR parts 30, 31, 32, 33 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally-Assisted Programs of the Department of Labor, Effectuation of Title VI of the

Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs and Activities; and Nondiscrimination on the basis of sex in Education programs receiving or benefiting from Federal Financial Assistance.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, VETS may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 27th day of February, 2003.

Daniel P. Murphy,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: The Glossary of Terms

Appendix G: List of 75 largest U.S. Cities

BILLING CODE 4510–79–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$		$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$		$	$	$
7. Program Income	$		$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

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PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 90 Days				
Number Retaining Jobs For 180 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total _____ _____

	Administration	Program
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs ----------	_____	_____
	Administration	Program

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans' Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Rank	Area Name	Census Population	
		April 1, 2000	April 1, 1990
1	New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA	21,199,865	19,549,649
2	Los Angeles--Riverside--Orange County, CA CMSA	16,373,645	14,531,529
3	Chicago--Gary--Kenosha, IL--IN--WI CMSA	9,157,540	8,239,820
4	Washington--Baltimore, DC--MD--VA--WV CMSA	7,608,070	6,727,050
5	San Francisco--Oakland--San Jose, CA CMSA	7,039,362	6,253,311
6	Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA	6,188,463	5,892,937
7	Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA	5,819,100	5,455,403
8	Detroit--Ann Arbor--Flint, MI CMSA	5,456,428	5,187,171
9	Dallas--Fort Worth, TX CMSA	5,221,801	4,037,282
10	Houston--Galveston--Brazoria, TX CMSA	4,669,571	3,731,131
11	Atlanta, GA MSA	4,112,198	2,959,950
12	Miami--Fort Lauderdale, FL CMSA	3,876,380	3,192,582
13	Seattle--Tacoma--Bremerton, WA CMSA	3,554,760	2,970,328
14	Phoenix--Mesa, AZ MSA	3,251,876	2,238,480
15	Minneapolis--St. Paul, MN--WI MSA	2,968,806	2,538,834
16	Cleveland--Akron, OH CMSA	2,945,831	2,859,644
17	San Diego, CA MSA	2,813,833	2,498,016
18	St. Louis, MO--IL MSA	2,603,607	2,492,525
19	Denver--Boulder--Greeley, CO CMSA	2,581,506	1,980,140
20	San Juan--Caguas--Arecibo, PR CMSA	2,450,292	2,270,808
21	Tampa--St. Petersburg--Clearwater, FL MSA	2,395,997	2,067,959
22	Pittsburgh, PA MSA	2,358,695	2,394,811
23	Portland--Salem, OR--WA CMSA	2,265,223	1,793,476
24	Cincinnati--Hamilton, OH--KY--IN CMSA	1,979,202	1,817,571
25	Sacramento--Yolo, CA CMSA	1,796,857	1,481,102
26	Kansas City, MO--KS MSA	1,776,062	1,582,875
27	Milwaukee--Racine, WI CMSA	1,689,572	1,607,183
28	Orlando, FL MSA	1,644,561	1,224,852
29	Indianapolis, IN MSA	1,607,486	1,380,491
30	San Antonio, TX MSA	1,592,383	1,324,749
31	Norfolk--Virginia Beach--Newport News, VA--NC MSA	1,569,541	1,443,244
32	Las Vegas, NV--AZ MSA	1,563,282	852,737
33	Columbus, OH MSA	1,540,157	1,345,450
34	Charlotte--Gastonia--Rock Hill, NC--SC MSA	1,499,293	1,162,093
35	New Orleans, LA MSA	1,337,726	1,285,270
36	Salt Lake City--Ogden, UT MSA	1,333,914	1,072,227
37	Greensboro--Winston-Salem--High Point, NC MSA	1,251,509	1,050,304
38	Austin--San Marcos, TX MSA	1,249,763	846,227
39	Nashville, TN MSA	1,231,311	985,026
40	Providence--Fall River--Warwick, RI--MA MSA	1,188,613	1,134,350
41	Raleigh--Durham--Chapel Hill, NC MSA	1,187,941	855,545
42	Hartford, CT MSA	1,183,110	1,157,585
43	Buffalo--Niagara Falls, NY MSA	1,170,111	1,189,288
44	Memphis, TN--AR--MS MSA	1,135,614	1,007,306
45	West Palm Beach--Boca Raton, FL MSA	1,131,184	863,518
46	Jacksonville, FL MSA	1,100,491	906,727
47	Rochester, NY MSA	1,098,201	1,062,470
48	Grand Rapids--Muskegon--Holland, MI MSA	1,088,514	937,891
49	Oklahoma City, OK MSA	1,083,346	958,839
50	Louisville, KY--IN MSA	1,025,598	948,829
51	Richmond--Petersburg, VA MSA	996,512	865,640
52	Greenville--Spartanburg--Anderson, SC MSA	962,441	830,563
53	Dayton--Springfield, OH MSA	950,558	951,270
54	Fresno, CA MSA	922,516	755,580
55	Birmingham, AL MSA	921,106	840,140
56	Honolulu, HI MSA	876,156	836,231
57	Albany--Schenectady--Troy, NY MSA	875,583	861,424
58	Tucson, AZ MSA	843,746	666,880
59	Tulsa, OK MSA	803,235	708,954
60	Syracuse, NY MSA	732,117	742,177
61	Omaha, NE--IA MSA	716,998	639,580
62	Albuquerque, NM MSA	712,738	589,131
63	Knoxville, TN MSA	687,249	585,960
64	El Paso, TX MSA	679,622	591,610
65	Bakersfield, CA MSA	661,645	543,477
66	Allentown--Bethlehem--Easton, PA MSA	637,958	595,081
67	Harrisburg--Lebanon--Carlisle, PA MSA	629,401	587,986
68	Scranton--Wilkes-Barre--Hazleton, PA MSA	624,776	638,466
69	Toledo, OH MSA	618,203	614,128
70	Baton Rouge, LA MSA	602,894	528,264
71	Youngstown--Warren, OH MSA	594,746	600,895
72	Springfield, MA MSA	591,932	587,884
73	Sarasota--Bradenton, FL MSA	589,959	489,483
74	Little Rock--North Little Rock, AR MSA	583,845	513,117
75	McAllen--Edinburg--Mission, TX MSA	569,463	383,545

[FR Doc. 03–5088 Filed 3–4–03; 8:45 am]
BILLING CODE 4510–79–C

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on March 10, 2003 via conference call. The meeting will begin at 2 p.m. and continue until conclusion of the Board's agenda.

LOCATION: 750 First Street, NE, 11th Floor, Washington, DC 20002, in Room 11026.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on adjustments to LSC's FY'04 budget request.
3. Consider and act on authorizing the LSC President and Chairman to discuss and negotiate with the Office of Management & Budget regarding LSC's FY'04 budget request.
4. Consider and act on other business.
5. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth Cushing, at (202) 336–8800.

Dated: March 3, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–5348 Filed 3–3–03; 3:20 pm]
BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: March 12, 2003: 8 a.m.–5:30 p.m., Open Session. Concurrent Sessions: 10 a.m.–10:30 a.m., Closed Session; 2 p.m.–3 p.m., Closed Session.

March 13, 2003: 8:30 a.m.–3 p.m., Open Session. Concurrent Session: 11:15 a.m.–11:45 a.m., Closed Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard,

Arlington, VA 22230, *http://www.nsf.gov/nsb.*

CONTACT PERSON FOR INFORMATION: NSF Information Center, (703) 292–5111.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED

Wednesday, March 12, 2003

Open

Task Force on National Workforce Policy for S&E (8 a.m.–10 a.m.), Room 1295
- Discussion of the draft NWP report

Task Force on S&E Infrastructure (8:30 a.m.–10 a.m.), Room 1235
- Discussion on the final INF report (NSB–02–190)
- Discussion of Draft Communication/Dissemination Plan

Committee on Strategy & Budget (10:30 a.m.–12 Noon), Room 1235
- Review of draft NSF GPRA Strategic Plan, FY 2003–2008
- Discussion of History and Impacts of Funds for Director's Initiatives
- Planning for Implementation of Section 22, NSF Authorization Act
- Review of Contract Activities Examining NSF Business & Management Practices

Subcommittee on S&E Indicators (10 a.m.–11 a.m.), Room 1295
- S&E Indicators 2004—State S&E Chapter
- Final NSB Reviewer Assignments

Executive Committee (2 p.m.–2:20 p.m.), Room 1295
- Director's Report

Committee on Education & Human Resources (3 p.m.–5:30 p.m.), Room 1235
- Agenda for the "Broadening Participation" Workshop
- Reports on NSF K–12, Undergraduate and Graduate Programs
- Report from the Subcommittee on S&E Indicators
- Focus on the Future: Mathematics Education Research
- Update on Meeting of the Mathematics Education Portfolio Review Panel
- Report from the Task Force on NWP
- Information Item: NSF Partnership with DOD for Funding REU Sites

Closed

Committee on Strategy and Budget (10 a.m.–10:30 a.m.), Room 1235
- Discussion of the FY 2005 NSF Budget

Executive Committee (2:20 p.m.–3 p.m.), Room 1295
- Specific Personnel Matters
- Future NSF Budgets

Vannevar Bush Award Committee (2 p.m.–3 p.m.), Room 1240
- Discussion of Candidates

Thursday, March 13, 2003

Closed

Plenary session of the Board (11:15 a.m.–11:45 a.m.), Room 1235
- Honorary Awards Recommendations

Open

Committee on Audit & Oversight (8:30a.m.–11 a.m.), Room 1295
- OIG Updates:
- —Performance Plan
- —Results of Audit Peer Review
- —FY 03 and FY 04 OIG Budgets
- CFO Update:
- —FY 03 and FY 04 Budgets
- —Facilities Management
- —Cost Sharing Implementation Update
- CIO Update: Security
- Contact Activity Examining NSF Business & Management Practices

Committee on Programs & Plans (8:30 a.m.–11 a.m.), Room 1235
- High Performance Computing and Computing Infrastructure
- INF Task Force Report
- Long-Lived Data Collections
- Information Item: Status of Support of U.S. Participation in the Integrated Ocean Drilling Program
- Update on NSB Environment Report
- Facilities Management & Oversight Guide: Status & Public Comment
- CPP Issues:
- —NSF Authorization Act, Section 14
- —Proposal for NSB Meetings Outside Washington

Plenary session of the Board (12:30 p.m.–3 p.m.), Room 1235
- Science Presentations
- Minutes
- Closed Session Items for May 2003
- Chairman's Report
- Director's Report
- Report on the Retreat
- Committee Reports

Gerard Glaser,

Executive Officer, NSB.

[FR Doc. 03–5350 Filed 3–3–03; 3:19 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03766]

Environmental Assessment and Finding of No Significant Impact

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact related to license amendment of Byproduct Material License No. 06–00807–01, Schlumberger Technology Corporation, Ridgefield, Connecticut.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Material License No. 06–00807–01 to authorize release a portion of its facility in Ridgefield, Connecticut, for unrestricted use and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate, and, therefore, an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: Judy Joustra, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5355 or e-mail *jaj@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U. S. Nuclear Regulatory Commission is considering amending Byproduct Materials License No. 06–00807–01 and authorizing the release of a portion of the licensee's facilities in Ridgefield, Connecticut, for unrestricted use and has prepared an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) in support of this action.

Summary

The U. S. Nuclear Regulatory Commission (NRC) reviewed the results of the decommissioning of the Schlumberger Technology Corporation (Schlumberger) facility in Ridgefield, Connecticut. Schlumberger was authorized by NRC from 1956 to 2003 to use radioactive materials for research and development purposes at the site. In 2000, Schlumberger ceased operations with licensed materials in a portion of its facility at the Ridgefield site, and on September 30, 2002 requested that NRC amend its license to release three areas for unrestricted use. Schlumberger contracted with Radiation Safety Associates, Inc. Hebron, Connecticut, who conducted surveys of the areas and determined that these areas meet the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has evaluated Schlumberger's request and results of the surveys, and has developed an Environmental Assessment (EA) in accordance with the requirements of 10 CFR Part 51. Based on the staff evaluation, the conclusion of the EA is a Finding of No Significant Impact (FONSI) on human health and the environment for the proposed licensing action.

Introduction

Schlumberger requested release for unrestricted use areas of designated as Lab Z, and Lab Z Lower Level including the area identified as the Catacomb, which are attached to the main building on Old Quarry Road, Ridgefield, Connecticut. NRC License No. 06–00807–01, which was issued in 1956 and amended periodically since that time authorized activities at these areas. In Lab Z, Lab Z Lower Level including the Catacomb the licensee conducted research and development, and manufactured neutron generators tubes using curie amounts of tritium.

Licensed activities in Lab Z, and Lab Z Lower Level including the Catacomb ceased completely in November 2000, and the licensee requested an amendment to its license to release Lab Z, and Lab Z Lower Level including the Catacomb for unrestricted use in September 2002. Based on the licensee's historical knowledge of the site and the conditions of the facility, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. A decommissioning plan was not required to be submitted to the NRC. The licensee's contractor surveyed the facilities, decontaminated or remediated areas as needed, and provided documentation that the facilities meet the license termination criteria specified in Subpart E of 10 CFR Part 20, and do not require additional decommissioning activities to be performed. The licensee subsequently requested that the facilities (Lab Z, and Lab Z Lower Level including the Catacomb) be released for unrestricted use.

The Proposed Action

The proposed action is to amend Byproduct Materials License No. 06–00807–01 and release Lab Z, and Lab Z Lower Level including the Catacomb of the facilities at Old Quarry Road, Ridgefield, Connecticut for unrestricted use. By letter dated September 30, 2002, Schlumberger provided survey results which demonstrate that the Ridgefield site is in compliance with the radiological criteria for license termination in Subpart E, 10 CFR Part 20, "Radiological Criteria for License Termination."

Purpose and Need for the Proposed Action

The purpose of the proposed action is to amend Byproduct Materials License No. 06–00807–01 and release Lab Z, and Lab Z Lower Level including the Catacomb of the Schlumberger site in Ridgefield, Connecticut, for unrestricted use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment of a license and release of facilities for unrestricted use that ensures protection of public health and safety and the environment.

Alternative to the Proposed Action

Since Lab Z, and Lab Z Lower Level including the Catacomb have already been surveyed and found acceptable for release for unrestricted use, the no-action alternative would be to keep the facilities on the license. This no-action alternative is not acceptable because the licensee does not plan to perform the previously authorized activities with licensed materials at those locations. Maintaining the areas under a license would reduce options for future use of the property.

The Affected Environment and Environmental Impacts

The NRC staff has reviewed the surveys performed by Schlumberger to demonstrate compliance with 10 CFR 20.1402 license termination criteria. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the release for unrestricted use of the Schlumberger facilities are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities' (NUREG–1496).

Lab Z, and Lab Z Lower Level including the Catacomb are attached to the main building on Old Quarry Road, Ridgefield, Connecticut. Since Lab Z, and Lab Z Lower Level including the Catacomb have been surveyed and meet the NRC criteria for unrestricted use in 10 CFR Part 20, the environmental impacts resulting from the release of these areas for unrestricted use are expected to be insignificant. The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Consulted

This Environmental Assessment was prepared entirely by the NRC staff. The State Office of Historical Preservation, the State Fish and Wildlife Service, and the U. S. Fish and Wildlife Service were not contacted because release of Lab Z, and Lab Z Lower Level including the Catacomb at the Schlumberger facilities for unrestricted use does not modify the facilities. No other sources were used beyond those referenced in this EA.

NRC provided a draft of its Environmental Assessment to the State of Connecticut Department of Environmental Protection (CTDEP) for review. On January 31, 2003, CTDEP responded by letter and stated that it concurs with NRC's FONSI on human health and the environment.

Finding of No Significant Impact

The NRC staff concluded that the completed action complies with 10 CFR part 20. NRC has prepared this EA in support of the proposed license amendment to the license and release Lab Z, and Lab Z Lower Level including the Catacomb facilities for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

Judy Joustra, Senior Health Physicist, Division of Nuclear Materials Safety, Region 1.

List of References

1. 10 CFR Part 20, Subpart E.

2. NRC License No. 06–00807–01 inspection and licensing records.

3. Letter dated September 30, 2002, with enclosures, from Schlumberger-Doll Research for Schlumberger Technology Corporation. [ADAMS Accession No. ML022820310].

4. Letter dated December 19, 2002, from Schlumberger-Doll Research for Schlumberger Technology Corporation. [ADAMS Accession No. ML023530607].

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," the application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

Any questions with respect to this action should be referred to Judy Joustra, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5355, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 26th day of February, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–5161 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste, Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on March 25, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, March 25, 2003—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: February 27, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–5163 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on March 19 and 20, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss Westinghouse Electric Company LLC proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, March 19, 2003—8:30 a.m. until the conclusion of business.

Thursday, March 20, 2003—8:30 a.m. until the conclusion of business.

The purpose of this meeting is to review thermal-hydraulic issues concerning the design certification of the AP1000 reactor design. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse Electric Company LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Medhat El-Zeftawy (Telephone: 301–415–6889) or the Cognizant Staff Engineer, Mr. Michael R. Snodderly (Telephone: 301–415–6927) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official or Cognizant Staff Engineer between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 27, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–5164 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1123, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1123, "Verification, Validation, Reviews, and Audits for Digital Computer Software Used in Safety Systems of Nuclear Power Plants" is being developed to describe a process that is acceptable to the NRC staff for the development and assessment of evaluation models that may be used to verify and validate safety system software, subject to the exceptions listed in Regulatory Positions 1 through 8, and for carrying out software reviews, inspections, walkthroughs, and audits, subject to the exceptions listed in Regulatory Position 8.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by April 30, 2003.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about Draft Regulatory Guide DG–1123, contact Mr. Roman Shaffer at (301) 415–7606, e-mail *RAS3@NRC.GOV*.

Although a deadline is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; e-mail PDR@NRC.GOV. Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to (301) 415–2289; e-mail *DISTRIBUTION@NRC.GOV*. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of February 2003.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 03–5162 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employer's Quarterly Report of Contributions Under the RUIA.

(2) *Form(s) submitted:* DC–1.

(3) *OMB Number:* 3220–0012.

(4) *Expiration date of current OMB clearance:* 05/31/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 550.

(8) *Total annual responses:* 2,200.

(9) *Total annual reporting hours:* 917.

(10) *Collection description:* Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751–3363.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–5084 Filed 3–4–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47407; File No. 10–135]

Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by the Island Futures Exchange, LLC

February 26, 2003.

Section 6(g) of the Securities Exchange Act of 1934 ("Exchange Act")[1] provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission ("Commission") if such exchange is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under Section 5a of the Commodity Exchange Act.[2] Rule 6a-4 under the Exchange Act[3] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[4] An exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[5]

On February 19, 2003, the Island Futures Exchange, LLC ("Island") filed a Form 1–N with the Commission. Pursuant to Section 6(g)(3) of the Exchange Act,[6] the Commission hereby acknowledges receipt of the Form 1–N submitted by Island. Copies of the Form 1–N submitted by Island, including all exhibits, are available in the Commission's Public Reference Room, File No. 10–135.

For questions regarding this Release, contact: Jennifer Colihan, Special Counsel at (202) 942–0735, or Mia Zur, Attorney at (202) 942–7309; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5157 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78f(g).

[2] 7 U.S.C. 7a.

[3] 17 CFR 240.6a–4.

[4] Upon receipt of a Form 1–N, the Division of Market Regulation examines the notice to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Exchange Act Rule 202.3(b)(3), 17 CFR 202.3(b)(3).

[5] Section 6(g)(2)(B) of the Exchange Act.

[6] 15 U.S.C. 78f(g)(3).

[7] 17 CFR 200.30–3(a)(77).

SECURITIES AND EXCHANGE COMMISSION

[Release Number IC–25948; 812–12546]

Rydex ETF Trust, et al.; Notice of Application

February 27, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of an open-end management investment company, whose portfolios will consist of the component securities of certain equity securities indexes, to issue shares of limited redeemability; (b)

secondary market transactions in the shares of the series to occur at negotiated prices on The Nasdaq Stock Market ("Nasdaq") or a national securities exchange (each, a "Listing Market"); (c) dealers to sell shares of the series to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"); and (d) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

APPLICANTS: Rydex ETF Trust ("Trust"), Rydex Distributors, Inc. ("Distributor"), PADCO Advisors II, Inc. ("Adviser").

FILING DATES: The application was filed on June 8, 2001, and amended on February 24, 2003 and February 27, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 24, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 9601 Blackwell Road, Suite 500, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust is organized as a series investment company with one portfolio (the "Initial Fund" and together with the "Future Funds," as defined below, the "Funds"). The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and will serve as the investment adviser to the Funds. The Adviser may, in the future, enter into subadvisory agreements with additional investment advisers to act as subadvisers with respect to particular Funds. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and will be the principal underwriter and distributor of the shares of each Fund ("Shares").

2. Each Fund will invest in a portfolio of equity securities generally consisting of the component securities of a specified equity securities index (an "Underlying Index").[1] The Initial Fund will be based on the Equal Weighted S&P 500 Index. In the future, applicants expect to offer multiple series based on other equity securities indices (each, a "Future Fund"). Any Future Fund will (a) be advised by the Adviser or an entity controlled by or under common control with the Adviser and (b) comply with the terms and conditions of this application. No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, a subadviser or promoter of a Fund, or the Distributor.

3. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of its Underlying Index. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout regular trading hours on the Listing Market. A Fund will utilize either a replication strategy or a representative sampling strategy to track its Underlying Index. A Fund using a replication strategy generally will invest in substantially all of the component securities of its Underlying Index in the same approximate proportions as in the Underlying Index. When a component security is illiquid or when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index, a Fund may use a representative sampling strategy where it holds a representative sample of the component securities of the Underlying Index and will invest in some but not all of the component securities of its Underlying Index.[2] Applicants anticipate that a Fund using the representative sampling technique will not track its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every component security of the Underlying Index with the same weighting as the Underlying Index. Applicants anticipate that, over time, the expected tracking error of a Fund using the representative sampling technique will not exceed 5%, net of fees or expenses.

4. Shares will be issued in aggregations of at least 50,000 or more ("Creation Units"). The price of a Creation Unit will range from $3,000,000 to $5,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a Depository Trust Company ("DTC") participant that has executed a participation agreement with the Distributor. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. A Fund also may sell Creation Units on a "cash only" basis in limited circumstances. A person purchasing a Creation Unit from a Fund must make a "Creation Deposit" consisting of: (a) securities selected by the Adviser to correspond to the price and yield performance of the relevant Underlying Index ("Deposit Securities"), and (b) a cash payment equal to the difference between the market value of the Deposit Securities and the net asset value ("NAV") of a Creation Unit ("Cash Amount").[3] An investor purchasing or redeeming Creation Units from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs incurred by the Fund in connection with the purchase and redemption of the Creation Units.[4] Each Fund will provide complete disclosure about the Transaction Fee in its prospectus, including the maximum amount of the Transaction Fee, and the method of calculating the Transaction Fee will be disclosed in the Trust's statement of additional information ("SAI").

5. Orders to purchase Creation Units must be placed with the Distributor who will be responsible for transmitting the orders to the relevant Fund. The Distributor will maintain a record of Creation Unit purchases and send out confirmations to purchasers. The Distributor will also furnish a copy of the Fund's prospectus to those placing purchase orders.

6. Persons purchasing Creation Units from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Funds will be listed on a Listing Market, which will either be Nasdaq or a national securities exchange as defined in section 2(a)(26) of the Act, and traded in the secondary market in the same manner as other equity securities. It is expected that one or more member firms of the Listing Market will act as a market maker or specialist ("Market Maker") and maintain a market on the Listing Market for the Shares.[5] The price of Shares traded on a Listing Market will be based on a current bid/offer market. Each Share is expected to have a market value of between $60 and $100. Purchases and sales of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. A Market Maker, in providing for a fair and orderly secondary market for Shares, also may purchase Creation Units in connection with its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[6] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at NAV, will ensure that the market price of Shares will not vary much from its NAV.

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Units from a Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit in most cases will receive a portfolio of securities ("Redemption Securities") plus a balancing cash amount representing the difference between the NAV of a Creation Unit and the market value of the Redemption Securities. As with purchases, a redeeming investor will pay a Transaction Fee. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is unable, by law or policy, to own a particular Redemption Security.

9. Applicants state that neither the Trust nor any Fund will be advertised, marketed, or otherwise held out as a traditional open-end investment company or mutual fund. Rather, applicants state that each Fund and the Trust will be marketed as a "Nasdaq-traded fund," "exchange-traded fund," "investment company," "fund," and "trust" without reference to an "open-end fund" or "mutual fund;" except to compare and contrast the Trust and the Funds with conventional open-end investment companies. All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units or Shares will prominently disclose that Shares are not individually redeemable and that Shares may be acquired or redeemed from the Fund in Creation Units only. The same type of disclosure will be provided in each Fund's prospectus, SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, the market price of Shares will not vary much from its NAV.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at an offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

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[1] At least 90% of each Fund's total assets (exclusive of collateral held from securities lending) will be invested in the component securities of its Underlying Index. Each Fund may also invest up to 10% of its total assets in stocks that are not included in the Underlying Index, futures contracts, options on futures contracts, options and swaps related to its Underlying Index, and cash and cash equivalents.

[2] Securities selected for inclusion in a Fund by the Adviser will have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Underlying Index taken in its entirety.

[3] On each day that the Listing Market is open for business ("Business Day"), the Adviser will make available through the National Securities Clearing Corporation ("NSCC"), prior to the opening of trading on the Listing Market, the list of the names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund as well as information regarding the Cash Amount. That Creation Deposit will apply to all purchases of Creation Units until a new Creation Deposit composition is announced. A purchasing investor may be permitted or required to substitute an amount of cash or a different security for a Deposit Security in certain circumstances. The Listing Market will disseminate every 15 seconds throughout the regular trading hours of the Listing Market, an amount representing on a per Share basis the sum of the current value of the Deposit Securities and the estimated Cash Amount.

[4] Where a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed a higher Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities.

[5] The listing requirements established by Nasdaq require that at least two market makers be registered in Shares in order for the Shares to maintain a listing on Nasdaq. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions.

[6] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. DTC or its participants will maintain records reflecting the beneficial owners of Shares.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (a) that secondary market trading in Shares will not cause dilution for owners of Shares because such transactions do not directly involve Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, these variances occur as a result of third-party market forces, such as supply and demand and not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[7]

[7] Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as purchases of shares from the Fund or an underwriter. Applicants state that a Fund's prospectus will caution persons purchasing Creation Units that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from a Fund, breaks them down into the constituent Shares, and sells those Shares directly to customers, or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. Each Fund's prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. Each Fund's prospectus also will caution dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

8. Applicants state that Shares will be listed on a Listing Market and will be traded in a manner similar to other equity securities. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

9. Applicants contend that Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Shares will be listed on a Listing Market, prospective investors will have access to several types of market information about Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information for Shares also will be published daily in the financial section of newspapers. In addition, the Trust (or the Listing Market) also intends to maintain a website that includes quantitative information updated on a daily basis, including, for each Fund, daily trading volume, the closing NAV and the reported closing price. The website for the Trust will also include, for each Fund, on a per Share basis, (a) a calculation of the premium or discount of the closing price against NAV, and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against NAV, within appropriate ranges, for each of the four previous calendar quarters.

10. Investors also will receive a product description ("Product Description") describing a Fund and its Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Shares that is tailored to meet the needs of investors purchasing Shares in the secondary market.

Sections 17(a)(1) and (2) of the Act

11. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that with respect to one or more Funds and the Trust, a large institutional investor, including a Market Maker, could own 5% or more or in excess of 25% of the outstanding Shares of a Fund or the Trust, making that investor an affiliated person of the Fund or Trust. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit persons that are affiliated persons of a Fund or the Trust solely by virtue of a 5% or more or in excess of a 25% ownership interest (and affiliated persons of such affiliated persons that are not otherwise affiliated with such Fund or Trust) to purchase and redeem Creation Units through in-kind transactions.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund or the Trust described above from purchasing or redeeming Creation Units through in-kind transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the securities in the Fund's portfolio. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds or Trust.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Fund, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission; or (b) the Future Fund will be listed on a Listing Market without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. Each Fund's prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a Listing Market.

4. Neither the Trust nor any of the Funds will be advertised or marketed as an open-end fund or a mutual fund. Each Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

5. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Trust has information about the premiums and discounts at which the Fund's Shares have traded.

6. The prospectus and annual report for each Fund will also include: (a) The information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

7. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, a Listing Market rule requiring Listing Market members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5156 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 47406; File No. SR–CBOE–2003–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, To Add Two Previously Deleted Interpretations to Rule 5.4

February 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. CBOE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange, to add two previously deleted Interpretations. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.4 to add two interpretations that were inadvertently and unintentionally deleted from Rule 5.4 in a prior rule change, SR–CBOE–1997–23.[5] In 1997, CBOE filed SR–CBOE–97–23, which proposed to make changes to CBOE Rules 5.4, 5.5, 5.6, and 5.7. As noted in that filing, the purpose of that rule change was: (1) To amend the procedures for opening trading in series of equity options under Rules 5.5 and 5.6 in order to allow the Exchange the same flexibility in adding series as permitted under other exchanges' rules; (2) to amend Rules 5.5 and 5.6 to provide specifically in the Rules for near-term options expiration and relieve the Product Development Committee of its responsibility with respect to

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* SEC Rel. No. 34–38743 (June 17, 1997), 62 FR 34332 (June 25, 1997).

opening series of options; and (3) to clarify and reorganize Rules 5.4, 5.5, 5.6, and 5.7.

In addition, in SR–CBOE–97–23 CBOE also inadvertently and unintentionally deleted from Rule 5.4 two Interpretations that were then numbered .07 and .08. The deletion of these two Interpretations was neither discussed in the proposed rule change CBOE submitted, nor in the SEC order granting accelerated approval of the proposed rule change. Interpretations .07 and .08 read:

.07 When there is no open interest in a series the Exchange may delist such series. Delisting shall be preceded by a notice to member organizations concerning the delisting.

.08 Where a class of options contracts is open for trading on another national securities exchange, the Exchange may delist such class of options contracts. Delisting shall be preceded by a notice to member organizations concerning the delisting.

CBOE now proposes to add former Interpretation .07 to the current version of Rule 5.4 as Interpretation and Policy 12, and to add a new Interpretation and Policy .13 which is nearly identical to former Interpretation .08. In the proposed new Interpretation .13, CBOE describes the process for delisting option classes that are traded on more than one exchange, and also adds language describing the process for delisting option classes that are traded solely on CBOE.

The Exchange notes that proposed new Interpretation .12 is identical to American Stock Exchange Rule 903, Commentary .02 and Pacific Exchange Rule 6.4(a), Commentary .02.

2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and in demand without sacrificing any investor protection. Accordingly, the proposed rule change is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5)[7] in particular, in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[10] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the CBOE must file notice of its intent to file the proposed rule change at least five business days beforehand. The CBOE has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The proposal merely replaces rule text that was inadvertently deleted. Also, the proposed rule change is consistent with the rules of other option exchanges that the Commission previously approved. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file No. SR–CBOE–2003–04 and should be submitted by March 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5082 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CRF 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47410; File No. SR–DTC–2002–13]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Establish the Prospectus Repository System

February 26, 2003.

I. Introduction

On September 11, 2002, The Depository Trust Company filed with the Securities and Exchange Commission ("Commission") a proposed rule change File No. SR–DTC–2002–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 4, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

In response to industry demand, DTC has recently developed a new service for participants that would make prospectuses and official statements relating to new issues of corporate and municipal securities ("Offering Documents") available in electronic format. The new service, the Prospectus Repository System ("PRS") will enable participants and DTC-authorized third parties (collectively referred to as "users") to view Offering Documents from a DTC-maintained Web site.[3]

As a new service related to DTC's underwriting services, PRS will function as a multipurpose library where users can view, download, and print preliminary and final Offering Documents for DTC-eligible securities for which the underwriters have provided DTC with Offering Documents. PRS will include Offering Documents for both corporate and municipal securities. Access to the Offering Documents posted on the website will be controlled by password protection. By posting Offering Documents in PRS, DTC intends to make access to Offering Documents easier and more efficient. PRS features will include on-line search capabilities; retrieval by ticker symbol CUSIP, or issuer; and downloadable or printable files.

All users accessing Offering Documents in PRS will be required to affirm that they have read DTC's disclaimer prior to retrieving any Offering Documents.[4] The disclaimer states that Offering Documents posted on the PRS website are for informational purposes only and do not constitute bids, offers, or solicitations for securities. The disclaimer also states that by virtue of offering the PRS service, DTC is not participating in any offering as an underwriter, dealer, investment advisor, or otherwise and is not providing any form of investment advice or recommendation as to any security, issuer, or offering. In addition, the disclaimer also states that DTC disclaims responsibility for the following:

- Satisfying Offering Document delivery requirements under federal securities laws or under Municipal Securities Rulemaking Board rules;
- Informing users of PRS of restrictions or limitations on securities or participation in an offering;
- The form or content of any Offering Document posted on the PRS website;
- The accuracy or DTC's verification of information submitted to DTC;
- The responsibility to update any Offering Document posted on the website,
- Posting a final Offering Document if it posts a preliminary Offering Document;
- Posting any supplements to a final Offering Document;
- Keeping an Offering Document posted for any amount of time.

III. Discussion

Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[5] The rule change permits DTC to offer PRS which should enable users to more efficiently obtain and use information about new offerings of securities which are eligible for deposit at DTC. In so doing, PRS should assist participants, as well other PRS users involved in the processing of securities transactions, to process new offerings of securities with more efficiency, less cost, and less errors. Accordingly, the Commission finds that the rule change is consistent with DTC's obligations under Section 17A of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2002–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5160 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46915, (November 26, 2002), 67 FR 72253 (December 4, 2002).

[3] PRS authorized third-party users will include syndicate members, correspondent banks, paying agents, transfer agents, and certain legal counsel end financial advisors associated with the underwriting. Individual investors will not have access to Offering Documents through the website.

[4] A copy of DTC's PPS disclaimer is attached to DTC's filing and is available at the Commission's Public Reference office or through DTC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47395; File No. SR–MSRB–2002–15]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–28, on Transactions with Employees and Partners of Other Municipal Securities Professionals

February 24, 2003.

On December 20, 2002, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities & Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–MSRB–2002–15). The proposed rule change was published for notice and comment in the **Federal Register** on January 22, 2003.[3] The Commission did not receive comment letters on the proposed rule change.

I. Description of the Proposed Rule Change

The MSRB's rule change creates an exemption from Rule G–28 for transactions and accounts involving municipal fund securities. Rule G–28, on transactions with employees and partners of other municipal securities professionals, requires a broker, dealer or municipal securities dealer ("dealer") that opens a municipal securities account for an employee of another dealer (or a spouse or child of such employee) to first provide written notice to such other dealer and to subsequently follow any instructions provided by the other dealer with respect to transactions for the employee. The transacting dealer is also required to provide copies of all confirmations to the other dealer. The rule was adopted to prevent an employee of a dealer from effecting transactions that are contrary to the interests of the dealer or from otherwise acting illegally or improperly with

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47189 (Jan. 15, 2003), 68 FR 03073.

respect to transactions in municipal securities.

The MSRB proposed the exemption because it believes that transactions in municipal fund securities appear not to present the same potential for adverse impact on an employing dealer as might exist with respect to transactions in other types of municipal securities. Furthermore, fulfilling Rule G–28 requirements may impose an unnecessary burden in the context of municipal fund securities, particularly 529 college savings plans, without any countervailing benefit. The MSRB notes that transactions in registered mutual fund shares are currently exempted from similar requirements imposed under NASD Rule 3050. Since there is no trading market in municipal fund securities, the MSRB believes the safeguards provided by Rule G–28 are not needed in the context of this market.

II. Summary of Comments

The Commission did not receive any comment letters relating to the MSRB's proposed rule change.

III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, which govern the MSRB.[4] The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[5] The rule change is consistent with the Act in that it amends an existing MSRB rule to accommodate the unique characteristics of municipal fund securities. Furthermore, the rule change removes impediments to a free and open market in such securities and promoting the protection of investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[6] that the proposed rule change (File No. SR–MSRB–2002–15) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5083 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[4] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o(b)(2)(C).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47409; File No. SR–NYSE–2003–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through June 30, 2003, or Such Earlier Date as the NYSE's Pending Rule Proposal Requiring Shareholder Approval of Equity-Compensation Plans Is Approved by the Commission

February 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans[3] is approved by the Commission, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.[4] The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.[5] The Pilot has since been extended until January 11, 2002,[6] March 11, 2002,[7] May 13, 2002,[8] June 30, 2002,[9] August 31, 2002,[10] October 30, 2002,[11] December 30, 2002,[12] and February 28, 2003.[13]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has had the Pilot with respect to the definition of a "broadly-based" stock option plan since June 4, 1999.[14] On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[15] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[16] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[17] The Exchange's 2001 Extension Request extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[18] The Pilot was again extended several times, most recently until February 28, 2003.[19]

On October 7, 2002, in connection with the Exchange's corporate governance proposals, the Exchange filed a proposal with the Commission that would require shareholder approval for equity-compensation plans, making it unnecessary to continue the Pilot. That proposal was published in the **Federal Register** on October 11, 2002.[20] As directed by the Commission staff, the Exchange is requesting an extension of the effectiveness of the Pilot until June 30, 2003, or until such earlier date as the Exchange's proposal relating to shareholder approval of equity-compensation plans is approved by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b-4(f)(6)[23] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before February 28, 2003, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission has waived the five-day pre-notice requirement for this proposed rule change. In addition, for the reasons discussed below, the Commission has also waived the thirty-day operative date requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, which will extend the Pilot through June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans[26] is approved by the Commission, become operative on February 28, 2003. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly-based" stock option plans under the Pilot.[27] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

The Commission notes that once the Exchange's proposed rule change relating to shareholder approval of equity compensation plans has been approved by the Commission, those approved rules will supercede this Pilot because the concept of "broadly-based" stock option plans will no longer be retained in the Exchange's shareholder approval rules.

Based on these reasons, the Commission has determined that it is consistent with the protection of investors and the public interest that the proposed rule change, which will extend the Pilot through June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans is approved by the Commission, become operative on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (File No. SR–NYSE–2002–46).

[4] *See* Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) ("Original Pilot Approval Order").

[5] *See* Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[6] *See* Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) ("2001 Extension Request").

[7] *See* Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR–NYSE–2002–03).

[8] *See* Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR–NYSE–2002–14).

[9] *See* Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR–NYSE–2002–18).

[10] *See* Securities Exchange Act Release No. 46143 (June 28, 2002), 67 FR 35174 (July 5, 2002) (File No. SR–NYSE–2002–22).

[11] *See* Securities Exchange Act Release No. 46437 (August 29, 2002), 67 FR 57262 (September 9, 2002) (File No. SR–NYSE–2002–42).

[12] *See* Securities Exchange Act Release No. 46747 (October 30, 2002), 67 FR 67680 (November 6, 2002) (File No. SR–NYSE–2002–57).

[13] *See* Securities Exchange Act Release No. 47084 (December 23, 2002), 67 FR 79681 (December 30, 2002) (File No. SR–NYSE–2002–67).

[14] *See* Original Pilot Approval Order note 4 *supra*.

[15] *See* Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) ("2000 Extension Request").

[16] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[17] *See* note 5 *supra*.

[18] *See* note 6 *supra*.

[19] *See* notes 7 through 13 *supra*.

[20] *See* note 3 *supra*.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] *Id.*

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See* note 3 *supra*.

[27] *See* Original Pilot Approval Order, note 4 *supra*.

February 28, 2003.[28] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2003–04 and should be submitted by March 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5158 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[28] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47408; File No. SR–Phlx–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Option Charges

February 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b-4 thereunder,[2] notice is hereby given that on February 19, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges by terminating the Index Option Book Charge of $1000 per month on Phlx specialists in the Exchange's Sector Index Options ("Index Options"), and the $2000 per month charge on Phlx specialists in the KBW Bank Sector℠ ("BKX℠"), the Oil Service Sector℠ ("OSX℠"), the Semiconductor Sector℠ ("SOX℠") and the Gold and Silver Sector℠ ("XAU℠"). The Index Option Book Charge became effective on January 2, 2003.[3] The text of the proposed rule change is set forth below. Deleted text is in brackets.

Summary of Index Option Charges

Option Comparison Charge I (applicable to all trades—except specialist trades)

Registered Option Trader—$.03 per contract

Firm (Proprietary and Customer Executions)—$.04 per contract

Option Transaction Charge I

Customer Executions

Market value less than $1.00*—$.20 per contract

Market value $1.00 or over*—$.40 per contract

Firm **—$.10 per contract

Registered Option Trade—$.19 per contract

Specialist—$.14 per contract

[Option Book Charge I

KBW Bank Sector℠—$2,000 per month

Oil Service Sector℠

Semiconductor Sector℠

Gold and Silver Sector℠

All other Index Options—$1,000 per month]

Option Floor Brokerage Assessment I

5% of net floor brokerage income.

Floor Brokerage Transaction Fee I

$.05 per contract, for floor brokers executing transactions for their own member firms.

Real-Time Risk Management Fee I

$.0025 per contract for firms/members receiving information on a real-time basis *See* Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to $1,000.

* Block transaction for customer executions of 500 to 999 contracts and 1000 contracts and more are eligible for a discount to such charges of 15% and 25% respectively from the stated rates upon submission to the PHLX of a customer option block discount request form with supportive documentation within thirty (30) days of monthly billing date.

** Non-clearing firm members' proprietary transactions are eligible for the "firm" rate based upon submission of a PHLX rebate request form with supportive documentation within thirty (30) days of invoice date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to terminate the Index Option Book Charge of $1000 per month on Phlx specialists in the Exchange's Index Options, and the $2000 per month charge on Phlx specialists in the KBW Bank Sector℠ ("BKX℠"), the Oil Service Sector℠ ("OSX℠"), the Semiconductor Sector℠ ("SOX℠") and the Gold and Silver Sector℠ ("XAU℠") Index Options. The Index Option Book Charge became effective on January 2, 2003.

2. Statutory Basis

The Exchange believes that its proposal to terminate the Index Option Book Charge consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.[6]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[7] and rule 19b–4(f)(2) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2003–09 and should be submitted by March 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5159 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47087 (December 23, 2002), 68 FR 146 (January 2, 2003).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] One comment letter regarding SR–Phlx–2002–80 was received after the proposed rule change was effective. No comments were solicited or received regarding the present proposed rule change.

[7] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4291]

Culturally Significant Objects Imported for Exhibition Determinations: "Renoir, Pierre-Auguste 1841–1919"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Renoir, Pierre-Auguste 1841–1919," imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Trust, Los Angeles,CA from on or about April 28, 2003 to on or about August 29, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of theseDeterminations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (*telephone:* (202) 619–6981). The address isU.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 27, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–5113 Filed 3–4–03; 8:45 am]

BILLING CODE 4710–08–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Transportation Equity Act Model (TEAM) Announcement of Request for Proposals

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice of request for proposals.

SUMMARY: The Department of Transportation established the Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. This office is responsible for implementing and monitoring DOT's goals for small, women-owned and disadvantaged businesses. DOT's Small and Disadvantaged Business Program is designed to ensure that small businesses have an equitable opportunity to participate in the DOT's procurement programs, and that they receive a fair and equitable share of the resulting contract awards.

OSDBU establishes a local presence by entering into Cooperative Agreements with Chambers of Commerce, Trade Associations, Business Organizations and For-Profit Entities to increase awareness of DOT's procurement opportunities and financial assistance programs for small, minority, women-owned and disadvantaged business enterprises (DBEs). This request solicits competitive proposals from organizations and entities classified above for participation under OSDBU's Transportation Equity Act Model (TEAM) program. OSDBU will enter into Cooperative Agreements with these organizations and entities to provide liaison services between the DOT, its grantees, recipients, contractors, subcontractors, and minority, women-

owned, small and disadvantaged business enterprises. This Request for Proposal contains information concerning: (1) The principal objectives of the competition, eligible applicants, activities and factors for an award; (2) the application process, including how to apply and the criteria used for selection; and (3) a checklist of application submission requirements.

DATES: Proposals must be received at U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Room 9414, Washington, DC 20590, by March 24, 2003, 4 p.m., eastern standard time. Proposals received after the deadline will be considered non-responsive and will not be reviewed. Due to security concerns, proposals should be submitted via overnight courier.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur D. Jackson, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., Room 9414, Washington, DC 20590, Tel. 202–366–2852 or 800–532–1169, ext 6–2852.

SUPPLEMENTARY INFORMATION: Send proposals to Arthur Jackson, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., Room 9414, Washington, DC 20590.

Dated: February 26, 2003.

Sean M. Moss,

Director, Office of Small and Disadvantaged Business Utilization.

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1. Introduction

1.1 Background

The United States Department of Transportation (DOT) established the Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The OSDBU administers the Department's Small and Disadvantaged Business Enterprise (DBE) Program which is designed to ensure that small, women-owned and disadvantaged businesses have an equitable opportunity to participate in DOT's procurement and Federal financial assistance programs and that they receive a fair share of the resulting contract awards. Because DOT's policy is to encourage and increase the participation of small, women-owned and disadvantaged businesses in the contracts and programs that it funds during FY 2002, awards to small businesses totaled $2.5 billion in DOT's direct procurement.

The mission of OSDBU is to promote customer satisfaction through successful partnerships that result in an inclusive and effective small business procurement process. To accomplish this mission, OSDBU has organized its responsibilities, programs and activities under four lines of business: Advocacy, Outreach, Financial Services, and Organizational Management. DOT/OSDBU has a strong commitment to the small business community and offers advocacy, outreach and financial programs to small businesses.

The OSDBU develops Department-wide policy and administers a number of programs and activities to implement the OSDBU's Congressional mandate expanding the level of participation of small, disadvantaged businesses in the Federal financial assistance and direct contracting programs of all modal administrations of DOT and DOT-assisted state and local transportation agencies. The OSDBU is responsible for the development and implementation of an effective program of activities directed at ensuring small business participation in the Department's direct procurement and Federal financial assistance activities. The OSDBU monitors all DOT procurement activities that involve the participation of small, minority, women-owned and disadvantaged businesses, including the goal settings and procurement practices of DOT financial assistance recipients, namely, state and local transportation agencies. The OSDBU also serves an important role in assisting firms in their marketing of the Department and all of its operating administrations. The OSDBU is responsible for developing and administering programs to encourage, stimulate, promote and assist small businesses to obtain and manage transportation-related contracts, subcontracts and projects. The OSDBU administers the Short Term Lending Program (STLP) and the Bonding Assistance Program, two financial assistance efforts that provide assistance in obtaining short-term working capital and surety bonding on transportation-related projects. Under the STLP, guarantees of lines of credit up to $500,000 are available at prime plus 1% to finance accounts receivable for transportation-related contracts. The Bonding Assistance Program enables DBEs to apply for bid, performance and payment bonds on contracts up to $1,000,000. The fee for performance and payment bonds is 2.5%.

1.2 Program Description and Goals

An area where the OSDBU has focused considerable efforts has been that of increasing small, minority, women-owned and disadvantaged businesses access to DOT financial assistance programs and contracting opportunities through the Transportation Equity Act Model (TEAM) program. This initiative utilizes Cooperative Agreements to provide liaison services between DOT, its grantees, recipients, contractors, subcontractors and small businesses. The TEAM includes activities such as information dissemination, outreach services, conference and seminar participation and referrals to technical assistance agencies (*i.e.*, Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), Procurement Technical Assistance Contractors (PTACs) and State DOT highway supportive services contractors) which offer management and technical assistance in financial assistance, marketing and other business areas. In addition, the TEAM provides one-on-one business counseling to small firms to increase their participation in mega projects emanating from the DOT, its grantees/recipients and to assist small businesses to participate in other agency initiatives such as Aviation, Security, and Surface Transportation Safety. Information dissemination and outreach include the distribution of the following DOT marketing materials: DOT Bonding Assistance Program information; DOT Short-Term Lending Program information; Procurement Forecasts; DOT Small Business Subcontracting Opportunities Directory; and Contracting with the United States Department of Transportation Booklets. A compilation of these materials is available in the DOT's Marketing Information Package, a comprehensive document which serves as a resource and reference tool.

The TEAM concept was established by the OSDBU in May 2000 in response to the continuing need to outreach to the small and disadvantaged business communities and increases their participation in DOT contracting and financial assistance programs. To address this need, the TEAM seeks (1) to increase the number of small and disadvantaged businesses that enter into transportation-related contracts; (2) to increase the participation of small, women-owned and disadvantaged businesses in mega projects funded largely from DOT Federal assistance; and (3) to increase the number of small, women-owned and disadvantaged businesses that receive DOT STLP lines of credit and bonding assistance.

The TEAM will:

(1) Work with prime contractors, Federal, State and local agencies, and DOT grantees and recipients to create opportunities for small, women-owned and disadvantaged businesses.

(2) Establish a communications link between DOT, its grantees, recipients, contractors, subcontractors and the small, disadvantaged business community. Increase awareness of contracting opportunities with mega projects by developing an aggressive outreach initiative to identify and refer qualified candidates to service providers and contracting agencies.

(3) Develop structured, consultative relationships with the private sector financial community and governmental agencies that can create a public/private partnership to provide specialized assistance to small, women-owned and disadvantaged businesses.

(4) Disseminate DOT marketing materials and relevant information at design/build meetings, selected conferences/seminars, and other transportation-related events through the use of quarterly newsletter and mailings from the TEAM's office.

(5) Develop and/or strengthen linkages with State DOTs, local Transit Agencies, Historically Black Colleges and Universities, Hispanic Serving Institutions, Associations of Minority and Women Contractors and Prime Contractors, to encourage small business participation in mega projects and other transportation-related opportunities.

(6) Stimulate referrals of firms to obtain technical assistance from Federal, state and local agencies such as MBDCs, SBDCs and State DOT highway supportive services contractors for management and other business-related assistance, including approvals of surety bonds and working capital.

(7) Establish business operations and procedures that are "results oriented", and implement the principles set forth in the Government Performance and Results Act (GPRA) of 1993. This Act ensures that programs and budget decisions are linked with program performance. GPRA establishes a framework for results-oriented management and promotes a new way of doing business, a common sense approach that focuses on getting results through performance-based goals and accountability. Each applicant will put forth every effort in complying with the GPRA and report on achievements of performance.

(8) Establish outreach and information dissemination activities to encourage partnerships with Federal, State and local governments, private sector organizations and businesses, including small and disadvantaged businesses, concerning the availability of contracts and other procurement opportunities.

(9) Focus efforts on existing transportation programs, such as Educational Institutions that use innovative strategies to assist individuals and companies to make the transition from entry-level businesses to successful entrepreneurs in the field of transportation.

(10) Focus on matching businesses with transportation-related procurement opportunities in mega projects where small, disadvantaged businesses can participate in DOT-assisted contracts. Techniques such as disseminating current information on procurement and contract opportunities; transmitting synopses of contract information by e-mail and/or electronic data transfers; and setting up one-to-one contacts between prime contractors and small businesses that will create a "match" between the two parties.

(11) Employ a multidimensional approach to business. The applicants must have the capacity and organizational structure to effectively access and provide supportive services to the broad range of small business and disadvantaged clients within their geographical areas. The applicants must have the background to provide management and technical help to small and disadvantaged firms. Applicants must have demonstrated knowledge of the contracting process in their geographical area to ably assist small businesses in contract acquisition.

1.3 Description of Competition

The purpose of this RFP is to solicit proposals from applicants, such as Chambers of Commerce, Trade Associations, Business Organizations and For-Profit Entities, to participate in the Transportation Equity Act Model (TEAM) program. The TEAM will enable the OSDBU to establish a local presence by assisting small businesses and DBEs in securing information on DOT procurement opportunities and DOT's Short-Term Lending and Bonding Assistance Programs in order to increase the number of small businesses that enter into transportation-related contracts. As the program requirements and selection criteria indicate, the OSDBU also intends that the TEAM is multidimensional; that is, the selected organizations and entities must have the capacity to effectively access contracts and other procurements for small businesses within their target areas. In addition, the TEAM must be able to coordinate and establish effective networks with DOT grant recipients and technical assistance agencies to maximize resources and avoid duplication of effort.

It is OSDBU's intent to fund one agreement in each of the selected locations. However, OSDBU reserves the option to make multiple awards, if warranted.

The geographical locations and Target Projects for each TEAM are as follows:

Eastern TEAM: New York, New York
Western TEAM; Oakland/San Francisco, California
Northern TEAM: Chicago, Illinois
Southern TEAM: Orlando, Florida
Midwest TEAM: Milwaukee, Wisconsin
Southeast TEAM: Atlanta, Georgia
Southwest TEAM: Alburquerque, New Mexico
Northwest TEAM: Seattle, Washington
Mid-Atlantic TEAM: DC/MD/VA

1.4 Duration of Agreements

Cooperative agreements will be awarded for a period of 12 months.

1.5 Authority

DOT is authorized under 49 U.S.C. 322 (Pub. L. 97–449), to develop by Cooperative Agreements, support mechanisms including liaison and assistance programs, that will increase the opportunities of small, women-owned and disadvantaged businesses to access transportation-related contracts.

1.6 Eligibility Requirements

- An established Chamber of Commerce, Trade Association, Business Organization or For-Profit Entity which has the documented experience and capacity necessary to successfully operate and administer a coordinated TEAM effort within a specific location.
- Documented and continuous experience prior to the date of application in areas such as advocacy for small businesses, management and marketing expertise, outreach referrals to technical assistance agencies, and government contracting within the jurisdiction of the TEAM service area in which proposed services will be provided; and
- Physically headquartered within the TEAM service area.

2. Program Requirements

In conducting the activities to achieve the goals of the TEAM, the recipient will be responsible for implementing the activities under 2.1 and 2.2 below. The OSDBU will be responsible for conducting activities under 2.3.

2.1 Recipient Responsibilities

(1) Develop structured, consultative relationships with key constituent groups within the TEAM area to help build and reinforce coordination and credibility. Such relationships will ensure that DOT non-minority and minority prime contractors, as well as organizations and associations, facilitate awareness and utilization of the TEAM program's services.

(2) Conduct *outreach* to identify and refer qualified candidates to service providers and contracting entities to ensure that small, minority, women-owned and disadvantaged businesses are well prepared for access to contracting opportunities.

(3) *Disseminate information* as a component of outreach by distributing DOT documents and materials, such as, DOT Bonding Assistance Program Fact Sheets and applications from bond agents; DOT Short-Term Lending Program Fact Sheets and applications; Procurement Forecasts; and Contracting with the United States Department of Transportation Booklets. A compilation of these materials is available in the DOT's Marketing Information Package, a comprehensive guide that serves as a resource and reference tool.

(4) Provide *referrals* to technical assistance agencies and educational institutions to receive assistance in areas such as, the completion of bonding and lending applications, bid and cost estimating, and management assistance. Technical assistance agencies include Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs) and State DOT highway supportive services contractors, Minority Educational Institutions, and Procurement Technical Assistance Centers.

(5) Complete a *follow-up* form for each referral made to the technical assistance agencies, educational institutions and financial institutions that documents the referrals, lists other services provided subsequent to the referral, identifies the *outcome measurements* that were achieved based upon the action taken. This information shall be reported in writing to OSDBU on a monthly basis and will identify the technical assistance agency and contact person.

(6) Develop and maintain a database of transportation-related firms that have the capability to bid on mega projects and other transportation-related opportunities and have

the capacity to secure bonds and loans in support of contracts and subcontracts. The targeted database should consist of firms that will receive a *comprehensive array of services*, including counseling, technical assistance, bonding and lending approvals and regular follow-up services under the TEAM. Referrals of DBEs will be made to prime contractors and mega projects subsequent to matching companies by categories such as NAICS Codes, HUB Zone participants, location of firms, type of certifications held, and bonding and lending capacity.

(7) Provide access to bonding and lending for certified firms to obtain bid, performance and payment bonds on transportation-related contracts up to $1,000,000 and guaranteed lines of credit up to $500,000 for accounts receivable financing. Also, firms certified by the Small Business Administration as 8(a), Hubzone, Small Disadvantaged Businesses (SDBs) and Service Disabled Veterans will qualify for the DOT Bonding and Lending Programs. DOT's bond agents and bankers shall work with the Project Director and OSDBU to present "how-to-workshops" on preparation and completion of bond and loan packages. The DOT partners will deliver the workshop presentations *only* when it is feasible for them to participate, or when a training session is scheduled in their locations. The OSDBU will participate in selective workshops at times when it is not feasible for the DOT bond agents or the DOT banks to be in attendance.

(8) Develop procedures for submitting bond and loan applications to DOT's bond agents and banks, and develop procedures for securing necessary training from sources such as, educational institutions, technical assistance agencies, private entities available to work with the TEAM.

(9) Provide access to contracts for businesses seeking to participate on mega or special projects by establishing a working knowledge of the projects and become familiar with the needs of prime contractors and other obligees. Electronic Commerce, Intelligent Transportation System (ITS), and Special Research & Demonstration Projects are additional areas where contract opportunities are available to small businesses.

(10) Participate in conferences/seminars on behalf of OSDBU by attending specific sessions that are transportation-related.

(11) Establish a toll free telephone line that is available to small businesses interested in securing information regarding the DOT in general and OSDBU's TEAM in particular. Callers should receive directions on how they can participate in DOT programs that will enhance their efforts in securing DOT contracts, especially mega projects.

(12) Provide special assistance to small firms by utilizing the services of technical experts in various disciplines to increase the knowledge base of DBE firms.

(13) Furnish all labor, facilities and equipment to perform the services described in this announcement.

2.2 Work Requirements

Each TEAM must perform work in the following functional areas:

- Advocacy
- Outreach
- Financial Services
- Referral to Technical Assistance Providers
- Follow Up
- Success Stories
- Teleconferencing

(A) Advocacy

The applicant shall serve in an advocacy role to small, women-owned and disadvantaged businesses to encourage their participation in DOT financial programs and DOT assisted contracts and procurement opportunities. The TEAM shall coordinate its efforts with Federal, State and local agencies and the private sector, to promote the development and implementation of effective programs that assist small, women-owned and disadvantaged businesses.

The TEAM shall counsel small, women-owned and disadvantaged businesses on the use of the Internet, with priority given to maximizing use of the DOT website at *http://www.dot.gov* and the OSDBU website at *http://osdbuweb.dot.gov* and encourage them to use this medium for marketing the U.S. DOT, the mega project(s) and other Federal, State and local agencies for procurement opportunities.

The TEAM shall establish and implement business operations and procedures that are results oriented, and implement the principles set forth in the Government Performance and Results Act (GPRA) of 1993. The TEAM will keep documentation as to achievements attained for reporting under the GPRA within its geographical area.

(B) Outreach

The TEAM shall provide assistance to small, women-owned and DBE firms for registering their businesses with Federal, State and local databases to market their goods and services to governmental agencies.

(1) *Conferences.* The TEAM shall participate in conferences/seminars as a representative of the DOT OSDBU. The meetings must be transportation related in scope and designed to assist small, disadvantaged businesses to obtain contract opportunities and access to bonding and lending. A written request must be received by OSDBU *at least five days in advance* of the conference and written approval shall be received from OSDBU prior to attendance. Written reports will be transmitted to OSDBU within five workdays after the conference. An outline of the report format will be provided by OSDBU.

The TEAM will work in conjunction with OSDBU's conference coordinator and serve as the local contact for logistical arrangements with hotel and/or other facilities where Transportation Marketplace Conferences are to be held. The TEAM will perform under the leadership of OSDBU's conference coordinator to ensure that local grantees/recipients and other Federal, State and local agencies are included in the planning and coordination of Transportation Marketplace Conferences.

(2) *Database Development.* The TEAM must assist firms to register with primary databases which are accessible from the OSDBU website, namely;

- Pro-Net—is an electronic gateway of procurement information, for and about small businesses, provided by the U.S. Small Business Administration (SBA). It is a search engine for contracting officers, a marketing tool for small firms and a link to procurement opportunities and important information. It is designed to be a virtual one-stop procurement shop.
- Fed Biz Ops—is a web-based system for posting solicitations and other procurement-related documents on the Internet. All DOT procurement organizations currently posting requirements to the Internet are required to use EPS. Contract specialists post synopses and other procurement documents, such as solicitations, amendments, and award notifications to a common index, which allows firms to search databases concerning information from many of the Federal agencies.
- News by E-Mail—is an automatic service afforded firms for registering on the OSDBU Web Site in order to subscribe and receive DBE Announcements, The Transportation Link Newsletter, OSDBU News and Outreach/Conference Announcements.

The agency shall conduct an aggressive outreach effort that will provide a significant increase in the number of small and disadvantaged businesses registered in the TEAM's database in order to participate more effectively in other DOT procurement in general and their special projects (identified under "Target Projects") particular. Outreach to DBEs, HUBZone businesses, Service-Disabled Veterans, 8(a) firms, and Women-Owned businesses shall be conducted and representatives from these groups should be a significant part of the database. The TEAM shall conduct outreach and information dissemination regarding the OSDBU bonding and lending programs, and procurement opportunities, at specific events being held in the community, such as conferences, seminars, events that are transportation-related. Materials and documents such as, DOT Bonding Assistance Program Fact Sheets and Application; DOT Short Term Lending Program Fact Sheets and Applications; Procurement Forecasts; and Contracting with DOT Booklets are some of the literature that should be disseminated to DBEs.

(3) *Toll Free Line.* The TEAM shall maintain a Toll Free telephone line to be made available to small, women-owned and disadvantaged businesses interested in securing information regarding the DOT. Reference should be made to the U.S. DOT TEAM when answering the line. Callers should receive directions on how they can participate in DOT programs, especially those related to mega projects, procurement and information on the application process for the Bonding and Short Term Lending Programs. In addition, information should be elicited from callers regarding their e-mail addresses. Inquiries should be made of callers as to their use, or lack of use of the DOT, OSDBU and TEAM web sites. TEAM staff must have sufficient knowledge of how to access and navigate through the web sites in order to provide guidance and assistance to the small businesses as good customer relations.

(C) *Financial Services*

The TEAM will provide assistance to small and disadvantaged businesses, including women-owned in order to participate in OSDBU's financial assistance programs. Also, firms certified by the U.S. Small Business Administration's 8(a) program, Small Disadvantaged Businesses (SDBs), HubZone Empowerment Contracting Program and Service-Disabled Veterans are eligible to participate in the following financial assistance services.

(1) *Bonding Assistance.* The TEAM will provide firms access to bonding information on the program to obtain bid, performance and payment bonds for transportation-related contracts up to $1,000,000.

(a) Deliver at least five bonding workshops on package preparation and completion of applications. The DOT bond agents will participate in the workshop presentations *only* when it is feasible for them to attend, or when a training session is scheduled in their locations.

(b) Provide a checklist of items and documents that each participant must bring to the work sessions and which must be approved by the TEAM prior to attendance.

(c) Produce at least 10 complete bond packages from 10 separate firms for approval by the DOT bond agent.

(d) Secure training and/or other assistance from technical assistance providers, educational institutions, and/or the private sector to ensure that firms will submit quality applications to the bond agents for approval.

The proposed plan of action of how the above will be accomplished must receive approval from OSDBU's COTR prior to implementation.

(2) *Short-Term Lending.* The TEAM will provide firms access to lending information on the program to obtain guaranteed lines of credit up to $500,000 for accounts receivable financing.

(a) Deliver at least five workshops on package preparation and completion of applications. The DOT banks will participate in the workshop presentations only when it is feasible for them to attend, or when a training session is scheduled in their locations.

(b) Provide a checklist of loan documentation required by the participants that should accompany firms to each work session. The TEAM will coordinate the checklist with the Lead Participating Bank and receive their input before proceeding with the work sessions.

(c) Produce at least 10 complete loan packages from 10 separate firms in the for approval by the DOT banks.

(d) Secure training and/or other assistance from technical assistance providers, educational institutions, and/or the private sector, to ensure that firms submit quality applications to the banks for approval.

The proposed plan of action of how the above will be accomplished must receive approval from OSDBU's COTR prior to implementation.

(D) Referral to Technical Assistance Agencies

The TEAM shall refer small and disadvantaged firms seeking contracts with mega projects to technical assistance providers from Federal, State and local agencies such as Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and State DOT highway supportive services contractors, Minority Education Institutions, Procurement Technical Assistance Centers (PTACs), and private sources. Assistance shall include management and other business related information, including completion and submission of DOT Bonding Assistance and Short Term Lending Applications in order to qualify for financial help. Documentation of each referral must be reported on a referral form indicating to whom the referral was made, the organization and name of the contact person, and the reason(s) for the referral. The technical assistance agency must verify (counter sign the form) to document receipt of the referral, and return it to the TEAM.

(E) Follow Up

The TEAM will track each firm's progress and report on any assistance provided by the TEAM, such as technical assistance referrals to service providers, referrals to financial institutions, counseling, and referrals to OSDBU's website. Also, report the number and type of contract awards received by clients as a result of TEAM's involvement, including the kind of assistance provided to the small business. Reports must be submitted to OSDBU using the monthly Reporting Form (to be provided). The numerical data on the form must be accompanied by narrative information regarding each activity and should highlight the problems, concerns and successes encountered by the small business person. Follow-up must be conducted on all referrals made by the TEAM.

(F) Success Stories

The TEAM must develop a minimum of three success stories each quarter that highlights the accomplishments of DBEs who participate in the assigned mega project(s). The stories shall be submitted to OSDBU for review and approval by the Director, prior to publication in the TEAM's newsletter and/or on OSDBU's Website and the Transportation Link Newsletter.

(G) Teleconferencing

Each TEAM will be responsible for teleconferencing calls with other team members and will document best practices that are derived from the interaction with peers. Each TEAM will be responsible for one teleconferencing call per month on a rotating basis during the course of this agreement. The purpose of the teleconference calls is to assist the TEAMS in working together as a cohesive unit, in exchanging ideas, in discussing on-going activities in respective regions and in sharing actions that are successful in one area, which may be replicated in another location. The TEAMS responsible for hosting the teleconferences are as follows:

1st month—Eastern TEAM
2nd month—Western TEAM
3rd month—Northern TEAM
4th month—Southern TEAM
5th month—Midwest TEAM
6th month—Southeast TEAM
7th month—Southwest TEAM
8th month—Northwest TEAM
9th—month Mid-Atlantic TEAM

At the completion of the 9th month the schedule will rotate back to the first TEAM and the process will continue throughout the period of the Cooperative Agreements. The TEAM that is responsible for placing the call will develop an agenda and transmit it by e-mail to each Project Director prior to teleconference. A written summary of the discussion will be submitted to OSDBU by the host TEAM and the report must include areas such as, discussion highlights, project accomplishments, problems or concerns, and recommendations for improvement.

2.3 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

The OSDBU will perform the following roles as its contribution to the attainment of the TEAM objectives:

1. Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.
2. Provide orientation and training, as appropriate, to applicants awarded funding for participation as TEAMs.
3. Systematically monitor the performance of successful applicants' activities and program compliance.
4. Assist successful applicants in collaborating and developing or strengthening linkages with State DOTs, technical assistance agencies and DOT grantees and recipients within geographical areas served.
5. Facilitate the exchange and transfer of successful TEAM activities and program information among other TEAMs.

3. Submission of Proposals

3.1 Content ond Format for Proposals

Each proposal submitted to DOT must be in the format and must contain the information set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any applicant (as defined in section 1.6 of this announcement) will submit only one proposal, not to exceed 35 single-sided pages, for consideration by DOT. Applications should be double spaced, and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, and four bound copies, should be submitted. All pages should be numbered. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposals should be submitted to: Arthur D. Jackson, Office of Small and Disadvantaged Business Utilization (S–40) Department of Transportation, 400 7th Street, SW., (Rm. 9414), Washington, DC 20590.

Proposals must be received by DOT/OSDBU no later than March 24, 2003, 4 p.m., e.s.t. Due to security concerns, proposals should be submitted via overnight courier.

4. Selection Criteria

DOT will use the following criteria to rate proposals received in response to this announcement for the specific location of the applicant. The following categories will constitute DOT's selection criteria:

- Approach
- Linkages
- Organizational Capability
- Staff Capabilities and Experience
- Cost

A. Approach

The applicant must describe the activities proposed to be implemented under the cooperative agreement and how the work will be accomplished. DOT will consider the extent to which the proposed objectives are specific, measurable, time-phased, consistent with TEAM goals and the proposed activities are consistent with the applicant's overall mission. DOT will give priority consideration to applicants that demonstrate innovation and creativity of approach in increasing the ability of small, minority, women-owned, and disadvantaged businesses (DBEs) to access information on DOT contracting opportunities and financial assistance programs. DOT will also consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives.

B. Linkages

DOT will consider innovative aspects of the applicant's approach which build upon the applicant's strength(s) and facilitate and encourage linkages to existing resources available within the area. The applicant should describe support and intended collaboration on TEAM activities from DOT grantees, prime contractors, subcontractors, State DOTs, State highway supportive services contractors, SBDCs, MBDCs and colleges and universities, including Minority Educational Institutions (Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs) and Tribal-Affiliated Colleges and Universities (TACUs)). DOT will also rate the effectiveness of the applicant's strategy to provide outreach, networking and liaison activities to the service area. In rating this factor, DOT will consider the extent to which the applicant demonstrates ability to effectively access and network supportive services to the broad and diverse range of small businesses within the applicant's service area. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to identified needs that can be successfully carried out within the period of this agreement and a plan for forming and involving an internal transportation advisory committee in the execution of that strategy.

C. Organizational Capability

The applicant must have outreach resources and relevant experience in carrying out the purposes of the TEAM program. In rating this factor, DOT will consider the extent to which the applicant has recent, relevant and successful experience in advocating for and addressing the needs of small businesses in general. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives (*i.e.*, computer facilities, voluntary staff time, space and financial resources).

D. Staff Capability and Experience

The applicant should provide a list of proposed personnel for the project with salaries, educational levels and previous experience delineated. The applicant's project team must be well-qualified and knowledgeable and demonstrate the ability to deal effectively with the broad range of small, disadvantaged businesses to be served. Resumes must be submitted for all proposed key personnel, outside consultants and subcontractors. Experience of key personnel in providing services similar in scope and nature to the proposed effort must be presented in detail. The Project Director will serve as the responsible individual for the project a minimum of 100 percent of his/her time. The resume of the proposed Project Director must be included in the applications submitted and his/her resume must reflect appropriate knowledge of the area and customer-service related experience.

DOT will consider the extent to which the applicant's proposed management plan (a) clearly delineates staff responsibilities and accountability for all work required and (b) presents a work plan with a clear and feasible schedule for conducting all project tasks.

E. Cost

The budget is the applicant's estimate of the total cost of establishing and administering its participation in the TEAM program for a 12 month period. The applicant's budget must be adequate to support the project and costs must be reasonable in relation to project objectives. Cost-sharing approaches, in-kind contributions (monetary and staff) are encouraged.

Appendix A—Application Form for Proposals for the Department of Transportation Transportation Equity Act Model (TEAM)

Proposals for the DOT Transportation Equity Act Model (TEAM) should contain all of the following information and should be submitted in the following format.

Applications should be double spaced and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, and four bound copies, should be submitted. Applications will not exceed 35 single-sided pages. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application should be included in a single submission, forwarded directly to the address listed below. Proposals should be submitted to: Arthur D. Jackson, Office of Small and Disadvantaged Business Utilization (S–40), Department of Transportation, 400 7th Street, SW., Room 9414, Washington, DC 20590.

Proposals must be received by DOT/OSDBU no later than March 24, 2003, 4 p.m. e.s.t.

Applications submitted must contain the following 12 sections and be organized in the following order and cannot exceed 35 single-sided pages.

1. Table of Contents

- Identify all parts, sections and attachments of the application.

2. Application Summary

- Provide a summary overview of the following:

—The applicant's proposed TEAM, its related activities including key elements of the plan of action/methodology to achieve project objectives.
—The applicant's relevant organizational experience and capabilities.

3. Understanding of the Work

- Provide a narrative that contains specific project information as follows:

—The applicant will describe its understanding of the TEAM, program goals and the role of the applicant's proposed TEAM in advancing the applicant's goals.
—The applicant will describe specific outreach needs of transportation-related small businesses in the area to be served and how the TEAM will address the identified needs.

4. Approach/Methodology

- Describe the applicant's methodology or plan of action for conducting the project in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and/or creative approaches to be implemented through the TEAM program to increase the ability of small businesses to access information on DOT contracting opportunities and financial assistance programs.

5. Linkages

- Describe outreach activities and linkages to be implemented to ensure that small and disadvantaged businesses participate in TEAM activities.
- Describe or indicate evidence of linkages or collaborations developed or to be developed with State DOTs, DOT grantees, DOT prime contractors, other Chambers of Commerce and trade associations and technical assistance agencies including DOT/FHWA supportive services contractors, MBDCs and SBDCs and educational institutions including HBCUs, HSIs and TACUs.

6. Organizational Capabilities

- Describe recent, relevant and successful experience in advocating and addressing the needs of small and disadvantaged businesses.
- Describe relevant experience in working or collaborating with Chambers of Commerce and trade associations, DOT grantees, State DOTs, technical assistance agencies including DOT/FHWA supportive services contractors, MBDCs, SBDCs and educational institutions including HBCUs, HSIs.
- Describe internal resources available to use in successfully performing/completing the work.

7. Staff Capabilities

- Describe the qualifications and relevant experience, in relation to project requirements, of the key personnel to be used in the project.

8. Management Plan

- Describe how personnel are to be organized in the project and how they will be used to accomplish project objectives. Outline staff responsibilities, accountability and a schedule for conducting project tasks.

9. Budget Narrative

- Outline proposed budget/cost information in detail.

10. Assurances Signature Form

- Complete the attached form identified as Attachment 1.

11. Certification Signature Form

- Complete the attached form identified as Attachment 2.

12. Standard Form 424

- Request for Federal Assistance. Complete the attached Standard Form 424 identified as Attachment 3.

Please be sure that all forms have been signed by an authorized official who can legally represent the applicant.

Thank you for submitting an application to be a participant in the U.S. Department of Transportation's Transportation Equity Act Model (TEAM) Program.

Attachment 1

Assurances

All recipients of Federal funding are required to assure that the recipient:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will establish safeguards to prohibit employees from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for Merit System of Personnel Administration (5 CFR 900; subpart F).
- Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color, or national origin; (b) title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of disability; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the National and Community Service Act of 1990, as amended; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- Will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328), which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- Will comply, as applicable, with the provisions of the David-Bacon Act (40 U.S.C. 276a and 276a–7), the Copeland Act (40 U.S.C. 276c and 28 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for Federally assisted constructions subagreements.
- Will comply, if applicable, with flood insurance purchase requirements of section 201(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which required the recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
- Will comply with environmental standards which may be prescribed pursuant to the following (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (Pub. L. 93–205).
- Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) Related to protecting components or potential components of the national wild and scenic rivers system.
- Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).
- Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 *et seq.*). Pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4301 *et seq.*). Which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
- Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular A–133. Audits of Institutions of Higher Learning and other Non-Profit Institutions.
- Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
- In addition, all recipients of Corporation assistance under this application are required to assure that the recipient:
- Will keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation.
- Will not use the assistance to replace state and local funding streams that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.
- Will use the assistance only for a program that does not duplicate, and is in

addition to, an activity otherwise available in the locality of the program.

• Will comply with the Notice, Hearing, and Grievance Procedures found in section 176 of the Act.

• Will comply with the nondisplacement rules found in section 177(b) of the Act. Specifically, an employer shall not displace an employee or position, including partial displacement such as reduction hours, wages, or employment benefits, as a result of the employer using an AmeriCorps participant; a service opportunity shall not be created that will infringe on the promotional opportunity of an employed individual; an AmeriCorps participants shall not perform any services or duties or engage in activities that (1) would otherwise be performed by an employee as part of the employee's assigned duties, (2) will supplant the hiring of employed workers, (3) are services or duties with respect to which an individual has recall rights pursuant to a collective bargaining; agreement or applicable personnel procedures; or (4) have been performed by or were assigned to any presently employed worker, an employee who recently resigned or was discharged, an employee who is on leave an employee who is on strike or is being locked out, or an employee who is subject to a reduction in force or has recall rights subject to a collective bargaining agreement or applicable personnel procedure.

Assurances—Signature

By signing this assurances page, the applicant certifies that it will agree to perform all actions and support all intention stated in the attached Assurances.

Note: This form must be signed and included in the application.

Applicant Name

Project Name

Name and Title of Authorized Representative

Signature

Date

Attachment 2

Certifications

Before completing certification, please read Certification Instructions.

Certification—Debarment, Suspension, and Other Responsibility Matters. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR part 85, section 85.510, Participants' responsibilities. The regulations were published as part VII of the May 26, 1988, **Federal Register** (pages 19160–19211).

(1) The applicant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency,

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property,

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification, and

(d) Have not within a three-year period preceding this application proposal had one or more public transactions (Federal, State or local) terminated for cause of default;

(2) Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation to this application.

Certification—Drug-Free Workplace. This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR part 85, subpart F. The regulations, published in the January 31, 1989, **Federal Register**, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (*see* 34 CFR part 85, section 85.615 and 85.620). The grantee certifies that it will provide a drug-free workplace by:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(2) Establishing a drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace,

(b) The grantee's policy of maintaining a drug-free workplace,

(c) Any available drug counseling, rehabilitation, and employee assistance programs, and

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

(4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will

(a) Abide by the terms of the statement, and

(b) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(5) Notifying the Corporation within ten days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction;

(6) Taking one of the following actions, within 30 days of receiving notice under subparagraph (4)(b) with respect to any employee who is so convicted —

(a) Taking appropriate personnel action against such an employee, up to and including termination; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

Certification Instructions

By signing the Certification Signature Page on the previous page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the Certifications.

Signing the Certification Page

1. *Inability to Certify.* The inability of a person to provide the certification required below will not necessarily result in denial of a grant. The applicant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Corporation determination whether to enter into this transaction. However, failure of the applicant to furnish a certification or an explanation shall disqualify such applicant for a grant.

2. *Erroneous Certification.* The certification in this clause is a material representation of fact upon which reliance was placed when the Corporation determined to enter into this transaction. If it is later determined that the applicant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Corporation may terminate this transaction for cause or default.

3. *Notice of Error in Certification.* The applicant shall provide immediate written notice to the Corporation to whom this proposal is submitted if at any time the applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changes circumstances.

4. *Definitions.* The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. An applicant shall be considered a "prospective primary participant in a covered transaction" as defined in the rules implementing Executive Order 12549. You may contact the Corporation for assistance in obtaining a copy of those regulations.

5. *Certificotion Requirement for Subgrant Agreements.* The applicant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Corporation.

6. *Certification Inclusion in Subgrant Agreement.* The applicant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the Corporation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. *Certification of Subgrant Principals.* A grantee may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A grantee may decide the method and frequency by which it determines the eligibility of its principals. Each grantee may, but is not required to, check the Nonprocurement List.

8. *Prudent Person Standard.* Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a grantee is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. *Non-Certification in Subgrant Agreements.* Except for transactions authorized under paragraph 6 of these instructions, if a grantee knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification—Lobbying Activities

As required by section 1352, title 31 of the U.S. Code, the applicant certifies that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

Certification—Signature

Before You Start. Before completing certification, please read Certification Instructions.

Note: This form must be signed and included in the application.

Signature. By signing this Certification page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the Certifications set forth above. The three Certifications are:

- Certification: Debarment, Suspension, and Other Responsibility Matters
- Certification: Drug-Free Workplace
- Certification: Lobbying Activities

Applicant Name

Project Name

Name and Title of Authorized Representative

Signature

Date

BILLING CODE 4910–62–P

ATTACHMENT 3

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION	
Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐ – ☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify) _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other *(specify):* _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*	

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE: _____ b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
a. Federal	$ .00	
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	
g. TOTAL	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Useable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

[FR Doc. 03–5138 Filed 3–4–03; 8:45 am]
BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–111–12]

ATC Transponder Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on guidance for an acceptable means of showing compliance with the proposed requirements of 14 CFR 121.346, ATC Transponder Operation.

DATES: Send your comments on or before April 4, 2002.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Kenneth Schroer, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flightcrew Interface Branch, ANM–111, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1154; fax (425) 227–1320; e-mail: *kenneth.schroer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http:www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, "Comments to Policy Statement No. ANM–03–111–12."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The policy memorandum provides a summary of policy that should be applied when certificating the transponder installations pursuant to the proposed rule. Aircraft Certification Offices (ACO) should apply the policy summarized in the memorandum to such new and amended type certificate (TC) and supplemented type certificate (STC) certification programs. The memo ensures a standardized approach in certification independent of ACO or Designated Alteration Station (DAS) geographical location.

Issued in Renton, Washington, on February 25, 2003.

Mike Kaszycki,

Acting Manager, Transport Airplane Director, Aircraft Certification Service.

[FR Doc. 03–5131 Filed 3–4–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP02–010

AGENCY: National Highway Traffic Safety Administration (NHTSA), Transportation.

ACTION: Denial of petition for a defect recall.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency initiate an investigation of model year (MY) 2000 and 2001 Suzuki GSX–R750 motorcycles to address an alleged safety-related defect. The petition is identified as DP02–010.

FOR FURTHER INFORMATION CONTACT: Mr. Leo Yon, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–7028.

SUPPLEMENTARY INFORMATION: Mr. Scott M. Shannon of Clearwater, Florida, submitted a petition to NHTSA dated October 8, 2002, requesting that NHTSA open a defect investigation on MY 2000 and 2001 Suzuki GSX–R750 motorcycles (the subject R models). The petition alleges that the motorcycles' 6-speed manual transmission contains a safety-related defect, which causes the vehicle to slip or shudder while under load in second gear.

The four cylinder 750cc Suzuki GS series motorcycles, for the years in question, were sold as two designated models: GSX–750 and GSX–R750. Approximately three times as many subject R models were sold in the U.S. as compared to the base model. Prior to MY 2000, the two models shared the same transmission components. For MY 2000, the R model received several design changes to enhance the motorcycle's performance. These changes include, but are not limited to, a revised overall final drive ratio through the use of a new transmission gear set. Other transmission modifications were also introduced in an effort to improve the motorcycle's perceived shift quality and feel.

To evaluate the petition, an information request was sent to the manufacturer, American Suzuki Motor Corporation (Suzuki), in November 2002. In its response, Suzuki submitted data for both models for MYs 1999 through 2001. The total population of the subject R models is 11,551 motorcycles. Following the introduction of the MY 2000 R model, Suzuki received a significant increase in the number of consumer complaints relating to the motorcycle's transmission. Suzuki reported that it received 248 consumer complaints about the subject R models where the key words "second gear" or "shifting" were found in the description field. This compares to 7 similarly-derived consumer complaints for both MY 1999 models. A corresponding increase occurred in warranty-related claims. Suzuki reported that, according to claims submitted by dealers on transmission parts, there were 439 claims attributed to the subject R models. This compares to 7 for both MY 1999 models. Field reports and calls by dealers to Suzuki's technical hotline for advice on this topic accounted for 492 contacts for the subject R models, compared to 10 for both MY 1999 models.

Suzuki reported only one claim of an injury that may have been caused by this condition in the subject R models. Five Suzuki technical hotline reports allege a crash that may, or may not, relate to the alleged defect. Suzuki stated that there is insufficient information concerning these alleged incidents to allow it to assess these reported incidents. Suzuki has no lawsuits or subrogation claims pertaining to the alleged defect regarding the MY 2000–2001 R model motorcycles.

NHTSA has received 30 "transmission" complaints involving the MY 2000 R models, with one injury allegation and one crash allegation.

To address consumer complaints about this condition, Suzuki redesigned the second driven gear for the R model. In November 2000, a newly-developed second driven gear was introduced as a running change to the MY 2001 R model and released as the recommended service part for all subject motorcycles. A technical training video was released to Suzuki dealers to help their mechanics diagnose the symptoms before disassembling the transmission. A copy of this tape was supplied with Suzuki's reply to ODI's information request.

Suzuki's Quality Assurance group examined several warranty return parts for mechanical integrity, noting that several displayed signs of abuse consistent with "incomplete or abusive shifting practices." Suzuki alleged that these practices will produce high impact shock loads between the gears' engagement surfaces, leading to localized deformation. Eventually, the deformation helps to create a force between the two gears, in this case second and sixth, pushing them apart. If the magnitude of the separating force between the gears exceeds the force generated by the shifting mechanism to hold them together, the two momentarily disconnect, and then are forced back together by the shifting mechanism. This momentary disconnect-reconnect as the motorcycle is accelerated gives the operator a slipping or popping sensation as the transmission delivers torque to the rear wheel. Under rapid acceleration, the operator can experience a quick, hesitation-like feeling when second gear momentarily disengages, accompanied by a change in the pitch of the sound generated by the engine. Left unattended, the slippage can increase in frequency and duration.

To reproduce and demonstrate the failure consequences to ODI, Suzuki prepared one subject motorcycle with parts intended to represent worst-case conditions on the engagement surfaces of the second gear. Additional instrumentation was installed on the shifting mechanism to record the resultant forces and the momentary disconnect of the second gear. Normal operation of the motorcycle, accelerating through a series of turns and straight roadways, was digitally taped (video) to allow analysis of the condition and its consequences, both from an observer's perspective and that of the operator. Review of the video clips did not identify an increased risk to safety or a loss of vehicle control.

Based on this analysis, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, your petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8

Issued on: February 26, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–5137 Filed 3–4–03; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 400X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Franklin and Webster Counties, NE

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 19.8-mile line of railroad between milepost 216.95 near Franklin, NE, and milepost 197.15 near Red Cloud, NE, in Franklin and Webster Counties, NE. The line traverses United States Postal Service Zip Codes 68972, 68939, 68952 and 68970.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 4, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 14, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 25, 2004, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void ab initio.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by March 10, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. See 49 CFR 1002.2(f)(25).

consummation by March 5, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 26, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–5002 Filed 3–4–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 03–10]

Recordation of Trade Name: "Revolutionary Products, Inc"

AGENCY: Customs Service, Treasury.

ACTION: Notice of final action.

SUMMARY: This document provides notice that "Revolutionary Products, Inc." is recorded by Customs as the trade name for Revolutionary Products, Inc., a California corporation organized under the laws of the State of California, located at 12910 Culver Boulevard, Suite G, Los Angeles, California 90066. This application for trade name recordation was properly submitted to Customs and published in the **Federal Register**. As no public comments in opposition to the recordation of this trade name were received by Customs within the 60-day comment period, the trade name is duly recorded with Customs and will remain in force as long as this trade name is used by this corporation, unless other action is required.

EFFECTIVE DATE: February 25, 2003.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Savoy, Intellectual Property Rights Branch, Office of Regulations & Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., (Mint Annex) Washington, DC 20229; (202) 572–8710.

SUPPLEMENTARY INFORMATION:

Background

Trade names adopted by business entities may be recorded with Customs to afford the particular business entity with increased commercial protection. Customs procedure for recording trade names is provided at § 133.12 of the Customs Regulations (19 CFR 133.12) pursuant to section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124). Pursuant to this regulatory provision, Revolutionary Products, Inc., a California corporation organized under the laws of the State of California, located at 12910 Culver Boulevard, Suite G, Los Angeles, California 90066, applied to Customs for protection of its trade name "Revolutionary Products, Inc.".

On Wednesday, December 18, 2002, a notice of application for the recordation of the trade name "Revolutionary Products, Inc." was published in the **Federal Register** (67 FR 247). The notice advised that before final action was taken on the application, consideration would be give to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name and received not later than February 24, 2003. The comment period closed February 24, 2003. No comments were received during the comment period. Accordingly, as provided by § 133.12 of the Customs Regulations, "Revolutionary Products, Inc." is recorded with Customs as the trade name of Revolutionary Products, Inc., and will remain in force as long as this trade name is used by this corporation, unless other action is required.

The application states applicant manufactures, advertises, distributes and sells an electrically driven rotating mechanical hairbrush in packaging and boxes labeled with the Revo Styler trademark and Revolutionary Products, Inc. trade name. Additionally, the trade name appears on a label affixed to the handle of the Revo Styler hairbrush, and is molded into the plastic of the electrical power plug.

The merchandise is manufactured in China and Hong Kong.

Dated: February 27, 2003.

George Frederick McCray,

Chief, Intellectual Property Rights Branch.

[FR Doc. 03–5118 Filed 3–4–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–485–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–485–89 (TD 8400), Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions) (Sections 1.988–0 through 1.988–5).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

OMB Number: 1545–1131.

Regulation Project Number: INTL–485–89.

Abstract: Internal Revenue Code sections 988(c)(1)(D) and (E) allow taxpayers to make elections concerning the taxation of exchange gain or loss on certain foreign currency denominated transactions. In addition, Code sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions. This regulation provides guidance on making the elections and complying with the identification rules.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 3,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5174 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–92–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–92–90 (TD 8395), Special Valuation Rules (Sections 25.2701–2, 25.2701–4, and 301.6501(c)–1).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Special Valuation Rules.

OMB Number: 1545–1241.

Regulation Project Number: PS–92–90.

Abstract: Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interests in the same entity. This regulation provides guidance on how taxpayers make these elections, what information is required, and how the transfer is to be disclosed on the gift tax return (Form 709).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 496 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5175 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8264

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8264, Application for Registration of a Tax Shelter.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration of a Tax Shelter.

OMB Number: 1545–0865.

Form Numbers: 8264.

Abstract: Under section 6111 of the Internal Revenue Code, organizers of certain tax shelters are required to register them with the IRS. Organizers filing a properly completed Form 8264 will receive a tax shelter registration number from the IRS. They must furnish the tax shelter registration number to investors in the tax shelter, who must provide the number to the IRS when they report any income or claim a deduction, loss, credit, or other tax benefit derived from the tax shelter on their tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 350.

Estimated Time Per Respondent: 41 hours, 5 minutes.

Estimated Total Annual Burden Hours: 14,382.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5176 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 5213

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5213, Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

OMB Number: 1545–0195.

Form Number: 5213.

Abstract: Section 183 of the Internal Revenue Code allows taxpayers to elect to postpone a determination as to whether an activity is entered into for profit or is in the nature of a nondeductible hobby. The election is made on Form 5213 and allows taxpayers 5 years (7 years for breeding, training, showing, or racing horses) to show a profit from an activity.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 10,730.

Estimated Time Per Respondent: 47 minutes.

Estimated Total Annual Burden Hours: 8,370.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5177 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–21–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary and final regulation, INTL–21–91 (TD 8656), Section 6662—Imposition of the Accuracy-Related Penalty (§ 1.6662–6).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Section 6662—Imposition of the Accuracy-Related Penalty.

OMB Number: 1545–1426.

Regulation Project Number: INTL–21–91.

Abstract: These regulations provide guidance on the accuracy-related penalty imposed on underpayments of tax caused by substantial and gross valuation misstatements as defined in Internal Revenue Code sections 6662(e) and 6662(h). Under section 1.6662–6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined for a transaction subject to Code section 482.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 8 hours, 3 minutes.

Estimated Total Annual Burden Hours: 20,125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5178 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–30–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–30–92 (TD 8560), Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Nonapplicability of Section 357(c), (§§ 1.1502–31, 1.1502–32, 1.1502–33, 1.1502–76).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Nonapplicability of Section 357(c).

OMB Number: 1545–1344.

Regulation Project Number: CO–30–92.

Abstract: These regulations amend the consolidated return investment adjustment system, including the rules for earnings and profits and excess loss accounts. In addition, the regulations provide special rules for allocating consolidated income tax liability among members and modify the method for allocating income when a corporation enters or leaves a consolidated group.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 52,049.

Estimated Time Per Respondent: 22 minutes.

Estimated Total Annual Burden Hours: 18,600.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5179 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–62–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–62–89 (TD 8407), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards (Section 1.382–3).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1260.

Regulation Project Number: CO–62–89 (Final).

Abstract: Internal Revenue Code section 382(l)(5) provides relief from the application of the section 382 limitation for bankruptcy reorganizations in which the pre-change shareholders and qualified creditors maintain a substantial continuing interest in the loss corporation. These regulations concern the election a taxpayer may make to treat as the change date the effective date of a plan of reorganization in a title 11 or similar case rather than the confirmation date of a plan.

Current Actiohs: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10 hours.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1 hour.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5180 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 7004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7004, Application for Automatic Extension of Time To File Corporation Income Tax Return.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time To File Corporation Income Tax Return.

OMB Number: 1545–0233.

Form Number: 7004.

Abstract: Form 7004 is used by corporations and certain nonprofit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Current Actions: There are three code reference additions, and one reference deletion for Form 7004.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and non-profit institutions.

Estimated Number of Respondents: 1,097,748.

Estimated Time Per Respondent: 10 hr., 13 min.

Estimated Total Annual Burden Hours: 11,048,280.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5181 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8281

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal RevenueService, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Information Return for Publicly Offered Original Issue Discount Instruments.

OMB Number: 1545–0887.

Form Number: 8281.

Abstract: Internal Revenue Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicly offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 500.

Estimated Time Per Response: 6 hr., 7 min.

Estimated Total Annual Burden Hours: 3,060.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5184 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted in Fresno, California.

DATES: The meeting will be held Friday, March 7, 2003, and Saturday, March 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Friday, March 7, 2003, from 1 p.m. p.s.t. to 4:30 p.m. p.s.t. at the Courtyard By Marriott located at 1551 N Peach Ave, Fresno, California and Saturday, March 8, 2003, from 11 a.m. p.s.t. to 2 p.m. p.s.t. at the Mosqueda Community Center located at 4670 E. Butler, Fresno, California. The public is invited to make oral comments on Saturday March 8, 2003. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited space, notification of intent to participate must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 24, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–5170 Filed 2–28–03; 3:17 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee has scheduled a meeting on Wednesday, March 19, 2003, at the Department of Veterans Affairs, Veterans Benefits Administration Education Conference Room 601V, 1800 G Street, NW., Washington, DC, from 8:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to review the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapters 30, 32, 34, or 35 of Title 38, U.S.C.

The meeting will begin with opening remarks and an overview by Ms. Sandra Winborne, Committee Chair. During the morning session, the Committee will hear reports on VA outreach activities and progress on implementing an improved Licensing and Certification Approval System (LACAS). The afternoon session will include discussion on any old or new business.

Any member of the public wishing to attend the meeting should contact Mr. Giles Larrabee or Mr. Michael Yunker at (202) 273–7187. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before the meeting or within 10 days after the meeting. Oral statements will be heard at 2 p.m.

Dated: February 26, 2003.

By Direction of the Secretary

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–5089 Filed 3–4–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 43
Wednesday, March 5, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange (CME): Proposed Amendments to the Weight Specifications, Speculative Position Limits, Delivery Locations, and Delivery Procedures for the Live Cattle Futures Contract

Correction

In notice document 03–1534 beginning on page 3231 in the issue of Thursday, January 23, 2003, make the following corrections:

1. On page 3232, in the first column, in the fifth paragraph, in the seventh line, "$0.15" should read, "$.015".

2. On page 3232, in the second column, under the **Background** heading, in the sixth line, "an" should read, "no".

[FR Doc. C3–1534 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–44–AD; Amendment 39–13006; AD 2002–26–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600,–700,–,700C,–800, and –900 Series Airplanes

Correction

In rule document 03–17 beginning on page 481 in the issue of Monday, January 6, 2003, make the following correction:

§ 39.13 [Corrected]

On page 483, in § 39.13, in the first column, in the second full paragraph, in the second line, "changing" should read, "chafing".

[FR Doc. C3–17 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–12423]

Qualification of Drivers; Exemption Applications; Vision

Correction

In notice document 03–4425 beginning on page 8794 in the issue of Tuesday, February 25, 2003, make the following corrections:

1. On page 8797, under the heading **Discussion of Comments**, in the third column, in the second full paragraph, in the second line, "psychiatrist" should read, "physiatrist".

2. On the same page, under the same heading, in the same column, in the same paragraph, in the fifth line, "psychiatrist" should read, "physiatrist".

[FR Doc. C3–4425 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
March 5, 2003

Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 740, 743, 772, and 774
Implementation of the 2002 Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 2, 3, 4, 5, 6, 7, 8, and 9 of the Commerce Control List, General Software Note, and Reporting Requirements; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 743, 772, and 774

[Docket No. 030127020–3020–01]

RIN 0694–AC65

Implementation of the 2002 Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 2, 3, 4, 5, 6, 7, 8, and 9 of the Commerce Control List, General Software Note, and Reporting Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, 7, 8, and 9 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the February 2002 meeting (and finalized in May 2002) and to make necessary revisions to reporting requirements, definitions, and the General Technology and Software Notes. The changes that affected microprocessors were published in a separate rule on January 14, 2003 (68 FR 1796).

EFFECTIVE DATE: This rule is effective: March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–5400.

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

This rule makes the following amendments to the list of items ineligible for export or reexport under License Exception GOV, to conform with revisions to the Wassenaar Arrangement's Annex 2 of the List of Dual-Use Goods and Technologies:

• For exports and reexports of commodities and software to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (EURATOM), reexports by IAEA and EURATOM for official international safeguard use:

(1) The following items are removed from the list of ineligible commodities and software: 1C012 (because commodities classified as 1C012 are under Department of State jurisdiction and must comply with the International Traffic in Arms Regulations (ITAR)), 9A011 (because commodities classified as 9A011 are under Department of State jurisdiction and must comply with the ITAR), 9D002 (because the ineligible software is under State Department jurisdiction as it pertains to production software for 9A011, which is under Department of State jurisdiction and must comply with ITAR), and 9D004 (because this software has been removed from Annex 2 of the Wassenaar Arrangement List of Dual-Use Goods and Technologies List);

(2) The following items are revised within the list of ineligible commodities and software:

(a) Narrowed the scope of 4D001 to only include software specially designed for the development or production of digital computers controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS;

(b) Added Note that applies to paragraph 740.11(a)(2)(iii) that reads as follows: "Nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by "electronic assemblies", which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of "computing elements" so that the CTP of the aggregation exceeds the CTP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR, without prior authorization from the Bureau of Industry and Security."

(c) Revised references to 5A001.b.4 to read 5A001.b.5, because the paragraph was redesignated in 5A001;

(d) Clarified the scope of 5D001.a; and

(e) Clarified the scope of 9D001 to harmonize with those items removed from the list of ineligible items.

(3) Added processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f to the list of ineligible commodities.

• For exports or reexports of items for official use within national territory by agencies of cooperating governments, and exports and reexports of items for diplomatic and consular missions of a cooperating government located in any country in Country Group B:

(1) The following items are removed from the list of ineligible commodities and software: 1C012 (because commodities classified as 1C012 are under Department of State jurisdiction and must comply with the International Traffic in Arms Regulations (ITAR)), 9A011 (because commodities classified as 9A011 are under Department of State jurisdiction and must comply with the ITAR), 9D002 (because the ineligible software is under State Department jurisdiction as it pertains to production software for 9A011, which is under Department of State jurisdiction and must comply with ITAR), and 9D004 (because this software has been removed from Annex 2 of the Wassenaar Arrangement List of Dual-Use Goods and Technologies List);

(2) The following items are revised within the list of ineligible commodities and software:

(a) Narrowed the scope of 4D001 to only include software specially designed for the development or production of digital computers controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS;

(b) Revised references to 5A001.b.4 to read 5A001.b.5, because the paragraph was redesignated in 5A001;

(c) Clarified the scope of 5D001.a;

(d) Clarified the scope of 9D001 to harmonize with those items removed from the list of ineligible items;

(e) Narrowed the scope of 1E001 by removing 1C012; and

(f) Narrowed the scope of 9E001 by removing 9A011 and 9D002.

(3) Added processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f to the list of ineligible commodities.

(4) Added 4E001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS to the list of ineligible technology; and

(5) Removed 9E002 from the list of ineligible technology.

• This rule clarifies the scope of Wassenaar reporting requirements that apply to License Exception GOV, and makes the following amendments to the Wassenaar Reporting Requirements in section 743.1 of the EAR to conform with changes made to the Wassenaar Arrangement's Annex 1 of the List of Dual-Use Goods and Technologies.

(1) This rule removes Wassenaar reporting requirements from part 743 for the following: 2B001.a, .b., .d, and .f; 4A001.b; and 4A003.b and .c.

(2) This rule revises the scope of Wassenaar reporting requirements under part 743 for the following: 1D002, 1E001, 2D001, 2E001, 2E002, 3D001, 3E001, 4D001, 4E001, 5B001, 5D001.a, 5D001.b, 5E001.a, 6A001.a.1.b, 6A006.g, 6D001, 6E001, 6E002, 8A002.b, 8A002.o.3, 8D001, 8E001, 9D001, and 9D002.

(3) This rule adds Wassenaar reporting requirements under part 743 for 9E003.a.1.

• This rule amends section 772.1 by:

(1) Adding new entries for: "Circulation-controlled, anti-torque or circulation-controlled direction control systems" and "Time-modulated ultra-wideband";

(2) Removing the entries "Assembly", "Beat length", "Circulation", "Global interrupt latency time", "Fluoride fibers", "Gateway", "ISDN", "Integrated Services Digital Network", "Network access controller", "Optical fiber preforms", and "Sputtering", and adding them to the Related Definitions sections of the appropriate ECCNs within the CCL;

(3) Revising the phrase "Only those" to read "those" in the entry "civil aircraft";

(4) Revising the phrase "arithmetic logic" to read "arithmetic or logic" in the entry "computing element";

(5) Revising the entry for "electronically steerable phased array antenna" to harmonize with the definition in the Wassenaar Arrangement List;

(6) Revising the phrase "End-effectors" include grippers," to read "Grippers," in the entry for "end-effectors";

(7) Revising the phrase "(f_2— f^1)" to read "(f_2—f_1) in the entry "noise level";

(8) Revising the entry heading "Systems tracks" to read "System tracks"; and

(9) Revising the phrase "product "X" that does not operate" to read "product "X" that operates", and the word "extending" to read "exceeding" in the entry "Required".

This rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with February 2002 revisions to the Wassenaar List of Dual-Use Goods and Technologies. This rule also revises language to provide a complete or more accurate description of controls. A detailed description of the revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

Category 2—Materials Processing

• ECCN 2A001 is amended by revising:

(a) Paragraph 2A001.a in the List of Items Controlled section to:

(1) Add "all" before "tolerances";

(2) Add "both" before "rings"; and

(3) Replace "balls or rollers" with "and rolling elements (ISO 5593)"; and

(b) Paragraph 2A001.b in the List of Items Controlled section to add "all" before "tolerances".

• ECCN 2B001 is amended by:

(a) Removing the License Requirements Notes referring to the Wassenaar reporting requirement in the License Requirements section; and

(b) Revising the Notes for 2B001.c by removing notes 3 and 4, and renumbering subsequent paragraphs.

• ECCN 2B003 is amended by revising the word "controllers" to read "controls" in the heading.

• ECCN 2B006 is amended by:

(a) Revising paragraph 2B006.b.1 in the List of Items Controlled section to add "displacement" after "linear";

(b) Adding a Technical Note after paragraph 2B006.b.1 that defines "linear displacement"; and

(c) Revising paragraph 2B006.b.2 in the List of Items Controlled section to add "displacement" after "angular".

Category 3—Electronics

• ECCN 3A001 is amended by:

(a) Revising the parameter for paragraph 3A001.a.7.b (basic gate propagation delay time) from 0.40 ns to .1 ns; and

(b) Adding a Note 2 after 3A001.b.1 that explains that 3A001.b.1 does not control non-"space-qualified" tubes which meet all of the characteristics in the new note.

• ECCN 3A002 is amended by:

(a) Adding a clarification note in the Related Definitions paragraph of the List of Items Controlled section; and

(b) Adding the words "radio frequency" before "signal analyzers" in paragraph 3A002.c.

• ECCN 3B001 (this change is from the Wassenaar 2000 agreements) is amended by:

(a) Revising the heading to add the phrase "as follows (see List of Items Controlled)";

(b) Modifying 3B001.c controls over etch equipment in order to control such equipment based on its capabilities rather than its characteristics. Specifically, for 3B001.c.1 and c.2, paragraph a. and b. have been redrafted.

(c) Modifying 3B001.d controls for CVD equipment in order to control such equipment based on its capabilities rather than its characteristics.

• ECCN 3B991 is amended by moving the definition for "sputtering" from section 772.1 of the EAR to the Related Definitions section of this entry, and exchanging the double quotes around the term to single quotes in the list of items controlled.

• ECCN 3C004 is amended by revising and moving the related control note to the list of items controlled section of this entry to harmonize with the Wassenaar Dual-Use List.

• ECCNs 3E001 and 3E002 are amended by revising the parameter in the Technical Note from "two metal layers" to "three metal layers" and from "two polysilicon layers" to "three polysilicon layers". In addition, the heading to 3E002 is revised to harmonize with Wassenaar.

• ECCN 3E003 is amended by adding a new paragraph 3E003.g to control electronic vacuum tubes operating at frequencies of 31 GHz or higher; and adding a sentence in the Related Controls paragraph of the List of Items Controlled section to read: Technology for the "development" or "production" of "space qualified" electronic vacuum tubes operating at frequencies of 31 GHz or higher, described in 3E003.g, is under the export license authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121)

Category 4—Computers

• ECCN 4A003 is amended by removing paragraph 4A003.d, graphics accelerators and graphics coprocessors; and removing the License Requirements Note that referred to a Wassenaar reporting requirement.

• ECCN 4D003 is amended by removing paragraph 4D003.d, operating

systems specially designed for "real time processing" equipment; and removing the License Requirements Note that referred to a Wassenaar reporting requirement.

• ECCN 4D993 is amended by revising the heading and paragraph 4D993.c to harmonize with the revisions made to 4D003, including revising the "global interrupt latency time" from "less than 30" to "less than 20 microseconds" to maintain AT controls on this software. In addition, the definition for "global interrupt latency time" has been moved from section 772.1 of the EAR to the Related Definition section of this ECCN.

Category 5—Part I—Telecommunications

• ECCN 5A001 is amended by adding a new paragraph 5A001.b.4, to add "radio equipment employing "time-modulated ultra-wideband" techniques, having user programmable channelizing or scrambling codes" to the list of items controlled under 5A001; and redesignate paragraphs 5A001.b.4 through 5A001.b.5 as paragraphs 5A001.b.5 through 5A001.b.6.

• ECCN 5A991 is amended by moving the definitions for "integrated services digital network" (ISDN) and "gateway" from section 772.1 of the EAR to the Related Definitions section of this entry, and exchanging double quotes for single quotes around these terms in this entry.

• ECCN 5B001 is amended by removing the words "not using semiconductor 'lasers'" from the note for 5B001.a.

• ECCN 5E001 is amended by harmonizing the TSR License Exception paragraph to harmonize with revisions made to 5A001.b; and revising the control language in 5E001.b.3 for the "technology" for the "development" of digital cellular radio systems.

• ECCN 5E991 is amended by adding definitions for 'Synchronous digital hierarchy' ('SDH') and 'Synchronous optical network' ('SONET') to the Related Definitions paragraph of the List of Items Controlled section; and changing the double quotes to single quotes around these terms in 5E991.a.2.

Category 5—Part II—Information Security

• ECCN 5A002 is amended by:

(1) Revising the Heading to add "as follows (see List of Items Controlled)";

(2) Revising the Related Controls paragraph in the List of Items Controlled section to add the phrase "contents stored on" to (d)(2)(a);

(3) Adding a new paragraph 5A002.a.6, to control "Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security," and other specially designed components that are designed or modified to use cryptographic techniques to generate channelizing or scrambling codes for "time-modulated ultra-wideband" systems; and by redesignating paragraphs 5A002.a.6 and 5A002.a.7 as 5A002.a.7 and 5A002.a.8;

• ECCN 5B002 is amended by removing the License Requirement Note referencing a Wassenaar reporting requirement.

• ECCN 5E002 is amended by removing the License Requirement Note referencing a Wassenaar reporting requirement.

Category 6—Sensors

• ECCN 6A001 is amended by:

(1) Fixing the abbreviations for the various units of measurement in 6A001a.1.b, a.1.c., a.2.a.3, and the technical note after a.2.a.5; and

(2) Removing the "or" at the end of 6A001.a.1.d.

• ECCN 6A005 is amended by:

(1) Revising the text "having all" to read "having any" in 6A005.b.1;

(2) Revising the text in 6A005.b.1.a that reads "A wavelength of less than" to read "A wavelength equal to or less than";

(3) Revising the text in 6A005.b.1.a that describes the parameter for wavelength: from "950 nm" to "1500 nm"; and

(4) Revising the text in 6A005.b.1.a "or more than 2000 nm; and" to read "and having an average or CW output power exceeding 1.5 W; or".

(5) Revising the text in 6A005.b.1.b "An average or CW output power exceeding 100 mW" to read "A wavelength greater than 1510 nm, and having an average or CW output power exceeding 500 mW"

• ECCN 6A008 is amended by revising the phrase "any of the characteristics" to read "any of the following characteristics" in the heading.

• ECCN 6C992 has been revised by moving the definition for "beat length" from section 772.1 of the EAR to the Related Definition section of this ECCN and exchanging the double quotes for single quotes around this term as it appears in this entry.

• ECCN 6C994 has been revised by moving the definition for "fluoride fibers" and "optical fiber preforms" from section 772.1 of the EAR to the Related Definitions section of this ECCN, and exchanging the double quotes for single quotes around these terms as they appear in this entry.

• ECCN 6D003 is amended by:

(1) Harmonizing the text of 6D003.a.3 with that of the Wassenaar Arrangement; and

(2) Adding paragraph 6D003.a.4, "source code" for the "real time processing" of acoustic data for passive reception using bottom or bay cable systems.

Category 7—Navigation and Avionics

• ECCN 7A003 is amended by:

(1) Adding the abbreviation (INS) after Inertial Navigation Systems in the heading and removing the detailed description of INS from the heading;

(2) Adding the definition for "Data-Based Referenced Navigation" ("DBRN") to the Related Definitions section;

(3) Reformatting paragraphs 7A003.a and 7A003.b.;

(4) Adding Technical Notes 1 and 2 after Note 2.

• ECCN 7D002 is amended by harmonizing the heading text with that of the Wassenaar Arrangement.

• ECCN 7D003 is amended by:

(1) Adding the definition for "Data-Based Referenced Navigation" ("DBRN") to the Related Definitions section;

(2) Removing the text "navigation data" from the end of paragraph 7D003.b;

(3) Adding the word "data" after the word "velocity" in paragraph 7D003.b.1; and

(4) Revising paragraph 7D003.b.3 from reading "Terrain data from data bases" to read "Data from "Data-Based Referenced Navigation" ("DBRN")".

Category 8—Marine

• ECCN 8A002 is amended by:

(1) Revising the Related Controls paragraph of the List of Items Controlled section to include "8A002 does not control closed and semi-closed circuit (rebreathing) apparatus that is controlled under 8A018.a. See also 8A992 for self-contained underwater breathing apparatus that is not controlled by 8A002 or released for control by the 8A002.q Note."

(2) Adding paragraph 8A002.q and the 8A002.q Note to harmonize with the Wassenaar Arrangement List.

• ECCN 8A018 is amended by:

(1) Revising the Related Controls paragraph of the List of Items Controlled section to include a reference to 8A002 and 8A992.

(2) Revising the phrase in paragraph 8A018.a "Closed and semi-closed circuit (rebreathing) apparatus for diving and underwater swimming" to read "Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use", to harmonize with the Wassenaar Arrangement.

• ECCN 8A992 is amended by revising the Related Controls paragraph of the List of Items Controlled section to include a reference to 8A002 and 8A018.

Category 9—Propulsion Systems

• Adding a new entry: ECCN 9A012 "Unmanned aerial vehicles * * *".

• ECCN 9A120 is deleted and incorporating it into ECCN 9A012.

• ECCNs 9D001 and 9D002 are amended by:

(1) Revising the phrase "Software required for" to read "Software specially designed or modified for" in the heading to harmonize with Wassenaar Arrangement text; and

(2) Revising the License Requirement section of to harmonize with the incorporation of 9A120 into 9A012.

• ECCN 9D003 is amended by Revising the phrase "Software required for" to read "Software specially designed or modified for" in the heading to harmonize with Wassenaar Arrangement text.

• ECCN 9D102 is amended by revising the heading to harmonize with the incorporation of 9A120 into 9A012.

All items removed from national security (NS) controls as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

In addition, this rule makes revisions to the Supplement No. 2 to part 774, General Technology and Software Notes to harmonize with the Wassenaar's Arrangements General Technology and Software Notes.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the Notice of August 14, 2002 (67 FR 53721, August 16, 2002), continues the Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport without a license, under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until April 4, 2003. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for June 3, 2003, BIS will accept license applications for items described either by the entries in effect immediately before March 5, 2003, or the entries described in this rule.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, PO Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 740 and 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign Trade, Reporting and recordkeeping requirements.

Accordingly, parts 740, 743, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

2. Section 740.11 is amended by revising paragraph (a)(2), to read as follows:

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(a) * * *

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 5A001.b.5, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., ; and

(i) "Composite" structures or laminates controlled by 1A002.a, having an organic "matrix" and made from materials listed under 1C010.c or 1C010.d; and

(ii) "Digital" computers controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(iii) "Electronic assemblies" controlled by 4A003.c and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 190,000 MTOPS; and

Note to paragraph 740.11(a)(2)(iii): Nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by "electronic assemblies", which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of "computing elements" so that the CTP of the

aggregation exceeds the CTP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR, without prior authorization from the Bureau of Industry and Security.

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled; by 6A001.a.2.f; and

(vi) "Software", as follows:

(A) Controlled by 4D001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(B) Controlled by 6D001.a, specially designed for the "development" or "production" of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the "development" of "technology" controlled by 9E003.a.1 or 9E003.a.3.a.

* * * * *

3. Supplement Number 1 to § 740.11 is revised to read as follows:

Supplement No. 1 to § 740.11—Additional Restrictions on Use of License Exception Gov

(a) *Items for official use within national territory by agencies of a Cooperating Government.* License Exception GOV is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., ; and

(i) "Composite" structures or laminates controlled by 1A002.a, having an organic "matrix" and made from materials listed under 1C010.c or 1C010.d; and

(ii) [Reserved]

(iii) [Reserved]

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f; and

(vi) "Software", as follows:

(A) Controlled by 4D001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(B) Controlled by 5D001.a, specially designed for the "development" or "production" of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the "development" of "technology" controlled by 9E003.a.1 or 9E003.a.3.a.

(vii) "Technology", as follows:

(A) Controlled by 1E001 for items controlled by 1A002.a as described by paragraph (a)(1)(i) of this Supplement, or 1C001; and

(B) Controlled by 4E001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(C) Controlled by 5E001.a for the "development" or "production" of digitally controlled radio receivers controlled by 5A001.b.5; or 5D001.a for "software" specially designed for the "development" or "production" of digitally controlled radio receivers controlled by 5A001.b.5; and

(D) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.2.a.1, 6A001.a.25.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(F) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(G) Controlled by 9E001 for items controlled by 9D001; and

(H) [Reserved]

(I) Controlled by 9E003.a.1; and

(J) Controlled by 9E003.a.3.a;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

(b) *Diplomatic and consular missions of a cooperating government.* License Exception GOV is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., ; and

(i) "Composite" structures or laminates controlled by 1A002.a, having an organic "matrix" and made from materials listed under 1C010.c or 1C010.d; and

(ii) [Reserved]

(iii) [Reserved]

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f; and

(vi) "Software", as follows:

(A) Controlled by 4D001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(B) Controlled by 5D001.a, specially designed for the "development" or "production" of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the "development" of "technology" controlled by 9E003.a.1 or 9E003.a.3.a.

(vii) "Technology", as follows:

(A) Controlled by 1E001 for items controlled by 1A002.a as described by paragraph (a)(1)(i) of this Supplement, or 1C001; and

(B) Controlled by 4E001, specially designed for the "development" or "production" of "digital computers" controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(C) Controlled by 5E001.a for the "development" or "production" of digitally controlled radio receivers controlled by 5A001.b.5; or 5D001.a for "software" specially designed for the "development" or "production" of digitally controlled radio receivers controlled by 5A001.b.5; and

(D) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(F) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(G) Controlled by 9E001 for items controlled by 9D001; and

(H) [Reserved]

(I) Controlled by 9E003.a.1; and

(J) Controlled by 9E003.a.3.a;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

PART 743—[AMENDED]

4. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq; Pub. L. 106–508; 50 U.S.C. 1701 et seq; E.O. 13206, 66 FR 18397, April 9, 2001.

5. Section 743.1 is amended by revising paragraphs (b)(1) and (c), and removing and reserving paragraph (e)(2), to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(b) * * *

(1) Exports authorized under License Exceptions GBS, CIV, TSR, LVS, CTP, and the cooperating government portions (§§ 740.11(b)(2)(iii) and 740.11(b)(2)(iv) of the EAR) of GOV (see part 740 of the EAR). Note that exports of technology and source code under License Exception TSR to foreign nationals located in the U.S. should not be reported; and

* * * * *

(c) *Items for which reports are required.* (1) You must submit reports to BIS under the provisions of this section only for exports of items controlled under the following ECCNs:

(i) *Category 1:* 1A002; 1C007.c and .d; 1C010.c and .d; 1D002 for "development" of 1A002, 1C007.c and .d, and 1C010.c and .d; 1E001 for "development" and "production" of 1A002, 1C007.c and .d, and 1C010.c and .d ; 1E002.e and .f;

(ii) *Category 2:* 2B003, 2D001 (certain items only; see Note to this paragraph), 2E001 (certain items only; see Note to this paragraph), and 2E002 (certain items only; see Note to this paragraph);

Note *to Paragraph (c)(1)(ii):* Reports for 2D001, are for "software", other than that controlled by 2D002, specially designed for the "development" or "production" of the equipment in 2B003 or 2B001.a or .b (changing 6μm to 5.1μm in 2B001.a.1 and 2B001.b.1.a) of the Commerce Control List (CCL). Reports for 2E001, are for "technology" according to the General Technology Note for "development" of the equipment in 2B003 or 2B001.a or .b (changing 6μm to 5.17mu;m in 2B001.a.1 and 2B001.b.1.a), or "software" in 2D001 of the CCL for the "development" or "production" of the equipment in 2B003. Reports for 2E002, are for "technology" according to the General Technology Note for "production" of the equipment in 2B003 or 2B001.a or .b (changing 6μm to 5.1μm in 2B001.a.1 and 2B001.b.1.a) of the CCL.

(iii) *Category 3:* 3A002.g.2, 3B001.a.2, 3D001 for "development" or "production" of 3A002.g.2 or 3B001.a.2, and 3E001 for "development" or "production" of 3A002.g.2 or 3B001.a.2;

(iv) *Category 4:* 4A001.a.2; 4D001 (see paragraph (c)(2) of this section); and 4E001 (see paragraph (c)(2) of this section);

(v) *Category 5:* 5A001.b.3; 5B001.a (items specially designed for 5A001.b.3); 5D001.a (specially designed for the "development" or "production" of equipment, function, or features in 5A001.b.3) and 5D001.b (specially designed or modified to support "technology" under 5E001.a); and 5E001.a (for the "development" or "production" of equipment, function, features, or "software" in 5A001.b.3, 5B001.a, 5D001.a and .b);

(vi) *Category 6:* 6A001.a.1.b (changing 10 kHz to 5 kHz in a.1.b.1 and a.1.b.2), .a.2.c, .a.2.d, and .a.2.e; 6A002.b; 6A004.c and d; 6A006.g (excluding compensators which provide only absolute values of the earth's magnetic field as output (*i.e.*, the frequency bandwidth of the output extends from DC to at least 0.8 Hz) and h; 6A008.d, .h, and .k; 6D001 (for 6A004.c); 6D003.a; 6E001 (for equipment and software listed in this paragraph); and 6E002 (for equipment and software listed in this paragraph);

(vii) *Category 8:* 8A001.c; 8A002.b (for 8A001.c), .h, .j, .o.3, and .p; 8D001 (for commodities listed in this paragraph); 8D002; 8E001 (for commodities listed in this paragraph); and 8E002.a; and

(viii) *Category 9:* 9B001.b; 9D001 (for 9B001.b and 9E003 (as described in this paragraph)); 9D002 (for 9B001.b); 9D004.a and .c; 9E001; 9E002; 9E003.a.1., .a.2, .a.3, .a.4, .a.5, .a.8, and .a.9.

(2) Reports for "software" controlled by 4D001 and "technology" controlled by 4E001 are required if specially designed for the "development" or "production" of computers controlled under 4A001.a.2, or for the "development" or "production" of "digital computers" having a CTP exceeding 75,000 MTOPS. For the calculation of CTP, *see* the Technical Note for Category 4 in the Commerce Control List (Supplement No. 2 to part 774 of the EAR).

* * * * *

PART 772—[AMENDED]

6. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

7. Section 772.1 is amended by:

(a) Adding new entries: "Circulation-controlled, anti-torque or circulation-controlled direction control systems' and "Time-modulated ultra-wideband" in alphabetical order, to read as follows;

(b) Removing the entries "Assembly", "Beat length", "Circulation", "Global interrupt latency time", "Fluoride fibers", "Gateway", "ISDN", "Integrated Services Digital Network", "Network access controller", "Optical fiber preforms", and "Sputtering';

(c) Revising the phrase "Only those" to read "those" in the entry "civil aircraft';

(d) Revising the phrase "arithmetic logic" to read "arithmetic or logic" in the entry "computing element';

(e) Revising the entry "electronically steerable phased array antenna", to read as follows;

(f) Revising the phrase "End-effectors" include grippers," to read "Grippers," in the entry for "end-effectors';

(g) Revising the phrase "(f_2–f^1)" to read "(f_2–f_1) in the entry "noise level";

(h) Revising the phrase "product "X" that does not operate" to read "product "X" that operates", and the word "extending" to read "exceeding" in the entry "Required"; and

(i) Revising the entry heading "Systems tracks" to read "System tracks".

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

"Circulation-controlled, anti-torque or circulation-controlled direction control

systems" (Cat 7)—Control systems using air blown over aerodynamic surfaces to increase or control the forces generated by the surfaces.

* * * * *

"Electronically steerable phased array antenna". (Cat 6)—An antenna that forms a beam by means of phase coupling (*i.e.*, the beam direction is controlled by the complex excitation coefficients of the radiating elements) and the direction of that beam can be varied (both in transmission and reception) in azimuth or in elevation, or both, by application of an electrical signal.

* * * * *

"Time-modulated ultra-wideband". (Cat 5 part 1 and Cat 5 part 2) The technique in which very short precisely time-controlled RF pulses are modulated in accordance with communications data by shifting pulse positions (usually called Pulse Position Modulation, PPM) channelized or scrambled in accordance with pseudo-random noise codes by PPM, then transmitted and received in the direct pulse form without using any carrier frequencies, consequently having extremely low power density over ultra-wide frequency bands. It is also known as Impulse Radio.

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PART 774—[AMENDED]

8. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, the following Export Control Classification Numbers (ECCNs) are amended:

(a) Revise the Heading of product group A at the beginning of Category 2 from "Equipment, Assemblies and Components" to read "Systems, Equipment and Components";

(b) Revising the *Items* paragraph in the List of Items Controlled section of ECCNs 2A001 and 2B006;

(c) Revising the Heading, removing the *License Requirement Notes* paragraph at the end of the License requirements section, and revising the *Items* paragraph of the List of Items Controlled section of ECCN 2B001; and

(d) Revising the Heading of 2B003, to read as follows:

* * * * *

2A001 Anti-friction bearings and bearing systems, as follows, (*see* List of Items Controlled) and components therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note: 2A001 does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

a. Ball bearings and solid roller bearings having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better, and having both ringsand rolling elements (ISO 5593) made from monel or beryllium;

Note: 2A001.a does not control tapered roller bearings.

b. Other ball bearings and solid roller bearings having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better;

Note: 2A001.b does not control tapered roller bearings.

c. Active magnetic bearing systems using any of the following:

c.1. Materials with flux densities of 2.0 T or greater and yield strengths greater than 414 MPa;

c.2. All-electromagnetic 3D homopolar bias designs for actuators; *or*

c.3. High temperature (450 K (177oC) and above) position sensors.

2B001 Machine tools (see List of Items Controlled) and any combination thereof, for removing (or cutting) metals, ceramics or "composites", which, according to the manufacturer's technical specification, can be equipped with electronic devices for "numerical control".

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note 1: 2B001 does not control special purpose machine tools limited to the manufacture of gears. For such machines, *see* 2B003.

Note 2: 2B001 does not control special purpose machine tools limited to the manufacture of any of the following parts:

a. Crank shafts or cam shafts;
b. Tools or cutters;
c. Extruder worms;
d. Engraved or faceted jewellery parts.

a. Machine tools for turning, having all of the following characteristics:

a.1. Positioning accuracy with "all compensations available" of less (better) than 6 µm along any linear axis; *and*

a.2. Two or more axes which can be coordinated simultaneously for "contouring control";

Note: 2B001.a does not control turning machines specially designed for the production of contact lenses.

b. Machine tools for milling, having any of the following characteristics:

b.1. Having all of the following:

b.1.a. Positioning accuracy with "all compensations available" of less (better) than 6 µm along any linear axis; *and*

b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control";

b.2. Five or more axes which can be coordinated simultaneously for "contouring control";

b.3. A positioning accuracy for jig boring machines, with "all compensations available", of less (better) than 4 µm along any linear axis; or

b.4. Fly cutting machines, having all of the following characteristics:

b.4.a. Spindle "run-out" and "camming" less (better) than 0.0004 mm TIR; and

b.4.b. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over 300 mm of travel.

c. Machine tools for grinding, having any of the following characteristics: c.1. Having all of the following:

c.1.a. Positioning accuracy with "all compensations available" of less (better) than 4 µm along any linear axis; *and*

c.1.b. Three or more axes which can be coordinated simultaneously for "contouring control"; *or*

c.2. Five or more axes which can be coordinated simultaneously for "contouring control";

Notes: 2B001.c does not control grinding machines, as follows:

1. Cylindrical external, internal, and external-internal grinding machines having all the following characteristics:

a. Limited to cylindrical grinding; and

b. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.

2. Machines designed specifically as jig grinders having any of following characteristics:

a. The c-axis is used to maintain the grinding wheel normal to the work surface; or

b. The a-axis is configured to grind barrel cams.

3. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for "contouring control";

e. Machine tools for removing metals, ceramics or "composites" having all of the following characteristics:

e.1. Removing material by means of any of the following:

e.1.a. Water or other liquid jets, including those employing abrasive additives;

e.1.b. Electron beam; *or*

e.1.c. "Laser" beam; *and*

e.2. Having two or more rotary axes which:

e.2.a. Can be coordinated simultaneously for "contouring control"; *and*

e.2.b. Have a positioning accuracy of less (better) than 0.003°;

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5,000 mm and specially designed components therefor.

2B003 "Numerically controlled" or manual machine tools, and specially designed components, controls and accessories therefor, specially designed for the shaving, finishing, grinding or honing of hardened (R_c = 40 or more) spur, helical and double-helical gears with a pitch diameter exceeding 1,250 mm and a face width of 15% of pitch diameter or larger finished to a quality of AGMA 14 or better (equivalent to ISO 1328 class 3).

* * * * *

2B006 Dimensional inspection or measuring systems and equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
ECCN Controls: * * *
Items:

a. Computer controlled, "numerically controlled" or "stored program controlled" dimensional inspection machines, having a three dimensional length (volumetric) "measurement uncertainty" equal to or less (better) than (1.7 + L/1,000) µm (L is the measured length in mm) tested according to ISO 10360–2;

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear displacement measuring instruments having any of the following:

Technical Note: For the purpose of 2B006.b.1 "linear displacement" means the change of distance between the measuring probe and the measured object.

b.1.a. Non-contact type measuring systems with a "resolution" equal to or less (better) than 0.2 µm within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems having all of the following characteristics:

b.1.b.1. "Linearity" equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ± 1 K; *or*

b.1.c. Measuring systems having all of the following:

b.1.c.1. Containing a "laser"; *and*

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ±1 K around a standard temperature and at a standard pressure, all of the following:

b.1.c.2.a. A "resolution" over their full scale of 0.1 µm or less (better); *and*

b.1.c.2.b. A "measurement uncertainty" equal to or less (better) than (0.2 + L/2,000) µm (L is the measured length in mm);

Note: 2B006.b.1 does not control measuring interferometer systems, without closed or open loop feedback, containing a "laser" to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

b.2. Angular displacement measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025 °;

Note: 2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

c. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better).

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, the following Export Control Classification Numbers (ECCNs) are amended by:

(a) Revising the *Items* paragraph in the List of Items Controlled section of ECCN 3A001;

(b) Revising the *Related Definitions* and the *Items* paragraphs in the List of Items Controlled section of ECCN 3A002;

(c) Revising the heading, and the *Items* paragraph in the List of Items Controlled section of ECCN 3B001;

(d) Revising the *Related Definitions* and the *Items* paragraphs in the List of Items Controlled section of 3B991;

(e) Revising the *Related Controls* and the *Items* paragraphs in the List of Items Controlled section of 3C004;

(f) Revising the *Items* paragraph in the List of Items Controlled section of 3E001;

(g) Revising the heading and the *Items* paragraph in the List of Items Controlled section of 3E002; and

(h) Revising the *TSR* paragraph in the License Exceptions section and revising the *Related Controls* and the *Items* paragraphs in the List of Items Controlled section of 3E003, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:

"Monolithic integrated circuits";
"Hybrid integrated circuits";
"Multichip integrated circuits";
"Film type integrated circuits", including silicon-on-sapphire integrated circuits;
"Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher; *or*

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher;

a.2. "Microprocessor microcircuits", "microcomputer microcircuits", microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or "optical integrated circuits" designed for "signal processing", field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125°C); *or*

a.2.b. Rated for operation at an ambient temperature below 218 K (− 55°C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (− 55°C) to 398 K (125° C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. "Microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. [Reserved]

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel "microprocessor microcircuits" with a transfer rate exceeding 150 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 5 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 200 ns; *or*

a.5.a.3. A resolution of more than 12 bit with a total conversion time of less than 2 µs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a "settling time" of less than 10 ns;

Technical Note: 1. A resolution of n bit corresponds to a quantization of 2 levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and "optical integrated circuits" designed for "signal processing" having all of the following:

a.6.a. One or more than one internal "laser" diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical "basic gate propagation delay time" of less than 0.1 ns; *or*

a.7.c. A toggle frequency exceeding 133 MHz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. [Reserved]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.1 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than (N log2 N)/20,480 ms, where N is the number of points;

Technical Note: When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note 1: 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; and

(b) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.1 does not control non-"space-qualified" tubes which meet all the following characteristics:

(a) An average output power equal to or less than 50 W; and

(b) Designed or rated for operation in any frequency band which meets all of the following characteristics:

(1) Exceeds 31 GHz but does not exceed 43.5 GHz; *and*

(2) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a "fractional bandwidth" of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; or

b.1.a.4.c. Being "space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing "monolithic integrated circuits" having one or more active circuit elements; and

b.2.b. Operating at frequencies above 3 GHz;

Note 1: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; and

(b) Is "allocated by the ITU" for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an "instantaneous bandwidth" of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 μs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave "assemblies" capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

Note: 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 μs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (*i.e.*, "signal processing" devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm3 (*e.g.*, standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30° C) to above 343 K (70° C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours © being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20° C) to above 333 K (60° C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28° C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527° C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging(MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm^2;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; or

f.2. An accuracy better than ± 2.5 seconds of arc.

3A002 General purpose electronic equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: Constant percentage bandwidth filters are also known as octave or fractional octave filters.

Items:

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (*e.g.*, using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; or a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ±0.1 μs;

Note: Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

Note: 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; or a.3.b. Being "space qualified";

Note: 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; *and*

a.5.b. A continuous throughput of 2 Gbit/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. "Frequency synthesizer", "electronic assemblies" having a "frequency switching time" from one selected frequency to another of less than 1 ms;

c. Radio frequency "signal analyzers", as follows:

c.1. "Signal analyzers" capable of analyzing frequencies exceeding 31 GHz;

c.2. "Dynamic signal analyzers" having a "real-time bandwidth" exceeding 500 kHz;

Note: 3A002.c.2 does not control those "dynamic signal analyzers" using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A "frequency switching time" from one selected frequency to another of less than 1 ms; *or*

d.3. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Note: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 40 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 40 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than 1 x 10^{-11}/month; *or* g.2. Being "space qualified".

Note: 3A002.g.1 does not control non-"space qualified" rubidium standards.

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled), and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. "Stored program controlled" equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing a layer thickness uniform to less than ± 2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. "Stored program controlled" equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. Being capable of high energy oxygen implant into a heated semiconductor material "substrate";

c. "Stored program controlled" anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Designed or optimized to produce critical dimensions of 0.3μm or less with ±5% 3 sigma precision; *or*

c.1.b. Designed for generating less than 0.04 particles/cm² with a measurable particle size greater than 0.1 μm in diameter;

c.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

c.2.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

c.2.b. Designed for generating less than 0.04 particles/cm² with a measurable particle size greater than 0.1 μm in diameter;

d. "Stored program controlled" plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

d.1.a. Designed or optimized to produce critical dimensions of 0.3μm or less with ±5% 3 sigma precision; *or*

d.1.b. Designed for generating less than 0.04 particles/cm² with a measurable particle size greater than 0.1 μm in diameter;

d.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

d.2.a. Designed or optimized to produce critical dimensions of 0.3μm or less with ±5% 3 sigma precision; *or*

d.2.b. Designed for generating less than 0.04 particles/cm² with a measurable particle size greater than 0.1 μm in diameter;

e. "Stored program controlled" automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B001.e. does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. "Stored program controlled" lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 350 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.5 μm or less;

Technical Note: The minimum resolvable feature size is calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in } \mu m) \times (\text{K factor})}{\text{numerical aperture}}$$

where the K factor = 0.7.

MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focused electron beam, ion beam or "laser" beam, having any of the following:

f.2.a. A spot size smaller than 0.2 μm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 μm; *or*

f.2.c. An overlay accuracy of better than ± 0.20 μm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

3B991 Equipment not controlled by 3B001 for the manufacture of electronic components and materials, and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: 'Sputtering' is an overlay coating process wherein positively charged ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on the substrate. (**NOTE:** Triode, magnetron or radio frequency sputtering to increase adhesion of coating and rate of deposition are ordinary modifications of the process.)

Items: a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and "electronic assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

Note: 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

Note: 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

Note: 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m² per minute;

b.1.c.2. "Stored program controlled" crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5×10^5 Pa; *or*

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. "Stored program controlled" equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than +3.5%; *or*

b.1.d.2. Rotation of individual wafers during processing;

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced 'sputtering' equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3. Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; *or*

b.1.g.4. Capable of high energy oxygen implant into a heated "substrate";

b.1.h. "Stored program controlled" equipment for the selective removal (etching) by means of anisotropic dry methods (*e.g.*, plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; *or*

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; *or*

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

Notes: 1. "Batch types" refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, *e.g.*, RF power, temperature, etch gas species, flow rates.

2. "Single wafer types" refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, *e.g.*, RF power or end point, can be independently determined for each individual wafer.

b.1.i. "Chemical vapor deposition" (CVD) equipment, *e.g.*, plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. "Chemical vapor deposition" equipment operating below 10^5 Pa; *or*

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling; 9

Note: 3B991.b.1.i does not control low pressure "chemical vapor deposition" (LPCVD) systems or reactive "sputtering" equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; *or*

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

Note: 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; *or*

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

Note: 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. "Stored program controlled" equipment using "lasers" for the repair or trimming of "monolithic integrated circuits" with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ± 1 micrometer; *or*

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask "substrates", mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

Note: The term "masks" refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; or

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; *and*

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or "software";

b.2.b. Mask "substrates" as follows:

b.2.b.1. Hard surface (*e.g.*, chromium, silicon, molybdenum) coated "substrates" (*e.g.*, glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm x 125 mm; *or*

b.2.b.2. "Substrates" specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm x 100 mm, or capable of producing a single exposure larger than 6 mm x 6 mm in the image (*i.e.*, focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the "substrate";

b.2.d.2. Mask or reticle fabrication equipment using ion or "laser" beam lithography capable of producing line widths of less than 2.5 micrometer; *or*

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

Note: 3B991.b.2.d.1 and b.2.d.2 do not control mask-fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. "Stored program controlled" equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; *and*

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

Note: 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

Note: 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ± 0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ± 0.3 micrometer; *or*

b.2.f.4. A light source wavelength shorter than 400 nm;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

Note: For focused, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using "lasers" for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. "Stored program controlled" die bonders having all of the following characteristics:

b.3.a.1. Specially designed for "hybrid integrated circuits";

b.3.a.2. X-Y stage positioning travel exceeding 37.5 x 37.5 mm; *and*

b.3.a.3. Placement accuracy in the X-Y plane of finer than ± 10 micrometer;

b.3.b. "Stored program controlled" equipment for producing multiple bonds in a single operation (*e.g.*, beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

Note: 3B991.b.3 does not control general purpose resistance type spot welders.

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 m³ and filter materials therefor.

3C004 Hydrides of phosphorus, arsenic or antimony, having a purity better than 99.999%, even diluted in inert gases or hydrogen.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: N/A
Related Definition: * * *
Items:
The list of items controlled is contained in the ECCN heading.

Note: This entry does not control hydrides containing 20% molar or more of inert gases or hydrogen.

3E001 "Technology" according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 and 3B992) or 3C.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definition: * * *
Items:
The list of items controlled is contained in the ECCN heading.

Note: 3E001 does not control "technology" for the "development" or "production" of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using "technology" of 0.7 micrometer or more; *and*

(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

3E002 "Technology" according to the General Technology Note other than that controlled in 3E001 for the "development" or "production" of "microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits having a "composite theoretical performance" ("CTP") of 530 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bits or more.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: ** *
Items:
The list of items controlled is contained in the ECCN heading.

Note: 3E002 does not control "technology" for the "development" or "production" of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using "technology" of 0.7 micrometer or more; *and*

(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

3E003 Other "technology" for the "development" or "production" of items described in the List of Items Controlled.

* * * * *

License Exceptions

CIV: * * *
TSR: Yes, except .f and .g

List of Items Controlled

Unit: * * *
Related Controls: (1) Technology for the "development" or "production" of "space qualified" electronic vacuum tubes operating at frequencies of 31 GHz or higher, described in 3E003.g, is under the export license authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121); (2) See 3E001 for silicon-on-insulation (SOI) technology for the "development" or "production" related to radiation hardening of integrated circuits.
Related Definitions: * * *
Items:
a. Vacuum microelectronic devices;
b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;
c. "Superconductive" electronic devices;
d. Substrates of films of diamond for electronic components;
e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;
f. Substrates of silicon carbide for electronic components;
g. Electronic vacuum tubes operating at frequencies of 31 GHz or higher.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, the following Export Control Classification Numbers (ECCNs) are amended by:

(a) Revising the License Requirements section, and the *GBS* paragraph in the License Exception section, and the *Items* paragraph in the List of Items Controlled section of ECCN 4A003;

(b) Amending the License Requirements section by removing the *License Requirement Notes* paragraph from the end of this section, and revising the *Items* paragraph in the List of Items Controlled section of ECCN 4D003; and

(c) Revising the *Related Definitions* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCN 4D993.

4A003 "Digital computers", "electronic assemblies", and related equipment therefor, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country Chart
NS applies to 4A003.b and .c.	NS Column 1
NS applies to 4A003.a, .e, and .g.	NS Column 2
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006..	MT Column 1
CC applies to "digital computers" for computerized finger-print equipment.	CC Column 1
AT applies to entire entry (refer to 4A994 for controls on "digital computers" with a CTP ≥6 but ≤ to 28,000 MTOPS).	AT Column 1

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "digital computers" with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, no license is required (NLR) for computers with a CTP not greater than 28,000 MTOPS and for "electronic assemblies" described in 4A003.c that are not capable of exceeding a CTP greater than 28,000 MTOPS in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Exceptions

LVS: * * *
GBS: Yes, for 4A003.e, and .g and specially designed components therefor, exported separately or as part of a system.
CTP: * * *
CIV: * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
Note 1: 4A003 includes the following:
a. Vector processors;
b. Array processors;
c. Digital signal processors;
d. Logic processors;
e. Equipment designed for "image enhancement";
f. Equipment designed for "signal processing".

Note 2: The control status of the "digital computers" and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;

b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; and

N.B. 1: The control status of "signal processing" or "image enhancement" equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The "technology" for the "digital computers" and related equipment is determined by 4E.

a. Designed or modified for "fault tolerance";

Note: For the purposes of 4A003.a., "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance" if they utilize any of the following:

1. Error detection or correction algorithms in "main storage";

2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or

4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 28,000 million theoretical operations per second (MTOPS);

c. "Electronic assemblies" specially designed or modified to be capable of enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds the limit in 4A003.b.;

Note 1: 4A003.c applies only to "electronic assemblies" and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated "electronic assemblies". It does not apply to "electronic assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A003.d, or 4A003.e

Note 2: 4A003.c does not control "electronic assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. [Reserved]

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. [Reserved]

g. Equipment specially designed to provide external interconnection of "digital computers" or associated equipment that allows communications at data rates exceeding 1.25 Gbyte/s.

Note: 4A003.g does not control internal interconnection equipment (*e.g.*, backplanes, buses) passive interconnection equipment, "network access controllers" or "communication channel controllers".

4D003 Specific "software", as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
a. Operating system "software", "software" development tools and compilers specially designed for "multi-data-stream processing" equipment, in "source code";
b. [Reserved]
c. "Software" having characteristics or performing functions exceeding the limits in Category 5, Part 2 ("Information Security").

4D993 "Program" proof and validation "software", "software" allowing the automatic generation of "source codes", and operating system "software" specially designed for real time processing equipment.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: "Global interrupt latency time" is the time taken by the computer system to recognize an interrupt due to the event, service the interrupt and perform a context switch to an alternate memory-resident task waiting on the interrupt.
Items:
a. "Program" proof and validation "software" using mathematical and analytical techniques and designed or modified for "programs" having more than 500,000 "source code" instructions;
b. "Software" allowing the automatic generation of "source codes" from data acquired on line from external sensors described in the Commerce Control List;
c. Operating system "software" specially designed for "real time processing" equipment that guarantees a "global interrupt latency time" of less than 20 microseconds.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications, Export Control Classification Numbers (ECCNs) are amended by:

(a) Revising the License Exceptions section, and the *Unit* and *Items* paragraphs in the List of Items Controlled section of ECCN 5A001;

(b) Revising the *Related Definitions* paragraph in the List of Items Controlled section of ECCN 5A991;

(c) Revising the *Items* paragraph in the List of Items Controlled section of ECCN 5B001;

(d) Revising the *TSR* paragraph in the License Exception section and the *Items* paragraph in the List of Items Controlled section of ECCN 5E001; and

(e) Revising the *Related Definitions* paragraph and the Items paragraph in the List of Items Controlled section of ECCN 5E991, to read as follows:

5A001 Telecommunications systems, equipment, and components.

* * * * *

License Exceptions

LVS: N/A for 5A001.a and b.5 $5000 for 5A001b.1, b.2, b.3, b.6, and .d $3000 for 5A001.c
GBS: Yes, except 5A001.a and b.5
CIV: Yes, except 5A001.a, b.3 and b.5

List of Items Controlled

Unit: Equipment in number; cable and fiber in meters/feet, components and accessories in $ value
Related Controls: * * *
Related Definitions: * * *
Items:
a. Any type of telecommunications equipment having any of the following characteristics, functions or features:
a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;
a.2. Specially hardened to withstand *gamma, neutron or ion radiation; or*
a.3. Specially designed to operate outside the temperature range from 218 K (−55° C) to 397 K (124° C).

Note: 5A001.a.3 applies only to electronic equipment.

Note: 5A001.a.2 and 5A001.a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:
b.1 Being underwater communications systems having any of the following characteristics:
b.1.a. An acoustic carrier frequency outside the range from 20 kHz to 60 kHz;
b.1.b. Using an electromagnetic carrier frequency below 30 kHz; *or*
b.1.c. Using electronic beam steering techniques;
b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:
b.2.a. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; or
b.2.b. Having all of the following:
b.2.b.1. Automatically predicting and selecting frequencies and "total digital

transfer rates" per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 MHz to 30 MHz frequency range or 250 W or more in the 30 MHz to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than −80 dB;

b.3. Being radio equipment employing "spread spectrum" techniques, including "frequency hopping" techniques, having any of the following characteristics:

b.3.a. User programmable spreading codes; *or*

b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

Note: 5A001.b.3.b does not control radio equipment specially designed for use with civil cellular radio-communications systems.

Note: 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4 Being radio equipment employing "time-modulated ultra-wideband" techniques, having user programmable channelizing or scrambling codes;

b.5. Being digitally controlled radio receivers having all of the following:

b.5.a. More than 1,000 channels;

b.5.b. A "frequency switching time" of less than 1 ms;

b.5.c. Automatic searching or scanning of a part of the electromagnetic spectrum; *and*

b.5.d. Identification of the received signals or the type of transmitter; *or*

Note: 5A001.b.5 does not control radio equipment specially designed for use with civil cellular radio-communications systems.

b.6. Employing functions of digital "signal processing" to provide voice coding at rates of less than 2,400 bit/s.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2×10^9 N/m² or more;

Technical Note: Proof Test: on-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20° C) and relative humidity 40%. Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

Note: 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. "Electronically steerable phased array antennae" operating above 31 GHz.

Note: 5A001.d does not control "electronically steerable phased array antennae" for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

5A991 Telecommunication equipment, not controlled by 5A001.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) *'Bandwidth of one voice channel'* is data communication equipment designed to operate in one voice channel of 3,100 Hz, as defined in CCITT Recommendation G.151. (2) *'Communications channel controller'* is the physical interface that controls the flow of synchronous or asynchronous digital information. It is an assembly that can be integrated into computer or telecommunications equipment to provide communications access. (3) *'Datagram'* is a self-contained, independent entity of data carrying sufficient information to be routed from the source to the destination data terminal equipment without reliance on earlier exchanges between this source and destination data terminal equipment and the transporting network. (4) *'Fast select'* is a facility applicable to virtual calls that allows data terminal equipment to expand the possibility to transmit data in call set-up and clearing 'packets' beyond the basic capabilities of a virtual call. (5) *'Gateway'* is the function, realized by any combination of equipment and "software", to carry out the conversion of conventions for representing, processing or communicating information used on one system into the corresponding, but diffetent conventions used in another system. (6) *'Integrated Services Digitol Network'* (ISDN) is a unified end-to-end digital network, in which data originating from all types of communication (*e.g.*, voice, text, data, still and moving pictures) are transmitted from one port (terminal) in the exchange (switch) over one access line to and from the subscriber.(7) *'Packet'* is a group of binary digits including data and call control signals that is switched as a composite whole. The data, call control signals, and possible error control information are arranged in a specified format.

Items: * * *

5B001 Telecommunication test, inspection and production equipment, as follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definition: * * *

Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the "development", "production" or "use" of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

Note: 5B001.a. does not control optical fiber characterization equipment.

b. Equipment and specially designed components or accessories therefor, specially designed for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

b.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

b.2. Equipment employing a "laser" and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing "optical amplification";

b.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5B001.b.2.d. does not include equipment specially designed for the "development" of commercial TV systems.

b.3. Equipment employing "optical switching";

b.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 128;

b.5. Equipment employing "common channel signaling" operating in either non-associated mode of operation or quasi-associated mode of operation.

5E001 "Technology", (see List of Items Controlled).

* * * * *

License Exceptions

CIV: * * *

TSR: Yes, except for exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" controlled by 5E001.a for the "development" or "production" of the following:

(1) Items controlled by 5A001.b.5; or

(2) "Software" controlled by 5D001.a that is specially designed for the "development" or "production" of equipment, functions or features controlled by 5A001.b.5.

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. "Technology" according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, functions or features or "software" controlled by 5A001, 5B001 or 5D001.

b. Specific "technologies", as follows:

b.1. "Required" "technology" for the "development" or "production" of telecommunications equipment specially designed to be used on board satellites;

b.2. "Technology" for the "development" or "use" of "laser" communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3: "Technology" for the "development" of digital cellular radio base station receiving equipment whose reception capabilities that allow multi-band, multi-channel, multi-mode, multi-coding algorithm or multi-protocol operation can be modified by changes in "software"

b.4. "Technology" for the "development" of "spread spectrum" techniques, including "frequency hopping" techniques.

c. "Technology" according the General Technology Note for the "development" or "production" of any of the following telecommunication transmission or "stored program controlled" switching equipment, functions or features:

c.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

c.2. Equipment employing a "laser" and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing "optical amplification" using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001.c.2.e. does not control "technology" for the "development" or "production" of commercial TV systems.

c.3. Equipment employing "optical switching";

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

c.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5E001.c.4.b. does not control "technology" for the "development" or "production" of equipment designed or modified for operation in any frequency band which is "allocated by the ITU" for radio-communications services, but not for radio-determination.

c.5. Equipment employing "common channel signaling" operating in either non-associated or quasi-associated mode of operation.

5E991 "Technology" for the "development", "production" or "use" of equipment controlled by 5A991 or 5B991, or "software" controlled by 5D991, and other "technologies" as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) "Synchronous digital hierarchy" (SDH) is a digital hierarchy providing a means to manage, multiplex, and access various forms of digital traffic using a synchronous transmission format on different types of media. The format is based on the Synchronous Transport Module (STM) that is defined by CCITT Recommendation G.703, G.707, G.708, G.709 and others yet to be published. The first level rate of 'SDH' is 155.52 Mbits/s. (2) 'Synchronous optical network' (SONET) is a network providing a means to manage, multiplex and access various forms of digital traffic using a synchronous transmission format on fiber optics. The format is the North America version of 'SDH' and also uses the Synchronous Transport Module (STM). However, it uses the Synchronous Transport Signal (STS) as the basic transport module with a first level rate of 51.81 Mbits/s. The SONET standards are being integrated into those of 'SDH'.

Items:

a. Specific "technologies" as follows:

a.1. "Technology" for the processing and application of coatings to optical fiber specially designed to make it suitable for underwater use;

a.2. "Technology" for the "development" of equipment employing 'Synchronous Digital Hierarchy' ('SDH') or 'Synchronous Optical Network' ('SONET') techniques.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part II—"Information Security" is amended by:

(a) Revising the Heading and the *Related Controls* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCN 5A002, to read as set forth below; and

(b) Amending the License Requirements section of ECCNs 5B002 and 5E002 by removing the *License Requirements Notes* paragraph at the end of this section.

5A002 Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", as follows (see List of Items Controlled), and other specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 5A992. This entry does not control:

(a) "Personalized smart cards" where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this note. Note that if a "personalized smart card" has multiple functions, the control status of each function is assessed individually;

(b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers;

(c) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption;

(d) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following:

(1) Execution of copy-protected "software";

(2) access to any of the following:

(a) Copy-protected contents stored on read-only media; *or*

(b) Information stored in encrypted form on media (*e.g.*, in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; *or*

(3) one-time encryption of copyright protected audio/video data;

(e) Cryptographic equipment specially designed and limited for banking use or money transactions;

(f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications. These items are controlled under ECCN 5A992.

Related Definitions: * * *

Items:

Technical Note: Parity bits are not included in the key length.

a. Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", and other specially designed components therefor:

a.1. Designed or modified to use "cryptography" employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

Technical Notes: 1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. "Cryptography" does not include "fixed" data compression or coding techniques.

Note: 5A002.a.1 includes equipment designed or modified to use "cryptography" employing analog principles when implemented with digital techniques.

a.1.a. A "symmetric algorithm" employing a key length in excess of 56-bits; *or*

a.1.b. An "asymmetric algorithm" where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.*, RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.*, Diffie-Hellman over Z/pZ); *or*

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.*, Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptanalytic functions;

a.3. [Reserved]

a.4. Specially designed or modified to reduce the compromising emanations of

information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" systems, including the hopping code for "frequency hopping" systems;

a.6. Designed or modified to use cryptographic techniques to generate channelizing or scrambling codes for "time-modulated ultra-wideband" systems;

a.7. Designed or modified to provide certified or certifiable "multilevel security" or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

a.8. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors is amended by:

(a) Revising the *Items* paragraph in the List of Items Controlled section of ECCN 6A001;

(b) Revising the *Unit* and *Items* paragraphs in the List of items Controlled section of ECCN 6A005;

(c) Revising the Heading of ECCN 6A008;

(d) Revising the Heading and the *Related Definitions* paragraph in the List of Items Controlled section of ECCN 6C992;

(e) Revising the *Related Definitions* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCN 6C994;

(f) Revising the *Items* paragraph in the List of Items Controlled section of ECCN 6D003, to read as follows:

6A001 Acoustics.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment and specially designed components therefor, as follows:

Note: 6A001.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ± 20°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons;

2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems designed for sea bed topographic mapping, having all of the following:

a.1.a.1. Being designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2. Being designed to measure depths exceeding 600 m below the water surface; *and*

a.1.a.3. Being designed to provide any of the following:

a.1.a.3.a. Incorporation of multiple beams any of which is less than 1.9°; *or*

a.1.a.3.b. Data accuracies of better than 0.3% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

a.1.b.6. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

a.1.b.6.a. Dynamic compensation for pressure; *or*

a.1.b.6.b. Incorporating other than lead zirconate titanate as the transduction element;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following:

Notes: 1. The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

2. 6A001.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (*e.g.*, air gun or vapor-shock gun) or chemical (*e.g.*, explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm²/Hz for devices operating at frequencies below 10 kHz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 Mw/mm²/Hz for devices operating at frequencies below 10 kHz; *or*

Technical Note: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiatlng surface and the frequency of operation.

a.1.c.3. Side-lobe suppression exceeding 22 dB;

a.1.d. Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed to operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m;

Note: 6A001.a.1.d includes:

a. Equipment using coherent "signal processing" between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle;

b. Equipment capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones having any of the following characteristics:

Note: The control status of hydrophones specially designed for other equipment is determined by the control status of the other equipment.

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers;

a.2.a.2.b. Piezoelectric polymers; *or*

a.2.a.2.c. Flexible piezoelectric ceramic materials;

a.2.a.3. A hydrophone sensitivity better than −180dB at any depth with no acceleration compensation:

a.2.a.4. When designed to operate at depths exceeding 35 m with acceleration compensation; *or*

a.2.a.5. Designed for operation at depths exceeding 1,000 m;

Technical Note: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 μPa. For example, a hydrophone of -160 dB (reference 1 V per μPa) would yield an output voltage of 10^{-8} V in such a field, while one of − 180 dB sensitivity would yield only 10^{-9} V output. Thus, − 160 dB is better than − 180 dB.

a.2.b. Towed acoustic hydrophone arrays having any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m;

a.2.b.2. Designed or "able to be modified" to operate at depths exceeding 35m;

Technical Note: "Able to be modified" in 6A001.a.2.b.2 means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Heading sensors controlled by 6A001.

a.2.d; a.2.b.4. Longitudinally reinforced array hoses;

a.2.b.5. An assembled array of less than 40 mm in diameter;

a.2.b.6. Multiplexed hydrophone group signals designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; or

a.2.b.7. Hydrophone characteristics controlled by 6A001.a.2.a;

a.2.c. Processing equipment, specially designed for towed acoustic hydrophone arrays, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.d. Heading sensors having all of the following:

a.2.d.1. An accuracy of better than ± 0.5°; *and*

a.2.d.2. Designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m;

a.2.e. Bottom or bay cable systems having any of the following:

a.2.e.1. Incorporating hydrophones controlled by 6A001.a.2.a; *or*

a.2.e.2. Incorporating multiplexed hydrophone group signal modules having all of the following characteristics:

a.2.e.2.a. Designed to operate at depths exceeding 35 m or having an adjustable or removal depth sensing device in order to operate at depths exceeding 35 m; *and*

a.2.e.2.b. Capable of being operationally interchanged with towed acoustic hydrophone array modules;

a.2.f. Processing equipment, specially designed for bottom or bay cable systems, having "user accessible programmability" and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

b. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

6A005 "Lasers", components and optical equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; components and accessories in $ value
Related Controls: * * *
Related Definitions: * * *
Items:

a. Gas "lasers", as follows:

a.1. Excimer "lasers", having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and having any of the following:

a.1.a.1. An output energy exceeding 50 mJ per pulse; *or*

a.1.a.2. An average output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and having any of the following:

a.1.b.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.b.2. An average output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and having any of the following:

a.1.c.1. An output energy exceeding 10 J per pulse; *or*

a.1.c.2. An average output power exceeding 500 W; *or*

a.1.d. An output wavelength exceeding 360 nm and having any of the following:

a.1.d.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.d.2. An average output power exceeding 30 W;

N.B. For excimer "lasers" specially designed for lithography equipment, see 3B001.

a.2. Metal vapor "lasers", as follows:

a.2.a. Copper (Cu) "lasers" having an average output power exceeding 20 W;

a.2.b. Gold (Au) "lasers" having an average output power exceeding 5 W;

a.2.c. Sodium (Na) "lasers" having an output power exceeding 5 W;

a.2.d. Barium (Ba) "lasers" having an average output power exceeding 2 W;

a.3. Carbon monoxide (CO) "lasers" having any of the following:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 5 kW; *or*

a.3.b. An average or CW output power exceeding 5 kW;

a.4. Carbon dioxide (CO_2) "lasers" having any of the following:

a.4.a. A CW output power exceeding 15 kW;

a.4.b. A pulsed output having a "pulse duration" exceeding 10 μs and having any of the following:

a.4.b.1. An average output power exceeding 10 kW; *or*

a.4.b.2. A pulsed "peak power" exceeding 100 kW; *or*

a.4.c. A pulsed output having a "pulse duration" equal to or less than 10 μs; and having any of the following:

a.4.c.1. A pulse energy exceeding 5 J per pulse; *or*

a.4.c.2. An average output power exceeding 2.5 kW;

a.5. "Chemical lasers", as follows:

a.5.a. Hydrogen Fluoride (HF) "lasers";

a.5.b. Deuterium Fluoride (DF) "lasers";

a.5.c. "Transfer lasers", as follows:

a.5.c.1. Oxygen Iodine (O_2−I) "lasers";

a.5.c.2. Deuterium Fluoride-Carbon dioxide (DF–CO_2) "lasers";

a.6. Krypton ion or argon ion "lasers" having any of the following:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 50 W; *or*

a.6.b. An average or CW output power exceeding 50 W;

a.7. Other gas "lasers", having any of the following:

Note: 6A005.a.7 does not control nitrogen "lasers".

a.7.a. An output wavelength not exceeding 150 nm and having any of the following:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and having any of the following:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; *or*

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed "peak power" exceeding 10 W; *or*

a.7.c.2. An average or CW output power exceeding 10 W; *or*

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

b. Semiconductor "lasers", as follows:

b.1. Individual single-transverse mode semiconductor "lasers" having any of the following:

b.1.a. A wavelength equal to or less than 1510 nm, and having an average or CW output power exceeding 1.5 W; *or*

b.1.b. A wavelength greater than 1510 nm, and having an average or CW output power exceeding 500 mW;

b.2. Individual, multiple-transverse mode semiconductor "lasers" having all of the following:

b.2.a. A wavelength of less than 950 nm or more than 2000 nm; *and*

b.2.b. An average or CW output power exceeding 10 W.

b.3. Individual arrays of individual semiconductor "lasers", having any of the following:

b.3.a. A wavelength of less than 950 nm and an average or CW output power exceeding 60 W; *or*

b.3.b. A wavelength equal to or greater than 2000 nm and an average or CW output power exceeding 10 W;

Technical Note: Semiconductor "lasers" are commonly called "laser" diodes.

Note 1: 6A005.b includes semiconductor "lasers" having optical output connectors (*e.g.* fiber optic pigtails).

Note 2: The control status of semiconductor "lasers" specially designed for other equipment is determined by the control status of the other equipment.

c. Solid state "lasers", as follows:

c.1. "Tunable" "lasers" having any of the following:

Note: 6A005.c.1 includes titanium—sapphire (Ti: Al_2O_3), thulium—YAG (Tm: YAG), thulium—YSGG (Tm: YSGG), alexandrite (Cr: $BeAl_2O_4$) and color center "lasers".

c.1.a. An output wavelength less than 600 nm and having any of the following:

c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

c.1.a.2. An average or CW output power exceeding 1 W;

c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and having any of the following:

c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed "peak power" exceeding 20 W; *or*

c.1.b.2. An average or CW output power exceeding 20 W; *or*

c.1.c. An output wavelength exceeding 1,400 nm and having any of the following:

c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

c.1.c.2. An average or CW output power exceeding 1 W;

c.2. Non-"tunable" "lasers", as follows:

Note: 6A005.c.2 includes atomic transition solid state "lasers".

c.2.a. Neodymium glass "lasers", as follows:

c.2.a.1. "Q-switched lasers" having any of the following:

c.2.a.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; *or*

c.2.a.1.b. An output energy exceeding 50 J per pulse;

c.2.a.2. Non-"Q-switched lasers" having any of the following:

c.2.a.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; *or*

c.2.a.2.b. An output energy exceeding 100 J per pulse;

c.2.b. Neodymium-doped (other than glass) "lasers", having an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm, as follows:

N.B.: For neodymium-doped (other than glass) "lasers" having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, see 6A005.c.2.

c.c.2.b.1. Pulse-excited, mode-locked, "Q-switched lasers" having a "pulse duration" of less than 1 ns and having any of the following:

c.2.b.1.a. A "peak power" exceeding 5 GW;

c.2.b.1.b. An average output power exceeding 10 W; *or*

c.2.b.1.c. A pulsed energy exceeding 0.1 J;

c.2.b.2. Pulse-excited, "Q-switched lasers" having a pulse duration equal to or more than 1 ns, and having any of the following:

c.2.b.2.a. A single-transverse mode output having:

c.2.b.2.a.1. A "peak power" exceeding 100 MW;

c.2.b.2.a.2. An average output power exceeding 20 W; *or*

c.2.b.2.a.3. A pulsed energy exceeding 2 J; *or*

c.2.b.2.b. A multiple-transverse mode output having:

c.2.b.2.b.1. A "peak power" exceeding 400 MW;

c.2.b.2.b.2. An average output power exceeding 2 kW; *or*

c.2.b.2.b.3. A pulsed energy exceeding 2 J;

c.2.b.3. Pulse-excited, non-"Q-switched lasers", having:

c.2.b.3.a. A single-transverse mode output having:

c.2.b.3.a.1. A "peak power" exceeding 500 kW; *or*

c.2.b.3.a.2. An average output power exceeding 150 W; *or*

c.2.b.3.b. A multiple-transverse mode output having:

c.2.b.3.b.1. A "peak power" exceeding 1 MW; *or*

c.2.b.3.b.2. An average power exceeding 2 kW;

c.2.b.4. Continuously excited "lasers" having:

c.2.b.4.a. A single-transverse mode output having:

c.2.b.4.a.1. A "peak power" exceeding 500 kW; *or*

c.2.b.4.a.2. An average or CW output power exceeding 150 W; *or*

c.2.b.4.b. A multiple-transverse mode output having:

c.2.b.4.b.1. A "peak power" exceeding 1 MW; *or*

c.2.b.4.b.2. An average or CW output power exceeding 2 kW;

c.2.c. Other non-"tunable" "lasers", having any of the following:

c.2.c.1. A wavelength less than 150 nm and having any of the following:

c.2.c.1.a. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

c.2.c.1.b. An average or CW output power exceeding 1 W;

c.2.c.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

c.2.c.2.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; *or*

c.2.c.2.b. An average or CW output power exceeding 30 W;

c.2.c.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:

c.2.c.3.a. "Q-switched lasers" having:

c.2.c.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 50 W; *or*

c.2.c.3.a.2. An average output power exceeding:

c.2.c.3.a.2.a. 10 W for single-mode "lasers";

c.2.c.3.a.2.b. 30 W for multimode "lasers";

c.2.c.3.b. Non-"Q-switched lasers" having:

c.2.c.3.b.1. An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 50 W; *or*

c.2.c.3.b.2. An average or CW output power exceeding 50 W; *or*

c.2.c.4. A wavelength exceeding 1,400 nm *and* having any of the following:

c.2.c.4.a. An output energy exceeding 100 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

c.2.c.4.b. An average or CW output power exceeding 1 W;

d. Dye and other liquid "lasers", having any of the following:

d.1. A wavelength less than 150 nm and:

d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

d.1.b. An average or CW output power exceeding 1 W;

d.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 20 W;

d.2.b. An average or CW output power exceeding 20 W; *or*

d.2.c. A pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the "pulse duration" is less than 100 ns;

d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 10 W; *or*

d.3.b. An average or CW output power exceeding 10 W; *or*

d.4. A wavelength exceeding 1,400 nm and having any of the following:

d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

d.4.b. An average or CW output power exceeding 1 W;

e. Components, as follows:

e.1. Mirrors cooled either by active cooling or by heat pipe cooling;

Technical Note: Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled "lasers";

f. Optical equipment, as follows:

N.B. For shared aperture optical elements, capable of operating in "Super-High Power Laser" ("SHPL") applications, see the U.S. Munitions List (22 CFR part 121).

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; *or*

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. "Laser" diagnostic equipment capable of measuring "SHPL" system angular beam steering errors of equal to or less than 10 µrad;

f.3. Optical equipment and components specially designed for a phased-array "SHPL" system for coherent beam combination to an accuracy of lambda/10 at the designed wavelength, or 0.1 µm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with "SHPL" systems.

6A008 Radar systems, equipment and assemblies having any of the following characteristics (see List of Items Controlled), and specially designed components therefor.

* * * * *

6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a 'beat length' of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by 'mole fraction'.

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List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) 'Mole fraction' is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal. (2) 'Beat length' is the distance over which two orthogonally polarized signals, initially in phase, must pass in order to achieve a 2 Pi radian(s) phase difference.

Items: * * *

6C994 Optical materials.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) 'Fluoride fibers' are fibers manufactured from bulk fluoride compounds. (2) 'Optical fiber preforms' are bars, ingots, or rods of glass, plastic or other materials that have been specially processed for use in fabricating optical fibers. The characteristics of the preform determine the basic parameters of the resultant drawn optical fibers.

Items:

a. Low optical absorption materials, as follows:

a.1. Bulk fluoride compounds containing ingredients with a purity of 99.999% or better; *or*

Note: 6C994.a.1 controls fluorides of zirconium or aluminum and variants.

a.2. Bulk fluoride glass made from compounds controlled by 6C004.e.1;

b. 'Optical fiber preforms' made from bulk fluoride compounds containing ingredients with a purity of 99.999% or better, specially designed for the manufacture of 'fluoride fibers' controlled by 6A994.b.

6D003 Other "software", as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Acoustics "software", as follows:

a.1. "Software" specially designed for acoustic beam forming for the "real time processing" of acoustic data for passive reception using towed hydrophone arrays;

a.2. "Source code" for the "real time processing" of acoustic data for passive reception using towed hydrophone arrays;

a.3. "Software" specially designed for acoustic beam forming for the "real time processing" of acoustic data for passive reception using bottom or bay cable systems;

a.4. "Source code" for the "real time processing" of acoustic data for passive reception using bottom or bay cable systems;

b. Optical sensors. None.

c. Cameras. None.

d. Optics. None.

e. Lasers. None

f. Magnetometers.

f.1. "Software" specially designed for magnetic compensation systems for magnetic sensors designed to operate on mobile platforms;

f.2. "Software" specially designed for magnetic anomaly detection on mobile platforms;

g. Gravimeters. "Software" specially designed to correct motional influences of gravity meters or gravity gradiometers;

h. Radar "software", as follows:

h.1. Air Traffic Control "software" application "programs" hosted on general purpose computers located at Air Traffic Control centers and capable of any of the following:

h.1.a. Processing and displaying more than 150 simultaneous "system tracks"; *or*

h.1.b. Accepting radar target data from more than four primary radars;

h.2. "Software" for the design or "production" of radomes which:

h.2.a. Are specially designed to protect the "electronically steerable phased array antennae" controlled by 6A008.e.; *and*

h.2.b. Result in an antenna pattern having an "average side lobe level" more than 40 dB below the peak of the main beam level.

Technical Note: "Average side lobe level" in 6D003.h.2.b is measured over the entire array excluding the angular extent of the main beam and the first two side lobes on either side of the main beam.

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, the following Export Control Classification Numbers (ECCNs) are amended by:

(a) Revising the Heading and the *Related Controls* paragraph, the *Related Definitions* paragraph, and the *Items* paragraph in the List of Items Controlled section of ECCN 7A003;

(b) Revising the Heading of ECCN 7D002; and

(c) Revising the *Related Definitions* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCN 7D003, to read as follows:

7A003 Inertial Navigation Systems (INS) and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 7A103 and 7A994. Inertial Navigation Systems (INS) and inertial equipment, and specially designed components therefor specifically designed, modified or configured for military use are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (*See* 22 CFR part 121.)

Related Definitions: "Data-Based Referenced Navigation" ("DBRN") systems are systems which use various sources of previously measured geo-mapping data integrated to provide accurate navigation information under dynamic conditions. Data sources include bathymetric maps, stellar maps, gravity maps, magnetic maps or 3–D digital terrain maps.

Items:

a. Inertial navigation systems (gimballed or strapdown) and inertial equipment designed for "aircraft", land vehicle or "spacecraft" for attitude, guidance or control, having any of the following characteristics, and specially designed components therefor:

a.1. Navigation error (free inertial) subsequent to normal alignment of 0.8 nautical mile per hour (nm/hr) Circular Error Probable (CEP) or less (better); *or*

a.2. Specified to function at linear acceleration levels exceeding 10 g.

b. Hybrid Inertial Navigation Systems embedded with Global Navigation Satellite System(s) (GNSS) or with "Data-Based Referenced Navigation" ("DBRN") System(s) for attitude, guidance or control, subsequent to normal alignment, having an INS navigation position accuracy, after loss of GNSS or "DBRN" for a period of up to 4 minutes, of less (better) than 10 meters Circular Error Probable (CEP).

Note 1: The parameters of 7A003.a and 7A003.b are applicable with any of the following environmental conditions:

1. Input random vibration with an overall magnitude of 7.7 g rms in the first half hour and a total test duration of one and one half hour per axis in each of the three perpendicular axes, when the random vibration meets the following:

a. A constant power spectral density (PSD) value of 0.04 g^2/Hz over a frequency interval of 15 to 1,000 Hz; *and*

b. The PSD attenuates with frequency from 0.04 g^2/Hz to 0.01 g^2/Hz over a frequency interval from 1,000 to 2,000 Hz; *or*

2. A roll and yaw rate of equal to or more than +2.62 radian/s (150 deg/s); *or*

3. According to national standards equivalent to 1. or 2. of this note.

Note 2: 7A003 does not control inertial navigation systems that are certified for use on "civil aircraft" by civil authorities of a country in Country Group A:1.

Technical Notes: 1. 7A003.b refers to systems in which an INS and other independent navigation aids are built into a single unit (embedded) in order to achieve improved performance.

2. "Circular Error Probable" ("CEP")—In a circular normal distribution, the radius of the circle containing 50 percent of the individual measurements being made, or the radius of the circle within which there is a 50 percent probability of being located.

7D002 Source code" for the "use" of any inertial navigation equipment including inertial equipment not controlled by 7A003 or 7A004, or Attitude and Heading Reference Systems (AHRS) (except gimballed AHRS).

* * * * *

7D003 Other "software", as follows (see List of Items Controlled).

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List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: 'Data-Based Referenced Navigation' ('DBRN') systems are systems which use various sources of previously measured geo-mapping data integrated to provide accurate navigation information under dynamic conditions. Data sources include bathymetric maps, stellar

maps, gravity maps, magnetic maps or 3–D digital terrain maps.

Items:

a. "Software" specially designed or modified to improve the operational performance or reduce the navigational error of systems to the levels controlled by 7A003 or 7A004;

b. "Source code" for hybrid integrated systems that improves the operational performance or reduces the navigational error of systems to the level controlled by 7A003 by continuously combining inertial data with any of the following:

b.1. Doppler radar velocity data;

b.2. Global navigation satellite systems (*i.e.*, GPS or GLONASS) reference data; *or*

b.3. Data from 'Data-Based Referenced Navigation' ('DBRN') systems;

c. "Source code" for integrated avionics or mission systems that combine sensor data and employ "expert systems";

d. "Source code" for the "development" of any of the following:

d.1. Digital flight management systems for "total control of flight";

d.2. Integrated propulsion and flight control systems;

d.3. Fly-by-wire or fly-by-light control systems;

d.4. Fault-tolerant or self-reconfiguring "active flight control systems";

d.5. Airborne automatic direction finding equipment;

d.6. Air data systems based on surface static data; *or*

d.7. Raster-type head-up displays or three dimensional displays;

e. Computer-aided-design (CAD) "software" specially designed for the "development" of "active flight control systems", helicopter multi-axis fly-by-wire or fly-by-light controllers or helicopter "circulation controlled anti-torque or circulation-controlled direction control systems" whose "technology" is controlled by 7E004.b, 7E004.c.1 or 7E004.c.2.

16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, is amended by:

(a) Revising the *Related Controls* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCNs 8A002 and 8A018; and

(b) Revising the Heading and the *Related Controls* paragraph of the List of Items Controlled section of ECCN 8A992, to read as follows:

8A002 Systems and equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 8A992 and for underwater communications systems, *see* Category 5, Part I—Telecommunications). 8A002 does not control closed and semi-closed circuit (rebreathing) apparatus that is controlled under 8A018.a. See also 8A992 for self-contained underwater breathing apparatus that is not controlled by 8A002 or released for control by the 8A002.q Note.

Related Definitions: * * *

Items:

a. Systems and equipment, specially designed or modified for submersible vehicles, designed to operate at depths exceeding 1,000 m, as follows:

a.1. Pressure housings or pressure hulls with a maximum inside chamber diameter exceeding 1.5 m;

a.2. Direct current propulsion motors or thrusters;

a.3. Umbilical cables, and connectors therefor, using optical fiber and having synthetic strength members;

b. Systems specially designed or modified for the automated control of the motion of submersible vehicles controlled by 8A001 using navigation data and having closed loop servo-controls:

b.1. Enabling a vehicle to move within 10 m of a predetermined point in the water column;

b.2. Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; *or*

b.3. Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed;

c. Fiber optic hull penetrators or connectors;

d. Underwater vision systems, as follows:

d.1. Television systems and television cameras, as follows:

d.1.a. Television systems (comprising camera, monitoring and signal transmission equipment) having a limiting resolution when measured in air of more than 800 lines and specially designed or modified for remote operation with a submersible vehicle;

d.1.b. Underwater television cameras having a limiting resolution when measured in air of more than 1,100 lines;

d.1.c. Low light level television cameras specially designed or modified for underwater use containing all of the following:

d.1.c.1. Image intensifier tubes controlled by 6A002.a.2.a; *and*

d.1.c.2. More than 150,000 "active pixels" per solid state area array;

Technical Note: Limiting resolution in television is a measure of horizontal resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart, using IEEE Standard 208/1960 or any equivalent standard.

d.2. Systems, specially designed or modified for remote operation with an underwater vehicle, employing techniques to minimize the effects of back scatter, including range-gated illuminators or "laser" systems;

e. Photographic still cameras specially designed or modified for underwater use below 150 m having a film format of 35 mm or larger, and having any of the following:

e.1. Annotation of the film with data provided by a source external to the camera;

e.2. Automatic back focal distance correction; *or*

e.3. Automatic compensation control specially designed to permit an underwater camera housing to be usable at depths exceeding 1,000 m;

f. Electronic imaging systems, specially designed or modified for underwater use, capable of storing digitally more than 50 exposed images;

g. Light systems, as follows, specially designed or modified for underwater use:

g.1. Stroboscopic light systems capable of a light output energy of more than 300 J per flash and a flash rate of more than 5 flashes per second;

g.2. Argon arc light systems specially designed for use below 1,000 m;

h. "Robots" specially designed for underwater use, controlled by using a dedicated "stored program controlled" computer, having any of the following:

h.1. Systems that control the "robot" using information from sensors which measure force or torque applied to an external object, distance to an external object, or tactile sense between the "robot" and an external object; *or*

h.2. The ability to exert a force of 250 N or more or a torque of 250 Nm or more and using titanium based alloys or "fibrous or filamentary" "composite" materials in their structural members;

i. Remotely controlled articulated manipulators specially designed or modified for use with submersible vehicles, having any of the following:

i.1. Systems which control the manipulator using the information from sensors which measure the torque or force applied to an external object, or tactile sense between the manipulator and an external object; *or*

i.2. Controlled by proportional master-slave techniques or by using a dedicated "stored program controlled" computer, and having 5 degrees of freedom of movement or more;

Note: Only functions having proportional control using positional feedback or by using a dedicated "stored program controlled" computer are counted when determining the number of degrees of freedom of movement

j. Air independent power systems, specially designed for underwater use, as follows:

j.1. Brayton or Rankine cycle engine air independent power systems having any of the following:

j.1.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.1.b. Systems specially designed to use a monoatomic gas;

j.1.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *or*

j.1.d. Systems specially designed:

j.1.d.1. To pressurize the products of reaction or for fuel reformation;

j.1.d.2. To store the products of the reaction; *and*

j.1.d.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

j.2. Diesel cycle engine air independent systems, having all of the following:

j.2.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.2.b. Systems specially designed to use a monoatomic gas;

j.2.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *and*

j.2.d. Specially designed exhaust systems that do not exhaust continuously the products of combustion;

j.3. Fuel cell air independent power systems with an output exceeding 2 kW having any of the following:

j.3.a. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *or*

j.3.b. Systems specially designed:

j.3.b.1. To pressurize the products of reaction or for fuel reformation;

j.3.b.2. To store the products of the reaction; *and*

j.3.b.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

j.4. Stirling cycle engine air independent power systems, having all of the following:

j.4.a. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *and*

j.4.b. Specially designed exhaust systems which discharge the products of combustion against a pressure of 100 kPa or more;

k. Skirts, seals and fingers, having any of the following:

k.1. Designed for cushion pressures of 3,830 Pa or more, operating in a significant wave height of 1.25 m (Sea State 3) or more and specially designed for surface effect vehicles (fully skirted variety) controlled by 8A001.f; *or*

k.2. Designed for cushion pressures of 6,224 Pa or more, operating in a significant wave height of 3.25 m (Sea State 5) or more and specially designed for surface effect vehicles (rigid sidewalls) controlled by 8A001.g;

l. Lift fans rated at more than 400 kW specially designed for surface effect vehicles controlled by 8A001.f or 8A001.g;

m. Fully submerged subcavitating or supercavitating hydrofoils specially designed for vessels controlled by 8A001.h;

n. Active systems specially designed or modified to control automatically the sea-induced motion of vehicles or vessels controlled by 8A001.f, 8A001.g, 8A001.h or 8A001.i;

o. Propellers, power transmission systems, power generation systems and noise reduction systems, as follows:

o.1. Water-screw propeller or power transmission systems, as follows, specially designed for surface effect vehicles (fully skirted or rigid sidewall variety), hydrofoils or small waterplane area vessels controlled by 8A001.f, 8A001.g, .8A001.h or 8A001.i:

o.1.a. Supercavitating, super-ventilated, partially-submerged or surface piercing propellers rated at more than 7.5 MW;

o.1.b. Contrarotating propeller systems rated at more than 15 MW;

o.1.c. Systems employing pre-swirl or post-swirl techniques for smoothing the flow into a propeller;

o.1.d. Light-weight, high capacity (K factor exceeding 300) reduction gearing;

o.1.e. Power transmission shaft systems, incorporating "composite" material components, capable of transmitting more than 1 MW;

o.2. Water-screw propeller, power generation systems or transmission systems designed for use on vessels, as follows:

o.2.a. Controllable-pitch propellers and hub assemblies rated at more than 30 MW;

o.2.b. Internally liquid-cooled electric propulsion engines with a power output exceeding 2.5 MW;

o.2.c. "Superconductive" propulsion engines, or permanent magnet electric propulsion engines, with a power-output exceeding 0.1 MW;

o.2.d. Power transmission shaft systems, incorporating "composite" material components, capable of transmitting more than 2 MW;

o.2.e. Ventilated or base-ventilated propeller systems rated at more than 2.5 MW;

o.3. Noise reduction systems designed for use on vessels of 1,000 tons displacement or more, as follows:

o.3.a. Systems that attenuate underwater noise at frequencies below 500 Hz and consist of compound acoustic mounts for the acoustic isolation of diesel engines, diesel generator sets, gas turbines, gas turbine generator sets, propulsion motors or propulsion reduction gears, specially designed for sound or vibration isolation, having an intermediate mass exceeding 30% of the equipment to be mounted;

o.3.b. Active noise reduction or cancellation systems, or magnetic bearings, specially designed for power transmission systems, and incorporating electronic control systems capable of actively reducing equipment vibration by the generation of anti-noise or anti-vibration signals directly to the source;

p. Pumpjet propulsion systems having a power output exceeding 2.5 MW using divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion-generated underwater-radiated noise.

q. Self-contained, closed or semi-closed circuit (rebreathing) diving and underwater swimming apparatus.

Note: 8A002.q does not control an individual apparatus for personal use when accompanying its user.

8A018 Items on the International Munitions List.

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List of Items Controlled

Unit: * * *

Related Controls: See also 8A002 and 8A992.

Related Definitions: * * *

Items:

a. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use, and specially designed components for use in the conversion of open-circuit apparatus to military use;

b. Naval equipment, as follows:

b.1. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over specially designed for submarines;

b.2. Electric motors specially designed for submarines, *i.e.*, over 1,000 hp, quick reversing type, liquid cooled, and totally enclosed;

b.3. Nonmagnetic diesel engines, 50 hp and over, specially designed for military purposes. (An engine shall be presumed to be specially designed for military purposes if it has nonmagnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines, or its nonmagnetic content exceeds 75 percent of total weight.);

b.4. Marine boilers designed to have any of the following characteristics:

b.4.a. Heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per cubic foot of furnace volume; *or*

b.4.b. Ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83;

b.5. Submarine and torpedo nets; *and*

b.6. Components, parts, accessories, and attachments for the above.

8A992 Underwater systems or equipment, not controlled by 8A002 or 8A018, and specially designed parts therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 8A002 and 8A018

Related Definitions: * * *

Items: * * *

17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, is amended by:

(a) Adding Export Control Classification number (ECCN) 9A012 following ECCN 9A011;

(b) Deleting ECCN 9A120;

(c) Revising the Heading and License Requirement section of ECCNs 9D001 and 9D002;

(d) Revising the Heading and the *Related Controls* paragraph of the List of Items Controlled section of ECCN 9D003; *and*

(e) Revising the Heading of ECCN 9D102, to read as follows:

9A012 Non-military unmanned aerial vehicles, having any of the following characteristics (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country Chart
NS applies to entire entry .. MT applies to non-military unmanned air vehicle systems (UAVs) and remotely piloted vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload.	NS Column 1 MT Column 1

Control(s)	Country Chart
AT applies to entire entry ..	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value

Related Controls: See the U.S. Munitions List Category VIII (22 CFR part 121).

Related Definitions: N/A

Items:

a. An autonomous flight control and navigation capability (*e.g.*, an autopilot with an Inertial Navigation System); or

b. Capability of controlled-flight out of the direct vision range involving a human operator (*e.g.*, televisual remote control).

Note: 9A012 does not control model aircraft.

9D001 "Software" specially designed or modified for the "development" of equipment or "technology" controlled by 9A (except 9A018, 9A990 or 9A991), 9B (except 9B990 or 9B991) or 9E003.

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country Chart
NS applies to "software" for items controlled by 9A001 to 9A003, 9A012, 9B001 to 9B009, 9E003.	NS Column 1
MT applies to "software" for equipment controlled by 9A001, 9A012, 9A101, 9A106, 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B116 for MT reasons.	MT Column 1
AT applies to entire entry ..	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

9D002 "Software" specially designed or modified for the "production" of equipment controlled by 9A (except 9A018, 9A990 or 9A991) or 9B (except 9B990 or 9B991).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country Chart
NS applies to "software" for equipment controlled by 9A001 to 9A003, 9A012, 9B001 to 9B009, or 9E003.	NS Column 1
MT applies to "software" for equipment controlled by 9A001, 9A012, 9A101, 9A106, 9B001, 9B002, 9B003, 9B004, 9B005, 9B007 9B116 for MT reasons.	MT Column 1
AT applies to entire entry ..	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

9D003 "Software" specially designed or modified for the "use" of full authority digital electronic engine controls (FADEC) for propulsion systems controlled by 9A (except 9A018, 9A990 or 9A991) or equipment controlled by 9B (except 9B990 or 9B991), as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 9D103. (2) "Software" "required" for the "use" of equipment or "technology" subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls is also subject to the same licensing jurisdiction. (See 22 CFR part 121.)

Related Definitions: * * *

Items: * * *

9D102 "Software" specially designed for the "use" of items controlled by 9A012 (for MT controlled items only), 9A101, 9A106, and 9A110.

* * * * *

18. Supplement No. 2 to part 774 (General Technology and Software Notes) is revised to read as follows:

1. *General Technology Note.* The export of "technology" that is "required" for the "development", "production", or "use" of items on the Commerce Control List is controlled according to the provisions in each Category.

"Technology" "required" for the "development", "production", or "use" of a controlled product remains controlled even when applicable to a product controlled at a lower level.

License Exception TSU is available for "technology" that is the minimum necessary for the installation, operation, maintenance (checking), and repair of those products that are eligible for License Exceptions or that are exported under a license.

N.B.: This does not allow release under a License Exception of the repair "technology" controlled by 1E002.e, 1E002.f, 8E002.a, or 8E002.b.

N.B.: The 'minimum necessary' excludes "development" or "production" technology and permits "use" technology only to the extent "required" to ensure safe and efficient use of the product. Individual ECCNs may further restrict export of "minimum necessary" information.

2. *General Software Note.* License Exception TSU ("mass market" software) is available to all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, for release of software that is generally available to the public by being:

a. Sold from stock at retail selling points, without restriction, by means of:

1. Over the counter transactions;
2. Mail order transactions;
3. Electronic transactions; *or*
4. Telephone call transactions; *and*

b. Designed for installation by the user without further substantial support by the supplier.

Note: The General Software Note does not apply to "software" controlled by Category 5—part 2 ("Information Security"). For "software" controlled by Category 5, part 2, see Supplement No. 1 to part 774, Category 5, part 2, Note 3—Cryptography Note.

Dated: February 25, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–4788 Filed 3–4–03; 8:45 am]

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Federal Register

Wednesday,
March 5, 2003

Part III

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410097–3041–07]

RIN 0660–ZA11

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of closing date for solicitation of radio and nonbroadcast applications.

SUMMARY: Subject to the availability of fiscal year (FY) 2003 funds, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public radio and nonbroadcast facilities under the Public Telecommunications Facilities Program (PTFP).

DATES: Pursuant to 15 CFR 2301.8(b), the NTIA Administrator hereby establishes the following closing date for the filing of radio and nonbroadcast applications for PTFP grants. The closing date selected for the submission of all radio and nonbroadcast applications for FY 2003 is Friday, April 4, 2003. Applications must be received prior to 6 p.m. Friday, April 4, 2003. Applications submitted by facsimile or electronic means are not acceptable.

ADDRESSES: Application materials may be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*). To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via the Internet (http://www.ntia.doc.gov/ptfp).

SUPPLEMENTARY INFORMATION:

I. Closing Date

NTIA announces that all radio and nonbroadcast applicants for matching grants under the PTFP must file their applications on or before 6 p.m., April 4, 2003. Issuance of grants is subject to the availability of FY 2003 funds. Congress has recently passed an appropriation of $43.5 million for the PTFP. NTIA intends to divide the funds appropriated by the Congress into two parts. One portion of the appropriation will be set aside to fund radio and nonbroadcast applications submitted in response to this Notice as well as television broadcast applications submitted in response to the Notice of Closing Date published by NTIA on October 17, 2002. A second portion of the appropriation will be set aside to fund additional phases of multi-phase projects initially funded in FY 2000, FY 2001 and FY 2002. NTIA will shortly publish a Notice in the **Federal Register** indicating the funds set aside for each portion. In awarding grants, NTIA will strive to maintain an appropriate balance between traditional grants and those to stations converting to digital broadcasting. Information regarding radio projects is included in Section VI of this document and information regarding nonbroadcast projects is included in Section VII. The amount of any grants awarded by NTIA will vary, depending on the approved project. For FY 2002, NTIA awarded $3.15 million in funds to 52 radio projects and $1 million in funds to 4 nonbroadcast projects. The radio awards ranged from $15,073 to $220,568 and the nonbroadcast awards ranged from $75,000 to $404,047.

Any applications submitted in response to this Notice which are for television broadcast projects will be returned to the applicant without review.

All radio and nonbroadcast applications will be reviewed according to the Evaluation Process discussed in Section XI. Radio and nonbroadcast applications will compete with applications for television replacement or signal extension projects which were submitted by the November 19, 2002 Closing Date previously established by NTIA for television broadcast applications. Radio and nonbroadcast projects will be awarded in the fourth quarter of FY 2003 (July–September 2003).

II. Application Forms

All applicants must use the official application form for the FY 2003 grant cycle. This form expires on October 31, 2003, and no previous versions of the form may be used. Each page of the application form has the expiration date of 10/31/2003 printed on the bottom line. To apply for a PTFP grant, an applicant must file an original and five copies of a timely and complete application on the application form. The current application form is available on the Internet and will be provided to applicants as part of the application package upon request.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been cleared under OMB control no. 0660–0003.

III. Authority

The Public Telecommunications Facilities Program is authorized by the Communications Act of 1934, as amended, 47 U.S.C. 390–393, 397–399(b).

IV. Catalog of Federal Domestic Assistance (CFDA)

CFDA No. 11.550, Public Telecommunications Facilities Program.

V. Regulations

The applicable Rules for the PTFP were published on November 8, 1996 (61 FR 57966). In accordance with provisions provided in 15 CFR part 2301, section 2301.26, certain requirements of the PTFP are modified in this Notice for FY 2003. Copies of the 1996 Rules are posted on the NTIA Internet site and NTIA will make printed copies available to applicants upon request. Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

Applicants sending applications must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. Applicants should be aware that all material sent via the United States Postal Service (including "overnight" or "Express Mail") are subject to delivery delays due to increased mail security procedures at the Department of Commerce. NTIA will not accept applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. Entrance to the Department of Commerce Building for security clearance is on the 15th Street side of the building. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current Grant Round and will be returned to the applicant. *See* 15 CFR 2301.8(c); but *see* also 15 CFR 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR 2301.3 or 2301.4. The Agency will inform the applicant of the reason for the return of any application.

All persons and organizations on the PTFP's mailing list will be sent a notification of the FY 2003 Grant Round. Copies of the application forms, Final Rules, Closing Date notification and application guidelines will be available on the NTIA Internet site: *www.ntia.doc.gov/ptfp*. Those not on the mailing list or who desire a printed copy of these materials may obtain copies by contacting the PTFP at the telephone and fax numbers, at the Internet site, or at the mailing address listed above. Prospective applicants should read the Final Rules carefully before submitting applications. Radio and nonbroadcast applicants whose applications were deferred in FY 2002 will be mailed information regarding the reactivation of their applications. Applicants whose radio projects were deferred from FY 2002 should carefully review Section VI., Radio Broadcasting, regarding policies which apply to the reactivation of their applications.

Indirect costs for construction applications are not supported by this program. The total dollar amount of the indirect costs proposed in a planning application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

VI. Radio Broadcasting

NTIA will take great care to ensure that its funding of radio applications follows the directive of 47 U.S.C. 393(c) that "a substantial amount" of each year's PTFP funds should be awarded to public radio. For the FY 2003 grant round, the eligibility and priority of radio projects, eligibility of radio equipment, and the presumption of 50% funding for radio equipment replacement applications remain as they were in the FY 2002 grant round.

In response to recent changes in technology and in the Federal regulatory environment, NTIA is providing guidance on three issues of interest to potential radio applicants. Applicants for the following types of applications should read the appropriate sections on radio signal expansion, conversion to digital transmission, or Internet streaming.

(A) Radio Signal Expansion

NTIA's highest priority is activation of public broadcasting facilities to provide a public broadcasting signal to unserved audiences. NTIA is prepared to fund new radio station projects as warranted by reviewers' evaluations and PTFP's financial resources. Activation of new radio stations has been delayed in recent years as the Federal Communications Commission (FCC) placed a "freeze" on new applications as it considers a large number of mutually exclusive applications for construction permits.

NTIA anticipates receiving many applications for station activation projects when the FCC begins to accept new applications. In anticipation of increased interest in these types of applications, we are hereby providing the following guidance to potential applicants.

Priority 1A. NTIA's first priority for radio projects remains activations to provide the first public radio signal to an area. These projects have been divided into two subgroups, Priority 1A and Priority 1B. As in the past, Priority 1A status will be given to first public radio signal projects that will originate a local public radio service to a geographic area. A Priority 1A application must include local facilities which are fully staffed for station management and program production.

NTIA has long recognized that new fully-staffed Priority 1A projects are usually submitted by organizations that are beginning to build community support. Priority 1A projects usually also incur significant project costs which are ineligible for Federal support, such as studio building acquisition/renovation and start-up staff costs. Because these projects are NTIA's highest priority, PTFP will continue to fund Priority 1A applications with a presumption of a 75% Federal share, the maximum amount permitted by law.

Priority 1B. Priority 1B status will continue to be given to first public radio signal projects which are repeaters or translators of other public radio facilities, or that will serve significant additional listeners with a first public radio signal through increases in tower height and/or power upgrades.

In recent years, applications for expansion of service have shifted from fully-staffed stations to requests for Priority 1B repeaters and translators. Given the limited availability of Federal funds and the increasing number of applications for new repeater/translator stations, PTFP will now evaluate Priority 1B applications to determine whether or not 75% Federal funding is merited. In general, NTIA will continue its present presumption of 75% Federal funding for Priority 1B applications which construct the applicant's first broadcast facility in a community.

An application requesting a translator upgrade to a repeater station or a project to construct a second station in a community where the applicant already has a facility will be funded by NTIA at a 50% Federal share. These applicants should be able to draw on the financial resources of the community served by the applicant's existing program service and also would incur reduced ineligible start-up costs since the broadcaster would be building upon existing infrastructure. Applications for these types of Priority 1B projects may seek a higher Federal percentage by submitting justification for the increased amount which will be reviewed by PTFP and the peer reviewers.

Power increase projects. Sometimes a project to replace a station's transmitter or antenna results in an increase in coverage to a new, but relatively small, unserved audience. PTFP usually treats these applications with incidental coverage increases as Priority 2 applications if the equipment replacement meets the Priority 2 criteria. If an applicant is requesting a Priority 1B consideration of such an application, the applicant should provide documentation of a significant increase in the population that will receive a first public radio signal. PTFP will evaluate the Priority of such requests on a case-by-case basis.

Second station in a market. Sometimes a project to construct a second station (or other additional stations) in a community results in an increase in coverage to a new, but relatively small, unserved audience. If an applicant is requesting a Priority 1B consideration of such an application, the applicant should provide documentation of a significant increase in the population that will receive a first public radio signal. PTFP will evaluate the Priority of such requests on a case-by-case basis.

Priority 4A. An application to provide an additional public radio signal to an area already served by public radio will continue to be placed in Priority 4A. The project must demonstrate that it

addresses underserved needs in a way that significantly differentiates its services from what is already available in the proposed service area (*see* § 2301.4(b)(ii)(b) of the PTFP Final Rules). In order to extend its resources to assist in signal expansion, NTIA will usually fund Priority 4A additional signal projects at no more than a 50% Federal share. This is due both to the lower priority and reduced ineligible costs of Priority 4A repeater/translator projects which build upon existing infrastructure. Applicants for Priority 4A expansion projects, including those for new fully-staffed facilities, may seek a higher Federal percentage by submitting justification for the increased amount which will be reviewed by PTFP and the peer reviewers.

All new service applications. An applicant proposing to construct a Priority 1A, 1B or Priority 4A facility should provide documentation, including maps or tables, of the number and geographical location of persons who would receive a first public radio signal as a result of the proposed project or who would receive a duplicated public radio signal as a result of the proposed project (*see* § 2301.4(b)(1)(v) of the PTFP Final Rules).

NTIA will permit those applicants whose FY 2002 applications for new service projects were negotiated by PTFP, but were deferred from funding because of the lack of FCC authorizations, to submit FY 2003 applications requesting the same Federal percentage as their FY 2002 applications.

(B) Radio Station Conversion to Digital Transmission

NTIA encourages the use of digital technologies for public radio facilities. For several years, NTIA has funded projects for digital STLs and audio production equipment which will assist public radio stations as they prepare for conversion to digital technologies. These digital projects are funded as equipment replacement, improvement, or augmentation projects with the presumption of a 50% Federal share unless a showing of extraordinary need for a higher percentage has been made pursuant to § 2301.6(b)(ii) of the PTFP Rules. NTIA will continue to support digital non-transmission equipment for radio as it has been doing for more than a decade.

Digital conversion projects. On October 10, 2002, the FCC approved digital transmission for radio stations, although it has not yet published regulations for such stations. Unlike the digital conversion of television stations, the FCC has not established a deadline for the conversion of radio stations. In addition, there is the question of when receivers will be generally available for purchase by the public. These factors raise the issue of whether projects whose primary purpose is to begin digital radio broadcasts present compelling urgency for funding in the FY 2003 grant round.

NTIA continues to examine with interest the development of digital radio, but shares many of the concerns which were recently expressed by the Digital Radio & Television Consultation Panels established by the Corporation for Public Broadcasting (CPB). In their joint recommendations, the Panels recommended that CPB set aside $3.5 million for conversion of public radio stations in 13 seed markets identified by Ibiquity, the developer of the digital radio standard. (The seed markets are Atlanta, Boston, Chicago, Dallas, Denver, Detroit, Las Vegas, Los Angeles, Miami, New York, San Francisco, Seattle, and Washington, DC.) Public radio stations serving these thirteen communities collectively provide service to more than 30% of public radio's total national audience.

On August 30, 2002, even before the FCC's October action, the CPB board of directors adopted the Panels recommendations.

The CPB Panels indicated that digital conversion of the stations in the seed markets would provide public radio with an opportunity to assess the risks and benefits of further digital deployment. Conversion of the stations, the joint panel report states, would provide "knowledge that would help stations develop a realistic timetable and plan for digital conversion in the rest of the country."

NTIA believes that the digital conversion of public radio stations in these markets is a reasonable way to begin the orderly transition to digital radio broadcasting. We urge stations in these thirteen markets to consider the funding opportunities presented by the Corporation for Public Broadcasting.

Applications for digital transmission equipment for public radio facilities to convert to digital broadcasting are eligible for PTFP funding although, for the reasons discussed above, we do not believe these applications will demonstrate compelling urgency during the FY 2003 grant round. As with applications for television digital conversion projects, PTFP will place radio applications requesting funds to convert to digital broadcasting in the Broadcast Other category. The presumption of funding for radio projects in the Broadcast Other category is a 50% Federal share.

Digital replacement transmitters. Regarding FY 2003 applications for replacement equipment, NTIA anticipates that it will fund digital-compatible transmitters as analog transmitter replacements, if requested by applicants and justified as urgent replacement of radio transmission equipment. Transmitter replacement applications will be placed in Priority 2 or Priority 4A, as appropriate, depending on whether the applicant provides the only public radio signal to an area (*see* §§ 2301.4(b)(2) and (4)). Reflecting many of the concerns regarding risks and benefits expressed by CPB's Digital Radio and Television Consultation Panel, NTIA believes that FY 2003 is the beginning of a transition period for public radio. PTFP does not anticipate directly funding digital transmitters with HD Radio (IBOC) exciters during the FY 2003 grant cycle. Grant recipients will, however, be able to add IBOC exciters to PTFP-funded digital-compatible transmitters. PTFP grant recipients can use the funds authorized for an analog or digital-compatible radio transmitter towards the purchase of a transmitter with an IBOC exciter. For FY 2003 awards, the maximum amount that PTFP will accept in the final cost of a project which includes an IBOC transmitter/exciter will be limited to the amount initially approved for the analog or digital-compatible transmitter. Any cost for the IBOC transmitter/exciter above the amount initially approved for the analog or digital-compatible transmitter will be the responsibility of the grantee. NTIA reminds potential applicants that licensing fees, including licensing fees related to the use of HD Radio technology, are not eligible for PTFP funds.

(C) Internet Streaming

Given the limited availability of funds, NTIA has emphasized support of basic equipment required for a public broadcast station to serve its local audience (*see* the Final Rules, § 2301.4, passim). NTIA continues to receive more activation and replacement applications than it can fund in any cycle. NTIA has received one or two applications for equipment to provide Internet streaming in each of the past several grant rounds. The applications have not been favorably evaluated by the outside peer reviewers or the national advisory panels.

NTIA has determined that streaming on the Internet goes beyond the provision of a basic local public broadcasting service. Until Internet streaming becomes a basic part of a station's service to its own community, therefore, NTIA will place any applications it receives for streaming equipment in Priority 5B (*see* § 2301.4(b)(5)(ii) of the PTFP Final Rules). Priority 5B relates to equipment required for the production of "programming for regional and national use."

VII. Distance Learning and Nonbroadcast Projects

Since 1979, NTIA has funded nonbroadcast distance learning projects through the Special Applications category as established in § 2301.4(a) of the PTFP Rules. NTIA encourages applications for innovative or unique distance learning projects which address demonstrated and substantial community needs. For fiscal year 2002, NTIA awarded $1 million in funds to four grants for distance learning projects. The awards ranged from $75,000 to $404,047.

The growth of digital technologies provides new opportunities for distance learning projects using both broadcast and nonbroadcast facilities. NTIA encourages applicants to consider the use of digital technologies in proposing unique or innovative distance learning projects for funding in FY 2003. Examples of innovative digital applications might include projects (1) Which use broadband technologies for distance learning, (2) which distribute educational or informational programming via Direct Broadcast Satellite technologies, or (3) which provide multi-media content using the digital television transmission infrastructure and delivered through a method that is not a typical broadcast channel. All distance learning applications must address substantial and demonstrated needs of the communities being served. NTIA is particularly interested in distance learning projects which benefit traditionally underserved audiences, such as projects serving minorities, people living in rural communities, or those living in disadvantaged areas where distance learning services will provide significant educational opportunities.

The November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)) mentioned in the Application Forms and Regulations section discussed a number of issues of particular relevance to applicants proposing nonbroadcast educational and instructional projects and potential improvement of *nonbroadcast* facilities. These policies remain in effect and will be available to all PTFP applicants as part of the Guidelines for preparing FY 2003 PTFP applications.

VIII. Television Broadcasting and Digital Conversion

NTIA is not accepting applications for television broadcasting and digital conversion projects at this time. The Closing Date for these applications was November 19, 2002.

IX. Eligible and Ineligible Costs

Eligible equipment for the FY 2003 Grant Round includes the apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers; antennas; transmitters; remote control equipment; transmission line; translators; microwave equipment; mobile equipment; satellite communications equipment; instructional television fixed service equipment; subsidiary communications authorization transmitting and receiving equipment; cable television equipment; and optical fiber communications equipment.

A complete listing of equipment eligible for funding during the FY 2003 Grant Round is posted on the NTIA Internet site and printed copies are available from PTFP.

Other Costs

(1) *Construction Applications:* NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain "pre-operational expenses" are eligible for funding. (*See* 15 CFR 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading *Support for Salary Expenses* in the introductory section of the document.

(2) *Planning Applications.* (a) *Eligible:* Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of 47 U.S.C. 392 (c). (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) *Audit Costs.* Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $300,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

NTIA recognizes that most of its grant recipients are divisions of state and local governments or are public broadcasting facilities, all of which routinely conduct annual audits. In order to make the maximum amount of monies available for equipment purchases and planning activities, NTIA will, therefore, fund audit costs only in exceptional circumstances.

X. Notice of Applications Received

In accordance with 15 CFR 2301.13, NTIA will publish a listing of all applications received by the Agency. The listing will be placed on the NTIA Internet site and NTIA also will make this information available by mail upon request. The address of the NTIA Internet site is: *www.ntia.doc.gov/ptfp.* Listing an application merely acknowledges receipt of an application to compete for funding with other applications. This listing does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application, nor does it assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party.

XI. Evaluation Process

See 15 CFR 2301,16 for a description of the Technical Evaluation and 15 CFR 2301.17 for the Evaluation Criteria.

XII. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary recommendations for the PTFP Director. These recommendations incorporate outside reviewers rankings and recommendations, engineering assessments, and input from the National Advisory Panel, State Single Point of Contacts and state telecommunications agencies. Staff recommendations also consider project impact, the cost/benefit of a project and whether review panels have consistently applied the evaluation criteria. The PTFP Director will consider the summary recommendations prepared by program staff, will recommend the funding order

of the applications, and will present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval of the recommended slate. The PTFP Director recommends the funding order for applications in three categories: "Recommended for Funding," "Recommended for Funding if Funds Are Available," and "Not Recommended for Funding." *See* 15 CFR 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Communications and Information, the NTIA Administrator.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR 2301.1(a) and (c). Prior to award, applications may be negotiated between PTFP staff and the applicant to resolve whatever differences might exist between the original request and what PTFP proposes to fund. Some applications may be dropped from the proposed slate due to lack of FCC licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. The PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR 2301.18. The Administrator then makes the final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR 2301.1(a) and (c).

XIII. Disposition of Unsuccessful Applications

PTFP will retain unsuccessful applications through the Closing Date of the FY 2004 grant cycle. Applicants may reactivate their unsuccessful applications pursuant to § 2301.9 of the PTFP Rules. Unsuccessful applications not reactivated by the Closing Date of the next grant cycle will be destroyed.

XIV. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods for grants in the five broadcast Priorities and nonbroadcast Special Applications category commonly range from one to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

XV. NTIA Policies on Procedural Matters

Based upon NTIA's experience during the PTFP 2002 Grant Round, NTIA has determined that it is in the best interest of NTIA and applicants to continue recent policies regarding three procedural matters. The following policies are applicable only to the FY 2003 PTFP Grant Round and resulting awards.

Applications Resulting from Catastrophic Damage or Emergency Situations

Section 2301.10 provides for submission of applications resulting from catastrophic damage or emergency situations. NTIA would like to clarify its implementation of this provision. While the intent of this Notice is to address FY 2003 radio applications, applicants for radio or television projects may submit applications resulting from catastrophic damage or emergency situations.

For FY 2003 PTFP applicants, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of significant equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment, it may file an emergency application for PTFP funding at any time. NTIA limits this request to equipment essential to a station's continued operation such as transmitters, towers, antennas, STLs or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

When submitting an emergency application, the applicant should describe the circumstances that prompt the request and should provide appropriate supporting documentation. NTIA requires that applicants claiming significant failure of equipment will document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

NTIA will grant an award only if it determines that (1) the emergency satisfies this policy, and (2) the applicant either carried adequate insurance or had acceptable self-insurance coverage.

Applications filed and accepted for emergency applications must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

NTIA will evaluate the application according to the evaluation criteria set forth in § 2301.17(b). The PTFP Director takes into account program staff evaluations (including the outside reviewers) the availability of funds, the type of project and broadcast priorities set forth at § 2301.4(b), and whether the applicant has any current NTIA grants. The Director presents recommendations to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. Upon approval by the OTIA Associate Administrator, the Director's recommendation will be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator makes final award selections taking into consideration the Director's recommendation and the degree to which the application fulfills the requirements for an emergency award and satisfies the program's stated purposes set forth at § 2301.1(a) and (c).

Service of Applications

FY 2003 PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. NTIA routinely notifies the FCC of projects submitted for funding which require FCC authorizations.

FY 2003 PTFP applicants for distance learning projects are not required to notify every state telecommunications agency in a potential service area. Many distance learning applications propose projects which are nationwide in nature. NTIA, therefore, believes that the requirement to provide a summary copy of the application in every state telecommunications agency in a potential service area is unduly burdensome to applicants. NTIA, however, does expect that distance learning applicants will notify the state telecommunications agencies in the states in which they are located.

FCC Authorizations

For the FY 2003 PTFP Grant Round, applicants may submit applications to the FCC after the closing date, but do so at their own risk. Applicants are urged to submit their FCC applications with as much time before the PTFP closing date as possible. No grant will be awarded for a project requiring FCC authorization until confirmation has been received by NTIA from the FCC that the necessary authorization will be issued.

For FY 2003 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations to operate the uplink prior to the release of Federal funds.

For FY 2003 PTFP applications, NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant in certain circumstances. Applicants requiring the use of FCC authorizations issued to another organization should discuss in the application Program Narrative why the FCC authorization must be in the other organization's name. NTIA believes that such circumstances will be rare and, in its experience, are usually limited to authorizations such as those for microwave interconnections or satellite uplinks.

As noted above, for FY 2003 PTFP applications, NTIA does not require that the FCC applications be filed by the closing date. While NTIA is permitting submission of FCC applications after the closing date, applicants are reminded that they must continue to provide copies of FCC applications, as they were filed or will be filed, or equivalent engineering data, in the PTFP application so NTIA can properly evaluate the equipment request. These include applications for permits, construction permits and licenses already received for (1) Construction of broadcast station, (including a digital broadcasting facility) or translator, (2) microwave facilities, (3) ITFS authorizations, (4) SCA authorizations, and (5) requests for extensions of time.

For those applicants whose projects require authorization by the FCC, information about FCC filing procedures can be found on the Internet at: *www.fcc.gov.*

XVI. Intergovernmental Review

Applicants should note that they must continue to comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before the Closing Date. Applicants are encouraged to contact the appropriate SPOC well before their PTFP closing date. A listing of the state SPOC offices may be found with the PTFP application materials at the NTIA Internet site. A list of the SPOC offices is available from NTIA (*see* the Address section above).

XVII. Other Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

XVIII. Executive Order 12866

It has been determined that this notice is a "not significant" rule under Executive Order 12866.

XIX. Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

XX. Regulatory Flexibility Analysis

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice related to public property, loans, grants, benefits or contracts, 5 U.S.C. 553(a), Regulatory Flexibility Analysis is not required and has not been prepared for this notice. 5 U.S.C. 601 *et seq.*

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 03–5136 Filed 3–4–03; 8:45 am]

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Federal Register

Wednesday,
March 5, 2003

Part IV

The President

Executive Order 13286—Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security

Executive Order 13287—Preserve America

Federal Register
Vol. 68, No. 43
Wednesday, March 5, 2003

Presidential Documents

Title 3—

The President

Executive Order 13286 of February 28, 2003

Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (Public Law 107–296) and section 301 of title 3, United States Code, and in order to reflect the transfer of certain functions to, and other responsibilities vested in, the Secretary of Homeland Security, the transfer of certain agencies and agency components to the Department of Homeland Security, and the delegation of appropriate responsibilities to the Secretary of Homeland Security, it is hereby ordered as follows:

Section 1. Executive Order 13276 of November 15, 2002 ("Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region"), is amended by:

(a) striking "The Attorney General" wherever it appears in section 1 and inserting "The Secretary of Homeland Security" in lieu thereof; and

(b) striking "the Attorney General" wherever it appears in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 2. Executive Order 13274 of September 18, 2002 ("Environmental Stewardship and Transportation Infrastructure Project Reviews"), is amended by inserting "Secretary of Homeland Security," after "Secretary of Defense," in section 3(b).

Sec. 3. Executive Order 13271 of July 9, 2002 ("Establishment of the Corporate Fraud Task Force"), is amended by:

(a) inserting "(b) the Secretary of Homeland Security;" after "(a) the Secretary of the Treasury;" in section 4; and

(b) relettering the subsequent subsections in section 4 appropriately.

Sec. 4. Executive Order 13260 of March 19, 2002 ("Establishing the President's Homeland Security Advisory Council and Senior Advisory Committees for Homeland Security"), is amended by:

(a) striking "the Assistant to the President for Homeland Security (Assistant)" in section 1(c) and inserting "the Secretary of Homeland Security (Secretary)" in lieu thereof;

(b) striking "the Assistant" wherever it appears in sections 2 and 3 and inserting "the Secretary" in lieu thereof;

(c) striking "the Office of Administration" in section 3(d) and inserting "the Department of Homeland Security" in lieu thereof;

(d) striking "the Administrator of General Services" in section 4(a) and inserting "the Secretary of Homeland Security" in lieu thereof; and

(e) inserting "of General Services" after "Administrator" in section 4(a).

Executive Order 13260 of March 19, 2002, is hereby revoked effective as of March 31, 2003.

Sec. 5. Executive Order 13257 of February 13, 2002 ("President's Interagency Task Force to Monitor and Combat Trafficking in Persons"), is amended by:

(a) inserting "(v) the Secretary of Homeland Security;" after "(iv) the Secretary of Health and Human Services;" in section 1(b); and

(b) renumbering the subsequent subsections in section 1(b) appropriately.

Sec. 6. Executive Order 13254 of January 29, 2002 ("Establishing the USA Freedom Corps"), is amended by striking "Director of the Federal Emergency Management Agency;" in section 3(b)(viii) and inserting "Secretary of Homeland Security;" in lieu thereof.

Sec. 7. Executive Order 13231 of October 16, 2001 ("Critical Infrastructure Protection in the Information Age"), as amended, is further amended to read in its entirety as follows:

"Critical Infrastructure Protection in the Information Age

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure protection of information systems for critical infrastructure, including emergency preparedness communications and the physical assets that support such systems, in the information age, it is hereby ordered as follows:

Section 1. *Policy.* The information technology revolution has changed the way business is transacted, government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures. It is the policy of the United States to protect against disruption of the operation of information systems for critical infrastructure and thereby help to protect the people, economy, essential human and government services, and national security of the United States, and to ensure that any disruptions that occur are infrequent, of minimal duration, and manageable, and cause the least damage possible. The implementation of this policy shall include a voluntary public-private partnership, involving corporate and nongovernmental organizations.

Sec. 2. *Continuing Authorities.* This order does not alter the existing authorities or roles of United States Government departments and agencies. Authorities set forth in 44 U.S.C. chapter 35, and other applicable law, provide senior officials with responsibility for the security of Federal Government information systems.

(a) Executive Branch Information Systems Security. The Director of the Office of Management and Budget (OMB) has the responsibility to develop and oversee the implementation of government-wide policies, principles, standards, and guidelines for the security of information systems that support the executive branch departments and agencies, except those noted in section 2(b) of this order. The Director of OMB shall advise the President and the appropriate department or agency head when there is a critical deficiency in the security practices within the purview of this section in an executive branch department or agency.

(b) National Security Information Systems. The Secretary of Defense and the Director of Central Intelligence (DCI) shall have responsibility to oversee, develop, and ensure implementation of policies, principles, standards, and guidelines for the security of information systems that support the operations under their respective control. In consultation with the Assistant to the President for National Security Affairs and the affected departments and agencies, the Secretary of Defense and the DCI shall develop policies, principles, standards, and guidelines for the security of national security information systems that support the operations of other executive branch departments and agencies with national security information.

(i) Policies, principles, standards, and guidelines developed under this subsection may require more stringent protection than those developed in accordance with section 2(a) of this order.

(ii) The Assistant to the President for National Security Affairs shall advise the President and the appropriate department or agency when there is a critical deficiency in the security practices of a department or agency within the purview of this section.

(iii) National Security Systems. The National Security Telecommunications and Information Systems Security Committee, as established by

and consistent with NSD–42 and chaired by the Department of Defense, shall be designated as the "Committee on National Security Systems."

(c) Additional Responsibilities. The heads of executive branch departments and agencies are responsible and accountable for providing and maintaining adequate levels of security for information systems, including emergency preparedness communications systems, for programs under their control. Heads of such departments and agencies shall ensure the development and, within available appropriations, funding of programs that adequately address these mission systems, especially those critical systems that support the national security and other essential government programs. Additionally, security should enable, and not unnecessarily impede, department and agency business operations.

Sec. 3. *The National Infrastructure Advisory Council.* The National Infrastructure Advisory Council (NIAC), established on October 16, 2001, shall provide the President through the Secretary of Homeland Security with advice on the security of information systems for critical infrastructure supporting other sectors of the economy: banking and finance, transportation, energy, manufacturing, and emergency government services.

(a) Membership. The NIAC shall be composed of not more than 30 members appointed by the President. The members of the NIAC shall be selected from the private sector, academia, and State and local government. Members of the NIAC shall have expertise relevant to the functions of the NIAC and generally shall be selected from industry Chief Executive Officers (and equivalently ranked leaders of other organizations) with responsibilities for security of information infrastructure supporting the critical sectors of the economy, including banking and finance, transportation, energy, communications, and emergency government services. Members shall not be full-time officials or employees of the executive branch of the Federal Government. The President shall designate a Chair and Vice Chair from among the members of the NIAC.

(b) Functions of the NIAC. The NIAC will meet periodically to:

(i) enhance the partnership of the public and private sectors in protecting information systems for critical infrastructures and provide reports on this issue to the Secretary of Homeland Security, as appropriate;

(ii) propose and develop ways to encourage private industry to perform periodic risk assessments of critical information and telecommunications systems;

(iii) monitor the development of private sector Information Sharing and Analysis Centers (ISACs) and provide recommendations to the President through the Secretary of Homeland Security on how these organizations can best foster improved cooperation among the ISACs, the Department of Homeland Security, and other Federal Government entities;

(iv) report to the President through the Secretary of Homeland Security, who shall ensure appropriate coordination with the Assistant to the President for Homeland Security, the Assistant to the President for Economic Policy, and the Assistant to the President for National Security Affairs under the terms of this order; and

(v) advise lead agencies with critical infrastructure responsibilities, sector coordinators, the Department of Homeland Security, and the ISACs.

(c) Administration of the NIAC.

(i) The NIAC may hold hearings, conduct inquiries, and establish subcommittees, as appropriate.

(ii) Upon request of the Chair, and to the extent permitted by law, the heads of the executive departments and agencies shall provide the NIAC with information and advice relating to its functions.

(iii) Senior Federal Government officials may participate in the meetings of the NIAC, as appropriate.

(iv) Members shall serve without compensation for their work on the NIAC. However, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Federal Government service (5 U.S.C. 5701–5707).

(v) To the extent permitted by law and subject to the availability of appropriations, the Department of Homeland Security shall provide the NIAC with administrative services, staff, and other support services, and such funds as may be necessary for the performance of the NIAC's functions.

(d) General Provisions.

(i) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the NIAC, the functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Department of Homeland Security in accordance with the guidelines and procedures established by the Administrator of General Services.

(ii) The NIAC shall terminate on October 15, 2003, unless extended by the President.

(iii) Executive Order 13130 of July 14, 1999, was revoked on October 16, 2001.

(iv) Nothing in this order shall supersede any requirement made by or under law.

Sec. 4. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its depart ments, agencies, or other entities, its officers or employees, or any other person."

Sec. 8. Executive Order 13228 of October 8, 2001 ("Establishing the Office of Homeland Security and the Homeland Security Council"), as amended, is further amended by:

(a) amending section 3(g) to read "(g) *Incident Management.* Consistent with applicable law, including the statutory functions of the Secretary of Homeland Security, the Assistant to the President for Homeland Security shall be the official primarily responsible for advising and assisting the President in the coordination of domestic incident management activities of all departments and agencies in the event of a terrorist threat, and during and in the aftermath of terrorist attacks, major disasters, or other emergencies, within the United States. Generally, the Assistant to the President for Homeland Security shall serve as the principal point of contact for and to the President with respect to the coordination of such activities. The Assistant to the President for Homeland Security shall coordinate with the Assistant to the President for National Security Affairs, as appropriate."; and

(b) inserting ", including the Department of Homeland Security" after "Government departments and agencies" in section 7.

Sec. 9. Executive Order 13223 of September 14, 2001 ("Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation"), as amended, is further amended by:

(a) striking "the Secretary of Transportation" in the title and wherever it appears in sections 1, 5, 6, and 7, and inserting "the Secretary of Homeland Security" in lieu thereof; and

(b) striking "the Department of Transportation" in section 7 and inserting "the Department of Homeland Security" in lieu thereof.

Sec. 10. Executive Order 13212 of May 18, 2001 ("Actions to Expedite Energy-Related Projects"), is amended by inserting "Homeland Security," after "Veterans Affairs," in section 3.

Sec. 11. Executive Order 13165 of August 9, 2000 ("Creation of the White House Task Force on Drug Use in Sports and Authorization for the Director of the Office of National Drug Control Policy to Serve as the United States Government's Representative on the Board of the World Anti-Doping Agency"), is amended by inserting "the Department of Homeland Security," after "the Department of Transportation," in section 2.

Sec. 12. Executive Order 13154 of May 3, 2000 ("Establishing the Kosovo Campaign Medal"), is amended by striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 13. Executive Order 13133 of August 5, 1999 ("Working Group on Unlawful Conduct on the Internet"), is amended by:

(a) inserting "(6) The Secretary of Homeland Security." after "(5) The Secretary of Education." in section 3(a); and

(b) renumbering the subsequent subsections in section 3(a) appropriately.

Sec. 14. Executive Order 13120 of April 27, 1999 ("Ordering the Selected Reserve and Certain Individual Ready Reserve Members of the Armed Forces to Active Duty"), is amended by striking "the Secretary of Transportation" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 15. Executive Order 13112 of February 3, 1999 ("Invasive Species"), is amended by inserting "the Secretary of Homeland Security," after "Secretary of Transportation," in section 3(a).

Sec. 16. Executive Order 13100 of August 25, 1998 ("President's Council on Food Safety"), is amended by inserting "and Homeland Security," after "Health and Human Services," in section 1(a).

Sec. 17. Executive Order 13076 of February 24, 1998 ("Ordering the Selected Reserve of the Armed Forces to Active Duty"), is amended by striking "the Secretary of Transportation" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 18. Executive Order 13011 of July 16, 1996 ("Federal Information Technology"), as amended, is further amended by:

(a) striking "17. Federal Emergency Management Agency;" in section 3(b); and

(b) renumbering the subsequent subsections in section 3(b) appropriately.

Sec. 19. Executive Order 12989 of February 13, 1996 ("Economy and Efficiency in Government Procurement through Compliance with Certain Immigration and Naturalization Act Provisions"), is amended by:

(a) striking "Naturalization" in the title and inserting "Nationality" in lieu thereof;

(b) striking ", the Attorney General" in section 3;

(c) inserting "the Secretary of Homeland Security" before "may" in section 3(a);

(d) inserting "the Secretary of Homeland Security" before "shall" in section 3(b);

(e) inserting "the Attorney General" before "shall" in section 3(c);

(f) inserting "Secretary of Homeland Security or the" before "Attorney General" wherever it appears in section 4;

(g) striking "The Attorney General's" in section 4(b) and inserting "Such" in lieu thereof;

(h) striking "the Attorney General" wherever it appears in the first two sentences of section 5(a) and inserting "the Secretary of Homeland Security and Attorney General" in lieu thereof;

(i) striking "the responsibilities of the Attorney General" in section 5(a) and inserting "their respective responsibilities" in lieu thereof;

(j) inserting "Secretary of Homeland Security or the" before "Attorney General" wherever in appears in the third sentence of section 5(a);

(k) inserting "Secretary of Homeland Security and the" before "Attorney General" in section 6;

(l) striking "the Attorney General's" in section 6 and inserting "their respective" in lieu thereof; and

(m) inserting "Secretary of Homeland Security, the" before "Attorney General" in section 7.

Sec. 20. Executive Order 12985 of January 11, 1996 ("Establishing the Armed Forces Service Medal"), is amended by striking "the Secretary of Transportation" in section 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 21. Executive Order 12982 of December 8, 1995 ("Ordering the Selected Reserve of the Armed Forces to Active Duty"), is amended by striking "the Secretary of Transportation" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 22. Executive Order 12978 of October 21, 1995 ("Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers"), is amended by inserting ", the Secretary of Homeland Security," after "the Attorney General" wherever it appears in sections 1 and 4.

Sec. 23. Executive Order 12977 of October 19, 1995 ("Interagency Security Committee"), is amended by:

(a) striking "the Administrator of General Services ("Administrator")" in section 1(a) and inserting "the Secretary of Homeland Security ("Secretary")" in lieu thereof;

(b) striking "and" after "(16) Central Intelligence Agency;" in section 1(b);

(c) inserting "and (18) General Services Administration;" after "(17) Office of Management and Budget;" in section 1(b);

(d) striking section 1(c)(2) and redesignating sections 1(c)(3) and 1(c)(4) as sections 1(c)(2) and 1(c)(3), respectively;

(e) striking "Administrator" wherever it appears in sections 2, 5(a)(3)(E), 6(a), and 6(c), and inserting "Secretary" in lieu thereof; and

(f) striking ", acting by and through the Assistant Commissioner," in section 6(c).

Sec. 24. Executive Order 12919 of June 3, 1994 ("National Defense Industrial Resources Preparedness"), is amended by:

(a) striking "The Director, Federal Emergency Management Agency ("Director, FEMA")" in section 104(b) and inserting "The Secretary of Homeland Security ("the Secretary")" in lieu thereof;

(b) striking "The Director, FEMA," in sections 201(c) and 601(f) and inserting "The Secretary" in lieu thereof;

(c) striking "the Director, FEMA," wherever it appears in sections 201(e), 202(c), 305, 501, 701(e), and 802(e), and inserting "the Secretary" in lieu thereof; and

(d) inserting "the Department of Homeland Security," after "Attorney General," in section 801.

Sec. 25. Executive Order 12906 of April 11, 1994 ("Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure"), is amended by:

(a) striking "and" in section 7(b)(ii);

(b) striking the period at the end of section 7(b)(iii) and inserting "; and" in lieu thereof; and

(c) inserting a new section 7(b)(iv) to read "(iv) the national security-related activities of the Department of Homeland Security as determined by the Secretary of Homeland Security.".

Sec. 26. Executive Order 12870 of September 30, 1993 ("Trade Promotion Coordinating Committee"), is amended by:

(a) inserting "(j) Department of Homeland Security;" after "(i) Department of the Interior;" in section 1; and

(b) relettering the subsequent subsections in section 1 appropriately.

Sec. 27. Executive Order 12835 of January 25, 1993 ("Establishment of the National Economic Council"), is amended by:

(a) inserting "(k) Secretary of Homeland Security;" after "(j) Secretary of Energy;" in section 2; and

(b) relettering the subsequent subsections in section 2 appropriately.

Sec. 28. Executive Order 12830 of January 9, 1993 ("Establishing the Military Outstanding Volunteer Service Medal"), is amended by striking "the Secretary of Transportation" wherever it appears and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 29. Executive Order 12824 of December 7, 1992 ("Establishing the Transportation Distinguished Service Medal"), is amended by:

(a) striking "Transportation" in the title and inserting "Homeland Security" in lieu thereof; and

(b) striking "Transportation" wherever it appears and inserting "Homeland Security" in lieu thereof.

Sec. 30. Executive Order 12807 of May 24, 1992 ("Interdiction of Illegal Aliens"), is amended by striking "the Attorney General" in section 2(c)(3) and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 31. Executive Order 12793 of March 20, 1992 ("Continuing the Presidential Service Certificate and Presidential Service Badge"), is amended by striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 32. Executive Order 12789 of February 10, 1992 ("Delegation of Reporting Functions Under the Immigration Reform and Control Act of 1986"), is amended by striking "The Attorney General" in section 1 and inserting "The Secretary of Homeland Security" in lieu thereof.

Sec. 33. Executive Order 12788 of January 15, 1992 ("Defense Economic Adjustment Program"), is amended by:

(a) inserting "(15) Secretary of Homeland Security;" after "(14) Secretary of Veterans Affairs;" in section 4(a); and

(b) renumbering the subsequent subsections in section 4(a) appropriately.

Sec. 34. Executive Order 12777 of October 18, 1991 ("Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990"), is amended by:

(a) inserting "and the Secretary of the Department in which the Coast Guard is operating" after "the Secretary of Transportation" in sections 2(b)(2) and 2(d)(2);

(b) striking "the Secretary of Transportation" in section 2(e)(2) and wherever it appears in sections 5 and 8 and inserting "the Secretary of the Department in which the Coast Guard is operating" in lieu thereof; and

(c) inserting "the Secretary of the Department in which the Coast Guard is operating," after "Agriculture," in section 10(c).

Sec. 35. Executive Order 12743 of January 18, 1991 ("Ordering the Ready Reserve of the Armed Forces to Active Duty"), is amended by:

(a) striking "the Department of Transportation" in section 1 and inserting "the Department of Homeland Security" in lieu thereof; and

(b) striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 36. Executive Order 12742 of January 8, 1991 ("National Security Industrial Responsiveness"), is amended by:

(a) inserting "Homeland Security," after "Transportation," in section 104(a); and

(b) striking "the Director of the Federal Emergency Management Agency" in section 104(d) and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 37. Executive Order 12733 of November 13, 1990 ("Authorizing the Extension of the Period of Active Duty of Personnel of the Selected Reserve of the Armed Forces"), is amended by striking "the Secretary of Transportation" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 38. Executive Order 12728 of August 22, 1990 ("Delegating the President's Authority to Suspend any Provision of Law Relating to the Promotion, Retirement, or Separation of Members of the Armed Forces"), is amended by striking "the Secretary of Transportation" in sections 1 and 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 39. Executive Order 12727 of August 27, 1990 ("Ordering the Selected Reserve of the Armed Forces to Active Duty"), is amended by striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 40. Executive Order 12699 ("Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction"), is amended by:

(a) striking "Federal Emergency Management Agency (FEMA)" in section 3(d) and inserting "Department of Homeland Security" in lieu thereof;

(b) striking "The Director of the Federal Emergency Management Agency" in section 4(a) and inserting "The Secretary of Homeland Security" in lieu thereof; and

(c) striking "The Federal Emergency Management Agency" and "The FEMA" in section 5 and inserting "The Department of Homeland Security" in lieu thereof (in both places).

Sec. 41. Executive Order 12657 of November 18, 1988 ("Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants"), is amended by:

(a) striking "Federal Emergency Management Agency" in the title and inserting "Department of Homeland Security" in lieu thereof;

(b) striking "Federal Emergency Management Agency ("FEMA")" in section 1(b) and inserting "Department of Homeland Security ("DHS")" in lieu thereof;

(c) striking "FEMA" wherever it appears in sections 1(b), 2(b), 2(c), 3, 4, 5, and 6, and inserting "DHS" in lieu thereof; and

(d) striking "the Director of FEMA" in section 2(a) and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 42. Executive Order 12656 of November 18, 1988 ("Assignment of Emergency Preparedness Responsibilities"), as amended, is further amended by:

(a) striking "The Director of the Federal Emergency Management Agency" wherever it appears in sections 104(c) and 1702 and inserting "The Secretary of Homeland Security" in lieu thereof;

(b) striking "the Director of the Federal Emergency Management Agency" wherever it appears in sections 104(c), 201(15), 301(9), 401(10), 501(4), 501(7), 502(7), 601(3), 701(5), 801(9), 1302(4), 1401(4), 1701, and 1801(b), and inserting "the Secretary of Homeland Security" in lieu thereof;

(c) striking "consistent with current National Security Council guidelines and policies" in section 201(15) and inserting "consistent with current Presidential guidelines and policies" in lieu thereof;

(d) striking "Secretary" in section 501(9) and inserting "Secretaries" in lieu thereof;

(e) inserting "and Homeland Security" after "Labor" in section 501(9);

(f) striking "and" after "State" in section 701(6) and inserting a comma in lieu thereof;

(g) inserting ", and Homeland Security" after "Defense" in section 701(6);

(h) striking "the Director of the Federal Emergency Management Agency," in section 701(6); and

(i) striking "Federal Emergency Management Agency" in the title of Part 17 and inserting "Department of Homeland Security" in lieu thereof.

Without prejudice to subsections (a) through (i) of this section, all responsibilities assigned to specific Federal officials pursuant to Executive Order 12656 that are substantially the same as any responsibility assigned to, or function transferred to, the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002 (regardless of whether such responsibility or function is expressly required to be carried out through another official of the Department of Homeland Security or not pursuant to such Act), or intended or required to be carried out by an agency or an agency component transferred to the Department of Homeland Security pursuant to such Act, are hereby reassigned to the Secretary of Homeland Security.

Sec. 43. Executive Order 12580 of January 23, 1987 ("Superfund Implementation"), as amended, is further amended by:

(a) inserting "Department of Homeland Security," after Department of Energy," in section 1(a)(2); and

(b) striking "Federal Emergency Management Agency" in section 1(a)(2).

Sec. 44. Executive Order 12555 of November 15, 1985 ("Protection of Cultural Property"), as amended, is further amended by:

(a) striking "the Secretary of the Treasury" in sections 1, 2, and 3, and inserting "the Secretary of Homeland Security" in lieu thereof; and

(b) striking "The Department of the Treasury" in the heading of section 3 and inserting "The Department of Homeland Security" in lieu thereof.

Sec. 45. Executive Order 12501 of January 28, 1985 ("Arctic Research"), is amended by:

(a) inserting "(i) Department of Homeland Security;" after "(h) Department of Health and Human Services;" in section 8; and

(b) relettering the subsequent subsections in section 8 appropriately.

Sec. 46. Executive Order 12472 of April 3, 1984 ("Assignment of National Security and Emergency Preparedness Telecommunications Functions"), is amended by:

(a) inserting "the Homeland Security Council," after "National Security Council," in sections 1(b), 1(e)(4), 1(f)(3), and 2(c)(4);

(b) striking "The Secretary of Defense" in section 1(e) and inserting "The Secretary of Homeland Security" in lieu thereof;

(c) striking "Federal Emergency Management Agency" in sections 1(e)(3) and 3(j) and inserting "Department of Homeland Security" in lieu thereof;

(d) inserting ", in consultation with the Homeland Security Council," after "National Security Council" in section 2(b)(1);

(e) inserting ", the Homeland Security Council," after "National Security Council" in sections 2(d) and 2(e);

(f) striking "the Director of the Federal Emergency Management Agency" in section 2(d)(1) and inserting "the Secretary of Homeland Security" in lieu thereof;

(g) striking "Federal Emergency Management Agency. The Director of the Federal Emergency Management Agency shall:" in section 3(b) and inserting "Department of Homeland Security. The Secretary of Homeland Security shall:" in lieu thereof; and

(h) adding at the end of section 3(d) the following new paragraph: "(3) Nothing in this order shall be construed to impair or otherwise affect the

authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title.".

Sec. 47. Executive Order 12382 of September 13, 1982 ("President's National Security Telecommunications Advisory Committee"), as amended, is further amended by:

(a) inserting "through the Secretary of Homeland Security," after "the President," in sections 2(a) and 2(b);

(b) striking "and to the Secretary of Defense" in section 2(e) and inserting ", through the Secretary of Homeland Security," in lieu thereof; and

(c) striking "the Secretary of Defense" in sections 3(c) and 4(a) and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 48. Executive Order 12341 of January 21, 1982 ("Cuban and Haitian Entrants"), is amended by:

(a) striking "The Attorney General" in section 2 and inserting "The Secretary of Homeland Security" in lieu thereof; and

(b) striking "the Attorney General" in section 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 49. Executive Order 12208 of April 15, 1980 ("Consultations on the Admission of Refugees"), as amended, is further amended by:

(a) striking "the following functions: (a) To" in section 1–101 and inserting "to" in lieu thereof;

(b) striking "the Attorney General" in section 1–101(a) and inserting "the Secretary of Homeland Security" in lieu thereof;

(c) striking sections 1–101(b) and 1–102; and

(d) redesignating sections 1–103 and 1–104 as sections 1–102 and 1–103, respectively.

Sec. 50. Executive Order 12188 of January 2, 1980 ("International Trade Functions"), as amended, is further amended by:

(a) inserting "(12) The Secretary of Homeland Security" after "(11) The Secretary of Energy" in section 1–102(b); and

(b) renumbering the subsequent subsections in section 1–102(b) appropriately.

Sec. 51. Executive Order 12160 of September 26, 1979 ("Providing for Enhancement and Coordination of Federal Consumer Programs"), as amended, is further amended by:

(a) inserting "(m) Department of Homeland Security." after "(l) Department of the Treasury." in section 1–102;

(b) striking "(s) Federal Emergency Management Agency." in section 1–102; and

(c) relettering the subsequent subsections in section 1–102 appropriately.

Sec. 52. Executive Order 12148 of July 20, 1979 ("Federal Emergency Management"), as amended, is further amended by:

(a) striking "the Federal Emergency Management Agency" whenever it appears and inserting "the Department of Homeland Security" in lieu thereof; and

(b) striking "the Director of the Federal Emergency Management Agency" wherever it appears and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 53. Executive Order 12146 of July 18, 1979 ("Management of Federal Legal Resources"), as amended, is further amended by:

(a) striking "15" in section 1–101 and inserting "16" in lieu thereof;

(b) inserting "(n) The Department of Homeland Security." after "(m) The Department of the Treasury." in section 1–102; and

(c) relettering the subsequent subsections in section 1–102 appropriately.

Sec. 54. Executive Order 12002 of July 7, 1977 ("Administration of Export Controls"), as amended, is further amended by inserting ", the Secretary of Homeland Security," after "The Secretary of Energy" in section 3.

Sec. 55. Executive Order 11965 of January 19, 1977 ("Establishing the Humanitarian Service Medal"), is amended by striking "the Secretary of Transportation" wherever it appears in sections 1, 2, and 4, and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 56. Executive Order 11926 of July 19, 1976 ("The Vice Presidential Service Badge"), is amended by striking "the Secretary of Transportation" in section 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 57. Executive Order 11858 of May 7, 1975 ("Foreign Investment in the United States"), as amended, is further amended by:

(a) inserting "(8) The Secretary of Homeland Security." after "(7) The Attorney General." in section 1(a); and

(b) redesignating subsection (8) as subsection (9) in section 1(a).

Sec. 58. Executive Order 11800 of August 17, 1974 ("Delegating Certain Authority Vested in the President by the Aviation Career Incentive Act of 1974"), as amended, is further amended by striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 59. Executive Order 11645 of February 8, 1972 ("Authority of the Secretary of Transportation to Prescribe Certain Regulations Relating to Coast Guard Housing"), is amended by striking "the Secretary of Transportation" in the title and in sections 1 and 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 60. Executive Order 11623 of October 12, 1971 ("Delegating to the Director of Selective Service Authority to Issue Rules and Regulations under the Military Selective Service Act"), as amended, is further amended by:

(a) striking "the Secretary of Transportation" in section 2(a) and inserting "the Secretary of Homeland Security" in lieu thereof; and

(b) striking "the Department of Transportation" in section 2(a) and inserting "the Department of Homeland Security" in lieu thereof.

Sec. 61. Executive Order 11448 of January 16, 1969 ("Establishing the Meritorious Service Medal"), as amended, is further amended by striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 62. Executive Order 11446 of January 16, 1969 ("Authorizing the Acceptance of Service Medals and Ribbons from Multilateral Organizations Other Than the United Nations"), is amended by striking "the Secretary of Transportation" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 63. Executive Order 11438 of December 3, 1968 ("Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces"), as amended, is further amended by:

(a) striking "the Secretary of Transportation" in sections 1 and 2 and inserting "the Secretary of Homeland Security" in lieu thereof; and

(b) striking "the Department of Transportation" wherever it appears in sections 2 and 4 and inserting "the Department of Homeland Security" in lieu thereof.

Sec. 64. Executive Order 11366 of August 4, 1967 ("Assigning Authority to Order Certain Persons in the Ready Reserve to Active Duty"), is amended by striking "The Secretary of Transportation" in sections 2 and 3(b) and inserting "The Secretary of Homeland Security" in lieu thereof.

Sec. 65. Executive Order 11239 of July 31, 1965 ("Enforcement of the Convention for Safety of Life at Sea, 1960"), as amended, is further amended,

without prejudice to section 1–106 of Executive Order 12234 of September 3, 1980 ("Enforcement of the Convention for the Safety of Life at Sea"), by:

(a) striking "the Secretary of Transportation" in sections 1, 3, and 4, and inserting "the Secretary of Homeland Security" in lieu thereof; and

(b) striking "The Secretary of Transportation" in sections 2 and 3 and inserting "The Secretary of Homeland Security" in lieu thereof.

Sec. 66. Executive Order 11231 of July 8, 1965 ("Establishing the Vietnam Service Medal"), as amended, is further amended by striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 67. Executive Order 11190 of December 29, 1964 ("Providing for the Screening of the Ready Reserve of the Armed Forces"), as amended, is further amended by striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 68. Executive Order 11139 of January 7, 1964 ("Authorizing Acceptance of the United Nations Medal and Service Ribbon"), is amended by striking "the Secretary of the Treasury" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 69. Executive Order 11079 of January 25, 1963 ("Providing for the Prescribing of Regulations under which Members of the Armed Forces and Others May Accept Fellowships, Scholarships or Grants"), as amended, is further amended by striking "the Secretary of Transportation" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 70. Executive Order 11046 of August 24, 1962 ("Authorizing Award of the Bronze Star Medal"), as amended, is further amended by striking "the Secretary of Transportation" in section 1 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 71. Executive Order 11016 of April 25, 1962 ("Authorizing Award of the Purple Heart"), as amended, is further amended by striking "the Secretary of Transportation" in sections 1 and 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 72. Executive Order 10977 of December 4, 1961 ("Establishing the Armed Forces Expeditionary Medal"), as amended, is further amended by striking "the Secretary of Transportation" in section 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 73. Executive Order 10789 of November 14, 1958 ("Authorizing Agencies of the Government To Exercise Certain Contracting Authority in Connection With National-Defense Functions and Prescribing Regulations Governing the Exercise of Such Authority"), as amended, is further amended by:

(a) striking "The Federal Emergency Management Agency" in paragraph 21 and inserting "Department of Homeland Security" in lieu thereof; and

(b) inserting at the end thereof the following new Part:

"Part III—Coordination with Other Authorities

25. After March 1, 2003, no executive department or agency shall exercise authority granted under paragraph 1A of this order with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology as defined in section 865 of the Homeland Security Act of 2002, unless—

(a) in the case of the Department of Defense, the Secretary of Defense has, after consideration of the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002, determined that the exercise of authority under this order is necessary for the timely and effective conduct of United States military or intelligence activities; and

(b) in the case of any other executive department or agency that has authority under this order, (i) the Secretary of Homeland Security has advised whether the use of the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002 would be appropriate, and (ii) the Director of the Office and Management and Budget has approved the exercise of authority under this order.".

Sec. 74. Executive Order 10694 of January 10, 1957 ("Authorizing the Secretaries of the Army, Navy, and Air Force to Issue Citations in the Name of the President of the United States to Military and Naval Units for Outstanding Performance in Action"), is amended by adding at the end thereof the following new section: "5. The Secretary of the Department in which the Coast Guard is operating may exercise the same authority with respect to the Coast Guard under this order as the Secretary of the Navy may exercise with respect to the Navy and the Marine Corps under this order.".

Sec. 75. Executive Order 10637 of September 16, 1955 ("Delegating to the Secretary of the Treasury Certain Functions of the President Relating to the United States Coast Guard"), is amended by:

(a) striking "The Secretary of the Treasury" in sections 1 and 2 and inserting "The Secretary of Homeland Security" in lieu thereof;

(b) striking "the Secretary of the Treasury" in the title and in subsections 1(j), 1(k), and 5, and inserting "the Secretary of Homeland Security" in lieu thereof; and

(c) striking subsection 1(r) and redesignating subsection 1(s) as subsection 1(r).

Sec. 76. Executive Order 10631 of August 17, 1955 ("Code of Conduct for Members of the Armed Forces of the United States"), as amended, is further amended by: striking "the Secretary of Transportation" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 77. Executive Order 10554 of August 18, 1954 ("Delegating the Authority of the President to Prescribe Regulations Authorizing Occasions Upon Which the Uniform May Be Worn by Persons Who Have Served Honorably in the Armed Forces in Time of War"), is amended by striking "the Secretary of the Treasury" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 78. Executive Order 10499 of November 4, 1953 ("Delegating Functions Conferred Upon the President by Section 8 of the Uniformed Services Contingency Option Act of 1953"), as amended, is further amended by striking "the Treasury" in sections 1 and 2 and inserting "Homeland Security" in lieu thereof.

Sec. 79. Executive Order 10448 of April 22, 1953 ("Authorizing the National Defense Medal"), as amended, is further amended by striking "the Secretary of Transportation" in sections 1 and 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 80. Executive Order 10271 of July 7, 1951 ("Delegating the Authority of the President to Order Members and Units of Reserve Components of the Armed Forces into Active Federal service"), is amended by striking "the Secretary of the Treasury" and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 81. Executive Order 10179 of November 8, 1950 ("Establishing the Korean Service Medal"), as amended, is further amended by striking "the Secretary of the Treasury" in sections 1 and 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 82. Executive Order 10163 of September 25, 1950 ("The Armed Forces Reserve Medal"), as amended, is further amended by striking "the Secretary of the Treasury" in sections 2 and 7 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 83. Executive Order 10113 of February 24, 1950 ("Delegating the Authority of the President to Prescribe Clothing Allowances, and Cash Allowances in lieu thereof, for Enlisted Men in the Armed Forces"), as amended, is further amended by striking "the Secretary of the Treasury" in sections 1 and 2 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 84. Executive Order 4601 of March 1, 1927 ("Distinguished Flying Cross"), as amended, is further amended by:

(a) striking "The Secretary of War, the Secretary of the Navy," in sections 2 and 12 and inserting "The Secretary of Defense" in lieu thereof; and

(b) striking "the Secretary of the Treasury" in sections 2 and 12 and inserting "the Secretary of Homeland Security" in lieu thereof.

Sec. 85. *Designation as a Defense Agency of the United States.*

I hereby designate the Department of Homeland Security as a defense agency of the United States for the purposes of chapter 17 of title 35 of the United States Code.

Sec. 86. *Exception from the Provisions of the Government Employees Training Act.*

Those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis are, pursuant to section 4102(b)(1) of title 5, United States Code, and in the public interest, excepted from the following provisions of the Government Employees Training Act as codified in title 5: sections 4103(a)(1), 4108, 4115, 4117, and 4118, and that part of 4109(a) that provides "under the regulations prescribed under section 4118(a)(8) of this title and".

Sec. 87. *Functions of Certain Officials in the Coast Guard.*

The Commandant and the Assistant Commandant for Intelligence of the Coast Guard each shall be considered a "Senior Official of the Intelligence Community" for purposes of Executive Order 12333 of December 4, 1981, and all other relevant authorities.

Sec. 88. *Order of Succession.*

Subject to the provisions of subsection (b) of this section, the officers named in subsection (a) of this section, in the order listed, shall act as, and perform the functions and duties of, the office of Secretary of Homeland Security ("Secretary") during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary.

(a) Order of Succession.

(i) Deputy Secretary of Homeland Security;

(ii) Under Secretary for Border and Transportation Security;

(iii) Under Secretary for Emergency Preparedness and Response;

(iv) Under Secretary for Information Analysis and Infrastructure Protection;

(v) Under Secretary for Management;

(vi) Under Secretary for Science and Technology;

(vii) General Counsel; and

(viii) Assistant Secretaries in the Department in the order of their date of appointment as such.

(b) Exceptions.

(i) No individual who is serving in an office listed in subsection (a) in an acting capacity shall act as Secretary pursuant to this section.

(ii) Notwithstanding the provisions of this section, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this order in designating an acting Secretary.

Sec. 89. *Savings Provision.*

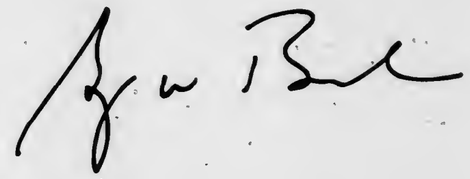
Except as otherwise specifically provided above or in Executive Order 13284 of January 23, 2003 ("Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security"), references in any prior Executive Order relating to an agency or an agency component that is transferred to the Department of Homeland Security ("the Department"), or relating to a function that is transferred to the Secretary of Homeland Security, shall be deemed to refer, as appropriate, to the Department or its officers, employees, agents, organizational units, or functions.

Sec. 90. Nothing in this order shall be construed to impair or otherwise affect the authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title.

Sec. 91. Nothing in this order shall be construed to limit or restrict the authorities of the Central Intelligence Agency and the Director of Central Intelligence pursuant to the National Security Act of 1947 and the CIA Act of 1949.

Sec. 92. This order shall become effective on March 1, 2003.

Sec. 93. This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,
February 28, 2003.

[FR Doc. 03–5343
Filed 3–4–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Title 3—

The President

Executive Order 13287 of March 3, 2003

Preserve America

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) (NHPA) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), it is hereby ordered:

Section 1. *Statement of Policy.* It is the policy of the Federal Government to provide leadership in preserving America's heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties. The Federal Government shall recognize and manage the historic properties in its ownership as assets that can support department and agency missions while contributing to the vitality and economic well-being of the Nation's communities and fostering a broader appreciation for the development of the United States and its underlying values. Where consistent with executive branch department and agency missions, governing law, applicable preservation standards, and where appropriate, executive branch departments and agencies ("agency" or "agencies") shall advance this policy through the protection and continued use of the historic properties owned by the Federal Government, and by pursuing partnerships with State and local governments, Indian tribes, and the private sector to promote the preservation of the unique cultural heritage of communities and of the Nation and to realize the economic benefit that these properties can provide. Agencies shall maximize efforts to integrate the policies, procedures, and practices of the NHPA and this order into their program activities in order to efficiently and effectively advance historic preservation objectives in the pursuit of their missions.

Sec. 2. *Building Preservation Partnerships.* When carrying out its mission activities, each agency, where consistent with its mission and governing authorities, and where appropriate, shall seek partnerships with State and local governments, Indian tribes, and the private sector to promote local economic development and vitality through the use of historic properties in a manner that contributes to the long-term preservation and productive use of those properties. Each agency shall examine its policies, procedures, and capabilities to ensure that its actions encourage, support, and foster public-private initiatives and investment in the use, reuse, and rehabilitation of historic properties, to the extent such support is not inconsistent with other provisions of law, the Secretary of the Interior's Standards for Archeology and Historic Preservation, and essential national department and agency mission requirements.

Sec. 3. *Improving Federal Agency Planning and Accountability.* (a) Accurate information on the state of Federally owned historic properties is essential to achieving the goals of this order and to promoting community economic development through local partnerships. Each agency with real property management responsibilities shall prepare an assessment of the current status of its inventory of historic properties required by section 110(a)(2) of the NHPA (16 U.S.C. 470h–2(a)(2)), the general condition and management needs of such properties, and the steps underway or planned to meet those management needs. The assessment shall also include an evaluation of the suitability of the agency's types of historic properties to contribute to community economic development initiatives, including heritage tourism, taking into

account agency mission needs, public access considerations, and the long-term preservation of the historic properties. No later than September 30, 2004, each covered agency shall complete a report of the assessment and make it available to the Chairman of the Advisory Council on Historic Preservation (Council) and the Secretary of the Interior (Secretary)..

(b) No later than September 30, 2004, each agency with real property management responsibilities shall review its regulations, management policies, and operating procedures for compliance with sections 110 and 111 of the NHPA (16 U.S.C. 470h–2 & 470–3) and make the results of its review available to the Council and the Secretary. If the agency determines that its regulations, management policies, and operating procedures are not in compliance with those authorities, the agency shall make amendments or revisions to bring them into compliance.

(c) Each agency with real property management responsibilities shall, by September 30, 2005, and every third year thereafter, prepare a report on its progress in identifying, protecting, and using historic properties in its ownership and make the report available to the Council and the Secretary. The Council shall incorporate this data into a report on the state of the Federal Government's historic properties and their contribution to local economic development and submit this report to the President by February 15, 2006, and every third year thereafter.

(d) Agencies may use existing information gathering and reporting systems to fulfill the assessment and reporting requirements of subsections 3(a)–(c) of this order. To assist agencies, the Council, in consultation with the Secretary, shall, by September 30, 2003, prepare advisory guidelines for agencies to use at their discretion.

(e) No later than June 30, 2003, the head of each agency shall designate a senior policy level official to have policy oversight responsibility for the agency's historic preservation program and notify the Council and the Secretary of the designation. This senior official shall be an assistant secretary, deputy assistant secretary, or the equivalent, as appropriate to the agency organization. This official, or a subordinate employee reporting directly to the official, shall serve as the agency's Federal Preservation Officer in accordance with section 110(c) of the NHPA. The senior official shall ensure that the Federal Preservation Officer is qualified consistent with guidelines established by the Secretary for that position and has access to adequate expertise and support to carry out the duties of the position.

Sec. 4. *Improving Federal Stewardship of Historic Properties.* (a) Each agency shall ensure that the management of historic properties in its ownership is conducted in a manner that promotes the long-term preservation and use of those properties as Federal assets and, where consistent with agency missions, governing law, and the nature of the properties, contributes to the local community and its economy.

(b) Where consistent with agency missions and the Secretary of the Interior's Standards for Archeology and Historic Preservation, and where appropriate, agencies shall cooperate with communities to increase opportunities for public benefit from, and access to, Federally owned historic properties.

(c) The Council is directed to use its existing authority to encourage and accept donations of money, equipment, and other resources from public and private parties to assist other agencies in the preservation of historic properties in Federal ownership to fulfill the goals of the NHPA and this order.

(d) The National Park Service, working with the Council and in consultation with other agencies, shall make available existing materials and information for education, training, and awareness of historic property stewardship to ensure that all Federal personnel have access to information and can develop the skills necessary to continue the productive use of Federally owned historic properties while meeting their stewardship responsibilities.

(e) The Council, in consultation with the National Park Service and other agencies, shall encourage and recognize exceptional achievement by such agencies in meeting the goals of the NHPA and this order. By March 31, 2004, the Council shall submit to the President and the heads of agencies recommendations to further stimulate initiative, creativity, and efficiency in the Federal stewardship of historic properties.

Sec. 5. *Promoting Preservation Through Heritage Tourism.*

(a) To the extent permitted by law and within existing resources, the Secretary of Commerce, working with the Council and other agencies, shall assist States, Indian tribes, and local communities in promoting the use of historic properties for heritage tourism and related economic development in a manner that contributes to the long-term preservation and productive use of those properties. Such assistance shall include efforts to strengthen and improve heritage tourism activities throughout the country as they relate to Federally owned historic properties and significant natural assets on Federal lands.

(b) Where consistent with agency missions and governing law, and where appropriate, agencies shall use historic properties in their ownership in conjunction with State, tribal, and local tourism programs to foster viable economic partnerships, including, but not limited to, cooperation and coordination with tourism officials and others with interests in the properties.

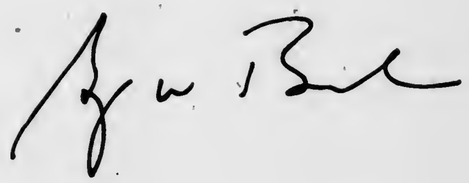
Sec. 6. *National and Homeland Security Considerations.*

Nothing in this order shall be construed to require any agency to take any action or disclose any information that would conflict with or compromise national and homeland security goals, policies, programs, or activities.

Sec. 7. *Definitions.* For the purposes of this order, the term "historic property" means any prehistoric or historic district, site, building, structure, and object included on or eligible for inclusion on the National Register of Historic Places in accordance with section 301(5) of the NHPA (16 U.S.C. 470w(5)). The term "heritage tourism" means the business and practice of attracting and accommodating visitors to a place or area based especially on the unique or special aspects of that locale's history, landscape (including trail systems), and culture. The terms "Federally owned" and "in Federal ownership," and similar terms, as used in this order, do not include properties acquired by agencies as a result of foreclosure or similar actions and that are held for a period of less than 5 years.

Sec. 8. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments,

agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
March 3, 2003.

[FR Doc. 03–05344
Filed 3–4–03; 8:45 am]
Billing code 3195–01–P

Federal Register

Wednesday,
March 5, 2003

Part V

The President

Proclamation 7648—American Red Cross Month, 2003

Proclamation 7649—Irish-American Heritage Month, 2003

Proclamation 7650—National Colorectal Cancer Awareness Month, 2003

Proclamation 7651—Women's History Month, 2003

Proclamation 7652—Save Your Vision Week, 2003

Federal Register
Vol. 68, No. 43
Wednesday, March 5, 2003

Presidential Documents

Title 3—

The President

Proclamation 7648 of February 28, 2003

American Red Cross Month, 2003

By the President of the United States of America

A Proclamation

Throughout our history, Americans have been committed to helping the suffering, the disadvantaged, and those in need of help. The American Red Cross represents the compassion of our Nation in action. During American Red Cross Month, we honor this remarkable organization and recognize its proud heritage of service.

For more than 121 years, the Red Cross has upheld its mission to provide relief to victims of disasters and to help people prevent, prepare for, and respond to emergencies. Last year, the Red Cross helped victims of more than 70,000 disasters, ranging from dwelling fires to widespread catastrophes such as hurricanes, floods, tornadoes, and wildfires. Around the world, the Red Cross contributed to international efforts that aided other countries devastated by natural disasters, assisted people in getting access to safe drinking water, and battled malnutrition and life-threatening diseases. More than half a million U.S. military families received direct assistance from the Red Cross, helping them stay connected with their loved ones, despite difficult circumstances.

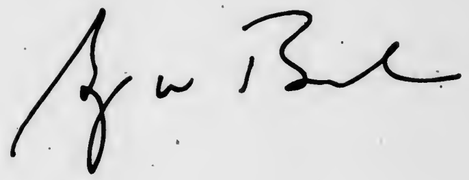
The American Red Cross also strengthens our communities by encouraging citizens to be involved and to help their neighbors in need. Last year, more than 1.2 million everyday heroes volunteered at their local Red Cross chapters, and almost 12 million more took the time to learn lifesaving skills such as first aid, CPR, and defibrillator use. And more than 4 million citizens answered the call for blood donors, giving 7.2 million blood donations through the American Red Cross.

During these times of great consequence, the mission of the Red Cross is more critical than ever. As our Nation confronts new challenges, the American Red Cross and its partners are working with the Federal Government and the emergency planning community to help keep America safe. Through its "Together We Prepare" campaign, the Red Cross is a vital partner with the Department of Homeland Security in empowering individuals and families to protect themselves and be prepared for the unexpected.

Countless people across our country turn to the American Red Cross every day for blood and blood products, disaster assistance, and vital community services. We are grateful for this essential and inspiring organization, and we celebrate its legacy of help, hope, and healing for those in need.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2003 as American Red Cross Month. As we celebrate this month, I call upon all citizens to become partners in preparedness with their local Red Cross chapters and to become active participants in advancing the noble mission of the American Red Cross.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–5368
Filed 3–4–03; 9:11 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7649 of February 28, 2003

Irish-American Heritage Month, 2003

By the President of the United States of America

A Proclamation

From the earliest days of our Republic, America has inspired the hopes and dreams of countless individuals from around the world who have come to share in our gifts of freedom, justice, and opportunity. During Irish-American Heritage Month, we celebrate the contributions of these talented and industrious citizens and recognize their rich legacy of ingenuity, creativity, and achievement.

Throughout our history, America has welcomed millions of Irish immigrants to its shores. These proud people arrived seeking a better life for themselves, their families, and future generations. Many courageous individuals came during the terrible years of Ireland's Great Famine in the middle of the 19th century, and their road to prosperity was not easy. Many faced significant obstacles, including discrimination and poverty. Despite these challenges, Irish Americans have risen to success in every sector of our society.

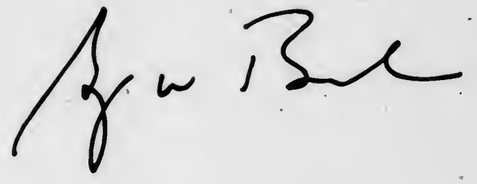
Americans of Irish descent have played a vital role in shaping our history and culture. Nineteen Presidents of the United States have claimed Irish heritage. One-third to one-half of the American troops during the Revolutionary War and 9 of the 56 signers of the Declaration of Independence were Irish Americans. Irish Americans explored our frontiers, built many of our Nation's bridges, canals, and railroads, and their proud record of public service helped to fortify our democracy.

In all areas of American life, Irish Americans have made significant and enduring contributions to our great country. America is a better Nation because of the efforts of Irish Americans like Henry Ford, who spurred innovation; Bing Crosby, who entertained countless people around the world; and activist Mary Kenney O'Sullivan, who worked for critical and compassionate social reform. These individuals are just a few of the many Irish Americans who helped to transform our national identity and whose accomplishments reflect the determination, joy, and hope of the Irish. The faith, perseverance, and spirit of the Irish have helped to strengthen our families, our communities, our ideals, and our national character.

Today, approximately one in four Americans can trace their ancestry in part to Ireland's green shores, and we are proud of and grateful for the many Irish Americans who continue to enrich our country.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2003 as Irish-American Heritage Month. I call upon all Americans to observe this month by learning about and commemorating the contributions of Irish Americans to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–5369
Filed 3–4–03; 9:11 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7650 of February 28, 2003

National Colorectal Cancer Awareness Month, 2003

By the President of the United States of America

A Proclamation

Colorectal cancer touches the lives of many Americans. This year, it is estimated that more than 148,000 new cases of colorectal cancer will be diagnosed. More than 56,000 people may die from this disease, making it a leading cause of cancer death in our Nation. We have achieved great progress in understanding what causes colorectal cancer, and how it develops and spreads. This fourth national observance once again helps increase awareness. Increased awareness can help us reach my Administration's goal, known as "Healthy People 2010," administered by the Department of Health and Human Services, to reduce the rate of colorectal cancer deaths by 34 percent by the year 2010.

Like many cancers, the development of colorectal cancer can take many years. Screening is an important tool to help detect colorectal cancer early by identifying precancerous growths or polyps, when treatment is more likely to be successful.

More than 90 percent of people who are diagnosed with colorectal cancer are over the age of 50. Yet, recent data indicates that less than 40 percent of adults age 50 or older have had one of the available colorectal cancer screening tests within recommended intervals. Researchers estimate that if everyone age 50 or older received regular colorectal cancer screenings, at least one-third of the deaths would be prevented.

Individuals must realize the importance of talking with their healthcare providers about when to begin screening, which tests to have, the benefits and risks of each test, and how often to schedule appointments. To help our citizens detect this disease, the Centers for Medicare and Medicaid Services (CMS) provides Medicare coverage for regular colorectal cancer screening tests to help detect precancerous conditions or colorectal cancer early.

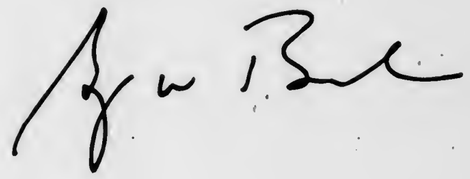
The National Cancer Institute (NCI), a component of the National Institutes of Health, is the Nation's principal research agency in the fight against colorectal cancer. The NCI invested approximately $245 million in 2002, and it will dedicate an estimated $267 million this year to advance our understanding of this disease. The Centers for Disease Control and Prevention (CDC) also plays an important role in our efforts to save lives and reduce the burden of colorectal cancer. Last year, the CDC allocated $12 million to educate the public and health professionals about colorectal cancer screening, and to conduct and support research efforts related to increasing national colorectal cancer screening rates.

The CDC, CMS, and NCI are participating together in the Screen for Life: National Colorectal Cancer Action Campaign to educate Americans aged 50 and older, particularly minority groups, about the benefits of colorectal cancer screening. Another coordinated effort is the Health Disparities Collaboratives, a public-private partnership that involves the Health Resources and Services Administration, CDC, NCI, and the Institute for Healthcare Improvement. These groups are focusing on screening and follow-up care for people who traditionally lack access to quality health care.

During this month, I encourage Americans to join me in the crucial effort to save lives by taking action against colorectal cancer by talking with healthcare providers about screening, telling friends and family members about the importance of early detection, and providing support for those diagnosed with colorectal cancer. By working together to increase awareness and supporting research about this disease, we can make a difference in the lives of our citizens and people around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2003 as National Colorectal Cancer Awareness Month. I call upon all Americans to reaffirm our Nation's continuing commitment to controlling and curing colorectal cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–5370
Filed 3–4–03; 9:11 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7651 of February 28, 2003

Women's History Month, 2003

By the President of the United States of America

A Proclamation

As our Founding Fathers worked to develop the framework of our Nation, Abigail Adams wrote to her husband: "I long to hear that you have declared an independency—and by the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favorable to them than your ancestors." An early advocate of women's rights, a farm and financial manager, and the mother of an American President, John Quincy Adams, Abigail Adams is one of many American women who helped establish the strength and vitality of our Nation. During Women's History Month, we recognize the generations of American women whose important contributions continue to shape our Nation and enrich our society.

Through vision, hard work, and determination, countless American women have broadened opportunities for themselves and for others at home, in the community, and in the workplace. In 1809, Mary Kies became the first woman to receive a U.S. patent. By developing a method of weaving straw with silk, she helped advance American industry and set an inspiring example for other American women. Her pioneering efforts helped define our country's entrepreneurial spirit and paved the way for future generations of women to take pride in their talents and creativity.

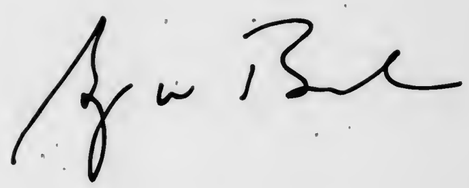
Since Mary Kies' groundbreaking achievement, many American women have become successful entrepreneurs and business professionals. In 1905, Madam C.J. Walker started her own business by creating and selling hair care products for African-American women. After a decade, her company was highly successful and employed more than 3,000 people, and at the time, was the largest African-American owned business in the United States. Today, Madam Walker is remembered for her business accomplishments, efforts to create new opportunities for women, and for her contributions to her community.

Driven by the legacy of these extraordinary figures, American women from all backgrounds continue to break barriers and fulfill their personal and professional potential. At the dawn of the 21st century, women have more choices than ever before. Between 1992 and 2002, the number of female college graduates in the United States has increased from 15.9 million to 23.6 million. Women account for 47 percent of all employed persons and are entering the American workforce in record numbers. In the last 10 years, their ranks have increased by 8.7 million. Furthermore, women-owned small businesses are growing twice as fast as all other U.S. firms, employing 7 million Americans and contributing to the vitality of our economy. To build on these successes, my Administration will continue our work to promote policies that advance the aspirations, hopes, and dreams of every American.

This month, as we celebrate remarkable women in our Nation's past, I encourage all citizens to recognize the countless American women whose efforts continue to enhance the economic, social, and cultural life of our great Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2003 as Women's History Month. I call upon all the people of the United States to observe this month with appropriate ceremonies and activities and to remember throughout the year the many contributions of American women.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03-5371
Filed 3-4-03; 9:12 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7652 of February 28, 2003

Save Your Vision Week, 2003

By the President of the United States of America

A Proclamation

Each year, the number of Americans who suffer from vision loss increases, yet half of all blindness can be prevented through early detection and treatment. During Save Your Vision Week, we renew our commitment to protecting eyesight by promoting healthy eye care and by encouraging Americans to receive routine vision screenings and dilated eye exams.

Our sense of sight affects how we work, communicate, and learn. All Americans must be aware of the risk of vision loss and take steps to preserve and protect their eyesight, beginning with getting regular eye exams, using the appropriate protective eyewear, and maintaining a healthy lifestyle. These small steps can make a big difference. When Americans take responsibility for improving their health, our whole society benefits.

Healthy vision is especially critical to our children's ability to receive a good education and establish a strong foundation in life. According to the American Optometric Association, 80 percent of learning depends on vision, yet 86 percent of children entering school have not had a thorough eye examination. Due to hereditary and prenatal factors, from a very early age, many children are at high risk for potentially severe eye diseases, including retinopathy of prematurity (ROP), amblyopia, and congenital glaucoma. One in four kids will develop myopia as teenagers. Children need regular eye care from birth to prevent and treat conditions that lead to visual impairment and blindness. Parents play a key role in obtaining eye care for their children and must be knowledgeable about the potential threats to a child's eyesight. For the future of our Nation, it is vital that we care for the visual health and well-being of America's children so they are able to reach their full potential.

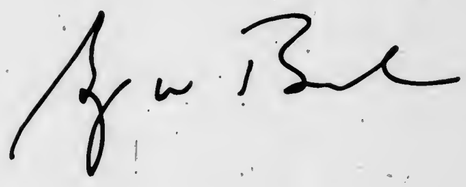
As part of my HealthierUS Initiative and my Administration's ongoing commitment to helping the American people live healthier lives, I encourage all Americans to get preventative health screenings. These screenings may tell you if you are prone to developing certain diseases, can help protect your vision, and could even save your life. I particularly urge parents to ask their children's doctors about vision screenings and eye exams, which can help ensure eye diseases and conditions are detected and treated early, when treatment is most effective. Through education about healthy vision and promotion of good eye care, we help protect the eyesight of countless people across our Nation.

The Congress, by joint resolution approved December 30, 1963, as amended (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week." During this week, I encourage all Americans to learn more about ways to prevent eye problems and to help others maintain the precious gift of sight.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 2 through March 8, 2003, as Save Your Vision Week. I urge all Americans to make eye care and eye safety an important part of their lives and to include dilated eye examinations

in their regular health maintenance programs. I invite eye care professionals, teachers, the media, and all public and private organizations dedicated to preserving eyesight to join in activities that will raise awareness of measures all Americans can take to protect and sustain our vision.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–5372
Filed 3–4–03; 9:12 am]
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S. 141/P.L. 108–8

To improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes. (Feb. 25, 2003; 117 Stat. 555)

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108th Congress

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